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Transportation Department

Aviation Safety
Federal Aviation Administration

Commodity Futures
Commodity Futures Trading Commission

Drug Traffic Control
Drug Enforcement Administration

Educational Research
Education Department

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Organization and Functions (Government Agencies)
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Surface Mining
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Superfund
Federal Emergency Management Agency

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1940 and 1944

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is publishing for implementation the regulations for the Housing Preservation Grant (HPG) program authorized by section 533 of the Housing Act of 1949, as amended by section 522 of Title V of the Housing Urban-Rural Recovery Act of 1983 (Pub. L. 98–181).

The HPG program will provide rehabilitated and repaired homeownership housing for very low- and low-income families in rural areas. Grants will be made to nonprofit and public entities to establish and operate a rehabilitation and repair program. The grant funds provided by FmHA will reduce the construction costs to homeowners, thereby assisting very low- and low-income families to live in adequate housing units. Cost reductions may be achieved by the HPG grantee with a variety of financial assistance mechanisms, including deferred payment loans, interest reductions on private lending, low-interest direct loans, direct grants, etc., based on need of the recipient, cost of rehabilitation and repairs, repayment ability, and needs of the community.

This action implements the homeowner aspect of the program as mandated by Congress. FmHA intends to continue to develop the rental repair and rehabilitation portion of the HPG program based upon the constructive comments received in response to our requests contained in the proposed rule publication of July 26, 1985 (50 FR 30429).

EFFECTIVE DATE: June 12, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Pentecost, Senior Loan Officer, Special Authorities Branch, Multifamily Housing Processing Division, FmHA, USDA, Room 5341, South Agriculture Building, Washington, DC 20250; telephone: (202) 382–6963 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: FmHA is publishing on this date a Notice in the Federal Register advising that preapplications must be submitted to the Farmers Home Administration within seventy-five (75) days. The Notice is being published in accordance with § 1944.678 of Subpart N of Part 1944. Incomplete preapplications and those received after the deadline, will be returned without further review. Organizations interested in applying for HPG funding are encouraged to contact their State FmHA Office as soon as possible to receive application information.

This action has been reviewed under USDA procedures established in Departmental Regulations 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor." This action has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not create any significant recordkeeping and reporting burdens or substantially increase costs to the Government and the public. The impact on proposed budget levels is dependent upon funding levels provided by Congress. $19,140,000 is available to the program through September 30, 1988.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433—Housing Preservation Grants. The FmHA programs and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V; 48 FR 29112, June 24, 1983).

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an environmental impact statement is not required.

Vance L. Clark, Administrator, Farmers Home Administration has determined that the proposed action will not have a significant impact on a substantial number of small entities because the relatively narrow scope of the program and the limited amount of funds currently available will restrict the number of applicants eligible to participate in the program. FmHA anticipates funding approximately one hundred grantees nationwide.

Discussion of Final Rule

A proposed rule was published in the Federal Register (50 FR 30429) on July 26, 1985 with a 60-day comment period, ending September 24, 1985. The supplementary information published as part of the proposed rulemaking fully discussed the program objectives, implementation alternatives, major policies, and significant operational issues. In response to the notice of proposed rulemaking, 29 comments were received from a variety of public and private nonprofit groups addressing the specific proposed regulations for the homeowner portion of the program. In addition, 15 of the 29 respondents provided very beneficial information for FmHA's implementation of the rental aspect of the HPG program.

Substantive changes to the previously published HPG regulations as a result of the comments are summarized below:

1. *Section 1944.651(a):* One respondent pointed out that the proposed regulations did not appear to give priority or sufficient attention to the needs of handicapped persons in housing rehabilitation. Improved accessibility by handicapped persons is an eligible activity as part of housing preservation activities and, accordingly, is now covered in part of the opening statement of purpose of the program to emphasize its importance.

2. Section 1944.656(g): Under the definition of "Organization," a consortium was restricted to "general local governments." In response to a comment that this was unduly restrictive where a State government may be an important member of a consortium, the language "general local" was dropped.

3. Section 1944.656(g): One respondent indicated that the Agency's policy requiring local participation from the area being served by nonprofit organizations is unnecessary and restrictive (in terms of serving rural areas that may not have such a group, but which could be served by a statewide or regional entity). FmHA acknowledges that this may create some hardships and has modified this section. While local participation is still preferred, the requirement for consultation with the local government and public notice should assure the local awareness and commitment to the project which was the rationale for previously mandating local participation.

4. Section 1944.656(i): In response to several comments on the definition of "Housing preservation" the definition was revised and clarified. Previously, it was not clear that the unit being "preserved" must meet FmHA thermal standards and FmHA development standards for existing structures (either minimum property standards or applicable local codes based on voluntary national model codes that apply to rehabilitated structures). FmHA intends that units which receive assistance under this program must meet such standards, not just part of the unit. The Agency's objective in providing assistance to families is for preservation of their units where the assistance results in an energy efficient unit that will meet code standards. Several comments indicated that this would be burdensome and unduly expensive and limit the number of units that could be assisted under the program. The Agency points out that the enabling legislation sets these standards and the Agency agrees with the apparent intent of the law not to use this program as a repair program similar to its section 504 repair program which can be used to make essential repairs without bringing the unit up to code standards. As a further note, FmHA is revising its definition of development standards in FmHA Instruction 1924–A (Subpart A of Part 1924 of Chapter XVIII of Title 7 of the Code of Federal Regulations) to include standards contained in any of the voluntary national model codes as well as the Minimum Property Standards for new and existing structures. Until that regulation is in effect, FmHA will review development standards proposed by applicants if they are based on national model codes. (§ 1944.656(i) has been redesignated § 1944.656(e).)

5. *Section 1944.658(b):* Several respondents pointed out that the proposed rule appeared unduly restrictive in terms of organizational experience of an applicant who may not have had housing related experience in the past. It is FmHA's intention to fund organizations that will be able to operate this program successfully. One way to assure that is to fund entities experienced in operating housing programs. However, if the organization has no experience, FmHA sees the necessity of the applicant at least to hire staff with experience to operate the program. The section of the regulations on "Applicant Eligibility" now reflects that the organization or members of its staff must have experience in operating a housing program.

6. *Section 1944.660(a):* In response to comments that FmHA policies concerning third party representatives of applicants was not clear, this section was revised to specify that an applicant's authorized representative may not receive any direct or indirect benefit after the award of the grant.

7. *Section 1944.661:* FmHA received comments that the requirements for eligibility of a homeowner for HPG assistance were overly restrictive in terms of being an occupant of the unit and owning it for a period of time prior to receiving assistance. This section has been revised for clarity to indicate that any recipient of HPG assistance must meet the income definitions required by law, must be an owner of the unit for at least one year prior to receiving assistance, and should be the intended occupant of the unit after receiving assistance. FmHA believes these requirements to be realistic in terms of assuring that the HPG program reach low- and very low-income families now residing in substandard housing and assist them to improve the units in which they are residing. Without these provisions, neither FmHA nor grantees will be able to prevent the use of program funds by new owners or creating an environment where there might be third party beneficiaries or windfall profits. In addition, there were comments concerning the requirement that the units be a "single family dwelling;" the Agency notes that this definition includes townhouses or duplex type units where each unit is separately owned.

8. *Section 1944.661(a)(2)(i):* One respondent pointed out that there was inconsistency between sections of the requirements in terms of length of occupancy and/or ownership. This section has been revised to delete the occupancy requirement of one year prior to assistance but has retained the one year ownership requirement. However, in the case of divided interest in ownership, occupancy is required, though the term has been corrected to reflect one year, not ten years as the proposed rule stated. Later, in § 1944.661(b)(3), the occupant of the unit may be eligible for assistance where there is no recorded deed or evidence of ownership if they have occupied the unit for 10 years and is the apparent owner of the property by having paid taxes, etc. FmHA believes these different terms provide adequate assurance of assisting intended recipients under a wide range of ownership situations.

9. *Section 1944.664:* Comments on this section dealing with eligible activities focused on the following points:

a. First was the applicability of FmHA's thermal standards and the need to bring the unit as a whole up to code standards, not just one or two individual components of the structure. This has been covered in paragraph 4 above.

b. Second, FmHA made revisions based on specific recommendations for clarity and inclusiveness, such as: including foundations with "structural supports;" noting that the funds can be used for materials and labor; including overcrowding as a health hazard; and combining all the incidental expenses related to HPG activities under one paragraph. The Agency also added to this last item the requirement that such incidental costs be in accordance with local prevailing rates and so documented.

c. Third, as a result of numerous comments, the regulations now permit the use of HPG funds to reimburse employees of the grantee where the grantee acts as the construction contractor. Several conditions must be met where the grantee chooses this option, including demonstration of cost savings, third party inspection of the work performed, a process for assuring consumer protection, and adequate accounting procedures to separate administrative costs from construction and labor costs.

d. Fourth, based on recommendations, the regulations concerning the use of funds for "convenience and cosmetic purposes" have been clarified, without changing the basic concept or the 25 percent limitation on use of HPG funds for such purpose.

e. Finally, one respondent requested modification of the prohibition against refinancing debts of the homeowner. FmHA will not allow such practice because such refinancing may well result in the actual use of funds for purposes other than home rehabilitation; given the limited funds available, this may create a serious drain on program resources.

10. *Section 1944.666:* FmHA received several comments on the rules governing use of HPG funds for administrative purposes. Although the 20 percent limitation for administration was accepted, by permitting grantees to act as construction contractors, several revisions were made to clarify that resources for such activities must come from nonadministrative funds and to permit the grantee to accept compensation from HPG recipient homeowners for such labor costs. Second, a revision was made to clarify that the 20 percent limitation applies to both direct and indirect administrative costs.

11. *Section 1944.673:* As a result of several comments noting the complexity of the environmental review process for the program, these requirements have been modified to some extent. An HPG grant has been defined as a Class I action under the requirements of 7 CFR Part 1940, Subpart G. This means that an applicant need submit only limited environmental information on the area to be affected and that FmHA completes a relatively brief, checklist-type environmental assessment of the preapplication. During the grantee's operation of the HPG program, no FmHA environmental review will be conducted of a proposed unit unless the unit: (1) Is located within a floodpath or wetland, or (2) is listed or eligible for listing on the National Register of Historic Places and the Advisory Council on Historic Preservation does not concur in the proposed work. (§ 1944.673 has been redesignated § 1944.672.)

12. *Section 1944.673:* This is a new section created to respond to comments from the Advisory Council on Historic Preservation which resulted in a Programmatic Memorandum of Agreement (PMOA) between FmHA, the Advisory Council and the National Conference of State Historic Preservation Officers. The PMOA is made part of the FmHA regulations as FmHA Instruction 2000-FF, Exhibit A (available in any FmHA office). In brief, applicants are required to consult with their respective State Historic Preservation Officer (SHPO), in both the design and implementation stages of their programs, as to how potential impacts to properties listed or eligible for listing on the National Register of Historic Places will be identified and treated. When this consultation process does not achieve a satisfactory result between the applicant, SHPO, and the Advisory Council on the Advisory Council on Historic Preservation, FmHA will intervene as necessary and consult directly with the parties to resolve the matter. FmHA believes this process will make it easier for both the grantees and the FmHA field staff to comply with historic preservation requirements.

13. *Section 1944.676:* One respondent pointed out that, as part of their application, grantees should indicate what provisions they have for disposition of security instruments when or if it loses its legal status after the end of the grant. Language has been added to this effect. No other substantive changes were made in this section. FmHA has edited the language for clarification and has added appropriate language reflecting other revisions discussed above.

14. *Section 1944.679:* This section received considerable comments and many recommendations for revisions. FmHA has adopted many of the suggestions and has revised this section completely. Nonetheless, even with the language changes, the Agency considers the end product consistent with the proposed rule. This is large part due to the fact that the original was based upon legislative requirements governing selection of recipients and any final rule would have to be likewise consistent with the law. Readers are encouraged to review this section; every effort has been made to make the criteria and assignment of rating points as objective as possible based on the preapplication submission. In response to several comments, the criteria are weighted to give emphasis to applicants who will be most productive, cost effective, and experienced (see comment 5 above concerning organization and/or staff experience). As required by law, additional points are given for proposals which are to be undertaken in remote rural areas, minimize use of administrative funds, alleviate overcrowding, and, if applicable, continue a successful HPC program. The criteria for leveraging resources is contained in § 1944.679(b)(2) which relates to maximizing use of grant funds. Exhibit D provides a summary of the criteria for use by FmHA staff in rating proposals.

15. *Section 1944.683:* Based upon several comments received on the lack of clear guidance on reporting and the need for obtaining information which can be computerized, FmHA has revised this section on reporting requirements and added Exhibit E as a guide for grantees. The only additional information requested is on the homeowners assisted under the program. Some revisions were made in § 1944.683(d) to give the State Director clear authority to take appropriate action if reports are not submitted in a timely fashion or if the grantee has made unsatisfactory progress in the execution of the program.

16. *Section 1944.688:* Comments were received on this section concerning the need to specify that audits would be an eligible project cost upon grant completion or termination. This section was also reordered for greater clarity.

17. Exhibit A, the HPG Grant Agreement, was modified to add investigations to litigation, claims and audits as a reason for retention of records after the usual three year period.

The following additional comments were received which were fully considered but have not been incorporated in the regulations:

1. Thirteen respondents provided comments and advice to FmHA for implementing the rental aspect of the housing preservation program. The comments submitted will be very beneficial. In response to several comments critical of the Agency's selection of implementing the homeowner aspect first, FmHA reiterates its intention to proceed in developing the regulatory revisions and additions necessary for the rental program.

2. Comments were received on requirements contained in the regulations which were included because they were stipulated in the law. No changes were made in these areas which include: The points in the project selection criteria for leveraging; the distribution of funds to all states; and the stipulation that grantees not receive more than 50 percent of a state's allocation when there is more than one eligible applicant.

3. One respondent pointed out that requiring the project to be operated in an area of concentration of substandard housing was inconsistent with the focus on rural areas and would preclude operation of a project in smaller communities with scattered units needing HPG assistance. FmHA has not modified its requirements in this regard nor does the Agency interpret this requirement as strictly as the respondent. Given limited resources, FmHA strongly encourages applicants to develop their projects to maximize its

impact by focusing its resources on target areas. This has no correlation to size of community. In fact, many rural communities and counties have pockets of substandard housing occupied by low income families needing the type of assistance which can be provided under the HPG program.

4. A respondent suggested limiting the amount of HPG funds for each unit. FmHA has not done so since the manner of assistance is potentially so varied that any limit imposed would provide an artificial constraint to the grantee. In addition, the project selection criteria, with its emphasis on cost efficiency and maximizing the potential number of units assisted, will require grantees to set their own limits or generate outside resources in order to be competitive. This process is more realistic and provides the intended flexibility to the grantees to tailor their HPG program to their service and needs.

5. Several respondents noted that the language for use of HPG funds for mobile/manufactured homes restricted the use of funds, to units of this nature, to recipients who owned both the site and the unit. FmHA believes to do otherwise would be inconsistent, even though the Agency recognizes the need to assist unit owners in rental parks. Such assistance will be considered under the rental aspect of the program. Also regarding manufactured housing/mobile homes, assistance is restricted to units on a permanent foundation. This is consistent with FmHA policies for this type of unit; at a minimum, such units must be permanently placed with any likelihood of future mobility absent.

6. Several comments were received concerning inspections of work financed under the HPG program, specifically whether a member of a consortium applicant could provide inspection services and whether it would even be feasible or possible to have third-party inspections in some areas. FmHA's policy in this area is based on the need to provide protection to the beneficiary low- and very low-income families, and to provide these families assurance that they are receiving full benefit. In addition, FmHA and grantees both need assurance that the work being performed under the HPG program is properly executed. In any event, FmHA's policy as applied to a consortium would mandate contract or fee inspections.

7. One comment requested that administrative funds include the cost of preparing an application as an eligible cost. FmHA has not done so since HPG funds for administration are limited and since the Agency believes this cost should be borne by the applicant similar to its requirements for other FmHA programs.

8. FmHA was asked to provide additional guidance on program administration to applicants and grantees and was also advised that the current requirements for applicant experience placed new organizations at a competitive disadvantage. The Agency considers the current regulations reflective of the apparent legislative intent to assure maximum grantee flexibility to operate its program with little interference or direction from FmHA. The rationale behind the program's requirement for applicant experience and capacity (see comment 5 revisions made) is also indicative of the relationship FmHA envisions between grantees and the Agency. Administrative guidance beyond the current requirements currently in the regulation is available from FmHA on an informal and as needed basis.

9. Comments were received expressing concern that FmHA might allocate funds to the section 504 repair grant program prior to using all HPG funds for acceptable HPG projects. 7 CFR Part 1940, Subpart L indicates that the National Office may reallocate funds among states to fund HPG projects. It is the Agency's intent to fund as many viable HPG projects as funds permit. Reallocation of funds to the section 504 program and their subsequent redistribution will be after that.

10. One respondent focused on several issues critical to Indian tribes and organizations. FmHA believes the current regulations contain sufficient flexibility to address the concerns raised. First, fund distribution includes a National Office reserve which can be made available to Indian organization applicants upon request by a state office if necessary. The Agency has not created a specific allocation for such entities, believing that they should be competitive with other applications within the state. Where there is a multistate Indian nation requesting assistance, the specific location of the applicant will determine the State to which to apply for funds. In this type of instance there would be no limitation to using the funds in other states where the grantee is authorized to operate. Second, regarding land tenure or ownership of housing by an Indian family homeowner on a reservation, the current regulations provide considerable latitude in the eligibility of homeowners for assistance. If a situation arises outside of what is covered under the regulations, the waiver provision contained in § 1944.690 can be used to request consideration. This is also applicable for code standards and alternative technology applicable to or in use on reservations. Finally, no revision to the regulation has been made to address the issue of Indian preference for assistance. The Agency policies on equal opportunity for any assistance provided to or through the program apply.

11. One respondent pointed out that the regulations and grant agreement prohibit lump sum drawdowns and provided language to modify the grant agreement. No changes are made to the proposed rule or the grant agreement since they currently permit draws based on program need for grant funds. Applicants are required to submit a financial plan with their preapplication.

12. Additional comments were received to clarify the language concerning the restrictions created by using HPG funds for nonexpendible personal property. These requirements are taken directly from OMB circulars which the Department of Agriculture and FmHA have adopted.

13. Comments were received indicating that the penalty clauses stipulating repayment of grant funds with interest in the event of grantee default on the program were unduly severe. FmHA has retained this provision to provide the authority to recapture all grant funds in any situation where a grantee or its representatives default on its grant agreement. The Agency considers this prudent grant management.

14. A respondent strongly encouraged publication in the "Federal Register" of Exhibit C, which contains administrative guidance to FmHA field staff. FmHA will not publish the Exhibit with the final rule in order to reduce publishing cost. However, the Exhibit is available to all interested parties from any FmHA office.

Several revisions were made to the proposed rule based upon internal comments and in an effort to simplify future revisions to regulations with crosscutting provisions. These include:

1. *Section 1944.675:* This section has been reworded to reflect the reference to 7 CFR Part 1940, Subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds. That subpart contains virtually the same information that was previously contained in this section.

2. *Section 1944.690:* The exception authority was modified to remove the apparent limitation of waiver requests to the State Directors; such constraint was not intended.

Finally, conforming changes are being made to Title 7, Part 1940, Subpart G, Environmental Program reflecting the Agency's determination that the HPG

program is Class I action under the Agency's environmental processes.

List of Subjects

7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, Natural wild and scenic river system, Natural resources, Recreation, Water supply.

7 CFR Part 1944

Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Nonprofit organizations, Rural housing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for Part 1940 continues to read as follows and all other authority citations contained in Part 1940 are hereby removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480(j); 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Environmental Program

2. Section 1940.311 is amended by removing "and" from the end of paragraph (a)(1), by changing the period at the end of paragraph (a)(2) to a semicolon, by adding "and" at the end of paragraph (a)(2), and by adding paragraph (a)(3) to read as follows:

§ 1940.311 Environmental assessments for Class I actions.

* * * * *

(a) * * *

(3) Financial assistance for a Housing Preservation Grant.

* * * * *

3. Section 1940.319 is amended by revising paragraph (e) to read as follows:

§ 1940.319 Completing environmental assessments for Class I actions.

* * * * *

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA 1940–21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the reviewer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved shall be attached. If more than one listed resource is to be affected, this shall be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action shall be initiated, except if the action under review is an application for a Housing Preservation Grant.

* * * * *

PART 1944—HOUSING

4. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

5. Subpart N is added to read as follows:

PART 1944—HOUSING

Subpart N—Housing Preservation Grants

Sec.

1944.651 General.
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1944.656 Definitions.
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1944.658 Applicant eligibility.
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1944.661 Homeowner eligibility for HPG assistance.
1944.662–1944.663 [Reserved]
1944.664 Housing preservation assistance.
1944.665 Supervision and inspection of rehabilitation and repair work.
1944.666 Administrative activities and policies.
1944.667 [Reserved]
1944.668 Term of grant.
1944.669 [Reserved]
1944.670 Project income.
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1944.674 Public participation and consultation with State and local governments.
1944.675 Allocation of HPG funds to States and unused HPG funds.
1944.676 Preapplication procedures.
1944.677 [Reserved]
1944.678 Preapplication submission deadline.
1944.679 Project selection criteria.
1944.680 Limitation on grantee selection.
1944.681 Application submission.
1944.682 Grant approval and requesting HPG funds.
1944.683 Reporting requirements.
1944.684 Extending grant agreements and modifying statements of activities.
1944.685 [Reserved]
1944.686 Additional grants.
1944.687 [Reserved]
1944.688 Grant evaluation, closeout, suspension and termination.
1944.689 [Reserved]
1944.690 Exception authority.
1944.691–1944.699 [Reserved]
1944.700 OMB Control Number
Exhibit A of Subpart N—Housing Preservation Grant Agreement
Exhibit B of Subpart N—Amendment to Housing Preservation Grant Agreement
Exhibit C of Subpart N—[Reserved]
Exhibit D of Subpart N—Project Selection Criteria–Outline Rating Form
Exhibit E of Subpart N—Guide for Quarterly Performance Report

Subpart N—Housing Preservation Grants

§ 1944.651 General.

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to eligible applicants to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the cost of providing assistance to rural housing homeowners for loans, grants, interest reduction payments or other assistance that will reduce the cost of repair and rehabilitation. Such assistance will be used by the homeowner to remove or correct health or safety, hazards of their home to meet applicable development standards or make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons.

(b) The Farmers Home Administration (FmHA) will provide Housing Preservation Grant (HPG) assistance to applicants responsible for providing assistance to eligible homeowners without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap if such person has capacity to contract.

§ 1944.652 Policy.

(a) The policy of FmHA is to provide housing preservation grants to eligible applicants to operate a program which finances repair and rehabilitation to single family housing for very low- and low-income homeowners. Applicants are expected to:

(1) Coordinate and leverage funding for the repair and rehabilitation of such housing with housing and community development organizations and/or activities operating in the same area; and

(2) Focus the program to rural areas and smaller communities so it serves very low- and low-income families.

(b) FmHA intends to permit grantees considerable latitude in program design and administration. The forms or types of assistance must provide the greatest long term benefit to the greatest number of persons residing in housing needing repair and rehabilitation.

(c) Repairs and rehabilitation activities affecting properties on or eligible for listing on the National Register of Historic Places will be accomplished in a manner that supports national historic preservation objectives as specified in § 1944.673 of this subpart.

§ 1944.653 Objective.

The objective of the HPG program is to rehabilitate housing owned and occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation.

§§ 1944.654–1944.656 [Reserved]

§ 1944.658 Definitions.

References in this subpart to District, State, National and Finance Offices and to District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this subpart have the following meanings:

(a) *Adjusted annual income.* As defined under § 1944.2(k) of Subpart A of Part 1944 of this chapter.

(b) *Applicant or grantee.* Any eligible organization which applies for or receives HPG funds under a grant agreement.

(c) *Grant agreement.* The contract between FmHA and the applicant which sets forth the terms and conditions under which HPG funds will be made available. (See Exhibit A of this subpart.)

(d) *Homeowner.* For the purposes of the HPG program, a homeowner is one who can meet the conditions of ownership under § 1944.661 of this subpart.

(e) *Housing preservation.* Repair and rehabilitation activities that contribute to the health, safety and well-being of the occupant and contribute to the structural integrity or long term preservation of the unit. As a result of these activities, the overall condition of the house must be raised to meet FmHA Thermal Standards and applicable development standards for existing housing recognized by FmHA in Subpart A of Part 1924 of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by FmHA. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673 of this subpart.

(f) *Low income.* An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by HUD for the county or MSA where the property is or will be located. Maximum low-income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

(g) *Organization.*

(1) A State, commonwealth or trust territory or other political subdivision, or public nonprofit corporation authorized to receive and administer HPG funds;

(2) An Indian tribe, band group, nation, including Alaskan Indians, Aleuts, Eskimos and any Alaskan Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512);

(3) A private nonprofit corporation that is owned and controlled by private persons or interests and is organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, is legally precluded from distributing any gains or profits to is members, and is authorized to undertake housing development activities; or

(4) A consortium of units of governments and/or private nonprofit organizations which is otherwise eligible to receive and administer HPG funds and which meets the following conditions:

(i) Be comprised of units of government and/or private nonprofit corporations that are close together, located in the same state, and serve areas eligible for FmHA housing assistance; and

(ii) Have executed an agreement among its members designating one participating unit of government or private nonprofit corporation as the applicant or designating a legal entity (such as a Council of Governments) to be the applicant.

(h) *Rural area.* The definition in § 1944.10 of Subpart A of Part 1944 of this chapter applies.

(i) *Very low-income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by the Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum very low-income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

§ 1944.657 [Reserved]

§ 1944.658 Applicant eligibility.

To be eligible to receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.656(g) of this subpart.

(b) Have the necessary background and experience on the part of its staff or governing body with proven ability to perform responsibly in the field of low-income rural housing development, repair, and rehabilitation, or have other business management or administrative experience which indicates an ability to operate a program providing repair and rehabilitation financial assistance;

(c) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation and the grant agreement, OMB Circulars A-102 (Uniform Requirements for Grants to State and Local Governments), A-87 (Cost Principles for State and Local Governments), A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals, and A-122 (Cost Principles for Nonprofit Organizations other Nonprofit Organizations, Uniform Administrative Requirements) as appropriate which are available in any FmHA office, and comply with the grant agreement and FmHA regulations; and

(d) If the applicant is engaged in or plans to become engaged in any other activities, provide sufficient evidence and documentation that it has adequate resources, including financial resources, to carry on any other programs or activities to which it is committed without jeopardizing the success and effectiveness of its HPG project.

§ 1944.659 [Reserved]

§ 1944.660 Authorized representative of the HPG applicant and FmHA point of contact.

(a) FmHA will deal only with authorized representatives designated by the HPG applicant. If the authorized representative is a third party, the representative must have no pecuniary interest directly or indirectly after grant award in any of the following as they would relate in any way to the HPG grant: the award of any engineering, architectural, management, administration, or construction contracts; purchase of any furnishings, fixtures or equipment; or purchases and/or development of land.

(b) FmHA has designated the District Office as the point of initial contact for

all matters relating to the HPG program and as the office generally responsible for the administration of HPG projects. However, the State Director may, based on total program size or complexity of a particular applicant, elect to process applications and service the program at the State Office. "Administrative Instructions for FmHA Field Offices Regarding Their Responsibilities in the Administration of Housing Preservation Grant Program" (available in any FmHA Office), provides guidance to FmHA staff on the HPG program.

§ 1944.661 Homeowner eligibility for HPG assistance.

The homeowners assisted by HPG must have income that meets the low- or very-low-income definition, be the owner of a single family dwelling at least one year prior to the time of assistance, and be the intended occupant of the dwelling subsequent to the time of assistance. The dwelling must be located in a rural area and be in need of housing preservation assistance. Determination of income will be made in accordance with § 1944.8 of Subpart A of Part 1944 of this Chapter. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. Each homeowner is required to submit evidence of income and ownership for retention in the grantee's files. Grantees may use certifications or require additional information from the homeowner and should seek advice from their attorney.

(a) Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least one year prior to the date of requesting assistance; and

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(b) The following items may be accepted as evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the HPG recipient is listed as the owner of the property by the local taxing authority and that real estate taxes, if any, for the property are paid by the recipient.

(3) Affidavits by others in the community that the recipient has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

§§ 1944.662–1944.663 [Reserved]

§ 1944.664 Housing preservation assistance.

(a) Grantees under HPG are responsible for providing loans, grants or other comparable assistance to homeowners for housing preservation as described in § 1944.656(e) of this subpart.

(b) Authorized housing preservation assistance includes but is not limited to cost of labor and materials for:

(1) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements.

(2) Energy conservation measures such as:

(i) Insulation; and

(ii) Combination screen-storm windows and doors.

(3) Repair or replacement of the heating system including the installation of alternative systems such as woodburning stoves or space heaters, when appropriate and if local codes permit.

(4) Electrical wiring.

(5) Repair of, or provision for, structural supports and foundations.

(6) Repair or replacement of the roof.

(7) Replacement of severely deteriorated siding, porches or stoops.

(8) Alterations of the unit's interior or exterior to provide greater accessibility for any handicapped family members.

(9) For properties listed on or eligible for the National Register of Historic Places, activities associated with conforming repair and rehabilitation activities to the standards and/or design comments resulting from the consultation process contained in § 1944.673 of this subpart.

(10) Necessary repairs to manufactured homes or mobile homes provided:

(i) the recipient owns the home and the site on which the home is situated and has occupied that home on that site for at least one year prior to receiving HPG assistance; and

(ii) the manufactured home or mobile home is on a permanent foundation or will be put on a permanent foundation with HPG funds. Advice on the requirements for a permanent foundation is available from FmHA.

(11) Additions to any dwelling (conventional, manufactured or mobile) only when it is clearly necessary to alleviate overcrowding or to remove health hazards to the occupants.

(c) HPG funds may be used for payment of incidental expenses directly related to accomplishing authorized activities such as fees for connection of utilities (water, sewer, gas, electric), credit reports, surveys, title clearance, loan closing, inspections, and architectural and other technical services. All fees will be in accordance with local prevailing rates and so documented.

(d) HPG funds may be used to make improvements that do not contribute to the health, safety and well being of the occupant or do not materially contribute to the structural integrity or long term preservation of the unit. The percentage of funds to be used for such purposes must not exceed 25 percent of the total funding for the unit, and such work must be combined with improvements listed as eligible under paragraph (b) of this section. These improvements might include, but are not limited to the following:

(1) Painting;

(2) Paneling;

(3) Carpeting;

(4) Improving clothes closets or shelving;

(5) Improving kitchen cabinets;

(6) Air conditioning; or

(7) Landscape plantings.

(e) Under the following conditions, HPG funds may be used to reimburse the grantee for authorized housing preservation activities performed by employees of the grantee where the grantee acts as a construction contractor and furnishes construction services:

(1) The grantee must demonstrate that such work performed by the grantee results in cost savings in terms of time and labor over cost for such work prevailing in the area;

(2) The grantee has established a process for third party review of performance by a local government, building inspector or other independent party;

(3) The grantee has established or makes available a process that provides for consumer protection to the homeowner assisted; and

(4) The grantee's accounting system provides a clear delineation between administrative costs and construction contractor (nonadministrative) costs.

(f) HPG funds may not be used to:

(1) Assist in the construction or completion of a new dwelling.

(2) Refinance any debt or obligation of the homeowner other than obligations incurred for eligible items covered by this section entered into after date of agreement with HPG grantee.

(3) Repair or rehabilitate any property located in the Coastal Barrier Resources System as designated by the Coastal Barrier Resource Act.

§ 1944.665 Supervision and inspection of rehabilitation and repair work.

Grantees are responsible for supervising all rehabilitation and repair work financed with HPG assistance. All HPG work must be inspected by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, or if the grantee would also normally make such inspections, the grantee must use qualified contract or fee inspectors. A grantee may not inspect its own work.

§ 1944.666 Administrative activities and policies.

Grant funds are to be used primarily for housing repair and rehabilitation activities. Use of grant funds for direct and indirect administrative costs is a secondary purpose and must not exceed 20 percent of the HPG funds awarded to the grantee.

(a) Administrative expenses may include:

(1) Payment of reasonable salaries or contracts for professional, technical, and clerical staff actively assisting in the delivery of the HPG project.

(2) Payment of necessary and reasonable office expenses such as office rental, supplies, utilities, telephone services, and equipment. (Any item of nonexpendable personal property having a unit value of $1,000 or more, acquired with HPG funds, will be specifically identified to FmHA in writing.)

(3) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, and the employer's share of Social Security and health benefits. Payments to private retirement funds are permitted if the grantee already has such a fund established and ongoing.

(4) Payment of reasonable fees for necessary training of grantee personnel.

(5) Payment of necessary and reasonable costs for an audit upon expiration of the grant agreement.

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific HPG grant which were anticipated in the individual HPG grant proposal and which have been approved as eligible expenses at the time of grant approval. This may include contract or fee inspection where necessary pursuant to § 1944.665 of this subpart.

(b) HPG administrative funds may not be used for:

(1) Preparing housing development plans and strategies except as necessary to accomplish the specific objectives of the HPG project.

(2) Substitution of any financial support previously provided or currently available from any other source.

(3) Reimbursing personnel to perform construction related to housing preservation assistance. (Nonadministrative funds may be used if construction is for housing preservation assistance under the provisions of § 1944.664(e) of this subpart.)

(4) Buying property of any kind from families receiving assistance from the grantee under the terms of the HPG.

(5) Paying for or reimbursing the grantee for any expense or debts incurred before FmHA executes the grant agreement.

(6) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving HPG assistance outside the costs of repair and rehabilitation.

(7) Any type of political activities prohibited by OMB Circular A–122.

(8) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs unrelated to the HPG assistance to homeowners, legislative expenses and any excess of cost from other grant agreements.

(c) Advice concerning ineligible costs may be obtained from the State Office as part of the HPG application review or when a proposed cost appears ineligible.

(d) The grantee may not charge fees or accept any compensation or gratuities from HPG recipients for the grantee's technical or administrative services under this program. Where the grantee performs as a construction contractor, the grantee may be paid such compensation directly related to construction services provided and limited to authorized housing preservation activities.

§ 1944.667 [Reserved]

§ 1944.668 Term of grant.

HPG projects may be funded under the terms of a Grant Agreement for a period of up to two years commencing on the date of execution of the Agreement by the State Director. Term of the project will be based upon HPG resources available for the proposed project and the accomplishability of the applicant's proposal within one or two years. Applicants requesting a two year term may be asked to develop a feasible one year program if sufficient funds are not available for a two year program.

§ 1944.669 [Reserved]

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners is governed by OMB Circular A–102 or A–110 (available in any FmHA office). All income during the grant period, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

(b) Grantees are encouraged to establish a program which reuses income from loans after the grant period for continuing repair and rehabilitation activities.

§ 1944.671 Equal opportunity requirements.

The policies and regulations contained in Subpart E of Part 1901 of this chapter apply to grantees under this subpart.

§ 1944.672 Environmental and administrative requirements.

The following policies and regulations apply to grants made under this subpart:

(a) Subpart G of Part 1940 of this chapter regarding environmental requirements:

(1) The approval of an HPG grant for the rehabilitation of single family dwellings shall be a Class I action. As part of their preapplication materials, applicants shall submit Form FmHA 1940–20, "Request for Environmental Information," for the geographical area(s) proposed to be served by the program. Guidance on completing the form for an HPG preapplication will be

available from the FmHA Office servicing the program.

(2) The use of HPG funds to rehabilitate specific single family dwellings are generally exempt from an FmHA environmental review. However, if such units are located in a floodplain or wetland or the proposed work is not concurred in by the Council on Historic Preservation under the requirements of § 1944.673 of this subpart, an FmHA environmental review is required. Applicants must include in their preapplication a process for identifying units that may receive housing preservation assistance that will require an environmental assessment.

(3) When such a unit requiring an environmental assessment is proposed for HPG assistance, the grantee will immediately contact the FmHA office designated to service the HPG grant and work with that office in preparing an environmental assessment and otherwise complying with Subpart G of Part 1940.

(b) The policies, guidelines and requirements of OMB Circulars (Nos. A–102 and A–87 for public bodies and Nos. A–110 and A–122 for nonprofits) apply to the acceptance and use of HPG funds.

§ 1944.673 Historic preservation requirements and procedures.

(a) FmHA has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation in order to implement the specific requirements regarding historic preservation contained in section 533(i) of the enabling legislation. The PMOA with attachments can be found in FmHA Instruction 2000–FF (available in any FmHA office).

(b) Accordingly, each applicant for an HPG grant will provide, as part of its preapplication documentation submitted to FmHA, a description of its proposed process for assisting very low- and low-income families owning historic properties needing rehabilitation or repair. "Historic properties" are defined as properties that are included or eligible for inclusion on the National Register of Historic Places. Each HPG proposal shall:

(1) Be developed in consultation with the State Historic Preservation Officer (SHPO) for the State in which the applicant proposes to undertake the HPG program;

(2) Take into account the national historic preservation objectives set forth at 16 U.S.C. 470–1(1), (4), and (5) (Attachment 1 of the PMOA) and specifically be designed to encourage the rehabilitation of historic properties in a manner that realistically meets the needs of very low- and low-income homeowners while preserving the historic and architectural character of such buildings;

(3) Establish a mechanism for determining whether buildings proposed for rehabilitation are "historic properties" and whether rehabilitation may affect historic properties. Such mechanisms must be consistent with the guidance contained in Attachment 2 of the PMOA.

(4) Establish mechanisms, as feasible, for coordinating with other public and private organizations and programs that provide assistance in the rehabilitation and preservation of historic properties;

(5) Establish a system to ensure that the rehabilitation of historic properties is reasonably consistent with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (G.P.O. 1983 0–416–888 or available from any FmHA office processing an HPG preapplication), except as provided in § 1944.673(b)(6), and that the SHPO is afforded the opportunity to comment on each such rehabilitation; and

(6) Establish a system by which the applicant will furnish all necessary information and initiate the consultation steps set forth in 36 CFR Part 800, Protection of Historic and Cultural Properties (available from any FmHA office processing an HPG preapplication), to afford the Advisory Council on Historic Preservation an opportunity to comment on any rehabilitation that the applicant, in consultation with the SHPO, determines cannot reasonably meet the *Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* or would adversely affect historic properties (see Attachment 3 of the PMOA).

(c) For the purposes of § 1944.673(b)(6), the Advisory Council on Historic Preservation will consider grantees as though they were Federal agencies in the process prescribed in the Council's regulations implementing section 106 of the National Historic Preservation Act (36 CFR Part 800, Protection of Historic and Cultural Properties), except that, should the Council be unable to concur in an applicant's proposal or reach agreement with the grantee on measures to avoid or mitigate effects on an historic property, the Council will notify the SHPO, the applicant or grantee and FmHA that the entity cannot be treated as though it were a Federal agency with respect to the specific property under consideration.

(d) The grantee will also notify the FmHA office servicing its program of notification from the Council immediately. Upon receipt of such notification, FmHA will assume responsibility for completing compliance with 36 CFR Part 800, using the procedures for an environmental assessment contained in Subpart G of Part 1940 of this Chapter. The grantee will assist FmHA in preparing this assessment and may be required, if further information is needed, to prepare and submit an FmHA Form 1940–20, "Request for Environmental Information," for the property, with the grantee being the "applicant." FmHA will work with the grantee to develop alternative actions as appropriate.

(e) Such assumption of responsibility by FmHA on a particular property shall not preclude the grantee from carrying out the requirements of 36 CFR Part 800 on other properties as though it were a Federal agency, but no work may be commenced on any unit in controversy until and unless so advised by FmHA.

(f) If FmHA is required to make an environmental assessment, the results of the assessment will be made part of the recipient's file. The grantee must also include in each recipient's file:

(1) Documentation on how the process for historic preservation review under this section has been complied with, including all relevant reviews and correspondence; and

(2) Determination whether the unit is located in a 100-year floodplain or a wetland.

§ 1944.674 Public participation and consultation with State and local governments.

(a) In preparing its Statement of Activity, the applicant is responsible for consulting with leaders from the county, parish and/or township governments of the area where HPG activities will take place for the purpose of assuring that the proposed HPG program is beneficial and does not duplicate current activities. Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of consulting with the county governments when the program is operated only on tribal land.

(b) The applicant must make its statement of activities available to the public for comment. The applicant must announce the availability of its Statement of Activities for review in a newspaper of general circulation in the project area and allow at least 15 days for comment.

(c) The HPG program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under Subpart J of part 1940 of this chapter, "Intergovernmental Review of Farmers Home Administration Programs and Activities," prospective applicants for HPG grants must submit their Statement of Activities to the State Single Point of Contact prior to submitting their preapplication to FmHA. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The name of the Point of Contact is available from the FmHA State Office.

§ 1944.675 Allocation of HPG funds to States and unused PHG funds.

The allocation and distribution of HPG funds is found in § 1940.578 of Subpart L of Part 1940 of this Chapter, "Methodology and Formulas for Allocation of Loan and Grant Program Funds."

§ 1944.676 Preapplication procedures.

(a) All applicants will file an original and two copies of Form AD–621, "Preapplication for Federal Assistance," and supporting information outlined in paragraph (b) of this section with the appropriate FmHA office. A preapplication packet including Form AD–621 is available in all FmHA District and State Offices.

(b) All preapplications shall be accompanied by the following information which FmHA will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the preapplication under the project selection criteria of § 1944.679 of this subpart.

(1) A statement of activities proposed by the applicant for its HPG program, including:

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation;

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the unit, identifying potential environmental effects (per § 1944.672 of this subpart), performing the necessary work, and monitoring/inspecting work performed;

(iii) The development standard(s) the applicant will use for the housing preservation work, and, if not the FmHA development standards for existing housing, evidence of its acceptance by the jurisdiction where the grant will be implemented.

(iv) The time schedule for completing the program;

(v) The staffing required to complete the program;

(vi) The estimated number of very low- and low-income minority and nonminority families the applicant will assist with HPG funds;

(vii) The area(s) to be served by the HPG program;

(viii) Annual estimated budget for the program year based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant's budget should also include a schedule (with amounts) of how the applicant proposes to draw PHG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.

(ix) A brief description of the accounting system to be used;

(x) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to FmHA per § 1944.683(b) of this subpart;

(xi) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(xii) The use of program income, if any;

(xiii) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status; and

(xiv) Any other information necessary to explain the HPG program.

(2) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program;

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, the names, addresses, and principal purpose of the other organizations and, if a consortium, documentation showing compliance with § 1944.656(g)(4) of this subpart.

(4) For a private nonprofit entity, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by the organization.

(5) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (as related to paragraph (b)(1)(x) of this section).

(6) A list of other activities the applicant is engaged in and expects to continue, a statement as to any other funding, and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the HPG grant agreement.

(7) Any other information necessary to specifically address the selection criteria in § 1944.679 of this subpart.

(c) The applicant must submit a description of its program for identifying and rehabilitating any properties that are listed on or eligible for listing on the National Register or Historic Places as well as evidence of concurrence by the SHPO in the program in accordance with § 1944.673 of this subpart, or, in the event of nonconcurrence, the SHPO's comments together with evidence that the applicant has sought the advice of the Advisory Council on Historic Preservation as to how the disagreement might be resolved and any advice provided by the Council.

(d) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674 (a) and (c) of this subpart regarding consultation with local government leaders in the preparation of its program and then consultation with local and

state government pursuant to the provisions of Executive Order 12372.

(e) The applicant is to make its Statement of Activity available to the public for comment prior to submission to FmHA pursuant to § 1944.674(b) of this subpart. The preapplication must contain a description of how this was accomplished as well as a synopsis of comments received and how the comments were addressed.

(f) The applicant must submit an original and one copy of Form FmHA 1940–20, as well as a description of the applicant's process for determining whether an individual property requires as environment assessment per § 1944.672 of this subpart.

(g) The applicant must submit an original and one copy of Form FmHA 400–1, "Equal Opportunity Agreement," and Form FmHA 400–4, "Assurance Agreement."

§ 1944.677 [Reserved]

§ 1944.678 Preapplication submission deadline.

Dates governing the invitation and review of HPG preapplications will be published annually in the Federal Register and may be obtained from FmHA State Offices. Preapplications received after the date specified in the Federal Register will not be considered for funding in that fiscal year and will be returned.

§ 1944.679 Project selection criteria.

(a) Grant applicants must meet all the following criteria:

(1) Provide a financially feasible program of housing preservation assistance as defined in § 1944.656(e) of this subpart;

(2) Serve eligible rural areas with a concentration of substandard housing for households with very low- and low-income;

(3) Be an eligible applicant entity as defined in § 1944.658 of this subpart; and

(4) Meet the requirements of consultation and public comment per § 1944.674 of this subpart; and

(b) For applicants meeting the requirements listed in paragraph (a) of this section, FmHA will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest ranking applicant(s) will be selected, in accordance with § 1944.680 of this subpart and the resources available to the State. For convenience, Exhibit B, "Project Selection Criteria—Outline Rating Form, may be used for the rating.

(1) Points are awarded based on the percentage of very low-income homeowners or families the applicant proposes to assist, using the following scale:

(i) More than 80%: 20 points.
(ii) 61% to 80%: 15 points.
(iii) 41% to 60%: 10 points.
(iv) 20% to 40%: 5 points.
(v) Less than 20%: 0 points.

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are awarded based on the following percentage of HPG funds to total funds:

(i) 50% or less: 20 points.
(ii) 51% to 65%: 15 points.
(iii) 66% to 80%: 10 points.
(iv) 81% to 95%: 5 points.
(v) 96% to 100%: 0 points.

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(i) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(ii) The organization or a member of its staff has two or more years experience successfuly managing and operating a program assisting very low- and low-income families obtain housing assistance: 10 points.

(iii) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(4) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population): 10 points.

(5) The program will use less than 20 percent of HPG funds for administration: 5 points.

(6) The proposed program contains a component for alleviating overcrowding: 5 points.

(7) The applicant is an existing grantee and meets the conditions under § 1944.686 of this subpart for additional points: 10 points.

§ 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of § 1944.679(a) of this subpart, the State Director may not approve more than 50 percent of the State's allocation to a single applicant.

§ 1944.681 Application submission.

(a) Applicants selected by FmHA will be advised to submit a full application in an original and two copies of Form AD–623, "Application for Federal Assistance (Nonconstruction Programs)," and to include any condition or amendments that must be incorporated into the Statement of Activities prior to submitting a full application. Instructions on submission and timing will be provided by FmHA.

(b) Applicants not selected by FmHA will be so notified and advised of their appeal rights under Subpart B of Part 1900 of this chapter.

§ 1944.682 Grant approval and requesting HPG funds.

(a) Grant approval is the process by which FmHA determines that all applicable administrative and legal conditions for making a grant have been met, the Grant Agreement is signed, and funds obligated for the HPG project. The FmHA office designated for servicing and monitoring the HPG applicant's program will review the application submission. If acceptable and if the designated office is prepared to recommend the application to the State Director for approval, the applicant will sign Form FmHA 1940–1, "Request for Obligation of Funds," and Exhibit A of this subpart, Housing Preservation Grant Agreement. If the application is approved by the State Director, the applicant will be sent a copy of the executed Grant Agreement and Form FmHA 1940–1. Should the State Director attach any conditions to the Agreement that must be satisfied prior to the applicant receiving any HPG funds, the Agreement and the conditions will be returned to the applicant for acceptance and acknowledgement on the Agreement prior to execution by the State Director.

(b) The application may be disapproved before execution of the grant agreement if the applicant is no longer eligible, the proposal is no longer feasible, or the applicant requests cancellation of its project. Except when the applicant requests cancellation, FmHA will document its findings and advise the applicant of its appeal rights

under Subpart B of Part 1900 of this chapter.

(c) With the executed Grant Agreement and Form FmHA 1940–1, FmHA will send the approved applicant (now the "grantee") copies of Standard Form (SF) 270, "Request for Advance or Reimbursement." The grantee must submit an original and two copies of SF–270 to the FmHA office servicing the project. Advances or reimbursements must be in accordance with the grantee's budget and Statement of Activity, including any amendments, prior approved by FmHA. Requests for reimbursement or advances must be at least 30 calendar days apart.

(d) If the grantee fails to submit required reports pursuant to § 1944.683 of this subpart or is in violation of the Grant Agreement, FmHA may suspend HPG reimbursements and advances or terminate the grant in accordance with § 1944.688 of this subpart and the Grant Agreement.

§ 1944.683 Reporting requirements.

(a) SF–269, "Financial Status Report," is required of all grantees on a quarterly basis. Grantees shall submit an original and two copies of the report to the designated FmHA servicing office. Reports will be submitted no later than February 15, May 15, August 15 and November 15 while the grant agreement is in effect.

(b) Quarterly performance reports shall be submitted by grantees with SF–269, in an original and two copies. (See Exhibit E of this subpart, Guide for Quarterly Performance Reports.) The quarterly report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. As part of the grantee's preapplication submission, as required by § 1944.676(b) of this subpart, the grantee established its objectives for the HPG program, including its method of evaluation to determine its effectiveness. Accordingly, the report must include, but need not be limited to, the following:

(1) Use of HPG funds for adminstration and housing preservation activities.

(2) The following specific information for each unit assisted:

(i) Name, address, income, and size of each homeowner family assisted;

(ii) Total cost of unit's repair/rehabilitation, major repairs made, amount financed by HPG, and amount financed from other sources;

(iii) Type of assistance provided (interest subsidy, loan, grant, etc.); and

(iv) Results of implementing the environmental process contained in § 1944.672 of this subpart and the historic preservation process contained in § 1944.673 of this subpart.

(3) A comparison of actual accomplishments to the objectives set for that period, including:

(i) The number of very low- and low-income, minority and nonminority families assisted in obtaining adequate housing by the HPG program through repair and rehabilitation; and

(ii) The average cost of assistance provided to homeowners.

(4) Reasons why, if established objectives are not met.

(5) Problems, delays, or adverse conditions which will materially affect attainment of the HPG grant objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of program work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal or other assistance needed to relieve the situation.

(6) Objectives established for the next reporting period, sufficiently detailed to identify the type assistance to be provided, the number and type of families to be assisted, etc.

(c) The grantee should be prepared to meet with the FmHA office servicing the project to discuss its quarterly report shortly after submission.

(d) If the reports are not submitted in a timely manner or if the reports indicate that the grantee has made unsatisfactory progress or the grantee is not meeting its established objectives, the State Director will recommend appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with § 1944.688 of this subpart and the Grant Agreement.

§ 1944.684 Extending grant agreements and modifying statements of activities.

(a) All requests extending the original grant agreement or modifying the HPG program's statement of activities must be in writing. Such requests will be processed through the designated FmHA office servicing the project. The State Office will respond to the applicant within 30 days of receipt of the request in the State Office.

(b) A grantee may request an extension of the Grant Agreement prior to the end of the project term specified in the Grant Agreement if the grantee anticipates that there will be grant funds remaining and the grantee has demonstrated its ability to conduct its program in a manner satisfactory to FmHA. The State Director may approve an extension when:

(1) The grantee is likely to complete or exceed the goals outlined in the approved Statement of Activities, and

(2) The FmHA office responsible for servicing the grant recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Modifications of the Statement of Activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the State Director when the modifications are for eligible purposes per §§ 1944.664 and 1944.666 of this subpart, meet any applicable review and process requirements of this subpart, and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA prior to modifying its operation from the approved Statement of Activites.

(d) Exhibit B, "Amendment to Housing Preservation Grant Agreement," will be used for all extensions and modifications.

§ 1944.685 [Reserved]

§ 1944.686 Additional grants.

An additional HPG grant may be made to a grantee when it has achieved or nearly achieved the goals established for the previous grant. The grantee must file a new application for HPG funds that will be processed similar to an initial application and compared under the project selection criteria to others submitted at that time. Ten additional points may be given to an existing grantee where there is a continuing need for the program in the area currently being served by the existing grant, the program has local public and community support, and the grantee has fully complied with the HPG requirements contained herein.

§ 1944.687 [Reserved]

§ 1944.688 Grant evaluation, closeout, suspension and termination.

(a) Grant evaluation will be an ongoing activity performed by both the grantee and FmHA. The grantee will perform self-evaluations by preparing quarterly performance reports in accordance with § 1944.683 of this subpart. FmHA will also review all reports prepared and submitted by the grantee in accordance with the Grant Agreement and this subpart.

(b) The grant can be suspended or terminated before the grant ending date for the causes specified in the Grant

Agreement. No further grant funds will be advanced when grant suspension or termination procedures have been initiated in accordance with the Grant Agreement. Grantees may be reimbursed for eligible costs incurred prior to the effective date of the suspension or termination. Grantees are prohibited from incurring additional obligations of funds after notification, pending corrective action by the grantee. FmHA may allow necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided they are for eligible HPG purposes. In the event of termination, FmHA may allow necessary and reasonable costs for an audit.

(c) Grantees will have the opportunity to appeal a suspension or termination under FmHA's appeal procedures, Subpart B of Part 1900 of this chapter.

(d) Within ninety (90) calendar days after the grant ending date, the grantee will complete the closeout procedures as specified in the Grant Agreement.

(e) The grantee will complete a final SF-269 and a final performance report upon termination or expiration of the Grant Agreement. The final performance report will serve as the last quarterly report.

(f) The grantee will have an audit performed upon termination or completion of the project in accordance with OMB Circulars Nos. A-102 or A-110, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

§ 1944.689 [Reserved]

§ 1944.690 Exception authority.

The Administrator of FmHA may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, or adversely affect the accomplishment of the purposes of the HPG program, or result in undue hardship by applying the requirement. The Administrator may exercise this exception authority at the request of the State Director. The request must be supported by information demonstrating the adverse impact, citing the particular requirement involved, recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§§ 1944.691-1944.699 [Reserved]

§ 1944.700 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575-0115.

Exhibit A of Subpart N—Housing Preservation Grant Agreement

This Agreement dated——— is between ——— (name),——— (address), (grantee), organized and operating under ——— (authorizing State statute), and the United States of America acting through the Farmers Home Administration (FmHA). FmHA agrees to grant a sum not to exceed $——— subject to the terms and conditions of this Agreement; provided, however, that the grant funds actually advanced and not needed for grant purposes shall be returned immediately to FmHA. The Housing Preservation Grant (HPG) Statement of Activities approved by FmHA, is attached, and shall commence within 10 days of the date of execution of this agreement by FmHA and be completed by ——— (date). FmHA may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this Grant Agreement or FmHA regulation related hereto. The grantee may appeal adverse decisions in accordance with the FmHA Appeal Procedures contained in Subpart B of Part 1900 of this chapter.

In consideration of said grant by FmHA to the Grantee, to be made pursuant to section 533 of the Housing Act of 1949, Housing Preservation Grant (HPG) program, the grantee will provide such a program in accordance with the terms of this Agreement and applicable FmHA regulations.

Part A—Definitions

1. "Beginning date" means the date this agreement is executed by FmHA and costs can be incurred.

2. "Ending date" means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. "Disallowed costs" are those charges to a grant which the FmHA determines cannot be authorized in accordance with applicable Federal cost principles contained in Treasury Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," OMB Circular A-87, "Cost Principles for State and Local Governments," OMB Circular A-122, "Cost Principles for Nonprofit Organizations," and other conditions contained in this Agreement and OMB Circular A-102 "Uniform Requirements for Grants to State and Local Governments," and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, Uniform Administrative Requirements," as appropriate.

4. "Grant closeout" is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. "Termination" of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

Part B—Terms of agreement

FmHA and grantee agree:

1. All grant activities shall be limited to those authorized in Subpart N of 7 CFR Part 1944.

2. This Agreement shall be effective when executed by both parties.

3. The HPG activities approved by FmHA shall commence and be completed by the date indicated above, unless earlier terminated under paragraph B 18 below or extended.

4. Grantee shall carry out the HPG activities and processes as described in the approved Statement of Activities which is made a part of this Agreement. Grantee will be bound by the activities and processes set forth in the Statement of Activities and the further conditions set forth in this Agreement. If the Statement of Activities is inconsistent with the Agreement, the latter will govern. A change of any activities and processes must be in writing and must be signed by the FmHA State Director or his or her delegated representative.

5. Grantee shall use grant funds only for the purpose and activities approved by FmHA in the HPG budget. Any uses not provided for in the approved budget must be approved in writing by FmHA in advance.

6. If the Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA employees for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the FmHA rates will be the maximum allowed.

7. Grant funds will not be used for any of the following:

(a) To pay obligations incurred before the effective date of this Agreement.

(b) To pay obligations incurred after the grant termination or ending date.

(c) Entertainment purposes.

(d) To pay for capital assets, the purchase of real estate or vehicles.

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improvement or renovation of grantee's office space, or repair or maintenance of privately owned vehicles.

(e) Any other purpose specified in §§ 1944.664(f) and § 1944.668(b) of this subpart.

(f) Administrative expenses exceeding 20% HPG grant funds.

8. Grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. Disbursal of grants will be governed as follows:

(a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated to OMB Circular A–102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A–110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's Statement of Activity and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days from the date of the Treasury check, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to FmHA that all officers of the Grantee organization authorized to receive and/or disburse Federal funds are covered by satisfactory fidelity bonds sufficient to protect FmHA's interests.

10. The grantee will submit performance and financial reports as indicated below to the appropriate FmHA office.

(a) As needed, but not more frequently than once every 30 calendar days, an original and 2 copies of SF–270, "Request for Advance or Reimbursement."

(b) Quarterly (not later than February 15, May 15, August 15, and November 15 of each year), an original and 2 copies of SF–269, "Financial Status Report," and a quarterly performance report in accordance with § 1944.683 of this subpart.

(c) Within ninety (90) days after the termination or expiration of the Grant Agreement, an original and 2 copies of SF–269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee for HPG. Final reports may serve as the last quarterly report.

(d) FmHA may require performance reports more frequently if deemed necessary.

11. In accordance with FMC Circular 74–4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval by FmHA.

13. Results of the program assisted by grant funds may be published by the grantee without prior review by FmHA, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, as amended, and that five copies of each such publications are furnished to FmHA.

14. Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

15. No person in the United States shall, on the grounds of race, creed, color, sex, marital status, age, national origin, or mental or physical handicap, be excluded from participating in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of FmHA contained in Subpart E of Part 1901 of this chapter.

16. In all hiring or employment made possible by or resulting from this grant, the grantee: (a) Will not discriminate against any employee or applicant for employment because of race, creed, color, sex, marital status, national origin, age, or mental or physical handicap, and (b) will take affirmative action to insure that employees are treated during employment without regard to their race, creed, color, sex, marital status, national origin, age, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the "Equal Employment Clause" as specified by Form FmHA 400–1, "Equal Employment Agreement."

17. The grantee accepts responsibility for accomplishing the HPG program as submitted and included in the Statement of Activities. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to FmHA on the status of grantee HPG programs, projects, related activities, and problems.

(c) The grantee shall inform FmHA as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any FmHA assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. Grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to FmHA any uncommitted balance of grant funds.

BEST COPY AVAILABLE

(ii) The grantee will furnish to FmHA within 90 calendar days after the date of completion of the grant an SF–269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

(iii) The grantee shall account for any property acquired with HPG grant funds, or otherwise received from FmHA.

(iv) After the grant closeout, FmHA retains the right to recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this Agreement, the State Director can, on reasonable notice, suspend the grant pending corrective action or terminate the grant pursuant to paragraph (c) below. In such instances, FmHA may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. FmHA will withhold further advances and grantees are prohibited from further obligating grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole or in part at any time before the date of completion, whenever FmHA determines that the grantee has failed to comply with the terms of this Agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by FmHA or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA in connection with any FmHA programs.

(F) Failure to maintain an accounting system acceptable to FmHA.

(ii) *Termination for convenience.* FmHA or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) FmHA shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination. Except for termination convenience, grantees have the opportunity to appeal a suspension or termination under FmHA's appeal procedure, Subpart B of Part 1900 of this chapter.

19. Upon any default under its representatives or agreements set forth in this instrument; the grantee, at the option and demand of FmHA, will, to the extent legally permissible, repay to FmHA forthwith the grant funds received with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by FmHA, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State Courts, as may be deemed necessary by FmHA to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

20. Extension of this Grant Agreement and/or modifications of the Statement of Activities may be approved by FmHA provided, in its opinion, the extension and/or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the Statement of Activities during the period of the extension and/or modifications as specified in § 1944.684 of this subpart.

Part C—Grantee agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A–102 or Attachment N of OMB Circular A–110 for State and local governments or nonprofit organizations respectively. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definitions of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of paragraph 1(c) below.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the grantee has title.

(i) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA.

(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First

preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original Grantor agency. FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the grantee no later than 120 calendar days after the grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal shares $100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(B) If the grantee is instructed to dispose of the property other than as described in paragraph 1(a)(iv) above, the grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(C) The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*1*) Property records shall be maintained accurately and shall include:

(*a*) A description of the property.

(*b*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*c*) Sources of the property including grant or other agreement number.

(*d*) Whether title vests in the grantee or the Federal Government.

(*e*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*f*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(*g*) Location, use, and condition of the property and the date the information was reported.

(*h*) Unit acquisition cost.

(*i*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a grantee compensates the Federal agency for its share.

(*2*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*3*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*4*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify FmHA.

(*5*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*6*) When the grantee is authorized or required to sell the property, proper sales procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

(*7*) Expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to Part B (10)(c) of this Agreement except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, audit or investigation findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by FmHA, the three year retention requirement is not applicable.

(c) When records are transferred to or maintained by FmHA, the three year retention requirement is not applicable.

Microfilm copies may be substituted in lieu of original records. FmHA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to

any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by FmHA concerning the grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by FmHA or acquired wholly or in part with HPG funds without the written consent of FmHA except as provided in Part C 1 of this Agreement.

6. To provide FmHA with such periodic reports of grantee operations as may be required by authorized representatives of FmHA.

7. To execute Form FmHA 400–1, and to execute any other agreements required by FmHA to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1875C—9 as amended.
Violations shall be reported to FmHA and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

12. That the grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

13. That the grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, or OMB Circular A–110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

14. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 et seq., and related regulations, and that all rights granted to FmHA herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and project FmHA's financial interest.

15. That it will adopt a Standard of Conduct that provides that, if an employee, officer, or agent of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (i.e., partnerships, corporation, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving HPG assistance.

Part D—FmHA agrees

1. That it may assist grantee, within available appropriations, with such technical and management assistance as needed in coordinating the Statement of Activities with local officials, comprehensive plans, and any State or area plans for improving housing for very low- and low-income households in the area in which the project is located.

2. That at its sole discretion, FmHA may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect FmHA's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and FmHA regulations.

This Agreement is subject to current FmHA regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this Agreement to be executed by its duly authorized ———, properly attested to and its corporate seal affixed by its duly authorized ———.

Attest:
Grantee:
By _____
(Title) _____

United States Of America Farmers Home Administration:
By _____
(Title) _____

Date of Execution of Grant Agreement by FmHA: _____

Attached Statement of Activities Is Made Part of This Agreement.

Exhibit B of Subpart N—Amendment to Housing Preservation Grant Agreement

This Amendment between ——— herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "FmHA," hereby amends the Housing Preservation Grant Agreement executed by said parties on ———, 19—, hereinafter called the "Agreement."

Said Agreement is amended by extending the Agreement to ——, 19—, and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Grantee has caused this Agreement to be executed by its duly authorized ———, properly attested to and its corporate seal affixed by its duly authorized ———.

Attest:
Grantee:
By _____
(Title) _____

United States Of America Farmers Home Administration.
By _____
(Title) _____

Date of Execution of Amendment to Grant Agreement by FmHA: ———.

Exhibit C of Subpart N—[Reserved].

Exhibit D of Subpart N—Project Selection Criteria Outline Rating Form

Applicant Name _____
Applicant Address _____
Application received on ———.
State ——— District Office ———.

Threshold Criteria

Applicant must meet the following:

1. Proposes a financially feasible HPG program ..... yes— no—
2. Serves an eligible rural area ..... yes— no—
3. Is an eligible HPG grantee... yes— no—
4. Has met consultation and public comment rules ..... yes— no—

If answer to any of the above is "no", application is rejected and applicant so notified.

Selection Criteria:

Select the appropriate rating:

1. Points awarded based on the percentage of very-low income homeowners or families the applicant proposes to assist, using the following scale ———:

(a) More than 80%: 20 points.
(b) 61% to 80%: 15 points.
(c) 41% to 60%: 10 points.
(d) 20% to 40%: 5 points.
(e) Less than 20%: 0 points.

2. Points awarded based on the applicant's percentage of use of HPG funds to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are based on the following percentage of HPG funds to total funds ———:

(a) 50% or less: 20 points.
(b) 51% to 65%: 15 points.
(c) 66% to 80%: 10 points.
(d) 81% to 95%: 5 points.
(e) 96% to 100%: 0 points.

3. The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(a) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program ———:

Yes—10 points.
No—0 points.

(b) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income families obtain housing assistance ———:

Yes—10 points.
No—0 points.

(c) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal ———:

No findings: 10 points.
Outstanding findings: 0 points.

4. The proposed program will be undertaken *entirely* in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) ———:

Non-MSA area below 10,000 pop.: 10 points.
MSA area below 5,000 pop.: 10 points.
Neither: 0 points.

5. The program will use less than 20 percent of HPG funds for administration ———:

Less than 20%: 5 points.
20%: 0 points.

6. The proposed program contains a component for alleviating overcrowding ———:

Has component: 5 points.
No component: 0 points.

7. The applicant is an existing grantee and meets the conditions of § 1944.686 of this subpart for additional points ———:

Meets conditions: 10 points.
Doesn't meet conditions: 0 points.
Total Points ———:
Ranking of This Applicant ———

Exhibit E of Subpart N—Guide For Quarterly Performance Report

Grantee name: ———
Grantee address: ———
Grant quarter: ——— ———
Report Period: From: ——— To: ———

I. General Information on Use of HPG Funds During Period:

A. Use of Administrative Funds:
Budgeted Amount ..... $———
Expended Thru Last Quarter ..... ———
Direct Cost:
Personnel ..... $———
Supplies & Equip ..... ———
Travel ..... ———
Indirect Costs:
(———% Rate) ..... ———
This Quarter Total ..... ———

B. Use of Program Funds:
Budgeted Amount ..... ———
Expended Thru Last Quarter ..... ———
Loans ..... No. ——— $———
Grants ..... No. ——— ———
Other subsidies
(describe briefly) ..... No. ——— ———
This Quarter Total ..... ———

II. Description of recipients provided assistance during report period: (Attach breakdown for each HPG recipient on separate page including name, address, income, size, race, housing preservation activities, and type of assistance received):

Number of low-income homeowners assisted ..... ———
Number of very low-income homeowners assisted ..... ———
Total number of homeowners assisted ..... ———
Racial composition:
White ..... ———
Black ..... ———
Hispanic ..... ———
Am. Indian ..... ———
Other ..... ———

III. Description of types of housing preservation provided:

Housing preservation activity		Financial assistance		
Item	Cost of materials/ labor	HPG	Other	Total

IV. Objectives for next period:

Loans ..... No. ——— $———
Grants ..... No. ——— $———
Other subsidy ..... No. ——— $———
Totals ..... No. ——— $———

V. Project summary:

	No. homeowners	HPG funds	Other
Assistance objectives of project		$———	$———
Assistance to date		———	———
Assistance during next period		———	———

	No. homeowners	HPG funds	Other
Average amount of HPG assistance			
Per unit provided (program to date) (per unit)	$———		

VI. Narrative:

A. Significant accomplishments.

B. Problem areas.

C. Proposed changes/assistance needed, etc.

D. Status of implementing environmental and historic preservation requirements. Include number of historic properties assisted.

Dated: April 15, 1986.
Vance L. Clark,
Administrator, Farmers Home Administration.
[FR Doc. 86-10594 Filed 5-12-86; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AAL-7]

Alteration and Establishment of VOR Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several airways and also establishes new airways in western Alaska. This action is due to the installation of new navigational aids, and publishing instrument flight rule (IFR) approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On September 17, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of several airways and also establish new airways in western Alaska (50 FR 37683). This action is due to the installation of new navigational aids and publication of IFR approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments were received. Both commenters agreed that the proposed changes and additions should contribute greatly to the movement and safety of IFR operations in western Alaska.

One commenter stated that "Victor Airways" should be based solely on VHF facilities, i.e.; VOR, VORTAC, or VOR/DME facilities. The FAA agrees that this would be preferable. However, this cannot always be done consistent with optimum service to the user and keeping air traffic delays to a minimum. In areas without radar coverage, it is to the advantage of the user and air traffic controller to use VOR radials over NDB bearings when possible.

The agency designed the airways to use the VOR's to the maximum extent possible, to facilitate flight plan filing, and to provide an orderly flow for the air traffic controller. The commenter disagreed with V-333, V-350, V-401, and V-477 because they include NDB's in the airways. We have reviewed the proposals and find that it would be more confusing to have the transition routes as suggested and would create more of a workload on the controller. The suggested transition routes do not allow the pilot to proceed to his destination in the most direct manner. The suggestion with reference to V-451, that V-451, be established from Nenana to Tanana to Huslia to Selawik to Kotzebue as alternate routing to/from Fairbanks, is beyond the scope of this proposal. The comment on V-480, that the new VOR being constructed at St. Paul be used rather than the NDB, is not valid. It will be 1988 or 1989 before a VOR is available at St. Paul due to equipment. Except for editorial changes and the withdrawal of V-453 from this action due to technical reasons, this amendment is the same as that proposed in the notice. Section 71.125 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.8A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will amend the description of several airways and also establish new airways in western Alaska. This action is due to the installation of new navigational aids and publication of IFR approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.125 [Amended]

2. § 71.125 is amended as follows:

V-319 [Amended]

By removing the words "to Bethel, AK." and substituting the words "Bethel, AK; to Hooper Bay, AK."

V-333 [New]

From Cape Newenham, AK, NDB via Kipnuk, AK; Hooper Bay, AK; Nome, AK; to Shishmaref, AK, NDB.

V-350 [New]

From Dillingham, AK, via Togiak, AK, NDB; to Bethel, AK.

V-401 [New]

From Ambler, AK, NDB via Kotzebue, AK; to Shishmaref, AK, NDB.

V-452 [Amended]

By removing the words "From Nome, AK, via" and substituting the words "From Kukuliak, AK, via Nome, AK;"

V-477 [New]

From Galena, AK, via Huslia, AK; Selawik, AK; to Ambler, AK, NDB.

V-480 [Amended]

By removing the word "From" and substituting "From St. Paul Island, AK, NDB via Kipnuk, AK;"

V-488 [Amended]

By removing the word "From" and substituting "From Hooper Bay, AK, via Unalakleet, AK;"

V-531 [New]

From Fairbanks, AK, via Tanana, AK; Huslia, AK; Selawik, AK; Kotzebue, AK; to Point Hope, AK, NDB.

Issued in Washington, DC, on May 5, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-10047 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASW-4]

Transition Area; Mountain View, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Mountain View, AR. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to Wilcox Memorial Airport utilizing the new SIAP. This amendment is necessary because the SIAP to Wilcox Memorial Airport has been revised. This amendment will not change the volume of airspace required to accommodate instrument flight rules (IFR) activity, but will reorient the 700-foot transition area extension approximately 60 degrees clockwise.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:

History

On February 25, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Mountain View, AR, transition area (51 FR 7953).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the 700-foot transition area to ensure segregation of aircraft using the new SIAP under IFR and other aircraft operating under visual flight rules (VFR) while arriving to and departing from the Wilcox Memorial Airport, Mountain View, AR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

Mountain View, AR [Amended]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of the Wilcox Memorial Airport (latitude 35°51'52" N.; longitude 92°05'31" W.) and within 3 miles each side of the 104-degree bearing of the NDB (latitude 35°52'03" N., longitude 92°04'40" W.) extending from the 6.5-mile radius area to 8.5 miles east of the NDB.

Issued at Fort Worth, TX, on April 30, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division Southwest Region.

[FR Doc. 86-10048 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ANM-4]

Transition Area; Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the transition area at Portland, Oregon, to accommodate a procedure turn on the Localizer DME Runway 20 approach to Portland International Airport, Portland, Oregon.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-4, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 19, 1986, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area for Portland, Oregon (51 FR 6007).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Regulations amends the Portland, Oregon, transition area. This action is necessary to provide additional controlled airspace to accommodate aircraft conducting a procedure turn on a Localizer DME Runway 20 approach to Portland International Airport. This action will ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual conditions.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

§ 71.181 [Amended]

Portland, Oregon, Transition Area (Amended)

That airspace extending upward from 700' above the surface bounded on the north by lat. 46°00'00" N, on the east by long. 122°00'00" W; thence via a line to lat. 45°51'00" N, long. 122°00'00' W; to lat. 45°51'00" N, long. 122°05'00" W; bounded on the south by lat. 45°10'00" N, and on the west by long. 123°30'00" W; that airspace extending upward from 1,200' above the surface bounded on the north by a line beginning at a point 3 miles offshore at lat. 46°30'30" N, extending easterly via lat. 46°30'30" N, to long. 121°40'00" W; thence easterly along the south edge of V-204 to lat. 46°30'40" N, long. 120°36'00" W; on the east by V-25, on the south by V-536 to Corvallis, VOR; thence via lat. 44°30'00" N, to a point 3 miles offshore and on the west by a line 3 miles offshore to the point of beginning.

Issued in Seattle, Washington, on May 1, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-10649 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ANM-3]

Alteration of Control Zone, Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the status of the Hoquiam Control Zone from full-time to part-time. The Hoquiam Flight Service Station (FSS) has modified its hours of operation and weather observations are not available from 0500 to 1400. Consequently, the control zone no longer qualifies to be operated on a full-time basis.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Fredric C. McDaniel, Airspace & Procedures Specialist, AMN-536, Federal Aviation Administration, Docket No. 86-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 19, 1986, the FAA proposed to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the status of the Hoquiam Control Zone from full-time to part-time (51 FR 6007).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the status of the Hoquiam Control Zone from full-time to part-time. The Hoquiam FSS has modified its hours of operation and weather observations are not available from 0500 to 1400.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

§ 71.171 [Amended]

Hoquiam, Washington, Control Zone [Amended]

By adding the following statement to the present description: "This control zone is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on May 1, 1986.

David E. Jones,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 86-10650 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85-AAL-9]

Establishment of VOR Federal Airway V-308 and Jet Route J-188; Bethel and Sparrevohn, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish a new Federal Airway V-308 and Jet Route J-188 between Bethel and Sparrevohn, AK. The additional Federal Airway and Jet Route expedite traffic and reduce sector workload by providing an alternate route for aircraft departing Bethel and climbing eastbound. This alleviates opposite direction climb situations.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800

Independance Avenue SW., Washington, DC 20591; telephone: (202) 426-8650.

SUPPLEMENTARY INFORMATION:

History

On February 24, 1986, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to establish a new Federal Airway V-308 and Jet Route J-188 between Bethel and Sparrevohn, AK (51 FR 6419). The additional Federal Airway and Jet Route expedite traffic and reduce sector workload by providing an alternate route for aircraft departing Bethel and climbing eastbound. This action alleviates opposite direction climb situations. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.125 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations establish new VOR Federal Airway V-308 and Jet Route J-188 between Bethel and Sparrevohm, AK. The new Jet Route and the new VOR Federal Airway expedite traffic and reduce workload by providing additional flexibility for maneuvering traffic in the terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and Jet Routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-308 [New]

From Bethel, AK, via INT Bethel 060 ° and Sparrevohn, AK, 279 ° radials; to Sparrevohn.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-188 [New]

From Bethel, AK, via INT Bethel 060 ° and Sparrevohn, AK, 279 ° radials; to Sparrevohn.

Issued in Washington, DC, on May 6, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-10646 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 16 and 33

Domestic Exchange-Traded Commodity Options; Revisions to Rules for Trading Non-Agricultural Option Contracts and Termination of Pilot Program Status

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: In late 1981 the Commission published final rules governing a three-year pilot program for exchange-traded commodity options. Option trading began on October 1, 1982 following the designation of the first option contract markets. That three-year pilot program expired on October 1, 1985. The Commission has examined its experience under the pilot program and has re-evaluated various option rules. The Commission is hereby adopting various amendments to the rules governing option trading, terminating the pilot status of this program, and making permanent the status of such trading.

EFFECTIVE DATE: With the exception of the amendments to Part 16 which shall be effective September 10, 1986, these amendments will become effective upon the expiration of thirty calendar days of continuous session of the Congress after the transmittal of these rules and related materials to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry pursuant to section 4c(c) of the Commodity Exchange Act, but not before further notice of the effective date is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, or Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, 2033 K Street, NW., Washington, DC 20581, (202) 254-6990 or 254-8955, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

As the culmination of a long history of Commission efforts to provide for the trading of commodity options in a regulated environment, the Commission, on November 3, 1981, published final rules establishing a strictly controlled, three-year pilot program to permit exchange-traded commodity options. 46 FR 54500. This pilot program permitted the re-introduction of option trading in the United States. Previously, exchange trading of options on the domestic agricultural commodities regulated under the Commodity Exchange Act ("Act") were prohibited by Congress in 1936 as a result of excessive price movements and severe disruptions in the futures markets attributed to speculative trading in options.[1] Moreover, prior to this pilot program, in 1978, the Commission, with minor exceptions, had banned all option trading in the previously unregulated commodities in the United States. This ban was the result of significant

[1] Act of June 15, 1936, Ch. 545, Section 5, 49 Stat. 1494. *See, e.g.*, Hearings on H.R. 8829 Before the House Committee on Agriculture, 73rd Cong., 2d Sess. 10 (1934) (statement of J. M. Mehl, Assistant Chief, Grain Futures Administration, United States Department of Agriculture); 80 Cong. Rec. 7853-54 (1936) (remarks of Senator Pope).

difficulties associated with the trading of such commodity options.

In the late 1960's and early 1970's, massive frauds in the off-exchange offer and sale of options on those commodities not regulated under the Act occurred. Those frauds were part of the impetus behind the creation of the Commission. In response, the Congress granted the new Commission broad power over option transactions in the previously unregulated commodities.[2] Because of continued abuses in the offer and sale of options not traded on domestic boards of trade, the Commission suspended the offer and sale of all commodity options in the United States effective June 1, 1978. 43 FR 16153 (April 17, 1978). The Congress codified that suspension as part of the 1978 amendments to the Act but granted the Commission authority to establish a pilot program to permit the trading of commodity options on exchanges. Pub. L. No. 95-405, section 3, 92 Stat. 867; 7 U.S.C. 6c(c) (1978, Supp. V).

The Commission reasoned that in light of these prior abuses in option trading greater protections for public customers were needed. The Commission believed that these protections could be provided if the trading of options took place on regulated exchanges. Accordingly, the pilot program for exchange-traded options was based:

> On the assumption of direct and primary regulatory responsibilities by the contract markets for the participation of their members firms. Indeed, the pilot program places significantly greater self-regulatory duties and responsibilities on boards of trade than is presently the case for futures trading, particularly with respect to the protection of the public from sales practice abuses. . . . It is only by placing these regulatory responsibilities on the exchanges that the Commission believes it can presently ensure that sufficient regulatory resources will be deployed to prevent a recurrence of the abuses which have characterized commodity options in the past.
>
> 46 FR at 54502.

The Commission is of the opinion that its pilot program for exchange-traded commodity options has been a success. This is highlighted by the Commission's phased expansion of option trading over the course of the pilot program. In this regard, the initial option rules permitted one option on a commodity futures contract other than on a domestic agricultural commodity to be traded on each exchange. 46 FR at 54530. Subsequently, the Commission adopted rules also permitting the trading of one option per exchange on a physical commodity. 47 FR 56996 (December 22, 1982). The pilot program was then modified by permitting two options per exchange whether on futures or physicals. 48 FR 41575 (September 16, 1983). On August 24, 1984, the permitted number of options on futures contracts was expanded from two to five options per exchange, although the previous limit on the number of options on a physical commodity was retained. 49 FR 33641. Finally, on November 4, 1985, the Commission expanded the number of options permitted on each exchange from five to eight. 50 FR 48511. In addition, following the repeal by the Congress of the 1936 statutory ban on options involving domestic agricultural commodities, a separate three-year pilot program for the trading of options on those commodity futures contracts was adopted on January 23, 1984. 49 FR 2752. This pilot program provided that each exchange could be designated for two options on domestic agricultural futures contracts. On April 2, 1986, the Commission determined to expand this latter pilot program from two to five commodity options per exchange. 51 FR 11905 (April 8, 1986).

Pursuant to the requirements of Section 4c(c) of the Act, with each major expansion of the program the Commission has justified to the Congress its ability to regulate the trading of exchange-traded commodity options. Major interim evaluations of the pilot option programs were made at the time the non-agricultural option pilot program was expanded from one option on a futures contract and one on a physical contract per exchange to two options of any kind, when the program was expanded from two to five options per exchange, and at the time the pilot program for options on domestic agricultural futures contracts was initiated. In addition, a major evaluation of the Commission's experience with option trading was sent to the Congress at the time that the pilot program for domestic agricultural options was expanded from two to five contracts per exchange.

Overall, The Commission's experience with its pilot option programs has been that few regulatory problems have arisen and that, for the most part, the exchanges have discharged their responsibilities under the programs adequately. Moreover, there were few, if any, customer complaints of the type which formerly had characterized option trading. Finally, the Commission has noticed no adverse effects on the underlying futures markets resulting from the option programs. An exception to the overall success of the option program on non-agricultural commodities has been the March 1985 default of Volume Investors Corporation, a clearing member of the Comex Clearing Association, as a result of the failure of three of its customers to meet margin calls on their uncovered short option positions in the Comex gold option contract. In response to this problem, the Commission proposed separate capital rules and a guideline concerning option margins.[3] 50 FR 3162; 50 FR 31625 (August 5, 1985). The Commission is still considering those proposed rules and the comments received on them and will make an appropriate determination at some future date.

II. The Proposed Rules

As part of its final evaluation of the pilot option program, the Commission proposed several modificaitons to the existing option rules. 50 FR 35247 (August 30, 1985). The most fundamental change contemplated by the Commission was whether to make the option program permanent. The Commission requested comment on whether, as an alternative to this, the pilot status of the program should be maintained but the permitted number of options expanded. In addition, changes in the existing rules which were proposed included modifications to the current definition of hedging to cover options, deleting the requirement of participation by commercial interests in developing option contracts, deleting an exchange-required definition of deep-out-of-the-money options, raising the underlying futures volume criterion for initial designation, establishing delisting criteria based on the volume in the underlying futures and in the option contracts, modifying reporting requirements and certain disclosure rules, deleting the requirement for exchange conduct of market-wide

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[2] Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, Section 402(c), 88 Stat. 1412-13 (codified at 7 U.S.C. 6c(b)). *See, e.g.*, 120 Cong. Rec. S34997 (daily ed. October 10, 1974) (remarks of Senator Talmadge); Hearings on the Review of the Commodity Exchange Act Before the House Committee on Agriculture, 93rd Cong., 1st Sess. 11 (1973) (statement of Representative Smith); H.R. Rep. No. 93-975, 93rd Cong., 2d Sess. 37-39, 49-50 (1974).

[3] The Commission notes that some of the exchanges commenting on the option rule proposals suggested that the Commission modify its regulations to permit "futures-style" margining of option transactions. The Commission has explored this issue in the past. *See, e.g.*, 49 FR 8937 (March 9, 1984). The Commission is not presently inclined, however, to expend substantial additional resources on any further examination of this subject, at least until a unified proposal, reasonably representative of the interests of the various exchanges and the clearing organizations, futures commission merchants, commercial users of the option markets and other interested persons, is presented to the Commission.

surveys, and modifying the requirement to file promotional material, customer complaints, and disciplinary actions with the exchanges.[4]

III. Comments Received

In response to these proposed rules the Commission received twenty-one comments. The commenters included six exchanges, eight futures commission merchants or commodity trading advisors, several foreign exchanges, one industry association, the government of the United Kingdom, and several corporate users of the option markets. In general, all of the commenters agreed that the pilot option program had been a success and should be made permanent.

The commenters agreed that option trading served a useful economic function and provided trading opportunities additional to future trading. Accordingly, the commenters supported the growth of the option program. Moreover, none of the commenters disagreed that certain of the Commission's proposed regulations should be adopted as final. These included the proposal to include options within the meaning of hedging (Commission Rule 1.3(z)), to delete the requirement that commercials participate in contract design (Commission Rule 33.4(a)(5)(ii)), to delete the required exchange definition of "deep-out-of-the-money" options (Commission Rule 33.4(b)(2)), and to delete the requirement that contract markets conduct market-wide surveys (Commission Rule 16.05).

In response to the Commission's request, several commenters also suggested various rule changes. These included proposals that contract terms and conditions be standardized, that the time between expiration of the option and the underlying futures contract be reduced from ten days to one day (Commission Rule 33.4(d)(1)), that the economic purpose test for option designation be deleted (Commission Rule 33.4(a)(6)(i)), that the requirement for speculative position limits on options be deleted or revised (Commission Rule 1.61), that an exchange be able to trade an option on any underlying futures contract regardless of where that contract is traded (Commission Rule 33.4(a)(3)), and that the ban on foreign traded options be lifted. These issues are discussed in greater detail below.

IV. Final Rules

A. The Pilot Nature of the Program

In light of the favorable experience with the pilot option program, including the apparent substantial use of these markets by commercial enterprises, the Commission requested comment on whether the pilot program should be made permanent and whether the Commission should lift the limitation on the number of options on futures contracts on commodities other than domestic agricultural commodities permitted on each exchange. Currently, Commission Rule 33.5(c) provides that the effective period for designation for commodity options shall not exceed three years from the effective date of designation. In addition, Commission Rule 33.4(a)(6) limits the number of commodity options which may be traded on an exchange.

As noted above, all twenty-one commenters responded favorably to this proposal. They uniformly held the option that the option program had been a success and should be made permanent. Moreover, they agreed that the limitation on the number of options permitted per exchange should be lifted. The Commission concurs. Accordingly, the Commission is amending Rules 33.4(a)(6) and 33.5(c) to delete the three-year limitation on the period of designation and the limitation on the number of options permitted per exchange. Insofar as these provisions also relate to the trading of options on physicals, however, it should be noted that although the three-year period for designation of such options has been lifted, the numeric limit on the number of such options continues. This limitation will be reconsidered after greater experience with the trading of options on physical commodities has been obtained.

B. Definition of Bona Fide Hedging

The Commission proposed that options be included within the definition of hedging under Commission Rule 1.3(z). As noted when the Commission proposed this rule,

> At the time that the initial option rules were adopted, the Commission was concerned that the use of options to shift risk might not fit fully with the definition of "hedging" as it applied to futures contracts.
>
> 50 FR 25249.

However, the Commission has learned in the course of the pilot program that the application of the term "hedging" to certain risk shifting activities of option traders is appropriate. Evidence of this is found in certain applications by the exchanges of the term "hedging" and the reference to the Commission's definition of hedging in Commission Rule 1.3(z)(1) as part of exchange-set speculative position limits for options. Moreover, uniform use of the term hedging with respect to both options and futures trading would simplify the option rules. The Commission therefore believes that an amendment of Commission Rule 1.3(z)(1) is appropriate. In this connection, Commission Rules 1.46 and 1.61 are also being amended in order to be consistent with the change to Commission Rule 1.3(z)(1).[5]

Although the adoption of this and the related proposed rules as final was supported by all of the commenters, one commenter questioned the Commission's statement "that generally option grantors cannot meet the Commission's definition of hedging and that this proposed amendment is not intended to imply that covering speculative futures . . . with options . . . can be considered hedging. . . ." 50 FR 35249. That commenter maintained that "it is incorrect to say that the use of options on financial futures to hedge a securities portfolio will generally not meet the definition of hedging."

The Commission reiterates, as discussed in the notice of proposed rulemaking, that the specific enumerated examples found in Commission rule 1.3(z)(2) apply only to those futures contracts governed by direct federal speculative limits. As further noted in that Federal Register notice, whether particular types of option transactions should be classified as hedging must be determined by applying only the general definition contained in Commission Rule 1.3(z)(1). Accordingly, although option grantors generally cannot meet the Commission's definition of hedging and the covering of speculative futures (or option) positions with option (or futures) positions cannot be considered hedging, there may be certain instances where grantors may be *bona fide* hedgers.

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[4] The Commission also proposed to amend the financial early warning system applicable to futures commission merchants by extending the requirements of Commission regulation 1.12 to situations in which a margin call to an individual account (or group of related accounts) exceeded an FCM's excess adjusted net capital. As the Commission explained at the time, its proposal was intended to augment other rule amendments, margin guidelines, and related requirements that had been published in response to the failure of Volume Investors Corporation. 50 FR at 35253–54. The Commission is continuing to evaluate each of these proposals and has extended the comment period on the proposed amendments to the Commission's minimum financial and related requirements that were first proposed in August 1985. *See* 51 FR 7285 (March 3, 1986). The Commission believes that its proposed enhancement of the financial early warning system is best considered in conjunction with these other financial rule proposals and is not, therefore, taking any action at this time on that aspect of this rulemaking proceeding.

[5] The Commission is also adopting a technical amendment to Commission Rule 1.61 deleting from that rule provisions for a phase-in period. These provisions are no longer needed.

C. Designation Criteria

Several amendments were proposed to Commission Rule 33.4 to amend the requirements for contract market designation. The Commission proposed these modifications in light of its three years of experience with the option program. In general, the modifications being adopted simplify designation requirements. Other modifications, such as raising the initial volume of the underlying futures market required for the designation of an option market, follow from the ending of the pilot status of the program and the deletion of other limitations or designation criteria.

1. Participation of Commercial Interests.

The Commission, as proposed, is deleting the requirement of Commission Rule 33.4(a)(5)(ii) that an exchange applying for designation demonstrate that commercial interests participated in formulating the option contract. Although this requirement was necessary initially in light of general inexperience with commodity option trading when the pilot program began, exchanges currently have sufficient expertise to make such a provision unnecessary. This view was concurred in by both the exchange and commercial commenters.

2. Deep Out-of-the-Money Options.

The Commission also proposed to delete the requirement that exchanges have rules which specifically identify and govern deep-out-of-the-money options. Commission Rule 33.4(d)(2).[6] The Commission's proposal, however, did not affect the existing requirement that the contract markets, as part of their sales practice audits, ascertain whether the offer or sale by futures commission merchants (FCMs) of such deep-out-of-the-money options is consistent with exchange rules. Commission Rule 33.4(c). Moreover, the Options Disclosure Statement that must be provided to every prospective option customer details the risks associated with both the purchase and the sale of deep-out-of-the-money options. Commission Rule 33.7(b)(6).

Although all of those commenting supported the proposed deletion of Commission Rule 33.4(b)(2), one commenter argued that deletion of only this rule did not go far enough. It maintained that the Commission has "never made a credible case for regulating the purchase or sale of options that are deep out of the money." Accordingly, the commenter opposed the requirement that boards of trade look for such trading as part of the sale practice audits that they conduct. Moreover, the commenter objected to this requirement on the grounds that what constitutes a deep-out-of-the-money option has been ill-defined.

As the Commission stated in its proposed rulemaking, the Commission maintains its belief that the offer and sale of such options must be carefully monitored because of the financial risks and issues concerning customer protection raised by such options. A pattern of such sales can indeed be abusive as well as a financial risk in light of the low-premiums and potential risk involved. As explained by the Commission in proposing to delete Commission Rule 33.4(b)(2), these issues are expected to be addressed by net capital and other financial rules and by greater emphasis on sales practice audits. Accordingly, the Commission emphasizes that although definitions of deep-out-of-the-money options will no longer be required because such general rules tended to be less encompassing than appropriate in particular cases, a case-by-case evaluation of specific options series in conjunction with front office audits remains a requirement of the exchange sales practice audits, even in the absence of rules specifically identifying which options would be deemed to be deep-out-of-the-money for a particular contract. Thus, a pattern of such trading in options with low premiums and strike prices considerably away from the money should be considered and treated as an abusive sales practice. Accordingly, the existing requirements in Commission Rule 33.4(c) that the exchanges' sales practice audit programs include provisions for the review of member FCM sales of deep-out-of-the-money options remain effective despite the elimination of the requirement that deep-out-of-the-money options be defined by exchange rules. Despite the elimination of this requirement, exchanges are free to retain their rules concerning the definition of deep-outs or to propose ones that the exchange would consider of greater use in carrying out their sales audit programs.

3. Volume of the Underlying Futures Market Required for Designation.

The Commission proposed to raise the threshold volume level of the underlying futures contract for designation of an option on such a futures contract from the current level of 1,000 contracts per week to 3,000 contracts per week and to eliminate the current alternative non-numeric test. The Commission reasoned that an initial volume of 1,000 contracts per week generally may not be adequate to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value.

Commenters were generally opposed to this proposal. The tenor of those commenting on the proposal was that the Commission lacked an empirical basis for its determination to raise the volume requirement on the underlying futures contract for designation of an option. One commenter expressed the view that "the Commission has no evidence at all that permits it to make a judgement either way. In the absence of any evidence, the Commission is basing its regulations on speculation rather than fact." The commenter continued that low volume in a futures contract is not by itself evidence that the market is illiquid.

The Commission noted in its proposed rulemaking that upon reviewing the data for trading volume of all designated option contract markets, it found that all of the option markets had average volumes in the underlying futures market far in excess of the 1,000 contract per week level. Indeed, all except one of the designated contracts had average volumes at least in the range of 5,000 contracts per week. 50 FR 35250. Moreover, it appeared from the Commission's data that the 3,000 contract level separates low volume futures contracts from the higher volume contracts comparable to those now included in the pilot program.

Based on such trading experience in the pilot program, the 3,000 contract weekly level was found to be the most appropriate to ensure that options are designated only on those relatively active futures markets which will not be adversely affected by option trading. This requirement takes on added importance in light of the Commission's determination to remove the current limitation on the number of contracts permitted per exchange. A higher volume level is necessary to ensure that options will be traded only on those

[6] Deep-out-of-the-money optios are options in which the strike prices are significantly above, in the case of a call, or significantly below, in the case of a put, the current price of the underlying futures contract of physical commodity. Characteristically, the premium for these options is relatively inexpensive while the likelihood of such options' becoming profitable is remote. Nevertheless grantors of such options may face substantial liability if there are sudden, adverse movements in the price of the underlying commodity.

contract markets which can best support such a derivative market.

Several commenters objected to the Commission's proposed deletion of the alternative designation criterion of Commission Rule 33.4(a) (5) (iii), which permitted designation upon a demonstration that there is sufficient liquidity in the cash and futures markets to prevent the disruption of those markets. The Commission maintained that the alternative test should be deleted because it did not ensure that a futures market was sufficiently liquid to avoid adverse effects from option trading. The commeters contended that the alternative test was needed to provide flexibility for designation of options on newly designated futues markets. Thus, one commenter stated that:

> We believe that cases will be seen where the introduction of an option will enhance the trading volume of the underlying future to the point where the underlying futures contract easily fits within the proposed criteria. We recognize the Commission's continuing concern with manipulation in low volume situations. Despite this we believe that the economic benefits which may be gained from the low volume situation outweigh the inherent risks of manipulation that is believed to be present.

The Commission agrees that adherence to the objective test, which requires a year-long history of trading, could result in a needless delay in the introdution of option markets on newly designated contracts. That is not to say, however, that the Commission will at any time permit the simultaneous designation of a futures contract and option on a futures market with the expectation that the introduction of the two contracts at the same time will assure adequate liquidity. The designation of the derivative option market must be predicated upon a pre-existing, liquid underlying futures market.

Upon careful consideration of the comments, the experience with the pilot program and the intent of the proposal, the Commission is maintaining in Rule 33.4(a)(5)(iii) an alternative liquidity demonstration. This demonstration requires a showing that a futures market substantially meets the objective volume criterion in less than a year. The Commission expects that this provision will be most useful in instances where a newly introduced futures contract or an existing one which begins to exhibit higher volume than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volumes the less time would be needed to demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. The Commission believes that this provision maintains the flexibility sought by the commenters while addressing the Commission's concerns that the applicable test be related to the liquidity of the underlying futures market.

4. Additional Suggested Modifications to Designation Criteria

Several of the proposals advanced by commenters involve changes to the criteria for designation. One industry association advocated the need for uniformity and standardization in contract terms and conditions as they relate to trading mechanics. This would include standardization of expiration dates, margin requirements and exercise procedures. The commenter stated that such uniform terms and conditions would improve customer understanding and increase option usage. Although such uniformity in trading mechanics might be beneficial to some market participants, the Commission believes that as a matter of regulatory policy it should not require such uniformity. Further, exchanges may have developed differences in trading mechanics in response to differences in the mechanics of their futures trading. Accordingly, the Commission does not believe that it should require such uniformity where it is unnecessary to ensure the economic appropriateness of the option contract or to protect the public.

An exchange suggested that Commisson Rule 33.4(d)(1) be deleted or amended to provide that an option expire one day, rather than the presently required ten days, before first notice day for delivery on the futures contract. The commenter suggested that the Commission's examination of this issue in granting exemptions from the current ten-day provision indicates that a shorter time period between expiration of the futures and delivery on the futures "would enhance the benefits of option trading by capturing a higher degree of convergence between cash and futures prices which occur closer to delivery period." The commenter continued that, because futures position limits apply to all positions created by option exercise, the expiration of the option in a period of less than ten days before delivery on the future would not pose serious disruption problems to futures contracts which involve physical delivery. The commenter further opined that in the case of cash-settled futures contracts, no such buffer period would be necessary.

The Commission does not agree that the rule should be changed. The Commission believes that having a one-day buffer period between the option expiration and first notice day could lead to congestion in the liquidation of many futures contracts. This is true not only for physical delivery contracts. Accordingly, the Commission believes that continuation of the present ten-day buffer period is appropriate. As in the past, however, exchanges are free to demonstrate on a case-by-case basis why less than the stated period is more appropriate. Although this may be viewed as a more cautious approach than advocated by the commenter, the Commission must be assured that trading on a derivative market will not create congestion or interfere with deliveries on the primary market.

Several commenters stated their belief that any exchange should be allowed to trade an option on any futures contract regardless of where the underlying futures contract is traded. After careful consideration of this comment, the Commission believes such a proposal would seriously undermine the success of the option program. From its beginning, the option program has relied on exchange self-regulation. The ability of exchanges to provide for the orderly trading of both futures and options could be seriously undermined were the same exchange not charged with responsibility for regulating both the underlying futures market and its option market. Accordingly, the Commission is not amending the current requirement under Commission Rule 33.4(a)(3) that the option and its underlying futures contract be traded on the same board of trade.

Other commenters contended that the economic purpose test and speculative position limits were unnecessary for options, placing additional restrictions on futures-related option markets which put them at a competitive disadvantage to security-related option markets. While the regulatory structures for option trading in the futures and securities arenas are not identical, the Commission believes that both of these features of its option regulatory structure should be maintained. As a commenter noted, the economic purpose of the typical option is clear-cut since a related futures contract already has demonstrated such a purpose. Thus, the demonstration of an economic purpose for a particular futures-based option should be relatively easy to make. Accordingly, because the burden of that demonstration generally will not be substantial, the Commission believes that the requirement should be maintained. On an option on a physcal commodity, however, no previous

demonstration of an economic purpose will have been made. Thus, although the burden of demonstrating that the proposed instrument will serve an economic purpose may therefore be greater, this requirement maintains the consistency between futures and option regulation.

With respect to speculative position limits, the Commission notes that such limits are a standard regulatory feature of both securities and commodity option trading. The Commission believes that exchange-set speculative position limits pursuant to Commission Rule 1.61 continue to serve an important regulatory function in commodity option markets. As the Commission noted previously:

> Although large options positions may not have precisely the same potentially disruptive effect as large futures positions, the relationship between the options market and the futures market strongly suggests that the effect of unlimited trading in one market can pass through to the other market either directly through exercise or indirectly through arbitrage.

46 FR 50938, 50944 (October 16, 1981) Accordingly, the Commission believes that Commission Rule 1.61 should not be amended at this time.

Finally, three commenters requested that the Commission lift its ban on foreign-traded options. In this respect the Commission notes that it has recently proposed rules concerning foreign options and futures (51 FR 12104 (April 8, 1986)). It will consider the trading of foreign options in that context and will consider the comments filed in this rulemaking proceeding at that time.[7]

D. Delisting Criteria

As part of the rules making option trading permanent, the Commission proposed delisting criteria to halt trading in any option on a futures contract where the futures contract fails to maintain the requisite volume level and for any option market that itself fails to trade over a specified volume for a specified period of time. Although such requirements were unnecessary during the pilot program, when trading is made permanent it can be expected that over time the volume of trading in various markets may fluctuate greatly.

Accordingly, the Commission proposed, and is now adopting, Rule 5.4 which requires that where the total trading volume for all trading months in the underlying future falls below an average of 1,000 contracts per week for the preceding six months, no new option expirations may be listed for trading. However, it would be expected that as prices of the underlying futures or physical commodity fluctuate substantially, at least some new strike prices would be added, as specified in exchange rules, to the remaining expirations as they trade out. Where the listing of additional option expirations has been suspended, additional expirations could be added only when trading volume in the underlying futures contract rose above an average of 2,000 contracts per week for a period of three months. These volume criteria should be computed by averaging together the total weekly volumes over the three or six-month period, as appropriate.

As explained in the notice of proposed rulemaking, the 1,000 contract per week level is the current designation requirement and, in the Commission's opinion, is the minimum acceptable level below which the individual trader in the underlying futures market may be adversely affected by the existence of a derivative market. 50 FR 3250–3251. As further explained in the proposal, a higher initial designation volume level and level needed to resume trading once the delisting mechanism has been activated are designed to avoid unduly disrupting markets based on minor volume fluctuations; such higher volume levels are set to detect generalized trends in trading volume.

In addition to the underlying futures contract, the designated option market may trade at chronically low levels or may cease to trade. Thus, the Commission proposed to include option contract markets under the requirement of Commission Rule 5.2 that designated contract markets in which no trading has occurred for all expiration months listed for trading for a period of six months shall be deemed dormant.[8] As the Commission previously noted, the rationale for applying the dormant contract rule to futures, *i.e.*, that contracts which have not traded may have outdated terms and conditions and that an opportunity to reassess those terms and conditions is necessary before trading can be resumed (47 FR 29515, 29517 (July 7, 1982)), is equally true with respect to option markets.[9]

Generally, those commenting opposed the delisting requirements where the underlying futures contract falls below the volume as specified. Commenters based their objections on the belief that there is no evidence to suggest that low futures volume by itself poses a problem or that the particular levels selected are arbitrary and unwarranted. The Commission does not agree with these views. Since the inception of the pilot program, the Commission has maintained the importance of approving options based on futures only where the underlying futures market has sufficient liquidity. The limitation on the number of contracts initially permitted under the pilot program and the provision for a three-year designation implicitly addressed this problem. The Commission firmly believes that with these two restrictions removed, it is necessary to assure that sufficiently liquid futures markets are the basis for option markets.

Some commenters argued that a dormant contract rule is unnecessary for options based on futures. These commenters argued that it is the underlying futures contract which will become out of date during a dormant period but that the terms of the option contract should not change over time. The Commission disagrees and believes that it is appropriate before trading is resumed in a dormant option contract to review its terms and conditions. Insofar as the option has fewer terms which may need to be changed than, for example, a futures contract specifying physical delivery, the Commission's review may be simpler and more expeditious.[10]

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[7] The Commission, pursuant to Commission Rule 32.4, additionally has authorized banks located in the United States to grant options on foreign currencies traded on the Montreal Exchange as principals for business-related purposes. 51 FR 12998 (April 15, 1986).

[8] In light of the prospective nature of these rule amendments, the six-month period for calculating whether a contract market is dormant begins on the effective date of this rule. Accordingly, no option contract market will be deemed to be "dormant" until at least six months following the effective date of the rule amendment. However, the three-year exemption period for newly designated contract markets is calculated from the date of designation and expires three years from that date. Thus, certain of the option contract markets which were designated in the early stages of the program no longer qualify under the exemption for newly designated markets.

[9] The Commission also proposed a technical amendment to Rule 5.2(c). This amendment deleted a procedure for expediting Commission approval of the proposal to resume trading under the dormant contract rule. The Commission believes that, in light of the statutory deadline for Commission review of exchange rule amendments enacted as part of the Futures Trading Act of 1982, such a separate time limit is unnecessary.

[10] In light of the fact that information regarding all commercial participants in the option markets is required to be provided by exchanges under Commission Rule 16.04, the Commission did not propose that chronically low volume option contracts be included under Commission Rule 5.3. However, contract markets are expected, as a matter of diligent self-regulation, to institute adequate surveillance procedures for all contract markets and to increase such efforts where appropriate.

E. Reporting Requirements

The Commission is adopting the amendments to Rule 16.01 as proposed. These amendments require that, where a delta factor is used by an exchange (including an exchange's clearing organization) for margining positions, evaluating compliance with speculative position limits, or evaluating the financial exposure of its members, the exchange report the delta factor to the Commission on a daily basis in marchine-readable form.

As the Commission explained in proposing its rules, such a requirement was not included in the initial option rules because delta systems were introduced by certain exchanges as the pilot program progressed. The use of deltas is important in the Commission's general surveillance of the markets, and the Commission should therefore know the particular delta factors used by the exchanges which trade options. Moreover, the Commission concluded that because such information was similar to that otherwise required under Rule 16.01 and is important to the financial operations of the option market, such information should be made available to the public in printed form on a daily basis.

The majority, but not all, of the commenters opposed this requirement. Typically the rationale of those opposing the requirements was that they agreed that the delta factors should be known to the Commission and the public-at-large at any particular time, but that the exchanges should be able to make available the delta formula to the Commission and the FCM community without undertaking to release the deltas on a daily basis. Thus, these commenters suggest that the Commission and the FCMs calculate the delta factors on their own.

The Commission believes that this alternative is not acceptable and that the better alternative is to require that the exchanges using delta factors make them available to both the Commission and the general public. There is a potential public impact if the exchanges use delta factors for any of the three reasons given above. It is not enough, however, to make public only the delta formulas. Results from the same delta formula may vary depending on interpretation or construction of the variables used in the formula and the particular methods of approximation used for solution. Moreover, solving the formula may require sophisticated methods beyond the means of many market participants. For this reason, public dissemination of the actual deltas used by the exchanges, rather than their methods of calculation, is appropriate. For the same reasons, it is appropriate that the exchanges provide the Commission with the calculated delta values. It is onerous and duplicative for the Commission and FCMs to attempt to develop and maintain various systems for calculating deltas which emulate those developed by the exchanges. It is necessary, however, for general surveillance, enforcement of speculative limits and of position-based capital requirements, and oversight of the exchanges' application of their financial rules that the Commission have access to the delta factors used by the exchanges.

The Commission also proposed two amendments to Rule 16.02. These proposed changes would provide the Commission and the exchanges with specific, additional information necessary for the conduct of market surveillance. They would require that reportable positions in each option expiration be reported by strike price. These data are currently provided only for the option which is next to expire or which will expire within six weeks. Also, for those exchanges which have adopted a delta system for purposes of exchange speculative position limits, the relevant position information would be provided in hard copy on a delta equivalent basis in a form and manner approved by the Director of the Division of Economic Analysis.

Although several commenters objected to these proposed rule amendments, two supported it. One, a large futures exchange, stated that it was already providing information in the form required by the proposed rule. The other commenter, a major FCM, noted that the proposed rule was a logical extension of the present requirement and that the cost and burden of providing the additional information was minimal. Two other commenters, both futures exchanges, objected to the requirement. One of those objecting stated that had the Commission originally requested the detail proposed now, the exchange could have avoided the costs associated with a change in the reporting requirements. The exchange also maintained that sufficient information was available from the current reports and that "the current report provides the Commission with position data on reportable positions for an overwhelming fraction of the total open interest in our contracts."

Although it is unfortunate that additional resources must be spent on various programming changes, it was the nature of the pilot program that after three years' experience certain changes were to be expected. Indeed, the very concept of a three-year pilot program was to provide a test of what would be required for permanent option trading. In this regard, it is unreasonable to assume that all details of the reports which the Commission would find necessary could have been known in advance of trading experience. Nevertheless, as indicated in these final rule amendments, the Commission has found it necessary to make few changes in its option rules at this time when the pilot status of the program is being terminated.

The reporting of option positions by expiration months to the exchanges is necessary, at the vary least, for the exchanges to enforce their option and futures speculative limits. Moreover, because of various exemptions permitted by the Commission, it is necessary that for applicable markets the exchanges transmit the position data in this form to the Commission in order for the Commission to enforce its speculative limits on futures or to oversee properly exchange enforcement of their speculative position limits and position-based capital requirements.

For example, during the course of the pilot option program, the Commission has approved exchange rules allowing certain exemptions from exchange option and futures speculative limits. Further, the Commission, at the request of the exchanges, has allowed certain exemptions from federal futures speculative limits based on offsetting option positions held in the same commodity. Commonly, these exemptions include certain option and futures configurations which are offsetting and generally include conversions and reverse conversions and, less typically, delta equivalent option to futures spreads. Calculation of these configurations requires knowledge of the option expiration months in which positions are held.

Under current rules, if the Commission notes a potential violation of its speculative limits or that of an exchange, it must contact the exchange to determine the expiration months in which option positions are held. This procedure can become burdensome, given the growth in options trading generally, and, more specifically, the number of traders who appear to avail themselves of these exemptions. Finally, it should be noted that if for particular contracts open interest is concentrated in the nearby months, as suggested by one commenter, there is little additional data that the exchanges must supply. Accordingly, the Commission is

adopting the amendments to Commission Rule 16.02 as proposed.

The Commission also proposed that the requirement that contract markets conduct market-wide surveys be deleted (Commission Rule 16.05) and that Commission Rule 21.02a be amended to require FCMs to respond to special calls in machine-readable form whether or not for purposes of sample surveys. As the Commission stated in its proposed rulemaking, it has not found it effective to use Commission Rule 16.05, which relies upon exchanges to conduct market-wide surveys. Rather, the Commission has itself conducted such surveys in order to ensure better the timeliness and standardization of the survey process. The Commission believes that the amendment of these two provisions results in no net increase of the information that FCMs are required to provide. In this connection, it should be noted that no commenters objected to these provisions. The Commission therefore adopted as final the proposed amendments to Commission Rules 21.02 and 21.02a as part of a final rulemaking or related reporting requirements (51 FR 4712 (February 7, 1986)) and is hereby deleting Commission Rule 16.05.

F. Changes in Sales Practice Requirements

The Commission also proposed to modify and streamline several of the special requirements that apply under the pilot program to the offer and sale of exchange-traded options. Although the comments received by the Commission generally favored each of the Commission's proposals, several of the commenters, noting the paucity of sales practice abuses during the past three years, also apparently assumed that the termination of option trading's pilot status meant that the Commission could eliminate altogether the special safeguards that have been one of the principal features of the pilot program.

The Commission does not agree, however, that the absence of sales practice problems during the course of the pilot program is evidence that the option sales practice rules are unnecessary. On the contrary, the Commission more prudently assumes that the absence of significant sales practice problems is itself evidence of the effectiveness of the sales practice rules which were adopted by the Commission as a cornerstone of the pilot program. Indeed, and as the Commission made clear at that time, those rules were adopted by the Commission after careful consideration and in light of the Commission's prior experience with the trading of options other than on designated contract markets during the early and mid-1970s. *See* 46 FR 54500, 54502–03 (November 3, 1981).

The Commission has nonetheless been willing to make appropriate modifications to those rules in light of its experience with option trading under the pilot program. The Commission therefore contemplates that it will continue to evaluate these requirements as it gains additional information with respect to public, "retail" participation in the option markets, even after the termination of the "pilot" status of option trading. The Commission notes, however, that it would expect not to diminish significantly existing option sales practice standards. Rather, the Commission anticipates that continued refinements in *futures* sales practice standards, such as those that have already been adopted by industry self-regulatory organizations in the years since the inception of the pilot program, should ultimately allow the Commission to harmonize and unify futures and option sales practice regulation.

With respect to the specific items proposed by the Commission, the commenters uniformly supported the proposed amendments to Commission regulations 33.4 (b)(4), (b)(6), and (b)(8) which would eliminate certain repetitious filings currently required of FCMs which are members of more than one self-regulatory organization. Those proposals, which are being adopted by the Commission without change, will relieve FCMs of the burden of filing copies of customer complaints, promotional material, and notices of disciplinary action with every self-regulatory organization of which the FCM happens to be a member. Those materials will now instead be filed routinely only with an FCM's designated self-regulatory organization which, as before, will have primary responsibility for monitoring it members' option sales practices.

The Commission has similarly determined that it is no longer necessary to continue to require FCMs and introducing brokers ("IBs") to reduce to writing and file with the exchanges and the National Futures Association any oral customer complaint which could result in an adjustment to a customer's account of $1000 or more. As the Commission noted when it proposed this latter amendment, there has been little evidence of oral complaints. Of greater practical significance, the Commission expects that a customer complaint, at least of the type contemplated by the rule, would most likely be in writing. Continued retention of this aspect of regulations 33.4(b)(4) therefore appears to be unnecessary.

By comparison, the Commission cannot agree with the suggestion made by one of the commenters that the proscription against (and duty to audit for evidence of) "high-pressure sales communications" be eliminated from Commission regulations 33.4(b)(10) and (c). Although the offer and sale of exchange-traded options generally has not be tainted by the types of practices that characterized commodity options prior to the establishment of the pilot program, the Commission must, as noted above, assume that this record is evidence of the need for standards and requirements such as the ban on high-pressure sales tactics. Indeed, the Commission believes that an effective program for the prevention of sales practice abuses would always include procriptions against high-pressure sales tactics.

The Commission is making several clarifying changes in the provisions governing the oral and written disclosures that must be made to option customers. In particular, the Commission has determined to adopt the proposed amendment to that portion of the disclosure rule which requires FCMs and introducing brokers to provide a "description" of the futures contract physical commodity underlying a particular option. As the Commission observed when it proposed this change to § 33.7(b)(2), this requirement has been construed to require FCMs and IBs to provide to every customer a comprehensive listing of every option contract that has been designated by the Commission. These listings typically provide the details not only of the option contracts themselves and of the futures contract or physical commodity underlying those options, but subsequent amendments to any of the terms and conditions of those contracts as well. The Commission noted that such required disclosures are not likely to be of more than incidental interest to option customers, that all of this information is readily available upon request, and that compliance with this requirement appears to entail substantial operational difficulties for FCMs and IBs.

The Commission therefore proposed to require instead that FCMs and IBs identify the futures contract or physical commodity which may be purchased or sold upon exercise of an option or, if applicable, whether exercise of the option will be settled in cash. Those persons who commented on this aspect of the Commission's proposal uniformly supported this change. In particular, the

commenters stated that the existing rule was burdensome and, for the reasons identified by the Commission in its proposal, apparently unnecessary. The commenters further observed that the rule as amended would nonetheless ensure that customers continue to receive any information of which they should be aware. The Commission is, therefore, adopting this portion of its proposal without change.

Commenters did not favor the Commission's proposed modifications regarding limit moves and the overnight risk of positions which have been exercised. They maintained that such disclosures were unnecessary or might further confuse customers. The Commission is unpersuaded by these comments and is of the opinion that such disclosures provide the public with additional information concerning the risks of option trading. Accordingly, the Commission is adopting the modifications without change.

The Commission is aware that the foregoing amendments to § 33.7 will require the modification of the Options Disclosure Statement that is provided to perspective option customers by future commission merchants and introducing brokers. The Commission further recognizes that FCMs or IBs may have an inventory of such Disclosure Statements in the form currently specified by Commission regulation 33.7. The Commission has therefore determined to allow FCMs and IBs to continue to use any such existing Disclosure Statements for up to six months from the date of publication of this Federal Register notice and will not take any enforcement action with respect to the distribution, during that time, of a Disclosure Statement that has not been amended to reflect the changes to Commission regulation 33.7(b) that are today being adopted by the Commission.

One of the commenters suggested that the Commission also reconsider the oral disclosures that must, under its rules, be made prior to every option transaction. In particular, while Commission regulation 33.7(c) currently requires that certain essential information be provided to option customers prior to the entry of the *first* transaction for the account of an option customer, Commission regulation 33.7(d) requires other information—such as commissions, fees, and exercise charges—to be repeated prior to *every* option transaction. The Commission agrees that reiteration of all of this information prior to every transaction is not likely to be of significant value to customers and may, in fact, impede the prompt transmission and execution of customer orders.

The Commission has, therefore, modified this portion of its regulations to require that certain basic information be provided to option customers prior to the first option transaction. Specifically, information relating to commissions, costs, fees and other charges to be incurred in connection with an option transaction (including any costs associated with exercise of the option) must now be provided in advance of the first option transaction but will not have to be reiterated unless that information has become inaccurate. Other items, such as the option strike price and premium, which are an integral part of each trade must, of course, continue to be disclosed to an option customer (other than a discretionary account customer) prior to each transaction.[11]

This commenter further observed that Commission regulation 33.7(b)(2)—which comprises a portion of the required Options Disclosure Statement—could similarly be construed to require repetitive disclosures, not only of commissions, costs and fees, but also of numerous other items of information. In particular, § 33.7(b)(2) specifies that an FCM or IB "is required to provide, and the individual contemplating an option transaction should obtain, a description" of various items (such as exercise procedures, storage charges, and margin requirements) that are alluded to in that portion of the Disclosure Statement "[p]rior to entering into *any* transaction involving a commodity option." (Emphasis added.) The commenter therefore urged the Commission to amend the Disclosure Statement to eliminate any such requirement.

The Commission has not previously interpreted § 33.7(b)(2), however, to require that these various items be disclosed affirmatively before each trade (except to the extent that they are covered by the separate provisions of regulation 33.7(d), discussed above). Rather, the Commission contemplates that an FCM or IB will provide its customers with all of the information required under the Option Disclosure Statement prior to the entry of the first transaction, as required by § 33.7(c). Thereafter, and as discussed above, § 33.7(d) will require an FCM or IB routinely to provide only that information (such as strike price and premium) which is related to a specific transaction unless additional disclosures are necessary to keep current any of the information that has previously been provided.[12]

[11] The Commission has also deleted the requirement, formerly contained in § 33.7(c), that the limitations, if any, on the transfer of an option customer's account from one future commission merchant to another be provided in writing. This provision was originally proposed in response to perceived problems in non-domestic markets (42 FR 55538, 55540 (October 17, 1977)); to the extent this issue has any continued relevance to trading under the pilot program, the Commission believes that the underlying problem is adequately addressed by rules of the various self-regulatory organizations.

III. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et. seq., requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the FRA. 47 FR 18618 (April 30, 1982). These proposed rules would permit and govern the trading of options on various contract markets and therefore, if promulgated, would not have significant economic impact on a substantial number of small entities. Accordingly, for the above reason and pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission invited comments from any firms or other persons which believed that the promulgation of these rule amendments might have a significant impact upon their activities. No such comments were received.

B. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget (OMB) pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collections required under these rules. A copy of this Federal

[12] An FCM or IB continues to remain obligated, under Commission Rule 33.7(f), to "disclose all material information to existing or prospective option customers even if the information is not specifically required" by the Commission's option disclosure rule. Furthermore, and as the Commission has previously indicated, an FCM or IB must additionally acquaint itself sufficiently with the personal circumstances of each option customer to determine what further facts, explanations and disclosures are needed in order for that particular option customer to make an informed decision whether to trade options. The procedures to be followed by the prudent FCM or IB in ascertaining those personal circumstances may require an FCM or IB to make an inquiry into an option customer's sophistication for purposes of determining to what extent risk disclosure above and beyond the disclosure statement itself might be advisable. 46 FR 54500, 54507 (November 3, 1981).

Register notice is also being sent to OMB. These rules amend existing rules which have been assigned OMB control numbers 3038–0007, 3038–0012, and 3038–0022. In response to the Commission's invitation for comments (50 FR 35255), several commenters questioned certain of the proposed amendments to the reporting requirements. The Commission has considered these comments carefully and has discussed them in detail above.

List of Subjects in 17 CFR Part 38

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options, Customer protection, Contract markets, Dormant Contracts Disclosure requirements, Financial rules, Fraud, Hedging, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and in particular, sections 2(a)(1)(A), 4c(b), 4c(c), 4c(d), 5, 5a, 6 and 8a thereof, 7 U.S.C. 2, 4, 6c(a), 6c(b) 6c(c), 6c(d), 7, 7a, 8 and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24 unless otherwise noted.

2. Section 1.3 is amended by revising paragraph (z)(1) introductory text, (z)(1)(iii), and the undesignated text at the end of (z)(1) to read as follows:

§ 1.3 Definitions.

* * * * *

(z) *Bona fide hedging transactions and positions.*

(1) *General definition.* Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transaction or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

* * * * *

(iii) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.

Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraphs (z) (2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

* * * * *

3. Section 1.46 is amended by revising paragraph (d)(1) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) * * *

(1) Purchases or sales of commodity options constituting "bona fide hedging transactions" pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) and approved by the Commission pursuant to Section 5a(12) of the Act; *Provided,* that no contract market or futures commission merchant shall permit such option positions to be offset other than by open and competitive execution in the trading pit or ring provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity option.

* * * * *

4. Section 1.61 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 1.61 Speculative position limits.

* * * * *

(b) * * *

(2) No bylaw, rule, regulation or resolution adopted pursuant to paragraph (b)(1) of this section shall apply to positions held by commercial interests in the underlying commodity which are determined by a contract market to be bona fide hedging positions as defined by a contract market in accordance with § 1.3(z)(1) of this chapter; *Provided,* that the contract market may limit bona fide hedging positions which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(c) *Time of filing.* Boards of trade seeking designation as a contract market in options or futures shall submit rules, bylaws, regulations or resolutions pursuant to this section with their application for designation.

* * * * *

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

5. The authority citation for Part 5 is revised to read as follows:

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a, unless otherwise noted.

6. Section 5.2 is revised to read as follows:

§ 5.2 Dormant contracts.

(a) *Definitions.* For purposes of this section:

(1) The term "dormant contract market" means any commodity futures or option contract market:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a board of trade to the Commission to be a dormant contract market.

(b) *Listing of additional futures trading months of option expirations.* No dormant contract market may list additional months or expirations for trading, or otherwise permit trading to recommence in such a dormant contract market, until such time as the Commission approves, pursuant to section 5a(12) of the Act and § 1.41(b) of these regulations, the bylaw, rule, regulation or resolution of the contract market submitted to the Commission pursuant to paragraph (c) of this section.

(c) *Bylaw, rule, regulation or resolution to list additional trading months or expirations.* (1) Any bylaw, rule, regulation or resolution of a contract market to list additional trading months or expirations in a dormant contract market or to otherwise recommence trading in such a contract market shall be submitted to the Commission under Section 5a(12) of the Act and § 1.41(b) of these regulations.

(2) Each submission shall include the information required to be submitted pursuant to § 1.41(b) of these regulations and also shall:

(i) Clearly designate the submission as filed pursuant to Commission Rule 5.2.

(ii) Contain an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions

which are now being proposed by the contract market, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or option contract will be used on more than an occasional basis for hedging or price basing.

(d) *Exemptions.* No contract market shall be considered dormant until the end of thirty-six (36) complete calendar months:

(1) Following designation;

(2) Following notice to the contract market that the Commission has reviewed the economic purpose and the terms and conditions of the contract and has determined in its discretion to permit this exemption; or

(3) Following Commission approval of the contract market bylaw, rule, regulation, or resolution submitted pursuant to paragraph (c) of this section.

7. Part 5 is amended by adding a new § 5.4 to read as follows:

§ 5.4 Delisting criteria for options.

For options on a designated futures contract market, where the trading volume of the underlying futures contract market falls below an average of 1,000 contracts per week for all trading months listed during the preceding six month period, no new expiration months may be listed for trading. New expiration months may be added in accordance with rules of the contract market when trading volume in the underlying designated futures contract market rises above an average of 2,000 contacts per week for all trading months listed for a period of three consecutive months.

PART 16—REPORTS BY CONTRACTS MARKETS

8. The authority citation for Part 16 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7, and 12a. unless otherwise noted.

9. Section 16.01 is amended by revising paragraphs (a) (5) and (a) (6.) adding (a)(7), and revising the undesignated text at the end of (a) to read as follows:

§ 16.01 Trading volume, open contracts and prices.

(a) * * *

(5) The total number of option contracts exercised;

(6) The total number of option contracts that expired unexercised; and

(7) The option delta, where a delta system is used.

This information shall be made readily available to the new media and the general public in printed form and without charge at the office and trading floor of the contract market no later than the business day following the day for which publication is made.

* * * * *

10. Section 16.02 is amended by revising paragraphs (a) introductory text, (a)(1)(i) (A), (B) and (C), removing (a)(1)(i)(D) and (E), revising (a)(1)(ii) (A) through (D), and by adding paragraph (a)(1) (iv) to read as follows:

§ 16.02 Large option trader reports.

(a) *Information required.* Each contract market shall submit to the Commission a weekly report for options on futures and for options on physicals that are settled in cash and, unless otherwise determined by the Commission, a daily report on all other options on physicals, containing the following information for each option trader controlling a reportable option position.

(1)(i) * * *

(A) All reportable position by expiration month and by strike price;

(B) The total reportable position controlled by the option trader by expiration month, regardless of strike prices; and

(C) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices.

(ii) * * *

(A) All reportable positions by expiration month and by strike price;

(B) The total reportable position controlled by the option trader by expiration month regardless of strike prices;

(C) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices; and

(D) The number of contracts exercised.

* * * * *

(iv) For those option contract markets which have adopted an option delta system for purposes of enforcing exchange speculative position limits pursuant to § 1.61 of this chapter, the information required by paragraph (a) of this section shall also be submitted in hard copy form on a delta-equivalent basis in a form and manner approved by the Director of the Division of Economic Analysis.

* * * * *

11. Part 16 is amended by removing and reserving § 16.05.

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

12. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19 and 21 unless otherwise noted.

13. Section 33.4 is amended by removing and reserving paragraph (a)(5)(ii), revising paragraphs (a)(5)(iii) and (a)(6)(ii), removing and reserving paragraph (b)(2), and revising paragraphs (b)(4) introductory text, (b)(4)(i), (b)(4)(iii), (b)(6) and (b)(8) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

* * * * *

(a) * * *

(5) * * *

(ii) [Reserved]

(iii) For opotions on futures contracts, the volume of trading in all contract months for future delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such futures contract market for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than 12 months preceding the date of application; and

* * * * *

(6) * * *

(ii) For commodities not specifically enumerated in section 2(a)(1)(A) of the Act, is not designated as a contract market for more than one other option on a physical

* * * * *

(b) * * *

(2) [Reserved]

* * * * *

(4) Require, with respect to all written option customer complaints, that each member futures commission merchant which engages in the offer or sale of commodity options regulated under this Part:

(i) Retain all such complaints;

* * * * *

(iii) Immediately send a copy of any such complaint to the member's designated self-regulatory organization and, upon final disposition thereof, immediately send a copy of the record of such disposition to the member's designated self-regulatory organization.

* * * * *

(6) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this Part to give to the member's designated self-regulatory organization notice of any disciplinary

action taken against the futures commission merchant or any of its associated persons by the Commission or by another self-regulatory organization.

* * * * *

(8) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this Part promptly to submit to the member's designated self-regulatory organization all promotional material (as defined in § 33.1). Such promotional material must be promptly reviewed by the designated self-regulatory organization to determine that such material is not fraudulent.

* * * * *

15. Section 33.5 is amended by revising paragraph (c) to read as follows:

§ 33.5 Application for designation as a contract market for the trading of commodity options.

* * * * *

(c) For options on a futures contract on a commodity specifically enumerated in section 2(a)(1)(A) of the Act, the effective period for designation as a contract market for a particular commodity option under this Part shall be for a period not to exceed three years from the effective date of the designation, or such shorter period as the Commission may specify at the time the designation is granted, and in any event shall be of no further force or effect should the Commission, by rule or regulation, repeal the provisions of this Part under which such designation is granted. Except as may be specifically authorized by the Commission, no board of trade which has been designated as a contract market for the trading of commodity options may authorize or allow the trading of any commodity option which will expire after the termination of the effective period of such designation or where the delivery month of the futures contract underlying such option is later than the termination of the effective period of such designation or where the delivery month for the underlying futures contract has not been listed.

16. Section 33.7 is amended by revising paragraphs (b)(2) introductory text and (b)(2)(i), by removing paragraph (b)(2)(ii) and by redesignating paragraph (b)(2)(iii)-(b)(2)(viii) as paragraphs (b)(2)(ii)-(b)(2)(vii), and by revising paragraphs (b)(3), (b)(5), (c), and (d) to read as follows:

§ 33.7 Disclosure.

* * * * *

(b) * * *

(2) *Description of commodity options.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option involved and the underlying futures contract or physical commodity. The futures commission merchant or introducing broker is required to provide, and the individual contemplating an option transaction should obtain:

(i) An identification of the futures contract or physical commodity underlying the option and which may be purchased or sold upon exercise of the option or, if applicable, whether exercise of the option will be settled in cash;

* * * * *

(3) *The mechanics of option trading.* Before entering into any exchange-traded option transaction, an individual should obtain a description of how commodity options are traded.

Option customers should clearly understand that there is no guarantee that option positions may be offset by either a closing purchase or closing sale transaction on an exchange. In this circumstance, option grantors could be subject to the full risk of their positions until the option position expires, and the purchaser of a profitable option might have to exercise the option to realize a profit.

For an option on a futures contract, an individual should clearly understand the relationship between exchange rules governing option transactions and exchange rules governing the underlying futures contract. For example, an individual should understand what action, if any, the exchange will take in the option market if trading in the underlying futures market is restricted or the futures prices have made a "limit move."

The individual should understand that the option may not be subject to daily price fluctuation limits while the underlying futures may have such limits, and, as a result, normal pricing relationships between options and the underlying future may not exist when the future is trading at its price limit. Also, underlying futures positions resulting from exercise of options may not be capable of being offset if the underlying future is at a price limit.

* * * * *

(5) *Profit potential of an option position.* An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to become profitable. This price would include the amount by which the underlying futures contract or underlying physical commodity would have to rise above or fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position.

Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised. Similarly, for options on physicals that are cash settled, the physicals price prevailing at the time the option is exercised may differ substantially from the cash settlement price that is determined at a later time. Thus, if a customer does not cover the position against the possibility of underlying commodity price change, the realized price upon option exercise may differ substantially from that which existed at the time of exercise.

* * * * *

(c) Prior to the entry of the first commodity option transaction for the account of an option customer, a futures commission merchant or an introducing broker, or the person soliciting or accepting the order therefor, must provide an option customer with all of the information required under the disclosure statement, including the commissions, costs, fees and other charges to be incurred in connection with the commodity option transaction and all costs to be incurred by the option customer if the commodity option is exercised: *Provided,* That the futures commission merchant or the introducing broker, or the person soliciting or accepting the order therefor, must provide current information to an option customer if information provided previouly has become inaccurate.

(d) Prior to the entry into a commodity option transaction on or subject to the rules of a contract market, each option customer or prospective option customer shall, to the extent the following amounts are known or can reasonably be approximated, be informed by the person soliciting or accepting the order therefor of the amount of the strike price and the premium (and any mark-ups thereon, if applicable).

* * * * *

Issued in Washington, DC on May 7, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-10736 Filed 5-12-86; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Rescheduling of Synthetic Dronabinol in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule I to Schedule II; Statement of Policy

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final Rule and Statement of Policy.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to transfer U.S. Food and Drug Administration (FDA) approved drug products that consist of synthetic dronabinol in sesame oil encapsulated in soft gelatin capsules from Schedule I into Schedule II of the Controlled Substances Act (CSA). Dronabinol is the synthetic equivalent of the isomer of delta-9-tetrahydrocannabinol (THC) which is the principal psychoactive substance in *Cannabis sativa L.*, marijuana. This action is based on a finding that U.S. Food and Drug Administration approved drug products which contain dronabinol fit the statutory criteria for inclusion in Schedule II of the CSA. As a result of this rule, the regulatory controls and criminal sanctions of Schedule II of the CSA will apply to the manufacture, distribution, importation and exportation of dronabinol pharmaceutical products. This rule does not affect the Schedule I status of any other substance, mixture or preparation which is currently included in 21 CFR 1308.11(d)(21), Tetrahydrocannabinols. The Administrator herein also issues a statement of policy regarding review, under the public interest criteria of 21 U.S.C. 823(f) and 824(a)(4), of the DEA registrations of practitioners who distribute or dispense dronabinol for purposes at variance with the FDA approved indications for use of the approved product. A notice is published elsewhere in this isue of the Federal Register that withdraws the proposed rule entitled Changes in Protocol Requirements for Researchers and Prescription Requirements for Practitioners (50 FR 42184–42186, October 18, 1985).

EFFECTIVE DATE: May 13, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

A proposed rule was published in the Federal Register on October 18, 1985 (50 FR 42186–42187), proposing that dronabinol in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. Food and Drug Administration be transferred from Schedule I to Schedule II of the Controlled Substances Act (21 U.S.C. 801 et seq.). Concurrently, a proposal was published which proposed changes in protocol requirements for researchers and prescription requirements for practitioners (50 FR 42184–42186). Interested persons were given until November 18, 1985, to submit comments or objections regarding each of the proposals.

Thirteen individuals or organizations availed themselves of the opportunity to comment, object or request an administrative hearing. Two organizations, Cannabis Corporation of America and National Organization for the Reform of Marijuana Laws (NORML), requested hearings. Both requests for hearings were subsequently withdrawn. Comments or objections were submitted by or on behalf of the following: Alliance for Cannabis Therapeutics, American College of Neuropsychopharmacology, American Medical Association, American Pharmaceutical Association, Arkansas Department of Health, Committee on Problems of Drug Dependence, Inc., Mr. Ansis M. Helmanis, the law offices of Kleinfeld, Kaplan and Becker, Marcos A. S. Lima, M.D., H. G. Pars Pharmaceutical Laboratories and the Pharmaceutical Manufacturers Association.

Having considered the comments and objections presented by the above listed parties, the requirements of the Controlled Substances Act and the Convention on Psychotropic Substances (T.I.A.S. 9725, July 15, 1980), the Administrator has decided (a) to proceed with the rescheduling of dronabinol as proposed at 50 FR 42186–42187 and (b) to issue a statement of policy regarding review of the distribution or dispensing of dronabinol by practitioner registrants which deviates from approved medical use to insure compliance with the obligations of the United States as a signatory to the Convention on Psychotropic Substances. The previously proposed regulations relating to dronabinol are withdrawn elsewhere in this issue of the Federal Register.

(a) Transfer of FDA Approved Dronabinol Drug Products From Schedule I to Schedule II

Having considered the comments and objections presented by the above listed parties and based on the investigations and review of the Drug Enforcement Administration, with attention to the obligations of the United States under the Convention on Psychotropic Substances, and relying on the scientific and medical evaluation and recommendation of the Assistant Secretary for Health of the Department of Health and Human Services, acting on behalf of the Secretary of the Department of Health and Human Services, in accordance with 21 U.S.C. 811(b), and the Food and Drug Administration approval of a new drug application for Marinol capsules, the Administrator of the Drug Enforcement Administration, pursuant to the provisions of 21 U.S.C. 811(a), finds that:

1. Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product has a high potential for abuse;

2. Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions, and

3. Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product may lead to severe psychological or physical dependence.

The above findings are consistent with placement of dronabinol approved drug products into Schedule II of the CSA. The transfer of the product from Schedule I to Schedule II is effective on May 13, 1986 with selected implementation dates as indicated. In the event that this imposes special hardships on any registrant, the Drug Enforcement Administration will entertain any justified request for an extention of time to comply with the Schedule II regulations. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports a FDA approved dronabinol drug product, or who engages in research or conducts instructional activities with such a substance must be registered to conduct such activities in accordance with Parts

1301 and 1311 of Title 21 of the Code of Federal Regulations. Any person currently registered to handle dronabinol in Schedule I may continue activities under that registration until approved or denied registration in Schedule II, provided such registrant has filed an application for registration in Schedule II with DEA on or before June 12, 1986. Any persons not currently registered and proposing to engage in such activities may not conduct activities with the drug product until properly registered in Schedule II.

2. *Security.* FDA approved dronabinol drug products must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c) and (d), 1301.73, 1301.74, 1301.75(b) and (c) and § 1301.76 of Title 21 of the Code of Federal Regulations. Dronabinol and all mixtures, compounds and preparations thereof, except for dronabinol in sesame oil and encapsulated in soft gelatin capsules in a FDA approved drug product, remain in Schedule I and must be stored in accordance with § 1301.75(a).

3. *Labeling and Packaging.* All labels and labeling for commercial containers of FDA approved dronabinol drug products must comply with the requirements of §§ 1302.03–1302.05 and 1302.07–1302.08 of Title 21 of the Code of Federal Regulations. Current products distributed or dispensed for approved research and labeled as Schedule I products may continue to be distributed and dispensed until May 13, 1987.

4. *Quotas.* All persons required to obtain quotas for dronabinol drug products shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of FDA approved dronabinol drug product shall take an inventory, pursuant to § 1304.03 and §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations, of all stocks on hand as of June 12, 1986.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding FDA approved dronabinol drug products.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding FDA approved dronabinol drug products.

8. *Order Forms.* All registrants involved in the distribution of dronabinol drug products shall comply with the order form requirements of Part 1305 of Title 21 of the Code of Federal Regulations.

9. *Prescriptions.* FDA approved dronabinol drug products have been approved for use in medical treatment and the drug may be dispensed by prescription. All prescriptions for FDA approved dronabinol drug products shall comply with §§ 1306.03–1306.06 and §§ 1306.11–1306.15 of Title 21 of the Code of Federal Regulations.

10. *Importation and Exportation.* All importation and exportation of dronabinol drug products shall be in compliance with Parts 1311 and 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal Liability.* Any activity with respect to FDA approved dronabinol drug products not authorized by or in violation of the Controlled Substances Act or the Controlled Substances Import and Export Act continues to be unlawful. The applicable penalties after May 13, 1986 shall be those of a Schedule II substance.

12. *Other.* In all other respects, this order is effective on May 13, 1986.

(b) Statement of Policy

The Administrator takes special note of the fact that synthetic tetrahydrocannabinol in all forms, including dronabinol, remains internationally controlled in Schedule I of the Convention on Psychotropic Substances. Under the special obligations of the Convention, to which the United States is a party, relative to Schedule I substances, Article 7 requires in part that parties shall "prohibit all use except for scientific and *very limited medical purposes . . .*" (emphasis added). The Administrator also notes that the official "Commentary on the Convention on Psychotropic Substances" provides guidance to parties in meeting this obligation consistent with national laws and policies.

The Administrator finds that the existing requirements of Schedule II of the Controlled Substances Act can provide adequate controls and restrictions to comply with the obligations of the Convention on Psychotropic Substances when coupled with effective oversight and enforcement, such as provided for in the Dangerous Drug Diversion Control Act of 1984 (part B of chapter V of Title II of Pub. L. 98–473). The Administrator notes that experience has demonstrated that there are medical practitioners registered to dispense Schedule II substance who abuse that registration and prescribe or dispense Schedule II substances outside the scope of the legitimate medical practice.

On May 31, 1985, the Food and Drug Administration (FDA) approved the drug product, Marinol capsules, containing dronabinol for nausea associated with cancer treatment. Considering the nature of this drug, it is reasonable to assume that drug abusers will attempt to seek out practitioner registrants willing to prescribe the drug for abuse purposes, under the guise of legitimate medical practice, as frequently occurs with other Schedule II substances. DEA has encountered practitioners who attempt to justify illegal or improper distribution or dispensing by claiming unique knowledge of a drug's effectiveness for a broad range of medical indications. While it is expected that legitimate structured research programs may document additional medical indications for dronabinol, prescribing which deviates from the recognized approved medical use must be questioned in keeping with the United States obligations to prohibit all use except for scientific and very limited medical purposes.

Therefore, in keeping with sound domestic drug control policy and the United States obligations under the Convention on Psychotropic Substances, the Administrator hereby issues this statement of policy:

Any person registered by DEA to distribute, prescribe, administer or dispense controlled substances in Schedule II who engages in the distribution or dispensing of dronabinol for medical indications outside the approved use associated with cancer treatment, except within the confines of a structured and recognized research program, may subject his or her controlled substances registration to review under the provisions of 21 U.S.C. 823(f) and 824(a)(4) as being inconsistent with the public interest. DEA will take action to revoke that registration if it is found that such distribution or dispensing constitutes a threat to the public health and safety, and in addition will pursue any criminal sanctions which may be warranted under 21 U.S.C. 841(a)(1). See *United States* v. *Moore*, 423 U.S. 122 (1975).

The proposed rule which was published at 50 FR 42184–42186, October 18, 1985, entitled Changes in Protocol Requirements for Researchers and Prescription Requirements for Practitioners, is withdrawn elsewhere in this issue of the Federal Register.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291 (46

FR 13193), this statement of policy has been submitted for review by the Office of Management and Budget. In accordance with the provisions of 21 U.S.C. 811(a), this order to reschedule certain drug products which contain synthetic dronabinol from Schedule I to Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the rescheduling of formulations which contain dronabinol, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980). This action will allow the marketing of a drug product which has been approved by the FDA.

Pursuant to the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], as redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR 0.100, and for the reasons set forth above, the Administrator hereby orders that 21 CFR 1308.12 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. 21 CFR 1308.12 is amended by redesignating the existing paragraph (f) as paragraph (g) and by adding a new paragraph (f), reading as follows:

§ 1308.12 Schedule II.

* * * * * * *

(f) *Hallucinogenic substances.*

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product..... 7369

[Some other names for dronabinol: (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol]

* * * * *

Dated: May 1, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–10724 Filed 5–12–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the appproval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On January 31, 1986, Indiana submitted amendments to its program requirements regarding civil penalties, incidental boundary revisions and use of explosives.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving these amendments. The Federal rules at 30 Part 914 which codify decisions concerning the Indiana program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 13, 1986

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32071–32108). Subsequent actions concerning the Indiana program are identified in 30 CFR 914.15 and 30 CFR 914.16.

II. Discussion of Proposed Amendment

On January 31, 1986, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, proposed State program amendments for approval (Administrative Record No. IND 0453). The amendments modify requirements for civil penalty assessments, incidental boundary revisions and use of explosives.

OSMRE published a notice in the Federal Register on February 26, 1986, announcing receipt of the proposed program amendments and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendments (51 FR 6751). The public comment period ended March 28, 1986. There was no request for a public hearing and the hearing scheduled for March 24, 1986, was not held.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Indiana on January 31, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Only those areas of particular interest are discussed below in the specific findings. Discussion of only those provisions for which findings are made does not imply any deficiency in any provisions not discussed.

Civil Penalties

Indiana has amended 310 IAC 12–6–11 to provide that the regulatory authority shall assess a penalty for a violation which leads to a cessation order and for notices of violation assigned 31 points or more under the point system established in 310 IAC 12–6–12.5. The rule provides that the regulatory authority may assess a penalty for 30 points or less. Under the rule, a penalty of $5000 per day shall be assessed for mining without a permit, except under certain circumstances.

Indiana has amended 310 IAC 12–6–12 to establish the requirements for assigning points for penalties based on certain factors. The factors to be considered are: The permittee's history of violations at the particular operation (up to 30 points); the seriousness of the violation for which the penalty is being assessed (up to 15 points); the degree of the permittee's negligence or fault in the violation (up to 25 points); and degree of good faith determined from the permittee's efforts to abate the violation (up to negative 30 points).

Indiana has added 310 IAC 12–6–12.5 to establish the number of dollars to be assessed against the permittee depending upon the number of points assigned to a violation. The dollar amounts range from $20 for 1 point to $5000 for 70 points and above.

Section 518(i) of SMCRA requires that civil and criminal penalties of a State program shall incorporate penalties no less stringent than those set forth in section 518 and contain the same or similar procedural requirements relating to those penalties.

The requirements of SMCRA section 518 which are pertinent to Indiana's amendments are the requirements in section 518(a) that: Permittees may be assessed a penalty for violations; cessation orders under section 521 shall be assessed a civil penalty; penalties shall not exceed $5000 for each violation; consideration shall be given to the four factors listed in 518(a) in determining the amount of the penalty. The Director finds that the Indiana rules address these requirements in a manner that is no less stringent than section 518(a) of SMCRA.

The Federal regulations implementing section 518 of SMCRA are contained in 30 CFR Part 845. The counterpart rules to these amended Indiana rules are found in 30 CFR 845.13, which establishes a point system for penalties, and 30 CFR 845.14, which establishes requirements for determination of the amount of penalty. These Federal rules establish a system which implements the requirements in SMCRA section 518(a) for assessment of penalties, including the requirement to assess a penalty for violations which lead to a cessation order, and for considering four factors in determining the amount of a penalty. The four factors contained in SMCRA and the Federal rules are: the history of previous violations at a particular operation; the seriousness of the violation; negligence of the person to whom the notice is issued; and good faith shown in attempting to achieve compliance.

The Indiana system for penalty determinations and assessments is similar to the Federal system under 30 CFR Part 845 in that Indiana assesses points based on the four factors for consideration contained in SMCRA section 518(a). The Indiana penalty determination system differs from the Federal system in that it allows up to a negative 30 points for good faith while the Federal rules allow only up to negative 10 points for good faith; however, the Director finds that the Indiana system properly considers all factors in a manner that is no less stringent than SMCRA and is consistent with the Federal regulations. The Indiana system assesses a dollar amount based on the number of points assessed for a violation which the Director finds consistent with the system in 30 CFR Part 845 and no less stringent than the requirements of SMCRA 518(a).

Incidental Boundary Revisions

Indiana has made minor editorial changes to 310 IAC 12–3–121 to simplify the cross references in paragraph (b)(2).

Indiana has added paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) to 310 IAC 12–3–121 to define which permit revisions are considered "incidental boundary revisions."

Paragraph (c)(1) of 310 IAC 12–3–121 defines incidental boundary revisions as those which: Do not constitute a significant departure from the method of conduct of mining or reclamation in the original permit, as defined in 310 IAC 12–3–121(a)(1); are required for orderly and continuous mining and reclamation; adjoin the permit acreage; will be mined and reclaimed in conformity with the approved permit; and, do not exceed 10 percent of the original permit acres or 20 acres, whichever is less. Paragraph (c)(2) limits the aggregate of all incidental boundary revisions for the permit to 15 percent of the original permit area, except that the aggregate of such revisions that involve removal of coal shall not exceed 10 percent of the original permit area. The rule provides regulatory authority discretion to waive the 15 percent limitation if all the other requirements of 310 IAC 12–3–121(c)(1) are met and the interests of the public will not be adversely affected.

The Director finds Indiana's definition of incidental boundary revisions and aggregate area restrictions upon incidental boundary revisions to be consistent with the requirements in SMCRA section 511(a) which provide for treatment of incidental boundary revisions distinct from other extensions to the area covered by the permit. The Director finds the rules to be no less effective than the Federal rules for permit revision at 30 CFR 774.13(d) which do not contain specific criteria for determining which revisions to the permit would be considered incidental boundary revisions.

Paragraph (c)(3) of 310 IAC 12–3–121 lists the information required to be submitted in the application for an incidental boundary revision, including, among other listed items of information, a statement indicating whether any areas unsuitable for mining are contained in the area to be added. Paragraph (c)(4) requires that no application shall be approved unless the applicant demonstrates and the regulatory authority finds that reclamation as required by the Indiana program can be accomplished, the application complies with the requirements of the Indiana program and the pertinent findings required by 310 IAC 12–3–112 are made.

The Director finds these requirements to be consistent with the provisions of SMCRA section 511(a)(2) which require that the regulatory authority, before approving an application for a permit revision, shall find that reclamation as required by SMCRA and the State program can be accomplished. The Director finds the Indiana rule no less effective than the Federal rule at 30 CFR 774.13(c) which requires further that the applicant demonstrate and the regulatory authority find that applicable findings under 30 CFR 773.15(c) (which include a finding of no area unsuitable for mining) are met and the application for a revision complies with all requirements of SMCRA and the regulatory program.

Paragraph (c)(5) of 310 IAC 12–3–121 requires the regulatory authority to approve or disapprove the incidental boundary revision within 30 days, but allows the regulatory authority to extend the limit beyond 30 days if it is not sufficient time. The Director finds the paragraph no less effective than 30 CFR 774.13(b) which requires the regulatory authority to establish a time limit for decisions on permit revision applications.

Paragraph (c)(6) of 310 IAC 12–3–121 states that nothing in subsection (c) shall be construed to alter the requirements in the Indiana program for submittal of fees and bond. The Director finds this no less effective than the Federal requirements for permit revisions in 30 CFR 774.13.

Use of Explosives

Indiana has amended its regulatory requirement pertaining to use of explosives in response to required program amendments codified at 30 CFR 914.16(b) and announced in the October 19, 1984 **Federal Register** (49 FR 41020).

Indiana has amended 310 IAC 12–5–34(e) and 12–5–100(e) to provide that if a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program, where no request has been made to the regulatory authority or the permittee, the survey need not be submitted to the regulatory authority. The Director finds that these changes satisfactorily address the requirement in 30 CFR 914.16(b)(1).

Indiana has amended 12–5–36(e)(4) and 12–5–101(e)(4) to require that, if

necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those required in the rule, for use in the vicinity of a specific blasting operation. The Director finds that these changes satisfactorily address the required amendment in 30 CFR 914.16(b)(4).

Indiana rules 310 IAC 12–5–36(f) and 12–5–101(f) are amended to add the requirement that flyrock not be cast beyond the boundary of the bonded area. Although 30 CFR 914.16(c)(3) specified that Indiana amend 310 IAC 12–5–36(f) and 310 IAC 12–5–101(f) to add the requirement that flyrock shall not be cast beyond the *permit* boundary, the Director finds that the changes satisfactorily address the required amendment, since the boundary of the bonded area will always fall within the permit area. Therefore, the Director finds the Indiana requirements no less effective than the Federal requirements.

Indiana has amended 310 IAC 12–5–36(h)(1) and 310 IAC 12–5–101(h)(1) to delete the word "active" from the phrase "active underground mines" as required by 30 CFR 914.16(b)(2), so that the rule requires that any underground mine shall be protected from damage by the establishment of a maximum allowable limit on the ground vibration. Indiana has also added a sentence to each of these paragraphs to read: "Provided, however, abandoned underground workings which are within the permit boundary and which are to be mined through according to approved mining plans are not subject to a ground vibration limitation." Although OSMRE specifically required Indiana to remove the word "active" in order that inactive (abandoned) underground mines would be protected as well as active mines, the Director finds that the exception provided by the additional sentence in the Indiana rules does not render the rule less effective than 30 CFR 816.67(d). The Indiana rule protects active and inactive underground mines with only the exception that if an inactive underground mine is being mined through, there may necessarily be damage to the mine from blasting in the course of mining through the underground workings. The Director finds this exception does not render the rule less effective than the Federal rule, and that the requirement in 30 CFR 914.16(b)(2) is satisfactorily addressed.

Indiana has made various minor editorial changes to 310 IAC 12–5–36 and 12–5–101 which the Director finds do not alter the substance of the rules.

IV. Public Comments

Comments on the proposed amendments were received from representatives of Peabody Coal Company and Old Ben Coal Company. Comments were generally supportive of the amendments.

The representative of Peabody Coal Company stated that the Secretary had no discretion to disapprove the civil penalty regulations, because a State cannot be required to use a point system and therefore a State can choose to use a point system that is not identical to that in 30 CFR Part 845, "as long as that point system is fairly and uniformly applied as reflected in oversight." The commenter stated that OSMRE's annual evaluation reports on the Indiana program implementation have discussed the assessment of civil penalties and that none of the reports noted deficiencies in the system itself. The commenter attached copies of the relevant portions of the reports to support this statement. The commenter then reiterated that the Secretary should approve Indiana's civil penalty amendment.

The representative from Old Ben Coal Company also supported the civil penalty amendment and said that the rules were consistent with SMCRA and the pertinent article of the Indiana Code. The commenter said the changes will provide operator flexibility while maintaining regulatory control and that paperwork and confusion will be decreased.

The Director agrees with the commenters to the extent that he has found the amended rules to be consistent with Federal requirements and has approved the amendment.

The Peabody Coal Company representative discussed the background of the incidental boundary rule revisions and said that OSMRE's concerns with previous preliminary submissions of the amendment had been addressed in this submission. The commenter said that the amendment should now be approved. The representative from Old Ben Coal Company generally supported the amendment.

The Director agrees with the commenters and has approved the amendment.

The Peabody commenter had no comment on the rule changes concerning use of explosives; the commenter from Old Ben Coal Company supported the amendments. The Director has found that the amendments satisfactorily address the requirements in 30 CFR 914.16(b).

V. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on January 31, 1986, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1982, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding new paragraph (m) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on

January 31, 1986, are approved effective May 13, 1986: amendments to the Indiana regulations at 310 IAC 12-6-11, 310 IAC 12-6-12, 310 IAC 12-6-12.5, 310 IAC 12-3-121, 310 IAC 12-5-34, 310 IAC 12-5-36, 310 IAC 12-5-100 and 310 IAC 12-5-101.

3. 30 CFR 914.16 is amended by removing and reserving paragraph (b) and removing paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) as follows:

§ 914.16 [Amended]

* * * * *

(b) [Reserved]

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[FR Doc. 86-10699 Filed 5-12-86; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 360

[DoD Directive 5105.40]

Defense Mapping Agency (DMA) Charter

ACTION: Final Rule.

SUMMARY: This part requires revision to: Reflect the assignment of responsibility for supervision of the Defense Mapping Agency and oversight of DoD MC&G programs to the ASD (C^3I) and incorporate statutory and DoD Directive changes pertinent to DMA which have taken place since the subject part was last published in 1978 (43 FR 58895).

EFFECTIVE DATE: April 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Comptroller), telephone: 697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 360

Organization and functions (Government Agencies).

Accordingly, 32 CFR Part 360 is revised to read as follows:

PART 360—DEFENSE MAPPING AGENCY

Sec.

360.1 Reissuance and purpose.
360.2 Mission.
360.3 Organization and management.
360.4 Responsibilities and function.
360.5 Relationships.
360.6 Authority.
360.7 Administration.
360.8 Delegations of Authority.

Authority: 10 U.S.C. Chapter 4.

§ 360.1 Reissuance and purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code, this part reissues 32 CFR Part 360 to update the responsibilities, functions, relationships, and authorities of the Defense Mapping Agency (DMA).

§ 360.2 Mission.

DMA shall provide support to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components") on matters concerning mapping, charting, and geodesy (MC&G).

§ 360.3 Organization and management.

DMA is established as a separate agency of the Department of Defense under the direction, authority, and control of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I)). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 360.4 Responsibilities and Functions.

(a) The *Director, DMA,* shall:

(1) Organize, direct, and manage the DMA and all assigned resources.

(2) Serve as Program Manager and coordinator of all DoD MC&G resources and activities, to include reviewing the execution of all DoD plans, programs, and policies for MC&G activities not assigned to DMA

(3) Provide staff advice and assistance on MC&G matters to the OSD, the OJCS, the Military Departments, other DoD Components, and other Government agencies, as appropriate.

(4) Develop MC&G guidance for the Department of Defense; review Military Department program and fiscal documents related to MC&G matters; and recommend appropriate actions to the Secretary of Defense.

(5) In support of the OJCS, review the MC&G requirements and priorities of the DoD Components and other Government agencies, and develop a consolidated statement of MC&G requirements and priorities.

(6) Ensure responsive support to the MC&G requirements of the Military Departments and the Unified and Specified Commands.

(7) Establish policies and provide DoD participation in national and international MC&G activities, in coordination with the Assistant Secretary of Defense (International Security Affairs) and the Assistant Secretary of Defense (International Security Policy), and execute DoD responsibilities under interagency and international MC&G agreements.

(8) Establish and/or consolidate DoD MC&G data collection requirements and provide them to the ASD(C3I), who shall verify and set priorities for such requirements; and collect or task other DoD Components to collect and provide necessary data.

(9) Establish DoD MC&G Research, Development, Test, and Evaluation (RDT&E) requirements, in coordination with the ASD(C3I), and task other DoD Components or private contractors to accomplish such requirements.

(10) Carry out the statutory responsibilities assigned to the Department of Defense under Chapter 167 of 10 U.S.C. for providing nautical charts and marine navigation data for the use of all vessels of the United States and navigators generally, and the responsibilities assigned under Chapter 13 of 44 U.S.C. for the printing of notices to mariners and other publications.

(b) The *Secretaries of the Military Departments* and the *Commanders of Unified and Specified Commands* shall:

(1) Develop and submit to DMA their MC&G requirements and priorities.

(2) Provide support, within their respective fields of responsibilities, to the Director, DMA, as required to carry out the assigned mission of the Agency.

(3) Assess the responsiveness of the DMA to their operational needs.

(c) The *Joint Chiefs of Staff* (JCS) shall:

(1) Advise the Secretary of Defense on MC&G requirements and priorities.

(2) Provide guidance to the DMA and the Unified and Specified Commands that will serve as the basis for interrelationships btween these organizations.

(3) Obtain the advice and recommendations from the Director, DMA, on matters within the areas of responsibility assigned to the DMA.

§ 360.5 Relationships.

(a) In performing assigned functions, the Director, DMA, shall:

(1) Be responsible to the JCS for operational matters within their cognizance, as well as requirements associated with the Joint Planning process. For these purposes, the Chairman of the JCS is authorized to task and communicate with the DMA directly.

(2) Maintain appropriate liaison with other DoD Components and other agencies of the Executive Branch for the exchange of information on programs

and activities in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies whenever practicable to achieve maximum efficiency and economy.

(4) Ensure that appropriate staff elements of the OSD, the OJCS, the Military Departments, and other DoD Components are kept fully informed concerning DMA activities with which they have substantive concern.

(b) The Secretaries of the Military Departments and Heads of other DoD Components shall:

(1) Provide assistance within their respective fields of responsibility to the Director, DMA, in carrying out the responsibilities and functions assigned to the DMA.

(2) Coordinate with the Director, DMA, on all programs and activities that include or are related to MC&G.

§ 360.6 Authority.

The Director, DMA, is specifically delegated authority to:

(a) Task DoD Components directly to accomplish the MC&G RDT&E and data collection requirements established by DMA and verified by the ASD(C3I).

(b) Have free and direct access to, and direct communications with, all elements of the Department of Defense and other executive departments and agencies, as necessary to carry out DMA functions and responsibilities.

(c) Obtain such reports and information, consistent with the policies and criteria of DoD Directive 5000.19,[1] and advice and assistance from other DoD Components as necessary to carry out DMA functions and responsibilities.

(d) Establish facilities necessary to accomplish the DMA mission in the most efficient and economical manner.

(e) Exercise the administrative authorities contained in § 360.6.

§ 360.7 Administration.

(a) The Director, DMA, shall be a commissioned officer of suitable general or flag rank appointed by the Secretary of Defense from officers of the Armed Forces on active duty.

(b) The Deputy Director shall be selected by the ASD(C3I). When the Deputy Director is a military officer, selection shall be based on the recommendation of the JCS.

(c) DMA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments shall assign military personnel to DMA in accordance with approved authorizations and procedures for assignment to joint duty. The JCS shall review and provide recommendations on the DMA joint manpower program to the ASD(C3I), as appropriate, for those functions where DMA is responsive to the JCS.

§ 360.8 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DMA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DMA to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DMA civilian personnel.

(b) Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DMA shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish advisory committees and employ part-time advisers, as approved by the Secretary of Defense, for the performance of DMA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DMA to perform this function.

(e) Establish a DMA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DMA or its subordinate activities, in accordance with the provisions of 5 U.S.C. 4503 and applicable Office of Personnel Management (OPM) regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2[2], "DoD Personnel Security Program," December 20, 1979; as appropriate:

(1) Designate any position in DMA as a "sensitive" position.

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not terminate the services of an employee in the interest of national security in positions within DMA.

(4) Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by DMA. Any action to deny or revoke a security clearance will be taken in accordance with procedures prescribed in DoD 5200.2-R[3], "DoD Personnel Security Program," December 1979.

(g) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DMA employees.

(h) Authorize and approve overtime work for DMA civilian officers and employees in accordance with the provisions of 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

(i) Authorize and approve:

(1) Travel for DMA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

(2) Temporary duty travel for military personnel assigned or detailed to DMA in accordance with Joint Travel Regulations, Volume 1, "Members of Uniformed Services."

(3) Invitational travel to persons serving without compensation whose consultive, advisory, or other highly specialized technical services are required in a capacity that is directly

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[1] Copies may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

[2] See footnote 1 to § 360.6(e).

[3] See footnote 1 to § 360.6(e).

related to, or in connection with DMA activities, pursuant to the provisions of 5 U.S.C. 5703.

(j) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DMA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

(k) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

(l) Establish and use imprest funds for making small purchases of material and services, other than personal, for DMA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71[4], "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

(m) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DMA consistent with 44 U.S.C. 3702.

(n) Establish and maintain appropriate property accounts for DMA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DMA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(o) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DMA, pursuant to DoD Directive 5200.8[5], "Security of Military Installations and Resources," July 29, 1980.

(p) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1[6], "Department of Defense Directives System," October 16, 1980.

(q) Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies, as required for the effective performance of DMA functions and responsibilities.

(r) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(s) Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of DMA. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(t) Sell maps, charts, and related products to the public as governed by the provisions of OMB Circular A-25, "User Charges," and 10 U.S.C., Chapter 167, section 2794.

(u) Authorize the release of classified DoD MC&G products to foreign nationals within DoD disclosure policies.

(v) Lease property under the control of DMA, under terms that will promote the national defense or that will be in the public interest, pursuant to the provisions of 10 U.S.C., Chapter 159, section 2667.

(w) Execute section 8091 of Pub. L. 99-190 (The FY 1986 Department of Defense Appropriations Act), December 19, 1985, relating to international agreements.

The Director, DMA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective April 23, 1986.

Dated: 8 May 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-10884 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

[4] See footnote 1 to § 380.4(e).

[5] See footnote 1 to § 380.4(e).

[6] See footnote 1 to § 380.4(e).

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6711]

Flood Insurance; Suspension of Community Eligibility

AGENCY: Federal Emergency Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management

measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are inpracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard areas identified	Date[1]
Region I					
Massachusetts	Falmouth, town of, Barnstable County.	255211F	July 23, 1971 Emerg.; May 16, 1973 Reg.; May 15, 1986 Susp.	May 16, 1973, July 1, 1974, Aug. 9, 1975, July 29, 1977, Sept. 30, 1977, Dec. 16, 1980, Oct. 1, 1983 and May 15, 1986.	May 15, 1986.
Do	Duxbury, town of, Plymouth County.	250293B	Sept. 29, 1972 Emerg.; May 2, 1977 Reg.; May 15, 1986 Susp.	Aug. 30, 1974, May 2, 1977 and May 15, 1986.	Do.
Region III					
Pennsylvania	Fountain Hill, borough of, Lehigh County.	421808A	July 31, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Nov. 12, 1974 and May 15, 1986	Do.
Do	Southampton, township of, Franklin County.	421657B	June 17, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	May 31, 1974, Oct. 8, 1976 and May 15, 1986.	Do.
Do	Washington, township of, Snyder County.	422041B	Mar. 11, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Jan. 17, 1975, Apr. 11, 1980 and May 15, 1986.	Do.
Region V					
Ohio	Dresden, village of, Muskingum County.	390705A	Apr. 30, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Feb. 4, 1975 and May 15, 1986	Do.
Region VII					
Kansas	Wichita, city of, Sedgwick County	200328B	Mar. 24, 1972 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 27, 1974, Apr. 1, 1977 and May 15, 1986.	Do.
Missouri	Fulton, city of, Callaway County	290051C	July 19, 1976 Emerg.; June 15, 1983 Reg.; May 15, 1986 Susp.	May 17, 1974, Jan. 16, 1976 and May 15, 1986.	Do.
Region II—Biennial Conversions					
New York	Clifton, town of, St. Lawrence County.	361173B	Oct. 28, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Nov. 29, 1974, Dec. 26, 1975 and May 15, 1986.	Do.
Region IV					
Florida	Jay, town of, Santa Rosa County	120339A	Jan. 13, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Oct 10, 1975 and May 15, 1986	Do.
Do	Madison, city of, Madison County	120152B	Aug. 1, 1975 Emerg., May 15, 1986 Reg.; May 15, 1986 Susp.	Jan. 24, 1974 May 21, 1976 and May 15, 1986.	Do.
Georgia	Lyons, city of, Toombs County	130223B	June 2, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 6, 1974, Nov. 21, 1975 and May 15, 1986.	Do.
Kentucky	Boyle County, Unincorporated areas.	210032B	July 20, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Aug. 19, 1977 and May 15, 1986	Do.
Do	Dover, city of, Mason County	210167B	Feb. 11, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Aug. 2, 1974, June 4, 1976 and May 15, 1986.	Do.
Do	Greensburg, city of, Green County	210068B	July 3, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Feb. 1, 1974, June 18, 1976 and May 15, 1986.	Do.
North Carolina	Aberdeen, town of, Moore County	370165B	May 14, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Nov. 10, 1923, July 2, 1976 and May 15, 1986.	Do.
South Carolina	Dillsboro, town of Jackson County	370136B	July 23, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Mar. 8, 1974, Oct. 15, 1976 and May 15, 1986.	Do.
Do	Jackson, town of, Aiken County	450058B	Apr. 12, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	May 17, 1974, Apr. 23, 1976 and May 15, 1986.	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date[1]
Tennessee	Eads Spring, town of, Franklin County.	[illegible]	July 17, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Feb. 1, 1974, Oct. 22, 1976 and May 15, 1986.	Do.
Do.	Mason, city of, Tipton County	[illegible]	Oct. 1, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Oct. 1, 1976 and May 15, 1986	Do.
Wisconsin	Prairie Farm, village of Barron County.	550015B	July 25, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 7, 1973, May 28, 1976 and May 15, 1986.	Do.
Region VII					
Kansas	Galena, city of, Cherokee County	200047B	June 12, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	May 24, 1975, Oct. 24, 1975 and May 15, 1986.	Do.
Missouri	Raymore, city, of Cass County	290070A	February 4, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 27, 1974 and May 15, 1986	
Region VIII					
Montana	Fairview, town of, Richland County	300084B	Feb. 3, 1977 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Aug. 16, 1974, May 14, 1976 and May 15, 1986.	Do.

Code for reading 5th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.
[1]Date certain Federal assistance no longer available in special flood hazard areas.

Harold T. Duryee,
Acting Administrator, Federal Insurance Administration.

[FR Doc. 86-10880 Filed 5-12-86; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6713]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth colum of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2787.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood evaluation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the flood plain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of Peoria	Apr. 4, 1986, and Apr. 11, 1986, *Peoria Times*.	The Honorable Edmund Pang, Mayor, City of Peoria, P.O. Box 38, Peoria, AZ 85345.	Mar. 24, 1986	040050B
Pima		Apr. 9, 1986, and Apr. 16, 1986 *Arizona Daily Star*.	The Honorable Sam Lena, Chairman, Pima County Board of Supervisors, 131 West Congress, Tucson, AZ 85701.	Mar. 19, 1986	040073

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
South Dakota: Lawrence	City of Spearfish	Jan. 23, 1986, Jan. 24, 1986, *Queen City Mail.*	The Honorable Wilbur Trethaway, Mayor, City of Spearfish, 722 Main Street, Spearfish, SD 57783.	Dec. 24, 1985	460046 C
Texas: Dallas	City of Irving	Apr. 9, 1986, Apr. 16, 1986, *Irving Daily News.*	The Honorable Bobby Joe Reper, Mayor of the City of Irving, Dallas County, P.O., Box 2288 Irving, TX 75061.	Mar. 26, 1986	480180

Issued: April 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-10075 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-05-M

44 CFR Part 67

Final Flood Elevation Determinations; New Jersey et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below: .

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
NEW JERSEY	
Waldwick (Borough), Bergen County (FEMA Docket No. 6536)	
Hohokus Brook:	
Downstream corporate limits	*187
Approximately 800' downstream of Dam No. 2	*188
Approximately 600' upstream of Dam No. 2	*209
Approximately 800' upstream of Dam No. 2	*209
Approximately 420 feet downstream of Wyckoff Avenue	*213
Downstream side of Wyckoff Avenue	*214
Maps available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.	
NEW YORK	
Canastota (Village), Madison County (FEMA Docket No. 6547)	
Canastota Creek:	
Approximately 950' upstream of the confluence with Cowaselon Creek	*393
Approximately 300' upstream of NYS Thruway	*399
Approximately 150' downstream of the upstream corporate limits	*460
Oneville Creek:	
Approximately 1,525' upstream of the confluence with Cowaselon Creek	*382
Approximately 400' upstream of NYS Thruway	*398
Upstream side of New Boston Street	*401
Maps available for inspection at the Village Hall, 205 South Peterboro Street, Canastota, New York.	
PENNSYLVANIA	
Logan (Township), Blair County (FEMA Docket No. 6538)	
Mill Run:	
At downstream corporate limits	*1,052
Upstream side of Logan Mall Access Road	*1,054
Upstream side of Union Avenue (downstream crossing)	*1,078
Approximately 2,000 feet upstream of Union Avenue (downstream crossing)	*1,096
Approximately 3,900 feet upstream of Union Avenue (downstream crossing)	*1,103
Approximately 350 feet downstream of CONRAIL	*1,193
Upstream side of CONRAIL (upstream crossing)	*1,204
Approximately 600 feet upstream of CONRAIL (upstream crossing)	*1,209
Approximately 2,000 feet downstream of Mill Run Road	*1,237
Approximately 500 feet downstream of Mill Run Road	*1,261
Upstream side of Mill Run Road	*1,275
Maps are available for inspection at the Logan Township Municipal Building, 600 39th Street, Altoona, Pennsylvania.	
Tionesta (Township), Forest County (FEMA Docket No. 6552)	
Allegheny River:	
Downstream corporate limits	*1,041
At confluence of Little Tionesta Creek	*1,048
Upstream side of upstream crossing of U.S. Route 62 bridge (second crossing)	*1,050
At upstream corporate limits	*1,061

Maps available for inspection at R.D. 1, Box 20, c/o Eugene Wagoner, Tionesta, Pennsylvania.

Issued: April 28, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-10672 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 60585-6085]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA issues an emergency interim rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. The rule modifies the geographic boundary and dates of the the seasonal closure to shrimp trawling off Texas to reduce the area closed to trawl fishing to that portion of the fishery conservation zone (FCZ) within 15 nautical miles of the baseline for the territorial sea (shore). The intended effect of this action is to support the closure of the State of Texas and to alleviate economic stress on the shrimping industry by enabling fishermen to harvest marketable-size shrimp from an area that would otherwise be closed.

EFFECTIVE DATES: May 10, 1986, through July 9, 1986, except for § 658.5(c). In § 658.25, paragraph (a) is suspended from May 10, 1986, through July 9, 1986. In § 658.25, a new paragraph (c) is added to be effective from 30 minutes after sunset May 10, 1986, through 30 minutes after sunset July 9, 1986. This rule is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 659.5(c). When OMB approval is received, a notice will be published in the Federal Register making this section effective.

ADDRESS: Copies of documents supporting this action may be obtained from and comments on this action may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council (Council) and was approved by the Assistant Administrator for Fisheries, NOAA, on November 7, 1980, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Final regulations implementing the FMP were effective May 20, 1981 (46 FR 24789). The Council prepared an FMP amendment that provides for modification of the closed area, identified in 50 CFR 658.24 as the Texas Closure. The FMP amendment was approved on December 28, 1981. A notice of availability and a request for comments on the amendment were published on January 28, 1982 (47 FR 4104). No written comments were received on the FMP amendment during the public comment period which ended on March 13, 1982.

The amended FMP and current regulations provide that the duration of the closure to shrimping in the FCZ off Texas not exceed 60 days, nor be less than 45 days, in order to delay harvest of small, juvenile brown shrimp until they reach a larger size, thus producing more pounds of more valuable shrimp. The growth cycle of brown shrimp shows that small shrimp stay in coastal estuaries until they reach a small adult size, at which time they move through the coastal passes to the deeper waters of the Gulf of Mexico, usually beginning in late May or early June of each year.

Justification

Economic conditions in the coastal areas of Texas and the western Gulf of Mexico have deteriorated significantly in the last year with a concomitant decrease in employment opportunity, which has directly affected the viability of the shrimping industry.

Information available to NMFS shows that harvestable size shrimp are available offshore during the closure period while the majority of small shrimp are located inshore. An opening of the FCZ beyond 15 miles from the shore (FCZ baseline) would allow the harvest of an estimated 843,000 pounds of large shrimp valued at about $1.8 million during the closure period of 45-60 days. Shrimp fishermen would have the opportunity to fish throughout the year in the non-closure portion of the FCZ off Texas.

Emergency regulations are being implemented to adjust the closure dates and to close only that portion of the FCZ within 15 miles of the Texas coast in 1986, for the 45-60 day closure period usually scheduled in June and July, to alleviate the severe economic impact associated with the loss of shrimp fishing days imposed upon fishermen and processors by the complete closure of the FCZ.

Endangered Species Act

Section 7 Consultation—Biological Opinion

On March 27, 1986, the Council provided NMFS, Southeast Region, with a letter concluding that the proposed modification of the FCZ Texas closure would have no effect on threatened and endangered species under the jurisdiction of NMFS. The species considered included five endangered whales: (1) The sperm (*Physeter catodon*), (2) fin (*Balaenoptera physalus*), (3) sei (*Balaenoptera borealis*), (4) humpback (*Megaptera novaeangliae*), and (5) right (*Eubalaena glacialus*). In addition, five endangered or threatened species of sea turtles were addressed: (1) The Kemp's ridley (*Lepidochelys kempi*), (2) loggerhead (*Caretta caretta*), (3) green (*Chelonia mydas*), (4) hawksbill (*Eretmochelys imbicata*), and (5) leatherback (*Dermochelys coriacea*). NMFS does not concur with the Council's "no effect" determination for endangered and threatened sea turtles. NMFS has determined that the proposed modification/partial elimination of the FCZ closure off Texas may adversely affect sea turtles. Pursuant to Section 7 of the Endangered Species Act (ESA), NMFS initiated formal consultation and prepared a Biological Opinion.

A Section 7 consultation on the Shrimp FMP was previously conducted in 1980 with the Council. It resulted in a May 8, 1980, Biological Opinion (BO) which determined that the management actions to be implemented through the Shrimp FMP were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The BO was based on an evaluation of the Shrimp FMP, the

Environmental Impact Statement (EIS) for the FMP, and the available data at that time. One of the management measures considered in the Shrimp FMP was the closure of the entire FCZ off Texas to shrimping from June 1 to July 15 (closing and opening date are flexible by 15 days). This FCZ closure is complementary to Texas' seasonal closure of its 9-mile territorial sea which has occurred for 45 to 60 days each year since 1959. The management objective of the Texas closure regulation (as specified in the FMP which was implemented in 1981) were to increase the yield of shrimp and eliminate the waste of undersized shrimp caught during the period in their life cycle when they are growing rapidly.

The EIS for the Shrimp FMP states that "sea turtles will benefit from increased protection afforded by the establishment of a 45-day closure to trawling in the FCZ off Texas." The EIS further states that the closure period occurs during a period when sea turtles are relatively abundant in Texas offshore waters. Therefore, NMFS believes that the proposed emergency rule to partially open this FCZ area may (or coincidentally) result in an increase in adverse impacts to sea turtles. The 1980 NMFS Biological Opinion for the Shrimp FMP resulted in a "no jeopardy" decision; however, it concluded that formal consultation should be reinitiated if the FMP were modified or new information revealed effects of the action that may affect listed species or critical habitat in a manner not considered in the BO.

The new Biological Opinion responds to the Gulf Council's March 27, 1986, letter and their recommendation to modify the existing FCZ closure off Texas. It is based on the best scientific and commercial data available and incorporates information from: (1) The 1980 Biological Opinion, (2) the Shrimp FMP, (3) the proposed emergency rule, (4) the scientific literature, and (5) other pertinent and available information.

Biological Opinion Summary

Section 7(b)(4) of the ESA requires that when a proposed agency action is found to be consistent with section 7(a)(2) of the Act and the proposed action is likely to take individuals of a listed species incidental to the action, the NMFS will issue a statement that specifies the impact (amount or extent) of such incidental taking. It also states that reasonable and prudent measures be provided that are necessary to minimize such impacts. The statement must also set forth the terms and conditions that must be complied with to implement those measures.

As required under section 7(b)(4) of the ESA, the NMFS sets the following incidental take levels for endangered and threatened species: Twenty (20) Kemp's ridleys and eighty (80) loggerheads. All takes are not anticipated to result in mortalities, as mortality may be dependent upon the amount of time of a trawl tow. The reasonable and prudent measures that the NMFS believes are necessary and appropriate to minimize the impact of incidental takings include two measures that have been proven to effectively reduce taking and/or mortalities of turtles in shrimp trawls. These are: (1) Utilization of the TED (Trawling Efficiency Device) and (2) reduction in the amount of time of the trawl tow. Implementation of either measure will reduce the impacts of incidential take. The TED can reduce turtle captures by as much as 97 percent while maintaining shrimp catches equal to standard rigged trawls. Reduced trawl times significantly reduce sea turtle drownings. Therefore, the following terms and conditions are established to implement the reasonable and prudent measures and to document the incidental take levels of sea turtles by shrimpers operating as a result of the proposed FCZ Texas closure modification. An option is given in the terms and conditions because the proposed action may occur as soon as May 10 and TEDs may not be available to all vessels:

1. Shrimp nets shall be equipped with TEDs; or

2. Trawl tow times shall not exceed 90 minutes (maximum per net).

When turtles are encountered, a report giving the date of take and an account of the status of each turtle must be provided to NMES, upon return to port following each fishing trip. Every effort must be made to return the turtles to the sea alive, with as little harm as possible. NMFS will supply the shrimp vessel operators with reporting forms, sea turtle identification guides, and resuscitation techniques upon request. Reporting forms must be returned to Laboratory Director, NMFS, Galveston Laboratory, 4700 Avenue U, Galveston, Texas 77550.

If the incidental take meets or exceeds the specified levels for Kemp's ridleys or loggerheads, then NMFS will reinitiate consultation. The NMFS Southeast Regional Office will cooperate with the Council and the shrimp industry in the review of the incident(s) to determine the need for developing additional mitigation measures.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds for good cause (i.e., to alleviate severe economic impacts associated with the loss of shrimp fishing days in a timely fashion) that the reasons justifying promulgation of these rules on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available for the "ADDRESS" listed above.

The rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comments.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 8, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 658.1 is amended by adding a new paragraph (d) to read as follows:

§ 658.1 Purpose and scope.

* * * * *

(d) Regulations governing the taking of endangered and threatened marine mammals and sea turtles appear in 50 CFR Parts 222 and 227.

3. Section 658.2 is amended by adding the definitions of *Endangered and threatened marine mammals and sea turtles* and *Trawling efficiency device* (TED) in alphabetical order as follows:

§ 658.2 Definitions.

* * * * *

Endangered and threatened marine mammals and sea turtles means five whale species (sperm, fin, sie, humpback, and right) and five sea turtle species (Kemp's ridley, loggerhead, green, hawksbill, and leatherback).

* * * * *

Trawling efficiency device (TED) means a device installed in the rear of a trawl net just before the cod end that reduces the catch of sea turtles and finfish bycatch, while not reducing shrimp catch.

* * * * *

4. In § 658.5, a new paragraph (c) is added to read as follows:

§ 658.5 Reporting requirements.

* * * * *

(c) *Texas closure.* The owner or operator of any fishing vessel that fishes for, or lands, shrimp or any part thereof in the area described at § 658.7(n) during the time of the Texas closure described at § 658.25(c), and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any fishing trip to the Center Director or his designee within 24 hours after landing:

(1) Date;

(2) Shrimp vessel name;

(3) Species of turtle caught;

(i) Loggerhead;

(ii) Kemp's ridley; or

(iii) Other (specify, see turtle I.D. guide).

(4) Status of turtle when released;

(i) Alive; or

(ii) Dead.

(5) Did the turtle have a tag?

(6) If so, what is the tag number?

(7) Coordinates of capture (loran coordinate or latitude and longitude);

(8) Approximate tow time; and

(9) Additional comments.

5. In § 658.7 a new paragraph (n) is added to read as follows:

§ 658.7 Prohibitions.

* * * * *

(n) During the time period of the Texas closure described at § 658.25(c), and within the area described in this paragraph, it is unlawful for any vessel to trawl for a time period that exceeds 90 minutes in duration, beginning when the trawl net enters the water and ending when the trawl net is pulled from the water, unless each such trawl net is fitted with a trawl efficiency device (TED), in which case there is no time limit restriction on individual trawl tows. The area is that part of the FCZ outside 15 nautical miles of the baseline for the territorial sea (shore) off the State of Texas west of a line connecting point A (29°32.1′ N. latitude, 93°7′ W longitude) to point B (26°11.4′ N latitude, 92°53′ W. longitude) (see Figure 3).

6. Section 658.25 is amended from May 10, 1986, through July 9, 1986, by suspending existing paragraph (a) from May 10, 1986, through July 9, 1986, and adding a new paragraph (c) to be effective from May 10, 1986, through July 9, 1986, to read as follows:

§ 658.25 Texas closure.

* * * * *

(c) *Area and season restrictions.* From 30 minutes after sunset May 10, 1986, through 30 minutes after sunset July 9, 1986, the area described in this paragraph is closed to all fishing for shrimp. The area is that part of the FCZ within 15 nautical miles of the baseline for the territorial sea (shore) off the State of Texas west of a line connecting point A (29°32.1′ N. latitude, 93°7′ W. longitude) and point B (26°11.4′ N. latitude, 92°53′ W. longitude) (see Figure 3).

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Proposed Rules

Federal Register
Vol. 51, No. 92
Tuesday, May 13, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 303

[Docket No. 44015; Notice No. 86-3]

Exemption From Prior Approval Requirements for Certain Transactions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation is proposing to amend the current aviation merger procedural regulations to reduce regulatory obstacles to air carrier acquisitions of other air carriers. The first amendment would allow air carriers to seek an exemption from the prior approval requirement of section 408 of the Federal Aviation Act, under expedited procedures, to permit an air carrier to acquire another air carrier and exercise control over it pending consideration of an application for approval. In particular, the exemption would be available where the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, has decided not to oppose the transaction. In addition, the Department is proposing to exempt air carriers from the provisions of section 408 to permit one air carrier to hold the voting securities of another air carrier in a voting trust, subject to certain conditions, without obtaining Department approval of the trust.

DATES: Comments may be submitted on or before June 12, 1986.

ADDRESSES: Comments may be submitted in triplicate to Docket 44015, 400 Seventh Street SW., Room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Baranko, Office of the Assistant General Counsel for International Law at (202) 472-5621 or Samuel E. Whitehorn, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 472-5677, or Robert S. Goldner, Office of the Assistant Secretary for Policy and International Affairs at (202) 426-2912, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increases in production costs or prices for consumers, individual industries, Federal, State and local governments, agencies, or geographic regions. Furthermore, this proposed rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would allow certain transactions to go forward, pending regulatory review, and rely upon procedures employed in unregulated industries to enforce certain laws. The proposed regulatory procedures will be more efficient and the extent of regulation will be reduced by these rules. Accordingly, a regulatory impact analysis is not required.

The proposed regulations are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, since they are primarily procedural in nature and do not affect the Department's ability to review the merits of transactions subject to section 408. Their economic impact should be minimal and a full regulatory evaluation is not required.

I certify that these rules will not have a significant economic impact on a substantial number of small entities, since most, if not all such entities, have been exempted from section 408 procedures by regulations adopted July 31, 1985 (50 FR 31134). Moreover, any impact would be positive.

These proposed regulations do not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. The relevant collection of information requirements will be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed information collection requirements may be sent to the DOT Desk Officer, OIRA, OMB, NEOB, Washington, DC. A copy should also be forwarded to the DOT docket for this rulemaking.

Background

On January 1, 1985, jurisdiction over airline mergers, acquisitions, and consolidations under section 408 of the Federal Aviation Act of 1958 (Act), 49 U.S.C. 1378, was transferred from the Civil Aeronautics Board (Board) to the Department of Transportation (Pub. L. 98-443, October 4, 1984). On July 31, 1985, the Department adopted new procedural regulations governing mergers and intercarrier agreements. 14 CFR Part 303 (50 FR 31134). Part 303 also exempts from Department review all mergers, acquisitions and consolidations except those involving two or more air carriers that operate large aircraft (60 seats or more) in passenger service. The parties to the latter types of transactions must receive Departmental approval before they may go forward.

Currently, unless exempt, no air carrier may obtain control of another air carrier without first obtaining the approval of the Department. Pursuant to section 408(f), 49 U.S.C. 1378(f), ownership of 10 percent or more of the stock of an air carrier is presumed to constitute "control" for purpose of section 408. While the Department is reviewing the proposed acquisition of control, a process that may take up to six months (see section 1010 of the Act, 49 U.S.C. 1490), the acquiring carrier may not exert control over the other company. If the transaction is one requiring Presidential review under section 801 of the Act, 49 U.S.C. 1461, the regulatory process may be extended for the two more months.

Consistent with policies adopted by the Board, the Department has approved voting trust agreements that allow carriers to purchase more than ten percent of a target carrier's stock pending completion of the regulatory process. *See e.g.*, Orders 85-10-78; 85-10-9; and 85-8-16. However, voting trusts permit the acquiring company to exercise only limited control of the target company. This is true regardless of whether the transaction raises significant competitive or public interest

issues. Moreover, the acquiring carrier must obtain approval of a voting trust, a process that may take two to three weeks, since the Department must consider, *inter alia*, the comments of interested parties.

The Department's processes are generally far more time consuming and burdensome on business prerogatives than those faced by firms in other industries. In other industries, the primary procedural obstacle to acquisitions or consolidations is the Hart-Scott-Rodino Antitrust Improvements Act. 15 U.S.C. 18a. Hart-Scott-Rodino provides that one firm cannot acquire 15 percent or more of another firm's voting securities (or acquire assets valued in excess of $15 million) while the Federal Trade Commission (FTC) or the Assistant Attorney General for Antitrust determines whether or not to challenge the transaction under the antitrust laws. The statute affords the FTC of the Assistant Attorney General 15 days to consider the effects of a cash tender offer. This period may be extended if the reviewing agency concludes that additional information is required. For cash tender offers, the waiting period may be extended until 10 days after compliance with a request for additional information. The waiting period for other transactions is 30 days, which period may be extended until 20 days after compliance with any additional information directive.

Hart-Scott-Rodino does not permit the FTC or the Assistant Attorney General to hold up acquisitions or consolidations indefinitely. If either agency decides to challenge the transaction, the statute provides that they may seek to have the transaction enjoined in District Court. Once the waiting period has expired, if no preliminary injunction has been entered, the parties may proceed.

Hart-Scott-Rodino does not appear to constitute a significant impediment to corporate acquisitions in the vast majority of cases. In 1984, approximately 80 percent of the filings under that Act resulted in "early termination letters" and 94 percent were reviewed without time extensions for collection of additional information. Federal Trade Commission, Eighth Annual Report to Congress pursuant to section 201 of the Hart-Scott-Rodino Antitrust Improvements Act, Appendix A (September 18, 1985).

We believe that Air carrier acquisitions of other air carriers should be subject to far more difficult and protracted processes than acquisitions in other industries. Rather, consistent with the policies expressed in the Airline Deregulation Act of 1978 (Pub. L. 95-504), the procedures faced by air carriers seeking to acquire other air carriers should be made as similar as possible to those that exist in unregulated industries. Specifically, delays created by the regulatory review process should be reduced and the process should be made more comparable to that applied in unregulated industries under the Hart-Scott-Rodino review process. This is particularly true in light of the fact that the Department of Justice will assume jurisdiction over air carrier acquisitions, mergers, and consolidations on January 1, 1989, following the sunset of section 408. See 49 U.S.C 1551 (a)(7). We are proposing two amendments in furtherance of this objective.

Exemption from the Prior Approval Requirement for Transactions the Assistant Attorney General Will Not Oppose

We are proposing, first, to exempt air carriers from the prior approval requirement of section 408 of the Act to allow them to go forward with certain transactions pending completion of the regulatory review process. A complete or partial exemption from the prior approval requirement of the Act may be granted.

The proposed amendment provides, in essence, for an initial assessment of the consequences of a transaction early in the section 408 process. Where transactions do not appear to raise substantial competitive or public interest issues, the Department would allow them to proceed pending regulatory review. In order to obtain an exemption under the expedited procedures provided for in this proposed rule, applicants would submit the transaction to the Department of Justice, under procedures comparable to those required under the Hart-Scott-Rodino review process (as if that section applied). In a case where the Assistant Attorney General for the Antitrust Division has indicated that he or she would not oppose the transaction, or would not oppose the transaction if certain conditions were imposed, an application seeking an exemption from the prior approval requirements of the Act would be filed with the Department of Transportation. A full and complete section 408 application must accompany the exemption application or have been previously filed. The exemption request would be processed under the following expedited procedures. Answers to the exemption application would be due ten days after the application is filed. In general, the Department intends to issue its determination within seven days of the deadline for such answers.

In those cases where the Assistant Attorney General offers no objection to the transaction, an exemption will normally be granted unless an objector has demonstrated a high probability that the Department would ultimately disapprove the transaction on the merits and that irreparable harm would likely occur if the transaction is allowed to go forward without limitation. With a full exemption from that requirement, one air carrier could acquire the securities of another and/or assert operational control during the Department's review process. In addition, two air carriers could merge or consolidate their operations.

Objectors may also argue that a more limited exemption would be appropriate because of competitive or public interest concerns. Such objections should specifically state the manner in which they believe the exemption should be limited. The Department will consider these arguments even though the objectors may not be able to demonstrate a likelihood of success on the merits and irreparable harm. An exemption may be so limited when an objector raises serious competitive or public interest issues that are not so substantial as to require an absolute bar to any significant acquisition of control by one carrier over another. In such circumstances, the Department may, for example, impose a hold separate requirement that would allow one carrier to acquire the stock of another, but not assume operational control. In other circumstances, the Department may allow the assumption of operational control, but preclude a complete merger of their operations. In short, the Department retains the discretion to limit the exemption where circumstances require.

Where the Assistant Attorney General indicates his or her conditional approval of a transaction, any exemption granted by the Department will be no more expansive than that which is consistent with the Assistant Attorney General's position. In addition, the Chief Executive Officer or Chief Legal Officer of the acquiring company would be required to file a statement indicating the company's unqualified acceptance of the proposed conditions before the exemption would be granted. The unconditional acceptance of the conditions would preclude it, and the other party to the merger in a consensual transaction, from contesting the conditions before the Department. Moreover, the Department's review of the underlying transaction under section 408 and section 401(h), if applicable, would consider the competitive and

public interest impact of the transaction as so conditioned.

Regardless of the scope of the exemption, the ability of the carriers to consolidate their operations pending final approval will be limited if section 401(h) of the Act, 49 U.S.C. 1371(h), applies to the transaction. Section 401(h) requires Department approval of any transfer of international certificate authority from one air carrier to another. If that section applies, separate corporate existences would have to be maintained to the extent necessary for each carrier to continue to provide international service consistent with its certificate obligations pending section 401(h) review. International certificate authority could not be transferred from the acquired carrier to the acquiring carrier until DOT approval under section 401(h) and Presidential review under section 801 had occurred.

Any exemption granted under this proposal would not eliminate the Department's section 408 review of the transaction. A proceeding would be held to consider any arguments that the transaction should not be approved or that additional or different conditions are necessary. If the Department eventually were to disapprove the transaction or impose conditions the parties find unacceptable and they cancel the transaction, the applicants would have to satisfy the Department that the *status quo ante* had been restored. Failure to do so could lead to enforcement action under Title IX, section 408 or section 411 of the Act, 49 U.S.C. 1381.

The instant proposal has a number of benefits. First, the exemption would reduce regulatory obstacles to air carrier acquisitions of other air carriers. Second, the Department of Justice's views would take on more importance in airline mergers and acquisitions. We do not believe that it would be appropriate, at this time, to make DOJ's views determinative on whether the underlying transaction should be approved while the statutory responsibility for implementing section 408 lies with this Department. However, DOJ's views should be afforded great weight in the decision on whether the prior restraint created by the statute may be lifted without significant risk of harm to competition or the public interest. A third, similar benefit is that by inducing carriers to use Hart-Scott-Rodino-like procedures, the amendment would facilitate the transition to the time when the Department of Justice assumes jurisdiction over airline mergers, acquisitions and consolidations.

Parties remain free to seek an exemption from the prior approval requirements of the Act at any time, as long as an application for approval of the underlying transaction is on file. However, if the Department of Justice's views on the transaction have not been obtained, the exemption would be considered under our normal exemption procedures and not the expedited procedures created by this proposal.

Exemptions for Voting Trust Agreements in Section 408 Transactions

The Department is also proposing to exempt air carriers from section 408 to the extent necessary to permit them to acquire the voting securities of another carrier, without obtaining prior Department approval, in certain circumstances.

Since the passage of the Airline Deregulation Act, air carrier parties to merger transactions have frequently used voting trust agreements as a means to acquire the stock of another air carrier pending review of the acquisition, merger or consolidation under section 408. Among other uses, the trust device gives the acquiring carrier the ability to attempt a hostile takeover of the target company. Such trusts seldom raise any prospect of harm to competition because the Board and the Department have attached conditions on the trust that allow the acquiring carrier to obtain only limited control of the other carrier. Nevertheless, because the Act creates a presumption of control when one air carrier acquires 10 percent or more of another air carrier's voting stock, air carriers using such trusts have been required to obtain approval under section 408.

For the most part, such voting trust agreements have been routinely approved, usually within three weeks after the filing of the application. In those cases where the acquiring carrier proposed to acquire no more than 25 percent of the target company's securities and all stock purchases were placed in the hands of an independent trustee obligated to vote the stock in the same proportion as other stock is voted, the CAB found that the voting trust agreement prevented the exercise of control over the target carrier. See Orders 78–10–100 and 78–12–173. We believe that continued *ad hoc* review of voting trust agreements with these limitations is unwarranted.

In addition, both the CAB and the Department have approved voting trust involving the acquisition of more than 25 percent of another air carriers's stock, particularly when the acquiring carrier is competing with other interested parties in the marketplace for the target company. Such trusts were approved, in significant measure, because section 408 requires air carriers to await regulatory approval of the transaction, while other potential buyers, not subject to section 408, are free to purchase securities of the target company during the period of delay. This resulted not only in an unfair burden on the acquiring carrier, but created a significant distortion of the market that normally governs transactions of this sort. Consequently, despite the fact that the right to purchase an unlimited amount of stock of another air carrier was found to constitute control within the meaning of the Act, even in a proportional voting trust, the Department concluded that as long as certain conditions were imposed the "control" would not be adverse to the public interest or have anticompetitive impacts. Therefore, the voting trusts were routinely approved to allow the acquiring carrier to compete in capital markets. See, *e.g.*, Orders 85–10–78, 85–10–9 and 85–8–16.

Our experience with such requests leads us to conclude that some form of automatic approval process is appropriate for voting trusts, for no matter how quickly we act, the delay may impede a carrier's ability to compete in acquiring another air carrier with a firm not subject to our jurisdiction. Consequently, exempting air carriers from section 408 to the extent necessary to acquire the stock of another air carrier, pursuant to a voting trust arrangement meeting certain defined criteria, would be in the public interest.

We are proposing to allow carriers to exceed the 25 percent theshold upon the submission, by the Chief Legal Officer of the acquiring company, of an affidavit that the target company is the subject of a competing takeover bid. This proposal is based upon past decisions that allowed larger acquisitions of stock because the target company was the subject of competing takeover bids. However, the Department has allowed larger acquisitions of stock in other circumstances and different or additional bases for permitting carriers to exceed the 25 percent threshold may be appropriate. Parties are invited to comment on this issue.

In addition, the Department is requesting comment, generally, on the desirability of creating limits on the amount of stock that may be placed in voting trusts that receive prior approval while an application under section 408 is pending. On several occasions, the Department has approved individual voting trusts in excess of the 25 percent threshold, while allowing carriers to retain an amount less than 10 percent outside the trust. In two recent filings,

the Department of Justice has suggested that allowing one air carrier to acquire all, or a large portion, of the stock of another air carrier pending the review process may cause significant competitive harm, particularly when the carriers are parties to a friendly merger agreement. The Department could limit the potential for such effects by limiting the amount of stock that may be placed in approved voting trusts. Of course, such a curtailment of the use of voting trusts generally would have the effect of increasing the incentives for carriers to present their transaction to the Assistant Attorney General and gain the broader exemption for transactions that have been cleared under Hart-Scott-Rodino procedures.

Consistent with our previous decisions, we would also require that the acquiring carrier execute a voting trust agreement and file it with the Department prior to reaching or exceeding the ten percent threshold. Further, to obtain the exemption, the voting trust must provide for the voting of all shares held in trust in the same proportion as other shares are voted. The only exception to this proportional voting requirement is that the acquiring carrier would be allowed to direct the trustee to vote its shares in support of any merger or consolidation proposal to which it, or its affilates or subsidiaries, would be a party, and vote in opposition to any contrary proposal. This exception would apply only to the actual merger or consolidation proposal (i.e., where the issue presented to the stockholders is to accept or reject a specific offer), and does not extend to other issues placed before the shareholders which might facilitate or inhibit a merger or consolidation.

However, we recognize that as the amount of stock held in trust increases, a proportional voting requirement becomes counterproductive. Sometime after a majority of ther target carrier's stock has been acquired, the amount of stock outside the trust is so limited that relatively small shareholders will dictate the outcome of shareholder votes, or can frustrate action by refusing to vote. In fact, we do not expect this potential problem will be of much practical significance, since in a hostile takeover it is highly unlikely that the carrier seeking the takeover would be able to acquire so high a percentage of stock as to reach the levels where potential voting could have adverse consequences. Nevertheless, were such circumstances to arise, an acquiring carrier would be free to request that the proportional voting requirement be lifted. In addition, the voting trust agreement may provide that the trustee provide reasonable notice of his or her intent to vote the trust shares proportionately to the acquiring carrier. This would allow the acquiring carrier the opportunity to petition the Department for modification of the trust agreement to permit it to direct the trustee's voting on a particular issue.

Where a carrier wishes to execute a voting trust agreement with a provision that would in any way be different than those described above, it must obtain the Department's approval of the agreement in its entirety before acquiring ten percent or more of another air carrier's stock. Similarly, where a carrier desires to modify an existing agreement to permit it to direct a trustee's vote on a particular issue, it must obtain our approval for the proposed modification. We would continue to consider any such applications on a case-by-case basis, with approval dependent upon the degree of control which the proposed modification would afford the acquiring carrier and the competitive impact, if any, of the proposal.

The Department also proposes to require that an independent trustee hold the trust shares and that the acquiring carrier have also submitted an application for approval of the underlying transaction under section 408. Of course, if the carrier decides not to pursue the transaction, or the Department disapproves it, the carrier would be required to prompptly file a complete plan for the divestiture of the stock.

Until a rule is adopted on this NPRM, prior approval of all voting trust arrangements in air carrier merger and acquisition proceedings is required. Failure to obtain such prior approval will subject the carriers involved to possible enforcement action, regardless of whether the carrier believes that the voting trust in question complies with the Civil Aeronautic Board or Department precedent.

In light of the fact that we are making Hart-Scott-Rodino-type procedures available to the airline industry in our other proposed rule, we are also requesting comments on an alternative approach that would reconcile our voting trust precedent with that procedure. That could be accomplished by limiting to 15 percent the amount of stock that could be purchased before Department approval of a voting trust. Carriers would only be permitted to exceed 15 percent after consideration of the particular voting trust proposal and a preliminary assessment of the merits of the underlying transaction consistent with the provisions of the other proposed rule.

List of Subjects in 14 CFR Part 303

Air carriers, Antitrust, Administrative practices and procedures, Reporting and recordkeeping requirements.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 49 U.S.C. Subtitle I, sections 1301, 1302, 1303, 1324, 1371, 1377, 1378, 1379, 1382, 1384, 1386, 1388, and 1551.

2. Part 303 is amended by adding new §§ 303.60 and 303.61 to subpart F to read as follows:

§ 303.60 Exemption From the Prior Approval Requirement for Transactions the Assistant Attorney General Will Not Oppose.

(a) Any air carrier may seek an exemption from Section 408 of the Act to the extent that that section requires prior approval of a transaction.

(b) The Department will normally grant a request for such an exemption if an application for approval of the underlying transaction is on file with the Department and:

(1) The air carrier or carriers seeking the exemption file, along with the application for an exemption under this section, a statement from the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, indicating that he or she does not oppose the transaction; or

(2) The air carrier or carriers file, along with the application for an exemption under this section, (i) a statement from the Assistant Attorney General indicating that he or she does not oppose the transaction if specified conditions are imposed, and (ii) a statement from either the Chief Executive Officer or Chief Legal Officer of the acquiring company that that company unconditionally accepts any such conditions.

(c) Any party objecting to such a request for an exemption shall submit such objection within 10 days of the filing of the request.

(d) The Department may condition the exemption as it deems appropriate based on the comments received.

(e) An exemption will be denied under this section, regardless of the position of the Assistant Attorney General, if an objection to the exemption demonstrates that there is a high probability that the Department would ultimately disapprove the transaction on the merits and that irreparable harm would likely occur if the transaction is exempted

from the prior approval requirements of the Act.

(f) Any exemption granted pursuant to this section does not eliminate carriers' obligations to seek approval of a transaction under either section 408 or section 401(h), if applicable, or constitute a disposition on the merits of any application for approval under those sections.

§ 303.81 Exemptions for Voting Trust Agreements in Section 408 Transactions.

(a) In addition to any other exemption granted under this Part, any air carrier is exempt from section 408 to the extent necessary to permit it to acquire up to 25 percent of the voting securities of another air carrier, provided that:

(1) The acquiring carrier has submitted an application, in accordance with the requirements of this Part, for approval of the acquisition, merger, or consolidation under section 408 or for an exemption from section 408 under section 303.54; and

(2) Prior to acquiring more than 10 percent of the shares of the target carrier, all of its shares of the target carrier are placed in a voting trust that conforms with the following requirements:

(i) All securities held in the voting trust must be voted in the same proportion as other shares voted; and

(ii) All trust securities must be held by an independent trustee, not affiliated with the acquiring carrier or the target carrier, their subsidiaries or affiliates.

(b) In addition to any other exemption granted under this Part, any air carrier is exempt from section 408 to the extent necessary to permit it to acquire the voting securities of another air carrier, provided that:

(1) The acquiring carrier has submitted an application, in accordance with the requirements of this Part, for approval of the acquisition, merger, or consolidation under section 408 or for an exemption from section 408 under section 303.54;

(2) Prior to acquiring more than 10 percent of the shares of the target carrier, all of its shares of the target carrier are placed in a voting trust that conforms with the following requirements:

(i) All securities held in the voting trust must be voted in the same proportion as other shares voted, except that the trustee may vote the securities for or against specific merger, acquisition or consolidation proposals; and

(ii) All trust securities must be held by an independent trustee, not affiliated with the acquiring carrier or the target carrier, their subsidiaries or affiliates.

(3) The Chief Legal Officer of the acquiring company submits an affidavit that the target company is the subject of a competing takeover bid.

(c) Should the carrier decide not to pursue an acquisition, merger, or consolidation, or should the Department disapprove the transaction, the carrier must promptly file a complete stock divestiture plan.

(d) Exemptions granted under this section shall take effect upon the filing with the Department of an executed voting trust agreement that complies with the requirements set out in paragraph (a) or (b) of this section.

Issued in Washington, DC on May 2, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-10735 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1306

Withdrawal of Proposal To Change Protocol Requirements for Researchers and Prescription Requirements for Practitioners

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Withdrawal of Proposed rule.

SUMMARY: This notice withdraws the proposed regulations regarding the handling of Schedule II dronabinol drug products by researcher and practitioner registrants under the Controlled Substances Act. Elsewhere in this issue of the **Federal Register**, the Administrator of the Drug Enforcement Administration has published a final order rescheduling this substance and issued a statement of policy concerning its distribution and dispensing.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1216.

SUPPLEMENTARY INFORMATION: On October 18, 1985, the Deputy Assistant Administrator, Office of Diversion Control of the Drug Enforcement Administration published a notice of proposed rulemaking (50 FR 42184-42186) regarding additional controls on the prescribing, administering, dispensing, and the conducting of research with Schedule II dronabinol products. The proposal was issued in conjunction with a notice of proposed rulemaking (50 FR 42186-42187) to reschedule U.S. Food and Drug Administration approved drug products which consist of dronabinol in sesame oil and encapsulated in soft gelatin capsules from Schedule I to Schedule II of the Controlled Substances Act, 21 U.S.C. 801 et seq. Comments and objections were accepted through November 18, 1985.

Thirteen individuals or organizations availed themselves of the opportunity to comment or object to the proposed changes or the proposed rescheduling of the dronabinol drug product. Two of the thirteen requested administrative hearings on the rescheduling of the dronabinol product. Following withdrawal of the requests for hearings, the Administrator, having considered the requirements of the Controlled Substances Act and the Convention on Psychotropic Substances and taking into account the comments and objections, has decided to proceed with the rescheduling of the dronabinol product and to issue a statement of policy which is published elsewhere in this issue of the **Federal Register**.

Accordingly, consistent with the findings of the Administrator in the final order and statement of policy, the Deputy Assistant Administrator withdraws the proposed changes in protocol requirements for researchers and prescription requirements for practitioners published at 50 FR 42184-42186, October 18, 1985.

List of Subjects

21 CFR Part 1301

Administrative practice and procedures, Drug traffic control; Security measure.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

Dated: May 1, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-10723 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF EDUCATION

34 CFR Part 796

National Diffusion Network

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a Notice of Proposed Rulemaking for the National

Diffusion Network. The intended effect of the proposed regulations is to improve the operation of the National Diffusion Network by increasing the pool of exemplary educational programs available to public and private schools in areas of national need.

DATES: Comments must be received on or before June 12, 1986.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lois N. Weinberg, U.S. Department of Education, Programs for the Improvement of Practice, Recognition Division, 555 New Jersey Avenue NW., Room 510 F, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, (202) 357–6134.

SUPPLEMENTARY INFORMATION: Current regulations require that to be eligible for funding by the National Diffusion Network (NDN), exemplary educational programs must be approved by the Joint Dissemination Review Panel (JDRP). The amendments to the NDN regulations proposed in this document would expand the kinds of programs reviewed by the JDRP to include "dissemination processes," in addition to the programs, products and practices it already reviews. The addition of dissemination processes will allow the JDRP to review, and the National Diffusion Network to fund, dissemination systems without reviewing each piece of material to be disseminated. Non-profit organizations such as professional associations and museums, as well as local education agencies, institutions of higher education, and state education agencies that have developed effective systems for the dissemination of educational programs, products, information and materials, would be able to seek support for their activities. The JDRP review would focus on the agency's ability to identify, review and select programs and products rather than on any specific set of materials to be disseminated.

Dissemination processes would be eligible for funding as Developer Demonstrator projects. The description of activities carried out by Developer Demonstrator projects have been revised to show the specific activities required of projects which represent dissemination processes. Like all Developer Demonstrator projects, they will provide information about the project to public and private schools and other education service providers throughout the Nation, they will maintain records about the use of their program materials by schools, they will cooperate with State Facilitator grantees, and they will evaluate the success of the project. There are no changes in the requirements for the traditional Developer Demonstrator projects that represent programs, products or practices.

The definition of the JDRP will also be revised to clarify that Panel members need not be Federal employees. The definition of JDRP approval will be revised to broaden the kinds of evidence reviewed by the Panel, and to show the different review criteria for dissemination processes.

Changes have also been proposed in the listing of program priorities, from which the Secretary selects categories for funding new projects each year. Several priorities have been expanded and made more specific. Nutrition and physical education have been deleted as separate priorities because programs in those categories, can compete under the health priority. Environmental education has been deleted as a separate priority because programs in that category can compete under the science priority. In future years, specific kinds of programs within those categories can be identified through invitational priorities. The descriptive language for several priorities has been deleted to simplify the whole section. New priorities have been added to reflect the Secretary's interest in character development, the humanities and the importance of better discipline in the schools. A special interest is indicated in programs in conjunction with the bicentennial of the Constitution of the United States. In addition, the new category of dissemination processes can be specified as a funding priority alone or in combination with other priorities.

It is the intention of these regulations to maintain the National Diffusion Network's focus on the dissemination of outstanding programs, products and practices. It is not the intention of these regulations to support program development activities.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Only a very small number of grants will be awarded, and these proposed regulations do not impose any additional requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510 F, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 706

Dissemination, Education, Educational research, Grant programs education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantial provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number 84.073—National Diffusion Network)

Dated: May 8, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal

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Regulations by revising Part 796 as follows:

PART 796—NATIONAL DIFFUSION NETWORK

1. The authority citation for Part 796 is revised to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

2. Section 796.3(b) is amended by adding a definition of "dissemination process" and revising the definitions of "exemplary educational program," "Joint Dissemination Review Panel," and "JDRP approval," to read as follows:

§ 796.3 What definitions apply to the NDN?

* * * * *

(b) * * *

"Dissemination process" means a system for reviewing, selecting and providing information and materials about a specific content area, field of professional development, or body of research, that will be of use to educational service providers.

"Exemplary educational program" or "program" means a program, product, practice or dissemination process approved by the Joint Dissemination Review Panel.

"Joint Dissemination Review Panel" or "JDRP" means a panel of Federal and non-federal experts, appointed by the Secretary, that examines evidence of effectiveness and potential value to educators in attaining goals of educational programs, products, practices or dissemination processes.

"JDRP approval," with respect to a dissemination process, means that the JDRP has determined that—

(1) The dissemination process has significant potential value to educational service providers that has been demonstrated;

(2) The dissemination process is accurately described;

(3) The materials to be disseminated could be used effectively in varied locations;

(4) The cost would be reasonable; and

(5) The dissemination process includes a review by qualified personnel of materials and information to be disseminated, using appropriate criteria such as academic merit and freedom from race and sex-role stereotyping.

"JDRP approval," with respect to a program, product or practice, means that the JDRP has determined that—

(1) A positive change has occurred that has been demonstrated to be directly attributable to the program, product or practice;

(2) The change was educationally significant, either as measured statistically or by other persuasive evidence;

(3) The evidence supporting these conclusions was gathered and interpreted correctly;

(4) The program, product or practice is accurately described;

(5) The program, product or practice could be used effectively in other locations;

(6) The cost would be reasonable, considering the magnitude and the subject of change;

(7) The program, product or practice has a high quality evaluation design; and

(8) The program, product or practice is free from race and sex-role stereotyping.

* * * * *

3. Section 796.12 is revised to read as follows:

§ 796.12 What activities must be Developer Demonstrator project conduct?

(a) A Developer Demonstrator project that represents a program, product or practice that has JDRP approval must—

(1) Develop and provide material—

(i) For educational service providers througout the Nation to use in deciding whether to adopt the program, product or practice; and

(ii) For training and instruction in the program, product or practice;

(2) Negotiate adoption agreements with State Facilitator grantees and educational service providers;

(3) Install the program, product or practice in new settings in other States by—

(i) Assisting potential adopters with preparatory steps;

(ii) Providing training to staff members of the adopting educational service provider; and

(iii) Providing technical assistance in the implementation and evaluation stages of an adoption;

(4) Evaluate the quality and effectiveness of the activities listed in paragraphs (a)(1), (2) and (3) of this section as specified in the evalution plan for the project;

(5) Monitor and evaluate the quality and effectiveness of the adoptions by collecting and analyzing impact data from a representative sample of adoption sites, as specified in the evaluation plan for the project;

(6) Maintain records during the grant period concerning the use of the program, product or practice, including records of—

(i) Demographic data;

(ii) Evaluation data; and

(iii) Program retention rates;

(7) Develop and implement a system to identify and train certified trainers;

(8) Identify and certify demonstration sites throughout the Nation;

(9) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(10) Cooperate with State Facilitator grantees in carrying out the activities of this section.

(b) A Developer Demonstrator project that represents a dissemination process that has JDRP approval must—

(1) Develop and provide information and material about the contest area, field of professional development or body of research for educational service providers throughout the Nation;

(2) Evaluate the quality and effectiveness of the dissemination process as specified in the evaluation design for the project;

(3) Maintain records during the grant period concerning the use of the information and materials, including demographic records;

(4) Monitor and evaluate the extent of use and the educational results of the information and materials selected by educational service providers;

(5) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(6) Cooperate with State Facilitator grantees in carrying out the activities in this section. (20 U.S.C. 3851).

4. Section 796.15 is revised to read as follows:

§ 796.15 Will priorities for funding Developer Demonstrator grants be established?

(a)(1) Each year the Secretary may announce in a notice published in the Federal Register the program priorities for which applicants may apply for assistance.

(2) The Secretary selects priorities under this section after taking into consideration any unmet national needs.

(b) The Secretary may select priorities from the following subject areas or special needs:

(1) English, including literature.

(2) Science.

(3) History, geography, and civics, including special history programs in conjunction with the bicentennial of the Constitution of the United States.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communication.

(7) Health.

(8) Character and ethics.

(9) The humanities.

(10) Programs that assist in improving school discipline and foster an atmosphere conducive to learning.

(11) Foreign languages.

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(12) Computer science.
(13) Programs that advance students' educational and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.
(14) Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.
(15) Programs that improve teaching and the quality of instruction.
(16) Education leadership.
(c) In addition to the priorities listed in paragraph (b) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs:
(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.
(2) The Secretary may establish as a priority one or more of the following special populations:
(i) Gifted and talented students.
(ii) Socioeconomically disadvantaged students.
(iii) Limited English proficient students.
(iv) Handicapped students.
(v) Migrant students.
(vi) Functionally illiterate adults or adolescents.
(d) The Secretary may also limit a priority established under paragraph (b) of this section to—
(1) An instructional level;
(2) One or more of the special populations listed in paragraph (c)(2) of this section; or
(3) Both an instructional level and one or more of the special populations listed in paragraph (c)(2) of this section.
(e) The Secretary may limit a competition established under these regulations to a dissemination process. (20 U.S.C. 3851)

4. Section 796.31(d) redesignated as paragraph (e) and a new paragraph (d) is added as follows:

§ 796.31 How does the Secretary evaluate an application for a Developer Demonstrator or a State Facilitator grant?

* * * * *

(d) In applying the selection criteria in § 796.32 to an application, the Secretary considers the extent to which excellence, balance, and imagination are demonstrated by the proposed activities.

* * * * *

5. Section 796.34(a) is revised to read as follows:

§ 796.34 What additional criteria exist for new and continuation awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Developer Demonstrator awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

* * * * *

[FR Doc. 86-10729 Filed 5-12-86; 8:45 am]
BILLING CODE 4000-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1228, 1232, 1236, 1239

Records management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises agency program responsibilities for audiovisual records management, providing more specific standards and instructions to Federal agencies. The proposed rule is intended to correct problems found by NARA during records management surveys and during the accessioning of audiovisual records into the National Archives. The proposed rule would add a provision that destruction of restricted records may be witnessed by contractor employees when an agency agrees. This change would allow the National Archives and Records Administration (NARA) to reduce the cost of this type of records disposal. This document also proposes to remove obsolete regulations governing preservation of records by war contractors. The proposed rule also makes minor technical and editorial corrections to other records management regulations.

DATE: Comments must be received by June 12, 1986.

ADDRESS: Comments should be sent to Director, Program Policy and Evaluation Division, National Archives and Records Administration (NARA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: This proposed rule provides, in 36 CFR Part 1232, specific guidance to Federal agencies on the creation, maintenance, use, and disposition of audiovisual records. 36 CFR Part 1239, Preservation of Records by War Contractors, would be removed since this regulation is obsolete and a revised regulation is not needed.

In 36 CFR Part 1228, General Records Schedule 25, Inspector General Records, would be added to the list of current general records schedules in 36 CFR 1228.22. Section 1228.74 would be modified to allow contractor employees to witness the destruction of restricted records when the agency which created the records authorizes such an action. Section 1228.162(a) would be revised to remove the reference to purchasing Standard Form 180, Request Pertaining to Military Records, from the Superintendent of Documents since the Superintendent of Documents no longer stocks the form for sale.

References in Part 1228 to the General Services Administration regulations on approval of interagency reprots have been revised to reflect those regulations' new location in 41 CFR Part 201-45. In 36 CFR 1236.8, a reference to the Federal records center in Mechanicsburg, PA, which has been closed, is deleted.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of subjects

36 CFR Parts 1228, 1232, and 1236

Archives and records.

36 CFR Part 1239

Archives and records, Government property management, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA proposes to amend Title 36 of the Code of Federal Regulations as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

§ 1228.22 [Amended]

2. Section 1228.22 (b) is amended by adding General Records Schedule 25 to read as follows:

"25. Inspector General Records."

3. Section 1228.74 is amended by revising paragraph (b) to read as follows:

§ 1228.74 Methods of disposal.

* * * * *

(b) *Sale or salvage.* Paper records to be disposed of normally must be sold as wastepaper. If the records are defense classified, their disposal is governed by Executive Order 12356. If the records are restricted; that is, if laws or regulations forbid their use by the public, the wastepaper contractor must be required to pulp, macerate, or shred the records,

and their destruction must be witnessed either by a Federal employee or, if authorized by the agency that created the records, by a contractor employee. The contract for sale must prohibit the resale of all other records for use as records or documents. Records other than paper records (film and plastic recording, etc.) may be salvaged and sold in the same manner and under the same conditions as paper records. All sales must be in accordance with the established procedures for the sale of surplus personal property. (See 41 CFR Part 101–45, Sale, Abandonment, or Destruction of Personal Property.)

* * * * *

4. Section 1228.92 is amended by revising paragraph (c) to read as follows:

§ 1228.92 Menaces to human life or health or the property.

* * * * *

(c) This report has been cleared in accordance with 41 CFR Part 201–45 and assigned Interagency Report Control Number 1095–NAR–AR.

5. Section 1228.104 is amended by revising paragraph (b) to read as follows:.

§ 1228.104 Reporting.

* * * * *

(b) This report has been cleared in accordance with 41 CFR Part 201–45 and assigned Interagency Report Control Number 0285–NAR–AR.

* * * * *

(6) Section 1228.162 is amended by revising paragraph (a) to read as follows:

§ 1228.162 Use of records in Federal records centers.

* * * * *

(a) Standard Form 180, Request Pertaining to Military Records, shall be used by Federal agencies to obtain information from military service records in the National Personnel Records Center (Military Personnel Records). Agencies may furnish copies of that form to the public to aid in inquiries.

* * * * *

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

7. The authority citation for Part 1232 continues to read as follows:

Authority: 44 U.S.C. 2904 and 3101.

8. Section 1232.4 is revised to read as follows:

§ 1232.4 Agency program responsibilities.

(a) Each Federal agency, in providing for effective controls over the creation of records, shall establish an appropriate program for the management of audiovisual records which program shall be governed by the following guidelines:

(1) Prescribe the types of records to be created and maintained so that audiovisual operations and their products are properly documented (guidelines describing the appropriate types of records are in § 1228.184 of this chapter).

(2) For contractor-produced audiovisual records, establish contract specifications which will protect the Government's legal title and control over all such audiovisual media and related documentation.

(3) Keep inventories indicating the location of all generations of audiovisual records, whether in agency storage, a Federal records center, or in a commercial facility such as a laboratory or library distribution center.

(4) Schedule disposition of all audiovisual records as soon as practicable after creation, following the instruction in GRS 21, Audiovisual Records, or a specific agency records schedule approved by the Archivist of the United States. The scheduling of permanent records must take into account the different record elements identified in § 1228.184, and must always include related finding aids.

(5) Review agency audiovisual recordkeeping practices for possible improvement.

(b) Each Federal agency, in establishing a program for proper storage, maintenance, and use of audiovisual records, shall implement the following standards in its practices:

(1) *Nitrate Film:* Remove nitrocellulose-base motion pictures, still pictures, and aerial film from records storage areas and place them in vaults meeting the standards prescribed in NFPA 40–1982, Cellulose Nitrate Motion Picture Film, which is incorporated by reference. Because of their age and inherent instability, immediately offer nitrate films to NARA so that they may be reviewed for disposal or copied and destroyed, as appropriate. NFPA 40–1982 is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on ———, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(2) *Unstable Safety Film:* Identify permanent or unscheduled audiovisual records composed of diacetate or other early forms of acetate film that are starting to deteriorate and offer them to NARA so that they can be copied. Although not hazardous like nitrate film, acetate film will deteriorate over time.

(3) *Storage Conditions:* (i) Provide audiovisual records storage facilities secure from unauthorized access and make them safe from fire, water, flood, chemical or gas damage, and from other harmful conditions. See NFPA 232–1986, Standard for Protection of Records issued by the National Fire Protection Association, which is incorporated by reference. The standard is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on ———, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(ii) Maintain good ambient storage conditions for audiovisual records. Generally, the temperature should not exceed 70 degrees F and relative humidity should be maintained in the range of 40–60%. Avoid fluctuating temperatures and humidities. Cooler temperatures and lower relative humidities are recommended for the storage of color films, and, for that reason, NARA will make a limited amount of temporary space available for the cold storage of Federal civilian agencies' color originals, negatives, and masters, provided the records are scheduled as permanent and are inactive.

(iii) For the storage of permanent or unscheduled records, utilize audiovisual storage containers or enclosures made of noncorroding metal, inert plastics, paper products and other safe materials recommended and specified in ANSI standards PH1.43–1985, Practice for Storage of Processed Safety Photographic Film; PH1.48–1982, Photography (Film and Slides) Black-and-White Photographic Paper Prints—Practice for Storage; and PH1.53–1984, Standard for Photography (Processing)—Processed Films, Plates, and Papers—Filing Enclosures and Containers for Storage. These standards, which are

incorporated by reference, are available from ANSI, Inc., 1430 Broadway, New York, NY 10018. These standards are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on ———, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(iv) Maintain originals and use copies (e.g., negatives and prints) separately, whenever practicable.

(4) *Maintenance and Operations:* (i) Because of their extreme vulnerability to damage, handle audiovisual records in accordance with commonly-accepted industry practices. For further information, consult ANSI, Inc., 1430 Broadway, New York, NY 10018 and the Society of Motion Picture and Television Engineers, Inc., 862 Scarsdale Avenue, Scarsdale, NY 10583. Use only personnel trained to perform their audiovisual duties and responsibilities.

(ii) Maintain continuous custody of permanent or unscheduled audiovisual records. Make loans of such records outside of the agency only if a record copy is maintained in the agency's custody at all times.

(iii) Take all steps necessary to prevent accidental or deliberate alteration or erasure of audiovisual records.

(iv) Do not erase information recorded on permanent or unscheduled magnetic sound or video media.

(v) If different versions of audiovisual productions (e.g., short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(vi) Maintain the association between audiovisual records and the finding aids for them, such as captions and published and unpublished catalogs.

(5) *Formats:* (i) When ordering photographic materials for permanent or unscheduled records, ensure that still picture negatives and motion picture preprints (negatives, masters, etc.) are composed of cellulose triacetate or polyester bases and are processed in accordance with industry standards as specified in ANSI PH1.28–1984, Specifications for Photographic Film for Archival Records, Silver Gelatin Type on Cellulose Ester Base, or PH1.41–1984, Photographic Film for Archival Records, Silver Gelatin Type on Polyester Base, which are incorporated by reference. It is particularly important to limit hypo residual sodium thiosulphate on newly processed photographic film, black and white or color, to the range of .002 to .004 grams per meter. Request laboratories to process film in accordance with this standard. Excessive hypo will shorten the longevity of film and accelerate color fading. If using reversal type processing, request full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash. The standards cited in this paragraph are availalbe from ANSI, Inc., 1430 Broadway, New York, NY 10018. These standards are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on ———, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(ii) Do not use motion pictures in a final "A & B" format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(iii) Use only industrial or professional format video tapes (e.g., 1-inch, ¾-inch) for record copies of permanent or unscheduled recordings. Limit the use of consumer formats (e.g., VHS, Beta) to distribution or reference copies or to subjects scheduled for disposal.

(iv) Record permanent or unscheduled audio recordings on ¼-inch open-reel tapes at 3¾ or 7½ inches per second, full track, using professional unrecorded polyester splice-free tape stock. Audio cassettes are not sufficiently durable to be used for permanent records.

(c) The disposition of audiovisual records shall be carried out in the same manner as that prescribed for other types of records in Part 1228 of this chapter. For further instructions on the disposition of audiovisual records see § 1228.184 of this chapter, Audiovisual Records.

PART 1236—VITAL RECORDS DURING AN EMERGENCY

9. The authority citation for Part 1236 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

§ 1236.8 [Amended]

10. Section 1236.8 is amended by removing in paragraph (a) the words "(except the FRC in Mechanicsburg, PA)".

PART 1239—PRESERVATION OF RECORDS BY WAR CONTRACTORS

11. Part 1239 is removed and reserved.

Dated: April 25, 1986.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 86–10094 Filed 5–12–86; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50527; FRL-2926-6]

Toxic Substances; Significant New Use Rules; Proposed Amendments to General Provisions and Individual Rules

Correction

In FR Doc. 86–8625 beginning on page 15104 in the issue of Tuesday, April 22, 1986, make the following corrections:

1. On page 15107, third column, three lines from the bottom, insert roman numeral "V" in front of "Economic Analysis".

2. On page 15108, first column, seventh line, "In come" should read "In some". In the same column, fourth complete paragraph, eleventh line, insert the following after "equivalency": "determination. In the absence of this proposed amendment,".

3. On page 15110, in § 721.7, second column, eighth line, "7076" should read "707".

4. On page 15111, first column, in § 721.18(h), seventh line, "dates" should read "date".

5. On the same page, second column, in § 721.19(a)(2), first line, "manufacture" should read "manufacturer". In the same column, in § 721.19(b)(1)(iv), last line, insert "or" before "processor".

BILLING CODE 1505-01

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6712]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect

in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed modified base (100-year) flood elevation determinations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980,which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42. U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground ^ Elevation in feet (NGVD)	
				Existing	Modified
California	City of Los Angeles (Los Angeles County).	Pacific Ocean	Approximately 350 feet south of the center of the intersection of Pacific Coast Highway and Sunset Blvd., at the shoreline.	None	^11
		Pacific Ocean	Approximately 500 feet south-west of the center of the intersection of Sunset Avenue and Ocean Front Walk, at the shoreline.	None	^12
		Pacific Ocean	Approximately 580 feet south of the center of the intersection of Paseo Del Mar and Western Avenue, at the shoreline.	None	^13
Maps are available for review at the Department of Public Works, City Hall, 200 North Spring Street, Los Angeles, California.					
Send comments to The Honorable Tom Bradley, Mayor, City of Los Angeles, City Hall, 200 North Spring Street, Los Angeles, California 90012.					
California	Palm Desert (city), Riverside County.	Dead Indian Canyon	At the intersection of Portola Avenue and State Highway 74.	# 1	None.
		Deep Canyon Channel	At the intersection of Portola Avenue and Haystack Road.	# 3	None
		Palm Valley Stormwater Channel (Palm Valley Drain).	At the intersection of Bursera Way and Fisheye Street.	# 1	None.
Maps available for inspection at the Planning and Engineering Department, 73510 Fred Waring Drive, Palm Desert, California.					
Send comments to the Honorable Richard Kelley, Mayor, City of Palm Desert, 73510 Fred Waring Drive, Palm Desert, California 92260.					
Illinois	Village of Shorewood	Hammel Creek	At mouth	^577	^577
			Just downstream of River Road	^616	^616
		Hammel Creek Tributary	Just upstream of the confluence with Hammel Creek	None	^606
			Just downstream of River Road	None	^614
		Robin Hill Road Split Flow	At confluence with Hammel Creek	None	^605
			At divergence from Hammel Creek	None	^613
Maps available for inspection at the Planning Department, Shorewood Village Hall, Route 52 and Raven Road, Shorewood, Illinois.					
Send comments to The Honorable Jim Shepard, Village Administrator, Village of Shorewood, Shorewood Village Hall, Route 52 and Raven Road, Shorewood, Illinois 60436.					
Indiana	Town of Edinburg, Bartholomew & Johnson Counties.	East Side Swale	About 800 feet downstream of County Line Road	^668	^668
			Just downstream of State Route 252	^674	^671
Maps available for inspection at the Town of Edinburg, P.O. Box 66, Edinburg, Indiana.					
Send comments to The Honorable James Billingsley, President of the Board, Town of Edinburg, P.O. Box 64, Edinburg, Indiana 46124-0064.					
Louisiana	Hammond, city, Tangipahoa Parish	Ponchatoula Creek	Upstream side of East Church Street	^40	^41
			Upstream side of Illinois Central Gulf Railroad	^40	^42
		Yellow Water River Canal	At Blackburn Road (extended)	^44	^43
			At upstream corporate limits	^45	^44
		Shallow Flooding	Upstream of Illinois Gulf Central Railroad	^43	^42

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground ^ Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the City Hall, Hammond, Louisiana.					
Send comments to The Honorable Debbie Salt Pope, Mayor of the City of Hammond, City Hall, P.O. Box 2788, Hammond, Louisiana 70404.					
New York	Saltaire, Village Suffolk County	Atlantic Ocean	Shoreline at Atlantic Walk (extended)	^14	^15
		Great South Bay	Shoreline at Pacific Walk (extended)	# 5	# 6
Maps available for inspection at the Village Hall, P.O. Box P551, Bay Shore, New York.					
Send comments to The Honorable Lawrence P. King, Mayor of the Village of Saltaire, Suffolk County, P.O. Box P551, Bay Shore, New York 11706.					
Oregon	City of Stanfield, Umatilla County	Umatilla River	At the intersection of Umatilla Street and W. Seymour Street.	^589	^591
Maps available for inspection at City Hall, 105 Wisewood, Stanfield, Oregon.					
Send comments to The Honorable Lewis Martuscelli, P.O. Box 369, Stanfield, Oregon 97875.					
Texas	Uvalde, city, Uvalde County	Leona River	Downstream corporate limits	^894	^897
			Upstream side of East Nopal Street	^899	^901
			Upstream side of Studer Street	^907	^902
			Upstream corporate limits	^913	^904
		Taylor Slough	Downstream corporate limits	^909	^907
			Approximately 80 feet upstream of FM Highway 1023	^916	^912
			Upstream corporate limits	^921	^917
Maps available for inspection at the City Permits Office, Main Street, Uvalde, Texas.					
Send comments to The Honorable James Thurman, Manager of the City of Uvalde, Uvalde County, P.O. Box 709, Uvalde, Texas 78801.					

Issued: April 23, 1986.

Jeffrey S. Bragg,
Administrator, Federal Insurance Administration.

[FR Doc. 86-10679 Filed 5-12-86; 8:45 am]
BILLING CODE 6718-03-M

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44 CFR Part 222

Superfund Cost Sharing Eligibility Criteria for Permanent and Temporary Relocation

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This regulation establishes policy implementing the Federal Emergency Management Agency's (FEMA) responsibility under Executive Order 12316 with regard to the State's allowable costs associated with the administration of permanent and temporary relocation activities, as part of a hazardous materials response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

The regulation will provide for consistent implementation of the program whether administered by FEMA, or by states.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Comments should be submitted to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 835, 500 "C" Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Karen Forbes, Superfund and Relocation Assistance Branch, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Room 701, Washington, DC 20472, (202) 646-3804.

SUPPLEMENTARY INFORMATION: Executive Order 12316, Responses to Environmental Damages (August 14, 1981), assigned to FEMA responsibility for permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), section 104(c)(3) states that the State will pay or assure payment of (i) 10 percentum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 percentum or such greater amount as the President may determine appropriate taking into account the degree of responsibility of the State or political subdivision of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The Federal Government will pay 90 percentum under (1) and 50 percentum or less under (ii).

The information collection and reporting requirements in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 301 et seq. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for FEMA." The final rule will respond to any OMB or public comments on the information collection and reporting requirements.

Environmental Considerations

FEMA has determined that the Superfund Cost Share Eligibility Criteria for Permanent and Temporary Relocation is an administrative regulation. Therefore, there will be no impact on the environment.

Regulatory Flexibility Act

The Agency has determined that this rule is not a major rule under Executive Order 12291, and I certify that the rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Most public entities receiving financial assistance have audits performed for their purposes. Therefore the proposed regulatory changes are not likely to create a significant economic impact on a substantial number of small entities. Hence, no regulatory impact analysis have been prepared.

List of Subjects in 44 CFR Part 222

Relocation assistance grants Administration, Hazardous substances, Superfund.

Accordingly, it is proposed to amend 44 CFR Chapter I by adding a new Part 222 as follows:

PART 222—SUPERFUND COST SHARE ELIGIBILITY CRITERIA FOR PERMANENT AND TEMPORARY RELOCATION

Sec.
222.1 Purpose
222.2 Definitions.
222.3 Program intent.
222.4 Matching contributions.
222.5 Criteria for in-kind contributions.
222.6 Documentation of in-kind contributions.
222.7 General eligible costs.
222.8 Ineligible costs.
222.9 Appeals.

Authority: Reorganization Plan Number 3 of 1978; 42 U.S.C. 9601 et seq., Executive Order 12316.

§ 222.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA), or any state acting on its behalf when implementing cost sharing under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), also known as Superfund.

§ 222.2 Definitions.

"Acceptable Contributions" means either cash (or its equivalent, appropriated funds) or in-kind contributions of goods, facilities or services, or combinations of these, can qualify for and meet matching share requirements.

"Allowable Costs" means those eligible, reasonable, necessary, and allowable costs which are permitted under the appropriate Federal cost principles, in accordance with FEMA policy, within the scope of the project and authorized for FEMA participation.

"Cash Contributions" means the recipients cash outlay, including the outlay of money contributed to the recipient by other public agencies, institutions, private organizations, and individuals.

"In-kind Contribution" means the value of a non-cash contributions provided by the State. In-kind contributions may be in the form of charges for real property and the value of goods and administrative services directly benefitting and specifically identifiable with the permanent or temporary relocation.

§ 222.3 Program intent.

(a) This regulation is intended to provide guidance with regard to the State's allowable costs associated with the administration of temporary and permanent relocation activities under CERCLA. CERCLA section 104(c)(3) states that the State will pay or assure payment of (1) 10 percentum of the costs of the remedial action, including all future maintenance or (2) at least 50 per centum or such greater amount as the President may determine appropriate taking into account the degree of responsibility of the State or political subdivision of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substance therein by the State or a political subdivision thereof.

The Federal Government will pay 90 per centum under (a)(2) and 50 per centum or less under (a)(2).

(b) FEMA will determine, based on policy determinations with prospective effect, the eligibility of any in-kind contributions not covered by this regulation. Expenditures and other actions must be in compliance with applicable FEMA/State cooperative agreements, contracts, Uniform Relocation Assistance and Real Property Acquisition Regulation, relocation plans, relocation criteria and applicable relocation regulations.

(c) FEMA shall maintain adequate records of its acquisition and relocation activities in sufficient detail to demonstrate compliance with these regulations.

(d) This regulation shall be used in conjunction with the following documents as necessary:

(1) CERCLA 96–510;

(2) Uniform Relocation Assistance and Real Property Acquisition Regulation;

(3) Appropriate relocation regulations or criteria.

§ 222.4 Matching contributions.

This paragraph establishes the criteria and procedures for matching contributions. Either cash and/or in-kind contributions can qualify as matching contributions. Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full matching share must be obligated by the end of the project for which the federal funds have been made available for obligation under an approved program or project.

§ 222.5 Criteria for in-kind contributions.

(a) The value of any resources accepted as in-kind contribution under one Federal agreement or program cannot be counted again as a contribution under another.

(b) Before an in-kind contribution will be accepted as fulfilling matching share requirements, the state seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from primary recipient's records;

(3) Not allocable to or included as a cost of any other federally financed program;

(4) Authorized under State law;

(5) Conform to any limitations or exclusions set forth in these regulations, federal laws or other governing limitations as to types or amounts of cost items; and

(6) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

§ 222.6 Documentation of in-kind contributions.

(a) The State shall maintain documentation for all items related to the relocation that it plans to use as an in-kind contribution. For items eligible for in-kind contribution. Documentation of dates on which the action took place, who performed such action, the cost, and specific work performed shall be sufficient. For items eligible for in-kind contributions, documentation of dates on which the action took place, who performed such action, the cost, and specific work performed shall be sufficient.

(b) When items are not specifically on the list of General Eligible Costs, § 222.7 of this part, the following documents shall be required. Sufficient supporting documents detailing the type of work eligible, justification to the relocation activity, the dates on which the actual work was performed and the cost of services required.

(c) The State shall also comply with the following requirements for all in-kind contributions:

(1) The State is responsible for maintaining records of the matching shares and providing the documentation by eligible category when requested by FEMA or its agent.

(2) The basis by which the State determines the value of in-kind contributions must be documented and a copy retained as part of the official record. State matching share records are subject to audit inspection in the same manner and to the same extent as records dealing with the receipt and disposition of Federal funding.

(3) These records shall become property of FEMA following completion

of the project or, at FEMA's request, shall be retained by the State for a period of three years.

§ 222.7 General eligible costs.

The following is a list of eligible expenditures. When items do not appear on the list they will be considered by policy determinations, based on criteria set forth above. All costs must be reasonable.

(a) Direct and indirect salaries or wages (including overtime) of employees hired specifically for the permanent or temporary relocation are eligible when engaged in the performance of eligible work for the permanent or temporary relocation.

(b) Direct and indirect salaries or wages (including overtime) of state employees whose duties changes, are eligible when they are engaged in the performance of eligible work for the permanent or temporary relocation.

(c) Regular salaries or wages of regularly employed police and fire personnel are eligible when they are engaged in the performance of work for the permanent or temporary relocation.

(d) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

(e) Audit costs for the relocation activity.

(f) Costs for providing site-security.

(g) Travel costs and per diem costs of state employees not to exceed the actual subsistence expense basis for the permanent or temporary activity. Federal Travel Regulations (FTRs) must be followed.

(h) Cost for rental of protective gear and costs for gear reasonably lost, worn out or destroyed when used in performing work directly related to the permanent relocation activity and fully documented. Protective gear may be purchased if it cannot be rented more cheaply.

(i) Only costs for the control of vectors which exceed the average cost included for same during the previous three years, when such controls are in the public interest.

(j) Costs for poviding permanent relocation assistance when in accordance with Pub. L. 91–646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (84 Stat. 1894; 42 U.S.C. 9615) and FEMA criteria issued pursuant thereto, which include:

(1) Costs for exercising the power of eminent domain to obtain any privately owned real property interest;

(2) Costs for the filing and recording of deeds in the recorder's office;

(3) Costs for the review of all sales contracts, title insurance commitments and deeds regarding the conveyance of real property interests prior to the purchase of such real property interests; and,

(4) Costs for the development and implementation of a property acquisition and permanent relocation assistance program. These include, but are not limited to the following costs:

(i) Development of a permanent relocation analysis;

(ii) development and implementation of a community relations program;

(iii) Title searches and appraisals for property within the boundaries of the project;

(iv) A relocation assistance advisory program;

(v) Title reviews, settlements and closings associated with properties located within boundaries of the project;

(vi) The preparation of offers of compensation;

(vii) Acquisition of properties; and,

(viii) Costs for administrative settlements.

(k) Costs for providing temporary relocation assistance in accordance with FEMA policies which include; negotiating leases, rent reimbursements, moving expenses, essential utility costs at original residence, food subsidy during transient accommodations, rental of essential furniture, and kennel costs.

§ 222.8 Ineligible costs.

(a) Regular salaries or wages of State employees, other than police or fire personnel, whose duties do not change or are not directly associated with the permanent or temporary relocation are ineligible.

(d) Replacement of revenue lost as a result of contamination in the project area are not eligible.

(c) Costs associated with potential litigation as a result of the States' pursuit and recovery of the States' cost share.

§ 222.9 Appeals.

The Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, shall be responsible for making policy determinations regarding the allowability of in-kind contributions not specifically covered in these criteria. Appeals from the determinations of the Assistant Associate Director may be made to the Associate Director, State and Local Programs and Support.

Dated: May 6, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86–10671 Filed 5–12–86; 8:45 am]

BILLING CODE 6718-02-M

Notices

Federal Register
Vol. 51, No. 92
Tuesday, May 13, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Special Volunteer Programs; Availability of Funds; Demonstration Grants

Background

Currently in the United States, about 275,000 children reside in foster care facilities, family foster homes, community group homes or institutions because their parents are unable to care for them. Almost 48%, or an estimated 42,000, are between the ages of 13 and 20 years; and each year 9,000 to 12,000 leave foster care because they reach the age at which the State no longer assumes responsibility for their care.

Frequently, these youth are not prepared to take on all of the responsibilities of adulthood, such as securing employment, managing money, finding housing and meeting their daily needs. They also lack the continuing family and community support which enables adolescents to make the transition to adulthood. The purpose of this announcement is to solicit community volunteer programs which will assist youth leaving foster care to achieve self-sufficiency.

A. The Office of Voluntarism Initiatives of ACTION announces the availability of funds during fiscal year 1986 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C, 42 U.S.C. 4992).

The purpose of this program is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

The purpose of this process is to identify and support innovative volunteer service projects that focus on assisting young people who are in foster care to make the transition to living as independent adults.

Consideration will be given to projects using volunteer service to help foster care children (age 16 to 21) who will be or have been released to their own responsibility, to leave the court and social service systems and to develop independent living skills through the provision of support services.

In planning and implementing their approaches to assisting youth in transition from foster care, applicants shall build upon existing knowledge about voluntarism.

Applicants shall describe their consultation with private and public agencies regarding the numbers and needs of such youth in their community and the ways in which a volunteer program can be most effective in providing assistance during the transitional period and beyond.

Objectives

Volunteer Demonstration Projects address areas of human and social concern where citizens, as volunteers, can contribute toward individual self-reliance and community self-sufficiency. Projects funded under this announcement must be able to: (1) Provide behavioral skills training (e.g. hygiene, grooming, interpersonal relationships); (2) provide vocational and educational opportunities and counselling; (3) provide home management/personal financial management skills (e.g. budget, housekeeping, home economics, banking); (4) provide housing search skills including the establishment of host homes if appropriate; (5) provide educational planning or referral for such; (6) provide support services such as transportation and adequate clothing; (7) provide literacy training or referral for such; (8) provide establishment of relationship with/within private sector to obtain jobs and on-the-job training; (9) provide recruitment of volunteers, including the elderly for intergenerational interaction and youths for peer relationship, to work as mentors on a one-to-one basis; (10) provide development of how-to-manual for their own use to orient new volunteers to this program and to provide information concerning resources available to volunteers; and (11) one project will be funded to develop a how-to-manual for the replication of similar programs in other communities.

B. Eligible Applicants. Only applicants from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant. ACTION anticipates awarding grants ranging in size from $40,000 to a maximum of $100,000. Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate any specific amount of money for demonstration grants.

D. General Criteria for Grant Selection. Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance with the instructions included in the application. Grant applications that have demonstrated competence in using volunteers to work with youth from the foster care system will be given preference.

The General Criteria are as follows:

1. Promise of developing innovations or knowledge in solving problems within the designated client population and significance to national development.
2. Clarity of objectives that are measurable and phased and the feasibility of proposed methods for meeting those objectives.
3. Capability of proposed staff.
4. Likelihood of completion of project within proposed timetable.
5. Potential for replication of the project model including plans for implementation and dissemination of results of project and any products, such as reports and manuals for use by others.
6. Feasibility of proposed budget.
7. Adequacy of plans for data gathering and evaluation.
8. Letters of support from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.
9. Plans for continuation of the activities and self sufficiency of the program following the completion of the project supported by ACTION funds.
10. While specific levels of matching funds are not a requirement for grants,

evidence of local public and private sector support (financial and in-kind) is strongly encouraged and will be considered in the decision-making process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements.

E. Application Review Process. ACTION's Demonstration Grants Division, in the Office of Voluntarism Initiatives, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for the Office of Voluntarism Initiatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline. One signed original and two copies of all completed applications must be submitted to the Associate Director for the Office of Voluntarism Initiatives, Room M516, 806 Connecticut Avenue, NW., Washington, DC 20525. The deadline for receipt of applications is June 16, 1986. Only those applications received by 5:00 p.m. EST on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (SF 424 pages 1–2; and ACTION Form A–1017 pages 3–7) with a narrative budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status or an application for non-profit status which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization.

To receive an application form, please call ACTION's Office of Voluntarism Initiatives, (202) 634–9749.

Signed in Washington, DC on May 2, 1986.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 86–10688 Filed 5–12–86; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The final regulations for the HPG program are published elsewhere in this issue of the Federal Register and the program is effective in thirty days. In order to give applicants the greatest length of time to prepare applications, without unduly delaying the funding of housing preservation projects, FmHA hereby announces that it will receive applications from the effective date of the regulations and for 45 days thereafter July 28, 1986.

DATE: The closing date for preapplications is July 28, 1986. Preapplications must be received by or postmarked on or before this date.

ADDRESS: Submission of preapplications will be to FmHA field offices; interested applicants must contact their State FmHA office for this information.

FOR FURTHER INFORMATION CONTACT: John H. Pentecost, Senior Loan Officer, Multifamily Housing Processing Division, FmHA, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–6983.

SUPPLEMENTARY INFORMATION: The regulations contained in 7 CFR Part 1944, Subpart N provide details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact their State office of the Farmers Home Administration to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include state and local governments, non-profit organizations, and consortia of eligible applicants.

The funding instrument for the housing preservation grant program will be a grant agreement. The term of the grants can vary from one to two years, depending on available funds. No maximum or minimum grant levels have been set, although the Agency anticipates that funding constraint and resources available to most states will require grants to range from $150,000 to $300,000 for a two-year proposal. $19,140,000 is available and has been distributed on an allocation formula to states pursuant to 7 CFR Part 1940, Subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds.

Applications will be reviewed and rated on the project selection criteria contained in the regulation for the program. Decision on funding will be based on preapplications and notice of action on preapplications should be made within 60 days of the closing date.

Dated: April 15, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–10585 Filed 5–12–86; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

[Docket No. 5664–01]

Noron S.A., Respondent; Order Vacating Temporary Denial Order

By a Temporary Denial Order issued May 17, 1985, 50 FR. 21482 (May 24, 1985), upon request of the U.S. Department of Commerce, the following Respondent was temporarily denied all privileges of particpating in any manner of capacity in the export of reexport of U.S.-origin commodities or technical data: Noron S.A., 40 Avenue de Broqueville, 1200 Brussels, Belgium.

The Temporary Denial Order extended its denial provisions also, because of a relationship to Noron S.A., to the following three related persons:

Claude Seront, Managing Director, Noron S.A., 40 Avenue de Broqueville, 1200 Brussels, Belgium

Herman Noe, Director, Noron S.A., 40 Avenue de Broqueville, 1200 Brussels, Belgium

FMO Taco Impex S.A., Via Lect. Olgiati 2.3, Quartiere Sagitiario, OH 6512 Guibiasco, Switzerland

The Department of Commerce has now moved to vacate the Temporary Denial Order. Based on the representations made by the Department, I conclude that the Temporary Denial Order is no longer required in the public interest to permit completion of an investigation Act of 1979 (50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), or to facilitate enforcement of the Export Administration Regulations (15 CFR Parts 368–399 (1985)).

Accordingly, it is hereby Ordered that, effective immediately, the May 17, 1985 Temporary Denial Order is vacated.

A copy of this Order Vacating the Temporary Denial Order shall be

published in the **Federal Register** and served upon the Respondent and upon each of the above three named related persons.

Dated: May 8, 1986.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 86-10742 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 15-86]

Foreign-Trade Zone 90, Onondaga County, New York Syracuse Customs Port of Entry; Application for Subzone Chrysler Transmission Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Syracuse, New York, grantee of Foreign-Trade Zone 90, requesting special-purpose subzone status for the transmission manufacturing plant of Chrysler Corporation in Onondaga County, New York, adjacent to the Syracuse Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 2, 1986.

The Chrysler plant is located on a 129-acre site at 6800 Chrysler Drive, in the Town of Dewitt in the East Syracuse area. The facility, operated by the company's New Process Gear Division, is used to manufacture and distribute manual transmissions, employing some 3,000 persons. Approximately 1 to 2 percent of the components used are purchased from abroad, including cases, bearings, gears, and synchromesh rings. Some complete transmissions and transaxles are imported. The finished products are shipped mainly to Chrysler vehicle assembly plants.

Zone procedures would exempt Chrysler from Customs duties on the foreign material that is reexported. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The rate on the transmission components ranges from 3 to 11 percent, whereas the rate on autos is 2.6 percent. The savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Daniel R. Clark, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, NY 14207.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 12, 1986.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Federal Bldg., Rm 1219, 100 South Clinton St., Syracuse, New York 13260

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th and Pennsylvania NW., Washington, DC 20230

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-10743 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Nation Oceanic and Atmospheric Administration

Marine Mammals; Permit Modification; Northwest and Alaska Fisheries Center; Modification No. 2 to Permit No. 464

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Sections B.9 to B.13 are added:

"9. A pre-Ketamine intramuscular injection of atropine sulfate at a dose rate of 0.01 mg/kg may be used to inhibit hyper-secretion of fluid in the lungs. An intravenous injection of 2.5–5.0 mg/kg of Doxapram HCL may be used to chemically stimulate respiration.

10. Prior to initiation activities using the requested drugs, the permittee shall consult with such experts as appropriate in order to review and evaluate the drug immobilization program as previously conducted. Such evaluation should include exploration of any other factors which possibly may have contributed to the deaths of four animals in April of 1985, such as time of day, whether the animals were molting, had been chased in the capture attempt or were in a stressed condition as a result of other causes. In this regard, it was noted that use of a "restraining bag" can cause stress and overheating and may impair an animal's ability to breathe. Therefore, if a restraining bag must be used, it should be used for the shortest possible time and be designed to assure that the animal has adequate ventilation.

11. If, based upon the results of the evaluation required by Special Condition B.10, experimentation with the requested drugs is still determined to be desirable, the permittee shall obtain expert guidance in developing a program for their use and arrange for an experienced veterinarian or other scientist with expertise in drug immobilization to be present during the proposed activities, at least until effective dosages and techniques are developed, and that vital signs of drugged animals be carefully monitored to identify possible life threatening situations at the earliest possible time. In this regard, it is understood that atropine can be expected, among other things to eliminate an animal's dive reflex for between 4–6 hours. Therefore you are required to make the appropriate arrangements for ensuring that animals injected with atropine will not enter the water during this time, as well as to ensure that the animal's dive reflex is functioning normally at time of release;

12. If another animal dies in the course of drug immobilization activities or adverse side effects are observed those activities shall be suspended until the drug combination, dosage, and procedures have been reviewed and, if necessary, revised to the satisfaction of the Service; and

13. A detailed summary of the experience with the requested drugs, if utilized, shall be included in the annual report required by Special Condition B.5 under the permit."

This modification became effective on May 2, 1986.

The Permit, as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: May 6, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-10701 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-22-M

National Advisory Committee Oceans and Atmosphere; Meeting

May 8, 1986.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Monday and Tuesday, June 2–3, 1986. The meeting will be held at the Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC. The meeting will commence at 9:00 a.m. and end at 3:30 p.m. on Monday and commence at 8:30 a.m. and end at 3:30 p.m. on Tuesday.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, June 2, 1986

Herbert C. Hoover Building, 14th Street NW. between E St. and Constitution Avenue NW., Rooms 4830 and 6802, Washington, DC

9:00 a.m.–12:30 p.m.
Plenary
Room 4830

9:00 a.m–9:30 a.m.
- Announcements

9:30 a.m.–12:30 p.m.
Panel Meeting
- Data Classification

Chairman: John E. Flipse
Room 4830
Topic: Classification of Multibeam Bathymetric Data
Speakers:
RADM John Bossler National Ocean Service, National Oceanic & Atmospheric Administration
Richard Greenwald, Deep Sea Ventures
James Baker, President, Joint Oceanographic Institutions
TBA, National Ocean Industries Association

12:30 p.m.–1:30 p.m.
Lunch

1:30—5:30 p.m.
Panel Meetings

1:30 p.m.–3:30 p.m.
- Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/ Office of Oceanic and Atmospheric Research Room 6802

Topic: Data Management
Speaker: None

3:30 p.m.–5:30 p.m.
- Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/ Office of Oceanic and Atmospheric Research Room 6802

Topic: Research Administration
Speaker: Vernon Derr, Director, Environmental Research Laboratories, National Oceanic & Atmospheric Administration

1:30 p.m.–5:30 p.m.
- Panel 1: Roles and Missions of the National Ocean Service/National Marine Fisheries Service, Room 4830

Topic: Panel Work Session
Speakers: None

5:30 p.m.
Recess

Tuesday, June 3, 1986

Herbert C. Hoover Building, 14th Street NW. between E Street and Constitution Avenue NW., Rooms 4830 and 6802, Washington, DC

8:30 a.m.–9:30 a.m.
Panel Meeting
- Panel 2 and Panel 3: Roles and Missions of the National Weather Service/National Environmental Satellite, Data, and Information Service, Room 4830

Topic: Panel Work Session
Speakers: None

9:30 a.m.–12:00 Noon
Plenary
- Discussion of NOAA Study

12:00 Noon–1:00 p.m.
Lunch

1:00 p.m.–3:30 p.m.
PLenary
- Old Business
- Panel Reports
- Data Classification Position Statement
- Discussion of Future Study Topics
- New Business

3:30 p.m.
Adjourn.

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after such each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653–7818.

Dated: May 8, 1986.

Amor L. Lane,
Acting Executive Director.

[FR Doc. 86–10762 Filed 5–12–86; 8:45 am]
BILLING CODE 3510–12–M

National Technical Information Service

Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc., having a place of business at 230 Half Mile Road, Red Bank, New Jersey, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "4-Carboxyphthalato-(1,2-Diamixohexane) Platinum II and Salts Thereof," U.S. Patent 4,137,248. The U.S. and foreign patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Dr. David Mowry, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-10717 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 29 May 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

8 May, 1986.

[FR Doc. 86-10685 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; New Record Systems

AGENCY: Office of the Secretary, Defense (DOD).

ACTION: Notice of two new systems of records subject to the Privacy Act.

SUMMARY: The Office of the Secretary of Defense is adding two new systems of records to its existing inventory of records systems subject to the Privacy Act as amended, (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on or before June 12, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the particular record system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C-315, The Pentagon, Washington, DC 20301. Telephone: (202) 695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22286) May 29, 1985
FR Doc. 85-27008 (50 FR 47087) November 14, 1985
FR Doc. 85-7574 (50 FR 11803) April 7, 1980

The two new record systems identified are DWHS P40, entitled: Classified Information Nondisclosure Agreement (NdA) and DUSDP 05, entitled: Defense Automated Case Review System (DACRS). A new system report for these systems as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on April 4, 1986, pursuant to Paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 8, 1986.

DWHS P40

SYSTEM NAME:

Classified Information Nondisclosure Agreement (NdA).

SYSTEM LOCATION:

Chief, Personnel Security Division, Directorate for Personnel & Security, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Office of the Secretary of Defense assigned to sensitive positions who are authorized access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains originals of SF 189, Classified Information Nondisclosure Agreements, signed by Office Secretary of Defense employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12356; sections 641, 793, 794, 798 and 952 of Title 18, U.S. Code; section 783(b) of Title 50, U.S. Code, and Intelligence Identities Protection Act of 1982.

PURPOSE(S):

To maintain a record of signed Standard Forms 189 which are used as a condition precedent to authorizing individuals access to classified information. The use of the form will enhance the protection of national security information and/or will reduce the costs associated with its protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, USES, AND THE PURPOSE OF SUCH USES:

See blanket routine uses.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by surname of individual.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly cleared and trained and who require access in connection with their officials duties. Records are stored in locked filing cabinets after normal business hours.

RETENTION AND DISPOSAL:

Records are retained for 50 years from date of signature and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security Division, Directorate For Personnel & Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Information may be obtained from Directorate for Personnel and Security, Washington Headquarters Services, Room 3B437, Pentagon, Washington, DC 20301-1155. Telephone: (202) 697-4573.

RECORDS ACCESS PROCEDURES:

Request from individuals should be addressed to the above System Manager.

Written requests for information should contain full name of the individual, current address, and telephone number and current business address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or employing office identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286(b) and OSD Administrative Instruction No. 81.

RECORDS SOURCE CATEGORIES:

Data maintained in the system is received from individuals who have executed a Classified Information Nondisclosure agreement (SF 189).

SYSTEMS EXEMPTED FROM CERTAIN INFORMATION OF THE ACT:

None.

DUSDP 05

SYSTEM NAME:

Defense Automated Case Review System (DACRS).

SYSTEM LOCATION:

Office of the Under Secretary of Defense (Policy), The Pentagon, Washington, DC 20301–2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Export license applicants and intermediate and ultimate consignees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Export license applications, names and addresses of applicants and cosignees, classified intelligence reports on foreign consignees and activities, proprietary business information, credit reports, product description, technical evaluation of commodities and technology, and Department of Defense recommendations to Department of Commerce on case dispositions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5 and section 10(g) of the Export Administration Act of 1979.

PURPOSE(S):

To permit the Under Secretary of Defense (Policy) (DUSD(P)) to fulfill Presidentially mandated requirements to expeditiously review and make recommendations to the Department of Commerce (DOC) on export license applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Used by the Office of the Secretary of Defense (OSD) analysts to prepare Department of Defense (DoD) positions and recommendations on export license applications. Users include policy and technical analysts, supervisory personnel up to and including Deputy Under Secretary of Defense (Policy)/ Defense Technology Security Administration (DTSA) in DoD. Information shared with strategic trade analysts and supervisors in Department of State (DOS), and DOC and Customs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records in file folders; computer magnetic tape disks, microfiche and microfilm in secure computer facility.

RETRIEVABILITY:

Files are retrieved by case number, applicant, purchaser, cosignee, commodity, and proposed end use.

SAFEGUARDS:

All files in this system are protected by limited, controlled access and locked doors. Only professional and/or research staff with appropriate security clearances are given access to files.

RETENTION AND DISPOSAL:

Files will be maintained and updated as long as DoD export control review program continues.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Under Secretary for Trade Security Policy Director, Counterintelligence and Security Policy Office of the Under Secretary of Defense (Policy) The Pentagon, Washington, DC 20301–2000.

NOTIFICATION PROCEDURE:

Unclassified, non-proprietary information may be obtained by written request to the system manager giving full name and residence. Identity verification may be required. Status of active export license applications may be obtained by accessing DoD Export License Status Advisor (ELISA) remote electronic bulletin board, (202) 697–6109.

RECORD ACCESS PROCEDURES:

See Notification Procedure above.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting content and appealing initial determinations by the individual concerned are contained in OSD Administration Instruction No. 81 (32 CFR Part 286b).

RECORD SOURCE CATEGORIES:

Information is obtained from various federal government agencies and civilian entities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-10687 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow-up Forces Attack will meet in closed session on June 26–27, August 7–8, and September 18–19, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with section 10(d) of the Federal Advisory Committe Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patrica H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

8 May, 1986.

[FR. Doc. 86-10688 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Determinations of Active Military Service and Discharge, Civilian or Contractual Personnel

Under the provisions of section 401 of Pub. L. 95–202 and DOD Directive 1000.20, "Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel," the Secretary of the Air Force, acting in accordance with authority delegated by the Secretary of the Defense, determined on April 28, 1986, that the service of the group known as "Personnel Who Served Aboard Coast and Geodetic Survey Vessels during World War II" shall not be considered active military service in the Armed Forces of the United States for all laws administered by the Veterans Administration.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Michael Dandar or Lt. Col. Mary Todd: (202) 692–4744 Office of the Secretary of the Air Force Personnel

Council (SAF/MIPC), the Pentagon, Washington, DC 20330-1440.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-10861 Filed 5-12-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 5, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the Pentagon, Washington, DC, on June 2, 1986, from 8:30 am to 5:00 pm and on June 3, 1986, from 8:00 am to 3:00 pm.

The purpose of the meeting will be for the Battle Management/C^3 (BM/C^3) Subpanel to hold classified panel discussions and begin preliminary report writing.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-10865 Filed 5-12-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command, Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), Army Department, Defense.

ACTION: Notice of the continued solicitation for movement of international commercial air unaccompanied baggage (UB) and household good (HHG) under the Direct Procurement Method (DPM). The DPM commercial air solicitation was first announced in Volume 49 Federal Register dated October 3, 1984.

SUMMARY: The third six-month cycle for the worldwide movement of DPM UB and HHG via commercial air will be effective October 1, 1986. The solicitation package for the October rate cycle will be distributed in June, 1986. Those carriers not already participating, but wish to do so, must notify MTMC by May 30, 1986 to receive copies of the solicitation. The system has been automated and rates must be submitted via magnetic tape.

The air freight forwarders/carriers submitting the most favorable offer will be awarded all traffic moving via DPM commercial air, between the origin/destination points. Estimated tonnages will be provided. However, there is no guarantees that any tonnage will move under this solicitation. The Government reserves the right to use any method of shipment, i.e. DPM MAC, Code J., or Code 8.

FOR FURTHER INFORMATION CONTACT: Ms. Eunice Andersen or Mrs. Naomi King, HQ, Military Traffic Management Command, ATTN: MT-ppc (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050 (202) 756-2385.

Joseph R. Marotta,

Colonel, GS Director of Personal Property

[FR Doc. 86-10878 Filed 5-12-86; 8:45 am]

BILLING CODE 3712-08-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Application Notice for New Awards Under the National Diffusion Network Program for FY 1986

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the National Diffusion Network Program for Fiscal Year 1986.

Programmatic and Fiscal Information

Applications are invited for new Developer Demonstrator projects under the National Diffusion Network (NDN) program for fiscal year 1986.

The purpose of the program is to promote the widespread use across the Nation of rigorously evaluated, exemplary educational programs. Developer Demonstrator projects disseminate exemplary educational programs nationwide. No funds are available for program development.

Eligible applicants are: any public or nonprofit private agency, organization or institution that has developed a program that has current approval or recertification from the Department of Education's Joint Dissemination Review Panel, and that is available for visitation.

Taking into account unmet national needs, the Secretary has selected priorities for this competition from the list of priorities at § 786.15. (See the Notice of Proposed Rulemaking for the NDN published in this issue of the Federal Register containing amendments to this section of the NDN regulations.)

Projects are selected for funding by a separate competition in each priority area. Only applications for projects in these priority areas will be considered.

The Secretary seeks applications for projects in the following priority areas:

1. Programs that assist in improving school discipline and that foster an atmosphere conducive to learning.
2. History, geography and civics, including special history programs in conjunction with the bicentennial of the Constitution of the United States.
3. Character and ethics.
4. English, including literature.
5. Mathematics. This priority is limited to programs for middle school and secondary school instructional levels.
6. Science.
7. Reading for the secondary school instructional level. The Secretary also invites applications for projects that use phonics methods to teach reading at any instructional level. However, these applications will not receive a competitive advantage over other applications in this priority.
8. Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.
9. Written communication.
10. Computer science.
11. Foreign languages.
12. Educational leadership.
13. Programs that improve teaching and the quality of instruction.
14. Early childhood and elementary school instructional levels.
15. Gifted and talented students.
16. Socioeconomically disadvantaged students.
17. Dissemination processes in any of the above topics.

However, this listing of priorities does not bind the Department of Education to a specific number of projects in each priority, or to selecting projects for funding in every priority.

Available Fund

The estimated amount available for new awards will be $900,000. The average award will be approximately $55,000. It is estimated that sixteen (16) new projects will be funded.

It is expected that new Developer Demonstrator awards will be for a project period not to exceed four years, contingent on satisfaction of the standards of the Education Department General Administrative Regulations (EDGAR) § 75.253.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is

otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 1, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.073 A, 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the National Diffusion Network Program, in 34 CFR Part 706. However, a Notice of Proposed Rulemaking (NPRM) amending the National Diffusion Network program regulations is published in this issue of the Federal Register. Applicants should prepare their applications based on the NPRM. If any substantive changes are made in the final regulations that would affect the content of applications, applicants will be given an opportunity to revise or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except for § 75.650), 77, 78 and 79.

Intergovernmental Review

Certain applicants for this program are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, potential applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. However, for this program, if the specific States in which the applicant's exemplary educational program may be used have not been determined, this requirement need not be satisfied. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 1, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, CFDA No. 84.073 A, 400 Maryland Avenue, SW., Washington, DC 20202.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application Forms

Application forms and program information packages are expected to be available by May 16, 1986 and may be obtained by writing to the National Diffusion Network, U.S. Department of Education, 555 New Jersey Avenue NW., Room 508 A, Washington DC 20208.

Further Information: For further information contact Mrs. Anne M. Barnes, Education Program Specialist, National Diffusion Network, U.S. Department of Education, 555 New Jersey Avenue NW., Room 508 A, Washington DC 20208. Telephone: (202) 357-6149.

Program Authority: 20 U.S.C. 3851.

(Catalog of Federal Domestic Assistance Number 84.073 A, National Diffusion Network Program)

Dated: May 8, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-10729 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on August 1, 1985, an arbitration panel rendered a decision in the matter of Jean E. (Petrali) Rudolph, vendor vs. California Department of Rehabilitation, Business Enterprise Program, state licensing agency (Docket No. R-S/83-1). This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner Jean E. (Petrali) Rudolph on May 23, 1983. Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State Licensing Agency. If the licensee is dissatisfied with the State agency decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: Elizabeth Arroyo, Acting Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services, Room 3232, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20202, Area Code (202) 732-1303 or TTY (202) 732-1298. The full text of the arbitration panel decision can be obtained from this source.

Dated: May 8, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

Arbitration Panel Decision

A blind vendor, Jean E. (Petrali) Rudolph, grieved a determination by the State of California, Department of Rehabilitation, State Licensing Agency (SLA) to reject her vendor's application to operate a cafeteria in a Department of Agriculture Building. The SLA refused to consider the vendor as a candidate to operate the vending facility on grounds that the vendor had not operated her previously assigned vending facility for at least six months.

The vendor argued that the Business Enterprise Program had represented to her that the six month period would run from the date she was assigned to the prior facility and not the date she actually commenced operations.

Ms. Rudolph retained counsel and pursued her grievance consistent with the procedural requirements of the Randolph-Sheppard Act at 20 U.S.C. 107 *et. seq.* and the Department's revised Interim Policies and Procedures for

Randolph-Sheppard Arbitrations. On the date of the scheduled hearing, and prior to the scheduled commencement of the hearing itself, the parties agreed upon a stipulated settlement and award which was accepted by the Arbitration Panel.

In accordance with this settlement and award, the vendor was entitled to apply for any dry vending concession operated by the California Department of Rehabilitation Business Enterprise Program within the Sacramento area during a two year period beginning August 1, 1985, provided such application is timely. If the vendor timely applies, she will automatically be placed in the final grouping of applicants for the concessions without displacing any other qualified applicant. Robertson, W.A., Ford, T. E. and LaRocco, J. B. (Chairperson).

Arbitration panel decisions do not necessarily represent the views of the Department of Education.

[FR Doc. 86-10733 Filed 5-12-86; 8:45 am]
BILLING CODE 4000-01-M

Proposed Annual Funding Priorities for Fiscal Year 1986—Projects With Industry; Withdrawal

AGENCY: Department of Education.

ACTION: Withdrawal Notice.

SUMMARY: A notice of proposed annual funding priorities for fiscal year 1986 for the Projects With Industry Program was published on October 9, 1985 at 50 FR 41186.

Subsequently, the Congress inserted language into the appropriation legislation for fiscal year 1986 (Pub. L. 99-178) requiring that funds appropriated for the Projects With Industry Program be used to assist only those projects funded in fiscal year 1985. This mandate prohibits the funding of new projects in fiscal year 1986 and therefore new funding priorities are unnecessary. This notice is withdrawn.

FOR FURTHER INFORMATION CONTACT: Art Cox, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3320, Mary E. Switzer Building, MS-2304, Washington, DC 20202. Telephone: (202) 732-1333.

Program Authority: 20 U.S.C. 795g. (Catalog of Federal Domestic Assistance No. 84-128B; Projects With Industry Program)

Dated: May 6, 1986.

William J. Bennett

Secretary of Education

[FR Doc. 86-10730 Filed 5-12-86; 8:45 am]
BILLING CODE 4000-01-M

Application Notice for New Awards Under Projects for Initiating Special Recreation Programs for Handicapped Individuals for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application notice for new awards under projects for initiating special recreation programs for handicapped individuals for fiscal year 1986.

Programmatic and Fiscal Information

Applications for new projects are invited under the program for Projects for Initiating Special Recreation Programs for Handicapped Individuals.

The purpose of this program is to support projects which initiate recreational service programs for handicapped individuals. Most handicapped individuals served in projects supported under this program are receiving vocational rehabilitation services from State vocational rehabilitation agencies.

Awards are made under this program to State and other public and non-profit agencies and organizations.

Up to seventy-five percent of fiscal year 1986 funds available for new projects under this program is being reserved by the Secretary for applications responsive to a funding priority designed to integrate recreational activities for the handicapped with those for non-handicapped individuals. A full description of this funding priority is contained in the Notice of Final Funding Priority for fiscal year 1986 which is published in this issue of the **Federal Register**. The remaining twenty-five percent of available funds under this program will be used to support new projects that are not responsive to the funding priority.

The total amount of funds awarded under this grant program in fiscal year 1985 was $2,100,000. Although the fiscal year 1986 appropriation is $2,200,000, mandatory reductions required by Pub. L. 99-177 have reduced the amount available for this program to $2,105,000. The Administration has requested a rescission of all these funds. Nevertheless, this notice is being published in order not to further delay the application receipt, review and award process, in the event that the rescission request is denied. If there is a rescission of all funds for this program, a cancellation notice will be published in the **Federal Register**. If the program is funded, the range of funded projects would be from $50,000 to $90,000 with the average projects being about $70,000. About 30 new projects would be awarded.

It is expected that any new projects funded under this program in fiscal year 1986 would be approved for project periods of up to 12 months.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before July 11, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.128J, 400 Maryland Avenue SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing Projects for Initiating Special Recreation Programs for Handicapped Individuals in 34 CFR Parts 369 and 378; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Application Forms

Application forms and program information packages are available. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3332, Mary E. Switzer Building, MS-2312, Washington, DC 20202. Telephone: (202) 732-1343.

Further Information

For further information contact Frank S. Caracciolo, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3327, Mary E. Switzer Building,

MS–2312, Washington, DC 20202. Telephone: (202) 732–1340.

Program Authority: (29 U.S.C. 777f).

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: May 8, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86–10702 Filed 5–12–86; 8:45 am]

BILLING CODE 4000–01–M

Application Notice for Noncompeting Continuation Awards Under the Projects With Industry Program for FY 1986

AGENCY: Department of Education.

ACTION: Application notice for noncompeting continuation awards under the projects with industry program for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of noncompeting continuation applications under the Projects With Industry program. Awards are made under this program to provide handicapped individuals with training and employment in a realistic work setting in order to prepare them for competitive employment. In addition, these projects provide supportive services as required to maintain the handicapped individual's employment. Projects also provide other services to the handicapped including (a) the development and modification of jobs to accommodate the special needs of such individuals, (b) the distribution of special aids, appliances, or adapted equipment, (c) the establishment of appropriate job placement services, and (d) the modification of facilities or equipment of the employer that are to be used by handicapped individuals.

The Appropriations Act of 1986 (Pub. L. 99–178) states that funds appropriated for this program can only be used to assist grantees that received grant awards in fiscal year 1985. Accordingly, the only eligible applicants for noncompeting continuation awards in fiscal year 1986 are those grantees which received funding under this program in fiscal year 1985. Grants will be awarded to eligible applicants unless the Commissioner of the Rehabilitation Services Administration determines that there is a substantial failure to comply with the provisions of the grantee's approved application.

In fiscal year 1985, $14,400,000 was available under the Projects With Industry Program to fund 98 existing projects; approximately $1,400,000 of this amount was used to extend through September 30, 1986, many projects which required funding for more than the 12 months of support normally provided under this grant program. The fiscal year 1986 appropriation is $15.2 million; however, mandatory reductions required by Pub. L. 99–177 have reduced the amount available for this program to $14.5 million.

Closing Date for Transmittal of Applications

Applications for noncompeting continuation awards must be mailed or hand-delivered on or before June 16, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.128B, 400 Maryland Avenue SW., Washington, DC 20202.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing Projects With Industry program in 34 CFR Part 369 and 379; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Application Forms

Application forms and program information packages will be mailed to each eligible applicant.

Further Information

For further information contact Art Cox, Office of Development Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3320, Mary E. Switzer Building, MS–2304, Washington, DC 20202. Telephone: (202) 732–1333.

Program Authority: (29 U.S.C. 795g).

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: May 8, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86–10734 Filed 5–12–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Dose Assessment Advisory Group (DAAG); Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Dose Assessment Advisory Group (DAAG) on May 28, 29, and 30, 1986, as published in the **Federal Register** on 5–2–86 (51 FR 16372).

Issued at Washington, DC on May 8, 1986.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 86–10692 Filed 5–2–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Historical Factors Task Group; Meeting

Notice is hereby given that the Historical Factors Task Group will meet in May 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Historical Factors Task is responsible for the identification and analysis of events, governmental policies, and actions (federal, state, and local), and the reactions of the oil and gas industries to such events, policies and actions (i.e., the "factors") that affect the supply of and demand for oil and gas in the U.S. since the end of World War II.

The Historical Factors Task Group will hold its second meeting on May 22, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC.

The tentative agenda for the Historical Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss the factors affecting the industry from World War II until 1975.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Historical Factors Task Group is empowered to conduct the meeting in a fashion that will, in his

judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Historical Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 7, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-10660 Filed 5-12-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives the notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

During the second quarter of fiscal year 1986 (January 1, 1986 through March 31, 1986), changes were made to the October 1, 1985 inventory of DOE information collections, which was published in the Federal Register, 50 FR 50938 (December 13, 1985). Changes made during the first quarter were published in the Federal Register, 51 FR 5758 (February 10, 1986). The changes are listed below, and include new information collection approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR INFORMATION CONTACT: Joyce Beattie, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2313.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-22, Forrestal Buildings, U.S. Department of Energy, Washington, DC 20585 (202) 252-8800.

Issued in Washington, DC, May 7, 1986.

H. A. Merklein,

Administrator, Energy Information Administration.

New DOE Energy Information Collections Approved by OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
FERC-588 *	Emergency Natural Gas Sale, Transportation and Exchange Transactions	19020144	03/31/89	
Energy Information Administration				
EIA-870	Natural Gas Compression Costs Survey	19050170	05/31/86	
Federal Energy Regulatory Commission				
FERC-587 *	Indexes of Essential Power Site Withdrawals	19020143	12/31/86	

* Does not use a structured form.

DOE Energy Information Collections Extended

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Federal Energy Regulatory Commission				
FERC-519 *	Electric Rates—Corporate Applications	19020082	03/31/89	18 CFR 33.
FERC-525 *	Financial Audit	19020082	06/30/86	18 CFR 101, 201.
FERC-534 *	Applications for Production Related Costs	19020057	03/31/89	18 CFR 270.203, 271.1103-.1106.
FERC-542 *	PGA Audits/Initial Rate/Rate Change and Tracking	19020070	02/28/87	18 CFR 154.61-.65, 154.91.
FERC-550 *	Oil Pipeline: Tariff Filings	19020069	08/31/86	18 CFR 341-346.
FERC-576 *	Report On Service Interruptions On Pipeline Systems	19020084	05/30/86	18 CFR 260.9.

* Does not use a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control	Expiration date	CFR citation
None.				

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control	Discontinued date	CFR citation
None.				

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE numbers as previously listed	Changes
FPC-8	Changed prefix from FPC to FERC.
EIA-23	EIA-23 was revised by deleting Schedule B.
EIA-23P	EIA-23P and EIA-64A were extensions without changes. All these forms are now approved through 12/31/88.
EIA-64	
RW-859	Revision to form and instructions.
FERC-516 [1]	Revision to reporting requirements.
FERC-531 [1]	
FERC-537 [1]	
FERC-568 [1]	
FERC-580 [1]	
FERC-583 [1]	

[1] Does not use a structured form.

[FR Doc. 86-10689 Filed 5-12-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Notice is hereby given of the following meeting:

Name: Solid Earth Sciences Panel on the Energy Research Advisory Board.

Date and Time: June 2, 1986–8:30 a.m.–4:00 p.m.; June 3, 1986–8:00 a.m.–2:00 p.m.

Place: Sandia National Laboratory, Building 822, Conference Room A, 1515 Eubank Boulevard, Kirtland Air Force Base, Albuquerque, NM 87175.

Contact: William L. Woodard, Department of Energy, Office of Energy Research (ER–8), 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 252–5757.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review the research and development programs of the Department of Energy involving the solid earth sciences, including such topics as basic research in continental structure, modeling enhanced oil recovery, and underground migration of chemicals. The Panel will also review the arrangements for coordination between industry, universities, and Federal agencies.

Tentative Agenda:

June 2, 1986

- Cooperative programs between DOE and State Governments
- Environmental research programs related to solid earth sciences
- Industry programs
- Public Comment—10 minute rule

June 3, 1986

- University programs in the solid earth sciences
- Manpower requirements
- Economic forecasts and relation to solid earth science support
- Public Comment—10 minute rule

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes of the Meeting: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 2, 1986.

Charles Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 86–10691 Filed 5–12–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP86–427–000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

May 7, 1986

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86–427–000]

Take notice that on April 9, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a Docket No. CP86–427–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of gas for The Great Lakes Steel Division of National Steel Corporation (National Steel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR request authority to transport, on an interruptible basis, up to 69,000 dt equivalent of natural gas per day which National Steel would cause its seller(s) to tender to ANR for transport and delivery of the same for National Steel's account to Michigan Consolidated Gas Company (MichCon) at an interconnection of the facilities of ANR and MichCon in Washtenaw County, Michigan. ANR states that National Steel would pay ANR its transportation rate of 74.59 cents per dt equivalent of gas transported. ANR proposes to provide the subject service for an initial two-year term and such additional period as the parties shall determine. Upon termination of the service ANR requests pre-granted abandonment authority.

ANR further proposes to take receipt of quantities of gas from existing or new gas sellers for National Steel's account at additional points of receipt and to advise the Commission annually of the service modifications.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company Great Lakes Gas Transportation Company

[Docket No. CP86–446–000]

Take notice that on April 15, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Great Lakes Gas Transmission (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226 (Applicants), filed in Docket No. CP86–446–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide a

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gas transportation service for Consumers Power Company (Consumers) and incident thereto for Great Lakes to provide a transportation service for ANR for the benefit of Consumers, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR request authority to transport, on an interruptible basis, up to 125,000 dt equivalent of spot natural gas per day which Consumers would cause its seller(s) to tender ANR at various points in Oklahoma, Kansas, Texas, Louisiana and/or Emerson, Manitoba, Canada. For volumes tendered at Emerson, transportation on behalf of ANR of the Consumers' volumes would be provided as requested by Great Lakes. Great Lakes requests authorization to transport, on an interruptible basis, the gas and deliver the same to ANR at the existing interconnection of the systems of ANR and Great Lakes at Farwell, Michigan. ANR would provide further transportation for Consumers and deliver gas, adjusted for fuel use on ANR's system, to Consumers in Allegan County, Michigan, or for Consumer's account at the proposed point of interconnection of the systems of ANR and Washtenaw Pipeline Company (Washtenaw) in Washtenaw County Michigan.

ANR further proposes the following transportation rates to charge Consumers (cents per dt):

Receipt points	Delivery points	
	[illegible]	Allegan
Oklahoma, Texas, and Kansas	44.0	39.2
Onshore Louisiana	38.8	42.7
Mansfield, Wisconsin	22.0	17.1
Farwell, Michigan	13.1	3.7

ANR would pay Great Lakes an appropriate rate, determined from an existing Rate Schedule T-4. ANR and Great Lakes propose to provide the subject service for an initial period of two years and such additional term as the parties shall determine.

ANR requests authority to construct a tap on its system in Washtenaw County, Michigan, to deliver the gas to Washtenaw on behalf of Consumers. ANR states that Washtenaw would reimburse ANR for construction costs, and would thereafter own the tap. ANR further states that the existing delivery point in Allegan County, Michigan, is currently authorized only for emergency situations. ANR proposes to utilize this delivery point as a regular delivery point for the proposed service.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP86-456-000]

Take notice that on April 15, 1986, Great Lakes Gas Transmission Company, 2100 Buhl Building, Detroit, Michigan 48226 (Petitioner), filed in Docket No. CP86-456-000, a petition to amend the Commission's order issued June 10, 1981, in Docket No. CP79-402-000, *et al.* (15 FERC ¶ 61,254), pursuant to sections 7(b) and 7(c) of the Natural Gas Act so as to amend its existing transportation service for ANR Pipeline Company (ANR), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to the June 10, 1981, order issued in Docket No. CP79-402-000, *et al.*, Great Lakes was authorized to transport up to 75,000 Mcf of imported natural gas per day to ANR commencing November 1, 1982, and to transport an amount equal to 75 percent, 50 percent and 25 percent of 75,000 Mcf of natural gas per day during the contract years beginning November 1, 1984, 1985 and 1986, respectively. The contract quantity under the existing authorization, it is stated, is zero for the contract year beginning November 1, 1987.

Petitioner states that pursuant to an amendment to the contract between Petitioner and ANR, the contract quantity would be reduced to zero on November 1, 1986, instead of November 1, 1987.

Petitioner proposes to amend two transportation agreements with TransCanada PipeLines Ltd. (TransCanada), under which TransCanada reduced its contract demand to allow equivalent quantities of natural gas to be transported on behalf of ANR and supplied Petitioner with the fuel and other company use gas necessary to provide the transportation service.

Comment date: May 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Midwestern Gas Transmission Company

[Docket No. CP86-442-000]

Take notice that on April 14, 1986, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-442-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Northern States Power Company (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport 5,307 dt equivalent of gas on a firm basis for NSP by means of existing facilities on its northern system. Applicant states that NSP would deliver the gas to be transported at the existing interconnections between the facilities of Applicant and Northern Natural Gas Company, Division of InterNorth, Inc., at the North Branch meter station located in Chisago County, Minnesota, and the Cambridge meter station located in Isanti County, Minnesota, and at the Genola meter station located in Morrison County, Minnesota, and Applicant would transport the proposed volumes to NSP at the existing delivery points between Midwestern and NSP located near Grand Forks and Fargo, North Dakota.

Applicant further states that proposed service is in addition to the firm transportation service of 42,093 dt equivalent authorized in Docket No. RP83-73 on June 1, 1984, and being rendered pursuant to Rate Schedule T-9 of Applicant's FERC Gas Tariff, Original Volume No. 2. It is explained that the rates for such service, as filed in Docket No. RP86-33-000 and being collected subject to refund, are a monthly capacity charge of $.96 per dt equivalent of gas and the effective non-gas commodity rate applicable to Rate Schedule CRL-2 equal to 13.11 cents per dt equivalent.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Mountain Fuel Resources, Inc.

[Docket No. CP86-457-000]

Take notice that on April 18, 1986, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP86-457-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to install and operate metering and appurtenant facilities at MFR's Allied Chemical Corporation (Allied) and Covey's Little America (Little America) existing delivery points, both of which are located near Green River, Wyoming, under the certificate issued to MFR in Docket No. CP82-491-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request

which is on file with the Commission and open to the public inspection.

MFR states that the existing Allied and Little America delivery points serve Mountain Fuel Supply Company (MFSC), MFR's local distribution company affiliate, under Rate Schedules CD–1 and X–33 of MFR's FERC Gas Tariff, and that deliveries of natural gas made to MFSC at these points are not currently metered by MFR. Consequently, MFR proposes to install one six-inch turbine meter and appurtenant facilities at the Allied delivery point and one 250 psig working-pressure positive-displacement meter and appurtenant facilities at the Little America delivery point, all in Sweetwater County, Wyoming.

It is stated that the proposed meter installations would be constructed immediately adjacent to existing facilities and would be located exclusively within the areas encompassed by the existing Little America and Allied delivery point rights-of-way.

Estimated costs for facilities at the Allied and Little America delivery points are stated to be $14,000 and $8,000, respectively.

MFR states that the installation of new meters and appurtenant facilities at the Allied and Little America delivery points would not limit MFR's ability to deliver to MFSC all volumes of gas required by the two customers of MFSC served by these delivery points. The maximum daily design capacities and actual average daily deliveries applicable to service provided at these delivery points are stated to be as follows:

Allied Delivery Point

(Mcf per day)

Maximum daily design capacity: 42,970
1985 Average daily flow rate: 8,960
1985 Maximum daily flow rate: 11,852

Little America Delivery Point

(Mcf per day)

Maximum daily design capacity: 284
1985 Average daily flow rate: 86.9
1985 Maximum daily flow rate: 131

It is stated that gas supplies delivered to Allied by MFSC are used by Allied to generate process heat in a calcine roaster to dry soda ash. While such gas supplies are primarily used in Allied's calciner, they are also consumed as fuel for several small heaters and used as back-up fuel in Allied's four coal-fired boilers, it is explained. MFR further states that gas delivered by MFSC to Little America, a motel/gas station complex, is utilized by Little America as fuel for heating and cooking.

MFR states that the construction and operation of the new metering facilities at the Allied and Little America delivery points would not change the existing delivery capacities at those points.

MFR submits that, pursuant to Opinion No. 221, it is authorized to provide (a) sale-for-resale service for MFSC under Rate Schedule CD–1 of MFR's FERC Gas Tariff, First Revised Volume No. 1, and (b) firm transportation service for MFSC under Rate Schedule X–33 of MFR's FERC Gas Tariff, Original Volume No. 3. In accordance with Opinion No. 221, MFR is committed to delivering to MFSC at the Allied and Little America CD–1/X–33 delivery points an appropriate mix of gas purchased by MFR for resale to MFSC and gas owned by MFSC and transported for MFSC by MFR, it is explained.

MFSC would continue to sell gas to Allied and Little America, it is stated, in accordance with firm and interruptible service rate schedules included as part of MFSC's Tariff No. 8 for Gas Service in the State of Wyoming.

MFR indicates that the proposed installations would have no adverse impact on peak day and annual deliveries to Docket No. MFSC, and that deliveries made to MFSC at the Little America and Allied CD–1/X–33 delivery points would continue to be within the maximum daily quantities applicable to the service provided to MFSC under MFR's FERC Rate Schedules CD–1 (Wyoming/Colorado Zone) (32,000 Mcf/d) and X–33 (160,000 Mcf/d).

Comment date: June 23, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP86–429–000]

Take notice that on April 10, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–429–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the long-term, firm transportation of up to 30 billion Btu of natural gas per day for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), from and within High Island Block A–270, offshore Texas, all as more fully set in the application which is on file with the Commission and open for public inspection.

Natural states that pursuant to an agreement between Natural and Tennessee, dated August 23, 1983, Tennessee would deliver, or cause to be delivered, to Natural for firm transportation up to 30 billion Btu of natural gas per day, the demand quantity, at Natural's measurement facilities located on the High Island Block A–270 Production Platform B, offshore Texas (receipt point). Natural proposes to transport and redeliver thermally equivalent volumes of natural gas, less five-tenths of one percent for gas lost and unaccounted for, for Tennessee's account at an existing point of interconnection between the facilities of Natural and High Island Offshore System located in High Island Block A–270, offshore Texas.

In addition to the demand quantity, it is said that Natural would accept during the term of the agreement, on a fully interruptible basis, daily quantities of overrun gas which Tennessee delivers or causes to be delivered at the receipt point.

The proposed service, it is said, would continue for a term of 13 years from the date of first delivery of gas under the long-term authorization requested and year to year thereafter unless cancelled by either party upon 12 months advance written notice, or the initial 13-year term may be extended by mutual agreement of the parties for another period of 5 years. Natural states that it commenced this service pursuant to Part 284 of the Commission's Regulations and the blanket authorization issued to Natural in Docket CP80–125 and as reported in Docket No. ST83–727.

Natural proposes to charge Tennessee monthly for this service a demand charge equal to $1.52 times the demand quantity. It is stated that if Natural accepts overrun gas, Tennessee would pay Natural 5.0 cents per billion Btu of overrun gas received by Natural at the receipt point.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP86–437–000]

Take notice that on April 14, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–437–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 4 billion Btu of natural gas per day on an interruptible basis for Olin Corporation (Olin) and the addition and deletion of related unspecified transportation receipt points, all as more fully-set forth in the application which is on file with

the Commission and open to public inspection.

It is explained that Natural and Olin have entered into a two-year gas transportation agreement dated March 27, 1986. Under such agreement Natural proposes to transport, on an interruptible basis, up to 4 billion Btu of natural gas per day on behalf of Olin, a high priority industrial end-user. Gas so transported would be used in the production of phosphate products in Olin's chemical plant in Joliet, Illinois, it is said.

It is further explained that Natural proposes to receive natural gas for Olin's account at the following existing interconnections between Natural's facilities and (1) Producer's Gas Company in Grady and Dewey Counties, Oklahoma; (2) Diamond Shamrock Exploration Company at the McKee plant in Moore County, Texas; (3) TransAmerican Transmission Corporation at Agua Dulce in Nueces County, Texas; (4) Kaiser Francis Oil Company in Woodward County, Oklahoma, and (5) MV Pipeline Company in Caddo County, Oklahoma.

Natural proposes to transport the volumes so received on an interruptible basis and redeliver them, less fuel and unaccounted for gas, to Northern Illinois Gas Company (NIGAS) for Olin's account at an existing point of interconnection in Livingston County, Illinois, for ultimate redelivery by NIGAS to Olin at its chemical plant in Joliet, Illinois.

Natural states that no new facilities would be required for the proposed interruptible transportation service, but requests authorization to add and delete future unspecified receipt points related to such service. Natural further states that it would file appropriate tariff revisions reflecting the addition and deletion of such receipt points by March 31 of each year.

For the proposed interruptible transportation service Natural would charge Olin the following rates:

Point of receipt	Point of delivery	Transportation rate (cents/million Btu)
Grady County, OK	Livingston County, IL	30.32
Woodward County, OK	do	26.30
Caddo County, OK	do	30.32
Dewey County, OK	do	29.06
Moore County, TX	do	30.32
Nueces County, TX	do	30.32

In addition to the above rates, which Natural states are consistent with its existing Rate Schedule No. T-1, Natural proposes to charge Olin the currently effective GRI surcharge as set forth on Sheet No. 5A of its FERC Gas Tariff, Volume No. 1.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Northwest Central Pipeline Corporation

[Docket No. CP80-499-008]

Take notice that on April 14, 1986, Northwest Central Pipeline Corporation (Petitioner), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP80-499-008 a petition to amend further the Commission's order issued December 22, 1980, in Docket No. CP80-499-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a two-year extension of its limited-term sale of gas to El Paso Natural Gas Company (El Paso), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the sale to El Paso would continue to be made from its system supplies at a rate equal to its Rate Schedule I-2 rate. Petitioner further states that this rate is fully compensatory and non-discriminatory. Petitioner also states that it would continue to deliver the gas volumes to Natural Gas Pipeline Company of America at their interconnections in Ford and Barton Counties, Kansas, for transportation and redelivery to El Paso in Lea County, New Mexico.

Other than its proposed two-year extension of the sale, Petitioner states that it seeks no other changes of its prior arrangement.

Petitioner states that the proposed sales volumes are surplus to the requirements of its present and future customers. Petitioner further states that without the sale it could incur take-or-pay deficiencies of up to $22.1 million in 1986.

Comment date: May 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Standard Gas Marketing Company

[Docket No. CP86-449-000]

Take notice that on April 16, 1986, Standard Gas Marketing Company (SGM), 5151 San Felipe, Houston, Texas 77056, filed in Docket No. CP86-449-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SGM states that it does not have any present operations but would upon the Commission's issuance of an optional expedited certificate of public convenience and necessity requested by it in Docket No. CP86-449-000 be a natural gas company engaged in the business of transporting natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the Natural Gas Act.

SGM states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP86-436-000]

Take notice that on April 11, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-436-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to provide a natural gas transportation service for General Motors Corporation (General Motors), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Tennessee requests authorization to render a transportation service for General Motors for an initial term of five years, pursuant to the provisions of a gas transportation agreement (agreement), dated April 7, 1986.

Tennessee states that it agrees to accept and receive daily, up to 10.9 billion Btu of natural gas per day for the account of General Motors, on an interruptible basis, as determined in Tennessee's sole opinion. It is indicated that Tennessee would receive this gas at a point of interconnection between the facilities of Tennessee and Columbia Gas Transmission Corporation at Mayville, New York. Tennessee proposes to transport and deliver, less volumes for Tennessee's system fuel and uses and gas lost and unaccounted for, a thermally equivalent quantity of gas to a point of interconnection between the facilities of Tennessee and New York State Electric and Gas Company in West Lockport, New York.

It is said that Tennessee would charge General Motors a quantity charge equal

to the product of 6.02 cents multiplied by the total quantity in million Btu of gas delivered by Tennessee for the account of General Motors during the month.

In addition, General Motors would provide to Tennessee, at no cost to Tennessee, a daily volume of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to .74 percent of the quantity received from General Motors on any day. Tennessee may elect to provide such quantities to General Motors at Tennessee's weighted average cost of gas, it is stated.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-464-000]

Take notice that on April 21, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-464-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to transport natural gas for Tenneco Oil Company (TOC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authority to transport, on an interruptible basis, up to 2 billion Btu of natural gas per day for a term of 5 years and year to year thereafter. It is stated that TOC would use the gas for gas lift and compressor operations on TOC's platform in Main Pass area South Addition Block 297, offshore Louisiana (Main Pass 297).

It is asserted that Tennessee would transport gas for TOC through two separated segments of its pipeline. Tennessee states that it would receive gas from TOC at the Main Pass 311 A platform and/or the Main Pass 311 B platform for delivery to Southern Natural Gas Company (Southern) at an existing subsea interconnection in Main Pass 311. Southern then proposes to transport this gas from such point in Main Pass 311 to an existing interconnection with Tennessee at Southern's platform in Main Pass 298.[1] It is explained that after Southern delivers gas to Tennessee in Main Pass 298, Tennessee would complete the transaction by making delivery to TOC in Main Pass 297.

Tennessee requests authority for both the transportation in Main Pass Block 311 and the service from Main Pass Block 298 to 297. Tennessee proposes to charge TOC 3.68 cents per million Btu of gas delivered.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Texas Eastern Transmission Corp. and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP75-127-009]

Take notice that on April 21, 1986, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 (Petitioners), filed in Docket No. CP75-127-009 a petition to amend the order issued July 18, 1975, in Docket No. CP75-127, as amended by orders issued September 22, 1977, April 9, 1980, and December 2, 1980, pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of exchange delivery points pursuant to amendments to an existing transportation and exchange agreement, as amended, on file with the Commission as Texas Eastern's FERC Rate Schedule X-73 and Tennessee's FERC Rate Schedule X-47, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that they are parties to a currently effective transportation and exchange agreement dated October 17, 1974, as amended June 27, 1977, September 5, 1979, and September 9, 1980, which provides for the transportation and exchange of natural gas volumes at various points offshore Louisiana.

It is stated that the deliveries of the new sources of gas at the additional exchange delivery points would not increase the certificated exchange volumes of 230,000 Mcf per day, previously authorized in Docket No. CP75-127. It is further stated that the proposed deliveries of new gas and the subsequent exchange represent the most efficient reasonable and least costly method by which Petitioners can receive these gas supplies into their respective systems.

Comment date: May 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. The Union Light, Heat and Power Company

[Docket No. CP86-447-000]

Take notice that on April 15, 1986, The Union Light, Heat and Power Company (Union), 107 Brent Space Square, Covington, Kentucky 41011, filed in Docket No. CP86-447-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Union to acquire certain pipeline facilities to be abandoned by Columbia Gas Transmission Corporation (Columbia) and to operate those facilities with Union's existing transmission and distribution system and for permission and approval to abandon or amend certain services related to Columbia's ownership of such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Union proposes to acquire from Columbia approximately 10.7 miles of 24-inch pipeline and 0.8 mile of 20-inch pipeline and appurtenant facilities. Union requests authority to operate these facilities in an integrated manner with its existing transmission and distribution system. In connection with the proposed acquisition of such facilities, Union also proposes to abandon an operating agreement with Columbia covering such facilities, designated as Union's Rate Schedule X-1, and proposes to modify an agreement under which it performs transportation for Columbia, designated as Union's Rate Schedule X-4.

It is stated that the proposed abandonments would not result in any change in the service provided by Union to its existing customers. As a result of the proposals, Union states that it would be able to avoid the construction of duplicative facilities and would achieve a substantially greater degree of flexibility and integration in its system operations.

Comment date: May 28, 1986, in accordance with Sfandard Paragraph F at the end of this notice.

13. Washtenaw Pipeline Company

[Docket No. CP86-444-000]

Take notice that on April 15, 1986, Washtenaw Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-444-000 an application

[1] It is indicated that Southern has filed an application for its segment of the transportation service in Docket No. CP86-147-000.

pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline and related facilities and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a partnership between American Natural Service Company, a wholly-owned subsidiary of American Natural Resources Company, and Conar Corporation, a wholly-owned subsidiary of Consumers Power Company (Consumers), and requests authorization to construct and operate 13.5 miles of 20-inch pipeline and related facilities through which it would be able to transport up to 125,000 dt equivalent of natural gas per day on a firm basis on behalf of Consumers, from a proposed point of interconnection with ANR Pipeline Company in Washtenaw County, Michigan, to a proposed point of interconnection with Consumers in Wayne County, Michigan.

It is stated that the cost of the proposed facilities would be approximately $4,343,250. It is indicated that the cost would be financed in part by equity contributions from the partners, with long-term funding of the balance. Applicant proposes to assess Consumers a two-part rate for the proposed firm service, consisting of a reservation charge of $0.09 per dt equivalent per month of maximum daily quantity of gas and a commodity rate of 0.17 cents per dt equivalent of gas transported.

Applicant proposes to render firm transportation service for Consumers and, to the extent of available capacity, interruptible service on a first come, first served basis. It is stated that the rate for the service would be pursuant to Applicant's new proposed Rate Schedules F and I, respectively, in Original Volume No. 1 of its F.E.R.C. Gas Tariff.

Applicant states that it has concurrently filed in Docket No. CP86-445-000 for a blanket certificate pursuant to § 284.221 of the Commission's Regulations.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10752 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-680-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Borden Chemical et al.

Comment date: June 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Borden Chemical

[Docket No. QF86-680-000]

May 7, 1986.

On April 21, 1986, Borden Chemical (Applicant), of P.O. Box 427, Geismar, Louisiana 70734, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's Geismar Plant in Geismar, Louisiana. The facility will consist of a gas combustion turbine generator, a waste heat recovery boiler, and condensing steam turbine generators. The primary energy source will be natural gas. The electric power production capacity of the facility will be 35.3 MW. The useful thermal output will be used in Applicant's distillation reboilers and process heaters. Construction of the facility was scheduled to commence in April, 1986.

2. Mobil Joliet Refining Corporation

[Docket No. QF86-683-000]

May 7, 1986.

On April 18, 1986, Mobil Joliet Refining Corporation (Applicant), of P.O. Box 874, Joliet, Illinois 60434, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 27.6 MW small power production facility will be located at the Joliet Refinery, Route 55 and Arsenal Road, Joliet, Illinois. The facility will consist of a gas combustion turbine generator, a waste heat steam generator, and a steam turbine generator. The primary energy source will be refinery off gas.

3. Martin Marietta Aluminum Properties, Inc.

[Docket No. QF86-686-000]

May 2, 1986.

On April 22, 1986, Martin Marietta Aluminum Properties, Inc. (Applicant),

of 6801 Rockledge Drive, Bethesda, Maryland 20817, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the alumina manufacturing facility of the Applicant in St. Croix, Virgin Islands. The facility will consist of three oil-fired boilers, one coal-fired boiler, four extraction steam turbine-generators, and auxiliary equipment. The extracted steam will be used for desalination of seawater and for process application in ethanol processing facility. The net electric power production capacity of the facility will be 35,000 kW. The primary energy source will be coal. Part of the facility was installed in 1965 and part in 1984–85.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests should be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–10750 Filed 5–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6872–002 35 al.]

Hydroelectric Applications (City of Ithaca et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Exemption (5MW or less).

b. Project No: 6872–002.

c. Date Filed: September 11, 1985.

d. Applicant: City of Ithaca.

e. Name of Project: Sixty Foot Dam.

f. Location: Six Mile Creek in Tompkins County, NY.

g. Filed Pursuant to: Energy Security Act of 1980 section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. John C. Gutenberger, Mayor, City of Ithaca, City Hall, 108 East Green Street, Ithaca, NY 14850, (608) 272–1713.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 70-foot-high, 200-foot-long concrete dam owned by the City of Ithaca with a crest elevation of 705 feet msl; (2) an existing reservoir with a surface area of 47 acres and a storage capacity of 800 acre-feet; (3) a new 14-foot-high, 13-foot-wide, 6-foot-long intake structure; (4) an existing 6-foot-diameter, 47-foot-long outlet pipe; (5) a new 4-foot-diameter, 142-foot-long penstock; (6) a new powerhouse containing a generating unit with a rated capacity of 400-kW; (7) a new 1,160-foot-long transmission line tying into the existing New York State Electric & Gas Company System; and (8) appurtenant facilities. The Applicants estimates a 1,400,000 kWh average annual energy production.

k. Purpose of Project: Power generated would be sold to New York State Electric and Gas Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

2a. Type of Application: Preliminary Permit.

b. Project No: 9894–000.

c. Date Filed: February 3, 1986.

d. Applicants: Hydro Inc.

e. Name of Project: Saugerties.

f. Location: Esopus Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Wagner, Hydro, Inc., 4050 Barclay Lane, Saugerties, NY 12477, (914) 246–8957.

i. Comment Date: June 11, 1986.

j. Competing Application: Project No. 9901–000. Date Filed: February 3, 1986.

k. Description of Project: The proposed project would consist of: (1) An existing 32-foot-high, 346-foot-long concrete gravity dam; (2) a reservoir with a surface area of 140 acres, a storage capacity of 826 acre-feet, and a normal water surface elevation of 46.5 feet m.s.l.; (3) an intake structure; (4) a new 12-foot-diameter, 80-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 2,000 kW; (6) two 10-foot-diameter, 12-foot-long steel outlet pipes; (7) a new transmission line 1,500 feet long; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 17,472,00 kWh. The existing dam is owned by Hydro, Inc., Saugerties, New York and Houseboat Realty, Bearsville, New York.

l. Purpose of Project: Project power would be sold to the Central Hudson Gas and Electric Corporation.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 18 months during which time the applicant would investigate project design alternatives, financial feasibility, environmental potential. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. The applicant estimates that the cost of the studies under permit would be $55,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 9809–000.

c. Date Filed: December 30, 1985.

d. Applicant: Rockfish Corporation, Inc.

e. Name of Project: Lawhorne Mill Dam Power Project.

f. Location: On the Rockfish River in Nelson County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John K. Pollock, Rockfish Corporation, Inc., Rt. 1 Box 413, Afton, VA 22920, (703) 456–6519.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Lawhorne Mill Dam approximately 100 feet long and 6 feet high; (2) an existing reservoir with an area less than one-acre having a storage capacity of 5 acre-feet at an elevation of 480 feet msl; (3) an existing mill race approximately 10 feet long and 5 feet wide; (4) a new wooden shed containing a single turbine/generator unit having an installed capacity of 75 kW operating at 6 feet of hydraulic head; and (5) appurtenant facilities. An existing 12.5-Kv transmission line is available adjacent to the site. The Applicant estimates that the average annual generation would be 500,000 kWh. The project dam is owned by Lawhorne Mill.

k. Purpose of Project: The Applicant intends to sell the power generated from the proposed facility to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposes Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $5,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 9845-000.

c. Date Filed: December 31, 1985.

d. Applicant: Humia Hydro Corporation.

e. Name of Project: Humboldt Mill Dam.

f. Location: On the Des Moines River near Humboldt, Humboldt County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Thomas J. Wilkinson, Jr., Humia Hydro Corporation, 630 Higley Building, Cedar Rapids, IA 51401, (319) 366-4990.

i. Comment Date: June 6, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 12 feet high and 557 feet long; (2) an existing 80-acre reservoir with a storage capacity of 400 acre-feet at a surface elevation of 1,070 msl; (3) a proposed concrete block powerhouse 25 feet square housing a 634-kW generator; (4) a proposed 12.47 kV transmission line 50 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.0 GWh. The project energy would be sold to the local utility. The dam is owned by the Humboldt County Conservation Board, Dakota City, Iowa.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $12,000.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9914-000.

c. Date Filed: February 18, 1986.

d. Applicant: Robert W. Shaw.

e. Name of Project: Indian Stream.

f. Location: Indian Stream, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert W. Shaw, 4 Pleasant Street, P.O. Box 17, Colebrook, NH 03576, (603) 237-4358.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) A new concrete gravity dam, 801 feet long, 108 feet high, and incorporating an integral powerhouse; (2) a new earthen dike, 900 feet long and 80 feet high; (3) a new impoundment of 1,220 acres surface area with a storage capacity of 58,300 acre-feet at a normal maximum surface elevation of 1,380 feet mean sea level; (4) a new turbine/generator with a capacity of 5.5 MW ; (5) a new 34.5-kV transmission line, 5.8 miles long; and (6) appurtenant facilities.

The estimated annual energy production is 21,500,000 kWh. The hydraulic head would be 160 feet. Project power would be sold to Public Service Company of New Hampshire.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. *Proposed Scope of Studies under Permit*: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $166,000.

6a. Type of Application: Preliminary Permit.

b. Project No.: 9930-000.

c. Date Filed: March 3, 1986.

d. Applicants: Northern Hydro Consultants, Inc.

e. Name of Project: Fort Covington.

f. Location: On the Salmon River, Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James W. Dowd, Box 319, Chateaugay, NY 12920, (518) 497-3146.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam 257 feet long, 21 feet high; (2) an existing impoundment 14.3 acres in surface area with a storage capacity of 45 acre-feet at a normal maximum surface elevation of 156 feet mean sea level; (3) an existing concrete water box 34 feet long and 18 feet wide, to house a new submersible turbine/generator of 425kW capacity; (4) a new equipment building less than 300 square feet in area; (5) a new 13.2 kV transmission line 100 feet long; and (6) appurtenant facilities.

The estimated annual energy production is 2,200,000 kWh. The hydraulic head is 11 feet. Project power would be sold to Niagara Mohawk Power Corporation. The owner of the dam is Northern Hydro Consultants, Inc.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $35,000.

7a. Type of Application: Preliminary Permit.

b. Project No.: 9828-000.

c. Date filed: December 31, 1985.

d. Applicant: Thomas J. Collins.

e. Name of Project: Wilmington Hydropower Project.

f. Location: On the Kankakee River, near Wilmington, Will County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Thomas J. Collins, Suite 401, 600 West Jackson Boulevard, Chicago, IL 60606, (312) 454-1060.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 635 feet long located in the main channel; (2) an existing 50 acre reservoir with a storage capacity of 350

acre-feet at a surface elevation of 538 msl; (3) an existing canal; (4) an existing diversion dam 100 feet long and 9 feet high across the canal; (5) a proposed powerhouse at the left dam abutment housing two 300-kW generator for a total capacity of 600 kW; (6) a proposed tailrace; (7) a proposed 12-kV transmission line 300 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual enegy generation would be 3.8 GWh. The project energy would be sold to a utility or industry.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $95,000.

8a. Type of Application: Preliminary Permit.

b. Project No: 9808–000.

c. Date Filed: December 30, 1985.

d. Applicant: Rockfish Corporation, Inc.

e. Name of Project: Ca Ira Dam Power Project.

f. Location: On the Willis River near the town of Cumberland, Cumberland County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John K. Pollock, Rockfish Corporation, Inc., Rt. 1 Box 413, Afton, Va 22920, (703) 456–6519.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Ca Ira Dam approximately 250 feet long and 10 feet high; (2) an existing 8-acre reservoir having a storage capacity of 40 acre-feet at an elevation of 240 feet msl; (3) a new wooden shed approximately 10 feet by 15 feet containing a single turbine/generator unit having an installed capacity of 100 kW operating at 10 feet of hydraulic head; and (4) appurtenant facilities. An existing 12.5-kV transmission line is available adjacent to the site. The Applicant estimates that the average annual generation would be 700,000 kWh. The project dam is owned by the Ca Ira Fishing Club.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $10,000.

9a. Type of Application: Preliminary Permit.

b. Project No: 9806–000.

c. Date Filed: December 30, 1985.

d. Applicant: Rockfish Corporation, Inc.

e. Name of Project: Reids Dam Power Project.

f. Location: On the Maury River near the City of Lexington, Rockbridge County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John K. Pollock, Rockfish Corporation, Inc., Rt. 1 Box 413, Afton, VA 22920, (703) 456–6519.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Reids Dam approximately 430 feet long and 16 feet high and an adjacent navigational lock 15 feet wide and 75 feet long; (2) an existing 36-acre reservoir having a storage capacity of 220 acre-feet at an elevation of 880 feet msl; (3) a new wooden shed approximately 15 feet by 20 feet containing a single turbine/generator unit having an installed capacity of 250 kW operating at 16 feet of hydraulic head; (4) a new 500-foot-long 600 volt transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 2,000,000 kWh. The project dam is owned by the City of Lexington.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $20,000.

10a. Type of Application: Preliminary Permit.

b. Project No: 9801–000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Little Willis Gulch.

f. Location: On Little Willis Gulch, near Leadville, partially within San Isabel National Forest, in Chaffee and Lake Counties, Colorado. (In Sections 25, 26, 27, 28, 29, 30, and 31 of T11s, R80W, Section 36 of T11S, R81W, and Section 1 of T12S, R81W, 6th P.M.&B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461, (303) 486–3397.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 10-foot-high, 25-foot-long earth fill diversion structure at elevation 11,220 feet msl; (2) a 24-inch-diameter, 5,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 775 kW operating under a head of 570 feet; and (4) a 13.8–kV, 60,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 5.843 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environment effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

11a. Type of Application: Preliminary Permit.

b. Project No. 9799–000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Cache Creek No. 2.

f. Location: On Clear Creek Ditch, near Leadville in Chaffee County, Colorado. (In Sections 1 and 2 of T 12S, R80W, Section 36 of T11S, R80W and Section 31 of T11S, R79W, 6th P.M. & B.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461, (303) 486–3397.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 10-foot-high, 20-foot-long earth fill diversion structure at elevation 9,480 feet msl; (2) a 30-inch-diameter, 4,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 410 kW operating under a head of 240 feet; and (4) a 13.8–kV 7,400-foot-long transmission line interconnecting the project to an existing Sanqre de Cristo Rural Electric Association line. The project's estimated average annual generation of 3.515 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No. 9798–000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Boswell Gulch.

f. Location: On Boswell Gulch, near Leadville, partially within San Isabel National Forest, in Chaffee and Lake Counties, Colorado. (In Sections 25, 26, 27, 28, 29, 30 and 31 of T11S, R80W, 6th P.M. & B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461, (303) 486–3397.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 7-foot-high, 12-foot-long earth fill diversion structure at elevation 11,120 feet msl; (2) a 24-inch-diameter, 2,500-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 500 kW operating under a head of 720 feet; and (4) a 13.8–kV 50,000-foot-long transmission line interconnecting the project to an existing Sanqre de Cristo Rural Electric Association line. The project's estimated average annual generation of 3.890 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 9918–000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Thirteen Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 13.

f. Location: On the Kentucky River in Lee County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546–5510.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 13, having a water surface elevation of 620.5 feet msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the right abutment containing two turbine/generator units having a total installed capacity of 5,200 kW operating at 17 feet of hydraulic head; (2) a new 800-foot-long 15-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 21.0 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

14a. Type of Application: Preliminary Permit.

b. Project No.: 9917–000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Five Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 5.

f. Location: On the Kentucky River in Anderson and Woodford Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546–5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 5, having a water surface elevation of 485.35 feet msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the right abutment containing two turbine/generator units having a total installed capacity of 6,000 kW operating at 13 feet of hydraulic head; (2) a new one-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 28.4 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design

alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

15a. Type of a Application: Preliminary Permit.

b. Project No: 9913–000.

c. Date. Filed: February 12, 1986.

d. Applicant: Dam Twelve Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 12.

f. Location: On the Kentucky River in Estill County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Ingolf Mermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546–5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 12, having a water surface elevation of 602.6 feet msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located in the left abutment containing two turbine/generator units having a total installed capacity of 5,500 kW operating at 17 feet of hydraulic head; (2) a new 1,400-foot-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 16.1 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

16a. Type of Application: Preliminary Permit.

b. Project No: 9911–000

c. Date filed: February 12, 1986.

d. Applicant: Dam Ten Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 10.

f. Location: On the Kentucky River in Madison and Clark Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, Ridgehill Professional Bldg., Suite 380, 2000 Plymouth Road, Minnetonka, MN 55343, (612) 546–5110.

i. Comment Date. June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 10, having a water surface elevation of 567.6 feet msl and would consist of: (1) a new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the left abutment containing two turbine/generator units having a total installed capacity of 5,100 kW operating at 17 feet of hydraulic head; (2) a new one-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 20.9 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $200,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 9794–000.

c. Date Filed: December 30, 1985.

d. Applicant: City of Kings Mountain.

e. Name of Project: John Henry Moss Hydropower Project.

f. Location: On Buffalo Creek near the City of Kings Mountain, Cleveland County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John Henry Moss, Mayor, City of Kings Mountain, P.O. Box 429, Kings Mountain, NC 28086, (704) 739–2563.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing earth filled dam approximately 840 feet long and 99 feet high; (2) an existing 1,350-acre reservoir having a storage capacity of 38,000 acre-feet at an elevation of 736 feet msl; (3) an existing penstock approximately 220 feet long and 54 inches in diameter; (4) a new concrete powerhouse 20 feet by 40 feet containing two turbine/generator units having a total installed capacity of 1,100 kW operating at 81 feet of hydraulic head; (5) a new 2.3–kV transmission line approximately 900 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.7 MWh. The project dam is owned by the Applicant.

k. Purpose of Project: All project energy would be used by the City of Kings Mountain or sold to Duke Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $25,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 9916–000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Four Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 4.

f. Location: On the Kentucky River in the City of Frankfort, Franklin County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546–5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 4, having a water surface elevation of 470.35 feet msl and would consist of: (1) A new reinforced concrete

powerhouse approximately 80 feet by 90 feet located on the east abutment containing two turbine/generator units having a total installed capacity of 5,000 kW operating at 11 feet of hydraulic head; (2) a new 15,000-foot-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 26.4 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 9915-000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Fourteen Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 14.

f. Location: On the Kentucky River in Lee County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 14, having a water surface elevation of 637.6 feet MSL and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located in the left abutment containing two turbine/generator units having a total installed capacity of 5,100 kW operating at 17 feet of hydraulic head; (2) a new 500-foot-long 15-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 16 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

20a. Type of Application: Preliminary Permit.

b. Project No.: 9912-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Eleven Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 11.

f. Location: On the Kentucky River in Madison and Estill Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 11, having a water surface elevation of 585.6 feet MSL and would consist of: (1) A new reinforced concrete powerhouse approximately 66 feet by 57 feet containing two turbine/generator units having a total installed capacity of 8 MW operating at 18.0 feet of hydraulic head; (2) a new 7.5-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy generation to be 30 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

21a. Type of Application: Preliminary Permit.

b. Project No: 9909-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Eight Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 8.

f. Location: On the Kentucky River in Jessamine and Garrard Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, Ridgehill Professional Bldg., Suite 380, 2000 Plymouth Road, Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 8, having a water surface elevation of 533.26 msl and would consist of: (1) A new powerhouse approximately 57 feet by 66 feet located at the right abutment containing two turbine/generator units having a total installed capacity of 7,000 kW operating at 18.6 feet of hydraulic head; (2) a new 1.5-mile-long 69-kV-transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 29.8 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $200,000.

22a. Type of Application: Preliminary Permit.

b. Project No: 9908-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Three Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 3.

f. Location: On the Kentucky River in Henry and Owen Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 3, having a water surface elevation of 456 msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the right abutment containing two turbine/generator units having a total installed capacity of 6,000 kW operating at 13.2 feet of hydraulic head; (2) a new 2,000-foot-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 28.9 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed to response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining this appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and

Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 89-23, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 8, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10752 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, (United Gas Pipe Line Company); Order Granting Request For Waiver

(Issued: May 7, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 25, 1986, United Gas Pipe Line Company (United) filed a request for waiver of the restrictions in the transitional provisions of § 284.105 of the regulations adopted in Order No. 436.[1] United seeks the waiver of permit the transportation of gas pursuant to section 311 of the Natural Gas Policy Act. We will grant United's request for waiver.

On November 27, 1984, Oxy Petroleum, Inc. (Oxy) and Tarpon Offshore Pipeline System, Inc. (Tarpon) entered into a gas purchase agreement whereby Oxy agreed to sell to Tarpon gas in and around Block 773-L of the Mustang Island area in offshore Texas. On March 27, 1985, Tarpon and Texas Industrial Energy Company (TIECO), a Hinshaw pipeline company, entered into a gas purchase agreement whereby Tarpon agreed to sell the gas it purchased from Oxy to TIECO. On June 1, 1985, TIECO and United entered into a gas exchange transportation agreement whereby United agreed to receive the gas from TIECO and redeliver an equivalent volume of gas to TIECO's facilities.

As the producer of the gas, Oxy stated in an affidavit dated April 25, 1986, that June 1, 1985 but before October 9, 1985, it expended a total of $420,000 on the construction and inspection of pipeline and gathering facilities, in reliance on the transportation agreement. Completion of the platform facilities around Block 773-L was delayed until November 18, 1985 due to engineering problems relating to the quality of the gas.[2]

In *CLARCO Gas Company, Inc.*,[3] we clarified our policy concerning waivers of the restrictions in the transitional provisions of Order No. 436:

> If gas hasn't flowed by October 9, 1985 the Commission will grant a waiver from the restrictions in the transitional provisions to the extent necessary to allow the transportation to commence if the parties executed a written gas transportation agreement prior to October 9, 1985, and expended significant funds or constructed significant facilities *in reliance on that agreement*, after the agreement was executed and prior to October 9, 1985.

We find that the facts and circumstances presented meet the *CLARCO* standard in that Oxy constructed significant facilities after the execution of a transportation agreement and prior to October 9, 1985, in reliance on a written transportation agreement which was executed prior to October 9, 1985. Accordingly, we grant United's request for waiver of the restrictions in § 284.105 to the extent necessary to permit United's transportation of gas for TIECO, as described above and in the transportation agreement, to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10749 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] 33 FERC ¶ 21,007, 50 FR 42408 (October 10, 1985).

[2] United States in its application, and Oxy confirms in its affidavit, that Oxy expended approximately $3,000,000 on the Block 773-L facilities and that, absent a waiver, the facilities will be rendered useless.

[3] 34 FERC ¶ 61,380 (March 28, 1986).

[Project No. 7358-003]

Salt Lake County Water Conservancy District; Surrender of Conduit Exemption

May 7, 1986.

Take notice that Salt Lake County Water Conservancy District, Exemptee for the proposed 11400 South Project, has requested that its conduit exemption be terminated. The 11400 South Project is located at the 11400 South Pump Station on the Cross Valley Water Transmission Pipeline in the town of Draper, Salt Lake County, Utah. The conduit exemption was issued on September 29, 1983 and no construction had begun on the project to date.

The Exemptee filed the request on April 15, 1986, and the conduit exemption for Project No. 7358 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10747 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-11-000, et al.]

Electric Rate and Corporate Regulation Filing; Southern California Edison Co. et al.

May 7, 1986.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. EL85-11-000]

Take notice that on April 24, 1986 Southern California Edison Company (Edison) tendered for filing a report of refunds made to its resale customers pursuant to the Commission's order of September 17, 1985.

Comment date: May 19, 1986 in accordance with Standard Paragraph H at the end of this notice.

2. Alamito Shareholder v. Alamito Company

[Docket No. EL85-36-000]

Take notice that on April 25, 1986, Alamito Shareholder tendered for filing a compliant against Alamito Company pursuant to sections 204, and 306 and the Federal Power Act ("Act"), 16 U.S.C. 824c and 825e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. Alamito Shareholder specifically requests the Commission to take immediate action to obtain a commitment from Alamito not consummate a proposed merger transaction until the Commission completes its review of the proposed merger. Should Alamito fail to provide the Commission with such a commitment, then Alamito Shareholder that the Commission seek injunctive relief against Alamito under 825(m) enjoining the merger pending the outcome of this proceeding, and that the Commission provides such other relief as may be appropriate.

Comment date: June 6, 1986 in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER79-126-012]

Take notice that on April 25, 1986, Arizona Public Service Company tendered for filing six copies of the Supplemental refund of a late payment charge made to the Papago Utility Tribal Authority (PTUA) associated with the Commission's Order on Remand in Docket No. ER79-126-011. This Supplemental Refund is intended to cover a $5,906.88 late payment charge (in accordance with contract provisions) that accompanied PTUA's backbilling payment made on July 26, 1983 Pursuant to FERC Opinion No. 137, plus $2,025.58 for interest through April 18, 1986. Because of an administrative oversight, this amount was not included with the Commission's Order on Remand in Docket No. ER79-126-001. This filing is also intended to satisfy PTUA's Protest and Motion to Intervene Out-of-Time in Docket No. ER79-126-012.

Comment date: May 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

4. David M. Barasch, Consumer Advocate of Pennsylvania, Complainant v. Allegheny Generating Company, Respondent

[Docket No. EL86-38-000]

Take notice that on April 29, 1986, David M. Barasch, the Consumer Advocate of Pennsylvania, tendered for filing a complaint against Allegheny Generating (AGC) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

The Office of the Consumer Advocate requests that the Commission:

a. Consolidate any and all Compliants against AGC's current return on equity;

b. Hold evidentiary hearings on the factual and legal bases for AGC's current 14.6 percent return on equity;

c. Reduce AGC' return on equity to not more than 12.0 percent; and

d. Grant any other relief which the Commission finds necessary or proper.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Consumer Advocate Division of the West Virginia Public Service Commission, and Maryland People's Counsel, Complainants v. Allegheny Generating Corporation, Respondent

[Docket No. EL86-37-000]

Take notice that on April 28, 1986 the Consumer Advocate Division of the West Virginia Public Service Commission (CAD) and the Maryland People's Counsel (People's Counsel) tendered for filing a joint complaint against Allegheny Generating Corporation (AGC). CAD and the People's Counsel request that:

1. FERC docket this joint complaint and set it for hearing as soon as practicable;

2. This joint complaint be joined with any other complaints filed concerning AGC's return on equity;

3. FERC adjust AGC's allowed rate of return on equity under the Settlement to a level one hundred (100) basis points below the FERC generic rate of return as periodically adjusted; and

4. FERC grant joint complainants any other relief to which they may be entitled.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket Nos. ER85-461-005 and ER85-521-002]

Take notice that on April 28, 1986, Kansas Gas and Electric Company tendered for filing its refund report for Kansas Electric Power Cooperative in accordance with the letter order dated March 28, 1986.

Comment date: May 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

7. Louisiana Power & Light Company

[Docket No. ER86-464-000]

Take notice that on May 2, 1986, the Louisiana Power & Light Company (LP&L) tendered for filing a Notice of Cancellation of an Agreement dated November 24, 1982 providing for the transmission of up to 10 mw of power and energy to the Municipal Energy

Agency of Mississippi (MEAM) from the City of Lafayette, Louisiana (City).

LP&L has requested waiver of the notice requirements of § 35.15 of the Commission's Regulations in order to permit termination of the Agreement on April 1, 1986, as requested by the City.

LP&L stated that a copy of this filing was mailed to the City of Lafayette, Louisiana.

Comment date: May 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Indiana, Inc.

[Docket No. ER86-448-000]

Take notice that Public Service Company of Indiana, Inc. on May 2, 1986 tendered for filing pursuant to the Interconnection Agreement between Public Service Company of Indiana, Inc. (Service Company) and Cincinnati Gas & Electric Company (Cincinnati Company) a Tenth Supplemental Agreement to become effective January 1, 1986, pursuant to § 35.2 of the Commission's Regulations.

Said Supplemental Agreement provides for the following:

1. Modify Service Schedule A—Emergency Service incorporates a minimum emergency energy charge and changes Cincinnati Company's Order 84 language.

2. Modify Service Schedule B—Interchange Power to change Cincinnati Company's Order 84 language.

3. Inserts a new rate Schedule E—Short Term Power which deletes the existing Rate Schedule E, as amended.

Copies of the filing were served upon Public Utilities Commission of Ohio and the Public Service Commission of Indiana.

Comment date: May 20, 1986, in accordance with Standard Paragraph E at the end of this document.

9. Southern California Edison Company

[Docket No. ER84-75-009]

Take notice that on April 28, 1986, Southern California Edison Company tendered for filing a report of refunds made to its resale customers pursuant to the Commission's order dated March 7, 1986 granting Edison's motion to collect lower resale rates on an interim basis.

Comment date: May 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10751 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol (Osborn Heirs Co.; Order Granting Request for Clarification

[Docket No. RM85-1-000]

Issued: May 8, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On March 14, 1986, Osborn Heirs Company filed a request for clarification of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction performed by Panhandle Eastern Pipe Line Company [2] under former § 157.209(a)(1) of the Commission's Regulations. We will grant Osborn's request.

Osborn, a producer, entered into an agreement to sell gas from wells in the Council Grove field in Kearny County, Kansas, to National Can Corporation, a high-priority end user. On April 3, 1985, Panhandle agreed to gather the gas from wells in the Council Grove field, transport the gas to the Council Grove compression station, and from that central point transport the gas to Indiana Gas Company, for ultimate delivery to National Can. The April 3 transportation agreement named individual well meter stations as points of receipt because Panhandle controlled the Council Grove field gathering facilities. On August 31, 1985, Osborn and Panhandle amended their transportation agreement to provide that "points of receipt . . . may be added, revised, or deleted from time to time [and such] [a]dditions, deletions, or revisions . . . shall not be considered amendments to this agreement." Transportation commenced before October 9, 1985. Under the terms of the April 3 transportation agreement as it existed on October 9, the transportation transaction can continue until October 3, 1986.

Osborn states that because of operational problems an imbalance of approximately 100,000 Mcf has occurred due to its inability to deliver the same quantities of gas to Panhandle as Panhandle has delivered to Indiana Gas.[3] Osborn proposes to correct the imbalance before October 3, 1986, by adding new wells to the April 3 transportation agreement. Osborn requests clarification that Panhandle will not be subjected to the non-discriminatory access conditions of Order No. 436 if new wells are added after October 9.

Osborn argues that clarification should be granted because, as a result of the August 31, 1985 amendment, its wells now being added do not require post-October 9 amendments to the terms of the transportation agreement. In the alternative, Osborn argues that even if the addition of wells is deemed to be an amendment to the transportation agreement, clarification should be granted because the wells are being added to the non-jurisdictional gathering portion of Panhandle's service, while the interstate portion of the service remains unchanged. In particular, the central receipt point for that interstate service remains the same. Finally, Osborn argues that, since we have allowed imbalances to be corrected after the transportation transaction has terminated, we should allow it to correct an imbalance before the transportation terminates.

In examining the facts and circumstances of the instant case, we find that the transportation was authorized and service had commenced before October 9, 1985. We construe the August 31, 1985 amendment to mean that the new wells can be added (behind the central receipt point) without

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[1] 33 FERC ¶61,007 (1985). FERC Statutes and Regulations ¶30,665 (1985).

[2] Panhandle has filed an answer in support of Osborn's request.

[3] Osborn emphasizes that Panhandle's gas deliveries to Indiana Gas have not exceeded the levels negotiated in the April 3 agreement.

amending the transportatio agreement. Thus, subsequent to October 9, 1985, there will be no amendment to the transportation agreement not any changes in either the central receipt point [4] or in the volumes of gas transported. Therefore, we will grant Osborn's request for clarification and allow the transportation transaction to continue from the new wells.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10748 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9097-001]

Mutual Energy Partnership; Surrender of Preliminary Permit

May 7, 1986.

Take notice that the Mutual Energy Partnership, Permittee for the Old Highway Project No. 9097, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9097 was issued on October 31, 1985, and would have expired on September 30, 1988. The project would have been located on the Big Wood River in Shoshone County, Idaho.

The Permittee filed the request on April 24, 1986, and the preliminary permit for Project No. 9097 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10746 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1588]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

May 7, 1986.

Petitions for consideration and applications for review have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to oppositions must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service. (PR Docket No. 83-426) Number of petitions received: 1

Subject: Amendment of Part 97 of the Commission's Rules to Permit Automatic Control of Amateur Radio Stations. (PR Docket No. 85-105, RM-4879) Number of petitions received: 1

Subject: WATS-Related and Other Amendments of Part 69 of the Commission's Rules (CC Docket No. 86-1) Number of petitions received: 2

Applications for Review Filed

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Murray, Kentucky) (MM Docket No. 83-1122, RM-4342) Number of applications filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Pinetop, Arizona) (MM Docket No. 84-522, RM-4653) Number of applications filed: 1

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 86-10657 Filed 5-12-86; 8:45 am]

BILLING CODE 6712-01-M

Michael J. Benna et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No.	MM Docket No.
A. Michael J. Benna, Thomas, WV	BPH-850710MN	86-124
B. Lynn Johnston, d.b.a. California Media, Thomas, WV	BPH-850712RR	
C. Don R. Davis, Thomas, WV	BPH-850712RS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, C
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Represeptative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-10652 Filed 5-12-86; 8:45 am]

BILLING CODE 6712-01-M

Joseph Wayne Collins et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Joseph Wayne Collins et al., d.b.a. Collins Communications Co., Dimmitt, TX.	BPH-850617MI	86-186
B. Ken Braddick, Dimmitt, TX.	BHP-850712RS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below each applicant's name, above, is used below to signify whether the issue

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[4] *See* Sohio Petroleum Company, 33 FERC ¶ 61,448 (1985).

in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A,B
2. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–10854 Filed 5–12–86; 8:45 am]

BILLING CODE 6712-01-M

Contemporary Communications Limited Partnership et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutual exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Contemporary Communications Limited Partnership, Marion, MS.	BPH-840801ID	86-107
B. Marion Broadcasting Co., Inc., Marion, MS.	BPH-841025ID	
C. Sherrie Powell, et al. d.b.a. Powell Communications, Marion, MS.	BPH-841029IE	
D. Wanda D. Cooper and Charles B. Cooper d.b.a. Charisma Radio Partners, Marion, MS.	BPH-841031ID	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), D
2. Comparative, A,B,C,D
3. Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

Appendix

Issue

1. To determine with respect to D (Charisma) whether, in light of the evidence adduced concerning the deficiency set forth below in paragraph 8 [1], the applicant is financially qualified.

[FR Doc. 86–10853 Filed 5–12–86; 8:45 am]

BILLING CODE 6712-01-M

New North Broadcasters Limited Partnership et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. New North Broadcasters Limited Partnership, Amarillo, TX	BPH-840420IF	86-121
B. T. Kent Atkins d.b.a. Atkins Broadcasting, Amarillo, TX	BPH-840629ID	
C. Delbert Francis Ault, Amarillo, TX	BPH-840629IE	
D. Llewellyn Broadcasting, Corp. Amarillo, TX	BPH-840629IG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If an environmental impact statement is issued with respect to (A) New North which concludes that the proposed facility is likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86–10855 Filed 5–12–86; 8:45 am]

BILLING CODE 6712-01-M

[1] Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
Charisma	Did not complete Section III, Item 2.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New

Title: Cost/Benefit Study RE: Residential Sprinkler Systems with Quick Reacting Sprinkler

Abstract: The objective of this effort is to provide a study to the U.S. Fire Administration which would detail the cost/benefit for local government, builders, developers, installers, fire departments, the insurance industry, and property owners, who install residential sprinklers with response heads in different housing types.

Type of Respondents: Individuals or Households, State or local governments, Businesses or other for-profit
Number of Respondents: 1,335
Burden Hours: 3,004

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1986

Walter A. Girstantas,

Director Administrative Support.

[FR Doc. 86-10673 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New
Title: Survey of Contractor Responsibility

Abstract: Form is to collect financial and historical data on prospective contractors to assist the Contracting Officer in making a determination of responsibility.

Type of Respondents: Individuals or Households, Businesses or other for-profit, Small businesses or organizations
Number of Respondents: 300
Burden Hours: 450

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington DC 20503.

Dated: May 7, 1986.

Walter A. Ginstantas,

Director, Administrative Support.

[FR Doc. 86-10674 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-01-M

Redelegation of Authority With Respect to the National Flood Insurance Program and the Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency, Federal Insurance Administration.

ACTION: Redelegation of Authority of Federal Insurance Administrator.

FOR FURTHER INFORMATION CONTACT: James M. Rose, Jr., Executive Assistant to the Administrator, Federal Emergency Management Agency, Federal Insurance Administration, 500 "C" Street SW., Washington, DC 20472, telephone number (202) 646–2780.

Notice is hereby given that pursuant to § 2.51 of Title 44 of the Code of Federal Regulations, Harold T. Duryee, Special Assistant to the Administrator, is hereby authorized to exercise the delegation of authority set forth at § 2.64 of Title 44 of the Code of Federal Regulations and is designated to serve as Acting Federal Insurance Administrator, with all the powers, functions, and duties delegated or assigned to the Federal Insurance Administrator.

Authority: Section 2.51 of Title 44 of the Code of Federal Regulations.

EFFECTIVE DATE: This delegation and designation shall be effective as of May 11, 1986.

Dated: May 1, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-10677 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 86-18]

Container Distribution, Inc. v. Neptune Orient Lines, Ltd.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Container Distribution, Inc. (CDI) against Neptune Orient Lines, Ltd. (NOL) was served May 7, 1986. CDI alleges that NOL has violated sections 8(c), 10(b)(5) and 10(b)(12) of the Shipping Act, 1984 through its failure to make available to CDI, as an alleged similarily situated shipper, the terms of a service contract.

This proceeding has been assigned to Administrative Law Judge Seymour Glanzer. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 7, 1987, and the final decision of the Commission shall be issued by September 8, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-10695 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public, Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages, Application; for Certificate [Casualty]

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Hapag-Lloyd Kreuzfahrten GmbH, Bremen, c/o Hapag-Lloyd (America) Inc., One Edgewater Plaza, Staten Island, NY 10305

Dated: May 8, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-10696 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public, Indemnification of Passengers for Nonperformance of Transportation; Application for Certificate [Performance]

Notice is hereby given that the following persons have applied to the

Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Hapag-Lloyd Kreuzfahrten GmbH, Bremen, c/o Hapag-Lloyd (America) Inc., One Edgewater Plaza, Staten Island, NY 10305

Dated: May 8, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-10997 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-11]

Neutral Container Rule—U.S. Atlantic-North European Conference; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies determined that Docket No. 86-11 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

On April 4, 1986, the Commission instituted an investigation into the practices governing use of neutral containers by the U.S. Atlantic-North European Conference (ANEC). This investigation will examine, among other things, Tariff Rule 21.J of ANEC's Intermodal Freight Tariff No. FMC-1 (Rule). The Rule relates to use of containers which are not owned or leased by carriers prior to delivering to the shipper for loading.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection upon request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-10993 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

American National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reseve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American National Corporation*, Omaha, Nebraska; to merge with American Commerce Bancshares, Inc., Omaha, Nebraska. In connection with this application, American Commerce Bancshares has applied to become a bank holding company by acquiring 100 percent of the voting shares of Financial Group Humboldt, Inc., Humboldt, Nebraska, and thereby indirectly acquire Home State Bank and Trust Company, Humboldt, Nebraska, and by acquiring 100 percent of the voting shares of Financial Group Elk Creek, Inc., Humboldt, Nebraska, and thereby indirectly acquire Johnson County Bank, Elk Creek, Nebraska, and by acquiring 100 percent of the voting shares of Financial Group Dawson, Inc., Humboldt, Nebraska, and thereby indirectly acquire the Dawson Bank, Dawson, Nebraska.

2. *First Canon Bancorp, Inc.*, Canon City, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Canon City, Canon City, Colorado.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10720 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

CNB Holding Co. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not late than June 5, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CNB Holding Company*, Daytona Beach, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Commercial National Bank, Daytona Beach, Florida.

2. *First State Bancshares of Blakely, Inc.*, Blakely, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Blakely, Blakely, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Prairie Bankshares, Inc.*, Georgetown, Illinois; to acquire 100

percent of the voting shares of The First National Bank of Ogden, Ogden, Illinois.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Omni Bancorp, Inc.*, Effingham, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Crossroads Bank, Effingham, Illinois.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Marquette County Financial Corporation*, Negaunee, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Negaunee, Negaunee, Michigan.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10744 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

J.P. Morgan & Co., Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *J.P. Morgan & Co., Incorporated*, New York, New York; to engage *de novo* in providing discount brokerage services, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10745 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

United Banks of Colorado, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (2 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by an statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado, to engage *de novo* though its subsidiary United Banks Financial Services Corporation, Denver, Colorado, in making and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10727 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

May 7, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

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DATE: Comments must be received within fifteen working days of the date of publication in the Federal Register.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number of the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3181).

Proposal to Approve Under OMB Delegated Authority the Extension Without Revision of the Following Reports

1. Report title: Regulation G Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks and Brokers or Dealers)
Agency form number: FR G–1
OMB Docket number: 7100–0011
Frequency: On occasion
Reporters: Federal and state credit unions, insurance companies; savings and loan associations; commercial and consumer credit organizations; production credit associations; small businesses; etc.
Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is given confidential treatment [5 U.S.C. 552 (b)(4), (b)(6)].

This report is needed to elicit certain background and financial information about a lender (other than banks and brokers or dealers) and the types and amount of credit activities engaged in with respect to stock market credit which enables the Federal Reserve to identify those lenders subject to Regulation G.

2. Report title: Deregistration Statement For Persons Registered Pursuant to Regulation G
Agency form number: FR G–2
OMB Docket number: 7100–0011
Frequency: On occasion
Reporters: Regulation G Registered Lenders (federal and state credit unions; insurance companies; etc)
Small businesses are affected.

General description of report:

If a registered lender chooses to deregister, this information collection is mandatory [15 U.S.C. 78g, 78w]; and is not given confidential treatment.

This report is necessary to notify the Federal Reserve System that a respondent, which must be a Regulation G registered lender, wishes to and is eligible to deregister.

3. Report title: Annual Report
Agency form number: FR G–4
OMB Docket number: 7100–0011
Frequency: Annually
Reporters: Every Regulation G registrant (federal and state credit unions; insurance companies; etc.)
Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is given confidential treatment [5 U.S.C. 552 (b)(4), (b)(6)].

This report is necessary of all lenders registered pursuant to Regulation G in order to enable the Federal Reserve to monitor the amount of stock-secured credit extended by such lenders and to aid the Federal Reserve in administering margin requirements pursuant to the Securities Exchange Act of 1934.

4. Report title: Statement of Purpose for an Extension of Credit Secured by Margin Securities by a Person Subject to Registration Under Regulation G
Agency form number: FR G–3
OMB Docket number: 7100–0018
Frequency: On occasion
Reporters: Federal and State credit unions; insurance companies; savings and loan associations; commercial and consumer credit organizations; small businesses; etc.
Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is not given confidential treatment.

This report is required to ensure that a lender does not extend credit to purchase or carry securities in excess of the amount permitted by the Federal Reserve Board pursuant to Regulation G.

5. Report title: Statement of Purpose for an Extension of Credit by a Creditor
Agency form number: FR T–4
OMB Docket number: 7100–0019
Frequency: On occasion
Reporters: Brokers and dealers
Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is not given confidential treatment.

This report provides a written record of the amount of "non-purpose" credit being extended, the purpose for which the money is to be used, and a listing and valuation of collateral. The form provides a uniform method by which the broker/dealer can establish its compliance with the statute and with the Board's regulation permitting "non-purpose credit" to be extended on better terms than are available for securities credit.

Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Report

1. Report title: 1986 Survey of Consumer Finances
Agency form number: FR 3038
OMB Docket number: 7100–0220
Frequency: Nonrecurring
Reporters: Sample of households nationwide
Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 225a, 1828(c), 1842, 1843; 15 U.S.C. 1693b(a)]. No problem of confidentiality arises since names and other characteristics that would permit personal identification of respondents will not be provided to survey sponsors.

This survey, a follow-up to an earlier survey, will collect data on major financial decisions and significant changes affecting the financial conditions of households. The survey is designed to provide basic information on financial behavior that can be applied to analysis of current and future policy issues.

Proposal to Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

1. Report title: Weekly Report of Selected Borrowings
Agency form number: FR 2415
OMB Docket number: 7100–0074
Frequency: Weekly
Reporters: Depository institutions
Small businesses are not affected.

General description of report:

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This information collection is voluntary [12 U.S.C. 248(a)(2)]; and is given confidential treatment [5 U.S.C. 552(b)(4), and (b)(8)].

The report collects data on federal funds and repurchase agreement (RP) transactions at a sample of large commercial banks. The proposed revision would include the collection of RP information from a sample of large thrift institutions. The information is used in the analysis and formulation of monetary policy.

Board of Governors of the Federal Reserve System, May 7, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-10656 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for a Project To Study the Human Health Consequences of Poly-Brominated Biphenyls (PBB) Contamination in Michigan; Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control announces the availability of funds in Fiscal Year 1986 to continue a cooperative agreement with the Michigan Department of Public Health to study the human health consequences of exposure to poly-brominated biphenyls (PBB) in farms in Michigan with particular emphasis on cancer incidence.

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241[a]), as amended. Catalog of Federal Domestic Assistance Number 13.283.

Background

This is not a formal request for applications. Assistance will be provided only to the Michigan Department of Public Health for the continued conduct of this project. The Michigan Department of Public Health and the Centers for Disease Control with assistance and funding from the National Cancer Institute and the National Institute for Environmental Health Sciences, NIH, the Food and Drug Administration, and the Environmental Protection Agency, have collaborated in the conduct of this study of the unique exposure of Michigan farm residents to PBB since 1976.

Availability of Funds

It is expected that $339,000 will be available during Fiscal Year 1986 to support this project. Funding is subject to change and estimates may vary. The cooperative agreement will be funded for 12 months with a 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

Information

Information may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: May 6, 1986.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-10698 Filed 5-12-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86F-0163]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp., has filed a petition proposing that the food additive regulations be amended to provide for additional uses of calcium bis[monoethyl)3,5-di-*tert*-butyl-4-hydroxybenzyl) phosphonate] as a stabilizer in articles or components of articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-[illegible]-5090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1785 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 6B3920) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for additional uses of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl) phosphonate] as a stabilizer in articles or components of articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: May 1, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-10670 Filed 5-12-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-374-PN]

Medicare Program; End-Stage Renal Disease Program; Composite Rates and Methodology for Determining the Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes a revised methodology for determining the composite rates for prospective payment for outpatient maintenance dialysis services and sets forth proposed rates based on the revised methodology. The new rates would be based on the most recent audits (1983) of facility costs. Additionally, in computing the rates we would use the new HCFA gross hospital wage index as published in the **Federal Register** on September 3, 1985 (50 FR 35646). This index reflects the latest Metropolitan Statistical Areas designated by the Executive Office of Management and Budget.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on June 12, 1986.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-374-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-374-PN. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Daniel Driscoll, (301) 597-1804.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1881(b) of the Social Security Act (the Act) requires the Secretary to pay for outpatient maintenance dialysis services under a prospective payment system that promotes home dialysis. This payment system must either pay for home dialysis under composite rates (that is, the same rate is paid for dialysis at home as in a dialysis facility) or use some other method that, after detailed analysis, is determined to be more efficient and promote home dialysis more effectively.

On February 12, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 6556) that proposed a prospective, composite rate payment system for outpatient maintenance dialysis that would implement section 1881(b) of the Act. Under that proposal, each facility was to receive a certain payment rate per treatment, adjusted for geographic wage differences, regardless of whether the treatment was furnished in the facility or at the patient's home. We proposed to set separate rates for hospital-based and for independent dialysis facilities.

On May 11, 1983, we published a final rule (48 FR 21254) that changed some of the elements of the February 12, 1982 proposed rule and that incorporated updated information on geographic wage differences. As a result, the average payment rates were projected to be $126.59 per treatment for independent facilities and $130.59 per treatment for hospital-based facilities. These average payment rates were calculated based on the overall effect of the geographic wage indexes in the per-treatment base rates of $122.91 for independent facilities and $126.76 for hospital-based facilities.

The regulation on payment for outpatient maintenance dialysis treatments is located at 42 CFR 405.439. This regulation does not include actual payment rates but does set forth the procedure for promulgating rates. Under § 405.439(i)(2), a notice must be published in the **Federal Register** (with opportunity for prior public comment) when payment rates are changed as a result of a change in the methodology for setting the rates. Since we are proposing to change the methodolgy for setting the rates, we are publishing a proposed notice.

The final rule published May 11, 1983, provided for a transition period during which no facility's payment rate could exceed $130 per treatment, and no facility's payment rate could be calculated using a wage index of less than 0.9. We propose to extend the application of these maximum and minimum rate limitations indefinitely.

II. Proposed Changes

This proposed notice would provide for the following:

- In determining the composite rate, the facilities' median costs would be weighted by the number of *treatments* in each stratum (a statistical grouping of facilities based on the number of dialysis stations in each facility) rather than weighting by the number of *facilities* in each stratum.
- We would update the composite rates for independent and hospital-based facilities using the most recent audit data on the costs of infacility and home dialysis and the most recent average national percentages of home dialysis patients.
- We would use the HCFA gross hospital wage index described in the prospective payment system regulation published in the September 3, 1985 **Federal Register** (50 FR 35661) to replace the urban and rural wage indexes that were published in the May 11, 1983 final rule.

As a result of publishing this notice in final, the revised base composite rates for outpatient maintenance dialysis would be calculated to be $113.47 for independent facilities, and $117.89 for hospital-based facilities. Wage indexes would be applied to these base rates, resulting in estimated average payment rates of $115.40 for independent facilities and $119.70 for hospital-based facilities.

We are also considering changes to other parts of the rate-setting methodology, and we are solicting public comment on the factors listed below. None of the changes listed has been employed in computing the rates shown above. However, if any or all of these changes were implemented, they would lower the rates shown.

- *The 105 percent multiplier for setting the hospital-based facility rate.* Currently, the hospital rate is set in part by multiplying the median cost of furnishing dialysis for all facilities by 105 percent. Originally, this multiplier accommodated the possibility that our methodology might have failed to recognize legitimate hospital costs and the fact that deviciencies in our data would have affected hospital-based facilities more than independents. We invite comments on whether these or other considerations warrant continuation of the use of the 105 percent multiplier for hospital-based facilities.
- *Percentage of home patients.* Currently, the rate is set by weighting the costs of home dialysis by the national percentage of home dialysis patients in independent and hospital-based facilities, respectively. Because the cost of home dialysis is lower than that of infacility dialysis, the higher the percentage of home patients, the lower the overall rate. Originally, we did not include any projections of data in the rate-setting methodology. However, we are now considering the possibility of trending our current data forward into 1986 and using these projected percentages to set the rates. We specifically request comments on this proposal.
- *Hospital overhead add-on factor.* Currently, the independent facility rate is set based on the median costs of all facilities, including hospital-based facilities. The hospital-based facility rate is set in part by determining the difference between the median overhead costs of all facilities versus the median overhead costs of hospital-based facilities taken alone. This difference is then added to the median cost for all facilities and used to set the base rate for hospital-based facilities.

Using current data, the overhead factor would result in an add-on of $4.65 for the hospital rate. This figure is reflected in the rates shown above. We are considering, however, basing the independent facility rate on the overhead costs of only independent facilities and determining the overhead add-on by taking the difference between the median overhead cost of the independent facilities taken alone versus the median overhead cost of the hospital-based facilities taken alone. We are considering this change because we question whether it is appropriate to base the independent facility rate in part on overhead costs incurred by hospital-based facilities . Because independent facilities have lower overhead costs than hospital-based facilities, this change would have the effect of lowering the rate for independent facilities while leaving the hospital-

based facility rate constant. We specifically request comments on this proposal.

III. Revised Composite Rates Based on Facility Audits

This section contains a brief explanation of how the composite rates would be established and a discussion of the revised rates for independent and hospital-based facilities based on audits of facilities' costs. (The audit data are available for public review upon request from the contact person listed above.)

A. Methodology for Ratesetting

1. Computation of Rates in 1983.

The methodology published in the final rule on May 11, 1983 provided separate rates for hospital-based and independent facilities. The rates were based on a national audit conducted in 1981 and were computed by taking the median labor and nonlabor costs for infacility and home dialysis treatments and then weighting these costs by the precentage of patients dialyzing at each location. The rates for independent facilities were based on the median costs of all facilities adjusted by the national average percentage of home dialysis patients served by independent facilities. The rates for hospital-based facilities were based on the median labor and nonlabor costs of all facilities adjusted by the national average percentage of home dialysis patients served by hospital-based facilities plus two additional amounts: a differential for the increased overhead incurred by hospital-based facilities ($2.10) and an overall addition of five percent. We made the $2.10 adjustment in the initial rate calculation to accommodate the allocation of excess overhead costs to hospital-based outpatient dialysis units that may result from Medicare cost-finding and reporting procedures.

We used home patient percentages of 23.5 percent for hospitals and 10.5 percent for independent facilities to construct the composite rates.

We did not make any adjustment in the case of the independent facilities but rather used the median cost levels for all facilities. This amount was higher than the median for independent facilities alone. (The median cost for all facilities combined was about $129 per treatment, compared to $107 for the independent facilities alone.)

2. Proposed Change to Methodology

The only change from the methodology published in the May 11, 1983 **Federal Register** would be that we would weight the median labor and nonlabor cost per treatment for each stratum by the number of treatments furnished by the facilities in that stratum. We would weight by treatments because this is a more accurate measure of the median cost per dialysis treatment. The previous methodology measured the median cost per facility, rather than the median cost per dialysis treatment. We would continue to set the rate for hospital-based facilities at 105 percent of the median costs for all facilities. However, this policy will be specifically considered again when any further modifications to the rate or rate methodology are considered. It is appropriate to use an adjustment for hospital-based facilities and not for independent facilities because hospitals incur higher costs, whereas most independent facilities incur costs below the payment rate we propose to set. We would also continue to add an amount to the nonlabor portion of the hospitals' infacility costs, which our audit data revealed as the difference between the median overhead costs of hospitals alone and the median of the combined sample of hospitals and independent facilities.

The 1983 audits, discussed below, confirm the results of earlier audits in showing that the costs of the overall dialysis service have not followed general inflation. Furthermore, the prospective composite rate system is intended to emphasize future incentives rather than past or present costs. Taking into account estimated adjustments for disallowances normally associated with auditing, unaudited cost data for 1984 reported the same independent facilities that were in the 1983 national audit, indicate that costs are continuing to decline. Accordingly, the proposed rate-setting methodology does not include a specific inflation factor.

The fact that the number of dialysis facilities continues to increase supports this policy. There were 606 facilities when the program began on July 1, 1973. Since May 11, 1983, the date we published final regulations for the ESRD composite rate, there have been 177 new facilities. Currently, there are 1,380 certified renal facilities that furnish outpatient maintenance dialysis. We can infer from this growth that the composite rate payment system has not discouraged the entry of new providers of dialysis services. Moreover, the composite rate structure continues to offer incentives to transfer appropriate patients to less costly home dialysis and to implement other cost-saving efficiencies.

B. Sample Design and Audit

1. Sample Design

In selecting the ESRD facilities to be audited, two separate audit samples were used. For infacility outpatient maintenance dialysis costs, the facilities to be audited were scientifically selected from a list of facilities certified to furnish outpatient maintenance dialysis services. We then separated the facilities into two groups: hospital-based and independent. Within each group, three strata were formed using the number of certified dialysis stations as the boundaries. Twenty-one facilities were then selected from each of the six strata for a total sample size of 126 facilities.

For home dialysis costs, we selected all facilities that had target rate reimbursement agreements for their home dialysis services and that furnished dialysis to at least five home patients. There were 15 of these facilities and none of them were part of the 126 facilities selected for the audit of infacility dialysis costs. Only those 15 facilities have incurred costs for the total scope of home dialysis items and services covered by the composite rate.

In total, 143 facilities were to be audited. In revising the composite rate payment, we only used the audited cost data of 132 ESRD facilities. The reasons for the difference are—

- Four hospitals provided inpatient dialysis treatment only;
- Two facilities had no available records;
- Two facilities treated less than the equivalent of one patient per year;
- Two facilities had no home dialysis costs; and
- One facility was terminated from the program.

2. Audits

The audits were conducted in the fall of 1983. In most cases, the designated Medicare intermediary for the ESRD either directly performed the audit or was responsible for subcontracting the audit. The Office of the Inspector General (OIG) audited four ESRD facilities and the home office of a chain of independent facilities. Intermediaries were instructed to examine the most recenty filed ESRD facility cost report. In the majority of cases, intermediaries examined the sampled ESRD facilities' cost reports for fiscal years ending between July 31, 1982 and June 30, 1983. This tied the audit of hospitals' base periods (required for the implementation of Medicare's prospective payment system) to the audit of their dialysis costs, thereby substantiating that the

costs allocated to the renal department of the hospital were correct.

We determined reasonable costs of the audited facilities in accordance with the principles of reimbursement as described in § 405.441.

The audits resulted in net adjustments to independent facilities' costs that reduced their reported outpatient maintenance dialysis cost by 17.7 percent as compared to a net reduction of 15 percent under the 1981 audits used in setting the composite rates published May 11, 1983. After adjustments, the median independent cost per treatment was approximately $104. Independent ESRD facilities' audited costs per treatment ranged from a low of $74 to a high of $188.

Audit adjustments made to hospital-based facilities resulted in net adjustments that reduced hospital costs by 3.9 percent, 0.9 percent more than those costs had been reduced under the 1981 audits. The median hospital audited cost per treatment was approximately $141, with a low of $89 and a high of $261.

The audits of home dialysis services showed that the average cost per treatment for home dialysis had dropped from $97 per treatment in the 1981 audits to $85 per treatment in 1983.

After the audits were completed, we performed the following steps on the data.

- We organized the data by the sample strata, as described above in section II. B. 1.
- From each facility's audited total outpatient maintenance dialysis costs, we—

—Verified that all physicians' direct patient care services were eliminated from reported costs; and

—Eliminated any excessive compensation paid to an administrator or to a medical director.

- For each facility that did not report laboratory costs (for example, where laboratory services were reimbursed directly through an independent laboratory and not through the facility), we added an adjustment amount to represent the cost of routine ESRD laboratory tests.
- For each facility, we divided the resulting net total outpatient dialysis costs by the corresponding number of outpatient maintenance dialysis treatments. This gave us a net total cost per treatment (CPT) for each facility.
- We divided each facility's net total cost per treatment into a labor and a nonlabor component.
- To adjust for geographic wage differences, we divided each facility's labor CPT by the appropriate value from the HCFA gross hospital wage index.
- For each stratum, we computed the median labor and nonlabor cost per treatment.
- We then multiplied the respective median values by the total number of treatments furnished by all facilities within each stratum.
- We summed the above results for the labor and the nonlabor cost components and for the number of treatments. We then divided the labor and the nonlabor components by the total number of treatments to arrive at the median outpatient treatment cost.

3. Audit Results

Applying the principles described above to the data from our audits of facility and home dialysis costs resulted in the following figures:

MEDIAN COSTS PER TREATMENT

Location of dialysis	Adjusted labor	Non-labor	Total
All Facilities	$53.17	$64.70	$117.87
Independents	42.77	60.84	103.61
Hospitals	70.67	70.96	141.63
Home	17.25	67.99	85.24
Overhead cost differential of hospitals over all facilities			4.05

C. Revised Home Treatment Percentage

Based on the December 31, 1984 facility survey data from HCFA's ESRD Medical Information System, the location of dialysis patients is as follows:

LOCATION OF PATIENTS (PERCENT)

Type of facility	Home	In facility
Independent	13.5	86.5
Hospital-based	27.5	72.5

If updated information from the December 31, 1985 facility survey is available when we develop the final notice, we will consider using the more recent data in the final notice.

D. Calculation of Rates

1. Deriving the Independent Base Rate Components

- We would compute the nonlabor composite cost component by mutiplying the nonlabor cost per treatment for all facilities by the national percentage of independent facility patients dialyzing on an outpatient basis in the facility (86.5 percent), and adding the result to the product of the median nonlabor cost of home dialysis and the national percentage of independent facility patients dialyzing at home (13.5 percent).

($64.70×.865)+($67.99×.135)=$65.15

- We would compute the labor composite cost component by multiplying the adjusted labor costs for all facilities by the national percentage of independent facility patients dialyzing on an outpatient basis in the facility (86.5 percent), and adding the result to the product of the median adjusted labor cost of home dialysis and the national percentage of independent facility patients dialyzing at home (13.5 percent).

($53.17×.865)+($17.25×.135)=$48.32

Therefore, the base rate components for indpendent facilities would be as follows:

Labor Component.....$48.32
Nonlabor Component.....$65.15

2: Deriving the Hospital-Based Facility Rates

- We would compute the nonlabor composite cost component in several steps. First, we would add the hospital overhead cost differential to the nonlabor cost per treatment for all facilities. We then would multiply this by 1.05 (105 percent) and by the national percentage of hospital-based facility patients who dialyze in the facility (72.5 percent). We would add the result to the product of the nonlabor cost per treatment of home dialysis multiplied by 1.05 and by the national percentage of hospital-based facility patients who dialyze at home (27.5 percent).

(($4.05+$64.70)×1.05×.725)+
($67.99×1.05×.275)=$72.43

- We would compute the labor composite cost component by multiplying the adjusted labor cost per treatment for all facilities by 1.05 (105 percent) and by the national percentage of hospital-based facility patients who dialyze in the facility (72.5 percent), and adding the result to the product of the labor cost per treatment of home dialysis multiplied by 1.05 and by the national percentage of hospital-based facility patients who dialyze at home (27.5 percent).

($53.17×1.05×.725)+($17.25×1.05×.275)=
$45.46

Therefore, the base rate components for hospital-based facilities would be as follows:

Labor Component.....$45.46
Nonlabor Component.....$72.43

3. Prospective Payment Rates

As described above, we would derive the basic components from which individual facilities' rates would be computed.

BASE RATES

Facilities	Components		Total base rate
	Labor	Nonlabor	
Independent	$48.32	[illegible]	$113.47
Hospital-based	45.46	72.43	[illegible]

To compute an individual facility's composite rate, we would multiply the labor component for the type of facility (independent or hospital-based, as the case may be) by the HCFA gross hospital wage index value that applies in the area where the facility is located (see section IV below). We would add the result to the corresponding nonlabor base component and derive the facility's rate. We propose to continue the upper payment level of $138 and the lower payment level such that no facility's payment rate would be calculated using a wage index value of less than 0.9.

Since the actual payment for each facility would be calculated by adjusting the labor component of the base rate by the appropriate wage index value, the actual average payment ($115.49 for independent facilities and $119.70 for hospitals) would be higher than the base rate, because most ESRD facilities are located, and most treatments are furnished, in areas that have a wage index value greater than one.

IV. Other Information

The policies regarding payment for peritoneal dialysis, self-care training, and home dialysis would remain the same as they were published in the final rule on May 11, 1983 (48 FR 21254). Below is a brief summary of those provisions.

A. Prospective Payment Rates for Peritoneal Dialysis

1. Intermittent Peritoneal Dialysis (IPD)

In the May 11, 1983 final rule (48 FR 21272), we established an equivalency rate for IPD. IPD sessions of 30 hours or more duration furnished once per week are paid for at a rate equivalent to three times the facility's composite rate per hemodialysis treatment. IPD sessions of 20 hours or more, but less than 30 hours in duration, furnished twice per week, are paid at a rate equivalent to one and one-half times the facility's composite rate per hemodialysis treatment. IPD sessions of less than 20 hours duration are paid at the same rate as the facility's composite rate per hemodialysis treatment. The above IPD rates are established exclusive of any exception amounts that may have been granted to the facility for hemodialysis.

2. Continuous Ambulatory Peritoneal Dialysis (CAPD) and Continuous Cycling Peritoneal Dialysis (CCPD)

In the May 11, 1983 final rule, we established equivalency rates for CAPD and CCPD (48 FR 21272). CAPD is furnished on a continuous basis, not in discrete sessions, and therefore, we cannot pay on a per session basis. We will pay for CAPD on a weekly basis, setting the weekly payment rate for CAPD at three times the per treatment composite payment rate (corresponding to the usual hemodialysis schedule of three sessions per week), for the ESRD facility through which monitoring and support services are furnished. We will pay for CCPD and similar techniques on the same basis.

B. Rates for Self-Care Dialysis Training

Self-care dialysis training is a program that trains ESRD patients to perform dialysis in the facility or in the home with little or no professional assistance, and trains other individuals to assist patients in performing dialysis. In the May 11, 1983 final rule, we established a rate for each self-dialysis and home dialysis training session (except for CAPD) at the amount equal to the facility's composite rate for outpatient maintenance hemodialysis (excluding any exception amounts) plus an additional $20 per session. CAPD training sessions are paid at a rate equal to the facility's outpatient maintenance hemodialysis composite rate plus an additional $12 per session. We will continue to review data contained in ESRD facilities' cost exports and requests for exceptions to determine whether these amounts should be changed.

C. Home Dialysis

1. Reimbursement Options for Home Dialysis

Home dialysis patients have a choice of two methods of payment for their home dialysis. They may choose to have the facility receive the same composite rate per treatment as it receives for its infacility dialysis treatments, or they may choose to bill directly for the costs of supplies and equipment. Composite rate payment (to a facility) is known as "Method I", and direct payment is known as "Method II". Currently, 82 percent of the program's home dialysis patients have chosen Method I, and 18 percent have chosen Method II.

2. Rate Adjustment for Home Dialysis Equipment Purchased Under a 100 Percent Reimbursement Agreement

Prior to August 1, 1983 (the effective date of the May 11, 1983 final rule), home dialysis equipment could be paid for at full cost (that is, without regard to the usual Medicare Part B deductible and coinsurance amounts) under a 100 percent reimbursement agreement (see §§ 405.438 and 405.690). In the May 11, 1983 final rule, we eliminated this provision for equipment furnished under the agreement after July 31, 1983. To account for equipment furnished under the agreement prior to August 1, 1983, we reduce the composite rate payment for home dialysis treatments furnished to any home dialysis patient using the equipment by $12 per treatment.

V. Revised Urban and Rural Wage Indexes

The ESRD final rule published on May 11, 1983 (48 FR 21254) set forth urban and rural wage indexes that were developed using data from the Bureau of Labor Statistics. On September 3, 1985, we published a final rule (50 FR 35661) that modified the Medicare inpatient hospital prospective payment system and included the HCFA gross hospital wage index. We developed the HCFA gross hospital wage index from a special survey of acute care hospitals subject to the prospective payment system. The HCFA gross hospital wage index was designed to correct the inability of the previous Bureau of Labor Statistics measures to account for local differences in part-time hospital employment. Because this is a more accurate measure of local wage variations than the previous BLS wage index, and because independent facilities are in competition with hospitals for the same dialysis personnel, we are also applying the HCFA gross hospital wage index to independent dialysis facilities.

We propose to use the HCFA gross hospital wage index to compute individual facilities' composite rates. However, the gross wage index value of .8198 that was published September 3, 1985 for the Lynchburg, Virginia MSA is incorrect. Although the gross wage index values were to have been developed exclusively from records from short-term acute care hospitals, we have discovered that the published Lynchburg MSA wage index was inappropriately derived from survey records that included data from a State Mental health hospital with an acute care subunit and skilled nursing facility. As this provider should have been excluded from the wage index survey data base, we have recalculated the Lynchburg, Virginia MSA gross wage index to reflect the correct figures. The corrected gross wage index value is .9148.

The HCFA gross hospital wage index reflects the latest Metropolitan Statistical Areas designated by the Executive Office of Management and Budget including the changes that were announced on June 27, 1985 and were effective June 30, 1985. A discussion of the legislative background and development of the HCFA gross hospital wage index can be found in the preamble to the September 3, 1985 final rule (50 FR 35661). We are reprinting the index below for the convenience of the reader.

WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene TX	.8937
Taylor, TX	
Akron, OH	1.1000
Portage, OH	
Summit, OH	
Albany, GA	.8124
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9278
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0998
Bernalillo, NM	
Alexandria, LA	.9102
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0379
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9950
Blair, PA	
Amarillo, TX	.9526
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2528
Orange, CA	
Anchorage, AK	1.5735
Anchorage, AK	
Anderson, IN	.9185
Madison, IN	
Anderson, SC	.8309
Anderson, SC	
Ann Arbor, MI	1.2515
Washtenaw, MI	
Anniston, AL	.8457
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0671
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Asheville, NC	.8780
Buncombe, NC	
Athens, GA	.8120
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9594
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0489
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9533
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0936
Kane, IL	
Kendall, IL	
Austin, TX	1.1096
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1972
Kern, CA	
Baltimore, MD	1.1069
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9135
Penobscot, ME	
Baton Rouge, LA	.9754
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0228
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0009
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0840
Beaver, PA	
Bellingham, WA	1.1368
Whatcom, WA	
Benton Harbor, MI	.8847
Berrien, MI	
Bergen-Passaic, NJ	1.0670
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0152
Yellowstone, MT	
Biloxi-Gulfport, MS	.8428
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9489
Broome, NY	
Tioga, NY	
Birmingham, AL	.9594
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9871
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9626
Monroe, IN	
Bloomington-Normal, IL	9773
McLean, IL	
Boise City, ID	1.0506
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1485
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.1244
Boulder, CO	
Bradenton, FL	.9129
Manatee, FL	
Brazoria, TX	.8679
Brazoria, TX	
Bremerton, WA	.9742
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1760
Fairfield, CT	
Brownsville-Harlingen, TX	.8912
Cameron,TX	
Bryan-College Station, TX	.9500
Brazos, TX	
Buffalo, NY	1.0474
Erie, NY	
Burlington, NC	.7868
Alamance, NC	
Burlington, VT	1.0058
Chittenden, VT	
Grand Isle, VT	
Canton, OH	1.0007
Carroll, OH	
Stark, OH	
Casper, WY	1.0984
Natrona, WY	
Cedar Rapids, IA	1.0101
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9893
Champaign, IL	
Charleston, SC	.8847
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0406
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8926
Cabarrus, NC	
Gaston, NC	

WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9278
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9668
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9631
Laramie, WY	
Chicago, IL	1.2299
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2370
Butte, CA	
Cincinnati, OH-KY-IN	1.0970
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8124
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1481
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0363
El Paso, CO	
Columbia, MO	1.0942
Boone, MO	
Columbia, SC	.9102
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7672
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9614
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.8627
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8931
Allegeny, MD	
Mineral, WV	
Dallas, TX	1.0656
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8028
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.0583
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0860
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9073
Volusia, FL	
Decatur, IL	.9523
Macon, IL	
Denver, CO	1.2772
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0480
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1640
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8396
Dale, AL	
Houston, AL	
Dubuque, IA	1.0514
Dubuque, IA	
Duluth, MN-WI	.9658
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9429
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9369
El Paso, TX	
Elkhart-Goshen, IN	.9581
Elkhart, IN	
Elmira, NY	.9670
Chemung, NY	
Enid, OK	.9557
Garfield, OK	
Erie, PA	.9919
Erie, PA	
Eugene-Springfield, OR	1.1082
Lane, OR	
Evansville, IN-KY	1.0143
Posey, IN	
Vanderburgh, IN	
Warwick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0567
Clay, MN	
Cass, ND	
Fayetteville, NC	.8270
Cumberland, NC	
Fayetteville-Springdale, AR	.8020
Washington, AR	
FLint, MI	1.2016
Genesee, MI	
Florence, AL	.7832
Colbert, AL	
Lauderdale, AL	
FLorence, SC	.7631
FLorence, SC	
Fort Collins-Loveland, CO	1.0768
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1168
Broward, FL	
Fort Myers-Cape Coral, FL	.9464
Lee, FL	
Fort Pierce, FL	1.0141
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9176
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8688
Okaloosa, FL	
Fort Wayne, IN	.9499
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9926
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1407
Fresno, CA	
Gadsden, AL	.8713
Etowah, AL	
Gainesville, FL	.9572
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1329
Galveston, TX	
Gary-Hammond, IN	1.0899
Lake, IN	
Porter, IN	
Glens Falls, NY	.9538
Warren, NY	
Washington, NY	
Grand Forks, ND	.9800
Grand Forks, ND	
Grand Rapids, MI	1.0586
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0644
Cascade, MT	
Greeley, CO	1.0685
Weld, CO	
Green Bay, WI	1.0252
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9320
Davidson, NC	
Davie, NC	
Forsyth, NC	

WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9064
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9516
Washington, MD	
Hamilton-Middletown, OH	1.0140
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9796
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-New Britain-Middletown-Bristol, CT	1.1379
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8917
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1935
Honolulu, HI	
Houma-Thibodaux, LA	.9162
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0591
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9441
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8599
Madison, AL	
Indianapolis, IN	1.0517
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.2980
Johnson, IA	
Jackson, MI	1.0132
Jackson, MI	
Jackson, MS	.9279
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7859
Madison, TN	
Jacksonville, FL	.9412
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7906
Onslow, NC	
Janesville-Beloit, WI	.9353
Rock, WI	
Jersey City, NJ	1.0529
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8555
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9457
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1172
Grundy, IL	
Will, IL	
Joplin, MO	.9136
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2252
Kalamazoo, MI	
Kankakee, IL	.9441
Kankakee, IL	
Kansas City, KS-MO	1.0583
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0796
Kenosha, WI	
Killeen-Temple, TX	.8765
Bell, TX	
Coryell, TX	
Knoxville, TN	.8931
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9799
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0093
LaCrosse, WI	
Lafayette, LA	1.0041
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9097
Tippecanoe, IN	
Lake Charles, LA	.9964
Calcasieu, LA	
Lake County, IL	1.1552
Lake, IL	
Lakeland-Winter Haven, FL	.8787
Polk, FL	
Lancaster, PA	1.0320
Lancaster, PA	
Lansing-East Lansing, MI	1.0692
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8104
Webb, TX	
Las Cruces, NM	.8703
Dona Ana, NM	
Las Vegas, NV	1.1173
Clark, NV	
Lawrence, KS	1.0106
Douglas, KS	
Lawton, OK	.9400
Comanche, OK	
Lewiston-Auburn, ME	.9357
Androscoggin, ME	
Lexington-Fayette, KY	.9602
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9795
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9640
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1355
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8349
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0205
Lorain, OH	
Los Angeles-Long Beach, CA	1.3193
Los Angeles, CA	
Louisville, KY-IN	1.0009
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0055
Lubbock, TX	
Lynchburg, VA	.9148
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9257
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0623
Dane, WI	

WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Manchester-Nashua, NH	.9508
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9847
Richland, OH	
McAllen-Edinburg-Mission, TX	.8046
Hidalgo, TX	
Medford, OR	1.0281
Jackson, OR	
Melbourne-Titusville, FL	.9310
Brevard, FL	
Memphis, TN-AR-MS	1.0418
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.0625
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0274
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1223
Midland, TX	
Milwaukee, WI	1.1329
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1687
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8863
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2015
Stanislaus, CA	
Monmouth-Ocean, NJ	.9853
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9275
Ouachita, LA	
Montgomery, AL	.8812
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.0903
Delaware, IN	
Muskegon, MI	.9840
Muskegon, MI	
Naples, FL	1.0373
Collier, FL	
Nashville, TN	.9346
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Ruthford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3278
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9725
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.1194
New Haven, CT	
New London-Norwich, CT	1.1023
New London, CT	
New Orleans, LA	.9277
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3710
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1321
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8894
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9622
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4793
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8672
Marion, FL	
Odessa, TX	.9550
Ector, TX	
Oklahoma City, OK	1.0851
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0709
Thurston, WA	
Omaha, NE-IA	1.0433
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9232
Orange, NY	
Orlando, FL	1.0115
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8184
Daviess, KY	
Oxnard-Ventura, CA	1.2807
Ventura, CA	
Panama City, FL	.8293
Bay, FL	
Parkersburg-Marietta, WV-OH	.9055
Washington, OH	
Wood, WV	
Pascagoula, MS	.9608
Jackson, MS	
Pensacola, FL	.8679
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0508
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1789
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0723
Maricopa, AZ	
Pine Bluff, AR	.7952
Jefferson, AR	
Pittsburgh, PA	1.0832
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0172
Berkshire, MA	
Portland, ME	.9808
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1987
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9305
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0174
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0426
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	

WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, RI	
Provo-Orem, UT	.9786
Utah, UT	
Pueblo, CO	1.1129
Pueblo, CO	
Racine, WI	.9930
Racine, WI	
Raleigh-Durham, NC	.9650
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9554
Pennington, SD	
Reading, PA	1.0174
Berks, PA	
Redding, CA	1.2306
Shasta, CA	
Reno, NV	1.1753
Washoe, NV	
Richland-Kennewick, WA	1.0182
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9529
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2426
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8832
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0210
Olmsted, MN	
Rochester, NY	1.0152
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1272
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2875
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0990
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9945
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9418
Buchanan, MO	
St. Louis, MO-IL	1.0748
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0892
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2480
Monterey, CA	
Salt Lake City-Ogden, UT	1.0279
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8656
Tom Green, TX	
San Antonio, TX	.8878
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.3009
San Diego, CA	
San Francisco, CA	1.6380
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4698
Santa Clara, CA	
Santa Barbara-Santa Maria-Lompoc, CA	1.1749
Santa Barbara, CA	
Santa Cruz, CA	1.2343
Santa Cruz, CA	
Santa Fe, NM	.9738
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3017
Sonoma, CA	
Sarasota, FL	.9569
Sarasota, FL	
Savannah, GA	.8853
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9910
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1495
King, WA	
Snohomish, WA	
Sharon, PA	.9667
Mercer, PA	
Sheboygan, WI	.9813
Sheboygan, WI	
Sherman-Denison, TX	.8557
Grayson, TX	
Shreveport, LA	.9543
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9989
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.0137
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0014
St. Joseph, IN	
Spokane, WA	1.1475
Spokane, WA	
Springfield, IL	1.0587
Menard, IL	
Sangamon, IL	
Springfield, MO	.9792
Christian, MO	
Greene, MO	
Springfield, MA	.9968
Hampden, MA	
Hampshire, MA	
State College, PA	1.0694
Centre, PA	
Steubenville-Weirton, OH-WV	.9585
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2778
San Joaquin, CA	
Syracuse, NY	1.0389
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0972
Pierce, WA	
Tallahassee, FL	.9441
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9759
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8395
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8588
Miller, AR	
Bowie, TX	
Toledo, OH	1.2178
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0555
Shawnee, KS	
Trenton, NJ	1.0242
Mercer, NJ	
Tucson, AZ	1.0017
Pima, AZ	
Tulsa, OK	1.0058
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0099
Tuscaloosa, AL	
Tyler, TX	.9963

WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Smith, TX	
Utica-Rome, NY	.8667
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.0300
Napa, CA	
Solano, CA	
Vancouver, WA	1.1574
Clark, WA	
Victoria, TX	.8145
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9858
Cumberland, NJ	
Visalia-Tulare-Portesville, CA	1.0586
Tulare, CA	
Waco, TX	.8051
McLennan, TX	
Washington, D.C.-MD-VA	1.1878
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9920
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9800
Marathon, WI	
West Palm Beach-Boca Raton-Delary Beach, FL	.9900
Palm Beach, FL	
Wheeling, WV-OH	.9700
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1508
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8712
Wichita, TX	
Williamsport, PA	.8983
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0511
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9522
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9961
Worcester, MA	
Yakima, WA	1.0314
Yakima, WA	
York, PA	.8782
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0404
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0385
Sutter, CA	
Yuba, CA	

WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7412
Alaska	1.4880
Arizona	.9255
Arkansas	.7647
California	1.1374
Colorado	.9258
Connecticut	1.0384
Delaware	.8582
Florida	.8751
Georgia	.7723
Hawaii	1.0084
Idaho	.9064
Illinois	.9726
Indiana	.8622
Iowa	.8656
Kansas	.8419
Kentucky	.7978
Louisiana	.8543
Maine	.8585
Maryland	.8710
Massachusetts	1.0516
Michigan	.9520
Minnesota	.8725
Mississippi	.7650
Missouri	.8265
Montana	.9087
Nebraska	.8250
Nevada	1.0721
New Hampshire	.9185
New Jersey[1]	
New Mexico	.9146
New York	.8766
North Carolina	.8071
North Dakota	.8995
Ohio	.9034
Oklahoma	.8401
Oregon	1.0704
Pennsylvania	.9359
Rhode Island [1]	
South Carolina	.7770
South Dakota	.8203
Tennessee	.7677
Texas	.8121
Utah	.9496
Vermont	.8824
Virginia	.8167
Washington	1.0199
West Virginia	.8752
Wisconsin	.8929
Wyoming	.9674

[1] All counties within the State are classified urban.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to publish an initial regulatory impact analysis for proposed regulations that are likely to meet the criteria for a major rule. A major rule is one that would result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that changing the rate-setting methodology and revising composite rates would reduce payments for outpatient maintenance dialysis services by approximately $105 million dollars in the first full fiscal year of implementation. This would significantly reduce gross revenues for ESRD dialysis facilities. Since the impact of this proposed notice would exceed the $100 million threshold, it is a major rule under E.O. 12291, and an initial regulatory impact analysis is required.

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed notices unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all ESRD facilities to be small entities. The changes contained in this proposed notice would result in a significant economic impact on all ESRD facilities. Therefore, we are providing a regulatory flexibility analysis.

The discussion below, in combination with the other sections of this notice, constitutes a combined initial regulatory impact analysis and initial regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Affected Entities.

There are 1,380 ESRD facilities throughout the country providing outpatient maintenance dialysis services. These facilities are largely dependent on Federal government payments for their existence. Over 90 pecent of all outpatients maintenance dialysis patients are Medicare beneficiaries. The Medicare program pays 80 percent of the composite

payment rate for outpatient dialysis for these patients. Additional Federal money is infused into the ESRD industy through the State Medicaid programs. Most of the State Medicaid programs pay the remaining 20 percent of the facility cost or charge not paid by Medicare for those patients who are Medicaid recipients.

C. Effects of These Revised Rates

When we published proposed and final regulations establishing the ESRD composite rate payments system, we stated that we expected the system to accomplish two major objectives which, though not without effects that may seem adverse to some parties, would be of sufficient benefit to offset greatly any costs that resulted. These objectives are (1) to encourage home dialysis to the greatest extent feasible for the ESRD patient population, and (2) to encourage economy and efficiency in furnishing dialysis services. These objectives are closely related, since we expect increasing home dialysis to contribute to cost reduction because it is a less expensive way to deliver treatment. As we stated in the May 11, 1983 final rule, facilities must comply with the health and safety requirements of 42 CFR Subpart U, and we expect those requirements to continue to prove satisfactory to ensure the adequacy of patient care. We also stated our expectation that tightening the rate of payment and increasing the incentives for efficiency would result in pressures on the ESRD manufacturers and suppliers of equipment and supplies to ESRD facilities to lower their prices as ESRD facilities economized and sought to lower their cost.

Some commenters on the proposed rule expressed concern that facility closures would leave them effectively unable to choose infacility dialysis because of increased travel time to the nearest facility. The continuing increase in facilities, even since the announcement of our proposed composite rates in November 1981, but particularly since the final rules took effect on August 1, 1983, confirms our belief that facilities are able to operate under the composite rate system. The following chart shows recent growth in the number of facilities.

NUMBERS OF OUTPATIENT ESRD FACILITIES

Calendar year	Hospital dialysis providers	Independent dialysis providers	Total providers
Dec. 1978	623	275	898
Dec. 1979	630	329	959
Dec. 1980	636	405	1041

NUMBERS OF OUTPATIENT ESRD FACILITIES—Continued

Calendar year	Hospital dialysis providers	Independent dialysis providers	Total providers
Dec. 1981	657	486	1143
Dec. 1982	642	528	1170
Dec. 1983	620	627	1247
Dec. 1984	622	668	1290
Dec. 1985	632	748	1380

The great fears expressed by some facilities, physicians and patients in response to the initial proposal of the composite rate system have not materialized. In addition, the proportion of patients receiving dialysis at home has increased, particularly for independent facilities. Thus, our experience to date supports our earlier expectations.

We believe that setting revised rates on the basis of the most recent available audit data and a slightly revised methodology is the best way to continue to pursue those objectives at this time. These changes would have a significant effect on annual payments for routine dialysis, as demonstrated by the following:

ESTIMATED REDUCTIONS IN MEDICARE PAYMENTS TO OUTPATIENT ESRD FACILITIES (IN MILLIONS)[1]

Fiscal year	Reduction in coinsurance	Medicare savings	Total reduction in payments
1986 (2 months)	$5	$30	$20
1987	25	115	140
1988	30	120	150
1989	30	125	155
1990	30	130	160
1991	35	135	170

[1]Due to rounding, addition may appear inexact. These estimates are rounded to the nearest $5 million, and are based on an assumed effective date of August 1, 1986.

In addition, because most State Medicaid programs pay coinsurance for ESRD beneficiaries who meet their eligibility requirements, some Medicaid savings would result from this change.

We expect these reduced revenues would intensify the incentives for ESRD facilities to improve their economy and efficiency and to shift as many patients to home dialysis as is safe and supportable. Our audits demonstrate that quality services are being furnished at a cost below the proposed rates at efficient and economical facilities. Hence, despite the estimated reductions in Medicare payments, we believe that quality of care will not be reduced.

Further, if a facility demonstrates with convincing evidence that it will have an allowable cost per treatment higher than its prospective rate, and if these excess costs meet the criteria in § 405.439(g), a facility may receive an exception to that rate. The exception process provides greater accuracy of payments in unique situations in which additional costs can be justified.

D. Effect of New Wage Index

Adopting the new HCFA wage index would affect the level of payment for a given facility if there were a significant change in the index value for the area. Some facilities would have a significantly higher wage index, while the wage index of other facilities would be lower. This effect would interact with the proposed reduction in the composite rates. Some facilities would have the reduction of their composite rates ameliorated by increases in their wage index values. On the other hand, some facilities would experience a further reduction in their rate due to a reduced wage index. This reduction in base composite rates combined with reduction in wage index values may, in some cases, result in a substantial reduction in a facility's payment per treatment. However, although some facilities will be disadvantaged by changes to the wage index, we believe the results would be generally equitable.

Compared to the BLS wage index used in the May 11, 1983 final rule, the adoption of the HCFA gross wage index would result in increased wage index values for 122 MSAs and 10 State-wide rural areas, and decreased values for 123 MSAs and 13 rural areas. Areas outside the 50 States and the District of Columbia would not be affected, because rates for ESRD facilities in all those areas are now, and will continue to be, calculated using the lower-limit wage index value of .9, which we have set as the lowest index we would use in this rate calculation.

We project that the wage index values would decrease for 613 ESRD facilities (including both hospital-based and independent facilities), increase for 556 facilities, and remain unchanged for 211 facilities. The resulting decreases in payment would average about $2.50 per treatment; increases would average about $2.20 per treatment. We estimate that the corresponding annual aggregate payment reduction for facilities with decreased index values would be about $10 million. The annual aggregate increase for facilities with increased

values would be about $7.5 million; thus, the net effect of the new wage index versus the present BLS wage index on total annual payments to ESRD facilities would be approximately a $2.5 million reduction.

E. Conclusion

We believe that the benefits of this proposed notice would outweigh the costs. Payments would more accurately reflect our experience, and result in a substantial cost savings to the Medicare program. Medicare beneficiaries would benefit from reduced coinsurance obligations. The revised rates would promote economic incentives and efficiencies and encourage additional appropriate dialysis in the home setting. Although the change in rate-setting methodology would result in a payment reduction, the proposed reduction based on the most recent available data, is reasonable and within our authority.

The proportion of patients receiving dialysis at home has increased, particularly for indpendent facilities. The cost of home dialysis has decreased. We expect these trends to continue. The fears expressed by some facilities, physicians and patients in response to the initial proposal of the composite rate system have not materialized as the number of ESRD facilities has continued to increase. We will continue to monitor the effects of composite rate reimbursement on beneficiaries' access to care and continued development of the ESRD industry.

VII. Collection of Information Requirements

These proposed changes would not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VIII. Response to Public Comments

Because of the large number of pieces of correspondence we normally receive on proposed documents, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final notice, we will respond to those comments in the preamble to that notice.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 5, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 2, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-10583 Filed 5-9-86; 9:20]

BILLING CODE 4120-01-M

National Institutes of Health

Biomedical Research Technology Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Health Research Extension Act of 1985, November 20, 1985 (Pub. L. 99-158, section 402(b)(6)), the Director, National Institutes of Health, announces the reestablishment of the Biomedical Research Technology Review Committee, formerly the Biotechnology Resources Review Committee, effective June 1, 1986, and the reestablishment, effective June 1, 1986, of the following committees:

Animal Resources Review Committee
Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke
Communicative Disorders Review Committee
General Clinical Research Centers Committee
General Research Support Review Committee
Neurological Disorders Program-Project Review A Committee
Neurological Disorders Program-Project Review B Committee

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: May 6, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86-10860 Filed 5-12-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Intent to Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Notice is hereby given in accordance with 40 CFR 1508.22 that the Safford District is starting the preparation of an EIS. The purpose of the EIS is to analyze the natural resource, social and economic effects of implementing a range of alternatives for various land uses on approximately 43,900 acres of public lands managed by the Bureau of Land Management in southeastern Arizona. The lands involved are located in Cochise County. Final acreages and boundaries will be determined at a later date.

SUPPLEMENTARY INFORMATION: Initial scoping was conducted by an interdisciplinary team from the District and at a series of public meetings in February 1986 and preliminary issues developed. Clarification of these issues and identification of additional ones will be sought from the public through letters, press releases, solicitations and public scoping meetings. The meetings are scheduled at the following locations:

Tuesday, June 10, 1986, Mesa Community Center, 201 N. Center Street, Mesa, Arizona

Wednesday, June 11, 1986, Smugglers Inn, 6350 E. Speedway Blvd., Tucson, Arizona

Thursday, June 12, 1986, City Council Chambers, City Hall, 2400 Tacoma Ave., Sierra Vista, Arizona

All meetings will begin at 7:00 p.m. Notices of all public meetings will be distributed to local media at least two weeks prior to the meetings.

Preliminary issues identified by BLM District staff and at the earlier public meetings are as follows:

- Maintenance and enchancement of water quality and quantity.
- Maintenance and enhancement of riparian vegetation.
- Recreational use and development.
- Protection of cultural and paleontological resources.
- Use of the property for livestock grazing.
- Use of the property for sand and gravel extraction.
- Fire management of the property.
- Present and future utility corridors.
- Controlling soil erosion.
- Use of the agricultural lands.

A full range of reasonable alternatives will be addressed in the EIS. They include: resource protection (minimum development); resoure utilization (maximum development); balanced use (moderate development); and no action (continue present management). An interdisciplinary team will evaluate the alternatives in the EIS.

The Draft EIS is scheduled for publication in November 1987. A notice

of availability will be published in the Federal Register and publicized through the media.

FOR FURTHER INFORMATION: All inquiries on the EIS should be directed to Jerrold Coolidge, EIS Team Leader, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, phone (602) 428–4040, (FTS) 702–6304.

Dated: May 5, 1986.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 86-10669 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-32-M

Portions of the Yuma District Resource Management Plan and Environmental Impact Statement; Yuma District, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public notice that the Arizona State director has approved, in a record of decision (ROD), portions of the resource management plan (RMP) for the Yuma District.

SUMMARY: With the exception of the Unique Natural Areas and Features sub-issue, the ROD has adopted the proposed plan that was presented in the final Environmental Impact Statement (EIS) for the Yuma District RMP.

The approved portions of the plan will be implemented and will guide future management on approximatley 1,192,000 acres of Federal lands along the lower Colorado River in southwestern Arizona and southeastern California. Counties within the planning area include Yuma, La Paz, and Mohave in Arizona and Riverside, San Bernardino, and Imperial in California.

Approval of the portion of the proposed plan that addresses Unique Natural Areas and Features has been withheld pending resolution of a protest. Once the protest is resolved this portion of the proposed plan will be approved and documented in a supplement to this Record of Decision.

EFFECTIVE DATE: May 1, 1986.

Availability

Copies of the Record of Decision will be sent to all individuals, agencies, and groups that received copies of the final EIS for the Yuma District RMP. In addition, a limited number of copies of the Record of Decision will be available upon request from the Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364. Public reading copies may be reviewed at the following locations:

BLM, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85014, (602) 241–5504;

BLM, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855–8017

Public Participation

The pulic was invited to participate in the RMP in issue identification and the development of planning criteria during a 90-day comment period allowed on the draft EIS and at public hearings held during the comment period. Five protests were received during the 30-day protest period allowed after publication of the final EIS. With the exception of the portion of one protest addressing the Unique Natural Areas and Features sub-issue, all of these protests have been resolved.

SUPPLEMENTARY INFORMATION: The approved portions of the RMP cover six public land management issues including: Wildlife habitat management, special management areas for protection of important cultural resources, grazing use of public lands, land ownership adjustments, location of rights-of-way for utility corridors and communication sites, and recreation use and management on public lands.

Six management alternatives for the issues were developed during the planning process and were anlayzed in the EIS. The alternatives were "No Action" (or continued implementation of current Management Framework Plans), an alternative directed toward resource production, an alternative directed toward balanced use with an emphasis on resource production, an alternative directed toward balanced use with an emphasis on resource protection, an alternative emphasizing resource protection, and the preferred alternative. The preferred alternative was selected for the proposed plan in the final EIS and (with the exception of the Unique Natural Areas and Features sub-issue) is the plan approved by this ROD.

The approved portions of the preferred alternative present a cost-effective plan that best responds to the issues in a multiple use/sustained yield framework. The approved portions provide for a variety of resource uses and protect the environment through mitigation of impacts. After implementation, other site-specific mitigation may be required to address impacts form specific land use proposals.

Progress toward accomplishing goals and objectives in the approved portions of the RMP will be monitored. The approved portions of the plan will be, maintained to keep them current, and may be amended or a new plan developed if management goals and objectives change.

Dated: May 5, 1986.

D. Dean Bibles,

Arizona State Director Bureau of Land Management.

[FR Doc. 86-10662 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-32-M

Realty Action, Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action CA 18784.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3s., R. 6E.,
Sec. 14: NW¼, S½.
T. 3S., R. 7E.,
Sec. 28: All south of Joshua Tree Nat'l Monument.
Sec. 34: All.
Containing approximately 1650 acres of public land.

The legal description and acreage of the above public lands may change following the publishing of a new survey plat. However, the exterior boundary locations of the subject lands will not change.

In exchange for these lands, the United States will acquire the following lands from The Nature Conservancy located within the following described area:

San Bernardino Meridian, California

T. 4S., R. 7E.,
Sec. 7: Lot 1 of NW¼, N½ of Lot 2 of NW¼, S½ of Lot 2 of NW¼, NE¼.
Containing 326.17 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for

the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

Publication of this notice is the Federal Register segregates the public lands from operation of the public lands laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be conducted on a value for value basis. Following an appraisal, full equalization of value will be achieved by acreage adjustments or by a payment to the United States by the Nature Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas and geothermal steam resources shall be reserved to the United States, together with the right to prospect for and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. Those rights for transmission line purposes granted to Imperil Irrigation District, its successors or assigns, serial No. CA 12724, under the Act of October 21, 1976 (43 U.S.C. 1761).

FOR FURTHER INFORMATION CONTACT: John Sullivan, Indio Resource Area at (714) 351–6663. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: May 2, 1986.

Hugh W. Riecken,

Acting District Manager.

[FR Doc. 86–10664 Filed 5–12–86; 8:45 am]

BILLING CODE 4310–40–M

[ES 21195 and ES 21200, Ohio]

Proposed Reinstatements of Terminated Oil and Gas Leases; Ohio

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatements of terminated oil and gas leases.

SUMMARY:

1. Federal oil and gas leases ES 21195 and ES 21200 terminated automatically by operation of law on May 1, 1985 (30 U.S.C. 188).

2. Petitions for reinstatements of ES 21195 and ES 21200 were filed by Amoco Corporation (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

3. The lessee has met all the following requirements of reinstatement:

(a) $1,000—Reimbursement of Department Administrative Cost.

(b) $1,065—Back Rental Payments.

(c) $257—Estimated Publication Cost.

4. The proposed reinstatements of the leases would be under the same terms and conditions of the original leases, except the rentals will be increased to $5.00 per acre per year, and royalties increased to 16⅔ percent beginning May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0160.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86–10594 Filed 5–12–86; 8:45 am]

BILLING CODE 4310–GJ–M

Minerals Management Service

Development Operations Coordination; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4460, Block 76, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Houma, Louisiana.

DATES: The subject DOCD was deemed submitted on April 30, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/ Development Plans Unit, Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-10863 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on leases OCS-G 6987 and 7980, Blocks 6 and 50, respectively, Green Canyon Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 30, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for the public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office House: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office hours: 8 a.m. to 4:30 p.m. Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that if is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

May 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-10860 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Consent Judgment In Action to Enjoin Violation of The Clean Water Act ("CWA"); Long Island Duck Farmers Cooperation, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent judgment in *United States v. Long Island Duck Farmers Cooperative, Inc.*, Civil Action No. CV-185-1427, was lodged with the United States District Court for the Eastern District of New York on April 21, 1986. The consent decree establishes a compliance program for the Eastport, Suffern County, New York facility owned and operated by Long Island Duck Farmers Cooperative, Inc., to bring the facility into compliance with the Clean Water Act ("CWA"), 33 U.S.C. 1251 *et seq.*, and its State Pollutant Discharge Elimination Permit ("N/SPDES") issued pursuant to Section 402 of the Act, 33 U.S.C. 1342 and required payment of a civil penalty in the amount of $80,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Long Island Duck Farmers Cooperative, Inc.*, D.J. Ref. No. 90-5-1-1-2339.

The consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of 1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Associate Attorney General.

[FR Doc. 86-10713 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Iowa and Steger-Heiderscheit

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on April 25, 1986 a proposed Consent Decree in *United States v. State of Iowa and Steger-Heiderscheit*, Civil Action No. C85-1008 was lodged with the United States District Court for the Northern District of Iowa. The proposed Consent Decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos. 40 CFR Part 61. The proposed Consent Decree requires defendants State of Iowa and Steger-Heiderscheit Construction to comply with the provisions of the asbestos NESHAP and to pay a civil penalty of $25,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. State of Iowa and Steger-Heiderscheit Construction*, D.J. Ref. 90-5-2-1-757.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Iowa, Room 226, U.S. Post Office and Courthouse, 101 First Street, SE., Cedar Rapids, Iowa 52401 and at the Region VII, Office of the Environmental

Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-10714 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Tom-Kat Mining Co.

In accordance with Department policy, 28 CFR 50.7, a notice is hereby given that on April 30, 1986, a proposed Consent Decree in *United States* v. *Tom-Kat Development, Inc., and Burton Carver dba Tom-Kat Mining Co.*, Civil Action No. A84-48 was lodged with the United States District Court for the District of Alaska.

The proposed Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and to refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The decree also imposes stipulated penalties on the defendants for any failures on their part to either obtain appropriate NPDES permits or to comply with the terms of the NPDES permits when such failure of compliance is attributable to a failure of the defendants to install, operate, or maintain waste-water pollution control facilities. The decree also provides for the payment of a civil penalty by the defendants in the amount of $12,500 to be paid upon entry of the decree. With the exception of penalty obligations, the decree terminates August 30, 1986.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Tom-Kat Development, Inc., and Burton Carver dba Tom-Kat Mining Company.*, D.J. No. 90-5-1-1-2061.

The proposed Consent Decree may be examined at the office of the United States Attorney, United States Courthouse, 101 12th Avenue, Room 310, Fairbanks, Alaska; the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and D.J. Number and enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-10715 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act in United States v. National Cement Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7., notice is hereby given that on May 2, 1986 a proposed Consent Decree in *United States* v. *National Cement Company, Inc.*, Civil Action No. CV-84-PT-2944M was lodged with the United States District Court for the Northern District of Alabama. The Complaint in this enforcement action was filed on November 24, 1984 against National Cement Company, Inc. ("National Cement") under Sections 111 and 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7411 and 7413, seeking civil penalties and injunctive relief to abate excessive particulate emissions discharged by National Cement's Portland Cement kiln and clinker-cooler at its facility located in Ragland, Saint Clair County, Alabama. The complaint alleged violations of New Source Performance Standards applicable to kilns and clinker-coolers at Portland Cement Plants. 40 CFR 60.62(a)(2), (b)(1) and (b)(2). The proposed Consent Decree ("Decree") requires the defendant to undertake source performance testing on its kiln over a one (1) year period and to overcontrol particulate matter emissions at the clinker/cooler for three years in addition to payment of a $50,000 civil penalty to the United States for past violations of the Act. Stipulated penalties are also provided in the event of future violations of schedules or for failure to comply with requirements of the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *National Cement Company, Inc.*, D.J. Ref. 90-5-2-1-760.

The proposed Consent Decree may be examined at the office of the United States Attorney, 200 Federal Courthouse, 1800 Fifth Avenue, Birmingham, Alabama, and at the United States Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $3.20 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-10667 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Hoffmann-LaRoche, Inc.

By Notice dated December 5, 1985, and published in the **Federal Register** on December 10, 1985 (50 FR 50354), Hoffmann-La Roche, Inc., 350 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370) (for manufacturing diagnostic products for non-human consumption to detect THC in urine)	I
Alphaprodine (9010)	II
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant

Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 1, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-10719 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

Donald F. Hoops, D.D.S.; Denial of Application

On December 27, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald F. Hoops, D.D.S., 2205 Paradise Road, Las Vegas, Nevada 89104–2581. The Order to Show Cause sought to deny the application for DEA registration executed by Dr. Hoops on June 25, 1985. The statutory predicate for the Order to Show Cause was, as to Schedule II substances, that Dr. Hoops was not authorized by the State of Nevada to prescribe, administer, dispense or otherwise handle controlled substances in Schedule II; and as to Schedule III, IV, and V controlled substances that Dr. Hoops' registration with the Drug Enforcement Administration would be inconsistent with the public interest.

The Order to Show Cause was sent registered mail, return receipt requested, to the address at which Dr. Hoops applied for registration. The Order to Show Cause was returned unclaimed. On February 24, 1986, a Special Agent of the Drug Enforcement Administration served Dr. Hoops with the Order to Show Cause dated December 27, 1985 at his office at 2205 Paradise Road, Las Vegas, Nevada. Dr. Hoops has not responded to the Order to Show Cause. The Administrator therefore finds that Donald F. Hoops, D.D.S. has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and enters this final order on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that in June 1982, Donald F. Hoops, D.D.S. entered into a stipulated settlement with the Nevada State Board of Dental Examiners in which he agreed to surrender his Class II dispensing license to the appropriate Nevada agency, and not to dispense Class II narcotics to any person. On October 5, 1982, Donald F. Hoops, D.D.S. surrendered the Schedule II portion of his DEA Certificate of Registration AH5812258 to agents of the Nevada Division of Investigation. DEA Certificate of Registration AH5812258 was subsequently retired from DEA files on May 31, 1983 for failure to renew. Dr. Hoops is currently licensed by the Nevada State Board of Pharmacy to handle only Schedule III, IV, and V controlled substances. He is, therefore, not authorized by the State of Nevada to handle Schedule II controlled substances. The Administrator finds, consistent with prior holdings, that a practitioner cannot be issued a DEA Certificate of Registration when he is not authorized to handle controlled substances in the jurisdiction in which he is applying for such registration. See *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986), *Marshall S. Tuck, M.D.*, Docket No. 80–28, 45 FR 85845 (1980).

The Administrator further finds that Dr. Hoops entered into a stipulated settlement with the Nevada Board of Dental Examiners in June 1982 as the result of an investigation which revealed that he was prescribing the Schedule II narcotic Percodan for individuals who were not patients, and for no legitimate medical purpose. As a result of this settlement he surrendered the Schedule II portion of his DEA Certification of Registration on October 5, 1982. On Dr. Hoops' application for registration dated June 25, 1985, he answered the question, "Has the applicant ever been convicted of a felony in connection with controlled substances under State or Federal law, or ever surrendered or had a CSA registration revoked, suspended or denied?" by checking the box marked "No". The Administrator finds that by stating that he had never surrendered a CSA registration, and failing to note that he had voluntarily surrendered his Schedule II and Schedule IIN registration on October 5, 1982, Dr. Hoops materially falsified his application for a DEA Certificate of Registration.

The investigative file also indicates that although Dr. Hoops' DEA registration was retired from DEA files on May 31, 1983, due to delinquency, Dr. Hoops continued to write prescriptions without a valid DEA registration. On June 24, 1985, Dr. Hoops wrote a prescription for 12 Tylenol with Codeine #3 tablets, although he did not possess a current DEA Certificate of Registration. On August 8, 1985, Dr. Hoops attempted to obtain Darvon tablets from a White Cross Drug Store by writing a prescription for himself. When the pharmacist on duty requested that Dr. Hoops write his DEA registration number on the prescription, Dr. Hoops proceeded to destroy the prescription. Clearly, on at least two occasions, Dr. Hoops wrote prescriptions for controlled substances even though he did not possess a current DEA Certificate of Registration, and consequently, was not authorized to administer, dispense or prescribe any controlled substances. The Administrator finds that such activity creates a danger to the public health and welfare of the community.

In addition, even while Dr. Hoops was duly registered to administer, dispense and prescribe controlled substances, the investigative record reveals that he prescribed Percodan to individuals for other than legitimate purposes. An investigation conducted by the Nevada Division of Investigations and Narcotics showed that between January 2, 1981 and October 8, 1981, Dr. Hoops wrote at least twenty-five prescriptions for a total of 392 dosage units of Percodan for various alleged "patients." Yet, when Dr. Hoops was questioned about such prescriptions, he could not provide the investigators with any dental records to substantiate the dental necessity of his Percodan prescribing activities. Based on the investigative record, the Administrator concludes that Dr. Hoops prescribed Percodan on numerous occasions without a legitimate medical purpose.

After fully reviewing the investigative record, the Administrator concludes that based on the fact that Dr. Hoops is not authorized to prescribe, administer, dispense or otherwise handle Schedule II controlled substances in the State of Nevada, and that he materially falsified his application for a DEA Certificate of Registration, there is a lawful basis for denying Dr. Hoops' application for a Certificate of Registration. In addition, since Dr. Hoops continued to prescribe controlled substances long after he was no longer authorized to do so, and even when he was authorized to handle controlled substances, he repeatedly abused that privilege by prescribing Percodan on numerous occasions to alleged "patients" for no legitimate medical purpose, the Administrator concludes that approving Dr. Hoops' application for registration would be wholly inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) orders that the application for a DEA Certificate of Registration, executed by Donald F. Hoops, D.D.S. on June 25, 1985, and any other outstanding applications for DEA registration executed by Dr. Hoops, be and are hereby denied.

This order is effective May 13, 1986.

Dated: May 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-10720 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-42]

Albert Lepis, M.D.; Partial Revocation of Registration

On July 30, 1985, the Assistant Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Albert Lepis, M.D. (Respondent), 39 Bentley Avenue, Jersey City, New Jersey 07304. The Order to Show Cause sought to revoke DEA Certificate of Registration AL0661872, previously issued to Respondent. The statutory predicate for the Order to Show Cause was the inconsistency of Respondent's continued registration with the public interest under 21 U.S.C. 823(f).

Respondent, proceeding through counsel, requested a hearing on the issue raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young on December 18, 1985, in Washington, DC. Judge Young issued his opinion and recommended ruling on March 11, 1986, and transmitted the record to the Administrator on April 7, 1986. Neither side filed exceptions. The Administrator hereby enters his final order in this matter based on the record developed before the Administrative Law Judge.

The Administrator finds that Respondent's prescribing practices first came to the attention of the DEA Diversion Group in Newark in late 1984, when a Diversion Investigator was inspecting the Schedule II prescriptions on file in several pharmacies in northern New Jersey. The Investigator discovered over 100 prescription for Dilaudid (hydromorphone), a Schedule II narcotic, written by Respondent between January 3, 1984 and December 12, 1984, for one Leo Palier. Each prescription was for 100 Dilaudid 4 mg. Leo Palier was known to the Investigator as a drug addict who had been in contact with DEA during the investigation of a prescription forgery ring in New York City in 1980.

The Administrator further finds that Palier, in the company of one Dennis Wilson, visited Respondent in April, 1983. Wilson posed as the grandson of Palier. Palier was ill at the time that he visited Respondent. He was diagnosed by Respondent as suffering from arthritis, an irregular heartbeat, and possible cancer of the prostate. Respondent also determined that Palier was in pain. Respondent prescribed Dilaudid for Leo Palier. In July, 1983, Respondent referred Palier to a urologist for examination. This specialist concluded that Palier, was, in fact, suffering from cancer of the prostate and recommended the prescription of opiates for the pain. Respondent continued to treat Palier and prescribe Dilaudid for him. Palier and Wilson visited Respondent every two weeks until Respondent himself was hospitalized in November, 1983.

Respondent returned to the practice of medicine in December, 1983, at which time Wilson returned to Respondent's office alone. Wilson told Respondent that his "grandfather" was confined to bed and could not come to Respondent's office. Wilson requested a Dilaudid prescription for Respondent, which respondent gave him. Wilson continued to visit Respondent through 1984 and obtain prescriptions for Dilaudid for his "grandfather".

Leo Palier died on November 28, 1983. Respondent did not know this, but continued to prescribe Dilaudid for Palier and give the prescriptions to Wilson. Dr. Lepis kept no record of the amounts of Dilaudid he prescribed or the dates on which he prescribed it. During the DEA investigation, one pharmacist said that he had telephoned Respondent four times about the Dilaudid prescriptions he was writing for Palier, since he had not seen Palier for some time and did not know if Palier was alive. Each time, Respondent assured him that Palier was still alive and that the prescriptions were valid, since Palier was very ill and needed the medication. Other pharmacists also called Respondent about these prescriptions, and Respondent told them the same thing.

The Administrator finds further that Wilson was arrested on December 21, 1984, for his role in a prescription fraud ring. Wilson pled guilty to a charge in Federal court and cooperated with DEA Agents by providing information concerning his illegal activities. Palier and Wilson were not related, but were friends and drug addicts. Wilson would pose as the nephew or grandson of Palier and select physicians to visit with Palier. These were older physicians with practices in declining neighborhoods, whom Wilson perceived as more compassionate and more likely to welcome a new patient.

DEA Diversion Investigators interviewed Respondent in January, 1985. Dr. Lepis learned of Palier's death during this interview. When asked when he last saw Palier, Respondent stated about one year ago. Respondent told the Investigators that he was writing four prescriptions for 100 Dilaudid evey two weeks, since Palier was taking 25 dosage units of Dilaudid per day. The Administrator finds that the relevant New Jersey regulation governing the prescribing and dispensing of Schedule II controlled substances limits the prescription of dispensing to 120 dosage units or a 30-day supply, whichever is less.

The Administrator further finds that Respondent is an elderly physician who was first licensed to practice medicine in 1934. In recent years, his practice has dwindled. The Administrator finds no evidence in the record that Dr. Lepis is a "script doctor" or that he abused his DEA registration prior to the Palier prescriptions.

Since this action is brought under 21 U.S.C. 823(f), the Administrator must consider the five factors set out in that section to determine whether the continued registration of Respondent is consistent with the public interest. The two factors relevant in this matter are Respondent's experience in dispensing, or conducting research with respect to controlled substances, and his compliance with applicable state, federal or local laws relating to controlled substances.

The experience of Respondent in dispensing Schedule II controlled substances is unacceptably negligent and irresponsible. This negligence and irresponsibility is amply demonstated. Respondent failed to keep any kind of records showing the amounts and dates of Dilaudid he prescribed for Leo Palier. Respondent never paid a house call on Palier, and gave prescriptions for large quantities of a most heavily-abused narcotic to Palier's "grandson" for a year without actually seeing the patient. While the Dilaudid was medically justified when Palier first saw Respondent, under no circumstances can it be said that there was a patient-physician relationship between Respondent and Palier when Wilson simply picked up the prescriptions, even had Palier not died in December, 1983. Respondent should have also been alerted by the calls from the pharmacists who had not seen Palier for some time.

Respondent's compliance with applicable laws relating to controlling substances also indicates that he should not be registered with DEA in Schedule II. Dr. Lepis prescribed 400 dosage units at a time for Palier, much more often than every two weeks. The relevant New Jersey regulation permits a

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physician to prescribe at any one time, no more than 120 dosage units or a 30-day supply of a Schedule II controlled substance, whichever is less. Respondent prescribed well in excess of the lawful limit. A physician, simply because he is a physician, cannot ignore or flout the law in such a manner.

In evaluating these factors, the Administrator also finds that Respondent has had no problem with controlled substances, except for the Palier affair. Respondent has a practice of elderly patients who need controlled substances. In order for Respondent to continue his practice, he will need to retain registration in Schedules III through V. The public interest will be served by the revocation of Respondent's registration in Schedule II.

21 U.S.C. 824(a)(4) provides that a registration may be revoked upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest, as determined under 21 U.S.C. 823(f). Accordingly, there is a lawful basis for revoking all, or some portions of, Respondent's registration.

Having examined the facts in this case, under the powers given the Attorney General in 21 U.S.C. 823 and 824, and delegated to the Administrator of the Drug Enforcement Administration in 21 U.S.C. 871 and 28 CFR 0.100 *et seq.*, the Administrator hereby revokes the Schedule II registration of AL0661872, previously issued to Albert Lepis, M.D., said revocation effective June 12, 1986.

Dated: May 7, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-10721 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

Paul Stepak, M.D.; Revocation of Registration

On March 27, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Paul Stepak, M.D. (Respondent), of Children's Hospital San Francisco, 3700 California Street, San Francisco, California 94118, and 4736 California Street, San Francisco, California 94118. The Order to Show Cause sought to revoke DEA Certificate of Registration AS2286537 and to deny any pending applications for registration, for reason that Respondent's continued registration with the Drug Enforcement Administration is inconsistent with the public interest, as that term is used in 21 U.S.C 823(f). The Order to Show Cause recited, as evidence that Respondent's registration is inconsistent with the public interest, his indictment on or about August 23, 1985, by a grand jury sitting in the Northern District of California, of one count of conspiracy to distribute LSD, a Schedule I controlled substance, in violation of 21 U.S.C. 846; four counts of distribution of LSD, in violation of 21 U.S.C. 841(a)(1); and four counts of aiding and abetting the distribution of LSD, in violation of 18 U.S.C. 2. The Order to Show Cause also recited, as evidence that the registration should be revoked, Respondent's plea of guilty on March 17, 1986, to one count of distribution of controlled substances.

Respondent, proceeding *pro se*, replied to the Order to Show Cause in a letter dated April 2, 1986. The Administrator finds that Respondent waived his opportunity for a hearing under 21 CFR 1301.54(a), and that the letter constitutes a written statement regarding Respondent's position on the matters of fact and law involved. 21 CFR 1301.54(c).

Since the Order to Show Cause seeks the revocation of Respondent's registration based on its inconsistency with the public interest, the Administrator must consider the factors enunciated in 21 U.S.C. 823(f) in deciding whether to revoke this registration. The Administrator finds that four of the factors in section 823(f) are relevant for consideration in this matter. They are: Respondent's experience in dispensing or conducting research with regard to controlled substances; Respondent's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances; Respondent's compliance with applicable state, federal or local laws relating to controlled substances; and such other conduct which may threaten the public health and safety. The Administrator shall consider each factor in turn.

In his letter of April 2, 1986, Respondent admits that he was charged "with multiple offences (sic) and "submitted a guilty plea to one count of distribution of controlled substances". He also states in that letter that he never misused his DEA registration or acted improperly in prescribing controlled substances. The Administrator finds no evidence to the contrary. However, the overwhelming evidence in this case leads to the inescapable conclusion that this registration should be revoked.

Respondent pled guilty in the United States District Court for the Northern District of California on March 17, 1986, to one count of distribution of controlled substances. The Administrator has consistently construed a plea of guilty or entry of a verdict as a "conviction" under 21 U.S.C. 824(a)(2). Therefore, the Administrator shall consider this plea to be a "conviction" under 21 U.S.C. 823(f). See *Faunce Drug Store*, Dk. No. 82-3, 47 FR 30122 (1982); *United States v. Rosenstengal*, 323 F.Supp. 499 (E.D.Mo. 1971). Respondent's plea stems from his participation in a major LSD manufacturing and distribution ring in the San Francisco Bay area. This conviction is for the felony of distributing a Schedule I hallucinogen, a most serious offense. The underlying facts leading to the plea show that Respondent's continued registration with DEA is inconsistent with the public interest.

The factors or Respondent's compliance with applicable laws relating to controlled substances, and his conduct that endangers the public health and safety, are closely intertwined. Respondent was an active participant in a ring that manufactured and distributed LSD. During the spring of 1985, Respondent, his wife and others conspired to sell large quantities of high-quality LSD. Respondent accepted $18,000 for ten grams of LSD on May 1, 1985 and sold another gram of LSD on May 2, 1985, for $1,900. A search of Respondent's home by DEA Special Agents on August 14, 1985, pursuant to a search warrent issued by a Federal magistrate, uncovered a formula to manufacture LSD. This was not a small operation. DEA officials involved estimated that based on the quantities of LSD seized and the records of the ring, these arrests immobilized a very important source of LSD in the United States.

Respondent's history of compliance with laws relating to controlled substances speaks for itself. The mercenary participation of this physician in a major LSD ring is abominable. Such activity also clearly endangers the public health and safety. The effects of LSD on its users and on society are so well-known that the Administrator will not recite them here. It is unthinkable that a physician would even countenance such distribution and manufacture, much less actively engage in these dangerous activities. Dr. Stepak should not be registered with DEA.

The facts in this case clearly establish that Respondent's registration should be revoked, even though his activities did not involve use of his DEA registration. In cases brought under 21 U.S.C. 823(a)(2), the Administrators of DEA have consistently held that the underlying controlled substance-related felony need not involve the DEA

registration to justify revocation or denial of application. See *Aaron Mosa, D.D.S.*, Dk. No. 80–2, 45 FR 72850 (1980) (smuggling of cocaine); *William H. Carranza, M.D.*, Dk. No. 84–23, 51 FR 2771 (1986) (smuggling of heroin). So it is here. The totality of the facts lead to the inescapable conclusion that the registration issued Dr. Stepak should be revoked.

21 U.S.C. 824(a)(4) provide that a registration may be revoked upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest, as determined under 21 U.S.C. 823(f). Accordingly, there is a lawful basis for revoking all, or some portion of, Respondent's registration.

Having examined the record as it appears, including the letter submitted by Respondent, pursuant to the authority given the Attorney General under 21 U.S.C. 823 and 824, and delegated to the Administrator of the Drug Enforcement Administration under 21 U.S.C 871 and 28 CFR 0.100, the Administrator hereby revokes DEA Certificate of Registration AS2286537, previously issued to Paul Stepak, M.D., and denies any pending applications for renewal, said revocation and denial effective June 12, 1986.

Dated: May 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–10722 Filed 5–12–86; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Record keeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting reqirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
New Jersey Reemployment Demonstration Project
ETA RC 87
As needed
Individuals or households
56,000 respondents; 5,500 hours; no forms

This demonstration project is designed to evaluate whether displaced workers can be identified early in the unemployment spell, test the ability of alternative employment services to reemploy the displaced and how such a program could be implemented.

Extension

Employment Standards Administration
Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act
1215–0158; WH–520
Annually
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations
350 responses; 18 hours; 1 form

Section 203(b)(1) of the Migrant and Seasonal Agricultural Worker Protection Act requires any person owning or controlling any facility or real property to be occupied by migrant agricultural workers to obtain a certificate of occupancy.

Occupational Safety and Health Administration
Mechanical Power Press Injuries, OSHA 180
1218–0070; OSHA 180
On occasion
Business or other for-profit
264 responses; 80 hours; no forms

OSHA is required to conduct an on-going analysis of mechanical power press injuries in order to monitor the effectiveness of the standard and to evaluate causes of injuries to detemine the need for standard revision. This analysis cannot be made without collecting information on power press accidents.

Reinstatement

Employment Standards Administration
Employee Mail Interview Form
1215–0011; WH–42
On occasion
Individuals or households
100,000 responses; 33,333 hrs.; 1 form

This form is used in selected instances during the course of an investigation for compliance under the Fair Labor Standards Act, Public Contracts Act, and Davis-Bacon and related Acts.
1215–0016; WH–31
On occasion
Individuals or households
50,000 responses; 50,000 hours, 1 form

This form is used by Compliance Officers to record oral interviews with employees of establishments under investigation to determine compliance with the FLSA, the Migrant and Seasonal Agricultural Worker Protection Act, Service Contract Act, Davis-Bacon and related Acts, or the Consumer Credit Protection Act.

Signed at Washington, DC this 8th day of May 1986.

Reggie Moore,

Acting Departmental Clearance Officer.

[FR Doc. 86-10760 Filed 5-12-86; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Electric Shavers and Parts Thereof

On March 27, 1986, the U.S. International Trade Commission (ITC) determined that increased imports of electric shavers and parts thereof are not a substantial cause of serious injury or the threat thereof to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (51 FR 11361)

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on electric shavers and parts thereof. The report found as follows:

1. Employment of all workers and of production and related workers increased steadily from 1980 to 1984. During the first nine months of 1985, employment of all workers was higher than during the same period of 1984; however, employment of production and related workers was lower for the same comparative periods.

2. The Department of Labor (DOL) has received one petition for trade adjustment assistance (TAA) from workers in the electric shavers industry since April 3, 1975, the effective date of the adjustment assistance program under the Trade Act of 1974. This investigation was terminated at the written request of the petitioners.

3. The TAA program, which was due to expire on September 30, 1985, was extended as a program from October 1, 1985 through December 19, 1985 by a series of Congressional continuing resolutions and legislation. With the Third Continuing Resolution of 1985 (Pub. L. 99-199), statutory authority for providing training, job search and relocation allowances, and other reemployment services was continued through September 30, 1986. However, authority for paying trade readjustment allowances (TRA), or cash payments, to workers certified for TAA was allowed to expire on December 19, 1985.

Under existing legislation, DOL budgeted an estimated $45.0 million for Fiscal Year (FY) 1985 TRA payments and an estimated $5.0 million for FY 1986 TRA payable to qualified workers for weeks of retroactive eligibility in FY 1985. However, on April 7, 1986 the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) which among its provisions extends the TAA program through September 30, 1991, provides for retroactive payments of TRA back to December 19, 1985, and links receipt of TRA benefits to participation in job search programs (Sections 13001-13009).

For FY 1985, Congress appropriated $26.0 million for training, job search and relocation allowances, and related services for all eligible workers of U.S. import impacted industries. In addition, $12.1 million in State unobligated funds from FY's 1983 and 1984 were available, making a total of $38.1 million available for these TAA program activities in FY 1985. For FY 1986, Congress appropriated $26.0 million, but as a result of the Gramm-Rudman-Hollings sequestration that amount was reduced to $24.822 million.

Under the new program, funds appropriated for training, job search and relocation, and related services for eligible workers in fiscal year 1986 remains at $24.822 million. However, DOL has now budgeted $106 million for TRA payments for FY 1986.

4. During Program Year (PY) 1985 (July 1, 1985 through June 30, 1986), a total of $1,861,260 was available for benefits under Job Training Partnership Act (JTPA) Title III, the dislocated worker program, in the State of Connecticut. This funding will be reduced to $867,640 in PY 1986. In addition, some potentially separated workers could be eligible for JTPA Title II-A disadvantaged worker programs. Title II-A funding in Connecticut was $15,291,391 in PY 1985 and will be $13,010,234 in PY 1986.

Copies of the Department's report containing nonconfidential information developed in the course of the six-month investigation may be purchased by contacting Curtis Kooser, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street, NW., Room 6020, Washington, DC 20213 (phone 202-376-6039).

Signed at Washington, DC this 6th day of May 1986.

Roger D. Somerad,

Assistant Secretary of Labor.

[FR Doc. 86-10758 Filed 5-12-86; 8:45 am]

BILLING CODE 4510-30-M

Wood Shakes and Shingles

On March 25, 1986, the U.S. International Trade Commission (ITC) determined that increased imports of wood shakes and shingles are a substantial cause of serious injury or the threat thereof to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (51 FR 11361)

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determine to be confidential).

The U.S. Department of Labor has concluded its report on wood shakes and shingles. The report found as follows:

1. Average employment of production and production-related workers producing wood shakes and shingles declined steadily during 1980-1984 and in the January-September period of 1984 and 1985. Permanent employment levels are expected to continue declining during the March 1986-February 1987 12-month period. Industrywide temporary layoffs are also expected.

2. The Department of Labor (DOL) has received and processed 152 petitions involving workers in the wood shake and shingle industry since April 3, 1975, the effective date of the worker adjustment assistance program, including 10 processed during the January 1983-March 1986 period; 8 of the 10 were certified. Seventy petitions were certified covering 1,075 industry workers, and 82 petitions were denied, or terminated. An additional three petitions covering wood shake and shingle workers were in process as of the date of preparation of this report.

Between April 3, 1975, and September 30, 1985, DOL paid $2,740,301 in trade

readjustment allowances to 788 workers formerly employed in facilities producing wood shakes and shingles. Workers whose petitions were certified during 1983—March 1986 have received $7,106. From April 3, 1975, to September 30, 1985, job search allowances of $1,963 were paid to 19 industry workers, relocation allowances of $10,264 were paid to 11 industry workers, and a total of $86,505 was spent on training programs involving 181 industry workers.

3. Most of the production and production related workers' occupations involved in wood shake and shingle operations are considered skilled to highly skilled.

4. Unemployment rates for 17 of the 20 known areas with facilities producing wood shakes and shingles were above the national unemployment rate of 6.7 percent (unadjusted) for December 1985. Reemployment prospects for most present and potential separated workers in areas with establishments responding to the DOL survey of domestic wood shake and shingle producers appear to be poor-to-fair.

5. The Trade Adjustment Assistance (TAA) program, which was due to expire on September 30, 1985, was extended as a program from October 1 through December 19, 1985, by a series of congressional continuing resolutions and legislation. With the Third Continuing Resolution of 1985 (Pub. L. 99–199), statutory authority for providing training, job search and relocation allowances, and other reemployment services was continued through September 30, 1986. However, authority for paying trade readjustment allowances (TRA), or cash payments, to workers certified for TAA was allowed to expire on December 19, 1985.

Under existing legislation, DOL budgeted an estimated $45.0 million for Fiscal Year (FY) 1985 TRA payments and an estimated $5.0 million for FY 1986 TRA payable to qualified workers for weeks of retroactive eligibility in FY 1985. However, on April 7, 1986, the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) which among its provisions extends the TAA program through September 30, 1991; provides for retroactive payments of TRA back to December 19, 1985; and links receipt of TRA benefits to participation in job search programs (Sections 13001–13009).

For FY 1985, Congress appropriated $26.0 million for training, job search and relocation allowances, and related services for all eligible workers of U.S. import impacted industries. In addition, $12.1 million in State unobligated funds from FY's 1983 and 1984 was available, making a total of $38.1 million available for these TAA program activities in FY 1985. For FY 1986, Congress appropriated $26.0 million, but as a result of the Gramm-Rudman-Hollings sequestration that amount was reduced to $24.822 million. The amount of unobligated funds that might be available during FY 1986 was not known as of the date this report was prepared.

Under the new program, funds appropriated for training, job search and relocation, and related services for eligible workers in FY 1986 remain at $24.822 million. However, DOL has now budgeted $106 million for TRA payments for FY 1986.

6. Dislocated workers from the wood shake and shingle industry may receive benefits from a fund of $95.7 million which has been set aside for Program Year 1986 (July 1, 1986–June 30, 1987) for the administration and delivery of dislocated worker benefits and services under Title III of the Job Training Partnership Act.

Copies of the Department's report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting Linda Poole, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street, NW., Room 6020, Washington, DC. 20213 (phone 202–376–6196).

Signed at Washington, DC. this 6th day of May 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–10759 Filed 5–12–86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M–86–45–C]

Pine Creek Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Pine Creek Mining, Inc., Box 418, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment, maintenance) to its No. 2 Mine (I.D. No. 46–06996) located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 12, 1986. Copies of the petition are available for inspection at that address.

Dated: May 5, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–10757 Filed 5–12–86; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees; Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94–463.

DATE: May 23, 1986, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, America Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader (202) 287–6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: May 5, 1986.

Glen A. Zimmerman,

Associate Librarian for Management.

[FR Doc. 85–10660 Filed 5–12–85; 8:45 am]

BILLING CODE 1410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on May 23, 1986, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, May 23, 1986—8 a.m. until the conclusion of business.*

The purpose of the meeting will be to discuss research associated with reliability research (reliability maintenance), mechanical and electrical equipment qualification, and plant aging. Related topics will also be discussed including seismic fragility of components (e.g., relay chatter) and the ability of containment isolation valves to close under accident flow.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 8, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–10740 Filed 5–12–86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street NW., Washington, DC 20549

Extension:

Rule 206(3)–2 [17 CFR 275.206(3)–2]

File No. 270–216

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 206(3)–2 under the Investment Advisers Act of 1940, Agency cross transactions for advisory clients.

Comments should be submitted to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Dated: May 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–10754 Filed 5–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23209; File No. SR–NSCC–86–05]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation Modifying Its Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 21, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Commission the proposed rule change described below. The Commission is publishing this Notice to solicit comments on the proposed rule change.

The proposed rule change modifies NSCC's fee structure to establish a fee for processing an adjustment to a customer's account number in the Automated Customers Account Transfer ("ACAT") system. The Commission previously approved NSCC's ACAT system (File No. SR–NSCC–85–07) in Securities Exchange Act Release No. 22481,[1] and a modification to that system (File No. SR–NSCC–86–01) in Securities Exchange Act Release No. 22858 ("Release No. 22858").[2]

NSCC's ACAT system enables members to effect automated transfers of customer accounts among themselves. An NSCC member to whom a customer's securities account is to be transferred initiates the account transfer

[1] (September 30, 1985), 50 FR 41274 (October 9, 1985).

[2] (February 4, 1986), 51 FR 5127 (February 11, 1986).

process by filing with NSCC a Transfer Initiation Request ("TIR"). Previously, if there was an error in the customer's account number on the TIR, the delivering member would reject the transfer and the NSCC member to whom the account is being transferred would have to re-initiate the transfer process by submitting another TIR. The modification to the system approved in Release No. 22858 permits NSCC to accept adjustments to customers' account numbers rather than reject the transfers. NSCC is now proposing to establish a $.10 fee for processing each adjustment to a customer's account number in the ACAT system. This fee will be discounted in the same manner as other ACAT service fees.

In its filing NSCC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of fees among NSCC Participants. NSCC also states that, inasmuch as the proposed rule change relates only to NSCC's Fee Structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

The foregoing rule has become effective pursuant to section 19(h)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 45 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number in the caption above and should be submitted by June 3, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–10755 Filed 5–12–86; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Ally Financial Corp.

[License No. 09/09–5299]; Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a transfer of control and ownership of Ally Financial Corporation, 9100 Wilshire Boulevard, Suite 408, Beverly Hills, California 90212 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The present shareholders plan to sell 67 percent of their shares of ownership in the Licensee, along with issuing and selling 400,000 additional shares to new shareholders. The proposed change in ownership and control would result in the following:

Name and address	Number of shares	Percentage
Percy Paihein Linn, 137 S. Palm Dr. #306, Beverly Hills, CA 90212	120,000	12.0
Walter Wen-Der Wu, 2735 Carlaris Road, San Marino, CA 91108	25,000	2.5
Ting and Esther Liu, 19639 Hiawatha Street, Chatsworth, CA 91311	235,125	23.5
Ping-Chi Wu, 567 Peralta Hills Drive, Anaheim, CA 92807	171,000	17.1
Ko Yen Lin, 4231 Balcony Drive, Woodland Hills, CA 91364	85,500	8.6
Chao Ho Lin, 4234 Balcony Drive, Woodland Hills, CA 91364	42,750	4.3
Yukiyo Matsumura, 4215 Balcony Drive, Woodland Hills, CA 91364	64,125	6.4
Wen Cherng Lee, 4231 Balcony Drive, Woodland Hills, CA 91364	42,750	4.3
Fui Ming Thian, 2332 Flintridge Drive, Glendale, CA 91206	17,100	1.7
Fai Boon Thian, 2315 Flintridge Drive, Glendale, CA 91206	17,100	1.7
Yee Chin Thian, 2309 Flintridge Drive, Glendale, CA 91206	68,400	6.8
Alan Yee-Phong Thian, 2314 Flintridge Drive, Glendale, CA 91206	68,400	6.8
Hsin Lee Lin, 2233 Carwile Drive, Alhambra, CA 91308	42,750	4.3

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new owners under their new management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Beverly Hills, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86–10681 Filed 5–12–86; 8:45 am]

BILLING CODE 8025–01–M

(Application No. 06/06–0292)

Ford Capital, Ltd.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Ford Capital, Ltd. (Applicant), 1525 Elm Street, Dallas, Texas 75221, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The management and control of the Applicant are the officers and directors of Ford Capital, Inc., Corporate General Partner, as follows:

Name and Position

Gerald J. Ford, 3804 Miramar, Dallas, Texas 75205, President/Director, Ford Capital, Ltd. (100 Percent Shareholder)

Robert W. Gentry, 3545 Southwestern, Dallas, Texas 75225, Vice President, Secretary & Director, Ford Capital, Ltd.

Donald E. Cosby, 4713 96th Street, Lubbock, Texas 79424, Director, Ford Capital, Ltd.

Ford Capital, Inc. is in the process of being organized for the purpose of

operating as the corporate general partner of Ford Capital, Ltd.

The capital for Ford Capital, Ltd. (the "Limited Partnership") will be raised by offering Units in the Limited Partnership privately to numerous banks.

The Applicant, Food Capital, Ltd., a Texas Limited Partnership, will begin operations with $7,810,310 net partnership private capital. The Applicant will conduct its activities primarily in the State of Texas but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-10682 Filed 5-12-86; 8:45 am]

BILLING CODE 8025-01-M

Intergovernmental Review of Agency Programs and Activities

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund the Wyoming Small Business Development Center (SBDC) during fiscal year 1986. Currently, there are 45 SBDC's operating in the SBDC program. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the SBDC to be refunded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 1, 1986.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awarness of the pending application of the Wyoming Small Business Development Center (SBDC) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the date of refunding of this existent SBDC. Relevant information identifying this SBDC and providing its mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 80 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 80-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with the SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization:

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: May 6, 1986.

Charles L. Heatherly,

Acting Administrator.

Address of Relevant SBDC Director

Mr. Mac Bryant, Wyoming SBDC State Director, Casper Community College, 944 East Second Street, Casper, Wyoming 82601, (307) 235-4825.

[FR Doc. 86-10683 Filed 5-12-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 965]

Subdelegation of Legal Adviser's Authority To Sign Receiving Agents Warrants; Delegation of Authority No. 142-1

By virtue of the authority vested in me by Delegation of Authority No. 142 of October 13, 1978 (43 FR 50981), I hereby delegate to the Deputy Legal Advisers all the authority and functions vested in the Legal Adviser by Delegation of Authority No. 142, which relates to issuance and signature of warrants appointing agents to return fugitives from justice extradited to the United States. Notwithstanding this delegation of authority, the Legal Adviser may at any time exercise any authority conferred upon him by Delegation of Authority No. 142.

Dated: April 28, 1986.

Honorable Abraham D. Sofaer,

Legal Adviser.

[FR Doc. 86-10686 Filed 5-12-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-5-31]

Aviation Proceedings; Fitness Determination of Princeton Air Link

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 86-5-31, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Princeton Air Link is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses:

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P-47, Department of Transportation, 400 7th Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 28, 1986.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 755-3812.

Dated: May 7, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-10739 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Niagara County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Niagara County, New York.

FOR FURTHER INFORMATION CONTACT:

Roger H. Edwards, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452

or

Victor E. Taylor, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to construct a new two-lane bypass around the central area of the City of Lockport, Town of Lockport, in Niagara County. The proposed work is considered necessary to alleviate the problem of truck traffic passing through the central area of the City of Lockport and to improve east-west access to the western Lockport industrial area.

Alternatives under consideration include (1) continued maintenance of the existing highway system; (2) low-cost operational improvements to the existing system; and (3) construction of a new two-lane bypass on five alternative highway locations identified as the West Canal, East Canal, Central, Ruhlmann Road Extension, and Summit Street. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Also planned are early coordination and exchanges of information with the public and agencies through public information meetings, direct requests to other agencies to become cooperating agencies, and early notification and solicitation with entities affected by the proposed action through the clearinghouse process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Issued on April 29, 1986.

Victor E. Taylor,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 86-10659 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 217]

Delegation of Authority to Regional Commissioner, Western Region

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to resolve pricing issues on interaffiliate transfers of electronic products and components that are manufactured and/or assembled abroad by foreign companies that effectively own or control United States affiliates which market the goods within the United States has been delegated to the Regional Commissioner, Western Region. This authority may not be redelegated.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Romoff, OP:EX:N:I Room 2511, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566-6744 (not toll free).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

William C. Roth,

Director, Office of National and International Programs.

Nationwide Authority To Approve Determinations on Interaffiliate Pricing of Inbound Transfers of Electronic Products and Components

Pursuant to authority vested in the Commissioner of Internal Revenue by IRC 7802, 26 CFR 1.482, 301.7701-9, and Treasury Department Order No. 150-37, the nationwide authority to approve the determination of intercompany transfer prices of electronic products and components that are manufactured and/or assembled abroad by foreign companies that effectively own or control United States affiliates which market the goods within the United States is hereby delegated to the Regional Commissioner, Western Region. The appeals authority regarding such issue shall remain with the Appeals Division.

This authority may not be redelegated.

Dated: May 2, 1986.

Approved: James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 86-10761 Filed 5-12-86; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 92
Tuesday, May 13, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, May 19, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Policy Statement on Accent
4. Annual Report: Coordination of Federal Equal Employment Opportunity Programs, FY 1985
5. Proposed Contract for Expert Services in Connection With a Court Case

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals
3. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: May 8, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86-10822 Filed 5-9-86; 2:37 p.m.]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Wednesday, May 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) A recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) a recommendation regarding the Corporation's corporate activities; and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(9)(A)(i), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: May 8, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-10819 Filed 5-9-86; 12:43 pm]

BILLING CODE 6714-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 8, 1986.

TIME AND PLACE: 10:00 a.m., Thursday, May 15, 1986.

PLACE: Room 600, 1730 K St. NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will also discuss the following:

2. Pontiki Coal Corporation, Docket No. KENT 83-181-R, etc. (Issues include whether the administrative law judge properly acted on the parties' settlement motion.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-10816 Filed 5-9-86; 12:43 pm]

BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, May 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10836 Filed 5-9-86; 3:34 pm]

BILLING CODE 6210-01-M

5

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5-86

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of a change in the date previously announced in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: The meeting previously set for Mon., May 19, 1986 at 10:30 a.m. is changed to: Tues., May 20, 1986 at 10:30 a.m.

SUBJECT MATTER: Consideration of claims filed under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 635–6155.

Dated at Washington, DC, on May 8, 1986.

Judith H. Lock,

Administrative Officer.

[FR Doc. 86–10782 Filed 5–9–86; 10:35 am]

BILLING CODE 4410-01-M

6

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, June 11, 1986.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1986.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of Notice: May 2, 1986.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 86–10785 Filed 5–9–86; 10:35 am]

BILLING CODE 7550-01-M

7

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 15, 1986.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Possible Revisions to the Commission's Rules of Procedure, Subpart B. Parties and Representatives. 29 CFR 2200.20 through 2200.22.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634–4015.

Dated: May 9, 1986.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 86–10778 Filed 5–9–86; 10:35 am]

BILLING CODE 7600-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 12, 1986:

A closed meeting will be held on Wednesday, May 14, 1986, at 2:30 p.m. An open meeting will be held on Thursday, May 15, 1986, at 2:30 p.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, May 14, 1986, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Formal order of investigation.
Institution of administrative proceeding of an enforcement nature.
Opinion.

The subject matter of the open meeting scheduled for Thursday, May 15, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272–7400.

The subject matter of the closed meeting scheduled for Thursday, May 15, 1986, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–3077.

John Wheeler,

Secretary.

May 7, 1986.

[FR Doc. 86–1.750 Filed 5–8–86; 4:36 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
May 13, 1986

Part II

Department of Transportation

Federal Highway Administration

49 CFR Part 391

Motor Carrier Safety Regulations; Driver Qualifications; Final Rule—Request for Comments and Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-116; Amdt. No. 83-17]

Qualifications of Drivers; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) by revising the prohibitive language of the nonalcoholic drug medical standard for interstate and foreign commerce drivers. The new rule will prohibit the use of certain drugs. The present rule prohibits the driver from having a current clinical diagnosis of drug dependence. This change in the rule is necessary because the present language could allow known drug users to continue to drive commercial motor vehicles with the knowledge of their drug use. In addition to this final rule, the FHWA requests comments and information on the question of whether the prohibited nonalcoholic drugs should include all controlled substances on the Drug Enforcement Administration's Schedules of Controlled Substances. Further, comments are requested on whether drug screening should be mandated.

DATES: This rule is effective June 12, 1986. Written comments must be received on or before August 11, 1986.

ADDRESS: All written comments should refer to the docket number and amendment number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 to 4:15 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755-1011; or Mr. Thomas P. Holian, Office of Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On November 5, 1984, the FHWA published a final rule in the Federal Register (49 FR 44210) which amended the FMCSR to incorporate in the driver qualification requirements prohibitions in the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances (SCS). There are approximately 100 drugs and other substances in Schedule I of the SCS. The action was taken because these substances degrade driving skills.

One of the amendments made by the November 5, 1984, final rule changed 49 CFR 391.41(b)(12). This provision concerns physical qualifications for drivers. Before the November 5, 1984, final rule, the subparagraph provided that a physically qualified driver, is one who "does not use an amphetamine, narcotic, or any habit-forming drug."

The November 5 final rule amended the rule to state that a physically qualified driver is one who,

> Has no current clinical diagnosis of a drug dependence of a Schedule I drug or other substance identified in Appendix D to this subchapter, an amphetamine, narcotic, or any other habit-forming drug.

Among other changes, the amendment provided that use of one of the cited substances, standing alone, was no longer a disqualifying condition. Only having a current clinical diagnosis of dependence on one of the substances was a disqualifying condition. This change was intended to make the regulations consistent in their treatment of drug and alcohol abuse. The FMCSR require that a physically qualified driver have "no current clinical diagnosis of alcoholism" (49 CFR 391.41(b)(13)).

On October 1, 1985, the FHWA proposed to amend the FMCSR by revising the prohibitive language of the nonalcoholic drug medical standard (Section 391.41(b)(12)) for interstate and foreign commerce drivers (50 FR 40040). The revision proposed that the prohibitive language be changed to the previous language whereby a driver is prohibited from use of certain nonalcoholic drugs. The proposed revision did not change the type of prohibited drugs.

The reasons cited for the proposed change were:

(1) The purpose of the FMCSR is to ensure safety of highway travel by, among other means, getting unqualified drivers off the road. A user of drugs, whether he or she is addicted to, or a recreational or occasional drug user, of certain substances, is a potential safety hazard on the highway.

(2) It is difficult to establish a diagnosis of drug dependence in general. For some drugs, experts disagree about whether dependence ever occurs (e g., marijuana).

(3) The problem from a motor carrier safety point of view is that a driver, though not subject to a clinical diagnosis of drug dependence, may create a serious safety hazard by even a one time or occasional use of drugs.

(4) The physical qualification standards are prevention in nature. The aim is to remove persons who are potentially a clear safety hazard to the public. It is fair to judge that a person who uses drugs, even though not clinically addicted to them, is more likely to be a hazard while driving under their influence than a person who does not use drugs.

(5) Finally, a drive is medically evaluated only once every two years. A driver who uses drugs now is more likely to become clinically drug dependent than someone who does not.

Analysis of Comments

Two hundred and fourteen comments were submitted to this rulemaking. There was overwhelming support for the proposal. Two hundred and twelve commenters supported the proposal. One commenter did not support the proposal. Those supporting the proposal are grouped as follows: 28 individuals, 143 motor carriers, 33 physicians, and 8 motor carrier industry associations. A State government agency comment addressed a subject that is not germane to the proposal. Several other commenters asked that the docket be broadened to consider whether the FMCSR should mandate chemical testing of body fluids for drugs. This subject will be discussed later in this document.

Comments in Support of the Proposal

The comments of the motor carrier industry are typified by those of the Federal Express Corporation:

> Federal Express has taken it upon itself to develop an internal policy prohibiting drug use by all employees, including its couriers, in order to ensure the safest conditions possible on public highways.
>
> We deemed a policy of this type necessary in light of the extreme difficulty in determining whether an individual has a current clinical diagnosis of drug dependence. Due to the nature of drug use, majority of physicians will not render this diagnosis even when a person is regularly using illegal substances.
>
> Moreover, operators of motor vehicles who use drugs in an experimental, casual or even abusive manner, which may not be included in the status of those dependent on a drug, clearly present a danger when operating a vehicle. Finally, due to the fact that neither the medical profession nor the legal system has been able to determine standards, based

on chemical analysis of urine, which accurately indicate whether an employee is under the influence of a particular drug, an employer must assume that any individual who is shown to have drugs in his system, indicating recent use, presents a possible threat to safety.

The change in the regulation mandates exclusion of employees using drugs and thus strengthens the legal basis for private industry's efforts to eliminate the drug problem. We urge its immediate adoption.

Liquid Carbonic Industries, Inc., currently has a drug screening program for new employees and for the recertification of its drivers. To date, eleven applicants withdrew following their refusal to be screened. Drugs found were marijuana, cocaine, heroin, and phencyclidine (PCP). Enterprise Transportation Company also has a company policy of prohibiting drug use. It has a drug screening program. It believes it is doing its part in removing drug users from the highway but worries about others in motor carrier industry who do not have such stringent standards. Enterprise Transportation states that the FMCSR establish minimum standards but allow a carrier to have more stringent qualifications (49 CFR 391.1). However, Enterprise believes that too many motor carriers do not have stringent enough qualifications. Therefore, it states that the FMCSR must be revised to meet the current transportation drug problem.

Ryder Truck Rental, Inc., submitted data from a recent report of the Insurance Institute for Highway Safety:

A recent report to be published by the Insurance Institute for Highway Safety, noted that more than 25 different drugs were found in the blood of young California men (age 15–34) who were killed as drivers of motor vehicles. * * *. 87% of the drivers with one drug in their blood were found to have been responsible for their crashes, while 96% of those with two or more drugs evident were at fault in their accidents. I seriously doubt that a significant percentage of these young men had a current clinical diagnosis of drug dependence at the time of their deaths.

Bee Line Motor Freight, Inc., has a company policy that any prohibited drug use within the previous twelve months is disqualifying. At present they are not doing urine drug screening. Bee Line believes the proposed change will add greatly to the preventive aspect of the medical certification process.

Murphy Motor Freight Lines, Inc., cited the repetitive vigilance aspects of commercial driving and noted the general deterioration of vigilance that use of Schedule I drugs cause. Further, it points out that though an employee's family and friends may be aware of an employee's drug problem, commonly the employer is not. Therefore, when the drug use finally comes to the employer's attention, the employer can be fairly certain that the abuse is of a serious nature. If an employee cannot hide his/her drug use at work, then Murphy believes this in and of itself should be evidence of a user's dependence.

The American Trucking Associations, Inc. (ATA), believes the current prohibitive language, "must show dependence on a prohibitive drug," is unduly burdensome and seriously hinders the truck industry in its efforts to remove substance abusers from the ranks of drivers. Further, it states that various industry studies agree that substance abusers are three to four times more likely to be involved in accidents than nonusers. The ATA states that while these data do not relate specifically to traffic accidents, the increased risks while in traffic are probably commensurate with those in industry generally. The ATA gave some information it gathered from its members who have a company policy of urine drug screening of its employees. It believes the findings confirm that a problem exists:

A laboratory which performs drug screens for serveral major carriers indicates that it has found from 13–18% of drug screens done for reexaminations to be positive. This has occurred even where carriers have given 30–60 days notice that the drug screening will be done. Other laboratories who do drug screening have indicated to ATA their opinion that the proposed amendment should be promulgated.

A carrier which did drug screens on 863 persons including current employees, casuals, and job applicants, found that 118 screens (17%) were positive. A carrier screening applicants in a major Midwestern city found positive drug screens for 47% of applicants checked.

A safety director making spot checks of his company's tractors found evidence of marijuana use. The ensuing indepth investigation resulted in the discharge of 50% of the drivers at the terminal involved.

The ATA believes attemping to demonstrate a current clinical diagnosis of drug dependence is too uncertain to be an effective means of evaluating a person's medical qualification to drive. Comments of the Truck Renting and Leasing Association (TRALA) state its belief that the FHWA should take a stronger lead in removing drug users from the highways. They believe this proposal shows that the FHWA is taking that lead. TRALA states:

The rules governing qualification for drivers, 49 CFR Part 391, are preventive in nature; they serve not only the immediate goal of removing from the road persons who present clear hazards before an accident occurs, but also the broader goal of policy articulation. Thus the BMCS reaffirmation of its strict drug policy sets a standard for industry and labor, keeping attention focused on the seriousness of the problem.

The concern of the medical profession was set forth in the following statement of a physician retained to perform DOT-mandated medical examinations for a major general freight carrier:

In my opinion, there is no room on our highways for drivers using mind altering drugs that significantly increase the risk of catastrophic events. In my 20 years' experience in industrial medicine, I can state without equivocation that a mind under the influence of drugs and alcohol cannot react nor maintain appropriate attention span to be any less than a lethal hazard to all our citizens.

Comments like these were received from 33 other physicians. Many of the physicians were speaking not only for themselves but other physicians in their industrial clinics or group practices that they worked with.

One physician states the benefits of the proposal to change the prohibitive language of the nonalcoholic drug as follows:

The current rule which provides that the driver "has no clinical diagnosis of a drug dependence" imposes a much more difficult problem in terms of establishing this fact. The establishment of drug dependence cannot actually be made on basis of a routine type office examination.

A more precise wording such as is proposed in the new regulation would be much easier to determine in that it would simply indicate that the use of these drugs is enough to disqualify a driver. The use, whether occasional or habitual, would be subject to confirmation with an appropriate urine and blood test where usage was suspected. This test might be a routine part of the examination, or it could be administered only in those cases where drug use was suspected. At any rate, the examining physician would be in a much more secure position in answering this question, and furthermore, it is my considered opinion that even if drug dependence is not present, even the occasional use of these prohibited drugs does impose a serious safety hazard for a driver of a large motor vehicle on the highways.

Mr. Ron O. Smock of Drug Detection Services, Inc., notes the potential liability of a motor carrier who knowingly permits a drug user to drive. Also, he points out that drug users do not have public acceptance to use drugs:

Any company could be liable if they know an individual is positive for drugs in their system and is put behind a wheel because the company could not demonstrate dependence. The company might just as well play Russian Roulette!

The impact on the company, the driver, and especially the public is so enormous that considering use vs. dependence should go without argument. The loss of one life, one

vehicle, is one too many. The public must end up paying double for all the problems. First by not being guaranteed a safe highway, and secondly by the cost of goods that must be increased because of the loss of property (and possibly life) caused by one individual who has voluntarily violated the law.

Laws are made to be examples of proper behavior in any society—they divide right from wrong; either you follow the law or break the law. There is no public support or law that supports drug use (and possession), which is the first step to dependence—not the other way around! In light of this, we can not say that drug use is OK until it has been demonstrated that there is a dependence.

The Keverly Laboratories, Inc., makes the following three points about drug users:

1. While a driver is under the influence of drugs he endangers the public and himself regarding accidents, whether he is an occasional or drug dependent user. It has been shown that the drug abuser is 3 to 4 times more likely to be involved in accidents at work and 4 to 6 times more likely to be involved in accidents away from work.

2. It has been documented that drug abusers perform at approximately 67% of their normal ability and their overall morale is significantly decreased.

3. It has been our experience that as many as 30% or more of pre-employment drugs of abuse screens including cannabinoids, in transit occupations may be positive.

Dr. Martin Rodriguez of the Maryland Medical Clinic comments that the proposal will have a unifying effect within the motor carrier industry and better serve the goal of removing drug users from the highways:

> Usage of alcohol and rules governing this problem have been compared as similar. The similarity is very limited to the fact that the use of both are prohibited while operating a motor vehicle. However, alcohol is treated with more definite action in that law enforcement officers have been provided with various methods of detection. Drugs should be treated in a like manner.
>
> The trucking industry, as I view it, has [a] responsibility to enforce the regulations relating to alcohol and has a large number of law enforcement personnel to assist. When it relates to drugs, the industry is bearing this burden all alone, and in most cases each trucking company is trying to fight this battle individually. A method to unify all these individual efforts would certainly make giant steps to begin dealing with the drug problem.

All the physicians and medical personnel believe that known drug users should not be qualified to drive in interstate or foreign commerce whether the drug user was an occassional drug user or drug dependent.

Twenty-eight individuals commented in the affirmative for the proposal. In general, they commented that the proposal would make the trucking industry a safer industry.

Comments Not in Favor of the Proposal

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Helpers of America (IBT) was the sole commenter not favoring the change in the prohibitive language for nonalcoholic drugs from that which prohibited a driver from having a current clinical diagnosis of drug dependence to that prohibiting a driver from using the nonalcoholic drugs named in § 391.41(b)(12). The IBT noted that they do not condone illegal drug use and that they, along with the motor carrier industry, have developed a labor/management agreement to combat it. The IBT argues that the prohibitive language of § 391.41(b)(12) should not be changed for three specific reasons. They are:

1. A return to the former language of § 391.41(b)(12) is not supported by medical evidence.

When FHWA amended the drug rules, they did so based on solid medical evidence that alcohol problems and drug problems affecting qualification to drive should be addressed similarly. Since that section deals with physical qualifications which are evaluated by a physician, an "in use" type regulation is not consistent with the physical qualifications section of the regulations. We know of no new evidence (medical or otherwise) which would support a return to an "in-use" specification under the physical qualifications sections of the regulations.

2. A return to the former language of § 391.41(b)(12) is not needed to keep drug users from driving because such users can be disqualified under § 391.15.

Although FHWA amended the drug rules in November, 1984, they retained § 391.15, which lists drug use as a disqualifying offense. In other words, the industry has the right under § 391.15, to remove a driver using drugs absent a medical determination of drug dependence. Because drug users can be kept from driving under § 391.15, clearly, an amendment to the regulation is not needed.

3. A return to the former language of § 391.41(b)(12) is legally unsupportable under the physical qualifications section of the regulations.

Although we oppose the proposed amendment, if it were adopted, such a provision would be legally—unsupportable—

> For example, who, other than a medical doctor, would be able to determine during a physical examination whether a driver is "using" drugs? How would "drug use" be determined? For example, could a single urine screening test for marijuana, which is known for its unreliability, be used to deem a driver not physically qualified to drive under the regulations? Does "no use of drugs" mean no use of a prescription drug or over-the-counter drug which may contain small amounts of a substance listed on Schedule I of controlled substances (such as phenobarbital)? How would such a regulation be implemented by the carriers and enforced by DOT without credible guidelines which are legally supportable? How can the innocent be protected from such a regulation when inexpensive, inaccurate drug screening is going on nationwide to determine so-called "drug use"? These are just a few of the questions that come to mind when the term "use of drugs" is put forth.
>
> In short, we object to an "in-use" provision without extensive evidence and guidelines as to what "drug use" means in terms of a driver's physical qualifications.

Discussion of Comments

An overwhelming number of comments support the proposal to change the prohibitive language of § 391.41(b)(12) from a prohibition against having a current diagnosis of drug dependence to a prohibition against a driver using prohibited drugs. Statements attested to the existence of studies which show an association between drug use and industrial accidents. Statements attested to evidence of drug use within the motor carrier industry. Opinions were given by motor carrier representatives and physicians that a drug user, whether drug dependent or an occasional user, was a potential safety hazard on the highway. Motor carriers expressed concern that they would be subject to liability claims if they knowingly allowed a known drug user, who they could not prove was drug dependent, to drive their commercial motor vehicles.

The IBT argued that the proposal should not take effect because:

1. When the rule was changed in November 1984, it was changed for a good medical reason, namely that it now coincided with another medical drug rule (i.e., the prohibition that a driver cannot have a current clinical diagonsis of alcoholism);

2. There is no need to disqualify for use of nonalcoholic drugs under § 391.41(b)(12) because this is presently addressed under § 391.15; and

3. A return to the former prohibitive language (i.e., prohibiting "use") is too ambiguous as proposed and leads to questions of how use is to be shown, confirmed, etc.

We believe a strong and convincing argument has been made to change the prohibitive language of § 391.41(b)(12) to a prohibition against the use of a Schedule I drug or other substance, an

amphetamine, a narcotic, or any other habit-forming drug. The motor carrier industry, many of its examining physicians, motor carrier associations, and many individuals have put forth several arguments that support the reasonableness and rationale of the proposal.

The first point of the IBT's argument for rejecting the proposal is, that the current prohibitive language is justified because it coincides with the prohibitive language against having a current clinical diagnosis of alcoholism. This argument is weakened by the fact that alcohol use is legal; nonalcohol drug use is illegal except in the case of medical treatment. Also, it is known that most of the nonalcohol drug abuse problem comes from the use of marijuana, heroin and cocaine, all nonmedically prescribed and illegal drugs. Further, alcohol abuse problems on the highway are addressed with long accepted and adequate means of detection and remedial action by State law enforcement efforts, but this is not the case for nonalcoholic drugs. There is no breath analyzer for nonalcoholic drugs and very few performance tests that law enforcement personnel can use to detect nonalcoholic drug use.

Therefore, the means to rid the highways of commercial motor vehicle drivers who use illicit or licit drugs is primarily through the medical certification process. The medical standards are preventive in nature and it is reasonable to remove drug users prior to their having an accident associated with their drug use.

The IBT makes a second point that there is no need for the change because drug users are disqualified under § 391.15. Section 391.15 disqualifies a driver for a criminal conviction of using drugs while on duty in the employ of a motor carrier. It is a reactive regulation addressing situations where a criminal conviction has taken place. From the evidence submitted by the commenters concerning drug use rates, few drivers would be subject to disqualification under § 391.15. Motor carriers initiate motor vehicle license violation checks as part of the employment process. These checks do not reveal drug conviction rates similar to the drug use rates.

The third point made by the IBT states that the proposal language is legally unsupportable. The IBT's third point does raise several issues as to whether additional regulations should stipulate what specific drugs are to be regulated, how to test for drug use, and what to do in case of a positive drug finding.

Several commenters supporting the proposal raised similar issues. They made a strong argument that the examining physician is hardly likely to elicit drug use information voluntarily from the examinee in the history taking part of the examination, and that the examining physician can miss signs and symptoms of drug use since they can be hidden or are subtle in nature. These commenters proposed that the FMCSR medical standards incorporate provisions to mandate that all driver examinees be required to undergo urine drug screen testing. This laboratory test could establish objective evidence of drug use. The FHWA believes the IBT's concerns about reliability of diagnosis of drug use and other commenters' proposals to mandate drug urine screening merit further investigation. Therefore, the FWHA requests comment on the following issues.

1. Should the FHWA mandate urine drug screening for all interstate or foreign commerce drivers?

2. Or should the FHWA only state it permits urine drug screening in the regulation, leaving the decision up to the motor carrier and the examining physician whether to perform the test?

3. Whether urine drug screening is mandated or optional, should the urine drug screening, where positive, be automatically subjected to more specific and sensitive tests for further confirmation.

4. Should the list of prohibited drugs, as now named, be changed to prohibit use of all drugs in the Schedule of Controlled Substances, Schedules I through V? If the SCS is adopted in its entirety, should a provision be added that specifically addresses instances of drivers using SCS drugs under doctor's orders?

The FHWA believes it is reasonable to now change the prohibitive language pertaining to nonalcoholic drugs to a prohibition against the use of Schedule I drugs and other substances, an amphetamine, a narcotic, or any other habit-forming drug. Comments are sought on the subject of broadening the rule to address body fluid testing (i.e., urine, blood, or salivary fluids), confirmation testing, and the inclusion of all SCS drugs as prohibited.

The impact of this final rule will not result in an annual effect to the economy of $100 million, a major increase in costs or prices, or have a significant adverse effect on the nation's economy. The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. This final rule does not add any financial burden to motor carriers; therefore, a full regulatory evaluation has not been prepared. For these reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 391

Driver qualifications-drug prohibition, Highways and roads, Highway safety, Motor Carriers, Physical standards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 7, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by revising Part 391 as set forth below.

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for Part 391 is amended to read as follows:

Authority: 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. Section 391.41(b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12) Does not use a Schedule I drug or other substance identified in Appendix D to this subchapter,[1] an amphetamine, a narcotic, or any other habit-forming drug; and

* * * * *

[FR Doc. 86-10845 Filed 5-6-86; 1:10 pm]

BILLING CODE 4910-62-M

[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, DC 20590, or to any Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration at the address given in Part 390 of this subchapter.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-116; Notice No. 86-4]

Qualifications of Drivers; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking; cross reference.

SUMMARY: In a document published in the rules section of this issue of the Federal Register, the FHWA is adopting a final rule that will prohibit the use of certain drugs. In that rule, the FHWA is requesting comments on the reliability of diagnosis of drug use and mandatory drug urine screening. This request proceeds from a discussion of the comments to that rule.

DATES: Written comments must be received on or before August 11, 1986.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: May 8, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 86-10707 Filed 5-8-86; 1:10 pm]

BILLING CODE 4910-22-M

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49 CFR Part 391

[BMCS Docket No. MC-120; Notice No. 86-3]

Qualifications of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed changes to the driver qualification requirements contained in the Federal Motor Carrier Safety Regulations (FMCSR). The revisions have been proposed in response to section 206 of the Motor Carrier Safety Act of 1984 and to comments received to an advanced notice of proposed rulemaking (ANPRM) published on January 23, 1985 (50 FR 2998). The proposed revisions will require motor carriers to ensure that drivers who operate: (1) Commercial motor vehicles transporting certain classes of hazardous materials (H/M) or (2) cargo tank (including portable tanks) commercial motor vehicles requiring placards meet additional or more stringent qualification requirements.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J.J. Fulnecky, Bureau of Motor Carrier Safety (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2829) (the Act). The Act was signed into law by the President on October 30, 1984.

On January 23, 1985, the FHWA published an ANPRM in the **Federal Register** (50 FR 2998) seeking public comment concerning possible revisions to the FMCSR. Approximately 50 comments were received concerning these potential changes. Only a few of these comments addressed issues related to Part 391 of the FMCSR; most of these addressed the qualifications of drivers used to transport hazardous materials.

Due to the complexity of the various areas of rulemaking, the FHWA is separating the review of the driver qualification requirements (49 CFR Part 391) from BMCS Docket No. MC-114. Further, in this rulemaking, the FHWA intends to focus its attention on the qualifications of those drivers used in the transportation of the most dangerous classes of hazardous materials and in the transportation of bulk quantities of hazardous materials by cargo tank (including portable tanks, as defined in § 171.8, but hereinafter referred to as "cargo tanks"). If comments warrant it, the FHWA will open an additional rulemaking docket to address other general driver qualification issues.

ANPRM Comments

In its comments to docket MC-114, the Truck Trailer Manufacturers Association stated that "Since drivers of tank vehicles are usually responsible for the loading and unloading of the tank, they need to have a knowledge of what to do in case of an emergency, either on the highway or at a loading or unloading facility. Drivers who have this responsibility should be trained in the operation of the tank they will be loading and unloading, including characteristics of the product handled, the functions of valves and vents, overfill protection, etc. . . . This training should also include how to close valves and pumps during an emergency and how to do an inspection to assure that all safety equipment is working properly."

The State of Wisconsin, in its comments, ". . . strongly urges that the rule changes provide for enhanced training requirements in the handling of hazardous materials and in emergency procedures. WisDOT [Wisconsin Department of Transportation] recommends that persons who operate commercial motor vehicles transporting hazardous materials be restricted to the possession and use of one valid chauffeurs license. Currently many operators maintain driver licenses in more than one jurisdiction. Their primary purpose is to avoid suspension or revocation by distributing moving violations among the licenses. WisDOT also recommends that any rule provision covering this situation set forth guidelines for uniform penalties."

The State of Minnesota expressed the need for high levels of competency for drivers of commercial motor vehicles. The comments went on to state that "all operators of vehicles transporting hazardous materials should have at least two to three years verifiable experience operating similar vehicles under all weather conditions."

Background

This rulemaking action responds to section 206 of the Act, which requires the Secretary of Transportation (the Secretary) to issue regulations pertaining to commercial motor vehicle safety.

The purposes of the Act, as stated by the Congress, are to promote the safe operation of commercial motor vehicles, the minimize dangers to the health of operators of commecial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act.

The Congress found that it is in the public interest to enhance commercial motor vehicle safety and to reduce highway fatalities, injuries, and property damage. By having more uniform commercial motor vehicle measures and strengthened enforcement, the number of fatalities and injuries, in Congress' view, would be reduced and the level of property damage related to commercial motor vehicle operations would also be reduced. Congress also found that it is in the public interest to enhance protection of the health of commercial motor vehicle operators.

The Transportation of Hazardous Materials

A hazardous material is any substance or material in transportation determined by the Secretary of Transporation to pose an unreasonable risk to health and safety or property.[1] The materials include radioactive materials, poisons, corrosives, explosives, flammable liquids and solids, hazardous wastes, and materials identified as hazardous substances. While these materials are essential to the health, productivity, prosperity, and welfare of our Nation, they also pose safety risks while in transporation. The toll of deaths, injuries, and property damage is minimized by a highly sophisticated and detailed regulatory scheme administered by Federal and State authorities. The regulatory scheme includes regulations governing the packaging, marking, labeling, loading, storage, transportation documentation, placarding, and handling of hazardous materials in package and bulk form. The intent of the requirements is to protect workers, emergency response personnel, and the public from the harmful effects of unintentional releases of hazardous materials.

It is estimated that in excess of 4 billion tons of hazardous materials move annually in highway transportation, involving some 351,000 placarded vehicles which travel over 5 billion miles each year.[2] Generally, an aggregate total of hazardous materials in excess of 1,000 pounds must be transported before placarding is required. However, certain hazard classes, namely, Class A explosives, Class B explosives, Poison A materials, Flammable solids which are water reactive, and Radioactive materials (hereafter referred to as Table 1 materials), are required by 49 CFR 172.504 to be placarded regardless of the amount being transported. In addition, whenever a cargo tank is used to transport hazardous materials, the cargo tank must remain placarded while both loaded and commercially empty, unless the tank has been throughly cleaned of H/M residue or has been reloaded with a nonhazardous material.

A primary catalyst for this rulemaking action is the recognition of the potential catastrophic results of an accident involving these materials. Due to the fact that the actions and capabilities of the driver greatly impact safe transportation, the FHWA believes that it should also consider imposing additional driver qualification requirements for operators of commercial motor vehicles used to transport these materials. We discuss these proposed changes in the paragraphs which follow.

Driver's Driving Record

During the period 1972 through 1979, the National Transportation Safety Board (NTSB) conducted 44 accident investigations which involved commercial motor vehicles. While investigating these accidents, NTSB made inquiries relative to the 44 commercial vehicle drivers' driving records. "When the responses to these inquiries were compiled, the composite records of the 44 drivers listed a total of 63 driver licenses, 98 license suspensions, 60 previous accidents, and 456 traffic convictions." [3] The most common traffic conviction (more than 60 percent of the total convictions) was for speeding.

It is a well known "secret" that many drivers of commercial motor vehicles obtain driver's licenses from several States so that they do not accumulate an excessive number of traffic convictions on a single license. By holding several licenses, the driver can average out traffic violations among those licenses, keeping one relative clear. Since it is difficult to detect when a driver is holding mutiple driver's licenses, the effect of holding multiple licenses is to prohibit the motor carrier or law enforcement agencies from fully evaluating the individual's driving record. A study by the National Highway Traffic Safety Administration in cooperation with the American Association of Motor Vehicle Administrators intitled "Multiple Licensing and Interstate Truck Drivers" reached a similar conclusion. [4] This is contrary to "the one license concept, [which] is based upon the philosophy that driver licenses issued by the States do not constitute separate privileges to drive; rather, each individual has a single, nationwide driving privilege which may be certified by any State by issuing a driver license." [5]

In a 1983 review of the transportation of H/M by highway, NTSB compiled the results of investigations of 15 accidents which had occurred since 1972, involving trucks transporting hazardous materials in bulk, where truck driver error or deficiency was a causal factor.[6] These accidents involved vehicle overturns, jacknifes, and collisions with trains, and collectively resulted in 61 fatalities and 283 injuries. Most of the fatalities and injuries were caused by the release of the hazardous materials being transported. Although records were not available for all of the involved drivers, a review of the records located by NTSB disclosed 11 driver's license suspensions, 19 previous accidents, and 83 previous traffic convictions among the 15 drivers.

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[1] Hazardous Materials Transportation Act of 1974, 49 U.S.C. 1803.

[2] U.S. Department of Transportation, Research and Special Programs Administration, *Truck Transportation of Hazardous Materials: A National Overview*, by Domenic J. Maio, Staff Study SS-42-U1.1-10.1, Transportation Systems Center, Cambridge, MA, May 1984. This study is available for public inspection and copying from the BMCS Docket Files.

[3] National Transportation Safety Board, Office of Evaluations and Safety Objectives, *Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations*, Report No. NTSBSEE801, February 15, 1980, p. 18.

[4] National Highway Traffic Safety Administration in cooperation with American Association of Motor Vehicle Administrators, *Multiple Licensing and Interstate Truck Drivers*, DOT-HS-805-845, January 1981.

[5] *Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations*, p.5.

[6] National Transportation Safety Board, Recommendations H-83-30 through 34, July 6, 1983. Available for inspection and copying from the BMCS Docket Files or by contacting the NTSB, Public Inquiries, Room 806F, 800 Independence Avenue, SW., Washington, DC 20594, (202) 382-6742.

The FHWA believes that restricting commercial motor vehicle drivers to one driver's license is central to the detection and control of problem drivers. Further, we believe that the motivation for a driver obtaining multiple driver's licenses is to circumvent the primary reason for requiring a driver's license, that is, to insure that only qualified individuals are operating motor vehicles on this Nation's highways. Based on the foregoing, the FHWA is proposing to prohibit a driver, operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded, from having more than a single operator's or chauffeur's license. That license must be issued by the driver's legal State of domicile. By State of domicile, we mean a "single" State of legal residence. An exception will be made for those instances where State law requires a driver to obtain an additional license for occupational purposes. In such cases, the driver may obtain a licensee from both the legal State of domicle and the State that requires a license for occupational purposes. As examples of this, we are aware that the States of Oklahoma and Montana require non-resident employees to obtain a license from one of those States before the individual accepts employment from a motor carrier domiciled in one of those States. We assume that in most, though not all instances, the State of domicile and the State requiring the license are the same, and therefore, it is assumed that the effect of the proposal would not undercut a single license concept. Commenters should address this problem and discuss whether it is likely to minimize multiple licensing.

As a point of clarification, the proposal to prohibit a driver from possessing more than a single operator's or chauffeur's license effectively prohibits a motor carrier from hiring a driver who holds more than a single license.

Prohibiting a driver from having multiple driver's licenses will facilitate the motor carrier's ability to obtain a complete motor vehicle record from the driver's State of domicile. In those limited instances where a State requires nonresident drivers, working for motor carriers domiciled in that State, to obtain an additional license from that State, the motor carrier will know that it must also contact this additional State in order to obtain a complete driving record.

This complete motor vehicle record (commonly called the Department of Motor Vehicle or DMV report) can become a vaulable tool for the motor carrier at the time of the driver's original employment by the motor carrier. Armed with a complete record of driving violations, motor carriers will be better able to evaluate whether the driver should be hired and permitted to operate a commercial motor vehicle used to transport Table 1 hazardous materials or operate a cargo tank commercial motor vehicle which must be placarded.

The National Driver Register is another source of information which could lead to discovery of a multi-State licensed driver. The States that contribute to this database could serve as a resource to learn which drivers are actually on record as possessing more than one license to operate a commercial motor vehicle. Commenters should also address other suggestions for enforcing the proposed single license requirement.

Given our previous discussion concerning the motivation for holding multiple driver's licenses and given the fact that this permits individuals, who would otherwise have had their privilege to drive suspended by the State of domicile, to endanger the motoring public by continuing to operate a commercial motor vehicle on this Nation's highways, the FHWA believes strong corrective measures must be taken. Therefore, the FHWA proposes that drivers permitted to operate a commercial motor vehicle used to transport Table 1 hazardous materials or operate a cargo tank commercial motor vehicle which must be placarded, and found holding licenses in more than one State, unless required by a State for occupational driving, be disqualified from operating those commercial motor vehicles for 1 year. Subsequent offenses within a 3-year period would result in disqualification for 3 years. Comments concerning these proposals are requested.

Due to the nature of the commodities these drivers will be transporting, the FHWA believes that a higher level of vigilance is required of both the driver and motor carrier. Consequently, the FHWA is also proposing to require motor carriers to annually obtain a current copy of the driver's DMV report, for each driver that operates a commercial motor vehicle used to transport Table 1 hazardous materials or operates a cargo tank commercial motor vehicle which must be placarded. An annual DMV check of these drivers will yield valuable data concerning the drivers' recent driving records, such as moving violations, speeding, failure to report accidents or even driver license restrictions or revocations. This data will permit the motor carrier to monitor, in a positive, ongoing fashion, the driving practices of the drivers it employs to tranport the most dangerous classes of hazardous materials. Comments concerning this annual DMV check for drivers who will be operating commercial motor vehicles requiring placarding are requested. Comments are also requested on whether this proposed DMV check should be made binding.

Driver's Age

The FHWA requests public comment concerning the minimum age which should be required for a driver who will operate a commercial motor vehicle used to transport Table 1 hazardous materials or who will operate a cargo tank commercial motor vehicle which must be placarded. We are concerned that the operation of vehicles laden with these materials may require individuals with a maturity level more advanced than the typical driver.

Statistical data show that there is a high correlation between accidents and being under the age of twenty five. Young males between 15 and 25 years of age have been shown to have a death rate from motor vehicle accidents which far exceeds that of any other age group.[7] As a group, Eicher *et al.* found that while passenger car drivers under 25 are twice as likely to be involved in an accident as could be expected based on their proportional share of miles driven, drivers in this same group who operate trucks were about six times more likely to be involved in an accident than would be expected.[8] Eicher concluded that "drivers of large trucks under age 25 exhibit much more of a safety problem than their counterpart passenger car driver." Eicher goes on to quote a study which points out that its survey" indicated that drivers under the age of 25 drove at slightly higher speeds, misrepresented their (driver's) logs more frequently, drove beyond the 10 hour limit more often, and had more violations than middle-aged or older truck drivers." It appears then that

[7] U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, *Minimum Age Requirements of the Federal Motor Carrier Safety Regulations*, April 1975.

[8] U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics & Analysis, *Large Truck Accident Causation*, by J. P. Eicher, H. D. Robertson, and G. R. Toth, Report No. DOT–HS–806 300, July 1982, p. IV–6.

younger truck drivers seem to take more and graver risks than older drivers.

Hackman *et al.* determined that drivers under the age of 25 "were extremely overrepresented" in the accident samples studied.[9] In fact, the accident experience for drivers in this age group were over 200 percent higher than would be expected.

Due to the nature of the commodities being transported, and the potential catastrophic consequences resulting from an accident involving hazardous materials, the FHWA is requesting comments on whether it should require drivers who operate a commercial motor vehicle used to transport Table 1 hazardous materials or who operate a cargo tank commercial motor vehicle which must be placarded, to be at least 25 years of age. Comments should discuss such an age requirement in light of the other stringent requirements proposed in this NPRM which all drivers will have to meet. Comments should also discuss whether prohibiting drivers under age 25 from operating such vehicles could impair the ability of hazardous materials trucking firms to train their drivers before they have developed poor driving habits on trucks subject to less stringent regulatory requirements. In addition, the next section addresses driver experience and commenters should consider both factors, i.e., age-experience.

Driver's Experience and Roadtest

Critical to the safe transportation of hazardous materials is the driver's familiarity with and training on the type of commercial motor vehicle to which the driver will be assigned. Numerous accidents, including one involving the overturn in Denver, Colorado, in August 1984 of a commercial motor vehicle which was loaded with Navy torpedoes, a Class A explosive, can be attributed to the driver's lack of familiarity with and training on the type of vehicle being operated.[10]

As a result of the Denver accident, on December 31, 1984, the Department of the Army's Military Traffic Management Command (MTMC) submitted a petition requesting rulemaking to strengthen the driver qualification requirements presently contained in the FMCSR. Specifically, MTMC requested modifications with respect to driver experience. According to the MTMC proposal, higher levels of driver experience should be required, at a minimum, for individuals who operate commercial motor vehicles used to transport class A or B explosives, or class A or B poisons. The FHWA is incorporating the MTMC petition into this rulemaking.

During the 1983 NTSB study referred to above, NTSB also found that many of the drivers involved in the accidents analyzed had worked for their current motor carrier for less than 2 years.[11] A review of the FHWA accident data for 1981 indicates that 46.7 percent of all accidents, where hazardous materials were being transported, involved drivers who had been with their carrier 2 years or less.

In 1978 the FHWA completed a study entitled "Effect of Cargo Shifting on Vehicle Handling."[12] Building on this study, in 1981, the FHWA completed a study entitled "Computer Simulation of the Effect of Cargo Shifting on Articulated Vehicles Performing Braking and Cornering Maneuvers."[13] Both studies concluded that cargo surge and sloshing in cargo tank vehicles have a deleterious effect on vehicle stability.

Vallette *et al.* in a 1981 study for FHWA, entitled "The Effect of Truck Size and Weight on Accident Experience and Traffic Operations, Volume 3: Accident Experience of Large Trucks," found that cargo tank commercial motor vehicles transporting liquid bulk materials have high accident rates.[14]

A study conducted by the California Highway Patrol in 1981 indicated that cargo tank commercial motor vehicles are frequently involved in overturn accidents.[15] In this study, it was found that the proportion of overturn accidents for cargo tank commercial motor vehicles was three times that recorded for all other trucks in fatal and injury accidents. The study also concluded that "empty tank trucks were the most stable against overturns, followed by fully loaded trucks. The least stable were partially loaded vehicles."

Consequently, the FHWA is proposing additional requirements in this area in order to ensure that each individual has been fully evaluated, in terms of his/her ability to safely operate a vehicle, by the employing motor carrier, prior to the carrier's permitting that individual to drive a commercial motor vehicle used to transport Table 1 hazardous materials or to operate a cargo tank commercial motor vehicle which must be placarded. The additional requirements being proposed include the requirement that the prospective driver have 1 year experience operating a motor vehicle of a type similar to that which the driver will be assigned by the motor carrier. For example, if the driver will be used to operate a cargo tank straight truck requiring placards, the driver must have previously had 1 year experience operating a straight truck. Similarly, if the driver will be used to operate a cargo tank tractor semi-trailer requiring placards, the driver must have previously had 1 year experience operating a tractor semi-trailer.

This proposed requirement of prior experience with similar equipment would be a one-time requirement only. Once a driver has obtained the required 1-year experience operating such vehicles, this requirement will be considered satisfied for the remainder of the driver's driving career. With regard to the proposal, the FHWA requests comments on how to measure the 1-year experience for drivers that operate different vehicles over the course of the year. Commenters are asked to address how to apply this provision to drivers that currently transport hazardous materials but have not had 1-year previous driving experience.

It is an accepted practice in some European countries to train commercial drivers in an apprentice program, at various tasks, for a period lasting from 6 months to 3 years before permitting the person to operate the vehicle alone. Drivers under the age of 25 appear to pose a higher risk according to studies completed on the subject, although it is

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[9] U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, *Analysis of Accident Data and Hours of Service of Interstate Commercial Motor Vehicle Drivers*, by Kenneth D. Hackman, Emilie E. Larson, and Allen E. Shinder, of Genesys Corporation, One Central Plaza, 11300 Rockville Pike, Rockville, MD.

[10] U.S. Department of Defense, *DOD Report on Motor Vehicle Accident Involving Transport of Navy MK 48 MOD 4 Torpedoes, Denver, Colorado, 1 August 1984*, by Peter J. Rutledge, Technical Advisor to the Director of Army Safety, November 20, 1984, p. 14.

[11] NTSB Recommendations.

[12] U.S. Department of Transportation, Federal Highway Administration, Offices of Research and Development, of *Effect of Cargo Shifting on Vehicle Handling*, by C. Culley, R. L. Anderson, and L. E. Wesson, Report No. FHWA–RD–78–78, March 1978.

[13] U.S. Department of Transportation, Federal Highway Administration, Offices of Research and Development, *Computer Simulation of the Effect of Cargo Shifting on Articulated Vehicles Performing Braking and Cornering Maneuvers*, by P. F. Bohn, M. C. Butler, H. D. Dunkle, and R. L. Eshleman, of the Johns Hopkins University/Applied Physics Laboratory, Report No. FHWA–RD–80–142, May 1981.

[14] U.S. Department of Transportation, Federal Highway Administration, Offices of Research and Development, *The Effect of Truck Size and Weight on Accident Experience and Traffic Operations, Volume 3: Accident Experience of Large Trucks*, by Gerald R. Vallette, Hugh McGee, James H. Sanders, and Deborah J. Enger, of BioTechnology, Inc., Report No. FHWA–RD–80–137, July 1981.

[15] California Highway Patrol, Enforcement Services Division, *California Tank Truck Accident Survey*, by W. M. Heath, Chief Engineer, December 1981.

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not clear if that risk is higher because of a lack of maturity or experience or other factors. While BMCS today proposes to restrict from driving those drivers with less than 1 year experience, it is possible that the European apprentice program could be better or more effective, although it is more restrictive. This decision could be left up to the affected industry and we are, therefore, requesting comments on this approach. We also request comments on whether 2 or 3 years or more truck driving experience should be required before permitting a driver to drive a commercial vehicle laden with Table 1 hazardous materials or a cargo tank motor vehicle.

Further, the FHWA proposes that, if the prospective driver will be operating a cargo tank (including a portable tank) commercial motor vehicle for the motor carrier: (1) The prospective driver must be given a road test using a cargo tank vehicle loaded approximately ½ full, and (2) the road test procedure must include the evaluation of the driver's knowledge of the ability to operate the cargo tank controls and emergency equipment on the type vehicle the motor carrier intends to assign the driver to operate. We are proposing to require the cargo tank vehicle to be loaded approximately ⅛ full, to permit evaluation of the driver's ability to adjust for cargo surge and sloshing. This road test requirement is in addition to the minimum requirements applicable to the typical commercial motor vehicle driver.

By proposing changes to the driver's skill requirements, the FHWA recognizes that the evaluation of a driver's capability to safely operate a commercial motor vehicle transporting hazardous materials, is an on-going process. Section 391.33 provides an exception from the road test requirement. This exception permits drivers to substitute a license or certificate issued to that driver pursuant to Section 391.31 within the preceding 3 years for a road test as equivalent thereto. To enhance the evaluation of the skill of drivers who will be assigned to operate commercial motor vehicles used to transport Table 1 hazardous materials or to operate cargo tank commercial motor vehicles which must be placarded, the FHWA is proposing to deny such drivers the alternative of substituting these licenses or certificates for the road test. This modification will require each driver of a commercial motor vehicle used to transport Table 1 hazardous materials or operate a cargo tank commercial motor vehicle which must be placarded, to have his/her driving skills evaluated by the motor carrier during a road test prior to being employed as a driver of such a vehicle. As stated above, this proposed requirement is in addition to the current regulation which call for road testing subject to certain exceptions. Comments concerning these driver's road test proposals are requested.

The FHWA intends to propose in a separate rulemaking to amend the accident report form (MCS 50–T) required to be completed by motor carriers when their vehicles are involved in reportable accidents. Part 394 of the Federal Motor Carrier Safety Regulations, requires motor carriers to file these reports with the FHWA. The FHWA is considering amending this form to require a motor carrier which is involved in an accident to supply additional information to the FHWA. This information could, among other things, include the driver's prior experience driving in the type vehicle involved in the accident.

Knowledge of the Hazardous Materials Regulations

Upon leaving a shipper's facility or a motor carrier's terminal, a driver operating a commercial motor vehicle laden with hazardous materials is, for all intents and purposes, on his/her own. In the event of an accident involving that motor vehicle, a driver having certain knowledge of the hazardous materials being transported can greatly assist emergency response personnel and can mitigate potential catastrophic occurrences. Further, basic knowledge of the hazardous materials requirements can help keep accidents and incidents from occurring. With this in mind, the FHWA proposes to require a driver, who will be operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded, to receive certain basic hazardous material training. We believe that the driver must have a functional knowledge of the Hazardous Materials Regulations addressing: (1) Shipping papers, (2) package marking requirements, (3) package labeling, (4) packaging requirements, (5) commercial motor vehicle placarding, and (6) the loading and storage of H/M. Further, the driver must have a functional knowledge of the requirements contained in Part 397 of the FMCSR pertaining to: (1) Vehicle attendance, (2) vehicle parking, (3) route selection, and (4) smoking by the driver.

Individuals who will be operating cargo tank commercial motor vehicles required to be placarded in accordance with § 177.823 of this title must, in addition to the training described above, be trained in the: (1) Operation of the emergency control features of the cargo tank, (2) operation of the emergency equipment required by § 393.95; and (3) proper loading and unloading of the cargo tank, including the vehicle attendance requirements.

The FHWA believes a driver who is knowledgeable in these areas can help to insure that shipping papers are properly prepared and that hazardous materials packages carried on the vehicle are in fact listed on the shipping papers. Such a trained driver can also identify improper packaging and labeling during the loading process and insure that the vehicle is properly placarded for the hazardous materials classes being transported. This functional knowledge will provide an additional measure of safety to highway transportation. Comments concerning this hazardous materials training proposal are requested.

Driver Disqualification

As stated in the DRIVER'S DRIVING RECORD section, we propose to disqualify any driver operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded for a period of one year, if the driver is found to possess more than one driver's license. Provision has been made for those limited instances where an additional license is required by State statute for occupational driving. Subsequent offenses would result in disqualification for 3 years.

Comments concerning this proposal are requested. Comments to extend such a requirement to all commercial motor vehicle drivers will also be considered.

Due to the potential catastrophic result of an accident involving the transportation by highway of Table 1 hazardous materials or a cargo tank commercial motor vehicle which must be placarded, the FHWA believes that the penalties associated with criminal misconduct while operating a commercial motor vehicle should reflect the seriousness of the offense. Consequently, when a driver is convicted of, or forfeits bond or collateral upon a charge of, a disqualifying offense listed in § 391.15(c) of the FMCSR (e.g., driving under the influence of alcohol, a narcotic drug, or a derivative of a narcotic drug; knowing transportation, possession or use of amphetamines, drugs or their derivatives; leaving the scene of an accident which resulted in injury or

death; or commission of a felony involving the use of a commercial vehicle), the FHWA proposes to disqualify that individual from operation of a commercial motor vehicle transporting Table 1 H/M or a cargo tank commercial motor vehicle for a period of 3 years. Under this proposal, subsequent convictions or forfeitures within 3 years of the date of the return of the driver's driving privilege would result in that individual being disqualified from operation of a commercial motor vehicle transporting Table 1 H/M or a cargo tank commercial motor vehicle for an additional period of 5 years.

Physical Qualifications and Examinations

On November 5, 1984, the FHWA published a final rule in the **Federal Register** (49 FR 44210) which amended the FMCSR to incorporate in the driver qualification requirements prohibitions in the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances (SCS). There are approximately 100 drugs and other substances in Schedule I of the SCS. The action was taken because these substances degrade driving skills.

The final rule provided an in-depth analysis of marijuana and its effects upon highway safety. Marijuana was chosen for discussion because: (1) Its effects are considered to be intermediate for those drugs and other substances found in Schedule I and (2) its incidence of usage, among Schedule I drugs, is probably the highest.

There has been a steady and dramatic increase in the use of marijuana during the last twenty years. In 1980, it was estimated that 16 million persons smoked marijuana monthly.[16]

Klein *et al.* studied the effect of marijuana on experienced users.[17] Klein's road test with drivers using high dosages of marijuana indicated dangerous effects on driving performance, including a sensory illusion of roadway inversion. It should be noted that the effect of alcohol is primarily depression of the senses, whereas the effect of marijuana is both hallucinatory and/or depression of the senses.

In 1977, Milner drew together twenty-two scientifically valid reports on marijuana and driving hazards.[18] His research indicated that marijuana is positively associated with roadway fatalities. Controlled laboratory studies showed marijuana to adversely affect perception skills, coordination, braking time, and other motor skills, mood, and judgment. Milner's study showed that marijuana adversely affected driving safety in controlled areas (closed driving courses) and in an ordinary traffic setting.

Lee I. Dogoloff, in an article in the "Journal of Traffic Safety Education," stated that it has been shown in laboratory and field experiments that marijuana, at typical levels, impairs driving skills.[19] Dogoloff cited numerous studies in which traces of marijuana were detected in autopsies of drivers who had died in automobile crashes. While such traces do not necessarily indicate impairment, the presence of marijuana in automobile accidents ranged from 9–31 percent. There was no truck data used in the Dogoloff article.

The Greyhound Lines, Inc., has given, as part of pre-employment physical examination, urine drug screening tests. In November 1983, Greyhound experienced a work stoppage. As a result of the work stoppage, it attempted to hire replacement drivers. Greyhound accepted applications from individuals that were experienced intercity bus drivers. Greyhound reports that 30 percent of the applicant's urine samples were positive for marijuana. These positive tests were confirmed with a second test using a different methodology.

In a related action, on August 2, 1985, the Federal Railroad Administration published a final rule in the **Federal Register** (50 FR 31508) which deals with the control of alcohol and drug use in railroad operations. The new regulation prohibits on-duty use of alcohol and drugs by railroad employees, mandates drug and alcohol testing for employees involved in major accidents, authorizes on-site testing of employees suspected of impairment, and requires pre-employment drug screening.

Additionally, attention is directed to a final rule which is to be found elsewhere in this **Federal Register** issue, which amends the FMCSR by revising the prohibitive language of the nonalcoholic drug medical standard for interstate or foreign commerce drivers. The revision provides that the use of certain nonalcoholic drugs renders a person not qualified to drive, whereas the previous rule provided that a person with a current clinical diagnosis of drug dependence would not be qualified to drive. The change was made because the old language could allow known drug users to continue to drive commercial motor vehicles in spite of the knowledge of their drug use.

Previously, § 391.41 of the FMCSR prohibited a driver from being medically certified to operate a commercial motor vehicle if the driver: (1) Had a current clinical diagnosis of dependence on a Schedule I drug, an amphetamine, a narcotic, or any other habit-forming drug, and/or (2) had a current clinical diagnosis of alcoholism. Section 392.4 of the FMCSR prohibits a driver from being on duty and possessing, being under the influence of, or using: (1) A Schedule I drug or other substance, (2) a narcotic drug or any formulation thereof, (3) an amphetamine or any formulation thereof (including, but not limited to, "pep pills" and "bennies"), or (4) any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle. Further, § 392.5 prohibits a driver from consuming or being under the influence of an intoxicating beverage while in an on-duty status or within 4 hours before reporting for duty.

Although these regulatory requirements were intended to eliminate or at least reduce the number of instances of drug and alcohol use during commercial motor vehicle driving, it is possible that many drivers are presently using these substances while operating commercial motor vehicles. Based on the experience of its field staff in regulating the motor carrier industry, the FHWA believes that current usage of substances, such as amphetamines, is related to the driver's desire to increase the length of time the driver is able to perform the driving task.

A 1982 technical report prepared for the National Highway Traffic Safety Administration (NHTSA) cites statistics on alcohol usage in fatal accidents involving trucks with a gross weight rating over 10,000 pounds. These data showed that 18.8 percent of the fatally injured drivers who were tested for blood alcohol content showed a concentration of .05 or greater. Similarly, 14.4 percent of those fatally injured drivers tested for blood alcohol content showed .10 alcohol concentration or greater.

These data, when matched to the task of operating a commercial motor vehicle laden with the most dangerous classes

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[16] Lee I. Dogoloff, "Marihuana and Driving," *Journal of Traffic Safety Education*, (October 1980): 8–10.

[17] Arnold W. Klein, Joseph H. Davis, and Brian D. Blackbourne, "Marihuana and Automobile Crashes," paper presented at Third Annual Meeting of the American Academy of Clinical Toxicology, San Francisco, CA, October 28, 1970. Available for inspection and copying from the BMCS Docket Files.

[18] Gerald Milner, "Marijuana and Driving Hazards," *The Medical Journal of Australia*, (February 12, 1977): 208–210.

[19] Dogoloff, p. 6.

of hazardous materials, indicate that FHWA action may be necessary. This is especially true when one considers the fact that the typical commercial vehicle driver drives tens of thousands of miles annually, operates a motor vehicle which may weigh 80,000 pounds, and is employed in a high stress occupation. The FHWA is considering either recommending or requiring such drivers to be tested for the presence of alcohol or certain drugs which are believed to interfere with a driver's ability to safely drive a commercial motor vehicle. This testing would be accomplished through an analysis of a urine sample of the driver. Regulatory language for both alternatives is included and persons should comment if either of these alternatives should be made final. Those persons who favor making this a requirement should provide data on the costs and benefits of such a requirement. The FHWA notes that companies increasingly have been voluntarily adopting drug urinalysis screening and we would expect this trend to continue absent a Federal requirement. Commenters supporting a Federal requirement, therefore, should explain why they believe it is necessary to have a mandated requirement.

At the present time, however, the FHWA does not have sufficient data which would permit a comprehensive evaluation of the costs and benefits related to a urinalysis requirement. In the railroad industry, a well documented study showed that on-the-job alcohol use by employees in the operating crafts was prevalent. A number of serious railroad accidents were also known to have occurred that involved drunken employees. Consequently, the FHWA requests data which will provide a basis for evaluating the costs and benefits of such a requirement for the hazardous material trucking industry.

Drivers and driver applicants would be provided 30 days advance notice of the testing (5 days for preemployment testing). Urine samples which are found to be positive for any of the substances listed would be subject to a second, confirmatory test.

Drivers whose urine sample tested positive for the presence of any prohibited drug would be disqualified from driving certain hazardous materials laden vehicles. In this regard it should also be remembered that the FHWA has adopted a rule to disqualify a driver who uses certain drugs. Accordingly, if a urine sample of any driver seeking to drive a hazardous material laden vehicle tested positive for any drug referred to in 49 CFR 391.41(b)(12), that driver would also be disqualified from driving non-hazardous material laden vehicles as well. Disqualifications under 49 CFR 391.41(b)(12) or (c) would last until such time as the driver was able to demonstrate that the driver was no longer using a controlled substance by presenting a "clean" urine sample.

Section 391.41(b)(13) states that a driver is disqualified if the driver has a current clinical diagnosis of alcoholism. Section 392.5 of the Department's regulations prohibits the use or possession of intoxicating beverages by a driver while on duty, or being on duty while under the influence of an intoxicating beverage, or consuming an intoxicating beverage within 4 hours of going on duty. Because of the prevalence of alcohol use in our society, and because an individual can consume an alcoholic beverage while off duty and, though not under the influence, some time later present a urine sample in which the presence of alcohol can be detected, the FHWA is not proposing that the discovery of the presence of alcohol in the urine, alone, result in the disqualification of the dirver or driver applicant. Rather, the FHWA proposes to require that an individual with such a positive urine sample be further evaluated to determine whether that individual should be diagnosed as having alcoholism and thus disqualified.

The FHWA is not today proposing but is considering a requirement that motor carriers test a driver for the presence of the drugs listed above after a driver is involved in a reportable accident, and that the results of the test be indicated in the "remarks" section of the accident report when it is submitted to FHWA. We believe, however, that post-accident drug testing may prove useful in identifying problems and measures to correct them. At this time, we do not have sufficient data upon which to evaluate the potential benefits and costs associated with such a requirement. Comments and information on this issue are requested.

Other Changes

Readers of this document should note that the term "commercial motor vehicle" is used throughout the proposed regulations rather than the term "motor vehicle". This is in keeping with section 204 of the Act where the term "commercial motor vehicle" is defined. The FHWA intends to amend Part 391 of the FMCSR at the Final Rule stage to substitute the term "motor vehicle" with the term "commercial motor vehicle".

Importance of Public Comments

The successful completion of this rulemaking effort requires the receipt of diverse viewpoints and supporting data to this public docket. The FHWA seeks detailed answers to the requests for information. Failure to provide complete data may not permit the FHWA to adequately consider the merits of an interested party's position. Information which provides a rationale for a particular position on a question is very important, as is data which estimates the cost impacts and benefits of the action under consideration.

Economic Impact Evaluation

Because the impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation has been prepared and is available for review in the public docket.

Based on the information available to the FHWA at this time, the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 391

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Driver qualifications.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 7, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 391 as set forth below.

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for Part 391 is amended to read as follows:

Authority: Section 206 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2505); 49 U.S.C. 3102; 49 U.S.C. 104; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

2. Part 391, Subpart B is amended by revising §§ 391.11(a) and the introductory text of (b) and 391.15(c)(3), and adding §§ 391.11(c) and 391.15(d) to read as follows:

§ 391.11 Qualifications of drivers.

(a) A person shall not drive a motor vehicle unless that person is qualified to drive a commercial moter carrier. Except as provided in § 391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle. It shall be the responsibility of the motor carrier to provide evidence that each driver has fulfilled each of the qualification requirements set forth in this section.

(b) Except as provided in paragraph (c) of this section and Subpart G of this part, a person is qualified to drive a commercial motor vehicle if that person—

* * * * *

(c) A person is qualified to drive a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title if that person—

(1) Is at least 21 years of age;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of at least 1 year's experience operating the type of commercial motor vehicle to which that person will be assigned, safely operate the commercial motor vehicle;

(4) Can, by reason of experience, training, or both, determine whether the cargo to be transported has been properly located, distributed, and secured in or on the commercial motor vehicle being driven;

(5) Is familar with methods and procedures for securing cargo in or on the commercial motor vehicle being driven;

(6) Is physically qualified to drive a commercial motor vehicle in accordance with Subpart E—Physical Qualifications and Examinations of this part;

(7) Has been issued a currently valid commercial motor vehicle operator's or chauffeur's license or permit by the individual's State of legal domicile;

(8) Does not hold more than one currently valid commercial motor vehicle operator's or chauffeur's license or other permit, unless required by State law for occupational driving;

(9) Has prepared and furnished the motor carrier that employs that person with the list of violations or the certificate as required by § 391.27;

(10) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15;

(11) Has successfully completed a driver's road test given by the motor carrier employing that person and has been issued a certificate of driver's road test in accordance with § 391.31;

(12) Has successfully completed a written examination given by the motor carrier employing that person and has been issued a certificate of written examination in accordance with § 391.35;

(13) Has successfully completed the hazardous materials training required by § 391.39; and

(14) Has completed and furnished the motor carrier that employs that person with an application for employment in accordance with § 391.21.

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(3) *Duration of disqualification for criminal misconduct*

(i) *First offenders.* A driver is disqualified from driving in interstate and foreign commerce for 1 year, and from driving any vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle which is required to be placarded in accordance with § 177.823 of this title for 3 years, after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, and did not forfeit bond or collateral upon a charge of, an offense that would disqualify the driver under the rules of this section.

(ii) *Subsequent offenders.* A driver is disqualified from driving in interstate and foreign commerce for 3 years, and from driving any vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle which is required to be placarded in accordance with § 177.823 of this title for 5 years, after the date of conviction or forfeiture of bond or collaternal if, during that 3 years preceding the date, the driver was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify the driver under the rules of paragraph (c) of this section.

(iii) A driver that has been disqualified under the terms of this paragraph on the effective date of this regulation, may be employed to operate a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, following the completion of the 1 year or 3 year disqualification periods, whichever is applicable, as set forth in paragraph (c)(3) of this section.

(d) *Disqualification for possession of multiple driver's licenses.*

(1) *General rule.* A driver of a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, who is found to be in possession of a driver's license other than a license issued by the driver's State of domicile, is disqualified for the period of time specified in paragraph (d)(2) of this section, unless the additional driver's license is required by State law for occupational driving.

(2) *Duration of disqualification for possession of multiple driver's licenses—*

(i) *First offenders.* A driver is disqualified from further operation of a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehilce required to be placarded in accordance with § 177.823 of this title for 1 year after the date the driver is found to be in possession of a driver's license other than a license issued by the State of legal domicile.

(ii) *Subsequent offenders.* A driver is disqualified from further operation of a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title for 3 years after the date the driver is found to be in possession of a driver's license other than a license issued by the State of legal domicile if, during the 3 years preceeding that date, the driver was disqualified under the rules of paragraph (d) of this section.

3. Part 391, Subpart C is amended by adding §§ 391.23(d) and 391.27(e) to read as follows:

§ 391.23 Investigations and inquiries.

* * * * *

(d) If, as the result of the inquiry to State agencies or the investigation of the driver's employment, it is determined that a person, who will be employed to

drive a commercial motor vehicle which will be used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, holds a driver's license other than a license issued by the State of legal domicile, the driver is disqualified for the period of time specified in § 391.15(d)(2), unless the additional driver's license is required by State law for occupational driving.

§ 391.27 Record of violations.

* * * * *

(e) Each motor carrier shall obtain the information required by § 391.23(a)(1) at least once every 12 months for each driver it employs to drive a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title.

4. Part 391, Subpart D is amended by revising the heading of subpart D, adding §§ 391.33(a)(3) and 391.39 and revising the introductory text of § 391.31(c) to read as follows:

* * * * *

Subpart D—Training, Examinations and Tests

§ 391.31 Road test.

* * * * *

(c) The road test must be of sufficient duration to enable the person who conducts the road test to evaluate the skill of the person taking the test. The skills to be evaluated include the driving of the motor vehicle and operation of the motor vehicle's associated equipment. If the person will be employed to drive a cargo tank (including a portable tank) commercial motor vehicle which must be placarded in accordance with § 177.823 of this title, the cargo tank (or portable tank) must be loaded approximately ⅛ full during the road test. When fulfilling the ⅛-full loading requirement, hazardous materials need not be used. The person who takes the test must be tested while operating the type of motor vehicle the motor carrier intends to assign that person. As a minimum, the person must be tested on the performance of each of the following operations:

* * * * *

§ 391.33 Equivalent of road test.

(a) * * *

(3) *Exception.* A driver who will be employed to drive a commerical motor vehicle which will be used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title may not present and the motor carrier may not accept the road test equivalents described in paragraphs (a) (1) and (2) of this section.

* * * * *

§ 391.39 Hazardous materials training.

(a) A person shall not operate a commerical motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, unless that person has received hazardous materials training.

(b) The hazardous materials training required by paragraph (a) of this section shall consist of—

(1) Instruction concerning the required information which must be shown on the hazardous materials shipping paper and the location where such shipping papers shall be kept during the operation of the commercial motor vehicle;

(2) Instruction concerning the markings and labels which must be shown on packages of hazardous materials;

(3) Instruction concerning the identification of improper packaging for the transportation of hazardous materials;

(4) Instruction concerning the proper placarding of commercial motor vehicles;

(5) Instruction concerning the loading and storage requirements contained in § 177.848 of this title;

(6) Instruction concerning the requirements contained in Part 397 of this chapter, including, but not limited to, vehicle attendance, vehicle parking, route selection, and smoking by the driver; and

(7) Instruction concerning the procedures to be followed in the event of an accident or other emergency.

(c) A person operating a cargo tank (including a portable tank) commerical motor vehicle required to be placarded in accordance with § 177.823 of this title must, in addition to the training set forth in paragraph (b) of this section, also be trained in the—

(1) Operation of the emergency control features of the cargo tank;

(2) Operation of the emergency equipment required by § 393.95 of this chapter; and

(3) Proper loading and unloading of the cargo tank, including the vehicle attendance requirements.

5. Part 391, Subpart E, is amended by adding one of the two alternatives given in Alternatives 1 and 2 which read as shown below. (The two proposed texts are given for commenters to review.)

Alternative 1

§ 391.41 Physical qualifications for drivers—Alternative Number 1 (Requirement).

* * * * *

(c)(1) In addition to the requirements contained in paragraphs (a) and (b) of this section, a driver who operates a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title, or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, shall not use a controlled substance as defined in 21 U.S.C. 802 including all substances listed in Schedules I through V of 21 CFR Part 1308, as they may be revised from time to time.

(2) *Exception.* This paragraph (c) does not prohibit the use, or possession incident to such use, of a controlled substance listed in Schedules II through V of the Schedules of Controlled Substances (21 CFR Part 1308) prescribed or authorized by a medical practitioner (physician or dentist) licensed or otherwise authorized to practice by the State, if the treating medical practitioner or a physician designated by the motor carrier has made a good faith judgment, with notice of the driver's assigned duties and on the basis of available medical history, that use of the substance by the driver at the prescribed or authorized dosage level is consistent with safe performance of the driver's duties, and the substance is used at the dosage prescribed or authorized.

(2)(i) A driver who operates a motor vehicle identified in paragraph (c) of this section shall be tested for the presence of alcohol and other drugs. The test shall be accomplished through analysis of a urine sample.

(ii) The employing motor carrier shall cause the driver's urine sample to be identified, preserved, and tested by a competent laboratory for the presence of drugs including, at a minimum, the following substances: alcohol, opiates (narcotics), cocaine, barbiturates, amphetamines, cannabis, and any other drug(s) identified by the medical authority conducting the test to be in frequent use in the locality.

(iii) The motor carrier shall give each employed driver 30 days notice in writing prior to testing. In the case of preemployment drug testing, a minimum of 5 days notice to the applicant is required.

(3) If the first test of a sample is positive for any drug listed in this section, the sample shall be tested a second time by another method, equal to or greater in sensitivity but greater in specificity than the first test, to confirm the finding.

(4) A person is not physically qualified under this section if the second test of the sample confirms the findings of the first test indicating the presence of any drug listed in this section except alcohol. If the second test confirms the finding of the first test that alcohol is present in the urine sample tested, then further medical investigation must take place to decide if a current clinical diagnosis of alcoholism is indicated. A person with a current clinical diagnosis of alcoholism is not physically qualified to drive a commercial motor vehicle under paragraph (b)(13) of this section.

(5) A driver or driver applicant who refuses to submit to drug testing under this section shall not be used as a driver during any period such refusal may continue.

Alternative 2

§ 391.41 Physical qualifications for drivers—Alternative Number 2 (Recommendation).

(c)(1) In addition to the requirements contained in paragraphs (a) and (b) of this section, a driver who operates a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title, or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, shall not use a controlled substance as defined in 21 U.S.C. 802 including all substances listed in Schedules I through V of 21 CFR Part 1308, as they may be revised from time to time.

(2) *Exception.* This paragraph (c) does not prohibit the use, or possession incident to such use, of a controlled substance listed in Schedules II through V of the Schedules of Controlled Substances (21 CFR Part 1308) prescribed or authorized by a medical practitioner (physician or dentist) licensed or otherwise authorized to practice by the State, if the treating medical practitioner or a physician designated by the motor carrier has made a good faith judgment, with notice of the driver's assigned duties and on the basis of available medical history, that use of the substance by the driver at the prescribed or authorized dosage level is consistent with safe performance of the driver's duties, and the substance is used at the dosage prescribed or authorized.

(3)(i) It is recommended that a driver who operates a motor vehicle identified in paragraph (c) of this section should be tested for the presence of alcohol and other drugs. The test should be accomplished through analysis of a urine sample.

(ii) The employing motor carrier should cause the driver's urine sample to be identified, preserved, and tested by a competent laboratory for the presence of drugs including, at a minimum, the following substances: alcohol, opiates (narcotics), cocaine, barbiturates, amphetamines, cannabis, and any other drug(s) identified by the medical authority conducting the test to be in frequent use in the locality.

(iii) The motor carrier should give each employed driver 30 days notice in writing prior to testing. In the case of preemployment drug testing, a minimum of 5 days notice to the applicant should be required.

(4) If the first test of a sample is positive for any drug listed in this section, the sample should be tested a second time by another method, equal to or greater in sensitivity but greater in specificity than the first test, to confirm the finding.

(5) A person should not be physically qualified under this section if the second test of the sample confirms the findings of the first test indicating the presence of any drug listed in this section except alcohol. If the second test confirms the finding of the first test that alcohol is present in the urine sample tested, then further medical investigation should take place to decide if a current clinical diagnosis of alcoholism is indicated. A person with a current clinical diagnosis of alcoholism may not be physically qualified to drive a commercial motor vehicle under paragraph (b)(13) of this section.

(6) A driver or driver applicant who refuses to submit to drug testing under this section should not be used as a driver during any period such refusal may continue.

6. Part 391, Subpart F, is amended by adding § 391.51(i) to read as follows:

* * * * *

§ 391.51 Driver qualification files.

* * * * *

(i) The qualification file for a driver who has been employed to operate a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title must, in addition to the information required by paragraphs (b) and (c) of this section, include—

(1) Evidence that the driver has fulfilled the qualification requirements found in § 391.11;

(2) The response to the annual inquiry to the State agency concerning the driver's driving record, pursuant to § 391.23; and

(3) The results of the urinalysis screenings required by § 391.41(c).

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Part III

Department of Justice

Bureau of Justice Assistance

Criminal Justice Discretionary Grants; Notice

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Criminal Justice Discretionary Grants

AGENCY: Bureau of Justice Assistance, DOJ.

ACTION: Notice of Proposed Program Priorities.

SUMMARY: The Bureau of Justice Assistance is publishing for public comment a notice of proposed program priorities for criminal justice discretionary grant funding.

DATE: Comments are due on or before July 14, 1986.

ADDRESS: Send comments to Eugene Dzikiewicz, Acting Deputy Director, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272–6838.

FOR FURTHER INFORMATION CONTACT: Curtis Straub II, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272–6838.

SUPPLEMENTARY INFORMATION: On October 12, 1984, President Reagan signed into law the Justice Assistance Act of 1984. Part E of the Act establishes a program of criminal justice discretionary grants to public agencies and private non-profit organizations for the purposes of: (1) Demonstration programs; (2) education and training for criminal justice personnel; (3) technical assistance to states and local governments; and (4) national or multi-state programs.

The discretionary grant program is intended to complement and enhance the criminal justice block grant program authorized under Part D of the Act and to address criminal justice issues which are national or multi-state in scope. Block grants, administered by the states, provide funds to carry out state and local programs which offer a high probability of improving the criminal justice system, with special emphasis on violent crime and serious offenders. National/multi-state programs are designed to address issues of national concern and to provide leadership in criminal justice system improvement. For fiscal year 1986, the amount available for discretionary programs is $11.6 million.

Responsibility for administering the discretionary grant program rests with the Bureau of Justice Assistance of the Office of Justice Programs. As required by the Act, the Bureau is announcing its proposed priorities for discretionary grants and inviting public comment. This notice was not released for public comment earlier this year pending action on a proposed rescission of fiscal year 1986 funds. After the 60-day comment period has ended and the Bureau has considered all comments received, it will publish a final notice of its priorities in the Federal Register detailing specific programmatic and application requirements.

The proposed priorities for fiscal year 1986 reflect two broad themes: the first is to facilitate the successful implementation of the block grant program through the continued provision of training and technical assistance; and the second is to continue the emphasis on programs that deal with violent crimes, serious offenders, victims and crime prevention through demonstration and national priority programs.

The fiscal year 1985 priorities published in the Federal Register on July 26, 1985 (50 FR 30664 July 26, 1985) have been modified to reflect the following changes: a supplemental award to the Law Enforcement Accreditation Program; a broadening of the Evaluation Component for Demonstration Programs to include evaluation of selected block grant projects; and the cancellation of the announcement for Technical Assistance and Training to Crimes Against the Elderly and Rural Law Enforcement Programs because these proposed areas have not proven to be selected by the states for sufficient block grant funding.

A substantial amount of the funds provided for in this announcement will not be awarded until the 60-day period for public comment has expired and the final notice of program priorities has been published. However, some projects will be started or continued during this period. The Bureau is specifically inviting comment and recommendations regarding candidate programs, particularly in the area of violent crimes and serious offenders. The Bureau is seeking to identify promising strategies that lend themselves to additional field testing.

I. Demonstration

Demonstration programs provide a means for testing in a variety of sites, programs that, based on research or experience, are likely to be a success in more than one jurisdiction and are not likely to be funded with monies from other sources. All demonstration programs will be evaluated and applicants will be required to cooperate with the evaluation effort. Programs that prove successful may be approved by the Bureau as eligible for block grant support in future years.

The Bureau proposes to undertake demonstration programs in the following priority areas:

a. *TASC Criminal History Tracking.* This program will demonstrate the feasibility of developing linkages to state computerized criminal history repositories for measuring the effectiveness of TASC programs, by tracking clients over time. The program will address issues related to criminal history records access by non-criminal justice agencies, privacy and security, mechanisms for the linkages and data analysis.

b. *Organized Crime/Narcotics Trafficking.* This program would develop a coordinated investigative and prosecutorial effort among Federal, state and local agencies in jurisdictions with heavy organized crime or narcotics trafficking activity. The program is designed to reduce fragmented and duplicative efforts through an emphasis on shared management, data exchange during investigations and prosecution and training in the seizure of financial assets and civil remedies.

c. *Projects Based on NIJ Research.* Projects will be developed to demonstrate that new procedures or techniques, found by the National Institute of Justice through research and evaluation to be effective in one or a small number of locations, can be transferred to other jurisdictions. Specific programs to be implemented will be determined in cooperation with NIJ.

d. *Justice Simulation Modeling.* Justice Simulation Modeling (JUSSIM), which is a computer-aided model focusing on the flow of offenders through the criminal justice system, will be implemented in several jurisdictions. This program will demonstrate the model's ability to assist decision-makers anticipate the effects that changes in justice policy, workload and resources in one agency have on other criminal justice agencies.

e. *Information Systems Projects.* Several projects will be funded to demonstrate the effectiveness of management information systems in improving the operations of criminal justice agencies. Efforts will focus primarily on the use of personal computers by small to medium sized organizations.

f. *Family Violence Projects.* This program will continue the efforts of the family violence demonstration program implemented with FY 1984–85 funds. The goal of this program is to intervene in and reduce battering in adult relationships by instituting an effective law enforcement and criminal justice intervention program in domestic violence cases.

g. *Prison Capacity.* Demonstration programs will implement

recommendations of the Attorney General's Task Force on Violent Crime. These recommendations include greater uniformity and certainty in sentencing and development of mechanisms for determining prison policy.

The Bureau anticipates conducting each of these demonstration programs in several sites. It is estimated that $3.8 million will be allocated for demonstration programs. Recommendations for promising programs that, based on research or experience are likely to prove successful, are invited. Individual program announcements will be published in the **Federal Register**.

II. Training and Technical Assistance

A major purpose for the use of discretionary grant funds is to support education and training programs for criminal justice personnel and provide technical assistance to state and local criminal justice agencies.

The Bureau proposes to undertake training and technical assistance activities in the following priority areas:

a. *Assistance to Block Grant Projects.* Training and technical assistance will be provided by national contractors to block grant programs funded under the following purpose areas:

Purpose 1—Community Crime Prevention
Purpose 12—Information Systems
Purpose 9—Prison and Jail Capacity

b. *Assistance to the Courts.* This program will assist the courts to increase efficiency through case management and management information systems. Models will be developed for the use of case management teams and case processing "tracks" with time standards. Assistance to states will be provided by a national organization.

c. *Catalog for Prosecution Management Support Systems.* A resource catalog of agencies implementing Prosecution Management Support Systems will be developed to provide projects with a mechanism to obtain technical assistance from other practitioners.

d. *Organized Crime/Drug Prosecutor.* Many state legislatures and/or Governors are examining the potential for the appointment of a statewide prosecutor for organized crime/narcotics trafficking activities. This project will assist states in implementing this concept once the appointment is made, through training and technical assistance provided by a national contractor.

It is estimated that $2.9 million will be allocated to training and technical assistance. Individual announcements or solicitations will be published in the **Federal Register**.

III. National/Multi-State Programs

National and multi-state programs address national priorities and initiatives that cannot be met through the state block grants. They reflect administration priorities or gaps in criminal justice funding that are not being met from other sources.

a. *National Citizens Crime Prevention Campaign.* This highly visible and successful program ("Take as Bit Out of Crime") provides public education through a national mass media program, operates a computerized information center on crime prevention programs and resources, and produces and distributes crime prevention materials for use by state and local groups. The Campaign is operated by the National Crime Prevention Council in cooperation with the Advertising Council, Inc., and the Crime Prevention Coalition.

b. *Victims Program.* Several projects will be funded to enhance the capabilities of state and local criminal justice agencies and community-based service organizations to assist crime victims. The Office for Victims of Crime in the Office of Justice Programs will be responsible for the planning, award and administration for this program. *For this program only,* comments should be forwarded to Verne L. Speirs, Administrator, Office of Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724–5983.

c. *Deadly Force Program.* Appropriate uses of and alternatives to the use of deadly force will be identified by a national law enforcement organization. Recommendations for law enforcement policies related to the use of deadly force will be developed and disseminated through seminars held around the country.

d. *Prison Capacity.* A national organization will be selected to provide assistance to states in addressing prison capacity problems.

It is anticipated that approximately $4.8 million will be allocated for national and multi-state programs. Announcements for new initiatives will be published in the **Federal Register**.

IV. General Requirements

a. *Match.* Grants may be awarded for up to 100 percent of program or project costs.

b. *Eligibility.* Public agencies and private non-profit organizations are eligible to apply. Specific eligibility requirements will be set forth in individual announcements.

c. *Period of Support.* Grants may support projects for up to three years and may be renewed for an additional two years if an evaluation indicates that the project has been effective and if the grantee agrees to provide at least one-half of the total cost of the project.

d. *Financial Requirements.* Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The Circulars along with additional information and guidance are contained in the "Financial and Administrative Guide for Grants" OJP Guideline Manual, OJP M 7100.1C, available from the Office of Justice Programs.

e. *Non-Discrimination.* The Justice Assistance Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Subparts C, D, E, and G.

Mack M. Vines,

Director.

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Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Projects for Initiating Special Recreation Programs for Handicapped Individuals; Notice of Final Funding

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Projects for Initiating Special Recreation Programs for Handicapped Individuals

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priority for Fiscal Year 1986.

SUMMARY: The Secretary announces a final annual funding priority for grants for Initiating Special Recreation Programs for Handicapped Individuals. The Secretary announces a single priority to support projects that integrate socialization and recreational opportunities for both handicapped and non-handicapped individuals. This is considered the area of greatest need during Fiscal Year 1986.

EFFECTIVE DATE: This final funding priority takes effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John Eger, Officer of Development Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3330—M/S 2312) Washington, DC 20202 Telephone (202) 732-1344.

SUPPLEMENTARY INFORMATION: Grants for Initiating Special Recreation Programs for Handicapped Individuals are authorized by Section 316 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777f). Program regulations are established at 34 CFR Part 378. The purpose of the Special Recreation Programs for Handicapped Individuals is to support projects which initiate recreational activities for handicapped individuals.

Summary of Comments and Responses

A notice of proposed annual funding priority was published in the Federal Register on November 13, 1985 (50 FR 46813) for Projects for Initiating Special Recreation Programs for Handicapped Individuals. A total of 44 comments were received in response to the Notice of Proposed Funding Priority. Thirty-four of the 44 commenters strongly endorsed the proposed priority. Fourteen commenters suggested that one year was not sufficient time to initiate and develop a project which demonstrates integration of socialization and recreational opportunities, and recommended multiple years of support. Four other commenters suggested that the Administration should support this program. The President's Budget does not include funds for this program in fiscal years 1986 and 1987. The Department's position is that more appropriate sources of financing for special recreational programs should be used. These include local organizations, private charities, and corporations. In these circumstances, awards will not be made for more than one year. One commenter suggested a method of improving the application review process. This suggestion, which will be fully considered by program staff, is not relevant to this priority announcement. The other comments and the Department's responses are summarized below.

Comment: Several commenters suggested that many of the severely disabled, who cannot participate in integrated programs, would be excluded from support under the proposed priority.

Response: A change has been made. The Secretary has determined that recreational funds provided under this program should be made available to the entire handicapped population. Twenty-five percent of the amount available for this program will not be reserved for projects responding to the priority and will be used to support segregated, partially integrated or other projects not responding to the priority.

Comment: Several commenters suggested that merely integrating recreational programs so that both handicapped and non-handicapped participate is insufficient; rather, there needs to be a sequential approach to offering comprehensive quality services to all handicapped individuals in the least restrictive environment.

Response: A change has been made. The Secretary has decided to allocate twenty-five percent of the funds available for this program to support handicapped recreation projects that do not meet this priority. Thus, applicants desiring to support segregated activities leading to integrated programs may apply for funding under the non-priority category. However, the Secretary has determined that the priority itself should not be changed to allow for segregated activities as this would defeat the purpose of the priority which is to support projects that integrate socialization and recreational opportunities for both handicapped and non-handicapped persons in existing local and national recreational activities.

Comment: One commenter suggested that it would be of limited value if funded projects simply placed disabled and non-disabled persons in the same setting, whereas projects might influence a more permanent change in the public service structure and attitudes by training community based agency staff or conducting public education within a rehabilitation setting. Another commenter suggested that the projects should provide in-service training for professionals who provide regular recreational activities. A third commenter suggested that grants be made to educational institutions for the dual purpose of training personnel to work with the disabled and to devise recreational programs to integrate handicapped and non-handicapped individuals.

Response: No change has been made. Under this priority, the Secretary is seeking applications that propose a variety of approaches to the problem of integrating socialization and recreational opportunities for both handicapped and non-handicapped individuals. While training is certainly one approach to the problem of integration, it is not the only solution to the problem.

Comment: One commenter suggested that applicants should either be generic recreation providers or show a strong relationship to those providers.

Response: No change has been made. All State and other public or non-profit agencies and organizations are eligible to apply for grants under this program. To limit applicants, as suggested by the commenter, would be contrary to the intent of legislation and regulations governing this program.

Comment: One commenter suggested that the target population for this program, *i.e.*, age 16 and above, should be extended to include children from kindergarten through the 12th grade.

Response: No change has been made. The age range of the population to be served by this program is not specified in the priority. However, the program evaluation criterion at 34 CFR 378.31(f)(2)(i) states that the proposed project should be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units. The population generally served by State vocational rehabilitation units is age 16 and above.

Comment: One commenter suggested that funding guidelines should ensure true integration, not just proximity.

Response: No change has been made. The Secretary agrees that there should be true integration and the final priority emphasizes this. Specific additional guidelines are not considered necessary

and would not contribute significantly toward clarifying the priority. However, all applications submitted in response to this priority that do not ensure true integration will be required to compete under the non-priority category.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications submitted in fiscal year 1986 in response to the single priority.

All applications will be evaluated according to criteria which appear in program regulations at 34 CFR 378.31. The single priority is:

Integrated Recreation

The purpose of this priority is to support projects that integrate socialization and recreational opportunities for both handicapped and non-handicapped individuals. The Secretary anticipates that this priority will stimulate greater involvement and participation of handicapped persons in existing local and national recreational activities and decreases the possibility of restricted and segregated recreational programs. In addition, there should be less duplication of resources for recreation.

(29 U.S.C. 777f)

Dated: May 8, 1986.

(Catalog of Federal Domestic Assistance No. 84.128, Initiating Special Recreation Programs for Handicapped Individuals)

William J. Bennett,

Secretary of Education.

[FR Doc. 86-10731 Filed 5-12-86; 8:45 am]

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Part V

Federal Emergency Management Agency

Offer To Assist Insurers In Underwriting Flood Insurance Using the Standard Flood Insurance Policy; Notice

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy.

SUMMARY: The Federal Insurance Administration is publishing in this Notice the Financial Assistance/Subsidy Arrangement for 1986–1987 governing the duties and obligations of insurers participating in the Write-Your-Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance, Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim what is set out as Appendix A to 44 CFR Part 62 and is republished for information and convenience W2H 5/2/82. This Notice relates to the final rule which was published in the Federal Register on April 25, 1985, at page 16238 regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. Last year, a copy of the offer to participate in the Arrangement was incorporated in the final rule and, this year, a copy of the offer is being published as a Notice.

DATE: The offer is effective upon publication in the Federal Register. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1986, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration, working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures. The Statistical Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, Rollover Procedures and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1986–87.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangment to the Administrator prior to midnight EDT September 30, 1986.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 15, 1986.

4. If (1), (2) or (3) above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to: FEMA, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Offer to Provide Financial Assistance

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128, Reorganization Plan No. 3 of 1978 (3 CFR Part 1978 Comp., p. 329), E.O. 12127, dated March 31, 1979 (3 CFR Part 1979 Comp., p. 376), Delegation of Authority to Federal Insurance Administrator, subject to all regulations promulgated thereunder and, to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, hereinafter referred to as the "Administrator", offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a state in which such private sector insurance company is licensed to engage in the business of property insurance.

Federal Emergency Management Agency

Federal Insurance Administration

Financial Assistance/Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1986.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including

1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);
1.1 Renewal Processing—7 days;
1.2 Endorsement Processing—7 days;
1.3 Cancellation Processing—15 days;
1.4 Correspondence, Simple and/or Status Inquiries—7 days;
1.5 Correspondence, Complex Inquiries—20 days;
1.6 Supply, Materials, and Manual Requests—7 days;
1.7 Claims Draft Processing—7 days from completion of file examination;
1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonable attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.
2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;
3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;
4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;
5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). The Company shall invest all funds held in the accounts established pursuant hereto, which funds are not necessary to meet current expenditures, in obligations of the United States Government. Such income as is derived from these investments shall be utilized to meet the obligations of the Company pursuant to flood insurance policies issued hereunder.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all the Company's operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Mutliple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to withhold 15.0% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents brokers, or other entities producing qualified flood insurance applications and other marketing expense.

With the agreement of the Administrator, the company may pay 3% of the company's written premium on the policies covered by this Arrangement for the right to obtain a reimbursement of state or municipal tax paid on the policies covered by this Arrangement.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Loss payments may include payments as a result of awards or judgments for punitive damages arising under the scope of this Arrangement and policies of flood insurance issued pursuant to this Arrangement provided that prompt notice of any claim for punitive damages is received by the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for punitive damages.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be only when net premium income and income derived from investments and disinvestments have been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. payment of claims as described in Article III, Section D; and

2. refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the Federal Register and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) require the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred

during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums and interest income collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. At the end of each fiscal year, the Company shall remit to the FIA any funds in excess of those required to meet expenses for loss and loss adjustment. Such liabilities shall be defined as liabilities established for case reserves and reserves established for losses incurred but not reported, plus $5,000.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this

BEST COPY AVAILABLE

Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, martial status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination, shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term thereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, 1986.

Company

The United States of America, Federal Emergency Management Agency.

by _____

by _____

(Title)

(Title)

Notice of Acceptance for Federal Emergency Management Agency; Federal Insurance Administration

Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, in 1986, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter, the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the **Federal Register**, does not provide sufficient space to type in the name of the company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the **Federal Register** does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the **Federal Register** under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company(ies) listed below is (are) duly licensed to engage in the business of property insurance:

_____

_____

_____

_____

In witness, whereof, the parties hereto have accepted the Arrangement on this _____ day of _____, _____.

The United States of America Federal Emergency Management Agency.

By: _____

Title: _____

By: _____

Title: _____

Exhibit A

FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40.00
CWP	70.00
$0.01 to $200.00	70.00
$200.01 to $400.00	90.00
$400.01 to $600.00	110.00
$600.01 to $800.00	130.00
$800.01 to $1,000.00	150.00
$1,000.01 to $1,500.00	180.00
$1,500.01 to $2,000.00	200.00
$2,000.01 to $2,500.00	220.00
$2,500.01 to $3,000.00	240.00
$3,000.01 to $3,500.00	260.00
$3,500.01 to $4,000.00	280.00
$4,000.01 to $4,500.00	300.00
$4,500.01 to $5,000.00	320.00
$5,000.01 to $6,000.00	350.00
$6,000.01 to $7,000.00	370.00
$7,000.01 to $8,000.00	390.00
$8,000.01 to $9,000.00	400.00
$9,000.01 to $10,000.00	420.00
$10,000.01 to $15,000.00	460.00
$15,000.01 to $20,000.00	490.00
$20,000.01 to $25,000.00	520.00
$25,000.01 to $30,000.00	550.00
$30,000.01 to $35,000.00	580.00
$35,000.01 to $40,000.00	610.00
$40,000.01 to $45,000.00	640.00
$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00
$75,000.01 to $100,000.00	950.00
$100,000.01 to $125,000.00	1,100.00
$125,000.01 to $150,000.00	1,250.00
$150,000.01 to $175,000.00	1,400.00
$175,000.01 to $200,000.00	1,550.00
$200,000.01 to limits	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amounts of insurance purchased.

Dated: May 7, 1986.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 86-10725 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-03-M

BEST COPY AVAILABLE

federal register

Tuesday,
May 13, 1986

Part VI

Department of Agriculture

Commodity Credit Corporation

Proposed Determinations With Regard to Common Program Provisions for the 1987 Crops of Wheat, Feed Grains, Upland Cotton and Rice; and Proposed Determinations With Regard to the 1987 Wheat Program

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to Common Program Provisions for the 1987 Crops of Wheat, Feed Grains, Upland Cotton and Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the common program provisions which are applicable to the 1987 crops of wheat, feed grains, upland cotton and rice: (a) Whether the same program enrollment periods should be applicable to such crops or whether individual program enrollment periods with varying signup dates based upon geographical location should be established; (b) whether the production of approved nonprogram crops (ANPC) should be allowed on underplanted program crop permitted acreage; (c) whether to permit the production of alternative crops on reduced acreage; (d) whether to require offsetting and cross compliance; (e) whether advance payments (deficiency or diversion) should be offered; (f) whether an advance recourse commodity loan program should be implemented; (g) whether a multiyear set-aside program should be implemented; (h) whether producers should be permitted to increase a crop acreage base by an amount not to exceed 10 percent of farm acreage base if such producers decrease another crop acreage base on such farm by a corresponding amount; (i) whether the actual yield per harvested acre for the 1987 crops should be considered in establishing a subsequent year's farm program payment yields; and (j) the proposed procedure for crediting prevented planting and failed acreage. These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act").

DATE: Comments must be received on or before May 28, 1986, in order to be assured of considerations.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Commodity Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4146. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Commodity Loans and Purchases—10.051; Upland Cotton Stabilization—10.052; Feed Grains Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Determinations with respect to the common program provisions pertaining to the 1987 crops of wheat, feed grains, upland cotton, and rice should be made in sufficient time to permit producers, especially wheat producers, to make timely plans for the 1987 crops. Accordingly, it has been determined that the public public comment period should be limited to a period of 15 days from the date this notice is filed with the **Federal Register**. This will allow the Secretary time to consider the comments received before the final program determinations are made.

The following proposed program determinations with respect to the common program provisions that are applicable to the 1987 crops of wheat, feed grains, upland cotton and rice are to be made by the Secretary:

Proposed Determinations

a. *Enrollment Period:* Historically, the program enrollment periods for wheat, feed grains, cotton and rice have been conducted concurrently on a nationwide basis. Interested persons have raised concerns as to whether such a practice provides equity among producers of the same commodity in all production regions of the United States. These persons suggest that a staggered enrollment period should be implemented to afford producers in different regions of the United States approximately the same knowledge concerning potential crop conditions at the time such producers make program participation decisions.

The Secretary proposes to begin the program enrollment period for the 1987 crops of wheat, feed grains, upland cotton and rice as soon as possible after all program provisions have been announced. Accordingly, comments are requested as to: (1) Whether the program enrollment period should continue to be held concurrently for all program crops; (2) whether varying signup dates should be established for each commodity program based on geographic location; and the dates which should be established for the program enrollment period for each commodity program.

b. *Approved Nonprogram Crops (ANPC) and Haying and Grazing on Underplanted Program Permitted Acreage (50/92 Provisions):* Sections 107D(c)(1)(C) and (K), 105C(c)(1)(B) and (I), 103A(c)(1)(B) and (G), and 101A(c)(1)(B) and (G) of the 1949 Act provide that if an acreage limitation program (ALP) is in effect for a crop of wheat, feed grains, upland cotton, and rice and the producers on a farm: (1) Devote a portion of the permitted commodity acreage of the farm equal to more than 8 percent of the permitted commodity acreage of the farm for the crop to conservation uses or approved nonprogram crops and (2) actually plant on the farm the respective program crop for harvest on an acreage equal to at least 50 percent of the permitted acreage for such crop, such portion of the permitted program commodity acreage (i.e., the crop acreage base minus reduced and diverted acreage) of the farm in excess of 8 percent of such acreage devoted to conservation uses or approved nonprogram crops shall be considered to be planted to such program commodity for the purpose of determining the individual farm program acreage and for the purpose of determining the acreage on the farm required to be devoted to conservation uses.

If a State or local agency has imposed in an area of a State or county a quarantine on the planting of a program commodity for harvest on farms in such area, the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment

Act (16 U.S.C. 590h(b)) may recommend to the Secretary that payments be made, without regard to the 50-percent planting requirements, to producers in such area who were required to forgo the planting of the program commodity for harvest on acreage in order to alleviate or eliminate the condition requiring such guarantine. If the Secretary determines that such condition exists, the Secretary may make payments to such producers. To be eligible for payments such producers must devote such acreage to conservation uses or approved nonprogram crops.

Any acreage considered to be planted to a program commodity may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation, set-aside program, or land diversion program requiring that the producers devote a specified acreage to conservation uses.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for payments as provided in the previous paragraphs to be devoted to sweet sorghum or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, commodities for which no substantial domestic production or market exists but that could yield industrial raw material which is being imported, or likely to be imported, into the United States, or commodities grown for experimental purposes (including kenaf), except that the Secretary may permit such acreage to be devoted to such production only if the Secretary determines that:

(1) The production is not likely to increase the cost of the price support program and will not affect farm income adversely; and

(2) The production is needed to provide an adequate supply of the commodity, or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

The Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for payments in such State to be devoted to haying and grazing if the Secretary determines that haying and grazing would not have an adverse economic effect.

Comments are requested as to whether the Secretary should permit haying and grazing of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for deficiency payments and whether nonprogram crops should be approved for production on such acreage.

c. *Uses of Reduced and Diverted Acreage:* Sections 107D(f)(4), 105C(f)(4), 103A(f)(3), and 101A(f)(3) of the 1949 Act provide that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses under the acreage limitation and diversion programs shall assure protection of such acreage from weeds and wind and water erosion.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

The Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to grazing in the case of the 1987 crops of wheat, feed grains, upland cotton, and rice. Grazing shall not be permitted for any crop during any 5-consecutive-month period that is established for such crop by the State committee.

In determining the amount of land to be devoted to conservation uses under an ALP for wheat and feed grains with respect to land that has been farmed utilizing summer fallow practices, as defined by the Secretary, the Secretary shall consider the effects of soil erosion and such other factors as the Secretary consists appropriate.

The Secretary prposes: (1) That the planting of alternative crips on acreage required to be devoted to approved conservation uses for the 1987 wheat, feed grains, cotton and rice ALP and diversion programs would not be permitted and (2) that nationally approved conservation uses on reduced or diverted acreage remain unchanged from those in effect for the 1986 crops, including summer-fallow rules. These rules provided that land in an area determined by ASCS to be an area in which summer fallowing is a common practice is eligible for designation as ACR if such land has been planted to a crop in at least one of the previous two years. For all other areas, land is eligible for designation as ACR if it has been planted to a crop in at least two of the previous three years.

Comments on the planting of alternate crops and approved conservation uses on the reduced or diverted acreage are requested.

d. *Cross and Offsetting Compliance Requirements:* Sections 107D(n)(1–2), 105C(n)(1–2), 103A(n)(1–2), and 101A(n)(1–2) of the 1949 Act provide with respect to wheat, feed grains, upland cotton, and rice, that the Secretary may not require as a condition of eligibility for loans, purchases, or payments, compliance on a farm with the terms and conditions of any other commodity program (strict cross compliance). However, if an ALP is established for a crop of wheat, feed grains, upland cotton, or rice, the Secretary may require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments for such crops, the acreage planted for harvest on the farm to such commodities and ELS cotton, if an ALP is in effect for such crops shall not exceed the crop acreage base for that commodity. This requirement is referred to as limited cross compliance.

Sections 103A(n)(3) and 101A(n)(3) which are applicable to upland cotton and rice provide that the Secretary may not require producers on a farm, as a condition of eligibility for loans, purchases, or payments to comply with the terms and conditions of the upland cotton and rice programs with respect to any other farm operated by such producers (offsetting compliance). No similar requirements are applicable to wheat and feed grains. However, in accordance with sections 107D(i) and 105C(i) of the 1949 Act, the Secretary may issue regulations the Secretary determines necessary to carry out the wheat and feed grains programs. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in

which they have an interest were either in compliance with the program requirements on the acreages of wheat or feed grains planted to harvest on each of such farms did not to exceed the wheat or feed grain crop acreage base established for such farms.

The Secretary intends to implement limited cross compliance requirements for the 1987 crops of wheat, feed grains, upland cotton and rice and does not intend to impose offsetting compliance requirements for wheat and feed grains.

Comments are requested concerning the limited cross compliance requirements for wheat, feed grains, cotton and rice and the offsetting compliance requirements for wheat and feed grains.

e. *Advance Recourse Loans:* Section 424 of the 1949 Act provides that the Secretary may make advance recourse loans to producers of these commodities for which nonrecourse loans are available if it is determined such a program is necessary to ensure adequate operating credit is available to producers. These recourse loans may be made available under terms and conditions prescribed by the Secretary, except that the producer shall be required to obtain crop insurance for the crop as a condition of eligibility for a loan.

Comments are requested as to whether an advance recourse loan program should be offered for those commodities for which nonrecourse loans are available for the 1987 crops.

f. *Multiyear Set-Asides:* Section 1010 of the Food Security Act of 1985 provides that the Secretary may enter into multiyear set-aside contracts for a period not to extend beyond the 1990 crops. Such contracts may be entered into only as a part of the programs in effect for wheat, feed grains, upland cotton, and rice and only to producers participating in one or more of such programs. Producers agreeing to a multiyear set-aside agreement would be required to devote the set-aside acreage to vegetative cover capable of maintaining itself through the contract period, to provide soil protection, water quality enhancement, wildlife production, and natural beauty. Grazing of such acreage is prohibited except under major disaster conditions. Cost-share assistance must be provided for the establishment of vegetative cover.

The Secretary does not intend to implement a multiyear set-aside program. The acreage required to be devoted to approved conservation uses under the annual acreage limitation and, if authorized, paid land diversion programs combined with acreage placed into the conservation reserve program are considered adequate programs for the purposes of supply management of program commodities.

Comments as to whether a multiyear set-aside program should be implemented are requested.

g. *Advance Payments:* Sections 107C(a)(1), (a)(2)(A–F), and (b) of the 1949 Act provide that, if the Secretary establishes an acreage limitation for the 1987 crops of wheat, feed grains, upland cotton, and rice and determines that deficiency payments will likely be made for such crop, the Secretary may make advance deficiency payments available to producers for the 1987 crops.

Advance deficiency payments may be made available to producers in the form of: (1) Cash, (2) commodities owned by CCC, or (3) certificates redeemable in a commodity owned by the CCC, except that not more than 50 percent of the advance deficiency payments may be made in commodities or certificates to any producer.

Advance deficiency payments may be made available as the Secretary determines appropriate to encourage adequate participation in the programs, except that the amount of such payments may not exceed an amount which is determined by multiplying: (1) the estimated farm program acreage for the crop, by (2) the farm program payment yield for the crop, by (3) 50 percent of the projected payment rate, as determined by the Secretary.

If the Secretary makes paid land diversion payments to assist in adjusting the total national acreages of the 1987 crops of wheat, feed grains, upland cotton, and rice to desirable goals, the Secretary may make at least 50 percent of such payments available to a producer as soon as possible after the producer agrees to undertake the diversion of land in return for such payments.

Under the 1986 wheat and feed grains programs producers were offered advance deficiency payments equal to 40 percent of the estimated total deficiency payments (75 percent cash and 25 percent in commodity certificates). For upland cotton and rice, advance cash deficiency payments were offered in an amount equal to 30 percent of the total estimated deficiency payments. All wheat and feed grains diversion payments were offered in advance payable in commodity certificates.

Comments are requested as to whether advance deficiency and diversion payments should be made for the 1987 crops of wheat, feed grains, upland cotton, and rice and, if so, in what amount and the manner of payment.

h. *Adjusting Crop Acreage Bases By Up To 10 Percent of Farm Acreage Base:* Section 505(b)(2) of the 1949 Act requires the establishment of a farm acreage base (FAB) for the 1987 crops of wheat, feed grains, upland cotton, and rice.

The FAB shall include: (1) The sum of the crop acreage bases (CAB) established for a farm and (2) the sum of (A) the average of the 1986 acreage planted to soybeans and (B) the average of the acreage on the farm devoted to a conserving use in the normal course of farming operations.

Section 505(a) provides that the Secretary may allow an upward adjustment of any CAB except such adjustment may not exceed 10 percent of the FAB. Any upward adjustment in a CAB established for a farm must be offset by an equivalent downward adjustment in one or more other CAB's established for such farm.

The Secretary proposes not to implement the option of adjusting CAB's by an amount not to exceed 10 percent of the FAB. Comments are requested on whether such a program should be implemented.

i. *1987 Yields:* Sections 506(a), (b)(1–3), and (c) of the 1949 Act provide that the Secretary shall provide for the establishment of a farm program payment yield for each farm for each program crop. The farm program payment yield for the 1987 crop year shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest. With respect to the 1987 crop year for a commodity, if the farm program payment yield for a farm is reduced by more than 5 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity (in the form of commodities owned by CCC) in such amount as the Secretary determines is necessary to provide the same total return to producers as if the farm program payment yield had not been reduced more than 5 percent below the farm program payment yield for the 1985 crop year.

For the 1988 and subsequent crop years, the Secretary may: (1) Establish a farm program payment yield as the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest, or (2) establish a farm program payment yield for any program crop on

the basis of the average of the yield per harvested acre for the crop for the farm for the immediately preceding five crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which such crop was not planted on the farm. For purposes of clause (2) of the preceding sentence, the farm program payment yield for the 1983 through 1986 crop years and the actual yield per harvested acre for the 1987 and subsequent crop years shall be used in determining farm program payment yields. Also, for purposes of establishing a farm program payment yield for any program crop for the 1988 and subsequent crop years, the farm program payment yield for the 1986 crop year may not be reduced more than 10 percent below the farm program payment yield for the farm for the 1985 crop year.

Comments are requested as to whether the Secretary should utilize the actual yield per harvested acre for the 1987 crops of wheat, feed grains, upland cotton, and rice for the establishment of subsequent years farm program payment yields.

j. *Crediting Prevented Planting and Failed Acreage:* Section 504(b)(2)(B) of the 1949 Act provides that the acreage considered planted to a program crop shall include any acreage on the farm that producers were prevented from planting to such crop because of drought, flood, other natural disaster, or other conditions beyond the control of the producers.

Section 504(d) provides that, if the occurrence of a natural disaster or other similar conditions beyond the control of the producer prevented the planting of a program crop on the farm or substantially destroyed such program crop after it had been planted but before it had been harvested (failed acreage), such acreage may be planted by the producer to a substitute crop including any program crop. For purposes of determining the FAB or CAB on the farm such substitute acreage shall be treated as if such acreage had been planted to the program crop for which the other crop was substituted.

It is proposed for the 1987 crops of wheat, feed grains, upland cotton, and rice that prevented planting and failed acreage be considered as planted as follows:

1. *For Program Crops on Farms on Which Producers Are Participating in the 1987 Programs:*

Prevented planted and failed acreage would be credited in an amount not to exceed the crop permitted acreage for the program crop.

2. *For Program Crops on Farms on Which Producers Are Participating in the 1987 Programs:*

a. Prevented planted acreage would be credited in an amount not to exceed the CAB.

b. Failed acreage would be credited to the extent the acreage was planted.

Comments are requested with respect to this proposal with respect to prevented planted and failed acreage.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Authority: Sections 101A, 103A, 105C, 107C, 107D, 424, 504, 505, and 506 of the Agricultural Act of 1949, as amended; 99 State. 1419, as amended, 1407, as amended, 1396, as amended, 1446, 1383, as amended, 1447, 1461, as amended, 1462, 1463 (7 U.S.C. 1441–1, 1444–1, 1444c, 1445b–2, 1445b–3, 1443c, 1464, 1465, and 1466); Section 1010 of the Food Security Act of 1985, as amended; 99 Stat. 1454 (7 U.S.C. 1445i).

Signed at Washington, DC, on May 9, 1986.

Milt Hariz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–10856 Filed 5–9–86; 4:14 pm]

BILLING CODE 3410–05–M

Proposed Determinations With Regard to the 1987 Wheat Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1987 crop of wheat: (a) The loan and purchase level; (b) whether a marketing loan program should be implemented; (c) the established "target" price; (d) the percentage reduction under an acreage limitation program (ALP); (e) whether an optional land diversion program should be established and, if so, the percentage of diversion under the program; (f) if a marketing loan program is implemented, whether the inventory reduction program should also be implemented; (g) whether a portion or all of the deficiency or diversion payments should be made in the form of commodity certificates; (h) provisions of the farmer-owned reserve (FOR) program; (i) whether a wheat export certificate program should be implemented; (j) whether the special wheat grazing and hay program should be implemented (k) other related provisions. These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act") and the Commodity Credit Corporation (CCC) Charter Act, as amended.

DATE: Comments must be received on or before May 27, 1986, in order to be assured of considerations.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4146. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Title-Wheat Production Stabilization; Number 10.058 and Title-Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Certain determinations set forth in this notice with respect to the 1987 Wheat Program are required to be made by the Secretary by June 1, 1986. In addition, it is necessary that the determinations for the 1987 crop be made in sufficient time to permit wheat producers to make plans to plant their 1987 crop. Accordingly, the public comment period is limited to 15 days from the date this notice is filed with the **Federal Register**. This will allow the Secretary time to consider the comments received before the final program determinations are made.

Elsewhere in this issue, a notice of proposed determinations was published which set forth provisions common to the 1987 wheat, feed grain, upland cotton, and rice price support and production adjustment programs and includes a proposal as to whether program enrollment periods should be staggered or conducted concurrently on a nationwide basis.

The comments received with respect to such notice and this notice of proposed determination which is applicable only to the 1987 crop of wheat will be reviewed in determining the provisions of the 1987 Wheat Program.

Accordingly, the following proposed program determinations with respect to the 1987-crop of wheat are to be made by the Secretary:

Proposed Determinations

a. *Loan and Purchase:* Sections 107D(a)(1), (3) and (4) of the 1949 Act provide that the Secretary shall make available to producers loans and purchases for the 1987-crop of wheat at such level as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat.

For any crop of wheat for which marketing quotas are not in effect, the basic loan and purchase level which is determined shall not be less than 75 percent, nor more than 85 percent, of the simple average price received by producers of wheat, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of wheat, excluding the year in which the average price was the highest and the year in which the average price was the loweat in such period, except that the loan and purchase level for a crop may not be reduced by more than 5 percent from the level determined for the preceding crop.

Also, if the Secretary determines that the average price received by producers for wheat in the previous marketing year was not more than 110 percent of the loan and purchase level for wheat for such marketing year or determines that such action is necessary to maintain a competitive market position for wheat, the Secretary may reduce the 1987-crop loan and purchase level for wheat by the amount the Secretary determines necessary to maintain domestic and export markets for grain. The basic loan and purchase level may not be reduced by more than 20 percent. Any reduction in the loan and purchase level for wheat shall not be considered in determining the loan and purchase level for wheat for subsequent years.

The 1987-crop basic loan and purchase level for wheat will be determined based upon the simple average marketing prices received by producers during the 1982 through 1986 crops of wheat. These prices are:

Crop year:	Average price/ bushel
1982	$3.55
1983	3.53
1984	3.38
1985 (Estimated)	3.10
1986 (Projected)	2.40

Crop year prices 1982 and 1986 would not be considered in making this determination since they are the highest and lowest prices during the 5-year base period. The average of the remaining prices would be approximately $3.34 per bushel with 75–85 percent of such amount equal to $2.51–$2.84 per bushel. Since these levels are below 95 percent of the 1986 basic loan and purchase level of $3.00 per bushel, the 1987 basic loan and purchase level for wheat may not be less than $2.65 per bushel.

If it is determined necessary to maintain domestic and export markets for grain, the Secretary proposes to reduce the basic 1987-crop loan and purchase level for wheat to the level deemed necessary. This adjusted level can be no lower than $2.28 per bushel ($2.85 per bushel times 0.8).

Comments on the level of loans and purchases for the 1987 crop of wheat are requested.

b. *Marketing Loans and Loan Deficiency Payments:* Sections 107D(5)(a) and (b) of the 1949 Act provide that the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of: (1) The announced loan level or (2) the higher of: (i) 70 percent of the basic loan or (ii) the prevailing world market price for wheat, as determined by the Secretary.

If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for wheat and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for wheat.

Additionally, the Secretary may, for the 1987 crop of wheat, make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments. The payment shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of wheat the producer is eligible to place under loan.

The quantity of wheat to be pledged as collateral for a CCC price support loan may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. The loan payment rates shall be the amount by which the announced loan level exceeds the level at which a loan may be repaid.

Comments on whether the Secretary should implement marketing loans and "loan deficiency" payments for the 1987 crop of wheat and the formula and methodology for determining the prevailing world market price to be used if marketing loans are implemented are requested.

c. *Established "Target" Price:* Section 107D(c)(1)(A) of the 1949 Act provides that the Secretary shall make available to producers payments for the 1987 crop of wheat in an amount computed by multiplying: (1) The payment rate by (2) the individual farm program acreage by (3) the farm program payment yield.

Section 107D(c)(1)(D)(i) of the 1949 Act provides that the payment rate for the 1987 crop of wheat shall be an amount by which the established "target" price for such crop exceeds the higher of: (1) The national weighted average market price received by producers during the first five months of the marketing year for such crop and (2) the basic loan level for such crop. Section 107D(c)(1)(E) provides that if the level of basic loan is adjusted, the Secretary shall provide emergency compensation by increasing the established price "deficiency" payments by an amount determined necessary to provide the same total return to producers as if the adjustment in the basic loan level had not been made. In determining the "deficiency" payment rate, the Secretary shall use the national weighted average market price of wheat received by producers during the marketing year for such crop. Section 107D(c)(i)(G) provides that the established "target" price for the 1987 crop of wheat shall not be less than $4.38 per bushel. Section 107D(c)(1)(J) provides that the Secretary may pay not more than 5 percent of the total amount of such payments in the form of wheat. The use of wheat in making payments to producers shall be subject to a determination by the Secretary of the effect that such in-kind payments will have on the market prices of any commodity.

Section 107D(c)(1)(H) of the 1949 Act provides that the Secretary may

determine the established "target" price on the basis of: (1) The percentage by which producers reduce the acreage planted to wheat on the farm in accordance with an acreage limitation program or (2) a graduated scale of production under which the amount of the payments made to producers would vary for specified quantities of wheat produced by producers and such payments would be targeted to commercial family farmers who have annual gross sales in excess of $20,000.

Section 107D(c)(1)(D) of the 1949 Act provides that, with respect to the 1987 crop of wheat, if the national weighted average market price received by producers during the first 5 months of the marketing year exceeds $2.65 per bushel, the "deficiency" payment rate shall be determined based upon the difference between the established "target" price, (i.e., $4.38 per bushel) and the higher of (1) the national weighted average price received by producers during the first five months of the marketing year (June–October, 1987) and (2) the basic loan level (i.e., $2.65 per bushel). Accordingly, the maximum payment rate would be $1.53 per bushel.

Section 107D(c)(1)(E) of the 1949 Act provides that, notwithstanding the provisions of Sections 107D(c)(1)(A)–(D), if the Secretary exercises the discretionary authority to adjust the loan and purchase level the Secretary shall increase the established price payments in such amount as the Secretary determines necessary to provide the same total return to producers as if such adjustment had not been made. This second payment rate level will be determined based upon the difference between the basic loan level, (i.e., $2.65 per bushel), and the higher of: (1) The weighted national average market price of wheat received by producers during the 1987–88 marketing year (June, 1987–May, 1988) and (2) the adjusted loan level, but not less than $2.28 per bushel. The maximum payment rate would be $0.57 per bushel and is not subject to the $50,000 payment limitation.

Comments are requested whether the Secretary should make a portion of the 1987 wheat crop deficiency payment in the form of in-kind compensation and whether the established "target" price should be determined in accordance with section 107D(c)(i)(H) of the 1949 Act.

d. *Acreage Limitation Program (ALP):* Sections 107D(f)(1)(c), (f)(2)(A)(i), (f)(B), and (f)(D) (i) and (ii) of the 1949 Act provide, with respect to the 1987 crop of wheat, that if the Secretary estimates, not later than June 1, 1986, that the quantity of wheat on hand in the United States on the first day of the marketing year for such crop (not including any quantity of wheat of such crop) will be: (1) More than 1,000,000,000 bushels, the Secretary shall provide for an ALP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 20 percent but not more than 27½ percent; or (2) 1,000,000,000 bushels or less, the Secretary may provide for an ALP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more than 20 percent.

If a wheat ALP is announced, such limitation shall be achieved by applying a uniform percentage reduction to the wheat crop acreage base for the crop for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to wheat produced on that farm. An acreage on the farm shall be devoted to conservation uses determined by dividing: (1) The product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage".

The quantity of wheat on hand on June 1, 1987, is currently estimated to exceed 1.0 billion bushels and may approach or exceed 2.0 billion bushels. Based upon such estimates the Secretary would be required to implement an ALP of 20.0–27.5 percent.

With program participation estimated to be at least 85 percent or more of the total wheat acreage base established for the 1987 crop year, the acreage which would be reduced acreage under a 20-percent ALP would be about 15 million acres. Under a 27.5 percent ALP, the acreage which would be reduced acreage would be about 5 million acres greater. Therefore, with a 27.5-percent ALP in effect, total wheat supplies would likely be decreased 150–180 million bushels more than under a 20-percent program. If a 27.5 percent ALP is implemented, carryout stocks are expected to decline moderately but on June 1, 1988 such stocks would still be well above the 1.0 billion bushel trigger level which is applicable to the implementation of an ALP of 30 percent for a 1988 crop of wheat.

Comments are requested as to the percentage level, if any, at which an ALP should be implemented for the 1987 crop of wheat.

e. *Land Diversion Program:* Section 107D(f)(5)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat, whether or not an ALP, set-aside program, or marketing quotas for wheat are in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additional acreage reduction under a land diversion program (LDP) would be at a producer's option. If such a program were implemented, payments for such diversion would be in cash or commodity certificates.

Comments are requested with respect to the need for an optional paid LDP as well as the provisions of such program.

f. *Inventory Reduction Program (IRP):* Section 107D(g) of the 1949 Act provides that the Secretary may, for the 1987 crop of wheat, make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant wheat for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage limitation program. Such payments shall be made in the form of wheat and, subject to the availability of such wheat, which is owned by CCC. Payments under this program shall be determined in the same manner as established with respect to the marketing loan program.

Accordingly, it is proposed that implementation of this program be

dependent on whether a marketing loan program is also instituted. Comments are requested on whether the IRP should be implemented for the 1987 crop of wheat.

g. *Commodity Certificates:* Section 107E of the 1949 Act provides that, in making in-kind payments under any wheat program, the Secretary may (1) acquire and use commodities that have been pledged to the CCC as security for price support loans, including loans made to producers under the farmer-owned reserve program and (2) use other commodities owned by the CCC.

The Secretary may make in-kind payments: (1) By delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; (2) by the transfer of negotiable warehouse receipts; (3) by the issuance of certificates which CCC shall redeem for a commodity; and (4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

Commodity certificates were issued with respect to the 1986 price support and production adjustment programs. The use of such certificates included payment of all diversion payments and a portion of the advance deficiency payments. The Secretary proposes to use commodity certificates with respect to the 1987 wheat program, subject to the availability of commodities pledged as collateral for CCC loans, and CCC-owned stocks.

Accordingly, comments are requested with respect to the use of commodity certificates in making payments under the 1987 wheat program.

h. *Farmer-owned Reserve (FOR) Program:* Section 110 of the 1949 Act provides that, effective with the 1986 crop of wheat, the Secretary shall formulate and administer a program under which producers will be able to store wheat when in abundant supply, extend the time period for its orderly marketing, and provide for adequate, but not excessive, carryover stocks in order to ensure a reliable supply. The Secretary is required to establish safeguards to assure that wheat held under the program shall not be utilized in any manner to unduly depress, manipulate, or curtail the free market.

Such a program is required to be established whenever the total quantity of wheat stored under such program is less than 17 percent of the estimated total domestic and export usage during the then current marketing year. In establishing such a program, original or extended price support loans for wheat are to be made available under terms and conditions designed to encourage participation by producers. Loans made in accordance with this program shall be made at such level of support as the Secretary determines appropriate, but not less than the then current level of support available under the wheat program. The program may provide for: (1) Repayment of such loans in not less than three years, with extensions as warranted by market conditions; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate charged CCC by the United States Treasury, except the Secretary may waive or adjust such interest as the Secretary deems appropriate to effectuate the purposes of section 110; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers when the total amount of wheat in storage under this program is below the maximum limits for such storage and the market price for wheat is below the higher of: (i) 140 percent of the nonrecourse loan rate for wheat or (ii) the established "target" price; and (5) conditions designed to induce producers to redeem and market the wheat securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained the higher of: (i) 140 percent of the nonrecourse loan rate for the commodity or (ii) the established price for such commodity.

The rate of interest applicable to loans made under this program shall be not less than the rate of interest charged CCC by the United States Treasury. However, the Secretary may: (1) Waive or adjust the rate of interest to effectuate the purposes of the program and (2) increase the applicable rate of interest as determined appropriate to encourage the orderly marketing of wheat securing such loans if the market price for wheat exceeds the higher of 140 percent of the nonrecourse loan rate or the established "target" price.

The Secretary may require producers to repay the principal amount of loans obtained under this program, plus accrued interest and other related charges, prior to the maturity date of such loans, if the Secretary: (1) Determines that emergency conditions exist which require that wheat be made available to meet urgent domestic or international needs and (2) reports such determination to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least fourteen days before taking such action.

Announcement of the terms and conditions of the program are to be made as far in advance of making loans as practicable and shall specify the quantity of wheat to be stored under the program which is determined appropriate to promote the orderly marketing of wheat. Prior to the harvest of each crop of wheat upper limits on the total quality of wheat that may be stored under such program during the marketing year for such crop are to be established. The upper limit for wheat shall not exceed 30 percent of the estimated total domestic and export usage during the marketing year for such crop. Such upper limit may be increased, but not in excess of 110 percent, if the Secretary determines that the higher limits are necessary to achieve the purposes of the program.

Based on estimated total domestic and export usage of wheat for the 1986/87 marketing year of about 2.1–2.3 billion bushels, the minimum FOR quantity would be 355–390 million bushels and the maximum quantity would be 630–690 million bushels. As of March 19, 1986, the quantity of wheat in the FOR was 500.2 million bushels. Based upon: (1) The ability of producers to place wheat pledged as collateral for maturing 1985 price support loans in the FOR; (2) removals from the FOR in accordance with the 1986 price support and production adjustment programs and; (3) FOR contract maturities, it is estimated that the FOR quantity on hand during the 1986/87 marketing year will be between the statutory minimum and maximum levels. Accordingly, the Secretary proposes not to permit entry of maturing 1986 and 1987 crop wheat price support loans into the FOR if the estimated FOR quantities during the 1986/87 and 1987/88 marketing years are above the statutory minimum.

Comments on FOR program provisions are requested including whether 1986 and 1987 crop wheat regular CCC price support loans should be permitted entry into the FOR.

i. *Wheat Export Certificate Program:* Section 107F(a)(1) of the 1949 Act provides that the Secretary may establish a program for the 1987 crop of wheat to provide incentives for the export of wheat from private stocks. Under such a program, export certificates would be issued to producers who comply with the terms and conditions of the 1987 wheat price

support and production adjustment program. Each certificate would bear a monetary amount and specify a quantity of wheat. The aggregate quantity of wheat specified on the certificate would be equal to the quantity which is determined by multiplying: (1) The wheat acreage planted on the farm by, (2) the farm program payment yield by, (3) an export production factor. Such factor for a crop is determined by dividing: (1) The estimated quantity of wheat harvested domestically that will not be used domestically and will be available for export less the portion of the crop expected to be added to carryover stocks by (2) the estimated quantity of the crop which will be harvested domestically.

Wheat export certificates would be distributed among eligible producers in a manner which would ensure that each producer receives certificates having an aggregate face value representing an equal rate of return per bushel of wheat produced. In determining such rate of return, regional variations in costs incurred to market wheat including transportation costs shall be considered.

The face value of the export certificates shall be redeemed by the Secretary for cash or a quantity of the commodity involved having a current fair market value equal to the amount of the face value of the certificate upon presentation of such certificate by a holder who exports the quantity of wheat shown on the certificate.

The total value of the wheat export certificate would be equal to an amount which is not less than the product determined by multiplying: (1) 21 cents per bushel by, (2) the acreage planted for harvest by 1987 wheat program participants by, (3) the average of program yields for the crop.

The following example illustrates how a wheat export certificate value and quantity would be determined:

1. Estimated Total Production (mil. bu.)	2,400
2. Estimated Quantity Available for Export (mil. bu.)	1,200
3. Participating Acreage for Harvest (mil. ac.)	50
4. Program Yield (bu/ac)	33.5
5. Export Production Factor [#2÷#1] (%)	.5000
6. Total Certificate Quantity [#3×#4×#5] (mil. bu.)	838
7. Total Certificate Value [$0.21×#3×#4] (mil. $)	352
8. Certificate Value Per Bushel [#7÷#6] ($/bu.)	0.42

With the above example, a producer participating in the 1987 wheat program would be issued export certificates in a quantity which is equal to a quantity which is determined by multiplying: (1) The producer's program acreage by, (2) program yield by, (3) the export production factor. The monetary value of these certificates would be the bushel quantity times the unit value ($0.42). These certificates would be made available after the marketing of such quantity of wheat. If this program is implemented, it is expected that wheat accompanied by an export certificate would be traded at a premium to noncertificate wheat.

Comments are requested on whether an export certificate program should be implemented for the 1987 crop of wheat.

j. *Special Wheat Grazing and Hay Program:* Section 109 of the 1949 Act provides that the Secretary may implement for the 1987 crop of wheat a special grazing and hay program. Under this special program, a producer is permitted to designate a portion of the acreage on the farm intended to be planted to wheat, feed grains or upland cotton for harvest, in an amount not to exceed 40 percent of such acreage or 50 acres, whichever is greater. The designated acreage must be planted to wheat and used by the producer for grazing or hay. Payments under this program would be determined by multiplying: (1) The special program acreage by, (2) the farm program payment yield by, (3) a fair and reasonable rate of payment.

Comments are requested on whether a special grazing and hay program should be implemented for the 1987 crop of wheat and, if so, the rate of payment.

k. *Other Related Provisions:* A number of other determinations must be made in order to carry out the wheat loan and purchase programs such as: (1) Commodity eligibility; (2) premiums and discounts for grades, classes, and other qualities; (3) establishment of county loan and purchase rates; and (4) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 107C, 107D, 107E, 107F, 109, and 110 of the Agricultural Act of 1949, as amended; 99 Stat. 1446, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended (7 U.S.C. 1445b–2, 1445b–3, 1445b–4, 1445b–5, 1445d and 1445e).

Signed at Washington, DC, on May 9, 1986.

Milt Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

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H.J. Res. 544/Pub. L. 99-291

To designate May 7, 1986, as National Barrier Awareness Day. (May 7, 1986; 100 Stat. 415; 1 page) Price: $1.00

H.J. Res. 569/Pub. L. 99-292

To designate May 8, 1986, as "Naval Aviation Day." (May 8, 1986; 100 Stat. 416; 1 page) Price: $1.00

S.J. Res. 264/Pub. L. 99-293

Designating April 28, 1986, as "National Nursing Home Residents Day." (May 8, 1986; 100 Stat. 417; 1 page) Price: $1.00

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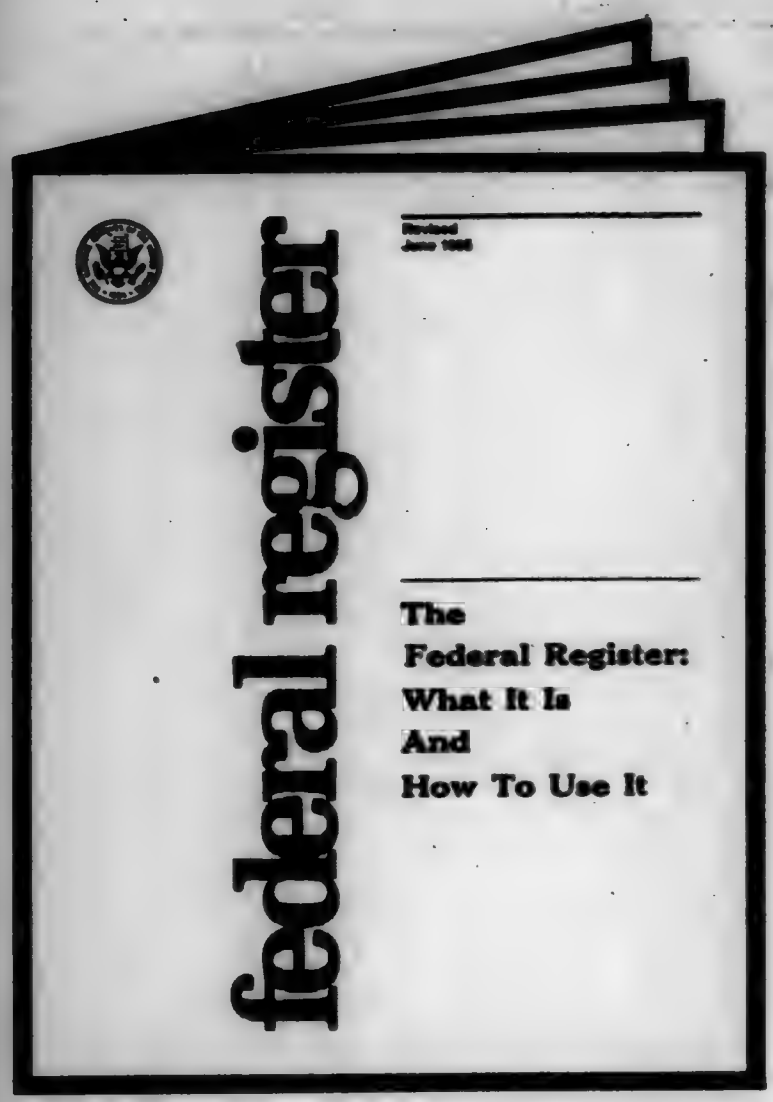

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Commodity Credit Corporation

Savings and Loan Associations
Federal Home Loan Bank Board

Selective Service System
Selective Service System

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Title 3—

The President

Proclamation 5475 of May 12, 1986

Year of the Flag

By the President of the United States of America

A Proclamation

There is no greater, more beautiful, and instantly recognizable symbol of our Nation and its ideals, traditions, and values than the flag of the United States. The thirteen stripes of red and white remind us of the courage and steadfastness of those who pledged their lives, their fortunes, and their sacred honor to found this great experiment in republican government. The white stars on a field of blue stand for the 13 original colonies that formed the nucleus of the new Nation and the 37 states that have become part of our Nation since then. Those many stars recall the saga of our growth as we spanned a continent. The colors of our flag signify the qualities of the human spirit we Americans cherish: red for courage and readiness to sacrifice; white for pure intentions and high ideals; and blue for vigilance and justice. In recent years, citizen awareness, interest, and appreciation of the flag and its relationship to our American heritage have increased. More American families and businesses are buying and displaying the flag.

Nineteen eighty-six marks the 200th anniversary of the first call for a Federal constitutional convention and the year of rededication of the Statue of Liberty, another mighty symbol of what America means. Let it also be the year we as a people commemorate our flag as the proud banner that the winds of freedom lovingly caress, for which generations of patriots have fought and died—the sign and symbol of a people ruled by a constitution that protects all and enshrines our hopes and our history.

The Congress, by House Joint Resolution 424, has designated 1986 as the "Year of the Flag" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1986 the Year of the Flag. To heighten citizen awareness of our flag, I urge all Americans to renew their appreciation of the flag and its relationship to our heritage, through appropriate celebrations honoring the flag.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11025
Filed 5-13-86; 10:21 am]
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Presidential Documents

Proclamation 5476 of May 12, 1986

Flag Day and National Flag Week, 1986

By the President of the United States of America

A Proclamation

Over two hundred years ago, in June 1775, the first distinctive American flags were flown over the colonial defenses during the Battle of Bunker Hill. One flag was an adaptation of the British Blue Ensign, while the other displayed the pine tree, a symbol of the experience of Americans who had wrested their land from the wilderness.

As the colonials moved toward a final separation from Great Britain, other flags appeared. At least two of them featured a rattlesnake, symbolizing vigilance and deadly striking power. One bore the legend "Liberty or Death"; the other, "Don't Tread on Me." The Grand Union Flag was raised over Washington's Continental Army Headquarters on January 1, 1776. It displayed not only the British crosses of St. Andrew and St. George, but also thirteen red and white stripes to symbolize the American colonies. The Bennington flag also appeared in 1776, with thirteen stars, thirteen stripes, and the number "76."

Two years after the Battle of Bunker Hill, on June 14, 1777, the Continental Congress adopted a flag that expressed clearly the unity and resolve of the patriots who had banded together in the cause of independence. The delegates voted "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation."

After more than two centuries, with the addition of thirty-seven stars, each representing one of our 50 States, the flag chosen by the Continental Congress on that June day in Philadelphia still waves over our Nation. This flag symbolizes our shared commitment to freedom and federalism and carries a message of hope to the afflicted, of opportunity to the oppressed, and of peace to all humanity.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate June 14, 1986, as Flag Day and the week beginning June 8, 1986, as National Flag Week, and I direct the appropriate officials of the government to display the Flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, set aside by Congress as a time to honor America (89 Stat.

211), by having public gatherings and activities at which they can honor their country in an appropriate manner, especially by ceremonies in which all renew their dedication by publicly reciting the Pledge of Allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11028
Filed 5-13-86; 10:22 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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Wednesday, May 14, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 25 and 25a

Rescission of Advisory Committee Management Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Rescission of regulations.

SUMMARY: Parts 25 and 25a of Title 7 of the Code of Federal Regulations were issued to provide operating instructions to USDA agencies concerning advisory committee management. It has been determined that it is more efficient and less costly to incorporate these regulations into the internal departmental regulation system. Therefore, 7 CFR Parts 25 and 25a are rescinded and removed.

EFFECTIVE DATE: May 14, 1986.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Office of Personnel, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3083.

SUPPLEMENTARY INFORMATION: The Department of Agriculture has determined that this action relates solely to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this action may be made effective less than 30 days after publication in the Federal Register. Further, since this action relates solely to internal agency management, it is exempt from the provisions of E.O. 12991. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Accordingly, 7 CFR Parts 25 and 25a are rescinded and removed.

Dated: May 8, 1986.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 86–10700 Filed 5–13–86; 8:45 am]

BILLING CODE 3410-01-M

Federal Crop Insurance Corporation

7 CFR Part 449

[Docket No. 0078A]

Fresh Market Sweet Corn Crop Insurance Regulations

Correction

In FR Doc. 86–7725 beginning on page 11895 in the issue of Tuesday, April 8, 1986, make the following correction: On page 11896, in the third column, in paragraph g, "must abandon" should read "must not abandon".

BILLING CODE 1501-01-M

Commodity Credit Corporation

7 CFR Part 1468

Payment Program for Mohair (1986–1990)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Commodity Credit Corporation's (CCC) price support program for mohair for the 1982–1985 marketing years to extend the terms and conditions of such program to the mohair price support program for the 1986–1990 marketing years. The price support program for mohair for the 1986–1990 marketing years is authorized by the Wool Act of 1954, as amended by the Food Security Act of 1985.

EFFECTIVE DATE: May 14, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1468) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0023 has been assigned.

This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Wool Act of 1954 ("Wool Act") was amended by the Food Security Act of 1985 to make price support available to producers of wool and mohair for the 1986–1990 marketing years by means of loans, purchases, payments, or other operations. It has been determined that price support for mohair for the 1986–1990 marketing years will be made available by means of payment to producers.

The Wool Act provides that the price of shorn wool shall be supported at 77.5 percent of an amount determined by a formula which is prescribed in Section 703 of the Wool Act. The Wool Act also authorizes the Secretary of Agriculture to establish a support price for mohair in relationship to the support price for shorn wool at approximately the same percentage of parity for mohair as for shorn wool. The deviation of mohair support prices shall not be calculated so as to cause it to rise or fall more than 15 percent above or below the comparable percentage of parity at which shorn wool is supported.

The regulations which previously set forth the terms and conditions for the price support payment program for mohair for the 1982–1985 marketing years are being amended to extend such terms and conditions to the price support payment program for mohair for the 1986–1990 marketing years. The calculation and determination of the support prices for mohair, the amount of payments made for mohair, and any deductions which may be made from price support payments for advertising and sales promotion activities for each of the 1986–1990 marketing years, will continue to be published as notices in the **Federal Register.**

Since the provisions of this final rule merely extend the terms and conditions which were set forth with respect to previous programs for mohair, it has been determined that no further public rulemaking is required. Accordingly, this rule shall become effective May 14, 1986.

List of Subjects in 7 CFR Part 1468

Price support programs, Mohair.

Final Rule

PART 1468—MOHAIR

Accordingly, the regulations at 7 CFR Part 1468 are amended to read as follows:

1. The authority citation in 7 CFR Part 1468 is revised to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c); secs. 702–708, 66 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

2. In Part 1468, "Subpart-Payment Program for Mohair (1982–1985)" is amended to read "Subpart-Payment Program for Mohair (1986–1990)".

§§ 1468.101 and 1468.103 [Amended]

3. In Part 1468, §§ 1468.101 and 1468.103 are amended by removing "1982, 1983, 1984, and 1985" and inserting in lieu thereof "1986, 1987, 1988, 1989, and 1990".

Signed at Washington, DC, on May 5, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-10480 Filed 5-13-86; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1472

Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1986–1990)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Commodity Credit Corporation's (CCC) price support program for shorn wool and unshorn lambs (pulled wool) for the 1982–1985 marketing years to make the terms and conditions of such program applicable to shorn wool and pulled wool for the 1986–1990 marketing years. The price support program for shorn wool and unshorn lambs for the 1986–1990 marketing years is authorized by the Wool Act of 1954, as amended by the Food Security Act of 1985.

EFFECTIVE DATE: May 14, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1472) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0023 has been assigned.

This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Wool Act of 1954 ("Wool Act") was amended by the Food Security Act of 1985 to make price support available to producers of wool and mohair for the 1986–1990 marketing years by means of loans, purchases, payments, or other operations. It has been determined that price support for shorn wool and pulled wool for the 1986–1990 marketing years will be made available by means of payments to producers.

Section 703(b) of the Wool Act provides that the price of shorn wool shall be supported at 77.5 percent of an amount determined by a formula which is prescribed in section 703 of the Wool Act. The Wool Act also provides that the support price for pulled wool shall be established at such level in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool. Section 704 of the Wool Act provides that payments shall be such as the Secretary determines to be sufficient, when added to the national average price received by producers, to give producers a national average return for the commodity equal to the support level.

The regulations which previously set forth the terms and conditions for the price support payment program for shorn wool and pulled wool for the 1982–1985 marketing years are amended herein to extend such terms and conditions to the price support payment program for shorn wool and pulled wool

for the 1986–1990 marketing years. The calculation and determination of the support prices for shorn wool, the amount of payments made for shorn wool and pulled wool, and any deductions which may be made from price support payments for advertising and sales promotion activities for each of the 1986–1990 marketing years, will continue to be published as notices in the Federal Register.

Since the provisions of the final rule merely extend the terms and conditions which were set forth with respect to previous programs for shorn wool and pulled wool, it has been determined that no further public rulemaking is required. Accordingly, this rule shall become effective May 14, 1986.

List of Subjects in 7 CFR Part 1472

Price support programs, Wool.

Final Rule

PART 1472—WOOL

Accordingly, the regulations at 7 CFR Part 1472 are amended as follows:

1. The authority citation in 7 CFR Part 1472—Wool, is revised to read as follows:

Authority Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

2. In Part 1472, "Subpart-Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982–1985)" is amended to read "Subpart-Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1986–1990)".

§§ 1472.1501 and 1472.1503 [Amended]

3. In Part 1472, §§ 1472.1501 and 1472.1503 are amended by removing "1982, 1983, 1984, and 1985" and inserting in lieu thereof "1986, 1987, 1988, 1989, and 1990".

Signed at Washington, DC, May 5, 1986.

Milton I. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–10479 Filed 5–13–86; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–108 AD; Amdt. 39–5316]

Airworthiness Directives: Canadair CL600–1A11 and CL600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Canadair CL600–1A11 and CL600–2A12 airplanes, which requires that aileron and elevator dampers be repetitively inspected and replaced, if necessary, and that the hydraulic fluid be replenished. This action is prompted by reports that these dampers are leaking hydraulic fluid. This condition, if not corrected, could result in flutter of the affected part and eventual loss thereof.

DATES: Effective June 2, 1986.

Comments must be received no later than June 2, 1986.

ADDRESSES: Send comments on the final rule in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel (ANM–7), Attention: Airworthiness Rules Docket 86–NM–108–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable alert wires specified in this AD may be obtained upon request to Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada; telephone (514) 744–1511. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. W. White or MR. C. Kallis, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: There have been numerous reports of aileron and elevator flutter dampers, Part Numbers (P/N) 600–75134–7 and –9, and 600–75135–3 and –5, respectively, found to be leaking hydraulic fluid in service. This condition could render them unserviceable and would permit flutter to occur in the event of failure of any two hydraulic systems. As a result, Canadair, Ltd., issued Alert Wire TA600–000–32/194, dated April 23, 1985, and Revision 1, dated November 27, 1985, which describe procedures to inspect the fluid level of these dampers periodically, replenish fluid, and replace the damper, if necessary. Transport Canada issued an airworthiness directive, CF 86–04, dated January 30, 1986, making compliance with these alert wires mandatory.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this situation is likely to exist or develop on other airplanes of this same type design registered in the United States, this AD requires repetitive inspections of the aileron and elevator flutter dampers, replacement of the damper, if necessary, and replenishment of the hydraulic fluid, in accordance with the Canadair alert wires previously mentioned.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ANM–7), Attention: Airworthiness Rule Docket No. 86–NM–108–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. All communications will be considered by the Administrator, and the AD may be changed in light of the comments received.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Canadair, Ltd.: Applies to all Model CL600-1A11 and CL600-2A12 airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure that flutter does not occur in the event of failure of any two hydraulic-controls systems:

A. Within 100 flight hours after the effective date of the AD, inspect the aileron and elevator flight dampers, replenish hydraulic fluid, or replace damper, if necessary, in accordance with Canadair Alert Wire TA 600-000-32/194, Revision 1, dated November 21, 1985.

B. Repeat the procedures referred to in paragraph A., above, at the following intervals:

1. Within 200 flight hours or six months, whichever occurs first for dampers that indicated green at the last inspection.

2. Within 100 flight hours or three months, whichever occurs first for dampers that indicated completely red at the last inspection.

C. An alternate means of compliance or adjustment of the compliance time which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment inspections and/or modifications required by this AD.

All persons affected by this final rule who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Canadair, Ltd., P.O. Box 6087, Montreal H3C 3G9, Canada. This document may be examined at the FAA, Northwest Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

The Amendment becomes effective June 2, 1986.

Issued in Seattle, Washington, on May 6, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-10770 Filed 5-13-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ASW-11, Amdt. 39-5294]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH (MBB), Model BK-117A-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires immediate replacement and frequent inspections of several tail rotor blades that may be installed on MBB BK-117A-3 helicopters. The AD is needed to detect or prevent possible separation of a tail rotor blade erosion shell or plate with a resultant severe imbalance condition in the tail rotor.

EFFECTIVE DATE: May 20, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: A copy of the alert service bulletin is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. The applicable service information may be obtained from MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: J.H. Major, Helicopter Policy and Procedures Staff, ASW-111, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2549.

SUPPLEMENTARY INFORMATION: The FAA has determined that in-flight separation of a tail rotor blade erosion protective shell or plate may occur on certain tail rotor blades installed on MBB Model BK-117A-3 helicopters. Possible improper bonding of the erosion shell and plate on tail rotor blades, Part Number (P/N) 117-31742 having Serial Numbers (S/N's) 63 up to and including 115 was reported in MBB Alert Service Bulletin AB-MBB-BK-117-3, dated January 24, 1986. This AD is needed to detect or prevent possible separation of the tail rotor blade erosion shell or plate on certain MBB BK-117A-3 helicopters with a resultant severe tail rotor imbalance. This AD requires for certain MBB BK-117A-3 helicopters immediate replacement of certain blades and frequent (preflight) inspections of the other blade for bond separation until rebonding of the affected blades has been accomplished. If bond separation of the erosion shell or plate exceeds the permissible limits stated in the MBB BK-117 maintenance manual, paragraph 34-2-2, the affected blade must be replaced before further flight. Tail rotor blades that have been rebonded may be returned to service.

Since it is found that immediate corrective action is required, notice and public procedure hereon are impracticable and good cause exists for making the AD effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, maybe obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Messerschmitt-Bolkow-Blohm: Applies to Model BK 117A-3 helicopters, certificated in any category that are equipped with tail rotor blades P/N 117-31742, S/N's 63 up to and including 115.

Compliance is required as indicated, unless previously accomplished.

To detect or prevent possible in-flight separation of a tail rotor blade leading edge

erosion protective shell or plate, accomplish the following:

(a) For tail rotor blades with less than 5 hours' time in service on the effective date of this AD, remove blades before further flight.

(b) For tail rotor blades with 5 or more hours' time in service on the effective date of this AD, before each flight, inspect the erosion protective shell and plate for separation in accordance with the MBB BK–117 maintenance manual, Section 34–2, paragraph 2a or b.

(c) If bonding separation exceeds permissible limits stated in Section 34–2, paragraph 2c of the maintenance manual, remove the affected blade before further flight.

(d) Upon request, an equivalent means of compliance with this AD may be used when approved by the Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667–1011.

(e) The aircraft may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where the tail rotor blades may be replaced.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective May 20, 1986.

Issued in Forth Worth, Texas, on April 17, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86–10776 Filed 5–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ANE–4; Amdt. 39–5168]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–15, –17, and –17R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: In Docket Number 84–ANE–4, Amendment Number 39–5168, appearing on pages 48376 through 48378, Volume 50, Number 227, in the Federal Register of November 25, 1985, the effective date for repaired disks for those persons who did not receive the telegrams issued September 25, 1985, was erroneously stated as December 26, 1986, in the part of the rule appearing on page 48378. The correct effective date for this category is December 26, 1985.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION: The airworthiness directive (AD) document that the FAA mailed to all owners and operators of Pratt & Whitney JT8D engines contained the correct effective dates for this rule. It was only the document forwarded to the Federal Register for publication which contained a typographical error as to the effective date for those provisions of the AD dealing with repaired disks.

Since this amendment merely corrects a typographical error in an existing regulation, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than thirty days.

Adoption of the Amendment

PART 39—[AMENDED]

In consideration of the foregoing and pursuant to the authority delegated to me, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the effective date for those provisions dealing with repaired disks in Amendment 39–5168 published in the Federal Register on pages 48376 through 48378, Volume 50, Number 227, November 25, 1985, by deleting the date "December 26, 1986," and substituting for it the date "December 26, 1985", in the last paragraph of the amendment.

This amendment becomes effectives on May 15, 1986.

Issued in Burlington, Massachusetts, on May 6, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–10775 Filed 5–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 85–AWA–37]

Alteration of Restricted Area—Fort Devens, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action subdivides Restricted Area R–4102, Fort Devens, MA, into upper and lower layers (R–4102A and R–4102B). There is no change to the present lateral boundaries, maximum altitudes or times of use. The Department of the Army has indicated that the majority of activities conducted within R–4102 occur below 2,000 feet mean sea level (MSL). This subdivision will allow activation of only that airspace actually needed to contain the activity, while freeing the unused airspace above for public use.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3128.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations subdivides R–4102, Fort Devens, MA, into upper and lower layers: R–4102A from the surface up to, but not including 2,000 feet MSL; and R–4102B from 2,000 feet MSL to 3,995 feet MSL. This action allows the military to activate only those altitudes within the restricted area which are actually needed to contain the hazardous operations to be conducted. This action makes no change to the present lateral boundaries, maximum altitudes or times of use. Because this is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5. U.S.C. 553(b) are unnecessary. Section 73.41 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.41 is amended as follows:

R-4102 Fort Devens, MA [Remove]

R-4102A Fort Devens, MA [New]

Boundaries. Beginning at lat 42°31'15" N., long. 71°36'30" W.; to lat. 42°31'00" N., long. 71°39'15" W.; to lat 42°30'45" N., long. 71°39'15" W.; to lat. 42°30'15" N., long. 71°40'00" W.; to lat. 42°29'45" N., long. 71°41'15" W.; to lat. 42°28'15" N., long. 71°41'15" W.; to lat. 42°28'00"N.; long. 71°39'45" W.; to lat. 42°29'45" N., long. 71°37'45" W.; thence to the point of beginning.

Designated altitudes. Surface to but not including 2,000 feet MSL.

Time of designation. 0000 Friday to 2359 Saturday local time; other times as specified by NOTAM issued 48 hours in advance.

Controlling agency. FAA, Boston Control Tower.

Using agency. Director of Plans, Training and Security, Fort Devens, MA.

R-4102B Fort Devens, MA [New]

Boundaries. Beginning at lat 42°31'15" N., long. 71°36'30" W.; to lat. 42°31'00" N., long. 71°39'15"W.; to lat 42°30'45" N., long. 71°39'15" W.; to lat. 42°30'15" N., long. 71°40'00"W.; to lat. 42°29'45" N., long. 71°41'15" W.; to lat. 42°28'15" N., long. 71°41'15" W.; to lat. 42°28'00" N., long. 71°39'45" W.; to lat. 42°29'45" N., long. 71°37'45" W.; thence to the point of beginning.

Designated altitudes. 2,000 feet MSL to 3,995 feet MSL.

Time of designation. 0000 Friday to 2359 Saturday local time; other times as specified by NOTAM issued 48 hours in advance.

Controlling agency. FAA, Boston Control Tower.

Using agency. Director of Plans, Training and Security, Fort Devens, MA.

Issued in Washington, DC, on May 7, 1986.

Daniel J. Peterson,

Aeronautical Information Division.

[FR Doc. 86-10768 Filed 5-13-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

Social Security Benefits and Supplemental Security Income; Continued Payment of Benefits to Persons in Vocational Rehabilitation Programs

AGENCY: Social Security Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: Section 301 of Pub. L. 96-265, which added sections 225(b) and 1631(a)(6) to the Social Security Act (the Act), requires the Social Security Administration to continue disability benefits under title II or title XVI of the Act to persons whose disability has medically ceased if the person is in an approved vocational rehabilitation (VR) program under a State plan at the time disability medically ceases and we determine that completion of the program, or continuation for a specified period of time, will increase the likelihood that the person will be permanently removed from the disability rolls. Our regulations are now being revised to extend consideration for eligibility under these provisions to all persons who medically recover while in an approved VR program, without regard to whether the person was expected at the outset of the VR program to medically recover before the scheduled completion date of that program. These regulations reflect the decision of the United States Court of Appeals for the Third Circuit in the case of *Paskel, et al.* v. *Heckler*, 768 F.2d 540 (3rd Cir. 1985).

DATE: These rules are being issued as interim final regulations and they are effective on May 14, 1986. We will consider any comments concerning these rules that we receive on or before July 14, 1986 and will revise such rules if public comment warrants.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 594-7337.

SUPPLEMENTARY INFORMATION: Section 301 of Pub. L. 96-265 requires the Social Security Administration to continue disability benefits under title II or title XVI to persons whose disability has medically ceased if the person is in an approved VR program under a State plan at the time disability ceases and we determine that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the person will be permanently removed from the disability rolls. An approved VR program under a State plan approved under title I of the Rehabilitation Act of 1973 is one that meets the requirements and specifications of 34 CFR 361.

In the 1980 Social Security Disability Amendments (Pub. L. 96-265), Congress expressed its concern that some persons who medically recover while participating in a VR plan have to cease their participation in that plan because they are no longer eligible for cash benefits. It was felt that in some of these cases, completion of a VR program would give the person skills that would increase the likelihood that he or she would not return to the disability rolls. Section 301 of Pub. L. 96-265 was designed to address this concern by providing for the continuation of disability benefits in these cases if the Commissioner of Social Security determines that the person's completion of the VR program, or continuation in the program for a specified period of time, will increase the "likelihood" that he or she will be permanently removed from the disability rolls.

The Committee of Conference, in its report on the 1980 Amendments (H.R. Rep. No. 944, 96th Cong., 2d Sess. 52 (1980)), expressly stated that Congress expected the provision for continued benefits to apply only in those exceptional cases where the disabled beneficiary is not expected at the beginning of the VR program to recover medically before the end of the program.

This intent was incorporated into the regulations by restricting continued benefits to persons who were not expected to recover medically before the end of the program. This meant that persons for whom a medical diary review had been established were excluded from consideration for eligibility under the benefit continuation provision. The reasoning is that persons with a medical diary have conditions that are likely to improve, and VR involvement in such cases will not substantially increase the likelihood of permanent removal from the disability rolls.

Several lawsuits have been filed challenging our implementation of section 301 of Pub. L. 96–265. In *Paskel* v. *Heckler* (discussed above) and in *Leschniok* v. *Heckler*, 713 F.2d 520 (9th Cir. 1983) the courts held that the language of the statute clearly requires that all disability beneficiaries and recipients who medically recover while in an approved State VR program be accorded "likelihood" decisions. That is, before we stop the benefits of a person who is in a VR program and who has medically recovered, we must first determine whether there is a "likelihood" that the person will or will not benefit (to the extent of permanent removal from the disability rolls) from further participation in the program.

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation because the interest of the public would not be served by advance notice. Adherence to our existing policy during the pendency of notice of proposed rulemaking procedures would adversely affect those beneficiaries who, but for the regulatory amendment, would have their benefits terminated without a "likelihood" determination.

Regulatory Procedures

Executive Order No. 12291

These regulations have been reviewed under Executive Order 12291 and we have determined that they do not create costs of $100 million or more yearly, or otherwise meet the threshold of the Executive Order. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect only disabled or blind individuals who are receiving title II or title XVI benefits because of disability and who are participating in a VR program.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: February 27, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: April 10, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 404 of Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart D of Part 404 is revised to read as follows:

Authority: Secs. 202, 205, 216, 223, 225, 228, and 1102 of the Social Security Act, as amended; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. Section 404.316 is amended by removing paragraphs (c)(1)(iv) and (c)(1)(v), by redesignating (c)(1)(vi) as (c)(1)(iv), by adding "and" at the end of (c)(1)(iii), and by revising the example in newly designated paragraph (c)(1)(iv) to read as follows:

§ 404.316 When entitlement to disability benefits begins and ends.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

Example: While under a disability from a severe back impairment, "A" begins a vocational rehabilitation program under the direction of a State vocational rehabilitation agency with a vocational goal of jewelry repairman. "A" is 50 years old, has a high school education, and worked as a route salesman for a bread company for 6 years before becoming disabled. Before "A" completes his training, his disability status is reviewed and a determination is made that he is able to do light work. Considering his age, education and work experience, "A" is no longer disabled. However, if "A" is able to work as a jewelry repairman, he will be considered able to engage in substantial gainful activity even if he can do only sedentary work. Therefore, it is determined that "A's" completion of the vocational rehabilitation program will significantly increase the likelihood that he will be permanently removed from the disability rolls. "A" will continue to receive payments until he completes or stops his program, or until it is determined that continued participation will no longer significantly increase the likelihood of permanent removal from the disability rolls.

* * * * *

§ 404.337 [Amended]

3. Section 404.337 is amended by removing paragraphs (c)(1)(iv) and (c)(1)(v), by redesignating (c)(1)(vi) as (c)(1)(iv) and by adding "and" at the end of (c)(1)(iii).

§ 404.352 [Amended]

4. Section 404.352 is amended by removing paragraphs (c)(1)(iv) and (c)(1)(v), by redesignating (c)(1)(vi) as (c)(1)(iv) and by adding "and" at the end of (c)(1)(iii).

5. The authority citation for Subpart P of Part 404 is revised to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302; Sec. 505 (a) and (c) Pub. L. 96–265, 94 Stat. 473, sections 2 and 4 of Pub. L. 98–460, 98 Stat. 1794.

§ 404.1586 [Amended]

6. Section 404.1586 is amended by removing paragraphs (g)(1)(iv) and (g)(1)(v), and by redesignating (g)(1)(vi) as (g)(1)(iv) and by adding "and" at the end of (g)(1)(iii).

§ 404.1596 [Amended]

7. Section 404.1596 is amended by removing paragraphs (c)(4)(iii) and (c)(4)(iv), by redesignating paragraph (c)(4)(v) as paragraph (c)(4)(iii) and by adding "and" at the end of paragraph (c)(4)(ii).

§ 404.1587 [Amended]

8. Section 404.1587 is amended by removing the sixth sentence which begins with "For" and ends with "program".

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart M of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611–1615, and 1631 of the Social Security Act, as amended; 42 U.S.C. 1302, 1382–1382d, 1383.

§ 416.1321 [Amended]

2. Section 416.1321 is amended by removing paragraphs (d)(3) and (d)(4), by redesignating paragraph (d)(5) as (d)(3) and by adding "and" at the end of (d)(2).

3. Section 416.1338 is amended by removing paragraphs (a)(4) and (a)(5), by redesignating (a)(6) as (a)(4) by adding "and" at the end of (a)(3) and by revising the example in newly designated paragraph (a)(4) to read as follows:

§ 416.1338 If you are participating in a vocational rehabilitation program.

(a) * * *

(4) * * *

Example: While under a disability from a severe back impairment, "A" begins a vocational rehabilitation program under the direction of a State vocational rehabilitation agency with a vocational goal of jewelry repairman. "A" is 50 years old, has a high school education, and worked as a route salesman for a bread company for 6 years before becoming disabled. Before "A" completes his training, his disability status is reviewed and a determination is made that he is able to do light work. Considering his age, education and work experience, "A" is no longer disabled. However, if "A" is able to work as a jewelry repairman, he will be considered able to engage in substantial gainful activity even if he can do only sedentary work. Therefore, it is determined that "A's" completion of the vocational rehabilitation program will significantly increase the likelihood that he will be permanently removed from the disability rolls. "A" will continue to receive payments until he completes or stops his program, or until it is determined that continued participation will no longer significantly increase the likelihood of permanent removal from the disability rolls.

[FR Doc. 86-10808 Filed 5-13-86; 8:45 am]

BILLING CODE 4190-11-M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1606, 1616, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1656, and 1657

Selective Service Regulations; Registrant Processing

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in administration.

DATE: These amendments become effective June 13, 1986.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Telephone: (202) 724–1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These Regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Analysis of Comments

The proposed amendments to Selective Service Regulations were published in the **Federal Register** on December 27, 1985 (50 FR 52955) for public comment. Seventy-one cards or letters of comment were received during the comment period which expired February 27, 1986. Only one of the cards or letters of comment received was from a person who claimed to be or otherwise could be identified as a registrant of the Selective Service System. For convenience each letter or card will be referred to as a comment.

Many comments addressed matters beyond the scope of the proposed amendments to Selective Service Regulations. Many of such comments reflected disagreement with or proposals for change in the Military Selective Service Act. Consideration of possible amendments to the Military Selective Service Act is not currently being given. The proposed amendments to Selective Service Regulations are based on the assumption that if and when inductions are resumed that will occur without change in the Military Selective Service Act other than with respect to the date July 1, 1973 when general induction authority expired.

Many of the comments purported to express the views and concerns of "conscientious objectors." Presumably the "conscientious objectors" concerned are those registrants who have conscientious objection to participation in military training and service. Many comments appeared to proceed on the assumption that all such conscientious objectors are prompted by religious considerations. The failure to recognize the Supreme Court decision in *Welsh* v. *United States*, 398 U.S. 333 (1970) and *United States* v. *Seeger*, 380 U.S. 163 (1965) may have inappropriately restricted the focus of the writers.

Many comments attempted to identify numerous "rights" of registrants of the Selective Service System who have conscientious objection to military training and service. No registrant has a right under the Military Selective Service Act other than as provided in section 6(j) merely because of his belief. Many comments appear to proceed on the assumption that everyone who has conscientious objector beliefs will receive the benefits of section 6(j) of the Military Selective Service Act. This assumption is erroneous for one or both of two reasons: No registrant receives the benefit of section 6(j) of the Military Selective Service Act without requesting it. This request is made by a claim properly filed for reclassification into Class 1–AO or Class 1–O. The filing of a claim does not guarantee that the claim will be granted. Section 6(j) of the Military Selective Service Act provides that before a registrant is entitled to the benefit of that section, the local board must have sustained the claim or that the local board has "found" the registrant to have the requisite beliefs. Only a finding by the local board that the registrant is conscientiously opposed to participation in combatant military training and service will permit the registrant to be inducted for non-combatant military training and service only. Only a finding by the local board that the registrant is conscientiously opposed to participation in both combatant and non-combatant military training and service will enable that registrant to be ordered to perform alternative service in lieu of induction. Absent a finding by the local board that the registrant has the requisite beliefs, a registrant found to be acceptable for induction can not be inducted for non-combatant service only or ordered to perform alternative service in lieu of induction.

Class 1–O or the expression "he is 1–O" can properly be used only to refer to a registrant who would be inducted absent a finding by the local board that he had the requisite beliefs to preclude his induction and thus he would be ordered to perform alternative service.

Analysis of those substantive comments which were received with respect to specific provisions in the proposed regulations follows. Paragraph numbers refer to the proposals; section numbers refer to sections of Selective Service Regulations 32 CFR Chapter XVI.

Paragraph 13. This paragraph will revoke § 1618.3 which was added in 1982 (47 FR 4648). This addition in 1982 was improvidently made. The Selective Service System simply should not be in the business of advertising the service of those who desire to advise or assist registrants of the Selective Service System. Selective Service personnel will be available to provide information that registrants may desire when inductions are authorized. Those persons who wish to make their services available to registrants with or without cost to the registrants are free to make their availability known by any lawful means.

Paragraph 15. This paragraph imposes upon the registrant to whom an order to report for examination has been issued the duty to comply with that order. Some comments criticize the proposal because it fails to recognize the beliefs of those who have conscientious objection to examinations to determine their fitness for military service. The Military Selective Service Act does not recognize the claimed right.

Paragraph 16. This paragraph is withdrawn.

Paragraph 19. This paragraph would rescind the improvident innovation in 1982 (47 FR 4649) providing for a postponement instead of deferment for registrants whose induction would result in hardship to their dependents for not more than 90 days. The innovation in 1982 is contrary to the provision of the Military Selective Service Act which authorizes deferments for registrants whose induction would result in hardship to their dependents. Furthermore, there is no apparent reason why a registrant whose induction would cause a hardship to his dependents for 85 days should be treated differently than a registrant whose hardship to his dependents would last for 91 days.

Paragraph 20. This paragraph and paragraph 17 would eliminate the innovation in 1982 (47 FR 4649, 4650) that a registrant who received a deferment at the time he was first issued an order to report for induction and the deferment expired could not again be ordered for induction unless persons in his age group were currently being inducted. Whatever the motive of the 1982 innovation, it frustrates the purpose of portions of sections 6 and 17(c) of the Military Selective Service Act. In 1951, Congress by law, added the provision that a person who had received a deferment under section 6 would have his liability for induction extended to age 35. That provision was reinforced by language in section 17(c). Furthermore, the innovation in 1982 in effect would convert a deferment to an exemption and thus eliminate the statutory consequence to registrants of having received deferments. The Selective Service System has the duty to carry out the will of Congress as expressed by law and to avoid frustrating the statutory requirement.

Paragraph 21. Criticisms of this paragraph were primarily one or both of two. Some comments expressed the view that 7 days notice allowed sufficient time for one to report for examination. When, in fact, such period would result in inconvenience to a particular registrant, he is free to request a postponement of the examination. Other comments expressed objection to the consequence to a registrant of his having abandoned his claim for reclassification or postponement of his induction because of his failure to report for examination as ordered. An opportunity will be afforded registrants to explain their failure to report for examination and there is no reason to assume that a local board would act unfairly in consideration of such explanation. This paragraph also was a focus for the opposition of some to registrants being required to undergo an examination. This matter will be addressed in connection with paragraph 23.

Paragraph 23. This paragraph revises the definition of Class 1–O: Conscientious Objector to All Military Service to recognize, as provided by section 6(j) of the Military Selective Service Act, that only a registrant who is acceptable for military service is entitled to be in Class 1–O. The innovation made by this paragraph is that the examination comes prior to instead of subsequent to local board action on a claim for the 1–O classification. The advantages both to registrants and to the Selective Service System that this change would effect are both great and apparent. Unfortunately, historical experience is that 50 percent of registrants are unacceptable for military service by reason of their physical, mental or moral condition. There is no reason to believe that claimants for classification in Class 1–O differ from the registrant population generally with respect to their physical, mental or moral conditions. Acceptability for military service can be determined objectively and quickly. The waste of time under former practice by local boards determining that registrants have the requisite beliefs to be entitled to classification in Class 1–O only later to have the determination made that such registrants are not acceptable for military service and thus could not be ordered to perform alternative service cannot be supported.

Paragraph 24. This paragraph establishes Class 1–O: Conscientious Objector to All Military Service (Separated). This classification would be available only to registrants who had been inducted under the Military Selective Service Act.

Paragraph 29. This paragraph returns to the pre-1982 interpretation of section 4 of the Military Selective Service Act that determinations of acceptability for military service will be made by the Secretary of Defense.

Paragraphs 32 and 33. These paragraphs also implement the interpretation that the acceptability of registrants for military service shall be determined by the Secretary of Defense. Classification in Class 4–F reflects the determination by the Secretary of Defense that the registrant is not acceptable on physical, mental or moral grounds for military service. The Selective Service System cannot appropriately review that determination.

Paragraph 35. This paragraph implements the provision in the Military Selective Service Act, section 5(a)(1) that there shall be no discrimination in the classification of registrants.

Paragraph 37, 50, 54. These paragraphs reflect a recognition of the fact that the importance of local board actions in classifying a registrant is of greater concern to him than its activity in recordkeeping. These changes enable a registrant to have his claim for reclassification considered by a local board convenient to him without the administrative inconvenience that would accompany the change of his local board assignment.

Paragraph 40. This paragraph eliminates the erroneous impression currently created by § 1636.8(a)(3) that a registrant is entitled to present witnesses at his personal appearance before the District Appeal Board. The Military Selective Service Act, section 22(b)(2) establishes the right to present witnesses only to the local board.

Paragraph 47. The proposal to eliminate particularized language that in the consideration of claims for Class 3–A there should be no discrimination is justified because of the absence of any evidence that the claims for Class 3–A are subject to special risk of discrimination in their consideration

that are not adequately prescribed by general non-discrimination language. (See Paragraph 35, *supra*.)

Paragraph 52. This proposal eliminates the automatic rescheduling of the personal appearance before the local board of a registrant who has filed a claim for classification in Class 1–A–O or Class 1–O. The provision for the automatic rescheduling is a ready-made device for the benefit of those who wish to delay the classification process without providing any additional safeguards to registrants who, for good reason, were unable to meet their scheduled personal appearance. There is no reason to assume that local boards would act unfairly on requests for rescheduling of personal appearances or explanations of failure to attend scheduled personal appearances.

Paragraph 53. This paragraph eliminates the innovation in 1982 (47 FR 4662) that proceedings before the local boards shall be open for the public upon the request or with the permission of the registrant. The registrant should be free of all pressure to request or consent to his personal appearance being open to the public. There will be many occasions when the registrant will wish to present information to the local board that he does not desire to have shared with family, friends and, least of all, mere spectators from the general public. The registrant's appearance before the local board is significant in the processing of his claim for reclassification and he should be free of pressure that an audience might create, particularly, if the audience is not sympathetic with his claim. Members of local boards should be free of the pressure that an audience supporting a registrant's claim might create.

Paragraph 55. This paragraph eliminates the power of the registrant to appeal to the District Appeal Board a decision of the local board on his claim for an administrative classification unless that decision is not unanimous. Determination of administrative classifications is primarily a matter of examining the documentation submitted by the registrant in support of his claim. Disagreements between the registrant and the area office personnel who initially make the determination with respect to classification undoubtedly would be rare. The registrant is entitled to a fair decision on his claim but not necessarily one with which he agrees. If he is unable to convince at least one member of the local board reviewing the area office decision that his interpretation of the documents which he presented in support of his claim for administrative classification is sound a reasonable conclusion is that the local board decision is correct.

Paragraph 56. The same policy considerations with respect to paragraph 53 apply to parallel language with respect to District Appeal Boards in paragraph 56.

Paragraph 59. This paragraph would prohibit employers of alternative service workers from requiring as a condition of such employment a commitment to any political or religious belief or doctrine or membership or non-membership in a political or religious group. This regulatory language reflects Selective Service policy of planning not to approve an employer to employ alternative service workers in violation of the prohibition stated.

The comments on this paragraph appear to have been made on an erroneous assumption that arrangements for performing alternative service are merely a matter of agreement between the alternative service worker and the employer. This erroneous assumption fails to recognize the role which the Director of Selective Service has under the Military Selective Service Act, particularly section 6(j), in the administration of the Alternative Sevice Program. Although a registrant entitled to perform alternative service in lieu of induction may propose jobs and employers for such service, the Selective Service System is not required to approve the proposal. The Director is required to determine that the work performed by the alternative service worker would comply with the statutory requirement. This includes both the work that the worker would be performing and the employer for whom he would be working. Failure of an alternative service worker to comply with the appropriate regulations and orders issued pursuant thereto would subject him to criminal penalties of imprisonment for a period not to exceed 5 years, a fine of not more than $250,000 or both. The same criminal penalities would apply to employers.

It is difficult to imagine a clearer violation of the Establishment Clause of the First Amendment to the Constitution of the United States than for the Director to permit a church to serve as an employer of alternative service workers which restricted its employees to its own members or to those who committed themselves to a particular statement of faith.

Were the Selective Service System to permit an alternative service employer to require alternative service workers to commit themselves to a statement of faith, additional administrative burdens would be placed upon the Alternative Service Office without any compensating benefits to the System. The Alternative Service Office would have to make additional referrals of prospective alternative service workers for employment or would have to screen prospective referees on the basis of their willingness to commit themselves to the statements of faith which alternative service employers might require.

Furthermore, the permitting of the requirement by alternative service employers of alternative service workers commiting themselves to statements of faith would result in substantial but inappropriate pressures upon prospective alternative service workers. Churches could use the arrangements "to keep the lads in the fold" which would violate their rights under the Freedom of Exercise rule in the First Amendment to the Constitution of the United States. Their opportunities for alternative service employment would be inappropriately restricted without any compensating benefits to them.

Most of the comments on this paragraph were from the point of view of religious organizations which are prospective employers of registrants required to perform alternative service in lieu of induction as provided by section 6(j) of the Military Selective Service Act. Many of the comments failed to recognize that no employer is required to employ alternative service workers, but that registrants who fulfill the conditions of section 6(j) of the Military Selective Service Act are required to perform alternative service work. Furthermore, these comments failed to recognize that unlike the facts in former times many—perhaps most—alternative service workers will not achieve that status by reason of their religious training and belief. (See general discussion, *supra*.)

There could be little serious contention that the Selective Service System should permit employers of alternative service workers to engage in practices which if engaged in by Selective Service System would be in violation of law. The Constitution and Federal statutes prohibit discrimination on the basis of religious belief or doctrine and membership or non-membership in any political or religious group. The Selective Service System does not have legal authority to permit the implementation of a program for which it has statutory responsibility in a way inconsistent with applicable Federal law.

Many of the comments assert rights on behalf of registrants who by virtue of section 6(j) of the Military Selective

Service Act are entitled to perform alternative service in lieu of induction beyond that recognized in the statute which is limited to that of performing alternative services in lieu of induction.

Assuming—but without ascertaining—that the Congress by law can permit employers of alternative service workers to discriminate on the basis of religious belief or doctrine, it is beyond reasonable doubt that the Selective Service System in carrying out its responsibility under section 6(j) of the Military Selective Service Act can neither engage in discrimination nor permit employees so to discriminate in the implementation of the Alternative Service Program that it is required to administer.

Paragraph 60. This paragraph will be amended to extend to registrants in Class 1–O–S the privilege afforded by § 1656.5(e) to registrants in Class 1–O.

Paragraph 61. Comments suggesting that the Selective Service System should reimburse overseas registrants for their expenses that would not be reimbursed for all other registrants were not supported by persuasive reasons.

The final rule is identical to the proposed rule except that paragraph 16 of the proposed rule is withdrawn and paragraph 60 of the proposed rule is modified.

As required by Executive Order 12291, I have determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that these regulations do not have a significant economic impact on a substantial number of small entities.

Certificate

Whereas, on December 27, 1985, the Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 50 FR 52955; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act [50 App. U.S.C. sections 451 et seq.] in that more than 30 days have elapsed subsequent to such publication during which period comments from the public (summarized above) have been received and considered; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now, therefore, by virtue of the authority vested in me by the Military Selective Service Act, as amended [50 App. U.S.C. section 451 et seq.] and Executive Order 11623 of October 12, 1971, the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, as stated below.

List of Subjects in 32 CFR Parts 1602, 1605, 1609, 1615, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1656, and 1657

Armed Forces—Draft, Selective Service System.

Dated: May 9, 1986.

Wilfred L. Ebel,

Acting Director.

PART 1602—DEFINITIONS

1. The authority citation for Part 1602 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

2. Section 1602.2 is revised to read:

§ 1602.2 Administrative classification.

A reclassification action relating to a registrant's claim for Class 1–C, 1–D–D, 1–D–E, 1–H, 1–O–S, 1–W, 3–A–S, 4–A–A, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T, or 4–W. These classes shall be identified as administrative classes.

3. Section 1602.11 is revised to read:

§ 1602.11 District appeal board.

A district appeal board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1615 of this chapter.

4. Section 1602.14 is revised to read:

§ 1602.14 Local Board.

A local board or a panel thereof of the of the Selective Service System is a group of not less than three civilian members appointed by the President after nomination by a Governor to act on cases of registrants in accord with the provisions of Part 1648 of this chapter.

5. Section 1602.15 is revised to read:

§ 1602.15 Local board of jurisdiction.

The local board of jurisdiction is the local board to which a registrant is assigned and which has authority, in accord with the provisions of this chapter, to determine his claim or to issue to him an order. "His local board" and "registrant's local board" refer to the local board of jurisdiction.

6. Section 1602.18 is revised to read:

§ 1602.18 National Appeal Board.

The National Appeal Board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1653 of this chapter.

7. Section 1602.24 is added to read:

§ 1602.24 Claim.

A "claim" is a request for postponement of induction or classification into a class other than 1–A.

8. Section 1602.25 is added to read:

§ 1602.25 Director.

Director is the Director of Selective Service.

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

8A. The authority citation for Part 1605 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

9. Section 1605.6 is revised to read:

§ 1605.6 National Appeal Board.

(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Appeal Board. The President shall appoint not less than three members to the National Appeal Board, and he shall designate one member as chairman.

(b) The President shall appoint members of the National Appeal Board form among citizens of the United States who:

(1) Are not active or retired members of the Armed Forces or any reserve component thereof;

(2) Have not served as a member of the National Appeal Board for a period of more than five years;

(3) Are at least 18 years of age;

(4) Are able to perform such duties as are necessary;

(5) Are able to devote sufficient time to Board affairs; and

(6) Are willing to fairly and uniformly apply Selective Service Law.

(c) The National Appeal Board may set *en banc*, or upon the request of the Director or as determined by the chairman of the National Appeal Board, in panels, each panel to consist of at least three members. The Chairman of the National Appeal Board shall designate the members of each panel and he shall designate one member of each panel as chairman. A majority of the members of a panel shall constitute a quorum for the transaction of

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business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question. Each panel of the National Appeal Board shall have full authority to act on all cases assigned to it. The National Appeal Board or a panel thereof shall hold meetings in Washington, DC, and, upon request of the Director or as determined by the Chairman of the National Appeal Board, at any other place.

(d) The National Appeal Board or panel thereof shall classify each registrant whose classification has been appealed to the President under Part 1653 of this chapter.

(e) No member of the National Appeal Board shall act on the case of a registrant who is the member's first cousin or closer relation either by blood, marrige, or adoption, or who is the member's employer, employee or fellow employee or stands in the relationship of superior or subordiante of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the National Appeal Board. A member of the National Appeal Board must disqualify himself in any matter in which he would be restricted for any reason in making an impartial decision.

(f) Each member of the National Appeal Board while on the business of the National Appeal Board away from his home or regular place of business shall receive actual travel expenses and per diem in lieu of subsistance in accordance with rates established by Federal Travel Regulations.

(g) The National Appeal Board shall in all respects be independent of the Director, except that the Director shall provide for the payment of the expenses of the members of the National Appeal Board, shall furnish that Board and its panels necessary personnel, suitable office space, necessary facilities and services. The Director and the chairman of the National Appeal Board shall furnish to each other such information, advice and assistance as will further the attainment of the objective of the Military Selective Service Act, and promote the effective administration of the Act.

§ 1605.51 [Amended]

10. Section 1605.51(b) is removed and reserved.

11. Section 1605.81(b) is revised to read:

§ 1605.81 Interpreters.

* * * * *

(b) The following oath shall be administered by a member of the board or a compensated employee of the System to an interpreter each time he or she is interprets:

Do you swear (or affirm) that you will truly interpret in the matter now in hearing?

* * * * *

PART 1609—UNCOMPENSATED PERSONNEL

A. The authority citation for Part 1609 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

12. Section 1609.1 is revised to read:

§ 1609.1 Uncompensated positions.

Members of civilian review boards, local boards, district appeal boards, and the National Appeal Board and all other persons volunteering their services to assist in the administration of the Selective Service Law shall be uncompensated. No person serving without compensation shall accept remuneration from any source for services rendered in connection with Selective Service matters.

PART 1618—NOTICE TO REGISTRANTS

12A. The authority citation for part 1618 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1618.3 [Removed]

13. Section 1618.3 is removed.

PART 1621—DUTY OF REGISTRANTS

13A. The authority citation for part 1621 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

14. Section 1621.1 is revised to read:

§ 1621.1 Reporting by registrants of their current status.

Until otherwise notified by the Director of Selective Service, it is the duty of every registrant who registered after July 1, 1980:

(a) To notify the System within 10 days of any change in the following items of information that he provided on his registration form: Name, current mailing address and permanent residence address; and

(b) To submit to the classifying authority, all information concerning his status within 10 days after the date on which the classifying authority mails him a request therefor, or within such longer period as may be fixed by the classifying authority; and

(c) Who has a postponement of induction, or has been deferred or exempted from training and service, to notify the System immediately of any changes in facts or circumstances relating to the postponement, deferment or exemption; and

(d) Who has a postponement of examination, to notify the System immediately of any changes in facts or circumstances relating to the postponement.

15. Section 1621.3 is added to read:

§ 1621.3 Duty to report for and submit to examination.

When the Director orders a registrant for examination, it shall be the duty of the registrant to report for and submit to examination at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for examination is postponed, it shall be the continuing duty of the registrant to report for and submit to examination at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for examination when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to examination at the place specified in the order to report for examination.

PART 1624—INDUCTIONS

16. The authority citation for part 1624 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

17. Section 1624.4 (b) and (c) are revised to read:

§ 1624.4 Selection and/or rescheduling of registrants for induction.

* * * * *

(b) Registrants whose postponements have expired in the order of expiration.

(c) Registrants who previously have been ordered to report for induction and whose exemptions or deferments have expired, in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1.

* * * * *

18. Section 1624.5(a) is revised to read:

§ 1624.5 Order to report for induction.

(a) Immediately upon determining which persons are to be ordered for induction, the Director of Selective Service shall issue to each person selected an Order to Report for Induction. The order will be sent to the current address most recently provided by the registrant to the Selective Service System. The date specified to report for

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induction shall be at least 10 days after the date on which the Order to Report for Induction is issued. The filing of a claim for reclassification in accord with § 1633.2 of this chapter delays the date the registrant is required to report for induction until not earlier than the tenth day after the claim is determined to have been abandoned or is finally determined in accord with the provisions of this chapter. A claim is finally determined when the registrant does not have a right to appeal the last classification action with respect to the claim or he fails to exercise his right to appeal.

* * * * *

19. Section 1624.6, paragraphs (a) and (e) are removed and reserved, (b) is revised, and (j) is added to read as follows:

§ 1624.6 Postponement of induction.

(a) [Reserved]

(b) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the Order to Report for Induction has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the induction order. When necessary, the Director may grant one further postponement, but the total postponement shall not exceed 90 days from the reporting date on the induction order.

* * * * *

(e) [Reserved]

* * * * *

(j) The initial determination of claims for all postponements is made by area office compensated personnel. After a denial of a claim for a student postponement, the registrant may request the local board to consider the claim. Such registrant shall be afforded an opportunity to appear before the board in accord with the procedures of §§ 1648.4 and 1648.5.

20. Section 1624.7 is revised to read:

§ 1624.7 Expiration of deferment or exemption.

The Director shall issue an Order to Report for Induction to a registrant who is liable for induction whenever his deferment or exemption expires.

21. Section 1624.10 is revised to read:

§ 1624.10 Order to report for examination.

(a) The Director of Selective Service may order any registrant in Class 1–A who has filed a claim for classification in a class other than Class 1–A or whose induction has been postponed, to report for an Armed Forces examination to determine acceptability for military service. The date specified to report for examination shall be at least 7 days after the date on which the Order to Report for Examination is issued. Such registrant will not be inducted until his claim for reclassification has been decided or abandoned.

(b) The reporting date for examination may be postponed for any reason a reporting date for induction may be postponed in accord with § 1624.6 (b), (d) or (f)(1).

(c) If a registrant fails to report for or complete an examination the local board will determine that he has abandoned his claim.

(d) If a registrant is determined not acceptable for military service, he will be reclassified in Class 4–F.

(e) If a registrant is determined acceptable for military service, the processing of his claim will be completed.

PART 1630—CLASSIFICATION RULES

21A. The authority citation for Part 1630 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et. seq., E.O. 11623.

22. Section 1630.13 is revised to read:

§ 1630.13 Class 1–D–D: Deferment for certain members of a reserve component or student taking military training.

In Class 1–D–D shall be placed any registrant who:

(a)(1) Has been selected for enrollment or continuance in the Senior (entire college level) Army Reserve Officer's Training Corps, or the Air Force Reserve Officer's Training Corps, or the Naval Reserve Officer's Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader's class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve, while undergoing professional training; and

(2) Has agreed in writing to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and

(3) Has agreed to remain a member of a regular or reserve component until the eighth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1–D–D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1–C under the provisions of § 1630.12; or

(b) Is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the Secretary of Defense. Such registrant shall be retained in Class 1–D–D during the period covered by such agreement but in no case in excess of four months; or

(c) Is other than a registrant referred to in paragraph (a) or (d) of this section who:

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction:

Enlists or accepts an appointment before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1–D–D so long as he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be; or

(d) At any time has enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therein upon graduation from an Officer's Candidate School of such Armed Force and has not been

ordered to active duty as a commissioned officer. Such registrant shall remain eligible for Class 1–D–D so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned; or

(c) Is serving satisfactorily as a member of a reserve component of the Armed Forces and is not eligible for Class 1–D–D under the provisions of any other paragraph of this section: *Provided*, That, for the purpose of this paragraph, a member of a reserve component who is in the Standby Reserve or the Retired Reserve shall be deemed to be serving satisfactorily unless the Armed Force of which he is a member informs the Selective Service System that he is not serving satisfactorily.

23. Section 1630.16 is added to read:

§ 1630.16 Class 1–O: Conscientious objector to all military service.

Any registrant whose acceptability for military service has been satisfactorily determined and who, in accord with Part 1636 of this chapter, has been found, by reason of religious, ethical or moral belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O).

24. Section 1630.17 is revised to read:

§ 1630.17 Class 1–O–S: Conscientious objector to all military service (separated).

Any registrant who has been separated from the Armed Forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O–S unless his period of military service qualifies him for Class 4–A. A registrant in Class 1–O–S will be required to serve the remainder of his obligation under the Military Selective Service Act in Alternative Service.

25. Section 1630.18 is revised to read:

§ 1630.18 Class 1–W: Conscientious objector ordered to perform alternative service.

In Class 1–W shall be placed any registrant who has been ordered to perform alternative service contributing to the maintenance of the national health, safety, or interest.

Section 1630.30 is revised to read:

§ 1630.30 Class 3–A: Registrant deferred because of hardship to dependents.

(a) In accord with Part 1642 of this chapter any registrant shall be classified in Class 3–A:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) The classification of each registrant in Class 3–A will not be granted for a period longer than 365 days.

27. Section 1630.31 is added to read:

§ 1630.31 Class 3–A–S: Registrant deferred because of hardship to dependents (Separated).

Any registrant who has been separated from active military service by reason of dependency or hardship shall be placed in Class 3–A–S unless his period of military service qualifies him for Class 4–A or 1–D–E. No registrant shall be retained in Class 3–A–S for more than six months.

28. Section 1630.40(a) introductory text is revised and (a)(4) is removed and reserved:

§ 1630.40 Class 4–A: Registrant who has completed military service.

(a) In Class 4–A shall be placed any registrant other than a registrant eligible for classification in Class 1–C, 1–D–D, or 1–D–E who is within any of the following categories:

* * * * *

(4) [Reserved]

* * * * *

29. Section 1630.44 is revised to read:

§ 1630.44 Class 4–F: Registrant not qualified for military service.

In Class 4–F shall be placed any registrant who is found by the Secretary of Defense, under applicable physical, mental or administrative standards, to be not acceptable for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by the Secretary of Defense to be justified shall be placed in Class 4–F until such further examination has been accomplished and such registrant continues to be found not acceptable for military service.

30. Section 1630.45—the section heading and (a) are revised to read as follows:

§ 1630.45 Class 4–G: Registrant exempted from service because of the death of his parent or sibling while serving in the armed forces or whose parent or sibling is in a captured or missing in action status.

* * * * *

(a) A surviving son or brother:

(1) Whose parent or sibling of the whole blood was killed in action or died in the line of duty while serving in the Armed Forces of the United States after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service; or

(2) Whose parent or sibling of the whole blood is in a captured or missing status as a result of such service in the Armed Forces during any period of time; or

* * * * *

31. Section 1630.48 is added to read:

§ 1630.48 Class 4–A–A: Registrant who has performed military service for a foreign nation.

In Class 4–A–A shall be placed any registrant who, while an alien, has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemptions from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months; Provided: That all information which is submitted to the Selective Service System concerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

PART 1633—ADMINISTRATION OF CLASSIFICATION

31A. The authority citation for Part 1633 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

32. Section 1633.1 (e) and (f) are revised to read as follows:

§ 1633.1 Classifying authority.

* * * * *

(e) A local board may also classify a registrant into Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–G, 4–T or 4–W for which he is eligible upon request by the registrant for a review of a classification denial action under § 1633.1(f).

(f) Compensated employees of an area office may in accord with § 1633.2 classify a registrant into Class 1–C, 1–D–

D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–F, 4–G, 4–T or 4–W for which he is eligible. No individual shall be classified into Class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

33. Section 1633.2 is revised to read:

§ 1633.2 Claim for other than Class 1–A.

(a) Any registrant who has received an order to report for induction may, prior to the day he is scheduled to report, submit to the Selective Service System a claim that he is eligible to be classified into any class other than Class 1–A. The registrant may assert a claim that he is eligible for more than one class other than Class 1–A. The registrant cannot subsequently file a claim with respect to a class for which he was eligible prior to the day he was originally scheduled to report. Information and documentation in support of claims for reclassification and postponement of induction shall be filed in accordance with instructions from the Selective Service System.

(b) Any registrant who has received an order to report for induction that has not been canceled may, at any time before his induction, submit a claim that he is eligible to be classified into any class other than Class 1–A based upon events over which he has no control that occurred on or after the day he was originally scheduled to report for induction.

(c)(1) Claims will be filed with the area office supporting the local board of jurisdiction.

(2) Claims will be considered by the local board identified in paragraph (c)(1) or its supporting area office as prescribed in this part.

(d) The initial determination of claims for all administrative classifications are made by area office compensated personnel. After a denial of a claim for an administrative classification other than Class 4–F the registrant may request the local board to consider the claim.

(e) The initial determination of a judgmental classification is made by a local board.

(f) A registrant may request and shall be granted a personal appearance whenever a local or appeal board considers his claim for reclassification. Personal appearances will be held in accord with Parts 1648, 1651 and 1653 of this chapter.

(g) A registrant who has filed a claim for classification in Class 1–A–O or Class 1–O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

(h) If granted, a deferment or exemption supersedes the original order to report for induction. When a deferment or exemption expires or ends, a new order to report for induction will be issued.

34. Section 1633.6 is revised to read:

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1–A–O considered the highest class and Class 1–H considered the lowest class, according to the following table:

Class 1–A–O: Conscientious Objector Available for Noncombatant Military Service Only.
Class 1–O: Conscientious Objector to all Military Service.
Class 1–O–S: Conscientious Objector to all Military Service (Separated).
Class 2–D: Registrant Deferred Because of Study Preparing for the Ministry.
Class 3–A: Registrant Deferred Because of Hardship to Dependents.
Class 3–A–S: Registrant Deferred Because of Hardship to Dependents (Separated).
Class 4–D: Minister of Religion.
Class 1–D–D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training.
Class 4–B: Official Deferred by Law.
Class 4–C: Alien or Dual National.
Class 4–G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action status.
Class 4–A: Registrant Who Has Completed Military Service.
Class 4–A–A: Registrant Who Has Performed Military Service For a Foreign Nation.
Class 4–W: Registrant Who Has Completed Alternative Service in Lieu of Induction.
Class 1–D–E: Exemption of Certain Members of a Reserve Component or Student Taking Military Training.
Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
Class 1–W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.
Class 4–T: Treaty Alien.
Class 4–F: Registrant Not Acceptable for Military Service.
Class 1–H: Registrant Not Subject to Processing for Induction.

35. Section 1633.7(b) is revised to read as follows, and (c) is removed:

§ 1633.7 General principles of classification.

* * * * *

(b) The classifying authority in considering a registrant's claim for classification shall not discriminate for or against him because of his race, creed, color or ethnic background.

36. Section 1633.10 is revised to read:

§ 1633.10 Notification to registrant of classification action.

The Director will notify the registrant of any classification action.

37. Section 1633.11 is revised to read:

§ 1633.11 Assignment of registrant to a local board.

(a) A registrant is assigned to the local board that has jurisdiction over his permanent address that he last furnished the Selective Service System prior to the issuance of his induction order.

(b) The Director may change a registrant's assignment when he deems it necessary to assure the fair and equitable administration of the Selective Service Law.

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

37A. The authority citation for Part 1636 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

38. Section 1636.3(a) is revised to read:

§ 1636.3 Basis for classification in Class 1–A–O.

(a) A registrant must be conscientiously opposed to participation in combatant training and service in the Armed Forces.

* * * * *

39. Section 1636.6—the section heading is revised to read:

§ 1636.6 Analysis of belief.

* * * * *

40. Section 1636.8(a)(3) is revised to read:

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

(a) * * *

(3) The oral statements of the registrant's witnesses, if any, at his personal appearance(s) before the local board; and

* * * * *

PART 1639—CLASSIFICATION OF REGISTRANTS PREPARING FOR THE MINISTRY

40A. The authority citation for Part 1639 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

41. Section 1639.3(a)(1) is revised to read:

§ 1639.3 Basis for classification in Class 2-D.

(a) * * *

(1) Who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or

* * * * *

42. Section 1639.6 the section heading is revised to read as follows:

§ 1639.6 Considerations relevant to granting or denying claims for Class 2-D.

* * * * *

43. Section 1639.7 is amended by adding paragraph (c) to read:

§ 1639.7 Types of decisions.

* * * * *

(c) The board may deny a claim for Class 2-D when the evidence fails to meet any of the criteria established in this section.

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO OTHERS

43A. The authority citation for Part 1642 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

44. Part 1642—heading is revised to read:

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO DEPENDENTS

45. Section 1642.3 is revised to read:

§ 1642.3 Basis for classification in Class 3-A.

(a) In Class 3-A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) In its consideration of a claim by a registrant for classification in Class 3-A, the board will first determine whether the registrant's wife, child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon the registrant for support. Support may be financial assistance, personal care or companionship. If financial assistance is the basis of support, the registrant's contribution must be a substantial portion of the necessities of the dependent. Under most circumstances 40 to 50% of the cost of the necessities may be considered substantial. If that determination is affirmative, the board will determine whether the registrant's induction would result in extreme hardship to his wife when she is the only dependent, or whether the registrant's deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support, or because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support. A deferment is advisable whenever the registrant's induction would result in hardship to his dependents.

(c) The registrant's classification shall be determined on the basis of the written information in his file, oral statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant's witnesses at his personal appearances.

46. Section 1642.4(a)(4) is revised to read as follows, and (b) is removed and reserved.

§ 1642.4 Ineligibility for Class 3-A.

(a) * * *

(4) There are other persons willing and able to assume the support of his dependents; or

* * * * *

(b) [Reserved]

§ 1642.5 [Removed]

47. Section 1642.5 is removed.

48. Section 1642.7(a) is revised to read as follows, and (c) is removed and reserved.

§ 1642.7 Types of decisions.

(a) A board may grant a classification into Class 3-A for such period of time it deems appropriate but in no event shall the period exceed one year.

* * * * *

(c) [Reserved]

* * * * *

PART 1648—CLASSIFICATION BY LOCAL BOARD

48A. The authority citation for Part 1648 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

49. Section 1648.1 is revised to read:

§ 1648.1 Authority of local board.

A local board shall consider and determine all claims which it receives in accord with § 1633.2 or § 1648.6 of this chapter. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

§ 1648.2 [Removed]

50. Section 1648.2 is removed.

51. Section 1648.3 (a) and (c) are revised to read as follows:

§ 1648.3 Opportunity for personal appearances.

(a) A registrant who has filed a claim for classification in Class 1-A-O or Class 1-O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

* * * * *

(c) Any registrant who has filed a claim for classification in Class 1-C, 1-D-D, 1-D-E, 1-O-S, 1-W, 3-A-S, 4-A, 4-A-A, 4-B, 4-C, 4-G, 4-T, or 4-W and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

52. Section 1648.4(b) is revised to read:

§ 1648.4 Appointment for personal appearances.

* * * * *

(b) Should the registrant who has filed a claim for classification in Class 1-A-O or Class 1-O fail to appear at his scheduled personal appearance, the board will not consider his claim for classification in Class 1-A-O or Class 1-O. The board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his claim for Class 1-A-O or 1-O and will be notified that his claim will not be considered. The board will

notify the registrant in writing of its action under this paragraph.

* * * * *

53. Section 1648.5 (a) and (i) are revised to read:

§ 1648.5 Procedures during personal appearance before the local board.

(a) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

(i) Proceedings before local boards are closed to the public.

54. Section 1648.6(a) is revised to read:

§ 1648.6 Registrants transferred for classification.

(a) Before a board of jurisdiction has undertaken the classification of a registrant, the file may, at his request, be transferred for classification to a local board nearer to his current address than is the local board of jurisdiction.

* * * * *

PART 1651—CLASSIFICATION BY DISTRICT APPEAL BOARD

54A. The authority citation for Part 1651 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

55. Section 1651.1(b) is revised to read:

§ 1651.1 Who may appeal to a district appeal board.

* * * * *

(b) The registrant may appeal the denial of his claim for a judgmental classification by the local board to a district appeal board. The registrant may appeal to a district appeal board the denial of his claim for an administrative classification by the local board whenever its decision is not unanimous.

56. Section 1651.4 (a), (j), (n)(3) and (r) are revised to read as follows:

§ 1651.4 Review by district appeal board.

(a) An appeal to the district appeal board is determined by its classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(j) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(n) * * *

(3) Has abandoned his right to an opportunity to appear; or

* * * * *

(r) Proceedings before district appeal boards are closed to the public.

PART 1653—APPEAL TO THE PRESIDENT

56A. The authority citation for Part 1653 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

57. Section 1653.3 (a) and (k) are revised to read:

§ 1653.3 Review by the National Selective Service Appeal Board.

(a) An appeal to the President is determined by the National Appeal Board by its classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(k) a quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

PART 1656—ALTERNATIVE SERVICE

57A. The authority citation for Part 1656 continues to read:

Authority: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

58. Section 1656.2 is revised to read:

§ 1656.2 Order to perform alternative service.

(a) The local board of jurisdiction shall order any registrant who has been classified in Class 1-O or 1-O-S to perform alternative service at a time and place to be specified by the Director.

(b) When the local board orders a registrant to perform alternative service, it shall be the duty of the registrant to report for and perform alternative service at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for alternative service is postponed, it shall be the continuing duty of the registrant to report for and perform alternative service at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for and perform alternative service when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and perform alternative service at the place specified in the order to report for and perform alternative service.

(c) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the order to perform alternative service has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the order to perform alternative service. When necessary, the Director may grant one further postponement but the total postponement shall not exceed 90 days from the reporting date on the order to perform alternative service.

(d) The Director may authorize a postponement of the reporting date to perform alternative service when the registrant qualifies and is scheduled for a State or National examination in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation.

(e) The Director shall issue to each registrant whose reporting date to perform alternative service is postponed a written notice thereof.

(f) A postponement of reporting date to perform alternative service shall not render invalid the order to report for alternative service which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new order to report for alternative service.

(g) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for alternative service at the place to which he was originally ordered.

(h) The Director may authorize a delay of reporting for alternative service for any registrant whose date for reporting conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for alternative service on the next business day following the religious holiday.

§ 1656.5 [Amended]

59. Section 1656.5 is amended by adding (a)(1)(iii) to read as follows:

(a) * * *
(1) * * *
(iii) Those who do not require as a condition of the employment of an ASW (A) his commitment to any political or religious belief or doctrine or (B) his membership or non-membership in a political or religious group.
* * * * *

§ 1656.5 [Amended]

60. Section 1656.5(e) is revised to read:
* * * * *

(e) A registrant classified in Class 1–O or Class 1–O–S may seek his own alternative service work by identifying a job with an employer he believes would be appropriate for Alternative Service assignments and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with § 1656.5(a).

61. Part 1657 is added to read:

PART 1657—OVERSEAS REGISTRANT PROCESSING

Sec.
1657.1 Purpose; definition.
1657.2 Local boards.
1657.3 District appeal boards.
1657.4 Consideration of claims.
1657.5 Place of induction.
1657.6 Transportation.

Authority: Military Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1657.1 Purpose; definition.

(a) The provisions of this part apply to the processing of overseas registrants, and, where applicable, they supersede inconsistant provisions in this chapter.

(b) An overseas registrant is a registrant whose bona fide current address most recently provided by him to the Selective Service System is outside the United States, its territories or possessions, Commonwealth of Puerto Rico, Canada and Mexico.

§ 1657.2 Local boards.

The Director shall establish local boards with jurisdiction to determine claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board, and designate or establish an area office to support it.

§ 1657.3 District appeal boards.

The Director shall establish district appeal boards with jurisdiction to determine appeals of claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board.

§ 1657.4 Consideration of claims.

An overseas registrant's claim shall be determined by a local board (or its supporting area office) or appeal board as may be established in accord with this part or, upon the request of the registrant filed no later than the filing of his claim for reclassification, by the board having geographic jurisdiction over his permanent address within the United States last reported by him to the Selective System prior to issuance of his induction order.

§ 1657.5 Place of induction.

The Director may order an overseas registrant to any place in the world for induction.

§ 1657.6 Transportation.

(a) The Director shall furnish transportation for an overseas registrant from the place at which the registrant's order to report for induction was sent to the place he is required to report for induction. If such registrant is not inducted, the Director shall furnish him transportation from the place he reported for induction to the place to which his order to report for induction was sent.

(b) In the event the personal appearance before a local board or appeal board of an overseas registrant is required by regulation or occurs at the registrant's request, travel expenses incurred in personally appearing before the board shall be at the registrant's own expense.

[FR Doc. 86–10835 Filed 5–13–86; 8:45 am]
BILLING CODE 8015–01–M

VETERANS ADMINISTRATION

38 CFR Part 3

Headstone or Marker Allowance

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has increased the monetary allowance prescribed in 38 CFR 3.1612, the amount ordinarily payable in lieu of a Government-furnished headstone or marker, from $70 to $71. This increase results from the fact that the average actual cost of a Government-furnished headstone or marker for fiscal year 1985 was $71. The effect of this amendment would ordinarily be to permit payment of up to $71 in lieu of a Government-furnished headstone or marker. However, due to the operation of the Balanced Budget and Emergency Deficit Control Act of 1985, all payments of this allowance which are obligated on or after March 1, 1986 through September 30, 1986, have been limited to $65.

DATE: This change is effective October 1 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3005.

SUPPLEMENTARY INFORMATION: On pages 2904–05 of the **Federal Register** of January 22, 1986, the VA published a proposed amendment to 38 CFR 3.1612. Interested persons were given until February 21, 1986, to submit comments, suggestions or objections to the proposed amendment. Since no comments, suggestions or objections were received, the amendment has been adopted as proposed. Although this amendment provides for an increase in the headstone or marker allowance, all payments of this benefit obligated during the period March 1, 1986, through September 30, 1986, have been limited to a maximum rate of $65 under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman"). That limitation was the subject of a separate, previously-published **Federal Register** notice (51 FR 9575, March 19, 1986).

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Also, this change simply updates VA regulations to reflect the average actual cost to the VA of headstones and markers in fiscal year 1985, in accordance with 38 U.S.C. 906(d). Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: April 28, 1986.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

38 CFR Part 3 Adjudication is amended by revising in § 3.1612, paragraph (e)(2)(ii) to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) *Payment and amount of the allowance.*

* * * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1984 (October 1, 1983, through September 30, 1984) was $70 and for fiscal year 1985 (October 1, 1984,through September 30, 1985) was $71.

(38 U.S.C. 906(d))

* * * * *

[FR Doc. 86-10625 Filed 5-13-86; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Post Office Box Group Application

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule change is designed to simplify post office box fee groups in noncity delivery (NCD) offices. The NCD offices have found it difficult to administer two or three different fee groups for the same post office box service. This rule change provides that all NCD offices charge only the Group 2 fees. No changes are made to the assignment of Group 3 fees at Community Post Offices (CPOs), and Group 3 fees are retained at all contract stations and branches of NCD offices. Certain other minor editorial changes are also made.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 268-5178.

SUPPLEMENTARY INFORMATION: On March 18, 1986, the Postal Service published for comment in the **Federal Register** (51 FR 9220) proposed changes to the Domestic Mail Manual which would simplify post office box fee groups, as described above.

One comment was received on the procedural status of the proposal. The commenting party observed that the proposed changes would appear to result in reclassification and fee increases for some customers, and suggested that changes in the conditions of eligibility for particular rates and fees were matters of mail classification which should be brought before the Postal Rate Commission.

The suggestion in the comment was not followed because no changes are being made in post office box fees or service. Rather, the Postal Service is simplifying the way is applies the existing post office box fee groups at various types of facilities. In the past, the eligibility of customers for particular post office box fees has depended upon several variable factors, including the customer's home address and eligibility for carrier delivery service, the type of delivery service provided at the post office involved, and the level of revenue at the office. The administration of the fee group system has been complicated by the use of these variable factors, which may alter the post office box fees charged to all customers at a smaller office, require an office to charge customers different fees for identically sized boxes, or make a particular customer ineligible for a lower fee group. This has led to confusion on the part of postal customers and postal employees regarding the proper application of post office box fee groups.

The Postal Service has decided to simplify the administration of post office box fee groups by linking the fee group directly to the status of the postal facility. In general, customers at all facilities (including stations and branches) of a city delivery office will be charged Group 1 fees. A customer at a city delivery office who is ineligible for any kind of carrier delivery may use one box at Group 2 fees. Customers at noncity delivery (NCD) offices (including those which provide rural carrier route or highway contract route delivery) will be charged Group 2 fees. Customers at Community Post Offices (CPOs) and at contract stations and branches of NCD offices, will be charged Group 3 fees. The Postal Service originally proposed to retain Group 3 fees only for CPOs, but, after reconsideration of its proposal, now believes that maintaining Group 3 fees for all contract facilities of NCD offices will minimize the impact of these changes on customers who are ineligible for carrier delivery.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service, Incorporation by reference.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5. U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3621, 5001; 42 U.S.C. 1973cc-13, 1973cc-14.

PART 951—POST OFFICE BOX (P.O. BOX) SERVICE

2. In 951 revise .221, .222, .23 and .24 to read as follows:

951.2 Fees.

* * * * *

.22 Fee Groups.

.221 General Provisions.

Customers at all facilities under the administration of the same post office are subject to the same post office box fees applicable at the main office. This includes any post office which has been discontinued and reestablished as a station or branch or another post office.

.222 Fee Group application.

a. Group 1 Fees.

(1) Customers at all facilities of a city delivery post office who are eligible for any kind of delivery by postal carrier, must be charged Group 1 fees. A customer who is ineligible for any kind of delivery by postal carrier may use one box at Group 2 fees. (Additional boxes may be rented at the applicable Group 1 fee.)

(2) All customers who receive mail at mail processing facility which is not under the administration of a post office must pay Group 1 fees.

b. Group 2 Fees.

Customers at nonsity delivery (NCD) offices will be charged Group 2 fees.

c. Group 3 Fees.

Customers at all Community Post Offices (CPOs) and at all contract stations and branches of NCD offices, including Community Post Offices (CPOs), will be charged the Group 3 fee.

.23 Changes in Fees. Changes in post office box fees may be required by a general fee change; or a different fee group may become applicable to the customers at an office as the result of a change in carrier service, or a change in the status of a postal facility. Revised post office box fees are effective on the date of the action which caused the change unless another date is specified in an official announcement. If a post office box fee is increased, no customer will be required to pay at the new rate until the end of the period (annual or semi-annual), for which the fee has already been paid.

.24 General Delivery. A customer who is eligible to use a post office box at Group 2 fees, but who, in fact, does not use a box, may receive no more than one separation in general delivery without time limit. Customers who are not eligible to use a post office box at Group 2 fees may not receive general delivery for periods longer than 30 days except as provided in 953.

* * * * *

PART 952—CALLER SERVICE

3. In 952 revise .124 and 222b(2) to read as follows:

952.124 Caller Service at Group 2 non-city delivery offices is available only as provided by 952.222b.(2).

* * * * *

952.222b. (2) Caller service will be provided for Group 2 non-city delivery offices only if a customer desires delivery through a post office box, and either no post office box or no post office box of appropriate size is available. In that event, a single box number will be assigned and caller service provided. The caller fee will be the same amount as the box fee for the largest box at that facility. Regular caller service fees are charged for any additional separations requested.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the Federal Register as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-10782 Filed 5-13-86; 8:45 am]

BILLING CODE 7710-12-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temporary Regulation D-71]

Program Management; Government Work Space Management Reform

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation cancels the requirement for Federal agencies to submit to GSA their annual Work Space Management Plans (GSA Form 3530) by May 15. A new form is being developed to replace the GSA Form 3530 and is not yet available for use.

DATES: Effective date: This supplement is effective upon publication in the Federal Register.

Expiration date: June 30, 1987, unless sooner revised or superseded.

Comments due by: To ensure their consideration in drafting additional regulations and bulletins regarding work space management, comments should be received by GSA no later than May 1, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Quigley, Director, Assignment and Utilization Policy Division, (202 566-0059).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Before issuing a final rule, GSA will make all necessary evaluations of economic effects, major costs to consumers or others, and significant adverse effects.

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government property management.

(Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of subchapter D to read as follows:

Federal Property Management Regulations, Temporary Regulation D-71, Supplement 1

April 22, 1986.

To: Heads of Federal agencies

Subject: Annual Work Space Management Plans

1. *Purpose.* This supplement cancels the fiscal 1986 reporting requirements set forth in section 101-17.009 of FPMR Temporary Regulation D-71, June 26, 1985.

2. *Effective date.* This supplement is effective upon publication in the Federal Register.

3. *Expiration date.* This supplement expires June 30, 1987, unless sooner revised or superseded.

4. *Explanation of changes.*

a. FPMR Temporary Regulation D-71 requires the head of each Federal agency to submit GSA Form 3530, Work Space Management Plan, to the General Services Administration no later than May 15 of each year.

b. The requirement for annual submission to GSA of the GSA Form 3530 and the annual submission to OMB of Exhibit 24D of OMB Circular A-11, Rental Payments to GSA, has been reviewed by GSA and OMB officials, as well as agency representatives. It has been concluded that these two forms should be combined to ensure consistency and to reduce workload. Because the new form is in the developmental stages, agencies will not be required to submit their annual Work Space Management Plans by May 15. In the future, Work Space Management Plans and budgets will be submitted simultaneously. In this regard, we expect the new form to be available for use for the fiscal year 1988 budget cycle. Further instructions will be issued with respect to the availability of the new form and the revised reporting date.

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 86-10784 Filed 5-13-86; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket 84-1299; FCC 86-144]

Common Carrier; Reconsideration of Establishment of Separate Satellite Systems for International Communications

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order on reconsideration.

SUMMARY: The Commission affirms its September 3, 1985 decision that the public interest requires authorization of separate satellite systems to provide international communications services, and that its imposition of certain restrictions will allow for the benefits of competition while safeguarding INTELSAT from significant economic harm. The Commission grants modifications on three ancillary issues, and otherwise affirms its *Separate Systems* decision. The Commission also affirms its six conditional grants to separate system applicants.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, Policy Division, Common Carrier Bureau, (202) 632-0745; Steve Lett, International Facilities Division, Common Carrier Bureau, (202) 632-7265.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's memorandum opinion and order on reconsideration, CC Docket 84-1299, adopted April 3, 1986 and released April 17, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M St., NW, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order on Reconsideration

1. Between March 1983 and May 1985, the Commission received six applications to construct, launch and operate international satellite systems independent of INTELSAT. Following a Presidential Determination that such systems are required in the national interest, and joint State/Commerce guidelines regarding the policies underlying this determination and the implementation of such systems, the Commission issued a Notice of Inquiry and Proposed Rulemaking (50 FR 1570, 1985) and a Report and Order ("*Separate Systems* decision," 101 FCC2d 1046, 1985). Concurrent with the *Separate Systems* decision, the Commission conditionally granted three applications and ordered modification on two others. (The Commission has subsequently conditionally granted those two applications and one additional, later-submitted application.) The instant Memorandum Opinion and Order on Reconsideration ("Order") responds to petitions for reconsideration regarding both the *Separate Systems* decision and the conditional grants of applications.

2. The Commission here affirms, with some modification, both the conditional authorizations to all six applicants and the conclusions reached in its *Separate Systems* decision. The issues considered in the Order are as follows:

A. Operational Restrictions

3. The *Separate Systems* decision establishes operational restrictions on separate systems operators and their users for the purpose of protecting INTELSAT's commercial core revenues, to safeguard INTELSAT from significant economic harm, in accordance with the INTELSAT Agreement. These restrictions include a prohibition on interconnection with the public switched network, the provision of all services and capacity only under long-term lease or sale terms, and a requirement of consultation under Article XIV(d) of the INTELSAT Agreement.

4. The Commission affirms the no-interconnection restriction, and denies a request to waive this restriction with regard to interconnection with computers which connect for storage and later retransmission with other computers which may interconnect with the public switched network. The Commission also affirms the restriction to sale or long-term lease, and the application of this restriction, like the no-interconnection restriction, across the board, from system operators to end-users. The Commission does modify its findings in this regard, however, to permit the provision of occasional use television (also on a long-term (minimum one year) lease basis). The Commission also affirms its conclusions that the certification and other enforcement measures set forth in its *Separate Systems* decision are necessary, and that there is no need or justification for a sunset provision regarding the operational restrictions.

B. Technical and Licensing

5. Several technical and licensing issues are considered. The Commission affirms its determination that separate systems applicant's financial qualification showings should be made in a two-stage process due to the requirement of Article XIV(d) consultation. The Commission responds to petitions requesting more rigorous standards for applicants by noting that the standards ultimately met by these applicants are the same standards met by domestic satellite applicants. The Commission will, however, impose a one-year limitation on all conditional authorizations, in order to avoid the warehousing of orbital locations by applicants who may be unsucessful in obtaining foreign operating agreements.

6. The Commission was also petitioned to reconsider the permitting of domestic service on a secondary basis. The Commission here agrees to broaden somewhat its previous, restrictive definition of "ancillary" service. Now, while insisting that separate system operators' primary purpose remain the provision of international communications, the Commission states that it will allow separate system customers to use their facilities for domestic communications which are reasonably related to use of the facilities for international communications.

7. The Commission was also asked to undertake additional steps toward the protection of orbital assignments, and to condition all authorizations on the outcome of WARC/ORB(1)-85. The Commission declines to do either of these things, finding both to be unnecessary and superfluous.

Ordering Clauses

8. Accordingly, it is ordered that the petitions for reconsideration of the *Separate Systems* decision, CC Docket 84-1299, are granted in part as discussed above and are denied in all other respects.

9. It is further ordered that the petitions for reconsideration of the conditional grants to the captioned applicants are denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-10651 Filed 5-13-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 41276-4176]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska will be achieved on May 10, 1986. A closure of the fishery for sablefish by hook-and-line gear is necessary to limit the harvest of sable fish by hook-and-line gear to the 95 percent of the OY that is permissible by Federal law in this district. This closure is a management measure intended to allocate the sablefish resource between hook-and-line and trawl gear in the West Yakutat District as required by Amendment 14 of the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, Alaska Daylight Time, May 10, 1986, until midnight, Alaska Standard Time, December 31, 1986. Public comments are invited on this closure until May 28, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS) 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act) provides for inseason adjustments of fishing seasons and areas. Regulations at § 672.22(a) specify that these adjustments will be made by the Secretary of Commerce (Secretary) under procedures set out in that section.

Section 672.2 defines three regulatory areas of the Gulf of Alaska. One of these is the Eastern Regulatory Area, which is further divided into three regulatory districts for the purpose of better managing sablefish: West Yakutat, East Yakutat, and Southeast Outside. Current regulations at § 672.20, Table 1, specify the sablefish OY in the West Yakutat District to be 1,660 metric tons (mt). However, the North Pacific Fishery Management Council (Council), at its December 10-14, 1985, meeting, determined that the OY in this district should be 2,550 mt. The Council recommended that NOAA promulgate an emergency rule under Magnuson Act section 305(e), to implement this new OY, pending amendment of the FMP. The Regional Director has submitted this emergency rule for review by the Secretary; it is expected to be promulgated within a month.

Section 672.24(b)(1) restricts directed fishing, defined at § 672.2, for sablefish in the Eastern Area with hook-and-line gear to 95 percent of its OY. Fishing for other groundfish species with trawl gear is allowed until trawl vessels have harvested 5 percent of the new sablefish OY as a bycatch. Thus, 95 percent and 5 percent of the new sablefish OYs are allocated to vessels using hook-and-line gear and trawl vessels, respectively.

The 1986 sablefish shares between hook-and-line and trawl gear in the West Yakutat District under the sablefish allocation formula provided by Amendment 14 are 95 percent and 5 percent of the recommended 1986 OY, or 2,423 mt and 127 mt, respectively.

An estimated 36 hook-and-line vessels have conducted a directed fishery for sablefish during the fishing season, which began on April 1, 1986. This number increased to about 47 vessels after the sablefish fishery in the adjoining Southeast Outside and East Yakutat Districts closed on April 17, 1986 (51 FR 15347, April 23, 1986). On average, the fleet is harvesting an estimated 54 mt of sablefish per day. At the current catch rate, the hook-and-line share of the OY will be fully harvested on May 10, 1986, and further directed sablefish fishing with hook-and-line gear after noon on that date is prohibited. This closure is a management measure intended to implement the allocation of the sablefish resource as provided for by Amendment 14 to the FMP. Sablefish landings by hook-and-line vessels west of the West Yakutat Districts, i.e., west of 147 °W. longitude, are expected to increase rapidly as part of the fleet moves west following notice of this closure.

Section 672.24(b) requires the Regional Director to close all fishing for groundfish with a gear type in an area when the sablefish share allocated by Amendment 14 to that gear type in that area has been taken. At its January 15-17, 1986, meeting, however, the Council recommended that NOAA amend this regulation to allow the Regional Director to prohibit directed fishing for sablefish by that gear type in that area and thus leave a bycatch to support other directed groundfish fisheries. Fishing for other groundfish species could thus continue. If the sablefish share was nevertheless harvested before the end of that year, the Regional Director may allow further fishing by that gear in that area for other groundfish species to continue, with sablefish being treated as a prohibited species, providing that overfishing of sablefish would not result. The Regional Director has also submitted an emergency rule that would amend the regulation cited above to implement the Council's recommendation.

The requirement of § 672.20(b), that all groundfish fishing by a gear in an area be closed when its sablefish allocation for that area has been taken, conflicts with Amendment 14 as interpreted by the Council and NMFS. The Regional Director is, therefore, not obliged even before promulgation of the new rule to impose such a closure, provided that continued fishing by that gear type will not cause overfishing of sablefish. The Regional Director has reviewed the bycatches of sablefish that might be taken in other directed groundfish hook-and-line fisheries in the West Yakutat District and finds that continued fishing for other groundfish species will not cause overfishing of sablefish.

This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address above for 15 days following its effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either conforming this closure's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource between hook-and-line and trawl gear in the West Yakutat District of the Gulf of Alaska, as required by Amendment 14 to the FMP, and the continued health of that resource will be jeopardized unless this closure takes effect promptly.

NOAA therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under §§ 672.22 and 672.24 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: May 8, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-10821 Filed 5-9-86; 4:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 93
Wednesday, May 14, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 30, 31, 32, 34, 40, 50, 61, and 70

Standards for Protection Against Radiation; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 9, 1986 (51 FR 1092), the Nuclear Regulatory Commission published for public comment a proposed rule setting forth revised standards for protection against radiation. A number of requests have been received to extend the comment period to allow more time for examination and analysis. As indicated in the **Federal Register** notice, the Commission has considered publishing a backfit analysis of the proposed rule and making it available for comment concurrently with the comment period for the proposed rule. The Commission expects to publish the backfit analysis for comment in the near future. In view of the above considerations and the importance of this rule, which provides basic dose limits and radiation safety standards for the Commission's regulatory programs, the Commission had decided to extend the comment period to September 12, 1986, to allow at least a 60-day period for examining and commenting on both documents together.

DATE: The comment period on the proposed rule is extended to September 12, 1986. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert E. Alexander, Office of Nuclear Regulatory Research, U.S Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4370.

Dated at Washington, DC, this 9th day of May, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–10854 Filed 5–13–86; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545 and 563

[No. 86–471; Previously Adopted as Board Res. No. 86–429, on April 24, 1986]

Nationwide Lending, Loan Participations, and Loan Recordkeeping Requirements

Dated: May 9, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations to reinstitute requirements for nationwide lending activities outside the normal lending territories of the principal and branch offices of institutions the accounts of which are insured by the FSLIC ("insured institutions") and for the joint origination of, or purchase of interests in, participation loans, and to expand existing recordkeeping requirements. Certain provisions of the proposal would apply not only to insured institutions but also to their service corporations.

The Board hereby notifies the public that it does not intend to make any final amendments effective on a date earlier than that of their publication in the **Federal Register**. Any final rule would apply only to loans originated or purchased, to participation interests issued or purchased, and to legally binding commitments to the foregoing entered into on or after the effective date. The Board specially solicits comments on what the effective date of any final amendments should be.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Director, Policy Analysis Division, Office of Policy and Economic Research, (202) 377–6763; Diana Garmus, Financial Analyst, Office of Examinations and Supervision, (202) 377–6820; John Downing, Attorney, Office of Enforcement, (202 223–5426; or C. Dawn Causey, Attorney, Office of General Counsel, (202) 377–6472, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Proposed Nationwide Lending and Participation Rules

1. Summary

The Board is proposing to amend the regulations governing the operations of insured institutions to adopt prudential guidelines regarding nationwide lending and loan participations. The proposal is designed to permit insured institutions operational flexibility while minimizing certain risks to which they are especially susceptible when engaging in nationwide lending and loan participations.

In brief, the nationwide lending proposal: (1) Bars all insured institutions from purchasing whole loans secured in a manner other than first liens on owner-occupied homes outside their normal lending territories ("nationwide loans") from sellers with deficient capital or portfolio performance; (2) permits insured institutions with demonstrable capital or portfolio weakness to engage in nationwide lending only pursuant to business plans and with the prior approval of their Principal Supervisory Agents ("PSAs"); (3) permits insured institutions meeting their capital requirement and having a low ratio of nonperforming assets to make or purchase without prior approval nationwide loans that are neither scheduled items nor classified

assets in an amount equal to regulatory capital and such loans which are home loans in an amount equal to twice regulatory capital, for an aggregate amount equal to three times regulatory capital.

The proposed rule relating to loan participations provides that insured institutions may participate in originating secured loans or purchase participation interests in any such loan without prior PSA approval only if any one of four conditions is satisfied. First, the loan must be owned exclusively by the insured institution and the Federal Home Loan Bank Mortgage Corporation or the Federal National Mortgage Association.

As a second alternative, the loan must be owned exclusively by "approved lenders" with adequate capital and portfolio performance and either (1) the loan must be insured or guaranteed or (2) at the close of the transaction each originating approved lender must retain at least a 10 percent unsubordinated interest in any home loan or, for loans other than home loans, either a 25 percent unsubordinated interest or a 10 percent subordinated interest.

Third, even if neither of the first two conditions is satisfied, PSA approval will not be required if participation interests are either (1) securities sold, issued, or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association which represent undivided interests in whole loans or undivided interests in participations, or (2) securitized loans which are rated in one of the four highest ratings by a nationally recognized rating agency.

Finally, PSA approval will not be required if the participation interests are interests in a pool of loans secured by first liens on homes at least 80 percent of which loans are secured by owner-occupied homes.

The PSA is granted authority to waive any of these regulatory requirements upon approval of a completed application which includes a business plan supporting such relaxation.

2. Statutory Authority

Among the paramount purposes of Title IV of the National Housing Act ("NHA"), 12 U.S.C. 1724–30, Federal Home Loan Bank Act ("Bank Act"), 12 U.S.C. 1421–28, is the development and maintenance of a system of sound and economical home financing. An additional and closely related purpose of the NHA is the protection of the FSLIC fund from undue risk.

It has been the Board's longstanding position, supported by legislative history and prior administrative practice, that the NHA authorizes the Board to regulate not only insured institutions that are federally chartered savings and loan associations and federal savings banks ("Federal associations") but state-chartered insured institutions as well in furtherance of these two purposes. Section 402(a) of the NHA, 12 U.S.C. 1725(a), empowers the Board, as the operating head of the FSLIC, to prescribe rules and regulations "for carrying out the purposes of this [Act]." Since this proposed rulemaking is designed to maintain safe, sound, and economical home financing, as well as to protect the FSLIC fund from undue risk, the proposal carries out the purposes of the NHA and consequently represents a permissible exercise of regulatory authority under section 402(a).

Moreover, under section 407 of the NHA, 12 U.S.C. 1730(b), the Board has the authority to terminate FSLIC insurance coverage entirely and to initiate cease-and-desist proceedings pursuant to "rules and regulations" promulgated by the Board, 12 U.S.C. 1730(m), in order to prevent "unsafe or unsound practices" that threaten the integrity of the FSLIC fund.[1] These powers encompass the less drastic power to prevent unsafe or unsound practices through regulations such as the proposed rules on nationwide lending and loan participations (and loan documentation as well). *See Independent Bankers Association of America* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980) (parallel statutory authority of the Comptroller of the Currency).

3. Purpose

The proposal seeks to address the problems associated with nationwide loans and with loan participations in a manner that recognizes that qualifying institutions having sound loan purchase programs in place and sufficient risk capital at stake should be permitted as much operational flexibility as is consistent with the Board's responsibility to safeguard all insured institutions and the FSLIC fund. In particular, the proposal would allow insured institutions to sell most of a loan, thereby enabling them to originate large loans while remaining in compliance with the Board's loans-to-one-borrower regulation. 50 FR 53260, 53272 (1985); 50 FR 45089, 45096 (1985) (to be codified at 12 CFR 563.9–3).

a. *Nationwide Lending.* The Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469 ("DIA"), granted Federal associations new and expanded investment powers to enhance their viability by affording new sources of contracyclical income to lessen the impact of mismatched portfolio assets and liabilities. Many state legislatures had already liberalized the asset powers and operations of state-chartered insured institutions to an even greater degree than the DIA, or quickly did so. In implementing these new and expanded authorities, the Board promulgated amendments to its regulations liberalizing operating constraints on Federal associations. Implementation of New Powers, 48 FR 23032 (May 23, 1983).

Prior to its deregulatory initiatives, the Board had specific criteria for originating, purchasing, participating in, and servicing nationwide loans, as well as limits on the amount of such loans in an insured institution's portfolio. The qualification criteria were based on the ratio of scheduled items to assets. The rationale for this requirement was that an institution with a high level of nonperforming assets might try to sell them to an unsuspecting buyer or might try to reach for yeild by buying high-risk, out-of-territory loans.

Since the time of these legislative and regulatory actions, the character of institutional distress causing supervisory concern and subsequent FSLIC outlays has changed to reflect a high ratio of asset quality problems. In 1982 approximately 80 percent of the FSLIC cases were primarily attributable to interest rate spread problems, and 20 percent were primarily due to asset quality problems. by 1984, that ratio had reversed itself to 30 percent versus 70 percent, with the result that a substantial portion of the FSLIC's current caseload is characterized by problems attributable to bad assets. In the Board's experience, many troubled and failed institutions have encountered serious difficulty because of the origination or purchase of loans outside their normal lending territories. Such lending entails unique risks which imperil the integrity of the underwriting process and the overall performance of nationwide loans.

[1] In 1966, Board Chairman John E. Horne explained to Congress that "[g]enerally speaking, an 'unsafe or unsound practice' embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operations, the possible consequences of which, if continued, would be abnormal risk of loss or danger to an institution, its stockholders, or the agencies administering the insurance fund." Memorandum on Unsafe or Unsound Practices submitted by John E. Horne to Hon. Wright Patman (Sept. 20, 1966), *quoted in Gulf Federal Savings & Loan Association* v. *Federal Home Loan Bank Board*, 651 F.2d 259 (5th Cir. 1981), *cert. denied*, 458 U.S. 1121 (1982).

The Board's supervisory and FSLIC files are replete with cases involving questionable loan sales. Often distressed sellers attempt to rid themselves of low-quality loans with high claimed rates of return by selling them to distressed buyers. Frequently, the loans purchased are from out-of-state lenders with offices located at such a distance that the purchasing institution can neither initially nor periodically inspect the collateral. If an ongoing project and lender are distant from each other, then it is more difficult for the lender to judge and verify the project's progress and the borrower's compliance with the terms of the loan.

b. *Participation Lending.* A loan in which participation interests are sold should be more prudently underwritten than a whole loan originated by a single lender because more than one institution has an incentive to assure proper loan underwriting and documentation. This, however, is not always the case if the originator-seller had no intent to retain a significant participation interest, if the participants are not familiar with the collateral or borrowers, if the loan involves a type of collateral the participants are unfamiliar with (for example, timeshare), or the collateral is located outside of the participants' normal lending territories. The Board's supervisory and FSLIC files contain numerous examples of participation loans turned sour in large part because of neglect by the lead or originating lender.

4. Description of the Proposal

The proposal ties the amount of nationwide loans—whole loans secured by collateral located outside the normal lending territory of the principal and branch offices of an insured institution—which the institution may make or purchase without prior approval to its regulatory capital requirement and its ratio of scheduled items and assest classified Doubtful or Loss to total assets. Insured loans, loans at least 20 percent of which are guaranteed, including loans guaranteed by the Veterans Administration or insured by the Federal Housing Administration ("FHA"), and loans secured by first liens on owner-occupied homes are exempt from the requirements of the proposal.

The proposal defines the "normal lending territory" of an insured institution to be the states within which its principal office and any branch offices are located, as well as any point within 100 miles of any office if such a point is outside the state within which the office is located. No definition of "branch office" is set forth. The Board hereby requests comment on an appropriate definition of the term "branch office" for purposes of any final rule. In particular, the Board seeks comment on whether the term should be limited, for example, to an office other than an institution's principal or home office "at which accounts are opened or payments thereon are received or withdrawals therefrom are paid," 12 U.S.C. 1464(m), or whether it should also include loan production offices, the offices of service corporations or mortgage banking subsidiaries, or other offices of an institution.

The Board would appreciate receiving comments addressing not only considerations going to operational flexibility but also to safety and soundness. In particular, while the Board wishes to provide institutions with operational flexibility, it is concerned that investment by insured institutions in subsidiaries or the use of agents not be employed as a means of evading any final regulation.

Institutions in compliance with their regulatory capital requirement and having a ratio of scheduled items and assets classified Doubtful or Loss to total assets of less than 4 percent ("qualifying institutions") may make or purchase nationwide loans that are neither scheduled items nor assets that are classified Doubtful or Loss in an amount equal to their regulatory capital. Additionally, these qualifying institutions may make or purchase such loans in an amount equal to twice their regulatory capital if those loans are home loans meeting the qualifying criteria of either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, except that the dollar amount of individual home loans may equal twice the dollar limit set for qualifying loans by either agency.

An institution not meeting its regulatory capital requirement or having a ratio of scheduled items and assets classified Doubtful or Loss to total assets of 4 percent or more ("nonqualifying institutions") may make or purchase nationwide loans only upon prior review and approval.

The proposal would require insured institutions to purchase nationwide loans only from designated "approved lenders," including qualifying institutions; institutions the deposits of which are insured by the Fedeal Deposit Insurance Corporation ("insured banks") in compliance with applicable capital adequacy requirements; service corporations the majority of whose capital stock is owned by such insured institutions and insured banks; FHA-approved mortgagees; agencies of the United States or of any State engaged in making, purchasing, or selling secured loans or in purchasing or selling participation interests in such loans; any domestic life, property, or casualty insurer rated B+ or better by Best's Insurance Reports; and any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934.

The Board specially requests comments on whether other entities should be included in the definition of "approved lender." The Board does not intend to unduly restrict the operations of well-capitalized and well-run institutions. Commenters arguing for a broader definition should address not only the need for operational flexibility for insured institutions but also the effect of a broadened definition upon the safety and soundness of insured institutions.

The proposed rule relating to loan participations provides that insured institutions may participate in originating secured loans or purchase participation interests in any such loan without prior PSA approval only if any one of four conditions is satisfied. Failure to continue to satisfy the applicable condition requires divestiture of the noncomplying investment within 90 days. The four alternative conditions are as follows:

First, the loan must be owned exclusively by the insured institution and the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

As a second alternative, the loan must be owned exclusively by "approved lenders" with adequate capital and portfolio performance and either (1) the loan must be insured (as defined in § 561.20) or guaranteed (as defined in § 561.21) or (2) at the close of the transaction each originating approved lender must retain an unsubordinated interest in any home (as defined in § 541.14) loan of at least 10 percent of the outstanding balance of the loan or, for loans other than home loans, either a 25 percent unsubordinated interest in the loan balance or a 10 percent subordinated interest. An originator retaining a subordinated participation interest in a loan would bear all losses on the loan up to the amount of the retained interest. For example, if an originator retains a 10 percent subordinated participation interest in a $1,000,000 loan which is written down by $300,000, or 30 percent, the originator's loss would be $100,000—10 percent of the loan—and the other participants would share in the remaining $200,000 loss pro rata. If the

originator had retained instead a 25 percent unsubordinated participation interest, all participants in the loan, including the originator, would share in the loss pro rata, the originator bearing a $75,000 loss.

As a third alternative condition, the participation interests must be either (1) securities sold, issued, or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association which represent undivided interests in whole loans or undivided interests in participations, or (2) securitized loans which are rated in one of the four highest ratings by a nationally recognized rating agency.

Finally, PSA approval would not be required if the participation interests are interests in a pool of loans secured by first liens on homes at least 80 percent of which loans are secured by owner-occupied homes.

For both nationwide and participation loans, the proposal establishes an application process to be administered by the PSAs for waiver of any of the provisions of the proposal. While the contents specified for each kind of application differ somewhat, both kinds of applications generally are to be accompanied by a business plan which sets forth a program of lending for the applicant demonstrating that it has sufficient internal controls and experience in dealing with nationwide or participation loans and that a waiver would be consistent with safe and sound lending practices and economical home financing. Within 10 days after the filing of an application, the PSA must notify the applicant in writing either that all the information needed has been filed or that additional information is required. If the PSA does not act on an application within 30 days after notification that all the required information has been filed, the application will be deemed to be approved. If the applicant is state-chartered, the applicant must also send a copy of the application to its state supervisor.

The Board hereby specifically requests comment on whether Supervisory Agents should be authorized to notify institutions within 10 days after the filing of an application that all necessary information has been filed or that additional information is required. The Board has become aware that in some instances requiring the PSAs to act within this 10-day period can be logistically difficult or create undue pressure.

The Board notes that its prior rules governing nationwide loans and participation loans, *see* 12 CFR 563.9, 563.9–1 (1980), contained requirements that such loans be serviced by "local eligible servicers" whose offices generally had to be within 100 miles of the collateral or within the normal lending territory of a local eligible servicer that was an insured institution. If the local eligible servicer requirement ceased to be met, an insured institution was required to divest itself of the noncomplying loan within 90 days. The Board further specifically solicits comment on whether any final rules should contain such a requirement.

II. Recordkeeping

The proposal also expands the existing recordkeeping requirements and makes them expressly applicable to the service corporations of insured institutions. The proposal sets forth greater detail as to the types of documentation required to meet the standard of accurate and complete records and minimally prudent underwriting for various kinds of transactions. Further, a requirement concerning certification of the adequacy of the loan-in-process account is added. These amendments are described more fully below.

1. Background

Pursuant to section 403(b) of the NHA, 12 U.S.C. 1726(b), the Board as the operating head of the FSLIC has the authority to conduct examinations of insured institutions. Section 403(b) provides for such examinations of insured institutions as are necessary in the judgment of the FSLIC for its protection and the protection of insured institutions. Pursuant to this authority, the Board has the responsibility to examine and evaluate insured institutions' assets, including those of their service corporations, and to provide reporting and accounting treatment of assets for regulatory evaluation purposes. The performance of the Board's examination function is vital to the financial integrity and regulatory compliance of the thrift industry. Through examination of an institution's and its service corporation's records the Board is able to uncover violations of its regulations and determine if corrective measures are necessary. Failure to maintain adequate records often indicates deficient operating standards and deteriorating financial conditions.

The Board's examination responsibilities can be met only if each insured institution and service corporation establishes and maintains records necessary to "provide an accurate and complete record of all business transacted" and makes these records available for use in examinations as required by the Board's insurance regulations. 12 CFR 563.17–1(c).[2] These records facilitate the examination and evaluation of assets by the examiner, and ensure that the insured institution has before it those basic documents without which a proper assessment of the risks of making the loan cannot be made. Making a loan without sound underwriting and such an assessment of risks could result in an unacceptable risk to the institution's assets and to the FSLIC and would be considered an unsafe or unsound practice.

In examining insured institutions, several problems with the existing list of requirements under § 563.17–1(c)(1), applicable to loans secured by real estate, have come to the Board's attention. First, although the general requirement that records be accurate and complete applies to service corporations, the list of items that must be maintained for loans made on the security of real estate does not expressly apply to service corporations. This is undesirable. Service corporations may originate undocumented, and thus poorly underwritten, loans. Any loss realized by a service corporation on such loans will diminish the value of the parent's investment. Accordingly, the Board believes that both the general and the specific loan documentation requirements of § 563.17–1(c) should apply expressly to insured institutions and to their service corporations ("lenders" or "loan purchasers").

Another area of concern is the absence of a requirement that the institutions retain the note evidencing a

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[2] In addition to this general requirement, section 563.17–1(c) requires that each insured institution include in its records, for all loans made on the security of real estate, the following types of documents.

1. A loan application;
2. A statement of the price paid for real estate security property being purchased and a deed of trust or mortgage instrument;
3. A written appraisal report on the security property;
4. A financial statement of credit report on the applicant;
5. Documentation of the approval of the loan;
6. Documentation of the date, amount, purpose and recipient of the proceeds of the loan;
7. An opinion of counsel, title insurance policy, or other affirmation on the quality and validity of the institution's lien on the security property;
8. A loan settlement statement;
9. A record of the status of taxes, assessments, insurance premiums, and other charges on the security for the loan;
10. Documentation of all modifications of the insured institution's security interest; and
11. Documentation concerning any releases of the collateral.

borrower's obligation to repay the amount of the loan. Obtaining the borrower's note is an essential underwriting requirement because without the borrower's note a lender may be unable to sue the borrower for the balance of a loan on which the borrower has defaulted. Proposed § 563.17–1(c)(1)(ii) would incorporate this requirement.

Another safeguard which the proposal adds concerns the value of the loan collateral. If the value of the collateral securing the loan has diminished due to fire, wind, or other natural disaster, such loss should be documented along with any recovery from insurance. This proposed requirement, § 563.17–1(c)(1)(xii), will encourage notice of changes in the value of the collateral and of the lender's rights, if any, to proceeds of any insurance settlement. Additionally, such documentation will provide essential information for the lender and the Board's examiners in assessing any recovery possible if default forces the lender to seize and sell the collateral.

Moreover, the current regulation governing loans made on the security of real estates does not require lenders to retain documentation that demonstrates the adequacy of the funds held in loan-in-process accounts to complete the construction of the project for which the loan has been obtained. One of the most serious problems in construction and acquisition and development lending is that during the development or construction phase of the project there are usually no cash payments from the builder or developer to the lender. Industry practice is that interest and fees on the loan are funded from a part of the loan-in-process account usually called the "interest reserve." This is an undisbursed portion of the loan retained by the lender to fund the loan's interest and fees. While interest is a legitimate cost to the builder or developer, keeping the loan current through use of interest reserve may camouflage the inability to sell the project for the originally expected price due to construction problems or cost overruns. In effect, the loan may be for an amount well over 100 percent of value of the project.

Such problems may be avoided by requiring the loan-in-process account always to have more than sufficient funds to complete the project. To this end, the proposed documentation requirements provide for the certification of the adequacy of the monies in the account to complete construction of the project prior to each disbursement by an agent of the insured institution. Morover, the proposed regulation would require that the lender certify that the funds disbursed from the loan-in-process account have been used for the purpose requested and that the project is proceeding on schedule.

In addition to its concerns regarding real estate-secured loans, the Board also is concerned that the existing recordkeeping requirements for other loans are unduly narrow. Although the general mandate that records be accurate and complete applies to all types of loans, the specific requirements of § 563.17–1(c)(1) of the regulation do not apply to loans that are not secured by real estate or to loans of any type that an insured institution or service corporation purchases in whole or in part.

Until recently, loans not secured by real estate were an insignificant portion of the portfolios of most insured institutions. Because of expanded federal and state investment powers for thrifts, however, insured institution haves become heavily involved in types of loan transactions with which they were not previously familiar. Thus, it is more important now than ever to require that lenders originate loans only after obtaining all documentation necessary for a thoroughly considered underwriting decision. The Board has determined, therefore, to identify the minimum documentation for loans not secured by real estate that lenders must maintain in their files to meet the requirement of accurate and complete records.

To encourage thorough underwriting and recordkeeping, the Board is also proposing minimum documentation requirements for loan purchases and participations. Loans purchased or participated in have become a troublesome portion of the assets of many insured institutions. Possibly because the purchasing or participating lenders do not make the initial underwriting decision on these loans, or because many of these loans are not located within their normal lending territories, many lenders have not devoted sufficient care to underwriting and documentation. Instead, many have relied on the originating institution's diligence. However, to ensure their safety and soundness, participating lenders must make their own credit decisions based on information they have obtained.

Another type of transaction for which recordkeeping has increasingly concerned the Board involves timeshare accounts receivable. Until 1980 Federal associations were not permitted to invest in timeshare paper or other similar accounts receivable. Since that time, however, investments in timeshare loans have become a sizable portion of the loan portfolio of several troubled institutions. Because of the unique document problems posed by the many forms timeshare financing may assume, as discussed hereafter, the proposal includes particular timeshare recordkeeping requirements.

The proposed rule also clarifies several of the eleven existing recordkeeping requirements. For example, the requirement that an institution's records must indicate the recipient of each loan disbursement may be misinterpreted to require only the recording of the name of the agent of the ultimate recipient. However, unless the ultimate recipient is recorded, the institution, inadvertently or by design, may violate such regulations as the loans-to-borrower rule or the rules restricting transactions with affilated persons.

The proposed revision of the regulation also would clarify that the written appraisal an insured institution must maintain in its files should be ordered by the insured institution. Emphasis on the fact that appraisals are made for and upon the request of the insured institution gives notice that the lender is entitled to rely upon the appraisal and that the appraiser will be liable to the lender if loss occurs as a result of reliance on grossly negligent or fraudulent appraisal.

2. Proposed Recordkeeping Amendments

a. *General Scope and Requirements.* The Board proposes to amend section 563.17–1(c) by extending the application of the existing and proposed loan documentation requirements to service corporations, thus facilitating examination, encouraging proper underwriting, and reducing risk to the parent insured institution. The proposal also would add requirements for all loans made or purchased, in whole or in part, that the financial statement obtained from loan applicants be current and that copies of a note given by the borrower or its agent be retained in the lender's records, a requirement which is critical to the lender's success in enforcing its contractual remedies against the borrower upon default. If the original borrower is released when a third party purchased the collateral, the proposed regulation also would require the lender to obtain the note of the third party.

b. *Requirements with Respect to Loans Made on the Security of Real Estate.* The proposed regulation would amend existing § 563.17–1(c)(1) by

adding a requirement that the lender retain documentation that demonstrates the adequacy of the funds held in loan-in-process accounts to complete nonresidential construction projects for which loans have been obtained. This proposed recordkeeping requirement could be satisfied by an estimate of remaining construction costs updated periodically by the borrower, together with an accounting of the amount remaining in the loan-in-process account.

Further, the proposal adds a provision requiring that a lender's records show the ultimate recipient of each loan disbursement. The proposed rule would also require that a written appraisal of the real estate security property be prepared at the request of the lender and for its use, thus emphasizing that the appraisal is made in the interest of, and may be relied upon by, the lender. Although such an appraisal must be signed prior to the final approval of the loan, the rule recognizes the practice of granting an application on the express condition that a satisfactory appraisal or certificate be obtained before any loan funds are disbursed.

The proposal also would make clear that the required documents evidencing modification of a security interest must indicate the approval of each party to each modification. Moreover, the requirement that the lender retain documents covering all releases of any portion of the collateral "supporting the loan, showing the part of the premises involved," would be revised to require that the lender retain documentation of releases of the collateral "pledged to secure the loan, showing the portion of the collateral released." This proposed revision states the requirement in more general terms and expands its applicability to loans not secured by real estate. Similarly, the requirement that the lender retain documentation covering all modifications of the original mortgage contract is revised to require retention of the pertinent documents by which any security interest is created.

c. *Requirements With Respect to Loans Not Made on the Security of Real Estate.* The Board also is proposing to apply five of the requirements of § 563.17–1(c)(1) to insured institutions and service corporations making loans not secured by real estate, while deleting requirements irrelevant to loans not secured by real estate. Thus, the proposal would require retention of loan applications, financial statements, documentation of loan approvals and loan disbursements, and any modifications of a lender's security interest or release of collateral. It would not, however, require a lender to maintain documents for a loan not secured by real estate that are related only to real estate security property, such as trust or mortgage documents, title insurance policies or opinions, records of taxes, premiums, or other assessments on the collateral, or loan settlement statements and related documentation required by the Real Estate Settlement Procedures Act, 12 U.S.C. 2601. The Board is instead proposing that the required documents simply include those evidencing creation of any perfected security interest, including the filing of any necessary financing statement.

The Board is also proposing to require that for a commercial loan not secured by real estate the lender must retain documentation showing whether the obligor is able to generate sufficient cash flow to meet scheduled interest and debt reduction payments. Because insured institutions generally are not experienced in disposing of collateral other than real estate that a commercial borrower may pledge, such as inventories or machinery, it is of paramount importance that before making the underwriting decision with respect to a loan the institution ascertain whether the ongoing operations of the business enterprise will be sufficient to repay the loan. This is underscored by the Board's previous recognition in its policy statement on classification of assets that is an obligor on certain types of loans is unable to generate sufficient cash flow for debt reduction the loan may be classified as Substandard. 50 FR at 53283.

d. *Records with Respect to Loan Purchases and Participations.* Unlike loans originated by an insured institution or service corporation, the basic records concerning a loan purchased or participated in should be available from an alternate source—the loan originator. Thus, the loan purchaser is not expected to obtain and retain in its files all the information required of the originator. However, a participating lender may not ignore its duty to conduct a sufficient review of the basic loan documents and evaluate the originating lender's underwriting standards to ensure that purchasing all or part of the loan will result in a safe and sound investment. The purchaser must at a minimum, obtain the originator and retain evidence of the terms and character of the loan, the value of any security, and the borrower's ability to repay. In the Board's experience, recordkeeping in this area has been uneven at best. Therefore, the Board is proposing to require that, for all types of loans, the loan purchaser/participant retain copies of the loan application, the current financial statement(s) of the applicant, and the borrower's note for the amount of the loan.

A second new requirement applicable to all loan purchases and participations relates to the role of the originating institution. The loan purchaser often will rely on the originator's representations regarding whether the loan is current and will be unfamiliar with whether the provisions of state or federal law with which the borrower must comply have been observed. The Board therefore is proposing to require that the purchasing institution obtain from the originator certification of the currency of the payment status of the loan and certification that the loan complies with all applicable state and federal laws. Furthermore, as proposed, the loan purchaser would obtain and maintain in its files the originator's agreement to provide access to all loan documentation in its possession or control, and the originator's certification that copies of documents it has furnished the loan purchaser are, to the best of its knowledge, accurate and complete. Knowledge that the purchaser may review the files at any time should enhance the reliability of representations made by the originator. Access to the loan files also may be useful in resolving any disputes between the originator and the loan purchaser, and consideration of some or all the documents therein may be necessary for the purchaser to properly make its underwriting decision to purchase an interest in the loan.

Moreover, the Board is proposing that the loan purchaser retain a copy of the originator's underwriting standards. Because a loan purchaser usually will not be as familiar with the borrower of the security property as the originator, it is essential that it be able to rely both on the information supplied to it and the underwriting standards of the originator. Lastly, the loan purchaser must retain a copy of an agreement it enters into concerning the servicing of the loan or by which it purchases a participation interest.

In addition, if the loan purchased or participated in is secured by real estate, the proposed regulation would require that the loan purchaser's records include an appraisal report; a deed of trust, a mortgage instrument, or similar document; a statement of the amount being paid for any real estate security being purchased with the loan proceeds; and any documents releasing collateral. If an entire loan secured by real estate is purchased by one lender, the proposal

requires the purchasing lender to retain documents evidencing the assignment to it of the mortgage or similar instrument.

If the loan is secured by collateral other than real estate, the proposal requires that the documents retained must include those evidencing creation and perfection of the security interest for the purchaser's benefit and records of releases of any portion of the collateral. If an unsecured loan or a loan secured by collateral other than real estate is made for commercial purposes, under the proposal the purchasing institution's records must include documentation of the obligor's cash flow.

e. *Records of Purchases and Loans Involving Timeshare Accounts Receivable.* The arrangements under which an insured institution or service corporation becomes involved with the financing of timeshare interests may assume a wide variety of forms. A loan on a timeshare interest may be considered either a loan secured by real estate, if the security property is considered real estate under state law, or a consumer loan if the security property is not considered real estate. *See* Implementation of New Powers, 48 FR at 23036. Financing furnished to a timeshare developer may take the form of a loan collateralized by timeshare accounts receivable (hypothecation) or of a purchase of such accounts receivable. Thus, a transaction involving timeshare accounts receivable could, if the Board's proposal is adopted, come within the specific recordkeeping requirements for loans made on the security of real estate, loans not made on the security of real estate, or loans purchased or participated in. Moreover, the range of possible timeshare financing arrangements is increased by the fact that insured institutions and their service corporations may make loans to individuals who are purchasing timeshare interest themselves, or the lenders may purchase timeshare contracts from or engage in much more complex transactions with timeshare developers. Timeshare purchasers may obtain a fee ownership in the development or obtain a mere right to use the timeshare property. The timeshare property itself may be structured as a condominium, cooperative, or even a campground. based on the interplay of these and other factors, the necessary documentation and underwriting required for an investment in timeshare receivables will vary greatly.

Although improper documentation of transactions involving timeshare receivables is an area of significant regulatory concern, the Board believes that the complexity and variety of timeshare financing arrangements and the concomitant need for flexibility on the part of the Board and the FSLIC would make a complete listing of specific documentation requirements in a regulation unwieldy. The Board is therefore proposing to require that the records of an insured institution or service corporation concerning purchases and loans involving timeshare accounts receivable satisfy the applicable requirements of § 563.17–1(c) (1), (2) and (3) and also include any other documents required to make these records accurate and complete, as this requirement is to be interpreted in an R or T Series memorandum to be issued by the Board's Office of Examinations and Supervision. The Board requests comments concerning the appropriate types of documentation which should be required for transactions involving timeshare accounts receivable.

f. *Other Recordkeeping Provisions.* In addition to the above, the Board is proposing to revise a reference to the requirements of § 563.17–1(c) contained in § 545.13(a) of the Board's regulations to provide consistency with the numbering of the proposed regulation.

The proposed amendments also redesignate various provisions of § 563.17–1(c) to accommodate the expanded contents of the section and employ the term "lender," which includes both insured institutions and their service corporations, for simplicity of reference. The provision requiring records related to insured accounts is amended to reflect the Board's deletion of the requirement that the insured institution's records disclose the names of the settlor and trustee of a trust and contain a signature card for the trust executed by the trustee. *See* 51 FR 12122 (April 9, 1986).

Effective Date

The Board hereby notifies the public that it does not intend to make any final amendments effective on a date earlier than that of their publication in the **Federal Register.** Any final rule would apply only to loans originated or purchased, to participation interests issued or purchased, and to legally binding commitments to the foregoing entered into on or after the effective date. The Board specially solicits comments on what the effective date of any final amendments should be.

As a separate matter, the Board also solicits comments on whether further rulemaking may be necessary to address asset quality problems associated with nationwide loans and participation interests already in the portfolios of insured institution interests already in the portfolios of insured institutions. Commenters taking the position that further rulemaking is necessary should specify what the provisions of a proposal should be.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* This element is discussed above in the **SUPPLEMENTARY INFORMATION.**

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The loan underwriting guidelines and documentation requirements set forth prudent lending requirements for insured institutions investing in certain types of loans. Alternatively, the Board could have prohibited investment by insured institutions in certain loans or set a fixed dollar amount limit to investments in such loans. The Board believes that such alternatives would have been less flexible and more restrictive for insured institutions.

List of Subjects in 12 CFR Parts 545 and 563

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfer, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, and Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071, unless otherwise noted.

2. Section 545.13(a) is amended by removing "§ 563.17–1(c)(5)" and inserting in lieu thereof "§ 563.17–1(c)(8)".

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

3. The authority citation for Part 563 continues to read as follows:

Authority: Pub. L. 95–147 of Oct. 28, 1977; sec. 4, 82 Stat. 856, sec. 4, 80 Stat. 824; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071, unless otherwise noted.

4. Section 563.9 is revised to read as follows:

§ 563.9 Nationwide lending.

(a) *Scope.* An insured institution may make or purchase nationwide loans only as provided in this section.

(b) *Definitions.* As used in this section—

(1) The term "approved lender" means (i) any insured institution which is in compliance with § 563.13 of this part at the close of its most recent calendar quarter and which has a ratio of scheduled items and assets classified Doubtful or Loss (other than assets acquired in a merger instituted for supervisory reasons) to total assets of less than 4 percent; (ii) any institution the deposits of which are insured by the Federal Deposit Insurance Corporation which is in compliance with applicable capital adequacy requirements; (iii) any service corporation the majority of the capital stock of which is owned by one or more insured institutions meeting the requirements of paragraphs (b)(1) (i) and (ii) of this section; (iv) any agency or instrumentality of the United States or of any State engaged in the making, purchasing, or selling of secured loans or in the purchasing or selling of participation interests in such loans; (v) any approved Federal Housing Administration mortgagee; (vi) any domestic life, property, or casualty insurer rated B+ or better by Best's Insurance Reports; or (vii) any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*); and

(2) The term "nationwide loan" means any whole loan secured by a lien upon collateral located outside the insured institution's normal lending territory (as defined in § 561.22 of this subchapter, except that for purpose of this § 563.9 only the term "principal office" as used in § 561.22 shall also include any branch office of the institution), excluding, however, (i) a loan at least 20 percent of which is a guaranteed loan; (ii) an insured loan secured by a lien on improved real estate; or (iii) a loan secured by a first lien on an owner-occupied home (as defined in § 541.14 of this chapter).

(c) *Nationwide lending by insured institutions.* (1) *Nonapproved lenders.* An insured institution which is not an approved lender may make or purchase nationwide loans only with the prior approval of its Principal Supervisory Agent.

(2) *Approved lenders.* Without the prior approval of its Principal Supervisory Agent, an insured institution which is an approved lender may make or purchase nationwide loans that are not scheduled items and that are not classified Doubtful or Loss up to an amount equal to its regulatory capital and in addition may make or purchase such loans that are home (as defined in § 541.14 of this chapter) loans up to an amount equal to twice its regulatory capital when all such home loans purchased or originated meet all of the qualifications for sale to the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association except for the dollar amount of such loans. Such qualified home loans eligible for inclusion in the twice regulatory capital calculation may be of an amount twice the dollar amount limit prescribed by either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(3) *Selling approved lender requirement.* Any nationwide loan purchased pursuant to this paragraph may be purchased only from an approved lender.

(d) *Exceptions.* (1) An insured institution may apply to its Principal Supervisory Agent for a waiver of any provision of this section, and if it is State-chartered it shall send a copy of such application to its State supervisor. The application shall include a business plan for its program of nationwide lending which demonstrates that the institution has sufficient internal controls and experience in dealing with such loans, and, to the extent appropriate, the application shall (i) be supported by a map showing any areas in which the institution desires to invest its funds; (ii) state the type and character of the loans to be made, purchased, or sold, including, if available, the percentage of the loan to appraisal; (iii) show the need by areas for the planned lending activities by the institution; (iv) show that the loans will be serviced adequately; and (v) show that the waiver would be consistent with safe and sound practices and economical home financing. A loan made, purchased, or sold pursuant to Principal Supervisory Agent approval shall comply with the terms and conditions of such approval. Within 10 days after the filing of an application or any additional information, the Principal Supervisory Agent shall notify the applicant in writing either that all information required under this paragraph has been filed or that additional specified information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days after the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(2) The applicant's Principal Supervisory Agent is authorized to approve or disapprove completed and properly filed applications for waivers of all or any portion of the provisions of this section. The Principal Supervisory Agent may specify terms and conditions for any such approval.

5. A new § 563.9–1 is added as follows:

§ 563.9–1 Participation loans.

(a) *Joint originations: purchase of participation interests.* An insured institution, to the extent that it has independent legal power to do so, may participate in the making of secured loans and may purchase participation interests in any such loan only if:

(1) The loan is owned exclusively by the insured institution and the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; or

(2) The loan is owned exclusively by approved lenders (as defined in § 563.9(b)(1) of this part) and either

(i) The loan is an insured loan or a guaranteed loan, or

(ii) At the close of the participation transaction each originating approved lender has retained an unsubordinated interest in any home (as defined in § 541.14 of this chapter) loan of at least 10 percent of the outstanding balance of the loan or, for loans other than home loans, either an unsubordinated interest in the loan of at least 25 percent of the outstanding balance of the loan or a subordinated interest in the loan of at least 10 percent of the outstanding balance of the loan;

(3) The participation interests are

(i) Securities sold, issued, or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the

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Government National Mortgage Association and representing undivided interests in whole loans or undivided interests in participations; or

(ii) Securitized loans which are rated in one of the four highest ratings by a nationally recognized rating agency; or

(4) The participation interests are interests in a pool of loans secured by first liens on homes (as defined in § 541.14 of this chapter)at least 80 percent of which loans are secured by owner-occupied homes.

(b) *Maintenance of requirements.* An insured institution may maintain a participation interest in a loan jointly originated or purchased pursuant to this section only if the requirements of paragraph (a) of this section continue to be met. In the event of noncompliance, such participation interest shall be divested within 90 days after the date that any requirement ceases to be met unless the insured institution obtains, prior to the expiration of such 90-day period, the written approval of its Principal Supervisory Agent to maintain such investment for such longer period as the Principal Supervisory Agent may provide.

(c) *Exceptions.* (1) An insured institution may apply to its Principal Supervisory Agent for a waiver of any provision of this section, and if it is State-chartered it shall send a copy of such application to its State supervisor. The application shall include a business plan setting forth a lending program describing the particular safeguards established by the applicant that demonstrate that it has sufficient internal controls and experience to monitor and supervise the performance of the loans, and shall show that the waiver would be consistent with safe and sound practices and economical home financing.

(2) An institution's Principal Supervisory Agent is authorized to approve or disapproye applications under paragraph (c)(1) of this section. Within 10 days after the filing of such an application or any additional information, the Principal Supervisory Agent shall notify the applicant in writing either that all information required under this paragraph has been filed or that additional specified information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days after the date of written notice that all required information has been filed, such application shall be deemed to be approved.

6. Section 563.17–1(c) is revised to read as follows:

§ 563.17–1 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) *Establishment and maintenance of records.* To enable the Corporation to examine insured institutions and affiliates and audit insured institutions, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each insured institution, affiliate or service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts and the documents, files, and other material or property composing said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be. At a minimum, insured institutions and service corporations ("lenders") shall establish and maintan the following records:

(1) *Records with respect to loans secured by real estate.* The records of a lender with respect to each loan that such lender makes on the security of real estate shall include:

(i) An application for the loan, signed by the borrower or the borrower's agent, in such form and containing such information as will disclose the purpose for which the loan is sought (for example, construction, purchase, refinancing) and the identity of any security property;

(ii) A note evidencing the borrower's obligation to repay the amount of the loan, executed by the borrower or his agent;

(iii) If any such loan is made for the purpose of financing the purchase of the real estate security for the loan, a signed statement by the borrower or the borrower's agent, as a part of or as an attachment to the application for the loan, disclosing the purchase price of such real estate security and a copy of the deed of trust or mortgage instrument on said real estate or other document customarily used in the jurisdication in which such real estate security is located evidencing the creation of a security interest in the real estate for the benefit of the lender, which deed of trust, mortgage instrument, or other document has been signed by the borrower or the borrower's agent;

(iv) One or more written appraisal reports, prepared at the request of the lender and for its use, and signed prior to the approval of such application by a person or persons duly appointed and qualified as appraisers by the board of directors of such lender, disclosing the market value of the security offered by the borrower and containing sufficient information and data concerning the appraised property to substantiate the market value of the security described in such reports; or, if such loan is an insured loan or a guaranteed loan, a certification of the valuation assigned to real estate security by the appraiser accepted by the insuring or guaranteeing agency and furnished to the lender by such agency;

(v) A current financial statement of the borrower signed by the borrower disclosing its financial ability to repay the loan or a written credit report prepared by the lender or by others at the special instance and request of such lender;

(vi) Documentation showing when and by whom such loan was approved and any terms and conditions of such approval;

(vii) Documentation showing the date, amount, purpose, and ultimate recipient of every disbursement of the proceeds of such loan, whether such disbursements are made directly by such lender or through escrows or other persons or concerns;

(viii) If the loan is made for the purpose of developing or constructing improvements on real estate, certification as to the adequacy of the funds held in the loan-in-process account to complete the project for which the loan has been obtained;

(ix) Certification by the lender or the lender's agent authorizing each draw on the loan-in-process account prior to disbursement stating that the project is proceeding according to its pre-approved timetable and that funds disbursed have been used for the purpose requested. Failure to meet either requirement will result in the loan being initially classified as Substandard pursuant to § 561.16c(b)(1) unless the terms of the loan are modified to reflect the changed circumstances or the amont of monies held in the loan-in-process account are increased by the borrower, or both;

(x) An opinion signed by the lender's attorney, a title insurance policy, or other documentary evidence customarily used in the jurisdiction in which the real estate security is located affirming the quality and validity of the lender's lien on the real estate security for the loan: *Provided, however,* That such documentary evidence shall not be required with respect to any loan having Federal Housing Administration mortgage insurance as to which §§ 203.390 and 230.402 of the Federal Housing Administration regulations (24 CFR 203.390 and 24 CFR 230.402) are applicable, and any such loan may be

considered to be secured by a first lien without new title evidence;

(xi) Documentation showing that the lender, upon the closing of the loan, furnished to the borrower a loan settlement statement setting forth in detail the charges or fees such borrower has paid or is obligated to pay to such lender or to any other concern or person in connection with such loan, which documentation shall include a copy of such loan settlement statement;

(xii) A record showing the status and current payment of taxes, assessments, insurance premiums, other charges on the security for the loan, and documenting any loss incurred on the loan security as well as any amounts recovered pursuant to an insurance settlement of such loss;

(xiii) Documentation evidencing any modifications of the original documents by which a security interest for the benefit of the lender was created, showing appropriate approval of each party to such modification; and

(xiv) Documentation evidencing any release of any portion of the collateral pledged to secure the loan, showing the portion of the collateral released, the consideration, if any, paid to effect such release, and a record of the appropriate approval of each such release.

(2) *Records with respect to unsecured loans and loans not secured by real estate.* The records of a lender with respect to each loan that such lender makes that is not secured by real estate shall include the documents referred to in paragraphs (c)(1) (i), (ii), (v), (vi), and (vii) of this section. If the loan is secured by collateral other than real estate, the lender's records also shall include documents evidencing the creation and perfection of a security interest in the collateral, including any financing statement, as well as the documents referred to in paragraphs (c)(1) (xiii) and (xiv). In addition, if the loan is made to a business entity, the lender's records shall include documentation showing whether the obligor on the loan is able to generate sufficient cash flow to meet scheduled interest and debt reduction payments.

(3) *Records with respect to loan purchases or participations.*

(i) The records of a lender with respect to each loan that it purchases, in whole or in part, that is secured by real estate shall include copies of the documents referred to in paragraphs (c)(1) (i) through (v), (x), and (xiv). A single lender purchasing a whole loan secured by real estate must retain the assignment to it of the mortgage or deed of trust.

(ii) The records of the lender with respect to loans it has purchased, in whole or in part, that are not secured by real estate shall include the documents referred to in paragraphs (c)(1) (i), (ii), and (v). If the loan is made to a business entity and is unsecured or secured by collateral other than real estate, documentation of the obligor's cash flow as described in paragraph (c)(2) must be included. If the loan is secured by collateral other than real estate, the purchasing lender must retain documents required by paragraph (c)(1)(xiv) and those evidencing creation and perfection of a security interest for its benefit in the collateral, including any financing statement, signed by the borrower or its agent.

(iii) In addition to the requirements of paragraphs (c)(3) (i) and (ii) of this section a lender purchasing all or any part of any loan must retain the originator's statement concerning whether, on the date the loan is purchased, the payments are current and, if not current, the period for which the loan is delinquent; the originator's written certification that each loan complies with all applicable State and Federal laws; any agreement concerning participation in or servicing of the loan; and a copy of the underwriting standards of the originator. In addition, a purchaser must retain the written agreement of the originator of the loan to provide access, upon request, to all loan documentation in its possession or control to the purchasing lender, the Board, the Corporation, its Principal Supervisory Agent, or the examinations and supervision staff of the Federal Home Loan Banks, as well as the originator's written certification that copies of any documents concerning the loan provided to the loan purchaser are accurate and complete to the best of the originator's knowledge.

(4) *Records with respect to loans secured by timeshare accounts receivable.* In addition to the records required by the applicable provisions of paragraphs (c) (1), (2) and (3) of this section, the records of a lender concerning loan purchases, participations, or originations of loans secured by timeshare accounts receivable, including fee, right-to-use, or membership interests, shall include any additional documents necessary to make those records accurate and complete, as this requirement is interpreted by the Board's Office of Examinations and Supervision.

(5) *Records with respect to property purchased subject to a lender's lien or a secured loan assumed by a third party of a lender's loan.* When a property on which a lender has a lien securing an unpaid loan is sold to a third party, whether by transfer subject to the lien or by assumption of the loan, the records of the lender shall contain such documentation and records with respect to such third party and such transaction as are required by paragraphs (c)(1) (ii), (iii), (v), (vi), (xiii), and (xiv) of this section.

(6) *Records with respect to loans sold.* The records of a lender with respect to each loan it sells, whether in whole or in part, shall include a signed opinion by such lender's attorney stating whether the terms of the sales agreement governing such sale provide for a sale without recourse.

(7) *Records with respect to the acquisition of mortgaged security.* A lender shall maintain a record which discloses every instance that it commences action to acquire the real estate security for a loan, by foreclosure or otherwise, and the ultimate disposition of such action. Such record shall include identification of the real estate security and loan, shall itemize all fees and charges incurred in such action, shall name the recipient or recipients to whom any such fees and charges were paid, and shall identify the holder of title to such real estate as a result of such action.

(8) *Records with respect to insured accounts.* The records of an insured institution with respect to each withdrawable or repurchasable share, investment certificate, deposit, or savings account it issues shall include the signature of the owner of such account or the duly authorized representative of such owner, together with a record reflecting the balance in such account. Notwithstanding the preceding requirement, no account signature card for a trust executed by its trustee(s) or information disclosing the names of the settlor or trustee(s) of the trust need be maintained in the records of an insured institution.

(9) *Other records.* A lender shall establish and maintain such other records as are required by statute or by any other regulation to which the lender is subject.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-10884 Filed 5-13-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-39-AD]

Airworthiness Directives; DeHavilland Model DHC-7 Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), that would require conductivity surveys, modification, and repair, if necessary, of the upper wing surface structure behind the engine. This action is prompted by reports of "wet starts" of the engine resulting in external combustion of fuel. This condition, if not corrected, could result in damage and weakening of the wing upper surface structure.

DATE: Comments must be received on or before July 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, ANM-7, Attention: Airworthiness Rules Docket No. 86-NM-39-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Vito Pulera, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, ANM-7, Attention: Airworthiness Rules Docket No. 86-NM-39-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports of "wet starts" (an aborted start wherein unburned fuel remains in the combustion chamber and/or exhaust) of the engine of DeHavilland Model DHC-7 airplanes which have, upon subsequent starting of the engine resulted in external combustion of fuel. This situation caused damage to the upper wing surface structure to the extent that a repair was necessary to restore the structural integrity of the wing. As a result, DeHavilland has issued Service Bulletin No. 7-57-25, Rev. B, dated November 22, 1985, which describes procedures for observation of engine starts after an aborted start, visual inspections, conductivity surveys, installation of heat shields, and repair of the wing upper surface structure. These procedures are necessary to determine if wet starts have resulted in damage to the wing upper surface structure which would then require repair. The Canadian Air Transport Administration (CATA), which is the airworthiness authority for Canada, has issued an airworthiness directive making compliance with the service bulletin mandatory.

On March 28, 1986, the FAA issued Amendment 39-5279 (51 FR 11710; April 7, 1986), which requires operators of DHC-8 airplanes to visually inspect, within 25 hours after the effective date of the AD, the upper wing surface structure behind the engine. If damage is discovered, which has been caused by heat due to "wet starts," operators are required to perform certain conductivity surveys and repairs. The AD also provides for an optional modification which would constitute terminating action for the required visual inspections and conductivity surveys. The FAA is now proposing an AD which would require certain actions to be accomplished even if there is no visible damage discovered from the inspections required by the existing AD, nor any recent history of "wet starts; it would also require installation of heat shields within one year after the effective date of the amendment.

Modification Nos. 7/2377 and 7/2378 (described in Service Bulletin No. 7-57-17), which replace tank covers on certain airplanes with a modified tank cover, are required by the Canadian airworthiness directive prior to incorporation of the heat shield. The installation of the heat shield provides protection from future wet starts.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the U.S., an AD is proposed that would require the previously mentioned inspections, repair, and modification.

This proposed AD would require that all survey data be sent to DeHavilland Aircraft of Canada, Ltd., for evaluation. The results of the evaluation would be approved by a CATA Designated Airworthiness Representative, acting on behalf of CATA, before it is sent back to the operator. The FAA would be informed of the results of DeHavilland's evaluation and would make official notification to the operator. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provision of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 44 airplanes of U.S registry would be affected by this AD, that it would take approximately 810 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,425,600.

For reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not

have a significant economic impact on a substantial number of small entities because few, if any, DeHavilland Model DHC-7 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: U.S.C. 1354(A), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland: Applies to all Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless already accomplished. To ensure detection of heat-damaged wing upper surface structure behind the engine, and protection against wet starts of the engine resulting in external combustion of fuel, accomplish the following:

A. Within three months after the effective date of this AD, perform an external conductivity survey and, as necessary, an internal conductivity survey, and make repairs as necessary, of the upper wing skin behind each engine nacelle, in accordance with the Accomplishment Instructions of DeHavilland Service Bulletin No. 7-57-25, Revision B, dated November 22, 1985. Details of any damage discovered and data obtained from conductivity surveys must be transmitted to DeHavilland Aircraft of Canada, Ltd., immediately for processing.

B. For airplanes on which the mid fuel tank access cover located aft of an outboard nacelle has been replaced, within three months after the effective date of this AD, perform an internal conductivity survey of the wing structure in this area and make repairs, as necessary, in accordance with the Accomplishment Instructions of DeHavilland Service Bulletin No. 7-57-25, Revision B, dated November 22, 1985. Following an internal conductivity survey, the removed fuel tank access covers must be inspected before replacement to ensure serviceability, and repaired, if necessary. Details of any damage discovered and data obtained from conductivity surveys must be transmitted to DeHavilland Aircraft of Canada, Ltd., immediately for processing.

C. Within 1 year after the effective date of this AD, accomplish DeHavilland Modification No. 7/2414—"Wing-Upper Skin Structure—Special Inspection and Installation of Heat Shields," described in DeHavilland Service Bulletin No. 7-57-25. The external conductivity survey and, as necessary, the internal conductivity survey detailed in paragraph A., above, must be accomplished immediately prior to installation of Modification 7/2414. For airplanes, serial numbers 1 through 27, Modification Nos. 7/2377 and 7/2378—"Fuel Tank Access Panel Replacement," described in DeHavilland Service Bulletin No. 7-57-17, must be accomplished prior to the incorporation of Modification No. 7/2414.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on May 6, 1986

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-10774 Filed 5-13-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-23-AD]

Airworthiness Directives; HTL Advanced Technology Fire Extinguisher Discharge Outlets Installed on Boeing Models 707, 727, 737, 747, 757, and 767, Series Airplanes, and on Airbus Industrie Model A300 and A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment of notice of proposed rulemaking (NPRM), reopening of comment period.

SUMMARY: This document amends an earlier proposed airworthiness directive (AD) that would require physical and x-ray inspections of certain HTL Advanced Technology fire extinguisher discharge outlets. Since the amended proposal was published, the FAA has determined that the proposed AD should require replacement of defective units, reidentification of acceptable units, and reduction of the compliance period from eighteen (18) months to twelve (12) months. It is necessary to amend the proposal to accomplish these changes.

DATES: Comments must be received no later than June 5, 1986.

ADDRESSES: Send comments on proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-23-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from HTL Advanced Technology, 1800 Highland Avenue, Duarte, California 91010, Attention: John Hansen, Director of Quality Assurance.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention:

Airworthiness Rules Docket No. 85-NM-23-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A Notice of Proposed Rulemaking (NRPM) was published in the Federal Register on March 28, 1986 (50 FR 11892), which requested public comment concerning a proposal to require physical and x-ray inspections of certain HTL Advanced Technology fire extinguisher discharge outlets installed on certain Boeing and Airbus airplanes. An amended NPRM was published in the Federal Register on November 13, 1985 (50 FR 46775).

Further review by the FAA revealed that the NPRM should require replacement of defective units and reidentification of acceptable units. Accordingly, this proposed NPRM specifies replacement of outlets found to be defective with serviceable units and reidentification of outlets found to be acceptable. The reidentification must be done in accordance with the accomplishment instructions of the various applicable service bulletins.

In addition, the HTL service bulletins applicable to the foreign manufacturers airplanes do not specify an inspection and reidentification, but only require removal of the old outlet and replacement with a new design outlet. Therefore, the FAA has determined that a secondary category of service bulletins is necessary, and has been included in this amendment to the NPRM.

It is estimated that approximately 5,000 fire extinguisher discharge outlets installed in U.S. registered airplanes, or in inventory as spares, would be affected by this AD. It is estimated that 2 manhours per fire extinguisher discharge outlet are needed to accomplish the required inspections, at an average labor cost of $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. registered owners is estimated to be $400,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 707, 727, 737, 747, 757, and 767 series airplanes, or Airbus A300 and A310 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Notice of Proposed Rulemaking, Docket 85-NM-23-AD, as published in the Federal Register on November 13, 1985 (50 FR 46775) as follows:

HTL Advanced Technology: Applies to HTL Advanced Technology fire extinguisher discharge outlets as listed in the service bulletins and installed on Boeing Model 707, 727, 737, 747, 757, and 767 series airplanes and on Airbus Industrie Model A300 and A310 series airplanes.

To preclude the potential for separation of the fire extinguisher discharge outlet and misdirection of the fire extinguisher agent, accomplish the following within twelve (12) months after the effective date of this AD, unless already accomplished:

A. Complete the physical and top view x-ray inspections of the fire extinguisher discharge outlets specified in HTL Advanced Technology Service Bulletins listed below, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region:

HTL Service Bulletins				Mins. S/B
35203000-26-A-2	Rev. C	6-15-85	747 ENG/APU	747-26A2108
35203006-26-A-3	Rev. C	6-15-85	767 ENG/APU	767-26A0019
35203010-26-A-1	Rev. A	6-15-85	707 ENG	707-A3441
35203018-26-A-2	Rev. B	6-15-85	737 ENG	737-26A1029
35203016-26-A-2	Rev. B	6-15-85	727 ENG	727-26A0034
35203021-26-A-2	Rev. B	6-15-85	737 APU	737-26A1029
35203023-26-A-2	Rev. B	6-15-85	727 APU	727-26A0034
35203037-26-A-2	Rev. C	6-15-85	767 ENG/APU	767-26A0019
35203038-26-A-1	Rev. A	6-15-85	767 Cargo	767-26A0021
35203039-26-A-1	Rev. A	6-15-85	767 ENG/APU	767-26A0019
35203040-26-A-1	Rev. A	6-15-85	767 ENG/APU	767-26A0019
35289660-26-A-1	Rev. A	6-15-85	747 ENG/APU	747-26A2110
35289660-26-A-1	Rev. A	6-15-85	757 Cargo	757-26A0010
35289660-26-A-1	Rev. A	6-15-85	767 Cargo	767-26A0021
35290250-26-A-2	Rev. B	6-15-85	747 APU	747-26A2108

Note: If a colored dot is observed on the top of the head, no further inspection is required.

B. If a discharge outlet does not meet the criterion for acceptability specified in the above service bulletins, replace it with a servicable unit before further flight.

C. For discharge outlets that meet the criterion for acceptance specified in the above service bulletins, accomplish the reidentification in accordance with the accomplishment instructions therein.

D. Remove and replace the fire extinguisher discharge outlets specified in the HTL Advanced Technology Service Bulletins listed below, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region:

HTL Service Bulletins				Mins. S/B
33600005-1-26-1	Rev.	10-15-84	A300/APU	A300-26-048
33600005-1-26-1		10-15-84	A310/APU	A310-26-2004
33600005-2-26-2		10-15-84	A310/APU	A310-26-2004
35203060-26-A-1		8-31-84	A310 ENG	A310-26-2003

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All person affected by this proposal who have not already received the appropriate documents from the manufacturer may obtain copies upon request to HTL Advanced Technology, 1800 Highland Avenue, Duarte, California 91010.

Attention: John Hansen, Director of Quality Assurance. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on May 6, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-10709 Filed 5-13-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 85-ASO-20]

Proposed Alteration of Restricted Areas R-2904 Starke, FL, and R-2503S Stevens Lake, FL

Correction

In FR Doc. 86-9351, beginning on page 15790, in the issue of Monday, April 28, 1986, make the following corrections:

1. On page 15791, third column, in § 73.29, under the first heading, sixteenth line, "82°02'18" W.; to lat." is removed and in the seventeenth line, "29°51'54" N., long." is removed.

2. On page 15792, first column, under the first heading, fifth line, "clockwise" should read "counterclockwise".

3. On the same page, first column, under the fourth heading, second paragraph, second line, "include" should read "including".

BILLING CODE 1505-01-M

14 CFR Part 39

[Docket No. 86-NM-25-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to all Boeing Model 767 series airplanes which would require the incorporation of a stronger access door for the opening within the empennage that provides access to the vertical fin. This action is needed because the vertical fin could be overpressurized to the point of structural failure in the event of a failure of the aft pressure bulkhead.

DATE: Comments must be received on or before July 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-25-AD, 17900 Pacific Highway South, C-68966, Seattle, Washinton 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yarges, Airframe Branch, ANM-120S; telephone (206) 431-2925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-25-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Recent analysis conducted by the manufacturer has shown that a massive rupture of the aft pressure bulkhead of the Model 767 airplane would result in a significant pressure rise in the unpressurized tail section, Section 48, and possible an overpressurization of the vertical fin inspar area if the existing fin access door fails under pressure. The fin access door separates the vertical fin inspar cavity from the body Section 48 cavity. Overpressurization of the vertical fin could cause damage to the inspar structure and possibly damage to the hydraulic systems which, in turn, could preclude the airplane's continued safe flight and landing. Providing a fin access door of greater strength, to prevent its failure under pressure, would greatly reduce the potential for overpressurization of the fin in the event of a rupture of the aft presure bulkhead.

Boeing has issued Service Bulletin 767-52-0042, Revision A, dated January 15, 1986, which provides for replacement of the existing access door with a stronger access door or for reinforcement of the existing access door, to preclude its failure under pressure.

Since the condition is known to exist on other airplanes of this same design, an AD is proposed which would require replacement or modification of the existing fin access door in accordance with the Boeing service bulletin mentioned above.

It is estimated that 60 airplanes of U.S. Registry would be affected by the requirements of this AD. Modification would require approximately 8 manhours to accomplish, at an average labor charge of $40 per manhour. Based on these firgures, the total cost impact of the AD to U.S. operators would be $19,200.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 airplanes, certificated in any category, listed in Boeing Service Bulletin 767–52–0042, Revision A, dated January 15, 1986. To prevent structural failure of the vertical fin in the event of a failure of the aft pressure bulkhead, accomplish the following within 6 months after the effective date of this AD, unless already accomplished:

A. Install a stronger replacement fin access door or reinforce the existing fin access door in accordance with Boeing Service Bulletin 767–52–0042, Revision A, dated January 15, 1986, or later FAA-approved revision.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received the Boeing service bulletin cited in this proposed AD, may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 6, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86–10772 Filed 5–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–40–AD]

Airworthiness Directives; DeHavilland Model DHC–7 and DHC–8 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt airworthiness directives (AD) which would require the introduction of a water drain hole on the elevator trim-tab jack-screw housing on DeHavilland Model DHC–7 and Model DHC–8 airplanes. This action is prompted by reports that moisture accumulates in the housing and freezes during flight in subfreezing temperatures. This condition, if not corrected, results in reduced controllability of the airplane.

DATE: Comments must be received on or before July 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–40–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. W. White, Systems Branch, ANE–173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docke.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–40–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been reports from operators of DeHavilland DHC–7, and DHC–8 airplanes that water can become entrapped in the elevator trim-tab jack-screw housing. In one incident, water entrapped in this area froze and prevented the operation of the elevator trim-tab. This condition, if corrected, can result in reduced controllability of the airplane.

DeHavilland has issued Service Bulletins No. 8–27–15 and 7–27–76, dated January 17, 1986, which contain procedures to correct this condition by incorporating a drain hole in the elevator trim-tab jack-screw housing on DHC–7 and DHC–8 airplanes. On January 30, 1986, Transport Canada, which is the airworthiness authority for Canada, issued two airworthiness directives, CF–86–02 and CF–86–03, to make the service bulletins mandatory.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the U.S., the FAA is proposing an AD to require the modification as described in the service bulletins mentioned above.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

It is estimated that a total of 60 Model DHC–7 and Model DHC–8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $24,000.

The FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, DeHavilland Model DHC–7 and DHC–8 airplanes are operated by small entities.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 30 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(A), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 970449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland: Applies to all Model DHC–7 and DHC–8 series airplanes, certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent the the elevator trim-tab from becoming inoperable due to accumulated water freezing in the trim-tab jack-screw housing, accomplish the following, unless already accomplished:

A. Model DHC–7 airplanes, within three months after the effective date of this AD, incorporate DeHavilland Modification Number 7/2489 to provide a drain hole in the elevator trim-tab jack-screw housing in accordance with the "Accomplishment Instructions" contained in DeHavilland Service Bulletin No. 7–27–76, dated January 17, 1986.

B. For Model DHC–8 airplanes, within three months after the effective date of this AD, incorporate DeHavilland Modification Number 8/0415 to provide a drain hole in the elevator trim-tab jack-screw housing in accordance with the "Accomplishment Instructions" contained in DeHavilland Service Bulletin No. 8–27–15, dated January 17, 1986.

C. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain upon request to DeHavilland of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on May 8, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86–10771 Filed 5–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–94–AD]

Airworthiness Directives; Lockheed-California Company Model L–1011–385 Series Airplanes Equipped With Dynamic Controls Corporation Part Numbers 11035–2 and 11035–3

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of oxygen initiator sequence timer switches (sequencers) on Lockheed Model L–1011–385 series airplanes. This proposal is prompted by a recent failure of a sequencer which, if not corrected, could cause the passenger oxygen system to malfunction. Malfunction of the passenger oxygen system at high altitude could deprive passengers of needed oxygen in the case of sudden loss of pressurization. This proposed AD is needed to ensure the reliability of the passenger oxygen system.

DATE: Comments must be received no later than July 7, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–94–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L–1011, Technical Operations, Dept. 63–38. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM–132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substances of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–94–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On October 18, 1985, an incident occurred in which an L–1011–385–3 series airplanes, while descending from 20,000 feet to 19,000 feet, experienced a loss of cabin pressure. The loss of cabin pressure did not result in an automatic activation of the passenger oxygen system, and the flight crew attempted to activate the system manually by depressing the "Passenger Oxygem Manual" switch. The "PASS OXYGEN-NORMAL MASK" and "OVERRIDE MASK" circuit breakers were tripped, interrupting the 28V DC power required to deploy the oxygen mask.

Subsequent investigation revealed that two electromagnetic interference (EMI) capacitors in an oxygen initiator sequence timer switch (sequencer) were shorted to ground, thus causing excessive current draw. The Model L–1011–385–1 series airplanes have one sequencer and the Model L–1011–385–3 series airplanes have two sequencers.

Airwothiness Directive (AD) 86–01–05 was issued on December 27, 1985, which requires a resistance check of sequencer(s) in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093–35–041, dated December 18, 1985.

Since issuance of AD 86–01–05, Lockheed issued Service Bulletin 093–35–041, Revision 1, dated February 24, 1986, which references Dynamic Controls Corporation Service Bulletin 11035–35–4, which describes removal of eight EMI capacitors and installation of two diodes. This modification will vastly improve the reliability of the sequencer.

Notwithstanding the fact that no reports of additional failed capacitors have been received, the FAA has determined that there is a potential for such failures in the future, which could result in depriving passengers of needed oxygen. Therefore, an AD is being proposed which would require modification of sequencers on Lockheed L–1011–385 series airplanes in accordance with Part II of the Accomplishment Instructions of

Lockheed Service Bulletin 093-335-041, Revision 1, dated February 24, 1986.

It is estimated that 125 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 manhours per Lockheed Model L-1011-385-1 series airplane and 13 manhours per Lockheed Model L-1011-385-3 series airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $62,600.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011-385 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category, equipped with Dynamic Controls Corporation oxygen initiator sequence timer switch(es), P/N's 11035-2/-3. Compliance required as indicated, unless previously accomplished.

To prevent malfunction of the passenger oxygen system due to dormant shorted electromagnetic interference filter capacitors in the oxygen initiator sequence timer switch(es), accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), modify P/N's 11035-2 and -3 oxygen initiator sequence timer switches in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093-35-041, Revision 1, dated February 24, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L-1011, Technical Operations, Dept. 63-38. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on May 9, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-10773 Filed 5-13-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

22 CFR Part 22

[Docket No. SD-199]

Schedule of Fees for Consular Services

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to revise the Schedule of Fees for consular services. The changes affecting exclusively foreign nationals are the proposed increase in the immigrant visa application fee, a decrease in the immigrant visa issuance fee, and increases in crew list visa fees. Proposed increases in fees for authentication of original documents of marriage and document searches will affect both United States citizens as well as foreign nationals. The Department also proposes to increase the fee for granting an exception to travel control regulations (passport waiver) to $80 for each waiver, a change affecting only U.S. citizens. Finally, the Witness to Marriage item will be eliminated form the Schedule. The Schedule is being changed in accordance with a recent study of policies, costs and fees for consular services and with the user charge principle, as prescribed by the Congress and applied by the Department in keeping with Office of Management and Budget guidelines.

DATE: Comments must be submitted on or before June 6, 1986.

ADDRESS: Send comments to Mr. Ronald K. Somerville, Executive Director, Bureau of Consular Affairs, Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Sylvia J. Bazala (202) 647-3118.

SUPPLEMENTARY INFORMATION: The Department of State is responsible for providing various consular services to United States citizens and foreign nationals. These include: passport and citizenship services; visa services for aliens; services relating to vessels and seamen; notarial services and authentications; services relating to taking of evidence; copying and recording services; examination services; and other services to assist Americans in foreign countries.

Fees are adjusted to ensure that they are fair and equitable, taking into consideration direct and indirect cost to the U.S. Government, benefit to the recipient, public policy or interest served, and other related considerations. The total cost for each type of service in relation to the number of services was the basis for determining the average unit cost. Such unit cost represented the optimum level for the fee to be charged in the interest of cost recovery to the full extent possible. Fees by type of service were set so as not to exceed the average unit cost, but, in certain instances, were set below this level due to policy considerations. The extent to which the U.S. government or the general public benefits from services was considered.

The proposed increase in the application fee for each immigrant visa reflects the increase in the cost of processing each application. The Department has determined that the major part of the fee should be collected for the application for the visa rather than for the issuance of the visa and therefore the fee for issuance has been reduced. This is a reversal of previous charges. Since the bulk of the work in processing immigrant visas lies in the application process, the change would more accurately reflect the actual workload.

The proposed increases in the fees for the four categories of crew list visas, for document searches, for passport waivers, and for authentication of original documents of marriage reflect

the increased cost to the government of providing these services.

Authentication of Original Documents of Marriage was a new item added to the Schedule in 1981 and satisfies the need for legal documentation by individuals who are married. Since the Witness to Marriage service is now redundant, and in any case rarely used, it is proposed that it be eliminated from the Schedule.

List of Subjects in 22 CFR Part 22

Passports and visas.

Accordingly, Part 22 of Title 22 of the Code of Federal Regulations would be amended as set forth below.

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICES

1. The authority citation for 22 CFR Part 22 continues to read as follows:

Authority: Secs. 3, 4, 63 Stats. 111, as amended (22 U.S.C. 811a; 2658; 22 U.S.C. 2651; 5 U.S.C. 583a; 22 U.S.C. 1201); E.O. 10718, 22 FR 4632; 3 CFR, 1954–1958 Comp. page 382.

§ 22.1 [Amended]

2. Section 22.1 is amended as follows:

A. Item No. 13(b) is removed.

B. Item No. 13(c) revised.

C. Item No. 16 is revised.

D. Item No. 20 is revised.

E. Item No. 21 is revised.

F. Item No. 24 is revised.

G. Item No. 86 is revised.

As amended, the revised portions of § 22.1 reads as follows:

§ 22.1 Schedule of fees [Amended].

Item number	Fee
Passport and Citizenship Services	
13. • • •	
(a) Authentication of original documents of marriage, per copy	[illegible]
16. Granting an exception under 22 CFR [illegible] of Travel Control Regulations	$30.00
Visa Services for Aliens	
20. Furnishing and verification of application for immigrant visa, including duplicate copy [112-IV APPL]	$125.00
21. Issuance of each immigrant visa [113-IV ISSUANCE], [114-R IV ISS], [115-211 WAIV/ISS]	$25.00
24. Visa or supplemental visa of alien crew list: (If item 93 is applicable, only one Surcharge shall be applied per group served on the same visit):	
(a) Up to 40 crew members	$37.50
(b) 41 to 100 crew members	$68.00
(c) 101 to 200 crew members	$165.00
(d) Over 200 crew members	$248.00
Other Consular Services	
86 Searching for and forwarding a document requested from a Foreign Service post by a non-government individual, organization or group (for each document)	$13.00

Dated: April 22, 1986.

Ronald I. Spiers,

Under Secretary for Management.

[FR Doc. 86-10611 Filed 5-13-86; 8:45 am]

BILLING CODE 4710-06-M

VETERANS ADMINISTRATION

38 CFR Part 17

Evidence of Inability To Defray Necessary Medical Expenses

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: Title XIX of Pub. L. 99–272, the Veterans' Health Care Amendments of 1986, amended several sections of title 38, United States Code, significantly affecting veterans' eligibility for health care benefits. The provisions of the law are in large part self-executing. Nevertheless, amendments to numerous regulations are necessary to implement the new law and existing regulations. Pub. L. 99–272 establishes three distinct levels or categories of eligibility for VA hospital and nursing home care, directing that hospital care be provided to veterans within one category and permitting care to be furnished on a space available basis to veterans in the other two categories. Within the framework of the elegibility categories, the law establishes an income-based (means) test for determining eligibility for cost free care for nonservice-connected disabilities. Veterans with income in excess of the means test income levels could obtain VA care, to the extent that resources and facilities are otherwise available, if they agree to pay a copayment. The law also made changes to outpatient care eligibility requirements, and provided that veterans with income over the means test level could receive certain outpatient care, to the extent that resources and facilities are otherwise available, if they agree to pay a copayment. The law eliminated the existing eligibility of veterans 65 and over to receive cost free care regardless of their ability to pay for care.

DATES: Comments must be received on or before June 13, 1986. It is proposed to make these regulations effective July 1, 1986. This date is consistent with the effective date specified in the statute.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding these regulations to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Medical Administration Service, Department of Medicine and Surgery, VA, (202) 389–2337.

SUPPLEMENTARY INFORMATION: To implement Pub. L. 99–272 and made needed conforming changes, the VA is amending several regulatory provisions in title 38 CFR 17.47 is completely revised to reflect the law's establishment of three categories of eligibility for VA hospital and nursing home care. Section 17.46 is amended to add three new paragraphs. New paragraph (d) establishes the income or means test for determining whether a veteran is "unable to defray the expenses of necessary care" making such veteran eligible for hospital care under provisions of § 17.47(a) and (c). New paragraph (e) establishes amounts of the copayment veterans are required to agree to pay to receive hospital and nursing home care under § 17.47(d), and hospital and nursing home care under § 17.60 (e) and (f). Paragraph (f) provides that veterans who fail to pay required copayments may be denied subsequent care. Section 17.49, which sets forth priorities for hospital, nursing home, and domiciliary care is amended simply to provide that the Chief Medical Director is authorized to establish priorities consistent with § 17.47, to facilitate management of VA health care facilities and to help assure prompt delivery of care. Section 17.30(w)(3), which sets forth limitations on VA's authority to provide health care benefits on a fee basis, is removed, and § 17.50b is amended to encompass the same limitations. Sections 17.50(b) and 17.51(a) are amended to provide that veterans eligible for care if they agree to make copayment, may receive contract hospital and nursing home care, or fee basis care only to the extent resources are available and not required to assure that VA can furnish care to veterans not required to make a copayment. Section 17.60 is amended to revise eligibility for

the home improvement and structural alterations benefit, and to provide that veterans seeking care for nonservice-connected disabilities who have income above the means test level may receive care if they agree to make a copayment as provided in § 17.48. Section 17.60g was amended to revise priorities for outpatient are in accordance with provisions of Pub. L. 99-272.

The Administrator has determined that these amendments to VA regulations are considered other than major since they will not have an annual effect on the economy of $100 million or more. The VA estimates the annual effect on the economy to be approximately $5 million. The VA believes that about 10,000 veterans who use the VA health care system will be required to agree to make copayments to establish eligibility for VA medical care and that the average cost to the individual veteran would be about $500 per year. Also, there will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and there will be no significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulation changes are nonmajor for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Catalog of Federal Domestic Assistance numbers are 64.009, 64.010 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: May 1, 1986.

Thomas K. Turnage,
Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is proposed to be amended as follows:

§ 17.30 [Amended]

1. In § 17.30, paragraph (w)(3) is removed.

2. § 17.47, (c)(3) is redesignated as (e)(1), (d)(3) is redesignated as (e)(2), (a), (b), (c) and (d) are revised to read as follows:

§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

(a) Hospital care shall be furnished and nursing home care may be furnished when needed to:

(1) A veteran who has a service-connected disability, for any disability;

(2) A veteran whose discharge or release from the active military, naval, or air service was for a disability incurred or aggravated in line of duty for any disability;

(3) A veteran who, but for a suspension pursuant to 38 U.S.C. 351 (or both such a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement described in such section, for any disability;

(4) A veteran who is a former prisoner of war, for any disability;

(5) A veteran exposed to a toxic substance or radiation as authorized in 38 U.S.C. 610(e);

(6) A veteran of the Spanish-American War, the Mexican Border Period, or World War I, for any disability; and

(7) A veteran for a nonservice-connected disability if the veteran is unable to defray the expenses of necessary care as determined under § 17.48(d)(1).

(38 U.S.C. 610, 622; sec. 19011, Pub. L. 99-272)

(b) In furnishing hospital care under paragraph (a) of this section, VA officials shall:

(1) If the veteran is in immediate need of hospitalization, furnish care at the VA facility where the veteran applies or, if that facility is incapable of furnishing care, arrange to admit the veteran to the nearest VA medical center, or Department of Defense hospital with which the VA has a sharing agreement under 38 U.S.C. 5011, which is capable of providing the needed care, or if VA or DOD facilities are not available, arrange for care on a contract basis if authorized by § 17.50(b); or

(2) If the veteran needs non-immediate hospitalization, schedule the veteran for admission at the VA facility where the veteran applies, if the schedule permits, or refer the veteran for admission or scheduling for admission at the nearest VA medical center, or Department of Defense facility with which the VA has a sharing agreement under 38 U.S.C. 5011.

(38 U.S.C. 603, 610; secs. 19011-19012, Pub. L. 99-272)

(c) To the extent resources and facilities are available, the Chief Medical Director may furnish needed hospital and nursing home care in VA facilities to a veteran for a nonservice-connected disability if the veteran is unable to defray the expenses of necessary care as determined under § 17.48(d)(2).

(38 U.S.C. 610, 622; sec. 19011, Pub. L. 99-272)

(d) To the extent resources and facilities are otherwise available and are not otherwise required to assure that VA can furnish needed care to veterans described in paragraph (a) of this section, the Chief Medical Director may furnish needed hospital and nursing home care in VA facilities to a veteran who is not described in paragraph (a) or (c) of this section for any disability if the veteran agrees to pay to the United States an amount as determined in § 17.48(e).

(38 U.S.C. 610; sec. 19011, Pub. L. 99-272)

* * * * * *

3. In § 17.48 paragraphs (e) through (h) are redesignated as (h) through (k); paragraph (g) is reserved; paragraphs (b) through (f) are revised, and a new paragraph (l) is added to read as follows:

§ 17.48 Consideration applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * * *

(b)(1) Under § 17.47(a), veterans who are receiving disability compensation awarded under § 3.600 of this title, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA

examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. ch. 31, under any law administered by the VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of § 17.47(a) may not be authorized during any period when disability compensation under § 3.800 of this title is not being paid because of the provision of § 3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in § 3.800(a)(2) of this title.

(38 U.S.C. 610(a); sec. 701, Pub. L. 98-160, Pub. L. 99-272)

(2) Under § 17.47(e), "no adequate means of support"—when an applicant is receiving an income of $415 or more per month from any source for personal use, this fact will be considered prima facie evidence of adequate means of support. This is subject to rebuttal by a showing that such income is not adequate to provide the care required by reason of the veteran's disability or that the income is not available for the veteran's use because of other obligations such as contributions in whole or in part to the support of a spouse, child, mother or father. In all such cases of alleged inadequate means of support, the circumstances will be submitted to the Director for decision.

(38 U.S.C. 610(a); sec. 701, Pub. L. 98-160, Pub. L. 99-272)

(c) A "disability, disease, or defect" will comprehend any acute, subacute, or chronic disease (or a general medical, tuberculous, or neuropsychiatric type) of any acute, subacute, or chronic surgical condition susceptible of cure or decided improvement by hospital care; or any condition which does not require hospital care for an acute or chronic condition but requires domiciliary care. Domiciliary care, as the term implies, is the provision of a home, with such ambulant medical care as is needed. To be entitled to domiciliary care, the applicant must consistently have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period.

(38 U.S.C. 601, 610)

(d)(1) For purposes of determining eligibility for hospital or nursing home care under § 17.47(a), a veteran will be determined unable to defray the expenses of necessary care if the veteran agrees to provide verifiable evidence, as determined by the Administrator, that:

(i) The veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act;

(42 U.S.C. 1396 et seq.)

(ii) The veteran is in receipt of pension under 38 U.S.C. 521; or

(iii) The veteran's attributable income does not exceed $15,000 if the veteran has no dependents, $18,000 if the veteran has one dependent, plus $1,000 for each additional dependent.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(2) For purposes of determining eligibility for hospital or nursing home care under § 17.47(c), a veteran will be determined unable to defray the expenses of necessary care if the veteran agrees to provide verifiable evidence, as determined by the Administrator, that: the veteran's attributable income does not exceed $20,000 if the veteran has no dependents, $25,000 if the veteran has one dependent, plus $1,000 for each additional dependent.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(3) Effective on January 1 of each year after calendar year 1986, the amounts set forth in paragraph (d) (1) and (2) of this section shall be increased by the percentage by which the maximum rates of pension were increased under 38 U.S.C. 311(a), during the preceding year.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(4) Determinations with respect to attributable income made under paragraph (d) (1) and (2) of this section, shall be made in the same manner, including the same sources of income and exclusions from income, as determinations with respect to income are made for determining eligibility for pension under §§ 3.271 and 3.272 of this title. The term "attributable income" means income of a veteran for the calendar year preceding application for care, determined in the same manner as the manner in which a determination is made of the total amount of income by which the rate of pension for such veteran under 38 U.S.C. 521 would be reduced if such veteran were eligible for pension under that section

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(5) Notwithstanding the attributable income of a veteran, the VA may determine that such veteran is not "unable to defray the expenses of necessary care" under paragraph (d) (1) and (2) of this section if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran's maintenance. The corpus of the estate of a veteran shall be determined in the same manner as determinations are made with respect to the determinations of eligibility for pension under § 3.275 of this title. The term "corpus of the estate of the veteran" includes the corpus of the estates of the veteran's spouse and dependent children, if any.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(6) In order to avoid hardship the VA may determine that a veteran is unable to defray the expenses of necessary care notwithstanding that the veteran does not meet the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section, if projections of the veteran's income for the year following application for care are substantially below the income requriements established in paragraph (d)(1)(iii) or (d)(2) of this section.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(e)(1) A veteran who receives hospital or nursing home care under §17.47(d) shall be liable to the United States, for each 90 days of care, or fraction thereof, in a 365 day period, for an amount equal to the lesser of:

(i) The cost of furnishing such care, as determined by the Chief Medical Director, and

(ii) In the case of hospital care, the amount of the inpatient Medicare deductible for the first 90 day period, and one-half that amount for each successive 90 day period, and in the case of nursing home care, the amount of the inpatient Medicare deductible for each 90 day period.

(38 U.S.C. 622, sec. 19011, Pub. L. 99-272)

(2) If a veteran pays, or agrees to pay the inpatient Medicare deductible in connection with either hospital or nursing home care, and before using 90 days of such care begins receiving the other mode of care (hospital or nursing home) in a 365 day period, the veteran will not be required to make any payment for the second mode of care until either:

(i) The number of days of hospital or nursing home care combined exceeds 90 days, or

(ii) The beginning of the next 365 day period, whichever occurs first.

If the veteran pays an amount equal to one-half of the inpatient Medicare deductible in connection with receiving hospital care, and before using 90 days

of such care within the 365 day period, receives VA nursing home care, the veteran will be required to pay one-half of the inpatient Medicare deductible in connection with the number of days of nursing home care that, when added to the days of hospital care, do not exceed 90 days within the 365 days period.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(3) A veteran who receives outpatient care under § 17.60(e) or (f) by virtue of the veteran's eligibility for hospital care under § 17.47(d) shall be liable to the United States for each outpatient visit for an amount equal to 20 percent of the average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished, except that in any 90 day period in a 365 day period, the total amount of deductibles paid for multiple outpatient visits shall not exceed the amount of the inpatient Medicare deductible in effect at the beginning of the 365 day period.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(4) A veteran who receives any combination of hospital, nursing home, or outpatient care in any 90 day period in a 365 day period shall not be required to pay an amount greater than the inpatient Medicare deductible for care received during that 90 day period.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(5) The term "inpatient Medicare deductible" means the amount of the inpatient hospital deductible in effect under 42 U.S.C. 1813(b) on the first day of any 365 day period referred to in this paragraph.

(38 U.S.C. 622; sec. 19011, Pub. L. 99-272)

(f) If a veteran who receives hospital or nursing home care under § 17.47(d), or outpatient care under § 17.60 (e) or (f) by virtue of the veteran's eligibility for hospital care under § 17.47(d), failure to pay to the United States the amounts agreed to under those sections shall be grounds for determining that the veteran is not eligible to receive further care under those sections until such amounts have been paid in full.

(38 U.S.C. 610, 621; sec. 19011, Pub. L. 99-272).

* * * * *

(1) In seeking medical care from the VA under § 17.47 or § 17.60, a veteran shall furnish such information and evidence as the Administrator may require to establish eligibility.

(38 U.S.C. 622; sec 19011, Pub. L. 99-272)

4. Section 17.49 is revised to read as follows:

§ 17.49 Priorities for inpatient care.

The Chief Medical Director may establish priorities for admission to hospital, nursing home, and domiciliary care consistent with § 17.47 to facilitate management of VA health care facilities and to help assure prompt delivery of care.

(38 U.S.C. 621)

5. Section 17.50b is revised to read as follows:

§ 17.50b Hospital care and medical services in non-VA facilities.

(a) When VA facilities or other government facilities are not capable of furnishing economical hospital care or medical services because of geographic inaccessibility or are not capable of furnishing care or services required, the VA may contract with non-VA facilities for care in accordance with the provisions of this section. When demand is only for infrequent use, individual authorizations may be used. Care in public or private facilities, however, subject to the provisions of § 17.50 (c) through (f), will only be authorized, whether under a contract or an individual authorization, for

(1) Hospital care or medical services to a veteran for the treatment of—

(i) A service-connected disability; or

(ii) A disability for which a veteran was discharged or released from the active military, naval, or air service or

(iii) For a disability associated with and held to be aggravating a service-connected disability, or

(iv) For any disability of a veteran participating in a rehabilitation program under 38 U.S.C. ch. 31 and when there is a need for hospital care or medical services for any of the reasons enumerated in § 17.48(j).

(38 U.S.C. 603, 1504; sec. 101, Pub. L. 96-466; sec. 19012, Pub. L. 99-272)

(2) Medical services for the treatment of any disability of—

(i) A veteran who has a service-connected disability rated at 50 percent or more,

(ii) A veteran who has received VA inpatient care for treatment of nonservice-connected conditions for which treatment was begun during the period of inpatient care. The treatment period (to include care furnished in both facilitites of the VA and non-VA facilities or any combination of such modes of care) may not continue for a period exceeding 12 months following discharge from the hospital except when it is determined that a longer period is required by virtue of the disabilities being treated, and

(iii) A veteran of the Mexican Border Period or World War I or who is in receipt of increased pension or additional compensation based on the need for aid and attendance or housebound benefits when it has been determined based on an examination by a physician employed by the VA (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in VA facilities;

(38 U.S.C. 603; sec. 19012, Pub. L. 99-272)

(3) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving hospital care or medical services in a facility over which the Administrator has direct jurisdiction or government facility with which the Administrator contracts, and for which the facility is not staffed or equipped to perform, and transfer to a public or private hospital which has the necessary staff or equipment is the only feasible means of providing the necessary treatment, until such time following the furnishing of care in the non-VA facility as the veteran can be safely transferred to a VA facility;

(38 U.S.C. 603; sec. 19012, Pub. L. 99-272)

(4) Hospital care for women veterans;

(38 U.S.C. 603; sec. 19012, Pub. L. 99-272)

(5) Through September 30, 1988, hospital care or medical services that will obviate the need for hospital admission for veterans in the Republic of Puerto Rico, except that the dollar expenditure in Fiscal year 1986 cannot exceed 85% of the Fiscal year 1985 obligations, in Fiscal year 1987 the dollar expenditure cannot exceed 50% of the Fiscal year 1985 obligations and in Fiscal year 1988 the dollar expenditure cannot exceed 25% of the Fiscal year 1985 obligations.

(38 U.S.C. 603; sec. 102, Pub. L. 99-166; sec. 19012, Pub. L. 99-272)

(6) Hospital care or medical services that will obviate the need for hospital admission for veterans in Alaska, Hawaii, Virgin Islands and other territories of the United States except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the VA in government and non-VA facilities in each such State or territory shall be consistent with the patient load or incidence of the provision of medical services for veterans hospitalized or treated by the VA within the 48 contiguous States.

(38 U.S.C. 603; sec. 19012, Pub. L. 99-272)

(7) Outpatient dental services and treatment, and related dental appliances, for a veteran who is a former prisoner of war and was detained or interned for a period of not less than 181 days.

(38 U.S.C. 603; sec. 19012, Pub. L. 99-272)

(8) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran which developed during authorized travel to the hospital, or during authorized travel after hospital discharge preventing completion of travel to the originally designated point of return (and this will encompass any other medical services necessitated by the emergency, including extra ambulance or other transportation which may also be furnished at VA expense.

(38 U.S.C. 601(5))

(9) Diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent VA outpatient clinics to obviate the need for hospital admission.

(38 U.S.C. 603; sec. 19012, Pub. L. 99-272)

(b) The Chief Medical Director shall only furnish care and treatment under paragraph (a) of this section to veterans described in § 17.47(d)

(1) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in §17 .47 (a) and (c), and

(2) If the veteran agrees to pay the United States an amount as determined in § 17.48(e).

(38 U.S.C. 603, 610 and 612; sec. 19011-19012, Pub. L. 99-272)

6. Section 17.51 is revised to read as follows:

§ 17.51 Use of community nursing homes.

(a) Nursing home care in a contract public or private nursing home facility may be authorized for the following:

(1) Subject to the limitations of paragraph (a)(5) of this section, any veteran eligible for hospital, nursing home, or domiciliary care under § 17.47 who has attained the maximum benefit from such care and for whom a protracted period of nursing home care will be required.

(38 U.S.C. 610, 620; sec. 19011, Pub. L. 99-272)

(2) Any person who has been furnished care in any hospital of any of the Armed Forces, who the appropriate Secretary concerned has determined has received maximum hospital benefits but requires a protracted period of nursing home care, and who upon discharge therefrom will become a veteran.

(38 U.S.C. 620)

(3) Any veteran who requires nursing home care for a service-connected disability without first requiring a period of hospitalization. Admission may be authorized upon a determination of need therefore by a physician employed by the VA or, in areas where no such physician is available, by carrying out such function under contract or fee arrangement.

(38 U.S.C. 620; sec. 108, Pub. L. 99-166)

(4) Any veteran who has been discharged from a hospital under the direct jurisdiction of the VA and is currently receiving VA hospital based home health services (Pub. L. 99-166).

(38 U.S.C. 620; sec. 108, Pub. L. 99-166)

(5) To the extent that resources are available and are not otherwise required to assure that the VA can furnish needed care and treatment to veterans described in § 17.47 (a) and (c), the Chief Medical Director may furnish care under this paragraph to any veteran described in §17.47(d) if the veteran agrees to pay the United States an amount as determined in § 17.48(e).

(38 U.S.C. 610, 620; sec. 19011, Pub. L. 99-272)

(b) Such nursing home care will be subject to the following restrictions:

(1) Any veteran eligible under paragraph (a)(1) of this section shall be transferred to the nursing home care facility from a hospital nursing home or domiciliary under the direct jurisdiction of the VA, except as provided for in § 17.51b.

(2) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(3) The cost of the nursing home care will not exceed 45 percent of the cost of care furnished by the VA in a general medical center an determined annually. However, the Administrator upon the recommendation of the Chief Medical Director may approve a higher rate not to exceed 50 percent of the cost of such care.

(4) Except as provided for in § 17.51a, nursing home care will not be for more than 6 months in the aggregate in connection with any one transfer, except in the case of a veteran who requires nursing home care for a service-connected disability. In such case entitlement to nursing home care under this paragraph is not subject to any time limitation.

(5) The standards prescribed by the Chief Medical Director and any report of inspection of institutions furnishing nursing home care to veterans shall, to the extent possible, be made available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(38 U.S.C. 620(b))

7. Section 17.51a is revised to read as follows:

§ 17.51a Extensions of community nursing home care beyond 6 months.

Directors of health care facilities may authorize, for any veteran who requires nursing home care for a nonservice-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond 6 months for circumstances of an unusual nature such as when a medical and economic need continues to exist, additional time is required to complete other arrangements for care, or when readmission to a hospital is not deemed professionally advisable despite terminal deterioration of the veteran's medical conditions.

(38 U.S.C. 620; sec. 108, Pub. L. 99-166)

8. The center heading preceding § 17.52 is revised to read:

Use of Services of Other Federal Agencies

§ 17.53 [Removed]

9. Section 17.53 is removed.

10. In § 17.60, the introductory text, paragraphs (e), (f), and (j) are revised; and new paragraph (m) is added so that the revised and added material reads as follows:

§ 17.60 Outpatient medical services for eligible persons.

To the extent resources and VA facilities are available, medical services may be furnished to the following applicants under the conditions stated, except that applicants for dental treatment must also meet the applicable provisions of § 17.123:

* * * * *

(e) *For pre-hospital care.* Subject to the limitations of paragraph (m) of this section, persons eligible for hospital care under § 17.47, where a professional determination is made that such care is reasonably necessary in preparation for admission of such persons for care, or (to the extent that facilities are available) to obviate the need for bed care.

(38 U.S.C. 612; sec. 19011, Pub. L. 99-272)

(f) *For post-hospital care.* Subject to the limitations of paragraph (m) of this section, persons eligible for hospital care under § 17.47 who have been

furnished hospital care, and outpatient medical services are reasonably necessary to complete treatment incident to such hospital care. Said service may be provided not to exceed 12 months after discharge from the in-hospital treatment except where a staff physician finds that a longer period is required by virtue of the disability being treated.

(38 U.S.C. 612; sec. 19011, Pub. L. 99-272)

* * * * *

(j) *Home health services.* Subject to the limitations of paragraph (m) of this section, home health services determined by the VA to be necessary for effective and economical treatment of a disability may be furnished to any veteran to include home improvement and structural alterations as are necessary to assure the continuation of treatment or to provide access to the home or to essential lavatory and sanitary facilities.

(1) The cost to the VA or reimbursement by the VA to the veteran will not exceed $2,500 for home improvement or structural alterations to veterans being treated for a service-connected disability or to veterans being treated for a nonservice-connected disability who are rated 50% or more for a service-connected disability, and

(2) Will not exceed $600 for veterans being treated for a nonservice-connected disability and then only to (i) veterans receiving authorized post-hospital care under the authority of § 17.60(f), (ii) veterans of the Mexican Border Period or World War I; and (iii) those in receipt of aid and attendance or housebound benefits.

(38 U.S.C. 612; sec. 19011, Pub. L. 99-272)

* * * * *

(m) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in § 17.47 (a) and (c), the Chief Medical Director may furnish treatment under paragraphs (e), (f) and (j) of this section to any veteran described in § 17.47(d) if the veteran agrees to pay the United States an amount as determined in § 17.48(e)

(38 U.S.C. 612; sec. 19011, Pub. L. 99-272)

11. Section 17.60g is amended by adding new paragraphs (f) through (i) to read as follows:

§ 17.60g Priorities for medical services.

* * * * *

(f) To any veteran who is in receipt of pension under 38 U.S.C. 521.

(g) To any other nonservice-connected veteran deemed unable to defray the expenses of necessary care as determined by § 17.48(d)(1).

(h) To any nonservice-connected veteran deemed unable to defray the expenses of necessary care as determined by § 17.48(d)(2).

(i) To any nonservice-connected veteran eligible for VA hospital care under § 17.47(d) if the veteran agrees to pay the United States an amount as determined by § 17.48(e).

(38 U.S.C. 612; sec. 19011, Pub. L. 99-272)

[FR Doc. 86-10820 Filed 5-13-86; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 26

Environmental Effects of VA Actions

AGENCY: Veterans Administration.

ACTION: Proposed rulemaking.

SUMMARY: The Veterans Administration (VA) proposes to revise 38 CFR Part 26, Environmental Effects of VA Actions. The intent is to simplify requirements to prepare an environmental assessment or environmental impact statement, to make changes reflecting the current VA organizational structure, and to shorten the regulations by deleting procedural guidelines. These regulations are intended to be a policy document for the VA.

DATES: Comments must be received on or before June 12, 1986.

ADDRESSES: Interested persons are invited to submit written comments, objections or suggestions regarding these proposed regulations to: Administrator of Veterans Affairs (271), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Gerdovich, (202) 389-3316.

SUPPLEMENTARY INFORMATION: This notice proposes revisions to the VA Regulations to be followed to comply with the requirements of section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended, (42 U.S.C. 4321-4370a); Executive Order 11514, March 5, 1970, "Protection and Enhancement of Environmental Quality (as amended by Executive Order 11991, May 24, 1977)"; and the implementing regulations issued by the Council on Environmental Quality (CEWQ), 40 CFR Parts 1500-1508.

These revisions are expected to shorten the VA's environmental review process; provide a more orderly manner for the review of projects, and establish new milestones for environmental compliance.

The existing regulations consist of both a policy document and procedural guidelines. The revised regulations will provide policy guidance for the departments and staff officers to assist in compliance with environmental laws and regulations. Procedural guidelines will be promulgated within the Veterans Administration separately.

Our analysis of projects assessed from 1976 to date provides historical justification to expand the list of categorical exclusions, which we accordingly have done in this proposed revision.

This proposed revision has been reviewed pursuant to Executive Order 12291, Federal Regulation, and has been found to be nonmajor. The proposed regulation revisions will not affect the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator has certified that these proposed regulations, if adopted, will not have a significant economic impact on any small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that the proposed revisions of the regulations will affect only the Agency's internal handling of matter relating to compliance with the NEPA. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Federal Domestic Assistance number for this regulation.

List of Subjects in 38 CFR Part 26

Environmental impact statements.

Approved: May 9, 1986.

Thomas K Turnage,

Administrator.

38 CFR Part 26, Environmental Effects of VA Actions, is revised to read as follows:

PART 26—ENVIRONMENTAL EFFECTS OF VA ACTIONS

Sec.
26.1 Issuance and purpose.
26.2 Applicability and scope.
26.3 Definitions.
26.4 Policy.
26.5 Responsibilities.
26.6 Environmental documents.
26.7 VA environmental decision making and documents.
26.8 Assistance to applicants.
26.9 Information on and public participation in VA environmental process.

Authority: 42 U.S.C. 4321–4370a; E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977.

§ 26.1 Issuance and purpose.

The purpose of this part is to implement the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321–4370a), in accordance with regulations promulgated by the Council of Environmental Quality (CEQ Regulations, 40 CFR Parts 1500–1508), and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977. This part shall provide guidance to officials of the Veterans Administration (VA) on the application of the NEPA process to agency activities. (42 U.S.C. 4321–4370a)

§ 26.2 Applicability and scope.

This part applies to the VA, its departments and staff offices. (42 U.S.C. 4321–4370a)

§ 26.3 Definitions.

(a) "United States" means all States, territories, and possessions of the United States and all waters and air space subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) "VA elements," for the purposes of this part, means the Department of Medicine and Surgery, the Department of Veterans Benefits, the Department of Memorial Affairs and the Office of Construction.

(c) Other terms used in this part are defined in CEQ Regulations, 40 CFR Part 1508 (42 U.S.C. 4321–4370a).

§ 26.4 Policy.

(a) The VA must act with care in carrying out its mission of providing services for veterans to ensure it does so consistently with national environmental policies. Specifically, the VA shall ensure that all practical means and measures are used to protect, restore, and enhance the quality of the human environment; to avoid or minimize adverse environmental consequences, consistently with other national policy considerations; and to attain the following objectives:

(1) Achieve the fullest possible use of the environment, without degradation, or undesirable and unintended consequences;

(2) Preserve historical, cultural, and natural aspects of our national heritage, while maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieve a balance between the use and development of resources, within the sustained capacity of the ecological system involved; and,

(4) Enhance the quality of renewable resources while working toward the maximum attainable recycling of nonrenewable resources.

(b) VA elements shall:

(1) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the NEPA and CEQ Regulations;

(2) Prepare concise and clear environmental documents which shall be supported by documented environmental analyses;

(3) Integrate the requirements of NEPA with agency planning and decision-making procedures;

(4) Encourage and facilitate involvement by affected agencies, organizations, interest groups and the public in decisions which affect the quality of the human environment; and,

(5) Consider alternatives to the proposed actions which are encompassed by the range of alternatives discussed in relevant environmental documents, and described in the environmental impact statement (42 U.S.C. 4321–4370a).

§ 26.5 Responsibilities.

(a) The Director of the Office of Environmental Affairs shall:

(1) Be responsible to coordinate and provide guidance to VA elements on all environmental matters;

(2) Assist in the preparation of environmental documents by VA elements; and, where more than one VA element, or Federal, State, or local agency is involved, assign the lead VA element or propose the lead Federal, State or local agency to prepare the environmental documents;

(3) Recommend appropriate actions to the Administrator on those environmental matters for which the Administrator has final approval authority;

(4) Assist in resolution of disputes concerning environmental matters within the VA, and among the VA and other Federal, State and local agencies;

(5) Coordinate preparation of VA comments on draft and final environmental impact statements of other agencies;

(6) Serve as the VA's principal liaison to the CEQ, the Environmental Protection Agency, the Office of Management and Budget, and other Federal, State, and local agencies on VA environmental actions; and

(7) Prepare appropriate supplemental guidance on implementation of these regulations.

(b) The VA General Counsel shall provide legal advice and assistance in meeting the requirements of NEPA, the CEQ Regulations and these regulations.

(c) The heads of each VA element shall:

(1) Adopt procedures to ensure that decisions are made in accordance with NEPA, the CEQ Regulations and these regulations; and,

(2) Be responsible to prepare environmental documents relating to programs and proposed actions by their elements, when required by these regulations (42 U.S.C. 4321–4370a).

§ 26.6 Environmental documents.

(a) *Environmental Impact Statements.* The head of each VA element shall include a detailed written statement "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment," NEPA 102(2), 42 U.S.C. 4332(2); *see* CEQ Regulations, 40 CFR Part 1502. An environmental impact statement shall be prepared in accordance with the following procedures:

(1) Typical Classes of Action Which Normally Do Require Environmental Impact Statements:

(i) Proposed legislation (CEQ Regulation, 40 CFR 1508.17);

(ii) Acquisition of land in excess of 10 acres for development of a VA medical center facility;

(iii) Acquisition of land in excess of 50 acres for development of a VA national cemetery; and

(iv) Promulgation of policies which substantially alter agency programs and which have a significant effect on the quality of the human environment.

(2) Specific Criteria for Typical Classes of Action Which Normally Do Require Environmental Impact Statements:

(i) Probable significant degradation of historic or cultural resources, park lands, prime farmlands, designated wetlands or ecologically critical areas;

(ii) An increase in average daily vehicle traffic volume of at least 20 percent on access roads to the site or the major roadway network;

(iii) Probable conflict with Federal, State, or local environmental protection laws or requirements;

(iv) Probable threat or hazard to the public, or the involvement of highly uncertain risks to the environment;

(v) Similarity to previous actions that required an environmental impact statement; and

(vi) Probable conflict with, or significant effect on, local or regional zoning or comprehensive land use plans.

(b) *Categorical Exclusions.* A categorical exclusion is a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal Agency in implementation of these regulations . . . and for which, therefore, neither an environmental assessment (see subparagraph (c), *infra*) or an environmental impact statement is required." CEQ Regulations, 40 CFR 1508.4.

(1) Typical Classes of Action Which Normally Do Not Require Either an Environmental Impact Statement or an Environmental Assessment:

(i) Repair, replacement, and new installation of primary or secondary electrical distribution systems;

(ii) Repair, replacement, and new installation of components such as windows, doors, roofs; and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaries;

(iii) Routine VA grounds and facility maintenance activities;

(iv) Procurement activities for goods and services for routing facility operations maintenance and support;

(v) Interior construction or renovation;

(vi) New construction of 75,000 gross square feet or less;

(vii) Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less;

(viii) Actions which involve support or ancillary appurtenances for normal operation;

(ix) Leases, licenses, permits, and easements;

(x) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes;

(xi) VA policies, actions and studies which do not significantly affect the quality of the human environment;

(xii) Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency; and

(xiii) Actions, activities, or programs that do not require expenditure of Federal funds.

(2) Specific Criteria for Typical Classes of Action Which Normally Do Not Require Either an Environmental Impact Statement or an Environmental Assessment:

(i) Minimal or no effect on the environment;

(ii) No significant change to existing environmental conditions;

(iii) No significant cumulative environmental impact; and,

(iv) Similarity to actions previously assessed with a finding of no significant impact.

(3) Extraordinary Circumstances That Must Be Considered by a VA Element Before Categorically Excluding a Particular Agency Action:

(i) Greater scope or size than normally experienced for a particular categorical exclusion;

(ii) Actions in highly populated or congested areas;

(iii) Potential for degradation, although slight, or existing poor environmental conditions;

(iv) Use of unproven technology;

(v) Potential presence of an endangered species, archeological remains, or other protected resources; or

(vi) Potential presence of hazardous or toxic substances.

(c) *Environmental assessments.* If the proposed action is not covered by paragraph (a) or (b) of this section, the responsible official (head of the VA element) will prepare an environmental assessment (CEQ Regulations, 40 CFR 1508.9). Based on the environmental assessment, the official shall determine whether it is necessary to prepare an environmental impact statement, or to prepare a finding of no significant impact (CEQ Regulations, 40 CFR 1508.13).

(1) Typical Classes of Action Which Normally Do Require Environmental Assessments, But Not Necessarily Environmental Impact Statements:

(i) Acquisition of land of 10 acres or less for development of a VA medical facility;

(ii) Acquisition of land from 5 to 50 acres for development of a VA national cemetery; and,

(iii) New construction in excess of 75,000 gross square feet;

(2) Specific Criteria for Typical Classes of Action Which Normally Do Require an Environmental Assessment:

(i) Potenital minor degradation of environmental quality;

(ii) Potential cumulative impact on environmental quality;

(iii) Presence of hazardous or toxic substances;

(iv) Potential violation of pollution abatement laws;

(v) Potential impact on protected wildlife or vegetation;

(vi) Potential effects on designated prime farmlands, wetlands, floodplains, or ecologically critical areas;

(vii) Alteration of stormwater runoff and retention;

(viii) Potential dislocation of persons or residences;

(ix) Potential increase of average daily vehicle traffic volume on access roads to the site by 10 percent or more but less than 20 percent, or which alters established traffic patterns in terms of location and direction;

(x) Potential threat or hazard to the public, or highly uncertain risks to the environment;

(xi) Potential conflicts with Federal, State, or local environmental protection laws or requirements;

(xii) Potential conflict with, or significant impact on, official local or regional zoning or comprehensive land use plans; and,

(xiii) Overloading of public utilities with insufficient capacity to provide reliable service and for average and peak periods (42 U.S.C. 4321–4370a).

§ 26.7 VA environmental decision making and documents.

(a) Relevant environmental documents shall accompany other decision documents as they proceed through the decision-making process.

(b) The major decision points for VA actions, by which time the necessary environmental documents must be completed, are as follows:

(1) *Leases.* Prior to execution of lease agreement.

(2) *Grants.* Prior to notification of grant award.

(3) *Policy.* Prior to final approval of a policy which substantially alters agency programs and which affects the human environment.

(4) *Legislative proposals.* Included in any recommendation or report to Congress on a legislative proposal which would affect the environment. The document must be available in time for Congressional hearings and deliberations.

(5) *Major, minor, minor miscellaneous delegated projects, and non-recurring*

maintenance projects. Prior to contract award for working drawings or prior to in-house initiation of working drawings. If the Administrator or designee makes a finding of compelling need, working drawings may commence prior to completion of the environmental compliance process. However, this will not preclude completion of environmental compliance prior to construction.

(6) *Land acquisition for development.* Prior to the Administrator's acceptance of custody and accountability (for Federal lands), or acceptance of offer to donate or contract for purchase (for private lands).

(c) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the VA must act in accordance with CEQ Regulations, 40 CFR 1506.11 (42 U.S.C. 4321–4370a).

§ 26.8 Assistance to applicants.

(a) The CEQ Regulations (40 CFR 1501.2(d)) provide for advising of private applicants or other non-Federal groups when VA involvement in a particular action is reasonably foreseeable. Such foreseeable actions involve application to a VA element by private persons, States, and local agencies and pertain primarily to permits, leases, requests for financial assistance, grants, and related actions involving the use of VA real property.

(b) VA involvement may be reasonably foreseeable when the following actions are initiated by non-Federal groups:

(1) Easements and rights-of-way on VA land;

(2) Petroleum, grazing, and timber leases;

(3) Permits, license, and other use agreements or grants of real property for use by non-VA groups; and,

(4) Application for grants-in-aid for acquisition, construction, expansion or improvement of state veterans' health care facilities or cemeteries.

(c) Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the environmental documents, studies or information foreseeably required for later action by VA elements and will advise of the assistance available to applicants by the VA element.

(d) When VA owned land is leased or otherwise provided to non-VA groups, the VA element affected will initiate the NEPA process pursuant to these regulations.

(e) When VA grant funds are requested by a State agency, the VA element affected will initiate the NEPA process and ensure compliance with the VA environmental program. The environmental documents prepared by the grant applicant shall assure full compliance with State and local regulations as well as NEPA before the proposed action is approved. (42 U.S.C. 4321–4370a).

§ 26.9 Information on and public participation in the VA environmental process.

(a) During the preparation of environmental documents, the responsible VA element shall include the participation of environmental agencies, applicants, State and local governments and the public to the extent practicable and in conformance with CEQ Regulations. Information or status reports on environmental documents shall be provided to interested persons upon request.

(b) Notice of availability or filing requirements vary, depending on the type of environmental documents requested. Specific requirements and procedures are defined for each VA element.

(c) For those actions relating specifically to the Administrator of Veterans Affairs, the Office of Environmental Affairs, or a VA element, information is available by writing to the Director, Office of Environmental Affairs, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. (42 U.S.C. 4321–4370a).

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 326

[Docket No. R–106]

Marine Protection and Indemnity Insurance Under Agreements With General Agents

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is proposing to revise its regulations that state the responsibility for obtaining protection and indemnity (P&I) insurance for vessels in MARAD's National Defense Reserve Fleet that are being operated by private vessel operators (General Agents), under agreements with MARAD, for purposes related to the national security. There are also proposed amendments to the procedures for reporting injuries or occurrences and claims of a P&I insurance nature and settling such claims that arise when a vessel is being operated by or under the control of a General Agent. The proposed revision of Part 326 also would reflect MARAD Organizational changes.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Jack Malkin, Director, Office of Marine Insurance, Maritime Administration, Department of Transportation, Washington, DC 20590. Tel. (202) 382–0369.

SUPPLEMENTARY INFORMATION:

Background

NDRF Vessel Operations

The Secretary of Transportation is directed by law to maintain a National Defense Reserve Fleet (NDRF) and to place in the NDRF, after consultation with the Secretaries of the Army and the Navy, such vessels that should be retained for the national defense. The Secretary of Transportation is responsible for preserving and maintaining all vessels placed in the NDRF (50 U.S.C. 1744) and may conduct vessel operation activities, with seamen employed through "General Agents" (private ship operators), as employees of the United States (46 U.S.C. App. 1241a). This authority has been delegated to the Maritime Administration (49 CFR 1.66).

In the capacity of "owner" of these NDRF vessels, MARAD enters into agreements with General Agents to operate one or more NDRF vessels. These "general agency agreements" (GAA) or "service agreements" are customarily made, pursuant to agreements between MARAD and the Military Sealift Command (MSC), Department of the Navy, to accommodate the MSC when it has a need to use NDRF vessels. Pursuant to a 1982 Memorandum of Understanding between the Department of the Navy and the Department of Transportation,

MARAD enters into service agreements with General Agents to operate vessels in the Ready Reserve Force (RRF) segment of the NDRF, upon their activation. The RRF is comprised of a select group of vessels that are maintained in the NDRF in a state of readiness that is sufficient to allow their activation by assigned General Agents within a period of five, ten or twenty days. General Agents have operated a small number of RRF vessels, for short periods of time for the MSC since 1977, pursuant to these agreements with MARAD.

P&I Insurance

Among the provisions contained in the service agreements that MARAD negotiates with these General Agents are those relating to the responsibility for obtaining protection and indemnity (P&I) insurance for the vessel and for settling P&I claims. P&I insurance provides coverage for injury to persons or property arising out of the operation of the vessel. The existing regulations, at 46 CFR Part 326, are inconsistent with the current MARAD practice. They were operative only for a one year period, during 1971, and provided that the General Agent is responsible for obtaining P&I insurance from a named insurance underwriter for each vessel that it operates. Since 1975, MARAD has executed numerous service agreements with General Agents that contain a standard provision on "insurnace and indemnification," making the United States responsible for providing or obtaining coverage for all insurance risks with respect to active NDRF vessels, consistent with provisions relating to P&I insurance that are set forth in 46 CFR Part 315.

Because the regulations in 46 CFR Part 326 are outmoded and inconsistent with the agency's practice, they should be amended to conform with MARAD's actual practice. Specifically, the provisions for reporting incidents of a P&I nature and P&I claims, and for the settlement of claims, should be amended to formally recognize MARAD's responsibility for providing P&I insurance.

The General Agent's settlement authority, now limited under existing Part 326 to the policy deductibles of $1000 for personal injury and $500 for most other accidents or occurrences, would be raised to a total settlement authority of $3,000 for any claim for injury to persons or property of a P&I insurance nature. MARAD considers $3,000 to be a reasonable upper limit for claims that an experienced vessel operator would not consider worth litigating. Claims over $3,000 would be submitted to MARAD for settlement. The higher limit of settlement authority would relieve MARAD of an administrative burden, and recognizes the expertise of General Agents in evaluating and disposing of routine P&I insurance claims. This settlement authority would be subject to the condition that General Agents settlement claims only when it is in the best interests of the United States. However, the General Agent would report all P&I accidents, occurrences and claims to MARAD. Other proposed amendments to the regulations reflect changes in MARAD organization.

E.O. 12291, Statutory and DOT Requirements

MARAD has determined that this proposed rule is neither major, as defined in E.O. 12291, nor significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). This proposed rule merely formalizes the present arrangement between MARAD and General Agents of NDRF vessels relating to the responsibility for providing P&I insurance and handling incidents of a P&I nature. This longstanding practice is reflected in existing GAA's or service agreements. MARAD is unaware of any other persons with an economic interest in these agreements. There would be no shifting of significant cost burdens between the operators and MARAD in obtaining insurance. MARAD has always paid the full cost of P&I insurance premiums when policies were issued by a commercial underwriter. During 1971, which was the only period when the General Agents were responsible for placing the insurance, they merely had to contact the underwriter to arrange P&I insurance for specific vessels. MARAD had already contracted for the underwriter's commitment to insure NDRF vessels that were activated.

The proposed rule would replace a procedure that was only operative for one year, 1971, and that has not been used since. The proposed rule reflects the savings MARAD realizes when it elects to be a self insurer for P&I losses, since it then does not have to pay an annual P&I insurance premium. The savings would average about $250,000 per vessel during peacetime in the present insurance market. MARAD's claims experience in being a self-insurer since 1977 has been limited due to the small number of vessels and claims involved, and has been favorable. Any costs that MARAD incurs are reimbursable by the MSC. Accordingly, the economic impact has been found to be so minimal as not to warrant further evaluation. Further, since this rule has application to and effect on only MARAD and General Agents of substantial size, the Maritime Administrator certifies that it will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). The existing or proposed rule contains information reporting requirements in sections 4 through 7. Because the respondents (General Agents) are agents of the United States, pursuant to their agreements with MARAD, and the collected information is not "used for general statistical purposes," this is not a "collection of information" (5 CFR 1320.7) requiring OMB approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 46 CFR Part 326

Claims, Insurance, Seamen.

Accordingly, 46 CFR Part 326 is revised to read as follows:

PART 326—MARINE PROTECTION AND INDEMNITY INSURANCE UNDER AGREEMENTS WITH GENERAL AGENTS

Sec.

326.1 Purpose.
326.2 Insurer.
326.3 Insured.
326.4 Reports of accidents and occurrences.
326.5 Report of claims.
326.6 Settlement of claims.
316.7 Litigation.

Authority: 50 U.S.C. App. 1744; 46 U.S.C. 1241a; 1114(b) 49 CFR 1.66.

§ 326.1 Purpose.

This part states the responsibility for obtaining protection and indemnity insurance (P&I) on any vessel that has been placed in the National Defense Reserve Fleet (NDRF), in the custody of the United States Maritime Administration, and is assigned under a general agency or service agreement (Agreement) executed by the United States, acting by and through the Director, National Shipping Authority of MARAD, with a private vessel operator (General Agent), to be operated by the General Agent for purposes related to the national security. It also contains procedures for the General Agent to report accidents and occurrences of a P&I insurance nature to MARAD and to report and settle P&I claims.

§ 326.2 Insurer.

MARAD shall be responsible for providing or obtaining P&I insurance for all vessels assigned to General Agents under Agreements between MARAD

and General Agents. At its election, MARAD may be a self-insurer of any one or more vessels covered by an Agreement, or may obtain P&I insurance coverage under one or more policies written by underwriters of vessel insurance. MARAD shall determine the amount of coverage to be provided or obtained. P&I insurance shall cover both the United States and its General Agents or sub-agents. To the extent not covered by P&I insurance or assumed by the United States as self-insurer, the United States shall indemnify and hold harmless and defend the General Agent against all claims or demands of a P&I nature (including costs and reasonable attorney's fees in defending such claim or demand), without regard to negligence of the General Agent.

§ 326.3 Insured.

The insured are: the United States of America, acting by and through the Director, National Shipping Authority, Maritime Administration, Department of Transportation, its General Agents and sub-agents.

§ 326.4 Reports of accidents and occurrences.

The General Agent shall report every accident or occurrence of a P&I nature promptly to the Director, Office of Marine Insurance, Maritime Administration, 400 Seventh Street, SW., Room 8204, Washington, DC 20590. Tel. (202) 382–0369. If MARAD has obtained P&I insurance from an insurance underwriter, the General Agent shall also file a report of such accident or occurrence with the underwriter. MARAD shall disclose the identity of such underwriter to the General Agent.

§ 326.5 Report of claims.

A General Agent shall also submit a quarterly report of all claims of a P&I insurance nature to the Director, Office of Marine Insurance. The report shall contain all relevant information, e.g., the name of the vessel and of the claimant, the date of the injury or occurrence, amount and basis for any payments already disbursed in behalf of the United States, estimated future costs and evaluation of the claim on the merits.

§326.6 Settlement of claims.

General Agents are authorized to settle, without prior MARAD approval, all claims of a P&I insurance nature, where the settlement amount does not exceed $3,000.00 for each accident or occurrence. A General Agent shall obtain MARAD's prior approval, through the Director, Office of Marine Insurance, of all settlements that do exceed $3,000.00. If MARAD has placed the P&I insurance with an insurance underwriter, General Agents shall also obtain the prior approval of the underwriter, as disclosed by MARAD. The amount of claims that do not exceed the limitation for settlement shall be chargeable by the General Agent to vessel expense and shall be accounted for in accordance with current accounting instructions. When settling any claim, the Geneal Agent shall advise the claimant that such settlement is not to be construed as an admission of liability by or on behalf of the United States, the General Agent or sub-agents. General Agents shall apply sound judgment and follow standard practices of vessel operators in the settlement or other disposition of P&I insurance claims, and shall settle such claims only when the settlement is adequately supported by all the facts and circumstances, and is in the best interests of the United States.

§ 326.7 Litigation.

(a) If a suit is filed arising out of the activities of a General Agent in the course of its official duties, wherein the General Agent is named as one of the parties defendant, and whether or not the risk is covered by P&I insurance, such General Agent shall immediately forward copies of the pleadings and all other related legal documents, by air mail, to the Chief Counsel, Maritime Administration, Department of Transportation, Washington, DC 20590, and to the Attorney General, Admiralty and Shipping Section, Department of Justice, Washington, DC 20530. No General Agent or sub-agent shall incur any legal expenses in connection with any claim covered by P&I insurance, unless approved in advance by MARAD, or the underwriter, where applicable, or in connection with any other claim, unless approved in advance by the Chief Counsel, Maritime Administration, except in an emergency where time will not permit such prior approval.

(b) In the event of any attachment or seizure of a vessel, whether or not the risk is covered by P&I insurance, the General Agent shall immediately notify the Chief Counsel, Maritime Administration, Washington, DC 20590. Tel. (202) 426–5711, by telegram, radio, or cable.

By Order of the Maritime Administrator.
Dated: May 8, 1986.

Murray A. Bloom,

Assistant Secretary.

[FR Doc. 86–10846 Filed 5–13–86 8:45 am]
BILLING CODE 4910–81–M

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Notices

Federal Register
Vol. 51, No. 93
Wednesday, May 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

National Volunteer Advisory Council; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council.

Date, time and place: June 2, 1986, 2:30 p.m., 806 Connecticut Avenue, NW., Room 522, Washington, DC 20525. The meeting will be open to the public.

Purpose: To review the President's Volunteer Action Awards selection process and hold the regular Council meeting.

For further information contact: Mike Korbey, Assistant Director for Policy and Planning, at (202) 634–9757.

Signed this 9th day of May 1986, in Washington, DC.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 86–10810 Filed 5–13–86; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 9, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments of any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Office of your intent as early as possible.

Extension

• Food and Nutrition Service
7 CFR Part 225—Summer Food Service Program (Recordkeeping)
FNS 81 and 81–1
Recordkeeping
Small business or organizations; recordkeeping; 12,437 hours; not applicable under 3504(h)
Marian Stroud (703) 756–3600

New

• Animal and Plant Health Inspection Service
Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which there is Reason to Believe are Plant Pests
PPQ Form 1000
On occasion
State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 325 responses; 878 hours; not applicable under 3504(h)
John R. Wood (301) 436–8896

Reinstatement

• Farmers Home Administration
Application for Guaranteed Loan (Farmer Programs)
FmHA 449–6
On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 25,000 responses; 12,500 hours; not applicable under 3504(h)
Jim Crysler (202) 382–1657

Revision

• Rural Electrification Administration
Manual for Preservation of Borrowers' Records (Electric)
REA Bulletin 180–2
Recordkeeping
Small businesses or organizations; recordkeeping; 22,120 hours; not applicable under 3504(h)
Roland S. Heard (202) 382–8227

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 10844 Filed 5–13–86; 8:45 am]

BILLING CODE 3410–01–M

CIVIL RIGHTS COMMISSION

Alaska Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on May 23, 1986, at the Federal Building, Room C–114, 701 C Street, Anchorage, Alaska. A factfinding meeting will be held on Indian school dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442–1246 (TDD 206/442–4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–10796 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

BEST COPY AVAILABLE

Arizona Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on May 30, 1986, at the Ramada Hotel Airport East, Board Room, 1600 S. 52nd Street, Tempe, Arizona. The purpose of the meeting is to discuss the Committee's monitoring of civil rights issues in the National Guard and the Yuma School System. In addition, the Committee will develop plans for a proposed project involving community colleges.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John P. White, or Philip Montez, Director of the Western Regional Office at (213) 688–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–10797 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

Hawaii Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon, on June 2, 1986, at the Waikiki Trade Center, Room 1800, 2525 Kuhio Avenue, Honolulu, Hawaii. The purpose of the meeting is to plan further implementation of the Native Hawaiian Homelands Project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre Tatibouet or Philip Montez, Director of the Western Regional Office at (213) 688–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–10798 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

Mississippi Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:30 p.m. on May 23, 1986, at the Walthall Hotel, Wheeler Room, 225 E. Capitol Street, Jackson, Mississippi. The purpose of the meeting is to review, discuss, and approve a briefing memorandum on a community forum held in Tunica, Mississippi concerning equality in the delivery of municipal services and to plan programs for FY 1987.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Louis Westerfield or Bobby Doctor, Director of the Southern Regional Office, at (404) 221–4391 (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–10799 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

Nebraska Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:30 p.m., on June 17, 1986, at the University of Nebraska, College of Law, 900 N. 16th, Lincoln, Nebraska. The purpose of the meeting is to plan activities and projects for the coming fiscal year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Duncan or Melvin Jenkins, Director of the Central States Regional Office, at (816) 374–5253 (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–10800 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

Nevada Advisory Committee, Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m., on June 7, 1986, at the University of Nevada, 4505 Maryland Parkway, Las Vegas, Nevada. The purpose of the meeting is to discuss the Casino Employment Project and future program plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office at (213) 688–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–10801 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

New Jersey Advisory Committee, Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission

will convene at 6:00 p.m. and adjourn at 8:00 p.m. on June 4, 1986, at the Hilton Gateway-Gateway Center, Newark, New Jersey. A briefing session will be held for committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero Director of the Eastern Regional Office at (212) 264–0400, (TDD 212/264–0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, may 8, 1986.

Ann E. Coode,

Program Specialist for Regional Programs.

[FR Doc. 86–10802 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

New Jersey Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on June 5, 1986, at the Newark Federal Building, Room 204, 970 Broad Street, Newark, New Jersey. The purpose of the meeting is to conduct a community forum on racial, ethnic, and religious vandalism in affected communities in Essex County, New Jersey.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero Director of the Eastern Regional Office at (212) 264–0400, (TDD212/264–0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Ann E. Coode,

Program Specialist for Regional Programs.

[FR Doc. 86–10804 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

Oklahoma Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on June 6, 1986, at the Hodge Education Building, State Regents Conference Room, 25th & Lincoln Blvd., State Capitol Complex, Oklahoma City, Oklahoma. The purpose of the meeting is to discuss a briefing memorandum to the Commissioners on higher education and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Fagin or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229–5570, (TDD 512/229–5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–10805 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

South Carolina Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon on June 11, 1986, at the Gressette Senate Office Building, Room 105, State Capitol Complex, Columbia, South Carolina. The purpose of the meeting is to review a briefing memorandum on minority participation in the electoral process in Orangeburg and Georgetown and plan next committee project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Patterson or Bobby Doctor, Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–10806 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on June 4, 1986, at the Wisconsin Memorial Union, 800 Langdon, Madison, Wisconsin. The purpose of the meeting is to discuss the April news conference on Indian rights in northern Wisconsin and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 8, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–10807 Filed 5–13–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene a public meeting at the Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI, as follows:

On May 29, 1986, the Council meeting will convene at 8 a.m. with a closed session (not open to the public), to

discuss employment matters, and will adjourn at 9 a.m. The Council's public meeting will convene at 9 a.m. on May 29 with a discussion of the progress on a limited entry concept for the bottomfish fisheries of the Northwestern Hawaiian Islands (NWHI); status of the National Marine Fisheries Service (NMFS) review of the Bottomfish Framework Fishery Management Plan (FMP); review recommendations of the Council's Lobster Planning Team and Scientific and Statistical Committee (SSC) on management of the NWHI fisheries, i.e. slipper lobsters, economic conditions, closed seasons, and comments of the lobster fishermen on those recommendations; review the 1985 lobster annual report; approve a budget for FY87; approve Advisory Panel and SSC membership for August 1986—August 1988, and discuss any other Committee business. The Council will adjourn at 5 p.m. on May 29; reconvene on May 30 at 9 a.m., and adjourn at 5 p.m. A public meeting of the Council's Committee will convene on May 28 at 1 p.m., and will adjourn at 4 p.m.

A detailed agenda will be available from the Council's office after May 9.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI; telephone (808) 523–1368.

Dated: May 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–10658 Filed 5–13–86; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395–7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, Commodity Futures Trading Commission, 2033 K Street NW. Washington, DC 20581, (202) 254–9735.

Title: Regulations Permitting the Grant, Offer and Sale of Dealer Options
Control Number: 3038–0003
Action: Extension
Respondents: Businesses, including small businesses
Estimated Annual Burden: One hour
Estimated Number of Respondents: One

Issued in Washington, DC, on May 8, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–10700 Filed 5–13–86; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–86–36 OFP Case Number 55118–9316–20–24]

Powerplant and Industrial Fuel Use; General Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption by General Electric Company and availability of certification.

SUMMARY: On March 24, 1986, General Electric Company (GE) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE seeking a permanent site limitation exemption for their proposed Martinez Cogen Plant, to be located in Martinez, California, from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new powerplants. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are published in the **Federal Register** at 46 FR 59872 (December 7, 1981). The site limitation exemption criteria is contained in 10 CFR 503.33 of the final rules.

GE requests a permanent site limitation exemption in order to burn natural gas in a gas turbine generator unit. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31(a) and 501.33(a), interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing the petition as well as other documents and supporting materials on this proceeding is available at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, 9:00 a.m. to 4:00 p.m. Monday through Friday, except Federal holidays. ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period of public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments or a request for public hearing on the acceptance of GE's petition for exemption are due on or before June 30, 1986.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs Coal & Electricity Division, Case Control Unit, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Docket Number ERA–C&E–86–36 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Phone (202) 252–6233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW. Washington, DC 20585, Phone (202) 252–6947

SUPPLEMENTARY INFORMATION: All cogeneration equipment will be located within the cogeneration facility boundaries, which will be located east of the existing PG&E Cogeneration Facility. The Cogeneration Facility will be approximately 150 feet by 250 feet.

The new cogeneration facility will house all of the cogeneration equipment including a gas turbine-generator, heat recovery steam generator, steam turbine-generator, and most of the auxiliary equipment. Some of the existing PG&E auxiliary equipment will be used to complete the facility.

One General Electric Mode G6501(b) gas turbine-generator, rated at 38,210 kW under site conditions, will be supplied as a package unit. The gas

turbine will be supplied with a sound attenuating enclosure, a CO_2 fire protection system, electric starter, and a steam injection system for NO_x control. The gas turbine-generator will be equipped to burn either natural gas or refinery gas.

GE has certified that due to the specific physical limitations enumeratued below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned facility has been furnished.

The physical limitations addressed by the petitioner are, coal fired boilers along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse.

GE certified that:

1. One or more specific physical limitations relevant to the location or operation of the proposed facility exists which, despite good faith efforts, cannot reasonably be expected to be overcome within five years after commencement of operation (10 CFR 503.33(a)(1)).

2. There is an unavailability of adequate land or facilities for handling, using, and storing coal and that this problem cannot be overcome in five years.

3. The use of oil and coal or natural gas and coal will not be technically feasible for the Gas Turbine at the proposed Martinez Cogen Facility.

4. The use of fluidized bed combustion is not economically or technically feasible at the proposed Martinez Cogen Facility.

5. An alternative site is not economically or technically feasible at the proposed Martinez Cogen Facility.

6. A fuel search was made to the extent necessary for the proposed Martinez Cogen Facility.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 20, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

Pursuant to 10 CFR 501.3, ERA hereby accepts GE's petition for a permanent site limitation exemption for the proposed facility. The acceptance of the petition by ERA does not constitute a determination that GE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on April 30, 1986.

Robert L. Davies,

Director of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-10816 Filed 5-13-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-25; OFP Case No. 66020-9308-20,21-24]

Powerplant and Industrial Fuel Use; Pacific Thermonetics, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting to Pacific Thermonetics, Inc. exemption from prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Pacific Thermonetics, Inc. (PTI or "the petitioner"), of Menlo Park, California. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for its proposed Crockett Cogneration Facility located in Crockett, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on July 13, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: PTI proposes to construct a 230 Megawatt (MW) cogeneration facility to produce steam for industrial use and to generate electrical power. The facility will be located at the C&H Sugar Company (C&H) refinery in the town of Crockett, California, in Contra Costa County. The facility is designed to produce sufficient steam for C&H to run the sugar refinery in a cost effective manner and to generate electricity for sale to Pacific Gas and Electric Company (PG&E).

The facility will consist of two gas turbine generators with a rated capacity of 80 MW each and two 35 MW steam turbine generators. The firing rate for each of the combustion units will be 908.5 MMBtu per hour. The exhaust heat from the gas turbines will be used to generate steam in the Heat Recovery Steam Generators (HRSGs) which will then be sent to the steam turbines. The HRSGs will be supplementally fired with natural gas, not in excess of 800,000 million Btu's per calendar year. Natural gas will be piped to the site from an upgraded PG&E gas transmission line located about one-half mile away from the site beneath the Carquinez Bridge.

The facility will burn fuel oil only in a curtailment situation. The maximum number of hours that the facility may burn fuel oil is 330 hours per year.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including PTI's certification to ERA, in accordance with §503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on February 18, 1986 (51 FR 5759), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 14, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that PTI has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to PTI to permit the use of natural gas as the primary energy source for its cogeneration facility in Crockett, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on April 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-10617 Filed 5-13-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-09; OFP Case No. 67051-9300-20, 21, 22, 23-24]

Powerplant and Industrial Fuel Use; Sycamore Cogeneration Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting to Sycamore Cogeneration Company exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Sycamore Cogeneration Company (Sycamore). The permanent exemption permits the use of natural gas as the primary energy source for a 300 MW facility designed to produce electricity and steam at the Sycamore Oildale, California location. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATE: The order shall take effect on July 13, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: The Sycamore Cogeneration Project will be designed to produce approximately 1.8×10^6 pounds per hour (pph) of 20-80% quality process steam at approximately 800 psig and 520 °F and to generate approximately 300 MW of electric power. Fuel is burned in four combustion turbine generators. Electricity is generated in this process, and the hot exhaust gases from each combustion turbine generator flow to the respective heat recovery steam generator. Here, the steam for thermal enhanced oil recovery is produced. The facility is expected to be operational 90% of the time. During that period, the facility will be producing the rated quantity of steam and electricity. It is expected that the congeneration system will be shut down ten percent of the time for scheduled and unscheduled maintenance.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Sycamore's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

(1) The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

(2) The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 4, 1985 (50 FR 49747), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on January 21, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that Sycamore has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent exemption to Sycamore to permit the use of natural gas as the primary energy source for its facility at its Oildale, California location.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on April 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-10616 Filed 5-13-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Technical Panel on Magnetic Fusion; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat 770), notice is hereby given of the following meeting:

Name: Technical Panel on Magnetic Fusion of the Energy Research Advisory Board

Date and Time: May 29, 1986—9:00 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 8E-089, Washington, DC 20585

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-2283

Purpose of the Technical Panel: To perform a review of the conduct of the national magnetic fusion energy program and make recommendations to the Energy Research Advisory Board. After consideration of the Panel report, the Board shall submit such report, together with any comments that the Board deems appropriate, to the Secretary of Energy. The purpose of the Energy Research Advisory Board is to advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Administrative items
- Review of DOE charge
- Magnetic Fusion program summaries
- Future meeting dates and speakers
- Public Comment—10 minute rule

Public participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 9, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-10615 Filed 5-13-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30255A; FRL-3013-8]

Approval of a Pesticide Product Registration; Chevron Chemical Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Chevron Chemical Co. to register the pesticide product Grass-B-Gon Grass Killer containing an active ingredient involving a changed use pattern pursuant to the provision of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number:

Rm. 237, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued notice, published in the Federal Register of August 6, 1985 (50 FR 31771), which announced that Chevron Chemical Co., 940 Hensley St., Richmond, VA 94804, has submitted an application to register the pesticide product Grass-B-Gon Grass Killer containing the active ingredient fluazifopbutyl (butyl) (RS)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]proponoate at 0.50 percent; involving a changed use pattern of the product.

The application was approved on March 14, 1986 for Grass-B-Gon Grass Killer for homeowner domestic use. The product was assigned EPA Registration No. 239-2531.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM No. 2, Arlington, VA 22202 (703-557-3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M Street SW., Washington, DC 20460.

Such requests should: (1) Identify the product name and registration number, and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: May 2, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-10447 Filed 5-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30220B; FRL-3013-8]

Approval of Pesticide Product Registrations; Elanco Products Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Elanco Products Co. to register the pesticide products Sonar SRP and Sonar A.S. containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460

Office location and telephone number:

Environmental Protection Agency, Rm. 237, TS–767C, 1921 Jefferson Davis Hwy, Arlington, VA. (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of July 28, 1982 (47 FR 32601), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, had submitted applications to register the pesticide products Sonar SRP and Sonar A.S. containing the active ingredients fluridone 1-methyl-3-phenyl-5-[3-trifluoromethyl]phenyl[-4(*1H*)-pyridinone at 5 percent; active ingredients not included in any previously registered products.

The product Sonar A.S. is being approved at 41.7 percent of the active ingredient fluridone.

The applications were approved on March 31, 1986 for Sonar SRP and Sonar A.S., EPA Registration Numbers 1471–126 and 1471–127 respectively; for management of aquatic weeds in ponds, lakes, and reservoirs.

The Agency has considered all required data on the risks associated with the proposed uses of fluridone and information on social, economic, and environmental benefits to be derived from uses. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that uses of fluridone when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on these registrations are contained in a Chemical Fact Sheet on fluridone.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS–767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St. SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St. SW., Washington, DC 20460.

Such requests should: (1) Identify the products name and registration numbers and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: May 1, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86–10445 Filed 5–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30269; FRL–3013–8]

Applications To Register Pesticide Products; Certain Companies; Pennwalt Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIDRA), as amended.

DATES: Comment by May 29, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP–30269] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to:

Environmental Protection Agency, Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of the information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS–767C), Attn: Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone No.	Address
PM 21, Henry Jacoby.	Rm. 235, CM No. 2, (703–557–1900).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA.
PM 25, Robert Taylor.	Rm. 245, CM No. 2, (703–557–1830).	Do.
PM 23, Richard Mountfort.	Rm. 237, CM No. 2, (703–557–1830).	Do.
PM 31, John Lee.	Rm. 254, CM No. 2, (703–557–3675).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File Symbol:* 4581–GAR. Applicant: Pennwalt Corp., Three Parkway, Philadelphia, PA 19102. Product name: Chembred™. Chemical Hybridizing Agent. Active ingredient: Potassium 3,4-dichloro-5-isothiazolecarboxylate 35.1%. Proposed classification/Use: General. For use on cotton by Pennwalt Personnel or persons under their direct supervision. (PM 25)

2. *File Symbol:* 372–AU. Applicant: Mallinckrodt, Inc., 3600 N. Second St., St. Louis, MO 63147. Product name; Benefit™ 50% Wettable Powder. Fungicide. Active ingredient: 2-Iodobenzanilide 50%. Proposed classification/Use: General. For control of diseases on ornamentals and turf. (PM 21)

3. *File Symbol:* 48301–RL. Applicant: Angus Chemical Co., 2211 Sanders Road, North Brook, IL 60062. Product

name: Bioban CS-1246 Antimicrobial Agent. Microbiocide. Active ingredient: 7-Ethyl-1,5-dioxa-6-azabicyclooctane 97%. Proposed classification/Use: General. For use in metalworking fluids, oilfield water systems, latex emulsions, and water dispersible paints. Type registration: Condition. (PM 31)

II. Products Involving A Changed Use Pattern

File Symbol: 100-AAA. Applicant: Ciba-Geigy Corp., Agricultural Div., PO Box 18300, Greensboro, NC 27419. Product name: Pace Herbicide. Herbicide. Acting ingredient: Metolachlor 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide 27.5%. Proposed classification/Use: General. To include in its presently registered terrestrial food crop and non-food use, new use for weed control in turfgrass. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: May 1, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-10444 Filed 5-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59216B; FRL-3015-8]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-35. The test marketing conditions are described below.

EFFECTIVE DATE: May 7, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Payer, Premanufacture Notice Management Branch, Chemical Control Division (TS-794) Environmental Protection Agency, RM. E-613, 401 M St., SW., Washington, DC 20460 (202-382-3380).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-35. EPA has determined that test marketing of new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-35. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-86-35

Date of Receipt: March 27, 1986.

Notice of Receipt: April 11, 1986 (51 FR 12556).

Applicant: Westvaco Corporation.

Chemical: (G) Carboxyethylated complex tall oil polyalkylene polyamine.

Use: (G) Asphalt emulsifier.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Twelve Months.

Commencing on: May 7, 1986.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 7, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-10626 Filed 5-13-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-452; FRL-3015-4]

Pesticide Tolerance Petition; Janssen Pharmaceutical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Janssen Pharmaceutical, has submitted to EPA a feed additive petition proposing to amend tolerances for imzalil in or on certain agricultrual commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-452] and the petition number, attention Product Manager (PM-21), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed

confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby (PM–21), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of August 8, 1984 (49 FR 31756) which announced that Janssen Pharmaceutical, P.O. Box 344, Bear Tavern Road, Washington Crossing, NJ 08560, has submitted FAP 4H5434 to the Agency proposing to amend 21 CFR 561.429 by establishing regulations permitting the combined residues of imazalil (1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1*H*-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol in or on the commodity apple pomace (wet/dry), (post-harvest) at 30 ppm.

Janssen Pharmaceutical has amended the petition by decreasing the tolerance level in or on apple pomace wet from 30 ppm to 15 ppm, and increasing the tolerance level in or on apple pomace dry from 30 ppm to 75 ppm.

Authority: 21 U.S.C. 348.

Dated: May 6, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–10830 Filed 5–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59186B; FRL–3015–7]

Certain Chemical; Extension of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's extension of the test marketing period of a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–28. The new test marketing conditions are described below:

EFFECTIVE DATE: May 7, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–609, 401 M Street, SW., Washington, DC 20460, (202–382–3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby extends the test marketing period for TME–85–28. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the original TME application and extension request, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–28. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity or the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–85–28

Date of Receipt: February 27, 1985.

Notice of Receipt: March 8, 1985 (50 FR 9509).

Applicant: CP Chemicals, Inc.

Chemical: (S) Stannous (Tin 2+) methanesulfonate.

Use: (S) Component in electroplating bath.

Production Volume: 4545 kilograms.

Number of Customers: Six.

Workers Exposure: Manufacture: A total of 3 workers at 1 site for 1 to 2 hours per day, 20 days per year. Use: a total of 6 workers at up to 6 sites for 2 to 8 hours per day, 7 to 28 days per year.

Notice of Approval of Test Marketing Exemption: April 26, 1985 (50 FR 16539).

Original Test Marketing Period: One year.

Modified Test Marketing Period: Six months.

Commencing on: May 7, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 7, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86–10827 Filed 5–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–302257A; FRL–3015–5]

Merck and Co.; Approval of Pesticide Products Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by MSD AGVET, Division of Merck and Co., Inc. to register the pesticide products Affirm™ Fire Ant Insecticide and Affirm™ Fire Ant Insecticide Bait containing active

ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 204, TS–767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of September 18, 1985 (50 FR 37903), which announced that MSD AGVET, Division of Merck Co., Inc., Rahway, NJ 07065, had submitted applications to register the pesticide products Affairm™ Fire Ant Insecticide, EPA File Symbol 618–OU, and Affirm™ Fire Ant Insecticide Bait, EPA File Symbol 618–OG, containing the active ingredients [a mixture of avermectins containing >80% avermectin B_1a)(5-O-demethyl-avermectin A_1a) and <20% avermectin B_1b (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] at 0.011 percent; containing active ingredients not included in any previously registered products.

The applications were approved on April 18, 1986 for Affirm™ Fire Ant Insecticide and Affirm™ Fire Ant Insecticide Bait, EPA Registration Numbers 618–94 and 618–93 respectively; for use on fire ants.

The Agency has considered all required data on the risks associated with the proposed uses of [a mixture of avermectins containing >80% avermectin B_1a) (5-O-demethyl-avermectin A_1a) and <20% avermectin B_1b (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] and information on social, economic, and environmental benefits to be derived from uses. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and exent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that uses of [a mixture of avermectins containining >80% avermectin B_1a) (5-O-demethyl-avermectin A_1a) and <20% avermectin B_1b (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on these registrations are contained in a Chemical Fact Sheet on [a mixture of avermectins containing >80% avermectin B_1a) (5-O-demethyl-avermectin A_1a) and <20% avermectin B_1b (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)].

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulations position and rationale, may be obtained from Registration Division (TS–767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, D.C. 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460.

Such requests should: (1) identify the products name and registration numbers and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: May 6, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86–10629 Filed 5–13–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–764–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–764–DR), dated May 3, 1986, and related determinations.

DATE: May 3, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of May 3, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms and flooding, beginning on or about March 22, 1986, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Roger E. Free of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster and are designated eligible as follows: Brookings, Clark, Codington, Day, Deuel, Grant, Hamlin, and Kingsbury Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86–10791 Filed 5–13–86; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Orlando District Office, chaired by Douglas D. Tolen, District Director. The topics to be discussed are Tanning and Tanning Products and Health Claims for Foods.

DATE: Wednesday, May 28, 1986, 1 p.m. to 3:15 p.m.

ADDRESS: Orlando District Office, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Orlando, FL 32809, 305–855–0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 8, 1986.

John M. Taylor,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–10779 Filed 5–13–86; 8:45 am]

BILLING CODE 4160–01–M

Anesthetic and Life Support Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Anesthetic and Life Support Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on May 1, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–443–2765.

Dated: May 8, 1986.

John M. Taylor,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–10780 Filed 5–13–86; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine.

DATE: No cutoff date is established for receipt of nominations.

ADDRESS: All nominations for membership should be submitted to Max L. Crandall (address below).

FOR FURTHER INFORMATION CONTACT: Max L. Crandall, Center for Veterinary Medicine (HFV–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4557.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the Veterinary Medicine Advisory Committee. The function of the committee is: (1) To review and evaluate available information concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production; and (2) make appropriate recommendations to the Commissioner of Food and Drugs.

Pesons nominated for membership shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. FDA asks potential candidates to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately respresented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: May 8, 1986.

John M. Taylor,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–10781 Filed 5–13–86; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–335–FN]

Medicare Program; Update to Freestanding and Hospital-Based Skilled Nursing Facility Cost Limits Effective for Cost Reporting Periods Starting May 1, 1986

Correction

In FR Doc. 86–7131 beginning on page 11253 in the issue of Tuesday, April 1, 1986, make the following corrections:

1. On page 11259, third column, after the last line, add "Broward, FL" as an indented entry under "Fort Lauderdale-Hollywood-Pompano Beach, FL".

2. On page 11260, first column, delete the first two lines and the entry under "Wage index".

3. On page 11261, second column, the entry for "Modesto, GA" should read "Modesto, CA".

4. On page 11262, first column, under the entry "Portland, OR", "Multnomah" was misspelled.

BILLING CODE 1505–01–M

[BERC-333-FN]

Medicare Program; Hospital-Based Skilled Nursing Facility Cost Limits Effective for Cost Reporting Periods Beginning October 1, 1982, and July 1, 1984

Correction

In FR Doc. 86-7132 beginning on page 11234 in the issue of Tuesday, April 1, 1986, make the following corrections:

1. On page 11246, second column, in Table B-II, the seventh entry should read, "Moca, PR".

2. In the same column, last line, "Buncombe" was misspelled.

3. On page 11247, second column, the Wage index for Chattanooga, TN-GA, should read ".9867"

4. In the same column, under Chicago, IL, insert "Du Page, IL" as an indented entry after Cook, IL.

5. In the same column, under Cleveland, OH, "Medina" was misspelled.

6. On page 11248, first column, the Wage index for Fort Walton Beach, FL, should read "*.8306".

7. On the same page, second column, "Greenville-Spartanburg" was misspelled and three lines below, "Spartanburg" was misspelled.

8. On page 11249, first column, after Lewiston-Auburn, ME, insert "Androscoggin, ME" as an indented entry. Delete the same entry under Lexington-Fayette, KY.

9. On the same page, third column, the Wage index for New Orleans, LA, should be preceded by an asterisk.

10. On page 11251, third column, Table B-III, last entry, the Wage index for California should read "1.0117".

BILLING CODE 1505-01-M

National Institutes of Health

National Cancer Institute; Meeting of the President's Cancer Panel

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, June 9, 1986, at the Dana-Farber Cancer Institute, 44 Binney Street, Boston, MA 02115.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and discussions to obtain information regarding center programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23 , National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will furnish substantive program information.

Dated: May 7, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-10661 Filed 5-13-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Grazing Advisory Boards; Establishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of establishment—Grazing Advisory Boards.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing 40 Bureau of Land Management (BLM) grazing advisory boards, listed below. The functions of the boards are two-fold. First, they will offer advice and make recommendations to BLM district managers concerning the development of provisions of allotment management plans governing livestock grazing operations and practices, including any inventories and monitoring associated with those operations and practices, as well as the type, location, ownership, and general specifications for range improvements to be installed and maintained on public lands to meet the needs of livestock grazing. Second, they will offer advice and make recommendations to BLM district managers about expending those range betterment funds for range improvement that are to be used on public lands to meet the needs of livestock grazing. To put it differently, the boards are to function in a way that provides BLM counsel on those questions related solely to livestock grazing that arise in developing allotment management plans and expending range betterment funds. Examples of the counsel to be provided include advice and recommendations on fences and water developments to improve the distribution of domestic livestock on public lands, planning the sequence grazing there, and altering the mixture of animal species permitted to graze. Each board will comprise not less than five nor more than eight persons holding permits of leases to graze domestic livestock on public lands administered by the Bureau District Manager they advise. To ensure that the boards are fairly balanced, individual members will be elected by vote of the persons holding permits or leases to graze livestock on public lands in the applicable district.

DATE: The 40 boards being established are as follows:

Arizona:
- Arizona Strip District Grazing Advisory Board
- Kingman Resource Area Grazing Advisory Board
- Phoenix-Lower Gila Resources Areas Grazing Advisory Board
- Safford District Grazing Advisory Board

California:
- Bakersfield District Grazing Advisory Board
- California Desert District Grazing Advisory Board
- Susanville District Grazing Advisory Board

Colorado:
- Canon City District Grazing Advisory Board
- Craig District Grazing Advisory Board
- Grand Junction District Grazing Advisory Board
- Montrose District Grazing Advisory Board

Idaho:
- Boise District Grazing Advisory Board
- Burley District Grazing Advisory Board
- Idaho Falls District Grazing Advisory Board
- Salmon District Grazing Advisory Board
- Shoshone District Grazing Advisory Board

Montana:
- Butte District Grazing Advisory Board
- Lewistown District Grazing Advisory Board
- Miles City District Grazing Advisory Board

Nevada:
- Battle Mountain District Grazing Advisory Board
- Carson City District Grazing Advisory Board
- Elko District Grazing Advisory Board
- Ely District Grazing Advisory Board
- Las Vegas District Grazing Advisory Board
- Winnemucca District Grazing Advisory Board

New Mexico:
Albuquerque District Grazing Advisory Board
Las Cruces District Grazing Advisory Board
Roswell District Grazing Advisory Board
Oregon:
Lakeview District Grazing Advisory Board
Prineville District Grazing Advisory Board
Vale District Grazing Advisory Board
Utah:
Cedar City District Grazing Advisory Board
Moab District Grazing Advisory Board
Richfield District Grazing Advisory Board
Salt Lake District Grazing Advisory Board
Vernal District Grazing Advisory Board
Wyoming:
Casper District Grazing Advisory Board
Rawlins District Grazing Advisory Board
Rock Springs District Grazing Advisory Board Worland District Grazing Advisory Board.

FOR FURTHER INFORMATION CONTACT:
The Director, Bureau of Land Management (220), U.S. Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

The Secretary of the Interior, through the Director, Bureau of Land Management, manages domestic livestock grazing on public lands under three statutes: the Taylor Grazing Act of 1934, 43 U.S.C. Sec. 315 *et seq.* (1982); the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. Sec. 1701 *et seq.* (1982); and the Public Rangelands Improvement Act of 1978 (PRIA), 43 U.S.C. 1901 *et seq.* (1982).

FLPMA creates duties for the Secretary in planning how to manage livestock grazing on public lands. Specifically, section 402(d) of FLPMA states that the Secretary may incorporate in permits and leases authorizing livestock grazing on public lands documents known as "allotment management plans" (43 U.S.C. 1752(d) (1982)). These documents are statutorily defined as plans which:

(1) Prescribe the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic, and other needs and objectives as determined for the lands by the Secretary concerned;

(2) Describe the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) Contain such other provisions relating to livestock grazing and other objectives found by the Secretary to be consistent with the provisions of this Act and other applicable law.

(Sec. 103(k)–(3) of FLPMA, 43 U.S.C. Sec. 1702(k)(1)–(3) (1982))

The Taylor Grazing Act, FLPMA, and PRIA also direct the Secretary to improve the range conditions of public lands suitable for livestock grazing. (See Sec. 4 of the Taylor Grazing Act, 43 U.S.C. Sec. 315(c) (1982); Sec. 401(b)(1) of FLPM, 43 U.S.C. 1752(b)(1) (1982); and Sec. 2 of PRIA, 43 U.S.C. 1901 (1982).) In particular, section 401(b)(1) of FLPMA directs the Secretary to use fifty percent of the fees collected from persons grazing livestock on public lands "for the purpose of on-the-ground rehabilitation, protection and improvements" (43 U.S.C. 1751(b)(1) (1982)). The monies so used are known as "range betterment funds."

Congress charged the Secretary, in developing allotment management plans and expending range betterment funds, to consult and coordinate with persons holding permits or leases to graze livestock on public lands (see sections 401(b)(1) and 402(d) of FLPMA, 43 U.S.C. 1752(d) (1982)).

Advice from persons holding permits and leases to graze livestock on public lands, organized as grazing advisory boards, will further the Secretary's ability to carry out particular aspects of the duties created by all three statutes. The Secretary has determined that their advice and recommendations on those questions related solely to livestock grazing in developing allotment management plans and expending range betterment funds will be especially useful. To illustrate, fencing and water development to improve distribution of animals, altering the sequence of grazing, and manipulating the mixture of livestock species are all techniques considered in planning and managing livestock grazing. Seeding, fertilization, and numerous other projects may be useful in themselves of in combination in attaining range improvement to meet the needs of livestock grazing. Persons holding permits or leases to graze livestock on public lands will have relevant experience and specialized knowledge about what planned practices, operations, and improvements will yield the greatest return per dollar spent for managing livestock grazing.

History corroborates the last observation. From 1976 through 1986, the Secretary, through the Director, BLM, relied on FLPMA-created grazing advisory boards, composed solely of livestock grazing permittees and lessees, for specialized advice in developing allotment management plans and expending range betterment funds. Agency experience is that the boards' advice has proven invaluable by providing first-hand knowledge of on-the-ground situations. Board members' expertise in animal husbandry and production economics has complemented the agency's expertise in managing vegetation, soils, and waters. Permittees and lessees elected by their peers to serve on grazing advisory boards are knowledgeable and experienced in the design and economics of range improvements. They provide valuable advice to BLM district managers regarding the feasibility of projects, maintenance responsibility, and requirements and potential for cost sharing. Many grazing advisory boards have been useful in influencing their peers to match range betterment funds with private contributions to stretch scarce dollars. Board members have also had expertise in the very arena committeed to the agency—range ecology.

Legitimacy of agency decisionmaking also dictates that persons regulated by the Government have a voice in what it plans. Governmental decisionmaking becomes more effective when those who are regulated have an opportunity to offer their advice and counsel before a decision is issued. The BLM's own experience is the same. Where allotment management plans have been carefully and closely coordinated with grazing advisory boards, the individual permittees and lessees directly affected by those plans have been more willing to abide by them. The consideration of legitimacy also is particularly apt when it comes to the agency expending monies for improving the range. Persons holding permits or leases to graze livestock, through payment of fees, generate a substantial amount of revenue used for range improvements. Comity alone argues that they have a say in how the monies are expended.

To ensure that the memberships of the boards are fairly balanced in terms of the functions they are to perform, individual members will be elected by vote of the persons holding permits or leases to graze livestock on public lands within various geographic sub-units in the applicable district. Past experience indicates that the election process results in a membership of livestock permittees and lesses with a diversity of views on livestock issues. There are also

representatives of the various species of livestock common to that district.

The Secretary is mindful that the advice solicited from grazing advisory boards may overlap to some degree the efforts of the district advisory councils established by section 309 of FLPMA 43 (43 U.S.C. 1284 (1982)). But the overlap is complementary, rather than duplicative. The councils, composed of representatives from major citizens interest groups concerned about land use planning and multiple use management of the public lands, focus on how land use planning can accommodate multiple use relationships, while the grazing advisory boards offer specialized knowledge and advice about one particular use among many considered by the councils. The Secretary must have not only advice on how to accommodate livestock grazing with other uses, but also specific information and proposals on how best to manage livestock use in its own right. The boards further the latter interest.

The certification of establishment is published below.

Certification

I hereby certify that the establishment of Bureau of Land Management grazing advisory boards is necessary and in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Dated: May 8, 1986.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 86-10803 Filed 5-13-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[A20346-M]

Realty Action; Exchange of Public Lands, Pinal County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 6 S., R. 14 E.,
Sections 4 and 5.
T. 5 S., R. 14 E.,
Section 25.
T. 7 S., R. 13 E.,
Sections 3, 4, 5, 8, 17 and 22.
T. 8 S., R. 12 E.,
Section 32.
T. 7 S., R. 12 E.,
Sections 14, 21, 23, 25, 26, 28, 29, and 34.
T. 9 S., R. 11 E.,
Section 1.
T. 7 S., R. 10 E.,
Sections 5, 6, 7, 8, 14, 17, and 18.
T. 8 S., R. 10 E.,
Section 30.
T. 10 S., R. 9 E.,
Sections 17, 29, 30, and 31.
T. 5 S., R. 9 E.,
Section 6.
T. 9 S., R. 8 E.,
Sections 2 and 11.
T. 6 S., R. 8 E.,
Sections 25 and 26.
T. 5 S., R. 8 E.,
Section 34.
T. 10 S., R. 7 E.,
Sections 12, 13, and 24.
T. 5 S., R. 6 E.,
Sections 17 and 23.
T. 5 S., R. 5 E.,
Sections 14, 16, 17 and 21.
T. 7 S., R. 4 E.,
Sections 10, 15 and 21.
T. 5 S., R. 4 E.,
Section 13.

Containing approximately 18,274.34 acres.

Copies of complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027

Dated: May 8, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-10788 Filed 5-13-86; 8:45 am]

BILLING CODE 4310-32-M

Realty Action Correction; Recreation and Public Purposes Act Classification; Public Lands in Humboldt County, NV

The March 14, 1986, Notice of Realty Action pertaining to the above referenced Recreation and Public Purposes Act lease application by Humboldt County (Humboldt County Gun Range) is hereby corrected in respect to the legal description of the public lands. The public lands are corrected to read as follows:

Mount Diablo Base & Meridian, Nevada

T. 36 N., R. 38 E.,
Sec. 18, NE¼, N½SE¼.
240 acres.
Dated: April 28, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-10787 Filed 5-13-86; 8:45 am]

BILLING CODE 4310-HC-M

Idaho; Proposed Continuation of Withdrawals

Correction

In FR Doc. 86-9221, appearing on page 15549, in the issue of Thursday, April 24, 1986 make the following correction:

1. In the first column, in the seventh line from the bottom, "Sec. 21" should read, "Sec. 31".

BILLING CODE 1505-01-M

Bureau of Reclamation

Chikaskia Project, Kansas; Withdrawal of the Draft Environmental Statement

The Bureau of Reclamation published a Notice of Intent to prepare an Environmental Statement for the Chikaskia Project, Kansas, in the **Federal Register**, Vol. 44, No., 161, dated August 17, 1979.

The Draft Environmental Statement (DES81-43) was filed with the Environmental Protection Agency on October 2, 1981, and the Notice of Availability was published in the **Federal Register** on October 9, 1981.

The Environmental Impact Statement process is being terminated since almost 5 years have elapsed since the filing of the DES. The State of Kansas is in the process of preparing its State Water Plan and is stil looking at alternative ways of supplying the future water needs of Wichita.

If further planning is carried out on this project, a new DES will be

prepared, filed, and distributed by the Bureau of Reclamation.

Dated: May 7, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86-10777 Filed 5-13-86; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Pending Nominations; Arkansas et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 3, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 29, 1986.

Beth Grosvenor,

Acting Chief of Registration, National Register.

ARKANSAS

Arkansas County

Stuttgart, *Riceland Hotel*, Third and Main Sts.

Jefferson County

Pine Bluff, *Sorrells, Walter B., Cottage*, Off AR 104

MAINE

Somerset County

Caratunk Falls Archeological District

MARYLAND

Baltimore (Independent City)

Fells Point Historic District (Boundary Increase), Roughly bounded by Gough & Chester Sts., Fells Point, NW Harbor, Wills, Dallas and Eden Sts.

Baltimore County

Catonsville, *Mount de Sales Academy*, 700 Academy Rd.

Massachusetts

Essex County

Beverly, *U.S. Post Office—Beverly Main*, 161 Rantoul St.

Salem, *U.S. Post Office—Salem Main*, 2 Margin St.

MISSOURI

Howard County

Fayette, *Coleman Hall*, 502 N. Linn

St. Louis County

Webster Groves, *Central Webster Historic District*, Roughly bounded by W. & E. Cedar, Plant, and W. Maple Aves., E. & W. Jackson Rd. and Gray Ave

NEW JERSEY

Morris County

Florham Park, *Columbia School District No. 5 Schoolhouse*, 203 Ridgedale Ave.

UTAH

Summit County

Snyderville vicinity, *Ecker Hill Ski Jump*, Off Interstate 80

VIRGINIA

Petersburg (Independent City)

Petersburg, *St. Paul's Church*, 102 N. Union St.

Albemarle County

Charlottesville vicinity, *Old Mitchie's Tavern*, VA 53

Scottsville vicinity, *High Meadows*, Off VA 20

Richmond (Independent City)

Richmond, *Fan Area Historic District (Boundary Increase)* Roughly bounded by S. Harrison St., Richmond Metropolitan Area Expressway, S. Mulberry and W. Cary Sts.

WISCONSIN

Vernon County

Westby vicinity, *Norwegian Evangelic Lutheran Church and Cemetery*, Coon Prairie and E. Coon Prairie Rds.

Winnebago County

Menasha, *Augustin, Gustav, Block*, 68 Racine St.

Menasha, *Tayco Street Bridge*, Tayco and Water Sts.

Menasha, *Washington Street Historic District*, 214-216 Washington St.

[FR Doc. 86-10767 Filed 5-13-86; 8:45 am]

BILLING CODE 4310-70-M

United States World Heritage Nominations 1985

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the nomination of Hawaii Volcanoes National Park to the World Heritage List. The nomination is the result of Interior's annual World Heritage nomination process, for 1985, which was initiated through a March 4, 1985, **Federal Register** notice (50 FR 8680). The Department earlier announced the identification of this site as a proposed U.S. World Heritage nomination (50 FR 41749). The nomination has been submitted to the Secretariat of the World Heritage Committee for consideration through a process that could lead to its inscription on the World Heritage List in fall 1987.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Wright, Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 89 other countries, has estalished a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement through the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of a 21-member nation World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of World Heritage Fund, with the primary function to assist participating countries in preserving and protecting endangered World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and,

(f) The promotion and enhancement of public knowledge and understanding of the vital importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 216 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administative, and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of World Heritage properties situated within its borders.

The Federal Interagency Panel for World Heritage makes recommendations on proposed U.S. World Heritage nominations and related

matters. The Panel includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish Wildlife Service and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; the Department of Agriculture; the Departemnt of State; and then U.S. Information Agency.

The United States, the Department of the Interior is responsible of directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 6, 1982, the Department of the Interior published in the **Federal Register** (47 FR 23392) the rules which are used to carry out this legislative mandate (36 CFR 73). The rules contain further information on the Convention and its implementation in the United States.

United States World Heritage Nominations: 1986

The Department of the Interior, in cooperation with the Federal Interagency Panel for World Heritage, has selected the following property as a United States nomination to the World Heritage Committee for inscription on the World Heritage List.

Natural Property

Hawiian Islands

Hawaii Volcanoes National Park (190° 20' N.; 155° 20' W.). Contains outstanding examples of active and recent volcanism, along with successive stages of vegetation development on volcanic deposits. Criteria: (i) an outstanding example illustrating the earth's evoluntionary history; (ii) an outstanding example of significant geological processes; and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Dated: May 6, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-10766 Filed 5-13-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-227]

Annual Reports on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas F. Jennings (202-523-1539), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit reports to the Congress and the President on the impact of the act. The first report, covering calendar years 1984 and 1985, is to be submitted by September 30, 1986, and annual reports for subsequent calendar years are to be submitted by September 30 of the following year for the duration of the program (which is presently scheduled to terminate on Sept. 30, 1995). The Commission has instituted an investigation under section 332(b) of the Tariff Act of 1930 for the purpose of gathering and presenting such information through 1995.

As required by section 215(b) of the CBERA, the Commission in such reports will assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and will assess the probably future effect which the act will have on the United States economy generally and on such domestic industries.

In preparing its assessments, the Commission will analyze the production, trade and consumption of U.S. products affected by the act, taking into consideration employment, profit levels, and use of production facilities with respect to the domestic industries concerned, and such other economic factors as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production. The Commission will also describe the nature and extent of any significant change in employment, profit levels, and use of production facilities, and such other conditions as it deems relevant.

As required by section 215(c) of the act, the Commission will submit its first report, covering calendar years 1984 and 1985, by September 30, 1986. Subsequent annual reports for calendar years through 1995 will be submitted by September 30 of the following years.

Written Submissions

The Commission does not plan to hold public hearings in connection with these reports. However, interested persons are invited to submit written statements concerning the matters to be addressed in the respective reports. Commerical of financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's 1986 report should be submitted at the earliest practical date and should be received no later than June 7, 1986 and by May 1 of each successive year through 1996 for reports to be prepared in those years. All submissions should be addressed to the Secretary of the Commission at the Commission's Office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 724-0002.

Issued: May 7, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10873 Filed 5-13-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-212]

Convertible Rowing Exercisers; Commission Determination to Grant in Part a Petition for Reconsideration, to Deny a Motion to Amend the Scope of Investigation, and to Deny a Motion to Remand for Supplemental Findings

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has (i) granted a petition for reconsideration of its final action in

the above-captioned matter to the extent of correcting a footnote in its Action and Order of Dec. 5, 1985, and denied the remainder of the petition; (ii) denied a motion to amend the scope of investigation by deleting reference to certain patent claims; (iii) denied a motion to remand the investigation to the presiding administrative law judge (ALJ) for supplemental findings regarding patent infringement; and (iv) granted a motion to file a reply brief.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–523–0002.

SUPPLEMENTARY INFORMATION: On December 5, 1985, the Commission issued an Action and Order in the above-captioned investigation in which it determined to review and reverse the initial determination (ID) on one issue and not to review the remainder to the ID. The Commission's determination had the effect of finding no violation of 19 U.S.C. 1337 in the investigation on the ground that U.S. Letters Patent 4,447,071 (the '071 patent) was invalid for obviousness.

On December 20, Weslo, Inc., a respondent, petitioned for reconsideration to correct an error in footnote 2, page 1, of the Action and Order and to issue supplemental findings that Weslo articles do not infringe certain claims of the '071 patent. As the footnote is in error, the Commission has granted the petition to the extent of correcting the footnote. The Commission has denied the remainder of the petition on the ground that, as the matter had been addressed in a petition for review, it could not be raised in a petition for reconsideration.

Complainant Diversified Products Corp. moved (Motion No. 212–92–C) to delete certain claims from the scope of the investigation. In light of the disposition of the petition for reconsideration, the Commission has denied the motion as moot. The Commission has granted complainant's motion (Motion No. 212–93–C) to reply to Weslo's response to Motion No. 212–92–C.

The Commission investigative attorney has moved (Motion No. 212–94–C) for resubmission of the investigation to the ALJ for supplemental findings of fact and conclusions of law regarding infringement by Weslo of certain dependent claims of the '071 patent. The Commission has denied this motion because it is in substance a petition for reconsideration the subject matter of which is outside the scope of such petitions.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: May 5, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–10868 Filed 5–13–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701–TA–257 (Final)]

Fresh Atlantic Groundfish From Canada

Determinations

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Canada of fresh and chilled (whole) cod, haddock, pollock, hake, and flounders and other flatfish (except halibut), whether whole or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed, provided for in items 110.15 and 110.35 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce to be subsidized by the Government of Canada. Further, the Commission unanimously determines that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of otherwise processed (fillets and steaks) fresh and chilled cod, haddock, pollock, hake, and flounders and other flatfish (except halibut), provided for in items 110.50, 110.55, and 110.70 of the TSUS, which have been found by the Department of Commerce to be subsidized by the Government of Canada.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes, Lodwick, and Rohr made affirmative determinations. Chairwoman Stern, Vice Chairman Liebeler, and Commissioner Brunsdale made negative determinations. Pursuant to 19 U.S.C. 1677(11) (1988), when the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.

Background

The Commission instituted this investigation effective January 9, 1986, following a preliminary determination by the Department of Commerce that imports of certain fresh Atlantic groundfish from Canada were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 24, 1986 (51 FR 3268). The hearing was held in Washington, DC, on April 1, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 8, 1986. The views of the Commission are contained in USITC Publication 1844 (May 1986), entitled "Certain Fresh Atlantic Groundfish from Canada: Determinations of the Commission in Investigation No. 701–TA–257 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

May 8, 1986.

[FR Doc. 86–10878 Filed 5–13–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–171]

Glass Tempering Systems, Provisional Acceptance of Motion to Dissolve Limited Exclusion Order

AGENCY: International Trade Commission.

ACTION: Provisional acceptance of a motion to dissolve limited exclusion order.

SUMMARY: Pursuant to 211.57 of the Commission's rules (19 CFR 211.57), the Commission has provisionally accepted a motion (Motion No. 171–31"C") to dissolve the limited exclusion order issued at the conclusion of the above-

captioned investigation. Former parties to the investigation have 30 days from the date of service of the motion to file a response to the motion.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0070.

SUPPLEMENTARY INFORMATION: The presiding administrative law judge (ALJ) issued an initial determination (ID) on August 15, 1984, in that she determined that there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation or sale of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces that infringe claim 1 of U.S. Letters Patent 3,994,711 (the '711 patent). On September 17, 1984, the Commission issued notice of its determination not to review the ID (49 FR 37858), thereby adopting the findings and conclusion of the ALJ.

The Commission issued a limited exclusion order in the investigation on November 16, 1984. The order prohibits entry of glass tempering systems that infringe claim 1 of the '711 patent and are manufactured by or on behalf of respondent AB Kyro OY or related businesses, except license of the patent owner.

On March 14, 1986, pursuant to 211.57 of the Commission's rules, AB Kyro OY filed a motion (Motion No. 171–31"C") seeking dissolution of the exclusion order. Pursuant to rule 211.57, the Commission has provisionally accepted the motion, and former parties have 30 days from the date of service of the motion upon them to respond to the motion.

Copies of the motion and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 5, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–10869 Filed 5–13–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–226]

Mass Spectrometers and Components Thereof; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: S.N. Nermag and Delsi, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. Part 1337). On January 9, 1986, the presiding administrative law judge (ALJ) issued an initial determination granting the joint motion, filed by complainant and the above-referenced respondents, to terminate the investigation on the basis of a consent order agreement. On January 24, 1986, respondents filed a petition to review the initial determination, and on April 2, 1986, the Commission determined to remand the investigation to the ALJ for the purposes of making further findings on the issue of whether there was a meeting of mind between the parties on the consent order agreement, and issuing a new initial determination or order. Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 5, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission. 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: May 7, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–10872 Filed 5–13–86 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–237]

Miniature Hacksaws; Commission Decision to Review an Initial Determination Amending Complaint and Notice of Investigation to Add Ten Respondents

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (ID) (Order No. 10) amending the complaint and notice of investigation in the above-captioned investigation to add ten respondents.

AUTHORITY: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.55 and 210.56, 19 CFR 210.55 and 210.56.

FOR FURTHER INFORMATION CONTACT: Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, Telephone 202–523–1641.

SUPPLEMENTARY INFORMATION: On March 5, 1986, complainant The Stanley Works filed a motion (Motion No. 237–9) to amend the complaint and notice of investigation to add ten additional respondents. The presiding administrative law judge issued an ID granting the motion on April 7, 1986. No petitions for review of the ID were filed nor were any comments received from Government agencies.

The Commission has concluded that there is one issue that warrants review. Specifically, the Commission will review the following question:

Whether the ID comports with § 210.22(a) of the Commission's Rules of Practice and Procedure.

Written Submissions

The parties to the investigation and interested Govenment agencies are encouraged to file written submissions on the legal issue under review. Written submissions on the issue under review must be filed not later than the close of business on the second business day following publication of this notice in the **Federal Register**.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this review.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence maut request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must include a full statement of reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 9, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–10670 Filed 5–13–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–231]

Soft Sculpture Dolls Popularly Known as "Cabbage Patch Kids," Related Literature and Packaging Therefor; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: International Panasound, Ltd. (IPL).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 7, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments:

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: May 7, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–10671 Filed 5–13–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–266 (Final)]

Steel Wire Nails From the People's Republic of China

Determination

On the basis of the record [1] developed in investigation No. 731–TA–266 (Final), the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673 (b)), that an industry in the United States is materially injured by reason of imports from the People's Republic of China of one-piece steel wire nails made of round steel wire, provided for in item 646.25 and 646.26 of the *Tariff Schedules of the United States* (TSUS); similar steel wire of one-piece construction, of any diameter provided for in item 646.30 of the TSUS; two-piece steel wire nails, provided for in item 645.32 of the TSUS; and steel wire nails with lead heads, provided for in item 646.36 of the TSUS which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Notice of the institution of the Commission's final investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 30, 1986 (51 FR 3862). The hearing was held in Washington, DC on April 3, 1986. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting held on April 25, 1986.

[1] The "record" is defined in § 207.2 (i) of the Commission's *Rules of Practice and Procedure* (19 U.S.C. 207.2(i)).

[2] Commissioners Eckes, Lodwick and Rohr made affirmative determinations. Chairwoman Stern, Vice Chairman Liebeler, and Commissioner Brunsdale made negative determinations. Pursuant to 19 U.S.C 1677(11) (1980), when the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.

BEST COPY AVAILABLE

Background

The Commission instituted this final investigation, effective January 8, 1986, following a preliminary determination by the Department of Commerce that imports of certain steel wire nails from the People's Republic of China ("China") are likely to be sold at LTFV. Commerce's preliminary affirmative LTFV determination was published in the Federal Register of January 9, 1986 (51 FR 1025).

On June 5, 1985, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel on behalf of Atlantic Steel Co., Atlas Steel & Wire Corp., Continental Steel Corp., Davis-Walker Corp.,[3] Dickson Weatherproof Nail Co., Florida Wire & Nail Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Fabric Co., and Wire products Co. The petitions alleged that certain steel wire nails from China were being, or were likely to be, sold in the United States at LTFV. Accordingly, effective June 5, 1985, the Commission instituted investigation No. 731-TA-286 (Preliminary) under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States was materially injured, or was threatened with material injury, or the establishment of an industry in the United States was materially retarded, by reason of imports from China of certain steel wire nails provided for in TSUS items 646.25, 646.35, 646.30, 646.32, and 646.36. On July 22, 1985, the Commission notified the Department of Commerce of its affirmative determination [4] with respect to its preliminary investigation on the imports from China. As a result, Commerce continued its investigation on alleged LTFV sales of certain steel wire nails from China. Commerce's final determination with respect to LTFV imports from China was published in the Federal Register of March 25, 1986 (51 FR 10247).

The Commission transmitted its report on this investigation to the Secretary of Commerce on May 8, 1986. A public version of the Commission's report, Certain Steel Wire Nails from the People's Republic of China (investigation No. 731-TA-286 (Final)), USITC Publication 1842, contains the views of the Commission and information developed during the investigation.

Issued: May 8, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-10674 Filed 5-13-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-292, 293, 294, and 296 (Final)]

Welded Carbon Steel Pipes and Tubes From the People's Republic of China, the Philippines, and Singapore

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-292, 293, 294, and 296 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the following welded carbon steel pipes and tubes, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV).

Standard pipes and tubes [1] from the People's Republic of China (China), the Philippines, and Singapore (investigations Nos. 731-TA-292 through 294 (Final))

Light-walled rectangular pipes and tubes [2] from Singapore (investigation No. 731-TA-296 (Final))

Unless the investigations are extended, Commerce will make its final LTFV determinations on or before July 7, 1986 and the Commission will make its final injury determinations by Aug. 25, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: April 28, 1986.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth (202-523-0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from China, the Philippines, and Singapore are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on November 13, 1985, by counsel for the Committee on Pipe & Tube Imports (CPTI) and the individual members of the CPTI. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 780, Jan. 8, 1986).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21)days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)),

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[3] Davis-Walker withdrew as a petitioner by letter of Sept. 5, 1985.

[4] Chairwoman Stern and Vice Chairman Liebeler dissenting.

[1] For purposes of these investigations, the term "standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, .375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the *Tariff Schedules of the United States (Annotated) (TSUSA).*

[2] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4928 of the TSUSA.

the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on June 20, 1986, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on July 8, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 27, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 2, 1986 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 2, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 201.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 201.24) and must be submitted not later than the close of business on July 15, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 15, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 207.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 207.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 201.20).

Issued: May 9, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-10679 Filed 5-13-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-272 and 731-TA-319 (Preliminary)]

Operators for Jalousie and Awning Windows From El Salvador

Determinations

On the basis of the record [1] developed in investigation No. 701-TA-272 (Preliminary), the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from El Salvador of operators suitable for jalousie and awning windows, provided for in item 647.03 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of El Salvador.

The Commission also determines, on the basis of the record [1] developed in investigation No. 731-TA-319, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from El Salvador of operators suitable for jalousie and awning windows, provided for in item 647.03 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 19, 1986, petitions were filed with the Commission and the Department of Commerce by Anderson Corp., San Juan, PR, and Caribbean Die Casting Corp., Bayamon, PR, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and dumped imports of operators for jalousie and awning windows from El Salvador. Accordingly, effective March 19, 1986, the Commission insitituted preliminary countervailing duty investigation No. 701-TA-272 (Preliminary) and antidumping investigation No. 731-TA-319 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** or March 27, 1986 (51 FR 10581). The conference was held in Washington, DC, on April 11, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in the investigations to the Secretary of Commerce on May 5, 1986. The views of the Commission are contained in USITC Publication 1843 (May 1986), entitled "Operators for Jalousie and Awning Windows from El Salvador."

Issued: May 5, 1986.

By order or the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10675 Filed 5-13-86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

VOL 51 ISS 93 MY 14 1986

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30617]

Exemption; Wisconsin and Calumet Railroad Co., Inc.; Trackage Rights Exemption; Soo Line Railroad Co.

Soo Line Railroad Company has agreed to grant trackage rights to Wisconsin and Calumet Railroad Company, Inc., as follows:

Segment 1—between Wheeler Pit, WI, milepost (MP) 94.49, and Janesville, WI, MP 98.09 (overhead only);

Segment 2—between Janesville, MP 98.09, and Anderson, WI, MP 101.35 (local and overhead);

Segment 3—between Monroe, WI, MP 11.02, and Janesville, MP 9.46 (overhead only);

Segment 4—between Madison, WI, MP 138.79, and Middleton, WI, MP 146.72 (overhead only);

Segment 5—in Madison, between MP 138.79 and MP 167.09 (overhead only);

Segment 6—in Madison, between MP 139.79 and MP 138.58 (overhead only);

Segment 7—in Madison, between MP 166.72 (MP 34.19) and Janesville Sand & Gravel Company, MP 162.73 (local and overhead); and

Segment 8—in Waukesha, WI, between MP 20.50 and Chicago and North Western Transportation Company's connection, MP 20.31 (overhead only).

The trackage rights will be effective on May 1, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-10812 Filed 5-13-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-174 X]

Seaboard System Railroad, Inc., Exemption; Discontinuance of Trackage Rights in Muscogee County, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of trackage rights by Seaboard Systems Railroad, Inc., over two segments of track over Georgia Power Company's Dummy Line, a distance of approximately 1.35 miles, in Columbus, Muscogee County, GA, subject to standard labor protective conditions.

DATES: This exemption will be effective on June 13, 1986. Petitions to stay must be filed by May 29, 1986. Petitions for reconsideration must be filed by June 9, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 174 X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 29, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-11018 Filed 5-13-86; 8:43 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Arizona State Standard; Notice of Approval

AGENCY: Occupational Safety and Health Administration (OSHA), LABOR.

ACTION: Approval of the Arizona State standard, hoes for weeding and thinning crops.

SUMMARY: This notice approves the Arizona standard for Hoes for Weeding and Thinning Crops submitted for OSHA approval on September 6, 1985. The Arizona standard is an independent State standard for which there is no Federal OSHA equivalent. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. After opportunity for and review of public comment, OSHA has made the decision to approve this standard.

EFFECTIVE DATE: May 14, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Occupational Safety and Health Administration will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and Part 1902.

On October 29, 1974, notice was published in the **Federal Register** (39 FR 39037) of the approval of the Arizona plan and the adoption of Subpart CC to Part 1952 containing the decision. On June 20, 1985, notice was published in the **Federal Register** (50 FR 25561) granting final approval to the Arizona State plan, pursuant to section 18(e) of the Act.

Under its approved State plan, the Arizona Division of Occupational Safety and Health either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with the Arizona

Occupational Safety and Health Advisory Committee and other persons knowledgeable in the specific field for which the standards are being formulated, and the standards are submitted to the Arizona Industrial Commission for its approval. The Arizona plan provides for adoption of a standard as a State standard after public notice and hearing dates are published in accord with the Administrative Rules and Regulations of Arizona.

The State submitted a State initiated plan change by letter, with attachments, dated September 6, 1984, from Larry Etchechury, Director, Arizona Division of Occupational Safety and Health, to Russell B. Swanson, Regional Administrator, and incorporated the standard on Hoes for Weeding and Thinning Crops as part of its occupational safety and health plan. The subject standard prohibits the use of a hoe with a handle less than four feet in length for weeding and thinning crops, based upon the existence of other practical and adequate alternatives to the use of these short handled hoes. The Commission held two hearings on the standard (July 24, 1984 and August 2, 1984). After public testimony the standard was adopted on August 16, 1984 and became effective on November 15, 1984.

In accordance with Arizona's observance of restrictions which are set forth in the Appropriations Act for the U.S. Departments of Labor, Health and Human Services, and Education, and related agencies for FY 1986, Federal OSHA grant funds, awarded pursuant to section 23(g) of the Act, are not obligated or expended by the State to enforce this standard in farming operations which do not maintain temporary labor camps and employ ten or fewer employees.

B. Product Clause Issue

Section 18(c)(2) of the Act provides that State standards must be at least as effective as their Federal counterparts, and that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

There is no equivalent Federal standard or enforcement policy prohibiting the use of short handled hoes for thinning and weeding crops. Based on its own review and the absence of specific public comment on the issue, OSHA has found that there is a compelling local condition supporting Arizona's ban of the short handled hoe. Hoes are used in Arizona, principally, in the cultivation and harvesting of lettuce, which is sold in many States. The State of Arizona has approximately 40,200 acres of lettuce under cultivation, and ranks second only to California which has approximately 224,500 acres of lettuce under cultivation. Arizona's rank as a lettuce producer presents a risk of injury from the use of the "short handled hoe" to more workers in lettuce farming than are affected in any other State or in all the States combined, except, California.

OSHA also has found based on its own review and the absence of specific public comment on the issue that the proposed standard does not unduly burden interstate commerce. The available record shows no concern by farmers or other affected parties regarding any possible net additional cost for the use of hoes over 48 inches.

C. Public Participation

On November 8, 1985, OSHA published a **Federal Register** notice (50 FR 46462) requesting public comment on whether the Arizona standard meets both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by December 9, 1985, written comments and views regarding the Arizona standard on Hoes for Weeding and Thinning Crops and whether it should be approved by the Assistant Secretary. In response to this notice, one comment was received from John D. Arnold, Ph.D., Executive Director, Portable Practical Educational Preparation, Inc., Tucson, Arizona 85713. Dr. Arnold commented that there is a need for an effective standard on the use of the short handled hoe and that the Arizona standard conformed to the effectiveness and product clause requirements of section 18(c)(2) of the Act.

II. Decision

Having reviewed the State submission and public comments submitted in response to the November 8, 1985 **Federal Register** notice, OSHA has determined that:

(1) There are no comparable Federal standards or compliance policies that would apply to the conditions regulated by Arizona under this standard; thus OSHA determines that the State standard meets the "at least as effective" criterion of section 18(c)(2) of the Act; and,

(2) The record on this standard includes no evidence, developed by or submitted to OSHA, that the standard is not in compliance with the product clause test of section 18(c)(2) of the Act; therefore the standard is presumed to be in compliance with section 18(c)(2) of the Act.

OSHA therefore approves the Arizona standard on Hoes for Weeding and Thinning Crops.

E. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; Office of the Arizona Division of Occupational Safety and Health, Industrial Commission of Arizona, 800 W. Washington, Phoenix, Arizona 85007; and, the Office of the Director, Federal-State Operations, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

This decision is effective May 14, 1986.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed this 9th day of May, 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-10858 Filed 5-13-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-55; Exemption Application No. L-5764 et al.]

Grant of Individual Exemptions; North Dakota Automobile and Implement Dealers Insurance Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations

contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 86–55; Exemption Application No. L–5764]

North Dakota Automobile and Implement Dealers Insurance Trust (the Trust), Located in Fargo, North Dakota

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act shall not apply to the sale of certain tangible personal property (the Property) by the Trust to Association Services Inc., a wholly-owned subsidiary of the Automobile Dealers Association of North Dakota and the North Dakota Implement Dealers Association; provided that the sales price is not less than fair market value of the Property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 14, 1986 at 51 FR 8911.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.).

Tuohy, Wells, Kimble, Goolsbee, Hardy, Hervey & Associates, Inc., Profit Sharing Plan (the Profit Sharing Plan) and Tuohy, Wells, Kimble, Goolsbee, Hardy, Hervey & Associates, Inc., Pension Plan (the Pension Plan; together, the Plans), Located in Kansas City, Missouri

[Prohibited Transaction Exemptions 86–56; Exemption Application No. D–5914]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain improved real property to Westport Management Services, Inc. (the Buyer), a party in interest with respect to the Plans, provided that the sale price is at least fair market value on the date of sale; and (2) the concurrent extension of credit from the Plans to the Buyer, provide that the terms are no less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1986 at 51 FR 7145.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Allright Auto Parks, Inc. Profit Sharing Plan and Trust (the Plan), Located in Houston, Texas

[Prohibited Transaction Exemption 86–57; Exemption Application No. D–6083]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to Allright Auto Parks, Inc. of a certain parcel of improved real property, provided that the terms of the proposed sale, including the sale price, are at least as favorable to the Plan as an arm's-length transaction with an unrelated party at the time of the consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, at 51 FR 9291.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Marprowear Corporation Profit Sharing Plan and Trust (the Plan), Located in West Orange, New Jersey

[Prohibited Transaction Exemption 86–58; Exemption Application No. D–6330]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved commercial real property to Martin Riback, Charles Riback and Joseph Weinberg, the trustees of the Plan, provided that such sale is on terms not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1986 at 51 FR 7147.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Richland Corporation Pension Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 86–59; Exemption Application No. D–6403]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution to the Plan of certain improved real property (the Property) by the Richland Corporation, the Plan sponsor, provided the Property will be valued for contribution purposes at no greater than its fair market value at the time of contribution.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption refer to the notice of proposed exemption published on February 21, 1986 at 51 FR 6331.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Optical Corporation of America, Inc., Restated Retirement Plan (the Plan), Located in Louisville, Kentucky

[Prohibited Transaction Exemption 86–60; Exemption Application No. D–6420]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale to the Plan of one parcel of improved real property (the Property) by FoCal Realty Company, a party in interest with respect to the Plan; and (2) the lease of the Property to Optical Corporation of America, Inc., a party in interest with respect to the Plan; provided that the sales price is not greater than the fair market value of the Property and that the terms and conditions of the proposed transaction are at least as favorable to the Plan as those obtainable from an unrelated third party.

Written Comments: The Department received one written comment from an interested person. However, the Department finds that this comment does not relate to the terms of the proposed transaction. Therefore, after consideration of the entire record, the Department has determined to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 21, 1986 at 51 FR 6332.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Wynne Building Corporation Employees Pension Trust (the Plan), Located in Miami, Florida

[Prohibited Transaction Exemption 86–61; Exemption Application No. D–6425]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of $750,000 (the Loan) secured by a first mortgage on certain real property (the Property) by the Plan to Wynne Building Corporation, a Florida corporation and a party in interest with respect to the Plan, provided that the terms of the Loan are and remain at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1986 at 51 FR 7148.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Forwarders List Money Purchase Pension Plan (the Money Purchase Plan) and Forwarders List Pension Plan (the Pension Plan; collectively, the Plans), Located in Baltimore, MD

[Prohibited Transaction Exemption 86–62; Exemption Application Nos. D–6428 and D–6429]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans (the Loans) of the lesser of $64,000 by the Money Purchase Plan, and $64,000 by the Pension Plan, or 25 percent of each of the Plans' assets, to the Ten Church Lane Partnership, a party in interest with respect to the Plans, provided the terms and conditions of the Loans are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

Comments: The applicant advised the Department that the notice of proposed exemption erroneously stated that the sponsor of the Plans, the Forwarders List of Attorneys, has an office in Chicago, Illinois when in fact the Forwarders List of Attorneys has no such office currently.

After consideration of the entire record, the Department has determined to grant the exemption as corrected.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 14, 1986 at 51 FR 8917.

For further information contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Eastern Carolina Neurosurgical Associates, Inc. Employees Retirement Plan (the Plan), Located in Greenville, North Carolina

[Prohibited Transaction Exemption 86–63; Exemption Application No. D–6503]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed purchase of 16,000 shares of First Federal Savings and Loan Association of Pitt County common stock (the Stock) by the individually directed account of Robert L. Timmons (Dr. Timmons) in the Plan from Dr. Timmons, a party in interest with respect to the Plan; and (2) the proposed purchase of 15,000 shares of the Stock by the individually directed account of Ira M. Hardy II (Dr. Hardy) in the Plan from Dr. Hardy, a party in interest with respect to the Plan, provided that the price paid for the Stock is no greater than the fair market value of the Stock on the date of purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1986 at 51 FR 9294.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) These exemptions are supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the t that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material ts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-10765 Filed 5-13-86; 8:45 am]

BILLING CODE 4510-29-M

Grant of Individual Exemptions; Johnson and Swanson Cash or Deferred Profit Sharing Plan et al.; Amendment

In the **Federal Register** dated April 29, 1986, (51 FR 15973) the Department of Labor published a notice granting PTE 86-52, PTE 86-53 and PTE 86-54.

Each of the exemptions is hereby amended by adding the following:

"Effective Date: This exemption is effective April 15, 1986."

Signed at Washington, DC, this 5th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration.

[FR Doc. 86-10764 Filed 5-13-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6531 et al.]

Proposed Exemptions; Minnesota Mutual Fire & Casualty Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Minnesota Mutual Fire & Casualty Co. Employee Pension Plan (the Plan) Located in Minnetonka, Minnesota

[Application No. D-6531]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of an annuity contract to the Plan by Minnesota Mutual Life Insurance Company (MML), provided the following conditions are met:

(a) MML—

(1) Is a party in interest with respect to the Plan by reason of its ownership of guaranty fund certificates of Minnesota Mutual Fire and Casualty Company (MMF&C),

(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Minnesota, within the 18 months prior to the date when the transaction is entered into, or when such certificates were last made available by the domiciliary state, if earlier, and

(4) (A) Has undergone a financial examination (within the meaning of the law of its domicilary state, Minnesota) by the Insurance Commissioner of Minnesota within 5 years prior to the end of the year preceding the year in which the subject transaction occurs; or

(B) Has undergone an examination by an independent certificated public accountant for its last completed taxable year immediately prior to the taxable year of the subject transaction.

(b) The Plan pays no more than adequate consideration for the annuity contract;

(c) No commissions are paid with respect to the sale of the contract; and

(d) For each taxable year of MML, the gross premiums and annuity considerations received in that taxable year by MML for life and health insurance or annuity contracts for the Plan, MMF&C, and all employee benefit plans (and their employers) with respect to which MML is a party in interest by reason of a relationship to such employer described in section 3(14)(E)

or (G) of the Act, or by reason of its ownership of guaranty fund certificates, does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by MML. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means that total of premiums and annuity considerations received, reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by MML.

(2) All premiums and annuity considerations written by MML for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

One of the conditions of PTE 79–41 is that the insurance company making the sale is a party in interest or disqualified persons with respect to the plan by reason of a stock or partnership (including a joint venture) affiliation with the employer establishing or maintaining the plan that is described in section 3(14) (E) or (G) of the Act and section 4975(e) (2) (E) or (G) of the Code (the Affiliation Condition). The applicants represent that MML is unable to meet this condition because MML owns 100% of the guaranty fund certificates of MMF&C, but is not a shareholder or partner of MMF&C (see rep. 1, below). However, the Department did state in PTE 79–41 that, where warranted by the circumstances and merits of a particular case, the Department would consider individual cases for possible additional exemptive relief.

Summary of Facts and Representations

1. MMF&C, which is the Plan sponsor, is a Minnesota mutual insurance company. MMF&C is controlled by MML, a Minnesota insurance corporation. MML holds all of the outstanding certificates of the guaranty fund of MMF&C. Under Minnesota law, a mutual fire insurance company may establish a guaranty fund which is divided into certificates. Each certificate holder of record is in essence a member of the mutual fire insurance company and is entitled to one vote in any meeting of the members of the company for each $10 investment in guaranty fund certificates. Certificate holders are also entitled to elect at least one-half of the total number of directors of the mutual fire insurance company. In this case, MML is entitled to elect all of the directors of MMF&C.

2. The Plan was established by MMF&C, effective as of January 1, 1985. The Plan is a defined benefit plan, with approximately 67 participants, which is similar to the MML defined benefit plan. It is expected that there will be movement of personnel between the two employers, and the two employers desire to have comparability of benefits. Further, as part of that comparability, the two employers desire to have the same type of plan investments.

3. The MML plan is currently funded by an annuity contract issued by MML. MMF&C desires to have the trustees of the trust established to fund the Plan buy a similar contract from MML. Because MML controls MMF&C through its position as a certificate holder, the applicants represent that MML is a party in interest, disqualified person and a fiduciary with respect to the Plan. The acquisition of the annuity contract is therefore a prohibited transaction, and the applicants represent that PTE 79–41 is not applicable because MML cannot satisfy the Affiliation Condition. However, as previously noted, MML controls MMF&C.

4. The applicants represent, however, that the transaction would satisfy all conditions of PTE 79–41 other than the Affiliation Condition:

(a) MML owns all of the outstanding certificates of the guaranty fund of MMF&C and thus controls MMF&C, the Plan sponsor;

(b) MML is licensed to sell insurance in Minnesota as well as several other states;

(c) MML has obtained all appropriate certifications from the Insurance Commissioner of Minnesota, its domiciliary state;

(d) MML has undergone appropriate financial examinations, including a recent one for the year ending December 31, 1985, performed by the independent certified public accounting firm of Peat, Marwick, Mitchell & Co.;

(e) No more than adequate consideration will be paid for the annuity contract to be purchased from MML. The pricing method will be the same as that used for the similar contract which funds the MML Plan;

(f) No commissions will be paid with respect to the annuity contract to be purchased from MML; and

(g) The premiums on the annuity contract will not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance of MML for any applicable taxable years. MML is a sizable life insurance company with assets in excess of $3 billion as of December 31, 1985.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) All of the protections provided by PTE 79–41 are provided to the Plan, except that the Affiliation Condition cannot be satisfied, although MML controls MMF&C; (b) MML is a sound, viable life insurance company which does a substantial amount of business with unrelated parties; and (c) the Plan's trustees have determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Superior Stamp and Coin Co., Inc. Money Purchase Pension Plan (the Pension Plan) and Superior Stamp and Coin Co., Inc. Profit Sharing Plan (the Profit Sharing Plan; Collectively, the Plans) Located in Los Angeles, California

[Application Nos. D–6255 and D–6256]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the December 31, 1985 sale by the Plans of an undivided 51% interest in certain real property (the Property) to Olympic Capital Ventures (the Partnership), for cash in the amount of $675,000, provided that such amount was not less than the greater of (1) the Plans' total expenditures in acquiring and holding their interest in the Property up to the date of sale; or (2) the fair market value of the Plans' interest in the Property on the date of sale.

Effective Date: If granted, the exemption will be effective December 31, 1985.

Summary of Facts and Representations

1. The Plans are comprised of a money purchase pension plan which had nineteen participants and net assets of $974,831 as of December 31, 1984 and a profit sharing plan which had nineteen participants and net assets of approximately $1,702,577 as of December 31, 1984. The assets of the Plans are commingled for investment purposes. The trustees (the Trustees) of the Plans are Messrs. Mark, Harold and Ira Goldberg, and Henry Casden. Mr. Casden, an attorney, was appointed as a trustee of and as the independent fiduciary for the Plans on November 10, 1983. Mr. Casden represents that he has no business or ownership relationships with Superior Stamp and Coin Co., Inc. (the Employer), the Partnership, or any of the partners in the Partnership. Messrs. Mark, Harold, and Ira Goldberg are directors and shareholders of the Employer, as well as partners in the Partnership. The Partnership is a general partnership comprised of Messrs. Mark, Harold, Ira, and Larry Goldberg, all of whom are equal partners.

2. The Property is an 11,000 square foot tract located at 9478 West Olympic Boulevard, Beverly Hills, California. The Property was previously the site of a U.S. Post Office building. When an opportunity to invest in the Property arose in 1983, the Trustees determined that the Plans and the Partnership should invest together in the Property, enter into a co-tenancy agreement and, as co-tenants, ground lease the Property to the Partnership, which would demolish the then-existing building (the Post Office Building) on the Property and construct a new three-story office building (the Building) on the site, approximately 32% of which would then be leased by the Partnership to the Employer.

3. On August 10, 1983, the Plans made a down payment on the Property of $50,775.93. The previous owners of the Property (the Sellers), who are unrelated to the Plan, the Partnership and the Employer, set the purchase price of the Property at $1,300,000, agreeing to accept $325,000 in cash and requiring the Plan and the Partnership to execute a note for the remaining $975,000. On November 3, 1983, Mr. Mark Goldberg, on behalf of the Plans, and the partners (the Partners) of the Partnership and their wives signed a deed of trust note (the Note) payable to the Sellers in the amount of $975,000, at 12% interest per annum. The terms of the Note provided that interest was payable monthly beginning January 1, 1984 and until January 3, 1985, with principal payments of $455,000 due on January 5, 1984 and $520,000 due on January 5, 1985. The applicants represent that the Note was fully paid as of January 5, 1985. The applicants represent further that the Plans paid their share of the Note off first so as to minimize their interest expenses.[1] The applicants state that as of February 3, 1985, the Plans had paid a total of $650,000 for their interest in the Property and the Partnership had paid $651,600. The deed to the Property shows the Plans as having a 51% undivided interest in the Property and the Partnership as having a 49% undivided interest in the Property.[2] Despite the Plans' 51% ownership, the applicants state that, until April 9, 1985, expenses with respect to the Property were divided equally between the Plans and the Partnership. Since April 9, 1985, the Partnership has paid all expenses with respect to the Property. The applicants represent that as of November 26, 1985, the Plans' total investment in the Property, including expenses incurred by the Plans with respect to the Property, was $667,085.

4. On September 4, 1984, the Plans and the Partnership entered into a co-tenancy agreement (the Co-Tenancy Agreement). On the same date the Plans and Partnership, as lessors, entered into a ground lease (the Ground Lease) of the Property to the Partnership, as lessee, for a term of fifty-five years with options to extend the Ground Lease for four additional periods of five years each. The Co-Tenancy Agreement obligated the Partnership to construct a multi-story office building on the Property and stated that such improvements were to be owned and operated by the Partnership as lessee under the Ground Lease, and that the only interest of the Plans in the improvements would be as co-lessor under the Ground Lease. Subsequently, in November, 1984, the Partnership, at its own expense, demolished the Post Office Building on the Property and cleared the resulting debris.

5. The applicants represent that, other than the demolition of the Post Office Building and the clearing of resulting debris, no actual use of the Property was made by the Partnership until January 11, 1985. On January 10, 1985, the Partnership was notified of an imminent change in zoning in the area where the Property is located. On January 11, 1985, the Partnership obtained a building permit and erected a power pole and barricade on the Property. The applicants state that these actions were taken in order to protect both the Plans and the Partnership from an imminent zoning change which would have resulted in a significant decrease in the value of the Property. This zoning change was enacted by the Beverly Hills City Council on January 15, 1985, and had the effect of reducing from three to two the number of stories of any building which could be built in the area where the Property is located. All projects for which building permits had already been issued and construction had begun, however, were exempted from the new rules. Between January 11, 1985 and January 15, 1985, the Partnership contacted Mr. Casden and informed him of the proposed zoning change and the actions taken and to be taken to preserve the value of the Property. Mr. Casden, acting as the sole trustee of the Plans having authority to act on behalf of the Plans with respect to the Property, approved of those actions.

6. The applicants acknowledge that the Partnership's use of the Property in commencing construction constituted a prohibitied transaction and represent that any excise taxes due as a result will be paid within 60 days of the date of a grant of the proposed exemption.

7. On August 29, 1985, Mr. Frankfort, an M.A.I. appraiser located in Los Angeles, California, stated that, based on two earlier appraisals of the Property which he had made on January 17, 1985 and May 30, 1985, subsequent market conditions and a personal inspection of the Property, it was his opinion that the fair market value of the Property, as of August 27, 1985 and exclusive of improvements, was $1,300,000. Based on this figure, the fair market value of the Plans' 51% percent interest in the Property would be $663,000. Mr. Frankfort stated further that as of that date the fair market value of the partially completed improvements on the Property was no greater than the cost expended on them.

8. The Ground Lease, entered into on September 4, 1984 between the Plans and the Partnership, as co-lessors, and the Partnership, as lessee, contained a

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[1] The Department expresses no opinion as to whether the acquisition of the interest in the Property by the Plans or any aspect thereof violated any provision of Part 4 of Title I of the Act.

[2] The Department notes that a deed dated November 10, 1983, showed title as passing from the Sellers to the Partners and the Plans, with each of the four Partners and their wives taking a 20% undivided interest in the Property and with the Plans taking a 20% undivided interest. The applicants state that a corrected deed, showing the Plans as having an undivided 51% interest in the Property, was recorded on December 5, 1985. The Department notes that the failure to have the Plans' interest in the Property properly recorded initially and during this time may have violated provisions of Part 4 of Title I of the Act. The Department is proposing no exemptive relief for any such violations.

condition precedent which stated that, if the condition precedent was not met, the Ground Lease "shall never become effective and automatically shall become null and void." The condition precedent was not satisfied, and in an opinion of counsel issued by Stephen Clamen, Esq., of the law firm of Greenburg, Glusker, Fields, Clamen & Machtinger, Los Angeles, California, the Ground Lease was declared to be null and void. The opinion of counsel states further that since the Ground Lease is null and void, the Plans may be deemed to own a 51% interest in any improvements on the Property. As the improvements, however, were financed solely by the Partnership and were ratified by or acquiesced in by Mr. Casden on behalf of the Plans, the Partnership would have a right of contribution against the Plans to recover 51% of their costs in constructing the improvements. Mr. Casden, as the independent fiduciary for the Plans, concurs with this opinion.

9. In order to end the ongoing prohibited transaction and to provide the Plans with more liquidity and more marketable assets, Mr. Casden determined that the Plans should sell their 51% interest in the Property on December 31, 1985 to the Partnership for cash in the amount of $675,000, which was the amount determined by Mr. Casden, as the independent fiduciary for the Plans, to be the fair market value of the Plans' 51% interest in the Property as of December 31, 1985. The applicants represent that they will pay the Plans appropriate back rental and interest on such rental for the Partnership's use of the Property from January 11, 1985, the date that construction commenced, until December 31, 1985, the date of sale, if and as determined to be due by Mr. Casden on behalf of the Plans.

10. The applicants state that the sale of the Plans' interest in the Property was appropriate for and in the best interest of the Plans because (1) the sale price of the Plans' interest in the Property was determined by an independent fiduciary acting solely on behalf of the Plans; (2) the sale substantially increased the liquidity of the Plans and will enable them to invest the proceeds in more marketable investments; and (3) the sale permitted the Plans to terminate an ongoing prohibited transaction.

11. In summary, the applicants represent that the transaction meets the statutory criteria of section 408(a) of the Act because: (1) The terms of the sale were determined by an independent fiduciary acting solely on behalf of the Plans; (2) the Plans were able to divest themselves of an illiquid asset constituting a significant portion of their portfolio and will be able to invest the proceeds in more marketable investments; (3) the sale was a one-time transaction for cash; and (4) an independent fiduciary determined that the sale and the terms and conditions of the sale were appropriate for and in the best interest of the Plan's participants and beneficiaries.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of May, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–10833 Filed 5–13–86; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86–36)]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee (SESAC).

DATE AND TIME: June 4, 1986, 9:30 a.m. to 5:30 p.m.; June 5, 1986, 8:30 a.m. to 5 p.m.; June 6, 1986, 8:30 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The committee is chaired by Dr. Louis Lanzerotti and is composed of 30 members. The committee operates both through a number of informal subgroups and as a whole. The meeting will be closed to the public on June 4, 1986, from 4:15 p.m. to 5:15 p.m. During this session the committee will discuss and evaluate candidates being considered for membership. Throughout the session the qualifications of candidates will be candidly discussed and appraised. Since this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the

public. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including committee members and other participants).

Type of meeting: Open, except for a closed session as noted in the agenda below.

Agenda

June 4, 1986

9:30 a.m. Announcements, Review of Agenda.
9:45 a.m. Review of Program Status: FY 1987 Budget in Congress, Shuttle Manifest, Status of Major Projects, Program Planning and Program Issues, and Prospects for the FY 1988 Budget.
11:30 a.m. Introduction to the New Start Discussions.
1 p.m. Presentations on Candidate New Starts; Advanced X-Ray Astrophysics Facility (AXAF).
2 p.m. Comet Rendezvous/Asteroid Flyby Mission (CRAF).
3:15 p.m. Global Geospace Science Program.
4:15 p.m. Closed Session to Discuss New Membership.
5:30 p.m. Adjourn.

June 5, 1986

8:30 a.m. General Discussion of Procedures for Arriving at Recommendations.
9 a.m. Splinter Meetings to Discuss New Starts, Program Priorities, Budget and Planning Issues.
1:15 p.m. Plenary Session to Discuss New Starts, Program Priorities, Budget and Planning Issues; Formulation of Preliminary Recommendations.
5 p.m. Adjourn.

June 6, 1986

8:30 a.m. Formulation of Committee Recommendations on Program Planning and Priorities.
10:15 a.m. General Discussion of SESAC Study Report.
1:15 p.m. Continuation of Discussion of SESAC Study Report/Plans for Completion of Study.
2:45 p.m. Meeting Summary; Recommendations and Plans for Next Year.
3:30 p.m. Adjourn.

Dated: May 8, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-10783 Filed 5-13-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Emerging Engineering Systems Section Advisory Committee; Meeting

The National Science Foundation announces the following advisory committee meeting:

Name: Advisory Committee for the Emerging Engineering Systems Section.

Date and time: May 30, 1986, 8:30 a.m.—5:00 p.m.

Place: National Academy of Sciences, Joseph Henry Building, Room 453, 2122 Pennsylvania Avenue NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. Jerome S. Schultz, Section Head, Emerging Engineering Systems, Division of Fundamental Research for Emerging and Critical Engineering Systems, National Science Foundation, 1800 G Street, NW., Room 1132, Washington, DC. 20550, Telephone: (202) 357-7955.

Summary Minutes: May be obtained from Contact Person listed above.

Purpose of Meeting: To provide advice and recommendations concerning fundamental research for emerging engineering systems.

Agenda: Review of Program Awards in Biotechnology, Bioengineering, Aid to the Handicapped, Lightwave Technology.

Current Plans and Program Goals.
Future Thrust Areas and Activities.

Dated: May 8, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-10866 Filed 5-13-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co.; Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43 for the Fermi-2 facility, issued to Detroit Edison Company (the licensee), for operation of the Fermi-2 plant, located in Monroe County, Michigan.

The amendment would revise the Fermi-2 Technical Specifications to add new values for the physical characteristics of the d–c batteries. Specifically, the limits and the allowable values for the float voltage and the specific gravity of the electrolyte solution are being revised. The proposed change is requested to permit the replacement of the Division 1 and Division 2 d–c source batteries. This replacement of the d–c batteries will be accomplished in a staggered fashion with Division 1 being changed first during the present outage. Division 2 will also be changed during this outage if there is sufficient time to do so during this outage; otherwise, the present Division 2 d–c batteries will be replaced no later than the first refueling outage. The purpose of this change is to enhance the reliability of the d–c batteries. These proposed changes are contained in the licensee's application for an amendment to the Fermi-2 Technical Specifications in its letter dated May 5, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration because the changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the capacity and the characteristics of both the original and the replacement d–c batteries meet the original Fermi-2 design requirements; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new possibility for an accident is introduced by modifying the specifications for the surveillance testing of the batteries; or (3) involve a significant reduction in the margin of safety because the replacement batteries' ability to satisfy their design requirements is not reduced from the original design characteristics of the plant.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By June 13, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with repect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have to opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esquire, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitons for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the fastors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for the amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Bethesda, Maryland, this 9th day of May 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86–10842 Filed 5–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72–1]

General Electric Co.; Issuance of Amendment to Materials License

The U.S. Nuclear Regulatory

Commission (the Commission) has issued Amendment No. 4 to Materials License No. SNM–2500 held by the General Electric Company for the receipt and storage of spent fuel at the General Electric Morris Operation, located in Grundy County, Illinois. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to extend the range of the Water Fuel Correction Graph, Figure 2–2.b. The purpose of this specification is to provide for an independent check of rod lattice k-infinity for boiling water reactor (BWR) fuel bundles received. No change to k-infinity limits set in the Technical Specifications is made. Consequently, no change in criticality safety margins occurs.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see: (1) The application for amendment dated March 28, 1986, and (2) Amendment No. 4 to License No. SNM–2500, and (3) the Commission's letter to the licensee dated May 7, 1986. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Silver Spring, Maryland, this 7th day of May 1986.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 86–10841 Filed 5–13–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company, Haddam Neck Plant; Exemption

I

The Connecticut Yankee Atomic Power Company (CYAPCO or the Licensee) is the holder of Operating License No. DPR–61 which authorizes operation of Haddem Neck Plant. The License provides, among other things, that the Haddam Neck Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a single-unit pressurized water reactor at the Licensee's site located in Middlesex County, Connecticut.

II

On March 25, 1986 (CYAPCO), reported that the results of analyses of a of a small limited range of break sizes in one loop of reactor coolant system (RCS) for which safety injection flow during only the high pressure recirculation mode may be insufficient to provide adequate core cooling. By letter dated April 10, 1986, CYAPCO identified measures to provide adequate core cooling in the event of a small-break loss-of-coolant accident (LOCA).

CYAPCO's proposed immediate corrective action measures included the use of the high pressure safety injection (HPSI) system, the residual heat removal (RHR) system and certain operator actions. However, CYAPCO noted that two valves, which are used during the HPSI recirculation mode, do not meet the prescribed single failure requirements.

Provisions requiring consideration of single failures in this context are set forth both in GDC 35 and the Interim Acceptance Criteria. GDC 35 provides, in applicable part, as follows:

> A system to provide abundant emergency core cooling shall be provided . . . to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure.

Further, the Interim Acceptance Criteria, to which Haddam Neck was originally evaluated, provide as follows:

> The combination of systems used for analyses should be derived from a failure mode and effects analyses, using the single failure criterion. (Interim Acceptance Criteria for Emergency Core Cooling Systems for Light Water Power Reactors, Appendix A, Part 3, 36 FR 12240).

III

For the following cases, a small break LOCA with a break size between 0.02 ft^2 and 0.045 ft^2 in the number 2 cold leg between the charging entry nozzle and the reactor vessel or in the charging line downstream from the inline check valve, adequate recirculation flow might not be delivered to the core. If the break is less than 0.02 ft^2, the charging pumps provide adequate makeup flow, and if the break is greater than 0.045 ft^2, the reactor coolant system (RCS) would depressurize rapidly enough to use the RHR pumps. By letter dated April 10, 1986, CYAPCO proposed a HPSI pump recirculation mode to provide adequate flow to the core for the above cases of small break LOCAs until CYAPCO could identify and establish a permanent resolution. By letter dated April 22, 1986, CYAPCO requested a temporary exemption from the single failure criteria for two valves outside of containment that would be used under procedurally defined conditions to respond to small break LOCAs. On April 23, 1986, the staff and CYAPCO met to discuss this exemption. During this meeting, CYAPCO agreed there were several actions that could be taken to improve the emergency procedures the operators would follow to respond to such events. By letter dated April 25, 1986, CYAPCO formalized several commitments made during this meeting, including the conduct of special training to assure operator awareness of both the actions to be taken and the reasons behind those actions.

To operate a HPSI in a high pressure recirculation mode, the HPSI system must be realigned from the RWST to the RHR pump discharge. This requires closing valve SI–MOV–24 to isolate the RWST, and opening valve RH–MOV–784 to align suction from the RHR system which draws from the containment sump. These valves do not meet the prescribed single failure requirement. These valves are outside of containment and can be aligned manually if necessary. Even if these valves cannot be aligned, the HPSI or charging pumps could inject water from the RWST at a rate sufficient to cool the core for several hours. The operator will assure the core is being adequately cooled by monitoring the core exit thermocouples and reactor vessel level instrumentation. The injection from the RWST at low flow can provide adequate time for the operator to depressurize the RCS, allowing the RHR pumps to be used in the recirculation mode.

The licensee has recently tested the valves in the HPSI suction line and

determined them to be operable. Also, CYAPCO has committed to impose a monthly surveillance and cycling requirement for these valves to provide assurance of valve operability. Additionally, during this refueling, CYAPCO conducted a 100% ultrasonic examination of the welds in the piping between the last check valve in loop 2 charging and the RCS main loop, including the joint to which the piping segments are connected. The probability of breaks in this piping is greatest at the weld locations. This examination provides further evidence that the probability of a break occurring in this piping remains remote. Based on all of the above, the staff concludes that the measures taken by CYAPCO will provide reasonable assurance that adequate core cooling for a small break LOCA at the Haddam Neck Plant can be accomplished.

The NRC staff's consideration of the safety aspects of the requested exemption has been discussed in detail above. The high pressure recirculation mode using the charging pumps has been found to be deficient for a narrow spectrum of breaks, whereas the safety benefits derived from using the HPSI pumps recirculation mode represent a capability for a much broader range of postulated breaks. CYAPCO has estimated that the implementation of the proposed interim response measure (use of HPSI pumps during the recirculation) decreases the overall core melt frequency associated with small and medium break LOCAs at Haddam Neck by approximately 27 percent over the original design. Thus, the licensee has concluded that the granting of the requested exemption will be a net benefit to plant safety.

CYAPCO has significantly upgraded their accident analyses for the Haddam Neck Plant in the past few years. This upgrade involved reanalyses of large and small break LOCA events, and non-LOCA events, including analyses performed in connection with the response to TMI Action Plan Items II.K.3.5, II.K.3.30, and II.K.3.31. In the recently completed probabilistic safety study (PSS) for the Haddam Neck Plant, CYAPCO identified the ECCS system sensitivity to breaks in loop 2 or the charging line during the recirculation phase of a small break LOCA. The present condition was identified as a result of CYAPCO's own initiatives to reevaluate Haddam Neck's LOCA analyses. Once identified, CYAPCO has shown diligence and willingness to resolve this safety issue. In the proposed immediate corrective action, CYAPCO identified a non-conformance with the prescribed single failure requirements. CYAPCO promptly evaluated this non-conformance and provided an exemption request with a basis for operation while in non-conformance with the single failure requirement. The staff has concluded that CYAPCO has been expeditious in its efforts to satisfy the ECCS requirements, including the IAC.

Based on its review, the staff concludes that issuance of this temporary exemption will have no significant effect on plant safety. Further, the licensee has shown good faith in rectifying the problem and in attempting to comply with the Commission's regulations as promptly as practicable.

IV

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (51 FR 15708).

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(v), the requested temporary exemption is authorized by law and will not endanger life or property or the common defense and security. Therefore, the Commission hereby grants the temporary exemption from the requirements of General Design Criteria 35 of Appendix A to 10 CFR Part 50 and the Interim Acceptance Criteria for valves RH–MOV–784 and SI–MOV–24 for the period of cycle 14 operation. By September 1986, CYAPCO shall provide a description of the long-term resolution of this issue and a schedule for completion of any plant modifications. Thereafter, the Director of the Office of Nuclear Reactor Regulation may extend the period of this exemption for good cause shown.

A copy of the Safety Evaluation dated April 28, 1986, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local Public Document Room, located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director Division of PWR Licensing–B.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 28th day of April 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing—B. Office of Nuclear Reactor Regulation.

[FR Doc. 86–10840 Filed 5–13–86; 8:45 am]

BILLING CODE 7590–01–M

Connecticut Yankee Atomic Power Co.; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment modifying the technical specifications to Connecticut Yankee Atomic Power Company (the licensee), for the Haddam Neck Plant located in Middlesex County, Connecticut.

Identification of Proposed Action

The requested license amendment modifies the current technical specifications to (1) permit the repair of degraded steam generator tubes by installing metal sleeves in the degraded tubes rather than removing them from service by plugging them; (2) change the definition of tube degradation; (3) add additional reporting requirements dealing with tube sleeving and (4) renumber existing technical specification pages. The license amendment is responsive to the licensee's application dated December 6, 1985, as modified January 7, 1986.

The Need for the Proposed Action

The proposed license amendment is needed to reduce the number of steam generator tubes which may be required to be taken out of service if the pitting corrosion previously identified had progressed substantially.

Summary of Environmental Assessment

The estimated radioactive releases resulting from the repair are much less than those due to normal plant operation. The doses due to these releases are small compared to the limits of 40 CFR Part 190 and to the annual doses from natural background radiation. Therefore, the radiological impact of the repair will not significantly affect the quality of the human environment.

With regard to potential non-radiological impacts, the proposed license amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant

effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed license amendment.

Finding of No Significant Impact

The staff has reviewed this proposed change relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment to the technical specifications dated December 6, 1985, as modified January 7, 1986, (2) the Final Environmental Statement for Haddam Neck issued October 1973, and (3) the Environmental Assessment dated March 27, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Russell Library, 123 Broad Street, Middletown, Connecticut.

Dated at Bethesda, Maryland this 27th day of March 1986.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Integrated Safety Assessment Project Directorate, Division of PWR Licensing—B.

[FR Doc. 86-10637 Filed 5-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Connecticut Yankee Atomic Power Company (the licensee), for the Haddam Neck Plant located in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The exemptions would grant relief in eight fire areas to the extent that redundant safe shutdown related cable and equipment are not separated and/or protected in accordance with section III.G.2 of Appendix R. The exemptions would include specific areas of the Primary Auxiliary Building, Service Building, Switchgear Room, Turbine Building and the Control Room.

The exemptions are responsive to the licensee's application for exemptions dated September 16, 1985.

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's requests regarding the existing and proposed fire protection at the plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are not significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources

This action does not involve use of resources not previously considered in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemptions which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland this 28th day of April 1986.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Integrated Safety Assessment Project Directorate, Division of PWR Licensing—B.

[FR Doc. 86-10638 Filed 5-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR 50.48 to the Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a schedular exemption from requirements of 10 CFR 50.48 relating to the completion date for the construction of an additional switchgear room and its related modifications. These modifications were determined by the licensee to be necessary at Haddam Neck to meet the requirements of Section III.G. of Appendix R.

The Need for the Proposed Action

By letter dated July 10, 1982, CYAPCO originally proposed specific modifications which required an exemption from the requirements of Appendix R, for the existing switchgear room. These modifications were subsequently approved and the exemption granted in a November 1984 safety evaluation report (SER). Completion of the modifications was to be accomplished according to the schedules identified in 10 CFR 50.48(c). For the Haddam Neck Plant, this date was by start-up from the 1986 refueling outage. Subsequently, the licensee concluded that the proposed modifications to the existing switchgear room could not be implemented. Therefore, the licensee proposed to

construct a new power distribution system for one train of safe-shutdown equipment in a new switchgear room. The magnitude of the work associated with the construction of an additional switchgear room is such that it does not allow the 10 CFR 50.48(c) schedule to be met.

The exemption is strictly schedular in that it allows the modification schedule to be extneded, with interim compensatory measures in place which will provide the necessary fire protection, until the corresponding modification is completed.

Environmental Impact of the Proposed Action

The proposed action only affects the length of time for the required modifications to be completed. The licensee has proposed interim compensatory measures to provide the necessary level of fire protection until the modifications are completed. Thus, free-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measureable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternatives to the exemption would be to impose a shorter extension period than requested. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated March 7, 1986, as supplemented by letter dated April 8, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Bethesda, Maryland this 28th day of April 1986.

For the Nuclear Regulatory Commission.

Christopher I. Grimes, Director,

Integrated Safety Assessment Project Directorate, Division of PWR Licensing—B.

[FR Doc. 10839 Filed 5-13-86 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Proposed Extension of Form for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of a form that collects information from the public. Section 205(b) of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended) sets forth certain requirements to be met by a person requesting to inspect or obtain a copy of a financial disclosure report. OPM Form 1401, Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report, serves as the standardized application form for this purpose. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on (202) 632–7714.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnal Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James M. Farron, (202) 632–7714, Office of Personnel Management

David H. Martin,

Director, Office of Government Ethics.

[FR Doc. 86–10882 Filed 5–13–86; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC 15090; 812–6319]

Sequoyah-X Limited Partnership et al.; Application for Exemption of Three-Tier Real Estate Limited Partnership

May 7, 1986.

Notice is hereby given that Sequoyah-X Limited Partnership ("Partnership"), Sequoyah-Victory Limited Partnership and Sequoyah-Columbus Limited Partnership ("Middle-Tier Partnerships"), Sequoyah Financial Corporation, ("SFC") and Charles T. Carlisle, Jr. ("Carlisle") (Partnership, Middle-Tier Partnerships, SFC and Carlisle, collectively, "Applicants"), 1200 Plaza Tower, Knoxville, TN 37929, filed an application on March 18, 1986, and an amendment thereto on April 22, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Partnership was formed on January 1, 1986, under the District of Columbia Uniform Limited Partnership Act ("Partnership Act") as a vehicle for equity investment in government-assisted rental housing pursuant to a "three-tier" arrangement. The Middle-Tier Partnerships, which will serve as conduits for the Partnership's investments, are also District of Columbia limited partnerships and were formed on October 1, 1985. The Columbus Local Limited Partnership and the Victory Local Limited Partnership ("Local Limited Partnerships"), both Georgia Limited partnerships, were formed on October 31, 1985, and will invest directly in the rental housing. Applicants represent that the Partnership is organized pursuant to an arrangement whereby a 1% general partner interest in the limited partnership is held by SFC (.01%), Carlisle (.215%) and Sequoyah General Corporation (.775%) ("General

Partners"), and a 99% limited partnership interest will be held by the anticipated investors (98.25%) and Prudential Bache Properties, Inc. (.75%). SFC will act as managing general partner to the Partnership and each Middle-Tier Partnership. Applicants further represent that the Partnership has a 99% limited partner interest and a .99% general partner interest in the Middle-Tier Partnerships, and each Middle-Tier Partnership has, in turn, a 98.99% limited partner interest in one Local Limited Partnership. Thus, Applicants submit that for purposes of control and other rights, as well as for purposes of beneficial ownership of the Local Limited Partnerships, the Partnership's investment in each Local Limited Partnership through the applicable Middle-Tier Partnership is tantamount to direct investment by the Partnership in each Local Limited Partnership. Applicants state that the Partnership, the Middle-Tier Partnerships and the Local Limited Partnerships are organized as limited Partnerships in order to provide investors with both liability limited to their capital investments and the ability to claim on their individual tax returns the deductions, losses, credits, and other tax items that originate from the Partnership's interest in the Local Limited Partnerships.

According to the application, the Partnership has invested, through the applicable Middle-Tier Partnership, in the Local Limited Partnerships, each of which is the beneficial owner of one government assisted apartment complex acquired by the Local Limited Partnerships on December 30, 1985 ("Developments"). The Developments are operated for low or moderate income families and individuals. Through its investment in the Local Limited Partnerships, the Partnership intends to realize: (i) A potential increase in its equity in the Developments through amortization of the Developments' mortgage indebtedness, (ii) cash flow from operations, (iii) potential appreciation in the value of the Developments, (iv) cash distrubutions from sale or refinancing of the Developments, and (v) certain tax benefits.

In reliance upon Regulation D and Rule 506 under section 4(2) of the Securities Act of 1933, the Partnership plans to offer 87 units of limited partnership interest ("Units") at $50,000 per Unit. Purchasers of Units will become limited partners of the Partnership ("Limited Partners"). Prudential-Bache Securities Inc. will act as selling agent for the offering of Units and subscriptions for half Units may be accepted at the sole discretion of the Partnership's General Partners.

Applicants state that the form of subscription agreement for Units provides that each subscriber must represent, among other things, either that: (1) For each Unit purchased the purchaser has either a net worth (exclusive of home, home furnishings and automobiles) in excess of $175,000 for each Unit purchased and anticipates that some part of the purchaser's income (without regard to the investment) through 1990 would be subject to federal income tax, under current law, at the rate of 42% or more, or (2) the subscriber has either (a) a net worth, or joint net worth with his or her spouse, in excess of $1,000,000 as of the date of the subscription agreement, or (b) had individual gross income (exclusive or gross income of his or her spouse) in excess of $200,000 in 1984 and 1985, and reasonably expects to have individual gross income (exclusive of gross income of his or her spouse) in excess of $200,000 in 1986, or (c) will purchase at least $150,000 of the security being offered, where the total purchase price does not exceed 20% of his or her net worth at the time of the sale, or joint net worth with his or her spouse. According to the application, any prospective transferee of a Unit will be required to make substantially similar representations in writing to the Partnership as to investment suitability.

Applicants assert that the three-tier arrangement described above is desirable and appropriate to secure potential tax advantages which result from the acquisition of the Developments having occurred in 1985, while facilitating marketing of the Middle-Tier Partnerships' investments in both Local Limited Partnerships. Applicants state that subsequent to the acquisition of the Developments by the Local Limited Partnerships, it was determined that interests in both Local Limited Partnerships should be sold in a single offering. Applicants further state that it was not deemed feasible for the Partnership to replace the Middle-Tier Partnerships directly as the limited partner in each of the Local Limited Partnerships as a means to achieve this result. According to the application, such a change of the limited partner holding a 98.99% interest in each Local Limited Partnership would have resulted in the termination, for federal tax purposes, of each of the Local Limited Partnerships after January 1, 1986. Such tax terminations after January 1, 1986, would have potentially forfeited certain tax benefits available under current law as a result of the acquisition of the Developments having occurred in 1985. Forfeiture of these tax benefits would result if tax reform legislation passed by the U.S. House of Representatives were to be enacted into law. Applicants assert that the use of such three-tier arrangement is able to achieve the result of offering investments in both Developments in a single offering without this potentially adverse tax result because the change made in the partners of the Middle-Tier Partnerships to include the Partnership does not result in the tax termination of the Local Limited Partnerships.

Applicants represent that the Partnership's Agreement of Limited Partnership ("Partnership Agreement") and its Private Placement Memorandum ("Memorandum") will contain numerous provisions designed to ensure fair dealing by the General Partners with the Partnership's Limited Partners. Applicants state that all potential conflicts of interest between the General Partners and the Limited Partners will be disclosed in the Memorandum, including the receipt of commissions, fees, and other compensation by the General Partners and their affiliates. Applicants believe that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Applicants further state that the Memorandum, the Partnership Agreement and the partnership agreements of the Middle-Tier Partnerships will contain various provisions designed to eliminate or significantly reduce potential conflicts of interest. According to the application, the Partnership Agreement will provide that a majority in interest of the Limited Partners may, without the concurrence of the General Partners: (1) Amend the Partnership Agreement (with certain restrictions); (2) remove any General Partner and elect a replacement (unless the removed General Partner was the sole remaining General Partner); and (3) dissolve the Partnership; provided that such actions shall not be effective until the Partnership has received an opinion of counsel that such action is permitted by the Partnership Act and will not impair the limited liability of the Limited Partners or adversely affect the classification of the Partnership as a partnership for federal income tax purposes.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request exemption from all provisions thereof. Applicants submit that the

contemplated arrangement is not susceptible to abuses of the sort the Act was designed to remedy. Applicants state that the investment suitability standards, the requirements for fair dealing provided by the Partnership's and the Middle-Tier Partnerships' governing instruments, and pertinent governmental regulations imposed on the Local Limited Partnerships by the federal government, provide protection to investors in Units comparable to and perhaps greater than that provided by the Act. Applicants further submit that the Partnership, by investing in government assisted housing owned by the Local Limited Partnerships, furthers the congressionally declared national housing goal of providing a decent home and a suitable living environment for every American family.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 29, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-10852 Filed 5-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15093; 811-3978]

Viking Corporate Dividend Fund, Ind.; Application for Investment Company Deregistration

May 8, 1986.

Notice is hereby given that Viking Corporate Dividend Fund, Inc. ("Fund"), 232 Lakeside Drive, Horsham, PA 19044, filed an application on April 21, 1986, for an order of the Commission pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") declaring that the Fund has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Fund is registered under the Act as an open-end, diversified, management investment company. The Fund states that as of the date of filing this application, it has one remaining shareholder, Fairfield Group, Inc., the administrator and distributor of the fund ("Distributor"). The Fund states further that on April 17, 1986, its Board of Directors authorized, and the Distributor consented to, the termination of the fund as a registered investment company. In addition, the Fund represents that this last remaining account of the Distributor will be liquidated when all outstanding expenses of the Fund have been paid.

The Fund states that at the time of filing this application, it retained short-term investments and cash of approximately $62,000 at market value, which will be used to cover accrued expenses, legal fees and miscellaneous expenses, and to make the final distribution of assets to the Distributor. According to the application, the only debts or other liabilities of Applicant which remain outstanding are debts that were incurred in connection with the Applicant's organization, accrued expenses, [custodial and transfer agent fees which have not been billed], any outstanding legal fees and any miscellaneous expenses that may have been incurred. The Fund represents that it incurred no expenses in connection with the liquidation, and that any expenses incurred in connection with the liquidation were incurred and paid for by the Distributor.

Finally, the Fund states that it is not now engged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs, and that it is not a party to any litigation or administrative proceeding. The Fund further undertakes to file the necessary certificates to dissolve itself under the laws of the Commonwealth of Pennsylvania and the State of Maryland.

NOTICE IS FURTHER GIVEN that any interested person wishing to request a hearing on the application may, not later than June 2, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personnaly or by mail upon Applicnt(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-10850 Filed 5-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23215; File No. SR-DTC-86-4]

Self-Regulatory Organizations; Proposed Rule Change by The Depository Trust Co.; Relating to Modifications of Its Procedures on Crediting of Cash Dividend and Interest Payments and on Related Matters

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1986 The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change consists of modifications to the procedures of The Depository Trust Company ("DTC") on crediting of cash dividend and interest payments ("dividends payments") and on related matters as set forth in DTC Important Notice B1751-86, dated April 9, 1986, which is attached as Exhibit 2 to DTC's filing on Form 19b-4, File No. SR-DTC-86-4.

The proposed rule change in identical terms is the subject of DTC's filing on Form 19b-4, File No. SR-DTC-86-3, which was made pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act") so that the proposed rule change could take effect during the period that it is subject to the procedures of section 19(b)(2) of the Act through DTC's filing on Form 19b-4, File No. SR-DTC-86-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for the Proposed Rule Change

DTC receives the vast majority of dividends payments on payable dates and in same-day funds. However, the volume of payments and variety of payment sources are causing a large percentage of funds to arrive at DTC too late in the day to be credited to Participants on the date of receipt. Although such late funds are mostly invested by DTC overnight and the investment earnings passed along to Participants through the monthly refund, the inclusion of earnings derived from late payments in the monthly refund does not provide each Participant with the same benefit as if it had been credited with the late payments on payable date. In addition, greater uniformity in dividends payment procedures will improve processing and recordkeeping in the dividends departments of DTC and its Participants. Any reduction in monthly dividends refunds as a result of the modified procedures will be more than offset by Participants' predictable and earlier receipt of dividends payments from DTC.

DTC is modifying its policy on dividends refunds to Participants based on the 90% standard because, in view of these modified procedures to credit dividends payments on payable dates, anything less than 100% payment on payable date in same-day funds will have an adverse impact on Participants since DTC will now finance most such shortfalls with same-day funds which otherwise would be available for investment overnight.

The pass-through of any funds usage charge in respect of bearer municipal bond interest payments received late by the interest collection agent will impose that charge on the Participants which benefited from receiving credits for those payments on payable dates.

DTC encourages all paying agents to establish procedures to make dividends payments to DTC on payable date and in same-day funds. Some paying agents have expressed reluctance to establish such procedures without an assurance that DTC will obtain the return of dividends payments from Participants in cases of errors and in cases of default or bankruptcy by issuers. To protect DTC and its Participants, it is also necessary to specify certain other instances in which DTC could charge Participant's settlement accounts for dividends payments previously credited to Participants.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will improve the timeliness of dividends payments to DTC's Participants and will improve processing and recordkeeping in the dividends departments of DTC and its Participants. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change provides for certain exceptions to the crediting of dividends payments and certain charge-backs of earlier dividends payments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC Participants or others have not been solicited or received on crediting of dividends payments, reducing dividends refunds and passing through any funds usage charge.

Written comments from DTC Participants on charge-backs of dividends payments were solicited by DTC Important Notice B1547–85, dated June 27, 1985, which is included in Exhibit 3 attached to DTC's filing on Form 19b–4, File No. SR–DTC–86–4. The few comments received by DTC mainly involved operational aspects of the procedures. Some commentators raised a concern that DTC would charge-back a payment to a Participant before the Participant's customer returned the payment. DTC believes situations of that type will arise infrequently and are offset by the benefits derived from encouraging paying agents to continue making dividends payments to DTC on payable date in same-day funds.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 4, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–10848 Filed 5–13–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-23213; File No. SR-NASD-86-11]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to Schedule D, Part VI, B(1) of the Corporation's By-Laws would increase the maximum annual fee for issuers to $4,000 from $2,500.

II. Self-Regulatory Orgainzation's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in secitons (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Governors approved the proposed rule change to increase the maximum permissible fee for issuers effective June 1, 1986 to transfer the cost of providing certain services from general assessments to user fees. The maximum annual fee for issuers is computed by adding the fees for stock issues, investment company shares, warrant issues, unit issues, shares of beneficial interest, convertible debentures and securities of foreign issuers and American Depository Receipts. The fees for these individual services remain unchanged while the maximum annual fee for the aggregate of these services has been increased to $4,000 from $2,500.

For reasons stated above, these proposed fees are consistent with and in furtherance of section 15A(b)(5) of the Act which requires that the rules of the Corporation provide for the equitable allocation of reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934. Imposition of the new maximum annual fee will, however, be delayed until June 1, 1986.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 4, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10849 Filed 5-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23211; File Nos. SR-NASD-85-9, SR-NYSE-86-3, SR-MSE-86-2, SR-PSE-86-6, SR-Phlx-86-10]

Self-Regulatory Organizations; Proposed Rule Changes by National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Midwest Stock Exchange, Inc., Pacific Stock Exchange, Inc., Philadelphia Stock Exchange, Inc. Relating to Amendments to Code of Arbitration Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 3, 1985, the National Association of Securities Dealers, Inc. ("NASD");[1] on January 22, 1986, the New York Stock Exchange, Inc. ("NYSE"); on February 6, 1986, the Midwest Stock Exchange, Inc. ("MSE"); on April 14, 1986, the Pacific Stock Exchange, Inc. ("PSE"); and on April 25, 1986, the Philadelphia Stock Exchange Inc. ("Phlx") [collectively the five self-regulatory organizations ("five SROs")] filed with the Securities and Exchange Commission the proposed rule changes to amend their rules regarding arbitration of claims. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Background

The Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of ten SROs, four public members, and representatives from the Securities Industry Association, a trade group, has developed a uniform arbitration code ("Uniform Code"). The Uniform provides for the resolution of disputes between broker-dealers and their customers, as well as, between and among broker-

[1] The NASD filed an amendment to its proposed rule change on April 8, 1986.

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dealers and/or persons associated with broker-dealers, through arbitration. All SROs (other than clearing agencies) have previously adopted the Uniform Code which has established throughout the securities industry an essentially uniform system for arbitrating customer disputes. The proposed rule changes are intended to conform the provisions of the five SROs to the recent amendments to the Uniform approved by SICA.[2]

II. The Proposed Rule Changes

The proposed rule changes amend the arbitration rules of the five SROs. The following is a summary of the major changes. First, the Director of Arbitration will be given the discretion decision to appoint a panel of three or five arbitrators where the amount the controversy is less than $500,000. Under the current provisions, a panel of five arbitrators is required in cases involving public customers where the amount in controversy is $100,000 or more. The SROs state that the change is proposed because of the increase in the number of cases in which $100,000 or more is claimed. The ability to choose a panel of three arbitrators will promote economy of effort and facilitate the scheduling of hearings which is especially important in cases that require multiple hearing sessions. In addition, the amendment provides that even where the amount in controversy is $500,000 or more, the parties may agree in writing to a panel of three, rather than five, arbitrators.

Second, the amendments specify procedures that arbitrators may follow when a party fails to file an answer within the time period prescribed by the Code or any extension of that time period granted by the Director of Arbitration. While civil court practice provides recourse for the failure to submit a timely answer, the current arbitration code provisions do not explicitly provide a mechanism to address such occurrences. Under the provision, prior to the hearing, the adversary party must file a written objection with the Director of Arbitration requesting that the arbitrators bar the respondent, responding claimant, cross-claimant or third-party respondent, from presenting any matter, arguments, or defenses at the hearing. The party is given an opportunity to oppose the objection. The arbitrators in their discretion will then decide whether to grant the request.

Third, the proposed amendment would require the party requesting an adjournment to submit a written request for adjournment and to pay a fee equal to the filing fee, but no more than $100.[3] All parties are notified of the request and are given an opportunity to oppose it. The request and any opposition is then submitted to the panel of arbitrators. If a request is granted, the arbitrators may waive the fee or return it in the arbitration award. The SROs state that the fee should discourage frivolous, last minute requests for postponement of hearing dates when a panel of arbitrators has already been appointed. The SROs state that the major reason for such adjourments is counsel's failure to secure all witnesses' availability for the date when it is scheduled. Such adjournments frustrate the SROs' ability to provide an expeditious resolution to a matter submitted for arbitration. The SROs state that the fee is designed to recoup a portion of the administrative costs associated with rescheduling of a hearing.

The NYSE and PSE rule changes specify that the Uniform Arbitration Code applies to controversies involving non-members who are not public customers.

In their respective rule filings, the five SROs indicate that the proposed rule changes are consistent with Section 15A(b)(6), in the NASD's case, and Section 6(b)(5) of the Act with respect to the four stock exchanges. The SROs represent that the proposed rule changes will promote just and equitable principles of trade by insuring that members, member organizations and the public have an impartial forum for the resolution of their disputes. The five SROs also represent that the proposed rule changes will not impose any burden on competition.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of the filings will also be available for inspection and copying at the principal office of the respective above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by June 4, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10651 Filed 5-13-86; 8:45 am]

BILLING CODE 8010-01-M

[2] The American Stock Exchange ("Amex") submitted, and the Commission approved a similar amendment to the Amex's arbitration rules to conform them to the Uniform Code. *See* Securities Exchange Act Release No. 23179, April 28, 1986; 51 FR 16414, May 2, 1986.

[3] The adjournment fee does not apply to claims filed under the small claims proceedings section.

DEPARTMENT OF STATE

Advisory Committee on International Investment, Technology, and Development; Subcommittee on Multilateral Affairs, Meeting

The Department of State will hold a meeting of the Subcommittee on Multilateral Affairs of the Advisory Committee on International Investment, Technology, and Development on May 22, 1986 from 10:00 a.m. to noon. The meeting will be held in room 1912 at the Department of State, 2201 "C" Street, NW., Washington, DC, 20520.

The purpose of the meeting will be to discuss recent developments on:

—UN Code of Conduct on TNCs;

—UN Commission on TNCs;

—OECD Committee on International Investment and Multinational Enterprises.

Access to the State Department is controlled. Therefore, members of the

public wishing to attend the meeting must contact the Office of Investment Affairs, (202) 647–2728, in order to arrange admittance. Please use the 21st street entrance.

The Chairman of the Subcommittee will, as time permits, entertain comments from members of the public at the meeting.

Dated: April 29, 1986.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 86–10813 Filed 5–13–86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Advisory Committee Renewal; Commercial Space Transportation Advisory Committee

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Publication of advisory committee renewal.

SUMMARY: DOT announces the renewal of the Commercial Space Transportation Advisory Committee (COMSTAC), an advisory committee created under the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C., App. 1) to provide information, advice, and recommendations to the Secretary of Transportation on matters relating to all aspects of the commercialization of expendable launch vehicles. This renewal is effective May 1, 1986 to May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Donald R. Trilling, Office of Commercial Space Transportation, Office of the Secretary of Transportation, Department of Transportation, Washington, DC 20590 (202) 426–5770. Authority: Title 49, Code of Federal Regulations, Sub. A, Part 95.

Madeline Johnson,

Director, Office of Commercial Space Transportation.

[FR Doc. 86–10877 Filed 5–13–86; 8:45 am]

BILLING CODE 4910-62-M

U.S.-Japan Small Package Service Proceeding and U.S.-Japan Route Authority; Order Instituting Proceeding

[Order 86–5–43; Docket 44016; Docket 43211]

Issued by the Department of Transportation on the 9th day of May, 1986.

By this order, the Department is instituting the *U.S.-Japan Small Package Service Proceeding* to select a small package delivery service to begin operation in the U.S.-Japan market. The opportunity to designate a small package carrier in this market derives from an interim agreement recently concluded between the two governments, and is reflected in a Memorandum of Understanding (MOU) signed on May 1, 1985. Among other matters, the agreement provides for up to three new combination services between gateways to be selected in the U.S. and either Tokyo or Nagoya in Japan.

Either side may, at its option, substitute the designation of a small package delivery service for one of its three combination services. The agreement provides that a small package carrier can serve Tokyo on a nonstop basis from any point in the U.S., except that Chicago may not be the last point of departure or first point of arrival in the U.S. Service by a small package carrier can begin no earlier than April 1, 1987, and its frequencies will be limited, together with the two combination carriers selected under the MOU, to an aggregate of 18 weekly round trips beginning April 1, 1987. The maximum aggregate frequency level specified in the agreement increases to 20 weekly round trips beginning April 1, 1988 and 21 beginning April 1, 1989. No carrier, however, may operate more than 7 round trip frequencies per week on any single route.

Because of the complex nature of the MOU and the numerous procedural options that it raised regarding the institution of a selection case, the Department, by Order 85–6–74, requested comments on how such a proceeding should be structured and conducted.[1] Based in large measure on the comments filed in that docket, the Department, on November 13, 1985, instituted the *U.S.-Japan Gateways Case*, Docket 43575, to select up to two combination carriers, and their respective gateways, for service in the U.S.-Japan market.[2]

In that order, we stated our intention to allocate the third route to a small package delivery service in a subsequent proceeding. In reaching that conclusion, we noted that the MOU affords us a limited opportunity to ensure that a wider choice of aviation services are available to American consumers in this market, a result consistent with the policies of the Federal Aviation Act. Given the interest in operating this service expressed by several carriers in their comments on this case, together with the fact that this opportunity was achieved only after extensive negotiations between the U.S. and Japanese governments, we continue to believe that the public interest would be best served by allocating the third MOU route to a small package carrier.

I. Frequency Allocation

As we stated when we instituted the *U.S.-Japan Gateways Case*, we undertake the allocation of frequencies with extreme reluctance, preferring to allow the marketplace to operate as the sole determinant of the number of flights each carrier operates. However, the frequency limitations imposed by the MOU leave us no choice but to allocate the 18 frequencies available during 1987 among the two combination carriers to be selected in the *Gateways* case and the small package carrier selected in this proceeding.

Many of the comments we received regarding procedures for awarding the MOU routes suggested that the most effective manner in which to allocate these frequencies for 1987 would be to award six daily round trips to each service. This would give each carrier a reasonable opportunity to develop the traffic generating potential of its particular market at a level close to the ultimate cap of seven weekly round trips imposed by the agreement beginning April 1, 1989. However, the allocation of frequencies to a small package carrier directly affects the number of frequencies which remain available for use by the combination services authorized by the MOU, and we have not yet completed carrier selection for these combination routes. Given these factors, we are reluctant to predetermine, at this early stage, frequency allocations for the second year of operations under the MOU. It is our present intention to solicit comments on the allocation of frequencies for the year beginning April 1, 1987, and announce our decision on these allocations in sufficient time to allow carriers to undertake any necessary operational planning.

In order to provide an equitable basis for a comparative analysis in this proceeding, we will require that all service proposals and supporting evidentiary submissions assume a common frequency level of six round trips per week. Applicants may also provide alternative proposals based on

[1] Since the Department has solicited and received both comments and reply comments on the issues that have been considered in instituting this case, we will not entertain petitions for reconsideration of this order.

[2] Order 85–11–29.

different frequency assumptions. Carriers that do not submit alternate proposals should indicate what effect a different frequency allocation might have on their proposed services during the forecast year.

II. Procedures

The *U.S.-Japan Small Package Service Proceeding*, Docket 44016, instituted by this order, will consider the selection of primary and backup carriers to provide small package delivery service between any point in the U.S. and Tokyo. Also at issue are the terms, conditions, and limitations which may be attached to any certificates issued in this docket. This proceeding will be set for an oral evidentiary hearing before an Administrative Law Judge.[3]

Whether certificating a carrier for the market is consistent with the public convenience and necessity will not be at issue. We now conclude that there is a need for the introduction of direct small package delivery service between the U.S. and Japan, and that certification is consistent with the public convenience and necessity. The opportunity to designate a small package carrier represents a valuable right obtained through diligent negotiating efforts to provide substantial benefits to U.S. consumers. The public interest clearly calls for utilization or this right.

In selecting carriers, we intend to focus on the degree to which each applicant's proposed service would provide public benefits and enhance the competitive environment in the U.S.-Japan cargo market. In this context, we will also look at route integration, which refers to a carrier's ability to flow freight to and from points behind its proposed hub. Flow or feed capability supports the viability of a carrier's proposed service and also affects the overall number of potential customers who might benefit from that service. Obviously, in pursuing our objective of enhancing public benefits, these are matters which we need to consider carefully, and which the parties and Judge therefore must explore thoroughly.

We will also consider applicants' rate proposals to the extent that they are consistent with the U.S.-Japan bilateral relationship. While service proposals remain an element of consideration in the selection process, we recognize that frequency levels are severely constrained by the terms of the MOU, and they should be evaluated with this important consideration in mind. Of course, we do not exclude other factors that have been historically used for carrier selection, where they are relevant.

We note that, on September 23, 1985, the Department issued a Notice of Proposed Rulemaking dealing, *inter alia*, with the duration of certificate authority on limited-entry international routes.[4] Until a final rule is issued, we will continue to issue authority for limited entry routes in the form of temporary, experimental certificates under section 401(d)(8) of the Act. In keeping with our current practice, we will also continue to make such awards effective for periods of five years. The ultimate duration of any certificates issued in this docket, however, will be subject to the decision we reach in that rulemaking proceeding.

III. Request for Applications

Applications for U.S.-Japan small package service authority, as well as any motions to consolidate or petitions to intervene, should be filed with the Department no later than 14 days after service of this order. Answers shall be filed within 7 days thereafter. All applications should conform to the limitations and requirements specified in the MOU.

Accordingly

1. We institute the *U.S.-Japan Small Package Service Proceeding*, Docket 44016, which will be set for an oral evidentiary hearing before an Administrative Law Judge of the Department at a time and place to be designated;

2. The proceeding instituted in paragraph 1 shall include consideration of the following issue:

a. Consistent with the terms of the 1985 Memorandum of Understanding between the governments of the United States and Japan, which primary and backup carriers should be certificated to engage in foreign air transportation of property and mail between any point in the United States and Tokyo, Japan; [5] and

b. What terms, conditions, or limitations, if any, should be placed on any authority awarded in this proceeding;

3. Applications, motions to consolidate, and petitions for leave to intervene shall be filed by May 28, 1986, and answers shall be filed within 7 days thereafter;

4. The Department makes the Office of Aviation Enforcement and Proceedings of the Office of the General Counsel, together with the Public Proceedings Division of the Office of Aviation Operations, a party to this case; and

4. We will serve this order upon all certificated air carriers, the Department of State, the Air Freight Association, the Airport Operators Council International, and all other commenters in Docket 43211.

We shall publish this order in the **Federal Register**.

By:

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

Appendix—U.S.-Japan Small Package Service Proceeding

Evidence Request

I. Public Disclosure of Data

Pursuant to sections 241.19–6 and –7 and 399.100 of the Department's Regulations, it is hereby determined that the Department's ER–586 Service Segment Data for operations between the United States and Japan, and beyond Japan for the period January 1, 1981, through final Department decision in this proceeding, are material and relevant to a final determination of the issues in this case. Those data are released to the U.S. carriers and U.S. non-airline civic and governmental intervenors participating in this proceeding. Those parties to the proceeding will be free to use these data to the extent they deem necessary.

II. Procedures and Ground Rules

In the interest of a complete record, current and prospective parties are required to submit information in the form of exhibits. The exhibits should contain sufficient detail, including sources (with citations), bases, and all assumptions and the methodology so that, without further clarification, any party can derive the necessary results from the basic data. In addition, the parties shall furnish witnesses competent to testify as to the information contained in their exhibits.

III. Request for Information and Evidence

A. Information Responses

1. Public Counsel [1]

a. ER–586 Service Segment Nonstop and On-Flight O&D Data by year for

[3] We have attached, as an appendix to this order, a proposed evidence request. The Judge, at his discretion, may entertain motions to alter the request

[4] Docket 43403, 50 FR 38539 (1985).

[5] This includes the issues of carrier fitness and citizenship.

[1] Public Proceedings Division, Office of Aviation Operations, and Office of Aviation Enforcement and Proceedings, Office of the General Counsel. Due to the volume of this material, Public Counsel will not be able to print and distribute copies to the parties.

Continued

Calendar Years 1981 through 1984, by month for Calendar Year 1985 and by month for 1986 to the extent available. Data will be segregated to show U.S. mail, U.S. mail non-priority, foreign mail, express and freight.[2]

b. Cargo Charter Data (U.S. and foreign carriers) between all U.S. points and Japan by flag of carriers, by direction for Calendar years 1981 through 1985, and the latest available for 1986.

c. U.S.-Foreign Air Trade (Import/Export) Data for Calendar Years 1983 and 1984, value and weight, by commodity type. Calendar Year 1985 will be provided to the extent available.

2. Incumbent Carriers [3]

a. Any carrier currently operating small package services, express services, time-sensitive document services, courier-accompanied services or facsimile services, is requested to provide the following information by type of service offered: the number of shipments, the size of shipments, the weight of shipments and the pricing of each type of shipment. They should also provide a list of foreign destinations served with small package/courier/express service as well as any indications of the length of time for which service is in demand (i.e., 1, 2 or 3-day service.)

B. Direct Exhibits [4]

1. Applicant Carriers [5]

a. The applicant carriers are requested to describe the proposed single-plane services with respect to aircraft type, configuration and capacity to be offered for each type of "small package" service proposed to be operated in the forecast year. Schedules should contain flight numbers, complete routings from origin to destination (including behind U.S. gateway points,) and departure and arrival times and days of the week service would be offered. Applicants are also requested to describe any proposed pick-up and delivery services at origin and/or destination or any other special service features (e.g. guaranteed delivery), that they propose to offer.

b. Based upon the proposed schedules and related services, applicants are requested to submit a cargo traffic forecast by traffic type, *e.g.* small packages, express, time-sensitive documents, etc. on an O&D market-by-market basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the forecast year detailing specifically the sources of all traffic. Indicate specifically the volume and type of traffic for each direction of carriage. Include any anticipated changes in the traffic in other markets on the applicant's existing system in which service will be altered as a result of the proposal(s) in this case. The basis for forecasting techniques used should be clearly explained. Indicate any anticipated weekly or seasonal fluctuations. Applicants should also indicate what effect a different frequency allocation (i.e. other than 6 frequencies/week) might have on their proposed services during the forecast year.

c. Show, with a breakdown for peak and off-peak carriage, if any, and for each direction the proposed rates in all markets (by type of rate and amount per unit of weight or time specifically described) in which single-plane service or pick-up and delivery is proposed and traffic is forecast. All proposed rates are to be those which the carrier would have offered on June 30, 1985, had it been providing service on that date. (Do not allow for inflation, SFRL rate adjustments or any upward rate flexibility to the forecast year). The applicants should assume that the Department will allow rate increases equal to adjustments in the Pacific SFRL between January 1, 1985, and the date of inauguration of service. Include a percentage distribution of traffic forecast for each type of service proposed for each market (explain the basis for the distribution by service type). Separately indicate the dilution from joint rates or other rates not directly related to any bulk or discount rate offerings. Explain the basis for any rate stimulation estimate.

d. Indicate the net revenue anticipated from the proposed service for the forecast year. This estimate is to be based on: (1) The traffic forecast in paragraph b, above; and (2) the rates proposed in paragraph c, above. Explain how all dilution factors were arrived at in each revenue estimate.

e. Submit a pro forma profit and loss statement for the forecast year, showing the estimated new impact of the proposal on the applicant. All expense estimates should be based on the CAB/DOT Form 41 functional account method. Unit costs, including fuel, should be for the 12 months ended June 30, 1985, and should be the carrier's Pacific Entity unit costs. (Do not allow for inflation to the forecast year).[6]

f. Indicate the source of aircraft for the proposed operations. If any applicant does not have on hand the particular aircraft shown in its proposed schedules, indicate delivery date, from whom the aircraft will be purchased or leased, the method of financing the purchase or lease, and submit a copy of any commitment or delivery documents. Submit a pro forma balance sheet reflecting the impact of the aircraft to be acquired to provide the proposed service. Indicate whether the aircraft proposed to be used comply with FAR-36. If not, indicate the applicant's plans for achieving compliance.

g. Estimate the number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed operations and explain the basis of such estimate. Also indicate fuel availability and method of obtaining the necessary fuel, e.g. contract purchase, etc. Separately indicate the cost per gallon of fuel used in your expense estimate in paragraph e, above.

h. Submit a map showing how the applicant's existing route structure would feed into its proposed service.

i. Answer the following interrogatories: [7]

1. Will the carrier selected agree to accept the following condition in its certificate:

"The holder shall file initial tariffs at levels no higher than those stipulated in Exhibit ( ) submitted in Docket 44016, adjusted to reflect increases in industry average costs accruing after the date for which the rate proposal in that exhibit was calculated."?

Two copies of these materials will be available for the parties use in Room 4201, 400 7th Street, SW., Washington, DC.

[2] ER-1401 eliminated the "Express" column from Schedule T-3 of the Form 41 Reports and from ER-586 Service Segment Data, effective January 1, 1985. Data formerly reported as "Express" is now included in "Freight"

[3] Any applicant or U.S. carrier intervenor in this proceeding currently providing scheduled nonstop combination or all-cargo service to Japan from any U.S. gateway

[4] The base year for traffic forecasting purposes will be Calendar Year 1985, and the forecast year will be the 12 months ending March 31, 1988.

[5] Any applicant not previously found fit by the Department to engage in transoceanic scheduled combination or all-cargo foreign air transportation will be expected to comply with the evidentiary requirements of Part 204 of the Department's regulations (14 CFR Part 204) in addition to the evidentiary requirements set forth in section III. B.1

[6] To the extent any cost estimates differ from costs shown in the carrier's Form 41 Reports (Pacific Entity) for the 12 months ended June 30, 1985, those differences should be fully explained. If any applicant in this proceeding does not (1) have Form 41 Reports on file with the Department, (2) have the type aircraft proposed to be operated in its current fleet, or (3) report data for a Pacific Entity, all expense estimates and the bases for those estimates should be fully explained and justified.

[7] As noted in the instituting order (Order 86-5-43, at 4) any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate issued will be for one year

2. Will the carrier, if selected as back-up, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

3. Will the carrier selected for primary authority accept a condition in its certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

2. Civic Parties

The civic parties are requested to:

a. Provide any relevant information (including surveys, local commercial data, or other data) relating to the size of the small package markets at issue. List any proposed airport and terminal improvements planned in the next five years.

b. Submit information indicating the character and composition of the small package/express traffic to Japan for the most recent period.

c. Submit any limitations on airport use or access by air carriers based on noise restrictions or ground-side facilities imposed or being considered by the airport operators.

d. See also section 399.61 of the Department's regulations (14 CFR 399.61) regarding material to be submitted by civic parties in route cases.

[FR Doc. 86-10876 Filed 5-13-86; 8:45 am]
BILLING CODE 4910-62-M

Maritime Administration

Values for War Risk Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Determination of Ship Values for War Risk Insurance, effective January 1, 1986.

SUMMARY: Pursuant to the procedure stated in 46 CFR 309.1, the required biannual notice is hereby given of the stated valuation of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with section 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA-184, prescribed by 46 CFR Part 308. In accordance with Pub. L. 99-59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of January 1, 1986,[1] by inserting in the space provided therefor, or in substitution for any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuation shall apply with in respect to insurance attached during the period January 1, 1986, to June 30, 1986 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator

Dated: May 8, 1986.

Murray A. Bloom,

Assistant Secretary.

BILLING CODE 4910-81-M

[1] The list of vessels is based on the best information available as of January 1, 1986.

FEDERAL REGISTER LIST OF SHIP VALUATIONS 04/25/86
7.81

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
3321	ALASKA STANDARD	278320	$ 250000
3603	ALDEN W. CLAUSEN	7104	$ 8000000
1567	ALEXANDRA	290273	$ 3705000
3537	ALISON C.	513704	$ 1625000
3647	AM. VETERAN(AUSTRAL MOON	530142	$ 8700000
3661	AMCO TRADER	516060	$ 1000000
3662	AMCO VOYAGER	515621	$ 1000000
2764	AMERICA SUN	523846	$ 10945000
2664	AMERICAN ALTAIR	298129	$ 3000000
2812	AMERICAN APOLLO	529004	$ 6000000
2869	AMERICAN AQUARIUS	530999	$ 6000000
2667	AMERICAN ARGO	296216	$ 6750000
2582	AMERICAN ASTRONAUT	520694	$ 6000000
3380	AMERICAN HERITAGE	577343	$ 4000000
2446	AMERICAN LANCER	514261	$ 5600000
2550	AMERICAN LARK	518444	$ 5600000
2485	AMERICAN LIBERTY	516464	$ 5600000
2518	AMERICAN LYNX	517450	$ 5600000
3644	AMERICAN MARKETER	544303	$ 9500000
3645	AMERICAN MERCHANT	547288	$ 9500000
3641	AMERICAN MONARCH	519937	$ 1500000
3494	AMERICAN PIONEER	612085	$ 28000000
3649	AMERICAN RAPID	522650	$ 7000000
2678	AMERICAN RESEVERST	296947	$ 6750000
3648	AMERICAN RESOLUTE	612715	$ 15000000
2684	AMERICAN RIGEL EX(NORMAC	297384	$ 6750000
3646	AMERICAN ROVER	519102	$ 7000000
3643	AMERICAN SPARTAN	521550	$ 1500000
3639	AMERICAN SPITFIRE	518434	$ 1500000
3640	AMERICAN TITAN	515976	$ 1500000
3398	AMERICAN TRADER	530139	$ 14000000
3642	AMERICAN TROJAN	517617	$ 1500000
2689	AMERICAN VEGA	296632	$ 6750000
3608	AMOCO ATLANTA	646348	$ 5960000
3510	AMOCO BALTIMORE	3234	$ 2500000
3511	AMOCO BRISBANE	3046	$ 2200000
3654	AMOCO COLUMBIA	648470	$ 5960000
3506	AMOCO CREMONA	2926	$ 2200000
3609	AMOCO FLORIDA	640014	$ 10920000
3610	AMOCO GEORGIA	643089	$ 9820000
3607	AMOCO RICHMOND	644241	$ 5960000
3509	AMOCO SAVANNAH	3459	$ 2500000
3611	AMOCO SOUTH CAROLINA	645759	$ 12905000
3606	AMOCO TALLAHASSEE	640635	$ 5960000
3507	AMOCO TEXAS CITY	3460	$ 2500000
3652	AMOCO VIRGINIA	642492	$ 10920000
3508	AMOCO VOYAGER	5886	$ 2200000
3505	AMOCO YORKTOWN	3233	$ 2500000
3495	ARCO ALASKA	614544	$ 32000000

FEDERAL REGISTER LIST OF SHIP VALUATIONS 04/25/86
7.81

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
3048	ARCO ANCHORAGE	548424	$ 20000000
3518	ARCO CALIFORNIA	623291	$ 32000000
233	ARCO ENDEAVOR	277623	$ 935000
3194	ARCO FAIRBANKS	559400	$ 20000000
1848	ARCO HERITAGE	293299	$ 1640000
3604	ARCO INDEPENDENCE	586633	$ 46000000
3142	ARCO JUNEAU	556666	$ 20000000
2900	ARCO PRUDHOE BAY	536496	$ 11785000
2948	ARCO SAG RIVER	539313	$ 11785000
3605	ARCO SPIRIT	580245	$ 46000000
3330	ARECIBO	246736	$ 1155000
3469	ARGONAUT	601377	$ 15000000
1716	ASHLEY LYKES	292191	$ 1000000
3385	ATIGUN PASS	586128	$ 30000000
1435	AUSTIN	247455	$ 750000
3118	AUSTRAL ENTENTE	552706	$ 16000000
2986	AUSTRAL ENVOY	541868	$ 16000000
3337	AUSTRAL RAINBOW	530141	$ 8700000
3433	AWA	524820	$ 760000
3397	B/T ALASKA	590208	$ 32000000
3432	B/T SAN DIEGO	598680	$ 32000000
2866	BALTIMORE TRADER	270179	$ 2000000
3464	BAY RIDGE	600128	$ 46000000
2870	BAYAMON	530007	$ 13800000
3357	BEAVER STATE	572359	$ 4000000
3522	BENJAMIN HARRISON	624457	$ 27750000
3315	BIEHL TRADER	582451	$ 4500000
3316	BIEHL TRAVELER	584627	$ 4500000
3628	BLUE RIDGE	633428	$ 38300000
3331	BORINQUEN	248239	$ 1120000
3270	BOSTON	511485	$ 700000
1414	BRINTON LYKES	288699	$ 1000000
3114	BROOKLYN	553548	$ 4300000
3408	BROOKS RANGE	586130	$ 30000000
3504	CAGUAS	557149	$ 18700000
2165	CARIBBEAN	502771	$ 2650000
3602	CARLA A. HILLS	7060	$ 8000000
3329	CAROLINA	515622	$ 1000000
3623	CG-461 THRUCG-480	543461-543480	$ 35000
3624	CG-481 THRU CG-660	543481-543660	$ 35000
798	CHABLIS	283424	$ 965000
3457	CHARLES LYKES	577636	$ 12000000
3350	CHARLESTON	248095	$ 700000
3215	CHELSEA	562416	$ 3500000
3144	CHERRY VALLEY	557503	$ 3500000
3343	CHESAPEAKE	296863	$ 1810000
3286	CHESTNUT HILL	577738	$ 4000000
3394	CHEVRON ARIZONA	588320	$ 11750000
2985	CHEVRON CALIFORNIA	541563	$ 12000000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
3308	CHEVRON COLORADO	577358	$ 11750000
3612	CHEVRON FRANKFURT	2815	$ 2250000
3372	CHEVRON LOUISIANA	584696	$ 11750000
2993	CHEVRON MISSISSIPPI	542850	$ 12000000
3309	CHEVRON OREGON	566080	$ 11750000
3652	CHEVRON PACIFIC	7328	$ 8000000
3310	CHEVRON WASHINGTON	570709	$ 11750000
3543	CHOTIN 4890	516768	$ 720000
3626	COAST RANGE	638709	$ 38300000
3593	CONCHO	247640	$ 765000
2227	CONNECTICUT	277291	$ 1265000
3104	CORONADO	553623	$ 3500000
1358	COSTA MANATEE	287186	$ 1095000
3566	COURIER	578746	$ 6000000
3663	COVE LEADER	279938	$ 3500000
3666	COVE LIBERTY	644295	$ 2950000
3665	COVE MARINER	270025	$ 965000
3404	COVE NAVIGATOR	261423	$ 950000
3664	COVE RANGER	266388	$ 965000
3667	COVE SAILOR	280193	$ 1055000
3379	COVE TRADER	279438	$ 1400000
3584	CUMBOTO I EX INAGUA PIL	11001-81	$ 1000000
3557	DAVID P. REYNOLDS	3386	$ 1950000
2944	DELAWARE SEA	245058	$ 700000
3570	DIAMOND GLORIOUS	5780	$ 5300000
2330	DOLLY TURNAN	508378	$ 825000
3106	DSLL 540650-540899	540650	$ 20000
3132	DSLL 553325-553348	553325	$ 20000
3272	DSLL 553965-554014	553965	$ 20000
3212	DSLL 55714-9	555714	$ 20000
2806	EDGAR M. QUEENY	528567	$ 5860000
3531	EDWARD RUTLEDGE	625873	$ 27750000
3633	EILEEN INGRAM	647470	$ 41000000
2086	ELIZABETH LYKES	500702	$ 825000
3638	ENERGY ALTAIR	653464	$ 4860000
3637	ENERGY AMMONIA	653463	$ 16500000
3658	ENERGY INDEPENDENCE	657540	$ 55000000
3343	ETHEL H	277709	$ 650000
2980	EXPORT FREEDOM	541414	$ 6000000
3085	EXPORT PATRIOT	548442	$ 6000000
2593	EXXON BALTIMORE	282272	$ 1370000
3056	EXXON BATON ROUGE	524619	$ 10000000
3465	EXXON BENICIA	600478	$ 30000000
2595	EXXON BOSTON	283784	$ 1440000
3668	EXXON CHARLESTON	658493	$ 82350000
2599	EXXON GETTYSBURG	273362	$ 1400000
2601	EXXON HOUSTON	297151	$ 4560000
2603	EXXON JAMESTOWN	275519	$ 1400000
2610	EXXON LEXINGTON	276270	$ 1400000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
2606	EXXON NEW ORLEANS	298216	$ 4560000
3460	EXXON NORTH SLOPE	600477	$ 30000000
3057	EXXON PHILADELPHIA	526792	$ 10000000
3058	EXXON SAN FRANCISCO	523626	$ 10000000
2609	EXXON WASHINGTON	273896	$ 1400000
3008	FORTALEZA	544797	$ 15135000
3293	FREDERICKSBURG	629297	$ 8000000
3540	FREEPORT I	514966	$ 5625000
3541	FREEPORT II	516720	$ 5625000
3538	GALE B.	292748	$ 1450000
2556	GALVESTON	248242	$ 700000
2421	GENEVIEVE LYKES	513140	$ 825000
3601	GEORGE H. WEYERHAEUSER	7079	$ 8000000
3523	GEORGE WYTHE	562594	$ 10000000
3346	GLACIER BAY	526588	$ 11255000
3369	GOLDEN ENDEAVOR	561433	$ 4000000
2791	GOLDEN GATE	526972	$ 10095000
3512	GOLDEN MONARCH	566090	$ 4000000
3384	GREAT LAND	567835	$ 18700000
3525	GREEN VALLEY	559623	$ 10000000
3326	GUAYAMA	516540	$ 700000
3320	HILLYER BROWN	266233	$ 445000
2306	HOWELL LYKES	507344	$ 825000
3325	HUMACAO	513557	$ 700000
3660	HUNTER ARMISTEAD	656742	$ 42250000
3578	INAGUA BAY	3779-73A	$ 500000
3579	INAGUA BEACH	3451-73	$ 750000
3581	INAGUA ESPANA	10744-81	$ 1800000
3582	INAGUA GULL	3450-73B	$ 550000
3502	INAGUA ISLAND	7663-77	$ 2200000
3583	INAGUA LIGHT	3798-73	$ 750000
3585	INAGUA RANGER II	3028-73B	$ 750000
3500	INAGUA SHORE	8689	$ 2415000
3587	INAGUA SOUND	3809-73	$ 750000
3588	INAGUA SPRAY	3449-73A	$ 820000
3499	INAGUA SURF	6414-76A	$ 2050000
3501	INAGUA TIDE	920878	$ 4500000
3589	INAGUA TRADER II	3865-73	$ 820000
2861	IOS 3301MARTHA R. INGRAM	531048	$ 5600000
2935	IOS 3302 CAROL G. INGRAM	538231	$ 5600000
2108	ISLANDER	292810	$ 650000
3438	ISLEWAYS NO. 4	251773	$ 90000
3439	ISLEWAYS NO. 5	251859	$ 90000
3436	ISLEWAYS NO.1	251436	$ 90000
3436	ISLEWAYS NO.2	251519	$ 90000
3437	ISLEWAYS NO.3	251682	$ 90000
3558	J. LOUIS	1554	$ 875000
387	JAMES LYKES	280564	$ 975000
1304	JEAN LYKES	287103	$ 975000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
3186	JO ANNE	541373	$ 2865000
3366	JOE SEVIER	500799	$ 170000
389	JOHN LYKES	282772	$ 975000
390	JOSEPH LYKES	281326	$ 975000
3596	JOSEPH P. GRACE	2129	$ 700000
3491	KAUAI	621042	$ 50000000
3456	KENAI	586127	$ 22720000
3634	KENNETH E. HILL	6490	$ 8750000
3614	KENNETH T. DERR	7235	$ 8000000
3398	KEYSTONE CANYON	586129	$ 30000000
598	KEYSTONER	266730	$ 445000
795	KING	275193	$ 1055000
3287	KITTANNING	579572	$ 4000000
796	KNIGHT	277183	$ 1055000
2353	KOMOKU	509280	$ 720000
3568	LAKE ARROWHEAD	5881	$ 6335000
3569	LAKE BERRYESSA	5819	$ 3150000
3571	LAKE SHASTA	5719	$ 3115000
3572	LAKE TAHOE	5672	$ 6400000
3216	LASH ATLANTICO	530145	$ 8500000
2864	LASH ITALIA	529255	$ 8000000
3217	LASH PACIFICO	530146	$ 8500000
3622	LB-726 THRU LB-966	550598-562966	$ 35000
1352	LESLIE LYKES	287416	$ 975000
2403	LETITIA LYKES	512187	$ 825000
3311	LNG AQUARIUS	582506	$ 69535000
3371	LNG ARIES	588005	$ 69535000
3407	LNG CAPRICORN	588006	$ 69535000
3429	LNG GEMINI	595752	$ 69535000
3454	LNG LEO	595753	$ 69535000
3463	LNG LIBRA	595756	$ 69535000
3467	LNG TAURUS	595754	$ 69535000
3475	LNG VIRGO	595755	$ 69535000
3256	LONG BEACH	248240	$ 1120000
2062	LOUISE LYKES	299938	$ 825000
3597	M.P. GRACE	2774	$ 1200000
2233	MALLORY LYKES	504077	$ 825000
1356	MANHATTAN	287253	$ 5000000
2763	MANUKAI	524219	$ 16450000
2803	MANULANI	528400	$ 16450000
3492	MAOI	618705	$ 900000
3555	MARCONA TRADER	2492	$ 1350000
3574	MARCONA TRANSPORTER	4433	$ 2165000
2814	MARINE CHEMIST	529398	$ 4750000
2777	MARINE DUVAL	245851	$ 790000
3430	MARINE EAGLE	245495	$ 590000
2133	MARINE FLORIDIAN	246836	$ 730000
1812	MARINE TEXAN	247563	$ 600000
1513	MARJORIE LYKES	289873	$ 1000000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
3539	MARTHA B.	299786	$ 3000000
2260	MASON LYKES	505408	$ 825000
2109	MAUNALEI	246243	$ 1120000
2649	MAUNAWILI	246984	$ 1120000
3410	METON	278624	$ 1100000
2716	MOBIL AERO	278471	$ 1020000
3152	MOBIL ARCTIC	542026	$ 20000000
2442	MOBIL MERIDIAN	286479	$ 1605000
2525	MONMOUTH	242426	$ 710000
2798	MONTPELIER VICTORY	289745	$ 1525000
2670	MORMACDRACO	299008	$ 3000000
3301	MORMACSKY	578268	$ 3675000
3302	MORMACSTAR	568257	$ 3675000
3303	MORMACSUN	573770	$ 3675000
2799	MOUNT VERNON VICTORY	284178	$ 1505000
2800	MOUNT WASHINGTON	283097	$ 1515000
1243	NANCY LYKES	286650	$ 975000
3595	NECHES	277703	$ 1030000
3348	NEW YORK	569563	$ 46000000
3656	NEW YORK SUN	628783	$ 42000000
3282	NEWARK	511486	$ 700000
3259	OAKLAND	249076	$ 1120000
3577	OGDEN HUDSON	642151	$ 46800000
3471	OGDEN LEADER	520839	$ 5860000
2614	OGDEN WABASH	520738	$ 5800000
3515	OGDEN YUKON	547919	$ 11645000
3434	OIC	518924	$ 575000
2745	OMI CHAMPION	523341	$ 5800000
3470	OMI CHARGER	522864	$ 5860000
3576	OMI DYNACHEM	638899	$ 46800000
2591	OMI WILLAMETTE	518738	$ 5800000
3616	ORCO TRADER	5062	$ 6000000
3560	OSWEGO HOPE	1914	$ 1395000
3600	OSWEGO PEACE	1579	$ 1585000
3559	OSWEGO SPIRIT	1255	$ 1415000
3598	OSWEGO STAR	6072	$ 1500000
2827	OVERSEAS ALASKA	529795	$ 10185000
3674	OVERSEAS ALEUTIAN	244619	$ 1150000
3672	OVERSEAS ALICE	514928	$ 4700000
2862	OVERSEAS ARCTIC	530877	$ 10185000
3535	OVERSEAS BOSTON	630050	$ 3865000
3378	OVERSEAS CHICAGO	583412	$ 20000000
3409	OVERSEAS HARRIETTE	590624	$ 6000000
3533	OVERSEAS JUNEAU	553137	$ 20000000
3406	OVERSEAS MARILYN	590623	$ 6000000
3377	OVERSEAS NATALIE	287156	$ 4300000
3386	OVERSEAS NEW YORK	568001	$ 20000000
3383	OVERSEAS OHIO	586647	$ 20000000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
2671	OVERSEAS VALDEZ	517186	$ 47000000
3480	OVERSEAS VIVIAN	518125	$ 47000000
3399	OVERSEAS WASHINGTON	588955	$ 20000000
3313	P.L. 1-0740	564740	$ 75000
3260	PANAMA	248241	$ 1120000
3563	PATRIOT	571049	$ 6000000
3073	PECOS	259357	$ 780000
2826	PENNSYLVANIA SUN	280202	$ 1400000
3340	PERTH AMBOY I	171776	$ 100000
3472	PETERSBURG	291990	$ 1510000
2560	PHILADELPHIA	516541	$ 700000
3655	PHILADELPHIA SUN	638073	$ 47000000
2844	PITTSBURGH	247275	$ 1050000
2999	PL1-0001-0033,0035-0036	525001	$ 20000
3000	PL1-0037,0102	525037	$ 20000
3001	PL1-0133-0167,0169-0175	525133	$ 20000
3002	PL1-0199-0299,0231,0264	525199	$ 20000
3003	PL1-0265-0273,0275-0276	525265	$ 20000
3004	PL1-0332-0360,0344-0360	525332	$ 20000
3005	PL1-0361-0367,0369-0375	525344	$ 20000
3426	PL1-1-0526/57--0559/0775	564526	$ 25000
3314	PL2-0426-2-0481	540426	$ 20000
3567	POHANG	5779	$ 3500000
3277	PORTLAND	511487	$ 700000
2501	PRESIDENT ADAMS	517120	$ 1750000
2740	PRESIDENT CLEVELAND	521866	$ 1750000
2447	PRESIDENT FILLMORE	513860	$ 4000000
3483	PRESIDENT GRANT	530138	$ 14000000
3485	PRESIDENT HOOVER	530137	$ 14000000
2526	PRESIDENT JACKSON	517717	$ 1750000
3030	PRESIDENT JEFFERSON	544900	$ 8500000
3121	PRESIDENT JOHNSON	552109	$ 8500000
1947	PRESIDENT KENNEDY	296779	$ 3750000
3677	PRESIDENT LINCOLN	651627	$ 38000000
3041	PRESIDENT MADISON	546725	$ 8500000
2416	PRESIDENT MCKINLEY	512593	$ 4000000
3678	PRESIDENT MONROE	655397	$ 38000000
3120	PRESIDENT PIERCE	552108	$ 8500000
2398	PRESIDENT TAFT	511653	$ 4000000
2565	PRESIDENT TAYLOR	518517	$ 1750000
1418	PRESIDENT TRUMAN	287976	$ 3500000
3484	PRESIDENT TYLER	530140	$ 14000000
2359	PRESIDENT VAN BUREN	509581	$ 4000000
3679	PRESIDENT WASHINGTON	653424	$ 38000000
2622	PRESIDENT WILSON	520392	$ 1750000
800	PRIDE II	279769	$ 965000
3396	PRINCE WILLIAM SOUND	570108	$ 20000000
3575	QUATSINO SOUND	6975	$ 3500000
3635	RALPH B. JOHNSON	2161	$ 1560000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
3564	RANGER	573810	$ 6000000
3147	ROBERT E.LEE	557033	$ 10000000
3536	ROVER	577241	$ 6000000
2162	RUTH LYKES	502928	$ 825000
3341	SALISBURY	275895	$ 950000
3179	SAM HOUSTON	559035	$ 10000000
3615	SAMUEL M. ARNACOST	7272	$ 8000000
2846	SAN PEDRO	248238	$ 1050000
3367	SANFORD B. DOLE	510052	$ 125000
2918	SANSINENA II	535020	$ 11655000
3423	SANTA ADELA	504015	$ 800000
2752	SANTA JUANA	502726	$ 800000
3669	SANTA PAULA	288986	$ 3500000
3670	SANTA ROSA	287238	$ 3500000
3617	SASSTOWN	1876	$ 860000
3542	SCOTT CHOTIN JR.	517539	$ 700000
3453	SEA-LAND ADVENTURE	594073	$ 12000000
3100	SEA-LAND CONSUMER	552818	$ 9500000
3488	SEA-LAND DEFENDER	604246	$ 27250000
3513	SEA-LAND DEVELOPER	604247	$ 27250000
2868	SEA-LAND ECONOMY	532410	$ 8000000
3534	SEA-LAND ENDURANCE	606062	$ 27250000
3489	SEA-LAND EXPLORER	604248	$ 27250000
3514	SEA-LAND EXPRESS	604249	$ 27250000
3527	SEA-LAND FREEDOM	606065	$ 27250000
3516	SEA-LAND INDEPENDENCE	606061	$ 27250000
3529	SEA-LAND INNOVATOR	606064	$ 27250000
3451	SEA-LAND LEADER	594374	$ 12000000
3487	SEA-LAND LIBERATOR	604245	$ 27250000
3526	SEA-LAND MARINER	606066	$ 27250000
3450	SEA-LAND PACER	593980	$ 12000000
3486	SEA-LAND PATRIOT	604244	$ 27250000
3452	SEA-LAND PIONEER	594375	$ 12000000
3121	SEA-LAND PRODUCER	552819	$ 9500000
2867	SEA-LAND VENTURE	531478	$ 8000000
3517	SEA-LAND VOYAGER	606063	$ 27250000
1428	SHIRLEY LYKES	289283	$ 1000000
3627	SIERRA MADRE	641804	$ 38300000
3344	SOHIO INTREPID	533270	$ 10945000
3345	SOHIO RESOLUTE	533357	$ 10945000
803	SOLAR	280223	$ 965000
982	SOLON TURMAN	285889	$ 975000
2489	SPIRIT OF LIBERTY	518521	$ 4700000
808	SPRAY	282848	$ 965000
3415	SS MAUI	591709	$ 40000000
2765	ST. LOUIS	515620	$ 1050000
2248	STELLA LYKES	504982	$ 825000
3148	STONEWALL JACKSON	557034	$ 10000000
3412	STUYVESANT	584459	$ 46000000

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BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.86
463	TEXACO CALIFORNIA	266910	$ 1250000
3051	TEXACO CONNECTICUT	266501	$ 1250000
3052	TEXACO FLORIDA	271820	$ 1250000
1867	TEXACO GEORGIA	293819	$ 825000
1823	TEXACO MARYLAND	292735	$ 825000
1824	TEXACO MASSACHUSETTS	290306	$ 785000
475	TEXACO MINNESOTA	243202	$ 800000
476	TEXACO MISSISSIPPI	245082	$ 815000
2028	TEXACO MONTANA	298918	$ 885000
3053	TEXACO NEW YORK	265981	$ 1250000
1899	TEXACO RHODE ISLAND	296380	$ 825000
2927	TEXAS SUN	283897	$ 1530000
2963	TEXAS TRADER	246503	$ 635000
3536	THERESA F.	516158	$ 1625000
405	THOMPSON LYKES	283413	$ 975000
3431	THOMPSON PASS	586131	$ 30000000
3618	TIMBO	1778	$ 860000
3391	TONSINA	585629	$ 23110000
3548	TRADE DARING (BUCKEYE)	2758	$ 1400000
2418	TRANSCOLORADO	248806	$ 680000
2419	TRANSCOLUMBIA	248702	$ 680000
3657	TROPIC SUN	275583	$ 1055000
3473	U.S.T. ATLANTIC	601437	$ 8000000
3474	U.S.T. PACIFIC	613131	$ 8000000
2270	VALLEY FORGE	505786	$ 4500000
2354	VELMA LYKES	509852	$ 825000
3551	VENTURE ITALIA	4211	$ 1800000
3552	VENTURE LOUISIANA	6381	$ 1725000
3553	VENTURE OKLAHOMA	6253	$ 1760000
3361	WA-1-001/0302--0304/0450	551001	$ 35000
3362	WA-2-0451-2-0575	567451	$ 35000
3621	WA-3-0576 THRU WA-3-0725	608713-608862	$ 40000
3297	WASHINGTON TRADER	279627	$ 1585000
3547	WEATHERLY	2940	$ 1510000
2928	WESTERN SUN	268798	$ 1010000
3392	WESTWARD VENTURE	581673	$ 20480000
3549	WILLIAM E. MUSSMAN	6491	$ 8750000
3524	WILLIAM HOOPER	561453	$ 10000000
3599	WILLIAM R. GRACE	2015	$ 720000
3221	WILLIAMSBURGH	560975	$ 4300000
411	ZOELLA LYKES	282126	$ 975000

[FR Doc. 86-10847 Filed 5-13-86 8:45 am]
BILLING CODE 4510-81-C

Research and Special Programs Administration

Technical Pipeline Safety Standards Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the Technical Pipeline Safety Standards Committee on June 10, 1986, at 9 a.m. in Room 4234, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to discuss and develop a report on the technical feasibility, reasonableness, and practicability of the following proposed amendments to safety standards:

1. Definition of Gas Gathering Line.
2. Fire Protection and Security of Liquified Natural Gas Facilities.
3. Period for Confirmation or Revision of Maximum Allowable Operating Pressure.
4. Confirmation of Revision or Maximum Allowable Operating Pressure Near Certain Occupied Buildings and Outside Areas.
5. Interval for Review and Calculation of Relief Device Capacity.
6. Exceptions from Nondestructive Testing of Welds in Transmission Line Repair.

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Rebecca Key, Room 8409, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-426-2392, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: May 9, 1986

Richard L. Beam,

Associate Director, Pipeline Safety Regulation, Office of Pipeline Safety.

[FR Doc. 86-10867 Filed 5-13-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 8, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0345
Form Number: ATF REC 5150/12
Type of Review: Extension
Title: Manufacturers Recovering Taxpaid Alcohol
OMB Number: 1512-0373
Form Number: ATF REC 5400/3
Type of Review: Extension
Title: Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Licensed Explosives Importers, Dealers, and Permittees
Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 1041S
Type of Review: New
Title: U.S. Fiduciary Income Tax Return for Non Taxable Simple Trust
Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86-10780 Filed 5-13-86; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 93
Wednesday, May 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATION COMMISSION

May 8, 1986.

The Federal Communications Commission will hold an Open Commission Meeting on the subjects listed below on Thursday, May 15, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: Applications for the transfer of control of Communications Industries Inc., from James F. Rill, Trustee, to Pacific Telesis Group. Summary: This item considers the transfer of control applications from James F. Rill, Trustee to Pacific Telesis Group. The transfer of control from Communications Industries Inc. to James F. Rill, Trustee, was previously approved. The Commission will consider whether the grant of the applications, which will allow Pacific Telesis to control nonwireline licensees; violates the wireline/nonwireline cellular set-aside. Also before the Commission is the issue of whether the grant of these applications has anticompetitive consequences. The application for the transfer of control of the San Diego permit to New Vector is also before the Commission and whether this transfer violates the Act or Commission rules will be addressed by the Commission.

Common Carrier—2—Title: In the Matter of Amendment of § 64.702 of the Commission's rules and regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under § 64.702 of the Commission's rules and regulations. Summary: The FCC will consider whether to adopt a Report and Order implementing a revised regulatory framework governing basic and enhanced services, and addressing specific problems that have arisen under the Second Computer Inquiry. The Commission will also consider whether to adopt a Supplemental Notice concerning certain issues on which further comment may be appropriate.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: May 8, 1986.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-10950 Filed 5-12-86; 2:45 pm]
BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552), notice is hereby given that at 3:00 p.m. on Thursday, May 8, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Commerce and Trust Company, Tulsa, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma, on Thursday, May 8, 1986; (2) accept the bid for the transaction submitted by the First National Bank and Trust Company of Tulsa, Oklahoma; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilities the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 12, 1986.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-10954 Filed 5-12-86; 2:46 pm]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:45 p.m. on Friday, May 9, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Rainsville Bank, Rainsville, Alabama, which was closed by the Superintendent of Banks for the State of Alabama on Friday, May 9, 1986; (2) accept the bid for the transaction submitted by Jacobs Bank, Scottsboro, Alabama, an insured State nonmember bank; (3) approve the application of Jacobs Bank, Scottsboro, Alabama, for consent to purchase certain assets of and assume the liability to pay deposits made in Rainsville Bank, Rainsville, Alabama, and for consent to establish the sole office of Rainsville Bank as a branch of the resultant bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Bank & Trust of Idaho, Malad City, Idaho, which was closed by the Director, Department of Finance for the State of Idaho, on Friday, May 9, 1986; (2) accept the bid for the transaction submitted by The Idaho First National Bank, Boise, Idaho; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(C) consider the application of Citizens Bank of Americus, Americus, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Webster, Preston, Georgia, and for

consent to establish the sole office of Bank of Webster as a branch of the resultant bank.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 12, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-10865 Filed 5-12-86; 2:40 pm]

BILLING CODE 6714-01-M

4

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, May 13, 1986.

CHANGES IN THE MEETING: Change in time for Commission meeting to 2:30 p.m.

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, Rohr and Brunsdale determined by unanimous vote that Commission business requires the change of time, affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, 202/523-0161.

Dated: May 9, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-10860 Filed 5-9-86; 4:59 pm]

BILLING CODE 7020-02-M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, May 21, 1986 at 9:30 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes
3. Ratification List.
4. Petitions and Complaints.
   a. Certain sickle guards (Docket Number 1311).
5. Investigation TA-201-59 (Apple Juice)—briefing and vote on injury.
6. Any times left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Dated: May 8, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-10861 Filed 5-9-86; 4:59 pm]

BILLING CODE 7020-02-M

6

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Thursday, May 1, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.,

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and 552b(c)(10) (Section 102.139)(a) of the Board's Rules and Regulations, Series 8, as amended)—deliberation on adjudicatory matters.

MATTERS TO BE CONSIDERED: Case Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMAITON: John C. Truesdale, Executive Secretary, Washington, DC 20570. Telephone: (202) 254-9430.

Dated, Washington, DC, 9 May 1986.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86-10909 Filed 5-12-86; 10:10 am]

BILLING CODE 7544-01-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 12, 19, 26, and June 2, 1986.

PLACE: Commissioner's Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 12

Thursday, May 15

9:30 a.m.
Briefing by AIF on State of the Industry (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) a. Request for Hearing by R.C. Arnold and E.G. Wallace

Friday, May 16

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Catawba-2 (Public Meeting)

Week of May 19—Tentative

Tuesday, May 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, May 21

10:00 a.m.
Discussion of Policy Options on Mixed Radioactive and Hazardous Low-Level Wastes (Public Meeting)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, May 22

10:00 a.m.
Briefing by Davis-Besse Ad Hoc Review Group (Open/Portions May be Closed)

2:00 p.m.
Briefing by Staff on Status of TVA (Open/Portion Closed—Ex. 5 & 7)

4:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of May 26—Tentative

Wednesday, May 28

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, May 29

10:00 a.m.
Briefing on Pending Enforcement Action (Closed—Ex. 5 & 7)

2:00
Affirmation Meeting (Public Meeting) (if needed)

Week of June 2—Tentative

Thursday, June 5

10:00
Meeting with Advisory Committee on Reactor Safeguards (ACRS) on GESSAR II (Public Meeting)

3:30
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters scheduled for May 7, *cancelled.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

May 8, 1986.

[FR Doc. 86-10855 Filed 5-9-86; 4:12 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
May 14, 1986

Part II

Environmental Protection Agency

40 CFR Parts 154, 155, 158, 162, and 172
Pesticide Programs; Effective Dates for Final Rules and Notice of Availability of Pesticide Docket Indices

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 154, 162, and 172

[OPP-300838; FRL-3015-1]

Special Review of Pesticides; Criteria and Procedures; Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Effective date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted a final regulation issued under FIFRA, "Special Review of Pesticides; Criteria and Procedures," to both Houses of Congress for review prior to the regulation taking effect. This regulation was published in the Federal Register of November 27, 1985 (50 FR 49003). The minimum 60-day period for congressional review has ended.

EFFECTIVE DATE: The regulation is effective on May 14, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Joan Warshawsky, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5778).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation to establish procedures that provide specific opportunities for public participation in development of pesticide Registration Standards. The procedures establish and provide for the maintenance of a docket for each Registration Standard, which is indexed and made available for public inspection. The procedures also provide for publication in the Federal Register of an annual schedule of Registration Standards under development and announcements of the availability of the Registration Standards and their dockets.

However, as required by section 25(a)(4) of FIFRA, the regulation could not take effect until it had been submitted to both Houses of Congress for a period of 60 days of continuous congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the congressional review period would end, the preamble to the final regulation stated that EPA would issued a separate Federal Register notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous congressional session has ended.

Accordingly, the final regulation, promulgated on November 19, 1985, and published in the Federal Register of November 27, 1985 (50 FR 49003) is effective on May 14, 1986.

Authority 7 U.S.C. 136w.

List of Subjects in 40 CFR Parts 154, 162, and 172

Administrative practice and procedure, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Recordkeeping and reporting requirements, Research, Special review.

Dated: May 2, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-10703 Filed 5-13-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 158 and 162

[OPP-300788; FRL-3015-2]

Product Performance Required for Vertebrate Control Products; Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Effective Date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted a final regulation issued under FIFRA, "Product Performance Required for Vertebrate Control Products," to both Houses of Congress for review prior to the regulation taking effect. This regulation was published in the Federal Register of November 13, 1985 (50 FR 46764). The minimum 60-day period for congressional review has ended.

EFFECTIVE DATE: The regulation is effective on May 14, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Bernard Schneider, Benefits and Use Division (TS-768C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 705, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2161).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation to amend pesticide registration data requirements by reinstating a requirement for the submission of efficacy data for certain vertebrate control products. The rule also revised conditional registration regulations to rescind an efficacy data waiver inconsistent with the new requirement. Applicants for registration of such products must submit or cite to the Agency efficacy data to support the registration of each pesticide product that claims to control vertebrates having human health implications.

However, as required by section 25(a)(4) of FIFRA, the regulation could not take effect until it had been submitted to both Houses of Congress for a period of 60 days of continuous congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate Federal Register notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous congressional session has ended.

Accordingly, the final regulation, promulgated on October 30, 1985, and published in the Federal Register of November 13, 1985 (50 FR 46764) is effective on May 14, 1986.

Authority: 7 U.S.C. 136w.

List of Subjects in 40 CFR Parts 158 and 162

Administrative practice and procedure, Data requirements, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests.

Dated: May 2, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-10708 Filed 5-13-86; 8:45am]

BILLING CODE 6560-50-M

40 CFR Part 155

[OPP-300808; FRL 3014-8]

Pesticide Registration Standards; Docketing and Public Participation; Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Effective Date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted a final regulation issued under FIFRA, "Pesticide Registration Standards; Docketing and Public Participation," to both Houses of Congress for review prior to the regulation taking effect. This regulation

was published in the Federal Register of November 27, 1985 (50 FR 48998). The minimum 60-day period for congressional review has ended.

EFFECTIVE DATE: The regulation is effective on May 14, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–0944).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation to establish procedures that provide specific opportunities for public participation in the development of pesticide Registration Standards. The procedures establish and provide for the maintenance of a docket for each Registration Standard, which is indexed and made available for public inspection. The procedures also provide for publication in the Federal Register of an annual schedule of Registration Standards under development and announcements of the availability of the Registration Standards and their dockets.

However, as required by section 25(a)(4) of FIFRA, the regulation could not take effect until it had been submitted to both Houses of Congress for a period of 60 days of continuous congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate Federal Register notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous congressional session has ended.

Accordingly, the final regulation, promulgated on November 19, 1985, and published in the Federal Register of November 27, 1985 (50 FR 48998) is effective on May 14, 1986.

Authority: 7 U.S.C. 136w.

List of Subjects in 40 CFR Part 155

Administrative practice and procedure, Confidential business information, Pesticides and pests.

Dated: May 2, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–10702 Filed 5–13–86; 8:45 am]

BILLING CODE 6560–50–M

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-38121; FRL-3014-9]

Pesticide Docket Indices; Inclusion on Mailing Lists

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of docket indices for pesticide Registration Standards under development and pending pesticide Special Reviews, and provides information on how interested persons may request inclusion on an Agency mailing list to receive such indices. This notice is in response to Agency regulations that become effective May 14, 1986.

DATE: Persons may request to be included on the mailing lists for pesticide docket indices at any time.

ADDRESS: Persons wishing to be included on a mailing list to receive docket indices should direct their requests to:

By mail: Information Services Section, Program Management and Support Division (TS-757), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, requests may be delivered to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Interested persons may contact Frances Mann (703-557-3262) of the Information Services Section, in Rm. 236 at the above address, for further information on the public dockets, their availability, and the docket indices.

SUPPLEMENTARY INFORMATION: The Agency promulgated final regulations on its Registration Standards and Special Review procedures, which were published in the Federal Register of November 27, 1985 (50 FR 48833). Those regulations become effective May 14, 1986. The regulations included provisions for the establishment of a public docket for Registration Standards under development and pending Special Review actions, the maintenance of docket indices, and the establishment of a mailing list of persons wishing to receive the docket indices on a regular basis.

In accordance with § 155.32(d)(2) of the Registration Standard regulations, and § 154.15(f)(3) of the Special Review regulations, the Agency has established a mailing list for docket indices. Separate mailing lists are maintained for Registration Standards and Special Reviews. Persons on each mailing list will receive automatically the docket indices (or updates to previous indices) for Registration Standards under development or pending Special Reviews. These will be distributed on a monthly or quarterly basis, as required by the regulations. Persons on each mailing list will receive docket indices for all open dockets. Persons will be required to renew their requests for inclusion on the mailing list annually.

Any person wishing to be included on either mailing list should submit his name, affiliation (if any), and mailing address to the address given earlier in this notice. Organizations, groups and companies are requested not to submit multiple requests under different names, but to designate a primary recipient within the organization. This will reduce mailing cost and Agency time in administering the mailing lists.

Dated: May 5, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-10706 Filed 5-13-86; 8:45 am]

BILLING CODE 6560-50-M

UMI

federal register

Wednesday
May 14, 1986

Part III

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities; and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Impact Aid Program to include eligibility criteria for payments under section 3 of Pub. L. 81–874. Section 3 payments provide maintenance and operations assistance to local educational agencies (LEAs) in federally affected areas.

DATE: All comments must be received on or before June 13, 1986.

ADDRESS: Comments should be addressed to W. Stanley Kruger, Acting Director, Division of Impact Aid, U.S. Department of Education, Room 2107, 400 Maryland Avenue SW., Washington, DC 20202–6272.

FOR FURTHER INFORMATION CONTACT: W. Stanley Kruger. Telephone: (202) 245–8427.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 81–874, as amended (the Act), 20 U.S.C. 236–244, known as the Impact Aid program, authorizes assistance to LEAs that are financially burdened by a reduced tax base resulting from the Federal acquisition of real property, or by an increased student population due to Federal activities, or both. Section 3 of the Act addresses both types of burdens by authorizing payments to LEAs that are required to provide free public education to federally connected students. These payments supplement local revenues and assist the LEAs in meeting their maintenance and operations costs.

As stated in the Notice of Intent to Regulate, published in the Federal Register (51 FR 6011) on February 19, 1986, the Department has obtained information concerning several situations that raise difficult interpretive questions regarding eligibility for section 3 payments. At issue is how the Department should treat the claim of an applicant LEA for children who reside within its boundaries but attend schools that are not operated by the LEA. Among these schools identified by the Department are schools funded by the Bureau of Indian Affairs (BIA) of the Department of the Interior, private schools, and schools operated by other LEAs. Under the terms of the Act, an LEA may not claim students for payment purposes if it is not providing them a free public education.

The Department has been able to identify a number of LEAs that in past years have applied for payments on behalf of students who reside within their boundaries but attend BIA-funded schools. In a letter dated January 24, 1986, the Department notified those LEAs that it has questions regarding their eligibility to claim those students and that it was preparing to publish regulations that would apply to their fiscal year 1986 payments.

Because these eligibility questions have been raised, the Secretary believes it is desirable to explain how the Department will determine the eligibility of all LEAs to claim children for purposes of section 3 Impact Aid payments. The provisions of this notice of proposed rulemaking (NPRM) are based on the eligibility requirements in the Act. These proposed regulations will further the purpose of the program by directing the limited Federal funds to the LEAs that are burdened by having to educate federally connected children.

The NPRM includes in an appendix examples that explain the Department's interpretation and application of the requirements in several complex factual situations. The Secretary does not intend to codify the Appendix in the Code of Federal Regulations.

Because the authority in the Act for current Subpart I of 34 CFR Part 222 has been repealed, these proposed regulations replace the current regulations in Subpart I. The Secretary anticipates that these regulations, when published in final form, will govern all section 3 payments beginning with fiscal year (FY) 1988.

The NPRM does not address the statutory eligibility requirements relating to the number and category of an LEA's federally connected children or any other eligibility requirements already included in 34 CFR Parts 222 and 223. Also, the NPRM does not address the situation in which a State educational agency (SEA) claims children for section 3 payments as if it were an LEA. Section 403(6) of the Act (20 U.S.C. 244(6)) specifies the conditions under which an SEA may qualify as an LEA. The Secretary may, at a future date, propose regulations incorporating or expounding those statutory conditions.

B. Proposed § 222.80—Payments to local educational agencies

Proposed § 222.80 sets forth the basic framework under which eligibility is determined. It explains that, among other things, an LEA must be legally responsible for providing, and in fact be providing, a free public education to the children it claims for payment under section 3. The Act and its legislative history contemplate that payments are to be made only to LEAs burdened by federally connected children. An LEA is not so burdened if it is not responsible for providing, and not actually providing, a free public education to those children. In most cases, the LEA in which a child resides is responsible under State law for providing that child's free public education, and in fact provides that education in accordance with the requirements of § 222.81.

Examples 1 and 2 in the Appendix illustrate the application of proposed § 222.80. In example 1, federally connected children residing within an LEA attend a BIA-funded school. In example 2, the children attend a combined BIA/LEA school and the education of some of the children is financed substantially by the BIA. Although the LEA in each example may have been legally responsible for providing those children a free public education, the BIA in effect has released each LEA of its responsibility for educating those children. The LEAs are not eligible to claim them under section 3 because the LEAs are no longer responsible for providing those children a free public education. The LEAs are also not eligible to claim those students because they are not in fact providing them a free public education that meets the requirements of proposed § 222.81, as explained below.

C. Proposed § 222.81—Free public education

Proposed § 222.81 specifies what is meant by a free public education. That section describes four tests for determining whether an LEA is providing a free public education. An LEA that fails to meet any of those four requirements with respect to the children it claims is not eligible under § 222.80 to claim those children.

First, paragraph (a)(1) of this section requires that the education be at public expense. Paragraph (b) explains that to meet this test requires, among other things, that Federal funds (other than Impact Aid funds) do not provide a substantial portion of the educational program.

In determining whether the portion of an educational program provided by Federal funds is substantial, the Department considers all relevant circumstances, including whether the Federal funds are intended to provide the entire cost of the educational program. As illustrated in the first and second examples in the Appendix, the public expense requirement would preclude an LEA from claiming under section 3 children whose education is financed primarily by the BIA, a Federal agency whose funds are designed to pay for the entire cost of the educational program for children attending its schools. This requirement ensures that duplicate payments are not made on behalf of children whose education is the financial responsibility of another Federal agency.

Second, paragraph (a)(2) of this section requires that a free public education be the complete elementary or secondary educational program. Paragraph (c) explains that the complete program is the program recognized by the State as meeting all requirements for elementary or secondary education for the children claimed. Supplementary services or instruction, or a portion of the required program, do not constitute the complete elementary or secondary educational program.

The requirement of a complete educational program codifies the existing Department interpretation of the Act. The Department believes that an LEA that provides federally connected children only a supplementary portion of their required educational program—unlike an LEA that provides the complete educational program required by the State—is not burdened with the responsibility of educating federally connected children within the meaning and purpose of the Act. Under existing Department policy and these regulations, payments are thus made only to those LEAs that are burdened with the responsibility of providing the complete educational program to federally connected children. Example 3 illustrates the situation in which an LEA that provides only supplementary instruction to the children it claims does not meet this requirement.

The Department recognizes that there may be LEAs responsible for providing the complete educational program to the children claimed but which, for any number of reasons, might not be providing a full day of instruction to some of those children. Since State requirements of what constitutes a complete educational program may vary depending on the needs and objectives of individual students, these regulations would not generally preclude LEAs from claiming children who attend one or more classes offered by another institution. The Secretary encourages LEAs to comment on this requirement so that he may have more complete information on the variety of circumstances in which LEAs may not be providing a full day of instruction to the children claimed.

Third, paragraph (a)(3) of this section requires that a free public education be provided either in a school of the LEA or under a tuition arrangement with another LEA or other educational entity. Paragraph (d) specifies what the Secretary regards as necessary for an acceptable tuition arrangement. Because tuition arrangements may vary depending on the circumstances of a particular State and LEA, the Secretary believes it impractical to develop a specific standard that would be applicable to every tuition arrangement. Rather, the Secretary proposes a general standard that requires the arrangement to satisfy all applicable State requirements and to reflect genuinely the applicant LEA's responsibility to provide a free public education to the children it claims. This general standard permits LEAs flexibility in developing bona fide tuition arrangements and permits the Secretary to evaluate an LEA's tuition arrangement on a case-by-case basis, in light of all relevant circumstances.

Although the Secretary believes that most tuition arrangements are bona fide, there may be some arrangements that in the Secretary's judgment would not genuinely reflect the LEA's responsibility to provide a free public education to the children claimed. An example of a tuition arrangement that would violate this requirement is an arrangement in which the amount of tuition paid on behalf of the federally connected children is not comparable to that paid on behalf of other children.

Fourth, paragraph (a)(4) of this section reiterates the statutory requirement that a free public education for most children must be provided under public supervision and direction. Although this requirement is generally met when an LEA provides the education in its own schools or in a school of another LEA (under a tuition arrangement), paragraph (e) is primarily designed to address the situation in which an LEA may be providing education under an arrangement with a private institution.

In the case in which children of an LEA attend a private school, the LEA or other public agency must exercise authority with respect to the significant aspects of the educational program for the children claimed. Because educational programs may differ depending on the needs and objectives of the individual students and the LEA, under these regulations the Secretary determines on a case-by-case basis whether an LEA meets the public supervision and direction requirement. Example 4 in the Appendix illustrates the situation in which an LEA pays tuition for all of its high school students to a private school, which provides those students their complete educational program. In that case the LEA meets the requirement by maintaining final authority over the significant decisions affecting the educational program for the children claimed. The Secretary encourages LEAs to comment on this requirement so that he may have more complete information on the variety of circumstances in which children of an LEA attend a private institution.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by the regulations are small LEAs. The regulations propose general standards based on requirements in Pub. L. 81–874. The Department estimates that fewer than 30 LEAs may be required to provide additional documentation of compliance. Although, under the regulations, a number of LEAs may receive less Impact Aid funds than they received in past years and others may receive more, the regulations will not have a significant economic impact on a substantial number of small LEAs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in receiving information regarding specific factual situations that may be affected by these proposed regulations. Written comments and recommendations may be sent to the Department of Education address given at the beginning of this document. All comments submitted on or before (insert the 30th day after publication of this

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document) will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2107, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the requirements of Executive Order 12291 for reducing regulatory burden, the public is invited to comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

List of Subjects in 34 CFR Part 222

Elementary and Secondary Education, Federally affected areas.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: May 9, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. Part 222 is amended by revising the citation of authority to read as follows:

Authority: 20 U.S.C. 236–244, unless otherwise noted.

2. Subpart I is revised to read as follows:

Subpart I—Standards for Determining Eligibility Under Section 3 of the Act

Sec.

222.80 Payments to local educational agencies.
222.81 Free public education.

Subpart I—Standards for Determining Eligibility Under Section 3 of the Act

§ 222.80 Payments to local educational agencies.

The Secretary makes payments to an applicant local educational agency (LEA) for children claimed under section 3 of the Act, only if—

(a) The LEA is responsible under applicable State or Federal law for providing a free public education (as provided in § 222.81) to those children;

(b) The LEA is providing a free public education to those children; and

(c) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 5(d)(2) of the Act.

(20 U.S.C. 238 (a) and (b))

§ 222.81 Free public education.

(a) As used in § 222.80, a free public education means education that is provided—

(1) At public expense;

(2) As the complete elementary and secondary educational program;

(3) In a school of the LEA or under a tuition arrangement with another LEA or other educational entity; and

(4) Except with respect to handicapped children, under public supervision and direction.

(b) For the purpose of paragraph (a)(1) of this section, education is provided at public expense if—

(1) There is no tuition charge to the child or the child's parents; and

(2) Federal funds, other than Impact Aid funds, do not provide a substantial portion of the educational program.

(c) For the purpose of paragraph (a)(2) of this section, the complete elementary or secondary educational program is the program recognized by the State as meeting all requirements for elementary or secondary education for the children claimed and does not include a program that provides only—

(1) Supplementary services or instruction; or

(2) A portion of the required educational program.

(d) For the purpose of paragraph (a)(3) of this section, a tuition arrangement must—

(1) Satisfy all applicable legal requirements in the State; and

(2) Genuinely reflect the applicant LEA's responsibility to provide a free public education to the children claimed under section 3.

(e) For the purpose of paragraph (a)(4) of this section, education provided under public supervision and direction means education that is provided—

(1) In a school of the applicant LEA or another LEA; or

(2) By another educational entity, over which the applicant LEA, or other public agency, exercises authority with respect to the significant aspects of the educational program for the children claimed. The Secretary considers significant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(20 U.S.C. 244(4))

Appendix—Examples Illustrating Application of Regulations in Certain Situations

Note.—This appendix will not be shown in the Code of Federal Regulations.

Example No. 1. Each LEA in a State is held responsible under State law for providing a free public education to all students who reside within its boundaries. This LEA meets its legal responsibility of providing free public education to its resident students by operating schools for grades kindergarten through 12. While all the students residing within this LEA are entitled to attend its schools to receive free public education, they are not required to do so.

Also located in or near this LEA are several schools operated by tribal groups under contract with the Bureau of Indian Affairs (BIA) of the Department of the Interior. The BIA provides funding to these schools from the Indian School Equalization Program (ISEP) under a formula designed to provide the full cost of educating the eligible students attending the schools. A large number of Indian students residing on Indian lands in the LEA are eligible and choose to attend the BIA-funded schools where they receive the full program of instruction at the elementary or secondary level required by the State. The LEA does not provide educational services to the students in the BIA-funded schools.

The LEA claims to have a tuition arrangement with the BIA-funded schools. Under that arrangement, the LEA agrees to send to each BIA-funded school the full amount of the Impact Aid payments that it anticipates receiving on behalf of students attending that school, less ten percent.

Under these regulations, the LEA is not eligible for purposes of section 3 to claim the children attending the BIA-funded schools. The LEA is not responsible for providing the free public education of those children, as required by § 223.80(a), because the BIA has in effect released the LEA from its legal responsibility to educate the children who choose to attend the BIA schools. The fact that the LEA claims to have a tuition agreement with each of the BIA-funded schools makes no difference. Because the LEA is not responsible for providing a free public education to

those children, the "tuition" payments it makes to the BIA-funded schools are gratuitous.

Another reason the LEA is not eligible to claim the children is that, under § 222.80(b), it is not in fact providing those children a free public education. One of the four tests of a free public education in § 222.81 is whether the education is provided at public expense. Because Federal BIA funds provide a substantial portion, if not the full cost, of the educational program for those children, the education is not provided at public expense as required by § 222.81(b).

Example No. 2. In one community there are two educational entities that serve the school-aged children in the area. One of the entities is an LEA and the other is a school operated by an Indian tribe with ISEP funds provided through a contract with the BIA. While the LEA and the Indian tribe operate separate elementary schools, they have decided that it is in their mutual interest to operate, through a joint board, a single high school program for all the children in the community. The members on the joint board who represent the LEA exercise authority with respect to all matters of significance concerning the operation of the high school.

The high school consists of two buildings, one of which is owned by the LEA and the other by the BIA school. The two buildings are used as one facility with all students moving freely from one to the other for their classes. The high school program is provided free of charge to all of the students who attend and is fully accredited and recognized by the State. The LEA and the BIA school pool the resources available for the students each is responsible for educating. The LEA contributes funds it raises from local property taxes, and the BIA school contributes the funds it receives under the ISEP formula. The State provides State aid payments on an equal basis for all the students in this high school.

Under either § 222.80 (a) or (b) of the regulations, the LEA is not eligible for purposes of section 3 to claim those high school students funded by the BIA under the ISEP formula. This is because the LEA is not responsible for providing those students a free public education as required by § 222.80(a). Also, because the education of those students is not provided at public expense as required by § 222.81(b), the LEA is not in fact providing them a free public education as required by § 222.80(b).

The LEA is eligible, on the other hand, to claim the federally connected high school students whose education is not funded by the BIA. Even though the joint operation of the high school is somewhat unusual, the LEA is responsible under State law for providing, and is in fact providing, their free public education. The program for those students is funded by the LEA's local tax revenues and State aid contributions, and therefore the education is provided at public expense in accordance with § 222.81(b). The education consists of the complete secondary educational program recognized by the State, in accordance with § 222.81(c). Finally, because the LEA's representatives on the joint school board exercise authority in all significant decisions regarding the operation of the high school, the education is provided under public supervision and direction in accordance with § 222.81(e).

Example No. 3. A State requires each of its LEAs to provide free public education to all students residing within its boundaries. In this State, these LEAs are referred to as "school districts of residence." A district of residence provides its students the complete educational program required by the State.

A county in this State, containing four districts of residence, is considered an LEA by the State and also meets the Federal requirements for being an LEA because it provides the full required educational program for some children. This county also offers a supplementary program of advanced vocational training that is open to the secondary students of the four districts of residence located within the county. Typically, the secondary students from the districts of residence who attend the county's advanced vocational education program do so for one or two class periods a day. While the advanced vocational classes may be counted as part of a student's secondary program, a student could not meet the State's requirements for high school graduation by attending these classes alone.

Some of the students in one of the districts of residence are federally connected students who also participate in the county's supplementary vocational program. The district of residence is eligible for purposes of section 3 to claim those students because it is both responsible for providing, and in fact is providing, the complete educational program required by the State. The county, on the other hand, would not be eligible to claim those students. This is because the county, which provides only a supplementary portion of the students' education, does not provide the complete secondary educational program for those students in accordance with § 222.81(c). Therefore, the county is not providing their free public education as required by § 222.80(b).

Example No. 4. An LEA located in a sparsely populated, rural area operates a full program of elementary education, as recognized by its State, for the students residing within its boundaries. For various reasons, the LEA does not have any facilities in which to offer a program for its students at the secondary level.

The LEA provides the recognized secondary education program to its students by entering into a tuition arrangement with a local private school that meets applicable State requirements. The tuition covers the full cost of educating all its students. The program is governed by a joint school board made up of equal numbers of representatives of the LEA and the private school. A representative of the LEA serves as the director of the board. The joint board operates the secondary program by selecting and employing all school personnel, designing the curriculum, and supervising classroom instruction. In the event of a stalemate with regard to any significant decision affecting the educational program, the board director is authorized to resolve the issue.

Under these regulations, the LEA is eligible to claim for purposes of section 3 the students who are attending the private school for their secondary program. The LEA is both responsible for providing, and in fact is providing, their free public education under § 222.80. The education is provided at public expense (§ 222.81(b)) and is the complete secondary program recognized by the State (§ 222.81(c)). The education is being provided under a tuition arrangement that meets applicable State requirements and that genuinely reflects the LEA's responsibility to provide a free public education to the children claimed under section 3, in accordance with § 222.81(d). Finally, because the LEA exercises authority with respect to the significant aspects of the educational program, the education is provided under public supervision and direction as required by § 222.81(e).

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Part IV

Department of Transportation

Urban Mass Transportation Administration

Data Reporting for Private Conventional and Subscription Bus Services Not Under Contract to a Public Agency; Notice

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Data Reporting for Private Conventional and Subscription Bus Services Not Under Contract to a Public Agency

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Public Transportation Act of 1982 (Pub. L. 97-424) established a new formula program for urbanized areas equal to or over 200,000 in population for FY 1983 (section 9A) and following years (section 9). Formula funds are apportioned on the basis of different criteria, including the provision of private mass transit services.

The initial Urban Mass Transportation Administration (UMTA) Notice and Instructional Circular for sections 9A and 9 published on February 2, 1983, included privately provided mass transit services in the data base for apportionment of funds only when services are provided *under contract* to a public agency. On August 8, 1983, UMTA solicited comments in the **Federal Register** on adopting a broader definition of eligiblity for privately provided services and on November 2, 1983, UMTA published a Notice in the **Federal Register** (48 FR 50656) which announced that beginning with the 1984 data reporting year, voluntarily submitted data for private conventional and subscription bus services not under contract to a public agency could be included in the section 9 formula.

To promote greater cooperation between public transit agencies and private conventional and subscription bus services not under contract to a public agency, UMTA has developed reduced reporting procedures for these private providers that volunteer their data. This Notice describes the data and forms for 1986 and subsequent years that private conventional and subscription bus services not under contract to a public agency should submit for use in the section 9 formula allocation.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Director, Information Services Staff, Office of Technical Assistance, Urban Mass Transportation Administration, Room 6419, 400 Seventh Street SW., Washington, DC 20590, (202) 426-9157.

SUPPLEMENTARY INFORMATION: The Federal Public Transportation Act of 1982 established a formula grant program under section 9 of the Urban Mass Transportation Act of 1964, as amended 49 U.S.C. 1611 (UMT Act). For urbanized areas of 200,000 or more in population, funds apportioned under Section 9 are based, in part, on data collected through the UMTA section 15 reporting system. The UMT Act requires all applicants and direct beneficiaries of section 5 or 9 funding to be subject to the section 15 reporting system of financial and operating data. See 49 CFR 630. Other urban mass transportation services may voluntarily report into the system. To encourage the participation of private enterprise in transit, UMTA solicited comments in the **Federal Register** on August 8, 1983 (48 FR 3605) on adopting a broader definition of eligibility in the section 9 formula for privately provided services than was followed in the initial FY 1983 section 9A program, which had requested data from private providers only *under contract* to a public agency.

There were 68 responses to this Notice: 36 from State agencies, 16 from transit authorities, 7 from interest groups, and 9 from private providers. The responses were mostly in opposition to the proposed broader definition of eligibility. A few respondents clearly misinterpreted the Notice, while other submitted information which went beyond the scope of the discussion. Those who were in favor of the proposal generally did so on the basis of the perceived increases in apportionment that would flow to their areas. Those opposed generally objected on the grounds of data availability, quality, or reporting and tracking requirements. These comments are available for review at UMTA in Docket No. 83-E.

UMTA reviewed these comments and other information and determined that data for certain private transit services should be included in the statistical data base upon which the section 9 apportionment is calculated and the inclusion of these services would be phased in over time. Beginning with the 1984 section 15 reporting year (i.e., data for reporters with fiscal years ending on or between January 1, 1984 and December 31, 1984), data for private conventional and subscription bus services not under contract to a public agency (hereafter "private providers") may be voluntarily reported for use in the section 9 formula allocation. This broadening of permitted services for the apportionment is intended to encourage the participation of private enterprise in transit. UMTA announced this policy in the **Federal Register** on November 2, 1983 (48 FR 50656).

Private providers or public transportation services in urban areas have been free to voluntarily report into the section 15 reporting system since the system began in 1978. (Only transit agencies directly benefiting from section 5 and 9 funding have been required to report.) However, not many private providers have chosen to undertake the extra effort to complete reports. Even the inclusion of certain of these data in the section 9 formula has not generated much response. UMTA desires to open the opportunity for more cooperation between these private providers and public transit agencies. It is therefore, reducing the number of reporting forms these private providers can submit from 23 to 3, supplemented by a validation statement and attestation. UMTA has determined that the 3 forms described below are the ones most appropriate for private providers. While the information contained in the other 20 forms would be helpful it is not strictly necessary for compilation purposes. The reduced data submission is effective beginning with the 1986 section 15 reporting year.

Description of Private Providers and Forms Requested

Those private providers requested to submit the forms are those who operate: (1) Private conventional bus services which are fixed-route, scheduled operations providing conventional, not specialized, services; and (2) subscription bus services which are fixed-route, scheduled operations contracted for by employers, employees, or community groups that provide conventional services. Data from these services are eligible for inclusion in the section 9 formula when the services operate totally within an urbanized area of 200,000 or more inhabitants (large UZA) or within two or more contiguous large UZAs. Commuter services coming from outside a large UZA may be counted also.

Data voluntarily reported by private providers which meet the requirements contained in this Notice will be eligible for use in the section 9 bus basic tier formula allocation only. The bus basic tier uses section 15 data pertaining to bus vehicle revenue miles. The limited nature of this data will result in the exclusion of private providers' data from the main body of the section 15 annual report. However, the data will be published as part of the data base used to apportion section 9 funds.

The three forms and supplemental information involved are:

Form 001, Transit System Identification Schedule;

Form 006, Section 9 Statistics Summary;

Form 406, Transit System Service Supplied, Service Consumed, Service Personnel, and Service Operated Schedule; and
Chief Executive Officer Attestation and Validation Statement.

Form 001 (Transit System Identification Schedule) requests general information to identify the reporter, including name, address, fiscal year end date, etc.

Form 006 (Section 9 Statistics Summary) summarizes section 15 data used for section 9 apportionments and allocates these data among urbanized areas. Private providers should complete this form for data on vehicle revenue miles only. These are the miles during which the vehicle is actually available for use by revenue paying passengers. Vehicle revenue miles may only be reported for services that operate totally within a large UZA or within two or more contiguous large UZAs. Commuter services coming from outside a large UZA may be reported also. All vehicle revenue miles reported by private providers are to be reported as non-fixed guideway data. When appropriate, reporters should allocate these data by urbanized area, using the urbanized area code as specified by the U.S. Bureau of the Census. Allocation of the statistics between large UZAs should be based on the private provider's assessment of the proportion of the private provider's total operations in each UZA.

Form 406 (Transit System Service Supplied, Service Consumed, Service Personnel, and Service Operated Schedule—Non-Rail Modes) collects data relating to the provision of service for non-rail modes. Private providers need only report data on this form pertaining to *service supplied* and *service operated* information. The data reported in these two categories must only be from those services eligible for inclusion in the section 9 formula allocation, as described above under Form 006. Service supplied data include number of vehicles in operation, total actual vehicle miles, total actual vehicle hours, total actual vehicle revenue miles, total scheduled vehicle revenue miles, and total actual vehicle revenue hours. Service operated data include days schedules operated, days not operated due to start-ups, terminations, and/or no scheduled services, days not operated due to strikes, days not operated due to officially declared emergencies, days not operated due to other reasons, and total days. Data for service supplied and service operated are provided by the total annual amounts and by breakdowns among average weekdays, Saturdays, and Sundays.

Finally, all private providers should submit with their reports a cover letter signed by the Chief Executive Officer of the private agency that (1) attests to the accuracy of the data submitted and (2) includes a validation statement. The validation statement is a clear statement on how the data submitted in the report may be validated. The statement should discuss the availability of published schedules, log books, contracts, reports to public utility commissions, or other sources that could be used to substantiate the report. Copies of any or all of these documents should be furnished to UMTA upon request. These documents and all auditable records should be maintained for 3 years.

The Metropolitan Planning Organization (MPO) in an urbanized area may coordinate the submissions of reports for private providers serving its urbanized area. The Urban Mass Transportation Administration encourages such coordinated reporting in order to streamline the data submission and validation process. If the MPO and private providers elect to submit their reports through the MPO, the MPO should: (1) Submit consolidated data for the private providers on each of the 3 forms above; (2) submit the original individual forms and supplemental information (i.e., CEO Attestation and Validation Statement) above for each of the private providers whose data are consolidated in step no. (1); and (3) serve as the primary contact point and responsible entity that UMTA will correspond with concerning the private providers' data and will work with to resolve any reporting issues.

Interested parties desiring reporting forms and detailed instructions for reporting section 15 data for private conventional and subscription bus services not under contract to a public agency should write or call the Urban Mass Transportation Administration, Office of Technical Assistance, Information Services Staff, 400 Seventh Street SW., Room 6419, Washington, DC 20590 (202) 426–9157.

Issued on May 9, 1986.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

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The President

Proclamation 5477 of May 13, 1986

National Osteoporosis Awareness Week, 1986

By the President of the United States of America

A Proclamation

Osteoporosis, a degenerative bone disease, affects 15 to 20 million Americans, mostly women, and takes a terrible human toll of pain, impaired mobility, and disruption of daily activities. Its victims lose their independence, and their families share in the heartache.

Often called a silent disease, osteoporosis may begin and then progress without any warning signs. Bone mass decreases, causing bones to be more susceptible to fracture. Each year more than 1.3 million Americans over 45 years of age suffer bone fractures as a result of this malady. Fractures of the spine, hips, and wrist are the most common, although any of the bones may be affected.

As the number of elderly persons increases, so will the magnitude of the problem. However, we now know that osteoporosis may not be an inevitable part of aging. New research findings and new approaches to prevention, diagnosis, and treatment are being developed to eliminate osteoporosis as a cause of human suffering. Working together, the Federal government and private voluntary organizations have developed a strong and enduring partnership in osteoporosis research. I am confident we will uncover the cause and cure of this major public health problem and promote measures to prevent or delay its occurrence.

The Congress, by Senate Joint Resolution 285, has designated the week beginning May 11 through May 17, 1986, as "National Osteoporosis Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 11 through May 17, 1986, as National Osteoporosis Awareness Week, and I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord ninteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-82-AD; Amdt. 39-5312]

Airworthiness Directives; Mitsubishi Models MU-300 and MU-300-10

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Mitsubishi Model MU-300 and MU-300-10 airplanes, which requires placards, a revision to the Airplane Flight Manual (AFM), and replacement of the presently installed faulty starter relays with newly designed relays. This action is prompted by reports of electrical malfunctions of these relays during engine starting operations, which in one case, resulted in arcing of the relay contacts and overheating of components in the starter relay area. This condition, if not corrected, could result in a cabin fire.

EFFECTIVE DATE: June 2, 1986.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Beech Aircraft Corporation, 9709 E. Central, Wichita, Kansas 67201. They may be examined at the FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas; FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas; or FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Christenson, FAA, Southwest Region, Airplane Certification Branch, ASW-150, P.O. Box 1689, Fort Worth, Texas 76101; telephone (817) 877-2500.

SUPPLEMENTARY INFORMATION: Starter relay malfunctions have occurred on twelve (12) Mitsubishi Model MU-300 airplanes. Arcing and overheating of the starter relay and adjacent components have occurred on one of these airplanes. An evaluation of the reasons for these failures showed that they happened during engine starting operation and were annunciated by a continued illumination of the engine START light. Investigation revealed that one set of starter contacts stuck closed, while the other set generated a continuous arc which overheated the relay and adjacent components. Continuous starter excitation was applied to the starter and could only be removed by turning off the battery switch. In another incident, the right starter generator was destroyed during a left generator-assisted start. Investigation of this incident revealed that it was also caused by stuck starter relay contacts. This condition, if not corrected, could result in cabin or engine compartment fires.

The manufacturer has published Mitsubishi Service Bulletins (SB) 74-001 and 74-002, both dated April 25, 1986, which specify the replacement of the faulty relays with Cutler Hammer Part No. SM400 D16 relays, and make other improvements to the relay circuitry.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued to require compliance with Mitsubishi Service Bulletins 74-001 and 74-002, which describe the installation of the new relay. This AD also requires that, prior to the installation of the new relays, placards must be installed to instruct pilots that continued operation with any engine "start" or disengage annunciation is prohibited; and AFM operations must be revised accordingly.

Because a condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and a good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive (AD):

Mitsubishi: Applies to Model MU-300, Serial Numbers A003SA through A091SA; and Model MU-300-10, Serial Numbers A-1001SA through A1011SA; certificated in any category. To prevent cabin and engine compartment fires, accomplish the following:

A. Within 15 days after the effective date of this AD, affix a placard immediately adjacent to the engine START switch, worded as follows: "AFTER ENGINE(S) START, CONTINUED OPERATION WITH ANY ENGINE *START* OR DISENGAGE ANNUNCIATION IS PROHIBITED." This placard must consist of 0.1-inch red letters on a white background and may be of a plastic adhesive type, purchased locally. The placard, which is contained with Beech Aircraft Corporation MU-300/MU-300-10 Safety Communique, dated April 1986, is an acceptable placard. The placard may be removed from MU-300 airplanes when the Airplane Flight Manual for these airplanes has been changed in accordance with paragraph B., below, and the airplane has been modified in accordance with paragraph C., below. The placard may be removed from MU-300-10 airplanes when the airplane has been modified in accordance with paragraph C., below.

B. Within 15 days after the effective date of this AD, incorporate the following into the Normal Procedure *Starting Engines* Section of the MU-300 (Diamond I) Airplane Flight

Manual: "CHECK STARTER DISENGAGEMENT AT APPROXIMATELY 32% N_g. IF STARTER HAS NOT DISENGAGED BY 45% N_g, PLACE THRUST LEVER IN CUTOFF POSITION AND REMOVE ALL ELECTRICAL POWER." This may be accomplished by including a copy of this AD in the airplane flight manual.

C. Within the next 200 hours time-in-service after the effective date of this AD, replace the airplane starter relay in accordance with Mitsubishi Service Bulletin SB 74-001, dated April 25, 1986 (for Model MU-300 airplanes), or SB 74-002, dated April 25, 1986 (for Model MU-300-10 airplanes), or later FAA-approved revisions.

D. Special flight may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

E. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Airplane Certification Branch, FAA, Southwest Region.

This amendment becomes effective on June 2, 1986.

Issued in Seattle, Washington, on May 8, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-10893 Filed 5-14-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-23115; File No. S7-41-85]

Amendment Relating to the Options Disclosure Document

Correction

In FR Doc. 86-8967 beginning on page 14980 in the issue of Tuesday, April 22, 1986, make the following correction:

On page 14982, in the third column, in 2(c), the amendatory language should read: "Adding a new paragraph (c)(5) to read as follows:"

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[T.D. 8084]

Excise Taxes; Second Tier Excise Taxes

Correction

In FR Doc. 86-9954 beginning on page 16300 in the issue of Friday, May 2, 1986, make the following correction: On page 16304, in § 53.4963-1(e)(3)(iv), in the third line, "4904" should read "4940".

BILLING CODE 1505-01-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Amendments

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: On 25 July 1985, Congress passed Pub. L. 99-80, 99 Stat. 183, amending and reauthorizing the Equal Access to Justice Act, retroactive to 1 October 1984. On 5 August 1985, the President signed the legislation and the amended Equal Access to Justice Act became law. The rules of the National Labor Relations Board have not been changed since initially established in October 1961. These revisions change the rules as they are affected by the 1985 amendments to the Equal Access to Justice Act and, in one instance, conform language in the rules to the statutory language.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), and in accordance with the requirements of section 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)), the National Labor Relations Board is revising its rules implementing the Equal Access to Justice Act governing the award of fees and other expenses to eligible parties who prevail in litigation before the Agency. In 1985, the Equal Access to Justice Act was amended with the changes in the Act made applicable to any case commenced after 1 October 1984. The amendments require a revision of the Board's rules to increase the net worth eligibility limits and to add small local governmental units as parties eligible for an award.

As stated in the rulemaking notice (51 FR 9467), in promulgating these rules, consideration was given to the model prepared by the Administrative Conference of the United States (50 FR 46250) when appropriate. The Administrative Conference also submitted comments to the Board's proposed rules. These comments were directed, in large part, to additions and modifications in the rules that were not included in the Board's proposed changes. These comments were fully considered in the determination to publish the rules unchanged from their proposed form.

The revisions to the rules will be effective immediately upon publication. The remaining provisions of the Board's rules regarding the administrative award of fees and expenses under the Equal Access to Justice Act remain unchanged.

Section 102.143(c) of the Board's rules presently provides that applicants who are eligible to receive awards include individuals with net worth of no more than $1 million, and the sole owner of an unincorporated business, a partnership, a corporation, an association, or a public or private organization with a net worth of not more than $5 million and not more than 500 employees. This section is revised to substitute the new net worth limitations of $2 million and $7 million for $1 million and $5 million, respectively. In addition, this section of the rules is revised to provide that a "unit of local government" is a party eligible to receive an award.

Section 102.144(a) is revised to include the statutory language "substantially justified" to evaluate the position of the General Counsel in place of the phrase "reasonable in law and fact." To avoid any confusion or misunderstanding, the statutory language has been used in place of the phrase presently in the rule.

Section 102.147(b) is revised to require that an application for an award include a statement that net worth does not exceed $2 million for an individual and $7 million for all other applicants, reflecting the higher net worth figures in the amended Act.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Equal access to justice.

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

Accordingly, 29 CFR Part 102 is amended as follows:

1. The authority citation for 29 CFR Part 102 is amended by adding the following citation:

Authority: * * * Sections 102.143(c), 102.144(a), and 102.147(b) also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.143 is amended by revising paragraph (c) to read as follows:

§ 102.143 "Adversary adjudication" defined; entitlement to award; eligibility for award.

* * * * *

(c) Applicants eligible to receive an award are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

3. Section 102.144 is amended by revising paragraph (a) to read as follows:

§ 102.144 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel's position in the proceeding was substantially justified.

* * * * *

4. Section 102.147 is amended by revising paragraph (b) to read as follows:

§ 102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

* * * * *

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

Dated: Washington, DC, May 9, 1986.
By direction of the Board.
National Labor Relations Board.
John C. Truesdale,
Executive Secretary.

[FR Doc. 86-10912 Filed 5-14-86; 8:45 am]
BILLING CODE 7545-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month ending after the effective date of the regulation, a series of interest rates to be used in valuing benefits and certain assets as of valuation dates that occur within that calendar month. This amendment adds a series of interest rates to that table and republishes the table in full.

EFFECTIVE DATE: June 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-956-5050 (202-956-5059 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal establishes rules for valuing assets and benefits of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15 of the regulation prescribes an interest assumption to be used in performing these valuations. Paragraph (c) of that section contains a table setting forth, for each calendar month ending after the effective date of the regulation, a series of interest rates to be used in any valuation performed as of a valuation date within the calendar month.

This amendment to the regulation adds the next monthly rate series to the table in § 2676.15(c). This rate series is for the month of June 1986 and applies to valuation dates occurring within that month. The PBGC intends to publish a new entry in the table each month, whether or not the new entry contains rates different from those prescribed for the preceding month. The PBGC expects to publish each month's rates on or about the fifteenth of the preceding month.

Due to a printing error, the table entry for May 1986, as published at 52 FR 16022 (April 30, 1986), was headed "April 1986." A correction of the error has been published, but to avoid confusion, this amendment republishes the table in full.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN ASSETS AND PLAN BENEFITS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219 (c)(1)(D), and 4281(b), Pub. L. 93-406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96-364, 94 Stat. 1302, 1237-1238, and 1281 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is revised to read as follows:

§ 2676.15 Interest

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
April 1986	.09875	.0985	.09	.085	.08	.07375	.07375	.07375	.07375	.07375	.0675	.0675	.0675	.0675	.0675	.06
May 1986	.09525	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06
June 1986	.09525	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 8th day of May, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-10789 Filed 5-14-86; 8:45 am]

BILLING CODE 7708-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1153

Authorities and Delegations

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule: Authorities and delegations.

SUMMARY: The Architectural and Transportation Barriers Compliance Board at its September 11, 1985 meeting adopted amendments to its Authorities and Delegations, which set forth the duties and responsibilities of the ATBCB, its officers and committees. The amendments were adopted to effect changes from the previous authorities and delegations and are being published so that all affected persons will be fully informed about the responsibilities and authorities of ATBCB officials.

EFFECTIVE DATE: September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Laurinda Steele, Office of Administration and Management, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW, Washington, D.C. 20202, Phone (202) 245-1601 voice or TDD. Copies of this notice are also available on tape for visually impaired persons.

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the Architectural and Transportation Barriers Compliance Board (ATBCB or Board) adopted Authorities and Delegations on July 12, 1983. The Authorities and Delegations were published at 48 FR 53074 (1983) and codified at 36 CFR Part 1153. The ATBCB adopted amendments to the Authorities and Delegations on September 11, 1985. The reasons for the amendments were to achieve a better balance of authority among the Board, officers, staff, and committees.

List of Subjects in 36 CFR Part 1153

Authority delegations, Archives and records, Consultants, Equal employment opportunity, Freedom of information, Government procurement, Handicapped, Organization and functions.

For the reasons stated in the preamble, 36 CFR Part 1153 is revised to read as follows:

PART 1153—AUTHORITIES AND DELEGATIONS

Sec.

1153.1 The Board.
1153.2 Chairperson.
1153.3 Vice Chairperson.
1153.4 Executive Director.
1153.5 General Counsel.
1153.6 Committees of the Board.
1153.7 Chief Procurement Officer.
1153.8 Equal employment opportunity.
1153.9 Freedom of Information Officer.
1153.10 Delegations records.

Authority: 29 U.S.C. 792, Pub. L. 93-112, as amended by Pub. L. 95-602.

§ 1153.1 The Board.

The Board is the governing body of the agency. The composition of the Board and its functions are established by section 502 of the Rehabilitation Act of 1973. The Board has the following duties and responsibilities, including:

(a) To carry out its responsibilities under section 502 of the Rehabilitation Act of 1973, as amended. In carrying out these responsibilities, the Board may hold public hearings throughout the country.

(b) To establish policies and issue regulations in accordance with its statutory mandate.

(c) To resolve issues that are within its jurisdiction.

(d) To determine and adopt a contracting and procurement policy for the agency. In carrying out this responsibility, the Board will enter into contracts only in accordance with its contracting and procurement policy, published in the Federal Register.

(e)(1) To effect the prompt and efficient disposition of all matters within its jurisdiction. In carrying out this responsibility, the Board in accordance with Article VI of its Statement of Organization and Procedures:

(i) By majority vote delegate to the Executive Committee authority to implement its decisions.

(ii) By two-thirds vote delegate to the Executive Committee any other of its authorities, to the extent permitted by law.

(iii) To the extent permitted by law, delegate other duties to its officers, committees, or staff by a vote of two-thirds of the membership of the Board at the time the vote is taken.

(2) A separate delegation is necessary for each action the Board desires the Executive Committee to implement. Unless so permitted in the original delegation, an officer, committee, or staff person shall not redelegate authority.

(f) To make to Congress, at the end of each fiscal year, an annual report of the Board's activities during that fiscal year. The annual report shall include such material as it is required by law to include and such other material as the Board may decide.

(g) To make to the President and Congress such other reports as it is required by law to make, and such recommendations as it considers necessary or desirable to eliminate environmental barriers confronting handicapped individuals.

(h) To allocate funds appropriated by the Congress for such activities as conducting investigations and surveys, initiating public hearings, collecting data on past and current studies, and providing stenographic or other services, as necessary, appropriate, and in accordance with law.

(i) To determine the jurisdiction of each standing committee of the Board.

§ 1153.2 Chairperson.

The Chairperson represents the Board as the head of the agency, whenever an applicable Federal statute or regulation imposes a duty or grants a right or authority to the head of the agency. The Chairperson or his or her designee has the following duties and responsibilities:

(a) To coordinate and organize the work of the Board in such a manner as to promote the prompt and efficient disposition of all matters within the jurisdiction of the Board. In carrying out these responsibilities, the Chairperson is delegated the authority to:

(1) Supervise the Executive Director.

(2) Direct the Executive Director concerning appropriate action to implement decisions of the Board.

(3) Evaluate the Executive Director's performance, and approve performance evaluations of employees who report directly to the Executive Director. A delegation of this authority may only be made to the Vice-Chairperson of the Board.

(4) Authorize domestic travel for the Executive Director, which authority may be delegated, and authorize foreign travel for staff, Board members and the Executive Director, which authority may not be delegated.

(5) Make necessary administrative decisions for the agency and direct the Executive Director concerning implementation of such decisions during periods when the Board is not in session.

(6) Review and approve publication of the Board newsletter and press releases which contain expressions of Board policy.

(7) Appoint members and chairpersons to the Board's subject matter committees, and appoint the chairperson of the Executive Committee.

(8) Nominate one or more Board members to serve, with their consent, at each public hearing which may be held by the Board.

(9) Request from departments or agencies represented on the Board such technical, administrative, or other assistance as may be required to carry out the Board's activities.

(10) Hire and fire staff at the GS–14 level and above, and approve promotions to the GS–14 level and above, with the consent of the Executive Committee. The authority to fire staff may only be delegated to the extent permitted by applicable Office of Personnel Management regulations.

(11) Nominate the General Counsel, who is to be confirmed by the Board, and appoint division directors, with the consent of the Executive Committee.

(b) To preside at all meetings and sessions of the Board.

(c) To represent the Board in all matters relating to congressional testimony and legislative reports. However, any other Board member may present his or her own or minority views on supplemental reports.

(d) To represent the Board in all matters involving submissions of comments on agencies' proposed regulations and responses to published directives of the Office of Management and Budget. The Board shall be given advance written notice of any action taken under this authority. The Chairperson may file comments on agencies' draft notices of proposed rulemaking (NPRMs), published NPRMs, final rules, other notices published in the **Federal Register**, only with advance approval of the Executive Committee.

(e) To call a special meeting of the Board at the request of the Executive Committee, to take action on a request to the Board to enter litigation as *amicus curiae*.

(f) To maintain going liaisons with constituency groups and other organizations and with staff of interested congressional committees to keep them informed of general Board policies and activities and to obtain information for use by the Board in formulating policy, developing budget requests, and drafting recommended legislative changes.

(g) To carry out other duties and responsibilities as may be delegated by the Board.

§ 1153.3 Vice Chairperson.

The Vice Chairperson shall, in the absence of the Chairperson from a Board meeting, or in the event of his or her death or disqualification, perform the duties and exercise the powers of the Chairperson, and shall generally assist the Chairperson and perform such other duties as may be directed by the Chairperson or the Board.

§ 1153.4 Executive Director.

The Executive Director is appointed by the Board and is responsible to the Board under the supervision of the Chairperson. He or she has the following duties and responsibilities:

(a) To assist the Chairperson in carrying out the administrative and executive responsibilities of the Chairperson in a manner that may be directed by the Chairperson. These duties may include acting as the administrative head of the agency and in connection therewith assisting in the planning, directing, coordinating, and managing of the administrative affairs of the Board. In carrying out these responsibilities, the Executive Director may exercise authority delegated to him or her in accordance with the Board's contracting and procurement policy published in the **Federal Register**. In addition, the Executive Director is delegated the authority to:

(1) Authorize travel expenses for consultants, specialists, experts, witnesses, and other persons whose presence is deemed essential for attendance at Board meetings, hearings, advisory committee meetings or other functions of the Board.

(2) Reimburse members of the Board who are not regular full-time employees of the United States for travel, subsistence, and other necessary expenses incurred in carrying out their duties.

(b) To recommend to the Executive Committee matters that should be considered by the Board or any of its designated committees.

(c) To review with the Board and with heads of the several units and offices, the program and procedures of the Board and to make recommendations thereon as may be necessary to administer Section 502 of the Rehabilitation Act of 1973 most effectively in the public interest.

(d)(1) To provide sustained administrative leadership, and supervision and management of staff activities in carrying out the policies and decisions of the Board under the direction and supervision of the Chairperson. Supervision of staff includes:

(i) Authority to detail, reassign and train all staff, hire and fire staff at the GS–13 level and below, and promote staff to the GS–13 level.

(ii) Making recommendations to the Chairperson on hiring and firing staff at the GA–14 level and above, and promoting to the GS–14 level and above.

(iii) Evaluating the performance of all staff who report directly to the Executive Director and approving the performance evaluations of all other staff.

(iv) Advance approval of work activities which are outside the normal scope of the employee's job duties.

(v) The utilization and assignment of staff in support of any Board member or Board committee.

(vi) All other utilization and assignment of staff.

(2) In carrying out these responsibilities, the Executive Director is delegated the authority to:

(i) Authorize domestic travel for all staff, within the Board designated levels in the budget. Approval by the Executive Committee is required for any travel expenditures above those designated levels.

(e) To direct compliance and enforcement activities in accordance with the procedures set forth in 36 CFR Part 1150 including:

(1) Issuing citations and determinations not to proceed.

(2) Conducting negotiations for compliance, and entering into agreements for voluntary compliance.

(3) All other actions authorized by law pertaining to compliance and enforcement not otherwise reserved to the Board by 29 U.S.C. 792.

(4) Issuing staff manuals which have been approved by the Board, to provide guidance to staff in interpreting the Architectural Barriers Act of 1968 and section 502 of the Rehabilitation Act of 1973, as amended, and standards and guidelines issued pursuant to those Acts. Positions taken in any such manuals will not be inconsistent with established Board policy, and administrative and court rulings, to the maximum extent possible. The manuals will be for staff guidance and will be available to the public upon request.

(f) To direct and supervise the development and execution of routine technical assistance and public information programs, as authorized by law. These activities may be carried out in cooperation with state and local government units, other Federal agencies, and interested consumer groups. Public information program initiatives other than routine program activities shall be approved by the Board in advance.

(g) To provide special administrative assistance to the Board at the request of the Chairperson.

(h) To direct investigation and research of initiatives submitted by staff or Board members regarding technical assistance or other Board functions.

(i) To propose and implement changes in the functional organization of the Board staff offices, following a written notification to the Board of the nature and reasons for the proposed changes. Personnel actions necessary to implement such changes shall not be approved until there has been a meeting of the Board, following the Board's written notification of the changes, and shall be taken consistent with § 1153.2 (a)(10).

(j) To submit biweekly reports to the Chairperson.

(k) To incorporate proposed revisions in the minutes if corrections or additions have been submitted, and present both the original and the corrected minutes to the Board for final approval. The Executive Director shall distribute the approved minutes within the (10) days after approval to: (1) Board members; (2) the House Education and Labor Committee, the House Public Works and Transportation Committee, the Senate Labor and Human Resources Committee, and the Senate Environment and Public Works Committee; and make minutes available to others upon request.

(l) To refer correspondence by the Board which involves a specific department or agency, to that department or agency for reply.

(m) To account to the Board for the administration of program expenditures and keep records which disclose disposition of any funds and the nature and extent of the Board's activities.

(n) To report semi-annually, in writing, to the Board on each procurement regardless of amount entered into to date in the fiscal year, listing each procurement separately with its amount and date. In addition, the report shall list all procurements then in progress that have not been awarded and any procurements being considered for any future time.

(o) To maintain and keep current a separate file containing all delegations of authority, which shall be in writing, and provide copies of all delegations to the Board as they occur.

§ 1153.6 General Counsel.

The General Counsel is nominated by the Chairperson and confirmed by the Board. He or she is responsible to the Board under the supervision of the Executive Director. The General Counsel has the following duties and responsibilities:

(a) To coordinate and organize the work of the legal staff in order to provide prompt and comprehensive legal advice to the Board.

(b) To provide legal interpretation of statutes, regulations, and rules of procedure for the Board's consideration.

§ 1153.61 Committees of the Board.

(a) *Committee chairpersons.* Committee chairpersons are appointed by the Chairperson of the Board. They have the following duties and responsibilities:

(1) To preside at all meetings of their respective committees.

(2) To provide, after each committee meeting (with the exception of teleconference meetings), an evaluation of the performance of the Board staff person assigned as liaison to the committee. Providing assistance to the committee shall be included as a critical element in the performance standards of each committee liaison staff person. The evaluations are to be considered by the supervisor of each Board committee liaison staff person in the annual performance evaluation.

(3) The chairperson of the Budget and Planning committee will ensure that work on each Board budget is begun no later than 21 months prior to the date on which the budget is to become operative.

(b) *Executive Committee.* The Executive Committee has the following duties and responsibilities:

(1) To report directly to the Board on matters submitted to it by members and subject matter committees, and all other matters that are within its jurisdiction.

(2) To review and consider recommendations and proposals from the various subject matter committees, and take appropriate action thereon. This may result in placing a proposal on the Board agenda for Board action, referring it back to the subject matter committee for further refinement of its proposal or revision of its reports, or referring it to another committee for appropriate actions.

(3) To issue recommendations to the Board concerning proposals on the agenda.

(4) To place items of business on the Board's agenda.

(5) To ensure the orderly functioning of the committees' work and the process for reviewing matters that are proposed for the Board's consideration.

(6) To assist the Chairperson in other circumstances at his or her request.

(7) To arrange joint meetings among the appropriate subject matter committees whenever two or more committees have jurisdiction over a matter, or other related responsibilities.

(8)(i) To review requests to the Board to enter litigation as *amicus curiae.*

(ii) In carrying out these responsibilities, the Executive Committee is delegated the authority to disapprove such requests and make recommendations to the Board to approve such requests. Board approval shall be required prior to any *amicus* filing. The Committee may request the Chairperson of the Board to call a special meeting of the Board to expedite Board action on the Committee's recommendations.

(9) To review and make recommendations to the Board to amend or approve the Board's statement of organization and procedures, formal policy statements, and authorities and delegations.

(10) To carry out other duties and responsibilities as may be duly delegated by the Board.

(c) *Subject matter committees.* Each subject matter committee studies and reports to the Executive Committee on matters that are within the subject matter committee's province, and has the following duties and responsibilities:

(1) To review and consider recommendations or proposals submitted by Board members,

committees, and other individuals and entities.

(2)(i) To identify issues and develop policy recommendations for review by the Executive Committee. This includes further refinement of matters that are referred from the Executive Committee, and submission of reports containing recommendations or proposals on which action is to be taken by the Board.

(ii) In carrying out these responsibilities, each subject matter committee is delegated the authority to arrange briefings, reports and research by designated staff, experts, or Federal member agency staff through requests to the Chairperson or the Executive Director, whichever is appropriate.

(3) To formulate and present projections of matters to be undertaken by the committee to the Budget and Planning Committee.

(4) To project and formulate the need for staff assistance in performing the committee's functions.

(5) To report, at the direction of the Chairperson of the Board or the committee, the status of matters that are within the committee's particular jurisdiction.

(6) To advise the Executive Committee to forward materials originating within the subject matter committee to other committees with jurisdiction over the matter involved.

(c) *Special Committees.* A Special Committee has the duties and responsibilities specified by its creator, who shall report the names of its members and chairperson to the Chairperson of the Board.

§1153.7 Chief Procurement Officer.

The Chief Procurement Officer is designated by the Head of the Procuring Activity in accordance with the Board's contracting and procurement policy published in the Federal Register. He or she has the following duties and responsibilities:

(a) To ensure that staff is provided with equipment and other basic supplies and services that are necessary to perform their duties.

(b) To report to the Head of the Procuring Activity in all other matters pertaining to the agency's needs for supplies and services.

§1153.8 Equal employment opportunity.

(a) The Director of Equal Employment Opportunity (EEO Director) is designated by the Chairperson. The EEO Director has the responsibility on a collateral duty basis, to carry out the functions of the EEO Director, Federal Women's Program Coordinator, Hispanic Employment Program Manager, and Handicap Program Coordinator, in accordance with regulations of the Equal Employment Opportunity Commission.

(b) For the purposes of 29 CFR 1613.221, the Chairperson shall make the final decision of the Board on a complaint based on information in the complaint file. The Chairperson may designate another Board member to discharge this responsibility. A person designated to make the decision for the head of the agency shall be one who is fair, impartial and objective.

§1153.9 Freedom of Information Officer.

(a) The Board has the responsibility to disseminate information on matters of interest to the public and to disclose on request all information contained in records in its custody insofar as it is compatible with the discharge of its responsibilities and consistent with the Freedom of Information Act, as amended, 5 U.S.C. 552 and the Board regulations "Public Availability of Information" (36 CFR Part 1120).

(b) The Board designates the Executive Director as the Freedom of Information (FOI) Officer. The FOI Officer has the responsibility for implementing the policies and procedures to ensure compliance with the requirements of the Freedom of Information Act and the Board regulations. The Executive Director may delegate that responsibility.

§1150.10 Delegations records.

All delegations authorized by these Authorities and Delegations shall be made in writing. Records of all such delegations will be maintained by the Executive Director in a separate file.

Adopted September 11, 1985, Meeting of the ATBCB.

Charles Hauser,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 86-11000 Filed 5-14-86; 8:45 am]

BILLING CODE 4000-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-3-FRL-3016-1]

New York; Decision on Final Authorization of the State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination on Application of New York for Final Authorization.

SUMMARY: New York has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New York's application and has reached a final determination that New York's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program.

DATE: Final authorization of New York's program shall be effective for purposes of judicial review at 1:00 p.m. eastern standard time on May 29, 1986. This approval shall become effective on May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Golumbek, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, Room 907, New York, New York 10278. Telephone (212) 264-7309.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the EPA to authorize state hazardous waste programs to operate in the state in lieu of the Federal hazardous waste program. To qualify for final authorization, a state program must: (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program, and (3) provide for adequate enforcement. (Section 3006(b) of RCRA, 42 U.S.C. 6228(b)).

On November 5, 1985, New York submitted a complete application to obtain final authorization to administer the RCRA program. On January 7, 1986, EPA published a tentative decision announcing its intent to grant New York final authorization. Further background on the tentative decision to grant final authorization appears at Vol. 51, No. 4, page 631, January 7, 1986.

Along with the Federal Register notice of tentative determination, EPA also announced the availability of New York's application for public inspection and copying, the dates of the public comment period, the date of the EPA public hearing on New York's application and EPA's tentative determination to grant the State final authorization via a special press release, issued by Region II, and appearing Statewide in various newspapers, as well as on radio and television news programs. The public hearing was held on February 7, 1986, in Albany, New York, and the public comment period ended at 5 p.m. on Tuesday, February 11, 1986.

Responsiveness Summary

By the close of the public comment period, EPA received comments from three persons on the tentative

determination to grant final authorization to New York. Each of the commentors opposed authorization of the State's hazardous waste program. The significant issues raised by these commenters and EPA's responses are summarized below.

Issue—The New York State Department of Environmental Conservation has sought to apply the State program to the handling of a broad range of functional electrical equipment which has not served its original intended purpose, and is still in productive use. This material is not a solid waste within the meaning of RCRA or EPA's RCRA program, and New York's program as applied to this equipment is neither equivalent to nor consistent with the Federal or state programs applicable on other states. Federal authorization should be denied for these reasons.

Response—The Federal program does not preclude states from adopting and enforcing regulations which are either more stringent than or broader in scope than the Federal program. New York's regulation of electrical equipment containing PCB wastes represents a program area in which the State's regulatory authority is broader in scope than the Federal program. EPA's approval of New York's hazardous waste program does not include the State's broader-in-scope regulations.

Issue—New York seeks to regulate a broad range of electrical equipment as a "hazardous waste" under the provisions of 6 NYCRR 371.4(e), thereby creating a separate and intricate scheme for regulating wastes containing PCBs. Such equipment is already subject to comprehensive regulation under EPA's Toxic Substances Control Act (TSCA). New York's program under 6 NYCRR Parts 370–373 is in conflict with the TSCA program, and with the regulatory policies on which that program is based. The State's program is therefore preempted by TSCA, and for this reason EPA has no authority to authorize its implementation.

Response—The EPA believes that the statutory scheme and legislative history of TSCA clearly demonstrate Congress' intention to preserve authority to the states to regulate the disposal of toxic wastes, including PCBs. Although Congress included an express Federal preemption provision in Section 18 of the Act, it concurrently recognized the importance of allowing the states to regulate local matters pertaining to the safety and health of their citizens, such as the disposal of PCBs. As a result, Congress specifically exempted the disposal of toxic wastes from the preemption provision of section 18. However, while Congress exempted the disposal of toxic wastes from Federal preemption, it did not give the states the authority to impede constitutional restraints, such as imposing a burden on interstate commerce.

The EPA has consistently interpreted sections 6 and 18 of TSCA as authorizing the states to regulate the disposal of PCBs since the Agency promulgated its PCB regulations in 1978. In view of EPA's interpretation of its statutory mandate and TSCA's legislative history, many states have adopted programs regulating the use and disposal of PCBs as a hazardous substance. The EPA supports the states' initiative and enforcement actions in the spirit of cooperative federalism, and as a necessary adjunct to the Federal PCB disposal program. Indeed, the states' PCB disposal programs have become an important part of the national effort to ensure proper and safe disposal of PCBs.

Issue—New York's inclusion of PCBs and items containing that substance as "hazardous waste" under the State program is not authorized by RCRA and is in conflict with the policy of national uniformity which Congress has required under the statute. New York's attempt to impose a set of separate and unique PCB regulations in the State renders its hazardous waste program not equivalent to, and inconsistent with, the Federal and state programs applied in other states. Final authorization should be denied for these reasons.

Response—New York's hazardous waste regulatory program is broader in scope than was the Federal program, in that the State lists as hazardous wastes . . . all solid wastes containing 50 parts per million by weight or greater of polychlorinated biphenols (PCBs). . .", with certain exclusions. Such wastes are not regulated by the EPA under the RCRA program. In accordance with 40 CFR 271.1(i) and 272.121(e)(2), state-imposed requirements which are beyond the coverage of the Federal program are not part of the Federally-approved program. Therefore, EPA approval of New York's hazardous waste program does not include the State's PCB regulation. Also pursuant to 40 CFR 271.1.(i), the State may adopt or enforce requirements which are more stringent than the Federal requirements. In either case, the State may adopt and enforce programs that are either broader in scope or more stringent than the Federal program, while remaining consistent with and equivalent to the Federal program under RCRA for the purpose of program authorization.

Region II conducted a comprehensive Capability Assessment, evaluating past State program performance and State resource capacity for future program implementation. The Capability Assessment, together with the Letter of Intent, highlighted the areas in which New York needed improvement and the measures that EPA and New York will take to ensure that these improvements are implemented. These areas were the taking of timely enforcement actions against facilities with Class I violations; the use and documentation of the EPA penalty policy; and timely and appropriate reporting. Since the publication of the tentative determination, Region II has continued to monitor the progress of the New York program in the above-noted areas of concern. Region II has found that New York continues to make progress in those areas.

Decision

After reviewing the State's application, capability to implement a quality hazardous waste management program and the public comments received on EPA's January 7, 1986 tentative determination and February 7, 1986 public hearing, I conclude that New York's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New York is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). New York now has the responsibility for permitting hazardous waste treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program.

New York also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA. New York is not authorized to operate the RCRA program on Indian lands, and this authority will remain with EPA.

As stated above, New York's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 8, 1984 HSWA amendments to RCRA. Prior to that date, a state with final authorization administered its hazardous waste management program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities that the state was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the state was obligated to

enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized state until the state adopted those requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized states at the same time as they take effect in non-authorized states. EPA is directed to carry out these requirements and prohibitions in authorized states, including the issuance of full or partial Federal permits, until the state is granted authorization to do so. While states must adopt HSWA-related provisions as state law to retain final authorization, HSWA provisions apply in authorized states in the interim. As a result of HSWA, there will be a dual State/Federal regulatory program in New York. To the extent the authorized State program is unaffected by HSWA, the State program is hereby authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in New York until the State receives authorization to do so. Any State requirement that is more stringent than its analogous HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in New York.

New York is not now being authorized for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time, the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized states. That notice was published in the July 15, 1985 **Federal Register** (at 50 FR 28702), and should be referred to for further information.

Effective Date

Final authorization of New York's program takes effect at 1:00 p.m. eastern standard time, on May 29, 1986.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New York's program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure; Confidential business information; Hazardous materials transportation; Hazardous waste; Indian lands; Intergovernmental relations; Penalties; Reporting and recordkeeping requirements; Water pollution control; Water supply.

Authority: Sec. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6926 and 6974(b), EPA Delegation 8-7.

Dated: March 28, 1986.

Christopher J. Daggett,

Regional Administrator.

FR Doc. 86-10941 Filed 5-14-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-3-FRL-3015-9]

West Virginia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination on West Virginia's Application for Final Authorization.

SUMMARY: The State of West Virginia has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed West Virginia's application and has reached a final determination that West Virginia's hazardous waste management program satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA is granting Final Authorization to the State of West Virginia to operate its hazardous waste program in lieu of the Federal program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final Authorization for the State of West Virginia shall be effective at 1:00 pm May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Renee Gruber, Program Manager, VA/WV Section, Waste Management Branch (3HW31), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597-9436.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984. To qualify for Final Authorization, a State's program must: (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

B. The State of West Virginia

On October 29, 1985, the State of West Virginia submitted an official application to obtain Final Authorization to administer the RCRA program. On January 13, 1986, EPA published a tentative decision announcing its intent to grant West Virginia Final Authorization. Further background on the tentative decision to grant authorization appears at 51 FR 1394, January 13, 1986.

Along with the tentative determination EPA announced the availability of the application for public review and comment and the date of a public hearing on the application. The public hearing was not held as scheduled on February 13, 1986, since neither EPA nor the State received sufficient interest in holding the hearing. In addition, no written comments were received on the application.

C. Decision

I conclude that West Virginia's application for Final Authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of West Virginia is granted Final Authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). In accordance with 40 CFR 271.21(e)(1) (i), official State applications shall be reviewed on the bases of Federal self-implementing statutory provisions that were in effect twelve months prior to the State's submission of its official application and the regulations in 40 CFR Parts 124, 260-266, 270 and 271 that were promulgated twelve months prior to the State's submission of its official application. In addition, a State may receive Final Authorization for any

provision of its program corresponding to a Federal provision in effect on the date of the State's authorization. Therefore, West Virginia is receiving Final Authorization for its program corresponding to any Federal self-implementing statutory provisions that were in effect on October 29, 1984, and to the Federal regulatory program promulgated up to October 29, 1984, as well as for the technical amendment issued on November 21, 1984 (49 FR 46094), and the amended interim status standards for landfills issued on April 23, 1985 (50 FR 16044–48).

West Virginia now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. West Virginia also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. The State has not sought the authority to operate the RCRA program on Indian Lands.

As stated above, West Virginia's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date, a State with Final Authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain Final Authorization, the HSWA applies in authorized States in the interim.

As a result of HSWA, there will be a dual State and Federal regulatory program in West Virginia. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in West Virginia until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remain in effect; thus, the universe of more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in West Virginia.

West Virginia is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, West Virginia's program in that area will operate in lieu of the Federal program. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

Compliance With Executive Order 12291: The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of West Virginia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: Sec. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act is amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 22, 1986.

James M. Seif,

Regional Administrator.

[FR Doc. 86–10942 Filed 5–14–86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 721

[OPTS-50518A; FRL-2926-9]

Benzoic Acid, 3,3'-Methylenebis [6-Amino-, Di-2-Propenyl Ester; Significant New Uses

Correction

In FR Doc. 86–10102 beginning on page 16684 in the issue of Tuesday, May 6, 1986, make the following correction: On page 16684, in the third column, in the **DATES** paragraph, in the fifth line, remove "14 days".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

Merchant Marine Training

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its merchant marine training regulations to effect a reduction in the entering classes at the United States Merchant Marine Academy.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin M. Hackett, Academies Program Officer, Office of Maritime Labor & Training, Maritime Administration—DOT, 400 Seventh Street, SW., Room 7302, Washington, DC 20590. Telephone: (202) 426–5759.

SUPPLEMENTARY INFORMATION: MARAD is amending Subpart C of 46 CFR Part 310—Admission and Training of Midshipmen at the United States Merchant Marine Academy—to lower quotas for all geographical areas that are eligible to send students to the United States Merchant Marine Academy (Academy). State quotas are set in proportion to a state's representation in Congress (House and Senate), with no state having a quota of less than one.

The Academy regulations were amended in 1983 and 1984 to reduce the size of the classes entering the Academy in each of those years. The two reductions were necessary because it was estimated that there would be substantially more deck and engine officers than needed to sustain an adequate deck and engine officer work force for our current and projected active fleet of large oceangoing ships.

The additional reduction in the entering class size, to be effected by this rule, is warranted by continuing unfavorable employment opportunities for merchant marine officers. A reduction in the number of licensed merchant marine officers being trained is further justified by the fact that, if unemployed in their profession, these young persons would have wasted four years of training and the Federal expenditure involved would be a waste of national resources. This reduction also complies with a recommendation by the President's Private Sector Survey on Cost Control that the enrollment at the United States Merchant Marine Academy be substantially cut from its level in pre-1983 years, to help reduce the Federal budget deficit. After this reduction, the enrollment at the Academy will remain at a level that is necessary to accomplish training program objectives that support our national maritime policy.

Cost and Benefits

This rule imposes no costs on the private sector. It reduces each entering class, in the first year of each class, by 27 students. The reduction in enrollment falls to 23 in the second year of enrollment for each entering class and 21 by the third and fourth years, based on estimated attrition. The cost savings in each year result from a reduction in four expense items: Food, uniforms, textbooks and travel. These expenses are identical in the first and fourth years, when the students remain at the Academy, and are higher than during the second and third years, when they are away from the Academy for six months of training aboard merchant ships.

The reduction in enrollment and cost savings are as follows:

REDUCTION IN ENROLLMENT [1]

[School years beginning]

Class (year)	1986	1987	1988	1989
First	27	27	27	27
Second		23	23	23
Third			21	21
Fourth				21
Total	27	50	71	[illegible]

[1] Uses 1984 entering class base of 242 and assumes an attrition of 4 students in the second year and 2 students in the third year.

TOTAL COST SAVINGS AS A RESULT OF REDUCTION [1]

[School year beginning]

1986	1987	1988	1989
[illegible]	$100,000	$139,000	$198,000

[1] Cost per student in the first and fourth years is $2,832, and cost per student is $1,416 in second and third years. Calculation assumes constant costs.

E.O. 12291, Statutory Requirements and DOT Procedure

This is not a major rule under Executive Order 12291. Pursuant to DOT regulatory policies and procedures (44 FR 11034, February 26, 1979), this rule is considered to be significant, because there is substantial Departmental and Congressional interest in the selection process for, and allocation of appointments to the United States Merchant Marine Academy. Since it affects only students and applicants to the USMMA, the economic impact of this final rule has been found to be so minimal that further regulatory evaluation is unnecessary. The rule will only affect individuals. Therefore, the Maritime Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.)

The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

Since the Congressional nomination process for the class entering July 1986 has already begun, it is imperative that the amendment to Subpart C be published as a final rule. Delay would create confusion for Congressional nominating authorities who initiate nominations, expecting the appointments to be made under current state quotas. A delay would also seriously affect the selection process at the admissions office of the United States Merchant Marine Academy, where the number of appointments are awarded based on precise knowledge of freshman vacancies available. The Maritime Administration has regularly issued regulations on merchant marine training as final rules, without opportunity for comment. Based on past experience, we do not expect to receive any comment on this change.

Therefore, pursuant to provisions of 5 U.S.C. 533, good cause exists for finding that notice and public comment are impracticable and unnecessary. In addition, due to the urgency surrounding the candidate selection process, the Maritime Administration finds good cause to make this regulation effective immediately.

List of Subjects in 46 CFR Part 310

Grant programs, Education, Maritime Administration, Schools, Seamen.

Accordingly, Subpart C of 46 CFR Part 310 is amended as follows:

PART 310—MERCHANT MARINE TRAINING

1. The authority citation for Part 310 continues to read as follows:

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

Subpart C—Admission and Training of Midshipmen of the United States Merchant Marine Academy

§ 310.53 [Amended]

Section 310.53, Nominations and vacancies, is amended by revising paragraph (b)(5) to read:

* * * * *

(b) * * *

(5) The distribution of each entering class by State is:

Alabama	4
Alaska	1
Arizona	3
Arkansas	2
California	19
Colorado	4
Connecticut	4
Delaware	1
Florida	10
Georgia	5
Hawaii	2
Idaho	2
Illinois	9
Indiana	3
Iowa	4
Kansas	3
Kentucky	2
Louisiana	4
Maine	2
Maryland	5
Massachusetts	5
Michigan	7

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Minnesota	3
Mississippi	3
Missouri	3
Montana	2
Nebraska	2
Nevada	2
New Hampshire	2
New Jersey	8
New Mexico	2
New York	15
North Carolina	6
North Dakota	1
Ohio	8
Oklahoma	2
Oregon	3
Pennsylvania	10
Rhode Island	2
South Carolina	4
South Dakota	1
Tennessee	4
Texas	13
Utah	2
Vermont	1
Virginia	5
Washington	5
West Virginia	2
Wisconsin	4
Wyoming	1

* * * * *

Dated: May 8, 1986.

By Order of the Maritime Administrator.

Murray A. Bloom,

Assistant Secretary.

[FR Doc. 86-11129 Filed 5-14-86; 8:33 am]

BILLING CODE 4910-81-M

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Proposed Rules

Federal Register
Vol. 51, No. 94
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-6]

Petitions for Rulemaking; Summary of Petitions Received From Air Transport Association (ATA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application processing, and disposition of petition for rulemaking (14 CFR Part 11), this notice contains a summary of a petition from the Air Transport Association (ATA) requesting a 6-month delay in the effective date of amendments which require certain air carriers to carry emergency medical equipment. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the legal status of any petition or its final disposition.

The agency finds that good cause exists to reduce the public comment period on this petition in order to permit a decision to be made on ATA's request well in advance of the August 1, 1986, effective date of Amendment Nos. 11-29 and 121-188.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before June 4, 1986.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 9, 1986.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
21069	Air Transport Association	Description of Petition: To extend the August 1, 1986, compliance date for Part 121 air carriers, to place on-board their aircraft medical equipment and drugs for use in the diagnosis and treatment of medical emergencies that might occur during flight time and to comply with related training and record keeping requirements. Regulations Affected: 14 CFR §§ 11.101, 121.308, 121.417, 121.715 and Appendix A. Petitioner's Reason for Rule: Interested vendors and a majority of air carriers have no experience in purchasing, storing, shipping or providing prescription drugs, and there remains a question concerning the inclusion of the medical kits in Minimum Equipment Lists (MEL). Thus, a 6-month delay of the compliance date of the rule could serve the public interest.

[FR Doc. 86-10696 Filed 5-14-86; 8:45am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-63-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to certain Boeing Model 747 airplanes that would require repetitive inspections for cracking, and repair as necessary, of lower lobe body frames (Sections 42 and 46) of the fuselage, and an inspection of certain cargo side guide support brackets, and repair, if necessary. This proposed AD is prompted by a recent finding of numerous body frame structure cracks in the lower lobe of the fuselage. Failure of the structure could lead to rapid decompression.

DATE: Comments must be received on or before July 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rule Docket No. 86-NM-63-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletins specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. They may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or the Seattle Aircaft Certification Office, 9010 East Marginal Way South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-63-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: There have been numerous reports of cracking of body frame structure in the lower lobe (Sections 42 and 46) of the fuselage. This cracking has been found on airplanes with 8,874 to 18,954 flight cycles. Recently, four adjacent frame webs were found severed on an airplane with 16,493 flight cycles. Another finding has been of a single frame and fail-safe chord severed on an airplane with 17,769 flight cycles. It has been determined that this cracking is attributed to cabin pressure cyclic loading. Such cracking can lead to failure of associated structure, which could lead to rapid decompression of the airplane.

Boeing has issued Alert Service Bulletin 74-53A2237, Revision 1, dated March 28, 1986, which provides procedures to inspect for body frame structure cracking in the lower lobe (Sections 42 and 46) of the fuselage, and repair of cracking, as necessary.

Two operators have reported cracking or complete separation of the frame inner chord and web on 12 airplanes with 12,483 to 20,002 flight cycles. Among the 12 airplanes, there were a total of 25 frames affected. Cracking began at the last fastener common to the cargo side guide support bracket and frame inner chord, and progressed to where 14 frames had separated the frame inner chord and web. Frames that are broken could eventually cause extensive skin cracks in the adjacent area and rapid decompresson of the airplane. Boeing has issued Alert Service Bulletin 747-53A2259, dated March 28, 1986, which describes an inspection and modification to maintain the structural integrity of lower lobe frames in the aft cargo compartment by installing a tapered strap adjacent to all cargo side guide support brackets found not tapered.

Since this situation is likely to exist or develop in airplanes of the same type design, this AD would require inspection for cracking of body frame structure in the lower lobe (Sections 42 and 46) of the fuselage, inspection of the cargo side guide support bracket for proper machined tapering, and repair, if necessary, in accordance with the alert service bulletins mentioned above.

It is estimated that 112 airplanes of U.S. registry would be affected by this AD, that it would take approximately 370 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,657,600.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 3913 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Alert Service Bulletins 747-53A2259, dated March 28, 1986, and 747-53A2237, Revision 1, dated March 28, 1986, certificated in any category.

To detect cracking of body frame structure in the lower lobe (Sections 42 and 46) of the fuselage, accomplish the following, unless already accomplished:

A. For airplanes listed in Boeing Alert Service Bulletin 747-53A2237, Revison 1, dated March 28, 1986:

1. Perform a detailed visual inspection for frame cracking from fuselage stations 540 to 760, and 1820 to 1900, stringers 35 left to 42 left, in accordance with Section III of Boeing Service Bulletin 747-53A2237, Revision 1, dated March 28, 1986, or later FAA-approved revision, in accordance with the following schedule after the effective date of this AD:

a. Within 300 landings for airplanes that have accumulated over 12,000 landings on the effective date of this AD.

b. Within 600 landings for airplanes that have accumulated 10,000 to 12,000 landings on the effective date of this AD.

c. Within 600 landings or upon the accumulation of 10,000 landings, whichever occurs later, for airplanes that have accumulated less than 10,000 landings on the effective date of this AD.

2. If cracking is found, repair prior to further flight in accordance with FAA-approved procedures.

3. Repeat the inspections required by paragraph A.1., above, at intervals not to exceed 3,000 landings until terminating action is performed.

4. Terminating action is modification of the frames in accordance with Boeing Service Bulletin 747-53A2237, Revision 1, dated March 28, 1986, or late FAA-approved revision.

B. For airplanes listed in Boeing Alert Service Bulletin 747-53A2259, dated March 28, 1986:

1. Perform a visual inspection of cargo side guide support brackets from fuselage stations 1500 to 1800, right and left hand side, for a proper machined taper in accordance with the Boeing Service Bulletin 747-53A2259, Section III, dated March 28, 1986, or later FAA-approved revision, in accordance with the following schedule after the effective date of this AD:

a. Within 300 landings for airplanes that have accumulated over 12,000 landings on the effective date of this AD.

b. Within 600 landings for airplanes that have accumulated 10,000 to 12,000 landings on the effective date of this AD.

c. Within 600 landings or upon the accumulation of 10,000 landings, whichever occurs later, for airplanes that have accumulated less than 10,000 landings on the effective date of this AD.

2. If any cargo side guide support bracket is improperly tapered, perform a detailed visual inspection of the frame area adjacent to the

untapered bracket for cracking in accordance with Boeing Service Bulletin 747–53A2295, dated March 28, 1986, or later FAA-approved revision.

3. Repeat the inspections required by paragraph B.2., above, at intervals not to exceed 3,000 landing until terminating action is performed.

4. If cracking is found, repair prior to further flight in accordance with FAA-approved procedure.

5. Terminating action is the installation of a tapered strap adjacent to the affected brackets in accordance with Boeing Service Bulletin 747–53A2259, dated March 28, 1986, or later FAA-approved revision.

c. For Boeing Model 747SR airplanes only, based on continued mixed operation of cabin pressure differentials, the initial inspection thresholds and reinspection intervals specified in this AD may be multiplied by a 1.2 adjustment factor.

D. For the purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

E. An alternate means of compliance or adjustment to the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 8, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–10967 Filed 5–14–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–33–AD]

Airworthiness Directive; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require a one-time inspection of the elevator trim tab bracket attachment, and repair, if necessary, on certain Fokker Model F27 series airplanes. The use of incorrect rivets was a contributing factor in one case of rubber tab further; there is evidence that the same incorrect rivets may have been used in the elevator trim tab. Flutter could lead to structural failure.

DATE: Comments must be received on or before July 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ANM–7), Attention: Airworthiness Rules Docket No. 86–NM–33–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, the Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM–113; telephone (206) 431–2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–33–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The Ministerie van Verkeer en Waterstaat, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on certain Fokkar Model F27 airplanes.

Incorrect rivets were reported to have been used in the assembly of at least one rubber tab, which contributed to flutter. There is evidence that the same incorrect rivets may have been used in the assembly of the elevator trim tab control bracket attachment, which could result in inadequate strength and elevator trim tab flutter. Elevator trim tab flutter can result in structural failure and loss of flight control. Fokker issued Service Bulletin F27/55–59, June 3, 1985, and Revision 1, October 15, 1985, requiring a one-time visual inspection and correction, if necessary, of the elevator trim tab. The RLD issued an airworthiness directive on July 12, 1985, making the bulletin mandatory by October 1, 1985.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection, and repair if necessary, of certain Fokker Model F27 series airplanes that may be operated on the U.S. Register.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,600.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act

that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and placed in the docket.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 3913 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes; serial numbers 10105 to 10648 inclusive, 10654, 10658, 10659, 10660, 10662 to 10667 inclusive, 10669, 10672 and 10678; certified in any category. To ensure structural integrity of the elevator trim tab, accomplish the following, unless already accomplished:

A. Within 60 days after the effective date of this AD, conduct a one-time visual inspection of the elevator trim tab in accordance with Fokker Service Bulletin F27/55-59, Revision 1, dated October 15, 1985.

B. If incorrect rivets are installed, repair the tab before further flight in accordance with the above service bulletin.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7000, 11172J Schiphol Oost, the Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 8, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-10998 Filed 5-14-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Eligibility of Mexican Inner Tubes for GSP Duty-Free Treatment

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of several domestic interested parties with respect to a Customs ruling that certain inner tubes imported from Mexico would be eligible for duty-free treatment under the Generalized System of Preferences (GSP). The petitioner contends that the inner tubes do not qualify for GSP duty-free treatment because the threshold Customs determination that the imported material from which the inner tubes are produced undergoes a substantial transformation into a separate and distinct article of commerce which, in turn, is used as a constituent material in producing the final article which is imported into the U.S., is incorrect. The petitioner believes that duty should be assessed on the inner tubes under the appropriate provision of the Tariff Schedules of the United States. This document invites comments with respect to the correctness of the determination of GSP-eligibility.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to a decision in which Customs ruled that certain inner tubes imported from Mexico would be eligible for duty-free treatment under the Generalized System of Preferences (GSP).

Under the GSP program established pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), certain articles imported directly from a beneficiary developing country (BDC) may be eligible for duty-free treatment if considered the growth, product, manufacture or assembly of the BDC, and if the sum of the cost or value of materials of the BDC, plus the direct costs of processing performed in the BDC, is not less than 35 percent of the appraised value of the article at the time of its entry into the U.S. The GSP program is implemented by §§ 10.171-10.178, Customs Regulations (19 CFR 10.171-10.178). Pursuant to § 10.177(a)(2), Customs Regulations (19 CFR 10.177(a)(2)), materials of which a GSP-eligible article is comprised, if not wholly the growth, product, or manufacture of a BDC, must be substantially transformed in the BDC into a new and different article of commerce in order for those materials to be considered to be produced in the BDC so that their cost or value may be counted toward the 35 percent value-content requirement. In other words, for the cost of materials from a non-BDC to be counted toward the 35 percent value-content requirement, the materials first must be substantially transformed into a new and different intermediate article of commerce and then must be used in the production of a new and different final article of commerce which is imported into the U.S.

On August 8, 1984, Customs issued ruling 071703 (C.S.D. 85-12, 19 Cust. B. and Dec. No. 7 at 22, February 13, 1985), which stated that when finished vulcanized rubber tubes were produced in Mexico, a BDC, from material known as masterbatch which was imported from a non-BDC, there was a substantial transformation of the masterbatch into a new and different intermediate article of commerce, unvulcanized tubes. Therefore, the cost or value of the masterbatch could be counted toward the GSP 35 percent value-added requirement when the final product, finished vulcanized rubber tubes, were imported into the U.S. The conclusion that the unvulcanized tubes were a separate and distinct article of commerce from the masterbatch and from the finished vulcanized rubber tubes was based upon review of the Explanatory Notes to the International Customs Cooperation Council

Nomenclature (CCCN) and the future international Harmonized System (HS) of tariff classification. Because Customs determined that the unvulcanized tubes were separate and distinct articles of commerce, the value of the masterbatch was permitted to be counted toward the 35 percent value-added requirement. Accordingly, the inner tubes imported from Mexico would be eligible for duty-free treatment under the GSP.

On December 24, 1985, a petition was submitted on behalf of several domestic interested parties who are manufacturers and producers in the U.S. of a class or kind of merchandise similar to the merchandise which is imported from Mexico. The petitioner claims that the processing in Mexico of masterbatch material imported from a non-BDC into finished inner tubes does not involve the production of a new and different intermediate article of commerce before the final article is produced. Uncured or unvulcanized tubing is not an intermediate constituent material, as Customs ruled, because it has no practical commercial viability. Trade in unvulcanized tubing suitable for making inner tubes is not possible as the short shelf-life of the tubing does not permit maintenance of commercial inventories.

The petitioner also contends that the international classification provisions relied upon in Customs decision do not support the conclusion reached inasmuch as the Explanatory Note to the CCCN referenced in the decision is concerned with a different product than tubing used in the manufacture of inner tubes.

For these reasons, the petitioner believes that the requirement in § 10.177(a)(2), Customs Regulations, is not satisfied and the cost or value of the masterbatch, imported to Mexico from a non-BDC, may not be counted toward the GSP value-content requirement.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on this issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: April 30, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 10634 Filed 5-14-86; 8:45 am]
BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42050B; FRL-2975-2(b)]

Toxic Substances; Proposed Testing Standards for Certain Chlorinated Benzenes

Correction

In FR Doc. 86-7476 beginning on page 11756 in the issue of Monday, April 7, 1986, make the following corrections: On page 11759, in the first column, in § 799.1052(c)(1)(ii), in the sixth line, "§ 799.2750" should read "§ 796.2750"; and in § 799.1053(c)(1)(ii), in the fifth line "§ 799.2750" should read "§ 796.2750".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Individual and Family Grant Programs

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises current Individual and Family Grant (IFG) regulations at 44 CFR 205.54. The Federal Emergency Management Agency (FEMA) is proposing these changes to: increase the economy and efficiency of administration, reduce certain flood insurance requirements, clarify the requirement for home ownership in certain grant categories, clarify the funding provisions and debt collection provisions, comply with the Single Audit Act of 1984, and update the States' appeal rights.

DATES: Comments will be accepted until July 14, 1986.

ADDRESS: Comments should be mailed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Emergency Management Specialist, Disaster Assistance Programs, Federal Emergency Management Agency, Room 710, 500 C Street SW., Washington, DC 20472, (202) 646-3660.

SUPPLEMENTARY INFORMATION: Each of the significant changes is identified and explained below.

Duplication of Benefits Changes

FEMA has determined that low dollar value "consumable" items such as linens, clothing, and basic kitchenware are not to be considered as duplicate assistance if they are provided by more than one disaster assistance agency. The staff time involved in tracking these things, item by item, is not warranted. Therefore, a new definition, "expendable items," is added as (c)(5), and a sentence is added to explain that such assistance does not include expendable items.

Ownership Provisions: Housing and Personal Property Categories

There has been much confusion over the forms of documentation required to prove ownership, which is a condition of assistance in the housing and personal property categories. This problem has occurred particularly in the political jurisdictions which are not States (e.g., Puerto Rico and the Indian tribes). To clarify what is being required as proof of ownership, two new language changes are being proposed. First, to the current definition of "owner occupied" a provision is added to the effect that where an applicant does not have legal proof of ownership, a State, Commonwealth, or local government attorney's affidavit may be allowed. It must explain that, under applicable State law, the applicant does legally own the residence, and explain the basis for this conclusion. If the attorney certifies this to be true, and one form of proof of occupancy is presented, the ownership criteria are deemed to be met. Second, to the eligibility section, a new provision is added to further amplify this, in terms of FEMA obtaining the information for verification purposes.

Definitions

Clarifying changes have been made to the definitions of "individual" and "family" at paragraph (c). A definition of "flowage easement" has been added.

Flood Insurance Requirements

FEMA is proposing changes to the flood insurance maintenance requirements imposed on IFG recipients. The IFG program is proposing that the "economic life of the project" concerning housing and personal property repair and replacement is three years. Hence, FEMA will require that a grant recipient obtain a flood insurance policy which covers the amount of funds granted for housing and personal property and maintain it for three years. If the cost for this coverage is less than the minimum premium, the remainder of the premium shall be used to buy additional building coverage. After the three years, no penalty will be imposed on an IFG recipient who fails to maintain the policy. During the three years, a recipient who fails to maintain the coverage is ineligible for subsequent grant assistance. FEMA is proposing this relaxed requirement because of the costs involved in maintaining records in perpetuity, and the inability of States to effectively police and enforce this activity for the allowed administrative expense.

This position is being taken because of the comparatively low dollar value of grants in the housing and personal property categories (on the average, for Fiscal Years 1982, 1983, and 1984, $2,100 for housing repairs and $1,000 for personal property), balanced against the allowable administrative costs for administration of the IFG program (only 3 percent of the Federal share of the program). Another reason for the change is the result of FEMA's review of repeat declarations, which indicates that only 64 of 1,189 counties (5.4 percent of the total) have been designated twice or more in Presidential declarations in a 6½ year period between 1979 and 1985. In any one given year, this translates to a .8 percent chance of being declared twice or more for flowing, or 99.2 percent chance of not being designated. The flood insurance requirement is thus proposed to be relaxed in Presidential declarations.

Certification of Eligibility

The current provision allows an applicant to self-certify that he/she meets the criteria for an automatic turndown by the Small Business Administration (SBA), and therefore need not first apply to SBA. This provision has not been used in recent IFG programs. In its place, States have preferred to use SBA's own procedures for automatic declines. These procedures call for SBA to interview the applicant and determine if he/she is qualified to apply to SBA. Thus, SBA exercises the authority to make its own determination, not the State on SBA's behalf. Since this certification provision is now unnecessary, it is being deleted.

Assumption of Risk

It is proposed that a new provision be added to make those who knowingly assumed the risk of living in certain disaster prone areas ineligible for a grant in the housing and personal property categories. The only cases in which FEMA proposes to enforce this restriction are: where property is located within a flowage easement, in an area between a river and a levee (where the family built the home after the levee was built or was compensated for future flood damage at the time the levee was built), and where a residence is located on land leased to an individual where that lease holds the government harmless from the risk of damage. A recent example of the latter occurred when the U.S. Army Corps of Engineers leased property to individuals along the Illinois and Missouri Rivers, with a hold harmless clause in the lease, specifically eliminating any cause of action against the government. The definition of "flowage easement" has been added to paragraph (c), Definitions Used in This Section.

National Eligibility Criteria

The section on transportation expenses, (d)(2)(iii), is being modified to eliminate the requirement that public transportation be unavailable prior to authorization of repair or replacement of a private vehicle.

FEMA is removing most verification responsibilities from the State and also eliminating the need for applicant supplied estimates for the housing and personal property categories. Hence, (d)(2)(viii) is modified. New subparagraph (d)(4) has been added, and (e)(1)(ii)(D), which is new (e)(1)(ii)(C), has been amended to include the new verification methods.

Requirements for State Administrative Plans

Several changes are proposed for paragraph (e) regarding items to be included in the State administrative plan.

First, the section on verification procedures is being modified to require only a review of FEMA supplied verifications in most cases. Since FEMA will be conducting verifications, provisions are necessary for the State to accomplish this only in cases like late applications and appeals.

Second, the State will not be required to recover funds, and will not be issued a Bill for Collection (BFC), when it makes a grant based on incorrect verification information provided by FEMA. A grant based on this incorrect information will not be subject to the State's normal recovery of funds procedures. The Office of General Counsel has determined that this procedure is legally sufficient.

Third, the requirement for program by program State audits is being eliminated. The Single Audit Act of 1984 no longer authorizes such audits. Only those compliance type audits imposed by the Act are required. However, the paragraph on voucher analysis (paragraph h) now indicates what items of information FEMA will be looking for when approving the State's final claim.

Fourth, a new provision is added for ensuring that the State repays any advanced State share by the agreed upon date. The State will have to specify in the letter requesting IFG program implementation what steps it will take to ensure that the loan of the State share is going to be repaid on time. The Regional Director cannot approve funding for the State share unless it repays any delinquent debt for the State share in a previous IFG program; the State may elect to allow offsetting against other funds payable to it by FEMA to eliminate this delinquency. (See the "Funding" section below.) This provision is being added because of the large amount of outstanding IFG debts, and the considerable collection efforts being undertaken by FEMA. The second portion of this change is that excess Federal share debts will be eliminated by requiring the State to return them immediately or face withholding of the Federal share in a current IFG program. The same offsetting action will be available, however.

Fifth, the State will now be required to include a management/staffing section in their administrative plan. This section should deal with functional planning for the workload in the IFG program, and with management and oversight of IFG staff. This provision will hopefully enable States to devote staff attention to track its cases, identify where management attention is needed, properly staff the program, and have the official sanctions it needs to fully implement the plan's provisions.

Sixth, States will not be required to submit a revised administrative plan every January. This requirement is being imposed because of the extreme

workload on States and FEMA regional office staff in making hasty changes at the beginning of each disaster operation. Each State should be in a condition of readiness to administer a program at any time. A recent review of the status of response ready IFG plans showed many which were dated 1979 and early 1980's; the new provision will ensure response ready plans, and will ensure that the States have material from which to train IFG personnel in a timely way.

Funding

Issues involving approval, obligation, and advances of funds have been clarified.

Up front funding for new IFG programs is being tied to timely repayment of debts from old programs. The Regional Director is being directed to withhold funds if delinquencies exist in repaying advances from prior programs. However, as mentioned above, an option is being provided to the State to eliminate the debt by offset against other funds due the State by FEMA.

Withdrawal of advances is also being tied to incremental increases in the Letter of Credit (LOC) to assure that large sums of Federal money are not on hand at the State level. The Governor is being requested to indicate the specific actions to be taken to repay the State share, in order that the Regional Director may exercise the fiscal management responsibility of determining whether or not to authorize additional funds.

Debt collection issues also are being clarified. The reader is being referred to FEMA's debt collection regulations (44 CFR Part 11) for general debt collection procedures; the more specifically applicable procedures for IFG are stated in this part.

The kinds of payable costs have been expanded for clarity. The new section states that certain costs which normally would be ineligible (misapplied grants and duplicated grants, for example) may be payable if the State takes steps outlined in its administrative plan to remedy the problems. Where the State did not take remedial steps, the costs would be suspended.

A new section on voucher analysis has been added. It details the responsibilities of FEMA regional office staff to perform analysis of the State's request for final payment. It also lists, for the State's information, what information will be required for payment of a final voucher. This section is necessary because the requirement for program by program State audit has been lifted, thus eliminating a significant source of information upon which to base final payment.

Appeals

The current section on appeals has been revised. Specific information on treatment of appeals regarding BFC's has been added. It includes the policy statement that interest starts accruing on the day a BFC is issued. If an appeal is successful, interest will not be charged. If unsuccessful, interest beginning on the day of issuance is charged, unless the State pays the debt within 30 days of issuance. Any debt not erased by appeal and not paid within 30 days of BFC issuance bears interest.

The State may also appeal any other determination of the Regional Director; information for this appeal is provided.

Audits

The requirement for program by program audits by States has been lifted by the Single Audit Act of 1984. A new audit section stating compliance with the new Act has been provided.

Environmental Consideration

According to the provisions of 44 CFR 10.8(c)(2), most IFG actions are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Those not excluded are the subject of a FEMA environmental assessment recently prepared to accompany a proposed rule change regarding floodplain management in the IFG program. That environmental assessment is available in the Office of Disaster Assistance Programs, Individual Assistance Division, Federal Emergency Management Agency, Room 710, 500 C Street, SW., Washington, DC 20472. It may be inspected during normal office hours of 8:30 a.m. until 5:00 p.m. Monday through Friday. An additional environmental assessment will not be prepared.

Reporting Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq., and has assigned OMB control number 3067–0146.

List of Subjects in 44 CFR Part 205

Disaster assistance, grant programs—housing and community development.

PART 205—FEDERAL DISASTER ASSISTANCE (PUB. L. 93–288)

Accordingly, it is proposed to amend 44 CFR Part 205 as follows:

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 5001; Reorganization Plan No. 3 of 1978; Executive Order 12148.

2. Section 205.54 is revised to read as follows:

§ 205.54 Individual and Family Grant (IFG) programs.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs. The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 3 percent of the Federal grant (see computation of State administrative expenses in paragraph (g)(6) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than $5,000, including both the Federal and State shares. The Governor or his/her designee is responsible for the administration of the grant program.

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants for emergency needs in instances where there is an unreasonable delay in receiving assistance from other means, with a commitment from the applicant that when assistance is received from other means the State must be reimbursed. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative.

(c) *Definitions used in this section.*

(1) "Necessary expense" means the cost of an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(2) "Serious need" means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) "Family" means a social unit living together and comprised of a husband and wife and dependents, or comprised of unmarried persons jointly forming a household unit (such as those who jointly own or share real estate and common household type personal property); or comprised of couples (and dependents of couples) who are joined in a common law marriage; or a household comprised of an unmarried person living with and supporting a dependent son, stepson, daughter, stepdaughter, or a dependent descendant of a son or daughter. Families may file only one IFG application.

(4) "Individual" means a person who is not a member of a family, as defined in paragraph (c)(3) above. Renters who live together are individuals. When one individual owns real property, and another lives there in a tenant-type relationship (whether or not rent is charged), the owner may file one IFG application for home repair and the personal property of the owner; and the other individual may file an IFG application for his/her own property.

(5) "Expendable items" means consumables such as linens, clothes, and basic kitchenware.

(6) "Assistance from other means" means assistance, including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other that those of the individual or family. It does not include expendable items.

(7) "Owner-occupied" means that the residence is occupied by: the legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. Those who do not have documentation proving home ownership may prove such ownership by presenting an affidavit executed by a State, Commonwealth, or local government attorney stating that the applicant is considered owner of the residence for legal purposes, and identifying the basis for this conclusion, and by presenting one form of proof of occupancy.

(8) "Flowage easement" means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria:

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals or families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared.

(iii) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, imposes certain restrictions or approval of Federal financial assistance for acquisition and construction purposes. Subpart K of Part 205 implements Pub. L. 93–234 for FEMA assistance generally. This paragraph refines those requirements for the IFG program. To the extent that this paragraph is inconsistent with Subpart K, this paragraph applies.

(A) For the purposes of this paragraph, "financial assistance for acquisition or construction purposes" means a grant to an individual or family to repair, replace, or rebuild the insurable portions of a home, and/or to purchase or repair insurable contents.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Director for at least one year as flood-prone, unless the community in which the structure is located is participating in the National Food Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the six-month period described in 44 CFR 205.253(a)(3)(i), the Governor's Authorized Representative (GAR) may request a time extension (see paragraph (j)(1)(ii) of this section) from the Regional Director for the purpose of accepting and processing grant applications in that community. The Regional Director or Associate Director, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C)(*1*) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for three years, or as long as they live in the affected residence, whichever is less. Adequate flood insurance, for the purposes of the IFG program, means a policy which buys as much building and contents coverage (to cover at least the grant amount in the housing category for homeowners, or the personal property category for renters) as is available for the minimum premium charged by the NFIP. If the cost for this coverage is less than the minimum premium, the remainder of the premium shall be used to buy additional building coverage first. If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction on insurable real estate and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the three year period, he/she is ineligible for subsequent IFG assistance for the remainder of the three year period for such items up to the amount which should have been insured by the flood insurance policy. The cost of the first year's policy is considered a necessary expense for those who are required under this section to obtain flood insurance.

(*2*) After a determination that flood insurance is required and after disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance.

(D) A State may not make a grant for acquisition or construction purposes where an applicant who is required to apply to SBA or FmHA in accordance with paragraph (d)(1)(i)(A) of this section is denied loan assistance because of failure to have obtained and/

or maintained a flood insurance policy required as a condition of previous loan assistance.

(E) A State may not make a grant for acquisition or construction purposes when the applicant is deemed to have assumed the risk knowingly, that is, when property is located within a flowage easement, or in an area between a river and a levee (where the family built the home after the levee was built, or was compensated for future flood damage at the time the levee was built), or when a residence is located on land leased to an individual where that lease holds the government harmless from the risk of damage. This restriction does not apply if an applicant is going to use the funds to move out of the risk area.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (EO 11988) and Protection of Wetlands (EO 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR Part 9. That part specifies which IFG program actions require a floodplain management decision-making process before a grant may be made, and also specifies the steps to follow in the decision-making process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Director to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time of the disaster, grants may be authorized to:

(A) Repair, replace, or rebuild;

(B) Provide access. Where an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charges involved) or if joint ownership of the access is agreed to;

(C) Clean or make sanitary.

(D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;

(E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage; and

(F) Minimization measures required by owner-occupants to comply with the provisions of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.

(ii) Personal property such as:

(A) Clothing;

(B) Household items, furnishings, or appliances. If a pre-disaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the pre-disaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;

(C) Tools, specialized or protective clothing, and equipment which are required by an employer as a condition of employment;

(D) Repairing, cleaning or sanitizing any eligible personal property item; and

(E) Moving and storing to prevent or reduce damage.

(iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles, or to provide public transportation.

(iv) Medical or dental expenses.

(v) Funeral expenses. Grants may include funeral and burial (and/or cremation) expenses.

(vi) Cost of the first year's flood insurance premium to meet the requirements of this section.

(vii) Cost for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimated to support the appeal is not an eligible cost.

(viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its findings of eligiblility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Director and request guidance. The Associate Director also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Associate Director shall advise the State, through the Regional Director, and provide the necessary program guidance.

(3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses and self-employment;

(ii) Improvements or additions to real or personal property, except those required to comply with paragraph (d)(2)(i)(F) of this section;

(iii) Landscaping;

(iv) Real or personal property used exclusively for recreation; and

(v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the Small Business Administration (SBA), and on those who were required to apply to SBA but also had expenses unrelated to SBA's disaster loan program. The FEMA Regional Director shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include documentation of vehicle ownership and/or registration, as appropriate to the State's administrative plan). Certain verifications may still be required to be performed by the State, such as on late applications or reverifications, when FEMA or its contractors are no longer available. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verifications performed by SBA staff on housing and personal property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below:

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Procedures for:

(A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(B) Establishing local application centers after the closing of Disaster Application Centers and accepting applications there;

(C) Reviewing verification data provided by FEMA and performing verifications for medical, dental and funeral expenses, and also for all grant categories in the instance of late applications and appeals;

(D) Determining applicant eligibility and grant amounts, and notifying applicants of the State's decision;

(E) Determining the requirement for flood insurance;

(F) Preventing duplication of benefits between grant assistance and assistance from other means;

(G) At the applicant's request, reconsidering the State's determinations;

(H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

(*1*) The receipt of oral or written evidence from the appellate or representative;

(*2*) A determination on the record; and

(*3*) A decision by an impartial person or board;

(I) Disbursing grants in a timely manner;

(J) Verifying by random sample (no less than a 5% sample) that grant funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements;

(K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, not expended or committed as of the date the State requests Federal reimbursement, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of Federally sponsored verification information are not subject to recovery by the State. As an attachment to its voucher, the State must identify each case were recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act;

(M) Reporting to the Regional Director, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR Part 11, Claims, and the State's own debt collection procedures.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the advanced State share as of the date agreed upon by the Governor and the Regional Director; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the General Accounting Office for the purpose of making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer; and

(D) The IFG program manager.

(2) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Director. The Regional Director shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Director shall request the State to prepare any amendments required to meet current policy guidance. The Regional Director must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in § 205.4 of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request to the President for a major disaster declaration or by separate letter to the Regional Director, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;

(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Associate Director; and

(6) To maintain close coordination with and provide reports to the Regional Director.

(g) *Funding.* (1) The Regional Director may obligate funds incrementally for the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with subparagraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Director may then obligate funds for the Federal share for the current disaster.

(2) The Regional Director may increase the State's letter of credit in increments of funds to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amounts made available to it by the Regional Director.

(3) The Regional Director may obligate funds incrementally for the State share

of the IFG program based upon the Governor's request (for subsequent obligations, the GAR may request). Along with an estimate of the total amount needed to meet the State's 25 percent share, the initial request for authority to borrow the State share shall include:

(i) A certification that the State is unable immediately to pay its 25 percent share, and the reasons for this inability;

(ii) A statement of the specific actions the State will take to enable it to pay its 25 percent share; and

(iii) A certification that the State will repay the advance, and the date for this repayment, which will be agreed upon in the FEMA/State agreement. A Bill for Collection (BFC) will be issued on the repayment date if the advance is not repaid as agreed. Prior to the repayment date, the State may request, and the Regional Director may approve, a revision to the FEMA/State agreement to extend the State share due date if good cause exists.

(4) The Regional Director may increase the State's letter of credit in increments of funds to meet the State share of program needs if the above conditions are met, and if the State is not delinquent in repaying State share debts from previous IFG programs. The State may eliminate this debt by accepting an offset of the owed funds against other funds payable to the State by FEMA.

(5) The Regional Director must recover any advance of the State share not repaid by the date established in accordance with subparagraph (g)(3)(iii), and any excess advance of the Federal share not repaid immediately upon discovery of the excess by using debt collection procedures at 44 CFR Part 11. Debt collection procedures must also be used when recovering funds due FEMA upon examination of the State's final voucher.

(6) Payable costs include 75 percent of the costs of meeting necessary expenses or serious needs, and expenses incurred in administering the grant program. The amount payable for administrative purposes is computed by dividing the payable Federal cost of meeting necessary expenses and serious needs by .97, and subtracting the payable Federal costs of meeting such expenses or needs from the quotient. Costs for grants that are improperly or inadequately documented are not payable. Costs for grants that are not in conformance with national eligibility criteria or the approved State administrative plan are not payable. Costs for grants that have not been expended or committed by the grant recipient at the time the State submits its final voucher may be payable only if the Regional Director determines, based on justification provided by the State, that adequate steps are being taken to correct the deficiency. Costs for grants made on the basis of fraudulent information, that were misapplied by the grant recipient, that duplicate assistance from other means, or that were authorized for acquisition or construction where proof of purchase of flood insurance was not provided by the grant recipient, may be payable only if the State has taken the steps required by its administrative plan to recover the funds. If the State has been unable to recover the funds, the Regional Director shall consider the costs payable, but shall institute debt collection procedures against the individual when fraud or misapplication are involved. If the State did not take the steps required by its administrative plan, the costs are not payable, and shall be suspended. The State must identify each case where deficiencies exist but for which it is requesting payment, and the steps it has taken to remedy the deficiency.

(h) *Voucher analysis.* Final reimbursement to the State, or final debt collection, shall be based on examination of a voucher filed by the State within the time limitations stated in paragraph (j) of this section. The voucher is either the final SF–269, Financial Status Report (used when the funding method is letter of credit), or FEMA Form 90–27, Request for Advance or Reimbursement (used when the Treasury check or wire transfer is the funding method).

(1) If no significant deficiencies were found during the mid program review, a second review and narrative summary shall be prepared, along with examination of the fiscal portion of the voucher. The review shall include the following determinations:

(i) That the State specifically identified in its accounts all Federal and State funds committed to the IFG program;

(ii) That the State's share was provided from funds made available by the State;

(iii) That the State has repaid, or is taking the necessary steps to enable it to repay, the State share and any excess advances of the Federal share which exceed program needs; and

(iv) That the claimed admmistrative costs were correctly calculated.

(2) If significant deficiencies (25 percent of case files examined) existed during the mid program review, a second review shall be prepared, along with an additional case file sample and a document containing the determinations in paragraph (h)(1) above and the following additional determinations that the grant payments:

(i) Meet eligibility criteria stated in the approved State administrative plan;

(ii) Were disaster related;

(iii) Are based on adequate FEMA verification documentation, and other documentation (flood insurance requirement, information on assistance from other means, grant award document, etc.);

(iv) Do not exceed $5,000;

(v) Were spent by the named disaster victim and spent as indicated in the grant award document;

(vi) Do not represent cases of fraud, misapplication or duplication of benefits, where the State has failed to take measures appropriate to its administrative plan; and

(vii) If based on an appeal, contain adequate justification for the final determination.

Voucher analysis results in approval of the final voucher in whole or in part, disapproval of the final voucher, request for a Federal audit, or suspension until deficiencies have been corrected by the State.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than seven days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration date, and for a minimum of 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner;

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursements, and disposition of appeals, within 180 days following the declaration date. The Regional Director shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Director within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The

Regional Director may approve the request for a period not to exceed 90 days. The Associate Director may approve any request for a further extension of the time limitations.

(k) *Appeals.* (1) *Bills for Collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Director. Such an appeal shall be made in writing within 30 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, or his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the Regional Director. Such appeals shall be made in writing within 30 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Associate Director.* The State may further appeal the Regional Director's decisions to the Associate Director. This appeal shall be made in writing within 30 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Associate Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(l) *Exemption from Garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt collection.* In cases involving fraud or misapplication of IFG funds, the Regional Director shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR Part 11, Claims.

Dated: April 28, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-9990 Filed 5-14-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 510, 580, and 582

[Docket No. 86-19]

Anti-Rebating Certification by Those Engaged in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing the filing of anti-rebating certificates in the foreign commerce of the United States. The purpose of the proposed rule is to establish uniform application of anti-rebating rules with respect to ocean common carriers, non-vessel operating common carriers and freight forwarders, and provide that companies which function in more than one capacity need file only one anti-rebating certificate. The proposed rule also specifies the time period covered by the anti-rebate certification and provides a uniform due date for submission of the certificate.

DATE: Comments due by June 16, 1986.

ADDRESS: Comments (original and 15 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is responsible for continued surveillance over all common carriers by water in the foreign commerce of the United States to ensure against rebating. Parts 510 and 582 of 46 CFR require the Chief Executive Officer of each common carrier and ocean freight forwarder to file with the Commission a certificate under oath attesting to the company's anti-rebating policies and efforts. Current regulations require the certification by common carriers to be filed by May 15 of each year. Freight forwarder certificates must be filed by March 1. In addition to the filing of a certificate, 46 CFR Part 580 requires that the tariff of each common carrier contain a provision stating that the company has a policy against rebating and that this policy has been certified to the Federal Maritime Commission. 46 CFR 580.5(c)(2)(ii).

The proposed rule establishes a common due date of December 31 by which all certificates must be filed, and specifies the time period to which each certificate is applicable. It also requires each common carrier to file a certificate with its initial tariff and each ocean freight forwarder to file its initial certificate with its license application. The proposed rule takes into account situations wherein a single company or firm functions in more than one capacity, i.e., both as a non-vessel operating common carrier and an ocean freight forwarder. In such instances, a single certificate would satisfy the annual filing requirement for that company or firm.

The proposed rule removes the tariff notification requirement contained in 46 CFR 582.3. This provision is duplicative of that contained in 46 CFR 580.5(c), where it properly resides.

The Commission has determined that the proposed rule is not a "major rule" as defined in Executive Order 12291, February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that, although this proposed rule may affect a substantial number of small entities, particularly small businesses, the economic impact is not considered to be significant.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget (O.M.B.) for review under section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Secretary. Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of O.M.B., Attention: Desk Officer for the Federal Maritime Commission. Collection of information requirements contained in original Parts 510, 580, and 582 were approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control numbers 3072-0009, 3072-0018, 3072-0028, 3072-0044, and 3072-0046.

List of Subjects

46 CFR Part 510

Exports, Freight forwarders, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 580

Anti-trust, Cargo, Cargo vessels, Contracts, Exports, Harbors, Imports, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Water carriers, Water transportation.

46 CFR Part 582

Cargo, Cargo vessels, Exports, Foreign relations, Freight forwarders, Imports, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Water carriers, Water transportation.

Therefore, it is proposed that Parts 510, 580, and 582 of Title 46, Code of Federal Regulations, be amended as follows:

PART 510—[AMENDED]

1. The authority citation to Part 510 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718.

2. Section 510.25 is revised to read as follows:

§ 510.25 Anti-rebate certifications.

(a) An anti-rebating certificate shall be filed by every applicant for an ocean freight forwarder license with its license application and, thereafter, on or before December 31 of each year.

(b) The anti-rebating certificate shall comply with the requirements of Part 582 of this title, and, except for a certificate filed with a license application, shall apply to the calendar year following the December 31 filing date.

PART 580—[AMENDED]

1. The authority citation to Part 580 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707–1709, 1712, 1714–1716, and 1718.

2. Section 580.5(c)(2) is revised to read as follows:

§ 580.5 Tariff contents.

* * * * *

(c) The body of the tariff shall contain the following:

* * * * *

(2)(i) The full legal name of each participating common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or Vessel Operating Common Carrier and the address of its principal office. Where a joint service participates, the FMC number of the agreement authorizing the joint service shall also be shown.

(ii) An anti-rebate tariff provision to be effective upon filing which shall read substantially as follows (*see* Exhibit No. 2 to this part):

(Name of company) has a policy against the payment of any rebate by the company or by any officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR 582.

(A) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's anti-rebate tariff provision in the conference tariff.

(B) In addition to the anti-rebate tariff provision, an anti-rebating certificate shall be filed by every common carrier with its initial tariff, and on each succeeding December 31. The anti-rebating certificate shall comply with the requirements of Part 582 of this title, and, except for a certificate filed with an initial tariff, shall apply to the calendar year following the December 31 filing date.

PART 582—[AMENDED]

1. The authority citation to Part 582 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, 1714, 1715, and 1716.

2. Section 582.1 is revised to read as follows:

§ 582.1 Scope.

(a) The requirements set forth in this part are binding upon every common carrier by water and ocean freight forwarder in the foreign commerce of the United States and, at the discretion of the Commission, will apply to any shipper, shippers' association, marine terminal operator, or broker.

(b) Information obtained under this part will be used to maintain continuous surveillance over common carrier and ocean freight forwarder activities and to deter rebating practices. Failure to file the required certificate may result in a civil penalty of not more than $5,000 for each day such violation continues.

3. Section 582.2 is revised to read as follows:

§ 582.2 Form of certification.

The Chief Executive Officer, i.e., the most senior officer within the firm designated by the board of directors, owners, stockholders or controlling body as responsible for the direction and management of the firm, of each common carrier and ocean freight forwarder and, when so ordered by the Commission, the Chief Executive Officer of any shipper, shippers' association, marine terminal operator or broker, shall file with the Secretary, Federal Maritime Commission, a written certification, under oath, as prescribed in the format in Appendix A to this part, attesting to the following:

(a) That it is the stated policy of the filing firm that the payment, solicitation or receipt of any rebate by the firm, which is unlawful under the provisions of the Shipping Act of 1984, is prohibited;

(b) That the policy of the firm described in paragraph (a) of this section was promulgated recently (together with the date of such promulgation) to each owner, officer, employee, and agent of the filing firm;

(c) The details of the efforts made within the firm or otherwise to prevent or correct illegal rebating; and

(d) That the filing firm will fully cooperate with the Commission in its efforts to end those illegal practices.

§ 582.3 [Removed]

4. Section 582.3 is removed.

5. Section 582.4 is redesignated as § 582.3 and revised to read as follows:

§ 582.3 Reporting requirements.

(a) Every common carrier required by this part to file a written certification, as prescribed in § 580.5(c)(2)(ii) of this title and required by § 582.2, shall file such certification with its initial tariff and, thereafter, on or before December 31 of each year.

(b) Every ocean freight forwarder required by this part to file a written certification, as prescribed in § 510.25 of this title and required by § 582.2, shall file such certification with its license application and, thereafter, on or before December 31 of each year.

(c) The certification required by this section shall apply to the remainder of the calendar year following the initial filing of a tariff or application for an ocean freight forwarder license and, thereafter, the calendar year following the December 31 filing date specified in 46 CFR sections 510.25, 580.5(c)(2)(ii) and 582.3 (a) and (b).

(d) Every person other than a common carrier which is ordered by the Commission to file a written certification under § 582.2 shall file the initial certification on the date designated by the Commission and,

thereafter, as the Commission may direct.

(e) In those instances in which a single firm operates in more than one capacity, such as both a non-vessel-operating common carrier and an ocean freight forwarder, a single certificate may be submitted to satisfy the annual reporting requirement.

6. Appendix A to Part 582 is revised to read as follows:

Appendix A—Certification of Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

46 CFR Part 582

I, (name of affiant), state under oath that I am the Chief Executive Officer (state exact title) of (Exact Names of firm), hereinafter referred to as "The Firm", and that:

1. It is, and shall continue to be, the policy of The Firm to prohibit its participation in the payment, solicitation, or receipt of any rebate, directly or indirectly, which is unlawful under the provisions of the Shipping Act of 1984.

2. Each owner, officer, employee and agent to The Firm was notified or reminded of this policy on ———. (Date)

3. The Firm affirms that it will cooperate fully with the Federal Maritime Commission in any investigation of suspected rebating in United States foreign trades.

4. Attached hereto is a description of the details of measures instituted, within The Firm or otherwise, to prohibit its involvement in the payment or the receipt of illegal rebates in the foreign commerce of the United States.

The period covered by this Certification is from ——— (Date) to ——— (Date).

The Firm a (check each block applicable):

——— Broker
——— Freight Forwarder (License No.———)
——— Marine Terminal Operator
——— Non-Vessel-Operating Common Carrier
——— Shipper
——— Shippers' Association
——— Vessel Operating Common Carrier

(Signature of affiant).

Subscribed to and sworn before me this ——— day of ———, 19 ———.

Notary Public.

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-10949 Filed 5-14-86; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 83-1376; FCC 86J-2]

Integration of Rates and Services Between Alaska and the Contiguous States

AGENCY: Federal Communications Commission.

ACTION: Order Requesting Data and Inviting Comments.

SUMMARY: The Federal-State Joint Board in *Integration of Rates and Services* (CC Docket No. 83-1376) is requesting carriers associated with the provision of telecommunication services in Alaska and between Alaska and the contiguous states to provide data on the telecommunication market for Alaska. This data is needed to allow the Joint Board to evaluate the alternative market structures for the Alaska market and to further evaluate the extent of the high costs associated with telecommunication service in Alaska.

DATES: The requested data are to be filed on or before July 15, 1986. Proposals for structuring the Alaska market and comments on the issues before the Federal-State Joint Board are to be filed on or before October 31, 1986. Oppositions or further comments in light of the market structure proposals and initial comments may be filed on or before December 16, 1986. Reply comments may be filed on or before January 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal-State Joint Board's *Order Requesting Data and Inviting Comments*, CC Docket No. 83-1376, adopted April 23, 1986, and released May 9, 1986.

The full text of this Joint Board order is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this order may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order Requesting Data and Inviting Comments

The Commission convened this Federal-State Joint Board (Joint Board) pursuant to section 410(c) of the Communications Act, 47 U.S.C. section 410(c) by issuing a *Notice of Proposed Rulemaking, Integration of Rates and Services*, 50 FR 41714 (Oct. 15, 1985). The Joint Board was asked to prepare recommendations concerning: (1) What, if any, market structure changes are necessary to harmonize the Commission's rate integration and procompetitive policies for the Alaska market; and (2) what separations or other rule changes, if any, would be necessary to implement any market structure changes. The Joint Board was also directed to consider the high cost of service in Alaska in reaching its recommended decision, and asked us to study whether there is a need for subsidization of telecommunication service in Alaska, and, if so, to explore alternative sources for such support. By this *Order*, the Joint Board requests interested persons to submit information and data concerning the provision of telecommunication services within the state of Alaska and between Alaska and the contiguous states. The Joint Board requests data that identifies: (1) The costs associated with Alaska's interstate and intrastate telecommunication services in order to determine the extent to which these services are characterized by high costs; (2) the location of those costs within the network hierarchy to permit the evaluation of cost allocation, market structure, or separations alternatives; and (3) the cost of the various interstate and intrastate service offerings of the Alaska carriers to allow evaluation of the market structure proposals. Data is requested from Alaska exchange carriers, the state of Alaska, Alascom, Inc. (Alascom), General Communication Incorporated (GCI), and the American Telephone and Telegraph Company (AT&T).

Each carrier providing interstate service between points in the contiguous states and points in Alaska and/or intrastate interexchange service in Alaska is requested to identify its current service offerings and explain how those services are provided. Alascom is requested to describe in detail the operation of its earth station network, including an explanation of how Alascom interconnects its network with the Alaska exchange carrier facilities. Alascom and GCI shall identify any telecommunication facilities that they own or lease located outside Alaska and shall describe the operational characteristics and cost of such facilities. Alascom and GCI shall identify each point of interconnection with the facilities of AT&T or another inter exchange carrier in the contiguous states. Any other interexchange carrier offering interstate or intrastate service in the Alaska market is requested to provide a description of its operations and information concerning the investment, expenses, and revenues associated with its Alaska service.

Alascom is requested to describe in general terms the application of the separations procedures to its investment and expenses. It is requested to describe

the manner in which "equivalent circuit miles" are used in the development of the conversation minute mile factor, the allocation of television transmission facilities and single channel per carrier transmission facilities used for communications to small earth stations, and the allocation of its investment and expenses to private line services.

The state of Alaska is requested to provide information concerning the population demographics of Alaska, the pattern of income distribution within the state, the state's business environment, and other relevant data. The state of Alaska is also requested to provide information on the types and amounts of telecommunication services purchased by it during 1985.

We are asking Alaska exchange carriers to file actual and projected data showing investment, expenses, and revenues separately for interstate and intrastate services for specified years. Each exchange carrier is requested to identify, to the extent possible, any instances in which it applies the separations procedures in a manner that differs from the application by the Bell Operating Companies in the lower-48 states. Alaska exchange carriers are also asked to file data on the charges for residential and business exchange service and basic private line exchange service. Each Alaska exchange carrier is further requested to provide data on the number of subscriber lines and private lines by NNX. Each Alaska exchange carrier is also requested to identify its interstate and intrastate subscriber line usage factors and its interstate frozen subscriber plant factor for 1983–85.

Alacsom and GCI shall each provide specified actual and projected investment, expense, and revenue data. This information shall be presented with billed revenues and settlements shown separately, as well as showing separately amounts associated with interstate exchange access and intrastate settlements with the Alaska exchange carriers. Alascom shall also specify the allocation of each account balance to the appropriate separation categories or subcategories and identify the allocation of each separations category or subcategory to the appropriate interstate or intrastate service.

AT&T shall provide a statement of its actual and projected billed revenues for Alaska service and its settlements with Alascom for specified years. AT&T is to estimate its cost, excluding settlements, of distributing the traffic of Alascom and GCI in the lower-48 states.

Alascom is requested to file the results of a study on the effect of using more than one separation study area for Alaska on its cost allocations and settlements. It is requested to project the results forward to 1985 and to calculate separately the costs of serving Ketchikan, Sitka, Nome, and Cordova. Alascom shall also state its investment and expenses by major separations categories, disaggregated to specified geographic areas.

Alascom, AT&T and GCI are requested to quantify the impact that the implementation of the final step of rate integration and termination of the transitional supplement would have had on their 1985 operations and estimate the effect on their 1986–87 projections under two stated assumptions. Alascom and CGI shall provide information showing the rates and rate design for the interstate and intrastate services they offered on January 1, 1986.

Alascom and GCI shall separately identify their actual and projected total interstate and their total intrastate messages and minutes for specified periods, showing northbound and southbound interstate messages and minutes separately. Alascom, GCI, and AT&T shall each provide information on its respective interstate and/or intrastate average length of haul. Alascom, AT&T and GCI shall each provide data concerning the capacity and usage of their earth stations, transponders, and microwave facilities, as appropriate.

Interested persons are invited to file comments, oppositions, and reply comments on the issues before the Joint Board in accordance with the time schedule set forth in the ordering clauses. Any person planning to submit a market structure proposal should do so in its initial comments in order to ensure an opportunity for other persons to respond. Interested persons should also address the question of the high cost of Alaska telecommunication service. Interested persons should identify the baseline criteria to be used in determining the extent of the high cost levels and should file such data if it is not already available, or state where it is available. Finally, interested persons should address any changes in the separations rules or other Commission rules necessary to address the high cost issue in light of possible market structure revisions.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 1, 4 (i) and (j), 201–205, 221, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154 (i) and (j), 201–205, 221, and 410(c), That the persons specified herein are directed to file the requested data on or before July 15, 1986. Interested persons may file proposals for structuring the Alaska market and comments on the issues before the Federal-State Joint Board on or before October 31, 1986. Oppositions for further comments in light of the market structure proposals and initial comments may be filed on or before December 16, 1986. Reply comments may be filed on or before January 15, 1987. An original and six (6) copies of the data submissions and comments shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionaly, one (1) copy of each data submission or comment shall be filed with each person listed in Appendix A.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–10952 Filed 5–14–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 86–163]

Private Land Mobile Service, Frequency Allocations; Buffalo et al.

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making proposing to amend Part 90 of the rules to provide for private land mobile operation in the 421–430 MHz band in the Detroit, Cleveland, and Buffalo urban areas.

DATES: Comments due June 23, 1986. Reply comments due July 8, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Overby, Private Radio Bureau (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (Notice)*, adopted April 18, 1986 and released May 2, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3600, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. On September 20, 1985, the Commission released a *Report and Order* in Gen. Docket No. 85-113, 50 FR 40016 (October 1, 1985), which allocated segments of the 421-430 MHz band for private land mobile operation within 50 miles of Detroit, Cleveland, and Buffalo. A total of 6.1 megahertz of spectrum was allocated for use in each of the Detroit and Cleveland areas, and 2.85 megahertz of spectrum was allocated for use in the Buffalo area. The *Report and Order* dealt only with the allocation and did not address implementation of rules governing systems operating on these bands. Accordingly, the Commission has adopted the above-captioned *Notice* proposing service rules for use of this spectrum.

2. The *Notice* proposes to divide this spectrum into 25 kHz channels, and to apportion the channels equally between a public safety/special emergency pool and a general access pool. Channels in the general access pool would be available to private land mobile entities that do not fall into the public safety/special emergency category. The proposal would provide a total of 47 channel pairs in Buffalo and 112 channel pairs in both Detroit and Cleveland, along with 20 single channels in each of the three areas. Channels would be assigned on a shared basis with no frequency exclusivity given to any licensee. Since the spectrum allocation was limited to within 50 miles of Detroit, Cleveland, and Buffalo, the Commission proposed to allow base stations to locate within 30 miles of these cities and to specify mobile operating areas of up to 20 miles around each base station. The proposed rules are listed are included in the original item.

3. This action is taken pursuant to sections 4(i), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will make additional channels available for private land mobile eligibles, some of which are small businesses. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 23, 1986, and reply comments on or before July 8, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 90

Private land mobile radio, Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-10958 Filed 5-14-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 94
Thursday, May 15, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board; Renewal

The Department of Agriculture has renewed the National Plant Genetic Resources Board for a 2-year period.

The Board was originally established in July 1975 by the Secretary and was last renewed on May 4, 1984.

The purpose of the Board is to advise the Secretary of Agriculture and officers of the National Association of State Universities and Land-Grant Colleges in order to assess national needs and identify high-priority programs for conserving and utilizing plant genetic resources, including such things as collection, maintenance and description of genetic stocks, and utilization of the stocks in plant improvement programs.

The Secretary has determined that continuation of the Board is necessary and in the public interest in order to assure adequate supplies of food, feed, and fiber by minimizing the genetic vulnerability of crops.

Done at Washington, DC, this 8th day of May 1986.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 86-10631 Filed 5-14-86; 8:45 am]

BILLING CODE 3410-03-M

Commodity Credit Corporation

Proposed Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1986 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: This notice sets forth certain proposed determinations concerning the price support levels for pulled wool and mohair for the 1986 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: Comments must be received on or before June 16, 1986 in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3758, South Building, P.O. Box 2415, Washington, D.C. 20013 or call (202) 475–4645. A Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published by 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program that this notice applies to are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations. It has been determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1990 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent. Based on current reported parity indices the calculation for the 1986 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1982–1984	1103.0
(2) Average parity index, calendar years 1958–1960	297.3
(3) Ratio of 1103.0 to 297.3	3.7101
(4) 3.7101 x 62 cents per pound (1965 support price)	$2.3003
(5) 77.5% x 2.3003	$1.7827
(6) 1.7827 rounded to nearest full cent	$1.78

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of

Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall establish and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following method for calculating the support prices for pulled wool and mohair for the 1986 marketing year are being proposed.

Proposed Determinations

A. *Support Price-Pulled Wool.* The support price for pulled wool for the 1986 marketing year cannot be determined until the 1986 average market price for shorn wool is calculated, which should occur by April 1987. It is proposed that the method for calculating the support price for pulled wool shall be as follows. Once the average market price for shorn wool is known, the support price for pullled wool will be determined by subtracting the 1986 average market price for shorn wool from the 1986 support prices of shorn wool and multiplying that number by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). The result is then multiplied by 80 percent which is a quality adjustment factor which recognizes that unshorn lamb pelts contain a shorter staple and a lower quality wool than wool shorn from other sheep.

B. *Support Price-Mohair.* It is proposed that the support price for mohair for the 1986 marketing year shall be determined based on the October 1985 parity prices for mohair and shorn wool. The following percentages are being considered in the final computation of the mohair support price:

(1) 85 pecent of the percent of parity at which shorn wool is supported.

(2) A percentage equal to the percent of parity at which shorn wool is supported.

(3) 115 percent of the percent of partity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on pulled wool and the proposed level of price support for mohair. Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC, on May 9, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-10932 Filed 5-14-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Intent To Amend the Routt, Pike and San Isabel; and Arapaho and Roosevelt National Forest Land and Resource Management Plans; Jefferson, Douglas, Park, Grand, Summit, Gilpin and Boulder Counties, CO

On February 12, 1985, the Rocky Mountain Region, Forest Service, U.S. Department of Agriculture, published a notice "Update of the Status of Participation in the Systemwide Site-Specific Metropolitan Denver Water Supply Environmental Impact Statements" (Vol. 50, No. 29, Page 5804). In that notice the Forest Service indicated that projects discussed in the Systemwide Site-Specific Environmental Impact Statement had the potential to affect the land use allocations of four National Forest Land and Resource Management Plans (Forest Plans). The National Forest administrative units identified in the February notice were the Arapaho and Roosevelt, the Pike and San Isable, the Routt, and the White River National Forests.

The notice also said that the sponsors expected to identify the projects which will have to be built in the near-term (10 to 15 years) and apply for the necessary land use authorizations and permits in October 1985. Additionally, if the projects identified did have the potential to affect Forest Plans, the Forest Service was to publish a Notice of Intent to prepare an Environmental Impact Statement to Amend the Forest Plans.

On March 4, 1986, the Forest Service received from the Denver Board of Water Commissioners an application for the construction and operation of the Two Forks Dam and Reservoir. Preliminary analysis shows that there may be a need to amend the Pike and San Isabel National Forest Plan to accommodate the proposed project. Additionally, operation of the proposed project or some of its alternatives may affect the operation of other elements of Denver's water collection system located on other National Forests. As a result there may be impacts on the Arapaho and Roosevelt and Routt National Forests that may require a Forest Plan amendment. The proposed project would inundate 5,250 acres of the Pike and San Isabel National Forests and potentially affect five different management area prescriptions under the current Forest Plan. Lesser National Forest acreages are inundated by alternatives to the proposed project, but some National Forest System land is required for each project alternative.

On April 10, 1986, the Denver Board of Water Commissioners applied to the Forest Service for approval to occupy National Forest System land within the Arapaho National Forest for the construction and operation of the extension and enlargement of the Williams Fork Diversion Project. The proposed project is located in a portion of the Arapaho National Forest that is administered by the Routt National Forest, and the lands are covered by the Routt's Land and Resource Management Plan. Preliminary analysis shows that there may be a need to amend the Routt National Forest Plan to accommodate the proposed project. Approval and construction of the proposed project or its alternative may also affect the operation of other elements of Denver's water collection system located on the Arapaho and Roosevelt National Forests, so the need for a Forest Plan amendment will also be evaluated for that Forest.

The Corps of Engineers (COE) is the lead agency in preparing the Environmental Impact Statement which will contain details sufficient to make the Forest Plan amendment decisions as well as land use authorization decisions. On April 9, 1982, the COE published a Notice of Intent to Prepare an Environmental Impact Statement in the **Federal Register** (Vol. 47, No. 69, Page 15405). In that notice the Forest Service was identified as a cooperating agency under the National Environmental Policy Act. The notice contained the schedule of scoping meetings.

Subsequent to analysis the scope of the EIS changed to emphasize site-specific projects and the COE published a second Notice of Intent to prepare an EIS in the **Federal Register** on April 9, 1984 (Vol. 49, No. 77 page 15800). The public was again asked to comment and to help define the scope of the issues to be analyzed in the EIS.

In addition to the two COE notices and requests for comments and the scoping meeting which were held, the Forest Service requested comments on the projects in their February 1985

notice referred to above. No additional scoping meetings have been scheduled, however, written comments and concerns may be sent to the Regional Forester, USDA Forest Service, P.O. Box 25127, Lakewood, CO 80225.

There will be a public comment period after the Draft EIS is released for public review and prior to preparation of the Final EIS. Public meetings will be conducted by the COE and the Forest Service to receive public input on the Draft EIS. These meetings will be held in the metropolitan Denver area as well as locations on Colorado's west slope and will be publicized through local news media.

S. H. Hanks,

Deputy Regional Forester.

[FR Doc. 86-10902 Filed 5-14-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of an Environmental Impact Statement for Geothermal Leasing; Lassen National Forest, CA

The Department of Agriculture, Forest Service, and Department of the Interior, Bureau of Land Management, has jointly prepared an environmental impact statement for proposed geothermal leasing on part of the Lassen National Forest. The land area involved covers 206,500 acres including the 56,750 acres within the Lassen Known Geothermal Resource Area (KGRA), south of Lassen Volcanic National Park.

Five alternatives have been considered, ranging from no leasing, to leasing with standard and various additional stipulations for protection of surface an subsurface resources.

Public involvement highlighted the following four issues that were addressed in two different development scenarios, 75MW & 300MW: (1) Impacts to geothermal features of Lassen Volcanic National Park and adjacent private lands; (2) impacts to wilderness areas, the Pacific Crest Trail, private land, and Lassen Volcanic National Park; (3) impacts to air, suface water, ground water, fish, wildlife, recreation, visual resources, cultural resource, sound levels, timber, range, sensitive plants, and other vegetation (4) the types and degree of geothermal activities permitted, their potential effects, and protective measures to mitigate those effects. Such activities include: Use of heavy equipment, road construction, truck traffic, buildings, dust emissions, well drilling, steam and gas discharge, fluid and solid waste discharge, and well abandonment.

The preferred alternative recommends the leasing of only National Forest lands within noncompetitive application areas north of LVNP in which rocks derived from the Lassen Volcanic center do not occur. These areas would be leased with standard lease terms and special stipulations. The rest of the study area including the KGRA is recommended to not be leased.

Comments on the draft environmental impact statement are being solicited from public agencies and interested individuals and organizations.

Copies of the Draft EIS are available for review at the public libraries in Lassen, Plumas, Shasta and Tehama Counties, as well as Lassen National Forest, Supervisor's Office, 55 S. Sacramento, Susanville, CA and Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, CA.

A limited number of single copies of the statement can be obtained by contacting the Forest Supervisor, Lassen National Forest or the District Manager, BLM-Susanville District.

DATE: The public comment period is open for 45 days from the date EPA published their Availability Notice, May 2, 1986. The comment period closes June 16, 1986.

Written comments should be sent to Mr. Richard A. Henry, Forest Supervisor, Lassen National Forest, 55 South Sacramento Street, Susanville, California 96130, phone (916) 275-2151; or to Mr. C. Rex Cleary, District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, phone (916) 257-5381.

FOR FURTHER INFORMATION CONTACT: Jim Saake, Lassen National Forest, (916) 257-2151 or John Bosworth, BLM-Susanville District, (916) 275-5381.

Dated: May 8, 1986.

W.S. Swanson,

Acting Forest Supervisor.

Bob Sherve,

Acting District Manager.

[FR Doc. 86-10905 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Aquidneck Island Watershed, RI; Finding of No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Aquidneck Island Watershed, Newport County, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Richard N. Duncan, State Conservationist, Soil Conservation Service, Alderic Complex, 46 Quaker Lane, West Warwick, Rhode Island, 02893-2120, telephone (401) 828-1300.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include land treatment on cropland consisting of enduring practices (terraces), management practices (contour farming), and one agricultural waste storage facility.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard N. Duncan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: May 7, 1986.

(Catalog of Federal Domestic Assistance Program No. 10-904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Richard N. Duncan,

State Conservationist.

[FR Doc. 86-10903 Filed 5-14-86; 8:45 am]

BILLING CODE 3410-16-M

BEST COPY AVAILABLE

Jumper Creek Watershed, FL; Intent to Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Jumper Creek Watershed project, Sumter County, Florida.

FOR FURTHER INFORMATION CONTACT: James W. Mitchell, State Conservationist, Soil Conservation Service, 401 SE First Avenue, Room 248, Gainesville, Florida 32601 telephone (904) 377-0940.

Jumper Creek Watershed, Florida; Notice of Intent to Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination has been made by James W. Mitchell that the proposed works of improvement for the Jumper Creek project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from James W. Mitchell, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

James W. Mitchell,

State Conservationist.

May 7, 1986.

[FR Doc. 86-10904 Filed 5-14-86; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Advisory Standard for Chairs Used Primarily for Enplaning and Deplaning Physically Disabled Passengers

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Invitation for public comment on proposed advisory standard.

SUMMARY: Aircraft boarding chairs, wheelchair-like devices used to transport disabled passengers onto airplanes, have been cited for safety and other problems. Responding to a survey distributed through the Federal Register, (49 FR 36210, September 14, 1984), passengers using aircraft boarding chairs reported complaints regarding safety, comfort, independent mobility, and personal dignity. In response to these problems and complaints, the Architectural and Transportation Barriers Compliance Board (ATBCB) sponsored a research effort to examine aircraft boarding chairs. The objective of the research effort was to develop a non-binding federal advisory standard aimed at improving aircraft boarding chair design and use.

ATBCB retained the services of a human factors engineering consulting firm to perform the research effort and develop this advisory standard. A human factors team, which included human factors engineer and both a physician and physical therapist specializing in wheelchair design and prescription, analyzed existing aircraft boarding chairs in both their static state and during use. This approach permitted a comprehensive evaluation of the physical features of aircraft boarding chairs and the "human-machine" interactions. A Draft Advisory Standard was reviewed by industry experts, boarding chair designers, airline personnel, airport operators and aircraft boarding chair users.

This publication of a proposed advisory standard incorporates the reviewers' comments on the draft. It contains a thorough overview of the development effort as well as background information which should facilitate advisory standard implementation. The body of this advisory standard contains detailed guidance for boarding chair design and use as well as training. Technical assistance on this and related issues is available through the ATBCB.

DATE: To be assured of consideration, comments must be in writing and must be postmarked on or before July 14, 1986.

ADDRESS: Comments should be sent to: Docket Trans-1-86, U.S. Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For information on techical issues concerning this standard, contact Mr. Dennis Cannon, Office of Technical Services, (202) 472-2700 (Voice or TDD). Legal questions should be addressed to Ms. Debra Fischer, Deputy General Counsel (202) 245-1801 (Voice or TDD). These are not toll free numbers. Copies of this notice are also available on tape for visually impaired persons.

SUPPLEMENTARY INFORMATION:

I. The Purpose of the Advisory Standard
1. What is an Advisory Standard?
2. Why was This Advisory Standard Established?
3. Who Should Use This Advisory Standard?
4. What is The Scope of This Advisory Standard?
5. How is This Advisory Standard Organized?

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1. The Need For An Advisory Standard
2. The Role of ATBCB
3. How This Advisory Standard Was Developed
4. The Needs of the Passengers and Airline Personnel
5. Goals for Boarding Chair Designers and Airlines

III. Areas for Public Comment

Advisory Standard

Part 1 Definition of Key Terms
Part 2 Human and Environmental Factors
2.1 Physical Characteristics of Users
2.2 The Aircraft Boarding Environment
Part 3 Guidelines for Boarding Chair Operation
3.1 Mobility
3.2 Safety
3.3 Maintenance
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Part 4 Guidelines for Design Features
4.1 General Physical Characteristics
4.2 Seating
4.3 Backrests
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4.5 Armrests
4.6 Gripping Surfaces
4.7 Restraints
4.8 Footrests
Appendix A: Adopted ISO Test Procedures
Appendix B: Guidelines for Training

I. The Purpose of the Advisory Standard

This advisory standard is intended to promote improvements in the accessibility of facilities and services to disabled people. As described in Section II, this particular advisory standard is part of a larger effort by the ATBCB to eliminate architectural and transportation barriers encountered by disabled people. The ATBCB's mechanism for accomplishing this goal is the implementation of an advisory standard on the design and use of aircraft boarding chairs.

1. What Is an Advisory Standard?

An advisory standard is non-binding and considered guidance only. An advisory standard can, at a later point, be enforced but this would require action by federal agencies (other than the ATBCB) who have rulemaking and enforcement authority. The initial approach of developing and implementing an advisory standard,

rather than a binding one, is an effective way to introduce guidance in cooperative manner, working together with industry, user, and governmental entities to improve conditions.

2. Why Was This Advisory Standard Established?

This advisory standard was established to promote and facilitate improvements in aircraft boarding chair design and use. The need for the advisory standard arises from persistent safety problems and complaints regarding aircraft boarding chairs. The advisory standard provides a range of guidance that is intended to help eliminate problems encountered by disabled passengers and airline attendants.

The advisory standard development effort is the result of several years' work in the aircraft boarding chair area. Over several years, representatives of the government, airlines, airport operators, aircraft boarding chair manufacturers and wheelchair users have organized and worked together in an effort to identify problem areas and make efforts to improve aircraft boarding chair design and use.

Many of the reported problems have been attributed to physical design problems. However, some problems have been the result of improper use of the devices, a result of inadequate or improper training. The advisory standard addresses both of these problem causes.

3. Who Should Use This Advisory Standard?

The major advisory standard end-users are expected to be aircraft boarding chair designers, airlines, aircraft designers, general public disabled passengers, and insurance companies.

Use by Aircraft Boarding Chair Designers

Aircraft boarding chair designers can benefit from the advisory standard through the comprehensive design guidance. It can be utilized as the basis for detailed design criteria or specifications when the designer develops a new design or enchances an existing one or to develop product specifications and evaluation checklists. The advisory standard is written in a manner that recognizes an aircraft boarding chair design as an optimization problem that requires tradeoff analysis. Guidance is performance-oriented rather than prescriptive to allow for creative, trade-off solutions. The advisory standard provides data on desirable design features based on user testing and preferences to which the designer may not otherwise have access. Aircraft boarding chair designers and manufacturers should apply the guidance provided in the advisory standard since the airlines (the customer) may be encouraged by the government and, potentially, by insurance companies to specify and purchase aircraft boarding chairs that conform to the guidance.

Use by the Airlines

Airlines may use the advisory standard to select the best aircraft boarding chair for purchase. The advisory standard identifies performance requirements for aircraft boarding chairs that the purchaser should look for in devices on the market and identifies how a specific feature should operate or be designed to satisfy passenger and attendant needs. The advisory standard can be used as the basis for purchase specification. It can also be used to make improvement in areas such as aircraft boarding chair maintenance and airline attendant training. Airlines may use the advisory standard initially to evaluate the aircraft boarding chairs they are currently using and determine if there is a need to replace them with improved products. The guidelines may also be useful when designing training courses.

Use by Aircraft Designers

Aircraft designers, including those who design the airframe, cabin layouts, and seating may use the advisory standard in an effort to accommodate the needs of disabled passengers who need wheelchair or boarding chair access. Ideally, all commercial aircraft, including small, commuter aircraft, should permit wheelchair or boarding chair access to all seat locations. Cabin doorways and aisles should be designed to allow wheelchair or boarding chair maneuverability and effective passenger transfers. Basic anthropometric and boarding chair dimensional data contained in this advisory standard should assist aircraft designers in achieving these goals.

Use by the General Public/Disabled Passengers

Disabled passengers may use the advisory standard as a technical resource to explain to airlines the need for safe and efective boarding chairs.

Use by Insurance Companies

Insurance companies that underwrite airline passenger services may consider requiring that the airlines use boarding chairs that conform to the advisory standard in order to obtain insurance coverage. This would ensure that airlines utilize the safest boarding chairs available. This could reduce the airlines' vulnerability to claims resulting from accidents involving boarding chairs.

4. What is the Scope of this Advisory Standard?

The advisory standard applies specifically to aircraft boarding chairs. It is not intended to be applied directly to devices used for functions other than aircraft boarding, such as on-board chairs used for in-flight mobility or wheelchairs used for mobility within the airport terminal. However, if a product such as an on-board chair is used for the purpose of aircraft boarding, the advisory standard is applicable.

The scope of the guidance provided in this advisory standard is broad enough to account for the many types of aircraft boarding chairs currently in use. The broad scope also supports the objective of sustaining or increasing the number of aircraft boarding chair manufacturers. The advisory standard is not intended to restrict design freedom. The performance-based guidelines are designed to eliminate safety hazards while permitting different and creative solutions to the engineering problems.

Not all of the guidance provided will or can be applied to a single type of aircraft boarding chair design. This is due to the fact that aircraft boarding chairs have competing design requirements such as maximum adjustability and mechanical simplicity. It is considered the responsibility of the advisory standard user to interpret the guidelines and determine where specific guidelines apply. Technical assistance to supplement the advisory standard and provide guidance for advisory standard interpretation and implementation will be available through the ATBCB.

5. How is the Advisory Standard Organized?

This advisory standard with preamble is divided into seven sections. Sections I–II of the preamble's supplementary information provide background information regarding the functions of the advisory standard and the topic of architectural barriers and aircraft boarding chairs. Section III identifies particular questions on which public comment is invited. The Advisory Standard itself is in four parts. Part 1 provides a list of key terms. Part 2 defines the physical characteristics of the users, both the passenger and attendant, and the environment in which the boarding chairs are used. The remainder of the standard, Parts 3 and 4,

consists of guidelines for boarding chair design. Appendix A provides the adopted ISO test procedures. Appendix B contains guidelines on personnel training and defines who should be trained, how often training should be conducted, and the extent of training needed.

II. Project Background

1. The need for an Advisory Standard

There is a continuing need to provide disabled people with equal access to places and services. With improved recognition of the rights of disabled people, many public works and services have been modified to provide access. However, modifications have not included provisions for complete, unhindered access to aircraft. While many airport terminals now provide accessible restrooms, electric doors and ramps, aircraft manufacturers have not widened the airplane aisle to allow standard wheelchair access.

Because a standard wheelchair will not fit down the airplane aisle (17" wide), it is necessary that some other device be used for boarding and deplaning disabled passengers. It would seem that wheelchair manufacturers solved the problem already by designing aircraft boarding chairs (examples of existing boarding chairs are shown in Figure II–1). However, aircraft boarding chairs do not fulfill all of the needs of the passengers and attendants. Reports of accidents and near-accidents involving existing aircraft boarding chairs have indicated that improvements in aircraft boarding chair design are needed. An advisory standard that provides for the basic needs of aircraft boarding chair users is essential in eradicating existing architectural barriers for disabled persons in air transportation.

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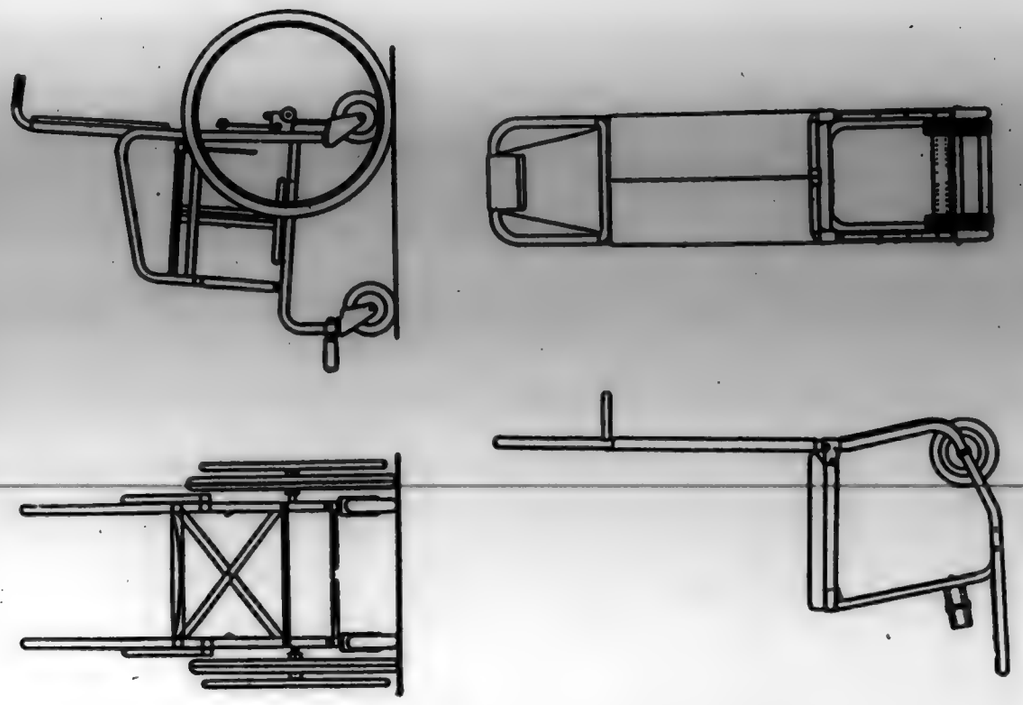

Figure II-1. Sample Existing Boarding Chairs

2. The Role of ATBCB

Under section 502 of the Rehabilitation Act of 1973, as amended, the Architectural and Transportation Barriers Compliance Board (ATBCB) is vested with various functions relating to transportation barriers confronting persons with disabilities (29 U.S.C. 792). First, the Board is directed to investigate and examine alternative approaches to eliminating transportation barriers, particularly with respect to public transportation (including air, water, and surface transportation whether interstate, foreign, intrastate, or local), and to determine what measures are being taken by Federal, State, and local governments and public and private agencies to eliminate such barriers. (id at 792(b) (2) and (3)).

The Board is also required to "prepare plans and proposals for . . . actions as may be necessary to the goals of adequate transportation . . . for handicapped individuals, including proposals for bringing together in cooperative effort, agencies, organizations, and groups working toward such goals of whose cooperation is essential to effective and comprehensive action" (id. at 792(c)(3)).

The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–502) amended section 502 to provide the ATBCB with new functions regarding transportation barriers. Under the Amendments, the Board is required to "insure that public conveyances, including rolling stock, are readily accessible to, and usable by physically handicapped persons" (29 U.S.C. at 792(b)(8)).

The Amendments also require the ATBCB, in cooperation and consultation with other concerned agencies, to "develop standards and provide appropriate technical assistance to any public or private activity, person or entity affected by regulations prescribed pursuant to this title [Title V of the Rehabilitation Act] with respect to overcoming . . . transportation . . . barriers" (id. at 792(d)(3)).

Since the ATBCB had received a number of reports of accidents or near-accidents involving the use of aircraft boarding chairs, the Board had reason to believe that current practices and standards regarding their use for enplaning and deplaning of disabled passengers, if any existed, are inadequate and unsafe.

As a result, the Board was concerned with the lack of standards in current regulations-standards that would ensure adequate safety features, equipment and procedures necessary to secure the safety features, equipment and procedures necessary to secure the safe enplaning and deplaning of physically disabled passengers by airport operators and airline carriers. This concern led to further research and the initiative to develop this advisory standard.

3. How This Advisory Standard Was Developed

The development of this standard was based on human factors engineering research and analysis. The human factors engineering research conducted to develop this advisory standard included full consideration of the product users (disabled passengers and airline attendants). Research methods included a complete literature search, static evaluations of the current product designs, dynamic observations of the products in use in their intended environment (the airport skybridge and aircraft), an assessment of the user's physiological needs, and extensive interviews with wheelchair users, airline attendants and boarding chair designers.

A set of problems, complaints, and concerns regarding boarding chairs was derived from each of the techniques. For each of the problems, complaints, and concerns identified, as well as for potential problems not actually observed or reported, a performance guideline was written to help alleviate the problem. The guidelines were then classified by topic (aircraft boarding chair feature, documentation issue, or training concern) for inclusion in this advisory standard.

Standards or standardized test procedures developed by industry consensus groups such as the International Organization for Standardization (ISO) or the American National Standards Institute (ANSI) have been incorporated where available and appropriate. Preliminary drafts were circulated for review and comment to the National Transportation Facilitation Committee (NTFC) Subgroup on Air Travel Accessibility, members of the ATBCB, and over 60 reviewers selected for their expertise in the subject area.

4. The needs of the Passengers and Airline Personnel

This standard addresses the needs of both the disabled passenger and the airline attendants. For the passenger, the boarding chair must provide adequate body support and restraint. Typically, a passenger is seated in the boarding chair for approximately 5 minutes or less. However, under circumstances when flight changes must be made, delays occur, or a standard wheelchair is unavailable, the time spent seated in the boarding chair can extend to an hour or longer. In such cases, support, ease of body repositioning and passenger independent mobility are vital. Regardless of the length of time spent seated in the boarding chair, proper support can only be achieved if the boarding chair accommodates the size of the passenger.

The airlines are concerned not only with the safety and comfort of the passenger, but also with the safety and comfort of the airline attendant and the ease of use of the aircraft boarding chair. The attendant is susceptible to injury if the transfer is performed incorrectly. Often, the size of the attendant in relation to the size of the boarding chair and passenger makes a proper transfer difficult. If the airline attendant must assume an awkward position while boarding or deplaning a passenger, there is a potential risk of injury for both the attendant and passenger.

5. Goals for Boarding Chair Designers and Airlines

It should be the goal of boarding chair designers and manufacturers to develop boarding chairs that minimize the potential for injury and increase overall comfort without sacrificing ease-of-use and low cost. The airline should select and purchase boarding chairs that best suit the needs of the passengers and attendants and provide adequate training for personnel. This standard provides guidelines to help fulfill these goals.

III. Areas for Public Comment

The board requests specific comments on the following four issues:

(1) Use of the 99th percentile male weight, as opposed to the 95th percentile male weight, in guidelines associated with load bearing capacity.

(2) The cost impacts of the proposed Advisory Standard in terms of new designs, existing boarding chair modifications and boarding chair replacement.

(3) Whether the final Advisory Standard, when published and provided for public information, should also be included in the Code of Federal Regulations even though it will be a non-binding standard.

(4) The size of the area on which the downward force is applied to the seat (see guideline 4.1(d)).

By vote of the Board, March 12, 1986.
Charles R. Hauser,
Chairperson, Architectural and Transportation Barriers Compliance Board.

Advisory Standard

Part 1. Definition of Key Terms

Air Carrier Airport: Airport that serves airlines utilizing aircraft that seat fifty or more passengers or receive federal funds for terminal facilities. (49 CFR Part 27, § 27.5)

Aircraft Boardng Chair: Narrow, wheelchair-like device used to transport non-ambulatory passengers between the airport terminal gate, via a skybridge or aircraft steps, and the aircraft seat.

Anthropometrics: Measurement of various human physical traits such as size, mobility (range-of-motion) and strength.

Attendant: Any individual who participates in the task of transporting and transferring a passenger; can be an airline employee, a service contractor, or a passenger's private assistant.

Boarding: The process of moving a passenger from the terminal, via a skybridge or aircraft steps, to the aircraft seat. The boarding task incorporates both transporting and transferring tasks.

Boarding Chair: Same as aircraft boarding chair.

Channeling: A groove used to direct or guide an attached mechanical part such as a strap in a specified direction.

Clarity of Function: Degree to which it is obvious how a boarding chair feature should be used.

Deplaning: The process of moving a passenger from the aircraft seat, via a skybridge or aircraft steps, to the airport terminal. The deplaning task incorporates both transporting and transferring.

Extended Periods: A duration of 15 minutes or longer. (period of time)

5th Percentile Female: An adult woman who is smaller than 95% of the female population for a given parameter.

Independent Mobility: The capability of moving without the help of another person while using a manual device.

ISO (Test) Dummy: A test apparatus, developed by the International Organization for Standardization (ISO), used as an equivalent human load for wheelchair testing. The dummy is equivalent to a male weighting 220 lbs with a standing height of 78 inches and is constructed according to Draft International Standard ISO-DIS 7176/11.

Lifting Device: Device used to elevate disabled passengers to the aircraft cabin entrance level, eliminating the need to use a stairway (REF: 44 Fed Reg 31442, Subpart D, Section 27.71(a)(2)(v))

95th Percentile Male: An adult man who is larger than 95% of the male population for a given parameter.

Quadriplegia: Paralysis involving the trunk and all limbs.

Repositioning: Shifting body position to redistribute weight.

Restrain: To restrict body movement or keep the body under control.

Skin Ulceration: Breakdown of skin tissue caused by prolonged external pressure on the skin.

Skybridge. Ramp that connects the airplane cabin door to the airport terminal gate entrance.

Standard Loading Mass: A regulation soccer ball (European football) filled with lead shot of approximately 3.0 mm to 4.0 in diameter to a specified weight (ISO definition).

Standard Loadng Pad: A rigid circular object 100 mm in diameter whose face has a convex spherical curvature of 300 mm radius with a 12 mm front edge radius. Pad should be faced with a layer of hard polyether foam 2 mm thick (ISO definition).

Storage Location: A place within the terminal (not on the aircraft) where boarding chairs are kept when not in use.

3.0 Safety Factor: A 200% increase in load capicity to ensure safety. To calculate load capacity with a 3.0 safety factor, multiply the baseline load by 3.0. This safety factor is generally accepted by wheelchair manufacturers and the ISO.

Transfer: The process of lifting up and moving a passenger from one seated position to another.

Transfer Board: Accessory used to bridge the gap between the aircraft boarding chair and aircraft seat. Passenger slides over the board thus reducing the time the passenger is held by the attendants.

Transport: The process of moving a passenger in a boarding chair whether it be by pushing, pulling or lifting.

Part 2. Human and Environmental Factors

2.1 *Physical Characteristics of Users.*

Designing aircraft boarding chairs requires close attention to the physical dimensions and biomechanical capabilities (together termed anthropometrics) of the people who will use the devices: the disabled passenger and the airline attendant. The aircraft boarding chair, the disabled passenger, and the airline attendant together form a system which has several physical interrelationships or interfaces. Designing the interfaces which meet the anthropometric requirements of the users will help assure that the "Boarding Chair" system is easy and safe to operate.

Body Dimensions

The boarding chair user population includes both adult males and females. Therefore, the physical characteristics of the aircraft boarding chair must accommodate a large range of human dimensions and physical capabilities which varies from small females to large males. It is normal in engineering and design to develop a product to meet the anthropometric requirements of 95% of the user population; meeting a large range which approaches 100% is usually infeasible or unwarranted. The range of anthropometric data is normally defined in terms of percentiles. To match the anthropometrics of approximately 95% of the aircraft boarding chair user population, one needs to find minimum and maximum anthropometric values (for a given parameter) for the 5th percentile female and the 95th percentile male, respectively.

A percentile is determined as follows:

For a 5th percentile female dimension, 5 out of 100 females would be smaller in that dimension.

The result of calculating parameter values for the 5th percentile female and 95th percentile male is a practical range of physical characteristics that can be used as a basis for design. This approach optimizes a design but, while it does not exclude them, may not met as effectively, the needs of 5% of the (small) females and 5% of the (large) males in the user population. It is not the intent to exclude any portion of the population. In practice a "5th–95th" design usually accommodates more than 95% of the user population.

Anthropometric data is presented in Figures 2–1 and 2–2 for use in designing aircraft boarding chairs. Figure 2–1 provides overall dimensions for the 5th percentile female and the 95th percentile male. Figure 2–2 provides hand, arm, foot and head dimensions for the same anthropometric range. This data is references from the "Human Factors Design Handbook." Additional data that relates specifically to the aircraft boarding chair design problem is presented below. The data includes body weight and strength. Other anthropometric data can be found in NASA Reference Publication 1024, "Anthropometric Source Book, Volume I: Anthropometry for Designers."

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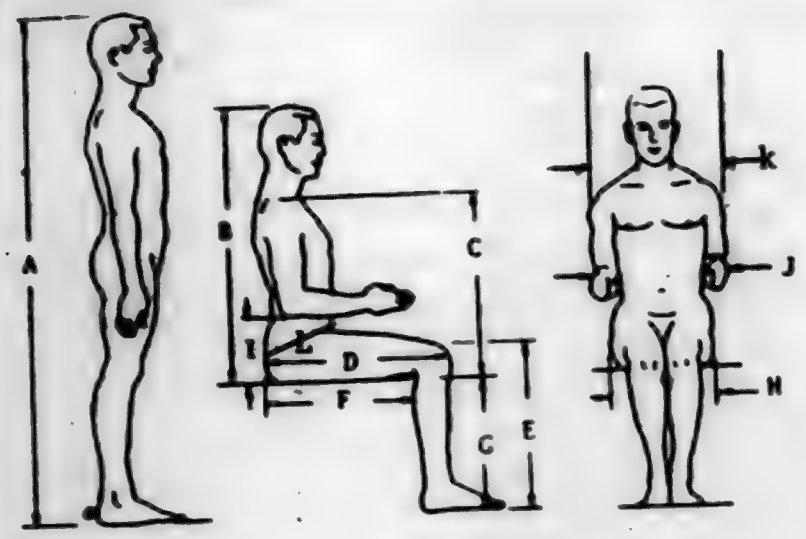

	DIMENSION	5% Female	95% Male
A	Standing Height	59.0"	72.8"
B	Sitting Height	30.9"	38.0"
C	Shoulder Height	18.0"	25.0"
D	Upper Leg Length	20.4"	25.2"
E	Knee Height	17.9"	23.4"
F	Seat Length	17.0"	21.6"
G	Seat Height	14.0"	19.3"
H	Seat Width	12.3"	15.9"
I	Elbow Height	7.1"	11.6"
J	Elbow Room	12.3"	19.9"
K	Shoulder Breadth	14.4"	19.6"
L	Hip Circumference	37.0"	44.5"

	5th Female	99th Male
Weight	104 lb	241 lb

Source: Woodson, Wesley E., Human Factors Design Handbook, 1981

Figure 2-1. Overall Anthropometric Data

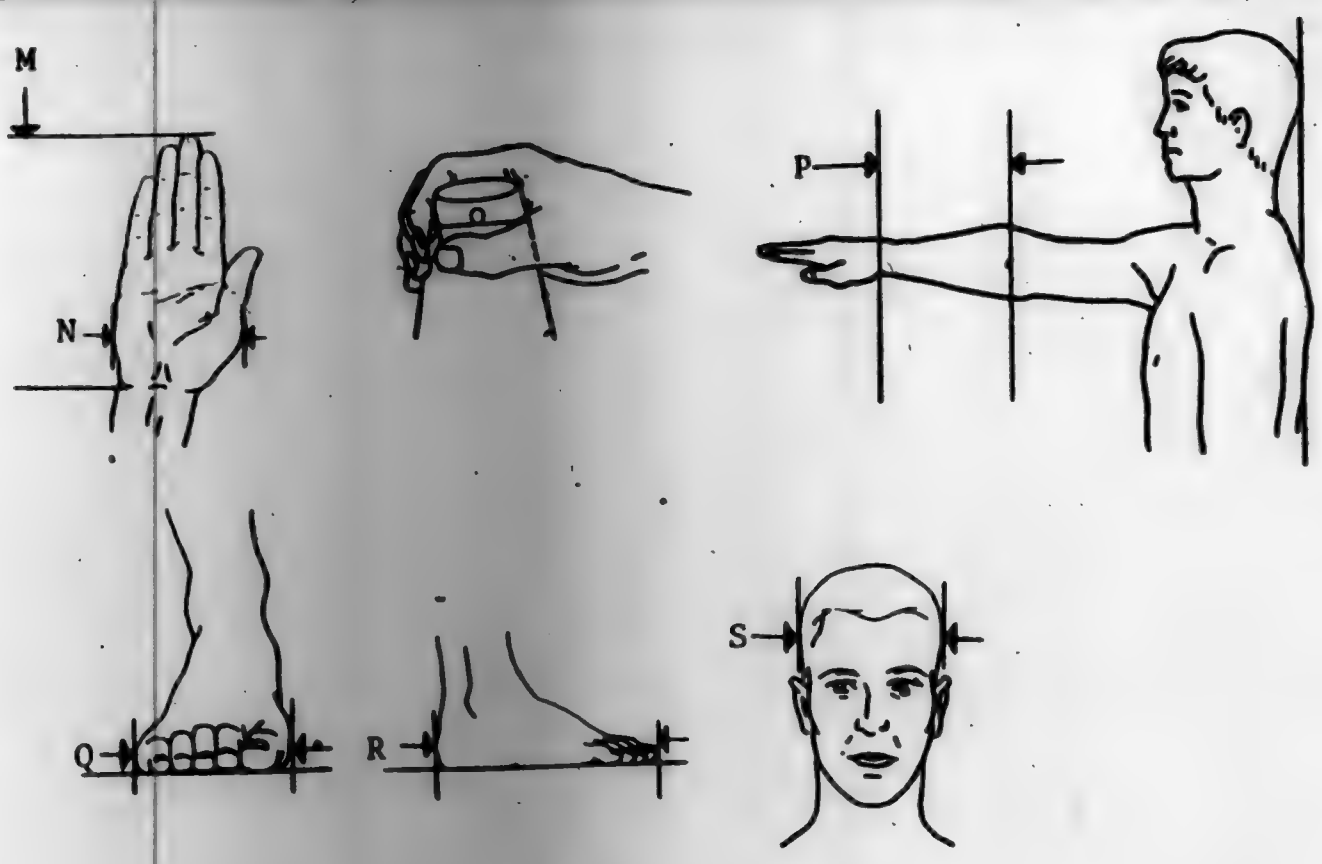

DIMENSION	5% Female	95% Male
M Hand Length	6.4"	8.2"
N Hand Breadth	3.2"	4.4"
O Grip Diameter*	1.64"	2.1"
P Elbow to Wrist	9.6"	12.0"
Q Foot Breadth	3.2"	4.3"
R Foot Length	8.7"	11.2"
S Head Breadth	5.4"	6.4"

Sources: Woodson, Wesley E., Human Factors Design Handbook, 1981.
* NASA Reference Publication 1024.

Figure 2-2. Hand, Arm, Foot, and Head Anthropometrics

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Body Weight

Maximum body weight determines the maximum load or stress on the components and frame of the aircraft boarding chair. A 99th percentile male weighs 241 lbs. A weight of 241 lbs. should be used as a design basis with appropriate consideration given to the use of safety factors in design, since there are still many people who weigh more than 241 lbs. Clearly, an aircraft boarding chair can not be designed to accommodate the heaviest person imaginable. Nonetheless, the disigner is advised to maximize weight bearing capacity in aircraft boarding chair design. The 99th percentile weight has been used, as opposed to the 95th percentile (which is 224 pounds), since the potential for damage or collapse of the aircraft boarding chair is a significantly more serious safety hazard than the failure of other design features that affect comfort more than safety.

Physical Strength and Endurance

Figure 2-3 illustrates the lifting strength and pushing force capacity of the 5th percentile female. A 5th percentile female in a standing position is capable of lifting 74 pounds from a starting point 15 inches off the ground. The same individual can apply a horizontal force of 24 pounds to a handle device which is 33 inches off the ground. Strength declines continuously after intital application to the point that strength is reduced to 25% of the original maximum capacity after four minutes of force application. This data suggests that many disabled passenger transfers will require two or more attendants or that only relatively strong attendants will be capable of performing all aspects of the boarding task which culminates with a transfer (involving a lift). For this reason, strength and endurance requirements of the transporting task should be minimized in any given design. Attendant training should incorporate procedures for transporting heavy passengers.

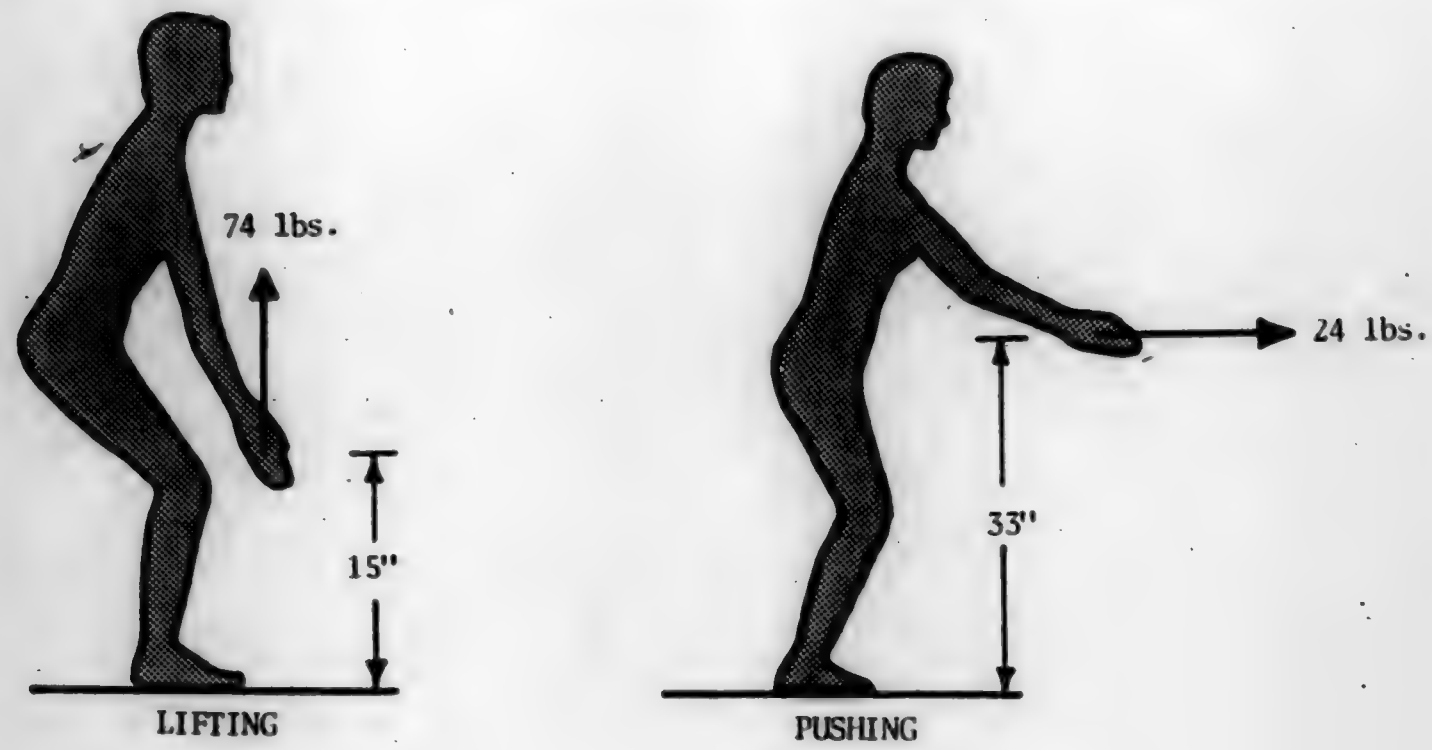

Sources Diffrient, Tilley and Herman Humanscale 4/5/6.
MIL-STD-1472C

Figure 2-3. 5th Percentile Female Lifting and Pushing Strength

Physical Disability

Aircraft boarding chairs should be designed for passengers with maximum disability. Therefore, a person with quadriplegic involving total loss of arm and leg control and weakened head control should be considered as the design basis. Designs should also consider the potential needs of individuals with missing limbs or deformities and/or involuntary movements.

2.2 The Aircraft Boarding Environment.

Aircraft are not optimized for wheelchair access. Aircraft cabin interiors and aisles, in particular, are designed to be narrow so that the cabin can accommodate the maximum number of people. The narrow aisle is one of the major complicating factors in disabled

passenger access. The other major factor is the continuing lack of skybridge connections to airplanes at many smaller airports and with many commuter airlines, requiring the use of a stairway to board an airplane. Stairways are still used at some airports to board even large, wide-body airplanes, especially during rush periods of the day when there are not always enough gates with skybridges available. The U.S. Department of Transportation requires that operators at federally assisted airports assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by jetways and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable operators at air carrier airport terminals that receive federal financial assistance shall assure that there are lifts, ramps, or other suitable devices not normally used for movement of freight that are available for enplaning and deplaning wheelchair users [49 CFR 27.71(a)(2)(v)]. A lift eliminates the need to carry the passenger up a stairway. However, lifts are not consistently available and stairways are often used.

Since stairways will continue to be a common means of aircraft access for the indefinite future, aircraft boarding chairs must be designed so that they are safe to use on stairways.

Stairway operation is the most critical mode of aircraft boarding chair use. In stairway operations, the dropping or tipping hazard is greatest for the passenger, while the physical exertion requirement for attendants is also at its peak. Such operations also cause the disabled passenger the greatest discomfort and anxiety. Boarding chair design and boarding methods must be implemented which minimize the risk of injury.

Skybridges are the preferred boarding approach. There are two basic types of skybridges: stationary and movable. Stationary skybridges have a fixed floor inclination. Movable skybridges have vertical and horizontal adjustability and can result in a steeper overall floor incline of up to 7.5 degrees (13%). The slope angle of the connecting ramps between skybridge sections may be as high as 13 degrees (25%). The movable skybridge is also narrower to enhance its movability but satisfies the width requirement for wheelchair access.

Passengers who use wheelchairs normally travel down the skybridge in standard-sized wheelchairs. At the base of the skybridge they are transferred into an aircraft boarding chair and brought onto the airplane. When a skybridge is used for access, the only potential architectural barriers outside the aircraft are the inclination of the skybridge floor and the gap at the threshold between the aircraft cabin door and the skybridge. A steep skybridge floor inclination requires extra strength to control the wheelchair or boarding chair (in the case that the boarding chair is used from the terminal gate point). Brakes are required in case there is a need to stop and hold the boarding chair on the incline. The threshold gap may require backward tilting of the aircraft boarding chair to overcome it and has implications in wheel and caster design.

The aircraft, depending on make and cabin configuraton, may present an access problem. This is particularly true for small commuter aircraft. Although the cabin doorway and entranceway are wide enough to permit easy entry into the aircraft with a boarding chair, the aisles between seats are narrow. The narrow aisle width increases the danger of a passenger's limbs getting wedged between the boarding chair and an aircraft seat. The narrowness of the aisle also presents a problem when the passenger must be moved from the boarding chair to the aircraft seat. The attendants are required to reach around the seated passenger to lift him or her into the aircraft seat. Space for the attendants' arms in the area between the aircraft seats and the boarding chair is tight. Therefore, in cases where the aircraft seat armrest does not pivot out of the way, transferring is further complicated. A fixed armrest necessitates that one attendant reach over the back of the aircraft seat and lift the passenger up over the armrest. This presents risk to the passenger and attendant. Reaching around the back of the seat does not permit the attendant to obtain secure grip of the passenger and the approach is generally less gentle and comfortable for the passenger. The attendant also risks back injury due to poor posture during lifting.

Part 3. Guidelines for Boarding Chair Use

3.1 Mobility.

(a) *Number of Attendants.* When boarding, a minimum of two airline attendants should be present to transport a passenger. If the passenger is particularly heavy or the attendant(s) is not physically strong, the transport task may require more than two attendants.

(b) *Time.* Once the boarding chair is at the aircraft entrance, the time to prepare the boarding chair for passenger seating should be less than two minutes.

(c) *Attendant Posture.* Transfers should not require the attendant to bend in awkward positions. Figure 3–1 illustrates the proper body posture that the boarding chair should permit.

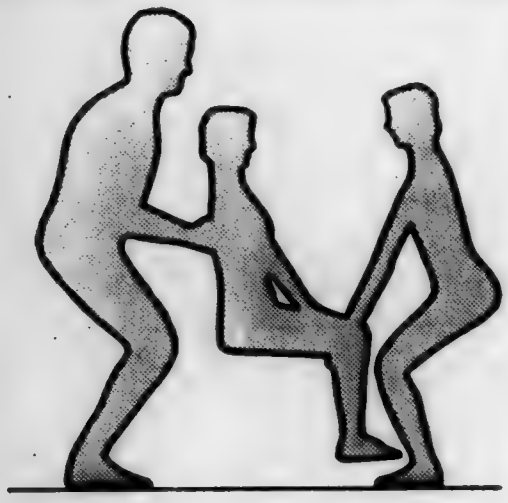

- BEND AT THE KNEES
- KEEP CENTER OF GRAVITY OVER THE KNEES
- USE A SYMMETRICAL POSTURE - DO NOT TWIST
- HOLD A FIRM, BALANCED STANCE
- KEEP YOUR BACK STRAIGHT
- USE A SOLID GRIP - USE BOTH HANDS
- LIFT ABOVE THE CENTER OF GRAVITY

Figure 3-1 Proper Posture for Transferring an Aircraft Boarding Chair Passenger

(d) *Passenger Posture.* The boarding chair design should ensure proper passenger posture. Figure 1–1 illustrates a proper body posture for passengers seated in a boarding chair.

(e) *Boarding Chair Orientation.* The boarding chair should not require tilting for movement unless negotiating curbs, stairs, or similar barriers.

(f) *Turning.* The occupied boarding chair should be able to turn within the confines of the boarding environment and the aircraft cabin layout shown in Figure 3–2. Turning should not require tilting or rocking the boarding chair.

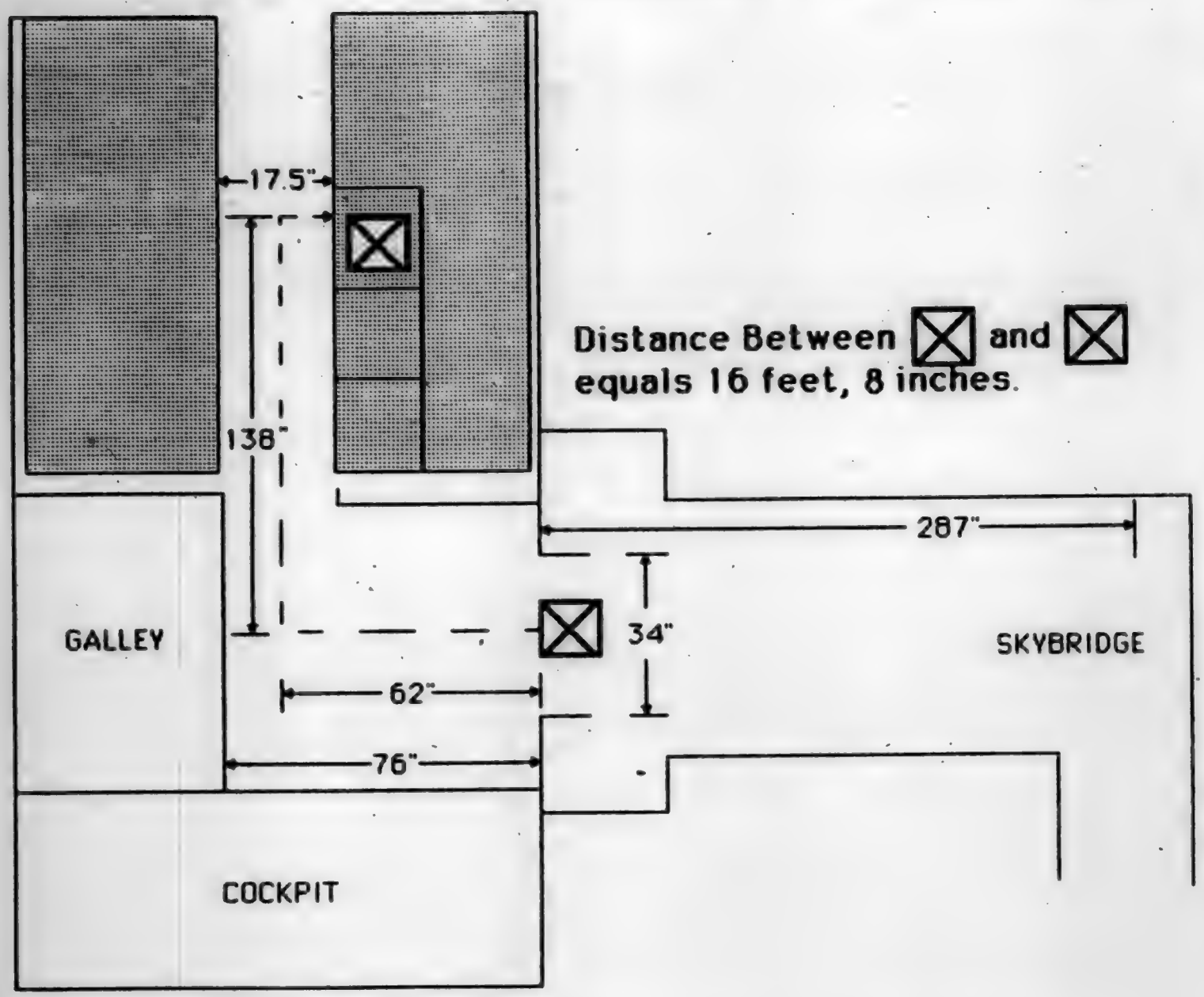

Figure 3–2. Typical Cabin Layout of a Jet Aircraft

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(g) *Ease of Movement.* The force required to push and turn (on a level surface) a boarding chair occupied by a 241 pound passenger (the 99th percentile male) should not exceed 24 pounds (the maximum force which can be exerted by a 5th percentile female).

(h) *Ease of Transfer.* The boarding chair should be designed to facilitate the use of a transfer board.

(i) *Vibration.* The boarding chair should be free of noticeable vibration when moving on a smooth surface such as a carpeted aircraft aisle.

(j) *Alignment.* When the boarding chair is pushed in a straight line it should continue to track accurately along that path.

(k) *Independent Mobility.* Boarding chairs designed to be used in the airport terminal should provide manual independent mobility for passengers who have manual independent mobility in their own wheelchairs.

(l) *Locking Mechanism.* Wheel locks should be accessible to the passenger. To the extent possible, the force required to engage/disengage locks should not exceed that which a passenger with limited hand and/or upper extremity function can exert. Wheel locks should hold the boarding chair (occupied by the 100 kg ISO dummy) motionless when placed at a 13 degree angle (maximum skybridge ramp angle) and faced either uphill or downhill. Wheel locks should not cause tire damage or excessive wear.

3.2 *Safety.*

(a) *Posture.* The boarding chair should be designed so that the passenger and attendant maintain proper posture during the passenger transport and transfer. (see Figure 1–1).

(b) *Support.* The boarding chair should provide adequate passenger body support for the full range of users, including quadriplegics and amputees. The passenger should not require supplementary seating or restraints outside those that are part of the boarding chair.

(c) *Restraints.* The restraining system should prevent the passenger from falling out of the boarding chair under all circumstances.

(d) *Hinges and Locking Mechanisms.* Hinges and locking mechanisms on movable and removable components should be located where they cannot pinch or damage the attendant's or passenger's skin or clothing.

(e) *Releases.* Releases (for components such as locks and footrests) should be located where they cannot be accidentally activated (released). Where accidental activation is possible and a safety concern, a guarded release or two-step release procedure should be used.

(f) *Rounded Edges.* The boarding chair design should incorporate rounded edges on all components to avoid injury to passenger, attendant or passerby and to protect the physical environment (stairway, skybridge, airplane).

3.3 *Maintenance.*

(a) *Preventive Maintenance.* Preventive maintenance tasks, task frequency, and specific procedures should be specified by the manufacturer. Maintenance task descriptions should include inspecting, cleaning, and performing minor repairs. All parts requiring maintenance should be easily accessible.

(b) *Cleaning.* Surfaces which come in contact with the passenger and attendant should be cleaned easily and cleaned as frequently as deemed appropriate by the airline. Boarding chair hardware components should be cleaned on a regular basis as deemed appropriate by the manufacturer. All surfaces and mechanisms requiring cleaning, as specified by the manufacturer, should be cleaned by airline personnel or the responsible contractor.

(d) *Inspection.* Parts which are subject to wear should be easily accessed and inspected on a regular basis. Inspection procedures should not require special knowledge, skills, tools, or equipment and should be performed by airline personnel or the responsible contractor.

(e) *Replacement of Parts.* Damaged or missing parts which are not part of the chair frame (main structure) should be available for purchase and replaceable according to paragraph 1.3(g).

(f) *Tools.* Only common tools should be required to perform maintenance tasks. Specialized or one-of-a-kind tools should not be required for maintenance tasks performed by airline personnel.

(g) *Spare Parts.* Components of the boarding chair which are easily replaced (such as fasteners and bearings) and not part of the chair frame (main structure) should be made readily available as spare parts stocked by the manufacturer and at least one other source. Available spare parts should be easily replaced.

3.4 *Storage.*

(a) *Damage Resistance.* Boarding chairs should be of durable construction to avoid damage during storage. Fabric on the chairs should be resistant to tears, stains, or fading which may occur during storage.

(b) *Compactness.* When possible, boarding chair design should utilize adjustable features which maximize compactness during storage.

(c) *Collapsibility.* Collapsible boarding chairs should lock in the collapsed position. Collapsible chairs should be easy to move when in the collapsed position. Reconfiguring the chair for use should be achieved easily and quickly.

(d) *Removable Items.* To avoid loss or theft, removable components should be attached to the chair during storage, though not necessarily in their operational configuration. Configuring components for storage should be performed easily and quickly. Small parts (such as nuts and bolts) should remain fastened to the chair during storage.

(e) *Loose Items.* There should be a clear method for storage of loose items (such as restraints) so they do not get lost or damaged.

(f) *Time Requirements.* Time required to prepare the boarding chair for storage should not exceed two minutes.

Part 4. Guidelines for Design Features

4.1 *General Physical Characteristics.*

(a) *Overall Dimensions.* The boarding chair should, to the extent possible, be sized to comfortably accommodate 95% of the passenger population (see Section 2.1), but should not exceed the dimensional limitations of the aircraft on which it is to be used.

(b) *Overall Weight.* Overall weight should be minimized.

(c) *Load Capacity.* The boarding chair should support 723 lbs. (the 99th percentile male body weight with 3.0 safety factor).

(d) *Static Stability.* The boarding chair should not structurally deflect (bend), rock or tip from the placement of a 241 lb. vertical, downward force at any point on the seat applied by a rigid circular object 4 inches in diameter (see definition for Standard Loading Pad).

The boarding chair should also meet the requirements for static stability as defined in Draft International Standard ISO/DIS 7176/1 (see Appendix A).

(e) *Static and Impact Strength.* For boarding chairs, the following sections of Draft International Standard ISO/TC173/SCI N3, "Static and Impact Strength Test", should be applied:

(1) 1—5.7 (Background Test Information)
(2) 6.1.1 Armrest Downward Static Load Test
(3) 6.1.2 Push Handle(s) Downward Static Load Test
(4) 6.1.3 Footrest Downward Static Load Test
(5) 6.1.4 Tipping Levers Downward Static Load Test
(6) 6.1.5 Hand Grip Static Load Test
(7) 6.1.6 Armrest Upward Static Load Test

(8) 6.1.7 Footrest Supports Upward Static Load Test
(9) 6.1.8 Push Handle(s) Upward Static Load Test
(10) 7.0 Conditions for Acceptance After Static Strength Test
(11) 8.1.1 Seat Impact Strength
(12) 8.1.2 Backrest Impact Strength
(13) 8.2.1 Drop Test Impact Strength
(14) 8.2.2 Rolling Test Wheels and/or Castors Impact Strength

For all above tests, the 220 lb. ISO dummy should be used (see Appendix A for test procedures).

(f) *Adjustable.* Where practical, adjustable features should be used to increase safety, support and comfort. The features should be easy to adjust and should not sacrifice chair and passenger stability.

(g) *Removable Parts.* To avoid loss, the number of removable parts should be minimized, or, if possible, eliminated.

(h) *Construction Materials.* Construction materials should be durable, damage resistant, fire retardant and low and high temperature resistant.

(i) *Protective features.* The boarding chair should have protective features (such as rounded edges and bumpers) to avoid damage to the aircraft boarding environment.

4.2 *Seating.*

(a) *Function.* Seating should accommodate 95% of the population and should be designed to facilitate transfers by proving unobstructed access for lifting.

(b) *Dimensions.* Seating should be sized according to the dimensions given in Figure 4–1.

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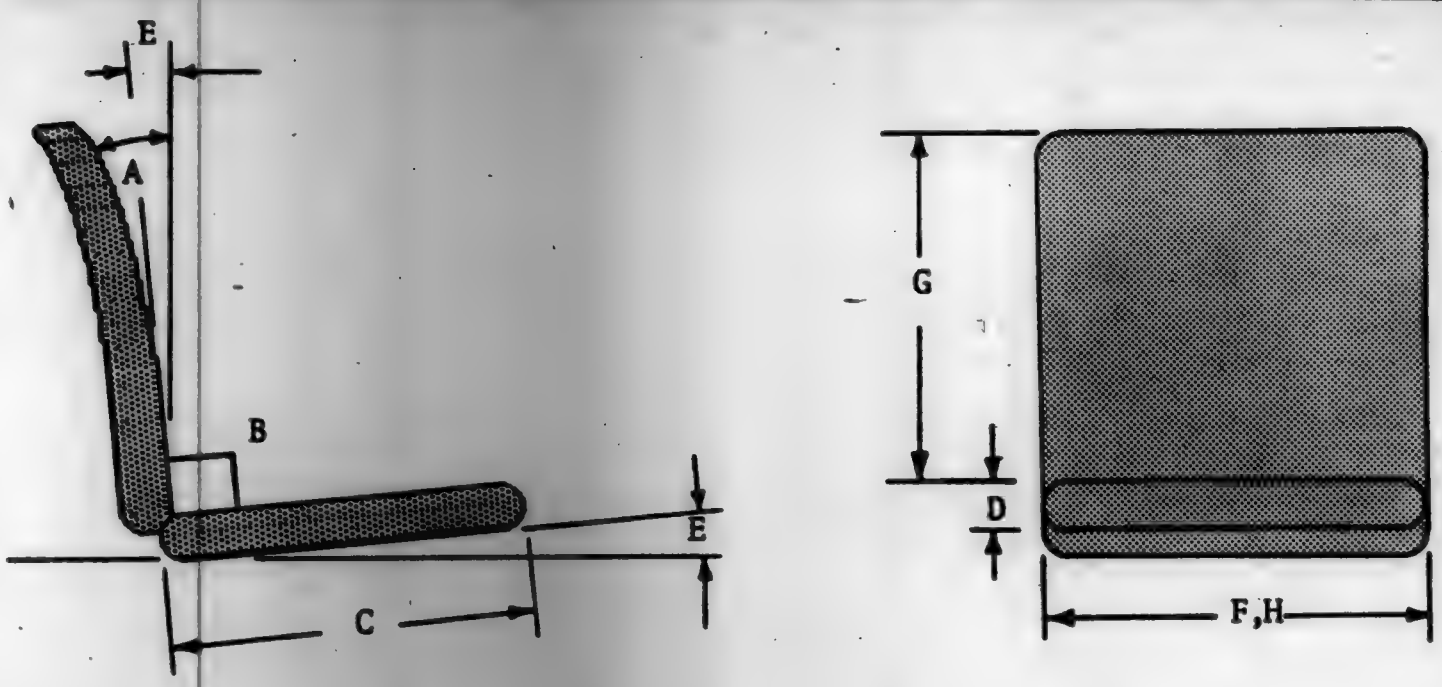

DIMENSION	VALUE
A Backrest, Optimum Angle (degrees)	8-10
B Backrest to Seat Angle (degrees)	90
C Seat depth (inches)	16
D Seat Thickness (inches)	2 (min)
E Seat Angle (degrees)	5
F Backrest width (inches)	15
G Backrest height (inches)	25
H Seat width (inches)	15

Figure 4-1. Seat and Backrest Dimensions and Angles

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(c) *Strength.* Seats should support a weight of at least 723 pounds (the weight of the 99th percentile male with a 3.0 safety factor) and should meet the requirements in guideline 4.1(e).

(d) *Location.* Seat surface height (compressed) should be 17–19 inches to match the height of aircraft seats and should incline 5 degrees to increase body restraint (see Figures 4–2 and 4–3).

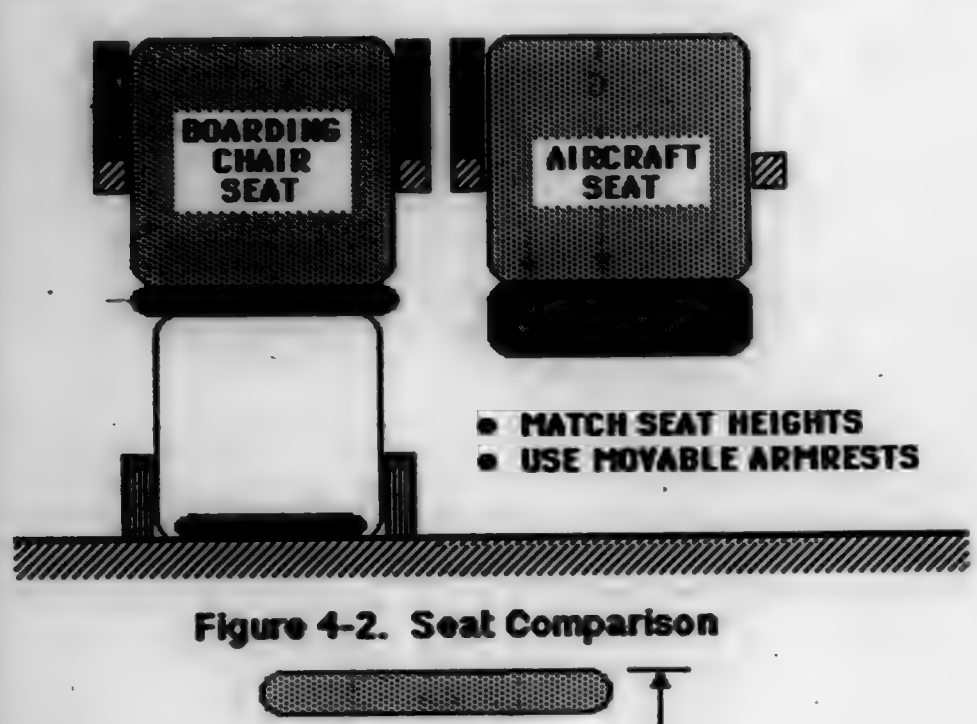

Figure 4-2. Seat Comparison

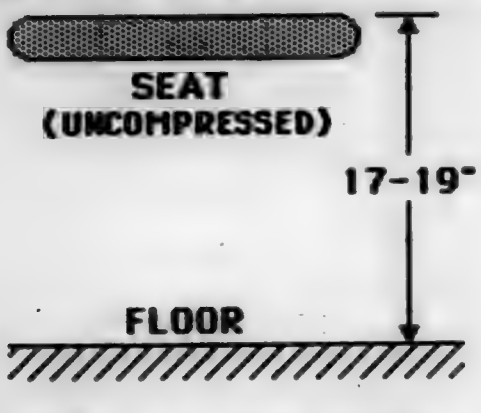

Figure 4-3. Seat Height

(e) *Shape.* Seat shape should provide passenger body support and restraint and distribute body weight evenly to avoid the risk of skin ulceration. Seat shape should not hinder passenger transfers.

(f) *Material.* Seat material should be water repellent, stain resistant, fire retardant, non-abrasive, durable, cleanable, and aesthetic. Based on ISO research, the cushion should be constructed of a good quality foam at least 2 inches thick with an indentation load deflection (ILD) of 70 as measured by ASTM Designation D 1564–71, "Standard Methods of Testing Slab Flexible Urethane Foam." The cushion cover should be stretchable or be fitted so that the top surface is 0.5 inches longer and wider than the foam pad. The cushion cover should be a color which is low in heat absorption so that the cover does not overheat (if left in the sun) and cause thermal trauma to passengers.

(g) *Texture.* Seat material texture should not be so rough (high friction) that it hinders passenger body positioning.

(h) *Cushioning.* Cushioned seating should be provided to distibute body weight evenly and to protect against skin ulceration. Seat cushions should not strike the back of the passenger's knee, thereby avoiding blood flow restriction and possible nerve damage (see Figure 4–4.)

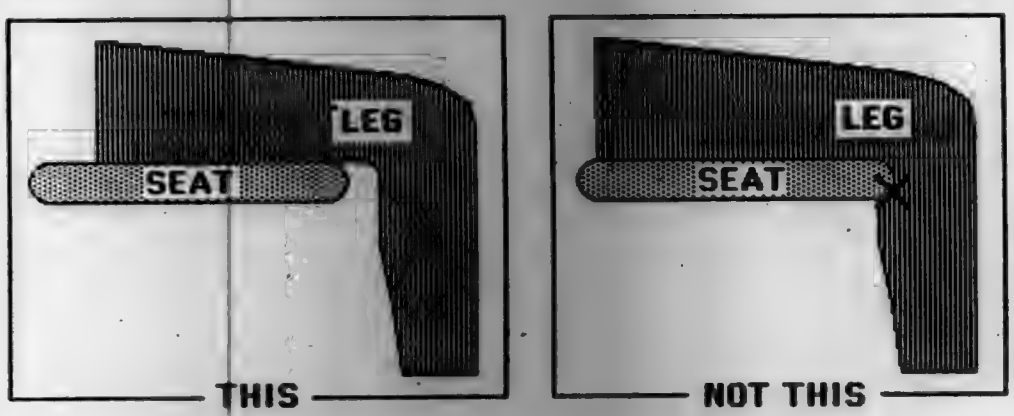

Figure 4-4. Seat Cushioning Placement

(i) *Construction.* Seats should keep their shape, even after extended use.

4.3 *Backrests.*

(a) *Function.* Backrests should support the passenger and aid in restraining the passenger's torso and be comfortable.

(b) *Dimensions.* Backrests should be sized according to dimensions given in Figure 4–1. Note: Where boarding chairs must be carried up stairways (i.e., at locations which are not air carrier airports) the backrest height should be a minimum of 38 inches. Refer to Section 4.4 Headrest.

(c) *Orientation.*. The angle between the base of the backrest and the seat should be 90 degrees. For comfort purposes, the middle to upper portion of the backrest may be gradually reclined as shown in Figure 4–1.

(d) *Strength.*. Backrests should meet the requirements in guideline 4.1(e).

(e) *Shape.* Backrests should be constructed to provide support, aid in restraining a passager, and avoid interference with passenger transfers.

(f) *Material.* Backrest material should be water repellent, stain resistant, fire retardant, non-abrasive, durable, cleanable, and attractive. For aesthetic purposes, cover material used on the backrest should be coordinated with the material used on the seat.

(g) *Texture.* Backrest cover material should not be so rough (high friction) that it hinders passenger body positioning.

(h) *Cushion.* The backrest cushion should provide a firm surface. However, cushion firmness should not compromise skin protection.

(i) *Folding.* Folding backrests should collapse in a manner which does not hinder transfers. Hinging mechanisms should automatically lock in place when the backrest is fully extended and folded.

(j) *Adjustment Mechanisms.* The method of operation of backrest adjustment mechanisms should be readily apparent and easy to perform.

4.4 Headrests.

(a) Function. Headrests should be provided to support the head, preventing the head from falling back or to the sides.

(b) *Dimensions.* Headrests should be dimensioned to accommodate 95% of the user population. (see Figure 2–2)

(c) *Location.* Headrests should support the passenger's head at ear level.

(d) *Strength.* Headrests should support a force of 30 lbs (the average weight of a male's head with a 3.0 safety factor) applied in the aft and both lateral directions and should meet the requirements in guideline 4.1(e).

(e) *Material.* Headrest material should be water repellent, stain resistant, fire retardant, non-abrasive, durable and cleanable.

(f) *Ease of Transfer.* The position of the headrest should be one which does not require an attendant to assume an awkward body position (with poor leverage) during a transfer. (e.g., the headrest could fold or retract out of the way).

4.5 *Armrests.*

(a) *Function.* Armrests should be provided to support the passenger's arms. Armrests should provide a firm gripping or resistance surface for passengers to push against when repositioning themselves and to assist in protecting the passenger from injury.

(b) *Dimensions.* Armrests should be sized to accommodate 95% of the passenger population for the dimension of arm length. (see Figure 2–2).

(c) *Location.* Armrests should be located at the seated elbow resting height optimized for 95% of the passenger population. The armrests should be adjustable over the range of 7.0–12.0 inches above the seat surface.

(d) *Strength.* Each armrest should support 241 lbs (the weight of the 99th percentile male) and meet the requirements in guideline 4.1(e).

(e) *Material.* Armrest material should be durable, non-slip, water repellent, stain resistant, fire retardant and cleanable.

(f) *Orientation.* Armrests should be oriented to provide vertical and lateral arm support.

(h) *Adjustability/Removability.* Armrests should be removable or fold away. Adjustable, folding, and/or removable armrests should have locking and quick release mechanisms that are accessible to the passenger.

4.6 *Gripping Surfaces.*

(a) *Function.* (a) Clearly identified gripping surfaces should be provided for attendants to hold onto during the transport of a passenger.

(b) *Number.* Gripping surfaces should be provided where needed for pushing, pulling, and lifting, as determined by defined operating procedures. As many gripping surfaces as possible should be provided to adapt to a variety of boarding chair-to-attendant orientations. As a minimum, the number of gripping surfaces should fulfill the requirements of paragraph 4.6(d).

(c) *Dimensions.* Gripping surface size should accommodate the 95th percentile male hand for width and length and the 5th percentile female hand for diameter (see Figure 2–2). Physical clearance between the gripping surface and surrounding boarding chair parts should be provided for the 95th percentile male hand.

(d) *Location.* As a minimum, gripping surfaces should be provided on the boarding chair frame near the shoulders and feet of the seated pasenger. The pushing surface should be located at the attendants' standing elbow height, 40–42 inches optimized for the 50th percentile of the total user population. (see Figure 2–1).

(e) *Material.* Gripping surface material should be textured, water repellent, stain resistant, temperature resistant, fire retardant and durable. Gripping surface materials should be firmly attached to avoid turning, slipping, or accidental removal.

(f) *Strength.* Each gripping surface should be capable of supporting (for all possible load applications) the total weight of the boarding chair plus 723 lbs (the 99th percentile male weight with a 3.0 safety factor). Each gripping surface should meet the requirements in guideline 4.1(e).

(g) *Body Posture.* The attendants should not be required to assume awkward positions (such as a twisted back or bent wrists) while pushing or lifting the chair.

(h) *Skin Protection.* The attendant's hands should be protected from contact with surrounding surfaces such as aircraft walls, seats, doors, or stairways while holding onto the gripping surfaces.

(i) *Clarity of Function.* Gripping surfaces should be readily apparent to the attendant.

(j) *Chair Stability.* When the boarding chair, ocupied by the 5th percentile female or 99th percentile male, is pushed, pulled or lifted by the gripping surfaces, the boarding chair should not tip or fall to either side.

4.7 *Restraints.*

(a) *Function.* Restraints, such as safety belts, should be used to secure a passenger in the boarding chair and ensure the safety of the passenger during transportation.

(b) *Placement.* Restraints should securely support:

(1) Torso.
(2) Pelvis.
(3) Knees.
(4) Feet.

Restraint placement should ensure that the passenger's body is centralized and stabilized in the boarding chair. Restraints should be attached rigidly to the boarding chair frame and held in their intended position of use by their method of attachment, channeling or some other means. Pelvic straps should be attached at a 30–45 degree angle from the seat connected at the seat and back joint to hold the pelvis against the back of the boarding chair (see Figure 4–5).

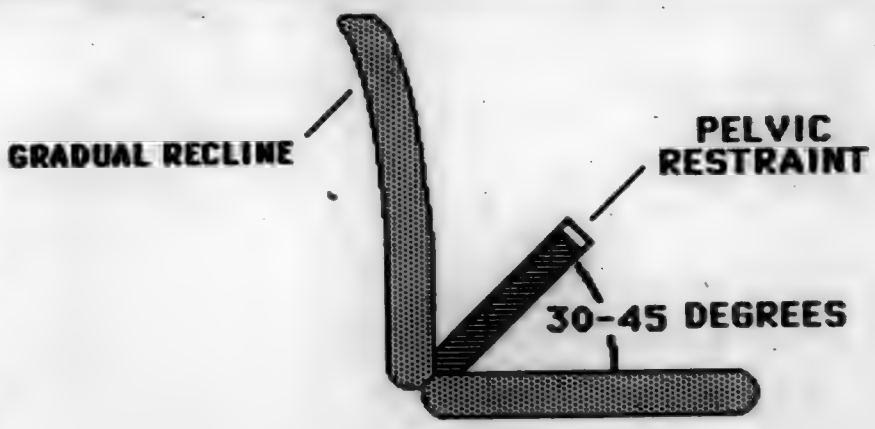

Figure 4-5. Pelvic Restraint Placement

(c) *Material.* Material should be stain resistant, non-abrasive, fire retardant, water resistant, durable, cleanable and attractive.

(d) *Texture.* Material used should not cause skin irritation or promote skin ulceration at contact points.

(e) *Fastening Mechanisms.* Restraint connect and release mechanisms should require as few steps as possible to be secured effectively (1–2 steps is optimum). Fastening mechanisms should connect and release quickly and be within the passenger's reach. Fastening mechanisms should be able to be released by individuals with impaired strength and reduced hand and arm dexterity.

(f) *Adjustability.* Restraining devices should be easily adjustable in size to accommodate the body dimensions of passengers ranging from the 5th percentile female to the 95th percentile male (see Figure 2–1). Once a restraining device has been adjusted to fit a passenger, any excess portion of a strap should not interfere with boarding chair operation and create a potential hazard for tripping or catching.

(g) *Clarity of Function.* Restraining device method of use and connection should be obvious. Incorrect use should be impossible. The need for instructions on use shall be minimized. Coding techniques, such as color or shape, should be used to simplify the identification of interacting parts (see Figure 4–6).

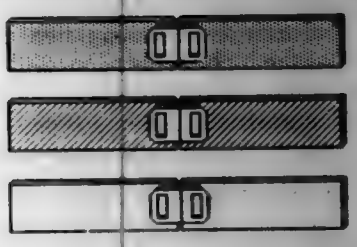

(h) *Strength.* Restraining devices should withstand a force of 723 pounds (the weight of the 99th percentile male with a 3.0 safety factor) as shown in Figure 4–7.

Figure 4-6. Visual Coding of Restraints

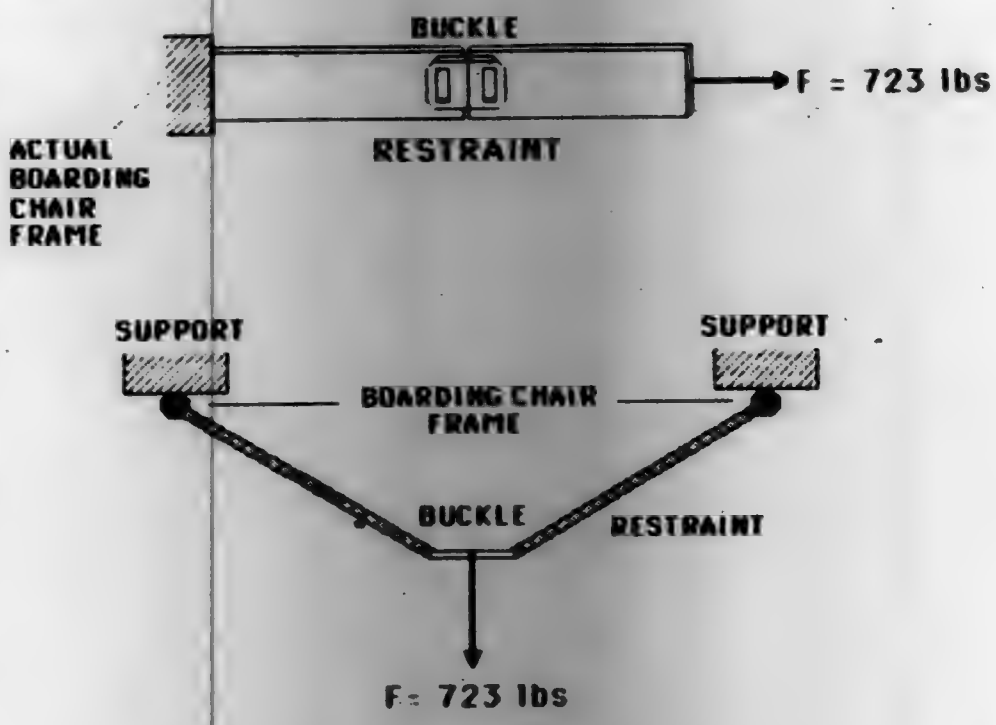

Figure 4-7. Static Testing of Restraints

(i) *Storage.* When not in use, restraining devices should not interfere with chair movement. Restraining devices not in use for a particular passenger should not interfere with operation or cause discomfort to the passenger. The method of restraint storage should be obvious and efficient.

4.8 Footrests

(a) *Function.* Footrests should be provided to support and stabilize the passenger's feet and legs during transport. The footrest should prevent the passenger's foot from slipping off the footrest when tilted back and should prevent the passenger's feet from sliding sideways or forward under all circumstances.

(b) *Dimensions.* Footrests should be a minimum of 4.3 inches in width for each foot. The depth of the footrest should maintain a secure and comfortable foot posture for extended periods. (See Figure 2–2).

(c) *Location.* The contact point between the foot and footrest should be located at an adjustable distance over the range of 16.0 to 29.0 inches from the front of the seat as shown in Figure 4.8.

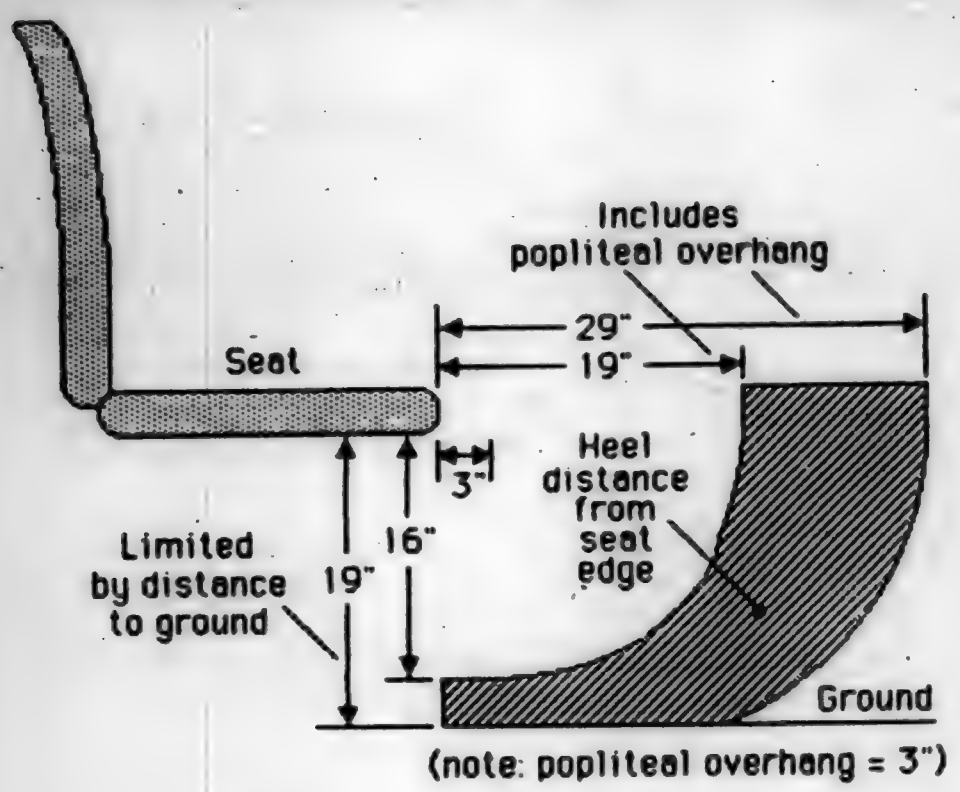

Figure 4.-8. Footrest Location

(d) **Orientation.** Footrests should allow the passenger's foot and lower leg to rest in the position typical to that person (this may not be directly side by side).

(e) *Adjustability.* Footrests should be easy to adjust.

(f) *Strength.* During operation, a collision between the footrest and a surrounding object should not cause passenger injury, alteration of passenger leg position, or damage to the boarding chair. Footrests should meet the requirements in guildeline 4.1(e).

(g) *Support.* Footrests should provide complete support to the passenger's feet and lower legs. Foot supports should prevent the passenger's feet and lower legs. Foot supports should prevent the passenger's feet from slipping beneath the boarding chair under all operating conditions.

(h) *Material.* Footrest material should be durable, resistant to cracking, chipping, or splintering, temperature resistant and cleanable.

(i) *Padding.* Footrests should not promote skin ulceration even after prolonged contact. Padding should be used, as necessary, to provide a comfortable contact surface; particularly in the area of the lower leg.

(j) *Ease of transfer.* Transfer of passengers should not be impeded by footrest size or location. If necessary, footrests should be retractable or swing away to ensure attendant and passenger safety.

Appendix A: Adopted ISO Test Procedures

Note.—Test Procedures have been paraphased and adapted for applicability to aircraft boarding chairs. For the complete Draft ISO Test Procedure Document, refer to ISO/173 SCI/WGI-220.

A1 Scope

This part of ISO 7176 specifies a method for determining the static, impact and fatigue strength of manual wheelchairs.

A2 References

ISO 6440 Wheelchairs—Nomenclature, Terms and Definitions ISO/DIS 7176/11 "Wheelchairs—Part II: Test Dummies".

A3 Definitions

For the purpose of the part of ISO, 7176, the definitions of ISO 6440 apply.

A4 Test Principles

The Static Tests are intended to assess the static strength of the wheelchair and its component parts under the high levels of loading that occur only occasionally.

The evaluation of boarding chairs does not require destructive tests.

A5 General Conditions

If this evaluation protocol is adopted, the following conditions shall be established and recorded during the testing of boarding chairs.

A5.1 The boarding chair shall be fully equipped for normal use.

A5.2 If the wheelchair has pneumatic tires, the air pressure in them should be adjusted in accordance with the directions set forth by the manufacturer/supplier. If a pressure range is specified, the highest recommended pressure shall be selected.

A5.3 The seat unit, if adjustable, shall be set to correspond to a natural sitting posture. The leg support/footrest, if adjustable, should be positioned 50mm above the ground. Horizontally adjustable seat units shall be set at their mid position. If adjustable, the slope of the seat relative to the horizontal shall be as close as possible to 4 degrees, and the slope of the backrest relative to the vertical shall be as close as possible to 10 degrees. The angle between the seat and leg support shall be as close as possible to 90 degrees. Wheelchairs with fore/aft adjustment on the rear wheels shall be adjusted at their middle position.

A5.4 The wheelchair shall be inspected to insure that:

(1) All supporting wheels are contacting the ground.

(2) All wheels meet the specified alignment tolerance limits.

(3) The folding mechanism (if it exists) fully and readily deploys (a wheelchair with a folding X-frame should fold under the influence of gravity when laid horizontally).

(4) All detachable components detach and reassemble readily.

(5) The tires are firmly seated in their rims.

(6) There are no loose spokes (if existing).

A5.5 The dimensions shall be recorded before the commencement of the tests and again all tests have been completed. Before any measurements are taken, any free play in the structure of the boarding chair which might affect the measurements should be taken up by loading the wheelchair with appropriate ISO dummy (Refer to ISO/DES 7176/11) Measurement should be made from well-defined points on the structure to give maximum indication of

any deformation that might occur as result of the tests.

A5.6 Immediately before commencing each test procedure the components for which the test was conducted shall be thoroughly inspected. Any visible defects shall be noted, and any defects considered sufficiently significant as to affect further testing shall, if possible, be rectified.

A5.7 References to an appropriate standard test dummy shall mean a test dummy of 220 lb constructed according to the details in ISO/DIS 7176/11 of this standard.

A6.1 Armrests Donward Static Load Test.

A downward force of 147ON, at 45 degrees, shall be applied to the upper surface of both armrests simultaneously while loading a fixture at the front of the horizontal surface of both armrests. For tests on chairs with removable armrests, check that armrests remove and reinstall correctly.

A6.1.2 Push handle(s) Downward Static Load Test.

A vertical downward force of 1860N shall be applied to the push bar or both push handles simultaneously. If the wheelchair is equipped with a push bar, the force is applied to the center of the push bar. If there are separate push handles the force is applied simultaneously by placing a bar over the push handles and applying the force, using the standard loading pad, midway between the handles.

A6.1.3 Footrest Downward Static Load Test.

A downward force of 1320N shall be applied once vertically downward, to the center of each footrest plate. If the footrest is of one-piece construction, the specified force shall be applied to its center, using the standard loading pad. If the wheelchair has adjustable knee angle leg rests they shall be adjusted as close as possible to 90 degrees between the seat and leg rest. Adjustable height footrests shall be extended to their lowest position or 50 mm above the ground, whichever is higher. If the footplate is adjustable, adjust to 90 degrees to the leg reference plane. During this test, slippage of adjustment shall not exceed 25 mm. The movable caster shall be placed in its normal trailing position.

A6.1.4 Tipping Levers Downward Static load Test.

A vertical downward force of 1470N shall be applied to each tipping lever in turn. The force shall be applied over a length of 50mm at the end of each tipping lever. This applies to any rearward projection that might be used as a foot tipping lever.

A6.1.5 Hand Grip Static Load Test.

A force of 1600N shall be applied once to each handgrip using a loading fixture. The force should be applied for 10 seconds without the handgrip pulling off.

A6.1.6 Armrests Upward Static Load Test.

An upward force of 1600N shall be applied at 10 degrees to the vertical, outward to the side. Force shall be applied to the underside of each armrest simultaneously, in the middle of the armrest, using 50mm webbing or strap material. For test on chairs with removable armrests check that armrests remove and reinstall correctly. Note: Vertically pivoting or non-locking armrests should pivot or remove easily and will therefore pass the test with regard to safety considerations.

A6.1.7 Footrest Supports Upward Static Load Test.

A vertical force of 430N shall be applied to both footrest support structures simultaneously (or most forward projecting part), using 50mm webbing or strapping material. If the footrest is constructed in one piece, the specified force shall be applied to its center. Note: Adjustable knee angle leg rests shall not be tested.

A 6.1.8 Push Handle(s) Upward Static Load Test.

A vertical upward force of 850N shall be applied to the push handle(s) simultaneously using 50mm webbing or strapping material. If a push bar is used, the load is applied to the center.

A7 . Conditions for Acceptance After State Strength Tests

The boarding chair shall be visually inspected after static strength tests are completed noting the following:

(1) Any fracture of any member, joint or component;

(2) Any fracture, cracking or discontinuity of the surface finish of the structure;

(3) Free play or loosening in the frame structure, folding mechanism, armrests, footrests, brakes, wheels or wheel bearings and any other component of the wheelchair, greater than that noted in the initial inspection;

(4) Any deformation or maladjustment of any part of the wheelchair, or its attachments, that will adversely affect its function;

(5) Wheel alignment shall be remeasured and recorded noting the tolerances given;

(6) The boarding chair dimensions shall be remeasured and recorded. These dimensions should be within 3mm of the pretest dimensions recorded;

A pass/fail disclosure shall be made based on the visual inspection and the alignment and dimensions noting the tolerances given.

A8.1.1 Seat Impact Strength.

The seat shall be tests for impact with the Standard Loading Mass filled with a weight of 25 kg. During these tests the wheelchair shall be secured to the floor to prevent folding or movement. With the wheelchair in the normal open position, the weighted mass shall be dropped onto different areas of the seat from a height of 200mm. The specified impact tests are as follows:

(1) Drop mass onto center of the seat.

(2) Drop mass onto each front corner of seat as near to the corner as possible. If the wheelchair has removable armrests they shall be removed.

A8.1.2 Backrest Impact Strength.

The backrest shall be tested for impact with the Standard Loading Mass with a weighted of 25kg. The specified impact tests for the backrest are as follows:

(1) Suspend the standard loading mass as a pendulum such that it impacts the center top edge of the backrest from the front at a 45 degree angle. The standard loading mass shall be dropped from a height of 500mm.

(2) Suspend the standard loading mass as a pendulum such that it impacts each back frame member at the top, from the front at a 45 degree angle. The standard loading mass shall be dropped from a height of 500mm. During this test the boarding chair shall be secured to the floor to prevent folding or movement.

A8.2.1 Drop Test Impact Strength.

(1) With all folding mechanism (if existing) deployed to the ready-to-use condition (open), lift the wheelchair loaded with the 220lb standard test dummy above a hard, flat surface at a height of 100mm. Using a quick release device drop the chair allowing it to fall freely under the influence of gravity to impact the flat surface. The wheelchair should be suspended from a single point so that it is tilted 10 degrees laterally (side-to-side) with an inclination 10 degrees aft so that a rear wheel will contact the floor first. The height of the chair should be measured from the floor to the lower surface of the wheel being tested.

(2) For folding chairs, repeat with an inclination fore 10 degrees so that a front wheel strikes the floor first.

A8.2.2 Rolling Test Wheels and/or Castors Impact Strength.

With the chair unfolded and loaded with the 220 lb standard test dummy, the chair is rolled on a straight line path at the velocity of 1.1 m/sec towards a standardized obstacle, which is securely fastened to the floor. The velocity

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should be measured by use of a standardized procedure. The test dummy shall be securely fastened into the boarding chair. If there are removable/adjustable footrests or other projections, they should be adjusted to the most upward position in order to clear obstacles. If the distance between the floor and non-removable structures or footrests is less than the height of the standardized obstacle, the maximum possible height object should be used and recorded.

Each front wheel or castor should contact the standardized obstacle independently. The impact angle should be 45 degrees to the long dimension of the standardized obstacle.

A9 Conditions for Acceptance After Impact Strength Tests

The boarding chair shall be visually inspected after impact strength tests are completed. A pass/fail disclosure shall be made based on the criteria to be determined by the ISO.

Appendix B—Guidelines for Training

B1 Training Course Responsibility

Airlines or responsible contract personnel should conduct training courses. The airline will ensure that contract personnel conduct adequate training and will be ultimately responsible for training content, frequency, and adequacy.

B2 Frequency of Training

The airline or responsible contract personnel should train all personnel who will perform disabled passenger transports with aircraft boarding chairs before they are allowed to perform the boarding task on the job. Refresher courses should be taught when different equipment is acquired, new staff are hired, and routinely, according to an established schedule.

B3 Level of Training

All attendants should successfully perform a passenger transport and transfer using both a skybridge and stairway to gain access to the airplane.

B4 Training Course Content

Training courses should include the material covered in guidelines on passenger services, transfers and stairways.

B4.1 Effectiveness of Passenger Services.

Training courses should include the following topics to reduce the likelihood of passenger injury:

(a) Maintain proper attitude toward the passenger to avoid mistreatment.

(b) Consult with the passenger to identify the best method for transferring.

(c) Be aware of the risk of injury.

(d) Obtain the owner's chair during layovers if at all possible.

(e) Minimize the number of transfers per passenger.

(f) Restrain the passenger firmly, but not so tight as to cause injury.

(g) Take caution against legs and feet becoming dislodged from the support and getting caught on corners, seat braces or seats.

(h) Avoid pressure sores; allow the passengers to stay in their own wheelchairs, (that is specifically padded for them) for as long as possible.

(i) Know where the movable armrests are located on the aircraft.

(j) Know where the boarding chair can be parked (greatest percent incline without danger of brakes not holding.)

B4.2 Passenger Transfers.

Training courses should include the following information to reduce the likelihood of passenger or attendant injury:

(a) Consult with the passenger on the best way to accomplish the transport procedure.

(b) If possible, use a seat with a movable armrest.

(c) Do not lift a person who is too heavy for your strength.

(d) Stand with feet 12–18 inches apart, lift from the knees and not the back by keeping the back as straight as possible and stand as close to the passenger as possible.

(e) Engage brakes/locks on wheelchair and boarding chair whenever making a transfer.

(f) Allow the passenger to assist with the lift whenever possible.

B4.3 Use of Stairways for Boarding.

Training courses should include the following information to reduce the likelihood of injury:

(a) Whenever possible, avoid carrying a passenger up stairs.

(b) Locate and know how to utilize any lifting device provided at the airport.

(c) Before starting, make certain that all restraints are securely fastened, especially about the lower extremities that could splay and injure the attendant or upset the balance of the boarding chair.

(d) Place the less experienced attendant at the foot of the passenger and the more experienced attendant at the shoulders.

(e) Take a practice run if not fully familiar or comfortable with the layout. Practice with a heavy staff member.

(f) Keep the passenger informed at all times as to the progress.

(g) Make sure hands and gripping surfaces are not wet or slippery.

(h) Rest at each step to preserve stamina.

(i) Do not wear baggy clothing which could get caught. Wear non-slip footwear, such as rubber-soled shoes.

(j) Keep the boarding chair tilted back slightly as horizontally straight as possible. Even the slightest sideways tilting can jeopardize control.

[FR Doc. 81–11001 Filed 5–14–86; 8:45 am]
BILLING CODE 6820-SF-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 330]

Approval for Expansion of Foreign-Trade Zone No. 98, Birmingham, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the City of Birmingham, Alabama, grantee of Foreign-Trade Zone No. 98, has applied to the Board for authority to expand its general-purpose zone to include a warehouse complex in Birmingham, within the Birmingham port of entry;

Whereas, the application was accepted for filing on May 9, 1985, and notice inviting public comment was given in the Federal Register on June 11, 1985 (Docket No. 15–85, 50 FR 24551);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve zone services in the Birmingham area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed May 29, 1985. The grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance

with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 8th day of May 1986.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 86-10913 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 331

Approval For Expansion of Foreign-Trade Zone No. 2, New Orleans, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Board of Harbor Commissioners of the Port of New Orleans, Louisiana, grantee of Foreign-Trade Zone No. 2, has applied to the Board for authority to expand its general-purpose zone to include an industrial park site in New Orleans, within the New Orleans Customs port of entry;

Whereas, the application was accepted for filing on September 30, 1985, and notice inviting public comment was given in the **Federal Register** on October 11, 1985 (Docket No. 35-85, 50 FR 41545);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve zone services in the New Orleans area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed September 30, 1985. The grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 8th day of May 1986.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 86-10914 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-401]

Certain Brass Valves and Connections From Italy, for Use in Fire Protection Systems; Second Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order.

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice.

SUMMARY: As a result of a remand from the United States Court of International Trade in *Badger—Powhattan* v. *United States et al* (Slip Op. 86-38 at 22, April 2, 1986), the Department of Commerce (the Department) is amending its final determination in this investigation and its antidumping duty order, and is directing the U.S. Customs Service to adjust the cash deposit for Rubinetterie A. Giacomini S.p.A. (Giacomini) and all other manufacturers/producers/exporters of certain valves and connections, of brass, for use in fire protection systems, from Italy (fire protection products) from 1.28 percent to 6.74 percent based on margins found for single and double clapper siamese fire department connections and pressure restricting valves.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION: On November 30, 1984, we published a final determination of sales at less than fair value for fire protection products from Italy (49 FR 47066). Subsequently, we discovered and corrected clerical errors and amended our final determination (50 FR 1099). On February 19, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d), the United States International Trade Commission (ITC) notified the Department that imports of certain brass fire protection products, which include single and double clapper siamese fire department connections and pressure restricting valves, are materially injuring a United States industry. The ITC also notified the Department that fire hose coupling, fog/straight stream nozzles, angle-type hose gate valves, wedge-disc hose gate valves, and pressure regulating valves are not materially injuring a United States industry. After being notified of these findings, the Department published an antidumping duty order covering the two products found to be materially injuring a United States industry (50 FR 8354). The cash deposit of 1.28 percent required by this order for Giacomini and all other manufacturers/producers/exporters of fire protection products was based on the weighted-average of the less than fair value margins of Giacomini's sales of all seven products.

The United States Court of International Trade has directed the Department to amend its final determination and its antidumping duty order to reflect a weighted-average margin based only on margins found for single and double clapper siamese fire department connections and pressure restricting valves. Consequently, we are futher amending our final determination by changing the weighted-average margin to 6.74 percent based on the margins found for siamese fire department connections and pressure restricting valves.

We are also amending our antidumping duty order to reflect the weighted-average margin of 6.74 percent. Accordingly, the order is amended to read as follows: on and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins on single and double siamese fire department connections and pressure restricting valves as noted below:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Rubinetterie A. Giacomini S.P.A.	6.74
All other manufacturers/producers/exporters	6.74

May 8, 1986.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-10817 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-501]

Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that welded carbon steel standard pipe and tube products from Turkey are being sold at less than fair value and that imports of this product from Turkey materially injure a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after January 3, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are welded carbon steel standard pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53 or A-135.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 3, 1986, the Department published its preliminary determination that there was reason to believe or suspect that certain welded carbon steel pipe and tube products from Turkey were being sold in the United States at less than fair value (51 FR 235). On April 17, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 13044).

On April 30, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that imports of welded carbon steel standard pipe and tube products from Turkey materially injure a United States industry. The ITC also notified the Department that a United States industry is not being materially injured or threatened with material injury by reason of imports of welded carbon steel line pipe from Turkey.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of welded carbon steel standard pipe and tube products from Turkey. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after January 3, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Accordingly, the level of export subsidies, as determined in the final affirmative countervailing duty determination on certain welded carbon steel pipe and tube products from Turkey (51 FR 1268-1274) will be subtracted from the dumping margins shown below for deposit purposes.

Manufacturers/products/exporters	Weighted-average margin (percent)
Borusan Ihicat ve Dagitim	1.26
Erkboru Profil Sanayi ve Ticaret	23.12
Manneesmann-Sumerbank Boru Industrisi	23.12
All Others	14.74

This determination constitutes an antidumping order with respect to welded carbon steel standard pipe and tube products from Turkey pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 7, 1986.

[FR Doc. 86-10916 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-565-501]

Postponement of Final Antidumping Duty Determination; Certain Welded Carbon Steel Small Diameter Pipes and Tubes From the Philippines

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On April 24, 1986, Goodyear Steel Corporation, the respondent in the antidumping duty investigation of certain welded carbon steel small diameter pipes and tubes (pipes and tubes), requested by letter through Mitsubishi International Corporation that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C.

1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of pipes and tubes from the Philippines have been made at less than fair value until not later than September 11, 1986.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1756 or 377–3965, respectively.

SUPPLEMENTARY INFORMATION: On December 16, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of pipes and tubes from the Philippines are being, or are likely to be sold at less than fair value (50 F.R. 51274). We issued our preliminary affirmative determination on April 22, 1986 (51 F.R. 15940). This notice stated that we would issue a final determination on or before July 7, 1986. On April 24, 1986, counsel for the single respondent requested that we extend the period for the final determination, in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than September 11, 1986, the 135th day after the date of publication of our preliminary determination in the **Federal Register**.

If requested, the public hearing will also be postponed until 2:00 p.m. on July 30, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by July 23, 1986.

This notice is published pursuant to section 735(d) of the Act.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 9, 1986.

[FR Doc. 86–10981 Filed 5–14–86; 8:45 am]

BILLING CODE 3510-DF-M

Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters; Establishment

SUMMARY: Subsection 135(c) of the Trade Act of 1974, 19 USC 2155, as amended by the Trade Agreements Act of 1979, (Pub. L. 95–39), and the Trade and Tariff Act of 1984 (Pub. L. 98–573), gives the President authority to establish advisory committees to provide general policy advice on trade. This authority has been delegated to the Secretary of Commerce (the Secretary), acting in conjunction with the United States Trade Representative (the USTR), according to Executive Order 11846 of March 27, 1975. It has now been determined by the Secretary and the USTR that the advisory committee listed below be established. This action is taken in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Part 101–6, as amended, Federal Advisory Committee Management Interim Rule.

Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters

The committee will provide technical and policy advice and information to the Secretary and the USTR on trade policy matters arising in connection with the administration of U.S. trade policy. Members of the committee will be appointed by and serve at the discretion of the Secretary and the USTR. It is proposed that each committee will meet at least semi-annually at the request of the Secretary and the USTR, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Trade Advisory Center, International Trade Administration (ITA) of the Department of Commerce, administers the program.

Copies of the Committee charter will be filed with appropriate committees of the Congress and copies will be forwarded to the Library of Congress.

EFFECTIVE DATE: May 2, 1986.

Membership

Representatives from industry or industry associations wishing to be considered for appointment to serve on this committee are requested to make application in writing to the Trade Advisory Center, Room H–6816, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3268. Comments and inquiries may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jacob Moose, Acting Director, Trade Advisory Center, telephone (202) 377–3200.

Dated: May 8, 1986.

Marjory Searing,

Acting Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 86–10985 Filed 5–14–86; 8:45 am]

BILLING CODE 3510-DR-M

[C–122–507]

Countervailing Duty Order; Certain Fresh Atlantic Groundfish From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) and the United States international Trade Commission (ITC) have determined that certain fresh whole Atlantic groundfish from Canada are receiving benefits which constitute subsidies within the meaning of the countervailing duty law, and that imports of certain fresh whole Atlantic groundfish from Canada are materially injuring a United States industry. In its determination, the Department also found that certain fresh Atlantic groundfish fillets from Canada are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. However, the ITC determined that imports of certain fresh Atlantic groundfish fillets are not materially injuring, threatening material injury to, or materially retarding the establishment of, a United States industry.

Therefore, based on these findings all entries of certain fresh whole Atlantic groundfish from Canada, which are entered or withdrawn from warehouse, for consumption on or after January 9, 1986, the date on which the Department published its preliminary countervailing determination in the **Federal Register**, will be liable for the possible assessment of countervailing duties. Furthermore, a cash deposit of estimated countervailing duties must be made on all such entries, or withdrawals from warehouse, for consumption, on or after the date of publication of this countervailing duty order in the **Federal Register**.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; Telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION: The products covered by this order are certain fresh whole Atlantic groundfish, as currently provided for in items 110.1585, 110.1593, and 110.3560 of the *Tariff Schedules of the United States Annotated* (TSUSA).

In accordance with section 703 of the Act (19 U.S.C. 1671b), on January 9, 1986, the Department published its preliminary determination that there was reason to believe or suspect that imports of certain fresh Atlantic groundfish from Canada (including both whole and filleted groundfish) received benefits which constitute subsidies within the meaning of the countervailing duty law (51 FR 1010). In accordance with section 705 of the Act (19 U.S.C. 1671d), on March 24, 1986, the Department published its final determination that these imports are being subsidized (51 FR 10041).

On May 8, 1986, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of certain fresh whole Atlantic groundfish are materially injuring a United States industry, and that imports of certain fresh Atlantic groundfish fillets are not materially injuring, threatening material injury to, or materially retarding the establishment of, a United States industry.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to setion 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the net subsidy for all entries of certain fresh whole Atlantic groundfish from Canada. These countervailing duties will be assessed on all unliquidated entries of certain fresh whole Atlantic groundfish from Canada entered, or withdrawn from warehouse, for consumption on or after January 9, 1986, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise a cash deposit equal to 5.62 percent *ad valorem* on all entries of certain fresh whole Atlantic groundfish from Canada.

The Department also directs that suspension of liquidation be discontinued for entries of certain fresh Atlantic groundfish fillets. All estimated countervailing duties deposited on such entries shall be refunded and the appropriate bonds or other security released at time of liquidation.

This determination constitutes a countervailing duty order with respect to certain fresh whole Atlantic groundfish from Canada pursuant to section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 CFR 355.36).

We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377-2768.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 C.F.R. 355.36).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 9, 1986.

[FR Doc. 86-10982 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-504]

Countervailing Duty Order; Certain Heavy Iron Construction Castings From Brazil

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation concerning certain heavy iron construction castings from Brazil (heavy castings), the United States Department of Commerce (the Department) has determined that heavy castings from Brazil are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. In a separate investigation, the United States International Trade Commission (ITC) determined that an industry in the United States is materially injured by reason of imports of heavy castings from Brazil.

Therefore, based on these findings, all unliquidated entries, or withdrawals from warehouse for consumption of heavy castings from Brazil made on or between August 12, 1985, the date on which the Department published its preliminary countervailing duty determination notice in the **Federal Register**, and December 11, 1985, and all entries, and withdrawals for consumption, on or after May 7, 1986, the date on which the ITC published its final determination in the **Federal Register**, will be liable for the assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this countervailing duty order in the **Federal Register.**

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Office of Investigations, or Richard Moreland, Office of Compliance, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174 or (202) 377-2768.

SUPPLEMENTARY INFORMATION: The Products covered by this order are heavy iron construction castings which are defined for purposes of this proceeding as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames; used for drainage or access purposes for public utility, water and sanitary systems. Manhole covers, rings and frames are currently provided for in item 657.0950 of the *Tariff Schedules of the United States Annotated* (TSUSA). All other heavy iron construction castings are subsumed in item 657.0990 of the TSUSA.

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671b), on August 12, 1985, the Department published its preliminary determination that there was reason to believe or suspect that imports of heavy castings from Brazil received benefits which constitute subsidies within the meaning of the countervailing duty law (50 FR 32462). On March 19, 1986, the Department published its final determination that these imports are being subsidized (51 FR 9491).

In accordance with section 705(d) of the Act (19 U.S.C. 1671d(d)), the ITC notified the Department that such imports of heavy castings from Brazil

materially injure a United States industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act (19 U.S.C. 1671e(a)(1)), countervailing duties equal to the amount of the estimated net subsidy for all entries of heavy castings from Brazil. These countervailing duties with be assessed on all unliquidated entries of heavy castings entered, or withdrawn from warehouse, for consumption or or between August 12, 1985, the date on which the Department published its preliminary affirmative countervailing duty determination notice in the **Federal Register** (50 FR 32462) and December 11, 1985, and on all entries and withdrawals made on or after may 7, 1986, the date of publication of the ITC final affirmative determination in the **Federal Register**. Entries of heavy castings on or between December 11, 1985, and the day prior to the date of publication of the ITC final determination in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 3.40 percent *ad valorem* on all entries of heavy castings from Brazil.

This determination constitutes a countervailing duty order with respect to certain heavy iron construction castings from Brazil, pursuant to section 706 of the Act (19 U.S.C. 1671e) and section 355.36 of the Commerce Regulations (19 CFR 355.36). We have deleted from the Commerce Regulations, Annex III of 19 CFR Part 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contract the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commerce an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 8, 1986.

[FR Doc. 86–10915 Filed 5–14–86; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

May 13, 1986.

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on May 29, 1986 at 10:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Excutive Session: 11:30 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982)) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S. C553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For futher information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–11100 Filed 5–13–86; 4:04 pm]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

May 13, 1986.

A meeting of the Management-Labor Textile Advisory Committee will be held on May 28, 1986 at 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.)

General Session: 1:00 p.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552(b)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

Fór further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–11099 Filed 5–13–86; 4:04 pm]

BILLING CODE 3510-DR-M

Wood Shake and Shingle Industry Prospects for Adjustment Assistance for Firms

AGENCY: International Trade Administration, Trade Development, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, pursuant to section 264 of the Trade Act of 1974, has conducted a study of firms in the wood shake and shingle industry; such a study is required whenever the U.S. International Trade Commission (USITC) begins an investigation under section 201 of the Trade Act.

In its report issued March 25, 1986, the Commission determined by a 5–0–1 vote that wood shakes and shingles were being imported into the United States in such increased quantities as to threaten serious injury to the domestic industry producing like or directly competitive articles. Three Commissioners recommended the imposition of a new 35 percent duty for a 5-year period. Two Commissioners recommended trade

adjustment assistance, while the sixth Commissioner opposed import relief.

According to section 202 of the 1974 Trade Act, the President shall determine within 60 days after receiving a report from the Commission containing an affirmative finding, whether to provide import relief and what methods and amounts of import relief will be provided.

In 1985, imports of wood shakes and shingles totaled 4.9 million squares (a "square" is the equivalent of 100 square feet of surface area and contains between three to five bundles of shakes and shingles), up about 29 percent from 1980 levels. During the 1976–84 period, industry employment declined 53 percent and domestic production declined by 49 percent.

Under Section 251 of the 1974 Trade Act, a firm may petition the Department of Commerce to be certified as eligible to apply for trade adjustment assistance; certification requires that increased imports of articles like or directly competitive with those produced by the petitioning firm contributed importantly to: (1) Absolute declines in sales or production, or both, and (2) the separation, or threat of separation, of a significant number or proportion of its workers. A trade-impacted producer may petition the Department for certification at any time regardless of a prospective Commission finding or its results.

As of the date of this report, 39 firms in the domestic wood shake and shingle industry have been certified and 24 of those firms have received assistance. Based on employment, sales, production, and import data obtained by the USITC in its investigation, it appears likely that several other firms could be certified as eligible for adjustment assistance under the 1986 Trade Act extension legislation. However, an approximate number cannot be determined without specific data on each company.

The program of adjustment assistance for firms authorized by the Trade Act under Title II, Chapter 3, and administered by the International Trade Administration (ITA) in the Department of Commerce, expired on December 18, 1985. The Consolidated Budget Reconciliation Act of 1986 extends the program authorization until September 30, 1991, but only technical assistance is available for trade-impacted firms (financial assistance is no longer available). Technical assistance may be used for management and operational assistance, feasibility studies and related research to aid in developing and implementing a firm's recovery plan.

Under the Public Works and Economic Development Act of 1965 (PWEDA), as amended, direct and indirect assistance to firms is available without Trade Act certification through the Economic Development Administration of the Department of Commerce. Firms located in EDA-designated "redevelopment areas" and "economic development centers" can benefit directly from business development loans and guarantees. It may also be possible for firms to benefit indirectly from public works financing. PWEDA authorizes technical assistance to firms regardless of location, and grants loanable funds to communities with actual or threatened unemployment.

The Farmers Home Administration (FmHA) of the Department of Agriculture has a program which may benefit firms in the industry. Loan guarantees are available to businesses located in areas other than cities with a population over 50,000. FmHA can also make loans to public bodies, such as local governments and development organizations, in areas other than cities of over 20,000 population.

The Small Business Administration (SBA) administers three programs of potential assistance to small businesses. Most wood shake and shingle producers would qualify as a "small business" under the SBA definition.

FOR FURTHER INFORMATION CONTACT: Donald W. Butts, Office of Forest Products and Domestic Construction, Room 4512, U.S. Department of Commerce, Washington, DC 20230, telephone 202–377–0382. Additional copies of the report, "Prospects for Adjustment Assistance for Firms in the Wood Shake and Shingle Industry" are available from the previous address.

David Diebold,

Deputy Assistant Secretary for Trade Development.

[FR Doc. 86–10986 Filed 5–14–86; 8:45 am]

BILLING CODE 3510-DR-M

Harvard School of Public Health; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–054. Applicant: Harvard School of Public Health, Cambridge, MA 02138. Instrument: Mass Spectrometer System, Model MMZAB. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice of 50 FR 27999.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value of the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) a mass range of 1 to 10 000 atomic mass units at an accelerating potential of 10 000 volts, (2) a scan speed of 0.1 seconds per decade and (3) FAB capability. The National Institutes of Health advises in its memorandum dated May 7, 1985 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–10983 Filed 5–14–86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 60456–6056]

Proposed Federal Information Processing Standard for Computer Graphics Metafile (CGM)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal information processing standard (FIPS).

SUMMARY: This proposed standard adopts a voluntary industry standard, Computer Graphics Metafile, for Federal use. The American National Standards Institute (ANSI) is expected to approve this standard in July 1986 as an American National Standard (ANS). The FIPS will adopt the final standard as approved by ANSI.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed Federal Information Processing Standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, is provided in its entirety in this notice; and (2) a specification portion which deals with the technical requirements of the standard, draft proposed American National Standard (dpANS) CGM. Interested parties may obtain a copy of the technical specifications from the Computer and Business Equipment Manufacturers Association (CBEMA), Attn: Sang, X3 Secretariat, 311 First Street NW., Washington, DC 20001, (202) 737–8888.

DATE: To be considered, comments on this proposed FIPS must be received on or before August 13, 1986.

ADDRESS: Comments concerning the adoption of CGM as a FIPS are invited and may be sent to Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS for CGM, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Skall, Center for Programming Science and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–2431.

Dated: May 12, 1986.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication _____

(date)

Announcing the Standard for Computer Graphics Metafile (CGM)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15, Code of Federal Regulations (CFR).

1. *Name of Standard.* Computer Graphics Metafile (CGM) (FIPS PUB _____).

2. *Category of Standard.* Software Standard, Graphics.

3. *Explanation.* This publication announces the adoption of the American National Standard for Computer Graphics Metafile, ANSI X3.122–1986, as a Federal Information Processing Standard (FIPS). ANSI X3.122–1986 is a graphics data interface standard which specifies a file format suitable for the description, storage, and communication of graphics (pictorial) information in a device independent manner. The purpose of the standard is to facilitate the transfer of graphical information between different graphical software systems, different graphical devices, and different computer graphics installations.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.122–1986, Computer Graphics Metafile (CGM).

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

b. American National Standard Graphical Kernel System, GKS, ANSI/ASC X3.124–1985.

8. *Objectives.* The primary objectives of this standard are:

—To allow the portability of graphics data among different graphics installations and devices. This encourages a uniform interface for noninteractive picture description.

—To promote the exchange of graphic information enabling installations to share data and reduce time spent recomputing in efforts to regenerate graphics data.

—To promote the use of a standard set of elements using standard terminology, which aids graphics programmers in using graphics methods.

9. *Applicability.*

a. This standard is intended for use in computer graphics applications that are either developed or acquired for government use.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—A graphics metafile is maintained at a central facility for a decentralized system that employs graphics devices of different makes and models that must utilize the data.

—A graphics metafile is required to preserve picture data when conversion or migration from one graphics system to another is necessary and the two systems are not necessarily compatible.

—A graphics metafile is intended for information interchange between a source system and a target system that are not necessarily compatible.

—A graphics metafile is intended for archival pruposes and the format and access to a standardized structure is critical to guarantee long life availability and utilization of the data.

c. Non-standard features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard features can be very useful, it should be recognized that the use of these or any other non-standard elements may make the interchange of graphics picture data and future conversion more difficult and costly.

10. *Specifications.* American National Standard ANSI X3.122–1986, Computer Graphics Metafile, defines the scope of the specifications, the syntax and semantics of the CGM elements and requirements for a conforming implementation. All of these specifications apply to Federal government implementation of this standard.

11. *Implementation.* The implementation of this standard involves two areas of consideration: acquisition of CGM implementations and interpretations of the standard.

11.1 *Acquisition of CGM Implementations.* This publication is effective (six months after the date of publication of final document in the **Federal Register**). Implementations acquired for Federal use after this date should implement the standard. Conformance to this standard should be considered whether computer graphics metafile systems are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce metafile systems conforming to the standard. The transition period begins on the effective date and continues for twelve (12) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, a metafile package not conforming to this standard may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS CGM.* Resolution of questions regarding this

standard will be provided by NBS. Questions concerning the content and specifications should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: CGM Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

12. *Waivers.* Under certain exceptional circumstances the head of the agency is authorized to waive the application of provisions of this FIPS PUB. Exceptional circumstances which would warant a waiver are:

a. Significant, continuing cost or efficiency disadvantages will be encountered by the use of this standard and,

b. The interchange of information between the system for which the waiver is sought and other systems is not anticipated.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 86-10930 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Blank Park Zoo of Des Moines

On March 28, 1986, notice was published in the **Federal Register** (51 FR 10650) that an application had been filed by Blank Park Zoo of Des Moines for a permit to take for public display five (5) California sea lions (*Zalophus californianus*) and three (3) harbor seals (*Phoca vitulina*) from beached/stranded or captive born stocks.

Notice is hereby given that on May 8, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: May 9, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-10996 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Douglas Wartzok (P375)

On March 14, 1986, notice was published in the **Federal Register** (51 FR 8668) that an application had been filed by Dr. Douglas Wartzok, Professor and Chairman, Department of Biological Sciences, Purdue University, Fort Wayne, Indiana 46805 to take bowhead whales in the Beaufort Sea by radio-tagging and harassment.

Notice is hereby given that on May 6, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: May 9, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-10995 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 16, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On March 12, 1986 a notice was published in the **Federal Register** (51 FR 8527), which announced extension of the limits established for Categories 333, 359, 636 and 659pt. (all TSUSA items except 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365), among others, produced or manufactured in Signapore and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1961, as amended, and extended, the Governments of the United States and Singapore have agreed to further amend their agreement to increase the limits for cotton and man-made fiber textile products, produced or manufactured in

Singapore and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986 in Category 333 from 9,669 dozen to 19,669 dozen, Category 359 from 76,067 pounds to 100,000 pounds, Category 636 from 25,000 dozen to 40,000 dozen, and Category 659pt. from 125,000 pounds to 160,000 pounds. The two countries also agreed to establish restraint limits for wool products in Categories 434 and 435 at a level of 2,926 dozen for each category, produced and manufactured in Singapore and exported during the period which began on January 1, 1986 and extends through June 30, 1986. The letter to the Commissioner of Customs which follows this notice implements the agreed amendments.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committe for the Implementation of Textile Agreements.

May 12, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of March 7, 1986 which directed you to prohibit entry of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Singapore and exported during the six-month period which began on January 1, 1986 and extend through June 30, 1986.

Effective on May 16, 1986, the directive of March 7, 1986 is hereby amended to increase the limits established for the following categories:

Categories	6-mo. restraint limits [1]
333	19,669 dozen.
359	100,000 pounds.
636	40,000 dozen.
659pt. [2]	160,000 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

[2] In Category 659pt., all TSUSA numbers in the category except 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2649, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9358, 384.9357, 384.9358, 384.9359, 384.9365.

Also effective on May 16, 1986, the directive of March 7, 1986 is hereby amended to include limits for Categories 434 and 435 at a level of 2,926 dozen for each catetory.

Charges for Categories 434 and 435 that have been made to the groups and aggregate limits shall be the same charges, in correct units, made to the category limits established in this directive.

Textile products in Categories 434 and 435 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Categories 434 and 435 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484 (a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), DEcember 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-10984 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DR-M

Extending Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore; Correction

May 19, 1986.

On March 12, 1986, a notice was published in the **Federal Register** (51 FR 8527), which announced the aggregate, group and individual category limits under a further extension of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1961, as amended and extended, between the Governments of the United States and the Republic of Singapore. The limit for men's and boys' knit shirts of man-made fibers in Category 638, exported during the period which began on January 1, 1986 and extends through June 30, 1986, was inadvertently omitted from the letter to the Commissioner of Customs which followed that notice and should have been included as follows:

Category	6-month restraint limit (doz)
638	212,500

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-10987 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet June 17–18, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda for the meeting will consist of discussions of key issues related to national security policy and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in wriing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: May 7, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-10919 Filed 5-14-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5

U.S.C app.), notice is hereby given that the Naval Research Advisory Committee Panel On U.S. Navy Anti-Submarine Warfare Technology 1986–1996 will meet on June 4–6, 1986, at the Naval Research Laboratory, Building 43, Washington, DC. The meeting will commence at 8:30 A.M. and terminate the 5:30 P.M. on June 4; and commence at 8:30 A.M. and terminate at 5:00 P.M. on June 5 and 6, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to evaluate the security of the present and future U.S. Navy surface fleet and undersea surveillance systems. The agenda will include technical briefings on the threat, surface ASW response, strategic and tactical performance requirements, undersea surveillance, and emerging technology. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the pubic because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Researach (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 9, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 10920 Filed 5–14–86; 8:45 am]

BILLING CODE 3810-AE-M

Board of Advisors to the President, Naval War College, Newport, RI; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is given that the Board of Advisors to the President, Naval War College, will meet on June 5, 1986, in Room 210, Conolly Hall, Naval War College, Newport, Rhode Island. The meeting will commence at 8:30 a.m., and the purpose is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the college, and is open to the public. For further information contact: Mrs. Mary Guimond, Executive Assistant to the Dean of Academics, Naval War College, Newport, Rhode Island 02841–5010. Telephone number (401) 841–3589.

Dated: May 9, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–10921 Filed 5–14–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program and Plus Program

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending March 31, 1986.

The Assistant Secretary for Postsecondary Education anounces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Pursuant to the requirements of section 252 of Pub. L. 99–177, Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as the Gramm-Rudman-Hollings Act), the President issued a sequestration order on February 4, 1986, directing implementation of the reductions contained in that law. Section 256 of Pub. L. 99–177 provides that if a sequestration order is issued, the special allowance formula for loans made after the order takes effect and before the end of the fiscal year is adjusted by reducing the rate provided in section 438(b)(2)(A)(iii) of the Higher Education Act by .4 percent. The reduction will apply to the first four special allowance payments on loans made on or after March 1, 1986, and before October 1, 1986.

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending March 31, 1986, the special allowance will be paid at the following rates:

	Applicable interest rate (percent)	Annual special allowance rate (percent)	Special allowance rate (percent) for quarter ending Mar. 31, 1986
I. GSLP loans or PLUS loans made prior to Oct. 1, 1981.	7	3.625	0.90625
	9	1.625	0.40625
II. GSLP loans or PLUS loans made on or after Oct. 1, 1981:			
A. Loans not subject to reduction order.	7	3.56	0.89
	8	2.56	0.64
	9	1.56	0.39
	12	0.00	0.00
	14	0.00	0.00
B. Loans subject to reduction order.	7	3.16	0.79
	8	2.16	0.54
	9	1.16	0.29
	12	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.* Determine the average bond equivalent rate of the 91-day Treasury Bill auctioned during the quarter for which this notice applies (7.06 percent for the quarter ending March 31, 1986);

(b) *Step 2.* Subtract from that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment;

(c) *Step 3.* (1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.1 percent to the remainder, in case of loans subject to the reduction order pursuant to Pub. L. 99–177; and

(d) *Step 4.* Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: May 9, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86–10974 Filed 5–14–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to conduct a competitive solicitation among the U.S. Territories and Puerto Rico inviting them to submit proposals for special energy projects. It is anticipated that the total amount of funding available for this program shall be $476,000. The Statutory Authority for use of a grant award is Pub. L. 95–91, DOE Organization Act, and Pub. L. 96–597.

Grant No. DE–FG03–86SF16333

Scope of Project

The DOE proposes to establish a competitive solicitation among the U.S. Territories and Puerto Rico inviting them to submit proposals for projects to address priority needs and opportunities as identified in the 1982 *Territorial Energy Assessment*, which was prepared by DOE in response to a mandate in the Omnibus Territories Act, Pub. L. 96–597. The actual work to be accomplished will be determined by the several projects selected for awards. These will be chosen by an interagency selection panel made up of a designee by the Director of the Office of State and Local Assistance Programs in DOE, a designee from the DOI Office of Territorial Affairs and the Director of the Pacific Site Office of DOE. All projects selected will be in the general categories of promoting the use of proven technologies that employ indigenous renewable resources or serve to reduce the costs and dependencies of the territories on imported fuels. A requirement of the solicitation will be for the territorial energy offices to work with their resident expertise in preparing proposals to be submitted thru the territorial office.

This solicitation will be on a restricted eligibility basis to the U.S. Territories and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Robert S. Todaro, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, April 28, 1986.

R.A. Du Val,

Manager, San Francisco Operations Office.

[FR Doc. 86–10887 Filed 5–14–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Mountain Fuel Supply Co. and Wexpro Co. Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $990,000 with Mountain Fuel and Wexpro and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATES: Comments by June 16, 1986.

ADDRESS: Send comments to: "Mountain Fuel/Wexpro Consent Order Comments," Office of the Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–43, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Francine B. Pinto, Office of the Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3F–070, RG–43, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office (202) 252–4102.

SUPPLEMENTARY INFORMATION: On April 18, 1986, the ERA executed a proposed Consent Order with Mountain Fuel Supply Company and Wexpro Company. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

During the period January 1, 1975 through December 31, 1980, Mountain Fuel Supply Company (Mountain Fuel) and Wexpro Company (Wexpro) engaged in the production and sale of crude oil from the Dry Piney Field located in Sublette County, Wyoming. Accordingly, Mountain Fuel and Wexpro were "producers" of crude oil, as defined in 19 CFR 212.31, and were subject to the regulations governing first sales of domestic crude oil in 10 CFR, Part 212, Subpart D. During the period January 1, 1975 to December 31, 1976 the Dry Piney Field was operated by Mountain Fuel. From January 1, 1977 to December 31, 1980 Wexpro operated the field. During this period the ERA conducted an audit of the sales of crude oil made by Mountain Fuel and Wexpro from the Dry Piney Field properties. The audit concluded that these sales were made at prices in excess of the maximum lawful ceiling prices provided by Subpart D.

On July 15, 1982, DOE issued a Proposed Remedial Order (PRO) to Mountain Fuel. The PRO alleged that Mountain Fuel caused overcharges in the amount of $468,649.16 during the audit period attributable to sales from the Dry Piney Field. Mountain Fuel and Wexpro filed a Joint Statement of Objections to the PRO on September 22, 1982. On December 13, 1984 ERA filed a motion to join Wexpro as a party to the proceedings. On December 21, 1984 Mountain Fuel and Wexpro filed a joint response to ERA's motion in which they stated that they did not oppose ERA's motion and acknowledged that on January 1, 1977 Wexpro became the operator of the Dry Piney Field properties.

In their Statement of Objections, the firms admitted that an invalid posted price had been utilized in pricing crude oil from the Dry Piney Field from January 1, 1975 through January 31, 1976 and acknowledged that Mountain Fuel was liable for the overcharges during this period. The firms contended, however, that the posted price which was used from February 1, 1976 through December 31, 1980 was a valid price and that no overcharges occurred after January 31, 1976. In addition Mountain Fuel and Wexpro generally challenged the application of the operator liability doctrine, specifically alleging that they should not be held responsible for overcharges related to any volumes of crude oil taken in kind by royalty and working interest owners in the Dry Piney Field. The firms also raised objections to the interest rates and remedial measures specified in the PRO.

After considering briefs and oral argument, DOE's Office of Hearings and Appeals issued the PRO as a Remedial Order (RO) to Mountain Fuel and Wexpro on November 6, 1985. In the RO, OHA found that prices contained in certain price bulletins circulated by Amoco Production Company constituted the highest posted prices applicable to production from the Dry Piney properties operated by the firms. The RO concluded that at different times during the audit period Mountain Fuel

and Wexpro exceeded the applicable Amoco prices. Under this decision, Mountain Fuel and Wexpro's liability, inclusive of interest, is approximately $1,246,000. On December 12, 1985, Mountain Fuel and Wexpro appealed this decision to the Federal Energy Regulatory Commission.

Throughout the foregoing proceeding, Mountain Fuel and Wexpro have claimed that the posted price utilized from February 1, 1976 to December 31, 1980 was a valid price and that no overcharges occurred after January 31, 1976. The firms have also maintained that they should not be held liable for overcharges related to volumes of crude oil taken in kind by interest owners because the interest owners set their own sales prices. Based on the analysis of the firms' arguments and the entire record in this proceeding, and in light of the expense to the government associated with any additional litigation, ERA believes that a payment of $990,000 is a satisfactory compromise of the issues raised in this audit. This amount includes interest.

II. Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Mountain Fuel's and Wexpro's compliance with the federal petroleum price and allocation regulations during the period January 1, 1975 through December 31, 1980. Although Mountain Fuel and Wexpro contend in all respects that they correctly construed and applied the applicable regulations, Mountain Fuel and Wexpro have entered into the proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes that the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by the audit.

III. Refunds

Under the terms of the proposed Consent Order, Mountain Fuel and Wexpro shall pay to DOE all of the monies deposited in the escrow account established by the firms on behalf of DOE inclusive of all interest accrued since January 31, 1980. The refund will be deposited in a suitable account for appropriate distribution by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of the proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 pm, local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC on the 5th day of May, 1986.

Carl A. Corrallo,

Solicitor, Office of the Solicitor, Economic Regulatory Administration.

[FR Doc. 86-10603 Filed 5-14-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-30-NG]

ANR-TransCanada Energy Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 25, 1986, of an application filed by ANR-TransCanada Energy Company (ANR-TransCanada Energy) for blanket authorization to import up to 100 Bcf of Canadian natural gas for a period of two years beginning on the date of first delivery. The gas would be supplied from sources in Alberta, Canada, for sale on a short-term basis to U.S. purchasers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. According to ARN-TransCanada Energy, the transactions it comtemplates will use existing pipeline facilities. ANR-TransCanada Energy proposes to file quarterly reports with the ERA giving the specific details of each transaction.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than June 16, 1986.

FOR FURTHER INFORMATION CONTACT:

Olga Ronkovich, National Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. They must be filed no later than 4:30 p.m., June 16, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any

request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ANR-TransCanada Energy's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 5, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–10884 Filed 5–14–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–27–NG]

Michigan Consolidated Gas Co.; Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application to Amend Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 16, 1986, of an application from Michigan Consolidated Gas Company (MichCon) to amend its existing import authorization to increase the maximum daily import of Canadian natural gas from 13,000 Mcf to 50,000 Mcf, pursuant to exchange agreements with Esso Chemical Canada (ECC), a Division of Imperial Oil Limited (Imperial), and Shell Western E&P Inc. (Shell).

Notice of MichCon's application to import up to 13,000 Mcf per day on an interruptible basis was issued on November 15, 1985, (50 FR 48467). DOE/ERA Opinion and Order No. 96 (1 ERA ¶70,614), issued December 20, 1985, authorized this import for a three-year period beginning on the date of first delivery which occurred on January 23, 1986. The gas is purchased by Imperial from TransCanada PipeLines Limited (TransCanada) and transported from the point of importation to MichCon by Great Lakes Gas Transmission Company (Great Lakes). The import represented a part of a proposed energy exchange, on an equivalent Btu basis, of natural gas for ethane that was being sold by Shell to MichCon. The ethane would now be delivered to ECC, a division of Imperial. Under the arrangement, MichCon incurs no additional cost above what it was paying Shell prior to the energy exchange.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than June 16, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585 (202) 252–9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667

SUPPLEMENTARY INFORMATION: Since the commencement of the natural gas/ethane exchange authorized by Opinion and Order No. 96, deliveries of gas by TransCanada to Great Lakes, and by Great Lakes to MichCon, have varied dramatically from 0 to 13,000 Mcf per day. At the same time, however, deliveries of ethane to ECC have been comparatively constant. As a result, a substantial imbalance has accumulated and continues to grow. The imbalance (839,826 Mcf as of March 31, 1986) is far in excess of what MichCon contemplated when it originally sought authorization for the importation. However, TransCanada has informed MichCon that it is able from time to time to deliver to Great Lakes, and Great Lakes has indicated that it can deliver to MichCon, volumes of gas in excess of 13,000 Mcf per day. MichCon wishes to be able to take advantage of these opportunities to reduce the sizable exchange imbalance more quickly than would otherwise be the case.

The proposed increase in the maximum daily quantity from 13,000 Mcf of gas per day to 50,000 Mcf per day is solely for the purpose of reducing the exchange imbalance described above and will not result in an increase in the total volume of gas to be imported over the term of the authorization.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitivenss as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m. e.d.t., June 1, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request

that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordnace with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A (202) 252-9478 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, May 5, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-10885 Filed 5-14-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-29-NG]

Natgas (U.S.), Inc.; Application to Export Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 22, 1986, of an application filed by Natgas (U.S.), Inc. (Natgas) for a blanket authorization to export up to 75 Bcf of natural gas for a two-year period beginning on the date of first delivery for sales on a short-term or spot basis primarily in Canada. Natgas, a U.S. corporation, is a wholly-owned subsidiary of Pan-Alberta Resources Incorporated which is an affiliate of Pan-Alberta Gas Ltd. (Pan-Alberta), a Canadian company. Pan-Alberta, a reseller of Alberta gas in the Canadian domestic and U.S. export markets, currently supplies the gas imported by Northwest Alaskan Pipeline Company through the prebuild eastern and western legs of the Alaska Natural Gas Transportation System.

The gas for export would be supplied by Pan-Alberta or other Canadian or U.S. suppliers. Natgas anticipates that a very large percentage of the gas to be exported pursuant to a blanket authorization would be either gas produced in western Canada that is merely being transported across U.S. territory to buyers in eastern Canada, or Canadian and U.S. gas currently committed to U.S. buyers that woud be released by such buyers for spot or short-term sales in eastern Canada. Natgas proposes to export the gas either as an exporter on its own behalf or as a broker or agent on behalf of U.S. and/or Canadian suppliers and/or Canadian purchasers. The specific terms of each export and sale woud be negotiated individually in short-term or spot sale contracts, and would, Natgas contends, necessarily be market responsive. Natgas intends that the exported gas would be transported through existing pipeline facilities, and proposes filing quarterly reports to the ERA.

In support of its application, Natgas maintains that its proposed export arrangement is fully consistent with the public interest requirement of section 3 of the Natural Gas Act, and with the DOE's announced international gas trade policies that are designed to promote competition by fostering freely negotiated arrangements between commercial parties.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. e.d.t. on June 16, 1986.

FOR FURTHER INFORMATION CONTACT:

Norman Breckner, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-9482

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's Delegation Order to the Administrator of the ERA (49 FR 6690, February 22, 1984), under which the domestic need for the gas to be exported is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of the domestic need for the gas as set forth in the Delegation Order. The applicant asserts that there is no domestic need for this gas. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 252-9478. They must be filed no later than 4:30 p.m. e.d.t. June 16, 1986.

The Administrator intends to develop a decisional record on the application through response to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should

explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by the parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Natgas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 (202) 252-9478, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., e.d.t. Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 5, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-10886 Filed 5-14-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

New Docket Prefix: TF; Gas Pipeline Tariffs Rate Adjustments

May 7, 1986.

Notice is hereby given that a new docket prefix has been created for interim rate adjustments pursuant to Purchased Gas Adjustment Provisions of FERC Gas Pipeline Tariffs.

The Commission has recently approved, on a case by case basis, procedures which will permit interstate natural gas pipelines to adjust their jurisdictional rates to reflect a revised average cost of gas between their regularly scheduled Purchased Gas Adjustment (PGA) adjustment dates. Such adjustments will be filed pursuant to the interim rate adjustment section of the Purchased Gas Adjustment Provisions (PGCA) of the General Terms and Conditions of their respective FERC Gas Tariffs.

These pipelines currently track changes in purchased gas costs under the *TA* docketing procedure whereby each pipeline is assigned an identification number and filings are docketed sequentially within each fiscal year. For example, TA86-2-42 identifies Transwestern Pipeline Corporation's (Transwestern) second PGA filing of FY 1986.

Although the interim rate adjustments are tendered pursuant to the pipelines' PGAC provisions and § 154.38(d)(iv) of the Commission's regulations they will not be subject to the same processing and review requirements of regular PGA filings. Accordingly, the Commission has established a new Prefix *TF* to identify such filings. Except for the *TF* prefix filings will be tracked under teh procedures establsished for the

Although the interim rate adjustments are tendered pursuant to the pipelines' PGAC provisions and§ 154.38(d)(iv) of the Commission's regulations they will not be subject to the same processing and review requirements of regular PGA filings. Accordingly, the Commission has established a new Prefix *TF* to identify such filings. Except for the *TA* prefix, filings will be tracked under the procedures established for the *TF* system. For example, the second adjustment in FY 1986 filed by Transwestern pursuant to section 19.6 (Interim Adjustments) of the PGA provision of its tariff will be designated *TF* 86-2-42. Filings made pursuant to Transwestern's overall PGA provision will retain the *TA* prefix.

The *TF* prefix is only applicable to those pipelines which have received specific Commission approval to make such interim rate adjustments.

The applicable filing fee for filings designated *TF* is the fee set forth in § 381.205 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10927 Filed 5-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9950-000, et al.]

Hydroelectric Applications; R.D. Bailey Hydro Partners et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulation Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9950-000.

c. Date Filed: March 21, 1986.

d. Application: R.D. Bailey Hydro Partners.

e. Name of Project: Bailey.

f. Location: Guyandotte River, Mingo and Wyoming Counties, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce J. Wrobel, Mitex, Inc., 91 Newbury Street, Boston, MA 02116 (617) 424-1888.

i. Comment Date: June 13, 1986.

j. Competing Application: Project No. 9928-000 Date Filed: March 3, 1986. Due Date: May 23, 1986.

k. Description of Project; The proposed project would use the existing R.D. Bailey Dam and Lake, owned and operated by the U.S. Army Corps of Engineers, and would consist of: (1) a new 1,200-foot-long penstock 6.5 feet in diameter; (2) a concrete powerhouse approximately 50 feet wide and 75 feet long; (3) two new turbine-generators of 3.5-MW capacity each; (4) a new 69-kV transmission line 4 miles in length; and (5) appurtenant facilities.

The estimated annual energy production is 29 million kWh. The hydraulic head is 120 feet. Project power would be sold.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of work to be performed under the preliminary permit would be $100,000.

2 a. Type of Application: Preliminary Permit.

B. Project No.: 9829-000.

c. Date Filed: December 31, 1985.

d. Applicant: Thomas J. Collins.

e. Name of Project: Fordam Hydropower Project.

f. Location: On Rock River Near Rockford, Winnebago County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Thomas J. Collins, Suite 401, 600 West Jackson Boulevard, Chicago, IL 60606 (312) 454-1060.

i. Comment Date: June 16, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing concrete dam 637 feet long and 10 feet high; (2) an existing reservoir with a normal surface elevation of 703 msl; (3) a proposed powerhouse housing two 300-kW generators for a total capacity of 600 kW; (4) a proposed 12-kV transmission line 1,000 feet long; and (5)

appurtenant facilities. The Applicant estimates that the average annual energy generation would be 4.0 GWh. The project energy would be sold to a utility or industry. The dam is owned by Commonwealth Edison Company, Chicago, Illinois.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A perliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on result of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $95,000.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 9949–000.

c. Date Filed: March 20,, 1986.

d. Applicant: WV Hydro Corporation.

e. Name of Project: Morgantown.

f. Location: At the U.S. Army Corps of Engineers' Morgantown Lock and Dam on the Monongahela River in Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Price, President, WV Hydro Corporation, 120 Calumet Court, Aiken, SC 29801, (803) 642–2749.

i. Comment Date: June 19, 1986.

j. Description of Project: The proposed run-of-river project would utilize the U.S.Army Corps of Engineers' Morgantown Lock and Dam and would consist: (1) a new intake structure and powerhouse at the east end of the dam with one turbine-generator unit with an installed capacity of 8 MW; (2) a short tailrace (3) a new 138–kV, 4,400-foot-long transmission line: and (4) other appurtenances. Applicant estimates an average annual generation of 28,000 MWh.

k. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope under this Permit: A perliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9974–000.

c. Date Filed: March 14, 1986.

d. Applicant: Robbins Lumber, Inc.

e. Name of Project: Robbins.

f. Location: St. George River in Waldo County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Edwin A. Heisler, Richardson, Hildreth, Tyler & Troubh, Attorneys at Law, 465 Congress Street, Portland, ME 04101 (207) 774–5621.

i. Comment Date: June 23, 1986.

j. Description of Project: The proposed project would consist of: (1) a new 18-foot-high, 100-foot-long concrete and timber crib dam; (2) a reservoir with a surface area of 16 acres, a storage capacity of 50 acre-feet, and a normal water surface elevation of 180 feet m.s.l.; (3) a new concrete intake structure; (4) a new concrete powerhouse containing one generating unit with a capacity of 42 kW and one generating unit with a capacity of 85 kW for a total installed capacity of 127 kW; (5) a new 30-foot-long earth tailrace; (6) a new transmission line, 180 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 550,000 kWh. The applicant owns the project property at the proposed dam site.

k. Purpose of Project: Project power would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a prelimiary permit for a period of 36 months during which time the applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. The applicant estimates that the cost of the studies under permit would be $39,000.

5. a. Type of Applicant: Preliminary Permit.

b. Project No: 9945–000.

c. Date Filed: March 17, 1986.

d. Applicant: City of Fort Collins.

e. Name of Project: Horsetooth-Poudre.

f. Location: Horsetooth Reservoir, Soldier Canyon Dam, and Cache La Poudre River, near Fort Collins, in Larimer County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael B. Smith, Director, Waste & Wastewater Utility, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would utilize the existing outlet works at the U.S. Bureau of Reclamation's Soldier Canyon Dam (Horsetooth Reservoir) and would consist of: (1) an existing 54-inch-diameter, 1,500-foot-long steel pipeline running from the outlet works to the Fort Collins Water Treatment Plant (WTP) No. 2; (2) a combination of existing 27-inch-diameter steel and 24-inch-diameter concrete pipelines, 38,000 feet long, running from the Fort Collins Water Treatment Plant No. 1 Cahe La Poudre River diversion to, (3) a new 36-inch-diameter, 16,000-foot-long pipeline to WTP No. 2; (4) a powerhouse containing 3 turbine-generator units with a total installed capacity of 850 MW and producing an estimated average annual generation of 0.19 GWh; and (5) a tap transmission line to interconnect the project to an existing 13.2 kV Public Service Company of Colorado (PSCC) line. Project power would be sold to PSCC.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $50,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9940–000.

c. Date Filed: March 5, 1986.

d. Applicant: Birch Power Company.

e. Name of Project: Pines.

f. Location: On Springs tributary to the Pahsimeroi River, in Custer County, Idaho. Township 13N and Range 22E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401 (208) 522–8069.

i. Comment Date: June 23, 1986.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high diversion structure at elevation 5,600 feet; (2) a 29,400-foot-long feeder ditch; (3) a 6,100-foot-long, 34-inch-diameter steel penstock; (4) a powerhouse containing a single generating unit with a capacity 900 kW and an average annual generation of 5,500,000 kWh; and (5) a 0.05-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $45,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9923–000.

c. Date Filed: March 3, 1986.

d. Applicant: Western Environmental Energy Company.

e. Name of Project: Mill Creek.

f. Location: On Mill Creek, a tributary to the Colorado River, near Moab, within Manti-La Sal National Forest, in San Juan County, Utah (In T26S, R24E; T26S, T23E; T27S, R23E; and T27S, R22E, S.L.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791[a]—825(r).

h. Contact Person: Mr. James W. Oliver, Jr., 265 East Maple Street, Mapleton, UT 84663 (801) 489–7225. Mr. Grant D. Durtschi, 12090 South 2330 West, Riverton, UT 84065 (801) 254–0649.

i. Comment Date: Jnue 16, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) an 7-foot-high, 16-foot-long concrete diversion structure at elevation 7,674 feet msl; (2) a 30-inch-diameter, 28,600-foot-long steel penstock; (3) a powerhouse containing two turbine-generator units with a combined rate capacity of 7,309 kW operating under a head of 2,144 feet; and (4) a 12.5-kV, 18,500-foot-long transmission line interconnecting the project to an existing Utah Power and Light Company line. The project's estimated average annual generation of 36.493 GWh would be sold to Utah Power and Light Company.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $50,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9922–000.

c. Date Filed: March 3, 1986.

d. Applicant: City of Boulder, Colorado.

e. Name of Project: Boulder.

f. Location: City of Boulder Municipal Water System.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Eva J. Heinrich, City of Boulder, P.O. Box 791, Boulder, CO 80306 (303) 441–3205.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of retrofitting the City of Boulder's municipal water transmission and distribution system for the installation of five conduit-type hydroelectric developments. Data on existing project structures in outlined in Tables 1 and 2. Data on proposed project works is outlined in Table 3. Applicant intends to interconnect the project with the existing Public Service Company of Colorado (PSCC) transmission grid. Project power would be sold to PSCC. The project would be partially located on Roosevelt National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9910–000.

c. Date Filed: February 12, 1986.

d. Applicants: Dam Nine Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 9.

f. Location: On the Kentucky River in Jessamine and Madison Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, Ridgehill Professional Building, Suite 380, 2000 Plymouth Road, Minnetonka, MN 55343 (612) 546–5110.

i. Comment Date: June 16, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 9, having a water surface elevation of 550.6 feet msl and would consist of: (1) a new reinforced concrete powerhouse approximately 80 feet by 90 feet located in the right abutment containing two turbine/generator units having a total installed capacity of 5,100 kW operating at 17.3 feet of hydraulic head; (2) a new 1.8-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 18 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $200,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9898–000.

c. Date Filed: February 3, 1986.

d. Applicant: Scofield Hydro Associates.

e. Name of Project: Scofield Hydro Project.

f. Location: On Price River in Carbon County, Utah: SLB&M, T.12S., R.7E, Sec. 6.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, P.O. Box N, Manti, Utah 84642.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Scofield Dam and Reservoir, and would consist of: (1) a 60-inch-diameter penstock utilizing the existing outlet works; (2) a powerhouse with an installed capacity of 1,450 kW operating under a gross head of 125 feet; (3) a tailrace discharging downstream of the toe of the dam; (4) a 46-kV transmission line, about 4,000 feet long, connecting to an existing line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 8,896,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $23,000.

m. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9833-000.

c. Date Filed: December 31, 1985.

d. Applicant: West Rutland Pumped Storage Hydrolectric, Inc.

e. Name of Project: West Rutland Pumped Storage.

f. Location: On the Castleton River, Rutland County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dermot A. McGuigan, West Rutland Pumped Storage Hydroelectric, Inc., c/o Vermont Hydroelectric, Inc, Chace Mill, 1 Mill Street, Burlington, VT 05401 (802) 658–5110.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) a new upper reservoir of 40 acres surface area and storage capacity of 4,000 acre-feet at a normal maximum surface elevation of 550 feet mean sea level, to be located in an existing excavated marble quarry; (2) a lower reservoir in existing or new sub-surface excavations; (3) a new power tunnel 20 feet in diameter; (4) a new excavated powerhouse enclosing 3 new turbine/generators of 25 MW capacity each; (5) a new 345 kV transmission line one-half-mile long; and (6) appurtenant facilities.

The project would operate as a pumped-storage facility with an estimated annual power generation of 240,000,000 kWh. The hydraulic head is 500 feet. Project power will be sold. The existing facilities are owned by Gawet Marble & Granite, Inc.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $300,000.

12. a. Type of Application: Preliminary Permit.

b. Project No.: 9802-000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Willis Gulch.

f. Location: On Willis Gulch, near Leadville, partially within Isabel National Forest, in Chaffee and Lake Counties, Colorado (In Section 2 of T12S, R81W, Sections 35 and 36 of T11S, R81W, and Sections 25, 26, 27, 28, 29, 30, and 31 of T11S, R80W, 6th P.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461 (303) 486–3397.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 7-foot-high, 20-foot-long earthfill diversion structure at elevation 11,170 feet msl;(2) a 30-inch-diameter, 3,500-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,500 kW operating under a head of 570 feet; and (4) a 13.8–kV, 64,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 11.118 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13. a. Type of Application: Preliminary Permit.

b. Project No.: 9800-000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Oregon Gulch.

f. Location: On Lost Canyon Creek, near Leadville, partially within San Isabel National Forest, and within land administered by the Bureau of Land Management, in Chaffee and Lake Counties, Colorado (In Sections 25, 26, 27, 33, and 34 of of T11S, R80W, 6th P.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461 (303) 486–3397.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 10-foot-high, 25-foot-long earthfill diversion structure at elevation 11,400 feet msl; (2) a 18-inch-diameter, 6,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,193 kW operating under a head of 1,760 feet; and (4) a 13.8–kV, 13,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 8.591 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 9796-000.

c. Date Filed: December 30, 1985.
d. Applicant: Twin Lakes Associates, Inc.
e. Name of Project: Lost Canyon.
f. Location: On Lost Canyon Creek, near Leadville, partially within San Isabel National Forest and within land administered by the Bureau of Land Management, in Chaffee and Lake Counties, Colorado (In Section 4 of T12S, R80W and Sections 25, 26, 27, 33, and 34 of T11S, R80W, 6th P.M.&B.).
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(A)–825(r).
h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961 Leadville, CO 80461 (303) 486–3397.
i. Comment Date: June 13, 1985.
j. Description of Project: The proposed project would consist of: (a) 40-foot-high, 1,200-foot-long zoned earth fill dam which would replace an existing 10-foot-high earth fill dam owned by John and Billy Lou Pearson and have a water surface elevation of 11,800 feet msl; (2) a reservoir with a storage capacity of 3,000 acre-feet and a surface area of 40 acres; (3) an 18-inch-diameter, 7,650-foot-long penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity 275 kW operating under a head of 400 feet; and (5) a 13.8-kV, 15,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 1.953 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15 a. Type of Application: Preliminary Permit.
b. Project No: 9797–000.
c. Date Filed: December 30, 1985.
d. Applicant: Twin Lakes Associates, Inc.
e. Name of Project: Flume Creek.
f. Location: On Cache Creek Ditch, near Leadville, partially within San Isabel National Forest, in Lake County, Colorado (In Sections 25, 26, 27, and 28 T11S, R80W, 6th P.M.&B.).
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961 Leadville, CO 80461 (303) 486–3397.
i. Comment Date: June 13, 1986.
j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 10-foot-high, 25-foot-high, 25-foot-long earth fill diversion structure at elevation 10,080 feet msl; (2) a 54-inch-diameter, 550-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,330 kW operating under a head of 260 feet; and (4) of 13.8-kV, 20,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 2.519 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit.
b. Project No: 9795–000.
c. Date Filed: December 30, 1985.
d. Applicant: Twin Lakes Associates, Inc.
e. Name of Project: Cache Creek No. 1.
f. Location: On Cache Creek, near Leadville, in Chaffee County, Colorado (In Sections 35 and 36 of T11S, R80W, Sections 1 and 2 of T12S, R80W, and Section 31 of T11S, R79W, 6th P.M.&B.)
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CA 80461, (303) 486–3397.
i. Comment Date: June 13, 1986.
j. Description of Project: The proposed project would consist of: (1) a 130-foot-high, 1,200-foot-long zoned earth fill dam which would replace an existing 10-foot-high earth fill dam owned by Bond Cache Mining Trust and have a water surface elevation of 9,200 feet msl; (2) a reservoir with a storage capacity of 7–620 acre-feet and a surface area of 170 acres; (3) a 40-inch-diameter, 750-foot-long penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity 400 kW operating under a head of 130 feet; and (5) a 13.8-kV, 3,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 2.029 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

17 a. Type of Application: Preliminary Permit.
b. Project No: 9760–000.
c. Date Filed: December 30, 1985.
d. Applicant: Re-Enertech.
e. Name of Project: Treadwell Ditch.
f. Location: On Treadwell Ditch, in the Burough of Juneau, Alaska.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: James D. Franklin, P.O. Box 1037, Oak Harber, WA 98277, (206) 679–4342.
i. Comment Date: June 23, 1986.
j. Description of Project: The proposed project would consist of: (1) a 5-foot-high wood diversion structure at elevation 550 feet; (2) a 2,250-foot-long, 30-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 2,200 kW and an average annual generation of 8.8 GWh; and (4) a 0.5-mile-long transmission line.

A preliminary permit, does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $22,000. No new roads would be constructed during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

18 a. Type of Application: Preliminary Permit.
b. Project No.: 9738–000.
c. Date Filed: December 27, 1985.
d. Applicant: Taft Hydropower, Inc.

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e. Name of Project: Rossie Hydropower Project.

f. Location: On Indian River near Rossie, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Road, Centeral Square, NY 13036, (313) 437–2547.

Mr. Neal F. Dunlevy, Stetson Dale Engineering, PC, 185 Genesee Street, Utica, NY 13501, (315) 797–5800.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) reconstruction of an existing breached concrete and stone mansonry gravity dam 80 feet long and 9 feet high (breakaway flashboards 3 feet high will be considered); (2) an existing 30 acre reservoir with a storage capacity of 200 acre-feet at a surface elevation of 295 msl; (3) enlarging an existing canal to 7 feet wide, 7 feet deep, and 250 feet long; (4) a proposed concrete power flume 15 feet wide, 20 feet long, and 20 feet deep housing a 1,000 kW submerged bulb turbine generator; (5) a proposed tailrace 10 feet wide, 7 feet deep, and 20 feet long; (6) upgrading an existing transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 5.0 GWh. The project energy would be sold to Niagara Mohawk Power Company. The dam is owned by Richard Rogers, Rossie, New York, and Charles Hyatt, Clarence, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

19 a. Type of Application: Preliminary Permit.

b. Project No: 9616–000.

c. Date Filed: November 12, 1985.

d. Applicant: John W. Delaney & Barbara Delaney.

e. Name of Project: Delaney.

f. Location: Squannacook River in Middlesex Country, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Warren Guinan, Power Technics, Inc., P.O. Box 1469, Dover, NH 03820, (603) 335–2606.

i. Comment Date: June 19, 1986.

j. Description of Project: The proposed project would consist of: 1) an existing 12-foot-high, 116-foot-long granite block dam owned by the Applicant; 2) an existing reservoir with a surface area of 14 acres and a storage capacity of 70 acre-feet at crest elevation 302 feet NGVD; 3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 105-kW; and 4) a proposed 37-foot-long transmission line tying into the existing Fitchburg Gas and Electric system. The Applicant estimates a 261,800 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminiary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $22,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No: 9530–000.

c. Date Filed: October 7, 1985.

d. Applicant: Douglas Hydro, Inc.

e. Name of Project: Tahoe Tunnel Power Project.

f. Location: Tahoe Basin in Douglas County, Nevada; Mount Diablo Base & Meridian: T13N, R18E, Sec. 13 and 14; T13N, R19E, Sec. 19, 20, 21, 22.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David L. Pruett, Douglas Hydro, Inc., Route 2, Box 69, Gardnerville, NV 89410.

i. Comment Date: June 23, 1986.

j. Description of Project: The proposed project would be located on both Toiyabe National Forest and private lands, would utilize waters of Tahoe Basin waste treatment facilities, and would consist of: (1) an intake structure and a steel pipeline/penstock, 24 inches in diameter and about 24,000 feet long; (2) a powerhouse with an installed capacity of 2,500 kW operating under a head of 1,400 feet; (3) a tailrace discharging into an irrigation system; (4) a 12.5 KV transmission line, about 0.1 mile long, interconnecting with a Sierra Pacific Power Company line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 17,500,000 kWh.

k. Purpose of Project: Project energy would be sold to the Sierra Pacific Power Company or other power purchasers.

l. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $50,000.

m. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, and D2.

21a. Type of Application: Minor License.

b. Project No.: 7830–002.

c. Date Filed: December 6, 1985.

d. Applicant: Florida Water Conservancy District (FWCD).

e. Name of Project: Lemon Dam.

f. Location: On Lemon Dam and Reservoir, on the Florida River, near Durango, in La Plata County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Loyd N. Hess, President, FWCD, Lawrence McDaniel, General Counsel, FWCD, P.O. Box 1157, Durango, CO 81302, (303) 247–1113.

i. Comment Date: June 19, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's (Bureau) 215-foot-high earthfilled Lemon Dam, impounding a 40,100 acre-foot reservoir, and would consist of: (1) a penstock consisting of the existing 8-inch-diameter bypass pipe, beginning upstream of the outlet control gates, passing through the existing gate chamber and ending 26 feet below the outlet control gates; (2) modification of the existing gate chamber to house a single Worthington pump-induction generator unit with a rated capacity of 110 kW and producing an estimated average annual generation of 0.757 GWh; (3) the 0.48-kV generator leads; (4) a 12.5-kV service connection cable installed in the 200-foot-high elevator shaft and interconnected to an existing Colorado Ute Electric Association (CUEA) transmission line; (5) a 3-phase, 0.48/12.5-kV, 150-kVA transformer; (6) a 1,200-foot-long, 7.2.-kV distribution line serving the dam superintendent's home; and (7) appurtenant facilities. Project

power would be utilized at the superintendent's home and to operate the dam with excess power sold to CUEA. The project would be located on Bureau lands which were withdrawn from the San Juan National Forest. Applicant estimates project cost at $173,000.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

22 a. Type of Application: Minor License (5MW or Less).

b. Project No.: 4206–001.

c. Date Filed: February 10, 1986.

d. Applicant: STS Energenics Ltd.

e. Name of Project: Laguna Dam.

f. Location: On the Colorado River, in Imperial County, California, and Yuma County, Arizona.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Granville Smith II, STS Energenics Ltd., 1725 K Street, NW, Suite 112, Washington, DC 20006, (202) 463–8620.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed run-of-river project would utilize the existing Bureau of Reclamation's 43-foot-high, 166-foot-long, Laguna Dam located on the Lower Colorado River and would consist of: (1) an underground intake structure; (2) a 9-foot-diameter, 203-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 875 kW, operating under a head of 21.5 feet; (4) a 45-foot-long concrete tailrace; and (5) a 252-foot-long, 34.5 kV transmission line interconnecting the project to an existing Bureau of Reclamation line. The project's estimated average annual generation of 4.2 GWh would be sold to Southern California Edison Company. The project would affect Bureau of Reclamation lands. The estimated cost of constructing the project is $1,892,000.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9), and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" OR "MOTION TO INTERVENE", As Applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the

Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Perservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, the agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 9, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–10924 Filed 5–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–74–000]

Algonquin Gas Transmission Co. Complainant and Texas Eastern Transmission Corp. Respondent; Notice of Complaint

May 7, 1986.

Take notice that on May 6, 1986, Algonquin gas Transmission Company (Complainant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. RP86–74–000 a complaint, pursuant to Order No. 436 and § 385.206 of the Commission's rules of practice and procedure (18 CFR 385.206), against Texas Eastern Transmisison Corporation (Respondent), principal pipeline supplier to Complainant, for carrying out its current transportation program during the interim period of Order No. 436 in a manner that unduly discriminates against Complainant's New England LDC customers and unduly grants preference to Respondent's upstream customers, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that it and its New England LDC customers are almost exclusively dependent on Respondent for its pipeline Gas supplies. It is further stated that Respondent's position is that it would have zero natural Gas Policy Act (NGPA) section 311 transportation capacity available to serve such New England LDC customers until all requests of Respondent's upstream LDC customers for such service have been satisfied.

Complainant alleges that Respondent is currently moving substantial quantities of NGPA section 311 gas for such upstream LDC customers and moving no gas for the New England LDC customers. Thus, it is asserted that Respondent is cutting off the New England LDC customers in clear violation of Order No. 436.

Complainant states that Respondent has advised that such action is required by a provision in Volume 1 of its FERC Gas Tariff (§ 12.6 of the General Terms and Conditions). Complainant claims that such an application of the tariff produces a result which violates the non-discrimination principles of Order No. 436.

Complainant, therefore, requests that Respondent be ordered, on an expedited basis, to cease and desist its acts, and apply § 12.6 of its Tariff in a manner which affords the New England LDC customers access to available NGPA section 311 transportation capacity on a basis that is on a parity with upstream LDC customers.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 19, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Complainant states that a copy of the complaint has been served on Texas Eastern. Texas Eastern's answer to the complaint shall also be due on or before May 19, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–10925 Filed 5–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-287-000]

Electric Rates; Order Accepting for Filing and Suspending Rates, Noting Intervention, Granting Waiver of Notice Requirements, and Establishing Hearing Procedures; Cambridge Electric Light Co.

Issued: May 8, 1986

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On February 6, 1986, as completed on March 13, 1986 [1] Cambridge Electric Light Company (Cambridge) submitted for filing a proposed interim agreement providing for the transmission by Cambridge of preference power from the Power Authority of the State of New York's (PASNY) Niagara Project to the Town of Belmont, Massachusetts (Belmont).[2] Under the terms of the agreement, Cambridge waives the provisions of its current full requirements tariff on file which mandate that Belmont purchase its entire requirements from Cambridge. Cambridge has no partial requirements rate schedule or tariff on file, but the company states that it will develop an appropriate rate to accommodate Belmont's new service as soon as possible. In the interim, Belmont will continue to be served at the full requirements rate. Cambridge proposes to wheel Belmont's PASY power at the proposed rate of $2.50/kW/month and to credit Belmont's power bills for an amount equal to Cambridge's average energy costs times Belmont's PASNY energy. Cambridge requests waiver of the notice requirements to permit an effective date of July 1, 1985, the date that Belmont began receiving PASNY power.

Notice of the original filing was published in the **Federal Register** [3] with comments due on or before March 7, 1986. Notice of the amended filing was published in the **Federal Register**,[4] with comments due on or before April 10, 1986.

On March 6, 1986, Belmont filed a motion to intervene and protest to Cambridge's original filing, requesting a one day suspension and hearing. Belmont further claimed that the filing was deficient and requested that Cambridge be required to supplement its filing with cost-of-service data required by § 35.13 of the Commission's regulations.[5] Belmont notes that the proposed filing, while crediting Belmont's power bills with the company's average energy costs, does not credit the bills for the capacity being provided by PASNY. Belmont alleges that it is entitled to capacity credits, arguing that, because of Belmont's PASNY allocation, Cambridge has benefitted by being able to reduce its New England Power Pool (NEPOOL) load commitments.

On March 21, 1986, Cambridge filed an answer to Belmont's motion, disputing Belmont's allegations and its request for suspension. Cambridge admits that it does not give Belmont a capacity credit on its requirements billing but notes, however, that, if PASNY power becomes unavailable to Belmont, Cambridge remains obligated to serve Belmont's full load. Cambridge claims that, during the period of this interim agreement, Belmont's PASNY allotment has only served to reduce the energy which would otherwise be supplied by Cambridge and that it is, therefore, unjustifiable to give Belmont a capacity credit during the interim period. With respect to Belmont's allegation that Cambridge obtained capacity benefits from NEPOOL, Cambridge answers that capacity acquisition commitments are made on a relatively long lead time and that, given the short notice afforded by Belmont, the company was unable to achieve any reduction in its costs of capacity, at least during this interim period. Cambridge concedes that, when the parties negotiate a partial requirements agreement, it may be appropriate to recognize the capacity value to Cambridge to the allotment.

On April 10, 1986, Belmont amended its March 6, 1986 protest. Belmont argues that Cambridge's charge for both transmission and full requirements amounts to a double payment for use of the company's transmission and interconnection facilities; that there is no merit to Cambridge's allegation that Belmont did not give adequate notice of its PASNY purchases; that these purchases provided capacity benefits to Cambridge which should be reflected in this filing; and that Cambridge erred in calculating the firm transmission rate.

Discussion

Under Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214), the timely, unopposed motion to intervene serves to make Belmont a party to this proceeding.

Our review of the company's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. We also noted that circumstances (such as customer agreement) might dictate a different result. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. However, Belmont requires the transmission service to receive the benefits of its PASNY allotment. The town has supported waiver of notice and requested only a nominal suspension so that the rate may be effective as of July 1, 1985, the date on which the PASNY service began.[6] Under these circumstances, we believe that good cause exists to waive the notice requirements and impose a nominal suspension of the rates. Accordingly, we shall accept the rates for filing and suspend them to become effective on July 1, 1985, subject to refund.

Finally, we note that Cambridge's proposed rate is based, in part, upon payments made to Boston Edison Company (Edison) for the joint use of a substation owned by Edison. According to Cambridge's 1984 Form 1, this payment amounted to $1,253,756. The service is currently governed by Edison's filed Rate Schedule FPC No. 101; that rate schedule, however, provides for a charge of only $82,578.[7] Edison has been advised that it improperly failed to file increases in the substation charge from the level currently on file, and the company has indicated that it will make the necessary

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[1] The company's original filing was deemed deficient by the Commission's Office of Electric Power Regulation, and additional information was submitted on March 13, 1986.

[2] *See* Attachment for rate schedule designations.

[3] 51 FR 7,329 (1986).

[4] 51 FR 11,605 (1986).

[5] Cambridge supplied additional cost data on March 13, 1986. *See* note 1.

[6] We note that, while both the company and the affected customer desire a July 1, 1985 effective date, neither has explained the reason for Cambridge's delay in tendering its submission. While we shall grant the request for waiver of the notice requirements in this proceeding, we admonish Cambridge to be more timely in future filings.

[7] Edison's substation charge is determined monthly pursuant to a formula. The formula lacked sufficient specificity to be accepted as the filed rate, however, and by letter order dated March 11, 1975, the Commission informed Edison that changes in the charges produced by the formula required a timely filing pursuant to the Commission's regulations.

filings. Because any Commission action regarding those filings may affect the inclusion of those costs in Cambridge's rate to Belmont, we shall make Cambridge's rate subject to the outcome of any Commission action on Edison's anticipated filing.

The Commission Orders:

(A) Waiver of the notice requirements is hereby granted for good cause shown.

(B) Cambridge's proposed rates are hereby accepted for filing and suspended, to become effective, subject to refund, on July, 1985, and, further, subject to the outcome of the Commission's action on the filing by Boston Edison Company of its charge for the joint use of the substation referred to in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Cambridge's rates.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convent a prehearing conference in this proceeding within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by Cambridge, and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(E) Subdocket 000 in Docket No. ER86-287 is hereby terminated. Docket No. ER86-287-001 is assigned to the evidentiary hearing ordered in the Federal Register.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

Cambridge Electric Light Company Rate Schedule Designations

Docket No. ER86-287-000

Designation and Description

Other Party: Town of Belmont
Effective: July 1, 1985

(1) Rate Schedule FERC No. 33—Letter Agreement dated July 12, 1985
(2) Supplement No. 1 to Rate Schedule FERC No. 33—Town of Belmont letter dated July 16, 1985
(3) Supplement No. 2 to Rate Schedule FERC No. 33—Cambridge letter dated July 22, 1985
(4) Supplement No. 3 to Rate Schedule FERC No. 33—Exhibit 4—Transmission Rate
(5) Supplement No. 4 to Service Agreement No. 2 under FERC Electric Tariff, Original Volume No. 1—Exhibit 3—Billing credits to Rate RS-4.

[FR Doc. 86-10928 Filed 5-14-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Identification of Corporations for Purposes of Industrial Energy Efficiency Improvement and Recovered Materials Utilization Reporting

AGENCY: Department of Energy.

ACTION: Notice of corporate identification.

SUMMARY: The Department of Energy (DOE) is identifying corporations which consumed at least one trillion British termal units (Btu's) of energy in calendar year 1985 in any of the major energy-consuming industries, as required by DOE's regulations at 10 CFR 445.15 which implements section 373(b) of the Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act.

Section 445.12 of these regulations requires certain corporations which consumed at least one trillion Btu's of energy in a calendar year in any of the 20 major energy-consuming industries identified by DOE to file a certified statement with DOE. The deadline to file this report with DOE was February 4, 1986. Based on the reports filed in response to this requirement and reports filed previously, DOE has identified the corporations listed in the appendix to this notice. Identified corporations are required to meet the reporting requirements of 10 CFR Part 445, Subpart C.

A Corporation may file a request with DOE to modify its identification on the grounds of technical or clerical error within 30 days of this notice as provided in 10 CFR 445.16.

Identified corporations are required to report on energy efficiency improvements and, if appropriate, recovered materials utilization in calendar year 1985 either directly to DOE or to DOE-approved sponsors of reporting programs, pursuant to Subpart C of 10 CFR Part 445 which implements the requirements of sections 374A, 375 and 376 of EPCA.

DATE: Requests for modification of identification must be filed by June 16, 1986.

ADDRESS: Modification requests should be submitted to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS-RM-80-304 CE-80, Room 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Charles J. Glaser, Office of Industrial Programs CE-14, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2429.

Vivian S. Lewis, Office of General Counsel GC-12, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9507.

Issued in Washington, DC, May 2, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

List of Corporations Identified for Calendar Year 1985

SIC 20—Food and Kindred Products

A. E. Staley Manufacturing Company (partial)
Adolph Coors Company
Amalgamated Sugar Company
American Crystal Sugar Company
American Maize-Products Company
AMFAC Inc.
Amstar Corporation
Anderson Clayton & Company
Anheuser-Busch Inc. (partial)
Archer Daniels Midland Company (partial)
Basic American Foods
Beatrice Foods Company (partial)
Bell Grain
Bell Mining
Borden Inc.
Bunge Corporation
Cadbury Schwepps Inc.
California & Hawaiian Sugar Company
Campbell Soup Company (partial)
Cargill Inc.
Carnation Company
Castle & Cooke Inc.
Central Soya Company Inc. (partial)
Chesebrough-Ponds Inc.
Coca Cola Company
Colonial Sugars Inc.
Conagra Inc.
Consolidated Foods Corporation (partial)
Continental Grain Company
CPC International Inc.
Curtice-Burns Inc.
Delta Sugar Company
Del Monte Corporation
E J Brach & Sons
Eli Lilly and Company

Excel Corporation
Farmland Industries Inc.
FDL Foods, Inc.
Federal Company
Flowers Industries Inc.
Foremost-McKesson Inc.
Froedtert Malt Corporation
G. Heileman Brewing Company Inc. (partial)
General Foods Corporation
General Mills Inc.
George A. Hormel & Company
Georgia Sugar Refinery
Gerber Products Company
Gold Kist Inc.
Grain Processing Corporation
Great Western Sugar Company
H.J. Heinz Company (partial)
Harvest States Cooperatives
Hershey Foods Corporation
Holly Sugar Corporation
Hubinger Company
IBP Inc.
IC Industries Inc.
Imperial Sugar Company
International Telephone & Telegraph Corporation
Interstate Bakeries Corporation
Iowa Beef Processors Inc.
J.R. Simplot Company
Joseph E. Seagram & Sons Inc.
Keebler Company
Kellogg Company
Kraft Inc.
Kroger Company
Ladish Malting Company
Land O'Lakes Inc. (partial)
Mars Inc.
McKesson Corporation
Michigan Sugar Company
Mid-America Dairymen Inc.
Midwest Solvents Company Inc.
Miller Brewing Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Moorman Manufacturing Company
Nabisco Brands Inc. (partial)
National Distillers & Chemical Corporation
National Starch & Chemical Corporation
Nestle Enterprises Inc.
Oscar Mayer & Company
Pabst Brewing Company
Pepsico Inc.
Perdue Inc.
Pet Inc.
Peter Paul Cadbury Inc.
Pillsbury Company
Procter & Gamble Company
Quaker Oats Company
Quincy Soy Bean Company
R.T. French Company
Ralston Purina Company (partial)
Rath Packing Company
Refined Sugars Inc.
Richland Foods Inc.
Safeway Stores, Inc.
Sara Lee Corporation (partial)
Savannah Foods & Industries Inc. (partial)
SCM Corporation
Southern Minnesota Sugar Cooperative
Star-Kist Foods Inc.
Stroh Companies Inc.
Sunkist Growers Inc.
Sunshine Biscuits Inc.
Supreme Sugar Company Inc.
Swift and Company
Swift & Company
Swift Independent Packing Company
Thomas J. Lipton Inc.
Tri/Valley Growers Inc.
Union Sugar Company
Univar Corporation
Universal Foods Corporation
Wilson Foods Corporation

SIC 21—Tobacco Products

American Brands Inc.
Brown & Williamson Tobacco Corp.
Philip Morris Inc.
R.J. Reynolds Industries Inc.

SIC 22—Textile Mill Products

Armstrong World Industries Inc.
Avondale Mills Inc.
Bibb Company
Bigelow-Sanford Inc.
Burlington Industries Inc.
Cannon Mills Company
Clinton Mills Inc.
Coats & Clark Inc.
Colgate-Palmolive Company
Collins & Aikman Corporation
Cone Mills Corporation
Cranston Print Works Company
Crompton Company Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
Graniteville Company
Greenwood Mills Inc.
J.P. Stevens & Company Inc.
Johnson & Johnson
Kiddie Tot Hosiery Mills Inc.
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Mohasco Corporation
Northwest Industries Inc.
RCA Corporation
Reeves Brothers Inc.
Riegel Textile Corporation
Russell Corporation
Sara Lee Corporation
Sayles Biltmore Bleacheries Inc.
Shaw Industries Inc.
Spartan Mills Inc.
Sperry and Hutchinson Company (partial)
Springs Industries Inc.
Standard Oil Company (Indiana)
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.
World Carpets Inc.

SIC 23—Apparel and Other Textile Products

None

SIC 24—Lumber and Wood Products

Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Jim Walters
Koppers Company Inc. (partial)
Louisiana-Pacific Corporation
Masonite Corporation
Potlatch Corporation
Weyerhaeuser Company
Willamette Industries Inc.

SIC 25—Furniture and Fixtures

Steelcase Inc.

SIC 26—Paper and Allied Products

Abitibi-Price Southern Corporation
Alabama River Pulp Company Inc.
Alaska Lumber & Pulp Company Inc.
Appleton Papers Inc.
Arcata National Corporation
Armstrong World Industries Inc.
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Inc.
Caraustar Industries Company
Champion International Corporation
Chesapeake Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers Inc.
Dennison Manufacturing Company
Dexter Corporation
Eddy Forest Products Limited
Frying Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper Limited
GAF Corporation
Garden State Paper Company Inc.
Genstar Roofing Products Company
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hearst Corporation
International Paper Company
International Telephone & Telegraph Corporation
Interstate Paper Corporation
James River Corporation of Virginia
Jefferson Smurfit Corporation
Jim Walter Corporation
Kimberly-Clark Corporation
Longview Fibre Company
Louisiana-Pacific Corporation
Macmillan Bloedel Inc.
Manville Corporation
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Merrimac Paper Company Inc.
Minnesota Mining & Manufacturing Company (partial)
Mobil Oil Corporation (partial)
Mosinee Paper Corporation
National Gypsum Company
Newark Group
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc.
P.H. Glatfelter Company
Penntech Papers Inc.
Pentair Industries Inc.
Phillip Morris
Pope and Talbot Inc.
Potlatch Corporation
Procter & Gamble Company
Rhinelander Paper Company
SCM Corporation
Scott Paper Company
Simpson Timber Company
Sonoco Products Company
Southeast Paper Manufacturing Company

Southwest Forest Industries
St. Joe Paper Company
Stone Container Corporation
Technographics, Inc.
Temple-Inland Inc.
Tenneco Inc.
Times Mirror Company
Union Camp Corporation
United States Gypsum Company
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.
Wisconsin Tissue Mills Inc.

SIC 27—Printing and Publishing

Arcata Graphics Company
PACE Industries Inc.
R.R. Donnelley & Sons Company
W.F. Hall Printing Company

SCI 28—Chemicals and Allied Products

Abbott Laboratories
A.H. Robins Company
Air Products & Chemicals Inc.
Airco Inc.
Akzo Inc.
Allied Corporation
Aluminum Company of America
AMAX Inc.
Amerada Hess Corporation
American Can Company
American Chrome & Chemicals Inc.
American Cyanamid Company (partial)
American Hoechst Corporation
American Petrofina Inc.
American Synthetic Rubber Corporation
Arcadian Corporation
Arizona Chemical Company
Asarco Incorporated
Ashland Chemical Company
Atlantic Richfield Company
Atlantic Refining & Marketing Corporation
Atlas Powder Company
Avtex Fibers Inc.
BF Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Beecham Laboratories
Beker Industries Corporation
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Bristol-Myers Company
Buffalo Color Corporation
CF Industries Inc.
Cabot Corporation
Cargill Inc.
Carus Chemical Company Inc.
Celanese Corporation
CF Industries Inc.
Chemical Products Corporation
Chemtech Industries Inc.
Chevron Chemical Company
CIBA-GEIGY Corporation
Citgo Corporation
Colgate-Palmolive Company
Columbia Nitrogen Corporation
Cominco American Inc.
Copolymer Rubber & Chemical Corporation
Corpus Christi Petrochemical Company
Cosden Oil & Chemical Company
CPC International Inc.
CPEX Pacific
Crompton & Knowles Corporation
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company (partial)
Dow Corning Corporation
E.I. du Pont de Nemours & Company (partial)
Eastman Kadak Company (partial)
Eli Lilly & Company
Emery Industries
Engelhard Corporation
Essex Chemical Corporation
Estech General Chemicals Corporation
Ethyl Corporation (partial)
Exxon Corporation (partial)
Farmland Industries Inc. (partial)
Ferro Corporation
Firestone Tire & Rubber Company
First Chemical Corporation
First Mississippi Corporation
FMC Corporation
Freeport Minerals Company
GAF Corporation (partial)
Gardinier Inc.
G.D. Searle & Company
General Electric Company
General Tire & Rubber Company
GenCorp Inc.
Georgia-Pacific Corporation
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Green Valley Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Hardy Salt
Harshaw/Filtrol Partnership
Hawkeye Chemical Company
Henkel Corporation
Hercules Inc. (partial)
Hoffmann-La Roche Inc.
ICI Americas Inc.
Inmont Corporation
International Minerals & Chemicals Corporation (partial)
Inter North Inc.
J.M. Huber Corporation
J.R. Simplot Company
Johnson & Johnson
Kaiser Aluminum & Chemical Corporation
Kerr-McGee Corporation
Koppers Company Inc. (partial)
LCP Chemicals & Plastics, Inc.
Lever Brothers Company
Lithium Corporation of America
Lubrizol Corporation
Mallinckrodt Inc.
Merck & Company Inc.
Merichem Company
Miles Laboratories Inc.
Minnesota Mining & Manufacturing Company (partial)
Mississippi Chemical Corporation
Mobay Chemical Corporation
Mobil Chemical Corporation
Monsanto Company
Morton Thiokol Inc.
N-Ren Corporation
Nelco Chemical Company
National Starch & Chemical Corporation
Neville Chemical Company
Newmont Mining Corporation
North American Rayon Corporation
Occidental Chemical Corporation
Occidental Petroleum Corporation (partial)
Olin Corporation
Organon Inc.
Pennwalt Corporation
Pfizer Inc.
Phillips Chemical Company
Pilot Chemical Company
Polysar Gulf Coast, Inc.
PPG Industries Inc.
Procter & Gamble Company
Purex Industries Inc.
Reilly Tar & Chemical Corporation
Reynolds Metals Company
Rohm and Haas Company
SCM Corporation
Schering-Plough Corporation
Shell Oil Company
Sheperd Chemical Company
Sherex Chemical Company Inc.
Sherwin-Williams Company
Sohio Chemical Company
Soltex Polymer Corporation
Squibb Corporation
Standard Chlorine of Delaware, Inc.
Standard Oil Company (Indiana)
Standard Oil Company of California
Stauffer Chemical Company
Sterling Drug Inc.
Sun Olin Chemical Company
Tenneco Inc. (partial)
Terra Chemicals International Inc.
Texaco Inc.
Texasgulf Chemicals Company
Travenol Laboratories Inc. (partial)
Union Camp Corporation
Union Carbide Corporation
Union Oil Company of California
Uniroyal Chemical
United States Borax & Chemical Corporation
United States Industrial Chemical Corporation
United States Steel Corporation
Upjohn Company
USS Chemical (partial)
Velsicol Chemical Corporation
Vertac Inc.
Vista Chemical Inc.
Vulcan Materials Company (partial)
W.R. Grace & Company
Warner-Lambert Company
Westvaco Corporation
Weyerhauser Company
Williams Companies
Witco Chemical Corporation
Wycon Chemical Company

SIC 29—Petroleum and Coal Products

Agway Inc.
Amber Refining
Amerada Hess Corporation
American Petrofina Inc.
Amoco Corporation
Asamera Oil (US) Inc.
Ashland Petroleum Company
Atlantic Richfield Company
Atlantic Rifining & Marketing Company
Beacon Oil Company
Bird Inc.
Certainteed Corporation
Champlin Petroleum Company
Charter International Oil Company
Chevron Corporation
Citgo Petroleum Corporation
Clark Oil & Refining Corporation
Coastal Corporation
Conoco Inc.
CRA Inc.
Crown Central Petroleum Corporation
Diamond Shamrock Corporation

Dorchester Refining Company
Edgington Oil Company
Exxon Corporation USA
Farmers Union Central Exchange Inc.
Fletcher Oil & Refining Company
GAF Corporation (partial)
Great Lakes Carbon Corporation (partial)
Holly Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association, Inc.
Jim Walter Corporation
Kern Oil & Refinery Company
Kerr-McGee Corporation
Koch Refining Company
Koppers Company Inc. (partial)
Louisiana Land & Exploration Company
Manville Corporation
Marathon Petroleum
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association, Inc.
Navajo Refining Company
Owens-Corning Fiberglas Corporation
Pacific Resources Inc.
Pennzoil Company
Petrolite Corporation
Phillips Petroleum Company
Placid Refining Company
Pride Refining Inc.
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Sinclair Oil Company
Southland Oil Company
Standard Oil Company (Ohio)
Sun Company
Tenneco Oil Company
Tesoro Petroleum Company
Texaco Inc.
Texas Eastern Corporation
Time Oil
Tosco Corporation
Total Petroleum Inc.
United Refining Company
Unocal
USS Chemical Division (partial)
Witco Chemical Corporation

SIC 30—Rubber and Miscellaneous Plastics Products

American Cyanamid Company (partial)
Armstrong Rubber Company
B F Goodrich Company
Carlisle Corporation
Continental Plastic Containers Inc.
Cooper Tire & Rubber Company
Dart Industries Inc.
Dayco Corporation
Dunlop Tire & Rubber Corporation
Eagle Picher Industries Inc.
Ethyl Corporation
Exxon Company
Firestone Tire & Rubber Company
Gates Rubber Company
General Motors Corporation (Recovered Materials Only)
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Michelin Tire Corporation
Minnesota Mining & Manufacturing Company (partial)
Owens-Illinois Inc.
Teledyne Monarch Rubber Company
Travenol Laboratories Inc. (partial)
Union Carbide Corporation (partial)
Uniroyal Inc.
W.R. Grace & Company
Westinghouse Electric Corporation

SIC 31—Leather and Leather Products

None

SIC 32—Stone, Clay and Glass Products

Adolph Coors Company
Aetna Cement Corporation
AFG Industries Inc.
Allied Chemical Corporation (partial)
Allied Corporation
Allied Products Company
American Olean Tile Company
American Standard Inc.
Anchoring Glass Corporation
Arkansas Louisiana Gas Company
Armco Inc.
Armstrong World Industries Inc.
Ash Grove Cement Company (partial)
Austin White Lime Company
Atlantic Cement Company Inc.
Ball Corporation
Belden Brick Company
Bethlehem Steel Corporation (partial)
Bickerstaff Clay Products Company Inc.
Black River Lime Company
Blue Circle Atlantic
Blue Circle Industries
Boren Clay Products Company
Brockway Glass Company Inc.
California Portland Cement Company
Can-Am Corporation
Capitol Aggregates Inc.
Centex Corporation
CertainTeed Corporation
Cianbro Corporation
Clevepak Corporation
Coors Container Company
Continental Lime Company
Coplay Cement Company
Corning Glass Works (partial)
Cutler-Magner Company
Davenport Cement Company
Delta Brick & Tile Company Inc.
Detroit Lime Company
Diamond Bathurst Inc.
Dickey Company
Dixie Lime and Stone Company
Domtar Industries Inc. (partial)
Dragon Products Company
Dravo Lime Company
Dresser Industries Inc.
Dundee Cement Company
Eagle-Picher Industries Inc.
Ferro Corporation
Ford Motor Company
GAF Corporation (partial)
Gallo Glass Company
General Electric Company
General Dynamics Corporation
General Shale Products Corporation
General Telephone & Electronic Corporation
General Portland & Masonary Cement Company
General Shale Products Corporation
Genstar Cement Company
Genstar Gypsum Products Company
Genstar Lime Company
Georgia-Pacific Corporation
Giant Portland & Masonry Cement Company
Gifford-Hill & Company Inc.
Glen-Gery Corporation
GTE Corporation
Guardian Industries Corporation
Gulf Coast Portland Cement
Hawaiian Cement
Ideal Basic Industries Inc.
In Con Inc.
Independent Cement Company
Interpace Corporation
Jim Walter Corporation (partial)
Justin Industries Inc.
Kaiser Cement Corporation
Kerr Glass Manufacturing Corporation
Kohler Company
Lancaster Colony Corporation
Latchford Glass Company
Lehigh Portland Cement Company (partial)
Libbey-Owens-Ford Company
Liberty Glass Company
Lone Star Industries Inc.
Louisville Cement Company
LTV Steel Corporation
Manville Corporation
Martin-Marietta Corporation (partial)
Maryland Clay Products Inc.
Medusa Corporation
Merry Companies Inc.
Midland Glass Company Inc.
Minnesota Mining & Manufacturing Company (partial)
Mississippi Lime Company
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
Moore McCormack Cement Inc.
National Can Corporation
National Cement Company
National Gypsum Company
National Lime & Stone Company
National Refractories & Minerals Corporation
Newmont Mining Corporation
Northwestern State Portland Cement Company
Norton Company (partial)
Norton Simon Inc.
Ohio Lime Company
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)
Pacific Coast Building Products Company (partial)
Pete Lien & Sons
Pfizer Inc.
Philip Morris Inc.
Pine Hall Brick and Pipe Company
PPG Industries Inc.
Puerto Rican Cement Company Inc.
Rangaire Corporation
Raymark Corporation
Richards Brick Company
Rinker Portland Cement Corporation
River Cement Company
Robinson Brick & Tile Company
Rockwell Lime Company
South Dakota Cement Company
Southwestern Portland Cement Company
St. Clair Lime Company
St. Marys Peerless Cement Company
Streetley Resources Inc.
Tenn-Luttrell Lime Company
Texas Industries Inc. (partial)
Thatcher Glass Corporation
United States Gypsum Company (partial)
Victor Cushwa & Sons Inc.
Vulcan Materials Company (partial)
Warner Company
Western Lime & Cement Company

Wheaton Glass Company
WS Dickey Clay Mfg Company

SIC 33—Primary Metal Industries

A. Finkl & Sons Company
Alcan Aluminum Corporation
Allegheny International, Inc.
Allegheny Ludlum
Alumax Inc.
Aluminum Company of America
Amax Inc.
Amcast Corporation
American Can Company
American Cast Iron Pipe Company
Armco Inc.
Asarco Inc.
Atlantic Richfield Company (partial)
Atlantic Steel Company
AT&T Technology, Inc.
Babcock & Wilcox
Bethlehem Steel Corporation
Bridgeport Brass Corporation
Budd Company
Cabot Corporation
Cargill Inc.
Carpenter Technology Corporation
Caterpillar Tractor Company
Cerro Copper Products Company
Cerro Metal Products Company
Century Brass Products Inc.
CF&I Steel Corporation
Chicago Extruded Metals Company
Colt Industries Inc.
Consolidated Aluminum Corporation
Copperweld Corporation
Crucible Materials Corporation
Cyclops Corporation
Dow Chemical Company (partial)
Elkem Metals Company
Ethyl Corporation
Extruded Metals
Florida Steel Corporation
Foote Mineral Company
Ford Motor
General Motors Corporation
Georgetown Steel Corporation
Globe Metallurgical Inc.
Grede Foundries Inc.
Gulf & Western Industries Inc.
Hayes-Albion Corporation (partial)
Howmet Turbine Component Corporation
Huntington Alloys Inc.
Hussey Copper Ltd
IC Industries Inc.
Inland Steel Company
Inspiration Consolidated Copper Company
Interlake Inc.
JI Case—Tenneco Inc.
Jessop Steel Company
Kaiser Aluminum & Chemical Corporation
Kennecott Corporation (partial)
Keystone Consolidated Industries Inc.
Korf Industries Inc.
Laclede Steel Company
Lone Star Steel Company
Louisiana Land & Exploration Company (partial)
LTV Steel
Lukens Steel Company
Marmon Group Inc.
Martin Industries Inc.
Martin Marietta Corporation
MoLaclede
Meade Corporation
Midland-Ross Corporation
National Steel Corporation (partial)
National Standard Company
Newmont Mining Corporation (partial)
NL Industries Inc.
Noranda Aluminum Inc.
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Ohio Ferro-Alloys Corporation
Olin Corporation
Ormet Corporation
Phoenix Steel Corporation
Quanex Corporation
Pechiney Ugine Kuhlmann Corp (partial)
Phelps Dodge Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Rogue Steel
Sharon Steel Corporation
Shenango
SKW Alloys Inc.
SMI Steel Inc.
Slater Inc.
Southwire Company
St. Joe Minerals Corporation
Structural Metals Inc.
Teledyne Inc. (partial)
Textron Inc.
Timken Company
Tyler Pipe Industries Inc
United States Pipe Company
United States Steel Corporation
United Technologies Corporation
Vulcan Materials Company
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation
White Consolidated Industries Inc.

SIC 34—FABRICATED METAL PRODUCTS

Aluminum Company of America
American Can Company
American Standard Inc.
Armco Inc.
Ball Corporation
Bethlehem Steel Corporation
Cameron Iron Works Inc.
Campbell Soup Company
Combustion Engineering Inc.
Continental Group Inc.
Crown Cork & Seal Company Inc.
Cyclops Corporation
E.I. du Pont de Nemours & Company (partial)
Gulf & Western Industries Inc.
Harsco Corporation
International Telephone & Telegraph Corporation
Kaiser Aluminum & Chemical Corporation
Kohler Company
Martin Industries
Martin Marietta Corporation
McDermott Inc.
Miller Brewing Company
National Can Corporation
Reynolds Metals Company
Rockwell International Corporation
Stanley Works Inc.
Stroh Brewery Company
Textron Inc.
United States Steel Corporation
Wyman-Gordon Company

SIC 35—Machinery, Except Electrical

Allis Chalmers Corporation
American Standard Inc.
Borg-Warner Corporation
Briggs & Stratton Corporation
Bucyrus-Erie Company
Carrier Corporation
Caterpillar Tractor Company
Clark Equipment Company
Colt Industries Inc.
Control Data Corporation
Cooper Industires Inc.
Cummins Engine Company Inc.
Deere & Company
Digital Equipment Corporation
Dresser Industries Inc.
Emerson Electric Company
Ford Motor Company
General Electric Company
Harnischfeger Corporation
Honeywell Inc.
Hussman Refrigerator Company
Ingersoll-Rand Company
International Business Machines Corporation
International Harvester Company
JI Case-Tenneco Inc.
Johnson Controls Inc.
Outboard Marine Corporation
Preway Industries Inc.
Rexnord Inc.
SKF Industries Inc.
Sperry UNIVAC Corporation
Sundstrand Corporation
Timken Company
Trane Company
TRW Inc.
United Technologies Corporation
Westinghouse Electric Corporation
Xerox Corporation

SIC 36—Electric, Electronic Equipment

Airco Carbon
Allied Corporation
AT&T Technology, Inc.
Dart & Kraft Inc.
Emerson Electric Company
General Electric Company
General Telephone & Electronic Corporation
Great Lakes Carbon Corporation (partial)
Harvey Hubbel Inc.
Hughes Aricraft Company
Johnson Controls Inc.
Maytag Company
McGraw-Edison Company
Minnesota Mining & Manufacturing Company (partial)
Preway Industries Inc.
Raytheon Company
RCA Corporation
Reliance Electric Company
Rockwell International Corporation
Square D Company
Stackpole Company
Texas Instruments Inc.
Union Carbide Corporation
Western Electric Company
Westinghouse Electric Corporation
Whiripool Corporation
White Consolidated Industries Inc.

SIC 37—Transportation Equipment

Allied Corporation
A.O. Smith Corporation
American Motors Corporation
Avco Corporation
Bethlehem Steel Corporation
Boeing Company
Borg-Warner Corporation
Budd Company
Chrysler Corporation
Dana Corporation
Eaton Corporation
Ford Motor Company

Fruehauf Corporation
General Dynamics Corporation (partial)
General Electric Company
General Motors Corporation
Goodyear Tire & Rubber Company
Grumman Corporation
Hercules Inc. (partial)
Hughes Aircraft Company
Lockheed Corporation
LTV Aerospace & Defense Company
Marquardt Company
Martin Marietta Corporation
McDonnell Douglas Corporation
Morton Thiokol Corporation
Northrop Corporation
PPG Industries Inc.
Rockwell International Corporation
Signal Companies Inc.
Sohio Chemical Company
Tenneco Inc. (partial)
Textron Inc.
TRW Inc.
United Technologies Corporation
Volkswagon of America
Vought Corporation

SIC 38—Instruments and Related Products

Eastman Kodak Company (partial)
G.D. Searle & Company
Johnson & Johnson
Minnesota Mining & Manufacturing Company (partial)
Polaroid Corporation

SIC 39—Miscellaneous Manufacturing Industries

Armstrong World Industries Inc.
Congoleum Corporation

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[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Exempt Corporations and Adequate Reporting Programs

AGENCY: Department of Energy.

ACTION: Notice of Exempt Corporations and Adequate Reporting Programs.

SUMMARY: As an annual part of the Department of Energy's (DOE) Industrial Energy Conservation Program, DOE is exempting certain corporations from the requirement of filing directly with DOE corporate energy efficiency progress reports including, if appropriate, progress on recovered materials utilization, and is determining as adequate certain industrial reporting programs for third party sponsor reporting. This notice is required pursuant to section 376(g)(1) of the Energy Policy and Conservation Act (EPCA) and DOE's regulation set forth at 10 CFR Part 445, Subpart D. DOE compiled this list based on submissions filed by corporations and third party sponsors in accordance with 10 CFR 445.34 and 445.35. The deadline for these filings was February 4, 1986. These procedures, which allow identified corporations to be exempted from filing energy data directly with DOE, assist in maintaining the confidentiality of consumption information and reduce the reporting burden for corporations. Parentheses with the word "partial" follow any corporation which reports less than its total energy data in a particular 2-digit SIC code through the program sponsor under which it is listed. The corporation reports the rest of its energy data through another sponsor or directly to DOE. The exempt corporations and the respective sponsors of adequate reporting programs are listed alphabetically by industry in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT:

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Vivian S. Lewis, Office of General Counsel, GC-12, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9507.

Issued in Washington, DC, May 2, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Exempt Corporations and Sponsors of Adequate Reporting Programs

SIC 20—Food and Kindred Products

American Bakers Association

Anheuser-Bush Company
Campbell Soup Company (partial)
Flowers Industries Inc.
G. Heileman Brewing Company, Inc. (partial)
Interstate Bakeries Corporation
Ralston Purina (partial)
Sara Lee Corporation (partial)

American Feed Manufacturers Association

Bell Grain
Bell Mining
Cargill Inc.
Central Soya Company Inc. (partial)
Gold Kist Inc.
Land O'Lakes, Inc. (partial)
Moorman Manufacturing Company
Quincy Soy Bean Company
Ralston Purina Company (partial)

American Frozen Food Institute

Campbell Soup Company (partial)
J.R. Simplot Company

American Meat Institute

Beatrice Foods Company (partial)
Consolidated Foods Corporation (partial)
Farmland Industries Inc.
FDL Foods, Inc.
George A. Hormel & Company
IBP Inc.
Oscar Mayer & Company
Sara Lee Corporation (partial)
Swift Independent Packing Company
Wilson Foods Corporation

Biscuit & Cracker Manufacturers Association

Keebler Company
Nabisco Brands, Inc. (partial)
Sunshine Biscuits, Inc.

Chemical Manufacturers Association

National Distillers Products Company

Corn Refiners Association

A.E. Staley Manufacturing Company (partial)
American Maize-Products Company
CPC International Inc.
Grain Processing Corporation
Hubinger Company
National Starch & Chemical Corporation
Univar Corporation

Grocery Manufacturers of America, Inc.

A.E. Staley Manufacturing Company (partial)
American Home Products Corporation
Amstar Corporation
Anderson Clayton & Company
Archer Daniels Midland Company (partial)
Basic American Foods
Beatrice Foods Company (partial)
Borden Inc. (partial)
Cadbury Schwepps
Carnation Company
Central Soya Company, Inc. (partial)
Chesebrough-Ponds Inc.
Coca Cola Company
E J Brach & Sons
General Foods Corporation
General Mills Inc.
H.J. Heinz Company (partial)
Hershey Foods Corporation
Kellogg Company
Kraft Inc.
Mars Inc.
Nabisco Brands, Inc. (partial)
PepsiCo Inc.
Pet Inc.
Pillsbury Company
Procter & Gamble Company
Quakter Oats Company
Ralston Purina Company (partial)
R.T. French Company
Sara Lee Corporation (partial)
Thomas J. Lipton Inc.
Universal Foods Corporation

National Food Processors Association

Campbell Soup Company
Castle & Cooke Inc.
Curtice-Burns Inc.
Del Monte Corporation
Gerber Products Company
H.J. Heinz Company (partial)
Star-Kist Foods Inc.
Sunkist Growers Inc.
Tri/Valley Growers Inc.

Pharmaceutical Manufacturers Association

Eli Lilly and Company

U.S. Beet Sugar Association

Amalgamated Sugar Company
American Crystal Sugar Company
Delta Sugar Company
Holly Sugar Corporation
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Southern Minnesota Sugar Cooperative
Union Sugar Company

The Beer Institute
Adolph Coors Company
Anheuser-Busch Inc. (partial)
Archer Daniels Midland Company (partial)
Froedtert Malt Corporation
Ladish Malting Company
Miller Brewing Company
Pabst Brewing Company
The Stroh Companies Inc.

U.S. Cane Sugar Refiners Association
California & Hawaiian Sugar Company
Colonial Sugars Inc.
Georgia Sugar Refinery
Imperial Sugar Company
Refined Sugars Inc.
Savannah Foods & Industries Inc. (partial)
Supreme Sugar Company, Inc.

SIC 22—Textile Mill Products

American Textile Manufacturers Institute
Avondale Mills Inc.
Bibb Company
Burlington Industries Inc.
Clinton Mills Inc.
Coats & Clark Inc.
Colgate-Palmolive Company
Collins & Aikman Corporation
Cone Mills Corporation
Cranston Print Works Company
Crompton Company Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
Goodyear Tire & Rubber Company
Graniteville Company
Greenwood Mills Inc.
J.P. Stevens & Company Inc.
Johnson & Johnson
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Northwest Industries Inc.
Reeves Brothers Inc.
Riegel Textile Corporation
Russel Corporation
Sayles Biltmore Bleacheries Inc.
Spartan Mills Inc.
Sperry and Hutchinson Company (partial)
Springs Industries Inc.
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.

Carpet & Rug Institute
Bigelow-Sanford Inc.
Mohasco Corporation
Shaw Industries Inc.
Standard Oil Company (Indiana)
World Carpets Inc.

SIC 24—Lumber and Wood Products

National Forest Products Association
Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Koppers Corporation (partial)
Louisiana-Pacific Corporation
Masonite Corporation
Potlatch Corporation
Weyerhaeuser Company
Willamette Industries Inc.

Chemical Manufacturers Association
Koppers Company Inc. (partial)

SIC 26—Paper and Allied Products

American Paper Institute
Abitibi-Price Southern Corporation
Alabama River Pulp Company Inc.
Appleton Papers Inc.
Arcata National Corporation
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Caraustar Industries Company
Champion International Corporation
Chesapeake Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Crown Zellerback Corporation
Deerfield Specialty Papers, Inc.
Dennison Manufacturing Company
Dexter Corporation
Eddy Forest Products Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper Limtied
GAF Corporation
Garden State Paper Company Inc.
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hearst Corporation
International Paper Company
International Telephone & Telegraph Corporation
James River Corporation of Virginia
Jefferson Smurfit Corporation
Kimberly-Clark Corporation
Longview Fibre Company
Macmillan Bloedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Merrimac Paper Company Inc.
Mobil Oil Corporation (partial)
Mosinee Paper Corporation
Newark Group
Newton Falls Paper Mills Inc.
Olin Corporation
Owens-Illinois Inc.
PH Glatfelter Company
Packaging Corporation of America
Penntech Papers Inc.
Pentair Industries Inc.
Pope and Talbot Inc.
Potlatch Corporation
Procter & Gamble Company
Rhinelander Paper Company
Scott Paper Company
Simpson Timber Company
Sonoco Products Company
Southeast Paper Manufacturing Company
Southwest Forest Industries
St. Joe Paper Company
Stone Container Corporation
Technographics Inc.
Temple-Inland Inc.
Tenneco Inc.
Times Mirror Company
Union Camp Corporation
Virginia Fibre Corporation
Wausau Paper Mills Corporation
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.
Wisconsin Tissue Mills Inc.

Chemical Manufacturers Association
Minnesota Mining & Manufacturing Co. (partial)
Glass—Pressed and Blown (Battelle Institute)
Owens-Corning Fiberglas

SIC 28—Chemicals and Allied Products

Aluminum Association
Aluminum Company of America
Reynolds Metals Company

American Feed Manufacturers Association
Cargill Inc.

Chemical Manufacturers Association
Air Products & Chemicals Inc.
Airco Inc.
Akzo Inc.
Allied Corporation
American Cyanamid Company (partial)
American Hoechst Corporation
Arizona Chemical Company
Ashland Chemical Company
Atlantic Richfield Company
Avtex Fibers Inc.
B F Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Buffalo Color Corporation
Cabot Corporation
Carus Chemical Company Inc.
Celanese Corporation
Chemical Products Corporation
Chemtech Industries Inc.
Chevron Chemical Company
CIBA-GEIGY Corporation
Columbia Nitrogen Corporation
Corpus Christi Petrochemical Company
Cosden Oil & Chemical Company
CPC International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company (partial)
Dow Corning Corporation
E.I. du Pont de Nemours & Company (partial)
Eastman Kodak Company (partial)
Emery Industries
Essex Chemical Corporation
Ethyl Corporation (partial)
Exxon Corporation (partial)
Firestone Tire & Rubber Company
First Chemical Corporation
FMC Corporation
Freeport Minerals Company
GAF Corporation (partial)
Georgia-Pacific Corporation
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Harshaw/Filtrol Partnership
Henkel Corporation
Hercules Inc. (partial)
ICI Americas Inc.

International Minerals & Chemicals Corporation (partial)
InterNorth Inc.
Kaiser Aluminum & Chemical Corporation
Kerr-McGee Corporation
Koppers Company Inc. (partial)
LCP Chemicals & Plastics, Inc.
Lever Brothers Company
Lubrizol Corporation
Mallinckrodt Inc.
Merichem Company
Minnesota Mining & Manufacturing Company (partial)
Mobay Chemical Corporation
Mobil Oil Corporation
Monsanto Company
Morton Thiokol, Inc.
Naloc Chemical Company
National Starch & Chemical Corporation
Neville Chemical Company
Occidental Chemical Corporation
Olin Corporation
Pennwalt Corporation
Pfizer Inc.
Phillips Chemical Company
Pilot Chemical Company
Polysar Gulf Coast, Inc.
PPG Industries Inc.
Procter & Gamble Company
Rielly Tar & Chemical Corporation
Rohm and Haas Company
Shall Oil Company
Shepherd Chemical Company
Sherex Chemical Company Inc.
Sohio Chemical Company
Soltex Polymer Corporation
Standard Chlorine of Delaware, Inc.
Standard Oil Company (Indiana)
Stauffer Chemical Company
Sun Olin Chemical Company
Tenneco Inc. (partial)
Texaco Inc.
Texasgulf Chemicals Company
Travenol Laboratories Inc. (partial)
Union Carbide Corporation (partial)
Uniroyal Chemical
United States Borax & Chemical Corporation
United States Industrial Chemicals Corporation
United States Steel Corporation
USS Chemicals (partial)
Velsicol Chemical Corporation
Vertac Inc.
Vista Chemical Company
Vulcan Materials Company (partial)
W.R. Grace & Company
Westvaco Corporation
Weyerhauser Company
Witco Chemical Corporation

Fertilizer Institute

Arcadian Corporation
Atlas Power Company
Baker Industries Corporation
CF Industries Inc.
CPEX Pacific
Cominco America Inc.
Estech General Chemicals Corporation
Farmland Industries Inc. (partial)
First Mississippi Corporation
Gardinier Inc.
Green Valley Chemical Company
Hawkeye Chemical Company
International Minerals & Chemical Corporation (partial)
J.R. Simplot Company
Mississippi Chemical Corporation
Occidental Petroleum Corporation (partial)
Terra Chemicals International Inc.
Union Oil Company of California
United States Steel Corporation (partial)
Williams Company
Wycon Chemical Company

Pharmaceutical Manufacturers Association

Abbott Laboratories
A H Robins Company
American Home Products Corporation (partial)
Beecham Laboratories
Eli Lilly & Company
G D Searle & Company
Hoffman-La Roche Inc.
Johnson & Johnson
Marck & Company Inc.
Miles Laboratories Inc.
Schering-Plough Corporation
Squibb Corporation
Upjohn Company
Warner-Lambert Company

SIC 29—Petroleum and Coal Products

American Petroleum Institute

Agway Inc.
Amber Refining
American Petrofina Inc.
Amoco Corporation
Asamera Oil (US) Inc.
Ashland Petroleum Company
Atlantic Richfield Company
Atlantic Refining & Marketing Company
Beacon Oil Company
Champlin Petroleum Company
Charter International Oil Company
Chevron Corporation
Clark Oil & Refining Corporation
Coastal Corporation
Conoco Inc.
CRA Inc.
Crown Central Petroleum Corporation
Diamond Shamrock Corporation
Exxon Corporation USA
Farmers Union Central Exchange Inc.
Fletcher Oil & Refining Company
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Kerr-McGee Corporation
Koch Refining Company
Marathon Petroleum
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association, Inc.
Pacific Resources Inc.
Pennzoil Company
Phillips Petroleum Company
Placid Refining Company
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Sinclair Oil Corporation
Southland Oil Company
Standard Oil Company (Ohio)
Sun Company Inc.
Tenneco Oil Company
Tesoro Petroleum Company
Texaco Inc.
Texas Eastern Corporation
Time Oil
Tosco Corporation
Total Petroleum Inc.
Unocal
Witco Chemical Corporation

Chemical Manufacturers Association

GAF Corporation (partial)
Great Lakes Carbon Corporation (partial)
Koppers Company Inc. (partial)
USS Chemicals Div. (partial)

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas Corporation

SIC 30—Rubber and Miscellaneous Plastic Products

Chemical Manufacturers Association

American Cyanamid Company (partial)
Dart Industries Inc.
Ethyl Corporation
Exxon Corporation
Minnesota Mining & Manufacturing Company (partial)
Travenol Laboratories Inc. (partial)
Union Carbide Corporation (partial)
W.R. Grace & Company

Rubber Manufacturers Association

Ames Rubber Corporation
Armstrong Rubber Company
B F Goodrich Company
Carlisle Corporation
Cooper Tire & Rubber Company
Dayco Corporation
Dunlop Tire & Rubber Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Owens-Illinois Inc.
Teledyne Monarch Rubber Company
Uniroyal Inc.

SIC 32—Stone, Clay and Glass Products

Brick Institute of America

Belden Brick Company
Brickerstaff Clay Products Company Inc.
Boren Clay Products Company
Delta Brick & Tile Company, Inc.
General Dynamics Corporation (partial)
General Shale Products Corporation
Glen-Gery Corporation
Justice Industries Inc.
Maryland Clay Products, Inc.
Merry Companies, Inc.
Pine Hall Brick & Pipe Company
Richards Brick Company
Robinson Brick & Tile Company
Victor Cushwa & Sons, Inc.

Chemical Manufacturers Association

GAF Corporation (partial)
Minnesota Mining & Manufacturing Company (partial)
Valcan Materials Company (partial)

Glass—Flat (Eugene L. Stewart)

AFG Industries Inc.
Food Motor Company
Guardian Industries Corporation
Libbey-Owens-Ford Company
PPG Industries Inc.

Glass—Pressed & Blown (Battelle Institute)

Anchor Hocking Corporation (partial)
CertainTeed Corporation
Corning Glass Works (partial
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)

Gypsum Association

Domtar Industries, Inc. (partial)
Genstar Gypsum Products Company
Georgia-Pacific Corporation
Jim Walter Corporation (partial)
National Gypsum Company (partial)
Pacific Coast Building Products Company (partial)
Unites States Gypsum Company (partial)

National Lime Association

Ash Grove Cement Company (partial)
Bethlehem Steel Corporation (partial)
Blue Circle Inc.
Can-Am Corporation
Continental Lime Company
Cutler-Magner Company
Detroit Lime Company
Dravo Lime Company
General Dynamics Corporation (partial)
Genstar Lime Company
National Lime & Stone Company
Pete Lien & Sons
Rockwell Lime Company
St. Clair Lime Company
Streetley Resources, Inc.
Tenn-Luttrell Lime Companies
United States Gypsum Company (partial)
Vulcan Materials Company (partial)
Warner Company

Portland Cement Association

Aetna Cement Corporation
Arkansas Cement Corporation
Ash Grove Cement Company (partial)
Atlantic Cement Company Inc.
Blue Circle Industries
California Portland Cement Company
Capitol Aggregates Inc.
Centex Corporation
Columbia Cement Corporation
Coplay Cement Manufacturing Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
General Portland Inc.
Genstar Cement & Company
Giant Portland & Masonary Cement Company
Gifford-Hill & Company Inc.
Hawaiian Cement
Ideal Basic Industries
Independent Cement Corporation
Kaiser Cement Corporation
Keystone Portland Cement Company
Lehigh Portland Cement Company (partial)
Lone Star Industries Inc.
Louisville Cement Company
Medusa Corporation
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
Moore McCormack Cement, Inc.
National Cement Company
Northwestern State Portland Cement Company
Rinker Portland Cement Corporation
River Cement Company
South Dakota Cement Company
Southwestern Portland Cement Company
St. Marys Peerless Cement Company
Texas Industries Inc. (partial)

Refractories Institute

Allied Chemical Corporation (partial)
Corning Glass Works (partial)
Dresser Industries Inc. (partial)
Kaiser Aluminum & Chemical Corporation (partial)
Martin Marietta Corporation (partial)
National Refractories & Minerals Corporation
Norton Company (partial)
United States Gypsum Company (partial)

Tile Council of America

American Olean Tile Company

SIC 33—Primary Metal Industries

Aluminum Association

Alcan Aluminum Corporation
Alumax
Aluminum Company of America
American Can Company
Atlantic Richfield Company (partial)
Cabot Corporation
Consolidated Aluminum Corporation
Ethyl Corporation
International Light Metals Corporation
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
National Steel Corporation (partial)
Noranda Aluminum Inc.
Ormet Corporation
Pechiney Ugine Kuhlmann Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Southwire Company

American Die Casting Institute

Hayes-Albion Corporation (partial)

American Foundrymen's Society

American Cast Iron Pipe Company
Amcast Corporation
Grede Foundries Inc.
Mead Corporation
Teledyne Inc. (partial)
United States Pipe Company

American Iron & Steel Institute

A. Finkl & Sons Company
Allegheny Ludlum
Atlantic Steel Company
Armco Inc.
Babcock & Wilcox
Bethlehem Steel Corporation
Cargill, Inc.
Carpenter Technology Corporation
Colt Industries Inc.
Cruciber Materials Corporation
Cyclops Corporation
Florida Steel Corporation
Ford Motor
Georgetown Steel Corporation
Inland Steel Company
Interlake
Jessop Steel
Keystone Consolidated Industries Inc.
Lone Star Steel Company
LTV Steel
Lukens Steel Corporation
McLaclede
National Steel Corporation (partial)
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Pheonix Steel
Sharon Steel Corporation
Shenago
Teledyne Inc. (partial)
Timken Company
United States Steel Corporation
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation

American Mining Congress

Amax Inc.
Asarco Inc.
Inspiration Consolidated Copper Company
Kennecott Corporation (partial)
Louisiana Land & Exploration Company (partial)
Marmon Group Inc.
Newmont Mining Corporation (partial)
Phelps Dodge Corporation (partial)
St. Joe Minerals Corporation

Chemical Manufacturers Association

Dow Chemical Company (partial)
N L Industries

Construction Industry Manufacturers Association

J I Case—Tenneco Inc.

Copper & Brass Fabricators Council

Atlantic Richfield Company (partial)
Bridgeport Brass Corporation
Cerro Copper Products Company
Cerro Metal Products Company
Chicago Extruded Metals Company
Extruded Metals
Hussey Copper Ltd.
Kennecott Corporation (partial)
Olin Corporation
Revere Copper & Brass Inc. (partial)

SIC 34—Fabricated Metal Products

Aluminum Association

Aluminum Company of America
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
Reynolds Metals Company

American Boiler Manufacturers Association

Combustion Engineering Inc.
McDermott Inc.

Can Manufacturers Institute

American Can Company
Campbell Soup Company
Continental Group Inc.
Crown Cork & Seal Company Inc.
Miller Brewing Company
National Can Corporation
Stroh Brewery Company

Chemical Manufacturers Association

E.I. du Pont de Nemours & Company (partial)

SIC 35—Machinery, Except Electrical

Air Conditioning & Refrigeration Institute

Emerson Electric Company
Honeywell Inc.
Hussman Refrigeration Company
Johnson Controls Inc.
Sundstrand Corporation
Trane Company

Computer & Business Equipment Manufacturers Association

Control Data Corporation
Digital Equipment Corporation
International Business Machines Corporation
Sperry UNIVAC Corporation
TRW Inc.
Xerox Corporation

Construction Industry Manufacturers Association

Caterpiller Tractor Company
Clark Equipment Company
Cummins Engine Company Inc.
Ford Motor Company
Harnischfeger Corporation

Ingersoll-Rand Company
J I Case—Tenneco Inc.

SIC 36—Electric, Electronic Equipment

Chemical Manufactures Association

Great Lakes Carbon Corporation (partial)
Minnesota Mining & Manufacturing Company (partial)

National Electrical Manufacturing Association

Airco Inc.
Allied Corporation
Emerson Electric Company
Harvey Hubbell Inc.
Johnson Controls Inc.
Reliance Electric Company
Square D Company
Union Carbide Corporation

SIC 37—Transportation Equipment

Aerospace Industries Association of America

Boeing Company
General Dynamics Corporation (partial)
Grumman Corporation
Hughes Aircraft Corporation
Lockheed Corporation
LTV Aerospace and Defense Company
Marquardt Company
Martin Marietta Corporation
McDonnell Douglas Corporation
Morton Thiokol Corporation
Northrop Corporation
Textron Inc.
TRW Inc.

Chemical Manufacturers Association

Hercules Incorporated (partial)
Tenneco Inc. (partial)

Motor Vehicle Manufacturers Association

American Motors Corporation
Chrysler Corporation
Ford Motor Company (SIC Code 33, Recovered Materials)
General Motors Corporation (SIC Code 30, 33, Recovered Materials)

SIC 38—Instrument and Related Products

Chemical Manufactures Association

Eastman Kodak Company (partial)
Minnesota Mining & Manufacturing Company (partial)

Pharmaceutical Manufacturing Association

Johnson & Johnson

[FR Doc. 86-10834 Filed 5-14-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders, Week of April 21 Through April 25, 1986.

During the week of April 21 through April 25, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 2, 1986.

Exxon Junction Service Bowbells, North Dakota, Kee-0033

Exxon Junction Service filed an Application for Exception from the requirement that it file Form EIA-782B. On April 21, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Schaal Oil Company, Jefferson, Iowa, Kee-0025

Schaal Oil Company filed an Application for Exception from the requirement that it file Form EIA-782B. The exception request, if granted, would relieve Schaal from its monthly reporting obligation. On April 22, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-10868 Filed 5-14-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders, Week of April 14 through April 18, 1986.

During the week of April 14 through April 18, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Environmental Task Force, 4/17/86; KFA-0020

The Environmental Task Force (ETF) filed an Appeal from a determination issued to it by the Director of the Office of the Executive Secretariat (Director) of the Department of Energy (DOE). ETF sought information under the Freedom of Information Act (FOIA) concerning the formation of a DOE cabinet level group to review the status of nuclear power in America. In considering the Appeal, the Office of Hearings and Appeals found that the scope of the search for responsive documents was inadequate, and that the Director must provide a more detailed justification for withholding portions of one document pursuant to FOIA Exemption 4. Accordingly, the case was remanded to the Director for a further search and determination.

Remedial Order

Transco Trading Company, 4/14/86; HRO-0014

The Office of Hearings and Appeals (OHA) issued a Decision and Order determining that a crude oil reseller, its parent corporation, and its president violated the "layering" regulation. The Decision required the parties to refund $21,187,495.00 plus interest.

The OHA rejected the firm's argument that it provided traditional and historical reseller services by taking risks. The OHA stated that the action which caused the risk rather than the risk itself is the relevant factor in determining whether a service was provided.

The OHA's decision also denied a motion by the Economic Regulatory Administration (ERA) which sought to withdraw one of the ERA's theories of liability. The OHA found that Transco's parent corporation could be held responsible for Transco's violations on the theory that both companies constituted one "firm."

Motions for Discovery

Brazoria Energy, Inc; HRD-0276
Gerald W. Collum, 4/17/86; HRH-0276

Brazoria Energy, Inc; and Gerald W. Collum (collectively "Brazoria") filed a Motion for Discovery and Motion for Evidentiary Hearing in connection with a Statement of Objections to a Proposed Remedial Order that was issued to Brazoria and Carl L. Counts. In the discovery motion, Brazoria sought discovery through interrogatories and the production of documents pertaining to (i) the audit of the firm, (ii) the administrative record of certain rulemakings applicable to crude oil resellers, and (iii) the DOE's contemporaneous construction of portions of the crude oil reseller regulations. The DOE determined that the discovery motion should be denied

since not only was it procedurally defective and failed to set forth clearly the information which was requested, but also because the discovery would not elicit evidence relevant and material to the issues raised in the Statement of Objections. Brazoria requested an evidentiary hearing to present evidence on the issue of whether certain crude oil resales were "layered" and on the issue of Gerald W. Collum's personal liability. The DOE partially granted an evidentiary hearing with regard to Collum's personal liability for the regulatory violations alleged in the PRO. The DOE further determined that Brazoria could submit written documentation relating to specific transactions covered in the PRO in which Brazoria alleges it performed traditional and historical reseller services.

Murphy Oil Corporation: HRD-0244 Economic Regulatory Administration, 4/16/86: HRD-0254

Murphy Oil Corporation filed Motion for Discovery in which it sought contemporaneous construction discovery concerning the treatment of revenues derived from the sale of fee-free import licenses. The discovery was requested in connection with the firm's objection to a Proposed Remedial Order in order to support its contention that the refiner price regulations did not require firms to treat such revenues as decreases in their crude oil costs. The Economic Regulatory Administration sought discovery pertaining to Murphy's method of accounting for revenues attributable to the sale of fee-free import licenses.

The DOE found that the agency had never taken an inconsistent position regarding fee-free import licenses and that the regulations were not sufficiently ambiguous to make contemporaneous construction discovery appropriate. Accordingly Murphy's discovery request was denied. With respect to the ERA's Motion, the DOE found that information pertaining to Murphy's method of accounting for fee-free license revenues was relevant to the issue of whether Murphy was entitled to reduce its May 1973 crude oil cost to reflect such revenues. Murphy had argued that although it did not actually receive any payments for fee-free licenses in May 1973, it should nevertheless be permitted to reduce its crude oil costs to reflect payments attributable to May 1973 under an accrual method of accounting. The DOE found, however, that the ERA's motion was unduly broad insofar as it sought information pertaining to the firm's accounting practices for years other than 1973, the year at issue. Accordingly, the ERA's discovery motion was granted in part.

Supplemental Order

C&H Refinery, Inc., 4/14/86: KRX-0012

A Remedial Order issued by DOE to C&H Refinery, Inc. on April 7, 1986 (Case No. KRO-0100) inadvertently included an incorrect ordering paragraph. This Supplemental Order deleted the incorrect paragraph, Ordering Paragraph (2).

Implementation of Special Refund Procedures

ELM City Filling Stations, Inc., 4/17/86: HEF-0067

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $172,193.63 obtained as a result of a Consent Order entered into between the DOE and Elm City Filling Stations, Inc. The Decision sets forth refund application procedures for customers who purchased No. 6 residual fuel oil from Elm City during the period covered by the Consent Order—November 1, 1973 through December 31, 1973. Specific information regarding the data to be included in refund applications is discussed in the Decision.

GCO Mineral Company, 4/15/86: HEF-0570

The DOE issued a Decision and Order setting forth procedures for distributing $1,800,000 plus accrued interest remitted to the DOE by GCO Mineral Company, a crude oil producer and a refiner, pursuant to a 1984 consent order. The DOE determined that the funds should be divided into two pools, one for crude oil claims and the other for refined products claims. The crude oil funds will be pooled with other crude oil funds in escrow to afford Congress the opportunity to select the means for distributing the funds. The remainder of the GCO settlement funds will be available to customers of GCO refined products who were injured by the firm's pricing practices during the consent order period, August 19, 1973 through June 30, 1979. The Decision outlines specific information to be included in refund applications.

Refund Applications

Allied Materials Corporation/Kitchen Oil Company, Kelley Oil Co., Paul Penley Oil Co., Inc., 4/16/86, FR194-1; RF194-3; FR194-5.

The DOE issued a Decision and Order concerning three Applications for Refund filed by Kitchen Oil Company, Kelley Oil Co., and Paul Penley Oil Co., Inc. Each of the applicants had purchased refined petroleum products from Allied Materials Corporation, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Allied. Two of the three firms applied for refunds based upon the procedures for filing small claims outlined in *Allied Materials Corporation and Excel Corporation*, 13 DOE ¶ 85,095 (1985). The one remaining applicant was eligible to apply for a refund greater than $5,000, but chose to follow the small claims procedures. After examining the applications submitted by the firms, the DOE concluded that each of the three firms should receive a refund based on the per gallon volumetric refund amount. The total amount of refunds granted was $10,011.

Amtel, Inc./Highway Oil, Inc. et al., 4/15/86, RF46-22 et al.

The DOE issued a Decision and Order concerning eight refund applications filed in the Amtel, Inc. special refund proceeding. In the Decision, the DOE found that all eight claimants were spot purchasers from Amtel and that none of the claimants had rebutted the presumption that spot purchasers were not injured by Amtel's alleged overcharges. Accordingly, all eight applications were denied.

Amtel, Inc./Krum Oil Company, et al., 4/17/86, RF46-1 et al.

The DOE issued a Decision and Order granting 12 Applications for Refund filed in the Amtel, Inc. special refund proceeding. All but one of the applicants chose to rely on the per gallon volumetric presumption and the presumption of injury for small claims established in the *Amtel* implementation Decision. The DOE found that the remaining applicant, Mobley Oil Company, had failed to submit information sufficient to demonstrate that the firm should receive a refund in excess of the volumetric amount. Accordingly, all 12 applicants received refunds based on the per gallon volumetric amount. The total amount of refunds granted in this proceeding is $38,133 ($20,378 principal plus $18,755 interest).

Arkansas Louisiana Gas Co./Southern Marketing, Inc., 3/17/86, RF154-16.

The DOE issued a Decision concerning an Application for Refund from the Arkansas Louisiana Gas Co. (Arkla) escrow account filed by Southern Marketing, Inc. Southern was a spot purchaser of Arkla products. Spot purchasers must rebut the no-injury presumption by submitting sufficient evidence to establish that they were unable to recover the alleged overcharges they paid the consent order firm. Southern failed to provide substantial proof of injury. Accordingly, its refund claim was denied.

Boswell Oil Company/Belle Vernon Oil Company, 4/17/86, RF179-3; RF179-6; RF179-16.

The Department of Energy issued a Decision and Order concerning three separate applications for refund in the Boswell Oil Company special refund proceeding filed in connection with purchases of motor gasoline by Belle Vernon Oil Company from Boswell. In determining which applicant was the proper recipient of Belle Vernon's refund, the DOE found that, absent special circumstances, the impact of Boswell's pricing practices would have been felt by the firm's owners at the time of those alleged overcharges. Due to a legal dispute over the liquidation of Belle Vernon's assets, however, the DOE was unable to determine the extent of each owner's alleged injury. The DOE therefore concluded that the refund of $1,604.39 should go to Belle Vernon's Liquidating Receiver who will ultimately disburse the refund to the owners in accordance with the judgment of the court handling the liquidation.

Central Oil Co./Fred's Auto Repair, 4/18/86, RF209-1.

The DOE issued a Decision and Order concerning an Application for Refund filed by Fred's Auto Repair in the Central Oil Company special refund proceeding. Fred's Auto Repair was a reseller of motor gasoline purchased from Central during the consent order period (November 1, 1973 through October 3, 1974) and the volume of the firm's purchases rendered it eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the Fred's Auto Repair application under the standards specified in *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 (1985). The refund granted in this proceeding totals $740, representing $492 in principal and $257 interest.

Gate Petroleum, Inc./Robert E. Hatcher, 4/14/86 RF205–4.

The DOE issued a Decision and Order granting an Application for Refund which Robert E. Hatcher filed in the Gate Petroleum, Inc. Special refund proceeding. In the Decision, the DOE found that Hatcher had purchased motor gasoline from Gate during the consent order period and that Hatcher's claim did not exceed the $5,000 presumption of injury for small claims. Accordingly, Hatcher was granted a refund of $208 ($136 principal plus $72 interest).

Lowe Oil Company/Jones Texaco, 4/14/86, RF206–4.

The DOE issued a Decision and Order concerning an Application for Refund filed by Jones Texaco. The applicant had purchased refined petroleum products from Lowe Oil Company, and thus sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Lowe. The firm was identified in the DOE's audit files and was listed in the Appendix to the Decision establishing refund procedures for the distribution of the Lowe consent order fund. *See L&L Oil Company, Inc., Lowe Oil Company, and Moyle Petroleum Company,* 13 DOE ¶ 85,198 (1985). After examining the applications submitted by the firm the DOE granted the applicant a refund of $412, representing $262 in principal, and $150 in accrued interest.

Richards Oil Company/Dayton's, 4/16/86, RF70–29.

The DOE issued a Decision and Order granting a refund in the Richards Oil Company special refund proceeding to a firm which had been identified by the Economic Regulatory Administration as having sustained overcharges alleged in the ERA's audit of Richards' sales of No. 2 fuel oil and Nos. 4, 5, and 6 residual fuel oil. The claimant's Application for Refund adequately demonstrated that it was injured by the alleged overcharges. The total amount of the refund granted in the Decision was $8,219, representing $5,819 in principal and $3,400 in interest.

Gulf Oil Corp., Township of Randolph et al., 4/17/86, RF40–1117 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 85 end-users of petroleum products purchased indirectly from Gulf Oil Corporation. In accordance with the procedures established in the Gulf Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on its purchase volumes of Gulf products during the consent order period. The total amount of refunds approved in this Decision is $16,630 ($13,994 principal plus $2,636 interest).

Gulf Oil Corporation/Region Oil Co. Inc., et al., 4/15/86, RF40–828, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by retailers and resellers of Gulf covered refined petroleum products. In accordance with the procedures established in the Gulf special refund proceeding, the DOE determined that each applicant should receive a refund based on its purchase volumes of Gulf products during the consent order period. The refunds granted in this decision total $78,777.

Little America Refining Company/Moyle Petroleum, 4/17/86, RF112–119.

The DOE issued a Decision and Order concerning an Application for Refund filed by Moyle Petroleum, a purchaser and reseller of products covered by a consent order the agency entered into with Little America Refining Company (Larco). Based on the principles established for evaluating Larco refund applications, the DOE concluded that the applicant was injured. Therefore, the DOE granted Moyle a refund of $17,428, representing its full volumetric share of $11,646 plus $5,782 in interest.

Little America Refining Company/Dunn Oil, et al., 4/17/86, FR112–93, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to four resellers of Larco covered products. All four firms elected to limit their refund claims to the small claims threshold level of $5,000, and were therefore not required to submit further evidence of injury. The refunds to these firms total $29,928, representing $20,000 in principal and $9,928 in interest.

The Parade Company/Gulf States Oil & Refining Company, 4/17/86, RF74–3.

Gulf States Oil & Refining Company (Gulf States) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with The Parade Company (Parade). The DOE found that Gulf States paid above-market average prices for butane and pentane during most of the months of 1976 and 1977 in which purchases were made during the consent order period. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Gulf States' competitive disadvantage. A refund of $52,324.98 was found to equitably compensate Gulf States for injury experienced as a result of Parade's alleged overcharges. In addition, the firm received accrued interest of $11,795.50 for a total refund of $64,122.48.

Dismissals

The following submissions were dismissed:

Name and case No.

Adkins Mid-Town Gulf, RF40–1308.
Almeda Gulf Service, RF40–3024.
Bannock Regional Medical Center, KEE–0029.
Barrett Gulf, RF40–1307.
Carolyn Park Gulf, RF40–1330.
Chronister Oil Company, RF40–130.
Coastal Refining & Marketing, RF180–7.
Commerce Gulf, RF40–1315.
Courtview Service Station, RF40–2985.
Danny's Gulf Service, RF40–221.
Donati's Auto Repair, RF40–1625.
E&M Tire Service Center, RF40–2980.
Fleming Garage, RF40–1732.
Fleuette's Automotive Service, RF40–1210.
Foulds, Inc., RF225–506.
Frank M. Speaks, Jr., RF215–6.
Gainsboro Oil Co., Trust, RF40–62.
Glen Ann Towing, RF40–1286.
Gogel's Gulf Service, RF40–1092.
Hall's Gulf Service, RF40–2502.
Homer's Gulf Service, RF40–1261.
Jack's Gulf Service, RF40–1283.
James Yingling Gulf, RF40–1293.
Lassalle Gas Co., Inc., RF40–502.
Leland Gulf & Grocery, RF40–1883.
Choate's Gulf Service, RF40–2278.
Mack-Miller Candle Co., Inc., RF225–513.
McCormick's Gas & Oil, RF46–47.
Modern Gas Co., Inc., RF40–1904.
Nick's Gulf Service, RF40–2984.
Schulte Oil Co., Inc., RF194–2.
Stepp Gulf, RF40–1303.
Swindle's Gulf, RF40–1262.
Wisconsin Electric Power Co., RF194–7.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
May 8, 1986.

[FR Doc. 86–10689 Filed 5–14–86; 8:45 am]
BILLING CODE 6750–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $20,985.53 obtained as a result of a Consent Order which the DOE entered into with Port Oil Company, Inc., a reseller-retailer of petroleum products located in Mobile, Alabama. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATES AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0153.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings

and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $20,965.53 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with Port Oil Company, Inc. (Port). The funds were provided to the DOE by Port to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through December 31, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order refunds should be distributed to firms and individuals that purchased Port motor gasoline during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of Port motor gasoline and to demonstrate that it was injured by Port's pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisifed. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 5, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 5, 1986.

Name of Firm. Port Oil Company, Inc.
Date of Filing: October 13, 1983
Case Number: HEF–0153

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Port Oil Company, Inc. (Port).

I. Background

Port is a "reseller-retailer" of refined petroleum products as the term was defined in 10 CFR 212.31 and is located in Mobile, Alabama. A DOE audit of Port's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and December 31, 1979, Port committed possible pricing violations amounting to $101,670.59 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Port and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Port and the DOE entered into a consent order on September 1, 1981 (modified on April 17, 1986). The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Port does not admit that it violated the regulations.

Under the terms of the consent order, Port was required, in a series of installments, to deposit $18,472.72, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Port made its final payment on February 23, 1983.[1]

[1] Port paid $20,965.53, including installment interest, into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Port escrow account stood at $29,499.98 as of March 31, 1986.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *See Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Port's pricing practices during the period April 1, 1979, through December 31, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Port refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Port's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions and findings which will be used to help determine the level of a purchaser's injury.

The presumptions and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficent way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of Port's sales of motor gasoline made during the consent order period. This presumption is called a volumetric method. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end

users, certain types of regulated firms, and cooperatives were injured by Port's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product covered by the consent order. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Port motor gasoline that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.002561 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accured interest.

The second presumption we plan to use is that purchasers of Port motor gasoline seeking small refunds were injured by the firm's pricing practices. Under this presumption, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of Port motor gasoline purchased if its refund claim is below $5,000. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm might make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that market conditions were the reason that it did not pass through those increased costs.[3]

A modification of the standard injury requirement is necessary in this proceeding because for 5½ months of the 9-month Port consent order period, retailers of motor gasoline were not required to computed MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29,546 (1989). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-marign approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 5½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered cost banks, would effectively eliminate all non-threshold retailer claimants for a portion of the consent order period. Therefore, in this proceeding, we will allow retailers which lack banks subsequent to July 16, 1979 to file a claim for a refund which exceeds $5,000.[4] However, like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e. g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes or competitive disadvantage.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been inuured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. Firms which made only spot purchases of Port motor gasoline will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured.

As noted above, we have concluded tht end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[6]

In addition, we propose that firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the motor gasoline overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Port's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should

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[2] This figure is computed by dividing the $20,965.53 received from Port by the 8,184,882 gallons of motor gasoline sold by the firm during the consent order period.

[3] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980, for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[4] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,085 at 88,017 n.1 (1982).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

[6] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE at 85.225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases of Port motor gasoline as well as all relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Port Oil Company, Inc. pursuant to the Consent Order executed on September 1, 1981, as modified on April 17, 1986, will be distributed in accordance with the foregoing decision.

[FR Doc. 86-10890 Filed 5-14-86; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementatation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $50,595 obtained as a result of a consent order which the DOE entered into with Petroleum Sales and Service, Inc. (PS&S), a reseller-retailer of refined petroleum products located in Buffalo, New York. The money is being held in escrow following the settlement of enforecement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the PS&S consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0151 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Petroleum Sales and Service, Inc. (PS&S) which settled all claims and disputes between PS&S and the DOE regarding the manner in which PS&S applied the federal price regulations with respect to its sales of motor gasoline during the period, April 1, 1979, through March 31, 1980 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the PS&S consent order funds was issued on March 13, 1986. 51 FR 38189 (March 20, 1986).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by PS&S pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals that purchased motor gasoline sold by PS&S during the consent order period. Eligible applicants downstream customers as well as first purchasers. In order to receive a refund, a claimant will be required to submit a schedule of its monthly purchases of PS&S motor gasoline and to demonstrate that it was injured by PS&S. pricing practices. A downstream purchaser must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by PS&S.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased motor gasoline sold by PS&S during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: May 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 2, 1986.

Name of Firm: Petrpleum Sales and Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0151.

Under the procedural regulations of the Department of Energy (DOE), the

Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Petroleum Sales and Service, Inc. (PS&S). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

PS&S is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Buffalo, New York. A DOE audit of PS&S's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and March 31, 1980, PS&S committed possible pricing violations amounting to $129,428 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between PS&S and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, PS&S and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges but notes that there was no finding that violations occurred. Additionally, the consent order states that PS&S does not admit that it violated the regulations.

Under the terms of the consent order, PS&S was required, in a series of installments, to deposit $59,595, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. PS&S avoided paying any installment interest by remitting the full sum on September 30, 1981.[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On March 13, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of PS&S's alleged violations in its sales of motor gasoline during the consent order period. 51 Fed. Reg. 38189 (March 20, 1986). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&O were sent to various petroleum dealers associations. Comments were submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the PS&S refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE at 85,055. Therefore, it would be premature for us to address the issues raised by the states' comments at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

III. Refunds to Identifiable Purchasers

In the first stage of the PS&S refund proceeding, we will distribute the funds currently in escrow to claimants that demonstrate that they were injured by the alleged overcharges. In order to be eligible to receive a refund, claimants will have to file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order funds.

In this case we will adopt two rebuttable presumptions as well as two findings regarding injury. These presumptions and findings have been used in many previous special refund cases. First, we will presume that purchasers of PS&S motor gasoline that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Second, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Third, we will make a finding that end-users or ultimate consumers of PS&S motor gasoline whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Lastly, we ill not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased PS&S motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&O. 51 FR 9715 at 9716–17 (March 20, 1986). These presumptions and findings will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

In the PD&O we stated that a demonstration of "banks" of unrecovered product costs, along with information regarding an applicant's competitive disadvantage in its local market, would generally be a sufficient showing of injury for reseller or retailer applicants claiming refunds above the $5,000 threshold.[2] *See, e.g., Triton Oil and Gas Corp./Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). As outlined in the PD&O, we will continue to use this requirement for non-threshold reseller applicants, but we will use a modified requirement for retailers.

A modification of the standard injury requirement is necessary because for 8½ months of the 12 month PS&S consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546(1980). Instead, effective July 16, 1979, a retailer

[1] The total value of the PS&S escrow account stood at $91,904.99 as of March 31, 1986.

[2] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

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was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 8⅓ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered cost banks, would effectively eliminate all non-threshold retailer claimants for a portion of the consent order period. Therefore, in this proceeding, we will allow retailers which lack banks subsequent to July 16, 1979 to file a claim for a refund which exceeds $5,000.[3] However, like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes, or competitive disadvantage.[4]

A. Calculation of Refund Amounts

We will use a volumetric method to determine the refunds of eligible applicants. This method presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline sold by PS&S during the consent order period. Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of PS&S motor gasoline that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.001074.[5] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have incurred a disproportionate share of the alleged overcharges. Any purchaser who can make a showing of disproportionate overcharge may file a refund application based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the PS&S consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased motor gasoline sold by PS&S between April 1, 1979, and March 31, 1980. Eligible applicants include downstream customers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its montly purchases of PS&S motor gasoline along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was a downstream purchaser it must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by PS&S.

(2) Whether the applicant has previously received a refund from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private action filed under § 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [of affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0151 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to Department of Energy by Petroleum Sales and Service, Inc. pursuant to the Consent Order executed on September 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: May 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–10891 Filed 5–14–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

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[3] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,006 at 88,017 n.1 (1982) (Tenneco).

[4] Resellers or retailers who claim a refund in excess of $5,000 but who do not seek to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,398. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

[5] This figure is computed by dividing the $59,585 received from PS&S by the 55,481,424 gallons of motor gasoline estimated to have been sold by the firm during the consent order period. The volume estimate was derived from data concerning PS&S's purchases of motor gasoline during the first six months of the consent order period. Since the firm has limited storage capacity, it is reasonable to assume that PS&S sales of motor gasoline were roughly equal to its purchases during a given period. After making this assumption, we then extrapolated from the six months data to arrive at a sales estimate for the entire consent order period.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $93,907.92 obtained as a result of a Consent Order which the DOE entered into with King and King Enterprises, Inc., a reseller-retailer of petroleum products located in Kansas City, Missouri. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0108.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $93,907.92 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with King and King Enterprises, Inc. (K&K). The funds were provided to the DOE by K&K to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period March 1, 1979, through June 30, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to the ten first purchasers identified in the ERA audit file. In order to obtain a refund, each of these claimants will be required to submit a schedule of its monthly purchases of motor gasoline from K&K or to submit a statement verifying that it purchased motor gasoline from K&K and is willing to rely on the data in the audit file. In addition, Applications for Refund will be accepted from purchasers not identified by the ERA audit. Unidentified customers that bought directly from K&K will be required to provide schedules of their monthly purchases during the consent order period. An indirect purchaser will also be required to provide the name of the firm from which the purchase was made as well as the reason why it believes the motor gasoline was initially sold by K&K. All claimants, whether identified or unidentified, will have to demonstrate that they were injured by K&K's pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 1, 1986.

Name of Firm: King and King Enterprises, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0108.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with King and King Enterprises, Inc. (K&K).

I. Background

K&K is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Kansas City, Missouri. A DOE audit of K&K's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. A Notice of Probable Violation (NOPV) issued by ERA on September 29, 1980, alleged that between March 1, 1979, and June 30, 1979, K&K committed possible pricing violations amounting to $507,237.16 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between K&K and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, K&K and the DOE entered into a consent order on August 31, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there were no finding that violations occurred. Additionally, the consent order states that K&K does not admit that it violated the regulations.

Under the terms of the consent order, K&K was required, in a series of installments, to deposit $81,934.56, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. K&K made its final payment on August 18, 1983. This decision concerns the distribution of the funds inthe escrow account, including accrued interest.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identity readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (181) (*Vickers*).

[1] K&K paid $93,907.92, including installment interest, into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the K&K account stood at $130,721.28 as of March 31, 1986.

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by K&K's pricing practices between March 1, 1979, and June 30, 1979. In any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,040 (1982) *(Amoco).*

A. Refunds to Identified Purchasers

In order to recompense parties who were injured as a result of the alleged violations of the DOE regulations, we will rely in part upon the information developed by the ERA in its aduit of K&K. *See, e.g., Marion Corp.* 12 DOE ¶ 85,014 (1984) *(Marion).* With this type of material, a reasonably precise determination can be made as to the identity of possibly overcharged parties and the level of any overcharges.

During the DOE's audit of K&K, ten first purchaser-customers of the firm were identified as having been allegedly ovecharged. ERA also alleged ovecharges to other, unidentified customers. As in previous cases of this type, we propose that the funds in the escrow account be apportioned among (i) the first purchasers identified by the audit which adequately demonstrate that they were injured by the alleged overcharges, (ii) other injured first purchasers, and (iii) subsequent repurchasers that can also show injury. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Richards Oil Company,* 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in the Appendix to this Decision.

We plan to adopt certain presumptions and findings regarding injury which will allow claimants to participate in the refund process without incurring inordinate expenses and which will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we propose to adopt a presumption of injury with respect to small claims. Second, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Third, we plan to use a volumetric presumption for applicants not identified by ERA. Finally, we are making proposed fundings that end users, certain types of regulated firms, and cooperatives were injured by K&K's pricing practices. The volumetric and spot purchaser presumptions as well as the three findings will be discussed below in Section II.

Under the small-claims presumption, if a refund claim is below a certain sum, a reseller- or retailer-claimant will not be required to making a showing of injury other than evidence of the volumes of K&K motor gasoline which it purchased. In this case, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.* 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel,* 11 DOE ¶ 85,226 (1984) *(Conoco),* and cases cited therein. The record in this proceeding indicates that eight of the ten identified customers made small purchases.

A reseller or retailer which claims a refund of more than $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that market conditions were the reason that it did not pass through those increased costs.[4]

We propose to distribute a portion of the escrow funds to the firms listed in the Appendix to this Decision, provided that they file Applications for Refund and make any necessary demonstrations of injury.[5] Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds.[6]

B. Refunds to Unidentified Purchasers

As noted above, this Decision concerns the distribution of the entire $03,997.92 that K&K deposited into the escrow account, plus accrued interest to date. Since the settlement amounts tentatively allotted to identified purchasers total only $23,883.59, the remaining portion of the K&K consent order funds may be distributed among first purchasers other than those identified by the ERA audit as well as to subsequent repurchasers that may have been injured by the alleged overcharges. To assist potential claimants in deciding whether to apply for a refund, we propose to use the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges allotted to unidentified purchasers were dispersed equally among all sales of motor gasoline made by K&K to those customers during the consent order period. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any pruchaser may file a refund application based on a claim that it incurred a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon & Gasoline, Co., and Richardson Products Co. Siouxland Propane Co.,* 12 DOE § 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric method we plan to adopt, a claimant that was not identified by the ERA audit will be eligible to apply for a refund equal to the number of gallons of K&K motor gasoline that it purchased times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.010441 per gallon.[8] In addition, successful claimants will receive a proportionate share of the accrued interest.

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's

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[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,069 at 88,122 (1982) (Ada).

[4] One of the firms listed in the Appendix is itself involved in an enforcement proceeding with the DOE. On October 29, 1982, the ERA issued a Proposed Remedial Order (PRO) alleging overcharges by Highway Oil, Inc. on its sales of motor gasoline during the period November 1973 through April 1974. The alleged overcharges specified in the PRO totaled $2,808,430.56, including interest through September 1982. We may delay granting a refund to Highway until the issues underlying this enforcement proceeding are resolved.

[5] The share of the K&K escrow fund allocated to each firm listed in the Appendix represents 16.15 percent of the amount each was allegedly overcharged plus its proportionate share of the installment interest paid by K&K. This is consistent with the terms of the K&K consent order which settled for 16.15 percent of the total amount of overcharges alleged in the NOPV. However, purchasers identified in th ERA audit as having allegedly been overcharged may attempt to show that they should receive refunds larger than those indicated.

[6] This per gallon factor is computed by dividing the $70,344.23 available for distribution to unidentified purchasers by the 6,737,516 gallons of motor gasoline which K&K sold to those customers during the consent order period.

product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85, 396–97. Firms which made only spot purchases of K&K motor gasoline will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and stablishes the extent to which they were injured.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.*

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or that operate under the terms of a cooperative agreement not be required to demonstrate that they absorbed the motor gasoline overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of K&K's alleged violations of the DOE regulations would routinely be passed through to their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money.

* If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

C. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant identified by ERA must submit either a schedule of its monthly purchases of motor gasoline from K&K during the consent order period or a statement verifying that it purchased motor gasoline from K&K and is willing to rely on the data in the audit file. A purchaser not identified by the ERA audit will be required to provide specific information as to the date, place, and volume of motor gasoline purchased as well as the name of the firm from which the purchase was made. All applicants, whether identified or unidentified, should also provide all relevant information necessary to support their claims in accordance with the presumptions and findings outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* CFR 205.9(d).

D. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any funds remaining in the escrow account until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by King and King Enterprises, Inc. pursuant to the Consent Order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

APPENDIX—FIRST PURCHASERS

First purchaser	Share of settlement*
D&D Oil, 9524 Antioch, Overland Park, KS 66212	$104.21
EA-ZEE, 406 S. Main, Gardner, KS 66030	895.24
Flaca Oil, Post Office Box 3363, Kansas City, KAS 66103	404.99
Graves Truck, 4310 S. Jackson, Tulsa, OK 75222	45.00
Highway Oil, Inc., First National Bank Building, 12th Floor, Topeka, KS 66603	9,013.97
Mica Oil, Post Office Box 2433, Shawnee Mission, KS 66201	580.25
Petroleum Trading and Transport Co., 616 Philtower Building, Tulsa, OK 74103	8,952.39
Quick Trip, Post Office Box 3475, Tulsa, OK 74107	206.05
United Oil, 9405 W. 108th, Overland Park, KS 66212	2,630.66
Walker Oil, 222 W. Gregory, Kansas City, MO 64114	551.83

* Not including interest which has accrued on the escrow account.

[FR Doc. 86–10682 Filed 5–14–86; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3016–4]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for public hearing.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it

has adopted regulations which set forth exhaust emission standards and enforcement procedures for new modifier certified motor vehicles. These regulations pertain to "grey market" passenger cars, light-duty trucks and medium-duty vehicles. California has requested EPA to determine that these regulations are within the scope of previous waivers granted to California pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). However, EPA considers these regulations to be new standards and test procedures and, hence, the proper subject of a full waiver determination. This notice announces that EPA has tentatively scheduled a public hearing for June 12, 1986, to consider CARB's request and to hear comments from interested parties regarding CARB's regulations. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by June 5, 1986. If no party informs EPA that it wishes to testify on these modifier certified regulations, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA will hold a public hearing on June 12, 1986, beginning at 9:00 a.m., if any party notifies EPA by June 5, 1986, that it wishes to present oral testimony regarding CARB's requests. Any party may submit written comments regarding CARB's requests by July 7, 1986. It is EPA policy to consider late comments if time permits.

ADDRESSES: EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), Nevada room, 215 Fremont Street, San Francisco, California. Parties wishing to present oral testimony at the public hearing should notify in writing: Charles N. Freed, Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Any party may also submit written comments regarding the waiver request to the same address to the attention of the Docket EN-86-15. Copies of material relevant to the waiver request (Docket EN-86-15) will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Attorney/Advisor, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2529.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act, as amended, 42 U.S.C. 7543(a), provides in part: "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part . . . [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent . . . to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that [its] . . . standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards . . . [unless] the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such . . . standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving a further waiver of Federal preemption. If California acts to amend previously waived emission standards or accompanying enforcement procedures, the change may be considered to be within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with respect to section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.

By a letter dated March 28, 1986, CARB submitted to EPA a request for a determination that certain regulations are within the scope of previous waivers of Federal preemption. These regulations include the adoption of a new Section 1904 of Title 13 of the California Administrative Code—Special Test Procedures for Certification and Compliance—New Modifier Certified Motor Vehicles ("Modifier Certification Procedures"). These regulations apply to the California certification of all passenger cars, light-duty trucks, and medium-duty vehicles manufactured outside the United States which are subsequently modified to meet California motor vehicle emission standards by independent commercial importers.

The Modifier Certification Procedures incorporate, with significant revisions, California's existing certification program applicable to original equipment manufacturers. Specifically, the regulations:

(1) Require modifiers to demonstrate that the modified vehicles meet California emission standards and minimum requirements for durability, driveability and configuration control;

(2) require modifiers to warrant emission controls and be responsible for parts availability, repair stations and recall program administration as necessary;

(3) require modifiers to demonstrate financial responsibility by posting a $1,000 bond per vehicle or provide recall insurance with a minimum of $3,000 liability per vehicle;

(4) provide for assembly-line testing, confirmatory testing, engine compartment labelling, fuel fill pipes and openings, new and used dealership inspections, defect reporting and in-use vehicle enforcement testing.

California states in its March 28, 1986 letter that it has determined that these amendments do not undermine its determination that its standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards since these amendments do not change California exhaust emission standards. Further, California states that these amendments are consistent with section 202(a) of the Act. Finally, California states that the amendments raise no new issues affecting previous waiver decisions. However, EPA believes that by extending California's emission standards and enforcement procedures to grey market vehicles not previously covered, these regulations do raise significant new issues not considered in prior waiver decisions. California's new regulations establish new standards and enforcement procedures for modifier certified new motor vehicles.

Since EPA believes California's request should be considered according to the requirements for a full waiver

determination, an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file 10 copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the address listed above not later than June 5, 1986. In addition, the party should submit 25 copies, if feasible, of the proposed statement to the Presiding Officer at the time of the hearing.

Since a public hearing is designated to give interested persons an opportunity to participate in this proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statements of any witness.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. I will base my determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and consider other pertinent information. This information will be available for public inspection at the EPA Central Docket Section.

Dated: May 2, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-10943 Filed 5-14-86; 8:45 am]

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[Docket Nos. A-79-28, A-82-37, A-84-25; ORD-FRL-3016-2]

Draft Addendum to The EPA Criteria Document: Air Quality Criteria For Particulate Matter and Sulfur Oxides

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a workshop to be held by EPA's Environmental Criteria and Assessment Office at the Environmental Research Center, Research Triangle Park, Carolina, to facilitate preparation of an external review draft of an addendum to the health effects chapters of the criteria document, *Air Quality Criteria for Particulate Matter and Sulfur Oxides* (EPA-600/8-82-029aF, bF, cF).

DATES: The workshop will be held on May 22 and 23, 1986, from 8:30 a.m. to 5:30 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Dennis J. Kotchmar, M.D., Project Manager for the Particulate Matter/Sulfur Oxides Addendum, Environmental Criteria and Assessment Office, MD-52, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (919) 541-4158 [FTS 629-4158]. The project manager should also be contacted by those persons who wish to attend the workshop.

SUPPLEMENTARY INFORMATION: In 1982, EPA's Environmental Criteria and Assessment Office (ECAO) completed preparation of a revised criteria document, *Air Quality Criteria for Particulate Matter and Sulfur Oxides* (EPA-600/8-82-029aF, bF, and cF). In that same year, EPA's Office of Air Quality Planning and Standards completed preparation of staff papers to assess the implications of the revised criteria for the review, and possible revision, of the national ambient air quality standards for particulate matter (EPA-450/5-82-001) and for sulfur oxides (EPA-450/5-82-007). On March 20, 1984 (49 FR 10408), EPA proposed revisions of the particulate matter standard and formally issued the criteria document.

On April 1, 1986 (51 FR 11058), EPA announced plans to prepare addenda to the criteria document and the staff papers. The addendum to the criteria document will summarize pertinent health effects studies that have been published since the completion of the document in 1982. The addenda to the staff papers will assess the implications, if any, of these studies for the national ambient air quality standards.

ECAO is now assembling a panel of authors and contributors, EPA personnel, and other scientifically and technically qualified persons to review a draft of the addendum to the criteria document at the workshop. Copies of the workshop draft of the addendum will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft addendum subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the first external review draft. The public comment period will be announced in a subsequent **Federal Register** notice.

Detailed notes of the meeting will be kept by EPA. These notes and any other materials provided for or produced collectively at the meeting will be included in the rulemaking docket established for particulate matter (A-82-37) and in the review docket (A-79-28) and the rulemaking docket (A-84-25) established for sulfur oxides. The dockets are available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m. at EPA headquarters in the Central Docket Section (A-130), Gallery 1, West Tower, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Dated: May 7, 1986.

Donald J. Ehreth,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-10044 Filed 5-14-86; 8:45 am]

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[Docket No. PF-456; FRL-3016-5]

Pesticide Tolerance Petitions; Mobay Chemical Corp. and Pennwalt Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-456] and the petition number, attention Product Manager (PM-16), at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holiday.

FOR FURTHER INFORMATION CONTACT: By mail:

William Miller (PM–16), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number:

Room 211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3402.* Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR 180.320 by reducing the established tolerances for the combined residues of the insecticide/bird repellent 3,5-dimethyl-4-(methylthio) phenyl methylcabamate and its cholinesterase-inhibiting metabolites in or on the commodities blueberries and cherries from 25.0 parts per million (ppm) to 5.0 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure utilizing a flame photometric detector operated in the sulfur mode.

2. *PP 6F3399.* Pennwalt Corp., Three Parkway, Room 619, Philadelphia, PA 19102. Proposes to amend 40 CFR Part 100 by establishing exemptions from the requirement of a tolerance for residues of the insecticides fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the following commodities: apples, apricots, beans, beets (with or without tops) or beet greens alone, blackberries, blueberries (huckleberries), boysenberries, broccoli, brussels sprouts, cabbage, carrots, cauliflower, citrus fruits, corn, collards, cranberries, cucumbers, dewberries, eggplants, grapes, kale, kohlrabi, lettuce, loganberries, melons, mustard greens, nectarines, okra, peaches, peanuts, pears, peas, peppers, plums (fresh prunes), potatoes, pumpkins, quinces, radishes (with or without tops) or radish tops, raspberries, rutabagas (with or without tops) or rutabaga tops, squash, strawberries, summer squash, tomatoes, turnips (with or without tops) or turnip greens, and youngberries.

The proposed analytical method for determining residues is an ammonium hydryide reflex method employing a floride specific ion.

Authority: 21 U.S.C. 346a.

Dated: May 9, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Progams.

[FR Doc. 86–10939 Filed 5–14–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 86–181]

Common Carrier Bureau; Midyear 1986 Access Tariff Filings

AGENCY: Federal Communications Commission.

ACTION: Order designating issues for investigation.

SUMMARY: This action establishes an investigation of the National Exchange Carrier Association's (NECA) proposed carrier common line rates which were filed as NECA's Tariff F.C.C. No. 1, Transmittal No. 122, on April 1, 1986, to be effective June 1, 1986. This action also establishes a procedural schedule for this investigation.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Tariff Division, (202)–632–6387.

SUPPLEMENTARY INFORMATION: This is an initiation of an investigation of NECA's midyear 1986 access tariff filings, CC Docket No. 86–181, adopted May 2, 1986, and released May 2, 1986.

The full text of the Bureau's Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Designation Order

Pending before the Commission are the latest set of access tariff revisions, filed pursuant to the Commission's Order in CC Docket No. 85–385 Revision of Part 69 of the Commission's Rules and Regulations, FCC 86–70, released February 6, 1986, as implemented in the Common Carrier Bureau's Order, Midyear 1986 Access Tariff Filings, Mimeo No. 3414, released March 26, 1986.

By this Designation Order, the Bureau has initiated an investigation of NECA's tariff revisions regarding its carrier common line rates to determine if they are reasonable before June 1, 1986 effective date.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–10959 Filed 5–14–86; 8:45 am]

BILLING CODE 6712–01–M

[FCC 86–224]

Midyear 1986 Access Tariff Filings; Memorandum Opinion and Order

Adopted: May 1, 1986.
Released: May 2, 1986.
By the Commission.

1. Initial review of the access tariff transmittals and rates filed by the local exchange carriers on April 1, 1986 to be effective June 1, 1986 indicates that some rates, terms, and conditions may be unreasonable or in conflict with Commission Rules and Orders. Because of the importance of these filings to the public and to long distance carriers, we anticipate that investigatory and other proceedings to correct the tariffs may be necessary. Because of the limited time available before the June 1 effective date, however, it is important that any

such proceedings be initiated and concluded promptly, so far as possible before June 1.

2. For these reasons, and in light of the fact that the issues involved are largely ones of compliance with Commission Orders and the review of individual rates; we hereby delegate authority to the Chief, Common Carrier Bureau, to designate for hearing and issue reports or Orders with respect to all issues presented by the access tariff transmittals filed by or on behalf of the local exchange carrier to be effective June 1, 1986, including amendments or additions thereto. Any conclusions reached concerning the access tariffs will directly affect the reasonableness of the pending MTS and WATS rate revisions filed by AT&T Communications in its Transmittal No. 804, also effective June 1. Therefore, our delegation of authority also includes this transmittal, any amendments or additions thereto, and the pending investigation of AT&T's WATS rates in CC Docket No. 85–81.[1] This action is taken pursuant to § 1.1 and 0.201 et seq. of the Commission's Rules, 47 CFR 1.1 and 0.201 et seq.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–10956 Filed 5–14–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010926.

Title: Long Beach Container Terminal, Inc./Orient Overseas Container Line, Inc.

Parties:

Long Beach Container Terminal, Inc. (LBCT)

Orient Overseas Container Line, Inc. (Carrier)

Synopsis: The proposed agreement would permit LBCT to provide container terminal stevedoring services at its terminal facility located in the Port of Long Beach for containers to be loaded onto or discharged from cellular container vessels owner, operated, chartered or controlled by the Carrier in the trade between Far East Ports and the Port of Long Beach.

Agreement No.: 224–010927.

Title: Long Beach Container Terminal, Inc./Neptune Orient Lines Terminal Agreement

Parties:

Long Beach Container Terminal, Inc. (LBCT)

Neptune Orient Lines, Ltd. (NOL)

Synopsis: The proposed agreement would permit LBCT to provide container terminal stevedoring services at its terminal facility located in the Port of Long Beach for containers to be loaded onto or discharged from cellular container vessels owner, operated, chartered or controlled by NOL in the trade between Far East Ports and the Port of Long Beach.

Agreement No.: 224–010928.

Title: Long Beach Container Terminal, Inc./Yamashita-Shinnihon Steamship Co., Ltd.

Parties:

Long Beach Container Terminal, Inc. (LBCT)

Yamashita-Shinnihon Steamship Co., Ltd. (Carrier)

Synopsis: The proposed agreement would permit LBCT to provide container terminal stevedoring services at its terminal facility located in the Port of Long Beach for containers to be loaded onto or discharged from cellular container vessels owner, operated, chartered or controlled by the Carrier in the trade between Far East Ports and the Port of Long Beach.

Dated: May 12, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86–10946 Filed 5–14–86; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010929

Title: Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (Port)

Yang Ming Marine Transport Ltd. (Yang Ming)

Synopsis: The proposed agreement would accomplish the relocation of Yang Ming from its current premises operated by the Overseas Terminal Company to an operating area within and adjacent to the Indies Terminal. The parties have requested a shortened review period.

Agreement No.: 224–010930

Title: Port of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles Harbor Department (City)

Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would establish a nonexclusive preferential assignment arrangement whereby the City would provide SSA an nonexclusive lease of three Port cranes. The crane assignment would require SSA to pay the City $87,780 per year for each crane for up to 3000 hours of use. For each additional hour of use, SSA would pay the City 75 percent of the Port of Los Angeles tariff rate for cranes. The crane assignment will terminate July 31, 1989. The parties have requested a shortened review period.

Agreement No.: 217–010731–001

Title: Sea-Land Service/United Arab Shipping Co. Space Charter Agreement

Parties:

Sea-Land Service, Inc. (Sea-Land)

United Arab Shipping Company (UASA

Synopsis: The proposed amendment would change the allocation of spaces

[1] Because this delegation of authority is intended only to allow necessary action before the schedule June 1 effective dates of the tariffs, delegation of authority to act in CC Docket No. 85–81 is granted only up to June 1, 1986.

UASC agrees to make available to Sea-Land from a guaranteed number per annum to a fixed number per vessel sailing in each direction. It would also permit the parties to interchange equipment and would clarify the scope of the agreement as it pertains to certain foreign-to-foreign movements.

Dated: May 12, 1986.

By order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-10978 Filed 5-14-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Hans H. Alexander, 17 Battery Place North, 21st Floor, New York, NY 10004

Air-Sea International, Inc., 8432 Sterling, Suite 102, Irving, TX 75063

Officers: Bradley S. Clemens, Gary F. Glanton, Bettie Sue Hines

H & K Transportation, Inc., 4415 Highline Blvd., Suite 206, Oklahoma City, OK 73108

Officers: Clifford Randal Honeycutt, President; Elizabeth Ann Honeycutt, Secretary; Gary Max Kimray, Treasurer/Vice President

Kilo Freight, Inc., 200 Lake View Drive, # 201, Ft. Lauderdale, FL 33326

Officers: Dr. Hilario V. Guanipa, President/Director; Jenny G. Salazar, Secretary/Treasurer/Director

Teresa H. Kuwahara, 601 W. Fifth Street, M100, Los Angeles, CA 90071

Vextrac-Virginia Export Trading Company, 600 World Trade Center, Norfolk, VA 23510

Officers: Robert H. Spilman, Chairman; Frank W. Kellam, Vice Chairman; J. Robert Bray, President; J. Stanley Payne, Secretary/Treasurer

AABE Forwarding, Inc., 3110 Via Mondo, Rancho Dominguez, CA 90221

Officers: John Cardwell, President

George Chia-Chu Cheng, 220A W. Norwood Place, San Gabriel, CA 91776

ERC International Forwarders, 2330 W. Temple Street, Suite C, Los Angeles, CA 90026

Partners: Generoso R. Calderon, Estelita Navarro

Anchor Shipping Crop., 424 Beach Avenue, Bronx, NY 10473

Officers: Victor Cruz, Jr., President/Chairman; Elizabeth F. Cruz, Secretary/Treasurer

Dated: May 12, 1986.

By the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-10946 Filed 5-14-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1353
Name: Eastern Forwarding, International, Inc.
Address: 29 Livingston Ave., Edison, NJ 08820
Date Revoked: April 17, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2494
Name: All Countries Forwarding, Inc.
Address: 3635 Westheimer St., #301, Houston, TX 77027
Date Revoked: April 18, 1986
Reason: Failed to maintain a valid surety bond

License Number: 155
Name: Block Overseas Shipping Co., Ltd.
Address: 15 Park Row, New York, NY 10038
Date Revoked: April 25, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2106
Name: Eduardo Ubaldo Lopez dba Federal Freight Forwarders
Address: 1606 SW. 101st Avenue, Miami, FL 33165
Date Revoked: April 30, 1986
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-10947 Filed 5-14-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Harco Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Harco Bankshares, Inc.*, Harlan, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the Harlan National Bank, Harlan, Kentucky.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bankers' Bancorp of Illinois*, Springfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Bankers' Bank of Illinois, Springfield, Illinois, a *de novo* bank.

2. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana; to acquire 100 percent of the voting shares of First Union Bank and Trust, Winamac, Indiana. Comments on this application must be received not later than June 2, 1986.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancorp of Mississippi, Inc.*, Tupelo, Mississippi; to acquire at least

7.76 percent of the voting shares of First Mississippi National Corporation, Hattiesburg, Mississippi, and thereby indirectly acquire shares of First Mississippi National Bank, Hattiesburg, Mississippi.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Verde Valley Bancorp, Inc.*, Cottonwood, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Verde Valley, Cottonwood, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 12, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-10975 Filed 5-14-86; 8:45 am]

BILLING CODE 6210-01-M

MCorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting woud be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 6, 1986.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas; to acquire Ecom Systems, Incorporated, Memphis, Tennessee, and thereby engage in the activity of providing to others financially related data processing and data transmission services, facilities, and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *MCorp Financial Inc.*, Wilmington, Delaware; to acquire Ecom Systems, Incorporated, Memphis, Tennessee, and thereby engage in the activity of providing to others financially related data processing and data transmission services, facilities, and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10899 Filed 5-14-86; 8:45 am]

BILLING CODE 6210-01-M

Resource Companies, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1986.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Resource Companies, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary Resource Capital Advisers, Inc., Minneapolis, Minnesota, in providing continuous and individualized management of investment portfolios including equities, bonds, and short-term investments pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10900 Filed 5-14-86; 8:45 am]

BILLING CODE 6210-01-M

Suburban Bancorp. Inc., et al.; Formations of, Acquisitions, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Suburban Bancorp, Inc.*, Palatine, Illinois; to acquire 100 percent of the voting shares of Marengo State Bank, Marengo, Illinois.

2. *Suburban Bancorp, Inc.*, Palatine, Illinois; to acquire 95 percent or more of the voting shares of West Brook Bank, Westchester, Illinois.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Smith Associated Banking Corporation*, Little Rock, Arkansas; to acquire at least 98 percent of the voting shares of Stephens Security Bank, Stephens, Arkansas.

Board of Governors of the Federal Reserve System, May 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10901 Filed 5-14-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Procurement Activities; Information Collection

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3507 (1982) and 5 CFR 1320.12 (1982) and 5 CFR 1320.12 (1985) for clearance of the information collection aspects of FTC procurement activities.

SUMMARY: Under the Code of Federal Regulations (Title 41–Public Contracts and Property Management), the FTC is required to solicit information from the private business community regarding certain planned procurement actions. Information is submitted in response to Invitations for Bids, Requests for Proposals, and Requests for Quotations. The responses generally include pricing and technical approach plans and information regarding the offeror's previous experience and related business data addressing its ability to perform the proposed work. The Commission is seeking a three-year extension of the existing OMB clearance (Control No. 3084–0047) for the information collection requests made in the procurement of necessary goods and services. The FTC has issued no procurement regulations or forms of its own. It uses government-wide procurement procedures that are estimated to involve 1,000 burden hours annually.

DATE: Comments on this application must be submitted on or before June 16, 1986.

ADDRESS: Send comments to Mr. Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert S. Walton III, Office of Procurement and Contracts, Federal Trade Commission, Washington, DC 20580, (202) 523–5552.

Dated: May 9, 1986.

Marcy J.K. Tiffany,

Acting General Counsel.

[FR Doc. 86-10980 Filed 5-14-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Initial Review Committees; Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2, sec. 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Date and Time: June 2–3: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue NW, Washington, DC 2007.

Status of Meeting: Open—June 2: 9:00–11:00 a.m. Closed—Otherwise.

Contact: Walter T. Schaffer, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee.

Date and Time: June 2–3: 9:00 a.m.

Place: Linden Hill Hotel, Pinehurst Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Status of Meeting: Open—June 2: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Betty Russell, Room 9C15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alchohol Biomedical Research Review Committee.

Date and Time: June 2–3: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue, N.W., Washington, DC 20007.

Status of Meeting: Open—June 2: 9:00–11:00 a.m. Closed—Otherwise.

Contact: Mark R. Green, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Research Scientist Development Review Committee.

Date and Time: June 4–5: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Status of Meeting: Open—June 4: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Linda Rainey, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee.

Date and Time: June 5–6: 9:00 a.m.

Place: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting: Open—June 4: 9:00–10:30 a.m. Closed—Otherwise.

Contact: Jean Byrne, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee.

Date and Time: June 10–13: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Status of Meeting: Open—June 10: 9:00–9:30 a.m. Closed—Otherwise.

Contact: Daniel L. Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Services Research Subcommittee of the Epidemiologic and Services Research Review Committee.

Date and Time: June 11–13: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Status of Meeting: Open—June 11: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopathology and Clinical Biology Research Review Committee.

Date and Time: June 11–13: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut, Washington, DC 20008.

Status of Meeting: Open—June 11: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Emilie A. Embrey, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute for support of activities in the fields or research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee.

Date and Time: June 11–13: 9:15 a.m.

Place: Dupont Plaza Hotel, Dupont Circle, 1500 New Hampshire Avenue NW, Washington, DC 20009.

Status of Meeting: Open—June 11: 9:15–10:30 a.m. Closed—Otherwise.

Contact: Peg Lyons, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3907.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Basic Behavioral Processes Research Review Committee.

Date and Time: June 12: 9:00 a.m.

Place: The State Plaza Hotel, 2117 E Street NW, Washington, DC 20037.

Status of Meeting: Open—June 12: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Shirley Maltz, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee.

Date and Time: June 12–13: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue NW, Washington, DC 20007.

Status of Meeting: Open—June 12: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Doris East, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee.

Date and Time: June 12–14: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue, N.W., Washington, DC 20007.

Status of Meeting: OPEN—June 12: 9:00–10:00 a.m. CLOSED—Otherwise.

Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychological Sciences Subcommittee of the Mental Health Research Education Review Committee.

Date and Time: June 12–13: 9:00 a.m.

Place: Georgetown Marbury House, Stafford Sheffield Room, 3000 Wisconsin Avenue NW, Washington, DC 20036.

Status of Meeting: Open—June 12: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Sandra Buckhalter, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of personality, emotion, cognition, and related higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee.

Date and Time: June 12–13: 9:00 a.m.

Place: Dupont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, DC 20036.

Status of Meeting: Open—June 12: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Maureen Eister, Room 9C02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neurobehavioral Research Subcommittee of the Neurosciences Research Review Committee.

Date and Time: June 12–14: 8:30 a.m.

Place: Washington Marriott Hotel, 22nd & M Streets, N.W., Washington, DC 20037.

Status of Meeting: Open—June 12: 8:30. a.m. 9:30 a.m. Closed—Otherwise.

Contact: Lynn Warwick, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Basic Psychopharmacology Research Subcommittee of the Neurosciences Research Review Committee.

Date and Time: June 12–14: 8:30 a.m.

Place: Washington Marriott Hotel, 22nd & M Streets, N.W., Washington, DC 20037.

Status of Meeting: Open—June 12: 8:30–9:30 a.m. Closed—Otherwise.

Contact: Lynn Warwick, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee.

Date and Time: June 12–14: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting: Open—June 12: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Dorothy Tengood, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee.

Date and Time: June 16–18: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue, N.W., Washington, DC 20007.

Status of Meeting: Open—June 16: 9:00–10:30 a.m. Closed—Otherwise.

Contact: Mary L. Ganikos, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Epidemiologic Research Subcommittee of the Epidemiologic and Service Research Review Committee.

Date and Time: June 16–18: 5:00 p.m.

Place: Hyatt Pittsburgh, 112 Washington Place, Pittsburgh, Pennsylvania 15219.

Status of Meeting: Open—June 16: 5:00–6:00 p.m. Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.

Date and Time: June 19–20: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue, N.W., Washington, DC 20007.

Statue of Meeting: Open—June 19: 9:00–9:30 a.m. Closed—Otherwise.

Contact: Laura Weinstein, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications

for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: National Advisory Mental Health Council

Date and Time: June 20: 9:00 a.m.

Place: Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockville, Maryland 20857.

Status of Meeting: Open—June 20: 9:00–9:30 a.m. Closed—Otherwise.

Contact: Rachel Driver, Parklawn Building, Room 90105, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aids relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Mental Health Small Grant Review Committee.

Date and Time: June 20–21: 9:30 a.m.

Place: Canterbury Hotel 1733 N Street, N.W., Washington, DC 20036.

Status of Meeting: Open—June 20: 9:30–10:30 a.m. Closed—Otherwise.

Contact: Barbara McCracken, Room, 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Committee Name: Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee.

Date and Time: June 30: 9:00 a.m.

Place: Holiday Inn Capitol, 550 C Street, S.W., Washington, DC 20024.

Statue of Meeting: Open—June 30: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Mary Kielkopf, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 433–1644. NIMH: Ms. Helen Garrett, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: May 9, 1986.

[redacted] L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–10922 Filed 5–14–86; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Demonstration of Effectiveness of Injury Control Interventions; Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC), announces that competitive cooperative agreement applications are being accepted for Demonstration of Effectiveness of Injury Control Interventions. The Catalog of Federal Domestic Assistance number is being applied for.

Program Objective

The purpose of each cooperative agreement is to demonstrate, using epidemiologic methods, that an ongoing injury control program or intervention has a measurable beneficial effect on the (a) the incidence of the injury, or (b) the severity of the injury, or (c) recovery from the injury, or (d) the cost of the injury, or (e) exposure to injurious agents.

Applicants are encouraged to coordinate all activities with State and/or local health officials.

The cooperative activities will be performed using existing data sets; new data will not be generated, and new interventions will not be started.

The cooperative agreement is not intended to assist an agency or institution study the effectiveness of a hospital-based surgical or medical treatment for a specific type of injury. However, pre-hospital emergency trauma care, including a community trauma care system or components thereof, may be considered for study.

Authority

The legislative authority for these Cooperative Agreements is Section 301 of the Public Health Service Act.

Eligibility Requirements

Eligible applicants include public and private nonprofit organizations. Thus, State and local governments, U.S. Territories, the Commonwealth of Puerto Rico, the District of Columbia, universities, colleges, and research institutions may apply for these cooperative agreements.

Availability of Funds

It is expected that approximately $88,000 will be available in Fiscal Year 1986 to fund up to four (4) cooperative agreements, ranging in value from $15,000 to $35,000. The project(s) will be for a one-year period.

Type of Assistance

The award(s) resulting from this announcement will be a Cooperative Agreement(s). Cooperative activities of the recipient are:

1. Identify, collect, edit, sort, and link, if necessary, appropriate data sources on:

a. injury outcomes, e.g. severity or incidence of injury of interest;

b. exposure to the injurious agent(s) of interest, e.g. motor vehicle crashes, fires;

c. individuals or populations to which the intervention has and has not been applied.

2. Design and develop a protocol to demonstrate the effect of the intervention(s). The following references provide good examples of approaches for measuring the effectiveness of an intervention:

a. Decker MD, Dewey, MJ, Hutcheson RH, and Shafner W. The use and efficacy of child restraint devices. JAMA 1984; 252:2571–2575.

b. Spiegel CN and Lindaman FC. Children can't fly: a program to prevent

childhood morbidity and mortality from window falls. AJPH 1977; 67:1143–1147.

c. Muller A. An evaluation of the effectiveness of motorcycle daytime headlight laws. AJPH 1982; 72:1136–1141.

d. Guerin D and MacKinnon D. An assessment of the California child passenger restraint requirement. AJPH 1985; 75:142–144.

3. Conduct statistical and epidemiologic analysis of data.

4. Interpret, present, and publish findings in appropriate scientific journals in collaboration with CDC.

Cooperative activities of CDC/CEH are:

1. Assist in the editing of appropriate data sets on injury outcome, exposure to injurious agents, and recipients of the injury intervention(s).

2. Assist in the development of the protocol to demonstrate the effect of the intervention.

3. Collaborate in the statistical and epidemiologic analysis of data.

4. Collaborate in the interpretation, presentation, and publication of the study findings.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–79) on or before July 7, 1986 to: Grants Management Officer, Centers of Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30305. Telephone: (404) 262–6575.

Application forms should be available in your business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date.

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Applications

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and are not subject to review under regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

5. Content and Evaluation Criteria

Review of the application will be conducted in accordance with PHS Grants Administration Manual Chapter PHS:1–507, Objective Review of Grant Applications. The information provided should be consistent with the following evaluation criteria:

a. The applicant's understanding of the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement.

b. How the project will be administered; how the applicant will develop and implement the project, including a time schedule; what are the qualifications and time allocations of the staff that will be assigned to the project; and what facilities and data processing equipment will be required to carry out this project.

c. The ability of the applicant to carry out the responsibilities of the project.

d. The nature and extent of the injury or trauma problem in the community or population that will be studied.

e. The applicant's detailed description of:

(1) The rationale for the intervention;

(2) The reason(s) for implementing the program, project, or measure in this community;

(3) What is the population targeted for the intervention;

(4) Why the applicant believes the program, project, or measure to have a beneficial impact on public health;

(5) When the intervention began (and ended, if applicable);

(6) How the intervention program is administered and funded.

f. The sources of data that will be used to measure:

(1) The number of occurrences of the injury;

(2) The degrees of severity of the injury;

(3) What individuals have been exposed to the injurious agent(s) regardless of whether or not an injury was sustained;

(4) The cost(s) of the injury and the intervention;

(5) The extent of recovery from the injury.

g. The quality of existing data including:

(1) If available, samples of forms used for data collection;

(2) Evidence, if available, of the validity and reliability of the data;

(3) The training and instruction given to data recorders;

(4) If the data used was a sample, then describe sampling method.

h. Assurance that the data for injury occurrence, exposure to the injurious agent(s), and intervention program(s) are for time periods that are appropriate to show the effectiveness of the intervention and that the data are available and existent.

i. The method(s) in which data sources could be linked to demonstrate the effectiveness of an intervention. If data will need to be put on a computer tape, describe how this will be done, what quality control measures will be taken for this process, and what will be the source of the computer hardware.

j. Plans to publish results and designate responsibilities for scientific publications and authors, summary documents, news releases, etc.

Reporting Requirements

1. A final performance report, final financial status report, final invention certification and inventory of equipment (if applicable) will be due 90 days after the end of the project in accordance with 45 CFR Part 74, Subpart M.

2. All reports shall be submitted to: Centers for Disease Control, Grants Management Branch, PGO, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Betty Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, GA 30305, Telephone: 404/262–6575 or FTS 236–6575.

Technical assistance may be obtained from Richard Hoffman, M.D., Division of Injury Control and Epidemiology, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404/454–4575 or FTS 454–4575.

Dated: May 9, 1986.

William E. Muldoon,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 86–10929 Filed 5–14–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86M-0136]

Sorin Biomedica, S.p.A.; Premarket Approval of AB-Corek (in Vitro Radioimmunoassay for Antibody to Hepatitis B Core Antigen in Serum or Plasma); Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting the docket number in the heading of the notice that announced its approval of an application for the premarket approval of the AB-COREK (in vitro radioimmunoassay for antibody to hepatitis B core antigen in serum or plasma).

FOR FURTHER INFORMATION CONTACT: Agnes Black, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-7954 appearing on page 12395 in the issue of Thursday, April 10, 1986, the docket number in the heading of the document is changed is read "[Docket No. 86M-0136]".

Dated: May 8, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86-10910 Filed 5-14-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0139]

Bioelectron, Inc.; Premarket Approval of Orthopak™ Bone Growth Stimulator System; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting the docket number in the heading of the notice that announced its approval of an application for the premarket approval of the Orthopak™ Bone Growth Stimulator System.

FOR FURTHER INFORMATION CONTACT: Agnes Black, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-7828 appearing on page 12210 in the issue of Wednesday, April 9, 1986, the docket number in the heading of the document is changed to read "[Docket No. 86M-0139]".

Dated: May 8, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86-10911 Filed 5-14-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6976-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(b), will be issued to Kootznoowoo, Incorporated for approximately 5,693 acres. The lands involved are in the vicinity of Angoon, Alaska.

Cooper River Meridian

T. 76 S., R. 86 E. (Unsurveyed)
T. 76 S., R. 87 E. (Unsurveyed)
T. 77 S., R. 87 E. (Unsurveyed)
T. 77 S., R. 88 E. (Unsurveyed)
T. 77 S., R. 89 E. (Unsurveyed)
T. 78 S., R. 88 E. (Unsurveyed)
T. 78 S., R. 89 E. (Unsurveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversly affected by the decision shall have until June 16, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file and appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-10872 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-JA-M

Environmental Impact Statement/New Mexico Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Revised Draft Environmental Impact Statement (DEIS).

SUMMARY: The Department of the Interior, Bureau of Land Management, New Mexico is preparing a Revised DEIS for the New Mexico Statewide Wilderness Study. The Revised DEIS will address all 46 Wilderness Study Areas (WSA's) in the Statewide Study. This will include those WSA's or WSA lands that have split estate (Federal surface/non-Federal subsurface), as well as one WSA that is less than 5,000 acres. These lands are now being studied because they were reinstated for wilderness study due to a court decision. This Revised DEIS will supersede the earlier DEIS which was released in May 1985.

Scoping to help define environmental issues and alternatives for these reinstated lands has occurred both in 1982 and during the post year.

The Revised DEIS is scheduled for release in September 1986. The following WSA's will be addressed in this DEIS:

WILDERNESS STUDY AREAS IN THE NEW MEXICO STATEWIDE WILDERNESS STUDY

Name	WSA No.	Acreage
Albuquerque District		
Taos Resource Area:		
Rio Chama	NM-010-058	11,365
Sabinosa	NM-010-055	15,760
San Antonio	NM-010-035	7,050
Rio Puerco Resource Area:		
Cabezon	NM-010-022	8,159
Empedrado	NM-010-063	9,097
Ignacio Chavez	NM-010-020	33,264
Chamisa	NM-010-021	12,802
La Lesa	NM-010-063A	10,438
Manzano	NM-010-052	881
Ojito	NM-010-024	11,919
Petaca Pinta	NM-020-014	11,568
Rimrock	NM-020-007	29,515
Sand Canyon	NM-020-008	8,566
Little Rimrock	NM-020-009	9,697
Pinyon	NM-020-010	12,413
Las Cruces District		
Socorro Resource Area:		
Antelope	NM-020-053	30,710
Continental Divide	NM-020-044	68,761
Devils Backbone	NM-020-047A	9,904
Eagle Peak	NM-020-019	43,980
Horse Mountain	NM-020-043	5,032
Jornada Del Muerto	NM-020-051	31,147
Mesita Blanca	NM-020-018	19,414
Prieta	NM-020-037	6,680
Sierra De Las Cenas	NM-020-036	12,836
Sierra Ladrones	NM-020-016	43,248
Stallion	NM-020-040	24,238
Veranito	NM-020-035	7,206
Las Cruces/Lordsburg Resource Area:		
Aden Lava Flow	NM-030-053	25,287
Alamo Hueso Mtns	NM-030-038	19,264
Big Hatchet Mtns	NM-030-035	45,872
Blue Creek	NM-030-026	14,896
Cedar Mtns	NM-030-042	14,911
Cooke's Range	NM-030-031	19,606

WILDERNESS STUDY AREAS IN THE NEW MEXICO STATEWIDE WILDERNESS STUDY—Continued

Name	WSA No.	Acreage
Cowboy Spring	NM-030-007	8,699
Florida Mins.	NM-030-034	22,336
Gila Lower Box	NM-030-029	9,585
Las Uvas Mins.	NM-030-055	11,057
Organ Mins.	NM-030-074	7,293
Robledo Mins.	NM-030-052	12,946
West Potrillo Mins.	NM-030-052A	
and Mt. Riley	NM-030-052C	157,185
White Sands Resource Area:		
Broken Mins.	NM-030-112	31,609
Culp Canyon	NM-030-152	10,937
Roswell District		
Carrizozo Lava Flow	NM-060-109	10,240
Little Black Peak	NM-060-110A	15,072
Mudgetts	NM-060-619	2,941
Number of WSA's: 46		
Total acreage: 943,212		

FOR FURTHER INFORMATION CONTACT: Joseph Sovcik, EIS Team Leader, or Jon Joseph, Wilderness Specialist, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504–1449. They may be reached at (505) 988–6565 or FTS 476–6565.

Monte G. Jordan,

Acting State Director.

[FR Doc. 86–10988 Filed 5–14–86; 8:45 am]

BILLING CODE 4310-FB-M

Bakersfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield district advisory council meeting.

SUMMARY: Notice is hereby given in accordance with pub. L. 94–579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on June 13 and 14, 1986. The meeting on Friday, June 13, will begin at 9 a.m. in Room 335, in the Federal Building at 800 Truxtun Avenue, Bakersfield, California. The meeting on Saturday, June 14, will be a field trip to the Walker Pass area, departing at 7 a.m. from the Federal Building in Bakersfield.

SUPPLEMENTARY INFORMATION: The meeting agenda on Friday will consist of updates and orientation on Bureau programs, including resource management projects, and the BLM/Forest Service Interchange.

The Council will tour the Walker Pass Common Allotment area on Saturday and will review initial efforts made toward developing the Walker Pass Coordinated Resource Management Plan. Public participants may meet the tour when it departs at 7 a.m. from the Federal Building in Bakersfield, or at 8:30 a.m. at the Chimney Peak turnoff from Highway 178.

Opportunity for the public to address the Council will be available at 3 p.m. that afternoon at the South Fork Union School on Highway 178 in Weldon, California.

Public participants are invited to join the meeting and field trip, but must provide their own transportation and meals.

Summary minutes of the meeting will be maintained in the Bakersfield District office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, Public Affairs Officer, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861–4191.

Dated: May 9, 1986.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 86–10928 Filed 5–14–86; 8:45 am]

BILLING CODE 4310-40-M

4–20703–ILM]

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: The citizen advisory council for the Bureau of Land Management's Dickinson District will meet June 11, 1986, in Dickinson, North Dakota. The following topics will be discussed at the Council meeting:

BLM/FS interchange; noxious weed and grasshoper control program; land sales-exchanges (pooling); progress of the North Dakota Resource Management Plan; the status of the coal program and oil drainage review; the Secretarial program "Take Pride In America—This Land Is Your Land"; public land in the Conservation Reserve Program; volunteers in the BLM; and Federal appropriations to counties.

The Council is chartered by the Secretary of Interior to give citizen advice to the Dickinson District Manager regarding planning and management of public lands and resources.

The meeting is open to the public, and members of the public will be given the opportunity to make statements before the Council. Persons wishing to submit a written statement to the Council should send it to the Dickinson District Manager.

Location, Date, and Time: June 11, 1986, from 8:30 A.M. to approximately 4:00 P.M. Mountain Daylight Time, Community Room (basement) of the Gate City Building, 204 Sims Street, Dickinson, North Dakota.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager; P.O. Box 1229, Dickinson, North Dakota 58602; Telephone (701) 225–9148.

Dated: May 7, 1986.

William F. Krech,

District Manager.

[FR Doc. 86–10973 Filed 5–14–86; 8:45 am]

BILLING CODE 4310-DN-M

Meeting of the Rock Springs District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of field tour and meeting of the Rock Springs District Advisory Council.

DATE: June 25–26, 1986.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The field tour will leave the District Office at 9:00 A.M. on June 25 and return about 4:30 P.M. the same day. Weed control, rehabilitation of disturbed sites, and threatened and endangered plant species will be discussed. The tour is open to the public; however, BLM will not provide transportation.

The meeting on June 26 will begin at 9:00 A.M. in the District Office conference room.

The agenda will include:

Introduction of New Members
Election of Officers
Discussion of the Field Tour
Pinedale Resource Management Plan Progress Report
Wild Horse Gathering Plan
Update on Riley Ridge
Cooperative Management Agreement with Wyoming Game and Fish
Minerals Decentralization
Public Comment Period

Arrangements for the Next Meeting.

Donald J. Seibert,

Acting District Manager.

[FR Doc. 86-10906 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-DN-M

Realty Action—Lease, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public lands in Lewis and Clark County, Montana.

SUMMARY: The following described lands have been identified as suitable for a ski area lease under the conditions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976; 43 U.S.C. 1732.

Principal Meridian Montana

T. 12 N., R. 6 W., Sec. 35, lots 1, 17, 18, 19, 20, 23, NW¼NE¼, NE¼NW¼.
Section 36, lots 28, 29.

The lands will be offered non-competitively to the Great Divide Skiing Company as part of the former Mt. Belmont Ski Area. Only portions of the above described lands will actually be included in the lease.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the proposed lease including an environmental assessment and the actual lands to be included in the lease will be available at the Butte District Office, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The Great Divide Ski Company is in the process of purchasing the Belmont Ski Area from the Belmont Ski Club which has operated in the area under a Recreation and Public Purposes Act lease. The reason for converting the lease to a commercial lease is to allow greater capitalization of the area so major improvements can be made to the lifts, runs, and lodge facilities. Less than one-half of the ski area is located on public land. The rest is leased from private parties. The lands will be leased non-competitively with the annual rental based on the appraised fair market value.

Dated: May 7, 1986.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 86-10907 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-DN-M

[W-57410]

Receipt of Exchange Proposal; Wyoming

Correction

In FR Doc. 86-9801 appearing on page 16234 in the issue of Thursday, May 1, 1986, make the following correction: In the first column, in the SUMMARY paragraph, in the seventh line, after "approximately" insert "equal value in the Powder River Basin. The coal reserves specifically".

BILLING CODE 1505-01-M

[C-4-86]

California; Filing of Plat of Survey

May 7, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately.

San Bernardino Meridian, Riverside County

T. 4 S., R. 4 W.

2. This supplemental plat of sec. 32, Township 4 South, Range 4 West, San Bernardino Meridian, California, showing amended lottings, is based upon the plat approved June 17, 1898 and the plat accepted March 10, 1977, was accepted April 24, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 86-10904 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 858]

California; Filing of Plat of Survey

May 7, 1986.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County

T. 27 S., R. 36 E.
T. 27 S., R. 37 E.

2. a. The dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 13, 24, and 25, Township 27 South, Range 36 East, Mount Diablo Meridian, California.

b. The dependent resurvey of a portion of the south boundary of Township 26 South, Range 37 East, a portion of the south boundary, the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 18, 19, and 30 of Township 27 South, Range 37 East, Mount Diablo Meridian, California under Group 858 were accepted April 22, 1986.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge, Chief

Records & Information Section.

[FR Doc. 86-10905 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-40-M

[C-25-84]

California; Filing of Plat of Survey

May 7, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian Siskiyou County

T. 47 N., R. 5 E.

2. This supplemental plat, showing amended blocks in Newell Townsite, Section 26, Township 47 North, Range 5 East, Mount Diablo Meridian, California,

is based upon the plats accepted June 22, 1948, October 25, 1950, February 13, 1951, and January 13, 1956, and was accepted April 30, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 86-10986 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 871]

California; Filing of Plat of Survey

May 7, 1986

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mono County

T. 9 N., R. 23 E.

2. This plat, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the survey of the subdivision of sections 28 and 33, and the metes-and-bounds survey of a portion of the westerly right-of-way line of Eastside Road in sections 28 and 33, Township 9 North, Range 23 East, Mount Diablo Meridian, California, under Group No. 871, was accepted April 24, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room 2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Records & Information Section.

[FR Doc. 86-10987 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8448, Block 279, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 6, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m., to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Angie D. Gobert, Mineral Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 9, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-10983 Filed 5-14-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Fifth Revised I.C.C. Order No. P.-86]

Passenger Train Operation; Central Vermont Railway, Inc.

TO: Central Vermont Railway, Inc.

It appearing, That the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Washington, DC and Montreal, Canada. The operation of these trains requires the use of the tracks and other facilities of Boston and Maine Corporation (BM). The BM Line is temporarily out of service because of a labor dispute. An alternate route is available via the Central Vermont Railway, Inc., between Palmer, Massachusetts and White River Junction, Vermont.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Central

Vermont Railway, Inc. (CV), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Palmer, Massachusetts and White River Junction, Vermont.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

*(d) *Effective date.* This order shall become effective at 11:59 p.m., April 18, 1986.

*(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 30, 1986, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Central Vermont Railway, Inc., and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, April 18, 1986.

Interstate Commerce Commission.

William J. Love,

Agent.

[FR Doc. 86-10937 Filed 5-14-86; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-90]

Passenger Train Operation; Union Pacific Railroad Co.

To: Union Pacific Railroad Company.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and Los Angeles, California. The operation of these trains requires the use of tracks and other facilities of The Atchison, Topeka and Santa Fe Railway Company (ATSF). A potion of the ATSF Line between Daggett and Los Angeles, CA, is temporarily out of service because of a work stoppage. An alternate operation is available via the Union Pacific Railroad Company between Dagget and Los Angeles, California.

It is the opinion of the Commission that the use of such alternate operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Daggett, California and the Union Passenger Terminal in Los Angeles, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 3:30 p.m., EDT, May 5, 1986.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., EDT, May 12, 1986, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon The National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, May 5, 1986.

Interstate Commerce Commission.

Bernard Gaillard,

Agent.

[FR Doc. 86-10936 Filed 5-14-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30815

Chicago West Pullman Corp.; Acquisition and Operation Exemption; Manufacturers' Junction Railway Company; Exemption

Chicago West Pullman Corporation (Chicago West) has filed a notice of exemption to acquire and operate the line of Manufacturers' Junction Railway Company (MJ).

Chicago West is a non-carrier that already controls a carrier, Chicago, West Pullman & Southern Railroad Company (CWP). CWP is a Class III railroad that operates over 30 miles of track in Chicago, IL. MJ is a carrier that operates approximately 5.27 miles in Cicero, IL. CWP and MJ do not connect. the distance between them is approximately 21 miles. Chicago West states that the acquisition is not part of a series of anticipated transactions that would lead to a connection between CWP and MJ. This is an acquisition of nonconnecting carrier, exempt from 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

Employees of MJ affected by MJ closing the facility will be protected by the Facility Closing Program, as agreed to by the United Transportation Union. All other railroad employees affected by the transaction, will be protected by the conditions in *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979). this will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: April 30, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-10938 Filed 5-14-86; 8:45 am]

BILLING CODE 7035-01-M

MERIT SYSTEMS PROTECTION BOARD

Change in Organization Titles

AGENCY: U.S. Merit Systems Protection Board.

* Change of effective periods.

BEST COPY AVAILABLE

ACTION: Notice of change in organization titles.

SUMMARY: The U.S. Merit Systems Protection Board has changed the organizational title of its regional attorney-examiners from Presiding Official to Administrative Judge. The change is being made to more accurately reflect the nature and function of the position.

The title of the Board's regional directors will now be Regional Director/Chief Administrative Judge.

The authority and duties of these positions remain the same as set forth in current MSPB regulations.

DATE: Effective May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Doheny, Acting Assistant Managing Director for Regional Operations, (202) 653-7980.

Dated: May 12, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-10979 Filed 5-14-86; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Fellowships Section) to the National Council on the Arts will be held on June 3, 1986, from 9:00 a.m. to 6:00 p.m., and on June 4, 1986, from 9:00 a.m.-5:30 p.m., in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on June 4, from 4:30 p.m. to 5:30 p.m., for a policy discussion.

The remaining sessions of this meeting on June 3, from 9:00 a.m. to 6:00 p.m., and on June 4, from 9:00 a.m. to 4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Yvonne Sabine,

Acting Director Office of Council and Panel Operations National Endowment for the Arts.

May 8, 1986.

[FR Doc. 86-10971 Filed 5-14-86; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio Programming in the Arts Section) to the National Council on the Arts will be held on May 29, 1986 from 9:00 a.m. to 5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, elevation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506;, or call (202) 682-5433.

Yvonne Sabine,

Acting Director Council and Panel Operations National Endowment for the Arts.

May 8, 1986.

[FR Doc. 86-10969 Filed 5-14-86; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Programming in the Arts Section) to the National Council on the Arts will be held on June 2-3, 1986 from 9:00 a.m. to 5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated May 8, 1986.

Yvonne Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-10970 Filed 5-14-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on May 27, 1986, Room 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 27, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the regulatory process as it relates to the June 9, 1985 event at Davis-Besse.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the

meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allowed therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 9, 1986.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 86-10994 Filed 5-14-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, June 5, 1986
Thursday, June 12, 1986
Thursday, June 19, 1986
Thursday, June 26, 1986

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisioins of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632-9710.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate, Advisory Committee.

May 8, 1986.

[FR Doc. 86-10999 Filed 5-14-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23212; File No. SR-CBOE-86-07]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change

On March 6, 1986, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change that would establish for a six month period a foreign currency options incentive program that would provide financial credits to market makers based on the number of their off-floor order trades. These credits could be applied by the market maker toward the payment of dues, fees and open-market seat purchases.

The proposed rule change was noticed in Securities Exchange Act Release No. 23051 (March 4, 1986), 51 FR 11123. No comments were received on the proposed rule change.

Under the proposed six-month currency options incentive program, the CBOE would compute for each market-maker, from trade match data in each currency option class, the total number of inperson, market-maker trades made with off-floor orders (also known as "accommodation volume")[3] Based on this information, incentive credits will be allocated among market-makers for each currency option class. The monthly allocation of credits will be the percentage of each market-maker's accommodation volume per currency option class as compared to the toal accommodation volume in that class. Accordingly, if a market-maker handles 10% of the accommodation volume in a particular option, he will receive 10% of the bonus for that month in that option. The CBOE will, however, impose a $50 cap per contract, so that if a market-maker trades only one contract, the maximum incentive credit that can be gained is $50. During the first three months of the program, CBOE will impose the following monthly limits on credits allowed for each currency options class: $30,000 each for Japanese yen and Swiss francs, $20,000 each for

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Accommodation volume includes both firm proprietary and public customer orders. No order from a market-maker can be an off-floor order and thus, will not be counted as a part of a market-maker's accommodation volume.

British pounds and West German marks, and $10,000 each for Canadian dollars and French francs. In addition, during the entire six month program, the monthly total of incentive credits will not be more than $120,000 for all currency options classes.[4]

The incentive credits can be applied, by the market-maker who earned them, toward the payment of CBOE dues, fees and open-market seat purchases.[5] In addition, the credits can be sold to the market-marker's clearing firm, which also may apply them to its dues, fees and open-market seat purchases. In its filing, the CBOE has stated that it will begin to compute market-maker accommodation volume in connection with the program as of March 3, 1986, although no actual credits will be applied until Commission approval of the proposal.

The CBOE has stated that the purpose of its currency incentive program is to ensure the continued presence of those market-makers who have already demonstrated the ability and willingness to fill outside order flow, and to attract new market-makers to the currency trading crowds. CBOE believes that because it will provide a regularized level of incentive payments in each currency options class, the program should encourage market makers to support these products.

In reviewing the proposed incentive program, the Commission recognizes that CBOE is attempting to attract more market-maker interest in a new product that, to date, has not attracted substantial market-maker or other floor participation. Nevertheless, the Commission is concerned that an incentive program designed to provide dollar credits (that can be applied to dues and fees) based on a market-maker's volume in foreign currency options could encourage so-called "chumming"[6] or other artificial forms of trading by which market-makers might attempt to inflate their volume in order to earn the credits. Indeed, as a more general matter, the Commission is also concerned about the fact that market-makers would be induced to trade based, not on their assessment of market forces or in response to their affirmative market making obligations, but rather in an attempt to earn trading credits.

The Commission, however, has determined that this limited incentive program may be approved. First, we note that the program will only exist for a six month trial period. Second, under the proposal, no order from another market-maker will be deemed an off-floor order in which credit for accommodation volume is provided. Accordingly, the proposal should not create incentives for market-makers to enter into transactions with each other solely for the purpose of obtaining credits. Third, in its filing, the CBOE states that it will monitor the currency options trading of market-makers doing a large accommodation volume to ensure that this volume consists of actual accommodations that should be counted towards the market-maker's credits. We also note that the CBOE's general surveillance of prearranged trading should capture any transaction effected for the purpose of increasing a market-maker's volume. On balance, therefore, the Commission believes that the six month currency options incentive program proposed by CBOE for the limited purpose of attracting more market makers to a relatively new product traded mostly by institutional investors should be approved.[7]

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2)of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: May 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10080 Filed 5-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23218; File No. SR-CBOE-86-11]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to Extension of the RAES Pilot Program

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on May 2, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to extend the operation of the CBOE's retail automatic execution system ("RAES") pilot program. RAES permits the automatic execution of certain public customer orders in a limited number of the Standard & Poor's 100 Index ("OEX") series.[1] The Proposal would extend the operation of the pilot from April 30, 1986, through July 4, 1986. The CBOE applied for an extension of time in order to give the Commission additional time to consider a companion rule filing wherein the CBOE requests that the RAES pilot in OEX be made permanent.[2] In the interim, the Exchange seeks to continue operating RAES in OEX on a pilot basis.

In its submission to the Commission, the CBOE states that the RAES pilot has been highly successful, with customers' brokers receiving execution reports on RAES orders sometimes within one minute of the order's entry into the system. CBOE states that there have been virtually no complaints regarding RAES or its operations. The Exchange believes that the proposed rule change is ocnsistent with the provisions of the Act, in particular section 6(b)(5) thereof, in that the proposed rule change offers the potential for improved accuracy, reporting and handling of small public customer orders and timely and cost-

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[4] This will provide CBOE with the flexibility to alter the dollar limits in each class established for the first three months of the program depending on how the trading in each class is effected by the incentive credits. In any event, however, the monthly total credits for all options classes will not exceed $120,000.

[5] CBOE has indicated that by allowing the credits to be applied to open-market seat purchases the rule proposal may also encourage the purchase of such seats on the exchange.

[6] Chumming is a broad term that covers a variety of activity, including prearranged trades, wash sales and trade reversals, that is intended to give the appearance of increased trading volume. *See Report of the Special Study of the Options Markets.* H.R. Rep. No. 1PC3. 96th Cong., 1st Sess. (Comm Print 1978) at 169–172.

[7] In addition, CBOE has represented that during the program it will monitor whether increased market-maker participation in foreign currency options results from market-makers leaving lower volume equity options classes thereby decreasing the liquidity in those options classes. The CBOE has stated that it does not believe such an effect is likely to occur.

[8] 15 U.S.C. 78f (1982).

[9] 15 U.S.C. 78 s(B) (2) (1982).

[10] 17 CFR 200.30-3(a)(12)(1985).

[1] A complete description of RAES is provided in the Commission's initial order approving CBOE's implementation of the RAES pilot program. *See* Securities Exchange Act Release No. 21686 (January 28, 1985), 50 FR 4029 (File No. SR–CBOE–84–30).

[2] *See* Securities Exchange Act Release No. 22274 (July 29, 1985) 50 FR 31284 (File No. SR–CBOE–85–32). The CBOE also has filed with the Commission a proposed rule change to use RAES for individual stock options on a six month pilot basis. *See* Securities Exchange Act Release No. 22270 (July 26, 1985), 50 FR 31449 (File No. SR–CBOE–85–16, Amendment No. 2).

efficient executions of small option orders.

The Commission finds that an extension of the pilot program through July 4, 1986 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, sections 6(b)(5) and 11A of the Act.[3] It does not appear that extending the duration of the pilot until this time will impose any undue burdens on public customers of OEX, or on any other public customers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after date of publication of the proposal in the **Federal Register** in that the pilot has been operational since February 1, 1985 and the Commission has not received any comments concerning the pilot which would warrant discontinuing it prior to a Commission determination on the merits of the CBOE's request to accord the pilot permanent status.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: May 8, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10090 Filed 5-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23219; File No. SR-DTC-86-3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Depository Trust Company

On April 17, 1986 the Depository Trust Company ("DTC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"). The proposed rule change, among other things, modifies DTC's procedures for crediting cash dividend and interest payments ("Payments"), charge-backs of dividend and interest payments, dividend and interest refunds and passing through fund usage charges on bearer municipal bond interest payments. The rule change is a temporary rule which will expire no later than October 17, 1986. The Commission is publishing this Notice to solicit comment on the rule change.[1]

DTC's proposed rule change modifies DTC's procedures for crediting corporate cash dividend and interest payments from payment on the date payment is received to payment on payable date, subject to certain exceptions. (DTC will continue to credit bearer and registered municipal bond interest payments on payable date.) Because some paying agents routinely fail to pay dividends and interests in good funds on payment date, the proposal would authorize DTC to withhold crediting participants' accounts until DTC has received the necessary funds. Moreover, any margin of Payments credited to Participants in excess of actual receipts by DTC on that day will be funded by an equal amount of same-day funds received the next day which then would not be invested overnight (thereby reducing monthly dividend refunds to Participants). When infrequent peak payment dates make cash flow from same-day funds projected for the next day inadequate to fund that margin of Payments, some large Payments to DTC of less than $5 million will be deleted from credits to Participants if those Payments do not arrive before early afternoon.

The proposal also modifies DTC's refund policy with respect to dividend and interest investment income to reduce the monthly refund of overnight investments to participants that pay DTC more than 90%, but less than 100%, of dividend and interest payments received in same-day funds on payable date. Because DTC pays participants dividend and interest on their securities positions in next-day funds, DTC invests dividend and interest payments received in same-day funds on payable date overnight and rebates to participants, *pro rata* on a monthly basis, the income from those investments. Currently, participants that have paid DTC at least 90% of the dollar amount owed to DTC during the previous three month period on payable date and in same day funds share in this investment income. Under the proposal DTC, however, will reduce the monthly refund payments to these paying agents by the percentage of the total month's payments that fall short of 100% of the amount due DTC in same day-funds on payable date.[2]

The proposal also allows DTC to pass through interest collection agent's interest cost from late payments to participants. (This is called a "funds usage charge".) DTC channels all coupons for bearer municipal bonds to a central interest collection agent ("Agent"). On payable date the Agent pays DTC the total interest payments regardless of whether the Agent has collected all the funds from the various paying agents. Under the proposal, the Agent will charge DTC a funds usage charge and DTC will pass the charge on a *pro rata* basis to participants that received those particular payments.

The proposal allows DTC to charge-back certain dividend payments previously credited to participants. DTC will charge-back previously credited payments upon written request from a paying agent within 10 business days of the payable date for an error by the paying agent; a failure by the issuer to provide the paying agent with sufficient funds to cover the payments; or the bankruptcy of the issuer on or prior to the payable date. Also, DTC may charge back any errors made by DTC as a result of erroneous announcements or calculations or payments credited to participants in anticipation of payments which have not been received by DTC 10 business days after payable date. For charge-backs as a result of a paying agent's written request, the rule change requires DTC to notify participants one business day prior to the date DTC enters the charge-back in the participants' daily settlement accounts.[3] If the paying agent notifies DTC more than 10 business days after payment date, DTC is not required to charge-back the participant's accounts but will cooperate with the paying agent and participants to resolve the matter. For DTC initiated charge-backs, DTC will give participants one day notice if the

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[3] 15 U.S.C. 78f and 78k-1 (1982).

[4] 15 U.S.C. 78s(b)(2)(1982).

[5] 17 CFR 200.30-3(a)(12) (1985).

[1] Written comments from DTC participants on charge-backs of Payments were solicited by DTC. Several Commentors raised a concern that DTC would charge-back payments to participants before participants' customers returned the Payments. DTC, however, believes situations of this type arise infrequently and are offset by the benefits of obtaining Payments from paying agents on payable date in same-day funds. Written comments from DTC participants or others were not solicited or received on crediting of Payments on payable date, reducing dividend and interest refunds and passing through to participants any funds usage charge.

[2] For example, if a payor fails to make 5% of its payments on payable date and 4% of the payments made on payable date are not in same-day funds, its refund for that month will be reduced by 9%.

[3] While DTC usually will attempt to verify the facts stated in the notice from the paying agent, the rule change notes that DTC incurs no such obligation.

charge-back will occur within 10 business days after payable date. Otherwise, DTC will notify participants 5 business days prior to entry of the charge-back.

DTC believes that proposed rule change is consistent with section 17A of the Act because it will improve the timeliness of dividend and interest payments to DTC participants. DTC believes the proposal also will improve processing and recordkeeping of DTC and its participants.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. This rule change is a temporary rule which shall expire no later than October 17, 1986. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submission should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number in the caption above and should be submitted by June 5, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 8, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–10989 Filed 5–14–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-23220; File No. SR-NASD-86-12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Specifications and Study Outline for the Revised General Securities Representative Examination

Pusuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed revised specifications and a revised study outline for the General Securities Representative (Series 7) examination administered by the securities industry self-regulatory organizations. The examination questions for the revised Series 7 examination are in the custody of the New York Stock Exchange, Inc.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of the these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

The Series 7 examination is used to qualify persons seeking registration as general securities representatives. The revised specifications and study outline reflect a joint securities industry self-regulatory effort to update the examination in view of securities industry developments since the Series 7 examination was adopted as an industry wide qualification examination in 1974. Among the changes in the industry are: the development of several new securities products (such as, index options, interest rate options, and foreign currency options), the alteration of the product mixes within the general securities firms, and the modification of the registered representative's job due to the expanding range of financial services offered. The examination has been revised to cover these areas, as well as, to place more emphasis on Direct Participation Programs. Moreover, the revised examination will place less emphasis on factual recall and more emphasis on application, evaluation, and analysis.

The revised specifications and study outline are consistent with section 15A(g)(3) of the Securities Exchange Act of 1934, which provides that a registered securities association may prescribe standards of training, experience and competence for persons associated with a member and may examine and verify the qualifications of such persons in accordance with procedures established by the rules of the association.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the specifications or study outline for the revised Sereis 7 examination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation by Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted in June 5, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority, 17 CFR 200.30-3(a)(12).

Dated: May 8, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10993 Filed 5-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23214; File No. SR-PSE-86-4]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Adoption of a Rule Fixing the Effective Date of Suspension of Trading in Dually Listed Securities When the Primary Market Has Suspended Trading Due to Buyouts or Mergers

The Pacific Stock Exchange, Inc. ("PSE") submitted on March 18, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Rule I, section 3(f) of the PSE's Rules to specify the date and time of suspension of trading in dually traded securities that have been suspended by the primary market due to a merger or buyout.[1] The proposal provides for the suspension of trading in the affected security at the close of trading on the primary market on the day designated by the primary market as the day of suspension.[2] The rule also allows for the Joint Equity Floor Trading Committee of the PSE ("JEFTC"), in situations involving suspensions because of a buyout or merger, to commence the suspension at a time other than the close of business of the primary market. The PSE states that this provision will permit the Exchange flexibility to deal with unforeseen situations.[3]

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 23061, March 25, 1986) and by publication in the **Federal Register** (51 FR 11125, April 1, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10992 Filed 5-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24092]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); National Fuel Gas Co. et al.

May 8, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 2, 1986 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70-7210)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries, National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation, Empire Exploration, Inc. ("Empire"), Penn-York Energy Corporation, and National Fuel Gas Distribution Corporation, all located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10 and 12 (c), (d) and (f) of the Act and Rules 43 and 500(a)(3) promulgated thereunder.

The applicants-declarants seek authority for (i) the transfer by Supply to Empire of Supply's remaining oil and gas wells and related facilities in the Appalachian region; (ii) the transfer by Empire to Supply of 50 shares of Empire common stock, $10 par value; and (iii) the declaration of a dividend of these shares of common stock from Supply to National. The transfers will be valued at net book value as of the end of the latest practical fiscal year. The number of wells to be transferred will not exceed 2,400, and the net book value at September 30, 1985 of the wells and

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[1] The original filing of the proposed rule change by the PSE was mistakenly listed as File No. SR-PSE-86-3. Therefore, the Commission release and publication in the **Federal Register** incorrectly refer to the rule filing by that file number.

[2] Since the primary markets, the New York Stock Exchange, Inc. and the American Stock Exchange, Inc., close at 4:00 p.m. Eastern time, and the PSE does not close until 1:30 p.m. Pacific time (4:30 p.m. Eastern time), under the rule, the PSE will continue to be open for thirty minutes after trading has halted on the Exchange on an affected security.

[3] In a letter to the Division of Market Regulation, the PSE explained the rationale of the "unforeseen circumstances" provision of the rule change, noting that, "some degree of flexibility" was necessary to achieve the purposes of the rule. The letter cited an emergency situation, where the primary market is forced to close prior to its normal time on a day when a merger or buyout-related halt also has been announced, as evidence of the utility of this provision. *See* Letter from Kenneth J. Marcus, Attorney, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated March 25, 1986.

related facilities to be transferred will not exceed $15 million.

Additionally, they seek authorization until December 31, 1986 to grant easements, rights-of-way, other interests in real property, and to transfer other property or assets, which are not goods, at market consideration where business requirements dictate.

Eastern Edison Company (70–7254)

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Massachusetts 02403, an electric utility subsidiary of of Eastern Utilities Associates, a registered holding company, has filed a declaration with this Commission pursuant to sections 6, 7 and 12(c) of the Act and Rule 50 promulgated thereunder.

Eastern proposes to increase its capital stock in an amount not in excess of $15,000,000 consisting of up to 150,000 shares of Preferred Stock, per value $100 per share ("New Preferred Stock") and to issue and sell such New Preferred Stock by competitive bidding. Eastern also proposes to issue sell, in one or more series from time to time by competitive bidding, up to $55,000,000 aggregate principal amount of First Mortgage and Collateral Trust Bonds ("New Bonds"). Eastern requests authorization to issue and and sell its New Preferred Stock and New Bonds through December 31, 1986.

The net proceeds of the sales of the New Preferred Stock and/or of one or more series of New Bonds will be applied first to redeem outstanding securities. The remainder of the proceeds will be applied to pay underwriting costs and other issuance expenses for the New Preferred Stock and the New Bonds and to reduce short-term bank indebtedness of Eastern.

Northeast Nuclear Energy Company et al. (70–7256)

Northeast Nuclear Energy Company ("Company"), and The Connecticut Light and Power Company ("CL&P"), Seldon Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, each a subsidiary of Northeast Utilities, a registered holding company, have filed a declaration pursuant to sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

The Company proposes to issue and sell, pursuant to a negotiated private placement with one or more institutional investors, not to exceed $20 million aggregate principal amount of guaranteed term notes. The notes will have maturities ranging from 7 to 20 years and are proposed to be guaranteed severally but not jointly by CL&P and WMECO in the percentages of 81% and 19%, respectively. The Company proposes to negotiate the terms of the issuance. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–10901 Filed 5–14–86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM–8/969]

Chairman's Ad Hoc Group on Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 29, 1986 at 10:30 a.m. in Room 1205, Department of State, 2201 C Street NW., Washington, D.C.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

The purpose of the meeting on May 29 will be to review the results of the April 22–24 meeting of the Advisory Board of the Center for Telecommunications Development in Geneva. In addition, the Ad Hoc Group will review the status of United States support for the Center and make recommendations regarding appropriate United States positions regarding the Center for the ITU Administrative Council, which convenes June 16 in Geneva.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647–1007.

Requests for further information should be directed to Mr. D. Clark Norton, State Department, Washington, DC, telephone (202) 647–1007.

Dated: May 6, 1986.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86–10906 Filed 5–14–86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Individual Flotation Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C72c prescribes the minimum performance standard that individual flotation devices must meet in order to be identified with the marking "TSO–C72c."

DATE: Comments must identify the TSO file number and be received on or before August 22, 1986.

ADDRESS: Send all comments on the proposed Technical Standard Order to: Federal Aviation Administration, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C72c, 800 Independence Avenue, SW., Washington, DC 20591

or deliver comments to:

Room 335, 800 Independence Avenue, SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 426–8395.

Comments received on the proposed technical standard order may be inspected, before and after the comment closing date at Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

TSO holders have asked questions regarding the correct marking of seat cushions which incorporate fire blocking material to meet FAR 25.853(c), effective November 26, 1984, and which will be required for transport category airplanes operating under FAR Part 121 after November 26, 1987.

Since many TSO seat/flotation device manufacturers are including the fire blocking materials as part of their TSO article, TSO–C72b is being changed to include FAR 25.853(c) as an option.

TSO–C72b is being changed to allow the TSO holder, if he so desires, to conduct the testing of FAR 25.853(c), effective November 26, 1984, and after conducting such testing and meeting those requirements, mark on the TSO tag that the cushion has been tested to FAR 25.853(c).

How to Obtain Copies

A copy of the proposed TSO may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT." Federal Aviation Administration Standards for Individual Flotation Devices may be obtained at the FAA Headquarters in the Office of Airworthiness, Aircraft Engineering Division (AWS–110), and at all Aircraft Certification Offices (ACO's).

Issued in Washington, DC, on May 8, 1986.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 86–10895 Filed 5–14–86; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 158—Airborne Loran-C Receiving Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 158 on Airborne Loran-C Receiving Equipment to be held on June 10–11, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Second Meeting Minutes; (3) Update of FAA Loran-C Nonprecision Approach Program; (4) Report on SC–137 Loran-C RNAV MOPS Revised Final Draft; (5) Refinement of Nonprecision Approach Criteria; (6) Oceanic Applications; (7) Use of Skywaves; (8) Define Further Scope of Work; (9) Task Assignments; (10) Other Business; and (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretaries, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 8, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–10896 Filed 5–14–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Boards; Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executive employee's performance and make recommendations regarding performance and performance awards.

DATE: The Performance Review Boards become effective on May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry L. Padalino, Director of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 1134, Washington, D.C. (202) 377–9205.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service as follows:

1. The Performance Review Board to review Senior Executives rated by the Commissioner and Deputy Commissioner is composed of the following members:

Stephen E. Higgins—Director, Bureau of Alcohol, Tobacco and Firearms
Mitchell A. Levine—Assistant Commissioner, Comptroller, Financial Management Service
John W. Mangels—Director, Office of Operations, Department of Treasury
Larry B. Sheafe—Assistant Director (Investigations) U.S. Secret Service
Richard Wassenaar—Assistant Commissioner (Criminal Investigations), Internal Revenue Service

2. The Performance Review Board to review all other Senior Executives is composed of the following members:

William P. Rosenblatt—Assistant Commissioner Office of Enforcement, U.S. Customs Service
William Green—Assistant Commissioner Office of Internal Affairs, U.S. Customs Service
Eugene H. Mach—Assistant Commissioner, Office of Inspection and Control, U.S. Customs Service
Michael H. Lane—Assistant Commissioner, Office of Commercial Operations, U.S. Customs Service
James W. Shaver—Assistant Commissioner, Office of International Affairs, U.S. Customs Service
D. Lynn Gordon—Acting Comptroller, U.S. Customs Service
Jerry L. Padalino—Director, Office of Human Resources, U.S. Customs Service
William J. Griffin—Regional Commissioner, Northeast Region, U.S. Customs Service
James R. Grimes—Regional Commissioner, South Central Region, U.S. Customs Service
Donald F. Kelly—Regional Commissioner, New York Region, U.S. Customs Service
Edward F. Kwas—Regional Commissioner, Southeast Region, U.S. Customs Service
William Logan—Regional Commissioner, Southwest Region, U.S. Customs Service
Richard McMullen—Regional Commissioner, North Central Region, U.S. Customs Service
Quintin L. Villanueva, Jr.—Regional Commissioner, Pacific Region, U.S. Customs Service.

Dated: May 9, 1986.

William von Raab,

Commissioner of Customs.

[FR Doc. 86–10923 Filed 5–14–86; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Silver Treasure from Early Byzantium" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Walters Art Gallery in Baltimore, Maryland, beginning on or about May 16, 1986, to on or about August 18, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: May 13, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86-11078 Filed 5-14-86; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document. A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7978, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

UNITED STATES SENTENCING COMMISSION

Treatment of Prior Criminal Record Under Sentencing Guidelines; Hearing

AGENCY: United States Sentencing Commission.

ACTION: Notice of Hearing.

SUMMARY: This notice announces that a hearing on the topic of treatment of prior criminal record under sentencing guidelines is scheduled by the U.S. Sentencing Commission for Thursday, May 22, 1986.

Date: May 22, 1986.

Time: 10 a.m.

Location: U.S. Sentencing Commission Hearing Room, 14th Floor of the North Office Tower at National Place, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004 Further Information: Contact Paul K. Martin, Communications Director, 1331 Pennsylvania Avenue, N.W., Suite 1400, Washington, D.C. 20004, (202) 662-8800.

SUPPLEMENTARY INFORMATION: The U.S. Sentencing Commission was established under the Comprehensive Crime Control Act of 1984 and is an independent Commission in the Judicial Branch. The Commission is charged with developing a national sentencing policy for the federal courts, and pursuant to that, determinate sentencing guidelines. The May 22 hearing, the Commission's second, will focus on the offender characteristics a judge should consider when sentencing—specifically the treatment of prior record in the sentencing decision.

Written statements on this topic may be submitted to the U.S. Sentencing Commission, 1331 Pennsylvania Avenue, N.W., Suite 1400, Washington, D.C. 2004. The hearing record will remain open for thirty days after the hearing for additional written submissions. All are invited to attend the hearing.

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 86-10945 Filed 5-14-86; 8:45 am]

BILLING CODE 2210-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 94
Thursday, May 15, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, May 20, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance and for consent to merge and establish five branches:

United Savings Bank, Manchester, New Hampshire, a state-chartered stock savings bank, in orgnaization, for Federal deposit insurance, for consent to merge, under its charter and title, with United Federal Bank, FSB, Manchester, New Hampshire, a non-FDIC-insured institution, and for consent to establish the five branches of United Federal Bank, FSB as branches of United Savings Bank.

Application for consent to merge and establish two branches:

Bank of Dadeville, Dadeville, Alabama, an insured State nonmember bank, for consent to merge, under its charter and title, with Camp Hill Bank, Camp Hill, Alabama, and for consent to establish the two offices of Camp Hill Bank as branches of the resultant bank.

Applications for consent to purchase assets and assume liabilities:

First National Bank and Trust Company/St. Lucie County, Port St. Lucie, Florida, for consent to purchase certain assets of and assume the liability to pay deposits made in the St. Lucie Plaza Branch of Citizens Federal Savings and Loan Association, Miami, Florida, a non-FDIC-insured institution.

Bank One, Athens, National Association, Athens, Ohio for consent to purchase certain assets of and assume the liability to pay deposits made in the Logan, Pomeroy and Athens offices of Diamond Savings and Loan Company, Findlay, Ohio, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,512–SR
The Bank of Woodson, Woodson, Texas
Case No. 46,513–SR
United of America Bank, Chicago, Illinois
Case No. 46,516–SR (Amendment)
Gamaliel Bank, Gamaliel, Kentucky

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 13, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86–11104 Filed 5–13–86; 3:18 pm]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, May 20, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a members of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Memorandum regarding the Corporation's assistance agreement with an insured bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Date: May 13, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-11105 Filed 5-13-86; 3:19 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 20, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 86-11101 Filed 5-13-86; 3:17 pm]

BILLING CODE 6715-01-M

4

LEGAL SERVICES CORPORATION

TIME AND DATE: An executive session will be held at 5:00 p.m., Thursday, May 22, 1986. The public portion of the meeting will commence at 1:00 p.m., Thursday, May 22, 1986, and continue until all official business is completed.

PLACE: May 22, 1986—Twin Bridges Marriott, Chesapeake Room, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and unvestigatory matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Personal and Personnel Matters (Closed)
2. Litigation and Investigation Matters (Closed)
3. Approval of Agenda
4. Approval of Minutes
   —February 21, 1986
   —March 21, 1986
   —March 29, 1986
5. Proposal to Transfer Funds from the Program Development Budget Line to Law School Clinics
6. Proposal to Consolidate Regional Office Functions in Washington, DC
7. Discussion and Action on Recommendations of the Operations and Regulations Committee
   Questioned Costs—Proposed 45 CFR Part 1630
   —Report from Corporation Staff
   —Public Comment
   F.I.F.O.—Proposed 45 CFR Part 1631
   —Report from Corporation Staff
   —Public Comment
8. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date issued: May 13, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-11063 Filed 5-13-86; 2:51 pm]

BILLING CODE 6820-35-M

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10:00 A.M., Thursday, May 29, 1986.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Possible Revisions to the Commission's Rules of Procedure, Subpart E. Hearings. 29 CFR 2200.60 through 2200.76.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: May 12, 1986.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 86-11027 Filed 5-13-86; 10:34 am]

BILLING CODE 7600-01-M

federal register

Thursday
May 15, 1986

Part II

Environmental Protection Agency

40 CFR Parts 795 and 799
Proposed Test Rules:
Methylcyclopentane; Commercial Hexane
Tetrabromobisphenol A
Triethylene Glycol Monomethyl, Monoethyl, and Monobutyl Ethers

VOL 51 ISS 94 MY 15 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42084; FRL-3008-8]

Methylcyclopentane and Commercial Hexane; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to the Interagency Testing Committee's (ITC) designation of methylcyclopentane (MCP; CAS No. 96-37-7) for health effects testing, EPA is proposing that manufacturers and processors of MCP as well as manufacturers and processors of commercial hexane other than as impurities be required under section 4(a)(1)(A) of the Toxic Substances Control Act (TSCA) to perform testing of MCP for neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, motor activity, and developmental neurotoxicity screen), subchronic toxicity, and inhalation and dermal pharmacokinetics (absorption, distribution, metabolism, and excretion). The Agency also believes that it could find under section 4(a)(1)(B) that there is the potential for substantial human exposure to MCP from its manufacture, processing, and use as a substantial component of commercial hexane and other mixed hexane products. EPA is proposing the testing of MCP because it is the second largest constituent of commercial hexane. The largest constituent, *n*-hexane, is a known neurotoxicant undergoing testing by the National Toxicology Program (NTP) for other toxicological endpoints. The Agency has inadequate information to characterize the toxicity of MCP. If industry should consider reformulating commercial hexane to reduce its *n*-hexane content, the content of MCP in the mixture would increase. Therefore, the Agency believes that testing MCP is necessary to determine its potential impact on human health.

Because there is substantial production and widespread exposure to commercial hexane and because current exposure to MCP occurs primarily following exposure to commercial hexane, EPA is also proposing under section 4(a)(1)(B) of TSCA that manufacturers and processors of commercial hexane other than as an impurity be required to perform testing of this substance for acute and subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagenicity, neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, and motor activity), and inhalation and dermal pharmacokinetics (absorption, distribution, metabolism and excretion).

DATES: Submit written comments on or before July 14, 1986. If persons request an opportunity to submit oral comments by June 30, 1986, EPA will hold a public meeting on this rule in Washington, DC. For Further information on arranging to speak at the meeting see Unit VIII of this preamble.

ADDRESS: Submit written comments identified by the document control number (OPTS-42084) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, DC 20460.

A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington DC 20460, Toll Free: (800-424-9065), In Washington, DC.: (554-1404), Outside the USA: (Operator--202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule for MCP and commercial hexane under section 4(a) of TSCA in response to the ITC's designation of MCP for health effects testing consideration. Testing is being proposed for commercial hexane because there is widespread exposure to commercial hexane and because current exposure to MCP occurs primarily following exposure to commercial hexane. The Agency has concluded that existing data are inadequate to assess the risks to health posed by exposure to MCP and commercial hexane and that testing of both substances is necessary to develop such data.

I. Introduction

A. ITC Recommendation

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.)* established the ITC under section 4(e) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC designated methylcyclopentane (MCP; CAS No. 96-37-7) for priority consideration for health effects testing in its 16th Report, published in the **Federal Register** of May 21, 1985 (50 FR 20930). The ITC recommended that MCP be tested for health effects including neurotoxicity, cardiotoxicity, oncogenicity, genotoxicity, teratogenicity, and reproductive effects. The rationale for conducting these tests was based on: (1) The potentially high exposure of the general population to MCP through its presence in commercial hexane solvents and gasoline; (2) the large number of workers (over one million) thought to have been potentially exposed to MCP; and (3) the irrelevance of existing toxicity studies in which animals were dosed orally rather than by inhalation, the route by which the general population is more likely to be exposed to MCP. No separate justification for cardiotoxicity or oncogencity testing was provided in the Report.

Because of its high volatility and moderate water solubility, the ITC expected MCP to partition into the atmosphere where it would be rapidly degraded. Therefore, the ITC did not recommend testing for environmental effects.

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, the EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine if there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under sections 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agnecy might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules, published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 46 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations concerning MCP, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of MCP under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning MCP; and published and unpublished data on MCP and commercial hexane available to the Agency. From its evaluation, as described in this proposed rule, EPA is proposing health effects testing requirements for MCP under section 4(a)(1)(A). Because there is substantial production and widespread exposure to commercial hexane and because current exposure to MCP occurs primarily following exposure to commercial hexane, EPA is also proposing that manufacturers and processors of commercial hexane be required to perform testing of this substance for health effects under section 4(a)(1)(B).

II. Review of Available Data

A. Chemical Profile

1. *MCP.* MCP is a colorless, flammable liquid with a sweet odor (Ref. 1). At 25 ° C, MCP has a moderate water solubility of 42 mg/l (Ref. 2). Its vapor pressure is 100 mm Hg at 17.9° C (Ref. 3) and 233 mm Hg at 37.8° C (Ref. 4), and its specific gravity is 0.750 g/ml at 20/4 ° C (Ref. 5). The log octanol/water partition coefficient (K_{ow}) is estimated as 3.31 (Ref. 6). A log soil/sediment-absorption coefficient (K_{oc}) is estimated as 3.18 (Ref. 6). MCP has an estimated atmospheric half-life of 1.97 days and an estimated Henry's law constant of 0.322 atm-m³/mole (Ref. 6). Because of its high volatility and moderate water solubility, MCP is expected to partition into the atmosphere, where it would be rapidly degraded by reaction in the vapor phase with hydroxyl radicals (Ref. 6).

2. *Commercial hexane.* MCP is one of several C_6 hydrocarbons found in commercial hexane (Ref. 9). Normal hexane (*n*-hexane; CAS No. 110–54–3), sometimes known as "hexane," is the saturated straight-chain hydrocarbon with the molecular formula C_6H_{14} (Ref. 9). It is a clear, volatile liquid with a molecular weight of 86.17 daltons and a specific gravity of 0.660 g/ml at 20° C (Ref. 13). *n*-Hexane solidifies between −95 and −100° C, boils at 68.95° C, and has a vapor pressure of 150 mm Hg at 24.8° C (Ref. 13). At room temperature, *n*-hexane has a faint, peculiar odor (Ref. 41). Insoluble in water, *n*-hexane is fairly soluble in organic solvents, e.g., alcohol, ether, and chloroform (Ref. 41).

While in the singular sense "hexane" refers to *n*-hexane, in the plural sense "hexanes" refer to the straight chain compound *n*-hexane, as well as the branched hydrocarbons with the same C_6H_{14} molecular formula known as isohexanes, which include 2-methylpentane (2-MP; CAS No. 107–83–5), 3-methylpentane (3-MP; CAS No. 96–14–0), 2,2-dimethylbutane (2,2-DMB; CAS No. 75–83–2), and 2,3-dimethylbutane (2,3-DMB; CAS No. 79–29–8) (Ref. 9). Commercial hexane is a narrow-boiling mixture of *n*-hexane, the isohexanes 2-MP, 3-MP, 2,2-DMB, 2,3-DMB, with MCP, cyclohexane (CAS No. 110–82–7), and benzene (CAS No. 17–43–2) (Ref. (0. Minor amounts of C_5 and C_7 hydrocarbons may be present (Refs. 9) and 13). Refer to Figure 1 below.

FIGURE 1 -- C_6 HYDROCARBONS PRESENT IN COMMERCIAL HEXANE

1. n-Hexane
CAS No. 110-54-3

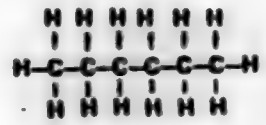

2. 2-Methylpentane (2-MP)
CAS No. 107-83-5

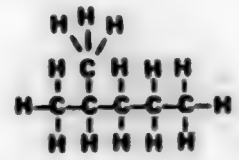

3. 3-Methylpentane (3-MP)
CAS No. 96-14-0

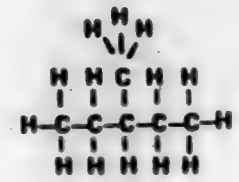

4. 2,2-Dimethylbutane (2,2-DMB)
CAS No. 75-83-2

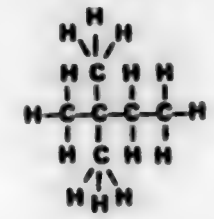

5. 2,3-Dimethylbutane (2,3-DMB)
CAS No. 79-29-8

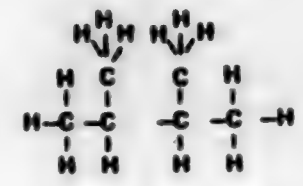

6. Cyclohexane
CAS No. 110-82-7

7. Methylcyclopentane (MCP)
CAS No. 96-37-7

8. Benzene
CAS No. 71-43-2

B. Production

1. *MCP.* MCP occurs naturally in crude oil and natural gas liquids and therefore is a constituent of some refinery hydrocarbon processing streams, e.g., straight-run gasoline, and finished petroleum products, e.g., jet fuel and hexane solvent (Ref. 7). MCP also is present as a nonisolated, in-stream component of a feed stream used in the production of hexane isomers, e.g., *n*-hexane, and cyclohexane, from C_6 hydrocarbon petroleum fractions in a closed-loop system (Refs. 8, 21, and 22). Phillips Petroleum Co. (Phillips), the sole manufacturer of isolated MCP, once separated MCP from the naphtha stream that was used to produce 98-percent cyclohexane. This naphtha stream consisted of benzene and C_6 naphthenes, 60 to 80 percent of which is MCP. While Phillips no longer isolates MCP for sale, production of MCP by this process was incidental to the production of cyclohexane (Ref. 20) and continues to occur.

According to the public portion of the TSCA Inventory, production of MCP in 1977 was 50 to 100 million pounds (Ref. 15). Phillips' Philtex Plant in Borger, Texas, is cited in the 1985 SRI Directory of Chemical Producers as the sole manufacturer of MCP (Ref. 16). However, Phillips pointed out that there has been no production of pure MCP in over 3 years, and that during each of the last years it was manufactured, 1980 through 1982, an average of 435 pounds of pure MCP was sold to laboratories for research (Ref. 8). This amount reflects the 0 to 1,000 pounds of MCP listed in the TSCA Inventory.

In addition, Phillips stated that the 50–100 million pounds of MCP reported in the TSCA Inventory as having been produced at its Sweeney, Texas, plant does not reflect production of pure MCP for sale, but reflects the amount of MCP used as an in-stream component which is converted into cyclohexane (Ref. 8).

The second manufacturer listed on the TSCA Inventory, Ashland Chemical Co., produced a maximum of 17,000 pounds of MCP per year as a byproduct of the manufacture of a high-energy fuel, RJ4, in previous years (Ref. 17). Ashland has recently lost the RJ4 contract to Koch Chemical Company and so will not produce any MCP for at least the next 4 years (Ref. 18). Koch chemical claims that its RJ4 fuel does not contain MCP (Ref. 50). Ashland used the byproduct MCP as a boiler fuel (Ref. 17).

Since the 1977 TSCA Inventory was conducted, PGP Gas Products, the third manufacturer listed on the TSCA Inventory, has split into two companies,

Valero Energy Corp. and Perry Gas Processors, both of Houston, Texas. Neither company currently produces MCP (Ref. 19).

2. *Commercial hexane.* There are three major types of commercial hexane, each produced in a different manner (Ref. 9). The composition of a commercial hexane depends upon the choice of feedstock and the process used to separate components (Ref. 9). The three most commonly used feedstocks are staight-run gasolines distilled from crude oil, the higher boiling portion of the liquid product stripped from natural gas, and a refinery stream known as "BTX raffinate," which is the paraffinic portion that remains after the removal of benzene, toluene, and xylene from a naphtha which has been refined to convert naphthalenes to aromatics (Ref. 41). While there is no current production of pure MCP, it is a major component of commercial hexane (8–19 percent), a high-volume solvent (Ref. 9). According to the International Trade Commission, approximately 500 million pounds of hexane were produced in 1984 (Ref. 10). This translates into 40–95 million pounds of MCP. Most of the exposures occur to the commercial hexane mixture rather than to pure MCP.

Commercial hexane A, or solvent grade, derived from the fractionation of straight-run gasoline (Ref. 41), has high benzene and sulfur contents and contains approximately 64 liquid volume percent *n*-hexane and 19 liquid volume percent MCP (Ref. 9). Commercial hexane B, or food grade, recovered in a refinery operation, is purer than A and is low in benzene, sulfur, and olefins (Ref. 9). It contains approximately 81 liquid volume percent *n*-hexane and 12 liquid volume percent MCP. Commercial hexane C, or reaction grade, is the result of extremely close fractionation of a natural gas liquid stock (Ref. 41). This relatively pure commercial hexane is low in impurities and contains approximately 88 liquid volume percent *n*-hexane and 8 liquid volume percent MCP (Ref. 9). EPA notes that as the percent of *n*-hexane increases, the percent of MCP decreases in commercial hexane.

According to EPA's economic analysis for this proposed rule (Ref. 23), commercial hexane is produced by several companies. Individual plant capacities are not available, but producers include Phillips Petroleum Co. (Borger, Texas, and Sweeney, Texas), Pennzoil Co. (Shreveport, Louisiana), Ashland Oil, Charter International Oil, Chemical Exchange Industries, Exxon Chemical Americas, Shell Oil, and Union Oil Co. of California. As industry conditions change from time to time, it is possible some of these producers do not currently manufacture hexane but they have been listed in trade sources as producers in recent years.

C. Uses

1. *MCP.* MCP can be used as a synthesis intermediate, as an extractive solvent, and as an azeotropic distillation agent (Ref. 5). Most of the in-stream MCP in the production of hexane isomers is converted into cyclohexane by Phillips (Ref. 8). Phillips at one time sold 99.9+ percent research grade, 99.5+ percent pure grade, 95+ percent technical grade, and 60 percent commercial grade MCP preparations to laboratories or research facilities (Ref. 20).

2. *Commercial hexane.* Commercial hexane A is used in motor fuels, commercial hexane B as a solvent to extract seed oils, and commercial hexane C as a reaction medium for various polymerization reactions and to formulate various products (Ref. 9). According to Kirk-Othmer (Ref. 9), the greatest volume of commercial hexane B is used during the extraction of oils from soybeans, cottonseed, flaxseed, safflower seed, corn germ, peanuts, and other minor crops. High solvency for the oil that is to be extracted, low boiling point to facilitate separation of the oil from the meal, low benzene content, and low cost are properties of commercial hexane B which have made it the predominant solvent for oil seed extraction (Ref. 9). These same properties apparently make commercial hexane B a desirable reaction medium and solvent in the manufacture of polyolefins, synthetic rubbers, and pharmaceuticals. When it is necessary to use a solvent which has been treated to reduce impurities to low levels, commercial hexane C may be used in polymerization reactions. It is also used as a component of quick-drying rubber cements and certain 2-solvent-system adhesives where it controls viscosity and reduces drying time. In addition, commercial hexane C is used in the preparation of lacquers and printing inks requiring a quick-drying diluent (Ref. 9).

D. Human Exposure

1. *Occupational exposure.* a. *MCP.* Although isolated MCP is currently not manufactured for sale, its presence in various hexane-containing refinery streams and products leads to widespread exposure of workers to MCP along with other C_6 hydrocarbons. The ITC's concern for occupational exposure to MCP was based upon the National Occupational Hazard Survey (NOHS) of 1972–74 in which 1,056,700 workers in 130 occupations were estimated to have been potentially exposed to MCP (Ref. 11). Phillips correctly noted that this estimate was high (Ref. 8). Only 3 percent of the observations had trade name products containing MCP. MCP was not seen in the workplace in its pure form.

Subsequently, the National Institute for Occupational Safety and Health (NIOSH) estimated that there are approximately 38,000 workers with potential exposure to either MCP itself or in a trade name product (Ref. 11). The data from the survey indicate that occupations involving contact with petroleum-based products, i.e., fuels, paints, and solvents, contain the largest number of exposed workers. A study by Brugnone *et al.* has established a correlation between environmental, alveolar, and blood MCP levels after exposure of shoe workers to solvents used in that industry (Ref. 40). EPA believes that this correlation, together with the NOHS survey and NIOSH exposure estimates, supports the concern for widespread worker exposure to MCP.

When Phillips examined 1,590 area samples at 104 locations and 5,589 personal samples at 72 locations for MCP, the average 8-hour time-weighted average (TWA) for all the samples was 0.25 ppm (Ref. 8). Personal sampling measurements for MCP ranged from <1ppm to 48 ppm (Ref. 12). These monitoring data were obtained from service stations, exploration/production facilities, chemical plants, and refineries (Ref. 12).

While EPA is not basing its findings upon MCP's presence in gasoline, gas station employees are expected to be exposed to MCP. Although no exposure data exist for these workers, the American Petroleum Institute (API) has predicted exposures ranging from 0.04 to 0.95 ppm (TWA) using an API theoretical model (Ref. 7). API stated that the high end of the range represented a worst-case exposure estimate (Ref. 7).

There is neither an Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL) (29 CFR 1910.1000, Table Z–1) nor an American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) (Ref. 13) for MCP.

b. *Commercial hexane.* According to the National Occupational Exposure Survey (NOES) of April 3, 1985, 68,000 workers were estimated to have actual exposure to hexane solvents. Of these,

12,578 were women (Ref. 42). Since there is no CAS Number for commercial hexane, EPA presumes that the bulk of the NOES estimate represents exposure to commercial hexanes. There are neither OSHA PELs (29 CFR 1910.1000, Table Z–1) nor ACGIH TLVs (Ref. 13) for the major components of commercial hexane (MCP, 2-MP, and 3-MP) other than *n*-hexane. There is a 500 ppm PEL and a 50 ppm TLV for *n*-hexane. There is a 500 ppm TLV and a 1,000 ppm STEL for hexane isomers other than *n*-hexane. Phillips has a corporate standard of 100 ppm for hexanes (Ref. 14).

2. *General population exposure.* a. *MCP.* Although isolated MCP is currently not manufactured for sale, its presence in various hexane-containing refinery streams and products leads to widespread exposure of the general population to MCP along with other C_6 hydrocarbons. There are numerous human-generated sources of MCP. It is estimated that approximately 179 million pounds of MCP are released by oil spills, evaporation of gasoline from gasoline stations and hydrocarbon emissions from land transportation vehicles (Ref. 24). Other potential sources of MCP release that cannot be quantified are combustion of JP–4 jet fuel, deliberate venting of waste hydrocarbon gases, and dumping of formation waters (water produced with oil and gas) associated with offshore crude oil production operations.

MCP has been detected 9 times at <10μg/1 and once at 10 to 100 μg/1 in 63 samples of industrial waste water effluents (Ref. 38). MCP also has been detected and quantified in underwater hydrocarbon vents and formation water from offshore oil production facilities (Ref. 25). Having examined MCP's environmental fate, EPA believes that virtually all MCP released into the environment will partition into the atmosphere (Ref. 6).

Furthermore, a number of studies have been conducted in which MCP has been quantified or simply detected in air (Refer to Ref. 6). MCP has been detected both outdoors in air surrounding automotive painting plants when *n*-hexane is used as a paint diluent (Ref. 32) as well as in four indoor telephone control offices and one telephone business office in five States (ppb range) (Ref. 39). In addition, MCP is widespread in urban air, probably due to its presence in automobile exhaust, as discussed above. Although a measured atmospheric half-life of MCP is unavailable, the estimated half-life of 1.97 days suggests that released MCP will not persist in the atmosphere, although constant replenishment near urban areas and petroleum refining and processing facilities may establish steady-state concentrations (Ref. 6).

MCP has been detected as a constitutent (<1.0 liquid volume percent) of commercial hexane solvents used in chemical analyses (Ref. 31). *n*-Hexane of unspecified grade is used as a paint diluent (Ref. 5) and several studies indicate the release of MCP from automotive painting plants along with *n*-hexane, 2-MP, and 3-MP (Refs. 32, 33, and 34).

The potential for general population exposure to MCP is high, since the results of monitoring surveys indicate that MCP has been detected in air, water, and human body fluids. Results from an EPA monitoring survey of human breast milk indicated that three of the seven components of commercial hexane were qualitatively identified in breast milk samples: *n*-hexane—8/8 samples; MCP—6/8 samples; and cyclohexane—5/8 samples (Refs. 36 and 37). In this survey, samples of mother's milk were analyzed from five cities for volatile (purgeable) and semivolatile (extractable) organics using gas chromatography/mass spectrometry. Environmental pollutants were measured in the milk to evaluate the utility of using this body fluid in specific pollutant studies for populations living near chemical manufacturing plants. MCP was present in breast milk samples collected from women in 3 States.

The investigators pointed out that the small sample size (no attempt was made to develop a statistically valid sample), the lack of control over participants (subjects were volunteers), and the selection of sites as having a high probability of detecting pollutants (urban areas with hydrocarbon pollutants) preclude extrapolating these data to the general population.

Despite these noted limitations, EPA believes that the results from this survey are valuable because they indicate that: (1) *n*-hexane, cyclohexane, and MCP are present in a body fluid, indicating their absorption and transport to breast milk; and (2) *n*-hexane, cyclohexane, and MCP were detected in samples collected from three States, indicating potentially widespread exposure.

b. *Commercial hexane.* Between 1979 and 1984, annual production of commercial hexane increased from 390 to 470 million pounds (Ref. 10). Approximately 32 percent of this production was used in vegetable oil extraction, 25 percent in polyolefin manufacturing, 22 percent in elastomer manufacturing, and 21 percent in adhesives and other uses (Ref. 9). Fifty percent of that used for vegetable oil extraction alone is lost through evaporation from seals and equipment (Ref. 23). In addition, motor fuels contain commercial hexane A. Such uses and losses likely contribute to general population exposure to commercial hexane and various C_6 isomers. Although the volume of commercial hexane in motor fuels is not known, the Agency expects this to be the major source of exposure to the general population.

The Agency is basing its estimation of general population exposure to commercial hexane not only on the production and use figures cited above but also on the assumption that the general population exposure as discussed above (Unit II.D.2.a.) is indicative of widespread general population exposure to commercial hexane and other hexane containing refininery streams and products.

3. *Consumer exposure.* a. *MCP.* EPA believes that consumer exposure to MCP may occur during the use of commercial hexane-based petroleum solvents, paints, and thinners. In addition, MCP has been detected in an unspecified adhesive (Ref. 35), wherein it probably occurs due to the commercial hexane contained in the adhesive. Liquid adhesives may, therefore, constitute another source of consumer exposure to MCP.

b. *Commercial hexane.* EPA believes that widespread consumer exposure to commercial hexane may occur during the use of petroleum solvents, paints, thinners, and other consumer products containing commercial hexane. Although EPA lacks specific data on the amount of such solvents in consumer products, their widespread use in industrial products as indicated by NOES data (Ref. 42) suggests that such solvents probably are used in a variety of similar products available to consumers.

E. Health Effects

1. *Pharmacokinetics.* The Agency has reviewed several absorption, distribution, and metabolism studies and has found them insufficient to predict the inhalation and dermal pharmacokinetics behavior of either MCP or commercial hexane.

a. *Absorption and distribution.* In order to compare alveolar and blood monitoring to environmental monitoring for solvents, Brugnone *et al.* (Ref. 40) studied the simultaneous exposure of Italian shoe factory workers to five solvents, i.e., acetone, *n*-hexane, MCP, 2–MP, and 3–MP, over a 4.5 hour period of the work shift. The authors reported that alveolar and blood concentrations

as well as lung uptake were significantly correlated with environmental air samples taken at selected times during the workshift for all five solvents.

Perbellini *et al.* [Ref. 44] determined the partition coefficients of several industrial aliphatic hydrocarbon compounds in various human tissues. The partition coefficient between blood and air is a determinant of inhalation absorption efficiency. The tissue/air partition coefficients for MCP were as follows (mean±standard deviation): fat (176±10.0); liver (7.8±1.0); brain (7.3±0.8); muscle (5.0±0.8); kidney (4.7±1.1); heart (1.9±0.8); lung (1.7±0.04); and blood (0.86±0.08). The high fat/air partition coefficient (176) and the estimated log octanol/water partition coefficient of 3.31 (Ref. 6) suggest that MCP is lipophilic.

These data concur with the results of a survey in which MCP was detected in breast milk (Refs. 36 and 37) (See Unit II.D.3. above). EPA believes that these results are valuable in terms of absorption because they indicate that inhaled MCP and other components of commercial hexane are present in a body fluid, and suggest transport of these components to breast milk.

Naruse (Ref. 35) studied the effects on mice of exposure to four unspecified adhesives containing various quantities and types of organic solvents. "Adhesive D" contained the following organic solvents as percents of the total adhesive: cyclohexane (36.3), acetone (15.3), isopropyl acetate (7.1), *n*-hexane (6.8), MCP (1.5), 3-MP (1.0), 2,3-DMB + 2-MP (0.8), and toluene (0.5).

An unspecified number of male "ddY" mice were exposed for 1 hour to 1 of 3 doses of vapors of the adhesive coated on aluminum foil strips. The air inside the chamber was sampled at intervals throughout the exposure period and analyzed for concentration of organic solvents and for oxygen. Blood samples were taken from the mice before exposure, at the middle and at the end of the 1-hour exposure period, and at 0.5, 1, 2, 3, 6, 12, 18, and 24 hours after cessation of exposure. Air sampling measurements indicated that acetone concentration rapidly increased immediately after the onset of exposure, reaching a maximum level in approximately 15 minutes. The other organic solvents reached maximum concentrations in air proportional to the concentration of adhesive vapor after approximately 30 minutes. Blood sampling measurements immediately after cessation of exposure to vapors of "Adhesive D" indicated that acetone, isopropyl alcohol, and cyclohexane were the major compounds found in blood. MCP and toluene were not detectable in the blood of mice exposed to 30 ml of adhesive vapor (detection level of 1 g/ml), but were detectable within 30 minutes in animals exposed to 50 and 70 ml of vapor. 2,3-DMB, 2-MP, and 3-MP were below detectable levels at all 3 exposure levels. Within 30 minutes after cessation of exposure, *n*-hexane, isopropyl acetate, toluene, and MCP concentrations in blood dropped below detectable levels. Cyclohexane was detected at 2 to 8 hours after cessation of exposure; acetone and isopropyl alcohol were detected at 6 to 12 hours after cessation of exposure. All solvents, however, dropped below detectable levels at 24 hours after cessation of exposure. No other tissues were studied. The Agency believes that this study indicates that these components of commercial hexane were absorbed in the blood following inhalation exposures.

b. *Metabolism and elimination.* Perbellini *et al.* (Refs. 47, 48, and 49) performed a series of studies in which urine samples from Italian shoe factory workers exposed to commercial hexane and to other solvents were analyzed by gas chromatography. However, the authors only looked for substances they thought would be present. No actual pharmacokinetic data obtained from labeled compounds were presented. No urinary metabolites of MCP or 2,3-DMB were specifically identified in these studies.

2. *Acute toxicity.* The Agency has reviewed the acute inhalation toxicity studies available and has found them inadequate to predict the acute toxicity of either MCP or commercial hexane. Based on the chemical profiles, production, and uses of commercial hexane, the most likely route of exposure is by inhalation.

3. *Subchronic toxicity.* The Agency has reviewed available subchronic studies and has found them either inadequate to predict or suggestive of the subchronic toxicity of MCP and commercial hexane.

Phillips (Ref. 8, Att. IV) provided a copy of a pathology report of an API-sponsored 4-week oral nephrotoxicity screening study of numerous test materials, including MCP, 2,3-DMB, and 2-MP. Twenty male F-344 rats were randomly distributed into 2 treatment groups of 10 animals. The two groups received either 0.5 g/kg or 2g/kg of test material by gavage 5 days per week for 4 weeks. Physiological saline (2.0 g/kg) was administered at the same time to 10 control rats. Histopathologic evaluations were performed on kidneys removed the day immediately following final administration of the test material. Lesions associated with experimental hydrocarbon nephropathy, such as hyaline droplet change, regenerative epithelium, and tubular dilation with granular material, were used to grade the extent of nephropathic changes. Rats treated with 2,3-DMB exhibited moderate hydrocarbon nephropathy scores (7.6 at a dose of 0.5 g/kg and 6.1 at a dose of 2.0 g/kg). Rats treated with 2-MP exhibited nephropathy scores slightly above those of controls (4.6 at 0.5 g/kg and 5.9 at 2.0 g/kg). The MCP nephropathy scores (2.9 at 0.5 g/kg and 3.4 at 2.0 g/kg), however, were comparable to those of the saline control group (3.0). EPA believes that this study is inadequate to predict the nephrotoxicity of either MCP or commercial hexane because of the small number of animals, short duration (28 vs. 90 days), and oral rather than inhalation administration.

In addition, the API study (Ref. 8, Att. III), discussed below under neurotoxicity, provides suggestive evidence of the subchronic toxicity potential of MCP and commercial hexane.

4. *Chronic toxicity.* No data on the chronic toxicity of either MCP or commercial hexane have been found in the literature.

5. *Oncogenicity.* No data on the oncogenic effects of either MCP or commercial hexane have been found in the literature.

6. *Developmental and reproductive toxicity.* No data on the developmental and reproductive effects of either MCP or commercial hexane have been found in the literature.

7. *Mutagenicity.* No data on the mutagenic effects of either MCP or commercial hexane have been found in the literature.

8. *Neurotoxicity.* In Italy and in Japan, commercial hexane is used as a solvent for leather adhesives and constitutes a ubiquitous pollutant in shoe-manufacturing industries (Ref. 49). Although *n*-hexane was once believed to have been of low toxicity, outbreaks of peripheral neuropathies in industrial workers exposed to commercial hexane focused attention on occupational exposure to *n*-hexane and its metabolites (Refs. 47 and 49).

It has been well documented that workers exposed to repeatedly high levels of commercial hexane solvents have developed peripheral neuropathies. The first documented cases were Japanese workers who developed polyneuropathy after 3 to 10 months of exposure to industrial atmospheres with high amounts (1,000 to 2,500 ppm) of hexane isomers (Ref. 46). Subsequently, similar cases appeared in U.S. and

European workers. These cases were supplemented by case reports of polyneuropathies following the intentional inhalation of glue vapors containing commercial hexanes and other solvents (Ref. 46). Clinically observed effects included fatigue, poor appetite, and weight loss, followed by impaired sense of touch and loss of strength in the extremities. Physiological effects included reduced nerve conduction velocities and denervation. Histopathological examinations revealed evidence of axonal degeneration, thereby confirming clinical observations.

Chronic exposure of rats to *n*-hexane has resulted in polyneuropathy (Ref. 43 and 46). When hexacarbon metabolites of *n*-hexane, methyl *n*-butyl ketone and 2,5-hexane-dione, were shown to induce the same type of neuropathy seen in rats exposed to *n*-hexane, other hexacarbon compounds found in commercial hexane were suspected of being neurotoxic (Ref. 43). Consequently, the following studies were performed to determine the neuropathic potential of the other hydrocarbon components of commercial hexane.

Ono *et al.* (Ref. 43) conducted a study to determine the comparative neurotoxicities of *n*-hexane (a known neurotoxicant) and certain of its isomers (2–MP, 3–MP, and MCP) commonly present in commercial hexane mixtures. The chemicals (>99 percent pure) were diluted in olive oil and orally administered to male Wistar rats (5 to 7 per group) daily for 8 weeks. Doses were increased at 4 weeks and at 6 weeks to accommodate the normal weight gain (measured at biweekly intervals) of the animals. For the first 4 weeks of the experiment, animals received 0.4 ml (approximately 700 mg/kg/day) of the appropriate chemical and 0.6 ml of olive oil per day. For weeks 5 and 6, they received 0.6 ml (approximately 1,000 mg/kg/day) of a chemical and 0.4 ml of olive oil per day and for weeks 7 and 8 they received 1.2 ml (approximately 2,000 mg/kg/day) of a chemical and 0.8 ml of olive oil per day. Controls received olive oil alone.

The conduction velocity of the peripheral nerve was measured in the animals' tails at biweekly intervals. Rats were immobilized without anesthesia and three electrodes were inserted in the nerve: the first was placed 3 cm down from the anus (A); the second was 7 to 10 cm down from the first (B); and the third was 5 cm down from the second and 3 to 4 cm up from the tail end (C). After insertion of the electrodes, the tail was immersed in a paraffin bath maintained at 37–38 °C. Motor nerve conduction velocity (MCV) and distal latency (DL) were measured by stimulating point A and point B in turn and observing the electromyogram (EMG) at point C. Mixed nerve conduction velocities (MNCV) were measured by stimulating the nerve at C and observing and summing the nerve impulses at A and B.

No significant differences were observed in body weight between groups over the course of the experiment. MCV in the *n*-hexane group was significantly less than control at 4 weeks ($p<0.05$) and at 8 weeks ($p<0.01$) after the beginning of the study but not at 6 weeks. MCV in the MCP group was significantly less than controls at 8 weeks ($p<0.05$). No significant differences were noted for the other test compounds. No significant differences in DL were noted for any test group when compared with controls. In the *n*-hexane group, MHCV (distal) was significantly less than controls at 4, 6, and 8 weeks ($p<0.05$). No significant differences were noted for the other test compounds. In the *n*-hexane group, MNCV (proximal) was significantly less than controls at 6 ($p<0.01$) and at 8 ($p<0.05$) weeks. In the MCP and 2-MP groups MNCV (proximal) was significantly less than controls at 8 weeks ($p<0.05$). No significant difference was noted for the 3-MP group. No behavioral changes were noted in any group throughout the course of the study.

EPA believes that this study provides suggestive evidence of MCP's and possibly 2-MP's neurotoxic potential. While *n*-hexane distinctly impaired the motor nerve conduction velocities of the peripheral tail nerve of male Wistar rats, MCP slightly, but significantly ($p<0.05$), impaired them.

Egan *et al.* (Ref. 46) conducted a 6-month subchronic continuous inhalation toxicity study to determine whether a mixture of C_6 isomers virtually free of n-hexane could induce in rats a neuropathy similar to that seen in experimental studies in animals chronically exposed to pure *n*-hexane. The mixture of C_6 isomers consisted of: 24.6 percent MCP (431.0 mg/m³ nominal concentration); 35.3 percent 2-MP (618.0 mg/m³); 30.0 percent 3-MP (525.0 mg/m³); 6.2 percent cyclohexane (109.0 mg/m); 3.4 percent 2,3-DMB (60.0 mg/m³); and 0.3 percent *n*-hexane (5.3 mg/m³).

Male Sprague-Dawley rats were divided into four groups (6 per group): a sham-exposed group which received hydrocarbon-free air; a positive control which received methyl *n*-butyl ketone (98.66 percent pure) at 400 mg/m³ (100 ppm); a negative control which received methyl ethyl ketone (99.98 percent pure) at 1,475 mg/m³ (500 ppm); and an experimental group which received the mixture of C_6 isomers at 1,750 mg/m³ (500 ppm). Animals were exposed 22 hours/day, 7 days/week for 6 months. Two rats per group were used as the subjects of detailed neuropathological examinations following 2, 4, or 6 months of exposure.

No clinically observable disorders, including neurological impairment, were observed in either exposed or control animals throughout the 6-month course of exposure. After 4 months of exposure, animals exposed to methyl *n*-butyl ketone, the positive control, showed histopathological signs of hexacarbon-induced neuropathy in both the central and peripheral nervous systems. After 6 months of exposure, more advanced neuropathy was observed. Exposure to methyl ethyl ketone, the negative control, for up to 6 months did not produce any histopathological changes in the central or peripheral nervous systems.

Animals exposed to the mixure of C_6 isomers for up to 6 months showed no significant histopathological differences from controls. As above, nervous tissue sections examined after 2 months of exposure appeared normal. At 4 months, age-associated changes in the medulla oblongata and chronic traumatic damage to plantar nerves were observed, but these changes were not attributed to compound administration. Single teased nerve fiber preparations appeared normal (in contrast to the giant axonal swellings seen in preparations from positive controls).

EPA believes that this study is well-conducted. Egan *et al.* used appropriate control animals and carefully monitored actual exposure concentrations and other variables, such as diet. However, EPA believes that the doses used were too low to adequately demonstrate lack of neurotoxic potential of the C_6 isomer mixture. For any repeated exposure study to provide adequate evidence of a substance or mixture's lack of potential to cause a specific effect, EPA feels that exposure to a maximum tolerated dose is necessary. Therefore, the study was inadequate to reasonably predict the neurotoxic potential of either MCP or commercial hexane.

In 1982, API sponsored a two-part study of the neuropathic potential of *n*-hexane in the presence of other hexane isomers (Ref. 8, Att. II). The mixture of C_6 isomers consisted of 30 percent MCP, 30 percent 2-MP, 30 percent 3-MP, 5 percent cyclohexane, 5 percent 2,3-DMB, and less than 1 percent *n*-hexane. Phase I of the study was designed to determine

whether rats treated with non-neurotoxic doses of *n*-hexane would develop neuropathy when treated concurrently with a mixture of *n*-hexane-free C_6 isomers. Phase II of the study was designed to determine whether a mixture of *n*-hexane-free C_6 isomers would potentiate the neurotoxic effects of *n*-hexane given to rats in neurotoxic doses.

In Phase I, young adult male Charles River CD rats were exposed by inhalation to combinations of *n*-hexane and C_6 isomers for 22 hours/day, 7 days/week for up to 6 months at International Research and Development Corp. Animals were killed by perfusion with paraformaldehyde followed by glutaraldehyde, and dissected to remove the brain, spinal cord, and sciatic/tibial nerve complex. Tissues were examined by light microscopy.

A total of 54 animals in six groups were examined. The first group (controls) consisted of 14 animals; the second group (four animals) was exposed to 125 ppm *n*-hexane for 6 months; the third group (four animals) was exposed to 125 ppm *n*-hexane and 125 ppm C_6 isomers for 6 months; the fourth group (four animals) was exposed to 125 ppm *n*-hexane and 375 on ppm C_6 isomers (approximately 112.5 ppm MCP, 2-MP, and 3-MP, respectively) for 6 months; the fifth group (four animals) was exposed to 125 ppm *n*-hexane and 1,375 ppm C_6 isomers (approximately 412.5 ppm MCP, 2-MP, and 3-MP, respectively) for 6 months; and the sixth group (24 animals) was exposed to 500 ppm *n*-hexane. Selected animals from the first and sixth groups were killed at monthly intervals throughout the study.

Weight loss and/or functional signs of abnormality expressed as hindlimb weakness were observed in all animals treated with 500 ppm *n*-hexane beginning with the fourth month of exposure. All other animals were reported to appear normal. Microscopic examination of animals treated with 500 ppm *n*-hexane revealed early pathological changes in the tissues studied beginning with the 2-month exposure group. Characteristic *n*-hexane-induced pathological changes were observed at the third month, and advanced pathological changes were seen by the fourth month.

Of the animals in the other groups (subjected to different exposure levels and examined at 6 months), age-related dystrophic axons were observed in all groups, including the controls. In the groups exposed to 125 ppm *n*-hexane in combination with either 375 or 1,375 ppm C_6 isomers, scattered axonal swellings were also observed, but these were not considered by the investigators to have been pathological changes consistent with *n*-hexane-induced neuropathy.

In Phase II, young adult male Charles River CD rats were exposed to combinations of *n*-hexane and C_6 isomers by a protocol detailed in the companion study (Ref. 8, Att. III). This report details the findings of the light microscopy examination of the brain, spinal cord, and sciatic/tibial nerve complex of animals after 2 months and 6 months of exposure. Five animals were examined from each exposure group at each time point, making a total of 40 animals. The exposure groups included controls, animals exposed to 500 ppm C_6 isomers, animals exposed to 500 ppm *n*-hexane concurrently with 500 ppm C_6 isomers, and animals exposed to 500 ppm *n*-hexane alone. Animals were exposed for 22 hours/day, 7 days/week for 2- or 6-month periods. Sacrifice was by perfusion with 4-percent paraformaldehyde followed by 5-percent glutaraldehyde.

All of the animals receiving *n*-hexane either alone or in combination with C_6 isomers exhibited signs of abnormality. After 2 months of exposure, weight loss, flat-footedness, and poor fur texture were noted. After 6 months, weight loss and hindlimb weakness were observed. All other animals were reported to appear normal.

Upon microscopic examination, animals not exposed to *n*-hexane exhibited only age-related changes. Animals exposed to *n*-hexane alone displayed pathological changes consistent with *n*-hexane-induced neuropathy at 2 and 6 months of exposure. Animals exposed to *n*-hexane concurrently with other C_6 isomers did not display compound-related pathological changes at 2 months exposure. Compound-related changes typical of *n*-hexane-induced neuropathy were seen at 6 months and were reported to be similar in degree to changes induced by *n*-hexane alone.

In 1983, API sponsored a study designed to evaluate the inhalation toxicity, particularly neurotoxicity, of *n*-hexane alone and mixed with other C_6 isomers commonly found in commercial hexanes (Ref. 8, Att. III). The chemicals and mixtures under study were administered to male Charles River CD rats (20 per group) for approximately 22 hours/day, 7 days/week for 6 consecutive months. No rationale was given for the selection of exposure levels.

Four groups of rats were employed. Group VII was exposed to filtered air only (methods control); Group VIII was exposed to 500 ppm mixed hexanes; Group IX was exposed concurrently to 500 ppm *n*-hexane and 500 ppm mixed hexanes, making a total of 1,000 ppm; and Group X was exposed to 500 ppm *n*-hexane (positive control). Two lots of *n*-hexane were employed during the course of the study. The purity of *n*-hexane was 99.3 to 99.4 weight percent. The major contaminant was MCP at 0.4 to 0.5 weight percent. Two lots of mixed hexanes were also used, consisting of approximately 30 percent MCP, 30 percent 2-MP, 30 percent 3-MP, 5 percent cyclohexane, 5 percent 2,3-DMB, and less than 1 percent *n*-hexane. Minor amounts of 2,2-DMB and an unknown component were reported in one lot.

After 2 months and 6 months of exposure, five animals/group were removed from this study for independent examination of the brain, spinal cord and sciatic/tibial nerve complex. These results are reported separately in the 1982 API study (Ref. 6, Att. II).

After 6 months of exposure, all surviving animals were killed by intraperitoneal administration of sodium pentobarbital followed by exsanguination. All animals (including those that died during the course of the study or were killed *in extremis*) were subjected to complete necropsy.

The only treatment-related pharmacotoxic sign observed was abnormal gait, which first appeared at week 16 in one animal from Group X and at week 17 in one animal from Group IX. The incidence and severity increased over time in both animals. Group IX (15 percent MCP and 50 percent *n*-hexane) and X (*n*-hexane only) had significantly ($p<0.01$) lower body weights than either Group VII (controls) or VIII (30 percent MCP). The difference first became significant at week 5 in Group IX and by week 26 was about 25 percent less than controls. In Group X, significance was first noted at week 7, and at week 26 was about 30 percent less than controls.

In all three experimental groups, kidney weights were significantly increased when compared with controls. Upon microscopic examination, a slightly increased incidence of chronic nephritis was observed which was considered to be consistent with the increase in weight. The severity of the condition was also increased in treated animals when compared with controls, but it was unclear whether this was due to amplification of the process seen in control animals or to additional tubular injury caused by the administered hexanes and typically seen in hydrocarbon-induced renal disease.

Groups IX and X, but not Group VIII, exhibited other organ weight variations,

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but no significant alterations were noted upon histological examination. These variations were considered to be reflections of decreased body weight gain.

Abnormal gait was observed in 8/15 rats in Group IX and 9/15 rats in Group X by week 25 of the study. Microscopic examination revealed peripheral nerve lesions including atrophy, axonal degeneration, and mono-nuclear cell infiltration, in some cases accompanied by secondary skeletal muscle atrophy. These microscopic lesions and the clinical sign of abnormal gait were found only in the groups receiving *n*-hexane, either alone or in combination with mixed hexanes. Administration of mixed hexanes without *n*-hexane (Group VIII) did not result in detectable signs of neurotoxicity.

EPA believes that while the experimental protocol and exposure information in the 1982 API Study (Ref. 8, Att. II) were minimally presented, the 1983 API Study (Ref. 8, Att. III) appears to be well-conducted, with careful monitoring of actual exposure concentrations. Both these studies allow a comparison of effects in male rats after inhalation exposure for up to 6 months to C_6 isomers less *n*-hexane versus *n*-hexane alone. EPA further believes that these studies indicate that *n*-hexane produces clear clinical signs, e.g. abnormal gait, and neuropathy at 500 ppm, the OSHA, PEL, but not at 125 ppm. Exposure to up to 1,375 ppm C_6 isomers produced neither clinical signs nor neuropathy. For any repeated exposure study to provide adequate evidence of a substance or mixture's lack of potential to cause a specific effect, however, EPA believes that a maximum tolerated dose is necessary, and was not used in these studies. Therefore, these studies were inadquate to predict the neurotoxic potential of either MCP or commercial hexane.

F. Ongoing Testing

n-Hexane and its metabolites, methyl *n*-butyl ketone and 2, 5-hexanedione, have been shown to induce polyneuropathy in rats (Refs. 43 and 46). The National Toxicology Program (NTP) is conducting a subchronic inhalation toxicity test of *n*-hexane in B6C3F$_1$ mice (Ref. 26). There is continuous exposure at the low dose of 1,000 ppm. Exposure to 4,000 and 10,000 ppm occurs for 6 hours/day, 5 days/week for 13 weeks (90 days). Because Cavender *et al.* (Ref. 27), sponsored by the Chemical Industry Institute of Toxicology (CIIT), have published the results of a subchronic (13-week) inhalation toxicity study in Fischer rats exposed to 0, 3,000, 6,500, and 10,000 ppm of *n*-hexane for 6 hours/day, 5 days/week. NTP will evaluate the need for chronic toxicity testing (oncogenicity) after reviewing CIIT's data in rats and their own data in mice (Ref. 26). In addition, NTP has arranged for reproductive and developmental toxicity testing of *n*-hexane by inhalation (Ref. 26). Finally, NIOSH is testing potential motor and sensorimotor effects of acute inhalation exposures of rats to *n*-hexane, methyl ethyl ketone, and methyl amyl ketone (Ref. 29).

III. Findings

EPA is basing proposed testing requirements upon TSCA section 4(a)(1)(A) for MCP and upon section 4(a)(1)(B) for commerical hexane.

1. Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of MCP, whether as an isolated product or as a substantial component of mixed hexane products, may present an unreasonable risk of neurotoxicity and subchronic toxicity. Ono *et al.* (Ref. 43) reported impaired motor nerve conduction velocities in rats exposed to MCP, providing suggestive evidence of the neurotoxic potential of MCP. API (Ref. 8, Att. III) reported that a mixture of C_6 isomers virtually free of *n*-hexane caused significantly increased kidney weights and increased incidence in severity of chronic nephritis, providing suggestive evidence of the subchronic toxicity potential of MCP which was a major constituent of this mixture. Although isolated MCP has not been sold in the U.S. since 1982 (Ref. 8), MCP is a substantial component of various hexane-containing refinery streams and products whose manufacture, processing, and use result in extensive exposure of workers, consumers, and the general population to MCP as described in Unit II. D.

Under section 4(a)(1)(A)(ii), EPA finds that existing data and experience are inadequate to reasonably determine or predict the potential for exposure to MCP resulting from its manufacture, processing, and use, either as an isolated product or as a substantial component of mixed hexane products, to produce neurotoxicity, subchronic toxicity, and pharmacokinetic effects. EPA believes that the studies conducted by Egan *et al.* (Ref. 6) and API (Ref. 8, Att. II and Att. III) are inadequate because animals were not exposed to maximum tolerated doses of the test substance. EPA believes that exposure to maximum tolerated doses is necessary in order for such studies to provide adequate evidence of a substance or mixture's lack of potential to cause a specific effect. Thus, these studies cannot refute the positive findings of neurotoxicity provided by Ono *et al.* (Ref. 43) or the kidney effects provided by API (Ref. 8, Att. III). Furthermore, EPA believes that the nephrotoxicity oral screening study (Ref. 8, Att. IV) is inadequate to predict the nephrotoxicity of MCP because of the small number of animals, short duration (28 vs. 90 days), and oral rather than inhalation administration. In addition, while the absorption, distribution, and metabolism studies of MCP and other C_6 isomers indicate the absorption of MCP in blood, they are inadequate to predict to pharmacokinetic behavior of MCP.

Under section 4(a)(1)(A)(iii), EPA finds that testing of MCP for neurotoxicity, subchronic toxicity, and pharmacokinetic behavior is necessary to develop adequate data to assess the effects of human exposure to MCP resulting from its manufacture, processing, and use.

2. EPA also believes that there is substantial production of MCP as a component of mixed hexane products and that it could find that there is substantial human exposure to MCP from the manufacture, processing, and use of such products. Although isolated MCP is currently not manufactured for sale, its presence in various hexane-containing refinery streams and products leads to widespread exposure of workers, consumers, and the general population to MCP along with other C_6 hydrocarbons. Under a section 4(a)(1)(B) finding, EPA could require testing of MCP for additional health effects (e.g., reproductive effects) for which data currently do not exist and for which a section 4(a)(1)(A) finding of potential unreasonable risk cannot be made. However, because EPA simultaneously is proposing testing of commercial hexane for all such effects, and because such testing of commercial hexane will screen for the potential of MCP and other components of commercial hexane to produce any of these effects, the Agency is proposing to limit the testing of MCP at this time to neurotoxicity, subchronic toxicity, and pharmacokinetics under section 4(a)(1)(A). EPA believes that this limited testing will provide enough information to determine MCP's effective dose on various target organs and provide a basis for determining the need for any additional testing if the results of this testing and that on commercial hexane indicate other effects.

3. Under section 4(a)(1)(B) , EPA finds that commercial hexane is produced in substantial quantities and that there is substantial human exposure from its manufacture, processing, and use. Approximately 500 million pounds of hexanes were produced in 1984 (Ref. 10).

In addition, according to the National Occupational Exposure Survey of 1985 (NOES), 83,000 workers are estimated to have actual exposure to hexane solvents. Of these, 12,576 are women (Ref. 42). Commercial hexanes are used as a component of motor fuels, lacquers, printing inks, and adhesives, and as a seed oil extractant (Ref. 9). Such uses may result in potentially widespread exposure to workers and consumers, and the general public may be exposed through fugitive emissions from anthropogenic sources.

While EPA believes that there may be substantial human exposure to C_6 hydrocarbons in gasoline, EPA is not considering exposure to the finished gasoline as part of its basis for finding substantial human exposure to commercial hexane. The Agency believes that exposures associated with the manufacture and processing of commercial hexanes and use of solvents containing significant concentrations of C_6 isomers provide sufficient basis for a finding of substantial human exposure under TSCA section 4(a)(1)(B)(i) for commercial hexane.

EPA finds that there are insufficient data to reasonably determine or predict the acute, subchronic, oncogenic, reproductive, developmental, mutagenic, neurotoxic, and pharmacokinetic effects of human exposure to commercial hexane resulting from its manufacture, processing, and use. EPA further finds that testing is necessary to develop such data.

IV. Proposed Rule

A. Proposed Testing and Test Standards

The Agency is proposing that testing be conducted in accordance with specific test guidelines set forth in sections in Title 40 of the Code of Federal Regulations (CFR) as enumerated below. Test methods under new Parts 796, 797, and 798 were published in the **Federal Register** of September 27, 1985 (50 FR 39252). Proposed revisions to these guidelines were published in the **Federal Register** of January 14, 1986 (51 FR 1522). Elsewhere in this issue of the **Federal Register**, new Part 795—Provisional Test Guidelines is being proposed.

On the basis of the findings presented above for health effects testing, the Agency is proposing that MCP be tested under TSCA section 4(a)(1)(A) for: (1) neurotoxicity by inhalation using the tests specified in §§ 795.250, 798.6050, 798.6200, 798.6400, and 798.6500; (2) subchronic inhalation toxicity using the test specified in § 798.2450; and (3) inhalation and dermal pharmacokinetics using the test specified in § 795.232 of this chapter.

Acute neurological effects are of concern because such effects may increase accident proneness, impair self-rescue, or reduce work efficiency (Ref. 45). This is of particular concern to the 38,000 workers potentially exposed to either actual MCP or MCP in a trade name product (Ref. 11). In order to assess the acute neurologic effects of inhaled MCP at low levels on behavior, the Agency is proposing that the neurotoxicity testing include a schedule-controlled operant behavior study (§ 798.6500). In order to assess the effects of repeated inhalation exposures to MCP, the Agency is proposing a subchronic neurobehavioral toxicity evaluation, consisting of neuropathologic evaluation of tissues perfused *in situ* (§ 798.6400), a functional observation battery (§ 798.6050), and measurement of motor activity (§ 798.6200). Furthermore, EPA believes that MCP's presence in breast milk samples raises concerns for neonates and children, whose developing neurological systems may be more susceptible to damage from exposure to MCP than adults. Therefore, in order to assess potential functional and morphological hazards to the nervous system which may arise in neonates from exposure of the mother to MCP during pregnancy and lactation, the Agency is proposing that MCP be tested for developmental neurotoxicity (§ 795.250), which is being proposed elsewhere in this issue of the **Federal Register**.

In order to assess the degree of toxicological activity of MCP upon various target organs, the Agency is proposing that MCP be tested for subchronic toxicity by inhalation (§ 798.2450).

In order to compare actual uptake levels by inhalation of MCP vapors and by dermal absorption following contact with liquid MCP in solvents, testing to compare inhalation and dermal pharmacokinetics (§ 795.232) is also proposed. Because MCP is moderately water soluble (Ref. 2) while *n*-hexane is insoluble (Ref. 4), EPA is concerned that dermal exposure to commercial hexane in solvents by workers and the general population could cause greater exposure to MCP than to *n*-hexane. The Agency believes that this testing will allow it to determine the pharmacokinetic behavior of MCP through solvent use.

On the basis of the findings presented above for health effects testing, the Agency also is proposing that commercial hexane be tested under TSCA section 4(a)(1)(B) for: (1) acute inhalation toxicity using the test specified in § 798.1150; (2) subchronic inhalation toxicity using the test specified in § 798.2450; (3) oncogenicity by inhalation using the test specified in § 798.3300; (4) reproductive toxicity by inhalation using the test specified in § 798.4700; (5) developmental toxicity by inhalation using the test specified in § 798.4350; (6) neurotoxicity by inhalation using the tests specified in §§ 798.6050, 798.6200, 798.6400, and 798.6500; and (7) inhalation and dermal pharmacokinetics using the test specified in § 795.232 of this chapter.

To assess the potential for commercial hexane to cause gene mutations, the Agency is proposing that a reverse mutation assay in *Salmonella typhimurium* be conducted with and without metabolic activation using the procedures specified in § 798.5265. If the results from the *Salmonella typhimurium* test are negative, a gene mutation test in mammalian cells in culture will be required with and without metabolic activation using the procedures specified in § 798.5300. Unless the results of both the *Salmonella typhimurium* test and the mammalian cells in culture test are negative, a sex-linked recessive lethal test in *Drosophila melanogaster* will be required using the procedures specified in § 798.5275. A positive result in the sex-linked recessive lethal test will trigger a mouse specific locus test using the procedures specified in § 798.5200. If the sex-linked recessive lethal test is negative, then the mouse specific locus test will not be required.

To asess the potential for commercial hexane to cause chromosomal aberrations, the Agency is proposing that *in vitro* cytogenetic assays be conducted on commercial hexane as specified in § 798.5375. Unless the results of the *in vitro* test are negative, a dominant-lethal assay will be required using the procedures specified in § 798.5450. A positive result in the dominant-lethal assay will trigger a heritable translocation assay using the procedures specified in § 798.5460. If the *in vitro* cytogenetics assay is negative, an *in vivo* bone marrow assay using procedures specified in § 798.5385 will be required. Should the *in vivo* bone marrow test results prove negative, no further chromosomal aberration testing would be required. A non-negative result in the *in vivo* bone marrow test would trigger the dominant-lethal assay. Again, if the dominant-lethal test is positive, a heritable translocation assay will be required. If the dominant-lethal test is negative, no further chromosomal

aberration testing will be required for commercial hexane.

Before testing is initiated in one or both of the endpoint mutagenicity tests, EPA will hold a public program review, if the results of the previous tier tests are positive. Public participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the **Federal Register**. Should EPA determine, based on the available weight of evidence, that proceeding to the mouse specific locus or to the heritable translocation test is no longer warranted, the Agency would propose to repeal these testing requirements and, after public comment, issue a final amendment to rescind these requirements.

For a more detailed discussion concerning mutagenicity-tiered testing and public program review procedures see EPA's final test rule for the C_6 aromatic hydrocarbon fraction published in the **Federal Register** of May 17, 1985 (50 FR 20662).

Because of the large exposures to commercial hexane, the requirement for oncogenicity testing will be independent of the outcome of the mutagenicity testing, and the deadline for its completion will be based on its intiation immediately after completion of the subchoronic study.

The Agency is proposing that the above-referenced TSCA health effects test guidelines be employed as the test standards for the purposes of the proposed tests for MCP and commercial hexane. The TSCA test guidelines for health effects testing specify generally accepted minimal conditions for determining the health effects for substances like MCP and commercial hexane to which humans are expected to be exposed. The Agency's review of the TSCA Test Guidelines, which occurs on a yearly basis according to the process described at 47 FR 41857 (September 22, 1982), has found no reason to conclude that these protocols need to be modified significantly. However, because of the high volatility of commercial hexane and because human exposure occurs primarily by inhalation, EPA is proposing chemical-specific modifications to the proposed mutagenicity tests that take into account these factors. In addition, because of the numerous components of commercial hexane, EPA is proposing chemical-specific modifications to the proposed inhalation and dermal pharmacokinetics testing to facilitate identification of the radiolabeled components of the mixture.

EPA published in the **Federal Register** certain proposed revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study (51 FR 1522; January 14, 1986). In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for MCP and commercial hexane.

B. Test Substance

EPA is proposing under TSCA sections 4(a)(1)(A) that methylcyclopentane (MCP; CAS No. 96-37-7) of at least 99.9 percent purity be used as the test substance. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to MCP itself. Because Phillips stated that it sold 99.9+ percent research grade MCP preparations to laboratories or research facilities (Ref. 20), EPA believes that this research grade MCP is readily available for testing purposes. Radiolabeled MCP will be needed for the inhalation and dermal pharmacokinetics testing.

EPA is proposing under TSCA section 4(a)(1)(B) that commercial hexane A, or solvent grade, derived from the fractionation of straight-run gasoline and consisting of no more than 64 liquid volume percent *n*-hexane and no less than 19 liquid volume percent MCP, be used as the test substance. According to Kirk-Othmer (Ref. 9), commercial hexane A, or solvent grade, consists of the following components: 63.91 liquid volume percent *n*-hexane (CAS No. 110-54-3); 19.43 liquid volume percent methylcyclopentane (MCP; CAS No. 96-37-7); 9.38 liquid volume percent 3-methylpentane (3-MP; CAS No. 96-14-0); 3.48 liquid volume percent 2-methylpentane (2-MP; CAS No. 107-83-5); 2.81 liquid volume percent benzene (CAS No. 71-43-2); 0.78 liquid volume percent cyclohexane (CAS No. 110-82-7); 0.16 liquid volume percent 2,2- and 2,4-dimethylpentane (2,2-DMP; CAS No. 590-35-2; 2,4-DMP; CAS No. 108-08-7), 0.05 liquid volume percent 2,3-dimethylbutane (2,3-DMB; CAS No. 79-29-8); and 25 ppm sulfur (CAS No. 7704-34-9). EPA believes that commercial hexane A is readily available for testing purposes. Radiolabled components of commercial hexane A will be needed for the inhalation and dermal pharmacokinetics testing.

Because of the numerous kinds of exposure to the C_6 hydrocarbon fraction and because of the variability in composition of commercial hexanes, EPA believes that specifying commercial hexane A as the test substance will alleviate the problem of selecting an appropriate C_6 mixture as the test substance under section 4(a)(1)(B). There are several reasons which led to the proposal of commercial hexane A as the test substance. First, the Agency feels that testing is needed to characterize the toxicity of a type of commercial hexane to which people are actually exposed, rather than a synthetic blend of C_6 hydrocarbons. Second, because the neurotoxic and other effects of *n*-hexane are under study by the National Toxicology Program (NTP), the Agency believes that industry may reduce the *n*-hexane content in C_6 hydrocarbon solvents, thereby increasing exposure to the other constituents, but primarily to MCP. Third, the Agency believes that testing commercial hexane A is more appropriate than testing commercial hexanes B or C because commercial hexane A has the greatest MCP content and the highest solvent use.

C. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "imports"). Processors are required to test if the findings are based on processing ("process" is defined in section 3(10) of TSCA as the preparation of a chemical substances or mixture, after its manufacture, for distribution in commerce). Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects on human health of the manufacture, processing, and use of MCP and commercial hexane, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, MCP or commercial hexane other than as impurities at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. In addition, manufacturers and processors of MCP or commercial hexane who do so in the course of producing gasoline or other motor or heating fuels are subject to this rule because the Agency's section 4(a)(1)

(A)(ii) and (B)(ii) findings are based on the manufacture, processing, and use of MCP and commercial hexane. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. The Agency anticipates that the current manufacturers of MCP or commercial hexane will form the reimbursement pool and sponsor the required testing. EPA promulgated procedures for appyling for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the Federal Register to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for MCP and commercial hexane. As noted in Unit IV.B. above EPA is interested in evaluating the neurotoxic and subchronic effects of MCP itself and has specified a relatively pure substance for testing. In addition, the Agency has proposed a specific type of commercial hexane for testing and believes that testing of commercial hexane A will allow reasonable prediction of the potential of various commercial hexane products to cause the effects to be studied.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards in Table 1 as follows:

TABLE 1.—REPORTING REQUIREMENTS

Test	Reporting deadline for final report (No. of months after the effective date of the final rule)	No. of interim (6-mo) reports required
1. Testing for MCP:		
A. Neurotoxicity tests: §§ 795.250, 798.6050, 798.6200, 798.6400, and 798.6500	12	1
B. Inhalation and dermal pharmacokinetics: § 795.252	12	1
C. Subchronic inhalation toxicity: § 798.2450	15	2
2. Testing for commercial hexane:		
A. Acute inhalation toxicity: § 798.1150	6	0
B. Subchronic inhalation toxicity: § 798.2450	15	2
C. Oncogenicity: § 798.3300	53	8
D. Reproduction and fertility effects: § 798.4700	29	4
E. Inhalation developmental toxicity: § 798.4350	12	1
F. *Salmonella typhimurium*: § 798.5265	4	0
G. Mammalian cells in culture: § 798.5300	12	1
H. *Drosophila* sex-linked recessive lethal: § 798.5275	24	1
I. Mouse specific locus: § 798.5200	48	8
J. *In vitro* cytogenetics: § 798.5375	4	0
K. *In vivo* cytogenetics: § 798.5385	12	1
L. Dominant lethal assay: § 798.5450	24	1
M. Heritable translocation assay: § 798.5460	48	8
N. Neurotoxicity tests: §§ 798.6050, 798.6200, 798.6400, and 798.6500	12	1
O. Inhalation and dermal pharmacokinetics: § 795.232	12	1

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844). In brief, as of the effective date of this test rule, an exporter of MCP or commercial hexane must report to EPA the first export or intended export of MCP or commercial hexane to a particular country in a calendar year. EPA will notify the foreign country concerning the test rule for the chemical.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. * * *" The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection.

Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated EPA representatives to determine compliance with any final rule for MCP and commercial hexane. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards under 40 CFR Part 792 and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors who fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (See 40 CFR 790.28(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Issues for Comment

1. Are there health effects studies on commercial hexane A which would adequately characterize its potential to cause any of the effects for which EPA has proposed testing?

2. Which substance should be tested to characterize the toxicity of commercial hexane under section 4(a)(1)(B): commercial hexane A or *n*-hexane-free C_6 isomers?

Normally, EPA would require testing of the most representative substance to which people are exposed. In this proposed rule, EPA has specified commercial hexane A, or solvent grade, as the test substance because there is actual exposure to it and because it contains the highest amount of MCP, 1 of its 2 largest constituents. The largest constituent, *n*-hexane, is a known neurotoxicant undergoing testing by NTP and NIOSH for other toxicological endpoints. EPA is concerned that the presence of *n*-hexane (64 liquid volume percent) in commercial hexane A may mask the adverse health effects of the other components. In addition, benzene, a known carcinogen, is present in commercial hexane A at 2.81 liquid volume percent.

EPA seeks comment on whether testing *n*-hexane-free C_6 isomers may be a more appropriate test substance. If industry should consider reformulating commercial hexane to reduce its *n*-hexane content, the content of the other C_6 isomers (MCP, 2–MP, and 3–MP) would increase in the mixture. Testing of *n*-hexane-free C_6 isomers would complement the ongoing testing of *n*-hexane because it would characterize the toxicity of the other components collectively. In fact, this synthetic blend has been tested by API and has no benzene and less than 1 liquid volume percent *n*-hexane. On the other hand, because this is a synthetic mixture, testing would provide toxicological information on a mixture to which there currently is no actual exposure.

3. The authors of the EPA monitoring study raised concerns that infants might be uniquely susceptible to some pollutants because of their small body weights and their metabolic systems which differ from those of adults. Is additional testing of MCP and/or commercial hexane needed to assess potential adverse health effects upon neonates, who may be exposed to hexanes and MCP through mother's milk, and whose developing neurological systems may be more susceptible to damage from exposure to these compounds? What test methods should be used for such testing?

4. Since the API study (Ref. 8, Att. III) showed significantly increased kidney weights in rats dosed for 22 hours per day, 7 days per week for 6 consecutive months, should the subchronic test standard for MCP be modified to follow this dosing regimen?

VI. Economic Analysis of Proposed Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis (Ref. 23) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of commercial hexane: (1) price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If these indications are negative for commercial hexane, no further economic analysis is performed. However, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Testing costs for the proposed testing of MCP are estimated to range from $297,000 to $559,000 and for commercial hexane are estimated from $2,016,000 to $3,310,000, for a total estimated testing cost for the proposed rule of $2,313,000 to $3,869,000. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $0.6 to $1.0 million. Based on 1984 production of 470 million pounds, the unit test costs range from $0.0013 to $0.0021 per pound. Relative to a current list price of $0.20 per pound of commercial hexane, these costs are equivalent to 0.7 to 1.1 percent of price.

Based on these costs and the market characteristics of commercial hexane, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test

rule is low. This conclusion is based on the following observations:

1. The annual unit cost of the testing required in this rule is low;

2. Demand for commercial hexane is relatively inelastic with respect to price in all of its major uses; and

3. Market expectations for commercial hexane are positive.

Refer to the economic analysis for a complete discussion of the potential for economic impact resulting from these costs.

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82–140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, DC: (554–1404); Outside the U.S.A. (Operator—202–554–1404), by June 30, 1986. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

IX. Public Record

EPA has established a record for this rulemaking, (docket number OPTS–42064). This record contains the basic information considered by the Agency in developing this proposal, and appropriate Federal Register notices.

This record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this proposed rule consisting of:

(a) Notice containing the ITC designation of MCP to the Priority List (50 FR 20930; May 21, 1985).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on MCP (50 FR 20909; May 21, 1985).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Notice of proposed rule revising TSCA test guidelines (51 FR 1522; January 14, 1986).

(2) Support documents consisting of:

(a) MCP technical support document for proposed rule.

(b) Economic impact analysis of NPRM for MCP and commercial hexane.

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials.

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X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. Enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Submit comments on these requirements to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place, NW., Washington DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Reporting and recordkeeping requirements.

Dated: May 2, 1986.

Victor J. Kimm,

Deputy Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 795—[AMENDED]

1. In proposed Part 795:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding new § 795.232 to read as follows:

§ 795.232 Inhalation and dermal pharmocokinetics.

(a) *Purpose.* The purpose of these studies is to:

(1) Determine bioavailability of the test substance after dermal or inhalation administration.

(2) Ascertain whether the metabolism of the test substance is similar after dermal or inhalation administration.

(3) Examine the effects of repeated dosing on the metabolism of the test substance.

(b) *Definitions.* (1) Pharmacokinetics is the study of the kinetics of absorption, distribution, metabolism, and exertion of a test substance in animals.

(2) Bioavailability refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for absorption, metabolism, and toxcicological studies. For dermal penetration studies, the female guinea pig shall also be used to provide additional information on dermal absorption.

(ii) *Animal strains.* Adult male and female Fischer 344 rats and female Hartley guinea pigs shall be used. At 7 to 9 weeks of age, the male rats shall weigh 125 to 175 grams and the female rats 110 to 150 grams. The female guinea pigs, 5 to 7 weeks old, shall weigh between 400 and 500 grams. The animals should be purchased from a reputable dealer and shall be identified with ear tags upon arrival. The animals shall be selected at random for the testing groups, and any animal showing signs of ill health shall not be used.

(iii) *Animal care.* (A) Animal care and housing shall be in accordance with DHEW Publication No. NIH)–78–23, 1978, "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals shall be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms shall be maintained at a temperature of 25± 2°C and humidity of 5±10 percent with a 12-hour light/dark cycle per day. The rats shall be kept in a quarantine facility for at least 7 days prior to use.

(C) During the acclimatization period, the rats and guinea pigs shall be housed in suitable cages on hardwood chip bedding. All animals shall be provided with certified feed and tap water *ad libitum.* The guinea pig diet shall be supplemented with adequate amounts of ascorbic acid in the drinking water.

(2) *Administration*—(i) *Test substance.* The proposed study will require the use of both nonradioactive and radiolabled (preferably^{14}) test substance.

(ii) *Dosage and treatment.* (A) In the inhalation studies, three concentrations shall be used. The higher two concentrations should ideally induce some overt symptoms of toxicity after the exposure period is over, although the intermediate level of exposure may be excluded from this condition. The low concentration should not induce any observable signs of toxicity and, ideally, should approximate the human exposure level.

(B) Inhalation treatment shall be conducted using a "nose-cone" apparatus or other method that minimizes dermal exposure of the rats to the test substance. This procedure is preferable to a "bell jar" type, since rats "groom" themselves and could increase the dosage by licking their coat and swallowing the test substance.

(C) For dermal treatment, the doses shall be administered in a suitable vehicle and applied at a volume adequate to deliver the prescribed doses. The backs of the animals shall be lightly shaved with an electric clipper 24 hours before treatment. The dose shall be applied with a micropipette on a specific area (2 cm_2 for rats, 5 cm_2 for guinea pigs, or at least 10 percent of body surface) of the intact shaven skin. The dosed areas shall be concluded with a suitable patch which is secured in place.

(iii) *Washing efficiency study.* Before initiation of the dermal absorption studies described in paragraphs (c)(2)(iv) (A)(*2*) and (B) of this section, an initial washing efficiency experiment shall be conducted to assess the removal of the applied test compound by washing the exposed skin area with soap and water or organic solvents. Four rats and four guinea pigs shall be lightly anesthetized and then the test compound applied at the low dose level to a specific area. After application (5 to 10 minutes), the areas shall be washed with soap and water (2 rats, 2 guinea pigs) or appropriate solvent (2 rats, 2 guinea pigs), and the animals then housed in individual cages for excreta collection. Urine and feces shall be collected at least once following dosing. The amount of test substance recovered shall be determined to assess efficacy of the test substance removal by washing of the skin.

(iv) *Determination of pharmacokinetics*—(A) *Rat studies.* Each experimental group shall contain at least 4 animals of each sex for a total of at least 8 rats.

(*1*) *Inhalation studies* (6-hour exposure periods).

(*i*) Group A shall be exposed to a mixture of radioactive test substance in air at the low concentration.

(*ii*) Group B shall be exposed to a mixture of radioactive test substance in air at the intermediate concentration.

(*iii*) Group C shall be exposed to a mixture of radioactive test substance in air at the high concentration.

(*iv*) Group D—identical to paragraph (c)(2)(iv)(A)(*1*)(*i*) of this section.

(*v*) Group E—identical to paragraph (c)(2)(iv)(A)(*1*)(*ii*) of this section.

(*vi*) Group F—identical to paragraph (c)(2)(iv)(A)(*1*)(*iii*) of this section.

(*vii*) *Kinetic studies.* Groups A, B, and C shall be used to determine the kinetics of absorption of the test substance through the lungs. The concentration of the test substance in inspired and expired air and blood shall be measured at selected time intervals during and after inhalation exposure. The values for the test substance's retention, body burden, and saturability shall be calculated from these experiments.

(*viii*) *Metabolism studies.* At the end of the exposure periods, rats from Groups D, E, and F shall be placed in individual metabolic cages. Excreta (urine, feces, and expired air) shall be collected at 8, 24, 48, 72, and 96 hours post-treatment.

(*2*) *Dermal studies.* Two doses shall be used in this study. The high dose should, if possible, induce some overt toxicity, while the low dose should not. If feasible, the high and low doses for the dermal studies should be equivalent to the applied high and low doses administered during the inhalation studies.

(*i*) Group G shall be dosed once dermally with the low dose of the test substance (combination of radiolabeled and nonradiolabeled test substance components).

(*ii*) Group H shall be dosed once dermally with the high dose of the test substance (combination of radiolabeled and nonradiolabeled test substance components).

(*iii*) For the dermal studies, the test substance shall be kept on the skin for a

minimum of 8 hours, or as determined by the absorption properties of the compound. After application, each animal shall be placed in a separate metabolic cage for excreta collection. Urine and feces shall be collected at 8, 24, 48, 72, and 96 hours. At the time of removal of the patch, the occluded area shall be washed with an appropriate solvent to remove any test substance which may remain on the skin surface. At the termination of the experiments, each animal shall be sacrificed and the exposed skin area removed. The skin (or an appropriate section) shall be solubilized and assayed for radioactivity to ascertain if the skin acts as a reservoir for the test substance.

(B) *Guinea pig studies.* The dermal studies conducted on groups G and H as specified in paragraph (c)(2)(iv)(A)(*2*) of this section shall be repeated using female guinea pigs. Groups I and J shall each contain at least 4 female guinea pigs.

(v) *Repeated dosing study.* Group K (4 rats, 2 of each sex) shall receive a series of single daily inhalation doses of nonradioactive test compound over a period of at least 14 days, followed at 24 hours after the last dose by a single inhalation dose of radiolabeled test compound. Each dose shall be at the low dose level.

(3) *Observation of animals*—(i) *Bioavailability.* The levels of radioisotope shall be determined in whole blood and blood plasma or blood serum at 8, 24, 48, 72, and 96 hours or at other time intervals necessary for completion of the study after dosing rats as specified in paragraph (c)(2) (iv)(A) and (v) of this section and guinea pigs as specified in paragraph (c)(2)(iv)(B) of this section. Four animals from each group shall be used for this purpose.

(ii) *Urinary and fecal excretion.* The quantities of radioisotope excreted in the urine and feces by rats dosed as specified in paragraph (c)(2) (iv)(A) and (v) of this section and guinea pigs dosed as specified in paragraph (c)(2)(iv)(B) of this section after dosing, and if necessary, daily thereafter until at least 90 percent of the applied dose has been excreted or until 7 days after dosing (whichever occurs first). Four animals from each group shall be used for these analyses.

(iii) *Biotransformation after inhalation and dermal dosing.* Appropriate qualititaive and quantatitive methods shall be used to assay urine and fecal specimens collected from rats dosed as specified in paragraph (c)(2)(iv)(A) of this section. Efforts shall be made to identify any metabolite which comprises 10 percent or more of the dose excreted.

(iv) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radiolabeled compounds in excreta (collected 24 and 48 hours after dosing) from rats dosed as specified in paragraph (c)(2)(iv)(A)(*1*)(*iv*) of this section with those in the excreta (collected at 24 and 48 hours after the radiolabeled dose) from rats in the repeated-dose study as specified in paragraph (c)(2)(v) of this section.

(d) *Data and reporting*—(1) *Treatment of results.* Data shall be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards under Part 792 of this chapter, the following specific information shall be reported:

(i) Species and strains of laboratory animals.

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substance.

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Percentage absorption of radiolabeled test substance after inhalation and dermal exposures to rats and dermal exposure to guinea pigs.

(v) Quantity of isotope, together with percent recovery of administered dose of feces, urine, blood and skin and skin washings (dermal study only for last two portions of rats and guinea pigs).

(vi) Quantity and distribution of radiolabeled test substance in various tissues of rats, including bone, brain, fat, gonads, heart, kidney, liver, lung, muscle, spleen, and in residual carcass.

(vii) Biotransformation pathways and quantities of test substance and metabolites in excreta collected after administering single high, intermediate, and low inhalation and high and low dermal doses to rats.

(viii) Biotransformation pathways and quantities of test substance and metabolites in excreta collected after administering repeated low inhalation doses of test substance to rats.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2003, 2611, 2625.

b. By adding new § 799.2535 to read as follows:

§ 1799.2535 Methylcyclopentane.

(a) *Identification of test substance.* (1) Methylcyclopentane (MCP; CAS No. 96-37-7) shall be tested in accordance with this section.

(2) MCP of at least 99.9-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process, or intend to manufacture or process, MCP, other than as an impurity, and all persons who manufacture or process commercial hexane, other than as an impurity, from the effective date of this rule (44 days after the publication date of the final rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data or submit exemption applications as specified in this section, Subpart A of this Part, and Part 790 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Neurotoxicity*—(i) *Required testing.* Neurotoxicity tests shall be conducted with MCP in accordance with §§ 795.250, 798.6050, 798.6200, 798.6400, and 798.6500 of this chapter.

(ii) *Reporting requirements.* (A) The study plans for the neurotoxicity tests must be submitted at least 45 days before the initiation of testing.

(B) The neurotoxicity tests shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(C) Progess reports shall be submitted 6 months from the effective date of the final rule.

(2) *Inhalation and dermal pharmacokinetics*—(i) *Required testing.* An inhalation and dermal pharmacokinetics test shall be conducted with MCP in accordance with § 795.232 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the inhalation and dermal pharmacokinetics test must be submitted at least 45 days before initiation of testing.

(B) The inhalation and dermal pharmacokinetics testing shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(C) Progress reports shall be submitted 6 months from the effective date of the final rule.

(3) *Subchronic inhalation toxicity*—(i) *Required testing.* A subchronic inhalation toxicity test shall be

conducted with MCP in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the subchronic inhalation toxicity test must be submitted at least 45 days before initiation of testing.

(B) The subchronic inhalation toxicity test shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final rule.

(C) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

PART 799—[AMENDED]

2. In Part 799: By adding § 799.2155 to read as follows:

§ 799.2155 Commercial hexane.

(a) *Identification of test substance.* (1) "Commercial hexane," for purposes of this rule, is a product obtained from crude oil, natural gas liquids, or petroleum refinery processing which consists primarily of six-carbon alkanes or cycloalkanes and contains at least 50 liquid volume percent *n*-hexane (CAS No. 110–54–3) and at least 5 liquid volume percent methylcyclopentane (MCP; CAS No. 96–37–7).

(2) The test substance shall be commercial hexane A, or solvent grade, derived from the fractionation of straight-run gasoline, and shall consist of no more than 64 liquid volume percent *n*-hexane and no less than 19 liquid volume percent MCP.

(b) *Persons required to submit study plant, conduct tests, and submit data.* All persons who manufacture or process, or intend to manufacture or process, commercial hexane, other than as an impurity, from the effective date of this rule (44 days after the publication date of the final rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data, or submit exemption applications, as specified in this section, Subpart A of this Part, and Part 790 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Acute inhalation toxicity*—(i) *Required testing.* An acute inhalation toxicity test shall be conducted with commercial hexane in accordance with § 798.1150 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the acute inhalation toxicity test must be submitted at least 45 days before the initiation of testing.

(B) The acute inhalation toxicity test shall be completed and the final results submitted to the Agency within 6 months of the effective date of the final rule.

(2) *Subchronic inhalation toxicity*—(i) *Required testing.* A subchronic inhalation toxicity test shall be conducted with commercial hexane in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the subchronic inhalation toxicity test must be submitted at least 45 days before initiation of testing.

(B) The subchronic inhalation toxicity test shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final rule.

(C) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(3) *Oncogenicity*—(i) *Required testing.* An oncogenicity test shall be conducted by inhalation with commercial hexane in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the oncogenicity test must be submitted at least 45 days before the initiation of testing.

(B) The oncogenicity test shall be completed and the final results submitted to the Agency within 53 months of the effective date of the final rule.

(C) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(4) *Reproduction and fertility effects*—(i) *Required testing.* A reproduction and fertility effects test shall be conducted by inhalation with commercial hexane in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the reproduction and fertility effects test must be submitted at least 45 days before the initiation of testing.

(B) The reproduction and fertility effects test shall be completed and the final results submitted to the Agency within 29 months of the effective date of the final rule.

(C) Progress reports shall be submitted at 6-month intevals beginning 6 months after the effective date of the final rule.

(5) *Inhalation developmental toxicity*—(i) *Required testing.* An inhalation developmental toxicity test shall be conducted with commercial hexane in accordance with § 798.4350 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the inhalation developmental toxicity test must be submitted at least 45 days before the initiation of testing.

(B) The inhalation developmental toxicity test shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(C) Progress reports shall be submitted 6 months from the effective date of the final rule.

(6) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A)(*1*) A *Salmonella typhimurium* reverse mutation assay shall be conducted with commercial hexane both with and without metabolic activation in accordance with § 798.5265 of this chapter and as modified in paragraph (c)(6)(i)(A)(*2*) of this section.

(*2*) Test standard modifications. The requirement under § 798.5265 of this chapter is modified so that the assay shall be performed using the desiccator method described as follows: The agar overlay plates shall be placed uncovered in a 9-liter desiccator. A volume of the liquid test substance shall be added to the glass Petri dish suspended beneath the porcelain shelf of the desiccator. A magnetic stirring bar to serve as a fan to assure rapid distribution and even distribution of the vapor shall be placed on the bottom of the inside of the desiccator. The desiccator shall be placed on a magnetic stirrer within a 37° C room or chamber for 7 to 10 hours. The plates shall then be removed, their lids replaced, followed by incubation for an additional 40 hours at 37° C before counting.

(B)(*1*) A gene mutation test in mammalian cells shall be conducted with commercial hexane both with and without metabolic activation as specified in § 798.5300 of this chapter and as modified in paragraph (c)(6)(i)(B)(*2*) of this section if the results from the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(6)(i)(A) of this section are negative.

(*2*) Test standard modifications. The requirement under § 798.5300 of this chapter is modified to read as follows: Cells should be exposed to the test substance both with and without metabolic activation. Treatment flasks shall be incubated on a rocker panel to insure maximum contact between the cells and the test agent. Incubation shall be at 37° C for 18 hours for experiments without metabolic activation and for 5 hours for experiments with activation. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and the end of exposure period and analyzed to determine the amount of test substance in each flask.

(C)(*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with commercial hexane in accordance with § 798.5275 of this chapter and as modified in paragraph (c)(6)(i)(C)(*2*) of this section unless the results of both the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(6)(i)(A) of this section and the mammalian cells in the culture gene mutation test conducted pursuant to paragraph (c)(6)(i)(B) of this section, if required, are negative.

(*2*) Test standard modifications. The requirement under § 798.5275 of this chapter is modified so that the route of administration shall be inhalation.

(D)(*1*) A mouse specific locus test shall be conducted with commercial hexane by inhalation in accordance with § 798.5200 of this chapter and as modified in paragraph (c)(6)(i)(D)(*2*) of this section if the results of the sex-linked recessive lethal test conducted pursuant to paragraph (c)(6)(i)(C) of this section are positive.

(*2*) Test standard modifications. The requirement under § 798.5200 of this chapter is modified so that the duration of exposure shall be for 6 hours per day.

(ii) *Reporting requirements.* (A) The study plans for each gene mutation test must be submitted at least 45 days before the initiation of testing.

(B) Gene mutation tests shall be completed and final results submitted as follows: *Salmonella typhimurium*, 4 months; mammalian cells in culture, 12 months; *Drosophila* sex-linked recessive lethal, 24 months; and mouse specific locus, 48 months.

(C) Except for the *Salmonella typhimurium* test, progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(7) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A)(*1*) An *in vitro* cytogenetics test shall be conducted with commercial hexane in accordance with § 798.5375 of this chapter and as modified in paragraph (c)(7)(i)(A)(*2*) of this section.

(*2*) Test standard modifications. The requirement under § 798.5375 of this chapter is modified so that the assay shall be performed using flasks flushed with commercial hexane vapors, then closed with a cap with a rubber septum.

(B)(*1*) An *in vivo* cytogenetics test shall be conducted with commercial hexane by inhalation in accordance with § 798.5385 of this chapter and as modified in paragraph (c)(7)(i)(B)(*2*) of this section if the *in vitro* test conducted pursuant to paragraph (c)(7)(i)(A) of this section is negative.

(*2*) Test standard modifications. The requirement under § 798.5385 of this chapter is modified so that the duration of exposure shall be for 6 hours per day for 5 consecutive days.

(C)(*1*) A dominant lethal assay shall be conducted with commercial hexane by inhalation in accordance with § 798.5450 of this chapter and as modified in paragraph (c)(7)(i)(C)(*2*) of this section unless both the *in vitro* and *in vivo* cytogenetics tests conducted pursuant to paragraphs (C)(7)(i) (A) and (B) of this section are negative.

(*2*) Test standard modifications. The requirement under § 798.5450 of this chapter is modified so that the duration of exposure shall be for 6 hours per day for 5 consecutive days.

(D) A heritable translocation test shall be conducted with commercial hexane by inhalation in accordance with § 798.5460 of this chapter if the results of the dominant lethal assay conducted pursuant to paragraph (c)(7)(i)(C) of this section are positive.

(ii) *Reporting requirements.* (A) The study plans for each chromosomal aberration test must be submitted at least 45 days before the initiation of testing.

(B) Chromosomal aberration tests shall be completed and final results submitted as follows: *in vitro* cytogenetics, 4 months; *in vivo* cytogenetics, 12 months; dominant lethal assay, 24 months; and heritable translocation assay, 48 months.

(C) Except for the *in vitro* cytogenetics test, progress reports shall be submitted beginning 6 months after the effective date of the final rule.

(8) *Neurotoxicity*—(i) *Required testing.* Neurotoxicity tests shall be conducted with commercial hexane in accordance with §§ 798.6050, 798.6200, 798.6400, and 798.6500 of this chapter.

(ii) *Reporting requirements.* (A) The study plan for the neurotoxicity tests must be submitted at least 45 days before the initiation of testing.

(B) The neurotoxicity tests shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(C) Progress reports shall be submitted 6 months from the effective date of the final rule.

(9) *Inhalation and dermal pharmacokinetics*—(i) *Required testing.* (A) An inhalation and dermal pharmacokinetics test shall be conducted with commercial hexane in accordance with § 795.232 of this chapter.

(B) Test standard modifications. The requirement under § 795.232 (c)(2)(i) of this chapter is modified to read as follows:

(*2*) *Administration of test substance*—(i) *(test substance.* Since the test substance is a mixture of *n*-hexane; MCP; 3-MP; 2-MP; benzene; cycolohexane; 2,2- and 2,4-DMp; 2,3-DMB; and sulfur, the experiments shall be conducted in groups using ^{14}C and ^{3}H labeled components. This type of labeling can be conducted in groups of 2 components. For example, in the first groups, *n*-hexane may be labeled with ^{14}Cv and MCP with tritium with the remaining components unlabeled. The kinetic and metabolic studies would then be run on the test substance and analyzed for *n*-hexane and MCP as described below. In the second group, 3-MP may be labeled with tritium and 2-MP labeled with ^{14}C. The third group would have benzene labeled with ^{14}C and cyclohexane labeled with tritium, etc. If it is feasible from an analytical standpoint, one of the higher liquid volume percent components (*n*-hexane, MCP, or 3-MP) could be labeled with deuterium and a gas chromatograph/mass spectrometer (GC/MS) used to follow the disposition of the deuterium-labeled component of the test substance. This procedure would permit the investigators to use fewer experimental groups to obtain the same amount of information.

(ii) *Reporting requirements.* (A) The study plan for the inhalation and dermal pharmacokinetics test must be submitted at least 45 days before the initiation of testing.

(B) The inhalation and dermal pharmacokinetics test shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(C) Progress reports shall be submitted 6 months from the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033)

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40 CFR Parts 795 and 799

[OPTS-42083; FRL-2998-5]

Tetrabromobisphenol A; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing that manufacturers and processors of tetrabromobisphenol A (TBBPA, CAS No. 79-94-7) be required, under section

4 of the Toxic Substances Control Act (TSCA), to perform testing for chemical fate and environmental effects. The proposed testing includes biodegradation studies and a number of environmental effects studies including a study to determine the effects of TBBPA on microorganisms in activated sludge, acute toxicity studies in freshwater algae, fish, and invertebrates, chronic toxicity studies in fish and invertebrates, and bioconcentration potential studies in fish and invertebrates. This proposed rule is in response to the Interagency Testing Committee's (ITC's) designation of TBBPA for priority consideration for chemical fate and environmental effects testing.

DATES: Submit written comments on or before July 14, 1986. If persons request an opportunity to submit oral comment by June 30, 1986, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VII of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS–42083), in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll free: (800–424–9065); In Washington, DC: (554–1404), Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of TBBPA for chemical fate and environmental effects testing consideration.

I. Introduction

A. ITC Recommendation

TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC under section 4(e) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated TBBPA (CAS No. 79–94–7) for priority consideration in its 16th Report submitted to EPA on May 2, 1985. The report was published in the **Federal Register** of May 21, 1985 (50 FR 20930). The ITC recommended that TBBPA be considered for chemical fate testing, including water solubility, soil adsorption coefficient, and persistence; and environmental effects testing, including acute and chronic toxicity to fish, aquatic invertebrates and algae, and bioconcentration potential in fish.

ITC's rationale for chemical fate testing was the lack of definitive data to characterize the effects of concern for TBBPA in the environment.

The ITC's rationale for ecological effects testing was: (1) TBBPA is highly toxic to fish under acute conditions; (2) there is a lack of acute data for invertebrates and algae; (3) TBBPA is expected to be chronically toxic to fish and aquatic invertebrates at very low concentrations (i.e., <0.10 mg/L), and (4) there is the potential for TBBPA to bioconcentrate based on its high log P value of 4.5.

No health effects tests were recommended by the ITC. According to the ITC, TBBPA has been found to have a low level of toxicity to animals by the oral and inhalation routes, microbial genotoxicity tests with TBBPA have been negative, and the potential for human exposure is low.

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Agency finds that:

> (A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under section 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48524 and 46 FR

30300 and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations for TBBPA, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration and any public comments on the ITC's recommendations; production volume, use, exposure, and release information reported by manufacturers of TBBPA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning TBBPA; and published and unpublished data available to the Agency. From its evaluation, as described in this proposed rule, EPA is proposing chemical fate and environmental effects testing requirements for TBBPA under section 4(a)(1)(A). By this action, EPA is responding to the ITC's designation of TBBPA for priority testing consideration.

II. Review of Available Data

A. Profile

TBBPA is a white, free-flowing or crystalline powder that is soluble in many organic solvents but has a low solubility in water (Refs. 1 and 2). The experimentally determined water solubility values for TBBPA at 15 °C, 25 °C, and 35 °C are 0.72 ppm, 4.16 ppm, and 1.77 ppm respectively (Ref. 3). At 25 °C, TBBPA has an estimated vapor pressure of 4.15×10^{-8} mm Hg and an estimated Henry's Law constant of 4.46×10^{-8} atm–m³/mole (Ref. 4). Its experimentally determined log octanol-water partition coefficient (K_{ow}) value is 4.5 (Ref. 5). The estimated log soil adsorption coefficient (K_{oc}) value is 4.29 (Ref. 4).

B. Production

TBBPA is manufactured by reacting gaseous bromine with bisphenol A in a low molecular weight solvent; it is then crystallized by adding water. The solvent can be an alcohol, aqueous acetic acid, a non-polar solvent, or a two-phase water-organic system (Ref. 6). Ethyl Corporation uses a continuous batch operation which involves a closed vessel procedure during the reaction and drying cycles (Ref. 2).

TBBPA is produced domestically by two corporations, Ethyl Corporation and Great Lakes Chemical Corporation, with a combined production capacity of 85 million pounds per year (Ref. 7). The actual production volumes for 1984 have been submitted by the two companies under section 8(a) of TSCA as confidential business information (CBI). Importation of the compound from 1979 to 1983 ranged from approximately 1.3 to 2.6 million pounds per year (Ref. 8). At the present time, Ameribrom appears to be the only importer of TBBPA (Ref. 9).

C. Uses

TBBPA is used primarily as a reactive flame retardant and to a lesser extent as an additive flame retardant. In general, when used as a reactive flame retardant, TBBPA reacts chemically with other compounds to form a polymer, leaving little opportunity for the TBBPA to be released once it has been incorporated into the polymer. TBBPA is used as a reactive flame retardant in the manufacture of epoxy resins, polycarbonates, and unsaturated polyesters (Refs. 1 and 2). A principal use of TBBPA epoxy resins, where the TBBPA content may be 34 percent, is in printed circuit boards (Ref. 10). Polycarbonates are used in communication and electronics equipment, lighting fixtures and signs (Ref. 11). Unsaturated polyesters are used for making simulated marble, floor tiles, bowling balls, furniture parts, sewer pipe coupling compound, automotive patching compounds, buttons, and for encapsulating electrical devices (Ref. 12).

TBBPA is coated on or mixed with other compounds when used as an additive flame retardant. Approximately six to eight million pounds of TBBPA is believed to be used annually as an additive flame retardant (Ref. 7). Because TBBPA does not chemically react with the other compounds when used in this manner, it may leach out of the finished products when they are in use and/or following disposal of these products. No information is available on whether TBBPA leaches out of products or the extent of leaching. Ethyl Corporation, in response to Agency questions concerned with leaching of TBBPA, submitted the statements that no leaching of TBBPA is expected for products containing TBBPA and that there is no consumer exposure from using products containing TBBPA (Ref. 13). TBBPA is used as an additive in ABS (acrylonitrile-butadiene-styrene) thermoplastics, in polystyrene, and in phenolic resins (Ref. 2). Recommended starting levels of TBBPA in ABS (medium to high impact) are 17.6 to 22 percent and 14 percent in high impact polystyrene (Ref. 14). ABS resins are used in automotive parts, pipe and fittings, refrigerators, other appliances, business machines, and telephones (Ref. 15). Polystyrene is used in packaging, consumer products, disposables, electrical and electronics equipment, furniture, and building and construction materials (Ref. 16). TBBPA is also reportedly used as a flame retardant in paper and textile applications, and as a plasticizer (Refs. 17 and 18).

D. Release and Exposure

TBBPA is expected to enter the environment mainly as a result of wastewater released from processes where TBBPA is made and used. A limited amount of TBBPA is likely to enter the environment as a result of its release into the atmosphere from activity in the packaging area of plants and from the use of TBBPA as an additive flame retardant. Release levels have been submitted by the manufacturers of TBBPA under section 8(a) of TSCA as confidential business information (CBI).

According to one process described for manufacturing TBBPA, bisphenol A is brominated in an anhydrous methanol solvent and then crystallized by adding water. The crystals are filtered, washed, and dried. Wastewater generated from the crystallization and washing steps may be treated to recover the excess bromide and solvent. The methanol solvent may be recovered by neutralizing the waste stream and then distilling. The still bottoms contain polyhalongenated phenolics such as TBBPA. An oxidizing agent can be used to initiate a polymerization reaction among polyhalogenated phenolic compounds present in the waste liquid. The polymerized product settles rapidly in the waste liquid and may be disposed of in a sanitary landfill. However, the efficiency of this process to polymerize the polyhalogenated phenolics and the precent of the total wastewater being treated in this manner has not been reported (Ref. 6).

Evidence of TBBPA exposure to the environment has been found in sediment, soil, and air samples collected in the vicinity of a company manufacturing the compound. The concentrations reported at these sites were from 0.03 to 330 ppm in the sediments, 2 to 150 ppm in the soil, and 28 to 1800 ng/m³ in the air (Ref. 19). Although levels of TBBPA as high as 150 ppm in the soil have been reported, on the basis of sampling locations information provided in the monitoring study, it is very likely that the presence of TBBPA in the soil is limited to the area surrounding the production facility and may result from releases during packaging and loading operations. Therefore, it does not appear to the Agency at this time that terrestrial exposure to TBBPA presents a concern.

E. Chemical Fate

Based on its high log K_{oc} and log K_{ow} values and low water solubility, TBBPA is expected to partition to compartments with high concentrations of organic matter or lipids. In water, TBBPA will partition to sediments or biological tissues; on land, it will partition to soils. Volatilization of TBBPA is expected to be fairly slow and partitioning from soil and water to air is not expected to be important because of the low estimated values for the vapor pressure and the Henry's law constant (Refs. 4, 9 and 20).

The Environmental Partitioning Model (ENPART) and the Exposure Analysis Model (EXAMS 2) were used to estimate the relative partitioning of TBBPA between air, water, soil and sediment. The ENPART results show that the highest concentration of TBBPA will be in soil but the largest mass will be in water (this is due to the much greater volume of water in comparison to the volume of soil). Ambient monitoring data for TBBPA in the sediment are available. For a sediment concentration of 24 ppm, TBBPA concentrations in the water column are estimated to be 125 ppb by the EXAMS 2 model. Partitioning of TBBPA to the atmosphere will be insignificant. The estimated atmospheric half-life for TBBPA, using the Fate of Atmospheric Pollutants (FAP) model, is 1.79 days (Refs. 4 and 9).

The persistence of TBBPA trapped in soils, sediments and sludges is not well defined. One study from Japan classified TBBPA as not very biodegradable; however, no experimental details were available (Ref. 21). The ENPART estimate for 50 percent mass reduction of TBBPA present in the environment at steady state, after loading ceases, is 3 months (Ref. 4).

F. Environmental Effects

1. *Acute toxicity*—a. *Fish and aquatic invertebrates.* Static studies (96-hr) are available for bluegill sunfish (*Lepomis macrochirus*) and rainbow trout (*Salmo gairdneri*) using nominal concentrations of TBBPA (Ref. 22). The 96-hour LC_{50} values for bluegill sunfish and rainbow trout are reported to be 0.51 mg/L and 0.40 mg/L respectively. These values indicate a high order of acute toxicity towards freshwater fish. The no-effect levels (based on the lack of abnormal behavioral observations) were reported as 0.18 mg/L for bluegill and 0.10 mg/L for trout.

Static acute toxicity of TBBPA to *Daphnia magna* has been investigated using a range of nominal test concentrations (Ref. 23). The 48-hour LC_{50} value for *Daphnia* is reported to be 0.96 mg/L. The no effect level (based on zero deaths) was observed to be <0.32 mg/L.

The static test conditions used for the above studies are satisfactory because TBBPA has an extremely low volatility and the biological loading in the test vessels is well below a maximum loading of 1.0 g/L recommended in EPA's TSCA test guidelines. Although the use of nominal concentrations may have actually underestimated the acute toxicity of TBBPA, the Agency believes that these data are adequate to reasonably predict the high acute toxicity of TBBPA towards the two freshwater fish (bluegill sunfish and rainbow trout) and *Daphnia*. However, when a high order of acute toxicity is demonstrated from initial static acute tests, as is the case of existing data on TBBPA, the Agency believes that further acute testing also appears to be indicated in alternate species for making a final assessment of the acute safety hazard.

b. *Marine algae.* Preliminary data for effects of TBBPA on growth of three species of marine unicellular algae in several different media were received from an EPA lab (Ref. 24). The 72-hour EC_{50} values of two species, *Skeletonema costatum* and *Thalassiosira pseudonana*, were, in most instances, well below 1 mg/L. The EC_{50} values of less than 1 mg/L indicate that TBBPA is highly toxic to these species. No EC_{50} values could be calculated for TBBPA when tested with *Chlorella*. The highest concentration, 1.5 mg/L, did not inhibit growth of *Chorella* by 50 percent in any medium.

2. *Chronic toxicity.* No information was found on the chronic toxicity of TBBPA to aquatic organisms. However, the available data on the compound's acute toxicity to aquatic organisms indicate that TBBPA is highly toxic under acute conditions. In the acute study with rainbow trout, fish mortality increased throughout the duration of the study suggesting that, if the study had continued, mortalities may have occurred at even lower concentrations. On the basis of this information and the reported high log k_{ow} value, TBBPA is expected to be chronically toxic to fish at very low concentrations.

3. *Bioconcentration.* No useful experimental data were located on the bioconcentration of TBBPA in aquatic organisms. Using the equation (log BCF=0.85 log P-0.70) developed by Veith (Ref. 25), the bioconcentration factor (BCF) for TBBPA in fish was estimated to be approximately 1,300. This estimate indicates that TBBPA may bioconcentrate to a significant degree.

III. Findings

EPA is basing its proposed chemical fate and environmental effects testing for TBBPA on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that the release of TBBPA which likely results from its manufacture, processing, use and disposal may present an unreasonable risk of exposure and injury to the organisms in the environment, on the basis of information presented in Unit II above showing that TBBPA has the potential to be persistent, it may bioconcentrate, and it is highly toxic under acute conditions to aquatic organisms. Studies performed to determine acute toxicity of TBBPA to fish, *Daphnia*, and marine unicellular algae show that it is highly toxic (i.e., LC_{50} less than 1 mg/L or ppm). The reported high log k_{ow} of 4.5 and the high acute toxicity data reported for fish and *Daphnia* suggest that TBBPA can be expected to be chronically toxic to fish and aquatic invertebrates at very low concentrations. TBBPA concentrations up to 330 ppm in sediment samples have been detected in the vicinity of a company manufacturing the compound.

In addition, modeling indicates that TBBPA may be present in the water column in ppb levels, which could be of concern. The primary release of TBBPA to the environment is expected to be via wastewater generated from processes where TBBPA is made and used. In the aquatic environment, TBBPA partitions mainly to sediments. The Agency is particularly concerned with the effects of TBBPA on benthic organisms, i.e., organisms which remain in intimate contact with the sediments.

There is also the potential for TBBPA to bioconcentrate in aquatic organisms based on its estimated bioconcentration factor of 1,300.

The structure of TBBPA suggests by analogy to other polyhalogenated compounds that TBBPA might be persistent. As noted in Unit II.E., one study from Japan, with no experimental details provided, classified TBBPA as not very biodegradable.

Based on EPA's evaluation, the experimental data available for water solubility, log K_{ow}, and acute toxicity to marine unicellular algae appear to be adequate to reasonably determine or predict these characteristics for TBBPA. The log K_{ow} can be estimated reasonably well if the experimental value for the log K_{ow} is available. The Agency has further determined that data are inadequate to fully characterize the degradability of TBBPA present in soils, sediments, sludges, and water; toxicity

of TBBPA to microorganisms in activated sludge; toxicity of TBBPA to freshwater algae under acute conditions; chronic toxicity of TBBPA to fish and invertebrates and bioconcentration potential of TBBPA in fish and invertebrates. In addition, because acute toxicity values below 1 mg/L (ppm) have been found for the two fish (bluegill Sunfish and rainbow trout) and *Daphnia*, additional acute tests with alternate species of fish and invertebrates are required for making a final assessment of the acute hazard. Testing is necessary to develop these data.

IV. Proposed Rule

A. Proposed Testing and Test Standards

On the basis of the findings given in Unit III, EPA is proposing chemical fate and environmental effects testing for TBBPA. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practice standards in 40 CFR Part 792 and specific TSCA test guidelines as enumerated in 40 CFR Parts 796 and 797, published in the Federal Register of September 27, 1985 (50 FR 39252), or other published test methods as specified in this test rule for TBBPA. Proposed revisions to the TSCA test guidelines were published in the Federal Register of January 14, 1986 (51 FR 1522); the Agency is proposing that these revisions be adopted in the test standards for TBBPA.

The chemical fate tests to be conducted for TBBPA are: (1) Biodegradability in water, using the eco-core method described by Bourquin *et al.* (Ref. 28); (2) the aerobic and anaerobic biodegradability in soil, using the guideline at 40 CFR 796.3400; and (3) the biodegradability in sludge systems, using the guideline at 40 CFR 796.3341.

Environmental effects tests to be conducted for TBBPA are: (1) The effect of test substance on activated sludge, using the guideline entitled "Activated Sludge, Respiration Inhibition Test" proposed at 40 CFR 795.170, and published with this rule. (2) The acute toxicity to freshwater alga, *Selenastrum capricornutum*, using the test guideline at 40 CFR 797.1050, and as modified under § 799.4000(d)(2)(i)(B). (3) The acute toxicity to the amphipod *Gammarus*, using the guideline at 40 CFR 797.1310. (4) The acute toxicity to *Pimephales promelas* (fathead minnow) in a flow-through system, using the guideline at 40 CFR 797.1400.

EPA is also proposing that: (5) The invertebrate *Daphnia* shall be tested in a flow-through system to determine the chronic toxicity of TBBPA using the guideline at 40 CFR 797.1330. (6) The testing for early life stage toxicity to fish be conducted in a flow-through system using the guideline at 40 CFR Part 795. The test species shall be fathead minnow (*Pimephales promelas*) if the 96-hour LC_{50} for fathead minnow is equal to or less than 0.40 mg/L; the test species shall be rainbow trout if the 96-hour LC_{50} for fathead minnow is greater than 0.40 mg/L.

EPA further proposes that: (7) A bioconcentration test in the fathead minnow (*Pimephales promelas*) be conducted using the guideline at 40 CFR 797.1520, and (8) a bioconcentration test in the oyster (*Crassostrea virginica*) be conducted using the guideline at 40 CFR 797.1830.

The Agency is proposing that the above referenced chemical fate and environmental effects test guidelines and modifications and other cited methods be considered the test standards for the purposes of the proposed testing for TBBPA. The TSCA test guidelines for chemical fate and aquatic toxicity testing specify generally accepted minimal conditions for determining chemical fate and aquatic animal toxicities for substances like TBBPA to which aquatic life is expected to be exposed.

The proposed eco-core method of Bourquin *et al.* (1977) for testing the biodegradability of TBBPA in water specifies generally accepted minimal conditions. The Agency believes that this test reflects the current state-of-the-art methodology for testing the fate of chemicals such as TBBPA in aquatic systems.

B. Test Substance

EPA is proposing that TBBPA of at least 99 percent purity be used as the test substance; EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to TBBPA itself. In a separate rulemaking, EPA is proposing to require testing and submission of data on the presence of dioxins and furans in TBBPA (50 FR 51794; December 19, 1985). If contamination of TBBPA with these substances is confirmed, the purity of the test substance for this test rule may need to be further defined to limit levels of contamination.

C. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the EPA makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the findings are based on distribution, use, or disposal.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, use and disposal of TBBPA on the environment, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, TBBPA at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time after the submission of the last final report required under the test rule equal to that which was required to develop data, if more than 5 years.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of

intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the Federal Register to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for TBBPA. As noted in Unit IV.B, EPA is interested in evaluating the effects attributable to TBBPA itself and has specified a highly pure substance for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TCSA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

1. The biodegradation tests, the test for toxicity to microorganisms in activated sludge, the acute toxicity tests in fresh water algae, fish, and invertebrates, and the bioconcentration tests in fish and invertebrates shall be completed, and the final reports submitted to EPA within 1 year of the effective date of the final test rule. Quarterly progress reports shall be required.

2. The early life stage toxicity test in aquatic vertebrates and a chronic toxicity test in invertebrates shall be completed, and the final reports submitted to EPA within 2 years of the effective date of the final test rule. Quarterly progress reports shall be required.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of the final test rule, an exporter of TBBPA must report to EPA the first annual export or intended export of TBBPA to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . . ." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for purpose of determining compliance with any final rule for TBBPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Issues for Comment

This proposed rule specifies TSCA test guidelines and independent, published test methods as the test standards for chemical fate and environmental effects. The Agency is soliciting comments as to whether the chemical fate and environmental effects test guidelines and the independent methods are appropriate and applicable for the testing of TBBPA. Also regarding the testing of TBBPA, the Agency requests comments on:

1. The availability of appropriate test methods and facilities for testing the toxicity of this chemical to benthic organisms (i.e. organisms which remain

in intimate contact with the sediment). Because TBBPA is expected to partition strongly to sediment, the Agency believes that determining the toxicity of TBBPA to benthic organisms is important in characterizing the environmental effects of aquatic releases of TBBPA. The Agency believes that sediment bioassay methods using freshwater invertebrates, such as those published by Nebeker *et al.* (Ref. 27) and Adams *et al.* (Ref. 28) or, as an alternative, relevant microcosm test protocols (Refs. 29 and 30) may be useful for characterizing the effects of TBBPA on benthic organisms. The Agency is requesting comments on the effectiveness and availability of these or other methods and which, if any, would be most appropriate for testing of TBBPA. If the comments indicate the appropriate test methods and facilities are available, the Agency is proposing that it will include tests to determine the toxicity of TBBPA to benthic organisms in the final rule for TBBPA.

2. The adequacy of the proposed testing to characterize the environmental fate and environmental effects of TBBPA.

3. The reporting times for the identified chemical fate and environmental effects tests.

4. The purity of the test substance to be used in light of the possible presence of the dioxin/furan contamination.

5. Whether there are any other testing approaches which should be considered.

VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for the test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for TBBPA are estimated to range from $59,520 to $144,580. This estimate includes the costs for both the required minimum series of tests as well as any conditional ones. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $15,400 to $37,500. Based on an estimated production volume range of 56.6 million pounds to 83.7 million pounds the unit test costs range from 0.026 to 0.063 cents per pound. In relation to the current list price of $1.15 per pound (99 percent purity) of TBBPA, these costs are equivalent to 0.02 to 0.05 percent of price.

Based on these costs and market characteristics of TBBPA, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations: (1) The annual unit cost of the testing required in this rule is very low; and (2) the market expectations for TBBPA are optimistic.

Refer to the economic analysis which is contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs.

VII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, DC: (554-1404); Outside the U.S.A. (Operator—202-554-1404), by June 30, 1986. A meeting will not be held if members of the public do not indicate they they wish to make oral presentation. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VIII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

IX. Public Record

EPA has established a record for this rulemaking, (docket number OPTS-42083). This record contains the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices.

This record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of TBBPA to the Priority List (50 FR 20930; May 21, 1985).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on TBBPA (50 FR 20910; May 21, 1985).

(c) TSCA test guidelines cited as test standards for this rule.

(d) Notice containing revision of TSCA test guidelines cited as test standards for this rule.

(2) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(3) Reports—published and unpublished factual materials.

B. References

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(2) Ethyl Corp. Baton Rouge, LA 70820. Letter and enclosures from R.L. Smith to M. Grief, TSCA Interagency Testing Committee, Washington, DC 20460. (February 29, 1984).

(3) Great Lakes Chemical Corp. West Lafayette, IN 47906. "Water solubility of several flame retardants and industrial chemicals." Letter with attached studies from D.L. McFadden to Narendra Chaudhari, Environmental Protection Agency. (August 1, 1985).

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(14) Great Lakes Chemical Corp., West Lafayette, IN 47906. Letter with attached information on BA–59 from Rebecca Ball to Susan Beals, Syracuse Research Corp. (June 25, 1985).

(15) "Chemical profile: ABS resins." *Chemical Marketing Reporter* (July 1, 1985).

(16) "Chemical profile: Polystyrene." *Chemical Marketing Reporter* (June 17, 1985).

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(20) CRCS, Inc. in collaboration with Dynamac Corp. Reston, VA 22090. Information Review: Tetrabromobisphenol A. Prepared for TSCA Interagency Testing Committee. Contract No. 68–01–5729. (February 15, 1984).

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(22) Great Lakes Chemical Corp., West Lafayette, IN 47906. Acute toxicity of TBBPA to bluegill sunfish (Project #11506–03–50) and rainbow trout (Project #11506–03–51). Letter with attached studies from D.L. McFadden to Narendra Chaudhari, Environmental Protection Agency. (August 1, 1985).

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(26) Bourquin, A.W., Hood, M.A. Garnas, R.L., "An artifical microbial exosystem for determining effects and fate of toxicants in a salt-marsh environment." *Developments in Industrial Microbiology* 18: 185–191. (1977).

(27) Nebeker, A.V. *et al.* "Biologoical methods for determining toxicity of contaminated freshwater sediments to invertebrates." *Environmental Toxicology and Chemistry*. 3:617–630. (1984).

(28) Adams, W.J. Kimerle, R.A., and Mosher, R.G., "Aquatic safety assessment of chemicals sorbed to sediments," *Aquatic Toxicology and Hazard Assessment: Seventh Symposium*. ASTM STP 854, R.D. Cardwell, R. Purdy, and R.C. Bahner, Eds., American Society for Testing and Materials, Philadelphia. pp. 329–453. (1985).

(29) Hendrix, P.R. *et al.* "Microcosm as test systems for the ecological effects of toxic substances: an appraisal with cadmium." Prepared for Environmental Research Laboratory, USEPA, Athens, Georgia 30613. NTIS, Springfield, Virginia 22161. PB81–205585. (1981).

(30) U.S. Environmental Protection Agency. Environmental Research Laboratory, Narragansett, Rhode Island 02882. "Experimental marine microcosm test protocol and support document." Prepared for Office of Toxic Substances, USEPA, Washington, DC 20460. EPA–600/3–83–055. (1983).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E–107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency will supplement this record periodically with additional relevant information received.

X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have any annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) There are no known small manufacturers, (2) any small processors are not expected to perform testing themselves or to participate in the organization of the testing effort, (3) they will experience only very minor cost in securing exemption from testing requirements, and (4) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals,

Environmental effects, Recordkeeping and reporting requirements.

Dated: May 2, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 795—[AMENDED]

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. In proposed Part 795:

a. The authority citation of Part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 795.170 to read as follows:

§ 795.170 Activated sludge, respiration inhibition test modified test for chemical substances that have low water solubility.

(a) *Introductory information.*—(1) *Prerequisites.*

(i) Water solubility.

(ii) Vapor pressure.

(2) *Guidance information.* (i) Information on the structural formula of the test substance will be useful.

(ii) Purity of the test substance shall be specified in the test rule in 40 CFR Part 798.

(3) *Recommendation.* Activated sludge may contain potentially pathogenic organisms and should be handled with care.

(4) *Standard documents.* This test guideline has been based on the references in (d) (1) thru (6) of this section.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i) *Introduction.* (A) The method described in this test guideline assesses the effect of a test substance on microorganisms by measuring the respiration rate under defined conditions in the presence of different concentrations of the test substance. The method is based on that described by the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry, in which activated sludge obtained from a sewage treatment plant is used as the microbial source.

(B) The purpose of this test guideline is to provide a rapid screening method whereby substances which may adversely affect aerobic microbial treatment plants can be identified and to indicate suitable non-inhibitory concentrations of test substances to be used in biodegradability tests.

(C) A range-finding test may precede a definitive test. It provides information about the range of concentrations to be used in the main test.

(D) Two controls without test substance are included in the test design, one at the start and the other at the end of the test series. Each batch of activated sludge should also be checked using a reference substance.

(ii) *Definitions*—(A) *Respiration rate.* The oxygen consumption of aerobic sludge or wastewater microorganisms, generally expressed as mg O_2 per liter per hour.

(B) *Effective concentration* (EC_{xx}). In this test guideline, the concentration of the test substance at which the respiration rate is 50 percent of that shown by the control under conditions in this guideline.

(iii) *Reference substances.* 3,5-dichlorophenol (a known inhibitor of respiration) shall be used as a reference substance and tested for EC_{50} on each batch of activated sludge as a means of checking that the sensitivity of the sludge is not abnormal.

(iv) *Principal of the test method.* The respiration rate of an activated sludge fed with a standard amount of synthetic sewage feed is measured after a contact time of 30 minutes or 3 hours, or both. The respiration rate of the same activated sludge in the presence of various concentrations of the test substance under otherwise identical conditions is also measured. The inhibitory effect of the test substance at a particular concentration is expressed as a percentage of the mean respiration rates of two controls. An EC_{50} value is calculated from determinations at different concentrations.

(v) *Conditions for the validity of the test.* (A) The test results are valid if the two control respiration rates are within 15 percent of each other.

(B) The EC_{50} (3 hours) of 3,5-dichlorophenol must be in the accepted range 5 to 30 mg/L.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Equipment.* Normal laboratory equipment and especially the following is necessary:

(*1*) Measuring apparatus (flat bottom flask, stirrer bar, magnetic stirrer, oxygen electrode, and recorder).

(*2*) Aeration device.

(*3*) pH-Electrode and measuring equipment.

(*4*) O_2-Electrode.

(B) *Solutions of the test substance.* (*1*) Solutions of the test substance are freshly prepared at the start of the study using a stock solution. A stock solution concentration of 0.5 g/L is appropriate if the procedure recommended below is followed. [Note: A solution of 3,5-dichlorophenol can be conveniently prepared by dissolving 0.5 g 3,5-dichlorophenol in 10 ml of 1N NaOH, diluting to approximately 30 ml with distilled water, adding under stirring 1N H_2SO_4 to the point of incipient precipitation—and finally diluting the mixture to one liter with distilled water. The pH should then be in the range 7 to 8].

(*2*) If the test substance is not sufficiently soluble to allow preparation of a concentrated stock solution in water, it should be added directly to test vessels or, alternatively, as a concentrated stock solution in an organic solvent. Direct addition is recommended. If an organic solvent is used, the solvent must neither significantly inhibit nor contribute to respiration. Further, a control containing activated sludge and solvent but no test substance is required.

(C) *Test concentrations.* At least five concentrations, spaced by a constant factor preferably not exceeding 3.2, should be used.

(D) *Synthetic sewage feed.* (*1*) A synthetic sewage feed is made by dissolving the following amounts of substances in 1 liter of water:

(*i*) 16 g peptone.

(*ii*) 11 g meat extract.

(*iii*) 3 g urea.

(*iv*) 0.7 g NaCl.

(*v*) 0.4 g $CaCl_2.2\ H_2O$.

(*vi*) 0.2 g $MgSO_4.7\ H_2O$.

(*vii*) 2.8 g K_2HPO_4.

(*2*) This synthetic sewage is a 100-fold concentrate of that described in the OECD Technical Report "Proposed method for the determination of the biodegradability of surfactants used in synthetic detergents" June 11, 1976, with dipotassium hydrogen phosphate added.

(ii) *Test system.* Activated sludge from a sewage treatment plant is normally used as the microbial innoculum for the test. Where possible, activated sludge should be obtained from a sewage work treating predominantly domestic sewage. If this is not possible, the activated sludge may be obtained from sewage works treating predominantly industrial waste water but used only following deadaptation. Even so, results obtained with activated sludge from works treating industrial waste waters may be atypical. On return to the laboratory the sludge is washed, if necessary, with tap water or an isotonic solution. After centrifuging the supernatant is decanted. This procedure is repeated three times. A small amount of the washed sludge is weighed and dried. From this result the amount of wet sludge can be calculated which must be suspended in water in order to obtain an activated sludge with a mixed liquor suspended solids level of 4 g/L(±10 percent). This level gives a concentration of 1.6 g/L in the test medium if the procedure recommended below is followed. If the sludge cannot

be used on the day of collection, 50 ml synthetic sewage is added to each liter of the activated sludge prepared as described above; this is then aerated overnight at 20±2°C. It is then kept aerated for use during the day. Before use the pH is checked and buffered, if necessary to pH 6.0 to 8.0 using sodium bicarbonate solution. The mixed liquor suspended solids should be determined as described in the preceeding paragraph. If the same batch of sludge is required to be used on subsequent days (maximum 4 days), a further 50 ml of synthetic sewage feed is added at the end of each working day.

(iii) *Test conditions.* The following conditions apply to the test system.

(A) Duration/contact time: 30 minutes and/or 3 hours, during which aeration takes place.

(B) Vessels: Beakers are suitable.

(C) Water: Drinking water (dechlorinated if necessary).

(D) Air supply: Clean oil-free air. Air flow 0.5 to 1 liter/minute.

(E) Measuring apparatus: Flat bottom flask such as a BOD-flask.

(F) Oxygen meter: Polarographic oxygen electrode, connectable to a potentiometric recorder. (200 mv range).

(G) Nutrient solution: Synthetic sewage feed (see above).

(H) Test substance: The test solution is freshly prepared at the start of the test.

(I) Reference substance: e.g. 3,5-dichlorophenol (at least 3 concentrations).

(J) Controls: Innoculated sample without test substance.

(K) Temperature: 20± 2°C.

(iv) *Performance of the test.* A suggested experimental procedure which may be followed for both the test and reference substance for the 3-hour contact period is given below:

(A) Several vessels (e.g. 1-liter beakers) are used.

(B) At time "0", 16 ml of the synthetic sewage feed are made up to 300 ml with water. Two hundred ml of microbial innoculum are added and the total mixture (500 ml) poured into a first vessel (first control C_1). Aeration at 0.5 to 1 liter per minute is commenced using a Pasteurpipete as aeration device.

(C) (*1*) At time "15 min" (15 minutes is an arbitrary, but convenient, interval) the above is repeated, except that 100 ml of the test substance stock solution are added to the 16 ml of synthetic sewage before adding water to 300 ml and microbial innoculum to make a volume of 500 ml. This mixture is then poured into a second vessel and aerated as described in (B) above. This process is repeated at 15-minute intervals with different volumes of the test substance stock solution to give a series of vessels containing different concentrations of the test substance. Finally, a second control (C_2) is prepared.

(*2*) If the test substance is not sufficiently soluble to allow addition from a stock solution in water, the appropriate proportion of the 100 ml-volume of test substance stock solution referred to above is replaced with water. For example, if 10 ml of an insoluble liquid test substance or solvent containing test substance is added directly to the test vessels, 90 ml of water is added. If insoluble solid test substance is added to the test vessel, 100 ml of water is added. If test substance is added as a stock solution in an organic solvent, a third control, containing the appropriate amount of solvent plus water to a total of 100 ml, is required, in addition to the series of test vessels containing different concentrations of the test substances.

(D) After 3 hours the contents of the first vessel are poured into the measuring apparatus and the respiration rate is measured over a period of up to 10 minutes; the measuring can also be carried out directly in the vessel.

(E) This determination is repeated on the contents of each vessel at 15-minute intervals, in such a way that the contact time in each vessel is three hours.

(*1*) The reference substance is tested on each batch of microbial innoculum in the same way. A different regime (e.g. more than one oxygen meter) will be necessary when measurements are to be made after 30 minutes of contact.

(*2*) If measurement of the chemical oxygen consumption is required, further vessels are prepared containing test substance, synthetic sewage feed and water, but no activated sludge.

(v) *Observations.* Oxygen consumption is measured and recorded after an aeration time of 30 minutes and/or 3 hours contact time.

(c) *Data and reporting*—(1) *Treatment of results.* (i) The respiration rate is calculated from the recorder trace as mg O_2/L.h between approximately 6.5 mg O_2/L and 2.5 mg O_2/L, or over a 10-minute period when the respiration rate is low. The portion of the respiration curve over which the respiration rate is measured should be linear. In order to calculate the inhibitory effect of a test substance at a particular concentration, the respiration rate is expressed as a percentage of the mean of the two control respiration rates:

Formula:

$$\left(1-\frac{2R_s}{Rc_1+Rc_2}\right)\cdot 100=\text{percent inhibition}$$

where

R_s = oxygen-consumption rate at tested concentration of test substance

R_{c1} = oxygen-consumption rate, control 1

R_{c2} = oxygen-consumption rate, control 2

(ii) If the respiration rates of the two controls are not within 15 percent of each other or the EC_{50} (3h) of the reference substance is not in the accepted range (5 to 30 mg/L for 3,5-dichlorophenol), the test is invalid and must be repeated. The percent inhibition is calculated at each test concentration using the formula shown above. The percent inhibition is plotted against concentration on log-normal (or log-probability) paper and an EC_{50} value derived. Ninety five percent confidence limits for the EC_{50} values can be determined using standard procedures. In view of the variability often observed in the results, it is recommended that the results be expressed in orders, of magnitude, e.g. less than 1, 1 to 10, 10 to 100, etc. (in mg/L).

(2) *Interpretation of results.* The EC_{50} value should be regarded merely as a guide to the likely toxicity of the test substance either to activated sludge sewage treatment or to wastewater microorganisms, since the complex interactions occurring in the environment cannot be accurately simulated in a laboratory test.

(3) *Test report.* The test report should include the following information.

(i) Test substance: Chemical identification data.

(ii) Test system: Source, concentration and any pretreatment of the activated sludge.

(iii) Test conditions: Test temperature, test duration, reference substance and its measured EC_{50}, and abiotic oxygen uptake, if any.

(iv) Results: All measured data; inhibition curve and method for calculation of EC_{50}; EC_{50}, and if possible, 95 percent confidence limits; EC_{20} and EC_{80}; all observations and any deviations from this test guideline which could have influenced the result.

(d) *Literature references.* (1) International Standard ISO/TC 147/SC 5/WC 1, N53 No. D (June 1981).

(2) Broecker, B. and Zahn, R., *Water Research, 11*, 165 (1977).

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(3) Brown, D., Hitz, H.R. and Schaefer, L., *Chemosphere, 10,* 245 (1981).
(4) ETAD (Ecological and Toxicological Association of Dyestuffs Manufacturing Industries) Recommended Method No. 103, also described by:
(5) Robra, B., *Waeser/Abwasser, 117,* 80 (1976) and
(6) Schefer, W., *Textilveredlung, 6,* 247 (1977).

PART 799—[AMENDED]

2. Part 799 is amended as follows:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.4000 to read as follows:

§ 799.4000 Tetrabromobisphenol A.

(a) *Identification of test substance.* (1) Tetrabromobisphenol A (TBBPA CAS No. 79–94–7) shall be tested in accordance with this section.

(2) Tetrabromobisphenol A of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (import) or process tetrabromobisphenol A, other than as an impurity, after the effective date of this rule (44 days after publication of the final rule in the **Federal Register**) to the end of the reimbursement period submit exemption applications, submit study plans, conduct tests, and submit data as specified in this section, Subpart A of this Part, Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Chemical fate*—(1) *Biodegradability in water*—(i) *Required testing.* Biodegradation testing in water shall be conducted with TBBPA in accordance with the method described in Bourquin *et al.* "Developments in Industrial Microbiology" 18, 185–191, 1977. The method is available from the Office of the Federal Register Information Center, 11th and L St., NW., Washington, DC 20408, and in the EPA OPTS Reading Room, Rm. E–107, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register on [date]. The method is incorporated as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The biodegradation test in water shall be completed and the final report submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final rule.

(2) *Inherent biodegradability in soil*—(i) *Required testing.* Inherent biodegradability in soil tests to assess aerobic and anaerobic biodegradability shall be conducted with TBBPA in accordance with § 796.3400 of this chapter.

(ii) *Reporting requirements.* (A) The inherent biodegradability in soil tests shall be completed and the final report submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(3) *Biodegradability in sludge systems*—(i) *Required testing.* Biodegradability tests in sludge systems shall be conducted with TBBPA in accordance with § 796.3341 of this chapter.

(ii) *Reporting requirements.* (A) The biodegradability tests in sludge systems shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(d) *Environmental effects*—(1) *Respiration inhibition in activated sludge*—(i) *Required testing.* A respiration inhibition test in activated sludge system shall be conducted with TBBPA in accordance with the guideline specified in § 795.170 of this chapter.

(ii) *Reporting requirements.* (A) The respiration inhibition test in activated sludge system shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(2) *Algal acute toxicity*—(i) *Required testing.* (A) Algal acute toxicity testing shall be conducted with TBBPA using *Selenastrum capricornutum* in accordance with § 797.1050 of this chapter and the modification specified in paragraph (d)(2)(i)(B) of this section.

(B) Modification. The requirements under § 797.1050 (c)(1)(ii) and (c)(6)(i)(B) of this chapter are modified to require that the agal cells at the end of 24, 48, and 72 hours also be enumerated and that the algal cells at the end of 24, 48, cells from the test solution be done using an ultrafiltration (e.g. 0.45 micrometer pore size) technique.

(ii) *Reporting requirements.* (A) The algal acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(3) *Gammarus acute toxicity*—(i) *Required testing. Gammarus* acute toxicity testing shall be conducted with TBBPA using *G. lacustris, G. fasciatus,* or *G. pseudolimnaeous* in accordance with § 797.1310 of this chapter.

(ii) *Reporting requirements.* (A) The *Gammarus* acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(4) *Fish acute toxicity*—(i) *Required testing.* Fish acute toxicity testing shall be conducted with TBBPA using *Pimephales promelas* (fathead minnow) in accordance with § 797.1400 of this chapter.

(ii) *Reporting requirements.* (A) The fish acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(5) *Daphnid chronic toxicity*—(i) *Required testing.* Daphnid chronic toxicity testing shall be conducted with TBBPA using *Daphnia magna* or *D. pulex* in accordance with § 797.1330 of this chapter.

(ii) *Reporting requirements.* (A) The daphnid chronic toxicity test shall be completed and the final report submitted to the Agency within 2 years of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(6) *Fish early life stage toxicity*—(i) *Required testing.* A fish early life stage toxicity test shall be conducted with TBBPA using fathead minnow (*Pimephales promelas*) if the 96-hour LC_{50} for fathead minnow conducted in accordance with paragraph (d)(4) of this section is equal to or less than 0.40 mg/L; the test species shall be rainbow trout if the 96-hour LC_{50} for fathead minnow is greater than 0.40 mg/L. The fish early life stage toxicity test shall be conducted in accordance with § 797.1600 of this chapter.

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(ii) *Reporting requirements.* (A) The fish early life stage toxicity test shall be completed and the final report submitted to the Agency within 2 years of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(7) *Bioconcentration in fish*—(i) *Required testing.* A bioconcentration test shall be conducted with TBBPA using *Pimephales promelas* (fathead minnow) in accordance with § 797.1520 of this chapter.

(ii) *Reporting requirements.* (A) The bioconcentration test in fish shall be completed and the final report submitted to the Agency within 1 year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(8) *Bioconcentration in oyster*—(i) *Required testing.* A bioconcentration test shall be conducted with TBBPA using *Crassostrea virginica* (oyster) in accordance with § 797.1830 of this chapter.

(ii) *Reporting requirements.* (A) The bioconcentration test in oyster shall be completed and the final report submitted to the Agnecy within one year of the effective date of the final rule.

(B) Quarterly progress reports shall be submitted to the Agency beginning 90 days after the effective date of the final test rule.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070-0033)

[FR Doc. 86-10705 Filed 5-14-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42080; FRL-3001-6]

Triethylene Glycol Monomethyl, Monethyl, and Monobutyl Ethers; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing that manufacturers and processors of triethylene glycol monomethyl ether (CAS No. 112-35-6), triethylene glycol monomethyl ether (CAS No. 112-50-5), and triethylene glyclo monobutyl ether (CAS No. 143-22-6) be required, under section 4 of the Toxic Substances Control Act (TSCA), to perform testing for these three chemicals for subchronic toxicity, developmental toxicity, neurotoxicity and developmental neurotoxicity, mutagenicity, reproductive toxicity, and oncogenicity. This is a two-stage rule. The subchronic toxicity, developmental toxicity and developmental neurotoxicity, the neurotoxicity and the lower-tier mutagenicity are in the first stage. Following the receipt of the first-stage data, EPA will review it and decide what further testing needs to be done in stage two. This proposed rule responds to the Interagency Testing Committee's (ITC's) designation of these three compounds for priority consideration for health effects testing.

DATES: Submit written comments on or before July 14, 1986. If persons request an opportunity to submit oral comment by June 30, 1986. EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VIII of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42080), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-106, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Wasington, DC 20460, Toll free: (800-424-9065); In Washington, DC: (554-1404); Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of triethylene glycol monomethyl, monoethyl, and monobutyl ether for health effects testing consideration.

I. Introduction

A. ITC Recommendation

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established ITC under section 4(e) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

ITC designated the three triethylene glycol ethers for priority testing consideration in its Sixteenth Report, published in the **Federal Register** of May 21, 1985 (50 FR 20930). ITC recommended pharmacokinetic and metabolic studies. Dependent upon the results of the pharmacokinetic and metabolic work, subchronic studies with emphasis on hematologic effects, as well as reproductive and developmental toxicity studies, should be performed. This document responds to ITC's designation.

B. Test Rule Development Under TSCA

Under section 4 (a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if it finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making section 4(a)(1)(A) findings, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the second finding under section 4(a)(1)(A), EPA examines toxicity studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to the chemical. In making the third finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300).

For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine if there is or may be substantial production and significant or substantial human exposure. For the findings under section 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to the chemical. In making the finding under section 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in its second proposed test rule [See the **Federal Register** of June 5, 1981 (46 FR 30300)].

In evaluating ITC's testing recommendations for the three triethylene glycol ethers, EPA considered all available relevant information including the following: information presented in ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of these compounds under TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and published and unpublished data available to the Agency. From its evaluation, as described in this proposed rule, EPA is proposing health effects testing requirements for triethylene glycol monomethyl, monoethyl, and monobutyl ethers under sections 4(a)(1)(A) and 4(a)(1)(B). By these actions, EPA is responding to ITC's designation of triethylene glycol monomethyl, monoethyl, and monobutyl; ethers for priority testing consideration.

II. Review of Available Data

A. Physicochemical Information

These three compounds are liquids, with very low estimated vapor pressures (Ref. 1).

Triethylene glycol monomethyl ether—2.90×10^{-3} mm Hg
Triethylene glycol monoethyl ether—2.90×10^{-3} mm Hg
Triethylene glycol monobutyl ether—2.50×10^{-3} mm Hg

B. Production and Use

These three chemicals are primarily co-produced during the manufacture of lower molecular weight glycol ethers. About 5 percent of the production is purified further for use as chemical intermediates, but the majority of production is sold in a technical grade for use as a diluent in brake fluids. The glycol ethers comprise 95–97 percent of the market for brake fluid diluents (Ecomomic Analysis Support Document). The International Trade Commission (1985) has estimated the 1984 production levels of these compounds to be as follows (Economic Analysis Support Document):

Triethylene glycol monomethyl ether—27 million lbs.
Triethylene glycol monoethyl ether—24 million lbs.
Triethylene glycol monobutyl ether—11 million lbs.

C. Exposure and Release

Preliminary data from the National Occupational Exposure Survey (NOES) conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1980–1983 indicate that 248,333 workers, including 8,107 females, were potentially exposed to brake fluids in the workplace in 1980 (Ref. 2).

There are no data on levels of dermal exposure in the workplace or on release to the environment. However, the nature of brake system maintenance and repair suggests that complete exposure of both hands occurs regularly, even daily, for many professional mechanics. Furthermore, there is a potential for consumer exposure, since some individuals can be expected to add brake fluid or perform brake maintenance on their automobiles.

D. Health Effects

Acute toxicity tests have been done on all these chemicals by the oral, dermal and inhalation routes, although in different species. Oral and dermal median lethal doses (LD_{50}'s) for each compound are of the same order of magnitude, which indicates that the compound is dermally absorbed. While these studies differ in some respects from the corresponding TSCA test guidelines, EPA believes that the data are sufficient to predict the acute effects of these compounds, and that further acute studies need not be performed.

However, a complete health effects profile of these three triethylene glycol ethers is not established. Only triethylene glycol monoethyl ether has been tested in other than acute tests. Kondratyuk *et al.* (Ref. 3) gave a brief summary of the results of a 6-month gavage study in rats. Hypochromatic anemia, leucocytosis, eosinophilia, lymphocytopenia and monocytopenia, and liver and kidney dysfunction were seen at 0.775 and 7.75 mg/kg. A no-observed-effect level (NOEL) was seen at 0.0775 mg/kg. These data indicate a potential for chronic blood and organ effects for triethylene glycol monoethyl ether, as well as for the chemically related triethylene glycol monomethyl ether and triethylene glycol monobutyl ether, but the information available is insufficient for EPA to evaluate the possible risks to humans, as no specific histopathologic or biochemical data are provided.

Fetotoxicity and testicular atrophy have been noted with ethylene glycol monomethyl ether, a congener of triethylene glycol monomethyl ether (Ref. 4). Behavioral and neurochemical alterations have been seen in rats exposed *in utero* to the same chemical (Ref. 5), as well as encephalopathy in humans exposed in a work situation (Ref. 6). Another congener, diethylene glycol monobutyl ether, has given a positive response in the mammalian cells in culture gene mutation assay using mouse lymphoma cells (Ref. 7).

III. Findings

EPA is basing its proposed health effects testing of these glycol ethers on the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

Under section 4(a)(1)(A) EPA finds that the use of the triethylene glycol ethers listed above may present an unreasonable risk of chronic toxicity based upon the chronic toxicity in the hematopoietic system and kidney and liver dysfunction seen with triethylene glycol monoethyl ether. The 4(a)(1)(A) findings for mutagenicity, developmental toxicity, neurotoxicity, developmental neurotoxicity and reproductive toxicity are based on positive results seen for related chemicals (Unit II.D).

Under section 4(a)(1)(B) of TSCA the Agency finds that triethylene glycol monomethyl, monoethyl, and monobutyl ethers are produced in substantial quantities and that there is substantial human exposure in the workplace as a result of the use of these substances in brake fluid.

The Agency also finds that the available data are insufficient to reasonably predict or determine the effects of the use of these compounds, and that testing is necessary to develop such data.

IV. Proposed Rule

A. Proposed Testing and Test Standards

The Agency is proposing that health effects testing be conducted on triethylene glycol monomethyl, monoethyl, and monobutyl ethers in accordance with specific guidelines set forth in Title 40 Part 798 published in the **Federal Register** of September 27, 1985 (50 FR 39252) as modified in the **Federal Register** of January 14, 1986 (51 FR 1522), as enumerated below. As all of these chemicals will be proposed for the same tests, the term "glycol ether" will refer to each of them as discussed below.

All the tests that can be performed by the dermal route are being proposed by that route because the expected human exposure is dermal. The rabbit has been proposed for the subchronic test because in studies done with related compounds, the rabbit was more sensitive to dermal exposure than the rat.

This proposed rule is a two-stage rule. The following tests will be incorporated in the first stage: subchronic toxicity, neurotoxicity, developmental toxicity and developmental neurotoxicity, and the lower-tier mutagenicity. The Agency will review all these data as received, decide which of the second-stage tests should be finalized, and publish a notice of that decision requesting public comment. EPA will hold a public meeting to discuss this decision if it is requested.

The second-stage tests may include the two-generation reproductive toxicity test, the heritable translocation test, the mouse specific locus test and the oncogenicity test.

All of the tests will be proposed at this time, but the final rule will include only the first-stage tests. The second-stage tests which EPA believes are needed following review of the first-stage tests will be made final following the public meeting and time for public comment.

Each glycol ether will be tested for subchronic toxicity, with special testing for liver dysfunction, kidney dysfunction, hematologic effects and reproductive effects. Exposure will be by the dermal route in the rabbit. Special organs of the reproductive tract to be weighed and evaluated are listed in § 799.4440. Urinalyses in all animals will be done before dosing begins, at day 30 and day 90 in order to examine kidney function. The details for the liver dysfunction tests and the special hematologic studies are given in § 799.4440. Subchronic dermal neurotoxicity studies will be performed in the rat: A functional observational battery (section 798.6050), motor activity (section 798.6200), and neuropathology (section 798.6400). These neurotoxicity tests may be combined, using 10 animals for each dose and sex.

To assess the potential for gene mutations, the Agency is proposing mutagenicity testing in the *Salmonella* reverse mutation assay as specified in § 798.5265 for all three glycol ethers. In each case, if the *Salmonella* result is negative, a mammalian cells in culture test shall be done (section 798.5300). If the mammalian cells in culture test is negative, no further gene mutation studies need be done.

If either the *Salmonella* or mammalian cells in culture test is non-negative, a *Drosophila* sex-linked recessive lethal test (section 798.5275) shall be performed for the chemical. If the sex-linked recessive lethal test is negative, no further gene mutation studies need be done. If the *Drosophila* test is positive, EPA will consider requiring a mouse visible specific locus test (section 798.5200) in the second-stage rule.

For testing for chromosomal aberrations, each of the glycol ethers shall undergo a tiered testing scheme. The first test is the *in vitro* cytogenetic chromosomal aberration test (section 798.5375). If this test is negative, the chemical shall be tested in the *in vivo* cytrogenetic assay (section 798.5385). If this test is also negative, no further testing for chromosomal effects need be done. If either the *in vitro* or *in vivo* test is non-negative for any chemical, then a dominant lethal study in the rat shall be performed (section 798.5450). If the dominant lethal study is negative, no further chromosomal aberration studies need be done, and if the dominant lethal test is positive, then EPA will consider requiring a mouse heritable translocation test (§ 798.5460) in the second stage final rule.

EPA is requiring developmental toxicity testing in the rabbit and the rat, according to § 798.4900. This study shall be by the dermal route of exposure. Another dermal rat developmental neurotoxicity study, according to § 795.250 shall be performed in which the offspring shall be allowed to go to parturition, and those offspring shall be evaluated for behavioral alterations at various stages following birth. The developmental neurotoxicity test shall be performed after the developmental toxicity study has been done in order to determine appropriate doses, i.e., the developmental neurotoxicity study shall be performed at doses lower than those

which induce severe teratogenic or fetal effects.

The Agency is proposing that an oral two-generation reproductive test (section 798.4700) be required in the rat if the results of gross or histopathologic evaluation of the reproductive tissue in male or female exposed rabbits from the subchronic exposure test show adverse effects. Following the completion of the subchronic study, a public review of the data will be held to determine if the Agency should promulgate a final rule requiring a two-generation study.

If either the Drosophila sex-linked recessive lethal or the dominant lethal test for any of these compounds is positive, a public program review will be held before the final tier testing for mutagenicity of that compound is required.

Oncogenicity studies (section 798.3300) for each of these three chemicals may be required in the mouse and rat by dermal absorption. EPA will review the mutagenicity data and all other available data related to oncogenicity and hold a public program review before publishing a final rule on oncogenicity.

B. Test Substance

EPA is proposing testing of the triethylene glycol ethers of at least 90-percent purity. The EPA believes that test materials of this purity are available at reasonable cost. The Agency has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the subject compounds themselves. This requirement would lessen the likelihood that any effects seen are due to impurities.

C. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing, which includes production of these chemicals as a co-product ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures causing the potential risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assess the health risks from the use of these compounds, the EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, these glycol ethers at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, if more than 5 years, after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the Federal Register to notify processors to respond; this procedure is described on 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for these glycol ethers. As noted in Unit IV.B. of this preamble, the EPA is interested in evaluating the effects attributable to the specified compounds and has proposed relatively pure substances for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before the start of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed tests as follows:

1. The subchronic toxicity and subchronic neurotoxicity tests shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule.

2. The lower-tier mutagenicity studies shall be completed and final results submitted to the Agency within the deadlines specified in the rule. These range from 4 months after the effective date of the final test rule for the *in vitro* cytogenetics assay to 24 months for the *Drosophila* sex-linked recessive lethal assay and the dominant lethal assay.

3. The upper-tier mutagenicity tests shall be completed and final results submitted to the Agency within 12 months of the effective date of a final test rule requiring these studies.

4. The developmental toxicity studies shall be completed and final results submitted to the Agency within 12 months of the effective date of the final test rule.The developmental neurotoxicity test shall be completed and final results submitted to the Agency within 24 months of the effective date of the final test rule.

5. The oncogenicity tests shall be completed and the final results submitted to the Agency within 53 months of the effective date of a final test rule requiring this study.

6. The two-generation reproductive study shall be completed and the final results submitted to the Agency within 29 months of the effective date of a final test rule requiring that study.

Progress reports on these tests will be required at 6-month intervals beginning 6 months from the effective date of the final rule requiring that study.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of any of the three triethylene glycol ethers referred to in this rule must report to EPA the first annual export or intended export of the compound to any one country. EPA will notify the foreign country about the test rule for the chemical.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) establish or maintain records (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated EPA representatives to determine compliance with any final rule for these glycol ethers. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Intentional violations could lead to theimposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. At its discretion, EPA may proceed against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C.1001.

V. Issues for Comment

1. EPA is proposing the rat as the species in which to perform an oral two-generation reproductive toxicity study, although the normal human exposure is dermal. Should the reproductive study be done dermally? The rabbit has proved to be more sensitive to the effects of related glycol ethers than the rat when treated dermally. However, some persons feel that the rabbit is inappropriate for doing two-generation reproductive toxicity studies, either dermally or orally, because rabbits do not breed well in captivity. The Agency invites comment on these issues.

2. EPA is proposing that the *in vivo* cytogenetics and the dominant lethal mutagenicity tests be done by the dermal route because humans are expected to be exposed dermally. However, mutagenicity testing by the dermal route has little precedent. Furthermore, the mouse specific locus test and the heritable translocation test are being proposed by the oral route because no historical controls are available for the dermal route. The Agency invites comment on the desirability of dermal administration of the glycol ethers in the mutagenicity tests.

3. This test rule may result in three oncogenicity tests, one for each glycol ether being tested. Is it appropriate to consider in that case requiring oncogenicity testing for only the most potent chemical as determined from the first-stage mutagenicity testing to share the costs and reduce the economic impact, and regulating all three on that basis? Should this approach be considered for the other stage-two tests proposed in this rule?

4. Although the Level I economic analysis indicates a potential for significant economic impact (see Unit VI), EPA will not be performing a Level II economic analysis until after proposal of this rule. In order to refine the economic analysis, EPA requests comments on the economic impact on the manufacturers, processors and users.

5. EPA is proposing in this notice a two-stage test rule. The first stage will include the subchronic toxicity test, the developmental toxicity tests, neurotoxicity tests and the lower-tier mutagenicity tests. EPA will review the data after it is received, approximately two years from the final rule, and will then hold a public review meeting to discuss EPA's decisions as to which of the second-stage tests are necessary. The second-stage testing includes oncogenicity, mouse specific locus, heritable translocation and two-generation reproductive toxicity tests. The Agency believes that this approach provides needed flexibility in dealing with this group of chemicals and requests comment from interested parties.

6. EPA is proposing extensive testicular histopathology in the 90-day subchronic, because members of this class of compounds are known to cause testicular atrophy. The effects seen have been described in detail and the modifications proposed in this notice specifically address these concerns. However, the chemicals tested for reproductive toxicity have affected the female as much as the male in some cases. Because it is more difficult to predict reproductive effects from standardized subchronic histopathology on the female reproductive organs, EPA has not routinely used such testing to trigger a two-generation reproductive test. However, for these glycol ethers, EPA is considering requiring data on the estrous cycle in exposed animals by performing vaginal cytology over the last two weeks of exposure in the 90-day subchronic (Ref. 8), and more detailed histopathologic analysis of the ovary to evaluate oocyte toxicity (Ref. 9). The Agency requests comments on whether EPA should require the cyclicity study and the detailed female histopathology, and on the availability of test facilities with experience in such studies.

7. It has been suggested that the rats in the subchronic neurotoxicity tests also be examined for reproductive effects. Most of the available research has been performed in the rat, which would make the results easier to evaluate. In addition, EPA could require a satellite group for reproduction and fertility study. The Agency requests comments on the usefulness of these proposed protocol changes to predict reproductive toxicity.

8. EPA is proposing that the developmental neurotoxicity screen be performed using the dermal route of exposure. Because exposure of the dams will continue through lactation, dermal administration to the dams may result in the pups being exposed directly to the compound, either dermally or orally, instead of just indirectly through the milk. Should this study be performed using the oral route?

9. It has further been suggested that the oral route be used for all the tests. The reason for proposing the dermal route has been discussed earlier (see Unit IV.A. and Issues 1. and 2.). Dermal and oral disposition and metabolism tests may give the Agency the option to require oral testing and use the comparative oral and dermal chemical disposition and metabolism testing to estimate the appropriate dermal dose an individual might receive. Should the Agency evaluate this option?

10. If this option is considered, what are the pros and cons of using an *in vitro* percutaneous absorption study rather than an *in vivo*? Using an *in vitro* study would allow the tester to use human skin to measure absorption which may more effectively simulate human exposure. However, there is some indication that using skin from different individuals may result in widely varying figures, whereas using skin samples from an in-bred rat strain gives very reproducible results.

11. Recently the Chemical Manufacturers Association (CMA) informed EPA about three studies it is sponsoring on these triethylene glycol ethers, a 14-day dermal limit test, an *in vitro* percutaneous absorption study, and a Chernoff-Kavlock teratogenicity bioassay. The Agency is requesting comments on the use of the Chernoff-Kavlock assay specifically for the glycol ether chemical class as a screen for further testing needs, or as a replacement for one of the species in the standard developmental toxicity assay.

12. The Agency prefers to require testing of commercially available substances of the highest purity, rather than proposing that the manufacturers purify the compounds to a pre-designated level. However, if the impurities in the triethylene glycol ethers are the monoethylene congeners, which are known toxicants, it is possible that the perceived toxicity of the test substances might be increased. Should the EPA require in this case that a greater than commercial purity be achieved, or that no other glycol ethers be found as impurities in the test substance?

VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for each triethylene glycol ether are estimated to range from $1,292,006 to $1,838,190. This estimate includes the costs for the required minimum series of tests as well as the conditional ones. The annualized test costs (using a cost of capital of 25 percent over a 15-year product life) range from $334,781 to $476,306 for each chemical. When broken down into the two stages proposed in this rule, the total testing costs for the first stage are estimated to range from $318,946 to $496,966, and the annualized test costs from $82,645 to $128,512. The total testing costs for the second stage are estimated to range from $973,060 to $1,342,230 and the annualized test costs from $252,136 to $347,794. Based on the estimated 1984 production volumes listed in Unit II.A., the unit test costs, the average selling price and the relative costs are listed below for each glycol ether.

For the first stage testing for each chemical:

Triethylene glycol monomethyl ether: unit test cost 0.48 cent per pound, average selling price $0.44 per pound, relative cost 1.08 percent of price.

Triethylene glycol monoethyl ether: unit test cost 0.54 cent per pound, average selling price $0.50 per pound, relative cost 1.07 percent of price.

Triethylene glycol monobutyl ether: unit test cost 1.2 cents per pound, average selling price $0.43 per pound, relative cost 2.72 percent of price.

For the total testing for each chemical:

Triethylene glycol monomethyl ether: unit test cost 1.8 cents per pound, average selling price $0.44 per pound, relative cost 4.01 percent of price.

Triethylene glycol monoethyl ether: unit test cost 2.0 cents per pound, average selling price $0.50 per pound, relative cost 3.97 percent of price.

Triethylene glycol monobutyl ether: unit test cost 4.3 cents per pound, average selling price $0.43 per pound, relative cost 10.07 percent of price.

The two-stage testing proposal has mitigated the economic impact for all three chemicals to some extent, so that a potential for significant economic impact is not expected for triethylene glycol monomethyl ether and triethylene glycol monoethyl ether for the first-stage testing. However, a Level II economic analysis will be done on triethylene glycol monobutyl ether after receiving comments on this proposal. Following completion of the first-stage testing, EPA will evaluate the results and decide whether the importance of the potential adverse health effects outweighs the possible adverse economic effects.

before requiring the second stage of testing.

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule". Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82–140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing specified in this proposed rule.

VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800—424–9065); In Washington, DC: (554–1404); Outside the U.S.A. (Operator—202–554–1404), by June 30, 1986. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe it and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

IX. Public Record

EPA has established a record for this rulemaking, (docket number OPTS–42080). This record contains the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices.

This record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of triethylene glycol monomethyl, monoethyl, and monobutyl ethers.

(b) Rules requiring TSCA section 8 (a) and (d) reporting on triethylene glycol monomethyl, monoethyl, and monobutyl ethers.

(c) Notice of final rule on EPA's TSCA good laboratory practice standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(2) Support document consisting of triethylene glycol monomethyl, monethyl, and monobutyl ethers' economic analysis.

(3) TSCA test guidelines and other test methodologies cited as test standards for this rule (50 FR 39252; September 27, 1985; 51 FR 1522; January 14, 1986.)

(4) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials.

B. References

(1) USEPA. U.S. Environmental Protection Agency. Memorandum from Patricia Harrigan to Gary Timm on Chemical Property and Environmental Behavior Estimates for Chemicals on the 16th ITC Priority List. Office of Toxic Substances (June 7, 1985).

(2) NIOSH. National Occupational Exposure Survey (1980–1983). Cincinnati, OH: Department of Health and Human Services, National Institute for Occupational Safety and Health. (1985).

(3) Kondratyuk, V.A., Pis'ko, G.T., Sergeeva, V.N., Gun'ko, L.M., Fira, L.S., Pastushenko, T.V. *et al.* "Establishment of the maximum permissible concentration of triethylene glycol ethyl ether in reservoir water." *Gigiena Sanitariya* 5:84–85 (1982).

(4) Doe, J.E. "Further studies on the toxicology of the glycol ethers with emphasis on rapid screening and hazard assessment." *Environmental Health Perspectives* 57:199–206 (1984).

(5) Nelson, B.K., Brightwell, W.S., Burg, J.R., and Massari, V.J. "Behavioral and neurochemical alterations in the offspring of rats after maternal or paternal inhalation exposure to the industrial solvent 2-methoxyethanol." *Pharmacology, Biochemistry and Behavior* 20:269–279 (1984).

(6) Ohi, G. and Wegman, D.H. "Transcutaneous ethylene glycol monomethyl ether poisoning in the work setting." *Journal of Occupational Medicine* 20(10):675–676 (1978).

(7) Thompson, E.D., Coppinger, W.J., Valencia, R. and Iavicoli, J. "Mutagenicity testing of diethylene glycol monobutyl ether." *Environmental Health Perspectives* 57:105–112 (1984).

(8) Sadleir, R.M.F.S. "Cycles and seasons." *Reproduction in Mammals: I. Germ Cells and Fertilization.* Ed. Austin, C.R., Short, R.V., New York: Cambridge Press, pp. 65–102 (1978).

(9) Mattison, D.R. "Morphology of oocyte and follicle destruction by polycyclic aromatic hydrocarbons in mice." *Toxicology and Applied Pharmacology* 53:249–259 (1980).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E–107, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070–

0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for the EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 795 and 798

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 2, 1986.

Victor J. Kimm,

Deputy Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 795—[AMENDED]

1. In proposed Part 795:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. New § 795.250 is added to read as follows:

§ 795.250 Developmental neurotoxicity screen.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, it is important to determine when acceptable exposures in the adult may not be acceptable to a developing organism. This study is designed to provide information on the potential functional and morphologic hazards to the nervous system which may arise in the offspring from exposure of the mother during pregnancy and lactation. If effects are detected, further studies may be required to characterize and assess the risk(s).

(b) *Principle of the test method.* The test substance is administered to several groups of pregnant animals during gestation and lactation, one dose level being used per group. Offspring are randomly selected from within litters for neurotoxicity evaluation. The evaluation includes observation to detect gross neurologic and behavioral abnormalities, determination of motor activity, neurophathological evaluation, and brain weight. Measurements are carried out periodically during both postnatal development and adulthood.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Testing shall be performed in the rat.

(ii) *Age.* Young adult animals (nulliparous females) shall be used.

(iii) *Sex.* Pregnant animals shall be used at each dose level.

(iv) *Number of animals.* A sufficient number of pregnant rats shall be exposed to ensure that an adequate number of offspring are produced for neurotoxicity evaluation. Sample size should be based on the test requiring the greatest number of offspring to achieve sensitivity. The test should be able to detect a 20 percent difference in the test group relative to the control group with 90 percent power at the 5 percent level. For most designs, calculations can be made according to Dixon and Massey (1957) under paragraph (e)(3) of this section, Neter and Wasserman (1974) under paragraph (e)(7) of this section, Sokal and Rohlf (1969) under paragraph (e)(8) of this section, or Jensen (1972) under paragraph (e)(5) of this section. The size of each litter shall be adjusted as outlined in the Toxic Substances Control Act (TSCA) reproduction and fertility effects guideline, 40 CFR 798.4700, as published in the Federal Register of September 27, 1985 (50 FR 39432). One male and one female shall be randomly selected from each litter for interim sacrifice at weaning. One male and one female shall be randomly selected from each litter for behavioral assessment and terminal sacrifice. It is also recommended that additional males and females randomly selected from each litter be assigned to different tasks to eliminate any confounding from multiple testing. If the behavioral tasks are conducted in the same animal, then the sequence should be locomotor activity, auditory startle, maze performance. A minimum of 1–2 days should separate each test.

(2) *Control group.* A concurrent control group shall be used. This group shall be a sham treated control group, or, if a vehicle is used in administering the test substance, a vehicle control group. Animals in the control group(s) shall be handled in an identical manner to test group animals. The vehicle shall neither be developmentally toxic nor have effects on reproduction.

(3) *Dose levels and dose selection.* (i) At least 3 dose levels with a control (vehicle control, if vehicle is used) shall be used.

(ii) If the substance has been shown to be developmentally toxic, either in a standard developmental toxicity study or a pilot study, the highest dose level shall be the maximum dose which will not induce *in utero* or neonatal death or malformations sufficient to preclude a meaningful evaluation of neurotoxicity.

(iii) In the absence of standard developmental toxicity, unless limited by the physicochemical nature or biological properties of the substance, the highest dose level shall induce some overt maternal toxicity such as a 20 percent reduction in weight gain throughout gestation and lactation.

(iv) The lowest dose level should not produce any grossly observable evidence of either maternal or developmental neurotoxicity.

(v) The intermediate dose(s) shall be equally spaced between the highest and lowest dose, on a log scale.

(4) *Dosing period.* Day 0 in the test is the day on which a vaginal plug and/or sperm are observed. The dose period shall cover the period from Day 6 of gestation through weaning (21 days).

(5) *Administration of test substance.* The test substance or vehicle is usually administered orally, by intubation, unless the chemical or physical characteristics of the test substance or pattern of human exposure suggest a more appropriate route of administration. The test substance shall be administered at the same time each day. The animals shall be weighed periodically and the dosage based on the most recent weight determination.

(6) *Observation of dams.* (i) A gross examination of the dams shall be made at least once each day, before daily treatment. The animals shall be observed each day by the same trained technician, who shall be blind with respect to the animals' treatment.

(ii) During the treatment and observation periods, cage-side observations shall include:

(A) Any unusual responses with respect to body position, activity level, coordination of movement, and gait.

(B) Any unusual or bizarre behavior, including, but not limited to, headflicking, headsearching, compulsive biting or licking, self-mutilation, circling, and walking backwards.

(C) The presence of:

(*1*) Convulsions;

(*2*) Tremors;

(*3*) Increased levels of lacrimation and/or red-colored tears;

(*4*) Increased levels of salivation;

(*5*) Piloerection;

(*6*) Pupillary dilation or constriction;

(*7*) Unusual respiration (shallow, labored, dyspneic, gasping, and retching) and/or mouth breathing;

(*8*) Diarrhea;

(*9*) Excessive or diminished urination;

(*10*) Vocalization.

(iii) Signs of toxicity shall be recorded as they are observed, including the time of onset, the degree and duration.

(iv) Animals shall be weighed at least weekly.

(7) *Study conduct.* (i) Physical landmarks of development. Offspring shall be weighed at birth, days 12, 17, 21, and biweekly thereafter. The age of the

following physical landmarks shall be determined:

(A) Eye opening;
(B) Incisor eruption;
(C) Vaginal opening;
(D) Testes descent.

General procedures for these determinations may be found in Adams *et al.* (1985) under paragraph (e)(1) of this section.

(ii) Motor activity shall be monitored on days 13, 17, 21, 30, 45, and 60. Motor activity must be monitored by an automated activity recording apparatus. The device used must be capable of detecting both increases and decreases in activity, i.e., baseline activity as measured by the device must not be so low as to preclude decreases nor so high as to preclude increases. Each device shall be tested by standard procedure to ensure, to the extent possible, reliability of operation across devices and across days for any one device. In addition, treatment groups must be balanced across devices.

(A) Each animal shall be tested individually. The test session shall be long enough for motor activity to approach asymptotic levels by the last 20 percent of the session for most treatments and animals' activity counts shall be collected in equal time periods of no greater than 10 minutes duration. All sessions shall have the same duration. Treatment groups shall be counter-balanced across test times.

(B) Efforts shall be made to ensure that variations in the test conditions are minimal and are not systematically related to treatment. Among the variables which can effect motor activity are sound level, size and shape of the test cage, temperature, relative humidity, lighting conditions, odors, use of home cage or novel test cage, and environmental distractions. Tests shall be executed by an appropriately trained individual.

(C) Additional information on the conduct of a motor activity study may be obtained in the TSCA motor activity guideline, 40 CFR 798.6200, as published in the **Federal Register** of September 27, 1985 (50 FR 39460).

(iii) Observation of offspring. (A) The offspring shall be examined cage-side daily for gross signs of mortality and morbidity.

(B) The offspring shall be examined outside the cage for gross signs of toxicity whenever they are weighed or removed from their cages for behavioral testing. As a minimum, the endpoints outlined in paragraph (6)(ii) shall be used.

(C) Any gross signs of toxicity in the offspring shall be recorded as they are observed, including the time of onset, the degree and duration.

(iv) An auditory startle habituation test shall be performed on the offspring on days 22 and 60. Details on the conduct of this testing may be obtained in Kellog *et al.* (1980) under paragraph (e)(6) of this section and Adams *et al.* (1985) under paragraph (e)(1) of this section.

(v) The Biel water maze paradigm shall be conducted beginning at approximately day 55 of age. Details on the conduct of this testing may be obtained in Vorhees *et al.* (1978) under paragraph (e)(11) of this section.

(8) *Post-mortem evaluation*—(i) *Age of animals.* One male and one female per litter shall be sacrificed at weaning and the remainder following the last behavioral measures. Both neuropathology and brain weight determinations shall be made at both time points.

(ii) *Neuropathology.* Details for the conduct of neuropathology may be obtained in 40 CFR 798.6400, as published in the **Federal Register** of September 27, 1985 (50 FR 39461). At least 6 offspring per dose group shall be randomly selected from each sacrificed group (weaning and adulthood) for neuropathologic evaluation. These animals shall be balanced across litters and equal numbers of males and females shall be used. The remaining sacrificed animals shall be used to determine brain weight. Animals shall be perfused *in situ* by a generally recognized technique. After perfusion, the brain and spinal cord shall be removed and gross abnormalities noted. Cross-sections of the following areas shall be examined: The forebrain, the center of the cerebrum and midbrain, the cerebellum and pons, and the medulla oblongata; the spinal cord at cervical and lumbar swelling; Gasserian ganglia, dorsal root ganglia, dorsal and vertral root fibers, proximal sciatic nerve (mid-thigh and sciatic notch), sural nerve (at knee), and tibial nerve (at knee). Tissue samples from both the central and peripheral nervous system shall be further immersion-fixed and stored in appropriate fixative for further examination. After dehydration, tissue specimens shall be cleared with xylene and embedded in paraffin or paraplast. Tissue sections shall be prepared from the tissue blocks. The following general testing sequence is proposed for gathering histopathological data:

(A) *General staining.* A general staining procedure shall be performed on all tissue specimens in the highest treatment group. Hematoxylin and eosin (H&E) shall be used for this purpose. The staining shall be differentiated properly to achieve bluish nuclei with pinkish background.

(B) *Special stains.* Based on the results of the general staining, selected sites and cellular components shall be further evaluated by the use of specific techniques. If H&E screening does not provide such information, a battery of stains shall be used to assess the following components in all appropriate required samples: neuronal body (e.g., Einarson's gallocyanin), axon (e.g., Kluver's Luxol Fast Blue) and neurofibrils (e.g., Bielchosky). In addition, nerve fiber teasing shall be used. A section of normal tissue shall be included in each staining to assure that adequate staining has occurred. Any changes shall be noted and representative photographs shall be taken. If a lesion(s) is observed, the special techniques shall be repeated in the next lower treatment group until no further lesion is detectable.

(C) *Alternative technique.* If the anatomical locus of expected neuropathology is well-defined, epoxy-embedded sections stained with toluidine blue may be used for small sized tissue samples. This technique obviates the need for special stains.

(iii) *Brain weight.* Animals that are not sacrificed for histopathology shall be used to determine brain weight. The animals shall be decapitated and the brains carefully removed, blotted, chilled and weighed. The following dissection shall be performed on an ice-cooled glass plate: First the rhombencephalon is separated by a transverse section from the rest of the brain and into the cerebellum and the medulla oblongata/pons. A transverse section is made at the level of the 'optic chiasma' which delimits the anterior part of the hypothalamus and passes through the anterior commissure. The cortex is peeled from the posterior section and added to the anterior section. This divides the brain into four sections, the telencephalon, the diencephalon/mid-brain, the medulla oblongata + pons, and the cerebellum. Sections shall be weighed as soon as possible after dissection to avoid drying. Detailed methodology is available in Glowinski and Iversen (1966) under paragraph (e)(4) of this section.

(d) *Data reporting and evaluation.* In addition to the reporting requirements specified under 40 CFR Part 792, Subpart J, the final test report must include the following information.

(1) *Description of system and test methods.* (i) A detailed description of the procedures used to standardize observation and operational definitions for scoring observation.

(ii) Positive control data from the laboratory performing the test that demonstrate the sensitivity of the procedures being used. These data do not have to be from studies using prenatal exposures. However, the laboratory must demonstrate competence in testing neonatal animals perinatally exposed to chemicals and establish test norms for the appropriate age group.

(iii) Procedures for calibrating and assuring the equivalence of devices and balancing treatment groups.

(iv) A short justification explaining any decisions where professional judgement is involved such as fixation technique and choice of stains.

(2) *Results.* The following information must be arranged by test group dose level.

(i) In tabular form, data for each animal must be provided showing:

(A) Its identification number and litter from which it came.

(B) Its body weight and score on each sign at each observation time; total session activity counts; intrasession subtotals for each date measured; time and cause of death (if appropriate); location(s), nature of, frequency, and severity of the lesion(s); total brain weight; absolute weight of each of four sections; and weight of each section as a percentage of total brain weight. A commonly used scale such as 1+, 2+, 3+, and 4+ for degree of severity of lesions ranging from very slight to extensive may be used for morphologic evaluation. Any diagnoses derived from neurologic signs and lesions, including naturally occurring diseases or conditions, shall also be recorded.

(ii) Summary data for each group must include:

(A) The number of animals at the start of the test.

(B) Body weights of the dams during gestation and lactation.

(C) Litter size and mean weight at birth.

(D) The number of animals showing each observation score at each observation time.

(E) The percentage of animals showing each abnormal sign at each observation time.

(F) The mean and standard deviation for each continuous endpoint at each observation time. These will include body, weight, motor activity counts, acoustic startle responses, maze performance, and brain weights (both absolute and relative).

(G) The number of animals in which any lesion was found.

(H) The number of animals affected by each different type of lesion, the average grade of each type of lesion and the frequency of each different type and/or location of lesion.

(3) *Evaluation of data.* An evaluation of the test results must be made. The evaluation shall include the relationship between the doses of the test substance and the presence or absence, incidence, and severity of any neurotoxic effects. The evaluation shall include appropriate statistical analyses. The choice of analyses shall consider tests appropriate to the experimental design and needed adjustments for mulitple comparisons.

(e) *References.* For additional background information on this test guideline the following references shall be consulted:

(1) Adams, J., Buelke-Sam, J., Kimmel, C.A., Nelson, C.J., Reiter, L.W., Sobotka, T.J., Tilson, H.A., and Nelson, B.K. "Collaborative Behavioral Teratology Study: Protocol design and testing procedure." *Neurobehavioral Toxicology and Teratology* 7:579–586 (1985).

(2) Buelke-Sam, J., Kimmel, C.A., Adams, J., Nelson, C.J., Vorhees, C.V., Wright, D.C., St. Omer, V., Korol, B., Butcher, R.E., Geyer, M.A., Holson, J.F., Kutscher, C., and Wayne, M.J. "Collaborative Behavioral Teratology Study: Results." *Neurobehavioral Toxicology and Teratology* 7:591–624 (1985).

(3) Dixon, W.J. and Massey, E.J. *Introduction to Statistical Analysis.* 2nd Ed. New York: McGraw-Hill, (1957).

(4) Glowinski, J. and Iversen, L.L. "Regional studies of catecholamines in the rat brain—I." *Journal of Neurochemistry* 13:655–699 (1966).

(5) Jensen, D.R. "Some simultaneous multivariate procedures using Hotelling's T^2 Statistics." *Biometrics* 28:39–53 (1972).

(6) Kellogg, C., Tervo, D., Ison, J., Parisi, T., and Miller, R.K. "Prenatal exposure to diazepam alters behavioral development in rats." *Science* 207:205–207 (1980).

(7) Neter, J. and Wasserman; W. *Applied Linear Statistical Models.* Homewood, IL: Richard D. Irwin, Inc. (1974).

(8) Sokal, R.P. and Rohlf, E.J. *Biometry.* San Francisco: W.H. Freeman and Co. (1969).

(9) Tanimura, T. "Guidelines for developmental toxicity testing of chemicals in Japan." *Neurobehavioral Toxicology and Teratology* 7:647–652 (1985).

(10) Vorhees, C.V. "Comparison of the Collaborative Behavioral Teratology Study and the Cincinnati behavioral teratology test batteries." *Neurobehavioral Toxicology and Teratology* 7:625–633 (1985).

(11) Vorhees, C.V., Brunner, R.L., McDaniel, C.R., and Butcher, R.E. "The Relationship of gestational age to vitamin A induced postnatal dysfunction." *Teratolgoy* 17:271–276 (1978).

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. New § 799.4440 is added to read as follows:

§ 799.4440 Triethylene glycol ethers.

(a) *Identification of test substances.* (1)Triethylene glycol monomethyl ether (CAS No. 112–35–6), triethylene glycol monomethyl ether (CAS No. 112–50–5), and triethylene glycol monobutyl ether (CAS No. 143–22–6) shall be tested in accordance with this section.

(2) Compounds of at least 90 percent purity shall be used as the test substances.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process one or more of the listed chemicals, other than as an impurity, from the effective date of this section (44 days after the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to conduct testing on the chemical or chemicals they manufacture or exemption applications, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data as specified in this section, Subpart A of this Part, and Part 790 of this chapter.

(2) [Reserved].

(c) *Health effects testing*—(1) *Neurotoxicity*—(i) *Required testing.* Neurotoxicity tests shall be conducted in accordance with §§ 798.6050, 798.6200 and 798.6400 of this chapter with each of the chemicals listed in paragraph (a)(1) of this section. The tests shall be performed in the rat by dermal administration as specified under § 798.3300(b)(6)(ii) of this chapter for a period of 90 days.

(ii) *Modifications.* The following modification to these three sections shall apply: These three tests may be combined, using 10 animals per sex per dose level.

(iii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and final results submitted to the Agency within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency at 6-month intervals, beginning 6 months after the effective date of the final rule.

(2) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity tests shall be performed on rats and rabbits by dermal application as specified under § 798.3300(b)(6)(ii) of this chapter with each of the chemicals listed in paragraph (a)(1) of this section in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity tests shall be completed and the results submitted to the Agency within 12 months of the final test rule.

(B) Progress reports shall be submitted to the Agency at 6-month intervals, beginning 6 months after the effective date of the final rule.

(3) *Developmental neurotoxicity*—(i) *Required testing.* Developmental neurotoxicity tests shall be performed in rats by dermal application as specified under § 798.3300(b)(6)(ii) of this chapter, with each of the chemicals listed in paragraph (a)(1) of this section, in accordance with § 795.250 of this chapter, following completion of the developmental toxicity study.

(ii) *Reporting requirements.* (A) The developmental neurotoxicity study shall be completed and the final results submitted to the Agency within 24 months of the effective date of the final test rule.

(B) Progress reports shall be submitted to the Agency at 6-month intervals, beginning 6 months after the receipt by the Agency of the final report of the developmental toxicity test.

(4) *Mutagenicity*—(i) *Required testing.* (A) An Ames test in *Salmonella* shall be done in accordance with § 798.5265 of this chapter for each of the chemicals listed in paragraph (a)(1) of this section.

(B) A gene mutation test in mammalian cells shall be done for each chemical listed in paragraph (a)(1) of this section as specified in § 798.5300 of this chapter if the results from the Ames test specified in paragraph (c)(4)(i)(A) of this section for that chemical are negative.

(C) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be performed for each chemical listed in paragraph (a)(1) of this section using the guidelines in § 798.5275 of this chapter if the results of either the Ames test specified in paragraph (c)(4)(i)(A) of this section or the mammalian cells in culture gene mutation assay as specified in paragraph (c)(4)(i)(B) of this section are non-negative for that chemical.

(D) An *in vitro* cytogenetics test shall be conducted in accordance with § 798.5375 of this chapter for each chemical listed in paragraph (a)(1) of this section.

(E) An *in vivo* cytogenetics test shall be done for each chemical listed in paragraph (a)(1) of this section by dermal absorption as specified under § 798.3300(b)(6)(ii) of this chapter, in accordance with § 798.5385 of this chapter if the *in vitro* test as specified in paragraph (c)(4)(i)(D) of this section for that chemical is negative.

(F) A dominant-lethal assay for each chemical listed in paragraph (a)(1) of this section shall be conducted by dermal application as specified under § 798.3300(b)(6)(ii) of this chapter, in accordance with § 798.5450 of this chapter if a non-negative result occurs in either the *in vitro* or *in vivo* cytogenetics test as specified in paragraphs (c)(4)(i)(D) and (E) of this section for that chemical.

(ii) *Reporting requirements.* (A) Mutagenicity tests shall be completed and final results submitted as follows: *Salmonella*, 5 months; mammalian cells in culture, 12 months; *Drosophila* sex-linked recessive lethal, 24 months; *in vitro* cytogenetics, 4 months; *in vivo* cytogenetics, 12 months; and dominant-lethal assay, 24 months.

(B) Progress reports are required at 6-month intervals, beginning 6 months after the effective date of the final rule.

(5) *Subchronic toxicity*—(i) *Required testing.* (A) A subchronic toxicity test shall be performed on the rabbit for each chemical listed in paragraph (a)(1) of this section by dermal application in accordance with § 798.2250 of this chapter.

(B) *Modifications.* The following modifications shall be incorporated in § 798.2250 of this chapter for testing each of the triethylene glycol ethers listed in paragraph (a)(1) of this section.

(*1*) *Observations.* The requirement under § 798.2250(e)(9)(iv) of this chapter is modified so that cage-side observations shall include daily examination for hematuria.

(*2*) *Hematology.* The requirement under § 798.2250(e)(10)(i)(A) of this chapter is modified so that hematology determinations shall be carried out 24 to 48 hours following initiation of dosing in addition to the other times specified. At all hematologic determinations additional measurements shall include a platelet count and mean corpuscular volume.

(*3*) *Clinical biochemistry.* The requirement under § 798.2250(e)(10)(i)(B) of this chapter is modified so that clinical biochemistry determinations shall be carried out 24 to 48 hours following initiation of dosing in addition to the other times specified.

(*4*) *Urinalysis.* The requirement under § 798.2250(e)(10)(ii)(B) of this chapter is modified so that urinalyses shall be done at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. The animals shall be kept in metabolism cages, and the urine shall be examined microscopically for the presence of erythrocytes and renal tubular cells, in addition to measurement of urine volume, specific gravity, glucose, protein/albumin and blood.

(*5*) *Liver-function tests.* The requirement under § 798.2250(e)(10)(ii) of this chapter is modified to add required testing for liver function using five rabbits per sex per dose with sulfobromophthalein (BSP) and a like number using indocyanine green (ICG). The same animals shall be tested at three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period.

(*6*) *Organ weights.* The requirement under § 798.2250(e)(11)(ii) of this chapter is modified so that the prostate gland, the epididymes, the seminal vesicles, and pituitary gland weights shall be determined wet, as soon as possible after dissection.

(*7*) *Gross pathology.* The requirement under § 798.2250(e)(11)(iii) of this chapter is modified so that the following additional organs shall be preserved in a suitable medium for future histopathologic examination: the vas deferenes, the oviducts and the vagina.

(*8*) *Histopathology.* The requirement under § 798.2250(e)(12)(i) of this chapter is modified so that the accessory genital organs (epididymes, prostate, seminal vesicles) and the vagina shall be examined histopathologically. In addition, preparations of testicular and associated reproductive organ samples for histology shall follow the recommendations of Lamb and Chapin (1985) under paragraph (d)(1) of this section, or an equivalent procedure, with particular attention directed toward achieving optimal quality in the fixation and embedding, and including an evaluation of the spermatogenic pattern. Spermatid counts shall be performed as described by Johnson *et al.* (1980) and Blazak *et al.* (1985) under paragraph (d) (2) and (3) of this section or an equivalent procedure. Epididymal sperm count and sperm morphology shall also be done.

(ii) *Reporting requirements.* (A) The subchronic test shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule.

(B) Progress reports shall be submitted at 6-month intervals, beginning 6 months after the rule is made final.

(d) *References.* For additional background information the following references should be consulted:

(1) Lamb, J.C. and Chapin, R.E. "Experimental models of male reproductive toxicology," *Endocrine Toxicology.* Eds. J.A. Thomas, K.S. Korach, J.A. McLachlan. New York, NY: Raven Press, pp. 85–115 (1985).

(2) Johnson, L., Petty, C.S., and Neaves, W.B. "A comparative study of daily sperm production and testicular composition in humans and rats," *Biology of Reproduction, 22:1233–1243. (1980).*

(3) Blazak, W.F., Ernest, T.L., and Stewart, B.E. "Potential indicators of reproductive toxicity: Testicular sperm production and epididymal sperm number, transit time and motility in Fischer 344 rats," *Fundamental and Applied Toxicology,* 5:1097–1103. (1985).

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033)

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 215
Subsistence Taking of North Pacific Fur Seals; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 60473-6073]

Subsistence Taking of North Pacific Fur Seals; Proposed Restriction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The NMFS is proposing a rule regarding the subsistence taking of North Pacific fur seals (*Callorhinus ursinus*) by Indians, Aleuts, and Eskimos who live on the Pribilof Islands. This action is necessary to protect the breeding stock of this declining species. This rule places restrictions upon the subsistence taking of fur seals allowed under the Marine Mammal Protection Act and the Fur Seal Act, and provides that the harvest may be suspended once the substance needs of the Pribilovians have been satisfied.

EFFECTIVE DATES: Comments on this proposed rule must be received by June 16, 1986.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Gosliner (Principal Attorney), 202-634-4224 or Georgia Cranmore (Program Official), 202-634-7278.

SUPPLEMENTARY INFORMATION:

Background

From 1957 through 1984, a harvest of fur seals on the Pribilof Islands was conducted under the authority of the Interim Convention on Conservation of North Pacific Fur Seals (Convention). The parties to the Convention, the United States, Canada, Japan, and the Soviet Union, agreed to prohibit pelagic (at-sea) harvesting of seals, conduct limited land harvests and share the commercially valuable seal skins. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976, and 1980. Prior to the entry into force of the Convention, harvests were conducted under the 1911 Convention for the Preservation and Protection of Fur Seals. The 1911 treaty was interrupted prior to World War II by the withdrawal of Japan, but the Pribilof Islands seal herd was protected between 1941 and 1957 by a provisional agreement between the United States and Canada.

The subsistence needs of the Pribilovians for seal meat have traditionally been met from seals taken in the commercial skin harvest conducted under the Convention. The level of the commercial harvest historically has exceeded the estimated subsistence needs of the islanders. In 1984, for example, the commercial harvest on the Pribilof Islands totalled over 22,000 seals. Since 1973, no commercial take has been allowed on St. George Island and only a limited subsistence harvest has been authorized to protect ongoing fur seal population research. The resultant shortfall in meeting the St. George residents' subsistence requirements has been offset by providing them with meat from the St. Paul harvest.

Under the terms of the 1980 extension of the Convention, the Convention expired on October 14, 1984. On October 12, 1984, the parties to the Convention signed a protocol that, upon acceptance by all four parties, would extend the Convention until October 13, 1988. Japan, Canada, and the Soviet Union have ratified the 1984 protocol. On March 20, 1985, the President transmitted the protocol to the Senate, requesting its advice and consent. On June 12, 1985, a hearing was held on the protocol before the Senate Committee on Foreign Relations, but no final action has been taken on the protocol.

In consultation with the Departments of State and Justice, and the Marine Mammal Commission, NOAA determined that no commercial harvest could be conducted under existing domestic law, absent Senate ratification of a protocol extending the Convention or provisional application of the protocol. Accordingly, on July 8, 1985 (50 FR 27914), NOAA promulgated an emergency interim rule to govern subsistence taking of North Pacific fur seals under the authority of section 105(a) of the Fur Seal Act (FSA). The purpose of the interim rule was to limit the take of seals to a level providing for the legitimate subsistence needs of the Pribilovians and to restrict taking by sex, age, and season for herd management purposes. One important element of the interim rule was the maintenance of the humane harvest methods developed during the years of the commercial harvests. These proposed regulations are similar to the emergency interim rule published on July 8, 1985 (50 FR 27914).

Just prior to the expiration of the 19-day harvest season, the NMFS received an urgent request to extend the season for one additional day (August 6, 1985). Due to delays which occurred at the outset of the harvest period, several potential harvest days were lost. Consequently, the number of seals harvested by August 5 failed to reach even the lower bound of the subsistence need estimate provided in the preamble of the July 8 emergency rule. The Pribilovians were granted an emergency one-day extension on August 6, 1985 (50 FR 32205). During the 1985 season, 3,384 seals were taken for subsistence on St. Paul Island and 329 on St. George. A theoretical mean consumption of 0.4 lbs. of seal meat per person per day for one year was possible for residents of St. Paul Island based on the amount of edible meat removed from seal carcasses and retained on that island.

Applicable Laws

Two statutes are potentially applicable to the taking of fur seals on the Pribilof Islands absent the Convention, the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, and the FSA, 16 U.S.C. 1151. Both statutes provide for the subsistence taking of fur seals by Alaskan Indians, Aleuts, and Eskimos, but their provisions are not identical.

Section 101(b) of the MMPA, 16 U.S.C. 1371(b), provides that marine mammals may be taken

> By any Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—
>
> (1) Is for subsistence purposes; or
>
> (2) Is done for the purposes of creating and selling authentic native articles of handicrafts and clothing . . .; and
>
> (3) In each case, is not accomplished in a wasteful manner.

Notwithstanding this provision, the Secretary of Commerce may prescribe regulations to limit the taking of marine mammals by Alaskan Natives if he determines the species to be depleted. Any regulations issued under the MMPA to restrict the native taking rights must be promulgated by formal, on-the-record rulemaking after an opportunity for an agency hearing.

The FSA provides for the subsistence take of fur seals under section 103, 16 U.S.C. 1153. Under the terms of section 103(a)

> Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals [if] . . . the seals are taken for subsistence uses as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), and only in canoes . . . propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms.

It is arguable that this section does not apply to the Pribilovians since they have

harvested fur seals on land for nearly 200 years and have not "hitherto practiced" canoe-based hunting. Moreover, section 103(b) more specifically addresses the subsistence harvest of fur seals on the Pribilof Islands and would appear to take precedence over the more general provisions of section 103(a).

Section 103(b) of the FSA states that

> Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State. . . .

No such recommendations on the taking of fur seals for subsistence purposes by Pribilovians have been made by the Commission and accepted by the Secretary of State.

Subsistence takings allowed under section 109(f)(2) of the MMPA differ from those authorized by MMPA section 101(b). Section 109(f)(2) defines "subsistence uses" as

> The customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption.
>
> The term "family" means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.
>
> The term "barter" means the exchange of marine mammals or other parts, taken for subsistence uses—(i) for other wildlife or fish or their parts, or (ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Section 101(b) allows the taking of marine mammals for the creation of handicrafts and clothing for sale, whereas section 109(f)(2) only permits handicraft articles to be made if the marine mammals were initially taken for consumption.

The definition of subsistence contained in the regulations which implement section 101(b) of the MMPA (50 CFR 216.3) allows marine mammal parts to be used by anyone who depends upon the taker to provide them with subsistence. In contrast, section 109(f)(2) allows personal or family consumption, or barter, or sharing for personal or family consumption.

Section 105(a) of the FSA empowers the Secretary of Commerce to "prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands . . . as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population. . . ." It is under this broad authority that these regulations are issued. The MMPA management scheme of section 109(f)(2), as referenced in section 103 of the FSA, was followed in the 1985 emergency rule and has been adopted in this rule.

Need for Subsistence Regulations

The Pribilof Island fur seal population is currently declining at the rate of about 6 percent annually and is below levels which would result in maximum productivity. Extensive research conducted under the terms of the Convention indicates that a harvest of females, pups, or harem bulls could have a disastrous effect on the already declining fur seal population. One of the causes of the population decline observed prior to the 1970s is the female harvest which occurred between 1956 and 1968. In contrast, based on available information, a harvest of subadult males at levels which allow for the future reproductive needs of the population will have no negative impact on long-term population trends. Additional research is needed to determine the effect, if any, of the harvest on overall population trends.

Without this proposed rule, the age and sex classes of fur seals that may be taken would not be limited. Females, pups, and harem bulls would be subject to harvesting as well as the subadult male fur seals that were the sole target of the commercial harvest since 1969. Absent this regulation, the harvest would not be limited in time and place, but could continue as long as seals were available at any location where they congregate.

This rule provides harvest restrictions to ensure that none of the haulout areas of the bachelor males is overharvested. Hauling grounds on St. Paul Island may be harvested only once each week. Since, at any one time, many of the subadult male seals are away from the islands and are feeding at sea, the rotation of harvest sites is intended to allow a sufficient number of young seals to escape the harvest to return to breed in later years.

Under this rule, only taking by traditional harvesting methods is allowed. These methods have been determined to be painless and humane by a number of prominent veterinarians, including the Panel of Euthanasia of the American Veterinary Medical Association. By restricting the harvest to traditional techniques, taking will be humane and it is believed that the disruption of the fur seal rookeries will be minimized and that the risk of mistakenly taking female seals will be reduced.

Comments on the Interim Rule

Of the 16 letters of comment the NMFS received on the emergency interim rule, 15 contained statements of qualified or complete support for the adopted subsistence regime. One commenter supported a continuation of the commercial harvest and opposed limiting the harvest to subsistence purposes only. Five letters included a recommendation to extend the 1985 harvest season due to extenuating circumstances. Three commenters opposed any extension of the harvest past August 5 because of the possibility of increased taking of females.

One animal welfare group stated that, "NMFS has a duty to ensure, to the extent possible, waste-free and complete utilization of these animals for the subsistence purposes for which their taking is being permitted." This commenter suggested that 100 percent utilization of all edible parts is mandatory and that the sample size used in our monitoring program may not be adequate to ensure complete utilization of each animal. The Pribilovians on the other hand, strongly objected to what they called "oppressive supervision" of subsistence-use practices. They requested that harvest management be accomplished by their own leadership.

While several commenters recommended the establishment of a permanent reporting system for subsistence use, one commenter criticized the practice of weighing all meat taken for subsistence. This commenter suggested that we weigh enough carcasses to arrive at an average weight of all edible parts and then concentrate on visual inspection of each carcass. Two commenters recommended that we devise a system to monitor and record actual consumption of subsistence meat. One commenter recommended that an upper limit be established for the subsistence harvest and that all bacula (sealsticks) be destroyed to avoid providing an incentive to harvest more seals than needed for food.

While one commenter urged us to avoid waste of pelts due to any restrictions on their commercial use, others objected to the section of the interim rule concerning disposition of fur seal parts. Specifically, two commenters objected to the provision that would allow payment to Pribilovians for skin processing done on behalf of the United States Government. One commenter claimed that this provison could lead to

a "government subsidy of the 'subsistence' hunt." One commenter recommended that a limit of 6,600 skins be set for those skins that may be transferred to the government for final disposition. Any commercial use or potential commercial use that may be allowed was viewed by a number of commenters as a possible incentive for increased harvesting of seals beyond numbers needed for food.

One commenter, who had observed the 1985 harvest, noted that there were no seal handicrafts for sale on St. Paul Island. Since seal parts were generally not available to individual Pribilovians in the past, except at considerable cost, no tradition of seal handicrafts had developed. However, some handicrafts made from seal pelts, bones, and teeth are apparently in private use on St. Paul. Accordingly, this commenter recommended that the handicraft definition be amended by deleting the word "commonly" so as to encourage the production and sale of rare items, but not, presumably, the development of totally new products.

Two reviewers recommended that we rely on section 109(f)(2) of the MMPA for guidance on the regulation of subsistence take, rather than section 101(b). Section 101(b) allows the taking of marine mammals for the creation of handicrafts and clothing for sale, whereas section 109(f)(2) only permits handicraft articles to be made if the marine mammals were initially taken for consumption. The Marine Mammal Commission believes the application of section 101(b) procedures requiring formal rulemaking is appropriate in this instance. They further state, however, that, "Although it is the position of the Commission that the formal rulemaking requirements of the MMPA should be used if permanent regulations are determined to be necessary, we recommend that consideration be given to the alternative approach of developing a cooperative agreement with the Pribilovians to govern the taking of fur seals for subsistence purposes."

The Marine Mammal Commission provided a formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA. Four other commenters also requested a finding of depletion. The MMPA defines "depletion", among other things, to mean "any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under . . . this Act, determines that a species or population stock is below its optimum sustainable population . . .".

A status review of the North Pacific fur seal conducted under the Endangered Species Act of 1973, and published in the **Federal Register** on March 6, 1985 (50 FR 9232), contained findings on the current population status in relation to its optimum sustainable population (OSP). Since the current population is below 50 percent of the levels observed in the 1940s and early 1950s, the population is believed to be below a level which can maintain maximum net productivity, the lower bound of the OSP range as defined at 50 CFR 216.3.

A finding of depletion is a condition precedent to regulation of a subsistence harvest under section 101(b) of the MMPA, but not the FSA. Accordingly, such a finding will not be part of the present rulemaking under section 105 of the FSA. As noted by the Marine Mammal Commission in comments on the emergency rule, the designation of depleted status carries with it certain restrictions which affect the interests of private parties and other Federal and state agencies. Interested parties should therefore be provided with an opportunity to review and comment on any proposed designation. When the NMFS determines that the designation of this population as depleted is appropriate, we intend to make use of notice-and-comment rulemaking procedures. The use of informal rulemaking to make a depletion designation is supported by the recommendation of the Marine Mammal Commission.

Discussion of Regulatory Provisions

Definitions. Several definitions are added to § 215.2 to accompany the substantive regulatory changes of other sections. Also, the definition of "director" and "convention" are deleted since the former term is obsolete and the latter is defined in the FSA. The most important definitional additions are those for "subsistence uses", and "wasteful manner". The definition of "wasteful manner" is functionally identical to that for the same term used in the MMPA regulations at 50 CFR 216.3. The only modifications are the restriction of the definition to the Pribilof Islands and to the taking of fur seals and a change to conform to the definition of subsistence used in this rule. The definition of subsistence is taken from section 109(f)(2) of the MMPA. The definition of "handicraft articles" is functionally identical to that contained in 50 CFR 216.3 for "authentic native articles of handicrafts and clothing".

Conforming provisions. The penalty provisions of § 215.3 are amended to bring them into conformity with changes made to the enforcement section of the FSA in 1983. This is merely a technical amendment and no discretion is exercised in its adoption.

Subsistence Harvest of Fur Seals

Section 215.31 states the general conditions under which fur seals may be harvested by Pribilovians. As noted above, the MMPA management scheme contained in section 109(f)(2), and referenced in section 103 of the FSA, is adopted in this rule. Its definition of subsistence provides the most harmonious resolution of the conflicting provisions of the two acts. Under this proposed rule permissible takings must be for subsistence uses as defined in section 109(f)(2) of the MMPA and repeated in § 215.3 of this rule. Subsistence uses include the customary and traditional use of fur seals for food, shelter, fuel, clothing, tools, or transportation. The definition also specifies that seal parts may be used for barter or sharing for personal or family consumption. Additionally, handicraft articles may be made and sold if they are fashioned from nonedible byproducts of marine mammals taken for personal or family consumption.

Section 215.31(c) requires that any takings may not be accomplished in a wasteful manner. There are three facets to the definition of the term "wasteful manner". First, it means any taking which is likely to result in the killing of fur seals beyond those needed for subsistence purposes. Second, wasteful manner includes takings which result in the waste of a substantial portion of the fur seal. Lastly, it means the employment of a taking method which is not likely to assure the killing and retrieval of the fur seal.

The harvesting method employed by the Pribilovians has been shown to be a very effective means of taking fur seals that virtually guarantees that the targeted seals will be killed and retrieved. Provided that the traditional harvesting techniques are followed, the provisions of the last facet of the wasteful manner definition is clearly satisfied.

In order to determine if taking is wasteful under the first criterion, the level of taking which is necessary to meet the subsistence needs of the Pribilovians must be established. Also, it should be noted that the second standard of wastefulness closely relates to this determination. As part of accurately estimating subsistence needs, one must have some idea of what

portion of a fur seal is reasonably usable for subsistence purposes. These determinations are crucial to the operation of this rule since the Assistant Administrator is authorized by § 215.32(a) to suspend the harvest when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

Since the commercial harvest of fur seals on the Pribilof Islands historically exceeded the subsistence needs of the Pribilovians, no accurate record of the extent of that need was developed. Whereas the levels of the commercial harvest were documented each year, no such figures were kept concerning the eventual fate of non-commercial seal parts. The excess availability of seal carcasses for subsistence resulted in the selective use of prime seal meat portions and the discard or other use of less desirable parts.

Prior to the 1985 subsistence harvest, the NMFS had limited data on the amount of seal meat actually consumed by Pribilovians. Estimates presented in the preamble to the interim rule were derived from a variety of historical records, from extrapolations based on certain subsistence-use data recently recorded for St. George Island, and from contemporary testimony and written reports provided by the Pribilovians. Two assumptions were used to derive the subsistence use estimates cited in the 1985 rule: (1) That the current *native* population is 483 on St. Paul Island and 153 on St. George Island (U.S. Bureau of Census, 1980); and (2) that a subadult male fur seal dresses to 25 pounds of meat. *See* Hearings before the Committee on Expenditures in the Department of Commerce, "Investigations of the Fur Seal Industry", 63rd Cong. 2d Sess., (1914) at 514.

Estimates of the annual subsistence need for fur seals by Pribilovians published in the 1985 interim rule ranged from 3,358 to over 15,000 seals. During the 15 day subsistence harvest on St. Paul Island in 1985, 3,384 subadult seals were taken. About 80 percent were 3-year-olds and all but five were males. A detailed report on the 1985 harvest has been provided by Drs. Steven T. Zimmerman and James D. Letcher. Dr. Zimmerman is the Chief of the Marine Mammals and Endangered Species Division, Alsaka Region, NMFS. Dr. Letcher is a private veterinarian (currently affiliated with the Baltimore Zoo) who agreed to observe the 1985 subsistence harvest on St. Paul. (*See* Zimmerman and Letcher, A Report on the 1985 Subsistence Harvest of Northern Fur Seals on St. Paul Island, Alaska, *Marine Fisheries Review*, In Press).

The total weight of meat taken on St. Paul Island for subsistence purposes was 93,435 lbs. An unmeasured percentage of this total was taken each day for immediate personal consumption. The remainder was sent to St. George Island (about 18,000 lbs.), sent to other Aleut Villages (about 4,000 lbs.), or preserved for use on St. Paul Island by salting (about 8,500 lbs.) or freezing (about 50,000 lbs.). Approximately 10,500 lbs. of the meat sent to St. George Island spoiled. An estimated 7,500 lbs. of the meat on St. Paul Island spoiled before it could be preserved. In both cases spoilage resulted from packing meat into large boxes while it was still too warm.

An average of 27.5 lbs. of meat (with bone) was butchered from each seal. This is 43.8 percent of the total mean weight of a harvested seal (62.8 lbs.) and 55.7 percent of the seal's weight minus pelt and attached blubber (49.4 lbs.). During the 1984 commercial harvest, Dr. Zimmerman had observed that front flippers, hearts, livers, and shoulders comprised most of what was taken from the seal carcasses for consumption. During the 1985 season, Dr. Zimmerman was able to determine that the combined weights of these most prized parts constituted 30 percent of the animals by weight. The difference between the 43.8 percent use of carcasses in 1985 and the estimated 30 percent use of some carcasses in 1984 is due to the fact that backs, ribs, and chests were taken in 1985 in addition to flippers, hearts, livers, and shoulders. The relatively high yield of meat (27.5 lbs.) from each animal killed during 1985 appeared to result from diligent attempts by Pribilovians to avoid wasting meat during the butchering process.

After losses due to spoilage and transfer to other villages, about 64,000 lbs. of seal meat remained available for subsistence on St. Paul Island at the conclusion of the 1985 harvest. This would allow for a theoretical annual daily consumption of approximately 0.4 lbs. of seal meat (with bone) per person per year. The amount of meat harvested per person was less than that recorded in other northern and western Alaska villages which depend on subsistence lifestyles.

During the week of March 2, 1986, the NMFS conducted an informal survey of subsistence use of seal meat taken on St. Paul Island. About two-thirds of the approximately 50,000 lbs. of meat stored in the community freezer from the 1985 harvest is believed to remain on the island. About 80 percent consists of ribs and back portions. Some native leaders have concluded that only the front flippers, liver, hearts, and shoulders are desired for subsistence purposes, and that these are the seal parts that have been traditionally used for island subsistence.

Under the terms of this rule not only must the subsistence harvest not exceed the subsistence needs of the Pribilovians, but there must be substantial use made of each seal taken. Since no one target number has been set for the subsistence needs, the NMFS believes that the best way to ensure that the harvest is accomplished in a non-wasteful manner is to continue to monitor the use of those seals which are taken.

The NMFS representatives that will be on thePribilof Islands during the annual harvest will collect three types of information to aid in making the findings required by § 215.32(a). Each day it will be noted how many seals are killed. Then, with the cooperation of the Pribilovians, the NMFS officials will weigh a representative sample of carcasses before and after meat has been removed for human consumption. This will be done to estimate the percent use which is being made of seals. At the end of each day's harvest, a visual survey will be made of the remaining carcasses to see that substantial utilization has been made of each animal taken. Substantial use of a carcass will mean that it has been dressed out and that the front flippers, shoulders, and most other readily obtainable and utilizable tissues and organs have been removed for subsistence uses. If this monitoring program indicates that the carcasses are not being utilized or that the subsistence needs of the islanders have been satisfied, the Assistant Administrator intends to exercise his authority under § 215.32(a) to suspend the harvest.

During the period of the harvest, an unbiased estimate of the average percentage of utilization of seal carcasses will be made. Based upon a daily random sample of approximately 10–20 percent of all seals killed, the following data will be collected:

1. The weight of the animals immediately following exsanguination,
2. The weight of the pelt with blubber still attached, and
3. The weight of organs and tissues not removed for food purposes.

Section 215.32(b)(1) provides that only traditional methods of harvesting may be used to take fur seals. These methods consist, in part, of organized drives of subadult male fur seals from the haulout

sites to killing fields located some distance inland. Drives are conducted only in the early morning hours when the temperature is low and the stress placed upon the seals is minimal. Once at the killing fields, the driven animals are separated into smaller groups and selected individuals are stunned by a sharp blow to the head with a long club. The stunning is followed immediately by exsanguination.

Limiting the harvest to the use of traditional methods will ensure that humane methods are used, will minimize the disruption to rookeries which may result from other methods of taking, and will lessen the risk that female seals will be taken. Since the discontinuation of the female harvest in 1968, this method of harvesting has resulted in an accidental taking of females well below one percent of the total take. In 1985, only five females were accidentally taken during the total harvest of 3,384 seals.

Section 215.32 (b)(2) clarifies that only subadult male fur seals may be taken. The Scientific Committee of the Commission, since 1969, had recommended that only this component of the fur seal population be harvested. The rule specifies that no adult fur seals or pups may be taken. Because of difficulties in distinguishing between immature male and female fur seals, the rule provides for the occasional accidental taking of a subadult female fur seal which may arise during the harvest so long as the historic low level of females taken is maintained. Intentional taking of subadult females, however, is not allowed.

NOAA's fur seal research program has yielded much valuable data necessary for the management and conservation of the fur seal, and a major goal of the program is to determine the cause of the continuing decline in the fur seal population. Data from the harvest have been used to monitor the rate of entanglement in debris and to determine body weight, body length, tooth size, levels of toxic substances, and changes in the age structure of the male portion of the population. These data are also used to assess the status of the population, to monitor population trends, to evaluate rates of population interchange between the islands, and to seek explanations for the observed dynamics of the population. The harvest has also been used to retrieve tags applied for various research purposes.

To insure that new data are comparable to existing data and not confounded by procedural changes, it was deemed advisable, in the interim rule, to maintain as much continuity in the harvest methods as possible. Where possible, every effort was made to ensure that the specific procedures of the subsistence harvest follow historic practices.

This rule seeks to continue the accommodation of the research program to the extent possible. However, greater latitude in choosing harvest days and locations is being provided in the proposed rule. For example, only a recommended harvest schedule is provided. No one haulout area may be harvested more than once each week, however, regardless of the rotation schedule chosen.

Aside from research motives, seasonal restrictions have been adopted to avoid an unacceptable taking of female fur seals. Under this rule, no fur seals may be taken on St. Paul Island after the first week in August. At this time, immature fur seals of both sexes begin to arrive on St. Paul Island in significant numbers. Also, the harem structure breaks down in early August and many females begin using the haulout areas. Extending the harvest period could result in a marked increase in the accidental take of female seals without additional controls on harvest methods. As illustrated by the population decline which coincided with the female harvests of the 1950s and 1960s, any increase in the taking of females is likely to have a detrimental effect on the fur seal population. The first 3-year-olds arrive on the islands early in July, and are available for harvest. Beginning the subsistence harvest much earlier than July would tend to select for older males which arrive on the Pribilofs earlier in the season.

The provisions applicable to the St. George Island harvest are drawn from past practice and are incorporated into this rule primarily to safeguard the research program which has been conducted on the Pribilof Islands since 1973. So as not to jeopardize this research, which compares the dynamics of harvested and unharvested populations, it has been recommended that the harvest level on St. George be reduced in proportion to the overall decline in the population. In 1984, the St. George quota was 350 and was reduced to 329 in 1985 to match the approximate six percent decline in the population that year. Since the three year running average decline rate remains at six percent, the St. George quota is lowered to 309 for 1986. As with St. Paul Island, only subadult males may be taken. Restrictions are also placed on the location of drives and the number of seals that may be taken per day.

The harvest restrictions placed upon St. George Island in this rule may not allow its residents to take enough fur seals to satisfy their subsistence requirements. To mitigate any burden placed on St. George residents, the NMFS is proposing to provide free air transportation between St. George and St. Paul Islands at least once a week throughout the duration of the St. Paul harvest to allow St. George residents to obtain additional quantities of fresh meat for subsistence purposes. However, the NMFS recognizes that St. George residents are being asked to accept greater restrictions on subsistence taking than those placed on residents of St. Paul Island. Consequently, while the quota system for St. George, established in 1973 and carried over into the 1985 interim rule, has been adopted in this proposed rule, the NMFS is prepared to consider alternatives. We solicit comments on this issue during the public review period.

Section 215.33 governs the disposition of fur seal parts to any person other than an Alaskan Native. Fur seal parts, under this rule may be transferred from the taker to other Alaskan Natives in accordance with section 109(f)(2) of the MMPA. No part of a fur seal may be sold to a non-native unless it is a nonedible byproduct of a seal taken for personal or family consumption that has first been converted into an article of handicraft as defined in § 215.2(e). For example, the bacula of male seals (sealsticks) cannot be sold as aphrodisiacs and excess seal meat cannot be converted into dog food. Skins that have been retained from the subsistence take for conversion into handicrafts may be transferred to a registered tannery for processing, as long as they are returned directly to the Privilovians from whom they were obtained.

The NMFS is considering the promulgation of an interpretive rule that will further delineate the uses that may be made of nonedible byproducts. Comments on the necessity of such a rulemaking are invited.

In accordance with section 103(b) of the FSA, only Pribilovians are authorized to engage in the land based harvesting of fur seals. All other Native Alaskans who harvest fur seals must conform to the provisions of section 103(a) of the FSA which allows fur seals to be taken only from canoes not

propelled by motors and manned by not more than five persons each. No numerical limit is placed upon the level of fur seals that may be harvested by the Pribilovians. Seals may be taken so long as the taking is for a "subsistence use" and is not accomplished in a "wasteful manner".

No reporting requirements are placed upon the Pribilovians under this rule. However, § 215.34 requires those who take fur seals to cooperate with NMFS representatives in compiling scientific information and other data regarding the extent of taking and uses to which seal parts are being put. The compilation and analysis of this information is essential to the Assistant Administrator's monitoring of the harvest and will be used to determine the point at which subsistence needs have been satisfied. These data may also be used as evidence that the harvest is or is not otherwise being conducted in a wasteful manner.

Classification

The NMFS prepared an environmental assessment (EA) of this proposed rule and concluded that it will result in no significant impacts on the environment other than those already discussed in the final environmental impact statement (EIS) on the Interim Convention on Conservation of North Pacific Fur Seals, published in April 1985. A copy of the EA/EIS may be obtained by writing to the address listed above.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This rule will *not* result in a) an annual effect on the economy of $100 million or more; b) a major increase in costs or prices; or c) a significant adverse effect on the U.S. economy. A regulatory impact review concludes that this rule will have no economic effects save those nondiscretionarily mandated by statute. Consequently, the General Counsel of the DOC certified to the Small Business Administration that this proposed rule if adopted, will *not* have a significant economic impact on a substantial number of small entities. Additionally, this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: May 12, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 215—[AMENDED]

Accordingly, 50 CFR Part 215 is amended as follows:

1. The authority citation is revised to read as follows:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.2 is revised to read as follows:

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part:

(1) *Act* means the Fur Seal Act, as amended, 16 U.S.C. 1151–1175.

(b) *Alaskan Native* has the identical meaning under this section as in 50 CFR 216.3.

(c) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) *Fur seal* means North Pacific fur seal, scientifically known as *Callorhinus ursinus*.

(e) *Handicraft articles* means items made by an Indian, Aleut, or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which: (1) Were commonly produced by Alaskan Natives on or before October 14, 1983, and (2) Are composed wholly or in some significant respect of natural materials, and (3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tanner registered under 50 CFR 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

(f) *Public display* means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

(g) *Pribilovians* means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

(h) *Subsistence uses* means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—(i) for other wildlife or fish or their parts, or (ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(i) *Wasteful manner* means any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a fur seal or which is not immediately followed by a reasonable effort to retrieve the fur seal.

3. Section 215.3 is revised to read as follows:

§ 215.3 Penalties.

(a) *Criminal penalties.* Any person who knowingly violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part will, upon conviction, be fined not more than $20,000 for such violation, or be imprisoned for not more than one year, or both.

(b) *Civil penalties.* Any person who violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part may be assessed a civil penalty of not more than $10,000 for each such violation.

4. A new Subpart D is added to read as follows:

Subpart D—Taking for Subsistence Purposes

Sec.

215.31 Allowable take of fur seals.
215.32 Restrictions on taking.
215.33 Disposition of fur seal parts.
215.34 Cooperation with federal officials.

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Subpart D—Taking for Subsistence Purposes

§ 215.31 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

(a) For subsistence uses, and

(b) Not accomplished in a wasteful manner.

§ 215.32 Restrictions on taking.

(a) The Assistant Administrator is authorized to suspend the take provided for in § 215.31 when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

(b)(1) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including organized drives of subadult male fur seals to killing fields and separation into smaller groups for selective stunning followed immediately by exsanguination.

(2) Only subadult male fur seals may be taken. Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(3) The following schedule and take limits shall apply:

(i) *St. Paul Island*—Any harvest of fur seals on St. Paul Island must be conducted in accordance with the following provisions:

(A) The harvest season opens June 30 of each year and closes on August 8 or upon suspension of the harvest by the Assistant Administrator under the provisions of § 215.32(a), whichever occurs first.

(B) No haulout area may be harvested more than once each week. The following is a suggested harvest schedule:

Monday—Zapadni
Tuesday—English Bay
Wednesday—Northwest Point
Thursday—Polovina, Little Polovina, Lukanin, Kitovi
Friday—Reef

(C) Only subadult male seals 124.5 centimeters or less in length may be taken.

(D) Seals with tags and/or entangling debris may only be taken if so directed by scientists studying fur seal entanglement.

(ii) *St. George Island*—Any harvest of fur seals on St. George Island must be conducted in accordance with the following provisions:

(A) Fur seals may only be taken at the east haulout area of the North Rookery. No more than two drives may be conducted per week and no more than 50 seals may be taken per day.

(B) Only subadult male seals 124.5 centimeters or less in length may be taken.

(C) The total take on St. George Island must not exceed 309 seals in 1986, and will vary in subsequent years in accordance with the rate of seal population growth or decline, as determined by the NMFS. To meet their subsistence needs, air transportation between St. George and St. Paul Islands will be made available to St. George native residents free of charge at least once per week during the St. Paul harvest to allow them to obtain additional quantities of fresh meat, if needed for subsistence uses.

§ 215.33 Disposition of fur seal parts.

No part of a fur seal taken for subsistence uses may be sold or otherwise transferred to any person other than an Alaskan Native unless it is a nonedible byproduct which

(a) Has been transformed into an article of handicraft, or

(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Native Alaskan, or

(c) Is being sold or transferred to an agent registered under 50 CFR 216.23(c) for resale or transfer to a Native Alaskan who will convert the seal part into a handicraft.

§ 215.34 Cooperation with federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of sales taken each day in the subsistence harvest,

(b) The extent of the utilization of fur seals taken, and

(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(a).

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federal register

Thursday
May 15, 1986

Part IV

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 300

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Assistance to States for Education of Handicapped Children program authorized by Part B of the Education of the Handicapped Act (EHA-B). These final regulations establish procedures for disapproval of a State plan under section 613(c) of the EHA-B.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. William Tyrrell, Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3611), Washington, DC 20202; Telephone: (202) 732–1014.

SUPPLEMENTARY INFORMATION: Pub. L. 94–142, enacted on November 29, 1975, substantially revised Part B of the Education of the Handicapped Act (20 U.S.C. 1401, 1411, *et seq.*). Part B authorizes formula grants to States and, through States, to local educational agencies and intermediate educational agencies to assist them in the education of handicapped children. The purposes of the Act, as amended by Pub. L. 94–142, are: to ensure that a free appropriate public education is made available to all handicapped children, to ensure that the rights of handicapped children and their parents are protected, to assist States and localities to provide for the education of handicapped children, and to assess and ensure the effectiveness of efforts to educate those children.

In order to receive assistance under the EHA–B, section 613(a) of the Act requires a State to submit, and have approved, a State plan. Under section 613(c) of the EHA–B, the Secretary is required to approve a State plan which meets the requirements of the Act and to disapprove a State plan which does not. The Secretary may not finally disapprove a State plan until the State has been given reasonable notices and an opportunity for a hearing. Section 616(b) provides a right to judicial review of the final decision of the Secretary.

If the Secretary determines that a State plan should be disapproved, it will be necessary to advise the affected State of its opportunity for a hearing and the exact procedures, including timelines, to be followed. Currently, these procedures and timelines are not established, either in the EHA-B statute or regulations, or in the Education Department General Administrative Regulations (EDGR) provision (34 CFR 76.202) generally applicable to the disapproval of plans submitted under the Department's State-administered programs. A notice of proposed rulemaking for this program was published on November 23, 1984 (49 FR 46252). A summary of the comments received on the proposed regulations and the Department's responses to those comments are included in the appendix to these regulations.

These final regulations expand upon the procedures that were in effect for the disapproval of the EHA-B State plans prior to the promulgation of EDGAR in 1980. *See* 45 CFR 121a.580–121a.583 (1980); 42 FR 42499–42500 (August 23, 1977). These regulations clarify the procedures to be followed, the rights of the parties, and the duties of the Hearing Official or Panel. The Secretary believes that these final regulations will ensure that hearings under these provisions are conducted in a manner consistent with the procedures followed by the Department in similar proceedings.

A summary of these final regulations follows:

- Section 300.580 *(Opportunity for a hearing)* is removed because the cross-referenced sections under paragraphs (a) and (b) of this section were revoked in 1980. Section 300.589(g) is also amended to reflect the removal of § 300.580.
- Sections 300.581–300.587 describe the notice, opportunity for hearing, and judicial review provisions and contain the following information:

1. Section 300.581 (*Disapproval of a State plan*) states that the Secretary must provide the State with written notice and an opportunity for a hearing before disapproving a State plan.

2. Section 300.582 (*Content of notice*) describes the content of the written notice, the procedures for sending the notice to the State educational agency, and the Secretary's acknowledgement of a State's request for a hearing.

3. Section 300.583 (*Hearing Official or Panel*) describes how the Secretary appoints the Hearing Panel or Hearing Official and includes an impartiality requirement for those officials. It also describes the circumstances under which a hearing may proceed before the Education Appeal Board.

4. Section 300.584 (*Hearing procedures*) describes the scope of authority of the Hearing Official or Panel; procedures to be followed during the hearing; and the rights of the parties.

5. Section 300.585 (*Initial decision; final decision*) provides procedures for reaching and issuing a decision after the hearing.

6. Section 300.586 (*Judicial review*) provides procedures for a State dissatisfied with the Secretary's decision to seek judicial review. These procedures are specified in Section 616(b)(1) of the EHA–B.

- Section 300.589 (*Waiver of requirement regarding supplementing and supplanting with Part B funds*) is amended by removing the cross-reference to §§300.580–300.583 as the authority for a hearing under this section. Hearing procedures relating to waivers of the nonsupplanting requirement would be determined on a case-by-case basis, as needed.

In issuing these final regulations, the Secretary recognizes that it is desirable to consolidate and simplify the various different procedures for affording administrative review to recipients of Federal assistance under different programs. The Department has therefore recently added to the United Agenda of Federal Regulations an entry calling for an overall assessment of the Department's administrative review procedures, with an aim toward a future consolidation of the Department's divergent review procedures into a smaller number of procedures of more general applicability. This examination of Departmental administrative review regulations is scheduled to begin later this year, and at that time, the Department expects to reassess whether a more general set of procedures may be preferable to these regulations as the future vehicle for providing States with administrative review of State plan disapprovals under the EHA–B. Until such procedures are established through additional rulemaking, however, these regulations will govern such review.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

These regulations do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 4, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal finanical assistance.

In accordance with the Order, this document is intended to provide early notificiation of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal education opportunity, Grant program-education, Privacy, Private schools, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

Dated: May 12, 1986.

William J. Bennett,

Secretary of Education.

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

The Secretary amends Part 300 of Title 34 of the Code of Federal Regulations as follows:

1. The table of contents of Part 300 is amended by adding headings for new sections 300.580–300.586, to read as follows:

* * * * *

Subpart E—Procedural Safeguards

* * * * *

Department Procedures

Sec.
300.580 [Reserved]
300.581 Disapproval of a State plan.
300.582 Content of notice.
300.583 Hearing official or panel.
300.584 Hearing procedures.
300.585 Initial decision; final decision.
300.586 Judicial review.
300.587—300.589 [Reserved]

Authority: Part B of the Education of the Handicapped Act, Pub. L. 91–230, Title VI, as amended, 89 Stat. 776–794 (20 U.S.C. 1411–1420) unless otherwise noted.

§ 300.580 [Removed and reserved]

2. Section 300.580 is removed and that section is reserved.

3. New §§ 300.581–300.586 are added to read as follows:

§ 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the State educational agency written notice and an opportunity for a hearing.

(20 U.S.C. 1413(c))

§ 300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the State educational agency that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the State educational agency by certified mail with return receipt requested.

(20 U.S.C. 1413(c))

§ 300.583 Hearing Official or Panel.

(a) If the State educational agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of the program under this part, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(c) If the State has an appeal pending with the Education Appeal Board on a matter arising out of the same State plan, or on the same issue arising from a prior plan, the State may contest the disapproval of its plan before the Education Appeal Board in accordance with 34 CFR Part 78.

(20 U.S.C. 1413(c))

§ 300.584 Hearing procedures.

(a) As used in §§ 300.581–300.586 the term "party" or "parties" means the following:

(1) A State educational agency that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case who has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held;

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared

to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(20 U.S.C. 1413(c))

§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision which addresses each of the points in the notice sent by the Secretary to the State educational agency under § 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(20 U.S.C. 1416(b)(1))

§§ 300.587–300.588 [Removed]

4. Sections 300.587 and 300.588 are removed.

5. In § 300.589, paragraph (g) is revised to read as follows:

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

* * * * *

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(20 U.S.C. 1411(c)(3); 1413(e)(9)(B))

Appendix—Summary of Comments and Responses

Note.—This Appendix will not be codified in the Code of Federal Regulations.

The following is a summary of the comments received on the notice of proposed rulemaking for the Assistance to States for Education of Handicapped Children program published on November 23, 1984. Each comment is followed by a response that indicates a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Section 300.581—Disapproval of a State plan.

Comment. A number of commenters felt that § 300.581 should include a timeline stating how long the Secretary may take to make a decision on the approval or disapproval of a State plan starting from the time it is received in the Department.

Response. No change has been made. The timeline would depend on the date

by which a State educational agency submitted its State plan to the Secretary, the number of revisions made to the State plan since the State's last plan was approved, and other factors not under the control of the Secretary. However, the Department makes every effort to give a State educational agency early notification if the Secretary proposes to disapprove its State plan.

Comment. A number of commenters felt that State educational agencies should be given an opportunity to take corrective action before the Secretary disapproves a State plan. Traditionally, the Department has used informal procedures to negotiate with a State educational agency when differences have arisen during the review of a State plan. One commenter felt that this informal negotiating process should be exhausted before a State plan is disapproved. Several other commenters felt that the regulations should include mediation procedures which could be used prior to the disapproval of a State plan. One commenter recommended adding an opportunity for an informal hearing prior to the written notice of a proposed disapproval.

Response. No change has been made. The Department will continue to use informal procedures to negotiate differences that arise during the State plan review process. State plan disapproval is a drastic step that will only be used as a last resort when all other attempts to resolve an issue have failed.

Informal negotiation will generally be conducted before a written notice is sent to a State. Requiring informal negotiation following the written notice would lengthen and delay the State plan disapproval procedure.

Section 300.582—Content of notice.

Comment. One commenter recommended changes to the language and content of § 300.582: (1) to inform State educational agencies of the criteria the Secretary will use to disapprove a State plan; and (2) to provide the State educational agency with the criteria used by the Education Appeal Board, and the Department's administrative procedures.

Response. No change has been made. The criteria for State plan disapproval are provided in Section 613(c) of the EHA–B and the implementing regulations for Part B. The procedures used by the Education Appeal Board appear at 34 CFR Part 78. These procedures are only applicable in the circumstances described in § 300.583(c) where an appeal is already pending before the Education Appeal Board. The Department's administrative procedures for State-administered programs are provided in the Education Department General Administrative Regulations (EDGAR) at 34 CFR Parts 74, 76, 77, 78, and 79.

Comment. Several commenters asked that the written notice to a State educational agency include: (1) A full explanation of the reasons for the disapproval, with specific references to statutory or regulatory provisions and copies of these provisions; (2) options for resolving the issue; (3) factors related to the disapproval; (4) an explanation of the hearing procedures, including timelines; and (5) an explanation of rights and responsibilities to the State educational agency.

Response. A change has been made. Section 300.582(a)(1) as proposed states that the written notice of a proposed State plan disapproval includes the basis on which the Secretary proposes to disapprove a State plan. A new § 300.582(a)(2) is added and states that the notice may identify options for resolving the issues which are preventing the approval of a State plan. Section 300.582(a)(4) also has been added to the regulations and states that information about the procedures followed for a hearing will be included with the written notice.

Comment: One commenter asked for the timeframe for the number of days between the State educational agency's request for a hearing and the hearing date.

Response: A change has been made. A new § 300.584(b) is added stating that within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties. To afford the opportunity for a preliminary conference before a hearing, no hearing date is required at this stage.

Section 300.583—Hearing Official or Panel.

Comment. One commenter felt that neither the persons serving on a Hearing Panel nor the individual serving as a Hearing Official should be connected with or employed by the Department in order to insure impartiality. Another commenter wanted to eliminate the possibility that Hearing Panel members or the Hearing Official could come from outside of the Department.

Response. No change has been made. The Secretary believes that, as presently worded, § 300.583(a) will meet the intent of the provisions at Section 613(c) of the EHA–B since it allows for fair proceedings and impartiality by barring individuals responsible for or connected with the EHA–B program from serving as Hearing Panel members or as the Hearing Official.

Limiting the appointment of a Hearing Official or Panel to only the Department's employees or nonemployees would constrict the pool of otherwise qualified candidates, and could raise questions concerning the impartiality of the proceeding. The Secretary intends to use non-employees of the Department except in emergency situations where those persons were unavailable.

Comment. One commenter felt that, to ensure impartiality, there should be a three-member panel, with no more than one representative from the Department. The commenter also recommended that the Panel include a representative from the State educational agency. Another commenter asked the Secretary to specify how many people should serve on a Hearing Panel (i. e., an uneven number of members should be appointed to avoid a deadlock).

Response. No change has been made. Neither the statute nor these regulations specifically preclude designating State educational agency or Federal employees as Panel members. Section 300.583 provides for the impartiality of the Hearing Official or Panel.

Comment. A number of commenters felt that § 300.583(a) should include criteria stating: (1) When a Hearing Official should be appointed; (2) the qualifications of individuals who may serve on a Hearing Panel or as a Hearing Official to ensure a fair and impartial hearing; and (3) how the State educational agency is involved in the selection of a Hearing Official or Panel. One commenter felt that the Hearing Official or Panel should be knowledgeable about compliance, planning, implementation, and the administration of special education programs. Another commenter felt that the State educational agency should have the opportunity to review and challenge the appointments of the Hearing Official or Panel to assure that there is no bias. The commenter suggested that objections should be presented to the Secretary.

Response. No change has been made. The selection of a Hearing Official or Panel is made on a case-by-case basis. A Hearing Panel or Hearing Official is selected from a pool of candidates knowledgeable in relevant areas, such as the fields of education of the handicapped, general education, or law. This process is consistent with EDGAR procedures which have been effective in ensuring that the individuals selected are fair and impartial. As in any administrative proceeding, a designated

individual will be disqualified if there is an actual or potential conflict of interest.

Comment. One commenter asked for clarification of the relationship between the Hearing Official or Panel and the Education Appeal Board (see 34 CFR Part 78). Another commenter recommended that an appeal before the Education Appeal Board supersede that of an appeal to the Panel convened to hear a case regarding the disapproval of a State plan.

Response. No change has been made. The Hearing Official or Panel described in these regulations hears only cases regarding the disapproval of a State Plan submitted for EHA–B funding. These separate hearing procedures are established for such cases so that the Secretary can provide the State educational agency with an expeditious hearing and final decision regarding the proposed disapproval of its State plan. The procedures used for an EHA–B State plan disapproval hearing are, in part, modeled upon the procedures used by the Education Appeal Board. The type of cases which the Education Appeal Board hears are described at 34 CFR 78.2. The provision under § 300.583(c) is included to avoid the time, expense, energy, and inconvenience of having parties involved in more than one proceeding where there are similar claims involved. A State educational agency has the option of contesting the disapproval of a State plan before the Education Appeal Board if the State has an appeal pending with that Board on a matter arising out of the same State plan or on the same issue arising from a prior State plan.

Section 300.584—Hearing procedures.

Comment. One commenter felt that timelines are needed from the time of the appointment of the Hearing Official or Panel through the rendering of an initial decision.

Response. A change has been made. A new § 300.584(c)(4) is added and states that a Hearing Official or Panel or a party to the hearing may request a conference with the Hearing Official or Panel and the parties to consider subjects such as: (1) Narrowing and clarifying issues; (2) assisting the parties in reaching agreements and stipulations; (3) clarifying the positions of the parties; (4) setting dates for the exchange of written documents; and (5) setting dates for the receipt of comments from the parties on the need for oral argument, an evidentiary hearing, or further proceedings before the Hearing Official or Panel. Timelines and completion dates for the review and initial decision by the Hearing Official or Panel may be set on a case-by-case basis that assist in the expeditious resolution of disputes.

The following timelines, including those previously proposed and newly inserted, are specifically designated in these regulations: (1) The State educational agency may request a hearing not later than 30 calendar days after it receives the notice of proposed State plan disapproval; (2) within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties; (3) the parties to a hearing have 15 calendar days to comment on an initial decision and seven calendar days to respond to each other's comments; (4) the initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification; (5) the Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed; and (6) the State educational agency has 60 days after the Secretary's final decision in a case to file a petition for review with the United States court of appeals. The Secretary believes that these timelines are sufficient to protect the rights of the parties involved in a State plan disapproval hearing. However, the provision which is added to these final regulations at § 300.584(b)(4) allows the parties to a case to confer with the Hearing Official or Panel and to establish timelines for various other steps in the proceedings. A single set of timelines would not provide the flexibility necessary to review cases.

Comment. Several commenters felt that a timeline should be set for scheduling a hearing after a State educational agency is notified of a proposed disapproval. One commenter felt that the Secretary and State educational agency should be permitted to suspend, delay, or terminate the hearing with prior approval from the Hearing Official or Panel.

Response. No change has been made. The Secretary believes that the commenters' recommendations are accommodated by the change made to § 300.584(c)(4). A State educational agency can propose timelines that will fit its unique circumstances under this new provision.

Comment. Several commenters felt that the rights and responsibilities of a State educational agency should be included in the regulations, and they recommended adding a new section that includes: (1) The right to be accompanied and advised by counsel or other knowledgeable individuals; (2) the right to present evidence and confront and cross-examine witnesses at a hearing; (3) the right to subpoena and compel the attendance of witnesses; and (4) the right to prohibit evidence that was not part of the Secretary's denial letter or was not disclosed to the State educational agency before the hearing; (5) the right to provide evidence related to the case; and (6) the right to a written record of the proceedings at the Secretary's expense within a specified timeline (i.e., five days).

Response. A change has been made. Section 300.584(m)(2) already provides that the parties to a hearing have the opportunity to be represented by counsel. A new § 300.584(n) is added to these final regulations requiring the Hearing Official or Panel to accept any evidence that is relevant and material to the proceedings and is not unduly repetitious. If a formal hearing is held, the parties to the hearing also have the opportunity to present and cross-examine witnesses. The decision to hold a formal hearing can be made at the conference provided for under § 300.584(c)(4).

The Hearing Official or Panel does not have the statutory or regulatory authority to issue subpoenas or compel the attendance of witnesses. The Hearing Official or Panel cannot prohibit the introduction of evidence that was not a part of the Secretary's notice under § 300.582 or that was not disclosed to the State educational agency before a hearing.

A new § 300.584(p) is added to these regulations which states, among other things, that the Hearing Official or Panel will arrange for the preparation of a transcript of a hearing and will provide a copy of the transcript to the parties. This is consistent with the procedures of the Education Appeal Board. (*See* 34 CFR 78.48). A timeline has not been specified, because the length of time necessary for transcribing the hearing record will vary depending upon factors such as the length of the hearing. However, every effort will be made to ensure that copies of the written record are provided in a timely manner.

Comment. One commenter felt that the term "each party" should be clarified to specify who is involved in the hearing process. The commenter felt that the parties to the hearing should include only the Department and the State educational agency.

Response. A change has been made. A definition is added at § 300.584(a) to

clarify that, as used in this part, the term "party" or "parties" means the State educational agency, the Department officials who administer the EHA-B program, or an intervening party. The Secretary believes that the Hearing Official or Panel should have the discretion to allow intervention in appropriate cases.

Comment. One commenter felt that the Hearing Official or Panel should arrange a time, date, and site for a hearing that is convenient to both parties.

Response. No change has been made. Hearings are generally held in Washington, DC. In exceptional circumstances, the Hearing Officer or Panel may determine that a hearing should be held at one of the Department's regional offices or another facility convenient to the State educational agency.

Comment. One commenter asked if only written testimony is determined necessary by the Hearing Official or Panel, allowing part of the testimony to be provided in writing, how else can the other part of the testimony be provided if not by oral testimony?

Response. A change has been made. Each party to a hearing has an opportunity, as § 300.584(m)(1) currently provides, to present arguments to the Hearing Official or Panel through briefs and other documents.

The Hearing Official or Panel determines if oral argument or evidentiary hearing is also needed. The Secretary believes that the commenter's concern is accommodated by the change made to § 300.584(c)(4). Under that provision, the Hearing Official or Panel and the parties to a hearing may consider whether oral testimony by witnesses having relevant information about the case will materially assist in the resolution of the dispute and whether an informal conference should be scheduled for a specific case. A decision may then be made for a schedule for conducting an oral argument or an evidentiary hearing.

Comment. Several commenters asked for a definition of "informal conference" (prehearing conference) and asked for a description of the procedures or criteria to follow in determining whether a formal or informal conference would be held and how. These commenters suggested that both parties should be equally involved in determining the hearing procedures to be followed. Several commenters felt that a Hearing Official or Panel should not have the authority to deny a State educational agency a formal means of resolving disagreements involving the disapproval of a State plan. One commenter asked if a State Educational agency can contest the Department's refusal to hold a formal hearing if one is requested and the request is denied.

Response. A change has been made. The term "informal conference" has been changed to "preliminary conference." Section 300.584(c) is intended to allow a Hearing Official or Panel to conduct proceedings that: (1) Are less technical in nature than proceedings conducted by administrative law judges or courts of law; and (2) admit all information needed to aid a Hearing Official or panel in reaching a decision on a case.

Comment. One commenter recommended rewording § 300.584(n) to state that either party may request that the Hearing Official or Panel make a decision based upon: (1) A review of the State plan; (2) the Secretary's basis for denial of approval; and (3) the written response from the State educational agency. The State educational agency should be given 30 days to provide its arguments, in whole or in an informal conference, before the Hearing Official or Panel. The commenter also felt that if the Hearing Official or Panel decides that testimony would assist the resolution of a case, the parties to the hearing should have the opportunity to present witnesses, cross-examine witnesses, and provide evidence in the case.

Response. No change has been made. The Secretary believes that the commenter's recommendations are substantially accomodated by the change made in § 300.584(c)(4). The State educational agency, the Departmental official, and the Hearing Official or Panel can establish the issues in the case and propose timelines that will fit the unique circumstances of a case under this new provision.

Section 300.585—Initial decision; final decision.

Comment. A number of commenters asked for a timeline specifying how long the Hearing Official or Panel has to issue an initial written decision.

Response. No change has been made. The Secretary believes that the commenters' recommendations are accommodated by the change made in § 300.584(c)(4). The Hearing Official or Panel can establish timelines which will fit the circumstances of each case.

Comment. One commenter felt that a hearing should be suspended at any point upon written agreement by the State educational agency and the Secretary, without prior approval from the Hearing Official or Panel.

Response. No change has been made. Once appointed, the Hearing Official or Panel has jurisdiction to regulate the course of the proceedings and rule on motions and other issues at any stage of the proceedings. However, if the Department made a redetermination that the State's plan was approvable, the Department and the State would merely notify the Hearing Official or Panel that the proceeding was withdrawn.

Comment. One commenter felt that the initial decision of a Panel should be rendered by majority agreement.

Response. A change has been made. Language has been added to § 300.585(b) to clarify that the decision of a Hearing Panel is made by a majority of the Panel members.

Comment. Several commenters felt that § 300.585 should be amended to add a specific timeline from the receipt of the initial decision to the submission of written comments to the Secretary. Commenters felt that the language "within a specified reasonable time" is too vague.

Response. A change has been made. Section 300.585(d) has been added stating that each party has 15 calendar days from the date that the party receives the Hearing Official's or Panel's initial decision to file comments and recommendations on that decision. The Hearing Official or Panel then sends a copy of these comments and recommendations to the other parties by certified mail with return receipt requested. A new § 300.585(e) states that each party then has seven days from the date the party receives copies of these comments and recommendations to file responsive comments and recommendations with the Hearing Official or Panel. These changes have been made in the final regulations in order to establish standard timelines to ensure the expeditious resolution of cases.

Comment. A number of commenters felt that § 300.585 should specify the criteria the Secretary uses to review a Hearing Official's or Panel's initial decision.

Response. A change has been made. Section 300.585(i) is modified to state that the "Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous." This establishes the standard for the Secretary's review of an initial decision.

Comment. A number of commenters felt that the State educational agency should have the opportunity to request a review of the initial decision. Several commenters recommended adding a timeline for a State educational agency to request a review of the Hearing

Official's or Panel's initial decision in a hearing. The commenter also suggested that the Hearing Official or Panel be given the authority to extend the timelines if petitioned by either party involved in a hearing. One commenter felt that a party to a hearing should be permitted to appeal the review within 15 days of the receipt of the decision.

Response. No change has been made. Under § 300.585(d), the State educational agency has the opportunity to submit written comments to the Secretary which could include a request for Secretarial review. The regulations provide timelines for the receipt of written comments and for the Secretary's review. In order to ensure speedy resolution of cases, the Secretary has adopted recommendations of commenters to establish specific timelines for the receipt of comments on the initial decision.

Comment. A number of commenters felt that the 25 day timeline in § 300.585(g) should be clarified to specify 25 calendar days.

Response. A change has been made. Section 300.585(g) is modified to make it clear that the timeline is 25 calendar days.

Comment. One commenter felt that the Secretary should have the authority to request additional evidence as well as to accept, reject, or modify an initial decision of the Hearing Panel or Hearing Official.

Response. A change has been made. Each party has the responsibility of offering evidence supporting its position to the Hearing Official or Panel during the hearing proceedings. However, the Secretary may remand the case for additional proceedings if necessary.

Comment. One commenter felt that language should be added stating that the Secretary should be required to inform the State educational agency, as well as the Hearing Official or Panel, of the fact that a hearing decision is being reviewed.

Response. A change has been made. The Secretary notifies the parties in writing of the fact that a hearing decision regarding the disapproval of a State plan is being reviewed for the purpose of accepting, rejecting or modifying the decision.

Comment. One commenter stated that no remedy other than judicial review is specified in the regulations. The commenter felt that the Secretary's decision should specify the corrective action required of the State. Such corrective action should be implemented unless a judicial review is invoked.

Response. No change has been made. The decision of the Hearing Official or Panel will indicate where deficiencies exist or do not exist in the State plan and whether changes must be made before a State plan is finally approved. A State educational agency may reapply for funding under the program by submitting an approvable State plan if the final decision upholds the Secretary's decision to disapprove the plan that was in controversy.

Comment. One commenter asked how much time after a formal hearing will be allowed before a decision is required.

Response. No change has been made. The Secretary believes that the commenter's concern is accommodated by the change made in § 300.585(c)(4) which permits the parties and the Hearing Official or Panel to establish reasonable timelines.

Comment. Several commenters felt that the regulations should clarify which review process is being referenced in § 300.585(f) as it appeared in the notice of proposed rulemaking. One commenter felt that § 300.585(f) should be combined with that portion of § 300.585 which deals with the Secretary's decision to review the initial decision of the Hearing Official or Panel.

Response. A change has been made. The order of the provisions in § 300.585 has been changed to clarify that the review refers to the Secretary's review of the Hearing Official or Panel's initial decision on a case. Clarifying language has also been added to make clear that the Secretary reviews the initial decision and either adopts the decision or decides to reject, modify or remand the decision.

Comment. Several commenters felt that the rights and options of a State educational agency during the review process should be included in § 300.585.

Response. No change has been made. The Secretary believes that the procedures set forth in § 300.585 provide a detailed description of the rights and options of a State eductional agency.

Section 300.586—Judicial review.

Comment. One commenter felt that § 300.586 should state who is responsible for court costs for a judicial review. The commenter asked whether the Department pays for the judicial review if the decision is in favor of the appealing State educational agency.

Response. No change has been made. Each party is responsible for the cost of litigation unless the court determines otherwise.

General

Comment. One commenter asked what the Department wishes to accomplish as a consequence of these regulations.

Response. No change has been made. When the EHA–B regulations were published in the Federal Register on August 23, 1977, specific procedures for a State plan disapproval hearing were included in the regulations. When the Education Department General Administrative Regulations (EDGAR) were promulgated in April, 1980, these EHA–B State plan hearing procedures were revoked but were not replaced with specific procedures. *See* 34 CFR 76.202. The propose of these regulations is to establish specific procedures so that if a State plan for EHA–B funding is disapproved, the Department will not have to rely on *ad hoc* procedures on an emergency basis and so that State educational agencies will know what to expect if a State plan is disapproved. These procedures have been developed at this time because when the 1984–1986 State plans for EHA–B funding were reviewed, a few States received approval for only one year of funding. Second and third year fundings were made contingent upon certain modifications being made to these State plans. It is possible that, in some cases, all attempts at mediation could be exhausted, and it may be necessary to disapprove a State plan.

Comment. One commenter felt that because small States cannot afford lengthy hearings, they will be less likely to contest findings that would result in disapproval of a State plan.

Response. No change has been made. The Secretary will make every attempt to expedite the hearing process and to avoid delays in the resolution of issues which resulted in the proposed disapproval of a State plan. The hearing procedures have been kept flexible to the extent feasible by allowing for informal conferences, which could be conducted by conference calls to conserve time and resources.

Comment. A commenter asked what the consequences are if a State plan is disapproved.

Response. No change has been made. If the Secretary disapproves a State plan and this decision is upheld, the State educational agency is not authorized to receive its allotment of funds under the EHA–B programs until an approvable State plan has been submitted to the Secretary. If a State chooses not to resubmit its State plan, then the Secretary may reallocate the funds reserved for that State among the other participating States.

Comment. One commenter felt that a section should be added to the regulations stating whether the Department has the authority to revoke a State plan at any time during the

three-year period for an approved State plan.

Response. No change has been made. Under the EHA–B program, States submit three-year State plans to the Secretary and, under normal circumstances, the fully approved State plan is effective for three fiscal years. There may, however, be circumstances where a State plan is approved for a period of less than three years, and the full approval of the plan for three fiscal years is contingent on meeting specified conditions. If those conditions are not met, the Secretary may disapprove the State plan for the remaining fiscal years. If a State plan was fully approved for a period of three fiscal years, the Secretary may act, under the authority of section 616(a) of the EHA–B, to withhold further payments to that State, if the Secretary finds: (1) That there has been a failure to comply substantially with any provision of sections 612 or 613; or (2) that in the administration of the State plan there is a failure to comply with any provision of the EHA–B or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan.

Comment. One commenter felt that the regulations focus on process rather than the outcome of the hearing.

Response. No change has been made. The outcome of a hearing will be a decision on the substantive issues involved in the Secretary's decision to disapprove a State plan. These regulations are designed to provide the process by which the Secretary's determination can be appealed and reviewed.

Comment. One commenter felt that a section should be added to the regulations regarding: (1) The pendency of the State plan in entering a new grant year during the appeal process; and (2) the continued distribution of EHA–B funds to the State educational agency during the appeal process.

Response. No change has been made. Under section 613(c) of the EHA–B, the Secretary disapproves a State plan that does not meet the requirements of sections 613 (a) and (b) of the Act. If the Secretary's decision to disapprove a State plan is upheld by the Hearing Official or Panel, then the Secretary may not award funds for the disapproved State plan, and the State must return unobligated funds issued under an expired prior State plan.

[FR Doc. 86–10977 Filed 5–14–86; 8:45 am]
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Part V

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals; Notice of Establishment of Geographic Regions

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals

AGENCY: Department of Education.

ACTION: Notice of Establishment of geographic regions for operation of regional centers for deaf individuals.

SUMMARY: The Secretary announces the establishment of geographic regions for Fiscal Year 1986 awards under the Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals. The Secretary will support the operation of four regional centers for deaf individuals including models of comprehensive supportive services to those indiviudals.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein, Postsecondary Education Programs for Handicapped Persons, Division of Innovation and Development, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building,-Room 3511–M/2313), Washington, DC 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: Under section 625(a)(2) of Part C of the Education of the Handicapped Act, the Secretary gives priority consideration to four regional centers for deaf individuals, in addition to other activities supported under section 625 of the Act. Three years ago, the Department began making the four awards on a competitive, open basis.

In fiscal year 1983, the Department published a notice which established two regions for the purpose of making the four awards under this program in the fiscal year. This notice establishes the same regional structure as the basis for making the four awards in fiscal year 1986.

Projects that operate regional centers for deaf individuals provide regional models of comprehensive supportive services to deaf students who desire postsecondary education and vocational technical training. Comprehensive supportive services for deaf students in postsecondary regional educational settings may include: interpreters, tutors, notetakers, counseling, placement, speech, and hearing services, special classes, vocational development, supervised housing, and opportunities for faculty and students to learn special techniques for communicating with the deaf students with whom they come into contact.

A notice of proposed establishment of geographic regions was published in the **Federal Register** on January 30, 1986 at 51 FR 3900. The public was given thirty days in which to comment. No comments were received.

Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals. The program regulations at 34 CFR 338.10(a)(1) and 338.30(a) establish that the Secretary gives priority consideration to four regional centers for deaf individuals, including models of comprehensive supportive services to those individuals.

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(b)(2)(i), the Secretary issues these awards on the basis of geographical regions, as listed below. The making of awards on a regional basis is contemplated by the authorizing legislation and is consistent with program history. *See also,* S. (conference) Rep. No. 1026, 93rd Cong., 2nd Sess. 194 (1974). Each application will be considered in competition with those of applicants from the same region. The Secretary makes two awards per region, but will not make any award for a region for which he determines that no application is of sufficient quality to merit approval.

The regions are:

Western Region: Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Northern Marianas, Oklahoma, Oregon, South Dakota, Texas, Trust Territories of the Pacific Islands, Utah, Washington, and Wyoming.

Eastern Region: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Carolina, Rhode Island, Tennessee, Vermont, Virginia, Virgin Islands, West Virginia, and Wisconsin.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and action for this program.

(20 U.S.C. 1424a)

(Catalog of Federal Domestic Assistance Number 84.078; Postsecondary Education Programs for Handicapped Persons)

Dated: May 12, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–10978 Filed 5–14–86; 8:45 am]

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H.R. 1116/Pub. L. 99-294

Garrison Diversion Unit Reformulation Act of 1986. (May 12, 1986; 100 Stat. 418; 9 pages) Price: $1.00

S. 1952/Pub. L. 99-295

Young Astronaut Program Medal Act. (May 12, 1986; 100 Stat. 427; 2 pages) Price: $1.00

S.J. Res. 187/Pub. L. 99-296

Designating Patrick Henry's last home and burial place, known as Red Hill, in the Commonwealth of Virginia, as a National Memorial to Patrick Henry. (May 12, 1986; 100 Stat. 429; 2 pages) Price: $1.00

S.J. Res. 285/Pub. L. 99-297

To designate the week of May 11, 1986, through May 17, 1986, as "National Osteoporosis Awareness Week of 1986". (May 12, 1986; 100 Stat. 431; 1 page) Price: $1.00

S. 2309/Pub. L. 99-298

To authorize the President of the United States to award congressional gold medals to Natan (Anatoly) and Avital Shcharansky in recognition of their dedication to human rights, and to authorize the Secretary of the Treasury to sell bronze duplicates of those medals. (May 13, 1986; 100 Stat. 432; 2 pages) Price: $1.00

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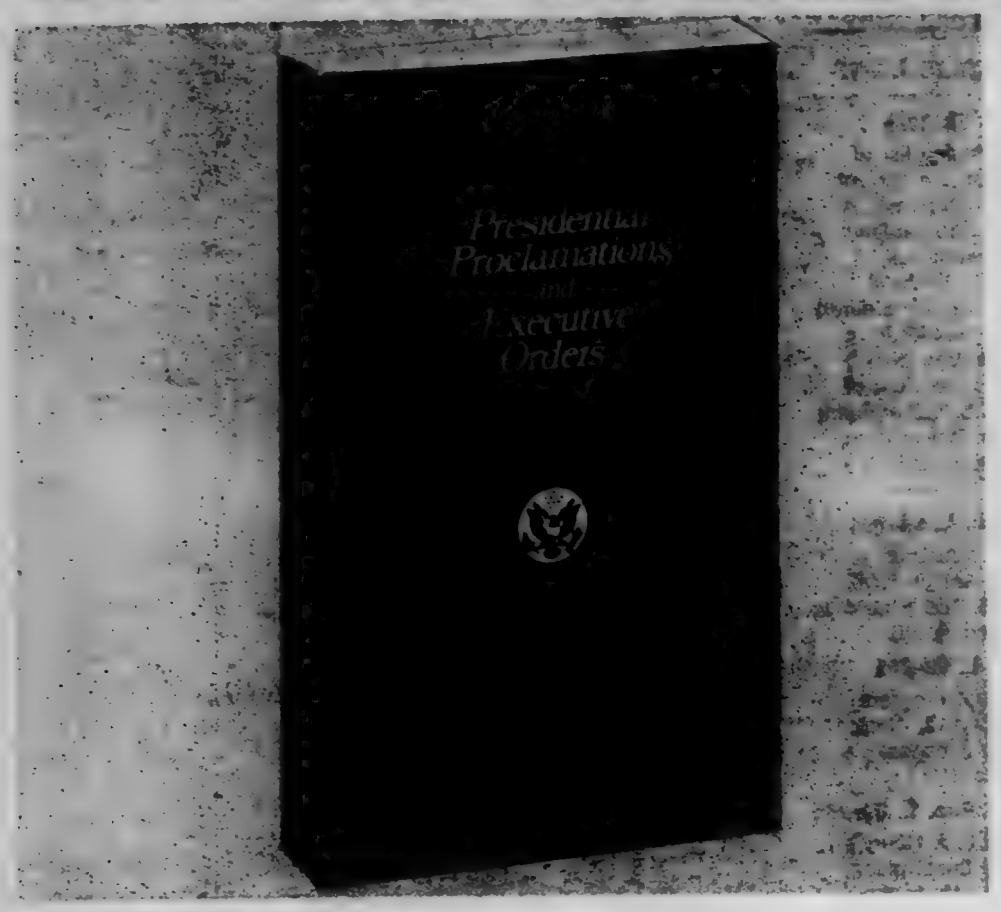

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Rules and Regulations

Federal Register
Vol. 51, No. 95
Friday, May 16, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Order; Final Procedures for the Conduct of Referenda and Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Such Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612) authorizes a program of research and promotion to be developed through the promulgation of an order. Based on evidence received at a public hearing, the U.S. Department of Agriculture recently concluded that an order be issued. To become effective, however, the order must be approved by honey producers and importers in a referendum. This rule establishes procedures for the conduct of referenda and rules of practice governing proceedings on petitions to modify or to be exempted from the order.

EFFECTIVE DATE: May 16, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been designated a "non-major" rule under criteria contained therein. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Honey Research, Promotion, and Consumer Information Order and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. The great majority of handlers and importers of honey or honey products may be classified as small entities. While this action may impose some costs on affected handlers and importers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant. Furthermore, an exemption from regulation is provided for small producers, producer-packers, and importers who produce or import less than 6,000 pounds of honey or honey products annually.

The Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612) authorizes the development of a nationally coordinated program of research, promotion, and consumer education designed to expand markets for honey and honey products. A public hearing was held on a proposed honey research, promotion, and consumer information order in July of 1985. Based on the record of the hearing, a recommended decision and a final decision were issued which concluded that the proposed order would effectuate the purposes of the Act. The final decision directed that a referendum be conducted among producers and importers to determine whether they favor the proposed order. This final rule sets forth, among other things, procedures for the conduct of such referendum.

A rule proposing this action was published in the April 2, 1986 issue of the **Federal Register** (51 FR 11313) which provided a comment period which ended April 17, 1986. Two comments were received. Binford Weaver, Chairman of the Honey Research, Promotion, and Consumer Information Order Promulgation Committee and Frank A. Robinson, Secretary-Treasurer, American Beekeeping Federation, Inc., submitted written comments on the proposed rulemaking. Both commentors suggested that in deciding how balloting is to be done, a combination of polling places and mail ballots would be the most satisfactory for beekeepers because those who were near their polling place could cast their ballots there, while others could handle it entitely by mail. However, it has been determined that the referendum will be conducted during the period May 19–31, 1986, by mail ballot and not at polling places. This procedure is not expected to cause any inconvenience to producers since ballots will be mailed to all known eligible producers and importers of honey. In addition, ballots will be available at county Agricultural Stabilization and Conservation offices. All ballots must be returned to the Secretary's designated referendum agents in Washington, D.C. for tabulation and verification.

Mr. Robinson also objected to the definition of "Eligible producer" in § 1240.201(h) of the Subpart-Procedure for the Conduct of Referenda. He correctly pointed out that a producer eligible to participate in a referendum under the proposed order should include any person defined as a producer under the Act and order and not exempt from assessments under section 7(e)(2) of the Act (i.e. a producer or producer-packer who produces, or handles, or produces and handles 6,000 pounds or more of honey each year.) The proposal defined an eligible producer as a person with total *sales* of 6,000 pounds or more. Therefore, the definition of "Eligible producer" in § 1240.201(h) is revised accordingly.

The definition of "Eligible importer" should also be modified by inserting the word "importation" into the definition of "Eligible importer" in place of the word "sales" in § 1240.201(i) to conform with the Act and the proposed order.

The referendum is scheduled to be conducted May 19–31, 1986, and these procedures need to be finalized in order to make preparations to conduct the referendum. Therefore, this rule is to become effective upon publication in the **Federal Register.**

This action also establishes rules for proceedings on petitions to modify or be exempted from the order. Such procedures are necessary to meet the requirements of the Act.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, and Consumer information.

Part 1240 is added to 7 CFR Ch. XI to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

Sec.

1240.200 General.
1240.201 Definitions.
1240.202 Voting.
1240.203 Instructions.
1240.204 Subagents.
1240.205 Ballots.
1240.206 Referendum report.
1240.207 Confidential information.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order

1240.250 Words in the singular form.
1240.251 Definitions.
1240.252 Institution of proceeding.

Authority: Pub. L. 98–500, 7 U.S.C. 4601–4612.

Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination, or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1240.201 Definitions.

(a) "Act" means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612.

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and "Department" means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) "Order" means the order (including an amendment to the order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 12 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term "partnership" includes, but is not limited to: (1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production or importation of honey or honey products for market and the authority to transfer title to the honey and honey products so produced or imported.

(h) "Eligible producer" means any person defined as a producer or producer-packer in the order who produces, or handles, or produces and handles 6,000 pounds or more of honey or honey products during the representative period and who: (1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced; (2) rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced; or (3) owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; (4) is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(i) "Eligible importer" means any person defined as an importer in the order, engaged in the importation of honey and/or honey products with total importation of 6,000 pounds or more during the representative period. Importation occurs when commodities originating outside the States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

(j) "Honey Board" means the administrative board provided for under section 7(c) of the Act.

§ 1240.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to only one vote in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only his or her share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he or she has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining: (1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the amount of honey produced by the voting producer during the representative period, (3) the total volume of honey and/or honey products produced and/or imported during the representative period, and (4) in a joint venture, names of the parties and each one's share of ownership.

(d) Give reasonable advance notice of the referendum: (1) By utilizing available media or public information sources without advertising expense (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: *Provided,* That no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballot cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1240.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1240.205 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his or her signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1240.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order

§ 1240.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1240.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612;

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead;

(d) The term "judge" means any Administrative Law Judge in the Office of Administrative Law Judges, U.S. Department of Agriculture;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead;

(f) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(g) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(h) The term "proceeding" means a proceeding before the Secretary arising under Section 10 of the Act;

(i) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(j) The term "party" includes the Department;

(k) The term "hearing clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC;

(l) The term "decision" means the judge's report to the Secretary and includes the judge's proposed: (1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions, and orders submitted by the parties; and

(m) The term "petition" includes an amended petition.

§ 1240.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership; the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *A motion to dismiss petition—(1) Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Admininstrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompained by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for his/her consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to "marketing order" in the title shall mean "order".

Dated: May 28, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-10843 Filed 5-15-86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1806

Multiple Family Housing; Real Property Insurance

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the Real Property Insurance loss deductible clause for Multiple Family Housing Loan and Grant recipients. This action is taken to provide flexibility in selection of the level of loss deductible and keep insurance premiums at reasonable amounts. The intended effect is to help hold tenant rents from unreasonable escalation.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: James D. Tucker, Branch Chief, Multiple Family Housing Servicing and Property Management (MHSPM) Division, USDA, Room 5321–S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, DC 20250. Telephone: (202) 382–1618.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is determined by FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; and 10.427, Rural Rental Assistance Payments. For the reasons set forth in the final rule related notice(s) to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, the program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

Vance L. Clark, Administrator, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

General Information

Background and Statutory Authority

This subpart prescribes the authorization, methods, and procedures for obtaining and servicing property insurance on buildings on owned or leased land securing the interest of Farmers Home Administration (FmHA) in connection with Farmer Program (FP), Rural Housing (RH), Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Recreation Loans (RL), Other Real Estate (ORE), Soil and Water (SW), Timber Development (TD), and Land Conservation and Development (LCD) loans. Farmer Program means direct and insured individual farm real estate, operating and emergency loans secured by real estate.

This change is to revise the amount of loss deductible allowable on Real Property Insurance Policies covering buildings securing RRH, RCH, and LH organization type loans securing FmHA financed projects.

FmHA has recently received a number of examples where dramatic increases in insurance premiums have adversely impacted the financial conditions of MFH projects. This rule is one response to this increase. By allowing for increased deductibles, a significant savings can be obtained for FmHA projects and tenants. This change will allow borrowers to purchase less expensive insurance.

Response to Public Comments

FmHA published a proposed rule on September 12, 1985 (50 FR 37200). The comment period ended November 12, 1985. FmHA received four comments on the proposed rule. All comments supported the change. Two of the commenters expressed a need to revise the proposed rules.

Both commenters wanted to be assured that FmHA will allow the use of funds from the replacement reserve account to cover the amount of the deductible, if needed. Current regulations (7 CFR Part 1930, Subpart C, Exhibit B, Paragraph XIIIB2c(5)(ii)), permit this and we find no need for additional regulatory clarification.

Both commenters were also concerned that FmHA grant quick rent increases to pay increased premiums or allow replacement reserve account funds to be used to pay rapidly escalating insurance premium costs. We find neither action is needed since there exists ample time within the current rent change process.

Both commenters felt that the escrow requirement to increase the deductible beyond Option (1) and (2), could be burdensome on financially troubled projects. We point out that increasing the deductible by an amount that would require an escrowed amount is entirely optional for a particular borrower and can be done only after FmHA feels it is a prudent action. Consequently, we find no reason to change this stipulation.

One commenter went further and expressed concern that borrowers recoup any funds that they deposit themselves in the replacement reserve account as an escrow to increase the amount of the deductible. While this rule does not encourage the use of borrower funds to increase the escrow, we have provided that they can be used and recouped based on actual savings. Again, the escrow increase in the replacement reserve account is a voluntary decision and the regulation is written to encourage borrowers to do this only when real savings in insurance can be obtained. Consequently, we have made no change in this requirement.

All comments indicated some confusion over the functions of Options (3) and (4), so they have been rewritten for clarification. Our intent is to require that only the amount needed to increase the deductible beyond the amount specified in Options (1) and (2) be placed in escrow in the project's reserve account. The deductible amount up to the maximum levels of Options (1) and (2) do need to be escrowed.

Finally, one commenter stated that FmHA should consider the establishment of "in-house" insurance to lower the cost of MFH insurance premiums. While the idea has merit, we choose not to consider it in the context of this particular rule making action.

List of Subjects in 7 CFR Part 1806

Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

Therefore, Subpart A of Part 1806, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1806—INSURANCE

1. The authority citation for Part 1806 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. In § 1806.2, paragraph (d)(1)(iii) is revised to read as follows:

§ 1806.2 Companies and policies.

* * * * *

(d) * * *

(1) * * *

(iii) *Loss Deductible Clause.* (A) For all loans other than RRH, RCH, and LH organizations this clause generally provides that loss to each building to the extent of the limitation is not recoverable. The company is liable only for loss to each building in excess of such limitation stated in the clause. This clause may be accepted where the limitation does not exceed $150, or one percent of the insurance coverage whichever is greater. In no case, however, may the limitation on any one building exceed $500.00.

(B) For RRH, RCH, and LH organization loans this clause generally provides that loss to each project to the extent of the limitation is not recoverable. The company is liable only for loss to each project in excess of such limitation stated in the clause. This clause may be accepted where the limitation does not exceed the option shown below that is chosen by the borrower and agreed to by the Loan Approving Official and properly annotated in the borrower file. The borrower and FmHA Official should consider the economic impact to the project when selecting the appropriate option.

(*1*) Option 1—Up to one-fourth of one percent (0.0025) of the insurable value. Maximum deductible $5,000.

(*2*) Option 2—Up to a maximum deductible of $500 on any project with an insurable value not exceeding $200,000.

(*3*) Option 3—Option 1 may be chosen and increased above the maximum deductible by an amount equivalent to funds specifically escrowed in the project replacement reserve account as an offset to the increased deductible.

(*4*) Option 4—Option 2 may be chosen and increased above the maximum

deductible by an amount equivalent to funds specifically escrowed in the project replacement reserve account as an offset to the increased deductible.

(5) The funds used to increase the deductible in Option 3 or Option 4 may be from project funds if it does not create an unsecure financial situation for the project. Also, non-project funds may be used for Option 3 or 4 and then repaid by withdrawal from the project at the rate of 75 percent of the annual insurance premium savings earned by the amount of escrow deposit, up to the amount deposited.

(6) The funds escrowed to increase the authorized deductible will be placed in the project reserve account as an increased amount in and above the amount required by the Loan Agreement/Resolution and so annotated in the borrower's accounting system.

* * * * *

Dated: March 12, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-11112 Filed 5-15-86; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Parts 1822, 1823, 1941, 1943, 1944, 1945, 1955, 1962, and 1965

Single and Multipe Family Housing and Farmer Program Loans; Interest Rates

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published February 20, 1986 [51 FR 6731]. In this rule, FmHA implemented the provisons of Pub. L. 99-88 for Single and Multiple Family Housing and Farmer Program Loans. A provision of Pub. L. 99-88 provides that applicants requesting FmHA assistance have the right to request that their FmHA loan close at the lower of the interest rates in effect at the time of loan approval or loan closing. In the preamble to the final rule, FmHA mistakenly stated that Pub. L 99-88 applies to transfers with assumption and credit sales. Pub. L. 99-88 does not apply to transfers with assumption or credit sales, however, FmHA administratively elected to adopt the regulation with provisions similar to those of Pub. L. 99-88 for credit sales involving Single Family Housing (SFH), Multiple Family Housing (MFH) and Farmer Program (FP) loans. Additionally, FmHA has administratively elected to adopt the provisions of Pub. L. 99-88 for transfers with assumption involving only SFH and FP loans. The intended effect of this action is to correct the aforementioned preamble of the final rule, by providing a correct interpretation of Pub. L. 99-88 and clarify the Agency's implementation of same.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialists, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250. Telephone: (202) 382-1452.

Dated: May 8, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-11111 Filed 5-15-86; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86-042]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the States of New Jersey and West Virginia from Class A to Class Free. This action is necessary because it has been determined that these States meet the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the States of New Jersey and West Virginia.

DATES: Effective date of the interim rule is May 16, 1986. Written comments must be received on or before July 15, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-042. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5961.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the States of New Jersey and West Virginia from Class A to Class Free.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concers the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been

sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the States of New Jersey and West Virginia were classified as Class A States. It had been necessary to classify these States as Class A rather than Class Free because of the herd infection rate. To attain and maintain Class Free states, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12-month period and the adjusted MCI reactor prevalence rate for such 12-month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). A review of brucellosis program records establishes that the States of New Jersey and West Virginia should be changed to Class Free since these States now meet the criteria for classification as Class Free.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy, will not cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the States of New Jersey and West Virginia reduces certain requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the States of New Jersey and West Virginia.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register.

Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the Federal Register.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(a) is amended by adding "New Jersey;" immediately before "New York" and by adding "West Virginia;" immediately before "Wisconsin".

3. In § 78.20(b), "New Jersey," is removed and "Washington, and West Virginia" is changed to "and Washington."

Done at Washington, D.C., this 8th day of May 1986.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–11051 Filed 5–15–86; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-14; Amdt. 39-5299]

Airworthiness Directives; Avco Lycoming LTS 101-600A-2, -600A-3, -650A-2, -650B-1, -650B-1A, -650C-2, -650C-3, -650-3A, -750A-1, -750A-3, -750B-2, and -750C-1 Turboshaft; and LTP101-600A-1A, and -700A-1A Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires installation of an improved gas producer (G.P.) turbine rotor assembly incorporating metal blade dampeners on certain Avco Lycoming LT101 series turboshaft and turboprop engines. This AD is needed to reduce G.P. blade virbratory stresses to prevent blade failure leading to in-flight shutdowns.

DATE: Effective—May 16, 1986.

Compliance schedule—As prescribed in body of the AD.

Comments for inclusion in the docket must be received on or before June 16, 1986.

Incorporation by Reference—Approved by the Director of the Federal Register on May 16, 1986.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86–ANE–14, 12 New England Executive Park, Burlington, Massachusetts 01803.

or delivered in duplicate to Room Number 311 at the above address.

Comments delivered must be marked: Docket Number 86–ANE–14.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Avco Lycoming Williamsport Division, 652 Oliver Street, Williamsport, Pennsylvania 17701. Attention: Customer Support.

A copy of the SB is contained in Rules Docket Number 86–ANE–14 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England

Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robbin Goulet, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7069.

SUPPLEMENTARY INFORMATION: The FAA has determined that the G.P. turbine blades in certain Avco Lycoming LT101 series turboshaft and turboprop engines are susceptible to excessive vibratory stresses in the speed range from 87 percent to 89 percent G.P. turbine speed.

Installation of the dampeners, between the turbine disc outer diameter and the underside of the blade platform, will reduce the vibratory stresses in the G.P. blades to an acceptable level. There have been 44 incidents of G.P. turbine blade failures. Fractures occur in the G.P. turbine blade shank, just above the ball root (blade attachment). Fatigue cracks initiate by high cycle fatigue. The blade life at time of failure has ranged from 110 hours to 1,211 hours. All G.P. blade failures have been contained. Seven of the 44 cases have resulted in airframe damage due to forced landings. Due to a higher failure rate, the compliance end date is more restrictive for the LTS101-600A-2, -600A-3, and -750C-1 engine models as compared to the other affected LT101 series engine models.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires installation of an improved G.P. turbine rotor assembly incorporating metal blade dampeners on certain Avco Lycoming LT101 series turboshaft and turboprop engines.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-14". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

A copy of the final evaluation if filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Avco Lycoming: Applies to Avco Lycoming model LTS101-600A-2, -600A-3, -650A-2, -650B-1, -650B-1A, -650C-2, -650C-3, -650C-3A, -750A-1, -750A-3, -750B-2, and -750C-1 turboshaft; and LTP101-600A-1A, and -700A-1A turboprop engines.

Compliance is required on or before June 1, 1986, for engine models LTS101-600A-2, -600A-3, and -750C-1; and on or before September 30, 1986, for all other affected LT101 series engine models, unless already accomplished.

To prevent the failure of a gas producer (G.P.) blade due to fatigue cracking from excessive vibratory stresses, incorporate G.P. blade dampeners in accordance with Avco Lycoming Service Bulletin (SB) Number LT101-72-50-0079, Revision 1, dated April 21, 1986, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance dates specified in this AD.

Avco Lycoming SB Number LT101-72-50-0079, Revision 1, dated April 21, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Avco Lycoming Williamsport Division, 652 Oliver Street, Williamsport, Pennsylvania 17701, Attention: Customer Support.

This document also may be examined at the Office of the Regional Counsel, Rules Docket Number 86-ANE-14, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective on May 16, 1986.

Issued in Burlington, Massachusetts, on April 24, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-11002 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-16; Amdt. 39-5300]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires initial and repetitive eddy current inspections (ECI) of the diffuser case rear rail for cracks and removal of the diffuser case as necessary on certain PW JT9D series turbofan engines. This AD is needed to institute an inspection program that assures timely crack detection to prevent diffuser case rupture that can cause an uncontained engine failure.

DATES: Effective June 16, 1986.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on June 16, 1986.

ADDRESSES: The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. Copies of the SB's are contained in the Rules Docket Number 85-ANE-16, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring an initial and repetitive inspections of the diffuser case rear rail and removal of the diffuser case as necessary on PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines was published in the **Federal Register** on June 28, 1985, (50 FR 26788). The proposal was prompted by an uncontained engine failure that was caused by an explosive diffuser case rupture, due to a rear rail crack that propagated undetected to critical length. The FAA has determined that this condition is likely to exist or develop on other engines of the same type design; therefore, a new AD is being issued which requires incorporation of PW SB 5591, Revision 4, dated March 6, 1986, and PW SB 5670, dated March 6, 1986. These SB's specify the procedures and the intervals at which the required inspection should be carried out and the criteria under which the diffuser case must be removed.

Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments received.

Seven responses were received concerning the proposed rule. Five of those were submitted through one commenter who conducted an industry-wide survey and received responses to the proposed rule. Based on the responses received and upon further review, several substantive changes as well as changes of an editorial and clarifying nature have been made on the proposed rule and the applicable engine manufacturer's SB's.

One commenter agreed with the proposed rule and urged the FAA to expedite rulemaking. The FAA is responding accordingly.

Five commenters requested that a fly back provision should be incorporated to allow adequate scheduling for engine removal and repair, following a confirmation of a three sensor crack. The FAA concurs and has coordinated with the engine manufacturer for the incorporation of such a provision into Revision 4, of PW SB 5591.

Three commenters requested a clarification be made regarding the in-shop inspection requirement for cases separated at "M" flange to require only a rear rail inspection and not an inspection of the entire diffuser case. The FAA concurs and that clarification has been made.

One commenter has requested that the inspection interval be altered for those engines in which PW SB 5055 has been incorporated. The FAA disagrees. During the development of this rule, this concern was addressed with the engine manufacturer. Since there are no conclusive data to support this proposal, a relaxed compliance for those engines is unwarranted.

One commenter requested that post weld repair x-ray data should be analyzed to expand the "C" sensor crack limit. Currently there is no data basis available supporting this proposal. Therefore the FAA will defer this item for consideration when such data becomes available to support an amendment of this rule.

One commenter has requested that a modified inspection requirement be adopted for the the PW JT9D-20 turbofan engine due to its unique design features. In coordination with the engine manufacturer, the FAA has learned that an additonal ECI probe be used to inspect the diffuser case rear rail front face and justifiably relax the repetitive inspection requirement for crack free cases. Since issuance of the Notice of Proposed Rulemaking, PW SB 5670 has been issued to establish the inspection requirements applicable only to the JT9D-20 turbofan engines. Because the inspection requirements of PW SB 5670 are relaxatory relative to the inspection requirements of PW SB 5591, Revision 1, dated May 22, 1985, no further notice is needed. Therefore, the FAA is incorporating the requirements of PW SB 5670, dated March 6, 1986, in this AD.

One commenter has requested minor editorial changes which have been incorporated.

Conclusion

The FAA has determined that this regulation involves 1,731 JT9D engines installed on Boeing 747 series aircraft and 75 JT9D engines installed on McDonnell Douglas DC-10 series 40 aircraft, and the approximate total annual cost is $157,000. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 aircraft and McDonnell Douglas DC-10 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person

identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449 January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent diffuser case rupture resulting from diffuser case rear rail cracking, accomplish the requirements of the PW Service Bulletin (SB) 5591, Revision 4, dated March 6, 1986, or FAA approved equivalent, for the JT9D-3A, -7, -7H, -7A, -7AH, -7F, and -7J turbofan engines, and the requirements of PW SB 5670, dated March 6, 1986, or FAA approved equivalent, for the JT9D-20 turbofan engines as follows:

(a) Eddy current inspect the diffuser case rear rail for cracks within the next 500 cycles in service after the effective date of this AD.

(b) Reinspect the diffuser case rear rail for cracks, at the established reinspection intervals, as stated in the respective SB's.

(c) Remove from service, prior to further flight, diffuser cases cracked beyond the established acceptable limits as stated in the respective SB's.

(d) Eddy current inspect the diffuser case rear rail for cracks on engines separated at "M" flange, and repair cracked cases, prior to return to service.

Upon request, an equivalent means for compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance schedule specified in this AD.

PW SB Number 5591, Revision 4, dated March 6, 1986, and PW SB 5670, dated March 6, 1986, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney Group, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. These documents also may be examined at the Office of Regional Counsel, New England Region, FAA Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective on June 16, 1986.

Issued in Burlington, Massachusetts, on April 25, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-11003 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-ANE-15; Amdt. 39-5301]

Airworthiness Directives; Rolls-Royce, Limited, Spey 555-15, -15H, -15N, and -15P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which imposes reduced retirement lives for all stage 12 high pressure compressor (HPC) disks, stage 12 HPC rotor seals, and low pressure compressor (LPC) drive shafts, on certain Rolls-Royce Limited, Spey engines. The AD is needed to prevent failure of these components which can result from fatigue cracks. The recalculation of cyclic life using current in-service flight cycle profiles has shown the need to reduce the maximum cyclic life of the components due to a reduction in low cycle fatigue capabilities.

DATES: Effective June 20, 1986.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on June 20, 1986.

ADDRESSES: The applicable service bulletin (SB) may be obtained from the Service Manager, Spey Engines, Rolls-Royce Limited, East Kilbride, Glasgow G74 4Pr, Scotland. A copy of the SB is contained in Rules Docket Number 83-ANE-15, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung C. Hsieh, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7091.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring cyclic life reduction on certain Rolls-Royce Spey turbofan engines was published in the **Federal Register** on September 4, 1985 (50 FR 35837). The proposal was prompted by the recalculation of low cycle fatigue capabilities of the affected components using current in-service flight cycle profiles. The maximum approved cyclic lives of all stage 12 HPC disks, stage 12 HPC rotor seals, and LPC drive shafts (pre-Mod. 4927) must be reduced to prevent failure. Since this condition is likely to exist on other engines of the same type design, the AD requires the removal of these disks, seals, and drive shafts from service, in accordance with Rolls-Royce Mandatory SB Number Sp 72-969, dated May 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. The commenter was in agreement with the proposal. Accordingly, the proposal is adopted without change in the compliance requirements. Certain editorial changes have been made to clarify the relationship of the amendment and the SB which do not change the requirements or intent of the AD.

Conclusion

The FAA has determined that this regulation involves 78 Spey 555-15, -15H, -15N, and -15P engines, and the approximate cost for each engine is $511.00. It has also been determined that a substantial number of small entities are not affected as these engines are installed in the Fokker F28 aircraft. All of these aircraft are operated by large entities. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting

the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce Limited: Applies to Rolls-Royce Spey 555-15, -15H, -15N, and -15P turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of the stage 12 high pressure compressor (HPC) disk, stage 12 HPC rotor seal, and low pressure compressor (LPC) drive shaft (Pre-Mod. 4927), accomplish the following in accordance with Rolls-Royce Service Bulletin (SB) Sp 72-969, dated May 1984, or FAA approved equivalent:

Remove stage 12 HPC disks and rotor seals, and LPC drive shafts (Pre-mod. 4927) from service on or before accumulating the cyclic lives (flights) specified below. Parts which have accumulated more cycles in service than those specified below on the effective date of this AD, must be removed prior to further flight.

CYCLIC LIVES

Part description	Modification	Number of flights—					
		A*	B*	C*	D*	E*	F*
High pressure compressor stage 12 rotor disks and seals		13,800	15,600	17,600	19,700	22,100	17,300
Low pressure compressor rotor drive shaft	Pre-Mod 4927	10,000	10,600	11,500	12,500	14,400	11,200

*Note.—Cyclic lives for each component are for flight profiles as denoted by A through F and defined below:
For engines with no N_2 monitoring:
A. Spey 555-15 and 555-15N full throttle
Spey 555-15H and 555-15P rated takeoff
For engines with N_2 monitoring:
B. Where 85% of takeoffs do not exceed 100% N_2
C. Where 85% of takeoffs do not exceed 99% N_2
D. Where 85% of takeoffs do not exceed 98% N_2
E. Where 85% of takeoffs do not exceed 97% N_2
F. Datum profile, average 99.5% N_2
Aircraft may be ferried in accordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Rolls-Royce SB Sp 72-969, dated May 1984, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to the Service Manager, Spey Engine, Rolls-Royce Limited, East Kilbride, Glasgow G74-4PY, Scotland. This document also may be examined at the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective on June 20, 1986.

Issued in Burlington, Massachusetts, on April 28, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-11008 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-6]

Establishment of Airport Radar Service Areas

Correction

In FR Doc. 86-9998 beginning on page 16610 in the issue of Monday, May 5, 1986, make the following corrections:

1. On page 16611, in the first column, in the third complete paragraph, in the first line, "SSR" should read "SSA".

2. On page 16612, in the first column, in the second complete paragraph, in the seventh line, "ACT" should read "ATC"; in the fourth complete paragraph, in the ninth line, "offset in" should read "offset is"; in the third column, in the third complete paragraph, in the fourteenth line, "ARSA" should read "TRSA".

3. On page 16615, in the first column, in the third complete paragraph under "*Indianapolis International Airport, IN*", in the eight line, "core" should read "outer core"; in the second column, in the first paragraph under "*Phoenix Sky Harbor International Airport, AZ*", in the third line from the bottom, "SPA" should read "APA".

4. On page 16617, in the third column, in the sixth line under "**Wichita Mid-Continent Airport, KS-[New]**", "feet to" should read "feet MSL to".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-86-1243; FR-2104]

Use of Materials Bulletin No. 44d; HUD Building Product Standards and Certification Program for Carpet and Carpet With Attached Cushion

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule (1) adopts as part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that references nationally recognized standards for the manufacture of carpet and carpet with attached cushion; (2) provides for a labeling and third party certification program; (3) supplements HUD's Building Product Standards and Certification Program by requiring that certain additional information be included on a label, mark, or stamp which each manufacturer would apply to the certified products; and (4) specifies the frequency with which products must be tested in order to be acceptable to HUD.

EFFECTIVE DATE: June 23, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, Room 9151, 451 Seventh Street, SW., Washington, DC 20410-5000; telephone (202) 755-5929. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 15, 1985, HUD published a proposed rule (50 FR 41699) which

would (1) adopt as part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that references nationally recognized standards issued by the American Society for Testing and Materials (ASTM), American Association of Textile Chemists and Colorists (AATCC) and National Bureau of Standards for the manufacture of carpet and carpet with attached cushion; (2) provide a labeling and third party certification program to assure that the product used in buildings under HUD programs meets these nationally recognized standards; (3) supplement HUD's Building Product Standards and Certification Program by requiring that certain additional information be included on a label, mark, or stamp which each manufacturer would apply to the certified products; and (4) specify the frequency with which carpet and carpet with attached cushion must be tested in order to be acceptable to HUD.

The Department received ten public comments on the proposed rule. All of the commenters favored the publication of the proposed rule except one, who stated that the rule would result in increased costs of fifty dollars per dwelling unit. The Department has determined that there is no factual basis for this comment.

Another commenter suggested upgrading the face weight of carpet by 20 percent. While this would be desirable, HUD has determined that such an addition to the initital cost of a house would not be cost effective. Furthermore, the present HUD carpet face weight requirements appear to have remained adequate since their adoption in 1978.

Finally, several technical and editorial suggestions were made by commenters interested in improving the clarity of the rule. These have been incorporated into the final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is available for public inspection of copying during regular business hours in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Rule would not have a significant economic impact on a substantial number of small entities. UM 44d adopts standards that are nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standards.

This rule was listed as item number 855 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036,14058) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Administrative practice and procedures, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan Program: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, and Incorporation by reference.

Accordingly, 24 CFR Part 200 is amended as follows:

PART 200—INTRODUCTION

1. The Authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715z–18); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new § 200.942 is added, to read as follows:

§ 200.942 Supplementary specific procedural requirements under HUD building product standards and certification program for carpet and carpet with attached cushion.

(a) *Applicable standards.* (1) Carpet and carpet with attached cushion certified for this program shall be designed, manufactured and tested in accordance with the following standards:

(i) AATCC 20A–81—Fiber Analysis: Quantitative;

(ii) AATCC 16E–82—Colorfastness to Light: Water-Cooled Xenon-Arc Lamp, Continuous Light;

(iii) AATCC 8–85—Colorfastness to Crocking: AATCC Crockmeter Method;

(iv) AATCC 24–85—Insect, Resistance to Textiles to;

(v) ASTM D1335–67 (Reapproved 1972)—Standard Test Method for Tuft Bind of Pile Floor Coverings;

(vi) ASTM D3676–78 (Reapproved 1983)—Standard Specification for Rubber Cellular Cushion Used for Carpet or Rug Underlay;

(vii) ASTM E648–78—Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source;

(viii) ASTM D2646–79—Standard Methods of Testing Backing Fabrics;

(ix) ASTM D3936–80—Standard Test Method for Delamination Strength of Secondary Backing of Pile Floor Coverings;

(x) ASTM D297–81—Standard Methods for Rubber Products—Chemical Analysis;

(xi) ASTM D418–82—Standard Methods of Testing Pile Yarn Floor Covering Construction; and

(xii) National Bureau of Standards DOC FF 1–70. (ASTM D2859–76)—Standard Test Method for Flammability of Finished Textile Floor Covering Materials.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the (i) American Association of Textile Chemists and Colorists (AATCC), P.O. Box 12215, Research Triangle Park, NC. 27709; (ii) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103; and (iii) U.S. Department of Commerce, National Bureau of Standards, Washington, DC 20234.

The standards are also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

(b) *Labeling.* (1) Under the procedures set forth in § 202.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applied standard is required to be on the certification label issued by the administrator to the manufacturer. In the case of carpet and carpet with attached cushion, the following additional information shall be included on the certification label, mark or stamp:

(i) Manufacturer's name or code identifying the manufacturing plant location; and

(ii) Manufacturer's statement of compliance with UM 44d.

(2) The certification mark shall be applied to each carpet at intervals of at

least every six feet, not less than one foot from the edge.

(c) *Periodic tests and quality control inspections.* (1) Five samples of carpet and carpet with attached cushion shall be tested annually by the administrator or by an administrator-approved laboratory. Three samples of each certified quality shall be taken from the plant annually. Of these, two shall be interim samples (taken every six months) and one an annual sample. In addition, two samples of each certified quality shall be taken annually from sources other than the manufacturer, *i.e.*, brought in the market place from distributors or stores, not from the factory. The administrator shall select samples for testing, and testing shall be conducted, in accordance with the applicable standards in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards, U.S. Department of Commerce.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality control procedures continue to be followed.

Dated: April 24, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 86-11019 Filed 5-15-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8068]

Income Taxes; Temporary Regulations Under Section 338, Stock Acquisitions, Statements of Elections and Due Dates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations primarily relating to section 338(g) of the Internal Revenue Code of 1954 ("Code") as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). The temporary regulations provide additional guidance to taxpayers concerning the filing of certain statements of election on or after December 9, 1985, and on or before July 15, 1986. An amendment to temporary regulation § 1.338-4T clarifies the application of the mitigation of limitations provisions.

The temporary regulations also extend the time for taking certain actions under section 338. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register.**

DATES: The temporary regulations under section 338(g) and the amendments to the temporary regulations generally are effective with respect to stock acquisitions made after August 31, 1982. New paragraph (m) of § 1.338-1T is effective only with respect to elections under section 338 filed on or after December 9, 1985, and on or before July 15, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kane of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends temporary regulations §§ 1.338-1T, 1.338-2T, 1.338-4T, 1.338-5T, and 1.338(h)(10)-1T in Part 1 of Title 26 of the Code of Federal Regulations ("CFR"). Section 1.338-1T was published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and was amended and redesignated (as § 1.338-1T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Section 1.338-1T also was amended by temporary regulations published as T.D. 8021 in the **Federal Register** on April 25, 1985 (50 FR 16402). The temporary regulations published on April 25, 1985, also added § 1.338-4T. Sections 1.338-1T and 1.338-4T were amended by temporary regulations published as T.D. 8068 in the **Federal Register** on January 8, 1986, and by temporary regulations published as T.D. 8072 in the **Federal Register** on January 29, 1986. The temporary regulations published on January 8, 1986, also added § 1.338(h)(10)-1T. All these temporary regulations were further amended by temporary regulations published as T.D. 8074 published in the **Federal Register** on February 12, 1986, which also added § 1.338-5T. The temporary regulations amended by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

The amendments made by this document are primarily under section 338(g). That provision was originally added by section 224 of TEFRA (Pub. L. No. 97-248; 96 Stat. 485) and was amended by section 712(k) of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 946). Other amendments are briefly discussed at the end of this preamble.

Operation of Section 338

In General

Section 338 generally provides that, if a corporation ("target") is acquired by another corporation ("purchasing corporation") in a qualified stock purchase, the purchasing corporation may elect (or may be deemed to elect under certain consistency rules) to have the target treated as if it: (1) Sold all of its assets (as "old target") at fair market value at the close of the day on which the qualified stock purchase occurred ("acquisition date") and (2) purchased those assets as a new corporation ("new target") at the beginning of the following day for an amount generally equal to the price paid by the purchasing corporation for target stock plus liabilities of target and other relevant items. Section 338 (a) and (b). The deemed sale of assets by old target generally is governed by the nonrecognition rule of section 337. In general, the tax attributes of old target are not available to new target. The net effect of a section 338 election is that the purchasing corporation obtains a basis in target assets that generally reflects the price it paid for target stock.

Effect of Section 338 Election on Taxable Year

Once a valid section 338 election has been made, old target's taxable year ends as of the close of business on the acquisition date. If the selling and purchasing groups each file separate returns (as opposed to consolidated returns) and the acquisition date occurs on a day other than the last day of target's regular taxable year, then the Federal income tax return (filed prior to making the section 338 election) for the relevant taxable year which includes the acquisition date should be amended and two separate amended returns should be filed as a result of the section 338 election. The first amended return would cover the portion of that relevant taxable year through the close of business on the acquisition date, which would include any additional Federal tax due because of target's deemed sale of assets under section 338. The second amended return would cover the balance of target's taxable year (relating

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to target's operations) subsequent to the acquisition date.

The impact of a section 338 election on target's taxable year will be different if old target was a subsidiary in an affiliated group that filed a consolidated return for the period that included the acquisition date and an election under section 338(h)(10) is not made. In such case, the deemed sale will be the only transaction reported on old target's final return (called a "deemed sale return"). The Federal income tax consequences of target's operations through the close of business on the acquisition date shall continue to be reported on the selling group's consolidated return for the taxable period which included the acquisition date. Likewise, the Federal income tax consequences of target's operations for the remainder of target's regular taxable year shall continue to be reported either on the purchasing group's consolidated return or on a separate return for target if the purchaser was not included on a consolidated return.

Explanation of Provisions

These temporary regulations provide procedures in new paragraph (m) of § 1.338–1T for filing and for perfecting certain statements of election under section 338(g) for statements of election filed on or after December 9, 1985, and on or before July 15, 1986. The time for making such an election is extended by these regulations to the later of the 15th day of the ninth month beginning after the month in which the acquisition date occurs or July 15, 1986. See News Release IR–86–18, dated February 27, 1986.

For elections which do not require the filing of a deemed sale return, the procedures in new paragraph (m) condition the election on either filing consents which postpone the expiration of the statute of limitations or filing closing agreements which waive the expiration of the statute of limitations and extend the period for assessment. These new procedures are applicable for each relevant taxable year for which the statute of limitation of assessment has expired or will expire on or before November 15, 1986. A relevant taxable year is one for which a Federal income tax return was filed prior to filing the statement of section 338 election, but only if there would be an increase or decrease in Federal income tax as a result of the election. Additionally, new paragraph (m) conditions an effective section 338 election upon the filing of a closing agreement in situations where a deemed sale return must be filed as a result of the section 338 election. Standard language for these agreements is prescribed in this document for the convenience of both taxpayers and the Internal Revenue Service.

The procedures described in these regulations are required whether the tax for the period affected would be increased or decreased. Increased tax may arise, for example, by reasons of income or tax credit recapture caused by the deemed sale by old target and by tax attributes of old target not carrying over to new target. An example that results in a decrease in tax is higher depreciation or a similar deduction for new target that arises by reason of the deemed purchase under section 338 (a)(2) by new target of assets that had a tax basis in the hands of old target lower than new target's tax basis.

Statute of Limitations

As previously described, the section 338 election may create two taxable periods within a relevant taxable year which otherwise would be properly accounted for as a single taxable year before the statement of election was filed. If new target chooses the same taxable year that old target used, and if target had filed a tax return for the relevant taxable year which includes the acquisition date, the statute of limitations for any short period which may arise (as a consequence of the section 338 election) starts to run under new § 1.339–1T(m)(10) on the date on which target is considered to have filed under section 6501(b) its tax return for that relevant taxable year. For example, if target is a calendar year taxpayer and a qualified stock purchase of its stock is made on December 1, 1982, the statute of limitations for target's year ending December 1, 1982 (a short period which results from the section 338 election) would begin to run on the date target is considered to have filed its return for its taxable year ending December 31, 1982.

A deemed sale return cannot be filed prior to the filing of a section 338 election. Accordingly, the statute of limitations will not begin to run until the deemed sale return is filed. See section 6501(a) and section 6501(b)(1). The closing agreements required by new paragraph (m) of § 1.338–1T in these situations reflect this rule of law.

Consents To Extend Statute of Limitations

Section 1.338–1T (m) provides for procedures in circumstances when the statement of section 338 election is filed and the statute of limitations for a relevant taxable year of target, affected target, or corporate transferee expires after August 15, 1986, and on or before November 15, 1986. As a condition for making a section 338 election, the target, affected target, or corporate transferee is required to extend under section 6501(c)(4) the period for making an assessment for each such relevant taxable year until May 15, 1987. Unless such requirement is satisfied, the statement of section 338 election is ineffective unless such condition is waived by the District Director.

The extensions required by these regulations are necessary to ensure that taxpayers do not avoid the burdens of a section 338 election while retaining its benefits. The extensions will also have the effect of extending the period to file claim for refund. The extension date of May 15, 1987, was chosen to avoid requiring taxpayers to extend the period within which an assessment can be made for a period of less than 6 months and, for administrative convenience in order to provide a uniform date to which extensions would be made. The consent procedures in § 1.338–1T (m) apply only if the statute of limitations on assessment will not otherwise expire on or before August 15, 1986.

Closing Agreements—No Deemed Sale Returns

If for a relevant taxable year the statute of limitations has already expired or will expire on or before August 15, 1986, new paragraph (m) of § 1.338–1T also provides that an express election filed on or after December 9, 1985, and on or before July 15, 1986, is conditioned upon filing a closing agreement executed by target, affected target or corporate transferee wherein they: (1) Agree to waive the statute of limitations which has expired or is about to expire, (2) agree to file on or before November 3, 1986, amended returns which reflect the consequences of the deemed sale of assets under section 338(a) (1) and (3) agree to extend the statute of limitations for assessment of any additional tax due as a result of the deemed sale of assets until June 15, 1988. The election will be ineffective unless this condition is satisfied or is waived by the District Director.

It should be noted that even if each of the conditions for an effective election pursuant to this regulation are satisfied, certain adverse consequences may result in the event that an amended return reflecting the deemed sale is filed after July 15, 1986, and on or before November 3, 1986. Section 1.338–1T (h) of the existing temporary regulations generally permits waivers of certain additions to tax and time to act only if any required amended return is filed and certain other corrective action is taken on or before the last day for making an election under section 338.

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Also, section 1.338–1T (f)(7) permits a new target to adopt on its first return a taxable year other than the one target used before making the section 338 election, but only if that first return is filed on or before the last day for making an express election under section 338.

Except in the event a section 338(h)(10) election is made, the statement of section 338 election will also be ineffective if the amended return described in any closing agreement is not filed on or before the time required by the agreement unless the District Director waives this additional requirement. If a selling group participates in a section 338(h)(10) election, the selling group must agree to file an amended consolidated return which reports the deemed sale gain. However, the section 338 election and the section 338(h)(10) election are not ineffective if the amended consolidated return is not filed. This rule protects target and its purchaser from an act of omission which is beyond their control.

Section 6401(a) provides that any amount of a payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto is an overpayment. By entering into a closing agreement which waives and extends the applicable statute of limitations, and tax reported, paid, and collected as a result of the deemed sale of assets is not an overpayment within the meaning of section 6401(a).

In general, the reasons for these closing agreement procedures are similar to the reasons previously explained in this document for the requirements for consents to extend the statute of limitations. The August 15, 1986, cut-off date for the expiration of the statute of limitations for closing agreements in those cases where a deemed sale return is not required was selected in order to allow the Internal Revenue Service a reasonable amount of time to process the required documents and affix the appropriate signatures and for purposes of taxpayer convenience.

Closing Agreements—Deemed Sale Returns or Combined Deemed Sale Returns

A closing agreement is also required if a deemed sale return must be filed as a result of a section 338 election. The closing agreement procedures require that a deemed sale return or a combined deemed sale return must be filed on or before November 3, 1986, and that the statute of limitations with respect to a deemed sale return or a combined deemed sale return will not terminate prior to the expiration of three years from the date a deemed sale return or combined deemed sale return is considered filed.

Effective Date

After December 6, 1985, the public was on notice that the Internal Revenue Service was going to consider the publication of rules dealing with "elections made in circumstances when the statute of limitations has expired or is about to expire for certain taxable years (such as might be the case for target's taxable year that includes the acquisition date)." See IRS News Release IR–85–115, December 9, 1985, was selected as the effective date for the procedures in new paragraph (m) because it was the first business day following the release of News Release IR–85–115.

Elections for Which Perfection Is Required

If a statement of section 338 election filed on or after December 9, 1985, and on or before July 15, 1986, does not meet the requirements in new paragraph (m)(2) of § 1.338–1T, which includes the filing of consents to extend the statute of limitations or certain closing agreements, then the election may be perfected by refiling in accordance with those requirements on or before July 15, 1986.

District Director Discretion

For a statement of section 338 election filed on or before July 15, 1986, the District Director (or his delegate) has discretion to waive any requirement in new paragraph (m)(2) of § 1.338–1T, including the requirement of filing any amended return as prescribed by closing agreement. This discretion is to be exercised in connection with the examination of any Federal income tax return which would be affected by a section 338 election and is to be exercised on the basis of all the relevant facts and circumstances.

Mitigation

In the absence of a section 338(h)(10) election, any tax due in any closed taxable year as the result of a section 338 election made after the close of such year may be collected through the operation of the mitigation provisions (sections 1311–1314). Section 1.338–4T (l)(5), added by this document, points out that old target and new target are the same "taxpayer" for purposes of the mitigation provisions. Although section 338(a)(2) treats target as a "new corporation" for the purpose of having "purchased all the assets" of old target "as of the beginning of the day after the acquisition date", the legislative history makes it clear that new target and old target may be regarded as the same taxpayer for purposes of carrying out the intent of the statute, *e.g.*, nonrecognition treatment for minority shareholders who retain their stock interest in target and the requirement that new target must report as income on its return any additional recapture income arising from an adjustment of the deemed sale price to old target due to an event or events occurring after old target files its final return. See H. Rep. No. 97–760 (Conf. Rep.), 97th Cong., 2d Sess. 537. The treatment of old target and new target as the same taxpayer is appropriate in view of the legislative history.

Postponement of Due Date

The temporary regulations extend the time for taking certain actions under section 338. Thus, in temporary regulations §§ 1.338–1T, 1.338–2T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T, all references to "March 15, 1986" with respect to the time for making elections or taking certain other actions under section 338 will be changed to "July 15, 1986." However, references to "March 15, 1986" will not be amended where the applicability of certain rules depends on whether the acquisition date occurs after March 15, 1986.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information contained in the regulations refer to requirements that have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, and have been approved by OMB (Control Number 1545–070).

Drafting Information

The principal author of these temporary regulations is Thomas J. Kane of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing

the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 1.338–1T, 1.338–2T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T also issued under 26 U.S.C. 338.

Par. 2. Section 1.338–1T is amended as follows:

1. Paragraph (c) is amended by—

a. Removing from the first sentence the word "March" and by adding in its place the word "July".

b. Adding a new sentence at the end of paragraph (c) to read as set forth below.

2. Paragraph (e) is amended by:

a. Removing, from each place it appears in paragraph (e)(1)(ii) (A) and (B), the word "March" and by adding in its place the word "July".

b. Removing, from paragraph (e)(2)(ii)(A), the word "March" and by adding in its place the word "July".

3. Paragraph (f)(7)(ii) is amended by removing the word "March" and by adding in its place the word "July".

4. Paragraph (h) is amended by:

a. Removing, from each place it appears in paragraph (h) (1) and (2), the word "March" and by adding in its place the word "July".

b. Removing, from each place it appears in *Example (1)* of paragraph (h)(4), the word "March" and by adding in its place the word "July".

c. Removing, from the third sentence of paragraph (h)(4) *Example (2)*, the word "March" and by adding in its place the word"July".

5. Subparagraphs (2) and (4) of paragraph (j) are amended by removing, from each place it appears, the word "March" and by adding in its place the word "July".

6. Paragraph (k) is amended by—

a. Adding a new sentence at the end of paragraph (k)(1) to read as set forth below

b. Removing from each place it appears in subdivisions (iv) and (v) of paragraph (k)(7) the word "March" and by adding in its place the word "July".

7. Adding at the end thereof new paragraph (m) to read as set forth below.

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(c) *Time and manner of making election.* * * * For special rules applicable to certain statements of section 338 election filed on or after December 9, 1985, and on or before July 15, 1986, see paragraph (m) of this section.

* * * * *

(K) *Special rules for foreign corporations or DISCs*—(1) *Election by certain foreign purchasing corporations.* * * * However, the items required under paragraph (m) of this section to be filed by such a foreign purchasing corporation with the District Director shall be filed with the District Director of the Foreign Operations District (Attention: Chief of Examination), 1325 K Street N.W., Washington, D.C. 20225.

* * * * *

(m) *Statements of section 338 election filed on or after December 9, 1985, and on or before July 15, 1986*—(1) *General rule.* A statement of section 338 election filed on or after July 15, 1986, is not effective unless—

(i) It meets the applicable requirements prescribed in paragraph (m)(2) of this section when it is filed,

(ii) It is perfected by refiling in accordance with paragraph (m)(4)(ii) of this section, or

(iii) The District Director or his delegate waives, under paragraph (m)(13) of this section, the applicable requirements contained in paragraph (m)(2) of this section.

(2) *Applicable requirements.* The requirements of this subparagraph (2) are that—

(i) The statement of section 338 election meets the filing, documentation, and Form 872 requirements of paragraph (m)(4), (5), and (6) of this section for each relevant taxable year (within the meaning of paragraph (m)(3) of this section) for which the statute of limitations on making an assessment is considered under paragraph (m)(10) of this section to expire after August 15, 1986, and on or before November 15, 1990,

(ii) The statement of section 338 election meets the filing, documentation, and closing agreement requirements of paragraph (m)(4), (5), and (7) of this section for each relevant taxable year (within the meaning of paragraph (m)(3) of this section) for which the statute of limitations on making assessment is considered under paragraph (m)(10) of this section to expire on or before August 15, 1986, and

(iii) The statement of section 338 election meets the filing and closing agreement requirements of paragraph (m)(4) and (7)(v) of this section if a deemed sale return is required to be filed and the acquisition date occurred on or before November 15, 1983.

(3) *Relevant taxable year.* For purposes of this paragraph (m), a taxable year is relevant if it is one for which a Federal income tax return was filed prior to filing the statement of section 338 election, but only if it is also—

(i) A taxable year of target (or an affected target) which includes its acquisition date, or

(ii) Any subsequent taxable year of target (or an affected target) or an affected taxable year of an affected corporation (within the meaning of paragraph (m)(12) of this section).

(4) *Filing procedures*—(i) *In general.* The statement of section 338 election and any documents, Forms 872, and closing agreements to which paragraph (m)(2) of this section applies shall all be filed in one envelope with the District Director (Attention: Chief of Examination) for the internal revenue district where original target had its principal place of business or where it principal office or agency was located on the acquisition date.

(ii) *Perfection rule.* A statement of section 338 election filed on or after December 9, 1985, and on or before July 15, 1986, that does not comply with the applicable procedures prescribed in paragraph (m)(2) of this section is perfected by refiling in accordance with those procedures the statement of election on or before July 15, 1986, along with a copy of the previously filed statement of election.

(5) *Documents required under paragraph (m)(2) of this section.* The documents required by this subparagraph (5) for each relevant taxable year are—

(i) A photocopy of the face page of the income tax return (and of any amended return or returns) filed for the taxable year, and

(ii) A photocopy of any extension, consent, or other document previously entered into or filed which extended the statute of limitations on assessment for the year.

(6) *Contents of Form 872*—(i) *In general.* For purposes of paragraph (m)(2)(i) of this section, for each relevant taxable year a Form 872 must be properly completed and executed in duplicate on behalf of each target or any affected corporation and must agree to

extend until May 15, 1987, the period for making an assessment with respect to any tax due as a result of the deemed sale under section 338(a)(1) by the target. A photocopy of Form 872 (including one on white paper) may be used instead of a copy supplied by the Internal Revenue Service.

(ii) *Restrictive language*—(A) *General language.* The following restrictive language shall be inserted as numbered paragraph (4) on the face page of any Form 872 to which this subparagraph (6) applies: "THIS CONSENT AND AGREEMENT IS LIMITED TO ANY FEDERAL TAX DUE FROM TAXPAYER (INCLUDING ACCRUED INTEREST THEREON) AS A RESULT OF THE DEEMED SALE OF ASSETS UNDER SECTION 338(a)(1) OF THE INTERNAL REVENUE CODE BY TAXPAYER" [if taxpayer is not the target, substitute name of target instead of last word].

(B) *Year which includes the acquisition date.* If the relevant taxable year of target includes the acquisition date, the Form 872 for that relevant taxable year shall contain the following language inserted as numbered paragraph (5): "THIS CONSENT AND AGREEMENT COVERS THE ENTIRE PERIOD ENDING ON THE DATE SET FORTH IN PARAGRAPH (1) OF THIS AGREEMENT, AS WELL AS ALL SHORT PERIODS WHICH RESULT AS A CONSEQUENCE OF THE SECTION 338 ELECTION AND WHICH END WITH OR WITHIN THAT ENTIRE PERIOD".

(7) *Closing agreement*—(i) *In general.* For purposes of paragraph (m)(2) (ii) and (iii) of this section, a separate closing agreement under section 7121 shall be submitted on Form 906 and must be properly completed and executed on behalf of each target or any affected corporation. For guidelines on preparation of closing agreements, see Rev. Proc. 68–16, 1968–1 C.B. 770. A photocopy of Form 906 (including one on white paper) may be used instead of a copy supplied by the Internal Revenue Service. In addition, a separate closing agreement under the provisions of paragraph (m)(2)(ii) of this section must be executed in triplicate for each relevant taxable year and contain the applicable language prescribed in paragraph (m)(7) (ii), (iii), and (iv) of this section. For special rules for applying the provisions of paragraph (m)(2)(iii) of this section with respect to a deemed sale return or a combined deemed sale return, see paragraph (m)(7)(v) of this section.

(ii) *Waiver of statute of limitations*—(A) *In general.* Each closing agreement required by paragraph (m)(2)(ii) of this section must contain an express waiver of the statute of limitations on assessment (under section 6501(a)) and credit (under section 6402(a)) with respect to any Federal tax (including accrued interest thereon) required to be reported on any return or claim for refund for the relevant taxable year of the taxpayer, using the following language: "TAXPAYER AND COMMISSIONER AGREE TO WAIVE THE STATUTE OF LIMITATIONS FOR ASSESSMENT AND CREDIT WHICH (HAS EXPIRED or WILL EXPIRE) ON [insert expiration date] FOR ANY FEDERAL TAX DUE OR REFUNDABLE (INCLUDING ACCRUED INTEREST THEREON) AS A RESULT OF THE DEEMED SALE OF ASSETS UNDER SECTION 338(a)(1) OF THE INTERNAL REVENUE CODE BY TAXPAYER" [if taxpayer is not the target, substitute name of target instead of last word].

(B) *Year which includes the acquisition date.* If the relevant taxable year is a taxable year of target which includes the acquisition date, the closing agreement for that relevant taxable year shall contain the following language in addition to the language contained in subdivision (m)(7)(ii)(A) of this section: "TAXPAYER ACKNOWLEDGES THAT THIS CLOSING AGREEMENT COVERS THE ENTIRE PERIOD DESCRIBED IN THE PRECEDING SENTENCE, AS WELL AS ALL SHORT PERIODS WHICH RESULT AS A CONSEQUENCE OF THE SECTION 338 ELECTION AND WHICH END WITH OR WITHIN THAT ENTIRE PERIOD".

(iii) *Amended returns*—(A) *In general.* Each closing agreement must contain an express agreement on behalf of the taxpayer to file an amended Federal income tax return or returns on or before November 3, 1986, for each relevant taxable year, and an acknowledgement that the statement of section 338 election will not be effective in the event of a failure to timely file any such amended return, unless the requirement of filing an amended return is waived by the District Director or his delegate.

(B) *Relevant taxable year which includes acquisition date.* For the relevant taxable year which includes the acquisition date, the following language shall be inserted in the closing agreement: "FOR THE RELEVANT TAXABLE YEAR COVERED BY THIS CLOSING AGREEMENT, TAXPAYER AGREES TO FILE ON OR BEFORE NOVEMBER 3, 1986 (IF NOT ALREADY FILED), THE FOLLOWING FEDERAL INCOME TAX RETURNS[S]:(*1*) AN AMENDED RETURN AS OLD TARGET'S FINAL RETURN, AND (*2*) AN AMENDED RETURN FOR NEW TARGET'S FIRST TAXABLE YEAR ENDING ON [insert date]. TAXPAYER ACKNOWLEDGES THAT A STATEMENT OF ELECTION UNDER SECTION 338 WILL NOT BE EFFECTIVE IF THE FEDERAL INCOME TAX RETURN(S) COVERED BY THIS CLOSING AGREEMENT (IS) (ARE) NOT FILED ON A TIMELY BASIS, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE DISTRICT DIRECTOR OR HIS DELEGATE." If the acquisition date occurs on the last day of target's relevant taxable year or if new target does not have a taxable year that terminates within the relevant taxable year, then the language in (*2*) of this subdivision (B) shall be omitted. If new target has more than one taxable year ending within the relevant taxable year covered by a closing agreement governed by this subdivision (B), then appropriate language referring to the amended returns for those years shall be added to the closing agreement, using the format set forth in this subdivision (B).

(C) *Other relevant taxable years.* For a relevant taxable year which does not include the acquisition date, the following language shall be inserted in the closing agreement. "TAXPAYER AGREES TO FILE AN AMENDED FEDERAL INCOME TAX RETURN ON OR BEFORE NOVEMBER 3, 1986, FOR THE RELEVANT TAXABLE YEAR COVERED BY THIS CLOSING AGREEMENT. TAXPAYER ACKNOWLEDGES THAT A STATEMENT OF ELECTION UNDER SECTION 338 WILL NOT BE EFFECTIVE IF ANY FEDERAL INCOME TAX RETURN COVERED BY THIS CLOSING AGREEMENT IS NOT FILED ON OR BEFORE NOVEMBER 3, 1986, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE DISTRICT DIRECTOR OR HIS DELEGATE."

(D) *Section 338(h)(10) election.* The second quoted sentence in subdivision (iii) (B) and (C) of this paragraph (m)(7) shall be omitted from any closing agreement for a relevant taxable year of a selling group referred to in paragraph (m)(11)(ii)(A) of this section (relating to section 338(h)(10) election).

(E) *Waiver of certain additions to tax and time to act.* See § 1.338–1T(h) for rules applicable to the waiver of certain additons to tax and time to act.

(iv) *Consent to extend expiration date.* Each closing agreement must contain an express consent to extend until June 15, 1988, the period for further assessment (under section 6501(a)) or credit (under section 6402(a)) of any tax due or refundable (including accrued interest

thereon) for any relevant taxable year resulting from the deemed sale under section 338(a)(1), using the following language: "TAXPAYER AND COMMISSIONER AGREE TO EXTEND UNTIL JUNE 15, 1988, THE PERIOD FOR MAKING ANY FURTHER ASSESSMENT OR CLAIMING ANY CREDIT OF ANY FEDERAL TAX DUE OR REFUNDABLE (INCLUDING ACCURED INTEREST THEREON) AS A RESULT OF THE DEEMED SALE OF ASSETS UNDER SECTION 338(a)(1) BY TAXPAYER" [If taxpayer is not the target, substitute name of target instead of last word].

(v) *Special rule for deemed sale return or combined deemed sale return*—(A) *In general.* For purposes of paragraph (m)(2)(iii) of this section, if a target is required to file a deemed sale return (as defined in paragraph (f)(3)(i) of this section), then a separate closing agreement with respect to that deemed sale return must be filed in triplicate in order to make an effective election under section 338. The closing agreement shall contain the following language: "TAXPAYER AGREES TO FILE ON OR BEFORE NOVEMBER 3, 1986 (IF NOT ALREADY FILED), A DEEMED SALE RETURN REFLECTING THE CONSEQUENCES OF THE DEEMED SALE OF ASSETS BY TAXPAYER [if taxpayer is not the target, substitute the name of target instead of last word] UNDER SECTION 338. TAXPAYER ACKNOWLEDGES THAT A STATEMENT OF ELECTION UNDER SECTION 338 WILL NOT BE EFFECTIVE IF THE DEEMED SALE RETURN IS NOT FILED ON A TIMELY BASIS, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE DISTRICT DIRECTOR OR HIS DELEGATE. TAXPAYER FURTHER AGREES THAT THE STATUTE OF LIMITATIONS ON ASSESSMENT FOR ANY FEDERAL TAX DUE AS A RESULT OF THE DEEMED SALE OF ASSETS BY TAXPAYER [if taxpayer is not the target, substitute the name of target instead of last word] UNDER SECTION 338 WILL NOT TERMINATE PRIOR TO THE EXPIRATION OF THREE YEARS FROM THE DATE THE DEEMED SALE RETURN IS ACTUALLY FILED."

(B) *Combined deemed sale return.* All targets which are eligible to file a combined deemed sale return (as defined in section 338(h)(15) and § 1.338–4T(k)(6)) may join together in a combined deemed sale closing agreement, instead of filing a separate closing agreement for each target under paragraph (m)(7)(v)(A) of this section. If a combined deemed sale closing agreement is filed, then a combined deemed sale return must be filed. The combined deemed sale closing agreement shall contain the language prescribed in paragraph (m)(7)(v)(A) of this section, except that the words "COMBINED DEEMED SALE RETURN" shall be substituted for "DEEMED SALE RETURN,' the word "TAXPAYER" shall be expressed in the singular or plural (as the case may be), and each target's name shall be inserted in place of "TAXPAYER", if appropriate. A list containing the name, address, and employer identification number of each target which is joining in the combined deemed sale closing agreement shall be included in the text of the combined deemed sale closing agreement. If the targets included in the combined deemed sale closing agreement constitute a single affiliated group within the meaning of section 1504(a), the combined deemed sale closing agreement shall be signed by an officer of the common parent of that group. Otherwise, the combined deemed sale closing agreement must be signed by an officer of each target included in the combined deemed sale closing agreement.

(8) *Execution of Form 872 or Form 906*—(i) *On behalf of Commissioner.* Any Form 872 or Form 906 properly submitted pursuant to the requirements in this paragraph (m) will be executed on behalf of the Commissioner of Internal Revenue and an executed copy of each Form 872 and each Form 906 will be returned to the originating party.

(ii) *On behalf of target.* If target was included on a consolidated return filed by the purchasing group for a relevant taxable year, the common parent of the purchasing group shall be the proper party to execute any Form 872 or Form 906 required by this paragraph (m) for that year. See § 1.1502–77(a).

(9) *Exceptions.* This paragraph (m) shall not apply—

(i) If the statement of section 338 election has been filed before December 9, 1985, or after July 15, 1986,

(ii) If there is no relevant taxable year of a target, affected target, or affected corporation for which the statute of limitations expires on or before November 15, 1986,

(iii) With respect to the taxable year of a selling group that files a consolidated return for the period that includes the acquisition date, if the binding contract rule in paragraph (l) of this section applies, or

(iv) With respect to the taxable year of a person that includes the acquisition date of a target, if (A) the target is a DISC, a controlled foreign corporation, or a domestic corporation described in section 1248 (e) and (B) the person actually transfers the target stock (as distinguished from being treated under section 338(a)(1) as having sold it).

(10) *Statute of limitations on assessment*—(i) *General rule.* For purposes of applying this paragraph (m), the statute of limitations on assessment is considered to begin to run for a relevant taxable year, and any short period of target which may result as a consequence of a section 338 election that ends with or within that relevant taxable year, on the date target is considered under section 6501(b) to have filed its return for that relevant taxable year.

(ii) *Deemed sale return.* If old target's final return is a deemed sale return (within the meaning of paragraph (f)(3)(i) of this section) or a combined deemed sale return (within the meaning of section 338(h)(15)), then the period for assessment under section 6501 does not begin to run until such deemed sale return or combined deemed sale return is filed.

(11) *Section 338(h)(10)*—(i) *Scope.* This subparagraph (11) provides rules for applying this paragraph (m) as a condition for electing to report the consequences of old target's deemed sale of its assets under section 338(a)(1) on the selling group's consolidated return under section 338(h)(10).

(ii) *Application.* If this subparagraph (11) applies, then—

(A) A relevant taxable year under paragraph (m)(3) of this section is considered to include the period for which a consolidated return of the selling group is filed that includes the acquisition date.

(B) Any document executed or item submitted by the common parent of the selling group on behalf of that entire group with respect to that relevant taxable year is considered to be on behalf of old target (see § 1.1502–77(a)).

(12) *Affected taxable years of affected corporations.* For purposes of this paragraph (m)—

(i) *Affected taxable year.* A taxable year is affected by the section 338 election if Federal tax for that year is increased or decreased as a result of the section 338 election. For example, an affected taxable year may arise if target originally filed a return for a period which ended on or after the acquisition date and the deemed sale of assets results in additional Federal tax due from target for that period, or if consideration for stock included in a qualified stock purchase is contingent and receipt of that consideration subsequent to the acquisition date is

reported on new target's return under § 1.338 (b)–3T(h).

(ii) *Affected corporation.* An affected corporation is a corporation that has a basis in an asset transferred to it by a new target or another affected corporation that is determined in whole or in part by reference to the asset's basis in the hands of the transferor.

(13) *Discretion of the District Director*—(i) *General standard.* In exercising discretion to waive any of the requirements prescribed under this paragraph (m) for any statement of section 338 election or amended returns, the District Director or his delegate shall consider all of the relevant facts and circumstances.

(ii) *Time when discretion is exercised.* The discretion of the District Director or his delegate under this paragraph (m) can be exercised at any time in connection with the examination of any Federal income tax return which would be affected by a section 338 election.

(14) *Applicability of the mitigation provisions.* For application of the mitigation provisions contained in sections 1311–1314, see § 1.338–4T (l)(5).

(15) *Examples.* The provisions of this paragraph (m) may be illustrated by the following examples.

Example (1). (i) T is an unaffiliated corporation filing income tax returns on the basis of a fiscal year ending February 28. At the close of January 20, 1983, P acquires all of T's stock in a qualified stock purchase. P does not file consolidated returns. On May 15, 1983, T timely files an income tax return (without extensions) for its taxable year beginning on March 1, 1982, and ending February 28, 1983. On May 14, 1986, P files a statement of election under section 338 which (if effective) would cause T's taxable year ending on February 28, 1983, to be divided into two periods. The first period for "old T" ends on the close of the acquisition date (January 20, 1983), and the second period for "new T" begins the next day. For T's taxable year ending February 28, 1983, the statute of limitations expires on May 15, 1986. In order for the section 338 election to be effective, the statement of election must be filed in accordance with the requirements of paragraph (m)(2)(ii) of this section. Thus, for example, there must be filed with the election, in the form prescribed in paragraph (m)(7) of this section, a closing agreement for T's taxable year ending on February 28, 1983, for which T's return was filed on May 15, 1983, extending the time within which assessments can be made until June 15, 1986. This closing agreement will cover the two periods into which that taxable year has now been divided. Additionally, the closing agreement must provide that on or before November 3, 1986, T must file old target's final return for the taxable year ending on January 20, 1983, and an amended return for the taxable year ending on February 28, 1983. The section 338 election will be ineffective unless the closing agreement procedures are followed and T files on or before November 3, 1986, the required returns, unless the District Director, in his discretion, waives any failure by P or T to comply with these requirements. However, in order for the waiver provisions contained in paragraph (h) of this section to apply, the amended returns must be filed on or before the last day for making an election under section 338, *i.e.*, July 15, 1986.

(ii) T also timely filed an income tax return (without extensions) on May 15, 1984, for its taxable year beginning on March 1, 1983, and ending on February 29, 1984. Since the statute of limitations on assessment for the income tax return filed on May 15, 1984, expires on May 15, 1987, which is after November 15, 1986, the provisions contained in paragraph (m) of this section are not applicable with respect to that taxable year.

Example (2). Assume the same facts as in *Example (1)* except that P files the statement of election on April 1, 1986, and that filing does not comply with the requirements of paragraph (m)(2)(ii) of this section. On July 6, 1986, under paragraph (m)(1)(ii) of this section, P perfects the election by refiling the election in accordance with the requirements of paragraph (m) (2)(ii) and (4)(ii) of this section. As long as T timely files on or before November 3, 1986, the returns which relate to the periods covered by the closing agreement (*i.e.*, T's taxable years ending on January 20, 1983, and February 28, 1983), the section 338 election will be valid.

Example (3). Assume the same facts as in *Example (2)* except that P does not perfect the election. Under paragraph (m) (1)(iii) and (13) of this section, the election is ineffective unless the District Director waives the requirements of paragraph (m)(2) of this section.

Example (4). Assume the same facts as in *Example (2)* except that T does not timely file the returns covered by the closing agreement. The section 338 election is ineffective under paragraph (m)(13) of this section unless the District Director waives the timely filing requirement for the amended returns.

Example (5). Assume the same facts as in *Example (1)* Assume further that T owns all the stock of T1 and that T1 uses the same taxable year as T. For the election to be effective, P must also file a closing agreement for T1 and T1 must file on or before November 3, 1986, the returns for the periods covered by T1's closing agreement unless those requirements are waived by District Director.

Example (6). Assume the same facts as in *Example (2)* except that T reports its income on the basis of a taxable year ending June 30. Assume further that on September 15, 1983, T timely filed an income tax return (without extensions) for its taxable year ending June 30, 1983, and that the statute of limitations for that year expires on September 15, 1986. In order for the section 338 election to be effective, the statement of election must be filed in accordance with the requirements of paragraph (m)(2)(i) of this section. Thus, for example, there must be filed with the election, in the form prescribed in paragraph (m)(6) of this section, a Form 872 for T's taxable year ending June 30, 1983, for which T's return was filed on September 15, 1983, extending the time within which assessments can be made until May 15, 1987. This Form 872 will cover both periods into which the taxable year has been divided. However, in order for the waiver provisions contained in § 1.338–1T(h) to apply, T must file the amended returns on or before the last day for making an election under section 338, *i.e.*, July 15, 1986. In any event, old target's final return and an amended return for the taxable year ending June 30, 1983, should be filed on or before May 15, 1987.

Example (7). Assume the same facts as in *Example (1)* except that T files its income tax returns on the basis of the calendar year and actually filed its returns for calendar year 1983 on March 3, 1984. No Form 872 or closing agreement is required for T's 1983 calendar year if the statute of limitations for that year expires after November 15, 1986. See paragraph (m)(1) and (9)(ii) of this section. The statute of limitations for new T's first taxable year and old T's period ending on the close of the acquisition date (January 20, 1983) did not start to run until the due date for T's 1983 return (March 15, 1984), and therefore cannot expire prior to March 15, 1987. See section 6501(b)(1) and paragraph (m)(10) of this section.

Example (8). (i) Assume the same facts as in *Example (1)* except that T, on its first tax return as new T filed on or before July 15, 1986, adopts a taxable year ending on January 31. The closing agreement referred to in *Example (1)* for the taxable year ending on February 28, 1983, will also operate to waive and extend the statute of limitations on assessment for new T's first taxable year which begins January 21, 1983, and ends on January 31, 1983. If T filed its first tax return as new T after July 15, 1986, it would not be permitted to adopt a taxable year different from the year T used before making the section 338 election. See paragraph (f)(7)(ii) of this section.

(ii) The tax consequences of new T's operations for the period that begins on February 1, 1983, and ends on February 28, 1983, will now have to be reported on an amended return which should be filed by new T for its second taxable year which begins on February 1, 1983, and ends on January 31, 1984. The statute of limitations on assessment for new T's second taxable year is controlled by the due date of the return T originally filed (without regard to the section 338 election) on May 15, 1984, for its taxable year ending February 29, 1984, which includes the last day of new T's second taxable year (*i.e.*, January 31, 1984). Because the statute of limitations on assessment for the taxable year ending on February 29, 1984, does not expire until May 15, 1987, the provisions of paragraph (m) does not apply to new T's second taxable year.

(iii) The results of this example may be summarized with time lines. Line A represents taxable years of T for which returns were filed prior to the time that a section 338 statement of election was filed. Line B represents taxable years of old T and new T reflecting such election. Arrows show dates on Line A when T's tax returns were filed, which started the statute of limitations running for the taxable periods shown on Line B.

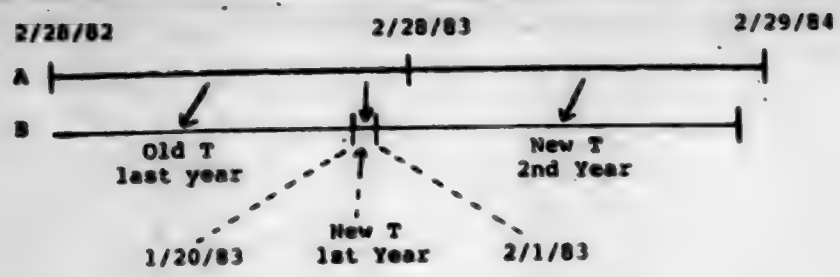

Example (9). Assume the same facts as in *Example (1)* except that T, on its first tax return as new T filed on or before July 15, 1986, adopts a taxable year ending on April 30. The closing agreement referred to in *Example (1)* for the taxable year ending on February 28, 1983, will waive and extend the statute of limitations on assessment only for old T's taxable year ending on January 20, 1983. The tax consequences of new T's operations for new T's taxable year which begins on January 20, 1983, and ends on April 30, 1983, will have to be reported on an amended return filed for that period. The statute of limitations on assessment for new T's first taxable year is controlled by the due date of the return T originally filed (without regard to the section 338 election) on May 15, 1984, for its taxable year ending February 29, 1984, which includes the last day of new T's first taxable year, (*i.e.*, April 30, 1983). Because the statute of limitations on assessment for the taxable year ending on February 29, 1984, does not expire until May 15, 1987, the provisions of paragraph (m) do not apply to new T's first taxable year.

Example (10). All of T's stock is owned by S, which is included in a consolidated return that is filed for the S group on the basis of a fiscal year ending January 31. At the close November 15, 1982, P acquired all of T's stock in a qualified stock purchase. P is the common parent of an affiliated group that files consolidated returns on the basis of a calendar year. On July 1, 1986, P files a statement of election under section 338 for T. As a result of the acquisition, the results of T's operations through the close of business on November 15, 1982, was originally reported on the consolidated return for the S group which was timely filed on April 15, 1983. The results of T's operations from November 16, 1982, through December 31, 1982, were originally reported on the consolidated return for the P group, which was timely filed on March 15, 1983. Because T must file a deemed sale return (within the meaning of paragraph (f)(3)(i) of this section) and the acquisition date occurred on or before November 15, 1983, in order for the section 338 election to be effective, the closing agreement and other procedures required by paragraph (m)(2)(iii) and (7)(v) of this section must be followed and the deemed sale return must be filed on or before November 3, 1983, unless those requirements are waived by the District Director.

Par. 3. Section 1.338–2T is amended by removing, from each place they appear in *Example (1)* and *Example (2)* of paragraph (j), the words "August 23, 1985" and by adding in their place the words "July 15, 1986".

Par. 4. Section 1.338–4T is amended as follows:

1. Paragraph (a)(3) is amended by adding immediately after item (l)(4) a new item (l)(5) to read as follows: "(5) Application of mitigation provisions."

2. Paragraph (a)(4) is amended by adding in the second table immediately after the line "1248 (e) . . . (b)(6)" the following new line: "1311 . . . (l)(5)".

3. Paragraph (l) is amended by adding at the end thereof new subparagraph (5) to read as set forth below.

4. Paragraph (f)(6) (iv) Answer (i)(C)(l) is amended by removing the word "March" and by adding in its place the word "July".

5. Paragraph (j)(2) Answer 5(i) is amended by removing from the third sentence the word "March" and by adding in its place the word "July".

§ 1.338–4T Questions and answers relating to miscellaneous issues under section 338 (temporary).

* * * * *

(l) *Miscellaneous matters affecting new T.* * * *

* * * * *

(5) *Application of mitigation provisions.*

Question: For purposes of applying sections 1311–1314 (relating to the mitigation of the effect of limitations), in the absence of a section 338(h)(10) election, are old T and new T to be treated as being the same taxpayer?

Answer: Yes.

Par. 5. Section 1.338–5T is amended as follows:

1. Paragraph (a)(2) is amended by removing from the outline of topics at both (j)(8) (ii) and (iii) the word "March" and by adding in both places the word "July".

2. Paragraph (c)(2)(v)(C) is amended by removing, from each place it appears, the word "March" and by adding in its place the word "July".

3. Subdivisions (ii) and (iii) of paragraph (j)(8) are each amended by removing from the heading and from the text the word "March" and by adding in both places in each such subdivision the word "July".

Par. 6. Section 1.338(h)(10)–1T(d) is amended by—

1. Removing, from each place it appears in subparagraph (7) (i) and (ii), the word "March" and by adding in its place the word "July".

2. Adding at the end thereof new subparagraph (9) to read as follows:

§ 1.338(h)(10)–1T Elective recognition by selling consolidated group of deemed sale gain or loss on target's assets (temporary).

* * * * *

(d) *Time and manner of making section 338(h)(10) election.* * * *

(9) *Special rules.* See § 1.338–1T(m)(11) for special rules applicable to certain statements of section 338 election filed on or after December 9, 1985, and on or before July 15, 1986.

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 6, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

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26 CFR Parts 1, 7, and 602

[T.D. 8057]

Income Taxes; Transfers of Property by U.S. Persons to Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to transfers of property by U.S. persons to foreign corporations. These regulations affect U.S. persons that transfer property to foreign corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. They provide the public with guidance necessary to comply with the Tax Reform Act of 1984. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in

the proposed rules section of today's Federal Register.

DATES: These temporary regulations are generally applicable for transfers made after December 31, 1984, and are effective June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Charles W. Culmer, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 367 of the Internal Revenue Code of 1954, as amended by section 131 of the Tax Reform Act of 1984 (98 Stat. 662). The temporary regulations are issued under the authority contained in sections 367 (26 U.S.C. 367) and 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Discussion

Statutory Provisions

The Tax Reform Act of 1984 substantially revised the rules that apply under section 367 to transfers of property by U.S. persons to foreign corporations. Section 367(a) now provides generally that a foreign corporation will not be considered to be a corporation, for purposes of applying the corporate organization, reorganization, and liquidation rules to a U.S. person's transfer of property to the foreign corporation. Thus, transfers of property to foreign corporations will generally be treated as taxable exchanges. However, an exception is provided for transfers of property that will be used in the active conduct of a trade or business outside of the United States. Such transfers may be made tax-free. On the other hand, certain types of property are specified that may not be transferred free of tax, even if they are to be used in the active conduct of a trade or business. In addition, a special rule requires the recapture of previously deducted losses of a foreign branch, when the branch is transferred to a foreign corporation. New section 367(d) applies a special rule to certain transfers of intangible property to foreign corporations, requiring the U.S. transferor to recognize a U.S.-source deemed payment for the transferred property annually over the useful life of the property. Finally, new section 367(e) provides that liquidating distributions by domestic corporations under section 336 will be taxable under rules similar to those of section 367(a).

Need for Temporary Regulations

The effective date of the amendments to section 367 is January 1, 1985. The proper application of the section is dependent upon the Service's detailed specification by regulations of the manner in which the general requirements of the statute will be administered. Without this specification, taxpayers will be unable to make transfers to related foreign corporations with certainty as to the U.S. income tax consequences of the transfer. Because of the need for immediate guidance in this regard, for both the public and employees of the Internal Revenue Service, the Service has found it to be impracticable to issue these temporary regulations either with notice and public procedure under section 553(b) of Title 5 of the United States Code.

Description of Temporary Regulations

Section 1.367(a)-1T provides general rules describing the transfers of property that are subject to section 367(a), and explaining the effect of the section upon those transfers. A gain-limitation rule is provided in § 1.367(a)-1T(b)(3), ensuring that the gain recognized under section 367(a) upon a transfer of appreciated property is not greater than the gain that would be recognized on a normal taxable exchange. Detailed rules are provided in § 1.367(a)-1T(c) concerning various transactions that are considered to include a transfer subject to section 367(a). Relevant definitions are provided in § 1.367(a)-1T(d). Section 1.367(a)-1T(e) contains effective date provisions.

Section 1.367(a)-2T provides rules concerning the exception from section 367(a) for transfers of property that will be used in the active conduct of a trade or business outside of the United States. Paragraph (b) of the section separately defines the concepts of "trade or business," "active conduct," and "outside of the United States." Each standard must be met for a transfer to qualify for the exception.

Section 1.367(a)-3T provides rules concerning transfers of stock or securities to a foreign corporation in an exchange described in section 367(a). Paragraph (b) specifies certain transfers of stock that are not subject to section 367(a). Paragraph (c) provides rules concerning transfers of stock of domestic corporations. Such transfers are generally taxable, but several exceptions are provided. Paragraph (d) provides rules concerning transfers of stock of foreign corporations. Again, such transfers are generally taxable, but several exceptions are provided. Paragraphs (e), (f), and (g) provide rules concerning the exceptions that are applicable under paragraphs (c) and (d). Under paragraph (e), a transfer of stock is not subject to section 367(a) if the transfer is for use in the active conduct of a trade or business, as defined in that paragraph. Paragraph (f) provides that a transfer is not subject to section 367(a) if the U.S. transferors of the stock obtain a limited interest in the transferee foreign corporation. Under paragraph (g), a transfer of stock is not subject to section 367(a) if the U.S. transferor agrees to recognize gain upon any subsequent disposition of the stock by the transferee foreign corporation. Finally, paragraph (h) sets forth two anti-abuse rules.

Section 1.367(a)-4T contains a series of special rules concerning the treatment of certain specified transfers of property. Paragraph (b) addresses transfers of depreciated property previously used in the United States, while paragraph (c) concerns property that will be leased by the transferee. Paragraph (d) concerns property to be sold by the transferee. Paragraph (e) specifies the circumstances in which oil and gas working interests will be considered to have been transferred for use in the active conduct of a trade or business. Paragraphs (f) and (g) provide exceptions from section 367(a) for transfers that are required by foreign governments and for transfers to FSCs.

Section 1.367(a)–5T provides rules concerning transfers of property that are subject to taxation by reason of section 367(a) regardless of whether the property will be used in the active conduct of a trade or business. These rules apply to transfers of inventory, installment obligations, foreign currency, intangible property, and leased property.

Section 1.367(a)–6T provides special rules relating to the incorporation of a foreign branch with previously deducted losses. Paragraph (b) provides generally that such losses must be recaptured by recognizing the gain realized on the transfer of the branch's assets. Paragraph (c) specifies the character of, and limitations on, the gain required to be recognized, while paragraphs (d) and (e) provide for adjustments to the amount of losses subject to recapture. Paragraph (f) provides an example. Finally, paragraph (g) defines the term "foreign branch."

Section 1.367(d)–1T provides rules under section 367(d) concerning transfers of intangible property by U.S. persons to foreign corporations. Paragraph (b) specifies the transfers that are subject to section 367(d), while

paragraph (c) provides rules concerning the consequences of such a transfer. In general, the U.S. transferor will be treated as receiving payments contingent on productivity or use of the transferred property, over the useful life of the property (regardless of whether such payments are in fact made by the transferee). Under a special transitional rule contained in § 1.367(a)–1T (d)(3)(iv), certain foreign marketing intangibles developed by a foreign branch and transferred prior to May 16, 1986, will not be subject to the rules of section 367(d). Transfers of such marketing intangibles made on or after that date are subject to the section 367(d) rules. Paragraphs (d), (e), and (f) provide rules for cases in which there is a later direct or indirect disposition of the intangible property transferred. In general, deemed license payments will continue if a transfer is made to a related person, while gain must be recognized immediately if the transfer is to an unrelated person. Paragraph (g) provides several special rules, including a rule allowing appropriate adjustments where deemed payments under section 367(d) are not in fact received by the U.S. transferor of the intangible property, and a rule providing for a limited election to treat certain transfers of intangible property as sales at fair market value (in lieu of applying the general useful life-contingent payment rule). In addition, paragraph (g) provides rules coordinating the application of section 367(d) with other relevant Code sections. Finally, paragraph (h) defines the term "related person" for purposes of section 367(d).

Section 1.6038B–1T provides rules concerning the information that is required to be reported under section 6038B with respect to transfers of property to foreign corporations. Paragraph (b) of the section explains when and how to report under section 6038B. Paragraphs (c) and (d) specify the information that is required to be reported with respect to transfers of property described in section 367 (a) and (d), respectively. Paragraph (e) is reserved to specify the information required to be reported with respect to transfers subject to section 367(e). Finally, paragraph (f) sets forth the consequences of a failure to comply with the requirements of section 6038B.

The temporary regulations do not provide rules concerning new section 367(e). When such regulations are issued, they will apply only on a prospective basis. The temporary regulations do, however, describe the situations in which section 367(a) will apply to corporate liquidations under section 332.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

These regulations were submitted to The Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545–0026.

Drafting Information

The principal authors of these regulations are Charles W. Culmer of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, and Robert E. Culbertson, Jr., of the Office of the Associate Chief Counsel (International), Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.301–1–1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR 1.6001–1 Through 1.6109–2

Income taxes, Administrative practice and procedure, Filing requirements.

26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1, Part 7, and Part 602 are amended as follows:

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.367(a)–1T through 1.367(a)–7T also issued under 26 U.S.C 367(a). Section 1.367(d)–1T also issued under 26 U.S.C 367(d). Section 1.6038B–1T also issued under 26 U.S.C 6038B.

§ 1.367(a)–1 [Removed]

Par. 2. Section 1.367(a)–1 is removed.

§ 1.367(a)–4T [Redesignated as § 1.367(a)–7T]

Par. 3. Section 1.367(a)–4T is redesignated as § 1.367(a)–7T.

Par. 4. Sections 1.367(a)–1T through 1.367(a)–6T are added immediately after § 1.362–2, to read as follows:

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (temporary).

(a) *Purpose and scope of regulations.* These regulations set forth rules relating to the provisions of section 367(a) concerning certain transfers of property to foreign corportions. This § 1.367(a)–1T provides general rules explaining the effect of section 367(a)(1) and describing the transfers of property that are subject to the rule of that section. Section 1.367(a)–2T provides rules concerning the exception from the rule of section 367(a)(1) for transfers of property to be used in the active conduct of a trade or business outside of the United States. Rules concerning the application of section 367(a)(1) to transfers of stock or securities are provided in § 1.367(a)–3T, while § 1.367(a)–4T provides special rules regarding other specified transfers of property. Section 1.367(a)–5T describes types of property that are subject to the rule of section 367(a)(1) regardless of whether they are transferred for use in a trade or business. Section 1.367(a)–6T provides rules concerning the application of section 367(a) to the transfer of a branch with previously deducted losses. Finally, § 1.367(a)–7T contains transitional rules concerning transfers of intangible property to foreign corporations made after June 6, 1984 and before January 1, 1985. Rules explaining the operation of section 367(d), concerning transfers of intangible property pursuant to an exchange described in section 351 or 361, are provided in § 1.367(d)–1T. Rules concerning the reporting requirements of section 6038B are provided in § 1.6038B–1T.

(b) *General rules*—(1) *Foreign corporation not considered a corporation for purposes of certain transfers.* If a U.S. person transfers property to a foreign corporation in connection with an exchange described in section 332, 351, 354, 355, 356, or 361, then pursuant to section 367(a)(1) the foreign corporation shall not be considered to be a corporation for purposes of determining the extent to

which gain shall be recognized on the transfer. Section 367(a)(1) denies nonrecognition treatment only to transfers of items of property on which gain is realized. Thus, the amount of gain recognized because of section 367(a)(1) is unaffected by the transfer of items of property on which loss is realized (but not recognized). The transfers of property that are subject to section 367(a)(1) are further described in paragraph (c) of this section, and relevant definitions are provided in paragraph (d) of this section.

(2) *Cases in which foreign corporate status is not disregarded.* Section 367(a)(1) shall not apply, and a foreign corporate transferee shall, thus, be considered to be a corporation, in the case of any of the following:

(i) The transfer of stock or securities of a foreign corporation which is a party to the exchange or reorganization (as defined in section 368 (b));

(ii) The transfer of property for use in the active conduct of a trade or business outside of the United States in accordance with the rules of §§ 1.367(a)-2T through 1.367(a)-6T; or

(iii) Certain other transfers of property described in §§ 1.367(a)-2T through 1.367(a)-6T.

For the treatment of a transfer of stock or securities of a foreign corporation which is a party to the exchange or reorganization, see §§ 1.367(a)-3T(b)(1), 7.367(b)-4, and 7.367(b)-7.

(3) *Limitation of gain required to be recognized*—(i) *In general.* If a U.S. person transfers property to a foreign corporation in a transaction on which gain is required to be recognized under section 367(a) and regulations thereunder, then the gain required to be recognized by the U.S. person shall in no event exceed the gain that would have been recognized on a taxable sale of those items of property if sold individually and without offsetting individual losses against individual gains.

(ii) *Losses.* No loss may be recognized by reason of the operation of section 367.

(iii) *Ordinary income and capital gain.* If section 367(a) and regulations thereunder require the recognition of ordinary income and capital gain in excess of the limitation described in paragraph (b)(3)(i) of this section, then the limitation shall be imposed by making proportionate reductions in the amounts or ordinary income and capital gain, regardless of the character of the gain that would have been recognized on a taxable sale of the property.

(4) *Character, source, and adjustments*—(i) *In general.* If a U.S. person is required to recognize gain under section 367 upon a transfer of property to a foreign corporation, then—

(A) The character and source of such gain shall be determined as if the property had been disposed of in a taxable exchange with the transferee foreign corporation (unless otherwise provided by regulation); and

(B) Appropriate adjustments to earnings and profits, basis, and other affected items shall be made according to otherwise applicable rules, taking into account the gain recognized because of section 367(a)(1). Any increase in the basis of the property received by the foreign corporation resulting from the application of section 367(a) and section 362 (a) or (b) shall be allocated over the transferred property with respect to which gain is recognized in proportion to the amount realized by the U.S. person on the transfer of each item of that property. See paragraph (c)(3) of this section for special rules applicable to transfers of partnership interests.

(ii) *Example.* The rules of this paragraph (b)(4) are illustrated by the following example.

Example. Domestic corporation DC transfers inventory with a fair market value of $1 million and adjusted basis of $800,000 to foreign corporation FC in an exchange for stock of FC that is described in section 351 (a). Title passes within the U.S. Pursuant to section 367(a), DC is required to recognize gain of $200,000 upon the transfer. Under the rule of this paragraph (b)(4), such gain shall be treated as ordinary income (sections 1201 and 1221) from sources within the U.S. (section 861) arising from a taxable exchange with FC. Appropriate adjustments to earnings and profits, basis, etc., shall be made as if the transfer were subject to section 351. Thus, for example, DC's basis in the FC stock received, and FC's basis in the transferred inventory, will each be increased by the $200,000 gain recognized by DC, pursuant to sections 358(a)(1) and 362(a), respectively.

(c) *Transfers described in section 367(a)(1)*—(1) *In general.* A transfer described in section 367(a)(1) is any transfer of property by a U.S. person to a foreign corporation pursuant to an exchange described in section 332, 351, 354, 355, 356, or 361. Section 367(a)(1) applies to such a transfer whether it is made directly, indirectly, or constructively. Indirect or constructive transfers that are described in section 367(a)(1) include the transfers described in subparagraphs (2) through (7) of this paragraph (c). See § 1.367(a)-3T(b)(1) for rules relating to the transfer of stock or securities of a foreign corporation that is a party to the exchange or the reorganization.

(2) *Indirect transfers in certain reorganizations*—(i) *Mergers described in section 368(a)(1)(A)*—(A) *In general.* A transfer in connection with a reorganization described in section 368(a)(1)(A) to which either section 368(a)(2) (D) or (E) applies may be an indirect transfer described in section 367(a)(1) if the reorganization involves the merger of two domestic corporations and if stock of a foreign corporation which controls one of such domestic corporations is exchanged in the reorganization. The transfers in connection with such a reorganization that are described in section 367(a)(1) are specified in subdivisions (B) and (C) of this paragraph (c)(2)(i). If a transfer in connection with such a reorganization is described in section 367(a)(1), then the rules of § 1.367(a)-3T shall apply to determine whether the U.S. transferor is required to recognize gain with respect to the transfer.

(B) *Mergers to which section 368(a)(2)(D) applies.* A U.S. shareholder of a domestic corporation shall be considered to make a transfer of stock that is described in section 367(a)(1) if—

(*1*) The domestic corporation transfers substantially all of its properties to another domestic corporation in connection with a reorganization described in section 368(a)(1)(A) to which section 368(a)(2)(D) applies; and

(*2*) The controlling corporation (within the meaning of section 368(a)(2)(D)) is a foreign corporation.

The indirect transfer of stock by the shareholder shall be subject to the provisions of § 1.367(a)-3T.

Example. F, a foreign corporation, owns all the stock of S, a domestic corporation. In a reorganization described in section 368(a)(1)(A) to which section 368(a)(2)(D) applies, S acquires substantially all the properties of W, a domestic corporation, in a merger of W into S. The stock of F is used as consideration. The reorganization is considered to constitute a transfer of stock described in section 367(a)(1) by the shareholders of W that are U.S. persons.

(C) *Mergers described in section 368(a)(1)(A) to which section 368(a)(2)(E) applies.* A shareholder of a domestic corporation that is a U.S. person shall be considered to make a transfer of stock that is described in section 367(a)(1) if—

(*1*) The domestic corporation acquires substantially all of the properties of another domestic corporation in connection with a reorganization described in section 368(a)(1)(A) to which section 368(a)(2)(E) applies; and

(*2*) The controlling corporation (within the meaning of section 368(a)(2)(E)) is a foreign corporation.

The indirect transfer of stock by the shareholder shall be subject to the provisions of § 1.367(a)-3T.

(ii) *Reorganizations described in section 368(a)(1)(B).* If, in connection with a reorganization described in section 368(a)(1)(B), a U.S. person exchanges stock of a domestic corporation for voting stock of a foreign corporation that is in control (as defined in section 368(c)) of the domestic acquiring corporation, then that U.S. person is considered to make a transfer of stock that is subject to section 367(a)(1). The rule of this paragraph (c)(2)(ii) is illustrated by the following example.

Example. F, a foreign corporation, owns all the stock of S, a domestic corporation. In a reorganization described in section 368(a)(1)(B), S acquires all the stock of domestic corporation Y, and the shareholders of Y receive voting stock of F. The reorganization includes an indirect stock transfer described in section 367(a)(1) by those shareholders of Y who are U.S. persons.

(iii) *Reorganization described in section 368(a)(1)(C).* A U.S. shareholder of a domestic corporation shall be considered to make a transfer of stock that is subject to section 367(a)(1) if—

(A) The domestic corporation transfers substantially all of its properties to another domestic corporation in connection with a reorganization described in section 368(a)(1)(C); and

(B) The domestic corporation receives voting stock in a foreign corporation that is in control (as defined in section 368(c)) of the acquiring corporation (and distributes the stock to its shareholders in accordance with section 368(a)(2)(G)).

The rule of this paragraph (c)(2)(iii) is illustrated by the following example.

Example. F, a foreign corporation, owns all of the stock of S, a domestic corporation. In a reorganization described in section 368(a)(1)(C), S acquires substantially all of the properties of Z, a domestic corporation, and Z receives voting stock of F (and distributes the stock to its shareholders). The reorganization is considered to include an indirect transfer of stock described in section 367(a)(1) by the shareholders of Z that are U.S. persons.

(3) *Indirect transfers involving partnerships and interests therein*—(i) *Transfer by partnership treated as transfer by partners*—(A) *In general.* If a partnership (whether foreign or domestic) transfers property to a foreign corporation in an exchange described in section 367(a)(1), then a U.S. person that is a partner in the partnership shall be treated as having transferred a proportionate share of the property in an exchange described in section 367(a)(1). A U.S. person's proportionate share of partnership property shall be determined under the rules and principles of sections 701 through 761 and the regulations thereunder. The rule of this paragraph (c)(3)(i)(A) is illustrated by the following example.

Example. P is a partnership having five equal general partners, two of whom are United States persons. P transfers property to F, a foreign corporation, in connection with an exchange described in section 351. The exchange includes an indirect transfer of property by the partners to F. The transfers of property attributable to those partners who are United States persons, that is, 40 percent of each asset transferred to F, are transfers described in section 367(a)(1). The gain (if any) recognized on the transfer of 40 percent of each asset to F is attributable to the two partners who are United States persons.

(B) *Special adjustments to basis.* If a U.S. person is treated under the rule of this paragraph (c)(3)(i) as having transferred a proportionate share of the property of a partnership in an exchange described in section 367(a), and is therefore required to recognize gain upon the transfer, then—

(*1*) The U.S. person's basis in the partnership shall be increased by the amount of gain recognized by him;

(*2*) Solely for purposes of determining the basis of the partnership in the stock of the transferee foreign corporation, the U.S. person shall be treated as having newly acquired an interest in the partnership (for an amount equal to the gain recognized), permitting the partnership to make an optional adjustment to basis pursuant to sections 743 and 754; and

(*3*) The transferee foreign corporation's basis in the property acquired from the partnership shall be increased by the amount of gain recognized by U.S. persons under this paragraph (c)(3)(i).

(ii) *Transfer of partnership interest treated as transfer of proportionate share of assets*—(A) *In general.* If a U.S. person transfers an interest as a partner in a partnership (whether foreign or domestic) in an exchange described in section 367(a)(1), then that person shall be treated as having transferred a proportionate share of the property of the partnership in an exchange described in section 367(a)(1). Accordingly, the applicability of the exception to section 367(a)(1) provided in § 1.367(a)–2T shall be determined with reference to the property of the partnership rather than the partnership interest itself. A U.S. person's proportionate share of partnership property shall be determined under the rules and principles of sections 701 through 761 and the regulations thereunder.

(B) *Special adjustments to basis.* If a U.S. person is treated under the rule of paragraph (c)(3)(ii)(A) of this section as having transferred a proportionate share of the property of a partnership in an exchange described in section 367(a), and is therefore required to recognize gain upon the transfer, then—

(*1*) The U.S. person's basis in the stock of the transferee foreign corporation shall be increased by the amount of gain so recognized by that person;

(*2*) The transferee foreign corporation's basis in the transferred partnership interest shall be increased by the amount of gain recognized by the U.S. person; and

(*3*) Solely for purposes of determining the partnership's basis in the property held by it, the U.S. person shall be treated as having newly acquired an interest in the partnership (for an amount equal to the gain recognized), permitting the partnership to make an optional adjustment to basis pursuant to sections 743 and 754.

(C) *Limited partnership interest.* The transfer by a U.S. person of an interest in a partnership shall not be subject to the rules of paragraph (c)(3)(ii) (*A*) and (B) if—

(*1*) The interest transferred is a limited partnership interest; and

(*2*) Such interest is regularly traded on an established securities market.

Instead, the transfer of such an interest shall be treated in the same manner as a transfer of stock or securities. Thus, the consequences of such a transfer shall be determined under the rules of § 1.367(a)–3T. For purposes of this section, a limited partnership interest is an interest as a limited partner in a partnership that is organized under the laws of any State of the United States or the District of Columbia. Whether such an interest is regularly traded on an established securities market shall be determined under the provisions of paragraph (c)(3)(ii)(D) of this section.

(D) *Regularly traded on an established securities market*—(*1*) *Established securities market.* For purposes of this paragraph (c)(3)(ii), an established securities market is—

(*i*) A national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 (15 USC 78f);

(*ii*) A foreign national securities exchange which is officially recognized, sanctioned, or supervised by governmental authority; and

(*iii*) An over-the-counter market. An over-the-counter market is any market reflected by the existence of an inter-dealer quotation system. An inter-dealer quotation system is any system of general circulation to brokers and dealers which regularly disseminates

quotations of stock and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

(2) *Regularly traded.* A class of interests that is traded on an established securities market is considered to be regularly traded if it is regularly quoted by brokers or dealers making a market in such interests. A class of interests shall be presumed to be regularly traded if the entity has a total of 500 or more interest-holders.

(4) *Transfers by trusts and estates*—(i) *In general.* For purposes of section 367(a), a transfer of property by an estate or trust shall be treated as a transfer by the entity itself and not as an indirect transfer by its beneficiaries. Thus, a transfer of property by a foreign trust or estate (as defined in section 7701(a)(31)) is not described in section 367(a)(1), regardless of whether the beneficiaries of the trust or estate are U.S. persons. Similarly, a transfer of property by a domestic trust or estate may be described in section 367(a)(1), regardless of whether the beneficiaries of the trust or estate are foreign persons.

(ii) *Grantor trusts.* A transfer of a portion or all of the assets of a foreign or domestic trust to a foreign corporation in an exchange described in section 367(a)(1) is considered a transfer by any U.S. person who is treated as the owner of any such portion or all of the assets of the trust under sections 671 through 679.

(5) *Termination of election under section 1504(d).* Section 367(A) applies to the constructive reorganization and transfer of property from a domestic corporation to a foreign corporation that occurs upon the termination of an election under section 1504(d), which permits the treatment of certain contiguous country corporations as domestic corporations. The rule of this paragraph (c)(5) is illustrated by the following example.

Example. Domestic corporation Y previously made a valid election under section 1504(d) to have its wholly owned Canadian subsidiary, C, treated as a domestic corporation. On July, 1, 1986, C fails to continue to qualify for the election under section 1504 (d). A constructive reorganization described in section 368(a)(1)(D) occurs. The resulting constructive transfer of assests by "domestic" corporation C to Canadian corporation C upon the termination of the election is a transfer of property described in section 367(a)(1).

(6) *Changes in classification of an entity.* If a foreign entity is classified as an entity other than an association taxable as a corporation for United States tax purposes, and subsequently a change is made in the governing documents, articles, or agreements of the entity so that the entity is thereafter classified as an association taxable as a corporation, the change in classification is considered a transfer of property to a foreign corporation in connection with an exchange described in section 351. For purposes of section 367(a)(1), the transfer of property is considered as made by the persons determined under the rules set forth in paragraph (c)(3) of this section with respect to partnerships, and paragraph (c)(4) (i) or (ii), with respect to trusts and estates, and the rules of such paragraphs apply determining whether a transfer described in section 367(a)(1) has been made.

(7) *Contributions to capital.* For rules with respect tothe treatment of a contribution to the capital of a foreign corporation as a transfer described in section 367(a)(1), see section 367(c)(2) and the regulations thereunder.

(d) *Definitions.* The following definitions apply for purposes of this section and § 1.367(d)–1T.

(1) *United States person.* The term "United States person" includes those persons described in section 7701(a)(30). The term includes a citizen or resident of the United States, a domestic partnership, a domestic corporation, and any estate or trust other than a foreign estate or trust. (For definitions of these terms, see section 7701 and regulations thereunder.) For purposes of this section, an individual with respect to whom an election has been made under section 6013 (g) or (h) is considered to be a resident of the United States while such election is in effect. A nonresident alien or a foreign corporation will not be considered a United States person because of its actual or deemed conduct of a trade or business within the United States during a taxable year.

(2) *Foreign corporation.* The term "foreign corporation" has the meaning set forth in section 7701(a) (3) and (5) and § 301.7701–5.

(3) *Transfer.* For purposes of section 367 and regulations thereunder, the term "transfer" means any transaction that constitutes a transfer for purposes of sections 332, 351, 354, 355, 356, or 361, as applicable. A person's entering into a bona fide cost-sharing arrangement under § 1.482–2(d)(4) or acquiring rights to intangible property under such an arrangement shall not be considered a transfer of property described in section 367(a)(1). See § 1.6038B–1T(b)(3) for the date on which the transfer is considered to be made.

(4) *Property.* For purposes of section 367 and regulations thereunder, the term "property" means any item that constitutes property for purposes of sections 332, 351, 354, 355, 356, or 361, as applicable.

(5) *Intangible property*—(i) *In general.* For purposes of section 367 and regulations thereunder, the term "intangible property" means knowledge, rights, documents, and any other intangible item within the meaning of section 936(h)(3)(B) that constitutes property for purposes of sections 332, 351, 354, 355, 356, or 361, as applicable. Such property shall be treated as intangible property for purposes of section 367 (a) and (d) and the regulations thereunder without regard to whether it is used or developed in the United States or in a foreign country and without regard to whether it is used in manufacturing activities or in marketing activities. A working interest in oil and gas properties shall not be considered to be intangible property for purposes of section 367 and the regulations thereunder.

(ii) *Operating intangibles.* An operating intangible is any intangible property of a type not ordinarily licensed or otherwise transferred in transactions between unrelated parties for consideration contingent upon the licensee's or transferee's use of the property. Examples of operating intangibles may include long-term purchase or supply contracts, surveys, studies, and customer lists.

(iii) *Foreign goodwill or going concern value.* Foreign goodwill or going concern value is the residual value of a business operation conducted outside of the United States after all other tangible and intangible assets have been identified and valued. For purposes of section 367 and regulations thereunder the value of the right to use a corporate name in a foreign country shall be treated as foreign goodwill or going concern value.

(iv) *Transitional rule for certain marketing intangibles.* For transfers occurring after December 31, 1984, and before May 16, 1986, for foreign trademarks, tradenames, brandnames, and similar marketing intangibles developed by a foreign branch shall be treated as foreign goodwill or going concern value.

(e) *Effective date of certain section*—(1) *In general.* Except as specifically provided to the contrary elsewhere in these sections, §§ 1.367(a)–1T through 1.367(a)–6T apply to transfers occurring after December 31, 1984.

(2) *Private rulings.* The taxpayer may rely on a private ruling under section 367(a) received by him before June 16, 1986.

(3) *Certain indirect transfers.* Sections 1.367(a)–1T(c)(2) (i) and (iii) and 1.367(a)–1T(c)(3) apply to transfers made after June 18, 1986. For transfers made before that date, see 26 CFR § 1.367(a)–1(b) (revised as of April 1, 1986).

§ 1.367(a)–2T Exception for transfers of property for use in the active conduct of a trade or business (temporary).

(a) *In general.* Section 367(a)(1) shall not apply to property transferred to a foreign corporation if—

(1) Such property is transferred for use by that corporation in the active conduct of a trade or business outside of the United States; and

(2) The U.S. person that transfers the property complies with the reporting requirements of section 6038B and regulations thereunder.

Where these conditions are satisifed, the foreign corporate transferee of the property shall be considered to be a corporation for purposes of determining the extent to which gain or loss is required to be recognized upon the transfer pursuant to section 332, 351, 354 [reserved as to section 355 or so much of section 356 as relates to section 355], 356, or 361. Paragraph (b) of this section provides rules concerning the requirement that property be transferred for use in the active conduct of a trade or business outside of the United States, while paragraph (c) concerns the application of the requirement where the transferee itself re-transfers the property. In addition, § 1.367(a)–3T provides rules concerning the treatment of stock or securities transferred to a foreign corporation in an exchange described in section 367(a)(1), and § 1.367(a)–4T provides special rules concerning the treatment of other specified types of property. Finally, §§ 1.367(a)–5T and 1.367(a)–6T provide rules concerning certain transfers of property that are subject to section 367(a)(1) regardless of whether the property is used in the active conduct of a trade or business.

(b) *Active conduct of a trade or business outside the United States*—(1) *In general.* Property qualifies for the exception provided by this section if it is transferred to a foreign corporation for use in the active conduct of a trade or business outside of the United States. Therefore, to determine whether property is subject to the exception provided by this section, four factual determinations must be made:

(i) What is the trade or business of the transferee;

(ii) Do the activities of the transferee constitute the active conduct of that trade or business;

(iii) Is the trade or business conducted outside of the United States; and

(iv) Is the transferred property used or held for use in the trade or business?

Rules concerning these four determinations are provided in paragraphs (b) (2), (3), (4), and (5) of this section.

(2) *Trade or business.* Whether the activities of a foreign corporation constitute a trade or business must be determined under all the facts and circumstances. In general, a trade or business is a specific unified group of activities that constitute (or could constitute) an independent economic enterprise carried on for profit. For example, the activities of a foreign selling subsidiary could constitute a trade or business if they could be independently carried on for profit, even though the subsidiary acts exclusively on behalf of, and has operations fully integrated with, its parent corporation. To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. In this regard, one or more of such activities may be carried on by independent contractors under the direct control of the foreign corporation. (However, see paragraph (b)(3) of this section.) The group of activities must ordinarily include the collection of income and the payment of expenses. If the activities of a foreign corporation do not constitute a trade or business, then the exception provided by this section does not apply, regardless of the level of activities carried on by the corporation. The following activities are not considered to constitute by themselves a trade or business for purposes of this section:

(i) Any activity giving rise to expenses that would be deductible only under section 212 if the activities were carried on by an individual; or

(ii) The holding for one's own account of investments in stock, securities, land, or other property, including casual sales thereof.

(3) *Active conduct.* Whether a trade or business is actively conducted must be determined under all the facts and circumstances. In general, a corporation actively conducts a trade or business only if the officers and employees of the corporation carry out substantial managerial and operational activities. A corporation may be engaged in the active conduct of a trade or business even though incidental activities of the trade or business are carried out on behalf of the corporation by independent contractors. In determining whether the officers and employees of the corporation carry out substantial managerial and operational activities, however, the activities of independent contractors shall be disregarded. On the other hand, the officers and employees of the corporation are considered to include the officers and employees of related entities who are made available to and supervised on a day-to-day basis by, and whose salaries are paid by (or reimbursed to the lending related entity by), the transferee foreign corporation. Whether a trade or business that produces rents or royalties is actively conducted shall be determined under the principles of § 1.954–2(d)(1) (but without regard to whether the rents or royalties are received from an unrelated person). The rule of this paragraph (b)(3) is illustrated by the following example.

Example. X, a domestic corporation, and Y, a foreign corporation not related to X, transfer property to Z, a newly formed foreign corporation organized for the purpose of combining the research activities of X and Y. Z contracts all of its operational and research activities to Y for an arm's-length fee. Z's activities do not constitute the active conduct of a trade or business.

(4) *Outside of the United States.* Whether a foreign corporation conducts a trade or business outside of the United States must be determined under all the facts and circumstances. Generally, the primary managerial and operational activities of the trade or business must be conducted outside the United States and immediately after the transfer the transferred assets must be located outside the United States. Thus, the exception provided by this section would not apply to the transfer of the assets of a domestic business to a foreign corporation if the domestic business continued to operate in the United States after the transfer. In such a case, the primary operational activities of the business would continue to be conducted in the United States. Moreover, the transferred assets would be located in the United States. However, it is not necessary that every item of property transferred be used outside of the United States. As long as the primary managerial and operational activities of the trade or business are conducted outside of the United States and substantially all of the transferred assets are located outside the United States, incidental items of transferred property located in the United States may be considered to have been transferred for use in the active conduct of a trade or business outside of the United States.

(5) *Use in the trade or business.* Whether property is used or held for use

in a trade or business must be determined under all the facts and circumstances. In general, property is used or held for use in a foreign corporation's trade or business if it is—

(i) Held for the principal purpose of promoting the present conduct of the trade or business;

(ii) Acquired and held in the ordinary course of the trade or business; or

(iii) Otherwise held in a direct relationship to the trade or business. Property is considered held in a direct relationship to a trade or business if it is held to meet the present needs of that trade or business and not its anticipated future needs.

Thus, property will not be considered to be held in a direct relationship to a trade or business if it is held for the purpose of providing for future diversification into a new trade or business, future expansion of trade or business activities, future plant replacement, or future business contingencies.

(c) *Property transferred by transferee corporation*—(1) *General rule.* If a foreign corporation receives property in an exchange described in section 367(a)(1) and as part of the same transaction transfers the property to another person, then the exception provided by this section shall not apply to the initial transfer. For purposes of the preceding sentence, a subsequent transfer within six months of the initial transfer shall be considered to be part of the same transaction, and a subsequent transfer more than six months after the initial transfer may be considered to be part of the same transaction upon the application of step-transaction principles.

(2) *Exception.* Notwithstanding paragraph (c)(1) of this section, the active conduct exception provided by this section shall apply to the initial transfer if—

(i) The initial transfer is followed by one or more subsequent transfers described in section 351 or 721; and

(ii) Each subsequent transferee is either a partnership in which the preceding transferor is a general partner or a corporation in which the preceding transferor owns common stock; and

(iii) The ultimate transferee uses the property in the active conduct of a trade or business outside the United States.

(d) *Transitional rule.* Notwithstanding any other provision of this section, property shall be considered to have been transferred for use in the active conduct of a trade or business outside of the United States, if—

(1) The property was transferred after December 31, 1984, and before June 18, 1986;

(2) The property was, or would have been, considered to be transferred for use by the transferee foreign corporation in the active conduct, in any foreign country, or a trade or business, under the principles of section 3.02(1) of Revenue Procedure 68–23, 1968–1 C.B. 821; and

(3) Based on all of the facts and circumstances, it was, or would have been, determined under section 2.02 of Revenue Procedure 68–23 that tax avoidance was not one of the principal purposes of the transaction.

§ 1.367(a)–3T Treatment of transfers of stock or securities to foreign corporations (temporary).

(a) *In general.* This section provides rules concerning the transfer of stock or securities to a foreign corporation in an exchange described in section 367(a)(1). In general, a transfer of stock or securities by a U.S. person to a foreign corporation in connection with any exchange described in section 332, 351, 354 [reserved as to section 355 and so much of section 356 as relates to section 355], 356, or 361, is subject to section 367(a)(1) (and, therefore, treated as a taxable exchange) unless one of the exceptions set forth in this section applies to the transfer. Paragraph (b) of this section specifies certain transactions that are not subject to section 367(a)(1), while paragraph (c) provides rules concerning the treatment of transfers of stock or securities of domestic corporations pursuant to any exchange described in section 367(a)(1). Paragraph (d) of this section provides rules concerning the transfer of stock of a foreign corporation to another foreign corporation pursuant to section 332 or 351 [reserved as to section 355 and so much of section 356 as relates to section 355]. Finally, paragraphs (e), (f), and (g) provide detailed rules applicable to certain transfers decribed above and paragraph (h) sets forth anti-abuse rules.

(b) *Transfers to which section 367(a)(1) does not apply*—(1) *Transfers in certain reorganizations of stock or securities of foreign corporations.* If, pursuant to an exchange described in section 354, 361, or so much of section 356 as relates to section 354, a U.S. person transfers to a foreign corporation stock or securities of a foreign corporation that is a party to the reorganization, then section 367(a) shall not apply to the transfer, by reason of the operation of section 367(a)(2) and 1.367(a)–1T(b)(2)(i). Thus, section 367(a)(1) shall not apply to a transfer of stock of a foreign corporation by a U.S. person to another foreign corporation pursuant to a reorganization described in section 368(a)(1)(B) because the foreign corporation whose stock is transferred is a party to the reorganization. This result follows even though that foreign corporation may not be a party to other types of reorganizations or exchanges for which the transaction also qualifies. For rules concerning the treatment of certain transfers that are described in section 351 as well as one of the above-cited sections, see §§ 7.367(b)–4 and 7.367(b–7.

(2) *Compulsory transfers.* For rules regarding a transfer of property (including stock or securities) that is compelled by foreign government action, see § 1.367(a)–4T(f).

(c) *Transfer of stock or securities of domestic corporation*—(1) *In general.* The transfer of stock or securities of a domestic corporation to a foreign corporation (in an exchange described in section 367(a)(1)) shall be subject to section 367(a)(1) and shall therefore be treated as a taxable exchange, except in the circumstances set forth in paragraphs (c) (2), (3), (4), (5), and (6) of this section.

(2) *Active conduct of a trade or business.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a domestic corporation if—

(i) The transfer is described in paragraph (e)(2) of this section; and

(ii) The transferor files an agreement to recognize gain upon the transferee's later disposition of the transferred interest in accordance with the provisions of paragraph (g) of this section.

In general, paragraph (e)(2) of this section describes certain transfers of stock or securities for use by the transferee in the active conduct of a trade or business outside of the United States.

(3) *U.S. transferors obtain limited interest in transferee.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a domestic corporation if the transfer is described in paragraph (f) of this section. In general, paragraph (f) of this section describes transfers in which the U.S. transferors of stock or securities obtain only a limited interest in the transferee foreign corporation.

(4) *Transferor files agreement to recognize gain upon later disposition.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a domestic corporation if—

(i) Immediately after the transfer all U.S. transferors own in the aggregate less than fifty percent of both the total voting power and the total value of the stock of the transferee foreign corporation; and

(ii) The subject transferor files an agreement to recognize gain upon the transferee's later disposition of the transferred interest in accordance with the provisions of paragraph (g) of this section.

(5) *Certain transfers in connection with performance of services.* Section 367(a)(1) shall not apply to a domestic corporation's transfer of its own stock or securities in connection with the performance of services, if the transfer is considered to be to a foreign corporation solely by reason of § 1.83-6(d)(1).

(6) *Transfers pursuant to section 355 or so much of section 356 as related to section 355.* [Reserved.]

(d) *Transfer of stock or securities of foreign corporation pursuant to section 332 or 351 [reserved as to section 355 and so much of section 356 as relates to section 355]*—(1) *In general.* If a U.S. person transfers stock or securities of a foreign corporation to another foreign corporation in an exchange described in section 332 or 351 [reserved as to section 355 or so much of section 356 as relates to section 355] then section 367(a)(1) shall apply to the transfer (which is therefore treated as a taxable exchange), except in the circumstances set forth in paragraphs (d) (2), (3), (4), (5), and (6) of this section. Transfers described in section 351 that are also described in section 368(a)(1)(B) shall be subject to the rules set forth in §§ 7.367(b)-4 and 7.367(b)-7 and shall not be subject to the rules of this paragraph (d).

(2) *Active conduct of a trade or business.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a foreign corporation if—

(i) The transfer is described in paragraph (e) (2) or (3) of this section; and

(ii) The transferor files an agreement to recognize gain upon the transferee's later disposition of the transferred interest in accordance with the provisions of paragraph (g) of this section.

In general, paragraph (e) describes transfers of stock or securities for use by the transferee corporation in the active conduct of a trade or business outside of the United States.

(3) *Transfer of stock or securities of foreign corporation to another corporation organized in same country.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a foreign corporation if—

(i) The transferred corporation and the transferee corporation are created or organized under the laws of the same foreign country;

(ii) At least 50 percent of the assets used in the trade or business of the transferred corporation are located in that same foreign country;

(iii) Prior to the transfer, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of the transferred corporation was held by U.S. persons;

(iv) After the transfer, the transferee corporation holds more than 50 percent of the total combined voting power of all classes of stock entitled to vote of the transferred corporation;

(v) After the transfer, the U.S. persons that controlled the transferred corporation before the transfer hold at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the transferee corporation;

(vi) After the transfer, the transferee corporation is a controlled foreign corporation within the meaning of section 957(a); and

(vii) The transferor files an agreement to recognize gain upon the transferee's later disposition of the transferred interest in accordance with the provisions of paragraph (g) of this section.

The provisions of this paragraph (d)(3) shall apply to transfers occurring after June 16, 1986. For other transfers, see section 3.02(1)(a)(iii)(B) of Revenue Procedure 68-23.

(4) *U.S. transferors obtain limited interest in transferee.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a foreign corporation if the transfer is described in paragraph (f) of this section. In general, paragraph (f) of this section describes transfers in which the U.S. transferors of stock or securities obtain only a limited interest in the transferee foreign corporation.

(5) *Transferor files agreement to recognize gain upon later disposition.* Section 367(a)(1) shall not apply to a transfer of stock or securities of a foreign corporation if—

(i) Immediately after the transfer all U.S. transferors own in the aggregate less than fifty percent of both the total voting power and the total value of the stock of the transferee foreign corporation; and

(ii) The subject transferor files an agreement to recognize gain upon the transferee's later disposition of the transferred interest in accordance with the provisions of paragraph (g) of this section.

(6) *Transfer pursuant to section 355 or so much of section 356 as relates to section 355.* [Reserved.]

(e) *Transfer for use in the active conduct of a trade or business outside of the United States*—

(1) *In general.* Section 367(a) shall not apply to a transfer of stock or securities of a corporation if—

(i) The transfer is described in paragraph (e) (2) or (3) of this section; and

(ii) The transferor files an agreement to recognize gain upon the transferee's later disposition of the transferred interest in accordance with the provisions of paragraph (g) of this section.

(2) *Stock constituting operating asset.* A transfer of stock or securities of a foreign or domestic corporation to a foreign corporation shall be considered to be for use in the active conduct of a trade or business outside of the United States if the stock or securities are essentially operating assets in the hands of the transferor because ownership of the stock or securities grants material rights to acquire for use in the transferor's trade or business outside the United States products produced by the transferred corporation outside the United States. See *Kaiser Aluminum Chemical Corp. V. Comm'r*, 76 T.C. 325 (1981).

(3) *Consolidation of integrated business*—(i) *In general.* A transfer of stock or securities of a foreign corporation to a foreign corporation shall be considered to be for use in the active conduct of a trade or business outside of the United States if—

(A) Immediately after the transfer, the transferee foreign corporation holds more than 50 percent of the total voting power and more than 50 percent of the total value of stock of the transferred corporation; and

(B) Both immediately before and immediately after the transfer, the transferred corporation and the transferee foreign corporation constitute an integrated business in accordance with the provisions of paragraph (e)(2)(ii) of this section.

(ii) *Integrated business.* For purposes of this paragraph (e)(2), the transferred and transferee corporations shall be considered to constitute an integrated business only if—

(A) Each corporation is engaged, directly or indirectly, in substantial business operations beyond the mere provision of general managerial, financial, or similar services to the other corporation; and

(B) Either the business operations of one corporation are substantially identical to all or the principal part of the operations of the other, or the operations of the two corporations

constitute in principal part complementary and mutually interdependent steps in the production and sale or lease of a product or products or in the provision of a service. Substantial identity of business operations requires that the two corporations engage in substantially the same production (or service) and marketing processes or activities for generally the same or similar products (or services).

(f) *U.S. transferors obtain limited interest in transferee*—(1) *In general.* A transfer of stock or securities of a foreign or domestic corporation by a U.S. person to a foreign corporation shall not be subject to section 367(a)(1) if immediately after the transfer—

(i) All U.S. transferors own in the aggregate less than twenty percent of both the total voting power and the total value of the stock of the transferee foreign corporation; or

(ii)(A) All U.S. transferors own in the aggregate twenty percent or more of either the total voting power or the total value of the stock of the transferee foreign corporation, but less than fifty percent of that total voting power and that total value; and

(B) The subject U.S. transferor owns less than five percent of both the total voting power and the total value of the stock of the transferee foreign corporation.

(2) *Attribution.* Section 958 shall apply in determining the ownership of stock for purposes of this paragraph (f).

(3) *Rule not applicable to stock of holding companies.* The rule of paragraph (f)(1) of this section shall not apply if the assets of the transferred corporation consist principally of stock or securities held as portfolio investments. Stock of securities of a given entity held by the transferred corporation shall be presumed not to constitute a portfolio investment if the transferred corporation holds ten percent or more by value of the outstanding stock and securities of that entity. This presumption may be rebutted by evidence that the stock was held by the transferred corporation as a passive, portfolio investment.

(g) *Transferor's agreement to recognize gain upon later disposition by transferee*—(1) *In general.* A transfer of stock or securities shall not be subject to section 367(a)(1) if—

(i) The transferor complies with the reporting requirements of section 6038B and any regulations thereunder;

(ii) The transferor files a binding agreement to recognize gain upon the transferee corporation's later disposition of the transferred stock or securities, in accordance with the rules of this section; and

(iii) The transfer is described in paragraph (d)(3) or (e) of this section or, immediately after the transfer, all U.S. transferors own in the aggregate less than 50 percent of both the total voting power and the total value of the stock of the transferee foreign corporation.

(2) *Agreement to recognize gain: in general.* A transferor's agreement to recognize gain must be attached to, and filed by the due date of, the information return required under section 6038B.

In general, the return must be filed with the transferor's tax return for the taxable year that includes the date of the transfer. However, pursuant to § 1.6038B–1T(b)(1), returns with respect to transfers that took place prior to June 16, 1986, are not required to be filed until September 16, 1986. Therefore, an agreement to recognize gain under the rules of this section with respect to any such transfer may be timely filed until that date. The agreement must be signed under penalties of perjury by a trustee, executor, or equivalent fiduciary in the case of a trust or estate, by a responsible officer in the case of a corporation, by a debtor in possession or trustee in a bankruptcy case under Title 11, United States Code, and in the case of an individual, including a partner who is treated as a transferor by virtue of § 1.367–1T(c)(3), by the individual himself. An agreement may also be signed by an agent authorized to do so under a general or specific power of attorney. The agreement must set forth the following materials, preferably in paragraphs labeled to correspond with the subparagraphs set forth below:

(i) A statement that the document submitted constitutes the transferor's agreement to recognize gain, in accordance with the requirements of § 1.367(a)–3T(g);

(ii) A description of the stock or securities transferred, an estimate of fair market value as of the date of the transfer, and a statement of cost or other basis and any adjustments thereto;

(iii) The transferor's agreement to recognize gain, as described in subparagraph (3) of this paragraph (g);

(iv) A waiver of the period of limitations, as described in subparagraph (4) of this paragraph (g); and

(v) An agreement to file with the transferor's tax returns for the 5 years following the year of the transfer a certification and waiver as described in subparagraph (5) of this paragraph (g).

(3) *Terms of agreement*—(i) *Recognition of gain.* The transferor must agree that if, prior to the close of the fifth taxable year following the taxable year of the transfer, the transferee foreign corporation disposes of the transferred stock in any manner (other than in a liquidation of the transferred corporation), then by the 90th day thereafter the transferor will file an amended return for the year of the transfer and recognize thereon the gain realized but not recognized upon the initial transfer. Such gain shall be computed as if there had been a sale of the stock or securities at fair market value at the time of the initial transfer. Net operating losses or credits against tax that were available in the year of the initial transfer and that have expired unused may be applied (respectively) against any gain recognized or tax owed by reason of this provision, but no other adjustments shall be made with respect to any other items of income or deduction in the year of the transfer or other years. If additional tax is required to be paid, then interest must be paid on that amount at the rates determined under section 6621, with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year of the transfer and the date on which the additional tax for that year is paid. For special rules applicable to nonrecognition transfers, see subparagraph (7) of this paragraph (g). For special rules applicable when a U.S. transferor that enters into an agreement under this paragraph (g) ceases to exist, see subparagraph (9) of this paragraph (g).

(ii) *Partial disposition.* If the transferee foreign corporation disposes of only a portion of the stock or securities of the transferred corporation, then the U.S. transferor shall be required to recognize a proportionate amount of the gain realized but not recognized upon the initial transfer. The proportion required to be recognized shall be determined by reference to the fair market value of the stock or securities disposed of an the fair market value of those retained. The rule of this paragraph (g)(3)(ii) is illustrated by the following example.

Example. A is a U.S. citizen who owns 100 percent of the outstanding stock of foreign corporation X. In a transaction described in section 351, A exchanges his stock in X for 25 percent of the outstanding stock of foreign corporation Y. A submits an agreement under the rules of this section to recognize gain upon a later disposition. In the following year, Y disposes of 50 percent of the fair market value of the stock of X. Therefore, A is required to recognize 50 percent of the gain he realized but did not recognize upon the initial transfer of the shares of X.

(iii) *Disposition of assets by transferred corporation.* For purposes of paragraph (g)(3) (i) and (ii) of this section, a disposition not in the ordinary course of business by the transferred corporation of all or a substantial portion of its assets (other than a distribution, including a liquidating distribution, to the transferee foreign corporation) shall be treated as a disposition by the transferee foreign corporation of a proportionate amount of stock of the transferred corporation.

(iv) *Disposition of assets after distribution by transferred corporation.* For purposes of paragraph (g)(3) (i) and (ii) of this section, a disposition not in the ordinary course of business by the transferee foreign corporation of all or a substantial portion of the assets received by it in a distribution, including a liquidating distribution, from the transferred corporation shall be treated as a disposition by the transferee foreign corporation of a proportionate amount of stock of the transferred corporation.

(4) *Waiver of period of limitation.* The transferor must file a waiver of the period of limitation on assessment of tax upon the gain realized on the transfer. The waiver shall be executed on such forms as are prescribed therefor by the Commissioner and shall extend the period for assessment of such tax to a date not earlier than the close of the eighth taxable year following the taxable year of the transfer. Such waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person authorized to sign the agreement pursuant to the provisions of paragraph (g)(2) of this section.

(5) *Annual certification and waiver*—(i) *Certification.* The transferor must agree to file with its income tax return for each of the five taxable years following the taxable year of the transfer a certification that the stock or securities transferred have not been disposed by the transferee in a transaction that is considered to be a disposition for purposes of this paragraph. If either a disposition qualifying under paragraph (g)(1) of this section or a nonrecognition transfer subject to paragraph (g)(7) of this section has occurred, the transferor's certification must provide the information required under the rules of the subject paragraph. The annual certification pursuant to this paragraph (g)(5) must be signed under penalties of perjury by a person authorized to sign the agreement pursuant to the provisions of paragraph (g)(2) of this section. The certification must identify the transfer with respect to which it is given by setting forth the date of the transfer and a description of the stock or securities transferred. If a taxpayer has made more than one transfer subject to the rules of this paragraph (g), the certifications for those transfers may be combined in a single document, but each transfer must be separately identified.

(ii) *Waiver.* The transferor must agree to file with its income tax return for each of the eight taxable years following the taxable year of the transfer a waiver of the period of limitations on assessment as described in paragraph (g)(4) of this section. For the rule extending the period of limitations upon a failure to comply with the reporting requirements of section 6038B and regulations thereunder, see § 1.6038B–1T(f)(1)(iii).

(6) *Warranty of information regarding disposition.* The transferor must warrant that arrangements have been made in connection with the transfer of stock or securities to ensure that the transferor will be informed of any subsequent disposition of stock, securities, or assets that would require the recognition of gain under the agreement.

(7) *Treatment of nonrecognition transfers.* If, during the period the agreement is in force, the transferee foreign corporation disposes of the stock or securities of the transferred corporation in a transaction on which gain or loss would not be required to be recognized under U.S. income tax principles, then the U.S. transferor shall not be required to recognize gain under paragraph (g)(3)(i) of this section, provided that the U.S. transferor complies with the requirements of subdivisions (i), (ii), and (iii) of this paragraph (g)(7).

(i) The U.S. transferor must provide a notice of the transfer with its next annual certification under paragraph (g)(5) of this section, setting forth—

(A) A description of the transfer;

(B) The applicable nonrecognition provision; and

(C) The name, address, and identifying number (if any) of the new transferee of the stock or securities of the transferred corporation.

(ii) The U.S. transferor must provide a new agreement to recognize gain (in accordance with the rules of paragraph (g) (2) and (3)(i) of this section) if, prior to the close of the fifth taxable year following the taxable year of the initial transfer, either—

(A) The initial transferee foreign corporation disposes of the interest which it received in exchange for the stock or securities of the transferred corporation (other than in a disposition which itself qualifies under the rules of this paragraph (g)(7)); or

(B) The person that obtained the stock or securities of the transferred corporation disposes of that stock or those securities (other than in a disposition which itself qualifies under the rules of this paragraph (g)(7)).

If a disposition that triggers the recognition of gain under the rules of this paragraph is only a partial disposition of the property, then the U.S. transferor shall be required to recognize a proportionate amount of the gain realized but not recognized upon the initial transfer. The proportion required to be recognized shall be determined by reference to the fair market value of the stock or securities disposed of and the fair market value of those retained as of the date of the disposition.

(iii) The U.S. transferor must warrant that arrangements have been made, in connection with the nonrecognition transfer, ensuring that the U.S. transferor will be informed of any subsequent disposition with respect to which recognition of gain would be required under the agreement.

(8) *Special rules for indirect transfers*—(i) *Transfers covered.* If a U.S. person that holds an interest in an entity is considered to make an indirect transfer of stock or securities described in section 367(a) under the provisions of § 1.367(a)–1T(c), then the rules of this paragraph (g)(8) shall apply to the transfer.

(ii) *Applicable rules.* For purposes of this paragraph (g), the foreign corporation that issued the stock or securities received by the U.S. transferor shall be considered to be the transferee foreign corporation. Any agreement entered into under this paragraph (g) with respect to such a transfer shall require the recognition of gain by the transferor if—

(A) That transferee foreign corporation disposes of the corporation that it controls (regardless of whether that corporation is the transferred corporation itself or another corporation that obtained the stock, securities, or assets of the transferred corporation); or

(B) The corporation that holds the assets of the transferred corporation disposes of all or a substantial portion of those assets other than in the ordinary course of business.

The rules of paragraph (g)(7) of this section shall apply if gain or loss would

not be required to be recognized under U.S. income tax principles with respect to such a transfer.

(9) *U.S. transferor goes out of existence.* If a U.S. corporation, trust, or estate that has entered into an agreement under this paragraph (g) goes out of existence, and that corporation, trust, or estate is not required to recognize gain under section 367 upon its liquidating transfer of the stock of the transferee foreign corporation, or if an individual transferor that has entered into an agreement under this paragraph (g) dies, then either—

(i) The person winding up the affairs of the transferor must retain assets to meet any possible liability of the transferor under the agreement;

(ii) The person winding up the affairs of the transferor must provide security under subparagraph (10) of this paragraph (g) for any possible liability of the transferor under the agreement; or

(iii) Each person that obtains the stock of the transferee foreign corporation from the transferor must enter into an agreement under this paragraph (g) having the same terms as the agreement entered into by the transferor (but only with respect to that person's proportionate share of the gain realized but not recognized upon the transferor's initial transfer of stock to the transferee foreign corporation).

(10) *Use of security.* The transferor may be required to furnish a bond or other security that satisfies the requirements of § 301.7101–1 if the district director determines that such security is necessary to ensure the payment of any tax upon the gain realized upon the transfer. Such bond or security will generally be required only if the stock or securities transferred are the principal asset of the tranferor and the director has reason to believe that a disposition of the stock or securities may be contemplated. In addition, if a tranferor corporation, trust, or estate ceases to exist, or if an individual transferor dies, then the person winding up the affairs of the transferor (such as a trustee in bankruptcy or an executor) may choose to supply security pursuant to paragraph (g)(9) of this section for the performance of the transferor's obligations under an agreement entered into under this paragraph (g).

(11) *Failure to comply.* If a person that has entered into an agreement under this paragraph (g) fails at any time to comply in any material respect with the requirements of this section or with the terms of any agreement submitted pursuant thereto, then the rule of paragraph (g)(1) of this section shall not apply. Thus, the initial transfer of the stock or securities will become subject to section 367(a)(1) (unless otherwise excepted under the rules of this section) and will be treated as a taxable exchange in the year of the initial transfer. Such a material failure to comply shall extend the period for assessment of tax until three years after the date on which the Internal Revenue Service receives actual notice of the failure to comply.

(12) *Availability of forms.* Any agreement, certification, waiver, or other document required to be filed pursuant to the provisions of this paragraph (g) shall use such forms as may be prescribed therefore by the Commissioner (or a similar statement providing the same information). Until such time as forms are published, all necessary filings may be accomplished by providing the required information to the Service in accordance with the rules of this paragraph.

(13) *Basis adjustments*—(i) If a U.S. transferor is required to recognize gain under this paragraph (g), then in determining for U.S. income tax purposes any gain or loss recognized by the transferee foreign corporation upon its subsequent dispositon of the transferred stock or securities, its basis in such interests shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount).

(ii) If a U.S. transferor is required to recognize gain under this paragraph (g), then the U.S. transferor's basis in the stock of the transferee foreign corporation shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount).

(h) *Anti-abuse rules*—(1) *Coordination with Subpart F.* Notwithstanding the provisions of paragraph (d) (2) or (3) of this section, section 367(a)(1) shall apply to a transfer of stock or securities of a foreign corporation if either:

(i) The transferred corporation was a controlled foreign corporation within the meaning of section 957(a), and the transferee corporation is not a controlled foreign corporation; or

(ii) Both the transferred and the transferee corporations are controlled foreign corporations within the meaning of section 957(a) but the transferor was a U.S. shareholder of the transferred corporation within the meaning of section 951(b) and is not a U.S. shareholder of the transferee corporation, within the meaning of section 951(b).

However, section 367(a)(1) shall not apply to such a transfer if the transferor enters into an agreement to recognize gain under paragraph (g) of this section.

(2) *Incorporation of property to avoid section 367(a)(1).* Notwithstanding any other provision of this section, section 367(a)(1) shall apply to a transfer of stock or securities of a domestic corporation if:

(i) The domestic corporation holds property that would be subject to section 367(a)(1) if it were transferred directly to a foreign corporation;

(ii) A U.S. person transferred that property to the domestic corporation in a transaction on which gain or loss was not required to be recognized, and

(iii) One of the principal purposes of the incorporation and transfer was avoidance of the provisions of section 367(a).

A transfer of property shall be presumed to have been made to avoid the provisions of section 367(a) if the transfer to the domestic corporation occurred less than two years before the transfer of the stock of the domestic corporation to the foreign corporation, or if it otherwise appears that the transfer of stock to the foreign corporation was planned or contemplated at the time of the transfer of the property to the domestic corporation. The presumption created by the previous sentence may be rebutted by evidence establishing that avoidance of the provisions of section 367(a) was not one of the principal purposes of the incorporation and subsequent transfer.

§ 1.367 (a)–4T Special rules applicable to specified transfers of property (temporary).

(a) *In general.* This section provides special rules for determining the applicability of section 367(a)(1) to specified transfers of property. Paragraph (b) of this section provides a special rule requiring the recapture of depreciation upon the transfer abroad of property previously used in the United States. Paragraphs (c) through (f) of this section provide rules for determining whether certain types of property are transferred for use in the active conduct of a trade or business outside of the United States. Paragraph (g) excepts certain transfers to FSCs from the operation of section 367(a)(1). The treatment of any transfer of property described in this section shall be determined exclusively under the rules of this section.

(b) *Depreciated property used in the U.S.*—(1) *In general.* If a U.S. person transfers U.S. depreciated property (as defined in paragraph (b)(2) of this section) to a foreign corporation in an exchange described in section 367(a)(1),

then that person shall include in its gross income for the taxable year in which the transfer occurs ordinary income equal to the gain realized that would have been includible in the transferor's gross income as ordinary income under section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a), whichever is applicable, if at the time of the transfer the transferor had sold the property at its fair market value. Recapture of depreciation under this paragraph (b) shall be required regardless of whether any exception to section 367(a)(1) (such as the exception for property transferred for use in the active conduct of a foreign trade or business) would otherwise apply to the transfer. However, any applicable exception shall apply with respect to realized gain that is not included in ordinary income pursuant to this paragraph (b).

(2) *U.S. depreciated property.* U.S. depreciated property subject to the rules of this paragraph (b) is any property that—

(i) Is either mining property (as defined in section 617(f)(2)), section 1245 property (as defined in section 1245(a)(3)), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)(2)), or oil, gas, or geothermal property (as defined in section 1254(a)(3)); and

(ii) Has been used in the United States or has qualified as section 38 property by virtue of section 48(a)(2)(B) prior to its transfer.

(3) *Property used within and without the U.S.* If U.S. depreciated property has been used partly within and partly without the United States, then the amount required to be included in ordinary income pursuant to this paragraph (b) shall be reduced to an amount determined in accordance with the following formula:

$$\text{Full recapture amount} \times \frac{\text{U.S. use}}{\text{Total use}}$$

For purposes of the above fraction, the "full recapture amount" is the amount that would otherwise be included in the transferor's income under paragraph (b)(1) of this section. "U.S. use" is the number of months that the property either was used within the United States or qualified as section 38 property by virtue of section 48(a)(2)(B), and was subject to depreciation by the transferor or a related person. "Total use" is the total number of months that the property was used (or available for use), and subject to depreciation, by the transferor or a related person. For purposes of this paragraph (b)(3), property shall not be considered to have been in use outside of the United States during any period in which such property was, for purposes of section 48 or 168, treated as property not used predominantly outside the United States pursuant to the provisions of section 48(a)(2)(B). For purposes of this paragraph (b)(3) the term "related person" shall have the meaning set forth in § 1.367(d)–1T(h).

(4) *Transfer followed by section 338 election.* For purposes of paragraph (b)(1) of this section, property that is transferred by a U.S. corporation to a foreign corporation in a transfer described in the section 367(a)(1) shall be treated as U.S. depreciated property at the time of the transfer if—

(i) The transferee foreign corporation was a member of the U.S. transferor's affiliated group (determined without regard to the exceptions contained in section 1504(b)) at the time of the transfer; and

(ii) Within three years after the transfer, a purchasing corporation files an express election under section 338(g) for any member of the U.S. corporation's affiliated group (determined without regard to the exceptions contained in section 1504(b)) and files a regular exclusion election under § 1.338–5T(c)(2)(v) by virtue of which the transferee foreign corporation is excluded from the status of target affiliate.

(5) *Effective date.* This paragraph (b) applies to transfers occurring on or after June 16, 1986.

(c) *Property to be leased*—(1) *Leasing business of transferee.* Tangible property transferred to a foreign corporation that will be leased to other persons by the foreign corporation shall be considered to be transferred for use in the active conduct of a trade or business outside of the United States only if—

(i) The transferee's leasing of the property constitutes the active conduct of a leasing business;

(ii) The lessee of the property is not expected to, and does not, use the property in the United States; and

(iii) The transferee has need for substantial investment in assets of the type transferred.

The active conduct of a leasing business requires that the employees of the foreign corporation perform substantial marketing, customer service, repair and maintenance, and other substantial operational activities with respect to the transferred property outside of the United States. Tangible property subject to the rules of this paragraph (c) includes real property located outside of the United States. The rules of § 1.367(a)–5T(b) shall apply to transfers of property described in that section regardless of satisfaction of the rules of this paragraph (c).

(2) *De minimis leasing by transferee.* Tangible property transferred to a foreign corporation that will be leased to other persons by the foreign corporation and that does not satisfy the conditions of paragraph (b)(1) of this section shall, nevertheless, be considered to be transferred for use in the active conduct of a trade or business if either—

(i) The property transferred will be used by the transferee foreign corporation in the active conduct of a trade or business but will be leased during occasional brief periods when the property would otherwise be idle, such as an airplane leased during periods of excess capacity; or

(ii) The property transferred is real property located outside the United States and—

(A) The property will be used primarily in the active conduct of a trade or business of the transferee foreign corporation; and

(B) Not more than ten percent of the square footage of the property will be leased to others.

(d) *Property to be sold.* Property shall not be considered to be transferred for use in the active conduct of a trade or business and a transfer of stock or securities shall not be excepted from section 367(a)(1) under the rules of § 1.367(a)–3T if, at the time of the transfer, it is reasonable to believe that, in the reasonably foreseeable future, the transferee will sell or otherwise dispose of any material portion of the transferred stock, securities, or other property other than in the ordinary course of business.

(e) *Oil and gas working interests*—(1) *In general.* A working interest in oil and gas properties shall be considered to be transferred for use in the active conduct of a trade or business if—

(i) The transfer satisfies the conditions of paragraph (e)(2) of this section;

(ii) At the time of the transfer, the transferee has no intention to farmout or otherwise transfer any part of the transferred working interest; and

(iii) During the first three years after the transfer there are no farmouts or other transfers of any part of the transferred working interest as a result of which the transferee retains less than a 50 percent share of the transferred working interest.

(2) *Active use of working interest.* Working interests in oil and gas properties shall be considered to be transferred for use in the active conduct of a trade or business if—

(i) The transferor is regularly and substantially engaged in exploration for and extraction of minerals, either directly or through working interests in joint ventures, other than by reason of the property that is transferred;

(ii) The terms of the working interest transferred were actively negotiated among the joint venturers;

(iii) The working interest transferred constitutes at least a five percent working interest;

(iv) Prior to and at the time of the transfer, through its own employees or officers, the transferor was regularly and actively engaged in—

(A) Operating the working interest, or

(B) Analyzing technical data relating to the activities of the venture;

(v) Prior to and at the time of the transfer, through its own employees or officers, the transferor was regularly and actively involved in decisionmaking with respect to the operations of the venture, including decisions relating to exploration, development, production, and marketing; and

(vi) After the transfer, the transferee foreign corporation will for the foreseeable future satisfy the requirements of subdivisions (iv) and (v) of this paragraph (d)(2).

(3) *Start-up operations.* Working interests in oil and gas properties that do not satisfy the requirements of paragraph (e)(2) of this section shall, nevertheless, be considered to be transferred for use in the active conduct of a trade or business if—

(i) The working interest was acquired by the transferor immediately prior to the transfer and for the specific purpose of transferring it to the transferee foreign corporation;

(ii) The requirements of paragraph (e)(2) (ii) and (iii) of this section are satisfied; and

(iii) The transferee foreign corporation will for the foreseeable future satisfy the requirements of paragraph (e)(2) (iv) and (v) of this section.

(4) *Other applicable rules.* Oil and gas interests not described in this paragraph (e) may nonetheless qualify for the exception to section 367(a)(1) contained in § 1.367(a)–2T, relating to transfers of property for use in the active conduct of a trade or business outside of the United States. However, a mere royalty interest in oil and gas properties will not be treated as transferred for use in the active conduct of a trade or business outside the United States. Moreover, a royalty or similar interest that constitutes intangible property will be subject to the rules of § 1.367(d)–1T, relating to transfers of intangible property.

(f) *Compulsory transfers.* Property shall be presumed to be transferred for use in the active conduct of a trade or business outside of the United States, if—

(1) The property was previously in use in the country in which the transferee foreign corporation is organized; and

(2) The transfer is either:

(i) Legally required by the foreign government as a necessary condition of doing business in that country; or

(ii) Compelled by a genuine threat of immediate expropriation by the foreign government.

(g) *Relationship to other sections.* The rules of §§ 1.367(a)–5T, 1.367(a)–6T, and 1.367(d)–1T apply to transfers of property whether or not the property is transferred for use in the active conduct of a trade or business outside the United States. See § 1.367(d)–1T(g)(2)(ii) for a special election with respect to compulsory transfers of intangible property.

(h) *Transfers of certain property to FSCs*—(1) *In general.* The provisions of section 367 (a) and (d) and the regulations thereunder shall not apply to a transfer of property by a U.S. person to a foreign corporation that constitutes a FSC, as defined in section 922(a), if—

(i) The transferee FSC uses the property to generate exempt foreign trade income, as defined in section 923(a);

(ii) The property is not excluded property, as defined in section 927(a)(2); and

(iii) The property consists of a corporate name or tangible property that is appropriate for use in the operation of a FSC office.

(2) *Exception.* The general rule in paragraph (g)(1) of this section shall not apply if, within three years after the original transfer, the original transferee FSC (or a subsequent transferee FSC) disposes of the property other than in the ordinary course of business or through a transfer to another FSC. Thus, the U.S. transferor may recognize gain in the taxable year in which the original transfer occurred through the application of section 367 and the regulations thereunder.

§ 1.367(a)–5T Property subject to section 367(a)(1) regardless of use in trade or business (temporary).

(a) *In general.* Section 367(a)(1) shall apply to a transfer of property described in this section regardless of whether the property is transferred for use in the active conduct of a trade or business. Certain exceptions to the operation of this rule are provided in this section, and a special gain limitation rule is provided in paragraph (e). A transfer of property described in this section is subject to section 367(a)(1) even if the transfer is a compulsory transfer described in § 1.367(a)–4T(f).

(b) *Inventory, etc.* Regardless of use in an active trade or business, section 367(a)(1) shall apply to the transfer of—

(1) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; and

(2) A copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(i) A taxpayer whose personal efforts created such property;

(ii) In the case of a letter, memorandum, or similar property, a taxpayer from whom such property was prepared or produced; or

(iii) A taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subdivision (i) or (ii) of this paragraph (b)(2).

For purposes of this section, the term "inventory" includes raw materials and supplies, partially completed goods, and finished products.

(c) *Installment obligations, etc.* Regardless of use in an active trade or business, section 367(a)(1) shall apply to the transfer of installment obligations, accounts receivable, or similar property, but only to the extent that the principal amount of any such obligation has not previously been included by the taxpayer in its taxable income.

(d) *Foreign currency, etc.*—(1) *In general.* Regardless of use in an active trade or business, section 367(a)(1) shall apply to the transfer of foreign currency or other property denominated in foreign currency, including installment obligations, futures contracts, forward contracts, accounts receivable, or any other obligation entitling its payee to receive payment in a currency other than U.S. dollars.

(2) *Exception for certain obligations.* If transferred property denominated in a foreign currency—

(i) Is denominated in the currency of the country in which the transferee foreign corporation is organized; and

(ii) Was acquired in the ordinary course of the business of the transferor that will be carried on by the transferee foreign corporation,

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then section 367(a)(1) shall apply to the transfer only to the extent that gain is required to be recognized with respect to previously realized income reflected in installment obligations subject to paragraph (c) of this section. The rule of this paragraph (d)(2) shall not apply to transfers of foreign currency.

(3) *Limitation of gain required to be recognized.* If section 367(a)(1) applies to a transfer of property described in this paragraph, then the gain required to be recognized shall be limited to—

(i) The gain realized upon the transfer of property described in this paragraph (d), minus

(ii) Any loss realized as part of the same transaction upon the transfer of property described in this paragraph (d). This limitation applies in lieu of the rule in § 1.367(a)–1T(b)(1). No loss shall be recognized with respect to property described in this paragraph (d).

(e) *Intangible property.* Regardless of use in an active trade or business, a transfer of intangible property pursuant to section 332 shall be subject to section 367(a)(1), unless it constitutes foreign goodwill or going concern value, as defined in § 1.367(a)–1T(d)(5)(iii). For rules concerning transfers of intangible property pursuant to section 351 or 361, see section 367(d) and § 1.367(d)–1T.

(f) *Leased tangible property.* Regardless of use in an active trade or business, section 367(a)(1) shall apply to a transfer of tangible property with respect to which the transferor is a lessor at the time of the transfer, unless—

(1) With respect to property that will not be leased by the transferee to third persons, the transferee was the lessee of the property at the time of the transfer; or

(2) With respect to property that will be leased by the transferee to third persons, the transferee satisfies the conditions set forth in § 1.367(a)–4T(c)(1) or (2).

§ 1.367(a)–6T Transfer of foreign branch with previously deducted losses (temporary).

(a) *In general.* This section provides special rules relating to the transfer of the assets of a foreign branch with previously deducted losses. Paragraph (b) of this section provides generally that such losses must be recaptured by the recognition of the gain realized on the transfer. Paragraph (c) of this section sets forth rules concerning the character of, and limitations on, the gain required to be recognized. Paragraph (d) of this section defines the term "previously deducted losses." Paragraph (e) of this section describes certain reductions that are made to the previously deducted losses before they are taken into income under this section. Finally, paragraph (g) of this section defines the term "foreign branch."

(b) *Recognition of gain required*—(1) *In general.* If a U.S. person transfers any assets of a foreign branch to a foreign corporation in an exchange described in section 367(a)(1), then the transferor shall recognize gain equal to—

(i) The sum of the previously deducted branch ordinary losses as defined and reduced in paragraphs (d) and (e) of this section; and

(ii) The sum of the previously deducted branch capital losses as defined and reduced in paragraphs (d) and (e) of this section.

(2) *No active conduct exception.* The rules of this paragraph (b) shall apply regardless of whether the assets of the foreign branch are transferred for use in the active conduct of a trade or business outside the United States.

(c) *Special rules concerning gain recognized*—(1) *Character and source of gain.* The gain described in paragraph (b)(1)(i) of this section shall be treated as ordinary income of the transferor, and the gain described in paragraph (b)(1)(ii) of this section shall be treated as long-term capital gain of the transferor. Gain that is recognized pursuant to the rules of this section shall be treated as income from sources outside the United States. Such recognized gain shall be treated as foreign oil and gas extraction income (as defined in section 907) in the same proportion that previously deducted foreign oil and gas extraction losses bore to the total amount of previously deducted losses.

(2) *Gain limitation.* For a rule limiting the amount of gain required to be recognized under section 367(a) upon any transfer of property to a foreign corporation, including the transfer of assets of a foreign branch with previously deducted losses, see § 1.367(a)–1T(b)(3).

(3) *Foreign goodwill and going concern value.* For purposes of this section, the assets of a foreign branch shall include foreign goodwill and going concern value related to the business of the foreign branch, as defined in § 1.367(a)–1T(d)(5)(iii). Thus, gain realized upon the transfer of the foreign goodwill or going concern value of a foreign branch to a foreign corporation will be taken into account in computing the limitation on loss recapture under paragraph (c)(2) of this section.

(4) *Transfers of certain intangible property.* Gain realized on the transfer of intangible property (computed with reference to the fair market value of the intangible property as of the date of the transfer) that is an asset of a foreign branch shall be taken into account in computing the limitation on loss recapture under paragraph (c)(2) of this section. For rules relating to the crediting of gain recognized under this section against income deemed to arise by operation of section 367(d), see § 1.367(d)–1T(g)(3).

(d) *Previously deducted losses*—(1) *In general.* This paragraph (d) provides rules for determining, for purposes of paragraph (b)(1) of this section, the previously deducted losses of a foreign branch any of whose assets are transferred to a foreign corporation in an exchange described in section 367(a)(1). Initially, the two previously deducted losses of a foreign branch for a taxable year are the total ordinary loss ("previously deducted branch ordinary loss") and the total capital loss ("previously deducted branch capital loss") that were realized by the foreign branch in that taxable year (a "branch loss year") prior to the transfer and that were or will be reflected on a U.S. income tax return of the transferor. The previously deducted branch ordinary loss for each branch loss year is reduced by expired net ordinary losses under paragraph (d)(2) of this section, while the previously deducted capital loss for each loss year is reduced by expired net capital losses under paragraph (d)(3) of this section. For each branch loss year, the remaining previously deducted branch ordinary loss and the remaining previously deducted branch capital loss are then reduced, proceeding from the first branch loss year to the last branch loss year, to reflect expired foreign tax credits under paragraph (d)(4) of this section. The reductions are made in the order of the taxable years in which the foreign tax credits arose. Finally, similar reductions are made to reflect expired investment credits under paragraph (d)(5) of this section.

(2) *Reduction by expired net ordinary loss*—(i) *In general.* The previously deducted branch ordinary loss for each branch loss year shall be reduced under this paragraph (d)(2) by the amount of any expired net ordinary loss with respect to that branch loss year. Expired net ordinary losses arising in years other than the branch loss year shall reduce the previously deducted branch ordinary loss for the branch loss year only to the extent that the previously deducted branch ordinary loss exceeds the net operating loss, if any, incurred by the transferor in the branch loss year. The previously deducted branch ordinary losses shall be reduced proceeding from the first branch loss year to the last branch loss year. For each branch loss

year, expired net operating losses shall be applied to reduce the previously deducted branch ordinary loss for that year in the order in which the expired net ordinary losses arose.

(ii) *Existence of expired net ordinary loss.* An expired net ordinary loss exists with respect to a branch loss year to the extent that—

(A) The transferor incurred a net operating loss (within the meaning of section 172(c));

(B) That net operating loss arose in the branch loss year or was available for carryover or carryback to the branch loss year under section 172(b)(1);

(C) That net operating loss has neither given rise to a net operating loss deduction (within the meaning of section 172(a)) for any taxable year prior to the year of the transfer, nor given rise to a reduction of any previously deducted branch ordinary loss (pursuant to paragraph (d)(2) of this section) of any foreign branch of the transferor upon a previous transfer to a foreign corporation; and

(D) The period during which the transferor may claim a net operating loss deduction with respect to that net operating loss has expired.

(3) *Reduction by expired net capital loss*—(i) *In general.* The previously deducted branch capital loss for each branch loss year shall be reduced under this paragraph (d)(3) by the amount of any expired net capital loss with respect to that branch loss year. Expired net capital losses arising in years other than the branch loss year shall reduce the previously deducted branch capital loss for the branch loss year only to the extent that the previously deducted branch capital loss exceeds the net capital loss, if any, incurred by the transferor in the branch loss year. The previously deducted branch capital losses shall be reduced proceeding from the first branch loss year to the last branch loss year. For each branch loss year, expired net capital losses shall be applied to reduce the previously deducted branch capital loss for that year in the order in which the expired net capital losses arose.

(ii) *Existence of expired net capital loss.* An expired net capital loss exists with respect to a branch loss year to the extent that—

(A) The transferor incurred a net capital loss (within the meaning of section 1222(10));

(B) That net capital loss arose in the branch loss year or was available for carryover or carryback to the branch loss year under section 1212;

(C) That net capital loss has neither been allowed for any taxable year prior to the year of the transfer, nor given rise to a reduction of any previously deducted branch capital loss (pursuant to paragraph (c)(3) of this section) of any foreign branch of the transferor upon any previous transfer to a foreign corporation; and

(D) The period during which the transferor may claim a capital loss deduction with respect to that net capital loss has expired.

(4) *Reduction for expired foreign tax credit*—(i) *In general.* The previously deducted branch ordinary loss and the previously deducted branch capital loss for each branch loss year remaining after the reductions described in paragraph (d) (2) and (3) of this section shall be further reduced under this paragraph (d)(4) proportionately by the amount of any expired foreign tax credit loss equivalent with respect to that branch loss year. The previously deducted branch losses shall be reduced proceeding from the first branch loss year to the last branch loss year. For each branch loss year, expired foreign tax credit loss equivalents shall be applied to reduce the previously deducted branch loss for that year in the order in which the expired foreign tax credits arose.

(ii) *Existence of foreign tax credit loss equivalent.* A foreign tax credit loss equivalent exists with respect to a branch loss year if—

(A) The transferor paid, accrued, or is deemed under section 902 or 960 to have paid creditable foreign taxes in a taxable year;

(B) The creditable foreign taxes were paid, accrued, or deemed paid in the branch loss year or were available for carryover or carryback to the branch loss year under section 904(c);

(C) No foreign tax credit with respect to the foreign taxes paid, accrued, or deemed paid has been taken because of the operation of section 904(a) or similar limitations provided by the Code or an applicable treaty, and such taxes have not given rise to a reduction (pursuant to this paragraph (d)(5)) of any previously deducted branch loss of the foreign branch for a prior taxable year or of any previously deducted branch losses of any foreign branch of the transferor upon a prior transfer to a foreign corporation; and

(D) The period during which the transferor may claim a foreign tax credit for the foreign taxes paid, accrued, or deemed paid has expired.

(iii) *Amount of foreign tax credit loss equivalent.* The amount of the foreign tax credit loss equivalent for the branch loss year with respect to the creditable foreign taxes described in paragraph (d)(4)(ii) of this section is the amount of those creditable foreign taxes divided by the highest rate of tax to which the transferor was subject in the loss year.

(5) *Reduction for expired investment credits*—(i) *In general.* The previously deducted branch ordinary loss and the previously deducted branch capital loss for each branch loss year shall be further reduced under this paragraph (d)(5) proportionately by the amount of any expired investment credit loss equivalent with respect to that branch year. The previously deducted branch losses shall be reduced proceeding from the first branch loss year to the last branch loss year. For each branch loss year, expired investment credit loss equivalents shall be applied to reduce the previously deducted branch loss for that year in the order in which the expired investment credits were earned.

(ii) *Existence of investment credit loss equivalent.* An investment credit loss equivalent exists with respect to a branch loss year if—

(A) The transferor earned an investment credit (within the meaning of section 46(a)) in a taxable year;

(B) The investment credit was earned in the branch loss year or was available for carryover or carryback to the branch loss year under section 39;

(C) The investment credit earned by the transferor in the credit year has been denied by section 38(a) or by similar provisions of the Code and has not given rise to a reduction (pursuant to this paragraph (d)(5)) of any previously deducted branch loss of the foreign branch for a preceding taxable year or of the previously deducted losses of any foreign branch of the transferor upon any previous transfer to a foreign corporation; and

(D) The period during which the transferor may claim the investment credit has expired.

(iii) *Amount of investment tax credit loss equivalent.* The amount of the investment credit loss equivalent for the branch loss year with respect to the investment credit described in paragraph (d)(5)(ii) of this section is 85 percent of the amount of that investment credit divided by the highest rate of tax to which the transferor was subject in the loss year.

(e) *Amounts that reduce previously deducted losses subject to recapture*—(1) *In general.* This paragraph (e) describes five amounts that reduce the sum of the previously deducted branch ordinary losses and the sum of the previously deducted branch capital losses before they are taken into income under paragraph (b) of this section. Amounts representing ordinary income shall be applied to reduce first the sum of the previously deducted branch

ordinary losses to the extent thereof, and then the sum of the previously deducted branch capital losses to the extent thereof. Similarly, amounts representing capital gains shall be applied to reduce first the sum of the previously deducted branch capital losses and then the sum of the previously deducted branch ordinary losses.

(2) *Taxable income.* The previously deducted losses shall be reduced by any taxable income of the foreign branch recognized through the close of the taxable year of the transfer, whether before or after any taxable year in which losses were incurred.

(3) *Amounts currently recaptured under section 904(f)(3).* The previously deducted losses shall be reduced by the amount recognized under section 904(f)(3) on account of the transfer.

(4) *Gain recognized under section 367(a).* The previously deducted branch losses shall be reduced by any gain recognized pursuant to section 367(a)(1) (other than by reason of the provisions of this section) upon the transfer of the assets of the foreign branch to the foreign corporation.

(5) *Amounts previously recaptured under section 904(f)(3).*—(i) *In general.* The previously deducted branch losses shall be reduced by the portion of any amount recognized under section 904(f)(3) upon a previous transfer of property that was attributable to the losses of the foreign branch, provided that the amount did not reduce any gain otherwise required to be recognized under section 367(a)(3)(C) and this section (or Revenue Ruling 78-201, 1978-1 C.B. 91).

(ii) *Portion attributable to the losses of the foreign branch.*—(A) *Branch property.* The full amount recognized under section 904(f)(3) upon a previous transfer of property of the branch shall be treated as attributable to the losses of the foreign branch.

(B) *Non-branch property.* The portion of the amount previously recognized under section 904(f)(3) upon a transfer of non-branch property that was attributable to the losses of the foreign branch shall be the sum, over the taxable years in which the transferor sustained an overall foreign loss some portion of which was recaptured on the disposition, of the recaptured portions of those overall foreign losses after multiplication by the following fraction:

$$\frac{\text{Losses of the foreign branch for the year}}{\text{All foreign losses for the year}}$$

For purposes of this fraction, the term "losses of the foreign branch for the year" means the losses of the foreign branch that were taken into account under section 904(f)(2) in determining the amount of the transferor's overall foreign loss for the year, and the term "all foreign losses for the year" means all of the losses of the transferor that were taken into account under section 904(f)(2).

(6) *Amounts previously recognized under the rules of this section.* The previously deducted losses shall be reduced by the amounts previously recognized under the rules of this section upon a previous transfer of assets of the foreign branch.

(f) *Example.* The rules of paragraphs (b) through (e) of this section are illustrated by the following example.

Example. (i) *Facts.* X, a U.S. corporation, is a calendar year taxpayer. On January 1, 1981, X established a branch in foreign country A to manufacture and sell X's products in country A. On July 1, 1986, X organized corporation Y, a country A subsidiary, and transferred to Y all of the assets of its country A branch, including goodwill and going concern value. During the period from January 1, 1981, through July 1, 1986, X's country A branch earned income and incurred losses in the following amounts:

COUNTRY A BRANCH

Year	Ordinary income (loss)	Capital gain (loss)
1981	(200)	0
1982	(300)	(100)
1983	(400)	0
1984	(200)	0
1985	(100)	0
1986	50	0

At the time of the transfer of X's country A branch assets to Y, those assets had a fair market value of $2,500 and an adjusted basis of $1,000. For each of the assets, fair market value exceeded adjusted basis. X had no net capital loss or unused investment credit during any taxable year relevant to the transfer. In 1984, X incurred a net operating loss of $400, $200 of which was carried back to prior years. An additional $50 of the 1984 net operating loss was carried over to 1985. The remaining $150 of the 1984 net operating loss was not used in any year prior to the transfer. In 1979, X paid creditable foreign taxes of $330 that could not be claimed as a credit in that year or any earlier year because of section 904. Of those foreign taxes, $100 were carried over and claimed as a credit in 1983, but the remaining $230 were not used in any year prior to the transfer. X was not required to recognize any gain under section 904(f)(3) on account of the 1986 transfer or any prior transfer. X was not required to recognize gain upon the transfer under section 367(a) (other than by reason of the provisions of this section).

(ii) *Previously deducted losses.* The previously deducted losses of X's country A branch are $575 of ordinary losses and $25 of capital losses, computed as follows: Initially, the branch has previously deducted ordinary losses of $1,000 ($200+$300+$400+$100), and previously deducted capital losses of $100. (See paragraph (d)(1) of this section.)

(iii) *Expired losses and credits.* Under the facts of this example, there are no reductions for expired net ordinary losses or expired net capital losses under paragraph (d) (2) or (3) of this section. However, the previously deducted losses are reduced proceeding from the first branch loss year to the last branch loss year to reflect the expired foreign tax credit from 1979. The amount of the foreign tax credit loss equivalent with respect to 1981 is $500 ($230/.46). It reduces the previously deducted losses for 1981 proportionately. Thus, the previously deducted ordinary loss for 1981 is reduced from $200 to $0. (See paragraph (d)(4) of this section.) The amount of the foreign tax credit loss equivalent with respect to 1982 is $300 ($500−$200, *i.e.*, $138/.46). (See paragraph (d)(4)(ii)(C) of this section.) It reduces the previously deducted losses for 1982 proportionately. Thus, the previously deducted ordinary loss for 1982 is reduced from $300 to $75, and the previously deducted capital loss for 1982 is reduced from $100 to $25.

(iv) *Further reductions.* The previously deducted ordinary losses of $575 and the previously deducted capital losses of $25 are reduced by the taxable income earned by the branch prior to the date of the transfer ($250). (See paragraph (e)(2) of this section.) Since that income was ordinary income, it is applied first to reduce the previously deducted ordinary losses of $575 to $325. (See paragraph (e)(1) of this section.)

(v) *Recapture.* Since the gain realized by X upon its transfer of the branch assets to Y exceeds the sum of the previously deducted branch losses as defined and reduced above ($325+$25), the limitation in paragraph (c)(2) of this section does not apply. Thus, X is required to recognize $325 of ordinary income and $25 of long-term capital gain upon the transfer. (See paragraph (b) and (c)(1) of this section.)

(g) *Definition of foreign branch.*—(1) *In general.* For purposes of this section, the term "foreign branch" means an integral business operation carried on by a U.S. person outside the United States. Whether the activities of a U.S. person outside the United States constitute a foreign branch operation must be determined under all the facts and circumstances. Evidence of the existence of a foreign branch includes, but is not limited to, the existence of a

separate set of books and records, and the existence of an office or other fixed place of business used by employees or officers of the U.S. person in carrying out business activities outside the United States. Activities outside the United States shall be deemed to constitute a foreign branch for purposes of this section if the activities constitute a permanent establishment under the terms of a treaty between the United States and the country in which the activities are carried out. Any U.S. person may be treated as having a foreign branch for purposes of this section, whether that person is a corporation, partnership, trust, estate, or individual.

(2) *More than one branch.* If a U.S. person carries on more than one branch operation outside the United States, then the rules of this section must be separately applied with respect to each foreign branch that is transferred to a foreign corporation. Thus, the previously deducted losses of one branch may not be offset, for purposes of determining the gain required to be recognized under the rules of this section, by the income of another branch that is also transferred to a foreign corporation. Similarly, the losses of one branch shall not be recaptured upon a transfer of the assets of a separate branch. Whether the foreign activities of a U.S. person are carried out through more than one branch must be determined under all of the facts and circumstances. In general, a separate branch exists if a particular group of activities is sufficiently integrated to constitute a single business that could be operated as an independent enterprise. For purposes of determining the combination of activities that constitute a branch operation as defined in this paragraph (g), the nominal relationship among those activities shall not be controlling. Factors suggesting that nominally separate business operations constitute a single foreign branch include a substantial identity of products, customers, operational facilities, operational processes, accounting and record-keeping functions, management, employees, distribution channels, or sales and purchasing forces. For examples of the application of the principles of this paragraph (g)(2), see Revenue Ruling 81–82, 1981–1 C.B. 127.

(3) *Consolidated group.* For purposes of this section, the activities of each of two domestic corporations outside the United States will be considered to constitute a single foreign branch if—

(i) The two corporations are members of the same consolidated group of corporations; and

(ii) The activities of the two corporations in the aggregate would constitute a single foreign branch if conducted by a single corporation.

Notwithstanding the preceding rule of this paragraph (g)(3), gains of a foreign branch of a domestic corporation arising in a year in which that corporation did not file a consolidated return with a second domestic corporation shall not be applied to reduce the previously deducted losses of a foreign branch of the second corporation (but may be applied to reduce such losses of the foreign branch of the first corporation) upon the transfer of the two branches to a foreign corporation, even though the two domestic corporations file a consolidated return for the year in which the transfer occurs and the two branches are considered at that time to constitute a single foreign branch. For an example of the application of the principles of this paragraph (g)(3), see Revenue Ruling 81–89, 1981–1 C.B. 129.

(4) *Property not transferred.* A U.S. transferor's failure to transfer any property of a foreign branch shall be irrelevant to the determination of the previously deducted losses of the branch subject to recapture under the rules of this section. Thus, if the activities with respect to untransferred property constituted a part of the branch operation under the rules of this paragraph (g), then the losses generated by those activities shall be subject to recapture, notwithstanding the failure to transfer the property. For an example of the application of the principles of this paragraph (g)(4), see Revenue Ruling 80–247, 1980–2 C.B. 127, relating to property abandoned by the U.S. transferor.

(h) *Anti-abuse rule.* If—

(1) A U.S. person transfers property of a foreign branch to a domestic corporation for a principal purpose of avoiding the effect of this section; and

(2) The domestic corporation thereafter transfers the property of the foreign branch to a foreign corporation,

then, solely for purposes of this section, that U.S. person shall be treated as having transferred the property of the branch directly to the foreign corporation. A U.S. person shall be presumed to have transferred property of a foreign branch for a principal purpose of avoiding the effect of this section if the property is transferred to the domestic corporation less than two years prior to the domestic corporation's transfer of the property to a foreign corporation. This presumption may be rebutted by clear evidence that the subsequent transfer of the property was not contemplated at the time of the initial transfer to the domestic corporation and that avoidance of the effect of this section was not a principal purpose for the transaction. A transfer may have more than one principal purpose.

(i) *Basis adjustments.* Basis adjustments reflecting gain recognized pursuant to this section shall be made as described in § 1.367(a)–1T(b)(4)(ii).

Par. 5. Section 1.367(d)–1T is added immediately after § 1.367(c)–2, to read as follows:

§ 1.367(d)–1T Transfers of intangible property to foreign corporations (temporary).

(a) *Purpose and scope.* This section provides rules under section 367(d) concerning transfers of intangible property by U.S. persons to foreign corporations pursuant to section 351 or 361. Paragraph (b) of this section specifies the transfers that are subject to section 367(d) and the rules of this section, while paragraph (c) provides rules concerning the consequences of such a transfer. In general, the U.S. transferor will be treated as receiving annual payments contingent on productivity or use of the transferred property, over the useful life of the property (regardless of whether such payments are in fact made by the transferee). Paragraphs (d), (e), and (f) of this section provide rules for cases in which there is a later direct or indirect disposition of the intangible property transferred. In general, deemed annual license payments will continue if a transfer is made to a related person, while gain must be recognized immediately if the transfer is to an unrelated person. Paragraph (g) of this section provides several special rules, including a rule allowing appropriate adjustments where deemed payments under section 367(d) are not in fact received by the U.S. transferor of the intangible property, and a rule providing for a limited election to treat certain transfers of intangible property as sales at fair market value (in lieu of applying the general useful life-contingent payment rule). In addition, paragraph (g) of this section provides rules coordinating the application of section 367(d) with other relevant Code sections. Paragraph (h) of this section defines the term "related person" for purposes of this section. Finally, paragraph (i) of this section provides the effective date of this section. For rules concerning transfers of intangible property pursuant to section 332, see § 1.367(a)–5T(e).

(b) *Intangible property subject to section 367(d).* Section 367(d) and the rules of this section shall apply to the

transfer of any intangible property, as defined in § 1.367(a)–1T(d)(5)(i). However, section 367(d) and the rules of this section shall not apply to the transfer of foreign goodwill or going concern value, as defined in §1.367(a)–1T(d)(5)(iii), or to the transfer of intangible property described in §1.367(a)–5T(b)(2). However, the transfer of those items to a foreign corporation is subject to the rules set forth in § 1.367(a)–6T, and the transfer of intangible property described in § 1.367(a)–5T(b)(2) is subject to the rules set forth in § 1.367(a)–5T. For a special rule relating to the transfer of operating intangibles, as defined in § 1.367(a)–1T(d)(5)(ii), see paragraph (g)(3) of this section. Transfers of intangible property to foreign corporations pursuant to section 351 or 361 are subject to the rules of this section regardless of whether the property is to be used in the United States, in connection with goods to be sold or consumed in the United States, or in connection with a trade or business outside the United States.

(c) *Deemed payments upon transfer of intangible property to foreign corporation*—(1) *In general.* If a U.S. person transfers intangible property that is subject to section 367(d) and the rules of this section to a foreign corporation in an exchange described in section 351 or 361, then such person shall be treated as having transferred that property in exchange for annual payments contingent on the productivity or use of the property. Such person shall, over the useful life of the property, annually include in gross income an amount that represents an appropriate arms-length charge for the use of the property. The appropriate charge shall be determined in accordance with the provisions of section 482 and regulations thereunder. See § 1.482–2(d). The amount of the deemed payment thus calculated shall be reduced by any royalty or other periodic payment made or accrued by the transferee to an unrelated person during that taxable year for the right to use the intangible property. Amounts so included in the transferor's income shall be treated as ordinary income from sources within the United States. For purposes of computing estimated tax payments, deemed payments under this paragraph (c) shall be treated as received by the transferor on the last day of its taxable year.

(2) *Required adjustments.* The following adjustments shall be made with respect to a U.S. person's recognition of a deemed payment for the use of intangible property under this paragraph (c):

(i) For purposes of chapter 1 of the Code, the earnings and profits of the transferee foreign corporation shall be reduced by the amount of such deemed payment; and

(ii) For purposes of Subpart F of Part III of subchapter N of the Code, the transferee foreign corporation may treat such deemed payment as an expense (whether or not that amount is actually paid), properly allocated and apportioned to gross income subject to Subpart F, in accordance with the provisions of §§ 1.954–1(c) and 1.861–8.

No other special adjustments to earning the profits, basis, or gross income shall be permitted by reason of the recognition of a deemed payment under this paragraph (c). However, see paragraph (g)(1) of this section for rules permitting the establishment of an account receivable with respect to deemed payments not actually received by the U.S. person.

(3) *Useful life.* For purposes of this section, the useful life of intangible property is the entire period during which the property has value. However, in no event shall the useful life of an item of intangible property be considered to exceed twenty years. If intangible property derives its value from secrecy or from protections afforded by law, the useful life of such property shall terminate when the property is no longer secret or no longer legally protected.

(4) *Blocked income.* No deemed payment included in a taxpayer's income under paragraph (c)(1) of this section shall be treated as deferrable income for purposes of applying rules relating to blocked foreign income. See Revenue Ruling 74–351, 1974–2 C.B. 144.

(d) *Subsequent transfer of stock of transferee foreign corporation to unrelated person*—(1) *Treatment as sale of intangible property.* If a U.S. person transfers intangible property that is subject to section 367(d) and the rules of this section to a foreign corporation in an exchange described in section 351 or 361, and within the useful life of the intangible property that U.S. transferor subsequently disposes of the stock of the transferee foreign corporation to a person that is not a related person (within the meaning of paragraph (h) of this section), then the U.S. transferor shall be treated as having simultaneously sold the intangible property to the person acquiring the stock of the transferee foreign corporation. The U.S. transferor shall be required to recognize gain (but not loss) from sources within the United States in an amount equal to the difference between the fair market value of the transferred intangible property on the date of the subsequent disposition and the U.S. transferor's former adjusted basis in that property (determined as of the original transfer). If the U.S. transferor's disposition of the stock of the transferee foreign corporation is subject to U.S. tax other than by reason of this paragraph (d), then the amount of gain otherwise required to be recognized with respect to the stock of the transferee foreign corporation shall be reduced by the amount of gain recognized with respect to the intangible property pursuant to this paragraph (d).

(2) *Required adjustments.* If a U.S. person disposes of the stock of a transferee foreign corporation, and under paragraph (d)(1) of this section is treated as having simultaneously sold intangible property, then, for purposes of computing basis and earnings and profits, the person acquiring the stock of the transferee foreign corporation shall be deemed to have purchased that property at fair market value and to have immediately thereafter contributed it to the transferee foreign corporation in a transaction not covered by section 367(d). Therefore, for purposes of chapter 1 of the Code—

(i) The transferee foreign corporation's basis in the intangible property will be equal to its fair market value (as calculated for purposes of determining the gain required to be recognized by the U.S. transferor);

(ii) The acquiring person's basis in the stock of the transferee foreign corporation shall be determined as if no portion of the consideration given by the acquiring person for the stock is attributable to the intangible property; and

(iii) The earnings and profits of the transferee foreign corporation will not be affected by the transfer of its stock or the deemed transfer to it of the intangible property.

(e) *Subsequent transfer of stock of transferee foreign corporation to related person*—(1) *Transfer to related U.S. person treated as disposition of intangible property.* If a U.S. person transfers intangible property that is subject to section 367(d) and the rules of this section to a foreign corporation in an exchange described in section 351 or 361 and, within the useful life of the transferred intangible property, that U.S. transferor subsequently transfers the stock of the transferee foreign corporation to U.S. persons that are related to the transferor within the meaning of paragraph (h) of this section, then the following rules shall apply:

(i) Each such related U.S. person shall be treated as having received (with the

stock of the transferee foreign corporation) a right to receive a proportionate share of the contingent annual payments that would otherwise be deemed to be received by the U.S. transferor under paragraph (c) of this section.

(ii) Each such related U.S. person shall, over the useful life of the property, annually include in gross income a proportionate share of the amount that would have been included in the income of the U.S. transferor pursuant to paragraph (c) of this section. Such amounts shall be treated as ordinary income from sources within the United States.

(iii) The amount of income required to be recognized by the U.S. transferor pursuant to the rule of paragraph (d)(1) of this section shall be reduced to the amount determined in accordance with the following formula:

(d)(1) amount × (100% − (e) percentage)

For purposes of the above formula, the "(d)(1) amount" is the income that would otherwise be required to be recognized by the transferor corporation pursuant to paragraph (d)(1) of this section, and the "(e) percentage" is the percentage of the transferor corporation's total deemed rights to receive contingent annual payments under paragraph (c) of this section that is deemed to be transferred to related U.S. persons under the rules of this paragraph (e).

(iv) The rules of paragraphs (d) and (e) of this section shall be reapplied in the case of any later transfer of the stock of the transferee foreign corporation by a related U.S. person that received such stock in a transfer that was subject to the rules of this paragraph (e). For purposes of reapplying the rules of paragraphs (d) and (e), each such related U.S. person shall be treated as a U.S. transferor of intangible property to the transferee foreign corporation (to the extent of the interest attributed to such person pursuant to subdivision (i) of this paragraph (e)(1)).

(2) *Required adjustments.* If a U.S. person transfers stock of a transferee foreign corporation to a U.S. related person in a transaction that is subject to the rules of paragraph (e)(1) of this section, the following adjustments shall be made:

(i) For purposes of chapter 1 of the Code, the earnings and profits of the transferee foreign corporation shall be reduced by the amount of any payment deemed to be received by a related U.S. person under paragraph (e)(1)(ii) of this section;

(ii) For purposes of Subpart F of Part III of subchapter N of the Code, the transferee foreign corporation may allocate and apportion such deemed payments (whether or not such payments are actually made to gross income subject to Subpart F to the extent appropriate under the provisions of §§ 1.954–1(c) and 1.861–8;

(iii) For purposes of reapplying the rules of paragraph (d) and (e) of this section, if the related U.S. person is deemed to have received a right to contingent annual payments for the use of intangible property, then the U.S. related person shall be deemed to have held a proportionate share of the property with a basis equal to a proportionate share of the U.S. transferor's adjusted basis plus the gain, if any, recognized by the U.S. transferor on the earlier transfer of the stock to the U.S. related person, and then to have transferred that proportionate share of the property to the foreign corporation in a transfer subject to section 367(d); and

(iv) If the U.S. transferor is itself required to recognize gain upon the transfer by reason of the operation of paragraphs (d)(1) and (e)(1)(iii) of this section (because stock of the transferee foreign corporation is also transferred to unrelated persons), then those unrelated persons shall be deemed to have purchased a proportionate share of the transferred intangible property at fair market value and immediately contributed that property to the transferee foreign corporation, consistent with the general rule of paragraph (d)(2) of this section concerning transfers of stock to unrelated persons. Therefore, for purposes of chapter 1 of the Code—

(A) Each unrelated person's basis in the stock of the transferee foreign corporation shall be increased to the extent of the gain recognized by the U.S. transferor upon the deemed purchase of intangible property by that person; and

(B) The transferee foreign corporation will receive an increase in its basis in the transferred intangible property equal to the fair market value of that portion of the intangible property deemed to be contributed to the transferee foreign corporation by unrelated persons (as calculated for purposes of determining the gain required to be recognized by the U.S. transferor).

(3) *Transfer to related foreign person not treated as disposition of intangible property.* If a U.S. person transfers intangible property that is subject to section 367(d) and the rules of this section to a foreign corporation in an exchange described in section 351 or 361, and within the useful life of the transferred intangible property, that U.S. transferor subsequently transfers any of the stock of the transferee foreign corporation to one or more foreign persons that are related to the transferor within the meaning of paragraph (h) of this section, then the U.S. transferor shall continue to include in its income the deemed payments described in paragraph (c) of this section in the same manner as if the subsequent transfer of stock had not occurred. The rule of this paragraph (e)(3) shall not apply with respect to the subsequent transfer by the U.S. person of any of the remaining stock to any related U.S. person or unrelated person.

(4) *Proportionate share.* For purposes of this paragraph (e), any "proportionate share" shall be determined by reference to the fair market value (at the time of the original transfer) of the stock of the transferee foreign corporation that was transferred by the U.S. transferor and the fair market value of all of the stock of the transferee foreign corporation originally received by the U.S. transferor.

(f) *Subsequent disposition of transferred intangible property by transferee foreign corporation*—(1) *In general.* If a U.S. person transfers intangible property that is subject to section 367(d) and the rules of this section to a foreign corporation in an exchange described in section 351 or 361, and within the useful life of the intangible property that transferee foreign corporation subsequently disposes of the intangible property to an unrelated person, then—

(i) The U.S. transferor of the intangible property (or any person treated as such pursuant to paragraph (e)(1) of this section) shall be required to recognize gain from U.S. sources (but not loss) in an amount equal to the difference between the fair market value of the transferred intangible property on the date of the subsequent disposition and the U.S. transferor's former adjusted basis in that property (determined as of the orginial transfer); and

(ii) The U.S. transferor shall be required to recognize a deemed payment under paragraph (c) of this section for that part of its taxable year that the intangible property was held by the transferee foreign corporation and thereafter shall not be required to recognize any further deemed payments under paragraph (c) or (e)(1) of this section with respect to the transferred intangible property disposed of by the transferee foreign corporation.

(2) *Required adjustments.* If a U.S. transferor is required to recognize gain

under paragraph (f)(1) of this section, then—

(i) For purposes of chapter 1 of the Code, the earnings and profits of the transferee foreign corporation shall be reduced by the amount of gain required to be recognized; and

(ii) The U.S. transferor's recognition of gain will permit the establishment of an account receivable from the transferee foreign corporation, in accordance with paragraph (g)(1) of this section.

(3) *Subsequent transfer of intangible property to related person.* The requirement that a U.S. person recognize gain under paragraph (c) or (e) of this section shall not be affected by the transferee foreign corporation's subsequent disposition of the transferred intangible property to a related person. For purposes of any required adjustments, and of any accounts receivable created under paragraph (g)(1) of this section, the related person that receives the intangible property shall be treated as the transferee foreign corporation.

(g) *Special rules*—(1) *Establishment of accounts receivable*—(i) *In general.* If a U.S. person is required to recognize income under the provisions of paragraph (c), (e), or (f) of this section, and the amount deemed to be received is not actually paid by the transferee foreign corporation, then the U.S. person may establish an account receivable from the transferee foreign corporation equal to the amount deemed paid that was not actually paid. A separate account receivable must be established for each taxable year in which payments deemed to be received are not actually made. Payments received from the transferee foreign corporation must be designated as payments upon a particular account and must be deducted from that account. Accounts receivable under this paragraph (g)(1) may be established and paid without further U.S. income tax consequences to the U.S. transferor or the transferee foreign corporation. No interest shall be paid or accrued on an account receivable created under this paragraph (g)(1), nor shall any bad debt deduction be allowed under section 166 with respect to any failure to receive payment on an account.

(ii) *Unpaid receivable treated as contribution to capital.* If any portion of an account receivable established under this paragraph (g)(1) remains unpaid as of the last day of the third taxable year following the taxable year to which the account relates, then—

(A) Such portion shall be deemed to have been paid on that date; and

(B) The U.S. person shall be deemed to have contributed an equivalent amount to the capital of the foreign corporation, and the U.S. person's basis in the stock of the foreign corporation shall, therefore, be increased by that amount.

(2) *Election to treat transfer as sale.* A U.S. person that transfers intangible property to a foreign corporation in a transaction subject to section 367(d) may elect to recognize income in accordance with the rules of this paragraph (g)(2), if—

(i) The intangible property transferred constitutes an operating intangible, as defined in § 1.367(a)–1T(d)(5)(ii); or

(ii) The transfer of the intangible property is either legally required by the government of the country in which the transferee corporation is organized as a condition of doing business in that country, or compelled by a genuine threat of immediate expropriation by the foreign government; or

(iii)(A) The U.S. person transferred the intangible property to the foreign corporation within three months of the organization of that corporation and as part of the original plan of capitalization of that corporation;

(B) Immediately after the transfer, the U.S. person owns at least 40 percent but not more than 60 percent of the total voting power and total value of the stock of the transferee foreign corporation;

(C) Immediately after the transfer, at least 40 percent of the total voting power and total value of the stock of the transferee foreign corporation is owned by foreign persons unrelated to the U.S. person;

(D) Intangible property constitutes at least 50 percent of the fair market value of the property transferred to the foreign corporation by the U.S. transferor; and

(E) The transferred intangible property will be used in the active conduct of a trade or business outside of the United States within the meaning of § 1.367(a)–2T and will not be used in connection with the manufacture or sale of products in or for use or consumption in the United States.

A person that makes the election under this paragraph (g)(2) shall not be subject to the provisions of paragraphs (c) through (f) of this section. Such person shall instead recognize in the year of the transfer ordinary income from sources within the United States in an amount equal to the difference between the fair market value of the intangible property transferred and its adjusted basis. A U.S. person shall make an election under this paragraph (g)(2) by notifying the Internal Revenue Service of the election in accordance with the requirements of section 6038B and regulations thereunder, and subsequently including the appropriate amounts in gross income in a timely filed tax return for the year of the transfer.

(3) *Intangible property transferred from branch with previously deducted losses.* If income is required to be recognized under section 904(f)(3) and the regulations thereunder or under § 1.367(a)–6T upon the transfer of intangible property of a foreign branch that had previously deducted losses, then the income recognized under those sections with respect to that property shall be credited against amounts that would otherwise be required to be recognized with respect to that same property under paragraphs (c) through (f) of this section in either the current or future taxable years. The amount recognized under section 904(f)(3) or § 1.367(a)–6T with respect to the transferred intangible property shall be determined in accordance with the following formula:

$$\text{loss recapture income} \times \frac{\text{gain from intangibles}}{\text{gain from all branch assets}}$$

For purposes of the above formula, the "loss recapture income" is the total amount required to be recognized by the U.S. transferor pursuant to section 904(f)(3) or § 1.367(a)–6T. The "gain from intangibles" is the total amount of gain realized by the U.S. transferor pursuant to section 904(f)(3) and § 1.367(a)–6T upon the transfer of items of intangible property that are subject to section 367(d). ("Gain from intangibles" does not include gain realized upon the transfer of property described in § 1.367(a)–5T(b)(2), foreign goodwill or going concern value, or intangible property with respect to which the taxpayer has made the election provided for in § 1.367(d)–1T(g)(2).) The "gain from all branch assets" is the total amount of gain realized by the transferor upon the transfer of items of property of the branch in which gain is realized. The fraction shall not exceed 1.

(4) *Coordination with section 482*—(i) *In general.* Section 367(d) and the rules of this section shall not apply in the case of an actual sale or license of intangible property by a U.S. person to a foreign

corporation. If an adjustment under section 482 is required with respect to an actual sale or license of intangible property, then section 367(d) and the rules of this section shall not apply with respect to the required adjustment. If a U.S. person transfers intangible property to a related foreign corporation without consideration, or in exchange for stock or securities of the transferee in a transaction described in sections 351 or 361, no sale or license subject to adjustment under section 482 will be deemed to have occurred. Instead, the U.S. person shall be treated as having made a transfer of the intangible property that is subject to section 367(d).

(ii) *Sham licenses and sales.* For purposes of paragraph (g)(4)(i) of this section, a purported sale or license of intangible property may be disregarded, and treated as a transfer subject to section 367(d) and the rules of this section, if—

(A) The purported sale or license is made to a foreign corporation in which the transferor holds (or is acquiring) an interest; and

(B) The terms of the purported sale or license differ so greatly from the economic substance of the transaction or the terms that would obtain between unrelated persons that the purported sale or license is a sham.

The terms of a purported sale or license, for purposes of applying the rule of this paragraph (g)(4)(ii), shall be determined by reference not only to the nominal terms of the agreement but also to the actual practice of the parties under that agreement. A sale or license of intangible property shall not be disregarded under this paragraph (g)(4)(ii) solely because other property of an integrated business is simultaneously transferred to the foreign corporation by the U.S. transferor in a transaction described in section 367(a)(1) or any statutory or regulatory exception to section 367(a)(1).

(5) *Determination of fair market value.* For purposes of determining the gain required to be recognized immediately under paragraph (d), (f), or (g)(2) of this section, the fair market value of transferred property shall be the single payment arm's-length price that would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 and regulations thereunder. The allocation of a portion of the purchase price to intangible property agreed to by the parties to the transaction shall not necessarily be controlling for this purpose.

(6) *Anti-abuse rule.* If a U.S. person—

(i) Transfers intangible property to a domestic corporation with a principal purpose of avoiding the effect of section 367(d) and the rules of this section; and

(ii) Thereafter transfers the stock of that domestic corporation to a related foreign corporation,

then solely for purposes of section 367(d) that U.S. person shall be treated as having transferred the intangible property directly to the foreign corporation. A U.S. person shall be presumed to have transferred intangible property for a principal purpose of avoiding the effect of section 367(d) if the property is transferred to the domestic corporation less than two years prior to the transfer of the stock of that domestic corporation to a foreign corporation. The presumption created by the previous sentence may be rebutted by clear evidence that the subsequent transfer of the stock of the domestic transferee corporation was not contemplated at the time the intangible property was transferred to that corporation and that avoidance of section 367(d) and the rules of this section was not a principal purpose of the transaction. A transfer may have more than one principal purpose.

(h) *Related person.* For purposes of this section, persons are considered to be related if—

(1) They are partners or partnerships described in section 707(b)(1) of the Code; or

(2) They are related within the meaning of section 267 (b), (c), and (f) of the Code, except that—

(i) "10 percent or more" shall be substituted for "more than 50 percent" each place it appears; and

(ii) Section 1563 shall apply (for purposes of section 267(d)), without regard to section 1563(b)(2).

(i) *Effective date.* Except as specifically provided to the contrary elsewhere in this section, this section applies to transfers occurring after December 31, 1984.

Par. 6. Section 1.6038B–1T is added immediately after § 1.6038A–1, to read as follows:

§ 1.6038B–1T Reporting of transactions described in section 367 (temporary).

(a) *Purpose and scope.* This section sets forth information reporting requirements under section 6038B, concerning certain transfers of property to foreign persons. Paragraph (b) of this section provides general rules explaining when and how to carry out the reporting required under section 6038B. Paragraphs (c) and (d) of this section specify the information that is required to be reported with respect to transfers of property that are described in section 367 (a) and (d), respectively. Finally, paragraph (f) of this section sets forth the consequences of a failure to comply with the requirements of section 6038B and this section. Except as specifically provided to the contrary elsewhere in this section, this section applies to transfers occurring after December 31, 1984.

(b) *Time and manner of reporting—(1) In general.* Any U.S. person that is required to report pursuant to section 6038B and the rules of this section must attach the required information to Form 926 (Return by Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership). Form 926 and the required attachments must be filed at the Internal Revenue Service Center where the U.S. person is required to file its Federal income tax return. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be filed with the transferor's tax return for the taxable year that includes the date of the transfer (as defined in paragraph (b)(3) of this section). However, in the case of a transfer that occurred prior to June 16, 1986, Form 926 and the required attachments must be filed by September 16, 1986, if that date is later than the date the filing would otherwise be required under the preceding sentence. Section 7502 and regulations thereunder shall apply in determining whether the form and attachments are timely filed. Any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief.

(2) *Person required to file—(i) In general.* Form 926 and the attachments required under the rules of this section must be filed by each U.S. person that makes a transfer described in section 367 (a) or (d). No notice shall be required under this section with respect to a distribution described in section 367(e). No notice shall be required under this section with respect to a transfer of stock of securities described in § 1.367(a)–3T(f)(1) or with respect to a transfer described in section 367(a)(2). If two or more persons transfer jointly-owned property to a foreign corporation in a transfer with respect to which a notice is required under this section, then each person must report with respect to the particular interest he transferred, specifying the nature and extent of the interest. However, a husband and wife (and their minor children) may jointly file a single information return. If two or more U.S.

persons owning stock or securities in a corporation transfer such stock or securities to a foreign corporation in the same transaction, then the corporation whose stock or securities are transferred may, at its choice, file the notice required by this section on behalf of its shareholders. In that case, a single Form 926, signed by the responsible officer of the corporation, shall be filed, containing the required information with respect to each shareholder, other than shareholders described in § 1.367(a)–3T(f)(1).

(ii) *Indirect transfers.* If a U.S. person that holds an interest in an entity is considered to make an indirect transfer (when the entity transfers property to a foreign corporation) under the provisions of—

(A) Section 367(a)–1T(c)(2)(i)(B) (concerning mergers to which section 368(a)(2)(D) applies);

(B) Section 367(a)–1T(c)(2)(i)(C) (concerning mergers to which section 368(a)(2)(E) applies);

(C) Section 367(a)–1T(c)(2)(ii) (concerning reorganizations described in section 368(a)(1)(B));

(D) Section 367(a)–1T(c)(2)(iii) (concerning reorganizations described in section 368(a)(1)(C));

(E) Section 367(a)–1T(c)(3)(i) (concerning transfers of property by a partnership); or

(F) Section 367(a)–1T(c)(4) (concerning transfers of property by a trust or estate),

then the requirements of this section shall apply with respect to each such person. However, the requirements of this section may be satisfied by the entity, on behalf of its interest-holders, by the filing of a single information return containing the required information with respect to each interest-holder (other than persons described in § 1.367(a)–3T(f)(1)) that is considered to make a transfer described in section 367(a). If the entity chooses to satisfy the requirements of this section on behalf of its interest-holders, Form 926 must be signed by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate.

(3) *Date of transfer*—(i) *In general.* For purposes of this section, the date of a transfer described in section 367 is the first date on which title to, possession of, or rights to the use of stock, securities, or other property passes pursuant to the plan for purposes of subtitle A of the Internal Revenue Code. A transfer will not be considered to begin with a decision of a board of directors or similar action unless the transaction otherwise takes effect for purposes of subtitle A of the Internal Revenue Code on that date.

(ii) *Termination of section 1504(d) election.* A transfer deemed to occur as a result of the termination of an election under section 1504(d) will be considered to occur on the date the contiguous country corporation first fails to continue to qualify for the election under section 1504(d). The rule of this paragraph (b)(3)(ii) is illustrated by the following example.

Example. Domestic corporation W previously made a valid election under section 1504(d) to have its Mexican subsidiary S treated as a domestic corporation. On August 1, 1986, W disposes of its right, title, and interest in 10 percent of the stock of S by selling such stock to an unrelated United States person who is not a director of S. S first fails to continue to qualify for the election under section 1504(d) on August 1, 1986, since on such date it ceases to be directly or indirectly wholly owned or controlled by W. The constructive transfer of assets from "domestic" corporation S to Mexican corporation S is considered to occur on that date.

(iii) *Change in classification.* A transfer deemed to occur as a result of a change in classification of an entity caused by a change in the governing documents, articles, or agreements of the entity (as described in § 1.367(a)–1T(c)(6)) will be considered to occur on the date that such changes take effect for purposes of subtitle A of the Internal Revenue Code.

(iv) *U.S. resident under section 6013 (g) or (h).* A transfer made by an alien individual who is considered to be a U.S. resident by reason of a timely election under section 6013 (g) or (h) will be considered to occur, for purposes of this section (but not for purposes of section 367), on the later of—

(A) The date on which the election under section 6013 (g) or (h) is made; or

(B) The date on which the transfer would otherwise be considered to occur under the rules of this paragraph (b)(3).

The rule of this paragraph (b)(3)(iv) is illustrated by the following example.

Example. D is a nonresident alien individual who is married to a United States citizen. On March 1, 1986, D transfers property to a foreign corporation in an exchange described in section 351. On April 15, 1987, D and the spouse timely file with their tax return for the taxable year ended December 31, 1986, an election under section 6013(g) for D to be treated as a United States resident. The election is effective on January 1, 1986. For purposes of section 6038 B, the transfer described in section 367(a) made by D in connection with the section 351 exchange is considered to occur on April 15, 1987, the date on which the timely election was made under section 6013(g).

(c) *Information required with respect to transfers described in section 367 (a)(1).* A U.S. person that transfers property to a foreign corporation in an exchange described in section 367(a)(1) (other than a transfer described in section 367(a)(2)) must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. If a particular item is not applicable to the subject transfer, list its heading and state that it is not applicable.

(1) *Transferor.* Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(2) *Transfer.* Provide the following information concerning the transfer:

(i) Name, U.S. taxpayer identification number (if any), address, and country of incorporation of transferee foreign corporation;

(ii) A general description of the transfer, and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.

(3) *Consideration received.* Provide a description of the consideration received by the U.S. person making the transfer, including its estimated fair market value and, in the case of stock or securities, the class or type, amount, and characteristics of the interest received.

(4) *Property transferred.* Provide a description of the property transferred. The description must be divided into the following categories, and must include the estimated fair market value and adjusted basis of the property, as well as any additional information specified below.

(i) *Active business property.* Describe any transferred property (other than stock or securities) to be used in the active conduct of a trade or business outisde of the United States. Provide here a general description of the business conducted (or to be conducted) by the transferee, including the location of the business, the number of its employees, the nature of the business, and copies of the most recently prepared balance sheet and profit and loss statement. Property listed within this category may be identified by general type. For example, upon the transfer of the assets of a manufacturing operation, a reasonable description of the property to be used in the business might include the categories of office equipment and supplies, computers and related equipment, motor vehicles, and several major categories of manufacturing

equipment. However, any property that is includible both in this subdivision (i) and in subdivision (iii) of this paragraph (c)(4) (property subject to depreciation recapture under § 1.367(a)–4T (b)) must be identified in the manner required in subdivision (iii). If property is considered to be transferred for use in the active conduct of a trade or business under a special rule in § 1.367(a)–4T, specify the applicable rule and provide information supporting the application of the rule. If property is subject to section 367(a)(1) regardless of its use in a trade or business under the rules of §§ 1.367(a)–4T or 1.367(a)–5T, list the property only in response to subdivision (vii) of this paragraph (c)(4).

(ii) *Stock or securities.* Describe any transferred stock or securities, including the class or type, amount, and characteristics of the transferred stock or securities, as well as the name, address, place of incorporation, and general description of the corporation issuing the stock. In addition, provide the following information if applicable:

(A) *Active trade or business stock.* If the stock or securities are considered to be transferred for use in the active conduct of a trade or business outside of the United States under the rules of § 1.367(a)–3T(d)(2), provide information supporting the application of the rule.

(B) *Application of special rules.* If any provision of § 1.367(a)–3T applies to except the transfer of stock or securities from the rule of section 367(a)(1), provide information supporting the claimed application of such provision (including information supporting the nonapplicability of either anti-abuse rule under § 1.367(a)–3T(h)). If the transferor is entering into an agreement to recognize gain upon a later disposition of the transferred stock by the transferee foreign corporation under § 1.367(a)–3T(g), attach the agreement and waiver as required by the rules of that paragraph.

(iii) *Depreciated property.* Describe any property that is subject to depreciation recapture under the rules of § 1.367(a)–4T(b). Property within this category must be separately identified to the same extent as was required for purposes of the previously claimed depreciation deduction. Specify with respect to each such asset the relevant recapture provision, the number of months in which such property was in use within the United States, the total number of months the property was in use, the fair market value of the property, a schedule of the depreciation deduction taken with respect to the property, and a calculation of the amount of depreciation required to be recaptured.

(iv) *Property to be leased.* Describe any property to be leased to other persons by the transferee foreign corporation (unless such property is considered to be transferred for use in the active conduct of a trade or business and was thus listed under subdivision (i) of this paragraph (c)(4)). If the rules of § 1.367(a)–4T(c)(2) apply to except the transfer from the rule of section 367(a)(1), provide information supporting the claimed application of such provision.

(v) *Property to be sold.* Describe any transferred property that is to be sold or otherwise disposed of by the transferee foreign corporation, as described in § 1.367(a)–4T(d).

(vi) *Transfers to FSCs.* Describe any property that is subject to the special rule of § 1.367(a)–4T(g) for transfers to FSCs. Provide information supporting the claimed application of that rule.

(vii) *Tainted property.* Describe any property that is subject to § 1.367(a)–5T (concerning property that is subject to the rule of section 367(a)(1) regardless of whether it is transferred for use in the active conduct of a trade or business outside of the United States). Such description must be divided into the relevant categories, as follows:

(A) *Inventory, etc.* Property described in § 1.367(a)–5T(b);

(B) *Installment obligations, etc.* Property described in § 1.367(a)–5T(c);

(C) *Foreign currency, etc.* Property described in § 1.367(a)–5T(d);

(D) *Intangible property.* Property described in § 1.367(a)–5T(e); and

(E) *Leased property.* Property described in § 1.367(a)–4T(f).

If any exception provided in § 1.367(a)–5T applies to the transferred property (making section 367(a)(1) not applicable to the transfer), provide information supporting the claimed application of such exception.

(viii) *Foreign loss branch.* Provide the information specified in paragraph (c)(5) of this section.

(ix) *Other intangibles.* Describe an intangible property sold or licensed by the transferor to the transferee foreign corporation, and set forth the general terms of each sale or license.

(5) *Transfer of foreign branch with previously deducted losses.* If the property transferred is property of a foreign branch with previously deducted losses subject to the rules of § 1.367(a)–6T, provide the following information:

(i) *Branch operation.* Describe the foreign branch the property of which is transferred, in accordance with the definition of § 1.367(a)–6T(g).

(ii) *Branch property.* Describe the property of the foreign branch, including its adjusted basis and fair market value. For this purpose property must be identified with reasonable particularity, but may be identified by category rather than listing every asset separately. Substantially similar property may be listed together for this purpose, and property of minor value may be grouped into functional categories. For example, a reasonable description of the property of a business office might include the following categories: word processing or data processing equipment, other office equipment and furniture, and office supplies.

(iii) *Previously deducted losses.* Set forth a detailed calculation of the sum of the losses incurred by the foreign branch before the transfer, and a detailed calculation of any reduction of such losses, in accordance with § 1.367(a)–6T (d) and (e).

(iv) *Character of gain.* Set forth a statement of the character of the gain required to be recognized, in accordance with § 1.367(a)–6T(c)(1).

(d) *Transfers subject to section 367(d)*—(1) *Initial transfer.* A U.S. person that transfers inntangible property to a foreign corporation in an exchange described in section 351 or 361 must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. If a particular item is not applicable to the subject transfer, list its heading and state that it is not applicable. The information required by subdivisions (i) through (iii) need only be provided if such information was not otherwise provided under paragraph (c) of this section. (Note that the U.S. transferor may subsequently be required to file another return under paragraph (d)(2) of this section.)

(i) *Transferor.* Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(ii) *Transfer.* Provide information concerning the transfer, including:

(A) Name, U.S. taxpayer identification number (if any), address, and country of incorporation of the transferee foreign corporation; (B) A general description of the transfer, and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.

(iii) *Consideration received.* Provide a description of the consideration received by the U.S. person making the transfer, including its estimated fair market value and, in the case of stock or securities, the class or type, amount, and characteristics of the interest received.

(iv) *Intangible property transferred.* Provide a description of the intangible property transferred, including its adjusted basis. Generally, each intangible asset must be separately identified. Operating intangibles and foreign goodwill or going concern value, as defined in § 1.367(a)–1T(d)(5) (ii) and (iii), should be so identified and classified.

(v) *Annual payment.* Provide and explain the calculation of the annual deemed payment for the use of the intangible property required to be recognized by the transferor under the rules of section 367(d).

(vi) *Election to treat as sale.* List any intangible with respect to which an election is being made under § 1.367(d)–1T(g)(2) to treat the transfer as a sale. Include the fair market value of the intangible on the date of the transfer and a calculation of the gain required to be recognized in the year of the transfer by reason of the election.

(vii) *Coordination with loss rules.* List any intangible property subject to section 367(d) the transfer of which also gives rise to the recognition of gain under section 904(f)(3) or § 1.367(a)–6T. Provide a calculation of the gain required to be recognized with respect to such property, in accordance with the provisions of § 1.367(d)–1T(g)(4).

(viii) *Other intangibles.* Describe any intangible property sold or licensed by the transferor to the transferee foreign corporation, and set forth the general terms of each sale or license.

(2) *Subsequent transfers.* If a U.S. person transfers intangible property to a foreign corporation in an exchange described in section 351 or 361, and at any time thereafter (within the useful life of the intangible property) either that U.S. person disposes of the stock of the transferee foreign corporation or the transferee foreign corporation disposes of the transferred intangible, then the U.S. person must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. The information required by subdivisions (i) and (ii) need only be provided if such information was not otherwise provided in the same return, pursuant to paragraph (c) or (d)(1) of this section. For purposes of determining the date on which a return under this subparagraph (2) is required to be filed, the date of transfer is the date of the subsequent transfer of stock or intangible property.

(i) *Transferor.* Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(ii) *Initial transfer.* Provide the following information concerning the initial transfer:

(A) The date of the transfer;

(B) The name, U.S. taxpayer identification number (if any), address, and country of incorporation of the transferee foreign corporation; and

(C) A general description of the transfer and any wider transaction of which it formed a part.

(iii) *Subsequent transfer.* Provide the following information concerning the subsequent transfer:

(A) A general description of the subsequent transfer and any wider transaction of which it forms a part;

(B) A calculation of any gain required to be recognized by the U.S. person under the rules of § 1.367(d)–1T (d) through (f); and

(C) The name, address, and identifying number of each person that under the rules of § 1.367(d)–1T (e) or (f) will be considered to receive contingent annual payments for the use of the intangible property.

(e) *Transfers subject to section 367(e).* [Reserved]

(f) *Failure to comply with reporting requirements*—(1) *Consequences of failure.* If a U.S. person is required to file a notice under § 1.6038B–1T(b) and fails to comply with the applicable reporting requirements of section 6038B and this section, then with respect to the particular property as to which there was a failure to comply—

(i) That property shall not be considered to have been transferred for use in the active conduct of a trade or business outside of the United States, for purposes of section 367(a) and regulations thereunder;

(ii) The U.S. person shall pay a penalty equal to 25 percent of the amount of gain realized on the exchange of that property (without regard to whether gain is recognized on the transfer); and

(iii) The period of limitations on assessment of tax upon the transfer of that property shall not begin to run until the date on which the transferor does comply with the applicable reporting requirements.

Thus, the time for assessment of tax is extended indefinitely if the transferor's failure to comply is continued indefinitely.

(2) *Failure to comply.* A failure to comply with the requirements of section 6038B is—

(i) The failure to report at the proper time and in the proper manner any material information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

Thus, a transferor that timely files Form 926 with the attachments required under the rules of this section shall, nevertheless, have failed to comply if, for example, the transferor reports therein that property will be used in the active conduct of a trade or business outside of the United States, but in fact such property continues to be used in a trade or business within the United States.

(3) *Reasonable cause exception.* The provisions of paragraph (f)(1) of this section shall not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

Par. 7. The authority for Part 7 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 7.367(b)–1 and 7.367(b)–4 also issued under 26 U.S.C. 367(b).

Par. 8. Section 7.367(b)–1 is amended by removing the last sentence of paragraph (a) and adding in lieu thereof the following two new sentences.

§ 7.367(b)–1 Other transfers.

(a) *Scope.* * * * An exchange to which section 367(b) applies is an exchange described in section 367(b) and in section 332, 351, 354, 355, 356, or 361 with respect to which the status of a foreign corporation as a corporation is relevant for determining the extent to which gain shall be recognized and in connection with which there is no transfer described in section 367(a). An election by a domestic corporation under section 1504(d) to treat a corporation organized under the laws of a contiguous foreign country as a domestic corporation shall be considered to be a transfer of property made pursuant to an exchange to which section 367(b) applies.

Par. 9. Section 7.367(b)–4 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 7.367(b)–4 Certain exchanges described in more than one Code provision.

* * * * *

(b) *Treatment of certain exchanges described in both section 354 and in either section 351 or 361.*

* * * * *

(2) *Exceptions.* * * *

(i) *Specified treatment.* If an exchange of stock in a foreign corporation by a U.S. person is an exchange to which the rules under section 367(a) apply, then the gain required to be included in gross income under paragraph (b)(1)(i)(B) or paragraph (b)(1)(ii) of this section shall not be required to be immediately recognized under this paragraph (b), and instead the transaction shall be treated in accordance with the regulations under section 367(a). See § 1.367(a)–3T.

Par. 10. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 11. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.367(a)–1T. . .1545–0026" "§ 1.367(a)–2T. . .1545–0026" "§ 1.367(a)–3T. . .1545–0026" "§ 1.367(a)–6T. . .1545–0026" "§ 1.367(a)–1T. . .1545–0026" "§ 1.6038B–1T. . . 1545–0026"

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: April 29, 1986.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 86–10631 Filed 5–15–86; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 513

[Army Reg. 600–15]

Indebtedness of Military Personnel; Claim Processing Policies; Correction

AGENCY: Department of the Army Community and Family Support, Defense.

ACTION: Final rule.

SUMMARY: This rule gives the Army's policies and procedures governing private indebtedness of Army members. It also provides for processing claims. It forbid debt collectors from contacting commanders without prior consent of the debtor or without a court order.

EFFECTIVE DATE: May 16, 1986.

ADDRESS: Commander, U.S. Army Community and Family Support Center (DACF–IS–PA), Room 468, Hoffman I, Eisenhower Avenue, Alexandria, VA 22331–0522.

FOR FURTHER INFORMATION CONTACT: LTC Milton J. Brolcaw, (202) 325–8851.

SUPPLEMENTARY INFORMATION: On Monday, March 3, 1986 the Department of the Army published a final rule (51 FR 7268) FR Doc. 86–4290, concerning Indebtedness of Military Personnel; Claim Processing Policies. The rule contained some administrative errors which require the Army to remove § 513.1(j) in its entirety until corrections can be made.

This regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et al. Further, this regulation does not meet the economic requirements of Executive Order 2291. And, this regulation does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 32 CFR Part 513

Credit, Debts, Wages, Military personnel.

1. The authority citation for Part 513 continues to read:

Authority: 10 U.S.C. 3012.

2. According 32 CFR Part 513 is amended by removing § 513.1(j).

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–10935 Filed 5–15–86; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–86–11]

Special Local Regulations: Norfolk Harborfest 1986, Elizabeth River, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the City of Norfolk Harborfest. This event will be held on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. These special local regulations are needed to control vessel traffic within the immediate vicinity of the Harborfest activities due to the confined nature of the waterway and the expected congestion at the time of the events. The effect will be to restrict general navigation in the area for the safety of spectators and participants in the event.

EFFECTIVE DATES: These regulations effective as follows.

a. 6 June 1986, 10:00 am until 10:00 pm
b. 7 June 1986, 8:30 am until 10:30 pm
c. 8 June 1986, 9:30 am until 6:00 pm

FOR FURTHER INFORMATION CONTACT: B.J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804–398–6204).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations, and good cause exists for making them effective in less than 30 days from the date of publication. There was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information: The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and LT. Wade Mitchell, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations: The three-day City of Norfolk Harborfest, sponsored by Norfolk Festevents, Inc., will consist of numerous water events, including: parade of vessels, water ski exhibitions, boat races, military vessel and helicopter demonstrations, and fireworks. Commercial vessels will be permitted to transit the regulated area between events, and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority 33: U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–0511 is added to read as follows:

100.35–0511. Elizabeth River, Norfolk, Virginia.

(a) *Regulated Area:* The waters of the Elizabeth River and its branches from shore to shore, except marinas, piers, and shipyards, bounded to the northwest by a line drawn over the Midtown Tunnel, located in the Port Norfolk Reach section of the Elizabeth River between Pinners Point at latitude 36°51'26.0" North, longitude 76°18'59.0"

West and the northeast shore of the Elizabeth River at latitude 36°51'39.5" North, longitude 76°18'36.5" West, to the south by a line drawn over the Downtown Tunnel, located in the Lower Reach section of the Elizabeth River, between the western shore of the Southern Branch of the Elizabeth River in Portsmouth, Virginia at latitude 36°49'57.0" North, longitude 76°17'40.0" West, and the eastern shore at latitude 36°49'56.5" North, longitude 76°17'34.5" West, and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50'21.5" North, longitude 76°17'14.5" West and Norfolk at latitude 36°50'35.0" North, longitude 76°17'10.0" West.

(b) *Special Local Regulations:*

(1) Except for participants in the Norfolk Harborfest, or persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel underway or at anchor may enter or remain in the regulated area. The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by any Coast Guard officer or petty officer.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of these regulations but may not block a navigable channel.

(3) The Coast Guard Patrol Officer is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the reviewing platform at Town Point.

(4) The Coast Guard Patrol Officer may stop the event to allow the transit of backed up marine traffic through the regulated area.

Dated: May 7, 1986.

James C. Irwin,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 86-11014 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 153

[CGD 84-067]

Oil and Hazardous Substance Discharge Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This Final Rule amends the procedures for reporting discharges of oil and hazardous substances as required by section 311 of the Federal Water Pollution Control Act, as amended (FWPCA), revises or deletes outdated language, and clarifies the criteria for direct payment from the Pollution Fund. These revisions are necessary to reflect amendments to the FWPCA and the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan), and to remain consistent with related Environmental Protection Agency regulations. The intended effect of this rule is to assure consistency of this Part with the statutory provisions of the FWPCA, the regulatory requirements of the National Contingency Plan, and the statutory reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: LT G.A. Wiltshire; 202-426-9568.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published on September 20, 1985 (50 FR 38139) and invited comments for 60 days ending November 19, 1985. Comments were received from seven sources including individuals, industry groups, businesses, and federal agencies. No public hearings were requested and none were held. A dicussion of the comments received and the actions taken are discussed below.

Drafting Information

The principal persons involved in the drafting of this final rule are Lieutenant G.A. Wiltshire, Project Officer, Office of Marine Environment and Systems, and Lieutenant S. Sylvester, Project Attorney, Office of the Chief Counsel.

Background

The regulations in Part 153 of Title 33 of the Code of Federal Regulations concerning notice of discharges of oil or hazardous substances, oil discharge removal, and administration of the Pollution Fund established by section 311(k) of the Federal Water Pollution Control Act, as amended (FWPCA) (33 U.S.C. 1321) were published in 1976. Since that time, both the FWPCA and the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) (40 CFR Part 300) have been amended. As a result, some of the definitions, procedures, and references in the regulations were outdated. In addition, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.) established requirements to report hazardous substance releases that overlapped the FWPCA reporting requirements. A Notice of Proposed Rulemaking was published on September 20, 1985 in the **Federal Register** (50 FR 38139) where various revisions were proposed to Part 153 to delete outdated materials, to update language to correspond to the FWPCA and National Contingency Plan revisions that have occurred or been proposed since the regulations were last updated, to clarify the criteria for direct payment from the Pollution Fund, and to revise the FWPCA discharge reporting procedures to correspond with the CERCLA reporting requirements.

Discussion of Changes From Proposed Rule

Eight revisions were made to the proposed rule based on comments received during the public comment period. Each of these changes are discussed in more detail below.

1. The definition of "coastal waters" in § 153.103 has been modified to add a reference to the Exclusive Economic Zone and to indicate where the specified ports and harbors on inland rivers are identified.

2. The definition of "Chief, Office of Marine Environment and Systems" in § 153.103 has been modified to reflect changes in Coast Guard program responsibilities.

3. The definition of "navigable waters" in § 153.103 has been modified to make reference to the definition in paragraph 2.05-25(b) of this Chapter.

4. The list of definitions in § 153.103 have been reorganized into alphabetical order for ease of use.

5. The procedures for notice of discharge in § 153.203 have been modified as they relate to notifications to the nearest Coast Guard unit. The proposed rule authorized reporting to either the Coast Guard or EPA predesignated federal On-Scene Coordinator (OSC), or the nearest Coast Guard unit, if direct reporting to the National Response Center (NRC) was not practicable. Based on comments received, this has been revised in the final rule to allow reports to the nearest Coast Guard unit only when it is not possible to notify the NRC or OSC directly. Reporting parties would be required to subsequently notify the NRC of the discharge as soon as possible.

6. The list of addresses and telephone numbers for Coast Guard district and EPA regional offices in Table 1 of Subpart B has been modified to reflect address or telephone number changes in EPA Regions I, III, IV, V, VII; VIII, and IX and the First, Second, and Twelfth Coast Guard Districts.

7. The list of states and corresponding Coast Guard Districts in Table 2 of Subpart B has been revised to delete the reference to coastal contingency plans and to better define the inland areas of the Coast Guard Districts.

8. The procedures for requesting reimbursement for response actions under FWPCA sections 311(c) and 311(d) and the Intervention on the High Seas Act, previously separated into §§ 153.417 and 153.419, have been consolidated into §153.417.

Discussion of Comments Received

Of the seven comments received, none objected to the revisions in the proposed rule, however, some comments recommended additional changes to the sections. The following is a discussion of the comments received.

1. Three comments were received concerning the definitions in 153.103. One comment requested that, for ease of use, the list of definitions be reorganized into alphabetical order. The Coast Guard agrees with this comment and has reorganized this section into alphabetical order for the Final Rule.

One comment requested that the definition of "coastal waters" in § 153.103(o) be revised to make specific reference to the 200-mile Exclusive Economic Zone. This comment was based on the portion of the definition covering discharges ". . . which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. . ." On March 10, 1983, the President proclaimed that an ocean area extending up to 200 miles offshore would be covered within this zone, where the United States would exercise its soverign rights over natural resources and certain other economic activities. Since this area should fall within the definition of "coastal waters," the definition has been modified.

The final comment requested that the definition of "such quantities as may be harmful" in § 153.103(n) be modified to establish a standard for reporting based on the volume of oil discharged and the location of the discharge. The Coast Guard does not agree with this comment. The reporting regulations in this section merely establish a mechanism for receiving reports of "such quantities as may be harmful" as established by the Administrator of the Environmental Protection Agency (EPA) in accordance with section 311(b)(4) of the FWPCA. Existing EPA regulations in 40 CFR Part 110 establish this quantity for the navigable waters of the United States and the contiguous zone as a discharge which violates applicable water quality standards in navigable waters of the United States, causes a film or sheen or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. A recent EPA Notice of Proposed Rulemaking concerning 40 CFR Part 110 (50 FR 9776 of March 11, 1985) proposed the extension of this "sheen test" to offshore waters outside the contiguous zone and solicited comments concerning the use of a volumetric test as an alternative. Until the EPA regulations are revised otherwise, the "sheen test" continues to be the quantity that requires reporting within the navigable waters and the contiguous zone.

In addition to the above changes, the definition of "Chief, Office of Marine Environment and Systems" in § 153.103(u) of the existing rule (§ 153.103(d) in Final Rule) has been modified to reflect revisions in Coast Guard program responsibilities, the definition of "coastal waters" in § 153.103(n) of the existing rule (§ 153.103(e) in Final Rule) has been modified to indicate that the specified ports and harbors on inland rivers where the Coast Guard acts as OSC are identified in the applicable Regional Contingency Plans, and the definition of "navigable waters" in § 153.103(w) of the existing rule (§ 153.103(k) in Final Rule) has been modified to reference the definition of this term in paragraph 2.05–25(b) of this Chapter.

2. Four comments were received concerning the reporting requirements in § 153.203. Three comments supported the reporting procedures proposed, but suggested additional revisions to reduced the spill investigation burden on the Coast Guard and industry, and one comment recommended that the provision for reporting a discharge to the nearest Coast Guard unit be deleted. A detailed discussion of these comments follows.

Two comments recommended that provisions be added to this section requiring the reporting of specific information about a discharge (size, possible shoreline impact, corrective action taken) and the recording of specific information concerning the discharge in the "Oil Record Book" that must be maintained by certain vessels as required by 33 CFR Part 151. The comments noted that these revisions would reduce the unnecessary costs incurred by government and industry in reporting and responding to many small and harmless spills. The comments further offered possible criteria that the Coast Guard could use for evaluating the need for investigating a reported discharge. The comments stated that, once the required notification was made and evaluated by the Coast Guard, a vessel involved in a discharge could resume operations and cleanup operations could proceed without undue administrative delays. While the Coast Guard appreciates the concern expressed by these comments, we believe that no revisions to the reporting regulations are necessary to address these concerns. Regarding the requirement of reporting parties to provide specific information when the report is received by the NRC or OSC, reporting parties are already asked to provide various information, such as the size of the discharge, source, cause, cleanup activities underway, and other discharge-related information. The Coast Guard believes that there is no need to "require" specific information to be provided, since it is already collected voluntarily. Regarding the use of Oil Record Books for recording information on oil discharges, the existing regulation concerning use of Oil Record Books in 33 CFR 151.25(g) already requires that information on any emergency, accidental, or other exceptional discharge of oil or oily mixture be entered in the Oil Record Book. The Coast Guard believes that this would cover the situation addressed by the comments. Regarding the investigation policy, the Coast Guard feels that this comment is beyond the scope of this rulemaking. Coast Guard policies for investigating reported discharges exist independent of the specific reporting regulations. The present policy is that the Coast Guard will investigate all reported discharges, resources permitting. Regarding the delays in vessel oil transfers resulting from oil discharges, the oil transfer regulations in 33 CFR 156.125 already address procedures for continuing oil transfers after a discharge occurs. These regulations require that an oil transfer operation be stopped after an oil discharge occurs and not resumed until the discharged oil is cleaned up, is contained and being cleaned up, or the resumption is authorized by the Coast Guard Captain of the Port (COTP), who is usually the predesignated Federal On-Scene Coordinator (OSC) for the area. Thus, it would be inappropriate to allow for resumption of oil transfers based solely on the reporting of a discharge, whatever the size, until the criteria in § 156.125 are met. However, this does not preclude the reporting party from receiving permission from the COTP to resume an oil transfer if the initial report is made directly to the OSC, and permission is received to resume the

transfer before Coast Guard personnel can investigate the discharge.

One comment recommended that the Coast Guard delete the provision that allows reporting of discharges to the nearest Coast Guard unit. The comment expressed concern that reports would be made to Coast Guard units where personnel are not familiar with the reporting requirements and may not obtain sufficient information concerning the discharge, may not process the report properly, or may inadvertently present a hazard to Coast Guard personnel not trained to respond to such reports. The comment also expressed concern that reporting to the nearest unit would delay the relaying of the information to the federal OSC. While the Coast Guard appreciates these concerns, we do not agree that this provision should be completely deleted, however, revisions have been made that should address these concerns. Specifically, the reporting requirement has been revised to allow reporting to the nearest Coast Guard unit only when it is not possible to report directly to the NRC or the predesignated OSC for the geographic area where the discharge occurs. In such cases, immediate reports can be made directly to the nearest Coast Guard unit, however, the person in charge of the vessel or facility involved in the discharge must subsequently notify the NRC as soon as possible. This revision retains the provision for reporting to the nearest Coast Guard unit, limiting its use, however, to those situations where it is not possible to report to either the NRC or the OSC.

One of the purposes of revising the FWPCA reporting requirements is to ensure consistency with the reporting requirements under CERCLA. All hazardous substance discharges which are subject to the FWPCA section 311(b)(5) reporting requirements are also subject to the reporting requirements in CERCLA section 103(a). This overlap exists because the list of hazardous substances defined in CERCLA section 101(14) includes substances designated pursuant to FWPCA section 311(b)(2), and the definition of a hazardous substance release in CERCLA section 101(22) includes discharges to navigable waters and other areas covered by the FWPCA. It is highly desirable, both from the perspectives of efficiency and in minimizing regulatory burden, to allow a single report to meet the requirements of both statutes. CERCLA section 103(a) requires reports of all hazardous substances releases to be made to the NRC. With this in view, EPA's final rule for reporting CERCLA hazardous substance releases in 40 CFR 302.6 states that such reports must be made to the NRC. However, in revising §§ 300.51 and 300.63 of the National Contingency Plan on November 20, 1985 (50 FR 47912), EPA authorized reports to the appropriate Coast Guard or EPA predesignated OSC where direct reporting to the NRC is not practicable, requiring that these reports be promptly relayed by the OSC to the NRC. This was to assure that even when hazardous substances discharges/releases are reported to the OSC, the statutorily required notice to the NRC will also be provided. In the case where it is not possible to notify the NRC or predesignated OSC immediately, EPA authorized reports to the nearest Coast Guard unit, but the reporting party must subsequently report to the NRC as soon as possible to meet the CERCLA reporting requirement. EPA intends to amend the rule implementing the CERCLA notification provisions to parallel the reporting procedure that is adopted in this rule and in the National Contingency Plan. Consequently, in cases where both CERCLA and the FWPCA apply, one report will meet the reporting requirements of both statutes.

Requiring persons that report to the nearest Coast Guard unit to subsequently notify the NRC should not impose any significant burdens on the reporting public. The Coast Guard believes that reports to the nearest Coast Guard unit would be limited to discharges involving vessels at sea or offshore platforms with no telephone access. These persons would normally report by radio to a Coast Guard station that maintains a radio watch. To ensure that the reporting requirement is met and, in the case of a hazardous substance discharge, to meet the CERCLA reporting requirement, persons who report under this provision must subsequently notify the NRC as soon as possible.

It is important to note that reports to locations other than the NRC are authorized only when direct reporting to the NRC is not practicable. Because the NRC maintains toll-free telephone numbers accessible from anywhere in the country, reporting to the predesignated OSC or the nearest Coast Guard unit should be very limited.

The final comment referred to reporting requirements of the Minerals Management Service (MMS), U.S. Department of the Interior, for certain oil discharges on the Outer Continental Shelf, and requested that providing notice to the NRC meet the MSS reporting requirements. The comment also indicated that they were recommending this same change to MMS. The Coast Guard believes that this comment is beyond the scope of this rulemaking. The MMS reporting requirements are based on their authorities under the Outer Continental Shelf Lands Act and exist independent of any FWPCA reporting requirements. Thus it is inappropriate to address any MMS reporting requirement in this rulemaking.

3. One comment noted that the address and phone number listed in Table 1 for EPA Region VII was incorrect, and that there were typographical errors in Table 2. The final rule corrects this information, as well as the address for Regions III and VIII and the First, Second, and Twelfth Coast Guard Districts, and updates the telephone numbers for all offices. In addition, Table 2 has been updated to delete the footnote concerning coastal regional contingency plans and to better define the inland areas of the Coast Guard districts. This corresponds with revisions to the National Contingency Plan that combined the coastal and inland regional contingency plans into one plan covering an entire standard Federal Region.

4. One comment suggested that separate certification procedures for FWPCA sections 311(c) and 311(d) and Intervention on the High Seas Act response actions contained in §§ 153.417 and 153.419 were unnecessary and should be combined. The Coast Guard agrees with this comment. The Final Rule consolidates the certification information previously included separately in §§ 153.417 and 153.419 into § 153.417 and deletes § 153.419.

5. One comment, although not requesting any revisions, inquired about the procedures for States to be reimbursed for their Phase III oil removal actions or hazardous substance removal actions. While §§ 153.407 and 153.417 of this Part describe the methods for obtaining reimbursement, additional requirements must be met before States can be reimbursed. These requirements, located in the National Contingency Plan (40 CFR 300.58(f)(4)), include a determination by the Federal OSC that the responsible party is unknown or not conducting a proper removal. The OSC must also determine that State action is required to minimize or mitigate a significant threat to public health or welfare which the Federal Government cannot minimize or mitigate, or that a removal or partial removal can be carried out by the State at a cost which is less than or not significantly greater than the costs which would be incurred by the Federal Government. The Coast

Guard has developed a standard agreement for use by States desiring reimbursement from the Pollution Fund which details the various requirements and procedures to be followed. Interested States should contact the appropriate Coast Guard District Office listed in Table 1 to obtain further information concerning these agreements. It should be noted that, because of the availability of the CERCLA Trust Fund for hazardous substance removal activities, use of these agreements is presently limited to Phase III oil removal activities only.

Reporting and Recordkeeping Requirements

The requirement for reporting oil and hazardous substance discharges is an existing requirement. The final revisions affect only the procedures for making the required notifications. These revisions do not create any increase in the reporting or recordkeeping requirements. The existing information collection requirements have previously been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been approved by OMB. The section number and corresponding OMB approval number is 33 CFR 153.203, OMB No. 2115-0137.

E.O. 12291 and DOT Regulatory Policies and Procedures

These final regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The final rule will not establish any new reporting requirements, and only reflects statutory or regulatory changes that have occurred since the regulations were last revised or clarify existing policies or procedures.

Regulatory Flexibility Act

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 153

Hazardous substances, Oil pollution.

For the reasons set out in the preamble, Part 153 of Subchapter O, Chapter I of Title 33 of the Code of Federal Regulations is amended to read as set forth below:

PART 153—[AMENDED]

1. The authority citation for Part 153 is revised to read as follows and all authority citations within the Part are removed:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321(j)(1)(A) and (m); 42 U.S.C. 9615; secs. 2, 5, and 7, E.O. 11735 (38 FR 21243) as amended by E.O. 12418 (48 FR 20891); E.O. 12316 (46 FR 42237); 49 CFR 1.45(b) and 1.46 (l), (m), and (n).

2. Section 153.101 is revised to read as follows:

§ 153.101 Purpose.

The purpose of this part is to prescribe regulations concerning notification to the Coast Guard of the discharge of oil or hazardous substances as required by the Federal Water Pollution Control Act, as amended (FWPCA); the procedures for the removal of a discharge of oil; and the costs that may be imposed or reimbursed for the removal of a discharge of oil or hazardous substances under the FWPCA.

3. Section 153.103 is revised to read as follows:

§ 153.103 Definitions.

As used in this part:

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(b) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(c) "Chemical agents" means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or removal of the pollutant from the water. The term "chemical agents" as used in this part includes dispersants, surface collecting agents, biological additives, burning agents, and sinking agents as defined in Subpart H of the National Contingency Plan.

(d) "Chief, Office of Marine Environment and Systems" means the Coast Guard Officer designated by the Commandant to assist and advise the Commandant on matters related to marine environmental response, port and environmental safety, and waterways management.

(e) "Coastal waters" means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, or other waters of the high seas subject to discharges in connection with activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)). These waters include those contained within the Exclusive Economic Zone declared by Presidential Proclamation 5030 on March 10, 1983 (43 FR 10605).

Note: Coastal waters are those waters where the Coast Guard has the responsibility for providing On-Scene Coordinators under the National Contingency Plan. Specific dividing lines between coastal and inland waters, and the identification of specified ports and harbors on inland rivers, are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(f) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, as published in the June 1, 1972 issue of the Federal Register (37 FR 11906).

(g) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under Section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under Section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

(h) "Hazardous substance" means any substance designated by the Administrator of the Environmental Protection Agency pursuant to section 311(b)(2) of the Act.

(i) "Inland waters" means all other waters of the U.S. not included in the definition of coastal waters.

Note: Inland waters are those waters where the Environmental Protection Agency has the responsibility for providing On-Scene Coordinators under the National Contingency Plan. Specific dividing lines between coastal and inland waters are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(j) "Mechanical removal" means the use of pumps, skimmers, booms, earthmoving equipment, and other

mechanical devices to contain the discharge of oil and to recover the discharge from the water or adjoining shorelines.

(k) "Navigable waters" means the waters of the United States as defined in paragraph 2.05–25(b) of this Chapter.

(l) "Offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(m) "Oil" means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(n) "On-Scene Coordinator" or "OSC" is the Federal official predesignated by the Environmental Protection Agency (EPA) or Coast Guard to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) as published in 40 CFR Part 300.

(o) "Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.

(p) "Person" includes an individual, firm, corporation, association, and a partnership.

(q) "Pollution Fund" and "Fund" means the revolving fund established in the Treasury under the authority in section 311(k) of the Act to carry out the provisions of section 311 (c), (d), (i), and (l) of the Act.

(r) "Public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(s) "Remove" or "Removal" refers to removal of oil or hazardous substances from the waters and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(t) "Sorbent" means materials essentially inert and insoluble used to remove oil from water through a variety of sorption mechanisms. Examples include straw, expanded perlite, polyurethane foam, reclaimed paper fibres, and peat moss.

(u) "Such quantities as may be harmful" means those quantities of oil and any hazardous substances determined in accordance with the provisions of section 311(b)(4) of the Act.

Note: Regulations that relate to such quantities as may be harmful of oil are published in 40 CFR Part 110. Regulations that relate to such quantities as may be harmful (reportable quantities) of hazardous substances are published in 40 CFR Part 117 and also listed in 40 CFR Part 302.

(v) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(w) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

4. In § 153.105, paragraph (d)(4) is revised to read as follows:

§ 153.105 Delegations.

* * * * *

(d) * * *

(4) Which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

* * * * *

5. Section 153.203 is revised to read as follows:

§ 153.203 Procedure for the notice of discharge.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as they have knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of section 311(b)(3) of the Act, immediately notify the National Response Center (NRC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593, toll free telephone number 800–424–8802 (in Washington, D.C. metropolitan area, 426–2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated OSC for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible.

Note: Geographical jurisdiction of Coast Guard and EPA OSC's are specified in the applicable Regional Contingency Plan. Regional Contingency Plans are available at Coast Guard District Offices and EPA Regional Offices as indicated in Table 2. Addresses and telephone numbers for these offices are listed in Table 1.

6. In § 153.305, paragraph (d) is revised to read as follows:

§ 153.305 Methods and procedures for the removal of discharged oil.

* * * * *

(d) Use chemical agents only in accordance with the provisions of Subpart H of the National Contingency Plan and with the prior approval of the Federal OSC; and

* * * * *

7. Table 1 of Subpart B is revised to read as follows:

TABLE 1.—ADDRESSES AND TELEPHONE NUMBERS OF COAST GUARD DISTRICT OFFICES AND EPA REGIONAL OFFICES

	Address	Telephone
EPA Regional Offices		
Region:		
I	John F. Kennedy Federal Bldg., Boston, MA 02203.	617-223-7265
II	26 Federal Plaza, New York, NY 10278.	201-548-8730
III	841 Chestnut Street, Philadelphia, PA 19107.	215-597-9800
IV	345 Courtland Street, NE, Atlanta, GA 30365.	404-347-4062
V	230 S. Dearborn Street, 13th Floor, Chicago, IL 60604.	312-353-2216
VI	First International Building, 1201 Elm Street, Dallas, TX 75270.	214-767-2600
VII	726 Minnesota Avenue, Kansas City, KS 66101.	913-236-3778
VIII	One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202-2413.	303-293-1788
IX	215 Fremont Street, San Francisco, CA 94105.	415-974-8131
X	1200 6th Avenue, Seattle, WA 98101.	206-442-1263
Coast Guard District Offices		
District:		
1st	408 Atlantic Ave., Boston, MA 02110-2209.	617-223-8444
2nd	1430 Olive St., St. Louis, MO 63103.	314-425-4655
3rd	Governors Island, New York, NY 10004-5098.	212-668-7152
5th	Federal Bldg., 431 Crawford St., Portsmouth, VA 23705-5004.	804-398-6638
7th	Federal Bldg., Room 1221, 51 S.W. 1st Ave., Miami, FL 33130.	305-350-5276
8th	Hale Boggs Federal Bldg., 500 Camp St., New Orleans, LA 70130-3396.	504-589-6298
9th	1240 East 9th St., Cleveland, OH 44199.	216-522-3919
11th	union Bank Bldg., 400 Oceangate, Long Beach, CA 90822-5399.	213-590-2301
12th	Coast Guard Island, Alameda, CA 94501.	415-437-3466
13th	Federal Bldg., 915 Second Ave., Seattle, WA 98174.	206-442-5850
14th	Prince Kalanianaole Federal Bldg., 300 Ala Moana Blvd., 9th Floor, Honolulu, HI 96850.	808-546-7510
17th	P.O Box 3-5000, Juneau, AK 99802.	907-586-7195

8. Table 2 of Subpart B is revised to read as follows:

TABLE 2.—STANDARD ADMINISTRATIVE REGIONS OF STATES AND CORRESPONDING COAST GUARD DISTRICTS AND EPA REGIONS

States and EPA region	Coast Guard district
Region I:	
Maine	1st
New Hampshire	1st
Vermont:	
All except Northwestern portion	1st
Northwestern portion	3rd
Massachusetts	1st
Connecticut	3rd
Rhode Island	1st
Region II:	
New York:	
Coastal area and Eastern portion	3rd
Great Lakes area and other portions	9th
New Jersey	3rd
Puerto Rico	7th
Virgin Islands	7th
Region III:	
Pennsylvania:	
Eastern portion	3rd
Great Lakes area	9th
Southwestern portion	2nd
Maryland	5th
Delaware	3rd
West Virginia	2nd
Virginia	5th
District of Columbia	5th
Region IV:	
Kentucky	2nd
Tennessee	2nd
North Carolina	5th
South Carolina	7th
Georgia	7th
Florida:	
Atlantic and Gulf coasts	7th
Panhandle area	8th
Alabama:	
Southern	8th
Northern	2nd
Mississippi:	
Southern	8th
Northern	2nd
Region V:	
Minnesota:	
Great Lakes area	9th
Inland rivers area	2nd
Wisconsin:	
Great Lakes area	9th
Inland rivers area	2nd
Michigan	9th
Illinois:	
Great Lakes area	9th
Inland rivers area	2nd
Indiana:	
Great Lakes area	9th
Inland rivers area	2nd
Ohio:	
Great Lakes area	9th
Inland rivers area	2nd
Region VI:	
New Mexico	8th
Texas	8th
Oklahoma	2nd
Arkansas	2nd
Louisiana	8th
Region VII:	
Nebraska	2nd
Iowa	2nd
Kansas	2nd
Missouri	2nd
Region VIII:	
Montana	13th
Wyoming	2nd
Utah:	
Northern	12th
Southern	11th
Colorado	2nd
North Dakota	2nd
South Dakota	2nd
Region IX:	
California:	
Northern	12th
Southern	11th
Nevada:	
Northern	12th
Southern	11th
Arizona	11th
Hawaii	14th
Guam	14th
American Samoa	14th
Trust Territory of the Pacific Islands	14th
Northern Mariana Islands	14th
Region X:	
Washington	13th
Oregon	13th
Idaho	13th
Alaska	17th

9. in § 153.407, the introductory text of paragraph (a) and paragraph (b) are revised to read as follows:

§ 153.407 Payments or reimbursements from the pollution fund.

(a) The following costs incurred during performance of a Phase III activity as defined in Subpart E of the National Contingency Plan, or a removal action as defined in Subpart F of the National Contingency Plan, are reimbursable to Federal and State agencies when authorized by the appropriate OSC under the authority of section 311(c) of the Act, and are reimbursable to Federal agencies when authorized by the appropriate Coast Guard or EPA official in the case of the summary removal or destruction of a vessel, other "intervention" (as defined in § 153.105(e) of this Part), or any other action under the authority of section 311(d) of the Act or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.):

* * * * *

(b) The District Commander may authorize the direct payment of the costs found to be reasonable under paragraph (a)(3) of this section. Direct payment may only be made to Federal or State agencies, or to Federal contractors or suppliers. Direct payments to State or local agency contractors or suppliers will not be authorized.

* * * * *

10. In § 153.415, the section heading and introductory paragraph are revised to read as follows:

§ 153.415 Cost summary reports.

As soon as practicable after completion of an action authorized under section 311 (c) or (d) of the Act or the Intervention on the High Seas Act, the OSC submits a cost summary report to the cognizant District Commander that includes:

* * * * *

11. Section 153.417 is revised to read as follows:

§ 153.417 Reimbursement for actions under section 311(c) or 311(d) of the Act of the Intervention on the High Seas Act.

(a) Each Federal or State agency requesting reimbursement for an action authorized under section 311(c) or 311(d) of the Act or under the Intervention on the High Seas Act must, within 60 days after completion of the action, submit to the cognizant District Commander, through the OSC for review and certification required in paragraph (b) of this section, lists accompanied by supporting accounting data, itemizing actual costs incurred.

(b) Requests for reimbursement submitted by Federal and State agencies are reviewed by the OSC to ensure that the costs for which reimbursement is being sought were authorized as Phase III removal actions for oil discharges, or removal actions as defined in Subpart F for hazardous substance discharges, and must have one of the following certifications by the OSC, as appropriate:

(1) I certify that the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund.

_____

(OSC signature)

_____

(Incident title)

_____

(Pollution incident project number)

(2) I certify that, except as noted below, the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund. The following actions were not authorized by me and are not subject to reimbursement from the Pollution Fund:

_____

(OSC Signature)

_____

(Incident title)

_____

(Pollution incident project number)

§ 153.419 [Removed]

12. Section 153.419 is removed.

Dated: May 12, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc. 86-11010 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

Safety Zone Regulations; Upper Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Chesapeake Bay (COTP Baltimore, MD Regulation 86-04). This will be a moving zone centered around the S/S QUEEN ELIZABETH II during her transit to and from Baltimore, Maryland. The zone is needed to protect watercraft from a safety hazard associated with the passage of the S/S QUEEN ELIZABETH II into the Upper Chesapeake Bay. Entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore, Maryland.

EFFECTIVE DATES: This regulation becomes effective 09 May 1986 at 10:00 AM. It terminates on 17 May 1986 at 3:30 PM unless sooner terminated by the Captain of the Port Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Commander D. M. Strasser, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days from the date of this publication. Publishing a NPRM and delaying the effective date of this safety zone would be contrary to the public interest since action is needed to safeguard watercraft and their occupants on the scheduled dates.

Drafting Information

The drafters of this regulation are CWO-2 D. L. HUTCHINSON, project officer for the Captain of the Port Baltimore, MD and LCDR F. E. COUPER, Project Attorney, Fifth Coast Guard District Legal Office (Baltimore Branch).

Discussion of Regulation

The event requiring this regulation will occur on 17 May 1986 and again on 17 May 1986. This safety zone is necessary to protect the boating public from the hazards associated with the passage of the S/S QUEEN ELIZABETH II through the Upper Chesapeake Bay and in and out of the Port of Baltimore, Maryland. This action will help prevent damage to watercraft and their occupants.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.49 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new section 165.T0504 is added to read as follows:

§ 165.T0504 Safety Zone: Upper Chesapeake Bay, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: A 200 yard radius moving zone around the S/S QUEEN ELIZABETH II, while in transit of the Upper Chesapeake Bay, North of a line between Thomas Point to the mouth of Price Creek to Dundalk Marine Terminal Baltimore, Maryland and the return trip South through the Upper Chesapeake Bay from Dundalk Marine Terminal to a line from Thomas Point to the mouth of Price Creek.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore, MD.

Dated: April 30, 1986.

R.C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 86-11012 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

Security Zone Regulations; Upper Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in the Baltimore Harbor, Dundalk Marine Terminal, Baltimore, Maryland. The zone is needed to protect the S/S QUEEN ELIZABETH II and her passengers from a security threat associated with the port call of the S/S QUEEN ELIZABETH II at Baltimore, Maryland. Entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore, Maryland.

EFFECTIVE DATES: This regulation becomes effective on 09 May 1986 at 2:00 PM. It terminates on 17 May 1986 at 11:30 AM unless sooner terminated by the Captain of the Port Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Commander D. M. STRASSER, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days from the date of this publication. Publishing a NPRM and delaying the effective date of this security zone would be contrary to the public interest since action is needed to safeguard the S/S QUEEN ELIZABETH II and her passengers on the scheduled dates.

Drafting Information

The drafters of this regulation are CWO-2 D. L. HUTCHINSON, project officer for the Captain of the Port Baltimore, MD and LCDR F. E. COUPER, Project Attorney, Fifth Coast Guard District Legal Office (Baltimore Branch).

Discussion of Regulation

The event requiring this regulation will occur on 09 May 1986 and again on 17 May 1986. This security zone is necessary to protect the S/S QUEEN ELIZABETH II and her passengers while moored at Dundalk Marine Terminal, Baltimore, Maryland. This action will minimize the hazards to the S/S QUEEN ELIZABETH II and her passengers from possible damage from any person or persons.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.49 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T0505 is added to read as follows:

§ 165.T0505 Security Zone: Baltimore, Maryland.

(a) *Location.* The following area is a security zone: A 500 yard perimeter upon the waters surrounding the vessel S/S QUEEN ELIZABTEH II while moored at Dundalk Marine Terminal, Berth 5.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore, MD.

Dated: April 30, 1986.

R. C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 86-11013 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 10

International Surface Air Lift Service to Panama and Certain Far Eastern Countries

AGENCY: Postal Service.

ACTION: Final action on International Surface Air Lift Service to Panama and Certain Far Eastern countries.

SUMMARY: Pursuant to agreements with the postal administrations of Panama and certain Far Eastern countries, the Postal Service intends to begin International Surface Air Lift Service to those countries at postage rates indicated in the tables below. Service is scheduled to begin on June 15, 1986.

EFFECTIVE DATE: June 15, 1986.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlmn, [202] 268-2673.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on April 10, 1986 [51 FR 12343], the Postal Service announced that it was proposing to begin International Surface Air Lift Service to Panama and certain Far Eastern countries. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin International Surface Air Lift Service to Panama and certain Far Eastern countries on June 15, 1986 at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

Part 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

International Surface Air Lift

(See following list for AMF and country groups)

Origin AMF group	Rate group A	Rate group B	Rate group C	Rate group D	Rate group E
a. Parcel Rate:*					
(1) Regular Service:					
East	$1.95	$2.22	$2.55	$2.66	$3.40
Central	1.70	2.47	N/A	2.57	3.22
West	1.99	2.53	2.99	2.33	3.13
(2) Regular Service M-Bag:					
East	1.75	2.00	2.30	2.39	3.06
Central	1.53	2.22	N/A	2.31	2.90
West	1.79	2.28	2.69	2.10	2.62
(3) Transit Service Regular:					
East	N/A	2.41	N/A	N/A	3.60
Central	2.02	2.54	2.40	N/A	3.42
West	N/A	2.62	N/A	N/A	3.30
(4) Transit Service M-Bag:					
East	N/A	2.17	N/A	N/A	3.24
Central	1.82	2.36	2.16	N/A	3.08
West	N/A	2.54	N/A	N/A	2.97

*Contact your local postmaster or customer services representative for possible discount rates based on type of mail matter and weight of mailing.

International Surface Air Lift Service Rate Groups

Origin AMF's:[1]

East	
Boston	Philadelphia
New York City	Washington, DC
Central	
Chicago	Houston
Dallas	Miami
West	
Los Angeles	San Francisco

Destination Countries for Regular and/or Transit Service:

Rate Groups

A	*B*
Belize	Albania
Colombia	Austria
Costa Rica	Belgium
Cuba	Bulgaria
Dominican Republic	Czechoslovakia
Ecuador	Denmark
El Salvador	East Germany
Guatemala	Finland
Haiti	France
Honduras	Great Britain
Jamaica	Greece
Mexico	Hungary
Netherlands Antilles	Iceland
Nicaragua	Ireland
Panama	Italy
Trinidad and Tobago	Luxembourg
Venezuela	Netherlands
	Norway
	Poland
	Portugal
	Rumania
	Spain
	Sweden
	Switzerland
	West Germany
	Yugoslavia
C	*D*
Argentina	Hong Kong
Bolivia	India
Brazil	Japan
Chile	Korea, So.[2]
French Guyana	Taiwan [2]
Guyana	
Paraguay	
Peru	
Suriname	
Uruguay	
E	
Australia	New Guinea
China, Peoples Republic [2]	New Zealand
Fiji Islands	Philippines
Malaysia [2]	Singapore
	South Africa
	Thailand [2]

[1] All AMF's do not service all destinating countries. Contact your local postmaster or customer services representative for list of AMF's and the destinating countries served by particular AMF's.

[2] New destination countries.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-11095 Filed 5-15-86; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 21

[Gen. Docket No. 80-112; FCC 86-225]

Common Carrier Services; Instructional Television Fixed Service, the Multipoint Distribution Service and the Private Operational Fixed Microwave Service; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action changes the cut-off date for the submission of settlement agreements, pertaining to MMDS, from two (2) business days prior to the date of the lottery to ten (10) business days prior to the lottery. The increase in time is required to ensure that all of the administrative details involved in including new settlement entities in the lottery system can be accomplished. This action will ensure that all new settlement entities that submit their settlement agreement at least ten (10)

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days prior to a designated lottery will be included in that lottery.

EFFECTIVE DATE: May 16, 1986.

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Common Carrier Bureau, (202) 634–1774.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Gen. Docket No. 80–112, Adopted: April 30, 1986; and Released: May 8, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order

This Order changes the cut-off date for the submission of settlement agreements, pertaining to MMDS, from two (2) business days to the date of the lottery to ten (10) business days prior to the lottery.

Ordering Clauses

Accordingly, it is ordered, That under the authority contained in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), para. 31 in *Second Report and Order*, Gen. Docket No. 80–112 (February 13, 1985, 50 FR 5983) is amended as hereinbefore described.

William J. Tricarico,

Secretary.

[FR Doc. 86–10962 Filed 5–15–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 18

[GEN Docket 20716; FCC 86–205]

Radiation Limits Below 30 MHz for RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Memorandum Opinion and Order, the Commission affirms its decision in the Third Report and Order in this proceeding with regard to the technical standards for radio frequency (RF) lighting devices. This action is being taken in response to a petition for partial reconsideration filed by the National Association of Broadcasters. The Commission also amends §§ 18.213, 18.305 and 18.309 of its Rules to provide additional information to the public.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Liliane Volcy, Office of Engineering and Technology, tel: (202) 653–7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, GEN Docket 20716, adopted April 16, 1986, and released May 8, 1986.

The full text of Commission decisions is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The Commission denies the petition for partial reconsideration filed by the National Association of Broadcasters ("NAB") with regard to the technical standards adopted for RF lighting devices in the Third Report and Order in this proceeding, 50 FR 36061 (1985). Although the Commission finds inadequate justification for adopting the particular radiation limit requested by NAB (25 μV/m at 10 meters below 30 MHz), it agrees with NAB that, in view of the expected proliferation and long life-expectancy of RF lighting devices, the lack of a radiation limit below 30 MHz may increase the interference potential of such products to authorized radio services. Therefore, in an associated Notice of Proposed Rule Making in GEN Docket 83–806, the Commission proposes to impose radiation limits at frequencies below 30 MHz on the operation of RF lighting devices. These limits are based on current standards applied to other equipment regulated by the Commission and operating in the same frequency range and on the fact that there has been little or no reported interference from such devices. The subject Memorandum Opinion and Order also amends §§ 18.213, 18.305 and 18.309 of the Rules to provide additional information to the public.

Ordering Clauses

2. Accordingly, it is ordered, That the Petition for Partial Reconsideration filed by the National Association of Broadcasters is denied. It is also ordered, That Part 18 of the Rules is amended as shown below, effective June 9, 1986.

List of Subjects in 47 CFR Part 18

Business and industry, Household appliances.

William J. Tricarico,

Secretary.

Part 18 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat. 1066, 1082, 1083, as amended; Sec. 303, 82 Stat. 290; 47 U.S.C. 154, 302, 303, 307.

2. The introductory paragraph of § 18.213 is revised to read as follows:

§ 18.213 Information to the user.

Information on the following matters shall be provided to the user in the instruction manual or on the packaging if an instruction manual is not provided for any type of ISM equipment:

* * * * *

3. Section 18.305 is amended by revising paragraph (b) and notes 1 and 2 to the section to read as follows:

§ 18.305 Field strength limits.

* * * * *

(b) The field strength levels of emissions which lie outside the bands specified in § 18.301, unless otherwise indicated, shall not exceed the following:

Equipment	Operating frequency	RF Power generated by equipment (watts)	Field strength limit (uV/m)	Distance (meters)
Any type unless otherwise specified (miscellaneous).	Any ISM frequency	Below 500	25	300
		500 or more	25 $\sqrt{\text{power}/500}$	[1]300
	Any non-ISM frequency	Below 500	15	300
		500 or more	15 $\sqrt{\text{power}/500}$	[1]300
Industrial heaters and RF stabilized arc welders.	On or below 5,725 MHz	Any	10	1,600
	Above 5,725 MHz	Any	(*)	(*)
Medical diathermy	Any ISM frequency	Any	25	300
	Any non-ISM frequency	Any	15	300
Ultrasonic	Below 490 kHz	Below 500	2,400/F(kHz)	300
		500 or more	2,400/F(kHz) $\sqrt{\text{power}/500}$	[1]300
	490 to 1,600 kHz	Any	24,000/F(kHz)	30
	Above 1,600 kHz	Any	15	30
Induction cooking ranges	Below 90 kHz	Any	1,500	[2]50

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Equipment	Operating frequency	RF Power generated by equipment (watts)	Field strength limit (uV/m)	Distance (meters)
	On or above 92 MHz	Any	500	[4]30

[1] Field strength may not exceed 10 μV/m at 1600 meters. Consumer equipment operating below 1000 MHz is not permitted the increase in field strength otherwise permitted here for power over 500 watts.
[2] Reduced to the greatest extent possible.
[3] Field strength may not exceed 10 μV/m at 1600 meters. Consumer equipment is not permitted the increase in field strength otherwise permitted here for over 500 watts.
[4] Induction cooking ranges manufactured prior to February 1, 1980, shall be subject to the field strength limits for miscellaneous ISM equipment.

* * * * *

Notes

1. The tighter limit shall apply at the boundary between two frequency ranges.

2. Testing for compliance with these limits may be made at closer distances, provided a sufficient number of measurements are taken to plot the radiation pattern, to determine the major lobes of radiation, and to determine the expected field strength level at 30, 300, or 1600 meters. Alternatively, if measurements are made at only one closer fixed distance, then the permissible field strength limits shall be adjusted using 1/d as an attenuation factor.

3. In § 18.309, paragraph (a) is revised to read as follows:

§ 18.309 Frequency range of measurements.

(a) For field strength measurements:

Frequency band in which device operates (MHz)	Range of frequency measurements	
	Lowest frequency	Highest frequency
Below 1.705	Lowest frequency generated in the device, but not lower than 9 kHz.	30 MHz.
1.705 to 30	Lowest frequency generated in the device, but not lower than 9 kHz.	400 MHz.
30 to 500	Lowest frequency generated in the device or 25 MHz, whichever is lower.	Tenth harmonic or 1,000 MHz, whichever is higher.
500 to 1,000	Lowest frequency generated in the device or 100 MHz, whichever is lower.	Tenth harmonic.
Above 1,000	do	Tenth harmonic or highest detectable emission.

* * * * *

[FR Doc. 86-10900 Filed 5-15-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Scaevola Coriacea (Dwarf Naupaka)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Scaevola coriacea* (dwarf naupaka) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended (Act). Populations, once prevalent throughout the major Hawaiian islands, are now limited to four small areas of State and private land in Maui County, Hawaii. The only signficant population, near Waiehu Point, is threatened by residential development. Approximately two-thirds of the plant's remaining habitat will be impacted by this development. Protective measures for the remaining plants are needed. This determination that *Scaevola coriacea* is an endangered species implements the protection provided by the Act.

EFFECTIVE DATE: The effective date of this rule is June 16, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Scaevola coriacea is a sparsely branched, prostrate shrub found in close proximity to the ocean. It was first collected by David Nelson in 1779, and later described by Thomas Nuttall (1843), based on specimens collected on "Atooi" (Kauai) in 1835. Its leaves are thick and succulent, light green, and about 2.5 centimeters (1 inch) in length. Cream-colored flowers, 1.9 centimeters (0.75 inch) long, may open at any time during the year. The flower is typical of the genus *Scaevola*, with a corolla split down the upper side so that it resembles half of a radially symmetrical flower that has been divided longitudinally. This is sometimes referred to as a "half-flower." The fruit is purplish black and approximately 1.3 centimeters (0.5 inch) in length, and contains 2 seed cells (Carr 1981). Single plants may cover up to 10 square meters (108 square feet) of surface area.

Sites occupied by *Scaevola coriacea* are mostly on low, consolidated sand dunes near the ocean. The habitat is relatively dry and hot. The sites receive high insolation and most of the vegetation is at or near ground level. Associated species include *Scaevola taccada* (a common, shrubby member of the same genus), *Bidens mauiensis, Nama sandwicensis, Boerhavia diffusa,* and *Lipochaeta integrifolia* (Herbst 1972).

Historically, populations of *Scaevola coriacea* were present on all the major Hawaiian islands, with Maui supporting the most extensive populations. Presently, only four small populations remain in Maui County, Hawaii: at Waiehu Point, West Maui; at Kaupo, East Maui; on the islet of Moke'ehia, off West Maui; and on the islet of Mokuho'oniki, east of Molokai. The islets are part of the Hawaiian State Seabird Sanctuary and are under the jurisdiction of the State Department of Land and Natural Resources. The Waiehu Point population is split between land in State and private ownership. The State-owned land is under the jurisdiction of the County of Maui. The Kaupo population is entirely on private land. Loss of current and suitable habitat to development represents the major threat to the species. Protection of the remaining habitat from degradation, through a cooperative State, Federal, and county effort, is needed to ensure the species' continued existence.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended).

On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Scaevola coriacea* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796). In the Federal Register of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Scaevola coriacea* was included in this notice as a category-1 species, indicating that existing data warranted proposal to list as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. *Scaevola coriacea* was subject to this provision, so that a finding was required within one year as to whether its listing was warranted. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Scaevola coriacea* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. A proposal was published on July 16, 1985 (50 FR 28878), based on information available in 1975 and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Carr 1982). The Service now determines *Scaevola coriacea* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the July 16, 1985, proposed rule (50 FR 28878) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Maui News* on August 16, 1985, and in the *Honolulu Star Bulletin* and the *Honolulu Advertiser* on August 21, 1985. Seven letters of comment were received and are discussed below. A public hearing was requested and held in Kahului, Maui, Hawaii on November 5, 1985. The comment period was reopened following the public hearing, closing again December 9, 1985 (50 FR 42190). Three persons testified; their testimony also is included in the following summary.

Comments were received from a U.S. Congressman, the Governor of the State of Hawaii, the Western Regional Office of the National Audubon Society, a Professor of Botany at the University of Hawaii, a landowner on whose property a part of one population of the *Scaevola* grows, and two other individuals. Testimony at the public hearing was presented by the Administrator of the Division of Forestry and Wildlife of the State Department of Land and Natural Resources, a member representing the Friends of Maui Botanical Gardens, and a private individual. All comments submitted and all testimony given at the public hearing have been considered in formulating this final rule.

Six of the seven letters of comment and all testimony at the public hearing supported listing *Scaevola coriacea* as an endangered species. In his letter of comment, the president of the company that owns several of the sand dunes at Waiehu disagreed with the Service's census of the species. He visited two of the dunes and counted over 1,000 plants on one dune in 1984 and found more than 300 on the other in 1985. The proposed rule stated that the entire known population at Waiehu consisted of approximately 300 individuals. Admittedly it is very difficult to count or to estimate population sizes because of the prostrate, creeping habit of the species. However, many botanists and interested naturalists have visited these dunes and made estimates of the population size; at least four individuals have done so between 1981 and 1985. Their estimates are fairly close and all approximate 300 plants. The company's president recommends that public lands be used to create a protected habitat for the species. Additional information was submitted in this and several of the other letters and has been incorporated into the final rule.

The University professor indicated reservations concerning the Service's failure to propose designation of critical habitat. The Service continues to believe that such designation would not be prudent in this case because of the associated risks of vandalism and collecting.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Scaevola coriacea* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scaevola coriacea* Nutt. (dwarf naupaka) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, *Scaevola coriacea* was present on all the major Hawaiian islands, with Maui supporting the largest populations. Presently, the species exists in only four small areas of Maui County, Hawaii: Waiehu Point, West Maui; Kaupo, East Maui; the islets of Moke'ehia off West Maui, and Mokuho'oniki, east of Molokai. The entire known population consists of approximately 350 individuals, 300 of which are found at Waiehu Point (Carr 1981). The Waiehu population may now be smaller as a result of recent urban development in that area.

The Waiehu Point population occurs on four sand dunes, both on State land, as part of Waiehu Golf Course, and on private land, owned by a realty company. The latter is presently being developed into residential lots. This action will cause loss of nearly two-thirds of the species' remaining habitat. Habitat degradation of the remaining fraction of public land by the activity of golfers off the fairway is a potential, but probably minimal, threat to the plant.

Scaevola coriacea can not compete with aggressive weedy species. Koa haole (*Leucaena leucocephala*) and other plants appear to be encroaching on some of the Waiehu habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Scaevola coriacea* is subject to potential collecting and vandalism due to the accessibility of its habitat and current unprotected status. The flowering plant is attractive, is easily propagated, and has been noted as being ". . . a worthwhile plant for homes by the beach" (Degener and Greenwell 1950).

C. *Disease or Predation.* No such threats to *Scaevola coriacea* are known to occur at this time.

D. *The inadequacy of existing regulatory mechanisms.* A special permit is required to land on Mokuho' oniki islet, a State bird sanctuary. No other protection is now provided to *Scaevola coriacea.*

E. *Other natural or manmade factors affecting its continued existence.* Further reductions of the breeding population may have adverse effects on the reproductive capacity and survival ability of this species (Carr 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Scaevola coriacea* as endangered. The low number of individuals in the wild and the current loss of two-thirds of its remaining habitat warrant this decision. Critical habitat is not being designated at this time because of the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *Scaevola coriacea* is potentially subject to collecting, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. The plant currently occurs on State and private land outside Federal jurisdiction. Because publication of critical habitat descriptions would make this species more vulnerable to collecting and vandalism, without providing it with appreciable protection because of the lack of Federal involvement in the areas in which it occurs, there would be no net benefit to this species from such a designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individual. Section 6 of the Act details conditions for cooperative action between the Service and State agencies. Such actions include the establishment of conservation programs, acquisition of land, scientific research, and cooperative funding. The State of Hawaii has entered into a cooperative agreement with the Service. Since much of the remaining habitat of *Scaevola coriacea* occurs on State land, some of which is under county jurisdiction, cooperation among Federal, State, and county officials will be necessary to ensure the continued survival of the species. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal activities are known or expected to affect *Scaevola coriacea.*

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered species of plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it and reduce it to possession from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Cultivated specimens of *Scaevola coriacea* can be found at several sites in Hawaii, including the Maui Zoo and Botanical Garden and the courtyard of the Plant Science Building at the University of Hawaii. However, it is anticipated that few trade permits will ever be sought or issued since the species is not otherwise common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Carr, G.D. 1981. Unpublished status survey of *Scaevola coriacea.* U.S. Fish and Wildlife Service. Honolulu, Hawaii. 40 pp.

Degener, O., and A. Greenwell. 1950. Flora Hawaiiensis, family 340. *Scaevola coriacea.* Publ. priv. 2pp.

Herbst, D.R. 1972. Botanical survey of the Waiehu sand dunes. The Bulletin, Pacific Tropical Botanical Garden 2:6–7

Nuttall, T. 1843. Descriptions and notices of new or rare plants. Transactions of the American Philosophical Society, N.S. 8:251–272.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530 or FTS 546–7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat.

3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Goodeniaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Goodeniaceae—Goodenia family:						
Scaevola coriacea	Dwarf naupaka	U.S.A. (HI)	E	231	NA	NA

Dated: April 24, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–11107 Filed 5–15–86; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Chrysopsis Floridana (Florida Golden Aster)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant in the family Asteraceae (asters), *Chrysopsis floridana* (Florida golden aster), to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Critical habitat is not being designated. This plant is endemic to small areas of ancient dunes in Hillsborough, Manatee, and Pinellas Counties, Florida. All known colonies of the plant are on private property. *Chrysopsis floridana* is endangered by residential and commercial development of its habitat, and also by mowing, intense grazing, and heavy use of off-road vehicles. This action will implement Federal protection and recovery provisions afforded by the Act for this plant.

DATES: The effective date of this rule is June 16, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Endangered Species Station Office, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Chrysopsis floridana was described by John K. Small in 1903 from specimens collected by S. M. Tracy at Bradenton, Manatee County, Florida, in 1901. Small subsequently collected the species at Long Key, Pinellas County, in 1921 (where it has since been extirpated), and in southern Hillsborough County in 1924. The species was not collected again until 1953. Since 1961, a number of collections have been made in southern Hillsborough County near Riverview and Ruskin. Specimens were collected west or Bradenton, Manatee County, in 1964, and in 1982 (Andre Clewell, pers. comm.) (this population was incorrectly described in the proposal as being east of Bradenton and extirpated). A population was discovered near Seminole, Pinellas County, in 1983 (R. Wunderlin and A. Burdett, pers. comm.). *Chrysopsis floridana* was included in a list of the plants of a State park in Highlands County, Florida but this report is not supported by a specimen and is almost certainly incorrect. All the known populations are on private land.

Several alternative taxonomic treatments have been proposed for *Chrysopsis floridana* and associated species. Fernald (1937) made *Chrysopsis floridana* a variety of *C. mariana*. Shinners (1951) merged the entire genus *Chrysopsis* into *Heterotheca;* Harms, in several publications, supported Shinners' view, and formally published the name *Heterotheca mariana* subspecies *floridana*. Long (1970), preferring to recognize this plant as a species, published the name *Heterotheca floridana*. In the 1970's Semple began an extensive program of taxonomic research on golden asters that resulted in the reinstatement of *Chrysopsis* as a genus. A floristic treatment of the aster family in the southeastern United States by Cronquist (1980) included *Chrysopsis floridana* in *C. scabrella*, while noting that "work in progress by John C. Semple may necessitate the revival of some names here reduced to synonomy." Semple's (1981) revision of the genus *Chrysopsis* recognized *C. floridana* as a full species.

Chrysopsis floridana is a perennial herb of the aster family. Young plants form rosettes with leaves that are covered with dense, white, short-wooly hairs. Upright stems that grow from the rosettes are 0.3–0.4 meters (1–1.5 feet) tall or taller, with closely-spaced, obovate-elliptic, hairy leaves. The leaves are nearly as large at the top of the stem as at the bottom. The flower heads are arranged in a more or less flat-topped cluster. Each head is slightly over 2.5 centimeters (1 inch) in diameter. Both the central disc and the rays are yellow. The plants grow in open, sunny areas in sand pine-evergreen oak scrub vegetation, on well-drained fine white sand. In the past, the plant also grew on beach dunes. The plant has been extirpated from much of its former range by urban development. The two largest remaining sites are in residential subdivisions where streets and utilities already exist, and where many houses have been built. Other threats are intense cattle grazing, railroad maintenance, and heavy off-road vehicle use (Wunderlin *et al.*, 1981).

Chrysopsis floridana was recognized as an endangered species by the Florida Committee on Rare and Endangered Plants and Animals in its 1979 publication on plants (Ward, 1979). In response to this project, the Service contracted for a status survey on this species by botanists from the University of South Florida. A preliminary status report was submitted in 1980 and a final report in 1981 (Wunderlin *et al.*, 1981).

Chrysopsis floridana was included as a category-1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, Federal Register (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982,

be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Chrysopsis floridana* was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Chrysopsis floridana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. On August 5, 1985, the Service published a proposed rule in the **Federal Register** (50 FR 31629), to list *Chrysopsis floridana* as an endangered species, constituting the next required one year finding.

Summary of Comments and Recommendations

In the August 5, 1985, proposed rule (50 FR 31629) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Tampa Tribune* on August 23, 1985, which invited general public comment. Eight written comments were received and are discussed below.

One State agency, The Florida Natural Areas Inventory; the Pinellas County Board of County Commissioners; two garden clubs; and two garden circles supported listing. A Florida botanist did not oppose the proposal to list *Chrysopsis floridana*, but questioned the prudence of listing this weedy looking plant, an action that might provoke residential developers. He said that he would rather see other species listed first, and also suggested that recovery action could be conducted without listing. The Service responds that the Act requires listing of species to be based on the best biological and commercial data available. The Service is proceeding to list *Chrysopsis floridana*, because an excellent new taxonomic revision of the genus was available, together with up to date information on its status, and its listing priority number (see listing priority guidelines, 48 FR 43098) is higher than other candidate plants which are awaiting listing. Recovery actions are organized by the Service after a species is listed as endangered or threatened.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Chrysopsis floridana* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chrysopsis floridana* Small (Florida golden aster) [synonyms: *Chrysopsis mariana* (L.) Ell. var. *floridana* (Small) Fern., *Heterotheca mariana* subsp. *floridana* (Small) Harms, and *Heterotheca floridana* (Small) Long] are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historical range of the Florida golden aster is uncertain because new specimens were ever collected. The plant has been extirpated from most of the sites where it was collected prior to the 1970's, including Long Key (St. Petersburg Beach) and Bradenton Beach. A population reported from Manatee County in 1982 was in a "remnant sand pine scrub patch in an area that was rapidly becoming residential west of Bradenton" (Clewell, pers. comm., 1985). The Seminole area, in Pinellas County, is urban, with little or no possible habitat left for the golden aster. The five existing populations in southern Hillsborough County are all on well-drained sand soil with sand pine-evergreen oak scrub vegetation. The two largest populations are in residential subdivisions. The Florida golden aster is restricted to vacant lots, where it occupies areas of bare sand at the edges of remnants of scrub vegetation. Other populations are in scrub vegetation grazed by cattle, on an abandoned railroad embankment, and in a recently burned sand pine scrub area. At least 16 tracts of scrub vegetation near the existing populations lack *Chrysopsis floridana* (Wunderlin *et al.*, 1981). *Chrysopsis floridana* requires bare sand. Consequently, the plant benefits from limited disturbance (which can include fire, limited land clearing, grazing, and off-road vehicles), but may be destroyed by more intense, frequent, or extensive disturbance. Such disturbance, including dumping and intense off-road vehicle use, threatens the Florida golden aster. The plant does not tolerate mowing. The main threat to this plant is the loss of its habitat to residential construction as the urbanization of southern Hillsborough County progresses. The recent completion of Interstate Highway 75 from Tampa to Bradenton ensures rapid growth (Wunderlin *et al.*, 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* All populations of *Chrysopsis floridana* occur in areas that are easily accessible and near population centers. *Chrysopsis floridana* has been suggested for cultivation for planting on barrier island dunes. If such a demand develops, care will have to be taken to ensure that material is obtained from only cultivated sources (not from wild populations).

C. *Disease or predation.* Two populations found in pastures are subject to grazing by cattle. Light grazing may be beneficial or non-harmful to this species; however, heavy grazing with associated soil compaction and erosion would further threaten *Chrysopsis floridana*.

D. *The inadequacy of existing regulatory mechanisms. Chrysopsis floridana* is listed as endangered under the Preservation of Native Flora of Florida Act (Section 581.185–187, Florida Statutes), which regulates taking, transport, and the sale of plants, but does not provide habitat protection. The Hillsborough County Land Alteration and Landscaping Ordinance (Ordinance 85–29) provides limited protection to the plant's sand pine scrub habitat, but not to the plant itself. Federal listing augments these protections, and provides for development of a recovery plan for the species.

E. *Other natural or manmade factors affecting its continued existence.* Restriction to specialized habitats and small geographically limited ranges tend to intensify any adverse effects upon the populations or habitat of any rare plant. This is certainly true for *Chrysopsis floridana* and is further intensified by the loss of habitat that has already taken place.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Chrysopsis floridana* as endangered. The very limited habitat and range of this plant render it highly vulnerable to residential and commercial real estate development. All the populations are on private land. Several sites where they formerly occurred have been lost and

the species is in danger of extinction. Critical habitat is not being designated for the reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species, which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Chrysopsis floridana* at this time. Such designation would not be beneficial to *Chrysopsis floridana* since identification of critical habitat with maps and precise localities, several of them in residential neighborhoods, would increase the degree of threat from taking or vandalism. All populations of this plant occur in easily accessible sites in heavily populated areas. Appropriate landowners, county and State agencies, and Federal agencies (should any become involved in the future) will be notified of the locations of this plant and the Service will work towards protection of the sites during the recovery process. No additional notification benefits would accrue from designating critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for *Chrysopsis floridana* are on private land where no Federal involvement is currently known, there will be no effect on Federal agencies from the above requirements unless the project requires a Federal permit or approval.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will be sought or issued since this species is not common in cultivation or in the wild. *Chrysopsis floridana* might be cultivated in the future for planting on barrier island dunes. *Chrysopsis floridana* is not known at present on Federal lands, so requests for collection permits are not anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Semple, J.C. 1981. A revision of the goldenaster genus *Chrysopsis* (Nutt.) Ell. Nom. Cons. (Compositae—Asteraeae). Rhodora 83(835):323–384.

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Wunderlin, R., D. Richardson, and B. Hansen. 1981. *Chrysopsis floridana*. Status report prepared for U.S. Fish and Wildlife Service. Endangered Species Field Station files, Jacksonville, Florida.

Author

The primary author of this final rule is David L. Martin, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Chrysopsis floridana (=*Heterotheca floridana*)	Florida golden aster	U.S.A. (FL)	E	232	NA	NA

Dated: April 18, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-11108 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Eight Foreign Mammals, Leadbeater's Possum, etc.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for eight foreign mammals: Leadbeater's possum, buffy tufted-ear marmoset, southern bearded saki, large-earned hutia, little earth hutia, dwarf hutia, Cabrera's hutia, and Baluchistan bear. All occupy very restricted ranges and are jeopardized by human habitat disruption and/or direct killing. This rule implements the protection of the Endangered Species Act of 1973, as amended, for these eight mammals.

EFFECTIVE DATE: The effective date of this rule is June 16, 1986.

ADDRESS: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, Broyhill Building, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Whenever practical, and if there is no substantial evidence to the contrary, the Service classifies foreign mammals as endangered, pursuant to the Endangered Species Act of 1973, as amended, if such mammals are so classified in the *Red Data Books* of the International Union for Conservation of Nature and Natural Resources (IUCN). These books result from research by the IUCN Conservation Monitoring Centre in the United Kingdom, which draws upon authorities from around the world for the latest and best data on the bioconservation status of mammals. The Service and IUCN classifications are now almost in general accord, but in the most recent editions of the *Red Data Books* covering mammals (Thornback 1978, Thornback and Jenkins 1982), the following eight taxa, which were not hitherto on the U.S. List of Endangered and Threatened Wildlife, are categorized as endangered by the IUCN:

Leadbeater's possum (*Gymnobelideus leadbeateri* McCoy, 1867), a marsupial, about 150 millimeters (mm) (6 inches (in.)) in head and body length, with a tail about 200 mm (8 in.) long and flattened laterally, arboreal and nocturnal, and found in the wet forests of southeastern Australia (Nowak and Paradiso 1983);

Buffy tufted-ear marmoset (*Callithrix jacchus aurita* (E. Geoffroy, 1812), considered a full species, *C. aurita,* by IUCN), a small primate, less than 300 mm (12 in.) in head and body length and 400 mm (15 in.) in tail length, characterized by white ear tufts and black head markings, arboreal, and found in forests along the southeastern coast of Brazil (Nowak and Paradiso 1983);

Southern bearded saki (*Chiropotes satanas satanas* (Hoffmannsegg, 1807)), a primate, 360 to 520 mm (14 to 20 in.) in head and body length, with a bushy tail of about the same length, dark in color, and found in the tropical forests of Amazonian Brazil (Nowak and Paradiso 1983, Thornback and Jenkins 1982);

Large-eared hutia (*Capromys auritus* Varona, 1970), a large rodent, about 300 mm (12 in.) in head and body length, with a tail about 180 mm (7 in.) long, having harsh brown fur, arboreal, and found only in a mangrove swamp on Cayo Fragoso, an island off north-central Cuba (Hall 1981, Thornback and Jenkins 1982);

Little earth hutia (*Capromys sanfelipensis* Varona, 1970), a rodent similar to the large-eared hutia, but having a mostly reddish tail, and found in an area of low and dense vegetation on Cayo Juan Garcia off southwestern Cuba (Hall 1971, Thornback and Jenkins 1982);

Dwarf hutia (*Capromys nana* G.M. Allen, 1917), a somewhat smaller rodent that the above, about 200 mm (8 in.) in head and body length and 175 mm (7 in.) in tail length, generally reddish agouti in color, and found only in the Zapata Swamp, about 100 kilometers (62 miles) southeast of Havana, Cuba (Hall 1981, Thornback and Jenkins 1982);

Cabrera's hutia (*Capromys angelcabrerai* Varona, 1979), a rodent similar to the dwarf hutia, but having a relatively shorter tail, and found only on the Cayos de Ana Maria off south-central Cuba (Varona 1979); and

Baluchistan bear (*Ursus thibetanus gedrosianus* Blanford, 1877, considered by some authorities to belong to a separate genus, *Selenarctos*), a small subspecies of the Asiatic black bear, generally reddish brown in color, usually with a pale breast mark, and now found in the mountains of southern Pakistan and possibly southeastern Iran (Macey 1982).

Available data indicate that each of the above mammals qualifies for classification as endangered, pursuant to the Endangered Species Act. Several appear to be on the verge of extinction. As explained below, the main problems are thought to be habitat destruction and direct killing by people. In the **Federal Register** of October 25, 1985 (50 FR 43420-43423), the Service proposed to determine endangered status for each of these mammals. The proposal requested comments and information that might contribute to development of a final rule. Notifications also were sent to the governments of the nations in which the mammals occur. Only two responses were received, both supportive.

Summary of Factors Affecting the Species

After a through review and consideration of all information available, the Service has determined that the eight mammals named above should be classified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors, and their application to the eight mammals named above, are as follows

(information from Thornback 1978, and Thornback and Jenkins 1982, unless otherwise noted):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the named mammals have naturally restricted ranges and are dependent on specific kinds of habitat. In some cases, their ranges have been substantially reduced because of human habitat disruption.

Leadbeater's possum is known only from a small area of southeastern Victoria, the southeasternmost state of mainland Australia. It was believed extinct after 1909, but was rediscovered in 1961. It apparently requires mature montane forest, with mountain ash trees over 150 years old and containing hollows that are used for construction of nests. Many such trees were killed by fires in the 1930's and are no longer usable by the possum. Most of the known remaining range of the species is in areas scheduled for logging.

The buffy tufted-ear marmoset has an extremely small range in a region along the southeastern coast of Brazil comprising southeastern Sao Paulo, western Rio de Janeiro, and adjacent parts of Minas Gerais. It is entirely dependent on forest habitat, nearly all of which has already been cleared for agricultural, lumbering, and industrial purposes.

The southern bearded saki occurs to the south of the Amazon River in east-central Brazil. It depends on tropical rain forest and seems to be partial to undisturbed habitat. Its range has a large human population and is being rapidly developed. This mammal thus has disappeared from many areas.

The large-eared hutia was not discovered until 1970 and is known only from one area of mangrove swamp on Cayo Fragoso, an island off north-central Cuba. The population is thought to be very small and vulnerable.

The little earth hutia was also discovered in 1970 and has been recorded only from Juan Garcia Cay, a very small island off southwestern Cuba. It may also occur on the nearby and larger Cayo Real. It is thought to be uncommon and was not located at all during an expedition to Juan Garcia Cay in 1980.

The dwarf hutia is currently confined to the Zapata Swamp southeast of Havana. Fossil remains, however, indicate that it once occurred over a much larger part of Cuba. Agricultural development is a potential threat to its small remaining habitat.

Cabrera's hutia was discovered only in 1974 and has not been located since 1975. It is apparently confined to mangrove swamps on a few small islands in the Cayos de Ana Maria of south-central Cuba. Current numbers are unknown but are thought to be very low.

The Baluchistan bear originally occurred almost throughout the mountainous parts of what is now the nation of Pakistan. It currently appears confined to a relatively small area in the south-central part of the nation, but may also occur in adjacent parts of southeastern Iran. It is evidently rare, with perhaps fewer than 200 individuals surviving. Most of its original forest habitat has been eliminated. According to Roberts (1977), forest clearing opens areas to human utilization and thus leads to increased killing of the bear.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At present, overutilization is not reported to be a problem for Leadbeater's possum or the buffy tufted-ear marmoset. However, any commercial use of the marmoset would be disastrous, considering its low population levels, and primates historically have been heavily exploited for commercial and scientific purposes. The tail of the southern bearded saki is used as a duster, and was being commonly sold in the city of Belem, Brazil, in 1978.

The main threat to the large-eared, little earth, and Cabrera's hutias is reportedly taking for use as food by fishermen and other persons who visit the small islands where the animals live. The hutias are sometimes driven into the water, where they are slow and clumsy, and thus easily captured. The dwarf hutia is also probably taken by fishermen who visit its swamp habitat.

The Baluchistan bear has declined drastically since the 1930's because of killing by people. It is regarded as vermin and is regularly killed by local farmers, who claim that it damages millet and sorghum crops, and attacks domestic sheep and goats.

C. *Disease or predation.* The buffy tufted-ear marmoset may have disappeared from two national parks in Brazil because of epidemics. Otherwise, disease and nonhuman predation have not been reported as problems for the eight species covered by this rule.

D. *The inadequacy of existing regulatory mechanisms.* Leadbeater's possum is protected against taking by the laws of Victoria, but only some parts of its habitat are being managed with consideration of its welfare. The buffy tufted-ear marmoset and southern bearded saki are not fully protected by law in Brazil. The habitat of both primates is not protected, except in a few relatively small parks and preserves. According to information available to the Service, all hutias are legally protected in Cuba from hunting activities, but enforcement is difficult. The Baluchistan bear is not known to be protected by law.

E. *Other natural or manmade factors affecting its continued existence.* All eight mammals covered by this rule occur in such small numbers that inbreeding and loss of genetic viability could be a problem.

The decision to determine endangered status for the eight mammals named above was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would constitute failure to properly classify these mammals pursuant to the Endangered Species Act and would exclude these species from benefits provided by the Act. A decision to determine only threatened status would not adequately reflect the evident rarity and multiplicity of problems of the various species. Critical habitat is not being designated, as it is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402, and are now under revision (see proposal in the **Federal Register** of June 29, 1983, 48 FR 29990). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. However, an opinion of August 31, 1981, from the Office of the Solicitor, U.S. Department of the Interior, indicates that the jeopardy prohibition of section 7(a)(2) does not apply to

activities occurring within foreign countries.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It is also illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The buffy tufted-ear marmoset and the Baluchistan bear are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), meaning that their importation into the U.S. requires both an export permit from the country of origin and an import permit from the U.S. Management Authority for CITES. The southern bearded saki is on Appendix II of CITES, meaning that importation into the U.S. requires an export permit from the country of origin. International trade in these three species, and the other five that are covered by this rule, is expected to be minimal. The Service will review all of these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References

Hall, E.R. 1981. The mammals of North America. John Wiley & Sons, New York, 2 vols.

Macey, A. 1982. *Selenarctos thibetanus*. *In* Identification manual, volume 1: Mammalia, Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Gland, Switzerland.

Nowak, R.M., and J.L. Paradiso. 1983. Walker's mammals of the world. Johns Hopkins Univ. Press, Baltimore, 2 vols.

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Thornback, J. 1978. Red data book. Volume 1: Mammalia. International Union for Conservation of Nature and Natural Resources, Morges, Switzerland.

Thornback, J., and M. Jenkins. 1982. The IUCN mammal red data book. Part 1. International Union for Conservation of Nature and Natural Resources, Gland, Switzerland, xl + 516 pp.

Varona, L.S. 1979. Subgenero y especie nuevos de *Capromys* (Rodentia: Caviomorpha) para Cuba. Poeyana, no. 194, 33 pp.

Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Bear, Baluchistan	*Ursus thibetanus gedrosianus*	Iran, Pakistan	Entire	E	233	NA	NA
Hutia, Cabrera's	*Capromys angelcabrerai*	Cuba	do	E	233	NA	NA
Hutia, dwarf	*Capromys nana*	do	do	E	233	NA	NA
Hutia, large-eared	*Capromys auritus*	do	do	E	233	NA	NA
Hutia, little earth	*Capromys sanctaeluciae*	do	do	E	233	NA	NA
Marmoset, buffy tufted-ear	*Callithrix jacchus aurita*	Brazil	do	E	233	NA	NA
Possum, Leadbeater's	*Gymnobelideus leadbeateri*	Australia	do	E	233	NA	NA
Saki, southern bearded	*Chiropotes satanas satanas*	Brazil	do	E	233	NA	NA

Dated: April 24, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-11110 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 18

Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service amends Part 18 to incorporate amendments to the Marine Mammal Protection Act of 1972 and update organizational nomenclature. The revisions affect those sections of Part 18 where the regulations paraphrase the wording in the Act. Also changed are the references to terms, such as "Bureau" and "Area Director," which are no longer used in the Service's organization. These amendments eliminate inconsistencies with the law and avoid reader confusion.

DATE: These changes are effective June 16, 1986.

ADDRESS: Questions may be forwarded to Chief, Division of Wildlife Management, Room 514 Matomic, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: LeRoy Sowl, Chief, Division of Wildlife Management, address above, telephone (202)-632-2202.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA or Act) was enacted in 1972, and the Fish and Wildlife Service has implemented the Act, as amended, by regulations contained in 50 CFR Parts 18, 82 and 403. The MMPA was enacted for the purpose of ensuring that marine mammals are maintained at healthy population levels. In passing the Act, Congress responded to the growing concern regarding the decline of certain marine mammal species and recognized the important role that marine mammals play in the ecosystem as well as their economic, aesthetic and recreational value. Under the MMPA the Department of the Interior is charged with responsibility for polar bears, walruses, sea and marine otters, manatees and dugongs. On October 9, 1981, Congress amended the MMPA with the passage of Pub. L. 97-58.

On July 29, 1983, the Service published a notice in the **Federal Register** (48 FR 34486) that described the various changes made by Pub. L. 97-58. On December 23, 1985, the Service published a proposed rule (50 FR 52348) that proposed revisions to 50 CFR Part 18. While regulatory measures addressing marking and tagging of marine mammal parts and incidental take by commercial fishermen will be addressed in separate rulemaking documents, this action contains changes necessary to remove inconsistencies with the legislative amendments, and corrects several outdated organizational terms. The changes being adopted are described below:

1. Section 18.11 is amended to include a citation to 50 CFR Part 403, the joint regulations issued by the Service and the National Marine Fisheries Service concerning transfer of marine mammal management authority to States. Such reference paraphrases the wording of 16 U.S.C. 1372(a), which was amended by Pub. L. 97-58 to include reference to the transfer of management authority provisions.

2. Section 18.13 paraphrases 16 U.S.C. 1372(a), which was changed by the 1981 MMPA amendments (see section 3 of Pub. L. 97-58) by replacing paragraph (a)(3) with new paragraphs (a) (3) and (4), and redesignating former paragraph (a)(4) as (a)(5). Section 18.13 (b) and (c) of Title 50, CFR are revised to make them consistent with the present wording of the law.

3. Section 18.14(c) is updated by replacing the term "Bureau" with "Service." The "Bureau" term referred to the Service's former name, Bureau of Sport Fisheries and Wildlife.

4. Section 18.22 paraphrases 16 U.S.C. 1379(h), which was revised by Pub. L. 97-58, section 4, by adding Federal employees to the officials that may "take" marine mammals in the course of official duties. Section 18.22 is amended to reflect this statutory change. Section 18.22(b) is also amended by replacing the term "Bureau" with "Service," for the same reason as described in item 3, above.

5. Section 18.23 is amended by changing the section title, introductory sentence, and paragraph (a)(1). The revision removes the inconsistencies with 16 U.S.C. 1371(b), which is paraphrased by § 18.23(a). These changes are the product of Pub. L. 97-58, section 2. The two references in the section to the Alaska Area Director are changed to reflect the position's current title of regional director.

6. Section 18.26 is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with "Service" for the reasons set forth under 3, above.

The Service received one letter of comment concerning the proposed rules from the Marine Mammal Commission. The Commission supported the proposed changes with modifications which are discussed below.

1. In § 18.13, the Commission recommends removal of the phrase "subject to the jurisdiction of the United States" from paragraph (b) and (c). The comparable provisions of the Act do not contain such wording, and, therefore, the Commission believes that such deletion will conform § 18.13 to the wording in the Act and eliminate any potential confusion.

2. In § 18.23, the Commission recommends revising the wording in paragraph (a) to specifically include the provision contained in section 101(b) of

the Act that addresses applicability of State regulations to Alaskan Natives pursuant to the provisions of section 109 of the Act. The Commission also commented that the Service should retain the language "Indian, Aleut, or Eskimo" instead of "Alaskan Native." Although both terms have the same meaning (see 50 CFR 18.3), the Commission believes that the more descriptive term would conform the wording of this section with the language contained in the Act and would, therefore, "eliminate the potential for confusion."

The Service agrees with the comments proffered by the Commission and has made appropriate changes in the final rule to implement these comments.

As noted above, these amendments to Part 18 remove inconsistencies with the MMPA in these areas where the law has been amended. These changes are necessary to conform existing regulations to the law. The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Similarly, the Service determines that, since the regulatory amendments reflect the statutory language, an environmental assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared for this action. There are no impacts on the public other than to remove any confusion created by the lack of consistent wording contained in the regulations and the law. Additionally, there are no information collection requirements contained in this document that require Office of Management and Budget clearance under 44 U.S.C. 3501. The primary authors of this document are Rupert R. Bonner and James E. Pinkerton of the Fish and Wildlife Service.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Marine mammals, Transportation.

PART 18—[AMENDED]

Accordingly, 50 CFR Part 18 is amended as described below:

1. The authority citation for Part 18 continues to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92–522, 86 Stat. 1027; Pub. L. 97–58, 95 Stat. 979 (16 U.S.C. 1361–1407).

2. Section 18.11 is amended by revising the introductory text to read as follows:

§ 18.11 Prohibited taking.

Except as otherwise provided in Subpart C, D, or H of this Part 18, or Part 403, it is unlawful for:

* * * * *

3. Section 18.13 is amended by redesignating paragraph (c) as (d), revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 18.13 Prohibited uses, possession, transportation, and sales.

* * * * *

(b) Any person to possess any marine mammal, or product therefrom, taken in violation of the Act or these regulations;

(c) Any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; or

* * * * *

§ 18.14 [Amended]

4. Section 18.14(c) is amended by replacing the term "Bureau" with "Service."

5. Section 18.22 is amended by revising the section title, and amending paragraph (a), by inserting "Federal," before the term "State."

§ 18.22 Taking by Federal, State or local government officials.

6. The flush paragraph appearing after paragraph (b)(6) of § 18.22 is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with the term "U.S. Fish and Wildlife Service."

7. Section 18.23 is amended by revising the section title, introductory paragraph (a), and paragraph (a)(1) to read as follows:

§ 18.23 Native exemptions.

(a) *Taking.* Except as otherwise provided in Part 403 of this Title, any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, subject to the restrictions contained in this section, if such taking is:

(1) For subsistence purposes, or

* * * * *

8. Section 18.23 is further amended in introductory paragraph (b) and paragraph (b)(2) by replacing the term "Alaska Area" with "Regional" both times it appears in this section.

§ 18.26 [Amended]

9. Section 18.26(b) is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with the term "U.S. Fish and Wildlife Service."

Dated: April 8, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–11064 Filed 5–15–86; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 51, No. 95
Friday, May 16, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1097

[Docket No. AO-219-A43]

Milk in the Memphis, Tennessee Marketing Area; Emergency Decision on Proposed Amendments To Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts, on an emergency basis, amendments to the plant location adjustment provisions of the Memphis, Tennessee order. The changes are based on evidence presented at a public hearing on March 4–7, 1986, in Irving, Texas. The hearing proceeding included proposed amendments to Texas and six other southwestern orders. However, this decision deals only with the Memphis order. Action on proposed amendments to the other six orders will follow.

The changes adopted herein essentially were proposed by two cooperative associations and the operator of a fluid milk plant that is regulated under the order. The changes are needed to align prices among Federal order markets after May 1, 1986, when the Class I differentials mandated by the Food Security Act of 1985 became effective. Because of the limited time available to complete the rulemaking procedures, a recommended decision for the Memphis market and the opportunity to file exceptions thereto have been omitted. The amended order must be approved by the market's dairy farmers to become effective. A referendum will be conducted to determine whether producers favor issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–12) requires the agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. The action reflects changes in economic conditions that have occurred in the marketplace as a result of the changes to Class I differentials mandated by the Food Security Act of 1985 and increases in the cost of hauling milk that were recognized in those changes. The amended order recognizes these current economic and marketing conditions that affect producers and handlers and its implementation will not cause any additional significant impact on such producers and handlers.

Prior document in this proceeding:

Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6250).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Memphis, Tennessee marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Irving, Texas, on March 4–7, 1986. Notice of such hearing was issued on February 14, 1986 and published February 21, 1986 (51 FR 6250).

Proposals to amend the location adjustment provisions of Texas and six other Federal orders were involved in the hearing proceeding (Docket No. AO–231–A54 *et al.*). This emergency final decision deals only with proposed amendments to the Memphis, Tennessee milk order (Docket No. AO–219–A43). Action with respect to proposed amendments for the other six orders will follow.

Interested parties were given until March 25, 1986, to file post-hearing briefs on the proposed amendments to the Memphis order as published in the hearing notice and on whether these proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Plant location adjustments for handlers under the Memphis, Tennessee order.
2. Need for emergency action.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Plant location adjustments for handlers under the Memphis, Tennessee order.* The location adjustment provisions of the Memphis order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect the Class I differentials mandated by the Food Security Act of 1985 that became effective on May 1, 1986.

The 1985 Act increases Class I price differentials under 35 of the 44 milk orders. The amount of increase differs among markets, but the Act establishes progressively greater amounts from northern markets to southern markets. Increases range from 18 cents to $1.00 per hundredweight for those orders that regulate plants that distribute Class I milk in the Memphis marketing area. Plants located in six surrounding order marketing areas compete with Memphis handlers for sales of fluid milk products in the Memphis marketing area. The Class I differential increases under these seven orders are as follows: Greater Kansas City, 18 cents; Southern Illinois, 39 cents; Nashville, 67 cents; Paducah, 69 cents; Central Arkansas, 83 cents; Memphis, 83 cents; and New Orleans-Mississippi, $1.00.

Generally, a fluid milk distributing plant is regulated under the Federal order where the plant has the greater proportion of its fluid milk distribution and the milk is priced at the location of the plant where the milk is received from producers. For example, a distributing plant located in the Nashville marketing area is fully regulated under the Memphis order since a greater proportion of its fluid

milk distribution is made in the Memphis marketing area than in any other Federal order marketing area. Because of this circumstance, the plant procures its milk supply in competition with other plants regulated under the Nashville order and sells much of its Class I milk in competition with Nashville handlers. Potentially, other plants located in other marketing areas could become regulated under the Memphis order. In recognition of the competitive milk procurement and sales situation for plants located in or near other Federal order areas, the Memphis order has provided for location adjustments to the applicable Class I and uniform prices that recognize the Federal order pricing structure in surrounding markets. Since the inter-market Class I price structure has been changed by the Class I differentials mandated by the Food Security Act of 1985, the plant location adjustments under the Memphis order should be modified to realign prices under the Memphis order with prices that will apply in neighboring markets.

The changes adopted herein are essentially those proposed jointly by two dairy farmer cooperatives (Associated Milk Producers, Inc. and Mid-America Dairymen, Inc.). The operator of a fluid milk plant that is located in Nashville, Tennessee and regulated under the Memphis order supported the cooperative's proposed location pricing arrangement and specifically testified in favor of the proposed pricing change at Nashville under the Memphis order.

This proposed rule, if adopted, would revise the plant location adjustment provisions of the Memphis order to recognize the location value of milk in a three-state area of Tennessee, Mississippi and Arkansas that surrounds the Memphis market. The amended order would provide a minus 25-cent adjustment for plants in Tennessee that are more than 50 miles from Memphis, a plus 13-cent adjustment for plants in a nine-county area of northern Mississippi, and zone pricing adjustments for plants in Arkansas. The zones in Arkansas would provide no adjustment in central Arkansas, a minus 22-cent adjustment in northern Arkansas, and a plus 31-cent adjustment in southern Arkansas. Also, the rate for determining location adjustments at distant plants would be increased from 1.5 cents to 2.1 cents per 10 miles to provide closer alignment of Class I prices at plants located in other markets. There was only limited opposition to the proposed changes. Such opposition primarily was related to the proposed changes for another market involved in this proceeding.

There are currently five fluid milk plants that are fully regulated under the Memphis order. Three of the five plants (Dean, Loftin and Turner) are located within 50 miles of Memphis where historically a location adjustment has not been applicable under the order. No adjustment for location would apply at such plants under the order as amended. Thus, the competitive Class I price relationships among these three handlers would be unchanged. The Class I differential of $2.77 mandated for the Memphis market by the Food Security Act of 1985 applies at these three plants.

Another of the five fluid milk plants regulated under the Memphis order the plant of Malone & Hyde, is located in downtown Nashville. As proposed by the plant operator and proponent cooperatives, a minus 25-cent location adjustment would apply for milk received at plants in Tennessee that are located more than 50 miles from Memphis. Such adjustment will maintain the existing pricing policy for such plants because the location adjustment equals the difference between the Nashville order Class I differential and the Memphis order Class I differential. A minus 25-cent adjustment under the Memphis order for plants in Tennessee located more than 50 miles from Memphis results in an adjusted Class I differential of $2.52 at Nashville. That is the same Class I differential mandated for the Nashville order by the Food Security Act of 1985.

The other fluid milk plant (Avents Dairy) that is fully regulated under the Memphis order is located at Oxford, Mississippi, in Lafayette County. The hearing notice proposal of the cooperatives provided that a plus 18-cent location adjustment (or an adjusted Class I differential of $2.95) apply under the Memphis order at plants located in a nine-county area across northern Mississippi. Proponents modified their proposal at the hearing and proposed that one of the nine counties (Lafayette County where the Oxford, Mississippi plant is located) be removed from the plus 18-cent zone and that a plus 13-cent location adjustment apply at plants in that county only. Proponents' spokesman testified that this modification is needed to coordinate Class I pricing in northern Mississippi under the New Orleans-Mississippi and Memphis orders and specifically to equate the Class I differential adjusted for location under the Memphis order effective at the plant of Avents Dairy in Oxford, Mississippi in Lafayette County with the $2.90 Class I differential proposed for northern Mississippi under the New Orleans-Mississippi order.

As modified, however, under the Memphis order a plant located at Tupelo, Mississippi that distributes milk throughout northern Mississippi would have a five-cent higher Class I price than a plant located at Oxford, Mississippi. To further accomplish proponents' stated intentions of aligning Class I prices in northern Mississippi under the two orders, the plus 13-cent location adjustment zone of the Memphis order should include all nine counties originally proposed for inclusion in the plus 18-cent zone. By providing this, the same $2.90 Class I differential would apply at all plants located in the nine-county area across northern Mississippi which includes both Tupelo and Oxford, Mississippi. Such a coordinated location pricing arrangement for northern Mississippi will provide equity among handlers competing in that area.

Also, a uniform price zone for the nine-county area that constitutes an east-west band across northern Mississippi will establish price alignment under the orders on the same east-west basis as was provided by the Food Security Act of 1985 through the mandated Class I differentials for Federal order markets. For instance, the same $2.77 Class I differential was provided for the Tennessee Valley, Central Arkansas, Fort Smith and Southwest Plains orders. By providing that the same Class I prices apply at Memphis and Chattanooga, which are both located on the southern border of Tennessee, it has been established that prices are to be aligned on an east-west axis in this area of the country.

The plants at Oxford and Tupelo are located essentially the same distance from the southern boundary of Tennessee. Accordingly, it is consistent with the mandated differentials to adopt an equal price zone on an east-west axis across northern Mississippi. The 13-cent plus adjustment proposed for this zone under the Memphis order is essentially the same amount as the 12-cent plus adjustment now applicable at the Oxford plant based on its distance from Memphis under the order's current location adjustment provisions.

Additionally, the Oxford plant is located about 40 miles south of the fully regulated plant at Red Banks, Mississippi, which is within 50 miles of Memphis and no location adjustment applies. The 13-cent higher price proposed for the Oxford plant represents a rate of about 3 cents per 10 miles distance between the two plants.

Such a rate approaches the full cost that may be associated with distance in moving milk. Thus, it would be inappropriate to provide the higher 18-cent plus location adjustment at Oxford as originally proposed, because the Oxford plant would be at a disadvantage in competing with the plant at Red Banks for Class I sales in northern Mississippi.

The location adjustment provisions of the Memphis order have provided that no location adjustment apply in a large number of counties in central Arkansas, since the Class I differentials under the central Arkansas and Memphis orders are identical. Differentials for Class I milk under both orders are now $2.77. Accordingly, the no location adjustment policy now applicable under the Memphis order for territory in central Arkansas should be continued and the 40-county area in central Arkansas where the cooperatives proposed that no location adjustment be applied should be adopted.

Proponents proposed a plus 31-cent location adjustment zone under the Memphis order for territory in southern Arkansas. This territory is situated about 200 miles southwest of Memphis and is located adjacent to and north of the Greater Louisiana marketing area where a $3.28 Class I differential was mandated. The 51-cent higher differential at Shreveport, which is in the base pricing zone of that market, represents an increasing value of milk in that direction from Memphis at the rate of 1.5 cents per 10 miles. Thus, the proposed 31-cent plus location adjustment zone in the intervening territory between the two markets in southern Arkansas adequately reflects the 1.5 cents per 10 miles rate that the mandated differentials for such orders represent. By so doing, it will provide proper alignment of prices in that area between the Memphis order and other nearby orders.

The only other specific pricing zone proposed for the Memphis order is the territory in northern Arkansas that is north of the no location adjustment zone in central Arkansas. A fluid milk plant located in northern Arkansas at Paragould and regulated under the Central Arkansas order has some fluid milk distribution in the Memphis marketing area. The current location adjustment provisions of the Memphis order would provide for a minus location adjustment of 16.5 cents at Paragould, since the plant is about 100 miles from Memphis.

Proponents proposed that a minus 22-cent location adjustment apply in the northern Arkansas zone. This is essentially the same adjustment that would apply at Paragould if the plant's adjustment were computed on the basis of the 2.1 cents per 10-miles rate that is proposed for plant locations in all territory not otherwise specifically zoned under the order.

The higher 2.1 cents per 10-miles rate for plants outside any zone was proposed to more nearly reflect under the order the current cost associated with distance in transporting milk. Also, it serves the purpose of providing inter-market price alignment in situations where plants in distant areas may become regulated udner the order. The record indicates that the current cost of hauling milk is more than twice the 1.5 cents per 10-miles rate now used to compute location adjustments under the order. However, the use of such a rate would result in adjusting prices more than is necessary to provide alignment of prices on an inter-market basis under the price structure mandated through the Class I differentials that became effective on May 1, 1986.

No location adjustments are needed to align prices in this region on an east-west axis, since the mandated Class I differentials are idential along a line extending from Oklahoma City to Chattanooga. On a strictly north-south axis, the mandated differentials reflect up to 3 cents per 10-miles distance. For example, the $3.85 Class I differential at New Orleans exceeds the Memphis Class I differential by a rate of about 3 cents per 10-miles. To the north, the Class I price at a plant in Fulton, Kentucky, which is regulated under the Paducah order and distributes fluid milk products in the Memphis marketing area, is below the Memphis Class I price by 3 cents per 10-miles distance also. Similarly, for plants regulated under the Southern Illinois order that have sales in the Memphis market, the difference in Class I prices reflects a rate of about 2.7 cents per 10-miles distance.

For markets located off of a straight north-south axis from Memphis the differences in Class I differentials would reflect a somewhat lesser rate than those centered directly on the north-south axis. For example, to the northwest in the direction of the Greater Kansas City order, which regulates a handler who has Class I sales in the Memphis market, the Class I differentials between the Memphis and Kansas City markets reflects a rate of 1.9 cents per 10 miles.

In view of the variation in rates between markets, no single location adjustment rate will provide exact price alignment in areas that are not specifically zoned. The proposed rate of 2.1 cents per 10-miles falls within the range of rates that would provide reasonable inter-market price alignment at distant locations.

The only opposition to the proposed changes in the location adjustment provisions for the Memphis market was presented by the operator of a distributing plant at Paragould, Arkansas. The handler's primary concern was that the proposed order amendments would adversely impact the Paragould plant's competitive position in the marketplace. The handler contents that the location adjustment at Paragould under both the Memphis, Tennessee and Central Arkansas orders be minus 34 cents rather than minus 22 cents.

The Paragould plant is fully regulated under the Central Arkansas order and has only a limited association with the Memphis market. For example, only three percent of the plant's fluid milk sales are distributed on routes in the Memphis marketing area. About 50 percent of the plant's sales are distributed on routes in the Paragould area in competition with handlers regulated under the Memphis order who will be subject to higher Class I prices. The handler's opposition would appear to be more relevant to the proposed changes in the location pricing provisions of the Central Arkansas order, which regulates the handler, than to the Memphis order provisions. Accordingly, the handler's position with respect to the location value of milk at Paragould will be dealt with later in a decision involving the Central Arkansas market.

2. *Need for emergency action.* The representative for Malone & Hyde testified that if the mandated Class I differentials become effective before the location adjustment provisions of the Memphis order are amended, the Class I price at its Nashville plant under the Memphis order will be 16 cents higher than plants similarly located but regulated under the Nashville order. The handler estimated that if this happened, milk for the Nashville plant would cost $15,000 per month more than at the Class I price for plants of other handlers who are similarly located but regulated under the Nashville order. Because of the adverse impacts on the handler's Nashville plant in such case, the handler asked that the decision for the Memphis order be dealt with separately on an expedited basis so that the amended order effective on May 1, 1986, would reflect the Memphis order's higher mandated Class I differential and the proposed changes in the location adjustment provisions.

Disorderly marketing conditions could result if the location adjustment

provisions of the Memphis order are not amended as expeditiously as possible. Expedited action for the Memphis market was widely favored by interested parties and no opposition to such action was expressed. Omission of a recommended decision and the opportunity to file exceptions thereto is necessary to amend the order's location adjustment provisions as soon as possible. For the above reasons, a recommended decision is omitted on the basis that the due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed by certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Memphis, Tennessee order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Memphis, Tennessee marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which was published with this decision.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 20th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Memphis, Tennessee, marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be November 1985.

The agent of the Secretary to conduct such referendum is hereby designated to be Richard E. Arnold.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on May 8, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [1] amending the order, regulating the handling of milk in the Memphis, Tennessee, marketing area.

Findings and determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in Memphis, Tennessee, marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Memphis, Tennessee, marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1097—MILK IN THE MEMPHIS, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR Part 1097 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

2. Section 1097.52 is revised to read as follows:

§ 1097.52 Plant location adjustments for handlers.

(a) For milk received at a fluid milk plant from producers or a handler described in § 1097.9(c) and which is classified as Class I milk without movement to another fluid milk plant, the price specified in § 1097.50(a) shall be adjusted by the amount or at the rate specified in paragraphs (a) (1) through (4) of this section for the location of such plant.

(1) For a plant located in the State of Tennessee and more than 50 miles from the City Hall in Memphis, Tennessee, the adjustment shall be minus 25 cents.

(2) For a plant located in the State of Mississippi, the adjustment shall be as follows:

(i) In the Mississippi counties of Itawamba, Lafayette, Lee, Panola, Pontotoc, Prentiss, Tate, Tunica or Union, the adjustment shall be plus 13 cents; and

(ii) In any Mississippi county not specified in paragraph (a)(2)(i) of this section and more than 50 miles from the City Hall in Memphis, Tennessee, the adjustment shall be plus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(3) For a plant located in the State of Arkansas, the adjustment shall be as follows:

(i) In the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff or Yell, no adjustment shall apply;

(ii) In any Arkansas county lying north of any county specified in paragraph (a)(3)(i) of this section, the adjustment shall be minus 22 cents;

(iii) In any Arkansas county lying south of any county specified in paragraph (a)(3)(i) of this section, the adjustment shall be plus 31 cents.

(4) For a plant located outside the areas described in paragraphs (a) (1), (2) and (3) of this section, the adjustment shall be minus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(b) For fluid milk products transferred in bulk between fluid milk plants and classified as Class I milk, such location adjustments shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned in Class I to receipts from other order plants and unregulated supply plants, such assignment to be made in sequence beginning with the transferor plant with the highest Class I price.

[FR Doc. 86-10809 Filed 5-15-86; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Informal Airspace Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Informal Airspace Meeting.

SUMMARY: This notice announces an informal airspace meeting to seek information on proposing a modification of the Houston Terminal Control Area (TCA).

DATE: July 15, 1986, 7:00 p.nm. Central daylight time.

ADDRESS: Houston Police Academy, 17000 Aldine Westfield, Houston, Texas 77073.

FOR FURTHER INFORMATION CONTACT: Everett J. Sinon, Jr., Manager, Houston Intercontinental Airport Traffic Control Tower, P.O. Box 60158, Houston, Texas 77205; Telephone (713) 443-1333.

Issued in Fort Worth, Texas, on May 9, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-11005 Filed 5-15-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 60228-6028]

General License GTDA; Technical Data Available To All Destinations

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Export Administration has reviewed the Export Administration Regulations pertaining to scientific communications, especially those exportable under General License *GTDA:* Technical Data Available to All Destinations. This proposed rule seeks to provide clarified guidelines for the use of General License *GTDA*, and preserves the free flow of ideas and people that is fundamental to effective research. This rule covers the areas of publications, conferences, educational instruction, correspondence and informal scientific exchanges, federal contract controls, and commercial consulting.

The current *GTDA* regulations have three categories of eligibility: (1) Data generally available to the public; (2) scientific or educational data; and (3) information contained in patent applications. Several issues have arisen over the years in applying these categories. "Data Generally Available" included publications available at "nominal cost". The "nominal cost" test often indicated general availability, but it could also often be unduly restrictive. Moreover, determining what dollar amount constituted "nominal" cost was difficult. The transfer of data in a scientific conference was permitted under GTDA if the conference was "open". However, determining an "open" conference was difficult. Finally, the regulations for "Scientific or Educational Data" did not provide express guidance as to the type of research that qualified for this exception.

The proposed regulations redefine these three categories. Under the new regulation to qualify for *GTDA*, technical data must fit into one of four categories. (1) Public availability; (2) Fundamental Research; (3) Educational Information; or, (4) Patents. While the proposed regulations establish parameters for each of these categories, their major thrust is aimed at defining "public availability" and "fundamental research."

The proposed regulations make it clear that data need not be available to every person on the street to qualify for GTDA, but rather availability to a community of persons, such as those in a scientific or engineering discipline, is sufficient. In defining "fundamental research," the proposed regulations examine the degree of "control" on the dissemination of the data and the "entity" performing the research. If the research is conducted at a university and is neither contractually controlled nor classified, it will be deemed fundamental research. In contrast,

research that is conducted by a business entity will be considered proprietary and therefore not GTDA, unless the information can be freely disclosed.

The proposed changes to section § 379.3 are based on the recommendations of an interagency Working Group on Export Controls and Scientific Communication. Copies of the Working Group's report, dated April 5, 1985, are available through the information contact listed below.

At about the same time as the Working Group completed its deliberations and report, Export Administration independently published new regulations on control of software (50 FR 16468 April 26, 1985). Generally, under these regulations an individual validated license or, in some cases, a written assurance is required for export to any destination of software covered in the Commodity Control List, in Supplement No. 3 to Part 379, or in § 379.4(c) or (d) Except for the embargoed countries, General License GTDR is available for export to all destinations of any other software.

A question has arisen about the extent to which General License GTDA should be available for exports of software. While the proposed regulations treat software as being eligible for General License GTDA, because of the uniqueness of software, concern has arisen over this treatment. Public comment is specifically requested on this treatment of software and on the definition of "public availability".

DATE: Comments must be received by the Department July 15, 1986.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Black or Patti Muldonian, Export Administration (Telephone: (202) 377–2440).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in developing final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

3. Because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule by section 533 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information requirement subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0140.

The period for submission of comments will close 60 days after publication. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured.

The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Patrica L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Part 379

Exports, Science and Technology.

PART 379—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Part 379) are proposed to be amended as follows:

1. The authority citation for 15 CFR Part 379 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401, *et. seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. Section 379.1(b)(1) is amended by adding a note before the semicolon at the end of paragraph (ii), to read as follows:

§ 379.1 Definitions.

* * * * *

(b) *Export of technical data.*

(1) * * *

(ii) * * * (**Note.**—Such "knowledge or intent" is presumed when the release is to a natural person who is not a citizen of the United States unless that person has been lawfully admitted for permanent residence in the United States under the Immigration and Naturalization Act (8 U.S.C. 1101) or the person releasing the data can otherwise establish that the data will not be shipped or transmitted from the U.S.); or * * *

* * * * *

3. Section 379.1(b)(2) is amended as follows: The word "and" following the semicolon in paragraph (ii) is removed, the period at the end of paragraph (iii) is replaced by a semicolon and the word "and" is added, and a new paragraph (iv) is added to read as follows:

§ 379.1 Definitions.

* * * * *

(b) * * *

(2) * * *

(iv) Training, including training of foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repaid, maintenance, modification or reconstruction of commodities.

* * * * *

4. Section 379.3 is revised to read as follows:

§ 379.3 General license GTDA; technical data available to all destinations.

(a) *Establishment of general license.* A General License GTDA is hereby established authorizing:

(1) Unrestricted export to any destination of technical data that are already publicly available or will be made publicly available by such export, as described in paragraph (b) of this section;

(2) Unrestricted export to any destination of information arising during or resulting from fundamental research, as described in paragraph (c) of this section;

(3) Release of educational information, as described in paragraph (d) of this section; and

(4) Export of information in connection with certain patent applications, as described in paragraph (e) of this section

However, see paragraph (f) with regard to Government-sponsored research covered by contractual national-security controls and paragraph (g) with regard to consulting.

(b) *Publicly available* Technical data are made public and so become "publicly available" when they are put into public domain in any form, including:

(1) Publication in periodicals, books, or other print or electronic media available for general distribution to any member of the public, either free or at a price reflecting an intention that the information be widely available to the public or to a community of persons, such as those in a scientific or engineering discipline, interested in the subject matter.

(2) Ready availability at libraries open to the public or at university libraries; or

(3) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or other gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations.

(ii) All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding:

(A) A registration fee reasonably related to costs and reflecting an intention that all interested and technically qualified persons be able to attend, or

(B) A limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility.

This General License GTDA authorizes submission of papers to domestic or foreign editors or reviewers of journals, or to organizers of open conferences or other open gatherings, with the understanding that the papers will be made publicly available if favorably received.

(c) *Information resulting from fundamental research*—(1) *Fundamental research.* Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. Paragraphs (c) (2) through (4) of this section provide explicit rules that will be used to identify research qualifying as fundamental research.

(2) *University-based research.* (i) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. ("University" means any accredited institution of higher education located in the United States.)

(ii) Arrangements providing for a prepublication review by a sponsor of university research solely to ensure that the publication would neither compromise patent rights nor inadvertently divulge the sponsor's trade secrets do not in themselves change the rule described in (i).

(iii) However, that normal rule will not hold for a research project or activity if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless become subject to General License GTDA once all such restrictions have expired or have been removed.

(iv) Paragraph (a)(2) includes disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between a firm and the university, as long as the arrangements do not include restrictions of the type referred to in paragraph (c)(2)(iii) immediately above.

(v) Note that paragraph (f) will apply if a university or its researchers accept specific national security controls on a research project or activity sponsored by the U.S. Government.

(3) *Research based at Federal agencies or FFRDCs.* Research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC) may be designated as "fundamental research" within any appropriate system controlling release of information by such scientists and engineers devised by the agency or the FFRDC.

(4) *Corporate research.* Research conducted by scientists or engineers working for a business entity will be considered "fundamental research" at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary or national security considerations. Prepublication review by the company solely to ensure that the publication would compromise no patent rights will not be considered a proprietary restriction for this purpose.

(5) *Research based elsewhere.* Research conducted by scientists or engineers who are not working for any of the institutions described in paragraphs (c) (2) through (4) will be treated the same as corporate research, as described in paragraph (c)(4).

(d) *Educational information.* The release of "educational information" referred to in paragraph (a)(3) is release by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is treated in paragraph (c)(2).

(e) *Patent applications.* The information referred to in paragraph (a)(4) above is:

(1) Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to

the United States for subsequent filing in the U.S. Patent and Trademark Office; or

(2) Information contained in a patent application, or an amendment, modification, supplement, or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR Part 5. See §370.10(j).

(f) *Government-sponsored research covered by contract controls.* (1) If research is funded by the U.S. Government, and specific national security controls are agreed on in the funding instrument to protect information resulting from the research, paragraph (a)(2) will not apply to any export of such information in contravention of such controls. A General License GTDA as described in paragraph (a) is nonetheless available for any export of information resulting from the research that is consistent with the specific controls.

(2) Examples of "specific national security controls" include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to noncitizens or other categories of persons; or restrictions on participation of noncitizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a "specific national security control".

(g) *Consulting.* Consulting generally is an especially effective mechanism of technology transfer. Although General License GTDA authorizes release via a consulting arrangement of technical data described in paragraph (a) (1) through (3), it does not authorize release of other technical information or application abroad of other personal knowledge or technical experience acquired in the United States. See also paragraph (h) below.

(h) *Advice concerning uncontrolled information.* Persons may be concerned that an export of uncontrolled information, could adversely affect U.S. national security interests. Exporters who wish advice before exporting such information can contact the appropriate Government scientific or technical personnel by calling Export Administration at (Telephone (202) 377–4811).

5. Section 379.4 is amended by adding paragraph (f)(4) to read as follows:

§ 379.4 General license GTDR technical data under restriction.

* * * * *

(f) * * *

(4) Written assurance requirement for foreign natural persons employed in the United States. Technical data otherwise exportable only under an individual validated license may be released to employees who are foreign persons under this General License GTDR by an employer who is a citizen or national of the United States, a firm organized under the laws of the United States, or a university, subject to the following conditions:

(i) The foreign person is a bonafide and full-time regular employee, or appropriate action has been initiated under the Immigration and Naturalization Act that is intended to result in the foreign person becoming a full time regular employee;

(ii) The employee resides throughout the period of employment in the United States;

(iii) The employee is not a national of a country listed in Country Groups Q, S, W, Y, Z, Afghanistan or the People's Republic of China;

(iv) The technical data are not restricted by either § 379.4(c) or (e); and

(v) The employer has been assured by the employee in writing that the technical data will not be transferred to other foreign persons, except as permitted by these regulations, without the written consent of Export Administration.

* * * * *

Dated: May 13, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86–11106 Filed 5–15–86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–6–86]

Income Taxes: Proposed Rule by Cross Reference to Temporary Regulations Under Section 338, Stock Acquisitions, Statements of Elections and Due Dates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is amending temporary regulations relating to section 338(g) of the Internal Revenue Code of 1954 ("Code") as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). The amendments provide additional guidance to taxpayers concerning the filing of certain statements of election under section 338 on or after December 9, 1985, and on or before July 15, 1986. An amendment to temporary regulation § 1.338–4T also clarifies the application of the mitigation of limitations provisions. The temporary regulations also extend the time for taking certain actions under section 338. The text of the new and revised sections also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective date

The regulations are proposed to apply generally to stock acquisitions made after August 31, 1982. Certain provisions would only apply with respect to elections under section 338 filed on or after December 9, 1985, and on or before July 15, 1986.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by July 15, 1986

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–6–86], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kane of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202–566–3458 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend temporary regulations §§ 1.338–1T, 1.338–2T, 1.338–4T, 1.338–5T, and 1.338 (h) (10)–1T in Part 1 of Title 26 of the Code of the Federal Regulations ("CFR"). The final regulations that are proposed to be based on the amended temporary regulations would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance on filing certain statements of

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election under section 338 (g) of the Internal Revenue Code. Section 338 (g) was added by section 224 of TEFRA (Pub. L. No. 97–248; 96 Stat. 485) and was amended by section 712 (k) of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 948). For the text of the amendments to the temporary regulations, see T.D. 8068, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the additions to the regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply.

Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Request For a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a possible hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Thomas J. Kane of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–10997 Filed 5–15–86; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[LR–3–86]

Transfers of Property by U.S. Persons to Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add new §§ 1.367(a)–1T through 1.367(a)–6T, relating to transfers of property by U.S. persons to foreign corporations, new § 1.367(d)–1T, relating to transfers of intangible property by U.S. persons to foreign corporations, and new § 1.6038B–1T, relating to reporting of transactions described in section 367. The text of the new sections also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before July 15, 1986.

The regulations are proposed generally to apply to transfers made after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–3–86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Charles W. Culmer of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T) (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.367(a)–1T, 1.367(a)–2T, 1.367l(a)–3T, 1.367(a)–4T, 1.367(a)–5T, 1.367(a)–6T, 1.367(d)–1T, and 1.6038B–1T to 26 CFR Part 1. The final regulations that are proposed to be based on these temporary regulations would amend 26 CFR Part 1 by adding these new temporary regulation sections as final regulation sections under sections 367 and 6038B of the Internal Revenue Code of 1954. For the text of the temporary regulations, see FR Doc. 86–10831 [T.D. 8087] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for A Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of this regulation is Charles W. Culmer of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subject

26 CFR 1.301–1 through 1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Proposals of Regulations

The temporary regulations, FR Doc. 86–10831 [T.D. 8087] published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 367 and 6038B of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–10832 Filed 5–15–86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S001]

Hazard Communication in Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: As of May 25, 1986, OSHA's Hazard Communication Standard (HCS) (§ 1910.1200) will be applicable to all employment in SIC Classifications 20 through 39, which include shipbuilding and ship repairing employment. As of that date, shipbuilding and ship repairing will no longer be covered by § 1915.97(a)–(d). However, since shipbreaking is included in SIC Code 44 and is not currently covered under the scope of § 1910.1200, the shipbeaking segment of the industry will continue to be covered by § 1915.97 (a), (b), and (d). OSHA is proposing to amend § 1915.97 to reflect the change in coverge for shipbuilding and ship repairing employment. OSHA is also proposing that its current requirement in § 1915.97(c) for OSHA approval of forms used for Material Safety Data Sheets (MSDS) in all shipyard employment, (shipbuilding, ship repairing, and shipbreaking), be revised. OSHA believes that such approval is not necessary to assure that the appropriate information is contained in an MSDS, and that the particular form used by an employer is not critical to the MSDS requirement in § 1915.97. OSHA is also proposing that the discussed revision of § 1915.97(c) would become effective as of the issuance of the final rule.

DATES: Comments on the proposal must be postmarked by July 15, 1986. Requests for a hearing must also be postmarked by July 15, 1986.

ADDRESS: Comments, objections, and hearing requests should be sent to: Docket Officer, Docket No. S001, Occupational Safety and Health Administration, Room N3670, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Paragraphs (a) through (d) of § 1915.97, entitled "Health and Sanitation," require employers engaged in ship repairing, shipbuilding or shipbreaking to obtain information regarding hazardous materials used in their workplaces and to make this information available to their employees.

On November 25, 1983 (48 FR 53280), OSHA promulgated Section 1910.1200, entitled "Hazard Communication," which applies to manufacturers and importers of hazardous materials in SIC Codes 20 through 39 effective May 25, 1986. Employers engaged in ship repairing and shipbuilding are covered by this regulation since they are included within SIC Code 37. Employers engaged in shipbreaking are not presently covered by this regulation, as they are included within SIC Code 44, and thus not within the current coverage of the Hazard Communication Standard.

Section 1910.1200 requires employers to obtain and transmit to their employees information about hazardous materials in the workplace, and to instruct these employees regarding measures that are or may be necessary for employee protection. Since § 1910.1200 will apply to ship repairing and shipbuilding effective May 25, 1986, it is proposed to recognize this coverge for those industry sectors within Part 1915, in place of § 1915.97 (a), (b), and (d) while continuing coverage of § 1915.97 (a), (b), and (d) for employers in the shipbreaking industry.

In addition, it is the Agency's intention to revise the current requirement contained in § 1915.97(c), that pertinent data relating to hazardous materials be recorded on an OSHA Form 20 or on an "essentially similar form which has been approved by" the Agency. Material Safety Data Sheets for shipbreaking would be considered to be in compliance with § 1915.97 if all of the information requested in § 1915.97(b) is included on a form or format that is accessible for the emplyees. OSHA had determined that pre-approval of the form to be used is not necessary for employee safety. The procedures under § 1915.97 would thus become similar to those prescribed by paragraph (g) of § 1910.1200 which does not specify the use of a specific form to impart this pertinent data.

As noted above, paragraph (c) of § 1915.97 currently requires that the Material Safety Data Sheet for shipyards be on an "OSHA Form 20" or essentially similar form approved by the Agency. In developing the HCS, OSHA determined that it was not necessary for the purpoes of the standard that the MSDS be on any particular form. The information required on the OSHA Form 20 is very similar to what is required under 29 CFR 1910.1200. This was recognized in the preamble of 29 CFR 1910.1200, which stated: "Anyone wishing to use the Form 20 may continue to do so, so long as they ensure that all of the information required by this standard is provided." (48 FR 53310)

What is important, for the purposes of § 1910.1200, is that the necessary information about the hazardous material in question be available on the Material Safety Data Sheet, regardless of the form that is used. OSHA believes that the same reasoning holds true for both shipyard employment and general industry.

It has been noted that there are some differences between what is required by § 1910.1200 and what is required on the OSHA Form 20. In brief, the primary differnce is that the HCS requires that the hazardous chemical's primary route of entry into the body be identified; and if the hazardous chemical is in any of the publications cited in the standard, (NRP's "Annual Report of Carcinogens" or IARC's "Monographs"), this must be noted. The current OSHA Form 20 does not contain any sections which are designated for the inclusion of this information.

Employers who are using Form 20's are responsibile for reviewing these forms to determine whether they contain all the necessary information under the HCS. OSHA believes that most Form 20's in use are fully or substantially in compliance with the HCS. In the course of this rulemaking, the Agency solicits information from interested persons as to the information which is currently available on MSDS's in shipyards, and how that information compares to the requirements of the HCS.

In *United Steelworkers* vs. *Auchter*. No. 83–3554. (3d cir., May 24, 1985), the U.S. Court of Appeals for the Third

Circuit upheld the application of OSHA's Hazard Communication Standard, 29 CFR 1910.1200, to industry sectors in SIC Codes 20 through 39. In addition, the court directed the Secretary "to reconsider its application to employees in other sectors, and to order its application in those sectors unless he can state reasons why such application would not be feasible." Slip op. at p.38. OSHA is presently engaged in performing the additional review and analysis as directed by the court on this and other issues and intends to publish notices in the Federal Register in the near future to deal directly with the court decision. In this regard, on November 27, 1985 (50 FR 48794), OSHA published an advance notice of proposed rulemaking, requesting comments and information on expanding the scope of industries covered by § 1910.1200. In contrast it should be noted that the present proposal was not developed as part of the Agency's response to the court mandate. It was initiated as a means of alleviating the potential for conflict and confusion in the application of the Hazard Communication Standard to shipyard employment.

Pursuant to 5 U.S.C. 553, OSHA is proposing that these amendments become effective immediately upon publication of the Final Rule, since they reduce the regulatory burden on employers by deleting the requirement for an OSHA approved form for MSDS's, while imposing no new requirements on employers.

OSHA recognizes that shipbreaking employers may wish to comply with § 1910.1200 in lieu of the requirements of § 1915.97. In order to deal with this possibility, OSHA intends to consider violations of § 1915.97 to be "deminimus," provided that the employer is in compliance with § 1910.1200.

II. Benefits

The OSHA Form 20 Material Safety Data Sheet currently required in shipyards by § 1915.97 has traditionally been prepared by chemical manufacturers, importers, and distributors. However, the obligation under § 1915.97 is placed on shipyard employers to provide information regarding hazardous materials to their employees. Section § 1915.97 does not require chemical manufacturers, importers, and distributors to provide MSDS's to the shipyard employer. Under § 1910.1200, they were required to furnish Material Safety Data Sheets to a large group of employers (i.e., SIC Codes 20 through 39), including ship repairing and shipbuilding, effective November 25, 1985. The burden placed on shipyard employers in the ship repairing and shipbuilding industries to provide MSDS information to their employees will remain essentially the same under the new § 1910.1200 as it is under the current § 1915.97.

Under § 1910.1200, there will no longer be a need for shipyard employers to adhere to a rigid format in developing Material Safety Data Sheets. Those employers who develop their own Material Safety Data Sheets, as well as those who receive the forms from manufacturers, distributors, and importers, will save the time and expense associated with obtaining approval of these forms from OSHA.

III. Regulatory Impact Assessment

The proposed revocation of § 1915.97(c), and adoption of § 1910.1200 is not a "Major" action as defined by Executive Order No. 12291 (46 FR 13193, February 19, 1981) as it will not have an annual effect on the economy of $100 million or more, cause major increase in costs or prices, or have any other significant adverse effects. This change would not constitute a "major rule" primarily because no additional requirements will be imposed on industry and it would relieve current regulatory burdens by deleting the requirement for shipyard employers to use a specific OSHA approved form for their Material Safety Data Sheets.

For the same reason, OSHA certifies that pursuant to the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601) the proposed action will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Assessment

This proposed rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and DOL's NEPA Procedures (29 CFR Part 11). As a result of this review, OSHA has determined that the proposed rule will have no significant environmental impact.

Because this action does not change the substance of the OSHA standard and is intended to simplify current procedures, there is no impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

V. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by July 15, 1986, and submitted in quadruplicate to the Docket Officer, Docket No. S-001, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Written submissions must clearly identify the specific provisions of the proposal which are addressed, and specific recommendations are encouraged on each issue raised by the proposal.

All data received within the specified comment period will be made a part of the record. Data, views and arguments that are submitted will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11 interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be postmarked by July 15, 1986;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

IV. State Plan Standards

Those of the 25 states with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently five States (California, Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States: Alaska, Arizona, Connecticut [1], Hawaii, Indiana,

[1] Plan covers only State and local government employees.

Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,[1] North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands and Wyoming. (All States with State plans must also extend coverage to States and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Maritime, Shipyard, Marine chemist, Occupational Safety and Health, Safety.

VII. Authority.

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, under sections 4 (b)(2), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599, 29 U.S.C. 653, 655, 657) and section 41 of the Longshoremen's and Harborworkers' Compensation Act (44 Stat. 1444 as amended; 33 U.S.C. 941, 5 U.S.C. 553), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911, 29 CFR Part 1915 is proposed to be amended, as set forth below.

Signed at Washington, DC, this 7th day of May, 1986.

David C. Zeigler,

Acting Assistant Secretary of Labor.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

It is proposed to amend 29 CFR Part 1915 as follows:

1. The authority citation for Part 1915 would be revised to read as follows:

Authority. Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 41, Longshoremen's and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1915.97 Introductory text and paragraphs (c) and (j) also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

2. Section 1915.97 would be amended by revising the introductory text, and paragraph (c); and by adding a new paragraph (j), as follows:

§ 1915.97 Health and sanitation.

The provisions of this section shall apply to ship repairing, shipbuilding and shipbreaking, except where indicated otherwise. Effective May 25, 1986, paragraphs (a), (b), (c), and (d) of this section shall no longer apply to shipbuilding and ship repairing but shall apply only to shipbreaking.

* * * * *

(c) The pertinent information required by paragraph (b) of this section shall be kept in any form that is readily accessible to employees that may be exposed to the hazardous chemicals or materials.

* * * * *

(j) Effective May 26, 1986, 29 CFR 1910.1200 entitled "Hazard Communication" shall apply to shipbuilding and ship repairing.

[FR Doc. 86-10862 Filed 5-15-86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 85-76]

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Bergen County, the Coast Guard is considering a change to the regulations governing the Union Avenue drawbridge across the Passaic River, mile 13.2, Rutherford, NJ by requiring at least eight hours advance notice be given for openings from 4 p.m. to midnight daily in addition to the existing eight hours notice from midnight to 8 a.m. Consideration is also being given to permitting advance notice all day on Christmas and New Years. This proposal is being made because of a steady decrease in requests for openings of the draw during the requested time period. This action should relieve the bridge owner of the burden of having two persons constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before June 30, 1986.

ADDRESSES: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspecton and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Jose M. Arca Jr. project officer, and Mary Ann Arisman, project attorney.

Discussion of Proposed Rugulations

The Douglas O. Mead (Union Avenue) bridge over the Passaic River at mile 13.2 facilitates the movement of land traffic between Rutherford and Passaic. The Passaci River upstream of Union Avenue bridge has one active oil facility. The bridge provides a vertical clearance of 13 feet above Mean High Water and 18 feet above Mean Low Water. The bridge presently requires two men to safely operate the bridge. Current regulations provide that the drawbridge, shall open on signal, except that, from midnight to 8 a.m., the draw shall open on signal if at least eight hours notice is given. The proposed regulation would expand the eight hours notice period to commence at 4 p.m. daily and end at 8 a.m. and would place the bridge on advance notice all day on Christmas and New Year day.

The County intends to maintain one man on duty as a watchman and to receive notifications between 4 p.m. and 8 a.m. except Christmas and New Years day. Between 4 p.m. and 12 midnight the bridge was opened only 40 times in 1984, 42 times in 1983, 6 times in 1982 and 13 times in 1981 and 28 times in 1980.

Bergen County by resolution passed on 21 Octoer 1981, has renamed the Union Avenue bridge to Douglas O. Mead bridge as part of a program to

honor Bergen County war veterans who gave their life for their country. The bridge was officially dedicated the Douglas O. Mead bridge on 2 November 1981.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed change in the regulation would not prevent mariners from transiting the bridge when needed. However, between 4 p.m. and 8 a.m. eight hours advance notice would normally be required. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.739 (1) is proposed to be revised as follows:

§ 117.739 Passaic River

* * * * *

(l) The draw of the Douglas O. Mead (Union Avenue) Bridge at Rutherford, mile 13.2, shall open on signal, except that: (1) From 4 p.m. to 8 a.m., the draw shall open if at least eight hours notice is given.

(2) On Christmas and New Years day, the draw shall open if notice is given prior to 4 p.m. the day prior.

Dated: May 1, 1986.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 86–11016 Filed 5–15–86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of Timber; Timber Export and Substitution

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal revises the reporting requirements at 36 CFR 223.48 on the export of timber from National Forest System lands and the use of such timber to substitute for private timber exported by the purchaser. The proposed rule would change the report to an annual report of the timber exported, sold for export, exchanged or otherwise disposed of during the previous calendar year. The intended effect of the rule is to reduce the paperwork burden on purchasers of National Forest timber sales while maintaining appropriate controls on log exports.

DATE: Comments must be received by June 30, 1986.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

The public may inspect comments received on this proposed rule in the office of the Director, Timber Management Staff, Room 3207, South Building, 14th and Independence SW, Washington, D.C., between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen J. Paulson, Timber Management Staff, (202) 475–3755.

SUPPLEMENTARY INFORMATION:

Background

In response to concerns about possible increases in third party substitution of National Forest timber for private timber which is exported, the Senate Subcommittee on interior and Related Agencies Appropriations directed the Forest Service to report every 6 months on trends in log exports and substitution. In order to provide this information, the Forest Service requires purchasers of National Forest timber to report every 6 months on the disposition of harvested timber. (36 CFR 223.48)

On July 25, 1985, the Chairman of the Senate Committee on Appropriations and the Chairman of the Subcommittee on Interior and Related Agencies requested the United States General Accounting Office to review the potential impacts of tightening Forest Service log export restrictions in the West. On January 28, 1985, GAO reported its findings and concluded that there was no significant amount of third party substitution occurring in the western United States and that tightened controls were unnecessary.

Concerned about burdening purchasers with the 6-month reporting requirements, the Forest Service subsequently requested that the Subcommittee change the reporting frequency to an annual report. In light of the GAO finding and Forest Service analysis of past years' reports, the Subcommittee agreed to the Forest Service request.

This rulemaking action would not change the requirement that purchasers domestically process National Forest System timber or change the requirement for certification of domestic processing from other firms or individuals that receive unprocessed National Forest System timber. Under the proposed rule, purchasers would be required to submit an annual certified report, for the previous calendar year, on the disposition of unprocessed timber from National Forests which is sold, exchanged, or otherwise disposed of to another party and report the sale of any timber from private lands owned or controlled by the purchaser which is exported or sold for export.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this regulation is not a major rule. The regulation will have little or no effect on the economy or on individuals since the regulation is essentially procedural. The changes will result in savings to the Forest Service and purchasers of National Forest timber sales, mostly by reducing the cost to prepare, submit, and review Export and Substitution reports.

Based on both past experience and environmental assessment, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it has been categorically excluded from documentation in an environmental analysis or an environmental impact statement. (40 CFR 1508.4)

Controlling Paperwork Burdens on the Public

Under this proposed rule, individuals and firms who purchase National Forest timber sales would be required to submit reports annually rather than every 6 months. Therefore, the proposed rule would reduce the information collection requirements as defined in Office of Management and Budget (OMB) regulations at 5 CFR 1320.7. The

present annual report has OMB approval for use through March 31, 1987.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, timber.

Therefore, for the reasons set forth above, Part 223 of Chapter II, Title 36, of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 223 would continue to read:

Authority: Sec. 14, Pub. L. 94–588, 90 Stat. 2958, 16 U.S.C. 472a.

2. Revise paragraphs (a) and (b) of § 223.48 to read as follows:

§ 223.48 Reports on export or substitution of unprocessed timber.

* * * * *

(a) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another person and a description of the relationship with the other person;

(b) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report, on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

* * * * *

§§ 223.48 and 223.164 [Amended]

3. Remove the editorial note on Office of Management and Budget approval of report #0596–0021 that occurs at the end of § 223.164, and add an editorial note at the end of § 223.48 to read as follows:

Note.—The information collection requirements in the section have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and 5 CFR 1320. They have been assigned #0596–0021 and are approved for use through March 31, 1987.

Dated: April 23, 1986.

Peter C. Myers,

Assistant Secretary

[FR Doc. 86–11050 Filed 5–15–86; 8:45 am]

BILLING CODE 3410–11–M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation and Education; Changes in the Levels of Review for Authorization of Expenditures for Training and Rehabilitation Services

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: It is proposed to amend § 21.430 to update the amounts that determine which VA staff may approve training and rehabilitation services. This amendment is based upon cost increases since present levels were established and administrative experience with these provisions.

DATE: Comments must be received on or before June 17, 1986. It is proposed to make this amendment effective the date of final publication in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only in room 132, Veterans Service Unit, at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boise, (202) 389–2886.

SUPPLEMENTARY INFORMATION: Under the provisions of § 21.430 specific limitations are established in the VA staff's authority to approve expenditures for training and rehabilitation services under chapter 31 during each calendar year of the veteran's rehabilitation program. These approval levels limit the authority of VA staff to approve expenditures, not the amount which may be authorized in the individual case. Increases in the cost of training and rehabilitation services since December 1981, when existing guidelines were promulgated, have resulted in an increase in the number of cases which must be reviewed by the VR&C (Vocational Rehabilitation and Counseling) Officer and by the Director of the field facility. The proposed amendment in authority for case managers and VR&C Officers is necessary to restore a proper balance in the proportion of cases reviewed at higher levels. The amendment will reduce unnecessary multiple reviews and allow staff to focus on those cases in which such review is desirable.

The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (FRA), U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed amendment concerns the VA staff levels at which expenditures for training and rehabilitation services must be approved. Thus, no regulatory burdens are imposed on small entities by these regulations

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 23, 1986.

Thomas K. Turnage,

Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21, is amended by revising § 21.430, paragraph (c)(1), (2) and (3) to read as follows:

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

* * * * *

(c) *Limitations.* * * *

(1) The DVB case manager may not authorize payment or program costs which will exceed $3,200 per year. If program costs for a year exceed $3,200, additional concurrence is required as specified in paragraph (c)(2) through (4) of this section;

(2) Program costs which will be greater than $3,200 but not more than $9,500 per year, may be approved by the vocational and Rehabilitation Counseling Officer;

(3) Program costs which will be greater than $9,500 per year, but not more than $15,000 per year, may be approved by the Director, VA Regional Office; and

* * * * *

(38 U.S.C. 1515(a)(4))

[FR Doc. 86–11079 Filed 5–15–86; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 21

Vocational Rehabilitation; Disposition of Cases in Which Potentially Eligible Veterans Do Not Initiate or Pursue a Claim

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: In the present rules the VA has established procedures governing the administrative actions to be taken when service-disabled veterans fail to pursue a claim for vocational rehabilitation services or to continue to pursue a vocational rehabilitation program for which services have been authorized. The procedures include followup by VA staff when a veteran does not initiate or continue the rehabilitation process. The proposed amendments would improve the administration of provisions for followup action by VA staff.

DATES: Comments must be received on or before June 17, 1986. It is proposed to make these amendments effective the date of final publication in the Federal Register.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 132 of the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies, (202) 389–2686.

SUPPLEMENTARY INFORMATION: Sections 21.180 through 21.198 establish a case status system. The case status system enables the VA to monitor the veteran's progress through the rehabilitation process and provides information needed for program management.

An ambiguity in the rules for the disposition of cases in applicant status (§ 21.182) has caused unnecessary expenditure of staff time to dispose of cases in which a veteran does not initiate or pursue a claim. Those cases in which the veteran has either filed a formal or informal claim for chapter 31 benefits or has been advised that he or she may be eligible for such benefit, and has been encouraged to apply are assigned to applicant status. Under present provisions, the case status system provides for disposition of cases in the applicant status, when appropriate, through placement in interrupted status and, later, discontinued status. Assignment of a case to either interrupted or discontinued status requires followup procedures to assure that efforts are made to resolve problems which caused transfer to these statuses before terminating further attempts to secure the veteran's participation in the chapter 31 program.

However, the followup provisions in interrupted and discontinued status are not needed when a veteran is assigned to either such status from the applicant status because the applicant status procedures already provide for such followup before the case is reassigned to one of the other statuses.

We propose to amend current regulations to provide for direct assignment of cases from applicant to discontinued status if the veteran does not apply for chapter 31 benefits or fails to pursue a chapter 31 claim. The followup procedures required for other cases assigned to discontinued status would not apply to cases transferred from applicant status and the extra step of assignment to interrupted status would be eliminated.

In all other respects a case assigned to discontinued status will be handled in the same manner as other cases assigned to that status. These amendments will reduce the administrative burden resulting from current policies.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have other significant adverse effects on the economy.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed amendments concern the rights and responsibilities of individual VA beneficiaries under chapter 31. Thus, no regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 24, 1986.

Thomas K. Turnage,
Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21, is amended to read as follows:

1. In § 21.62, paragraph (b)(4) is revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

* * * * *

(b) *Consultation required.* * * *

(4) *Discontinuance.* The panel shall review any case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling, except cases reassigned to "discontinued" status following termination of "applicant" status. (38 U.S.C. 1504(a))

* * * * *

2. In § 21.182, paragraph (d) is added to read as follows:

§ 21.182 "Applicant" status.

* * * * *

(d) *Transfer of teminated cases to "discontinued" status.* Each instance in which a veteran's case is terminated for reasons described in paragraph (c) (4) or (5) of this section shall be placed in "discontinued" status. (38 U.S.C. 1502)

3. In § 21.197, paragraph (c)(1) and (c)(4) are revised to read as follows:

§ 21.197 "Interrupted" status.

* * * * *

(c) *Reasons for assignment to "interrupted" status.* A veteran's case may be interrupted and assigned to "interrupted" status for reasons including but not limited to the following:

(1) *Veteran does not initiate or continue rehabilitation process.* If a veteran does not begin or continue the rehabilitation process, the veteran's case will be be interrupted and assigned to "interrupted" status, including:

(i) A case in "evaluation and planning" status;

(ii) A case in "extended evaluation" status;

(iii) A case in "rehabilitation to the point of employability" status;

(iv) A case in "independent living program" status; or

(v) A case in "employment services" status.

* * * * *

(4) *Prior to assignment to "discontinued" status.* A veteran's case shall be assigned to "interrupted" status prior to discontinuance and assignment to "discontinued" status in all cases except as provided in § 21.182(d) and upon the veteran's death. The purpose of assignment to "interrupted" status is to assure that all appropriate actions have been taken to help the veteran continue in his or her program before discontinuing benefits and services.

* * * * *

(38 U.S.C. 1511)

4. In § 21.198, the introductory text of paragraph (d) is revised to read as follows:

§ 21.198 "Discontinued" status.

* * * * *

(d) *Followup of cases placed in "discontinued" status.* The VA shall establish appropriate procedures to followup on cases which have been placed in "discontinued" status, except in those cases reassigned from "applicant" status. The purpose of such followup is to determine if:

* * * * *

(38 U.S.C. 1507)

[FR Doc. 86-11080 Filed 5-15-86; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 265

Amendments to Freedom of Information Act Regulations

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to publish advance notice of proposed changes to Postal Service regulations governing the waiver of fees. The proposed regulations increase the amount for which a general waiver of fees may be granted and extend the authority of the custodian to grant waivers of fees, or the requirement for their advance payment, in any amount.

DATE: Comments must be received on or before June 15, 1986.

ADDRESS: Written comments should be addressed to the Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Office, (202) 245-5158.

SUPPLEMENTARY INFORMATION: Section 265.8(e)(5) authorizes a general waiver of fees for a request or series of related requests amounting to less than $3.00. It is proposed that this amount be increased to comport with § 265.8(b)(1) which, in effect, grants a waiver of search fees in an amount greater than $3.00. (This section provides that the established fee of $4.25 per quarter hour for clerical search time not be charged if the search involves no more than one quarter hour.) Further, the administrative costs to process a check precludes charging for a request involving a fee in an amount of less than $10.00. For these reasons, it is proposed that the general fee waiver provision at § 265.8(e)(5) be amended to apply to requests amounting to $10.00 or less.

The authority of a custodian to waive a fee, or the requirement of its advance payment, is limited to apply to fees of less than $25.00. Fees in excess of that amount may only be waived by the General Counsel or other Officer of the Postal Service. The Postal Service has approximately 30,000 facilities nationwide at which requests for information may be received, but only about 30 officers, most of whom are centrally located. In this circumstance, the current requirement that a custodian obtain authorization from an officer to waive fees in excess of $25.00 has been found to be impractical and costly, and to cause undue delays in the processing of requests. Proposed § 265.8(e)(6) eliminates the $25.00 limitation and gives custodians the authority to waive a fee in any amount and to waive the requirement for advance payment of fees.

Accodingly, §§ 265.8(e)(5) and 265.8(e)(6) of 39 CFR 265 are modified as follows:

List of Subjects in 39 CFR Part 265

Release of Information; Postal Service.

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

2. In § 265.8, paragraphs (e)(5) and (e)(6) are revised to read as follows:

§ 265.8 Schedule of fees.

* * * * *

(e) *Payment and waiver of fees—*

* * * * *

(5) *Fees not charged for certain services.* Fees must not be charged if they would amount, in the aggregate, for a request or a series of related requests, to $10.00 or less. This general waiver does not apply to the fee for providing change of address information.

(6) *Waiver of fees by custodian.* The custodian may waive a fee, in whole or in part, or the requirement for advance payment of such a fee, when he determines that furnishing the records is primarily for the benefit of the general public.

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-11096 Filed 5-15-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-258-P]

42 CFR Parts 405, 409, and 442

Medicare and Medicaid Programs; Benefit Period Determinations, Drug Regimen Reviews and Other Technical Changes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Under the Hospital Insurance Program (Medicare-Part A), payment for covered inpatient hospital and skilled nursing facility (SNF) services is available for a limited number of days during each benefit period or "spell of illness." Current Medicare regulations reflect the statutory provision under section 1861(a) of the Social Security Act (Act) that a beneficiary's benefit period begins on the day he or she is furnished hospital or SNF services and ends when he or she has not been an inpatient of a hospital or SNF (as defined under sections 1861 (e)(1) and (j)(1) of the Act, respectively) for 60 consecutive days.

We propose to amend our regulations to: (1) Specify that a beneficiary is an "inpatient" of a SNF and is therefore prolonging a spell of illness in a SNF only if the care received by the beneficiary meets skilled level of care conditions and (2) establish certain presumptions for determining when skilled level of care conditions have been met during a SNF stay. We are also proposing a miscellaneous provision that would permit either a registered nurse or a pharmacist to perform drug regimen reviews in SNF's or intermediate care facilities (ICF's). In addition, we would amend § 405.702 of

the regulations to remove certain cross-references that are now outdated and unnecessary.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on June 16, 1986.

ADDRESS: Mail comments in writing to the following address:

Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC–258–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW, Washington, D.C.; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–258–P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., phone (202) 245–7890.

FOR FURTHER INFORMATION CONTACT:

Thomas Hoyer (Benefit Period Deteminations and Drug Regimen Reviews), (301) 594–9445.
Luisa Iglesias (Other Technical Changes), (202) 245–0383.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under the Hospital Insurance Program (Medicare-Part A), payment for covered inpatient hospital and SNF services is available for a limited number of days during each "spell of illness" or benefit period. (Payment is subject to applicable deductible and coinsurance amounts as set forth in section 1813(a) of the Social Security Act (Act).) Once a beneficiary has exhausted that allotted number of days (up to 150 days for inpatient hospital care if the 60 lifetime reserve days are used and 100 days for SNF care), no further Part A program payment is available for those services until the beneficiary ends that benefit period and begins a new one (section 1812(a) of the Act).

Under section 1861(a)(1) of the Act, a beneficiary's "spell of illness" begins on the day he or she is furnished inpatient hospital or SNF services and, under section 1861(a)(2) of the Act, ends when he or she has not been an inpatient of a hospital or SNF for 60 consecutive days. The law does not limit the number of benefit periods an individual may have, provided each prior period has ended.

The material following section 1861(j)(15) of the Act specified that for purposes of determining when a benefit period ends under section 1861(a)(2), a SNF is defined by section 1861(j)(1) of the Act. This latter provision defines a SNF as a facility which—

is primarily engaged in providing to inpatients

(A) skilled nursing care and related services for patients who require medical medical or nursing care; or

(B) rehabilitation services for the rehabiliation of injured, disabled, or sick persons.

Also, the material following section 1861(e)(9) of the Act specifies that for purposes of section 1861(a)(2), a hospital is any institution which meets the requirements of section 1861(e)(1) of the Act. Basically, that latter provision defines a hospital as an institution primarily engaged in providing to inpatients diagnostic and thereapeutic services, or rehabiliation services.

Therefore, under the law, the application of the terms "SNF" and "hospital" for purposes of ending a benefit period is not limited to facilities which participate, but have chosen not to participate. Any facility meeting the broad definition of hospital of SNF is considered a hospital or SNF, as appropriate, in relation to a benefit period.

II. Program Experience

The term "hospital" as used in section 1861(e) of the Act and State licensure laws has a generally accepted meaning that has seldom been questioned. However, unlike the term "hospital," the various categories of nursing and rehabiliation facilities do not have commonly accepted meanings. Accordingly, in 1967, we developed criteria to be used to assess whether a facility meets the defintion of a SNF under section 1861(j)(1) of the Act and, therefore, would be of a type in which a continued stay would prolong a beneficiary's benefit period. These criteria were published in section 3412 of the Medicare "State Operations Manual" and in the **Federal Register** as a Notice of HCFA Ruling (HCFA 83–2) December 3, 1982 (47 FR 54551). In response to a recent court decision (*Kron* v. *Heckler*, Civil Action Number 80–1332 (E.D. Louisiana, October 17, 1983)), the criteria were amended to exclude, for benefit period determinations, facilities licensed or certified solely as ICF's from status as SNF's under section 1861(j)(1) of the Act. The amended criteria, for benefit period determinations, were published in HCFA Ruling 83–3 (March 22, 1984, 49 FR 10710).

The Medicare program has continually maintained that it is the type of facility in which a beneficiary resides rather than the care he or she receives that determines whether or not a benefit period has ended. This meant that if a beneficiary was *in* a hospital meeting the section 1861(e)(1) definition or *in* a SNF meeting the section 1861(j)(1) definition, the beneficiary was considered an "inpatient" of those facilities for purposes of benefit period determinations, regardless of the level of care actually received by the beneficiary.

We believe that this is the interpretation intended by Congress. In 1967, Congress had already become aware that some beneficiaries who resided in long-term care facilities were exhausting their entitlement to hospital days due to the continuation of their benefit periods. Rather than challenge the Department's interpretation of the statute, Congress altered the statute to provide an additional 60 "lifetime reserve days" under the Part A benefit to alleviate the problems faced by such individuals. (S. Rep. No. 744, 90th Cong., 1st Sess. 70 (1967).)

Some federal district courts have supported the Department's view. See *Stoner* v. *Califano, 458 F. Supp. 781 (E.D. Mich. 1978) and Brown* v. *Richardson*, 367 F. Supp. 377 (W.D. Pa. 1973). However, four federal circuit courts have concluded that the type of care provided to the beneficiary in a SNF should affect the ending of benefit periods. See *Mayburg* v. *Heckler*, 740 F.2d 100 (1st Cir. 1984), *Levi* v. *Heckler*, 736 F.2d 848 (2nd Cir. 1984), *Friedberg* v. *Schweiker*, 721 F.2d 445 (3rd Cir. 1983), and *Kaufman* v. *Harris*, 731 F.2d 370 (6th Cir. 1984).

In general, the latter decisions have concluded that, contrary to current Medicare policy, a beneficiary can be an "inpatient" of a SNF for purposes of benefit period determinations only if the beneficiary is receiving a skilled level of care. In view of these court decisions, we are proposing in this regulation to provide that a beneficiary's care in a SNF must meet the Medicare skilled level of care requirements in order for the beneficiary to be considered an "inpatient" of a SNF. This would make our treatment of all beneficiaries consistent with the manner in which benefit period determinations are now being made, pursuant to court order, in the 1st, 2nd, 3rd and 6th federal judicial circuits.

The result of the change being proposed is that in order for a stay in a facility to prolong a benefit period, the beneficiary must be *both* in a facility which is a SNF, as defined in section 1861(j)(1) of the Act, and receiving a skilled level of care. If, for at least 60 consecutive days, either one of those elements is not met, a benefit period will terminate during the beneficiary's stay.

III. Provisions of the Regulation

A. Skilled Level of Care Requirement

These proposed regulations would not affect the current definitions of "hospital" as used in section 1861(e)(1) and "SNF" as used in section 1861(j)(1). HCFA Rulings 83–2 and 83–3 would remain in effect.

However, we are proposing to amend §409.60 of the regulations to specify that for purposes of ending a benefit period, a beneficiary is an "inpatient" of a SNF only if the beneficiary's care in the SNF meets the skilled level of care requirements contained in §409.31(b)(1) and (3) of current regulations. These requirements are part of those used to determine whether or not Medicare payment may be made for care in a SNF. Section 409.31(b)(1) provides that the beneficiary must require skilled services on a daily basis and §409.31(b)(3) provides that the daily skilled services must be ones that, as a practical matter, can only be provided in a SNF on an inpatient basis. This means that a beneficiary is an "inpatient" of a SNF only if the beneficiary receives skilled nursing or rehabilitation services (already defined in regulations at §409.31(a), and further delineated in §§409.32 and 409.33) that he or she requires on a daily basis (§409.34) and that, as a practical matter, can only be provided on an inpatient basis (§409.35). Therefore, if a beneficiary in a SNF receives daily skilled services but does not actually need them on a daily basis, or if a beneficiary receives skilled services which would normally not be performed on an inpatient basis, the beneficiary is not at a skilled level of care and the portion of the SNF stay that is not at the skilled level of care would not prolong a benefit period. In summary, to prolong a benefit period in a SNF, the beneficiary must need and receive daily skilled services that, as a practical matter, can only be provided on an inpatient basis.

We adopted this approach because it assists a beneficiary in terminating a benefit period more easily and because a number of federal courts have suggested that as soon as a patient's level of care below the skilled level of care for which Medicare SNF payment could be made, the patient is no longer receiving skilled services for purposes of maintaining inpatient status for benefit period determinations. (See, for example, Levine v. Secretary, 529 F.Supp. 333 (W.D. N.Y. 1981); Hasek v. Mathews, CCH Medicare and Medicaid Guide 1977 Transfer Binder 28,345 (N.D. Cal. 1977); and Levi v. Heckler, 575 F.Supp. 1381 (S.D. N.Y. 1983).)

We would not apply the level of care requirement contained in 42 CFR 409.31(b)(2) for purposes of determining "inpatient" status during prior SNF stays for benefit period determinations. That provision provides that, in order for Medicare payment to be made for SNF care, the services must have been furnished to treat a condition for which the patient also received inpatient hospital services or a condition which arose which the patient was receiving such treatment. This aspect of the Medicare skilled level of care definition is related to the circumstances under which the level of care triggers a benefit payment rather than the nature of the care itself. Therefore, we are not including this provision in benefit period determinations.

B. Presumptions in Applying the Level of Care Requirements

1. General

We are proposing to establish seven presumptions to aid in administering the proposal that a beneficiary can be considered an "inpatient" of a SNF only if he or she is receiving a skilled level of care. Those seven presumptions are intended to cover every situation concerning a beneficiary's prior stay in a SNF, so that in all cases, the presumptions can serve to characterize (at least initially) the level of care status of a prior SNF stay. We expect them to minimize the administrative burden associated with making these new level of care determinations as they apply to benefit period determinations and to benefit beneficiaries by expeditingthese determinations.

Four of the presumptions are based on prior claims determinations that, if correct, would leave no doubt as to whether skilled care was provided. Three of the presumptions are based on prior claims determinations that may be subject to differing interpretations.

2. Presumptions Entirely Based Upon the Accuracy of Prior Claims Determinations

The four presumptions set forth in the proposed § 409.60(c)(1) are based on prior claims payment determinations that, if correct, leave no doubt as to whether skilled care was or was not provided. As set forth in the proposed § 409.60(c)(3), the benefit period determinations resulting from those presumptions can only be changed if the beneficiary successfully appeals the prior claims determination upon which the presumption is based. Those four presumptions are that for purposes of determining whether a beneficiary has ended a benefit period—

(1) A beneficiary's care in a SNF met the skilled level of care requirements if Medicare or Medicaid made SNF benefit payments for that care (but not under Medicare limitation of liability rules at § 405.330(a), under Medicare grace day rules at § 405.330(b), or under any State Medicaid rules providing for SNF payment for administratively necessary days (ANDs) not meeting the skilled level of care requirements);

(2) A beneficiary's care in a SNF met the skilled level of care requirements if a SNF claim was paid under section 1879(e) of the Social Security Act;

(3) A beneficiary's care in a SNF did not meet the skilled level of care requirements if Medicare payment was made for the SNF care under the limitation of liability rules at § 405.330(a) or the grace day rules at §405.330(b); and

(4) A beneficiary's care in a SNF did not meet the skilled level of care requirements if a Medicaid SNF claim was denied on the grounds that the care was not at the SNF level of care (even if paid under any State Medicaid rules which provide for payment for ANDs not meeting the skilled level of care requirements).

Each of these presumptions is triggered by virture of there having been a prior Medicare or Medicaid payment decision which required a level of care finding. Concerning presumption (1), consistent with both Medicare and Medicaid payment rules, if either program made SNF payment (but not under Medicare limitation of liability, Medicare grace day, or State Medicaid and rules), the skilled level of care requirements for a prior SNF stay had to have been met. That is, for Medicare payment to be made, the condition set forth in § 409.31(b) (1), (2) and (3) must have been met and, therefore, for benefit period purposes the skilled level of care requirements in § 409.31 (b)(1) and (b)(3) had to have been met. Also, for Medicaid, the requirement in § 409.31 (b)(1) and (b) (3) had to have been met because the Medicaid definition of skilled level of care set forth in § 440.40(a)(1)(i) is the same as that set forth at § 409.31(b) (1) and (3). Presumption 2 is established because section 1879(e) limitation of liability

payments, under current Medicare instructions (see Intermediary Manual sections 3431.3 and 3431.4) are made only when skilled level services were needed and provided, but were provided in a noncertified bed. Presumption 3 is established because Medicare limitation of liability and grace day payments made for skilled nursing facility care under § 405.330 can be made only when skilled level services were not needed or not provided. Finally, presumption 4 is established because a Medicaid SNF claim is denied on level of care grounds (including those paid under various State provisions not related to level of care) only if the skilled level of care standards applicable in these regulations (§§ 409.31(b) (1) and (3)) are not met. (Under certain State Medicaid provisions, Medicaid payment may be made for inpatient care which would not otherwise be payable under Medicaid solely on the basis of a patient's need for the level of care specified. This can include payment for care in a SNF which does not meet the skilled level of care requirements; for example, care while awaiting ICF placement). Therefore, binding presumptions are appropriate in these cases unless the earlier determination is reopened and revised. (Note that presumption (2) regarding care in noncertified SNF beds is petinent only if the noncertified bed in which the patient was placed is in a part of the facility *not* certified or licensed solely as an ICF. If the beneficiary is placed in a noncertified bed in such an ICF distinct part, then, based on *Kron*, the ICF distinct part is excluded from status as a SNF under section 1861(j)(1) of the Act. Therefore, although the beneficiary received a skilled level of care as the presumption establishes, the benefit period would not be prolonged because to prolong a benefit period the beneficiary must be *both* in an 1861(j)(1) facility and receiving a skilled level of care.

Because these presumptions would be triggered by Medicare or Medicaid payment findings, beneficiaries may exercise their right to appeal a benefit period determination made as a result of them by timely appealing the claim determinations upon which the presumptions are based.

3. Other Presumptions

In the proposed 42 CFR 409.60(c)(2), we would establish three presumptions that can be challenged by the beneficiary because the prior claims determination may be subject to another interpretation with respect to the current benefit period determination. For purposes of determining whether a beneficiary has ended a benefit period, we would presume that—

(5) A beneficiary's care in a SNF meets the skilled level of care requirements if a Medicare or Medicaid claim for the SNF care was denied on other than level of care grounds (for example, denied because the three day prior hospital stay requirement was not met);

(6) A beneficiary's care in a SNF did not meet the skilled level of care requirements if a Medicare SNF claim was denied on level of care grounds and payment was not made under limitation of liability or grace day rules at § 405.330; and

(7) A beneficiary's care in a SNF did not meet the skilled level of care requirements if no Medicare or Medicaid SNF claim was submitted for the SNF stay.

In each of these three presumptions, we have established the presumption to reflect the circumstances that we believe to be the most likely to have occurred in the case. Under each presumption, however, another outcome is possible and, for that reason, beneficiaries would be allowed to present documentation (for example, medical records and statements of physicians and nurses regarding the services needed and received) to challenge the presumption.

As set forth in proposed § 409.60(c)(4), when these presumptions are applicable, Medicare beneficiaries would (in the context of the initial Medicare determination of the current claim) be advised of their opportunity to rebut the presumptions regarding any prior SNF stays. This notification would be included in the form HCFA–1954 or 1955 (when there has been an initial determination of total or partial payment denial by Medicare for the current claim) or in a separate special notice from the fiscal intermediary (to be sent prior to the HCFA Form 1533, when there has been an initial determination to make full Medicare payment for the current claim). These appeals opportunities will exist in the context of appealing determinations, made under Title 42, Part 405, Subpart G, for the current claim (that is, the claim for which looking back at the status of the prior SNF stay can affect the beneficiary's benefit period status). In connection with the appeals opportunities set forth in proposed § 409.60(c)(4), we would amend § 405.704(b)(10) to make clear that initial determinations also include determinations made under the presumptions established under proposed § 409.60(c)(2).

Showings can be made by beneficiaries at the initial determination level or at the reconsideration, Administrative Law Judge (ALJ) or Appeals Council levels. Even in cases in which a Medicaid payment determination has triggered one of these three presumptions, it is the Medicare intermediary (or the ALJ or Appeals Council, as appropriate) that evaluates any showing made by the beneficiary, and that evaluation again occurs in the context of making determinations (under Title 42, Part 405, Subpart G) for the current claim.

With regard to certain of the three presumptions contained in proposed § 409.60(c)(2), certain observations should be made. Presumption 6 (that is, proposed § 409.60(c)(2)(ii)) can be reversed because the Medicare skilled level of care definition for coverage purposes differs from the skilled level of care definition used here for benefit period determinations. Specifically, the requirement in § 409.31(b)(2) (regarding the requirement for prior hospital care related to the SNF care) is included for meeting Medicare SNF coverage requirements for payment purposes, but has not been included in these regulations as a standard for benefit period determinations. Therefore, Medicare *payment* could have been denied for a prior SNF stay on level of care grounds (that is, no payment was made under the limitation of liability rules at § 405.330) because of noncompliance with § 409.31(b)(2), even though the skilled level of care requirements established under these regulations for benefit period determinations were in fact met by the prior SNF stay. Consequently, when there has been a Medicare SNF payment denial on level of care grounds the beneficiary must be given the opportunity to demonstrate that he or she still needed and received a skilled level of care as defined by §§ 409.31(b) (1) and (3) for purposes of benefit period determinations.

This issue does not arise when a Medicaid SNF claim has been denied on level of care grounds. That is because the Medicaid skilled level of care standard for SNF coverage is the same as our proposed skilled level of care standard for benefit period determinations. Therefore, when a Medicaid SNF claim is denied on level of care grounds, it can be absolutely presumed (if the prior claim payment determination was correct) that services at the skilled level of care were not provided. (See presumption 4.)

With regard to presumption 7, it may seem equally reasonable to presume

that a SNF inpatient received skilled care. However, *Mayburg* and other court decisions (upon which our proposed changes to regulations are based) support the opposite view; that is, that we may not presume that a beneficiary in a SNF received skilled care simply because he or she resided in a SNF. Making this presumption would end a benefit period for affected beneficiaries. In some cases, this would adversely affect beneficiaries who incurred another deductible as a result. However, in other cases, beneficiaries would be protected from exhausting their benefits. We believe that presumption 7, as we propose to establish it, would primarily affect private-pay long-term SNF patients, and that, for the most part, they are not receiving skilled care.

4. Treatment of "No Payment Bills"

Hospitals and SNFs that participate in Medicare must submit Part A bills for their Medicare inpatients for days of care for which no Medicare payment may be made. These bills are referred to as "no payment" bills submitted by the SNF where a prior stay has occurred will have the same effect as Medicare SNF claims which request payment. That is because such "no payment" bills result in Medicare program payment determinations (that is, denials) that trigger the applicable presumptions. This will also be the case in any State Medicaid program that utilizes "no payment" bills that lead to Medicaid program payment determinations (denials). When the intermediary finds that a SNF has erroneously failed to submit a Medicare claim (albeit a no-pay claim), the intermediary will request compliance with Medicare rules which require such claim submission. Once the no-pay bill is submitted and the Medicare denial is made regarding the prior SNF stay, the applicable presumption would be triggered, based on the nature of the denial. Presumption 7 (that is, § 409.60(c)(2)(iii)) would not apply.

5. Prior Stay Determinations—One Finding Only

Proposed 42 CFR 409.60(d) provides that the Medicare program will recognize only one level of care status finding (made under the Medicare or Medicaid programs) for any given day of care in a SNF. We do not want any given day of care in an SNF to have more than one status for purposes of Medicare payment. We believe that a day should not, for example, be considered as covered for one purpose and paid for under Medicare and then later considered as non-covered for purposes of establishing a new benefit period. Therefore, this regulation requires that the status of any day of care in an SNF about which a program determination has already been made will also be the status of that day for purposes of a determination under this regulation. A beneficiary who desires to challenge the validity of an earlier determination in connection with an assertion about whether a new benefit period should or should not begin must first appeal that decision (subject to the applicable rules for reopening prior claims). This policy applies only to days of care to which a prior claims determination specifically applies, not to days before or after the period for which the determination was made.

This rule means that if, in the case of the three rebuttable presumptions, a determination regarding a prior SNF stay has already been made in the context of adjudicating another claim, an intermediary or ALJ would be bound by that earlier characterization of the prior SNF stay in adjudicating a current claim; that is, unless the beneficiary can demonstrate that the earlier characterization was erroneous. The result is that beneficiaries may wish to appeal earlier decisions regarding the type of care they received in a prior stay but, if HCFA reviews the determination and agrees, a payment adjustment in the prior claim would be made, if necessary, to reflect the revision made to that earlier determination.

6. Validation of Patient Records

We recognize that the use of presumptions does create an incentive for patients to represent the care they received in an SNF as unskilled or skilled, depending on whether beginning a new benefit period would benefit them. As we have noted elsewhere in this preamble, we intend these presumptions to be used for ease in administration but also plan to encourage intermediaries to review medical records when there is a basis for questioning the level of care alleged by the SNF or beneficiary.

IV. Effective Date

These regulations would become effective 30 days after the publication of a final rule. We are proposing that these regulations would be applied only to those claims for which determinations have not yet become final (under Part 405, Subpart G) on or after the effective date of the final rule.

When adjudicating a claim to which these regulations would apply, we would determine whether there has been any prior SNF stay in the beneficiary's current benefit period that would end the benefit period under these regulations. We would examine any prior SNF stay in the beneficiary's current benefit period, regardless of whether or not the prior stay occurred immediately before the stay in the current claim. In all cases where these regulations would result in a prior SNF stay ending a benefit period, the new benefit period would begin with the stay for which the current claim, that is, the claim that has not yet become final, was filed.

V. Regulatory Impact Statement

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule includes any proposed regulation that woud have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) we also prepare and publish an initial regulatory flexibility analysis for any proposed regulation that would have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000.

The proposals on drug regimen reviews discussed in section VI., below, and the proposed technical changes discussed in section VII., would not have a significant effect on Medicare or Medicaid program expenditures or on State or provider operations. However, our proposals on benefit period determinations would have some significant effects. Although we do not believe that those effects would be of such a magnitude as to require either a regulatory impact analysis or a regulatory flexibility analysis, it is clear from our program experience, as well as past judicial proceedings, that the consequences of following this proposal will be received with great interest and concern. Therefore, we have provided the following discussion of the expected impact of these proposals, in order to clarify our reasons for not preparing analyses under either E.O. 12291 or the RFA.

B. Benefit Period Determinations

As noted above in this preamble, we are proposing that for benefit period determinations a beneficiary's care in a SNF must meet certain skilled level of care requirements in order for the beneficiary to be considered an "inpatient" of the SNF.

We anticipate that implementation of this proposal on a nation-wide basis could generate certain costs and savings to the Medicare and Medicaid programs, improvements in the administration of State long-term care programs, and advantages and disadvantages to some beneficiaries.

Budget Impact

We estimate a final net annual budget impact of $10 million in Medicare costs. This impact reflects increased Medicare net costs offset by Medicaid savings, as follows:

[In million of dollars]

Medicare cost	Medicare savings	Net Medicare cost	Medicaid savings	Final net cost
$50	−$35	$15	−$5	$10

The Medicare costs represent an expected increase in benefit payments while the Medicare savings reflect income received from new deductibles generated by those beneficiaries beginning new spells of illness under these regulations. Medicaid savings would result from Medicare payment for services currently paid for by Medicaid for certain dually eligible beneficiaries. Thus, the net budget impact represents an increase in Medicare program expenditures to implement this change in our benefit period policies to accommodate the dictates of several federal court decisions.

Beneficiary Impact

In practice, the proposed regulation would affect different beneficiaries differently, depending on the specific circumstances of each beneficiary's situation. The proposed rule would make it easier for a beneficiary to end a benefit period and thereby begin a new one. For a beneficiary who has used enough inpatient hospital or SNF care to now be using copayment days, lifetime reserve days or be in "days exhausted" status, it would be beneficial to end one period and begin a new one. As a result of this proposed rule, these beneficiaries could start a new benefit period if they reside in a nursing home. This would generate more payment liability for the Medicare program and reduce the beneficiary's liability because the beneficiary would not continue to pay a copayment or full charges amount.

On the other hand, the proposed rule would not be advantageous for a beneficiary who has not made extensive use of the inpatient hospital benefit. Such a beneficiary would have paid his or her required deductible when beginning the benefit period. As long as the beneficiary is in Medicare full payment days (that is, before copay days are triggered) it is to his or her advantage to have the current benefit period prolonged until the full-pay days are exhausted. Thus, the beneficiary would avoid paying another deductible for the full-pay Medicare days (that is, for covered care) to which the person is already entitled in becoming a hospital inpatient again. As a result of this proposed new rule, beneficiaries in this latter category who "reside" in a SNF (that is, do not receive skilled care) would be required to pay new deductibles if they become hospitalized. Under existing rules (in those areas of the country not under a Mayburg-type court order), those SNF stays would prolong a benefit period, and no deductible would be owed at the beginning of a new hospitalization.

Other Program Effects

We anticipate at least one other, less significant, outcome from the proposed change to our current benefit period policy. By providing States with incentives to implement the long-term care provisions of their Medicaid programs more efficiently, we believe that more proper level of care determinations for recipients would be made.

Under the proposed rule, Medicare will presume (in the case of beneficiaries entitled both to Medicare and Medicaid) that skilled care was needed and received if a State makes a Medicaid SNF payment for the care. As a result of that presumption, if Medicaid SNF payments are made for a beneficiary in a SNF, but who is not at the skilled level of care, the beneficiary is unable to end his Medicare benefit period. Thus, beneficiaries who are either in copay or exhausted status under the Medicare SNF or hospital inpatient benefit would receive either reduced or no Medicare payment for any impatient SNF or hospital services needed subsequent to the non-skilled stay for which the State made Medicaid SNF payment, and Medicaid liability would continue.

The result is that for those beneficiaries who are also Medicaid-eligible, the State would become the liable payor for the cost of the services not paid for by Medicare. We believe that this proposed rule would create a fiscal incentive to States to assure that the distinction between SNF and ICF care is properly made. This improvement, over time, should lead to more accurate SNF and ICF payment rates and more appropriate use of nursing home beds.

Summary

We conclude that the proposed change to our current policy regarding benefit period determinations would produce certain outcomes. These impacts would result from our conforming policies to the dictates of several circuit court decisions compelling us to make these changes in a significant number of States. These rules would make nationwide the provisions now applicable in those States covered by the court orders. We estimate a net increase in Medicare costs resulting from increased benefit payments. We also recognize that some beneficiaries would be advantaged and others disadvantaged by this proposal.

In summary, we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities. In addition, the estimated impact would not meet the $100 million threshold or the other criteria for identifying major rules under Executive Order 12291. Because this proposed rule would not result in an annual economic impact that meets the threshold criteria of Executive Order 12291 or of the RFA, we have not prepared either a regulatory impact analysis or a regulatory flexibility analysis.

C. Paperwork Reduction Act of 1980

The proposed changes regarding benefit period determinations and the drug regimen review provision in section VI., following, would not impose any additional information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Section 405.1127(a) of this rule contains an information collection requirement that has been approved by the Office of Management and Budget under control number 0938–0364.

VI. Drug Regimen Reviews

The Medicare SNF regulations (§ 405.1127(a)) and the Medicaid SNF regulations (§ 442.202(c)), by reference to Part 405, Subpart K, require that a pharmacist perform a monthly drug

regimen review on each patient in the SNF. However, under Medicaid regulations located at 42 CFR 442.336(a), in ICFs, these monthly reviews must be performed by a registered nurse. This presents a problem for some facilities dually certified as both a SNF and an ICF that might find it administratively more efficient to designate either a pharmacist or a registered nurse to conduct reviews for all its patients regardless of the level of care.

In recognition of this situation and in order to provide flexibility for SNFs and ICFs, we are proposing to modify §§ 405.1127(a) and 442.336(a) of the regulations to permit either a pharmacist or a registered nurse to conduct these reviews at the option of the facility. This proposal would alleviate the problem this presents to those facilities dually certified as both a SNF or an ICF.

VII. Technical Changes

We are proposing to make technical changes to 42 CFR 405.702 (as a result of other amendments to regulations) to remove two cross-references in that section.

On September 1, 1983, we published in the **Federal Register** a final rule with comment period that revised § 405.401(c) of the regulations (48 FR 39609). The old paragraph (c) dealt with intermediaries in general, but the current paragraph (c) as amended by the rule now deals with outpatient maintenance dialysis and related services. Therefore, in the first sentence of § 405.702, we would remove, as outdated and unnecessary, the parenthetical reference "(see § 405.401(c))". Also, as a result of regulations published on April 4, 1980 (45 FR 22935), certain sections of regulations formerly appearing in Title 42 under Part 405 were redesignated as Part 489. For the same reasons as above, we would amend the second sentence of § 405.702 to remove the parenthetical "(see § 405.605)".

VIII. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. 42 CFR Part 405 would be amended as set forth below:

1. The authority citation for Part 405, Subpart G is revised to read as follows:

Authority: Secs. 1102, 1154, 1155, 1869(b), 1871, 1872 and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1395ff(b), 1395hh, 1395ii and 1395pp).

§ 405.702 [Amended]

2. In § 405.702, in the first and second sentences, the parenthetical references "(see § 405.401(c))" and "(see § 405.605)", respectively, are removed as outdated and unnecessary.

3. In § 405.704, the introductory language to paragraph (b) is reprinted and (b)(10) is revised to read as follows:

§ 405.704 Actions which are initial determinations

* * * * *

(b) Requests for payment by or on behalf of individuals. An initial determination with respect to an individual includes any determination made on the basis of a request for payment by or on behalf of the individual under Part A of Medicare, including a determination with respect to:

(10) The beginning and ending of a spell of illness, including a determination made under the presumptions established under § 409.60(c)(2) of this chapter, as specified in § 409.60(c)(4) of this chapter.

* * * * *

4. The authority citation for Part 405, Subpart K is revised to read as follows:

Authority: Secs. 1102, 1814, 1832, 1833, 1861, 1863, 1865, 1866, 1871, of the Social Security Act; 42 U.S.C. 1302, 1395f, 1395k, 1395l, 1395x, 1395z, 1395bb, 1395cc, 1395hh.

5. Section 405. 1127(a) is revised to read as follows:

§ 405.1127 Condition of participation—pharmaceutical services.

* * * * *

(a) Standard: Supervision of services. The pharmaceutical services are under the general supervision of a qualified pharmacist who is responsible to the administrative staff for developing, coordinating, and supervising all pharmaceutical services. The pharmacist (if not a full-time employee) devotes a sufficient number of hours, based upon the needs of the facility during regularly scheduled visits to carry out these responsibilities. The pharmacist or a registered nurse reviews the drug regimen of each patient at least monthly, and reports any irregularities to the medical director and administrator. The pharmacists submits a written report at least quarterly to the pharmaceutical services committee on the status of the facility's pharmaceutical service and staff performance.

* * * * *

PART 409—MEDICIARE BENEFITS, LIMITATIONS, AND EXCLUSIONS

B. 42 CFR Part 409 would be amended as set forth below:

1. The authority citation for Part 409 is revised to read as follows:

Authority: Secs. 1102, 1812, 1813, 1814, 1861, 1866, 1871, 1881, and 1882 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395f, 1395x, 1395cc, 1395hh, 1395rr, and 1395tt)

2. Section 409.60 is revised to read as follows:

Scope of Benefits

§ 409.60 Benefit periods.

(a) *When benefit periods begin.* The initial benefit period begins on the day the beneficiary receives inpatient hospital or SNF services for the first time after becoming entitled to hospital insurance. Thereafter, a new benefit period begins whenever the beneficary receives inpatient hospital or SNF services after he or she has ended a benefit period as described in paragraph (b) of this section.

(b) *When benefit periods end.* (1) A benefit period ends when a beneficiary has, for at least 60 consecutive calendar days, not been an inpatient in any hospital that meets the requirements of section 1861(e)(1) of the Act or in any SNF that meets the requirements of section 1861(j)(1) of the Act.

(2) For purposes of ending a benefit period, a beneficiary was an inpatient of a SNF if his or her care in the SNF met the skilled level of care requirements specified in § 409.31(b) (1) and (3).

(c) *Presumptions.* (1) For purposes of determining whether a beneficiary was

an inpatient of a SNF under paragraph (b)(2) of this section—

(i) A beneficiary's care met the skilled level of care requirements if inpatient SNF claims were paid for those services under Medicare or Medicaid, unless such payments were made under § 405.330 or Medicaid administratively necessary days provisions which result in payment for care not meeting the skilled level of care requirements;

(ii) a beneficiary's care met the skilled level of care requirements if a SNF claim was paid under section 1879(e) of the Social Security Act;

(iii) A beneficiary's care did not meet the skilled level of care requirements if a SNF claim was paid for the services under § 405.330;

(iv) A beneficiary's care did not meet the skilled level of care requirements if a Medicaid SNF claim was denied on the grounds that the services were not at the skilled level of care (even if paid under applicable Medicaid administratively necessary days provisions which result in payment for care not meeting the skilled level of care requirements);

(2) For purposes of determining whether a beneficiary was an inpatient of a SNF under paragraph (b)(2) of this section a beneficiary's care in a SNF is presumed—

(i) To have met the skilled level of care requirements if a Medicaid or Medicare claim was denied on grounds other than that the services were not at the skilled level of care;

(ii) Not to have met the skilled level of care requirements if a Medicare SNF claim was denied on the grounds that the services were not at the skilled level of care and payment was not made under § 405.330; or

(iii) Not to have met the skilled level of care requirements if no Medicare or Medicaid claim was submitted by the SNF.

(3) When the intermediary makes a benefit period determination based upon paragraph (c)(1) of this section, the beneficiary may seek to reverse the benefit period determination by timely appealing the prior Medicare SNF claim determination under 42 CFR Part 405, Subpart G, or the prior Medicaid SNF claim under 42 CFR Part 431, Subpart E.

(4) When the intermediary makes a benefit period determination under paragraph (c)(2) of this section, the beneficiary will be notified of the basis for the determination, and of his or her right to present evidence to rebut the determination that the skilled level of care requirements specified in § 409.31 (b)(1) and (b)(3) were or were not met on reconsideration and appeal under 42 CFR, Part 405, Subpart G.

(d) *Limitation on benefit period determinations.* When the intermediary considers the same prior SNF stay of a particular beneficiary in making benefit period determinations for more than one inpatient Medicare claim—

(1) Medicare will recognize only the initial level of care characterization for that prior SNF stay (or if appealed under 42 CFR Part 405 Subpart G, the level of care determined under appeal); or

(2) If part of a prior SNF stay has one level of care characterization and another part has another level of care characterization, Medicare will recognize only the initial level of care characterization for a particular part of a prior SNF stay (or if appealed under 42 CFR Part 405 Subpart G, the level of care determined under appeal).

(e) *Relation of benefit period to benefit limitations.* The limitations specified in §§ 409.61 and 409.64, and the deductible and coinsurance requirements set forth in Subpart G of this part apply for each benefit period. The limitations of § 409.63 apply only to the initial benefit period.

PART 442—STANDARDS FOR PAYMENTS FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

c. 42 CFR Part 442 would be amended as set forth below:

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 442.336(a) is amended by adding a reference to a pharmacist. As revised, paragraph (a) reads as follows:

§ 442.336 Review of medications.

(a) A pharmacist or a registered nurse must review medications monthly for each resident and notify the physician if changes are appropriate.

* * * * *

Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program; No. 13.714, Medical Assistance Program)

Date: March 11, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 9, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-11055 Filed 5-15-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[GEN Docket 83-806; FCC 86-208]

FCC Regulations Concerning RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Part 18 of its Rules to impose radiated limits on emissions below 30 MHz caused by the operation of radio frequency (RF) lighting devices. The intended effect is to minimize the interference potential of RF lighting devices to authorized radio services, such as AM broadcasting, amateur, etc.

DATES: Comments must be submitted on or before June 30, 1986, and reply comments on or before July 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Liliane Volcy, Office of Engineering and Technology, tel: 653-7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, GEN Docket 83-806, adopted April 18, 1986, and released May 8, 1986.

The full text of Commission decisions is available for inspection and copying during normal business hours in the FCC Dockets Banch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. Radio frequency (RF) lighting devices are capable of interfering with AM broadcasting, safety, amateur, and other radio services due to the fact they produce RF emissions in the MF and HF regions of the spectrum. In order to mitigate potential interference problems, we are currently imposing conduction limits on emissions in the 0.45-30 MHz range, and radiation limits on emissions in the 30-1000 MHz range. We now propose that radiation limits below 30 MHz be imposed to assure further continued non-interference with authorized radio services on a long term basis. The FCC laboratory will verify compliance with these proposed levels using the testing procedures outlined in

FCC/OST MP–5, "Methods of Measurements of Radio Noise Emissions from Industrial, Scientific, and Medical Equipment" (1985). Compliance with the new radiation limits below 30 MHz, would be required for all RF lighting devices marketed one year after the effective date of the final rules.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., the proposed rule should not, if promulgated, have a significant economic impact on a substantial number of small entities because most RF lighting devices can be designed to meet the limits recommended herein.

3. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible ex parte contacts.

4. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rule, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 30, 1986, and reply comments on or before July 15, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 18

Business and industry, Household appliance.

William J. Tricarico,

Secretary.

It is proposed that Part 18 of Title 47 of the Code of Federal Regulations be amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat. 1066 1082, 1083, as amended; Sec. 303, 82 Stat. 290; 47 U.S.C. 154, 302, 303, 307.

2. Section 18.203 is amended by revising paragraph (c) and by adding two new paragraph (d) and (e) as follows:

§ 18.203 Equipment authorization.

* * * * *

(c) For ISM equipment, other than RF lighting devices, grants of equipment authorization issued, as well as on-site certifications preformed, before March 1, 1986, remain in effect and no further action is required.

(d) Consumer RF lighting devices for which applications for certification are filed before [six months after effective date of final rules] are not subject to the field strength limits specified below 30 MHz in § 18.305(c). Non-consumer RF lighting devices verified before [nine months after effective date of final rules] are not subject to the field strength limits below 30 MHz specified in § 18.305(c).

(e) Notwithstanding the provisions of paragraph (d), above, the marketing and importation of any RF lighting devices, the certification or verification of which shows that they meet the field strength limits specified only above 30 MHz in § 18.305(c), shall not be permitted after [one year after effective date of final rules]. However, the use of such devices may continue in accordance with the general operating conditions of § 18.111.

3. Section 18.305(c) is revised to read as follows:

§ 18.305 Field strength limits.

* * * * *

(c) The field strength limits for RF lighting devices shall be the following:

Frequency (MHz)	Distance (m)	Field Strength Limit (dBV/m) Applications	
		Non-consumer	Consumer
0.009 to 0.49	300	2.4/F(MHz)	2.4/F(MHz)
0.49 to 1.705	30	24/F(MHz)	24/F(MHz)
1.705 to 30	30	15	15
30 to 88	3	300	100
88 to 216	3	500	150
216 to 1000	3	700	200

* * * * *

§ 18.307 [Amended]

4. Section 18.307 is amended by removing note 2 and redesignating note 3 as note 2.

[FR Doc. 86–10961 Filed 5–15–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 21

[CC Docket No. 86–179; FCC 86–226]

Multipoint Distribution Service (MDS) Regulatory Classification

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has issued an NPRM that proposes providing single channel MDS and multichannel MDS appicants with the option to make their service offerings available on either a common carrier or non-common carrier basis. Those applicants electing to offer service as common carriers would be subject to the Commission's regulatory policies applicable to non-dominant, forborne common carriers. The Commission also proposed to eliminate both § 21.903(b)(1), the "content restriction rule", and § 21.903(b)(2), the "fifty-percent rule", from the rules and regulations governing MDS common carriers. This action was initiated as a means of encouraging a competitive marketplace environment for the full and flexible development of this service.

DATES: Comments are due by June 30, 1986, Reply comments are due by July 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Cassandra C. Thomas, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1855.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, CC Docket No. 86–179, adopted April 30, 1986, and released May 9, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW, Washington, DC 20554. The complete text of this decision can also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The Commission has adopted a Notice of Proposed Rulemaking (NPRM) proposing to (1) permit MDS applicants, permittees, and licensees the option of rendering service on either a common carrier basis or on a non-common carrier basis. The proposal would apply to single-channel as well as multichannel MDS applicants; (2) extend the Commission's non-dominant, forbearance policies to MDS common carriers; and (3) eliminate § 21.903(b)(1), the "content-restriction rule", and § 21.903(b)(2), the "fifty-percent rule", from its rules. 47 CFR 21.903(b)(1) and 21.903(b)(2).

2. *Common carrier* v. *non-common carrier.* While acknowledging MDS' principal use as a delivery system for the distribution of premium video entertainment programming to end-users, the Commission recognized that the continued development of MDS for video entertainment programming as well as non-video entertainment programming is facilitated by its continued classification as a common carrier service. At the same time, the maximum and flexible development of the service would be enhanced by our proposal to permit MDS applicants the option to make their service offerings available on a non-common carrier basis. Entities that elect to provide

service on a common carrier basis would be subject to the requirements of Title II in the manner discussed at paragraph 3 below. Alternatively, parties choosing non-common carrier status would be subject only to the requirements of Title III imposed on applicants seeking a radio license authorization.

3. *MDS non-dominant, forborne common carriers.* The Commission's decision to extend its non-dominant, forbearance policies to MDS carriers is predicated on the tentative conclusion that, as a whole, these carriers lack the market power to control prices for their service offerings in such a way as to constitute unjust, unreasonable and unduly discriminatory rates and anti-competitive practices contrary to the statutory obligations imposed by Sections 201(b) and 202(a) of the Communications Act of 1934, as amended. The Commission observed that the MDS receives vigorous competition from other services capable of transmitting video entertainment programming as well as from other transmission services. Based on this analysis, it proposed to treat MDS common carriers as non-dominant carriers. In addition, it also determined that reliance on its carrier and customer complaint process would serve as an adequate mechanism for ensuring that common carriers meet their statutorily imposed obligation to refrain from setting unjust, unreasonable and discriminatory rates and practices.

4. *Elimination of §§ 21.903(b)(1) and 21.903(b)(2).* The proposal recommends eliminating both §§ 21.903(b) and 21.903(b)(2) from the Commission's rules and regulations. Section 21.903(b)(1), the restriction on content control, was found to be unnecessary because it merely restated the principle that a common carrier may not undertake to influence the content of the message transmitted. Similary, § 21.903(b)(2), the "fifty-percent" rule, was also determined to be unnecessary in view of the manner in which the service has developed and how it is anticipated it will develop in the future. The Commission noted that the subscriber non-affiliation rule embodied in § 21.903(b)(2) may not be necessary to ensure the availability of transmission time and capacity to users other than the licensee. It also observed that the stated practice in the MDS industry is for operators to lease 100% of their transmission time and all of their capacity to unaffiliated parties, even though § 21.903(b)(2) would allow carriers to lease up to 50 percent of their transmission time and capacity to related entities. In addition, the Commission further stated that in light of its proposal to permit entities to elect to offer MDS on a common carrier basis or on a non-common carrier basis, a party choosing to offer service to an affiliate would be able to do so by rendering MDS on a non-common carrier basis.

5. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231 for rules governing permissible ex parte contacts.

6. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will remove a significant regulatory restriction now imposed upon both small and large MDS carriers. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision. This proposal has also been analyzed with regard to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements. The proposal will not increase or decrease burden hours imposed on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419, of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 30, 1986, and reply comments on or before July 15, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clause

8. Accordingly, notice is hereby given of rulemaking to amend the Commission's Rules and Regulations in accordance with the rule proposals set forth at the end of this document. Authority for this proposed rulemaking is contained in Sections 4 (i) and (j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), and 303 and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

List of Subjects in 47 CFR Part 21

Communications common carriers, Radio.

Part 21 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart K—Multipoint Distribution Service

1. The authority citation for Part 21 continues to read as follows:

Authority: 47 U.S.C. 154, 309.

2. Section 21.900 is amended by revising the first sentence of the introductory paragraph and paragraph (c) to read as follows:

§ 21.900 Eligibility.

Authorizations for stations in this service will be granted to existing and proposed communications common carriers or non-common carriers.

* * * * *

(c) The public interest, convenience, and necessity would be served by a grant thereof. The applicant shall submit a statement indicating whether service will be provided on a common carrier or non-common carrier basis. In addition, the applicant shall submit a statement indicating whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

3. Paragraph (b) of § 21.903 is revising introductory paragraph, removing paragraphs (b)(1) and (b)(2), redesignating paragraph (b)(3) as (b)(1), revising the new paragraph (b)(1), redesignating paragraph (b)(4) as (b)(2), and by revising paragraph (c) as follows:

§ 21.903 Purpose and permissible service.

* * * * *

(b) Unless otherwise directed or conditioned in the applicable instrument of authorization, Multipoint Distribution Service stations may render any kind of communcations service consistent with the Commission's rules and the legally applicable tariff of the carrier or on a non-common carrier basis.

(b)(1) Unless service is rendered on a non-common carrier basis, the carrier must control the operation of all receiving facilities (including any equipment necessary to convert the signal to a standard television channel but exlcuding the television receiver); and

* * * * *

(c) Non-dominant common carriers are required to charge just, reasonable and non-discriminatory rates and are subject to the Commission's complaint process, but are not required to file a tariff with the Commission. Although tariff filings with the Commission are not necessary, those carrier's desiring to file a tariff may continue to do so. In those instances, the carriers tariff shall fully described the parameters of the service to be provided, including the degree of privacy of communications a subscriber can expect in ordinary service. If the ordinary service does not provide for complete security of transmission, the tariff shall make

provision for service with such added protection upon request.

William J. Tricarico,

Secretary.

[FR Doc. 86-10953 Filed 5-15-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 21

[Docket 20490]

Common Carrier Radio Licensing; Termination of Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proceeding Terminated.

SUMMARY: The Commission has terminated Docket 20490 which proposed to amend Part 21 of the Commission's Rules relating to licensing of common carrier microwave stations because most of the issues have been resolved. The few issues remaining unresolved in Docket 20490 have been incorporated into CC Docket 86-128 which proposes a comprehensive revison of Part 21.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Emily Williams, Domestic Facilities Division, Common Carrier Bureau, (202) 634-1869.

SUPPLEMENTARY INFORMATION:

Order Terminating Proceeding

In the matter of Amendment of Parts 21 and 43 of the Commission's rules and regulations relative to various procedural requirements for the Domestic Public Fixed Radio Services; Docket No. 20490, FCC 86-160.

Adopted April 8, 1986.
Released April 11, 1986.

By the Commission:

This proceeding was initiated May 29, 1975 (40 FR 24021, June 4, 1975) by the issuance of a Notice of Proposed Rulemaking which sought to promulgate new rules in parts 21 and 43 of the Commission's Rules to simplify and improve our processing of common carrier radio applications. Most of the proposed rules were adopted in the First Report and Order, 55 FCC 2d 744 (1975), and the Second Report and Order 76 FCC 2d 273 (1980). Several proposals have never been adopted, however.

Since the release of the Notice of Proposed Rulemaking in this Docket there have been a number of important developments in the domestic common carrier radio industry, the Communications Act and our own regulations. These changes have required us to review all the rules relating to the Domestic Fixed Radio Services. Accordingly, we have adopted a Notice of Proposed Rulemaking (NPRM) that proposes a comprehensive revision of Part 21 of our rules. (51 FR 13258, April 18, 1986). The NPRM incorporates the unresolved proposals from the notice in this docket that remain viable in today's industry and environment.

Accordingly, it is ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-8910 Filed 5-15-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket PS-89, Notice]

Fire Protection and Security of Waterfront Liquefied Natural Gas Facilities

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend the scope of the existing standards governing fire protection and security of liquefied natural gas (LNG) facilities to cover facilities at waterfront LNG plants other than facilities that involve marine cargo transfer operations and facilities located in navigable waters. The proposed amendment is needed to comply with mandatory provisions of the Pipeline Safety Act of 1979 and to conform the existing standards with the United States Coast Guard's revised assessment of responsibilities for port safety and security. The proposed amendment would require that the affected facilities at waterfront LNG plants meet the same standards for fire protection and security that now apply to similar facilities at more than 100 non-waterfront LNG plants in the United States.

DATE: Interested persons are invited to submit written comments on this proposal before August 14, 1986. Late filed comments will be considered so far as practicable.

ADDRESS: Comments should be sent to the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and identify the docket and notice numbers. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m., and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, 202-426-2392.

SUPPLEMENTARY INFORMATION: Section 152(a) of the Pipeline Safety Act of 1979 (49 U.S.C. 1674a(b)), required the Secretary of Transportation to establish, within 270 days after November 30, 1979, minimum safety standards for operation and maintenance of liquefied natural gas (LNG) facilities. With certain exceptions for waterfront LNG plants, as explained below, RSPA issued the requisite standards on October 17, 1980, including, in accordance with 49 U.S.C. 1674a(d)(3), associated standards for fire protection and security of LNG facilities and personnel qualifications and training. The new standards were published as Subparts F-J of Part 193 (Docket OPSO-46; 45 FR 70390, October 23, 1980), completing a comprehensive set of safety standards for LNG facilities begun January 30, 1980, by issuance of standards for siting, design, and construction (45 FR 9189; February 11, 1980).

The United States Coast Guard (USCG) has been developing regulations for the storage and handling of LNG and other hazardous materials at waterfront facilities. To avoid inconsistent regulations and duplication of effort regarding waterfront LNG plants, a memorandum of understanding (MOU) was signed February 7, 1978 (44 FR 8146). Among other things, the 1978 MOU made the establishment of regulatory requirements for fire protection and security matters at waterfront LNG plants an exclusive USCG responsibility. Consequently, waterfront LNG plants are specifically excepted from the scope of RSPA's standards in Part 193 governing fire protection (Subpart I) and security (Subpart J) of LNG facilities (§§ 193.2801 and 193.2901). Because of this exclusion, the related qualification and training requirements (Subpart H) for fire protection and security personnel do not apply at waterfront LNG plants. All other Part 193 operation and maintenance standards do apply to waterfront LNG plants, however, except for marine cargo transfer systems and associated facilities (§ 193.2001(b)(3)) and any LNG facility located in navigable waters (§ 193.2001(b)(4)).

The term "waterfront LNG plant" is defined in Part 193 as "an LNG plant with docks, wharves, piers, or other

structures in, on, or immediately adjacent to the navigable waters of the United States or Puerto Rico and any shore area immediately adjacent to those waters to which vessels may be secured and at which LNG cargo operations may be conducted." There are five LNG plants in the United States which are now or have been operational waterfront LNG plants. Four are LNG import terminals: (1) Distrigas Corporation, Everett, Massachusetts (2) Columbia LNG Corporation, Cove Point, Maryland; (3) Southern Energy Company, Elba Island, Georgia; and (4) Trunkline LNG Company, Lake Charles, Louisiana. One, Philips-Marathon, Kenai, Alaska is an export terminal. Only the Distrigas and Philips plants are currently operational. The remaining three import terminals are temporarily shut down due to high contract costs for base-load LNG. A proposed import waterfront plant, Western LNG Terminal, Point Conception, California, has undergone considerable planning, but has been placed on hold. Also, an export waterfront LNG plant in Alaska, originally proposed for bringing Alaskan LNG to Western and the lower 48 States, frequently appears in the literature as a continuing consideration. In addition, a proposal to enlarge or build new LNG facilities in Kenai for exporting Alaskan LNG to Japan is actively being pursued.

Since 1980, when the Part 193 fire protection and security standards were adopted, USCG has reassessed the scope of its port safety and security responsibilities.

Also, since then RSPA and the gas pipeline industry have had several years' experience applying the standards to over 100 non-waterfront LNG plants. Apart from the marine transfer aspects, many of these plants are similar in size and operating characteristics to waterfront LNG plants. Given these considerations, RSPA and USCG have reconsidered the division of responsibilities in the 1978 MOU regarding fire protection and security regulations.

Consequently, a revised MOU has been adopted. It is published in this issue of the **Federal Register** as part of USCG's rulemaking notice on waterfront LNG plants. The revised MOU assigns RSPA new responsibility for regulating fire protection and security. It also recognizes that due to a statutory change (49 U.S.C. 1671(12)), RSPA's responsibility for regulating LNG facilities does not extend to any structures or equipment (or portions thereof) located in navigable waters. All other duties assigned by the 1978 MOU remain the same. More specifically, the revised MOU assigns RSPA responsibility for regulating fire protection and security of all waterfront LNG facilities except those facilities located between the vessel and the last manifold (or valve) immediately before the receiving tanks and any structures or equipment (or portions thereof) located in navigable waters. USCG is responsible for fire protection, security, and all other matters pertaining to these excepted facilities except for RSPA's responsibility for site selection of the onshore portion of marine cargo transfer systems and associated facilities.

In view of this new division of regulatory responsibilities and the mandate of the Pipeline Safety Act of 1979 to establish operation and maintenance standards for LNG facilities which cover fire protection, security, and associated personnel qualification and training (49 U.S.C. 1674a(b) and (d)(3)), RSPA is proposing to delete the exceptions of waterfront LNG plants from the fire protection and security standards of Part 193. Removal of the exceptions, which are provided in §§ 193.2801 and 193.2901, would simultaneously cause the related personnel qualification and training requirements of Subpart H of Part 193 to apply to waterfront LNG plants (§§ 193.2709, 193.2715 and 193.2717). As provided by the existing § 193.2001(b)(3), if the proposed amendments to §§ 193.2801 and 193.2901 are adopted as final, the fire protection and security standards of Subparts I and J and the related rules in Subpart H would remain inapplicable to marine cargo transfer systems and associated facilities at waterfront LNG plants. Section 193.2001(b)(4) now provides that Part 193 does not apply to any structures or equipment (or portions thereof) located in navigable waters.

When final rules for fire protection and security were published in Subparts H, I, and J, operators of non-waterfront LNG plants were allowed varying extended periods to prepare for compliance before the rules became effective. Extra time was necessary to procure and install new equipment and to develop the required personnel training program and procedures for fire protection and security. In contrast, RSPA's experience with waterfront LNG plants shows that the operators already voluntarily comply with most, if not all, of the fire protection and security rules of Part 194. They, therefore, should not need a lengthy period in which to bring their facilities into full compliance before the rules become mandatory. RSPA proposes, therefore, that after final rules are published in this proceeding, a period of 6 months be provided before the rules take effect.

This notice does not propose any substantive change to the existing rules in Subparts H, I, or J of Part 193. Those rules cover aspects of fire protection and security of LNG facilities that should need no differentiation with regard to waterfront location. RSPA intends to establish identical requirements for non-waterfront as well as waterfront LNG plants. Comments that suggest modifications to existing rules will be considered, but unless clearly based on waterfront location, they will be set aside for future consideration in a separate proceeding involving all LNG facilities.

Classification. The proposed amendments to the regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979) based on the evaluation of costs and benefits contained in Docket OPSO-46. Also, the agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities, since small entities do not now, and are not expected to, own or operate waterfront LNG plants because of the high capital costs involved. RSPA's experience with waterfront LNG plants shows that the expected impact of this rulemaking on existing and planned facilities would not be substantial enough to warrant a full evaluation of the costs and benefits involved.

List of Subjects in 49 CFR Part 193

Fire prevention, Security measures, Liquefied natural gas facilities.

Accordingly, RSPA proposes to amend Part 193 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 193 is revised to read as follows:

Authority: 49 U.S.C. 1674a; 49 CFR 1.53.

2. By revising § 193.2801 to read as follows:

§ 193.2801 Scope.

This subpart prescribes requirements for fire prevention and fire control at LNG plants.

3. By revising § 193.2901 to read as follows:

§ 193.2901 Scope.

This subpart prescribes requirements for security at LNG plants.

Issued in Washington, DC, on May 9, 1986 under authority delegated by 49 CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 86-11008 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 79-04; Notice 3]

Federal Motor Vehicles Safety Standards; Side Impact Protection; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction.

SUMMARY: This document corrects a notice announcing a public meeting on side impact protection. The notice referenced various research results that the agency believed would be of interest to persons planning to attend the meeting and provided an incorrect listing of the public dockets that contained the research. This notice lists the correct dockets.

FOR FURTHER INFORMATION CONTACT: Mr. J.E. Tomassoni, NRM-12, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-2242.

SUPPLEMENTARY INFORMATION: On April 8, 1986 (51 FR 11957), NHTSA published in the **Federal Register** a notice announcing a public meeting on side impact protection. For the convenience of persons planning to attend the meeting, the notice identified relevant research on side impact protection and listed the agency's dockets in which the information was filed. The docket listings for some of the documents were incorrect. Attached is a complete listing of all the referenced research material and the corrected docket listings:

1. "Results of the National Highway Traffic Safety Administration's Thoracic Side Impact Protection Research Program" Hackney et al., SAE Paper 840886 (See Docket 79-04, General Reference, Entry 55).

2. "Structural Improved Side Impact Protection in Europe," European Experimental Vehicles Committee (EEVC) Working Group, 9th International Technical Conference on Experimental Safety Vehicles. (See Docket 79-04, General Reference, Entry 51).

3. "The CCMC Mobile Deformable Barrier for Lateral Collision Testing," Committee of Common Market Automobile Constructors Working Group, 10th International Technical Conference on Experimenatl Safety Vehicles (See Docket 79-04, General Reference, Entry 47).

4. "Results of the Motor Vehicle Manufacturers Association Component and Full Vehicle Side Impact Test Procedure Evaluation Program," Wasko and Wilson, 10th International Technical Conference on Experimental Safety Vehicles (See Docket 79-04, General Reference, Entry 49).

5. "A Force Measuring Mechanical Test Device for Estimating and Comparing the Energy Absorbing Characteristics of Vehicle Side Panels." Daniel, *et al.*, 9th International Technical Conference on Experimental Safety Vehicles. (See Docket 79-04, General Reference, Entry 63.)

6. "Development of Dummy and Injury Index for NHTSA's Thoracic Side Impact Protection Research Program," Eppinger, *et al.* SAE Report No. 840885 (See Docket 79-04, General Reference, Entry 46).

7. "The EUROSID Side Impact Dummy," EEVC, 10th International Technical Conference on Experimental Safety Vehicles (See Docket 79-04, General Reference, Entry 45).

8. "Thoracic Impact: A Viscous Tolerance Criterion," Viano and Lau (See Docket 74-14, General Reference, Entry 579).

In addition, the notice incorrectly noted the hours that the agency's docket section is open. The docket is open from 8:00 am to 4:00 p.m.

Issued on May 13, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-11049 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290 (Sub-2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking and reopened proceeding.

SUMMARY: In a decision served May 1, 1986, and published in the Federal Register on May 2, 1986 (51 FR 16363), the Commission proposed to modify its rules governing railroad cost recovery procedures by requiring railroads to adjust their rates to take into account declines in the rail cost adjustment factor. That notice established May 16, 1986, as the date for filing initial comments and May 23, 1986, as the date for filing replies in this proceeding. In a motion filed May 8, 1986, the Association of American Railroads (AAR) seeks a 14-day extension of the time for filing initial and reply comments. AAR states that the extension is necessary because of the complexity and importance of the issues, and because of the short time period originally allotted for comments. Some shipper respondents oppose the extension request; some do not.

While we recognize the complexity and importance of the issues, we will grant only a seven-day extension in the time for filing opening comments. Although the comment period established in our May 1, 1986, decision appears short, in fact we informed the public in our decision served April 18, 1986, that comments would soon be sought on an expedited basis in this matter.

Moreover, the parties have been aware of the issues involved for several months. Because delays in resolving this matter could result in substantial revenue losses to the shipping public and could preclude timely issuance of the third quarter Rail Cost Adjustment Factor (currently due to be issued on June 20, 1986), we conclude that the full extension sought by AAR is not warranted.

Accordingly, AAR's petition is granted in part. Initial comments will now be due on May 23, 1986. Because of the Memorial Day holiday, reply comments will not be due until June 2, 1986.

DATES: Initial comments are due May 23, 1986; reply comments are due June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Craig M. Keats, (202) 275-7602.

Decided: May 13, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre voted to grant the two-week extension. Commissioner Lamboley was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 86-11167 Filed 5-15-86; 8:45 am]

BILLING CODE 7035-01-M

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Warea Amplexifolia (Wide-Leaf Warea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant in the Mustard family (Brassicaceae), *Warea amplexifolia* (wide-leaf warea), to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not being proposed. This species occurred historically in a small region of central Florida in Lake County, western Orange County, extreme northwestern Osceola County, and northern Polk County. It is now limited to only four sites in Lake and Polk Counties. Habitat at all of the other sites at which the species was known to occur has been destroyed by intensive agricultural (citrus) and urban developments.

This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant. Comments on this proposal are invited from all interested parties.

DATES: Comments from all interested parties must be received by July 15, 1986. Public hearing requests must be received by June 30, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Warea amplexifolia was originally described by Thomas Nuttall in 1822 from a specimen collected in central peninsular Florida by N. A. Ware. Nuttall at first placed this plant in the genus *Stanleya* but in 1834 transferred it to the genus *Warea* and provided an amplified description that accommodated specimens from the Florida panhandle. The panhandle specimens were later recognized as a distinct species, *Warea sessilifolia*, by Nash. Shinners (1962) proposed a new name for the peninsular species, *Warea auriculata*, but other reviewers (Payson 1922, Channel and James 1964, Judd 1980) consider *Warea amplexifolia* to be the correct name. The plant has been collected infrequently during the years since the early 1800's, probably because of its extremely restricted geographical range. It is now known to occur at only four localities in Lake and Polk Counties, Florida.

Warea amplexifolia is in the mustard family (Brassicaceae). It is an erect herb growing to a height of about 0.6 meters (3 feet), with slender branching stems arising from an elongate tap root. The leaves are alternately arranged along the stem and are generally heart-shaped. They are about 8 millimeters (0.3 inch) to about 30 millimeters (1.3 inches) long and from about 4 millimeters (0.2 inch) to nearly 20 millimeters (0.8 inch) wide, with conspicuous basal lobes which clasp the stem. The flowers are showy and are borne in small, rounded, puff-like clusters at the ends of the branches. Each flower has 4 pale purple petals with a rounded upper portion, an elongated stalk-like lower portion, and 6 stamens which protrude above the petals. The pistil is narrowly cylindrical and is borne at the end of a long stalk. The fruit is a dry, thin, curved pod of about 30 millimeters (1.0 inch) to about 75 millimeters (3.0 inches) in length which is borne at the end of a 9–14 millimeter (0.3–0.5 inch) long stalk. The pod (silique) eventually splits lengthwise into two portions which spread apart revealing a thin central partition around which the small brown seeds are attached.

Warea amplexifolia is occasionally confused with the three other species of the genus. It is distinguished from *Warea sessilifolia* by its conspicuously heart-shaped leaves and lighter purple flowers; it is easily separated from *Warea carteri* and *Warea cuneifolia* by its stalkless and auriculate-based leaves. Keys to the species of *Warea* are given by Payson (1922), Small (1933) and Channel and James (1964).

Warea amplexifolia is a summer annual herb, with showy flowers, visited by various Hymenoptera (bees) and Lepidoptera (butterflies). Reproduction is exclusively sexual, by the production of seeds which are probably released from the pods by wind action. The small seeds generally fall near the parent plant. No information exists on the yearly fluctuation in seed production, seed viability, germination requirements, or the extent of soil storage. Flowering occurs from mid-August to early October, and fruiting occurs from late September to mid-November. Senescence (old age) occurs just before the fruit matures; the population overwinters as seeds.

The following information is from Judd (1980). *Warea amplexifolia* is endemic to the Lake Wales Ridge of central peninsular Florida. It was known to occur in Lake County, Orange County, Osceola County, and Polk County, but is now confined to only Lake and Polk Counties. the Lake Wales ridge is an elongated area of raised and usually dry soils, with elevations up to about 100 meters (300 feet), extending from central Highlands County northward and gradually disappearing in southern Marion County. The region supports dry forests of *Pinus palustris* (long-leaf pine) or *Pinus clausa* (sand pine), and various communities dominated by scrubby oaks such as *Quercus laevis* (turkey oak), *Quercus geminata* (sand live oak), *Quercus incana* (bluejack oak), *Quercus myrtifolia* (myrtle oak), and *Quercus chapmanii* (Chapman's oak), or *Ceratiola ericoides* (Florida rosemary). *Warea amplexifolia* is restricted to *Pinus palustris* and scrubby oak forests. Most of the Lake Wales ridge has undergone intensive agricultural development and now supports extensive citrus groves. The remaining portion is under extremely heavy pressure from agricultural and urban developments. These developments have resulted in a loss of habitat for *Warea amplexifolia*, and threaten the survival of the species at the four sites where it still occurs in Lake and Polk Counties.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94–51) to Congress on January 9, 1975. On July 1, 1975, the ervice published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) of the Act. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species recommended by the Smithsonian Report to be endangered species pursuant to section 4 of the Act. *Warea amplexifolia* was included in the Smithsonian Report, the July 1, 1975, notice, and the June 6, 1976, proposal.

The 1978 Endangered Species Act Amendments required that all proposals over 2 years old be withdrawn, except

that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals which had expired (44 FR 70796). On December 15, 1980, the Service published a revised notice of review in the Federal Register (45 FR 82480); *Warea amplexifolia* was included as a category-1 species (species for which data in the Service's possession indicate listing is warranted). A supplement to the Notice of Review (48 FR 53640, November 28, 1983) treated *Warea amplexifolia* as a category-2 candidate (species for which data in the Service's possession indicate listing is possibly appropriate). The 1985 updated review of plant candidates (50 FR 39526, September 27, 1985) maintained *Warea amplexifolia* in category 2. This reclassification was based on a report of the species being found in Alabama, subsequently found to be incorrect.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the Act's Amendments of 1982, further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Warea amplexifolia* because of the acceptance of the 1975 Smithsonian Report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service made 12-month findings that the petition to list *Warea amplexifolia* was warranted, and that although pending proposals had precluded its proposal, expeditious progress was being made to add other species to the list. Biological data, supplied by Judd (1980) and supplemented by a field investigation in 1985, fully support a listing of *Warea amplexifolia* as endangered. The present proposal is based primarily on Judd's biological data, and constitutes the next 12-month finding requirement of section 4(b)(3)(B) of the Act for this species. All four sites listed by Judd as containing populations of *Warea amplexifolia* were revisited in 1985. Three of these four sites were found to still contain habitat which could support the species. The fourth site has been lost to commercial development since Judd completed his survey. An additional site was discovered in 1985 on the grounds of the Bok Tower Gardens, Lake Wales, Polk County; it was reported to the Fish and Wildlife Service by Kent Perkins of the University of Florida Herbarium on November 14, 1985.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). these factors and their application to *Warea amplexifolia* (Nuttall) Nuttall (wide-leaf warea) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This has been, and continues to be, the primary threat to the survival of *Warea amplexifolia*. The species is known at present from only the following three sites of Judd (1980), all of which were relocated in 1985, and one additional site reported to the Fish and Wildlife Service by Kent Perkins, University of Florida Herbarium, in personal communication of November 14, 1985:

1. Leesburg Site (Lake County)—A population of ca. 250 plants occupy a woodlot or roughly 1 acre. The woodlot is surrounded by development (urban and citrus), but is now part of the Lake Griffin State Recreation area.

2. Clermont Site (Lake County)—About 700 plants (the largest population known) inhabit a woodland of roughly 10 acres. The woodland is privately owned (by a mining company) and is surrounded by orange groves.

3. Haines City Site (Polk County)—About 200 plants inhabit a privately owned woodland of about 1 to 2 acres in size surrounded by orange groves.

4. Lake Wales Site (Polk County)—A population of about 24 plants was discovered in 1985 at the Pine Ridge Reserve on the grounds of the Bok Towers Gardens. This area is about 50 acres in size and is a remnant of the original longleaf pine vegetation. It is managed by the Gardens to preserve its flora.

The species is known or assumed extirpated from four sites in Orange County and one site in both Lake and Osceola Counties within its historical range (Judd 1980). Judd further noted that very few areas of upland, dry, open *Pinus palustris* woods exist at the present time in the area of well-drained white sandy soil from Leesburg to Haines City. This area is now covered with citrus groves, with the few remaining wooded areas occupying mainly lowland sites. A search of the Clermont, Haines City, and Leesburg areas revealed no additional localities for *Warea amplexifolia*.

Thus, of the 10 sites where the species has been known to occur historically, six have already been destroyed by agricultural and urban development. The remaining four sites are small, the three are privately-owned; two of these are very vulnerable to development pressures. Altogether, fewer than 1,200 plants are known to survive on less than 65 acres of land. All present populations are surrounded by citrus groves and/or urban developments (Orlando, Tavares, Leesburg, etc.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* According to Judd (1980), *Warea amplexifolia* has potential as a cultivated ornamental because of its showy, light purple flowers clustered in dense "puff-like" terminal racemes. The plant is striking in full bloom, and is highly vulnerable to picking by vandals and curiosity seekers.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms. Warea amplexifolia* was listed as endangered in 1985 under the Preservation of the Native Flora of Florida Law (Section 581.185 of the Florida Statutes). This Florida law regulates taking, and the sale of plants, but it does not provide habitat protection.

E. *Other natural or manmade factors affecting its continued existence.* Because this species is an annual, and extremely restricted in both range and members, it is very vulnerable to disturbance and natural disasters. The failure of any one of the four remaining populations to set seed in the fall, could result in the extirpation of that population and a further reduction in the already small genetic variability of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Warea amplexifolia* as endangered. The species is extremely limited in range and numbers, and occurs mainly on private lands in rapidly growing areas. A failure to list this species, or a proposal to list it as threatened, would not recognize the fact that available data indicate it is in danger of extinction throughout its entire range. Critical habitat is not being proposed for *Warea amplexifolia* for the reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As stated under Factor B in the "Summary of Factors Affecting the Species," *Warea amplexifolia* is a striking plant when in bloom, and has a potential for ornamental cultivation. In addition, its showy, light purple flowers are conspicuous in the field, and it would be a great temptation for flower lovers or for vandals to pick them. Since there are only four remaining populations of this species, any molestation of them by curiosity seekers or vandals could result in their extinction. Therefore, a determination of critical habitat would provide an additional threat to the species by supplying precise information to the general public on where the species may be found. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Because of these factors, the Service believes that a determination of critical habitat is not prudent for *Warea amplexifolia*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorizes, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for *Warea amplexifolia* are on private or State owned land, there will be no effect from the above requirement unless a private action requires some Federal action, such as funding or permits.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. All trade prohbitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. *Warea amplexifolia* is not known at present from any Federal lands. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would be sought or issued for *Warea amplexifolia*, since it is not in cultivation or common in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particulaly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4j) Current or planned activities in the subject areas and their possible impacts on this species.

Final promulgation of the regulation on *Warea amplexifolia* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be fild within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Office, 2747 Art Museum Drive, Jacksonvile, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Channel, R.B., and C.W. James, 1964. Nomenclatural and taxonomic corrections in *Warea* (Cruciferae). Rhodora 66:18–28.

Judd, W.S. 1980. Status report on *Warea amplexifolia*. Unpublished report prepared for U.S. Fish and Wildlife Service, Jacksonville, Florida. 22 pp.

Nuttall, T. 1922. A catalogue of a collection of plants made in East-Florida, during the months of October and November, 1821 by A. Ware, Esq. Amer. Jour. Sci. 5:297.

Nuttall, T. 1834. A description of some of the rarer or little known plants indigenous to the United States, from the dried specimens

in the herbarium of the Academy. Jour. Acad. Nat. Sci. Philadelphia 7:83.
Payson, E.B. 1922. A monographic study of *Thelpodium* and its immediate allies. Ann. Missouri Bot. Gard. 9:233–324.
Shinners, L.H. *Warea auriculata* instead of *W. amplexifolia* of Small (Cruciferae). Rhodora 66:18–26.
Small, J.K. 1933. Manual of the Southeastern Flora. Privately published, New York, N.Y., pp. 573–574.

Author

The primary author of this proposed rule is John L. Paradiso, Jacksonville Endangered Species Field Office, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants:

* * * * *

(h) * * *

Species			Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Brassicaceae—Mustard family:							
Warea amplexifolia	Wide-leaf warea		U.S.A. (FL)	E		NA	NA

Dated: April 18, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–11109 Filed 5–15–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 95
Friday, May 16, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Administration of the Administration Conference of the United States, to be held at 2:30 p.m. on Wednesday, May 28, 1986, in the Secretary's Conference Room, Room 5859, at the Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C.

The Committee will meet to discuss the following projects:

(a) The proposed recommendation on agency use of alternative dispute resolution techniques, based on a project by Philip J. Harter, Esq.; and,

(b) Professor Burnele V. Powell's preliminary analysis on agency use of declaratory orders.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference by Friday, May 23. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. (Telephone: 202-254-7065.) Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
May 14, 1986.

[FR Doc. 86-11195 Filed 5-15-86; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest Lands in the Pacific Northwest Region; Entire States of Oregon and Washington, and Minor Portions of California and Idaho; Intent To Prepare a Supplement to Programmatic Environmental Impact Statement; Cancellation

The Department of Agriculture, Forest Service, has withdrawn its proposal to prepare a Supplement to the Final Programmatic Environmental Impact Statement entitled "Methods of Managing Competing Vegetation," dated June 2, 1981.

The Notice of Intent, published in the Federal Register on June 4, 1985, is hereby cancelled (50 FR 107, page 23480).

For further information, contact Gary Larsen, Leader, Pesticide Use Management, USDA Forest Service, P.O. Box 3623, Portland, OR 97208, phone (503) 221-2727.

Dated: May 9, 1986.

Chad Olsen,
Acting Regional Forester.

[FR Doc. 86-11021 Filed 5-15-86; 8:45 am]
BILLING CODE 3410-11-M

Office of Grants and Program Systems

Policy Advisory Committee for the Science and Education Research Grants Program; Renewal

Notice is hereby given that the Secretary of Agriculture has renewed the Policy Advisory Committee for two years. The purpose of this Committee is to advise the Secretary with respect to areas of agricultural research to be supported, priorities to be adopted, and procedures to be followed in implementing programs of research grants to be awarded competitively.

The Policy Advisory Committee will meet twice annually in Washington, DC, to assess the Competitive Research Grants Program in relation to progress in funded areas; recommend shifts in resources to concentrate more effort in certain ongoing areas; or in new areas, advise on ways to improve guidelines and evaluation procedures.

It has been determoined that the renewal of the Policy Advisory Committee is in the public interest in connection with the duties and responsibilities of the Department of Agriculture as lead agency of the Federal Government of agricultural research.

Done at Washington, DC, this 6th day of May, 1986.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 86-11113 Filed 5-15-86; 8:45]
BILLING CODE 3410-MT-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1986 Post-Enumeration Survey Followup of Los Angeles, California
Form number: Agency—DC-1301U; OMB—NA
Type of request: New collection
Burden: 400 respondents; 400 reporting hours
Needs and uses: This survey will be used to determine whether people were counted in the 1986 Census of Los Angeles. The information will be used to match the Post Enumeration Survey and the Census for estimates of coverage
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 9, 1986.
Edward Michals,
Departmental Clearance Officer.
[FR Doc. 86-11066 Filed 5-15-86; 8:45 am]
BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Incidental Taking of Sea Turtles
Form number: Agency—N/A; OMB—N/A
Type of request: New collection/emergency submission
Burden: 100 respondents; 8 reporting hours
Needs and uses: To support the closure by the State of Texas of a shrimping area to allow shrimp to grow to a marketable size, NOAA is opening up a geographical area for a limited time that would otherwise be closed to shrimp trawlers. The proposed action is likely to result in the capture, injury or harassment of endangered or threatened sea turtles. The information collection will be used to monitor shrimping operations to ensure that allowable incidental take levels are not exceeded.
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Other (By fishing trip)
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 9, 1986.
Edward Michals,
Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.
[FR Doc. 86-11067 Filed 5-15-86; 8:45 am]
BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

The Western Pacific Fishery Management Council's Scientific and Statistical Committee (SSC), and Lobster Plan and Bottomfish/Seamount Grounfish Plan Development Teams will convene public meetings as follows:

Lobster Plan Development Team (PDT)—will convene May 23, 1986, at 12:30 p.m., at the Council's Office, 1164 Bishop Street, Room 1405, Honolulu, HI, to discuss the outcome of the recent public information meeting (April 29, 1986) on lobsters; review recommendation of legal minimum tail width for common slipper lobster (*Scyllarides squammosus*); discuss state/federal consistency and enforcement issues per recent changes in the spiny lobster regulations, as well as discuss other Team business.

Bottomfish/Seamount Groundfish PDT—will convene May 27, 1986, at 8:30 a.m., at the Pagoda Hotel, Penthouse Room, 1525 Rycroft Street, Honolulu, HI, to discuss the preparation of a bottomfish annual report-format and information base; review progress of developing a Northwestern Hawaiian Islands (NWHI) bottomfish access management plan, and discuss other Team business.

SSC—will convene May 27, 1986, from 1:30 p.m. to 5 p.m.; reconvene May 28, from 8:30 a.m. to 5 p.m., at the same location as stated above for the Bottom fish/Seamount Groundfish PDT meeting. The SSC will review progress on an access management amendment to the Bottomfish Framework Fishery Management Plan; review recommendations of the Lobster Planning Team on management of the NWHI fisheries, i.e., slipper lobsters closed seasons economic conditions of the fishery, and the comments of the lobster fishermen on those recommendations; review and comment on the final 1985 lobster annual report as well as discuss any other SSC business. A detailed agenda will be available through the Council's Office after May 9. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI; telephone: (808) 523-1368.

Dated: May 12, 1986.
Richard B. Roe,
Director, Office of Fisheries Management National Marine Fisheries Service.
[FR Doc. 86-11032 Filed 5-15-86; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Apparel Products From the Democratic Socialist Republic of Sri Lanka

May 13, 1986.

The Chairman of the Committee for Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 19, 1985. For further information contact Nathanial Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive date May 24, 1985 (50 FR 21923) established limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 341 (women's, girls' and infants' cotton blouses and shirts), produced or manufactured in Sri Lanka and exported during the agreement period which began on June 1, 1985 and extends through May 31, 1986. The limit for Category 341 is filled. At the request of the Government of the Democratic Socialist Republic of Sri Lanka, special carryforward in the amount of 20,000 dozen is being applied to the restraint limit, increasing it from 526,939 dozen to 546,939 dozen for the current agreement year. The limit for Category 341 during the agreement period beginning on June 1, 1986 will be adjusted to account for carryforward used in the current agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44872), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.
May 13, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 24, 1985, from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the agreement period which began on June 1, 1985.[1]

Effective on May 23, 1986, paragraph 1 of the directive of May 24, 1985, as amended, is hereby further amended to include an adjusted restraint limit for Category 341 of 546,539 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11102 Filed 5-15-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjusted Restraint Limit for Category 334 Produced or Manufactured in Sri Lanka

May 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 19, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated May 24, 1985 (50 FR 21923) established restraint limits for certain cotton, wool and man-made fiber textile products, including men's and boys' other cotton coats in Category 334, produced or manufactured in Sri Lanka and exported to the United States during the agreement year which began on June 1, 1985 and extends through May 31, 1986. The limit for Category 334 was increased to 191,892 dozen by the application of carryover from the previous agreement year by directive of February 4, 1986 (51 FR 4784). Additional shipments have been received and charged, reducing the amount of carryover actually available. Consequently, in the letter to the Commissioner of Customs which follows this notice, the Chairman of CITA directs that the limit for Category 334 be reduced from 191,892 dozen to 188,019 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 24, 1985, as amended, concerning certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on May 19, 1986, the directive of May 24, 1985 is hereby further amended to reduce the restraint limit established for cotton textile products in Category 334 to 188,019 dozen.[1]

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86-11103 Filed 5-15-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded during the agreement year by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; and (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

[2] The restraint limit has not been adjusted to reflect any imports exported after May 31, 1986.

[1] The limit has not been adjusted to reflect any imports exported after May 31, 1986.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1986 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 16, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 21, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 6295) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986:

Bag, Carrying: 8465-01-216-6259.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 86-11002 Filed 5-15-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Blue Ribbon Commission on Defense Management; Closed Meeting

ACTION: Notice of Closed Meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on June 11 and 12, 1986, at 735 Jackson Place, NW., Washington, DC 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) and (c)(9)(9B) of Title 5, United States Code, this meeting will be closed to the public.

Agenda: The Commission will meet to continue its consideration of defense management and organization issues and its preparation of a final report to the President.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1899 L Street NW., Suite 400, Washington, DC 20036. Telephone: (202) 466–7980 or (202) 395–3198.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 12, 1986.

[FR Doc. 86–11116 Filed 5–15–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board, Meeting

May 9, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Close Air Support (CAS) will meet at George AFB, CA, on June 5–6, 1986 from 8:00 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to discuss CAS tactics, defense suppression tactics, and tactical air control procedures.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11085 Filed 5–15–86; 8:45 am]

BILLING CODE 3901-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday & Wednesday, 3–4 June 1986.

Times of Meeting: 0930–1700 (3 Jun); 0800–1200 (4 Jun).

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board 1986 Summer Study on Technology Forecast for the Key Operational Capabilities will meet for continuation of briefings, for ASB panel members on technical matters pertaining to Key Operational Capabilites. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–11082 Filed 5–15–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, 3–4 Jun 1986.

Times of Meeting: 0730–1600 (3 Jun 86); 0730–1600 (4 Jun 86).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board 1986 Summer Study Panel on C³I Requirements for AirLand Battle will meet to receive technical briefings and discuss C³I with Senior Army leaders. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 86–11084 Filed 5–15–86; 8:45 am]

BILLING CODE 3710-08-M

Army Service Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday, 5 June 1986.

Times of Meeting: 0800–1600 hours.

Places: Research, Development and Engineering Center, US Army Missile Command, Redstone Arsenal, Alabama.

Agenda: The Army Science Board AHSG on MICOM Lab Effectiveness Review will visit the Center for the purpose of gathering data on the activities in the Shorad and software areas. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 86–11084 Filed 5–15–86; 8:45 am]

BILLING CODE 3710-08-M

Defense Contract Audit Agency

Privacy Act of 1974; New Record System

AGENCY: Defense Contract Audit Agency (DCAA), DoD.

SUMMARY: The Defense Contract Audit Agency is adding a new record system to its existing inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice June 16, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Connie Miller, Records Administrator, Cameron Station, Room 4A–375, Alexandria, VA 22304–6178, Telephone: 202–274–7288.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22894) May 29, 1985
FR Doc. 85-29260 (50 FR 50339) December 10, 1985
FR Doc. 85-30595 (50 FR 52903) December 27, 1985

The new record system identified as RDCAA 160.5, entitled: Travel Orders, is required to document all entitlements, authorizations and paperwork associated with an employee's official travel. These records are currently maintained by travel order number. A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on April 4, 1986, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer Department of Defense.
May 12, 1986.

RDCAA 160.5

SYSTEM NAME:

160.5 Travel Orders.

SYSTEM LOCATION:

Defense Contract Audit Agency (DCAA) Headquarters, Cameron Station, Alexandria, VA 22304-6178, DCAA regional offices, whose addresses are listed in the DoD directory in the appendix to DCAA's systems notices and field audit offices, whose addresses may be obtained from their cognizant regional office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who performs official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's orders directing or authorizing official travel to include approval for transportation of automobiles, documents relating to dependents travel, bills of lading, vouchers, contracts, and any other documents pertinent to the individual's official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC. 301; 10 USC 133; 44 USC 2901, et seq.

PURPOSE(S):

To document all entitlements, authorizations, and paperwork associated with an employee's official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, USES, AND THE PURPOSE OF SUCH USES:

See blanket routine uses.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By fiscal year and alphabetically by surname. May be filed in numerical sequence by travel order number.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Field Administration Support Office, Headquarters, DCAA, Cameron Station, Alexandria, VA 22304-6178;

Regional Directors, DCAA, whose addresses are listed in the DoD directory in the appendix to DCAA's systems notices (50 FR 22897, May 29, 1985); and

Chiefs of Field Audit Offices, whose addresses may be obtained from their cognizant regional office.

NOTIFICATION PROCEDURE:

Information may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

Written requests for information should contain the full name of the individual, current address, and telephone number and current business address. Visits are limited to those offices listed in the DoD directory in the appendix to DCAA's systems notices.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or employing office identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

RECORD SOURCE CATEGORIES:

Administrative offices; personnel offices; servicing payroll offices; employee.

SYSTEMS EXEMPTED FROM CERTAIN INFORMATION OF THE ACT:

None.

[FR Doc. 86-11117 Filed 5-15-86; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Proposed U.S. Navy Restriction of the North River, Naval Submarine Base, Kings Bay, GA; Public Hearing on the Kings Bay Environmental Impact Statement (EIS) for North River Access Restriction

Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361) and the Council on Environmental Quality Regulations (40 CFR 1500-1508), the U.S. Navy has prepared and filed with the U.S. Environmental Protection Agency, a Draft Environmental Impact Statement (DEIS) for the proposed restriction of the North River, Naval Submarine Base, Kings Bay, Georgia. The DEIS has been distributed to various Federal, Georgia and Florida state and local agencies, interest groups and media. Copies of the DEIS may also be viewed during normal business hours at the following locations:

a. *St. Marys, Georgia*
(1) St. Marys City Hall.
(2) National Park Service Office (Cumberland Island National Sea Shore).
b. *Kingsland, Georgia*
(1) Kingsland City Hall.
(2) Camden County Branch Office.
c. *Woodbine, Georgia*
(1) Camden County Court House.
d. *Fernandina Beach, Florida*
(1) Fernandina Beach City Hall.

A public hearing to inform the public of the study's findings and to solicit comments on the Navy's proposed restriction of the North River will be held at the following location:

Camden County High School, St. Marys, Georgia
Date: Tuesday, June 3, 1986
Times: Registration—7:00 to 7:30 P.M.;
Hearing—7:30 to approximately 10:30 P.M.

The hearing will be chaired by the U.S. Navy in accordance with the National Environmental Policy Act, Council of Environmental Quality regulations and applicable U.S. Navy

regulations. All interested parties are invited to be present or represented at this meeting. This includes representatives of Federal, state, and local agencies; private industry; civic and environmental groups; fish and wildlife organizations; and other interested and concerned citizens. All parties will be afforded full opportunity to express their views, but in order to allow all an opportunity to speak, oral statements will be limited to 5 minutes. Technical statements, statements of considerable length, or statements from persons unable to attend, should be delivered in writing either at the hearing or mailed to: Director, Strategic Systems Programs, Department of the Navy (SP–20161), Washington, DC 20376–5002.

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. All statements, both oral and written, will become part of the official record on this study. Copies of the public hearing transcript will be available for public review at the locations listed above for reviewing the DEIS.

Final decision on the proposed project will be made only after full consideration is given to the views of responsible agencies, groups, and citizens.

Written statements will be accepted until June 27, 1986.

Questions concerning this public notice may be directed to Commander Bruce M. Dutton at telephone (202) 697–8055.

Dated: June 13, 1986.

Robert E. Coyle,

Captain, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 86–11084 Filed 5–15–86;8:45am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Direct Service Industry Options; Final Environmental Impact Statement Availability

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice is hereby given that the Bonneville Power Administration, in compliance with the National Environmental Policy Act of 1969 (NEPA), has responded to comments received on the subject draft environmental impact statement (EIS), revised the document accordingly, and prepared a final EIS entitled "Direct Service Industry Options."

SUMMARY: The EIS examines three potential actions (and alternatives) by which BPA hope to reduce load fluctuations and revenue uncertainty resulting from its electrical service to 10 aluminum smelters. Options discussed include a variable power rate tied to the price of aluminum; a formal link between the Industrial Firm Power and the rate to the preference utilitie; and partial BPA support for aluminum smelter modernization/conservation. BPA believes these actions, or combinations of them, will give BPA greater ability to plan for power needs and help to maintain its relatively strong financial position during this current period of power surplus, enhancing PBA's ability to repay the U.S. Treasury. In turn, BPA's rates to its utility and other nonindustrial customers would stabilize.

Copies of the final EIS are available for public review at major libraries in California, Idaho, Montana, Oregon, and Washington, and at locations listed bulow:

Reading Rooms

FOI DOE MA 232.1, Public Reading Room 1E–190, Forrestal Building, 1000 Independence Ave. SW, Washington, DC

Bonneville Power Administration, Washington, DC Office, Room 3G033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC

Additional Review Locations

The document may be inspected at the following BPA offices.

Ms. Donna Geiger, BPA Public Reference Room, 1002 NE. Holladay, 6th Floor, Portland, Oregon 97232
503–230–3478

Mr. George Gwinnutt, Area Manager, Suite 288, 1500 NE Irving Street, Portland, Oregon 97208
503–230–4551

Mr. Ladd Sutton, District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401
503–687–6952

Mr. Wayne R. Lee, Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201
509–456–2518

Mr. George Eskridge, District Manager, 800 Kensington, Missoula, Montana, 59801
406–329–3060

Mr. Ronald K. Rodewald, District Manager, P.O. Box 741, Wenatchee, Washington 98801
509–662–4377, Ext. 379

Mr. Terence G. Esvelt, Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109
206–442–4130

Mr. Frederic D. Rettenmund, District Manager, Federal Building, Room 376, 550 W. Fort Street, Boise, Idaho 83724
208–334–9137

Mr. Thomas Wagenhoffer, Area Manager, West 101 Poplar, Walla Walla, Washington 99362
509–522–6226

Mr. Robert N. Laffel, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401
208–523–2706.

FOR FURTHER INFORMATION CONTACT: Requests for copies, questions, or comments regarding the EIS should be directed to Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208; phone 503–230–5136. The review period will close 18 days after the Environmental Protection Agency's notice of availability of the final EIS is published in the Federal Register.

Issued in Portland, Oregon, on May 8, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86–11052 Filed 5–15–86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order; Port Petroleum, Inc. et al.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Port Petroleum, Inc. and Morris M. James, T. Michael Howell, and C. Gregory Crafts. This Proposed Remedial Order alleges entitlement violations in the amount of $9,020,867 plus interest in connection with the failure to satisfy entitlements obligations during the period August 1979 through December 1980. These alleged violations have potential nationwide impact.

A copy of the Proposed Remedial Order may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building, Room 1E–190; 1000 Independence Avenue SW.; Washington, D.C. 20585. Within fifteen (15) days of publication of this Notice, any aggrieved person may filed a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building, Room 6F–078; 1000 Independence Avenue SW.; Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 7th day of April 1986.

Dan Lennes,

Director, Office of Field Operations, Dallas Economic Regulatory Administration.

Appendix

The addresses of the Port Petroleum, Inc. Proposed Remedial Order respondents are: Port Petroleum, Inc., Louisiana Towers, Suite 1810, Shreveport, Louisiana 71101; Morris M. James, 1963 Round Springs, Kingwood, Texas 77339; T. Michael Howell, 5724 Marina Bay Drive, Shreveport, Lousiana 71119; and C. Gregory Crafts, 2790 Fairfield Avenue, Shreveport, Louisiana 71104.

[FR Doc. 86-10663 Filed 5-15-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; Scruggs Energy Co. et al.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed remedial order to Scruggs Energy Company, W.W. (Bill) Scruggs and Donald W. Guillory.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Scruggs Energy Company, W.W. (Bill) Scruggs and Donald W. Guillory (collectively referred to as Scruggs). This Proposed Remedial Order alleges layering violations in the amount of $13,302,314.00, plus interest, and pricing violations in the amount of $660,379.00, plus interest, in connection with the sale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period August 1, 1979 through January 31, 1981. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue SW., Washington, DC. 20585.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

James Louthan, Audit Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 660, 500 Dallas Street, Houston, Texas 77002

and upon:

Carl A. Corrallo, Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-15, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Houston, Texas, on the 10th day of April 1986.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

Appendix

The addresses of the Scruggs Energy Company Proposed Remedial Order respondents are: Scruggs Energy Company, c/o W.W. (Bill) Scruggs, President, 2907 Laurel Lake Drive, Kingwood, Texa 77339; W.W. (Bill) Scruggs, Lakewood Yacht Club, 2425 Nasa Road 1, Nassaua Bay, Texas 77566; and Donald W. Guillory, Route 8, Box 194, Lake Charles, Louisiana 70605.

[FR Doc. 86-11124 Filed 5-15-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP86-73-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 9, 1986.

Take notice that on May 2, 1986, Algonquin Gas Transmission Company ("Algonquin Gas ") tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Second Revised Sheet No. 631
Substitute Original Sheet No. 631-A

Algonquin Gas states that it is filing such tariff sheets to add a provision to its Purchased Gas Cost Adjustment Provisions ("PGAC") setting forth the procedure for reimbursement to Algonquin Gas of a contingent purchased gas cost, if incurred. More specifically Algonquin Gas' purchases from its supplier, Texas Eastern Transmission Corporation ("Texas Eastern") include gas purchased under a filed rate schedule of that Company (Rate Schdule DCQ-D). That rate schedule contains a minimum commodity charge which has not heretofore been applicable. As a result of transportation programs, however, the provision may now become applicable and result in an actual gas cost to Algonquin Gas . The purpose of Algonquin Gas' filing is to provide a specific procedure for distributing any such actual gas cost among Algonquin Gas' customers.

Algonquin Gas proposes the effective date of the above tariff sheets to be April 30, 1986, the date the Commission issued an order making effective a new transportation rate schedule of Algonquin Gas which may have the effect of activating the contingent gas cost provision of Texas Eastern.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11035 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-467-000, et al.]

Boston Edison Co., et al.; Electric Rate and Corporate Regulation Filings

May 9, 1986.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER86-467-000].

Take notice that on May 5, 1986, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Cambridge Electric Light Company (CEL), under its FERC Electric Tariff, Original Volume No. III, Non-Firm

Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by CEL under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1986.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER86-468-000]

Take notice that on May 5, 1986, Boston Edison Company (Edison) tendered for filing updated charges to be paid by Cambridge Electric Light Company (Cambridge), for the support of Edison's Substation 509 located in North Cambridge, Massachusetts. These charges are filed pursuant to Boston Edison Company FPC Rate No. 101 approved by the Commission on March 11, 1975 in docket E-9254.

Edison requests waiver of the Commission's notice requirements to permit these charges to be made effective as of June 24, 1982.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Cliffs Electric Service Company

[Docket No. ER86-463-000]

Take notice that on May 1, 1986, Cliffs Electric Service Company tendered for filing an Amendment to the Power Sales Agreement between Cliffs Electric Service Company (Service Company) and Wisconsin Public Power Incorporated System (WPPI). The Amendment amends the May 13, 1985, Power Sales Agreement.

The Power Sale Agreement was accepted for filing in Docket No. ER85-529 by letter dated July 8, 1985. The Amendment filed herewith extends the time during which Service Company will sell power to WPPI and revises certain of the rates, terms, and conditions of the sale. The Admendment limits options previously available to WPPI to terminate at an earlier date purchases under Transaction No. 4 and reduces slightly the energy rates in the Power Sale Agreement. The changes reflected in the April 22, 1986, letter agreement were reached after negotiations between the parties.

Comment date: May 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. The Connecticut Light and Power Company.

[Docket No. ER86-466-000]

Take Notice that on May 5, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule an agreement (the Agreement) between CL&P, Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and Long Island Lighting Company (LILCO). The Agreement, dated as of February 21, 1986, provides for the sale by the NU Companies of system power from their systems ("system power") to LILCO on a daily or weekly basis (a transaction). CL&P states that the timing of transactions cannot be accurately estimated but that the NU Companies would offer to sell such system power to LILCO only when it was economic to do so. LILCO would only accept such offer if it was economical to do so.

LILCO will pay a capacity charge to the NU Companies for each transaction in an amount equal to the megawatt-hours of system power reserved for LILCO by the NU Companies during a transaction multiplied by a capacity charge rate negotiated prior to each transaction. LILCO will pay an energy charge for each hour of each transaction in an amount equal to (i) the megawatt-hours delivered to LILCO pursuant to this Agreement for such hour, multiplied by (ii) the forecasted energy charge rate on the systems of the NU Companies for such hour.

CL&P requests that the Commission waive its customary notice period and allow the Agreement to become effective on February 21, 1986.

WMECO has filed a Certificate of Concurrence in this docket.

The Agreement has been executed by CL&P, WMECO and LILCO, and copies have been mailed or delivered to each of them.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER86-472-000]

Take notice that on May 6, 1986, Florida Power Corporation (Florida Power) tendered for filing a Contract for Interchange Service dated May 1, 1986 between Florida Power and Florida Municipal Power Agency (FMPA). FMPA has become the all requirements resale service supplier to the Cities of Bushnell, Leesburg, and Ocala, Florida. Florida Power and FMPA do not have an existing contract for interchange service.

Florida Power requests that the Contract for Interchange Service be made effective as a rate schedule on May 1, 1986, and therefore, requests waiver of the sixty day notice requirement. Copies of the filing have been served on the Cities of Bushnell, Leesburg, and Ocala, Florida, Florida Municipal Power Agency, and the Florida Public Service Commission.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Kansas City Power & Light Company

[Docket No. ER86-165-000]

Take notice that on May 5, 1986, Kansas City Power & Light Company ("KCPL") tendered a supplement to its earlier filing in this Docket.

KCPL states that the purposes of this supplement is to respond to an objection to language contained in Section A of Schedule H-MPA contained in the Amendatory Agreement. The supplement accepts a cap for percentage adders on purchase and resale transactions under Section A of Schedule H-MPA. The cap is the same as the adder for purchase and resale transactions which the Commission has accepted for other similar transactions by KCPL.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER86-469-000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on May 5, 1986, tendered for filing proposed changes in its FERC Rate Schedules Nos. 27, 28, 30, 33 and 35. It is estimated that the proposed changes would increase revenues from jurisdictional sales and service by about $20,000 based on the 12-month period ended October 31, 1985.

Pursuant to Ordering Clause No. 3 of Opinion 85-8 issued by the Public Service Commission of the State of New York on April 9, 1985 at the end of NYSEG's previous major rate case, NYSEG made a "third stage" filing of revised leaves to Schedule PSC No. 115—Electricity, which were allowed to become effective April 15, 1986. These increased rates are the result of the third

and final phase-in of the Somerset generating plant into base rates. Rate Schedule PSC No. 115 is incorporated in the previously noted FERC schedules.

NYSEG has filed with its jurisdictional customers copies of this proposed notice, the filing letter, the pertinent revenue effect schedules and applicable tariff leaves.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER86-465-000]

Take notice that Union Electric Company, on May 2, 1986 tendered for filing a Letter Agreement dated March 20, 1986, between City of Columbia, Missouri, and Union Electric Company.

Union Electric states the purpose of the Letter Agreement is to revise the rate formula for Transmission Service.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

Virginia Electric and Power Company

[Docket No. ER86-372-000]

Take notice that Virginia Electric and Power Company on May 6, 1986, tendered for filing supplemental materials supporting its March 27, 1986 filing in Docket No. ER86-372-000 and, at the same time, submitted rate schedules to substitute for those filed March 27, 1986 to become effective only if the additional materials are found to be deficient. The alternative rates eliminate the revenues associated with the inclusion of "Other CWIP" in rate base. Based on the test period 12 months ending December 31, 1986 conditions, the alternative rate schedules will increase revenues from Rural Electric Cooperatives, other than Old Dominion Electric Cooperative (ODEC), by $1.9 million, increase annual revenues from the Municipal Customers by $2.5 million and increase revenues from supplemental service to ODEC by $10.4 million. The Company has requested waiver of the notice requirements so as to permit the alternative Phase 1 and Phase 2 rates to become effective May 27, 1986 and May 28, 1986, respectively.

Copies of the proposed alternative rates were served upon all of the Company's jurisdictional wholesale customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should life a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shoudl be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11038 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

Docket No. G-6150-001, et al.

Mobil Producing Texas & New Mexico Inc.; Application

May 12, 1986.

Take notice that on April 30, 1986, Mobil Producing Texas & New Mexico Inc. (MPTM), of Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an application pursuant to Section 7 of the Natural Gas Act, 15 U.S.C. 717f, and § 157.23 of the Commission's Regulations under the Natural Gas Act, to continue the service previously authorized to The Superior Oil Company (Superior) in the states of Texas and New Mexico, which is on file with the Commission and open to public inspection. Applicant requests that the certificates currently held by Superior be amended to show Mobil Producing Texas & New Mexico Inc. as certificate holder and that the related rate schedules be redesignated as those of Mobil Producing Texas & New Mexico Inc., all as more fully shown on the attached Exhibit "A". Mobil Producing Texas & New Mexico, Inc. also requests that it be sustituted for Superior in any pending proceeding before the Commission.

By assignment dated effective April 1, 1986, The Superior Oil Company conveyed all of its interest in properties located in Texas, New Mexico and the offshore Federal waters of the U.S. outer continental shelf within the limited jurisdiction of Texas, to Mobil Producing Texas & New Mexico Inc.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 27, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

Docket No.	Rate schedule No.	Buyer	Field	ST
G-6150	1	Trunkline Gas Co.	Lake Creek, *et al*	TX
G-6151	2	Tennessee Gas Pipeline Co.	Portilla	TX
G-6155	6	United Gas Pipe Line	Slick	TX
G-6163	8	El Paso Natural Gas Co.	Lovelland	TX
G-6166	9	do	S. Fullerton	TX
G-6165	10	do	TXL	TX
G-6173	17	United Gas Pipe Line Co.	Slick	TX
G-6190	20	El Paso Natural Gas Co	Canyon Largo	NM
G-8723	44	do	Eumont	NM
G-3802	63	Tennessee Gas Pipeline Co.	Chess/LaSara	TX
G-10108	66	Natural Gas Pipeline Co.	Quinduno	TX
G-11568	70	Northern Natural Gas Co.	Eumont	NM
G-12761	72	do	W. Perryton	TX
G-13632	75	West Texas Gathering Co.	S. Kermit	TX

EXHIBIT "A"—Continued

Docket No.	Rate schedule No.	Buyer	Field	ST
G-19060	83	Florida Gas Transmission Co.	Monte Christo	TX
G-10079	84	....do	S. Alvin	TX
G-10081	86	....do	N. Monte Christo	TX
G-10078	87	....do	Algoa	TX
G-16147	88	Trunkline Gas Co.	Franks	TX
G-16261	93	Transwestern Pipeline Co.	Lipscomb	TX
CI60-675	94	El Paso Natural Gas Co.	Jicarilla	NM
CI60-807	100	Valley Gas Transmission	Diconas/Lanfuerte	TX
CI65-995	115	Natural Gas Pipeline Co.	Indian Basin	NM
CI65-1263	116	El Paso Natural Gas Co.	Cinta Roja	NM
CI66-1105	119	....do	Three Bar	TX
CI67-1075	122	Transwestern Pipeline Co.	Worsham-Bayer	TX
CI68-1340	132	....do	W. Perryton	TX
CI69-80	135	Natural Gas Pipeline Co.	Crittendon	TX
CI70-496	138	Transwestern Pipeline Co.	Bell Lake	NM
CI70-972	139	....do	S. Carlsbad	NM
CI71-500	144	Northern Natural Gas Co.	Share	TX
CI71-870	150	Natural Gas Pipeline Co.	High Island 14	TX
CI74-83	162	El Paso Natural Gas Co.	Rojo Caballos	TX
CI75-760	175	Transwestern Pipeline Co.	Worsham Bayer	TX
CI77-484	185	....do	West Atoka	NM
CI77-561	189	El Paso Natural Gas Co.	Sonora	TX
CI77-566	190	....do	Sand Dunes	NM
CI77-576	191	....do	West Jal	NM
CI77-627	192	Natural Gas Pipeline Co.	Sand dunes	NM
CI77-619	193	El Paso Natural Gas Co.	Burton Flat	NM
CI77-714	195	ANR Pipeline Co.	High Island A-323	OCS-TX
CI77-720	196	....do	High Island A-520	OCS-TX
CI77-852	197	El Paso Natural Gas Co.	S. Carlsbad	NM
CI78-252	199	Transcontinental Gas P/L	High Island 111	OCS;-TX
CI78-822 [1]	204	Transwestern Pipeline Co.	Horseshoe Bend	NM
CI78-1030	207	Natural Gas Pipeline Co.	High Island 14	TX
CI78-850	210	Columbia Gas Transmission	High Island A-337	OCS-TX
CI78-1215	211	El Paso Natural Gas Co.	Angel Ranch	NM
CI79-8	212	....do	Parkway West	NM
CI78-1265	213	....do	N. Horseshoe Bend	NM
G-6920	216	....do	Headless	TX
CI61-427	221	Natural Gas Pipeline Co.	N.E. Thompsonville	TX
CI63-884	223	Northwest Pipeline Corp.	Huerfanito	NM
CI64-1486	224	....do	Huerfanito	NM
CI65-849	226	El Paso Natural Gas Co.	Basin Dakota	NM
CI72-879	229	Florida Gas Transmission Co.	Aqua Dulce	TX
CI65-849	230	Northwest Pipeline Corp.	Basin Dakota	NM
CI66-5	231	....do	Basin Dakota	NM
CI75-628	233	El Paso Natural Gas Co.	Langlie-Mattix	NM
CI78-106	234	....do	Langlie-Mattix	NM
CI79-534	235	Colorado Interstate Gas Co.	Antelope Ridge	NM
CI79-102	238	Northern Natural Gas Co.	Hansford	TX
CI80-213	239	Natural Gas Pipeline Co.	High Island 139	OCS-TX
CI80-477	243	ANR Pipeline Co.	High Island A-555	OCS-TX
CI81-72	244	....do	High Island A-325	OCS-TX
CI81-186	246	United Gas Pipeline Co.	High Island A-325	OCS-TX
CI81-293	247	ANR Pipeline Co.	High Island A-325	OCS-TX
CI81-289	248	United Gas Pipe Line Co.	High Island A-325	OCS-TX
CI77-802	254	ANR Pipeline Co.	High Island A-323	OCS-TX
CI77-803	255	....do	High Island A-520	OCS-TX
CI78-405	256	Transcontinental Gas P/L	High Island 111	OCS-TX
CI78-661	258	Columbia Gas Transmission	High Island A-337	OCS-TX
CI80-383	261	Natural Gas Pipeline Co.	High Island 139	OCS-TX
CI80-514	263	ANR Pipeline Company	High Island A-555	OCS-TX
CI82-233	266	United Gas Pipe Line Co.	High Island A-351	OCS-TX
CI78-44	268	ANR Pipeline Co.	High Island A-323	OCS-TX
CI78-36	269	....do	High Island A-520	OCS-TX
CI78-408	271	Transcontinental Gas P/L	High Island 111	OCS-TX
CI78-657	272	Columbia Gas Transmission	High Island A-337	OCS-TX
CI80-385	273	Natural Gas Pipeline	High Island 139	OCS-TX
CI80-513	276	ANR Pipeline Co.	High Island A-555	OCS-TX
CI81-290	277	United Gas Pipeline Co.	High Island A-325	OCS-TX
CI81-292	278	ANR Pipeline Co.	High Island A-325	OCS-TX
CI82-244	279	....do	High Island A-351	OCS-TX
CI76-2	288	....do	High Island A-323	OCS-TX
CI76-3	289	....do	High Island A-520	OCS-TX
CI78-404	290	Transcontinental Gas P/L	High Island 111	OCS-TX
CI78-658	291	Columbia Gas Transmission	High Island A-337	OCS-TX
CI80-476	292	ANR Pipeline Co.	High Island A-555	OCS-TX
CI81-71	293	....do	High Island A-325	OCS-TX
CI81-182	294	United Gas Pipe Line Co.	High Island A-325	OCS-TX
CI82-236	295	....do	High Island A-351	OCS-TX
CI82-245	296	ANR Pipeline Co.	High Island A-351	OCS-TX

[1] Pending abandonment application.

[FR Doc. 86-11036 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01

[Project No. 9817-000, et al.]

Hydroelectric Applications (Cash Flow Systems, et al.); Filed With the Commission

Take notice that the following hydroelectric appliocations have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Preliminary Permit.

b. Project No.: 9817-000.

c. Date Filed: December 31, 1985.

d. Applicant: Cash Flow Systems.

e. Name of Project: Ausable.

f. Location: Ausable River in Essex and Clinton Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Lawrence R. Taft, 10315 Caughdenoy Road Central Square, NY 13036, (315) 437-2547.

i. Comment Date: July 7 1986.

j. Description of Project: The purpose of project would consist of: (1) Reconstruction of the existing 8-foot-high, 160-foot-long concrete dam owned by the Village of Keeseville with a crest evaluation of 380 feet msl; (2) a proposed reservoir with a surface area of 3 acres and a storage capacity of 15 acre-feet; (3) a proposed 10-foot-diameter, 230-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 1,500-kW; and (5) a proposed 50-foot-long transmission line tying into the existing New York State Electric and Gas Company system. The Applicant estimates a 5,200,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending on the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $21,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

2 a. Type of Application: Minor License.

b. Project No.: 9722-000.

c. Date Filed: December 20, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Wynantskill Project.

f. Location: Wynantskill Creek in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803, (617) 229-6103.

i. Comment Date: July 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 110-foot-long concrete gravity dam; (2) a reservoir with a surface area of 10 acres, a storage capacity of 44 acre-feet, and a normal water surface elevation of 251 feet m.s.l.; (3) a new concrete intake structure; (4) a new 42-inch-diameter, 1,225-foot-long steel penstock; (5) an existing 13-foot-wide, 10-foot-high concrete surge tank; (6) a new concrete powerhouse containing six generating units with a capacity of 94.5 kW each for a total installed capacity of 567 kW; (7) a new transmission line, 500 feet long; (8) a 500-foot-long gravel access road; and (9) appurtenant facilities. The applicant estimates the average annual generation would be 1,200,000 kWh. The existing dam is owned by Campbell's 9 Acres, Inc., Wynantskill, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Minor License.

b. Project No.: 9689-000.

c. Date Filed: December 18, 1985.

d. Applicant: Wilfred and Rory Poulin.

e. Name of Project: Wynantskill.

f. Location: On the Wynantskill Creek in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Neal F. Dunlevy, Stetson-Dale, Architects & Engineers, 185 Genesee Street, Utica, NY 13501, (315) 797-5800.

i. Comment Date: July 7, 1986.

j. Description of Project: The propsed project would consist of: (1) An existing 15-foot-high, 200-foot-long concrete gravity dam with masonry abutments; (2) a reservoir with a surface area of 15 acres, a storage capacity of 48 acre-feet, and a normal water surface elevation of 177.0 feet m.s.l.; (3) a new concrete intake structure; (4) a new 42-inch-diameter, 2,800-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 255 kW and one generating unit with a capacity of 475 kW for a total installed capacity of 730 kW; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 2,230,000 kWh. The existing dam is owned by the City of Troy, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. Type of Application: Major License.

b. Project No.: 9073-001.

c. Date Filed: December 26, 1985.

d. Applicant: Northwest Power Company, Inc.

e. Name of Project: Lavezzola Creek, near Downieville, within the Tahoe National Forest, in Sierra County, California (Sections 28, 32, and 33 of T21N, R12E, Sections 5, 6, 7, and 18 of T20N, R12E, and Sections 13, 23, 24, and 26 of T20N, R11E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. J. Ward MacDonald, Northwest Power Company, Inc., Four Embarcadero Center, Suite 1960, San Francisco, CA 94111, (415) 433-3505.

i. Comment Date: July 2, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6-foot-high, 70-foot-long concrete and steel diversion structure at elevation 4,500 feet msl; (2) a 6-foot-high (arched), 9-foot-wide, 1,200-foot-long tunnel; (3) a 42-inch-diameter, 11,200-foot-long steel penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 4,660 kW and operating under a head of 710 feet; and (5) a 60-kV, 5-mile-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) substation. The project's estimated average annual generation of 9.5 GWh would be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Exemption (5 MW or less).

b. Project No.: 9664-000.

c. Date Filed: December 12, 1985.

d. Applicant: Weisenberger Mills.

e. Name of Project: Weisenberger Mills.

f. Location: On South Elkhorn Creek near Midway, Scott and Woodford Counties, Kentucky.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Daniel Swan, Power Development Systems, Inc., 1712 Deerwood #3, Louisville, KY 40205–1053, (502) 451–1848.

i. Comment Date: June 16, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing masonry and concrete dam 10.5 feet high and 150 feet long; (2) an existing concrete powerhouse 20 feet square and 10 feet high containing a proposed 67-kW submerged turbine-generator; (3) a proposed 240-V three phase transmission line 65 feet long; and (4) appurtenant facilities. The project energy will be used at the mill with the surplus sold to Kentucky Utilities. The Applicant estimates that the average annual energy generation would be 214 MWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license appplicant that would seek to take or develop the project.

l. This notice also consists of the following standard following paragraphs: A3, A9, B, C, and D3a.

6. a. Type of Application: Preliminary Permit.

b. Project No.: 9954–000.

c. Date Filed: March 25, 1986.

d. Applicant: Burlington Hydro Associates.

e. Name of Project: Mississippi Lock & Dam No. 18.

f. Location: On the Mississippi River in Henderson County, Illinois and Desmoines County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, Burlington Hydro Associates, 5041 S. Boabab Drive, Salt Lake City, UT 84117, (801) 272–2030.

i. Comment Date: July 7, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Mississippi River Lock and Dam No. 18, having a water surface elevation of 528.0 feet msl and would consist of: (1) Four new steel penstocks each 60 feet long and 19 feet in diameter; (2) a new concrete powerhouse 80 feet by 240 feet containing four turbine/generator units having a total installed capacity of 28 MW operating at 9.37 feet of hydraulic head; (3) a new rock tailrace approximately 100 feet long, 200 feet wide, and 5 feet deep; (4) a new 1.5-mile-long 69-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 170 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Iowa-Illinios Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $155,000.

7. a. Type of Application: Preliminary Permit.

b. Project No.: 9952–000.

c. Date Filed: March 24, 1986

d. Applicant: Warren Osborne.

e. Name of Project: Sixmile Creek.

f. Location: On Sixmile Creek in Adams County, Idaho, Township 20N and Range 2E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Carl L. Myers, 750 Warm Springs Avenue, Boise, ID, 83712, (208) 336–1425.

i. Comment Date: June 30, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 5160 feet; (2) an 11,500-foot-long, 22-inch-diamater penstock; (3) a powerhouse containing a generating unit with a capacity of 2,850 kW and an average annual generation of 5,117 MWh; and (4) an 0.5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 18 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $25,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9975–000.

c. Date Filed: April 17, 1986.

d. Applicant: City of Tacoma, Washington.

e. Name of Project: Howard Hanson.

f. Location: At the Corps of Engineers Howard Hanson Dam on the Green River, in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: E.E. Coates, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, (206) 383–2471.

i. Comment Date: July 10, 1986.

j. Description of Project: The proposed project would utilize the Corps of Engineers Howard Hanson Dam and would consist of: (1) An intake structure at the dam; (2) a 2,640-foot-long, 11-foot-diameter penstock to the upper powerhouse; (3) an upper powerhouse containing a generating unit with a capacity of 2.5 MW; (4) a 3,000-foot-long, 12-foot-diameter tunnel; (5) a 14,600-foot-long, 11-foot-diameter penstock to the lower powerhouse; (6) a lower powerhouse containing three generating units, with a combined capacity of 24.5 MW; and (7) a 1,000-foot-long transmission line. The average annual generation would be 94 GWh.

A peliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $250,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: New License.

b. Project No.: 1250–001.

c. Date Filed: December 31, 1984, and amended on January 31, 1986.

d. Applicant: City of Pasadena Water and Power Department.

e. Name of Project: Azusa Water Power Project.

f. Location: On the San Gabriel River, in Los Angeles County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Karl A. Johnson, General Manager, City of Pasadena Water and Power Department, 100 North Garfield Avenue, Pasadena, California 91109, (818) 405–4420.

i. Comment Date: July 7, 1986.

j. Expiration Date of Initial License: Applicant's initial license for Project No. 1250 expired on May 31, 1984. The project is currently under annual license.

k. Description of Project: The existing project would utilize waters released

from the Los Angeles County Flood Control District's (District) San Gabriel Reservoir through a 30-foot-diameter, 1,850-foot-long outlet tunnel at the end of which the powerhouse for the exempted San Gabriel Project No. 6764 will be located. The existing project starts at the tailrace of Project No. 6764 and consists of: (1) A 30-foot-diameter, 50-foot-long tunnel; (2) a small stilling basin; (3) a 5.63-mile-long horseshoe shape tunnel, 4.75 feet wide and 5.3 feet high; (4) a 40-foot by 18-foot forebay at elevation 1,147 feet; (5) a 38-inch-diameter, 797-foot-long penstock; (6) a powerhouse containing a single generating unit with installed capacity of 3,000 kW, operating under a head of 400 feet; (7) a switchyard; (8) a 12-kV transmission line approximately 500 feet long connecting the project with the Southern California Edison Company's (SCE) transmission line west of the powerhouse.

The project does not include any recreational facilities and none is proposed by the Applicant. Applicant estimates the replacement cost of the project at $34 million.

l. Purpose of Project: The annual generation of 11.5 million KWh is sold to SCE.

m. This notice also consists of the following standard paragraphs: B, C, and D1.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9955–000.

c. Date Filed: March 25, 1986.

d. Applicant: Lowman Associates.

e. Name of Project: Deadwood Dam.

f. Location: At the Bureau of Reclamation's Deadwood Dam in Valley County, Idaho, Township 11N and Range 7E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: J. Kirk Rector, 5041 S. Boabab Drive, Salt Lake City, UT 84117.

i. Comment Date: June 27, 1986.

j. Description of Project: The proposed project would utilize the existing Deadwood Dam, reservoir, and outlet pipes. New construction would include: (1) A 160-foot-long, 30-inch-diameter steel penstock from the dam outlet pipes to the powerhouse (2) a powerhouse containing one generating unit with a capacity of 8,000 kW and an average annual generation of 18.6 GWh and (3) a 22-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for the term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $155,000. No new roads would be constructed. Core drilling would be conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9702–000.

c. Date Filed: December 30, 1985.

d. Applicant: Re-Enertech, Inc.

e. Name of Project: Sheep Creek.

f. Location: On Sheep Creek, in the Burrough of Juneau, Alaska.

g. Filed Pursuant to: Federal Power Act U.S.C. 791(a)–825(r).

h. Contact Person: James D. Franklin, P.O. Box 1037, Oak Harber, WA 98277, (206) 679–4342.

i. Comment Date: June 25, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high crib dam at elevation 620 feet; (2) a 2,687-foot-long, 36-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 2,200 kW and an average annual generation of 4.5 GWh; and (4) a 0.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $22,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9866–000.

c. Date Filed: January 3, 1986.

d. Applicant: Birch Power Company.

e. Name of Project: Williams Creek.

f. Location: On Williams Creek, in Franklin County, Idaho. Township 12S and Range 41E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. Comment Date: June 30, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high embankment dam at elevation 5,540 feet; (2) a 13,500-foot-long, 28-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 725 kW and an average annual generation of 4,700 MWh; and (4) a 0.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $15,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Utah Power and Light.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9763–000.

c. Date Filed: December 30, 1985.

d. Applicant: Re-Enertech, Inc.

e. Name of Project: Nugget Creek.

f. Location: In Tongass National Forest, on Nugget Creek, in the Borough of Juneau, Alaska. Township 40S and Range 66E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: James D. Franklin, P.O. Box 1037, Oak Harbor, WA 98277, (206) 679–4342.

i. Comment Date: June 25, 1986.

j. Description of Project: The proposed project would consist of: (1) A 25-foot-high crib dam at elevation 600 feet; (2) a 6,582-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 2,200 kW and an average annual generation of 4.5 GWh; and (4) a 0.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $22,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent

allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State

Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 12, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11039 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-471-000]

Arizona Public Service Co.; Filing

May 8, 1986.

Take notice that Arizona Public Service Company (APS) on May 5, 1986, tendered for filing a schedule of "Established Transmission Service Rates" for transmission services provided under the auspices of the Revised Inland Power Pool Agreement (FERC Rate Schedule NO. 104).

The schedule of Established Transmission Service Rates proposes rates for non-firm transmission service that are consistent with previously accepted Commission rates for similar service in other FERC rate schedules.

APS requests waiver of the notice requirements so that the rate can become effective upon the date of filing.

Copies of this filing are being served upon the Arizona Corporation Commission and all the parties to the Revised Inland Power Pool Agreement.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before May 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11041 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1927-003]

Clifford L. Greenwalt; Filing

May 9, 1986.

Take notice that on April 28, 1986 Clifford L. Greenwalt tendered for filing an application to hold the following position:

Position, Name of Corporation, and Classification

Director, CIPS, Public Utility

Any person desiring to be heard or to protest the Application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11042 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6920-005]

DCH Development Co.; Surrender of Exemption

May 12, 1986.

Take notice that DCH Development Company, Exemptee for the proposed Cascade Dam Hydroelectric Project No. 6920, has requested that his exemption be terminated. The exemption was issued on March 3, 1983. The project would have been located at South Fork of Deer Creek at the Cascade Dam, in Nevada County, California. No construction has commended at this project.

The Exemptee filed the request on April 17, 1986, and the exemption for Project No. 6720 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11037 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-470-000, et al.]

Gas Gathering Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corpoeation

[Docket No. CP86-470-000]

May 7, 1986.

Take notice that on April 22, 1986, Gas Gathering Corporation (GGC), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP86-470-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to transport natural gas on behalf of Anchor Gasoline Corporation (Anchor) under the certificate issued in Docket No. CP86-129-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The proposed transportation service commenced on April 5, 1986, pursuant to the 120-day self-implementing provisions of § 284.223(a)(1) of the Regulations. GGC states that the transportation would be performed under the terms of Rate Schedule T-1 and would be for an initial term through December 5, 1986, and month to month thereafter. It is stated that the maximum daily deliveries under the agreement would be 550 MMBtu.

Comment date: June 23, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Algonquin Gas Transmission Company

[Docket No. CP86-480-000]

May 9, 1986.

Take notice that on April 28, 1986, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP86-480-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of firm natural gas to eleven existing resale customers, under existing Rate Schedule F-4, and the construction and operation of facilities necessary for such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that as a result of additional gas supply of 4,612 MMBtu equivalent of natural gas per day offered to it by its principal supplier, Texas Eastern Transmission Corporation (TETCO), Applicant proposes to offer such additional gas to the following of its existing resale customers under its existing Rate Schedule F-4:

Customer	Rate schedule F-4 additional maximum daily quantities (million Btu)	Rate schedule F-4 additional annual contract quantities (million Btu)
Bay State Gas Co	576	210,970
Bristol and Warren Gas Co	34	12,410
Colonial Gas Co	200	73,000
Commonwealth Gas Co	1,225	447,490
The Connecticut Light & Power Co	900	324,000
Fall River Gas Co	252	91,980
City of Norwich, CT	77	28,105
The Pequot Gas Co	9	3,285
Providence Gas Co	808	294,920
South County Gas Co	21	7,665
The Southern Connecticut Gas Co	517	188,700
Total	4,612	1,683,280

In order to provide the proposed sales service on a firm basis, Applicant states that it must construct the following loops: (1) 2.5 miles of 16-inch pipeline loop would be added to Applicant's existing G-3 system near Dartmouth, Massachusetts; and (2) 1.4 miles of 12-inch pipeline loop, will be added to Applicant's existing G-10 system near Berkley, Massachusetts. Applicant states that the total cost of the facilities is estimated to be $3,985,100. Applicant states it would initially finance this cost of constructing the proposed facilities through revolving credit arrangements, short-term loans, and funds on hand, with permanent financing to be undertaken at a later date as part of Applicant's overall long-term financing program.

Applicant states that it would render the proposed firm sales service upon the completion of required facilities and availability of firm service from TETCO, which presently is scheduled to commence on or about November 1, 1986.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP86-482-000]

May 9, 1986.

Take notice that on April 29, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-482-000 an application pursuant Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that Air Products owns and operates an industrial facility near Floridatown, Santa Rosa County, Florida. Pursuant to an agreement executed November 1, 1984, United has, under Order No. 319, transported natural gas to Air Products' facility for use as process gas and feedstock. Although the agreement provides that additional delivery points may be added by mutual agreement, the Commission has held that United may not transport gas delivered through delivery points that were not specified in the agreement on October 9, 1985. United states that its application is filed, in part, to restore its ability to add delivery points related to Air Products' sources of supply and to authorize the transportation of gas for use as boiler fuel, process gas and feedstock.

United states that it would transport, on an interruptible basis, up to 35,000 Mcf per day to an existing point of interconnection between the facilities of United and Air Products located near Floridatown, Santa Rosa County, Florida. United advises that there are currently 32 delivery points. However, new delivery points would be allowed periodically during the term of the agreement, if the parties mutually agreed. United could accept or refuse tenders in excess of 35,000 Mcf per day. The initial rate for the transportation would be 42.04 cents per Mcf, which is United's currently effective Northern - Zone transportation rate, including components for fuel and GRI.

The agreement would remain in effect until October 1, 1989, and would continue on a year-to-year basis thereafter. However, either party could terminate the agreement prior to October 1, 1989, by giving the other party 24 months advance written notice. For termination thereafter, six months prior notice is required.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is

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filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11034 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-474-000, et al.]

Great Lakes Gas Transmission Company, et al.; Natural Gas Certificate Filings

May 12, 1986.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP86-474-000]

Take Notice that on April 23, 1986, Great Lakes Gas Transmission Company, 2100 Buhl Building, Detroit, Michigan 48226 (Petitioner), filed in Docket No. CP86-474-000 a petition to amend the Commission's order issued February 10, 1986, in Docket No. CP79-464-010, *et al.*, 34 FERC ¶ 61,185, pursuant to section 7(c) of the Natural Gas Act, so as to authorize an increase in transportation volumes, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it seeks authorization to render transportation service, for the contract year beginning November 1, 1986, for Texas Eastern Transmission Corporation (TETCO) of volumes of natural gas to be purchased by TETCO from ProGas Limited, in the quantity of 75,000 Mcf of gas per day, instead of the 37,500 Mcf per day currently authorized for such contract year.

Petitioner states that pursuant to an order issued June 10, 1981, 15 FERC ¶ 61,154, as amended by the orders issued July 18, 1985, and February 10, 1986, Petitioner is currently authorized to transport up to 75,000 Mcf of gas per day for TETCO. Petitioner further states that current authorization provides for transportation service for TETCO of up to 75,000 Mcf per day and an amount equal to 50 percent of 75,000 Mcf of gas per day during the contract year beginning November 1, 1986. Petitioner states that TETCO has requested in an April 4, 1986, letter that TETCO's level of transportation volumes remain at 75,000 Mcf per day commencing November 1, 1986.

Comment date: June 2, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Standard Gas Marketing Company

[Docket No. CP86-448-000]

Take notice that on April 16, 1986, Standard Gas Marketing Company (SGM), 5151 San Felipe, Houston, Texas 77056, filed in Docket No. CP86-448-000 an application pursuant to section 7 of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for an optional expedited certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and the transportation of natural gas through such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SGM proposes to construct and operate 30.0 miles of 8-inch pipeline from an interconnection with ANR Pipeline Company's (ANR) pipeline in Bolivar County, Mississippi, to a pulp and paper mill in Desha County, Arkansas, owned and operated by Potlatch Corporation (Potlatch) and to transport gas through such facilities for Potlatch. SGM estimates that the cost of the proposed facilities wold be $4,111,000 and states that such facilities would be financed from funds on hand or funds obtained from SGM's parent company, Standard Oil Production Company (Standard).

It is stated that pursuant to a natural gas sales agreement dated August 29, 1985, as amended, Potlatch is obligated to purchase from SGM, once SGM has the necessary facilities in place, its requirements for natural gas for use in its pulp and paper mill located near Cypress Bend, Desha County, Arkansas. The agreement, it is indicated, is for a primary term of five years and year to year thereafter until terminated by either party. It is explained that the Potlatch mill is located within forty miles of several points on the existing interstate pipeline system of ANR and that under a transportation agreement dated October 10, 1985, between SGM and Potlatch, SGM is obligated to seek approval for the construction of facilities connecting the Potlatch mill to ANR's system and the transportation of gas for Potlatch through those facilities. Initially, it is contemplated that SGM would be transporting gas purchased by Potlatch from SGM, with Potlatch's taking title to the gas at the point of interconnection between the SGM and ANR facilities. However, it is not that the transportation agreement obligates SGM to transport gas for Potlatch for a period of at least five years after sales terminate.

It is stated that under a transportation agreement dated November 19, 1985, as amended February 13, 1986, ANR has agreed to transport gas for SGM from certain specified points of receipt onshore and offshore Texas and in Oklahoma and Kansas to the proposed point of interconnection with the SGM facilities for which approval is sought herein. It is further stated that on February 26, 1986, ANR filed with the Commission, in Docket No. CP86-348-000, an application for a certificate of public convenience and necessity authorizing it to provide the transportation services contemplated by the agreement.

It is explained that Potlatch does not presently have a supplier of gas for its Cypress Bend pulp and paper mill. The proposal herein would, it is asserted, enable SGM to provide Potlatch with economic natural gas for use in its process equipment, which has been recently modified to permit dual fuel operation. It is further asserted that this service would eliminate Potlatch's sole dependence on fuel oil, would enable Potlatch to obtain natural gas service at market sensitive prices, and would contribute to an overall lowering of its cost of manufacturing.

SGM states that concurrently with the filing of the instant application it has filed an application in Docket No. CP86-449-000 for a blanket transportation certificate under Section 284.221 of the Commission's Regulations.

Comment date: June 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc. United Gas Pipe Line Company

[Docket No. CP86-434-000]

Take notice that on April 11, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-434-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee and United propose to exchange up to 5,000 Mcf of natural gas

per day from sources of supply in the vicinity of each other's pipeline systems in Cameron and Lafayette Parishes, Louisiana. It is stated that United would deliver natural gas to Tennessee at a point of receipt in the Little Chenier field, Cameron Parish, Louisiana. It is further stated that natural gas delivered to United by or for the account of Tennessee would be delivered to United at the following points of delivery: (1) United's existing common point connection in South Grand Chenier field, Cameron Parish, Louisiana; (2) United's existing common point connection in the Ridge field, Lafayette Parish, Louisiana; and (3) United's existing common point connection in the Grand Chenier field, Cameron Parish, Louisiana.

Tennessee and United state that all natural gas exchanged under the gas exchange agreement dated June 12, 1964, is at no charge to either party provided, however, there are no imbalances. For excess gas transported and delivered by United to Tennessee at the Tennessee balancing points, the amount to be paid by Tennessee to United would be an amount, per Mcf, equal to one-half of United's transportation rate in effect from time to time in United's Southern Rate Zone and/or one-half of United's transportation rate in effect from time to time in United's Northern Rate Zone, depending upon the zone in which such excess gas is delivered. For all excess gas delivered by Tennessee to United at the United balancing points, the amount to be paid by United to Tennessee for such service would be based on Tennessee's system average transmission costs.

It is stated that in the event of an imbalance, the natural gas from such imbalance would be transported and delivered by the party receiving such excess natural gas to certain balancing points of delivery. It is further stated that excess natural gas delivered by United to Tennessee would be delivered at the following balancing points: (1) The existing interconnection between Tennessee and United located near Iowa, Calcasieu Parish, Louisiana, (2) the existing interconnection between Tennessee and United near Centerville, St. Mary Parish, Louisiana, and (3) the existing point of interconnection between Tennessee and United near West Monroe, Ouachita Parish, Louisiana. To the extent that Tennessee delivers excess gas to United, it is indicated that such natural gas would be delivered at the following balancing points: (1) the existing interconnection between Tennessee and United near Iowa, Calcasieu Parish, Louisiana; (2) the outlet of the Champlin gas processing plant in Panola County, Texas; and (3) the existing interconnection between Tennessee and United near Wharton, Wharton County, Texas.

Comment date: June 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-465-000]

Take notice that on April 21, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-465-000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the sale of natural gas for resale in interstate commerce, on an interruptible basis, and the operation of certain existing measurement facilities to make such sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to make a sale for resale to Cameron Gas Company (Cameron), on an interruptible basis, of up to 20 billion Btu of natural gas per day pursuant to an interruptible gas sales contract, dated April 17, 1986. It is stated that Cameron owns and operates a gas distribution system in West Virginia. It is explained that Cameron intends to purchase such gas for resale to various industrial end-user customers.

Tennessee proposes to deliver gas to Cameron at the following points:

1. Interconnection of Tennessee and Mountaineer Gas Company (Mountaineer Gas) at Tennessee's meter No. 2-0614, Cabell County, West Virginia;
2. Interconnection of Tennessee and Mountaineer Gas at Tennessee's meter No. 2-0615, Kanawha County, West Virginia;
3. Interconnection of Tennessee and Columbia Gas Transmission Corporation (Columbia Gas) at Tennessee's meter No. 2-0027, Kanawha County, West Virginia;
4. Interconnection of Tennessee and Columbia Gas at Tennessee's meter No. 2-0001, Kanawha County, West Virginia; and/
5. Interconnection of Tennessee and Consolidated Gas Supply Corporation at Tennessee's meter No. 2-0044, Kanawha County, West Virginia.

It is explained that with the exception of the metering facilities connecting Mountaineer Gas' system, the meters proposed to be utilized are existing certificated sales meters. It is stated that with respect to the metering facilities connecting Mountaineer Gas' system, Tennessee seeks authorization to operate the existing facilities in interstate commerce. Tennessee further states that these facilities were installed to render a transportation service pursuant to section 311 of the Natural Gas Policy Act of 1978 on behalf of Mountaineer Gas and pursuant to § 284.3(c) of the Commission's Regulations are not jurisdictional. Tennessee requests authorization to operate the facilities to make the jurisdictional sale proposed herein.

Tennessee states that it proposes to charge Cameron each month a negotiated sales rate for each dt equivalent of natural gas delivered by Tennessee for Cameron's account at the delivery points. Tennessee requests authorization to have several negotiated gas sales rates applicable to the dt of gas solf by Tennessee to Cameron each month. Tennessee proposes that these rates, to be agreed upon monthly, would not exceed the maximum gas sales rate currently calculated to be $3.06, or be less than the minimum gas sales rate, currently calculated to be $2.66. Tennessee also requests authority to charge Cameron an overrun quantity penalty, emergency quantity charge, or an incremental pricing surcharge.

Additionally, as provided for in Subpart E of Part 157, Tennessee requests conditional pregranted abandonment authorization at the expiration of its gas sales contract with Cameron.

Comment date: June 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86-475-000]

Take notice that on April 25, 1986, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-475-000, a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authority to construct and operate a sales tap under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to install a 2-inch sales tap on its 4-inch Avery Island pipeline in Iberia Parish, Louisiana. In order to sell and deliver up to 124 Mcf of natural gas per day to Entex, Inc. (Entex), a local distribution company, for resale to residential and commercial

customers in Entex's New Iberia, Louisiana, Service Area. Applicant states that it is authorized in Docket No. CP71–89–000 to sell and deliver natural gas to Entex for resale under Applicant's Rate Schedule DG–S. Applicant further states that the proposed construction and operation would not result in an increase in Entex's aggregate base requirements or contractual MDQ, nor would it have an adverse impact upon any of Applicant's other existing customers.

Comment date: June 26, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP86–476–000]

Take notice that on April 25, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP86–476–000 a request, pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205), for authorization to construct and operate a 2-inch sales tap on United's 16-inch pipeline in Ouachita Parish, Louisiana, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed sales tap would enable United to sell and deliver to Trans Louisiana Gas Company Inc. (Transla), the local distributor, an estimated daily volume of up to 100 Mcf of natural gas on an average day, and 160 Mcf on a peak day, for resale to residential users in the Many, Louisiana, service area. United advises that Transla is an existing total requirements customer and purchases gas under United's Rate Schedule G–N pursuant to a service agreement dated August 27, 1981. United avers that its proposal would not impact Transla's current base requirement (the maximum daily quantity is stated to be 4,075 Mcf) or minimum daily requirement.

Comment date: June 26, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Williston Basin Interstate Pipeline Company

[Docket No. CP86–450–000]

Take notice that on April 17, 1986, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP86–450–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a sales tap and appurtenant facilities under the authorization issued in Docket Nos. CP82–487–000 *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon one sales tap and appurtenant facilities located on its natural gas transmission system in McLean County, North Dakota. It is stated the customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., no longer requires the tap and facilities because its customers' site has been acquired by the North Dakota Highway Department through right-of-way acquisition. It is stated that the abandonment of the sales tap would have no effect upon existing rates and no impact upon Williston Basin's peak-day and annual requirements. Williston Basin further states that since such sales tap would be abandoned on its existing transmission right-of-way, there would be no significant adverse impact on the environment.

Comment date: June 26, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–11033 Filed 5–15–86; 8:45 am]
BILLING CODE 6717–01–M

[Project Nos. 8507–001, et al.]

HydroPool, et al.; Surrender of Preliminary Permits

May 12, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. HydroPool

[Project No. 8507–001]

Take notice that HydroPool, Permittee for the Eagle Creek Project, FERC No. 8507, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8507 was issued on March 14, 1985, and would have expired on August 31, 1988. The project would have been located on Eagle Creek, in Trinity County, California.

The Permittee filed the request on April 18, 1986.

2. Utah Municipal Power Agency

[Project No. 7316–002]

Take notice that Utah Municipal Power Agency, Permittee for the Thistle Lake Power Project, FERC No. 7316, has

requested that its preliminary permit be terminated. The preliminary permit for Project No. 7316 was issued on March 20, 1984, and would have expired on February 28, 1987. The project would have been located on Spanish Fork River, in Utah County, Utah.

The Permittee filed the request on April 17, 1986.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11040 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-47-002]

MIGC, Inc.; Compliance Filing

May 9, 1986.

Take notice that on May 1, 1986, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirty-Seventh Revised Sheet No. 32. MIGC states that the filed sheet reflects changes made effective through the Commission's approval on April 3, 1986 of a contested settlement in Docket No. RP84-15, *et al.* and MIGC's latest purchase gas cost adjustment in the above-referenced docket. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 5, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before May 20, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11044 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-005]

Natural Gas Pipeline Co. of America; Compliance Filing

May 9, 1986.

Take notice that on April 25, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Fourth Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. Natural states that the purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of May, 1986. Natural further states that this filing is being made in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986, at Docket No. CP85-57-003.

Natural has mailed copies of this filing to its jurisdictional customers and to interested regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before May 16, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11045 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-474-000]

Southern California Edison Co.; Filing

May 8, 1986.

Take notice that, on May 7, 1986, Southern California Edison Company ("Edison") tendered for filing an agreement entitled "Edison-Arizona Interruptible Transmission Service Agreement", which has been executed by Edison and the Arizona Public Service Company (APS").

Under the terms and conditions of the Agreement, Edison will make available to APS interruptible transmission service from a specified point of receipt to a specified point of delivery.

The Agreement is proposed to become effective when executed and accepted for filing by the Commission, with a proviso that if the Commission enters into a hearing to determine whether the Agreement is just and reasonable, the Agreement will not become effective until the date when an order no longer subject to judicial review has been issued by the Commission determining the Agreement to be just and reasonable without changes or new conditions unacceptable to either party.

Copies of the filing were served upon the Public Utilities Commission of the State of California and APS.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11043 Filed 5-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-18-000]

Zinn Petroleum Co.; Petition for Adjustment

May 12, 1986.

On March 28, 1986, Zinn Petroleum Company (Zinn) filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [1] and Subpart K of the Commission's Rules of Practice and Procedure.[2] Zinn seeks waiver of its

[1] 15 U.S.C. 3412(c) (1982).

[2] 18 CFR Part 385, Subpart K (1985).

obligation under Commission Order Nos. 399, 399–A, and 399–B [3] requiring payment of Btu adjustment refunds by first sellers of natural gas.

Zinn, operator of the Daniel-Pierce No. 1 Well, Matagorda County, Texas, states that a working interest owner in the well, Partners Oil Company (Partners), has declined, on the grounds of bankruptcy, to pay $4,194.13 in Btu adjustment refunds. Zinn had sold the gas from this well to Dow Chemical U.S.A. which is seeking the Btu refund from Zinn. Upon Zinn's request that Partners pay its share of this refund, Partners declined, stating that the U.S. Bankruptcy Court for the Southern District of Texas had confirmed a plan of reorganization for Partners and that Partners was thereby released from all pending claims. Partners further stated that since the refund claim was a pre-bankruptcy petition claim and was not filed with the Court, nothing was allowed for it in the confirmed plan. Zinn requests a waiver of responsibility for payment of the refund amount attributable to Partners' working interest in the well.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11046 Filed 5–15–86; 8:45 am]

BILLING CODE 6717-01-M

[3] 49 Fed. Reg. 37,735 (1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,597; 49 FR 48,353 (1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,612; and 50 FR 30,141 (1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,651.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59186B FRL–3017–8]

Toxic and Hazardous Substances Control; Extension of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's extension of the test marketing period of a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–32. The new test marketing conditions are described below.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Room E–609, 401 M Street, SW., Washington, DC 20460, (202–382–3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby extends TME–85–32. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the original TME appplication and extension request, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–32. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–85–32

Date of Receipt: March 19, 1985.

Notice of Receipt: March 29, 1985 (50 FR 12626).

Applicant: CP Chemicals, Inc.

Chemical: (S) Lead methanesulfonate.

Use: (S) Lead salt in electroplating operations.

Production Volume: 10,000 pounds.

Number of Customers: Six.

Worker Exposure: Manufacture: dermal and inhalation, a total of up to 3 workers, up to 2 hrs/day for up to 20 days/year each. Use: dermal and inhalation, a total of up to 6 workers, up to 8 hours/day for up to 28 days/year each.

Notice of Approval of Test Marketing Exemption: May 7, 1985 (50 FR 19228).

Original Test Marketing Period: Twelve months.

Modified Test Marketing Period: Six months.

Commencing on: May 8, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 8, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86–11073 Filed 5–15–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59185B; FRL–3017–4]

Toxic and Hazardous Substance Control; Extension of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's extension of the test marketing period of a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–53. The new test marketing conditions are described below:

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice

Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Room E–609, 401 M Street SW., Washington, DC 20460 (202–382–3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and diposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby extends TME–85–53. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the original TME application and extension request, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–53. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–85–53

Date of Receipt: June 20, 1985.

Notice of Receipt: June 28, 1985 (50 FR 26840).

Applicant: CP Chemicals, Inc.

Chemical: (S) Copper (2+) methanesulfonate.

Use: (S) Copper salt in electroplating operations.

Production Volume: 4545 kilograms.

Number of Customers: Six.

Worker Exposure: Manufacture: A total of 4 workers at 1 site for up to 3 hours per day, 20 days per year. Use: A total of 6 workers per site, at 6 sites for up to 8 hours per day, 28 days per year.

Notice of Approval of Test Marketing Exemption: August 6, 1985 (50 FR 31770).

Original Test Marketing Period: Twelve months.

Modified Test Marketing Period: Six months.

Commencing on: May 8, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 8, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86–11074 Filed 5–15–86; 8:45 am]

BILLING CODE [illegible]

[OPTS–59221; FRL–3017–7]

Dimethyl Siloxane Copolymer; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: June 2, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–59221]" and the specific TME number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Hearing Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86–42

Close of Review Period. June 19, 1986.

Manufacturer. Confidential.

Chemical. (G) Dimethyl siloxane copolymer.

Use/Production. (G) Coating component. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: May 12, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–11075 Filed 5–15–86; 8:45 am]

BILLING CODE [illegible]

[ER–FRL–3016–6]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed May 5, 1986 Through May 9, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860179, Draft, COE, TX, Trinity River and Tributaries Flood Plain Development Project, Permits, Dallas, Denton and Tarrant Counties, Due: June 30, 1986, Contact: Rebecca Doby (807) 334–2095.

EIS No. 860180, Report, COE, VA, Norfolk Harbor and Channels, Deepening and Dredged Material Disposal Site Plan, Summarized Investigation Results, Contact: Richard Muller (804) 441–3767.

EIS No. 860181, Final, FHW, OR, Alsea River Bridge Replacement, Oregon Coast Highway/US 101, Waldport, Lincoln County, Due: June 16, 1986, Contact: Dale Wilken (503) 399–5749.

EIS No. 860182, Final, FHW, AZ, Arizona Forest Highway 1/AZ–67 Reconstruction, Jacob Lake to Grand Canyon National Park, Coconino County, Due: June 16, 1986, Contact: Robert Arsensdorf (303) 236–3468.

EIS No. 860183, Final, CDB, NY, Brooklyn Rennaissance Plaza Development, Construction, Kings County, Due: June 16, 1986, Contact: Michael Spies (212) 619–5000.

EIS No. 860184, Final, BPA, ID, MT, OR, WA, Direct Service Industry Options on Reducing Load Fluctuations and Revenue Uncertainties, Due: June 02, 1986, Contact: Anthony Morrell (503) 230–5136.

EIS No. 860185, Final, BOP, PA, Bradford Federal Correctional Institution Complex, Construction and Operation, McKean County, Due: June 16, 1986, Contact: Loy Hayes (202) 272–6536.

EIS No. 860186, Final, AFS, MT, SD, NC, Custer National Forest, Noxious Weed Treatment Program, Due: June 16, 1986, Contact: David Filius (406) 657–6361.

Amended Notices

EIS No. 860013, DRevised, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Due: May 30, 1986, Published FR 1–24–86—Review period extended.

EIS No. 860166, Final, FHW, TN, TN–386 Extension, I–65 to Hendersonville Bypass, Construction, Davidson and Sumner Counties, Due: June 16, 1986, Published FR: 5–2–86—Review period reestablished.

EIS No. 860173, Final, AFS, ME, NH, White Mountain National Forest, Land and Resource Management Plan, Due: June 9, 1986, Published FR 5–9–86—Incorrect status and review period.

Dated: May 13, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–11090 Filed 5–15–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3016–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 28, 1986 through May 2, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–AFS–J82001–00, Rating EC2, Custer Nat'l Forest, Noxious Weed Treatment Program, MT, ND, and SD. Summary: EPA generally concurs with the preferred alternative, but recommends additional emphasis on applicator training and awareness of herbicide impacts on riparian and wetland areas.

ERP No. D–AFS–K01004–AZ, Rating EC2, Canyon Uranium Mining Development, Kaibab Nat'l Forest, AZ. Summary: EPA requested more complete information on provisions to prevent contamination from storm water runoff and mine abandonment; and clarification of portions of the radiation discussion.

ERP No. D–AFS–K65069–CA, Rating EC2, Sequoia Nat'l Forest, Land and Resource Mgmt. Plan, CA. Summary: EPA expressed concerns about potential impacts to forest resources such as watersheds, water quality, riparian/meadow areas, soils and beneficial uses.

ERP No. D–COE–C36060–NY, Rating LO, Cazenovia Creek Flood Damage Reduction Plan, NY. Summary: EPA believes that no significant environmental impacts will result from implementation of the project. However, EPA requested that additional information on minimum flows through the sluice gate be included in the final EIS.

Final EISs

ERP No. FB–COE–A36264–CA, Wildcat and San Pablo Creeks Flood Control Plan, Description of Impacts, CA. Summary: The final supplemental EIS adequately addressed the flood control project's environmental impacts.

ERP No. FS–COE–C36005–NY, Saw Mill River Basin Flood Control Project, Elmsford and Greenburgh Areas, NY. Summary: The final EIS adequately addresses the concerns EPA expressed on the draft EIS.

ERP No. FS–COE–F39015–OH, Geneva-on-the-Lake Small Boat Harbor Construction, Revised Plan and Additional Wetland Mitigation Construction, OH. Summary: EPA's review resulted in no objections to the proposed activity.

ERP No. FS–USN–C11004–00, Stapleton—Fort Wadsworth Complex, Surface Action Group Homeporting Facility, Development Plans Modification and Family Housing alternatives at Staten Island, NY, RI, and MA. Summary: EPA believes that no significant environmental impacts will result from the implementation of this project. However, EPA requested that a commitment to implement mitigation measures on impacts to air quality and environmentally sensitive resources be included in the record of decision.

Dated: May 13, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–11091 Filed 5–15–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3016–7]

Intent to Prepare an Environmental Impact Statement; Hilltop Interception; Northeast Ohio Regional Sewer District: Cleveland, OH

AGENCY: Environmental Protection Agency (USEPA) Region V.

ACTION: Preparation of an environmental impact statement (EIS) for the construction of interceptor sewers to service the Hilltop Planning Area of the Northeast Ohio Regional Sewer District (NEORSD).

PURPOSE: In accordance with section 102(2)(c) of the National Environmental Policy Act, USEPA has identified a need to prepare an Environmental Impact Statement (EIS) and therefore publishes this Notice of Intent pursuant to 40 CFR 1401.7.

FOR FURTHER INFORMATION CONTACT: William D. Spaulding, 5WFP–TUB–00, Environmental Planning Section, Telephone No. (312) 886–0215, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Summary

Proposed USEPA Action

It is the intent of USEPA to study and select the most cost-effective and environmentally acceptable wastewater

treatment and/or conveyance alternative for the Hilltop Planning Area.

The Hilltop planning area is located in northeastern Cuyahoga County and includes all or portions of Richmond Heights, Highland Heights, Lyndhurst, Mayfield, Mayfield Heights, and Willoughby Hills.

Project Background

The Hilltop project is the second portion of the Heights/Hilltop interceptor system. A Finding of No Significant Impact (FNSI) was issued for the Heights portion of the system on August 29, 1984, and construction has begun. General problems to be solved by the Hillton project include: wet weather overflows from the Beech Hill-Bonnieview/ Wilson Mills (BBW) pumping complex; inadequate treatment by package plants; and inflow and infiltration problems. The proposed project, as described in an August 1985 preliminary environmental assessment, recommends construction of a large (60 to 70 million gallons per day) gravity interceptor to transport wastewater to the Heights Interceptor and then to the NEORSD Easterly WWTP. The Hilltop Interceptor would eliminate the need for package plants and several pumping stations in the area.

Issues Involved

a. Construction of the proposed project may lead to destruction of natural terrestrial and acquatic habitat.

b. The design of the proposed project appears to anticipate growth, yet population data reflects a stable population over the 20-year design period. The basis of design, its relationship to growth projections and the environmental impacts associated with potential development will be studied.

c. The recommended action is the environmental assessment and facilities plan is the most costly alternative. This expenditure may be a high cost project.

Scoping Process

The scope of the EIS will encompass the range of possible alternatives for solving the Hilltop area wastewater problems and their potential impacts upon the surrounding communities. It is the intent that there shall be an early and open process for determining the scope of issues to be addressed and for all parties to identify the significant environmental issues related to the proposed project.

The scoping process shall consist of two public meetings to be held at 3:00 and 7:30 p.m. on Wednesday, June 18, 1986, at the Highland Heights Community Center, 5827 Highland Road, Highland Heights, Ohio 44143.

At each of these meetings a summary of the project will be provided, and the public will be invited to present concerns they would like to see addressed in the EIS.

Timing

USEPA expects to issue a draft EIS for public review and comment within approximately ten (10) months.

Requests for Copies of the Draft EIS

All interested parties are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-11089 Filed 5-15-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51623; FRL-3017-6]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-four PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-980, 86-981 and 86-982—July 30, 1986.

P 86-983, 86-984 and 86-985—August 2, 1986.

P 86-986, 86-987, 86-988, 86-989, 86-990, 86-991, 86-992, 86-993, 86-994, 86-995, 86-996, 86-997, 86-998, 86-999, 86-1000, 86-1001, 86-1002, 86-1003, 86-1004, 86-1005, 86-1006, 86-1007—August 3, 1986.

P 86-1008, 86-1009, and 86-1010—August 4, 1986.

P 86-1011, 86-1012, and 86-1013—August 5, 1986.

Written comments by:

P 86-980, 86-981 and 86-982—June 30, 1986.

P 86-983, 86-984 and 86-985—July 3, 1986.

P 86-986, 86-987, 86-988, 86-989, 86-990, 86-991, 86-992, 86-993, 86-994, 86-995, 86-996, 86-997, 86-998, 86-999, 86-1000, 86-1001, 86-1002, 86-1003, 86-1004, 86-1005, 86-1006 and 86-1007—July 4, 1986.

P 86-1008, 86-1009, 86-1010—July 5, 1986.

P 86-1011, 86-1012, and 86-1013—July 6, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51623]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-980

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Imidazolidine amide carboxylate complex.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral: 25,000 mg/kg; Irritation: Skin—Non-corrosive, Eye—Non-irritant; LC_{50} 96 hr (Fathead minnow): 45.2 mg/l; EC_{50} 48 hr (Daphnia magna): 21.1 mg/l.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to water. Disposal by on-site waste water treatment.

P 86-981

Manufacturer. Confidential.

Chemical. (G) Alkylphosphatoalkyl titanate.

Use/Production. (G) Ink additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 3 hrs/da.

Environmental Release/Disposal. No release.

P 86-882

Manufacturer. Confidential.
Chemical. (G) Prepolymer modified MDI.
Use/Production. (G) Insulation. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release. Disposal by navigable waterway.

P 86-883

Manufacturer. Confidential.
Chemical. (G) Magnesium salt of alkenyl succinic acid.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 26 workers.
Environmental Release/Disposal. Less than 1 kg/batch released to air and water. Disposal by navigable waterway.

P 86-884

Manufacturer. Confidential.
Chemical. (G) Alkyl ester capped urea compound.
Use/Production. (G) Sag control agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-885

Manufacturer. Hach Company.
Chemical. (S) 2,4'-dihydroxy-1,1'-azobisnaphthalene-3,4',6-trisulfonic acid.
Use/Production. (S) Industrial reagent for hardness analysis in water or brine. Prod. range: 100–300 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 7 workers, up to 8 hrs/da, up to 60 da/yr.
Environmental Release/Disposal. Release to water. Disposal by publicly owned treatment works (POTW) and waste treatment facility.

P 86-886

Importer. Confidential.
Chemical. (G) Hydrocarbon resin.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 2.0 g/kg; Irritation: Eye—Slight; Inhalation: 180 mg/m³; Skin sensitization: Non-sensitizer; Sensory irritation: Non-irritant; Human repeat insult patch test: Very low potential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-887

Manufacturer. Confidential.
Chemical. (G) Alkyl alcohol, alkoxylated.
Use/Production. (G) Textile processing aid. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-888

Importer. Confidential.
Chemical. (G) Substituted copper phthalocyanine, salts.
Use/Production. (S) Industrial colorant for paper. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; 96 hr (Brachydanio rerio): 31.6 mg/l and 4.2 mg/l; 48 hr (Brachydanio rerio): 56.2 mg/l; $IC_{...}$: >100 mg/l.
Exposure. Processing: dermal and ocular.
Environmental Release/Disposal. No release to air, water and land.

P 86-889

Importer. Confidential.
Chemical. (G) Substituted copper phthalocyanine, salts.
Use/Production. (S) Industrial colorant for paper. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 mg/kg; Irritation: Skin—Non-irritant, Eye—Corrosive; $LC_{...}$ 96 hr (Brachydanio rerio): 115 mg/l; $LC_{...}$ 96 hr (Brachydanio rerio): 102 mg/l; $LC_{...}$ 96 hr (Brachydanio rerio): 90 mg/l; $IC_{...}$: >100 mg/l.
Exposure. Processing: dermal and ocular.
Environmental Release/Disposal. No release to air, water and land.

P 86-890

Manufacturer. Confidential.
Chemical. (G) Starch, dihydrogen phosphate, disubstituted alkyl ether.
Use/Production. (G) Cellululose binder. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 86-891

Manufacturer. Confidential.
Chemical. (G) Alkoxylated aromatic, alkenoate ester.
Use/Production. (G) Radiation and chemical curing agent for inks and coatings. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-892

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86-893

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86-894

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86-895

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86-896

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–997

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–998

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–999

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1000

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1001

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1002

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1003

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total or 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1004

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1005

Importer. DSM Resins US Inc.
Chemical. (G) Dibasic-acid/glycol ester.
Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 75–100 workers, up to 15–30 min.
Environmental Release/Disposal. Release to environment could occur during production stage.

P 86–1006

Manufacturer. Confidential.
Chemical. (G) Alkylaluminum compound.
Use/Production. (G) Catalyst-contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Enviromental Release/Disposal. Confidential.

P 86–1007

Importer. Confidential.
Chemical. (G) Acrylated functional polysiloxane.
Use/Import. (S) Industrial paper coating for release liners. Import range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin-Non-irritant: Ames test: Non-mutagenic; Skin sensitization: Weak sensitizer.
Exposure. Processing: dermal, a total of 3 workers, up to 2.0 hr/da.
Environmental Release/Disposal. 1.0 kg released. Disposal by Resource Conservation and Recovery Act (RCRA) and approved landfill.

P 86–1008

Manufacturer. Confidential.
Chemical. (G) Terephthalic mixed glycol ester.
Use/Production. (G) Industrial intermediate glycolester for urethane foam insulating material. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 27 workers, up to 2 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 5 to 10 kg/batch released to water. Disposal by POTW, incineration, approved landfill and recycling with 10 to 30 kg/batch to control technology.

P 86–1009

Manufacturer. Confidential.
Chemical. (S) Polymer of isobutyl acrylate, 2-ethyl hexyl acrylate, methyl methacrylate, acrylic acid.
Use/Production. (G) An open use. Prod. range: 7,000–15,000 kg/yr.
Toxicity Data. COD: 1,880,000 ug/g[a]; BOD: 4,800 ug/g[a].
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoon and licensed landfill.

P 86–1010

Manufacturer. Lawter International Inc.
Chemical. (G) Polyester of aliphatic polyol, rosin, linseed oil and aromatic dibasic acid.
Use/Production. (S) Printing ink vehicle. Prod. range: 225,000–270,000 kg/yr.
Toxicity Data. No data submitted.

Environmental Release/Disposal. 0.1 kg/batch released to air and water with 0.5 to 2 kg/batch to solids. Disposal by POTW and approved landfill.

P 86-1011

Manufacturer. Confidential.

Chemical. (G) Substituted carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by navigable waterway.

P 86-1012

Manufacturer. Confidential.

Chemical. (S) Mixed $C_6/C_6/C_7$, dimer, and C_6/C_6 ethers; (gases, extractive, C_4-C_6, amylene rich, reaction products with olefins, and methanol, distillation residues).

Use/Production. (S) Industrial automotive fuel components. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release expected.

P 86-1013

Manufacturer. Confidential.

Chemical. (S) Mixed $C_6/C_6/C_7$, dimer, and C_6/C_6 methyl ethers; (gases, extractive, C_4-C_6, amylene rich, reaction products with olefins, and methanol, distillation residues).

Use/Production. (S) Industrial fuel oil components. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release expected.

Dated: May 9, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-11078 Filed 5-15-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59765; FRL-3017-5]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of fourteen such PMNs and provides a summary of each.

DATES: Close to Review Period:

Y 86-131 and 86-132—May 22, 1986.

Y 86-133—May 25, 1986.

Y 86-134, 86-135, 86-136, 86-137, and 86-138—May 26, 1986.

Y 86-139, 86-140, 86-141, 86-142 and 86-143—May 27, 1986.

Y 86-144—May 28, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-131

Manufacturer. Confidential.

Chemical. (G) Modified styrenated acrylic terpolymer.

Use/Production. (S) Commercial automotive after market refinish clear coat for pigment basecoat. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-132

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic acid, sulfonated carbomonocyclic ester, alkylene glycol cycloalkylene glycol styrenated acrylic terpolymer.

Use/Production. (S) Industrial sizes for textile. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-133

Manufacturer. General Electric Company.

Chemical. (S) A crosslinked poly (2-propenoic acid, butyl ester) core// crosslinked polystyrene.

Use/Production. (G) Impact modifier for thermoplastic. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 19 workers, up to 24 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. 0.016 to 78 kg/day released to air with 21 kg/day to water. Disposal by on-site waste treatment plant with 1.5 incinerated.

Y 86-134

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (S) Industrial and site-limited spray applied coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-135

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-136

Manufacturer. Confidential.

Chemical. (G) Polyurethane resin.

Use/Production. (S) Industrial and site-limited spray applied coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-137

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–138

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 86–139

Manufacturer. Confidential.
Chemical. (G) Polyester of alkane, dicarboxylic acid, alkanedioland benzene polycarboxylic acid derivative.
Use/Production. (G) Resin for industrial enamels. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 12 workers, up to 10 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. No release.

Y 86–140

Manufacturer. Confidential.
Chemical. (G) Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester.
Use/Production. (G) Polymer for applications for fabrics. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–141

Manufacturer. Confidential.
Chemical. (G) Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester.
Use/Production. (G) Polymer for applications to fabrics. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–142

Manufacturer. Confidential.
Chemical. (G) Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester.
Use/Production. (G) Polymer for applications to fabrics. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–143

Manufacturer. Confidential.
Chemical. (G) Polyester of carbomonocyclic acid, alkylene glycols, and sulfonated carbomonocyclic ester.
Use/Production. (G) Size for continuous filament polyester yarn. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–144

Manufacturer. Confidential.
Chemical. (G) Acrylic latex.
Use/Production. (S) Packaging ink vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: May 9, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–11077 Filed 5–15–86; 8:45 am]

BILLING CODE 6560–

FEDERAL EMERGENCY MANAGEMENT AGENCY

Anti-Arson Program; Solicitation for Award of Cooperative Agreement

May 12, 1986.

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Solicitation for Award of Cooperative Agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW–86–S–2355 on May 13, 1986 regarding the design and implementation of anti-arson strategy program for Community-Based Anti-Arson Programs. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

*To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.

*To expand the neighborhood involvement to a community-wide participation in fighting arson.

*To make information available to other neighborhoods and communities regarding successful programs.

*To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.

*To build a comprehensive community anti-arson program.

Applications for assistance must be requested in writing and addressed as follows:

Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., Room 728, Washington, DC 20472
ATTN: John Marshall, Contract Specialist
Request for Assistance No. EMW–86–S–2355

Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of thirty (30) assistance awards will be made. the anticipated funding levels of this program are between $5,000 to $25,000. based on the criteria shown in Attachment C of the solicitation package.

Kenneth J. Brzonkala,

Acting Director, Office of Acquisition Management.

[FR Doc. 86–11031 Filed 5–15–86; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 9, 1986.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of packages)

Food and Drug Administration

Subject: Establishment License Application and Supplemental License Application for the Manufacture of

Blood and Blood Components—Extension—(0910–0041)
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of packages)
Subject: Request for Claim Number Verification—HCFA 1600—Extension—(0938–0069)
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Title XIX Superior Utilization Review System Waiver Request—Information Collection Requirement—Sections 9320–9330 of State Medicaid Manual—HCFA R–95 Existing Collection—
Respondents: State or local governments
Subject: Medicaid Eligibility Quality Control Statistical Tables—HCFA 302–309—Revision—(0938–0310)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. ATTN: (name of OMB Desk Officer)

Dated: May 13, 1986.

K. Jacqueline Holz,
Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–11115 Filed 5–15–86; 8:45 am]
BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. June 5 and 6, 8:30 a.m. Conference Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

Type of meeting and contact person. Open public hearing, June 5, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 6 p.m.; open committee discussion, June 6, 8:30 a.m. to 6 p.m.; Michael S. Gluck, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7255.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify Michael S. Gluck (address above) before May 23, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss information contained in premarket approval applications for a transcutaneous carbon dioxide monitor and two high frequency ventilators. The committee will also discuss a proposed reclassification of pH-sensitive glass electrode cutaneous carbon dioxide ($PcCO_2$) monitors and a Proposed Evaluation Protocol for high frequency ventilators.

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. June 23, 2 p.m., June 24, 9 a.m., Bldg. 12, Conference Center, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open committee discussion, June 23, 2 p.m. to 5 p.m.; open committee discussion June 24, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 3 p.m.; Ronald F. Coene, National Center for Toxicological Research, Food and Drug Administration, 5600 Fishers Lane, Rm. 14–101, Rockville, MD 20857, 301–443–3155.

General function of the committee. The committee advises the Director, National Center for Toxicological Research (NCTR), in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The committee provides the extra-agency review needed to ensure that research programs at NCTR are scientifically sound and pertinent to its stated goals and objectives.

Agency—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before June 13, and submit a brief statement of the general nature of the evidence or argument they wish to present, the name and address of proposed participants, and an indication of the approximate time requested to make their comments.

Agenda—Open committee discussion. The committee will receive an update of NCTR's research initiatives in the areas of: (1) Biomarkers, modulators of toxicity and extrapolation/risk assessment; and (2) a review of NCTR's programs in reproductive and developmental toxicology. Additional items are being considered for review by the committee and a final agenda will be available on June 17, 1986, by contacting Ronald F. Coene (address above).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public

advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 12, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–11023 Filed 5–15–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86E–0147]

Determination of Regulatory Review Period for Purposes of Patent Extension; Toray Soft Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Toray Soft Contact Lens and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims this medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the Toray Soft Contact Lens, a daily or extended-wear soft contact lens for correction of visual acuity in aphakic and not-aphakic people with nondiseased eyes that are myopic. Following FDA's approval, Toray Industries filed a patent term restoration application with the U.S. Patent and Trademark Office, which then requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated April 11, 1986, FDA advised the Patent Office that the product had undergone a regulatory review period and that the product represented the first commercial marketing or use of the device. Shortly thereafter, the Patent Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Toray Soft Contact Lens is 2,355 days. Of this time, 1,867 days occurred during the testing phase of the regulatory review period, while 488 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* August 16, 1979. The product is a nonsignificant-risk device, for which FDA regulations do not require that FDA review an investigational device exemption (IDE). In addition, the clinical studies for the device were conducted in Japan. For these reasons, FDA lacks records to verify independently the date on which the applicant began clinical testing and accepts the applicant's claim that testing began on August 16, 1979.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* September 24, 1984. FDA has verified that the premarket approval application (No. P84–0044) was initially submitted on September 24, 1984.

3. *The date the application was approved:* January 24, 1986. FDA has verified that PMA P84–0044 was approved on January 24, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 146 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 15, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 12, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984). Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management

Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 9, 1986.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 86-11024 Filed 5-15-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that HCFA is revising one of its system of records, the Physician's Practice Costs and Incomes Survey, HHA/HCFA/ORD No. 09-70-0032, most recently published at 49 FR 14442; April 11, 1984. The notice is being revised to reflect a change in the Retention and Disposal section of the system. The revision contains no new routine uses.

EFFECTIVE DATE: May 16, 1986.

FOR FURTHER INFORMATION CONTACT: Sherry A. Terrell, Office of Research and Demonstrations, Health Care Financing Administration, Room 2-A-14, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone 301-597-1416.

SUPPLEMENTARY INFORMATION: HCFA, in cooperation with the Assistant Secretary of Planning and Evaluation, is planning to participate in a one time resurvey of respondents of the original 1984-1985 survey. Therefore, it is necessary to maintain the records from the survey longer than originally anticipated. Even if a resurvey were not contemplated, contractor data quality control activities have delayed implementation of the survey process and a new retention and disposal date of September 1986 is needed.

The applicable text of the system of records is revised to read as follows:

09-70-0032

SYSTEM NAME

Physicians' Practice Costs and Incomes Survey.

* * * * *

RETENTION AND DISPOSAL:

Hardcopy lists of names and case identification numbers will be retained in secure storage areas. Individual records delivered to HCFA on the final data tape will contain no individual names, and the case identifiers will be different from those used by the contractor. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in September 1986. Hardcopy lists of names and identifying numbers will be destroyed at this time.

* * * * *

Dated: May 9, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86-11047 Filed 5-15-86; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

The meeting of the National Cancer Advisory Board, National Cancer Institute, May 19-21, 1986, Building 31C, Conference Room 6, 6th floor, National Institutes of Health, which was published in the **Federal Register** on Wednesday, May 7 (51 FR 16898) is being amended to include a visit at 12:00 p.m., on May 19 to the supercomputer facility at the Frederick Cancer Research Facility.

Dated: May 13, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-11223 Filed 5-15-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Oglala Sioux Tribe, Pine Ridge Indian Reservation, Pine Ridge, South Dakota, Transfer of Federally-owned Lands

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

By notice dated February 3, 1986, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 93-599, dated January 2, 1975 (88 Stat. 1954), custody and accountability is transferred to the Bureau of Indian Affairs, effective 12:01 a.m., March 1, 1986, without reimbursement, to be held in trust by the United States for the benefit and use of the Oglala Sioux Tribe, Pine Ridge Indian Reservation, Pine Ridge, South Dakota, for the following described lands:

Sixth Principal Meridian

T. 36 N., R. 49 W.,

Sec. 35, S½SW¼SE¼SE¼

Containing 5.0 acres, more or less.

These lands are to be treated the same and to receive the same benefits and protection as other trust lands held for the benefit and use of the Oglala Sioux Tribe. Appropriate notations will be made in the land records of the Bureau of Indian Affairs.

Ross O Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86-11085 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Anchorage District Advisory Council Meeting

AGENCY: Bureau of Land Managment, Interior.

ACTION: Joint Meeting of Fairbanks and Anchorage District Advisory Councils.

SUMMARY: The District Advisory Councils for the Fairbanks and Anchorage Districts of the Bureau of Land Management will have a general meeting on Tuesday, June 17, 1986. The meeting will be held at the BLM/Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

The meeting will convene at 9:00 a.m. and conclude at 7:00 p.m. Public comments will be received by the Council from 11:30 a.m.-12:30 p.m. Oral comments may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

The major topic of discussion will center on the organizational structure of BLM/Alaska.

All Advisory Council meetings are open to the public. For additional information contact the Bureau of Land Management, Public Affairs Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, telephone (907) 267-1284.

Wayne A. Boden,

District Manager, Anchorage District Office.

[FR Doc. 86-11086 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-JA-M

[A-21760]

Realty Actions; Arizona; Notice of Reconveyance and Order Providing for Opening Lands

An exchange proposal made under the provisions of section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716, will reconvey the following described lands to the United States:

Gila and Salt River Meridian, Arizona

T. 17 N., R. 5 E.,

Sec. 33, a parcel of land situated in and being a part of the E½ described as follows:

Parcel A

Beginning at the Northeast corner of said Section 33, as established from the USBLM survey of 1956, run thence South 4°46' West (USBLM bearing—1956) along the East line of said Section 33, 700.28 feet; thence North 87°45'20" West, 196.61 feet; thence South 40°03'50" West, 84.39 feet; thence South 2°06'53" East, 119.25 feet; thence South 16° 49'04" East, 33.41 feet; thence South 46°41'39" East, 39.55 feet; thence South 55°22'04" east, 91.43 feet; thence South 51°44'22" East, 58.70 feet to a point on the East line of said Section 33; thence South 4°46' West along said East line of Section 33, 3703.40 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter (NE¼SE¼SE¼) of Section 33; thence North 89°55'31" West along the South line of said Northeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 33, 662.45 feet of the Southwest corner of said Northeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 33; thence North 4°21'47" East, 2004.54 feet to the Northwest corner of the East Half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼) of Section 33; thence South 89°58'57" West along the North line of the Southeast Quarter (SE¼) of Section 33, 557.40 feet to the Southeast corner of the certain property as described in Book 607, Pages 908, 909, and 910, Records of Yavapai County, Arizona; (deed bearing North 88°40' East); thence along the Easterly line of that certain property as described in said Book 607, Pages 908, 909, and 910 (making an adjustment of 0°19'00" Easterly to said deed bearing) the following described courses and distances, i.e.;

North 0°21' East (North 0°02' East deed), 1207.87 feet; North 65°16' East (North 64°57' East deed), 109.20 feet; North 63°43' East (North 63°24' East deed), 414.82 feet; North 5°32' West (North 5°51' West deed) 296.70 feet; North 61°29' East (North 61°10' East deed), 122.00 feet, to a point in Oak Creek; North 10°11' West (North 10°30' West deed), 183.60 feet; North 13°17' West (North 13°36' West deed), 221.97 feet; North 36°01' West (North 36°20' West deed), 171.35 feet; North 31°44' West (North 32°03' West deed), 131.32 feet; North 37°49' West (North 38°08' West deed), 90.34 feet; North 75°27' West (North 75°46' West deed), 420.53 feet; South 78°11' West (South 77°52' West deed), 308.39 feet; South 62°52' West (South 62°33' West deed), 107.03 feet; South 56°56' West (South 56°37' West deed), 356.66 feet; North 42°29' West (North 42°48' West deed), 383.50 feet; South 47°31' West (South 47°12' West deed), 58.20 feet, more or less to a point in Red Rock road; thence North 43°40'04" East, 40.45 feet to a point of curve on the center line of Red Rock Road, as described in Book 118, Pages 419, 420, and 421, said point of curve having a tangent bearing of North 50°47'30" East (North 50°57'30" East deed); thence along said curve in a Northeasterly direction, concave to the left, said curve having a central angle of 13°10'15", a radius of 727.01 feet and a length of 167.12 feet to a point on the North line of the Northeast Quarter (NE¼) of said Section 33; thence North 88°05' East (USBLM bearing—1956) along the North line of said Northeast Quarter of Section 33, 2468.40 feet to the Northeast corner of said Section 33 and the point of beginning.

Sec. 34, a parcel of land situated in and being a part of section 34 described as follows:

Parcel B

Beginning at the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of said Section 34, from which the Northwest corner of said Section 34 bears North 4°K46' East (USBLM bearing), 1355.31 feet; thence South 4° 46' West along the West line of said Section 34, 3373.92 feet to the Southwest corner of the North Half of the South Half of the Southwest Quarter (N½S½SW¼) of said Section 34; thence North 88°25'09" East along the South line of said North Half of the South Half of the Southwest Quarter, 2583.54 feet to the Southeast corner of said North Half of the South Half of the Southwest Quarter of said Section 34, said corner being identical with the Southwest corner of the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW¼SW¼SE¼) of said Section 34; thence North 89°33'04" East, 660.13 feet to the Southeast corner of said Northwest Quarter of the Southwest Quarter of the Southeast Quarter of Section 34; thence North 2° 42' 22" East along the East line of said Northwest Quarter of the Southwest Quarter of the Southeast Quarter of Section 34 and a prolongation thereof, 1015.11 feet to the Northeast corner of the South Half of the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (S½SW¼N W¼SE¼) of said Section 34; thence North 9°16'16" East, 47.13 feet to the Southeasterly corner of that certain property as described in Book 564, Page 157, Records of Yavapai County, Arizona; thence along the Southerly and Westerly lines of said property as described in Book 564, Page 157 (making an adjustment of 0°02'00" Easterly to said deed bearings) the following courses and distances, i.e.;

South 48°51' West (South 48°49' West deed), 52.5 feet; North 46° 44' West (North 46° 42' West deed) 327.9 feet; North 22° 20' West (North 22°18' West deed), 105.6 feet; North 54° 33' West (North 54°31' West deed), 197.5 feet; North 21°01' West (North 20°59' West deed), 235.0 feet; North 48°14' West (North 48°12' West deed), 152.8 feet; South 89°36' West (South 89°38' West deed), 148.7 feet; North 39°24' West (North 39°22' West deed), 304.9 feet to a point in Oak Creek; North 41°22' East (North 41°24' West deed), 123.3 feet up Oak Creek; North 11°45' West (North 11°43' West deed), 395.0 feet up Oak Creek to the Northwest corner of that certain property as described in said book 564, Page 157 said Northwest corner also being the Southwest corner of that certain property as described in Book 559, Page 780, Records of Yavapai County, Arizona; thence along the Westerly line of said property as described in Book 559, Page 780 (making a bearing adjustment of 0°02'00" Easterly to said deed bearings) the following courses and distances, i.e.;

North 11°45' West (North 11°43' West deed), 505.0 feet up Oak Creek; North 33°02' West (North 33°00' West deed), 397.2 feet up Oak Creek to a point on the North line of the Southeast Quarter of the Northwest Quarter (SE¼NW¼) of said Section 34; thence South 88°39'22" West along the South line of the North Half of the Northwest Quarter (N½ NW¼) of said Section 34, 1680.40 feet to the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of said Section 34 and the point of beginning.

Excepting therefrom the following described land:

The North 635.25 feet of the West 1200.00 feet of the Southwest Quarter of the Northwest Quarter (SW¼NW¼), the side lines being parallel with the North and West lines of said SW¼NW¼, located in Section 34, Township Seventeen (17) North, Range Five (5) East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

The areas described contain 256.17 acres, more or less, located in Lower Oak Creek State Park within the boundaries of the Prescott National Forest.

Upon acceptance of title, the land will be transferred to the Arizona State Parks Board under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. 869.

Inquiries concerning the land should be addressed to Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-11022 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-32-M

Realty Action; Idaho Falls District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in Bear Lake and Caribou County, Idaho.

SUMMARY: The following described lands have been examined and, through the public-supported land use planning process, have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less

than fair market value as determined by an appraisal (available after June 1, 1986):

Parcel	Legal description	Sale type
I-19700	T. 14 S., R. 46 E., B.M., Sec. 27: SE¼NE¼ (40 acres), Bear Lake County.	Competitive.
I-22292	T. 11 S., R. 43 E., B.M., Sec. 33: SW¼NW¼ (40 acres), Bear Lake County.	Direct.
I-22293	T. 12 S., R. 43 E., B.M., Sec. 20: SE¼SE¼ (40 acres), Bear Lake County.	Competitive.
I-22296	T. 9 S., R. 42 E., B.M., Sec. 31: N½NE¼ (80 acres), Caribou County.	Competitive.

When patented, the lands will be subject to the following reservations:

Parcel and Reservations

I-19700—Ditches and Canals, all minerals.
I-22292—Ditches and Canals, all minerals, Grazing Lease #3521 expiring 2/28/1990, held by Don F. Bartschi (if competitive).
I-22293—Ditches and Canals, all minerals, Grazing Lease #3551 expiring 2/28/1990, held by Wilmer W. Brown, Road Right-of Way I-20533, held by Bear Lake County.
I-22296—Ditches and Canals, leasable minerals, Grazing Lease #3620 expiring 2/28/1992, held by Rich Livestock Company. Powerline Right-of-Way I-05212, held by Utah Power & Light.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The previously described lands are hereby segregated from appropriation under the public land laws, including the mining laws, for a period of 270 days or until patent is issued, whichever comes first.

Sales Procedures

Sale parcels I-19700, I-22293, and I-22296 will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of the sale in the Pocatello Resource Area Office located in the Federal Building, Room 172, 250 South 4th Avenue, Pocatello, Idaho 83201. The bid must be sealed in an envelope with the envelope specifying the serial number and the sale date in the lower left hand corner (i.e. "Sealed Bid—Public Land Sale I-19700—July 29, 1986"): If two or more valid sealed bids are received for the same amount and are the high bid, a supplement bidding of the high bidders will be held.

Sale parcel I-22292 is being offered directly to Don F. Bartschi because of his past use of the land and owning the land surrounding the parcel. Should Mr. Bartschi fail to submit a bid by the date of the sale, the parcel will be sold by competitive procedures as described in the previous paragraph.

Bids must be submitted for at least fair market value and will constitute an application to purchase that portion of the mineral estate of no known value for I-22296. A thirty percent (30%) deposit must accompany each bid and for parcel I-22296 an additional $50 non-refundable mineral conveyance processing fee is required. The filing fee and deposit must be paid by certified check, money order, bank draft, or cashier's check. Bids will be rejected if accompanied by a personal check.

DATE AND ADDRESS: The sale offering will be held on Tuesday, July 29, 1986, at 1 p.m. in the basement meeting room, B-43, in the Federal Building, 250 South 4th Avenue, Pocatello, Idaho. Unsold parcels or direct sale parcels where no bids are received will be offered every Tuesday at 1:00 p.m. in Room 172 at the above address through August 26, 1986, on which date this sale offering will be suspended.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Debbie Kovar or Dennis Hill at (208) 236-6860.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 8, 1986.

O'dell A. Frandsen,
District Manager.

[FR Doc. 86-11087 Filed 5-15-86; 8:45am]
BILLING CODE 4310-GG-M

[N-43253]

Realty Action; Lease or Sale of Public Lands for Recreation and Public Purposes, Pershing County, NV

In response to an application from the State of Nevada for a medium security prison site, the following described land has been identified as suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E., sec. 10, All.

By motion of the Bureau, the following additional lands have been identified as alternate sites which are suitable for the use proposed and will also be classified for lease or sale under the Recreation and Public Purposes Act:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 4, lots 2, 3, NE¼SW¼, S½S½;
Sec. 8, NE¼NE¼, S½NE¼, E½SE¼SW¼, SE¼;
Sec. 10, All.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest.

The lands described in this notice will not be offered for lease or sale until the classification becomes effective, all required environmental, archaeological, and mineral clearances are completed and all application requirements are met.

A patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law.

And will be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register** the above described public lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, but not the Recreation and Public Purposes Act.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 705 East 4th Street, Winnemucca, NV 89445. Any adverse comments will be reviewed by the State

Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Upon the effective date of classification, the lands described above in sections 4, 8, and 18 will be open to the filing of an application under the Recreation and Public Purposes Act by the State of Nevada for the specified use. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the Authorized Officer.

Dated: May 9, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-11099 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-HC-M

Emergency Seasonal Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency seasonal closure of public lands in eastern Kern County, California.

SUMMARY: Certain Public Lands in eastern Kern County, California, generally described as lying east of State Highway 14 in the Red Rock Canyon area, are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking, sightseeing, grazing, and mining operations from May 7, 1986 through June 30, 1986. Access may be allowed for management or scientific study purposes and must be approved in writing by the Authorized Officer. The lands affected by this notice are being closed under the authority of 43 CFR 8364.1.

The lands affected by this emergency closure are specifically:

Mt. Diablo Base and Meridian T. 29 S., R. 37 E.

Secs: 23 (portion of SE¼, S and E of existing route)
24 (S½);
25 (N½ and SW¼);
26 (E½).

Totaling approximately 1,200 acres.

Any person who violates this closure order may be subject to a fine of $1,000 or imprisonment not exceeding 12 months, or both, under authority of 43 CFR 8360.0-7.

Public Lands temporarily closed to public use under this order will be posted with signs at points of public entry. Maps showing the exact location of the closure are available from the Ridgecrest Resource Area Office, 112 E. Dolphin St., Ridgecrest CA 93555. Closure order notices and or maps will be posted near or within the closure area as well as at local U.S. Post Offices, the Red Rock Canyon State Park, and the Ridgecrest Resource Area Office.

EFFECTIVE DATES: May 7, 1986, through June 30, 1986.

SUPPLEMENTARY INFORMATION: The purpose of this emergency seasonal closure is to provide protection and solitude for nesting birds of prey, primarily, the golden eagle (*Aquila chrysaetos*), and prairie falcon (*Falco mexicanus*), and the great horned owl (*Bubo virginianus*). Further, this closure is ordered to comply with 16 U.S.C., Subchapter II, Part 668, Bald Eagle Protection Act, as amended, which extends protection to golden eagles. This closure order will prevent violations of "take", described in Part 668c of the Act as including "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

The lands affected by this closure notice are cooperatively managed by the Bureau of Land Management and the California Department of Parks and Recreation. Enforcement will be accomplished by both agencies.

FOR FURTHER INFORMATION CONTACT: Patricia E. McLean, Area Manager, Ridgecrest Resource Area, 112 E. Dolphin, Ridgecrest, California 93555, (619) 375-7125.

Dated: May 9, 1986.

H.W. Blackan,

District Manager.

[FR Doc. 86-11098 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-40-M

[I-12084]

Exchange of Public and State Lands in Owyhee County, ID

Correction

In FR Doc. 86-9809 beginning on page 16230 in the issue of Thursday, May 1, 1986, make the following corrections on page 16230.

1. In the second column, in the Action section, third line, "Country" should read "County".

2. In the same column, under T.6 S., R.3 W., in Sec. 34, the second line should read "SW¼SE¼".

3. In the same column, under T.8 S., R.4 W., in Sec. 4, the entry should read "S½SW¼".

4. In the same column, under T.9 S., R.3 W., in Sec. 11, the entry should read "N½SW¼, SW¼SE¼".

5. On the same page, third column, under T.14 S., R. 5 W., in Sec. 36, "NE¼Ne¼" should read "NE¼NE¼".

BILLING CODE 1505-01-M

National Park Service

Management Plan—Upper Delaware Scenic and Recreational River; NY and PA Hearings

AGENCY: National Park Service, Interior.

ACTION: Notice of Public Hearings and Opportunity to Comment on Draft River Management Plan (incorporating Revised Guidelines for Land and Water Use Controls and the Land Protection Plan) and draft environmental impact statement.

SUMMARY: This notice sets forth the schedule of public hearings and opportunity for written comment on the draft River Management Plan, including revised Guidelines for Land and Water Use Controls, and draft Environmental Impact Statement. Public hearings are required pursuant to the Upper Delaware Segment Special Provisions (section 704(b) to (j) of Pub. L. 95-625). The draft River Management Plan also incorporates a land protection plan for the area, in conformance with National Park Service rules (48 FR 21121, May 11, 1983).

DATES AND ADDRESSES:

June 4, 1986; 7:30 PM, Damascus Central School, Damascus, PA

June 5, 1986; 7:30 PM, Delaware Valley Central School, Rt. 97, Callicoon, NY

June 6, 1986; 7:30 PM, Shohola Firehouse, Shohola, PA

June 7, 1986; 1:00 PM; Port Jervis Senior High School, Huguenot Road, Port Jervis, NY

Written comments should be submitted on the draft Plan to either James W. Coleman, Jr., Regional Director, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106 (215/597-7013) or Craig Stewart, Chairman, Conference of Upper Delaware Townships, P.O. Box 41, Fosterdale, New York 12735 (914/932-8707). Comments on the draft Environmental Impact Statement should be submitted to Mr. James W. Coleman, Jr., at the above address. Comments must be received by June 20, 1986.

FOR FURTHER INFORMATION CONTACT: J. Glenn Eugster, Chief, Park and Resource Planning, National Park Service, Mid-Atlantic Regional Office, 143 South

Third Street, Philadelphia, Pennsylvania 19106 (215/597-7386).

SUPPLEMENTARY INFORMATION: The draft River Management Plan and the revised Guidelines for Land and Water Use Controls have been prepared pursuant to the National Wild and Scenic Rivers Act of 1968 (Pub. L. 90-542, as amended) and the 1978 special provisions for management of the Upper Delaware defined in section 704 of Pub. L. 95-625. The draft plan and the revised Guidelines were prepared by the Conference of Upper Delaware Townships and the National Park Service, with the advice and participation of the Commonwealth of Pennsylvania, the State of New York, the Delaware Rive Basin Commission, the Upper Delaware Citizens' Advisory Council, and many other interested parties. Copies of the draft plan and the revised Guidelines are available on request.

The draft River Management Plan contains detailed maps showing the boundaries of the Upper Delaware Scenic and Recreational River, a program for the management of existing and future land and water uses, an assessment of the impacts of the plan on the revenues and cost of local government, and a program providing for coordinated implementation and administration of the plan. The draft document also includes proposed revisions to the existing Land and Water Use Guidelines for the Upper Delaware (published in 46 FR 45433, September 11, 1981). Additionally, the draft plan incorporates, through its "land management program" a land protection plan for the area, as required by National Park Service rules (48 FR 21121, May 11, 1983).

A draft Environmental Impact Statement (EIS) has also been prepared by the National Park Service for this draft plan. The EIS describes in detail the environment of the Upper Delaware and identifies the environmental impacts of the proposed plan and alternatives. The final River Management Plan and final EIS will be issued simultaneously.

The draft plan will be revised based upon comments received during public review. Upon completion of the plan and EIS both will then be submitted to the Secretary of the Interior for consideration and decision, following which the plan will be transmitted to the Governors of New York and Pennsylvania, and to the House Interior and Insular Affairs Committee, and the Senate Committee on Energy and Natural Resources of the Congress. The plan will become effective ninety days after its transmittal to the Congress.

Dated: May 9, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 86-11056 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: Water Users Census

Abstract: The annual crop census is taken on all operating Federal Reclamation projects primarily for use as a tool in administering, managing, and evaluating the Federal Reclamation program. Respondents are water users on Reclamation project lands.

Bureau Form Number: 7-332

Frequency: Annual

Description of Respondents: Water Users on Federal Reclamation Projects

Annual Responses: 25,000

Annual Burden Hours: 8,333

Bureau clearance officer: Alma Gonzales, (202) 343-4249.

Dated: April 17, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86-11059 Filed 5-15-86; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-52 (Sub-45)]

The Atchison, Topeka & Santa Fe Railway Co.—Abandonment—In Pawnee and Osage Counties, OK; Notice of Findings

The Commission has issued a certificate and decision authorizing the Atchison, Topeka and Santa Fe Railway Company to abandon its 21.61-mile rail line between Camp (milepost 59.36) and Fairfax (milepost 37.55), in Pawnee and Osage Counties, OK. The abandonment certificate will become effective 30 days after this publication unless within 15 days after publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86-11058 Filed 5-15-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-157)B]

Seaboard System Railroad, Inc.—Abandonment—In Polk County, FL.; Notice of Findings; Decision

Notice of Findings in this proceeding was correctly published at 51 FR 7502, March 4, 1986. A subsequent publication at 51 FR 11489, April 3, 1986, was in error and is to be disregarded.

James H. Bayne,

Secretary.

[FR Doc. 86-11057 Filed 5-15-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; NAHB Research Foundation; Smart House Project

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), the NAHB Research Foundation, Inc. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

American Gas Association
AMP, Incorporated
Apple Computer, Inc.
AT&T Technologies, Inc.
Bell Communications Research, Inc.
Bell Northern Research Ltd.
BrinTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Copper Development Association
Dukane Corporation
E.I. duPont de Nemours & Company (Inc.)
Electric Power Research Institute
Emerson Electric Co.
Federal Pacific Electric
Gas Research Institute
General Electric Company
Honeywell Inc.
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Sola Basic Industries, Inc.
Southern California Edison Company
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

A prior notification identifying the parties to the venture and describing in general terms the areas of planned activity of the venture, is published at vol. 50, no. 197, p. 41428, October 10, 1985.

Joseph H. Widmar,
Director of Operations Antitrust Division.

[FR Doc. 86–11030 Filed 5–15–86; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment; American Savings Bank, FSB, et al. (Mortgage Conference of New York)

Notice is hereby given that American Savings Bank, FSB, Apple Bank for Savings, Bankers Trust Company, The Bowery Savings Bank, The Canada Life Assurance Company, Chase Manhattan Bank, N.A., Chemical Bank, Citibank, N.A., Crossland Savings, FSB, Dime Savings Bank of New York, Dollar Dry Dock Savings Bank of New York, Eastern Savings Bank, Emigrant Savings Bank, Irving Trust Company, Manhattan Savings Bank, Manufacturers Hanover Trust Company, Morgan Guaranty Trust Company of New York, New York Life Insurance Company, The Prudential Insurance Company of America, Savings Banks Trust Company, The Seamen's Bank for Savings, PSB, and Ticor Title Guarantee Company ("defendants") have filed with the United States District Court for the Southern District of New York a joint motion to terminate the final judgment in *United States of America* v. *The Mortgage Conference of New York, et al.*, Civil No. 37–247; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on August 6, 1946) alleged a combination and conspiracy in restraint of trade and commerce in setting mortgage interest rates, mortgage payment schedules, and appraisal procedures in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Specifically, the complaint described how by creating a trade association, The Mortgage Conference of New York ("The Mortgage Conference"), the defendants jointly set rental policies for mortgaged properties, exchanged weekly reports of new mortgage commitments, withheld financing for new construction that might lessen income from other mortgaged properties, and engaged in red-lining—jointly refusing on racial or ethnic grounds to grant mortgages in certain neighborhoods, regardless of the qualifications of the applicant or the property in question. The case was settled by entry of a consent decree. The judgment (entered on June 16, 1948) required the dissolution of the Mortgage Conference and enjoined the other defendants from jointly setting rates or terms of mortgages, exchanging information about pending applications, joint red-lining or otherwise refraining from competing in greater New York City, including the counties of New York, Bronx, Kings, Queens, Richmond, Westchester, and Nassau.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, the defendant's joint motion, the stipulation containing the government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202/633–2481), and at the Office of the Clerk

BEST COPY AVAILABLE

of the United States District Court for the Southern District of New York, Foley Square, New York, 10007. Copies of any of the materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within thirty (30) days, and will be filed with the court. Comments should be addressed to Barry Grossman, Chief, Communications and Finance Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202/724-6693).

Dated: May 9, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-11029 Filed 5-15-86; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment; Matthews International Corp.

Notice is hereby given that Matthews International Corporation ("Matthews"), formerly Jas. H. Matthews & Company, has filed with the United States District Court for the Western District of Pennsylvania a petition to terminate the Final Judgment in *United States v. Jas. H. Matthews & Co.*, Civil Action No. 16818; and the Department of Justice ("Department") filed with the Court a memorandum requesting publication of notice of Matthews' petition for termination of the Final Judgment, to provide all interested persons an opportunity to submit comments concerning the petition.

The complaint in this case (filed on March 21, 1958) alleged a conspiracy to restrain trade, a conspiracy to monopolize, an attempt to monopolize, and a monopolization of the manufacturer, sale and distribution of bronze grave markers. The Final Judgment (entered on November 5, 1958) enjoins Matthews from engaging in the conduct that prompted the filing of the Complaint, including, among other things, (1) selling markers to any cemetary which reserves to itself the exclusive right to sell markers within its confines, which refuses to install reasonably appropriate markers which are sold by other retail dealers or which has any rule or established course of conduct which makes it unreasonably difficult or more costly to install within its confines markers sold by others, (2) entering into a requirements contract for markers, (3) entering into an exclusive contract to supply markers, (4) urging a person to refuse the sale or installation of markers not made by Matthews, and (5) making suggestions to any cemetery to refuse the installation or sales of markers in that cemetery by any person. The Final Judgment also requires Matthews to sell its markers on a non-discriminatory basis to any person who makes a written request and who has been regularly engaged in the retail sale of markers or monuments for the last six months.

Copies of the Complaint and Final Judgment (as modified), Matthews' petition, the Department's memorandum and all further papers filed with the Court in connection with this petition will be available for inspection at Room 7233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Western District of Pennsylvania, 829 United States Post Office & Courthouse, Seventh Avenue & Grant Street, Pittsburgh, Pennsylvania 15219. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgment to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to John A. Weedon, Chief, Great Lakes Office, Antitrust Division, Department of Justice, 905 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone 216-522-4070).

Dated: May 9, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-11030 Filed 5-15-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-55]

Michael B. McCormick, M.D.; Notice of Hearing

Notice is hereby given that on November 13, 1985, the Drug Enforcement Administration, Department of Justice, issued to Michael B. McCormick, M.D., Camarillo, California, an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on April 23, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 1:00 p.m. on Wednesday, June 4, 1986, in the Los Angeles County Courthouse, 111 North Hill Street, Los Angeles, California.

Dated: May 12, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-11060 Filed 5-15-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-1]

Donald Patsy Rocco, D.D.S.; Notice of Hearing

Notice is hereby given that on November 20, 1985, the Drug Enforcement Administration, Department of justice, issued to Donald Patsy Rocco, D.D.S., Salinas, California, an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for a DEA Certificate of Registration, executed on September 5, 1985, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Tuesday, June 3, 1986, in the Los Angeles County Courthouse, 111 North Hill Street, Los Angeles, California.

Dated: May 12, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-11062 Filed 5-15-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-34]

Jay Blaine Sorenson, D.D.S.; Notice of Hearing

Notice is hereby given that on March 24, 1986, the Drug Enforcement Administration, Department of justice, issued to Jay Blaine Sorenson, D.D.S., Salt Lake City, Utah and Newport Beach, California, an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his

DEA Certificate of Registration, AS8249776, and deny his undated application, received on December 20, 1985, at the DEA Los Angeles Field Division, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 p.m. on Thursday, June 5, 1986, in the Los Angeles County Courthouse, 111 North Hill Street, Los Angeles, California.

Dated: May 12, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-11061 Filed 5-15-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
- CT86-1 (Jan. 3, 1986) ..... pp. 64-65, p. 68.

District of Columbia:
- DC86-1 (Jan. 3, 1986) ..... pp. 80, pp. 83-84, p. 86.

Maryland:
- MD86-1 (Jan. 3, 1986) ..... p. 384-386.
- MD86-2 (Jan. 3, 1986) ..... pp. 391.

Pennsylvania:
- PA86-1 (Jan. 3, 1986) ..... pp. 792-793, p. 795.
- PA86-2 (Jan. 3, 1986) ..... pp. 804-806, p. 809.
- PA86-4 (Jan. 3, 1986) ..... p. 822.
- PA86-5 (Jan. 3, 1986) ..... pp. 829-831.
- PA86-22 (Jan. 3, 1986) ..... pp. 937, 940.

West Virginia:
- WV86-2 (Jan. 3, 1986)..... pp. 1116, 1119, pp. 1125, 1137.
- WV86-3 (Jan. 3, 1986)..... p. 1141.

Volume II

Iowa:
- IA86-5 (Jan. 3, 1986) ..... pp. 44-45.

Indiana:
- IN86-6 (Jan. 3, 1986)..... pp. 284.

Louisiana:
- LA86-5 (Jan. 3, 1986) ..... pp. 362-363, p. 366, pp. 371-372, p. 376.

Missouri:
- MO86-1 (Jan. 3, 1986)..... p. 540.
- MO86-2 (Jan. 3, 1986)..... p. 559.
- MO86-9 (Jan. 3, 1986)..... p. 596.

Michigan:
- MI86-4 (Jan. 3, 1986)..... p. 423, pp. 425-428.
- MI86-7 (Jan. 3, 1986)..... pp. 445-461.

New Mexico:
- NM86-1 (Jan. 3, 1986)..... p. 639.

Texas:
- TX86-14 (Jan. 3, 1986) ..... p. 881.

Wisconsin:
- WI86-1 (Jan. 3, 1986) ..... p. 946.
- WI86-3 (Jan. 3, 1986) ..... p. 953.
- WI86-4 (Jan. 3, 1986) ..... p. 956.
- WI86-5 (Jan. 3, 1986) ..... p. 959.
- WI86-6 (Jan. 3, 1986) ..... p. 963.
- WI86-7 (Jan. 3, 1986) ..... p. 966.
- WI86-8 (Jan. 3, 1986) ..... pp. 969-970, p. 973.
- WI86-9 (Jan. 3, 1986) ..... p. 986.
- WI86-10 (Jan. 3, 1986) ..... pp. 989-990, p. 992.
- WI86-11 (Jan. 3, 1986) ..... p. 999.
- WI86-12 (Jan. 3, 1986) ..... p. 1002.
- WI86-13 (Jan. 3, 1986) ..... p. 1005.
- WI86-14 (Jan. 3, 1986) ..... pp. 1006-1009.
- WI86-16 (Jan. 3, 1986) ..... p. 1014.

Volume III

Hawaii:
- HI86-1 (Jan. 3, 1986) ..... p. 120, pp. 122-123.

Montana:
- MT86-1 (Jan. 3, 1986)..... pp. 155-156. p.158.

Washington:
- WA86-1 (Jan. 3, 1986) ..... p. 298.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition and (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 9th day of May 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-10669 Filed 5-15-86; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

State Employment Security Agency Administrative Financing System; DOL Planned Changes

AGENCY: Employment and Training Administration, Labor.

ACTION: Planned actions in response to public comments.

SUMMARY: This notice announces changes which the Department of Labor plans to make to the administrative financing procedures for the State Employment Security Agency (SESA) system, pursuant to comments recieved in response to notices published in the Federal Register on December 20, 1985, (50 FR 51955) and January 3, 1986, (51 FR 264) and at four public meetings in January 1986.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213 (202/376-6636).

SUPPLEMENTARY INFORMATION: Public meetings were held by the Department of Labor in Dallas, Texas; Chicago, Illinois; Washington, DC; and San Francisco, California, in January 1986. Forty-nine of the 198 attendees provided oral comments. Written comments were received from eighty-four respondents. Comments were received from a wide variety of parties interested in administrative financing of the State Employment Security Agency system, including State agencies, State governors, business and labor groups, and other parties. Respondents identified problems in the administrative financing process and made recommendations for short-term and long-term solutions. The Department of Labor reviewed these comments and proposals and in response is taking the following actions: (1) Announcing its decisions on the following four *short-term* revisions which reflect a broad consensus of the comments received, and (2) continuing the public discussion through the SESA Administrative Finance Roundtable on proposed *long-term* revisions to the administrative financing system with the objective of developing a proposal that will receive broad support.

Department of Labor Decisions on Short-Term Changes to the State Employment Security Agency Administrative Financing System

Decision 1: Replace quarterly recapture of unused base Unemployment Insurance (UI) grants-to-states funds with annual recapture only. The appropriation language for the administration of State base Unemployment Insurance operations states in part that contingency funds shall be available for increased costs of administration generally over those upon which the State's basic allocation was based and which cannot be provided for by normal budgetary adjustments. Heretofore, it has been the Department's practice to recapture unused basic UI administrative allocations three times during the year—at the end of the second, third, and fourth quarters—before honoring any requests for contingency funds. This has frequently resulted in States losing funds in one quarter which were needed in subsequent quarters.

The Department will discontinue the second and third quarter recapture processes, and complete the normal budgetary adjustment once annually at the end of the fiscal year. Thirty-four commenters proposed this change, to increase State flexibility and ability to respond more effectively to changes in current year's needs. This change will have no impact on the contingency process used to finance ". . . increased costs of administration resulting from changes in a State law or increases in the number of unemployment insurance claims filed and claim paid or increased salary costs resulting from changes in State salary compensation plans . . ." (Department of Labor Appropriation Act, 1986, Pub. L. 99-178, quoted in part).

Decision 2: Substantially reduce fiscal reporting as rapidly as possible, pursuant ot Decision 1 and to other changes such as Decision 4. The Department will forward to the Office of Management and Budget for expedited approval revisions to a number of existing reporting and planning forms. These revisions will reduce State reporting burdens and simplify the planning and reporting processes. They will also demonstrate the Department's intent to confine detailed review of State administrative resources to State self-monitoring, to control and monitor administrative expenditures and obligations on a bottom line basis and to focus its attention on performance outcomes. Forty-five commenters suggested giving States greater flexibility and bottom-line authority over expenditures. (Earlier, in response to State concerns about overlap and duplication between the quality appraisal and quality control systems, instructions eliminating overlap were issued.) At the present time, the current method used to allocate administrative resources to States will not change, although Decision 2 will reduce Federal monitoring and reporting requirements on the use of these resources.

Decision 3: Eliminate detailed Federal monitoring of State financial administration of the UI program. Eighteen commenters cited this as a problem; ten suggested reduced monitoring as a solution. Routine Federal fiscal monitoring will be limited to total dollar utilization for the UI program. Consistent with the other changes being made, the current quarterly monitoring of spending by line item and by salary and nonpersonal service cost categories will be eliminated. Current requirements for corrective action planning and follow-up monitoring for States failing to meet the Secretary's standards for performance (20 CFR, Ch. V, Part 640 and 650, Employment and Training Administration Handbook 365, and Unemployment Insurance Program Letter 9-86) will remain unchanged. As a

result, States will have increased flexibility to move resources among program categories, among quarters within a fiscal year, and among cost categories. States will not be held accountable by specific cost category, but rather on a bottom line basis, and State managers will gain the flexibility to use UI administrative resources based on State assessment of needs. The Department will focus its monitoring on State performance outcomes rather than on expenditure by cost category. Requirements for grant officer's prior approval of expenditures contained in Federal regulations (41 CFR, 29–70.103) will be delegated to the States. States will continue to be required to provide additional information to the Department on any requests for supplemental funding to justify the need for increased funds for changes in State law or for increased salary costs; the Department has streamlined its procedures for handling such requests.

Decision 4: Consolidate contingency categories and contingency overhead funding. Many commenters criticized the present contingency system as too complex, and urged simplification. The Department will consolidate contingency financing and reporting categories consistent with reduced overall financial planning and reporting requirements, as outlined in Decision 2. Contingency support resources for nonpersonal services, UI support, and administrative staff and technical resources will be provided as a flat percentage add-on to direct workload entitlement. This change will simplify and reduce State reporting, increase State flexibility in the use of resources and reduce Federal workload. This change will result in more stable and predictable resource expectations for States and simplify State planning for anticipated workload increases.

The Department plans to implement these decisions as soon as possible. Decision 1 is expected to be implemented in field office instructions within the next few weeks. Revised planning and reporting instructions will be issued as soon as possible to implement Decision 2. Field office guidance to implement Decisions 3 and 4 will be issued as soon as possible, with the objective of implementing Decision 3 upon issuance and Decision 4 effective October 1, 1987.

The Department is continuing the public discussion on possible long-term revisions to the administrative financing system as a result of commenters' suggestions on changes to the current allocation system and to the statutory framework which defines and authorizes the current administrative financing system. Any proposals for such long-term changes will be published separately for notice and comment in the **Federal Register** before the Department makes any decisions.

Signed at Washington, DC, on May 12, 1986.

Roberts T. Jones,

Deputy Assistant Secretary of Labor.

[FR Doc. 86–11169 Filed 5–15–86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meetings:

Name: Advisory Committee for Engineering.

Date and Time: June 5–6, 1986; 9:00 a.m.–5:00 p.m., June 5; 9:00 a.m.–3:00 p.m., June 6.

Place: National Science Foundation, 1800 G Street NW., Room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9571.

Summary Minutes: Mrs. Mary Poats at the above address.

Purpose of Advisory Committee Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Summarized Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of the Engineering Research Centers Program; discussion of Engineering Directorate budget situation as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

May 13, 1986.

[FR Doc. 86–11122 Filed 5–15–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and Time: June 5, 6, 1986—8:30 a.m. to 5:00 p.m. each day.

Place: Room 351, National Academy of Sciences, 21st and Pennsylvania Avenue NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, DC—Telephone: 202/357–9639.

Summary Minutes: May be obtained from the contact person.

Purpose of Committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda

The Committee will hold morning and afternoon Sessions on both days. Following opening remarks and general introductions—the Committee will hear several presentations and status reports of current and topical interest from various officials and representatives from NSF, other departments and agencies, and other organizations active in ocean science matters. The Committee will also hear reports from subcommittees ranging from Manpower to Oversight Review and determine a proper course of action based on the information and circumstances presented. The committee will also discuss scheduled revisions of the Long-Range Plan for Ocean Sciences and formulate guidance and direction for the continuing planning process. The Committee will also conduct necessary administrative functions in accordance with established custom and practice with respect to: approval of the minutes of the previous meeting; determination of time and place of the next meeting; as well as any other appropriate business.

M. Rebecca Winkler,

Committee Management Officer.

May 13, 1986.

[FR Doc. 86–11123 Filed 5–15–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on June 3, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, June 3, 1986—8:30 a.m. until 12:00 noon.*

The Subcommittee will review recent evens at operating plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 12, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–11119 Filed 5–15–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Severe (Class 9) Accidents; Meeting

The ACRS Subcommittee on Severe (Class 9) Accidents will hold a meeting on June 3, 1986, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, June 3, 1986—1:00 p.m. until 5:00 p.m.*

The Subcommittee will review final draft of NUREG–0956, "Reassessment of the Technical Bases for Estimating Source Terms.".

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to the advised of any changes in schedule, etc., which may have occurred.

Dated: May 13, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–11118 Filed 5–15–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on June 4, 1986, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, June 4, 1986—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue its discussion on the proposed NRC Safety Research Program and Budget for FY 1988 and 1989. It will discuss also a Draft ACRS report to the Commission on this matter.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 12, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–11120 Filed 5–15–86; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

Correction

In FR Doc. 86–10031 beginning on page 16919 in the issue of Wednesday, May 7, 1986, make the following correction:

On page 16940, in the third column, under the heading "Virginia Electric and Power Company . . .", in the twenty-second line, "April 24" should read "April 22".

BILLING CODE 1505–01–M

DEPARTMENT OF STATE

[CM-6/970]

Shipping Coordinating Committee; Notice of Two Meetings

The Shipping Coordinating Committee (SHC) will conduct an open meeting on June 12, 1986 at 9:30 AM, in Room 6319, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC

The purpose of the meeting is to finalize preparations for the 56th Session of the Council of the International Maritime Organization (IMO) which is scheduled for June 16–20 in London. In particular, the SHC will discuss the development of the U.S. positions dealing with, inter alia, the following topics:

—Reports of the various committees
—Financial and personnel matters
—Status of conventions

Members of the public may attend up to the seating capacity of the room.

For further information, please contact Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CPI), 2100 Second Street SW., Washington, DC. 20593, Tel: (202) 426–2280.

Subcommittee on Safety of Life at Sea Working Group on Fire Protection

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on June 18, 1986 at 9:30 am, in Room 1103, U.S. Coast Guard Headquarters, 2100 Second Street SW. Washigton, DC

The purpose of this meeting will be to discuss results of the 31st Session and plans for the 32nd Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection, February 24–28, 1986, including: location and separation of spaces, location of fire control plans, flame spread test for interior finish and deck coverings, portable and fixed halon units, bow and stern loading, helicopter facilities, fire standards for bedding, upholstered furniture, guidelines for cargo tank venting, oxygen liberation, materials other than steel for pipes, floating reception facilities, and other miscellaneous subjects.

Members of the public may attend up to the seating capacity of the room.

For further information please contact Mr. Donald J. Kerlin, U.S. Coast Guard (G–MTH–4/13), 2100 Second Street SW., Washington, DC 20593, Tel: (202) 426–2107.

Dated: May 12, 1986.

Richard C. Scissors,

Director, Shipping Coordinating Committee.

[FR Doc. 86–11068 Filed 5–15–86; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86–5–47; Docket No. 41045]

Proposed Revocation of the Section 401 Certificate of Alaska Aeronautical Industries, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause, (Order 86–5–47) Docket 41045.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it shoud not issue an order revoking the certificate of Alaska Aeronautical Industries, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objection should do so no later than May 30, 1986.

ADDRESS: Response should be filed in Docket 41045 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, D.C. 20590 and should be served on the parties listed in Attachment A.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 755–1812.

Dated: May 12, 1986.

Matthew V. Scocozza,

Asistant Secretary for Policy and International Affairs.

Service List for Alaska Aeronautical Industries, Inc.

Mr. Houston D. Haynes, President, Alaska Aeronautical Industries, Inc., P.O. Box 6067 Airport Annex, Anchorage, Alaska 99502

Mr. Daniel Beaudett, Acting Manager, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591

Federal Aviation Administration, Flight Standards District Office #63, 6601 South Airpark Place, Suite 216, Anchorage, Alaska 99502

Mr. P. Richard Steinman III, Chief, Alaska Field Office, U.S. Department of Transportation, 701 C Street Box 27, Anchorage, Alaska 99513

Ms. Donna Kelly, Official Airline Guides, 2000 Clearwater Drive, Oak Brook, Illinois 60521

Military Airlift Command, Attention TRCC, Scott Air Force Base, Illinois 62225–5001

Military Traffic Management Command, Attention PTS, 5711 Columbia Pike, Falls Church, Virginia 22041–5050.

[FR Doc. 86–11128 Filed 5–15–86; 8:45 am]

BILLING CODE 4910–62–M

Agreements Filed During the Week Ending May 9, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
May 6, 1986	44012 R–1–R–SM	Members of International Air Transport Association	North/Central Pacific Fares	June 1, 1986.
May 9, 1986	44016 R–1–R–E	Members of International Air Transport Association	Europe Libya Fares	Do.
Do.	44019 R–1–R–PE	Members of International Air Transport Association	U.S. South Pacific Fares	Do.
May 7, 1986	44013	Air Traffic Conference of America, c/o Nestor N. Pylypec, 1709 New York Avenue, NW., Washington, D.C. 20006. Application of Air Traffic Conference of America pursuant to Section 412 and 414 of the Act submitting amended/new Air Traffic Conference Resolutions taken by Mail Votes consummated on February 21, 1986, April 12, 1986 and April 18, 1986.		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86–11125 Filed 5–15–86; 8:45 am]

BILLING CODE 4910–62–M

[Docket 44018]

United States-Japan Small Package Service Proceeding; Assignment

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M–50, Room 9400A, Nassif Bldg, 400 7th Street SW., Washington, DC 20590, telephone (202) 426–5560.

Dated Washington, DC, May 12, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86–11126 Filed 5–15–86; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 44016]

United States-Japan Small Package Service Proceeding; Prehearing Conference

Order 85–5–43, issued May 9, 1986, instituting the above-captioned proceeding, directed that applications, motions to consolidate, and petitions for leave to intervene shall be filed within 7 days thereafter.

Notice is hereby given that a Prehearing Conference in this proceeding is assigned to be held on June 12, 1986 at 9:30 a.m. (local time) in Room 5332, Nassif Bldg., 400 7th Street SW., Washington, DC, before the undersigned Chief Administrative Law Judge.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and three copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for additional information and evidence; (4) statements of position; and (5) proposed procedural dates. These preconference submissions shall be serve on or by June 5, 1986.

Dated at Washington, DC, May 12, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86–11127 Filed 5–15–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Task Force Report V-Tail Bonanza Investigation; Availability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of task force report V-tail Bonanza investigation.

SUMMARY: This report provides the results of an independent study of the Beech Aircraft V-tail Bonanza by the Transportation Systems Center (TSC), Cambridge, Massachusetts, contracted for by the FAA, and a Foreword to the report prepared by the FAA.

DATE: The report was published in January, 1986.

ADDRESSES: Send all requests for the report to: Federal Aviation Administration, Attn: Technical/Administrative Support Staff Office, ACE–103, 601 E. 12th Street, Kansas City, Missouri 64106, together with payment in the amount of $19.60, or $25.60 for a certified true copy.

FOR FURTHER INFORMATION CONTACT: Larry Malir, Aerospace Engineer, FAA, Standardization/Evaluation Group Office, Projects and Evaluation Section, ACE–107, 601 E. 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374–9634 or FTS 758–9634.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this Report by writing to: Federal Aviation Administration, Aircraft Certification Division, ACE–103, 601 E. 12th Street, Kansas City, Missouri 64106. When ordering please submit a check in the amount of $19.60, or $25.60, payable to the Treasurer of the United States, for the cost of this Report.

Background

This Task Force Report, consisting of two volumes, is an independent study prepared by TSC, Cambridge, Massachusetts, for FAA under a contract, to define actions necessary to determine whether there are deficiencies inherent in the design of the Beechcraft V-tail Bonanza that contribute significantly to in-flight airframe failure.

Recommendations were made by TSC to the FAA which are being addressed as described in the FAA Foreword to the report. The FAA is concerned with several findings. These concerns and their proposed resolution are specifically addressed in the Foreword.

Issued in Kansas City, Missouri, on May 2, 1986.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 86–11006 Filed 5–15–86; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159—Minimum Aviation System Performance for Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance for Global Positioning System to be held on June 12–13, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Second Meeting Minutes; (3) Review of EUROCAE WG–28 Activities; (4) Report on SC–155 Operations Working Group Activities; (5) Report of the Integrity Working Group; (6) Briefing on Waypoint Entry, Simplification and Error Reduction; (7) Consideration of Working Papers on GPS Minimum System Requirements; (8) Develop Format for Committee Report; (9) Task Assignments; (10) Other Business; and (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 9, 1986.

Wesdie F. Chapman,

Designated Officer.

[FR Doc. 86–11007 Filed 5–15–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: May 12, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0334
Form Number: ATF REC 5150/3
Type of Review: Extension
Title: Usual and Cutomary Business Records Relating to Tax-Free Alcohol

OMB Number: 1512-0335
Form Number: ATF REC 5150/4
Type of Review: Revision
Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol

OMB Number: 1512-0336
Form Number: ATF REC 5150/2
Type of Review: Extension
Title: Letterhead Applications and Notices Relating to Denatured Spirits

Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,
Departmental Reports Management Office.

[FR Doc. 86-11121 Filed 5-15-86; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Greenville, North Carolina, on Wednesday, June 4, 1986, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the USIA VOA Relay Station in Greenville, North Carolina. The meeting will begin at 8 a.m. Point of contact for the meeting is Terry Balazs, telephone (202) 485-8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of 500 kW high frequency broadcasting transmitters, the status of site negotiations and major construction projects and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to future site negotiations for VOA relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 USC 552b(c)(1)).

Dated: May 8, 1986.

Charles Z. Wick,
Director.

[FR Doc. 86-11068 Filed 5-15-86; 8:45 am]
BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 95
Friday, May 16, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, May 21, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. NCUA's Long Range Plan.
4. Review of Central Liquidity Facility Lending Rate.
5. Insurance Fund Report.
6. Proposal to Delete Part 709 of NCUA Rules and Regulations regarding Division of Assets, Liabilities, and Capital.
7. Interpretive Ruling and Policy Statement 84-1 to clarify agency policy regarding field of membership amendments for national groups.
8. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Credit Union Administration.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Wednesday, May 21, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Communications System. Closed pursuant to exemption (2).
7. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[FR Doc. 86-11176 Filed 5-14-86; 1:11 pm]
BILLING CODE 7535-01-M

2

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 19, 1986:

Open meetings will be held on Tuesday, May 20, 1986, at 2:30 p.m., and Thursday, May 22, 1986, at 11:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, May 20, 1986, following the 2:30 p.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, May 20, 1986, at 2:30 p.m., will be:

1. Consideration of whether to: (1) issue a notice of filing of an application for an order, pursuant to Sections 6(c), 17(b) and 17(d) of the Investment Company Act of 1940 and Rule 17d-1 thereunder, so that the IDS Mutual Fund Group may lend portfolio securities to Shearson Lehman Brothers, an affiliated broker-dealer; and (2) authorize the Secretary to issue an order "By the Commission" granting the application, if no request for a hearing if filed. For further information, please contact George Martinez at (202) 272-3024.

2. Consideration of whether to adopt Rule 151 under the Securities Act of 1933, which would provide a "safe harbor" for certain types of annuity contracts. The rule would define the term "annuity contract," as used in Section 3(a)(8) of the Act, to include any contract offered by a corporation subject to state insurance regulation, under which the insurer assumes the investment risk, and which is not marketed primarily as an investment. For further information, please contact Joseph R. Fleming at (202) 272-3017.

The subject matter of the closed meeting scheduled for Tuesday, May 20, 1986, following the 2:30 p.m. open meeting, will be:

Formal order of investigation.
Modification of administrative proceeding.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, May 22, 1986, at 11:00 a.m., will be:

Consideration of developments over the last year in the internationalization of the world securities markets and what future actions should be taken in the internationalization area. For further information, please contact Andrew E. Feldman at (202) 272-2414.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Schy at (202) 272-2468.

John Wheeler,
Secretary.
May 12, 1986.

[FR Doc. 86-11166 Filed 5-14-86; 11:50 am]
BILLING CODE 8010-01-M

federal register

Friday
May 16, 1986

Part II

Department of Defense

Department of the Navy

Privacy Act of 1974; Annual Publication of the System of Records; Notice

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Annual Publication Systems of Records

AGENCY: DEPARTMENT OF THE NAVY, DOD.

ACTION: The Department of the Navy is publishing in their entirety the notices for all of the record systems subject to the Privacy Act of 1974, maintained by the Navy as of April 15, 1986.

DATES: The systems are all effective now as all of these system notices listed have been previously published in the Federal Register as required y 5 U.S.C. 552a(e)(11) of the Privacy Act of 1974.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, D.C. 20350-2000, telephone: 202-697-1459.

SUPPLEMENTARY INFORMATION: This compilation of Navy systems represents a complete up-to-date listing of all the Navy record systems subject to the Privacy Act including those systems that have been added, or amended since the last published compilation on May 29, 1985 at 50 FR 22735. This compilation is current as of April 15, 1986. This current updated compilation will serve as the new base line of reference when adding, deleting or amending future Navy systems of records. This publication is not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of a new or altered system report.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 1, 1986.

BILLING CODE 3810-01-M

UNITED STATES NAVY

HOW SYSTEMS OF RECORDS ARE ARRANGED. In the Department of the Navy records are categorized by a Standard Subject Identification Code (SSIC). Each series of records has been assigned a major subject title, followed by a combined alpha-numeric identification number. For example, the systems of records containing financial information would be found under the major subject title, Financial Management. The range of identification records will be from 7000 to 7999. The system of records containing military pay is 7220. If there were multiple systems of records maintained under the NO7220 identification number, they would be identified as NO7220-1, NO7220-2, NO7220-3, etc. The NO stands for Navy, the four digits indicates that records are related to military and the last digit indicates the first, second, third, etc system or records within the category of military pay.

HOW TO USE THE INDEX GUIDE. The systems of records maintained by the Department of the Navy are contained within the major subject title and numerical series listed below. This list identifies each series in numeric order. Use the list to identify major subject areas of interest.

SUBJECT SERIES
SYSTEM IDENTIFICATION SERIES

Military Personnel
1000-1999

Telecommunications
2000-2999

Operations and Readiness
3000-3999

Logistics
4000-4999

General Administration and Management
5000-5999

Medicine and Dentistry
6000-6999

Financial Management
7000-7999

Ordnance Material
8000-8999

Ships Design and Material
9000-9999

General Material
10000-10999

Facilities and Activities
11000-11999

Civilian Personnel
12000-12999

Aeronautical and Astronautical Material
13000-13999

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE-LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE-DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE-DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the

requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE-CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

ROUTINE USE-PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE-DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE-DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE-DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

ROUTINE USE-DISCLOSURE TO MILITARY BANKING FACILITIES OVERSEAS

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

ROUTINE USE-DISCLOSURE OF INFORMATION TO THE GENERAL SERVICES ADMINISTRATION (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE-DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE-DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C 1205 and 1206, or as may be authorized by law.

N01001-1

SYSTEM NAME:

Roster, Naval Reserve Law Companies

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 62) Department of the Navy, 200 Stovall St., Alexandria, Va 22332

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Listing of law program officers in Naval districts having cognizance over Reserve affairs; listing of Naval Legal Service Offices; listing of the staff of the Director, Naval Reserve Law Programs; listing of Naval Reserve Law Company commanding officers; and listing of members of the law companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Roster contains names and locations of personnel associated with Naval Reserve Law Programs; names of members of law companies, social security number, rank, home and office addresses, name of spouse, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 806

PURPOSE(S):

To facilitate and promote liason between Naval Reserve Law Companies, law program officers, the Director, Naval Reserve Law Programs, and the Navy's legal assistance program. It is an essential publication used by legal assistance officers Navy-wide. It apprises Naval Reserve Officers of the locations of Reserve units in order

that they participate in the reserve law program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

By names of members and location of Reserve units.

SAFEGUARDS:

Records are maintained under the control of authorized personnel during working hours; the office space in which the rosters are maintained is locked outside official working hours.

RETENTION AND DISPOSAL:

Rosters are retained for approximately two years and destroyed when a new edition is published.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law) Office of the Judge Advocate General Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager. Personal visits may be made to: Reserve Personnel Division Office of the Judge Advocate Room 9S05 Hoffman Bldg II 200 Stovall St. Alexandria, Va. 22332

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

RECORD SOURCE CATEGORIES:

Information is received from Reserve officers who participate in the Naval Reserve Law Programs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01001-2

SYSTEM NAME:

Naval Reserve Law Program Officer Personnel Information

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants applying for appointment or transfer to Judge Advocate General's Corps of the Naval Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Furnishes information as to applicant's qualifications and intentions to affiliate in Naval Reserve Law Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 806

PURPOSE(S):

Information is obtained to publish a Directory of Naval Reserve Judge Advocates' location, Reserve assignment, etc. Information in the Directory is made available to Navy Judge Advocates, active and reserve, to enable them to locate and identify the legal expertise of Naval Reserve Judge Advocates in the various states with varying legal qualifications and State licenses and to permit contact between Navy Judge Advocates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, stored in a file cabinet

RETRIEVABILITY:

By officer's name

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the: Office of the Judge Advocate General (Code 62), Department of the Navy, Room 9S05, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Written requests must be signed by the requesting individual, and for personal visits, the individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Requests should be addressed to: Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from applicants who are applying for appointment in the Judge Advocate Generals' Corps or from reserve officers requesting transfer to the system manager.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01001-3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File

SYSTEM LOCATION:

Commander Naval Intelligence Command 4600 Silver Hill Road Washington, DC 20389

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel of the Naval Reserve Intelligence Program and applicants for affiliation with the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information relating to the individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military

duty assignments and military reserve active duty training and background investigation, qualifications for active military duty assignments and military promotions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301 Departmental Regulations; 10 U.S.C. 503 Department of the Navy 10 U.S.C. 6011 Departmental Regulations; 44 USC 3101, Records Management by Federal Agencies;

PURPOSE(S):

To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized magnetic tapes; microform; some records may be maintained in file folders.

RETRIEVABILITY:

The file can be accessed for each file element or any combination therof.

SAFEGUARDS:

GSA approved security containers located in controlled access spaces.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is a member of the Naval Reserve Intelligence Program. Records are destroyed when member becomes inactive.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Intelligence Command 4600 Silver Hill Road Washington, DC 20389

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the System Manager, giving full name, residence address and date and place of birth. A notarized statement may be required for identity verification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Reserve Personnel History File data submitted by the individual; background investigation reports from the Naval Investigative Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONR

N01001-5

SYSTEM NAME:

MSC/NCSORG Reserve Personnel Record

SYSTEM LOCATION:

Commander, Military Sealift Command, Department of the Navy, Washington, D.C. 20390

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval Reserve personnel in the MSC/NCSORG Reserve Program

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, social security number, designator, date of birth, home address and phone, active duty training, correspondence courses, education, active military service, civilian employment experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations

PURPOSE(S):

To facilitate COMSC in keeping a current record of MSC and NCSORG reserve personnel. Such information is used to identify location, qualifications, and training assignments of the reservists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data cards or similar record.

RETRIEVABILITY:

By name

SAFEGUARDS:

Records are kept within COMSC Naval Reserve Division Office. No one authorized access outside of Naval Reserve Division personnel. Building employs security guards.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Military Sealift Command. Department of the Navy. Washington, D.C. 20390

NOTIFICATION PROCEDURE:

Information may be obtained from System Manager. Written requests for information should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information is submitted by the individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-1

SYSTEM NAME:

JAG Corps Officer Personnel Information

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Officers in the Judge Advocate General's Corps, Active Duty

Officers in the Law Education and Excess Leave Programs

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security account number, USN/USNR, designator, rank, state bar membership and year admitted, wife's name, no. of dependents, lineal listing by year group, duty assignment, arrival and rotation dates, release date if applicable

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 806

PURPOSE(S):

To manage the officers of the Navy JAG Corps, as the Judge Advocate General is statutorily required to make recommendation on the assignment of all active duty JAG Corps officers; to determine qualifications of an officer to receive a JAG Corps designation and to be certified as a trial or defense counsel; to determine the rotation dates and release from active duty dates of JAG Corps officers as well as the date new officers will be available for duty; to prepare JAG Corps strength plans for submission to OPNAV; and to obtain an officer's preference for duty assignment as well as eligibility for consideration for postgraduate education and overseas assignments. Certain of this information is promulgated to all active-duty JAG Corps officers in a semi-annual publication known as the Directory of Navy Judge Advocates. The information is promulgated for informational purposes so that officers can determine what positions (billets) might be available should they desire rotation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer strips kept on a strip file (wheel) and paper records kept in a folder identified by the officer's name kept in file cabinets.

RETRIEVABILITY:

By officer's name, folders are filed alphabetically.

SAFEGUARDS:

Records are maintained in the Office of the Judge Advocate General personnel office under the control of authorized personnel during working hours; the office space in which the storage devices containing the records is locked outside official working hours.

RETENTION AND DISPOSAL:

Upon release from active duty, records are kept three years and then destroyed. Upon retirement from active duty, records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from: Judge Advocate General (Code 61), Department of the Navy, Room 9S25, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332, Telephone: (202)325-9830

Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Judge Advocate General (Code 61), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Personnel visits may be made to the JAG Personnel Office, Room 9S25, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his successful completion of law school and admission to the bar, orders to active duty and subsequent transfer orders, computer strips provided by the Bureau of Naval Personnel on all active duty officers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01070-10

SYSTEM NAME:

Aviation Training Jacket

SYSTEM LOCATION:

The Aviation Training Jacket accompanies the individual student to each Naval Air Command as he progresses in the training program. Upon completion or termination of training, the Aviation Training Jacket is forwarded to the following command:
Chief of Naval Air Training
Naval Air Station
Corpus Christi, TX, 78419

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval aviators, naval flight officers, naval flight surgeons, aviation warrant officers, and precommissioning training for aviation maintenance duty and aviation intelligence officers. This includes records in the above categories for individuals who do not complete prescribed training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aviation flight training, practical and academic grade scores, including pre-training aviation test battery scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

To maintain an up-to-date student flight record and to evaluate the student's individual training progress and qualifications, including aircraft, medical and physiological qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To educational institutions upon individual requests for academic transcripts.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in metal filing cabinets.

RETRIEVABILITY:

Name and date of designation, completion or termination of training.

SAFEGUARDS:

Access is restricted to the individual or those who maintain training records and those who are directly involved with the individual's training or evaluation. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

RETENTION AND DISPOSAL:

Retained at the Chief of Naval Air Training headquarters for six months, then transferred to the Federal Records Center, East Point, GA. Retained for 75 years (SECNAVINST 5212.5B).

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Air Training, Naval Air Station, Corpus Christi, TX 78419

NOTIFICATION PROCEDURE:

The individual is informed that the Aviation Training Jacket is being maintained and has ready access to it during training. After training, he can submit written request to the system manager listed above and must provide name, social security number or officer file number, and date of completion or termination of training. Personal vistors can provide proof of identity by military identification card, active or retired, or driver's license and some record of naval service.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Prior educational experience, flight grades, academic grades supporting flight training, physical fitness/survival/swimming proficiency, aviation physiology training and qualifications, and birth certificate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-11

SYSTEM NAME:

Flight Instruction Standardization and Training (FIST) Jacket

SYSTEM LOCATION:

The FIST jacket is located at the various Naval Air Training Commands where the individual may be assigned. The following command can be contacted to determine the location of any specific command. Chief of Naval Air Training Naval Air Station Corpus Christi, TX 78419

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval aviators and naval flight officers assigned to duty as instructors within the Naval Air Training Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record of flight instruction standardization and training required of naval aviators and naval flight officers assigned duty as instructors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental regulations

PURPOSE(S):

To ensure that the flight instructor's qualifications are current to instruct in the designated naval aircraft, both academically and physiologically. The system is used to schedule training flights, qualify and designate flight instructors, etc. This system is used by Commanding Officers and training personnel of the command to which the individual is assigned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in metal file cabinets.

RETRIEVABILITY:

Name, rank, and social security number.

SAFEGUARDS:

Access is restricted to the individual, his commanding officer, or those involved in maintaining training records. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

RETENTION AND DISPOSAL:

Jackets are retained in the individual's command until detachment, at which time it is given to the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Air Training, Naval Air Station, Corpus Christi, TX 78419

NOTIFICATION PROCEDURE:

The individual is informed that the FIST jacket is being maintained, participates in its development and, additionally, is required to review the jacket with his instructor periodically.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting content and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Academic tests, Flight performance evaluation, Check flight evaluation, Instructor's evaluation, Command determinations, and, Personal input

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-12

SYSTEM NAME:

Administrative Files System

SYSTEM LOCATION:

Naval Investigative Service (NIS) Headquarters, PO Box 16230, Suitland, Md. 20746

Decentralized Segments - Naval Investigative Service Regional Offices (NISROs) retain duplicate copies of certain segments of the administrative files. Addresses of these offices are included in the directory of Department of the Navy mailing list.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present civilian, military and foreign national personnel assigned world-wide NIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Management System - an automated management information and statistical system containing all needed items of personnel information.

Special Agent Career Development Files - a compendium of Civil Service Performance Evaluation and Ratings and all correspondence unique to the NIS Special Agent, including annual physical examinations, which has a bearing on world-wide assignability, promotion and general career assessment.

Weapons Inventory File - an automated file containing the credential number, badge, weapons and handcuffs assigned to each NIS criminal investigator.

Personnel Security Clearance File - an automated file containing the classified material access level and date of last security clearance for assigned civilian and military personnel of NIS.

Personnel Utilization Data File - an automated file designed to provide statistical information regarding the manner by which available NIS manhours are expended in the execution of its assigned investigative and counterintelligence mission. The file is formed by the submission (monthly) of individual manhour diaries. All assigned personnel input to this system; their manhours are categorized by function.

Freedom of Information and Privacy Requests File. Records relating to requests for information pursuant to the Freedom of Information Act and the Privacy Act of 1974, and responses thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Departmental Regulations

PURPOSE(S):

The Personnel Management System: To prepare virtually all personnel documents and personnel statistical studies. It provides such information as the average grade, the total number and composition of personnel at each NIS component and the past assignments of personnel. It is used on a daily basis by personnel in the formation and execution of staffing actions for the various NIS components, informal verification of employee's tenure and the compilation of necessary statistical studies.

Special Agent Career Development Files: Used for in-house agency decisions regarding reassignment, promotion, career training and long-range development. They form in-house agency repository for both adverse and favorable documents regarding Special Agents. The files have a long-range function - that of forming the basis for law enforcement retirement service certification. Though part of the file is duplicated in the official file maintained by the Civilian Personnel Office, the Special Agent Career Development file is considered privileged information and its contents are not released outside NIS. Within NIS, the files are maintained and controlled exclusively within the Career Services Division, NIS HQS, and by assigned personnel to that Division. The files are released for review only to senior management personnel of NIS.

Weapons Inventory File: To identify and inventory credentials, weapons, badges and handcuffs issued to authorized NIS personnel.

Personnel Security Clearance File: To informally verify and authenticate security clearances issued to NIS personnel. The file has a daily working purpose of acting as a check sheet for the updating of security clearances. It further is the file referred to when the Director, NIS, is required to certify the access level of certain assigned NIS personnel to other Navy commands as well as civilian contractors.

Personnel Utilization Data File: A statistical file from which an indepth analyses of manhour expenditures are surveyed (used exclusively within NIS). The various analyses drawn from the file are used to modify the staffing levels at various NIS components based on actual work level. It further provides a tool to NIS management to gauge the efficiency of all components by comparing their workload with the amount of manhours available.

The records in this system may be used by other DOD components requiring confirmation of security clearance levels and statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To law enforcement activities conducting criminal or suitability investigations.

To the Office of Personnel Management when making personnel determinations, e.g., awards or disciplinary actions.

To credit companies in response to credit queries and to personal physicians regarding medical records.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Personnel Management System, Weapons Inventory File, Personnel Security Clearance File and the Personnel Utilization Data File are stored on magnetic tape in an automated system. The Personnel Management System is composed of visible file cards and computer paper printouts; the Personnel Security Clearance File is composed of computer paper printouts and associated Department of Defense security certification documents, the latter being filed in individual file folders; the Weapons Inventory File and the Personnel Utilization Data File are composed of computer papor printouts only.

The Special Agent Career Development files are composed exclusively of paper records in file folders.

RETRIEVABILITY:

Information is accessed and retrieved by name only in the Special Agent Career Development File. The Weapons Inventory File is queried by either name only or by item number (i.e., badge, credential, weapon, handcuff serial number).

The Personnel Management System is accessed by name and SSN; retrieval is by individual data characteristic such as GS-grade level, duty-station, special qualifications, language qualifications or it my be retrieved by name only or in conjuction with the SSN.

The Personnel Utilization Data File is normally accessed and retrieved by location and functional category of employment (i.e., Special Agent, clerical, etc.). The capability exists, however, to retrieve by SSN. The Personnel Security Classificaton File is a subordinate file to the Personnel Management System. Accession is by name and SSN. Retrieval is accomplished by computer paper printout in both alphabetical and duty-station format.

SAFEGUARDS:

All files in this system are protected by limited, controlled access, safes, and locked cabinets and doors. Futher, visitor control and secure computer software measures (where applicable) are utilized.

RETENTION AND DISPOSAL:

Personnel indexed in the Personnel Management System and the Personnel Security Clearance File are deleted from the magnetic tape data storage upon termination of employment. Residual paper records are retained from two to five years.

Personnel indexed in the Weapons Inventory File are deleted at such time as assigned equipment is returned and accounted for. Residual paper printouts are destroyed at least semi-annually.

The Special Agent Career Development Files are semi-permanent and are retained, at least in essential skeletal format, indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Investigative Service, P.O. Box 16230, Suitland, Md. 20746

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager, above. Individuals submitting requests should provide their full name, date of birth, SSN and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a drivers' license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty-station with NIS.

RECORD ACCESS PROCEDURES:

Access to files in this system may be gained by written notification or personal visit to the Naval Investigative Service Headquarters at the location specified above. Requests should be directed to the Information and Privacy Coordinator.

CONTESTING RECORD PROCEDURES:

The agency's rule for access to records and for contesting contents and appealing initial determinations by the inividual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

In the case of Personnel Management System and the Personnel Utilization Data System, the individual employee is the prime source of information both for initial access to the files as well as periodic update. The Personnel Security Clearance File information is obtained as a sub-file to the Personnel Management System. The information for the Weapons Inventory File is obtained from personnel charged with the issuance of various items inventoried therein (with verification by the personnel to whom the items are issued.)

Information for the Special Agent Career Development File is recieved from the individuals supervisors, from various Naval Commands and other Federal and State agencies with whom the Special Agent has had professional contact and from the individual himself. Also, this file contains copies of each physical examination required annually of assigned civilian Special Agents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01070-13

SYSTEM NAME:

Nuclear Program Interview and Screening

SYSTEM LOCATION:

Naval Sea Systems Command (Code 08), Washington, D.C. 20362

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel interviewed or considered for assignment or retention in the Naval Nuclear Power Program

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview appropriation folder, interview chronology, interview index card, Navy Enlisted Nuclear Program Technical Screening Sheets, Nuclear Propulsion Officer Candidate Records

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations

PURPOSE(S):

To determine eligibility of individuals for the Naval Nuclear Power Program; to maintain statistical and accounting records on individuals for assignment and retention in the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, loose leaf binders, and index card box

RETRIEVABILITY:

Name, chronological, Navy rate (if applicable), Social Security Number, approximate date of screen

SAFEGUARDS:

Located in restricted area

RETENTION AND DISPOSAL:

Indefinitely

SYSTEM MANAGER(S) AND ADDRESS:

Naval Sea Systems Command (Code 08), Washington, D.C. 20362

NOTIFICATION PROCEDURE:

Contact System Manager; provide full name, Navy rate (if applicable), Social Security Number, Nuclear Power School Class or dates at attendance (if applicable) and proof thereof, dates of service or screening and proof thereof.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual; Naval Military Personnel Command; U.S. Naval Academy; current and/or previous commands; Director, Division of Naval Reactors

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-14

SYSTEM NAME:

Next of Kin Information for Sea Trial Riders

SYSTEM LOCATION:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals attending nuclear propulsion plant sea trials of Navy ships

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of next of kin; name, Social Security Number and security clearance of individual

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

To maintain information necessary to notify the next of kin in case of accident or other emergency of those individuals assigned to nuclear propulsion plant sea trials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 index cards

RETRIEVABILITY:

Alphabetically by name

SAFEGUARDS:

Locked in 3-way combination safe in a restricted area

RETENTION AND DISPOSAL:

Indefinitely

SYSTEM MANAGER(S) AND ADDRESS:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

NOTIFICATION PROCEDURE:

Contact System Manager; Provide name and social security number and identify sea trials attended

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

From the individual

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-2

SYSTEM NAME:

Naval Attache Files

SYSTEM LOCATION:

Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Navy and Marine Corps Officers nominated and/or assigned to duty in the Defense Attache System (DAS)

CATEGORIES OF RECORDS IN THE SYSTEM:

File containe records concerning the service and personal history of officers nominated and/or assigned to duty in the DAS and their dependents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1974, as amended; 5 USC 301, Departmental regulations; 10 USC 503, Department of the Navy; 10 USC 6011, Navy Regulations; 44 USC 3101, Records Management by federal agencies; United States Navy Regulations, 1973 Executive Order 11652, Classification and declassification of National Security Information and Material

PURPOSE(S):

To determine suitability of personnel for security clearances and assignment to the Defense Attache System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of State to determine suitability of personnel for security clearances and assignment to the Defense Attache System.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files in folders stored in standard GSA safes.

RETRIEVABILITY:

By name of officer.

SAFEGUARDS:

Records are stored in a controlled access area and are accessible only to a very limited number of authorized personnel with proper security clearance and demonstrated need for access.

RETENTION AND DISPOSAL:

Records are opened on individuals when first nominated for attache duty, and retained until six months after completion of attache duty.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the system manager, giving full name, residence address, and date and place of birth. A notarized statement may be required for identity verification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data is gained from the subjects of the file, NMPC and Headquarters Marine Corps files of subject's fitness reports, DIS/NIS background, investigations and other sources who are familiar with the subject.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01070-3

SYSTEM NAME:

Navy Personnel Records System

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D.C. 20370; Naval Reserve Personnel Center, Naval Support Activity (East Bank), Bldg. 603, New Orleans, LA 70159; and local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

Secondary System-Department of the Navy Activities in the Chain of Command between the local activity and the Headquarters level (see Directory of the Department of the Navy Mailing Addresses); Federal Records Storage Centers; National Archives.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Service Jackets and Service Records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of Navy military personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (Officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and

administration of military personnel and the operation of personnel affairs and functions.

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemology. Each study in which the records of members and former members of the naval service are used must be approved by the Commander, Naval Military Personnel Command.

To officials and employees of the Department of Health and Human Services, Veterans Administration, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verfication of the active duty naval service of members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by social security account number and/or name.

Manual records may be retrieved by name, social security account number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5 , subj: Disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Washington, D.C. 20370; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities as listed in the Directory of the Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (ATTN: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370. or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB 2), Washington, D.C., for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k) (1) and (5), as applicable. For additional information contact the System Manager.

N01070-4

SYSTEM NAME:

Naval Reserve Security Group Personnel Records

SYSTEM LOCATION:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington D.C. 20390

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval Reserve Security Group Personnel

BEST COPY AVAILABLE

CATEGORIES OF RECORDS IN THE SYSTEM:

System comprises records reflecting information pertaining to reservist's ACDUTRA (Active Duty for Training); miscellaneous personnel actions, i.e., in-training status for change of rank/designator/rate; clearance certificate; congratulatory letters to officers upon promotion; history of past ACDUTRA performed; correspondance courses completed; old data cards and clearance eligibility letters

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To verify past active duty and ACDUTRA performed, currency of clearance status, mobilization assignments, and to identify civilian skills acquired.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper-records in file folders

RETRIEVABILITY:

Filed alphabetically by last name of reservist

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained

RETENTION AND DISPOSAL:

Records are retained in active file until reservist has fulfilled drilling obligation or upon discharge or transfer to stand-by reserve

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington D.C. 20390

NOTIFICATION PROCEDURE:

a. Send request to SYSMANAGER

b. Full name, DPOB, military status, SSN (if you will voluntarily include it) or service number

c. Visits for the purpose of obtaining information must be submitted in writing to Commander, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington D.C., 20390, who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requestor

d. Scheduled visitors must be prepared to present adequate proof of identification - i.e., combination of full name, DPOB, parent(s) name, driver's license, medicare card, military I.D. card, if applicable

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager

RECORD SOURCE CATEGORIES:

District Officers for Naval Reserve Security Group, Commanding Officers of Naval Reserve Security Group Divisions, and, Commanding Officer, Naval Technical Training Center, Pensacola, FL

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01070-5

SYSTEM NAME:

Personnel Resources Information System for Management (PRISM)

SYSTEM LOCATION:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington, D. C. 20390

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel and Naval and Marine Corps Reserve personnel affiliated with the Naval Security Group. Also civilian personnel holding a NAVSECGRU clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

System comprises automated records reflecting information pertaining to the pesonnel identification, location, current duties, professional qualifications and experiences, education, rotation data, personal information (marital status, dependents, home of record) and career information (dates of expiration of enlistment, release from active duty and security clearance data)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To plan and manage NAVSECGRU personnel resources. Regularly produced management reports are used to determine adequacy of the personnel manning posture (quantitatively and qualitatively) at NAVSECGRU field activities; trends concerning levels of various NAVSECGRU personnel skills; trends in enlistments, reenlistments, training quotas, retirement, etc.

Personnel of the Naval Military Personnel Command use the information to assist in meeting authorized NAVSECGRU training requirements. NAVSECGRU Area Directors in Atlantic, Pacific and European Commands use the information to determine manning and skill posture within their respective theaters. Officials of NAVSECGRU field stations world-wide use the information to determine numbers and skills of personnel ordered to report to duty. Officials of the Naval Technical Training Center, Pensacola, Florida use the information to mail advancement examinations and other training materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the National Security Agency to assess adequacy of personnel levels and skills in meeting national cryptologic requirements.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes, discs, punched cards, microfiche and computer paper printouts.

RETRIEVABILITY:

Records are retrieved by name, social security number, skill codes, duty stations, career information (dates of enlistment, expected release), education, rating and paygrade.

SAFEGUARDS:

The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Records and computer printouts are

available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Computer magnetic tapes are erased three months after they are created. Punched cards are converted to magnetic tape and destroyed. Microfiche and paper printouts are retained 3 years or until superseded.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington, D.C. 20390

NOTIFICATION PROCEDURE:

Send request to SYSMANAGER. Full name, DPOB, military status, SSN (if you will voluntarily include it) or service number.

Visits for the purpose of obtaining information must be submitted in writing to Commander, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington, D.C. 20390, who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requestor. Scheduled visitors must be prepared to present adequate proof of identification - i.e., combination of full name, DPOB, parent(s) name, driver's license, medicare card, military I.D. card, if applicable.

RECORD ACCESS PROCEDURE:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting content and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Chief of Naval Personnel MAPMIS (Manpower Management Information System) ADP file; Naval Security Group field sites; Naval Security Group Field Office Representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-6

SYSTEM NAME:

Employee Explosives Certification Program

SYSTEM LOCATION:

Organization elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel involved in the process or evolutions of explosives operations

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual certifying document and combined register of all employees certified

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To record the names of all employees and their qualifications to work in certain categories of explosive operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, punched cards

RETRIEVABILITY:

SSN, Name

SAFEGUARDS:

Personnel escort required

RETENTION AND DISPOSAL:

Permanent, unless employee terminates or is no longer involved in explosives processes. Document returned to employee's department for routine disposal after deletion from program

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer or head of the organization in question. See directory of Department of Navy mailing addresses.

NOTIFICATION PROCEDURE:

Individuals may inspect personnel certifying documents at local activity to which individual assigned. Requesters must be escorted and provide identification for inspection of their personnel records.

RECORD ACCESS PROCEDURE:

The agency rules for access to records may be obtained from the System Manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager

RECORD SOURCE CATEGORIES:

Personnel files, previous supervisors

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-7

SYSTEM NAME:

Resale System Military Management Information System

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past military officer and key enlisted personnel assigned to the Navy Resale System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Management Information System (including: Name; rank or rate; social security number; designation date of rank; date reported; rotation date; educational level; lineal number; dependency status) Card file on officers assigned (including: dates in navy resale system; location of assignments) Correspondence folder with Officer and senior enlisted personnel (containing: preference of assignment; biographical information; and orders)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5USC301 and 10USC5031

PURPOSE(S):

Officials and employees of the Navy Resale and Services Support Office in the performance of their official duties related to the management, supervision and administration of its personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: Magnetic tape; printed reports; card files and file folders.

RETRIEVABILITY:

Name; rank or rating, social security number

SAFEGUARDS:

Locked file cabinets; locked archives; supervised office spaces and supervised computer tape library which is accessible only through the computer center (entry to computer center is controlled by a combination lock known by authorized personnel only).

RETENTION AND DISPOSAL:

Records are permanent. Records are maintained for five years and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

Record Holder: Director, Office of Military Personnel (OMP), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

In the initial inquiry, the requester must provide full name, social security number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contestng contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

U.S. Navy Manpower Information System; the Naval Military Personnel Command, the individual; the individual's superior officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01070-6

SYSTEM NAME:

Correction Board Case Files System.

SYSTEM LOCATION:

Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370; decentralized segments located in the Naval Military Personnel Command, Headquarters, U.S. Marine Corps, and the individual military personnel record of the service member concerned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any member or former member of the U.S. Navy or Marine Corps who has applied for the correction of his/her naval record.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of file cards with basic information and computer records derived therefrom, case files containing records of board proceedings, material submitted for correction and supporting documentation, correspondence and transcripts of board formal hearings. The basic case information and computer records derived therefrom include the following: rank; social security number/service number; docket number; date application received; subject category; subject category description; examiner's initials; date examiner assigned; branch of service; board decision; date of board decision; date decision promised if interested members of Congress; date case forwarded to the Secretary of the Navy; lineal number of officer applicant; officer designated; date officer case forwarded to Naval Military Personnel Command/Commandant of the Marine Corps; date officer case returned from Naval Military Personnel Command/ Commandant of the Marine Corps; date advisory opinion requested; identity of advisor's organization; date advisory opinion received; date service record ordered; date medical record ordered; date court-martial record ordered; date confinement record order; date Navy Discharge Review Board record ordered; date other record ordered; date service record received; date medical record received; date court-martial record received; date confinement record received; date Navy Discharge Review Board record received; date other record received; number of Navy applications received; number of Marine Corps applications received; total number of Navy and Marine Corps applications received; percent of total to grand total; total number of Navy discharge cases; total number Marine Corps discharge cases; Navy grant count; Navy deny count; Navy modify count; Marine grant; Marine deny count; Marine modify count.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1552, Title 10 United States Code; Part 723 Title 32 Code of Federal Regulations.

PURPOSE(S):

To review applicant's Naval record to determine the existence of alleged error or injustice and to recommend appropriate corrective action when warranted - to report its findings, conclusions and recommendations to the Secretary of the Navy in appropriate cases - to respond to inquiries from applicants, their counsel, and members of Congress.

To provide officials of the Naval Military Personnel Command with advisory opinions in cases involving present and former Navy personnel - to correct records of present and former Navy personnel in accordance with approved Board decisions.

To provide officials and employees of the Naval Medical Command with advisory opinions on medical matters.

To provide the Naval Council of Personnel Boards/Office of Naval Disability Evaluation with advisory opinions on medical matters.

To provide officials and employees of HQ, U.S. Marine Corps with advisory opinions in cases involving present and former Marine Corps personnel - to correct records of present and former Marine Corps personnel in accordance with approved correction Board decisions.

To officials and employees of the Litigation Division, NJAG, to prepare legal briefs and answers to complaints against the Department of the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained as paper and microfiche records in file folders, and manually retrieved file cards.

RETRIEVABILITY:

Records are filed alphabetically, by the last name of the applicant and are cross filed by docket number, and service or social security account numbers.

SAFEGUARDS:

Access to building is protected by uniformed security officers requiring positive identification; for admission after hours, records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

All file cards are permanently retained by the agency. Case files are permanent. They are retained in the active files for three years and then retired to the Washington National Records Center, Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify a full name, and social security account numbers or service numbers. Visitors should be able to provide proper identity, such as a drivers license. Written requests must be signed by a requester or his/her legal representative.

RECORD ACCESS PROCEDURES:

Information may be obtained from the Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370 by providing name, military status, branch of service and social security number. Current address and telephone numbers should be included. Personal visits may be made only to the Board for Correction of Naval Records, Arlington Annex, Columbia Pike and Southgate Road, Arlington, Virginia. For personal visits, identification will be required.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents of records and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

All official Naval records, Veteran's Administration and Police and Law enforcement records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01070-9

SYSTEM NAME:

White House Support Program

SYSTEM LOCATION:

White House Liaison Office, Office of the Secretary of the Navy, Department of the Navy, Washington, DC 20350.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps military and civilian personnel and contractor employees who have been nominated by their employing activities for assignment to Presidential support duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records, correspondence, and other documents and records in both automated and nonautomated form concerning classification, security clearances, assignment, training, and other qualifications relating to suitability for Presidential support duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

To evaluate and nominate individuals for assignment to Presidential support duties; to ensure that only those individuals most suitably qualified are assigned to duty in Presidential support activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees in the Executive Office of the President in the performance of their duties related to personnel administration, and evaluation and nomination of individuals for assignment to Presidential support duties.

To officials and employees of other federal agencies and offices, upon request, in the performance of their official duties related to the provision of Presidential support and protection.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc drums, and on punched cards. Manual records may be stored in file folders, or microform.

RETRIEVABILITY:

Manual Records: By name if individual has been nominated and not yet approved. By OSD approval date if individual has been approved, and by employing activity removal date if an individual is removed from assignment for cause. Automated records may be retrieved by name, social security number, and control number.

SAFEGUARDS:

Records are afforded appropriate protection at all times, stored in locked rooms and locked file cabinets, and are accessible only to authorized personnel who have a definite need to know and who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps records.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Aide to the Secretary of the Navy, Navy Department, Washington, D.C. 20350

NOTIFICATION PROCEDURE:

Requests from individuals by correspondence should be addressed to the Office of the Administrative Aide to the Secretary of the Navy, Navy Department, Washington, D.C. 20350. Visits are limited to the Office of the Administrative Aide to the Secretary of the Navy. Written requests should contain the full name of the individual and his social security number. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy and other Department of Defense components; federal, state, and local court documents; civilian and military investigative reports; general correspondence concerning the individual; and federal and state agency records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (2), (3) and (5),

as applicable. For additional information, contact the System Manager.

N01060-1

SYSTEM NAME:

Enlisted Master File Automated System

SYSTEM LOCATION:

Naval Military Personnel Command, Navy Department, Washington, D. C. 20370; Personnel Management Information Center, New Orleans, LA 70159; Naval Reserve Personnel Center, New Orleans, LA 70159

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy Enlisted Personnel: Active and Inactive

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer file contains data concerning enlisted assignment, planning, programming, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and enlisted reserve drill data. The system also contains Activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill reports and other personnel transaction documents necessary to maintain file accuracy and currency; and all computer extracts, microform, and printed reports therefrom.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To assist in the administration, management, and supervision of Navy enlisted personnel and the operation of personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of Navy enlisted personnel affairs and functions.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or government agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disks, drums and on punched cards.

Printed reports and other related documents supporting the system are stored in authorized areas only.

RETRIEVABILITY:

Automated records are retrieved by Social Security Account Number.

SAFEGUARDS:

Within the computer center, controls have been established to desseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category, i.e., inadvertant or unauthorized disclosure will result in harm, embarrassment, inconvenience or unfairness to the individual, will be shredded. Computer files are kept in a secure, continuously manned area and are accessible only to authorized computer operators, programmers, enlisted managment, placement, and distributing personnel who are directed to respond to valid, official requests for data. These accesses are controlled and monitored by the Security System.

RETENTION AND DISPOSAL:

Automated records are retained in accordance with MAPMIS manual (periods range from 1 month to permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D. C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence from active duty enlisted personnel shall be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D. C. 20370; requests by correspondence from inactive duty and reserve personnel shall be addressed to: Commanding Officer, Naval Reserve Personnel Center (Attn: Privacy Act Coordinator), New Orleans, La 70149; request shall contain full name, social security account number, rank, status, and signature of requestor.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy and Department of Defense and Components thereof in performance of their office duties and as specified by current instructions and regulations promulgated by competent authority; educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01060-2

SYSTEM NAME:

Officer Master File Automated System

SYSTEM LOCATION:

Naval Military Personnel Command, Navy Department, Washington, D.C. 20370; Personnel Management Information Center, New Orleans, LA 70149; Naval Reserve Personnel Center, New Orleans, LA 70149

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Naval Officers; commissioned, warrant, active, inactive; officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer file contains data concerning officer assignment, planning, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and Reserve Officer drill data. System also contains activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill Reports and other personnel transaction documents necessary to maintain file accuracy and currency; and all computer file extracts, microform and printed reports therefrom.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 USC 301 Departmental Regulations

PURPOSE(S):

To assist officials and employees of the Navy in their official duties related to the management, supervision, and administration of both active duty and retired Naval officers, and in the operation of personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of Navy officer personnel and the operation of personnel affairs and functions.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated Records are stored on magnetic tapes, disks, drums and on punched cards. Printed reports and other paper documents supporting the system are stored in authorized personnel areas only.

RETRIEVABILITY:

Automated records are retrieved by Social Security Account number.

SAFEGUARDS:

Within the computer center, controls have been established to disseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category, i.e., inadvertent or unauthorized disclosure that would result in harm, embarrasment, inconvenience or unfairness to the indiviual, will be shredded. Computer files are kept in a secure, continuously manned area and are distributing personnel who are directed to respond to valid, official request for data. These accesses are controlled and monitored by the Security System.

RETENTION AND DISPOSAL:

Records are retained in accordance with MAPMIS Manual (periods range from 1 month to permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Department of the Navy, Washington, D.C. 20370.

NOTIFICATION PROCEDURE:

Active duty Navy Officers/Officer Candidates shall request by correspondence addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370. Naval Reserve and retired officers shall request by correspondence from Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149. Requests shall contain full name, Social Security Account Number, rank, status, address and signature of the requestor.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense and components therof, in performance of their official duties and as specified by current Instructions and Regulation promulgated by competent authority; official records of professional qualifications; Educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01130-1

SYSTEM NAME:

Low Quality Recruiting Report

SYSTEM LOCATION:

Commander, Naval Recruiting Command 4015 Wilson Blvd Arlington, Va 22203

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reports of enlisted performance

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of performance

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Used by the Navy Recruiting Command, the Chief of Naval Education and Training, the Chief of Naval Technical Training and the Recruit Training Center to evaluate the quality of recruits with a view towards improvement of recruitment and training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folder

RETRIEVABILITY:

Random filing by submitting activity

SAFEGUARDS:

Maintained in locked safe in controlled building

RETENTION AND DISPOSAL:

Two years

SYSTEM MANAGER(S) AND ADDRESS:

Commander Navy Recruiting Command

NOTIFICATION PROCEDURE:

By individual request upon presentation of letter or identification. Must provide program and name.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Service Record entries, Commanding Officers performance evaluations .

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01131-1

SYSTEM NAME:

Officer Selection and Appointment System

SYSTEM LOCATION:

Primary System - Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203 Decentralized segments - Headquarters, Navy

Recruiting Activities and subsidiary offices; Armed Forces Entrance and examining Centers; Bureau of Naval Personnel; Bureau of Medicine and Surgery; National Personnel Records Centers; Naval Reserve Units; Naval Education and Training Activities; NROTC Units; Naval Sea Systems Command Headquarters; Naval Intelligence Command and subsidiary activities; Department of Defense Medical Examination Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made application for direct appointment to commissioned grade in the Regualr Navy or Naval Reserve, applied for officer candidate program leading to commissioned status in the U.S. Naval Reserve, applied for a Navy/Marine Corps sponsored NROTC scholarship program or preparatory school program, applied for interservice transfer to Regular Navy or Naval Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and non-automated form concerning any applicant's personal history, education, professional qualifications, physical qualifications, mental aptitude, character and interview appraisals, National Agency Checks and certifications of background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code, Sections governing authority to appoint officers. 10 USC Sections 591, 600, 716, 2107, 2122, 5579, 5600. Merchant Marine Act of 1939 (as amended); Executive Orders 9397, 10450, 11652; 5 USC 301 Departmental Regulations.

PURPOSE(S):

To manage and contribute to the recruitment of qualified men and women for officer programs and the regular and reserve components of the Navy. To ensure quality military recruitment and to maintain records pertaining to the applicant's personal profile for purposes of evaluation for fitness for commissioned service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape; paper records are stored in file folders.

RETRIEVABILITY:

Name and social security number applicant

SAFEGUARDS:

Records kept in file cabinets and offices locked after working hours. Based on requirements of user activity, some buildings have 24-hour security guards.

RETENTION AND DISPOSAL:

Application records maintained six months; after six months, summary sheets maintained for 5 years at National Record Storage Center. NROTC application records kept for current year only. Correspondence files maintained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander Naval Recruiting Command (Attn: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, Va. 22203; or, Chief of Naval Reserve (Code 111C), New Orleans, Louisiana, 70146, or, to applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. Letter should contain full name, address, social security account number and signature.

The individual may visit Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Va. 22203. Proof of identification will consist of picture-bearing or other official identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Navy Recruiting personnel and employees processing application; Medical personnel conducting physical examination and private physicians providing consultations or patient history; character and employer references named by applicants; educational institutions, staff and faculty members; Selective Service Commission local state, and Federal law enforcement agencies; prior to current military service record; members of Congress; Commanding Officer of Naval Unit, if active duty; Department of Navy offices charged with personnel security clearance functions. Other officials and employees of the Department of the Navy, Department of Defense, and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552 a (k)(1), (5), (6) and (7), as applicable. For additional information, contact the System Manager.

N01131-2

SYSTEM NAME:

U.S. Naval Academy Admissions Records

SYSTEM LOCATION:

U.S. Naval Academy, Leahy Hall, Annapolis, Maryland 21402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All candidates for admission to the Naval Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Admissions records, including information on nominations and appointments, and candidate guidance files. Admissions files contain personal data, personal statements, transcripts from previous academic institutions, admission tests results, physical aptitude exam results, recommendation letters from school officials and others, interest inventory, extracurricular

activities report, and report of officer interview. Nominations and appointments records consist of card files all Congressional Offices and who each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source, of all candidates appointed, admitted, and graduated or resigned prior to graduation. Similar files are separately kept on foreign candidates. Candidate guidance files consist of precandidate questionnaires concerning educational background, personal data, physical data, extracurricular activities and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 6956, 6957, and 6958, 44 U.S.C. 3101.

PURPOSE(S):

To evaluate eligibility/potential and establish an audit trail of candidate profiles by obtaining information for the initiation of formal officer accession programs in conjunction with the admissions process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are filed in folders or index boxes, and stored in file cabinets in the appropriate offices.

RETRIEVABILITY:

Basic admissions records are retrieved by use of a six digit candidate number. Nominations and Appointment records are indexed either by candidate names or by nomination source. Candidate guidance questionnaires are stored by candidate names alphabetically.

SAFEGUARDS:

Visitor control and all files are kept in locked file cabinets and locked offices.

RETENTION AND DISPOSAL:

Admissions records of admitted candidates are kept by the Registrar's office after a candidate reports. Unsuccessful candidate files are kept for one year in locked file, then destroyed. Nomination and Appointment files vary in retention. All Congressional Office card files are kept for 10 years on the premises. Status cards of admittees are kept until graduation or resignation, and then transferred to the Academy archives and microfilmed. Nominations files are disposed of yearly through normal refuse removal methods. Candidate guidance files are destroyed after one year.

SYSTEM MANAGER(S) AND ADDRESS:

Admissions Officer, Office of the Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402.

NOTIFICATION PROCEDURE:

Written request may be made to the system manager.

RECORD ACCESS PROCEDURES:

Rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

Rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Educational institutions, nominating sources, individual candidates, school officials, personal statements, Blue and Gold officer interviews, and letters of recommendation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01133-1

SYSTEM NAME:

NAME/LEAD Processing System

SYSTEM LOCATION:

Primary System, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have responded to Navy advertising, requested their names not be used in future Navy advertising, students throughout the country who may be qualified for enlistment, first-term enlistees on active duty in the U. S. Navy, veterans, enlisted discharged personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated and non-automated form containing personal records and correspondence on both education, service, and Navy program information on potential Navy applicants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5531; Section 133, 503, 504, 508, 510; 5 USC Sections 301, 302; 44 USC Sections 3101, 3702

PURPOSE(S):

To provide field recruiters with names of individuals who have responded to Navy advertising, students who may be qualified for enlistment, first-term enlistees in the U.S. Navy, veterans, and enlisted personnel who have been discharged. To provide an interface between Navy Recruiters and members of the civilian community. To generate prospective applicants for enlistment in the U.S. Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on disks, magnetic tape or on punched cards in a limited access area.

Computer print outs are stored in locked filing cabinets or file folders

RETRIEVABILITY:

Information can be accessed by name, program and social security account number.

SAFEGUARDS:

Lists and files are handled with maximum security during processing and storage, and are accessible to routine users only and then only through a selected group of individuals charged with security of the lists. Files are stored in a limited access area and coded so

that only several persons have both knowledge of the code and access to the files.

RETENTION AND DISPOSAL:

A record is maintained of all outgoing automated responses, and disposed of in accordance with Departmental Regulations.

Compiled lists and commercial purchased lists are maintained for certain period of time depending on the usefulness and currentness of the information, and disposed of in accordance with Departmental Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Recruiting Adverstising Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

NOTIFICATION PROCEDURE:

Requests should be addressed to: Director, Recruiting Advertising Department, Navy Recruiting Command, 4015 Wildon Boulevard, Arlington, Virginia 22203.

Requester is required to provide a full name, address, and signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the SYSMANAGER

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

RECORD SOURCE CATEGORIES:

Parents, influentials, friends and associates of the subject of the records and officials and employees of the Department of the Navy, Department of Defense, and the Veterans Administration in the performance of their official duties and as specified by current Instructions and regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01133-2

SYSTEM NAME:

Recruiting Enlisted Selection System

SYSTEM LOCATION:

Primary System - Commander Navy Recruiting Command Decentralized Segments - Navy Recruiting Area Commanders, Navy Recruiting District Headquarters, Navy Recruiting 'A' Stations, Navy Recruiting Branch Stations, AFEES.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records and corespondence pertaining to prospective applicants, applicants for regular and reserve enlisted programs, and any other individuals who have initiated correspondence pertaining to enlistment in the United States Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and non-automated form concerning personal history, education, professional qualifications, mental aptitude, physical qualifications, character and interview appraisals, National Agency Checks and certifications, service performance and congressional or special interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Sections 133, 275, 503, 504, 508, 510, 672, 1071 - 1087, 1168, 1169, 1475 - 1480, 1553, 5031; 5 USC 301 Departmental Regulations.

PURPOSE(S):

To provide recruiters with information concerning personal history, education, professional qualifications, mental aptitude, and other individualized items which may influence the decision to select/non-select an individual for enlistment in the U.S. Navy. To provide historical data for comparison of current applicants with those selected in the past.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

To officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape; paper records are stored in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of subject

SAFEGUARDS:

Records are accessible only to authorized Navy recruiting personnel within and are handled with security procedures appropriate for documents marked 'For Offical Use Only'

RETENTION AND DISPOSAL:

Records are normally maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander Naval Recruiting Command (Attn: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203; or, Chief of Naval Reserve (Code 111C), New Orleans, Louisiana, 70146, or, to applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. Letter should contain full name, address, social security account number and signature.

The individual may visit Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203. Proof of identification will consist of picture-bearing or other official identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Navy Recruiting personnel and Administrative Staff; Medical Personnel conducting physical examinations and/or Private Physicians providing consultations or patient history; Character and Employer references; Educational institutions, Staff and Faculty members; Selective Service Commission; Local, State, and Federal

Law enforcement agencies; prior or current military service records; Members of Congress.

Other officials and employees of the Department of the Navy, Department of Defense and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (5), (6), and (7) as applicable. For additional information contact the System Manager.

N01136-1

SYSTEM NAME:

Navy Recruiting Support System

SYSTEM LOCATION:

Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Decentralized Segments-Navy Recruiting Areas; Navy Recruiting Districts; Navy Recruiting 'A' Stations; Navy Recruiting Branch Stations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students who have taken the Armed Forces Vocational Aptitude Battery; Naval Reserve officers nominated by District Commanding Officers for a collateral duty assignment as Recruiting District Assistance Council Chairmen (RDAC); Enlisted Personnel selected by local Navy Recruiter for participation in local Navy Recruiting effort; Community leaders and individuals who provide assistance to Navy Recruiters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; Address; Pertinent family information; Pertinent military information; Professional and education affiliations and experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Sections 133, 503, 504, 508, 510, 5031; 5 USC 301 Departmental Regulations; 44 USC Sections 3101, 3702.

PURPOSE(S):

To provide field recruiters with various vehicles of recruiting support; to familiarize Navy Recruiters with community leaders; to provide a thorough interface between the Navy and the community; to promote the Navy among the members of the civilian community; to provide educators with a measure of the vocational aptitude of their students through administration of the Armed Services Vocational Aptitude Battery; to cultivate community awareness; to assign inactive Reserve officers to recruiting support functions as Recruiting District Assistance Council Chairmen; to facilitate liason with various business, social and education cultures in the community; to obtain media support for the Navy Recruiting Command; to assist the local recruiter in any way the recruiter feels necessary; and to generate prospective applicants for the U.S. Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and magnetic tape

RETRIEVABILITY:

Information can be accessed by name and social security number

SAFEGUARDS:

Lists and files are handled with discretion and accessible only to those personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained for the tenure of the individual involved or in the case of high school Armed Services Vocational Aptitude Battery lists for a maximum two-year period or until information is no longer useful for recruiting support.

Magnetic tapes are demagnetized; other manual files are shredded or burned when discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203 Telephone: 202/692-4795

Requester is required to supply full name, rank/rate (if applicable), address and social security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Subject of the information; Field Recruiters; Area Commanders/ District Commanding Officers; Chief of Naval Personnel; Chief of Naval Reserve; District Commandants; Chief of Naval Education and Training; Vocational Testing Group; Recruit Training Commands; Service Schools Commands and other officials and employees in the Department of the Navy and other components of the Department of Defense in the performance of their officials duties and as specified by current instructions and regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01211-1

SYSTEM NAME:

Naval Research Reserve Program Personnel Accounting System

SYSTEM LOCATION:

Office of Naval Research 800 North Quincy st. Arlington, VA 22217

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research reserve personnel, officer and enlisted

CATEGORIES OF RECORDS IN THE SYSTEM:

Military identification information, including Naval Officer Billet Codes, plus professional qualifications information, including education and occupation

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To effectively manage the Office of Naval Research headquarters reserve unit. These records are used to maintain the unit's mobilization readiness. The

system is used to prepare fitness reports, recall rosters, training reports and any other management function required to sustain the reserve unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Punched cards, printouts, printed forms (NAVSO 1060/2 and 1060/2A)

RETRIEVABILITY:

Name, rank, designator, NOBC's, education, major subject, First Navy qualification, first job function, reserve unit affiliation

SAFEGUARDS:

Records kept in controlled access building, controlled computer spaces, file cabinets in limited access offices

RETENTION AND DISPOSAL:

Physically destroyed annualy when new questionnaire forms are received

SYSTEM MANAGER(S) AND ADDRESS:

Research Reserve Coordinator, Code 723 Office of Naval Research Arlington, VA 22217

NOTIFICATION PROCEDURE:

Write to SYSMANAGER, giving full name, rank, SSN. Visit Office at above address, showing Naval Research ID Card.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Qualifications Questionnaire Naval Reserve Research Program, NAVSO form 1060/2

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01301-1

SYSTEM NAME:

Office of the Judge Advocate General, Reporting Questionnaire

SYSTEM LOCATION:

Office of the Judge Advocate General, (Code 61), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, designator, rank, date of rank, branch of service, place and date of birth, dependents, wife's name, height, weight, eye and hair color, home address and telephone number, date reported, date detached, previous duty station and mode of travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 806

PURPOSE(S):

To assist the Judge Advocate General in assignment of officers within the Office of the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records kept in a folder alphabetically, stored in a file cabinet.

RETRIEVABILITY:

By officer's name.

SAFEGUARDS:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are destroyed when the officer is transferred from the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his reporting for duty in the Office of the Judge Advocate General.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01301-2

SYSTEM NAME:

Naval Officer Development and Distribution Support System

SYSTEM LOCATION:

Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Naval officers on active duty; all Naval Reserve officers requesting recall to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and personnel records in both automated and non-automated form concerning classification, qualifications, assignment, placement, career development, education, training, recall, release from active duty and management of Naval officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations
10 USC 5504 Lineal List
10 USC 5706 Promotion Selection List

PURPOSE(S):

To assist Navy officials and employees in the classification, qualification determinations, assignment, placement, career development, education, training, recall and release of officer personnel pursuant to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management and administration of Navy enlisted personnel in order to meet manpower allocations and requirements.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetice tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by social security account number and/or name.

Manual records may be retrieved by name or social security account number.

SAFEGUARDS:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are generally maintained until superseded, or for a period of two years or until release from active duty and disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator) Navy Department, Washington, D.C. 20370. The letter should contain full name, rank, social security account number,. designator, address and signature.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB 2) Rm. 1066, Washington, D.C. for assistance. Advance notification is requested for personal visits. Proof of identification will consist of military identification card.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

RECORD SOURCE CATEGORIES:

Personnel Service jackets; records of the officer promotion system; officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and regulations promulgated by competent authority; education institutions; official records of professional qualifications; general correspondence concerning the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01306-1

SYSTEM NAME:

Enlisted Development and Distribution Support System

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D.C. 20370 Secondary System-Enlisted Personnel Management Center, New Orleans, Louisiana 70159 and Naval Reserve Personnel Center, Naval Support Activity (East Bank), Bldg. 603, New Orleans, Louisiana 70149

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy enlisted personnel: active, inactive, reserve, fleet reserve, and retired.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, advancement, performance, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, and administration of Navy military personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To assist Navy officials and employees in the initiation, development, implementation of policies pertaining to enlisted personnel assignment, placement, retention, career enhancement, and motivation, and other career related matters, in order to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management and administration of Navy enlisted personnel in order to meet manpower allocations and requirements.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums, and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by social security account number and/or name.

Manual records may be retrieved by name, social security account number, or enlisted service number.

SAFEGUARDS:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to

authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

The Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or, for Training and Administration of Reserve personnel only, to Commanding Officer, (Attn: Privacy Act Coordinator) Naval Reserve Personnel Center, Naval Support Activity (East Bank), Bldg. 603, New Orleans, Louisiana 70149. The letter should contain full name, social security account number (and/or enlisted service number), rate, military status, and signature of the requestor. The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB #2), Rm. 1066, Washington, D.C. for assistance with records located in that building; or Training and Administration of Reserve personnel may visit the Commanding Officer (Privacy Act Coordinator), Naval Support Activity (East Bank), Bldg. 603, New Orleans, Louisiana 70149. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and components therof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status; Educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01420-1

SYSTEM NAME:

Officer Promotion System

SYSTEM LOCATION:

Naval Military Personnel Command, Navy Department, Washington D.C. 20370; and Reporting Seniors (see Directory of the Department of the Navy Mailing Addresses); Federal Records Storage Centers; National Archives.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers on active duty; all reserve officers on inactive duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fitness Report Jacket, Selection Board Jacket, Officer Summary Record, Promotion History Cards, and other records concerning fitness and qualifications of officers and related to promotion requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations
10 USC 543 Selection Boards
10 USC 33, 545, 549 Promotions

PURPOSE(S):

To assist officials and employees of the Department of the Navy relating to the promotion of naval officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the Navy's Officer Promotion System and the records contained therein.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tape, discs or on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by social security account number. Manual records may be retrieved by social security account number and/or officer file number, and name.

SAFEGUARDS:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or to Reporting Seniors (see Directory of the Department of the Navy Mailing Addresses). The letter should contain full name, social security account number, (or officer file number), rank, military status, address and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex, (FOB#2), Rm. 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the Reporting Senior for records maintained by that individual. Proof of identification will consist of Military Identification Card.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, other Departments and Agencies of the Executive Branch of the Government, and components therof, in the performance of their official duties as specified by current Instructions and Regulations promulgated by competent authority; educational institutions; federal, state and local court documents; general correspondence concerning the individual; official records of professional qualifications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (5), (6), and (7) as applicable. For additional information contact the System Manager.

N01500-1

SYSTEM NAME:

Naval Educational Development Records.

SYSTEM LOCATION:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applications, participants, graduates and staff of officer acquisition, professional development, Navy Youth, dependents' education (Atlantic), and Non-Traditional Education Support programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, biographical information, student records and reports of performance, graduation, and disenrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Used by Naval Educational Development staff members, selection boards, Naval Military Personnel Command, and Navy media for selection, student monitoring, and utilization of graduates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and punched cards.

RETRIEVABILITY:

Name and SSN

SAFEGUARDS:

Locked buildings and access only to authorized personnel.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual

SYSTEM MANAGER(S) AND ADDRESS:

Director of Naval Educational Development (See location section)

NOTIFICATION PROCEDURE:

By individual request upon presentation of letter of identification. Must provide program and name.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applications, selection board proceedings, transcripts, and correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01500-2

SYSTEM NAME:

NAVSCOLS/TIS, USMC Training Supays

SYSTEM LOCATION:

Schools and other training activities or similar organizational elements of the Department of the Navy and Marine Corps as listed in the directory of Department of Navy activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of present, former, and prospective students at Navy and Marine Corps schools and other training activities or associated educational institution of Navy sponsored programs; instructors, staff and support personnel; participants associated with activities of the Naval Education and Training Command, including the Navy Campus for Achievement and other training programs; tutorial and tutorial volunteer programs; dependents' schooling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Schools and personnel training programs administration and evaluation records. Such records as basic identification records i.e., social security number, name, sex, date of birth, personnel records i.e., rank/rate/grade, branch of service, billet, expiration of active obligated service, professional records i.e., Navy enlisted classification, military occupational specialty for Marines, subspecialty codes, test scores, basic test battery scores, and Navy advancement test scores. Educational records i.e., education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, and attrition categories. Academic/training records, manual and mechanized, and other records of educational and professional accomplishment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5031

PURPOSE(S):

To determine course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; guidance and counseling of students; preparation of required reports, and for other training administration and planning purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Education as required.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in microform or in file folders, card files, file drawers, cabinets, or other filing equipment. Automated records may be stored on magnetic tape, discs, punched cards, etc.

RETRIEVABILITY:

Social security number and name

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized personnel only. Records are maintained in controlled access rooms or areas. Data is limited to personnel training associated information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers. Information provided via batch processing is of a predetermined and rigidly formatted nature. Output is controlled by the functional managers who also control the distribution of output.

RETENTION AND DISPOSAL:

Records disposal manual.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. See the directory of Navy and Marine Corps activities mailing addresses.

NOTIFICATION PROCEDURE:

Apply to system manager. Requestor should provide his full name, social security number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, schools and educational institutions, Commander, Naval Military Personnel Command, staff of Naval Education and Training Command and other activities and the Commandant of the Marine corps; instructor personnel; and Commander, Naval Recruiting Command.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01500-3

SYSTEM NAME:

Students awaiting legal, medical action account

SYSTEM LOCATION:

Naval Air Technical Training Center, Lakehurst, New Jersey 08733

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. The student locator card file contains specific data on all student personnel assigned to NATTCL, whether or not they successfully completed training. A dead file is maintained after the student is transferred.

B. The 'others' file is a list of all students on board that are not enrolled in class. Categories include: disciplinary, medical, and administrative (awaiting orders, port calls, passports, humanitarian requests, administrative discharge).

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The student locator card file is composed of 4' x 6' cards on which the following is recorded: name, previous command, rate, branch of service, date of transfer, new duty station and command, estimated date of arrival, standard transfer order number, and rate upon departure.

B. The following information is included on students listed in the 'others' file: date of hold, type of hold, estimated period of hold, work assignment, parent command notification, date re-enrolled, availability submission (used to notify Chief of Naval Personnel of member's availability for transfer), date orders or discharge authorization received, date transferred, and remarks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To verify date of departure; to determine, in conjunction with the next duty station, if member is in an unauthorized absentee; to verify attendance and/or completion of training; to answer requests by parents who do not know the school or class individual is attending; to forward official correspondence; to maintain accountability of all students not enrolled in class to ensure the appropriate administrative actions are completed in a timely manner ensuring minimum delay in the training pipeline.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A. Index card drawer
B. File folders

RETRIEVABILITY:

A. Name
B. Name, rate, social security number

SAFEGUARDS:

A. Locked room
B. Maintained in locked room-accessibility is limited to the student control office personnel, personnel officer, administrative officer, legal officer, executive officer, and commanding officer.

RETENTION AND DISPOSAL:

A. Two years
B. Two years

SYSTEM MANAGER(S) AND ADDRESS:

A. Personnel office supervisor
B. Personnel office supervisor

NOTIFICATION PROCEDURE:

A. The file is available to members upon proper identification.

B. The file does not contain information beneficial to the individual; however, with proper identification any student can review the form pertaining to himself. This may be accomplished by presentation of Military I.D. card to a responsible petty officer in the student control office.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

A. Official documents such as orders, assignment directives, and service records.

B. Sources of information are: NATTCL schools, medical authorities, legal officer, transfer section of personnel office, drug exemption officer, NATTCL duty office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01500-4

SYSTEM NAME:

DODCI Student Record System

SYSTEM LOCATION:

Department of Defense Computer Institute, Washington Navy Yard, Washington, D.C. 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students who have completed a course of instruction presented by the Department of Defense Computer Institute: primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetized card file of students who have attended DODCI courses. Record consists of name, military rank or rate, civilian grade, branch of service, DOD agency or activity and title of course attended. Also associated file of consolidated listing of students for each course offering arranged by DOD agency or activity and name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Maintained by DODCI registrar to respond to individuals requesting official verification of attendance to a specific course; to respond to students, agency or activity requesting official record of training completed. Used to compile statistical data of student throughput, e.g., attendance by course, attendance by branch of service, agency or activity. Statistical data is not compiled by name.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetic card file and file folders in file cabinet.

RETRIEVABILITY:

Name and course title.

SAFEGUARDS:

Maintained in administrative office which is locked after normal working hours, accessible only to authorized office staff and director or delegate on demand.

RETENTION AND DISPOSAL:

Individual cards by student name and consolidated listing of students are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, DOD Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

NOTIFICATION PROCEDURE:

By individual request upon presentation of letter or identification. Must provide course title and year of attendance.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concernd may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enrollment and registration request for DOD management education and training program courses (DD Form 1556), and course listing of students review by course manager and individual students.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01500-5

SYSTEM NAME:

DODCI Student/Faculty/Senior Staff Biography System

SYSTEM LOCATION:

Department of the Defense Computer Institute, Washington Navy Yard, Washington, D.C. 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All faculty members, senior staff members, and guest lecturers currently instructing or managing at the DODCI. All students who are attending or who have completed a course of instructions presented by the Department of Defense Computer Institute: primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local governments agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic summary forms individually submitted upon request by each DODCI faculty member, senior staff member, guest lecturer, or student. Students record consists of name, rank or rate, civilian grade, organization and division, office phone number, current and previous job titles and positions, number of months with present job title, major duties of present job, formal education completed, objectives for attending DODCI course, computer-related and other technical training and experience, information on usage of computers in present position, influence and authority student has over design of computer-based systems including security and privacy aspects, extent involved in planning and design of teleprocessing systems. Faculuty/senior staff record consists of name, rank or rate, current and previous job titles and positions, former major duties, formal education completed, computer-related and other technical training experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301.

PURPOSE(S):

The student biographical summaries are used by course managers and functional department heads to evaluate education level, computer related work experience, and general computer background of DODCI students. Establishes student qualifications to attend a requested course and if course objectives have satisfied personal objectives of students attending course. Statistical summarization of information contained in the system provides basis for modification and revision to course content. Serves as vehicle to place student into appropriate laboratory and

seminar group in courses requiring such a breakout.

Information on faculty/senior staff members contained in the biographical summaries is provided to students as an attachment to their student notebooks. Records are used to identify faculty and senior staff members, areas of data processing and information management expertise for consultation purposes and as an expertise preamble to the next scheduled lecturer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File foldera in file cabinet.

RETRIEVABILITY:

By name for faculty/senior staff members. Course title and name for students.

SAFEGUARDS:

Maintained in scheduling office (for students) and in the reproduction shop (for faculty/members) which is locked after normal working hours, access controlled by system manager and accessible only to authorized faculty members, director of administration, and director or delegate on demand.

RETENTION AND DISPOSAL:

All completed individual student biographical summaries attending a specific course are retained in a file folder marked by course title and course date. Individual student biographical summaries are retained by course for two fiscal years preceeding the fiscal year in progress. All individual faculty and senior staff biographical summaries are retained in a master file folder until no longer providing services to DODCI. Master file is review periodically to maintain currency. Students receiving a course notebook can retain the included biographical records are well as the notebook.

SYSTEM MANAGER(S) AND ADDRESS:

Scheduling Officer, DOD Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

NOTIFICATION PROCEDURE:

Students by individual request upon presentation of letter of identification. Must provide course title and year of attendance.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Student biography forms are of DODCI origin and completed by each individual student. Forms are completed either the first day of the course or, in the case of certain specific courses, are mailed to the prospective student requesting return prior to commencement of the course.

Biographies are authorized by each faculty and senior staff member soon after arrival at DODCI. Guest lecturers are requested to voluntarily submit biographies for use in course notebooks. Contents is never changed, but in some cases selectively reduced in length so as not to exceed one page. Format and content are generated solely by DODCI member and are subjected only to editorial review.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01500-6

SYSTEM NAME:

DODCI Course Evaluation System

SYSTEM LOCATION:

Department of Defense Computer Institute, Washington Navy Yard, Washington, D.C. 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students who have completed a course of instruction presented by the Department of Defense Computer Institute: primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual student evaluation of entire course and random sampling of specific lecture presentations. Includes objectives for attending course; statement concerning realization of personal objectives, numerical or qualitative rating of overall course, lab sessions and/or specific lectures; list of strengths and weaknesses of course; list of lecture subjects of particular benefit or of little use to student; list of lecture subjects which should be expanded or reduced in coverage; and list of topics not covered in course but should be included. Comments concerning course content, sequence, lecture presentation, teaching techniques, audio visual aids, physical facilities and administrative support are solicited and recorded. Categories are posed as questions with ample space to encourage written response of student opinion in a structured but non-restrictive format. These Course Evaluation Forms also contain hard core factual information, i.e., course title, course dates, student name, rank/rate/grade, branch of service, duty station or agency, and present job title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301.

PURPOSE(S):

The system is used to evaluate course, lecture, teaching techniques and individual instructor effectiveness. It provides basis for modification and revision to course content and sequence and lecture content. It provides input to long-range plan for course update, additions and revisions. Student evaluation of all attendees to a particular course are reviewed as a composite group by DODCI faculty members to determine problem areas, trends, and provides a continuous evaluation of course effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in file cabinet.

RETRIEVABILITY:

Course Title and Student Name.

SAFEGUARDS:

Maintained in Scheduling Office which is locked after normal working hours, access controlled by Systems Manager and accessible only to authorized faculty members. Director of

Administration, and Director or delegate on demand.

RETENTION AND DISPOSAL:

All completed individual evaluations of students attending a specific course are retained in a file folder marked by Course Title and Course Date. Individual student evaluation forms are retained by course for two fiscal years preceeding the fiscal year in progress.

SYSTEM MANAGER(S) AND ADDRESS:

Scheduling Officer, DOD Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

NOTIFICATION PROCEDURE:

By individual request upon presentation of letter or identification. Must provide course title and year of attendance.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Student Course Evaluation Forms are of DODCI origin and distributed in class and completed by each individual student.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01500-7

SYSTEM NAME:

DODCI Lecture-Instructor Inventory System.

SYSTEM LOCATION:

Department of Defense Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current DODCI instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Two disk files comprise the system of records. First master file contains instructor's name, functional group assignment code, projected date of departure; list of lectures instructor gives. Second master file contains lecture I.D., title, lecture primary, instructors giving the lecture. In addition to the items on disk, a manual file is maintained which is a record summary form containing the names of DODCI instructors and the number of lectures and/or laboratory hours they present in resident or on-site classes each quarter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 10 U.S.C. 5031

PURPOSE(S):

The system provides the ability for functional managers to generate a list of instructors along with the associated lectures in which they are proficient or to specify a lecture title and determine which instructors are capable of presentation. This system provides assistance in assigning instructors to course schedules, teams for on-site course presentations, determining lectures which are critical in flexibility of assignment, planning instructor assignments on the order of lecture priority. The Records Summary Form is used to evaluate the instructor's workloads and to assist in preparing the performance evaluation reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic disks in a computer data base. The Record Summary Form is maintained in paper copy in file cabinets.

RETRIEVABILITY:

Instructor's last name, lecture ID number, or functional group code.

SAFEGUARDS:

This system of records is maintained on magnetic disks in the computer operations center which is kept locked. Only the manager and assistant manager of the Computer Support office have access to the center during normal working hours and the security watch has access after hours. The mode of access to the computer-based system is via remote terminal and special passwords are required. Appropriate data base language commands (available only to authorized DODCI staff members) must be invoked to gain access to information in the system. Portions of the system can only be accessed by functional managers via controlled key work commands. An accounting log is maintained of all accesses to the system which contains identification of the user, log-on and off, station number, and date/time of last access.

RETENTION AND DISPOSAL:

The system data base is retained indefinitely. Revisions are in continuous process, e.g., instructors' names being added upon arrival and deleted on departure, lecture titles added or deleted as they are developed or discontinued, lecture presentation capability expanded or deleted as appropriate. The Record Summary Form is retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Computer Support Office, DOD Computer Institute, Building 175, Washington, D.C. 20374 for records maintained on magnetic disks. The Scheduling/Reproduction Officer, for the Record Summary Form.

NOTIFICATION PROCEDURE:

DODCI faculty members are informed of existence and purpose of system. Individual instructors can request printout of information in system which pertains to them.

RECORD ACCESS PROCEDURES:

The Institutes rules for access to records may be obtained from the Systems Manager.

CONTESTING RECORD PROCEDURES:

The Institute's rules for contesting contents and appealing initial determinations by the individual concerned can be obtained from the Systems Manager.

RECORD SOURCE CATEGORIES:

DODCI functional managers maintain system and periodically revise data base by entering new data and deleting discontinued information. Additionally, the Systems Manager can enter information affecting printout format and contents. The information contained in the Instruction Hour Records forms are extracted from teaching schedules prepared on each course of instruction.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01500-8

SYSTEM NAME:

Personnel and Training Evaluation Program Automated System.

SYSTEM LOCATION:

Strategic Systems Programs Office, Navy Department, Washington, DC 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted technicians who have been trained to operate and maintain the Strategic Weapon System on Fleet Ballistic Missile Submarines. These individuals are identified by a Navy Enlisted Classification Code in the series 3301-3349.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number, NEC codes, current duty station and projected rotation date, duty station assignment history, Armed Services Vocational Aptitude Battery or Basic Test Battery scores, completion data for Navy schools, civilian education, promotion history (present and past rate), enlistment data (dates of service entry and expiration of enlistment/extension), patrol experience and scores on the Personnel and Training Evaluation Program examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To maintain a data base which will permit the Strategic Systems Programs Office to record achievemetest scores of enlisted members who operate and maintain the Strategic Weapon System on Fleet Ballistic Missile Submarines. This information will be used to assess the adequacy of traininreceived and the need for additional training.

Internal Navy users: Director, Strategic Systems Programs, Chief of Naval Technical Training and asschools, Type Commanders and assigned units in the performance of their duties relating to training on the Strategic Weapon System. Commander, Naval Military Personnel Command and Type Commanders and assigned units in the performance of their duties related to personnel assignment. Navy Personnel Research and Development Center who may, from time to time, validate service selection criteria for the DOD. It may be provided to such civilian contractors and their employeesas are or may be operating in accordance with an approved official contract with the U.S. Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's Compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on computer media, disks or magnetic tape. Hard copy reports are distributed to authorized user activities. These reports are stored in notebooks or file folders in drawers, cabinets or other filing equipment.

RETRIEVABILITY:

SSN, name and duty station.

SAFEGUARDS:

Access is provided to authorized personnel only on a 'need-to-know' basis. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and password. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to appecifically authorized individuals.Password authorization, assignment and monitoring is the responsibility of the systems manager.

RETENTION AND DISPOSAL:

Records are retained for five years after an individual leaves the Fleet Ballistic Missile program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Training Systems Branch, Strategic Systems Programs, Navy Department, Washington, DC 20376

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requester should provide his/her full name, social security number and military duty status. Visitors should present military identification card, civilian drivers license or other similar identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Individuals, their supervisors, Naval Military Personnel Command, schools assigned to the Chief of Naval Technical Training.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01513-1

SYSTEM NAME:

Navy Recruiting Command Attrition Tracking System

SYSTEM LOCATION:

Primary System - Recruiting Data Systems,Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy Enlisted Personnel who attrite during Basic Recruit Training

CATEGORIES OF RECORDS IN THE SYSTEM:

File consists of records and correspondence pertaining to individuals discharged at Navy Recruit Training Centers. Records include personal and service information, education, physical and mental qualifications and circumstances surrounding discharge.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Sections 133, 275, 503, 504, 508, 510, 5031; 5 USC 301 Departmental Regulations.

PURPOSE(S):

To accumulate records and correspondence pertaining to individuals discharged at Navy Recruiting Training Centers. To provide attrition information to Navy Recruiting Command Headquarters for application against recruiter point averages under the Freeman Plan. To provide a historical record of reasons for attrition for use in determining new enlistment eligibility parameters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment or reenlistment eligibility and related benefits.

To officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their duties related to management of quality military recruitment.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual Records stored in file cabinets in a secure government building. Automated records are maintained on magnetic tape.

RETRIEVABILITY:

Info can be retrieved by Social Security Account Number, Navy Recruiting Area or District Recruit Training Center, Age, Education, Discharge Reason or Date of Discharge.

SAFEGUARDS:

Only authorized routine users are permitted access to the records. The Headquarters building in which the records are located has a 24-hour guard which prevents unauthorized access to the building.

RETENTION AND DISPOSAL:

Records are maintained at Headquarters, Navy Recruiting Command for five years, and then destroyed. Records at Area and District Headquarters are retained for one year before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Recruiting Data Systems, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203 Telephone: 202-692-4069

Written requests for information should contain the full name, social security account number and location where individual was recruited, and signature.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The Agency's for access to records may be obtained from System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Discharge Sections at Navy Recruit Training Commands Other officials and employees of the Department of the Navy, Department of Defense and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01531-1

SYSTEM NAME:

U.S. Naval Academy Midshipmen Performance Records.

SYSTEM LOCATION:

U.S. Naval Academy, Bancroft Hall, Annapolis, Maryland 21402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval Academy Midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance jackets contain midshipmen records relative to all facets of performance. Specifically, the jackets include: Performance aptitude evaluations, performance grades, personal history, autobiography, record of emergency data, aptitude history, review board records, medical excuse from duty forms, conduct records and grades, counseling and guidance interview sheets, academic grades, letters of commendation, and training records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 6962 and 10 U.S.C. 7008.

PURPOSE(S):

To maintain information on midshipmen in regard to their aptitude for military service, conduct, and academic standing in order to have a composite record used for management, supervision, administration, counseling and disciplining. The midshipmen performance jacket is an official file of material compiled on each individual while attending the Naval Academy and is not a part of a graduated midshipmen's permanent service record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the parents and guardians of midshipmen in connection with the counseling of midshipmen who encounter academic, performance, or disciplinary difficulties.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are kept in file folders in locked cabinents.

RETRIEVABILITY:

Records are kept alphabetically by Company and Class.

SAFEGUARDS:

Visitor control and files are kept in locked cabinets.

RETENTION AND DISPOSAL:

Performance records are kept by the Company Officer until graduation or separation from the Academy. The records are then retained in the Performance Office storage area until they are destroyed two years after the midshipman's class graduates.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, Annapolis, Maryland 21402 and the Performance Officer, Office of the Commandant, U.S. Naval Academy, Annapolis, Maryland 21402.

NOTIFICATION PROCEDURE:

Written request may be made to the system manager.

RECORD ACCESS PROCEDURES:

Rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

Rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual midshipman, supervisors, midshipman personal history/performance record, midshipman autobiography, Record of Emergency Data (NAVPERS 601-2), Statement of Personal History (DD-398), Aptitude History Record (Form 1610-105), Midshipmen Summary Sheets, Military Performance Board Results, Letters of Probation, Midshipmen Performance Evaluation Reports (Form 54A), Medical Reports, Clinical Psychologist Reports, Excused Squad Chits (Form 6320/20), Conduct Card (Form 1690/91C), Letters of Commendation, Counseling and Guidance Interview Records (Form 1230/98), Letters from Congressmen, parents, etc., and copies of replies thereto, and Record of Disclosure (Privacy Act).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01533-1

SYSTEM NAME:

NROTC Educational Development Records

BEST COPY AVAILABLE

SYSTEM LOCATION:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NROTC Scholarship Candidate Placement Records, NROTC Student Attrition Records, NROTC Student Jackets, Applications for NROTC Program, Commanding Officers and Executive Officers of NROTC units.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning students selected as principal and alternate candidates for NROTC scholarship. Contains name, SSN, address, telephone number, academic scores, medical qualification, race, and sex.

Reports of disenrollment, appointment to commissioned status, and non-selection as an applicant for the NROTC program.

Student records containing enlistment cntract, service agreement, officer candidate training application, evidence of citizenship, birth certificate, reports of medical qualification, aptitude for naval service evaluations, academic records, personal history information, report of security clearances granted, special request, and action of boards concerning these special request.

Application file consisting of officer candidate training request, service agreement, report of medical qualification, evidence of citizenship, personal history, interviewers' appraisal sheets, and academic records.

Officer Biography Sheet (NAVPERS 079)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To assign scholarship selectees to various NROTC hosted institutions. Provides reference to individuals's attrition from the NROTC program. Provides program managers with information to determine students eligibility for continuation in program and eventual commissioning as a naval officer. To determine applicant's eligibility for enrollment in NROTC program. Information in the system can be used in preparing Fitness Reports, award recommendations, TAD assignments in conjunction with summer training and preparing background information for Flag and high government official visits to the NROTC unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, index cards, and notebook

RETRIEVABILITY:

Name, SSN, and NROTC unit.

SAFEGUARDS:

Secured room and building. Access to information to authorized personnel only.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

NROTC, CNET, NAS, Pensacola, FL.

NOTIFICATION PROCEDURE:

Call or write system manager listed above.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, CHNAVPERS, COMNAVCRUITCOM, and NROTC unit.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01572-1

SYSTEM NAME:

Reservists reporting for active duty for training, background questionnaires

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, designator, rank, unit to which attached, law school attended, year admitted to practice and State or Territory where admitted, and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 806

PURPOSE(S):

Information provided by this questionnaire will routinely be used in the preparation of a memorandum to the Judge Advocate General and/or Deputy Judge Advocate General on each officer who reports for active duty for training. The memorandum permits the JAG and/or Deputy JAG to familiarize himself with the officer's background. It also assists the Reserve Personnel Division to make an informed assignment of the officer during his/her training period which will enable the officer and the JAG and/or Deputy JAG to obtain maximum benefit from the officer's training period.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, stored in a file cabinet.

RETRIEVABILITY:

By officer's name.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the cabinets are located is locked outside of official working hours.

RETENTION AND DISPOSAL:

Records are retained for two months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Written requests must be signed by the requesting individual.

For personal visits, the individual should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from Reserve officers who participate in the Naval Reserve Law Programs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01610-1

SYSTEM NAME:

Navy Personnel Evaluation System

SYSTEM LOCATION:

Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the U.S. Navy including Regular, Reserve, Active Duty, Inactive Duty, Fleet Reserve and Retired.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and investigatory material containing information pertinent to member's retention, assignment or separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301. Departmental Regulations.

PURPOSE(S):

To assist in personnel administration of Navy members, including but not limited to retention, assignment, and separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Director, Veterans Administration, and Director, Selective Service Administration and their officials and employees in connection with notification and assistance in obtaining benefits by members and former members. To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to personnel administration. To state and local government agencies in the performance of their official duties related to personnel administration. When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary. The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and index cards. Some information from the paper records is automated.

RETRIEVABILITY:

Filed alphabetically by last name or by Social Security Account Number.

SAFEGUARDS:

Stored in locked safes and cabinets in buildings that employ security guards. File areas are accessible only to authorized persons who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are maintained as long as member has any affiliation with the Naval service and for five years thereafter and are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370. The letter should contain full name, social security account number, rank/rate/civilian status, address and notarized signature of the requestor. The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex, Washington, D.C. (FOB#2) Rm. 1066, for assistance with records located in that building. Prior written notification of personal visits is required to ensure that all parts of the record will be available at the time of the visit. Proof of identity will be required and will consist of a military identification card for persons having such cards and picture-bearing identification.

RECORD ACCESS PROCEDURES:

The agency's rule for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Civilian and military investigative reports; reports of federal and state civilian court actions and criminal proceedings; general correspondence concerning and individual; officials and employees of the Department of the Navy, Department of Defense and Components therof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (2), (5), and (7) as applicable. For additional information contact the System Manager.

N01640-1

SYSTEM NAME:

Individual Correctional Records

SYSTEM LOCATION:

United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are in the Department of Defense Directory; and/or may be obtained from Naval Military Personnel Command, Washington, D.C. 20370.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any military member confined in a naval facility as a result of or pending trial by courts-martial; any member sentenced to three days bread and water or diminished rations; and any military member awarded correctional custody to be served in a correctional custody unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains documents related to the administration of individual prisoners in the Department of the Navy confinement and correctional custody facilities - courts martial orders; release orders; confinement orders; medical examiners' reports; requests and receipts for health and comfort supplies; reports and recommendations relative to disciplinary actions; clothing and equipment records; mail and visiting

lists and records; personal history records; individual prisoner utilization records; requests for interview; initial interview; spot reports; prisoner identification records; parolee agreements; inspection record of prisoner in segregation; personal funds records; valuables and property record; daily report of prisoners received and released; admission classification summary; social history; clemency recommendations and actions; parole recommendations and actions; restoration recommendations and actions; psychiatric, psychological, and sociological reports; certificate of parole; certificate of release from parole; requests to transfer prisoners; disciplinary action data cards showing name, grade, SSN, sex, education, sentence, offense(s), sentence computation, organization, ethnic group, discharge awarded, length of unauthorized absence, number and type of prior punishments, length of service, and type release; weekly status report (each member's legal status, offense charged, length of time confined). On tape, the same data as the disciplinary action data card, except name, computation of sentence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951

PURPOSE(S):

Commanding officers, officers-in-charge, and chief petty officers-in-charge of Navy brigs and Marine Corps correctional facilities and staff members use these records to determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Justice and state and local criminal justice agencies established by law.

To law enforcement and investigative agencies for investigation and possible criminal prosecution, civil court actions or regulatory order.

To confinement/correctional system agencies for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty, and parole actions; verifications concerning military offenders or military criminal records, employment records and social histories.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; on punch cards and computer tapes.

RETRIEVABILITY:

Paper records filed alphabetically by last name of prisoner. Information from computer tapes is retrieved using SSN of the individual.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer tape information at NMPC accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Logs and disciplinary action data cards are transferred to National Personnel Records Center, St. Louis, MO 63132 two years after release of prisoner. Other records are held at confinement facilities/correctional custody units for two years and destroyed. Transfer of a prisoner from one naval facility to another is not construed as a release. In such cases, the file accompanies the prisoner.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command (NMPC-84) Washington, D.C., 20370; Commandant of the Marine Corps (Code MPH) Washington, D.C., 20380.

NOTIFICATION PROCEDURE:

Information should be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records; military financial and medical records; military and civilian investigative and law enforcement agencies; courts-martial proceedings; records of non-judicial administrative proceedings; United States military commanders; staff members and cadre supply information relative to service member's conduct or duty performance; and other individuals or organizations which may supply information relevant to the purpose for which this system was designed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 USC 522a (j) (2) as applicable. For additional information, contact the System Manager.

N01710-1

SYSTEM NAME:

Special Membership Listing of the Organizational Recreation Association

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file records the name of all members who join the particular ship or activity recreation association. Also crossfiled by number of membership card.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record lists the names, internal codes, room and telephone numbers of each membership card and dates purchased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To indicate income from sale of membership cards; to provide an audit trial for the auditors; and to confirm memberships, upon request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concern, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01740-1

SYSTEM NAME:

Personal Services and Dependents Services Support System

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D.C. 20370; Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199; local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

Secondary System-Department of the Navy Activities in the Chain of Command between the local activity and the Headquarters level (see Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, Naval Reserve Officer Training Corps personnel, and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, forms, correspondence and supporting documents and other personnel records concerning entitlements, benefits, basic allowance for quarters, waiver of indebtedness, travel allowances, morale, and personal affairs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301. Departmental Regulations

10 USC 6161

10 USC 2774 as added by Public Law 92-453

PURPOSE(S):

To assist in the management, supervision, and administration of personal services, benefits and entitlements for Navy service members and their dependents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of Navy Relief and American Red Cross in the performance of their duties related to assistance of the members, their dependents and relatives.

To state and local government agencies in the performance of their official duties related to assistance of members and their dependents.

To non-government agencies only to assist members and their dependents.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders.

RETRIEVABILITY:

Records may be retrieved by name, social security account number or enlisted service number/officer file number of member; or name of dependent.

SAFEGUARDS:

Computer and punched cards processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, military status, or name of the dependent, name of sponser, sponsor's social security account number, and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB#2), Room 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy and the Department of Defense in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; educational institutions; federal, state, and local court documents; general correspondence relative to individual; officials and employees of Navy Relief, the American Red Cross, Veterans Administration and other agencies in the performance of their official duties.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01740-2

SYSTEM NAME:

Federal Housing Administration Mortgage Insurance System

SYSTEM LOCATION:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy members who have home mortgages through FHA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payments made to FHA for insurance payments credited to members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To calculate payments for FHA and to reconcile any discrepancies in accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of the Treasury when address is needed for issuance of a check.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

Social security number and member's name

SAFEGUARDS:

Guards, personnel screening and requestor codes

RETENTION AND DISPOSAL:

Destroyed one year after death or discharge of member

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to members at above address. Information request must contain Navy member's full name and social security number. Requester may visit above address and must have military identification card or valid state driver's license and social security card as proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

FHA, member, field disbursing officers

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01746-1

SYSTEM NAME:

Nonappropriated Fund Activity Information Support System

SYSTEM LOCATION:

Naval Military Personnel Command, Navy Department, Washington, D. C. 20370; and local nonappropriated Fund Activities under the cognizance of the Commander, Naval Military Personnel Command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals authorized under current regulations to use Commissioned Officers Messes (open), Chief Petty Officer Messes, Petty Officer First and Second Class Messes, Enlisted Men's Clubs, Consolidated Package Stores, Special Services facilities, and other Non-Appropriated Fund Activities under the cognizance of the Commander, Naval Military Personnel Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, records, membership applications, membership and user listings of Nonappropriated Fund Activity facilities, accounts receivable records, bad check listings, investigatory reports involving abuse of facilities, required for management of Nonappropriated Fund Activities under the cognizance Commander, Naval Military Personnel Command.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To assist in the management, supervision and administration of Nonappropriated Fund Activities such as messes, clubs, package stores and special-services facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Primarily by Name, and/or Social Security Number/Membership Number.

SAFEGUARDS:

Computer and punched card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to

authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or Departmental Instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D. C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, 20370; or to the Head of the local Nonappropriated Fund Activity concerned. The letter should contain full name, social security account number, status, address, and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Washington, D. C. 20370 (Arlington Annex, FOB #2), Rm. 1066 for assistance with records located in that building; or the individual may visit the local activity concerned for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; general correspondence concerning the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01754-1

SYSTEM NAME:

Navy Family Support Program

SYSTEM LOCATION:

Navy Family Service Centers located at various Naval and Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps service members and their families/dependents. In certain overseas locations civilian Navy and Marine Corps employees may be eligible for services. In certain CONUS locations, civilian Marine Corps employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

File could contain personal information such as name, case number, home address, telephone number, marriage counseling information, parent-child relationship information, family relations, financial data, and developmental disability information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations.

PURPOSE(S):

The Family Service Centers offer information, conduct referral services, and directly deliver services for a wide array of personal and family matters, counseling, assistance and crisis intervention to naval members and/or dependents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of member.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel that are properly cleared and trained. Building/rooms locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Family Support Program Division (NMPC-66), Human Resources Management Department, Naval Military Personnel Command, Washington, DC 20370.

NOTIFICATION PROCEDURE:

Written requests may be addressed to the appropriate Naval/Marine Corps activity concerned (mailing addresses are listed in the Navy directory in the component system notice). Individuals should provide proof of identity, full name, rank, dates of counseling, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Form submitted by the individual applying for counseling/assistance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01754-2

SYSTEM NAME:

Navy/USMC Family Service Centers Volunteers

SYSTEM LOCATION:

Navy Family Service Centers (FSCs) located at various Naval and Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who volunteers to assist at one of the Navy/USMC Family Service Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information such as name, home address, home telephone number, date of birth, age andnumber of children, experience, education, professional qualifications, interests, hobbies, assignments at the FSC, and any other information essential for placing the volunteer in the most appropriate position at the FSC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031

PURPOSE(S):

To supervise the performance of individuals who have volunteered to assist in the Navy and Marine Corps Family Service Center (FSC) Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name or skill of volunteer.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel that are properly cleared and trained. Building/rooms locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are retained for 15 years from the date the individual departs from the Center, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Family Support Program Division (NMPC-66), Human Resource Management Department, Naval Military Personnel Command, Washington, DC 20370.

NOTIFICATION PROCEDURE:

Written requests may be addressed to the Naval or Marine Corps activity concerned. Individuals should provide proof of identity, full name, dates of volunteer service, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information is obtained and periodically updated directly from the volunteer FSC employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01770-1

SYSTEM NAME:

Decedent Affairs Records System

SYSTEM LOCATION:

Commander, Naval Medical Command, 23rd and E Sts., N.W., Washington, D.C. 20372; Office of Medical Affairs Geographic Commands and Commanding Officers, Naval Medical Treatment Facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Deceased individuals for whom the Department of the Navy is responsible

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports concerning casualty, status, transportation of remains, requests for special escorts and our responses, disposition instructions, acknowledgements to next of kin; pertinent data, medals and awards, preparation and identification of remains reports, escort orders and debriefing forms, death certificates, some autopsy reports, DD Forms 1300 (Reports of Casualty); correspondence pertaining thereto; and adjudication copies and paid vouchers and statistical data excerpted from decedent affairs files

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, US Code 103a and b; Title 10, Sections 1481-1488, US Code; Executive Orders 8557, 30 Sep 40 and 10209 of 1 Feb 51; 44 US Code 3101

PURPOSE(S):

To facilitate and monitor return of remains and associated benefits; to verify eligibility of beneficiaries for benefits; to assist officials in the identification, care and return of decedent's remains, and the notification of the next of kin of the cause of death, and payment of allowances thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

CATEGORIES OF USERS

Department of Navy and families of decedents

SPECIFIC USES

Verification of eligibility for benefits; provision of information to families of decedents concerning identification, care and return of remains, causes of death and payment of allowances

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders Statistical data on magnetic tape

RETRIEVABILITY:

Filed alphabetically according to name of decedent by fiscal year of date of death -- Name, social security (or serial) number, date of death

SAFEGUARDS:

Locked building and guard during non-duty hours; personnel screening during duty hours

RETENTION AND DISPOSAL:

Permanent - Records are accumulated chronologically and filed alphabetically by fiscal year; held three years and retired to the Federal Records Center for permanent retention under control of this Command. Records are held for two years and then destroyed at the Office of Medical Affairs Geographic Commands.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, 23rd and E Sts., N.W., Washington, D.C. 20372 Office of Medical Affairs Geographic Commands and Commanding Officers, Naval Medical Treatment Facilities.

NOTIFICATION PROCEDURE:

Address inquiries to the systems manager Inquiry must include name of decedent, military status at time of death, SSN and/or service number, and date of death Requestor may visit Naval Medical Command, 23rd and E Streets, N.W., Washington, D. C. 20372

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

RECORD SOURCE CATEGORIES:

Reports submitted by field commands and next of kin as required by regulations and directives pertaining to the decedent affairs program

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01770-2

SYSTEM NAME:

Casualty Information Support System

SYSTEM LOCATION:

Primary System-Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

and local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses); Washington National Records Center, Suitland, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel who are reported missing, missing in Action, Prisoner of War or otherwise detained by armed force; deceased in either an active or inactive duty status; reported ill/injured in either active duty, fleet reserve, or retired status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, reports, and records in both automated and non-automated form concerning circumstances of casualty, next-of-kin data, survivor benefit information, personal and service data, and casualty program data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 USC 301 Departmental Regulations

PURPOSE(S):

To assist in the management of the casulty assistance program and to provide swift accurate responses to beneficiaries and survivors of Navy military personnel; to aid in the efficient settlement of the service member's estate and other affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Health and Human Services in connection with eligibility, notification and assistance in obtaining benefits due.

To officials and employees of the Veterans Administration and the Selective Service Administration in connection with eligibility, notification and assistance in obtaining benefits due.

To officials and employees of state and local government agencies in connection with eligibility, notification and assistance in obtaining benefits due.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper files, microfiche or microfilm.

RETRIEVABILITY:

Records may be retrieved by name and/or social security account number.

SAFEGUARDS:

Computer and punched card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained, and cleared.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Files are retained and disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or in accordance with Department Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command, (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requestor. The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB-2), RM 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rule for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, Public Health Service, Veterans Administration, and components thereof, in performance of their official duties as specified by current Instructions and Regulations promulgated by competent authority; casualty reports may also be received from state and local agencies, Hospitals and other agencies having knowledge of casualties to Navy personnel; general correspondence concerning member.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01770-3

SYSTEM NAME:

Naval Academy Cemetery Records

SYSTEM LOCATION:

U.S. Naval Academy, Administration Building Annapolis, Maryland 21402

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those eligible to reserve a lot for future burial in the Naval Academy Cemetery. Deceased individuals interred in the Naval Academy Cemetery.

CATEGORIES OF RECORDS IN THE SYSTEM:

State of Maryland Burial Transit Permit, Cemetery Interment Record (NDM-USNA-PWO-1170), U.S. Naval Academy Cemetery Records (NDW-USNA-DMC-5360/11) and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: full name, home address, rank, service, social security number, date and place of birth, date and place of death, marital status, name of father and mother, date and place of burial, lot number and other information relating to burial arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; Title 10, Secs 1481-88; 44 U.S.C. 3101

PURPOSE(S):

To maintain official records of individuals holding gravesite reservations in the Naval Academy Cemetery. Records are used to respond

to general inquiries from individuals holding gravesite reservations. To verify eligibility of widows of an officer or enlisted person of the Navy or Marine Corps who is buried in the Naval Academy Cemetery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Records are kept in a building not open to general visiting and are maintained in an area accessible only to authorized personnel. Building is under surveillance of security personnel during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. They are retained after the individual is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, Annapolis, Maryland 21402

NOTIFICATION PROCEDURE:

Written requests may be made to the system manager.

RECORD ACCESS PROCEDURES:

The agencies rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agencies rules for contesting contents by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from the Register of Alumni.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01800-1

SYSTEM NAME:

Naval Home Resident Information System

SYSTEM LOCATION:

Primary System-Governor, U.S. Naval Home, 24th and Grays Ferry Avenue, Philadelphia Pennsylvania 19146 Secondary System-National Personnel Records Center, St. Louis, Missouri 63132

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residents of the Naval Home (current, discharged and deceased).

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning application for admission and supporting documents, personnel data, service data, personal affairs, administrative records covering period of residence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations
24 USC 17

PURPOSE(S):

To manage and supervise the Naval Home with specific emphasis on personnel administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by residents of the Naval Home.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records may be stored in paper file folders, and/or vertical card files.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

All file folders and cards of residents are locked in file cabinets and are available only to authorized persons having a need to know.

RETENTION AND DISPOSAL:

Records are maintained at Naval Home for life of Resident and for 10 years after death or discharge or Resident; thereafter, records are retained at the National Personnel Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Governor, U.S. Naval Home, 24th and Grays Ferry Avenue, Philadelphia, Pa 19146.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to : Governor, U.S. Naval Home, 24th and Grays Ferry Avenue, Philadelphia, Pa 19146. The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, and signature of requestor. The individual may visit the Governor, U.S. Naval Home for assistance with record located in that building. Proof of identification will consist of Military Identification Card.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and Veteran's Administration in the performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; general correspondence concerning the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N01810-1

SYSTEM NAME:

Directory of Retired Regular and Reserve Judge Advocates

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61) Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired Officers of the Judge Advocate General's Corps

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, Designator, address, rank, retirement date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806

PURPOSE(S):

To utilize/assign retired Judge Advocate Generals' Corps Officers to Official Navy Selection Boards involving Judge Advocate Generals' Corps Personnel and to facilitate location of lawyers throughout the world with naval experience, which may be utilized by the Naval Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer paper printouts

RETRIEVABILITY:

Computer paper printouts requested from the Bureau of Naval Personnel. Retirees are shown alphabetically by rank.

SAFEGUARDS:

Records are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records not kept after person is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information received from records held by the Bureau of Naval Personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N01580-1

SYSTEM NAME:

Determinations on Origins of Disabilities For Which Military Members Have Retired

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired or former members of the Navy or Marine Corps who have been placed on the Temporary Disability Retired List or Permanent Disability Retired List and who have subsequently obtained or applied for Federal civilian employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests originated by individuals concerned or any federal agencies employing such individuals; Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3502(a), 6303(a), 8332(c);
5 U.S.C. 301;
44 U.S.C. 3101.

PURPOSE(S):

Information is used as the basis for determinations concerning the eligibility of individuals to certain benefits connected with Federal civilian employment available to those disabled in combat with enemies of the United States or having disabilities caused by instrumentalities of war during periods of war.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Determinations are rendered, upon request, to any Federal agencies employing members who retired from the naval service for disability.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the System Manager stating the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to: Civil Affairs Division (Code 12) Office of the Judge Advocate General Room 9N11, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332

Armed forces identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Employment information in the system is submitted by the individuals concerned or the Federal agencies employing them. Medical information in the system is obtained from the individuals' medical records, physical evaluation board records, and service records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01850-2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings

SYSTEM LOCATION:

Director, Disability Evaluation System, Ballston Tower 2, 801 N. Randolph St., Arlington, Va. 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps personnel who have been considered by a Physical Evaluation Board for separation or retirement by reason of physical disability (including those found fit for duty by such boards).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Veterans Administration and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions/appellate actions/review taken in the case; transcripts of physical evaluation board hearings; rebuttals submitted by the member; intra and interagency correspondence concerning the case; correspondence from and to the member, members of Congress, attorneys, and other interested members; and documents concerning the appointment of trustees for mentally incompetent service members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1216

PURPOSE(S):

To determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred, and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel.

Used by the Office of the Judge Advocate General relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651-53); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veteran's Administration to verify information of service connected disabilities in order to evaluate applications for veteran's benefits.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche, and in some files, plastic recording discs and cassettes.

RETRIEVABILITY:

Filed by year of initial disability proceeding, and alphabetically by name within that year.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Records are permanent. They are retained by the Naval Council of Personnel Boards for six years. After that time, they are sent to the Washington National Center, 4205 Suitland Road, Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph St., Arlington, Va. 22203.

NOTIFICATION PROCEDURE:

Information may be obtained from the Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph St., Arlington, Va. 22203.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

For personal visits, the individual should be able to provide some acceptable identification, such as a military identification card (active duty or retired) or a driver's license.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph St., Arlington, Va. 22203.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Military medical boards and medical facilities; Veterans Administration and civilian medical facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Naval Medical Command; the Judge Advocate General; Navy and Marine Corps local command activities; other activities of the Department of Defense; and correspondence from private counsel and other interested persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01900-1

SYSTEM NAME:

Naval Discharge Review Board Proceedings.

SYSTEM LOCATION:

Naval Discharge Review Board, Room 914, Ballston Tower 2, 801 North Randolph Street, Arlington, Va. 22203

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 USC 1553, or whose discharge or dismissal has been or is being reviewed by the Naval Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the former member's application for review of discharge or dismissal, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Naval Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 1553

PURPOSE(S):

The collected information is used to defend the Department of the Navy in civil suits filed against it in the State and/or Federal courts system. This information will permit officials and employees of the Board to consider former member's applications for review of discharge or dismissal and any subsequent application by the member; to answer inquiries on behalf of or from the former member or counsel regarding the action taken in the former member's case. The file is used by members of the Board for Correction of Naval Records when reviewing any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by counsel for the former member, and by accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Naval Discharge Review Board.

Officials of the Department of Justice and the United States Attorneys offices assigned to the particular case.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; plastic recording disks and recording cassettes.

RETRIEVABILITY:

The records are filed by name, by social security number, and by service number.

SAFEGUARDS:

Files are kept within the Naval Discharge Review Board's administrative office. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Files are permanent. They are retained in the Naval Discharge Review Board's administrative office for two years. After that time, they are sent to the Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Naval, 801 North Randolph Street, Arlington, Va. 22203

NOTIFICATION PROCEDURE:

Information may be obtained from the Naval Discharge Review Board, Room 905, 801 North Randolph Street, Arlington, Va. 22203. Telephone 202/692-4071

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N01905-2

SYSTEM NAME:

Navy Individual Service Review Board Proceedings (ISRB)

SYSTEM LOCATION:

Commander, Naval Military Personnel Command, Department of the Navy, Washington, DC 20370.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for discharge from the United States Navy who claim membership in a group which has been determined to have performed active military service with the United States Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the individual's application for discharge, supporting documentation, copies of correspondence between the individual and the Navy ISRB and other correspondence concerning the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95-202

PURPOSE(S):

The file is used in conjunction with the consideration of the individual's application for discharge and any subsequent application by the individual. The file is used by the individual, the counsel for the individual, his/her designated representative and by the Navy ISRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and cross-referenced index cards.

RETRIEVABILITY:

The records are filed by name.

SAFEGUARDS:

The files are kept within the Naval Military Personnel Command offices. Access during business hours is controlled by Command personnel. Records not in use are maintained in a room which is locked during non-duty hours. The Command is secured at the close of business and the building is which the command is located has limited access controlled by security guards.

RETENTION AND DISPOSAL:

Applications which are approved will necessitate creation of a service record which is part of the Navy Personnel Records System. Remaining records are retained in the Naval Military Personnel Command for two years and then destroyed. Cross-referenced index cards are retained permanently in the Naval Military Personnel Command.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Department of the Navy, Washington, DC 20370.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, Naval Military Personnel Command (NMPC-3), Department of the Navy, Washington, DC 20370.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the individual or those acting on the individual's behalf, from other military records and from the Department of Defense Civilian/Military Service Review Board.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N03461-1

SYSTEM NAME:

Summary debriefs of former Prisoners of War.

SYSTEM LOCATION:

Fleet Aviation Specialized Operational Training Group, Pacific Fleet, Naval Air Station, North Island, San Diego, California 92135

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Prisoners of War in Southeast Asia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Synopsis of captivity experiences as summarized by debriefers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

School instructors/managers use this system to maintain information on captivity experiences, resistance techniques, and survival aspects including indoctrination, interrogation, POW organization, communications, medical/isolation conditions and facilities for use in training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Need to know certification, locked room, limited access building with visitor control, GSA Approved Security Container.

RETENTION AND DISPOSAL:

Held indefinitely in support of training.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Intelligence Command, Naval Intelligence Command Headquarters, 2461 Eisenhower Avenue, Alexandria, Virginia 22331.

NOTIFICATION PROCEDURE:

Commanding Officer of military personnel submit visit request (OPNAV Form 5521-27) to Commanding Officer, Fleet Aviation Specialized Operational Training Group, Pacific Fleet, Naval Air Station, North Island, San Diego, California 92135. Civilian personnel submit request to System Manager.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Debriefing sessions with individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE.

N03461-2

SYSTEM NAME:

POW/MIA Captivity Studies

SYSTEM LOCATION:

Naval Aerospace Medical Institute, Special Studies Department(122), Naval Air Station, Pensacola, Florida 32508

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files are maintained by Code on all military and civilian returned prisoners of war, and on the families of military POW/MIAs, civilian POWs and military KIAs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of intelligence debriefing material, microfilm and microfiche copies of medical records, X-rays, dental and somatotype photographs, newspaper clippings, individual and family research questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Files are converted to group statistics and are used for research into the effects of the captivity experience on the man and his family and for recommending changes in training and improved health care delivery services, as well as for professional publications. Information is used by the Professional Staff, Center for Prisoner of War Studies, Research Staff, Naval Aerospace Medical Institute, Pensacola, Florida; Research Staff, Brooke Army Medical Center, San Antonio, Texas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files consist of file folders, magnetic and video tapes, key-punched IBM cards, computer tapes, microfiche and microfilm.

RETRIEVABILITY:

Files are retrieved by code number.

SAFEGUARDS:

All files in this system are protected by limited, controlled access, locked doors and class 6 security cabinets. Only professional and/or research staff with appropriate security clearances are given access to files.

RETENTION AND DISPOSAL:

The files will be maintained as long as there is an ongoing program of captivity research; with destruction of codes when files are closed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, RPOW Data Analysis Division, Naval Aerospace Medical Institute, Naval Air Station, Pensacola, Florida 32508

NOTIFICATION PROCEDURE:

Write: Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 122, Naval Air Station, Pensacola, Florida 32508, providing full name, military or civilian status, POW status, security clearance, and service affiliation.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System's manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

All information contained in files was obtained through personal interviews with returned POWs, families of POW/MIA/KIA/hostages/civilian POWs, through intelligence debriefings at time of repatriation, newspapers and periodicals, and from materials supplied by the Department of the Army (Office of the Surgeon General and Army Intelligence); Department of the Navy (Bureau of Medicine and Surgery and Naval Intelligence); and Marine Corps Headquarters.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N03501-1

SYSTEM NAME:

Fleet Ballistic Missile Submarine Demo and Shakedown Operation Crew Evaluation

SYSTEM LOCATION:

Director, Strategic Systems Projects (PM-1) Department of the Navy Washington, D.C. 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer and enlisted personnel in responsible positions within the Weapons and Navigation Department of both crews of a fleet ballistic missile submarine undergoing Demonstration and Shakedown Operations

CATEGORIES OF RECORDS IN THE SYSTEM:

Memorandum report to file

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Preparation of Certification for Deployment Messages by Director, Strategic Systems Projects and Commander, Submarine Group Six, and development of follow-on training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File holders

RETRIEVABILITY:

Ship and crew designators

SAFEGUARDS:

Access restricted to Assistant for Weapons System Operation and Evaluation staff, Strategic Systems Project Office and Commander Submarine Group Six staff. Vault storage.

RETENTION AND DISPOSAL:

Maintained for at least two years then destroyed by shredding

SYSTEM MANAGER(S) AND ADDRESS:

Director, Strategic Systems Projects Department of the Navy Washington, D.C. 20376

NOTIFICATION PROCEDURE:

All inquiries should be directed to the Privacy Act Coordinator:
Deputy Director, Strategic Systems Projects
Department of the Navy
Washington, D.C. 20376
and should indicate full name, military status, time period and ship undergoing Demonstration and Shakedown Operations, and billet held.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Observation of Demonstration and Shakedown Operation team and questionnaire filled out by ship's personnel

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N03760-1

SYSTEM NAME:

Individual Flight Activity Report

SYSTEM LOCATION:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All aeronautically designated commissioned Navy and Marine Officers assigned as crew members in the operation of an aircraft in accordance with the direction of competent authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of each flight submitted by the custodian of the aircraft. Total flight activity survey reports and annual flight activity reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Flight activity data for specific individuals or categories of aviators is correlated with aircraft mishap data. This information is analyzed in order to determine the relationship between various categories and combinations of flight experience and accident involvement. Results of these studies are provided to all echelons within the Navy and Marine Corps having responsibility for flight operations, pilot training and allocation of resources to and within the aviation program. An annual summary of flight activity by model aircraft is provided to each reporting individual for his/her verification and personnel records. Upon request, a detailed by flight report for a specified time frame is also provided. Records are also provided to Commander, Naval Military Personnel Command for promotional screening, detailing and compliance with minimum standards. Summaries of flight activity for Marine Corps personnel are provided to the Commandant of the Marine Corps. Records of specific pilots or categories of pilots are provided to contractors, if required, for projects either funded by or

deemed potentially valuable to the Department of the Navy.

To the Naval Audit Service to investigate certain phases of the Naval Aviation Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To committees authorized by Congress to investigate certain phases of the Naval Aviation Program.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Any of the data elements such as pilot's social security number, model aircraft, squadron and specific flight experience may be used to retrieve individual records.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information which are not included in the routine usage criteria must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Aviation Safety Programs, Naval Safety Center, NAS, Norfolk, VA 23511

NOTIFICATION PROCEDURE:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Aircraft reporting custodian, Navy and Marine Corps pilots.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N03834-1

SYSTEM NAME:

Special Intelligence Personnel Access File

SYSTEM LOCATION:

Commander Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20390

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian and military personnel of the Department of the Navy and contractors and consultants of the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to the eligibility of Department of the Navy personnel (civilian,military, contractor and consultant) to be granted access to Special Intelligence which include documents of nomination, personal history statements, background investigation date and character, narrative memoranda of background investigation, eligibility documents for access to special intelligence, proof of indoctrination and debriefings as applicable and record of hazardous activity restrictions assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by federal agencies; Executive Order 11652, classification and declassification of National Security Information and Material.

PURPOSE(S):

To permit a determination of an individual's eligibility for access to Special Intelligence information. This information may be provided to the Department of Defense and all its components to certify Special Compartmented Intelligence access status of Naval personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, the Department of Energy, the Department of Treasury, and to any other Federal agency in the performance of their official duties, to certify SCI access status of Naval personnel.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active files consist of paper records in file folders and computerized tapes. Inactive files are retained on microfiche.

RETRIEVABILITY:

Records are filed alphabetically by last name of the individual.

SAFEGUARDS:

GSA approved containers located in controlled access spaces.

RETENTION AND DISPOSAL:

Records are retained indefinitely. Inactive files are retained on microfiche.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Intelligence Command, 4600 Silver Hil Road, Washington, DC 20390.

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the system manager, giving full name, residence address and date and place of birth. A notarized statement may be required for identity verification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal History Statement and related forms from the individual. Access forms and documents prepared by the system manager. Correspondence between system manager and activities requesting access status.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1) and (5) as applicable. For additional information contact the System Manager.

N03900-1

SYSTEM NAME:

Naval Air Test Center Technology Data File

SYSTEM LOCATION:

Office of Staff Assistant for Research and Technology, Naval Air Test Center, Patuxent River, Maryland 20670. Included in this notice are those records duplicated for maintenance at a site closer to where the technical specialists and technology representatives work.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian and military technical managers, directors, technical directors, chief test pilots, chief engineers, program managers, department heads, department chief engineers, technical specialists and technicians who work at the Naval Air Test Center (NAVAIRTESTCEN). It also includes personnel who are considered a technical resource by directorate management.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, date of birth; status (military or civilian); classification (i.e., GS-0855 for civilians or 06/1510 for military); formal education; technical courses/ operational training; test and evaluation, research and development, and military experience; current RDT&E activity contacts; membership in professional organizations and societies; level of responsibility in NAVAIRTESTCEN organization; organizational code; office telephone number; naval aviation technology preference and a listing of any unique technical skills, experience or knowledge the individual may posess.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To develop an on-line information network which provides project personnel a means to fully exploit NAVAIRTESTCEN technical resources and provide technical managers a real-time assessment of NAVAIRTESTCEN technical depth in the areas of education, training, experience and professional interface associated with emerging naval aviation technologies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk and hardcopy forms.

RETRIEVABILITY:

Social Security Number

SAFEGUARDS:

During working hours the NAVAIRTESTCEN staff building is open to official visitors and civilian, military and contractor personnel employed by NAVAIRTESTCEN. After working hours, the building is secured. Access to the staff building after working hours can only be obtained by securing assistance from the base Command Duty Officer. The system is protected by the following software features: user identification number, password sign-on and procedure name.

RETENTION AND DISPOSAL:

Records are retained in the current data base until he/she is no longer an employee of NAVAIRTESTCEN. When an employee leaves NAVAIRTESTCEN, the record is removed from the current data base. After ten years, the record will be erased from tape.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Assistant for Research and Technology, Naval Air Test Center, Patuxent River, MD 20670.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

All data contained in the NAVAIRTESTCEN Technology Data File is obtained from the individuals in the data file. Data is collected by means of an annual questionnaire.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04050-1

SYSTEM NAME:

Personal Property Program

SYSTEM LOCATION:

All Navy Personal Property Counseling and Shipping Offices and Federal Records Centers (mailing addresses are listed in the Navy directory in the appendix to the Component System Notice).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOD and other federal departmental military personnel and their dependents and civilian employees and their dependents having applied for and shipped and/or stored personal property, privately owned automobiles and mobile homes.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's applications for shipment and/or storage related shipping documents and records of delivery, payment, and inspection of personal property. Forms maintained include: DD 619 Statement of Accessorial Services Performed; DD 1100 Household Good Storage Record; SF 1103 U.S. Government Bill of Lading; DD 1252 U.S. Customs Declaration for Personal Property Shipments (Part I); DD 1252-1 U.S. Customs Declaration for Personal Property Shipments (Part II); DD 1299 Application for Shipment and/ or Storage of Personal Property; DD 1671 Reweight of Personal Property; DD 1780 Report of Carrier Services Personal Property Shipment; DD 1781 Customer Satisfaction Report; DD 1797 Personal Property Counseling Checklist; DD 1799 Member's Report on Carrier Performance- Mobile Homes; DD 1800 Mobile Home Shipment Inspection at Destination; DD 1841 Government Inspection Report; DD 1842 Claim for Personal Property Against the United States; DD 1845 Schedule of Property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5724; DOD Regulation 4500.43; DOD Regulation 4500.34-R; 'personal Property Traffic Management Regulation;' JAG Manual; NAVSUP

Publication 490; 'Transportation of Personal Property.'

PURPOSE(S):

Navy Personal Property Shipping Offices applicable finance centers and the Navy Material Transportation Office for effecting, coordinating and payment of personal property shipment and storage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of member.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel that are properly cleared and trained. Buildings-rooms locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are retained in Personal Property Office files for a period of four years, then forwarded to Federal Record Centers and/or General Accounting Office for indefinite retention.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Supply Systems Command (Code 05), Washington, D.C. 20376.

NOTIFICATION PROCEDURE:

Written requests may be addressed to the appropriate Navy personal property shipping office concerned (mailing addresses are listed in the Navy directory in the component system notice). Individuals should provide proof of identity, full name, rank, dates of shipment-storage, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the Commander, Naval Supply Systems Commands (Code 05), Washington, D.C. 20376.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents of records and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Application and related forms submitted by the individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N04060-1

SYSTEM NAME:

Navy and Marine Corps Exchange and Commissary Sales Control and Security Files

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers, employees, and guests at Navy and Marine Corps Exchanges and Commissaries, including individuals making large dollar volume purchases and contract purchases; individuals having requested adjustments or made claims; individuals having previously passed bad checks or been apprehended for shoplifting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Sales and contract records; lists, logs, or card records of individuals; claims and adjustment records; large volume purchase records; mail orders, and customer special order records, customer list; correspondence; and abuser notification letters. Records of complaints and investigations of regulatory and criminal violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations.

PURPOSE(S):

To control sales; to prevent and detect abuse of privileges; to determine responsibility when there are violations of regulations or criminal statutes. Information may be furnished to the Naval Investigative Service or command legal personnel for prosecution of military offenses and other administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Federal Bureau of Investigation or foreign organizations for further investigation or prosecution.

To officials of other federal agencies in connection with the performance of their official duties related to personnel administration.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tape, discs, drums, and punched cards. Manual records may be stored in file folders or microform, in file cabinets or other containers.

RETRIEVABILITY:

Automated and manual records may be retrieved by social security account number and/or name.

SAFEGUARDS:

Access is provided on a need-to-know basis, only. Automated records are located in restricted areas accessible only to authorized persons. Manual records and computer printouts are maintained in locked or controlled access areas.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST 5212.5B, Disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to system manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individuals concerned, other records of the activity concerned, other records of activity investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(2), as applicable. For additional information, contact the system manager.

N04064-1

SYSTEM NAME:

Naval Academy Laundry/Drycleaning Charge Account

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402-5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have applied for a charge account with the Naval Academy Laundry and Drycleaning Plant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH-4064/14 and includes applicant's name; SSN; rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from and/or recorded on accounts receivable ledgers, journals, charge tickets and check listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; 44 U.S.C. 3101; Executive Order 9397

PURPOSE(S):

To establish a charge account at the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing purposes by the officials and employees of the Plant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and magnetic minicassette tape form.

RETRIEVABILITY:

Both hard copy and magnetic tape records are accessed alphabetically by name.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is routinely limited to the billing clerk processing the application and recording activity on the account. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Hard copy records are retained in the current file area as long as the charge account is active. These records are then retired and kept in secured storage for two years and then destroyed. Cassette tape records are of two types, daily and journal (monthly recapitulation). These tapes are erased on a daily or monthly basis, respectively, during the preparation of the following day's or month's activity record.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402-5052.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for the charge account, from daily laundry and drycleaning will-call tickets (charges for goods and services provided) and from records of payment by charge account holders (check listings).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04064-2

SYSTEM NAME:

Retail Customer Claim Record

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402-5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant and appropriation 17X4002 for cash or credit settlement for damaged or lost articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH-4064/15 and includes claimant's name; SSN; rank (if applicable); home and work addresses and telephone numbers; description, original cost and date of purchase of item(s) for which claim is filed, and circumstances of loss or extent of damage; claim number, disposition, and remarks by approving authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; 44 U.S.C. 3101; Executive Order 9397

PURPOSE(S):

Records are used by officials and employees of the Plant related to investigation of circumstances concerning a claim for cash or credit settlement for damaged or lost articles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy form.

RETRIEVABILITY:

Records are maintained in standard office files and may be accessed alphabetically or chronologically.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is limited to the official processing of the claim and the clerk who maintains the file and prepares the administrative paperwork. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

An individual's record is retained in the current file area for one calendar year after the close of the individual's claim. The record is then retired and kept in secured storage for one more year.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402-5052.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from offices processing claims.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04066-1

SYSTEM NAME:

Bad Checks and Indebtedness Lists

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy Exchanges) Commissary Store operations as listed in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons of Navy exchanges and Commissary Stores who have passed checks which have proven bad; recruits who have open accounts wth Navy exchanges; patrons who have made C.O.D. mail order transactions and those patrons who make authorized charge or credit purchases where their accounts are maintained on the basis of an identifying particular such as name, social security number or service number.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check or checks; correspondence relative to attempt by the Navy exchange or Commissary Store to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had two or more checks returned through their own fault or negligence) Accounts Receivable Ledger, detailed by patron; COD Sales Ledger.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 and 10 USC 5031

PURPOSE(S):

To record receipt of bad checks from patrons; to monitor and avoid undue losses because of continued passing of bad checks. To keep track of the correspondence issued in an effort to recover losses. The information in this system is issued to all cashiers, exchange and commissary officers. The Accounts Receivable Ledgers are used to properly record credit sales and the payment of these accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: magnetic tape; printed reports; file folders; file cards.

RETRIEVABILITY:

Name and social security number

SAFEGUARDS:

Locked file cabinets; supervised office spaces; supervised computer tape library which is accessible only through the computer center (entry to the computer center is controlled by a combination lock known by authorized personnel only).

RETENTION AND DISPOSAL:

Records are kept for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

Record Holder: Director, Treasury Division (TD), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

In the initial inquiry the requester must provide full name, social security number, activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide the following proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved and the activity sales records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04066-2

SYSTEM NAME:

Commercial Fidelity Bond Insurance Claims

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy Exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel assigned to Navy exchanges, who the duly constituted authority (usually a Board of Investigation appointed by the base Commanding Officer) has established to be guilty of a dishonest act which has resulted in a loss of money, securities or other property, real or personal, for which the exchange is legally liable.

CATEGORIES OF RECORDS IN THE SYSTEM:

Equipment Loss Reports, Cash and/or Merchandise Loss Reports from Navy exchanges, including correspondence relating to losses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5USC 301 and 10 USC 5031

PURPOSE(S):

To render proper assistance in processing insurance claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the insurance carrier (Fidelity Bond Underwriter) to ensure appropriate coverage.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained varies but includes file folders and ledgers.

RETRIEVABILITY:

Name, payroll number, service number, activity.

SAFEGUARDS:

Locked file cabinets; locked offices which when open are supervised by appropriate personnel; security guards.

RETENTION AND DISPOSAL:

Records are kept for four years and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

In the initial inquiry the requestor must provide full name, payroll or military service number and activity where they had their dealings. A list of other offices the requestor may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requestors must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the insurance underwriter; audit reports; investigatory reports and/or activity loss records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04066-3

SYSTEM NAME:

Layaway Sales Records

SYSTEM LOCATION:

Commands, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy exchanges)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons of Navy exchanges who buy goods on a layaway

CATEGORIES OF RECORDS IN THE SYSTEM:

Layaway Tickets and layaway patron lists

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 and 10 USC 5031

PURPOSE(S):

To record the selection of layaway merchandise, record payments, verify merchandise pick-up and perform sales audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders include layaway tickets and layaway patron lists.

RETRIEVABILITY:

Name, address, service number or exchange permit number

SAFEGUARDS:

Locked file cabinets, supervised records space

RETENTION AND DISPOSAL:

Destroyed after two years per Navy Exchange Manual

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

Record Holder: Director, Controller Non-appropriated Fund Division (CNAFD), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305

In the initial inquiry, the requester must provide full name, social security number, activity where layaway sales were transacted. A list of other offices the requester may visit will be provided after initial contact at the office listed above. At the time of personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04066-4

SYSTEM NAME:

Navy Lodge Records

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy Exchanges)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons and guests authorized lodging at a Navy exchange Navy Lodge.

BEST COPY AVAILABLE

CATEGORIES OF RECORDS IN THE SYSTEM:

Reservation request; guest registration card; navy lodge guest folio.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 and 10 USC 5031

PURPOSE(S):

To keep a record of reservations to insure orderly room assignment and avoid improper booking; to record registration and payment of accounts; to verify proper usage by eligible patrons; cash control; to gather occupancy data; to determine occupancy breakdown; and to account for rentals and furnishings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: folio card; ledger; Guest Registration Cards; and local copies and reports of central system reports.

RETRIEVABILITY:

Name; service number; social security number

SAFEGUARDS:

Supervised offices; locked files

RETENTION AND DISPOSAL:

Records are kept for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official Commander Navy Resale and Services Support Office Fort Wadsworth Staten Island, New York 10305

Record Holder Manager, Personalized Services (SODI) Navy Resale and Services Support Office Fort Wadsworth Staten Island, New York 10305

Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office Fort Wadsworth Staten Island, New York 10305

In the initial inquiry the requester must provide full name, social security number, service number and location of the last Navy Lodge where they had dealings. A list of other offices the requester may visit will be provided after initial contact is made with the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual patron and the charges he or she incurred during a visit at the Navy Lodge.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04350-1

SYSTEM NAME:

Contract Field Service File

SYSTEM LOCATION:

Commander, Naval Electronic Systems Command, Washington, D.C. 20360

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractor representatives (engineers/technicians)

CATEGORIES OF RECORDS IN THE SYSTEM:

NAVELEX 4603 maintains a contractor field engineer file system by name and company. The only personal information contained in these files are security clearance information (degree, date cleared, by whom), date and place of birth, and social security number. Contract services requests and authorizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulation

PURPOSE(S):

The system is used to notify ships, shipyards, supships, other Navy activities and some contractor plants of reporting engineers security information for tech assistants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

The files are filed by company and name.

SAFEGUARDS:

The files are located in a locked cabinet. When the cabinet is open, personnel is in the room at all times. Normally no other people have access to these files. The only ones that could have access based upon a need to know are the cognizant engineers and the contractor representatives may review their own personal jacket. ELEX 4603 personnel must remove records from cabinets.

RETENTION AND DISPOSAL:

The records are retained as long as the engineer is employed by the company, then the records are transferred to Archives for the standard retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Contract Services Coordinator, ELEX 4603

NOTIFICATION PROCEDURE:

Request must be made to system manager ELEX 4603. Requestor must provide full name, social security number and photo identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of information is from the contractor representatives (engineers/technicians) employers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04385-1

SYSTEM NAME:

IG Investigatory System

SYSTEM LOCATION:

Inspector General offices within the Department of the Navy as listed in the directory of the Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged, suspected, convicted, or otherwise involved in areas of possible criminal or administrative misconduct, including, but not limited to, fraud, larceny, embezzlement, theft or other improper conduct relating to the acquisition or disposal of government property, conflict of interest, violation of the standards of conduct, or other violations of law or regulation pertaining to procurement, disposal and related matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Administrative memoranda.
2. Investigative reports and other investigative/intelligence information.
3. Reports of disciplinary action taken.
4. Public court records.
5. Synopsis of the allegations of wrongdoings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (10 USC 987 app.(1982)), 10 USC 5088, Naval Inspector General: Details, duties; Department of Defense Directive 5106.1 of March 14, 1983, entitled, 'Inspector General of the Department of Defense'; Secretary of the Navy Instruction 5430.57D of December 9, 1980, entitled, 'The Naval Inspector General; Mission and Functions of'; Secretary of the Navy Instruction 5430.92, April 17, 1981, entitled, 'Assignment of Responsibilitiesto Counteract Fraud, Waste and Related Improprieties Within the Department of the Navy.'

PURPOSE(S):

To conduct and to coordinate official investigations and inquiries of audit to monitor final actions taken thereon. To disseminate information on misconduct, procurement fraud and related matters to other components within DOD.

To monitor the progress of criminal or administrative actions taken regarding Naval active duty officers in pay grade O-5 or higher and civil service employees (GS-13 or GM-13 and above), and any other DOD individuals (military and civilian) who have been named in allegations of wrongdoing which apparently warrant criminal prosecution or adverse personnel actions. Internal users are Department of the Navy and Department of Defense component officials engaged in audit, investigative, inspection and management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To federal, state or local law enforcement agencies, when such information relates to matters under their judicial or administrative cognizance.

To the Department of Justice or other appropriate agencies for use in judicial or administrative actions such as debarrment/suspension actions and required notification of federal, state and local agencies.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, index cards, magnetic tape/discs.

RETRIEVABILITY:

By subject name and SSN; by case name, case number, type of crime and other case fields.

SAFEGUARDS:

Access is limited to officials/employees of the command who have a need to know. Files are stored in a locked cabinet. The area is sight controlled during normal work hours and locked during non duty hours. Building access is controlled during non-duty hours by a Security Force, which also conducts roving patrols of the building. There is no possibility that the computer can be accessed from outside the controlled area.

RETENTION AND DISPOSAL:

Files are maintained at the command for two years after final action is taken. Thereafter, files are stored with the nearest Federal Records Center. Electronic data are erased, over-printed or destroyed, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General of the Command in question. See the directory of Navy activities mailing addresses.

For tracking system, the Head, Investigations Division, Naval Inspector General (Code 81), Office of the Naval Inspector General, Bldg 200, Washington Navy Yard, Washington, DC 20374-2001.

NOTIFICATION PROCEDURE:

Written requests should be addressed to the system manager, giving full name, address, and either a social security number or date and place of birth. Written requests must be notarized. Individuals may visit the system manager between the hours of 0900-1500, Monday-Friday and must show proof of identity consisting of ID containing photograph.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's Rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individuals, investigative, judicial, and administrative reports, and complainants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (j)(2). The exemption rule for this system is contained in SECNAVINST 5211.5 series.

N04410-1

SYSTEM NAME:

File of Records of Acquisition, Transfer and Disposal of Privately Owned Vehicles

SYSTEM LOCATION:

U.S. Naval Radio Station, FPO New York 09516

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Navy personnel stationed at U.S. Naval Radio Station, FPO New York 09516 who own a concession vehicle in the United Kingdom.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for delivery of a motor vehicle without payment of duty, value added tax and car tax.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To maintain information on type of car, engine no., license no., year, make of car, base assigned, organization, SSNA, and paygrade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

Name

SAFEGUARDS:

Locked safe in Admin Office with a 24 hour security watch.

RETENTION AND DISPOSAL:

Records are maintained as long as a person owns a concession vehicle in the United Kingdom. Records are burned as soon as vehicle is either shipped out of the U.K. or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, U.S. Naval Radio Station, FPO New York 09516 is overall policy official with the Administrative Officer, U.S. Naval Radio Station, FPO New York 09516 as the subordinate holder.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to U.S. Naval Radio Station, FPO New York 09516, giving full name and social security number. Visitors may come to the Administrative Office at the address given under SYSMANAGER and must have valid military I.D. or, if no longer in the military, have other valid identification such as a driver's license.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from th system manager.

RECORD SOURCE CATEGORIES:

Applicable U.S. Serviceman

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04410-2

SYSTEM NAME:

Military and Civilian Employee Dependents Hurricane Shelter Assignment List

SYSTEM LOCATION:

Commanding Officer, Naval Communication Station Key West, Key West, Florida 33040

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel and civilian employees and their dependents who apply for assignment to naval communication station shelter

CATEGORIES OF RECORDS IN THE SYSTEM:

Record lists names, addresses, and phone numbers of military/ civilian station personnel applying for shelter assignments for their families, together with names of dependent spouses, names and ages of dependent children, and whether or not requirement exists for station transportation to shelter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Used by Disaster Preparedness Officer in determining shelter logistics requirements and by Shelter Officer in mustering assigned dependents in shelter in case of hurricane.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder

RETRIEVABILITY:

Name

SAFEGUARDS:

File maintained in locked cabinet by Disaster Preparedness Officer.

RETENTION AND DISPOSAL:

Maintained from May through April each year, disposed of by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Disaster Preparedness Officer, Naval Communication Station Key West, Key West, Florida 33040

NOTIFICATION PROCEDURE:

Individual record entries are filled out by hand by station military/civilian sponsors desiring to register their families in command hurricane shelter. System contains no info other than entries provided by sponsors. Certified station sponsors may review/remove entry by phoning/visiting the Disaster Preparedness Officer, Naval Communications Station Key West.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

All entries to file are hand written forms filled in by military/civilian command sponsors requesting hurricane shelter for their families.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N04410-3

SYSTEM NAME:

Duty Free Vehicle Log

SYSTEM LOCATION:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515

Customs Officer, HMS Customs and Excise, Campbeltown, Argyll, Scotland

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals stationed aboard NAVWPNSFACDET Machrihanish who own vehicles purchased or imported into the United Kingdom duty free.

CATEGORIES OF RECORDS IN THE SYSTEM:

Single line entry on loose leafe pages listing: Name and rank/rate of individual; make, year and registration of vehicle; status (bought new in UK or imported) of vehicle; and date of purchase or importing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To assist local customs officials in protecting against the illegal transfer of duty-free vehicles to UK citizens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder

RETRIEVABILITY:

Name

SAFEGUARDS:

The records are maintained in an office that is locked when not manned.

RETENTION AND DISPOSAL:

Pen and ink changes are made to records until complete page must be retyped. Old pages are then destroyed by shredding or burning. Retention period dependent upon number of changes occuring. Method of disposal by local customs official unknown.

SYSTEM MANAGER(S) AND ADDRESS:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515

NOTIFICATION PROCEDURE:

Individuals wishing to learn if records concerning them are still retained may contact the System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information is obtained from documents provided by the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N04410-4

SYSTEM NAME:

Record of Import and Export of Foreign Made Auto Vehicles into and out of Australia

SYSTEM LOCATION:

U.S. Naval Communication Station FPO San Francisco 96680

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Importers/exporters and purchasers of foreign made automobiles imported into Australia by U.S. personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of shipping and customs documents for automobiles imported into and exported from Australia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, and Agreement between Australia and the United States of America concerning the status of United States forces in Australia and protocol to that agreement.

PURPOSE(S):

The Supply Officer uses this system to determine shipping and wharf handling requirements. The legal officer uses this system to monitor sale and/or export of foreign made vehicles imported into Australia by U.S. personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Name.

SAFEGUARDS:

File cabinet, Entry by legal/personal property office personnel only.

RETENTION AND DISPOSAL:

Duration of customs to duty bond. Destruction through burning.

SYSTEM MANAGER(S) AND ADDRESS:

Legal officer and personal propety supervisor.

NOTIFICATION PROCEDURE:

Individual initates record and may request information. Legal Officer, Personal Property Supervisor, U.S. Naval Communication Station. Information requested must provide: full name, official title, purpose of inquiry. Offices to be visited: Legal Office and Personal Property Office, U.S. Naval Communication Station. Proof of identity: visual recognition or identification card.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information supplied by individual, copy of purchase documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N04650-1

SYSTEM NAME:

Personnel Transportation System

SYSTEM LOCATION:

Military Traffic Office & East Coast Passenger Control Point, Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370.

District Passenger Transportation Office & West Coast Passenger Control Point, Headquarters, TWELFTH Naval District, Treasure Island, San Francisco, California 92132.

District Passenger Transportation Office & Alaskan Passenger Control Point, Naval Support Activity, Seattle, Washington 98115.

District Passenger Transportation Offices, all other Naval District Headquarters.

Overseas Area Travel Coordinators at U. S. Naval Activities, United Kingdom; U. S. Naval Activities, Spain; Headquarters, U. S. Fleet Air Mediterranean; U. S. Naval Support Activity, Naples, Italy; Headquarters, Middle East Force; U. S. Naval Station, Keflavik, Iceland; U. S. Naval Air Facility, Lajes, Azores; Naval Station, Argentina, Newfoundland; Naval Base, Guantanamo Bay, Cuba; Headquarters, TENTH Naval District; Headquarters, FIFTEENTH Naval District; Headquarters, U. S. Naval Forces, Mariannas; Headquarters, U. S. Naval Forces, Philippines; Headquarters, U. S. Naval Forces, Japan; and Naval Communication Station Harold E. Holt, Exmouth, Western Australia (See Directory of the Department of the Navy Mailing Addresses).

And local activities (See Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military personnel, midshipmen, retired Navy members, civilian employees of the Navy, dependents of the foregoing, and other civilians

authorized through Navy commands to travel at Government expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for travel and, where applicable, for passports and visas; requests for extension of 12-month limit on travel by retired member to home of record; supporting documents; correspondence, and approvals/disapprovals relating to the above records; travel arrangements in response to above applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 USC 404 Travel & Transportation Allowances--General
5 USC 5701 et seq Travel, Transportation & Subsistence

PURPOSE(S):

To determine eligibility for transportation; to authorize or deny transportation; and otherwise manage the personnel transportation system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the provision of transportation; diplomatic, official, and other no-cost passports; and visas to subject individuals.

Foreign embassies, legations, and consular offices--to determine eligibility for visas to respective countries, if visa is required.

To Commercial Carriers providing transportation to individuals whose applications are processed through this system of records.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums, and on punched cards. Manual records in file folders or file-card boxes, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by social security account number and/or name. Manual records are filed alphabetically by name of applicant; applications for dependents filed by name of sponsor.

SAFEGUARDS:

Records are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or in accordance with Departmental regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to the local activity where the request for transportation was initiated (see Directory of the Department of the Navy Mailing Addresses), and/or to intermediate activities (if applicable) (see Directory of the Department of the Navy Mailing Addresses, or to the Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370). The letter should contain full name, social security account number, address and signature of the requester. The individual may visit the activities and commands listed under LOCATION for assistance with the records maintained at the respective locations. Proof of identification will consist of Military Identification Card for persons having such cards. Others must present other positive personal identification, preferably picture-bearing.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, State Department and other agencies of the Executive Branch and components thereof, in the performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; foreign embassies, legations, and consular offices reporting approval/disapproval of visas; and carriers reporting on provision of transportation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05100-1

SYSTEM NAME:

Diving Log

SYSTEM LOCATION:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military and civilian employees of the Navy involved in diving or exposed to a hyperbaric environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Diving Log Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Reports summarizing diving activity are furnished to the commanding officer for individuals attached to the unit and are used to monitor experience levels associated with types of dives, equipment usage and requalification requirements. Individual records are also used to evaluate the diving program at specific activities and to determine if manning level, experience and operational requirements are consistent with an effective safety program. Pertinent individual records or statistical summaries prepared by Naval Safety Center analysts are also provided to all echelons within the Navy having a responsibility for the diving program and to the Commander, Naval Military Personnel Command, Naval Audit Service or other activities having responsibility for the administration or control of personnel assignments and hazardous duty payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Records may be selected based on any of the data elements contained in the file such as diver's social security number, organization unit, type of dive and equipment used.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to the diving program must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Submarine Safety Programs, Naval Safety Center, NAS, Norfolk, VA 23511

NOTIFICATION PROCEDURE:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Commanding Officer of naval units conducting diving or hyperbaric exposure incident to diving.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05100-2

SYSTEM NAME:

Diving Accidents and Injuries

SYSTEM LOCATION:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA. 23511

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military and civilian employees of the Navy involved in an accident or who are injured while engaged in diving or exposed to a hyperbaric environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Diving Accident/Injury Report. Personnel Casualty Report. JAG manual investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Records of diving accidents and injuries are evaluated by Naval Safety Center analysts to determine existence of problem areas and to detect trends. The records are correlated with the diving log reports and used as a basis for recommending changes in operating procedure, equipment, decompression schedules and training requirements. Individual reports and compilations of accidents and injuries are routinely furnished to activities within the Navy having responsibility for diving safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To government and private research institutions engaged in studies relating to the prevention or treatment of diving injuries or the design and usage of underwater equipment.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Any of the data elements such as diver's social security number, type of accident, depth and purpose of dive, degree of injury and treatment provided are used to retrieve individual records.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to diving safety must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Submarine Safety, Naval Safety Center, NAS, Norfolk, Va. 23511

NOTIFICATION PROCEDURE:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Commanding Officer of naval units conducting diving or hyperbaric exposure incident to diving, Office of the Judge Advocate General, and the Naval Medical Command.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05100-3

SYSTEM NAME:

Occupational Injury and Illness

SYSTEM LOCATION:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511 (Central) Subordinate Type Commands/ Ship/Naval Units

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military personnel who sustain an injury or occupational illness and Navy civilian personnel who sustain an occupational illness or injury resulting in one or more days of lost time.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accidental Injury/Death Reports. Personnel Casualty Reports. Hospital Admission Reports. JAG manual investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Accidental injury records are used to compile a variety of statistical reports which are routinely published or prepared at the request of Navy forces afloat and shore activities. Individual injury reports are selected and reviewed by Naval Safety Center analysts in order to detect problem areas relating to operating procedure, training and equipment usage and malfunction. Results of these studies which may include individual injury reports are provided to commanding officers and to all echelons within the Navy having responsibility for the allocation of resources or the implementation of the Safety Program. Individual injury records are correlated with data contained in other personnel files in order to detect unfavorable trends within an activity and to recommend appropriate corrective measures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Individual records and statistical summaries are provided on request to all Government activities having a legitimate need for such information. Individual records and summary data are provided to contractors and research activities in connection with projects either funded by or deemed potentially valuable to the Department of the Navy.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape. (Central location) File Folders/cardex (subordinate commands)

RETRIEVABILITY:

Any of the data elements such as social security number, command or unit identification code, degree of injury, location, equipment malfunction and cause factors are used to select individual records.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not within the routine usage criteria must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Occupational Safety, Health and Support Programs, Naval Safety Center, NAS, Norfolk, VA 23511

NOTIFICATION PROCEDURE:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Commanding officers of Forces Afloat and Shore activities, Judge Advocate General and Commander, Naval Medical Command.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05100-4

SYSTEM NAME:

Motor Vehicle Accidents and Injuries

SYSTEM LOCATION:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511 Subordinate/Type Commands/Levels

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military personnel regardless of duty status who are injured as a result of a motor vehicle accident or are the operator of one of the vehicles involved in such an accident. Navy military and civilian personnel who are involved in a Government motor vehicle accident or a private motor vehicle accident on Navy property. Navy civilian employees who are injured in a motor vehicle accident during the course of their official duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Motor Vehicle Accident Report. Personnel Casualty and Death Report, Hospital Admission Reports and JAG manual investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Motor vehicle accident records are used to compile statistics which are given wide dissemination within the Navy. Compilations of motor vehicle accident records for particular commands, activities and units are furnished on request to assist in the development of an effective safety program at all levels within the Navy. Accident records of individuals assigned to specific units or records of individuals involved in multiple accidents are provided to commanding officers. Motor vehicle accident records are correlated with data contained in other accident/injury or training files. The significance of this data is evaluated by Naval Safety Center analysts and summary information, specific individual records or composite records provided to all echelons within the Navy having a responsibility for motor vehicle safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Individual records and statistical summaries are provided on request to all Government activities having a legitimate need for such information.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape. (Central location) File folders/cardex (subordinate commands)

RETRIEVABILITY:

Any of the data elements such as individual social security number, activity or unit identification, cause factors and degree of injury are used to retrieve individual records.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information which are not included in the routine usage criteria must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Magnetic tape files contain all available records and are never purged. Original documents are destroyed when no longer required. Reports are not transferred to a record center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Occupational Safety, Health, and Support Programs, Naval Safety Center, NAS, Norfolk, VA 23511

NOTIFICATION PROCEDURE:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Commanding officers of Forces Afloat and Shore activities, Judge Advocate General and Commander, Naval Medical Command.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05100-5

SYSTEM NAME:

Aviation Mishap Report

SYSTEM LOCATION:

Commander, Naval Safety Center, Naval Air Station, Norfolk, Virginia 23511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All aeronautically designated individuals in a crew status who are involved in a naval avaiation mishap resulting in a cost of $50,000 or more.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, flight experience of involved individuals, and location, severity, cause factors and description of the accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DOD Instruction 1000.19, dated 18 October 1979; subject: Mishap Investigative Reporting and Recordkeeping.

PURPOSE(S):

Used to file complete reports of mishap involvement by individual pilots. The reports are required to evaluate potential problems of active duty aviators and to determine suitability for assignment to selected Reserve units. Unless required, the identification of individuals will be deleted from reports provided to non-Navy activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Departments of Labor, Commerce, Transportation and NASA for the purpose of promoting aviation safety.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, disk storage packs, file folders and microfilm.

RETRIEVABILITY:

Name or social security number may be used for retrieval.

SAFEGUARDS:

Files are maintained within the data processing facility and a limited number of Naval Safety Center personnel have free access to this area. When the computer facility is not occupied, physical security is provided by the Naval Safety Center duty section and by periodic checks made by the base security patrol. A knowledge of the computer operating system is required to process the mechanized files.

RETENTION AND DISPOSAL:

Original source documents will normally be destroyed within 18 months after being processed. Microfilm copies of the source documents and the data files will be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Records and Data Processing Department, Naval Safety Center, Naval Air Station, Norfolk, Virginia 23511.

NOTIFICATION PROCEDURE:

Individuals can determine the existence of records pertaining to them by contacting the System Manager. Full name and social security number must be provided.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The source of data for the file is the Aviation Mishop Report.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05101-1

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel whose work requires them to wear, or are issued, protective clothing or equipment, including prescription safety lenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listings, cards, and other records of individuals requiring, authorized, or issued prescription or other safety equipment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

Used by Safety Department personnel to determine who needs; is eligible; or has been authorized or issued prescription or other safety equipment for protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card index files, file folders in file drawers, or microform.

RETRIEVABILITY:

By name or date of authorization or issue.

SAFEGUARDS:

Controlled access space or locked rooms; personnel screening.

RETENTION AND DISPOSAL:

Secretary of the Navy Instruction 5212.5B, Disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting access may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05101-2

SYSTEM NAME:

Sight Conservation Program

SYSTEM LOCATION:

Director, Naval Research Laboratory, Washington, D.C. 20375

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees wearing glasses whose work requires the use of safety glasses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Eyewear prescriptions and pertinent information on special fitting requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

To maintain a record of eyewear prescriptions for employees whose work requires use of safety glasses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Office door locked at night.

RETENTION AND DISPOSAL:

Retained as long as employee is on program. When he leaves NRL or changes job and does not qualify for program, his file is destroyed by tearing it up.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Safety Office, Naval Research Laboratory, Building 222, Room 188.

NOTIFICATION PROCEDURE:

Verbal request to system manager, with some proof of identity, such as driver's license or ID card.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Optometrist's measurements.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05120-1

SYSTEM NAME:

Bond Accounting

SYSTEM LOCATION:

Decentralized, maintained by Issuing Agents for Savings Bonds; a list is available from:
Commander
Navy Accounting and Finance Center (NCF-123)
Washington, D.C. 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and Military Personnel of the Department of the Navy including contract employees who meet the requirement for ownership of savings bonds as outlined in Treasury Department Circular No. 530 as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual application and related records - The Bond Record File - Master Bond Record Card Control Account - The Master Control Account - Activity Subcontrol Accounts - Refund Subcontrol - Transfer Journal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To issue U.S. Savings Bonds; to provide an audit trail on requisition, control and issuance of bonds and to maintain the accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Metal file cabinets equipped with a locking device - Paper records in metal filing cabinets - Microfilm.

RETRIEVABILITY:

Retrieved by name, social security number or payroll number. From the Federal Reserve Bank by numerical sequence by serial number shown on bond issued stub.

SAFEGUARDS:

Locked cabinets, with building or military base security. Access authorized to personnel engaged in payroll processing, disbursing, supervisory or management personnel, and auditors. Bond subscribers are authorized to receive information on their own records.

RETENTION AND DISPOSAL:

Records are maintained for one year. Records are then forwarded to a Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Accounting and Finance Center (NCF-123), Washington,

D.C. 20376 Procedures are prescribed in Comptroller of the Navy Manual (NAVSO P-1000). For decentralized locations where individuals may deal directly, addresses are available from the SYSMANAGER.

NOTIFICATION PROCEDURE:

Information may be obtained by contacting the Bond Issuing Office responsible for issuing bond if known. If unknown the inquiry should be submitted to Commander, Navy Accounting and Finance Center, NCF-123, Washington, D.C 20376. Requester should provide full name, social security number or payroll number, current address when requesting information. An individual is permitted to visit any Bond Issuing Agent Office for information and will be required to provide identification such as identification card (i.e., DOD Building Pass).

RECORD ACCESS PROCEDURES:

The Agency's rule for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Request for Bonds are filed by individuals who provide information on themselves. Other records are generated from the original request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05210-1

SYSTEM NAME:

Correspondence files

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These are files kept by subject, name of correspondent (Congressman, contractor, other member of public, etc.,) or name of recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming and outgoing correspondence and related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To follow-up on previous correspondence, for reference purposes, to assure consistency of policy, and for other official Navy business, as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case Number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05300-1

SYSTEM NAME:

Organization Locator and Social Roster

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel attached to the activity; also may include military and civilian personnel of the Department of Defense and other government agencies; may also include family members and guests of military and civilian personnel; other invitees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets, protocol, and other information associated with attendents at functions. Locator records of personnel attached to the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To locate individuals on routine and emergency matters. System is used for mail distribution, for forwarding addresses, and as a recall list. Also, may be used as a social roster for social reference for various official and non-official functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape, and similar record formats.

RETRIEVABILITY:

Name, SSN, number, organization, function.

SAFEGUARDS:

Access provided on a need to know basis.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to record may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, correspondents, directories and official publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05300-2

SYSTEM NAME:

Administrative Personnel Management System

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities. Official mailing addresses are in the Navy's address directory in the appendix to the Navy Department's systems notices appearing in the Federal Register. Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence/records concerning identification, location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs, grade and series or rank/rate, retirement category, awards, property custody, personnel actions/dates, violations of rules, physical handicaps and health data, veterans preference, mutual aid association memberships, union memberships, qualifications, and other data needed for personnel, financial, line and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5031

PURPOSE(S):

To manage, supervise and administer programs for all Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; laborcosting; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; and similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape, magnetic disc.

RETRIEVABILITY:

Name, SSN, Case number, organization, work center and/or job order.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need to know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigators, opm officials, and/or members of the American Red Cross.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05300-3

SYSTEM NAME:

Faculty Professional Files

SYSTEM LOCATION:

Superintendent, Naval Postgraduate School, Monterey, CA 93943-5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Faculty personnel employed by the Naval Postgraduate School and individuals applying for positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Faculty academic promotion/tenure case evaluation files and faculty professional status and accomplishment file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

Records are used by Department Chairmen, Deans, and the Superintendent to determine the ranking, promotion, tenure, reappointment and evaluation of faculty personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To potential/future employers who inquire concerning a faculty member's qualifications, status and accomplishments and who have an interest in hiring the member.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

Name

SAFEGUARDS:

During work hours, records are secured within locked file drawers within departmental offices to which only authorized personnel have access. After working hours, records are kept within locked file drawers within secured offices located within a locked building which is part of a Naval facility to which entry is restricted.

RETENTION AND DISPOSAL:

Records are retained during the faculty member's period of employment. Records are destroyed upon termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Provost, Code 01, Naval Postgraduate School, Monterey, CA 93943-5100.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from previous employers, educational background, correspondence, peer evaluations, supervisory evaluations and student evaluations of teaching.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system are exempt under 5 U.S.C. 522a (k) (5). For additional information, contact the System Manager.

N05300-4

SYSTEM NAME:

Personnel Management and Training Research Statistical Data System

SYSTEM LOCATION:

Commanding Officer
U. S. Navy Personnel Research and Development Center
San Diego, California 92152

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U. S. Navy and Marine Corps Personnel and applicants thereto: Active duty, reserve, prior service, dependents, retired, and Department of the Navy civilians from 1951 to present. (Only samples of data from each category are on file, depending on research study.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance, attitudinal, biographical, aptitude, vocational interest, demographic, physiological. Data in any file are limited, depending on purpose of the research study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

The data are used solely by Navy Personnel Research and Development Center researchers who analyze them statistically to arrive at recommendations to management on such topics as: Comparison of different training methods, selection tests, equipment designs, or policies relating to improving race relations and decreasing drug abuse. In no case are the data used for other than statistical purposes; that is, the data are not used in making decisions affecting specific individuals as individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, magnetic disk, punched cards, and coding

RETRIEVABILITY:

Records are retrievable by name, social security number, or service/file numbers, but such identifying information is used only to permit collation of data for statistical analysis, and is not used for retrieval of individual records.

SAFEGUARDS:

Unauthorized access to records is controlled by: Security clearances for all Research Center and contractor personnel; physical security including a badge system for entry to the Center and a 24-hour guard maintained on a fenced compound; control of visitors; data bank users having special access codes; and, access limited to only designated personnel.

RETENTION AND DISPOSAL:

Records are destroyed five years after termination of a research project. They are maintained within the confines of the Research Center. Destruction is accomplished by degaussing magnetic tapes and disks, and punched cards are recycled.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Programs (Code 03PA)
U. S. Navy Personnel Research and Development Center
San Diego, California 92152

NOTIFICATION PROCEDURE:

Research Center files are organized by research study. To determine if Center files contain information concerning himself, an individual would have to specify time and place of participation in the research, unit to which attached at the time, and descriptive information about the study so that appropriate data may be located. For further information, contact the System Manager.

Office to visit: Contact System Manager

Visitor Identification: System Manager will specify

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The source depends on purpose and nature of study: From the subjects themselves, educational institutions,

supervisors, peers, instructors, spouses, and job sample tests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05300-5

SYSTEM NAME:

Sys Cmd Accting/Monitoring of Projects (SCAMP)

SYSTEM LOCATION:

Navy Regional Data Automation Center (NARDAC), Washington Navy Yard, Building 196, Washington, D.C. 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees, assigned military personnel, contractor personnel and those separated within the current five fiscal years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's social security number, date of birth, home address, home telephone number, education level, sex, race or ethnic group. Other types of records integrated with personnel records include: (a) status of travel orders during the previous fiscal year; (b) vehicle identification for parking control purposes; (c) privacy log containing a history of accesses made to any of the privacy protected data; (d) record of personnel actions issued; (e) training data extracted from the Individual Development Plan (IDP); (f) history of all promotions associated with employment at NARDAC; (g) listing of security accesses; (h) manpower costs for all personnel distributed by project and task; and (i) data relating to projects or endeavors that individuals have work on. This data deals with costs and milestone monitoring.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 42 U.S.C. 2000e et seq., 44 U.S.C. 3101, Federal Personnel Manuals 293, 294, 295, 713.

PURPOSE(S):

To manage personnel, monitor projects and manage financial data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk and on magnetic tape.

RETRIEVABILITY:

SCAMP users obtain information by means of either a query or a request for a standard report. Personnel data may be indexed by any data item although the primary search key is the badge number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission. The computer room where data is physically stored is protected by a cypher lock. The system is protected by user account number and password sign-on, data base authority, set and item authority for list, add, delete and update.

RETENTION AND DISPOSAL:

An individual's Personnel Master Data Set record is retained in the data base as long as they are actively employed with the Command. The online personnel data set is purged of all records of separated personnel at the end of each fiscal year. Historical data may be kept for five years on separate tape files.

SYSTEM MANAGER(S) AND ADDRESS:

Department Head, Management Information Analysis Department (Code 20B) NARDAC, Building 157, Washington Navy Yard, Washington, D.C. 20374.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the system manager. Written requests should contain the full name and signature of the individual concerned and his/her social security number indicated on the letter. For personal visits, the individual should be able to provide some acceptable form of identification, i.e., driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, from security agencies to which application for clearances have been made, and from agencies' various administrative departments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05300-6

SYSTEM NAME:

Armed Forces Staff College Administrative Data System

SYSTEM LOCATION:

Armed Forces Staff College (AFSC), 7800 Hampton Blvd., Norfolk, VA 23511-6097.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have attended or will attend AFSC and those who are assigned to staff or faculty at AFSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name; SSN; age; sex; service specialty; engineering, logistics, or intelligence experience; rank; work room assignment; marital status; spouse's name; number, names and ages of dependents; seminar assignments; date of rank; years commissioned service; aero rating; Vietnam experience; smoker indicator; source of commission; examination results; education level; auditorium seat; address and telephone number of student while attending course; next duty assignment; major writing exercise grade; and recommendation for faculty assignment. The data items maintained on the historical file are name, SSN, military service, class number, major writing exercise grade, and recommendation for future faculty assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To maintain a data base that will permit the Armed Forces Staff College to keep track of student's examinations, evaluations and grades; to assign base housing; to achieve a uniform distribution of students at seminars based upon student's experience and military service affiliation; and to maintain a historical file of recommendations for future faculty assignments of students.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy forms.

RETRIEVABILITY:

AFSC users obtain information by means of standard reports or update programs.

SAFEGUARDS:

Access to building is protected by uniformed guards who require positive identification for admission after hours. System information is protected by port access restrictions and user password sign-on software.

RETENTION AND DISPOSAL:

The record of an individual in the current class is retained on disk and will be available for online access. Student information is kept in a historical file for all past classes. The historical file is also retained on disk and will be available for on-line access. An individual's class record will be retained for one year after graduation and then destroyed. There are currently no plans to discard the historical file information.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Naval Administrative Command, and Dean, Department of Academic Support, Armed Forces Staff College, 7800 Hampton Blvd, Norfolk, VA 23511-6097.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by a commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from the individual's seminar chairman.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05330-1

SYSTEM NAME:

Manhour Accounting System

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record could contain any of the following: assigned organization code, work center code, name, grade code, pay rate, social security number, NEC/MOS, labor code, type transaction, hours assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5031

PURPOSE(S):

To maintain a data base which will permit officials and employees of the respective naval commands to effectively manage and administer the workforce such as scheduling and assigning work; identifying individuals' skill level; tools issued, planned absents and temporary assignments to other areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Punched cards, magnetic tape and flat paper

RETRIEVABILITY:

Name, organization code, SSNA, and work center.

SAFEGUARDS:

Files are stored in a limited access area. Information provided via batch processing is of a predetermined and strictly formatted nature.

RETENTION AND DISPOSAL:

Individual personal data are retained only for that period of time that an individual is assigned. Upon departure of an individual, personal data are deleted from the records and history records are not maintained.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. See directory of Navy activities mailing addresses.

NOTIFICATION PROCEDURE:

Individuals desiring information whether the system contains records pertaining to them should request that determination from the Records Holder listed under SYSMANAGER. The requester should provide his social security number and full name. The office of the Records Holder listed under SYSMANAGER may be visited for this determination but the requester must present his social security card and military identification card.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing intitial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Input provided by command employing individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05340-1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts from payroll systems and administrative personnel management systems. Contributor cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10927

PURPOSE(S):

To manage the Combined Federal Campaign fund drive of CFC records. To manage the Navy Relief Society Fund drive of NRS records. Data released to respective campaign coordinators.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Payroll files, administrative personnel files, contributors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05340-2

SYSTEM NAME:

Personal Commercial Affairs Solicitation Privilege File System

SYSTEM LOCATION:

Primary System-Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370.

Secondary System-Local Navy Activities involved in the Personal Commercial Affairs Solicitation Privilege System (see Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are authorized Personal Commercial Affairs Solicitation Authorization concerning solicitation privileges on board military installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning letter of application for solicitation privileges, letters of accreditation, violation incident data, denial data, appeal data, and other supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 USC 301 Departmental Regulations

PURPOSE(S):

To assist in responding to letters of application for solicitation privileges, granting letters of accreditation, responding to appeals and compiling of statistics pertaining thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To state and local agencies in the performance of their official duties related to agent qualifications.

To private firms whose agents have been banned may request verification of the status of agents.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records may be stored in paper file folders.

RETRIEVABILITY:

Records are retrieved by name of agent or agency.

SAFEGUARDS:

Records are accessible only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Files are retained and disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or Departmental Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security number of the applicant, firm represented, and dates or time period in question, and signature of the requestor. The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB#2), Rm 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity for access to records maintained locally. Proof of identification will consist of picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerning may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties as specified by current Instructions and Regulations promulgated by competent authority; State and local agencies in the performance of their official duties related to agent qualifications; investigatory records; general correspondence concerning individual agents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05350-1

SYSTEM NAME:

Navy Personnel Rehabilitation Support System

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D.C. 20370;

Decentralized segments-Navy Drug Rehabilitation Centers, Navy Alcohol and Drug Information System Processing Office, Navy Alcohol Rehabilitation Centers, Naval Regional Medical Centers, Navy Counseling and Assistance Centers, Navy Alcohol Rehabilitation Drydocks, Naval Health Research Center, and local activities to which an individual is assigned (see Directory of Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers, or who have undergone counseling and rehabilitation for drug or alcohol abuse in Navy Drug or Alcohol rehabilitation facilities; counselors and counselor candidates; personnel who work part-time helping alcoholics; active duty navy recovered alcoholics who voluntarily help their commands develop alcoholism prevention programs; navy personnel convicted by court martial and sentenced to confinement; or who were in pre-trial confinement; spouses and significant others (this includes parents, live-togethers, and other non-spouses who play an important part in the alcoholic's/drug abuser's life) who have undergone counseling and rehabilitation in navy drug or alcohol rehabilitation centers, who themselves participate in counseling or treatment programs at such facilities and civilians authorized by the Secretary of the Navy for treatment at a military facility for rehablitation purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of interview appraisals, progress reports, psychosocial histories, counselor observations and impressions of client's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinanalysis for alcohol/drug abuse, and personnel, service, biographical and educational data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V, Public Law 92-129; Section 413; Public Law 92-255

PURPOSE(S):

To identify alcohol and drug abusers and either restore such persons to effective duty or identify rehabilitation failures for separation from Government service. Information is used to treat, diagnose, counsel and rehabilitate individuals in the drug or alcohol abuse programs. For counselors and counselor candidates to use in screening and evaluation of candidates for counselor school and the continuing evaluation of counselors during the course of their duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Blanket Routine Uses identified in the yearly recompilation do not apply to this system of records.

Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C. Section 1175, as amended by 88 Stat. 137, and Title 42 U.S.C., Section 4582, as amended by 88 Stat. 131. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

Within the Armed Forces or within those components of the Veterans Administration furnishing health care to veterans or between such components and the Armed Forces.

To medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency.

To Government personnel for the purpose of obtaining benefits to which the patient is entitled.

To qualified personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose identities in any manner.

To a court of competent jurisdiction upon authorization by an appropriate order after showing good cause therefore. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums or on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Manual records may be retrieved by name and social security number. Automated records may be retrieved by social security number. Computer programs associated with automated records maintained in this system allow for names and social security numbers to be removed while leaving other data elements intact. When the name and social security number is removed, data is aggregated for use in research, management information and planning.

SAFEGUARDS:

Computer and punched card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Manual records are maintained for two years and automated records are maintained indefinely.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Written requests should be addressed to activity to which the individual received treatment or to the Commander, Naval Military Personnel Command, Navy Annex, Washington, D.C. 20370. Requests must contain full name, social security account number,

military status, address and signature of requester. The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB-2) for assistance with records located in the Naval Military Personnal Command; the individual may also visit local activities concerned (see Directory of Department of the Navy mailing addresses). Proof of identification will consist of military ID card for persons having them or other picture-bearing ID.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; notes and documents from Service Jackets and Records; federal, state and local court documents; general correspondence concerning the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05353-1

SYSTEM NAME:

Treatment Effectiveness Assessment System

SYSTEM LOCATION:

Primary System-Alcohol Rehabilitation Branch, Health Promotion Division, Naval Medical Command, 23rd and E Streets, NW, Washington, DC 20372.

Secondary system-27 Alcohol Rehabilitation Services at Naval Hospitals in Bethesda, Maryland; Jacksonville, Florida; Pensacola, Florida; Orlando, Florida; San Diego, California; Long Beach, California; Oakland, California; Camp Pendleton, California; Bremerton, Washington; Charleston, South Carolina; Beaufort, South Carolina; Corpus Christi, Texas; Great Lakes, Illinios; Groton, Connecticut; Camp LeJeune, North Carolina; Millington, Tennessee; Newport, Rhode Island; Philadelphia, Pennsylvania; Quantico, Virginia; Guam; Guantanamo Bay, Cuba; Naples, Italy; Roosevelt Roads, Puerto Rico; Okinawa, Japan; Yokosuka, Japan; Subic Bay, Republic of the Phillipines; and Rota, Spain.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have successfully completed a six-week residential alcohol rehabilitation program at a Navy alcohol rehabilitation service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected is in three categories:

a. Treatment Facility Records. Title and address of facility; prognosis of individual; dates of treatment completion; and entry for whether an individualized aftercase program has been established.

b. Reviewer's Information. Reviewing official's name, grade and title, and date of review.

c. Service Member's Information. Name, SSN, grade, date of birth, current status, type of discharge, if applicable, and general information regarding individual's progress subsequent to treatment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 and 10 U.S.C. 5031

PURPOSE(S):

For officials and employees of the Naval Medical Command to maintain a data base which will permit monitoring treatment effectiveness of services that provide alcohol rehabilitation (Alcohol Rehabilitation Services/Substances Abuse Departments) at Navy medical treatment facilities in accordance with the Navy Substance Abuse Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on hard copy forms in a secured safe.

RETRIEVABILITY:

Data will be indexed by name and social security number.

SAFEGUARDS:

The records will be maintained in a secured, locked safe accessible only by combination number. Access to the secured safe is under the control of authorized personnel during working hours. In addition, access to the compound is protected by uniformed guards and requires positive identification for admission.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual successfully completes a residential Navy alcohol rehabilitation program. The records are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Alcohol Rehabilitation Branch, Health Promotion Division, Naval Medical Command, Department of the Navy, 23rd and E Streets, NW, Washington, DC 20372.

NOTIFICATION PROCEDURE:

Information should be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, the individual's current duty station, and from the Alcohol Rehabilitation Service in which attended.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05354-1

SYSTEM NAME:

Equal Opportunity Information and Support System

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D. C. 20370; and local activity to which individual is attached (see Directory of the Department of the Navy Mailing Addresses).

Secondary System-Department of the Navy Activities in the Chain of Command between the local activity and the Headquarters level (see

Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel who are involved in formal or informal investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incident data, endorsements and recommendations, formal and informal investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To assist in equal opportunity measures, including but not limited to, investigations and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel on a need to know basis.

RETENTION AND DISPOSAL:

Records disposed of after two years in accordance with SECNAVINST P5212.5B, 'Disposal of Navy and Marine Corps Records'; or in accordance with Departmental Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (Attn: Privacy Act Coordinator), Washington, D.C. 20370; or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number, rank/rate, military status, and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FB42), Rm. 1066 Washington D.C. for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1) and (5) as applicable. For additional information contact the System Manager.

N05370-1

SYSTEM NAME:

Statements of Employment (Regular Retired Officers)

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center Anthony J Celebrezze, Federal Building, Cleveland, Ohio 44199 and Marine Corps Finance Center, Kansas City, Missouri 64197

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps Regular retired officers who have filed a Statement of Employment (DD Form 1357).

CATEGORIES OF RECORDS IN THE SYSTEM:

The information is typically contained in the individual's pay account file and occasionally accompanied by correspondence from, to, or concerning individuals in the above-stated category.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3326; 18 U.S.C. 207, 281, 283; 37 U.S.C. 801; 44 U.S.C. 3101; U.S. Const., Art. I, 9, CL. 8.

PURPOSE(S):

To determine whether the retiree has of may have a conflict of interest or is engaging in prescribed post-retirement employment activities. In some cases, the information is provided to the Judge Advocate General to serve as basis for advisory opinions on the legality and possible penial and civil consequences of post-retirement employment activities and related conflicts of interests and standards of conduct questions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Justice and other law enforcement and investigation agencies in instances of suspected violations of conflict of interests and related standards of conduct.

To the Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to instances of suspected violations of conflict of interests and related standards of conduct.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name or social security number of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside of official working hours.

BEST COPY AVAILABLE

RETENTION AND DISPOSAL:

Records are maintained at the above-stated locations for up to two years after the death of the individual concerned, at which time they are transferred to the Federal Records Center, Mechanicsburg, Pennsylvania, in the case of Navy personnel, and to the Federal Records Center, Kansas City, Missouri in the case of Marine Corps personnel.

SYSTEM MANAGER(S) AND ADDRESS:

For Navy Regular retired officers:
Comptroller of the Navy
Navy Department
Washington, D.C. 20350

For Marine Corps Regular retired officers:
Commanding Officer
Marine Corps Finance Center
1500 East Bannister Road
Kansas City, Missouri 64197

NOTIFICATION PROCEDURE:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e., full name and social security number); the written request must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager for Marine Corps and the Navy Finance Center for Navy.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager for Marine Corps and the Navy Finance Center for Navy.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05370-2

SYSTEM NAME:

Statements of Employment and Financial Interest

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing DD 1555 or DD 1555-1

CATEGORIES OF RECORDS IN THE SYSTEM:

DD 1555 or DD 1555-1 and supplemental lists or reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations and E.O. 11222.

PURPOSE(S):

For supervisors and counselors to determine whether the employee has or may have a conflict of interest. The Naval Investigative Service may use the system to handle violations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For law enforcement and investigatory agencies, such as the Federal Bureau of Investigation and the Department of Justice, to handle violations.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and card files.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Safe or locked file cabinet accessible to au ıorized personnel only.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer or head of the organization in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, his supervisor, and the counselor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05371-1

SYSTEM NAME:

Conflicts of interest and employment activities.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, or retired military personnel and present and former civilian employees of the Navy or Marine Corps who, by reason of their own inquiries or inquiries or complaints of Department of the Navy or other Federal officials or other appropriate persons, have been the subject of correspondence with the Judge Advocate General concerning the legality of outside Federal, State, or private employment or financial interests, dual Federal employment, post-retirement employment, defense related employment, or foreign employment; acceptance of gifts, gratuities, or benefits from Government cntractors, foreign governments, or other sources, or other possible violations of Federal conflicts-of-interest or standards-of-conduct laws or regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from, to, or concerning, individuals of the above stated category regarding their current, past, or prospective outside Federal, State, or private employment; defense-related employment; post-retirement employment; foreign employment; dual Federal employment; acceptance of gifts, gratuities, or benefits from Government contractors, foreign governments, or other questionable sources; or other possible violations of conflicts-of-interest or standards-of-conduct laws or regulations. Additionally, such records sometimes include copies of statements of employment submitted by retired military personnel to the Navy Finance Center and referred to the Judge Advocate General for review and further action, and copies of investigative reports concerning suspected violations of pertinent laws or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3326, 5532; 10 U.S.C. 973, 974, 1032, 6223;
18 U.S.C. 202, 203, 205, 207, 209, 219, 281, 283;
37 U.S.C. 801;
U.S. Const., Art. I, 9, cl 8;
5 U.S.C. 301;
44 U.S.C. 3101.

PURPOSE(S):

Information is used as the basis for advisory opinions on the legality of employment activities, financial interests, and the related conflicts-of-interest and standards-of-conduct questions described above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the General Accounting Office; the Department of Justice; and the Office of Personnel Management in instances of suspected violations of pertinent laws or regulations.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Files are maintained in file cabinets under the immediate control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General. However, after five years, name indexes are destroyed, eliminating the capability for retrieval by the names of individuals. Thereafter, they are retrievable only by topical indexes arranged according to the legal issues involved.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va., 22332

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the system manager stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Visits may be made to: Civil Affairs Division (Code 12), Office of the Judge Advocate General, Room 9n11, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Armed forces identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the sstem manager.

RECORD SOURCE CATEGORIES:

Information in the system is furnished by the individual and is supplemented by correspondence from Federal officials; current, past, and prospective employers; other interested persons regarding possible conflicts of interest and employment activities; and by investigations pertaining to particular suspected violations. Additional information in the form of statements of employment is forwarded by officers of the Navy Finance Center to the Judge Advocate General for review and further action.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE.

N05512-1

SYSTEM NAME:

Vehicle Control System

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals that have vehicles registered at a particular Navy installation; and all individuals who apply for Government Motor Vehicle Operator's License.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical file of each individual who have vehicles registered or who have applied for a Government Motor Vehicle Operator's License. Files kept by month, individual's name, date of birth, SSN, height, weight, hair and eye color, place of employment, driving record, license number, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Used as a car pool locator, vehicle registration, parking control system, insurance verification system to verify issue of license when individual has lost his or her operator's card, and may be referred to by security or safety officials to determine individual's previous driving record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05520-1

SYSTEM NAME:

Personnel Security Eligibility Information System

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

Secondary System-local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Navy and Naval Reserve, former members, and applicants for enlistment or commissioning.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain reports of personnel security investigations, criminal investigations, and counterintelligence investigations, usually brief excerpts only; correspondence, records and information pertinent to an individual's eligibility for acceptance and retention, personnel security clearance, assignment to the Nuclear Weapon Personnel Reliability Program or other 'high risk' program requiring personnel quality control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To determine service member's eligibility for acceptance and retention, personnel security clearances, assignment to the Nuclear Weapon Personnel Reliability Program and other 'high risk' programs requiring quality control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To state and local government agencies in the performance of their official duties relating to personnel security eligibility.

To officials and employees of other Executive Branches of the Government, upon request, in the performance of their duties related to personnel security eligibility.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and index cards. Some information from the paper records is contained in an automated file.

RETRIEVABILITY:

Filed alphabetically by last name of individual. Automated files are by social security account number.

SAFEGUARDS:

Stored in locked safes and cabinets. File areas are accessible only to authorized persons who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records and portions thereof vary in period of time retained; records are retained and disposed of in accordance with Department Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Navy Department, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to Commander, Naval Military Personnel Command, (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security number, rank/rate/civilian status, address and notarized signature of the requestor. The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex, (FOB-2) Washington, D.C., Rm. 1066, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Prior written notification of personal visits is required to ensure that all parts of the record will be available at the time of the visit. Proof of identity will be required and will consist of a military identification card for persons having such cards and picture-bearing identification.

RECORD ACCESS PROCEDURE:

The agency's rules for access to records may be obtained from the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing inital determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, and other Departments and Agencies of the Executives Branch of government, and components thereof, in performance of their official duties and as specified by current instruction and regulations promulgated by competent authority; civilian and military investigative reports; federal state and local court documents; fingerprint cards; official correspondence concerning individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (2), (5), and (7) as applicable. For additional information contact the System Manager.

N05520-2

SYSTEM NAME:

Listing of Personnel - Sensitive Compartmented Information

SYSTEM LOCATION:

Director, Naval Research Laboratory, Washington, D. C. 20375

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indoctrinated for access to compartmented information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, affiliation, billet description, clearances authorized, clearances held, rank, Social Security Number, Background Investigation date, date of birth, place of birth, date of marriage, place of marriage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To record and monitor the NRL sensitive compartmented information (SCI) billet structure (personnel authorized to be indoctrinated for SCI).

To control and monitor access to sensitive compartmented information facilities.

To maintain records of NRL personnel visiting other commands as well as personnel from other activities who visit NRL on SCI visits.

To maintain a listing of SCI materials signed out on sub-custody to division personnel for inventory control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Tape

RETRIEVABILITY:

Name, Social Security Number, affiliation, assigned billet number

SAFEGUARDS:

Three combination security container and/or vault.

RETENTION AND DISPOSAL:

Records maintained as long as individual authorized access; changed as changes occur.

Magnetic tape erased as required.

SYSTEM MANAGER(S) AND ADDRESS:

Special Security Officer, Naval Research Laboratory, Washington, D. C. 20375

NOTIFICATION PROCEDURE:

Letter to System Manager at above address giving full name, Social Security Number, and affiliation, or visit to NRL Special Security Office with NRL pass as identification

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

All information obtained from individuals and indoctrination documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05520-3

SYSTEM NAME:

Civilian Personnel Security Files

SYSTEM LOCATION:

Department of the Navy Staff, Headquarters and Field Activities employing civilians in sensitive and nonsensitive positions. Official mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Appropriated and nonappropriated fund employees, contractor employees and visitors requiring base or activity access, and applicants under consideration for employment within the employing activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain records and information appropriate to the activities civilian employee security program and may include certificates of personnel security clearances and source documents which identify the appropriate investigative basis for clearance eligibility, security access information, copies of requests for investigation, personal history and qualifications statements and other information provided by the employee, signed security briefing and debriefing statements, exception documents, copies of letters of reprimand or suspension, memorandums between the personnel officer or other officers and the security manager, final and interim reports of investigations completed, correspondence concerning personnel security matters, records of security orientation, education and training provided employees, internal security information, records of security violations, and information from law enforcement agencies, former employers and supervisors, references and schools attended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 (as amended), 'Security Requirements for Government employment' Internal Security Act 1950, 18 USC 1382, and Title 18 U.S. code, and E.O. 9397.

PURPOSE(S):

To provide an effective program to insure that the employment and retention in employment of any civilian officer or employee within the activity is clearly consistent with the interests of national security. To determine the investigative requirements for appointment and retention of civilian officers and employees. To provide information concerning the security clearance and degree of access granted each employee. To provide a basis by which an applicant or employee may be determined suitable for employment or retention in employment in sensitive or nonsensitive positions within the Federal civilain service. To provide a record of favorable security and suitability determinations made by the Navy Central Clearance Group, of favorable and unfavorable determinations made by the Secretary of the Navy and of suitability determinations made by the Office of Personnel Management and the activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on file cards.

RETRIEVABILITY:

Name (last, first, middle), date of birth, and social security number.

SAFEGUARDS:

Safekeeping and storage in accordance with the Department of the Navy Information Security Program Regulation, OPNAV 5510.1G.

RETENTION AND DISPOSAL:

Records are retained during the employment of the employee at the activity, and during period applicants are being considered for employment, but may be disposed of at any time after serving their purpose. The records are disposed of upon separation (retirement, transfer, resignation, termination, etc.) of the employee. Disposal may be made by (1) return to the source from which received, if required, (2) forwarding to the Department of Defense activity to which an employee is transferred, or (3) destruction.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officers of Heads of Department of the Navy Staff, Headquarters and field activities employing civilians.

NOTIFICATION PROCEDURE:

Request should be by correspondence addressed to the SYSMANAGER. The letter should contain the full name, date

and place of birth, and social security number of the requestar and his signature. Official mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register. The employee may visit the Security Manger's Office of the activity at which she or he is employed.

RECORD ACCESS PROCEDURES:

The agency's rules for access may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

RECORD SOURCE CATEGORIES:

Investigation results and information provided by appropriate investigative agencies and the Naval Civilian Personnel Command.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (2), and (5) as applicable. For additional information contact the System Manager.

N05520-4

SYSTEM NAME:

NIS Investigative Files System

SYSTEM LOCATION:

Primary System-NIS Records Management Division Administration Department, NIS Headquarters, P.O. Box 16230, Suitland Md. 20746

Decentralized Segments - Naval Investigative Service Regional Offices (NISROs) retain copies of certain segments of the investigative files, and related documentation for up to one year. Addresses of these offices are included in the directory of Department of the Navy mailing addresses. Naval Investigative Service Resident Agencies retain copies of investigative reports during pendency and for 90 days thereafter. They also retain evidence custody cards on persons from whom evidence was seized. The number and location of these Resident Agencies are subject to change in order to meet the requirements of the Department of the Navy. Current location may be obtained from Naval Investigative Service Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in the following categories who require access to classified defense information prior to August 1972: Active and inactive members of the naval service, civilian personnel employed by the Department of the Navy (DON), industrial and contractor personnel, civilian personnel being considered for sensitive positions, boards, conferences, etc., civilian personnel who worked or resided overseas, Red Cross personnel. Civilian and military personnel accused, suspected or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the DON. Civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a DON installation, facility or ship. Civilian or military personnel involved in the loss, compromise or unauthorized disclosure of classified material/information. Civilian and military personnel who were of counterintelligence interest to the DON.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system: Official Reports of Investigation (ROI) prepared by NIS or other federal, state, local or foreign law enforcement or investigative body on either hard copy or microfilm. NIS operations reports (NORs) and their predecessor NIS information reports (NIRs). NORs and NIRs document information received by NIS which is of interest to the naval services or other law enforcement or investigative bodies. The information may be of criminal, counterintelligence or general investigative interest.

General Administration Reports (GEN). Although no longer used as such, the Inve tigative Purpose of the GEN was to report the results of pre-employment inquiries on applicants for positions as special agents with NIS. The official ROI (above) is now used for this purpose.

Action, Lead Sheets (ALS's), investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner.

Case Control and Management documents which serve as the basis for controlling and guiding the investigative activity.

Records identifying confidential sources and contacts with them.

Index to persons reported by 'Name Only'.

Wiretap Data Records. Automated listing of persons who were subjects of wiretapping or eavesdropping operations.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhours expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Modus Operandi Files.

Screening Board Reports. These reports set forth the results of oral examination of applicants for a position as a Special Agent with the NIS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301
44 U.S.C. 3101
47 U.S.C. 605
Executive Memorandum of 26 June 1939; Investigations of espionage, counteresplonage and sabotage matters.

Executive Order 12036; United States Intelligence Activities; SECNAVINST 5520.3, criminal and security investigations and related activities within the Dept of the Navy; DOD Dir 5210.6, policy on investigation and clearance of DOD Personnel for access to defense information; DOD Dir 5200.26, defense investigative program; DOD Dir 5200.27, acquisition of information concerning persons and organizations not affiliated with the Dept of Defense; and DOD Dir 5200.24, telephone interception and eavesdropping, and SECNAVINST 3820.2D, investigative and counterintelligence collection and retention guidelines pertaining to the DON.

PURPOSE(S):

The information in this system is (was) collected to meet the investigative, counterintelligence and security responsibilites of the DON. This includes personnel security, internal security, criminal and other law enforcement matters all of which are essential to the effective operation of the department.

The records in this system are used to make determinations of; suitability for access or continued access to classified information, suitability for employment or assignment, suitability for access to military installations or industrial firms engaged in government projects/contracts, suitability for awards or similar benefits; use in current law enforcement investigation of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; insurance claims including workmens compensation; provide protective services under the DOD Distinguished Visitor Protection

Program and to assist the U.S. Secret Service in meeting its responsibilities; used for public affairs or publicity purposes such as wanted persons, etc.; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Central Index of Investigations.

Users of the records in this system include employees of the NIS who require access for operational, administrative or supervisory purposes; DOD criminal investigative, investigative and intelligence units; DOD components making suitability determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To law enforcement or investigatory authorities for law enforcement purposes.

To federal intelligence/counterintelligence agencies of matters under their purview.

To foreign government organizations of criminal and counterintelligence information necessary for the prosecution of justice, or for mutual security and protection.

To other investigative units (federal, state or local) for whom the investigation was conducted, or who are engaged in criminal investigative and intelligence activities; federal regulatory agencies with investigative units.

To defense counsel in the course of acquiring information.

To officials and employees of the National Archives for historical purposes.

To commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an unwarranted invasion of privacy is not involved.

To victims of crimes to the extent necessary to pursue civil and criminal remedies.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, on cards and on microfilm. Automated records on magnetic tape.

RETRIEVABILITY:

NIS permanent files are filed by terminal digit number. In order to locate the file it is necessary to query the Defense Central Index of Investigations (DCII) computer using the name of the subject and at least one other personnel identifier such as date of birth, place of birth, social security number or military service number. Files may also be retrieved by a case control number assigned at the time the investigation is initiated. Copies of the files in the NISROs and Resident Agencies are retrieved by name.

SAFEGUARDS:

NIS investigative files (permanent and temporary) are maintained and stored in open shelves and filing cabinets located in secured areas accessible only to authorized personnel. Dated files are retired to the Washington National Records Center where retrieval is restricted to NIS authorized personnel.

RETENTION AND DISPOSAL:

Retention of completed NIS Investigative files on Personnel Security Investigations (PSI's) is authorized for 15 years unless adverse information is developed, in which case they may be retained for 25 years. PSI files on persons considered for affiliation with DOD will be destroyed within one year if the affiliation is not consummated. Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Criminal files are retained for 25 years. Major investigations of a counterintelligence/security nature, of espionage or sabotage, may be retained permanently. Certain of the above records, when found to have possible historical value, may be offered to the National Archives for continued retention. Counterintelligence records on persons not affiliated with DOD must be destroyed within 90 days or one year under criteria set forth in DOD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy. Files retained in the NISO's and resident agencies are temporary and are destroyed after 90 days or one year, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Naval Investigative Service has ultimate responsibility for all NIS file holdings. Management of NIS permanent files is the direct responsibility of the Head Administration Department. NISRO Commanding Officers are responsible for files retained in their NISRO subordinate Resident Agencies.

NOTIFICATION PROCEDURE:

All requests relative to the retention and/or releasability of NIS investigative files should be addressed to the Director, Naval Investigative Service, P.O. Box 16230, Suitland, Md. 20764. Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, social security number or military service number. Personal visits by requesters should be confined to the Naval Investigative Service headquarters at the above address. It should be borne in mind that the vagaries of the automated indexing system might preclude a same day response. Persons submitting written requests must properly establish their identity to the satisfaction of the NIS. Where a question exists a signed, notarized statement or other certified form of identification will be required. Individuals appearing in person may present proof of identification in the form of military ID card, valid driver's license, or other suitable form of identification bearing a photograph and signature. Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record.

RECORD ACCESS PROCEDURES:

Individuals may make inquiries relative to NIS records maintained on them thru the NIS Information and Privacy Coordinator Naval Investigative Service Headquarters, at the address specified in the previous paragraph.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

See EXEMPTION.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552 a (j)(2) and (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6) as applicable. For additional information, contact the System Manager.

N05521-1

SYSTEM NAME:

Access control system

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy and any visitor (military, civilian, contractor) requiring access to a naval base/activity or contractor facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity/contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain all aspects of proper access control, to replace lost badges, to retrieve passes upon separation, to maintain visitor statistics and background information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To designated contractors when Navy member is visiting that contractor's facility.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05521-2

SYSTEM NAME:

Commonwealth Pass Application Form

SYSTEM LOCATION:

U.S. Naval Communciation Station FPO San Francisco 96680

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel requiring access to the Commonwealth property on which the Naval Communication Station is located.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed application forms for Commonwealth passes. Contains name, rank, organization, height, color of hair, color of eyes, date of birth and place of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Arrangements for the use and occupation by the United States Navy of Commonwealth land and for associated matters.

PURPOSE(S):

To issue passes for entry to Naval Communication Station.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Locked cabinet - limited access.

RETENTION AND DISPOSAL:

Duration of individual's stay in area. Destruction by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, U.S. Naval Communication Station.

NOTIFICATION PROCEDURE:

Individual initiates record and may request information. Security Officer, U.S. Naval Communicaton Station, information requester must provide: full name, official title, purpose of inquiry. Office to be visited: Security Office, U.S. Naval Communication Station. Proof of identity: visual recognition or identification card.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information supplied by individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05527-1

SYSTEM NAME:

Security Incident System

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in or witnessing incidents requiring the attention of base, station, or activity security personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident/complaint report, investigator's report, military magistrate's records, confinement

records, traffic accident and violation records, traffic court file, citations to appear before U. S. Magistrate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

Used by command legal personnel for prosecution of military offenses and other administrative actions; support of insurance claims and civil litigation, revocation of base, station, or activity driving privileges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Federal Bureau of Investigation for further criminal investigations or court actions.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (j)(2) as applicable. For additional information contact the System Manager.

N05527-2

SYSTEM NAME:

Security inspection and violation system

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in security violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security violation reports, security inspection reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To identify problem areas in security indoctrination, to alert command management officials to areas which present larger than normal security problems and identify personnel who are cited as responsible for non-compliance with procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05527-3

SYSTEM NAME:

Naval Educational Development

SYSTEM LOCATION:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Formal/Informal investigations, inquiries conducted as directed by CNET and higher authority

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigations, inquiries

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To provide CNET and higher authorities with subsequent information involving each formal/informal inquiry.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

Name, grade, title, position

SAFEGUARDS:

Stowed in 3-tumbler safe; access to authorized personnel only

RETENTION AND DISPOSAL:

Per Records Disposal Instructions

SYSTEM MANAGER(S) AND ADDRESS:

Staff Inspector General and his immediate staff

NOTIFICATION PROCEDURE:

Information is available to individuals but is restricted to the extent that the source of the information is not revealed.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Multitude of sources as determined by the scope of the investigation, inquiry.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05527-4

SYSTEM NAME:

Naval Security Group Personnel Security/Access Files

SYSTEM LOCATION:

The central record system is located at:
Commander, Naval Security Group Command
3801 Nebraska Ave., N.W.,
Washington, D.C. 20390

Duplicates of portions of records may be held by other Naval and Marine Corps activities served by a Naval Security Group Special Security Officer. Records pertaining to Naval and Marine Corps military personnel who were considered but not selected for assignment to the Naval Security Group while undergoing recruit training are located at one of the following locations:

Resident in Charge
Naval Security Group Field Office
Marine Corp Recruit Depot
Parris Island, South Carolina 29905

Resident in Charge
Naval Security Group Field Office
Naval Administrative Command
Naval Training Center,
Great Lakes, Illinois 60088

Resident in Charge
Naval Security Group Field Office
Naval Training Center
San Diego, California 92133

Resident in Charge
Naval Security Group Field Office
Naval Training Center
Orlando, Florida 32813

Resident in Charge
Naval Security Group Field Office
Naval Technical Training Center, Corry Station
Pensacola, Florida 32511

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval and Marine Corps military and civilian personnel assigned to or employed by the Naval Security Group, including the Reserve components thereof, or who have been considered for such assignment or employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file may contain personal history information, investigative reports, security suitability reports, incident reports, and other data pertinent to determination of eligibility for access to Sensitive Compartmented Information (SCI), including the decisions made in each case. The file also contains records of authorized access to classified information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450 Eisenhower Security Program
E.O. 12356 National Security Information

PURPOSE(S):

Information is collected and used by SCI security personnel for the purposes of determining the individual's eligibility for access to SCI information, of maintaining a record of the degree(s) to which access to SCI has been authorized, and of determining the extent, if any, to which controls must be exercised to prevent the compromise of SCI through hostile foreign intelligence activity.

Information may be released to officials and employees of the Defense Intelligence Agency, Army Security Agency, Air Force Security Service, and the Defense Industrial Security Clearance Office to determine the individual's eligibility for access to classified information under the user Agency's cognizance.

Information may be disseminated to the Defense Investigative Service and the Naval Investigative Service to conduct investigations on which to base SCI eligibility decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the National Security Agency, Central Intelligence Agency, and White House Communications Agency for the purpose of determining the individual's eligibility for access to classified information under the user agency's cognizance.

To the Central Intelligence Agency to maintain an index of personnel who have been granted access to certain sensitive intelligence programs.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, and magnetic tape.

RETRIEVABILITY:

By name and SSN.

SAFEGUARDS:

Approved security areas with alarms and guards. Access is limited to assigned personnel who have been found eligible for access to SCI and received specific instruction in the handling, security, and dissemination policy of information in the files.

RETENTION AND DISPOSAL:

Central record system retained for thirty years after last action. Records held at Naval Security Group Field Offices forwarded to central system after two years. Records retained in central record system and destroyed by burning, shredding, degaussing or chemical destruction at end of retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Security Group Command 3801 Nebraska Ave., N.W. Washington, D.C. 20390

NOTIFICATION PROCEDURE:

a. Send request to SYSMANAGER

b. Full name, date and place of birth, military status, social security number (if voluntarily included) or service number.

c. Visits for the purpose of obtaining information must be submitted in writing to Commander, Naval Security Group Command, 3801 Nebraska Ave., N.W., Washington, D.C. 20390 who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requester.

d. Scheduled visitors must be prepared to present adequate proof of identification-i.e.-combination of full name, date and place of birth, parent(s) name, drivers license, medicare card, military identification card if applicable.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

In addition to information furnished by the individual himself, files contain information furnished by federal investigative agencies, other SCI security organizations, and reports submitted by Naval Security Group Special Security Officer. Files also include administrative correspondence among associated personnel and security offices of the executive branch.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1) through (5), as applicable. For additional information contact the System Manager.

N05527-5

SYSTEM NAME:

Navy Central Clearance Group (NCCG) Records

SYSTEM LOCATION:

Naval Civilian Personnel Command, (Code 23), Department of the Navy, 800 N. Quincy St., Arlington, VA. 22302.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Incumbent and former civilian employees in and applicants for sensitive and nonsensitive postions at Department of the Navy appropriated fund activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records are comprised of (1) reports and other investigative material and information developed by investigations conducted by Federal investigative agencies pursuant to statute and executive order; (2) reports of arrest, criminal activity and their disposition, (3) results of the review of the reports by the NCCG, including the security or suitability determination made on the case; (4) copies of correspondence regarding the case and/or reflecting the determination made by the NCCG; and (5) an index file card on each case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 10450 (as amended), 'Security Requirements for Government Employment'. (2) 5 USC 7532, 'Suspension and Removal'.

PURPOSE(S):

The records are maintained to meet the statutory requirements of 5 USC 7532 and E.O. 10450 which require the establishment and maintenance of an effective program to insure that the employment and retention in employment of any civilian officer or employee within the Department is clearly consistent with the interest of the national security and which require adjudication and readjudication of the information as appropriate, and to have the material furnished by the Office of Personnel Management, readily available for return to the OPM upon request. Upon receipt of investigative reports and security information on civilian employees and applicants, the NCCG reviews the material. The Naval Civilian Personnel Command, Personnel Security Branch then transmits the material to the employing activity with a letter or stamped endorsement apprising the command of the security determination made by the NCCG. During the period that the reports and documents are at an activity, the material is under the custody of the activity's Security Manager. Following the review of the material by the activity's commanding officer or his/her designee, the material is returned to the source from which received, if required; retained until the employee is separated, or destroyed if it is of no further value. If the employing activity determines that an adverse action against the employee is warranted based on information in the report, appropriate action in accordance with Office of Personnel Management suitability procedures is initiated by the activity. In some cases the NCCG will make a suitability determination. Other users of the records may include members of Security Hearing Boards and officials and employees of the Department of the Navy in performance of their official duties related to the Department of the Navy Civilian Personnel Security Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on file cards

RETRIEVABILITY:

Name (last, first, middle) and date of birth.

SAFEGUARDS:

Records maintained in GSA approved security containers accessible only to authority employees of NCPC Security Branch who are properly screened and trained and who have proper security clearance.

RETENTION AND DISPOSAL:

Records with the exception of the index file card are retained in active file until end of third calendar year following last entry and then retired to the National Personnel Records Center, Suitland, Md. Index cards are retained in active file until destroyed. Records are destroyed in accordance with DOD NCI-330-76-1 of 3 May 1976.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Naval Civilian Personnel Command (NCPC), 800 N. Quincy St., Arlington, VA. 22203.

NOTIFICATION PROCEDURE:

Written requests should be addressed to the Director, Naval Civilian Personnel Command, (Code 23), Department of the Navy, 800 N Quincy St, Arlington, VA 22203. The letter should contain the full name, date and place of birth, and social security number of the requester and his signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

RECORD SOURCE CATEGORIES:

Investigation results and information provided by appropriate investigative agencies of the Federal Government.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1) and (5), as

applicable. For additional information contact the System Manager.

N05760-1

SYSTEM NAME:

Biographical and Service Record Sketches of Chaplains

SYSTEM LOCATION:

Office of the Chief of Chaplains, Department of the Navy, Washington, DC 20370

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy chaplains who have served on extended active duty at some time during the period 1778-1961 inclusive, and any future editions. It lists the names, years in which they were commissioned, and the ecclesiastical affiliations of all who held chaplaincy commissions during the period.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and professional summary which includes individual's full name, denomination of faith group, date and place of birth, education, ordination, date of marriage and name of spouse, first names of children, prior professional experience, authorship, prior military service (including date of commission, date of rank at commissioning, ships/stations, places and dates; and period spent, if any, in Inactive Reserve), date of augmentation (if applicable), promotion history, awards and decorations, conclusion of active duty (date of resignation, release from active duty, or retirement as applicable), post active duty career (retirees only), and distinctions which have made the chaplains career interesting or unusually significant (corroborative material suggested).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 5031.

PURPOSE(S):

To provide background data in response to news media requests; to provide information on individual chaplains prior to public appearances in which they are scheduled to appear; to provide internal release of information as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in bound and published volumes. Source materials are in paper files.

RETRIEVABILITY:

Data is indexed alphabetically by individual names and made available upon written request.

SAFEGUARDS:

Files are locked after official working hours.

RETENTION AND DISPOSAL:

Forms and documents are destroyed after five years from the date of publication. The volumes are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chaplain Corps Historian, Office of the Chief of Chaplains, Department of the Navy, Washington, DC 20370.

NOTIFICATION PROCEDURE:

Information should be obtained from the system manager or authorized representative upon written request signed by the listed individual. The full name of the individual should be given. Individuals making inquiry in person must present personal identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from returned questionnaires addressed to individual chaplains, supplemented by Officer Data Cards and historical research.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05800-1

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy Activities. Official mailing addresses are listed in the Navy's address directory appended to this publication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Criminal and civil plaintiffs/ defendants involved in litigation against or involving the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements, affidavits, correspondence, briefs, petitions, court records involving litigation and related matters

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 28, USC; Executive Order 10501; 5 USC 301; 10 USC 801-940

PURPOSE(S):

To prepare correspondence and materials for litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets

RETRIEVABILITY:

Case citation, name of individual

SAFEGUARDS:

Locked in executive spaces

RETENTION AND DISPOSAL:

Most are retained permanently, others disposed of in accordance with Defense Disposal Manual

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel (Litigation), Washington DC 20360.

NOTIFICATION PROCEDURE:

Direct inquiry to SYSMANAGER, providing name, rank/rate/shop or badge number and social security number

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager

RECORD SOURCE CATEGORIES:

Court records, personal interviews and statements, departmental records, State and Federal records, police reports and complaints, general correspondence

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (j) or (k), as applicable. For additional information contact the System Manager.

N05800-2

SYSTEM NAME:

Legal Records System

SYSTEM LOCATION:

Commanding Officer
Naval Regional Medical Center
San Diego, CA 92134

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients, visitors, staff and employees of Naval Regional Medical Center, San Diego, CA 92134.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident reports and in-house investigations; records of Commanding Officer's Nonjudicial Punishment and appeals thereof; files of litigation and potential litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Federal Tort Claims Act; Medical Care Recovery Act; Article 15, UCMJ.

PURPOSE(S):

Some are protected by attorney-client relationship, and thus are not released without consent of client or used in any way other than original purpose. Incident reports used for internal administration of Medical Center (to correct errors and improve procedures) and to notify attorney of incidents having a potential for legal action. In-house investigations used to prepare for litigation. Records of NJP used in administering Article 15, UCMJ, punishment and for referral to Military Personnel System (for performance evaluation, administrative separation, etc.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, forms, letters.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Available to staff of Staff Judge Advocate (three persons) on a 'need to know' basis only. Otherwise, maintained in locked cabinets and/or in locked rooms.

RETENTION AND DISPOSAL:

Retained as required; destroyed or moved to National Personnel Records Center, St. Louis, MO, as directed by Department Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Judge Advocate
Naval Regional Medical Center
San Diego, CA 92134

NOTIFICATION PROCEDURE:

Individuals can determine whether the system contains records pertaining to them by writing or visiting the System Manager and supplying full name, SSN, military status, approximate date of contact with system (if known).

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Investigative reports (as from JAG Manual investigations, Office of Naval Intelligence reports, Security System, etc.), Military Personnel System, medical records, personal interviews, personal observation, reported by persons witnessing or knowing of incidents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05801-1

SYSTEM NAME:

Legal Services Management Information System

SYSTEM LOCATION:

Typically maintained at Naval Legal Service Offices, the Naval Legal Service Branch Offices, and any command with a legal assistance office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Servicemembers who are pending courts-martial. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal Assistance Card Files. Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.
(2) Case Analysis and Tracking System (CATS): CATS records contain identification information about the individual being courts-martialed such as name; rank/rate; service number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges alleged, charges of which convicted, if any, sentence adjudged; and other information describing overall case management and processing.
(3) Legal Assistance and Personal Representation Client Records: File contains ID information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Manual of the Judge Advocate General; 44 U.S.C. 3101

PURPOSE(S):

Attorneys and clerical personnel directly involved in processing courts-martials, and rendering legal assistance and advice within the Naval Legal Service Offices and Detachments and legal assistance offices established within the Department of the Navy. Data will be used for the internal management of the Naval Legal Service Offices and legal assistance offices such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-printed cards stored in file cabinets; case files are stored on magnetic disk. Reports extracted from this data may be stored temporarily in paper files.

RETRIEVABILITY:

Card files maintained by the legal assistance offices are retrieved by name of client. Case files maintained by the Naval Legal Service Offices are retrieved by an internal case number and secondarily, by name of individual.

SAFEGUARDS:

Manual records/cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Data disks are secured in areas accessible only by authorized personnel. Additionally, data disks are unreadable without the program disks, as an added security precaution.

RETENTION AND DISPOSAL:

Records are retained for two years after completion of the case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332, for legal assistance card files.

Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, Virginia 22332, for case files.

NOTIFICATION PROCEDURE:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e. full name, etc.); the written request must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Basic information contained in the card files is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05802-1

SYSTEM NAME:

Fiduciary Affairs Records

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, fleet reserve, and retired members of the Navy and Marine Corps who have been medically determined to be mentally incapable of managing their financial affairs, their appointed or prospective trustees, and members' next-of-kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains proceedings of medical boards, documentation indicating the origin of the mental incapability, the name(s) and address(es) of the individual's next-of-kin, the disability retirement index, a copy of the interview(s) of prospective trustee(s), the appointment of the approved trustee, authority to pay the individual's retirement pay to the approved trustee, the instructions of duties and responsibilities to the trustee, annual trustee accounting reports, copy of the trustee's surety bond, a copy of the affidavit executed by the trustee to obtain the surety bond, miscellaneous correspondence relating to the trustee's duties and responsibilities, annual approvals of the trustee account, discharge(s) of trustee, release(s) of surety, periodic physical examinations, medical records, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 37 U.S.C. 601-604; 44 U.S.C. 3101

PURPOSE(S):

To provide non-judicial financial management of military pay and allowances payable to active duty, fleet reserve, and retired Navy and Marine Corps members for the period during which they are medically determined to be mentally incapable of managing their financial affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Justice when there is reason to suspect financial mismanagement and no satisfactory settlement with the surety can be reached.

To officials and employees of the Veterans Administration in connection with programs administered by that agency.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

By name of the member or by name of the trustee.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Indefinitely; however, after the death of a member, his/her files are typically transferred to the Federal Records Center, Suitland, Maryland, 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law) Office of the Judge Advocate General Department of the Navy 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e., full name); written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Components within the Department of the Navy, medical doctors, approved trustees, prospective trustees, surety companies, and Veterans Administration.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05810-1

SYSTEM NAME:

Article 138 Complaint of Wrongs

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Complaints, three years old or older, are stored at the Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel who have submitted complaints of wrong pursuant to Article 138, UCMJ, which have been forwarded to the Secretary of the Navy for final review of the complaint and the proceedings had thereon.

CATEGORIES OF RECORDS IN THE SYSTEM:

The complaint and all proceedings had thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 138, Uniform Code of Military Justice, (10 U.S.C. 938).

PURPOSE(S):

Used by JAG as a working file to review and make recommendations to the Secretary of the Navy on Article 138 complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside office working hours.

RETENTION AND DISPOSAL:

Complaints are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Administrative Law Division, Office of the Judge Advocate General, Room 9N03, Hoffman Bldg II, 200 Stovall St, Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. armed forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) complaint of wrongs; (2) results of examination into complaint of wrongs by the general court-martial authority; and (3) final review action by the Secretary of the Navy.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05810-2

SYSTEM NAME:

Military Justice Correspondence File

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, retired, and discharged Navy and Marine Corps personnel who were the subject of military justice proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains copy of incoming correspondence, all background material necessary to answer the correspondence and copies of letters replying to the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To provide a record of individual inquiries and JAG responses concerning military justice related matters for reference purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Correspondence is kept in alphabetical order according to the last name of the individual who is the subject of the correspondence.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S00, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records of trial and correspondence from commands and agencies involved in the matter which is the subject of the correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE.

N05810-3

SYSTEM NAME:

Appellate Case Tracking System (ACTS)

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Military Review and/or the Court of Military Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Naval appellate case records; additional Navy appellate case information records; and historical Navy appellate case records. Files contain personal information such as name, rank, social security number, etc., and specific information with regard to the Navy appellate cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 866, 867, and 5031.

PURPOSE(S):

To track the status of courts martial cases appealed to the Navy Marine Court of Military Review and Court of Military Appeals. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and on hard copy forms.

RETRIEVABILITY:

ACTS users obtain information by means of a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name, social security number of Navy-Marine Corps Court of Military Review docket number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: user account number and password sign-on, data base access authority, data set authority for add and delete, and data item authority for list and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for twenty-five years after the close of the individual's case. The record will be purged to magnetic tape after twenty-five years and will be utilized in a batch processing mode.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Claims Defense/ADP Programs, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332.

NOTIFICATION PROCEDURE:

Information should be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual's record of trial and supporting documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06813-1

SYSTEM NAME:

Ethics file.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military lawyers authorized to practice before a court-martial or Navy Court of Military Review and who by their personal or professional conduct have demonstrated that they are so lacking in competency, integrity or ethical or moral character as to be unacceptable as counsel before a court-martial or Navy Court of Military Review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, correspondence, and court papers relating to the complaint brought against attorneys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Manual of the Judge Advocate General, section 0142, and 5 USC 301.

PURPOSE(S):

To provide a record of individual lawyers who are not authorized to practice within the military justice system and to document ethics violations for future suspension/revocation of certification in order to protect the integrity of the judicial system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the attorney concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from military judges, staff judge advocates, judge advocates, and other military personnel; correspondence from the Judge Advocates General of other branches of the Armed Forces; investigative reports from Naval Investigative Service offices; correspondence and copies of court papers from civilian authorities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

M05813-2

SYSTEM NAME:

Courts-Martial Case Report

SYSTEM LOCATION:

Chief, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, D.C. 20374

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals having appeared before a special or general court-martial within the preceding two fiscal years.

CATEGORIES OF RECORDS IN THE SYSTEM:

The recording of the Article violation of the UCMJ, the plea, the finding, the sentence and other related information concerning the trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

To formulate status reports for the JAG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders by circuit and fiscal year

RETRIEVABILITY:

By name or case number

SAFEGUARDS:

Personnel screening, visitor control

RETENTION AND DISPOSAL:

Two fiscal years. They are not moved to Record Centers but are disposed of after two fiscal years in the same manner as all other unclassified material, i.e., general destruction.

SYSTEM MANAGER(S) AND ADDRESS:

Circuit Military Judge
ATLANTIC Judicial Circuit
Navy-Marine Corps Trial Judiciary
Washington Navy Yard
Washington, D.C. 20374

NOTIFICATION PROCEDURE:

Write to address listed under SYSMANAGER. Provide full name, branch of service, military status, where stationed when tried, and when tried

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial

determinations by the individual concerned may be obtained from the system manager

RECORD SOURCE CATEGORIES:

Military Judge of respective individual's court-martial

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05813-3

SYSTEM NAME:

General Courts-Martial Records of Trial.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel tried by general court-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

General court-martial records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 865 and 5 USC 301.

PURPOSE(S):

To complete appellate review as required under 10 USC Section 869(a) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy court-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e., full name and date of trial of individual concerned). The written request must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Department of the Navy, Room 9S09, Hoffman Bldg, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings by a general court-martial.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05814-1

SYSTEM NAME:

Summary courts-martial and non-bad conduct discharge courts-martial--Navy and Marine Corps

SYSTEM LOCATION:

Records are retained for two years after final action by appropriate officers having supervisory authority over shore activities. Records are retained for three months after final action by appropriate officers having supervisory authority over fleet activities, including Fleet Air Wings and Fleet Marine Forces. After the two years or three month retention period, as appropriate, the records are transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps enlisted personnel tried by summary courtmartial or by special court-martial which did not result in a bad conduct discharge.

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary court-martial and non-bad conduct discharge special court-martial records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 865, 5 U.S.C. 301, and Executive Order No. 11476 of June 19, 1969, as amended by Executive Order No. 11835 of January 27, 1975, paragraph 94b (manual for courts-martial, 1969 (rev.))

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. Section 864(a) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Type of court-martial, date, command which convened the court-martial, name of individual defendant, and command which completed the supervisory authority's action.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action by officers having supervisory authority over shore activities, and for three months by officers having supervisory authority over fleet activities. At the termination of the appropriate retention period, records are forwarded for storage to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132. Records are destroyed 15 years after final action has been taken.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332 and appropriate officers having supervisory authority over Naval activities.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332, by written request including the full name of the individual concerned, the type of court-martial (summary or special), the name of the command which held the court-martial, and the date of the court-martial proceedings. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va., 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. armed forces identification cards, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings of summary courts-martial and special courts-martial which did not result in a bad conduct discharge.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05815-1

SYSTEM NAME:

Special courts-martial resulting in bad conduct discharges or concerning commissioned officers.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by special court-martial and awarded a bad conduct discharge, and all Navy and Marine Corps commissioned officers tried by special court-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special court-martial which resulted in a bad conduct discharge, or involving commissioned officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 865, 5 U.S.C. 301 and Executive Order No. 11476 of June 19, 1969, as amended by Executive Order No. 11835 of January 27, 1975, paragraph 94b (manual for courts-martial, 1969 (rev.))

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. Section 866(b) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy court-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St, Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332, by written request stating full name, and date of trial of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. armed forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special court-martial proceedings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE.

N05817-1

SYSTEM NAME:

Courts-Martial Statistics.

SYSTEM LOCATION:

Magnetic tape held at Naval Command Systems Support Activity, Production Code 60.1, room 4002, building 196, Washington Navy Yard, Washington, D.C. 20360. Source document (NAVJAG 5813/1) held in Information and Reports Section, Office

of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by general courts-martial and by special courts-martial when the special court-martial sentence as finally approved includes a punitive discharge.

CATEGORIES OF RECORDS IN THE SYSTEM:

Court-martial information on special courts-martial if sentence as finally approved includes a punitive discharge and all general courts-martial including name, social security number, pleas, convening authority action, supervisory authority action, and Court of Military Review action. Information available from 1970 to present only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To collect statistical data on general and bad conduct discharge special courts-martials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To governmental, public and private organizations and individuals, as required.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and source documents (NAVJAG 5813/1) if file folders.

RETRIEVABILITY:

Name and social security number or Navy court-martial number.

SAFEGUARDS:

Tapes stored in secret vault. Without project code number, tape can neither be read nor added to. Only person who has code number is Project Code Officer. Source documents are filed in file cabinets which are located in an office which is under observation during working hours and is locked at night. The office is located in a secure building which is surrounded by a guarded fence. The building is guarded 24 hours a day, and admission is allowed only to personnel on official business and authorized visitors.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St, Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name, date of trial (if known), date of discharge and type of discharge of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to: The Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals must be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Form NAVJAG (Navy Judge Advocate General) 5813/1.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05815-1

SYSTEM NAME:

Article 69 Petitions

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who were tried by courts-martial which were not reviewed by the Navy Court of Military Review and when such service member has petitioned the Judge Advocate General pursuant to Article 69, Uniform Code of Military Justice, for review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual service member's petition together with all forwarding endorsements and copy of action taken by the Judge Advocate General with supporting memorandum.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 69, Uniform Code of Military Justice (10 USC 869).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. Section 869(b) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained in chronological calendar order with alphabetical cross-referencing system.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the

Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The records comprise the following source materials: (1) petitions for relief, (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of court-martial (above information is omitted if petitioner is former service member), and (3) action of the Judge Advocate General on petition.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05819-2

SYSTEM NAME:

Article 73 Petitions for New Trial.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their court-martial sentence by the convening authority but after their case had been reviewed by the Navy Court of Military Review or Court of Military Appeals, if appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

PURPOSE(S):

To provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel durng working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals should have the following items of identification: drivers license or military identification card.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of court-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05819-3

SYSTEM NAME:

Naval Clemency and Parole Board files

SYSTEM LOCATION:

Naval Clemency and Parole Board, Ballston Tower 2, 801 North Randolph Street, Arlington, Va. 22203

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members or former members of the Navy or Marine Corps whose cases have been or are being considered by the Naval Clemency and Parole Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains individual applications for clemency or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; and a summarized record of the proceedings of the Board.

BEST COPY AVAILABLE

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 874(a), 952-954

PURPOSE(S):

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is warranted. The file is referred to in answering inquiries from the member or former member or their counsel. The file is referred to by the Naval Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Folders are filed by name and social security number or service number.

SAFEGUARDS:

Files are kept within the Naval Clemency and Parole Board administrative office. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Files are permanent. They are retained in the Naval Clemency and Parole Board's administrative office until all portions of the sentence have been completed and the discharge has been executed. After that the folders are sent to Washington National Records Center, 4205 Suitland Road, Suitland, MD. 20409

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, 801 North Randolph Street, Arlington, Va. 22203

NOTIFICATION PROCEDURE:

Information may be obtained from the Naval Clemency and Parole Board, Room 905, Ballston Tower 2, 801 North Randolph Street, Arlington Va. 22203.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system may be exempt under 5 U.S.C. 552a (j)(2) as applicable. For additional information contact the system manager.

N05820-1

SYSTEM NAME:

International Legal Hold Files

SYSTEM LOCATION:

U.S. Naval Legal Offices in a foreign country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, members of civilian component and their dependents who have had criminal charges lodged against them in a foreign country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized summaries and card files containing copies of legal documents received and filed relative to the case, statements, affidavits, handwritten notes, and other miscellaneous data about the particular case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

Used by foreign civilian attorneys in representing the accused, by the accused's military advisor in seeking an expeditious settlement of the case; by supervisory personnel in the performance of their official duties when monitoring the legal hold status of the individuals involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, file folders and file cards.

RETRIEVABILITY:

Files are retrieved by name and ssn.

SAFEGUARDS:

Only personnel in International Law Department are authorized access. Building is kept locked when not occupied.

RETENTION AND DISPOSAL:

For computerized and manual records-retain on tape until the final outcome of each case, whether it be by final adjudication or out of court settlement and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer or head of the organization in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Requester can write to the system manager giving name, rate and service number. Military ID or any standard ID showing applicant's photo shall be sufficient for personal visits.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Foreign judicial system, accused, attorneys representing accused, military legal advisor, Provost Marshal's office, subject's commanding officer, witnesses, and the complainant.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05822-1

SYSTEM NAME:

Otsu Prison Health and Comfort Items

SYSTEM LOCATION:

Commander Fleet Activities, FPO Seattle 98762

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been imprisoned under Japanese Law and jurisdiction for various offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of requests for, receipt of, and issues to of individuals imprisoned in Otsu Prison located in Yokosuka, Japan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations.

PURPOSE(S):

Used for billing armed services, other than Navy and Marine Corps for items of health and comfort issued to their personnel imprisoned. Billing is prepared in accordance with existing interservice support agreements (ISSAS). Additionally, file used to answer complaints in instances where prisoners contend they are not supported properly.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetically by surname. New individual files instituted with arrival of individual in prison. Previous files retrieved to semi-active for one year and thereafter destroyed without report.

SAFEGUARDS:

Files maintained in locked file cabinet in locked office.

RETENTION AND DISPOSAL:

Destroyed without report after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander Fleet Activities, FPO Seattle 98762

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the SYSMANAGER listed above and provide, as a minimum, the following information: rank/ rate, full name, branch of service, social security number. Files maintained in logistics within command and requestors may visit this office for review of their files during normal working hours. Proof of identification limited to Armed Forces Identification Cards or Passports.

RECORD ACCESS PROCEDURES:

The agency's rule for access to record may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Prison Officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06930-1

SYSTEM NAME:

JAG Manual Investigative Records

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 21) Department of the Navy 200 Stovall St, Alexandria, Va 22332

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who participated in, who was involved in, who incurred an injury, disease, or death in, who was intoxicated (drugs or alcohol) during, before, or after, or who had an interest in any accident, incident, transaction, or situation involving or affecting the Department of the Navy, naval personnel, or any procedure, operation, material, or design involving the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain all documented evidence relevant to the item under investigation, together with an investigating officer's report, which makes findings of fact and expresses opinions and recommendations, the reviewing authority's actions which either approved or modified the investigating officer's report or returned the entire record for further investigation or remedial action to perfect the record, and, the results of hearings afforded persons who incurred injuries and diseases, to allow them to explain or rebut adverse information in the record. The Judge Advocate General's correspondence to locate and obtain required investigations is also included in the record. Some records contain only a field command's explanation as to why investigation is not required, together with documents pertinent to this lack of requirement. Some records contain only an accident, injury, or death report, prepared for the Department of the Navy by the Army, Air Force, Coast Guard, or other agency under reciprocal agreements, in situations where the Navy or Marine Corps could not conduct the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Requirement that enlisted men make up time lost due to misconduct or abuse of alcohol or drugs (10 U.S.C. 972(5)); retirement or separation for physical disability (10 U.S.C. 1201-1221); Executive Order 11476, Manual for Court-Martial, par. 133b; Uniform Code of Military Justice, 10 U.S.C. 815, 832, 869, 873, 935, 936, and 938-940; Military Claims Act (10 U.S.C. 2733); Foreign Claims Act (10 U.S.C. 3724, 2734a, 2734b); Emergency payment of claims (10 U.S.C. 2736); Non-scope claims (10 U.S.C. 2737); Duties of Secretary of the Navy (10 U.S.C. 5031); Duties of the Office of the Chief of Naval Operations (10 U.S.C. 5081-5082, 5085-5088); Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General (10 U.S.C. 5131-5153); Duties of the Commandant of the Marine Corps (U.S.C. 5201); Reservist's disability and death benefits (10 U.S.C. 6148); Requirement of exemplary conduct (10 U.S.C. 5947); Promotion of accident and occupational safety by Secretary of the Navy (10 U.S.C. 7205); Admiralty claims (10 U.S.C. 7622-23); Public Vessels Act (46 U.S.C. 781-790); Suits in Admiralty Act (46 U.S.C. 741-752); Admiralty Extension Act (46 U.S.C. 740); Transportation Safety Act (49 U.S.C. 1901); Federal Tort Claims Act (28 U.S.C. 1346, 2671-2680); Financial liability of accountable officers (31 U.S.C. 82, 89-92); Military Personnel and Civilian Employee's Claims Act of 1964, as amended (31 U.S.C. 240243); Federal Claim Collection Acts (31 U.S.C. 71-75, 951-953); Forfeiture of pay for time lost due to incapacitation caused by alcohol or drug use (37 U.S.C. 802); Eligibility for certain veterans benefits (38 U.S.C. 105); Postal claims

(39 U.S.C. 712); Medical Care Recovery Act (42 U.S.C. 2651-2653); General authority to maintain records (5 U.S.C. 301); Records management by agency heads (44 U.S.C. 3101).

PURPOSE(S):

JAG Manual Investigative Records are used internally within the Department of the Navy as basis for evaluating procedures operations, material, and designs with a view to improving the efficiency and safety of the Department of the Navy; determinations concerning status of personnel regarding disability benefits, entitlements to pay during periods of disability, severance pay, retirement pay, increases of pay for longevity, survivors' benefits, and involuntary extensions of enlistments, dates of expiration of active obligated service and accrual of annual leave; determinations concerning relief of accountable personnel from liability for losses of public funds or property; determinations pertaining to disciplinary or punitive action and evaluation of petitions, grievances, and complaints; adjudication, pursuit, or defense of claims for or against the Government; and public information releases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration for use in determinations concerning entitlements to veterans and survivors' benefits.

To Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds.

To the U.S. Government Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters.

To agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters.

To contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems.

To agencies of the Federal, State or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents stapled together (with real evidence, if any, attached) in paper file folders and stored in metal file cabinets, on shelves, and in cardboard boxes.

RETRIEVABILITY:

Records are filed in calendar year groupings by surname of individual, bureau number of aircraft, name of ship, hull number of unnamed watercraft, or vehicle number of Government vehicles. Incidents are topically cross-referenced.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside official working hours.

RETENTION AND DISPOSAL:

The records are retained permanently. All naval activities which prepare JAG Manual Investigative Records, or which are intermediate addresses, typically retain duplicate copies in local files for a two-year period.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law) Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the system manager. The request must contain the following: (a) an adequate description of the individual about whom the record is retained (e.g., full name, date of birth, etc.); (b) the calendar year to be searched, and the approximate date of the incident which was the subject of the investigation; (c) a signed and notarized statement of the identity of the requester; (d) the present mailing address of the requester, including ZIP code; (e) the present day-time telephone number of the requester, including area code; (f) the request must be signed by the individual. No telephone inquiries will be processed.

RECORD ACCESS PROCEDURES:

Requests from individuals for access should be addressed to the system manager. The request must include a signed and notarized statement of identity. Personal visits may be made to: Office of the Judge Advocate General (Code 21) Investigations Division Room 8S23 Hoffman Bldg II 200 Stovall Street Alexandria, Va 22332

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records of JAG Manual Investigations are compilations of evidence, information, and data concerning the circumstances of incidents, accidents, events, transactions, and situations, prepared by administrative fact-finding bodies for utilization by proper authorities in making determinations, decisions, or evaluations relating to the matters under investigation. Records may contain: (1) testimony or statements of individuals who are parties to the investigations, witnesses, and others having pertinent knowledge concerning matters under investigation; (2) documentary evidence, typically including records and reports of military or Federal, State, or foreign, civilian law-enforcement investigative, judicial, or corrections authorities; medical records and reports, investigations and accident and injury reports prepared by Federal, State, or foreign governmental agencies or other organizations or persons; court records and other public records; official logs and other official naval records; letters and correspondence; personnel, pay, and medical records; financial records, receipts, and cost estimates; publications, and other pertinent documents and writings; (3) pertinent real evidence; and (4) pertinent demonstrative evidence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05861-1

SYSTEM NAME:

Private Relief Legislation

SYSTEM LOCATION:

Office of Legislative Affairs
Department of the Navy
Pentagon, Room 5C831
Washington, D.C. 20350

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals concerning whom private legislation is introduced in the U.S. Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters to Congressional Committees, expressing the views of the department concerning the legislation and records necessary to prepare the letters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations

PURPOSE(S):

To prepare for Congress the position of the Department concerning proposed legislation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To members of Congress to provide the Navy position on proposed legislation.

To officials and employees of the Office of Management and Budget to clear the Navy position on proposed legislation.

To other executive agencies who would have an interest in the Navy's position on the proposed legislation and/or the Navy's position would impact on that agency.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

Name

SAFEGUARDS:

Access generally limited to personnel of the Office of Legislative Affairs. Stored in a locked office.

RETENTION AND DISPOSAL:

Retained for at least 6 years or as long as the legislation is active if more than 6 years and then moved to Federal Records Center, GSA Accession Section, Washington, D.C. 20409

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Legislative Affairs
Department of the Navy
Pentagon, Room 5C831
Washington, D.C. 20350

NOTIFICATION PROCEDURE:

System Manager; Full name, term and session of Congress when bill introduced, bill number, sponsor of bill (if available); Office of Legislative Affairs, Department of the Navy, Pentagon, Washington, D.C. Driver's license or similar substitute.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member of Congress; individual about whom file is maintained and individuals from whom he solicits information; other Navy, Marine Corps, and DOD components; OMB; and other interested executive agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N00870-1

SYSTEM NAME:

Patent, Invention, Trademark, Copyright and Royalty Files

SYSTEM LOCATION:

Office of Naval Research, 800 North Quincy Street, Arlington, VA, 22217

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inventors and patent owners of inventions in which Government has an interest or which Department of the Navy has evaluated; copyright owners of works in which Government has an interest; and claimants or parties in administrative proceedings or litigation with the Government involving patents, copyrights or trademarks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invention disclosures; disposition of rights in inventions of Government employees; patent applications and patented files; patent licenses and assignments; patent secrecy orders; copyright licenses and assignments; patent and copyright royalty matters; administrative claims and litigation with the Government involving patents, copyrights and trademarks including private relief legislation involving these matters; and documents and correspondence relating to the foregoing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5151

PURPOSE(S):

Used by Navy patent personnel to determine rights of the Government and employees in employee inventions; to file and prosecute patent applications; to publish invention disclosures for public information and defensive purposes; to provide evidence and record of Government interest in or under patents or applications for patents; to provide evidence and record of patent and copyright licensing and assignment; to determine action or recommended action regarding disposition of claims or litigation; and to recommend Government employee incentive awards. Used by other Navy/Marine Corps commands to determine Government interest in inventions; to permit utilization of inventions; and to support employee incentive awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the U.S. Patent and Trademark Office to determine respective rights of the Government and employee-inventors and to evidence legal interests in patent and copyright licenses and assignments; and for the prosecution of patent applications.

To the Commissioner of Patents and Trademarks to administer Patent Secrecy responsibilities.

To the Federal Council for Science and Technology as a source of statistical data for an annual report on Government patent policy.

To appropriate foreign government offices for prosecution of patent applications.

To officials and employees of the U.S. Copyright Office to evidence legal interests in patent and copyright licenses and assignments.

To the National Technical Information Service for publication of inventions available for licensing; non-governmental personnel (including contractors and prospective contractors) having an identified interest in particular inventions and Government rights therein, in infringement of particular patents or copyright, or in allowance of royalties on contracts.

To the Congress in the form of reports on particular bills for private relief and reports of action on Congressional and constituent requests.

To government agencies involved in claims or litigation, including the Department of Justice, who have access to prosecute and defend cases.

To all government agencies who have access to license records.

To parties involved in particular licensing arrangements who have access to specific files involved.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files.

RETRIEVABILITY:

Subject matter; Navy patent case number; name of inventor, patentee, copyright owner, claimant or correspondent.

SAFEGUARDS:

Maintained in safes and file cabinets in controlled spaces accessible only by authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Maintained indefinitely but records are transferred to Federal Records Center two years after completed action on case to which record relates.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief for Patents, Code 300, Office of Naval Research, Arlington, VA, 22217

NOTIFICATION PROCEDURE:

Direct information requests to system manager.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individual inventor, patent or copyright owner, claimant, licensor or licensee, or from U.S. Patent and Trademark Office, or from U.S. Copyright Office. Information on Government employee-inventors or copyright owners may be obtained from Government personnel records and from Government supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05890-1

SYSTEM NAME:

Federal Tort Claims Files

SYSTEM LOCATION:

Office of the Judge Advocate General, Offices of the Commandants of the Naval Districts, Naval Legal Service Offices, all overseas commands with a Navy Judge Advocate General Corps Officer or a Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands with which claims under the Federal Tort Claims Act are initially filed typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Defense Directory in the appendix to this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individuals who have filed claims against the Navy under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680); 32 C.F.R. 750.30-750.49; 5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

To evaluate claims for purposes of adjudication and litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The files or portions thereof may be furnished to the claimant or his authorized representative, and for those claims for which payment is determined proper.

To third parties in those cases in which they indemnify the U.S. government or to verify claims.

To officials and employees of the Department of Treasury for those claims for which payment is determined proper.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

Filed alphabetically by name of claimant.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General Department of the Navy, 200 Stovall St., Alexandria, Va., 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: x-rays and medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and municipal police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence

from claimants and their attorneys and insurance companies, state insurance commissions, United States Attorneys, and various other Government agencies with information concerning the claim.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05880-2

SYSTEM NAME:

Admiralty Claims Files

SYSTEM LOCATION:

Office of the Judge Advocate General; Office of the Commander-in-Chief, United States Naval Forces, Europe; Office of the Commander, Sixth Fleet; and the Federal Records Center, Suitland, Maryland. Local commands with which claims under the Public Vessels Act and the Suits in Admiralty Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of the Navy directory of mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301; 44 U.S.C. 3101

PURPOSE(S):

Used in the administrative evaluation and settlement of admiralty claims asserted against the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Justice to defend civil maritime suits brought against the U.S.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices

RETRIEVABILITY:

Filed alphabetically by name of claimant

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

RETENTION AND DISPOSAL:

Records are retained in active files until each claim is settled or litigation resulting therefrom has been concluded. Thereafter, the files are maintained within the office for two years and then retired to the Federal Records Center, Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: x-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports; witnesses; and correspondence from claimants and their representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05890-1

SYSTEM NAME:

Automated Claims Information System (ACIS)

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Va 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Department of the Navy under the Federal Tort Claims Act, the Foreign Claims Act, Military Claims Act, the 'Nonscope' Claims Act, Legislative Reorganization Act, or Military and Civilian Employees' Claims Act. All individuals who have filed claims with the U.S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U.S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 712. All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States. All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependents of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct. All common carriers against whom recovery has been sought by the Department of the Navy. Any medical personnel involved in medical malpractice claims against the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number, office processing the claim, dollar amount of claim, dollar amount paid, type of claim, type of property damage, type of personal injury, date of incident that caused the claim, date the

claim was presented to the Navy, date payment was made or claim was closed, amount claimed against individual, amount received from individual, location of incident, and medical personnel involved (if applicable), and government bill of lading (if applicable).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680); 32 CFR 750.30-750.49; Medical Care Recovery Act(42 U.S.C. 2651-53); Federal Claims Collection Act (31 U.S.C. 951-53); 32 CFR 757.1-757.21; Foreign Claims Act (10 U.S.C. 2734); 32 CFR 753.1-753.29; Military Claims Act (10 U.S.C. 2733); 32 CFR 750.50-750.59; "Nonscope" Claims Act (10 U.S.C. 2737); 32 CFR 750.60-750.69; Military and Civilian Employees Claims Act (31 U.S.C. 240-243); 32 CFR 751.0-751.3; Legislative Reorganization Act (10 U.S.C. 1552); Admiralty Claims Act (10 U.S.C. 7622); 39 U.S.C. 712; 5 U.S.C. 30; 5 U.S.C. 301; 44 U.S.C. 3101; and 31 U.S.C. 231.

PURPOSE(S):

To manage and process claims both for and against the Department of the Navy. The system will be used to report contingent liability to the GAO to satisfy requirements of the GAO Policy and Procedures Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Military Traffic Management Command in the performance of their official duties related to the Management of the Department of Defense personal property movement and storage program. The cognizant U.S. Attorney and/or officials and employees of the Department of Justice who are charged with responsibility for either initiating civil actions or defending civil actions arising under the aforementioned claims statutes, and for prosecuting civil or criminal cases under the False Claims Act (31 U.S.C. 231).

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy forms.

RETRIEVABILITY:

ACIS users obtain information by means of either a query or a request for a standard report. Data may be retrieved by any data item although the primary search keys are the name or social security number.

SAFEGUARDS:

Access to buildings are protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: user account number and password sign-on, data base authority, set and item authority for list, add, delete and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for three years after the close of the individual's claim. The record will be transferred to magnetic tape after three years and will be utilized in a batch processing mode. After ten years, the record will be erased from the tape.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Claims Defense Program, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Va 22332.

NOTIFICATION PROCEDURE:

Information should be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from offices processing claims.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05890-2

SYSTEM NAME:

Affirmative Claims Files

SYSTEM LOCATION:

Office of the Judge Advocate General, Offices of the Commandants of the Naval districts; Naval Legal Service Offices, and Branch Offices of the Officers in Charge of U.S. Sending State Offices; overseas commands with a Navy or Marine Corps judge advocate attached; the Federal Records Center, Suitland, Maryland; and such other offices of officers as may be designated by the Judge Advocate General. Official mailing addresses of these locations are included in the Department of Defense Directory in the appendix of this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependents of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files contain reports of injuries to individuals entitled to care at Navy expense, reports of damage to Navy property, x-rays, medical and dental records of treatment, and statements of charges therefor, military and municipal police and individual's reports of accidents, investigative reports, correspondence, legal research, and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Medical Care Recovery Act (42 U.S.C. 2651-53); Federal Claims Collection Act (31 U.S.C. 951-53); 32 CFR 757.1-757.21; 5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

To further efforts to collect such claims without litigation, for preparing litigation reports to the Department of Justice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To insurance companies to support claims by documenting injuries or diseases for which treatment was provided at government expense.

To civilian attorneys representing the injured parties and the government's interests.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder stored in file cabinets or other storage device.

RETRIEVABILITY:

Filed alphabetically by name of the individual.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rule for contesting contents and appealing initial determinations may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in these files includes: military and local police reports, line of duty investigations, commercial credit and asset reports, questionnaires completed by accident victims, x-rays, medical and dental records of treatment and statements of charges therefor from civilian and military doctors and medical facilities; correspondence; and witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

M05800-3

SYSTEM NAME:

Foreign Claim Files

SYSTEM LOCATION:

Office of the Judge Advocate General; United States Sending State Office for Italy; United States Sending State Office for Australia; Naval Missions (including the office of the naval section of military missions); Military Assistance Advisory Groups (including the Offices of Chiefs, Naval Section, Military Assistance Advisory Groups); Office of the Naval Advisory to Argentina; naval attaches; any command which has appointed a Foreign Claims Commission; and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the Foreign Claims Act are initially filed and which do not have or choose to appoint a Foreign Claims Commission, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Defense directory in the appendix to this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Department of the Navy under the Foreign Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as foreign police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Claims Act (10 U.S.C. 2734); 32 CFR 753.1-753.29; 5 U.S.C. 301; 44 U.S.C. 3101

PURPOSE(S):

To adjudicate claims and to evaluate and decide reconsiderations of denials of claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The files or portions thereof may be furnished to the claimant or his authorized representatives.

For those claims for which payment is determined proper, the files or portions thereof may be provided to the Department of Treasury.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

Filed alphabetically by name of claimant.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va., 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to

provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files includes: x-rays, medical records, and dental records; investigative reports from military and foreign police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence from claimants, their attorneys, and insurance companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05890-4

SYSTEM NAME:

Military Claims Files

SYSTEM LOCATION:

Office of the Judge Advocate General, Offices of the Commandants of the Naval Districts, Naval Legal Service Offices and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the Military Claims Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Defense directory in the appendix of this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims under the Military Claims Act against the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Claims Act (10 U.S.C. 2733); 32 CFR 750.50-750.59; 5 U.S.C. 301; 44 U.S.C. 3101

PURPOSE(S):

To evaluate claims for purposes of adjudication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To third parties in those cases in which they indemnify the U.S. government or to verify claims.

To the claimant or his authorized representative for those claims for which payment is determined proper.

To officials and employees of the Department of Treasury for those claims for which payment is determined proper.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices

RETRIEVABILITY:

Filed alphabetically by name of claimant

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rule for contesting contents and appealing initial determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: x-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and municipal police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence from claimants, their attorneys, insurance companies, state commissions, United States Attorneys, and various other Government agencies with information concerning the claim.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N05890-5

SYSTEM NAME:

Nonscope Claims Files

SYSTEM LOCATION:

Office of the Judge Advocate General, Naval Legal Service Offices, and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the "Nonscope" Claims Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Navy directory of mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims under the 'Nonscope' Claims Act against the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports, photographs, drawings, opinions of experts, legal memoranda, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Nonscope" Claims Act (10 U.S.C. 2737); 32 CFR 750.69-750.69; 5 U.S.C. 301; 44 U.S.C. 3101

PURPOSE(S):

To evaluate claims for purposes of adjudication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Justice to defend unauthorized suits brought against the U.S. under the "Nonscope" Claims Act.

To the claimant or his authorized representative.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices

RETRIEVABILITY:

Filed alphabetically by name of claimant

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: x-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and municipal police agencies; reports of circumstances of incidents from operators of Government vehicles; witnesses; correspondence from claimants, their attorneys, insurance companies, state insurance commissions, United States Attorneys, and various other Government agencies with information concerning the claim; commercial credit and asset reports; and questionnaires completed by accident victims.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05800-5

SYSTEM NAME:

Military Personnel and Civilian Employees' Claims

SYSTEM LOCATION:

Offices of the Judge Advocate General; Naval Legal Service Offices; offices of the Commandants of the Naval Districts; Naval Legal Service Branch Offices; the Federal Records Center, Suitland, Maryland; naval activities where there are officers specifically designated by the Judge Advocate General to adjudicate personnel claims. Official mailing addresses of these locations are included in the Department of the Navy Directory of mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Department of the Navy under the Military Personnel and Civilian Employees' Claims Act and all common carriers against whom recovery has been sought by the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, copies of order, copies of insurance policies, Government bills of lading, copies of Powers of Attorney, estimates of loss or damage, inventories, demands on carriers for reimbursement, correspondence, and legal memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 240-243); 32 CFR 751.0-751.30; 5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

To evaluate claims for purposes of adjudication, reimbursement for the Department of the Navy from common carriers, warehousemen, contractors, or insurers who are responsible for loss or damage to personal property of individual claimants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Justice to defend unauthorized suits brought against the U.S. under the Military Personnel and Civilian Employees' Claims Act.

To the claimant or his/her authorized representative.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

Filed alphabetically by name of claimant and name of common carrier, warehousemen, contractors, and insurers.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which file cabinets and storage devices are located is locked outside of working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically Files located in the Office of the Judge Advocate General

are transferred to the Federal Records Center, Suitland, Maryland three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is initially provided by the claimant and witnesses, after which the personal property divisions contribute investigative reports. The carrier may contribute information, and in some cases an investigative report is furnished by a military member's command or by an investigative agency. Adjudicated amounts allowed for the claim are provided by the adjudicating authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05890-7

SYSTEM NAME:

U.S. Postal Service Indemnity Claims Files

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 15), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332 and the Federal Records Center, Suitland, Md. 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed claims with the U. S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U. S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 712.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may contain claims, substantiating documents, Navy investigative reports (and allied reports such as U. S. Postal Service investigative reports, legal memoranda, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 712; 5 U.S.C. 30; 44 U.S.C. 3101

PURPOSE(S):

To evaluate requests for reimbursement by the U. S. Postal Service for payment on claims for loss or damage to mailed matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

Filed alphabetically by name of claimant.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of working hours.

RETENTION AND DISPOSAL:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify only their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address, and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The information in U. S. Postal Service Indemnity Claims Files may consist of claims filed, substantiating documents, Navy investigative reports, (and allied reports such as U. S. Postal Service investigative reports), legal memoranda, and correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05890-8

SYSTEM NAME:

NAVSEA Radiation Injury Claim Records

SYSTEM LOCATION:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed by the Navy and Navy contractors who have alleged radiation injury from radiation exposure associated with Naval Nuclear Propulsion plants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Excerpts from personnel medical records, Navy field organization and Navy contractor work histories and Navy and Labor Department correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

Technical evaluation of radiation injury compensation claims by NAVSEA Radiological Control Managers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders

RETRIEVABILITY:

Alphabetical by name

SAFEGUARDS:

Locked in safe and specific permission of custodian

RETENTION AND DISPOSAL:

Indefinitely

SYSTEM MANAGER(S) AND ADDRESS:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

NOTIFICATION PROCEDURE:

Contact System Manager; Provide name, organization where employed at time of alleged injury and supporting evidence.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Personnel medical records and Navy and contractor work histories.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05891-1

SYSTEM NAME:

Litigation Case File

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who may institute or have instituted litigation concerning matters under the cognizance of the Department of the Navy excepting those cases arising:(1) in admiralty,(2) under the Federal Tort Claims Act, and from matters under the cognizance of the General Counsel's Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records, correspondence, pleadings, documents, memoranda, and notes relating to the litigation or anticipated litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 5148, and 44 U.S.C. 3101.

PURPOSE(S):

To represent the Department of the Navy and cognizant officials in litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To U.S. Attorney's, litigants and other parties in litigation.

To Federal and state courts to whom and which information may be provided.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrievable by last name of the litigant or anticipated litigant.

SAFEGUARDS:

Records are maintained in file cabinets accessible only to persons responsible for servicing the record system in performing their official duties.

RETENTION AND DISPOSAL:

Generally retained in office files for four years after final action, then destroyed. Specially designated files are retained for longer periods.

SYSTEM MANAGER(S) AND ADDRESS:

Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager.

RECORD ACCESS PROCEDURES:

Access is not permitted to this system. See 5 U.S.C. 552a (d)(5).

CONTESTING RECORD PROCEDURES:

The Navy's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From all sources with information which may impact upon actual or anticipated litigation, e.g., other record systems within DON, DOD, and other agencies and departments of the Federal Government, particularly the Department of Justice; state and local governments and law enforcement agencies; counsel and parties in litigation; third parties who provide information voluntarily or in response to discovery, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06150-1

SYSTEM NAME:

Medical Department Professional/ Technical Personnel Development

SYSTEM LOCATION:

Naval Medical Command, Navy Department, Washington, D.C. 20372; individual's duty station or reserve unit (see Directory of the Deparment of the Navy Mailing Addresses); Military Sealift Command, Navy Department, Washington, D.C. 20390; National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132; National Personnel Records Center, 111 Winnebago St., St. Louis, Missouri 63118; Naval Medical Command managed education and training activities (see Directory of Department of the Navy Mailing Addresses); various colleges and universities affiliated with COMNAVMEDCOM managed education and training activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy (military and civilian) health care personnel; applicants to student status in Navy Aerospace Medicine, Navy Aerospace Physiology and Navy Aerospace Experimental Psychology; Navy (military and civilian) personnel qualified as divers or involved in other professional/specialty/technical training; Navy (military and civilian) personnel exposed to occupational/ environmental hazards; distinguished/

noted civilian physicians in capacity of lecturer/consultant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and demographic data; education, training, professional, specialty, and technical accomplishments/qualifications; credentialing programs; surgical and surgical support team personnel listings; assignments history, projected rotation date, projected release from active duty date, active duty obligation, officer preference card, and variable incentive pay/continuation pay selection data; Hospital Corps education and training history and grades received, commanding officer's performance evaluation, and recommendations; periodic and total lifetime accumulated exposure to occupational/environmental hazards; curricula vitae of civilian consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, U.S.C.; 5 U.S.C. 301; Title 10, CFR Part 20, Standards for Protection Against Radiation.

PURPOSE(S):

To manage the Naval Medical Command's education and training activities related to procurement, assignments, professional/specialty/technical training, credentialing, promotion, and all other aspects of health care personnel management; career development; evaluation of candidates for position of lecturer/consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning; management of physical standards; and maintenance of safe occupational/environmental protection standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information of adverse actions or revocations of health care providers' clinical credentials may be disseminated to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored in card files and folders in filing cabinets.

RETRIEVABILITY:

Manual records retrieved by full name, SSN, file numbers, program title or locator card. Automated records retrieved by key to any data field.

SAFEGUARDS:

Records maintained in monitored or controlled access rooms or areas; public access to the records is not permitted; computer hardware is located in supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in the performance of their duties. Buildings/rooms locked outside regular working hours.

RETENTION AND DISPOSAL:

Medical Department personnel professional development and training records; Headquarters, COMNAVMEDCOM records-retained at COMNAVMEDCOM for duration of member's service, then retired to NPRC, St. Louis for 10 year retention; COMNAVMEDCOM field activities-retained 5 years, then destroyed.

Radiation exposure records; personnel exceeding exposure limits-retained at COMNAVMEDCOM 50 years, then destroyed; all others-retained 5 years, then destroyed.

Surgical support team records; Headquarters, COMNAVMEDCOM-destroyed upon termination of active duty service; COMNAVMEDCOM field activities-destroyed upon termination of duty at the Medical Department facility.

Curricula vitae of lecturers/consultants-destroyed upon termination of status at the Medical Department facility.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, D.C. 20372; Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132; Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118; commanding officers of naval activities, ships and stations.

NOTIFICATION PROCEDURE:

Offices where requester may visit to obtain information of records pertaining to the individual; Potomac Annex, 23rd and E Streets, N.W., Washington, D.C.; Navy medical centers and hospitals; other Navy health care facilities; and COMNAVMEDCOM managed education and training facilities.

The individual should present proof of identification such as an I.D. card, drivers license, or other type of identification bearing signature and photograph.

Written requests may be addressed as follows:

Active duty Navy members or civilian employees presently working for the Navy should address requests to the commanding officer of the facility or ship where they are stationed or employed.

Former members of the Navy should address requests to Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132.

Former civilian employees of the Navy should address requests to Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, Mo. 63118.

All written requests should contain full name, rank, SSN, file number (if any), and designator.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Military Headquarters, offices and commands; education institutions at training hospitals; boards, colleges and associations of professional licensure and medical specialties; personnel records; information submitted by the individual; automated system interface.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06150-2

SYSTEM NAME:

Health Care Treatment Record System

SYSTEM LOCATION:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps Personnel. Retained at the individual's duty station or reserve unit. (Mailing addresses are listed in the Navy Directory in the appendix in the component system notice.) Naval Medical Command, Navy Department Washington, DC; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, Louisiana 70149; Headquarters Marine Corps,

Navy Department, Washington, DC 20380; Marine Corps Reserve Forces Administrative Activity, Class III, 1500 E. Bannister Road, Kansas City, Missouri 64131; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. Inpatient treatment records for active duty military, dependents, retired military and dependents, civilian employees, VA beneficiaries and humanitarian. Naval Medical Treatment Facilities; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. Outpatient treatment records for dependents of active duty military, retired military and their dependents, civilian employees, VA beneficiaries and humanitarian. Naval Regional Medical Centers and Naval Hospitals, and Clinics (Dispensaries); National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. Subsidiary record files of the health care treatment record system are located at Naval Medical Data Services Center, Bethesda, Maryland; Regional Data Service Centers; Naval Environmental Health Center, Norfolk, Virginia; and other approved locations for conducting research studies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy, Marine Corps, other military personnel, dependents, retired military personnel and dependents, civilian employees, VA beneficiaries and humanitarian.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps: system is made up of records pertaining to the member or former member's medical history; physical, dental and mental examinations; consultation; innoculations; outpatient treatment, including laboratory and x-ray reports; report of medical boards; summaries of periods of hospitalization, dental evaluation and treatment, reports of exposure to environmental and radiation hazards, results of special diagnostics and clinical studies; recommendations regarding requests for waivers of established physical standards.

Inpatient and outpatient treatment records: file contains a multiplicity of prescribed forms documenting health evaluations, medical/dental care and treatment for any health or medical condition or problem provided an eligible individual on an outpatient and/or inpatient status. The records contain history and physical examinations or health evaluation, reports of exposure to ionizing radiation, consultation reports and medical care and treatment provided, including procedures utilized such as surgery, drugs, dietary, x-ray laboratory, nursing notes, physical therapy and other specialty care applicable to the medical diagnosis or conditions found. The records also contain patients demographic data, family health history data, length of inpatient stay, disease nomenclature, discharge summary of inpatient care. Documentation of health history, diagnosis, care and treatment provided and the recording thereof conform with the standards prescribed by the joint commission on accreditation of hospital. In addition to, and based on individual medical record files, there are subsidiary records such as registers of patients; patient health care, medical board and death statistics; environmental health data; operating room schedules, tumor registers; appointment registers; sick call and treatment logs; x-ray files; laboratory files and logs; pharmacy records; EKG's; EEG's; neuropsychiatric evaluations; physical therapy records; other patient evaluation records, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5131 (as amended), 10 USC 5132, 44 USC 3101, 5 USC 301.

PURPOSE(S):

This system is used by officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps individuals; determining physical qualifications and suitability of candidates for various programs; personnel assignments; adjudicating claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; rendering opinions regarding members' physical fitness for continued naval service; litigation involving medical care provided those categories of individuals covered by this record system; performance of research studies and compilation of statistical data; implementing preventive medicine, dentistry, and communicable disease control programs. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individuals covered by this record system; and in the conduct of analyses and research studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Naval Service.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Surgeon General of the Navy.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing and local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. Authorized surveying bodies for professional certification and accreditations.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization, or government agency, as necessary. Drug/Alcohol and Family Advocacy Information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with the applicable statutes, 21 U.S.C. 1175, 42 U.S.C. 4582, and 5 U.S.C. 552.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps:

Records are stored in file folders, microform, on magnetic tape, punched cards, machine listings, discs, and other computerized or machine readable media.

Inpatient and outpatient treatment records. These records originate at any Navy Medical Treatment Facility where the individual comes for medical care and treatment. The inpatient treatment records are retained for 2 years from date of last treatment at the activity and then sent to the National Personnel Records Center, St. Louis, Missouri. Outpatient treatment records are transferred for continuity of care and treatment to other medical activities upon change of station by the service member. Outpatient files, upon 2 years from date of last treatment are transferred to the National Personnel Records Center.

Inpatient and outpatient treatment records are maintained in mechanized lists, file folders, microform, and on magnetic tape, discs, punched cards, and other computerized or machine readable media. Inpatient treatment records are filed numerically by hospital register numbers. The alphabetical patient register serves as the locator media. Outpatient treatment records are filed by the Military Member's SSN with an alphabetical card or mechanized list or other record as the locator media. Medical x-rays are filed by a sequential numbering system in manual or mechanized format with an alphabetical name locator.

RETRIEVABILITY:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps Members.

Records retired to the National Personnel Records Center, St. Louis, Missouri, prior to 1971 are retrieved by name and service or file number. After that date, records are retrieved by name and social security number. Records retired to the National Personnel Records Center, St. Louis, Missouri prior to 1971 are retrieved by name and service or file number, after that date records are retrieved by name and social security number.

Inpatient and outpatient treatment records.

Records are retrieved by manual or automated locator media (alpha name cards, logs, listings, tapes, etc.).

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specific monitored or controlled access rooms or areas; public access is not permitted. Computer terminals are located in supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in providing further medical care or in support of administrative/clerical functions. Records are controlled by a charge-out system to clinical and other authorized personnel.

RETENTION AND DISPOSAL:

Health care treatment records are retained, retired, and disposed of in accordance with SECNAVINST 5212.5 series, disposal of Navy and Marine Corps Records.

SYSTEM MANAGER(S) AND ADDRESS:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps: Commander, Naval Medical Command, Navy Department, Washington, D.C. 20372; Commanding Officers, Naval Activities, Ships, and Stations, Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 64131.

Inpatient and outpatient treatment records: Commander, Naval Medical Command, Navy Department, Washington, D.C. 20372; Commanding Officer's and OIC's of Naval Medical Treatment Facilities; Director, National Personnel Records Center, St. Louis, Missouri 63118.

NOTIFICATION PROCEDURE:

Service medical (health and dental) records for active duty and reserve; Navy and Marine Corps Members;

Requests for information from active duty Navy and Marine Corps personnel and drilling members of the Navy and Marine Corps Reserves should be addressed to the individual's commanding officer. Official mailing addresses are in the Department of Defense Directory in the appendix to the component's system notice. Inactive Naval Reservists should address requests for information to the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, Louisiana 70146. Marine Reservist's should address request for information to Marine Corps Reserve Forces Administrative Activity, Class III, 1500 E. Bannister Road, Kansas City, Missouri 64131.

Former members who have no further reserve or active duty obligations should address requests for information to director, National Personnel Records Center (Navy Reference Branch), 9700 Page Boulevard, St. Louis, Missouri 63132.

All written requests should contain the full name and social security, account number of the individual, his signature, and in those cases where his period of service ended before 1971, his service or file number. In requesting records for personnel who served before 1964, information provided to the National Personnel Records Center should also include date and place of birth and dates of periods of active Naval service. Active duty Navy and Marine Corps personnel including drilling members of the reserves may visit the medical department of the activity to which attached. Inactive Naval Reservists whose tour of active duty ended after 1 July 1972 may visit the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans,Louisiana. Marine Reservists whose tour of active duty ended after 1 July 1972 and who have a continual reserve obligation may visit the Marine Corps Reserve Forces Administration Activity, Class III, 1500 E. Bannister Road, Kansas City, Missouri. Former members with no further obligation and reservists whose tour of active duty ended prior to 1 July 1972 may visit the National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri. Proof of identification in the case of active duty, retired and reserve personnel will consist of the Armed Forces of the U.S. Identification Card or by other types of identification bearing picture and signature. Former members may provide drivers license or other types of identification bearing picture and signature.

Inpatient and outpatient treatment records:

(Care/treatment-within 2 years) Commanding Officer of the Naval Regional Medical Center or hospital where the individual was treated.

(More than 2 years) Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118 or Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132.

Provide the following data: full name, service number, status, or SSN of sponsor, date(s) of treatment or period of hospitalization, address at time of medical treatment, if known.

Office where requester may visit to obtain information of records pertaining to the individual.

Regional Medical Center or Hospital Chief, Patient Affairs Service
Chief, Outpatient Service

Officer-in-charge other Navy Medical Facility

Full name, date and place of birth, ID card or drivers license, or other identification to sufficiently identify the individual with the medical records held by the treatment facility must be presented.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerning may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Reports from attending and previous physicians and other medical personnel regarding the results of physical, dental and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies conducted to provide health care to the individual or to determine the individuals physical and dental qualification.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N06150-3

SYSTEM NAME:

Naval Health/Dental Research Center Data File

SYSTEM LOCATION:

Naval Medical Research and Development Command, Naval Medical Research Institute and/or Naval Dental Research Institute to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

For medical: Navy and Marine Corps personnel on active duty since 1960 to date. Civilians taking part in Operation Deep Freeze, 1964 to date. For dental: Navy and Marine Corps personnel on active duty since 1967 to date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of information from official medical/dental and personnel records, results of dental examinations conducted by staff research scientists, as well as information dealing with biographical, attitudes, and questions relating to medical and dental health patterns during active service or prior to active duty..

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 5031

PURPOSE(S):

To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy and Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained on magnetic tape, flexible and hard disks, paper files, punch cards and optically marked cards.

RETRIEVABILITY:

Retrievability is by Social Security number or service number as appropriate for military and former military personnel. Civilians are by name only.

SAFEGUARDS:

Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain ID numbers that can be matched to SSN's on code sheets maintained by research personnel.

RETENTION AND DISPOSAL:

Research records are permanent. They are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question (see Directory of Department of the Navy Mailing Addresses).

NOTIFICATION PROCEDURE:

Navy and Marine Corps personnel and former serving members must provide a social security number or service number as appropriate, give the branch of service, and years of active duty. Civilians in Operation Deep Freeze must identify themselves by full name and the year in which they wintered over.

RECORD ACCESS PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information is derived from (a) Medical Treatment Record Systems, including medical, dental, health records, inpatient treatment records and outpatient treatment records, (b) Personnel Records System and Personnel Rehabilitation Support System, (c) Enlisted Master File, (d) information provided by the members themselves on a volunteer basis in response to specific research questionnaires and forms, and (e) information provided by the members' peers and superiors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06310-1

SYSTEM NAME:

Personal injury and illness reports on civilian and govt-service seaman employed on MSC ships

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 11), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Injured civilian seamen and government service seamen employed by the Military Sealift Command or its contract operators for service on board MSC ships.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of preliminary personal injury and illness reports on civilian seamen and government service seamen employed by the Military Sealift Command or its contract operators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301; 44 U.S.C. 3101

PURPOSE(S):

To evaluate and settle subsequently submitted admiralty claims asserted against the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Justice for defense of civil maritime suits brought against the U.S. The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets

RETRIEVABILITY:

Filed by name of injured seaman listed under each particular MSC ship by date of injury.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Reports are maintained in personal injury report file folders for a period of two years from the date of particular injury or illness and are, thereafter, destroyed at the local office level.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing determinations may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Masters of Military Sealift Command ships; witnesses; medical and dental forms; and investigative reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N05320-1

SYSTEM NAME:

Uncollectible Accounts

SYSTEM LOCATION:

Primary System - Commander, Naval Medical Command, Navy Department, Washington, D. C. 20372. Decentralized Segments - Naval Hospitals and Medical Centers which provide services or perform work giving rise to such accounts receivable. (See directory of Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual incurring indebtedness to the United States by receiving health care treatment or examination services funded by the Navy Medical Department. Coverage also includes sponsors and other persons responsible for the debts of such persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and SSN, sponsor's SSN, if applicable, paygrade, branch of service, duty station address, account number, activity performing service, insurance company, civilian employer, patient category, time and dates of service, units of service, physicians' and hospitals' statements of service and total charges for treatment including interest, administrative and penalty charges, payment receipts, admission documents, correspondence relating to collection attempts to ascertain eligibility status, patient category, and third party insurer liability, records of payment received and outstanding balances, letter reports of uncollectible accounts receivable, records suspending or terminating collection action or effecting compromise settlement agreements, and requests for recovery of Champus funds and substantiating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 USC 191-195, 227, and 952 (also known as the Federal Claims Collection Act of 1966); 10 USC 1078-1079; and 37 USC 702, 705, and 1007.

PURPOSE(S):

To identify and facilitate payment of amounts owed the U.S. Users of the information include Naval Medical Command personnel who are directly involved in processing payments or billings of patient accounts. The information is used to determine amounts owed, methods to be employed to effect recovery, whether or not the claim can be compromised or collection action thereon terminated or suspended, and to collect charges for utility bills and other miscellaneous items. File may be forwarded to the Naval Investigative Service for investigation or to any component of DOD, as needed, in the performance of their duties related to same.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES

Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and reading files. Index cards (3"x5").

RETRIEVABILITY:

Automated records are retrieved by either a query or a request for a standard report. Data may be indexed by any data element although the primary search keys are name and SSN. Paper records are filed alphabetically by last name of debtor.

SAFEGUARDS:

Access to the automated system requires user account number and password sign on. Access to the paper records and/or terminals are limited to only authorized personnel that are properly screened and trained. Office space where records and/or terminals are located is locked after official working hours.

RETENTION AND DISPOSAL:

Records are retained in active file until collection action has been completed, compromised, suspended, or terminated. They are held in inactive file until statute of limitations has run and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, D. C. 20372 and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, Naval Medical Command. Requests should provide the full name of the debtor, the military or dependency status of the debtor, and the location and approximate dates of treatment or examination. Driver's license and/or military ID card will be considered adequate proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appearling initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Automated patient administration system records produced at Medical Treatment Facilities include but are not limited to Inpatient Admission/Disposition Records, NAVMEDCOM 6300/5; Report of Treatment Furnished Pay Patients-Hospitalization/Outpatient Treatment Furnished, DOD 7/7A, Part A/B. Other record source categories are: OCHAMPUS, Denver; U.S. Postal Service; Military Locator Services; State Departments of Motor Vehicles; any component of the DOD; the Department of Justice, the General Accounting Office, retail credit associations, financial institutions, current or previous employers, educational institutions, trade associations, automated system interfaces, local law enforcement agencies, the Department of Health and Human Services, the Internal Revenue Service, and the Office of Personnel Management.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

M06320-2

SYSTEM NAME:

Family Advocacy Program System

SYSTEM LOCATION:

Central Registry -- Commander, Naval Medical Command, Navy Department, Washington, D. C. 20372. Individual Case Files -- Naval Medical Treatment Facilities, and duty stations of the military sponsors. (See Directory of Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities, and all persons suspected of abusing or neglecting such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of suspected and confirmed cases of family member abuse or neglect, also, investigative reports, correspondence, family advocacy committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to individual family advocacy program files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 5132, and 44 U.S.C. 3101.

PURPOSE(S):

To collect and disseminate (to authorized officials), information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private organizations and individuals for authorized health research in the interest of the federal government and the public; and authorized surveying bodies for professional certification and accreditation.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Records are retrieved through indices and cross indices of all individuals and relevant incident data. Types of indices used include, but are not limited to: names, social security numbers, and types of incidents.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled access rooms or areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and on a need-to-know basis, only.

Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Family advocacy case records are maintained at the activity having cognizance of the case for a period of 5 years and are then destroyed. Central registry records are permanently retained under the control of the Naval Medical Command.

SYSTEM MANAGER(S) AND ADDRESS:

Central Registery -- Commander, Naval Medical Command, Navy Department, Washington, D.C. 20372, -- and commanding officers of medical treatment facilities under the command of the Commander, Naval Medical Command, where the treatment and reporting occurred.

NOTIFICATION PROCEDURE:

Informational requests should be directed to the cognizant system manager(s). Requests should contain the full name of the individual and social security number of the military or civilian sponsor or guardian, date and place of treament, and alleged reporting

of incident. The requester may visit the office of the Commander, Naval Medical Command, 23rd and 'E' Streets, N.W., Washington, D.C. and the commading officers of the individual medical treatment facilities to obtain information on whether or not the system contains records pertaining to him or her. Armed Forces I.D. card or other type of identification bearing the picture and signature of the requested will be considered adequate proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports from physicians and othe medical department personnel regarding the results of physical, dental, mental, and other examinations, treatment, evaluation, consultation, laboratory, x-ray, and special studies; reports and information from other sources, including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Part of this system may be exempt under 5 U.S.C. 552a(k) (2) and (5), as applicable. For additional information, contact the system manager(s).

N06320-3

SYSTEM NAME:

COMNAVMEDCOM Quality Assurance/Risk Management

SYSTEM LOCATION:

Naval Medical Command, Navy Department, Washington, DC 20372; health care treatment facilities. (See directory of Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients, staff, visitors, contractors, and other personnel who converge upon Naval medical treatment care, or health related ancillary or support services consistent with institutional purposes. Such individuals may be noted in organized review of care provided, reviews of injuries or mishaps sustained, or be governed by stipulations under which care may be rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident reports; follow-up reports; letters, memos, and other correspondence or supportive statements; statistical reports; and committee minutes; and credentialing program documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulations; 10 U.S.C. 5132.

PURPOSE(S):

This system relates to the Navy Medical Command's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of care provided; investigate, analyze, and report accidents, injuries, and other incidents; to identify health care providers with known or suspected problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information of adverse actions or revocations of health care providers' clinical credentials may be disseminated to various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on hard copy forms in filing cabinets.

RETRIEVABILITY:

Records are retrieved by full name of patient, SSN of sponsor, date of incident, or other alpha/numeric identifier.

SAFEGUARDS:

Files are monitored during normal working hours by authorized personnel and the room or the files are locked at all other times.

RETENTION AND DISPOSAL:

Records are retained for 3 years after the year in which created and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372. Commanding Officer or Officers in charge of Navy Medical Department health care treatment facilities (see directory of Department of the Navy mailing addresses).

NOTIFICATION PROCEDURE:

Requests should be addressed to Commander, Naval Medical Command or commanding officers or officers in charge at the addresses indicated above. Requests should contain the full name, SSN, and signature of the individual. The individual may also visit COMNAVMEDCOM or the health care treatment facility. Visitors must posess proof of identification such as ID card, driver's license, or other identification showing name and a recent photograph of the individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Incident reports relating to patients, staff, and other personnel documenting accidents, injuries, and other incidents, together with supportive correspondence and statements including statistical displays and summaries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06470-1

SYSTEM NAME:

USN/USMC Nuclear Test Personnel Review Program.

SYSTEM LOCATION:

Primary Navy System exists at the Project Manager's Office, Navy Nuclear Test Personnel Review, Room 756, Commonwealth Building, 1300 Wilson Boulevard, Arlington, VA. 22209. Automated segments exist at Navy Regional Data Automation Center, Washington Navy Yard, Washington, D.C. 20374 and J. A. Young corporation, 205 South Whiting Street, Alexandria, VA 22304. The entire Marine Corps systems exists at the Project Coordinator's Office, Marine Corps Nuclear Test Personnel Review, Records Branch, Personnel Services Division, Headquarters Marine Corps, Washington, D.C. 20380. Extracts of individualized records of both Navy and Marine Corps reside at Headquarters,

Defense Nuclear Agency, Washington, D.C. 20305.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps military and civilian personnel and/or contractor personnel in support of the Navy and Marine Corps who may have been exposed to radiation as the direct result of government sponsored atmospheric nuclear detonations occurring between 1945 and 1962.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank/grade, service number, social secuity account number, current or last know address, dates of test partcipation, radiation exposure (if any) & dose data, Navy and Marine Corps unit/office of assignment at time of exposure, current medical status, next-of-kin data, and extracts of service medical data such as CBC's, bioassay data and radiation sickness sequellae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U. S. C. 5031

PURPOSE(S):

To identify personnel who either were exposed to or participated in the atmospheric nuclear detonation program and to collect radiation exposure information so as to determine appropriate government-provided medical treatment, and to answer inquiries.

DOD components use the system for the purpose of preparing histories of atmospheric nuclear test participation and for use in litigation between test participants or their representatives and the Department of Defense.

The Defense Nuclear Agency Contractors use the system for the purpose of assisting DOD components in preparation of histories of atmospheric nuclear test participation, to reconstruct individual dosimetry data based on research and application of mathematical factors and responding to the inquiries and concerns of individuals who may have participated in the test programs and/or their representatives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration to process/adjudicate claims in which service-connected disabilities resulting from radiation exposure are alleged.

To officials and employees of the National Research Council and the Center for Disease Control for the limited purpose of conducting epidemiological studies of the effects of ionizing radiation from the atmospheric nuclear weapons tests on DOD participants in those tests.

To officials and employees of the Department of Energy for the limited purpose of identifying AEC and AEC-contractor personnel exposed to ionizing radiation during nuclear testing and for conducting epidemiological studies of radiation effects of individuals so identified; and for use in litigation between the DOD and any of the individuals so identified.

To officials and employees of the Department of Transportation for the limited purpose of identifying DOT and DOT-affiliated personnel exposed to ionizing radiation during nuclear testing and for use in litigation between the DOT and any of the individuals so identified.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer magnetic tapes, disks, and computer printouts.

RETRIEVABILITY:

By individual's name and/or service number/SSN, or listed in conjunction with a unit (ship, air squadron, etc.) associated with atmospheric nuclear testing.

SAFEGUARDS:

Access is limited to properly clear personnel having need for the information in the performance of official duties. Paper records are maintained in an office which is locked during non-working hours. The building in which both offices are located maintains continuous security guard surveillance during non-working hours. Magnetic tapes and disks are stored in secured computer areas, access to which is controlled by password.

RETENTION AND DISPOSAL:

Paper records are retained after data is transferred to magnetic tapes. Personnel and health records are retained by the National Personnel Records Center, St. Louis, Missouri. Other paper records will be retired to Naval and Marine Corps Historical Offices after completion of Nuclear Test Personnel Review effort. Magnetic tapes and disks are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Navy Nuclear Test Personnel Review, Room 758, Commonwealth Building, 1300 Wilson Boulevard, Arlington, VA 22209 and Project Coordinator, Marine Corps Nuclear Test Personnel Review, Commandant of the Marine Corps, (MSRB-60), Washington, D.C. 20380.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information pertinent to them shall either write or visit the system manager. Signed letters or proper identification are required.

RECORD ACCESS PROCEDURES:

Individuals may access records pertaining to them by furnishing full name and SSN and/or service number. Additional information such as unit to which assigned at time or radiation exposure as well as place and approximate dates of exposure expedite recovery of desired records.

CONTESTING RECORD PROCEDURES:

The agencies' rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the respective system manager.

RECORD SOURCE CATEGORIES:

From the individual; Navy and Marine Corps organizational, personnel, and medical records; the Veterans Administration, Department of Enery, Defense Nuclear Agency & other military departments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06530-1

SYSTEM NAME:

Blood Donor Program Files

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel donating blood or seeking replacement of blood.

CATEGORIES OF RECORDS IN THE SYSTEM:

Blood donation records. Blood replacement requirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

BEST COPY AVAILABLE

PURPOSE(S):

To record emergency blood requests by blood type; to recognize and identify donors; and to replace blood provided, to cover individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the American Red Cross in the performance of their duties related to the assistance of the members.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07210-1

SYSTEM NAME:

Losses of Public Funds File

SYSTEM LOCATION:

Navy Accounting and Finance Center, Code NAFC-73, Washington, DC 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Disbursing personnel who are entrusted with public funds and who incur losses of the public funds entrusted to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetized folders containing reports of losses of public funds, reports of investigations into losses of public funds, requests for relief of liability for losses of public funds and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 USC 95a, 82a-1, and 82a-2

PURPOSE(S):

To maintain and process documentation related to losses of public funds; to inform individuals of their rights to repay losses or to submit requests for relief of liability; to maintain records of investigations conducted; to approve requests for relief of liability for losses of less than $500; to make recommendations to the Secretary of the Navy on all denials and losses of $500 or more, and to control liquidation of losses by relief or by collective action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and control log

RETRIEVABILITY:

Name of accountable disbursing individual in whose custody the public funds were entrusted when the losses occured.

SAFEGUARDS:

Maintained in General Services approved Class 3, Security Cabinet equipped with a Type II, three tumbler combination lock accessible only to authorized individuals.

RETENTION AND DISPOSAL:

Transferred to Federal Records one year following liquidation of the loss.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Accounting and Finance Center, Code NAFC-73, Washington, DC 20376

NOTIFICATION PROCEDURE:

Correspondence only

RECORD ACCESS PROCEDURES:

The agency's rule for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rule for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Messages, letters, and reports of investigations into losses of public funds received from: accountable disbursing personnel, commanding officers of Navy and Marine Corps activities at which disbursing offices are located, officers appointed to conduct Judge Advocate General Manual investigations, Commanding Officer, Naval Investigative Service, Commandant of the Marine Corps, and Secretary of the Navy.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07220-1

SYSTEM NAME:

Armed Forces Health Professional Scholarship System

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

AFHSP students until graduation

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and entitlement data necessary for pay computation

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92-426

PURPOSE(S):

To maintain a data base which will permit officials and employees of the Department of the Navy to prepare checks, leave and earning statements and financial reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of the Treasury, Social Security Administration, and Veterans Administration when needed to provide payment or service to member.

To federal, state, or local government agencies when payments received through the Armed Forces Health and Professional Scholarship System impact on payments or benefits issued by those agencies and/or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To the American Red Cross, Navy Relief Society and U.S.O. for personal assistance to the member.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and file folders

RETRIEVABILITY:

Social security account number and member name

SAFEGUARDS:

Guards, personnel screening, and requestor codes

RETENTION AND DISPOSAL:

Destroyed ten years after member's graduation

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Office Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Information request must contain Navy member's full name, military status, and social security number. Requestor may visit above address and must have military identification card or valid state driver's license and social security card as positive proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Disbursing Officer, Reserve members, COMNAVMILPERSCOM, and COMNAVMEDCOM

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07220-2

SYSTEM NAME:

Retired Pay System

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former members of the Navy and Reservists receiving Retired or Retainer Pay; Survivors of members or reservists requesting Survivor Benefit Plan, Retired Serviceman's Family Protection Plan or Minimum Income Widow payments; Individuals eligible for National Oceanic and Atmospheric Administration retirement payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual retired pay and annuity pay records, statements of service, retirement orders, survivor benefit plan elections, w-4 and w-2 data, allotment data, death certificates, applications for annuities, correspondence from or to the member or annuitant or third parties relating to an individual account, documentation of mass change, e.g., cost of living increase, due to legislative change.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Subtitle C

PURPOSE(S):

To compute retirement and annuity payments and to investigate and reconcile any underpayments, overpayments or claims. Data is used for fiscal reports and the extraction and compilation of statistical analyses and reports for management studies for internal use as required by the Department of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used for fiscal reports and the extraction and compilation of statistical analyses and reports for management studies for use externally required by Department of Labor, Department of Commerce or by other government agencies.

Records may be released to the Comptroller General or any of his authorized representatives in the course of the performance of duties of the Comptroller General. To the General Accounting Office for audits and determinations relating to military pay entitlements expenditures and accounting procedures.

To the Department of Treasury in connection with check or Electronic Fund Transfer (EFT) payment issuance.

To the Veterans Administration in regard to Disability and Severance Pay and educational benefits.

To the Social Security Administration for FICA Wage reporting.

To the Internal Revenue Service and state and local taxing authorities for computing or resolving tax liability.

To the Federal Reserve Banks for the distribution of payments made through the Direct Deposit System, to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accouunts, and federal, state, or local government agencies when payments received through the Retired Pay system impact payments or benefits issued by those agencies and/or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To designated beneficiaries of deceased member.

To the American Red Cross, Navy Relief Society, or U.S.O. personnel for assistance to the member or annuitant.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, and disc files, microfilm and file folders.

RETRIEVABILITY:

Social security number and member's name

SAFEGUARDS:

The on-line system contains the following safeguards: a. Physical access to CRT data entry terminals is under supervisory control. b. Access to central computer mainframe, other peripheral equipment and tape and disc storage is strictly controlled. Individuals must sign in and be authorized admittance before access. c. Individual user identification codes and passwords are used to control access to automated records. d. Reports are issued that are used to help monitor individuals accessing the system. Access to microfiche and

microfiche readers and the respective data are maintained by supervisory control. During non-working hours, offices where records are stored are locked.

RETENTION AND DISPOSAL:

Records are retained for ten years after death of retiree or annuitant then shipped to a Federal Records storage facility. NOAA accounts are dropped upon retiree's death.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Information request must contain Navy member's full name and social security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Field disbursing offices, Navy Military Personnel Command, Navy Reserve Personnel Center, individual members, annuitants, financial organizations, designated guardians and conservators of retirees or annuitants, Veterans Administration, Social Security Administration, Office of Personnel Management, Internal Revenue Service, and federal, state, and local courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07225-3

SYSTEM NAME:

Reserve Pay System

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active reservists drilling in pay units

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance entitlements, monthly and yearly pay, and personnel data needed for pay computation and issuance

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S. Code Chapter 11

PURPOSE(S):

This information is used by officials and employees of the Navy Finance Center to issue checks and leave and earnings statements, investigate claims and overpayments, and to prepare financial reports. This information may be used by officials and employees in the Department of Defense, and the Naval Military Personnel Command to assist in updating, verifying or correcting their records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Internal Revenue Service and state or local tax authorities for use in computing or resolving member's tax liability.

To the Social Security Administration to determine member's coverage under that program.

To the Department of the Treasury for issuance of checks.

To the Veterans' Administration or to the Navy Family Allowance Activity when needed to process cases in the courts upon court order.

To the designated beneficiaries of deceased members.

To federal, state, or local government agencies when payments received through the Reserve Pay System impact on payments or benefits issued by those agencies and/or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and file folders

RETRIEVABILITY:

Social security number and name

SAFEGUARDS:

Guards, personnel screening, requestor codes

RETENTION AND DISPOSAL:

Microfilm record kept indefinitely in safekeeping

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Information request must contain Navy member's full name and social security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Disbursing Officers, individual members, BUPERS, and IRS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07220-4

SYSTEM NAME:

Naval Reserve Officer Training Corps Pay System

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NROTC students until time of commissioning

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and entitlement data necessary for computation of pay entitlements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U. S. Code, Chapter 103 and Public Law 88-647.

PURPOSE(S):

This information is used by officials and employees of the Navy Finance Center to issue checks and leave and earnings statements, investigate claims and overpayments, and to prepare financial reports. This information may be used by officials and employees in the Department of Defense, and the Navy Military Personnel Command to assist in updating, verifying or correcting their records or to process cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Internal Revenue Service and state or local tax authorities for use in computing or resolving member's tax liability.

To the Social Security Administration to determine member's coverage under that program.

To the Department of the Treasury for issuance of checks.

To the Veterans' Administration or to the Navy Family Allowance Activity when needed to process cases.

To the courts upon court order.

To the designated beneficiaries of deceased members.

To federal, state, or local government agencies when payments received through the Naval Reserve Officer Training Corps Pay System impact on payments or benefits issued by those agencies and/or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and file folders

RETRIEVABILITY:

Social Security account number and member name

SAFEGUARDS:

Guards, personnel screening, requestor codes

RETENTION AND DISPOSAL:

Original shipped to safekeeping for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Information request must contain Navy member's full name, military status, and social security account number. Requestor may visit above address and must have military identification card or valid state driver's license and social security card as positive proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Disbursing Officer, Member, NMPC, CNETO, and IRS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N07220-5

SYSTEM NAME:

Joint Uniform Military Pay System [JUMPS]

SYSTEM LOCATION:

(Decentralized) Navy and Marine Corps disbursing offices, i.e., Personnel Support Activities, Personnel Support Detachments, Disbursing Officers Afloat, and the Navy Finance Center. Specific activities are identified in Appendix B of Volume IV, Navy Comptroller Manual and addresses are contained in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy Personnel on active duty and individual recipients of allotments of Navy Personnel (active duty and retired)

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Leave and Earnings Statements, Personnel Financial Records, substantiating documentation submitted via OCR documents, tape input or direct on-line CRT entry which authorized credits and deductions of pay entitlements and withholding of Federal income tax, Federal Insurance Contribution Act (FICA) payments, and Servicemen's Group Life Insurance, state and local taxes, or other deductions. Other records include Internal Revenue Form w-2's, money lists, pay receipts, check and distribution lists, allotment authorizations and associated files, absentee and deserter lists, miscellaneous correspondence requesting or providing pay information, Commanding Office Leave Lists and microfilm and microfiche records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles 10 and 37 U.S.C.

PURPOSE(S):

To maintain and distribute Leave and Earning Statements; determine and audit pay entitlements or deductions; compute, pay and report payments; determine budgets and appropriation requirements; commence and terminate allotments; determine amounts subject to fines, forfeitures or detentions of pay in connection with non-judicial punishment and courts-martial and distribution of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Comptroller General or any of his authorized representatives in the course of the performance of duties of the Comptroller General or the General Accounting Office in the audit and determinations relating to military pay entitlements, expenditures and accounting procedures.

To the Department of the Treasury in connection with check of Electronic Fund Transfer (EFT) payment issuance.

To the Veterans Administration in regard to Disability and Severence Pay and Educational benefits; the Social Security Administration for FICA Wage reporting.

To the Internal Revenue Service and state and local taxing authorities for computing or resolving tax liability.

To the Federal Reserve Banks for the distribution of payments made through the Direct Deposit System.

To financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

To federal, state, or local government agencies when payments received through the JUMPS system impact payments or benefits issued by those agencies or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To the American Red Cross, Navy Relief Society, or U.S.O. for personal service to the member or allotment recipient.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Personal Financial Records containing Leave and Earnings Statements, which are paper records, are stored in wooden or metal boxes or cabinets. Copies of

Leave and Earnings Statements and supporting documents are stored in file folders and cabinets or on micro-film or microfiche. Automated records are stored on magnetic tapes, discs and punched cards.

RETRIEVABILITY:

Automated records are retrieved by Social Security Number and name. Documents are retrieved by sen or by an assigned internal document control number.

SAFEGUARDS:

Outside of normal working hours Personal Financial Records with Leave and Earnings Statements are secured in safes, vaults or locked cabinets. Substantiating documents and microfilmed records are retained in unlocked cabinets. During non-working hours, offices where the above-mentioned records are stored are locked.

The safeguards in the on-line automated system include the following controls: a. Physical access to CRT data entry terminals is under supervisory control. b. Access to central computer main frame, other peripheral equipment and tape and disc storage is strictly controlled. Individuals must sign in and be authorized admittance before access. c. Individual user identification codes and passwords are used to control access to automated records. d. Reports are issued that are used to help monitor the system to determine individuals who are accessing data.

Access to microfiche and microfiche readers and the respective data are maintained by supervisory control.

RETENTION AND DISPOSAL:

Personal financial records containing the twelve most recent leave and earning statements are retained by the Personnel Support Detachment or disbursing office servicing the Command to which the member is assigned. Copies of originating documents are retained by the local command for one year after submission and then destroyed. A central automated file is maintained for all active duty Navy personnel at the Navy Finance Center, Cleveland. Following a member's separation or retirement from the Navy, the member's Personal Financial Record is forwarded to the central site-Navy Finance Center, Cleveland, where it is retained for approximately two months pending individual claims and is then forwarded to the Federal Records Center. The member's Master Pay Account is retained at the central site for six months following a member's separation or retirement at which time it is purged from the computer file, microfilmed, and forwarded to the Federal Records Center. Substantiating documents are microfilmed and retained at the central cite for one year and then forwarded to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Navy; Commander, Naval Military Personnel Command; Commander, Navy Accounting and Finance Center; and Commanding Officer, Navy Finance Center.

NOTIFICATION PROCEDURE:

Individuals can be informed of any records maintained within the system by identifying themselves to the Personnel Support Detachment servicing that Command. The member may identify himself by presenting his military identification card. Former members may request information from the Navy Finance Center, Cleveland.

RECORD ACCESS PROCEDURES:

Individuals, properly identified, may request any information pertaining to their pay from their Personnel Support Detachment. If the requested information is not avilable locally, the disbursing officer will obtain the information from other sources, i.e. member's previous duty stations or the Navy Finance Center, Cleveland.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individuals concerned may be obtained from the SYSMANGER.

RECORD SOURCE CATEGORIES:

Local Personnel Support Detachments and other disbursing and personnel offices, the Veterans Administration, the Navy Military Personnel Command, various taxing agencies, individual members and recipients of allotments and various Navy procedures and entitlements manuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07220-6

SYSTEM NAME:

Midshipman Pay System

SYSTEM LOCATION:

Primary - Superintendent, Naval Academy, Annapolis, MD 21402; decentralized segments - Commanding Officer, Navy Regional Finance Center, Washington, D.C. 20371, Commanding Officer, Navy Finance Center, Cleveland, OH 44199, and Commander, Naval Military Personnel Command (Code H-13), Navy Department, Washington, D.C. 20370.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Midshipmen of the U.S. Naval Academy, Annapolis, Maryland.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains automatic data processing pay accounts of all Naval Academy Midshipmen. Document flow is controlled by use of a Midshipmen Payroll Change form. Controls over the system are maintained by use of a Midshipmen Payroll Control Register. Input source documents include (1) letter authority from the Superintendent to the Midshipmen Pay Offices to open the pay (2) documents to substantiate credits of advances for initial clothing and equipment issues, commuted rations, refunds for clothing turn-in, and discharge payments (3) letters from the Commandant of Midshipmen to the Midshipmen Pay Officer containing listings of names and amounts to the checked for personnel services (4) documents to substantiate checkages for liquidation of clothing and equipment advances, store bills of midshipmen subscriptions to magazines, musical concerts, etc., and (5) required deductions for Federal Tax and FICA Tax. Output documents include printouts of (1) Midshipmen Monthly Pay Accounts (2) Midshipmen Debit and Credit Explanation Register and (3) Midshipmen Yearly Pay Account. Payroll money lists which substantiate payments made and travel payment vouchers are also in files. Monthly financial returns are submitted to the Navy Regional Finance Center, Washington, D.C. for consolidation with the accounts of that office and are then forwarded to the Navy Finance Center Cleveland, Ohio in accordance with procedures prescribed in NAVCOMPT Manual, par. 048080. Copies, of the financial returns are therefore, on file in these offices. In addition, copies of documents supporting Federal Income and FICA Taxes withheld are forwarded to the Commander, Naval Military Personnel Command (Code H-13).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act Amendments of 1949 (10 U.S.C. 5060).

PURPOSE(S):

To accurately and efficiently maintain the pay accounts of Naval Academy Midshipmen; to pay and account for payments and collection of Naval Academy Midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Internal Revenue Service and the Social Security Administration for reporting wages, FICA tax and federal tax paid.

To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Midshipmen Pay Office - Computer print-outs. ADP Office - Computer magnetic tapes.

RETRIEVABILITY:

Retrieved by Alfa Codes assigned to each midshipmen.

SAFEGUARDS:

Only Midshipmen Disbursing Office personnel are authorized access to records of that office. Only the computer operations are authorized access to the computer tapes. The computer area is restricted and computer tapes are locked in fireproof safes when not in use.

RETENTION AND DISPOSAL:

Pay information on the computer tapes is retained for 30 days and the tapes are then reused. Tapes containing Federal Income Tax and FICA Tax information are retained for 1 year until the required reports are rendered. The tapes are then reused. Retained copies of Midshipmen Pay Office forms are disposed of as follows: 1. Midshipmen Payroll Control Register - retain for 2 years and destroy. 2. Midshipmen Payroll Change - retain for 6 months and destroy. 3. Midshipmen Monthly Pay Account - retain for 4 years, from admission of each class through month following its graduation and destroy. 4. Midshipmen Debit and Credit Explanation Register - same as 3, above. 5. Midshipmen Yearly Pay Account - same as 3, above. Other disbursing records and financial returns are retained 4 years follow period covered by the account and transferred to the Federal Records Center in accordance with SECNAV Instruction P5212.5b.

SYSTEM MANAGER(S) AND ADDRESS:

Overall policy and procedures - Comptroller of the Navy; primary - Superintendent, Naval Academy; decentralized segments - Commanding Officer, Navy Regional Finance Center, Washington, D.C., Commanding Officer, Navy Finance Center, Cleveland, Ohio and Chief of Naval Personnel (Code H-13) Washington, D.C.

NOTIFICATION PROCEDURE:

Individuals can be informed of any records maintained in the system by identifying themselves to Midshipmen Pay Office. Members must present his identification card to obtain requested information.

RECORD ACCESS PROCEDURES:

Midshipmen are issued a monthly earnings statement. All information concerning credits and checkages of pay and allowances are contained in the statement. Additional required information relative to miscellaneous changes reflected on the statement may be obtained from the individual Academy activity which reported the changes to the Midshipmen Pay Office upon presentation of his identification card.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individuals concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Members service record on file in the Midshipmen Personnel Office and those documents contained in RECORD-CATEGORY, above.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

H07220-7

SYSTEM NAME:

Travel Pay System

SYSTEM LOCATION:

Decentralized, maintained by Navy disbursing offices; a list is available from:
Commander
Navy Accounting and Finance Center
(NAFC-44)
Washington, D.C. 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person, government or private, who submits a request for payment of a travel advance or travel claim to a Navy disbursing office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Public vouchers; substantiating documents such as travel orders and expense receipts; card file or log book; automated records stored on magnetic program cards, tapes, disks, drums or punched cards utilized to control receipt and disposition of travel claims; suspense files, pay adjustments authorization, and payroll checkages utilized for control and follow-up on travel advances; debtor information records; and correspondence relating thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To reimburse any person, government or private, for travel expenses and to record, account and report for government funds. To provide a historical file and audit trail for travel payments made by the Navy; to provide a means to respond to inquiries from travelers on status of claims; to control travel advances to insure liquidation; and to provide a means for collection in cases of over advances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(b)(12)), debtor information may be released to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic program cards, disk, tape, hard copy forms, paper records in file folders, index cards or log books.

RETRIEVABILITY:

Travel claims which are computed with automatic data processing equipment are retrieved by using the SSN. Manually computed travel claims are retrieved by disbursing office voucher number and SSN. Card index files and log books are retrieved by name and SSN.

SAFEGUARDS:

The safeguards in the automated system include the following controls; (1) Physical access to video display terminals is under strict supervisory control, (2) Access to the computer

peripheral equipment, program cards, tapes and disk storage is strictly controlled. (3) Individual user identification codes and passwords are used to control access to automated records. (4) Reports are issued that are used to help monitor the system to determine individuals who are accessing data. (5) Output products and storage media are stored in locked cabinets or rooms with building or military base security. (6) Positive identification is established prior to releasing personal information to an individual, and (7) Output products and storage media are labeled to warn individuals that they contain personal information subject to the Privacy Act(e.g., Personal Data-Privacy Act of 1974). Access is authorized to personnel engaged in travel claim processing, supervisory or management personnel, and inspectors, auditors, investigators. Travelers are authorized access to their own travel records; fund administrators are authorized access to records pertaining to their own funds.

RETENTION AND DISPOSAL:

The automated record is retained no longer than one year following the final settlement of a travel claim. Records recorded on magnetic program cards, tapes, disks, and drums will be disposed of by degaussing or erasing. A history/inactive hard copy file is maintained no longer than four years. Records may be moved to a regional Federal Records Center depending on local storage capability.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Accounting and Finance Center, (Code NAFC-44), Washington, DC 20376. A list of the Navy disbursing offices is available from the Systems Manager.

NOTIFICATION PROCEDURE:

If the individual is a traveler and knows the location of the Navy disbursing office processing his/her travel claim, direct contact with that office is sufficient. If unknown, or the inquirer is not a traveler, the inquiry should be submitted to the Commander, Navy Accounting and Finance Center, address above. Requestor should provide full name, social security number, whether military or civilian, and, if possible, disbursing office voucher number, dates of travel, and date and location of travel claim or travel advance submission. An individual is permitted to visit any Navy disbursing office to which he/she has submitted an advance or claim. Military identification card or civilian identification such as driver's license is sufficient.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Travel advances and travel claims are filed by individuals who provide information (name, SSN, etc) on themselves. Supporting documentation is obtained from the associated travel order, employing commands, service providers (e.g., receipt of taxis), and Navy disbursing offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N07220-1

SYSTEM NAME:

Navy Standard Civilian Payroll System (NAVSCIPS)

SYSTEM LOCATION:

Decentralized, maintained by 72 Navy and 1 Marine Corps civilian payroll offices; a list is available from:
Commander
Navy Accounting and Finance Center
(NAFC-42)
Washington, D.C. 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees who are employed by Navy and Marine Corps Activities and are paid from appropriated funds

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual civilian pay records, retirement records and leave records, applications for leave; overtime authorizations; substantiating documents such as personnel action forms effecting new appointments, separations, promotions, demotions, and deduction changes; Internal Revenue Service Form W-4; State and City tax information; authorizations for deductions, i.e., savings bonds, group life insurance, health benefits, overpayments, indebtedness to the Government; court orders for garnishment of wages for child support and alimony payments; allotments, i.e., union dues, charity contributions, savings allotments, special allotments for overseas employees; tax levies; claims; award payments; special pay; allowances and differentials, and case files which contain requests for waiver of erroneous payment of pay for civilian employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5301, Pay Rates and Systems, Pay Comparability System Policy

PURPOSE(S):

To pay Navy and Marine Corps civilian employees, maintain leave and retirement records and to record, report and account for government expenditures for personal services. To provide time and attendance information to individual employees and management; and to provide audit trails for GAO, Navy Area Audit, and internal audit procedures; to provide federal, state, and city tax information to appropriate authorities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Office of Personnel Management related to retirement information and monies for computation of annuities. Provides other data, as required for special studies.

To officials and employees of the Department of the Treasury in connection with check issuances.

To officials and employees of the Veterans Administration regarding Disability or Severence Pay Entitlement.

To officials and employees of the Social Security Administration for FICA and FITW wage reporting.

To state and local tax authorities for computing or resolving tax liability.

To state employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees.

To financial organizations to provide lists of those employees who make deposits and the amount of the deposit to each financial organization.

To officials of labor organizations who are recognized under E.O. 11491, as amended, with information as to the identity of employees contributing dues each pay period and the amount of dues withheld from each contributor.

To the General Accounting Office, for waiver of overpayments of pay which are forwarded to them for adjudication.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disc, microfilm/microfiche and punched cards. Manual records on manual card files and in file folders.

RETRIEVABILITY:

By name, social security number, or locally assigned identification number.

SAFEGUARDS:

Locked fireproof cabinets for retirement records. Metal cabinets for manual payroll and leave records within locked rooms. The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to personnel engaged in payroll processing, auditors, investigative officials and management personnel.

RETENTION AND DISPOSAL:

Payroll records are maintained on-site for 6 years, then shipped to Federal Record Center where they are retained for 56 years.

Leave Records - same as above, except held by Federal Record Center for 10 years.

Retirement Registers - same as above, except are destroyed rather than sent to Federal Record Center. Retirement records are maintained until employee separates; if he/she goes to another Navy or Marine Corps activity, retirement records are sent to that activity; if he/she goes to another agency or separates, sent to OPM.

SYSTEM MANAGER(S) AND ADDRESS:

Overall policy and procedure for the Civilian Payroll System are established by the Commander, Navy Accounting and Finance Center, Washington, D.C. 20376. A list of the system managers by payroll activity is available from Navy Accounting and Finance Center (NAFC-42).

NOTIFICATION PROCEDURE:

Civilian employees can directly contact the system manager of his payroll activity. If unknown, the inquiry should be submitted to the Commander, Navy Accounting and Finance Center, address above. Requestor should provide full name, social security number, identification number, if applicable, activity where employed and information desired. An individual can visit his/her payroll office on any matter concerning his/her pay.

RECORD ACCESS PROCEDURES:

Employees have access to their individual pay, leave and retirement records. The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Standard Form 50's (Personnel actions), time and attendance records, applications for leave and overtime authorizations, retirement records, federal state and tax forms, deduction authorizations, allotment authorizations, court orders for garnishment of wages for child support and alimony payments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07240-1

SYSTEM NAME:

Commercial Invoice Payments History System

SYSTEM LOCATION:

Decentralized, maintained by Navy disbursing offices; a list is available from
Commander
Navy Accounting and Finance Center
(NCF-5)
Washington, D.C. 20376

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, government or private, who submits a request for payment to Navy disbursing offices for goods and/or services rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Public vouchers; substantiating documents such as invoices, receipt documents, inspection reports, procurement instruments, contract index files, assignment documents, machine listings, government bills of lading, transportation requests, meal tickets; magnetic tape, disk files, roll microfilm, microfiche; and related correspondence files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To provide a record of all disbursements made on commercial invoices by Navy disbursing offices; provides an audit trail of commercial invoice payments made by the Navy; provides a means to respond to inquiries from individuals on status of invoices and contracts; provides a means of detecting and precluding duplicate payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer magnetic tapes; roll microfilm, microfiche.

RETRIEVABILITY:

Retrieved by disbursing office voucher number for paid invoices; retrieved by procurement instrument identification number for contractors by contract index cards; retrieved by name of individual from machine listings. Information in disbursing office voucher file and microfilm/microfiche can be retrieved by name through search process if billing/submission date is known.

SAFEGUARDS:

Locked cabinets or rooms, with building or military base security. Access authorized to designated personnel engaged in commercial invoice processing, supervisory or management personnel, and inspectors, auditors, investigators. Individuals are authorized access to their own payment history file; fund administrators are authorized access to records pertaining to their own funds.

RETENTION AND DISPOSAL:

Records are maintained for four years. Records may be moved to a regional Federal Records Center depending on local storage capability. No standard means for destruction exists.

SYSTEM MANAGER(S) AND ADDRESS:

Commercial invoice payment history requirements are prescribed by the Comptroller of the Navy in its Manual (NAVSO P-1000); a list of Navy disbursing offices authorized to pay invoices can be obtained from the Commander, Navy Accounting and Finance Center (NCF-5), Washington D.C. 20376.

NOTIFICATION PROCEDURE:

If the individual knows the location of the Navy disbursing office holding his/her invoice payment history, direct contact with that office is sufficient. If location is unknown, the inquiry should be directed to the Commander, Navy Accounting and Finance Center, address above. Inquirer should provide full name, social security number, whether military or civilain, contract or purchase order number and, if possible, disbursing office voucher number, invoice date, number and amount. An individual is permitted to visit any Navy disbursing office to which he/she has submitted an invoice for payment. Identification should include military identification card, civilian identification such as driver's license and company or agency affiliation. Access to classified contracts requires confirmation of security clearance and need to know.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for conteating contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Commercial invoices are filed by individuals who provide information on themselves. Supporting documentation is obtained from employing company, material/service providers and receivers and Navy disbursing offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N07300-1

SYSTEM NAME:

Relief of Accountable Personnel From Liability For Losses of Public Funds

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Accountable Navy and Marine Corps military and civilian disbursing personnel and collection agents who request relief from liability for losses of public funds in their custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of requests submitted by individuals of the above-stated category for grant of relief from liability, together with information voluntarily furnished by the affected individuals concerning the circumstances of losses of funds in their custody, and additional information derived from investigatory and audit reports and comments of forwarding endorsers concerning circumstances of losses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 95a., 82a-1, 82a-2;
5 U.S.C. 301
44 U.S.C. 3101

PURPOSE(S):

To determine within the Department of the Navy and GAO as to whether the circumstances of particular losses of public funds warrant granting accountable individuals' requests for relief from liability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual requesting relief.

SAFEGUARDS:

Files are maintained in file cabinets under the control of personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General. However, after three years, name indexes are destroyed, eliminating the capability for retrieval by the names of individuals. Thereafter, they are retrievable only by topical indexes arranged according to the legal issues involved.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

NOTIFICATION PROCEDURE:

Information may be obtained by written request to the system manager stating the full name of the individual concerned and the approximate date on which relief was requested. Written requests must be signed by the requesting individual. visits may be made to: Civil Affairs Division (Code 12), Office of the Judge Advocate General, Room 9N11, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Armed forces identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is furnished partly by the individual requesting relief, and is supplemented by reports of Department of the Navy audits and investigations pertaining to the particular losses of funds involved. Additional amplifying information is typically furnished by officers forwarding requests to the Secretary of the Navy.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE.

N07300-2

SYSTEM NAME:

Resource Accounting and Project Tracking System (RAPTS)

SYSTEM LOCATION:

Navy Fleet Material Support Office, P. O. Box 2010, Mechanicsburg, Pennsylvania 17055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All currently employed civilian and military personnel of the Navy Fleet Material Support Office. May include private contractors who work on Navy Fleet Material Support Office projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number, pay number, grade, step, job title, job series, military or civilian designator, organizational code, leave schedule, hourly rate of pay, civilian position description number, pay plan, veteran preference, service computation date, supervisory designator, tenure group, exemption code, target grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

To monitor the current status of projects under development at the Navy Fleet Material Support Office; to report status and labor charges against functional cost accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape and hard copy forms.

RETRIEVABILITY:

RAPTS users obtain information by means of query or standard batch reports. Data may be indexed by any data items with entry keys using employee organization, sort key and employee initials.

SAFEGUARDS:

Access to computer room after hours is controlled by card key and pass number locking device. The system is protected by the following software feature: password sign-on.

RETENTION AND DISPOSAL:

All active records are stored on random access files. Once a project is complete, all data for that project is moved to a history file which is maintained on magnetic tape. Project record data is maintained for three years in the history file. After three years the project record will be erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Fleet Material Support Office, P. O. Box 2010, Mechanicsburg, Pennsylvania 17055.

NOTIFICATION PROCEDURE:

Information should be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the civilian personnel files of the Consolidated Civilian Personnel Office, Mechanicsburg, Pennsylvania and from the individual to whom it applies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N07220-1

SYSTEM NAME:

Property Accountability Records

SYSTEM LOCATION:

At all activities

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Department of the Navy employee (military or civilian) receiving government property for which he must sign a receipt.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

PURPOSE(S):

To identify individuals to whom government property has been issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The receipts may be maintained in any of the following formats: logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge out cards or any other statement of individual accountability for receipt of government property.

RETRIEVABILITY:

Retrievability may be by any of the following: name, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

SAFEGUARDS:

The receipts are unclassified.

RETENTION AND DISPOSAL:

Retention of receipts for property is at the discretion of the local activity responsible for the property being issued.

SYSTEM MANAGER(S) AND ADDRESS:

Overall policy official: no designated official The system manager is the commanding officer or officer in charge of the activity where the property accountability records are maintained.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have a Department of the Navy approved identification card.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is collected directly from the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N07401-1

SYSTEM NAME:

Bingo Winners

SYSTEM LOCATION:

Decentralized, maintained at Navy and Marine Corps stateside and overseas bases, where bingo is authorized and played. Inquiries should

be addressed to the local activity or to the:
Chief of Naval Personnel (Pers-7)
Bureau of Naval Personnel
Washington, D.C. 20370 (for naval activities); and the
Commandant of the Marine Corps (MSMS)
Washington, D.C. 20380 (for Marine Corps activities).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual U.S. citizens 18 years of age and older who are paid monies/prizes of $1,200 or more for one-time winnings associated with bingo.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bingo payout control sheet indicating individual name, grade, SSN, duty station, dates and amounts of bingo monies paid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; Section 6041, Internal Revenue Code; BUPERSINST 1710 series; Manual for Messes Ashore, NAVPERS 15951; MCO P-1745.15 series; and NAVSO P-3520.

PURPOSE(S):

Navy and Marine Corps shore activities use this file (where bingos have been authorized) to account for and control monies and items of merchandise paid to individual winners of bingo games and as a basis for IRS Forms W-2G and 5754, reporting on individuals whose one-time winnings are $1,200 or more. To provide a means of paying, recording, accounting for, reporting, and controlling expenditures and merchandise inventories associated with bingo games.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in file cabinets located in a secure area.

RETRIEVABILITY:

Individual control sheets. Individual IRS Form W-2G by name and SSN.

SAFEGUARDS:

Records are kept in occupied rooms which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained on site for 3 years and then shipped to the Federal Records Center in accordance with SECNAVINST 5212.5 series.

SYSTEM MANAGER(S) AND ADDRESS:

Overall policy and procedures for the bingo operations are contained in NAVSO P-3520, BUPERSINST 1710 series and MCO P-1746.15 series. A list of system managers by activity is available from the Chief of Naval Personnel (Pers-7) for Navy managers and the Commandant of the Marine Corps (MSMS) for Marine Corps managers.

NOTIFICATION PROCEDURE:

Individuals are notified via IRS Form W-2G if their one-time bingo winnings are $1,200 or more. An individual can contact the applicable systems manager on matters concerning their bingo winnings.

RECORD ACCESS PROCEDURES:

Individuals have access to information applicable to their individual bingo winnings. Officials such as the IRS have access to information applicable to all bingo winners. Access is through the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Bingo payout control sheets.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N07430-1

SYSTEM NAME:

Accounts Receivable System

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been paid more funds by the Department of the Navy than to which they were legally entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation which established overpayment status, financial status affidavit, payment record, credit reference, and miscellaneous correspondence to and from the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

80 Stat 308 and 88 Stat 399, Federal Claims Collection Act of 1966 (P.L. 89-508) and Debt Collection Act of 1982 (Pub. L. 97-365).

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If any account is delinquent and circumstances warrant, records may be released to the General Accounting Office and the Department of Justice for collection action. Data on individuals with delinquent accounts may be given to credit reporting agencies for the purpose of either adding to a credit history file or obtaining a credit history file; to asset reporting agencies for obtaining an asset report; and, to commercial collection agencies for collection action, in accordance with Debt Collection Act of 1982 (Pub. L. 97-365).

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, disc, microfiche

RETRIEVABILITY:

Social security number and individual's name

SAFEGUARDS:

Personnel screening, requester codes

RETENTION AND DISPOSAL:

Files of accounts which are paid in full will be maintained for 3 years after final payment. Other files will be maintained for 6 years after termination of collection action.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to the system manager at the above address. Information request must contain individual's full name and should include the Social Security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Disbursing officers, credit bureaus, the individual, Internal Revenue Service, Postmasters, Veterans Administration, Bureau of Motor Vehicles.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N07431-1

SYSTEM NAME:

Savings Deposit

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy members still declared missing in action in the Vietnam conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Members records reflecting account balances

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 89-538

PURPOSE(S):

To credit interest and to clear accounts upon termination. Records will be furnished to Navy Family Allowance Activity and other Department of Defense agencies servicing families of persons still having active accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Internal Revenue Service upon termination of account.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and file folders

RETRIEVABILITY:

Social security number and member name

SAFEGUARDS:

Guards, personnel screening, and specific requestor codes

RETENTION AND DISPOSAL:

Upon closing of account, records are shipped to FRC and destroyed after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Only the member or executor or benificiary of estate will be provided information. Individual's name and social security number are required. Persons wishing to view records in person must report to the Navy Family Allowance Activity, Room 967, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's initial request, adjudicators in Central Accounts Department.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N07600-1

SYSTEM NAME:

NIF RDT&E Standard Automated Financial Systems (STAFS)

SYSTEM LOCATION:

Naval Industrial Fund Research, Development, Test and Evaluation Activities (NIF RDT&E): (1) Naval Air Development Center (NADC), Warminster, Pennsylvania; (2) Naval Coastal Center (NCSC), Panama City, Florida; (3) Naval Surface Weapons Center (NSWC), Dahlgren, Virginia; (4) David W. Taylor Naval Ship Research and Development Center (DTNRDC), Bethesda, Maryland; (5) Naval Ocean Systems Center (NOSC), San Diego, California; (6) Naval Underwater Systems Center (NUSC), Newport, Rhode Island; (7) Naval Weapons Center (NWC), China Lake, California; (8) Naval Air Engineering Center (NAEC), Lakehurst, New Jersey; (9) Naval Air Propulsion Center (NAPC), Trenton, New Jersey; (10) Naval Air Test Center (NATC), Patuxent River, Maryland; (11) Pacific Missile Test Center (PMTC), Pt. Mugu, California; (12) Civil Engineering Laboratory (CEL), Pt. Hueneme, California; and (13) Naval Research Laboratory (NRL), Washington, DC. Official mailing addresses are in the Navy's Address Directory in the appendix to the Navy Department's systems notices appearing in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of present, former, and prospective military personnel assigned to, and civilian personnel employed by the 13 activities listed above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel, payroll, travel and locator records, and work history for billing for services provided to other naval activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C 2208, Title IV

PURPOSE(S):

To prepare rosters and locator lists; to contact appropriate personnel in emergencies; for continuity of operations, planning and execution of functions; to make determinations of clearance for access control, budget and manpower control; to maintain minority and occupation statistics, labor costing, customer billing, watch bill preparation, civilian grade control, and similar administrative uses requiring personnel information; to reimburse travelers for travel expenses; to maintain a historic file and audit trail for payments made by the Navy; to respond to inquiries from travelers on status of claims; to control travel allowances and pay; to record and account for government expenditures for personal services of Navy employees; to maintain time and attendance information, and federal, state, and city tax information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, magnetic disc.

RETRIEVABILITY:

By name, SSN, organization, job order, values and ranges of values, other relationships defined by the system manager.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need to know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records are retained locally for two years, shipped to remote storage for four years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to system manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individuals concerned, other records of the activity concerned, other records of activity supervisors, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N06370-1

SYSTEM NAME:

Weapons Registration

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals registering firearms or other weapons with station security officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Weapon registration records, weapon permit records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To assure proper control of weapons on Naval installations and to monitor and control purchase and disposition of weapons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N09593-1

SYSTEM NAME:

Naval Environmental Training System (NETS)

SYSTEM LOCATION:

Naval Energy and Environmental Support Activity/Facilities Support Office (NEESA/FACSO), Naval Construction Battalion Center, Port Hueneme, California 93043.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy sewage treatment operators, and water treatment operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

The NETS contains both data on treatment plants and treatment plant operations. Data includes social security number, name, treatment plant number and location, operators grade/rank, certification level, level of education, job experience (past and present), job title and number of years in direct responsible charge for the treatment plant(s). Additional data covers operator training, such as course number, title, content, location, total course hours, and date completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12088 of 13 October 1978

PURPOSE(S):

To monitor the current status of Navy water/wastewater treatment plants and its operators.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disks, tapes and hard copy forms.

RETRIEVABILITY:

Users obtain information by means of a request via the NEESA Office, Port Hueneme, California.

SAFEGUARDS:

Access to the Construction Battalion Center is restricted at all times. The system is protected by the following software features: password sign-on, set and item authority for list, add, delete and update.

RETENTION AND DISPOSAL:

All data on a particular individual is maintained until he/she retires, dies or changes career. Data is updated every year. Records are retained on magnetic tapes. Records are erased from the tape during system updates if applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Facilities Engineering Command, (Code 112), 200 Stovall Street, Alexandria, Virginia 22332.

NOTIFICATION PROCEDURE:

Information should be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Data collected from each individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N10140-1

SYSTEM NAME:

Ration Card, Luxury Permit Record Cards

SYSTEM LOCATION:

Commander, U.S. Naval Activities, United Kingdom, Box 60, FPO NY 09510

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer, Enlisted and civilian component personnel

CATEGORIES OF RECORDS IN THE SYSTEM:

Ration Card/Luxury Permit holders are entered on a 5'X8' color coded cards, which are contained in boxes and maintained alphabetically. Ration Cards/Luxury Permit are registered in log, showing name of individual and number of Ration Card/Luxury Permit issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To establish strict control over persons entitled to acquire tax-free ration items; to ensure entitled personnel do not obtain more than one ration card/luxury permit, and for inspection by officers of Her Majesty's Commissioners of Customs and Excise, United Kingdom, with whom Ration Card and Luxury Permits program was originally negotiated by the U.S. military authorities. Accredited members of the Naval Investigative Service Office may have access, upon request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All Ration Card/Luxury Permit records maintained on 5'X8' cards filed and listed in numerical order in logs.

RETRIEVABILITY:

Name

SAFEGUARDS:

Records held in file cabinets in space maintained by Enlisted Personnel Office during working hours and locked after working hours.

RETENTION AND DISPOSAL:

All records maintained for duration of tour of personnel concerned. Thereafter destroyed when ration card/luxury card destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Naval Activities, United Kingdom, Box 60, FPO NY 09510

NOTIFICATION PROCEDURE:

Personnel presenting a valid military identification card or Department of Defense identification card at this office, can obtain viewing of all records pertaining to themselves. No procedures exist for providing this type of information by mail, nor is it normally required by individuals.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Not applicable

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N10140-2

SYSTEM NAME:

Privately-owned Tax-free Vehicle Record Cards. Tax-free Gasoline Record Cards.

SYSTEM LOCATION:

Commander, U. S. Naval Activities, UK, FPO NEW YORK 09510

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, enlisted and civilian component personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Privately-owned tax/free vehicles and owners are entered on type-written 8' x 5' white cards, which are contained in boxes and maintained alphabetically. Gasoline coupon records are maintained on individually-completed green 8' x 5' cards (3AF Form 43) and filed alphabetically. I.D. windscreen stickers registered in log, showing name of individual and sticker number allocated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To establish strict control over persons entitled to acquire tax-free vehicles; to ensure entitled personnel do not obtain gasoline coupons in excess of their entitlement, and for inspection by officers of Her Majesty's Commissioners of Customs and Excise, United Kingdom, with whom the tax-free vehicle and gasoline program was originally negotiated by the U. S. military authorities. Accredited members of the Naval Investigative Services Office may have access, upon request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All vehicle and gasoline records maintained on 8' by 5' cards. I. D. Stickers listed numerically in register.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records held in file cabinets in space maintained by Law Center personnel when unsecured and locked when not so monitored.

RETENTION AND DISPOSAL:

All records maintained for duration of tour of personnel concerned. Thereafter destroyed when vehicle shipped out of the country or scrapped. Gas coupon records destroyed upon turn-in of unused coupons on departure of personnel.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U. S. Naval Activities, UK (Staff Judge Advocate)

NOTIFICATION PROCEDURE:

Individuals presenting a valid military identification card or Department of Defense identification at the Office of the Staff Judge Advocate, U. S. Naval Activities, U. K., can obtain viewing of all records pertaining to themselves. No procedures exist for providing this type of information by mail, nor is it normally required by individuals.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Application by member.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N10140-3

SYSTEM NAME:

Individual Merchandise Control Record

SYSTEM LOCATION:

Merchandise Control Offices:
U.S. Naval Station, Subic Bay, RP
U.S. Naval Air Station, Cubi Point, RP
U.S. Naval Communications Station Philippines, San Miguel, RP, and
3D Combat Support Group, Clark Air Base, RP.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual records are maintained on each person issued a ration card for purchasing purposes at the various bases in the Philippines.

CATEGORIES OF RECORDS IN THE SYSTEM:

Purchases of individuals while attached for duty and authorized to buy items during their tenure in the Philippines.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Bases Agreement and subsequent exchange of notes between the Governments of the United States of America and the Republic of the Philippines.

PURPOSE(S):

To monitor the purchases of individuals to insure they are not over expending their purchase limitations or abusing their tax-free privileges afforded them, plus to identify any possible blackmarketeering.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders

RETRIEVABILITY:

Name

SAFEGUARDS:

Only authorized employees allowed access to files, locked cabinets.

RETENTION AND DISPOSAL:

If no violations during tour - destroyed immediately upon detachment; if minor violations - destroyed after three months of detachment; if permanent revocation of privileges invoked - record kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Merchandise Control Officers, U.S.Naval Station, Subic Bay; U.S.Naval Air Station, Cubi Point; U.S. Naval Communcations Station Phil, San Miguel, RP, and 3D Combat Support Group, Clark Air Base, RP.

NOTIFICATION PROCEDURE:

Individual must fill out merchandise control information form upon requesting a ration card be issued. Info provided merchandise control officers. Requester must provide merchandise control officer with his name, rank/rate/GS rating, marital status, number of dependents, age of dependents, name of parent command attached to in the Phillipines, social security number, name of dependents; individual can visit merchandise control office applicable to their command for record maintenance. Military ID card required.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Personal data of individual and dependents

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N10140-4

SYSTEM NAME:

USAREUR/USAFE Ration Card

SYSTEM LOCATION:

U.S. Naval Radio Station, FPO New York 09516.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USN personnel and their dependent wives and children over 18 years of age, who are stationed at U.S. Naval Radio Station, FPO New York 09516.

CATEGORIES OF RECORDS IN THE SYSTEM:

File sheet with members name, rate, serial no., and organization assigned. Also if member is single or married.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

To record the individuals holding a ration card.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Locked safe in Admin Office and a 24 hour security watch.

RETENTION AND DISPOSAL:

Records are maintained as long as member retains ration card. After transfer records are burned.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, U.S. Naval Radio Station, FPO New York 09516 is overall policy official with the Administrative Officer, U.S. Naval Radio Station, FPO New York 09516 as the subordinate holder.

NOTIFICATION PROCEDURE:

Inquiries sould be addressed to U.S. Naval Radio Station, FPO New York 09516, giving full name and social security number, and personal visitors must have valid military I.D. or, if no longer in the military, have other valid identification such as a driver's license. Visitors may come to the Administrative Office at the address given under SYSMANAGER.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applicable U.S. Serviceman.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N10140-6

SYSTEM NAME:

Gasoline Ration System

SYSTEM LOCATION:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel stationed aboard NAVWPNSFACDET Machrihanish who own private vehicles and wish to purchase Navy Exchange Gasoline.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record on each individual contains information on: vehicle description; dates of vehicle insurance, inspection and tax; United Kingdom address of individual and amount of gasoline allowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5USC301

PURPOSE(S):

Information is used by Transportation Officer to allocate ration coupons to authorized pesonnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards in holder.

RETRIEVABILITY:

Name

SAFEGUARDS:

Locked in combination safe in an office which is locked when unmanned. Only Transportation Officer knows combination to safe.

RETENTION AND DISPOSAL:

Records are destroyed by shredding or burning approximately one year after transfer of individual.

SYSTEM MANAGER(S) AND ADDRESS:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515

NOTIFICATION PROCEDURE:

Individuals wishing to ascertain if records concerning them are still retained may contact the System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information concerning vehicles, insurance, inspection and tax is copied from the appropriate document as provided by the individual. Other information is received from the individual directly.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N10140-7

SYSTEM NAME:

Application for U.S. Navy Ration Permit

SYSTEM LOCATION:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel stationed at NAVWPNSFACDET Machrihanish desiring to utilize U.S. Navy Exchanges in the United Kingdom.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record includes: Name, rank/rate, SSN, date of birth (if under 18), and marital status of serviceman; location, name, relationship, date of birth (if under 18) and ID card number of dependents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5USC301

PURPOSE(S):

To prepare ration cards used in U.S. Military Exchanges in the U.K. and to maintain a record in case of loss of those cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards in file box.

RETRIEVABILITY:

Name

SAFEGUARDS:

Maintained in an office that is locked when unmanned.

RETENTION AND DISPOSAL:

Cards are destroyed by shredding or burning upon transfer of serviceman.

SYSTEM MANAGER(S) AND ADDRESS:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515

NOTIFICATION PROCEDURE:

Records are held only on personnel currently stationed at NAVAVNWPNSFAC Machrihanish who can enquire at the Administrative Office concerning the records.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The information is provided by the serviceman.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N10570-1

SYSTEM NAME:

Pet Registration

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of pets residing on Naval property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Owner's name and pet tag.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To provide for registration of pets to ensure appropriate innoculations and assist in the identification of rightful owners.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape.

RETRIEVABILITY:

Name, SSN, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Veterinary records and statements provided by pet owners.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N11012-1

SYSTEM NAME:

Navy Personnel Billeting System (NPBS)

SYSTEM LOCATION:

Navy Regional Data Automation Center, San Diego (NARDAC), Naval Air, Station, North Island, San Diego, California 92135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All bachelor military (officers and enlisted) and bachelor civilian personnel requesting berthing currently or in the future at a command where this system is installed may be covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's social security number, name, duty station, forwarding address and home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031

PURPOSE(S):

To manage the BEQ/BOQ complex; to report status of berthing availability, furniture and maintenance associated with a BEQ/BOQ complex.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy reports.

RETRIEVABILITY:

Name and/or SSN.

SAFEGUARDS:

Access to computer room, software and storage media requires special positive identification clear through security department. System access from remote terminals is controlled by codes used site ID's.

RETENTION AND DISPOSAL:

An individual's reservation record is maintained on disk for six months and is then system deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Regional Data Automation Center, Requirements Analysis and Design Division, Code 41, Building 334, Naval Air Station, North Island, San Diego, California 92135.

NOTIFICATION PROCEDURE:

Information should be obtained from the system manager. Requesting

individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies in the form of navy messages and/or travel orders.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N11101-1

SYSTEM NAME:

Family Housing Assignment Application System

SYSTEM LOCATION:

All Navy activities with family housing assets.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel eligible for or interested in occupying Navy family housing.

CATEGORIES OF RECORDS IN THE SYSTEM:

All applicants for family housing provide information to housing office at next duty assignment pertaining to personal data, e.g., name, address, rank/rate, social security number/service number, length of service, time remaining on active duty, data of rank, etc.; dependency data, e.g., total number in family, spouse, age and sex of dependents, etc.; and other pertinent housing information, e.g., last assignment, months involuntarily separated, special health problems, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

All Navy family housing offices use this data to determine individual's eligibility for family housing and notification for subsequent assignment to family housing or granting a waiver to allow occupancy of private housing. To determine and list individual's name on appropriate housing waiting list.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Housing files within the housing office, used solely within the housing organization and protected by military installation's security measures. Individual may, upon request, have access to housing application form.

RETENTION AND DISPOSAL:

Data is retained until termination of housing occupancy and subsequently disposed of according to local records disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Military Personnel Command, PERS-71, 1000 North Glebe Road, Arlington, Virginia 20370

NOTIFICATION PROCEDURE:

Records are maintained by housing office at the Navy activity responsible for management of assets from data specifically provided by individual on DD Form 1646, Application for and Assignment to Military Family Housing. Individual may request access to such data upon proof of identity (ID card).

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from installation family housing office.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation family housing office.

RECORD SOURCE CATEGORIES:

Data collected from each applicable individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N11101-2

SYSTEM NAME:

Family Housing Requirements Survey Record System

SYSTEM LOCATION:

Military installations with family housing offices

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer and enlisted personnel and only key and essential civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Non-individual oriented input documents that reflect local housing assets; family housing survey questionnaires indicating family size, individual preference for housing, housing cost, and indication as to suitability of housing for need of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To determine the housing requirement for the location to support proposed family housing construction, leasing, mobile home spaces and other military construction programs submitted for OSD support and Congressional approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETREIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and file folders

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Housing files used solely within housing office; tape files used solely within data processing system; and protected by the military installation's security measures.

RETENTION AND DISPOSAL:

Held three years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Overall policy official: Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Virginia

22332. Subordinate record holders of questionnaires: family housing office at military installation.

NOTIFICATION PROCEDURE:

Contact housing office of installation at which individual was assigned when the individual completed the family housing questionnaire.

RECORD ACCESS PROCEDURE:

The agency's rules for access to records may be obtained from the installaton family housing office.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing in..ial determinations by the individual concerned may be obtained from the installation family housing office.

RECORD SOURCE CATEGORIES:

Data collected from each applicable individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N11101-3

SYSTEM NAME:

Family Housing Mock Utility Billing System

SYSTEM LOCATION:

Ten test sites: Pacific Missile Test Center, Point Mugu, California; Construction Battalions Center, Port Huememe, California; Public Works Center, Great Lakes, Illinois; Marine Corps Development and Education Command, Quantico, Virginia; Fort Eustis, Virginia; Fort Gordon, Georgia; Marine Corps Air Station, Beaufort, South Carolina; Little Rock Air Force Base, Arkansas; Cannon Air Force Base, New Mexico; Yuma Proving Grounds, Arizona; Central Processing Site: Harry Diamond Laboratories, White Oak, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and Civilian personnel occupying housing units selected at the ten test sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is to produce mock utility bills and management reports on the usage of gas, fuel oil, electricity, steam, propane, and hot water heat for a representative cross section of approximately 10,000 military family housing units. Information as to name, address, rank/rate, number of dependents, house phone number, account number and utility consumption will be maintained for a 15 month period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95-82 (Military Construction Authorization Act, 1978); 5 U.S.C. 301 Departmental Regulations.

PURPOSE(S):

To measure energy consumption in military family housing units.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Magnetic tape, disk, punched card, and file folders.

STORAGE:

Account number

RETRIEVABILITY:

Housing files are used solely within housing office; magnetic tape, punched card, and disk files used solely within the security measures.

SAFEGUARDS:

Held 5 years and destroyed by authority SECNAVINST P5212.5B, para. 11300.

RETENTION AND DISPOSAL:

Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Va 22332

SYSTEM MANAGER(S) AND ADDRESS:

Records are maintained by the housing office at the service activities participating in the test. Individual may request access to such data upon presenting proof of identity (ID) card.

NOTIFICATION PROCEDURE:

The agency's rules for access to records may be obtained from the installation family housing office.

RECORD ACCESS PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

Data collected from each individual and utility consumption data obtained from monthly meter readings.

RECORD SOURCE CATEGORIES:

None

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N11101-4

SYSTEM NAME:

Station Housing Records

SYSTEM LOCATION:

All Navy installations with housing inventories and/or housing management responsibilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel desiring housing or temporary lodging, and eligible DOD civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records and data collected and maintained regarding individual housing or lodging needs; occupancy; furnishings inventory; housing condition reports; assignment and termination of housing; damage assessment; occupant and landlord relations and complaints; maintenance and repairs; waiting lists; inspections; quarters cost data; Congressional and Inspector General inquiries and responses; Servicemen's Mortgage Insurance Premiums payments; individual cost data for establishing and maintaining housing allowances; eligibility for homeowners' assistance; and entitlement for basic allowances for quarters (BAQ).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To operate and maintain the Navy Housing Program and to service personnel eligible for Navy family housing, temporary lodging, or services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files; microform; or, if automated, on punched cards, magnetic tape, etc.

RETRIEVABILITY:

By individual's name or building and unit number.

SAFEGUARDS:

Housing files within the housing office, used solely with the housing organization and offices providing support to housing office, and protected by military installation's security measures. Individual may, upon request, have access to such data.

RETENTION AND DISPOSAL:

Retained in office files until termination of occupancy, obsolete, no longer needed for reference, or disposal of associated housing unit(s).

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate Navy installation responsible for Navy housing inventory or housing support.

NOTIFICATION PROCEDURE:

Records are maintained by housing office at Navy installation responsible for management of assets or providing housing support. Individual may request access to such data upon proof of identity (ID card).

RECORD ACCESS PROCEDURES:

Installation rules for access to records may be obtained from installation housing office.

CONTESTING RECORD PROCEDURES:

The installation rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation system manager.

RECORD SOURCE CATEGORIES:

Data reported by or collected from occupants of housing or personnel provided housing support.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N11103-1

SYSTEM NAME:

Housing Referral Services Record System

SYSTEM LOCATION:

All Navy installations with housing referral offices

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel reporting to an installation who will be residing off-base desirous of seeking off-base housing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on DD Form 1668 from all military personnel reporting to a housing referral office as pertains to name, grade, branch of service, organization and location, local address; housing need, e.g., rental/sale, number of bedrooms, furnished/unfurnished, price range, etc.; number of dependents, male or female, and age; a list of housing referral services provided; and identification of member of racial or ethnic minority groups. Individuals provided referral assistance must in turn provide notification of housing selection by use of DD Form 1670 which includes such information as type of housing selected, e.g., location, temporary/permanent, rental/sale, cost, number of bedrooms; media through which housing was found, e.g., housing referral, realtor, newspaper, etc.; and satisfaction with selection, e.g., too small, too far; discrimination encountered; and satisfaction with housing referral services provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Department Regulations

PURPOSE(S):

Referral offices use data to assist and counsel individuals in locating suitable housing off-base, used for follow-up purposes when written notification from individual is not provided as to ultimate location of housing; used for purposes of reporting statistics on field activity housing referral services; used to follow-up on availability of rental unit subsequent to occupant's receipt of PCS orders; and follow-up regarding tenant/landlord complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders

RETRIEVABILITY:

By individual's name

SAFEGUARDS:

Housing files within the housing referral or housing office, used solely within the housing organization and protected by military installation's security measures. Individual may upon request, have access to all such data.

RETENTION AND DISPOSAL:

Data is retained until individual's tour is completed and subsequently disposed of according to local records disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Facilities Engineering Command (Code 08), 200 Stovall Street, Alexandria, Virginia 22332

NOTIFICATION PROCEDURE:

Records are maintained by housing referral offices at the Navy activity responsible for providing referral services for military personnel in the area. Individual may request access to records upon proof of identify (ID card).

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from installation family housing office.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation family housing office.

RECORD SOURCE CATEGORIES:

Data collected from each applicable individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N12290-1

SYSTEM NAME:

Record System for Civilian Employees of Nonappropriated Fund (NAF) Activities

SYSTEM LOCATION:

Primary System-Naval Military Personnel Command, Washington, D.C. 20370; and local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses); National Personnel Records Center, St. Louis, Missouri 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees of Nonappropriated Fund Activities under the cognizance of the Commander, Naval Military Personnel Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records pertaining to performance, employment, pay, classification, security clearance, personnel actions, medical, insurance, retirement, tax withholding information, exemptions, unemployment

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compensation, employee profile, education, benefits, discipline and administration of nonappropriated fund civilian personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301. Department Regulations
Public Law 92-392
Fair Labor Standards Act, as amended

PURPOSE(S):

To manage, supervise, and administer the nonappropriated fund civilian personnel program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

When required by Federal Statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, mirofiche, or microfilm.

RETRIEVABILITY:

Records may be retrieved by name, social security account number and/or activity number.

SAFEGUARDS:

Computer and punched card progessing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5b, subj: Disposal of Navy and Marine Corps Records, or Departmental Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Military Personnel Command, Department of the Navy, Washington, D.C. 20370

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command, (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities).

The letter should contain full name, social security number, activity at which employed, and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB#2), Rm 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy and Department of Defense in the performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; previous employers; educational institutions; employment agencies; civilian and military investigative reports; general correspondence concerning individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N12290-2

SYSTEM NAME:

Models for Organizational Design and Staffing (MODS)

SYSTEM LOCATION:

Chief of Naval Operations (OP-16), and Navy Department Staff, Headquarters, and field activities employing civilians; also at contractor facilities; mailing addresses are provided in the Navy Department directory published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian employees paid from appropriated funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated and manual files contain information on individual's proficiencies and knowledges as reported in self-evaluation questionnaires vouchered by the supervisor, as well as data on the requirements of specific jobs submitted by the supervisor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 301 Departmental Regulations

PURPOSE(S):

To test the operational usefulness of a staffing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Office of Personnel Management in the performance of their duties related to staffing and/or evaluation of civilian manpower programs.

To the University of Texas faculty and students working under a contract relating to MODS to monitor progress of research study.

To Carnegie-Mellon University faculty and students working under contract relating to MODS to assist in research project.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tape and drum, and optical scanner forms and computer printouts.

RETRIEVABILITY:

Accessed by social security number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained so long as personnel continue to work at same activity.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350.

NOTIFICATION PROCEDURE:

Request by correspondence should be addressed to the Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350 or

Manpower Management, Department of the Navy, Washington, D.C. 20360 or to the head of the Navy activity at which the individual is or was employed. Written requests for information must contain full name of individual, current verbal information that could be verified

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

First-line supervisors and personnel automated data system (PADS).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N12300-1

SYSTEM NAME:

Employee Assistance Program Case Record System

SYSTEM LOCATION:

Chief of Naval Operations (Code 14), Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC), NCPC Field Division; and navy staff, Headquarters and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

System is comprised of case records on employees who are patients (counselees) which are maintained by individual counselors and consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, emotional, or other personal problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Drug Abuse Office and Treatment Act of 1972, as amended by Public Law 93-282 (21 U.S.C. 1175); Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Public Law 93-282 (42 U.S.C. 4582); Subchapter A of Chapter I, Title 42, Code of Federal Regulations.

PURPOSE(S):

Used by the Navy counselor in the execution of his/her counseling function as it applies to the individual patient (counselee).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of this recompilation do not apply to this system of records.

With specific written authority of the patient, selected information may be provided to and used by other counselors for the purpose of treatment and diagnosis of the patient.

To medical personnel to the extent necessary to meet a bonafide medical emergency.

To government personnel for the purpose of obtaining benefits to which the patient is entitled.

To qualified personnel for the purpose of conducting scientific research, management of financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose identities in any manner.

To a court of competent jurisdiction upon authorization by an appropriate order after showing good cause therefore. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

To employers and patient representatives such as legal counsel, when disclosure is to the patient's benefit, such as for processing retirement applications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

By employee name or by locally assigned identifying number.

SAFEGUARDS:

All records are stored under strict control. They are maintained in spaces normally accessible only to authorized persons, normally in locked cabinets.

RETENTION AND DISPOSAL:

Records are purged of patient identifying information within five years after termination of counseling.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), and employee assistance program Administrators at Department of the Navy Staff, headquarters and field activity levels.

NOTIFICATION PROCEDURE:

Request by correspondence should be addressed to the Chief of Naval Operations (OP-14) or to the appropriate employee assistance program administrator. The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Counselors; other officials, individuals or practitioners; and other agencies both in and outside of Government.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N12593-1

SYSTEM NAME:

Living Quarters and Lodging Allowance

SYSTEM LOCATION:

Overseas organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Appropriated and non-appropriated fund U.S. civilian employees eligible for allowance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, grade, address, rent and utility expenses, living quarters and lodging allowance, and name of family and/or members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive order number 10603 of 9 January 1961, Executive order number 10970 of 27 October 1961, Executive order number 10653 of 27 November 1959, and executive order number 10982 of 25 December 1961, as implemented by State Department regulation.

PURPOSE(S):

Used by civilian personnel office to record employee's living quarters or temporary lodging allowance entitlement. Other users include Naval Supply Depot Payroll Office, the employing office, disbursing office; Commander, Fleet Activities FPO Seattle 98762.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials of the Department of State for the purpose of monitoring the level of allowances that Navy is authorized.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

File folders maintained by surname.

SAFEGUARDS:

Personnel screening and visitor control.

RETENTION AND DISPOSAL:

Files retained for a period of two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Overseas commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

A copy of living quarters allowance is provided to each employee.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official personnel files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N12711-1

SYSTEM NAME:

Labor Management Relations Records System

SYSTEM LOCATION:

Chief of Naval Operations (Code 14), Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC), NCPC Field Division; and navy staff, headquarters and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian employees paid from appropriated and non-appropriated funds, who are involved in a grievance which has been referred to an arbitrator for resolution; Navy civilian employees involved in the filing of an Unfair Labor practice complaint which has been referred to the Federal Labor Relations Authority; union officials; union stewards; and representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records comprise: Manual files, maintained in paper folders, manually filed by type of case and case number (not individual). Folder contains all information pertaining to a specific arbitration case or specific Unfair Labor Practice with whom Navy has dealings; field activities maintain manual roster of local union officials and union stewards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 7101-7135

PURPOSE(S):

To manage the Labor-Management Relations Program, e.g.: administration/implementations of arbitration awards; interpretation of P.L. 95-454 through 3rd party case decisions; national consultation and other dealings with recognized unions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To representatives of the Office of Personnel Management on matters relating to the inspection, survey, audit, or evaluation of Navy Civilian Personnel Management Programs.

To the Comptroller General or any of his authorized representatives, in the course of the peformance of duties of the General Accounting Office relating to the Navy's Labor Management Relations Program.

To a duly appointed hearing examiner or arbitrator for the purpose of conducting a hearing in connection with an employee's grievance.

To an arbritrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in paper folders.

RETRIEVABILITY:

Manual records are retrieved by case subject, case number, and/or individual employee names.

SAFEGUARDS:

All manual files are accessible only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Case files are permanently maintained. Union official rosters are normally destroyed after a new roster has been established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), Department of the Navy, Washington, D. C. 20390.

NOTIFICATION PROCEDURE:

Request by corresponent should be addressed to the Chief of Naval Operations (OP-14), Department of the Navy, Washington, D. C. 20390; field activities.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Navy civilian personnel offices; arbitrator's office; Office of the Assistant Secretary of Labor for Labor-Management Relations; union headquarters offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N12771-1

SYSTEM NAME:

Employee Grievances, Discrimination Complaints, and Adverse Action Appeals.

SYSTEM LOCATION:

Employee Appeals Review Board Ballston Tower 2 801 N. Randolph St. Arlington, Va. 22203

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present civilian employees of the Department of the Navy, and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The case files contain background material on the act or situation complained of; the results of any investigation including affidavits and depositions; records of personnel actions involved; transcripts of hearings held; Examiners' reports of findings and recommended actions; advisory memoranda from CNO, BUPERS, DOD, SYSCOMS; SECNAV decisions; reports of actions taken by local activities; comments by EARB or local activities on appeals made to EEOC; EEOC decisions, Court decisions, Comptroller General decisions. Brief summaries of case files are maintained on index cards

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Sections 1301, 3301, 3302, 7151-7154, 7301, and 7701

PURPOSE(S):

This information is used by the EARB to adjudicate cases. SYSCOMS, CNO and NCPC are internal users for informational/implementational purposes. Individual members acting on behalf of the individual involved are supplied with copies of decisions and other appropriate background material. Grievants and appellants are furnished SECNAV decisions, with copies to their representatives. EEO complainants are furnished SECNAV decisions, with copies of the hearing transcripts and Examiners' reports; complainants' representatives are provided copies of SECNAV decisions on grievances and appeals. Activities involved in EEO complaints are provided copies of SECNAV decisions, hearing transcripts, and Examiners' reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the EEOC to adjudicate cases.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and index cards.

RETRIEVABILITY:

Name

SAFEGUARDS:

Classified material kept in locked safe. Other materials are kept in file cabinets within the EARB Administrative Offices. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employees security guards.

RETENTION AND DISPOSAL:

Case files maintained for one year and sent to the Washington National Records Center, 4205 Suitland Rd, Suitland, Md. 20409; and maintained for four years. EEOC decisions and index cards are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph St., Arlington, VA 22203. Must provide full name, employing office, and appropriate identification card.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information in the file is obtained from former and present civilian employees of the DON, applicants for employment with the DON, employing activities, EEOC, NCPC.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N12771-2

SYSTEM NAME:

Employee Relations Including Discipline, Employee Grievances, Complaints, etc.

SYSTEM LOCATION:

Chief of Naval Operations (OP-14), Naval Civilian Personnel Command (NCPC), NCPC Fields Divisions, Navy and Navy Staff Headquarters and Field Activities employing civilians, Commandant of the Marine Corps (Codes MPC-30/HQSG), and Marine Corps Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps civilian employees, paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom discipline, grievances, and complaints records exist. discrimination complaints of Navy and Marine Corps civilian employees, paid from appropriated and non-appropriated funds, applicants for employment and former employees in appropriated and non-appropriated positions. appeals of Navy and Marine Corps civilian employees paid from appropriated funds. Filipino employee appeal case files ('Filipinos who are lawfully admitted residents.') Cases reviewed by CINCPAC under Filipino Employment Policy Instructions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual files, maintained in paper folders, contain copies of documents and information pertaining to discipline, grievances, complaints, and appeals. Management operation record system consisting of manual file maintained by immediate supervisors and high level managers concerning employee performance, capability, informal discipline, attendance, leave and

tardiness, work assignments, and similar work related employee records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration, amended by Executive Order 10577 and Executive Order 12106; Executive Order 12107; 5 USC 1205,1206,1206,1302,3301,3302,7105,7512, relevant portions of the Civil Service Reform Act, P.L. 95-454; 42 U.S.C. Sec 2000e-116 et. seq.; Equal Employment Opportunity Act of 1972, P.L. 93-259, amendment to the Fair Labor Standards Act, 29 U.S.C. Sec 201, et. seq.; Age Discrimination and Employment Act, 29 U.S.C. Sec 633a; the Rehabilitation Act of 1978 as amended, 29 USC 791 and 794a.

PURPOSE(S):

To manage civilian employees in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To Representatives of the Office of Personnel Management on matters relating to the inspection, survey, audit or evaluation of Navy and Marine Corps civilian personnel management programs or personnel actions, or such other matters under the jurisdiction of the Office of Personnel Management.

To appeals officers and complaints examiners of the Merit Systems Protection Board and Equal Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To disclose information on any source from which additional information is requested in the course of processing a grievance or appeal to the extent necessary to identify the individual, to inform the source of the purpose(s) of the request and identify the type of information requested.

To disclose information to a federal agency in response to it's request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Administration in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in paper folders.

RETRIEVABILITY:

Manual records are filed by last name.

SAFEGUARDS:

All records are stored under strict control, and are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Manual records are destroyed upon separation of the employee from the activity, or in accordance with appropriate record disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350. For the Marine Corps civilian personnel, the Commandant of the Marine Corps (Code M), HQS, US Marine Corps (Arlington Annex), Washington, DC 20380

NOTIFICATION PROCEDURE:

Request of correspondence should be addressed to the Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350, or the Commandant of the Marine Corps (Code M), HQS, US Marine Corps (Arlington Annex), Washington, DC 20380, commanding officers or heads of navy staff hqs and field activities. The letter should contain the full name, social security number, and signature of the requester. The individual may visit the Chief of Naval Operations (OP-14), of the Navy or USMC activity at which he or she is employed.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N12930-1

SYSTEM NAME:

Industrial Relations Personnel Records

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, N.Y. 10305 (Central Offices for all Navy Exchanges). Personnel records of employees of the central office and in the Navy Resale System activities employing Civilians paid from non-appropriated funds.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian Employees, former civilian employees and applicants for employment with the Navy Resale and Services Support Office and Navy Exchanges located worldwide. Employee categories paid from non-appropriated funds are: regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to: Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination; Indoctrination Checklist; Designation of beneficiary; death benefit; leave records; report of accident; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee

grievances; official work performance rating; designation of beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of NSA and NIS reports); travel requests,travel allowance and claims record; transportation agreements; employee affidavit; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include: Notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions; data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, Beneficial Suggestions and similar awards; and personnel listings of the aforementioned services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 and 10 USC 5031.

PURPOSE(S):

To provide a basis by which an employee or an applicant may be determined to be suitable for employment, transfer, promotion or retention in employment; for verification of employment; to provide a record of travel performed and verification that the employees receive proper renumeration for the travel performed; to insure employees received timely consideration in the processing of work/appraisals and salary increases; for recognition of accomplishments and contributions by employees, and in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to it's request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Administration in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: file folders; magnetic tapes; disks; punch cards; rolodex files; cardex files; ledgers; and printed reports.

RETRIEVABILITY:

Name and/or social security number; employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also locked cabinets in locked offices supervised by appropriate personnel; supervised computer tape library which is accessible only through the Computer Center (entry to the computer center is controlled by a combination lock known by authorized personnel only; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the appropriate personnel offices; records on former employees are retained for one year and then forwarded to the Federal Records Center, St. Louis, Mo. for retention of permanent papers and destruction of temporary papers. Applicant files are retained for one year. Navy Exchange records retention standards are contained in the Disposal of Navy and Marine Corps Records Part II, chapters 3 and 5 in the Navy Exchange Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, N.Y. 10305

Record Holder: Manager, Recruitment and Employment (IRD3), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, N.Y. 10305

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, N.Y. 10305

In initial inquiry, the requester must provide full name, social security number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigative results and information provided by appropriate investigative agencies of the Federal Government.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(5) and (6), as applicable. For additional information contact the System Manager.

N12930-2

SYSTEM NAME:

Area Coordinator Information and Operation Files

SYSTEM LOCATION:

Chief of Naval Operations (Code 16), Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC), NCPC Field Division; and Navy staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, paid from appropriated and non-appropriated funds, military personnel or private citizens affected by or involved in action of area coordination significance, and speakers, specialists and other interested participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

System is composed of but not limited to records compiled in accordance with regulations, correspondence regarding status of EEO investigations, index file of program administration and interested participants including ad hocs, summaries compiled for budget administration, biographies of speakers or of key officials obtained from individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To manage civilian personnel and special projects related to civilian employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To representatives of the Office of Personnel Management on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs or personnel actions, or such other matters under the jurisdiction of the Office of Personnel Management.

To a duly appointed Hearing Examiner or Arbitrator (an employee of another Federal agency) for the purpose of conducting a hearing in connection with an employee's grievance.

To an arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper file folders, list finders, index cards, or logs or other indexing systems.

RETRIEVABILITY:

Records are retrieved by subject matter, or by name.

SAFEGUARDS:

Records are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained for varying lengths of time as required by local regulations; some records may be maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), and the heads of Navy Staff, Headquarters, and field activities employing civilians. Addresses are provided in the Department of the Navy directory published in the Federal Register.

NOTIFICATION PROCEDURE:

Requests by correspondence or in person should be made to the Chief of Naval Operations (OP-14), or to the head of the nearest Navy activity or to the Navy activity with which the individual is employed or serves as a contact point or participates with in matters relating to the program of his interest. Correspondence should contain the full name, social security number and signature of the requestor. For personal visits, proof of identification will consist of a Department of Defense or Navy building pass or identification badge or drivers license or other types of identification bearing his signature or picture or by providing information which may be verified against the record. Addresses of these activities are in the directory of Department of the Navy mailing addresses.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Navy Civilian Personnel Offices and their representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N12930-1

SYSTEM NAME:

Career Development Program for Communicators

SYSTEM LOCATION:

Commander Naval Telecommunications Command Naval Telecommunications Command (NAVTELCOM) Headquarters 4401 Massachusetts Avenue, N.W. Washington, D.C. 20390

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian employees of NAVTELCOM in GS-303 series

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaire completed by employees giving name, duty, work and education experience, birth date, grade level, telephone number (work)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Departmental Regulations

PURPOSE(S):

To implement and manage the Naval Telecommunications Command Career Development Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders

RETRIEVABILITY:

Name

SAFEGUARDS:

Safes and vaults

RETENTION AND DISPOSAL:

Records destroyed by burning upon separation of employee

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Telecommunications Command, 4401 Massachusetts Avenue, N.W., Washington, D.C. 20390 Civilian Manpower Coordinator, NAVTELCOM, same address

NOTIFICATION PROCEDURE:

Provide name to Civilian Manpower Coordinator, address above, Room 138, with routine ID card, driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Questionnaire completed by employee

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N12950-3

SYSTEM NAME:

Payroll and Employee Benefits Records

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former civilian employees with the Navy Resale and Services Support Office and Navy Exchanges located world-wide. (Payroll and benefits information) Civilian employees and former civilian employees of Coast Guard exchanges, clubs and messes and US Navy civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Distribution reports; tax reports; leave accrual reports; earnings records cards, payroll registers; insurance records and reports regarding property damage, personal injury or death, group life, disability, medical and retirement plan; payroll savings authorization; record of payroll savings; overtime authorization; Treasury Department tax withholding exemption certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 and 10 USC 5031

PURPOSE(S):

To calculate pay; prepare checks for distribution; prepare education registers; leave records; to submit federal and state tax reports; to record contributions to benefit plans; to process all insurance claims; to calculate retirement benefits upon request of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the insurance carriers and the U.S. Department of Labor, Bureau of Employees Compensation.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: Magnetic tape files; card files; file folders; ledgers; and printed reports.

RETRIEVABILITY:

Name and/or social security number; employee job number; employee payroll number.

SAFEGUARDS:

Locked file cabinets; safes; locked offices which are supervised by appropriate personnel, when open; security guards; supervised computer tape library which is accessible only through the computer center (entry to computer center is controlled by a combination lock known by authorized personnel only).

RETENTION AND DISPOSAL:

Permanent records-maintained for five years and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official Commander Navy Resale and Services Support Office Fort Wadsworth Staten Island, New York 10305

Record Holder Risk Manager Navy Resale and Services Support Office Fort Wadsworth Staten Island, New York 10305

Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office Fort Wadsworth Staten Island, New York 10305

In the initial inquiry the requester must provide full name, social security number, activity where last employed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The employee of former employee; payroll department; the employee's supervisor and the employee's physician or insurance carrier's physician.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NONE

N12950-4

SYSTEM NAME:

Naval Audit Personnel Development System

SYSTEM LOCATION:

Naval Audit Service Headquarters, P.O. Box 1206, Falls Church, Virginia, 22041

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel employed by the Naval Audit Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee audit experience and historical career development data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations

PURPOSE(S):

To identify audit task assignments; monitor future career development; and forecast talent requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape

RETRIEVABILITY:

Name, SSN

SAFEGUARDS:

Computer System Software; code word access.

RETENTION AND DISPOSAL:

Records retained until employee retires, is deceased, or leaves Audit Service for other employment; record is then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Audit Service is overall policy official; Director, Education and Training Division has direct control; Naval Audit Service HQ, Falls Church, Va 22041

NOTIFICATION PROCEDURE:

Apply to System Manager

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned. Standard civilian personnel files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N12950-5

SYSTEM NAME:

Navy Civilian Personnel Data System (NCPDS)

SYSTEM LOCATION:

Chief of Naval Operations (Codes 14 and 16), Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC), Naval Military Personnel Command (NMPC), NCPC Field Divisions; operating civilian personnel offices and Navy commands and management offices; and the Navy Regional Data Automation Center (NARDAC) and its designated contractors. The addresses of the activities are furnished in the Department of the Navy Directory published in the Federal Register. Included in this notice are those records duplicated for retrievability at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Navy civilian employees paid from appropriated and non-appropriated funds and foreign national direct and indirect hire employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises automated and non-automated records describing and identifying the employee (e.g., name, social security account number, sex, birth date, minority designator, citizenship, physical handicap code); the position occupied and the employee's qualifications; salary and salary basis or other compensation and allowances; employee's status in relation to the position occupied and the organization to which assigned; tickler dates for impending changes in status; education and training records; previous military status; functional code; previous employment record; performance appraisal and other data needed for screening and selection of an employee; referral records; professional licenses and publications; and reason for position change or other action affecting the employee and case files pertaining to EEO, MSPB, labor and employee relations, and incentive awards. The records are those found in the NCPDS subsystems: the Navy Automated Civilian Manpower Information System (NACMIS), the Training Information Management System (TIMS), the Personnel Automated Data System (PADS), the Computerized Employee Management Program Administration and Research (CEMPAR), the OP-14/NCPC Customer Support Centers, the Executive Personnel Management Information System (EPMIS) and the NCPDS base level and Headquarters systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 4118; Executive Order 9397; 5 U.S.C. 2951; Executive Order 10450; 42 U.S.C. 2000e, 5 U.S.C. 3135, 5 U.S.C. 4301, et. seq., 5 U.S.C. 4501 et. seq., 5 U.S.C. 4705 and Subparts D, E, F, and G of Title 5, U.S.C. and 29 CFR Part 1613 et. seq.

PURPOSE(S):

To manage and administer the Department's civilian personnel and civilian manpower planning programs and in the design, development, maintenance and operation of the automated system of records. Designated contractors of the Department of the Navy and defense in the performance of their duties with respect to equipment and system design, development test, operation and maintenance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of Executive Branch agencies.

To officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for vacant positions.

To representatives of the United States Department of Labor on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice training programs or on other such matters under the jurisdiction of the Labor Department.

To representatives of the Veterans Administration on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice and on-the-job training program.

To contractors or their employees for the purpose of automated processing of data from employee personnel actions and training documents, or data collection forms and other documents.

To a duly appointed hearing examiner or arbitrator in connection with an employee's grievance.

To an appointed complaints examiner for the purpose of conducting a hearing in connection with an employee's formal Equal Employment Opportunity (EEO) complaint.

To officials and employees of schools and other institutions engaged to provide training.

To labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

To representatives of the Federal Labor Relations Authority.

To representatives of the Merit Systems Protection Board.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system and its subsystems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape, disc, drum and punched cards and computer printouts. Manual records are stored in paper file folders.

RETRIEVABILITY:

Information is retrieved by SSN or other similar substitute if there is no SSN, position number, name, or by specific employee characteristics such as date of birth, grade, occupation, employing organization, tickler dates, academic specialty level.

SAFEGUARDS:

The computer facility and terminal are accessible only to authorized persons that have been properly screened, cleared and trained. Manual and automated records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Input documents are destroyed after data are converted to magnetic medium. Information is stored in magnetic medium within the ADP system. Information recorded via magnetic medium will be retained permanently. For TIMS and the apprentice programs the computer magnetic tapes are permanent. Manual records are maintained on a fiscal year basis and are retained for varying periods from 1 to 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), Department of the Navy and the commanding officers of the employee's activity.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the SYSMANAGER or to the civilian personnel officer under his cognizance. Requests must be accompanied by the individual's full name, social security number and name of employing activity. Requesters may visit the civilian personnel office of the naval activity covered by the system to obtain information. In such case proof of identity will consist of full name, social security account number and a third positive identification such as driver's license, Navy building pass or identification badge, birth certificate, Medicare card, etc. Address of the activity is furnished in the Department of the Navy directory of mailing addresses published in the Federal Register.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Categories of sources of records in the system are: the civilian personnel office of the employing activity; the payroll office; NCPC headquarters; the security office of the employing activity; line managers, other designated officials and supervisors; the employee and persons named by the employee as references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N12990-4

SYSTEM NAME:

Computer Assisted Manpower Analyses System (CAMAS)

SYSTEM LOCATION:

Chief of Naval Operations (Op-14), and Navy Department Staff, headquarters, and field activities employing civilians; mailing addresses are provided in the Navy Department directory published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian employees paid from appropriated funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain records from the Personnel Automated Data System (PADS) which contain job related data including individual identification, location information, and salary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 301 Departmental Regulations

PURPOSE(S):

To aggregate manpower planning, including calculating transition rates, forecasting number of retirements, and running models to determine the extent to which projected manpower requirements can be met.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tape and disc.

RETRIEVABILITY:

Accessed by social security number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20390.

NOTIFICATION PROCEDURE:

Request by correspondence should be addressed to the Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350. Written requests for information must contain full name of the individual, current address and telephone number, and birth date and social security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel Automated Data System (PADS)

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

DIRECTORY OF DEPARTMENT OF THE NAVY MAILING ADDRESSES

Assistance in obtaining any Navy mailing address not included in the following directory may be obtained from:

Chief of Naval Operations
(Op-09B30)
Navy Department
Washington DC 20350

Such assistance concerning any Marine Corps address may be obtained from:

Commandant of The Marine Corps
(Code MPI)
Washington DC 20380

ALASKA

Commanding Officer
Naval Arctic Research Laboratory
Barrow AK 99723

ARIZONA

Commanding Officer
Marine Corps Air Station
Yuma Arizona 85364

CALIFORNIA

Director
Navy Office of Information
Los Angeles Branch
11000 Wilshire Blvd Rm 10201
Los Angeles CA 90024
Commanding Officer
Naval Hospital
7500 E. Carson Street
Long Beach CA 90822
Commanding Officer
Naval Dental Clinic
Long Beach CA 90822
Commanding Officer
Naval Legal Service Office
Naval Station
Long Beach CA 90822
Commanding Officer
Personnel Support Activity
Long Beach CA 90822-5001
Director Consolidated
Civilian Personnel Office
Naval Station
Long Beach CA 90822
Commanding Officer
Office of Naval Research
Branch Office
1030 East Green St
Pasadena CA 91106
Commanding General
I Marine Amphibious Force FMF
Camp Pendleton CA 92055
Commanding General
Marine Corps Base
Camp Pendleton CA 92055
Commanding Officer
Naval Dental Clinic
Camp Pendleton CA 92055
Commanding Officer
Naval Hospital
Camp Pendleton CA 92055
Commanding General
1st Marine Division FMF
Camp Pendleton CA 92055
Commanding General
4th Marine Division FMF
US Marine Corps Reserve
Camp Pendleton CA 92055
Director
Naval Audit Service
Western Region
1220 Pacific Highway
San Diego CA 92132
Commander
Naval Base
San Diego CA 92132
Commander
Naval Base San Francisco
Naval Base
San Diego CA 92132
Commander
Fleet Accounting And Disbursing Center
U.S. Pacific Fleet
San Diego CA 92132
Commanding Officer
Naval Education and
Training Support Center Pacific
Fleet Station Post Office Bldg
San Diego CA 92132
Commander
Naval Reserve Readiness Command
Region Nineteen
960 North Harbor Drive
San Diego CA 92132
Commanding Officer
Navy Manpower and Material
Analysis Center
Pacific
San Diego CA 92132
Commanding Officer
Human Resource Management Center,
San Diego
Naval Training Center
San Diego, CA 92133
Commanding Officer
Personnel Support Activity
Naval Training Center
San Diego, CA 92133
Commanding Officer
Naval Medical Command
Southwest Region
San Diego CA 92134
Commanding Officer
Navy Drug Screening Laboratory
Naval Hospital
Bldg 10
San Diego, CA 92134
Commanding Officer
Naval Hospital
San Diego, CA 92134
Commanding Officer
Naval School of Health Sciences
San Diego, CA 92134
Commanding Officer
Naval Air Station
North Island
San Diego CA 92135
Commanding Officer
Navy Regional Data Automation Center
Naval Air Station
North Island
San Diego CA 92135
Commander Naval Air Force
US Pacific Fleet
Naval Air Station North Island
San Diego CA 92135
Commanding Officer
Personnel Support Activity
San Diego, CA 92136
Commanding Officer
Naval Alcohol Rehabilitation Center
Naval Station
San Diego CA 92136-5060
Commanding Officer
Naval Legal Service Office
Naval Station
San Diego CA 92136
Commanding Officer
Naval Dental Clinic
San Diego CA 92136-5147
Commanding Officer
Naval Medical Clinic
Naval Station
San Diego, CA 92136
Commanding Officer
Naval Station
San Diego Calif 92136
Commanding Officer
Naval Health Research Center
P O Box 85122
San Diego CA 92138
Commanding General
Marine Corps Recruit Depot
San Diego CA 92140
Commanding Officer
Naval Air Station
Miramar
San Diego CA 92145
Commanding Officer
Naval Drug Rehabilitation Center
Naval Air Station, Miramar
San Diego CA 92145
Commander Training Command
US Pacific Fleet
San Diego CA 92147
Commander
Naval Ocean Systems Center
San Diego CA 92152
Commanding Officer
Navy Personnel Research and
Development Center
San Diego CA 92152
Commander Amphibious Group
Eastern Pacific
Naval Amphibious Base Coronado
San Diego CA 92155
Commanding Officer
Naval Amphibious Base Coronado
San Diego CA 92155
Commander
Naval Surface Force
US Pacific Fleet
San Diego CA 92155
Director
Naval Civilian Personnel Command
Southwest Region
880 Front St Room 5-S-29
San Diego CA 92188
Commanding General
Force Troops
Fleet Marine Force Pacific
Marine Corps Base
Twentynine Palms CA 92278
Commanding General
Marine Corps Base
Twentynine Palms CA 92278
Commanding General
Marine Corps Logistics Base
Barstow CA 92311

Commander
Marine Corps Air Bases Western Area
Marine Corps Air Station
El Toro, Santa Ana CA 92709
Commanding General
Marine Corps Air Station El Toro
Santa Ana CA 92709
Commanding General
Marine Aircraft Wing 46
Marine Corps Air Station El Toro
Santa Ana CA 92709
Commanding Officer
Marine Corps Air Station
(Helicopter)
Santa Ana CA 92710
Commanding Officer
Naval Air Station
Point Mugu CA 93042
Commanding Officer
Naval Medical Command
Port Hueneme, CA 93043
Commanding Officer
Naval Hospital
Le Moore, CA 93246
Commander
Naval Weapons Center
China Lake CA 93555
Director
Defense Resources Management
Education Center
Naval Postgraduate School
Monterey, CA 93940
Director
Manpower Research and Data Analysis
Center
Naval Postgraduate School
Monterey, CA 93940
Superintendent
Naval Postgraduate School
Monterey CA 93940
Commanding Officer
Naval Air Station
Moffett Field CA 94035
Director
Naval Civilian Personnel Command
Northwest Region
525 Market St
San Francisco CA 94105
Commanding Officer
Personnel Support Activity
San Francisco
Bldg 1 Treasure Island
San Francisco CA 94130
Director
Navy Office of Information
San Francisco Branch
San Francisco CA 94130
Director
12th Marine Corps District
Naval Support Activity, Treasure Island
San Francisco CA 94130
Commanding Officer
Naval Legal Service Office
Naval Station
Treasure Island
San Francisco CA 94130
Commanding Officer
Naval Dental Clinic
San Francisco CA 94130
Commander
Naval Reserve Readiness Command
Region Twenty Bldg 1 Naval Station
Treasure Island
San Francisco CA 94130
Officer in Charge
Navy Disease Vector Ecology and
Control Center
Naval Air Station
Alameda CA 94501
Commanding Officer
Naval Air Station
Alameda Calif 94501
Commanding Officer
Navy Regional Data Automation Center
San Francisco
Naval Air Station
Alameda CA 94501
Commanding Officer
Naval Support Activity Mare Island
Vallejo CA 94592
Officer in Charge
Naval Biosciences Laboratory
Naval Supply Center
Oakland CA 94625
Commander
Naval Medical Command
Northwest Region
Oakland CA 94627
Commanding Officer
Naval Hospital
Oakland CA 94627
Commanding Officer
Navy Drug Screening Laboratory
8750 Montain Blvd
Oakland CA 94627

CONNECTICUT

Commanding Officer
Regional Accounting and Disbursing
Center
Groton CT 06340
Commanding Officer
Naval Security Group Activity
Box 90
Naval Submarine Base New London
Groton CT 06340
Director
Consolidated Civilian Personnel
Office Box 20
Naval Submarine Base New London
Groton CT 06340
Commanding Officer
Naval Submarine Medical Research
Laboratory
Naval Submarine Base New London
Groton CT 06349
Commanding Officer
Navy Legal Service Office
Box 10
Naval Submarine Base New London
Groton CT 06349
Commanding Officer
Naval Hospital
Groton CT 06349
Commanding Officer
Personnel Support Activity
New London Box 63
Naval Submarine Base New London
Groton CT 06349

DISTRICT OF COLUMBIA

Director
Marine Corps Institute
Marine Barracks
Washington DC 20003
Comptroller of the Navy
Navy Department
Washington DC 20350
Chief of Information
Navy Department
Washington DC 20350
Secretary of the Navy
Navy Department
Washington DC 20350
Chief of Legislative Affairs
Navy Department
Washington DC 20350
Under Secretary of the Navy
Navy Department
Washington DC 20350
Chief of Naval Operations
Department of the Navy
Washington DC 20350
Asst Secretary of the Navy
(Financial Management)
Navy Department
Washington DC 20350
Asst Secretary of the Navy
(Manpower & Reserve Affairs)
Navy Department
Washington DC 20350
Asst Secretary of the Navy
(Research, Engineering and Systems)
Navy Department
Washington DC 20350
Director
OpNav Support Activity
Washington DC 20350
Commander
Naval Electronic Systems Command
Naval Electronic Systems Command
Headquarters
Washington DC 20360
General Counsel
Navy Department
Washington DC 20360
Chief of Naval Material
Navy Department
Washington DC 20360
Commander
Naval Air Systems Command
Naval Air Systems Command
Headquarters
Washington DC 20361
Commander
Naval Sea Systems Command
Naval Sea Systems Command
Headquarters
Washington DC 20362
Commander
Naval Supply Systems Command
Naval Supply Systems Command
Headquarters
Washington DC 20376

Recorder
Board for Corrections of Naval Records
Navy Department
Washington DC 20370
Senior Member
Board of Decorations and Medals
Arlington Annex Room 3028
Navy Department
Washington DC 20370
Commander
Naval Military Personnel Command
Navy Department
Washington DC 20370
Officer in Charge
Personnel Support Activity
Detachment Crystal Mall 3 Room 100
Crystal City
Washington DC 20371
Commander
Naval Medical Command
Navy Department
Washington DC 20372
President
Board of Inspection and Survey
Navy Department
Washington DC 20372
Director Consolidated Civilian Personnel Office
Bldg 200 Washington Navy Yard
Washington DC 20374
Director
Department of Defense Computer Institute
Washington Navy Yard
Washinton DC 20374
Commandant
Naval District Washington
Washington Navy Yard
Washington DC 20374
Commanding Officer
Personnel Support Activity
Bldg 92
Naval District Washington
Washington DC 20374
Commanding Officer
Navy Medical Clinic
Washington Navy Yard
Washington DC 20374
Director
Naval Historical Center
Washington Navy Yard
Washington DC 20374
Commanding Officer
Naval Legal Service Office
Washington Navy Yard
Washington DC 20374
Commander
Naval Reserve Readiness Command Region Six
Washington Navy Yard
Washington DC 20374
Officer in Charge
Navy-Marine Corps Appellate Review Activity
Office of Judge Advocate General
Washington Navy Yard
Washington DC 20374
Officer in Charge
Navy Band
Washington Navy Yard
Washington DC 20374
Commander
Naval Data Automation Command
Washington Navy Yard
Washington DC 20374
Commanding Officer
Navy Regional Data Automation Center Washington
Washington Navy Yard
Washington DC 20374
Chief
Navy-Marine Corps Trail Judicary
Washington Navy Yard
Washington DC 20374
Commanding Officer
Naval Research Laboratory
Washington DC 20375
Director
CCPO Crystal City
1931 Jefferson Davis Highway
Crystal Mall 2
Washington DC 20376
Commander
Navy Accounting and Finance Center
Navy Department
Washington DC 20376
Commandant of the Marine Corps
Navy Department
Washington DC 20380
Director
Headquarters
Naval Investigative Service
Washington DC 20388
Commander
Naval Intelligence Command
4600 Silver Hill Road
Washington DC 20389
Commanding Officer
Naval Air Facility
Washington D C 20390
Superintendent
Naval Observatory
34th and Massachusetts Ave NW
Washington DC 20390
Commanding Officer
Naval Security Station
3801 Nebraska Ave NW
Washington DC 20390
Commander
Naval Telecommunications Command
4401 Massachusetts Ave N W
Washington DC 20390

FLORIDA

Commanding Officer
Regional Accounting and Disbursing Center
Jacksonville FL 32212
Commanding Officer
Navy Regional Data Automation Center Jacksonville
Naval Air Station
Jacksonville FL 32212
Commanding Officer
Naval Alcohol Rehabilitation Center
Naval Air Station
Jacksonville, FL 32212
Commander
Naval Base
Jacksonville FL 32212
Commanding Officer
Naval Legal Service Office
Naval Air Station
Jacksonville FL 32212
Commanding Officer
Navy Legal Service Trial Defense Activity
Box 107 Naval Air Station
Jacksonville FL 32212
Commanding Officer
Personnel Support Activity
Box 50
Naval Air Station
Jacksonville FL 32212
Officer in Charge
Navy Disease Vector Ecology and Control Center
Naval Air Station
Jacksonville FL 32212
Commanding Officer
Naval Dental Clinic
Jacksonville, FL 32212
Commander
Naval Reserve Readiness Command Region Eight
Bldg 90 Naval Air Station
Jacksonville FL 32212
Commanding Officer
Naval Medical Command Southeast Region
Jacksonville FL 32214
Commanding Officer
Navy Drug Screening Laboratory
Naval Hospital
Jacksonville FL 32214
Commanding Officer
Naval Hospital
Jacksonville FL 32214
Commanding Officer
Navy Legal Service Office
Box 217 Naval Station
Mayport FL 32228
Chief of Naval Education and Training
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Aerospace Medical Research Laboratory
Naval Air Station
Pensacola FL 32508
Commanding Officer
Personnel Support Activity
Naval Air Station
Pensacola FL 32508
Commanding Officer
Navy Regional Data Automation Center
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Legal Service Office
Naval Air Station
Pensacola, FL 32508

Commanding Officer
Naval Dental Clinic
Pensacola, FL 32508
Commanding Officer
Naval Education and Training
Program Development Center
Pensacola FL 32509
Commanding Officer
Naval Aerospace Medical Institute
Naval Air Station
Pensacola FL 32512
Commanding Officer
Naval Hospital
Pensacola FL 32512
Commanding Officer
Naval Dental Clinic
Orlando FL 32813
Commanding Officer
Naval Hospital
Orlando FL 32813
Commanding Officer
Personnel Support Activity
Orlando FL 32813
Commanding Officer
Naval Training Equipment Center
Orlando FL 32813
Commanding Officer
Naval Security Group Activity
Homestead FL 33039
Commanding Officer
Naval Medical Clinic
Key West FL 33040

GEORGIA

Commanding Officer
Naval Air Station Atlanta
Marietta GA 30060
Director
6th Marine Corps District
75 Piedmont Ave NE
Atlanta GA 30303
Director
Navy Office of Information
Atlanta Branch
1459 Peachtree St Suite 300
Atlanta GA 30309
Officer in Charge
Personnel Support Activity
Detachment
Navy Supply Corps School
Athens GA 30606
Petty Officer in Charge
Personnel Support Activity
Detachment
Naval Submarine Base
Kings Bay GA 31547
Commanding General
Marine Corps Logistics
Base Atlantic
Albany GA 31704

HAWAII

Director Consolidated
Civilian Personnel Office
Pearl Harbor
4300 Radford Drive
Honolulu HI 96818
Commander in Chief
US Pacific Fleet
Pearl Harbor HI 96860
Commander
Third Fleet
Pearl Harbor HI 96860
Commander
Naval Base Hawaii
Pearl Harbor HI 96860
Commanding Officer
Personnel Support Activity Hawaii
Box 202
Pearl Harbor HI 96860
Commander
Fleet Intelligence Center Pacific
Pearl Harbor HI 96860
Commanding Officer
Human Resources Management Center
Pearl Harbor
Pearl Harbor HI 96860
Commander Submarine Force
US Pacific Fleet
Pearl Harbor HI 96860
Commander
Naval Logistics Command
US Pacific Fleet
Pearl Harbor HI 96860
Commanding Officer
Naval Dental Clinic
Pearl Harbor HI 96860
Commanding Officer
Navy Medical Clinic
Pearl Harbor HI 96860
Officer in Charge
Navy Environmental and Preventative
Medicine Unit No 6 Box 112
Pearl Harbor HI 96860
Commanding Officer
Naval Western Oceanography Center
Box 113
Pearl Harbor HI 96860
Commanding Officer
Navy Data Automation Facility
Pearl Harbor HI 96860
Director
Naval Civilian Personnel Command
Pacific Region
Box 119
Pearl Harbor HI 96860
Commanding Officer
Naval Legal Service Office
Pearl Harbor HI 96860
Commanding General
Fleet Marine Force, Pacific
Camp H.M.Smith, HI 96861
Commander
Naval Medical Command
Pacific Region
Naval Air Station
Barbers Point HI 96862
Commanding Officer
Marine Corps Air Station
Kaneohe Bay HI 96863

ILLINOIS

Commanding Officer
Naval Air Station
Glenview IL 60026
Commander
Naval Base
Building 1
Great Lakes IL 60088
Commanding Officer
Naval Legal Service Office
Rm 230, Bldg 1
Great Lakes IL 60088
Commanding Officer
Naval Dental Clinic
Great Lakes IL 60088
Commanding Officer
Naval Medical Command
Northeast Region
Great Lakes IL 60088
Commanding Officer
Navy Drug Screening Laboratory
Naval Hospital
Bldg 200-H
Great Lakes IL 60088
Commanding Officer
Naval Hospital
Great Lakes IL 60088
Commanding Officer
Naval Dental Research Institute
Great Lakes IL 60088
Commander
Naval Reserve Readiness Command
Region Thirteen
Bldg 1 Naval Training Center
Great Lakes IL 60088
Commanding Officer
Personnel Support Activity
Naval Training Center
Great Lakes IL 60088
Commander
Navy Regional Finance Center
Great Lakes IL 60088
Director
Navy Office of Information
Chicago Branch
536 South Clark St Room 252
Chicago IL 60605
Commanding Officer
Office of Naval Research
Branch Office
536 S Clark St
Chicago IL 60605

STORAGE:

SAS
Director
9th Marine Corps District
10000 West 25th Street
Shawnee Mission KS 66204
Commander
Naval Reserve Readiness Command
Region 18
301 Navy Drive
Industrial Airport KS 66031

LOUISIANA

Commander
Naval Reserve Readiness Command
Region Ten
Bldg 11 Naval Support Activity

New Orleans LA 70142
Commanding Officer
Naval Air Station
New Orleans LA 70146
Commanding Officer
Naval Medical Clinic
New Orleans LA 70146
Director
8th Marine Corps District
New Orleans LA 70146
Commanding Officer
Personnel Support Activity
Naval Support Activity
Bldg 123
New Orleans LA 70146
Director
Naval Air Logistics Office
4400 Dauphne Street
New Orleans LA 70146
Commanding Officer
Navy Regional Data Automation Center
New Orleans
New Orleans LA 70146
Commanding Officer
Naval Support Activity
New Orleans LA 70146
Director Consolidated
Civilian Personnel Office
Naval Support Activity
New Orleans LA 70146
Chief of Naval Reserve
New Orleans LA 70146
Commanding Officer
Naval Reserve Personnel Center
New Orleans LA 70149
Commanding Officer
Enlisted Personnel
Management Center
New Orleans LA 70159
Commanding Officer
Naval Biodynamics Laboratory
P O Box 29407
New Orleans LA 70189

MARYLAND

Commander
David W. Taylor Naval Ship Research and Development Center
Bethesda, MD 20084
Commander
Naval Polar Oceonography Center
Suitland MD 20390
Commanding Officer
Naval Hospital
Patuxent River MD 20670
Commanding Officer
Naval Security Group Activity
Fort George G Meade MD 20755
Commanding Officer
Naval Medical Research and Development Command
Naval Medical Command NATCAP Region
Bethesda, MD 20814
Commanding Officer
Naval Medical Research Institute
Naval Medical Command
National Capital Region
Bethesda, MD 20814
Commanding Officer
Naval Hospital
Bethesda MD 20814
Commanding Officer
Naval Dental Clinic
Bethesda MD 20814
Commander
Naval Medical Command
National Capital Region
Bethesda MD 20814
Commanding Officer
Naval Medical Data Service Center
Naval Medical Command
National Capital Region
Bethesda, MD 20814
Commanding Officer
Naval School of Health Sciences
Naval Medical Command
National Capital Region
Bethesda, MD 20814
Commanding Officer
Naval Health Sciences Education and Training Command
Naval Medical Command NATCAP Region
Bethesda, MD 20814
Superintendent
Naval Academy
Annapolis MD 21402
Commanding Officer
Naval Station
Annapolis MD 21402
Commanding Officer
Naval Medical Clinic
Annapolis MD 21402

MASSACHUSETTS

Director
Navy Office of Information
Boston Branch
575 Technology Square 8th Floor
Cambridge MA 02139
Commanding Officer
Naval Air Station
South Weymouth MA 02190
Commanding Officer
Office of Naval Research
Eastern/Central Regional Office
Boston MA 02210

MICHIGAN

Commanding Officer
Naval Air Facility Detroit
MT Clemens MI 48043

MINNESOTA

Commander Naval Reserve
Readiness Command Region Sixteen
Bldg 715
Minn-St Paul International Airport
Minneapolis MN 55450

MISSISSIPPI

Commanding Officer
Naval Air Station
Meridian MS 39301
Governor
Naval Home
01800 East Beach Blvd
Gulfport MS 39501
Commander
Naval Oceonography Command
NSTL Station
Bay St Louis MS 39520
Commanding Officer
Naval Ocean Research and Development Activity
National Space Technology Labs
Bay St Louis MS 39520
Commanding Officer
Naval Oceonographic Office
NTSL Station
Bay St Louis MS 39520

MISSOURI

Director
Marine Corps Automated Services Center
1500 E Bannister Rd
Kansas City MO 64131
Director
Marine Corps Reserve Forces Administrative Center
1500 East Bannister Road
Kansas City MO 64131
Commanding Officer
Marine Corps Finance Center
Kansas City MO 64197

NEVADA

Commanding Officer
Naval Air Station
Fallon NV 89406

NEW HAMPSHIRE

Commanding Officer
Naval Medical Clinic
Portsmouth NH 03801

NEW JERSEY

Director
Naval Audit Service Northeast Region
Central Camden Parkade Bldg 215
30 North 5th Street
Camden NJ 08102

NEW YORK

Director
Navy Office of Information
New York Branch
663 Fifth Ave 3rd Floor
New York NY 10022
Commander
Navy Resale and Services Support Office
Fort Wadsworth
Staten Island NY 10305
Counsel New York Branch

Office of the General Counsel
Department of the Navy
Fort Wadsworth
Staten Island NY 10305
Officer in Charge
Navy Motion Picture Service
Flushing and Washington Aves
Brooklyn NY 11251
Director
1st Marine Corps District
605 Stewart Ave
Garden City
Long Island NY 11533
Commander
Naval Reserve Readiness Command
Region Two Bldg 1
Scotia NY 12302

NORTH CAROLINA

Commander
Marine Corps Air Bases Eastern Area
Marine Corps Air Station
Cherry Point NC 28533
Commanding General
Marine Corps Air Station
Cherry Point NC 28533
Commanding General
2nd Marine Aircraft Wing
Marine Corps Air Station
Cherry Point NC 28533
Commanding Officer
Naval Hospital
Cherry Point NC 28533
Commanding Officer
Marine Corps Air Station
(Helicopter)
New River
Jacksonville N C 28540
Commanding General
Force Troops Atlantic
2D Force Service Support Group FMF
Camp Lejeune NC 28542
Commanding General
Marine Corps Base
Camp Lejeune NC 28542
Commanding Officer
Naval Dental Clinic
Camp Lejeune NC 28542
Commanding Officer
Naval Hospital
Camp Lejeune NC 28542
Commanding General
2nd Marine Division FMF
Camp Lejeune NC 28542

OHIO

Director
Navy Family Allowance Activity
Anthony J. Celebrezze Federal Bldg.
1240 East 9th Street
Cleveland OH 44199
Commanding Officer
Navy Finance Center
Anthony J Celebrezze Federal Bldg
Cleveland OH 44199
Director
Personnel Support Activity
Navy Finance Center
Anthony J. Celebrezze Federal Bldg.
Cleveland OH 44199
Commander
Naval Reserve Readiness Command
Region Five Bldg 1033 USAAP
Ravenna OH 44266

PENNSYLVANIA

Commander
Naval Air Development Center
Warminster PA 18974
Commanding Officer
Naval Air Station
Willow Grove PA 19090
Commanding Officer
Naval Air Reserve Anti-Submarine
Warfare Training Center
Naval Air Station
Willow Grove PA 19090
Commander
Naval Base
Philadelphia PA 19112
Commanding Officer
Personnel Support Activity
Philadelphia PA 19112
Commander
Naval Base Boston
Philadelphia PA 19112
Commander
Naval Base New York
Philadelphia PA 19112
Commanding Officer
Naval Legal Service Office
Naval Base
Philadelphia PA 19112
Commanding Officer
Naval Dental Clinic
Philadelphia, PA 19112
Commander
Naval Reserve Readiness Command
Region Four Bldg 662 Naval Base
Philadelphia PA 19112
Director
Naval Civilian Personnel Command
Northeast Region
Bldg 75-3 Naval Base
Philadelphia PA 19112
Director
Consolidated Civilian Personnel
Office
Bldg 75 Naval Base
Philadelphia PA 19112
Director
4th Marine Corps District
Bldg 75 Naval Base
Philadelphia PA 19112
Commanding Officer
Naval Medical Material Support
Command, Bldg 1-9
17th St and Pattison Ave
Philadelphia PA 19145
Commanding Officer
Naval Hospital
17th St and Pattison Ave
Philadephia PA 19145

PUERTO RICO AND VIRGIN ISLANDS

Commanding Officer
Camp Garcia
Fleet Marine Force Atlantic
Vieques PR 00765

RHODE ISLAND

Commander
Naval Education and Training Center
Newport RI 02840
Commanding Officer
Naval Data Automation Facility,
Newport
Bldg 11 Naval Education and Training
Center
Newport RI 02840
Commanding Officer
Naval Dental Clinic
Newport RI 02841
Commanding Officer
Naval Hospital
Newport RI 02841
Commanding Officer
Naval Underwater Systems Center
Newport RI 02840
President
Naval War College
Newport RI 02840
Commanding Officer
Naval Legal Service Office
Naval Education and Training Center
Newport RI 02841
Commander
Naval Reserve Readiness Command
Region One Bldg 344
Naval Education and Training Center
Newport RI 02841
Commanding Officer
Naval Justice School
Newport RI,02841-5030
Commanding Officer
Personnel Support Activity
Naval Education and Training Center
Newport RI 02841

SOUTH CAROLINA

Commander
Naval Base
Charleston SC 29408
Commanding Officer
Naval Legal Service Office
Naval Base
Charleston SC 29408
Commanding Officer
Naval Dental Clinic
Charleston SC 29408
Commanding Officer
Naval Hospital
Charleston SC 29408
Commander
Naval Reserve Readiness Command
Region Seven
Naval Base
Charleston SC 29408
Commanding Officer
Naval Security Group Activity

Naval Base
Charleston SC 29408
Commanding Officer
Personel Support Activity
Charleston SC 29408
Commanding Officer
Polaris Missile Facility
Atlantic
Charleston SC 29408
Commanding Officer
Marine Corps Air Station
Beaufort SC 29902
Commanding Officer
Naval Hospital
Beaufort SC 29902
Commanding General
Marine Corps Recruit Depot
Parris Island SC 29905
Commanding Officer
Naval Dental Clinic
Parris Island SC 29905

TENNESSEE

Commander
Naval Reserve Readiness Command
Region Nine
Bldg E35 Naval Air Station Memphis
Millington TN 38054
Commanding Officer
Naval Legal Service Office
Naval Air Station Memphis
Millington TN 38054
Commanding Officer
Naval Hospital
Millington TN 38054
Chief of Naval
Technical Training
Naval Air Station
Memphis
Millington TN 38054
Commanding Officer
Personnel Support Activity
Naval Air Station Memphis (10)
Millington TN 38054

TEXAS

Director
Navy Office of Information
Dallas Branch Main Tower Bldg
1200 Main St Suite 230
Dallas TX 75202
Commanding Officer
Naval Air Station
Dallas TX 75211
Commander
Naval Reserve Readiness Command
Region Eleven
Bldg 11 Naval Air Station
Dallas TX 75211
Commanding Officer
Naval Air Station
Chase Field
Beeville TX 78102
Director
Naval Civilian Personnel Data
System Center
Randolph AFB TX 78150
Commanding Officer
Naval Air Station
Corpus Christi TX 78419
Chief of Naval Air Training
Naval Air Station
Corpus Christi TX 78419
Commanding Officer
Naval Legal Service Office
Naval Air Station
Corpus Christi TX 78419
Commanding Officer
Naval Hospital
Corpus Christi TX 78419
Commanding Officer
Personnel Support Activity
Naval Air Station
Corpus Christi TX 78419

VIRGINIA

Auditor General of the Navy P.O. Box
1206 Falls Church VA 22041
Director
Naval Audit Service Capital Region
PO Box 1206
Falls Church VA 22041
Director
Naval Audit Service Headquarters
PO Box 1206
Falls Church VA 22041
Commanding General
Marine Corp Development
and Education Command
Quantico VA 22134
Commanding Officer
Marine Security Guard Battalion
State Department
Quantico VA 22134
Commanding Officer
Naval Medical Clinic
Quantico VA 22134
Commanding Officer
Human Resource Management Center
Washington
1000 North Glebe Road
Arlington VA 22201
Director
Naval Civilian Personnel Command
Department of the Navy
800 N. Quincy St
Arlington VA 22203
Director
Naval Civilian Personnel Command
Capital Region
801 N. Randolph St.
Arlington VA 22203
Director
Naval Council of Personnel Boards
801 N. Randolph St
Arlington VA 22203
Commander
Navy Recruiting Command
4015 Wilson Boulevard
Arlington VA 22203
Commanding Officer
Headquarters Battalion
Headquarters US Marine Corps
Henderson Hall
Arlington VA 22214
Commanding Officer
Marine Security Guard Battalion
Headquarters (State Department)
US Marine Corps Henderson Hall
Arlington VA 22214
Chief of Naval Research
800 North Quincy St
Arlington VA 22217
Commanding Officer
Navy Petroleum Office
Cameron Station
Alexandria VA 22304-6180
Commander
Naval Legal Service
Department of the Navy
200 Stovall Street
Alexandria VA 22332
Judge Advocate General
Navy Department
200 Stovall Street
Alexandria VA 22332
Commanding Officer
Naval Civil Law Support Activity
200 Stovall Street
Alexandria VA 22332
Chief
Navy-Marine Corps Trial Judiciary
200 Stovall Street
Alexandria VA 22332
Commander
Naval Facilities Engineering
Command NAVFACENGCOM Hdqtrs
200 Stovall Street
Alexandria VA 22332
Commander
Naval Surface Weapons Center
Dahlgren VA 22448
Commanding Officer
Naval Security Group Activity
Northwest
Chesapeake VA 23322
Director
Naval Audit Service Southeast Region
5701 Thurston Ave
Virginia Beach VA 23455
Commanding Officer
Naval Medical Clinic
Norfolk VA 23508
Commander
Naval Medical Command
Mid-Atlantic Region
Norfolk, VA 23508
Commanding Officer
Human Resource Management Center,
Norfolk
5621-23 Tidewater Drive
Norfolk VA 23509
Officer in Charge
Personnel Support Activity Det
Atlantic Fleet Headquarters
Support Activity
Norfolk VA 23511
Commanding Officer
Camp Elmore
Marine Corps
Norfolk VA 23511
Commanding Officer
Naval Eastern Oceanography Center

Mcadie Bldg
Naval Air Station
Norfolk VA 23511
Commanding Officer
Fleet Accounting and Disbursing
Center U S Atlantic Fleet
Building 132 Naval Station
Norfolk VA 23511
Commanding Officer
Navy Environmental Health Center
Naval Station
Norfolk VA 23511
Officer in Charge
Navy Environmental and
Preventive Medicine Unit No 2
Norfolk VA 23511
Commanding officer
Personnel Support Activity
Norfolk VA 23511
Director
Fleet Home Town News Center
Norfolk VA 23511
Commanding Officer
Fleet Intellience Center
Europe and Atlantic
Norfolk VA 23511
Commanding General
Fleet Marine Force Atlantic/
Commanding General Fleet Marine
Force Europe (Designate)
Norfolk VA 23511
Commanding Officer
Naval Administrative Command
Armed Forces Staff College
Norfolk VA 23511
Commanding Officer
Naval Air Station
Norfolk VA 23511
Commanding Officer
Naval Alcohol Rehabilitation Center
Building J-50
Naval Station
Norfolk VA 23511
Commander
Naval Base
Norfolk VA 23511
Commanding Officer
Naval Education and Training
Support Center, Atlantic
Bldg Z-86, Naval Station
Norfolk VA 23511
Commanding Officer
Naval Legal Service Office
Naval Base
Norfolk VA 23511
Commanding Officer
Naval Dental Clinic
Norfolk VA 23511
Commander
Naval Safety Center
Naval Air Station
Norfolk VA 23511
Commanding Officer
Navy Drug Screening Laboratory
Naval Air Station
Bldg S-33
Norfolk VA 23511
Commander
Naval Surface Force
US Atlantic Fleet
Norfolk VA 23511
Commanding Officer
Navy Manpower and Material
Analysis Center
Atlantic
Commander
Oceanographic System Atlantic
Box 100
Norfolk VA 23511
Director
Naval Civilian Personnel Command
Southeast Region
Bldg A-67 Naval Station
Norfolk VA 23511
Director
Consolidated Civilian
Personnel Office
Bldg N-26 Naval Base
Norfolk VA 23511
Commanding Officer
Navy Regional Data Automation Center
Norfolk
Norfolk VA 23511
Commander
Submarine Force
US Atlantic Fleet
Norfolk VA 23511
Commander in Chief
US Atlantic Fleet
Norfolk VA 23511
Commander Naval Air Force
US Atlantic Fleet
Norfolk VA 23511
Commander Training Command
US Atlantic Fleet
Norfolk VA 23511
Commanding Officer
Naval Weapons Station
Yorktown, VA 23691-5000
Commanding Officer
Naval Ophthalmic Support and
Training Activity
Yorktown, VA 23690
Commanding Officer
Naval Hospital
Portsmouth VA 23708

WASHINGTON

Officer in Charge
Marine Corps Reserve Training Center
Naval Air Station
Seattle WA 98115
Commanding Officer
Naval Legal Service Office
Seattle WA 98115
Commander
Naval Reserve Readiness Command
Region Twenty-Two Bldg 9
Naval Support Activity
Seattle WA 98115
Commanding Officer
Naval Support Activity
Seattle WA 98115
Commanding Officer
Naval Medical Clinic
Naval Station
Seattle WA 98115
Commanding Officer
Naval Hospital
Oak Harbor WA 98278
Commanding Officer
Naval Dental Clinic
Bremerton, WA 98314
Commanding Officer
Naval Hospital
Bremerton WA 98314
Commanding Officer
Personnel Support Activity
Puget Sound (Bangor)
Bremerton WA 98315
Commanding Officer
Strategic Weapons Facility, Pacific
Silverdale, WA 98383
Officer in Charge
Marine Corps Reserve Training Center
1702 Tahoma Avenue
Yakima WA 98920

APO/FPO ADDRESSES

Commanding Officer
US Naval Security Group Activity
APO New York 09240
Commander
US Naval Forces Azores
APO New York 09406
Commanding Officer
US Naval Air Facility
APO New York 09406
Commanding Officer
US Naval Security Group Activity
APO New York 09406
Commanding Officer
US Naval Security Group Activity
APO New York 09458
Commander
Amphibious Group 2
FPO New York 09501
Commander
Antisubmarine Warfare Force
US Sixth Fleet
FPO New York 09501
Commander
Attack Carrier Striking Force
Sixth Fleet
FPO New York 09501
Commander
Middle East Force
FPO New York 09501
Commander
Second Fleet
FPO New York 09501
Commander
Sixth Fleet
FPO New York 09501
Commander
South Atlantic Force
US Atlantic Fleet
FPO New York 09501
Commander in Chief
US Naval Forces Europe
FPO New York 09510
US Commander
Eastern Atlantic
FPO New York 09510

Counsel
European Branch
Office of the General Counsel
Department of the Navy
FPO New York 09510
Commanding Officer
Human Resource Management Center
Box 23
FPO New York 09510
Commanding Officer
US Navy Personnel Support Activity United Kingdom/ Northern Europe
FPO New York 09510
Commanding Officer
Marine Barracks
US Naval Activities
FPO New York 09510
Commanding Officer
Office of Naval Research
Branch Office Box 39
FPO New York 09510
Commander
US Naval Medical Command European Region
FPO New York 09510
Commander
US Naval Activities United Kingdom
FPO New York 09510
Commanding Officer
US Naval Aviation Weapons Facility
FPO New York 09511
Commanding Officer
US Communication Station
FPO New York 09512
Commanding Officer
US Naval Security Group Activity
FPO New York 09518
Commanding Officer
U S Naval Facility
FPO New York 09519
Commander
Fleet Air Mediterranean
FPO New York 09521
Commanding Officer
US Naval Legal Service Office
US Naval Support Activity
FPO New York 09521
Commanding Officer
US Naval Hospital
PO Box 19
FPO New York 09521
Commanding Officer
US Naval Support Activity
FPO New York 09521
Commanding Officer
U.S. Naval Dental Clinic
FPO New York 09521
Commanding Officer
US Navy Personnel Support Activity Mediterranean Box 20
FPO New York 09521
Commanding Officer
US Naval Air Facility
FPO New York 09523
Commanding Officer
U S Naval Communication Station
FPO New York 09525
Commander
US Naval Activities Spain
FPO New York 09540
Commanding Officer
US Naval Communication Station
FPO New York 09540
Commanding Officer
US Naval Hospital
FPO New York 09540
Commanding Officer
US Naval Station
FPO New York 09540
Commanding Officer
U S Naval Communication Station
FPO New York 09542
Commander
Fleet Air Caribbean
FPO New York 09551
Commander
US Naval Base
FPO New York 09551
Commanding Officer
US Naval Hospital
FPO New York 09551
Commanding Officer
US Naval Station
FPO New York 09551
Commanding Officer
U S Naval Communication Station
FPO New York 09554
Commanding Officer
US Naval Security Group Activity
FPO New York 09555
Commanding Officer
US Naval Air Station
FPO New York 09560
Commander
Fleet Air Keflavik
FPO New York 09571
Commanding Officer
Naval Security Group Activity
FPO New York 09571
Commanding Officer
US Naval Communication Station Box
FPO New York 09571
Commander
US Naval Forces Iceland
FPO New York 09571
Commanding Officer
US Naval Station
FPO New York 09571
Commanding Officer
US Naval Communication Station
FPO New York 09580
Commanding Officer
US Naval Security Group Activity
Box 5028
FPO New York 09584
Commanding Officer
U S Naval Station
FPO New York 09585
Commanding Officer
U S Naval Station
FPO New York 09593
Commanding Officer
US Naval Air Station
FPO New York 09593
Commander
US Naval Base
Box 34
FPO New York 09593
Commanding Officer
US Naval Hospital
FPO New York 09593
Commanding Officer
US Naval Security Group Activity
US Naval Base Box 41
FPO New York 09593
Commanding Officer
US Naval Station
FPO Miami 34051
Commanding Officer
US Naval Hospital
FPO Miami 34051
Commanding Officer
US Naval Dental Clinic
FPO Miami 34051
Commanding Officer
US Naval Security Group Activity
APO San Francisco 96210
Commanding Officer
Headquarters Support Activity
Box 25
APO San Francisco 96263
Commanding Officer
US Naval Hospital
Box 4
APO San Francisco 96263
Commanding Officer
U S Naval Security Group Activity
APO San Francisco 96274
Commander
U S Forces Korea
APO San Francisco 96301
Commander
US Naval Forces Korea
APO San Francisco 96301
Commander
US Forces Japan
APO San Francisco 96329
Commanding Officer
US Naval Security Group Activity
Torii Station
APO San Francisco 96331
Commanding Officer
US Naval Medical Research Unit No 3
FPO New York 09527
Commanding Officer
US Naval Medical Research Unit No 2
APO San Francisco 96528
Commander
Amphibious Group 1
FPO San Francisco 96601
Commander
Carrier Striking Force
Seventh Fleet
FPO San Francisco 96601
Commander
Cruiser Destroyer Force

Seventh Fleet
FPO San Francisco 96601
Commander
Seventh Fleet
FPO San Francisco 96601
Commander Amphibious Force
Seventh Fleet
FPO San Francisco 96601
Commander
US Naval Support Force Antarctica
FPO San Francisco 96601
Commanding General
III Marine Amphibious Force FMF
FPO San Francisco 96602
Commanding General
1st Marine Aircraft Wing
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Commanding General
3D Marine Division FMF
FPO San Francisco 96602
Commanding Officer
Camp H M Smith US Marine Corps
FPO San Francisco CA 96610
Commanding Officer
Fleet Intelligence Center
Pacific
FPO San Francisco 96610
Commanding General
Fleet Marine Force Pacific
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Commanding Officer
Human Resource Management Center
FPO San Francisco 96610
Commander
Marine Corps Base Pacific
FPO San Francisco 96610
Commander
Naval Base
Box 110
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Commanding Officer
Naval Investigative Service Office
Pacific Box 76
FPO San Francisco 96610
Commanding Officer
Naval Legal Service Office
Box 124
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Commander
Naval Logistics Command
US Pacific Fleet
FPO San Francisco 96610
Commanding Officer
Naval Station
FPO San Francisco 96610
Commanding Officer
Naval Submarine Base
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Commanding Officer
Naval Submarine Training
Center Pacific
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Commander
Third Fleet
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Commander in Chief
US Pacific Fleet
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Commanding Officer
Naval Air Station
Barbers Point
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Commanding Officer
Marine Corps Air Station
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Commander
US Naval Base
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Commander
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US Naval Station
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U.S. Naval Dental Clinic
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US Navy Personnel Support
Activity Guam
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Commanding Officer
US Naval Air Station
FPO San Francisco 96637
Commander
US Naval Forces Philippines
Box 30
FPO San Francisco 96651
Commanding Officer
US Navy Personnel Support
Activity Philippines
Box 45
FPO San Francisco 96651
Commanding Officer
US Naval Legal Service Office
US Naval Base
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FPO San Francisco 96660
Commanding Officer
US Naval Communication Station
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Commander Fleet Air
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Commander
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Facility
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Commanding Officer
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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Airworthiness Standards; Fire Protection Requirements for Cargo or Baggage Compartments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24185; Amdt. No. 25-60]

Airworthiness Standards; Fire Protection Requirements for Cargo or Baggage Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment upgrades the fire safety standards for cargo or baggage compartments in transport category airplanes by establishing new fire test criteria and by limiting the volume of Class D compartments. This amendment is the result of research and fire testing and is intended to increase airplane fire safety.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 84-11, which was published in the **Federal Register** on August 8, 1984 (49 FR 31830). The notice proposed to upgrade the fire safety standards for cargo or baggage compartments in transport category airplanes by establishing new fire test criteria and by limiting the volume of Class D compartments.

As discussed in the notice, there are five classes of cargo compartments (Class A, B, C, D, and E) in the existing Part 25 regulatory classification system. The classification of compartments is based primarily on the ease of access and the capability of the compartment to contain a fire. With the exception of the Class A compartment, all categories of cargo compartments are required to have liners in order to protect the structural integrity of the airplane from the effects of fire.

The FAA conducted a series of tests at its Technical Center to investigate the capability of three typical liner materials to resist flame penetration under conditions representative of actual cargo or baggage compartment fires. The tests were conducted in simulated Class C and D compartments with bulk-loaded baggage typical of that found in actual service. In conjunction with these tests, the FAA developed a method of testing liner materials utilizing a 2 gallons-per-hour kerosene burner. The materials—fiberglass, Kevlar and Nomex—comprise the primary liner materials currently used in domestic jet transport airplanes.

As a result of these full-scale tests, it was found that a fire could rapidly burn through Nomex or Kevlar under representative conditions. In addition to the fire hazards associated with the initial flame penetration, further suppression of the oxygen in compartments would be hindered. This, in turn, could result in a fire of increased intensity. It was therefore concluded that improved standards are warranted for the sidewall and ceiling liner panels of all classes of cargo or baggage compartments that depend on liners for fire control. Considering probable flame path, the FAA determined that it is not necessary for the materials used for bottom liner panels to meet these improved standards.

The full-scale tests conducted at the FAA Technical Center also showed that a limitation on the volume of Class D compartments is warranted. These tests indicated that the intensity of a fire in a Class D compartment is dependent on compartment volume as well as the sum of compartment volume and the volume of leakage from the compartment in a given period of time. In this regard, it was found that the intensity of a fire in a larger Class D compartment is much greater due to the total amount of oxygen available in compartments larger than approximately 1,000 cubic feet and is, therefore, beyond the capability of the liner to resist flame penetration. Accordingly, the volume of a Class D compartment would be limited to a maximum of 1,000 cubic feet.

The comment period for this notice originally closed on October 8, 1984. It was reopened, as announced in Notice 84-11A (49 FR 40041; October 12, 1984), because of requests received from persons desiring more time in which to study the proposal and prepare their comments. The comment period was further reopened, as announced in Notice 84-11B (50 FR 13226; April 3, 1985), in light of requests received after further tests were conducted by the FAA at its Technical Center. One commenter requested that the FAA reopen the comment period for an additional period; however, the reason given was not considered sufficient to warrant such action. Although the comment period closed on June 3, 1985, late comments have been considered in accordance with 14 CFR 11.47(a). All interested parties have thus been given ample opportunity to participate in the making of this final rule, and due consideration has been given to all matters presented. Except for the changes discussed below, this final rule and the reasons for its adoption are the same as those stated in Notice 84-11.

Discussion of Comments

The numerous comments receive in response to Notice 84-11 represent the views of airplane and equipment manufacturers, airplane operators, material producers and testing laboratories, airplane crew organizations, U.S. and foreign government organizations, and consumer groups. The vast majority of commenters endorse the intent of the proposals of Notice 84-11, although some suggest modifications to the proposed requirements. The following FAA responses to comments are discussed according to the subject matter of the comment.

One commenter believes the justification for the proposed standards to be deficient in analysis. In this regard, the commenter states that the basis for the proposed rule was a catastrophic fire which occurred on a Lockheed L-1011 airplane and that the standards are a reaction to a preconceived notion that Kevlar and Nomex are less desirable than fiberglass since the proposed test methods do not relate to an actual fire scenario. The commenter contends that there is nothing in the analysis to indicate that the results of the L-1011 accident would have been prevented if fiberglass liners had been installed.

The proposed standards are not based on a scenario derived from an analysis of the L-1011 accident, but rather are based on full-scale testing that was conducted with simulated Class C and D compartments using bulk-loaded baggage. The full-scale tests showed that fiberglas as typically used in cargo or baggage compartments, is superior to Kevlar or Nomex from a flame penetration standpoint. The more significant result of these tests is, however, the fact that existing standards for liner materials do not provide adequate protection from a typical cargo or baggage compartment fire. In this regard, it must be noted that liners constructed of Kevlar or Nomex, as well as those of fiberglass, meet the current standards. Because it would be impractical to conduct a full-scale test to qualify each type of material, the FAA developed test methods that would provide results comparable to those of a full-scale test from a materials qualification standpoint. As a result of this correlation, the proposed test methods do, in fact, relate to an actual

fire scenario. As explained in Notice 84–11, the L–1011 accident cited by the commenter was *assumed* to have resulted from a fire in the cargo or baggage compartment for regulatory analysis purposes. The analysis notes that the specific cause of the fire is the subject of considerable dispute.

Several commenters present views supporting or opposing application of the proposed standards to airplanes already in service. Because such action would be beyond the scope of the notice, the comments are not considered relevant to this rulemaking. The FAA is, however, considering additional rulemaking that will address this issue.

One commenter contends that although reinforced with fiberglass and using state-of-the-art resins, almost all ceiling liners and some sidewall liners that are used in the current jet transport fleet do not meet one or more of the proposed requirements in the notice. The commenter also contends that materials which simultaneously satisfy the functional requirements for ceiling and sidewall liners, as well as the proposed fire safety standards, are not available. These contentions are not supported by the testing conducted. As noted in FAA Technical Note DOT/FAA/CT–TN85/11, An Evaluation of the Burn-Through Resistance of Cargo Lining Materials, dated April 1985, there are a number of suitable liner materials that meet the standards and are available. A copy of this technical note has been placed in the Rules Docket.

One commenter contends that additional FAA and industry developmental work is clearly required prior to issuance of regulatory material to establish test apparatus, procedures, and evaluation criteria that will accomplish the intent of the proposed rule. The FAA does not agree. Testing has shown that the proposed standards do realistically discriminate between acceptable and unacceptable liners, and any further development work would unnecessarily delay introduction of improved liners in service.

One commenter supports the notice, but is concerned that the research and development testing did not account for the possible presence of hazardous materials in the cargo compartment. While any consideration of a regulation addressing the effects of hazardous materials would be beyond the scope of the notice, it is noted that standards concerning the carriage of hazardous materials are contained in Chapter I of Title 49, Code of Federal Regulations (CFR).

Although two commenters consider the proposed standards to be too stringent, these standards have been shown to be necessary by full-scale testing and achievable with currently available materials. One of these two commenters further states that smoke and toxicity should also be addressed. Such standards would be beyond the scope of the notice and could not be considered at this time. It should be noted, however, that existing § 25.831 provides standards for crew and passenger compartment ventilation and evacuation of smoke. While there is evidence of the need for improved standards with respect to flame penetration, the FAA does not have evidence that the existing standards of § 25.831 do not provide adequate protection from smoke and toxicity. Standards for toxicity would be especially difficult to establish because there has not been sufficient research to adequately define acceptable levels of human tolerance to typical cargo or baggage compartment fire toxicants.

One commenter proposes the use of a "total flood" of extinguishing agent in lieu of improved standards for the liners. Similarly, another commenter believes the standards should give credit for an active fire extinguishing system by allowing the use of liners with less resistance to flame penetration than that proposed in the notice. These concepts are considered inadequate because liners with less ability to resist flame penetration are likely to fail very quickly before the extinguishing agent is effective, allowing the extinguishing agent to escape and rendering the extinguishing system inoperative.

One commenter compares the proposed standards for cargo or baggage compartment liners with the guidance in Advisory Circular AC 20–107A, Composite Aircraft Structure, for composites that are required to be fire-resistant. The commenter believes that the proposed standards are too stringent when compared to the standards for composite materials, considering that a fire in a cargo or baggage compartment would be less severe (according to the commenter) due to the limited amount of oxygen available. The comparison of the proposed standards with the guidance for composite materials is not appropriate because the purposes differ. The proposed standards for cargo or baggage compartments are intended to safely contain a fire. The guidance for composite materials is, on the other hand, to ensure that the structural integrity of the materials will be maintained during exposure to a fire.

Two commenters believe that the rulemaking for improving fire safety in air carrier airplanes is proceeding faster than the fire safety technology. The FAA has determined that the technology exists for compliance with these new standards and that consequently the manufacturers can design liners for cargo and baggage compartments that meet the new standards.

Two commenters support the proposed standards for Class C and D compartments, but not for Class B or E compartments. A Class B compartment is typically the large cargo portion of the cabin in a combination passenger and cargo carrying airplane (frequently referred to as a "combi" airplane). A Class E compartment is the main cabin of an airplane used only for the carriage of cargo. Both Class B and E compartments may be dedicated solely to the carriage of cargo or may be convertible passenger or cargo compartments. (Airplanes with convertible compartments are frequently referred to as "quick change (QC)" airplanes.) The seats of QC airplanes are generally installed on pallets so that they can be removed rapidly for the carriage of cargo. The sidewalls, bulkheads and ceillings of the passenger interior then serve as the liners of the cargo compartments. Like Class C compartments, Class B and E compartments are required to have smoke or fire detection systems to give warning at the pilot or flight engineer station. For fire extinguishment, Class B compartments are required to have sufficient accessibility to enable a crewmember to effectively reach any part of the compartment with the contents of a hand fire-extinguisher. Class E compartments must have means to shut off the ventilating airflow and to exclude hazardous quantities of smoke, flames or noxious gases from the flightcrew compartment. Class B and E compartments, therefore, do not depend on the integrity of the liner to retain the agent from a built-in extinguishing system, as in a Class C compartment, or to limit the supply of oxygen, as in a Class D compartment.

Based on the lack of adverse service experience with Class B and E compartments to date, and the lack of full-scale test data that are directly applicable, the FAA concurs that the liners of these compartments need not meet the new standards. This does not preclude future rulemaking to require such liners to meet these standards if warranted by further service experience or testing.

Several commenters have presented opposing views concerning Class D compartments. Some contend that the proposed 1,000 cubic feet limitation of the volume of a Class D compartment is too restrictive. One commenter suggests that the rate of ventilation and leakage

for Class D compartments should be as low as practicable and should not exceed the following formula, which (according to the commenter) has been an acceptable means of compliance with the objective requirements of current § 25.857(d):

W=1,000–V

Where W=ventilation and leakage airflow in cu. ft. hr.
V=compartment volume in cu. ft.

One commenter further suggests that the burner heat flux density, flame temperature, and time of application, should be redefined to reflect conditions to be established by the FAA Technical Center by further testing for a Class D compartment that is greater than 1,000 cubic feet, but meets the above formula. As discussed in the notice, the tests conducted at the FAA Technical Center indicated that the intensity of a fire in a Class D compartment is dependent on compartment volume as well as the sum of compartment volume and the volume of leakage in a given period of time. In this regard, it was found that the intensity of a fire in a larger Class D compartment is much greater due to the total amount of oxygen available in compartments larger than approximately 1,000 cubic feet, and beyond the capability of the liner to resist flame penetration. While the leakage rate is an important consideration, a low rate does not mitigate the need to limit the total volume of a Class D compartment to 1,000 cubic feet. The more stringent standards that would be needed to safely contain a fire in a compartment greater than 1,000 cubic feet would be beyond the scope of the notice.

Other commenters, in contrast, believe that Class D compartments should be eliminated altogether. One commenter is concerned that a fire may originate in a Class D compartment that is nearly empty, grow out of control due to the greater amount of oxygen available, and spread to an adjacent compartment that does have combustible cargo or baggage. This scenario is considered unrealistic because the compartment in which the fire originates is unlikely to contain enough combustible materials to sustain an intense fire for an extended period if it is nearly empty. In this regard, the scenario presupposes, first, that the combination of compartment volume and leakage airflow and liner integrity are inadequate to safely suppress and contain the fire in the original compartment and, second, that the liner of the adjacent compartment is incapable of preventing burn-through in reverse. In light of the testing conducted, the proposed standards would make both suppositions unlikely. The same commenter is concerned that in-service damage to liners may allow additional leakage airflow and compromise the capability of the liner to suppress a fire. The FAA notes the commenter's concern and concurs that the use of improved materials will increase the capability of the liners to suppress fires only if the integrity of the liners is maintained in service. In this regard, the FAA is presently emphasizing to operators the importance of properly maintaining the liners in all cargo or baggage compartments that are required to have liners and has stepped up surveillance of airline maintenance of cargo compartment liners. The commenter is also concerned about the failure of a ventilation control valve in a Class D compartment which, the commenter alleges, was the cause of the previously discussed Lockheed L–1011 accident. As also noted previously, the cause of the fire involved in that accident is a matter of considerable dispute, and has not been attributed to such a failure.

One commenter supports the proposed limitation of the volume of a Class D compartment to 1,000 cubic feet but believes a specific limitation on leakage airflow should also be imposed. The FAA concurs that the leakage airflow rate is an important factor. Such leakage must be considered for compliance with the objective requirements of current § 25.857(d)(1). As these objective requirements would remain applicable, it is not considered necessary to establish a specific limitation on leakage airflow.

Two commenters recommend that the FAA require fire detection systems for Class D cargo compartments so that the flightcrews would be alerted to the existence of a fire. Another commenter recommends that all cargo compartments, except Class A and B, should be classified as Class C. While these recommendations are beyond the scope of the notice, neither is considered to be warranted. As discussed above, the full-scale and other fire tests have shown that Class D compartments provide an acceptable level of safety if liners meeting the new standards are used and the volume does not exceed 1,000 cubic feet. As discussed below, the present standards are considered to provide an acceptable level of safety for Class B and E compartments.

One commenter notes that standards for flammability of seat cushions have been adopted (Amendment 25–59; 49 FR 43188; October 26, 1984) since the time Notice 84–11 was issued and believes that many of the elements of the testing required for seats are also appropriate for liner testing.

Although there are necessary differences due to the nature of tests, the FAA concurs that the test methods and procedures should be the same wherever possible. The adopted test procedures have been changed accordingly.

One commenter recommends that the burner heat flux density, flame temperature, and time of application should be redefined to reflect the conditions to be established for a Class C compartment with a properly operating fire detection and extinguishing system. Based on the full-scale tests conducted, the FAA considers that the proposed criteria do simulate the exposure conditions (including burner heat flux density, temperature, and duration) of a realistic cargo fire in a Class C compartment equipped with detectors that provide indication of a fire within one minute, as required by existing § 25.858. The proposed standards are, therefore, considered appropriate in this regard and have been adopted in this final rule.

Several commenters suggest test specimen sizes other than the proposed 16 x 25 inches. One commenter recommends the use of 16 x 24 inch specimens in order to reduce waste when specimens are cut from a standard 4 x 8 foot sheet. The FAA concurs with this recommendation and the requirement has been changed accordingly.

As proposed, ceiling and sidewall liners would have to meet the improved standards while floor panels would only have to meet the current standards. Two commenters believe that flooring should also meet the higher standards; however, their position is not supported by the results of the full-scale testing. Such tests have shown that fires tend to burn upward, and there is little or no involvement of flooring. The improved standards are, therefore, not warranted for flooring.

In lieu of the proposed test panel size and positioning, one commenter suggests the use of a 610 mm x 610 mm panel centered horizontally 203 mm above the flame. Alternate panel sizes and positioning could be used under the equivalent safety provisions of § 21.21(b)(1) of this chapter provided the tests yield the same results. The suggested change is, therefore, unnecessary. The same commenter believes that negative test results should not preclude the use of aluminum as liner material. The FAA does not concur because, for reasons stated earlier, the FAA considers the proposed standards

to be the minimum required for safety. Testing conducted subsequent to Notice 84–11 has shown that aluminum sheet, in thicknesses typically used for liners, does not meet the proposed standards.

Several commenters express related concerns that the proposed rule would require only the basic panel material to be tested and that design features, such as joints, structural attachments, lamp units, lashing points and pressure relief panels, would be omitted. In this regard, one commenter contends that the proposed test seems to confuse two objectives: The need to demonstrate the ability of a material to resist flame penetration and the need to demonstrate fire containability of a "simulation" of the ceiling and sidewall. The commenter states that view A–A of Figure 1 of the notice shows the edges of the panel held in a manner that is not representative and is not therefore a "simulation" that will test a design detail.

In response to the commenter's concerns, the term "liner," as used in § 25.855(a–1), includes any design features that would affect the capability of the liner to safely contain a fire. Such features would, therefore, have to be tested along with the basic panel material unless they have been previously found satisfactory. For example, joints that are constructed with fireproof fasteners and are not subject to gaps caused by distortion need not be tested. On the other hand, the test specimens would include joints constructed with nonfireproof fasteners or joints subject to distortion. Similarly, test specimens woud include lamp lenses, if failure of the lenses would allow flames to pass; however, lamps need not be included in the test specimen if the lamp incorporates a fireproof body that would prevent passage of flames. The test acceptance criteria have been clarified in this regard. One commenter also contends that the apparatus assumes that the sidewall will be vertical, which is not always the case. Tests have shown that results obtained with vertical panels are also representative of sidewalls that are inclined; therefore, the FAA considers the test apparatus to be appropriate in this regard.

One commenter suggests that it is unnecessary to test ceiling and sidewall panels simultaneously. The FAA concurs that it is not necessary to test ceiling and sidewall panels simultaneously; and it may, in some instances, be advantageous to test the panels separately. For example, material tested as a ceiling panel with a baffle installed to simulate the missing side panel would be qualified for use as ceiling material with any otherwise qualified sidewall material. Furthermore, the material would also be qualified for use as sidewall material due to the test heat transfer characteristics. On the other hand, a material tested as a ceiling panel simultaneously with a sidewall panel would be qualified for use only with sidewalls of the material used in the sidewall test panel.

One commenter believes that the use of alternate burners should be allowed. The commenter notes that kerosene burners with improved adjustment and controlling devices are available and that gas-type burners could also be used. The proposed standards note that two particular burner models have been used in the past, but the standards do not specifically require use of those particular models. Any burner that meets the proposed standards could, therefore, be used. Other burners, such as gas-type burners, could be used under the equivalent level of safety provisions of § 21.21(b)(1) of this Chapter provided they are shown to give the same test results.

Two commenters believe that the test fixture should be revised to allow a baffle to be placed around the liner. The baffle would simulate a ceiling and thereby prevent the piloted ignition of combustion gases released by the test specimen. Such use of a baffle is not considered appropriate because combustible gases released from liner materials could reignite outside the compartment and contribute to the hazard in an actual cargo or baggage compartment fire. Furthermore, there are currently available materials constructed with resins that do not release such combustible gases.

The proposed burner test fuel is defined as "kerosene." One commenter believes that this term is too board and notes that its use has led to problems in testing both cargo or baggage compartment liner materials and seat cushions. The FAA concurs and notes that the test fuel for the recently adopted seat cushion flammability standards (Amendment 25–59; 49 FR 43188; October 26, 1984) is defined as "#2 kerosene or equivalent." For consistency, the fuel for testing cargo or baggage compartment liners will also be defined as "#2 kerosene or equivalent."

The proposed burner cone is 12 inches wide at the exit. As equipment already in use incorporate burner cones that are 11 inches wide, one commenter recommends specifying that this dimension should be specified as 11.5±0.5 inches in order to accommodate both sizes. It appears that such a variation in burner cone area would cause variations in burner heat output and inconsistencies in test results. Use of the 11-inch wide cone specified for the recently adopted seat flammability standards (Amendment 25–59; 49 FR 43188; October 26, 1984) would eliminate the need for two separate cones while still assuring consistency of test results. The test apparatus specified for these tests has been changed accordingly.

Two commenters recommend conditioning the test specimens to 50±5 percent relative humidity prior to testing. The FAA concurs. In order to assure consistent test results, the test specimen criteria will include such conditioning.

One commenter notes that there are brief excursions below the minimum temperature on any one thermocouple due to the transient nature of a fire. The commenter suggests that these excursions can be as great as 100°F. and as frequent as several seconds apart. In order to accommodate a temperature measuring device that takes periodic instantaneous readings rather than a continuous reading, the commenter recommends using the average of temperature and heat flux over a representative exposure time, e.g. one minute, in lieu of the minimum values. In general, it appears that such averaging would not ensure the intended level of safety. A temperature measuring device of this nature could, however, be used under the "other equivalent methods" provisions of § 25.855(a–1)(1) provided it is shown to provide test results equivalent to those that would be obtained with continuous reading devices.

One commenter suggests the proposed acceptance criteria that self-extinguishing time must be less than 15 seconds and that glow time must be less than 10 seconds are unnecessary. The FAA concurs that materials that meet the proposed burn-through criteria will inherently have satisfactory self-extinguishing and glow characteristics, and these criteria have been deleted.

Two commenters suggest increasing the measured limit 4 inches above a tested ceiling liner to more than 400 °F. (One commenter specifically recommends 500 °F.) Although the temperature measured at this point varies depending on the weave and resin of the material tested, tests have shown that many materials are capable of meeting the proposed limit. The proposed limit of 400 °F. is, therefore, considered appropriate.

One commenter believes that the standards should be more precise as to

what kind of heat energy shall be measured, i.e., heat radiation only or the total heat flux consisting of radiation and convection. The notice specifies total flux. To avoid possible confusion, a Foil Type Gardon Gage total heat flux calorimeter is specified.

One commenter recommends establishing the following tolerance for the thermocouple calibration temperature: a 1700 °F. minimum temperature averaged over the seven thermocouples with a maximum lower deviation for any one thermocouple of 100 °F. The FAA concurs that the standards must allow a tolerance in this regard as a matter of practicality. The rule is changed accordingly.

One commenter suggests that the test time be measured to flame penetration *or* test completion. The FAA concurs that this change is needed to cover tests in which the test is successfully completed without any penetration. The rule is changed accordingly.

One commenter requests an additional requirement to record the flame time after removal of the flame source and the glow time. As noted earlier, these criteria are unnecessary for materials that meet the proposed burn-through criteria. This addition is, therefore, unwarranted.

Since the time Notice 84–11 was issued, existing Appendix F of Part 25 has been reidentified as Appendix F, Part I, and new standards for flammability of seat cushions have been added as Appendix F, Part II by Amendment 25–59; (49 FR 43186; October 26, 1984). The new standards for cargo or baggage compartments are, therefore, added as Appendix F, Part III. Other nonsubstantive conforming editorial changes, including that to § 25.853(b), have also been made. Furthermore, minor nonsubstantive changes have been made to the test procedures.

Regulatory Evaluation

I. Cost Benefit Anaylsis

A. Costs

The costs of the amended regulations included in this final rule will result primarily from the additional fuel consumed by the airplanes subject to the rule as a result of the slight increase in airplanes weight necessary to comply with the new standards. The airplanes that would be affected are those newly designed transport category airplanes for which an application for type certificate is made on or after the effective date of the final rule. The precise number of airplanes which will be affected cannot be accurately predicted because of the uncertainties in the number of future airplanes designs and the number of airplanes of each design that will be produced. The estimated costs of this final rule have, therefore, been based upon average total costs for a typical type certificate issued, rather than overall costs for all future airplanes types which may be certificated under the new standard. (This differs slightly from the methodology used in Notice 84–11, where fuel penalty costs were presented on an hourly basis.) Further, in developing the average total costs per type certificate issued, the FAA has estimated that a newly type certificated airplanes will have a production run of approximately 1,000 airplanes, and that each airplane will have an average life of 60,000 hours, yielding a total of 60 million flight hours for all airplanes produced under a typical type certificate. Because both the costs of this rule, and the benefits of reduced exposure to the risk of a catastrophic cargo compartment fire, will be realized simultaneously during actual operation of the airplanes, the ratio of costs to benefits will remain unchanged regardless of the level of activity in any given year over the 40 to 50 year period during which airplanes produced under a type certificate will remain in active service. Thus, comparison can be made in the form of total costs and benefits for all airplanes produced under one type certificate, rather than in the form of discounted present values, which would necessitate making arbitrary assumptions about the rate of airplane production, activity, and attrition during each year of the 40 to 50 year period.

Of the materials which meet the more stringent flame penetration standards adopted in this final rule, fiberglass is currently considered the most feasible material for use as sidewall or ceiling panels of cargo or baggage compartments. This material is somewhat heavier than Kevlar or Nomex, the other two liner materials currently used in transport category airplanes. According to data compiled by the FAA, Boeing achieved a weight savings of approximately 150 pounds in each Model 767 airplane by using Kevlar instead of fiberglass for the ceiling and sidewall panels. Because the Model 767 falls approximately in the middle of the size range of existing transport category airplanes, the FAA has assumed, for purposes of this analysis, that a typical affected transport category airplane would incur an average weight penalty of approximately 150 pounds as a result of the need to use fiberglass liner materials in lieu of lighter alternatives, such as Kevlar or Nomex. This, of course, is based on the further assumption that no new lightweight materials are developed which would meet the higher flame penetration standard.

Data compiled by the National Aeronautics and Space Administration (NASA) indicate that each additional pound of weight added to a transport category airplane results in an average additional fuel consumption of about 15 gallons per year per airplane, or an average of .008 gallons per hour based upon an average utilization rate of 2,500 hours per year per airplane. At the current jet fuel price of $.85 per gallon, and 1,000 airplanes flying a total of 60,000 lifetime hours each, the total additional fuel cost attributable to the heavier liner material will be approximately $46 million for each future type certificate that is issued. This cost will be incurred over a period of 40 to 50 years, and equates to about $46 thousand per airplane distributed over the lifetime of that airplane. Actual costs can be expected to be less than this estimate because of expected improvements in the fuel efficiency of new technology engines.

Cargo or baggage compartments larger than 1,000 cubic feet in volume may currently be designed as Class D compartments in lieu of Class C compartments with smoke or fire detection and fire extinguishment systems. Under the terms of this amendment, compartments of this size in affected airplanes would have to be designed as Class C compartments. The FAA estimates that an average weight penalty of 150 pounds per affected airplane would result from the installation of smoke or fire detection and extinguishment systems in the Class C compartments that, in the absence of the rule change, would have been designed as Class D compartments. This will result in an additional $46 million total weight penalty per type certificate for all airplanes built under type certificates which are also affected by this provision of the final rule.

Further, the cost of the smoke or fire detection and extinguishment systems must also be considered (this cost factor was erroneously omitted from the evaluation of Notice 84–11). The FAA estimates that system equipment, installation by the airframe manufacturer, and interest will add approximately $10,500 to the cost of each airplane purchased, yielding a total additional cost of $10.5 million per type certificate for the approximately 1,000 airplanes estimated to be built under a future type certificate. Although each individual airplane cost represents a capital expenditure, the total cost will

be spread over the entire production run of an airplane model produced under a type certificate, and further annualized by the purchaser of each airplane produced. Consequently, these detection and extinguishment system costs will be incurred over a period of 20 to 30 years. They have, therefore, been presented in the form of total costs rather than in the form of discounted present values for the same reasons discussed previously with respect to fuel costs.

The total cost of the liner material weight penalty, detection and extinguishment system weight penalty, and detection and extinguishment system equipment is estimated to be $102 million per type certificate for those future designs which will be affected by both the amended Class D volume constraint and the new liner material standard. These total costs will be incurred over a period of 40 to 50 years, and equate to about $102 thousand per airplane distributed over the lifetime of that airplane. It must also be noted that relatively few existing transport airplanes have Class D compartments which are larger than 1,000 cubic feet in volume. There are currently only three airplane designs in domestic use with such compartments (the McDonnell Douglas Models DC–8 and DC–10, and the Lockheed Model L–1011). Therefore, assuming no major change in the size distribution of transport airplanes, a relatively small proportion of airplanes type certificated in the future is expected to be affected by the reduction in the maximum allowable volume of a Class D compartment.

Some commenters stated that, in its analysis, the FAA neglected to consider costs related to design features such as panel joints, lamp assemblies, pressure relief panels, structural attachments, etc. These costs, if any, are considered negligible. This final rule applies only to new airplane designs; therefore, there are no redesign costs involved. Furthermore, most of the components and design techniques which are currently in use will meet the new standards. For the few instances in which current components or techniques cannot be used, the designer can choose to use other equivalent components or techniques that will meet the new standards and are currently available.

B. Benefits

The potential benefits of these rule changes are the avoided losses of life and property which would have resulted from those airplane fires that may be prevented by the provisions of the final rule. While a relatively minor benefit will result from the use of fiberglass, which is slightly less expensive to purchase than Nomex or Kevlar, this cost saving is overshadowed by the saving of the total cost of a new airplane or the benefits of accidents prevented over the lifetime of an airplane design. Quantifying these benefits is somewhat difficult because most transport category airplanes currently in service have liners constructed of fiberglass materials which already meet the new standards, and because relatively few have Class D compartments which are larger than 1,000 cubic feet in volume.

Because of the limited number of airplane models currently in service which do not meet the new standards, a Poisson distribution has been used to estimate the probability of preventing random cargo compartment fire accidents during the total service life of a newly designed transport category airplane which is type certificated in accordance with the new standards. (This probability approach is somewhat different than the method used in Notice 84–11, in which a maximum possible accident rate was estimated.) The Poisson distribution provides a realistic model for predicting many random phenomena and frequently is used in safety analysis to estimate future accident risk. The Poisson distribution of potential catastrophic cargo compartment accidents provides a base line from which the potential benefits of the rule change can be measured. Because it is unlikely that the new liner standards or the Class D volume constraint can effectively prevent a catastrophic accident from developing in every possible fire scenario, a sensitivity analysis has been completed to compare the probable benefits which would result if the new standards were effective in 100 percent, 70 percent and 50 percent of the fire scenarios.

In order to develop the Poisson distribution for this analysis, it is necessary to determine the historical average rate of catastrophic cargo compartment fires. Of the three major transport category airplane models currently in service with liner materials that do not meet the new flame penetration standards, only one has been in service for an extended period of time. This is the Lockheed L–1011, which uses Nomex as the liner material in its cargo or baggage compartments. (The other two airplanes, Boeing Models 767 and 757, use Kevlar as the liner material, and each has been in service for only about three years.) Since the Model L–1011 entered service in 1972, it has experienced one catastrophic fire that was possibly related to the cargo compartment. The specific origin or cause of this fire is the subject of considerable dispute; however, for the limited purposes of this document, it will be assumed that the fire originated in the cargo compartment. Based on these assumptions, the limited service experience with the Model L–1011 suggests a mean rate of one catastrophic cargo compartment fire accident in the total service life of all airplanes built under a type certificate which does not require compliance with the new standards. This mean rate of one may be used to develop the Poisson distribution of the probability of accidents which could be experienced by a future design which does not comply with the new liner material standards. The FAA believes that this is a conservative estimate of the mean accident rate because the current accumulated flight time of all Model L–1011 airplanes is far less than the 60 million hours of total flight time estimated in this analysis to be accumulated by all airplanes produced under a typical future type certificate.

Further, the same mean accident rate of one has been used to estimate benefits for those future designs which will be affected by the Class D volume constraint as well as the new liner material standard. Although it stands to reason that a greater safety benefit will be realized for those airplanes for which both fire protection deficiencies (Class D volume and liner material) is corrected, there have been no actual cargo compartment fire accidents that have been attributed to the size of the Class D compartment. Nevertheless, the full-scale tests conducted at the FAA Technical Center clearly indicated that the intensity of a fire in larger Class D compartments can become so great that the capability of the liner to resist flame penetration is exceeded. In the judgment of the FAA, a mean rate of one catastrophic cargo compartment accident is a reasonable compromise between the service history of existing noncompliant airplanes and the results of the laboratory tests. Therefore, this rate has been used to develop an order of mangitude estimate of the potential benefits which may be realized by those future airplane models affected by both of the new standards.

Applying the effectiveness coefficients of 100 percent, 70 percent, and 50 percent to the mean accident rate of one provides probability distributions, based upon each respective assumption about the effectiveness of the new standards, of the number of accidents which might be prevented for each future airplane design receiving a type certificate in compliance with the new standards.

The FAA estimates that the benefits which will be realized from avoiding a typical cargo compartment fire accident in the future will be the prevention of 110 passenger and crew fatalities (derived from FAA traffic data) and the loss of the airplane. Mid-size transport category airplanes which have recently received new type certificates and new designs currently under development are priced between $30 million and $60 million. The FAA, therefore, estimates that $20 million is a reasonable price for a typical used transport category airplane of the future and has used this value as the quantifiable benefit of avoiding the loss of an airplane for each accident prevented.

Based on the Poisson distribution and the alternative effectiveness assumptions discussed above, there is a 63 percent probability that one or more catastrophic cargo compartment fire accidents will be prevented, if the new standards, are 100 percent effective, for each future airplane design issued a type certificate under the new standards. If the new standards are at least 70 percent effective, then the probability that one or more catastrophic accidents will be prevented for each type certificate is about 50 percent; and if the new standards are 50 percent effective, then there is a 40 percent probability that one or more accidents will be prevented for each type certificate. These potential benefit estimates must be compared to the 63 percent probability that, in the absence of these new standards, one or more catastrophic accidents will occur for each new type certificate that is issued which does not meet these standards.

C. Comparison of Costs and Benefits

The FAA has estimated that the total cost per type certificate for the new liner standard, distributed over a 40 to 50 year period, will be about $46 million. The FAA expects that the majority of future airplane designs receiving new type certificates will be affected by the liner standard only. If one or more catastrophic accidents are prevented, then the loss of at least one airplane valued at $20 million will be prevented, at least 110 fatalities will be prevented, and the cost per fatality avoided will not be greater than $235 thousand. For those relatively few new aircraft designs which may be required to comply with both the amended liner material and the Class D compartment size standards, then the total costs increase to appoximately $102 million per type certificate over a 50 year period. If one or more accidents are prevented, the same benefits as those expected for airplanes subject to only the liner standard will be realized, except that the maximum cost per fatality avoided will increase to approximately $748 thousand.

Based upon a conservative estimate of the historic accident rate, and a sensitivity analysis of the potential effectiveness of the new standards, there is about a 40 to 60 percent probability that one or more catastrophic cargo compartment fire accidents will be prevented for each new type certificate that is issued, and that very reasonable cost-benefit relationships will be achieved. This compares to about a 60 percent probability that one or more catastrophic fire accidents will occur for each noncompliant type certificate that is issued in the absence of these new standards.

II. Regulatory Flexibility Act Determination

A final regulatory flexibility determination was conducted in compliance with the Regulatory Flexibility Act. The conclusion in the initial regulatory evaluation, that the rule will have no direct impact on small entities, is not altered by the present evaluation.

III. International Trade Impact Analysis

The amendment will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. In the U.S., foreign manufacturers will have to meet U.S. requirements, and thus they will gain no competitive advantage. In foreign countries, foreign manufacturers could have some minor cost advantage if the foreign country does not require the improved design standards, but because the cost will be negligible compared to the new airplane cost, there will be essentially no impact.

Conclusion

For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291. The FAA has determined that this action is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it has been determined under the criteria of the Regulatory Flexibility Act that this rule does not have a significant economic effect on a substantial number of small entities, since none would be affected. A regulatory evaluation, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been prepared for this regulation and has been placed in the Rules Docket. A copy of this evaluation may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, Part 25 of the Federal Aviation Regulations (FAR), 14 CFR Part 25 is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 25.853 by revising paragraph (b) to read as follows:

§ 25.853 Compartment interiors.

* * * * *

(b) Floor covering, textiles (including draperies and upholstery), seat cushions, padding, decorative and nondecorative coated fabrics, leather, trays and galley furnishings, electrical conduit, thermal and acoustical insulation and insulation covering, air ducting, joint and edge covering, liners of Class B and E cargo or baggage compartments, floor panels of Class C or D cargo and baggage compartments, insulation blankets, cargo covers, and transparencies, molded and thermoformed parts, air ducting joints, and trim strips (decorative and chafing), that are constructed of materials not covered in paragraph (b–2) of this section, must be self-extinguishing when tested vertically in accordance with the applicable portions of Part I of Appendix F of this Part, or other approved equivalent methods. The average burn length may not exceed 8 inches, and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 5 seconds after falling.

* * * * *

3. By amending § 25.855 by revising paragraph (a–1), to read as follows:

§ 25.855 Cargo and baggage compartments.

* * * * *

(a-1) Class B through Class E cargo or baggage compartments, as defined in § 25.857, must have a liner and the liner must be separate from (but may be

attached to) the airplane structure, and must be tested as follows:

(1) Ceiling and sidewall liner panels of Class C and D compartments must meet the test requirements of Part III of Appendix F of this Part or other approved equivalent methods.

(2) Floor panels of all compartments and ceiling and sidewall liner panels of Class B and E compartments must be constructed of materials that meet at least the requirements set forth in § 25.853(b). Also, these liner panels must be tested at a 45 degree angle in accordance with the applicable portions of Part I of Appendix F of this Part or other approved equivalent methods. The flame may not penetrate (pass through) the material during application of the flame or subsequent to its removal. The average flame time after removal of the flame source may not exceed 15 seconds, and the average glow may not exceed 10 seconds.

* * * * *

4. By amending § 25.857 by adding a new paragraph (d)(6) to read as follows:

§ 25.857 Cargo compartment classification.

* * * * *

(d) * * *

(6) The compartment volume does not exceed 1,000 cubic feet.

* * * * *

5. By amending Appendix F by adding a new Part III to read as follows:

Appendix F to Part 25

* * * * *

Part III—Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners.

(a) *Criteria for Acceptance.*

(1) At least three specimens of cargo compartment sidewall or ceiling liner panels must be tested.

(2) Each specimen tested must simulate the cargo compartment sidewall or ceiling liner panel, including any design features, such as joints, lamp assemblies, etc., the failure of which would affect the capability of the liner to safey contain a fire.

(3) There must be no flame penetration of any specimen within 5 minutes after application of the flame source, and the peak temperature measured at 4 inches above the upper surface of the horizontal test sample must not exceed 400 °F.

(b) *Summary of Method.* This method provides a laboratory test procedure for measuring the capability of cargo compartment lining materials to resist flame penetration with a 2 gallon per hour (GPH) #2 Grade kerosene or equivalent burner fire source. Ceiling and sidewall liner panels may be tested individually provided a baffle is used to simulate the missing panel. Any specimen that passes the test as a ceiling liner panel may be used as a sidewall liner panel.

(c) *Test Specimens.*

(1) The specimen to be tested must measure 16±⅛ inches (406±3 mm) by 24+⅛ inches (610±3 mm).

(2) The specimens must be conditioned at 70 °F.±5 °F. (21°C.±2 °C.) and 55%±5% humidity for at least 24 hours before testing.

(d) *Test Apparatus.* The arrangement of the test apparatus, which is shown in Figure 3 of Part II and Figures 1 through 3 of this Part of Appendix F, must include the components described in this section. Minor details of the apparatus may vary, depending on the model of the burner used.

(1) *Specimen Mounting Stand.* The mounting stand for the test specimens consists of steel angles as shown in Figure 1.

(2) *Test Burner.* The burner to be used in tesing must—

(i) Be a modified gun type.

(ii) Use a suitable nozzle and maintain fuel pressure to yield a 2 GPH fuel flow. For example: an 80 degree nozzle nominally rated at 2.25 GPH and operated at 85 pounds per square inch (PSI) gage to deliver 2.03 GPH.

(iii) Have a 12 inch (305 mm) burner extension installed at the end of the draft tube with an opening 6 inches (152 mm) high and 11 inches (280 mm) wide as shown in Figure 3 of Part II of this Appendix.

(iv) Have a burner fuel pressure regulator that is adjusted to deliver a nominal 2.0 GPH of #2 Grade kerosene or equivalent.

Burner models which have been used successfully in testing are the Lenox Model OB–32, Carlin Model 200 CRD and Park Model DPL. The basic burner is described in FAA Powerplant Engineering Report No. 3A, Standard Fire Test Apparatus and Procedure for Flexible Hose Assemblies, dated March 1978; however, the test settings specified in this appendix differ in some instances from those specified in the report.

(3) *Calorimeter.*

(i) The calorimeter to be used in testing must be a total heat flux Foil Type Gardon Gage of an appropriate range (approximately 0 to 15.0 British thermal unit (BTU) per ft.^{2} sec., 0–17.0 watts/cm^2). The calorimeter must be mounted in a 6 inch by 12 inch (152 by 305 mm) by ¾ inch (19 mm) thick insulating block which is attached to a steel angle bracket for placement in the test stand during burner calibration as shown in Figure 2 of this Part of this Appendix.

(ii) The insulating block must be monitored for deterioration and the mounting shimmed as necessary to ensure that the calorimeter face is parallel to the exit plane of the test burner cone.

(4) *Thermocouples.* The seven thermocouples to be used for testing must be 1/16 inch ceramic sheathed, type K, grounded thermocouples with a nominal 30 American wire gage (AWG) size conductor. The seven thermoocouples must be attached to a steel angle bracket to form a thermocouple rake for placement in the test stand during burner calibration as shown in Figure 3 of this Part of this Appendix.

(5) *Apparatus Arrangement.* The test burner must be mounted on a suitable stand to position the exit of the burner cone a distance of 8 inches from the ceiling liner panel and 2 inches from the sidewall liner panel. The burner stand should have the capability of allowing the burner to be swung away from the test specimen during warm-up periods.

(6) *Instrumentation.* A recording potentiometer or other suitable instrument with an appropriate range must be used to measure and record the outputs of the calorimeter and the thermocouples.

(7) *Timing Device.* A stopwatch or other device must be used to measure the time of flame application and the time of flame penetration, if it occurs.

(e) *Preparation of Apparatus.* Before calibration, all equipment must be turned on and allowed to stabilize, and the burner fuel flow must be adjusted as specified in paragraph (d)(2).

(f) *Calibration.* To ensure the proper thermal output of the burner the following test must be made:

(1) Remove the burner extension from the end of the draft tube. Turn on the blower portion of the burner without turning the fuel or igniters on. Measure the air velocity using a hot wire anemometer in the center of the draft tube across the face of the opening. Adjust the damper such that the air velocity is in the range of 1550 to 1800 ft./min. If tabs are being used at the exit of the draft tube, they must be removed prior to this measurement. Reinstall the draft tube extension cone.

(2) Place the calorimeter on the test stand as shown in Figure 2 at a distance of 8 inches (203 mm) from the exit of the burner cone to simulate the position of the horizontal test specimen.

(3) Turn on the burner, allow it to run for 2 minutes for warm-up, and adjust the damper to produce a calorimeter reading of 8.0±0.5 BTU per ft.^{2} sec. (9.1±0.6 Watts/cm^2).

(4) Replace the calorimeter with the thermocouple rake (see Figure 3).

(5) Turn on the burner and ensure that each of the seven thermocouples reads 1700 °F. ±100 °F. (927 °C. ±38 °C.) to ensure steady state conditions have been achieved. If the temperature is out of this range, repeat steps 2 through 5 until proper readings are obtained.

(6) Turn off the burner and remove the thermocouple rake.

(7) Repeat (1) to ensure that the burner is in the correct range.

(g) *Test Procedure.*

(1) Mount a thermocouple of the same type as that used for calibration at a distance of 4 inches (102 mm) above the horizontal (ceiling) test specimen. The thermocouple should be centered over the burner cone.

(2) Mount the test specimen on the test stand shown in Figure 1 in either the horizontal or vertical position. Mount the insulating material in the other position.

(3) Position the burner so that flames will not impinge on the specimen, turn the burner on, and allow it to run for 2 minutes. Rotate the burner to apply the flame to the specimen and simultaneously start the timing device.

(4) Expose the test specimen tto the flame for 5 minutes and then turn off the burner. The test may be terminated earlier if flame penetrations observed.

(5) When testing ceiling liner panels, record the peak temperature measured 4 inches above the sample.

(8) Record the time at which flame penetration occurs if applicable.

(b) *Test Report.* The test report must include the following:

(1) A complete description of the materials tested including type, manufacturer, thickness, and other appropriate data.

(2) Observations of the behavior of the test specimens during flame exposure such as delamination, resin ignition, smoke, ect., including the time of such occurrence.

(3) The time at which flame penetration occurs, if applicable, for each of the three specimens tested.

(4) Panel orientation (ceiling or sidewall).

Donald D. Engen,

Administrator.

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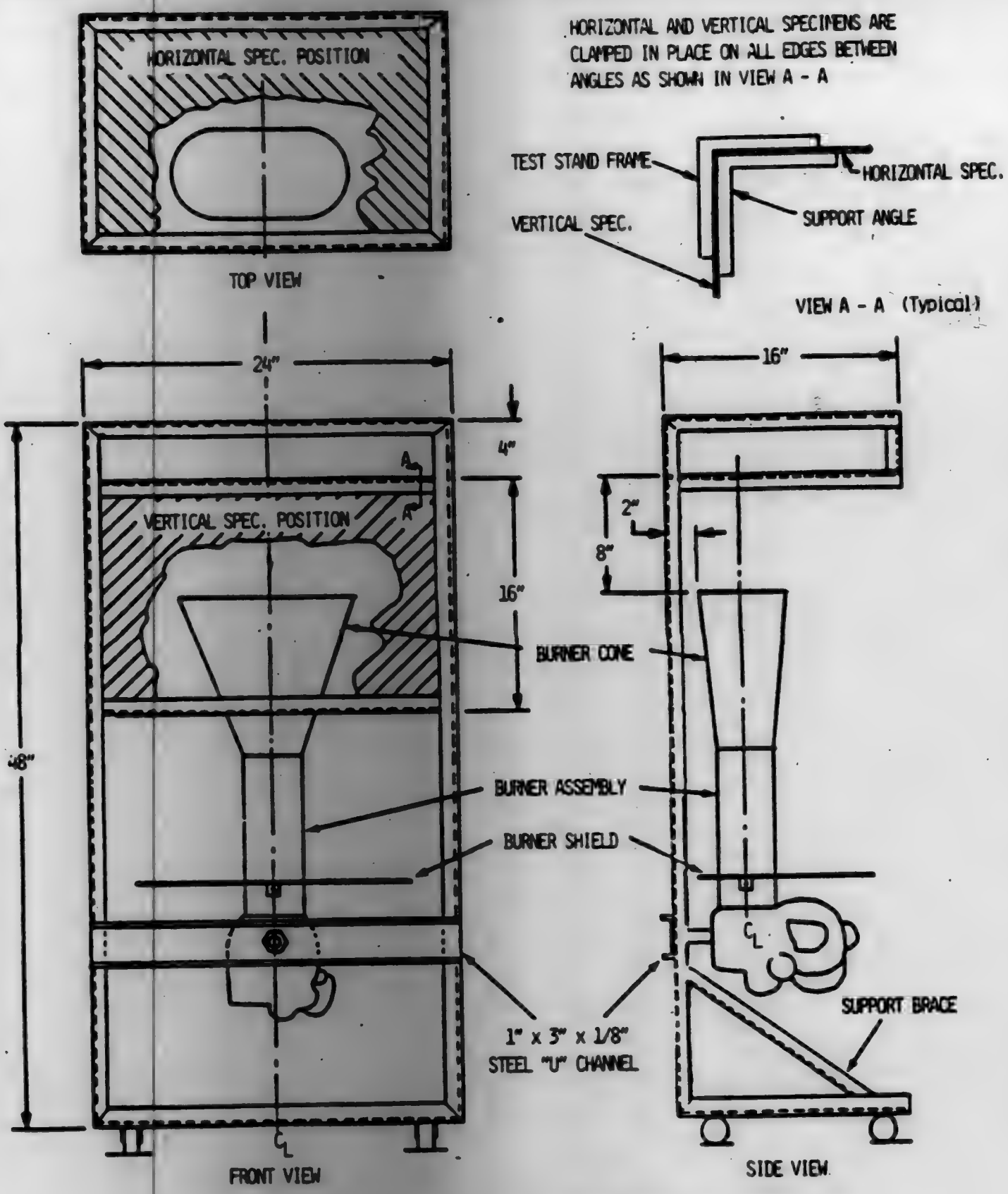

TEST STAND IS CONSTRUCTED WITH 1" x 1" x 1/8" STEEL ANGLES, ALL JOINTS WELDED
SUPPORT ANGLES ARE 1" x 1" x 1/8" CUT TO FIT

FIGURE 1. TEST APPARATUS FOR HORIZONTAL AND VERTICAL MOUNTING

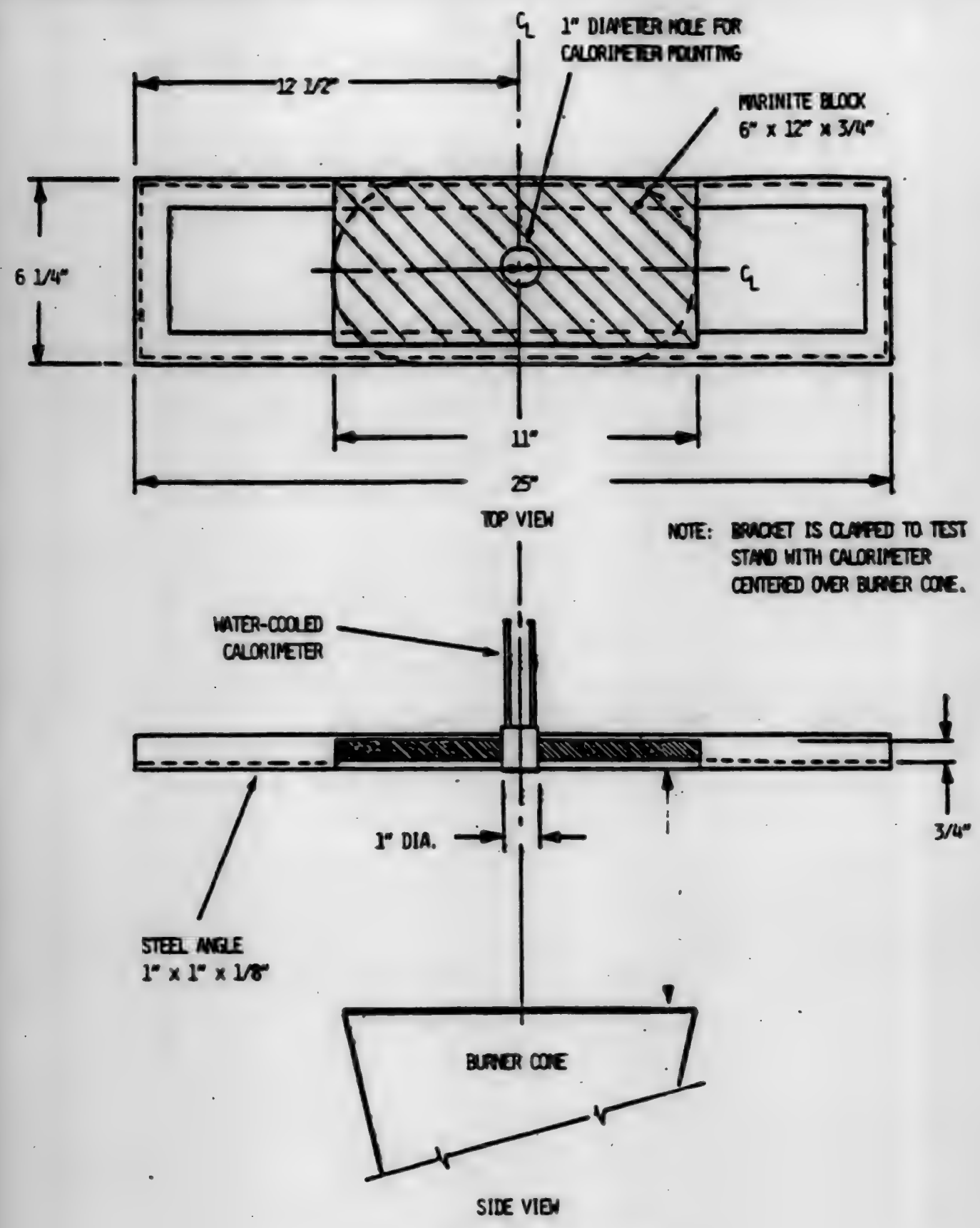

FIGURE 2. CALORIMETER BRACKET

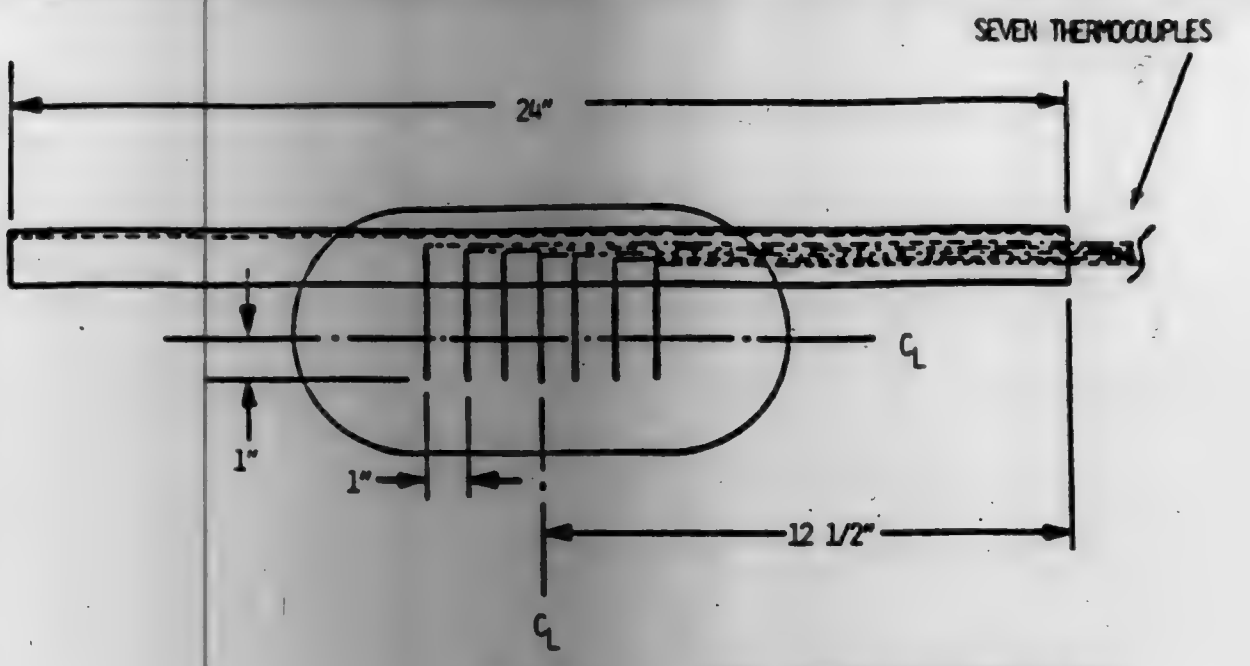

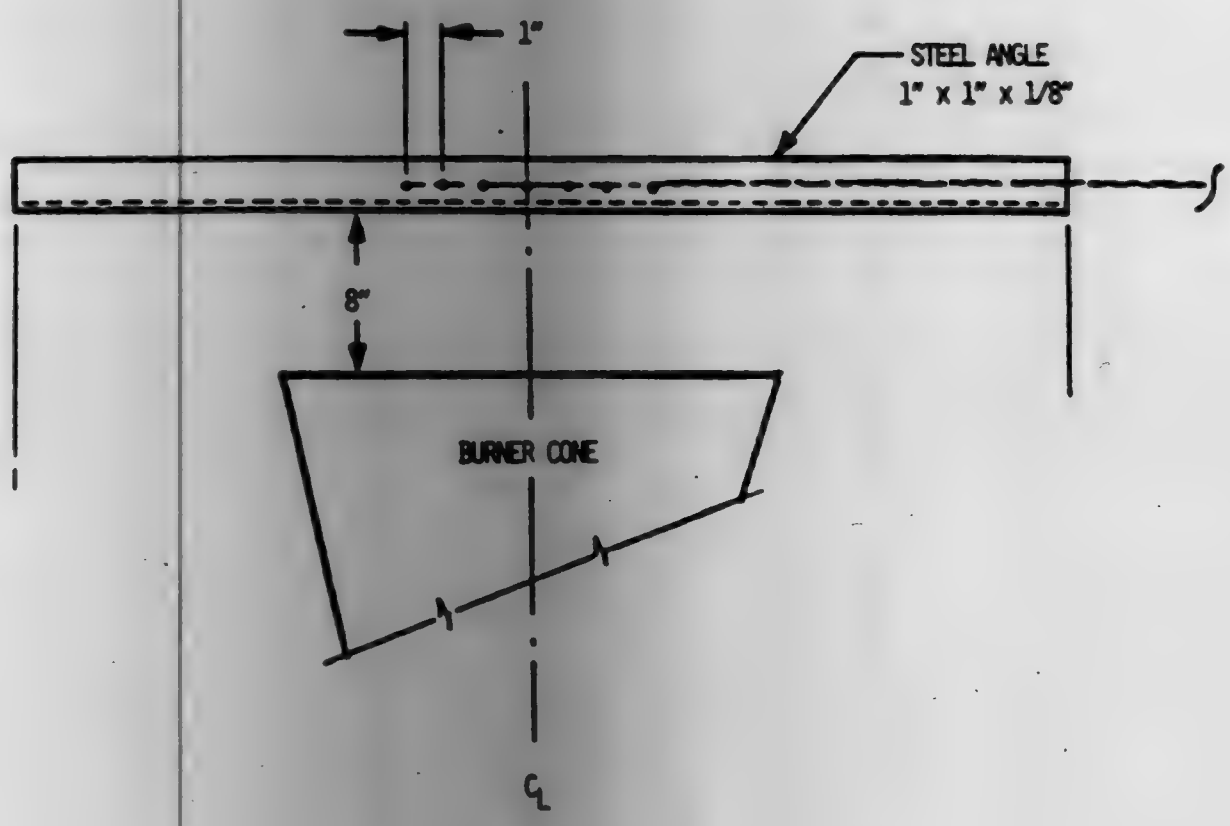

FIGURE 3. THERMOCOUPLE RAKE BRACKET

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Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1986.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1986, of 83 rescission proposals and 66 deferrals contained in the six special messages of FY 1986. These messages were transmitted to the Congress on October 1 and November 25, 1985, February 5, March 12, March 20, and April 25, 1986.

Rescissions (Table A and Attachment A)

As of May 1, 1986, there were rescission proposals totaling $194.4 million pending before the Congress.

Deferrals (Table B and Attachment B)

As of May 1, 1986, $11,933.1 million in 1986 budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1986.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the Federal Register listed below:

Vol. 50, FR p. 41100, Tuesday, October 8, 1985
Vol. 50, FR p. 49498, Monday, December 2, 1985
Vol. 51, FR p. 5830, Tuesday, February 18, 1986
Vol. 51, FR p. 9154, Monday, March 17, 1986
Vol. 51, FR p. 10526, Wednesday, March 26, 1986
Vol. 51, FR p. 16274, Thursday, May 1, 1986

James C. Miller, III,
Director.

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TABLE A

STATUS OF 1986 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$10,140.0
Accepted by the Congress	0
Rejected by the Congress	9,945.7 a/
Pending before the Congress	$194.4

****

TABLE B

STATUS OF 1986 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$24,720.7
Routine Executive releases through May 1, 1986 (OMB/Agency releases of $12,622.8 million and cumulative adjustments of $58.8 million)	-12,564.0
Overturned by the Congress	-223.6
Currently before the Congress	$11,933.1

a/ Rescission proposals transmitted with the FY 1987 Budget were released immediately following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1986

As of May 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Multilateral Assistance								
International organizations and programs.	R86-1 R86-1A	39,760		2-5-86 3-20-86		39,760	4-16-86	
DEPARTMENT OF AGRICULTURE								
Agricultural Stabilization and Conservation Service								
Rural clean water program	R86-2	6,000		2-5-86		6,000	4-16-86	
Agricultural conservation program	R86-3	140,839		2-5-86		140,839	4-16-86	
Water bank program	R86-4	8,371		2-5-86		8,371	4-16-86	
Dairy indemnity program	R86-5	95		2-5-86		95	4-16-86	
Rural Electrification Administration								
Reimbursement to the Rural electrification and telephone revolving fund for interest subsidies and losses	R86-6	100,000		2-5-86		100,000	4-16-86	
Purchase of Rural Telephone Bank capital stock	R86-7	20,710		2-5-86		20,710	4-16-86	
Farmers Home Administration								
Rural development loan fund	R86-10	13,674		2-5-86		13,674	4-16-86	
Soil Conservation Service								
Watershed and flood prevention operations	R86-11	69,481		2-5-86		69,481	4-16-86	
Great plains conservation program	R86-12	6,686		2-5-86		6,686	4-16-86	
Food and Nutrition Service								
Food donations program	R86-13	5,183		2-5-86		5,183	4-16-86	
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs	R86-14	101,389		2-5-86		101,389	4-16-86	
International Trade Administration								
Operations and administration	R86-15	19,290		2-5-86		19,290	4-16-86	
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R86-16	63,323		2-5-86		63,323	4-16-86	
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R86-17	21,820		2-5-86		21,820	4-16-86	
DEPARTMENT OF DEFENSE - MILITARY								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R86-81		34,000	4-25-86				
Shipbuilding and conversion, Navy	R86-82		48,188	4-25-86				
Other procurement, Air Force	R86-83		40,000	4-25-86				
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	R86-18	7,177		2-5-86		7,177	4-16-86	
Special programs	R86-19	37,782		2-5-86		37,782	4-16-86	
Office of Bilingual Education and Minority Languages Affairs								
Immigrant education	R86-20	20,710		2-5-86		20,710	4-16-86	
Office of Special Education and Rehabilitative Services								
Education for the handicapped	R86-21	44,364		2-5-86		44,364	4-16-86	
Rehabilitation services and handicapped research	R86-22	75,439		2-5-86		75,439	4-16-86	
Payments to institutions for the handicapped	R86-23	446		2-5-86		446	4-16-86	
Office of Vocational and Adult Education								
Vocational and adult education	R86-24	210,337		2-5-86		210,337	4-16-86	
Office of Postsecondary Education								
Student financial assistance	R86-25	456,347		2-5-86		456,347	4-16-86	
Higher education	R86-26	180,862		2-5-86		180,862	4-16-86	
Special Institutions								
Howard University	R86-27	5,699		2-5-86		5,699	4-16-86	

Attachment A - Status of Rescissions - Fiscal Year 1986

As of May 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Office of Educational Research and Improvement								
Libraries	R86-28	33,017		2-5-86		33,017	4-16-86	
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R86-8		38,689	3-12-86				
Fossil energy research and development	R86-88		13,072	3-12-86				
	R86-88A		13,138	4-8-86				
Energy conservation	R86-77		9,816	3-12-86				
	R86-77A		6,344	3-20-86				
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R86-9	211,455		2-5-86		211,455	4-17-86	
Indian health	R86-29	24,262		2-5-86		24,262	4-16-86	
Indian health facilities	R86-30	38,642		2-5-86		38,642	4-16-86	
Centers for Disease Control								
Disease control, research, and training	R86-31	34,096		2-5-86		34,096	4-17-86	
National Institutes of Health								
National Cancer Institute	R86-32	6,808		2-5-86		6,808	4-18-86	
National Heart, Lung and Blood Institute	R86-33	11,469		2-5-86		11,469	4-18-86	
National Institute of Diabetes and Digestive and Kidney Diseases	R86-34	7,980		2-5-86		7,980	4-18-86	
National Institute of Neurological and Communicative Disorders and Strokes	R86-35	9,554		2-5-86		9,554	4-18-86	
National Institute of Allergy and Infectious Disease	R86-36	1,613		2-5-86		1,613	4-18-86	
National Institute of General Medical Sciences	R86-37	7,358		2-5-86		7,358	4-18-86	
National Institute of Child Health and Human Development	R86-38	1,150		2-5-86		1,150	4-18-86	
National Eye Institute	R86-39	6,224		2-5-86		6,224	4-18-86	
National Institute on Aging	R86-40	2,679		2-5-86		2,679	4-18-86	
Office of the Director	R86-41	23,065		2-5-86		23,065	4-18-86	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R86-42	39,718		2-5-86		39,718	4-18-86	
Health Care Financing Administration								
Program management	R86-43	912		2-5-86		912	4-16-86	
Social Security Administration								
Refugee and entrant assistance	R86-44	87,551		2-5-86		87,551	4-16-86	
Human Development Services								
Human development services	R86-45	29,980		2-5-86		29,980	4-16-86	
Family social services	R86-46	6,157		2-5-86		6,157	4-16-86	
Work incentives	R86-47	45,884		2-5-86		45,884	4-16-86	
Community services block grant	R86-48	182,139		2-5-86		182,139	4-16-86	
Community development credit union revolving fund	R86-49	2,529		2-5-86		2,529	4-16-86	
Departmental Management								
General Departmental management	R86-50	19,619		2-5-86		19,619	4-16-86	
Policy research	R86-51	220		2-5-86		220	4-16-86	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Subsidized housing programs	R86-52	4,416,151		2-5-86		4,416,151	4-16-86	
Congregate services program	R86-53	2,565		2-5-86		2,565	4-16-86	
Housing counseling assistance	R86-54	3,313		2-5-86		3,313	4-16-86	
Community Planning and Development								
Urban development action grants	R86-55	220,062		2-5-86		220,062	4-16-86	
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Land acquisition	R86-56	3,000		2-5-86		3,000	4-16-86	
United States Fish and Wildlife Service								
Land acquisition	R86-57	4,951		2-5-86		4,951	4-16-86	
National Park Service								
Construction	R86-58	13,613		2-5-86		13,613	4-16-86	
Land acquisition	R86-59	83,917		2-5-86		83,917	4-16-86	
Historic preservation fund	R86-60	10,523		2-5-86		10,523	4-16-86	

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Attachment A - Status of Rescissions - Fiscal Year 1986

As of May 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF JUSTICE								
Federal Prison System National Institute of Corrections	R86-61	3,315		2-5-86		3,315	4-16-86	
Office of Justice Programs Justice assistance	R86-62	134,666		2-5-86		134,666	4-16-86	
DEPARTMENT OF LABOR								
Employment and Training Administration Training and employment services	R86-63	416,037		2-5-86		416,037	4-16-86	
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration Rail service assistance	R86-64	14,356		2-5-86		14,356	4-16-86	
Northeast corridor improvement program	R86-65	11,962		2-5-86		11,962	4-16-86	
Railroad rehabilitation and improvement financing funds	R86-66	32,859		2-5-86		32,859	4-16-86	
Urban Mass Transportation Administration Discretionary grants	R86-67	621,275		2-5-86		621,275	4-16-86	
DEPARTMENT OF THE TREASURY								
Office of Revenue Sharing Payments to State and local government fiscal assistance trust fund	R86-68	759,975		2-5-86		759,975	4-16-86	
Federal Law Enforcement Training Center Salaries and expenses	R86-69	4,976		2-5-86		4,976	4-16-86	
United States Customs Service Salaries and expenses	R86-70	4,160		2-5-86		4,160	4-16-86	
Operation and maintenance, air interdiction program	R86-71	19,275		2-5-86		19,275	4-16-86	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R86-72	26,796		2-5-86		26,796	4-16-86	
OFFICE OF PERSONNEL MANAGEMENT								
Government payment for annuitants, employees health benefits	R86-73	600,000		2-5-86		600,000	4-16-86	
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission Appalachian regional development programs	R86-74	81,000		2-5-86		81,000	4-16-86	
Corporation for Public Broadcasting Public broadcasting fund	R86-75	44,000		2-5-86		44,000	4-16-86	
National Endowment for the Humanities Grants and administration	R86-76	1,903		2-5-86		1,903	4-16-86	
State Justice Institute Salaries and expenses	R86-78	7,656		2-5-86		7,656	4-16-86	
United States Railway Association Administrative expenses	R86-79	640		2-5-86		640	*4-16-86	
Total, rescissions		9,945,631	194,351			9,945,671		

Notes. - The amount of the rescission proposal for Subsidized housing programs (R86-52) for the "Rental rehabilitation grants program" was inadvertently shown in the Third Special Message as $71,755,000 instead of $71,775,000. This report reflects the correct amount.

The following rescission proposal has been adjusted downward to reflect the impact of sequestration: R86-64..... $3,312,600

On April 8, 1986, the General Accounting Office reclassified a portion of Deferral No. 86-6A as a rescission. This is shown above as Rescission No. 86-80A.

Attachment B - Status of Deferrals - Fiscal Year 1986

As of May 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	086-1	10,000		10-1-85					10,000
International Security Assistance									
Foreign military sales credit.....	086-32	4,590,000		2-5-86	2,453,162				2,136,838
Economic support fund.....	086-24	1,222,216		11-25-85					
	086-24A		1,936,000	2-5-86	1,550,621			40,116	1,643,771
Military assistance program.....	086-33	661,360		2-5-86	618,146				43,204
International military education and training.....	086-34	27,246		2-5-86	27,246				0
Agency for International Development									
International disaster assistance.....	086-59	64,607		3-12-86	38,023				26,585
Multilateral Development Banks									
Contribution to the special facility for sub-saharan Africa.....	086-35	75,000		2-5-86	75,000				0
DEPARTMENT OF AGRICULTURE									
Farmers Home Administration									
Rural housing insurance fund.....	086-60	700,000		3-12-86					700,000
Forest Service									
Expenses, brush disposal.....	086-2	77,913		10-1-85					181,506
	086-2A		30,893	3-12-86	7,300				22,702
Timber salvage sales.....	086-3	22,864		10-1-85	151				442,336
Cooperative work.....	086-61	442,336		3-12-86					
DEPARTMENT OF COMMERCE									
Economic Development Administration									
Economic development assistance programs.....	086-36	40,000		2-5-86					40,000
National Oceanic and Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	086-26	32,333		11-25-85	32,333				0
Fisheries loan fund.....	086-25	1,969		11-25-85					2,297
	086-25A		328	2-5-86					
Patent and Trademark Office									
Salaries and expenses.....	086-65	1,977		3-20-86					1,977
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.....	086-4	353,070		10-1-85					
	086-4A		1,488,579	2-5-86	1,859,651			20,343	1,350
Family Housing									
Family housing, Defense.....	086-27	11,800		11-25-85					138,000
	086-27A		210,042	2-5-86	83,842				
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	086-5	1,168		10-1-85					1,230
	086-5A		88	2-5-86	124			106	
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply, research and development activities.....	086-38	65,763		2-5-86	39,909				25,854
	086-58	504,158		2-5-86					504,158
Uranium supply and enrichment activities...	086-6	9,247		10-1-85					
Fossil energy research and development.....	086-6A		55,566	2-5-86	33,174			(6,498)	25,140
	086-7	7,038		10-1-85	4,964				2,074
Fossil energy construction.....	086-8	156,660		10-1-85					36,661
Naval petroleum and oil shale reserves.....	086-8A		10,298	2-5-86	130,005				
	086-9	9,000		10-1-85					21,462
Energy conservation.....	086-9A		25,962	3-12-86	10,400			3,000	41,162
Strategic petroleum reserve.....	086-37	197,041		2-5-86	156,750				

Attachment B - Status of Deferrals - Fiscal Year 1986

As of May 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-86
SPR petroleum account	D86-10	536,958		10-1-85					577,534
	D86-10A		40,576	2-5-86					
Alternative fuels production	D86-11	1,149		10-1-85					0
	D86-11A		750	2-5-86	1,899				
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D86-42	400		3-12-86					400
Southeastern Power Administration, Operation and maintenance	D86-12	25,344		10-1-85	23,936			681	2,089
Southwestern Power Administration, Operation and maintenance	D86-13	5,000		10-1-85					13,243
	D86-13A		8,243	2-5-86					
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D86-14	27,095		10-1-85					43,466
	D86-14A		16,371	3-12-86					
Departmental Administration									
Departmental administration	D86-15	8,581		10-1-85	8,581				0
	D86-63	393		3-12-86					393
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D86-16	3,000		10-1-85					3,000
Health Care Financing Administration									
Program management	D86-57	8,489		2-5-86					8,489
Social Security Administration									
Limitation on administrative expenses (construction)	D86-20	6,489		11-25-85					6,647
	D86-20A		157	2-5-86					
Limitation on administrative expenses (excludes disability determination services)	D86-39	30,000		2-5-86	30,000				0
Limitation on administrative expenses (information technology systems)	D86-40	114,641		2-5-86					114,641
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Annual contributions for assisted housing -									
Budget authority	D86-41	7,032,643		2-5-86	4,731,637				2,300,006
Contract authority	D86-42	641		2-5-86	641				0
Rental housing development grants	D86-43	77,000		2-5-86	77,000				0
Congregate services program	D86-44	2,670		2-5-86	2,670				0
Housing for the elderly or handicapped fund	D86-45	699,801		2-5-86	69,581				530,220
Nonprofit sponsor assistance	D86-46	1,000		2-5-86	543				457
Community Planning and Development									
Rental rehabilitation grants program	D86-47	77,000		2-5-86	77,000				0
Community development grants	D86-48	500,000		2-5-86					-500,000
Urban development action grants	D86-49	251,000		2-5-86	251,000				0
Rehabilitation loan fund	D86-50	135,535		2-5-86	4,402				131,133
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d)	D86-66	49		3-20-86					49
National Park Service									
Land acquisition and State assistance	D86-64	1,893		3-12-86					1,893
DEPARTMENT OF JUSTICE									
Bureau of Prisons									
Buildings and facilities	D86-17	20,000		10-1-85					30,730
	D86-17A		10,730	2-5-86					
Office of Justice Programs									
Crime victims fund	D86-18	100,000		10-1-85					99,696
	D86-18A		3,396	2-5-86	4,300				

Attachment B - Status of Deferrals - Fiscal Year 1986

As of May 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-86
DEPARTMENT OF LABOR									
Employment and Training Administration									
State unemployment insurance and employment service operation	D86-51	37,000		2-5-86	33,089				3,911
DEPARTMENT OF STATE									
Bureau of Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D86-19	18,082		10-1-85					18,082
Other									
Assistance for implementation of a Contadora agreement	D86-20	2,000		10-1-85					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Conrail labor protection	D86-52	4,565		2-5-86					4,565
Urban Mass Transportation Administration									
Discretionary grants	D86-21	223,600		10-1-85		223,600	P.L. 99-190		0
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D86-29	686,430		11-25-85					
	D86-29A		681,723	2-5-86	28,011				1,340,151
Maritime Administration									
Operations and training	D86-53	9,350		2-5-86					
	D86-53A		868	3-28-86	8,500				1,718
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D86-30	7,743		11-25-85					
	D86-30A		97,483	2-5-86					
	D86-30B		19,774	3-12-86	125,712			712	(0)
Local government fiscal assistance trust fund	D86-31	54,349		11-25-85					
	D86-31A		25,681	3-12-86	5,049			244	75,195
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine									
Salaries and expenses	D86-54	233		2-5-86					233
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D86-22	10,947		10-1-85					10,947
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D86-23	243		10-1-85	43				200
Dual benefits payments account	D86-55	2,201		2-5-86	2,009				192
United States Information Agency									
Acquisition and construction of radio facilities	D86-56	66,545		2-5-86	4,888				61,666
TOTAL, DEFERRALS		20,855,719	4,665,888		12,622,811	223,600		58,792	11,933,107

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D86-30B) of outlays only.

Some of the amounts shown above as "Cumulative OMB/Agency Releases" were sequestered pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985.

On April 8, 1986, the General Accounting Office reclassified a portion of Deferral No. 86-6A as a rescission. This is shown on Attachment A as Rescission No. R6-88A.

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Part V

Department of the Treasury

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service.

ACTION: Final rule.

SUMMARY: The Bureau of the Public Debt hereby publishes, as a final rule, that portion of the proposed rule establishing a revised book-entry system governing all marketable Treasury securities to be held in the TREASURY DIRECT book-Entry Securities System [formerly known as "T-DAB" but now referred to as "TREASURY DIRECT"]. With the exception of certain definitions which apply only to TREASURY DIRECT, Subpart A of the rule, which provides general and definitional information about the revised book-entry system, and certain other provisions of the rule governing marketable Treasury securities held in the commercial counterpart [formerly known as "T-FED" but now known as "TRADES," i.e., Treasury/Reserve Automated Debt Entry System], were published separately for comment at 51 FR 8846 on March 14, 1986. That portion will be published as part of the final rule after the end of the comment period and following consideration of the comments submitted.

As explained in the notice of proposed rulemaking for the TREASURY DIRECT regulations on December 2, 1985, at 50 FR 49412, Treasury bonds and notes issued after the effective date for TREASURY DIRECT will no longer be offered in physical form, but will be available only in book-entry. Treasury bills, which are currently offered only in book-entry form, will be added to the TREASURY DIRECT system on a phased-in basis. All book-entry Treasury securities will be available in TRADES, which will be essentially a continuation of the system currently being maintained through the Federal Reserve Banks.

To provide a complete rule in a single document, the Department plans to republish the final TREASURY DIRECT regulations set forth below with the publication of the regulations as finally adopted for TRADES.

EFFECTIVE DATE: These regulations shall be effective July 1, 1986, and shall apply to securities made eligible for TREASURY DIRECT either by the applicable offering circular or by announcement by the Secretary of the Treasury.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Attorney-Adviser (202-376-4320), or John E. Logue, Attorney-in-Charge (202-447-9659).

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt, in its Notice of Proposed Rulemaking on December 2, 1985, at 50 FR 49412, referred to the book-entry system to be established by the regulations as T-DAB, an acronym for Treasury Direct Access Book-Entry Securities System. It was subsequently decided that TREASURY DIRECT would be more understandable in referring to the new book-entry system, better communicating its central feature, i.e., a Treasury-operated system to which investors have direct access. Where the term "T-DAB" appeared in the proposed rule, the term "TREASURY DIRECT" has now been substituted.

Discussion of Final Rule

Backgound

Twenty-four written comments were received to the notice of proposed rulemaking from various sources, including Federal agencies, trade associations, as well as financial and commercial investment institutions. With the exception of one bank, all commentators endorsed the concept of a certificateless security.

The grouping and identification of the comments received have been made on a section-by-section basis, with an explanation of the action taken with respect thereto. As circumstances necessitated the publication of the rule in two segments, in order to make each part more understandable, certain definitions, such as those for "Department" and "securities", have appeared in the proposed rule for both TREASURY DIRECT and TRADES, and were slightly modified in the proposed rules on TRADES. Because these modifications represent non-substantive clarifications, and to avoid confusion as between the two portions of the rules, the definitions as used in TRADES have been adopted.

Section-By-Section Analysis

Section 357.21 Registration.

The forms of registrations provided for securities to be held in TREASURY DIRECT have different legal effect from those currently provided for in the case of definitive Treasury securities and for the Treasury's book-entry Treasury bill system. A comment was received that, as a result, this could lead to some confusion, and that the Treasury bill forms of recordation currently offered should be changed, particularly since Treasury bills will be phased into TREASURY DIRECT gradually. The Bureau believes that the benefits of uniformity of rights and interests that TREASURY DIRECT investors will derive far outweigh any possible confusion. As for confusion with the current Treasury bill book-entry system, given the fact that Treasury bills have a term of not more than a year, it is believed that the problem, if any, will be short-lived.

Given the importance of the change that TREASURY DIRECT provides as to registration, the discussion thereof that accompanied the Notice of Proposed Rulemaking is re-published below.

"*Forms of Registration.* The proposed rule provides the investor with a variety of registration options. They are essentially similar to those provided for registered, definitive marketable Treasury securities. Investors should be particularly aware that, where the security is held in the names of two individuals, the registration chosen may establish rights of survivorship.

"The reason for establishing the rights of ownership for securities held in TREASURY DIRECT is that it will give investors the assurance that the forms of registration they select will establish conclusively the rights to their book-entry securities. It will also serve to eliminate some of the uncertainties, as well as possible conflicts, between the varying laws of the several States.

"A Federal rule of ownership is being adopted by the Treasury for TREASURY DIRECT securities. This regulatory approach is consistent with the one previously taken in the case of United States Savings Bonds. It will have the effect of overriding inconsistent State laws. See, *Free v. Bland,* 369 U.S. 663 (1962).

"In the case of individuals (who are likely to be by far the majority of holders of securities in TREASURY DIRECT), the options offered will permit virtually all the preferred forms of ownership. At the investor's option, it will be possible to provide for the disposition of the securities upon death through rights of survivorship.

"*Coownership registration.* One option is the coownership form of registration, i.e., "A or B." Unlike the current Treasury bill book-entry system being administered by the Bureau of the Public Debt, a security held in TREASURY DIRECT registered in this form will be transferable upon the written request of *either* coowner. Other changes in the account may also be made upon the request of *either* party.

While this form of registration will facilitate the receipt of payments and provide ease in conducting transactions, care should obviously be exercised in designating a coowner.

"*Joint ownership.* For those who would prefer to have the transferability of a security held in two names contingent upon the request of both, the joint form of registration will be appropriate. This form of registration, i.e., "A and B, with [without] the right of survivorship," will require the agreement of both parties to conduct any authorized transaction.

"*Beneficiary form.* The beneficiary form, i.e., "A payable on death to (POD) B," will permit the owner to have sole control of the account during his/her lifetime, but in the event of death, the account will pass by right of survivorship to the beneficiary."

One commentator questioned the "natural guardian" and "voluntary guardian" forms of registration provided in the regulations, pointing out that financial institutions are reluctant to establish an account in the name of a natural guardian of a minor because of the uncertainties as to who might be entitled to the funds on the death of the natural guardian or minor, or when the minor reached majority. It was mentioned that a bank would be reluctant to open an account in the name of a voluntary guardian, or to release funds from an existing account to a voluntary guardian because of the potential risk in the event of a claim from a court-appointed guardian. It seems apparent that the comment was prompted by the provision that appeared in the proposed rule that the account held in TREASURY DIRECT and the deposit account to which payments are to be directed should be in the same form. As hereafter pointed out in the discussion under the payment section, this is not a requirement.

While parents are universally recognized as the natural guardians of the person of minors, they have generally not been recognized as entitled to control the estates of these minors, except perhaps in the case of small amounts. Traditionally, the guardian of the estate of a minor involves judicial appointment and supervision. In order to provide a means of dealing with the problem of disposing of securities inadvertently registered in the name of minors without requiring the appointment of a legal guardian and to provide a means for investing funds of a minor, which did not technically qualify for investment under the Uniform Gifts to Minors Act, the Department decided to provide recognition for natural guardians.

The voluntary guardianship procedure is wholly a creature of the Department's regulations. It was established in recognition of the burden placed on an incompetent's estate and his/her family by requiring the appointment of a legal guardian to receive the interest on, or to redeem securities for, the account of an individual who has become incompetent, at least where the incompetent's estate is relatively modest. This form of registration is not available on original issue and is limited to an aggregate of $20,000 (par amount) of TREASURY DIRECT securities. The $20,000 limit in connection with the use of the voluntary guardianship procedure is in keeping with the limits used in connection with the summary administration of decedents' estates under the laws of many States.

Section 357.23 Judicial proceedings.

No comments were received regarding the provisions on judicial proceedings. Given their importance, the discussion that accompanied the publication thereof in proposed form is included here.

"*Judicial proceedings.* Under the principle of sovereign immunity, neither the Department nor a Federal Reserve Bank, acting as fiscal agent of the United States, will recognize a court order that attempts to restrain or enjoin the Department or a Federal Reserve Bank from making payment on a security or from disposing of a security in accordance with instructions of the owner as shown on the Department's records.

"The Department will recognize a final court order affecting ownership rights in TREASURY DIRECT securities provided that the order is consistent with the provisions of Subpart C and the terms and conditions of the security, and the appropriate evidence, as described in § 357.23(c), is supplied to the Department. For example, the Department may recognize final orders arising from divorce or dissolution of marriage, creditor or probate proceedings, or cases involving application of a State slayer's act. The Department will also recognize a transaction request submitted by a person appointed by a court and having authority under an order of a court to dispose of the security or payment with respect thereto, provided conditions similar to those above are met."

Section 357.25 Security interests.

TREASURY DIRECT is not designed to reflect or handle the various types of security interests that may arise in connection with a Treasury bond, note or bill. However, the Treasury has from time to time and to a limited extent held in safekeeping, for such agencies as the Customs Service and Immigration and Naturalization Service, Treasury securities submitted in lieu of surety bonds in accordance with 31 U.S.C. 9303. While the Federal Reserve Banks handle the majority of such pledges and will continue to do so, as this statute requires the Treasury to accept these Government obligations so pledged, a provision has been added for accepting and holding book-entry securities submitted for such purposes.

Section 357.26 Payments.

(a) *General.* Most comments focused on the provisions on payments. A key feature of TREASURY DIRECT will be the making of payments by the direct deposit method (also known as the electronic funds transfer or ACH method). Checks will be issued only under extraordinary circumstances. A number of comments endorsed the concept of payment by direct deposit as an improvement given the difficulties associated with checks.

One comment expressed concern as to who would have the burden of resolving errors in cases where a receiving financial institution fails to properly credit a payment. The Department has concluded that while the direct deposit payment method is not without risks, it is far superior to the use of checks, in terms of the risks, potential losses, and costs. In a case where a receiving institution fails to act in accordance with the instructions given it, the Bureau intends to use its best efforts to assist investors in rectifying the error.

(b) *Direct deposit.* A number of comments expressed the view that the TREASURY DIRECT payment system should adopt either the rules governing the direct deposit of Government payments (31 CFR Part 210), or the rules of the National Automated Clearing House Association ("NACHA Rules"), but not separate rules. The final rules have adopted some of the existing practices applicable to commercial ACH payments, but it is not possible for the Department of the Treasury to conform to all of these rules. For example, the Treasury has no authority to indemnity recipients of direct deposit payments, although such indemnification by a sender is contemplated in the NACHA rules and was advocated in several comments. It should also be noted that the rules applicable to TREASURY DIRECT payments are modeled, to some extent, on the rules for Government direct deposit payments in order to take advantage of the large number of entities that are a part of the

Government direct deposit network. See the discussion under paragraph (b)(2). Where there are unique rules applicable to TREASURY DIRECT, however, they are explained here.

Given the variance between the procedures set out in the proposed rules and existing practice, and the increased burdens resulting therefrom, several clearing house associations and financial institutions requested that the implementation of TREASURY DIRECT be delayed from July 1986 to July 1987. The Treasury is satisfied that the added burdens that would have been imposed on financial institutions to receive TREASURY DIRECT payments under the proposed rules have been effectively eliminated in the final rule. Thus, Treasury plans to implement the system on or about the original target date. The final rules are being published, however, in advance of actual implementation so as to give financial institutions an opportunity to make whatever remaining, minor procedural changes as may be necessary.

(b)(1) *Information on deposit account at financial institution.* The proposed regulations provided that the owner of a security in TREASURY DIRECT, or in the case of ownership by two individuals, the first-named owner, must be an owner of, and so designated, on the account at the receiving financial institution. The regulations also provided that in any case in which a security is held jointly or with right of survivorship, the account at the financial institution should be established in a form that assures that the rights of each joint owner or survivor will be preserved.

The rule requiring the naming of the first-named owner on the receiving financial institution account was based on tax reporting considerations. It has now been determined that the first-named security owner need not be named on the receiving deposit account.

The rule relating to establishment of the receiving account in joint ownership cases in the same form as the registration of the security was intended to be a notice to investors of a potential problem, rather than a requirement. In cases where an investor intends a beneficiary, joint owner or coowner to receive securities after the investor's death, this intention may be defeated if the recipient is not also named on the receiving deposit account. It is up to the investor to examine his or her particular circumstances and determine whether the form in which the deposit account will be held is satisfactory. This matter has been clarified in paragraph (b)(1)(v) of the final rule. Except for the restriction described in paragraph (b)(1)(ii) (see below), the Treasury does not intend to establish any limitations on how the receiving deposit account is held.

Several comments addressed the issue of the registration of the security versus the title of the deposit account. Two comments pointed out that if the deposit account must be in the same form as the registration of the security, then existing traditional forms of ownership for bank accounts, which do not include all the forms of registration for securities held in TREASURY DIRECT, would not suffice. Concerns were also expressed that with multiple forms of ownership, financial institutions could become involved in disputes with investors. As noted above, there is no requirement that the TREASURY DIRECT account and the deposit account be identical. The responsibility to choose the title of the deposit account rests with the investor.

Another comment objected to the rule that the first-named security owner be named on the receiving deposit account because the rule would eliminate the possibility of payment to an account at a financial institution in the name of a mutual fund, security dealer, or insurance company. Although the change in the tax reporting rule described above permits payment to such accounts, as well as to trust accounts, since it appears that there is a question as to the capability of some receiving institutions to handle such payments, investors are strongly urged to consult their financial institution before requesting such payment arrangements. See paragraph (b)(1)(iii).

It should be emphasized that any payments that must be made by check will be made in the form in which the TREASURY DIRECT account is held, which may be different than the form of the deposit account. Investors should be aware that this may result in checks being issued, and thus payment being made, in a form different than they intended the direct deposit payments to be made. For example, if Investor A purchases a security in his or her name alone with instructions that payments be directed to a financial institution for the account of a money market fund, any checks that must be issued will be drawn in the name of Investor A. This could happen if Investor A furnishes erroneous payment instructions and the problem cannot be resolved before a payment date, in which case a check would be issued.

The one restriction on the form of the deposit account that appears in paragraph (b)(1)(ii) of the final regulations is a rule that where the TREASURY DIRECT account is in the name of individual(s), and the receiving deposit account is also in the name of individual(s), one of the individuals on the TREASURY DIRECT account must be named on the deposit account. This rule is intended to provide a means to determine the disposition of the payment, if necessary. The Treasury does not expect financial institutions to monitor this rule.

Provision has been made in paragraph (b)(1)(vii) to permit financial institutions to request "mass changes" of deposit account numbers without the submission of individual requests from investors to TREASURY DIRECT. This procedure is intended for use where an institution changes all or an entire group of its account numbers, typically as a result of an organizational change. TREASURY DIRECT will honor requests from a financial institution to change deposit account numbers under such circumstances, with the understanding that the institution agrees to indemnify the Treasury and the security owners for any losses resulting from errors made by the institution. If the institutions does not wish to use the "mass change" procedure, then the change in account number must be requested by the investor, using the authorized transaction request form. See § 357.28.

Some institutions voiced concern in general about investor errors in furnishing the TREASURY DIRECT a deposit account number and the financial institution's routing number. Although the Treasury plans to provide as much assistance to investors as possible, the investor must bear the responsibility for securing accurate payment information. Investors are urged to consult with their receiving institution to verify the accuracy of the payment information, since neither the Treasury nor the receiving financial institution would be responsible for payment errors resulting from erroneous information provided by investors.

The proposed rule provided in § 357.26(b)(1)(iii) that the designation of a financial institution by a security owner to receive payments from TREASURY DIRECT would constitute the appointment of the financial institution as agent for the owner for the receipt of payments. The crediting of a payment to the financial institution for deposit to the owner's account, in accordance with the owner's instructions, would discharge the United States of any further responsibility for the payment. One comment noted that, in contrast, the rule in 31 CFR § 210.13 for Federal recurring payments is that the United States is not acquitted until the payment is credited to the account of

the recipient on the books of a financial institution.

Although, in principle, the same rules should apply to all Government payments, the proposed TREASURY DIRECT rule has been retained in the final regulations on the basis of the major differences in the procedures to be used in TREASURY DIRECT. Most significantly, the Treasury will not be securing any written verification (*i.e.*, an enrollment form) from a financial institution as to the accuracy of the deposit account number and other payment information, as is now the practice in the case of payments under 31 CFR Part 210. Under these circumstances, the Treasury cannot, in effect, guarantee that a payment will be credited by a financial institution to the correct account. It should also be noted that this rule on acquittance of the United States is consistent with the provision in § 357.10(c) of the proposed regulations on TRADES. In practice, however, the Treasury plans to participate actively in seeking to locate and recover any payments that have been misdirected.

(b)(2) Agreement of financial institution. The proposed rule provided, in Sec. 357.26(b)(2), that a financial institution which has agreed to accept payments under 31 CFR Part 210 shall be deemed to have agreed to accept payments from TREASURY DIRECT. The rule further provided that an institution could not be designated to receive TREASURY DIRECT payments unless it had agreed to accept direct deposit payments under 31 CFR Part 210.

One financial institution commented that a receiving institution that has already agreed to accept Part 210 payments should have the choice as to whether to accept payments from TREASURY DIRECT. The basis for this comment was the perception that the receipt of TREASURY DIRECT payments would require the implementation of special procedures by the financial institution and expose it to additional risks. As explained earlier, the Treasury has significantly modified the procedures and reduced the requirements imposed upon a financial institution in order to receive TREASURY DIRECT payments, and decreased as well the risks an institution will incur in the receipt of such payments. Thus, the proposed rule on eligibility of receiving institutions has been retained in the final rule in essentially the same form.

Two other comments were made to the effect that the category of institutions receiving payments should be broadened. In deciding to authorize payments to all institutions receiving Part 210 payments, the Treasury considered the fact that many more institutions are designated endpoints for Government (direct deposit) payments than for commercial ACH payments. In order to afford investors the widest choice of recipient institutions, all institutions that had agreed to accept Part 210 payments were designated as authorized recipients. Treasury has now broadened the rule further to also authorize those financial institutions that are willing to agree to accept Part 210 payments in the future. This rule will permit investors to designate institutions that are not now receiving Government direct deposit payments as the recipients of their TREASURY DIRECT payments if the institutions make appropriate arrangements with the Federal Reserve Bank of their District.

(b)(3) *Pre-notification.* A significant feature of the TREASURY DIRECT payment procedure will be the use of a pre-notification message sent to the receiving financial institution in advance of the first payment. This procedure, already in use for commercial ACH payments, alerts the institution that a payment will be made and provides an opportunity for verification of the accuracy of the account information.

The proposed regulations provided that the financial institution would be required to reject the pre-notification message within four calendar days after the date of receipt if the information contained in the message did not agree with the records of the institution or if for any other reason the institution would not be able to credit the payment. The rules also stated that a failure to reject the message within the specified time period would be deemed an acceptance of the pre-notification and a warranty that the information in the message was accurate.

Because there was some confusion over when the pre-notification message woud be sent, the final rules clarify, in paragraph (b)(3)(i), that in most cases, this will occur shortly after establishment of a TREASURY DIRECT account. The Treasury has under consideration a system change that would permit a second pre-notification to be sent closer to the time of the payment if the first payment is to occur a substantial length of time after account establishment.

One of the items of information contained in a pre-notification message is the name the investor has indicated appears on the deposit account. Comments were received that existing procedures and software do not permit automatic verification of the account name. Although there is apparently some variation in practice, and some institutions undertake to verify the account name information manually, the Treasury has decided to drop the account name verification requirement in the final rules. This means that under paragraph (b)(3)(ii), a financial institution need only verify the account number and type designations on the pre-notification message. However, the Treasury urges institutions which are able to verify account names to do so and encourages the development of software that would have this capability.

A number of comments urged that the four-day period provided for an institution to reject a pre-notification message be lengthened. After consideration of the various alternatives proposed, the Treasury has concluded that an eight-day period will meet the needs of most institutions. See paragraph (b)(3)(ii) of the final rule. In responding to a pre-notification message, an institution may use the NACHA's "notification of change" procedure, standardized automated rejection codes, or any other similar standard procedure. Upon receipt of such notification, the Treasury will either make the necessary changes in the TREASURY DIRECT account or contact the investor, depending on the circumstances.

One commentator objected to the warranty by the receiving institution as to the accuracy of the pre-notification information, particularly in view of the manual verification or changes in procedures that would be required, and the resulting possibility of error. As previously noted, the requirement to verify an account name has been eliminated. In addition, language has been added to make it clear that the verification is limited to the time of pre-notification. The Treasury is of the view that the warranty is a useful concept in encouraging institutions to respond to pre-notification messages and will benefit all concerned by increasing the likelihood that payments will be made accurately and to the appropriate party.

(b)(5) *Responsibility of financial institution.* The proposed regulations provided, in § 357.26(b)(5)(ii), that a financial institution that receives a TREASURY DIRECT payment on behalf of a customer would be required to promptly notify the Treasury when it has made a change in the status or ownership of the customer's deposit account, such as the deletion of the first-named owner of the security from the title of the account, or when the institution is on notice of the death or

incompetency of the owner of the deposit account.

Several financial institutions objected to this requirement on the grounds that it would be burdensome and would require the development of new procedures to monitor the changes in deposit accounts. Specifically, several institutions indicated they would be unable to relate the receipt of TREASURY DIRECT payments, which would be handled in a centralized area of the institution, to the changes being made in a deposit account, which are handled in another operational area of the institution. These institutions said they would not necessarily be aware of who is the first-named owner of the security in TREASURY DIRECT, and that more responsibility should be placed on the security owner in reporting changes.

In response to these comments, the Treasury has narrowed the notification rule, in paragraph (b)(5)(ii) of the final rule, to require a financial institution to notify TREASURY DIRECT only in cases where it is on notice of the death or legal incapacity of an individual named on the deposit account, or where it is on notice of the dissolution of a corporation named in the deposit account. Upon receipt of notice by the area of the institution that receives credit payments, the institution will be required to return any TREASURY DIRECT payments received thereafter.

(b)(6) *Payments in error/duplicate payments.* The proposed regulations, in § 357.26(b)(6), set out rules describing the procedure that would be followed in cases where the Treasury or a Federal Reserve Bank has made a duplicate payment or a payment in error. First, the financial institution to which the payment was directed would be provided with a notice asking for the return of the amount of the payment remaining in the deposit account. If the financial institution were unable to return any part of the payment, it would be required to notify the Treasury or its Federal Reserve Bank, and provide the names and addresses of the persons who withdrew funds from the deposit account after the date of the duplicate payment or the payment in error. If the financial institution did not respond to the notice within 30 days, the financial institution's account at its Federal Reserve Bank could be debited in the amount of the duplicate or improper payment.

Several institutions raised objections about various aspects of the above procedures. One stated that 30 days was an insufficient time to respond and urged conformity with the rules in 31 CFR Part 210 permitting a 60-day response time. Some objected to furnishing information about the persons who withdrew money from an account. Several objected in principle to the provision authorizing the debiting of their accounts. Several comments indicated that if a payment is returned by a financial institution using an automated payment reversal procedure, then only the full amount of the payment (not a partial amount) can be reversed.

In the final rule, the Treasury has clarified the procedures. The requirement to provide the names of persons who withdrew funds from an account has been changed. In paragraph (b)(6)(i), financial institutions are asked to provide only such information as they have about the matter. The debiting of an institution's account at a Federal Reserve Bank is intended to be simply a last resort if the institution fails totally to respond to the notice of a duplicate payment or payment made in error. See paragraph (b)(6)(iii). The time provided for response to this notice has been lengthened to 60 days.

The final rule has also been clarified in paragraph (b)(6)(i) to provide that the amount that should be returned is an amount equal to the payment. The Treasury reserves the right, however, to request the return by other than automated means of a partial amount of a payment made in error. It is anticipated that such a procedure would occur only if the notice of a payment made in error is not issued immediately after the payment was made.

(d) *Handling of payments by Federal Reserve Banks.* Some of the comments raised a question about the liability of the Federal Reserve Banks in making payments. The proposed rule, in § 357.26(d)(2), provided that each Federal Reserve Bank would be responsible only to the Department and would not be liable to any other party for any loss resulting from its handling of payments. This rule was taken from the existing regulations in 31 CFR Part 210 (see § 210.3(f)), and is simply a restatement of existing law.

In making payments, the Federal Reserve Banks are acting in the capacity as fiscal agents of the United States, pursuant to 12 U.S.C. 391. They are not acting in an individual (banking) capacity. If a Federal Reserve Bank misdirects a payment contrary to instructions provided by the investor, the United States, as principal, may remain liable to the investor for the payment. The United States could seek to recover any loss from its agent, the Fedeal Reserve Bank. However, because the proposed rule simply stated a legal conclusion and tended to create the impression that the rule was broader than intended, it has been omitted from the final regulations.

Section 357.31 Certifying individuals.

For clarity, the warranties which accompany the use of a "Signature guaranteed" stamp have been set out.

Section 357.42 Preservation of existing rights.

This section has been deleted. The same subject-matter will be covered in § 357.1, as finally adopted.

Section 357.43 Liability of Department and Federal Reserve Banks.

This section was published as § 357.42 in the notice of proposed rulemaking for TRADES. The final version will be published after all the comments on the rulemaking for TRADES have been reviewed and considered.

Section 357.46 Supplements, amendments, or revisions.

Provision for "charges and fees for services and maintenance of book-entry Treasury securities" has been added in the event circumstances should dictate their imposition.

Procedural Requirements

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Although this rule was issued in proposed form to secure the benefit of public comment, the notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

The collection of information requirements in these regulations were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). The Office of Management and Budget approved those requirements under control No. 1535-0068.

List of Subjects in 31 CFR Part 357

Electronic funds transfer, Federal Reserve System, Government securities.

Dated: May 9, 1986.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 357 is added to Subchapter B of Title 31, Code of Federal Regulations, Chapter II, and issued as Department of the Treasury Circular, Public Debt Series No. 2-86, to read as follows. The "Discussion of Final Rule" portion of the

Supplementary Information section of this document is designated as Appendix A to Part 357 and is added to Part 357.

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2-86)

Subpart A—General Information

Sec.
357.0–357.2 [Reserved]
357.3 Definitions.

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)—[Reserved]

Subpart C—TREASURY DIRECT BOOK-ENTRY Securities System (TREASURY DIRECT)

357.20 Securities account in TREASURY DIRECT.
357.21 Registration.
357.22 Transfers.
357.23 Judicial proceedings—sovereign immunity.
357.24 Availability and disclosure of TREASURY DIRECT records.
357.25 Security interests.
357.26 Payments.
357.27 Reinvestment.
357.28 Transaction requests.
357.29 Time required for processing transaction request.
357.30 Case of delay or suspension of payment.
357.31 Certifying individuals.
357.32 Submission of transaction requests; further information.

Subpart D—Additional Provisions

357.40 Additional requirements.
357.41 Waiver of regulations
357.42 Liability of Department and Federal Reserve Banks. [Reserved]
357.43 Liability for transfers to and from TREASURY DIRECT.
357.44 Notice of attachment for securities in TRADES.—[Reserved]
357.45 Supplements, amendments, or revisions.

Appendix A—Discussion of Final Rule.

Authority: 31 U.S.C. Chapter 31; 12 U.S.C. 391.

Subpart A—General Information

§§ 357.0–357.2 [Reserved]

§ 357.3 Definitions.

In this Part, unless the context indicates otherwise:

"Bill" means an obligation of the United States, with a term of not more than one year, issued at a discount, under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Bond" means an obligation of the United States, with a term of more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Department" means the United States Department of the Treasury, and, where appropriate, the Federal Reserve Banks acting as fiscal agents of the United States.

"Depository institution" means an entity described in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)). Under section 19(b) of the Federal Reserve Act, the term "depository institution" includes:

(a) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(b) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(c) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(d) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured institution under 12 U.S.C. 1781;

(e) Any member as defined in 12 U.S.C. 1422;

(f) Any insured institution as defined in 12 U.S.C. 1724 or any credit union which is eligible to make application to become an insured credit union under 12 U.S.C. 1726; and

(g) For the purpose of 12 U.S.C. 248(o), 342 to 347, 347c, and 372, any association or entity which is wholly owned by or which consists only of institutions referred to in paragraphs (a) through (d) of this definition.

"Federal Reserve Bank" or "Reserve Bank" means a Federal Reserve Bank or Branch.

"Financial institution" means, for purposes of direct deposit, an institution which has agreed to receive credit payments under 31 CFR Part 210, as amended from time to time, and has not withdrawn its participation in a direct deposit program under Part 210, or an institution which is willing to agree to receive credit payments under 31 CFR Part 210 and has enrolled with its Federal Reserve Bank.

"Incompetent" means an individual who is legally, medically or mentally incapable of handling his or her business affairs, except that a minor is not an incompetent solely because of [illegible].

"Maturity value" is the amount that the Department is obligated to pay when a security matures.

"Minor" means an individual who is under the age of majority, as determined by applicable state law.

"Note" means an obligation of the United States, with a term of at least one year, but of not more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Original issue" means the offering by the Department of the Treasury of a marketable Treasury security to the public and its issuance in book-entry accounts maintained either directly by the Treasury or held through a Federal Reserve Bank.

"Owner," as used in Subpart C, means the individual(s) or entity in whose name a security is registered. If a security is registered in more than one name, the term "owner" incudes all those whose names appear on the registration and are authorized by this Part to make a transaction request on a security held in TREASURY DIRECT.

"Redemption" means payment of a security at maturity, or pursuant to a call for redumption in accordance with the terms of a security.

"Representative" includes an executor, administrator, legal guardian, committee, conservator, and any similar person or entity appointed by a court to represent the estate of a decedent, minor, or incompetent, as well as a trustee, whether appointed by a court or otherwise.

"Security" means a bond, note, or bill, each as defined in this section, and any other obligation issued by the Department that, by the terms of the applicable offering circular, are made subject to this Part. Solely for purposes of this Part, it also means the interest and principal components of a security eligible for Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), if such security has been divided into such components by the express terms of the offering circular under which the security was issued and the components are maintained separately on the books of a Federal Reserve Bank.

"Security interest" and "pledge" mean an interest in a security, which interest is acquired by a secured party to secure payment or performance of an obligation and is created by a security agreement between the person having such obligation and the secured party.

"Taxpayer identifying number" or "TIN" means a social security account number or an employer identification number, as appropriate.

"TRADES" is the Treasury/Reserve Automated Debt Entry System.

"Transaction request" means a request to effect a change in an account master record or securities portfolio maintained in TREASURY DIRECT.

"Transaction request form" means a form or series of forms prescribed for use by the Department to request a transaction in TREASURY DIRECT. (This term includes a document that the Department has determined contains all of the elements required by the transaction request form.)

"TREASURY DIRECT" is the TREASURY DIRECT Book-Entry Securities System.

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)—[Reserved]

Subpart C—TREASURY DIRECT Book-Entry Securities System (TREASURY DIRECT)

§ 357.20 Securities account in TREASURY DIRECT.

(a) *Account.* A securities account consists of:

(1) An account master record, and

(2) A securities portfolio.

(b) *Security.* A security in TREASURY DIRECT is evidenced by the account master record and a description of the security as set out in the securities portfolio associated with an account master record.

(c) *Account master record.* An owner must establish an account master record before the owner may deposit a security in TREASURY DIRECT. If the security is being purchased on original issue, the request that an account master record be established may be made on the form used for purchase of the security. If the security is being acquired other than on original issue, the request that an account master record be established should be made on the appropriate form that is provided by the Department. The account master record includes, but is not limited to, the following data:

(1) The exact form of registration in which the securities are held;

(2) The TREASURY DIRECT account number;

(3) The correspondence address for the account;

(4) The TIN of the owner, or in the case of ownership by two individuals, of the first-named owner; and

(5) Payment instructions. (See § 357.28.)

(d) *Securities portfolio.* The securities portfolio contains a description of each security and is the aggregate of all securities in the securities account.

(e) *Statement of account.* The Department shall send a statement of account ("statement") upon:

(1) Establishment of, or a change in, an account master record or the securities portfolio;

(2) Change in payment instructions; or

(3) An owner's request.

The statement shall contain information regarding the account as of the date of such statement. The price associated with each security in the securities portfolio will also appear on the statement.[1] The statement will normally be sent to the correspondence address designated in the account master record. When the statement is issued as a result of a change in ownership of a security, statements will be sent, where appropriate, to both the former and current owners. Other information regarding the account may be obtained in accordance with § 357.24

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§ 357.21 Registration.

(a) *General*—(1) Registration of a security conclusively establishes ownership, except in the case of partnership nominees, in which case the Department reserves the right to treat the registration as conclusive of ownership. The registration may not, except as provided in this Subpart, include any restriction on the authority of an owner to change the data in the account master record, transfer the security, or effect any other change in the securities portfolio.

(2) The registration of all securities held by an owner should be uniform with respect to the owner's name. An owner must be identified by the name by which the owner is ordinarily known, preferably including at least one full given name. A suffix, such as "Sr." or "Jr.", must be included when ordinarily used, or when necessary to distinguish members of the same family.

(3) If an additional security is deposited in an existing account, the security will be registered in the same name and form of registration that appears in the designated account master record. One who holds a security as "John Allen Doe" should use that name when depositing another security rather than "J. Allen Doe", or "John A. Doe'. Minor variations in names used in acquiring a security to be deposited in an established account may be resolved by the Department.

(b) *Natural persons.* A security may be registered in the names of one or two individuals, but only in one of the following forms:

(1) *Single ownership.* In the name of one individual.

Example: Robert W. Woods

An individual who is sole proprietor of a business conducted under a trade name may include a reference to the trade name.

Example: John A. Doe, doing business as Doe's Home Appliance Store.

(2) *Ownership by two individuals.*

(i) *"And" form—Joint Ownership*—(A) *Without right of survivorship.* In the names of two individuals, joined by the word "and", and followed by the words "without right of survivorship". A security so registered shall conclusively confer on each owner an undivided interest in the security.

Example: Elizabeth Black and Jane Brown, without right of survivorship.

Any request for registration which purports, by its terms, to preclude the right of survivorship, or which requests registration in the names of two persons without indicating whether survivorship rights attach (other than a registration under paragraph (b)(2)(ii) of this section), will be presumed to be a request for registration without right of survivorship. If a security is registered in this form, a transaction request, other than a request by one owner to transfer

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[1] IRS regulations require reporting of income information on a security.

(1) If the security is a bill, the price information will be used to comply with this requirement. The earnings reported to IRS for the year of a bill's maturity will be the difference between the par value of the bill and its price.

(a) If a bill is deposited in TREASURY DIRECT at original issue, the price shown will be the issue price.

(b) If a bill is transferred to TREASURY DIRECT from TRADES, the price shown will be that included in the transfer wire or supplied subsequently by the bill owner. If a price is not furnished, the price shown will be the weighted average price of the bill of the longest maturity having the identical CUSIP number.

(c) If a bill is transferred from one TREASURY DIRECT account to another, the price shown in the receiving (transferee's) account will be that shown on the transfer instructions or supplied subsequently by the transferee. If a price is not furnished, the price shown will be the weighted average price at original issue of the bill of the longest maturity having the identical CUSIP number, unless the term of the bill can be determined from the account record in which case the price shown will be the weighted average price at original issue of the bill with that term.

(2) If the security is a note or bond, the earnings reported to IRS for a year will be the periodic interest payments made during that year. If a note or bond is transferred to a TREASURY DIRECT account between interest payment dates, the earnings reported to IRS for the transferee will show the interest for the entire interest payment period. The price for notes and bonds will be shown on the statement of account for the account owner's information. The price shown will be determined following the procedures described above for bills.

(3) The security owner should report directly to the IRS (a) adjustments to annual earnings amounts arising from acquisition of notes and bonds between interest payment periods and (b) price corrections for bills reported after preparation of the reports to the IRS.

the security to the other owner, and other than a request for reinvestment, must be executed by both owners.

(B) *With right of survivorship.* In the names of two individuals, joined by the word "and", and followed by the words "with right of survivorship". A security so registered shall confer on each owner an undivided interest in the security and shall create a conclusive right of survivorship.

Example: Mark A. Doe and Mary B. Doe, with right of survivorship.

If a security is registered in this form, a transaction request, other than a request by one owner to transfer the security to the other owner, and other than a request for reinvestment, must be executed by both owners.

(ii) *"Or" form—"Coownership".* In the names of two individuals, joined by the word "or". A security so registered shall confer on each owner an undivided interest in the security and shall create a conclusive right of survivorship.

Example: Robert Woods or Laura Woods.

If a security is registered in this form, either coowner may make a transaction request, but if the Department receives conflicting requests at or about the same time, it may refuse to process them.

(iii) *Beneficiary.* In the name of one individual followed by the words "Payable on death to" (or "P.O.D.") another individual.

Example: Jack S. Jones, payable on death to Marie Jones.

If a minor or an incompetent is named as a beneficiary, the status of the beneficiary must be identified in the registration. A minor or an incompetent may not be designated as an owner. See paragraphs (b)(3) and (b)(4) of this section.

Example: John Perry, P.O.D. John Perry, Jr., a minor.

Registration in this form shall create ownership rights in the beneficiary only if the beneficiary survives the owner. During an owner's lifetime, a transaction request may be executed by the owner without the consent of the beneficiary. If the beneficiary dies before the owner, the security will be deemed to be registered in the owner's name alone.

(3) *Minors*—(i) *General.* A security may not be registered in the name of a minor in his or her own right as an owner. If a security is so registered and the Department thereafter receives evidence or information of that fact, the Department may suspend processing of any transaction request with respect to the security until either a legal guardian has been appointed or a natural guardian, as provided in paragraph (b)(3)(ii) of this section, has been recognized. Where a legal guardian is appointed, the Department will require a certified copy of the court order making such appointment. See § 357.28(c).

(ii) *Natural guardians of minors.* A security may be registered in the name of a natural guardian of a minor for whose estate no legal representative has been appointed. The parent with whom the minor resides will be recognized as the natural guardian. If the minor resides with both parents, either or both may be recognized as natural guardian(s). If the minor does not reside with either parent, the Department may recognize the person who furnishes the minor's chief support as the natural guardian.

Examples: Michael Jones, as natural guardian of Alice Jones, a minor.

Michael Jones and Evelyn Jones, as natural guardians of Alice Jones, a minor.

The security may also be registered in one of the forms authorized under paragraph (b)(2) of this section.

Examples: James Green, as natural guardian of William Green, a minor, and Anne Green, without right of survivorship.

James Green, as natural guardian of William Green, a minor, POD Lynne Green.

(iii) *Custodian under statute authorizing gifts to minors.* A security may be registered as provided under an applicable gift to minors statute.

Example: Virginia McDonald, as custodian for Lynne Gorman, under the New York Uniform Gifts to Minors Act.

Any request to alter the rights of ownership of the security must be made as provided in the applicable statute.

(4) *Incompetents*—(i) *General.* A security may not be registered in the name of an individual in his or her own right as an owner if that individual is incompetent. If a security is so registered, or if the owner subsequently becomes incompetent after the security is purchased, and the Department receives evidence or information of that fact, the Department may suspend any transaction with respect to the security until a legal guardian, conservator, or other representative of the incompetent's estate has been appointed, or a voluntary guardian, as provided in paragraph (b)(3)(ii) of this section, has been recognized. Where a legal guardian, conservator, or other representative is appointed, the Department will require a certified copy of the court order making such appointment. See § 357.28(c).

(ii) *Voluntary guardian of incompetent.* If a legal guardian has not been appointed, and the face amount of the securities held in one or more accounts in TREASURY DIRECT by an owner who had become incompetent does not exceed, in the aggregate, $20,000 (par amount), upon submission to, and approval by, the Department of an appropriate form, a relative or other person responsible for an incompetent's care and support will be recognized as voluntary guardian for purpose of making a transaction request under § 357.28(b)(4). All persons known by the Department to have an interest in the incompetent's estate, as required by the application form, must agree to the designation of the voluntary guardian. The security may be re-registered in the name of the voluntary guardian.

Example: Richard Melrose, as voluntary guardian for James W. Brundige.

(c) *Representatives.* A security may be registered in the name of a representative of an estate. If there is more than one representative, the names of some representatives may be omitted if followed by language that indicates the existence of other representatives. In such cases, those named in the registration shall be conclusively presumed by the Department to have authority to make a transaction request on behalf of all the representatives. The form of registration must identify the specific capacity of the representative(s) and the estate represented.

Examples: ABC National Bank of Chicago, Illinois and Harold Smith, co-executors of the will (or administrators of the estate) of Charles Johnson, deceased.

William Brown, guardian of the estate of Henry Jones, a minor.

Robert Smith, Richard Smith, *et al.*, executors of the will of Lorraine Smith, deceased.

If the representative is a trustee, the form of registration must identify specifically the authority or document creating the trust.

Examples: Sarah Jones and XYZ Trust Co., trustees under the will of Matthew Smith, deceased.

Cynthia Doe and Margaret Jones, trustees under agreement with Martha Roe, dated April 13, 1979.

Cynthia Doe, trustee under declaration of trust, dated April 13, 1979.

Richard Smith, James Jones, and Frank Brown, trustees under the will of Henry K. James, deceased.

ABC Corporation, Myrna Banker, *et al.*, trustees of Profit-Sharing Plan of Ace Manufacturing Co., under B/D resolution, dated May 18, 1975.

If there are several trustees designated as a board or authorized to act as a unit, their names should be omitted and the words, "Board of Trustees" substituted.

Example: Board of Trustees of Super Co. Retirement Fund, under collective bargaining agreement, dated March 18, 1969.

(d) *Private organizations (corporations, unincorporated associations and partnerships).* A security may be registered in the name of a private corporation, unincorporated association, or partnership. The full legal name of the organization, as set forth in its charter, articles of incorporation, constitution, partnership agreement, or other documents from which its powers are derived, must be included in the registration. The name may be followed by a reference to a particular account or fund, other than a trust fund, such as an escrow account.

(1) *A corporation.* The legal name of a business, fraternal, religious, or other private corporation must be followed by descriptive words indicating the corporate status unless the term "corporation" or the abbreviation "Inc." is part of the name or the name is that of a corporation or association organized under Federal law, such as a national bank or Federal savings and loan association.

Examples: Brown Manufacturing Co., a corporation (Education Fund).

The Apex Manufacturing Corporation.

XYZ National Bank of El Paso, Texas.

Goodworks, Unlimited, a not-for-profit corporation.

(2) *An unincorporated association.* Unless the name of a lodge, club, labor union, veterans or religious organization, or similar organization which is not incorporated (whether or not it is chartered by or affiliated with a parent organization which is incorporated) includes the words "an unincorporated association", the registration must include descriptive words indicating the organization's unincorporated status. A security may not be registered in the name of an unincorporated association if the legal title to its property or the legal title to the funds with which the security is to be purchased is held by trustees. In such a case, the security should be registered in the name of the trustees in accordance with paragraph (c) of this section. The term "unincorporated association" should not be used to describe a trust fund, a partnership or a business conducted under a trade name.

Examples: Local Union No. 13, Brotherhood of Operating Engineers, an unincorporated association.

The Simpson Society, an unincorporated association.

(3) *Partnership.* Unless the name of a partnership includes the word "partnership," the registration must include descriptive words indicating partnership status.

Examples: Red & Blue, a partnership.

Abco and Co., a nominee partnership.

(e) *Governmental entities and officers.* A security may be registered in the name of a State, county, city, town, village, school district, or other governmental entity, body, or corporation established by law. If a governmental officer is authorized to act as a trustee or custodian, a security may be registered in the title, or name and title, of the governmental officer. The form of registration should reflect the capacity in which the governmental entity or officer is authorized to hold property (*e.g.*, it may be authorized to hold property in its own name or as trustee or custodian).

Examples: Laura Woods, Treasurer, City of Twin Falls, Mo.

State of Michigan.

Village of Gaithersburg, Md.

Pennsylvania State Highway Administration (Highway Road Repair Fund).

Insurance Commissioner of Florida, trustee for benefit of policy holders of Sunshine Insurance Co. under F.S.A. Sec. 629.104.

Commonwealth of Virginia, in trust for Virginia Surplus Property Agency.

Gleason County Cemetery Commission, trustee under Md. Code Ann. Sec. 310.29.

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§ 357.22 Transfers.

(a) *General.* A security may be transferred only as authorized by this Part. A security may be transferred from an account in TREASURY DIRECT to an account in TRADES. A security may be transferred between accounts in TREASURY DIRECT, or from an account in TRADES to an account in TREASURY DIRECT, provided that prior to, or coincidental with, the transfer, an account master record has been established in accordance with the requirements of § 357.20(c).

(1) *Identification of securities to be transferred.* The owner must identify the securities to be transferred within TREASURY DIRECT, or from TREASURY DIRECT to TRADES, in the manner required by the transaction request form. If such identification is not provided, the request will not be processed and will be returned.

(2) *Denominational amounts.* A security may be transferred from an account only in a denominational amount authorized by the offering under which the security was issued. Any security remaining in the securities portfolio after the transfer must also be in an authorized denominational amount.

(3) *When transfer effective.* A transfer of a security within TREASURY DIRECT, or from TRADES to TREASURY DIRECT, is effective when an appropriate entry is made in the name of the transferee on the TREASURY DIRECT records. A transfer from TREASURY DIRECT to TRADES is effective as provided in Subpart B. If a transfer of a security from a transferor in TREASURY DIRECT to a transferee in TRADES cannot be completed, and the security is sent back to TREASURY DIRECT, the Department will redeposit the security in the transferor's account and treat the transferor as the owner.

(b) *Transfer upon death of an owner*—(1) *Right of survivorship.* If a security is registered in beneficiary form or a form which provides for a right of survivorship, upon the death of an owner, the beneficiary or survivor shall be the sole and absolute owner, notwithstanding any purported testamentary disposition by the decedent and notwithstanding any State or other law to the contrary. The Department will honor a transaction request by a beneficiary or a survivor (in the case of a security registered in the form described in § 357.21(b)(2)(i)(B)) only upon proof of death of an owner.

(2) *Succession under law of domicile.* If a security is registered in a form that does not provide for a right of survivorship, succession shall be determined in accordance with the applicable law and the terms of the domicile at the time of death.

(c) *Representative succession.* If a security is registered in the name of a representative who has died, resigned, or been removed, succession shall be determined in accordance with applicable law and theterms of the document under which the representative was acting.

(d) *Organizational succession*—(1) *Corporation and unincorporated association.* If a security is registered in the name of a corporation or an unincorporated association that has been dissolved, merged or consolidated into another organization, succession shall be determined in accordance with applicable law and the terms of the documents by which the dissolution, merger, or consolidation was effected.

(2) *Partnership.* If a partnership is dissolved or terminated, succession shall be determined in accordance with applicable law and the terms of the partnership agreement.

(e) *Succession of governmental officer.* If a security is registered in the name and title of a governmental officer who has died, resigned, or has been

removed, succession shall be determined in accordance with applicable law.

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§ 357.23 Judicial proceedings—sovereign immunity.

(a) *Department and Federal Reserve Banks not proper parties.* The Department and the Federal Reserve Banks are not proper defendants in a judicial proceeding involving competing claims to a security held in TREASURY DIRECT nor are they subject to any injunction or restraining order issued with respect to a security. The Department will not recognize a notice of a pending or contemplated judicial or administrative proceeding affecting a security in TREASURY DIRECT.

(b) *Orders—(1) Ownership rights.* The Department will recognize a final order entered by a court that affects ownership rights in a security in TREASURY DIRECT if:

(i) The order is consistent with the provisions of this Subpart and the terms and conditions of the security; and

(ii) The Department has received evidence of the order, as provided in paragraph (c) of this section.

(2) *Transaction request.* The Department will honor a transaction request submitted by a person appointed by a court and having authority under an order of a court to dispose of the security or payment with respect thereto if:

(i) The ordered disposition of the security or payments with respect thereto is consistent with the provisions of this Subpart and the terms and conditions of the security; and

(ii) The Department has received evidence of the appointment and order, as provided in paragraph (c) of this section.

(c) *Evidence required.* Before the Department will recognize an order or determination entered by a court, the Department must have received a certified copy of the judgment, decree, or order and any additional documents deemed necessary by the Department. A certificate from the clerk of the court, bearing the seal of the court, must also be submitted stating that the judgment, decree, or order is still in full force and has not been stayed or appealed, and that the time for filing an appeal has passed. Before the Department will honor a transaction request submitted by a person appointed by a court, the Department must receive a certified copy of the order making the appointment and describing specifically the person's authority, and any additional documents deemed necessary by the Department.

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§ 357.24 Availability and disclosure of TREASURY DIRECT records.

(a) *General.* All records with respect to a TREASURY DIRECT account are held confidential. Consistent with the Privacy Act (5 U.S.C. 552a), information relating to those accounts will be released only to the owner except:

(1) As provided in these regulations;

(2) As provided in Treasury regulations contained in 31 CFR Part 323; or

(3) As otherwise provided by law.

(b) *Inquiries by owners.* Information requested will be disclosed to an owner provided that:

(1) Sufficient information is provided to identify the owner; and

(2) Sufficient information is provided to identify the TREASURY DIRECT account.

(c) *Conditions for release.* A request for information will be honored only if, in the sole judgment of the Department or the Federal Reserve Bank to which the inquiry is made, the identify and right of the requester to the information have been established.

§ 357.25 Security interests.

(a) *General.* The Department will not recognize any notice or claim of a lien, encumbrance, or security interest of any kind, including a pledge, in a security in TREASURY DIRECT except as provided in § 357.23 and in paragraph (b) of this section.

(b) *Security for the performance of duty or obligation under Federal law.* The Department will accept and hold pursuant to the provisions of 31 U.S.C. § 9303, book-entry bonds, notes or bills submitted in lieu of a surety bond as security for the performance of a duty or obligation required by Federal law in accordance with said section.

§ 357.26 Payments.

(a) *General.* A payment by the Department with respect to a security shall be by direct deposit (electronic funds transfer), except when the Department determines that extraordinary circumstances exist that require payment by check.

(b) *Direct deposit.*

(1) *Information on deposit account at financial institution.*

(i) To establish an account in TREASURY DIRECT, the owner must furnish the name and ABA routing/transit number of the financial institution ("institution") to which payments with respect to a security are to be made, as well as a depositor name reference, deposit account number, and type or classification of account at the institution to which such payments are to be credited. The information should be furnished on the tender form if the account is being established on original issue, or in other cases on an appropriate form provided by the Department. To assure the accuracy of the account number and account type, as well as the name and ABA routing/transit number of the institution to which payments are to be made, the owner should consult with the institution in advance of the submission of the tender or transaction form. If the investor finds that the institution to be designated to receive TREASURY DIRECT payments has not agreed to receive direct deposit payments under 31 CFR Part 210, but is willing to do so, the investor should ask the institution to contact the Federal Reserve Bank of its district for enrollment advice.

(ii) Where the TREASURY DIRECT securities account is in the name of individual(s) in their own right, and the deposit account at the financial institution is in the name of individual(s) in their own right, the two accounts must contain at least one name that is common to both.

(iii) Where the deposit account to which payments are to be directed is held in the name of the financial institution itself acting as sole trustee, or as co-trustee, or is in the name of a commercially-managed investment fund, particular inquiry should first be made of the financial institution to make certain that the direct deposit payments can be received, and alternate arrangements made if it cannot do so.

(iv) In any case where, after the establishment of the securities account, it is determined that direct deposit payments cannot be accepted by the financial institution designated, under these circumstances, and pending new direct deposit instructions, payments will be made by check drawn in the name of the owner and sent to the correspondence address of record.

(v) All payments relating to a single account master record must be made to the same designated account at a financial institution.

(vi) The deposit account to which payments are directed should preferably be established in a form identical to the registration of the securities account, particularly where the securities are registered jointly or with right of survivorship, to assure that the rights of ownership and of survivorship can be more easily identified and preserved. Neither the United States nor any Federal Reserve Bank shall be liable for

any loss sustained because the interests of the holder(s) of a deposit account to which payments are made are not the same as the interests of the owner(s) of the security.

(vii) The designation of a financial institution by an owner to receive payments with respect to a security constitutes the appointment of that institution as the owner's agent for receipt of such payments. The crediting of a payment to the institution for deposit to an account in accordance with the instructions of the owner discharges the United States of any further responsibility for such payment. Where the institution has arranged with a Federal Reserve Bank to have payments credited through a designee institution, the crediting of a payment to that designee institution discharges the United States of any further responsibility for the amount of such payment.

(viii) Upon the request of a financial institution receiving direct deposit payments with respect to a security, the Department will change a deposit account number and/or type or classification of such account without requiring the submission of a transaction request from the owner of the security. The request must be made in accordance with implementing instructions issued by the Department. Such a request by a financial institution, however, will be deemed an agreement by the institution to indemnify the Department and the owner for any loss resulting from the requested change.

(2) *Agreement of financial institution.* Any financial institution which has agreed to accept credit payments under 31 CFR Part 210, or hereafter agrees to do so, shall be deemed to agree to accept payments under this Subpart. In any case, a financial institution's acceptance and handling of a payment made with respect to a security covered by this Subpart shall constitute its agreement to the provisions of this Subpart. An institution may not be designated to receive payments, as provided in this Subpart, unless it has agreed, or hereafter agrees, to receive direct deposit payments under 31 CFR Part 210.

(3) *Pre-notification*—(i) *General.* The institution designated for payment will receive shortly after a securities account has been established, but not less than fifteen (15) days prior to the first payment, a pre-notification message advising that an account maintained by such institution has been designated for direct deposit payment(s). A pre-notification message will also be sent whenever there is a change in the payment instructions. The pre-notification message shall contain the information prescribed in paragraph (b)(1)(i) of this section.

(ii) *Response to pre-notification.* The institution must respond to the pre-notification message within eight (8) calendar days after the date of receipt if the information as to the deposit account number and/or the type of account contained in the message does not agree with the records of the institution, or if the institution for any other reason has questions about the forthcoming payment, including its ability to credit the payment in accordance with this Subpart. Upon receipt of a response to the pre-notification message, the Department, as appropriate, will correct the payment instructions and send another pre-notification message, or contact the owner for further instructions. Where the circumstances indicate that there is insufficient time to effect the change, payment will be made by check. See paragraph (c) of this section.

(iii) *Effect of failure to reject.* If an institution does not reject or otherwise respond to a pre-notification message within the specified time period, the institution shall be deemed to have accepted the pre-notification and to have warranted to the Department that the information as to the deposit account number and/or the type of account contained in the message is accurate as of the time of such pre-notification.

(4) *Continuation of payment instructions.* Payment instructions for an account master record will apply to any and all securities held in that account until the Department:

(i) Receives a request from the owner to change such instructions; or

(ii) Receive a request from a financial institution to change such instructions in accordance with paragraph (b)(1)(vii) of this section; or

(iii) Receive advice from the financial institution holding the deposit account to which payment is being made that it has been closed; or

(iv) Receives notice of a change in status of a designated account or of the owner, as provided in paragraph (f) of this section.

(5) *Responsibility of financial institution.* An institution which receives a payment on behalf of its customer must:

(i) Upon receipt, credit the designated account and make the payment available for withdrawal or other use on the payment date. If a scheduled payment date is not a business day for the Federal Reserve Bank of the district in which the institution is located, payment will be made on the next-succeeding business day. If the institution is unable to credit the designated account, it shall return the payment by no later than the next business day after the date of receipt, with an electronic message or other response, explaining the reason for the return.

(ii) Promptly notify the Department when the designated account has been closed, or when it is on notice of the death or legal incapacity (as determined under applicable state law) of any individual named on such account, or when it is on notice of the dissolution of a corporation in whose name the deposit account is held. In all such cases, the institution, following receipt of notice by its organizational component responsible for direct deposit transactions, shall return to TREASURY DIRECT all payments received for the designated account.

(6) *Payments in error/duplicate payments.* If the Department or a Federal Reserve Bank has made a payment in error, the Department or Federal Reserve Bank will make a corrected payment, as appropriate, to the person(s) or entity entitled thereto under this Subpart. It will then promptly initiate action to recover the payment in error, and do so likewise on any duplicate payment that occurs, as follows:

(i) Send a written or electronic notice to the financial institution to which the payment was directed, which notice shall include the deposit account name reference, number, and the date and amount of the error in payment or duplicate payment that was not returned. See paragraphs (b)(3)(ii) and (b)(5)(ii) of this section. Upon receipt of this notice, the financial institution shall immediately return to the appropriate Federal Reserve Bank an amount equal to the payment in error or duplicate payment, where available. If the institution is unable to return payment for whatever reason, the institution shall immediately notify the Department or the Federal Reserve Bank, and provide such information as it has about the matter. The Department reserves the right to request the return of a partial amount of a payment in error or a duplicate payment.

(ii) Where the payment in error or a duplicate payment has not been returned, the Department or Federal Reserve Bank shall undertake such other actions as may be appropriate under the circumstances. To the extent permitted by law, the collection action may include deducting the amount owing from future payments made to the

deposit account to which the payment in error or duplicate payment was made.

(iii) If a financial institution has failed to respond in any way to the notice made pursuant to paragraph (b)(6)(i) of this section within sixty (60) calendar days of that notice, it will be deemed, by virtue of its acceptance of the direct deposit payment hereunder, to have authorized the Federal Reserve Bank to debit the amount of the payment in error or duplicate payment from the account maintained or utilized by the financial institution at the Federal Reserve Bank to which the payment in error or duplicate payment was credited. An institution designated by a financial institution to receive payment on its behalf, in authorizing such financial institution to utilize its account on the books of the Federal Reserve Bank, shall similarly be deemed to authorize such debit from that account. The institution to which payment has been directed and the owner of the TREASURY DIRECT account who designated the deposit account to which the payment has been deposited, shall be deemed to have agreed to provide information and assistance to effect recovery of a payment in error or duplicate payment under this subsection. The owner is further deemed to agree to any action permitted by law to effect collection of a payment in error or a duplicate payment.

(c) *Checks.* If a payment is not made by direct deposit, it shall be made by a check, drawn by a Federal Reserve Bank as fiscal agent of the United States, on the Federal Reserve Bank in its banking capacity ("fiscal agency check"), or drawn by the Department on itself ("Treasury check"). A fiscal agency check is governed by the regulations in 31 CFR Part 355. A Treasury check is governed by the regulations and statutes applicable to checks drawn on the United States or designated depositories of the United States (*i.e.*, 31 CFR Parts 235, 240, and 245). A check issued with respect to a security shall be made payable in the names of the owner(s) of the TREASURY DIRECT account and will be mailed to the correspondence address shown in the TREASURY DIRECT account.

(d) *Handling of payments by Federal Reserve Banks.* Each Federal Reserve Bank, as fiscal agent of the United States, shall receive payment in accordance with the information described in paragraph (b)(1)(i) of this section, and make payment to the designated institution by crediting it to the account of the designated institution, or of its designee, in accordance with the Federal Reserve Bank's operating circular governing such payments.

(e) *Timeliness of action.* If, because of circumstances beyond its control, the Department, a Federal Reserve Bank, or a financial institution is delayed beyond applicable time limits in taking any action with respect to a payment, the time for taking such action shall be extended as necessary until the cause of the delay ceases to operate.

(f) *Suspension of payments.* Upon receipt of notice that a designated deposit account has been closed, that an individual named on such account is dead or has been declared legally incompetent, or where a corporation is the owner, and it has been dissolved, the Department reserves the right to suspend payments and any transactions with respect to a security pending receipt of satisfactory evidence of entitlement. Payments will also be suspended in any case where the Department receives notice that an individual owner named on a securities account in TREASURY DIRECT is dead or has been declared legally incompetent, or in any case where the Department receives notice of a change in the name or status of an organization or representative named on a securities account in TREASURY DIRECT.

(Approved by the Office of Management and Budget under control number 1535–0068.)

§ 357.27 Reinvestment.

(a) *General.* Upon the request of an owner, the redemption proceeds of a security may be reinvested at maturity in a new security in the same form of registration, provided a new security is then being offered by the Department and provision for reinvestment is made in the offering. The new security must be in an authorized denominational amount and will be issued in accordance with the terms of the offering. If the new security is issued at a premium or with accrued interest, an additional payment will be required from the investor. If the new security is issued at a discount, the difference will be remitted to the owner.

(b) *Treasury bills.* A request by an owner for a single or successive reinvestment of a Treasury bill must be made in accordance with the terms prescribed on the tender form submitted at the time of purchase of the original bill, or by a subsequent transaction request received not less than twenty (20) calendar days prior to the maturity of the original bill. A request to revoke a direction to reinvest the proceeds of a bill must be received by the Department not less than twenty (20) calendar days prior to the maturity date of the bill. If either a request for reinvestment or revocation of a reinvestment request is received less than twenty (20) calendar days prior to maturity of the original bill, the Department may in its discretion act on such request if sufficient time remains for processing.

(c) *Issue date not coincidental with maturity date.* If the date on which a security matures or is called does not coincide with the issue date of the security being purchased through reinvestment, the Department may, at its option, hold the redemption proceeds in the same form of registration as the maturing or called security, but no interest shall accrue or be paid on such funds.

(Approved by the Office of Management and Budget under control number 1535–0068.)

§ 357.28 Transaction requests.

(a) *General.* Unless otherwise authorized by the Department, a transaction request must be submitted on a transaction request form. In the case of certain transactions specified by the Department, the owner's signature on the form must be certified or guaranteed, as provided in § 357.31. If the transaction request form is received more than six (6) months after its execution, it will not be honored by the Department and will be returned to the sender for further instructions.

(b) *Individuals*—(1) *General.* A transaction request must be signed by the owner of the security. In addition to any required certification, a transaction request form executed by a person by mark, *e.g.*, "(X)", must be witnessed by a disinterested person. The following language should be added to the form and be signed by the witness:

Witness to signature by mark

Signature of witness

Address of witness

(2) *Change of name.* If an individual's name has been changed from that appearing in the registration, the individual should sign both names to the transaction request form and state the manner in which the change occurred.

Example: Deborah L. Gains, changed by order of court from Deborah G. O'Brien.

The individual must provide evidence, such as a certified copy of a court order, which confirms the change, unless it is indicated that the change of name resulted from marriage.

Example: Catherine M. Cole, changed by marriage from Catherine T. Murray.

(3) *Natural guardians.* A transaction request involving a security registered in

the name of a natural guardian of a minor may be executed by the natural guardian. If a security is registered in the names of both parents as natural guardians of a minor, both must execute a transaction request. However, the Department will not honor a transaction request by the natural guardian(s):

(i) Which would transfer the security to a natural guardian in his or her own right; or

(ii) After the Department receives notice of the minor's attainment of majority, the qualification of a legal guardian or similar representative, or the death of the minor.

(4) *Voluntary guardians.* A transaction request involving a security belonging to an owner who has become incompetent may be executed by a voluntary guardian, but only after approval by the Department of the voluntary guardian's application for such designation. However, the Department will not honor a transaction request by the voluntary guardian:

(i) Which would transfer the security to a voluntary guardian in his or her own right; or

(ii) After the Department receives notice of the ward's restoration to competency, the qualification of a legal guardian or similar representative, or the death of the ward. See § 357.21(b)(4).

(c) *Representatives*—(1) *General.* A representative of an owner's estate, other than a trustee, may execute a transaction request form if the representative submits to the Department properly authenticated evidence of the authority to act. The evidence will not be accepted if dated more than six (6) months prior to the date of execution of the transaction request.

(2) *Estates closed.* If a security is registered in the name of an owner who is deceased and whose estate has been closed and the representative discharged, a transaction request must be made by the person(s) entitled to the security, as determined from the pertinent court records or the deceased owner's will, if any.

(3) *Estates not administered*—(i) *Special provisions under State laws.* If, under applicable State law, a person is entitled to or has been recognized or appointed to administer the estate of a deceased owner without court-supervised administration, that person may execute a transaction request involving a security belonging to the deceased owner, provided appropriate evidence of authority is submitted to the Department.

(ii) *Agreement of persons entitled.* If a representative of a deceased owner's estate has not been or is not to be appointed, the Department will honor an application for disposition of any securities belonging to the deceased owner pursuant to a written agreement provided that the Department is satisfied that:

(A) All persons entitled to share in the decedent's personal estate are parties to the agreement;

(B) Provision has been made for payment of all the decedent's debts; and

(C) The interests of any minor or incompetents have been protected.

(d) *Private organizations*—(1) *Corporations and unincorporated associations.* A transaction request involving a security registered in the name of a corporation or an unicorporate association (either in its own right or in a representative capacity), may be executed by an authorized person on its behalf. The request must be supported by evidence of the person's authority to act.

(2) *Partnerships.* A transaction request involving a security registered in the name of a partnership must be executed by a general partner.

(e) *Government entities.* A transaction request involving a security registered in the name of a State, county, city, school district, or other governmental entity, public body or corporation, must be executed by a authorized officer of the entity. The request must be supported by evidence of the officer's authority to act.

(f) *Public officers.* A transaction request involving a security registered in the title of a public officer must be executed by the officer. The request must be supported by evidence of incumbency.

(g) *Attorneys-in-fact.* A transaction request made by an attorney-in-fact must be accompanied by the original power of attorney or a properly authenticated copy. A power of attorney must be executed in the presence of a notary public or a certifying individual. See § 357.31. The power of attorney will not be accepted if it was executed more than two (2) years before the date the transaction request was executed, unless the power provides that the authority of the attorney-in-fact continues notwithstanding the incapacity of the principal. If two or more attorneys-in-fact are named, all must execute the transaction request unless the power authorizes fewer than all to act. A transaction request executed by an attorney-in-fact seeking transfer of a security to the attorney-in-fact will not be accepted unless expressly authorized by the document appointing the attorney-in-fact.

(Approved by the Office of Management and Budget under control number 1535–0066.)

§ 357.29 Time required for processing transaction request.

For purposes of a transaction request affecting payment instructions with respect to a security, a proper request must be received not less than twenty (20) calendar days preceding the next payment date. If the twentieth day preceding a payment date falls on a Saturday, Sunday, or a Federal holiday, the last day set for the receipt of a transaction request will be the last business day preceding that date. If a transaction request is received less than twenty (20) calendar days preceding a payment date, the Department may in its discretion act on such request if sufficient time remains for processing. If a transaction request is received too late for completion of the requested transaction, the transaction request will be acted upon with respect to future payments only.

(Approved by the Office of Management and Budget under control number 1535–0066.)

§ 357.30 Cases of delay or suspension of payment.

If evidence required by the Department in support of a transaction request is not received by the Department at least twenty (20) calendar days before the maturity date of the security, or if payment at maturity has been suspended pursuant to § 357.28(f), then, except as provided in § 357.27, in cases of reinveatment, the Department will redeem the security and hold the redemption proceeds in the same form of registration as the security redeemed, pending further disposition. No other interest shall accrue or be paid on such proceeds after the security is redeemed.

§ 357.31 Certifying individuals.

(a) *General.* The following individuals may certify signatures on transaction request forms:

(1) Officers and employees of depository institutions and officers of corporate central credit unions who have been authorized:

(i) generally to bind their respective institutions by their acts;

(ii) Unqualifiedly to guarantee signatures to assignments of securities; or

(iii) To certify assignments of securities.

(2) Officers and authorized employees of Federal Reserve Banks.

(3) Officers of Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives, the Central

Bank for Cooperatives, and Federal Home Loan Banks.

(4) Commissioned officers and warrant officers of the Armed Forces of the United States but only with respect to signatures on forms executed by Armed Forces personnel, civilian-field employees, and members of their families.

(5) Such other persons as the Commissioner of the Public Debt or his designee may authorize.

(b) *Foreign countries.* The following individuals are authorized to certify signatures on transaction request forms executed in a foreign country:

(1) United States diplomatic or consular officials.

(2) Managers and officers of foreign branches of depository institutions.

(3) Notaries public and other officers authorized to administer oaths, provided their official position and authority are certified by a United States diplomatic or consular official under seal of the office.

(c) *Duties and liabilities of certifying officers.*

(1) *General.* Except as specified in paragraph (c)(2) of this section, a certifying individual shall require that the transaction request form be signed in the certifying individual's presence after he or she has established the identity of the person seeking the certification. An employee who is not an officer should insert the words "Authorized signature" in the space provided for the title. A certifying individual and the organization of which the certifying individual is an officer or employee are jointly liable for any loss the United States may incur as a result of the individual's negligence.

(2) *Signature guaranteed.* The transaction request form need not be executed in the presence of a certifying individual if he or she unqualifiedly guarantees the signature, in which case the certifying individual shall, after the signature, endorse in the following form: "Signature guaranteed, First National Bank of Smithville, Smithville, NH, by A.B. Doe, President", and add the date. In guaranteeing a signature, the certifying individual and the organization of which the certifying officer is an officer or employee warrant to the Department that the signature is genuine and that the signer had legal capacity to execute the transaction request.

(3) *Absence of signature guaranteed by depository institution.* A transaction request form need not be actually signed by the owner in any case where a certifying individual associated with a depository institution has placed an endorsement on the form reading substantially as follows: "Absence of signature by owner and validity of transaction guaranteed, Second State Bank of Jonesville, Jonesville, NC, by B.R. Butler, Vice President". The endorsement shoud be dated, and the seal of the depository institution should be added. This form of endorsement is an unconditional guarantee to the Department that the depository institution is acting for the owner upper proper authorization.

(d) *Evidence of certifying individual's authority.* The authority of a certifying individual to act is evidenced by affixing to the certification the following:

(1) *Officers and employees of depository institutions*—The institution's seal, signature guarantee stamp, or, if the institution is an authorized paying or issuing agent for U.S. Savings Bonds, a legible imprint of the paying agent or the issuing agent's stamp.

(2) *Officers and authorized employees of Federal Reserve Banks*—Whatever is prescribed in procedures established by the Department.

(3) *Officers and employees of corporate central credit unions and other entities listed in paragraph (a)(3) of this section*—The entity's seal.

(4) *Notaries public, diplomatic or consular officials*—The official seal or stamp of the office. If the certifying individual has no seal or stamp, then the official's position must be certified by some other authorized individual, under seal or stamp, or otherwise proved to the satisfaction of the Department.

(5) *Commissioned or warrant officers of the United States Armed Forces*—A Statement which sets out the officer's rank and the fact that the person executing the transaction request is one whose signature the officer is authorized to certify under these regulations.

(e) *Interested persons not to act as certifying individual.* Neither the transferor, the transferee, nor any person having an interest in a security involved in the transaction may act as a certifying individual. However, an authorized officer or employee of a depository institution may act as a certifying individual on a transaction request for transfer of a security to the institution, or any request executed by another individual on behalf of the institution.

§ 357.32 Submission of transaction requests; further information.

Transaction requests and requests for forms and information may be submitted to any Federal Reserve Bank or to the Bureau of the Public Debt, TREASURY DIRECT, Washington, DC 20239-0001. A list of the addresses of Federal Reserve Banks will be available upon request to the Bureau. The Federal Reserve Banks, as fiscal agents of the United States, are authorized to perform such functions as may be delegated to them by the Department in order to carry out the provisions of this Part.

Subpart D—Additional Provisions

§ 357.40 Additional requirements.

In any case or any class of cases arising under these regulations, the Secretary of the Treasury ("Secretary") may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Secretary be necessary for the protection of the interests of the United States.

§ 357.41 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 357.42 Liability of Department and Federal Reserve Banks.—[Reserved]

§ 357.43 Liability for transfers to and from TREASURY DIRECT.

A depository institution or other entity that transfers to, or receives, a security from TREASURY DIRECT is deemed to be acting as agent for its customer and agrees thereby to indemnify the United States and the Federal Reserve Banks for any claim, liability, or loss resulting from the transaction.

§ 357.44 Notice of attachment for securities in TRADES.—[Reserved]

§ 357.45 Supplements, amendments, or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to securities, including charges and fees for the maintenance and servicing of securities in book-entry form.

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Part VI

Department of Transportation

Coast Guard

33 CFR Parts 126 and 127
Liquefied Natural Gas Waterfront Facilities; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 126 and 127

[Docket No. [CGD 76-038]

Liquefied Natural Gas Waterfront Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes safety standards for the design and construction, equipment, operations, maintenance, personnel training, firefighting, and security at liquefied natural gas waterfront facilities. These regulations implement the Ports and Waterways Safety Act of 1972, as amended, and are necessary to prevent or mitigate the results of an accidental release of liquefied natural gas (LNG at a LNG waterfront facility. They would reduce the possibility that such an accident could occur, and would reduce the damage and injury to persons and property should an accident occur.

DATE: Comments must be received on or before August 14, 1986.

ADDRESSES: Comments on the proposal should be submitted to Commandant (G-CMC), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426-1477. Normal office hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The Draft Evaluation and the Draft Environmental Assessment and Findings of No Significant Impact are also available for inspection and copying at the same address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems (G-WPE-3), (202) 426-9578, between 7:00 A.M. and 3:30 P.M., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 76-038) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held at a time and place to be set in a subsequent notice in the Federal Register if written requests for a hearing are received from interested persons raising valid issues, and if it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems, and Stanley M. Colby, Project Attorney, Office of the Chief Counsel.

Need

A new comprehensive set of safety standards is needed for LNG waterfront facilities. LNG is natural gas (mostly methane) that has been cooled to its normal boiling point of about minus 260 °F, and thereby liquefied. As a liquid, natural gas is 1/600th of its original volume, making it economically feasible to transport by vehicle or vessel and store in large quantities. The hazards of LNG derive from its cold temperature, flammability, and characteristics upon release. LNG can cause severe freeze burns to the skin and also immediate cracking of certain metals, such as carbon steel. Upon exposure to ambient temperatures, LNG vaporizes rapidly and returns to a gaseous state. Since its density at ambient temperatures is less than air, natural gas rises. However, due to the vapor's initially cold temperature after vaporization, it may remain close to the ground and travel in the form of a plume or cloud for long distances before dispersing into the atmosphere. While natural gas is not toxic, it can cause asphyxiation; and it is flammable in air in a concentration between 5 and 15 percent by volume.

Unlike a spill on land, LNG spilled on water would spread very quickly over the flat surface of the water and would not accumulate in low-lying areas or impounding spaces. It would evaporate faster on water than on land because of greater surface area and because it would gain heat from the unlimited supply of heat in the water. These factors make it very difficult to control a release of LNG on water.

This Notice of Proposed Rulemaking (NPRM) would replace older facility regulations in 33 CFR Part 126 for methane and establish a new Part 127 to apply to LNG waterfront facilities. Existing Coast Guard waterfront facility regulations in Part 126 which apply to LNG waterfront facilities, were issued in the 1950's and 1960's under the authority of the Magnuson Act (50 U.S.C. 191). They are still effectively enforced on waterfront facilities handling cargoes other than LNG. However, since they were written before the construction of LNG waterfront facilities began (about 1969) and do not account for the relatively new technology, new regulations for LNG waterfront facilities are needed.

So that LNG waterfront facilities are not regulated in two different parts of Title 33 of the Code of Federal Regulations, this NPRM would also revise §§ 126.05 and 126.10. LNG waterfront facilities would no longer be "designated waterfront facilities" or "facilities of particular hazard" and Part 126 would no longer apply.

The standards proposed by this notice concern design and construction, equipment, operations, maintenance, personnel training, firefighting, and security on that part of an LNG waterfront facility which falls under Coast Guard purview. They would fill a gap in current federal regulations for LNG waterfront facilities. The Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT, published regulations in 49 CFR Part 193 that apply to the inland side of all LNG waterfront facilities. The regulations in this proposal would apply only to the waterside of LNG waterfront facilities, and are compatible with MTB's regulations. The MTB and the Coast Guard cooperated in developing a format to be used by both agencies in their regulations.

These regulations would make many industry consensus standards and practices mandatory. Conscientious owners and operators of LNG facilities have developed and implemented safety standards and programs that have reduced the potential for accidents and injuries at these waterfront facilities. However, these standards and programs are voluntary. Making these industry standards and practices mandatory would provide new impetus for less conscientious companies, subcontractors, and workers to observe accepted waterfront safety practices and will provide a means to ensure corrective action where necessary.

Finally, these proposed regulations would organize the Coast Guard

requirements for LNG waterfront facilities so that they are easier for industry to understand and meet, and easier for the Coast Guard to enforce. There are concepts being considered in the proposed regulations that are not industry standards or practices. Some are based on Coast Guard requirements that are applied now to LNG waterfront facilities. They are from general sources, such as the existing waterfront facility regulations in 33 CFR Part 126 and the general ports and waterways safety regulations in 33 CFR Part 160. Others parallel the Coast Guard's oil pollution prevention regulations in 33 CFR Parts 154–156. Additional provisions are taken from the MTB's regulations in 49 CFR Parts 193 to provide uniformity. These concepts would be consolidated with up-to-date standards for LNG waterfront facilities into one Part in the Code of Federal Regulations.

Regulatory History

In the July 14, 1978 issue of the Federal Register (34 FR 30381), the Department of Transportation published a Memorandum of Understanding (MOU) between the Coast Guard and the MTB concerning each agency's responsibility for regulating LNG waterfront facilities. This MOU became effective on February 7, 1978.

The agencies considered the MOU necessary because they share certain regulatory authority over LNG waterfront facilities and wanted to avoid duplication of regulations. This authority concerned the siting, design, equipment, operations, and maintenance of LNG waterfront facilities.

By the terms of the MOU, the Coast Guard was responsible for establishing, and the MTB would refrain from establishing, regulatory requirements for: (1) The site selection as it relates to management of vessel traffic in and around each LNG waterfront facility; (2) fire prevention and fire protection equipment, systems, and methods for use at LNG waterfront facilities; (3) security of each LNG waterfront facility; and (4) all other matters pertaining to each facility between each vessel moored there and the last manifold or valve immediately before a receiving tank. (This area is referred to as the "marine transfer area" and in the proposed regulations as just the "area".) As a result of the MOU, the Coast Guard issued on August 3, 1978 an Advance Notice of Proposed Rulemaking (ANPRM)(43 FR 34362) proposing preliminary draft safety standards for LNG waterfront facilities.

The Research and Special Programs Administration (RSPA) was reorganized on November 1, 1985. The Office of Pipeline Safety Regulation in the MTB became the Office of Pipeline Safety in the RSPA.

Since the publication of the original MOU in July 1978, a revised MOU has been developed between the Coast Guard and the RSPA. In this MOU, the agencies agreed to a division of regulatory responsibilities for fire prevention and protection and security at the facility, at the last manifold or valve immediately before a receiving tank. As with all other matters pertaining to each facility, the Coast Guard will promulgate regulations for fire prevention and protection and security for that part of the LNG waterfront facility between each vessel and the last manifold or valve immediately before a receiving tank. The new MOU became effective on (insert date of signing). Because of the MOU and their new jurisdiction over fire prevention and protection and security, the RSPA will revise its regulations in a separate rulemaking, which will be coordinated with this NPRM.

The revised MOU follows:

Memorandum of Understanding Between the United States Coast Guard and the Research and Special Programs Administration for Regulation of Waterfront Liquefied Natural Gas Facilities

I. Introduction

Within the Department of Transportation (DOT), the United States Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) exercise separate and overlapping safety regulatory authority affecting the siting, design, construction, maintenance, and operation of waterfront liquefied natural gas (LNG) facilities adjoining the navigable waters of the United States. The USCG derives its authority over such facilities from the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) and Executive Order 10173, as amended (3 CFR, 1949–1953 Comp., p. 356), issued by the President under the Magnuson Act (50 U.S.C. 191). The regulatory authority of the RSPA over these same facilities (as well as non-waterfront LNG facilities) is derived from the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*). Under 49 U.S.C. 1671(12), the RSPA's authority over LNG facilities does not extend to any structures or equipment (or portions thereof) located in navigable waters.

In recognition of each of the parties' respective regulatory responsibilities, the USCG and the RSPA agree that a memorandum of understanding is needed to avoid duplication of regulatory efforts regarding waterfront LNG facilities and to maximize the exchange of relevant information.

II. Responsibilities of the Parties

For the foregoing reasons, the USCG and the RSPA agree to the following division of regulatory responsibilities with respect to waterfront LNG facilities and cooperation in carrying out those responsibilities:

USCG Responsibilities

The USCG is responsible for establishing regulatory requirements for—

(1) Facility site selection as it relates to management of vessel traffic in and around a facility; and

(2) All matters pertaining to structures or equipment (or portions thereof) located in the navigable waters and facilities located between the vessel and the last manifold (or valve) immediately before the receiving tank(s), other than the site selection responsibilities of the RSPA set forth below.

RSPA Responsibilities

The RSPA is responsible for establishing regulatory requirements for—

(1) Site selection of facilities other than structures or equipment (or portions thereof) located in the navigable waters and except as provided by paragraph (1) of the "USCG Responsibilities" set forth above; and

(2) All other matters pertaining to the facilities beyond (and including) the last manifold (or valve) immediately before the receiving tank(s) except those structures or equipment (or portions thereof) located in the navigable waters.

Joint Responsibilities

(1) The USCG and the RSPA will cooperate and assist each other in carrying out their respective waterfront LNG facility regulatory enforcement activities; and

(2) The USCG and the RSPA, in an effort to avoid inconsistent regulation of similar safety matters (including as between waterfront and non-waterfront LNG facilities), will consult with each other before issuing each Advance Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, and final regulation affecting waterfront LNG facilities.

III. Effect

This agreement is effective upon being signed by the authorized representatives of both the USCG and the RSPA and supersedes in its entirety the February 7, 1978, Memorandum of Understanding between the USCG and the Materials Transportation Bureau.

For the United States Coast Guard.

ADM James S. Gracey

Commandant.

Dated: May 5, 1986.

For the Research and Special Programs Administration.

M. Cynthia Douglass

Administrator.

Dated: May 9, 1986.

The regulatory authority of the Coast Guard is derived from the Ports and Waterways Safety Act of 1972 (PWSA), as amended by the Port and Tanker Safety Act of 1978 (33 U.S.C. 1221). Under this authority, the Coast Guard published the ANPRM on August 3, 1978. The RSPA published its regulations under the authority of the

Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1671), as amended by the Natural Gas Pipeline Safety Act Amendments of 1979 (NGPSAA) (Pub. L. 94-478, 90 Stat. 2073) and by the Pipeline Safety Act of 1979 (PSA) (Pub. L. 96-129, 93 Stat. 989, 996, 1004); and the Transportation Safety Act of 1974 (TSA) (49 U.S.C. 1801), as amended by the Hazardous Materials Transportation Act Amendments of 1976 (Pub. L. 94-474, 90 Stat. 2068).

These diverse regulatory authorities complicated federal regulation of LNG waterfront facilities. Section 4 of the NGPSA (49 U.S.C. 1672(a)(1)), as amended, allows state agencies to adopt additional or more stringent safety standards for intrastate pipeline transportation if such standards are compatible with the Federal minimum standards. However, this section prohibits those agencies from adopting or continuing in force any such standards applicable to interstate transmission facilities, after the Federal minimum standards become effective. No similar preemptive authority is granted by the PWSA, as amended. Without such preemption, it would be possible for an LNG facility to have to operate under the requirements of two Federal agencies and the State and local governments.

To ensure uniformity in regulating all LNG waterfront facilities, the Secretary of Transportation delegated to the Coast Guard certain functions and responsibilities vested in the Secretary by the NGPSA, as amended by the NGPSAA. This delegation, which appeared in the January 20, 1979 issue of the Federal Register (44 FR 5436) as an amendment to 49 CFR 1.46, allowed the Coast Guard to carry out the Secretary's responsibilities under the NGPSA, as amended, in accordance with the MOU, and, in effect, bestowed the same preemptive authority to the Coast Guard as delegated to the RSPA.

A supplemental ANPRM was issued on March 8, 1979 (44 FR 12693) reflecting the change in authority. However, subsequent legal review and legislative activity resulted in the determination that the Coast Guard does not have authority to regulate LNG waterfront facilities under the NGPSA, as amended by the PSA. The legislative history of the various statutes made it clear that Congress intended that the Coast Guard regulate LNG waterfront facilities exclusively under authority of the PWSA. This is supported by the definition of LNG facilities added by the PSA that excludes "any structure or equipment (or portion thereof) located in the navigable waters . . ." Therefore, Coast Guard regulations for LNG waterfront facilities will be issued under authority of the PWSA, which does not prohibit State or political subdivisions thereof from prescribing higher safety equipment requirements or safety standards for facilities than those which may be prescribed through this rulemaking process.

The following table shows the correspondence between section numbers in the ANPRM of August 3, 1976 and this NPRM. Due to modifications made to this NPRM, including the incorporation of some of the RSPA's fire and security regulations, not all sections in the ANPRM have corresponding sections in the NPRM. Some sections of the ANPRM have been omitted and some new sections have been added to the NPRM. Because the proposed regulations concern only LNG waterfront facilities and no other dangerous cargoes or facilities, they would not be established in Part 128, as originally proposed, but established in a new Part 127 in Title 33 of the Code of Federal Regulations.

NPRM	ANPRM
Subpart A—General	Application and Enforcement
127.001	126.2002
127.003	126.2050
127.005	126.2003
127.007	126.2011
127.009	126.2110
127.011	126.2015
127.013	126.2016
127.015	126.2030
127.017	126.2031
127.019	126.2014(a)
Subpart B—Design and Construction	Design and Construction
127.101	126.2210
127.103	126.2214
127.105	126.2219
127.107	126.2220
127.109	126.2221
127.111	126.2222
127.113	
Subpart C—Equipment	Detection and Sensor Systems
127.201	126.2310, 126.2315, 126.2320, 126.2325
127.203	126.2330(d)
127.205	126.2335
127.207	
Subpart D—Operations	Operations
127.301	126.2611
127.303	126.2613
127.305	126.2621
127.307	126.2622
127.309	126.2618
127.311	126.2642
127.313	126.2645
127.315	126.2651
127.317	126.2652
127.319	126.2653
127.321	126.2653(b)
Subpart E—Maintenance	Maintenance and Repair
127.401	126.2410, 126.2420
127.403	126.2430
127.405	126.2440
127.407	126.2440
127.409	126.2907
Subpart F—Personnel Training	Personnel
127.501	126.2722
Subpart G—Firefighting	Fire Protection and Safety Equipment
127.601	126.2511
127.603	
127.605	126.2550
127.607	126.2520
127.609	126.2524
127.611	
127.613	126.2941
127.615	126.2942
127.617	126.2953(n)
Subpart H—Security	Security
127.701	
127.703	126.2610
127.705	126.2610
127.707	126.2610
127.709	126.2610
127.711	

The regulatory scheme published in the ANPRM has been reorganized and simplified. Sections in the NPRM have been grouped into subparts and numbered according to the subpart group. The ANPRM consisted of 72 sections, while the NPRM consists of 52 sections. The burden on the industry has been reduced. There would be fewer paperwork requirements; the records of the Letter of intent, inspection, maintenance, and personnel training are no longer proposed in the NPRM. The number of industry specifications incorporated by reference has been reduced from 19 in the ANPRM to 7 in the NPRM. Burden is discussed further in the section titled EVALUATION.

General Comments

Comments were received on the ANPRM from 48 different commenters, the largest group (23) representing gas industry associations of LNG facility operators. Government agencies, non-industry organizations, and individuals also commented. The Coast Guard has reviewed the comments and has adopted those which it deems appropriate.

The comments indicated that there was confusion concerning the applicability of the regulations. Seven comments recommended that the regulation distinguish marine-mode waterfront facilities from peak shaving and satellite facilities adjacent to navigable waterways. Many comments to specific sections of the ANPRM also reflected this confusion. The proposed regulations apply only to waterfront facilities at which LNG transfer operations are conducted. A waterfront facility is defined in 33 CFR 126.01 as "all piers, wharves, docks, and similar structures to which a vessel may be secured; areas of land, water, or land and water under and in immediate proximity to them; buildings on such structures or contiguous to them and

equipment and materials on such structures or in such buildings. . . ." If LNG is not transferred between a vessel and the facility, these proposed regulations would not apply.

Comments also indicated confusion over the applicability of the proposed regulations to the whole facility versus the marine transfer area. This confusion was eliminated by the revised MOU, which was signed on (insert date of signing). The MOU splits Coast Guard and RSPA firefighting and security responsibility at the same location on the facility as all other matters, i.e. at the last manifold (or valve) immediately before a receiving tanks.

Other commenters said that it was not clear which proposed regulations applied to existing and new LNG waterfront facilities and which applied only to new LNG waterfront facilities. The proposed definition in this notice for "existing" means constructed or being constructed under a contract awarded before the effective date of the regulations. "New" is proposed to mean constructed or being constructed under a contract awarded on or after the effective date of the regulations. Existing facilities would not have to comply with the requirements in the design and construction, equipment, and security subparts, except § 127.701. New facilities would have to comply with all of the proposed rules. The applicability section was rewritten from that proposed in the ANPRM to eliminate this confusion.

Comments relating to the lack of Federal preemption authority in the PWSA were also received. The Coast Guard ANPRM was issued under the authority of the PWSA, which does not prohibit States or political subdivisions thereof from prescribing higher facility safety equipment requirements that those that may be prescribed through this rulemaking process. The RSPA's regulations, which apply to the inland side of a LNG waterfront facility, were issued under the authority of the NGPSA which allows preemption of state and local regulations. Eleven commenters indicated that different authorities governing different parts of a facility could result in a facility operating under the requirements of several overlapping and potentially conflicting jurisdictions. This is correct, however the limitations in existing statutory authority, as discussed earlier in the section titled REGULATORY HISTORY, dictate this result. The RSPA and Coast Guard regulations are intended to be completely compatible to minimize the burden on industry. Comments are particularly requested on any perceived areas of conflict or inconsistency.

The following portion of the preamble discusses the section-by-section comments to the ANPRM, as well as important changes to the proposed sections of this notice.

Subpart A—General

Many commenters suggested that §§ 126.2001, 126.2002 and 126.2025 (published as § 126.2205, in error) of the ANPRM be clarified to indicate the applicability of the proposed regulations. Section 126.2001, Purpose, and § 126.2025, Effective dates, have been omitted in the NPRM. These regulations would be effective 30 days after the final rule is published. In those sections in the NPRM where time is needed to comply with the requirements, a separate effective date is included. Clarifications to eliminate the confusion over the definition of waterfront facility, the applicability of the NPRM to the facility, and the applicability to new and existing facilities have been made. Other commenters said that the division of jurisdiction between the RSPA and the Coast Guard was complicated. This division is clearer in the revised MOU.

Many comments suggested changes to definitions found in the ANPRM. Twenty-one definitions in the ANPRM are not included in the NPRM because they are no longer used in the regulations or their meanings are the same as those found in a standard dictionary. Several minor wording changes have been made. Two definitions have been substantially rewritten to agree with the rewritten applicability. The definition of "Marine transfer area" (area) now corresponds to the area of Coast Guard jurisdiction as outlined by the MOU and the definitions of "waterfront facility" and "LNG facility" have been combined to form the definition of "LNG waterfront facility".

Section 126.2011, Letter of intent (now § 127.007), has been changed by excluding requests for information that would not be utilized or which is available to the Coast Guard from other sources. Section 126.2001, which requires the operator to keep a record of the Letter of intent, has been omitted from the NPRM. A paragraph concerning existing structures which have not transferred LNG within 12 months and which intend to transfer LNG, has been added to § 127.007 in the NPRM.

Eighteen commenters made suggestions concerning proposed § 126.2012 and the issuance of a use permit by the COTP to the facility operator for a period of five years. Ten said that the 5-year time period was too restrictive. This section has been omitted from the NPRM and a new section has been proposed as, § 127.019, *Operations Manual* and *Emergency Manual:* Procedures for examination. It would require that the *Operations Manual* and *Emergency Manual* meet §§ 127.305 and 127.307, respectively, and contain the words "examined by the Coast Guard" after review by the COTP. The Coast Guard believes that proposed § 127.019 and § 127.309, *Operations Manual* and *Emergency Manual:* Use, would be sufficient to regulate LNG transfer operations, and that the Use Permit would not be necessary. Section 126.2013 of the ANPRM, Enforcement, has also been omitted. The authority of the COTP to enforce regulations is clearly stated in Federal law and regulations.

Several comments on §§ 126.2016, 126.2031, 126.2035, and 126.2036 of the ANPRM indicated that a time limit should be set for response by the Coast Guard to any petitions or applications made by facility operators. The Coast Guard plans to issue policy guidance concerning this issue to its District Commanders, indicating that response shall be made in a timely manner. Section 126.2035, Exemptions, has been omitted, while the other sections now appear as 127.013, 127.017, and 127.015 respectively in the NPRM.

Section 126.2050, Reference specifications, standards and codes, (proposed in the NPRM as § 127.003) has been changed to include only those sources mentioned in the NPRM. Citations have been updated to reflect current editions.

Three commenters suggested that § 126.2110, LNG Facility Siting; LNG vessels, was either too general or that it should be deleted altogether. The Coast Guard feels that this requirement must be included. In order to protect the marine environment and prevent damage to or destruction of structures on or adjacent to the navigable waters, the waterway leading to the site from the sea must be suitable for the number and size of vessels contemplated as carriers for LNG. This section has been rewritten as proposed § 127.009, Letter of recommendation. It is very specific as to the proposed criteria used by the COTPs to fulfill the Coast Guard's siting responsibility under the MOU with the RSPA. The Letter of recommendation contains the COTP's recommendations concerning proposed sites. The Coast Guard is authorized by law to establish water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity, when

necessary for the protection of any vessel, structure, waters, or shore area.

Subpart B—Design and Construction

Section 126.2210 of the ANPRM (now § 127.101) has been retitled "Design and construction: General" and contains updated citations for the 1985 edition of NFPA 59A. Chapters 1, 3, 5 and 9 of NFPA 59A have been eliminated from this proposed section because they relate to areas outside Coast Guard purview.

Several paragraphs in § 126.2214 of the ANPRM (now § 127.103) have been omitted because they are already the minimum standards of industry construction. In accordance with several comments, mooring and breasting dolphins are exempted from the substructure requirements of proposed § 127.103. Comments also indicated confusion over the term "fire endurance rating" contained in § 126.2214 of the ANPRM because the term "flame" endurance rating was defined in § 126.2003 of the ANPRM. The word "flame" was inadvertently used in the definition and has been changed to "fire" in proposed § 127.005. Section 126.2214(m) concerning warning alarms has been moved to the proposed Subpart C, Equipment. It has also been changed to require that alarms be heard *and* seen from a distance of 1 mile. A recent National Transportation Safety Board investigation of a waterfront facility, involving a ship collision, pointed out the need for both visible and audible alarms to warn facility personnel and vessels of danger.

Several commenters felt that the prohibition, proposed in the ANPRM in § 126.2210, of sewers, open trenches, and drains that would allow LNG vapors to be carried to areas not under the full control of the operator, was too stringent. Because existing LNG waterfront facilities should not be required to rebuild their drainage systems, if they have had no problems, we have moved this requirement to Subpart B, Design and Construction, which applies only to new LNG waterfront facilities. It has been included in § 127.101 of the NPRM by incorporating by reference section 2-1.2 of NFPA 59A. Four commenters felt that the quality assurance plan required in § 126.2217 of the ANPRM was expensive and unnecessary. This section has been omitted from the NPRM.

Section 126.2219, LNG facility layout and systems spacing, has been replaced by a more general requirement (proposed in § 127.105) than the one in the ANPRM. The NPRM is written as a performance standard but retains the concept of the ANPRM.

Many comments to the ANPRM § 126.2221, Lighting systems, indicated that paragraph (b), which proposed that the lighting pattern on the facility be symmetrical, should be changed. The Coast Guard agrees that this is not necessary and has proposed a performance standard in § 127.109. Paragraph (a) of § 126.2222 (now § 127.111) has also been changed. The Coast Guard believes that three separate communications systems for the marine transfer area are not necessary. Therefore, a facility-wide "primary communications system" is not proposed in the NPRM.

Subpart C—Equipment

Sections 126.2310, 126.2315, 126.2320, and 126.2325 in the ANPRM have been condensed into § 127.201 in the NPRM. Section 127.201, Sensing and alarm systems, would incorporate parts of NFPA 59A instead of establishing new requirements for these systems.

As suggested by several comments, the title of § 126.2335 of the ANPRM has been changed from "Automatic shutdown" to the more appropriate "Emergency Shutdown" in proposed § 127.205. The section now includes a proposal for manual actuation. The proposed actuation at "30% or more of the lower flammable limit" in the ANPRM has been changed to "when LNG concentrations . . . exceed 40% of the lower flammable limit" in the NPRM to be consistent with the requirement found in 49 CFR 193.2439(a)(4).

Subpart D—Operations

The proposal in § 126.2810 in the ANPRM, LNG facility operations, has been divided into two sections in the NPRM. Section 127.309, *Operations Manual* and *Emergency Manual:* Use, proposes mandatory use of the *Emergency Manual*, which was not included in paragraph 126.2810(a). Section 127.019, *Operations Manual* and *Emergency Manual:* Procedures for examination, proposes requirements for new and existing facilities to correct the omission of procedures for existing facilities in § 126.2810(b).

Several commenters expressed concern that proprietary security procedures would become public information if they were included in the *Operations Manual*. Omitting § 126.2816 of the ANPRM, Manuals: availability, and, by silence, giving the operator control over the distribution of the manual, should alleviate the concern over this problem. The Coast Guard may withhold from public disclosure any information in the *Operations Manual* or *Emergency Manual*, in accordance with the requirements of 5 U.S.C. 552a and 49 CFR Part 7.

Commenters noted that the prohibition against motor vehicles in § 126.2842(a) of ANPRM should apply only during marine transfer operations. This paragraph has been omitted from proposed § 127.311. The concept as delineated by the words "when permitted by local ordinances and regulations" has been omitted from § 127.311(b) because, as commenters indicated, it is unnecessary.

Several comments were received on § 126.2852 of the ANPRM, Declaration of Inspection, stating that the responsibility for certain items was misplaced. These comments are no longer relevant because of the rewriting of this section. As now proposed, the person in charge of shoreside transfer operations would be responsible for executing the declaration. The proposal for the Declaration of Inspection to be in a specified format has been omitted. The proposal would allow any form, provided that the required information is included.

The Coast Guard concurs with commenters that operations need not be stopped if a fire occurs anywhere on the facility, as proposed in the ANPRM. Therefore paragraph (c)(2) of § 126.2853 has been rewritten. Proposed § 127.319 of the NPRM would require that transfer operations be discontinued during any fire in the marine transfer area and during uncontrolled fires within 4.8 kilometers (3 miles) of the periphery of the area. Other comments on § 126.2853 concerned paragraph (o) and stated that a requirement for hoses to be charged and laid out was unncessary. The Coast Guard agrees with these comments and this proposal has been omitted.

Subpart E—Maintenance

Some proposals in this group in the ANPRM were written so that they appeared to apply to the process plant, which is beyond Coast Guard jurisdiction. Corrections to those sections have been made to clarify the applicability.

Commenters made suggestions concerning the time interval between tests proposed in § 126.2440, Testing and calibration. The Coast Guard believes that "at least once every 12 months" is appropriate and has retained the concept in proposed § 127.407.

Some commenters to ANPRM § 126.2460, Repairs, indicated that some safety repairs can be made without taking the transfer system out of service. The Coast Guard agrees that the decision to take the system out of service during repairs, can be made by

the facility operator on a case-by-case basis. This requirement has been omitted.

Subpart F—Personnel Training

Section 126.2710, Emergency response personnel, has been omitted because these proposed requirements would involve the process plant operation and the whole facility, and should only apply to the marine transfer area. As suggested in the comments concerning paragraph (d) of § 126.2722, Training requirements, it is not necessary to repeat all required training at least every two years. The Coast Guard believes that requiring a refresher course for personnel who have already received training, is sufficient, which is proposed in § 127.501(c).

Subpart G—Firefighting

Several commenters thought that § 126.2510 of the ANPRM concerning written approval for the installation of any fire control system was redundant and unnecessary. The Coast Guard agrees that the COTP does not need to approve any additional firefighting equipment beyond the requirements of this subpart. Section 127.601 of this NPRM would require that additional equipment still meet the requirements of the subpart and bear the approval of Underwriters Laboratories, the Factory Mutual Research Corp., or the Coast Guard.

Many comments were received concerning § 126.2512, Automotive fire apparatus. However, because of the new MOU between the USCG and the RSPA, this subpart no longer applies to the whole facility and this section has been omitted.

Another comment indicated that the fire main pressure proposed in § 126.2522(d) of the ANPRM should not be limited by a maximum pressure. While the reaction forces from fire hoses can become dangerous above this maximum pressure, fire monitors operate safely at higher pressures. Therefore this requirement has been changed. The guideline for the fire main pressure in proposed § 127.607 is now a minimum pressure.

Paragraph 126.2550(d) has been omitted because two commenters indicated that no evacuation equipment, meeting the requirements in this paragraph, was available.

A section concerning portable fire extinguishers (§ 127.603) and a section requiring an international shore connection (§ 127.611) have been proposed for this subpart.

Subpart H—Security

Three new proposals have been added to this subpart in the NPRM. Section 127.701 requires that security procedures and arrangements that were in use when LNG transfer operations were last conducted be continued and maintained as long as transfer operations are conducted. Section 127.705, Security systems, requires that security patrols be made unless the facility has a manned television monitoring system. Section 127.711, Communications, requires that security patrols have a means to communicate with other personnel on duty on the facility.

Section 126.2510 in the ANPRM proposes a chain-link fence around the whole facility. This has been rewritten as proposed § 127.703 because, as many commenters pointed out, it is not intended to enclose the dock area of the facility.

Evaluation

The Transportation Systems Center (TSC) prepared a report entitled, *Preliminary Impact Analysis of the U.S. Coast Guard's Proposed LNG Regulations*, which is available through the Project Manager listed under "For Further Information Contact". For the analysis, a composite baseline standard was used by which the types of incremental costs and benefits, as well as their distributional effects, were identified. The baseline consisted of: (1) Current Coast Guard Waterfront Facilities regulations (33 CFR Part 126); (2) USCG facility operations plans which are issued by the Captain of the Port (COTP) for the port in which an LNG facility is located; and (3) National Fire Protection Association (NFPA) standards. The primary LNG standard is NFPA 59A, "Standards for the Production, Storage and Handling of LNG—1985 edition". NFPA standards are considered to be minimum industry standards voluntarily adopted by the LNG industry. The analysis determined the impacts of the ANPRM by identifying where the proposed regulations exceed current practices and, therefore, where costs and benefits would accrue. Although state and local jurisdictions may impose more stringent LNG safety standards, the baseline used in the analysis reflects only those Federal requirements and industry standards common to all waterfront facilities.

Of the 72 sections contained in the ANPRM, 54 were analyzed in the TSC report. Thirty-five or 65% of the 54 analyzed, introduced no change from the current baseline standards. Of the nineteen sections of the ANPRM that exceeded current requirements and standards, fifteen resulted in administrative costs, mostly for facility operators. Most of these costs would be minimal and not recurring. An example of an administrative cost would be the preparation and submission of an *Operations Manual* and an *Emergency Manual* to the COTP. The impact of this requirement would be minimal because facility operators already submit much of this information to the COTP or maintain it themselves.

The proposed fire protection and security regulations of the ANPRM were not analyzed by TSC because the Coast Guard's proposed regulations are similar to the RSPA's final rules found in 49 CFR Part 193. A telephone survey of all LNG waterfront facilities indicated that the proposed regulations in this notice do not exceed current industry practices.

To ensure the currency and validity of the TSC report, requests for estimates of the compliance costs of this NPRM, were sent to two operating LNG waterfront facilities. The results were the latest cost figures and a confirmation that the TSC report could still be applied to the NPRM. The survey information and the TSC report were both used in the final cost/benefit analysis.

Of the 52 sections contained in the NPRM, 39 or 75% introduced no change from the current baseline requirements and standards. Of the thirteen sections of the NPRM that exceed current requirements, 8 would result in administrative costs. This is a 32% decrease from ANPRM to NPRM in the number of sections in the rulemaking that exceed current requirements.

The proposed safety standards would result in low compliance costs. According to the analysis in the Draft Evaluation, the total initial cost of these regulations to the LNG industry is $96,000.00 and the annual recurring cost is $44,000.00. These costs represent such a relatively small amount of money to the industry that it is believed that this regulation will have no perceptible impact on the industry. For further information concerning the economic consequences of these proposed regulations, the availability of the Draft Evaluation is discussed below.

The TSC analysis concluded that due to the low probability of an LNG accident occurring, the expected value of the quantifiable benefits of the ANPRM were low. The benefits would be great if an accident occurred. A "maximum credible accident", as discussed in the Draft Evaluation,

involving a pool fire of 30,000 m^3 in an area with a population density of 10 people per km^2 at the dock site, could result in 11 fatalities with a cost to society of $21 million in property damage, injury, and loss of life. If the same pool fire occurred in an area with a population 1000 persons per km^2, the result could be 3,810 fatalities with social costs of $3.6 billion in property damage, injury, and loss of life.

Accidents involving small amounts of LNG have occurred in the past. The National Transportation Safety Board (NTSB) investigated one such accident that occurred at an LNG waterfront facility on October 6, 1979. According to NTSB report No. NTSB–PAR–80–2, "About 3:35 a.m., e.d.t., an explosion caused by liquefied natural gas vapors destroyed a transformer building at the reception facility of the Columbia LNG Corporation, Cove Point, Maryland. Odorless liquefied natural gas leaked through an inadequately tightened LNG pump seal, vaporized, passed through approximately 210 ft. of underground electrical conduit, and entered the substation building. One person was killed and one person was seriously injured. Damage to the facility was estimated at about $3 million."

Despite the very large savings that would result from preventing a major LNG accident or mitigating the results of an accident if it occurred at an LNG facility, it is difficult to precisely quantify the benefits that will accrue. Specific comments on costs and benefits are requested. This is because of the extremely low probability of a major LNG accident occurring. The limited number of reported LNG facility accidents requires that probability estimates of accidents be based on the theoretical analysis of factors which might lead to their occurrence. There is large inherent uncertainty associated with such estimates, and hence of the cost/benefit values derived from them. Because of such uncertainties, prudence dictates an extra measure of caution where there is potential for a catastrophic accident. Such caution should be weighed along with other considerations when judging the need for safety standards that can reduce the possibility of a catastrophic LNG accident. This is true even when these measures may not be justified based on a theoretical risk analysis.

The benefits that cannot be quantified are discussed in the section titled NEED in this preamble. They include replacing outdated regulations, filling a gap in federal regulations, making industry standards and practices mandatory, and consolidating and better organizing the regulations.

These proposed safety standards are considered to be non-major under Executive Order 12291 of February 17, 1981 (3 CFR, 1982 Comp., p. 127) and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and the Office of Management and Budget Bulletin No. 85–9 of January 10, 1985. The total cost to the industry of these proposed LNG safety standards does not exceed the $100 million threshold to qualify as a major rulemaking, and so a Regulatory Impact Analysis is not required.

This proposed rulemaking contains information collection requirements in sections 127.007, 127.015, 127.017, 127.019, 127.301, 127.317, and 127.409. They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under the section titled ADDRESSES.

The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. This is because few, if any, small entities are involved in the costly and highly technical operations of LNG waterfront facilities. All the existing LNG waterfront facilities are owned and operated by multimillion dollar corporations.

This regulatory project is not anticipated to have an adverse impact on the environment. It is intended to prevent or mitigate the results of a catastrophic accident at a LNG waterfront facility.

The Draft Evaluation and the Environmental Assessment and Finding of No Significant Impact have been prepared and are available for inspection and copying from the Marine Safety Council (G–CMC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593, (202) 426–1477.

List of Subjects

33 CFR Part 126

Explosives, Harbors, Hazardous materials.

33 CFR Part 127

Harbors, Security measures, Vessels.

In accordance with the preceding, it is proposed to amend Subchapter L, Chapter I of Title 33, Code of Federal Regulations as follows:

PART 126—[AMENDED]

1. The authority citation to Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46 (n)(4).

§ 126.05 [Amended]

2. By amending § 126.05(a) by adding the words ", except methane" after the words "any flammable or combustible liquid in bulk".

§ 126.10 [Amended]

3. By removing the word "methane" from the list in § 126.10(d).

4. By adding a new Part 127 to read as follows:

PART 127—LIQUEFIED NATURAL GAS WATERFRONT FACILITIES

Subpart A—General

Sec.
127.001 Applicability.
127.003 Incorporation by reference.
127.005 Definitions.
127.007 Letter of intent.
127.009 Letter of recommendation.
127.011 LNG waterfront facility inspections.
127.013 Suspension of transfer operations.
127.015 Appeals.
127.017 Alternatives.
127.019 *Operations Manual* and *Emergency Manual:* Procedures for examination.

Subpart B—Design and Construction

127.101 Design and construction: General.
127.103 Piers and wharves.
127.105 Marine transfer area layout and spacing.
127.107 Electrical power systems.
127.109 Lighting systems.
127.111 Communications systems.
127.113 Warnings signs.

Subpart C—Equipment

127.201 Sensing and alarm systems.
127.203 Portable gas detectors.
127.205 Emergency shutdown.
127.207 Warning alarms.

Subpart D—Operations

127.301 Persons in charge of shoreside transfer operations: Qualifications and certification.
127.303 Compliance with suspension order.
127.305 *Operations Manual.*
127.307 *Emergency Manual.*
127.309 *Operations Manual* and *Emergency Manual: Use.*
127.311 Motor vehicles.
127.313 Bulk storage.

Sec.
127.315 Preliminary transfer inspection.
127.317 Declaration of inspection.
127.319 LNG transfer.
127.321 Release of LNG.

Subpart E—Maintenance

127.401 Maintenance: General.
127.403 Inspections.
127.405 Repairs.
127.407 Testing.
127.409 Records.

Subpart F—Personnel Training

127.501 Training: General.

Subpart G—Firefighting

Fire Equipment

127.601 Fire equipment: General.
127.603 Portable fire extinguishers.
127.605 Emergency outfits.
127.607 Fire main systems.
127.609 Dry chemical systems.
127.611 International shore connection.

Fire Protection

127.613 Smoking.
127.615 Fires.
127.617 Hotwork.

Subpart H—Security

127.701 Security on existing facilities.
127.703 Access to the marine transfer area.
127.705 Security systems.
127.707 Security personnel.
127.709 Protective enclosures.
127.711 Communications.

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

Subpart A—General

§ 127.001 Applicability.

(a) This part applies to the marine transfer area of new LNG waterfront facilities and to new construction in the marine transfer area of existing LNG waterfront facilities.

(b) Subparts A, D, E, F, and G and § 127.701 apply to the marine transfer area of existing LNG waterfront facilities.

(c) Section 127.007, paragraphs (c), (d), and (e), applies to the marine transfer area of existing structures.

§ 127.003 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Port and Environmental Safety Division, Washington, DC 20593.

(b) The materials approved for incorporation by reference in this part are:

"American National Standards Institute", 1430 Broadway, New York, NY 10018

ANSI B31.3 Chemical Plant and Petroleum Refinery Piping, 1984.

"National Fire Protection Association", Batterymarch Park, Quincy MA 02269

NFPA 10 Standard for Portable Fire Extinguishers, 1984

NFPA 30 Flammable and Combustible Liquids Code, 1984

NFPA 51B Standard for Fire Prevention in Use of Cutting and Welding Processes, 1984

NFPA 59A Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG), 1985

NFPA 70 National Electrical Code. 1984

NFPA 251 Standard Methods of Five Tests of Building Construction and Materials, 1985

§127.005 Definitions.

As used in this part:

"Captain of the Port" (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in Part 3 of this chapter, or an authorized representative.

"Commandant" means the Commandant of the U.S. Coast Guard or an authorized representative.

"Control room" means a space within the LNG waterfront facility from which facility operations are controlled.

"District Commander" means the Coast Guard officer designated by the Commandant to command a Coast Guard District as described in Part 3 of this chapter, or an authorized representative.

"Environmentally sensitive areas" includes public parks and recreation areas, wildlife and waterfowl refuges, historic sites, fishing grounds, and other protected areas.

"Existing" means constructed or being constructed under a contract awarded before (insert the effective date of these regulations).

"Fire endurance rating" means the duration for which an assembly or structural unit will contain a fire retain structural integrity when exposed to the temperatures specified in the standard time-temperature curve in NFPA 251.

"Impounding space" means a space formed by dikes and floors that confines a spill of LNG.

"Liquefied natural gas" (LNG) means a liquid or semisolid consisting mostly of methane and small quantities of ethane, propane, nitrogen, or other natural gases.

"Liquefied petroleum gas" (LPG) means a liquid consisting mostly of propane or butane or both.

"Loading flange" means the connection or group of connections in the cargo transfer pipeline on the facility that connects the facility pipeline to the vessel pipeline.

"LNG vessel" means a watercraft constructed or converted to carry LNG in bulk.

"LNG waterfront facility" (facility) means a waterfront facility, as defined in §126.01, at which LNG transfer operations are conducted.

"Marine transfer area" (area) means that portion between the vessel or where the vessel moors and the last manifold or valve immediately before the receiving tanks.

"Maximum allowable working pressure" (MAWP) means the maximum gauge pressure permissible at the top of equipment, containers, or pressure vessels while operating at design temperature.

"New" means constructed or being constructed under a contract awarded on or after (insert the effective date of these regulations).

"Persons in charge of transfer operations on the vessel" is the person designated the person in charge of cargo transfer under 46 CFR 154.1831.

"Substructure" means the deck of a pier or wharf and the structural components below that deck.

§ 127.007 Letter of intent.

(a) In order to obtain the Coast Guard's views and comments, an owner who intends to build a new LNG waterfront facility or the operator who plans new construction on an existing LNG waterfront facility, must submit a Letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is or will be located, at least 60 days before construction begins.

(b) The owner or operator of an existing facility shall submit a Letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is located by (insert a date 30 days after effective date).

(c) An owner or operator of an existing structure that has not transferred LNG within 12 consecutive months, shall submit a Letter of intent

that meets paragraph (d) of this section to the COTP of the zone in which the facility is located, at least 60 days before transferring LNG.

(d) Each Letter of intent must contain—

(1) The name, address, and telephone number of the owner and operator;

(2) The name, address, and telephone number of the facility;

(3) The physical location of the facility;

(4) A description of the facility;

(5) The LNG vessels' characteristics and the frequency of LNG shipments to or from the facility;

(6) Maps and charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway within 40.2 kilometers (25 miles) of the facility; and

(7) Information on the following, on or adjacent to the facility:

(i) Depths of the water.

(ii) Tidal range.

(iii) Protection from high seas.

(iv) Natural hazards, including reefs, rocks, and sandbars.

(v) Underwater pipelines and cables.

(vi) Distance of berthed vessel from the channel and the width of the channel.

(e) The owner or operator who submits a Letter of intent under paragraphs (a), (b), or (c), shall notify the COTP in writing within 15 days if—

(1) There is any change in the information submitted under paragraph (d) of this section; or

(2) No LNG transfer operations are scheduled within the next 12 months.

§ 127.009 Letter of recommendation.

After the COTP receives the Letter of intent, the COTP issues a Letter of recommendation to the owner or operator of the facility and to the state and local government agencies having jurisdiction, as to the suitability of the waterway for LNG marine traffic, based on the following factors:

(a) The information submitted under § 127.007 (c)(3) through (c)(7).

(b) Density and character of marine traffic in the waterway.

(c) Locks, bridges, or other man-made obstructions in waterways.

Note.—The Coast Guard is authorized by law to establish water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity, when necessary for the protection of any vessel, structure, waters, or shore area.

§ 127.011 LNG waterfront facility inspections.

The operator shall ensure that the COTP or his representative is allowed to make reasonable examinations and inspections to determine whether the facility meets this part.

§ 127.013 Suspension of transfer operations.

(a) The COTP may issue an order to the operator to suspend LNG transfer operations if the COTP finds any condition requiring immediate action to—

(1) Prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

(2) Protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss.

(b) Each order to suspend transfer operations issued under paragraph (a) of this section—

(1) Is effective immediately;

(2) Contains a statement of each condition requiring immediate action; and

(3) Is withdrawn by the COTP whenever each condition is corrected or no longer exists.

§ 127.015 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (a) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the Coast Guard District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (c) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard, Washington, DC 20593; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) The Chief, Office of Marine Environment and Systems issues a ruling after reviewing the appeal submitted under paragraph (c) of this section, which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 127.017 Alternatives.

(a) The COTP may allow alternative procedures, methods, or equipment standards to be used by an operator instead of any requirements in this part if—

(1) The operator submits a written request for the alternative at least 30 days before facility operations under the alternative would begin, unless the COTP authorizes a shorter time; and

(2) The alternative provides at least the same degree of safety provided by the regulations in this part.

(b) The COTP approves or disapproves any alternative requested under paragraph (a) of this section—

(1) In writing; or

(2) Orally with subsequent written confirmation.

§ 127.019 Operations Manual and Emergency Manual: Procedures for examination.

(a) The owner or operator of an existing facility shall submit two copies of the *Operations Manual* and of the *Emergency Manual* by (insert a date that is 90 days after the effective date of these regulations) to the Captain of the Port of the zone in which the facility is located.

(b) The owner or operator of a new facility shall submit two copies of the *Operations Manual* and of the *Emergency Manual* at least 30 days before the first LNG transfer, to the Captain of the Port of the zone in which the facility is located.

(c) If the COTP finds that the *Operations Manual* meets § 127.305 and the *Emergency Manual* meets § 127.307, the Captain of the Port returns a copy to the owner or operator marked "Examined by the Coast Guard".

(d) If the COTP finds that the *Operations Manual* or the *Emergency Manual* does not meet this part, the Captain of the Port returns the manual with a statement of the reasons why it does not.

Subpart B—Design and Construction

§ 127.101 Design and construction: General.

The area must meet the following criteria in NFPA 59A:

(a) Chapter 2, Sections 2–1.2 and 2–3.

(b) Chapter 6.

(c) Chapter 7, Sections 7–6 and 7–7.

(d) Chapter 8, except Sections 8–3, 8–5 and 8–7.2.

§ 127.103 Piers and wharves.

(a) If the facility is in a region subject to earthquakes, the piers and wharves in the area must be designed to resist earthquake forces.

(b) Substructures, except moorings and breasting dolphins, that support or are within 5 meters (16 feet) of any pipe or equipment containing LNG, or are within 15 meters (50 ft) of a loading flange, must—

(1) Be made of concrete or steel; and

(2) Have a fire endurance rating of not less than two hours.

(c) Direct combustion heating equipment must be more than 60 meters (200 feet) from any loading flange.

(d) LNG or LPG storage tanks located in the area must have a volume of 1.9 cubic meters (500 gallons) or less and be designed for—

(1) Surge protection; or

(2) Pump suction supply.

§ 127.105 Marine transfer area layout and spacing.

(a) LNG impounding spaces must be located so that the heat flux from a fire over the impounding spaces does not cause structural damage to an LNG vessel moored or berthed at the facility.

(b) Each LNG loading flange must be located at least 300 meters (983 feet) from the following which are primarily intended for the use of the general public or railways:

(1) Each bridge crossing a navigable waterway.

(2) Each entrance to any tunnel under a navigable waterway.

§ 127.107 Electrical power systems.

(a) The area must have a power system and a separate emergency power system, which function so that failure of one system does not affect the capability of the other system. Each system must meet the National Electrical Code, NFPA 70.

(b) The emergency power system must provide enough power of the operation of the—

(1) Control room;

(2) Communications equipment;

(3) Firefighting equipment; and

(4) Emergency lighting.

(c) If an auxiliary generator is used as an emergency power source, it must meet Section 700–12 of NFPA 70.

(d) Fixed electrical equipment and wiring within 5 meters (16 feet) of any LNG loading flange must meet the requirements of NFPA 70 for installation in Class I, Division 2, Group D hazardous locations.

(e) Fixed electrical equipment and wiring more than 5 meters (16 feet) from any LNG loading flange must meet Chapter 7 of NFPA 59A.

§ 127.109 Lighting systems.

(a) The area must have a lighting system and a separate emergency lighting system.

(b) All outdoor lighting in the area must be—

(1) Explosion-proof as described in 46 CFR 111.105–9; and

(2) Located or shielded so that it is not confused with any aids to navigation and does not interfere with navigation on the adjacent waterways.

(c) The lighting system must provide an average illumination on a horizontal plane one meter (3.3 feet) above the deck that is—

(1) 54 lux (five foot-candles) at any loading flange; and

(2) 11 lux (one foot-candle) at each work area.

(d) The emergency lighting system must provide lighting for the operation of the—

(1) control room;

(2) communications equipment; and

(3) firefighting equipment.

§ 127.111 Communications systems.

(a) The area must have a ship-to-shore communication system and a separate emergency ship-to-shore communication system.

(b) Each ship-to-shore communication system must be a dedicated system that—

(1) is intrinsically safe as described in 46 CFR 111.105–11(a);

(2) meets the requirements in 46 CFR 111.105–15; and

(3) allows voice communication between the person in charge of transfer operations on the vessel, the person in charge of shoreside transfer operations, and personnel in the control room.

§ 127.113 Warning signs.

(a) The area must have warning signs that—

(1) meet paragraph (b) of this section;

(2) can be seen from the shore and the water; and

(3) have the following text:

Warning
Dangerous Cargo
No Visitors
No Smoking
No Open Lights

(b) Each letter in the words on the sign must be—

(1) Block style;

(2) Black on a white background; and

(3) 7.6 centimeters (3 inches) high.

Subpart C—Equipment

§ 127.201 Sensing and alarm systems.

(a) Fixed sensors must have audio and visual alarms in the control room and audio alarms where the sensors are located.

(b) Fixed sensors that continuously monitor for LNG must—

(1) Be in each enclosed area where vapor or gas may accumulate; and

(2) Meet section 9–4 of NFPA 59A.

(c) Fixed sensors that continuously monitor for flame, heat, or products of combustion must—

(1) Be in each location described in section 500–4 of NFPA 70 and each area in which flammable or combustible material is stored; and

(2) Meet Section 9–4 of NFPA 59A.

§ 127.203 Portable gas detectors.

The area must have at least two portable gas detectors capable of measuring 0–100% of the lower flammable limit of methane.

§ 127.205 Emergency shutdown.

Each transfer system must have an emergency shutdown system that—

(a) Can be activated manually; and

(b) Is activated automatically when LNG concentrations in the area exceed 40% of the lower flammable limit.

§ 127.207 Warning alarms.

(a) The area must have a rotating or flashing amber light with a minimum effective flash intensity, in the horizontal plane, of 5000 candelas. At least 50% of the required effective flash intensity must be maintained in all directions from 1.0 degree above to 1.0 degree below the horizontal plane.

(b) The area must have a siren with a minimum ⅓-octave band sound pressure level at 1 meter of 125 decibels referenced to 0.0002 microbars. The siren must be located in the area so that the sound signal produced is audible over 360 degrees in a horizontal plane.

(c) Each light and siren must be located so that the warning alarm is not obstructed for a distance of 1.6 km (1 mile) in all directions.

Subpart D—Operations

§ 127.301 Persons in charge of shoreside transfer operations: Qualifications and certification.

(a) No person may serve, and the operator of the facility may not use the services of any person, as a person in charge of shoreside transfer operations, unless that person—

(1) Has at least 40 hours of LNG transfer experience at any facility;

(2) Knows the hazards of LNG;

(3) Knows the rules of this subpart; and

(4) Knows the procedures in the examined *Operations Manual* and the examined *Emergency Manual*.

(b) Before a person in charge of shoreside transfer operations supervises a transfer, the operator shall certify in writing that the criteria in paragraph (a) of this section are met. The operator shall maintain a copy of each current certification available for inspection at the facility.

§ 127.303 Compliance with suspension order.

If an order to suspend is given to the operator or owner of the facility, no LNG transfer operations may be conducted at the facility until the order is withdrawn by the COTP.

§ 127.305 Operations Manual.

Each *Operations Manual* must contain—

(a) A description of the transfer system in the area including mooring areas, transfer connections, control rooms, and diagrams of the piping and electrical systems;

(b) The duties of each person assigned for transfer operations;

(c) The maximum relief valve setting or maximum allowable working pressure of the transfer system;

(d) The facility telephone numbers of facility supervisors, persons in charge of shoreside transfer operations, personnel on watch in the area, and security personnel;

(e) A description of the security systems for the area;

(f) The procedures for—

(1) Transfer operations including gauging, cool down, pumping, venting, and shutdown;

(2) Transfer operations start-up and shutdown;

(3) Security violations; and

(4) The communications systems; and

(g) A description of the training programs established under § 127.501.

§ 127.307 Emergency Manual.

Each *Emergency Manual* must contain—

(a) LNG release response procedures, including contacting local response organizations;

(b) Emergency shutdown procedures;

(c) A description of the fire equipment and systems and their operating procedures;

(d) A description of the emergency lighting and emergency power systems;

(e) The telephone numbers of local Coast Guard units, hospitals, fire departments, police departments, and other emergency response organizations;

(f) If the facility has personnel shelters, the location of and provisions in each shelter;

(g) First aid procedures and if there are first aid stations, the locations of each station; and

(h) Emergency procedures for mooring and unmooring a vessel.

§ 127.309 Operations Manual and Emergency Manual: Use.

The operator shall ensure that—

(a) LNG transfer operations are not conducted unless the facility has an examined *Operations Manual* and examined *Emergency Manual*;

(b) Each transfer operation is conducted in accordance with the examined *Operations Manual*; and

(c) Each emergency response is in accordance with the examined *Emergency Manual*.

§ 127.311 Motor vehicles.

(a) The operator shall designate and mark parking spaces that—

(1) Do not block fire lanes;

(2) Do not impede any exits;

(3) Are not located in any impounding space; and

(4) Are not within 15 meters (50 ft) of any storage tank or loading flange.

(b) No person may stop or park a motor vehicle in a space in the area unless that space is designated a parking space.

(c) No person may refuel any motor vehicle in the area.

§ 127.313 Bulk storage.

(a) The operator shall ensure that only the following is stored in the area:

(1) LNG.

(2) LPG.

(3) Vessel fuel.

(4) Oily waste from vessels.

(5) Solvents, lubricants, paints, and other fuels in the amount used for one day's operations and maintenance.

(b) Flammable liquids must be stored in accordance with Chapter 4 of NFPA 30.

§127.315 Preliminary transfer inspection.

Before transferring LNG, the person in charge of shoreside transfer operations shall—

(a) Inspect the transfer piping and equipment in the area and replace any worn or inoperable parts;

(b) For each of the vessel's cargo tanks from which cargo will be transferred, note the pressure, temperature, density, and volume to ensure they are safe for transfer;

(c) Review and agree with the person in charge of cargo transfer on the vessel to—

(1) The sequence of transfer operations;

(2) The transfer rate;

(3) The duties, location, and watches of each person assigned for transfer operations; and

(4) Emergency procedures from the examined *Emergency Manual*;

(d) Ensure that transfer connections allow the vessel to move to the limits of its moorings without placing strain on the loading arm or transfer piping system;

(e) Ensure that each part of the transfer system is aligned to allow the flow of LNG to the desired location;

(f) Ensure that warning signs are displayed that meet §127.113;

(g) Eliminate all ignition sources in the area;

(h) Ensure that personnel are on duty in accordance with the examined *Operations Manual*; and

(i) Test the following to determine that they are operable:

(1) The sensing and alarm systems under §127.201.

(2) The emergency shutdown under §127.205.

(3) The communication systems under §127.111.

§127.317 Declaration of inspection.

(a) After the preliminary transfer inspection under §127.315 has been satisfactorily completed, the person in charge of shoreside transfer operations shall ensure that no person transfers LNG until a Declaration of Inspection that meets paragraph (c) of this section is executed and signed in duplicate.

(b) The person in charge of shoreside transfer operations shall give one signed copy of the Declaration of Inspection to the person in charge of transfer operations on the vessel, and shall retain one signed copy at the facility for 30 days after completion of the transfer.

(c) Each Declaration of Inspection must contain—

(1) The name of the vessel and the facility;

(2) The date and time that transfer operations began;

(3) A list of the requirements in §127.315 with the initials of the person in charge of shoreside transfer

operations after each requirement, indicating that the requirement is met;

(4) The signature of the person in charge of shoreside transfer operations and the date and time of signing, indicating that he or she is ready to begin transfer operations; and

(5) The signature of each relief person in charge and the date and time of each relief.

§127.319 LNG transfer.

During the LNG transfer operations, the following must be met:

(a) The operator of the facility shall ensure that—

(1) The area is under the supervision of a person in charge, who has no other assigned duties during the transfer operation;

(2) Personnel transferring fuel or oily waste are not involved in LNG transfer; and

(3) No vessels are moored outboard of any LNG vessel.

(b) The person in charge of shoreside transfer operations shall—

(1) Be in continuous communication with the person in charge of transfer operations on the vessel;

(2) Ensure that an inspection of the transfer piping and equipment in the area for leaks, frost, defects, and other symptoms of safety and operational problems is conducted at least once every transfer.

(3) Immediately discontinue transfer operations during—

(i) Electrical storms;

(ii) Fires in the area; and

(iii) Uncontrolled fires within 4.8 kilometers (3 miles) of the periphery of the area; and

(4) Ensure that the lighting systems under § 127.109 are turned on between sunset and sunrise.

Note.—Vessel transfer requirements are published in 46 CFR Part 154.

§ 127.321 Release of LNG.

(a) The operator of the facility shall ensure that—

(1) No person releases LNG into the navigable waters of the United States; and

(2) If there is an accidential release of LNG, vessels near the facility are notified of the release by the sounding of warning alarms.

(b) If there is an accidental release of LNG, the person in charge of shoreside transfer operations shall—

(1) Immediately notify the person in charge of cargo transfer on the vessel of the intent to shutdown;

(2) Shutdown transfer operations;

(3) Notify the COTP of the release; and

(4) Not resume transfer operations until authorized by the COTP.

Subpart E—Maintenance

§ 127.401 Maintenance: General.

The operator of the facility shall ensure that the equipment required under this part is maintained in a safe condition so that it does not cause a release or ignition of LNG.

§ 127.403 Inspections.

The operator shall conduct a visual inspection for defects of each pressure-relief device not capable of being tested, at least once every 12 months, and make all necessary repairs.

§ 127.405 Repairs.

The operator shall ensure that—

(a) Equipment repairs are made so that—

(1) The equipment continues to meet the requirements in subparts B, C, G, and H of this part and in NFPA 59A; and

(2) Safety in the area is not compromised; and

(b) Welding is done in accordance with NFPA 51B and NFPA 59A, Chapter 6, Section 6–3.4.

§ 127.407 Testing.

(a) The operator shall pressure test under paragraph (b) of this section the transfer system, including piping, hoses, and loading arms, and verify the set pressure of the safety and relief valves—

(1) After they are altered;

(2) After they are repaired;

(3) After any increase in the MAWP; or

(4) At least once every 12 months.

(b) The pressure for the transfer system test under paragraph (a) must be at 1 and ⅛ times the MAWP and be held for a minimum of 30 minutes.

§ 127.409 Records.

(a) The operator shall keep on file the following information:

(1) A description of the components tested under § 127.407.

(2) The date and results of the test under paragraph (a).

(3) A description of any corrective action taken after the test.

(b) The information required by this section must be retained for 24 months.

Subpart F—Personnel Training

§ 127.501 Training: General

The operator shall ensure that each of the following is met by (insert a date 180 days after effective date) or before the employee begins assigned duties:

(a) All full-time employees have at least the following training:

(1) LNG firefighting procedures.

(2) LNG properties and hazards.

(b) In addition to the training under paragraph (a) of this section, each person assigned for transfer operations has the following training:

(1) Orientation on the examined *Operations Manual* and examined *Emergency Manual.*

(2) LNG firefighting strategies and tactics.

(3) Security procedures.

(4) LNG vessel orientation.

(5) LNG release response procedures.

(6) First aid for—

(i) Treatment of frostbite;

(ii) Treatment of burns;

(iii) Cardio-pulmonary resuscitation; and

(iv) Transportation injured personnel.

(c) The personnel who received training under paragraphs (a) and (b) receive refresher training in the same subjects at least once every five years.

Subpart G—Firefighting

Fire Equipment

§ 127.601 Fire equipment: General.

(a) Fire equipment and systems in the area provided in addition to the requirements in this subpart must meet the requirements of this subpart.

(b) The following must be red or some other conspicuous color and be in locations that are readily accessible:

(1) Hydrants and standpipes.

(2) Hose stations.

(3) Portable fire extinguishers.

(4) Fire monitors.

(c) Fire equipment, if applicable, must bear the approval of Underwriters Laboratories, Inc., the Factory Mutual Research Corp., or the Coast Guard.

§ 127.603 Portable fire extinguishers.

Each area must have—

(a) Portable fire extinguishers that meet 9–6.1 of NFPA 59A and Chapter 3 of NFPA 10; and

(b) At least one portable fire extinguisher in each designated parking area.

§ 127.605 Emergency outfits.

(a) Each area must have an emergency outfit for each person in the area whose duties include fighting fires; but, there must be at least two emergency outfits in the area. Each emergency outfit must include—

(1) One explosion-proof flashlight;

(2) Boots and gloves of rubber or other electrically nonconducting material;

(3) A rigid helmet that protects the head against impact;

(4) Water resistant clothing that also protects the body against fire; and

(5) U.S. Bureau of Mines approved self-contained breathing apparatus.

(b) Emergency outfits under paragraph (a) of this section must be in locations that are readily accessible and marked for easy recognition.

§ 127.607 Fire main systems.

(a) Each area must have a fire main system that provides at least two water streams to each part of the area, one of which must be from a single length of hose or from a fire monitor.

(b) The fire main must have at least one isolation valve at each branch connection and at least one isolation valve downstream of each branch connection to isolate damaged sections.

(c) The fire main system must have the capacity to supply—

(1) Simultaneously all fire hydrants, standpipes, and fire monitors in the system; and

(2) At a Pitot tube pressure of 618 kilonewtons per square meter (75 p.s.i.) the two outlets having the greatest pressure drop between the source of water and the hose or monitor nozzle.

(d) If the source of water for the fire main system is capable of supplying a pressure greater than the system's design working pressure, the system must have at least one pressure relief device.

(e) Each fire hydrant or standpipe must have at least one length of hose of sufficient length to meet paragraph (a) of this section.

(f) Each length of hose must—

(1) Be 1½ inches in diameter and 30.5 meters (100 feet) or less in length;

(2) Be on a hose rack or reel; and

(3) Have a Coast Guard approved combination solid stream and water spray fire hose nozzle.

§ 127.609 Dry chemical systems.

(a) Each area must have a dry chemical system. This system must provide at least two dry chemical discharges to each part of the area from separate hoses or monitors, except one of the dry chemical discharges for the area surrounding the loading flange must be—

(1) From a monitor; and

(2) Actuated and, except for pre-aimed monitors, controlled from a location other than the monitor location.

(b) The dry chemical system must have the capacity to supply simultaneously or sequentially all hoses or monitors in the system for 45 seconds.

(c) Each dry chemical hose station must have one length of hose that—

(1) Is 30.5 meters (100 feet) or less in length;

(2) Is on a hose rack or reel; and

(3) Has a nozzle with a valve that starts and stops the flow of dry chemical.

§ 127.611 International shore connection.

The area must have a Coast Guard approved international shore connection, a 2½ inch fire hydrant, and sufficient 2½ inch hose to connect the fire hydrant to the international shore connection on the vessel.

Fire Protection

§ 127.613 Smoking.

The operator shall ensure that no person smokes when there is LNG in the area.

§ 127.615 Fires.

The operator shall ensure that there are no fires when there is LNG in the area.

§ 127.617 Hotwork.

The operator shall ensure that no person conducts welding, torch cutting, or other hotwork unless that person has a permit from the COTP.

Subpart H—Security

§ 127.701 Security on existing facilities.

The operator shall ensure that any security procedure and arrangement on existing facilities, that were in use when LNG transfer operations were last conducted, be continued and maintained, or upgraded, whenever LNG transfer operations are conducted.

§ 127.703 Access to the marine transfer area.

The operator shall ensure that—

(a) Access to the area from the shoreside and the waterside is limited to Coast Guard personnel, personnel who work in the area including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business; and

(b) No person is allowed into the area unless that person is identified by a facility-issued identification card or other identification card displaying his or her photograph.

§ 127.705 Security systems.

The operator shall ensure that security patrols of the area are conducted once every hour, or that a manned television monitoring system is used, to detect—

(a) Unauthorized personnel;

(b) Fires; and

(c) LNG releases.

§ 127.707 Security personnel.

The operator shall ensure that no person is assigned security patrol duty unless that person has been instructed on security violation procedures.

§ 127.709 Protective enclosures.

The following must be within a fence or wall that prevents trespassing:

(a) Impounding spaces.

(b) Control rooms and stations.

(c) Power sources.

§ 127.711 Communications.

The area must have a means of direct communications between the security patrol and other operating or security personnel on duty on the facility.

Dated: April 28, 1986.

J.H. Parent,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

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Friday
May 16, 1986

Part VII

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Revision of Trademark Fees; Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 60457-6057]

Revision of Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent and trademark cases, Parts 1 and 2 of title 37, Code of Federal Regulations, to adjust trademark fee amounts. This action is necessary at this time because trademark operating costs have increased over the past three and one-half years. The Commissioner is authorized by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), to establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services and materials related to trademarks and other marks.

DATES: Comments must be submitted on or before June 16, 1986; a public hearing will be held on June 16, 1986, at 9:00 a.m. Requests to present oral testimony should be received on or before June 12, 1986.

ADDRESSES: Address written comments and requests to present oral testimony to the Assistant Secretary and Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Margaret M. Laurence, Room CP3–11C17. The hearing will be held in Room 11C24, on the 11th floor of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11C17 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Margaret M. Laurence, Assistant Commissioner for Trademarks by telephone at (703) 557–3061 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed primarily to adjust trademark fees because costs have increased and the Commissioner is authorized to adjust fees for the filing and processing of an application for the registration of a trademark or other mark for all other processing, services or materials related to trademarks which have been established by the Commissioner in accordance with section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113).

Adjustments to fees for filing and processing a patent application and for other processing, services or materials related to patents were made by rules published in the Federal Register on August 6, 1985, at 50 FR 31818, effective October 5, 1985.

Adjustments to fees for filing and processing a trademark application and for other processing, services or materials related to trademarks were not proposed at that time, pending review of automation cost requirements. The Patent and Trademark Office's proposal for an integrated Automated Trademark System was included in the President's FY 1987 Budget and the Office's revised Automation Master Plan that were submitted to the Congress in February 1986.

Background Information

Trademark fees are authorized by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113). Section 31 grants the Commissioner the authority to establish trademark fees and the discretion to establish the level of Office costs to be recovered from trademark fees. The House Committee on the Judiciary, in House Report 97–542 accompanying H.R. 6260 that was enacted as Pub. L. 97–247, recommended a trademark fee schedule that was adopted by rule published in the Federal Register on July 30, 1982 at 47 FR 33088, effective October 1, 1982.

In House Report 97–542, the Committee stated that:

". . . [it] is aware of the concerns of users of the Trademark registration system, however, and intends to exercise vigorous oversight with respect to the Commissioner to ensure that fees remain at a reasonable level and that trademark registrations are processed in an efficient and cost effective manner. As part of this oversight, the Committee recommends the following fee structure to the Commissioner for Fiscal Year 1983.

Type of fee:	Proposed fee
Application filing fee per class	$175
Renewal fee	300
Late renewal	100
Section 12(c) claim	100
New certificate	100
Certificate of correction	100
Disclaimer to registration	100
Amendment to registration	100
Per class combines section 8 and 15 affidavit	200
Per class section 8 affidavit alone	100
Per class section 15 affidavit alone	100
All petitions to Commissioner	100
Cancellation opposition per class	200
TTAB appeal	100
Certified copies	10
Copies of trademarks	1
Assignments	(1)

[1] 100 plus for each mark in addition to 1."

In addition, the Patent and Trademark Office (PTO) feels it is reasonable to adjust trademark fees to reflect, in the aggregate, fluctuations in the Consumer Price Index (CPI) during the previous three years. This would enable PTO to define the maximum revenue level that may be recovered from trademark fees for the three-year period 1986–1988. This is consistent with the method mandated by Pub. L. 97–247 for adjusting patent fees.

The first step in the trademark fee adjustment process was to determine the maximum level of recovery for the three-year fee cycle. This was done by: (1) Multiplying present fees by projected workload for fiscal years 1986–1988, (2) totalling the results, and (3) applying the rate of fluctuation in the Consumer Price Index as determined by the Secretary of Labor.

The second step in the trademark fee adjustment process was to establish the total cost to be recovered from trademark fees for the three year period 1986–1988. The total costs for the filing and processing of an application for the registration of a trademark or other mark and for all other processing, services or materials related to trademarks were determined. The Office followed: (1) The general guidelines set forth in OMB Circular A–25 entitled "User Charges", that establishes general policies for developing an equitable and uniform system of charges for certain Government services and property, and (2) the guidelines for accounting and reimbursement for sharing of information technology facilities as set forth in Appendix II to OMB Circular No. A–130 entitled "Management of Federal Information Resources."

The Office used cost-finding techniques for determining the costs of all processing, services and/or materials associated with each trademark fee. Costs were determined from the best available records and included both direct and indirect costs. Costs were adjusted to reflect projected increases or decreases contained in the President's FY 1987 Budget. These cost figures were documented by the Director, Office of Finance and reviewed by each responsible Assistant Commissioner.

The total projected costs for the three-year period 1986–1988 are lower than the maximum level of recovery which would be allowed if fees were adjusted strictly according to changes in the CPI during the past three years. In its adjustment of Trademark fees, PTO seeks to recover total projected costs in FY 1987 and FY 1988 and to provide for a contingency of two percent of the estimated fee income for fiscal years 1987–1988. PTO seeks comment on this approach.

This proposed rulemaking would continue to follow the suggested fee schedule contained in House Report 97–542, with the exception of proposed increases to the fee for filing an application for registration and the fee for a printed copy of a registered mark. As a result of continuing to follow this suggested fee schedule, over the two-year period, some trademark fees would recover more than their actual estimated cost and some would recover less than their actual estimated cost. Using the 1986–1988 workload projections, the total fee revenues generated by the proposed fees for the three-year period, in the aggregate, would not exceed the total projected costs for trademarks for the same period, apart from the contingency.

It is intended that the amount of any fee due and payable on or after October 1, 1986 is the amount set in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under section 1.8 of title 37, Code of Federal Regulations, will be considered to be the date of receipt in the Office. A "Certificate of Mailing under section 1.8" is *not* "proper" for items which are specifically excluded from the provisions of section 1.8. Section 1.8 of title 37, Code of Federal Regulations, should be consulted for those items for which a Certificate of Mailing is *not* "proper." The provisions of section 1.10, relating to filing of papers and fees by "Express Mail" with certificate, however do apply to *any paper or fee* to be filed in the Office. If an application or fee is filed by "Express Mail" with a certificate of mailing dated October 1, 1986, the amount of the fee to be paid is the fee established herein if a change is being made in the fee.

To ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below:

Discussion of Specific Changes

Section 1.24 Coupons

Section 1.24, if amended as proposed, would adjust the fee for the purchase of coupons for trademarks to make it comparable to the proposed fee required for the purchase of a printed copy of a registered mark.

Section 2.6 Trademark fees

Section 2.6, if amended as proposed, would adjust trademark fees established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) and set forth in paragraphs (a) and (n) of this section to more closely reflect the cost to the Office of such processing.

Section 2.6, paragraph (o) if amended as proposed, would provide a $25 fee for the expedited handling of a request for a certified copy of a trademark record. Currently there is no procedure for such expedited handling, and the Office has received many requests that this service be provided.

Section 2.6 paragraph (g), if amended as proposed, would clarify that the fee for recording documents applies to every paper which relates to the property in a registration or application. This is in accord with past and current Office policy.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. There are no information collection requirements relating to trademark fee rules.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because Office records show no decline in the number of applications filed by individuals and partnerships after the October 1, 1982 fee increases, and the proposed rules would maintain the present fee schedule for the most part, and limit the increase in the filing fee to the minimum amount possible.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 37 CFR Parts 1 and 2

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interest, Courts, Inventions and patents, Lawyers, Trademarks.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, 15 U.S.C. 1113 and 1123, and Pub. L. 97–247, the Patent and Trademark Office is proposing to amend title 37 of the Code of Federal Regulations as set forth. All proposed additions are printed between arrows and all deletions are shown between brackets.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.24 is proposed to be revised to read as follows:

§ 1.24 Coupons.

Coupons in denominations of [one dollar for the purchase of trademark registrations and] one dollar and fifty cents for the purchase of patents, designs, defensive publications, [and] statutory invention registrations►, and trademark registrations◄ are sold by the Patent and Trademark Office for the convenience of the general public; these coupons may not be used for any other purpose. The [one dollar coupons are sold individually and in books of 50 with stubs for record for $50 and the] one dollar and fifty cent coupons are sold individually and in books of 50 with stubs for record for $75. These coupons are good until used; they may be transferred but cannot be redeemed.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 would be revised to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, 25, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraphs (a), (n), (o) and (q).

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) For filing an application, per class...	[$175.00] ►$200.00◄

(n) For printed copy of registered mark: Copy only	[$1.00]	►$1.50◄
(o) For certifying trademark records, per certificate		$3.50
►For expedited handling of such certification, per record requested		$25.00◄
(q) For recording trademark assignments► and agreements or other papers relating to the property in a registration or application◄, per document		$100.00

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

Dated: March 28, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 86-11160 Filed 5-15-86; 8:45 am]

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federal register

Friday
May 16, 1986

Part VIII

The President

Imports From the European Economic Community; Memorandum to the United States Trade Representative and Proclamation 5478

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Friday, May 16, 1986

Presidential Documents

Title 3—

The President

Memorandum of May 15, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the quantitative restrictions on oilseeds, oilseed products and grains in Portugal and the uncompensated withdrawal of tariff concessions on corn and sorghum in Spain deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT), are unreasonable, and constitute a burden and restriction on U.S. commerce. Pursuant to Section 301 of the Trade Act, I have determined, in response to the EEC's quantitative restrictions in Portugal, to proclaim certain quantitative restrictions on products of the European Economic Community. I have further determined, in response to the EEC's withdrawal of tariff concessions on corn and sorghum in Spain, to suspend United States tariff concessions on certain products, although current rates of duty will be maintained for the time being, pending efforts to negotiate suitable compensation. I am taking these actions to enforce U.S. rights and to respond to the EEC practices in question.

Reasons for Determination

As part of the arrangements for the accession of Portugal and Spain to the EEC, the EEC: (1) has imposed restrictions on the importation into Portugal of oilseeds and oilseed products and on the consumption of vegetable oils (other than olive oil) in Portugal; (2) has required that a specified portion of Portuguese imports of grains be reserved for suppliers from other member countries of the EEC; and (3) has withdrawn Spanish tariff concessions and imposed variable levies on imports of corn and sorghum. These EEC actions apply from March 1, 1986. The average annual value of U.S. exports affected by the EEC actions exceeded a billion dollars in the 1981–1983 period.

In discussions with the EEC, we have sought the removal of the restrictions in Portugal, which we consider to be inconsistent with the General Agreement on Tariffs and Trade (GATT). We are also seeking, in accordance with our rights under GATT, appropriate compensation from the EEC for the tariff and variable levy actions in Spain.

On March 31, 1986, I announced that I would impose restrictions on imports of EEC products of comparable effect to the EEC's restrictions in Portugal unless and until we were able to resolve these matters. Efforts to obtain a satisfactory resolution have not yet been successful. I also announced that, in response to the EEC's tariff and levy actions in Spain, I would withdraw U.S. tariff commitments in GATT on certain products, but would maintain the current level of tariffs in order to allow until July 1 for expedited negotiation of agreed compensation from the EEC. I will proclaim increased duties as appropriate if such agreement is not possible. To the degree those negotiations are successful, I will restore concessions.

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I am taking these actions to enforce U.S. trade rights on important export interests. I would strongly prefer a solution that would restore and encourage trade for all parties, and we will continue negotiating efforts toward this goal.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 15, 1986.

[FR Doc. 86-11278
Filed 5-15-86; 11:06 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5478 of May 15, 1986

Imposition of Quantitative Restrictions on Imports of Certain Articles From the European Economic Community

By the President of the United States of America

A Proclamation

1. On March 31, 1986, I announced my decision to take action in response to restrictions imposed by the European Economic Community (EEC) affecting imports of United States grain and oilseeds into Spain and Portugal, following the expansion of the EEC to include those two countries. I have determined, pursuant to Section 301(a) of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2411(a)), that these restrictions deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), are unreasonable, and constitute a burden and restriction on United States commerce.

2. Section 301(a) of the Act (19 U.S.C. 2411(a)) authorizes the President to take all appropriate and feasible action to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that 1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or 2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce. Section 301(b) of the Act (19 U.S.C. 2411(b)) also authorizes the President to suspend, withdraw, or prevent the application of benefits of trade agreement concessions with respect to, and to impose duties or other import restrictions on the products of, such foreign government or instrumentality. Pursuant to Section 301(a) of the Act, any such actions can be taken on a discriminatory basis solely against the foreign government or instrumentality involved. Section 301(d)(1) of the Act (19 U.S.C. 2411(d)(1)) authorizes the President to take action on his own motion.

3. In response to the EEC imposition of illegal restrictions on Portuguese imports of grain, oilseeds, and oilseed products, I have decided that expeditious action is required, and, pursuant to Section 301 (a), (b), and (d)(1) of the Act, to impose quantitative restrictions on the articles provided for in Annex I to this proclamation that are the product of the EEC.

4. In response to the withdrawal of tariff concessions and the application of the EEC variable levy on Spanish imports of corn and sorghum, I have further decided, pursuant to Section 301 (a), (b), and (d)(1) of the Act, to take steps to suspend temporarily the tariff concessions made by the United States under the GATT on articles described in Annex II to this proclamation, but to make no immediate change in the rates of duty for these articles set forth in Rate of Duty Column 1 of the Tariff Schedules of the United States (TSUS). If by July 1, 1986, the EEC provides adequate compensation for the imposition of variable levies on imports of corn and sorghum into Spain, or if it is determined that other circumstances so warrant, I am authorizing the United States Trade Representative (USTR) to terminate any of these suspensions as appropriate. If such compensation is not provided, I will proclaim increased duties on these articles as appropriate. Having due regard for the international obligations of the United States, particularly paragraph 3 of Article XXVIII of the GATT requiring any suspension of trade agreement concessions to be made on a most-favored-nation basis, any duty increase on these articles will be made on a most-favored-nation basis.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Section 301 (a), (b), and (d)(1) and Section 604 of the Act (19 U.S.C. 2483), do proclaim that:

1. Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified as provided in Annex I to this proclamation. These changes shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after May 19, 1986.

2. The tariff concessions under the GATT on articles listed in Annex II to this proclamation are suspended, effective on the thirty-first day following notification to the Contracting Parties to the General Agreement on Tariffs and Trade, and Part I of Schedule XX of the GATT is modified to conform to this action. The rates of duty for these articles set forth in the Rate of Duty Column 1 of the TSUS are not affected by this action and shall remain as previously proclaimed until such time as they are expressly modified.

3. The USTR is hereby authorized to suspend, modify, or terminate the quantitative restrictions on any of the articles covered by Annex I to this proclamation, and to terminate the suspension of the tariff concessions under the GATT on any of the articles covered by Annex II, upon the publication in the Federal Register of his determination that such suspension, modification, or termination is justified by actions taken by the EEC with respect to this matter or is otherwise appropriate, taking into account the interests of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

Billing code 3190-01-M

ANNEX I

Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified —

(1) by inserting the following new headnote 3:

"3. For purposes of this subpart, the term "product of the European Economic Community" refers to products of any member state of this instrumentality which includes Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom."; and

(2) by inserting in numerical sequence the following new provisions:

Item	Articles	Quota Quantity
	Whenever, in the period from May 19, 1986, through December 31, 1986, the respective aggregate quantity specified below for the numbered classes of articles the product of the European Economic Community has been entered, no article the product of the European Economic Community in such class may be entered during the remainder of such period:	
946.01	Chocolate, sweetened, in bars or blocks weighing 10 pounds or more each (provided for in item 156.25, part 10A, schedule 1).....	7,358 thousand pounds
946.02	Candy, and other confectionery, not specially provided for (provided for in item 157.10, part 10C, schedule 1).....	122,546 thousand pounds
946.03	Apple or pear juices, not mixed and not containing over 1.0 percent of ethyl alcohol by volume (provided for in item 165.15, part 12A, schedule 1).....	73,093 thousand gallons
	Ale, porter, stout, and beer:	
946.05	In containers other than glass each holding not over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....	2,482 thousand gallons
946.06	In containers each holding over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....	7,405 thousand gallons
946.07	White still wines produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, valued over $4 per gallon (provided for in item 167.30, part 12C, schedule 1).....	27,991 thousand gallons

ANNEX I

-2-

Item	Articles	Quota Quantity
	Whenever, in the 12-month period beginning January 1, 1987, and in any subsequent 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for the numbered classes of articles the product of the European Economic Community has been entered, no article the product of the European Economic Community in such class may be entered during the remainder of such period:	
946.08	Chocolate, sweetened, in bars or blocks weighing 10 pounds or more each (provided for in item 156.25, part 10A, schedule 1).....	11,773 thousand pounds
946.09	Candy, and other confectionery, not specially provided for (provided for in item 157.10, part 10C, schedule 1).....	196,072 thousand pounds
946.10	Apple or pear juices, not mixed and not containing over 1.0 percent of ethyl alcohol by volume (provided for in item 165.15, part 12A, schedule 1).....	116,949 thousand gallons
	Ale, porter, stout, and beer:	
946.11	In containers other than glass each holding not over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....	3,971 thousand gallons
946.12	In containers each holding over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....	11,848 thousand gallons
946.13	White still wines produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, valued over $4 per gallon (provided for in item 167.30, part 12C, schedule 1).....	44,786 thousand gallons*

ANNEX II

Articles on Which Tariff Concessions under the General Agreement on Tariffs and Trade Are Suspended

Item No.	Articles
	[The bracketed language in this list has been included only to clarify the scope of the numbered items on which concessions are being suspended, and such language is not itself intended to describe articles on which concessions are suspended.]
	Pork, prepared or preserved (except sausages):
	Boned and cooked and packed in airtight containers:
	Hams and shoulders:
107.35 pt.	In containers holding less than 3 pounds
	Blue-mold cheese:
117.00	In original loaves
117.05	Other
	[Brynza and Cheddar cheeses]
117.25	Edam and Gouda cheeses
	[Gjetost, Goya, Sbrinz, Roquefort, Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, Swiss or Emmenthaler with eye formation, Gruyere-process, Gammelost, and Nokkelost cheeses]
	Other cheeses, and substitutes for cheese:
	[Cheeses made from sheep's milk]
	Other:
	Valued over 25 cents per pound:
	[Colby]
	Other:
	[Cheese and substitutes for cheese, whether or not original loaves, containing or processed from Romano, Reggiano, Parmesano, Provoloni, Provolette, Sbrinz, and Goya, all the foregoing made from cow's milk]
	Other:
117.88 pt.	Other than cheeses provided for in items 950.07, 950.08A, 950.08B, 950.09B, 950.10C, 950.10D, and 950.10E in part 3 of the Appendix to the Tariff Schedules of the United States
	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared for preserved):
136.10	Endive, including Witloof chicory
	Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B of part 8 of schedule 1 of the Tariff Schedules of the United States):
141.82	Carrots in airtight containers

ANNEX II

-2-

Item No.	Articles
	Olives, prepared or preserved:
	In brine, whether or not pitted or stuffed:
	Not ripe and not pitted or stuffed:
148.42	Not green in color and not packed in airtight containers of glass, metal, or glass and metal
	[Dried]
148.56	Otherwise prepared or preserved
	Still wines produced from grapes:
	Containing not over 14 percent of alcohol by volume:
	In containers each holding not over 1 gallon:
	Valued not over $4 per gallon:
167.30 pt.	White
	Brandy:
	[Pisco, singani, and slivovitz]
	Other:
	In containers each holding not over 1 gallon:
168.78	Valued over $13 per gallon
	Cordials, liqueurs, kirschwasser, and ratafia:
168.96	In containers each holding not over 1 gallon
	Gin:
169.07	In containers each holding not over 1 gallon
192.25	Hops

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Navigation (Water)
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Occupational Safety and Health Administration

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The President

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Jewish Heritage Week, 1986

By the President of the United States of America

A Proclamation

American Jews have made immeasurable contributions to our country's economic, political, social, and cultural development. The remarkable and varied achievements of American Jews have greatly enriched the lives of all Americans, from medicine and mathematics to movies and the musical theater.

It is appropriate at this time of year that we remind ourselves of the tragedy and glory of Jewish history. The Jewish people have recently celebrated Passover, the holiday that commemorates their deliverance by God from the bondage of Egypt to freedom in the Holy Land. Last week marked the observance of Yom Hashoa, the Day of Remembrance, and this week, Israeli Independence Day is celebrated. These events remind us that Israel was reborn out of ashes of the Holocaust. These commemorations sustain our hope that someday the persecuted Jews of the Soviet Union will be delivered from bondage.

At this time of year, it is appropriate for all Americans to acknowledge how much our country has benefited from the contributions of American Jews. We should be proud that Jews in America have always been free to practice their religion and preserve their traditions. And the Jewish people have responded with an ardent patriotism once so eloquently expressed by one of America's foremost rabbis:

> "God built Him a continent of glory and filled it with treasures untold. . . . Then He called unto a thousand peoples, and summoned the bravest among them. . . . And out of the bounty of earth and the labor of men, out of the longing of hearts and the prayers of souls, out of the memory of ages and the hopes of the world, God fashioned a nation in love, blessed it with a purpose sublime, and called it—America!"
>
> Silver, "America," 1917.

The Congress, by Senate Joint Resolution 275, has authorized and requested the President to issue a proclamation designating the week of May 11, 1986, through May 17, 1986, as "Jewish Heritage Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 11, 1986, through May 17, 1986, as Jewish Heritage Week. I call upon the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11358
Filed 5-16-86; 9:35 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5420 of May 15, 1986

National Defense Transportation Day and National Transportation Week, 1986

By the President of the United States of America

A Proclamation

Our Nation was founded on beliefs in basic human freedoms. Among these cherished freedoms is free movement of people and ideas. In exercising that freedom, Americans have developed the greatest transportation system the world has ever known. We can travel where and when we want, either by air, water, or land. We can move goods by airplane, railroad, ship, barge, and truck. This ability to travel and to ship goods is as important to our Nation's strength today as it was vital for the pioneers who settled this great Republic.

The first Federal highway built with national funds, the Cumberland Road, was begun in 1811. A century later, when the Lincoln Highway opened to traffic in 1913, we had our first paved coast-to-coast road. Between now and 1990, we will complete funding for our greatest highway project yet, the Interstate Highway System. Great progress has already been made, and when it is finished, the Nation will be linked together with 42,500 miles of unbroken, limited-access roadway. This is the equivalent of circling the world almost twice without hitting a traffic light—an achievement that benefits not only business and pleasure travel, but greatly strengthens our national defense as well.

In a few months, we will be celebrating the 100th birthday of our great symbol of freedom, the Statue of Liberty. This magnificent lady watched as millions of people streamed across the Atlantic to our shores in pursuit of a dream—a land of opportunity, a country where people were free to go as far as their abilities could take them. Many of these immigrants became involved in designing and building our highways, bridges, railways, and airports. Their sons and daughters are working on new challenges, high-speed railways, hypersonic flight, and new technologies to make all travel safer. What the future will bring we can only guess, but improvement in the swiftness, safety, dependability, and economy of transportation will be an integral part of even greater prosperity and human fulfillment.

In recognition of the importance of transportation, and to honor the millions of Americans who serve and supply our transportation needs, the Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 160), has requested that the third Friday in May of each year be designated as National Defense Transportation Day; and by joint resolution approved May 14, 1962 (36 U.S.C. 166), that the week in which that Friday falls be proclaimed National Transportation Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Friday, May 16, 1986, as National Defense Transportation Day and the week beginning May 11, 1986, through May 17, 1986, as National Transportation Week. I urge the people of the United States to observe these occasions with appropriate ceremonies that will give full recognition to the importance of our transportation system to this country.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11389
Filed 5-16-86; 8:09 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 96
Monday, May 19, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 22

[Docket No. 86-11]

Loans in Areas Having Special Flood Hazards

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is making technical amendments to 12 CFR Part 22—Loans in Areas Having Special Flood Hazards. This action is required to change a citation and to correct several titles, cross-references, and typographical errors. This amendment is solely technical in nature and will not have substantive impact.

DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Yvonne McIntire, Legislative and Regulatory Analysis Division, (202) 447-1177.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office is amending 12 CFR Part 22 including the Appendix to remove all references to the "Secretary of Housing and Urban Development" and to insert, in its place, the "Director of the Federal Emergency Management Agency". This change is required to reflect an amendment to 42 U.S.C. 4003 which replaced the Secretary of Housing and Urban Development with the Director of the Federal Emergency Management Agency as administrator of the National Flood Insurance Program.

The Office also is removing the references to the regulations of the Federal Insurance Administration of the Department of Housing and Urban Development and substituting the apropriate regulations of the Federal Emergency Management Agency.

Finally, the Office is amending paragraphs (1) and (2)(a) of the Appendix to 12 CFR Part 22 in order to correct several typographical errors—(1) the word "ares" in line 8 of paragraph (1) is removed and replaced with the word "ares"; (2) the word "is" in line 1 of paragraph (2)(a) is removed and replaced with the word "in"; and (3) the word "approve" in line 14 of paragraph (2)(a) is removed and replaced with the word "approved".

Reason for Not Allowing Notice and Comment Procedures

This final rule is purely technical in nature and will have no substantive impact. Since this final rule only makes corrections and reflects existing regulatory language, notice and comment procedure under section 553 of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, is unnecessary.

Reason for Immediate Effective Date

This final rule is not substantive. A 30-day delayed effective date, therefore, is unnecessary.

Regulatory Flexibility Act

The Comptroller certifies that this amendment will not have a substantial economic impact on a significant number of small entities. The amendment is purely technical in nature and will have no substantive impact.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require a Regulatory Impact Analysis. This amendment is purely technical in nature and will have no substantive impact.

Paperwork Reduction Act

This amendment contains no information collection requirements; consequently, it does not require Office of Management and Budget review pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 22

Flood insurance, National banks.

Authority and Issuance

For the reasons set forth in the preamble, 12 CFR Part 22 and the Appendix to 12 CFR Part 22 are amended as follows:

PART 22—[AMENDMENT]

1. The authority citation for 12 CFR Part 22 is revised to read as follows:

Authority: 42 U.S.C. 4003, 4106, 4012a, 4104a, 4128.

2. Section 22.0 is revised to read as follows:

§ 22.0 Scope.

This part applies to certain loans secured by improved real estate made by banks in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards.

3. Section 22.1 (b) and (d) are revised to read as follows:

§ 22.1 Definitions.

* * * * *

(b) The term "loan" means any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards.

* * * * *

(d) The phrase "participating community" means a community which has been designated as eligible for the sale of insurance by the Director of the Federal Emergency Management Agency pursuant to 44 CFR Part 64 and in which flood insurance is currently being sold.

* * * * *

4. Section 22.3 is revised to read as follows:

§ 22.3 Exemption.

Notwithstanding § 22.2, flood insurance shall not be required on any State-owned property that is covered under an adequate policy of self-insurance satisfactory to the Director of the Federal Emergency Management Agency who shall publish and periodically revise the list of states falling within the exemption provided by this section.

5. In the Appendix to 12 CFR Part 22 paragraphs (1) and (2)(a) are revised to read as follows:

Appendix—Sample Notice to Borrower

(1) Notice to Borrower of Special Flood Hazard Area

Notice is hereby given to _____ that the improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. This area is delineated on _____'s Flood Insurance Rate Map (FIRM) or, if the FIRM is unavailable, on the Flood Hazard Boundary Map (FHBM). This area has a 1 percent chance of being flooded within any given year. The risk of exceeding the 1 percent chance increases with time periods longer than one year. For example, during the life of a 30 year mortgage, a structure located in a special flood hazard area has a 26 percent chance of being flooded.

(2) Notice to Borrower About Federal Disaster Relief Assistance

(a) *Notice in Participating Communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is now participating in the National Flood Insurance Program. In the event such property is damaged by flooding in a federally declared disaster, Federal disaster relief assistance may be available. However, such assistance will be unavailable if the community has been identified for at least one year as a flood hazard area and is not participating in the National Flood Insurance Program at the time the assistance would be approved. This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

* * * * *

Dated: May 9, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-11180 Filed 5-16-86; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. 14807; Amdt. No. 11-31]

Termination of Suspension of Amendment 91-157; Minimum Equipment Lists (MEL); Correction

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects an error made when an Office of Management and Budget Control Number was printed in the Federal Register (50 FR 51188; December 13, 1985). This amendment is required to ensure that the list of control numbers is accurate.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 426-8357.

SUPPLEMENTARY INFORMATION: When Amendment No. 11-26 was published in the Federal Register (50 FR 51188; December 13, 1985), the Office of Management and Budget Control Number (2120-0522) for § 91.30 of the Federal Aviation Regulations was added to the table in § 11.101(b). However, the language in § 11.101(b) prior to the issuance of Amendment No. 11-26 listed the control number for §§ 91.24 through 91.34 as "2120-0005." Amendment No. 11-26 inadvertently neglected to amend the language in § 11.101(b).

Good Cause Justification for Making This Rule Effective Without Further Public Comment

Since this amendment corrects an editorial error, the FAA has determined that this action is appropriate without further delay. Because of this and since no additional burden is being placed on any person, additional notice and public procedure are impracticable and unnecessary.

Conclusion

This amendment corrects an editorial error. Accordingly, it has been determined that this document does not involve a rule change that is major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). I certify that, under the criteria of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 11

Aircraft, Airmen, Aviation safety, General aviation, reporting and recordkeeping requirements, Safety.

The Amendment

PART 11—[AMENDED]

Accordingly, Part 11 of the Federal Aviation Regulations (14 CFR Part 11) is amended to read as follows:

1. The authority citation for 14 CFR Part 11 continues to read as follows:

Authority: 49 U.S.C. 1341(a), 1353(d), 1348, 1354(a), 1401 through 1406, 1421 through 1431, 1461, 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

2. By amending § 11.101 by removing the OMB control numbers in paragraph (b) for §§ 91.24 through 91.34 and 91.30 and adding the following:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

§§ 91.24 thru 91.34 (except § 91.30)	2120-0005
§ 91.30	2120-0522

* * * * * *

Issued in Washington, DC, on May 9, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86-11135 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-30; Amdt. 39-5293]

Airworthiness Directives; Avco Lycoming Division T5313B and T5817A Series Turboshaft Engines

Correction

In FR Doc. 86-10001, beginning on page 16506, in the issue of Monday, May 5, 1986, make the following correction.

On page 16507, in the second column, in paragraph (a)(2), in the second line, "T513B" should read "T5313B".

BILLING CODE 1505-01-M

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14 CFR Part 39

[Docket No. 85-NM-152-AD; Amdt. 39-5314]

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection of trailing edge flap tracks for cracking on certain

Boeing Model 747 airplanes. This amendment will incorporate a decrease in the inspection intervals from 2,000 landings to 1,000 landings. This action is prompted by recent reports of cracking of twelve flap tracks. The cracking has occurred aft of the third lower forward fail-safe bar fastener hole. This recent service experience has shown that the present 2,000 landing inspection interval is inadequate.

DATE: Effective June 23, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM–120S; telephone (206) 431–2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for and subsequent repair of cracked structure was published in the **Federal Register** on February 4, 1986 (51 FR 4365). The comment period for the proposal closed on March 28, 1986. Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Comments were received from the Air Transport Association (ATA) of America summarizing the comments of its member operators. The airlines had no objections to the proposed rule. However, several operators questioned why the proposed initial inspection interval of 300 cycles is needed since it will disrupt their established inspection interval of 1,000 landings, and the ATA requested that Table I of the AD be replaced with a provision that requires operators to inspect within 1,000 landings after the effective date of the AD and to repeat the inspection at 1,000 landing intervals. The FAA does not concur with this request. The FAA recognizes that there may be some disruptions in the established inspection schedules of those operators who will have accumulated 1001 to 1700 landings since the last inspection as of the date of this amendment; however, the schedule as required by this amendment has been determined to be necessary in consideration of the risk associated with the subject cracking, and fact that such cracking has been found to occur on airplanes with fewer flight cycles than expected.

In a comment directly to the FAA, one operator requested changing the repeat inspection interval from 1,000 landings to 1,100 or 1,200 landings. The FAA does not concur with this increase based on recent service experience of cracking occurring at lower intervals, and the recommendation of the manufacturer.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 101 airplanes of U.S. operators will be affected by this AD, that it will take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $193,920 per additionally required inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria for the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

2. By amending AD 84–19–02, Amendment 39–4917 (49 FR 36819; September 20, 1984), by revising paragraph B. to read as follows:

B. Initially, as specified in Table I, below, and at intervals thereafter not exceeding 1,000 landings, visually inspect the flap track webs for cracks extending from all fastener holes not previously inspected under paragraph A., above, in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, or later FAA-approved revisions. Cracked parts must be replaced before further flight."

TABLE I

Number of landings since last inspection as of the effective date of this amendment	Inspect prior to the accumulation of the following number of landings
0 to 700	1,000 from last inspection.
701 to 1,700	300 after effective date of amendment.
1,701 to 2,000	2,000 from last inspection.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 23, 1986.

Issued in Seattle, Washington, on May 9, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–11133 Filed 5–16–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 93

[Docket No. 24600; Amdt No. 93–50]

Abbotsford, British Columbia (BC), Canada, Special Airport Traffic Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the ceiling of the Abbotsford, BC, Special Airport Traffic Area (SATA) from 4,000 feet mean sea level (MSL) to 3,000 feet MSL. This SATA is located in the State of Washington and is associated with the Abbotsford, BC, Airport in Canada. This action is being taken to complement the recent Canadian-controlled airspace reclassification which resulted in the establishment of a general ceiling for Canadian control zones of 3,000 feet above the elevation of the airport.

EFFECTIVE DATE: 0901 G.m.t., July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace-Rules

and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

As part of the reorganization of controlled airspace in Canada, most Canadian control zones are established at 3,000 feet above the airport elevation and expressed as cardinal altitudes above MSL. The current Abbotsford SATA lateral boundary is geographically described identically to the Abbotsford Control Zone in the U.S. However, the ceiling of the SATA is established as 4,000 feet MSL so that it would have the same ceiling as the Abbotsford Control Zone in Canada. The effect of the existing rule is that it establishes a U.S. airport traffic area, in U.S. airspace, for an airport located in Canada. However, the recent Canadian-controlled airspace reorganization lowered the ceiling of the Canadian Abbotsford Control Zone to 3,000 feet MSL leaving a disparity in the applicability between the U.S. and Canadian flight rules. Accordingly, by letter dated March 27, 1985, Mr. K. S. Gray, Transport Canada, petitioned the FAA to lower the ceiling of the Abbotsford SATA.

By way of Notice No. 85-18 (50 FR 41908), published on October 10, 1985, the FAA granted Mr. K. S. Gray's petition for rulemaking by proposing to amend Part 93 of the Federal Aviation Regulations (14 CFR Part 93) to lower the floor of the Abbotsford SATA from 4,000 feet MSL to 3,000 feet MSL. Interested parties were invited to participate in the rulemaking effort by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for one change of an editorial nature, this amendment is the same as that proposed in the notice. The editorial change is the insertion of the provision that the SATA's of Abbotsford, BC, and Sault Ste. Marie, ON, are only effective when the respective control towers in those SATA's are operational. The current rule makes the SATA's effective regardless of the status of the control towers.

Because this proposed amendment would establish, simplify, and standardize the flight rules for operations conducted to and from a Canadian airport, and its effect on the users of U.S. airspace is minimal, this document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Further, for those reasons, I certify that, under the criteria of the Regulatory Flexibility Act, a resulting amendment will not have a significant impact on a substantial number of small entities. In addition, the FAA has determined that the expected impact of this action is so minimal that it does not require an evaluation.

The Rule

Accordingly, the FAA is lowering the ceiling of the Abbotsford SATA from 4,000 feet MSL to 3,000 feet MSL so that it would coincide with the established ceiling of the Canadian Abbotsford Control Zone. Additionally, as previously discussed, the FAA is limiting the effect of the rule to the operational hours of the Abbotsford, BC, and Sault Ste. Marie, ON, control towers.

List of Subjects in 14 CFR Part 93

Special airport traffic areas, Traffic patterns, Safety, Aircraft, Aircraft pilots, Air traffic control.

Adoption of the Amendment

PART 93—[AMENDED]

For the reasons stated in the preamble, the FAA is amending Subpart Q of Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising § 93.195 as follows:

§ 93.195 Applicability.

(a) *Scope.* This Subpart describes special airport traffic areas and air traffic rules for persons operating in the airspace designated under this subpart for Abbotsford, British Columbia, and Sault Ste. Marie, Ontario, Canada.

(b) *Effective periods.* The respective airspace designations and rules of this subpart are effective only during the periods that the control towers at the affected airports are operational.

§ 93.197 [Amended]

3. In § 93.197(a) by removing the words "4,000 feet MSL" and substituting the words "3,000 feet MSL."

Issued in Washington, DC, on May 9, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86-11015 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 93

[Docket No. 24990; Amdt. No. 93-51]

Anchorage, Alaska, Special Airport Traffic Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action makes a minor revision to the description of the boundary of the Anchorage, AK, Special Airport Traffic Area (ATA). The revision is made necessary because of construction of a new Runway 14/32 to replace old Runway 13/31, slight changes in the geographical centers of the Anchorage International Airport and Elmendorf Air Force Base, and a reconfiguration to the boundaries of restricted areas whose boundaries, both past and present, form a portion of the ATA boundary.

Two other editional revisions are made to the Anchorage ATA. One is the deletion of the requirement that two-way radio communication be maintained with Anchorage International Airport Tower when the satellite Lake Hood Tower is not operating. This requirement is no longer applicable since Lake Hood Tower has been combined operationally with the Anchorage International Tower. The other editorial revision results from the fact that Palmer Highway, which appears as a reference point in the description, has been renamed as Glenn Highway. Accordingly, references in the former description to Palmer Highway have been changed to Glenn Highway.

DATES:

Comment Date: Comments must be submitted by July 3, 1986.

EFFECTIVE DATE: July 3, 1986.

ADDRESSES: Send comments on the rule in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24990, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this regulatory action by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the above specified address. All communications received on or before the closing date for comments will be considered by the Administrator. Commenters who wish the FAA to acknowledge receipt of their comments must submit with comments a self-addressed, stamped postcard on which the following statement is written: "Comments to Docket No. 24990." The postcard will be date/time stamped and returned to the commenter. The provisions in this rule may be changed in light of comments received. All comments submitted will be available, both before and after closing date for the comments, in the Rules Docket for examination by interested persons. A report summarizing substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (200) 426-8058. Communications must identify the docket number.

Background

Part 93, Subpart D, of the Federal Aviation Regulations (FAR), prescribes the boundaries of the Anchorage ATA and local operating rules. Several actions have been taken which require changes to the description of the ATA boundary and the deletion of an obsolete reference to a two-way radio communications requirement. These actions are:

(a) Construction and use of a new north/south Runway (14/32) at Anchorage International Airport and the closing of Runway 13/31.

(b) The reconfiguration of Restricted Area R-2203.

(c) The combining of Lake Hood Tower with Anchorage International Tower.

(d) A corrected description of the Elmendorf Air Force Base geographical center.

(e) Palmer Highway, which appears as a reference point in the description of the Anchorage ATA, has been renamed as Glenn Highway.

Need for Amendment

The actions listed above affect the Anchorage ATA description as follows:

(a) The new runway results in a need to correct the Anchorage International Airport geographical center. This point serves as a base reference in the general ATA description. Runway 13/31 is no longer in operation and physically does not exist. It can no longer be used as a reference to describe the "International" segment of the Anchorage ATA. Instead, the new reference point is the Anchorage International Tower. In the amended description, a line will be drawn from this reference which will help to depict an area which will include new Runway 14/32 and its associated traffic pattern.

(b) Restricted Area R-2203 has been reconfigured. The new configuration has slightly altered part of the ATA's northeastern boundary. The alteration of the ATA, as affected by the reconfigured restricted area, is minor. However, the FAA believes that no part of the definition of the Anchorage ATA boundary should be dependent upon the configuration of the restricted areas which are subject to change. Accordingly, the new description is referenced to coordinates. The reference to coordinates is a method which will be independent of any future restricted area reconfiguration that might occur. The revised description of the ATA in terms of coordinates does not in itself alter the airspace designation of the ATA.

(c) The Lake Hood Tower has been combined with the Anchorage International Tower which operates 24 hours a day. The current rule requires two-way radio communications with Anchorage Tower when Lake Hood Tower is not operating. Because of the combined operation, the rule is inaccurate and misleading to pilots.

(d) The revised Elmendorf geographical center, while not specified in the current rule, does require a slight change in the depiction of the ATA's north/northwest boundary.

(e) Renaming of Palmer Highway to Glenn Highway requires appropriate updating in the description of the Anchorage ATA.

These actions do not result in or necessitate any substantial change to the boundary of the ATA nor to aircraft operations or ATC procedures. However, the changes do require the technical amendment of the ATA boundary description and deletion of the outdated two-way radio communications requirement in the FAR.

The effect of this amendment is the slight alteration in the description of the Anchorage ATA boundary and the deletion from the rule of a two-way radio requirement which, because of the combining of tower operations, is no longer applicable. The amendment requires no change to aircraft operations in the ATA or to ATC procedures. Because the amendment is editorial in nature and only revises aeronautical charts and regulatory language to reflect configurations of adjacent airspace and airport facilities which are already in effect, this is a minor technical amendment in which the public would not be particularly interested. For the above reasons, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary. This document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Further, for these reasons, I certify that, under the criteria of the Regulatory Flexibility Act, the amendment will not have a significant economic impact on a substantial number of small entities. In addition, the FAA has determined that the expected impact of this amendment is so minimal that it does not require a regulatory evaluation.

List of Subjects in 14 CFR Part 93

Airport traffic areas, Special air traffic rules, Aviation safety.

Adoption of the Amendment

PART 93—[AMENDED]

Accordingly, Part 93 of the Federal Aviation Regulations (14 CFR Part 93), Subpart D, Anchorage, Alaska, Terminal Area, is amended as follows:

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1308, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 93.53 [Amended]

2. In § 93.53, the introductory paragraph is amended as follows:

a. By removing the words "the south boundary of Restricted Area R-2203A; thence west along the southern boundaries of R-2203A and R-2203B; thence north along the west boundary of R-2203B to its intersection with"; and substituting the words "a point which is lat. 61°17'15" N., long. 149°37'10" W.; thence west to lat. 61°17'15" N., long. 149°42'25" W.; thence northwest to lat. 61°19'12" N., long. 149°46'36" W.; thence via"

b. By removing the word "Palmer" which appears twice in the second sentence, and substituting the word "Glenn."

§ 93.55 [Amended]

1. Section 93.55 is amended as follows:

a. Paragraph (a) *International segment*, is amended by removing the words "terminal building extending northwesterly along a line ¼ statute mile east of, and parallel to runway 13½s" and substituting the words "control tower extending northwesterly on a direct line toward the substation."

b. Paragraph (b) *Merrill segment*, is amended by removing the word "Palmer" and substituting the word "Glenn."

§ 93.5 [Amended]

4. In § 93.61 paragraph (c) is removed.

Issued in Washington, DC, on May 9, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86-11136 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits Unlimited Reopening for Insured Status

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations clarify our regulations on when a determination or decision that a claimant did not have the necessary quarters of coverage for insured status under title II of the Social Security Act may be reopened and revised. It has long been our policy to permit unlimited reopening of this determination or decision only in certain situations. On August 5, 1980, we published new regulations (45 FR 52078) which restated in simpler language our rules governing this policy to make them easier for the public to read and understand. These new regulations have been interpreted by one court and some individuals to permit reopening in situations other than those originally included in the regulations. By making clarifying revisions, we hope to be able to eliminate such interpretations of the regulations which provide for unlimited reopening of an unfavorable determination or decision concerning an individual's insured status. In addition, the final regulations on unlimited reopening for insured status reflect a requirement concerning the evidence of earnings establishing insured status which has been part of our longstanding policy in this area, but which was not specifically expressed in our regulations.

The final regulatory changes affect current 20 CFR 404.988.

EFFECTIVE DATE: These rules are effective May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7452.

SUPPLEMENTARY INFORMATION:

Background and Final Regulations

The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on November 20, 1985 at 50 FR 47758-47760 with a 60-day comment period. No comments were received.

A worker who wants to collect benefits or establish a period of disability under title II of the Social Security Act (the Act) must have insured status. Insured status is acquired by working for a certain amount of time at a job or jobs which are covered under Social Security and, thus, paying Social Security taxes. The number of quarters of coverage needed for insured status varies depending on such factors as the date of birth and date of disability onset. The worker's covered earnings are credited to his or her earnings record which is maintained by the Social Security Administration.

We are clarifying our regulations on when a determination or decision that a claimant did not have the necessary quarters of coverage for insured status under title II of the Act may be reopened and revised. It has long been our policy that a determination or decision which finds that a claimant did not have the necessary quarters of coverage for insured status at the time of the determination or decision, may be reopened and revised at any time only in certain situations where certain provisions of the Act permit a correction in the earnings credited to the individual's earnings record and where the evidence of the earnings was in the possession of the Railroad Retirement Board (RRB) or in our possession prior to the date of notice of disallowance or denial. Prior to August 5, 1980, the regulations governing the policy (20 CFR 404.957(c)(7)(1980)) made specific references to the particular sections of the Act which permit certain corrections in an individual's earnings record at any time and which, under our policy, provide the grounds for unlimited reopening and revision of an unfavorable determination or decision concerning insured status. However, on August 5, 1980, we published new regulations in the **Federal Register** (45 FR 52078-52110) which restated our rules in simpler language to make them clearer and easier for the public to use. The new regulations (20 CFR 404.988(c)(7)) do not contain specific references to the particular sections of the Act concerning the correction of earnings records which, under our longstanding policy, represent the only situations where unlimited reopening to give insured status is permitted based on the correction of an earnings record. Subsequently, these new regulations have been interpreted by one court and some individuals to permit reopening in situations other than those originally included in the regulations. By making clarifying revisions, we hope to be able to eliminate such interpretations.

In addition, it has been a longstanding policy (although not previously stated in the regulations) that in order for unlimited reopening to apply in these situations, the evidence of earnings establishing insured status must have been in the possession of the RRB or in our possession prior to the date of the notice of disallowance or denial. We are adding this longstanding policy to the regulations in order to have the regulations reflect our policy.

The Social Security Act has no provisions on reopening and revising determinations and decisions that affect an individual's rights under title II of the Act. Our existing regulations which provide for reopening and revising determinations and decisions within specified time limits (or at any time with regard to certain matters) are based on general rulemaking authority granted the Secretary under the Act. We believe that we and the individual to whom the determination or decision applies should be able to rely on its correctness and, at some point, the finality of the determination or decision. Therefore, current regulations provide that when a determination or decision is made with respect to entitlement to, eligibility for, the amount of, or the actual payment of benefits under title II of the Act, it is generally final and binding upon us and the individual unless there is a timely appeal. However, there are special circumstances set out in current regulations which permit reopening and revising of a determination or decision which is otherwise final.

Under our regulations (20 CFR 404.988), a determination or decision we make about a person's rights under title II of the Social Security Act may be reopened (1) within 12 months of the date of the notice of the initial determination for any reason, (2) within 4 years of the date of that notice if we

find good cause as defined in our regulations, or (3) at any time under certain exceptions spelled out in the regulations.

Section 205(c)(5) of the Act lists 10 situations under which earnings may be credited to an earnings record after the expiration of the time limitation of 3 years, 3 months and 15 days, which applies to the correction of earnings records under section 205(c) of the Act. It has been our long-established policy that a determination or decision which finds that a claimant did not have the necessary quarters of coverage for insured status at the time of the determination or decision, may be reopened at any time only where earnings (which would have given the individual an insured status at the time of the determination or decision) may be credited under section 205(c)(5)(C) (to correct errors apparent on the face of the earnings record), or section 205(c)(5)(D) (to enter items transferred by the Railroad Retirement Board (RRB) which were credited under the Railroad Retirement Act when they should have been credited under the Social Security Act), or section 205(c)(5)(G) (to correct errors made in the allocation of wages or self-employment income to individuals or periods), and the evidence of the earnings was in the possession of the RRB or in our possession at the time of the determination or decision. We made these exceptions to the 4-year time period for reopening a determination or decision (20 CFR 404.988(b)) because they represent situations in which the unfavorable determination or decision was due solely to our (or the RRB's) mishandling of the evidence of the individual's earnings. We permit unlimited reopening in these situations so as not to penalize the claimant for an error we or the RRB made in the handling of his or her claim.

If, more than 4 years after the date of the notice of the initial determination that a claimant did not have the necessary quarters of coverage for insured status, new evidence is received which establishes additional earnings for insured status, we will credit the earnings record with these additional earnings if permitted under any of the 10 categories in section 205(c)(5) of the Act. However, we will not reopen the previous determinations or decision because of our long-established and accepted policy that the claimant has the responsibility to present the evidence necessary to establish that he or she qualifies for benefits. Since the previous determination or decision will not be reopened in these situations, the claimant has to file a new application to receive benefits.

We are clarifying the regulations by making specific references to those sections of the Act concerning the correction of earnings records which, under our policy, provide the bases for unlimited reopening of an unfavorable determination or decision concerning insured status. Also, while not explicit in the regulations prior to August 5, 1980, we are revising our regulations to reflect our current policy and policy prior to August 5, 1980, that the evidence of earnings establishing insured status must have been in the possession of the RRB or in our possession at the time of the determination or decision.

Regulatory Procedures

Executive Order No. 12291

These final regulations do not meet any of the criteria for a major regulation because they result in negligible program and administrative costs and savings. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

List of Subjects in 20 CFR Part 404

Administrative Practice and Procedure, Death Benefits, Disabled, Old-Age, Survivors, and Disability Insurance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance.)

Dated: April 3, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 5, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III of 20 CFR is amended as follows:

1. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 205 and 1102, Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302).

2. Paragraph (c)(7) of § 404.988 is revised to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(7) It finds that the claimant did not have insured status, but earnings were later credited to his or her earnings record to correct errors apparent on the face of the earnings record (section 205(c)(5)(C) of the Act), to enter items transferred by the Railroad Retirement Board, which were credited under the Railroad Retirement Act when they should have been credited to the claimant's Social Security earnings record (section 205(c)(5)(D) of the Act), or to correct errors made in the allocation of wages or self-employment income to individuals or periods (section 205(c)(5)(G) of the Act), which would have given him or her insured status at the time of the determination or decision if the earnings had been credited to his or her earnings record at that time, and the evidence of these earnings was in our possession or the possession of the Railroad Retirement Board at the time of the determination or decision;

* * * * *

[FR Doc. 86-11216 Filed 5-16-86; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Colloidal Ferric Oxide Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the portion of the regulation that reflected approval of a new animal drug application (NADA) sponsored by Veterinary Laboratories, Inc., providing for use of colloidal ferric oxide injection in baby pigs for preventing and treating iron deficiency anemia. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the subject NADA at the request of the sponsor.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Vitolis Vengris, Center for Veterinary Medicine (HFV-214), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Veterinary Laboratories, Inc.'s, NADA 46–210 which covers use of Iron-Dex 100 Injectable Iron (colloidal ferric oxide in a dextrin solution) in baby pigs for preventing and treating iron deficiency anemia. This document removes the portion of the regulation that reflected approval of the NADA.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM, NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

§ 522.940 [Amended]

2. Section 522.940 is amended in paragraph (c)(1) by removing the number "012481."

Dated: May 9, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–11138 Filed 5–16–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Bacitracin Zinc

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Minerals & Chemical Corp., providing for use of previously approved salinomycin and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds. The feeds are used for prevention of coccidiosis and for increased rate of weight gain.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Loanie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, filed NADA 130–235 providing for combining separately approved salinomycin and bacitracin zinc Type A articles to make Type C broiler feeds. The Type C feeds contain: salinomycin sodium, 40 to 60 grams per ton; and bacitracin zinc, 10 to 50 grams per ton. The feed is used for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain. The NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.78 is amended by adding new paragraph (d)(3)(x) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(d) * * *

(3) * * *

(x) Salinomycin as in § 558.550

3. Section 558.550 is amended by adding new paragraph (b)(1)(vii) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(1) * * *

(vii)(*a*) *Amount per ton.* Salinomycin 40 to 60 grams and bacitracin zinc 10 to 50 grams.

(*b*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain.

(*c*) *Limitations.* Feed continuously as sole ration. Not approved for use with pellet binders. Do not feed to layers. May be fatal if accidentally fed to adult turkeys or horses. Bacitracin zinc as provided by No. 012769 in § 510.600(c) of this chapter.

* * * * *

Dated: May 9, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–11139 Filed 5–16–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Approval of Amendment to the Pennsylvania Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a program amendment submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment satisfies two conditions of the Secretary of the Interior's approval of the Pennsylvania program. The two conditions, listed at 30 CFR 938.11(d) and 938.11(k), pertain to prime farmland requirements for proposed mining operations in the

anthracite region and to bond release procedures. The amendment also includes revisions to Pennsylvania's permitting and blasting regulations.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Secretary has determined that the amendment meets the requirements of SMCRA and the Federal regulations, with the exception of four deficiencies. Thus, the Secretary is approving the amendment while requiring the correction of these deficiencies by a specified date. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South Second Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently, the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050). Additionally, on April 20, 1983, the United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Association v. Watt*, Civil No. 82–1129, remanded to the Secretary for correction the provision in the Pennsylvania program concerning the timing of the bond release hearing and the decision. Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by a letter dated June 7, 1983, that a State program amendment was required to revise the State provision. In the **Federal Register** (48 FR 27102) dated June 13, 1983, OSMRE announced its intention to impose new condition (k) on the approval of the Pennsylvania program to comply with the district court decision. The State responded to OSMRE's June 7, 1983, letter on July 27, 1983, and advised OSMRE that it would amend its regulations (PA 86.171) to rectify the matter. In the **Federal Register** dated September 6, 1983 (48 FR 40223), OSMRE imposed condition (k). Other actions concerning the conditions of approval and program amendments are identified under 30 CFR 938.15 and 938.16.

II. Submission of Program Amendments

On November 2, 1984, the Pennsylvania Department of Environmental Resources (DER) submitted program amendments to satisfy the requirements of the Secretary's conditions of approval of the Pennsylvania program listed at 30 CFR 938.11(d) and 938.11(k). These amendments are filed in the OSMRE Administrative Record for Pennsylvania under number PA–539.

Condition (d) stipulates that Pennsylvania must submit to the Secretary copies of promulgated regulations, or otherwise amend its program to require: (1) That the applicant conduct a prime farmland investigation prior to mining in the anthracite region which is no less effective than 30 CFR 779.27, 783.27 (now cited at 30 CFR 785.17(b)), and in accordance with section 507(b)(16) of SMCRA; (2) that the applicant obtain, with respect to prime farmland, and negative determination when proposing to mine coal in the anthracite region which is not less effective than 30 CFR 786.19(1) (recodified as 30 CFR 773.15(c)(8)) and in accordance with section 510(d)(1) of SMCRA; and (3) the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) (now cited at 30 CFR 800.40(c)(2)) and in accordance with section 519(c)(2) of SMCRA.

Condition (k) stipulates that Pennsylvania must submit to the Secretary a copy of promulgated regulations or other amendments to its program to contain provisions no less effective than 30 CFR 800.40(b)(2) and (f) to require the State to hold a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or informal conference has been held.

In addition to amendments to satisfy conditions (d) and (k), Pennsylvania also submitted for OSMRE's approval proposed changes amending Sections 88.24, 88.30, 88.134, 88.135, 88.136, 88.137, and 88.491 of Pennsylvania's regulations.

OSMRE announced receipt of the amendments and initiated a public comment period on January 4, 1985 (50 FR 486). The comment period closed on January 24, 1985.

During review of the amendments, OSMRE identified some concerns related to anthracite operations on prime farmland and to blasting operations within 500 feet of any active underground mine. OSMRE's concerns are fully explained in its letter to the State of April 24, 1985 (Administrative Record number PA–553). On September 5, 1985, Pennsylvania responded to the issues raised by OSMRE (Administrative Record number PA–565).

On February 7, 1986, OSMRE reopened the comment period on the amendment for 15 days to provide the public an opportunity to review and comment on the clarifying materials submitted by Pennsylvania on September 5, 1985 (51 FR 4766). The comment period closed on February 24, 1986.

III. Summary Description of Amendments

Following is a summary description of the amendments to the Pennsylvania program submitted to OSMRE by the State on November 2, 1984.

Chapter 86

Section 86.37(a)(13)—amended by adding a reference to Chapter 88 which requires the applicant to conduct a prime farmland investigation prior to mining in the anthracite region.

Section 86.171—revised to require a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or informal conference.

Section 86.172(d)(2)(iii)—amended by adding a reference to Chapter 88 which prohibits bond release for anthracite operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland.

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Chapter 88

Subchapter A: Anthracite Coal Mining Activities Application Requirements, Premining Resources

Section 88.1 Definitions—the following definitions were added relevant to prime farmland requirements for anthracite operations:

Cropland
Historically used for cropland
Prime farmland
Soil survey

Section 88.24 Geology

(b)(4)—The requirement to analyze for marcasite has been deleted.

Section 88.30 Description of Land Use

(a)(1)—changed for clarification [the map requirement of old (a)(1) is now included in (a)].

(a) and old (1)—added to clarify the content requirements of the statement and map required under paragraph (a).

Section 88.31 Maps and Plans

(a)(7)—revised to add the location and elevation of springs and wells to the mapping requirements.

Section 88.32 Prime Farmland Investigation

—Added to include prime farmland requirements for anthracite surface mine operations.

Section 88.61 Prime Farmlands

—Added to establish prime farmland standards for anthracite surface mines.

Subchapter B: Surface Anthracite Coal Mines, Minimum Environmental Protection Performance Standards

Section 88.129 Revegetation: Standards for Successful Revegetation

—Added to establish prime farmland standards for anthracite surface mines.

Section 88.134 Blasting: General Requirements

(a)—clarification (storage and handling are covered by regulation of blasting in Pennsylvania).

(e)—clarification (replaces term "proximity" with set distance "500 feet").

Section 88.135 Blasting: Surface Blasting Requirements

(c)(1)—revised to define the distance from the operation for a warning.

(f)(2)—clarification (reference to Pennsylvania blasting regulations).

(h)—clarification (defines what the three mutually perpendicular directions are).

Section 88.136 Blasting: Near Underground Mines

(a)—clarification (replaces term "proximity" with a set distance "500 feet").

(c)—clarification regarding safety measures.

Section 88.137 Blasting: Records of Blasting Operations

(18)—clarification—the term "sketch" has been replaced with the term "arrangement" to be more precise regarding the information required.

(19)—old 19 deleted (information concerning the number of persons in the blasting crew). New (19) is old 20 renumbered.

Subchapter C: Anthracite Bank Removal and Reclamation, Minimum Environmental Protection Performance Standards

Section 88.217 Vegetation: Standards for Successful Vegetation

—Added to establish prime farmland standards for anthracite bank removal operations.

Subchapter D: Anthracite Refuse Disposal, Minimum Environmental Standards

Section 88.330 Revegetation: Standards for Successful Revegetation

—Added to establish prime farmland standards for anthracite disposal operations.

Subchapter E: Coal Processing Facilities

Section 88.381 General requirements

(b)(2)—clarification of reference.

(c)(9)—clarification of reference.

(c)(8)—added to establish prime farmland standards for anthracite coal processing facilities.

(c)(9)—change of number.

Subchapter F: Anthracite Underground Mines

Section 88.491 Minimum Requirements for Information on Environmental Resources

(i)(1)—revised to require landowner names and boundary information for anthracite underground mines.

(i)(13)—clarification (misprint).

(i)(22)—added to require surface feature information for the permit area and 1000 feet or permit area.

(i)(23)—clarification (number change).

(j)—clarification—the term "maps" added.

(k)—added to establish prime farmland requirements for anthracite underground operations.

Section 88.492 Minimum Requirements for Reclamation and Operation Plan

(m)—added to establish prime farmland standards for anthracite underground operations.

Section 88.493 Minimum Environmental Protection Performance Standards

(8)—added to establish prime farmland standards for anthracite underground operations.

IV. Secretary's Findings

The Secretary finds in accordance with SMCRA and 30 CFR 732.15 and 732.17 that the program amendments submitted on November 2, 1984, including clarifications submitted on September 5, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, with certain exceptions, as discussed below.

In conducting the initial review of the amendments submitted by Pennsylvania, OSMRE identified certain concerns related to anthracite operations on prime farmland and to blasting operations within 500 feet of active underground mines at anthracite operations. OSMRE's concerns were outlined in a letter to the State dated April 24, 1985. The State responded to the issues raised by OSMRE in a letter dated September 5, 1985. After reviewing the additional clarifying information submitted by the State, OSMRE has determined that the State's amendment satisfies conditions (d) and (k) as listed at 30 CFR 938.11 and are no less effective than the Federal requirements with certain minor exceptions.

Accordingly, the Secretary is approving the amendments and removing the two conditions while requiring revision of four provisions which do not satisfy the criteria for approval of State program amendments.

A full discussion of OSMRE's initial concerns and the disposition of each is provided below, together with the Secretary's findings on the State's satisfaction of conditions (d) and (k).

Finding 1

In its letter to Pennsylvania dated April 24, 1985, OSMRE advised the State that it found the revised bond release provision at 88.172 as it applies to anthracite operations to be less effective than the Federal requirements because it does not specify that the reference area for measuring the return of productivity of mined prime farmland be *of the same soil type* and *have been subject to equivalent management practices* as the mined prime farmland. The Federal

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regulation at 800.40(c)(2) provides that "no part of the bond shall be released until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land *of the same soil type* in the surrounding area *under equivalent management practices* . . ."

In its September 5, 1985 letter responding to the issues raised by OSMRE, Pennsylvania pointed out that these requirements are contained in the performance standards for anthracite operations contained in Chapter 88.

The State's rule at 88.129(g) as submitted on November 2, 1984, provides that "In all cases, soil productivity for prime farmlands shall be returned equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices . . ."

OSMRE has determined that Pennsylvania's revised regulation at 88.172, when considered in conjunction with State rule 88.129(g), provides the same standard for bond release on prime farmland as the Federal regulation. Therefore, the Secretary is approving it as an amendment to Pennsylvania's program. In adopting this amendment, Pennsylvania has satisfied part (3) of condition (d) of the Secretary's approval of the Pennsylvania program listed at 30 CFR 938.11. Condition 938.11(d)(3) provides that Pennsylvania must amend its program to require the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) (recodified as § 800.40(c)(2)) in accordance with section 519(c)(2) of SMCRA. As noted above, OSMRE has determined that the State's provisions at 88.172 and 88.129(g) are no less effective than the Federal standard at § 800.40(c)(2) for bond release on prime farmlands. Therefore, the Secretary is removing condition (d)(3).

Finding 2

Under Pennsylvania rules 88.32(a) and 88.491(k), which pertain to surface and underground anthracite mines, the applicant is required to conduct a pre-application investigation of the proposed permit area to determine whether lands within the area may be prime farmland. In its April 24, 1985 letter, OSMRE advised Pennsylvania that, unlike OSMRE's rule at 30 CFR 785.17(b)(1), the State rules do not specify that the nature and extent of the investigation shall be determined by the regulatory authority in consultation with the U.S. Soil Conservation Service [SCS].

Pennsylvania reponded in its September 5, 1985 letter to OSMRE that the SCS has completed soil surveys for all counties containing anthracite coal and identified soil map units within each county classified as prime farmland soils. Thus, the State pointed out, a "reconnaissance inspection" for determining the existence of prime farmland soils is not necessary. Under Pennsylvania's program, the permit applicant must identify soils within the proposed permit area which are classified by SCS as prime farmland soils, as well as identify prime farmland soils historically used for cropland.

OSMRE confirmed with SCS that it has identified all soil map units in the anthracite region classified as prime farmland soils. Thus, OSMRE has determined that the State's approach of requiring a "pre-application investigation" rather than a "reconnaissance inspection" for determining the existence of prime farmland soils is no less effective than the Federal requirement at 30 CFR 785.17(b)(1). The State's rules at 88.32 and 88.491(k), together with the State's permit application forms which require the submission of an SCS soil map delineating prime farmland soils and prime farmland soils historically used for cropland within the permit area, will ensure that the regulatory authority is informed of the existence of all prime farmland soils within a proposed permit area. The pertinent sections of the State's permit application forms were submitted by the State together with its letter and other materials on September 5, 1985 (Administrative Record number PA–565).

With the adoption of Pennsylvania rules 88.32(a) and 88.491(k), the State has satisfied part (1) of the condition of approval listed at § 938.11(d). That condition specifies that Pennsylvania must amend its program to require that the applicant conduct a prime farmland investigation prior to mining in the anthracite region which is no less effective than 30 CFR 779.27 and 783.27 (recodified as § 785.17(b)(1)) and in accordance with section 507(b)(16) of SMCRA.

As noted above, OSMRE has determined that State rules 88.32 and 88.491(k), together with relevant sections of Pennsylvania's permit application forms, are no less effective than 30 CFR 785.17(b)(1). Therefore, the Secretary is removing condition (d)(1).

Finding 3

Paragraph (b) under new section 88.32 of Pennsylvania's rules sets forth the allowable exemptions from prime farmland requirements for surface anthracite operations. OSMRE advised Pennsylvania in its April 24, 1985 letter that it had found the exemption under section 88.32(b)(4) to be inconsistent with SMCRA and Federal regulations. That provision provides that land shall not be considered prime farmland if the applicant can demonstrate that the area of prime farmland is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years).

OSMRE's regulation at 30 CFR 823.11(a) was remanded by the U.S. District Court on October 1, 1984 in Round II of *In re: Permanent Surface Mining Regulation Litigation II*. The Federal provision at 30 CFR 823.11(a) provides an exemption from the prime farmland performance standards for coal preparation plants, support facilities and roads of surface and underground mines that are actually used over extended periods of time and affect a minimal amount of land. The court found that OSMRE's rule improperly extended the exemption to facilities associated with both surface and undergound mining operations, contradicting the court's 1980 decision that such an exemption was reasonable only for underground mining operations.

Thus, Pennsylvania's rule at 88.32(f)(4), which provides an exemption for *surface* anthracite operations on the basis of long term usage and the minimal acreage affected, is inconsistent with the Federal rule as remanded by the court on October 1, 1984. Therefore, the Secretary is requiring Pennsylvania to amend its program by deleting the regulatory provision at 88.32(b)(4). As set forth herein under 30 CFR 938.16(c), the Secretary is requiring Pennsylvania to delete this provision from its regulations by January 31, 1987.

Finding 4

The Pennsylvania regulations at 88.32(a) and 88.491(k)(3) pertaining to surface and underground anthracite mines, specify that if the investigation of the proposed permit area which the applicant is required to make indicates that lands within the proposed permit area may be prime farmlands, the applicant shall cause a soil survey of those lands to be made if a soil survey does not already exist. In its April 24, 1985 letter to the State, OSMRE advised Pennsylvania that it found this provision to be consistent with the Federal

regulation at 30 CFR 785.17(b)(3) with one exception. Unlike the Federal regulation, the State rule does not indicate the required level of detail for the soil survey that is to be made. The Federal rule at 30 CFR 785.17(b)(3) stipulates that the soil survey used to identify and locate prime farmland soils must be of the detail used by SCS for operational conservation planning. In its letter responding to concerns raised by OSMRE, Pennsylvania pointed out that this requirement is significant only when no soil survey exists.

As discussed in Finding 2 above, SCS soil surveys identifying prime farmland soils have been completed for all counties in which anthracite mining operations occur. Thus, OSMRE has determined that the absence of a State requirement specifying the level of detail for a soil survey does not render the State program less effective than the Federal requirements and the Secretary is, therefore, approving the provisions at 88.32(d) and 88.491(k)(3) as amendments to the State program.

Finding 5

Pennsylvania rules 88.32(e) and 88.491(k)(4), as submitted November 2, 1984, require the applicant to submit with the permit application a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and the procedures set forth in the U.S. Department of Agriculture (USDA) Handbooks 436 and 18. The State rules further specify that the soil survey shall include a map unit and representative soil profile description for each prime farmland soil within the proposed permit area. The State rules provide that "other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey" may be used if available and approved by the Department. In its April 24, 1985 letter to Pennsylvania, OSMRE indicated that it had found the State rules to be consistent with the Federal regulation at 30 CFR 785.17(c)(1) with one exception. The Federal rules requires SCS approval of alternative soil profile descriptions, whereas the State rules allow the use of such alternative descriptions if prepared in conjunction with the National Cooperative Soil Survey and approved by the Department. OSMRE advised Pennsylvania that to be no less effective than the Federal regulation, the State rules must require SCS approval of alternative soil profile descriptions.

Pennsylvania advised OSMRE that the State regulatory authority's Memorandum of Understanding (MOU) with the State SCS provides for SCS review, comment and approval of all prime farmland reconstruction plans within a permit application. Pennsylvania indicated that SCS approval of prime farmland informational requirements and reconstruction plans would constitute approval of any alternative soil profile description which may be submitted by a permit applicant. After reviewing the State's MOU with SCS, OSMRE determined that is does not *explicitly* provide for SCS approval of prime farmland informational requirements and reconstruction plans. Therefore, OSMRE has determined that the State regulations at 88.32(e) and 88.491(k)(4) are less effective than the Federal requirements at 30 CFR 785.17(c)(1) to the extent that they do not require SCS approval of alternative soil profile descriptions. Therefore, the Secretary is requiring Pennsylvania to amend its program to include this requirement. As set forth herein under 30 CFR 938.16(d), the Secretary is requiring Pennsylvania to adopt this change by January 31, 1987.

Finding 6

Pennsylvania has added a new section 88.61 which sets forth special requirements for the applicant's operation and reclamation plan relevant to prime farmlands in the anthracite region. The State's proposed rule requires the applicant to demonstrate that:

(1) The land will be restored, within a reasonable time to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management, and

(2) The standards for successful revegetation of Sections 88.129, 88.217 and 88.330 can be achieved.

Unlike the Federal regulations at 30 CFR 785.17(c)(2), (3) and (4), the State's proposed rule does not also specify that the applicant's operation and reclamation plan for prime farmland include the following:

(i) A plan for soil reconstruction, replacement and stabilization to establish the technological capability to restore the operator's prime farmland to the soil reconstruction standards of 30 CFR Part 823.

(ii) The productivity prior to mining, including the average yield of food, fiber, forage or wood products obtained under a high level of management.

OSMRE informed the State in its letter of April 24, 1985, that its regulation at 88.61 is less effective than the Federal regulations because it lacks these two requirements. In responding to this issue in its September 5, 1985 letter to OSMRE, Pennsylvania pointed out that section 529 of Pub. L. 95–87 excluded anthracite coal mines from the environmental protection performance standards of sections 515 and 516. The State indicated that the soil reconstruction performance standards found at 30 CFR Part 823 do not apply to anthracite operations as these are derived from section 515(b)(7) of SMCRA, and the applicant should not, therefore, be required to provide a soil reconstruction plan. OSMRE agrees that performance standards contained in OSMRE's regulations which are derived from section 515 or 516 of the Act do not apply to anthracite mining operations. However, section 510(d) of SMCRA does apply to such operations. That section of the Act requires the regulatory authority, prior to granting a permit to mine on prime farmland, to make a written finding that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management. OSMRE has determined that while the Federal law does not require the State to adopt counterparts to the soil reconstruction standards set forth under 30 CFR Part 823 and to the corresponding requirement for a soil reconstruction plan contained in 30 CFR 785.17(c), Pennsylvania's program must include permit application requirements that will ensure that the requirements of section 510(d) of SMCRA relevant to the restoration of prime farmland soil will be met. Therefore, as set forth under 30 CFR 938.16(e) the Secretary is requiring Pennsylvania to amend its regulation at 88.61 or otherwise amend its program to (a) establish criteria for evaluating the applicant's operation and reclamation plan to determine whether the productivity standard for mined prime farmland can be achieved following mining; (b) require the applicant to submit a plan to establish his technological capability to comply with the requirements for restoring prime farmland productivity; and (c) require the applicant to submit information on productivity prior to mining. The State is required to adopt these changes to its program by January 31, 1987.

Finding 7

Paragraph (f) under Pennsylvania rule 88.129 establishes standards for determining success of revegetation on prime farmlands for surface anthracite coal mines. OSMRE advised Pennsylvania in its letter of April 24, 1985, that the standards established by the State's rule are not consistent with the Federal requirements because they

do not require that restoration of prime farmland productivity shall be determined on the basis of measurement of crop yields.

The State's rule provides that the standards for determining success of restoration on prime farmlands may be based on crop yields or on a soil survey. Section 88.129(f)(1) specifies that the standards shall be based on crop yields if crops are grown; section 88.129(f)(2) provides that the standards shall be based on a soil survey if crops are not grown. The State has similar requirements under Chapter 88, Subchapters C, D, and F pertaining to Anthracite Bank Removal and Reclamation, Anthracite Refuse Disposal and Anthracite Underground Mines.

As discussed in Finding 6 above, section 510(d) of SMCRA establishes that mined prime farmland shall be returned to equivalent or higher levels of yield as non-mined primed farmland in the surrounding area. OSMRE has determined that cropping is the only viable means to determine whether the statutory goal of restoration of prime farmland has been met because insufficient research has been published that demonstrates the reliability of any other methods. Under the Federal rules, it is the determination that prime farmland soil has been restored to pre-mining productivity levels, based on actual crop yields, and not soil surveys, that triggers the release of the operator's bond.

OSMRE advised Pennsylvania that to be consistent with the applicable requirements of the Act, Pennsylvania's rules must provide that restoration of prime farmland productivity shall be determined on the basis of measurement of crop yields.

In its letter to OSMRE dated September 5, 1985, Pennsylvania made the following points. The State asserted that the evaluation of the physical and chemical properties of the soil provides an adequate measure of soil productivity potential. The State indicated that the Federal rules allow for the substitution of other soil materials in place of the A horizon based on an evaluation of soil properties. Therefore, the State commented, OSMRE should allow analysis of soil properties to demonstrate soil productivity potential following mining on prime farmlands. In formulating the Federal standard for measuring the restoration of prime farmland productivity, OSMRE considered alternative measures, including the analysis of soil properties. These, however, were rejected and a determination made that the only reliable measure of prime farmland productivity is the growing of crops. The Federal standard was challenged by industry in *In re: Permanent Surface Mining Regulation Litigation*. In his Round II opinion issued October 1, 1984, Judge Flannery upheld OSMRE's regulation.

Therefore, the Secretary is requiring Pennsylvania to amend its rules at 88.129(f) (1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D and F to require that the restoration of prime farmland soil productivity shall be determined on the basis of the measurement of crop yields. As set forth herein under 30 CFR 938.16(f), Pennsylvania is required to adopt these changes by January 31, 1987.

Finding 8

Pennsylvania's regulation at 88.134(e) requires that each person who conducts blasting in connection with surface mining within 500 feet of any active underground mine shall do so in a manner as to protect the health and safety of persons working underground, to prevent any adverse impact upon an active, inactive or abandoned underground mine.

The Federal rule at 30 CFR 780.13(c) requires that blasting operations within 500 feet of active underground mines require the approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

In its letter to Pennsylvania dated April 24, 1985, OSMRE advised the State that to be no less effective than the Federal provision, the State rules must require, either in this section or under Section 88.136, that blasting operations within 500 feet of an active underground mine be approved by Federal or State agencies concerned with the health and safety of underground miners.

In its September 5, 1985 letter to OSMRE, Pennsylvania noted that section 88.134(a) provides that an operator must comply with "all applicable State and Federal laws in the storage, handling and use of explosives." It further noted that section 88.136(a) provides that a permittee operating in the proximity of a deep mine shall notify the surface mine inspector who in turn will notify the deep mine inspector and together they shall instruct the surface and deep mine operators as to procedure.

OSMRE has determined that these provisions, taken together with the State rule at 88.134(e), will provide adequate protection for underground mining operations in close proximity to surface blasting operations consistent with the Federal regulation at 30 CFR 780.13(c). Therefore, the Secretary is approving State revised rule 88.134(e) as an amendment to Pennsylvania's program.

Finding 9

Conditions of Approval

The amendments submitted by Pennsylvania on November 2, 1984, as clarified on September 5, 1985 are intended to address two conditions of the Secretary's approval of the Pennsylvania program, those listed at 30 CFR 938.11(d) and (k).

Condition "(d)"

As discussed above under Findings 1 and 2, OSMRE has determined that the provisions submitted by the State fully satisfy subparts (1) and (3) of the condition at § 938.11(d). With respect to the remaining subpart (2) under this condition OSMRE has made the following determination. Condition § 938.11(d)(2) specifies that Pennsylvania must amend its program to add a requirement that the applicant obtain, with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region which is no less effective than the Federal requirement at 30 CFR 786.19(e) [recodified as § 773.15(c)(8)] and section 510(d)(1) of SMCRA. Pennsylvania adopted provisions at §§ 86.37(a)(13), 88.32(c), 88.361(c)(8) and 88.491(k)(2) relevant to this condition. Section 86.37(a)(13) prohibits permit approval until the State has found that the applicant has satisfied the requirements of §§ 88.32 and 88.491(k) relating to a prime farmland investigation. Sections 88.32(c) and 88.491(k)(2) pertaining to performance standards for surface and underground anthracite operations, require that if the applicant determines after investigation that all of part of the lands in the proposed permit area are not prime farmland, the applicant shall submit with the permit application a request for a negative determination. This requirement is also incorporated by reference under State rule 88.361(c)(8) pertaining to coal processing facilities for anthracite operations. The Secretary has determined that the provisions adopted by the State are no less effective than the Federal requirements pertaining to negative determinations for prime farmland at 30 CFR 773.15(c)(8) and 785.17(b)(2). Therefore, the Secretary is approving the State provisions as amendments to the program and removing conditions § 938.11(d)(2).

Condition "(k)"

With regard to the Secretary's condition of approval at 30 CFR

938.11(k), Pennsylvania has revised § 86.171 of the State program regulations to address this condition. The condition at § 938.11(k) requires Pennsylvania to amend its program to include provisions no less effective than § 800.40(b)(2) and (f) to require the State to hold a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or inforinal conference has been held.

Pennsylvania's revised rule at § 86.171 stipulates that the Department will hold an informal conference on a bond release application if one is requested within 30 days from the date of the request for the conference, except that all requests for an informal conference that are filed prior to the tenth day following the final newspaper advertisement shall have a constructive date of filing as the tenth day following the final newspaper advertisement. Section 86.171(b) requires that at the time of filing an application for bond release, the applicant shall advertise the filing in a newspaper at least once a week for four consecutive weeks. Section 86.171(f)(3) specifies that if there has been an informal conference, notification of the decision shall be made within 30 days after the conference.

OSMRE has determined that the State's provisions under § 86.171 are no less effective than the Federal requirements at 30 CFR 800.40(b)(2) and (f). While the State's provision regarding the hearing date is somewhat different than the Federal provision at 30 CFR 800.40 (f), it nonetheless ensures that the last possible date for holding a conference is 60 days after the publication of the last newspaper advertisement of the filing of the bond release application. Under the Federal rules the last possible hearing date is also 60 days after the publication of the last newspaper advertisement. Thus, the Secretary has determined that the State's provision is no less effective than the Federal regulation and he is approving it as an amendment to the program and removing the condition.

V. Public Comment

OSMRE offered two comment periods on the amendments submitted by Pennsylvania. The first comment period was announced in the **Federal Register** on January 4, 1985 (50 FR 486). Comment was invited on the amendments submitted by Pennsylvania on November 2, 1984. On September 5, 1985, Pennsylvania submitted additional clarifying material for OSMRE's consideration. OSMRE announced receipt of this material on February 7, 1986 (51 FR 4706) and invited comment on it for 15 days.

During the first comment period OSMRE received one comment from the U.S. Department of Agriculture, Soil Conservation Service (SCS). No comments were received during the second comment period. SCS commented that regarding the provisions in Chapter 86 and 88 that the minimum prime farmland area be five acres, it would be more logical to use soil map units as delineated by the National Cooperative Soil Survey or comparable soil mapping. Soil map units in Pennsylvania range in size from two to five acres and are on the same map scale used by SCS for operational conservation planning.

As discussed in Finding 3 above, OSMRE has determined that an exemption from prime farmland requirements for surface anthracite operations involving less than 5 acres of prime farmland is inconsistent with the Federal rules as remanded by the court. With respect to underground anthracite operations, OSMRE has determined that an exemption from prime farmland requirements for areas of prime farmland that are minimal in size is not inconsistent with the Federal regulations as remanded by the court. In Round III of *In Re: Permanent Surface Mining Regulation Litigation II*, Judge Flannery ruled that an exemption properly applies to surface facilities for underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. However, the judge further stated that the Secretary must provide guidelines limiting the scope of this exemption. OSMRE has not yet provided guidance to indicate what is meant by extended period of time or a minimal amount of land. Pennsylvania has defined the time and spatial limits of the exemption as "less than 5 acres" and "more than 10 years". As OSMRE has not yet established specific guidelines with respect to the scope of the exemption for underground mining, it has no basis for requiring Pennsylvania to adopt the acreage limitation recommended by SCS. Once such guidance is established, OSMRE will reexamine the State's provision in light of the Federal standards.

SCS also commented that the provisions in Chapter 86 and 88 concerning the growing of the reference crop and measuring yields or using measured soil parameters to determine reclamation success need to be given further consideration. SCS pointed out that OSMRE's final rule on surface mining and reclamation operations published in the May 12, 1983, **Federal Register**, requires that the reference crop be grown and measured.

As discussed in Finding 7 above, the Secretary is requiring Pennsylvania to amend its program to require the measurement of prime farmland soil productivity to be made on the basis of cropping.

VI. Secretary's Decision

Based on the above findings, the Secretary is approving the amendments submitted by Pennsylvania on November 2, 1984, as clarified by the State's letter to OSMRE dated September 5, 1985, while requiring the State to correct certain deficiencies by a specified date. The Secretary is also removing conditions of approval of the Pennsylvania program (d) and (k) as listed under 30 CFR 938.11. The Secretary is amending Part 938 of 30 CFR Chapter VII to implement this decision.

VIII. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE on exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface Mining, Underground Mining.

Dated: May 12, 1986.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 938.11 [Amended]

2. 30 CFR 938.11 is amended by removing and reserving paragraphs (d) and (k).

3. 30 CFR 938.15 is amended by adding a new paragraph (k) to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(k) Amendments to the following sections of the Pennsylvania Department of Environmental Resources regulations as submitted to OSMRE on November 2, 1984, as clarified by the State's letter to OSMRE dated September 5, 1985, are approved effective May 19, 1986.

Regulations of the Department of Environmental Resources.

Chapter 86

86.37(a)(13)
86.171(e)(12)
86.172(d)(2)(iii)

Chapter 88

88.1—definitions for "cropland," historically used for cropland," "prime farmland," and "soil survey".
88.24(b)(4)—deleted
88.30(a) and (a)(1)
88.31(a)(7)
88.32—Subject to the required amendments set forth under 938.16(c) and (d)
88.61—Subject to the required amendment set forth under 938.16(e)
88.129—Subject to the required amendment set forth under 938.16(f)
88.134 (a) and (e)
88.135(c)(1), (f)(2) and (h)
88.136(a) and (c)
88.137(18 and (19)
88.217—Subject to the required amendment set forth under 938.16(f)
88.330—Subject to the required amendment set forth under 938.16(f)
88.381(b)(2), (c)(6), (c)(8) and (c)(9)
88.491(i)(1), (i)(13), (i)(22), (i)(23), (j), (k)—to the required amendments set forth under 938.16(d) and (f)
88.492(m)
88.493(8)

4. 30 CFR 938.16 is amended by adding paragraphs (c), (d), (e), and (f) to read as follows:

§ 938.16 Required program amendments.

* * * * *

(c) By January 31, 1987, Pennsylvania shall amend its program regulations to be consistent with the Federal regulations at 30 CFR Part 823 as remanded by the U.S. District Court for the District of Columbia on October 1, 1984, by deleting the language at PA 88.32(b)(4) which provides an exemption to the prime farmland requirements if "the area of prime farmland is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years)."

(d) By January 31, 1987, Pennsylvania shall amend its program regulations at 88.32(e) and 88.491(k)(4) or otherwise amend its program to be no less effective than 30 CFR 785.17(c)(1)(ii) in requiring approval by the U.S. Department of Agriculture Soil Conservation Service of alternative soil profile descriptions for prime farmland soils included in the permit application.

(e) By January 31, 1987, Pennsylvania shall amend its program regulations at 88.61 or otherwise amend its program to be consistent with section 510(d) of SMCRA to: (1) Establish criteria for evaluating the applicant's operation and reclamation plan to determine whether the productivity standard for mined prime farmland set forth under Chapter 88 can be achieved following mining; (2) require the applicant to submit a plan to establish his technological capability to comply with the requirements for restoring prime farmland productivity; and (3) require the applicant to submit information on productivity prior to mining.

(f) By January 31, 1987, Pennsylvania shall amend its regulations at 88.129(f)(1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

[FR Doc. 86–11114 Filed 5–16–86; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD5 86–03]

Security Zone; James River, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the waters of the James River immediately adjacent to the Newport News Shipbuilding and Drydock Co. (NNS) located in Newport News, Va., and is also establishing a section of anchorage G–1 as a security zone anchorage. This action is necessary to safeguard U.S. Naval vessels from sabotage or other subversive acts, accidents, or other incidents of a similar nature while they are moored at the shipyard. This security zone will provide protection to these vessels by prohibiting access to the waters around the shipyard, except by certain authorized vessels, and by providing a sufficient area in which to detect unauthorized intrusions in time to allow appropriate security measures to be taken.

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant W.J. Wetzel, (804) 398–6368.

SUPPLEMENTARY INFORMATION: On February 27, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (Vol. 51, FR 6921). Interested persons were requested to submit comments and six comments were received.

Drafting Information

The drafters of these regulations are Lieutenant W.J. Wetzel, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and Commander R.J. Reining, Project Attorney, Legal Office, Fifth Coast Guard District.

Discussion of Comments

Of the six comments received on this matter, four addressed the issue that the regulation would exclude commercial shellfishermen from the security zone, who have traditionally harvested clams from within its waters. Three of these four commenters were expressly opposed to the security zone unless a specific provision within the regulation itself would guarantee these shellfishermen continued entry to these waters for the purpose of harvesting clams.

This issue was discussed in the notice of proposed rule making, and it has been, and continues to be, the Coast Guard's intention to allow shellfishermen entry into the zone. To clarify this point, however, the Coast Guard has amended the proposed regulation to specifically include shellfishing vessels within the category of vessels exempt from certain portions of the regulations. Those shellfishermen and commercial shellfish harvesting vessels properly licensed by the Virginia Marine Resources Commission will be authorized by the Captain of the Port to enter the zone to harvest clams, provided that the Captain of the Port determines that the presence of the individual or vessel does not pose a security threat to the United States. We anticipate that the period of time during which this authorization will apply will coincide with the period authorized by the Virginia Marine Resources Commission, usually May 1 to September 1 of each year.

The Virginia Marine Resources Commission has offered to provide the Coast Guard a list of boats and individuals authorized to harvest clams from the shellfish beds within the zone; however, the method by which these boats and individuals will receive permission to enter the security zone is left to the Captain of the Port.

One commenter, the City of Newport News, recommended amending the southeasternmost boundary of the security zone because of its effect upon the city's downtown redevelopment plans. The city expects to locate small boat docking and marina facilities in this area, and believes that the proposed security zone boundary would interfere with these development plans. Because of this they have recommended that the zone be modified to exclude a portion of the area directly seaward of the planned development area.

The Coast Guard concurs that the security zone may unnecessarily interfere with the development of this waterfront area, and believes that the security zone can be reduced in size without compromising the security of this zone. As a result, the Coast Guard is amending the southeastern portion of the security zone boundary by moving it closer to the shipyard approximately 125 yards. Even with such a reduction in size, the new southeastern boundary line will still extend further from the shipyard than the overall boundary line along most other portions of the shipyard.

The City of Newport News also expressed concern that that portion of the security zone that will encompass the Land Level Ship Facility being built by the shipyard will create an inconvenience for recreational boaters, by forcing boaters to go further out of their way to stay out of the zone. The Coast Guard disagrees with this, and believes that the configuration of the security zone at this location is consistent with the overall need for security, and that its presence poses a minimum inconvenience, if any, to boaters.

Finally, three commenters made the request that a public hearing be held. They indicated a need to provide the public a forum to discuss these issues and have their comments made known. The Coast Guard recognizes the value of such proceedings, but in this instance feels that there is little new, if anything, which could be brought out on these issues through a public hearing. For this reason, the Coast Guard declines to hold a public hearing before issuing this final rule.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The only adverse effects expected to be caused by this regulation are to those interests which will be denied access to the waters contained in this zone. Those interests affected are expected to be primarily recreational, and the loss of the use of this part of the James River should not effect their use of the river for navigation or other purposes except in a very minor way.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. No environmental assessment has been prepared for this regulation. One is not required, because these regulations clearly do not have any environmental impact.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulations

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.504 is added to read as follows:

§ 165.504 Newport News Shipbuilding and Dry Dock Company Shipyard, James River, Newport News, Va.

(a) *Location.* The following is a security zone: The waters of the James River encompassed by a line beginning at the intersection of the shoreline with the northernmost property line of the Newport News Shipbuilding and Dry Dock Co. at latitude 37°00'38.1" N, longitude 76°27'05.7" W, thence southerly to latitude 36°59'58.4" N, longitude 76°27'16.7" W, thence southeasterly to latitude 36°59'23.0" N, longitude 76°26'54.6" W, thence westerly to latitude 36°59'21.5" N, longitude 76°26'58.4" W, thence southeasterly to latitude 36°59'12.9" N, longitude 76°26'52.4" W, thence easterly to latitude 36°59'14.2" N, longitude 76°26'49.1" W, thence southeasterly to latitude 36°58'37.8" N, longitude 76°26'28.3" W, thence easterly to latitude 36°58'43.5" N, longitude 76°26'13.7" W, thence northerly to the intersection of the shoreline with the southernmost property line of the Newport News Shipbuilding and Dry Dock Co. at latitude 36°58'48.0" N, longitude 76°26'11.2" W, thence northwesterly along the shoreline to the point of beginning.

(b) *Security zone anchorage.* The following is a security zone anchorage: The waters of the James River encompassed by a line beginning at the intersection of the shoreline with the northernmost property line of the Newport News Shipbuilding and Dry Dock Company shipyard at latitude 37°00'38.1" N, longitude 76°27'05.7" W, thence southerly to latitude 36°59'58.4" N, longitude 76°27'16.7" W, thence easterly to the shoreline at latitude 36°59'58.5" N, longitude 76°27'11.6" W, thence along the shoreline to the point of beginning.

(c) *Special Regulations.* (1) Section 165.33 (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States.

(ii) Public vessels owned or operated by the Commonwealth of Virginia or its

subdivisions for law enforcement or firefighting purposes.

(iii) Vessels owned by, operated by, or under charter to Newport News Shipbuilding and Dry Dock Co.

(iv) Vessels that are performing work at Newport News Shipbuilding and Dry Dock Co., including the vessels of subcontractors and other vendors of Newport News Shipbuilding and Dry Dock Co. or other persons that have a contractual relationship with Newport News Shipbuilding and Dry Dock Co.

(v) Vessels that are being built, rebuilt, repaired, or otherwise worked on at or by Newport News Shipbuilding and Dry Dock Co. or another person authorized to perform work at the shipyard.

(vi) Vessels that are authorized by Newport News Shipbuilding and Dry Dock Company to moor at and use its facilities.

(vii) Commercial shellfish harvesting vessels properly licensed by the Virginia Marine Resources Commission to harvest clams from the shellfish beds within this zone, during periods and under conditions specified by the Captain of the Port.

(2) Any vessel authorized to enter or remain in the security zone may anchor in the security zone anchorage.

(3) Other vessels desiring access to this zone shall secure permission from the Captain Of The Port through the Security Office of the U.S. Navy Supervisor of Shipbuilding, Conversion, and Repair at Newport News, Virginia. The request shall be forwarded in a timely manner to the Captain Of The Port by the appropriate Navy official.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the enforcement of this zone by the U.S. Navy.

Dated: May 7, 1986.

James C. Irwin,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 86-11011 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Parts 3 and 4

Amendment to Bylaws of Board of Governors

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the bylaws of the Board of Governors to reflect the creation of a new senior level position at Headquarters, that of Associate Postmaster General.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. David F. Harris, (202) 268-4800.

List of Subjects in 39 CFR Parts 3 and 4

Organization and functions (Government agencies), Postal Service.

Accordingly, the Board amends 39 CFR as follows:

PART 3—BOARD OF GOVERNORS—[ARTICLE III]

1. The authority citation for Part 3 is revised to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 1003, 3013; 5 U.S.C. 552b (g), (j).

§ 3.4 [Amended]

2. In paragraph (p) of § 3.4, insert the words "the Associate Postmaster General," immediately before the word "Senior".

3. In paragraph (q) of § 3.4, insert the words "the Associate Postmaster General," immediately before the words "the Senior".

§ 3.7 [Amended]

4. In paragraph (c) of § 3.7, insert the words "Associate Postmaster General" before the words "Senior Assistant Postmasters General".

PART 4—OFFICERS—[ARTICLE IV]

5. The authority citation for Part 4 is revised to read as set forth below and the authority citations following all the sections in Part 4 are removed.

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 1003, 3013.

§ 4.5 [Amended]

6. In the first sentence of § 4.5, insert the words "the Associate Postmaster General," immediately before the word "Senior".

David F. Harris,

Secretary.

[FR Doc. 86-11151 Filed 5-16-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704 and 716

[OPTS-62021A; FRL-3014-6]

P-Tert-Butylbenzoic Acid, P-Tert-Butyltoluene, P-Tert-Butylbenzaldehyde; Final Reporting and Recordkeeping Requirements, and Health and Safety Data Reporting

Correction

In FR Doc. 86-10590 beginning on page 17336 in the issue on Monday, May 12, 1986, make the following corrections:

On page 17336, second column, **DATES** paragraph, fifth line, "May 28, 1986" should read "May 27, 1986".

On page 17339, first column, § 704.33 (a)(3), "P-TBT" should read "P-TBB"

BILLING CODE 1505-01-M

40 CFR Parts 712 and 716

[OPTS-82027; FRL-3017-3]

Addition of Chemicals to Information-Gathering Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Eighteenth Report to EPA recommended that EPA give priority consideration to one chemical substance, phosphoric acid, tributyl ester, CAS. No. 126-73-8, in promulgating a chemical test rule. To assist EPA in its determination of which, if any, tests are needed for this substance, EPA is adding this substance to two model information gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. These model rules will require manufacturers, importers, and processors of this substance to report volume, end use, exposure, and unpublished health and safety data to EPA. The ITC also announced that two chemicals which had been recommended with intent-to-designate by the ITC in its Seventeenth Report, are now designated for response within 12 months.

DATE: This rule shall become effective on June 18, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(e) of TSCA established the ITC to recommend to EPA substances and mixtures for priority consideration in promulgating chemical test rules. For some of these substances the ITC may designate that EPA respond to its recommendations within 12 months.

Within this time, EPA must either initiate a rulemaking to test the substance or state in the Federal Register its reasons for not doing so. For the remainder of the recommended substances, no time limit for Agency response is imposed.

Elsewhere in today's Federal Register, EPA is announcing the receipt of the Eighteenth Report of the ITC, which was transmitted to EPA on May 1, 1986. The Eighteenth Report revises and updates the Committee's priority list of chemicals and adds one substance, phosphoric acid, tributyl ester, CAS. No. 126–73–8, to the section 4(e) priority list. This rule adds phosphoric acid, tributyl ester to the PAIR and the Section 8(d) Health and Safety Data Reporting Rule which will require reporting of volume, end use, exposure, and unpublished health and safety data to EPA. In addition, two chemical substances which had been recommended with intent-to-designate by the ITC in its Seventeenth Report, are now designated for response within 12 months. This revision does not trigger any new reporting requirements because following the recommendation with intent-to-designate, the two chemicals were automatically added to the PAIR and the section 8(d) Health and Safety Data Reporting Rule, as published in the Federal Register of November 19, 1985 (50 FR 47538).

To assist EPA in responding to the ITC recommendations, the Agency has provided in both the Preliminary Assessment Information Rule, and the Health and Safety Data Rule, for the automatic addition of all ITC priority list substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time, without notice and comment, amend the two model information-gathering rules by adding the recommended substances. Thirty days after publication of the amendment, this substance, phosphoric acid, tributyl ester, will be added to the PAIR and the Health and Safety Data Reporting Rule.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR Part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals listed in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35). EPA uses this model section 8(a) rule to gather current information on substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR Part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit to EPA lists and copies of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

II. Chemicals Formerly in the "Recommended With Intent-to Designate" Section Now Designated for Response Within 12 months

The Seventeenth Report established a third section of the priority list. The new section is Part B of the list and contains those chemicals and categories of chemicals "recommended with intent-to-designate." Part A lists those chemicals, mixtures, and categories designated for priority consideration and response by EPA within 12 months, and Part C contains those chemicals, mixtures, and categories that have been recommended for priority consideration without being designated for response within 12 months. The requirement for automatic reporting under TSCA section 8(a) and section 8(d) includes the chemicals, mixtures, and categories listed by the ITC in all the three sections of the priority list.

The information received following recommendation with intent-to-designate of a chemical, mixture, or category of chemicals may influence the committee either to designate or not designate that chemical, mixture, or category for EPA response within 12 months. Revising a "recommended with intent-to-designate" recommendation to "designated for response within 12 months" does not trigger any new reporting requirements because following the recommendation with intent-to-designate, chemicals are automatically added to the PAIR and the section 8(d) Health and Safety Data Reporting Rule.

The ITC in its Seventeenth Report to EPA recommended two chemicals with intent-to-designate: cyclohexane, CAS No. 110–82–7 and 2,6-di-*tert*-butylphenol, CAS No. 128–39–2.

Information on cyclohexane reviewed by the ITC in response to the Seventeenth Report included any public comments on the recommendations; production volume, use, exposure and release information reported by manufacturers of cyclohexane under PAIR; health and safety studies submitted under the Health and Safety Data Reporting Rule and any unpublished and published data available to the ITC. The information included acute toxicity studies, skin and eye irritation studies and additional genotoxicity studies. Summary data from acute toxicity, skin irritation and repeated dose studies were also received from other submitters. Additionally, although ecological effects testing was not recommended for cyclohexane, information dealing with environmental persistence was also received.

After reviewing the information, the ITC concluded that data are still lacking on chronic (2-year) effects, especially oncogenicity and neurotoxicity. Teratogenic and reproductive effects studies are also absent. For these reasons, and for the reasons presented in its Seventeenth Report, the ITC in its Eighteenth Report announced that the chemical cyclohexane, CAS No. 110–82–7 is now designated for response within 12 months.

Information on 2,6-di-*tert*-butylphenol reviewed by the ITC in response to the Seventeenth Report also included any public comments on the recommendations; production volume, use, exposure and release information reported by manufacturers of 2,6-di-*tert*-butylphenol under PAIR; health and safety studies submitted under the Health and Safety Data Reporting Rule and any unpublished and published data available to the ITC. The information included data on acute oral and percutaneous LD_{50} studies with rats; skin and eye irritation with rabbits; skin depigmentation, skin sensitization and delayed contact hypersensitivity with guinea pigs; rat hepatocyte primary culture and DNA repair tests; and Ames Salmonella microsomal assay; intravenous toxicity to mice, and a report on the physiological response of experimental animals to the absorption of alkylated phenols and anilines. A summary of ecological effects was also received.

After reviewing the information, the ITC concluded that data are still lacking on toxicokinetics, chronic toxicity, persistence in sediments, acute toxicity

to benthic organisms and bioconcentration in benthic organisms. For these reasons, and for the reasons presented in its Seventeenth Report, the ITC in its Eighteenth Report announced that the chemcial 2,6-di-*tert*-butylphenol is now designated for response within 12 months.

III. Chemical to be Added

The newly added ITC priority list substance for which reporting is required under 40 CFR Parts 712 and 716 is listed below by Chemical Abstract Service (CAS) Registry Number:

Recommended with Intent-to-Designate:

CAS No.	Name
126-73-8	Phosphoric acid, tributyl ester.

IV. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each manufacturing or importing site at which they manufactured or imported a listed substance. The form must be submitted to the Agency no later than August 18, 1986. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have its submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including the small manufacturers exemption, other exemptions, and a facsimile of the reporting form are fully described in 40 CFR Part 712. Copies of the form are available from the TSCA Assistance Office at the address given under FOR FURTHER INFORMATION CONTACT.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process; or have manufactured, imported, or processed the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions.

C. Removal of Chemicals From the Rules

Any person who believes that section 8 (a) or (d) reporting required by this rule on a particular substance is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. The request for removal of a substance from this rule must be received by EPA within 14 days of the publication of the rule. If EPA withdraws a substance from the rule, the Agency will issue a rule amendment for publication in the Federal Register.

V. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate data as prescribed in a rule-related notice published in the Federal Register of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than August 18, 1986.

VI. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates that the PAIR reporting cost of this rule is $9,786. To calculate this figure, EPA used the TSCA Inventory and other sources to generate a list of past, and possibly current, manufacturers and importers of this substance. Five companies operating at approximately five sites were identified as potential manufacturers and three companies were identified as potential importers of the chemical. Since one of the companies may qualify as small businesses as defined in 40 CFR 712.25(c), EPA estimates that seven firms may be required to report a total of seven reports.

Reporting cost (dollars):	
(a) 7 reports expected at $762/report	$5,334
(b) 7 familiarization cases at $638/case	$4,452
Total	$9,786
Average cost per site	$1,398
Average cost per firm	$1,398
Reporting burden (hours):	
(a) Familiarization (18 hours per site times 7 sites/importers)	126
(b) Reporting (16 hours per report times 7 reports)	112
Total	238

Note.—*EPA Cost:* Processing Cost = ($86/report times 7 reports) = $602.

B. Health and Safety Data Reporting Rule

EPA estimates that the total reporting cost for establishing section 8(d) reporting requirements for this substance is $6,671. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA

has used the best available data to make its economic projections, much of the data is not current. In view of this, EPA has chosen to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this proposed rule is low in comparison with its potential benefits. Health and safety studies concerning this substance would improve EPA's ability to identify potential public health and environmental problems with regard to this chemical. The Agency therefore would be better able to determine whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$2,448
Site identification/File search	918
File searches at affected sites	1,782
Title listing	114
Photocopying	165
Managerial review	918
Ongoing reporting	306
Total	6,671

VII. Rulemaking Record

The following documents constitute the public record for this rule (docket control number OPTS-82027). All of these documents are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. E-107, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analyses for this rule.
3. The Eighteenth Report of the Interagency Testing Committee.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not a major rule because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) review, because the automatic listing of recommended or designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the OMB under the provision of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2070-0054 and 2070-0004.

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: May 6, 1986.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR Parts 712 and 716 are amended as follows:

PART 712—[AMENDED]

1. In Part 712:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding paragraph (q) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(q) A Preliminary Assessment Information Manufacturer's Report must be submitted by August 18, 1986, for each chemical substance listed below.

CAS No.	Name
126-73-8	Phosphoric acid, tributyl ester.

PART 716—[AMENDED]

2. In Part 716:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.17 is amended by adding paragraph (a)(17) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(17) As of June 18, 1986, the following chemical substances are added to this section:

CAS No.	Name
126-73-8	Phosphoric acid, tributyl ester.

* * * * *

[FR Doc. 86-11069 Filed 5-16-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS-62044A; FRL 2966-7]

Toxic Substances; Asbestos Abatement Projects

Correction

In FR Doc. 86-8190 beginning on page 15722 in the issue of Friday, April 25, 1986, make the following corrections:

1. On page 15722, in the third column, in the twenty-fifth line of the "SUPPLEMENTARY INFORMATION" "routing" should read "routine";
2. On page 15728, in the third column, in the sixth line of the third complete paragraph, "0.5f/cc" should read "0.05f/cc";
3. On page 15729, in the first column, in the third line under the heading "VIII: Enforcement", insert "under" after "promulgated";
4. On page 15730, in the second column, in § 763.121(b)(2), eighth line "(3)" should read "(e)"; and
5. On page 15733, in the third column, in § 763.125(e), fourth line "7 of 17" should read "7 or 17".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Hearings and Appeals Procedures; Change of Time Period for Filing Notices of Appeal in Indian Probate Proceedings

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This Office amends its regulations to change the time period for filing notices of appeal in Indian probate proceedings. This action is being taken to facilitate determinations of finality of non-appealed decisions, and so to expedite distribution of Indian trust estates.

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce A. Johnson, Deputy Director, Office of Hearings and Appeals, (703) 235-3810.

SUPPLEMENTARY INFORMATION: On November 25, 1985, the Office of Hearings and Appeals published proposed regulations providing for the amendment of the present regulation concerning the date for filing a notice of appeal with the Board of Indian Appeals from decisions of Administrative Law Judges (Indian Probate).

On January 23, 1981, this Office had published regulations governing appeals in Indian probate proceedings in 43 CFR 4.320–4.323. These regulations replaced and updated the former appeals regulations found in 43 CFR 4.290–4.297 (1980). Paragraph (a) of 43 CFR 4.320 presently requires appeals in these cases to be filed within 60 days from receipt of the decision being appealed. The former rule had required the notice of appeal to be filed within 60 days from the date of the decision. In order to be able to prove date of receipt, this Office's Administrative Law Judges (Indian Probate) must mail their decisions by certified mail, return-receipt requested.

After 4 years experience with this procedure, it has been determined that by using this form of mail, Indian parties are frequently likely either not to receive decisions affecting them or to receive those decisions after long delays. It is therefore difficult for the Bureau of Indian Affairs to determine whether the time for filing an appeal has passed. Because of this uncertainty, the Bureau often delays distributing Indian trust estates that have not been appealed in order to avoid the problems that could result if an appeal were filed by a party who had received the decision after distribution. These facts lead to a situation in which distribution of Indian trust estates to the heirs and devisees is often needlessly protracted.

The return to a date based on a the date the decision was issued will provide certainly as to when estates can be distributed.

Two comments were received on the proposed change. One comment supported the change. The other comment, received from the Native American Rights Fund in Anchorage, Alaska, noted that receipt of mail is often difficult for Alaska Natives who maintain a traditional life-style and who might consequently lose their appellate rights. The commenter thus suggested that the 60-day appeal period set forth in the proposed regulation be increased to 120 days.

A general rule allowing a 120-day appeal period would unduly delay resolution of most Indian trust estate proceedings. The 60-day period is identical to the period required of Alaska Natives since 1971 to petition for rehearing of Indian probate decisions under 43 CFR 4.241. The Office therefore believes that the 60-day probate appeal period is sufficient.

The Department of the Interior has determined that this document is not a major rule under E.O 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This determination is based on the fact that the amendment concerns only a simplification of the determination of the time period for filing an appeal in certain administrative cases, and does not affect any substantive rights.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321–4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

Dated: February 24, 1986.

Ann McLaughlin,

Under Secretary.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians

PART 4—[AMENDED]

43 CFR Part 4, Subpart D, is amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 30 Stat. 855, as amended, 856, as amended, sec. 1, 36 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

2. Sections 4.320 is amended by revising the first sentence of (a) to read as follows:

§ 4.320 Who may appeal; scope of review.

* * * * *

(a) *Notice of Appeal.*—Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S.C. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. * * *

* * * * *

[FR Doc. 86-11199 Filed 5-7-86; 8:45 am]

BILLING CODE 4310-10-M

43 CFR Part 4

Hearings and Appeals Procedures; Use of Written Interrogatories and Requests for Admission as Discovery Devices in Indian Probate Proceedings

AGENCY: Office of Hearing and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This Office is amending its regulations concerning the use of written interrogatories and requests for admission as discovery devices in Indian probate proceedings. Present regulations require that these devices be ordered by the Administrative Law Judge (Indian Probate). The amendment makes the procedures for using these discovery devices more like the procedures for the production of documents and depositions. It also extends the time for response from 15 days to 30 days from the date of service. This conforms to the Federal Rules of Civil Procedure.

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce A. Johnson, Deputy Director, Office of Hearings and Appeals, (703) 235–3810.

SUPPLEMENTARY INFORMATION: On November 25, 1985, the Office of Hearings and Appeals published proposed regulations providing for the amendment of regulations concerning the use of written interrogatories and requests for admission as discovery devices in Indian probate proceedings. Current Departmental regulations in 43 CFR 4.222 provide that when parties involved in these proceedings wish to use written interrogatories and requests for admission, the application or request must be filed with the Administrative Law Judge (Indian Probate). The Judge is then responsible for serving the application or request on the party to whom it is addressed. This procedure causes unnecessary delays and is contrary to the procedures set out in 43 CFR 4.220, regarding production of documents, and 43 CFR 4.221, regarding depositions, in which the Judge becomes involved only when a problem develops between the parties.

The proposed amendment would provide that written interrogatories and requests for admission would be served directly upon the party to whom they are addressed, with a copy to the Judge. The Judge's involvement in discovery would be limited to those situations in which problems develop.

Two comments were received concerning the proposed amendment. One comment noted that the potential

for conflict between disputing parties might be intensified by requiring them to attempt to work together. Parties are already required to attempt cooperative use of discovery mechanisms under existing regulations relating to production of documents and depositions. Because the potential for conflict is always present in an adversary setting, the regulations provide for intervention by the Administrative Law Judge (Indian Probate), if necessary. The possibility of increased conflict is not seen as sufficient enough to justify retaining disparate treatment of the various forms of discovery devices.

The second comment generally supports the proposed changes, but suggests that the time for serving cross-interrogatories be changed from 10 to 15 days, which the commenter believed was a more realistic time limit. The 10-day period conforms to the period required under Rule 31(a) of the Federal Rules of Civil Procedure. It is our view that extending the period is not warranted.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the amendment concerns only the way discovery procedures in certain administrative appeals will be handled, and does not affect any substantive rights.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321–4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

Dated: February 24, 1986.

Ann McLaughlin,

Under Secretary.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

PART 4—[AMENDED]

43 CFR Part 4, Subpart D, is amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 858, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 58 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

2. Section 4.222 is revised to read as follows:

§ 4.222 Written interrogatories; admission of facts and documents.

At any time prior to a hearing and in sufficient time to permit answers to be filed before the hearing, a party in interest may serve upon any other party in interest written interrogatories and requests for admission of facts and documents. A copy of such interrogatories and requests shall be filed with the administrative law judge. Such interrogatories and requests for admission shall be drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing. Answers shall be served upon the party propounding the written interrogatories or requesting the admission of facts and documents within 30 days from the date of service of such interrogatories or requests, or within such other period of time as may be agreed upon by the parties or prescribed by the administrative law judge. A copy of the answer shall be filed with the administrative law judge. Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

[FR Doc. 86–11198 Filed 5–16–86; 8:45 am]

BILLING CODE 4310-10-M

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43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Correction

In FR Doc. 86–9918 beginning on page 16319 in the issue of Friday, May 2, 1986, the CFR part number in the heading was incorrect. It should have read as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 307

Establishment of Mandatory Position Reporting System for Vessels

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: This final rule establishes that vessel operators previously required to report separately to the Maritime Administration's mandatory U.S. Merchant Vessel Locator Filing System (USMER), which has been used to collect information on vessel locations for national emergency purposes, now must submit these reports to the Coast Guard's Automated Mutual-Assistance Vessel and Rescue System (AMVER). The Coast Guard will forward this information to MARAD. Currently, certain U.S. and non-U.S. vessel operators report their locations voluntarily to the AMVER System. The Coast Guard uses this information to maintain a plot for search and rescue (SAR) purposes worldwide. Since the existing AMVER Center recently has enhanced its data processing capability, it is now more feasible for the Coast Guard to process reports on vessel locations. Vessel operators that previously were required to file UMMER reports and voluntarily filed AMVER reports will now benefit from having to file only one set of reports with the Coast Guard.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Lockland, Office of Ship Operations, Maritime Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 426–5743.

SUPPLEMENTARY INFORMATION: The Maritime Administration (MARAD) established the USMER system in 1975 to enable MARAD to obtain the current locations of U.S.-flag and certain non-U.S. flag ships to facilitate the immediate marshalling of ships for national emergency purposes.

MARAD established the USMER system under authority of section 212(A) of the Merchant Marine Act, 1936, as amended, (46 U.S.C. 1122(a)), which requires operators of vessels in waterborne foreign commerce of the United States to file such reports relating to the use and performance of

vessels as the Secretary of Transportation may determine to be necessary to carry out the purposes of the Act. The system was extended by section 1209(a) of the 1936 Act (46 U.S.C. 1283) to cover foreign flag vessels insured or reinsured under the Government War Risk Insurance Program.

The U.S. Coast Guard, in connection with its SAR responsibility, operates the AMVER system, which receives reports from ships of all nations for the purpose of maintaining ship positions for SAR purposes worldwide. The enhancement of data processing capability at the AMVER Center now makes it feasible to process all position reports. In consideration of this, the Maritime Administrator and the Commandant of the United States Coast Guard have agreed that the USMER and AMVER objectives for U.S. ships should be met by a single reporting system. Separate USMER reports will be suspended. AMVER reports will remain voluntary for foreign ships unless directed otherwise by their governments. The voluntary reports will not be forwarded to MARAD. The Coast Guard will forward to MARAD the USMER information from vessel operators required to report under this part. This change in reporting procedure is not intended to affect vessel reporting requirements under 46 U.S.C. § 2306. MARAD retains its national security and enforcement authority.

Reporting will now be required for all U.S. ships operating in the waterborne foreign commerce of the United States, and foreign-flag vessels insured or reinsured under the Government War Risk Insurance Program, pursuant to 46 U.S.C. 1122(a), 1283. Affected ship operators will be required to file departure, arrival, position and deviation reports. Reporting formats and required data are described in § 307.11.

Prior to this time, operators of U.S. commercial ships had to send separate reports to satisfy the USMER requirement and to be a voluntary participant in AMVER. USMER reports could only be sent to certain Coast Guard and Navy radio stations. Under the new system, the ship operator will have to send only one set of reports to AMVER to satisfy both national security and SAR requirements. Radio operators will be able to select stations from the worldwide AMVER radio network at no charge. These benefits will save shipboard personnel time in preparing and transmitting the reports, thus resulting in cost savings. The Maritime Administration has found that alternatives, such as a satellite tracking or automatic position reporting beacons, while technically feasible, are too costly, and manual collection is inaccurate and not timely enough to accomplish the objectives.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this regulation is not a major rule as defined in E.O. 12291, but it is significant under DOT regulatory policies and procedures (49 FR 11034; Feb. 26, 1979) because of substantial Department interest. Because the issuance of this rule is necessary for timely support of national emergency-related operations, the Maritime Administrator has determined that there is good cause for exempting this rule from the notice and public procedure requirements of 5 U.S.C. 553 (the Administrative Procedure Act). This rule makes no substantive change in established procedures for the affected shipowners/operators except for a slight decrease in the reporting burden. Therefore, MARAD believes notice and public procedure thereon are impractical, unnecessary, and contrary to the public interest.

Moreover, 5 U.S.C. 553(d) requires that a rule not be made effective in fewer than 30 days except, among other things, where the agency finds good cause. For the reasons specified above in connection with notice and public procedure, the Administrator finds good cause for making this rule effective immediately. Under any circumstances, the rule principally affects ship operators that usually have annual receipts far in excess of the upper limit for qualification as small business entities under existing SBA criteria (13 CFR 121.3). Moreover, it has been determined that the economic impact of this proposal is minimal. Therefore, the Maritime Administrator certifies that it will not exert a significant economic impact on a substantial number of small entities. This rulemaking contains reporting requirements for the collection of information that are being submitted to OMB under control number 2133-[illegible].

List of Subjects in 46 CFR Part 307

Maritime carriers, national emergency, search and rescue.

Accordingly, a new Subchapter F, entitled Position Reporting System is added to 46 CFR, consisting of new Part 307 to read as follows:

Subchapter F—Position Reporting System

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

Sec.

307.1 Purpose.
307.3 Definitions.
307.5 Provisions of General Applicability.
307.7 Information Required in Report.
307.9 When to Report.
307.11 Report Changes.
307.13 Where to Report.
307.15 Release of Information from Reports.
307.17 Distress Messages and Hostile Action Reports.
307.19 Penalties.

Authority: Sections 204(b), 212(A), 1203(a), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1122(a), 1283); Pub. L. 97-31; 46 CFR 1.66.

§ 307.1 Purpose.

This Part establishes that operators of U.S.-flag oceangoing vessels in U.S. foreign trade and certain foreign-flag vessels as described in 46 U.S.C. 1283 must report on their locations according to the provisions of this regulation to enhance the safety of vessel operations at sea and provide a contingency for events of national emergency.

§ 307.3 Definitions.

As used in this Part:

(a) "Administrator" means the Maritime Administrator of the Department of Transportation.

(b) "MARAD" means the Maritime Administration, Department of Transportation.

(c) "Coast Guard" means the United States Coast Guard, Department of Transportation.

(d) "AMVER" means the Automated Mutual-Assistance Vessel Rescue System operated by the U.S. Coast Guard as it applies to U.S.-flag ships and certain non-U.S.-flag ships in U.S. foreign commerce under this regulation.

§ 307.5 Provisions of General Applicability.

(a) The following operators must comply with the reporting requirements contained in this Part:

(1) Operators of United States-flag vessels of one thousand gross tons or more, operating in the foreign commerce of the United States.

(2) Operators of foreign-flag vessels of one thousand gross tons, or more, for which an Interim War Risk Insurance Binder has been issued under the provisions of Title XII, Merchant Marine Act, 1936, as amended (46 U.S.C. 1281 *et seq.*).

(b) Operators of other merchant vessels may choose to submit reports

and have voyage information forwarded to MARAD, when approved by the Coast Guard and MARAD. Information voluntarily provided by them will be released by Coast Guard only for safety purposes or to satisfy certain advance notification requirements of 33 CFR Part 160. Requests should be addressed to the Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Attn: MAR-742.

§ 307.7 Information Required in Report.

(a) *Types of Reports.* Reports on vessel departure, arrival, position and deviation are required under this part. Sailing plans are optional, and may be sent prior to departure, or may be combined with departure reports.

(b) *Report Content.* Content of each type of required report are specified below. Note that the word "MAREP" must be included in the text of each message if MARAD is to receive the information.

(1) *Sailing Plan Report.* Sailing plan reports, though optional, must contain the following:

(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Intended time of departure,
(iv) Port of departure and latitude/longitude,
(v) Port of destination and latitude/longitude,
(vi) Estimated time of arrival,
(vii) Route information, and
(viii) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(2) *Departure Report.* Departure reports must contain the following:

(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Time of departure,
(iv) Port of departure,
(v) Latitude and longitude, and
(vi) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(3) *Position Report.* Position reports must contain the following:

(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Time at reported position,
(iv) Latitude and longitude, and
(v) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(4) *Deviation Report.* Deviation reports are necessary to report sailing plan changes or other changes and must contain the following:

(i) Vessel name,
(ii) International Radio Call Sign,
(iii) The changes to prior reports, and
(iv) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

(5) *Arrival Report.* Arrival reports must contain the following:

(i) Vessel name,
(ii) International Radio Call Sign,
(iii) Port name,
(iv) Latitude and longitude,
(v) Time of arrival, and
(vi) The keyword "MAREP".

If optional remarks are included, they must follow at the end of the text.

§ 307.9 When to Report.

(a) Operators required to report under this regulation shall send reports during the Radio Officer's normal duty hours.

(b) Operators shall send reports as follows:

(1) Departure Reports must be sent as soon as practicable upon leaving the Port of Departure.

(2) Position Reports must be sent within twenty-four hours of departure, and subsequently, no less frequently that every forty-eight hours until arrival.

(3) Arrival Reports must be sent immediately prior to or upon arrival at the Port of Destination.

(4) Deviation Reports may be sent at the discretion of the vessel operator. Reports may be sent more frequently than the above schedule, as, for example, in heavy weather or under other adverse conditions.

§ 307.11 Report Changes.

The Administrator, through MARAD advisory or special warning, may direct changes in reporting frequency and specify particular information to be included in the comments section of AMVER messages.

§ 307.13 Where to Report.

To ensure that no charge is applied, all AMVER reports must be passed through specified radio stations. Those stations which currently accept AMVER reports and apply no coastal station, ship station, or landline charge are listed in each issue of the "AMVER Bulletin" publication, together with respective International Radio Call Sign, location, frequency bands, and hours of operation. The "AMVER Bulletin" is available for Commander (As), Atlantic Area, U.S. Coast Guard, AMVER Center, Governors Island, New York, NY 10004. Although AMVER reports may be sent through other stations, the Coast Guard cannot reimburse the sender for any charges applied.

§ 307.15 Release of Information from Reports.

(a) The information collected under these instructions will be released to recognized search-and-rescue authorities, to make advance notice to the U.S. Coast Guard of arrival in U.S. ports as required by certain sections of 33 CFR. The information collected will also be forwarded to the MARAD.

(b) AMVER reports will remain voluntary for foreign ships unless otherwise directed by their governments, and will be kept strictly confidential by the U.S. Coast Guard. Information collected from such foreign ships will not be forwarded to MARAD.

(c) any information provided in the remarks line will be stored in AMVER's automatic data processing system for later review. However, no immediate action will be taken, nor will the information be routinely passed to other organizations. The remarks line cannot be used as a substitute for sending information to other search-and-rescue authorities or organizations. However, AMVER will, at the request of other SAR authorities, forward remarks line information to the requesting agencies.

§ 307.17 Distress Messages and Hostile Action Reports.

(a) AWVER reports shall not replace distress messages and hostile action reports prescribed by Chapter 5, Defense Mapping Agency (DMA) Publication 117.

(b) Vessel owners or operators subject to this part shall summarize distress messages or hostile action reports in the comments sections of AMVER reports.

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of $50 for each day of failure to file an AMVER report required by this Part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

Dated: May 14, 1986.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 86-11211 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 85-273; RM-4902; FCC 86-186]

Relax Restrictions on Certain Frequencies in the Business Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order amending § 90.75 of the rules concerning restrictions on ten pairs of Business Radio Service frequencies in the UHF band. This change will allow these frequencies to be used more effectively.

EFFECTIVE DATE: June 6, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Overby, Private Radio Bureau, (202) 634–2443.

This is a summary of the Commission's report and order, PR Docket No. 85–273, adopted April 17, 1986, and released April 30, 1986.

The full texts of Commission decisions are available for instpection and copying during normal business hours in the FCC dockets branch (room 230), 1919 M Street, Northwest, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street Northwest, Suite 140, Washington, D.C. 20037.

Summary of Report and Order

1. Since 1968, ten pairs of frequencies in the Business Radio Service have been reserved in 87 urban areas for ground support activities of entities engaged in furnishing commercial air transportation services.

Other Business Radio Service eligibles have been allowed to use these frequencies 75 or more miles outside the airports serving those areas. Also, low power (2 watts or less) stations have been allowed to operate 5 or more miles from those airports. In response to a Petition for Rule Making filed by the National Association of Business and Educational Radio, Inc. (NABER) on August 27, 1985, the FCC adopted a *Notice of Proposed Rule Making (Notice)*, PR Docket No. 85–273, 50 FR 37875 (September 18, 1985), that proposed to reduce the mileage restriction from 75 to 50 miles. The *Notice* proposed to authorize new operations on a non-interference basis with respect to co-channel facilities of commercial air transportation carriers located at the airports in the 87 urban areas. The intent of the proposal was to allow additional use of these frequencies by Business Radio Service eligibles in certain areas while maintaining adequate protection for ground support communications of commercial airline operations. Also, to avoid delays in applications processing, the FCC proposed to include a list of the protected airports and their reference coordinates in the rules.

2. By this *Report and Order*, the FCC has amended its rules essentially as proposed. The rules have been amended to specify which airport facilities are protected, and the reference coordinates for those airports. In response to the comments, the FCC has also added ten new airports to the list of protected facilities. Existing Business Radio stations located around the newly protected facilities may continue operation as currently authorized. The existing limitations on use of these frequencies for low power Business Radio Service operations have also been modified. Previously, such operations were allowed to locate 5 or more miles from a protected airport's *boundary*. The rules have been modified to allow new low power operations 10 or more miles from a protected airport's *reference coordinates*. Existing low power stations may continue operation as currently authorized. The amended rules specify that all Business Radio Service operations are authorized on a non-interference basis with respect to protected air terminal communications facilities.

3. The frequency pairs subject to these rule changes are: 460.650/465.650, 460.675/465.675, 460.700/465.700, 460.725/465.725, 460.750/465.750, 460.775/465.775, 460.800/465.800, 460.825/465.825, 460.850/465.850, 460.875/465.875 MHz.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision.

5. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering clause

6. Accordingly, it is Ordered, effective June 6, 1986, that Part 90 of the Commission's Rules (47 CFR Part 90 is amended as set forth below. The authority for this action is found in sections 4(i), 303(c), 303(f), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(r), and 332.

List of Subjects in 47 CFR Part 90

Business radio service, Frequencies, Private land mobile radio services, Radio.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

7. The authority citation for Part 90 continues to read:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; U.S.C. 154, 303, unless otherwise noted.

8. Section 90.75 is amended by revising paragraph (c)(15), by revising the introductory text, removing the undesignated paragraph following (c)(25)(vi), revising paragraph (c)(25)(vi), and by adding new paragraphs (c)(25) (vii) and (viii) as follows:

§ 90.75 Business radio service.

* * * * *

(c) * * *

(15) Operation on this frequency in connection with the servicing and supplying of aircraft is limited to a maximum output power of 20 watts.

* * * * *

(25) Except as noted in subparagraph (vii), this frequency is available for assignment to stations located on or near airports listed in subparagraph (viii) below and may be assigned only to persons engaged in furnishing commercial air transportation service, or to a corporation or association for the purpose of furnishing radio communications service to persons so engaged in accordance with the shared use provisions of § 90.179 of the rules. Stations on this frequency may be used only in connection with the servicing and supplying of aircraft at the listed airports. Common frequency signal boosters may be employed in accordance with the following criteria:

* * * * *

(vi) If signal boosters are to be used in conjunction with other facilities, the number of such boosters must be stated on the license application.

(vii) This frequency is available for assignment to stations in the Business Radio Service for use at locations removed by 80 or more km (50 or more mi.) from the reference coordinates of the airports listed below at a maximum effective radiated power (ERP) of 300 watts. This frequency may also be

assigned to low power (2 watts or less transmitter output power) stations in the Business Radio Service for use in areas removed by 16 or more km (10 or more mi.) from the reference coordinates of airports listed below. All such low power use is restricted to the confines of an industrial complex or manufacturing yard area. Business Radio Service stations first licensed prior to April 17, 1986 may continue to operate with facilities authorized as of that date. All Business Radio Service stations on this frequency may operate only on a non-interference basis to the co-channel facilities of air carriers located on or near the airports specified below.

(viii) The airports and their respective reference coordinates are:

City and airport	Reference coordinates	
	Latitude	Longitude
Akron, OH:		
Akron-Canton Regional (CAK).	40°52'01" N	81°26'39" W
Albany-Troy - Schenectady, NY:		
Albany County (ALB)	42°44'53" N	73°48'12" W
Albuquerque,NM:		
Albuquerque International (ABQ).	35°02'30" N	106°36'33" 0
Allentown-Bethlehem, PA:		
Allentown-Bethlehem-Easton (ABE).	40°39'11" N	75°26'25" W
Anchorage, AK:		
Anchorage International (ANC).	61°10'36" N	149°59'36" W
Atlanta, GA:		
Atlanta International (ATL).	33°38'25" N	84°25'39" W
Dekalb-Peachtree (PDK).	33°52'30" N	84°16'08" W
Fulton County (FTY)	33°46'45" N	84°31'17" W
Baltimore, MD:		
Baltimore-Washington Int'L (BWI).	39°10'30" N	76°40'10" W
Birmingham, AL:		
Birmingham Municipal (BHM).	33°33'50" N	86°45'16" W
Boston, MA:		
Logan International (BOS).	42°21'51" N	71°00'21" W
Bridgeport, CT:		
Sikorsky Memorial (BDR).	41°09'48" N	73°07'35" W
Buffalo, NY:		
Greater Buffalo Int'l (BUF).	42°56'29" N	78°43'57" W
Canton, OH:		
Akron-Canton Regional (CAK).	40°55'01" N	81°26'30" W
Charlotte, NC:		
Charlotte-Douglas Int'l (CLT).	35°12'52" N	80°56'37" W
Chattanooga, TN:		
Lovell (CHA)	35°02'07" N	85°12'15" W
Chicago,IL-Northwest, IN:		
Chicago-Wheeling-Palwaukee (PWK).	42°04'06" N	87°54'03" W
Meigs (CGX)	41°51'32" N	87°36'28" W
Michiana Regional (SBN).	41°42'19" N	86°18'58" W
Midway (MDW)	41°47'10" N	87°45'08" W
O'Hare International (ORD).	41°58'46" N	87°54'16" W
West Chicago-Dupage (DPE).	41°54'52" N	88°14'47" W
Cincinnati, OH:		
Greater Cincinnati Int'l (CVG).	39°14'39" N	84°23'14" W
Lunken (LUK)	39°06'13" N	84°25'08" W
Cleveland, OH:		
Burke Lakefront (BKL)	41°31'03" N	81°41'01" W
City and airport	*Reference coordinates*	
	Latitude	*Longitude*
Cuyahoga County (CGF).	41°33'56" N	81°29'15" W
Hopkins International (CLE).	41°24'35" N	81°50'58" W
Columbus, OH:		
Port Columbus Int'l (CMH).	39°59'43" N	82°53'11" W
Dallas, TX:		
Addison (ADS)	32°58'08" N	96°50'10" W
Dallas-Ft. Worth Regional (DFW).	32°53'45" N	97°02'19" W
Dallas-Love Field (DAL).	32°50'48" N	96°51'05" W
Red Bird (RBD)	32°40'48" N	96°52'02" W
Davenport, IA (Rock Island, Moline, IL):		
Davenport Municipal (DVN).	41°36'42" N	90°36'21" W
Quad City (MLI)	41°26'56" N	90°30'35" W
Dayton, OH:		
Dayton International (DAY).	39°54'04" N	84°13'12" W
Denver, CO:		
Centennial (APA)	39°34'19" N	104°50'54" W
Colorado Springs Municipal (COS).	38°48'21" N	104°42'35" W
Denver-Jeffco (BJC)	39°54'28" N	105°26'53" W
Stapleton International (DEN).	39°46'22" N	104°52'36" W
Des Moines, IA:		
Des Moines Municipal (DSM).	41°32'00" N	93°39'38" W
Detroit, MI:		
Detroit City (DET)	42°24'33" N	83°00'36" W
Detroit Metro-Wayne County (DTW).	42°12'56" N	83°20'50" W
Oakland-Pontiac (PTK).	42°39'54" N	83°25'05" W
Willow Run (YIP)	42°14'16" N	83°31'50" W
El Paso, TX:		
El Paso International (ELP).	31°48'24" N	106°22'36" W
Flint, MI:		
Bishop (FNT)	42°57'56" N	83°44'37" W
Ft. Lauderdale-Hollywood, FL:		
Ft. Lauderdale Executive (FXE).	26°11'48" N	80°10'15" W
Ft. Lauderdale-Hollywd Int'l (FLL).	26°04'19" N	80°09'13" W
Ft. Worth, TX:		
Meacham (FTW)	32°48'09" N	97°21'44" W
Fresno, CA:		
Chandler Downtown (FCH).	36°43'58" N	119°48'06" W
Fresno Air Terminal (FAT).	36°46'36" N	119°43'02" W
Grand Rapids, MI:		
Kent County Int'l (GRR).	42°52'57" N	85°31'26" W
Hana, HI:		
Hana (HNN)	20°47'56" N	156°01'02" W
Harrisburg, PA:		
Capital City (CXY)	40°13'01" N	76°51'06" W
Harrisburg Int'l (MDT)	40°11'38" N	76°45'48" W
Hartford, CT (Windsor Locks):		
Bradley Int'l (BDL)	41°56'20" N	72°41'01" W
Hartford-Brainard (HFD).	41°44'10" N	72°39'02" W
Hilo, HI:		
General Lyman Field (ITO).	19°43'24" N	155°03'05" W
Honolulu, HI:		
Honolulu International (HNL).	21°19'20" N	157°55'37" W
Houston, TX:		
W.P. Hobby (HOU)	29°38'43" N	95°16'43" W
D.W. Hooks Memorial (DWH).	30°06'50" N	95°33'11" W
Houston Intercontinental (IAH).	29°36'56" N	95°29'48" W
Indianapolis, IN:		
Indianapolis Int'l (IND)	39°43'29" N	86°16'50" W
Jacksonville, FL:		
Craig Municipal (CRG)	30°20'10" N	81°30'53" W
Jacksonville Int'l (JAX)	30°29'33" N	81°41'24" W
Kahului, HI:		
Kahului (OGG)	20°54'07" N	156°26'06" W
Kailua-Kona, HI:		
Ke-Ahole (KOA)	19°44'08" N	156°25'06" W
City and airport	*Reference coordinates*	
	Latitude	*Longitude*
Kamuela, HI:		
Waimea-Kohala (MUE).	20°00'16" N	155°40'15" W
Kansas City, MO-KS:		
Fairfax Municipal (KCK).	39°06'30" N	94°36'14" W
Kansas City Int'l (MCI)	39°17'57" N	94°43'04" W
Kansas City Municipal Dntn (MKC).	39°07'24" N	94°35'23" W
Richard-Gebaur (GBW).	38°56'37" N	94°33'37" W
Kauna Kalai, HI:		
Molokai (MKK)	21°09'25" N	157°05'07" W
Las Vegas, NV:		
McCarran Int'l (LAS)	36°04'56" N	115°09'13" W
Lihue, HI:		
Lihue (LIH)	21°58'42" N	159°20'40" W
Los Angeles,CA:		
Burbank-Glendale-Pasadena (BUR).	34°21'52" N	118°21'27" W
Catalina (AVX)	33°24'20" N	118°24'50" W
Long Beach-Daugherty Field (LGB).	33°49'06" N	118°09'09" W
Los Angeles Int'l (LAX).	33°56'33" N	118°24'26" W
Ontario Int'l (ONT)	34°03'22" N	117°36'11" W
Santa Ana-John Wayne-Orange City (SNA).	33°40'32" N	117°52'02" W
Louisville, KY:		
Standiford Field (SDF)	38°10'48" N	85°44'11" W
Memphis, TN:		
Memphis Int'l (MEM)	35°02'58" N	89°58'43" W
Miami, FLA:		
Miami Int'l (MIA)	25°47'34" N	80°17'26" W
Opa Locka (OPF)	25°54'25" N	80°16'30" W
Tamiami (TMB)	25°38'51" N	80°25'59" W
Milwaukee, WI:		
General Mitchell (MKE).	42°56'49" N	87°53'49" W
Minneapolis-St. Paul, MN:		
Minneapolis-St. Paul (MSP).	44°53'03" N	93°12'54" W
Mobile, AL:		
Bates Field (MOB)	30°41'33" N	88°14'31" W
Nashville, TN:		
Nashville Metropolitan (BNA).	36°07'37" N	86°40'53" W
New Haven, CT:		
Tweed-New Haven Municipal (HVN).	41°15'50" N	72°53'15" W
New Orleans, LA:		
Lakefront (NEW)	30°02'38" N	90°01'41" W
New Orleans Int'l (MSY).	29°59'34" N	90°15'23" W
Newport News-Hampton,VA:		
Patrick Henry Int'l (PHF).	37°07'54" N	76°29'36" W
New York-Northeast, NJ:		
Farmingdale Republic (FRG).	40°43'43" N	73°24'50" W
JFK International (JFK).	40°38'26" N	73°46'42" W
LaGuardia (LGA)	40°46'38" N	73°52'27" W
Long Island-MacArthur (ISP).	40°47'44" N	73°06'00" W
Morristown Municipal (NJ) (MMU).	40°47'57" N	74°24'55" W
Newark Int'l (EWR)	40°41'36" N	74°10'07" W
Teterboro (NJ) (TEB)	40°51'00" N	74°03'41" W
Norfolk-Portsmouth, VA:		
Norfolk Int'l (ORF)	36°53'40" N	76°12'08" W
Oklahoma City, OK:		
Wiley Post (DWA)	35°32'03" N	97°38'46" W
Will Rogers World (OKC).	35°23'36" N	97°36'02" W
Omaha, NE:		
Eppley Airfield (OMA)	41°18'04" N	95°53'36" W
Orlando, FL:		
Orlando Executive (ORL).	28°32'42" N	81°19'58" W
Orlando Int'l (MCO)	28°25'54" N	81°19'28" W
Philadelphia, PA-NJ:		
Northeast Philadelphia (PNE).	40°04'55" N	75°00'40" W
Philadelphia Int'l (PHC).	39°52'13" N	75°14'43" W

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City and airport	Reference coordinates	
	Latitude	Longitude
Phoenix, AZ:		
Phoenix-Sky Harbor Int'l (PHX).	33°26'10" N	112°00'22" W
Scottsdale Municipal (SDC).	33°37'32" N	111°54'32" W
Pittsburgh, PA:		
Allegheny County (AGC).	40°21'17" N	79°55'49" W
Greater Pittsburgh Int'l (PIT).	40°29'30" N	80°13'55" W
Portland, OR:		
Portland-Hillsboro (HIO).	45°32'26" N	122°58'52" W
Portland International (PDX).	45°35'20" N	122°35'47" W
Portland-Troutdale (TTD).	45°32'58" N	122°24'06" W
Providence-Pawtucket, RI—MA:		
North Central State (SFZ).	41°55'15" N	71°29'30" W
T.F. Green State (PVD).	41°43'31" N	71°25'41" W
Reno, NV:		
Reno International (RNO).	39°29'52" N	119°46'54" W
Richmond, VA:		
Byrd International (RIC).	37°30'18" N	77°19'12" W
Rochester, NY:		
Rochester-Monroe County (ROC).	43°07'08" N	77°40'22" W
Sacramento, CA:		
Sacramento Executive (SAC).	38°30'45" N	121°29'33" W
Sacramento Metropolitan (SMF).	38°41'44" N	121°35'01" W
St. Louis, MO—IL:		
Spirit of St. Louis (SUS).	38°39'36" N	90°38'42" W
St. Louis-Lambert Int'l (STC).	38°44'51" N	90°21'36" W
St. Petersburg, FL:		
Albert Whitted Municipal (SPG).	27°45'53" N	82°37'39" W
Clearwater Int'l (PIE)	27°54'38" N	82°41'16" W
Salt Lake City, UT:		
Salt Lake City Int'l (SLC).	40°47'13" N	111°58'05" W
San Antonio, TX:		
San Antonio Int'l (SAT).	29°32'00" N	98°28'10" W
San Bernardino, CA:		
Ontario Int'l (ONT)	34°03'22" N	117°36'11" W
San Diego, CA:		
Lindbergh Int'l (SAN)	32°44'01" N	117°11'12" W
San Francisco-Oakland, CA:		
Metropolitan Oakland Int'l (OAK).	37°43'17" N	122°13'11" W
San Francisco Int'l (SFO).	37°37'06" N	122°23'08" W
San Jose, CA:		
San Jose Int'l (SJC)	37°21'41" N	121°55'39" W
Scranton, PA:		
Wilkes-Barre Scranton Int'l (AVP).	41°20'20" N	75°43'27" W
Seattle, WA:		
King County Int'l (BFI)	47°31'49" N	122°18'01" W
Seattle-Tacoma Int'l (SEA).	47°26'57" N	122°18'29" W
Shreveport, LA:		
Shreveport Downtown (DTN).	32°32'23" N	93°44'40" W
Shreveport Regional (SHV).	32°26'48" N	93°49'30" W
South Bend, IN:		
Michiana Regional (SBN).	41°42'18" N	86°19'09" W
Spokane, WA:		
Grant County (MWH)	47°12'26" N	119°19'08" W
Spokane Int'l (GEG)	47°37'12" N	117°31'58" W
Springfield, MA:		
Barnes Municipal (BAF).	42°09'26" N	72°42'58" W
Westover Field (CEF)	42°11'52" N	72°31'50" W
Syracuse, NY:		
Syracuse-Hancock Int'l (SYR).	43°06'44" N	76°06'32" W
Tacoma, WA:		
Tacoma Narrows (TIW)	47°16'05" N	122°34'37" W
Tampa, FL:		
Tampa Int'l (TPA)	27°58'31" N	82°32'00" W
Toledo, OH:		
Toledo Express (TOL)	41°35'15" N	83°48'19" W
Trenton, NJ-PA:		
Mercer County (TTN)	40°16'36" N	74°48'50" W
Tucson, AZ:		
Tucson Int'l (TUS)	32°07'06" N	110°56'35" W
Tulsa, OK:		
R.L. Jones, Jr. (RVS)	36°02'16" N	95°59'05" W
Tulsa Int'l (TUL)	36°11'54" N	95°53'18" W
Washington, DC:		
Dulles International (IAD).	38°56'39" N	77°27'26" W
National (DCA)	38°51'07" N	77°02'17" W
Wichita, KS:		
Mid-Continent (ICT)	37°38'06" N	97°25'58" W
Wilkes-Barre, PA:		
Wilkes-Barre-Scranton (AVP).	41°20'20" N	75°43'27" W
Wilmington, DE:		
Gr. Wilm.-New Castle City (ILG).	39°40'42" N	75°36'25" W
Worcester, MA:		
Worcester Municipal (ORH).	42°16'02" N	71°52'34" W
Youngstown-Warren, OH-PA:		
Youngstown Municipal (YNG).	41°15'32" N	80°40'34" W

* * * * *

[FR Doc. 10658 Filed 5-16-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1144

[Ex Parte No. 445 (Sub-N 1)]

Intramodal Rail Competition

AGENCY: Interatate Commerce Commission.

ACTION: Correction of final rules.

SUMMARY: On November 6, 1985, the Commission published final rules at 50 FR 46066 to govern the handling of certain competitive access issues. That notice contained an inadvertent error in new § 1144.1 which this notice corrects.

DATES: This correction is effective on publication in the **Federal Register**, May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: At 49 FR 46067, November 6, 1985, § 1144.1(b)(3) contains an error in the last sentence, which is corrected as follows:

§ 1144.1 Notification, explanation, and justification.

* * * * *

(b) * * *

(3) * * * The 49 CFR Part 1132 time periods for protests and replies apply.

* * * * *

Decided: May 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–11165 Filed 5–16–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 51180–5180]

Fishery Conservation and Management; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final initial specifications and in-season adjustments.

SUMMARY: NOAA announces the final initial specifications for 1986 and apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and its implementing regulations. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: MAy 14, 1986.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP, which was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, and which is implemented by rules appearing at 50 CFR 611.93 and Part 675. The TACs are apportioned initially among DAH, reserves, and the total allowable level of foreign fishing (TALFF). Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under §§ 611.93(b) and 675.20(b).

Interim initial specifications for 1986 were announced in the **Federal Register** on January 9, 1986 (51 FR 956) and public comments were invited. No comments on the specifications were received.

Therefore, the initial specifications as announced are hereby made final for 1986.

As soon as practicable after April 1, June 1, and August 1, or on other dates as are deemed necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and apportions to TALFF the remaining portion of the reserve that will not be apportioned to DAH. When the interim initial specifications for 1986 were announced (51 FR 956, January 9, 1986), DAH and TALFF were supplemented with 29,857 metric tons (mt) from the initial 300,000-mt reserve, thereby reducing it to 270,143 mt. In April, DAH and TALFF were supplemented by an additional 135,072 mt from the reserve, reducing it to 135,071 (51 CFR 16058, April 30, 1986). This action supplements DAH with 500 mt from the reserve.

Apportionments to DAH

In the Bering Sea, the catch of sablefish intended for domestic processing (DAP), a component of DAH, has reached 1,760 mt, only 66 mt short of the current DAP apportionment of 1,826 mt. During the first 2 months of 1986, domestic catches of sablefish in the Bering Sea exceeded 140 mt per week. Those catches included target fisheries on sablefish by three catcher-processor trawlers, three longliners, and three pot vessels. During March and April, average weekly catches dropped to about 55 mt. Although total effort remained about the same, there were far fewer instances of trawlers reporting large sablefish catches. In order to provide for continued DAP catches of sablefish at current levels of catch and effort until the June Council meeting, when the situation will be reassessed, 500 mt of the non-specific reserve is apportioned to the Bering Sea sablefish allocation for DAP, thus increasing it to 2,326 mt.

At its March meeting, the Council indicated its support for increasing the sablefish TAC for the Bering Sea to allow continued DAP fishing as long as the TAC did not exceed the current equilibrium yield of 3,000 mt. This action also increases the TAC from 2,250 mt to 2,667 mt. These changes are reflected in Table 1.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC DAH = DAP + JVP

[figures are in metric tons]

		Current	This action	Revised
Sablefish (Bering Sea Area only). Equilibrium yield = 3,000.	TAC	2,250	+417	2,667
	DAP	1,826	+500	2,326
	JVP	348		346
	TALFF	95		95
Totals (TAC = 2,000,000)	DAP	325,090	+500	325,590
	JVP	1,048,383		1,048,383
	RES	135,071	−500	134,571
	TALFF	491,447		491,447

Comments and Responses

In accordance with §§ 611.93(b) and 675.20(b), aggregated reports of U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. No comments were received.

Classification

This action is taken under §§ 611.93(b) and 675.20(b), and complies with Executive Order 12291.

In view of the notice provided in the authorizing regulations regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of U.S. and foreign fisheries and to afford a reasonable opportunity to achieve OY, the Agency has determined that providing further opportunity for public comment and delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611 and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: May 13, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-11173 Filed 5-14-86; 1:39 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 96
Monday, May 19, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Nonlawyer Representation; Meeting on Proposed Recommendation

AGENCY: Committee on Regulation; ACUS.

ACTION: Meeting to review comments and to vote on proposed recommendation.

SUMMARY: The Administrative Conference Committee on Regulation is considering a tentative recommendation on the subject of "elimination of barriers to representation by nonlawyers". This topic relates to representation by persons other than lawyers of other persons who have business with "mass justice agencies" (as that term is defined in the recommendation). The Committee will meet on May 22, 1986, to review public comments on the recommendation, and to decide whether to forward the recommendation to the full Administrative Conference for consideration at the Conference's June 19–20 plenary session.

DATE: May 22, 1986, at 9:30 a.m.

ADDRESS: 2120 L Street NW., Washington, DC. Hearing Room #1, Lower Level Floor.

Public participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The committee chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037; telephone (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Regulation is working toward development of a recommendation concerning prepresentation by nonlawyers of persons having business with mass justice (e.g., Social Security) agencies. At its meeting on March 20, 1986, the Committee gave tentative approval to a draft recommendation captioned "Elimination of Barriers to Representation by Nonlawyers".

The Committee requested comments on the tentative recommendation by Federal Register notice on April 10, 1986 (51 FR 12332). The comment period expired on May 7, 1986. The Committee will meet on May 22, 1986, to review the comments and to decide whether, and in what form, to forward its recommendation to the full Administrative Conference. The Committee will, to the extent feasible, consider any additional comments received prior to the May 22 meeting.

The Committee's tentative recommendation is based largely on a report by our consultant Zona Hostetler. Copies of Ms. Hostetler's report, *Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines*, are available on request.

Dated: May 12, 1986.

Richard K. Berg,
General Counsel.

[FR Doc. 86–11152 Filed 5–16–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 85–ANE–46]

Airworthiness Directives; Pratt & Whitney (PW) JT8D –1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking [NPRM].

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) to require eddy current inspection and subsequent replacement of stage 8–9 high pressure compressor (HPC) removable sleeve spacers with the HPC integral sleeve spacer design on certain PW JT8D engines. This NPRM would amend Final Rule AD 86–06–04, Amendment 39–5287, which requires eddy current inspection of stages 7–8 and 9–10 HPC removable sleeve spacers, and subsequent replacement of all HPC spacers with the integral sleeve design. The FAA has determined that the spacer stage 8–9 HPC is subject to the same stress levels and environment as the stage 7–8 HPC spacer, and should therefore be addressed in like manner. This NPRM is needed to prevent failure of stage 8–9 HPC removable sleeve spacers which could result in in-flight engine shutdowns, engine cowl penetrations and airframe damage.

DATES: Comments must be received on or before July 9, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Rules Docket Number 85–ANE–46, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to the above address, to Room 311. Comments delivered must be marked: Docket Number 85–ANE–46.

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be

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changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85-ANE-40." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Final Rule AD 86-06-04, Amendment 39-5287, (51 FR 12690), by adding stage 8-9 HPC removable sleeve spacers to the eddy current inspection requirements. On April 4, 1986, Amendment 39-5287 was issued requiring eddy current inspection of stages 7-8 and 9-10 HPC removable sleeve spacers, and subsequent replacement of all HPC spacers stages with the integral sleeve design on certain PW JT8D engines. Following issuance of the AD, the FAA determined that the stage 8-9 is subject to the same stress levels and environment as stage 7-8. The potential energy of the stage 8-9 spacer, imparted by the rotational velocity of the HPC rotor, is comparable to the stage 7-8 spacer. Also, analysis of the containment capability of the surrounding cases does not indicate that a stage 8-9 spacer failure is any more likely to be contained than a stage 7-8 or 9-10 spacer failure. There have been four fractures of stage 8-9, none of which penetrated the engine cowls.

Since this condition is likely to exist or develop on other engines of the same design, this notice proposes to amend Final Rule AD 86-06-04, Amendment 39-5287, (51 FR 12690), to additionally require one time, eddy current inspection of stage 8-9 HPC removable sleeve spacers in accordance with PW ASB 5648, dated January 15, 1986. The proposed amendment would also add the requirement to replace the stage 8-9 HPC removable sleeve spacers with the integral sleeve spacers at the next rotor disassembly but not to exceed 2 years or 4,000 flight cycles, whichever occurs later.

Conclusion

The FAA has determined that this proposed regulation involves approximately 1,840 engines (domestic fleet) at an approximate additional cost of 0.7 million dollars. It has been determined that few if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By amending § 39.13, Amendment 39-5287, Airworthiness Directive (AD) 86-06-04, (51 FR 12690), as follows:

(a) Amend the second paragraph following the applicability statement and compliance paragraphs (a) and (b) by inserting a comma and then "8-9" between "7-8" and "and 9-10".

(b) Amend compliance Paragraph (c) by removing "8-9,".

(c) Revise the effectivity statement at the conclusion of the amendment to read "The provisions of this amendment applicable to the stage 8-9 spacer become effective on (the effective date of the amendment). The remaining provisions of this amendment applicable to stages 7-8 and 9-10 spacers are effective on May 27, 1986."

Issued in Burlington, Massachusetts, on May 8, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-11134 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 86-AWA-25]

Proposed Alteration of Restricted Area R-6601, Fort A.P. Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the times of use of Restricted Area R-6601, Fort A.P. Hill, VA. The Department of the Army has stated that the current published time of designation is inadequate to meet their requirements and necessitates nearly continuous Notices to Airmen (NOTAMs) to permit regular daily operations during the months of March, April, October and November.

DATES: Comments must be received on or before July 7, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-25, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the

airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comment. A report summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list of future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to increase the time of designation for Restricted Area R-6601, Fort A.P. Hill, VA, by adding the months of March, April, October and November to the period published for regular daily use. The present time of designation does not meet the Department of the Army's daily requirements for R-6601 during those months, necessitating nearly continuous NOTAM's to permit regular operations in March, April, October and November. The proposal would adjust the published times to reflect actual restricted area use and would enhance aviation safety by more accurately depicting this information on appropriate aeronautical charts. During the period December 1 through February 28/29, the restricted area would continue to be activated, when needed, through NOTAM action. Section 73.66 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.66 is amended as follows:

R-6601 Fort A.P. Hill, VA—[Amended]

By removing the words "0700 to 2300 EST, June 1 through September 8; and 0700 to 2300 EST, September 9 through May 31, by NOTAM issued at least 48 hours in advance." and substituting the words "0700 to 2300 local time daily, March 1 through November 30; and 0700 to 2300 local time, December 1 through February 28/29 when activated by NOTAM at least 48 hours in advance."

Issued in Washington, DC, on May 12, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-11137 Filed 5-15-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-020]

Indiana State Plan; Eligibility for Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the Indiana State occupational safety and health plan, as administered by the Indiana Department of Labor, for a determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the Indiana plan. This notice also announces that OSHA is soliciting written public comment to afford interested persons an opportunity to present their views regarding whether or not the final State plan approval should be granted, and that interested persons may request an informal public hearing on the question of final State plan approval.

DATES: Written comments or requests for a hearing must be received by June 23, 1986.

ADDRESS: Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T-020, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the "Act"), provides that States which desire to assume responsibility

for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial-approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the withdrawal of Federal standards authority and enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for 18(e) determinations are found at 29 CFR Part 1902, Subpart D.

In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan. An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program. A final requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the Indiana Plan and its Compliance Staffing Benchmarks

Indiana Plan

On December 21, 1972, Indiana submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on April 23, 1973, a notice was published in the **Federal Register** (38 FR 10049) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons an opportunity to submit data, views and arguments in writing and to request an informal hearing concerning the plan.

Comments in response to the April 23, 1972, **Federal Register** notice were received from: The American Federation of Labor and Congress of Industrial Organizations Standing Committee on Safety and Occupational Health; Indiana State AFL–CIO; Lake and Porter Counties AFL-CIO; United Steelworkers of America, Local 1066; United Steelworkers of America, Local 1014; United Steelworkers of America, Local 6787; Allied Industrial Workers of America; AFL-CIO District 31, Local 3008; United Auto Workers, Local 1122; Hoosier Air Transport, Local Lodge 2294; International Association of Machinists, Lincoln Lodge 209; Oil, Chemical and Atomic Workers, Local 7–1; the Indiana Chamber of Commerce; the Indiana Manufacturers Association; United States Steel Corporation; and, Miles Laboratories. In addition to the comments, an informal hearing was requested. In response to these comments and questions raised by OSHA, Indiana made many significant modifications to the plan.

Consequently, the Assistant Secretary found it appropriate to afford an additional opportunity for public comment on the modifications to the plan (38 FR 26837; September 26, 1973). Comments on the plan's modifications were received from: The AFL-CIO Standing Committee on Safety and Occupational Health; the Indiana State AFL-CIO; Lake and Porter Counties AFL-CIO; United Steelworkers of America, Local 1066; United Steelworkers of America Safety and Health Department; United Steelworkers of America Steelworkers of America District 31, Subdistrict 2; Allied Industrial Workers of America; the United Paperworkers International Union; Indiana Chamber of Commerce; the Indiana Manufacturers Association; AMOS Inc.; and, the Migrant Legal Reform and Rural Development Project. Requests for an informal hearing were made by: the AFL-CIO Standing Committee on Safety and Occupational Health; the Indiana State AFL-CIO; and, the Allied Industrial Workers of America.

In further response to expressed concerns, the Governor submitted a letter of assurance to the Assistant Secretary indicating that the State's supplemental operating budget, containing an additional appropriation for the Division of Labor, would be introduced in the 1974 Indiana General Assembly. The supplemental budget, as passed in 1974, ensured an increase of 34 State inspectors under the plan, thus raising the total number of inspectors to 69 during the first year of operation.

As there were no significant objections which were outstanding to the plan, as amended, all requests for a public hearing were denied. None of the questions raised in the public comments were of such a such a nature to require a hearing.

On March 6, 1974, the Assistant Secretary published a notice granting initial approval of the Indiana plan as a developmental plan under section 18(b) of the Act (39 FR 8611). The plan provides for a program patterned in

most respects after that of the Federal Occupational Safety and Health Administration.

The plan covers all issues except private-sector maritime employment and private sector hazardous waste disposal facilities designated as Superfund sites. The Indiana Department of Labor is designated as having responsibility for administering the plan throughout the State. The day-to-day operations of the plan are directed by the Administrator of Indiana OSHA (IOSHA). The plan provides for the adoption by Indiana of all Federal occupational safety and health standards contained in 29 CFR Parts 1910, 1926, and 1928, and the legislation provides for the adoption of future Federal standards after public hearing. The plan requires employers to furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employee are required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalties are heard by the Indiana Board of Safety Review. Decisions of the Indiana Board of Safety Review may be appealed to the appropriate State District Court.

The notice of initial approval noted a few distinctions between the Federal and Indiana program. The review system for contested enforcement actions is two tiered in that (1) contests result in automatic informal review by the Commissioner of Labor with (2) further contest and review by the Review Board. The State public sector plan provides for an employer's self-inspection program. The public-sector self-inspection program was subsequently limited by IOSHA to those agencies employing a full-time, professional Safety Director; and in those agencies, IOSHA will conduct general schedule inspections, monitoring visits, investigations of fatalities and catastrophes, as well as respond to employee complaints where the employee is dissatisfied with the Safety Director's handling of his or her complaint. Monetary penalties are not included in the public sector plan.

The Assistant Secretary's initial approval of Indiana's developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart Z; 39 FR 8611 (March 6, 1974)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and submitted for OSHA approval during the developmental period ending February 25, 1977. These "developmental steps" included submission of a State poster; amendments to the Indiana Occupational Safety and Health Act; submission of documentation outlining training and refresher courses for State compliance staff; submission of documentation showing that Indiana had substantially met its initial compliance staffing commitments by providing for 14 health and 70 safety compliance officers; development of an occupational safety and health program for public employees and revision thereto with implementing regulations; promulgation of rules for on-site consultation; submission of a compliance operations manual and a revised Industrial Hygiene manual; promulgation of regulations for inspections, safety orders, and proposed penalties parallel to 29 CFR Part 1903; promulgation of regulations for recordkeeping and reporting of occupational injuries and illnesses parallel to 29 CFR Part 1904, including revised recordkeeping and reporting provisions for the public sector; promulgation of rules for variances, limitations, variations, tolerances, and exemptions, parallel to 29 CFR Part 1905; adoption of rules of procedure for the Board of Safety and Review; deletion of coverage of the maritime and longshoring issues from its plan; and submission of documentation on establishment of a Management Information System.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan element were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Indiana subpart of 29 CFR Part was amended to reflect each of these approval determinations (see 29 CFR 1952.324).

On September 24, 1981, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Indiana has satisfactorily completed all developmental steps (46 FR 49120). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Indiana plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On December 23, 1977, OSHA published notice in the **Federal Register** (42 FR 64464) requesting public comment on a petition the Agency received requesting withdrawal of OSHA approval of the State plan. The petition was submitted by the President of the Indiana State AFL–CIO and the AFL–CIO Standing Committee on Occupational Safety and Health. The United Steelworkers of America subsequently joined the AFL–CIO in its petition. The petition alleged a failure by the State to adopt required provisions by statute or regulation, a lack of compliance with substantial provisions of the plan, deficiencies in performance as compared with Federal OSHA, and, particularly, a failure to provide an adequate health program.

OSHA's initial consideration of the petition and the agency's investigation of the allegations resulted in the January 16, 1981, publication of a notice of initiation of plan withdrawal proceeding and of a 30-day period for State response to the issues (46 FR 3919). However, based on a reconsideration of OSHA's investigation findings and a determination that the evidence therein was out-dated and did not reflect current State performance, as well as on a substantial increase by the State in the number of health compliance staff, the agency published notice of March 27, 1981 (46 FR 19000), of its decision to withdraw the complaint initiating the withdrawal of the Indiana State plan.

Although OSHA has not previously entered into an operational status agreement with Indiana, in 1981 OSHA determined that such agreements should be concluded with all qualified States.

Thus, a Federal Register notice was published on June 11, 1982 (47 FR 25324), announcing that an operational status agreement has been signed on May 18, 1981, for Indiana. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Indiana plan.

On October 6, 1981, OSHA published notice (46 FR 49116) of its approval of amendments to the Indiana Occupational Safety and Health Act (IOSHA Act) which were enacted subsequent to initial approval. These amendments included provision of specific authority for an on-site consultation program, broadening of the definition of the term "employment" to include certain non-paid employees, provision that the Commissioner of Labor or his designee may enter without delay to inspect places of employment, requirement that inspectors consult with a reasonable number of employees where there is no authorized employee representative, and requirement for issuance of a failure to correct notice where a previously cited standard violation has not been abated. An additional amendment to the IOSHA Act was signed by the Governor in 1983 providing that IOSHA may not adopt or enforce provisions more stringent than corresponding Federal provisions.

Indiana Benchmarks

Under the terms of a 1978 Court Order in *AFL-CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In 1980, in response to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 81 safety and 140 health compliance officers for Indiana. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 Indiana, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 47 safety and 23 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

Determination of Eligibility

This Federal Register notice announces the eligibility of the Indiana plan for an 18(e) determination. (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The Indiana plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are prepared annually and made available to the State and to the public. The results of OSHA's most recent post-certification monitoring during the period from March 1984 through December 1985 are set forth in an 18(e) *Evaluation Report* of the Indiana Plan, which together with all other post-certification reports has been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. In January 1986, pursuant to the terms of the Court Order and the 1980 *Report to the Court* in *AFL-CIO v. Marshall*, OSHA approved revised fully effective benchmarks of 47 safety and 23 health compliance officers for Indiana, based on an assessment of State-specific characteristics and historical experience. Indiana has allocated these positions, as evidenced by the FY 1986 *Application for Federal Assistance* (and amendment thereto) in which the State has committed itself to funding the State share of salaries for 47 safety inspectors adn 23 health compliance officers. The FY 1986 application has been made part of the record in the present proceedings.

(3) Indiana participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

Issues for Determination in the 18(e) Proceedings

The Indiana plan is not at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process, to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the Indiana plan, contained in the 18(e) Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicates that the regulatory indices and criteria are being met, and the Assistant Secretary accordingly has made an initial determination that the Indiana plan is eligible for an affirmative 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative 18(e) determination to Indiana. In order to encourge the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variences. Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate standards and amendments which are at least as effective as the Federal standards. See §§ 1902.37(b)(3); 1902.3(c); 1902.4(a) and (b). The Indiana plan provides for adoption of standards that are at least as effective as Federal standards. The State has generally adopted standards which are identical to Federal standards.

While past evaluations have shown IOSHA adopts standards in timely manner, during the evaluation period the State adopted five of eight required standards actions in a timely manner. There were minor delays ranging from two to four months in adopting OSHA's permanent standard for Ethylene Oxide and an amendment thereto and an amemdment to OSHA's Commercial Diving standard. The delays were occasioned by the departure from IOSHA of the individual assigned responsibility for preparation of standards promulgation packages and a reorganization to reassign these responsibilities, as well as by the subsequent illness of the individual now assigned this responsibilty. The temporary problem causing the standards delays was resolved by the end of the evaluation period and the State is now current in its adoption of required standards. (18(e) Evaluation Report, pp. 83–84.)

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure coverage at least as effective as comparable Federal standards. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement

stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1902.4(a), and 1902.4(b)(2). As already noted, the Indiana plan provides for adoption of standards which are at least as effective as the Federal standards. Indiana likewise adopts standards interpretations which are as effective as the Federal.

The State is required to take the necessary administrative, judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is adopted from Federal standards or developed by the State. See § 1902.37(b)(5). The Indian Court of Appeals found one State standard (identical to Federal OSHA's 29 CFR 1926.501(a)) impermissibly vague during a review of a contested case. Federal OSHA's Solicitors reviewed the decision of the Indiana court which affected a standard relating to employee exist(s) from elevated ramps. Although in their opinion, the Court's adverse decision did not render the IOSHA standard or the State program less effective than OSHA's, the Indiana OSHA officials appealed the case to the State's Supreme Court. At the end of the evaluation period, the case was still awaiting hearing. (18(e) *Evaluation Report*, p. 84.)

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if a permanent variance had not been granted. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). Indiana's regulations and procedures governing actions on permanent variances are equivalent to the Federal. The 16 permanent variances granted during the evaluation period were granted in a timely manner in accordance with approved State procedures and were deemed to provide equivalent protection. (18(e) *Evaluation Report*, p. 88.)

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The State's temporary variance procedures are comparable to the Federal. There were no temporary variances granted by Indiana during the evaluation period.

(b) Enforcement. Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA; section 18(c)(3) requires the State plan to provide for right of entry and inspection of all workplaces at least as effective as that in section 8 of the Act.

The State inspection program must provide that sufficient resources be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Indiana's targeting system is similar to the Federal system. Data contained in the 18(e) evaluation indicate that 98.7% of State programmed safety inspections and 99.3% of State programmed health inspections were conducted in high hazard industries. (18(e) *Evaluation Report*, p. 30).

In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3(e), and 1902.4(c)(2) (i) and (ix). Indiana law allows the IOSHA to apply for a warrant from the State courts to permit entry into an establishment that has refused entry for the purpose of inspection or investigation. The State successfully obtained warrants for all of the 155 denials of entry during the evaluation period. (18(e) *Evaluation Report*, p. 38).

Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2).

Procedures for the IOSHA compliance program are set out in the Indiana *Field Operations Manual*, which is patterned after the Federal manual, and thus the State follows inspection procedures, including documentation procedures, which are similar to the Federal. The Evaluation Report notes adherence to these procedures. ISOHA cites an average of 3.5 violations on programmed safety inspections with citations and 2.5 violations on programmed health inspections with citations, and 25.5% of safety and 26.5% of health violations are cited as serious, performance comparable to Federal OSHA during the evaluation period. (*Evaluation Report*, p. 43.)

State plans must include a prohibition on advance notice, and exceptions to this prohibition must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). Indiana has adopted procedures governing advance notice which are comparable to OSHA's. The 18(e) Evaluation Report (p. 39) notes that no advance notice of inspection was provided to employers during the period.

State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See §§ 1902.4(c)(2)(i) through (iii). Although IOSHA has a procedure similar to OSHA's for handling non-formal complaints by a letter to the employer, it responded by inspection to a greater extent than OSHA during the evaluation period (70.4% of safety complaints and 61.7% of health complaints received by the State were responded to by inspection). Complaint response was timely. (18(e) *Evaluation Report*, pp. 33–35.)

In addition, Indiana's law and procedures provide for employee participation in inspections. Employees either exercised their right to accompany the inspector or were interviewed on the walkaround in 88.1% of initial inspections. The remaining 11.9% of initial inspections were records inspections, in accordance with Indiana's adoption of the Federal OSHA policy. In these cases, since no inspection was conducted, no employee representatives were available. The report concludes that Indiana's efforts in apprising employees of their rights, and providing them with the means to exercise their rights, have been successful. (18(e) *Evaluation Report*, pp. 39–42.)

State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). The Indiana Act and regulations provide for discrimination protection equivalent to that provided by Federal OSHA. During the evaluation period, the State investigated 37 discrimination complaints in a timely manner. Of the investigated complaints, 17% were found to have merit; all were settled administratively. (18(e) *Evaluation Report*, pp. 89–91.)

The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi).

Indiana's lapse time from inspection to issuance of citation has averaged 14 days for safety and 30 days for health, both of which exceed Federal performance during the period. (18(e) *Evaluation Report*, pp. A–19.)

The State must propose penalties in a manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c)(2) (x) and (xi).

Indiana's procedures for calculation of penalties are comparable to Federal OSHA's. The 18(e) evaluation indicates that average proposed penalties for serious violations were $153 for safety and $305 for health. (18(e) *Evaluation Report*, pp. A–14, 15.)

The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c)(2) (vii) and (xi). Indiana conducts a proportionately greater number of follow-up inspections to assure abatement of cited violations (12.5% of not-in-compliance inspections) that does Federal OSHA. State abatement periods average 8.8 days for serious safety and 37.4 days for serious health violation. (18(e) *Evaluation Report*, p. 51.)

Wherever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). The 18(e) *Evaluation Report* for Indiana found no adverse adjudications which could result in program deficiencies.

(c) Staffing and Resources. A State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1); 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(i). As discussed above, the Indiana plan provides for 47 safety compliance officers and 23 industrial hygienists as set forth in the Indiana FY 1986 grant. This staffing level meets the approved revised fully effective benchmarks for Indiana for health and safety staffing, as discussed elsewhere in this notice. The State provides a comprehensive training program for new compliance personnel and refresher and specialized training for experienced staff, which includes attendance at the OSHA Training Institute and in-house and field training exercises. (18(e) Evaluation Report, p. 77–79.) During the evaluation period, State safety and health inspectors received, on the average, over 80 hours of formal training. (18(e) *Evaluation Report*, p. 80).

(d) Other requirements. States which have approved plans must maintain a safety and health program for State and local government employees which must be as effective as the State's plan for the private sector. See section 18(c)(6) of the Act and § 1902.3(j). Indiana's plan provides a program in the public sector separate from that in the private sector, but which is patterned after the private-sector program with the exception that monetary penalties are not utilized. In addition to the full-time safety inspectors assigned to public-sector activities, the program is supplemented with the services of industrial hygienists from the Bureau of Industrial Hygiene, who are assigned to handle health-related programs in State and local government agencies. (18(e) Evaluation Report, p. 58.) Injury and illness rates for State and local government employment (1984: all case rate 5.9; lost workday case rate 2.6) are lower than those for the private sector. However, the State government lost workday case rate rose slightly (from 2.5 to 2.6) in 1984, while the private sector rate had a slightly higher increase (from 3.1 to 3.3). (18(e) *Evaluation Report*, pp. 20, 25–26.)

As a factor in its 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). The 1983 and 1984 Bureau of Labor Statistics injury and illness rates for Indiana (private sector all case rate for 1983, 7.3; 1984, 7.7; lost workday case rate for 1983, 3.1; 1984, 3.3) were the same as or lower than rates in States where Federal OSHA provides enforcement coverage. In 1984, the all case incidence rates and the lost workday case rates for the private sector, manufacturing and construction experienced a modest increase in Indiana; however, the rate of increase was within the acceptable range established under OSHA's State Plan Activity Measures and the absolute rates in each case for 1984 were the same as or lwoer than corresponding rates in Federal States. However, while the percent change in lost workday cases for three of the State's five most hazardous industries was within the acceptable range as compared to the change in rates under Federal jurisdiction, the rate change in the two lowest ranked industries of the five exceeded the acceptable range. The relatively greater increase from 1983 to 1984 in lost workday case rates in these two industries (fabricated metal products, Standard Industrial Classification (SIC) 34; and, furniture and fixtures manufacturing, SIC 25) in Indiana is attributed to a greater increase in employment levels in these SIC's in Indiana when compared to States under Federal OSHA jurisdiction for the same period. Indiana workers employed in SIC 34 increased by 11.5% and hours worked increased by 11.6% in 1984, while employment and hours worked increased by only 3.2% and 5.0%, respectively, in States under Federal jurisdiction. In SIC 25, Indiana employment increased by 11.3% while increasing by 8.1% in Federal jurisdiction States, and the absolute rate in this industry is lower in Indiana (6.5). (18(e) Evaluation Report, pp. 18–20.)

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.3(1). Indiana employer recordkeeping requirements are substantially equivalent to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System as a means of providing reports on its activities to OSHA.

Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. The 18(e) Evaluation Report (p. 80) notes that the State conducts a comprehensive training and education program covering the private and public sectors. Training sessions for employers, employees and labor representatives have included seminars on general safety and health regulations, specific subjects such as forklift operations, machine guarding, flammable and combustible liquids, and hazard communication requirements. (18(e) Evaluation Report, p. 80.)

Indiana administers under its State plan a consultation program for both private and public sector employers and employees, designed to supplement the enforcement efforts of the safety and health compliance officers, with a field staff of 11 safety and three health consultants. During the last 12 months of the evaluation period, IOSHA received and responded to 587 requests for

consultations. Consultants observed an average of six violations per visit.

As part of its consultation program, Indiana also offers exemptions from general schedule inspections to companies which meet certain prerequisites, similar to the exemption program implemented by Federal OSHA for companies receiving consultations under section 7(c)(1) of the Act. In the twelve month period between October 1984 and September 1985, IOSHA received 468 requests for exemption from general schedule safety inspections. IOSHA granted 346 of these requests, denied 32, and the balance were pending at the time of Federal review.

OSHA conducted a special study of the State's inspection exemption program consisting of a review of 60 case files on companies which were granted and 32 companies which were denied exemptions. The review disclosed principally that more than half of the files on the 60 exempted companies contained some deficiency in documentation and that employee interviews and injury and illness rates were used inconsistently.

The problems identified in case file reviews were further investigated in on-site visits to ten exempted companies with high lost workday incidence rates. In the Federal monitors' judgment, three of the ten companies visited did not have all of the required exemption prerequisites implemented.

The OSHA Regional Administrator reviewed the special study findings with the Indiana Commissioner of Labor, and in response to OSHA recommendations, IOSHA instituted a series of actions to correct the deficiencies and to prevent their recurrence including establishment of clear guidelines, intensive training, hiring a new field supervisor, and closer supervisory review of case files, as discussed in the 18(e) Evaluation Report. In addition, IOSHA terminated the exemption status of the three questionable companies and obtained the information to complete the files on the 32 cases with inadequate documentation. Additionally, IOSHA conducted an internal audit of companies granted exemptions in 1985 and 1986, and as a result completed documentation in deficient files and identified three additional companies with high injury rates whose exemptions will be terminated.

Based on the remedial action undertaken by IOSHA to correct deficiencies in the inspection exemption through the consultation program, OSHA believes that IOSHA meets all criteria for an acceptable voluntary compliance program. (18(e) Evaluation Report, pp. 73–77.)

Effect of 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Indiana plan, as provided by section 18(e) of the Act and 29 CFR 1902.42(c). Indiana does not cover safety and health in private-sector hazardous waste facilities designated as Superfund sites, or in private sector maritime activities (enforcement of occupational safety and health standards comparable to 29 CFR Parts 1915, 1917, 1918 and 1919, as well as provisions of general industry standards (29 CFR 1910) appropriate to hazards found in those employments). Thus, Federal coverage of Superfund sites and private sector maritime employment would be unaffected by an affirmative 18(e) determination. In the event an affirmative 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the Federal Register in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to discrimination complaints under section 11(c) of the Act remains in effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that if the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart Z of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the Indiana plan, would be amended to reflect the 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the Indiana 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N–3670, Docket No. T–020, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Regional Administrator, U.S. Department of Labor, OSHA, 32nd Floor, Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604.

Indiana Department of Labor, 1013 State Office Building, 100 North Senate Avenue, Indianapolis, Indiana 46204.

To date, the record on final approval determination includes copies of all Federal Register documents regarding the plan including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and approval of various standards, developmental steps, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1986 Federal grant; and the March 1984 through December 1985 18(e) *Evaluation Report* and all previous, post-certification reports.

Public Participation

Request for Public Comment and Opportunity to Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by Indiana of the requirements of section 18(c) of the Act and all the specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the 15 factors in 29 CFR 1902.37(b)(1–15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, and criteria and factors presented in 29 CFR Part 1902, as they apply to the Indiana State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this proposed 18(e) determination. These comments must be received on or before June 23, 1986 and submitted in quadruplicate to the Docket Officer, Docket No. T–020, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of Indiana will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.30(f), interested persons may request an informal hearing concerning the proposed 18(e) determination. Such requests also must be received on or before June 23, 1986 and should be submitted in quadruplicate to the Docket Officer, Docket T–020, at the address noted above. Such requests must present particularized written objections to the proposed 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–3670, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Indiana under any new or different requirements, nor would any additional burden by placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 9th day of May 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 86–11233 Filed 5–16–86; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCD7 86–16]

Regatta; Apache Offshore Challenge Powerboat Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to close for three hours on 27 September 1986, the waters of Government Cut in the Port of Miami and further restrict the waters one nautical mile offshore from the City of Miami Beach, from one quarter nautical mile south of Bakers Haulover to one nautical mile south of theMiami seabuoy and two nautical miles offshore from Fisher Island affecting the approaches to the Miami ship channel and the Port of Miami. The consideration is due to an APPLICATION FOR APPROVAL OF MARINE EVENT (CC–4423) received from the Offshore Power Boat Racing Association, Inc. (OPBRA) on 4 April 1986.

DATES: Comments must be received on or before July 29, 1986.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group Miami. The comments and other materials referenced in this notice will be available for inspection and copying at 100 MacArthur Causeway, Miami Beach, Fl. 33139. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer T.C. Small; (305) 535–4304.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CCGD7 86–16 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Additionally, a public hearing will be held in the City of Miami Beach Commission Chambers located at 1700 Convention Center Drive, on May 29, 1986, from 1:00 to 3:00 p.m., to allow interested persons the opportunity to make oral presentations which will aid the rulemaking process.

Drafting Information

The drafters of this notice are Chief Warrant Officer T.C. Small, project officer, U.S. Coast Guard Group Miami and Commander K.E. Gray, project attorney, Seventh, Coast Guard District Legal Office.

Discussion of Proposed Regulations

The proposed event is designed to benefit the cities of Miami and Miami Beach and to promote commerce, power boat racing, spectator interest, tourism and governmental cooperation. The closure of Government Cut and the Port of Miami is viewed as a major logistical undertaking. However, after initial meetings and discussions with the Port of Miami Operations Office, Florida Marine Patrol, City of Miami Beach Police Chief, local Congressional office and numerous commercial and private interests in the port, no adverse comments have been received to date. Private vessel movements will only be slightly inconvenienced and then only for three hours. The agreed upon race course was intentionally designed so as not to interfere with areas on the western end of Government Cut turning basin and more specifically the nearby Atlantic Intercoastal Waterway (ICW), thus allowing north/south ICW traffic and providing for alternate routes to the Atlantic Ocean in nearby areas. A minimum of prior planning by commercial vessel operators will enable them to adjust their schedules during the event, with little or no inconvenience. The public notice and an open public hearing will allow all concerned parties an opportunity to be part of the rule making process and to further solicit comments. The sponsor of the proposed event envisions the race as an eventual annual event, paralleling that of the Miami Grand Prix auto race and is carefully nurturing commercial,

governmental, political and private part support and enthusiasm. In order to provide for the safety of both participants and spectators, the regulations as set forth in paragraph 2. of the proposed regulations herein, shall be implemented should this rule become final and the proposed event permitted.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 100.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Further, sufficient advance notice is being given to all commercial, governmental and private interests in the affected areas. The proposed closure of Government Cut, the Port of Miami, port approaches and the other affected areas will not exceed three (3) hours. A comprehensive mailing list to all concerned parties was developed and provides for the individual notification of those parties, allowing and soliciting any objections caused by the proposed regulation. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

PART 100—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35–716 is added to read as follows:

§ 100.35–716 Port of Miami approaches, waters of Government Cut and Waters off the City of Miami Beach, FL.

(a) *Regulated Area.* All navigable waters (Chart 11466) from shoreline at 25–53.8N south of Bakers Haulover, 090 degrees true to 25–53.7N/80–08. 1W, thence southward to 25–45.6N/80–05.6W, thence 195 degrees true to 25–44.8N.80–06.0W, thence 292 degrees true to the eastern tip of the Port of Miami entrance channel south jetty and all waters within Government Cut proper and westward to a line between the northwestern most end of Dodge Island and the southwestern corner of the Chalk's Airline ramp.

(b) *Special Local Regulations.* (1) Entry into the restricted area is prohibited unless authorized by the patrol commander.

(2) Participating race vessels will be departing and entering the regulated area in two locations known as the "outbound and inbound slots" and identified by large orange markers. Spectator vessels may observe the race from outside of the regulated area. Spectator vessels may not congregate at the outbound or inbound slots.

(3) No vessel shall anchor or moor within the restricted area unless authorized to do so by the patrol commander. Commercial vessels already moored or anchored will be allowed to remain in position at their moorings or anachorage at the discretion of the patrol commander.

(4) The waters of Government Cut and those adjacent waters providing access into the cut will be closed to all non-participating waterborne traffic during this event. Emergency vessels will be allowed to enter the regulated area with the prior coordination and permission of the patrol commander.

(5) A succession of not less than 5 short whistle or horn blasts will be the signal for any non-participating vessels to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately. (46 U.S.C. 454; 49 U.S.C. 1655(b), 49 CFR 1.46(b); and 33 CFR 100.35)

(c) *Effective date/times.* These regulations become effective on 27 September 1986 from 1100 to 1400 local time.

Dated: May 7, 1986.

R. P. Cueroni,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 86–11196 Filed 5–16–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 115

[CGD 81–057]

General Bridge Permit Program Regulations; Correction

AGENCY: Coast Guard, DOT.

ACTION: Supplementary notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to the supplementary notice of proposed rulemaking on the General Bridge Permit program that appeared at page 15503 in the Federal Register of Thursday, April 24, 1986, (51 FR 15503). The action is necessary to add the "ADDRESSES" section, which was inadvertently omitted from the supplementary notice, and to insert the name of the newly assigned person to contact for further information.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Thompson (202) 755–7620.

Accordingly, the Coast Guard is correcting FR Doc. 86–9201 appearing on page 15503 in the issue of April 24, 1986, to read as follows:

1. On page 15503 after the "DATE" paragraph, add the following paragraph:

ADDRESSES: Comments should be mailed to Commandant (G–CMC/21) (CGD 81–057), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593. Comments are available for inspection or copying at the Office of the Marine Safety Council, Room 2110, at the above address, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays. The telephone number is (202) 426–1477.

2. On page 15503 in the "FOR FURTHER INFORMATION CONTACT" paragraph, "Mr. Jerome D. Schwartz" is corrected to read "Mr. Mark Thompson."

Dated: May 8, 1986.

W.J. Brogdon, Jr.,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 86–11017 Filed 5–16–86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Trust Property or Interest

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: This Office is proposing to add a new regulation allowing persons receiving Indian trust property or an interest in such property either under a will or through interstate succession to renounce succession to that property or interest in property. A conforming amendment is proposed to clarify that the office's Administrate Law Judges (Indian Probate) have authority to accept such a renunciation of interest. A

second amendment to the regulation setting forth the general authority of Administrative Law Judges (Indian Probate) is also proposed. The second amendment would explicitly provide authority for the partial distribution of estates when a potential heir or devisee is missing and cannot be located.

DATE: Comments on the proposed rule must be received by June 18, 1986.

ADDRESS: Comments may be mailed to Bruce A. Johnson, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Bruce A. Johnson, Deputy Director Office of Hearings and Appeals, (703) 235–3810.

SUPPLEMENTARY INFORMATION: Based upon its experience in probating Indian trust estates, this Office has observed that allowing renunciations of Indian trust company or interests in such property would frequently be in the best interests of an Indian decedent's survivors. Often property passes to individuals who either do not want it or believe that another person needs or deserves it more. When property passes to a non-Indian, it loses its Indian trust status, often to the detriment of all persons concerned.

Therefore, it is proposed that a new regulation providing a consistent mechanism for renunciations be adopted. The proposed rule is intended to be lenient, with few mandatory procedural requirements, so that it will be easy to use, while still ensuring that the person renouncing both understands and intends the results.

A proposed conforming amendment to 43 CFR 4.202 would show that the office's Administrative Law Judges (Indian Probate) have authority to accept such renunciations.

A second amendment is also proposed to 43 CFR 4.202 that would explicitly provide for partial distribution of Indian trust estates when a potential heir or devisee is missing and cannot be located. The lack of such explicit authority has resulted in delay in the distribution of interests in Indian trust estates to those determined entitled to receive interests. Such unnecessary delay is not in accordance with the Department's trust responsibility to Indians. This amendment conforms with recent decisions of the Interior Board and Indian Appeals (IBIA) and the Director of the Office of Hearings and Appeals. On October 10, 1985, the IBIA held in *Estate of Frances Ingeborg Conger (Ford)*, 13 IBIA 296, 92 I.D. 512 (1985), that the Department has the authority to allow partial distribution of an Indian decedent's trust estate when a potential heir or devisee cannot be located. This decision was reviewed by the Director and his decision of December 30, 1985, held that an Administrative Law Judge (Indian Probate) possesses authority to decree such distribution. *Estate of Frances Ingeborg Conger (Ford)* (On Review By Director), 13 IBIA 296, 92 I.D. 634 (1985).

The Department of the Interior has determined that neither rule is a major rule under E.O. 12291 and certifies that they will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This determination is based on the fact that the new regulations concern only procedures for distributing the trust estates of certain deceased Indians.

Paperwork Reduction Act. These rules do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rules do not constitute major Federal actions significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321–4347).

The rules were written by Paul T. Baird, Director, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians, Indians—Lands.

Dated: April 14, 1986.

Paul T. Baird,

Director.

43 CFR Part 4, Subpart D, is proposed to be amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 50 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

2. In § 4.202 the first sentence is proposed to be revised to read as follows:

§ 4.202 General authority of administrative law judges.

Administrative law judges shall determine the heirs of Indians who die intestate possessed of trust property, except as otherwise provided in §§ 4.205(b) and 4.271; approve or disapprove wills of deceased Indians disposing of trust property; accept or reject full or partial renunciations of interest in both testate and intestate proceedings; allow or disallow creditor's claims against estates of deceased Indians; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living.* * *

3. A new § 4.206 is proposed to be added to read as follows:

§ 4.206 Renunciation of interest.

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the administrative law judge prior to entry of the administrative law judge's final order. No interest in the property so renounced is considered to have vested in the heir or devisee and the renunciation is not considered a transfer by gift of the property renounced, but the property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in accordance herewith shall be considered accepted when implemented in an order by an administrative law judge and shall be irrevocable thereafter. All disclaimers or renunciations heretofore filed with and implemented in an order by an administrative law judge are hereby ratified as valid and effective.

[FR Doc. 86–11197 Filed 5–16–86; 8:45 am]

BILLING CODE 4310–10–M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC–178; Sub-1]

Response to Petition for Investigation of Insurance Surcharges

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition filed by the Owner-Operator Independent Drivers Association of America, Inc., (Association), the Commission has instituted a rulemaking proceeding to determine whether carriers should be

prohibited from excluding revenues earned under insurance-related surcharges from computation of gross revenues. The Association seeks to ensure that owner-operators will share in the added revenues. The Interstate Carriers Conference replied in opposition and argues that adopting any rule defining gross revenues under the leasing regulations would be equivalent to the Commission regulating compensation paid to owner-operators in contravention of the holding in *Central Forwarding, Inc.* v. *ICC*, 698 F.2d 1266 (5th Cir. 1982). Comments are invited on the legal and policy issues raised in the petition and the reply.

DATES: Comments are due June 18, 1986.

ADDRESS: Send comments (original and 10 copies) to: Ex Parte No. MC–178 (Sub-No. 1), Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Mark S. Shaffer, (202) 275–7805 or Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2229, 12th and Constitution Ave., NW., Washington, DC 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

Energy and Environmental Considerations

This action does not appear to significantly affect either the quality of the human environment or conservation of energy resources. Comments on these issues are welcome.

Initial Regulatory Flexibility Analysis

Under 5 U.S.C. 601 *et seq.* we are required to analyze the potential impact of proposed rules on small entities.

We preliminarily conclude that, if the Commission were to adopt a rule requiring insurance surcharges to be included in carriers' computation of gross revenues, such a rule would not have a significant economic impact upon a substantial number of small entities inasmuch as it would not affect substantially the costs of doing business or costs involved in paying owner-operators. We are unaware of any regulatory burdens imposed by the proposal or of any alternative to the proposal that would result in a lesser burden on small entities. Comments on this issue are welcome.

Authority: 49 U.S.C. 10101, 10321, 11701, 10762, 10927; 5 U.S.C. 553.

Decided: May 8, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison Commissioner Andre dissented with separate expressions.

James H. Bayne,

Secretary.

[FR Doc. 86–11104 Filed 5–16–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

[Docket No. 86–03; Notice 1]

Vehicle Identification Number—Content Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice of proposed rulemaking is to propose an amendment to 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*. The amendment would change Table I which specifies, for each type of vehicle, the vehicle attributes which are required to be coded into the 17-character vehicle identification number (VIN). The rquirements that a "series" designation for trailers and a brake system for incomplete trailers be coded into the VIN would be deleted. This proposal is made in response to a petition from the Truck Trailer Manufacturers Association. The agency believes that this amendment is consistent with the purpose of this regulation which is to simplify vehicle identification information retrieval and increase the accuracy and efficiency of vehicle defect recall campaigns.

DATE: Comments must be received on or before July 18, 1986. The proposed effective date is upon publication of a final rule.

ADDRESS: Comments should refer to the docket and notice number stated above and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–426–2154).

SUPPLEMENTARY INFORMATION: Part 565, *Vehicle Identification Number—Content Requirements*, specifies the format and content for a vehicle identification number (VIN) system to simplify vehicle identification information retrieval and increase the accuracy and efficiency of vehicle defect recall campaigns. The physical requirements for a VIN are contained in Standard No. 115, *Vehicle Identification Number—Basic Requirements*. Under this standard, each vehicle must have a VIN assigned by its manufacturer. The standard also requires that each VIN have 17 characters.

In establishing the VIN content requirements, Part 565 divides the 17-character VIN into four sections. The proposed amendment would affect only the second section. This section consists of five characters which occupy positions four through eight (4–8) in the 17-character VIN. These five characters are used to identify uniquely the attributes of different types of vehicles as specified in Table I.

Table I specifies the information which must be decipherable from the numerals or letters in the second section according to the type of vehicle. For a trailer or trailer kit, the five characters currently must identify the type of trailer, series, body type, length, and axle configuration.

The Truck Trailer Manufacturers Association (TTMA) has submitted a petition for rulemaking requesting two revisions to Table I. The first would delete the requirement that a series be specified in the second section of the VIN for trailers. TTMA states that a survey of their trailer manufacturing members indicates that the term "series" is not applicable to truck trailers. The agency understands this statement to mean that trailer manufacturers do not divide their product line into series, as, for example, automobile manufacturers do. TTMA states in its petition that trailers are sufficiently designated by type, body type, length, and axle configuration. Therefore, requiring a series designation in trailer VIN's may not simplify vehicle identification information retrieval or contribute to the accurate identification of particular trailers.

The result of this proposed change would be that trailer manufacturers would have five characters with which to describe the four attributes listed above. Part 565.4 now states that a manufacturer may determine the characters utilized and their placement within the second section of the VIN. Therefore, if this amendment were adopted, a manufacturer could use two characters to indicate any one of these attributes. The agency's experience with

the information provided by trailer manufacturers to decipher the data coded into the VIN indicates that this proposed change could enable manufacturers to describe trailer attributes more accurately.

If this proposal were adopted, trailer manufacturers would not be required to code any new information into the VIN, but could delete the information about a "series" in the second section of the VIN. Therefore, trailer manufacturers would have to submit revised deciphering information for the second section of the VIN, if they delete the information on "series" or if they change the coded information on the remaining four attributes. This information would be required to be submitted on a one-time basis after the effective date of this proposed rule. If trailer manufacturers decide not to change the information now coded into the second section of the VIN, no submission would be required.

TTMA's second request was that Table I be amended to remove the requirement for incomplete trailers to have the brake system indicated in the second section of their VIN. Currently, Table I sets forth five attributes which must be encoded in the VIN for any type of incomplete vechicle, including trailers. These attributes are model or line, series, cab type, engine type, and brake system. Most of these attributes may be inappropriate for trailers. TTMA requests that Table I be amended to state that the same attributes be encoded for incomplete trailers as for complete trailers. Thus, this proposal would amend Table I to require that the same information be encoded in the VIN for complete and incomplete trailers, i.e., type, body type, length, and axle configuration. The incomplete vehicle category would be modified to state that it no longer includes incomplete trailers. Incomplete trailer manufacturers would be required to submit revised deciphering information for the second section of the VIN, on a one-time basis after the effective date, because the four attributes would be different from the five attributes now required to be coded into the second section of the VIN.

In addition, the agency proposes a technical correction to Table I which would remove the reference to footnote 1 after axle configuration in the list of trailer attributes. This footnote reference is incorrect because the footnote concerns engine net brake horsepower.

Since this proposal would relieve a restriction by reducing the information which Part 565 requires to be coded into the VIN, the agency believes that making the amendments effective on the publication date of a final rule would be appropriate.

Comments are requested on these proposed changes in the content requirements of Part 565.

Paperwork Reduction

The VIN information requirements in this proposal are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Costs and Other Effects

The agency has evaluated the economic and other effects of this proposed rule and determined that they would be neither major as defined by Executive Order 12291 nor significant as defined by the Department's Regulatory Policies and Procedures. The agency concludes that the economic and other consequences of the amendment would be so minimal as not to require the preparation of a full regulatory evaluation. Trailer manufacturers would have to submit revised deciphering information for the second section of the VIN, only if they decide to revise the information now coded into the second section of the VIN. The submission would be made on a one-time basis, for trailers manufactured after the effective date. The only change would be a slight modification in the details of part of that information. The agency estimates that the administrative and cost burdens on trailer manufacturers to prepare the VIN deciphering information would be slight. Similarly, the government cost to process and store this revised information would be minimal.

The agency has considered the effects of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Trailer manufacturers which are small businesses would have the minor, one-time cost of preparing and submitting modified deciphering information for the VIN's on trailers manufactured after the effective date. Thereafter, deciphering information would have to be submitted only when other manufactering changes occur, such as the production of a new vehicle type. This proposal would make small modifications in the description of that information to reflect trailer characteristics more closely, but would make no change in the basic administrative or cost burdens. Small organizations and small government jurisdictions would not be affected because the prices of new trailers would not be changed.

Finally, the agency has analyzed this amendment for purposes of the National Environmental Policy Act and determined that this proposal would not have a significant effect on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection

in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 573

Imports, Motor vehicle safety, Motor vehicles.

To accomplish the changes outlined above, the agency would amend Part 565, *Vehicle Identification Number—Content Requirements*, in Title 49 of the Code of Federal Regulations, as follows:

PART 565—[AMENDED]

1. The authority citation for Part 565 would be revised to read as follows:

Authority: 15 U.S.C. 1395, 1397, 1401, 1407, and 1412; delegation of authority at 49 CFR 1.50.

§ 565.4 [Amended]

2. Table I in § 565.4 would be revised to read as follows:

Table I—Type Of Vehicle And Information Decipherable

Passenger car: Line, series, body type, engine type,[1] and restraint system type.

Multi-purpose passenger vehicle: Line, series, body type, engine type,[1] gross vehicle weight rating.

Truck: Model or line, series, chassis, cab type, engine type,[1] brake system and gross vehicle weight rating.

Bus: Model or line, series, body type, engine type,[1] and brake system. Trailer, including trailer kit and incomplete trailer: Type of trailer, body type, length, and axle configuration.

Motorcycle: Type of motorcycle, line, engine type,[1] and net brake horsepower.[1]

Incomplete vehicle other than trailer: Model or line, series, cab type, engine type,[1] and brake system.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-11221 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-59-M

[1] Engine net brake horsepower when encoded in the VIN shall differ by no more than 10 percent from the actual net brake horsepower, shall, in the case of motorcycle with an actual net brake horsepower of 2 or less, be not more than 2; and shall, in the case of a motorcycle with an actual brake horsepower greater than 2, be greater than 2.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Establishment of Regulations for Subsistence Harvest of Migratory Birds in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rules.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) intends to propose regulations governing subsistence harvest of migratory birds in Alaska. These regulations will be based on provisions for such harvest in various laws, including the Fish and Wildlife Improvement Act of 1978. It is intended that the regulations will be adopted by spring of 1987, and that they will provide standards for managing subsistence harvest of migratory birds in Alaska so as to preserve and maintain their stocks.

DATE: Comments must be received on or before July 3, 1986.

ADDRESS: Comments should be addressed to: Regional Director (Attn: Robert Leedy, Wildlife Assistance), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Telephone: (907) 786-3443.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Leedy or Mr. Richard Pospahala, Wildlife Assistance, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Telehone: (907) 786-3443.

SUPPLEMENTARY INFORMATION: Since 1984, the Fish and Wildlife Service has regulated the subsistence harvest of migratory waterfowl in the Yukon-Kuskokwim Delta region in southwestern Alaska pursuant to cooperative management plans signed by representatives of the Service, the Alaska Department of Fish and Game, Alaska Natives, and the California Department of Fish and Game. The legality of these plans was challenged in *Alaska Fish and Wildlife Federation and Outdoor Council, Inc., et al.* v. *Jantzen, et al.*, No. J84-013 CIV (D. Alaska). On January 24, 1986, the court ruled that:

Until such time as the Secretary of the Interior adopts regulations pursuant to section 3(h)(2) of the Fish Wildlife Improvement Act, the Congress has authorized Alaska Natives to harvest migratory waterfowl under the Alaska Game Act of 1925 (as amended) during any season of the year, including but not limited to spring and summer months, when they or members of their family are in need of food and other sufficient food is not available.

The court stated that this authorization extends to taking for nutritional needs but not to taking for cultural purposes.

Section 3(h)(2) of the Fish and Wildlife Improvement Act of 1978 (FWIA), 16 U.S.C. 712 (1) provides that:

In accordance with the various migratory bird treaties and conventions with Canada, Japan, Mexico, and the Union of Soviet Socialist Republics, the Secretary of the interior is authorized to issue such regulations as may be necessary to assure that taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.

Section 3(h)(2) of the FWIA is virtually identical to the subsistence hunting provision contained in Article II, Paragraph 1(c) of the U.S.-U.S.S.R. migratory bird treaty negotiated in 1976. The report on the Soviet treaty submitted by the American treaty negotiating team to the United States Senate demonstrates two points. First, the phrase "indigenous inhabitants" is intended to encompass both Native and non-Native residents of rural Alaska. Second, the subsistence hunting provisions of the Soviet treaty were drafted in full recognition of the ostensibly more restrictive provisions of the United States-Canada migratory bird treaty negotiated in 1916. The subsistence hunting provisions in the Soviet treaty were intended to provide the Service with greater flexibility to resolve conflicts concerning regulation of subsistence hunting for migratory birds in Alaska. The legislative history of section 3(h)(2) of the FWIA indicates the firm intent of Congress that the provisons of the Soviet treaty would be the ultimate guide for regulation of subsistence use of migratory birds in Alaska.

Need to Develop Subsistence Harvest Regulations

Based upon the January 24, 1986, decision in *Alaska Fish and Wildlife Federation and Outdoor Council* and on the FWIA, the Service intends to propose regulations to govern the subsistence harvest of migratory birds in Alaska. These regulations, which would become effective prior to the commencement of the migratory bird harvest in Spring 1987, would address subsistence harvest of migratory birds throughout the State of Alaska. The

regulations would provide a general framework for management of subsistence taking of migratory birds throughout the State, but they would also address in detail problem associated with particular stocks of birds in certain parts of the State that are known to be of concern. The goose populations that nest in the Yukon-Kuskokwim Delta region certainly will require more restrictive and detailed regulations than other stocks of birds.

For the 1986 season, the Service is relying upon a renewal of the Yukon-Kuskokwim Delta Goose Management Plan. This plan had beneficial impacts in 1984 and 1985 in lowering subsistence harvest of the waterfowl species whose numbers have declined and in promoting a cooperative approach to regulation of subsistence harvest that relies principally upon voluntary compliance rather than enforcement by the Service. The Service anticipates similar results for 1986.

The Service, through this notice, invites public comment on its intent to propose and establish regulations for subsistence harvest of migratory birds in Alaska. Topics most affecting development of proposed regulations include the following: (1) Definition of "nutritional and other essential needs", (2) how birds and eggs taken for subsistence may be used; (3) who may participate in subsistence hunting of migratory birds and in what geographic areas; (4) allowable levels of harvest; (5) means of regulation (methods and means of harvest, seasons, bag limits, etc.); and (6) provisions for enforcement of the regulations. Although comments focused on these topics are viewed as being most useful in the development of the proposed regulations, comments on other subjects also may be appropriate.

As soon as possible after the comment period on this notice of intent closes, and upon review and consideration of all comments received, the Service will develop proposed regulations and a draft environmental assessment addressing subsistence harvest of migratory birds in Alaska. The Service will provide public notice of the proposed regulations and assessment through publication in the Federal Register and will consider all comments received. Public hearings will be conducted in various communities throughout Alaska to provide additional opportunity for public comment. Notice of these hearings will be published in the Federal Register as soon as possible after determination of times and locations.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife.

Dated: May 14, 1986.

Frank Dunkle,

Director, Fish and Wildlife Service.

[FR Doc. 86-11212 Filed 5-16-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 96
Monday, May 19, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Request Under OMB Review

AGENCY: ACTION.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the National Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Officer—Melvin E. Beatle, 202–634–9321.
Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, DC 20525
Office of ACTION Issuing Proposal: Domestic Operations
Title of Form: Project Progress Reports for all ACTION programs (Older American Volunteer Programs (includes Foster Grandparent, Retired Senior Volunteer and Senior Companion Programs); VISTA/Service Learning Programs (includes Volunteers in Service to America, Young Volunteers in ACTION (YVA) and Service Learning Projects); Title I Part C (includes Volunteer Management Support Program (VMSP) in Domestic Operations and other demonstration and special volunteer programs in the Office of Volunteerism Initiatives (OVI)].
Type of Request: Revision.
Frequency of Collection: Quarterly
General Description of Respondents: State or local governments, non-profit institutions, small businesses or organizations.
Estimated Number of Responses: 1794
Estimated Annual Reporting or Disclosure Burden: 43,056 hours.
Respondent's Obligation to Reply: Required to obtain or retain a benefit.
Person responsible for OMB Review: Judy MacIntosh, 202–395–6880.

Melvin E. Beatle,
Clearance Officer, ACTION.
[FR Doc. 86–11183 Filed 5–16–86; 8:45 am]
BILLING CODE 6050–28–M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m., on June 4, 1986, at the Connecticut Historical Society, 1 Elizabeth Street, Hartford, Connecticut. The purpose of the meeting is to develop preliminary plans for a proposed project on affirmative acton in the construction industry.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James Stewart or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 14, 1986.
Donald A. Deppe,
Program Specialist for Regional Programs.
[FR Doc. 86–11236 Filed 5–16–86; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held June 13, 1986, 9:00 a.m. to 3:30 p.m., Herbert Hoover Building, Room B841, 14th and Constitution Avenue, NW, Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Amendments Act of 1985 that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General session: 9:00–11:30. Status reports by Ad Hoc Chairmen and various developments at Commerce in the International Trade area.

Executive session: 1:30–3:00. Discussion of matters properly classified under Executive Order 12356 dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1985. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522b(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes, contact Debra Waggoner (202) 377–4220.

Dated: May 14, 1986.

David Schlechty,

Acting Director, Strategic Policy and Planning Division, Export Administration.

[FR Doc. 86-11181 Filed 5-16-86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Scoping Meeting on the Proposed Norfolk Canyon National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering Norfolk Canyon, located approximately 80 miles off the coast of Virginia, for designation as a national marine sanctuary. NOAA will hold a public meeting to gather information to determine the range and significance of issues related to sanctuary designation and management. This meeting will be held on June 11, 1986, from 2:00 to 4:00 P.M. and from 7:00 to 9:00 P.M. in the auditorium of Watermans Hall, Virginia Institute of Marine Science, Gloucester Point, Virginia. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, (202)673-5126.

ADDRESS: Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW, Washington, DC 20235.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431 et seq. (the Act), authorizes the Secretary of Commerce to designate ocean water, over which the United States exercises jurisdiction, consistent with international law, as national marine sanctuaries. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for those conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuary Program Division (SPD).

Natural Resources

Norfolk Canyon is the southernmost in a series of major submarine canyons along the Atlantic continental margin of the United States and is the only one of these canyons that can be associated with a major drainage system in a non-glaciated area. Norfolk Canyon extends for 10 to 12 miles on the continental shelf, descends the slope, and terminates on the upper continental rise. The extensive range of water depths and topography within the canyon provides habitats for a variety of demersal fish, decapods and other benthic or sessile organisms, including several types of coral. A more detailed discussion of Norfolk Canyon marine life is contained in the announcement of preliminary consultation on the site, 50 FR 37760.

Human Uses

The major human activities in the Norfolk Canyon area are recreational and commercial fishing and military operations. Two old dump sites for radioactive wastes are located in the canyon, but no dumping occurs there at present. There is currently no mineral resource development activity in the vicinity of Norfolk Canyon, although the area may have exploitable oil and gas deposits [EG & G *Environemntal Description of Norfolk Submarine Canyon.* Prepared for NOAA, Washington, DC, 1983].

The Designation Process

The preliminary consultation on Norfolk Canyon as a potential site for designation as a national marine sanctuary was begun with a notice published in the Federal Register, September 17, 1985, 50 FR 37760. A summary of comments received in the preliminay consultation and NOAA's response to them was published February 28, 1986, 51 FR 7097, in an announcement that Norfolk Canyon had been selected as an active candidate for sancturay status and that NOAA intended to prepare a draft environmental impact statement and management plan for the site. The initiation of this process does not commit NOAA to the final designation of Norfolk Canyon as a national marine sanctuary.

The management plan to be prepared for the proposed sanctuary will specify the goals and objectives of sanctuary designation and describe programs for resource protection, research and interpretation. Implementation of the management plan will be analyzed in the environmental impact statement.

Opportunities for public participation in NOAA's development of an environmental impact statement and management plan will be provided through the June scoping meeting, the solicitation of comments on the draft environmental impact statement, and formal public hearings.

The June scoping meeting will attempt to identify issues in establishing a Norfolk Canyon sanctuary and generate suggestions for resolving them.

Topics for discussion will include the following: (1) Boundary alternatives, (2) Management alternatives, (3) Resource protection, (4) Research opportunities and (5) Interpretative opportunities.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-11185 Filed 5-16-86; 8:45 am]

BILLING CODE 3510-08-M

Patent and Trademark Office

Extension of Previously Granted Interim Orders Under the Semiconductor Chip Protection Act of 1984

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Date for Hearing on Interim Orders under 17 U.S.C. 914.

SUMMARY: On March 24, 1986, 51 FR 10073-86, the Assistant Secretary and Commissioner of Patents and Trademarks solicited comments on the progress made toward the establishment of systems for the protection of mask works in Japan, Sweden, Australia, The United Kingdom, The Netherlands, Canada, Belgium, Denmark, France, The Federal Republic of Germany, Greece, Ireland, Italy and Luxembourg. Comments were originally requested by April 10, 1986. The Commissioner extended the period for comment to April 30, 1986. Comments were received regarding progress in Sweden, Japan, Canada, Australia, the United Kingdom, and the European Economic Community. The U.S. Semiconductor Industry Association (SIA) submitted comments and requested that a public hearing be held to review the situation regarding mask work protection.

Those comments are available for public inspection in the Office of Legislation and International Affairs in the U.S. Patent and Trademark Office.

All of the comments indicate that progress toward mask work protection is underway, however the variety of the approaches being adopted, as well as the complexity of the subject matter,

make it difficult to consider how existing interim orders ought to be considered. Consequently, to promote a full public discussion of the issues concerning mask work protection internationally, a public hearing on the existing interim orders will be held on July 9, 1986.

The interim orders issued for Japan, Sweden, Australia, and Canada are presently scheduled to expire in June 1986. In view of the date set for the hearing, it is clear that these orders would expire before the additional information disclosed at the hearing could be evaluated. The submissions from Japan, Sweden, Australia, and Canada indicate that reasonable progress toward developing regimes for mask work protection is underway and that mask works are not subject to misappropriation in any of these countries. Consequently, to promote the development of international comity in the protection of mask works, the interim orders issued for Japan, Sweden, Australia, and Canada are hereby extended to expire on September 12, 1986, the same date as the interim orders issued for the Member Countries of the European Economic Community.

Date and Location of Hearing

July 9, 1986, 9:00 A.M., U.S. Patent and Trademark Office, Commissioner's Conference Room, 2021 Jefferson Davis Highway, Arlington, Virginia.

Requests to Testify

Requests to testify and 25 copies of the statement to be delivered must be received in the Commissioner's Office by close of business, June 27, 1986. Address written materials to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The "Semiconductor Chip Protection Act (SCPA) of 1984," 17 U.S.C. 900 et seq., established a procedure designed to promote the rapid development of a new international system of intellectual property protection for mask works or the design-layout of semiconductor chips.

To carry out this intent, the Congress gave the Secretary of Commerce the authority, under section 914 of the SCPA, to extend to nationals, domiciliaries, and sovereign authorities of foreign countries the privilege of mask work protection in the United States if certain conditions were fulfilled. The Secretary has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks the responsibility to make findings concerning a foreign nation's good faith efforts and reasonable progress toward: (1) Entering into a treaty to protect mask works, or (2) enacting legislation to protect mask works on either substantially the same basis as under the U.S. law or in the same manner that it provides similar protection to its own nationals, and (3) that mask works are not being misappropriated in that country, and (4) that issuing the order would promote international comity in the protection of mask works.

Acting under this section, the Commissioner has extended interim orders to fourteen States, all of whom have responded to the request for comments published at 51 FR 10073–86. The speed with which other governments have acted to respond to the needs for legal protection in this frontier technology is commendable, and certainly, at least in part due to the interim order procedure. Although the response to the U.S. initiative has been rapid, it has been varied. This response, points out the wisdom of the Congress in providing this flexible interim order process through which technical and legal experts from both the U.S. and foreign countries are presented with a forum in which to develop their ideas.

The U.S. SCPA is based on a carefully crafted balance that promotes the public interest, and brings equilibrium to the interests of both producers and consumers of semiconductor chip products. This is done by granting chip producers appropriately limited exclusive rights, while assuring that the technology will achieve widespread dissemination through carefully crafted reverse engineering principles, and assuring that the consuming public's interest is protected through the innocent infringement provisions. If any of these elements of the law are made either disproportionately strong or weak the balance of the intended legal regime will suffer. For example, if reverse engineering is given too broad scope it can vitiate the protection afforded by the exclusive rights. On the other hand, if reverse engineering rights are too narrowly defined the result could be a real inhibition on international trade, because chips produced by reverse engineering in one country could be denied entry into a second country where the scope of permitted reverse engineering was less. Other equally serious concerns can arise in other areas.

The nature of an appropriate international legal regime for the protection of semiconductor chips is also being actively discussed in the World Intellectual Property Organization (WIPO) where a Group of Experts will meet from June 23 to 27, 1986, to discuss a draft treaty for the protection of integrated circuit chips. That process has made it clear that while there is a broad general agreement that this frontier technology deserves legal protection, there are questions about the specific features of such a new, *sui generis*, system of protection that must be addressed. As the comment letters submitted show, many of the countries to whom interim orders have been issued have been leading, active participants in the WIPO discussions.

One important feature of the 1984 SCPA was the provision that mask works that were first commercially exploited between July 1, 1983, and November 8, 1984, could be protected if registered in the Copyright Office prior to July 1, 1985. Because of that deadline, a number of countries sought interim orders and the requests were handled expeditiously. Those orders, issued at various dates in June, 1985, will expire before this hearing process can be completed unless those orders are extended. A brief review of progress in each of those countries is consequently appropriate.

In Japan, the new Act Concerning the Circuit Layout of a Semiconductor Integrated Circuit, Law No. 43 of 1985, became effective on January 1, 1986 and Japanese authorities are accepting and issuing chip registrations. However, the U.S. Semiconductor Industry Association has voiced some concern over the way in which the registration system has been implemented.

In Sweden, the report of the Swedish Committee for the Revision of the Copyright Law, and the comments received from Government of Sweden clearly indicate progress. Legislation is expected to be passed in the fall of 1986. This effort continues to be strongly supported by Swedish industry.

In Australia, the Government's submission indicates that consultations on the appropriate future policy to be pursued concerning chip protection are

underway, and that the doubts concerning the application of Australian copyright law to semi-conductor chip protection have been largely answered following the High Court's decision in *Edwards Hot Water* v. *Solarhand*.

In Canada, the Government is actively pursuing the enactment of a copyright oriented, *sui generis* system for the protection of semiconductor chips.

We have not been informed of any practices of misappropriation of semiconductor chips in any of these countries. Also, all of these countries are actively working in the WIPO forum to pursue the negotiation of a new treaty for the protection of semiconductor chips.

Consequently, I find that extending the interim orders for Japan, Sweden, Australia, and Canada until September 12, 1986, is appropriate. Since information on the specific features of proposed legislation is not available, and the U.S. Semiconductor Industry Association has raised concerns about the operation, in practice, of the Japanese registration system, I also conclude that holding a public hearing to permit a full airing of views would be appropriate. I am scheduling the hearing for July 9, 1986, at 9:00 A.M. so that a full review of progress can be made before September 12, 1986. This will also permit the Office to consider the progress in WIPO and how such activity may affect decisions on how to proceed with the interim order process.

To promote an orderly conduct of the hearing, each party appearing will be permitted 30 minutes in which to make their presentation and to respond to questions from the hearing panel. Written statements (25 copies) and requests to testify must be submitted to the Commissioner of Patents and Trademarks by close of business, June 27, 1986.

Dated: May 12, 1986.

Donald W. Peterson,

Deputy Assistant Secretary and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 86-11171 Filed 5-16-86; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With Korea To Review Trade in Categories 363 and 650

On April 11, and 24, 1986, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to man-made fiber dressing gowns in Category 650 and cotton terry and other pile towels in Category 363. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 363 and 650, produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in 20 copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553 (a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11338 Filed 5-16-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Role of the Naval Reserve in the Maritime Strategy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Role of the Naval Reserve in the Maritime Strategy Task Force will meet June 3–4, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine or determine a strategic rationale for the employment of Reserve forces, the value of the Reserve to the total force, and the best way to develop Reserve resources. The entire agenda for the meeting will consist of discussions of key issues regarding changes in the strategic balance, the need for mobilization capability, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the pubic interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, U.S.C.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401, Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: May 14, 1986.

William R. Rose, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-11184 Filed 5-16-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Secretary's Discretionary Program—Field Initiated Grant Program

AGENCY: Department of Education.

ACTION: Application notice for new awards under the Secretary's Discretionary Program for Fiscal Year 1986.

Programmatic and Fiscal Information

The Secretary of Education (the Secretary), announces a grant competition under the Secretary's Discretionary Program for fiscal year (FY) 1986. Pursuant to 34 CFR 760.11, the Secretary has chosen not to establish priorities for this competition. Therefore, the Secretary invites applications for projects on field-initiated topics.

To be eligible for funding under this program, a project must be designed to meet the special educational needs of educationally deprived children or to improve elementary and secondary education for children consistent with the purposes of the Education Consolidation and Improvement Act of 1981 (ECIA). The Secretary is authorized to fund projects that consist of one or more of the following activities:

1. Providing a national source for gathering and disseminating information on the effectiveness of programs designed to meet the special educational needs of educationally deprived children and others served by the ECIA, and for assessing the needs of such individuals;

2. Carrying out research and demonstrations related to the purposes of the ECIA;

3. Improving the training of teachers and other instructional personnel needed to carry out the purposes of the ECIA; or

4. Providing technical assistance to State educational agencies (SEAs) and local educational agencies (SEAs) in the implementation of programs under the ECIA.

SEAs and LEAs, institutions of higher education, and other public and private agencies, organizations, and institutions may apply for a grant. An applicant may apply singly or jointly with another eligible applicant, as provided in 34 CFR 75.127 through 75.129.

The Secretary urges applicants to limit the amount of assistance requested to not more than $100,000 per application since resources available under this announcement are limited. It is estimated that 8 to 10 awards will be made.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specifically by statute or regulations.

The Secretary encourages applicants to propose projects that demonstrate the applicant's thorough knowledge of previous work in the area to be addressed. A proposed project should use existing materials to the fullest extent possible. Also, because of the limited available resources, the Secretary encourages applicants to propose projects that would use the funds awarded for this competition to supplement other sources of funding. Projects supported under this program will be for a period of up to 12 months.

Selection Criteria

In evaluating applications under this program, the Secretary uses the selection criteria contained in § 760.31 of the regulations. The maximum possible number of points for these criteria is 85. In addition, the regulations authorize the Secretary to reserve and to distribute 15 additional points among the selection criteria listed in the regulations to bring the total to a maximum of 100 points. The Secretary will distribute these reserved points to the criterion at 34 CFR 760.31(f) *Improving elementary and secondary education*, for a possible total of 25 points for this criterion.

Closing Date for the Transmittal of Applications

Applications for new awards must be mailed or hand-delivered by July 7, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84. 122B, 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal Holidays.

Applicable Regulations

Regulations applicable to the program include the following:

(a) The regulations governing the Secretary's Discretionary Program in 34 CFR Part 760.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Application Forms

Application forms and program information packages will be available on May 30, 1986. These may be obtained by writing to: The Secretary's Discretionary Program, U.S. Department of Education, Room 722, Brown Building, 1200 19th Street, NW., Washington, DC 20208.

Further Information

For further information, contact: Thomas E. Enderlein, Secretary's Discretionary Progarm, U.S. Department of Education, Room 722, Brown Building, 1200 19th Street, NW., Washington, DC. 20208 Telephone: (202) 254–8227.

Program Authority

20 U.S.C. 3851.

(Catalog of Federal Domestic Assistance Number 84.122, Secretary' Discretionary Program)

Dated: May 15, 1986.

William J. Bennett,

Seacretary of Education.

[FR Doc. 86–11321 Filed 5–16–86 8:45am]

BILLING CODE 4000-01-M

Fund For the Improvement of Postsecondary Education; Application Notice for Comprehensive Program for FY 1986; Extension of Closing Date

AGENCY: Department of Education.

ACTION: Extension of closing date for transmittal of applications for new awards under the comprehensive program for fiscal year 1986.

The Secretary extends the closing date for transmittal of applications for new awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education for fiscal year 1986. The closing date for full applications is extended from June 4, 1986 to June 12, 1986.

On December 234, 1985 the Secretary published the Notice establishing the closing date for transmittal of preapplications and applications for the fiscal year 1986 competition under the Comprehensive Preogram (50 FR 52550–52552). Detailed information concerning this program is included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications.

Further information: For further information contact the Fund for the Improvement of Postsecondary Education regarding the Comprehensive Program. Telephone (202) 245–8091/8100.

Dated: May 13, 1986.

(20 U.S.C. 1135)

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(Catalog of Federal Domestic Assistance No. 84.116A. Fund for the Improvement of Postsecondary Education)

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-11217 Filed 5-16-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Electric Power Surveys

AGENCY: Energy Information Administration Energy.

ACTION: Solicitation of comments concerning electric power survey forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) solicits comments concerning proposed extensions and revisions to selected electric power survey forms.

DATE: Written comments must be submitted within 30 days of the publication of this notice.

ADDRESSES: Send written comments to Mr. Al Breuel (EI-541), Energy Information Administration, Department of Energy, Mail Stop: 2G-090, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6541.

Requests for additional information, or copies of the following forms and instructions should be directed to Mr. Breuel (at the address listed above): Forms EIA-101 EIA-213, EIA-412, EIA-714, EIA-759, EIA-767, EIA-826, EIA-860, EIA-861.

Similar requests for Form IE-411 should be directed to Mr. Norton Savage, Energy Emergency Operations, Department of Energy, Mail Stop 8F-055, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-1705.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Actions.
III. Request for Comments.

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub L. 93-275) and the Department of Energy (DOE) Organization Act (Pub L. 95-91), the Energy Information Administration is obligated to publish, and otherwise make available to the public, high-quality statistical data that reflect current and prospective national and regional electric power supply and demand activity as accurately as possible.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass every major electric power supply and demand activity in the United States. In addition to the electric power surveys administered by EIA for DOE and other federal agencies, DOE's Assistant Secretary for International Affairs and Energy Emergencies (IE) collects electric power system planning and system reliability information from the nine Regional Electric Reliability Councils in the United States.

II. Current Actions

In keeping with its mandated responsibilities, EIA proposes to extend for 3 years the following electric power data collection forms:

Monthly Electric Bill Data (Form EIA-101)
Typical Net Monthly Bills (Form EIA-213)
Annual Report of Publicly-Owned Electric, Utilities (Form EIA-412)
Annual Electric Power System Report (Form EIA-714)
Monthly Power Plant Report (Form EIA-759)
Steam-Electric Plant Operation and Design Report, (Form EIA-767)
Electric Utility Company Monthly Statement (Form EIA-826)
Annual Electric Generator Report (Form EIA-860)
Annual Electric Utility Report (Form EIA-861)
Coordinated Regional Bulk Power Supply Program Report (Form IE-411)

EIA proposes to revise the Form EIA-412 by eliminating the following parts:

Part V: Electric Sales Data for the Year
Part XII: Accumulated Provisions for Depreciation of Utility Plant, columns, b, c, d, and e
Part XVIII: Generating Plant Statistics (Small Plants)
Part XIX: Steam-Electric Generating Plants
Part XX: Hydroelectric Generating Plants
Part XXI: Internal Combustion engine and Gas-Turbine Generating Plants
Part XXV: Electric Energy Account

EIA proposes to revise the threshold for filing the EIA-412 to those publicly owned utilities who have sales to ultimate customers or sales for resale that are 100,000,000 kilowatthours or greater.

Except for the IE-411, EIA-767, and the EIA-714, all of the above are solely sponsored by EIA. EIA is reviewing all forms to improve the instructions or delete individual data items no longer required.

The Form EIA-767 is sponsored jointly by the Environmental Protection Agency (EPA); the Bureau of Economic Analysis, Department of Commerce; the Federal Energy Regulatory Commission; and the DOE Office of Environment, Safety, and Health (EH). EPA proposes to revise the Form EIA-767 by requiring that each U.S. plant with a total existing or planned organic- or nuclear-fueled steam-electric generator nameplate rating less than 100 megawatts submit page 1, Identification Information, and page 6, Boiler Fuel Consumption and Quality. EH proposes to include pages 13 and 14, Flue Gas Desulfurization Unit Annual Operations and Design Parameters for those plants also under 100 megawatts.

The Form EIA-714 is sponsored by the Federal Energy Regulatory Commission (FERC) and the EIA. The EIA, in coordination with the sponsors, processes the data collected on Forms EIA-767 and EIA-714. EIA and FERC are proposing the following changes for Form EIA-714. The threshold which requires filing of the Form EIA-714 is being modified to: "utilities whose own generation is greater than 100,000,000 kilowatt hours per year." To allow flexibility in the reporting of columns g through j of Schedule 5, "High Voltage Line Data," the following clarification of the instruction is proposed. "Power flow data entered in columns g through j may be obtained from meter recordings or the results of load flow simulations reasonably representing system conditions for the reporting periods. While the preferred reporting is actual metered data, simulations or data therefrom are acceptable as representative proxies for actual metered data. If simulations are used to provide the data, they need only be made under conditions which reasonably would have been expected during the reporting period."

In addition to the EIA-administered electric power surveys listed above, EIA solicits comments on the "Coordinated Regional Bulk Power Supply Program Report," (Form IE-411). Form IE-411 is not administered by EIA, but it is part of DOE's information base on electric utilities. Consideration is being given to reducing the data collection burden associated with the Form EI-411 by eliminating sections 3-C (unavailable capacity), 6-B (conceptual long-range plans) and 7-C (interruptible demand), and by using Form EIA-860 data to replace items 2-A (existing generating units) and 2-B (proposed generating units). The DOE staff is coordinating

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this activity with the representatives of the North American Electric Reliability Council (NERC) by providing the EIA–860 data files to NERC for review.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extensions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses. When providing comments, please indicate to which form(s) each comment applies.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, what instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will you require to complete and submit the required form(s)?

E. What is the estimated cost of completing this form(s), including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of other federal, state, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purposes would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in the electric power surveys.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of these data surveys; they also will become a matter of public record.

Issued in Washington, DC, May 13, 1986.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86–11162 Filed 5–16–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP85–437–000 etc.]

Mojave Pipeline Co.; et al.; Pipeline Projects to Supply Natural Gas for Enhanced Oil Recovery in California Supplemental Notice of Intent to Prepare a Draft Environmental Impact Statement

May 12, 1986.

In the matter of Mojave Pipeline Co., Kern River Gas Transmission Co., El Dorado Interstate Transmission Co., Transwestern Pipeline Co., El Paso Natural Gas Co., Northwest Pipeline Co. Docket Nos. CP85–437–000, CP85–552–000, CP86–205–000, CP86–212–000, CP86–197–001, CP85–625–000.

Introduction

Applications for approval of the above projects have been filed with the Federal Energy Regulatory Commisson (FERC) pursuant to section 7(c) of the Natural Gas Act. The first three projects, the Mojave Pipeline Project (Mojave), Kern River Project (Kern River), and the El Dorado Pipeline Project (El Dorado), are competing to transport natural gas from various sources outside of California to the Bakersfield, California, area for use in enhanced oil recovery (EOR) and related cogeneration projects. In each case, producers of crude oil in the San Joaquin Valley would use the natural gas as boiler fuel to create steam which would be injected into the oil fields to produce crude oil not recoverable by primary recovery methods. Some of the steam would also be used to generate electricity. The producers currently use crude oil and a limited amount of natural gas for steam generation. These proposed projects would allow substitution of natural gas for the crude oil now used, and may allow entry into the market of producers which presently cannot get authority to burn oil due to air pollution restrictions.

On August 23, 1985, and December 10, 1985, the FERC issued notices of intent to prepare a draft environmental impact statement (DEIS) and request for comments on its scope for the projects proposed in the above dockets (50 FR 34174 and 50941). The remaining applications, by El Paso Natural Gas Company (El Paso), Transwestern Pipeline Company and Northwest Pipeline Company involve facilities to deliver gas to the competitors.

On February 21, 1986, El Paso amended its original application to expand its existing system to transport natural gas to Mojave in western Arizona for delivery to California. This expansion could also be used to transport natural gas to El Dorado.

This supplementary notice of intent is to notify recipients of the original notices tht the El Paso portion of the proposed projects has been formally changed by the applicant.

This notice only modifies the December 10, 1985, notice as it relates to El Paso's facilities. In that notice the staff indicated that the DEIS would include an analysis of El Paso's identified (but not proposed) Case III which involved some 93.8 miles of pipeline looping. The current proposal, Case IV, involves 126.4 miles of looping, of which 40.5 miles are not part of Case III.

Scoping meetings, noticed in the **Federal Register** on January 27, 1986, (51 FR 3402) were held in Albuquerque, New Mexico and Flagstaff, Arizona, and an additional meeting was held at the tribal headquarters of the Navajo nation. The Case IV facilities were identified at each of these meetings. Therefore no additional scoping is necessary as a result of El Paso's amended filing.

Notice of Intent

Notice is hereby given that the staff of the FERC has determined that approval of any of the competing projects would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's rules of practice and procedure (18 CFR 2.82(b)), a DEIS will be prepared. The FERC will be the lead Federal agency and, with the California State Lands Commission (SLC), will produce a joint environmental impact statement/environmental impact report (EIS/EIR) satisfying the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively.

El Paso Expansion Project

El Paso's amended filing proposes to transport up to 400 MMcfd in support of the California EOR projects. This scenario is Case IV which is outlined in table 1 along with the original Case III.

Cases III and IV differ in their facility requirements because of the assumptions El Paso has made concerning the volumes of gas to be transported and system operation constraints. Since El Paso would not necessarily be the supplier of the gas it would transport to California, it says that it must make these assumptions for purposes of the application. Table 1

shown the assumed receipt points and gas volumes.

Case IV does not deliver enough gas to fill the design requirement for either Mojave or El Dorado. The Transwestern Expansion's 320 MMcfd must be included with the 400 MMcfd of Case IV to satisfy their requirements. With both expansions in place 720 MMcfd could be delivered to either company. This would be more than enough gas since Mojave only requires 680 MMcfd and El Dorado only 530 MMcfd.

TABLE 1.—EL PASO EXPANSION PROJECT FACILITY REQUIREMENTS [1]

	Case III	Case IV
Looping (miles, diameter)	93.8, 30- and 34-inch	128.4, 30- and 36-inch
Compression (horsepower)	7,160	7,160
Assumed receipt points and associated volume of gas (MMcfd): Ignacio (Colorado)	200	200
Blanco (New Mexico)		200
Total volume (MMcfd)	200	400

TABLE 1.—EL PASO EXPANSION PROJECT FACILITY REQUIREMENTS [1]—Continued

	Case III	Case IV
Hypothetical Flows (Tcf/d)	400	200
Total volume (MMcfd)	600	400

[1] Less gas could be delivered under Case IV. This is because the design basis for Case III turned out to be impractical. Case III is no longer a valid scenario for supplying the interstate projects.

Table 2 contains a description of all facilities needed for Case IV compared to Case III. Map 3 of the December 10, 1985, notice is attached to show locations of the loops.[1]

Case IV would directly affect some 1,500 acres of Federal State, private, and Indian lands during construction; however, only about 920 acres would be additional ROW needed for construction and operation since 580 acres of existing right-of-way would be used.

[1] Not printed in the Federal Register. Copies are available from the Commission's Division of Public Information.

TABLE 2.—EL PASO EXPANSION PROJECT FACILITY LOCATIONS

State and county	Miles of pipe: Case III	Miles of pipe: Case IV	Facility name	Areas of special concern
New Mexico: San Juan	14.6	14.6	Blanco Loop	
	6.4	6.5	Chaco Loop (1.1 added on east end)	
	8.6	8.5	White Rock Loop (0.1 dropped on east end)	Navajo Indian Reservation.
Total	29.6	37.0		
McKinley	14.5	14.5	Gallup Loop	
Arizona: Apache	9.4	16.0	Window Rock Loop (6.6 added on east end)	Navajo Indian Reservation.
Navajo	9.0	16.1	Navajo Loop (8.1 added on east end)	Do.
Coconino	13.3	37.0	Williams Loop (8.6 added on east and 14.9 on west end)	Coconino and Kaibab National Forests.
Yavapai	9.6	1.8	Seligman Loop (7.8 dropped from east end)	
Mohave	8.0	8.0	Hackberry Loop	
Yuma	—		Piping at Wenden Compressor Station	
Colorado: La Plata			Bondad Compressor Station (7,160hp additional)	

The El Paso Expansion Project would require no more than an additional 60 feet of ROW adjacent to the existing pipelines for both construction and operation. Additional land, on the order of 2 acres per crossing, would be needed to install the pipeline across some watercourses, railroads, and paved highway crossings. Because this project loops existing lines, new staging areas, maintenance bases, and communications facilities should not be needed. Minor surface facilities which would be associated with the looping would consist of valves, cathodic protection power sources, and pig launchers and receivers and would generally be within the permanent ROW.

No major rivers, wilderness areas, wilderness study areas, or RARE II areas would be traversed by the proposed loops.

Case IV would require the addition of 7,160 horsepower of compression at the Bondad Compressor Station, La Plata County, Colorado, the same as Case III. Also, approximately 600 feet of station piping and related modifications would be required at the Wenden Compressor Station in Yuma County, Arizona. Rewheeling of compressors would be needed at the White Rock, Gallup "B", and Seligman "B" compressor stations, and additional meter runs would be required at the Topcook Meter Station. None of these station modifications would require construction outside the existing station boundaries.

Questions concerning this notice should be addressed to: Mr. Robert K. Arvedlund, OPPR/FEB, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357–8043.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11201 Filed 5–16–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. C86–302–000, et al.]

Estate of Sam Sklar, et al.; Applications for Abandonment of Service

May 14, 1986.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb

Secretary

Docket No. and date filed	Applicant	Purchaser and location	Price per mcf	Pressure base
C86-382-000, B, Apr 2, 1986[1]	Estate of Sam Stiler, *et al.*[2] 2315 Mercantile Bank Bldg., Dallas, Texas 75201.	United Gas Pipe Line Company, Willow Springs Field, Gregg County, Texas.	([3])	
C86-382-000, B, Apr 21, 1986[4]	Coquina Oil Corporation,[5] P.O. Drawer 2880, Midland, Texas 79702.	El Paso Natural Gas Company, Wagner Federal No. 2 well, Eddy County, New Mexico.	([6])	
C86-384-000, B, Apr 24, 1986[7]	Scarth Oil & Gas Co.,[8] 601 South Polk, Amarillo, Texas 79101.	Panhandle Eastern Pipe Line Co., Lee #1 & #2, Logedon #1, and Hill #1 wells, Hansford County, Texas.	([9])	
C86-407-000, B, May 5, 1986	United Resources Capital Corporation, *et al.*[10] Robert S. Rose, Esq., 10100 Santa Monica Blvd., Suite 210, Century City North Building, Los Angeles, California 90067.	United Gas Pipe Line Company, Liberty-Simoneaux #1 well, Bayou des Allemands Field, St. Charles Parish, Louisiana.	([11])	

[1] Additional information received April 14 and 30, 1986.

[2] Applicants are Estate of Sam Stiler, August Erickson, Leonard W. Phillips, Albert Stiler, Idia D. White, Independent Executrix for the Estate of Morris B. White, and Betty Jo Walker Upton, which operate under small producer certificate in Docket No. CS72-187, Louis Dorfman, Sam Y. Dorfman, Jr., and S. L. Florsheim, Jr., which operate under small producer certificate in Docket NO. CS72-408, Clark Sestaple, Jr., which operates under small producer certificate in Docket No. CS72-768, and Steven A. Fehle.

[3] Applicants request authorization to abandon for a limited term not to exceed two years the sale of gas in excess of United's nominations from six wells. Applicants state that the wells and NGPA classification are as follows:

Well name and Classification
P.D. Hamson No. 2, Section 104
Claude Hayes No. 3, Section 109
McWherter No. 2, Section 104
Stevens No. 2, Section 104
Joe Toler No. 2 Section 104
G.A. Kelley No. 2, Section 104

Applicants state that delivery capacity for the subject wells in the aggregate is 992 Mcf per day, and United's nominations for the subject wells are less than 10% of delivery capacity. Applicants have advised that the subject contract contains no take-or-pay clause. Applicants state that they are currently seeking alternative marketing arrangements to sell their share of excess gas produced from the subject acreage.

[4] Additional information filed May 5, 1986.

[5] Sale covered under small producer certificate issued to Docket No. CS69-191.

[6] Applicant requests a limited-term abandonment of its sale of gas to El Paso from the Wagner Federal No. 2 well. Applicant states it is its preference that the abandonment be granted for a period of three years. Applicant states that the well qualifies as an NGPA section 109 well, and that the current deliverability of the well is 40 to 60 Mcf per day. Applicant states that El Paso is not paying for gas not taken. Applicant proposes to enter into a spot market contract with El Paso Gas Marketing Company.

[7] Additional information received May 1 and 7, 1986.

[8] Applicant's sales are covered by a small producer certificate issued in Docket No. CS79-324.

[9] Applicant requests authorization to abandon its sale of gas to Panhandle. Applicant states that the wells produce NGPA section 104—post 1974 gas and deliverability of the Logedon #1 is 250 to 300 Mcf per day and deliverability of the Hill #1 is 650 to 700 Mcf per day. The Lee #1 was plugged and abandoned and was replaced by the Lee #2 well from which no gas has been produced. Panhandle has concurred in the permanent abandonment of these sales by letter dated April 8, 1986. In Docket No. C86-48-000, Applicant was granted an abandonment on a month-to-month basis, until terminated by 30 days notice by either party; with respect to these sales, however, Applicant states that its ability to market its gas on a firm basis has been inhibited by virtue of the wells' contractual dedication to Panhandle.

[10] Applicants are: United Resources Capital Corporation, an affiliate of United California Capital Corporation, Mongrue Trust #1, John P. Harlan, and Gator Energy Corporation.

[11] Applicants request an abandonment of their sale to United from the Liberty-Simoneaux #1 well for a period of two years in order to seek an interstate market for the gas. Applicants state that the well is undergoing substantially reduced takes and United is not paying for gas not taken. United has concurred with the proposed limited-term abandonment by letter date April 21, 1986. United states that excess deliverability released is that gas production which Applicants have available for delivery on any day to United that is surplus to the needs of United on that day. Applicants state that the deliverability is approximately 1,000 Mcf per day. Applicants further state that the price for the gas is $1.746 per MMBtu at 14.73 psia plus severance tax which is a special relief price granted in Docket No. RP76-78-000 by order issued August 3, 1982.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-11202 Filed 5-16-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4579-036, et al.]

Cities Service Oil & Gas Corp., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

May 14, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure Base
G-4579-036, D, May 2, 1986	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, SW/4 Sec. 34-26S-33W, Finney County, Kansas.	([1])	
G-4579-037, D, May 2, 1986	do	Northern Natural Gas Company, W/2 Sec. 22-26S-32W, Finney County, Kansas.	([1])	
G-4579-038, D, May 2, 1986	do	Northern Natural Gas Company, SE/4 Sec. 29-31S-32W, Seward County, Kansas.	([1])	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C86-374-000, B, Apr. 25, 1986	Santa Fe Energy Company, 1616 South Voss Road, Suite 1000, Houston, Texas 77057.	Arkla Energy Resources, HBGN Survey, Wheeler County, Texas.	(20)	
G-7193-000, D, Apr. 25, 1986	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	United Gas Pipe Line Company, Eugene Island Area, Offshore Louisiana.	(3)	
G-10143-004, D, Apr. 28, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, West Delta Block 59, Offshore Louisiana.	(4)	
G-10354-002, D, Apr. 30, 1986	do	Transcontinental Gas Pipe Line Corp., Live Oak Field, Vermilion Parish, Louisiana.	(21)	
G-11551-001, D, Apr. 28, 1986	do	El Paso Natural Gas Company, Empire Field, Andrews County, Texas.	(5)	
G-12308-001, D, Apr. 30, 1986	do	Transcontinental Gas Pipe Line Corp., Gueydan Field, Vermilion Parish, Louisiana.	(6)	
C87-808-002, D, May 5, 1986	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Southern Natural Gas Company, West Delta Block 105, *et al* Fields, Offshore Louisiana.	(7)	
C86-91-000, D, Apr. 28, 1986	do	ANR Pipeline Company, South Marsh Island Block 49 Field, Offshore Louisiana.	(8)	
C86-185-000, D, Apr. 30, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Arkansas Louisiana Gas Company, Iberia Parish, Louisiana.	(9)	
C70-79-001, D, May 2, 1986	Shell Offshore Inc.	Sea Robin Pipeline Company South Marsh Island Block 27 Field, Offshore Louisiana.	(9)	
C70-83-001, D, May 6, 1986	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, Texas 79189.	El Paso Natural Gas Company, South Carlsbad Pool, Eddy County, New Mexico.	(9)	
C70-349-001, D, Apr. 28, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Trunkline Gas Company, N/2 South Marsh Island Block 231, Offshore Louisiana.	(10)	
C76-2-000, D, Apr. 28, 1986	do	do	(10)	
C76-552-002, C, Apr. 24, 1986	Odeco Oil & Gas Company, *et al*, P.O. Box 61780, New Orleans, La. 70161.	ANR Pipeline Company, East Cameron Block 28 Field, Gulf of Mexico, Offshore Louisiana, Federal Domain.	(11)	
C81-218-000, C, Apr. 24, 1986	Odeco Oil & Gas Company	ANR Pipeline Company, Ship Shoal Block 135 Field, Gulf of Mexico, Offshore Louisiana, Federal Domain.	(12)	
C86-378-000, (C86-109), B, Apr. 21, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	West Texas Gathering Company-Sagasser (Dawson) Field, Winkler County, Texas.	(13)	
C86-380-000, (C86-69), B, Apr. 21, 1986	Chevron, U.S.A. Inc., P.O. Box 3725, Houston, Texas 77253.	Texas Eastern Transmission Corporation Various Fields—South Louisiana and Offshore thereof.	(13)	
C86-381-000, B, Apr. 21, 1986	Southland Royalty Company, 200 Integrity Tower, Fort Worth, Texas 76102.	Natural Gas Pipeline Company of America, Crittendon Field, Winkler County, Texas.	(14)	
C86-383-000, B, Apr. 22, 1986	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	Northern Liquid Fuels Company, Abell Field, Pecos County, Texas.	(15)	
C86-385-000, F, Apr. 24, 1986	Cities Service Oil & Gas Corp. (Succ. to Sun Exploration & Production Company), P.O. Box 300, Tulsa, Okla. 74102.	United Gas Pipe Line Company, Redfish Bay and Mustang Island Fields, Nueces County, Texas.	(17)	
C86-386-000, F, Apr. 25, 1986	Amoco Production Company (Succ. in interest to Oltex, Inc. and Texon Energy Corp.), P.O. Box 800, Denver, Colorado 80201.	Southern Natural Gas Company, Hugoton Field, Finney County, Kansas.	(18)	
C86-387-000, B, Apr. 25, 1986	Scott Oil Company, P.O. Box 172, Salem, W. Va. 26426.	Consolidated Gas Transmission Corp., Warren District, Upshur County, and Elk District, Barbour County, West Virginia.	(19)	
C86-388-000, (C86-408), B, Apr. 25, 1986	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Sea Robin Pipeline Company, South Marsh Island Block 18 Field, Offshore Louisiana.	(9)	
C86-389-000, B, Apr. 21, 1986	Koch Industries, Inc., P.O. Box 2256, Wichita, Kansas 67201.	Northwest Central Pipeline Corporation, Hugoton Field, Seward County, Kansas.	(21)	
C86-390-000, B, Apr. 24, 1986	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Northern Liquid Fuels Company, Abell Field, Pecos County, Texas.	(15)	
C86-393-000, (C79-245), B, Apr. 25, 1986	FMP Operating Company, A Limited Partnership, 1615 Poydras Street—22nd Floor, New Orleans, La. 70112.	Transcontinental Gas Pipe Line Corp., Block 380, East Cameron Area, Offshore Louisiana, Gulf of Mexico.	(23)	
C86-394-000, (C81-251), B, Apr. 28, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Texas Eastern Transmission Corporation, Northwest Chalkley Field, Calcasieu Parish, Louisiana.	(21)	
C86-395-000, (C72-495), B, Apr. 28, 1986	Shell Offshore Inc.	Tennessee Gas Pipeline Company, Vermilion Block 191 Field, Offshore Louisiana.	(5)	
C86-399-000, B, Apr. 30, 1986	C.A. Wilson Oil & Gas Co., TERM Energy Corporation, Agent.	Consolidated Gas Transmission Corp., Ritchie County, West Virginia.	(20)	
C86-400-000, B, Apr. 29, 1986	Lumberport-Shinnston Gas Company, P.O. Box 366, Lumberport, West Virginia 26386.	Consolidated Natural Gas Company, Herbert Farm, Harrison County, West Virginia.	(20)	
C86-401-000, (C79-596), B, Apr. 30, 1986	Shell Offshore Inc.	Transcontinental Gas Pipe Line Corp., Matagorda Island Blocks 619 and 620 Field, Offshore Texas.	(5)	
C86-402-000, (C84-316-000), B, Apr. 28, 1986	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, Texas 79189.	Arkla Energy Resources, Northeast Hillsdale, Garfield County, Oklahoma.	(20)	
C86-404-000, (C72-160), B, Apr. 28, 1986	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Natural Gas Pipeline Company of America, Vermilion Block 255 Field, Offshore Louisiana.	(5)	
C86-405-000, (G-8044), B, May 2, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Mid-Louisiana Gas Company Vixen Field, Caldwell Parish, Louisiana.	(24)	
C86-406-000, (C82-338), B, May 2, 1986	Phillips Petroleum Company, 336 HSBL Bldg., Bartlesville, Okla. 74004.	Florida Gas Transmission Company, Hinde Field, Starr County, Texas.	(21)	
C86-411-000, (C77-497), B, May 5, 1986	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, Texas 79189.	Tennessee Gas Pipeline Company, South Timbalier Area, Offshore Louisiana.	(5)	
C86-412-000, (C86-558), B, Feb. 2, 1984	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Panhandle Eastern Pipe Line Company, Tyrone Field, Texas County, Oklahoma.	(25)	
C86-416-000, (C74-701), B, May 7, 1986	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Tennessee Gas Pipeline Company, La Reforma Field, Hidalgo County, Texas.	(5)	

[1] To release gas for irrigation fuel.
[2] Lease(s) relinquished.
[3] Original dedication covered Union's interest in five offshore blocks. Block 32 was subsequently assigned to Eugene Shoal Oil Company and sales authorized in Docket No. C83-33-000 and Rate Schedule No. 266. The remaining boocks were non-productive and the leases on these blocks expired on 11-24-86 and the remaining block on 11-17-86. A new OCS lease was issued on Block 42 on 12-1-81 and is not subject to the Commission's Natural Gas Act jurisdiction in accordance with Section 601(a)(1)(C) of the NGPA.
[4] Partial Assignment of interest in State Lease No. 977 dated 3-27-74 to Despot Exploration, Inc.
[5] ARCO assigned certain interests to James D. Mullins and Robert L. Prichard and no longer holds an interest in acreage to be deleted.
[6] ARCO conveyed its interest in assigned acreage to Petroleum Engineers Inc. and Phillip B. Berry.
[7] By Agreement dated 5-7-84, Shell Offshore Inc. has farmed-out certain acreage to FMP Operating Company.
[8] By Assignment dated 12-31-85, and effective as of 9-1-85, Shell Offshore Inc. has assigned certain of its interest to Taylor Energy Company.
[9] Production ceased and depletion of reserves.

[10] Partial assignment of interest to Hullco Petroleum Corporation, et al.
[11] Applicant is filing pursuant to an Amendment dated 1-27-86 to the Gas Purchase Agreement dated 7-16-79.
[12] Committed acreage was rolled over into Texaco Producing Inc. Gas Rate Schedule 341 (formerly Getty 341) by contract dated 9-9-85, filed with the Commission on 3-5-86.
[13] Termination of surplus gas contract. No gas has been available for 17 years.
[14] Interim sale of sour gas in intrastate market while interstate purchaser is in the proces of trying to get a permit for a sweetening facility.
[15] Depths from the surface down to 3,935 feet underlying the E. A. Hall Lease were conveyed to Olsen Energy Inc. on 7-13-82. The remaining acreage was non-productive and the gas contract was canceled 11-11-82.
[16] Not used.
[17] Effective 5-1-85, Cities Service Oil and Gas Corporation acquired from Sun Exploration and Production Company 25% interest in State Tract 15 (from 11,182 feet to 11,260 feet), Corpus Christi Bay, Nueces County, Texas, covered under Gas Purchase Contract dated 4-14-66, between Sun and United Gas Pipe Line Company.
[18] By an instrument dated effective as of 4-1-85, Oxtex and Texon assigned their interest in the subject acreage to Amoco.
[19] Production too low to economically produce.
[20] Applicant acquired acreage formerly dedicated to Arkla, but not having any producing wells. Applicant drilled three wells and wishes to sell gas to other buyers prior to their 102(c) and 103(c) determinations becoming final.
[21] Koch no longer anticipates gas production from this well (Rustman Unit #1).
[22] A portion of the contract acreage was assigned to Olsen Energy Inc. The remaining acreage is non-productive and the gas contract has passed the primary term.
[23] All production related to the referenced block has ceased, the reserves are depleted and the operator plans to plug and abandon all of the wells.
[24] Texaco Producing Inc. no longer has any interest in the leases commited under the contract. By agreement dated 8-22-85 (effective 11-27-85), between Tee Oil, Inc. and Texas Eastern Transmission Corporation, Tee Oil Inc. assigned and delegated the 4-30-81 contract, as amended.
[25] Not used.
[26] Uneconomical to operate because of increase in water fall and low pressure and volume.
[27] Not used.
[28] No sales since July, 1981 and contract terminated pursuant to paragraph 15 of contract.
[29] Well never conveyed to Seller—Sold before conveyance.
[30] All acreage has been assigned to Samson Resources Company.
[31] Phillips Petroleum Company's 50% working interest in the Bertsen "B" lease of the Gas Purchase Contract dated 7-21-58 has been assigned to the remaining working interest owners in the lease.
[32] Not used.
[33] Property sold to Kaiser-Francis Oil Company.
[34] The Hanson-Guerra Gas Unit No. 1 was plugged on 12-13-88. There is no remaining production subject to Rate Schedule No. 413.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-11203 Filed 5-16-86; 8:45 am]
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[Docket No. CI86-376-000, et al.]

Arkla Exploration Co., et al.; Applications for Blanket Abandonment and Blanket Certificates with Pre-Granted Abandonment

May 14, 1986.

Take notice that on April 23, 1986, as supplemented on April 30, 1986, Arkla Exploration Company (AEC) and Arkla Energy Marketing Company (AEM) (Applicants), P.O. Box 27134, Shreveport, Louisiana 71151, filed applications in Docket Nos. CI86-376-000 and CI86-377-000. In Docket No. CI86-376-000 AEC requests blanket authorization to abandon for an indefinite period sales of excess gas to Arkla Energy Resources, a division of Arkla, Inc., (AER) from wells and properties listed in the attached Exhibit. In Docket No. CI86-377-000 AEC and AEM request blanket certificates with pre-granted abandonment for resale of the released gas. AEC and AEM are wholly-owned subsidiaries of Arkla, Inc.

Applicants state that AEC expects to be restricted due to depressed market conditions from being able to produce for delivery to AER any more than 15% of current total deliverability for at least the next year. Such reduced production it is avered will cause loss of cash-flow and potential permanent loss of certain reserves through drainage and engineering problems such as "trapping" of gas in partial water-drive reservoirs.

Applicants request authorization pursuant to a letter agreement dated April 21, 1986, whereby AER released gas in excess of its system supply requirements, provided such gas is priced in excess of the replacement cost of gas available on AER's system, for a primary period extending through December 31, 1986, and continuing on a month-to-month basis until terminated by either party. The letter agreement provides that AEC in return has agreed to release AER from take-or-pay liabilities, credit released gas sold to a third party against future take-or-pay obligations and insert market-responsive pricing provisions in the contracts to the extent not previously provided. Such provisions include a ceiling of $2.35 MMBtu through December 31, 1986, with periodic renegotiations at six-month intervals.

AEC states that it intends to sell released gas to AEM or other purchasers. AEC further states that AER has reserved the right to recall supplies needed to meet system requirements. Applicants request the authorizations extend to other interest owners in the same wells and reservoirs who make sales under AEC's certificates and rate schedules and pursuant to contracts released in connection with resolution of outstanding take-or-pay and pricing matters.

If the Commission issues certificates to other natural gas companies authorizing blanket interstate transportation of gas abandoned under similar programs, Applicants request blanket certificate authorization with pre-granted abandonment for transportation by interstate pipelines of the subject released gas.

Waiver of Parts 154 and 271 of the Commission's regulations is requested so Applicants will not be required to file and maintain rate schedules for the sales of released gas but prices will not exceed applicable maximum lawful prices.

If the Commission desires, Applicants state they will file quarterly reports detailing the transactions.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days from the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

EXHIBIT

State	Field	Contract No.	Operator name	Lease name	Meter	Rate code [1]	Docket No.	Rate schedule
AR	Bonanza	3576	Arkla Energy Resources	Clarkland #1 Spire	137200	48	C85-262	24
			Arkla Exploration Co.	T.H. Gilchrist #1	137201	48		
		4661	Arkla Exploration Co.	Missouri Improvement #1-28	137202	41	C77-189	93
				Nichols #1-28	137203	41		
AR	Ewing	4003	Arkla Exploration Co.	Riggs #1-5	137302	42	C76-256	56
				USA #1-7	164304	41		
				USA #1-8	857727	41		
				USA #1-6	164301	48		
				USA #1-5	857716	42		
				Wells Riggs #2	164307	41		
AR	Hollis Lake to Line O	4003	Arkla Exploration Co.	USA #1-34	164303	42	C76-256	56
				USA #1-35-C	164301	48		
				USA #1-35-T	164401	48		
				USA #1-36	164308	48		
				USA #1-1	857714	42		
AR	Mansfield	3694	Amoco Production Co.	Heap #1 Up Hartford	153365	48	C86-356	606 (Amoco Production Co.)
AR	Masard thru Bonanza CK to O	3576	Tenneco Oil Co.	T.J. McBride No. 1 Alpha	137370	48	C85-262	24
AR	Wichenville	3995	Arkla Exploration Co.	Bell #1-25-C Turner	161501	41	C75-647	46
				Bell #1-25-T Brown	161401	41		
				Carter #1-28	161499	42		
				Carter #1-28 Lo Turner	161500	42		
				Holland #1-23C-Purch	857735	41		
				Holland #1-24-Purch	857728	41		
				Holland #2-23T-Purch	857733	41		
				Jenkins #1-27	161301	41		
				Kepner #1-22-Purch	857731	41		
LA	Calhoun to Calhoun Plant (HT-1)	3439	Arkla Energy Resources	S H Suc Haywoods #2	015300	48		
LA	Calhoun North (Integrated)	3841	Chevron USA Inc.	Bonsse #10 CV D	888403	48	C86-615	70 (Exxon Oil Co.)
			TXO Production Corp.	Malone #10 Purdy	888404	48		
LA	Caspiana—Olinkraft	3871	Arkla Exploration Co.	Caddo School Board #1-16	058307	41	C76-554	56
		4661	May Petroleum Inc.	Davis #2	059462	41	C75-763	61
				Davis 2-8	888502	41		
				Jackson B. Davis #3	058363	41		
				Jackson B. Davis #6	058367	41		
				Olinkraft #1 CT PT	058091	42		
				Olinkraft #2 C/P	058002	41		
				J. B. Davis #1	058362	41		
			Tenneco Oil Co.	Olinkraft #1	058368	41		
LA	Chalkley	3549	Amoco Production Co.	Caddoville Sand Unit	888308	48	C85-1169	18
LA	Drew South	3988	C H C Gerard	J. C. Sanford #1	094374	42	C76-38	59
			Tenaco Delta Land Co.	Browder #1-36	094375	41		
LA	Elm Grove to Diablo 12" Loop	3871	Arkla Exploration Co.	Cupples #4-12	013304	41	C76-554	56
				Cupples #3-1	013302	41		
				Cupples #2-11	013303	41		
			D. B. Mobley	Hutchinson #2 (#2 C/P)	876173	41		
			O. B. Mobley, Jr.	Hutchinson #3	013382	41		
			O. B. Mobley	Hutchinson #3 (#2 C/P)	876174	41		
			O. B. Mobley, Jr.	Hutchinson #1-27	013380	41		
			O. B. Mobley	Hutchinson #1-27 (#2 C/P)	876172	41		
			Arkla Exploration Co.	Whittington #1-30	013301	41		
				Whittington #2-30	013300	41		
LA	Elm Grove to Gaples Pk-Dist	3871	Arkla Exploration Co.	Hutchinson #3	850648	41	C76-554	56
			O. B. Mobley, Jr.	Snyder #3 Cotton Valley	020391	41		
LA	Elm Grove to Last R	3871	Arkla Exploration Co.	Cupps #1-37	058383	41	C176-554	56
				Caspiana Plantation #1	058381	42		
				Caspiana Plantation #2	058384	41		
				Cupples #1 CU Vaughn	058382	42		
				Cupples #5-10	058306	42		
				Frierson #1	058301	41		
				Hutchinson #1	058369	41		
				Hutchinson #2	058302	41		
LA	Elm Grove Direct to Lucas Line	3871	Arkla Exploration Co.	Hutchinson #3 Cotton Valley	888302	41		
LA	Ivan	3802	Sun Gas Co.	Ivan Fld C-P #2-Coker #1	876159	41	C176-25	41
LA	Monroe	3662	Arkla Exploration Co.	Art Nolan No. 2	614322	44	C166-1048	21
				Ben Rogers No. 1	614326	44		
				Ben Rogers No. 3	614328	44		
				Ben Rogers No. 4	614341	44		
				Ben Rogers No. 5	641347	44		
				Columbia Carbon Co. #3	641346	44		
				Columbian Carbon Co. #1	614315	44		
				Columbian Carbon Co. #2	614316	44		
				Emma Raben #1 et al	614324	44		
				F.O. Rogers #2	614325	44		
				Flora Potts	614323	44		
				Frost Lumber Co. #14	614337	44		
				Frost Lumber Co. #15	614339	44		
				Frost Lumber Co. #16	614338	44		
				Frost Lumber Co. #17	614340	44		
				Frost Lumber Co. #8	614308	44		
				Frost Lumber Co. Unit 1	614301	44		
				Frost Lumber Co. Unit 10	614310	44		
				Frost Lumber Co. unit 11	614311	44		
				Frost Lumber Co. Unit 12	614312	44	C166-1048	21
				Frost Lumber Co. Unit 13	614313	44		
				Frost Lumber Co. Unit 4	614304	44		
				Frost Lumber Co. Unit 7	614307	44		
				Frost Lumber Co. Unit 9	614309	44		
				Monroe Fld C/P	061017	44		
				Rebun Harrell	614318	44		

EXHIBIT—Continued

State	Field	Contract No.	Operator name	Lease name	Meter	Rate code	Docket No.	Rate schedule
				W.E. Wright #1	814336	44		
LA	Rocky Mount	3802	Arkla Exploration Co.	Anderson-Wall #1-35	083301	42	C175-25	41
				Antrim Estate #1-26	083302	41		
				Simpson #1-25	083304	41		
				Hall #2-35 M Cotton Valley	083303	41		
LA	Ruston North to Ruston PLT (F)	4085	Arkla Energy Resources	MCFRN SUA D Colvin #1	027453	47		
			Lyons Petroleum Co.	MH SUA Josie Colvin #4D	027351	47		
		4814	Arkla Exploration Co.	avid Love #1	891302	46		
		4165	IMC Exploration Co.	Heard Trust #1	085363	41	C178-150	64
OK	Alva East	3762	Vintage Petroleum Co.	Korell #1	73363	42	CI72-81	29
				Oshel #1	734364	42		
OK	Anthon NW to OK Mainline-Div 5	3762	Arkla Exploration Co	Wright #1-4 Morrow	720309	46	CI72-81	29
OK	Anthon NW to Line Ad-Div 4	3762	Arkla Exploration Co	Holiday #2-5 Morrow	316304	41	CI72-81	29
				Klein #1-9 Atoka	316301	42		
				Klein #2-9 Morrow	316302	41		
				Mueller #1-10 Morrow	316303	41		
			Coquina Oil Corp	Hodutler #1 Morrow	316360	41		
OK	Ashland North	3623	Arkla Exploration Co	C. Smith #1	138305	61	CI70-276	27
				Dillard #1 Cromwell	138300	61		
				Investors Royalty 1	138303	61		
				Johnson #1 Cromwell	138302	61		
				Johnson EST #2 Cromwell	138306	61		
				Kemp #1 Cromwell	138307	61		
				Lemons #1-25 Cromwell	138308	61		
				S. Moran #1 Cromwell	138304	61		
				Vaughn EST #1 Cromwell	138301	61		
			Chapman Energy Okla Inc	Wells #1	138363	61		
			Dyco Petroleum Corp.	Ward #1 Cromwell	138362	61		
OK	Butler	1230	Arkla Exploration Co	Beauchamp #1-21 Reg for	720303	46	CI75-295	43
OK	Cameron	3527	Cotton Petroleum Corp.	Needham A-2 Red Oak	148369	61		
			Exxon Corp.	M.L. Hill No. 1 Red Oak	148368	61		
OK	Carleton NE	1147	Arkla Exploration Co	Boeckman #2-34 Morrow	720307	46	CI70-299	26
		C1233	Arkla Exploration Co	Schoonover #1 Morrow	720306	42	CI75-36	40
OK	Carleton SE	1147	Arkla Exploration Co	Boeckman #1	720300	46	CI70-299	26
OK	Cedars thru Bonanza to Line 0	3527	Stephens Production Co.	H. Trimble #1 Spiro	137371	61	CI65-2	20
OK	Cedars thru SE Spiro	3527	Donald C. Slawson	K. Conrad #1 Cromwell	*145376	61	CI65-2	20
OK	Centralhoma to Ada Dist Div III	3885	Stephens Production Co.	Cody #1-C	638568	41	CI78-1101	69
				Cody #1-T	638468	41		
OK	Duncan NE	86-3762	MCOR Oil & Gas Corp	Mayberry #1	867502	44	CI72-81	
				Smith #1-14	867503	44		
OK	Erick	5132	Arkla Exploration Co	George Gilbreath #1	997504	61	CI63-1163	23 (Tennaco Oil Co)
OK	Gage SE	1224	Arkla Exploration Co	Jones #1-2 Morrow	735305	42	CI74-757	42
				Jones #2-11 Morrow	735304	42		
				Wright #1-12 Morrow	735306	42		
			Pengo Petroleum Inc	Jones #1-1 Morris	735361	42		
				State of Ok #1-36 Morrow	375360	42		
			Sabine Corp	Larason #1-6	735362	41		
OK	Geary SW	3762	Conoco, Inc.	Young #1-22	720393	42	CI72-81	29
OK	Hinton	4106	HPC, Inc.	Carpenter State #1-14	314361	41	CI77-136	62
				Foster #1	314362	41		
				Meriwether #1	314360	41		
OK	Kinta (orig) K-LEQ-Q Line 0	3527	Amoco Production Co.	Solan #1-6	141342	61	CI65-2	20
			An Son Corp	Slater #1-A	141390	61		
OK	Kinta (orig) K-LEQ-Q Line O	3527	Exxon Corp.	B. McDaniel #1 Cromwell	141361	61	C165-2	20
				Burge #1 UT Spiro	141572	61		
				Burge #1 LT Cromwell	141472	61		
				Claude Roye #1 Spiro	141375	61		
				McKinney #1-32	141566	61		
				McKinney #1 T Cromwell	141466	61		
				Oliver Heirs #1 LT Cromwell	141466	61		
				Oliver Heirs #1 UP Spiro	141566	61		
				Roye UN #1 LT Cromwell	141468	61		
				Roye UN #1 UT Spiro	141568	61		
				WM Oliver #1 LT Cromwell	141467	61		
				WM Oliver #1 UT Spiro	141567	61		
OK	Kinta (Spiro) Comp Sta-Line 0	3527	Amoco Production Co.	L.E. Kennedy #1 Spiro	139355	61		
			Arco Oil & Gas Co.	Wantland #1 Spiro	139356	61		
			Arkla Exploration Co.	Ballard #1	139301	61		
				C.A. Overstreet #1 Spiro	139300	61		
			Exxon Corp.	Carl Nixon #1 Spiro	139364	61		
				Cecil Hensley #1	139367	61		
				Cummings EST #1 Spiro	139368	61		
				D.R. Condo #1 Spiro	139373	61		
				Graham-McSee #1 Spiro	139366	61		
				Hightower #1 Spiro	139394	61		
				H.R. Harris #1	139358	61		
				L. Bridgeman #1 Cromwell	139371	61		
				Lizzabell Rees #1	139365	61		
				McCurtain #1 Spiro	139395	61		
				McSee-Harrison #1 to ALG	139375	61		
				Phillip Hays #1	139376	61		
				Rees #1 Spiro	139362	61		
				Rees-McSee #1 Spiro	139351	61		
				Self #1	139393	61		
				Simpson Evans #1 Spiro	139391	61		
OK	Kinta (Spiro) Comp	3527	Exxon Corp.	US Government #1 Spiro	139360	61	C165-2	20
				USA #1 Spiro	139378	61		
				W. Lowrey #1 Cromwell	139370	61		
				Walter Heirs #1 Spiro	139364	61		

Exhibit—Continued

State	Field	Contract No.	Operator name	Lease name	Meter	Rate code [1]	Docket No.	Rate schedule
			French Petroleum Corp	Rees #1	139085	61		
			LRF Corp	Rees #1	866803	61		
			Monsanto Oil Co	Lone Star #1 Spiro	139399	61		
			Stephens Production Co	Evans Unit #1	139372	61		
				Fitzgerald #1 Spiro	139374	61		
				Gross #1 LT	139312	61		
				H. Bledsoe #1 C Hunton	139325	61		
				McBee EST #1 Spiro	139330	61		
				N.C. Holt #1 LT Spiro	139460	61		
				P. Patterson #1 Spiro	139381	61		
				Ritter #1	139356	44		
			Sun Exploration and Production Co.	Federal College #1 Spiro	139369	61		
				Federal King #1 Spiro	139350	61		
				Federal Lankford #1 Spiro	139396	61		
				Federal Porter #1 Spiro	139382	61		
OK	Kiowa SW	4006	Arkla Exploration Co	Caldwell #1-14 Mid-Alaska	131382	41	CI76-782	60
OK	Mayfield SW to Line AD	3752	Helmerich & Payne Inc	Cupp C #1	309384	41	CI72-81	29
		4109	Conoco Inc	Wallace #1-18	309386	41	CI76-644	67
OK	Midway	4183	El Paso Natural Gas Co	Purvis #1	867225	41	CI76-529	65
OK	Minco SW	3782	Union Oil Co. of CA	Waterbury #1-28	303361	41	CI72-81	29
OK	Observe SW	1217	Arkla Exploration Co	Weber #1	720394	42	C175-566	45
			TXO Production Corp	Boeckman #1-20	720378	42		
		1227	Arkla Exploration Co	Oblender #1-18 Morrow	720395	42	C175-708	49
			H C M	Oblender #1-7	720387	41		
		1233	Arkla Exploration Co	Fast @1-12 Morrow	720388	41	C175-38	40
OK	Pine Hollow S-Anadarko-Dir 4	4027	Arkla Exploration Co	Miller #2-12	317380	41	C176-259	55
OK	Reams NW-Anadarko-Dir 4	4027	Arkla Exploration Co	McKay #1	317381	41	C176-259	55
OK	Shattuck	1234	Arkla Exploration co	Schollenberger 1-13	735380	42	C174-757	42
				Walton #1-15 Morrow	735382	42		
			May Petroleum Inc	Harrell #1	735984	41		
				Jacoby #1	735972	41		
OK	Sooner Trend-OK Mainline Dst 3	3782	Universal Resources	Bollenbach CT PT	867352	44	C172-81	29
OK	Walnut	3786	Arkla Exploration Co	Clancy EST #1 Springer	303381	46	C176-37	51
OK	Weatherford	1204	Arkla Exploration Co	Urania Leonard #1	720392	44	C173-386	33
OK	Wilburton	3523	Arco Oil & Gas Co	State C #1	132371	61	C170-276	27
		4086	Oxley Petroleum Co	Stevens #1 Red Oak	131382	41	C176-564	59
				Whiting #1 Red Oak	131160	42		
OK	Woodward South	1206	Coastal Oil & Gas Corp	A.A. Byrant #1 Morrow	734381	46	C174-348	71(Coastal)
				Campbell #1 Morrow	734382	42		
				R.E. Baird #1	734380	46		
TX	Buffalo Wallow	3752	Helmerich & Payne, Inc	George #1	309381	44	C171-274	28
				Huff #1	309380	44		
TX	Gilmer	3621	William D. McGee	Ind. RR Gas UN 2 Well #1 R	043370			
				Indian Rock Gas UN #3				
		3713	Norlux Corp	Coyle #1 Cotton Valley	043388			
TX	Hemphill	3763	Arkla Exploration Co	Cook #1-19	312380	41	CI72-73	31
				Hall #1-19	312385	42		
			Kerr McGee Corp	Norris #1-29	312384	42		
				Norris #1-44 Gran H	312388	42		
				Norris #2-29 Gran H	312386	41		
				Norris #2-44 Gran H	312387	41		
				Norris #3-29 Gran H	312371	41		
			Mesa Oil & Gas Corp	Little #1-43 Douglas	312570	41		
				Little #1-43 Gran Wash	312470	41		
				Little #2-30 Gran Wash	312370	41		
				Little #4-30	312374	41		
				Little #3-30	312373	41		
				Pycatt #1-19 Granite	312369	41		
				Pycatt #2-19 Gran Wash	312372	41		
			Mesa Petroleum Co	Raley #1	867805	44		
TX	Locke	3750	Hamon Oil Co	W.R. Holland #1LT G WASH	312462	44	CI73-149	30
				W.R. Holland #1UT BR DOL	312562	44		
			Jake Hamon	Locke Cattle Co. #4	312361	44		
				Locke Cattle #3C	867911	44		
				Locke Cattle #3T	867912	44		
				Locke Cattle #1	867910	44		
TX	Mathers Ranch (Integrated)	3763	Amarex Inc	Conatser #1-162	311347	42	CI72-73	31
				Conatser #2-162	311349	41		
				Conatser #3-162	311348	41		
				Federal #2-161	311350	41		
				USA Conatser #1-160	311370	44		
TX	Mathers Ranch (Integrated) (continued)	3763	Shell Oil Co	Federal #1-161 Hunton	311360	46	CI72-73	31
		3888	Amarex Inc	USA Conatser #1-160	311370	46	CI75-701	47
TX	Rodessa-Jeff Area	4200	Arkla Exploration Co	B. R. Badgett #1	019019	46	G-14812	10
TX	Stockman	4847	Arkla Exploration Co	Adams #1 Travis Peak	105300	41	CI76-319	56
				Grant #1	105302	41		
				Jones #1	105303	41		

[1] The rate codes entered correspond to the following pricing categories:
Rate Code and Price Category

41—NGPA §104, 18 CFR 271.402(b)(1)
42—NGPA §104, 18 CFR 271.402(b)(2)
44—NGPA §104, 18 CFR 271.402(b)(4)
46—NGPA §104, 18 CFR 271.402(b)(6)
47—NGPA §104, 18 CFR 271.402(b)(4)
48—NGPA §104, 18 CFR 271.402(b)(5)
61—NGPA §108, 18 CFR 271.402(b)(3)

[FR Doc. 86-11205 Filed 5-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-371-000, et al. and CI86-375-000, et al.]

Southern Natural Gas Co.; Trunkline Gas Co.; Applications for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificates With Pre-Granted Abandonment Filed by Pipeline Companies on Behalf of Their Producer-Suppliers

May 14, 1986.

Take notice that the pipeline companies (Applicants) listed herein have filed applications pursuant to section 7 of the Natural Gas Act for blanket limited-term abandonment and blanket limited-term certificates with pre-granted abandonment as described herein.[1]

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-371-000 A, Apr. 25, 1986 [1]	Southern Natural Gas Company,[2] P.O. Box 2563, Birmingham, Alabama 35202.	Southern Natural Gas Company Various locations	(*).	
CI86-392-000, B, Apr. 21, 1986	....do	....do	(*)	
CI86-375-000, A, Apr. 23, 1986 [3]	Trunkline Gas Company,[2] P.O. Box 1642, Houston, Texas 77251-1642.	Trunkline Gas Company Various locations	(*)	
CI86-408-000, B, Apr. 23, 1986 [4]	....do	....do	(*)	

[1] Application received April 21, 1986. Filing date is date of receipt of filing fee.
[2] Application is filing on behalf of its producer-suppliers.
[3] Applicant is requesting blanket limited-term abandonment and blanket certificates with pre-granted abandonment on behalf of certain of its producer-suppliers for a term not to extend beyond December 31, 1987, as provided for in each release with its individual producer-suppliers. Applicant requests authorization (1) for gas subject to a maximum lawful price equal to or greater than the NGPA section 109 price that applicant and its producer-suppliers agree to release from the applicable contract and (2) for gas subject to a maximum lawful price less than the NGPA section 109 price that applicant and its producer-suppliers agree to release from the applicable contract in conjunction with release of higher cost gas in a transaction in which the weighted average cost of the released volumes, if purchased by applicant, would have been equal to or greater than the NGPA section 109 price. Applicant also requests that the blanket resale certificates include authorization for any third parties which purchase such gas for resale in transactions constituting sales for resale in interstate commerce. Applicant states its projected system supply sales in 1986 and 1987 are 349 Bcf or less, while its available supply is projected to be 625 Bcf for 1986 and 539 Bcf for 1987, and such over-supply necessitated these applications. Applicant requests waiver of the Commission's regulations under Parts 154 and 157 to allow the requested authorizations to be exercised without further filings by its producer-suppliers and any third party resellers. Applicant proposes to file quarterly reports detailing the transactions.
[4] Additional information received May 5, 1986.
[5] Applicant is requesting blanket limited-term abandonment and blanket certificates with pre-granted abandonment on behalf of certain of its producer-suppliers for the period through October 31, 1987, in accordance with release agreements which have been or are to be executed with its producers providing for relief of take-or-pay liability. The gas is to have a maximum lawful price equal to or higher than the NGPA section 109 price or, if it is a measure of multiple vintages from a single producer, the volume-weighted average of the applicable maximum lawful prices equal to or higher than the NGPA section 109 price. Applicant estimates take-or-pay exposure for 1985 will exceed $550 million. Applicant projects availability of producer contract quantities totaling 391 Bcf for 1986 with purchase requirements of 297 Bcf and for the period from January through October 1987, total contract quantities of 285 Bcf and requirements of 153 Bcf. Applicant requests waivers of any applicable requirements of the NGA, NGPA and the Commission's regulations to the extent necessary for effectuation of the proposed arrangements.
* Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-11209 Filed 5-16-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP86-19-000]

State of New Mexico, Section 108 NGPA Determination; Amoco Production Co., Gallegos Canyon Unit No. 208, FERC No. JD86-09725; Petition To Reopen and Vacate Final Well Category Determination and Request for Withdrawal of Application

May 14, 1986.

On January 21, 1986, Amoco Production Company (Amoco) filed with the Federal Energy Regulatory Commission a petition pursuant to § 275.205 of the Commission's regulations [1] to reopen and vacate the captioned final well category determination under section 108 of the Natural Gas Policy Act of 1978 (NGPA)[2] for the Gallegos Canyon Unit No. 208 Well, San Juan County, New Mexico, and to withdraw its application for the determination. The determination permitted the continued qualification of the captioned well as a stripper well, based upon evidence that production from the well in excess of 60 Mcf per production day, during the 90-day period ending April 30, 1985, resulted from a temporary pressure buildup.[3] Amoco states that the reason for its petition is that Amoco personnel have subsequently concluded that the more likely cause of the excess production was repair and maintenance work performed on the well, rather than pressure buildups resulting from temporary shut-ins.

With respect to the question of refunds arising out of Amoco's petition, notice is hereby given that the question of whether refunds, plus interest computed under 18 CFR 154.102(c) (1985), will be required is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rule 214 [4] or 211 [5] of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 15 days following publication of this notice in the Federal Register. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

[FR Doc. 11204 Filed 5-16-86; 8:45 am]
BILLING CODE 6717-01-M

[1] 18 CFR 275.205 (1985).
[2] 15 U.S.C. 3318 (1982).
[3] See 18 CFR 271.804(c) (1985).
[4] 18 CFR 385.214 (1985).
[5] 18 CFR 385.211 (1985).

[Docket No. SA86-19-000]

Chino Mines Co.; Petition for Exemption and Interim Relief

Issued May 14, 1986.

On April 14, 1986, Chino Mines Company (Chino) filed a petition pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA)[1] and § 282.206(b) of the Federal Energy Regulatory Commission's regulations,[2] for interim and permanent relief from the Commission's incremental pricing regulations issued under Title II of the NGPA.[3] Chino seeks the relief for its mining, concentrating, smelting, and refining facility located at Hurley, New Mexico, served with gas by El Paso Natural Gas Company. The facility produces copper with molybdenum, gold, silver, and sulphuric acid as by-products.

In support of its petition, Chino states that it has been engaged in a major modernization program since 1981; that under this program it has made large capital investments to modernize its mining operations and has improved the productivity of its work force; and that as a result of the program, it has increased the facility's productivity by 340% and reduced the copper production costs from approximately 87 cents per pound to approximately 63.3 cents per pound since 1981. However, Chino states that despite these improvements, its operating expenses for the period March 1985 through February 1986 exceeded its operating revenues due to depressed world copper prices. It states that the low copper prices are caused by overproduction of foreign mines made possible by subsidization of such mines by their governments and the International Monetary Fund. Chino states that if interim relief were denied, the additional costs of incremental surcharges would be borne by a facility that is experiencing financial hardship and that would not be able to recoup such costs, once paid. It further states that such circumstance could well contribute to closure of the mining facility and would injure not only Chino, but also the 930 employees who depend on the mine for their livelihood, as well as the suppliers and merchants in the community who have come to depend on the continued operation of Chino Mines Company.

The procedures applicable to the conduct of this proceeding are set forth in Subpart K of the Commission's Rules of Practice and Procedure.[4] Any person desiring to participate in this proceeding must file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene in accordance with Subpart K within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11206 Filed 5-16-86; 8:45 am]
BILLING CODE 6717-01-M

[1] 15 U.S.C. 3346(d) 1982).
[2] 18 CFR 282.206(b) (1985).
[3] 15 U.S.C. 3341-3348 (1982).
[4] 18 CFR 385.1101-.1117 (1985).

[Docket No. RP85-168-006

Consolidated Gas Transmission Corp.

May 12, 1986.

Take notice that on May 5, 1986, Pennzoil Company and Pennzoil Producing Company (Pennzoil) filed with the Commission an interlocutory appeal of the presiding judge's ruling of April 3, 1986, denying them late intervention in this proceeding. Pennzoil filed on April 18, 1986 a motion with the presiding judge for leave to appeal his order of April 3, 1986 to the Commission. On April 29, 1986, the judge issued an order denying Pennzoil's motion.

The presiding judge certified a settlement in this docket to the Commission on April 8, 1986. With the certification of the settlement, the judge transferred to the Commission jurisdiction over the proceeding. Accordingly, the Commission will treat the appeal as a motion to the Commission for reconsideration of the judge's order denying late intervention. Any party wishing to respond to the May 5, 1986 motion will have until May 27, 1986 to do so.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11207 Filed 5-16-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. SA86-17-000]

Natural Gas Pipeline Co. of America; Petition for Adjustment

May 14, 1986.

Take notice that on April 8, 1986, Natural Gas Pipeline Company of

America (Natural) filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting adjustment relief from an annual filing requirement of § 281.204(b)(2) of the Commission's regulations. This regulation requires major interstate pipelines to update annually their respective indexes of essential agricultural users' entitlements to show changes in the amounts of gas allocated to such users under the pipelines' respective curtailment plans.

Natural states that its gas supplies are adequate for the immediate future to meet the essential agricultural users' entitlements and therefore compliance with § 281.204(b)(2) is unnecessary. Natural further states that because the annual filing requirement is unnecessary, the substantial time and expense involved in gathering and reviewing data and filing annual entitlement updates would constitute a special harship and an unfair distribution of burdens. Natural states that if obliged to reduce essential agricultural users' entitlements, curtailment will conform to Commission regulations implementing NGPA section 401.

The procedures applicable to the conduct of this proceeding are set forth in Rule 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–11206 Filed 5–16–86; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL–3018–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where the appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382–2740 or FTS 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Underground Storage Tank Notification Awareness Survey (EPA ICR #1297). (This is a new collection.)

Abstract: This survey is designed to determine the awareness of notification requirements by designated State agencies and compliance by owners of underground storage tanks regulated under Subtitle I of RCRA. Results will indicate the degree of Agency effectiveness in meeting notification requirements and help target additional future outreach and follow-up as needed.

Respondents: Owners of underground storage tanks in South Carolina and Kentucky.

Title: Used Oil Regulatory Impacts (EPA ICR #1298). (This is a new collection.)

Abstract: This information collection will help quantify the potential adverse impacts of EPA's proposed used oil rules on small businesses, small quantity generators, and State recycling programs. The collection consists of informal verbal interviews conducted on a voluntary one-time-only basis with used oil generators, processors, burners, re-refiners, and State personnel.

Respondents: Used oil generators, processors, burners, re-refiners, and State personnel.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460;

and

Nancy Baldwin, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: May 14, 1986.

Daniel J. Fiorino,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86–11175 Filed 5–16–86; 8:45 am]
BILLING CODE 6560-50-M

[FRL–30–17–1]

Agency Information Collection Activities, Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382–2740 or FTS 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticide and Toxic Substances

Title: Call-In of Confidential Statement of Formula and Product Chemistry Data/Pretest (EPA ICR #1280). (This is a new collection.)

Abstract: This activity calls for a pretest of a revised form and involves 150 respondents. EPA will use the information to determine practical means of carrying out a full-scale call-in of all confidential statements of formula for all registered pesticide products.

Respondents: Pesticide manufacturers and producers.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: May 13, 1986

Daniel J. Fiorino,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86–11071 Filed 5–16–86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-41021; FRL-3017-2]

Eighteenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Eighteenth Report to the Administrator of EPA on May 1, 1986. This report, which revises and updates the Committee's priority list of chemicals, adds one chemical to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new chemical is tributyl phosphate. This chemical is not designated for response within 12 months. Two substances previously recommended with intent to designate, cyclohexane and 2,6-di-tert-butylphenol (50 FR 47603), are now designated for response within 12 months. The Eighteenth Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend a Focus Meeting to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals. ITC also notes the removal of 6 chemicals from the priority list because EPA has responded to the ITC's previous recommendations for testing of the chemicals.

DATES: Written comments should be submitted by June 18, 1986. A Focus Meeting will be held on June 17, 1986.

ADDRESSES: Send written submissions to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS-41021).

The public record supporting this action, including comments, is available for public inspection in Rm. E-107 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. The Focus Meeting will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. Persons planning to attend the Focus Meeting and/or seeking to be informed of subsequent public meetings on this chemical, should notify the TSCA Assistance Office at the address listed below. To insure seating accommodations at the Focus Meeting, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has received the Report of the TSCA Interagency Testing Committee to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment.

Section 4(e) of TSCA established and Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the Federal Register its reasons for not doing so. The ITC's Eighteenth Report was received by the Administrator on May 1, 1986, and follows this Notice. The Report adds one substance to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's Federal Register adding the substance recommended in the ITC's Eighteenth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. This chemical will also be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

A Focus Meeting will be held to discuss relevant issues pertaining to this chemical and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meeting will be held on June 17, 1986 at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. This meeting is intended to supplement and expand upon written comments submitted in response to this notice. The meeting will be held at 10 a.m.

Persons wishing to attend this meeting or subsequent meetings on this chemical should call the TSCA Assistance Office at the toll free number listed above at least one week in advance.

All written submissions should bear the identifying docket number (OPTS-41021).

III. Status of List

In addition to adding the one recommendation to the priority list, the ITC's Eighteenth Report notes the removal of six chemicals from the list since the last ITC report because EPA has responded to the Committee's prior recommendations for testing of the chemicals. Subsequent to the ITC's preparation of its Seventeenth Report, EPA responded to the ITC's recommendations for six additional chemicals. The six chemicals removed and the dates of publication in the Federal Register of EPA's responses to the ITC for these chemicals are: anthraquinone, November 6, 1985 (50 FR 46090); cumene, November 6, 1985 (50 FR 46104); mercaptobenzothiazole, November 6, 1985 (50 FR 46121); octamethylcyclotetrasiloxane, October 30, 1985 (50 FR 45123); pentabromoethylbenzene, November 13, 1985 (50 FR 46785); sodium N-methyl-N-oleoyltaurine, November 6, 1985 (50 FR 46178). The report also notes that cyclohexane and 2,6-di-tert-butylphenol, which were originally recommended with intent to designate (50 FR 47603, November 19, 1985), have now been designated for response within 12 months by the ITC.

The current list contains seven designated substances, one chemical recommended with intent-to-designate, and two recommended substances.

Authority: 15 U.S.C. 2603.

Dated: May 6, 1986.

J. Morenda,

Director, Existing Chemical Assessment Division.

Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee (ITC), composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of one chemical, and is noting the removal of six as a result of responses by EPA. The Committee also is designating two chemicals that have been recommended with intent-to-designate in the seventeenth report.

The Priority List is divided into three parts. Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains those chemicals and groups recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemical or group of chemicals in a subsequent report to the Administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPA without being designated for response within 12 months.

The changes to the Priority List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY LIST—MAY 1986

Chemical/group	Recommended studies
A. Designated for response within 12 months:	
Cyclohexane [1] (CAS No. 110-82-7).	Health Effects: Chronic toxicity including oncogenicity and neurotoxicity; teratogenicity; reproductive toxicity. Health Effects: Toxicokinetics; chronic toxicity. Chemical Fate: Persistence in aerobic and anaerobic sediments. Ecological Effects: Acute toxicity to benthic organisms; bioconcentration in benthic organisms.
2,6-Di-tert-butylphenol [2] (CAS No. 128-39-2).	
NOTE: Cyclohexane and 2,6-Di-tert-butylphenol were recommended with intent-to-designate by the Committee in the seventeenth report (50 FR 47603).	
B. Recommended with intent-to-designate:	
Tributyl phosphate [3] (CAS No. 126-73-8).	Health Effects: Chronic toxicity including oncogenic, neurotoxic, renal, reproductive and developmental effects. Chemical Fate: Persistence in anaerobic soils and sediments. Ecological Effects: Chronic effects on aquatic and terrestrial plants; chronic effects on daphnids and/or other aquatic invertebrates; acute and chronic effects on benthic organisms and soil invertebrates, if found persistent under anaerobic conditions.
C. Recommended without being designated for response within 12 months:	
None.	
CA Index Names (9 CI):	
1. Cyclohexane	
2. Phenol, 2,6-bis(1,1-dimethyl ethyl)-	
3. Phosphoric acid, tributyl ester.	

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Evironmental Quality
  Harvey Doerksen, Member
Department of Commerce
  Patrick D. Cosslett, Member(*1*)
Environmental Protection Agency
  John D. Walker, Member and Vice Chairperson
  Laurence S. Rosenstein, Alternate
National Cancer Institute
  Richard Adamson, Member(*2*)
  Elizabeth K. Weisburger, Alternate(*3*)
National Institute of Environmental Health Sciences
  James K. Selkirk, Member(*4*)
National Institute For Occupational Safety and Health
  Rodger L. Tatken, Member and Chairperson
National Science Foundation
  Rodger W. Baier, Member
  Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
  Stephen Mallinger, Alternate

Liaison Agencies and Their Representatives

Consumer Product Safety Commission
  Lakshmi C. Mishra (*5*)
Department of Agriculture
  Richard M. Parry, Jr.
  Elise A. B. Brown(*6*)
Department of Defense
  Edmund Cummings
Food and Drug Administration
  Arnold Borsetti
National Library of Medicine
  Vera Hudson
National Toxicology Program
  Dorothy Canter

Committee Staff

Robert H. Brink, Executive Secretary
Norma Williams, ITC Coordinator

Support Staff

Alan Carpien—Office of the General Counsel, EPA

Notes

(*1*) Appointed on December 2, 1985.
(*2*) Appointed on October 28, 1985.
(*3*) Appointed on October 28, 1985.
(*4*) Appointed on February 21, 1986.
(*5*) Appointed on December 13, 1985.
(*6*) Appointed on January 6, 1986.

The Committee acknowledges and is grateful for the assistance and support given the ITC by staff of Dynamac Corporation (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469). The specific mandate of the Committee is to recommend to the

Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the Federal Register. The Committee is directed by section 4(e)(1)(A) of TSCA the designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is comprised of representatives from eight statutory member agencies and six liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Ref. 1 and 2).

1.2 *Committee's previous reports.* Seventeen previous reports to the EPA Administrator have been issued by the Committee and published in the Federal Register (Ref. 1 and 2). Ninety-one entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, four chemicals and one group of chemicals were recommended without being so designated.

1.3 *Committee's activities during this reporting period.* Between October 1, 1985, and March 31, 1986, the Committee continued to review chemicals fromits fourth and fifth scoring exercises, and from nominations by Member Agencies, Liaison Agencies and State Agencies.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpebllshed information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee reviewed available information on 32 chemicals and 3 large classes of chemicals. One chemical was selected for addition to the section 4(e) Priority List, and 12 were deferred indefinitely. The remaining chemicals are still under study.

On February 12, 1986, the ITC published an Intent-to-Designate notice (51 FR 5250) that listed isopropanol and described additional information needed by the ITC to reach a more informed decision on whether or not to designate isopropanol in a subsequent report to the EPA Administrator. A deadline of March 31, 1986 was provided for receipt of relevant information.

The Committee requested information on genotoxicity, carcinogenicity, and reproductive and developmental effects on isopropanol per se, uncontaminated with isopropyl sulfate. Information has been received indicating that some of the requested information is being developed in ongoing studies. The Committee is awaiting details on these studies and expects to make a decision on isopropanol prior to the next report to the EPA Administrator.

In its seventeenth report to the Administrator of EPA (Ref. 2), the ITC announced the establishment of a "recommended with intent-to-designate" category, to take advantage of recent rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule (50 FR 34805) and the TSCA section 8(d) Health and Safety Data Reporting rule (50 FR 34809). The 8(a) and 8(d) rules require the submission to EPA of information on production, use, exposure and unpublished health and safety studies that may not be publicly available. The ITC noted that information received following "recommendation with intent-to-designate" of a chemical or group of chemicals may influence the Committee to either designate or not designate that chemical or group of chemicals in a subsequent report to the Administrator.

When a chemical or group of chemicals is placed in the "recommended with intent-to-designate" category in a report to the Administrator, the ITC will review information submitted to the EPA and to the ITC following recommendation and will then take one of the following actions:

(a) Designate the chemical or group in the next ITC report, or

(b) Recommend the chemical or group without designation, in the next ITC report, providing a rationale for not designating the chemical or group, or

(c) Remove the chemical or group from the Priority List, in the next ITC report, providing a rationale for that removal, or

(d) Defer a decision, stating the reasons for the deferral and noting that a decision will be announced on or before a given date.

It is anticipated that deferral of a decision will occur infrequently. On occasion, however, the volume and/or complexity of information received may make it necessary to delay a decision. Whenever the deferral option is required, it is anticipated that a final decision (Designation, Recommendation or Removal) will be announced within 8 to 9 months following the report in which the chemical or group of chemicals was placed in the "recommended with intent-to-designate" category.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: ". . . make such revisions in the [priority] list as it determines to be necessary and . . . transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding one chemical: tributyl phosphate. Tributyl phosphate is being recommended with intent-to-designate in this report. In addition, the Committee is designating for response within 12 months two chemicals that were recommended with intent-to-designate in the seventeenth report. The designated chemicals are cyclohexane and 2,6-di-*tert*butylphenol. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

Six chemicals are being removed from the Priority List because the EPA Administrator has responded to the Committee's prior recommendations for testing them. They are listed in the following Table 2 with citations to EPA responses:

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY LIST OCTOBER 1, 1985 THROUGH MARCH 31, 1986

Chemical/group	EPA response	
	FEDERAL REGISTER citation	Publication date
Anthraquinone	50 FR 46360	Nov. 8, 1985.
Cumene	50 FR 46184	Nov. 8, 1985.
Mercaptobenzothiazole.	50 FR 46121	Nov. 6, 1985.
Octamethylcyclotetrasiloxane.	50 FR 49123	Dec. 30, 1985.
Pentabromotrichlorobenzene.	50 FR 45789	Nov. 13, 1985.
Sodium N-methyl-N-oleoyltaurate.	50 FR 46178	Nov. 8, 1985.

Removal of 81 entries was noted in previous reports (Ref. 1 and 2). To date, 87 chemicals and groups of chemicals have been removed from the Priority List.

With the one recommendation and six removals noted in this report, 10 entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 3 into three parts; namely, A, Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B, Chemicals and Groups of Chemicals Recommended with Intent-to-Designate, and C, Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 3 follows:

TABLE 3.—THE TSCA SECTION 4(e) PRIORITY LIST—MAY 1986

Entry	Date of designation
A. Chemical and groups of chemicals recommended as designated for response within 12 months:	
1. Cyclohexane	May 1986.
2. 2,6-Di-tert-butylphenol	May 1986.
3. Methyl cyclopentane	May 1986.
4. Tetrabromobisphenol A	May 1986.
5. Triethylene glycol monomethyl ether	May 1986.
6. Triethylene glycol monoethyl ether	May 1986.
7. Triethylene glycol monobutyl ether	May 1986.

B. Chemicals and groups of chemicals recommended with intent-to-designate:

Entry	Date of recommendation
1. Tributyl phosphate	May 1986.
C. Chemicals and groups of chemicals recommended without being designated for response within 12 months:	
1. 3,4-Dichlorobenzotrifluoride	May 1986.
2. Dioctacyl phenyl phosphite	November 1986.

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1986, 50 FR 20650-20658. Includes references to Reports 1 through 15 and an annotative list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603-47615.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following chemical substance to the section 4(e) Priority List: Tributyl phosphate. The recommendation of tributyl phosphate is being made after considering the factors identified in section 4(e)(1)(A) and other relevant information, as well as the professional judgment of Committee members. In addition, the Committee is designating for response within 12 months two chemical substances that were recommended with intent-to-designate in the seventeenth report. The designated chemicals are cyclohexane and 2,6-di-*tert*-butylphenol.

2.2 *Chemicals designated for response within 12 months.*

2.2.a Cyclohexane.

In the seventeenth report to the Administrator of EPA (50 FR 47603), cyclohexane was recommended with intent-to-designate. The rationale for that recommendation appears in the seventeenth report. Information reviewed by the Committee in response to the seventeenth report included any public comments on the Committee's recommendations; production volume, use, exposure, and release information reported by manufacturers of cyclohexane under the TSCA section 8(a) Preliminary Assessment rule; health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting rule; and any unpublished and published data available to the Committee. The information included acute toxicity studies, skin and eye irritation studies and additional genotoxicity studies (Phillips Petroleum Co., 1986). Summary data from acute toxicity, skin irritation and repeated dose (six months) studies were also received from other submitters (Eastman Kodak Co., 1986; Dow Chemical Co., 1986). Although ecological effects testing was not recommended for cyclohexane, information dealing with environmental persistence also was received (Shell Oil Co., 1986).

After reviewing the information, the Committee concluded that data are still lacking on chronic (two-year) effects, especially oncogenicity and neurotoxicity. Teratogenic and reproductive effects studies also are absent. For these reasons and for the reasons previously presented (50 FR 47603) the Committee is now designating cyclohexane for response within twelve months and recommending that it be tested for the following:

Health Effects:

Chronic effects including oncogenicity and neurotoxicity (with special emphasis on neuropathology).

Teratogenicity and reproductive toxicity.

References

(1) Dow Chemical Co., Midland, MI. Letter from L. Hampton to Document Control Officer, U.S. EPA. January 31, 1986.

(2) Eastman Kodak Co., Rochester, N.Y. Letter from R. L. Raleigh to U.S. EPA. January 15, 1986.

(3) Phillips Petroleum Co., Bartlesville, OK. Letter from J.R. Rust to Document Control Officer/OPTS, U.S. EPA. January 15, 1986.

(4) Shell Oil Co., Washington, DC. Letter from E.L. Hobson to U.S. EPA. February 5, 1986.

2.2.b 2,6-Di-*tert*-butylphenol.

In the seventeenth report to the Administrator of EPA (50 FR 47603), 2,6-di-*tert*-butylphenol was recommended with intent-to-designate. The rationale for that recommendation appears in the seventeenth report. Information reviewed by the Committee in response to the seventeenth report included any public comments on the Committee's recommendations; production volume, use, exposure and release information reported by manufacturers of 2,6-di-*tert*-butylphenol under the TSCA section 8(a) Preliminary Assessment rule; health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting rule; and any unpublished and published data available to the Committee. The information included data on acute oral and percutaneous LD50 studies with rats; skin and eye irritation with rabbits; skin depigmentation, skin sensitization and delayed contact hypersensitivity with guinea pigs; rat hepatocyte primary culture and DNA repair tests; an Ames *Salmonella* microsomal assay; intravenous toxicity to mice and a report on the physiological response of experimental animals to the absorption of alkylated phenols and anilines (Ciba-Geigy, 1986; DuPont, 1986; Ethyl, 1986; Shell, 1986). Also included was a summary on ecological effects (Dow, 1986).

After reviewing the information, the Committee concluded that data are still lacking on toxicokinetics, chronic toxicity, persistence in sediments, acute

toxicity to benthic organisms and bioconcentration in benthic organisms. For these reasons and for the reasons previously presented (50 FR 47603) the Committee is now designating 2,6-di-*tert*-butylphenol for response within twelve months and recommending that it be tested for the following:

Chemical Fate:
Persistence in aerobic and anaerobic sediments
Health Effects:
Toxicokinetics and chronic toxicity
Ecological Effects:
Acute Toxicity to benthic organisms
Bioconcentration in benthic organisms

References

(1) Ciba-Geigy. Ciba-Geigy Corp., Ardsley, N.Y. Letter from A. DiBattista to U.S. EPA. February 12, 1986.

(2) Dow. Dow Chemical Co., Midland, MI. Letter from L. Hampton to U.S. EPA. January 31, 1986.

(3) DuPont. E.I. DuPont de Nemours and Co., Wilmington, DE. Letter from K.D. Dastur to U.S. EPA. January 14, 1986.

(4) Ethyl. Ethyl Corporation, Baton Rouge, LA. Letter from L. L. Weir to Document Control Officer, Office of Pesticides and Toxic Substances, U.S. EPA. February 4, 1986.

(5) Shell. Shell Oil Co., Washington, DC. Letter from E. L. Hobson to U.S. EPA. February 5, 1986.

2.3. *Chemicals recommended with intent-to-designate but not designated for response within 12 months.*

2.3.a Tributyl Phosphate.

Summary of recommended studies. It is recommended that tributyl phosphate (TBP) be tested for the following:

A. Chemical Fate: Persistence in anaerobic soils and sediments.

B. Health Effects: Chronic toxicity including oncogenic, neurotoxic, renal, reproductive and developmental effects.

C. Ecological Effects: Chronic effects on aquatic and terrestrial plants; Chronic effects on daphnids and/or other aquatic invertebrates.

Acute and chronic effects on benthic organisms and soil invertebrates, depending on the results from persistence studies—

Physical and Chemical Information

CAS Number: 126–73–8.

Synonyms: Phosphoric acid, tributyl ester (9CI); Tributoxyphosphine oxide; Tri-*n*-butyl phosphate.

Acronym: TBP.

Structure:

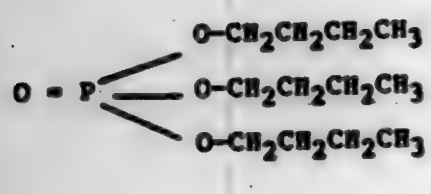

Empirical Formula: $C_{12}H_{27}O_4P$.

Molecular Weight: 266.32.

Melting Point: < −80°C (Ref. 47, TDB, 1986).

Boiling Point: 289°C at 760 mmHg (Ref. 11, CRC, 1983).

Vapor Pressure: 7.3 mmHg at 150°C (Ref. 23, Laham et al., 1964); 0.07 mmHg at 25°C (estimated; Ref. 48, U.S. EPA, 1985).

Air Vapor Density: 9.2 (Ref. 28, Monsanto, 1985).

Solubility in Water: 420 mg/L at 25°C (Ref. 17, General Electric, 1983); 280 mg/L (Ref. 39, Saeger et al., 1979).

Solubility in Organic Solvents: Soluble in ether, benzene carbon disulfide, ethanol, mineral oil, and gasoline (Ref. 11, CRC, 1983).

Specific Gravity: 0.977–0.978 at 20/20°C (Ref. 28, Monsanto, 1985).

Log Octanol/Water Partition Coefficient (log P): 4.0 (Ref. 39, Saeger et al., 1979); 2.36 (Ref. 20, Hansch and Leo, 1979).

Description of Chemical (ambient conditions): Clear, colorless, odorless liquid (Ref. 47, TDB, 1986).

Rationale for Recommendations

I. Exposure information—A. *Production/use.* There are at least three, and maybe as many as five, manufacturers of TBP in the United States. CEH (1981, Ref. 8) reported that at least 5 million pounds of the compound were produced in 1979. Annual production since then has been reported at 3 million pounds for 1982 and estimated at 3 million pounds for 1983 (Ref. 9, CEH, 1983). Current annual production has been estimated at 3 to 5 million pounds (Ref. 48, U.S. EPA, 1985.)

A major use of TBP is as a nonflammable component of hydraulic fluids in the control systems of commercial aircraft. Industrial fluids and lubricants account for another large share. Liquid phosphate esters are the basestocks for fire-resistant oils used in die-casting, air compressors, gas turbines, and many other applications. TBP may also be used as a solvent/plasticizer for certain polymers, an industrial solvent, an antifoam agent, and a pigment grinding assistant. It has been estimated (Ref. 28, Monsanto, 1985) that about 24 percent goes into hydraulic fluids, 50 percent into uses as a plasticizer, and 26 percent for miscellaneous uses.

B. *Occupational exposure.* The National Occupational Hazard Survey, conducted in 1972, estimated that 323,477 workers were potentially exposed to TBP in the workplace (Ref. 31, NIOSH, 1978). Preliminary data from the National Occupational Exposure Survey indicate that, in 1980, 12,111 workers (including 427 women) were potentially exposed to the compound in the workplace (Ref. 32, NIOSH, 1984).

The following limits have been established for workplace airborne concentrations of TBP:

8-hour TWA–PEL 5 mg/m³ (Ref. 34, OSHA, 1985).

8-hour TLV–TWA 2.5mg/m³ (0.2 ppm) (Ref. 2, ACGIH, 1985).

C. *Environmental release.* It is likely that most TBP is released to surface waters from industrial effluents and from the release of hydraulic fluids to storm drains and drainage ditches and to land and water via landfill disposal of oil wastes and plastics.

There is considerable evidence for widespread, low-level environmental exposures to TBP. It has been detected in fish and human lipid tissues, in municipal and industrial effluents, river water, estuarine water, ground water, drinking water, snow, and sediments. LeBel and Williams (1983, Ref. 25) analyzed 16 human adipose tissue samples from cadavers and found TBP at 9.0 ng/g, on an extracted fat basis, in the tissue from one cadaver. Dunlap et al. (1979, Ref. 14) found TBP at 1.7 ug/L in ground water below a landfill. Grob and Grob (1974, Ref. 18) measured TBP in water at or near Zurich, Switzerland, and found concentrations of 10 to 82 ng/L. Zoeteman et al. (1981, Ref. 51) measured TBP in ground waters in the Netherlands at 0.01 to 0.1 ug/L. Meijers and van der Leer (1976, Ref. 26) found TBP at up to 10 ug/L in the Waal River in the Netherlands. Sheldon and Hites (1978, Ref. 42) reported finding TBP in Delaware River water at 60 to 2,000 ng/L. Shackelford et al. (cited in U.S. EPA, 1985, Ref. 48) reported finding TBP in plant effluents form a variety of industries. Mean concentrations were from 15 ug/L to 1,880 ug/L. Williams and LeBel (1981, Ref. 50) examined drinking water form 29 municipalities across Canada and found measurable TBP in samples from each location, as well as in water form the Atlantic and Pacific Oceans, the Great Lakes, Lake Winnipeg, the St. Lawrence River, and the Columbia River. Concentrations ranged from 0.2 to 62 ng/L. Piet et al. (1981, Ref. 36) identified TBP at 100 ng/L in drinking water processed from surface water using sand filtration. The unfiltered water had no detectable TBP. TBP appears to be found nearly everywhere in the environment at low concentrations. No information was found on the natural occurrence of TBP.

II. Chemical fate information—A. *Transport.* TBP has moderate solubility in water and moderate vapor pressure at ambient temperatures. It also has a

moderate log P value (4.0, measured). The physical and chemical characteristics of TBP indicate that it will partition throughout the environment and appear almost everywhere, including biolipids.

B. *Persistence.* A study of the primary biodegradation of TBP by a river water die-away method (Ref. 38, Saeger et al., 1979) found 50 percent loss of the parent compound in about 3.5 days and complete loss in 7 days. These same investigators, using a carbon dioxide evolution method, also reported CO_2 evolution at 30 percent of theory in 7 days and 81 percent of theory in 28 days. Initial concentrations of TBP in the test units were 1 and 20 mg/L, respectively. These results indicate relatively rapid and complete biodegradation of TBP in aerated surface waters. There was no evidence of nonbiological degradation of TBP in sterile controls. Francis et al. (1980, Ref. 15) observed no anaerobic biodegradation of TBP incubated for 30 days at 28°C with anaerobic bacteria isolated from a waste disposal site. No other information on anaerobic biodegradation was found, and the potential for anaerobic biodegradation must be considered unknown.

Hydrolysis is very slow at most environmental pH's (Ref. 48, U.S. EPA, 1985). Atmospheric oxidation is not expected to be significant.

C. *Rationale for chemical fate recommendations.* Because of its moderate water solubility, log P, and vapor pressure, TBP should partition to natural waters, soils and sediments, biota, and air. TBP appears to be biodegraded rapidly and completely in aerobic surface waters. Its fate in soils and sediments is not clear. It is likely to persist in the atmosphere until returned to earth by virtue of its high vapor density or in precipitation. TBP that partitions to biota may become a part of the food chain. The ubiquitous environmental appearance of TBP at low concentrations may mean that it is not effectively degraded below some threshold concentration or that the continuous release of TBP into the environment leads to some low-level equilibrium concentration reflecting both input and removal processes. The monitoring evidence, showing widespread low concentrations of TBP, justifies the consideration of potential environmental effects resulting from continuous, low-level exposures. Tests should be conducted to evaluate the persistence of TBP in anaerobic sediments and soils.

III. Biological effects of concern to human health—A. *Metabolism and toxicokinetics.* Suzuki et al. (1984, Ref. 46) studied the excretion and biotransformation of TBP in rats. In animals dosed with [^{14}C]-TBP, 66 percent of an oral dose and 81 percent of an intraperitoneal dose were excreted in 24 hours. The two major metabolites present in urine were the hydrolysis products dibutyl and monobutyl phosphates. Other metabolites present were the result of oxidation of the butyl chain.

The effect of TBP on enzyme activity in rats has been studied by Oishi et al. (1980, Ref. 33). In animals fed a diet containing 0.5 or 1 percent TBP for 10 weeks, serum transaminase and alkaline phosphatase activities were significantly decreased. There was no difference in cholinesterase activity in serum, whereas brain cholinesterase activity was significantly increased. Blood coagulation time was significantly prolonged.

B. *Acute and subchronic (short-term) effects.* The acute effects of TBP have been studied by Smyth Carpenter (1944, Ref. 43), Chambers and Casida (1967, Ref. 10), Vanedkar (1957, Ref. 49), Suzuki et al. (1977, Ref. 45), Sabine and Hayes (1952, Ref. 38), Johannsen et al. (1977, Ref. 21), and Mitomo et al. (1980, Ref. 27). Sites and biological effects of acute testing were paralysis due to weak cholinesterase inhibition, anesthetic effect, skin and mucous membrane irritation, lung edema, and degeneration of kidney tubules.

Laham et al. (1983, Ref. 22) studied the effect of TBP in rats fed 0.28 and 0.42 mL/kg TBP by gavage for 14 days. In the high-dose group, a significant ($p<0.05$) reduction of caudal nerve conduction velocity accompanied by morphological changes in the sciatic nerve were observed in males. In both sexes of the high dose groups, electron microscopy showed a retraction of Schwann cell processes of the surrounding sciatic unmyelinated fibers, indicating an early response to a chemical insult.

In another study, Laham et al. (1984, Ref. 23) administered TBP by gavage to rates at concentrations of 0.14 and 0.42 mL/kg for 14 consective days. In the high dose group, a significant decrease in hemoglobin in females, a low incidence of degenerative changes in the testes in males, significant changes in amylase and triglyceride activity in females and an increased amylase activity in males were observed. In addition, a significant increase in potassium levels was observed in females both low- and high-dose groups.

Mitomo et al. 1(1980, Ref. 27) studied the effects of TBP on rats and mice that were fed TBP daily in their diets at concentrations of 0, 0.05, 0.2, and 1.0 percent for 3 months. Results of the studies showed a dose-dependent depression in body weight gain; an increase in liver, kidney, and testes weights; a decrease in uterus weight; and an increase in blood urea nitrogen values in both mice and rats at high-dose levels. Diarrhea was also observed. Similar effects were seen in 9- and 10-week studies when TBP was fed to rats (Ref. 33, Oishi et al., 1980).

Cascieri et al. (1985, Ref. 7) fed rats diets containing TBP at levels of 0, 8, 40, 200, 1,000 or 5,000 ppm for 90 days. Significant changes were seen in blood parameters and liver weight at the highest dose. Urinary bladder cell hyperplasia was observed in both sexes at the highest dose. At 1,000 ppm it was only noted in the males.

In a recent study, TBP was administered by gavage over an 18-week period to rats. Low-dose animals received 0.20 g/kg/day throughout the experiment and the high dose animals received 0.30 g/kg/day for the first six weeks. For the remaining twelve weeks, the high-dose level was increased to 0.35 g/kg/day. All test rats examined developed diffuse epithelial hyperplasia of the urinary bladder (Ref. 24, Laham et al., 1985).

C. *Genotoxicity.* Hanna and Dyer (1975, Ref. 19) tested tributyl phosphate in *S. typhimurium, E. coli* and *Drosophila.* No mutagenic effects were observed.

D. *Oncogenicity.* No information was found. Trimethyl phosphate, a structural analog, was tested for carcinogenicity in rats and mice (Ref. 30, NCI, 1978). It induced adenocarcinomas of the endometrium in female mice and benign fibromas of the subcutaneous tissue in male rats.

E. *Reproductive and developmental effects.* When tested in chicken eggs, TBP was found to be weakly teratogenic (Ref. 37, Roger et al., 1969). No mammalian reproductive and developmental effects information was found in the literature searched.

F. *Chronic (long-term) effects.* No information was found.

G. *Observations in humans.* Workers exposed to 15 mg/m^3 of TBP complained of nausea and headache (Ref. 1, ACGIH, 1980). The principal routes of exposure are skin contact and inhalation. Signs of exposure include nausea, headache, irritation of the eyes and dermatitis (Ref. 44, Stauffer, 1984).

H. *Rationale for health effects recommendations.* Thousands of workers and consumers are potentially exposed to TBP. There is a potential for human exposure to low levels of TBP due to its uses as a flame retardant in aircraft hydraulic fluid, for uranium extraction, as an industrial solvent, and

as a plasticizer. TBP has been detected at low levels in municipal and industrial effluents, sediments, and in river, estuarine, ground, and drinking waters. It has also been detected in human and fish lipid tissues.

Available information on health effects are limited to acute and subchronic effects. In view of the lack of information on the chronic health effects of TBP, the induction of urinary bladder hyperplasia and the carcinogenic effect of trimethyl phosphate, studies on chronic toxicity, including oncogenic, neurotoxic, renal, and reproductive and developmental effects, are recommended.

IV. Ecological effects of concern.—A. *Acute and subchronic (short-term) effects.* TBP produces acute toxicity with a variety of aquatic organisms, at low mg/L concentrations, as shown in Table 4. TBP inhibits the growth of some algae at concentrations of 3 to 10 mg/L (Ref. 48, U.S. EPA, 1985). Bringmann and Kuhn (Refs. 4 and 5, 1978, 1980) found that TBP inhibited the growth of an *Entosiphon* protozoa sp. at 14 mg/L, a *Scenedesmus* algal sp. at 3.2 mg/L, and a *Microcystis* bacteria sp. at 4.1 mg/L.

Gast and Early (1956, Ref. 16) investigated the phytotoxicity of several solvents by dipping plant foliage quickly into solutions of the solvents and observing the effects. Of 88 solvents investigated, TBP was the most toxic. Exposure to a 0.5 percent solution of TBP killed all of the six species tested, including bean, corn, cotton, cucumber, tobacco, and tomato.

TBP applied to vegetation reduced the growth of the roots of rice, radish, and soybean plants at concentrations of 10 to 100 ug/g of soil (Ref. 29, Muir, 1984).

A single-dose oral LD_{50} for the white leghorn adult hen was reported as 1.8 g/kg (Ref. 21, Johannsen et al., 1977).

TABLE 4.—ACUTE TOXICITY TESTS WITH A VARIETY OF AQUATIC ORGANISMS

Organism	24-hr LC_{50} (mg/L)	48-hr LC_{50} (mg/L)	72-hr LC_{50} (mg/L)	96-hr LC_{50} (mg/L)	Reference
Rainbow trout				5 to 9	Dave and Lidman (1978, Ref. 12).
Rainbow trout				11.0	Monsanto (1985, Ref. 28).
Zebrafish	11.4	11.4		11.4	Dave et al. (1981, Ref. 13).
Goldfish				8.8	Sasaki et al. (1981), Ref. 40).
Killifish				9.8	Sasaki et al. (1981), Ref. 40).
Fathead minno				8.4	Monsanto (1985, Ref. 28).
Chlorella		5 to 10			AQUIRE (1986, Ref. 3).
Daphnia	12.8	3.7	2.1		Dave et al. (1981, Ref. 13).

B. *Chronic (long-term) effects.* Penman and Osborne (1976, Ref. 35) reported that TBP, at doses of 0.1 to 0.2 percent, had no reproductive effects on the two-spotted spider mite. A related compound, trimethyl phosphate, produced reproductive effects on guppies, toads, quail, and mites, all at relatively high doses (Ref. 48, U.S. EPA, 1985).

C. *Other ecological effects (biological, behavioral, or ecosystem processes).* Bringmann and Kuhn (1982, Ref. 6) determined effects concentration (EC) values for immobilization of *Daphnia magna*. The EC_0, EC_{50}, and EC_{100} were 5, 30 and 41 mg/L, respectively.

D. *Bioconcentration and food-chain transport.* Given its octanol/water partition coefficient, TBP is likely to partition into lipids of biota. Saeger et al. (1979, Ref. 39) calculated a bioconcentration factor of 190. Sasaki et al. (1981, Ref. 40) studied the absorption and elimination of phosphoric acid esters by killifish and goldfish. They found that the amount of TBP in the fish varied with the species and that bioconcentration in the killifish was about three times greater than in goldfish, using a static water system.

In a followup study, using continuous-flow systems Sasaki et al. (Ref. 41, 1982) found TBP taken up rapidly by killifish and reaching a steady-state concentration within 1 day. It remained at that concentration during 38 days of exposure. The bioconcentration ratio during this time was almost constant, varying from 21 to 35. When exposure to TBP was stopped, elimination was very rapid, with half gone within 1.25 hours and no detectable TBP after 24 hours.

E. *Rationale for ecological effects recommendations.* The available information shows that TBP has acute effects on a variety of aquatic organisms at moderately low concentrations (low parts per million). TBP also has been found acutely toxic to terrestrial plants at 5,000 ppm. Nevertheless, there is low concern for the acute effects of TBP since it does not appear that TBP will persist in aerobic environments at concentrations likely to cause acute effects to biota. However, it does appear that nearly all biota are continuously exposed to low concentrations of TBP and the long-term effects of that exposure are largely unknown. The acute toxicity data with terrestrial plants and algae and the growth inhibition observed with rice, radish, and soybeans lead to the conclusion that long-term studies need to be conducted with both aquatic and terrestrial plants exposed to TBP at low concentrations. The data from the acute daphnid tests by Dave et al. (1981, Ref. 13) showed a high ratio between the 24- and 48-hour LC_{50}'s (12.8/3.8=3.5), suggesting potential chronic effects. Long-term studies, using low TBP concentrations, should be conducted with daphnids and/or other aquatic invertebrates. If anaerobic persistence studies indicate long half-lives for TBP in soils and sediments, bioassays should be conducted with representative benthic organisms and soil invertebrates.

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2.4 *Chemicals and groups of chemicals recommended without being designated for response within 12 months. None.*

[FR Doc. 86–11070 Filed 5–16–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51621; FRL–3012–5]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86–10015, beginning on page 16587, in the issue of Monday, May 5, 1986, make the following corrections:

1. On page 16588, first column, under "P86–931", fifth line, "1,1000–2,000" should read "1,000–2,000".

2. On page 16589, first column, under "P86–946", sixth line, "5/kg" should read "5 g/kg".

3. On the same page, second column, under "P86–948", sixth line, "g/kg" should read "5 g/kg".

BILLING CODE 6560–01–M

BEST COPY AVAILABLE

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0122.

Title: Debt Collection.

Abstract: Information will be collected only from persons who are delinquent in paying debts owed FEMA or who are requesting time or deferred payments.

Type of respondents: Individuals or Households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Number of respondents: 400.

Burden hours: 800.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 12, 1986.

Walter A. Gladnutes, Director, *Administrative Support.*

[FR Doc. 86–11148 Filed 5–16–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Automated Tariff Filing and Information System (ATFI); Advisory Committee Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Commission announces the second meeting of the ATFI Advisory Committee to be held on June 19–20, 1986 in Washington, DC. The agenda for this meeting includes the review of the current status of a feasibility study by a GSA contractor and a discussion of the critical issues identified in the feasibility study. The meeting will be open to the public.

DATE: The ATFI Advisory Committee meeting will commence on June 19, 1986 at 10:00 a.m. and, if necessary, will continue through June 20, 1986.

ADDRESS: The ATFI Advisory Committee meeting will be held at 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Committee Executive Secretary,* John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission's Automated Tariff Filing and Information System (ATFI) Advisory Committee will meet at 10:00 a.m. on June 19, 1986 in the Main Hearing Room at the Commission Headquarters Building, 1100 L. Street, NW., Washington, DC.

The Advisory Committee was established in November of 1985 (50 FR 47447) to advise the Commission on the study, development, and operation of an automated tariff filing system. The Committee consists of 20 members including one agency official and a balanced representation of the various segments of the shipping industry affected by ATFI.

At the first meeting of the Advisory Committee, held on January 23–24, 1986, the Committee was organized into subcommittees representing each identifiable segment of the shipping industry. A spokesperson for each segment was selected and provided an opportunity to formulate and express the perceived user needs and demands of that segment of the shipping industry. This information has been included in an ongoing feasibility study on the ATFI project undertaken for the Commission by a GSA contractor.

The GSA contractor has now completed its assessment of user needs and demands and the currently available services. Based upon this assessment, it has formulated key issues which, in its opinion, must be addressed in the development of the ATFI system. Accordingly, the agenda for the second ATFI Advisory Committee meeting is:

1. Briefing by U.S. Customs Service on Customs Automation Program Requirements.

2. Discussion of House Report 99–560, "Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview," (28th Report by the Committee on Government Operations).

3. Presentation and discussion of Deliverables 1 & 2 of the ATFI Feasibility Study: Assessment of User Needs & Demands and Baseline Analysis of Current Operations and Commercial Services.

4. Presentation and discussion of Feasibility Study Key Issue papers formulated by GSA contractor.

5. Formulation and presentation of position papers on Key Issues as identified by GSA contractor from each shipping industry segment spokesperson.

6. Establishment of future schedules.

The meeting will be open to public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each. More extensive questions or comments should be submitted in writing before June 10, 1986. Other public statements regarding committee affairs may be submitted at any time before or after the meeting. Approximately 25 seats will be available for the public (including 5 seats reserved for media representatives) on a first-come-first-served basis.

Copies of the summaries of the minutes will be available on written request 30 days after the meeting. Requests should be addressed to the Secretary of the FMC, should be submitted by July 11, 1986, and must be accompanied by a check for $30.00 made payable to the "Federal Maritime Commission".

Inquiries may be addressed to the Committee Executive Secretary, Mr. John Robert Ewers, Secretary, Federal Maritime Commission, Room, 11101, 1100 L Street, NW., Washington, DC 20573.

By the Commission.

John Robert Ewers, *Secretary.*

[FR Doc. 86–11200 Filed 5–16–86; 8:45 am]

BILLING CODE 6730–01–M

[Supreme Decree No. 009–86–TC]

Peruvian Cargo Reservation Extension of Time for Comments

May 15, 1986.

By Notice apearing in the Federal Register on April 22, 1986 (50 FR 15069), the Federal Maritime Commission invited persons interested in the impact of Peruvian Supreme Decree 009–86–TC upon shipping in the U.S. trade with Peru to submit views, arguments, or data relating to the matter by May 18, 1986.

Upon request of three carriers in the Peruvian trade i.e., Compania Sud Americana de Vapores ("CSAV"); Naviera Neptuno, S.A.; and Compania Peruana de Vapores ("CPV"), the Commission finds good cause to extend

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the date for all comments from May 16, 1986 to June 16, 1986.

By the Commission.

John Robert Evans,

Secretary.

[FR Doc. 86-11290 Filed 5-15-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

AmeriTrust Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 11, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation*, Cleveland, Ohio; to acquire 100 percent of the voting shares of American State Bank, Ligonier, Indiana, and thereby indirectly acquire American Ligonier Bancorp, Inc., Ligonier, Indiana.

2. *AmeriTrust Corporation*, Cleveland, Ohio; and its wholly-owned subsidiary, First Indiana Bancorp, Elkhart, Indiana, to acquire 100 percent of the voting shares of First National Bank and Trust Company, Sturgis, Michigan.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Liberty BanCorporation*, Longwood, Florida; to acquire 100 percent of the voting shares of Liberty National Bank of Orlando, Orlando, Florida, a *de novo* bank.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Suburban Bancorp Corporation*, Maywood, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Suburban National Bank, Maywood, Illinois.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of City Bancshares, Portage, Wisconsin, and thereby indirectly acquire City Bank and Trust Company, Portage, Wisconsin.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Tyson Corporation*, Minneapolis, Minnesota; to acquire 94.78 percent of the voting shares of Miltona State Bank, Miltona, Minnesota.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fredonia Bancshares, Inc.*, Nacogdoches, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Fredonia State Bank, Nacogdoches, Texas.

Board of Governors of the Federal Reserve System, May 14, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11237 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

Fuji Bank LTD.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Fuji Bank Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, Heller Capital Resources, Inc., Chicago, Illinois, in originating, structuring, syndicating and marketing personal property leases as agent, broker or adviser in return for a fee on a per-transaction basis and making loans or other extensions of credit such as would be made by a commercial finance company, including issuing letters of credit pursuant to § 225.25(b) (1) and (5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11238 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

Old Kent Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Old Kent Financial Corporation*, Grand Rapids, Michigan; to acquire Great Lakes Computer Center, Inc., Portage, Michigan, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11239 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

Atrium Capital Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 9, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Atrium Capital Corporation*, Boca Raton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Landmark Bank of Palm Beach County, Boca Raton, Florida.

2. *Midcontinental Holding Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Richland Banking Company Richland, Georgia.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *NBC Bancshares, Inc.*, Pampa, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of National Bank of Commerce, Pampa, Texas.

Board of Governors of the Federal Reserve System, May 13, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11148 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Financial Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8))and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to engage *de novo* through its subsidiary Midwest Life Insurance Company, Fort Wayne, Indiana, in underwriting credit life, credit accident and health insurance directly related to extensions of credit pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11149 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Application to Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR

225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1986.

A. Board of Governors of the Federal Reserve System, (William W. Wiles, Secretary) Washington, DC 20551:

1. *Security Pacific Corporation*, Los Angeles, California; to engage through its subsidiaries, Chartered Protective Life Insurance Company, San Diego, California; General Fidelity Life Insurance Company, San Diego, California; and Central Plains Insurance Company, Inc., San Diego, California, in the activities of the underwriting and reinsurance of home mortgage redemption insurance, that is, insurance that assures repayment of loans secured by first mortgages on residential real estate made or purchased by Security Pacific Corporation or its subsidiaries or affiliates in the event of the death or disability of the mortgagors of such loans. This application may be inspected at the Federal Reserve Bank of San Francisco. This activity has been approved by Board Order as permissible for bank holding companies. *Citicorp*, 72 Federal Reserve Bulletin 339 (1986).

Board of Governors of the Federal Reserve System, May 13, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11150 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 86-9968), published at page 16592 of the issue for Monday, May 5, 1986.

1. *Security Pacific Corporation*, Los Angeles, California; to acquire 100 percent of the voting shares of Arizona Bancwest Corporation, Phoenix, Arizona, and thereby indirectly acquire The Arizona Bank, Phoenix, Arizona. In connection with this application, SPC Acquisition Inc. has applied to become a bank holding company by acquiring Arizona Bancwest Corporation.

Security Pacific Corporation, Los Angeles, California, and SPC Acquisition Inc., have also applied to acquire:

(1) Bancwest Life Insurance Company, Phoenix, Arizona, and thereby engage in the reinsurance of life and disability insurance issued by others in respect of credit extended by SPC affiliates to the extent authorized by § 225.25(b)(9) of the Board's Regulation Y;

Comments on this application must be received not later than May 23, 1986.

Board of Governors of the Federal Reserve System, May 13, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11147 Filed 5-16-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Property Management; Guidelines for Establishment of Physical Fitness Facilities in Federal Space

AGENCY: General Services Administration (GSA).

ACTION: Notification of GSA's intent to revise and update the requirements for establishment of physical fitness programs and facilities.

SUMMARY: The Government Accounting Office (GAO) issued a decision in September of 1985 concerning a fitness program conducted by the National Park Service. In summary, GAO held that existing executive branch regulations do not authorize the use of appropriated funds for physical exercise as part of a health service program. The restrictions of using appropriated funds are contained in OMB Circular A-72, the OPM Personnel Manual and FPMR 101-5.304.

Therefore, on April 14, 1986, OPM revised the language in the OPM Personnel Manual to include the establishment and operation of physical fitness facilities. Further, on April 21, 1986, OMB rescinded Circular A-72. GSA is currently revising FPMR 101-5.304 and plans to issue it as a proposed rule within 60 days.

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Betsy Nordland, Realty Specialist, Assignment and Utilization Policy Division, Office of Real Property Development, Public Buildings Service, GSA, Washington, DC 20405 (202-566-0059).

Dated: May 7, 1986.

John T. Myers,

Acting Assistant Commissioner, Office of Real Property Development.

[FR Doc. 86-11177 Filed 5-16-86; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Iron-Dex 100 Injectable Iron; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Veterinary Laboratories, Inc., providing for the use of Iron-Dex 100 Injectable Iron (colloidal ferric oxide in a dextrin solution) for prevention and treatment of iron deficiency anemia in baby pigs. The firm requested the withdrawal of approval.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Vitolis Vengris, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3163.

SUPPLEMENTARY INFORMATION: Veterinary Laboratories, Inc., 12340 Santa Fe Drive, Lenexa, KS 66215, is sponsor of NADA 46-210 providing for the use of Iron-Dex 100 Injectable Iron (colloidal ferric oxide in a dextrin solution) for prevention and treatment of iron deficiency anemia in baby pigs.

The application was originally approved on November 10, 1972, with the sponsor at that time being Wittney &

Co. The NADA was later transferred when Witney & Co. was purchased by Vet Products Co., which subsequently changed its name to Veterinary Laboratories, Inc. In a letter dated February 20, 1986, the firm requested withdrawal of approval of the NADA because the drug product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 46–210 and all supplements thereto for Iron-Dex 100 Injectable Iron is hereby withdrawn, effective May 29, 1986.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing that portion of the regulations that reflects this NADA approval.

Dated: May 9, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–11143 Filed 5–16–86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Academic Research Enhancement Award

In its report accompanying the fiscal year 1985 appropriation for the National Institutes of Health (NIH), Congress called for an initiative to strengthen the research milieu of non-research-intensive, four-year colleges and univerisities which provide undergraduate or graduate training for a significant number of our Nation's research scientists. In fiscal year 1985, the NIH made $5,000,000 available for this purpose and was able to award 75 "Academic Reseach Enhancement Awards" (AREAs). This award in designed to enhance the research environment of educational institutions that have not been traditional recipients of NIH research funds. The award in intended to support new research projects or expand ongoing research activities proposed by faculty members of these institutions in areas related to the health sciences.

Congress has again appropriated funds for the AREA Program for fiscal year 1986. Grant applications for this round are currently undergoing review for scientific merit. Since it is anticipated that additional funds will be available next year, the NIH is inviting grant applications for the fiscal year 1987 competition for AREA grants.

Eligibility requirements of the AREA Program include the following:

1. *Applicant Institution:*

(a) Must be a domestic institution offering bacalaureate or advanced degrees in the sciences related to health.

(b) Have received an NIH Biomedical Research Grant (BRSG) in no more than three of the six fiscal year from fiscal year 1981 through fiscal year 1986.

Health professional schools (e.g., schools of medicine, dentistry, nursing, osteopathy, pharmacy, veterinary medicine, public health, allied health and optometry) are eligible if they meet both criteria above, as are officially discrete campuses of a university.

Multiple applications proposing different research projects may be submitted by an applicant institution.

2. *Applicant Principal Investigators:*

(a) Must not have active research grant support (including an AREA) from either NIH or the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) at the applicant institution at the time of award of an AREA grant.

(b) May not submit a regular NIH or ADAMHA research grant application for essentially the same project as a pending AREA application.

(c) Are expected to conduct the majority of their research at their own institution, although limited access to special facilities or equipment at another institution is permitted.

(d) May not be awarded more than one AREA grant.

Those in doubt about eligibility should consult their institution's office of sponsored research, or the NIH Office of Special Programs and Initiatives (Building 31, Room 1B54, NIH, Bethesda, MD 20892, 301/496–1966).

Funding decisions will be based on the proposed research project's scientific merit and relevance to NIH programs, and the institution's contribution to the undergraduate preparation of doctoral-level health professionals. Among projects of essentially equivalent scientific merit and program relevance, preference will be given to those submitted by institutions that have granted baccalaureate degrees to 25 or more individuals who, during the period 1977–1986, obtained academic or professional doctoral degrees in the health related sciences.

The AREAs are awarded on a competitive basis. Applicants may request support for up to $50,000 in direct costs (plus applicable indirect costs) for a period not to exceed 24 months. Although this award in non-renewable, it will enable qualified individual scientists within the eligible institutions to receive support for feasibility studies, pilot studies and other small-scale research projects preparatory to seeking more substantial funding from the regular NIH research grant programs.

Applications for this award will be accepted under the regular application submission procedures of the Division of Research Grants (DRG) of NIH. Grant applications must be prepared and submitted on PHS 398 grant application forms. An abbreviated format and simplified instructions will be provided for use in preparing these applications. The receipt date is September 22, 1986.

Those individuals and institutions meeting eligibility requirements and wishing to receive further information and/or application materials should write to: AREA Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building, Room 449, Bethesda, Maryland 20892.

Dated: May 7, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86–11222 Filed 5–16–86; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Aging Review Subcommittee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Aging Review Subcommittee B, National Institute on Aging, on June 19, 1986, Building 31, Conference Room 5C06, National Institutes of Health, Bethesda, Maryland, 20892.

This meeting will take the form of a conference telephone call. A speaker phone will be provided in the conference room to allow public participation during the open session of the meeting. The meeting will be open to the public from 1:00 p.m. to 1:15 p.m. on June 19 for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 19 from 1:15 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, 20892, (301) 496–5898, will provide a summary of the meeting and a roster of Committee members, as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: May 9, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 11227 Filed 5–16–86; 8:45 am]

BILLING CODE 4140–01–M

Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 24–25, 1986, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on June 25, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 23, from 3:00 p.m. to 4:00 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 24 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 24 from 11:00 a.m. to 5:00 p.m., and on June 25, from 8:30 a.m to adjournment; and the subcommittee meeting on June 23 from 3:00 p.m. to 4:00 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: May 9, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–11224 Filed 5–16–86; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), on June 5–6, 1986, at the National Institutes of Health, Conference Room 10, Building 31–C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 5 from 9:00 a.m. until recess, and on June 6 from 9:00 a.m. until approximately 10:45 a.m. for discussions on administrative matters such as previous meeting minutes; the Report of the Director, DRR; future meeting dates; and budget and legislative updates. DRR staff and the Council will discuss animal welfare issues such as the USDA plans to implement Pub. L. 99–198 (amendment to the Animal Welfare Act); the impact of new Federal policy on grantee institutions; and institutional review of research protocols involving the use of animals. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 6 from 11:15 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S. Code, the Council meeting will be closed to the public on June 6 from approximately 10:45 a.m. to approximately 11:15 a.m. for discussion and preparation of comments Council wishes to submit to the Director, NIH, for inclusion in the biennial report to the Congress.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: May 9, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–11225 Filed 5–16–86; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, June 5, and Friday, June 6, 1986 from 9:00 a.m. to 5:00 p.m. both days in Room 529A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Committee will receive the final report of the Subcommittee on Statistical Aspects of Physician Payment Systems and hear reports on the activities of the Subcommittees on Uniform Minimum Health Data Sets, Disease Classification and Automated Coding of Medical Diagnoses, Minority Health Statistics, and Data Gaps in Disease Prevention and Health Promotion.

Further information regarding this meeting of the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville,

Maryland 20782, telephone (301) 436-7050.

Dated: May 7, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86-11214 Filed 5-16-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Meetings; Correction

In FR Doc. 86-9997, appearing on page 16585, in the issue of Monday, May 5, 1986, make the following correction.

Please add Denali National Park and Preserve General Management Plan and Gates of the Arctic National Park General Management Plan to the list of Council consideration.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

May 13, 1986.

[FR Doc. 86-11194 Filed 5-16-86; 8:45 am]

BILLING CODE 4310-10-M

National Park Service

Intention to Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965, 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Lake Meredith Marina, Inc., authorizing it to continue to provide marina, fuel dock, and merchandise sales facilities and services for the public at Lake Meredith Recreation Area, Texas, for a period of ten (10) years from January 1, 1987 through December 31, 1996.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which will expire by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Lake Meredith Recreation Area, P.O. Box 1438, Fritch, Texas, 79036, telephone number (806) 857-3151, for information as to the requirements of the proposed contract.

Dated: April 15, 1986.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 86-11210 Filed 5-16-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petitions to reopen or institution of a new proceeding.

SUMMARY: The Commission is denying: (1) The National Industrial Transportation League's request for an order requiring motor and rail carriers to publish negative surcharges to reflect declining fuel prices; and (2) The National Small Shipments Traffic Conference, Inc., and Drug and Toilet Preparation Traffic Conference, Inc., joint petition for adjustment of the rate structure for similar reasons or alternatively, a negative fuel surcharge. The relief requested is unnecessary in view of actions already taken or contemplated.

DATE: This action is effective on May 16, 1986.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 275-7513.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Authority: 49 U.S.C. 10321, 10327, 5 U.S.C. 553.

Decided: May 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Sibbens, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86-11166 Filed 5-16-86; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data For Use by the Association of American Railroads

The Commission has received a request from the Intermodal Policy Division of the Association of American Railroads (AAR) to use the 1984 ICC Waybill Sample in its economic and policy research and analysis work. The waybill data will be used exclusively as input to the AAR Intermodal Competition Model. This model is the chief means by which the AAR and rail industry determine the impact on rail traffic and revenue of changes in rail, truck, or barge costs. It aggregates all rail shipments as if they were part of one large nationwide or State railroad. The waybill data actually required are the six and seven digit SPLC and STCC codes, car types, and route miles.

The computer output of AAR's model runs are always reported in a highly aggregated form so no individual railroad, shipper, or car owner information is revealed. Moreover, these aggregated results are not reported outside of AAR.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40828, September 9, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies)

with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-7093.

James H. Bayne,

Secretary.

[FR Doc. 86-11163 Filed 5-16-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; Aerojet Strategic Propulsion Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 7, 1986, Aerojet Strategic Propulsion Company, Contract Administration Mail Stop 25, Highway 50 at Hazel Avenue, P.O. Box 15699C, Sacramento, California 95813, made application to the Drug Enforcement Administration (DEA) for registration as bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols (7370).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance to of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 18, 1986.

Dated: May 13, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11187 Filed 5-16-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application; First State Chemical Co. Inc. (McNeilab Inc.)

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 28, 1986, McNeilab Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Morphine (9300)	II
Thebaine (9333)	II

Any other applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 18, 1986.

Dated: May 13, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11189 Filed 5-16-86; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Notice of Application; First State Chemical Co., Inc. (McNeilab Inc.)

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substances in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such substance, provide manufacturers holding registration for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21 Code of Federal Regulations (CFR), notice is hereby given that on January 28, 1986, McNeilab Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 18, 1986.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 13,1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11186 Filed 5-16-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application; Janssen Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 23, 1985, Janssen Inc., P.O. Box JPH, State Road

983 KM 01, Mamey Ward, Gurabo, Puerto Rico 00658, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Sufentanil.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 18, 1986.

Dated: May 13, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11188 Filed 5-16-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Notice of Registration; Johnson Matthey, Inc.

By Notice dated March 3, 1986, and published in the Federal Register on March 10, 1986; (51 FR 3257), Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 13, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11192 Filed 5-16-86; 8:45am]

BILLING CODE 4410-09-M

Importer of Controlled Substances Registration; Mallinckrodt, Inc.

By Notice dated March 5, 1986, and published in the Federal Register on March 13, 1986; (51 FR 8721), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 13, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11190 Filed 5-16-86 8:45am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Mallinckrodt

By Notice date March 14, 1986, and published in the Federal Register on March 21, 1986; (51 FR 9696), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 13, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11191 Filed 5-16-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings in Agenda

The regular spring meetings of committees of the Labor Research Advisory Council will be held on June 3, 4, and 5. The meetings will be held in Room N-3437 A and B, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The meetings of the Committee on Productivity, Technology and Economic Growth and the Committee on Foreign Labor Statistics will be combined. The schedule and agenda of the meetings are as follows:

Tuesday, June 3

9:30 a.m.—Committee on Employment Structure and Analysis
1. Impact of FY 1986–87 Budgets on Programs
2. Status of On-going Programs
   a. Plant Closing—Mass Layoff Reporting
   b. Measurement of Trends in Temporary Help Sector
   c. Occupational Employment Statistics
   d. Displaced Worker Data
   e. Employment and Trade Statistics
3. Special Topics:
   a. SIC Revision
   b. Part-time Employment Trends
   c. Universe Maintenance System Design
   d. Federal-State Cooperative Programs Administration
4. Other Business

1:30 p.m.—Committee on Productivity, Technology and Economic Growth and the Committee on Foreign Labor Statistics
1. Impact of GNP Revisions of Productivity Measures
2. Report of Work on Multifactor Productivity Measures for Two-Digit Industries
3. New OMB Government Productivity Program and Relation to BLS Programs
4. Development in International Comparisons Work
5. European Economic Committee's Special Study in Relation to BLS International Unemployment Comparisons
6. Other Business

Wednesday, June 4

9:30 a.m.—Committee on Prices and Living Conditions
1. CPI and CPI Revision
   a. Local Area CPI's; Transition
   b. Revision Status Report
2. Other Program Reports
3. Budget Status
4. Other Business

1:30 p.m.—Committee on Occupational Safety and Health Statistics
1. National Academy of Sciences Study and General Program Developments
2. Recordkeeping Guidelines
3. On-Site Case Study and Post Symposium Developments
4. WIR Update
5. Supplementary Data System Updates
6. Other Business

Thursday, June 5

9:30 a.m.—Committee on Wages and Industrial Relations
1. Review of Work in Progress
2. The FY 1987 Budget
3. Today's Pension Plans: How Much Do They Pay?
4. Review of Wage Program Concepts
5. Other Business.

The meetings are open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-0001.

Signed at Washington, DC, this 9th day of May 1986.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 86-11160 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A&M Rubber Supply Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 5th day of May 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers of loose workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
A&M Rubber Supply Inc. (workers)	Lewiston, ME	4/29/86	4/16/86	TA-W-17,392	Fiberglass inserts for ski boots, cobres, rubber soles, wooden heels, and liners for sealers.
Dorr-Oliver, Inc. (IAMAW)	Hazleton, PA	4/25/86	4/21/86	TA-W-17,393	Filter & mining equipment—office workers also should be included.
Dresser-Industries, Inc., Galion Operation of Construction Equipment Div. (IAMAW).	Galion, OH	4/29/86	4/23/86	TA-W-17,394	Construction equipment for road construction.
Dorham Oil Tools Co (workers)	Watford City, ND	4/25/86	4/24/86	TA-W-17,395	Oil field service tool supply.
E&W of Monterey, Inc. (company)	[illegible], TN	4/28/86	4/25/86	TA-W-17,396	Ladies blouses, men shirts coaches pants and shirts ball pants and jackets.
Firestone Tire and Rubber Co. (URW)	Bloomington, IL	4/29/86	4/25/86	TA-W-17,397	Oil the road tires heavy equipment.
General Electric Co. Capacitor Products Dept. (UE)	Hudson Falls, NY	4/28/86	4/23/86	TA-W-17,398	Capacitors for microwave ovens and air conditioners.
General Electric Co. Capacitor Products Dept (UE)	Fort Edwards, NY	4/28/86	4/23/86	TA-W-17,399	Capacitors for microwave ovens and air conditioners.
Jacksonville Kraft Paper Co. (IAMAW)	Jacksonville, FL	4/29/86	4/24/86	TA-W-17,400	Kraft paper and liner boards.
Kensing Drilling Service, Inc. (wins)	Williston, ND	4/29/86	4/24/86	TA-W-17,401	Drill oil and natural gas.
Otis Engineering Corp. (wins)	Williston, ND	4/29/86	4/23/86	TA-W-17,402	Sales and services, assemble down hold (wells) tools.
TRW Energy Products Group, Reeds Pump Div. (workers)	Thermopolis, WY	5/1/86	4/21/86	TA-W-17,403	Submersible pumps for use in oil wells.
Cabot Corporation, Alloy Manufacturing Operation (USWA)	Kokomo, IN	4/29/86	4/23/86	TA-W-17,404	Specialty steel, high temperature alloys, corrosive alloys.
C.E. Natco (workers)	Williston, ND	4/29/86	4/23/86	TA-W-17,405	Warehouse distribution—selling surface production equipment.

APPENDIX—Continued

Petitioner: Union/workers of former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Delco Systems Operations (wkrs)	Culpeper, VA	4/28/86	4/24/86	TA-W-17,406	Gun turret assembly and test light armored vehicles.
Everett Piano Div., Yamaha Int'l Corp. (United Furniture)	So. Haven, MI	4/28/86	4/21/86	TA-W-17,407	Upright pianos.
McKay Drilling, Rig 39, 52, 56 (workers)	Williston, ND	5/1/86	4/22/86	TA-W-17,408	Drilling oil, natural gas.
McCreary Marine Manufacturing Div. SWF Industries (workers)	Bradford, TN	4/28/86	4/23/86	TA-W-17,409	Piston rings and sealing rings.
Traveral Laboratories Inc. (workers)	Hays, KS	4/28/86	4/23/86	TA-W-17,410	Plastic administration set for intravenous solutions and blood.
Wire Rope Corp. of America, Inc. (USWA)	Saint Joseph, MO	4/28/86	4/24/86	TA-W-17,411	Steel wire rope.

[FR Doc. 86-11153 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Active Generation, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 12th day of May 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers of former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Active Generation, Inc. (workers)	Trenton, TN	5/2/86	4/28/86	TA-W-17,412	Mens' and boys' coats, caps.
Aluminum Company of America (AIOCWIU)	Massena, NY	5/1/86	4/28/86	TA-W-17,413	Molten aluminum metal, castings ingots form.
Bijur Lubrication Corp. (UE)	Bennington, VT	5/2/86	4/29/86	TA-W-17,414	Lubricating pumps.
Burlington Industries, Inc. (workers)	Sherman, TX	5/6/86	4/28/86	TA-W-17,415	Shearing materials.
Cross Country Clothes (workers)	Northampton, PA	5/6/86	5/3/86	TA-W-17,416	Men's sport jackets and suit jackets.
Dan River, Inc. (workers)	Benton, AL	5/6/86	5/2/86	TA-W-17,417	Shearing fabrics.
Firestone Steel Products (UAW)	Henderson, KY	5/2/86	4/17/86	TA-W-17,418	Light and heavy truck/trailer wheels and rims.
Grace Drilling Co., Bomac Div., Williston District (workers)	Williston, ND	5/5/86	4/26/86	TA-W-17,419	Oil and gas exploration drilling.
J.H. Wood Shake, Inc. (workers)	Lebam, WA	4/28/86	4/24/86	TA-W-17,420	Cedar shakes and shingles.
Missouri Valley Perforating, Inc. (workers)	Williston, ND	5/6/86	5/3/86	TA-W-17,421	Oilfield logging and perforating.
New Departure-Hyatt (UAW)	Bristol, CT	5/6/86	4/28/86	TA-W-17,422	Commercial belt bearing roller bearings.
Wm. Omstead Heel Co., Inc. (ACTWU)	Bradford, MA	5/2/86	4/20/86	TA-W-17,423	Heels—women's and children's shoes.

[FR Doc. 86-11154 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,736; 16,740; 16,741; 16,743; 16,745]

AT&T Information Systems; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 29, 1985 in response to a worker petition which was filed by the Communications Workers of America on behalf of workers at Service Centers of AT&T Information Systems (up to July 1, 1985 under the jurisdiction of AT&T Technologies) in Salt Lake City, Utah; East Syracuse, New York; Union, New Jersey; Cincinnati, Ohio and New Orleans, Louisiana. In the course of the investigation, it was ascertained that all of the above service centers, which include refurbishing shops and warehouses, were closed more than one year before the date of the petition, which is September 30, 1985.

The closing dates and locations are listed below:

Location	TA-W-#	Closing date
Salt Lake City, Utah	16,736	Dec. 31, 1983.
East Syracuse, New York	16,740	July 6, 1984.
Union, New Jersey	16,741	Aug. 31, 1984.
Cincinnati, Ohio	16,743	Dec. 31, 1983.
New Orleans, Louisiana	16,745	July 1, 1984.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of May 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-11155 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; BRW Industries et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 5, 1986–May 9, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–16,652; BRW Industries, Bangor, PA

TA–W–16,611; Armco, Inc., Ambridge, PA

TA–W–16,656; J.L. Clark Manufacturing Co., Havre De Grace, MD

TA–W–16,555; Kimble Products Division, Owens-Illinois, Inc., Pittston, PA

TA–W–16,463; Gates Learjet Corp., Wichita, KS

TA–W–16,464; Gates Learjet Corp., Tucson, AZ

TA–W–16,655; Handy and Harman, Electronic Materials, Montvale, NJ

TA–W–16,620; Spang and Company, Butler, PA

TA–W–16,576; C.E. Basic, Bettsville, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–16,683; West Company, North Bergen, NJ

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–16,665; El Paso Machine Steel Works, Inc., El Paso, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–16,486; Anchor Hocking Corp., Plant #12, #30, #40, #58, Lancaster, OH

A certification was issued covering all workers of the firm separated on or after September 12, 1984.

TA–W–16,616; Lebow Clothes, Inc., Baltimore, MD

A certification was issued covering all workers of the firm separated on or after October 24, 1984.

TA–W–16,637; Louisiana-Pacific Corp., Ashland, WI

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before April 15, 1986.

TA–W–16,606; Shenango Furnace Company, Dover, OH

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA–W–16,596; Texas Apparel Co., Carrizo Springs, TX

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA–W–16,640; Pennsylvania Optical Co., Reading, PA

A certification was issued covering all workers of the firm separated on or after November 11, 1984.

TA–W–16,657; Olin Corp., Ecusta Paper Film Group, Pisgah Forest, NC

A certification was issued covering all workers of the firm separated on or after November 13, 1984 and before April 30, 1986.

TA–W–16,610; WCI Machine Tool Systems, Fairfield, CT

A certification was issued covering all workers of the firm separated on or after October 22, 1984.

TA–W–17,102; United Merchants & Manufacturers, Inc., Amertex Dept 44, New York, NY

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before November 1, 1985.

TA–W–16,647; Great Lakes Carbon Corp., Morganton, NC

A certification was issued covering all workers of the firm separated on or after October 28, 1984.

TA–W–16,666; Elkem Metals Co., Marietta, OH

A certification was issued covering all workers of the firm separated on or after June 10, 1985.

TA–W–16,620A; Spang & Company, East Butler, PA

A certification was issued covering all workers producing tool joints separated on or after October 30, 1984.

TA–W–16,697; Sperry Corp., Ephraim, UT

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,697A; Sperry Corp., Salt Lake City, UT

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,600; Bethlehem Steel Corp., Steelton, PA

A certification was issued covering all workers except those workers engaged in employment related to production of steel reinforcing bar, frogs and switches and pipe products separated on or after January 1, 1985.

TA–W–16,576A; C.E. Basic, Maple Grove, OH

A certification was issued covering all workers producing nonclay refractories separated on or after September 24, 1984.

I hereby certify that the aforementioned determinations were issued during the period May 5, 1986–May 9, 1986. Copies of these determinations are available for inspection Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213, during normal business hours or will be mailed to persons who write to the above address.

Dated: May 13, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–11156 Filed 5–16–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,362]

Termination of Investigation; Pascoe Building Systems

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 21, 1986 in response to a worker petition which was filed on behalf of workers at Pascoe Building Systems, Wathena, Kansas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–16,669). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of May 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–11157 Filed 5–16–86; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-12,288]

Puna Sugar Co., Ltd., a Further Determination

Pursuant to the U.S. Court of International Trade remand, dated March 13, 1986, in *ILWU, Local 142* v. *Secretary of Labor*, (USCIT No. 83-5-00779) concerning the denial of certification for workers at the Puna Sugar Company, Ltd., Keaau, Hawaii, the Department makes the following further determination.

By order dated December 11, 1985, the Court remanded the case of the Secretary for further proceedings. On March 13, 1986, the USCIT denied the Secretary's request for a rehearing and remanded the case to the Department for further proceedings.

The Court held that the record did not support (1) the contention that the workers' firm produced refined sugar rather than raw sugar; (2) that HFCS was relevent to the workers' petition; (3) that HFCS had a significant impact on the raw sugar market and (4) that HFCS was a more important cause of workers separations than raw sugar imports. Also, the Court faulted the Department for failing to explain why the 1977 Hawaiian certifications did not "provide a precedent" and why the increase of raw sugar imports in 1981 did not contribute importantly to worker separations at Puna.

Findings in the record show Puna, in cooperation with other owners, produced and marketed refined sugar through the California and Hawaii Sugar Company (C&H). C&H did not import raw sugar.

On remand, the Office of Trade Adjustment had available the results of a customer survey involving customers of C&H done in conjunction with another investigation but which is relevant to the instant case. The results of the survey have been incorporated into the record. In addition, updated statistics have been included in the record and have been utilized by the Department on remand. As a result of the Department's investigation on remand, the Department has reached the following conclusions relevant to this petition:

The product of Puna was refined sugar.

There occurred neither an absolute nor a relative increase in imports of refined sugar in the relevant time period. The "increases of imports" requirement of the statute therefore could not be satisfied unless raw sugar can be considered to be a product "directly competitive with" refined sugar under the facts relevant to this petition and it can be determined that imports of raw sugar increased in the relevant time period.

Because of the domestic increase in refined sugar exports in the relevant time period brought about by the availability of "drawback" payments, most of the increases in imports of raw sugar in 1981 over import levels in 1980 was absorbed by the refined sugar exports and consequently did not remain in the domestic refined sugar market so as to affect prices for Puna's product. Thus, imports of raw sugar in the relevant time period did not have an economic effect "comparable to" the effect of imports of refined sugar and consequently imported raw sugar was not, within the meaning of the statute, "directly competitive with" domestic refined sugar in the relevant time period.

Even assuming that the "increases of imports" requirement could be satisfied by the 1980-81 increase in raw sugar imports, the Department has determined that this increase could not have, and did not in fact, contribute importantly to the decline in production or sales and separation of employees at Puna.

The 1977 certifications of workers at Wailuke Sugar Company do not "provide a precedent" for the Puna petition because the facts and the economic and regulatory circumstances relevant to the Wailuke petitions are distinguishable from those relevant to the instant petition.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers at Puna Sugar Company, Keaau, Hawaii.

Signed at Washington, DC, this 12th day of May 1986.

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 86-11158 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-30-M

United Merchants and Manufacturers, Inc., Arkwright Finishing Plant, Bath Mill Division; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 28, 1986, applicable to all workers of United Merchants and Manufacturers, Inc., Arkwright Finishing Plant, Fall River, Massachusetts. The Notice of Certification was published in the Federal Register on April 8, 1986 (51 FR 11982).

On its own motion the Office of Trade Adjustment Assistance expanded its initial investigation (TA-W-18,537) to include workers at United Merchants and Manufacturers, Inc., Bath Mill Division, Bath, South Carolina.

The Bath Mill Division is part of an integrated production process where woven greige goods of cotton/polyester blends are produced that are finished at other United Merchants' mills or mills under contract to United Merchants. United Merchants and Manufacturers, Incorporated maintains ownership and control of the goods throughout the production process. The finished goods are sold by the sales arm of United Merchants to apparel manufacturers. The Bath Mill Division ceased production permanently in October, 1985.

The intent of the amended certification is to cover under one notice all workers of the Arkwright Finishing Plant in Fall River, Massachusetts and the Bath Mill Division in Bath, South Carolina of United Merchants and Manufacturers, Inc. The notice, therefore, is amended by including the Bath, South Carolina plant with its January 1, 1985 impact date and January 1, 1986 termination date.

The amended notice applicable to TA-W-537 is hereby issued as follows:

All workers of United Merchants and Manufacturers, Incorporated, Arkwright Finishing Plant, Fall River, Massachusetts who became totally or partially separated from employment on or after January 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and all workers of United Merchants and Manufacturers, Incorporated, Bath Mill Division, Bath, South Carolina who became totally or partially separated from employment on or after January 1, 1985 and before January 1, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of May 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-11159 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

Correction

In FR Doc. 86-9606 beginning on page 16407 in the issue of Friday, May 2, 1986, make the following corrections:

On page 16408, in the table, in the FR Notice column, the first ten entries should read: "41 FR 13960, 48 FR 50666, 49 FR 13761, 49 FR 22577, 49 FR 40499, 49 FR 40501, 49 FR 26160, 49 FR 40506, 49 FR 35060, 49 FR 40497".

BILLING CODE 1505-01-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR Parts 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25 as amended):

Flushing Shirt Mfg., Inc., Grantsville, MD; 1-18-86 to 1-17-87; 10 percent of the total number of factory production workers for normal labor turnover (Men's shirts).

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended):

Somerset Mfg. Co., Somerset, PA; 3-12-86 to 3-11-87; 5 percent of the total number of factory production workes for normal labor turnover purposes (Ladies' slips and sleepwear).

Each certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or conaideration thereof on or before June 3, 1986.

Signed at Washington, DC, this 9th day of May 1986.

Arthur H. Kane,

Authorized Representative of the Administrator.

[FR Doc. 86-11104 Filed 5-16-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before July 18, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Effective with this notice, records schedules which include only requests to lengthen the retention period and where authority for disposal already exists are not being included.

Schedules Pending Approval

1. Department of Commerce, Bureau of Foreign Commerce, Office of Economic Affairs (N1-151-86-3). Records relating to treaties, tariffs, cartels, and commercial laws.

2. Department of Commerce, Office of Assistant Administrator for Industrial Analysis and Business Programs (N1-151-86-4). Records relating to industrial studies in Alaska.

3. Environmental Protection Agency, Office of Emergency and Remedial Response (NC1-412-85-10). General correspondence and records relating to administrative support.

4. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration (N1-90-86-5). Records relating to the National Health Service Corps scholarships, including correspondence, memoranda, applications, agreements, and other related records.

5. National Archives and Records Administration, National Archives Center, Kansas City, MO: records accessioned from the General Services Administration, Public Buildings Service (N2-121-86-1). Routine administrative

correspondence and housekeeping records relating to the disposal of real property.

6. United States Coast Guard, Office of Merchant Marine Safety (NC1–29–84–10). Records relating to merchant marine officers licenses and original articles containing seaman agreements with masters and/or companies.

7. Department of the Treasury, Comptroller of the Currency, Office of Bank Supervision (N1–101–86–1). Reports of conditions of the United States banking system, 1917–1928.

8. Department of the Treasury, International Revenue Service, Returns Processing and Accounting Division (NC–58–82–10). Miscellaneous statistical tables, correspondence, progress reports, demonstration materials.

Dated: May 12, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–11142 Filed 5–16–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before June 16, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202–786–0233) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503, (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instruction Forms for the Publication Subvention Category
Form Number: Not applicable
Frequency of Collection: Twice a year
Respondents: Publishers of works in the humanities
Use: Application for funding
Estimated Number of Respondents: 132 per year
Estimated Hours for Respondents to Provide Information: 24 per respondent.

Susan Metts,

Director of Administration.

[FR Doc. 86–11172 Filed 5–16–86; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

1. Date: May 30, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after September 1, 1986.

2. Date: June 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers in Comparative Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after September 1, 1986.

3. Date: June 3, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers in English and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after September 1, 1986.

4. Date: June 4, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after September 1, 1986.

5. Date: June 5, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Semniars for Secondary School Teachers in History of Art and Architecture, submitted to the Division of Fellowships and Seminars, for projects beginning after September 1, 1986.

6. Date: June 5–6, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–09.
Program: This meeting will review applications in the fields of the humanities submitted to the Conferences category of Regrants Program, Division of Research Programs, for projects beginning after October 1, 1986.

7. Date: June 5–6, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, submitted to the Division of State Programs, for activity beginning after November 1, 1986.

8. Date: June 8, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after September 1, 1986.

9. Date: June 12–13, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, submitted to the Division of State Programs, for activity beginning after November 1, 1986.

10. Date: June 19–20, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.

Program: This meeting will review state humanities council applications, submitted to the Division of State Programs, for activity beginning after November 1, 1986.

11. Date: June 9–10, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Exemplary Projects in Undergraduate and Graduate Education program, submitted to the Division of Education, for projects beginning after January 1, 1987.

12. Date: June 6, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Programs, Division of Research Programs, for projects beginning after October 1, 1986.

13. Date: June 9, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Program, Division of Research Programs, for projects beginning after October 1, 1986.

14. Date: June 12, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review Challenge Grants applications from Public Libraries, submitted to the Challenge Grants Programs, for projects beginning after December 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me be the Chairman's Delegation of Authority to Close Advisory Committee Meetings, date January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786–0322.

Stephen. J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 86–11213 Filed 5–16–86; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 22, 1986 (51 FR 15060). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1986 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Thermal Hydraulic Phenomena, May 21, 1986, Washington, DC. The Subcommittee will review NRC research programs in the thermal hydraulic phenomena area for the ACRS report to the Commission for FY 1988.

Ad Hoc Subcommittee on TVA, May 22, 1986, Washington, DC—Cancelled.

Reliability Assurance, May 22, 1986, Washington, DC (Note: This meeting will begin at 8:00 A.M.). The Subcommittee will discuss research associated with reliability research (reliability maintenance), mechanical and electrical equipment qualification, and plant aging. Related topics will also be discussed, including seismic fragility of plant components (e.g., relay chatter) and the ability of containment isolation valves to close under accident flow rates.

Regulatory Policies and Practices, May 27, 1986, Washington, DC. The Subcommittee will discuss the regulatory process as it relates to the June 9, 1985 event at Davis-Besse.

South Texas Units 1 and 2, May 29 and 30, 1986, Bay City, TX. The Subcommittee will review Houston Lighting and Power Company's application for an operating license.

Reactor Operations, June 3, 1986, Washington, DC. The Subcommittee will review recent events at operating plants.

Severe (Class 9) Accidents, June 3, 1986, Washington, DC. The Subcommittee will review a final draft of NUREG–0956, "Reassessment of the Technical Bases for Estimating Source Terms."

Safety Research Program, June 4, 1986, Washington, DC. The Subcommittee will continue its discussion on the proposed NRC Safety Research Program and Budget for FY 1988 and 1989. It will discuss also a Draft ACRS report to the Commission on this matter.

Containment Requirements, June 4, 1986, Washington, DC. The Subcommittee will review the status of the NRC Staff's programs for the development of Safety Goal Policy containment performance objectives.

Decay Heat Removal Systems, June 24, 1986 (tentative), Washington, DC. The Subcommittee will review NRR's Action Plan to address concerns with the reliability of certain plants' AFW systems.

Babcock and Wilcox (B&W) Reactor Plants, June 25, 1986, Washington, DC. The Subcommittee will consider the B&W Owners Group plans to reassess the long-term safety of B&W reactors, including the implications of operating experience on the adequacy of B&W plant designs. The Subcommittee will also be briefed on the NRC Staff's Incident Investigation Team's (IIT) findings related to the 12/26/85 loss of integrated control system power and overcooling transient at the Rancho Seco nuclear power plant.

Metal Components, June 25, 1986, Pittsburgh, PA. The Subcommittee will

review the status of NDE of cast stainless steel, and changes in steel-making practice.

Auxiliary Systems, June 26, 1986, Washington, DC. The Subcommittee will discuss: (1) The status of the Appendix R compliance, (2) differing technical views among the Staff, (3) proposed research and associated budget for FY 1988 and 1989 in the fire protection area, and (4) updates on the progress being made in the Sandia experimental program on fire protection.

Gas Cooled Reactor Plants, June 26, 1986, Washington, DC. The Subcommittee will review the applicability on NRC requirements for equipment qualification and cable testing to Fort St. Vrain, an HTGR.

Davis-Besse, June 27, 1986, Washington, DC. The Subcommittee will review start-up activities for Davis-Besse.

Joint Occupational and Environmental Protection Systems and Auxiliary Systems, June 27, 1986, Washington, DC. The Subcommittees will: (1) Review a draft AEOD report on the effects of ambient temperature on I&C Systems, (2) be briefed on the status of various control room HVAC Systems problems and the Staff's control room habitability improvement effort, (3) discuss with the Staff the 1 mrem/yr "cutoff" dose rate for the calculation of collective population doses, and (4) be briefed on the Staff's evaluation of the Shearon Harris Chilled Water Systems.

Reliability Assurance, July 8, 1986, Washington, DC. The Subcommittee will review the final resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants."

Waste Management, July 22 and 23, 1986, Washington, DC. The Subcommittee will review: (1) NUREG-0518, Final Environmental Statement pertaining to the salvaging of contaminated smelted alloys, (2) the broader generic question concerning the disposition of a wide range of related materials, including metals and equipment resulting from the decontamination and decommissioning of nuclear power plants, and (3) High-Level and Low-Level Radioactive Waste topics to be identified and discussed with NMSS at an agenda planning session on May 27, 1986.

Westinghouse Reactor Plants, July 24, 1986, Washington, DC. The Subcommittee will continue discussion and comment on NRC Staff actions taken with respect to the SONGS-1 water hammer/loss of AC power event. This will be a follow-up Subcommittee meeting to the February 12, 1986 meeting on the same subject.

Scram Systems Reliability, July 31, 1986, Washington, DC. The Subcommittee will review the status of the ATWS Rule implementation effort.

Extreme External Phenomena, August 6, 1986, Washington, DC. The Subcommittee will conduct a workshop to review the importance of seismic risk to nuclear power plants. Seismic hazard will be the principal topic to be discussed.

Decay Heat Removal Systems, August 13, 1986, Washington, DC. The Subcommittee will continue its review of NRR's proposed resolution position for USI A-45, "Shutdown Decay Heat Removal Systems."

Spent Fuel Storage, Date to be determined (June/July), Washington, DC. The Subcommittee will continue its review of 10 CFR Part 72 and Monitored Retrievable Storage (MRS).

Metal Components, Date to be determinerd (July), Richland, WA. The Subcommittee will visit and review steam generator, degraded piping, and NDE facilities and programs.

Instrumentation and Control Systems, Date to be determined (July), Washington, DC. The Subcommittee will review the Westinghouse RIVLIS level instrumentation.

Nuclear Plant Chemistry, Date to be determined (July/August), Washington, DC. The Subcommittee will discuss fission product source terms, aerosol behavior, emergency planning, etc.

AC/DC Power Systems Reliability, Date to be determined (August), Washington, DC. The Subcommittee will review the proposed Station Blackout rule (SECY-85-163).

Seabrook Units 1 and 2, Date to be determined (late summer/early fall), Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook 1 and 2.

Structural Engineering, Date to be determined (late 1986), Albuquerque, NM. The Subcommittee will visit and review containment integrity and Category I structures, facilities, and programs.

Probabilistic Risk Assessment, Date and location to be determined. The Subcommittee will review the probabilistic risk assessment for Millstone 2.

ACRS Full Committee Meeting

June 5-7, 1986: Items are *tentatively* scheduled.

*A. *Meeting with NRC Commissioners*—discuss ACRS report dated January 14, 1986 regarding the General Electric Standard Safety Analysis Report (GESSAR-II).

*B. *Recent Events at Operating Nuclear Power Stations*—reports and discussion regarding recent events and incidents at nuclear power stations.

*C. *South Texas Nuclear Power Plant*—request for an operating license for this facility.

*D. *Davis-Besse Nuclear Plant*—discuss regulatory processes associated with the evaluation of the design, operation and accident investigation regarding this nuclear power plant.

E. *Reactor Safety Research Program*—Preparation of ACRS report to the U.S. Congress regarding the proposed NRC safety research program for FY 1988 and 1989.

F. *Source Term for Nuclear Power Plant Accidents*—review proposed NRC NUREG regarding revised nuclear power plant source term to be used in accident evaluation.

G. *NRC Regulatory Guides*—consider proposed revisions to NRC Regulatory Guides.

*H. *ACRS Subcommittee Activities*—reports of designated ACRS subcommittees regarding safety-related regulatory matters including consideration of Technical Integration Centers, thermal-hydraulic research and management of ACRS activities.

I. *Future ACRS Activities*—discuss anticipated ACRS subcomittee activities and items proposed for consideration by the full Committee.

*J. *Appointment of ACRS Members*—discuss qualifications of candidates nominated for appointment to the ACRS and reappointment of a committee member when his term is complete.

K. *Systems Interactions*—Discuss proposed ACRS comments regarding examples of systems interactions.

*L. *Activities of ACRS Members*—discuss non-ACRS activities of Committee members and the impact of these activities on their participation as ACRS members.

July 10-12, 1986—Agenda to be announced.

August 7-9, 1986—Agenda to be announced.

Dated: May 14, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86-11226 Filed 5-16-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Revised

The **Federal Register** published May 8, 1986 (51 FR 17120) contained notice of a meeting of the ACRS Subcommittee to be held on Wednesday, May 21, 1986, 8:30 a.m., Room 1046, 1717 H Street, NW., Washington, DC. To the extent

practical, most of the meeting will be open to public attendance. However, a portion of the meeting will be closed to protect information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action. All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone: 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 14, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-11228 Filed 5-16-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Date Change

The ACRS Subcommittee on Reliability Assurance previously published in the Federal Register May 13, 1986 (51 FR 17560) scheduled for May 23, 1986 has been *rescheduled for Thursday, May 22, 1986, 8:00 A.M., Room 1046, 1717 H Street, NW., Washington, DC.* All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone: 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 14, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-11229 Filed 5-16-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Ad Hoc Subcommittee on TVA; Cancellation

The ACRS Ad Hoc Subcommittee on TVA scheduled for May 22, 1986, Room 1046, 1717 H Street NW., Washington, DC has been cancelled. This notice was previously published on May 9, 1986 (51 FR 17288).

Dated: May 14, 1986.

Morton W. Libarkin,

Assistant Executive for Project Review.

[FR Doc. 86-11230 Filed 5-16-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456-OL; 50-457-OL and ASLBP No. 79-410-03-OL]

Commonwealth Edison Co.; (Braidwood Station, Unit Nos. 1 and 2); Hearing

May 13, 1986.

Before Administrative Judges: Herbert Grossman, Chairman, Richard F. Cole, A. Dixon Callihan.

Please take notice that at 2:00 p.m. on Tuesday, May 27, 1986, the evidentiary hearing in the matter of the Braidwood Station operating license will reconvene in the Meeting Room, Lower Level, Circuit Court of Cook County, Municipal District 6, 16501 South Kedzie Parkway, Markham, Illinois 60426. The hearing will continue until concluded.

The public is invited to attend all hearing sessions.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman Administrative Judge.

[FR Doc. 86-11231 Filed 5-16-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445-CPA]

Texas Utilities Electric Co., et al., (Comanche Peak Steam Electric Station, Unit 1); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this construction permit amendment proceeding: Alan S. Rosenthal, Chairman, Dr. W. Reed Johnson, Thomas S. Moore.

Dated: May 13, 1986.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86-11232 Filed 5-16-86; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with the directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on ever employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1986 shall be at the rate of 22.5 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1986, 27.6 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 72.4 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 12, 1986.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-11176 Filed 5-16-86; 8:45 am]

BILLING CODE 7905-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Committee on International Science, Engineering, and Technology; Notice of Establishment and Correction

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Correction.

SUMMARY: This document corrects the document published on Page 15561 in the issue of Thursday, April 24, 1986. On Page 15561, first column, following Action entry, correct word Engineering to read Engineering. In the third column, page 15561, following entry The Department of Defense, correct first entry thereafter to read as follows:

—Deputy Undersecretary for Trade Security Policy On Page 15562, in the third column, under the heading Members and Chairman, Beginning with the entry The Department of Defense, the entries are corrected to read as follows:

• The Department of Defense
—Deputy Undersecretary for Trade Security Policy
—Deputy Undersecretary for Research and Advanced Technology
• The Department of the Treasury
—Deputy Assistant Secretary for Trade and Investment Policy
• Executive Office of the President
—Director for International Economic Affairs, National Security Council
—Deputy Associate Director, Special Studies Division, Office of Management and Budget
—Director, Chemical and Advanced Technology Trade Policy, Office of the United States Trade Representative
—Associate Director, Office of Science and Technology Policy.

Jerry D. Jennings

Executive Director, Office of Science and Technology Policy.

[FR Doc. 86-11179 Filed 5-16-86; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15005; 812-6367]

CBA Money Fund, et al.; Application for Order

May 13, 1986.

Notice is hereby given that CBA Money Fund; CMA Money Fund; CMA Government Securities Fund; Financial Institutions Series Trust (on behalf of the Overland Express Money Market Fund and Summit Cash Reserves Fund); Merrill Lynch Retirement Series Trust; Merrill Lynch U.S.A. Government Reserves; Merrill Lynch Series Fund, Inc. (on behalf of its Money Reserve Portfolio); and Merrill Lynch Variable Series Funds, Inc. (on behalf of Merrill Lynch Reserve Assets Fund and Merill Lynch U.S. Government Money Fund); Box 9011, Princeton, N.J. 08543-9011, and Merrill Lynch Government Fund Inc., 125 High Street, Boston, MA 02110, registered under the Investment Company Act of 1940 ("Act") as open-end, deversified, management investiment companies; and Merrill Lynch Asset Management (MLAM), and Fund Asset Management, Inc. (FAMI), registered as investment advisers under the Investment Advisers Act of 1940, and each acting as investment manager for one or more of the above-named registered investment companies (which, together with MLAM and FAMI are referred to herein after as "Applicants"); filed an application on April 29, 1986, pursuant to section 6(c) of the Act requesting an order of the commission exemption the above-named registered investment companies, as well as any additional "money market funds" which may be organized by MLAM or FAMI in the future (Funds), from the provisons of section 19(b) of the Act, and Rule 19b-1 thereunder, to permit the Funds to make distributions of long-term capital gains more frequently than once a year. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, and to the Act for the text of the relevant statutory provisions.

Each Fund is a money market fund organized to invest principally in a portfolio of money market securities, primarily short-term United States Government agency securities, bank money instruments, commercial paper, and repurchase agreements. The Funds' investment objectives are to seek current income and stability of principal.

Section 19(b) and Rule 19b-1, as here pertinent, prohibit distributions of long-term capital gains dividends more frequently than once a year. Applicants submit that although certain of the Funds may invest in securities maturing in less than two years and the remaining Funds may invest in securities maturing in less than one year, the average life of any Fund's portfolio generally does not exceed 65 days. In no case will such instruments be acquired with a view to the realization of long-term capital gains. If unaticipated circumstances result in the accrual of such gains, however, the Funds wish to be in the postion to distribute them at approximately the time they accure together with their other distributions of income. If such gains could not be distributed currently, the Funds' net asset value on each daily valuation day would be increased by the amount of such undistributed gain with no current benefit accuring to shareholders unless they elected to redeem their shares.

Applicants assert that the principal purposes of section 19(b) and Rule 19b-1 are (1) to pervent shareholders from confusing dividends of interest income with distributions of capital gains; (2) to relieve investment company advisers from pressure to realize such gains; (3) to mitigate improper sales practices related to the distributions of such gains; and (4) to eliminate the administrative expenses associated with frequent capital gains distributions. Applicants submit that such dangers are irrelevant to the Funds because (1) full disclosure is made to each shareholder of the investment objectives of each Fund, and capital gains distributions are clearly identified; (2) the Funds explicitly disclaim any intention of seeking such gain; (3) each Fund declares daily dividends of any realized gain and purposes to distribute such dividends as they are realized, and consequently a Fund would not be compelled to sell a security merely in order to be able to distribute a gain on sale; and (4) the Funds would not incur any substantial increases in administrative expenses, because the Funds already make distributions of short-term capital gains on a daily basis.

Applicants conclude that an order granting each of the Funds an exemption from section 19(b) and Rule 19b-1 thereunder to enable the Funds to make distributions of long-term capital gains as they are realized would be appropriate, in the public interest, and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Notice is further given that any intetested person wishing to request a hearing on the application may, not later than June 9, 1986, at 5:30 p.m., do so by submitting a writting request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the appropriate address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearings upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11218 Filed 5-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15094; File 811-3874]

Integra Fund, Inc.; Application for an Order Declaring That Applicant has Ceased To Be an Investment Company

May 14, 1986.

Notice is hereby given that Integra Fund, Inc. ("Applicant"), 600 New Hampshire Ave., NW., Suite 720, Washington, DC 20037, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 24, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it registered under the Act by filing Form N-8A on October 12, 1983, and that it did not file a registration statement under section 8(b) of the Act. Applicant's corporate status was revoked on September 9, 1985. Applicant further states that it never commenced operations and never had any assets or liabilities. Applicant does not propose to make a public offering or engage in business of any kind.

Notice is further given that any interested party wishing to request a hearing on the application may, not later than June 3, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11219 Filed 5-16-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-15132]

Application and Opportunity for Hearing; Plitt Theatres, Inc.

May 15, 1986.

Notice is hereby given that Plitt Theatres, Inc., a Delaware Corporation ("PTI" or the "Company"), has filed an application (the "Application") pursuant to section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission that, notwithstanding the merger of Plitt Theatre Holdings, Inc. ("PTH") with and into PTI, the trusteeships of Bankers Trust Company ("Bankers") under indentures dated as of June 15, 1985 between PTI and Bankers (the "PTI Indenture") which was heretofore qualified under the Act, and August 1, 1984, between PTH and Bankers (the "PTH Indenture") which was heretofore qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from continuing to act as trustee under both the PTI and PTH Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days of ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

PTI alleges that:

(1) The obligations of PTI under both Indentures, and particularly with respect to the debentures issued thereunder, are wholly unsecured and all such obligations will rank equally without seniority or subordination of one to the other.

(2) No default has at any time existed under either of the Indentures.

(3) The provisions of the PTI and PTH Indentures, while substantially similar, contain different terms with respect to subordination thereby creating a potential conflict between the two groups of debenture holders.

(4) Cineplex-Odeon Corporation, the ultimate parent company of PTI, intends to consummate a transaction with MCA, Inc., whereby MCA, Inc., would invest $108.65 million (Canadian) in Cineplex-Odeon Corporation.

(5) PTI believes that the MCA, Inc., transaction will be consummated in May, 1986, and that a portion of the proceeds will flow down to PTI.

(6) PTI presently intends to use such proceeds to redeem debentures issued pursuant to the PTH Indenture (the "PTH Debentures").

(7) If PTI does not accomplish the redemption of the PTH Debentures within 180 days of May 31, 1986, PTI will eliminate the potential conflict of interest by engaging a separate trustee for the PTH Debentures.

PTI has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Commission's Public Reference Section, File Number 22-15132, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than May 27, 1986, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11220 Filed 5-16-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

BEST COPY AVAILABLE

SUMMARY: This notice provides for public awareness of SBA's intention to refund six presently existent Small Business Development Centers (SBDC's) for fiscal year 1987. Currently, there are 45 SBDC's operating in the SBDC program. It should be noted that fiscal year 1987 funding is contingent upon legislative appropriation of the SBDC program. The following SBDC's are intended to be refunded: Connecticut; New York (Downstate); North Dakota; Ohio; Puerto Rico; and the Virgin Islands. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 18, 1986.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promugated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of six presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the expected date of refunding of these SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously funished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and

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design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association.) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: May 13, 1988.

Charles L. Heatherly,

Acting Administrator.

Addresses of Relevant SBDC Directors

Mr. John P. O'Connor, Connecticut SBDC State Director, University of Connecticut, Box U-41, Room 422, 368 Fairfield Road, Storrs, CT 06269, (203) 486-4135

Mr. James L. King, New York (Downstate) SBDC Director, State University of New York, State University Plaza, Albany, NY 12246, (518) 473-5398

Mr. Tom Rausch, North Dakota SBDC State Director, University of North Dakota, College of Business & Public Administration, Grand Forks, ND 58202, (701) 780-3403

Ms. Holly I. Schick, Ohio SBDC State Director, Ohio Department of Development 30 East Broad Street, P.O. Box 1001, Columbus, OH 43266-1001, (614) 466-4945

Mr. Jose M. Romaguera, Puerto Rico SBDC Director, University of Puerto Rico, College Station, Building B, Mayaguez, Puerto Rico 00708, (809) 834-3590 or 834-3790

Dr. Solomon S. Kabuka, Jr., Virgin Islands SBDC Director, College of the Virgin Islands, Box 1087, Charlotte Amalie, St. Thomas 00801, (809) 776-3206.

[FR Doc. 88-11144 Filed 5-16-88; 8:45 am]

BILLING CODE 8025-01-M

[Disaster Loan Area #2236]

Declaration of Disaster Loan Area; South Dakota

Hamlin County and the adjacent Counties of Brookings, Codington and Kingsbury in the State of South Dakota constitute a disaster area because of flooding which occurred on or about March 22, 1988. Applications for loans for physical damage may be filed until the close of business on July 7, 1988, and for economic injury until the close of business on September 2, 1988, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	10.500

The number assigned to this disaster is 223606 for physical damage and for economic injury the number is 640700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: May 8, 1988.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 88-11145 Filed 5-16-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 964]

Delegation of Authority No. 159

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658) the following functions are hereby delegated to the Legal Adviser, acting in consultation with the Assistant Secretary of the Bureau of International Organization Affairs and the Assistant Secretary of the geographical Bureau concerned:

1. General Delegation.

The functions vested in the Secretary of State under Executive Order 12555 of March 10, 1986, entitled Protection of Cultural Property.

2. Technical Provisions.

(a) Any officer to whom functions are delegated by this delegation of authority may, to the extent consistent with law, redelegate such functions and authorize their successive redelegation.

(b) Notwithstanding any provision of this delegation of authority, the Secretary of State or the Deputy Secretary may at any time exercise any function herein delegated.

(c) As used in this delegation of authority the term "functions" includes any power, authority, responsibility, right, privilege, duty, obligation, discretion, determination or activity.

(d) This delegation shall be deemed to be effective on signature.

Dated: May 2, 1986.

John C. Whitehead,

Acting Secretary of State.

[FR Doc. 86-11140 Filed 5-16-86; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

[Docket 43625]

Texas Air-Eastern Acquisition Case; Second Prehearing Conference

Served: May 14, 1986.

The Judge was notified in a telephone conference call at 3:45 p.m., May 13, 1986, from Counsel for Texas Air Corporation and Counsel for Pan American that agreement had just been reached between the two companies for the sale of certain New York Air slots and gates in the Northeast Corrider to Pan American. In view of the possible effect of that development upon this proceeding, a second prehearing conferences will be held on Monday, May 19, 1986, at 10:00 a.m. (local time) in Room 5332, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC., before the undersigned administrative law judge to consider whether any change in the present procedures are warranted.

The conference will address particularly the treatment which should be accorded the TAC–Pan American agreement in this proceeding in light of the language in the second full paragraph on page 11 of Department Order 86–4–24 regarding its intended procedure for considering proposed remedies for any anti-competitive effects of the TAC–Eastern acquisition.

Written comants including any proposals for changes in the present procedural schedule shall be served by 5:00 p.m., Friday, May 16, 1986.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 86-11280 Filed 5-16-86; 8:40 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP86-05; Notice 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation, of Warren, Michigan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.209, Motor Vehicle Safety Standard (FMVSS) No. 209 *Seat Belt Assemblies*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3(a) of FMVSS No. 209 requires that:

"(1) Attachment hardware of a seat belt assembly after being subjected to the conditions specified in S5.2(a) shall be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion at peripheral edges or edges of holes on underfloor reinforcing plates and washers."

Section (c)(1) of paragraph S4.3 also requires that:

"Eye bolts, shoulder bolts, or other bolts used to secure the pelvic restraint of a seat belt assembly to a motor vehicle shall withstand a force of 9,000 pounds or 4,080 kilograms when tested by the procedure specified in S5.2(c)(1)."

The petitioner, General Motors, produced approximately 7,802 vehicles between May 7 and May 10, 1985, which included the Pontiac 6000, Oldsmobile Ciera, Chevrolet Caprice, and Oldsmobile Delta 88. General Motors installed seat belt assemblies in these vehicles, and estimated that approximately 50 percent of the attachment bolts did nt meet the corrosion requirements of FMVSS No. 209.

General Motors indicated that the bolts which may have been improperly plated are the front inner and outer seat belt floor anchorage bolts.

General Motors also performed tensile strength load tests which showed that the bolts exceeded the strength requirement of S4.3(c)(1) of FMVSS No. 209. Test results showed a minimum load of 12,050.35 pounds, and a maximum of 14,208.63 pounds, with an average of 12,899.85 pounds.

General Motors also stated that:

"An examination of the bolts was also conducted at the University of Pennsylvania by Professor Charles J. McMahon, Jr. Concerning this examination , Professor McMahon states: For our examination we sectioned the bolts through rusted areas and examined microscopically the surface profile in these regions. As was expected from the prior visual examination of the surface, in which no significant pits were observed, the rusting was superficial and did not involve any subsurface damage, such as cracking, pitting, etc. Thus, the mechanical performance of the bolts would not be affected by this surface rust." Therefore, since the strength performance of these bolts exceeds the specific requirements in FMVSS No. 209, it is believed that no safety concern exists."

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 18.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 14, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-11170 Filed 5-16-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 18-86]

Treasury Bonds, of 2016

Washington, May 9, 1986.

The Secretary announced on May 8, 1986, that the interest rate on the bonds designated Bonds of 2016, described in Department Circular—Public Debt Series—No. 18-86 dated May 1, 1986, will be 7¼ percent. Interest on the bonds will be payable at the rate of 7¼ percent per annum.

John Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-11132 Filed 5-16-86; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular—Public Debt Series—No. 19-86]

Treasury Notes, Series R-1989

Washington, May 7, 1986.

The Secretary announced on May 6, 1986, that the interest rate on the notes designated Series R-1989, described in Department Circular—Public Debt Series—No. 16-86 dated May 1, 1986, will be 6⅞ percent. Interest on the notes will be payable at the rate of 6⅞ percent per annum.

John Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-11133 Filed 5-16-86; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular—Public Debt Series—No. 17-86]

Treasury Notes, Series C-1996

Washington, May 8, 1986.

The Secretary announced on May 7, 1986, that the interest rate on the notes designated Series C-1996, described in Department Circular—Public Debt Series—No. 17-86 dated May 1, 1986, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

John Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-11131 Filed 5-16-86; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 165 (Rev. 6)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific authority to respond to appeals filed pursuant to the Freedom of Information Act, 5 U.S.C. 552, (FOIA). The text of the delegation order appears below.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Peter V. Filpi, CC, 1111 Constitution Avenue NW., Room 3706, Washington, DC 20224, (202) 566-4100 (not a toll-free telephone number).

James J. Keightley,

Associate Chief Counsel (Litigation).

Order No. 165 (Rev. 6)

Effective date: 5-8-86.

Responses to Appeals Filed Pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA)

The authority vested in the Commissioner of Internal Revenue by 31 CFR 1.5(h) and Appendix B(4) to respond to administrative appeals filed pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), is hereby delegated, through the Chief Counsel and Associate Chief Counsel (Litigation), to the Director, Disclosure Litigation Division. In the absence of or at the request of the Director, the Assistant Director, may exercise this authority in his/her name for the Director. This authority may not be redelegated.

In addition, the authority vested in the Commissioner by 31 CFR 1.5(h)-(i) to acknowledge receipt of FOIA appeals and assert mandatory extensions of FOIA appeal time limits is hereby delegated to the Director, Disclosure Litigation Division. This authority may be redelegated not lower than attorneys in the Disclosure Litigation Division directly involved in such matters.

Delegation Order 165 (Rev. 5), issued July 26, 1982, is superseded.

Dated: May 8, 1986.

James I. Owens,

Deputy Commissioner.

[FR Doc. 86-11235 Filed 5-16-86; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 96
Monday, May 19, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 18007.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., May 20, 1986.

CHANGES IN THE MEETING: The meeting has been postponed to 2:00 p.m. on May 20, 1986.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-11301 Filed 5-15-86; 2:58 pm]
BILLING CODE 6351-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, May 21, 1986.
LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC
STATUS:
MATTERS TO BE CONSIDERED:

Open to the Public

1. Mid-Year Review

The Commission and staff will review and discuss the status of CPSC's Fiscal Year 1986 Operating Plan.

Closed to the Public

2. Enforcement Matter OS#3780

The Commission will consider Enforcement Matter OS#3780.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 14, 1986.
[FR Doc. 86-11278 Filed 5-15-86; 1:01 pm]
BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, May 22, 1986.
LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC
STATUS:
MATTERS TO BE CONSIDERED:

Open to the Public

1. Asbestos in Consumer Products: Options

The Commission will consider options to reduce consumer exposure to asbestos in selected products.

Closed to the Public

2. Enforcement Matter OS#2132

The staff will brief the Commission on issues related to OS#2132.

3. Enforcement Matter OS#5456

The staff will brief the Commission on issues related to OS#5456.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 14, 1986.
[FR Doc. 86-11279 Filed 5-15-86; 1:01 pm]
BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 17565, dated May 13, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, May 19, 1986.

CHANGE IN THE MEETING: The following matter has been postponed from the open portion of the meeting and will be rescheduled at a later date.

Proposed Policy Statement on Access

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634-6748.

Dated: May 15, 1986.

Johnnie L. Johnson,
Attorney-Advisor Executive Secretariat.
[FR Doc. 86-11281 Filed 5-15-86; 1:03 pm]
BILLING CODE 6750-06-M

5

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 9, 1986, 51 FR 17271.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: May 14, 1986, 10:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

4. The Use of High-Cube Containers in Japan.

John Robert Ewers,
Secretary.
[FR Doc. 86-11242 Filed 5-15-86; 8:45 am]
BILLING CODE 6730-01-M

6

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, May 22, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 14, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-11240 Filed 5-15-86; 9:00 am]
BILLING CODE 6610-01-M

7

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 3:30 p.m., Wednesday, May 21, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Discussion of Foreign Language Ballots in NLRB Elections.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC 14 May 1986.

By direction of the Board.
John C. Truesdale,
Executive Secretary, National Labor Relations Board.
[FR Doc. 86-11254 Filed 5-15-86; 8:45 am]
BILLING CODE 7545-01-M

8

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 am., Wednesday, May 28, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items will be open to the public, the last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Rear-End Collision of Metro-Dade Transportation Administration Train Nos. 172-171 and 141-142, Miami, Florida, June 26, 1985.
2. *Recommendations:* to the American Public Transit Association (APTA) and the Urban Mass Transportation Administration (UMTA) on Alcohol and Drug Use on Rail Rapid Transit Systems.
3. *Marine Accident Report and Recommendations:* Capsizing and Sinking of the Drilling Barge TONKAWA in Bayou Chene near Morgan City, Louisiana, May 30, 1985.
4. *Opinion and Order:* Administrator v. Vance, Docket SE-6546; disposition of respondent's appeal.

FOR MORE INFORMATION, CONTACT: H. Ray Smith (202) 382-6525.

Catherine T. Kaputa,
Federal Register Liaison Office.
May 14, 1986.

[FR Doc. 86-11241 Filed 5-15-86; 9:02 am]
BILLING CODE 7533-01-M

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federal register

Monday,
May 19, 1986

Part II

Department of Education

Office of Elementary and Secondary Education

34 CFR Parts 200 and 204

Education Consolidation and Improvement Act of 1981; Financial Assistance to Local Educational Agencies To Meet Special Educational Needs of Disadvantaged Children, and General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200 and 204

Chapter 1, Education Consolidation and Improvement Act of 1981; Financial Assistance to Local Educational Agencies to Meet Special Educational Needs of Disadvantaged Children, and General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations under Chapter 1 of the Education Consolidation and Improvement Act of 1981 to amend the regulations in 34 CFR Part 200 governing the program of assistance to local educational agencies to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and the regulations in 34 CFR Part 204 containing general definitions and administrative, project, fiscal, and due process requirements for all Chapter 1 programs. These regulations implement changes made to Chapter 1 by the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98–211). The regulations also implement several other statutory provisions.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments with the exception of §§ 200.53 and 200.54. Sections 200.53 and 200.54 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5610, ROB–3), Washington, DC. 20202. Telephone (202) 245–9846.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 1

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Chapter 1 supersedes Title I of The Elementary and Secondary Education Act of 1965, as amended. The purpose of Chapter 1 is to provide financial assistance to State and local educational agencies (SEAs and LEAs) and certain State agencies to meet special educational needs. In particular, Chapter 1 provides financial assistance to LEAs to meet the special educational needs of educationally deprived children, to SEAs to meet the special educational needs of children of migratory agricultural workers and migratory fishers, to State agencies to meet the special educational needs of neglected or delinquent children, and to State agencies to meet the special educational needs of handicapped children.

On November 19, 1982, the Department published final regulations in 47 FR 52340 as 34 CFR Part 200 implementing that part of Chapter 1 that provides financial assistance to LEAs to meet the special educational needs of educationally deprived children. On December 3, 1982, the Department published a notice of proposed rulemaking (NPRM) in 47 FR 54718 governing the Chapter 1 programs designed to meet the special educational needs of migratory children, handicapped children, and neglected or delinquent children. Included in this notice was a new Part 204 containing general definitions and administrative, project, fiscal, and due process requirements for all Chapter 1 programs. Accordingly, the notice proposed to transfer many of the provisions contained in the final regulations for Part 200 to the new Part 204 because those provisions apply to all Chapter 1 programs, not just to the LEA program.

On December 8, 1983, Congress enacted the ECIA Technical Amendments (Pub. L. 98–211) to improve the implementation of the ECIA. Those technical amendments necessitated certain changes to the final Chapter 1 regulations published as Part 200 on November 19, 1982 and to the Chapter 1 regulations proposed as Part 204 on December 3, 1982. As a result, the Department published an NPRM on August 9, 1984 in 49 FR 31914 implementing changes to those provisions of the Chapter 1 regulations in Part 200 affected by the technical amendments. Also on August 9, the Department published an NPRM in 49 FR 31918 for Part 204, in which the Department reproposed those sections in proposed Part 204 (published December 3, 1982) affected by the technical amendments and also proposed certain changes in the due process procedures applicable to Chapter 1.

On April 30, 1985, the Department issued final regulations in 50 FR 18415 for Part 204 that responded to comments received on the December 3, 1982 NPRM. The final regulations for Part 204, however, included only those sections that were not affected by the technical amendments or the other changes included in the August 9, 1984 NPRM. Moreover, the final regulations for Part 204 removed only those duplicate sections of Part 200 not affected by the technical amendments.

B. Overview of These Regulations

These final regulations accomplish a number of purposes. First, the regulations remove the remaining sections from Part 200 that are included in Part 204 because they apply to all Chapter 1 programs. Those sections are: § 200.54 Evaluation; § 200.55 Allowable costs; § 200.59 SEA rulemaking and other responsibilities; § 200.60 Maintenance of effort; § 200.61 Waiver of the maintenance of effort requirement; § 200.62 Supplement, not supplant; § 200.93 Eligibility for review; § 200.100 Practice and procedure; and § 200.103 The Secretary's decision. Second, the regulations implement changes to sections in Parts 200 and 204 affected by the technical amendments. Third, the regulations make final the changes proposed in the August 9, 1984 NPRM for Part 204 regarding certain due process procedures. Finally, the regulations make other changes to implement statutory provisions applicable to Chapter 1.

Several of the changes made by these regulations reflect the importance of parental involvement in educating Chapter 1 children. Educational research has clearly established the importance of parents in educating children. As recently reported in *What works*, the Department's compendium of research about teaching and learning, "(p)arents are their children's first and most influential teachers" and involvement by parents "helps children learn more effectively." Accordingly, schools must capitalize on this relationship and afford parents the opportunity to become involved in critical choices regarding their children's education. Through such involvement, parents can greatly enhance their children's learning.

Parental involvement is particularly important in Chapter 1. Research has demonstrated that parental involvement increases the effectiveness of Chapter 1 programs and makes a substantial contribution to the success of those programs. By working with teachers, and by reinforcing and promoting learning objectives in the home, parents of Chapter 1 children can dramatically improve their childen's educational achievement.

To ensure meaningful parental involvement in Chapter 1 programs, Congress enacted two provisions. Originally, Congress enacted section 556(b)(3), which requires an assurance that Chapter 1 programs and projects are designed and implemented in consultation with parents. Subsequently, because "[b]oth research and intuition confirm that parental consultation and involvement are ordinarily key ingredients in successful educational programs," Congress added section 556(e). S. Rept. 166, 98th Cong., 1st Sess. 10 (1983). That section requires an agency that receives Chapter 1 funds to convene annually at least one public meeting, to which all parents of eligible children must be invited, to explain the Chapter 1 program. The section also authorizes the agency to provide, upon request, reasonable support for additional parent involvement activities.

To be beneficial, parental involvement in Chapter 1 must be meaningful and substantive; as such, it can take a variety of forms, best determined by the agencies that receive Chapter 1 funds. For example, under the Chapter 1 LEA program for educationally deprived children, parent advisory councils can be constructive, but so can less formal mechanisms such as reports to parents on their children's progress, conferences between individual parents and teachers, consultation with parents on better ways in which a school can work with parents to achieve the program's objectives, and other mechanisms suggested in § 200.53. Whatever the methods of encouraging parental involvement selected, the underlying objective must be to ensure that individual parents are effectively informed of their children's progress and encouraged and assisted in efforts to sustain or enhance that progress. It is this underlying goal rather than any particular formalistic approaches that the Secretary endorses in these regulations.

These final regulations make changes to the following sections in Parts 200 and 204:

Section 200.50 Selection of school attendance areas.

This section implements a number of changes made by Pub. L. 98–211. First, paragraph (a) implements section 2(a) of Pub. L. 98–211, which deleted section 556(b)(1)(C) of Chapter 1 containing the option to design projects "to utilize part of the available funds for services which promise to provide significant help for all such children served by such agency." Second, paragraph (a)(2) implements section 556(b)(1) of Chapter 1 by requiring that an LEA order its school attendance areas based on concentrations of children from low-income families and select areas for participation based on that ordering. Third, paragraph (b) implements section 3 of Pub. L. 98–211, which allows an LEA certain flexibility in selecting school attendance areas and schools. Finally, paragraph (c) implements section 2 (b) of Pub. L. 98–211, which exempts an LEA with a total enrollment of less than 1,000 children from the requirements concerning selection of school attendance areas.

Section 200.51 Student identification and selection.

Paragraph (a)(2) implements section 2(c) of Pub. L. 98–211, which requires, among the educationally deprived children, selected, inclusion of those children who have the greatest need for special assistance. Paragraph (b) implements section 3 of Pub. L. 98–211, 98–211, which allows an LEA certain flexibility in selecting and serving children under Chapter 1.

Section 200.53 Consultation with parents and teachers.

Paragraph (b) has been revised to require an LEA to develop written policies to ensure that parents of the children being served have an adequate opportunity to participate in the design and implementation of the LEA's Chapter 1 project. This provision was not contained in the NPRM but has been added, in response to several comments, to ensure that an LEA provides for meaningful consultation with parents as required by section 556(b)(3) of Chapter 1. Although paragraph (b) requires the LEA to develop written policies, the provision gives the LEA complete discretion about the content of those policies so long as the policies ensure systematic consultation with parents in both the design and implementation of the LEA's Chapter 1 project. To assist the LEA in developing its policies, paragraph (b)(2) lists a number of possible activities for each LEA's consideration. The LEA may need to include several activities in its policies to meet the requirement in paragraph (b)(1).

Section 200.54 Schoolwide projects.

This section implements section 556(d)(9) of Chapter 1, added by section 3 of Pub. L. 98–211, concerning schoolwide projects.

Section 200.60 Comparability of services.

Paragraph (d) implements section 7 of Pub. L. 98–211, which permits LEA's to exclude, for the purpose of determining compliance with the comparability requirement, State and local funds spent for carrying out certain special programs to meet the educational needs of educationally deprived children, bilingual education for children of limited English proficiency, special education for handicapped children or children with specific learning disabilities, and certain State phase-in programs. Thus, § 200.60 permits LEA's to exclude from the comparability requirement more programs than those agencies may exclude from the supplement, not supplant requirement in 34 CFR 204.32. *See* H. Rept. 51, 98th Cong., 1st Sess. 6 (1983); S. Rept. 166, 98th Cong., 1st Sess. 11 (1983).

Section 200.80 Bypass—General.

Paragraph (c) incorporates the statutory provision in section 557(b)(3)(B) of Chapter 1 concerning the withholding of funds pending final resolution of an investigation or a complaint that could result in a bypass.

Section 200.86 Judicial review of bypass actions.

Section 200.86 concerning judicial review of bypass actions implements the statutory provision in section 557(b)(4)(B) of Chapter 1.

Section 200.87 Continuation of the bypass.

Section 200.87 implements the statutory provision in section 557(b)(3)(C) of Chapter 1, which indicates that a bypass action continues until the Secretary determines that there will no longer be any failure or inability on the part of the LEA that is being bypassed to meet the requirements in §§ 200.70–200.75.

Section 204.11 Access to records and audits.

Paragraphs (a)(1)(ii) and (2) incorporate minor editorial changes to make the language consistent with the corresponding regulation that applies to Chapter 2 of the ECIA. Paragraph (b)(1)

indicates that the audit requirements in the Single Audit Act of 1984 and the regulations implementing those requirements in 34 CFR 74.62 (50 FR 37389 (September 13, 1985)) apply to State and local governments that receive Chapter 1 funds. The Single Audit Act applies to those governments with respect to any of their fiscal years that begin after December 31, 1984.

Section 204.12 Audit claims.

Paragraph (b)(1) lists the factors contained in 4 CFR Part 103 (Standards for the Compromise of Claims) and section 452(f) of the General Education Provisions Act (GEPA) that the Secretary takes into account when considering whether to compromise an audit claim. This list does not include the factor contained in 4 CFR 103.2 regarding the debtor's inability to pay the claim in full because it is not applicable to collection actions against States. Paragraph (b)(2) indicates that it is the policy of the Secretary to consider the probability of the claim being upheld to be the most important factor in deciding whether to compromise an audit claim.

Section 204.13 State rulemaking and other SEA responsibilities.

Paragraph (b) incorporates the provision on State rulemaking contained in section 15 of Pub. L. 98-211. This provision replaces the prior authority for SEA rulemaking contained in § 200.59(b).

Section 204.21 Annual meeting of parents.

Paragraph (a) implements the provision in section 4 of Pub. L. 98-211 that requires an agency that receives Chapter 1 funds to convene annually at least one public meeting to which all parents of eligible children must be invited. The purposes of this meeting are to discuss with parents the programs and activities carried out with Chapter 1 funds, inform parents of their right to consult in the design and implementation of Chapter 1 projects, solicit parents' input, and provide parents an opportunity to establish mechanisms for maintaining ongoing communication among parents, teachers, and agency officials. *See* H. Rept. 51, 98th Cong., 1st Sess. 5 (1983); S. Rept. 100, 98th Cong., 1st Sess. 10-11 (1983). The annual meeting should be the first step in an ongoing process of consulting with parents. It is not intended in itself to satisfy the requirement in section 556(b)(3) of Chapter 1 that projects be designed and implemented in consultation with parents, or otherwise to supersede specific requirements for parental participation contained in 34 CFR Parts 200-203.

Paragraph (b) implements the provision in section 4 of Pub. L. 98-211 that permits an agency that receives Chapter 1 funds to provide, upon request, reasonable support for additional parent involvement activities. As indicated in that paragraph, this support may include, but is not limited to, reasonable access to meeting space and materials, provision of information concerning the Chapter 1 law, regulations, and instructional programs, training programs for parents, and other resources, as appropriate. H. Rept. 51, 98th Cong., 1st Sess. 5 (1983); S. Rept. 100, 98th Cong., 1st Sess. 10-11 (1983).

Section 204.22 Allowable costs.

Paragraph (d) implements section 556(d)(16) of Chapter 1, added by section 3 of Pub. L. 98-211, which allows an agency that receives Chapter 1 funds to assign, under certain conditions, personnel paid entirely with Chapter 1 funds to supervisory duties that provide some benefit to children not participating in the Chapter 1 project.

Section 204.23 Evaluation.

Paragraph (a) implements section 1(b) of Pub. L. 98-211 concerning evaluation and data collection by SEAs. Paragraph (b)(2) implements section 2(d) of Pub. L. 98-211, which requires agencies that receive Chapter 1 funds to consider evaluation results in the improvement of the agencies' Chapter 1 projects.

Section 204.30 Maintenance of effort; 204.31 Waiver of the maintenance of effort requirement.

These sections indicate that, in accordance with section 19 of Pub. L. 98-211, the maintenance of effort and waiver of the maintenance of effort requirements in Chapter 1 apply to all agencies that receive Chapter 1 funds.

Section 204.32 Supplement, not supplant.

Paragraph (a) implements section 6 of Pub. L. 98-211, which clarifies that the supplement, not supplant requirement applies to all agencies that receive Chapter 1 funds. Paragraph (b) implements section 7 of Pub. L. 98-211, which permits agencies to exclude, for the purpose of determining compliance with the supplement, not supplant requirement, State and local funds spent in carrying out certain special programs to meet the educational needs of educationally deprived children. This exclusion is more limited than the exclusions from the comparability requirement permitted by section 7 of Pub. L. 98-211. *See* H. Rept. 51, 98th Cong., 1st Sess. 6 (1983); S. Rept. 100, 98th Cong., 1st Sess. 11 (1983).

Section 204.43 Eligibility for review.

Paragraph (a)(4) incorporates the provision in section 452(a)(4) of GEPA authorizing the Secretary to designate other Chapter 1 proceedings to be reviewed by the Education Appeal Board (EAB). Paragraph (b) indicates that a recipient who is dissatisfied with a Department action that may be reviewed by the EAB must seek this administrative review before seeking judicial review. Paragraph (c) indicates that a Panel of the EAB may dismiss an appeal if there are no issues in the appeal within the EAB's jurisdiction.

Section 204.52 Practice and procedure.

Section 16 of Pub. L. 98-211 deletes the reference to a hearing "on the record" in section 592(a) of the ECIA. In so doing, Congress made clear that it did not intend the lengthy and time-consuming hearing procedures required by the Administrative Procedure Act (APA) to apply to withholding hearings under the ECIA. Therefore, as paragraph (a) indicates, practice and procedure before the EAB for withholding hearings under the ECIA will be governed by the same rules that govern other Chapter 1 proceedings. These rules include the preparation of a transcript for each hearing. *See* 34 CFR 78.48. Paragraph (b) implements the provision in section 452(b) of GEPA, which requires an appellant to prove before the EAB the allowability of the expenditures disallowed in a final audit determination.

Section 204.53 The Secretary's decision.

Section 452(d) of GEPA authorizes the Secretary, for good cause shown, to modify or set aside an EAB Panel's decision in the review of a final audit determination. Under the authority in section 451 (a) and (c) of GEPA to designate cases to be heard by the EAB and to establish appropriate procedures to guide the EAB's review, § 204.53 codifies the existing practice of the Secretary and the EAB and expressly permits the Secretary to remand a Panel's decision to the EAB for further review and consideration. If the Secretary does remand a Panel's decision, no final agency action will have occurred.

C. Changes Resulting From Rulemaking

The final regulations, in response to comments and staff review, differ from the proposed regulations in the following areas:

• In § 200.50 concerning selection of school attendance areas, paragraph (a)(2) has been added to clarify that an LEA must order its school attendance areas based on concentrations of children from low-income families and must select areas for participation based on that ordering. This requirement was implicit in the proposed regulations, because those regulations contained exceptions from the ordering requirement. However, in response to public comment asking for clarification of this provision, the Secretary has made the requirement explicit. This requirement is fully consistent with the legislative history accompanying Pub. L. 98–211, which states: "While the ECIA requirement to serve areas of 'highest concentrations of low-income children' necessarily implies an assessment of those concentrations and an ordering of schools or areas based on them, it is quite clear that the detailed, prescriptive 'ranking' procedure set forth in Title I is to have to application to Chapter 1 programs under the ECIA." S. Rept. 166, 98th Cong., 1st Sess. 9 (1983).

• The introductory language in § 200.50(b) has been revised to reflect the language in section 556(d) of Chapter 1 that an LEA, at its discretion, may implement the special rules in § 200.50(b)(1)–(5) to meet the requirement in § 200.50(a) for selecting school attendance areas.

• Section 200.50(b)(1) has been revised by deleting the words "and serve" to conform this provision to the language in section 556(d)(1) of Chapter 1.

• A phrase has been added to § 200.50(b)(4)(ii) concerning the continuation of eligibility of certain school attendance areas or schools to clarify that an ineligible school attendance area or school may receive a single additional year of eligibility for each of the two preceding fiscal years only if the school or area was selected to participate under § 200.50(a) in the year conferring the eligibility.

• In § 200.51 concerning identification and selection of children, paragraph (b)(1) has been revised to indicate that the flexibility that paragraph provides applies to LEAs that choose to serve only those educationally deprived children in greatest need for special assistance under § 200.51(a)(2). Section 200.51(b)(1) is superfluous for those LEAs that, in accordance with § 200.51(a)(2), serve children in greatest need and other educationally deprived children as well. According to the Conference Report accompanying Pub. L. 98–211, section 556(d)(6) of Chapter 1, implemented by § 200.51(b)(1), was not intended to conflict with the language in section 556(b)(2) of Chapter 1, which permits *any* educationally deprived children to be selected for participation in a Chapter 1 program—whether the children were previously in greatest need—as long as those children currently with the greatest need for special assistance receive services. H. Rept. 574, 98th Cong., 1st Sess. 12 (1983) (Conference Report). Thus, if an LEA serves educationally deprived children who are not in greatest need, § 200.51(b)(1) does not restrict services to those children for only one additional year or to only children who were previously in greatest need. For those LEAs serving only educationally deprived children in greatest need for special assistance, however, § 200.51(b)(1) has been revised to clarify that an LEA may serve children for one additional year who are no longer in greatest need of assistance. *See* H. Rept. 51, 98th Cong., 1st Sess. 4 (1983).

• In § 200.51, paragraph (b)(3)(ii) has been added to reflect the intent of Congress that the children served with Chapter 1 funds must include all children who are in greatest need for special assistance who are not receiving services of the same nature and scope from non-Federal sources. *See* H. Rept. 574, 98th Cong., 1st Sess. 12 (1983) (Conference Report).

• In § 200.53 concerning consultation with parents and teachers, paragraph (b) has been revised to require an LEA to develop written policies to ensure that parents of the children being served have an adequate opportunity to particpate in the design and implementation of the LEA's Chapter 1 project. Paragraph (b) also contains a list of activities for the LEA to consider in developing its policies on parental involvement.

• In § 204.13(b)(2) concerning State rulemaking, the phrase "issues, pursuant to procedures established by State law, any" has been added to implement statutory language in section 591(d).

• In § 204.21 concerning the annual meeting of parents, paragraph (a)(1) has been clarified to indicate the multiple purposes of the anual meeting. Paragraph (a)(2) has been added to clarify that an agency that receives Chapter 1 funds may hold more than one meeting of parents if that practice is more convenient for the agency or otherwise useful.

• In § 204.21, paragraph (b) has been revised to clarify that an agency that receives Chapter 1 funds may use those funds to provide support for further parent involvement activities under Chapter 1 for the parents of eligible children. Paragraph (b) has also been revised to indicate examples of the support that agencies may provide to facilitate the parent consultant requirement.

• In § 204.53 concerning the Secretary's decision following administrative proceedings before the EAB, paragraph (c)(1) has been added to clarify that, unless the Secretary remands the Panel's decision to the EAB for further consideration, the final decision of the Secretary is the final decision of the Department. Paragraph (d) has been added to clarify the responsibility of the EAB Chairperson with regard to the Secretary's decision.

D. Application of Other Statutes and Regulations

Pub. L. 98–211 makes several changes in the applicability of other statutes that affect Chapter 1. Section 18(a) of Pub. L. 98–211 amends section 596 of the ECIA to clarify the applicability of GEPA to Chapter 1. As amended, section 596(a) provides that, unless a section of GEPA is specifically excluded by section 596(b), the provisions in GEPA apply to Chapter 1.

Section 18(b) of Pub. L. 98–211 repeals a portion of the "State Uses of Federal Funds" report required by section 406A(a) of GEPA. The repealed sections required States to collect and furnish information on the amount of Federal funds received by each LEA, the purposes for which those funds were spent, and the individuals served by those activities, all tabulated with respect to the second preceding year.

According to section 596(c) of the ECIA, sections 434, 435, and 436 of GEPA are not applicable to Chapter 1 "except to the extent that such sections relate to fiscal control and fund accounting procedures. . . ." The Secretary has indicated that the provision in section 434 that applies to Chapter 1 is subsection (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. *See* 47 FR 52342 (November 19, 1982); 50 FR 18408 (April 30, 1985). Upon further consideration in conjunction with the review of GEPA applicability in Pub. L. 98–211, the Secretary has determined that section 434(b) (2) and (3) relating to SEA suspension and withholding of payments to LEAs that have failed to comply with Federal program requirements also deals with fiscal control and fund accounting procedures and is therefore applicable to Chapter 1.

Public Participation

Proposed regulations for Parts 200 and 204 were published on August 9, 1984 with a comment period of 45 days. In response to public request, the comment

period was extended to 90 days. During the comment period, approximately 370 comments and recommendations were received. Comments were also received at briefing sessions conducted by the Department for State and local officials. The Secretary carefully considered all comments received and made changes warranted by those comments. The changes are discussed in Part C above.

A summary of the comments and the Secretary's responses to those comments are contained in the appendix to these regulations. The appendix will not be codified in the Code of Federal Regulations.

In addition to the changes resulting from rulemaking, the Secretary has made other changes to certain provisions in Parts 200 and 204. For the reasons stated below, the Secretary is waiving proposed rulemaking for these changes.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to publish proposed regulations for comment in accordance with section 431(b)(2)(A) of GEPA (20 U.S.C. 1232(b)(2)(A)) and the APA (5 U.S.C. 553). However, under certain circumstances, the Secretary may waive proposed rulemaking under 5 U.S.C. 553(b). Specifically, section 553(b) permits waiver for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The final regulations include several changes to Parts 200 and 204 that were not published as proposed rules. The Secretary has decided to waive proposed rulemaking on the provisions containing these changes. In particular, the Secretary has determined that it is unnecessary to take public comment under the good cause exception in section 553(b)(B) because, with one exception, the revised provisions merely restate the law and establish no new substantive policy. The changes in Part 200, for example, concern the procedures for a bypass of the requirements for providing Chapter 1 services to children in private schools. Sections 200.80(c), 200.86, and 200.87 have been added to implement statutory provisions in section 557(b) (3)–(4) of Chapter 1 concerning withholding of funds pending final resolution of an investigation or a complaint that could result in a bypass, judicial review of bypass actions, and continuation of the bypass until there is no longer any failure or inability to comply, respectively.

Similarly, in Part 204, all but one of the changes implement statutory and regulatory provisions. The change in § 204.11(b)(1) concerning State and local audit responsibilities, for example, implements the audit requirements in the Single Audit Act of 1984. The change in § 204.12(b)(1) concerning the compromise of audit claims indicates the factors considered in compromising claims contained in 4 CFR Part 103 and section 452(f) of GEPA. Thus, these changes merely restate the law and establish no new substantive policy.

The one change that does not restate the law is § 204.12(b)(2), which indicates that it is the general policy of the Secretary to consider the probability of the claim being upheld to be the most important factor in deciding whether to compromise an audit claim. Because this is a general, nonbinding statement of policy that indicates the Secretary's intent to give the probability of the claim being upheld the greatest weight, the Secretary is waiving proposed rulemaking. An NPRM is not required for general statements of policy under 5 U.S.C. 553(b)(A).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and State agencies, the regulations will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 1. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations implement technical amendments or other statutory provisions and do not impose excessive regulatory burden or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations in §§ 200.53 and 200.54 will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

All other information collection requirements contained in these regulations have been approved by the Office of Management and Budget.

If any persons wish to comment on these information collection requirements, the comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue, NW., Washington, DC 20503. Attention: Joseph F. Lackey.

Intergovernmental Review

The program for financial assistance to SEAs to meet the special educational needs of migratory children (34 CFR Part 201) covered by the regulations in Part 204 is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects

34 CFR Part 200

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 204

Education, Education of disadvantaged, Education of handicapped, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Migrant labor, Neglected, Private schools, Reporting and recordkeeping requirements.

Citation of Legal Authority:

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: May 13, 1986.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies; 84.011, Migrant

Education—Basic State Formula Grant Program; 84.012, Educationally Deprived Children—State Administration; 84.009, Program for Education of Handicapped Children in State Operated or Supported Schools; 84.013, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children)

The Secretary amends Parts 200 and 204 of Title 34 of the Code of Federal Regulations as follows:

1. In Part 200 the following sections are removed and all except § 200.54 are reserved:

Sec.
200.54 Evaluation.
200.55 Allowable costs.
200.59 SEA rulemaking and other responsibilities.
200.60 Maintenance of effort.
200.61 Waiver of the maintenance of effort requirement.
200.62 Supplement, not supplant.
200.93 Eligibility for review.
200.100 Practice and procedure.
200.103 The Secretary's decision.

2. The table of contents for Part 200 is revised to read as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

Sec.
200.1 Purpose.
200.2 Applicability of regulations in this part.
200.3 Definitions.
200.4 Amount of funds available for Chapter 1 grants.
200.5–200.9 [Reserved]

Application Procedure

200.10 State assurances.
200.11 Payments for State administration.
200.12 LEAs that may receive Chapter 1 funds.
200.13 Submission of LEA project applications to the SEA.
200.14 SEA approval of applications.
200.15–200.19 [Reserved].

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

Basic Grants

200.20 Eligibility of LEAs for basic grants.
200.21 Determination by the Secretary of basic grants.
200.22 Allocation of county aggregate amounts by SEAs.
200.23 Exceptions to county aggregate amounts.
200.24–200.29 [Reserved]

Special Incentive Grants

200.30 Eligibility for special incentive grants.
200.31 Amount of special incentive grants.
200.32 Method of making special incentive grants.
200.33 Use of special incentive grant funds.
200.34–200.39 [Reserved]

Concentration Grants

200.40 States to receive concentration grant funds.
200.41 Determinations of State and county concentration grants.
200.42 Determinations of LEA allocations.
200.43 Method of awarding concentration grant funds.
200.44 Use of concentration grant funds.

Reallocations

200.45 Reallocation of Chapter 1 funds by SEAs.
200.46 Reallocation of Chapter 1 funds by the Secretary.
200.47–200.49 [Reserved]

Subpart C—Project Requirements

200.50 Selection of school attendance areas.
200.51 Student identification and selection.
200.52 Prohibition against using Chapter 1 funds to provide general aid.
200.53 Consultation with parents and teachers.
200.54 Schoolwide projects.
200.55–200.59 [Reserved]

Subpart D—Fiscal Requirements

200.60 Comparability of services.
200.61–200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

General

200.70 Responsibility of LEAs.
200.71 Factors used in determining equitable participation.
200.72 Funds not to benefit a private school.
200.73 Use of public school employees.
200.74 Equipment and supplies.
200.75 Construction.
200.76–200.79 [Reserved]

Procedures for Bypass

200.80 Bypass—General.
200.81 Notice by the Secretary.
200.82 Bypass procedures.
200.83 Appointment and functions of a hearing officer.
200.84 Hearing procedures.
200.85 Post hearing procedures.
200.86 Judicial review of bypass actions.
200.87 Continuation of the bypass.
200.88–200.89 [Reserved]

Authority: Secs. 552–559, 561–596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801–3809, 3871–3876, unless otherwise noted.

§ 200.4 [Redesignated from § 200.5]

3. Section 200.5 is redesignated as § 200.4.

4. Sections 200.49 and 200.50 are redesignated as §§ 200.50 and 200.51, respectively, and are revised to read as follows:

§ 200.50 Selection of school attendance areas.

(a) *General rule.* (1) Except as provided in paragraphs (b) and (c) of this section, an LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

(i) Conducted in school attendance areas of the LEA having the highest concentrations of low-income children; or

(ii) Located in all school attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children.

(2) To meet the requirement in paragraph (a)(1)(i) of this section, an LEA shall order its school attendance areas based on concentrations of children from low-income families and shall select areas for participation based on that ordering.

(b) *Special rules.* An LEA may implement the following provisions to meet the requirement in paragraph (a) of this section:

(1) Designate as eligible any school attendance area in which at least 25 percent of the children are from low-income families.

(2) Provide Chapter 1 services to educationally deprived children who are in a school which is not located in an eligible school attendance area if the proportion of children from low-income families in average daily attendance in that school is substantially equal to the proportion of those children in an eligible school attendance area of the LEA.

(3)(i) With the approval of the SEA, designate as eligible and serve school attendance areas or schools with substantially higher numbers or percentages of educationally deprived children before school attendance areas or schools with higher concentrations of children from low-income families, except that the LEA may not serve more school attendance areas or schools than could otherwise be served.

(ii) An SEA shall approve the selection of school attendance areas or schools under paragraph (b)(3)(i) of this section only if the SEA finds that the selection will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the LEA.

(4)(i) Continue to provide Chapter 1 services in a school attendance area or school that does not qualify under paragraph (a) of this section if that area or school was selected under the standards in paragraph (a) of this section in either of the two preceding fiscal years.

(ii) A school attendance area or school may receive a single additional year of eligibility for each of the two preceding fiscal years for which it was selected under paragraph (a) of this section. Thus, the eligibility conferred by paragraph (b)(4)(i) of this section can be valid for a total of two years.

(5) With the approval of the SEA, skip eligible school attendance areas or schools which have higher proportions of children from low-income families if the children in those areas or schools are receiving from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the provisions in paragraphs (a) and (b) (1) through (4) of this section.

(c) *Exemption.* An LEA with a total enrollment of fewer than 1,000 children does not have to comply with the requirements in this section but shall comply with the requirements in § 200.51.

(Sec 556(b)(1), (c), (d)(1)–(5), 20 U.S.C. 3805(b)(1), (c), (d)(1)–(5); H. Rept., 98th Cong., 1st Sess. 2, 4 (1983); S. Rept. 166, 98th Cong., 1st Sess. 2, 9 (1983))

§ 200.51 Student identification and selection.

(a) *Annual assessment of educational needs.* An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

(1) Identifies educationlly deprived children in all eligible school attendance areas or schools, including educationally deprived children in private schools;

(2) Requires, among the educationally deprived children selected, inclusion of those children who have the greatest need for special assistance; and

(3) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(b) *Special rules.* (1) If, in complying with paragraph (a)(2) of this section, an LEA chooses to serve only children in greatest need for special assistance, the LEA may use Chapter 1 funds to serve, for one additional school year, children who, in any previous year, were identified as being in greatest need for special assistance, and who continue to be educationally deprived, but who are no longer identified as being in greatest need for special assistance.

(2) An LEA may use Chapter 1 funds during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving Chapter 1 funds.

(3)(i) Except as provided in paragraph (b)(3)(ii) of this section, an LEA is not required to use Chapter 1 funds to serve educationally deprived children in greatest need for special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(ii) The LEA shall serve children who are in greatest need for special assistance who are not receiving services of the same nature and scope from non-Federal sources.

(Sec. 556(b)(2), (c), (d)(6)–(8), 20 U.S.C. 3805 (b)(2), (c), (d)(6)–(8); H. Rept. 51, 98th Cong., 1st Sess. 2, 4–5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 2, 8–9 (1983); H. Rept. 574, 98th Cong., 1st Sess. 12(1983))

5. Paragraph (b) of § 200.53 is revised to read as follows:

§ 200.53 Consultation with parents and teachers.

* * * * *

(b)(1) To meet the consultation requirement in paragraph (a) of this section, an LEA shall develop written policies to ensure that parents of the children being served have an adequate opportunity to participate in the design and implementation of the LEA's Chapter 1 project.

(2) Activities an LEA may consider in developing the policies required in paragraph (b)(1) of this section include, but are not limited to, the following:

(i) Notifying each child's parents in a timely manner that the child has been selected to participate in Chapter 1 and why the child has been selected.

(ii) Informing each child's parents of the specific instructional objectives for the child.

(iii) Reporting to each child's parents on the child's progress.

(iv) Establishing conferences between individual parents and teachers.

(v) Providing materials and suggestions to parents to help them promote the education of their children at home.

(vi) Training parents to promote the education of their children at home.

(vii) Providing timely information concerning the Chapter 1 program including, for example, program plans and evaluations.

(viii) Soliciting parents' suggestions in the planning, development, and operation of the program.

(ix) Consulting with parents about how the school can work with parents to achieve the program's objectives.

(x) Providing timely responses to parents' recommendations.

(xi) Facilitating volunteer or paid participation by parents in school activities.

(xii) Designating LEA parent coordinators,

(xiii) Establishing parent advisory councils.

6. A new § 200.54 is added to read as follows:

§ 200.54 Schoolwide projects.

(a) *Eligibility of a school for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if—

(1) The school serves an eligible school attendance area;

(2) At least 75 percent of the children at the school are from low-income families;

(3) The LEA develops for the school a plan that meets the requirements in paragraph (b) of this section and has been approved by the SEA; and

(4) The LEA meets the financial requirements in paragraph (c) of this section.

(b) *Required plan for each school selected for a schoolwide project.* The plan referred to in paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Provide for an instructional program designed to meet the special needs of all students in the school;

(3) Be developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(4) Provide for consultation among the individuals referred to in paragraph (b)(3) of this section concerning the educational progress of all students in the school;

(5) Provide for appropriate training for teachers and teacher aides to enable them to carry out the plan effectively;

(6) Include procedures that the LEA will use to evaluate the effectiveness of the schoolwide project and that will involve in the evaluation the

participation of the individuals referred to in paragraph (d)(3) of this section; and

(7) Include opportunities for periodic improvements in the plan based on the results of the evaluations referred to in paragraph (b)(6) of this section.

(c) *Financial requirements for a schoolwide project.* An LEA that uses Chapter 1 funds to conduct a schoolwide project shall meet the following financial requirements:

(1) In each school selected for a schoolwide project, the LEA shall provide, per educationally deprived child served in that school, an amount of Chapter 1 funds that is at least equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in other schools, if any, that serve project areas.

(2) In each school selected for a schoolwide project, the LEA shall provide, per child served by the schoolwide project who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in that school.

(3) During the fiscal year in which the plan required by paragraph (a)(3) of this section is carried out, the LEA shall, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

(4) In order to meet the requirements in section 558(b) of Chapter 1, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

(d) *Effect of selection of a school for a schoolwide project.* For each school that has been selected for a schoolwide project, the LEA is not required to—

(1) Comply with any requirements under Chapter 1 concerning the commingling of Chapter 1 funds with funds available for regular programs;

(2) Comply with the requirements in § 200.51 concerning identification and selection of children to participate in Chapter 1 projects: or

(3) Demonstrate that the services provided with Chapter 1 funds are supplementary to the services regularly provided in the school. (However, see paragraph (c)(4) of this section, which requires that Chapter 1 funds supplement the amount of non-Federal funds that are provided to the school.)

(Sec. 556(d)(9), 20 U.S.C. 3805(d)(9); Rept. 51, 98th Cong., 1st Sess. 2, 4–5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 2, 9–10 (1983))

§§ 200.55–200.59 [Reserved]

7. Section 200.63 is redesignated as § 200.60 and paragraph (d) is revised to read as follows:

§ 200.60 Comparability of services.

* * * * *

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out the following types of programs:

(1) Special programs to meet the educational needs of educationally deprived children, including compensatory education programs for educationally deprived children, that meet the following requirements:

(i) All children participating in the program are educationally deprived.

(ii) The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

(iii) The program provides supplementary services designed to meet the special educational needs of the children who are participating.

(iv) The LEA keeps records, and affords access to those records, as are necessary to ensure the correctness and verification of the requirements in paragraph (d)(1) (i)–(iii) of this section.

(v) The SEA monitors performance under the program to ensure that the requirements of paragraph (d)(1) (i)–(iv) of this section are met.

(2) Bilingual education programs for children of limited English proficiency.

(3) Special education programs for handicapped children or children with specific learning disabilities.

(4) State phase-in programs that meet the following requirements:

(i) The program is authorized and governed specifically by the provisions of State law.

(ii) The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school.

(iii) The program is based on objectives including, but not limited to, performance objectives related to educational achievement, and is evaluated in a manner consistent with those objectives.

(iv) Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program.

(v) The program will benefit all children in a particular school or gradespan within a school.

(vi) Schools participating in the program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children.

(vii) The phase-in period of the program is not more than six school years.

(viii) At all times during the phase-in period at least 50 percent of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families.

(ix) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in the program.

(x) The LEA is separately accountable, for purposes of compliance with paragraph (d)(4)(i) through (vi), (viii), and (ix) of this section, the SEA for any funds expended for the program.

(xi) The LEAs carrying out the program are complying with paragraph (d)(4)(i) through (vi), (viii), and (ix) and the SEA is complying with paragraph (d)(4)(x) of this section.

(Sec. 558(c)-(d), 20 U.S.C. 3807(c)-(d)) U.S.C. 3807(d)

§§ 200.61–200.69 [Reserved]

8. Under "Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools," the heading "General" is added before § 200.70.

9. The headings entitled "Subpart F—Due Process Procedures" and "Other Due Process Procedures" are removed.

10. Section 200.80 is amended by adding a new paragraph (c) to read as follows:

§ 200.80 Bypass—General.

* * * * *

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected LEA or SEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

11. A new § 200.86 is added to read as follows:

§ 200.86 Judicial review of bypass actions.

If an SEA or LEA is dissatisfied with the Secretary's final action after a proceeding under §§ 200.82–200.85, it

may, within 30 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Sec. 557(b)(4)(B), 20 U.S.C. 3507(b)(4)(B))

12. A new § 200.57 is added to read as follows:

§ 200.57 Continuation of the bypass.

Any bypass action by the Secretary continues in effect until the Secretary determines that there will no longer be any failure or inability on the part of the LEA that is being bypassed to meet the requirements in §§ 200.70–200.75.

(Sec. 557(b)(3)(C), 20 U.S.C. 3507(b)(3)(C))

§§ 200.58–200.60 [Reserved]

PART 204—GENERAL DEFINITIONS AND ADMINISTRATIVE, PROJECT, FISCAL, AND DUE PROCESS REQUIREMENTS FOR CHAPTER 1 PROGRAMS

13. The authority citation for Part 204 is revised to read as follows:

Authority: Secs. 555–556, 558–559, 591–592 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801–3805, 3807–3808, 3871–3878, unless otherwise noted.

14. Section 204.11 is amended by revising paragraphs (a)(1)(ii), (a)(2), and (b)(1) and the citation of authority to read as follows:

§ 204.11 Access to records and audits.

(a) * * *

(1) * * *

(ii) Any agency that receives Chapter 1 funds shall cooperate with the Inspector General of the Department in the conduct of audits authorized by the Inspector General Act of 1978, including providing access to information and access to agency personnel for the purpose of obtaining explanations of the information.

(2) An SEA shall repay to the Department the amount of Chapter 1 funds that the Department determines after an audit was not spent in accordance with applicable law.

(b) *State and local responsibilities.* (1) Any State or local government that receives Chapter 1 funds shall comply with the audit requirements in the Single Audit Act of 1984 and the regulations in 34 CFR 74.62 with respect to any of the government's fiscal years that begin after December 31, 1984.

* * * * *

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 437(b) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232f(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 7504; Secs. 3, 4, and 8 of the Inspector General Act of 1978, as amended, 5 U.S.C. App.; Sec. 202 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4212; Single Audit Act of 1984, 31 U.S.C. 7501 *et seq.*)

15. Section 204.12 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 204.12 Audit claims.

* * * * *

(b) *Compromise.* (1) In deciding whether to compromise an audit claim, or in recommending possible compromise to the United States Department of Justice, the Secretary considers the following factors in accordance with 4 CFR Part 103 and with section 452(f) of GEPA:

(i) The probability of the claim being upheld.

(ii) The cost of collecting the claim.

(iii) Whether the Department's enforcement policy in terms of deterrence and securing compliance would be adequately served.

(iv) Whether the practices of the agency that resulted in the claim have been corrected and will not recur.

(v) Whether collection would be in the public interest or practical.

(2) It is the policy of the Secretary to consider the probability of the claim being upheld to be the most important of the factors in paragraph (b)(1) of this section.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 3701 *et seq.*; 4 CFR Part 103)

16. A new § 204.13 is added to read as follows:

§ 204.13 State rulemaking and other SEA responsibilities.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that the agencies that receive Chapter 1 funds in the State comply with all statutory and regulatory provisions applicable to Chapter 1.

(b) *State rulemaking.* (1) Chapter 1 does not—

(i) Authorize States to issue rules, regulations, or policies that apply to agencies operating Chapter 1 projects, except as related to State audits and financial responsibilities; or

(ii) Encourage, preempt, or prohibit rules, regulations, or policies issued under State law.

(2) If a State issues, pursuant to procedures established by State law, any rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 1 (including those based on State interpretation of any Federal statute, regulation, or guideline), the State shall—

(i) Ensure that the rules, regulations, or policies do not conflict with the provisions of—

(A) Chapter 1;

(B) The regulations in this part and 34 CFR Parts 200 through 299; or

(C) Other applicable Federal statutes and regulations; and

(ii) Identify the State rules, regulations, or policies as State-imposed requirements.

(Sec. 588, 20 U.S.C. 3805; Sec. 301(d), 20 U.S.C. 3871(d))

17. A new § 204.21 is added to read as follows:

§ 204.21 Annual meeting of parents.

(a)(1) An agency that receives Chapter 1 funds shall convene annually a public meeting, to which all parents of eligible children must be invited, to discuss with those parents the programs and activities provided with Chapter 1 funds. The discussion must include—

(i) Informing parents of their right to consult in the design and implementation of the agency's Chapter 1 project;

(ii) Soliciting parents' input; and

(iii) Providing parents an opportunity to establish mechanisms for maintaining ongoing communication among parents, teachers, and agency officials.

(2) An agency may hold one or more meetings at sites convenient to the agency to meet the requirement in paragraph (a)(1) of this section.

(b) If parents of eligible children desire further activities, the agency may, upon request, provide reasonable support for these activities. This support may include, but is not limited to—

(1) Reasonable access to meeting space and materials;

(2) Provision of information concerning the Chapter 1 law, regulations, and instructional programs;

(3) Training programs for parents; and

(4) Other resources, as appropriate.

(Sec. 556(e), 20 U.S.C. 3805(e); H. Rept. 81, 98th Cong., 1st Sess. 5 (1983); S. Rept. 108, 98th Cong., 1st Sess. 10–11 (1983))

18. A new § 204.22 is added to read as follows:

§ 204.22 Allowable costs.

(a) An agency that receives Chapter 1 funds may use those funds only to meet the cost of project activities that—

(1) Are designed to meet the special educational needs of the children eligible to be served under the applicable Chapter 1 program;

(2) Are included in an approved application; and

(3) Comply with all requirements applicable to Chapter 1 programs.

(b) The project activities referred to in paragraph (a) of this section may include the applicable activities in Section 555(c) of Chapter 1.

(c) Administrative direction and control Chapter 1 funds and title to property acquired with these funds must be in a public agency.

(d) An agency that receives Chapter 1 funds may assign personnel paid entirely with Chapter 1 funds to supervisory duties that provide some benefit to children not participating in the Chapter 1 project, if—

(1) These duties are limited, rotating, and supervisory;

(2) Personnel with functions similar to those of the Chapter 1 personnel, but who are not paid with Chapter 1 funds, are assigned to these duties at the same school site;

(3) These duties do not include substitute teaching of a non-Chapter 1 class or regular supervision of a homeroom;

(4) The Chapter 1 personnel do not perform any duties for pay that non-Chapter 1 personnel perform without pay; and

(5) The proportion of total work time that Chapter 1 personnel at the same school site spend performing these duties does not exceed the lesser of either—

(i) The proportion of total work time that non-Chapter 1 personnel spend performing these duties; or

(ii) Ten percent of the Chapter 1 person's total work time.

Examples. Examples of the types of duties that might meet the conditions in paragraph (d) of this section include hall duty, lunchroom supervision, playground supervision, and other tasks commonly shared among the staff in a school.

(Sec. 554(a), 20 U.S.C. 3803(a) —3, (d)(1), Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2) —3, (d)(10), 20 U.S.C. 3805( )(b)(2)—3, (d)(10))

19. A new § 204.23 is added to read as follows:

§ 204.23 Evaluation.

(a) *SEA evaluation.* (1) Each SEA shall—

(i) Conduct an evaluation of the Chapter 1 programs in the State at least once every two years and make public the results of that evaluation; and

(ii) Collect data annually on—

(A) The race, age, and gender of children served by the Chapter 1 programs in the State; and

(B) The number of children served by grade level under the Chapter 1 programs in the State.

(2) To meet the requirement in paragraph (a)(1)(i) of this section, the SEA may, for each Chapter 1 program, aggregate evaluation data collected under paragraph (b)(1)(i) of this section to obtain statewide totals.

(b) *Applicant agency evaluation.* (1) An agency that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of the project's effectiveness in achieving the goals set for the project. This evaluation must include—

(i) Objective measurements of educational achievement in basis skills; and

(ii) A determination of whether improved performance is sustained over a period of more than one year.

(2) The agency shall consider the results of the evaluation required in paragraph (b)(1) of this section in the improvement of the agency's Chapter 1 project.

(Sec. 555(e), 20 U.S.C. 3804(e); Sec. 556(b)(4), 20 U.S.C. 3805(b)(4)) (Approved by the Office of Management and Budget under control number 1810-0504).

20. A new § 204.30 is added to read as follows:

§ 204.30 Maintenance of effort.

(a) *Basic standard.* Except as provided in § 204.31, an SEA shall pay a State agency or LEA its allocation of funds under Chapter 1 programs if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the affected State agency or LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures of State and local funds for the second preceding fiscal year. For purposes of determining maintenance of effort, "preceding fiscal year" means the fiscal year prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds made available only July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If a State agency or LEA fails to maintain effort and a waiver under § 204.31 is not granted, the SEA shall reduce the affected State agency's or LEA's allocation of funds under Chapter 1 in the exact proportion to which the State agency or LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State agency or LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State agency or LEA failed to maintain effort, the SEA may consider the State agency's or LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA or State agency) for the third preceding fiscal year.

Example: In fiscal year 1983, a State agency or LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980). In the following fiscal year (1984), the State agency's or LEA's fiscal effort in the second preceding fiscal year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a), 20 U.S.C. 3807(a)).

21. A new § 204.31 is added to read as follows:

§ 204.31 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an affected State agency or LEA in § 204.30 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the LEA or State agency; or

(iii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of Chapter 1 funds the affected State agency or LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the State agency's or LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA or State agency) for the third preceding fiscal year.

Example: In fiscal year 1983, a State agency or LEA assumes a review because its fiscal effort in the preceding fiscal year (1982) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1981) due to exceptional or uncontrollable circumstances. In the following fiscal year (1984) the State agency's or LEA's fiscal effort in the second preceding fiscal year (1982) could be considered to be no less than 90 percent of its fiscal effort for the third preceding fiscal year (1983).

(Sec. 555(a)(3), 20 U.S.C. 3507(a)(3); 127 Cong. Rec. H5945 (daily ed. July 28, 1981))

22. A new § 204.52 is added to read as follows:

§ 204.52 Supplement, not supplant.

(a) Except as provided in paragraph (b) of this section, an agency that receives Chapter 1 funds may use those funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An agency may exclude, for the purposes of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent in carrying out special programs to meet the educational needs of educationally deprived children, including compensatory education programs for educationally deprived children, that meet the following requirements:

(1) All children participating in the program are educationally deprived.

(2) The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

(3) The program provides supplementary services designed to meet the special educational needs of the children who are participating.

(4) The agency keeps records and affords access to those records as necessary to ensure the correctness and verification of the requirements in paragraph (b)(1)–(3) of this section.

(5) The SEA monitors performance under the program to ensure that the requirements of paragraph (b)(1)–(4) of this section are met.

(c) The supplement, not supplant requirement in paragraph (a) of this section does not require that an agency provide Chapter 1 services outside the regular classroom or school program.

(Sec. 555(b) (d), 20 U.S.C. 3507(b), (d))

23. A new § 204.3 is added to read as follows:

§ 204.61 Eligibility for review.

(a) Review under these regulations is available to a recipient of Chapter 1 funds that receives a written notice from an authorized Department official of—

(1) A final audit determination;

(2) An intent to withhold funds;

(3) A cease and desist complaint; or

(4) A proceeding designated by the Secretary.

(b) If a recipient receives written notice and brings a lawsuit to challenge that notice, the recipient has failed to exhaust administrative remedies and the Secretary may move for dismissal of the lawsuit on that basis.

(c) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decision or order to that effect.

(Sec. 592, 20 U.S.C. 3872; Sec. 434(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c; Sec. 455 of GEPA, 20 U.S.C. 1234d)

24. A new § 204.70 is added to read as follows:

§ 204.70 Practice and procedure.

(a) *General.* Practice and procedure before the Board in proceedings conducted under the regulations in this part are governed by the rules in Subpart E of 34 CFR Part 78, (Education Appeal Board).

(b) *Burden of proof.* The appellant shall present its case first and shall have the burden of proving the allowability of the expenditures disallowed in a final audit determination.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

25. A new § 204.53 is added to read as follows:

§ 204.53 The Secretary's decision.

(a) The Panel's decision in § 204.51 becomes the final decision of the Secretary 60 calendar days after the date the appellant receives the Panel's decision unless the Secretary, for good cause shown—

(1) Modifies or sets aside the Panel's decision; or

(2) Remands the Panel's decision to the Board for further review or consideration.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) (1) Except as provided in paragraph (c)(2) of this section, the final decision of the Secretary is the final decision of the Department.

(2) If the Secretary remands the Panel's decision of the Board, neither the Panel's decision nor the Secretary's remand becomes the final decision of the Department.

(d) The Board Chairperson sends the the Panel and to each party a copy of the Secretary's final decision and statement of reasons, a notice that the Panel's decision has become the Secretary's final decision, or a copy of the Secretary's decision to remand.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d); Sec. 455 of GEPA, 20 U.S.C. 1234d)

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

The following is a summary of the comments received on the notices of proposed rulemaking for Financial Assistance to Local Educational Agencies to Meet Special Educational Needs of Disadvantaged Children, and for General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs published on August 9, 1984. Each comment is followed by a response that indicates a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of these final regulations to which they pertain.

General Comments and Responses

Comment. One commenter noted that final regulations would not be published until well into the 1984–85 school year and suggested that the final regulations be effective for the 1985–86 school year.

Response. No change has been made. As the commenter suggested, these regulations will become effective during the 1985–86 school year. However, the provisions in Pub. L. 98–211, on which these regulations are based, were made effective July 1, 1983. As a result, agencies that receive Chapter 1 funds have been required to comply with the provisions in Pub. L. 98–211 since July 1, 1983.

Comment. One commenter noted that the Education Amendments of 1978 clearly made preschool programs for educationally deprived children eligible for Title I support, but that no reference is made to preschool programs in the current legislation or regulations. Because many States have Chapter 1-funded preschool programs, the

commenter suggested that the regulations should state clearly whether preschool programs are legal.

Response. No change has been made. Section 200.3(b) of the Chapter 1 regulations currently in effect defines "children" as persons up to age 21 who are entitled to a free public education not above grade 12, or *who are of preschool age.* That section also contains a definition of "preschool children." Thus, the Chapter 1 regulations already clearly authorize Chapter 1 projects for preschool children.

Comment. Two commenters suggested that all Chapter 1 regulations applicable to SEAs and LEAs be published in one document. The commenter noted that having four or five source documents is confusing at the State level and is bewildering to administrative personnel at the district level.

Response. No change has been made. General definitions and administrative, project, fiscal, and due process requirements applicable to all agencies that receive Chapter 1 funds are contained in a new Part 204 (published in 50 FR 18415–19 (April 30, 1985)). This part is similar to the former Part 200 under Title I. As in Title I, there are also Chapter 1 provisions that pertain only to specific Chapter 1 programs, such as the program for migratory children or the program for neglected or delinquent children. To avoid confusion among program officials as to which provisions apply to a specific program, the Secretary believes it is beneficial to separate the requirements in different documents. All the Chapter 1 regulations, however, will be published together in the Code of Federal Regulations, 34 CFR Parts 1–299.

Comment. One commenter, apparently reacting to the discussion in the preamble regarding the Regulatory Flexibility Act, stated that there should be no exemptions.

Response. No change has been made. In accordance with the Regulatory Flexibility Act, the Secretary certified in the preamble to the proposed regulations that the regulations would not have a significant economic impact on a substantial number of small entities because the regulations clarify authorized options and activities and increase flexibility with regard to program participation. As an example of such flexibility, the Secretary pointed out that school districts with less than 1,000 children are exempt from the requirement to select eligible schools or attendance areas. The commenter is apparently objecting to that exemption. The Secretary does not have the option of eliminating the exemption, however, because it was added to section 556 of the Chapter 1 statute by Pub. L. 98–211.

Section 200.50 Selection of school attendance areas.

Comment. Several commenters requested clarification of § 200.50 regarding the eligibility of attendance areas or schools with high concentrations of children from low-income families to receive Chapter 1 services.

Response. A change has been made. Section 200.50(a) has been revised by adding a new paragraph (a)(2) to clarify that an LEA must order its school attendance areas based on concentrations of children from low-income families and must select areas for participation based on that ordering. This provision makes explicit the requirement in section 556(b)(1)(A) of Chapter 1 that the Chapter 1 program must be provided in the school attendance areas having the highest concentrations of children from low-income families. Section 556(b)(1)(A) thus presumes an ordering or schools to determine those with the highest concentrations of low-income students. Moreover, section 556(d)(5), added by Pub. L. 98–211, also presumes an ordering because it provides specific rules for skipping attendance areas or schools under certain conditions, therefore providing exceptions from the ordering requirement. This change in § 200.50(a) is fully consistent with the legislative history accompanying Pub. L. 98–211, which states: "While the ECIA requirement to serve areas of 'highest concentrations of low-income children' necessarily implies an assessment of those concentrations and an ordering of schools or areas based on them, it is quite clear that the detailed, prescriptive, 'ranking' procedure set forth in Title I is to have no application to Chapter 1 programs under the ECIA." S. Rept. 166, 98th Cong., 1st Sess. 9 (1983). Thus, the revised regulations require an ordering, but leave to the State and local officials the determination of how the ordering will be done.

Comment. One commenter recommended that § 200.50(a)(1)(i) be clarified by stating that Chapter 1 projects do not necessarily have to be conducted in eligible attendance areas but may, at the direction of the LEA, be conducted at project sites located outside eligible attendance areas as long as only Chapter 1 eligible students, selected in accordance with the requirements of § 200.51, participate in the project.

Response. No change has been made. Section 200.50(a)(1)(i) accurately reflects the statutory requirement in section 556(b)(1)(A) of Chapter 1 that programs and projects must be conducted in attendance areas having the highest concentrations of low-income children. This requirement, however, does not preclude an LEA from physically locating a project outside the boundaries of an eligible attendance area as long as only eligible educationally deprived children from that attendance area participate in the project.

Comment. One commenter suggested that § 200.50(a)(1)(ii) be reworded to allow deviation from the requirement that Chapter 1 projects be located in *all* attendance areas of an LEA that has a uniformly high concentration of children from low-income families when compliance would adversely affect the quality of the projects or would conflict with section 556(c) of Chapter 1.

Response. No change has been made. Section 200.50(a)(1)(ii) accurately reflects the statutory requirement in section 556(b)(1)(B) of Chapter 1, which requires that Chapter 1 projects be located in *all* attendance areas of an LEA that has a uniformly high concentration of children from low-income families. If compliance with this requirement makes it difficult for an LEA to also comply with the size, scope, and quality requirement, the LEA may wish to select school attendance areas in accordance with § 200.50(a)(1)(i). Moreover, the Secretary does not believe § 200.50(a)(1)(ii) conflicts with section 556(c) of Chapter 1, which permits LEAs with a total enrollment of less than 1,000 children to select school attendance areas without regard to the requirements in either § 200.50 (a)(1)(i) or (a)(1)(ii).

Comment. One commenter stated that the phrase "substantially equal" in § 200.50(b)(2) is neither clearly defined nor consistent with regulations currently in effect. According to the commenter, the phrase appears to promote inconsistency in equal access to Chapter 1 assistance between districts and States. The commenter suggested using the phrase "at least as high" instead of "substantially equal."

Response. No change has been made. Section 300.50(b)(2) accurately reflects the statutory requirement in section 556(d)(3) of Chapter 1, added by Pub. L. 98–211. No similar provision is contained in the Chapter 1 regulations currently in effect. *See* 34 CFR 200.49 (1984). To the extent that the Chapter 1 nonregulatory guidance uses the phrase "at least as high," it was based on practices under Title I that the Department determined could be continued under the broad language in Chapter 1 as originally enacted. However, since Congress specifically amended Chapter 1 under Pub. L. 98–211 to include the phrase "substantially equal," it would be inconsistent with the statutory language for the regulations to

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contain the phrase "at least as high."

Comment. One commenter stated that § 200.50(b)(4) negates the interpretation by the Department that "an LEA's identification of eligible attendance areas may be for the entire period covered by the LEA's application." (Reference: Chapter 1 Nonregulatory Guidance, USED, Section 7(9)).

Response. No change has been made. As reflected in § 200.50(b)(4), section 556(d)(4) of Chapter 1, added by Pub. L. 98–211, provides authority to continue services in ineligible schools under certain conditions. This provision of the legislation now requires an annual determination of eligible attendance areas or schools. The nonregulatory guidance will be revised to reflect the technical amendment and will advise that eligible attendance areas must be identified annually.

Comment. One commenter objected to the language in § 200.50(b)(4) (i) and (ii) because it allowed the LEA to make arbitrary decisions, some of which may be based on factors other than the educational needs of children. The commenter requested that § 200.50(b)(4)(i) be revised to read "must continue to provide" and that (b)(4)(ii) be revised to read "must receive."

Response. No change has been made. Section 556(d) of Chapter 1, added by Pub. L. 98–211, clearly states that a "local educational agency shall have discretion to make educational decisions which are consistent with achieving the purposes of [Chapter 1] . . . ." Accordingly, an LEA has the discretion to invoke the provisions in section 556(d)(4) of Chapter 1, implemented in § 200.50(b)(4). To include the word "must" in § 200.50(b)(4) would negate the LEA's discretionary authority.

Comment. Two commenters suggested that § 200.50(b)(4) goes beyond the statutory language and beyond Congress' intent. They claim that Congress intended to allow only one year of continued eligibility for services.

Response. No change has been made. The Secretary believes that § 200.50(b)(4), which permits a total of two additional years of eligibility for certain ineligible school attendance areas or schools, is both consistent with the legislative history accompanying Pub. L. 98–211 and the literal language in section 556(d)(4). According to the Senate Report, the provisions in section 556(d) are "a series of additions aimed at making explicit certain flexibilities which were present in the former Title I law." S. Rept. 166, 98th Cong., 1st Sess. 2 (1983). Similarly, the House Report states that "[t]hese provisions of Title I, substantially carried over to Chapter 1 by these amendments, give school districts flexibility in targeting school buildings and selecting children to participate in Title I programs." H. Rept. 51, 98th Cong., 1st Sess. 2 (1983). Both reports indicate that the provisions of section 556(d) are "based on the former provisions of Title I." *Id.* at 4; S. Rept. 166, 98th Cong., 1st Sess. 9 (1983). As stated in 34 CFR 201.64(b) of the Title I regulations, continuation of eligibility for certain school attendance areas or schools was valid for two fiscal years. To allow only one additional year of eligibility under Chapter 1, therefore, would be inconsistent with the practice permitted under Title I. Moreover, it would make part of the provision in section 556(d)(4) meaningless. Because the provision is intended to permit services to children to continue, there would be no reason for the statute to continue to confer eligibility to a school attendance area or school that was eligible in either of the *two* preceding fiscal years, if only *one* additional year of eligibility could be obtained. Thus, the Secretary believes that the provisions in § 200.50(b)(4) allow for a minimum of abruptness in changing project areas, simulate the option available under Title I, and incorporate and intent of section 556(d)(4) of Chapter 1 and the accompanying legislative history.

Comment. One commenter suggested the addition of the phrase "for which it was selected under paragraph (a) of this section" at the end of the first sentence of § 200.50(b)(4)(ii) to avoid confusion regarding the number of years of eligibility for an area.

Response. A change has been made. Section 200.50(b)(4)(ii) contains the suggested phrase, which clarifies that an ineligible school attendance area or school may receive a single additional year of eligibility for each of the two preceding fiscal years only if the school or area was selected to participate in the year conferring the eligibility.

Comment. Two commenters questioned whether the exemption from the requirement regarding selection of eligible attendance areas for districts with fewer than 1,000 children would permit an LEA to designate certain schools as project schools and not serve all schools.

Response. No change has been made. According to both the House and Senate Reports, section 556(c) of Chapter 1 was enacted to "provide flexibility in terms of targeting school buildings." H. Rept. 51, 98th Cong., 1st Sess. 4 (1983); S. Rept. 166, 98th Cong., 1st Sess. 8 (1983). Therefore, districts with fewer than 1,000 children do not have to comply with either section 556(b)(1) (A) or (B) of Chapter 1. Rather, those districts may select school attendance areas and schools in accordance with the district's needs. As § 200.50(c) indicates, however, those districts must comply with the requirements for student identification and selection in § 200.51 within the schools selected to receive Chapter 1 services.

Comment. One commenter requested that the exemption of LEAs with enrollments of fewer than 1,000 children from the targeting requirement be changed to LEAs with enrollments of fewer than 2,000 children.

Response. No change has been made. Section 200.50(c) accurately reflects the statutory language in section 556(c) of Chapter 1, added by Pub. L. 98–211, which specifically limits the exemption to districts enrolling fewer than 1,000 children.

Comment. One commenter stated that § 200.50(c) is not following the purpose of the legislation because it penalizes urban areas that have greater concentrations of children from low-income families by treating them differently from rural areas.

Response. No change has been made. Section 200.50(c) accurately reflects the statutory provision in section 556(c) of Chapter 1, added by Pub. L. 98–211. Moreover, according to the House and Senate Reports accompanying Pub. L. 98–211, section 556(c) was specifically enacted to benefit small, rural LEAs. *See* H. Rept. 51, 98th Cong., 1st Sess. 4 (1983); S. Rept. 166, 98th Cong., 1st Sess. 8 (1983).

Section 200.51 *Student identification and selection.*

Comment. One commenter suggested that the phrase "to be served" be added after "attendance areas or schools" in § 200.51(a)(1). The commenter noted that most LEAs know what their respective allocations will permit them to do and suggested that conducting a needs assessment in all eligible areas is an unnecessary waste of time.

Response. No change has been made. The requirement in § 200.51(a)(1) to conduct an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas is required by section 556(b)(2) of Chapter 1. Thus, the Secretary cannot change the requirement to apply only to those school attendance areas to be served by Chapter 1. It is through the needs assessment that an LEA decides which educationally deprived children will receive Chapter 1 services and determines what those services will be.

Comment. One commenter asked if § 200.51(a)(1) restricted the student selection process to those private school children residing in eligible attendance areas or if all students who attend a private school are potential candidates for participation in the Chapter 1

program if they are determined to be educationally deprived.

Response. No change has been made. As indicated in section 557(a) of Chapter 1, as amended by Pub. L. 98–211, and § 200.70, only educationally deprived children attending private schools who reside in project areas of an LEA may receive Chapter 1 services. Thus, the residence of private school children is also critical in the selection of children to be served by the Chapter 1 program.

Comment. One commenter suggested that § 200.51(a)(1), in particular, and the final regulations, in general, stress residence requirements. The commenter stated that children, by parental choice, may attend a school other than the one serving their residential area. As a result, children could reside in an ineligible attendance area, but attend an eligible school by choice and, therefore, be eligible for selection for the Chapter 1 program.

Response. No change has been made. In general, eligibility for Chapter 1 services depends on the fact that a child is educationally deprived and resides in a school attendance area selected as a project area. Thus, in the situation described by the commenter, the children who reside in ineligible attendance areas would not be eligible for Chapter 1 services even though services are provided in the school they attend.

Comment. One commenter suggested adding a provision to clarify the relationship between § 200.51(a)(2) and section 556(b)(3) of Chapter 1 concerning the size, scope, and quality of projects. Specifically, the commenter suggested that the size, scope, and quality requirement must be met with respect to those children in greatest need of special assistance before an LEA could include educationally deprived children under § 200.51(a)(2) who are not in greatest need.

Response. No change has been made. Section 556(b)(3) of Chapter 1 and § 204.20 require that Chapter 1 projects be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of *the children being served.* Those sections, however, do not segregate the requirement as the commenter suggested. Consistent with the intent of Chapter 1, the Secretary believes that an LEA should have maximum flexibility in designing its Chapter 1 projects. Thus, although the size, scope, and quality requirement must certainly be met, the Secretary does not believe it is appropriate at the Federal level to specify how an LEA must meet that requirement.

Comment. Several commenters suggested adding a provision to clarify that services provided to children identified in § 200.51(b) (1) and (2) must be in addition to, and not in place of, services to children in greatest need selected under § 200.51(a)(2).

Response. A change has been made. In response to the commenters' suggestion, the Secretary considered the relationship between § 200.51(a)(2) and § 200.51(b) (1) and (2). The Secretary did not make the change suggested by the commenters because the Secretary believes § 200.51(b) (1) and (2) is intended to provide flexibility even when an LEA is serving only educationally deprived children in the greatest need for special assistance. The Secretary has revised § 200.51(b)(1), however, to indicate that the flexibility that paragraph provides applies to LEAs that choose to serve only those educationally deprived children in greatest need for special assistance under § 200.51(a)(2). Section 200.51(b)(1) is superfluous for those LEAs that, in accordance with § 200.51(a)(2), are serving children in greatest need and other educationally deprived children as well. According to the Conference Report accompanying Pub. L. 98–211, the flexibility allowed by section 556(d)(6) of Chapter 1, implemented by § 200.51(b)(1), was not intended to conflict with the language in section 556(b)(2) of Chapter 1, which permits *any* educationally deprived children to be selected for participation in a Chapter 1 program—whether the children were previously in greatest need—as long as those children currently in the greatest need for special assistance receive services. *See* H. Rept. 574, 98th Cong., 1st Sess. 12 (1983) (Conference Report). Thus, if an LEA serves educationally deprived children who are not in greatest need, § 200.51(b)(1) does not restrict services to those children for only one additional year or to only children who were previously in greatest need.

Comment. One commenter requested that the phrase "services of the same nature and scope" in § 200.51(b)(3) be defined to mean non-federally funded services that (1) meet the requirements of size, scope, and quality; (2) are provided under a special program that meets the requirements in Section 131(c) of Title I; and (3) are provided at a level that is at least equal to the level of services that would otherwise be provided with Chapter 1 funds.

Response. No change has been made. Congress did not specify in any way what services would qualify as having the "same nature and scope" as Chapter 1 services. Clearly, if Congress had wanted to restrict those services to ones provided under a program meeting the requirements in section 131(c) of Title I, for example, Congress could have done so. *See, e.g.,* section 558(d) of Chapter 1, as amended by Pub. L. 98–211. Because Congress did not specify or define "services of the same nature and scope," the Secretary believes it is inappropriate at the Federal level for the Chapter 1 regulations to restrict the types of services that could qualify.

Comment. One commenter requested adding a special rule to § 200.51(b) to permit the selection of educationally deprived children for participation in a Chapter 1 project who reside in the project area but who, as a result of their parents' choice of schools, attend a school in a non-Chapter 1 eligible attendance area.

Response. No change has been made. Nothing in the regulations prohibits LEAs from implementing the commenter's suggestion. In general, children are eligible to be served by Chapter 1 if they reside in a school attendance area selected as a project area and if they meet the education criteria established by the LEA for student selection purposes. Eligible children who attend a public school in a nonproject area as a result of their parents' choice of schools may participate in the Chapter 1 project if the design of the project makes this service available. For instance, if the project area is served by an after-school tutorial program, eligible children attending other, nonproject schools could be served. Similarly, if there is a sufficient number of children who meet the eligibility requirements and who attend a public school outside the project area as a result of their parents' choice of schools, the LEA may provide Chapter 1 services to these children at the school they attend. The placement of these services in the ineligible school, however, does not make that school eligible for Chapter 1 services and other children at that school who meet only the educational criteria for student selection are not eligible to receive Chapter 1 services.

Comment. One commenter suggested placing a time limit in § 200.51(b)(1) against serving students beyond one year. The commenter believes that retention of the same students year after year has the effect of denying much needed remedial services to other students who qualify according to the LEA's selection criteria.

Response. A change has been made. According to the House Report accompanying Pub. L. 98–211, the purpose of the statutory amendment

was to permit LEAs to serve educationally deprived children who previously were in greatest need for special assistance "for one additional year" even though those children may no longer be "in greatest need." H. Rept. 51, 98th Cong., 1st Sess. 4 (1983). Consistent with this legislative history, § 200.51(b)(1) has been revised to limit services to such children to one additional year. As § 200.51(b)(1) indicates, however, the provisions in that paragraph apply to LEAs that choose to serve only children in greatest need under § 200.51(a)(2). If an LEA serves other educationally deprived children in addition to those in greatest need, § 200.51(b)(1) does not limit those services to one additional year or to children who were previously in greatest need.

Comment. Several commenters requested clarification of § 200.51(b)(3) as it relates to § 200.51(a)(2). Specifically, the commenters suggested that § 200.51(b)(3) indicate, in keeping with Congress' intent, that when an LEA chooses not to use Chapter 1 funds to serve educationally deprived children in greatest need for special assistance because those children are already receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided by Chapter 1, the remaining children who are served with Chapter 1 must include all children who are in greatest need who are not served by programs from non-Federal sources. *See* H. Rept. 574, 98th Cong., 1st Sess. 12 (1983) (Conference Report).

Response. A change has been made. Section 200.51(b)(3) has been revised to reflect the intent of Congress.

Section 200.54 Schoolwide projects.

Comment. One commenter stated that to require in § 200.54(c)(2) an LEA to provide, per child served by the schoolwide project who is not educationally deprived, an amount of special supplementary State and local funds equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in that school negates the exclusion from the supplement, not supplant provision in § 204.32(b) for States that have an approved compensatory program similar to Chapter 1 in which funds are targeted for students in greatest educational need.

Response. No change has been made. Section 200.54(c)(2) accurately reflects the statutory requirement in section 133(b)(7)(B) of Title I, incorporated into section 556(d)(9) of Chapter 1 by Pub. L. 98–211. Moreover, the Secretary does not believe this section negates the exclusion from the supplement, not supplant requirement in § 204.32(b). Section 204.32(b) permits an agency that receives Chapter 1 funds to exclude, for the purpose of determining compliance with the supplement, not supplant requirement, State and local funds spent in carrying out certain special programs to meet the educational needs of educationally deprived children. Thus, § 204.32(b) relates to State and local funds used for programs for educationally deprived children. Section 200.54(c)(2), on the other hand, relates to the provision of State and local funds in schoolwide projects for children who are not educationally deprived. As a result, the provision in § 200.54(c)(2) does not negate the exclusion in § 204.32(b).

Comment. One commenter suggested that the reference to "all non-Federal funds" in § 200.54(c)(4) be clarified because the language may conflict with the requirements for "special supplementary State and local funds" described in § 200.54(c)(2). The commenter observed that, if the fiscal requirements of § 200.54(c), (1), (2), and (3) are satisfied, the requirement contained in paragraph (c)(4) appears to be redundant.

Response. No change has been made. The Secretary does not believe that § 200.54(c)(4) either conflicts with or is redundant to the other provisions in § 200.54(c). Section 200.54(c)(1) relates to the equitable distribution of Chapter 1 funds for educationally deprived children in schoolwide projects. Section 200.54(c)(2) deals with special supplementary State and local funds above and beyond the State and local funds the school would receive if it were not operating a schoolwide project. Section 200.54(c)(3) requires each school operating a schoolwide project to maintain effort. Only § 200.54(c)(4), however, ensures that a school operating a schoolwide project receives for any given year the amount of non-Federal funds the school would otherwise have received in that year if it were not operating a schoolwide project.

Comment. One commenter suggested adding the word "other" before the phrase "schools, if any, that serve project areas" in § 200.54(c)(1).

Response. A change has been made. The insertion of the word "other" adds clarity to the provision.

Comment. One commenter suggested that § 200.54(d)(2) be rewritten more precisely to indicate that schools operating schoolwide projects are exempt from compliance with that portion of § 200.51 relating to the selection of students (§ 200.51(a)(2)) but are not exempt from those requirements relating to the identification of students (§ 200.51(a)(1)) or the determination of students' needs (§ 200.51(a)(3)).

Response. No change has been made. The Secretary believes that § 200.54(d)(2) accurately reflects section 133(c)(2)(B) of Title I, incorporated into section 556(d)(9) of Chapter 1 by Pub. L. 98–211. As the legislative history accompanying section 133 of Title I indicates, "[o]nce the percentage of poverty children in a Title I school reaches a very high level, it makes little sense and is cumbersome to enforce requirements that Title I serve only Title I children. . . ." Rather, it is a "sounder educational practice to plan a curriculum focusing on the entire educational program and thus avoid the considerable administrative demands resulting from separate recordkeeping and scheduling of special programs." H. Rept. 1137, 95th Cong., 2nd Sess. 35–36 (1978). As in Title I, Chapter 1 now permits schoolwide projects in which all children in attendance are considered program participants, including those children who are not educationally deprived. Thus, the provisions concerning identification and selection of children in § 200.51 are not strictly applicable. However, as required in § 200.54(b)(1), an LEA operating a schoolwide project must prepare a plan that includes a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children. Thus, the concerns of the commenter are dealt with in § 200.54.

Comment. One commenter suggested that § 200.54(d)(3) be either eliminated because it serves no purpose or be revised if there is a purpose for the provision.

Response. No change has been made. Section 200.54(d)(3) accurately reflects the statutory requirement in section 133(c)(2)(C) of Title I that *services* provided with Chapter 1 funds in a schoolwide project do not have to be supplementary to the services regularly provided in the school. This provision enables an LEA to design a comprehensive Chapter 1 program to benefit an entire school without regard to the services the LEA would have provided for that school in the absence of Chapter 1. The parenthetical statement at the conclusion of § 200.54(d)(3), however, reminds the LEA that each school operating a schoolwide project must receive the same amount of non-Federal funds that it would have received had it not been selected for a schoolwide project.

Section 200.60(d). Comparability.

Comment. One commenter questioned the meaning of § 200.60(d)(4)(ix) and suggested that the provision be clarified in the Chapter 1 nonregulatory guidance.

Response. No change has been made. Section 200.60(d)(4)(ix) accurately reflects the statutory requirement in section 131(d)(9) of Title I, incorporated into section 558(d) Chapter 1 by Pub. L. 98–211. The Department will consider providing further clarification in the Chapter 1 nonregulatory guidance.

Comment. One commenter stated that § 200.60 lacks specificity and raised several questions about comparability. Are LEAs required to complete annual calculations to determine compliance with the comparability requirement? When should the calculations take place? Are the LEAs, upon completing the calculations, required to make adjustments to staff or instructional supplies to overcome any discrepancies in comparability between project and nonproject schools?

Response. No change has been made. The comparability requirements in § 200.60 accurately reflect the statutory requirements in section 558(c) and (d) of Chapter 1. Consistent with the intent of Chapter 1 to free schools of "unnecessary Federal supervision, direction, and control," the Secretary has not added to or defined the comparability requirements in the Chapter 1 regulations. Rather, SEAs have the flexibility to determine how comparability will be tested, as long as that determination is consistent with the statutory requirement in section 558.

34 CFR Part 204

General Comments and Responses

Comment. Several commenters stated that the term "agency" used in several sections of Part 204 is confusing since it may refer to an SEA, another State agency, or an LEA. Also, it is unclear whether the agency that receives Chapter 1 funds is the SEA or the LEA.

Response. No change has been made. Generally, when the term "agency" is used, it applies to any agency that receives Chapter 1 funds. When the regulations refer to particular type of agency, the term SEA, LEA, or State agency is used. If an agency receives Chapter 1 funds, it is a recipient agency.

Section 204.13 State rulemaking and other SEA responsibilities.

Comment. One commenter recommended revising this section to clarify the ambiguity of the language used. The commenter felt that the section poses potentially serious compliance issues between LEAs and SEAs. Another commenter stated that this section would restrict the ability of SEAs to administer the program because it limits State rulemaking to State audits and financial responsibilities.

Response. No change has been made. The provisions in § 204.13(b) accurately reflect the statutory provisions in section 591(d) of the ECIA that were added by Pub. L. 98–211. Section 591(d)(1) and § 204.13(b)(1)(i) only specifically authorize a State to issue rules and regulations related to State audits and financial responsibilities. However, as indicated in section 591(d)(2) and § 204.13(b)(1)(ii), a State is not preempted or prohibited by Chapter 1 from issuing other rules when those rules are issued pursuant to State law and are not in conflict with the provisions of Chapter 1 or other applicable Federal statutes and regulations. According to the House and Senate reports accompanying the technical amendments, Congress intended Chapter 1 to be neutral on the issue of State rulemaking. *See* H. Rept. 51, 98th Cong., 1st Sess. 8 (1983); S. Rept. 166, 98th Cong., 1st Sess. 13 (1983). Thus, if State law permits, an SEA may issue regulations that relate to topics other than the State's audit and financial responsibilities. As a result, the SEA's responsibility for ensuring that agencies that receive Chapter 1 funds in the State comply with applicable Chapter 1 requirements should not be impeded by § 204.13(b).

Comment. One commenter noted that § 204.13(b)(2) requires States to identify State regulations which relate to the administration and operation of Chapter 1 programs as State-imposed requirements. At the same time, § 204.13(b)(1)(i) only specifically authorizes States to issue regulations related to State audits and financial responsibilities. The commenter felt that the regulations were unclear as to what regulations are related only to State audit and financial responsibilities and what regulations are administrative.

Response. No change has been made. The language in § 204.13(b)(2) accurately reflects the language in section 591(d) of the ECIA. According to Congress, section 591(d) requires States to identify *any* State rules, regulations, or policies relating to Chapter 1 as State-imposed requirements. *See* H. Rept. 51, 98th Cong., 1st Sess. 8 (1983); S. Rept. 116, 98th Cong., 1st Sess. 13 (1983). Thus, the phrase "rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 1" in § 204.13(b)(2) includes all rules that a State promulgates to implement Chapter 1—even those relating to a State's audit and financial responsibilities.

Section 204.21 Annual meeting of parents.

Comment. A number of commenters recommended general changes in § 204.21. Several commenters questioned the propriety of requiring an annual public meeting and recommended that the section be deleted. One of those commenters felt the number of parents who attend such meetings may not justify the man-hours and postage costs of notifying parents of the meeting. Another commenter felt that the requirement could lead to funds being spent on mass meetings instead of services for Chapter 1 children. Other commenters felt the effort devoted to public meetings would not result in a significant impact on student achievement.

On the other hand, several commenters recommended strengthening the requirement for parental involvement in § 204.21. Believing that systematic consultation with parent is essential to ensure that program decisions are fully responsive to local needs, these commenters recommended that § 204.21 state the nature and purposes of the annual parent meeting and require LEAs to develop policies to ensure adequate parent consultation in all aspects of the design and implementation of Chapter 1 projects. One commenter recommended requiring LEAs to organize parent advisory councils.

Response. A change has been made. Section 204.21 has not been deleted because section 558(e) of Chapter 1, added by Pub. L. 98–211, requires an agency that receives Chapter 1 funds to convene annually at least one meeting to which all parents of eligible children must be invited. Congress added this provision to ensure parents of eligible children at least one opportunity annually to meet with each other and with appropriate agency officials for a discussion of the programs and activities affecting their children. In addition, Congress intended that the meeting inform parents of their right to consult in the design and implementation of Chapter 1 projects, solicit parents' input, and provide parents an opportunity to establish mechanism for maintaining ongoing communication among parents, teachers, and agency officials. *See* H. Rept. 51, 98th Cong., 1st Sess. 5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 10–11 (1983). Section 204.21(a) has been revised to indicate these multiple purposes. Agencies that receive Chapter

1 funds have discretion over how, when, and where these meetings take place. The annual meeting should be the first step in an ongoing process of consulting with parents. It is not in itself intended to satisfy the requirement in section 556(b)(3) of Chapter 1 that projects be designed and implemented in consultation with parents, or otherwise to supersede specific requirements for parental participation contained in 34 CFR Parts 200–203.

In addition to revising § 204.21, the Secretary has revised § 200.53, concerning consultation with parents and teachers, that governs the Chapter 1 LEA program for educationally deprived children. As many commenters pointed out, research has demonstrated that parental involvement improves the effectiveness of Chapter 1 programs and makes an essential contribution to the success of those programs. Because the Secretary believes that parental involvement is crucial to children's success in school, he has revised § 200.53(b) to require an LEA to develop written policies to ensure that parents of the children being served have an adequate opportunity to participate in the design and implementation of the LEA's Chapter 1 project. Although this provision has been added to implement the parent consultation required by section 556(b)(3) of Chapter 1, it gives the LEA complete discretion concerning what its policies require, so long as the policies ensure systematic consultation with parents. To assist the LEA in developing its policies, paragraph (b)(2) lists possible activities for the LEA's consideration.

Comment. One commenter questioned whether "a public meeting" may be interpreted as "public meetings" in situations where it is necessary to schedule meetings in several locations in order to encourage greater participation of parents.

Response. A change has been made. As the House Report accompanying Pub. L. 98–211 explains, "[s]chool districts may elect to hold one or more such meetings and may do so at any site most convenient to the district." H. Rept. 51, 98th Cong., 1st Sess. 5 (1983). Section 204.21(a)(2) has been added to reflect this flexibility.

Comment. One commenter questioned whether the phrase "if parents desire" may be interpreted as including any parent. The commenter recommended that the term be clarified by specifying "parents of eligible or participating children."

Response. A change has been made. To make clear that the "parents" referred to in paragraph (d) of § 204.21 are the same parents referred to in paragraph (a), the phrase "of eligible children" has been added to § 204.21(b).

Comment. One commenter, interpreting the annual meeting of parents requirement as being specifically designed for districts outside of major urban areas, recommended that large urban districts be excluded from this requirements.

Response. No change has been made. Nothing in section 556(e) of Chapter 1 or the legislative history suggests that urban districts are to be excluded from the requirement to hold an annual meeting of parents.

Comment. One commenter recommended revising the regulatory language in § 204.21(b) to read: "If parents desire further activities, the agency shall, upon request, provide reasonable support and monies for these activities."

Response. No change has been made. Section 204.21(b) accurately reflects the language in section 556(e) of Chapter 1, which additional support discretionary, rather than mandatory as the commenter suggested. Both the House and Senate Reports make clear that it is the agency that receives Chapter 1 funds that determines what technical support is to be provided and the form and amount of resources that are to be made available. *See* H. Rept. 51, 98th Cong., 1st Sess. 5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 10–11 (1983).

Comment. A number of commenters recommended adding the language of the House and Senate Reports to § 204.21 to clarify the requirements for parental involvement under Chapter 1.

Response. A change has been made. Section 204.21(b) has been revised to indicate that the support an agency receiving Chapter 1 funds may provide to parents includes, but is not limited to, reasonable access to meeting space and materials, provision of information concerning the Chapter 1 law, regulations, and instructional programs, training programs for parents, and other resources, as appropriate. *See* H. Rept. 51, 98th Cong., 1st Sess. 5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 10–11 (1983).

Comment. One commenter questioned whether "eligible children" should be interpreted as "educationally deprived children."

Response. No change has been made. Eligibility for Chapter 1 services includes educationally deprived children residing in low-income areas, migratory children, children in State institutions for neglected or delinquent children, and handicapped children in State institutions.

Comment. One commenter suggested substituting the term "local educational agency" in place of the phrase "an agency that receives Chapter 1 funds" in § 204.21(a). Another commenter recommended incorporating § 204.21 into § 200.53 regarding consultation with parents and teachers by LEAs. The commenter felt that by removing § 204.21 from Part 204, the State agency programs would be exempt from the requirement.

Response. No change has been made. Section 19 of Pub. L. 98–211 amended sections 142, 147, and 152 of Title I to clarify that, with two exceptions, all of the requirements in sections 556 and 558 of Chapter 1 are applicable to the State agency programs. Section 556(e), which contains the annual meeting of parents requirement, is not one of the excluded sections.

Comment. One commenter questioned why § 204.21 of the proposed regulations did not provide for parent advisory councils for migrant programs.

Response. No change has been made. The requirement for parent advisory councils for migrant programs is contained in § 201.35 of the Chapter 1 regulations for migrant education programs. Parent advisory councils are not required for all Chapter 1 programs. Therefore, the requirement for parent councils was placed in the migrant program regulations and not in § 204.21, which applies to all Chapter 1 programs.

Comment. One commenter questioned whether § 204.21 required a statewide meeting for migrant education programs or whether the requirement could be met by means of meetings at the local level.

Response. No change has been made. The statute requires the operating agency to convene at least one meeting annually to which all parents of eligible children are invited. Where the operating agency is an SEA or other State agency, one or more meetings may be held in conjunction with local level meetings to encourage greater participation of parents. However, in most cases SEAs operate their States' migrant education programs through LEAs or other local operating agencies, and those agencies must convene the annual meeting. Section 201.35 of the regulations for migrant education programs requires the SEA to have a statewide advisory council. In addition, LEAs acting as operating agencies for migrant education programs in the State must establish parent advisory councils.

Comment. Several commenters, responding to how State agencies, especially agencies serving neglected or delinquent children, can meet this requirement, indicated that the annual meeting would be difficult to stage and the response would likely be limited. The commenters believed, therefore,

that the benefits of such a meeting would be at best negligible. In addition, the commenters noted that often single institutions house students from an entire State, making a meeting for parents of eligible students totally unrealistic because of travel time and expense. One commenter noted that children adjudicated to the State Department of Corrections become wards of the State and that the State, not their parents, has full responsibility for their welfare and best interest. Moreover, in the case of many institutionalized children, there is not a caring family to participate in an annual meeting.

Response. No change has been made. Section 556(e) of Chapter 1 applies to State agencies directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions. The Secretary recognizes that for many State-operated programs, especially those serving neglected children, meetings with biological parents may not be possible. In those instances, while not excluding biological parents retaining parental rights, agencies should notify persons serving as parent surrogates for the children involved of the meeting. Where there is no identifiable adult in a supervisory or custodial relationship with the child, the agencies may send a notice of the meeting to the last known address of the last identified adult who had custody of or supervised and cared for the child.

Comment. A large number of commenters recommended that Chapter 1 programs of assistance of State agencies for projects designed to meet the special educational needs of children who are or who have been served in institutions for handicapped children be exempt from § 204.21. The commenters felt that § 204.21 was inappropriate for their programs for at least three major reasons: (1) Programs for handicapped students are covered under the due process provisions of Pub. L. 94–142, which require individual parent participation; (2) various sources of Federal and State funds, including funds under the Chapter 1 handicapped program, already are being used to support parent education and counseling; and (3) § 204.21 could be interpreted to mean that no project could be approved without public hearings.

Response. No change has been made. Section 556(e) of Chapter 1 applies to all State agencies directly responsible for providing free public education for handicapped children. The Secretary cannot waive this statutory requirement. The extent to which the requirement may need to be implemented differently for the Chapter 1 handicapped program will be discussed in the regulations specifically applicable to that program.

Section 204.22 Allowable costs.

Comment. Several commenters expressed concern that § 204.22(a) would prohibit some children in State institutions for handicapped children from participating in Chapter 1 programs on a space-available basis because they may not have been counted for allocation purposes. Several commenters suggested adding a new paragraph to make clear that children eligible for services under the Chapter 1 handicapped program, but not counted for allocations, may be served if all children counted are receiving services.

Response. No change has been made. Section 147 of Title I, incorporated into Chapter 1 by section 554(a)(2)(B), states that "each such child in average daily attendance counted under subsection (b) of section 146 will be provided with such a program, commensurate with his special needs. . . ." The regulation does not intend to preclude services to children who, had they been enrolled on October 1, would have been eligible to be included in the count. Therefore, where all children counted are receiving a program commensurate with their needs, other children in eligible State institutions would be eligible to participate in the program on a space available basis.

Comment. One commenter objected to the requirement in § 204.22(c) that administrative direction and control of Chapter 1 funds, and title to property acquired with those funds, be in a public agency. The commenter is concerned that the restriction will prohibit private agencies and schools serving handicapped children from participating in Chapter 1 projects. Another commenter suggested that administrative direction and control of Chapter 1 funds for handicapped children must be the responsibility of the SEA.

Response. No change has been made. Section 146(a) of Title I, incorporated into Chapter 1 by section 554(a)(2)(B), limits program eligibility to a "State agency which is directly responsible for providing free public education for handicapped children. . . ." States may, by contract or other arrangement, provide for private agencies to provide services to handicapped children, but must comply with the provisions of § 204.22(c).

Comment. One commenter recommended that § 204.22(c) specify what agency may hold title to property purchased with Chapter 1 funds.

Response. No change has been made. Title to property should be with the agency responsible for operating the Chapter 1 program: For 34 CFR Part 200, the LEA; for Part 201, the SEA; and for Parts 203 and 302, whichever public agency is actually operating the Chapter 1 program.

Comment. One commenter noted that the duties contained in § 204.22(d) do not apply to nonschool settings.

Response. No change has been made. Section 204.22(d) permits Chapter 1 teachers, in general educational settings, to perform certain non-Chapter 1 duties without violating statutory provisions related to the use of Chapter 1 funds only to meet the special educational needs of children eligible to be served.

Comment. One commenter urged that § 204.22(d)(3) be deleted, since the commenter found no statutory basis to prohibit Chapter 1 teachers from homeroom duty.

Response. No change has been made. Section 556(d)(10) of Chapter 1 states that Chapter 1 personnel "may be assigned limited, rotating, supervisory duties. . . ." This language is similar to that of section 134 of Title I, which referred to "certain limited, rotating, supervisory duties. . . ." Homeroom duty, while supervisory, is normally not a rotating assignment. Hence, under both Title I and Chapter 1, the Department has interpreted homeroom duty to be outside the realm of allowable duties for Chapter 1 personnel.

Comment. One commenter recommended deleting § 204.22(d)(5) which restricts the amount of time Chapter 1-paid personnel may spend performing non-Chapter 1 duties.

Response. No change has been made. These restrictions are included in section 556(d)(10) of Chapter 1.

Comment. One commenter recommended that § 204.22(d) specify that Chapter 1 personnel cannot perform any non-Chapter 1 duties during the time Chapter 1 instruction is taking place.

Response. No change has been made. It would be difficult to implement the commenter's recommendation because, in any school, certain Chapter 1 activities may be going on at all times, but not all Chapter 1 personnel may be engaged in carrying out those activities. The flexibility afforded by § 204.22(d), however, is not intended to permit non-Chapter 1 duties to interfere with the ability of Chapter 1 personnel to carry out the Chapter 1 program.

Comment. One commenter suggested that § 204.22(d) limit the amount of time Chapter 1 personnel may engage in non-Chapter 1 activities, even when the salary of the person is prorated among the various activities.

Response. No change has been made. The Secretary cannot prohibit personnel paid, in part, with Chapter 1 funds from also being assigned non-Chapter 1 activities. The amount of time spent on Chapter 1 activities by these personnel, however, must be adequately documented.

Comment. One commenter suggested that § 204.22 be expanded to include information on topics such as excessive or unallowable costs, travel and inservice costs, and similar items.

Response. No change has been made. For information on these topics, agencies are referred to 34 CFR Part 74, which, while not required for Chapter 1 programs, provides extensive guidance on allowable costs.

Section 204.23 Evaluation.

Comment. Several commenters expressed concern over the burden imposed by the data collection and evaluation requirements included in § 204.23. The commenters stated that the purpose for the data collection was unclear, and suggested that the Department show in two years how the data benefited Federal education policy.

Response. No change has been made. The evaluation and data collection requirements were added as section 555(e) of Chapter 1 by Pub. L. 98–211. According to the Senate Report accompanying Pub. L. 98–211, the purpose of the requirement is "to underscore the value of evaluation [by] requiring that State eductional agencies conduct an evaluation at least every two years and stipulating the kind of information which must be collected by the SEA for Chapter 1 activities." S. Rept. 166, 98th Cong., 1st Sess. 8 (1983). The provisions in § 204.23 accurately reflect the statutory requirements in section 555(e) of Chapter 1.

Comment. One commenter requested that LEAs be provided forms to facilitate the data collection and evaluation requirements contained in § 204.23.

Response. No change has been made. The Department intends to issue forms for SEAs to use in reporting State totals. Collection of information from agencies that receive Chapter 1 funds, however, is an SEA responsibility, and SEAs may devise their own methods for fulfilling that requirement.

Comment. Several commenters recommended that the program for handicapped children in State institutions be exempt from the data collection and evaluation requirements contained in § 204.23.

Response. No change has been made. The requirements for evaluation and data collection are included in section 555(e) of Chapter 1, which applies to all Chapter 1 programs.

Comment. One commenter noted that Chapter 1 programs are currently evaluated annually, rather than every two years.

Response. No change has been made. Section 204.23(a)(1)(i) implements section 555(e), which requires that Chapter 1 programs be evaluated "at least every two years." Annual evaluations fulfill this requirement.

Comment. One commenter noted that the two-year interval for SEA evaluations in § 204.23(a)(1)(i) and the three-year interval for evaluations by agencies that receive Chapter 1 funds in § 204.23(b)(1) are confusing.

Response. No change has been made. The two-year interval for SEA evaluations reflects the statutory requirement in section 555(e)(1) of Chapter 1. The three-year interval for evaluations by agencies that receive Chapter 1 funds coincides with the maximum application period contained in section 556(a) of Chapter 1. An SEA may require more frequent evaluations by agencies that receive Chapter 1 funds if the SEA needs those evaluations to meet the SEA's evaluation requirement.

Comment. One commenter stated that § 204.23(a)(1)(ii) should clarify on which Chapter 1 programs SEAs are required to collect data.

Response. No change has been made. Section 204.23(a)(1)(ii) accurately reflects section 555(e)(2) of Chapter 1, which requires SEAs to collect data on all Chapter 1 programs in the State.

Comment. One commenter noted that section 555(e)(2) of Chapter 1 does not include that word "annually" when referring to data collection. The commenter suggested that the word be deleted from § 204.23(a)(1)(ii) and that data collection, like evaluation, only be required every two years.

Response. No change has been made. Section 555(e)(2) of Chapter 1 requires SEAs to collect data on "children served by the programs assisted under [Chapter 1] . . . ." To allow biennial data collection would eliminate counts of children served in the alternate years. Moreover, Congress specifically provided for the two-year SEA evaluation requirement in section 555(e)(1) of Chapter 1. Presumably, if Congress had intended data collection to be conducted once every two years, Congress would have included that time frame in section 555(e)(2) also.

Comment. Several commenters objected to the inclusion of race and gender information in the data collection requirement in § 204.23(a)(1)(ii)(A). The commenters feared misuse of that information and suggested that § 204.23 contain a requirement to protect the confidentiality of the data. Another commenter noted that inclusion of information on race and gender may duplicate information collected by the Office for Civil Rights.

Response. No change has been made. Section 204.23(a)(1)(ii)(A) accurately reflects the requirement in section 555(e)(2) of Chapter 1, which requires SEAs to collect data on the "race, age, and gender of children served by the programs assisted under [Chapter 1] . . . ." These data, however, may be an aggregate number and need not identify each child served. Data collected under this provision are governed by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), which restricts their use. The information collected by the Office for Civil Rights includes all children in schools. There is no way to determine from those figures which children, if any, are being served by Chapter 1.

Comment. One commenter objected to the collection of information on the age of children participating in Chapter 1 programs under § 204.23(a)(1)(ii)(A). The commenter noted that cut-off dates for initial school enrollment vary throughout the country; hence schools would have to report at least two different age groups for each grade.

Response. No change has been made. The requirement for collecting data on the age of children participating in Chapter 1 programs is included in section 555(e)(2) of Chapter 1.

Comment. Several commenters objected to the requirement in § 204.23(a)(1)(ii)(B) that data be collected based on the grade level of participating students. The commenters noted that in nongraded situations, for preschool children, and for certain children in State institutions for handicapped children or for neglected or delinquent children, grade designations are inappropriate.

Response. No change has been made. Section 555(e)(2) of Chapter 1 requires that SEAs collect data on "the number of children served by grade-level . . . ." Where no grade level exists, it is appropriate to report data in another form that can yield similar information, such as "preschool children."

Comment. One commenter recommended that the data collection requirement in § 204.23(a)(1)(ii) provide

separate information on private school children served by Chapter 1.

Response. No change has been made. The data collection instrument used by the Department to collect aggregate information requires SEAs to provide separate totals for private school children being served. SEAs may design their own instruments to collect, at a minimum, the information required in § 204.23(a)(1)(ii).

Comment. Several commenters objected to the provision in § 204.23(a)(2) that would allow SEAs to meet the requirement for biennial evaluations by aggregating data collected under § 204.22(b) by agencies that receive Chapter 1 funds. The commenters stated that aggregation of data does not constitute conducting an evaluation and, therefore, does not meet the statutory requirement.

Response. No change has been made. The Secretary does not interpret the statutory requirement that SEAs "conduct an evaluation" to mean that SEAs must gather all original data. Rather, if they wish, SEAs may design systems that would allow them to aggregate local information, analyze it, and from this data, provide a statewide evaluation of the Chapter 1 program. This approach would not only meet the statutory requirement but would provide highly useful data on a statewide basis of the success of the program, would allow for comparisons between State averages and local achievements, would provide information for comparisons among States, and may allow further aggregation of information from States choosing this option to give national results.

Comment. Several commenters objected to § 204.23(b), stating that the use of achievement data and sustained gains is inappropriate for handicapped children, who may be severely disabled, and for children in institutions for neglected or delinquent youth. In addition, the commenters noted that appropriate evaluation measures, such as performance skills, are omitted.

Response. No change has been made. Section 556(b)(4) of Chapter 1, specifically made applicable to Chapter 1 programs for handicapped children by an amendment to section 147 of Title I, requires that evaluations "include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year. . . ." Other evaluation evidence, however, such as that suggested by the commenters, should be collected when that evidence provides more realistic information regarding the success of the program. When appropriate, agencies may consider a child's individualized education program (IEP) to be the set of basic skills appropriate for that child, and may evaluate the program according to progress in basic skills set by the IEP.

Comment. One commenter questioned the requirement for sustained gains in § 204.23(b)(1)(ii), stating that paperwork would be increased.

Response. No change has been made. The requirement for sustained gains in § 204.23(b)(1)(ii) is contained in section 556(b)(4) of Chapter 1.

Comment. One commenter noted that gathering data on sustained gains in the migrant education program is impractical due to the mobility of the population and that data would be difficult to validate.

Response. No change has been made. The requirement for gathering data on sustained gains in § 204.23(b)(1)(ii) is contained in section 556(b)(4) of Chapter 1. Section 556(b)(4) was specifically made applicable to the migrant education program by section 19 of Pub. L. 98–211, which amended section 142(a)(3) of Title I accordingly. Maximum interstate and intrastate coordination of migrant education programs and projects, coupled with full use of the migrant student record transfer system, will help facilitate this data collection responsibility.

Comment. One commenter expressed concern that funds used for evaluation not be wasted. The commenter noted that evaluation results should be used, rather than just gathered.

Response. No change has been made. Section 556(b)(4) of Chapter 1 specifically requires that evaluation results be used "in the improvement of the programs and projects assisted under [Chapter 1] . . . ." This requirement is reiterated in § 204.23(b)(2).

Section 204.23 Supplement, not supplant.

Comment. One commenter, while expressing agreement with the provisions of § 204.32 (a) and (b), was concerned about services to children in institutions for handicapped children when no State-funded programs are available. The commenter interpreted § 204.32(b) as allowing Chapter 1 to serve these children.

Response. No change has been made. Section 204.32(b) deals with the exclusion of State and local funds spent in carrying out certain special programs from the general supplement, not supplant requirement. Section 204.32(b) does not override 34 CFR 302.50(c) of the Chapter 1 handicapped program requirements.

Comment. Several commenters recommended that programs for handicapped children in State institutions be exempt from § 204.32.

Response. No change has been made. The Secretary has no authority to exempt Chapter 1 programs for handicapped children in State institutions from the supplement, not supplant requirement in § 204.32. Section 8 of Pub. L. 98–211 specifically amended the supplement, not supplant requirement in Section 558 of Chapter 1 to make clear that it applies to programs for handicapped children in State institutions. At the same time, section 19(a) of Pub. L. 98–211 amended section 147 of Title I to make clear that section 558 (other than the comparability requirement) applies to the Chapter 1 programs for handicapped children. The extent to which the requirement may need to be implemented specifically for the Chapter 1 handicapped program will be discussed in the regulations for that program.

Comment. One commenter recommended that § 204.32 be modified to allow funds for programs for handicapped children in State institutions to supplement those necessary to carry out a handicapped child's IEP.

Response. No change has been made. Section 204.32 currently allows Chapter 1 activities that supplement a handicapped child's IEP.

Comment. One commenter suggested that § 204.32 clarify the circumstances regarding the supplement, not supplant provision when related to programs for handicapped children in State institutions. The commenter stressed the relationship between services to be provided under Chapter 1 and those included in a child's IEP.

Response. No change has been made. Part 204 regulations contain only those provisions which apply to all Chapter 1 programs. Standards which apply only to individual Chapter 1 programs will appear in the proper program regulations. The extent to which the requirement may need to be implemented specifically for Chapter 1 handicapped programs will be discussed in the regulations for that program.

Comment. One commenter stated that § 204.32(b) needs clarification. The commenter questioned whether all five of the conditions in § 204.32(b)(1)–(5) must be met in order for a program to be excluded from the supplement, not supplant requirement.

Response. No change has been made. Section 204.32(b) accurately reflects the

language in section 556(d) of Chapter 1. Section 204.32(b) states that, in order to exclude State and local funds spent in carrying out special programs, those programs must "meet the following requirements." Thus, the requirements that are listed in § 204.32(b)(1)–(5) must all be met.

Section 204.43 *Eligibility for review.*

Comment. One commenter stated that this section is unclear, and suggested that it be revised to state that if a recipient brings a lawsuit to challenge a notice prior to exhausting administrative remedies, the Secretary could move for dismissal of the suit on that basis.

Response. No change has been made. The Secretary believes that the language in § 204.43(b) is essentially the same as that the commenter suggested. Moreover, the language in § 204.43(b) parallels the language in the comparable provision in 34 CFR Part 78 governing other programs before the Education Appeal Board.

Comment. One commenter noted that the functions, procedures, and duties of the panel and board referred to in this section are unspecified.

Response. No change has been made. This information is included in Subpart E of 34 CFR Part 78 (Education Appeal Board), made applicable to Chapter 1 due process proceedings by § 204.50(a).

Section 204.50 *Practice and procedure.*

Comment. One commenter questioned why the provision in 34 CFR Part 70, that only requires a lead time of ten days from notice before funds are cut off, applies to Chapter 1 when the Chapter 1 statute provides for sixty days.

Response. No change has been made. Section 204.50(a) only makes the regulations governing practice and procedure before the Education Appeal Board in Subpart E of 34 CFR Part 78 applicable to Chapter 1 due process proceedings. None of the provisions in Subpart E deals with the length of time from notice until funds are cut off. Rather, the provision to which the commenter apparently was referring is 34 CFR 78.25(b)(2) concerning written notice of an intent to suspend funds. This provision, which implements section 453(c) of the General Education Provisions Act (GEPA), is not applicable to Chapter 1 both because it is not contained in Subpart E and because section 453 of GEPA has been superseded by section 592 of the Education Consolidation and Improvement Act (ECIA). *See* Section 596(b)(6) of the ECIA as amended by the technical amendments. Accordingly, under Chapter 1, the Secretary would not withhold funds until sixty days after the date the Secretary provided notice of intent to do so.

Comment. Two commenters objected to the provision in § 204.50(b) that places the burden of proof on the appellant. One commenter supported the section as written.

Response. No change has been made. Section 204.50(b) accurately reflects section 452(b) of GEPA which states that "the burden shall be upon the State or local educational agency to demonstrate the allowability of expenditures disallowed in the final audit determination." As section 596 of the ECIA indicates, section 452 of GEPA applies to Chapter 1 programs.

Comment. One commenter questioned why § 204.50(b) omits the condition in section 452(b) of GEPA that the appellant has the burden of proof "[u]nless the Board determines that a final audit determination lacks sufficient detail. . . ."

Response. No change has been made. The condition in section 452(b) to which the commenter refers is the subject of § 204.48 of the Chapter 1 regulations concerning review of the written notice. As a result, the Secretary does not believe it is necessary to include the condition in § 204.50(b).

Comment. One commenter questioned why § 204.50(b) requires the appellant to present its case first when this requirement is not included in section 452(b) of GEPA.

Response. No change has been made. Section 204.50(b) requires the appellant to present its case first because the appellant has the burden of proof under section 452(b) of GEPA.

Section 204.53 *The Secretary's decision.*

Comment. Two commenters asked whether the Secretary's decision is final or whether an appeal to the court of appeals is allowed.

Response. A change has been made. As indicated in § 204.53(c)(1), the Secretary's decision is the final decision of the Department. In accordance with section 455 of GEPA, appellants may appeal the Department's final decision to the appropriate court of appeals.

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federal register

Monday
May 19, 1986

Part III

Department of Commerce

International Trade Administration

Export Trade Certificate of Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to American Pecan Company (APC). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Pecans and pecan products, including fancy mammoth pecans, junior mammoth halves, other fancy halves, fancy pieces, fancy midget pieces, fancy granules, fancy meal, and non-fancy pecan products.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Consulting; internatonal market research, advertising; marketing; insurance; product research; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and (b) that part of the continent of North America not included in (a) above.

Members

Nut Tree Pecan Company, Albany, GA; Stahmann Farms, Inc., Las Cruces, NM; Farmers Investment Company, doing business as Santa Cruz Valley Pecan Company, Sahuarita, AZ; and Leonard Nut Company, Fort Worth, TX.

Export Trade Activities and Methods of Operation

APC may:

1. Enter into agreements with its Member suppliers to act as an Export Intermediary, which may include any of the followng provisions:

a. APC agrees to purchase Products from its Member suppliers, and its member suppliers agree to sell Products to APC, at prices set in the supply agreements between APC and its Member suppliers. All Products purchased by APC from its Member suppliers will be for resale by APC in the Export Markets; APC will market and sell the Products, either directly or through Export Intermediaries other than APC, to such purchasers, at such prices, and on such terms as APC shall determine;

b. For each year of the supply agreement, APC may purchase Products from its Member suppliers on a pro rata basis, up to a fixed aggregate quantity per year. Once that quantity has been purchased, APC may offer its Member suppliers the right to sell additional Products to APC on a pro rata basis. If none of the Member suppliers elects to sell such additional Products to APC, APC may purchase Products for resale in the Export Markets from non-Member suppliers, provided that APC deals separately and individually with each non-Member supplier. APC may not enter into supply agreements that obligate non-Member suppliers to sell Products to APC or that obligate APC to buy Products from non-Member suppliers, or otherwise purchase Products from non-Member suppliers, except as is necessary to fill existing or reasonably anticipated orders from specifically identified customers of APC in the Export Markets. APC may purchase Products exclusively from its Member suppliers and may refuse to deal with non-Member suppliers; and

c. No Member supplier will be restricted from exporting products independently of APC. However, should any Member supplier cease to be a Member of APC, that Member supplier may be prohibited, during the remainder of the five-year term of the initial supply agreement between the Member supplier and APC, from selling Products to purchasers that were customers of APC prior to the date of the Member's termination, other than customers to which the Member supplier previously sold Products.

2. Determine the price of Products sold to APC by Member and Non-Member suppliers as follows:

a. For the fixed aggregate quantity (described in paragaph 1(b) above):

(i) During the first year of the initial five year term of the supply agreements between APC and its Member suppliers, APC may set the prices of Products at (a) fixed dollars amounts, as established in those supply agreements, or (b) a fixed percentage of the price at which APC resells the Products supplied in the Export Markets; and

(ii) During the second and subsequent years of the initial and any subsequent terms of the supply agreements between APC and its Members, APC may set the purchase price for all Products at a fixed percentage of the average price at which APC resold the class of Products in the Export Markets during the preceding year, which percentage may be modified annually by APC and its Member suppliers based upon an analysis of APC's operating and other costs and other information permitted to be discussed under paragraphs 4 and 5;

b. For quantities greater than the fixed aggregate quantity (described in paragraph 1(b) above) that APC purchases from its Member suppliers during any given year, APC may set the price of Products at a percentage of the price at which APC resells the Products supplied in the Export Markets, which percentage may be modified annually by APC and its Member suppliers based upon an analysis of APC's operating and other costs and other information permitted to be discussed under paragraphs 4 and 5; and/or

c. For quantities of Products APC purchases from non-Member suppliers, APC may set prices and terms and conditions of purchase individually for each transaction.

3. Enter into exclusive or nonexclusive agreements with other Export Intermediaries for the sale of Products in the Export Markets wherein:

a. APC agrees to deal in Products in particular Export Markets only through that intermediary; and/or

b. That intermediary agrees not to represent or otherwise deal with anyone except APC in those Export Markets.

4. Exchange information with Member suppliers regarding:

a. The prices that APC has charged or will charge in the Export Markets for each Member supplier's Products.

b. The quality and quantity of Products available from Member suppliers for export, but such exchange will be limited to the following:

(i) APC may contact a member supplier to determine if that Member supplier can fill a specific purchase order, and the Member supplier may inform APC whether it will be able to fill the order, and if it cannot fill the order, the reasons therefor that are specifically related to that Member's individual operations,

(ii) In order to allocate purchase orders among its Member suppliers so as to comply with its contractual obligation to buy from its Members on a pro rata basis up to a fixed amount annually, APC may contact its Member suppliers during the final quarter of any contract year to determine the quantity of Products that the Member suppliers will be able to sell to APC through the end of that year and the times at which such quantity may be available for purchase by APC, and the Member supplier may so inform APC, and

(iii) All requests for information must be made to Member suppliers individually, and the Member suppliers' responses must be made only to APC, which may not disclose the information to any other Member, except as may be necessary for the legitimate conduct of APC's export business,

c. Delivery dates, terms of sale, and other information necessary to arrange and complete export sales of the Products,

d. General economic or business conditions in the Export Markets, including supply and demand conditions, prices and terms of sale in the Export Markets; and transportation and other costs incurred in exporting to the Export Markets,

e. APC's sales results in the Export Markets, orders shipped, costs of doing business and other information relating to APC's business in the Export Markets,

f. Amounts and prices of Products purchased from each Member supplier for export, and the terms and conditions under which such purchases were made,

g. Matters concerning APC's organization, governance, financial condition and membership; and/or

h. Market strategies for the Export Markets, and other issues relating to sales and Export Trade Facilitation Services in the Export Markets and APC's export business.

5. Participate in meetings with one or more Member suppliers to deliver and discuss the information described in paragraph (4) above.

6. Enter into agreements with customers located in the Export Markets wherein APC may agree in each case to sell Products in the Export Markets only to such customers, and/or such customer may agree not to purchase the Product from any competitor of APC.

7. Prescribe conditions of membership to, and termination from, APC.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 14,1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-11322 Filed 5-16-86; 11:50 am]

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H.R. 4022/Pub. L. 99-300

To release restrictions on certain property located in Calcasieu Parish, Louisiana, and for other purposes (May 14, 1986; 100 Stat. 435; 1 page) Price: $1.00

S.J. Res. 281/Pub. L. 99-301

To designate the week of May 11 through May 17, 1986, as "Senior Center Week". (May 14, 1986; 100 Stat. 436; 1 page) Price: $1.00

S.J. Res. 284/Pub. L. 99-302

To designate the month of May 1986 as "Better Hearing and Speech Month". (May 14, 1986; 100 Stat. 437; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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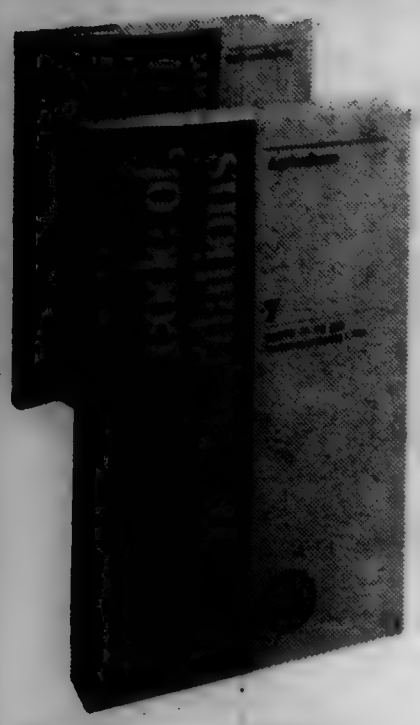

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Title 3—

The President

Executive Order 12557 of May 16, 1986

Establishing an Emergency Board To Investigate Disputes Between the Maine Central Railroad Company/Portland Terminal Company and Certain of Their Employees Represented by the Brotherhood of Maintenance of Way Employees

Disputes exist between the Maine Central Railroad Company/Portland Terminal Company and certain of their employees represented by the Brotherhood of Maintenance of Way Employees.

These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

These disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation services.

NOW, THEREFORE, by the authority vested in me by Section 10 of the Act (45 U.S.C. § 160), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is hereby established, effective May 16, 1986, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to these disputes within 30 days from the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 10 of the Act, from the date of the creation of the board and for 30 days after the board has made its report to the President, no change, except by agreement of the parties, shall be made by the carriers or the employees in the conditions out of which these disputes arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
May 16, 1986.

[FR Doc. 86-11466
Filed 5-16-86; 4:40 pm]
Billing code 3195-01-M

Editorial note: For the White House announcement of May 16 on the establishment of the emergency board, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 20).

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Executive Order 12558 of May 16, 1986

Establishing an Emergency Board To Investigate a Dispute Between the Long Island Rail Road and Certain Labor Organizations Representing Its Employees

A dispute exists between The Long Island Rail Road and certain of its employees represented by the labor organizations named on the list attached hereto and made a part hereof.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. § 159a).

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective May 16, 1986, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
May 16, 1986.

LABOR ORGANIZATIONS

ARASA Division, Brotherhood of Railway, Airline and Steamship Clerks
Brotherhood of Locomotive Engineers
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Railway Carmen of the United States and Canada
Brotherhood of Railroad Signalmen
International Association of Machinists and Aerospace Workers, AFL-CIO
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers

Police Benevolent Association
Sheet Metal Workers' International Association
United Transportation Union
United Transportation Union—Railroad Yardmasters of America Division

[FR Doc. 86-11497
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Editorial note: For the White House announcement of May 16 on the establishment of the emergency board, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 20).

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Proclamation 5481 of May 17, 1986

National Digestive Diseases Awareness Week, 1986

By the President of the United States of America

A Proclamation

Digestive diseases rank third in the total economic burden of illness in the United States. More important, in terms of human discomfort, pain, and mortality, they constitute one of our most serious national health problems.

Digestive diseases are a major cause of hospitalization and surgery in this country. Each day some 200,000 people miss work because of them. Twenty million Americans are treated for some type of chronic digestive disorder each year, and almost half of our population suffers an occasional digestive disorder, creating a yearly expenditure of approximately $17 billion in direct health care costs, and a total estimated economic burden of $50 billion.

Research into the causes, cures, prevention, and clinical treatment of digestive diseases and related nutrition problems continues with the support of public and private institutions at all levels. This year marks the third anniversary of the initiation of a national digestive diseases education program. Its goals are to involve all those concerned with the problem—including the Digestive Diseases National Coalition, the National Digestive Diseases Advisory Board, the National Digestive Diseases Education and Information Clearinghouse, and the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases—in educating the public as well as medical practitioners, dieticians, and nutrition experts on the seriousness of these diseases and the most advanced methods available to prevent, treat, and control them.

In recognition of the importance of efforts to combat digestive diseases, the Congress, by Senate Joint Resolution 324, has designated the week beginning May 18, 1986, as "National Digestive Diseases Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 18, 1986, as National Digestive Diseases Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to participate in appropriate activities to encourage further research into the causes and cures of all types of digestive disorders.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11497
Filed 5-19-86; 10:27 am]
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Rules and Regulations

Federal Register
Vol. 51, No. 97
Tuesday, May 20, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1955

Sale of Unsuitable Single Family Housing (SFH) Inventory Property

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the sale of unsuitable SFH inventory property. This action is being taken since the number of properties FmHA has in inventory has increased substantially. The intended effect of this action is to hold a 90-day sale on unsuitable homes by reducing downpayment requirements and sales prices.

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist or Frances B. Calhoun, Chief, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250, telephone: (202) 381-1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements as it involves only internal Agency management.

The SFH program is listed in the Catalog of Federal Domestic Assistance under:

10.410 Low Income Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Catalog numbers 10.410 and 10.417 are excluded from Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-90, an Environmental Impact Statement is not required.

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rule making since they involve only internal Agency management, and publication for comments is unnecessary.

At the current time, FmHA has approximately 18,000 single family properties in inventory nationwide. This high volume is primarily due to the poor agricultural economy facing the many rural areas in which FmHA finances and the resultant deflated housing market. In many cases, these homes have remained in inventory for extended periods of time costing the Government considerable amounts of money to retain. Especially evident of this are houses which the Agency has determined to be unsuitable for retention in the program. Generally, these homes are functionally obsolete and cannot be used to effectively fulfill the purpose for which the Section 502 RH program was intended.

The prime summer housing sales months and favorable mortgage interest rates are upon us. FmHA recognizes an urgency to take advantage of this opportunity and recover the Government's investment in these properties and relieve us of the high costs of retaining these houses. In an effort to sell these homes, FmHA will hold a 90-day "sale" on unsuitable inventory property. During this 90-day period, FmHA will launch an aggressive sales campaign and offer more favorable terms on which the public can purchase these properties.

Many lenders have offered special sales incentives and attractive financing terms in an effort to sell inventory property. Other Government lenders have offered inventory properties for sale with no downpayment requirements, granted discounts for cash offers, and paid a portion of the purchasers' closing costs. These efforts have proven successful in selling inventory property.

Current FmHA regulations [7 CFR Part 1955, § 1955.118] require a downpayment of 10 percent from purchasers obtaining FmHA credit on ineligible terms. During the sale period, FmHA reduces the required downpayment to 5 percent for investors and zero for purchasers who do not currently own a home and intend to occupy the dwelling (owner/occupant).

Additionally, current FmHA regulations [7 CFR Part 1955, § 1955.112(c)] authorize State Directors to sell unsuitable properties by sealed bid or auction. These sales have traditionally netted the Agency approximately 70 percent of the market value. Rather than incur the costs of an auctioneer or proceed with lengthy and time consuming sealed bid sales, FmHA will authorize unsuitable SFH inventory property to be listed/offered for sale at a percentage of market value.

FmHA amends Subpart C of Part 1955 by providing exceptions which authorize the aforementioned reduced downpayment requirements and reduced sales prices for a 90-day period beginning June 1, 1986 and terminating August 29, 1986.

In addition, FmHA published an Interim Rule on April 21, 1986 [51 FR 13437], with request for comments regarding the implementation of additional provisions of the Food Security Act of 1985. In this Interim Rule, FmHA amended the definition of the term, "Regular FmHA Sale" [§ 1955.103(n)], by adding language on the pricing of farm property. Identical language on the pricing of farm property can be found in § 1955.106(c) of the same Interim Rule. Defining how FmHA determines the price of property is not appropriate to the definition of the term, "Regular FmHA Sale," and as previously mentioned is appropriately located in other paragraphs of this subpart. Therefore, as part of this Interim Rule, FmHA is removing the unrelated language from this definition.

However, any comments regarding the pricing of farm property are still invited and requested pursuant to our April 21, 1986, Interim Rule.

List of Subjects in 7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 41 U.S.C. 1469, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Disposal of Inventory Property

2. Section 1955.103(n) is revised to read as follows:

§ 1955.103 Definitions.

* * * * *

(n) *Regular FmHA sale.* Sale made by other than sealed bid, auction, or negotiation by FmHA employees or real estate brokers.

* * * * *

3. In § 1955.113, the introductory text is revised to read as follows:

§ 1955.113 Price (housing).

Real property will be offered or listed for its market value, as adjusted by any administrative price reductions provided in this section, except during the period of June 1, 1986, through August 20, 1986, unsuitable SFH inventory property will be offered or listed for 70 percent of market value with the State Director having the authority to deviate from the percentage based upon documentable conditions within the State. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a section 515 RRH credit sale is being made to a nonprofit organization or public body for very-low income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any.

* * * * *

§ 1955.118 [Amended]

4. § 1955.118(b) is amended by changing the period at the end of the paragraph to a comma and adding the following to the end of the sentence: "except during the period of June 1, 1986, through August 20, 1986, the downpayment requirement for unsuitable SFH property is waived for purchasers who fall into the category specified in § 1955.118(d)(i)(A) of this subpart and is reduced to 5 percent for purchasers who fall into the category specified in § 1955.118(d)(i)(B) of this subpart. This exception applies to all acceptable sales contracts received from June 1, 1986, through close of business August 20, 1986."

Dated: May 9, 1986.

Vance L. Clark,

Administrator.

[FR Doc. 86-11331 Filed 5-19-86; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 122

[Rev. 7, Amdt. 1 for Part 120; Rev. 4, Amdt. 3 for Part 122]

Business Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) was enacted (100 Stat. 82) which amended the Small Business Act (15 U.S.C. 631 *et seq.*) (Act) to increase the percentage amount of the guaranty fee and to adjust the percentage of a loan which the Small Business Administration (SBA) may guarantee. This final rule implements these technical changes.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Harry D. Kempler, Office of General Counsel, 202-653-6757.

SUPPLEMENTARY INFORMATION: On April 7, 1986, Pub. L. 99-272 was enacted. Title XVIII thereof amended section 7(a) of the Act (15 U.S.C. 636(a)) with respect to guaranty fees and the percentage amount of a loan which SBA is authorized to guarantee. Thus, the guaranty fee is increased from one percent to two percent of the guaranteed portion of any loan other than one repayable in one year or less or a development company loan under section 7(a)(13) of the Act (15 U.S.C. 636(a)(13)). Section 120.104-1 of SBA regulations (13 CFR 120.104-1) is amended herein to reflect this statutory change.

Section 120.403-1 of SBA regulations (13 CFR 120.403-1) is amended herein to reflect the amendment in Pub. L. 99-272 which effectively allows SBA under its preferred lenders program to guarantee a loan of any amount, so long as the guaranteed portion does not exceed the statutory ceiling of $500,000. Prior to this statutory change, a preferred lender could only make a guaranteed loan over $155,000. Section 122.5-3 (13 CFR 122.5-3) is amended herein to reflect the statutory changes which (1) increased from $100,000 to $155,000 the amount of a loan entitled to receive a 90 percent guarantee and (2) reduced from 90 percent to 85 percent the maximum guaranty for loans over $155,000.

These regulatory changes will have a significant economic impact on a substantial number of small entities, as they will affect every guaranteed loan made by SBA after April 7, 1986. However, they are mandated by Pub. L. 99-272. As such there are no alternatives. There are no reporting, recordkeeping or compliance burdens inherent in these regulations and they do not duplicate or overlap other regulations.

These changes are being promulgated in final form pursuant to 5 U.S.C. 553(b)(B) in order to implement as soon as possible the nondiscretionary aspects of the statutory changes affecting the guaranteed loan program of SBA. Because immediate implementation of these rules is mandated by a law which became effective on April 7, 1986, notice and public comment on them is impractical and unnecessary.

These final rules, taken as a whole, are not a major rule for purposes of E.O. 12291. Their combined annual economic effect will be less than $100 million. The amendments are mandated by law which leaves SBA with no discretion as to the percentage of a given loan which is guaranteed and they will have no impact on the overall amount of budget authority which the Agency is authorized to utilize.

List of Subjects in 13 CFR Parts 120 and 122

Loan programs, Business.

Pursuant to the authority contained in sections 5(b)(6), 7(a) and 7(h) of the Small Business Act (15 U.S.C. 634(b)(6) and 636(a) and (h)), SBA hereby amends Parts 120 and 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.104-1 is amended by revising paragraph (a) to read as follows:

§ 120.104-1 Guaranty fees.

* * * * *

(a) *Amount.* SBA shall charge a guaranty fee on loans with maturities in excess of twelve months, equal to two

percent (2%) of the guaranteed portion of the loan. For loans with a maturity of twelve (12) months or less, the guaranty fee shall be one-quarter (¼) of one percent of the guaranteed portion of the loan. (See § 122.8-1 of this Chapter with respect to loan maturities.)

* * * * *

3. Section 120.403-1 is revised to read as follows:

§ 120.403-1 Amount of PLP loan and of maximum guaranteed portion.

The amount of a loan under this program may be any amount so long as the amount of the guaranteed portion shall not exceed the statutory ceiling of $500,000.

PART 122—BUSINESS LOANS

1. The authority citation for Part 122 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.7-3 is amended by revising paragraph (a) and (b) to read as follows:

§ 122.7-3 Guaranty loans.

* * * * *

(a) *Guaranty of loans not to exceed $155,000.* SBA shall guarantee at least 90 percent of a loan so long as the total amount outstanding (including the loan under consideration) does not exceed $155,000, except as permitted under paragraph (c) below.

(b) *Guaranty of loans in excess of $155,000.* SBA shall guarantee no more than 85 percent and not less than 70 percent of loans in excess of $155,000 so long as the total amount approved and outstanding does not increase SBA's exposure beyond $500,000, subject to paragraph (c) below. Decisions to guarantee such loans in amounts between 70 percent and 85 percent shall be made on a case-by-case basis. The percentage guaranteed shall not influence loan approvals. A Lender's request for less than a 70 percent participation by SBA shall not be approved unless a lesser percentage is necessary due to the statutory $500,000 ceiling on SBA exposure.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 25, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-11272 Filed 5-19-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ASW-3]

Designation of Transition Area; Carnegie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a 700-foot transition area at Carnegie, OK. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing new standard instrument approach procedure (SIAP) to the Carnegie Municipal Airport utilizing the Carnegie NDB (RCG) as a navigational aid. This amendment is necessary since there is a new NDB Rwy 17 SIAP to the Carnegie Municipal Airport using the Carnegie NDB. Coincident with this action, the airport status will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2922.

SUPPLEMENTARY INFORMATION:

History

On January 23, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Carnegie, OK, transition area (51 FR 4011).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a 700-foot transition area to ensure segregation of aircraft using the new SIAP under IFR and other aircraft operating under VFR while arriving to or departing from the Carnegie Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas, etc.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

Carnegie, OK [New]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Carnegie Municipal Airport (latitude 35°07'14" N., longitude 98°34'49" W.) and within 3 miles each side of the 005-degree bearing from the airport extending from the 5-mile radius area to 8.5 miles north of the airport.

Issued in Fort Worth, TX, on May 2, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-11248 Filed 5-19-86; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-3019-2; EPA Docket No: AM046PA]

Commonwealth of Pennsylvania; Approval of Revision to the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today withdrawing its former approval of State and local odor emission control regulations as part of the Pennsylvania State Implementation Plan (SIP). EPA believes that these regulations should not be included in the Pennsylvania SIP because they bear no significant relation to attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

EFFECTIVE DATE: June 19, 1986.

ADDRESSES: Copies of the revision and accompanying documents are available during normal business hours at the following office: U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, 8th Floor, Philadelphia, PA 19107, Attn: Donna Abrams.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597-9134.

SUPPLEMENTARY INFORMATION: Under section 110(a)(1) of the Clean Air Act, each State must submit to EPA a SIP that provides for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). On January 27, 1972, the Pennsylvania Department of Environmental Resources (DER), on behalf of the Commonwealth of Pennsylvania, submitted its SIP to EPA for review and approval. DER's SIP submittal included the Commonwealth's odor emission regulation and the City of Philadelphia's odor emission regulation (hereinafter collectively referred to as the "State odor emission regulations.")

EPA initially approved portions of the Pennsylvania SIP, via a national notice, on May 31, 1972 (*See* 37 FR 10889.) In this notice, EPA approved all portions of the State plans unless they were specifically disapproved. These exceptions did not include the State odor emission regulations. Therefore, they were approved by EPA as part of the Pennsylvania SIP.

EPA reaffirmed its approval of the Pennsylvania SIP, including the State odor emission regulations, on November 23, 1983. (*See* 36 FR 22398). In this notice, EPA approved Pennsylvania's plan for attainment and maintenance of the national standards except for specific portions which were listed in the notice. These specific exceptions did not include the State odor emission regulations.

On September 20, 1978, DER submitted to EPA a revision to the Pennsylvania SIP that, among other things, modified the State odor emission regulations by exempting agricultural sources from the control requirements. *See* 40 CFR 52.2020(c)(21)(1984). EPA later approved this SIP revision. *See* 45 FR 58080 (August 22, 1980).

EPA recognizes the problem raised by its approval of the State odor emission regulations. In reviewing SIPs, EPA is governed by the criteria in section 110(a)(2) of the Clean Air Act, which require measures for the attainment and maintenance of the primary and secondary NAAQS. In order for EPA to properly approve a State rule as part of the SIP, the rule must have a significant relationship to attainment and maintenance of a NAAQS.

EPA believes that the State odor emission regulations bear no significant relationship to the attainment and maintenance of any NAAQS. In general, EPA believes that there is no direct or indirect relationship between the State odor emission regulations cited below and any criteria pollutant.

EPA is listing in this final action additional state and city statutory and regulatory citations which were not included in EPA's proposed deletions, published on August 12, 1985 (50 FR 32451). These additional citations regulate or control odor emissions. EPA does not believe that the statutory citations were approved as part of the Pennsylvania SIP. However, to eliminate any doubt in the matter, and to the extent that they relate to the control of odors, EPA is listing these statutory provisions in its withdrawal of approval.

The additional regulations added in this final action were inadvertently omitted from EPA's proposed action. EPA believes that its proposed action provided sufficient notice that all state and local regulations relating to the control of odors were being proposed to be deleted from the Pennsylvania SIP. In addition, section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that notice of rulemaking is not required when an agency for good cause finds that notice thereon is impracticable or unnecessary. EPA finds that additional notice is unnecessary here because the Agency's notice (50 FR 32451) generally proposed deletion of all regulations which are related to the control of odors, even though the actual list of regulations had inadvertent omissions. EPA provided an extended comment period on the issue of whether any significant relationship could be established between the State odor emission regulations and the attainment or maintenance of any NAAQS. The public had the opportunity to comment on this general issue, with the obvious understanding that all odor emission controls would be deleted if such a relationship was not established. As discussed below, no relationship was established. Therefore, EPA is withdrawing its approval of all State odor emission regulations which relate to the control of odors. In light of the above, a new comment period concerning the additional statutory and regulatory citations contained in this final action would be wholly superfluous.

The statutes and regulations, pertaining to odor emission control, which will be affected are:

(1) 35 P.S. § 4003(4) (deletion of "odor" from definition);

(2) 35 P.S. § 4003(5) (deletion of reference to odors from definition);

(3) Philadelphia Air Management Code § 3-102(3) (deletion of "odors" from definition);

(4) Philadelphia Air Management Code § 3-102(25) (deletion of definition);

(5) 25 Pa. Code § 121.1 (deletion of reference to odors from definitions);

(6) 25 Pa. Code § 129.14(b)(2) (open burning operations);

(7) Regulation V (Phil. AMC) Section X—Odors.

(8) 25 PA Code § 123.31—Odor Emissions;

(9) Regulation I (Phila. AMC), Section I (A)(3)—Air Contaminant (deletion of reference to odors in definition);

(10) Regulation I (Phila. AMC), Section I (A)(4)—Air Pollution (deletion of reference to odors in definition);

(11) Regulation I (Phila. AMC), Section I (A)(5)—Air Pollution Nuisance (deletion of reference to odors in definition);

(12) Regulation I (Phila. AMC), section I(A)(25)—Odor (deletion of definition);

(13) Regulation I (Phila. AMC), section X—Compliance with regulations of Pennsylvania Air Quality Board (deletion of references to odors);

(14) Regulation XI (Phila. AMC), section III(C)—Odor Emissions.

Because the State odor emission regulations are presently part of the federally approved Pennsylvania SIP, EPA proposed deletion of these regulations on August 12, 1985 (50 FR 32451). EPA provided an extended sixty-day comment period to solicit public

comments as to whether any significant relationship could be established between the State odor emission regulations and attainment or maintenance of any NAAQS. Absent this showing, EPA proposed to delete these regulations from the Pennsylvania SIP. As a result of the Notice of Proposed Rulemaking, EPA received approximately forty-five (45) responses with comments. Six (6) of these responses with comments were in support of EPA's proposed action and are detailed in the Technical Support Document for this Rulemaking action. The remainder of the responses with comments were in opposition to EPA's proposed action. These comments are discussed below.

Public Comments

1. Comment

The federal odor regulations are the only means that we have for controlling polluting emissions such as sulfur dioxide, nitrogen oxides, volatile organic compounds (VOC's) which are precursors to ozone formation, and other hazardous air pollutants such as benzene and hydrogen sulfide.

Response: The federal odor regulations are not the only means for controlling polluting emissions such as those mentioned above. There are various regulations which are used to control polluting emissions, such as those mentioned above, other than odor regulations. With regard to Pennsylvania's regulations which are part of the SIP, sulfur compound emissions are regulated under section 129 of the Pennsylvania Air Resource Regulations. Where odor-producing hazardous air pollutants are identified, they have been and may be regulated through specific numerical standards issued under section 111 (New Source Performance Standards) or 112 (National Emission Standards for Hazardous Air Pollutants) of the Clean Air Act or through State and local laws and ordinances.

The City's Air Management Regulation VI is the foremost example in this region of exactly this type of local regulation of toxic air contaminants. Ninety-nine (99) substances have been individually listed, and the City's Department of Health has adopted numerical, health-based guidelines for these substances in the ambient air. Regulation VI authorizes the City to withhold permits from facilities emitting toxic contaminants at levels that pose a health hazard based on these guidelines.

Additionally, the City's Air Management Regulation III covers the control of emissions of oxides of sulfur compounds. Regulation VII controls the emission of nitrogen oxides from stationary sources, and Regulation V regulates the emissions of VOC's. These hydrocarbon regulations together with the DER regulations do provide an enforceable remedy to protect the public health.

2. Comment

Odor is an indication of human carcinogens.

Response: Odor is not necessarily an indication of human carcinogens. Many harmless substances cause odors. Additionally, a substance may be carcinogenic but odorless.

3. Comment

If the EPA deletes the odor regulations, there will be no meaningful right of citizens to enforce the odor regulations because the Pennsylvania Air Pollution Control Act does not provide for attorney fees in citizen lawsuit cases.

Response: While EPA is sensitive to this issue, we cannot use this as a basis for retaining the odor regulations in the Pennsylvania SIP.

4. Comment

EPA's proposed action is arbitrary and capricious. EPA has the burden of justifying its intent to withdraw.

Response: EPA is merely taking corrective action here to remedy an oversight in inadvertently approving the odor regulations. The Agency has never found any significant relationship between the control of odors and any NAAQS, but it has permitted the public the right to provide comments on this issue during an extended comment period.

5. Comment

EPA's proposed action is an abuse of discretion. Pennsylvania may include control measures in its SIP that are stricter than those required by EPA.

Response: EPA's proposed action is not an abuse of discretion. Although Pennsylvania may include control measures in its SIP that are stricter than those required by EPA, it has not been demonstrated that odor control constitutes a stricter control measure or that the control of odor relates to the attainment of an NAAQS.

6. Comment

The connection between odors and the criteria pollutants is easily made. There are odors directly associated with sulfur dioxide, nitrogen dioxide, and with hydrocarbons which are an ozone precursor.

Response: There are odors associated with sulfur dioxide and nitrogen dioxide. The odor threshold for sulfur dioxide is approximately 1 ppm. This threshold value is over seven times greater than the 24-hour standard for SO_2 (0.14 ppm) and, thirty-three times greater than the annual standard (0.03 ppm). The odor threshold for nitrogen dioxide is approximately 5 ppm. This level is one hundred times greater than the national standard for NO_2 (0.05 ppm). Therefore, if EPA were to allow levels of SO_2 and NO_2 necessary to reach the threshold at which an odor could be detected for each of these pollutants, the levels would be well in excess of the national standards. If odor regulations were used as a backup to determined excessive concentrations of these two pollutants, it would be a much less stringent standard than those already in place. Additionally, these regulations would have to be less general, and more specific to levels of SO_2 and NO_2 and quantifiable reductions in the levels of these pollutants.

With regard to odors as they pertain to hydrocarbons which are ozone precursors, EPA has not been able to establish any relationship, nor have any of the commentors provided any information which shows any technical correlation between controlling odor levels of hydrocarbons and reduction in ozone levels.

7. Comment

The odor regulations assist Philadelphia and Pennsylvania in monitoring VOC emissions from major sources and in controlling VOC emissions from minor sources.

Response: Odor regulations may be used to trace a source of an odor complaint. But, once the source of the odor has been established, the odor regulation itself would not be used to reduce levels of VOCs. The Pennsylvania VOC regulations, which are based on health and welfare effects levels of the compounds in question, would be applied.

The deletion of the odor regulations from the Pennsylvania SIP would not preclude Philadelphia and Pennsylvania from continuing to utilize these regulations as a tool to monitor and control VOC levels.

8. Comment

If EPA deletes 25 Pa. Code 123.31(a), and the Philadelphia Air Management Regulation XI, section 111(c), which are aimed at preventing odor emissions from incinerators, citizens will have no meaningful means for preventing malodorous, unhealthful incinerator

operations. These regulations require incinerator operators to operate their facilities at a minimum of 1200 °F. It is now known that temperatures above 1700 °F are desirable in preventing the formation of dioxins and furans.

Response: The deletion from the SIP of the odor emission control regulations would not preclude the City and DER from enforcing their regulations. However, with specific respect to dioxins and furans, these compounds are being considered to be listed as hazardous air pollutants. If and when these contaminants are listed, regulations would be developed in order to control the formation of these pollutants. The formation of dioxins and furans is a very complex mechanism with many variables other than temperature involved in their formation. The odor regulations should not be perceived as a means for controlling dioxin and furan formation.

2. *Comment*

The control of Total Reduced Sulfur (TRS) emissions is related solely to reduction of odors.

Response: The regulations governing TRS emissions are based on the health and welfare effects of certain levels of hydrogen sulfide, not on the odor threshold level (which is much lower) for hydrogen sulfide.

Conclusion

EPA's decision to adopt this revision is based on a determination, after a thorough review of the public comments, that there is no significant relationship between odor emission control regulations and attainment or maintenance of any NAAQS. These regulations were inadvertently approved as part of Pennsylvania's SIP and, therefore, EPA is today deleting these regulations from the Pennsylvania SIP. Additionally, EPA's withdrawl is consistent with prior administrative rulemaking. EPA declined to approve a SIP provision governing odor on May 12, 1981, that had been submitted by Guam (46 FR 26303). In another instance, EPA took similar action with respect to the Nevada SIP on August 27, 1981 (46 FR 43141). In a third instance, EPA refused to approve odor provisions in the Iowa SIP (47 FR 22532, 22532, May 25, 1982).

EPA's decision to delete the State Odor Regulations from the Pennsylvania SIP does not preclude the State from submitting to EPA quantifiable, specific, odor regulations which, when implemented, demonstrate reductions in emissions which would significantly contribute to attainment or maintenance of a NAAQS.

Furthermore, EPA's deletion of the State Odor Regulations, as stated previously, does not preclude the State and local agencies from enforcing their odor regulations.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 1986. This action may not be challenged later in proceedings to enforce its requirements (*See* 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2023 is amended by adding paragraph (h) as follows:

§52.2023 Approval status.

* * * * *

(h) The Administrator withdraws its prior approval (see Subpart NN 52.2020 (b)) of the following odor emission control regulations:

(1) 35 P.S. § 4003(4) (deletion of "odor" from definition);

(2) 35 P.S. § 4003(5) (deletion of reference to odors from definition);

(3) Philadelphia Air Management Code § 3–102(3) (deletion of "odors" from definition);

(4) Philadelphia Air Management Code § 3–102(25) (deletion of definition);

(5) 25 Pa. Code § 121.1 (deletion of reference to odors from definitions);

(6) 25 Pa. Code § 129.14(b)(2) (open burning operations);

(7) Regulation V (Phil. AMC) Section X—Odors.

(8) 25 PA Code § 123.31—Odor Emissions;

(9) Regulation I (Phila. Air Management Code), Section I (A)(3)—Air Contaminant (deletion of reference to odors in definition);

(10) Regulation I (Phila. AMC), Section I (A)(4)—Air Pollution (deletion of reference to odors in definition);

(11) Regulation I (Phila. AMC), Section I (A)(5)—Air Pollution Nuisance (deletion of reference to odors in definition);

(12) Regulation I (Phila. AMC), Section I (A)(28)—Oder (deletion of definition);

(13) Regulation I (Phila. AMC), Section X—Compliance with regulations of Pennsylvania Air Quality Board (deletion of references to odors);

(14) Regulation XI (Phila. AMC), Section III (C)—Odor Emissions.

[FR Doc. 86–11174 Filed 5–19–86; 8:45 am]

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40 CFR Part 52

[A–6–FRL–3018–4]

Approval and Promulgation of State Implementation Plans; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and response to petition for reconsideration.

SUMMARY: By this Notice EPA is promulgating a federal compliance date for the Texas lead State Implementation Plan (SIP) for El Paso County for compliance with certain lead pollution control measures at the ASARCO Incorporated (ASARCO) smelter in El Paso, Texas. This action is pursuant to the requirements of section 110(c) of the Clean Air Act (hereinafter referred to as the Act. EPA previously approved most of the Texas lead SIP for El Paso, but disapproved the compliance date for installation of secondary hoods on copper converters on August 13, 1984 (49 FR 32184). On January 4, 1985 (50 FR 493) EPA proposed a new compliance date for the Texas Lead SIP for El Paso. This notice completes the federal promulgation of a replacement date for the disapproved compliance date. In addition, this notice announces EPA's decision to deny ASARCO's petition to reconsider the disapproval of Texas' compliance date for installation of secondary hoods on ASARCO's copper converters announced on August 13, 1984 (49 FR 32184).

EFFECTIVE DATE: June 19, 1986.

ADDRESSES: The rulemaking file, including the Technical Support Document and public comments submitted in response to EPA's proposed action, may be inspected at the following locations between 8:00 am and 4:30 pm on weekdays, and a reasonable fee may be charged for copying: Docket No. 6A–84–01.

U.S. Environmental Protection Agency, Central Docket Section, West Tower, Lobby, Gallery No. 1, 401 M Street SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region 6, Library, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Ross Fanning, SIP/NSR Section, Air Programs Branch, EPA Region 6, Dallas, Texas 75270. Telephone (214) 767–1518, (FTS) 729–1518.

SUPPLEMENTARY INFORMATION:

I. Introduction

Today's action is in response to a court ordered schedule resulting from a Settlement Agreement reached on July 20, 1983, between EPA and the Natural Resources Defense Council, Inc. (NRDC v. Ruckelshaus, Civil Action No. 82–2137F) in the U.S. District Court for the District of Columbia. The State of Texas submitted a final lead SIP for El Paso on June 29, 1984, which EPA approved on August 13, 1984 (49 FR 32184), except for a disapproval of one compliance date which the State had included in the SIP. For SIPs or portions of SIPs which EPA has disapproved, EPA is required by the Settlement Agreement to promulgate a federal SIP. This notice promulgates a federal compliance date for the installation of certain control measures required by the Texas lead SIP for El Paso and for which the state compliance date was disapproved by EPA on August 13, 1984. In addition, this notice denies ASARCO's petition to reconsider the disapproval of Texas' compliance date for installation of secondary hoods on ASARCO's copper converters.

II. Background

On October 5, 1978, EPA promulgated a National Ambient Air Quality Standard (NAAQS) for lead of 1.5 $\mu g/m^3$, averaged over a calendar quarter. Pursuant to the requirements of section 110(a) of the Act, states were then to submit a SIP to implement the standard. If a State's SIP does not conform to the requirements of section 110(a), EPA is required to prepare and publish a SIP which does meet those requirements. When the states and EPA did not complete these actions, the Natural Resources Defense Council (NRDC) and others sued EPA in July, 1982. In settling the suit, EPA and the other parties negotiated schedules for prompt completion of action on the SIPs.

In July 1983, the EPA signed an agreement with NRDC and other plantiffs which called for certain lead SIPs (including the Texas SIP for El Paso) to be submitted to EPA in time to allow EPA to propose approval of the SIP by January 3, 1984. The Texas Air Control Board (TACB) developed a draft lead SIP for El Paso which required the implementation of reasonably available control technology (RACT) measures at the ASARCO-El Paso smelter. After review of the draft lead control plan and regulations for El Paso which TACB submitted to EPA on September 8, 1983, EPA proposed approval of the draft SIP and regulations on December 29, 1983, (48 FR 57336). The State submitted a final lead control plan for the El Paso area in a letter dated June 20, 1984, which differed in some respects from the draft. The final lead control plan is described below, along with EPA's action. The plan also included TACB regulations for El Paso County applicable to smelters, including the ASARCO facility. The ASARCO lead control plan, the El Paso County smelter regulations, and the public comments concerning EPA's December 1983 Federal Register proposal, are discussed in EPA's "Evaluation Report for the Texas Lead SIP for the El Paso Area," dated June 1984, which is available for review at the addresses listed in the ADDRESSES section of this notice. EPA's final approval/disapproval of the El Paso lead SIP was published in the Federal Register on August 13, 1984 (49 FR 32184). The final rulemaking on the El Paso lead SIP approved most of the SIP, including the State's commitments to do further studies to determine what additional control measures (beyond RACT) the State will adopt and implement to fully demonstrate attainment in all areas in El Paso. The currently approved Texas lead SIP provides for attainment of the lead NAAQS in all areas of El Paso by August 13, 1987, except for a limited area directly around the ASARCO-El Paso smelter (please see the August 13, 1984, FR notice). On August 16, 1985, (50 FR 33069) EPA proposed to approve a request by Texas to extend the attainment date for two years for the limited area around the ASARCO smelter. The only part of the El Paso lead SIP which was disapproved was the final compliance date for the requirements of TACB Rule 113.53, dealing with the installation of secondary hoods on the copper converters, ducting, a particulate matter control device and emission limitations at the ASARCO-El Paso smelter. On October 11, 1984, ASARCO filed a petition for reconsideration with the Administrator requesting that EPA reconsider its determination that secondary hoods represent RACT for control of lead emissions from copper converters. ASARCO also requested that EPA reopen the lead SIP rulemaking and suspend the effect of all lead SIP rule requirements affected by the August 13, 1984 rulemaking as it affected copper converters. Finally, ASARCO requested that EPA stay the effectiveness of its August 13, 1984, rulemaking pending judicial review of such rulemaking. On January 4, 1985 (50 FR 493) EPA proposed to promulgate a federal compliance date for the requirements of Rule 113.53 at the ASARCO El Paso smelter.

III. Disapproval of Compliance Date

On August 13, 1984, EPA disapproved a final compliance date listed in the TACB approved regulations for El Paso County for the requirements of Texas Rule 113.53, contained in Rule 113.122. In the September 1983 draft Texas regulations which EPA proposed to approve in December 1983, the final compliance date was December 31, 1984, which EPA considered to be expeditious. At that time, EPA explained that both the State and EPA believed that secondary hoods were necessary for the control of lead emissions at the smelter, were considered necessary for the attainment of the lead standard in El Paso and were currently available for installation.

EPA had previously proposed, on July 20, 1983, (48 FR 33112) to require secondary hoods to be installed at certain smelters with arsenic emissions, which included the ASARCO-El Paso smelter. The deadline for installation of the hooding to meet the arsenic regulations is 2 years after promulgation or sooner if feasible, as requried by section 112 of the Act. EPA has not yet taken final action on its July 30, 1983, proposal.

On February 17, 1984, the Texas Air Control Board approved revised regulations which required the installation of secondary hoods on the copper converters, ducting, a particulate matter control device and emission limitations by February 28, 1989 *or* by two years from EPA promulgation of the arsenic National Emission Standards for Hazardous Air Pollutants (NESHAP) for low-arsenic throughout copper smelters, whichever date is sooner. Section 110 of the Act requires attainment of the NAAQS by three years from EPA's final approval of the lead SIP which will be August 13, 1987 for the Texas-El Paso lead SIP. Thus, the compliance date in the Texas plan was disapproved in EPA's final action on August 13, 1984, since it potentially allowed for a compliance date beyond August 13, 1987.

On October 11, 1984, ASARCO petitioned the Administrator of EPA to reconsider his August 13, 1984, final action disapproving Texas' compliance date for the installation of secondary hoods on copper converters at

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ASARCO's El Paso smelter. In addition, ASARCO asked the Administrator to stay the effective date of his August 12, 1985 final action. Since the Clean Air Act does not include provisions for a petition for reconsideration of an approval or disapproval of a SIP submitted under Section 110(a)(1) of the Act, EPA is treating ASARCO's petition for revision of an existing rule under Section 4(e) of the Administrative Procedure Act, 5 U.S.C. 553(e). Section 4(e) establishes a general right to petition for "issuance, amendment or repeal" of an agency rule. See also, *Olijato Chapter of the Navajo Tribe* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975).

On January 4, 1985, EPA proposed a new date for compliance with the requirements of Rule 113.53 of August 13, 1987, or two years after EPA promulgation of the arsenic NESHAP for low-arsenic-throughput smelters, whichever date is sooner. The deadline dates for installation of all other RACT lead control measures at the ASARCO-El Paso lead smelter, as specified in the approved Texas lead SIP was approved by EPA. The Technical Support Document concerning this matter, plus previous Evaluation Reports developed by Region 6 concerning the past EPA actions on the Texas-El Paso lead SIP, can be reviewed at the addresses listed in the ADDRESSES section of this notice.

IV. Comments on EPA's Proposal

EPA solicited comments on the proposed federal compliance date through its January 4, 1985, Federal Register notice. In addition, the comment period was reopened for thirty days on April 17, 1985, (50 FR 15190) at the request of ASARCO, Incorporated.

In response to the January 4, 1985, notice ASARCO requested a public hearing be held on EPA's proposed action. However, ASARCO, in a letter dated March 7, 1985, withdrew its request for a public hearing conditioned on EPA reopening the comment period. EPA agreed to reopen the comment period with its April 17, 1985, notice and thus, the request of ASARCO for a public hearing was considered withdrawn.

Comments on EPA's proposed action were received from two parties, ASARCO, Inc. and the New Mexico Environmental Improvement Division (NMEID). In general, ASARCO was opposed to EPA's proposed action, while NMEID was in favor of it. Public comments received by EPA are available for review in the rulemaking file available at the addresses in the ADDRESSES section of this notice. Specific comments and EPA's response are as follows.

(1) ASARCO, Inc. comments on EPA's proposed action: ASARCO comments that the proposed EPA federal compliance date for secondary hoods should be rejected and the TACB adopted SIP deadline should be approved because:

(A) The secondary hoods expected to be installed at the El Paso smelter exceed reasonably available control technology (RACT) for the control of secondary lead emissions from copper converters;

(B) The lack of a final NESHAP for inorganic arsenic imposes a hardship on the company since the installation of hoods before the publication of a final NESHAP, which may also require such hoods, could necessitate extensive re-engineering, construction, and expenditures by the company in order to meet the NESHAP;

(C) Secondary hoods are unnecessary and overstated in value in the Texas lead attainment plan;

(D) Installation of secondary hoods on the copper converters could result in ASARCO being unable to comply with existing opacity and sulfur dioxide limitations because of increased collection efficiency in capturing fugitive SO_2 from the copper converters; and

(E) There is ample legal precedent for granting a compliance date extension under the circumstances regarding the El Paso smelter.

(2) EPA response to ASARCO's comments are as follows:

(A) *RACT Issue.* ASARCO's belief that the hooding requirement in the Texas lead SIP exceeds RACT is associated with their direct link of this requirement with the proposed hooding requirement in the NESHAP for inorganic arsenic. Arguing that the proposed NESHAP hooding requirement has been identified by EPA as Best Available Control Technology (BACT) and the fact that final NESHAP design requirements have not been issued, the hooding requirements of the Texas SIP, which ASARCO equates as the same, must be assumed to be BACT, at least, and not RACT. EPA does not disagree with ASARCO that the proposed NESHAP standard represents BACT. However, EPA also believes that the hooding requirement in the Texas lead SIP represents RACT. This is not a contradiction. In many cases a particular technology may represent both BACT and RACT. BACT usually requires greater emission reduction than does RACT for a given pollutant. In many cases a particular technology may represent both BACT for one pollutant and RACT for another, different pollutant. While hooding may be BACT with regard to control of arsenic emissions, it may be RACT with regard to control of lead emissions from the same source. The fact that one source emits both types of pollutants simply results in the circumstance that RACT is being applied to control lead emissions while BACT is being applied to control arsenic emissions. Thus, it remains EPA's position that secondary hooding as required by the Texas lead SIP represents RACT.

(B) *Lack of a Final NESHAP for Arsenic.* The connection between the requirements of the Texas lead SIP and the requirements of the proposed inorganic arsenic standard is one made by ASARCO regarding the installation of hoods on the copper converters. Both the Texas lead SIP and any finally promulgated inorganic arsenic NESHAP are independent regulatory requirements that must be complied with regardless of any other regulation. Implementation of the lead SIP for El Paso is long overdue, as the NRDC suit clearly indicated, and further delay due to suspected or potential problems in complying with another regulation has no basis in law. ASARCO's stated fear that an incompatible arsenic NESHAP might be promulgated by EPA is not an adequate justification for delaying implementation of a standard for the control of lead emissions.

(C) *Benefits of Secondary Hoods.* The benefit of secondary hooding is not relevant to the final compliance date issue. The hooding requirement is a part of a group of controls, identified by the TACB as RACT, that will provide for a significant reduction in lead emissions at the ASARCO facility. This action does not address whether or not the hoods should be installed, only the final date for compliance.

(D) *Effect of secondary hoods on ASARCO's ability to meet other regulations.* This comment is not germane to the issue of the appropriate compliance date for installation of the secondary hoods on the copper converters. Even if the date suggested by ASARCO were accepted (i.e., Feb. 1988) the potential would exist for conflict with later promulgated requirements.

(E) *Legal precedent for granting a compliance date extension.* This position is ultimately based on ASARCO's belief that the secondary hoods are beyond RACT, and thus the conditions of Section 110(e) are met and an extension is allowable under the Clean Air Act. Since it continues to be EPA's position that the secondary hooding is RACT, ASARCO's position regarding the availability of a

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compliance date extension cannot be accepted.

(3) NMEID comments on EPA's proposed action:

The NMEID submitted comments in favor of EPA's proposed action. The NMEID concluded that EPA's proposal was consistent with section 110(a)(2)(A) and any extension of the compliance date for secondary hooding would violate the Act. In addition, NMEID points out that Texas Governor Mark White did not specifically request an extension for the secondary hooding, but rather the extension was for the attainment date of an area in Texas within a two mile radius from the smelter. The justification submitted with the extension request clearly indicates that Texas considers hooding to be "reasonably available." The extension was requested because that area of El Paso would not meet the primary standard even after the implementation of all reasonable and feasible controls, including secondary hoods on the cooper converters. EPA understands the comments submitted by NMEID to support this action.

V. Petition for Reconsideration

ASARCO's October 11, 1984 petition for reconsideration raised essentially the same substantive arguments as those made by ASARCO in its comments in response to EPA's January 4, 1985, proposal. EPA, therefore, is denying ASARCO's petition for the same reasons set forth in today's final action notice. ASARCO, however, also argued in its petition that it had not had an adequate opportunity to comment on EPA's position opposing a two year extension of time for implementation of the secondary hoods on its copper converters. EPA, while not agreeing with ASARCO's assertion as to the Agency's final rulemaking action on the El Paso lead SIP, believes that in light of its January 4, 1985 proposal and opportunity for comment ASARCO has had an adequate opportunity to comment on EPA's position and that this issue is moot as to the petition for reconsideration. At the time ASARCO submitted its petition to EPA the August 13, 1984, final action had already been effective for one month. (The actual effective date of EPA's action was September 13, 1984, see 49 FR 32184, col. 3.) At no time did EPA stay the effect of its final action, and, in EPA's view, all the SIP requirements have been in effect since September 13, 1984.

ASARCO requested that EPA re-evaluate its interpretation of Section 110(e) of the Clean Air Act with respect to the availability of a compliance date extension for installation of secondary hoods. EPA has reconsidered its interpretation of that section and continues to believe that the extension of the compliance date is not available in this instance.

ASARCO also requested that if EPA denied its petition for reconsideration that EPA suspend and stay the effectiveness of its final action pending appellate review of these issues. EPA hereby denies ASARCO's request for suspension and stay of its final action and notes that based on today's final action the secondary hoods over ASARCO's copper converters are to be implemented as part of the lead implementation plan by August 13, 1987. EPA's denial is based on the fact that the necessary technology for this control measure is well known and currently available, it will take some time for ASARCO to install the hooding, the lead implementation plans demonstrates that this measure is necessary to bring the smelter into compliance with the lead NAAQS, and because the necessary controls to reduce excessive emissions of lead from ASARCO's smelter are already long overdue. For these reasons EPA believes that further delay is both unwarranted and unwise.

VI. EPA Final Action

By this notice, EPA is promulgating a federal compliance date for the requirements of Texas Rule 113.53, as contained in Rule 113.122. The compliance date as proposed on January 4, 1985, was indicated as August 13, 1987, or by two years from EPA promulgation of the arsenic NESHAP for low-arsenic-throughput smelter, whichever is sooner. Since this final action will be published after August 13, 1985, there is no reason to continue to include the two years after NESHAP promulgation language, since August 13, 1987, is within two years of today. Therefore the final compliance date for the requirements of Texas Rule 113.53 is August 13, 1987. The deadline dates for installation of all RACT lead control measures at the ASARCO-El Paso smelter are as specified in the approved Texas lead SIP. EPA is also denying ASARCO's October 11, 1984, petition for reconsideration of its disapproval of the date in Texas' El Paso lead SIP.

Under 5 U.S.C. 605(b), I have reviewed this action and determined that it does not have a significant economic impact on a substantial number of small entities because it affects only one large source.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: May 8, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

SUBPART SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2305 is added as set forth below:

§ 52.2305 Lead Control Plan: Federal Compliance Date for Requirements of Texas Air Control Board (TACB) Rule 113.53

(a) The requirements of section 110 of the Clean Air Act are not met regarding the final compliance date, as found in TACB Rule 113.122, for the requirements of rule TACB 113.53.

(b) TACB Rule 113.53 was adopted by the Board on February 17, 1984, and approved by the Administrator as a requirement of the State Implementation Plan on August 13, 1984. The owner or operator of any copper or zinc smelter located in El Paso County, Texas, shall comply with the requirements of TACB Rule 113.53 no later than August 13, 1987.

[FR Doc. 86-11292 Filed 5-19-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42050C; FRL-3015-9]

Test Requirements for Certain Chlorinated Benzenes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule document on the Toxic Substances Control Act (TSCA) test requirements for certain chlorinated benzenes, published in the Federal Register of April 7, 1986. This action is necessary to correctly identify (1) "1,2,3-

trichlorobenzene" as the substance in which mysid shrimp (*Mysidopsis bahia*) is to be tested to develop data on chronic toxicity and (2) the reference to "Table 6".

FOR FURTHER INFORMATION CONTACT:

By mail: Joanne Kia, Existing Chemical Assessment Division (TS-778), Office of Toxic Substances, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 103, Northeast Mall, 401 M St., SW., (202-475-8129).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, FR Doc. 86-7475, published in the Federal Register of April 7, 1986 (51 FR 11728), to require manufacturers and processors of certain chlorinated benzenes to conduct environmental effects and chemical fate testing. The regulation was issued in 40 CFR Part 798.

The following errors inadvertently appeared in the final document and are hereby corrected:

1. In unit IV.B. of the preamble, the reference to "Table 9", third line, is corrected to read "Table 6".

2. In § 798.1053 *Trichlorbenzenes*, the reference in paragraph (d)(5)(i), second sentence, to the chemical substance in which mysid shrimp (*Mysidopsis bahia*) is to be tested to develop data on chronic toxicity as "1,2,4-trichlorobenzene" is corrected to read "1,2,3-trichlorobenzene".

List of Subjects in 40 CFR Part 798

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 14, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-11294 Filed 5-19-86; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Dockets 84-690; RM-4426 and 84-690; FCC 86-209]

Radiodetermination Satellite Service; Policies and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has established rules and policies to govern the radiodetermination satellite service. This action follows a Notice of Proposed Rulemaking, (49 FR 36512, September 18, 1984), proposing to allocate frequencies for this service and to establish associated licensing policies, and a Report and Order allocating these frequencies, (50 FR 39161 September 27, 1985). This action will permit the FCC to act on the pending applications for radiodetermination satellite systems and to process future applications.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau, (202) 634-1862.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, Gen. Dockets 84-690 and 84-690, adopted April 22, 1986 and released May 8, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Second Report and Order

In 1984, the Commission issued a *Notice of Proposed Rulemaking (Notice)*, 49 FR 36512 (September 18, 1984), proposing to allocate frequencies for a radiodetermination satellite service (RDSS) and to establish associated licensing policies and procedures. This *Notice* was adopted in response to a petition for rulemaking and an RDSS system application filed with the Commission by Geostar Corporation (Geostar). The *Notice* was released with an accompanying public notice accepting Geostar's application for filing and inviting other applications to be submitted for concurrent consideration. The Commission proposed multiple entry as a general licensing policy. In addition to the extensive comments filed, Omninet Corporation (Omninet), MCCA American Radiodetermination Corporation (MARC), and McCaw Space Technologies, Inc. (McCaw) filed system proposals, and Geostar submitted an updated proposal. On July 25, 1985, the Commission allocated frequencies for the provisions of RDSS.

By this *Second Report and Order*, the FCC adopted governing rules and policies for the radiodetermination satellite service. The FCC stated that the four applications filed involved two distinct and incompatible proposals. The Geostar, McCaw and MARC system proposals were compatible and provided RDSS and ancillary non-voice message service. Omninet's system was incompatible with the other three. It provided a wide range of two-way voice communications services, and provided RDSS by accessing the government's global positioning system (GPS). Omninet had filed virtually the same application in the mobile satellite service (MSS) proceeding.

The FCC concluded that it would not authorize Omninet's system to use the entire bandwidth allocated to RDSS, especially since similar system proposals were under consideration in the MSS proceeding and might be authorized there. Omninet did not convince the FCC that its essentially MSS system would best serve RDSS users. A wide range of potential RDSS customers had urged that Geostar's proposed system be approved, and several had questioned whether Omninet's system would meet their needs. Further, the FCC stated that Omninet's design would not permit multiple systems to share the same frequencies, nor did Omninet demonstrate that its system was in any way superior to the one proposed by the other applicants. The FCC concluded that the benefits of competition would be best provided by independently licensed spread spectrum RDSS systems. The FCC also rejected Omninet's "compromise" to divide the allocated bandwidth into two equal segments, with each segment assigned to a different technology. The FCC found that dividing the spectrum in half would reduce the capacity of spread spectrum systems by at least that much and would substantially affect their accuracy. The FCC therefore authorized a spread spectrum multiple access technique for RDSS systems, and provided all applicant proposing incompatible systems 60 days to amend their proposals to bring them into compliance with this standard.

In addition to adopting rules governing system design, the FCC required that RDSS systems provide radiodetermination services on a primary basis and any associated non-voice data services on an ancillary basis only to comport with the RDSS allocation and to allow a competitive RDSS industry to develop. The FCC also affirmed its tentative conclusion in the *Notice* that RDSS should not be regulated on a common carrier basis. Further, financial standards similar to those applied in the private international satellite industry were adopted. The FCC found that the private

international satellite service was analogous to RDSS because it was also a new, unproven service where all pending applicants could be accommodated. The FCC therefore required RDSS applicants to demonstrate their financial preparedness to assume the costs and liabilities of constructing and launching their systems and operating them for one year by submitting a balance sheet reflecting assets sufficient to meet these costs, or by submitting an exhibit indicating sufficient anticipated income or revenues from system operation. In addition, to ensure that RDSS systems are implemented in a timely manner, the FCC required licensees to proceed with construction and launch in compliance with specified milestones. The FCC also adopted a blanket licensing procedure for transceiver units. It found that licensing individual transceivers would be costly and burdensome, and would not provide any meaningful way for other primary users in the 2483–2500 MHz band to coordinate their transmissions. The FCC required the service vendor to apply for blanket licenses for a specified number of transceiver units and to maintain responsibility for their operation. Finally, the FCC rejected several objections that had been raised with respect to the rulemaking and application processing procedures, finding that it properly exercised its wide discretion to fashion procedures.

Ordering Clauses

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), it is certified that the final rules do not have a significant economic impact on a substantial number of small entities. The Commission has not received, nor does it anticipate receiving, a substantial number of RDSS system applications from small entities because of the large financial resources needed to construct, launch and operate these systems.

Accordingly, pursuant to sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r), it is ordered, that applications for radiodetermination satellite systems shall be submitted in accordance with the standards, restrictions and requirements specified in this decision.

It is further ordered that the policies and procedures set forth in this *Report and Order* are effective May 8, 1993, and that Part 25 of Chapter I of Title 47 of the Code of Federal Regulations is amended effective May 8, 1993, as shown at the end of this document. Pursuant to 5 U.S.C. 553(d), we find that good cause exists for implementing these rules immediately. The *Notice of Proposed Rulemaking* gave notice that we contemplated licensing systems concurrently with adopting governing rules and policies. Moreover, all applicants are granted 60 days in which to file amendments to bring their applications into conformance with new requirements.[1] Accordingly, the effective date of § 25.392 will be May 8, 1993.

It is further ordered, that the proceedings in Gen. Docket Nos. 84-689 and 84-690 are terminated.

List of Subjects in 47 CFR Part 25

Satellite Radio Communication, Satellites.

William F. Tricarico,
Secretary.

PART 25—SATELLITE COMMUNICATIONS

Part 25 of the Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 25 Subpart C continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. § 154.

2. The following definition is added to § 25.201 in the appropriate alphabetical position:

§ 25.201 Definitions.

Radiodetermination Satellite Service: A radiocommunication service for the purpose of radiodetermination involving the use of one or more space stations.

* * * * * * *

3. Section 25.202 is amended by redesignating paragraph (a) as (a)(1) and a new paragraph (a)(2) is added as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) *Frequency Bands.* * * * * *

(2) The following frequencies are available for use by the Radiodetermination Satellite Service:

1610–1626.5 MHz: User-to-Satellite Link
2483.5–2500 MHz: Satellite-to-User Link

Fixed-Satellite service frequencies may be used for links between radiodetermination satellites and control centers, including the following specially allocated bands, subject to the Rules in this subpart:

5117–5183.0 MHz: Satellite-to-Control Center Link
6523–6541.5 MHz: Control Center-to-Satellite Link

[1] *See* Citizens to Save Spencer County V. Epa, 600 F. 2d 844, 879–91 (D.C. Cir 1979); *see also* Kessler v. FCC, 326 F. 2d 673, 685 (D.C. Cir. 1963) (effectiveness prior to publication in the Federal Register.

4. The authority citation for Part 25 Subpart E continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154.

5. A new § 25.392 is added as follows:

§ 25.392 Licensing Provisions for the Radiodetermination Satellite Service

(a) *Space Station Application Requirements.* Each application for a space station license in the radiodetermination satellite service shall describe in detail the proposed radiodetermination satellite system, setting forth all pertinent technical and operational aspects of the system, including its capability for providing and controlling radiodetermination service on a geographic basis, and the technical, legal and financial qualifications of the applicant. In particular, each application shall include the information specified in Appendix B of *Space Station Application Filing Procedures*, 99 FCC 2d 1260, 1285 (1983), except that in lieu of demonstrating compliance with item II.F (two degree spacing), applicants are required to demonstrate compatibility with licensed radiodetermination satellite systems. Applicants must also file information demonstrating compliance with all requirements of this section, specifically including information demonstrating how the applicant has complied or plans to comply with the requirements of paragraph (f).

(b) *Space Station Application Procedures.* Each application for a space station in the radiodetermination satellite service shall be placed on public notice for 60 days, during which time interested parties may file comments and petitions related to the application. A 60 day cut-off period shall also be established for the filing of applications to be considered in conjunction with an original application.

(c) *User Transceivers.* Individual user transceivers will not be licensed. Service vendors may file blanket applications for transceiver units using FCC Form 493 and specifying the number of units to be covered by the blanket license. FCC Form 430 should be submitted if not already on file in conjunction with other facilities licensed under this subpart. Each application must demonstrate that transceiver operations will not cause interference to other users of the spectrum.

(d) *Permissible Communications.* Stations in this service are authorized to render radiodetermination service, and may not render other services except as ancillary to the radiodetermination service.

(e) *Frequency Allocation Policies.* Each radiodetermination satellite service licensee will be assigned the entire allocated frequency bands on a non-exclusive basis. Coding techniques and power limits as set forth in paragraph (f) below and orbital spacing shall be employed to avoid harmful interference with other radiodetermination satellite service systems.

(f) *Radiodetermination Satellite Service.* Licensee shall coordinate with other licensees to avoid harmful interference to other radiodetermination satellite systems through (1) power flux density limits; (2) use of pseudorandom-noise codes (for both the satellite-to-user link and for the user-to-satellite link); and (3) restricting user emissions to random access TDM mode.

(g) *License Conditions.* All authorizations in the radiodetermination satellite service shall be subject to the policies set forth in the *Report and Order*, including compliance with Appendix D, and the *Second Report and Order* in General Docket Nos. 84-689 and 84-690 and to any policies and rules the Commission may adopt at the later date.

[FR Doc. 86-10967 Filed 5-19-86; 8:45 am]
BILLING CODE 6712-01

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47 CFR Part 63

[CC Docket No. 83-1230; FCC 86-220]

Common Carrier Services; Policies Governing Designation of Recognized Private Operating Agencies, Grants of Indefeasible Rights of User in International Facilities and Assignment of Data Network Identification Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order adopts policies covering grants of recognized private operating agency (RPOA) status; transfers of indefeasible rights of user (IRUs) in submarine telephone cables to non-carrier users; and assignments of data network identification codes (DNIC)s.

RPOA Status. This Report and Order concludes that the United States should extend RPOA status to unlicensed, enhanced-service providers who offer public-correspondence enhanced services. The Report and Order also adopts a formal procedure for granting RPOA status. The purpose of extending RPOA status to enhanced-service providers is to give such providers governmental recognition and formally to impose upon them the obligation to obey the International Telecommunication Convention and the regulations promulgated thereunder.

Non-carrier IRUs. This Report and Order finds enhanced-service providers and other users eligible under the Communications Act to acquire IRUs (a form of ownership) in circuits in common-carrier submarine telephone cables but declines to require carriers to transfer IRUs.

DNIC Assignment. This Report and Order concludes that the number of U.S. public data networks with a need for access to a DNIC is likely to exceed the 200 the United States has available for assignment. The Report and Order also concludes that public data networks which do not have interexchange or overseas lines can share a DNIC. The Report and Order adopts a plan for DNIC sharing, but declines to adopt a final domestic-numbering plan for use with the shared DNICs. The Report and Order refers that question to the industry for study and adopts an interim numbering plan for networks that cannot wait until a final plan is adopted.

EFFECTIVE DATE: The amendments to Part 63 will become effective on June 19, 1986.

FOR FURTHER INFORMATION CONTACT: John F. Copes, Policy and Planning Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket No. 83-1230, adopted May 1, 1986, and released May 12, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractors, International Transcription Service, (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On August 18, 1985, the FCC released a notice of proposed rulemaking in CC Docket No. 83-1230 (50 FR 34867; August 28, 1985) proposing policies governing grants of recognized private operating agency (RPOA) status, transfers of indefeasible rights of user (IRUs) in circuits in submarine telephone cables and assignment of data network identification codes (DNICs).

2. *RPOA Status.* The Commission concludes that U.S. enhanced-service providers whose services constitute "public correspondence," as that term is used in the ITU Convention, are eligible for designation as RPOAs. The Commission also concludes that RPOA status should be voluntary and freely available to those who need it. The Commission observed that extending RPOA status to enhanced-service providers could reassure overseas communications administrations that such providers will obey international communications regulations and may thereby assist U.S. providers in obtaining operating agreements from the administrations. Finally, the Commission adopted a formal, but relatively simple, process for RPOA certification based upon the filing of an application with the Commission.

3. The Commission concludes that designation as an RPOA does not require the entity to be a licensed common carrier, but that ITU member nations are free to "recognize" any kind of private entity to provide their communications and information services. The Commission also concludes that the term "public correspondence," used in defining an RPOA should be read as synonymous with "telecommunications" and that it describes "third-party" traffic in which the essence of the service is transport, with no change in the content of the customer's information. The term thus distinguishes transport services from "data processing" which is defined under CCITT Recommendation D.1 as a permissible use of international leased-channel service. U.S. enhanced-service providers who offer solely data-processing service, thus, do not offer a "public correspondence," since they do not offer a transport service, and are not eligible to be RPOAs. Other U.S. enhanced-service providers, which combine a computer processing with transport service to act upon the form but not the content of the sender's information (*e.g.*, those who offer code and protocol conversion), do engage in public correspondence and are eligible for RPOA status.

4. The Commission adopts amendments to Part 63 of its rules and regulations specifying the content and form of an application for RPOA status. The application requires sufficient information clearly to identify the applicant and to indicate that its service is an international public correspondence. The applicant must also clearly state its intent to obey the ITU Convention and regulations. The Commission will give public notice of the filing of an application and will accept informal comments by letter. The Commission will review the application, prepare a recommendation and forward

the matter to the U.S. Department of State for final action. The Commission makes clear that it has authority to require enhanced-service providers to obey the convention and regulations and that it will enforce compliance through cease and desist orders. The Commission also notes that the Department of State may revoke a violator's RPOA status.

5. *Non-Carrier IRUs.* The Commission concludes that users are eligible under the Communications Act to hold IRUs in circuits in common-carrier cables and that the public interest would be served by allowing users and carriers to negotiate IRU transfers. The Commission, however, also concludes that it should not require involuntary IRU transfers from carriers to users.

6. The Commission concluded that allowing users to hold IRUs could benefit users by giving them additional choices in meeting their communications needs and by reducing their costs for such services. The Commission also concluded that allowing non-carriers IRUs could benefit users of carrier leased-channel service by exercising a downward pressure on the rates therefor.

7. The Commission, however, recognized that the transfer of an IRU involves a long-term (up to 25 years) relationship between the IRU holder and other cable owners, necessitating periodic payments of operating and maintenance expenses. The Commission concluded that forcing unwilling partners into such a relationship is not desirable, unless there is clear evidence that such a course is the only way to protect the public interest. The Commission recognized that in the next several years new, large, fiber-optic cables will be introduced into the Atlantic and Pacific Ocean basins and that the supply of common-carrier cable circuits will increase sharply. Further, the Commission observed that introduction of one or more of the recently authorized non-common-carrier cables, which is planned for roughly the same period, will give users additional facilities choices. As a result, the Commission decided that market forces might make IRUs available to users without the need for coercive Commission action.

8. *DNIC Assignment.* The Commission concluded that a wide variety of public and private data networks operated by common carriers, enhanced-service providers and local exchange telephone companies will need access to a DNIC. The Commission also noted that the routing functions performed by the DNIC will be needed whether the network provides domestic or international data services. The Commission then concluded that the number of U.S. applicants for DNICs is likely to exceed the 200 available to the United States. Consequently, the Commission concluded that it should now adopt a formal policy for DNIC assignment and require some data networks to share DNICs.

9. The Commission found that only networks with their own interexchange and overseas lines need their own DNICs. Other networks, principally those operated local exchange telephone companies (including the BOCs), can share one or more DNICs, relying for discrete identification upon the the six digits which follow the DNIC in a subscriber's network terminal number (NTN).

10. To conserve DNICs, the Commission reserved seven regional DNICs, one for each of the regional holding companies which operate the former Bell operating companies (RBOCs), and one DNIC for the United States Telephone Association (USTA) to be shared on a nationwide basis by networks which do not wish to share the RBOC DNIC. The Commission, however, declined to adopt a final domestic numbering system to be used in connection with the shared DNICs, responding to arguments of several parties that adoption of such a plan is premature. Rather, the Commission referred the question of a numbering plan to the T1–Telecommunications Committee of the Exchange Carriers Standards Association for further industry study and preparation of a recommendation for final action by the Commission. The Commission provided that entities wishing to implement the shared DNIC, and who cannot await a final numbering plan, can use an interim numbering plan derived from the North American Numbering Plan used in telephone service.

11. Under this interim plan, each RBOC would administer the regional shared DNIC assigned to it and USTA would administer the nationwide shared DNIC assigned to it. The administrator will assign to each sharing network six-digit PNICs consisting of a three-digit data numbering plan area (DNPA) code plus a three-digit data central office (DCO) code. The DNPA is identical to the numbering plan area (NPA), or area code used in telephony, both in terms of geographical area described by the code and the three-digit numbers used to identify the particular area. The DCO would be equivalent to the central office (CO) code in telephony, the three-digit number which identifies a particular local switch to which a subscriber is attached. Thus, a network sharing a DNIC would receive a DNPA for every area code in which that network has subscribers. The networks would also receive its own DCO in each DNPA.

Ordering Clauses

12. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201–25, 214 and 403 (1976), that (1) the proposal in our notice of proposed rulemaking in the above-captioned proceeding to extend recognized private operating agency status to U.S. enhanced-service providers who offer an international "public-correspondence" service, and (2) the proposal to rely for RPOA certification upon a simple, voluntary application process are hereby adopted;

13. It is further ordered that the proposal to grant U.S. enhanced-service providers and other non-carrier users the right to acquire indefeasible rights of user in U.S. half-circuits in common-carrier submarine telephone cables on a voluntary basis is adopted and the American Telephone and Telegraph Company and other U.S. common carriers are authorized, as provided for herein, to transfer such IRUs at a price agreed upon between the carrier and the user, subject to the agreement of the entity which holds the other undivided one-half interest of the circuit;

14. It is further ordered that the proposal to adopt a formal DNIC-assignment plan is hereby adopted, but that adoption of a final domestic data-numbering plan for the United States is deferred pending further study and preparation of a recommendation to this Commission thereon by the Exchange Carriers Standards Association;

15. It is further ordered that the issue of a domestic data-numbering plan for the United States is hereby referred to the "T1" Committee operating under the aegis of the Exchange Carriers Standards Association, or such other subcommittee as that body shall deem appropriate, for further study and preparation of a recommendation for further Commission action;

16. It is further ordered that this proceeding shall remain OPEN for further Commission action on the issue of a final domestic data-numbering plan for the United States, pending receipt of the results of the further industry study or submission of a formal proposal for Commission action, and such further Commission deliberations as the public interest shall require.

List of Subjects in 47 CFR Part 63

Communications common carriers, Enhanced-service providers, Enhanced services, Radio, Recognized private operating agency status.

Part 63 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1078, as amended; 47 U.S.C. 214, unless otherwise noted.

2. The Title of Part 63 is revised to read as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

3. An undesignated center heading and §§ 63.701 and 63.702 are added:

Request for Designation as a Recognized Private Operating Agency

§ 63.701 Contents of application.

Except as otherwise provided in this part, any party requesting designation as a Recognized Private Operating Agency within the meaning of the International Telecommunication Convention shall request such designation by filing an original and two copies of an application stating the nature of the services to be provided and a statement in the applicant's own words but which makes clear that the applicant is aware that it is obligated under Article 44 of the Convention to obey the mandatory provisions thereof, and all regulations promulgated thereunder, and a pledge that it will engage in no conduct or operations which otherwise obey the Convention and regulations in all respects. The applicant should also include a statement that it is aware that failure to comply will result in an order from the Federal Communications Commission to cease and desist from future violations of an ITU regulation and may result in revocation of its recognized private operating agency status by the United States Department of State. Such statement must include the following information where applicable:

(a) The name and address of each applicant;

(b) The Government, State, or Territory under the laws of which each corporate applicant is organized;

(c) The name, title and post office address of the officer of a corporate applicant, or representative of a non-corporate applicant, to whom correspondence concerning the application is to be addressed;

(d) A statement of the ownership of a non-corporate applicant, or the ownership of the stock of a corporate applicant, including an indication whether the applicant or its stock is owned directly or indirectly by an alien;

(e) A copy of each corporate applicant's articant's articles of incorporation (or its equivalent) and of its corporate bylaws;

(f) A statement whether the applicant is a carrier subject to section 214 of the Communications Act, an operator of broadcast or other radio facilities, licensed under Title III of the Act, capable of causing harmful interference with the radio transmissions of other countries, or a non-carrier provider of services classed as "enhanced" under § 64.702(a);

(g) A statement that the services for which designated as a recognized private operating agency is sought will be extended to a point outside the United States or are capable of causing harmful interference of other radio transmission and a statement of the nature of the services to be provided;

(h) A statement setting forth the points between which the services are to be provided; and

(i) A statement as to whether covered services are provided by facilities owned by the applicant, by facilities leased from another entity, or other arrangement and a description of the arrangement.

§ 63.702 Form.

Application under § 63.701 shall be submitted in the form specified in § 63.53 for applications under section 214 of the Communications Act.

Federal Communications Commission
William J. Tricarico,
Secretary.

[FR Doc. 86-11280 Filed 5-19-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Parts 73, 74, and 76

Oversight of Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast and Cable TV regulations in Parts 73, 74 and 76 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau (202) 632-5414.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted May 5, 1986, and released May 12, 1986. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 1440, Washington, DC 20037.

Summary of Order

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast and cable television rules. Modifications are herein to update, delete, clarify or correct broadcast regulations as described below:

(a) Section 73.182, Engineering standards of allocation, opens with the text "Sections 73.21 to 73.34, inclusive, govern allocation of facilities in the AM broadcast band . . . ."

Section 73.34, Normal license period, was removed from 47 CFR when the rule's subject was recreated as a Subpart H, Part 73 rule—§ 73.1020—applicable to all services. (The rule sections in the FM and TV subparts dealing with this matter were concurrently removed). The § 73.34 reference is therefore removed in this Order.

An obvious omission is redressed here also by adding § 73.37, Applications for broadcast facilities, showing required, to this opening sentence of § 73.182. Certainly § 73.37 is a valid and important addition to the group of rules which "govern allocation of facilities in the AM broadcast band." So, henceforth, the opening § 73.182(a) will state "Sections 73.21 to 73.37, inclusive, govern allocation of facilities . . . . in the AM broadcast band . . . ." (See appendix item 2).

(b) The numerical designations of TV channels in § 73.603 indicates the frequency bands to which channels 2 through 69 are assigned. Paragraph (c) of the rule states that "Channel 37, 608-614 MHz, is reserved exclusively for the Radio Astronomy Service until the first Administrative Radio Conference after January 1, 1974, which is competent to review this provision."

WARC-79 (World Administrative Radio Conference—1979) *did* reallocate TV Channel 37 to the Radio Astronomy Service. The decision was implemented domestically via the *Second Report and Order* in General Docket No. 80-739.[1] Paragraph (c) of § 73.603 is amended accordingly. (See appendix item 3).

(c) Section 73.1590 has been amended three times in the past 15 months:

December 1984 in the *Report and Order* in Gen. Docket 83-114, FCC 84-521, 49 FR 48805, December 12, 1984;

August 1985 in the *Order* at 50 FR 32414, August 12, 1985; and

January 1986 in the *Report and Order* in Mass Media Docket 85-125, FCC 85-669, 51 FR 2704, January 21, 1986.

Inadvertent aberrancies were implanted in paragraph (b) of the rule, revised in each of the above actions, resulting in a major disarray in its final form:

Subdivision (b)(1)(v) unintentionally survived the December amendment;

Subparagraph (b)(1) was revised in the August modification, moving new text into (b)(1) from another part of the rule, but failing to remove the text from its original location; and

With the last paragraph (b) amendment, in January 1986, the adopted removal of subdivisions (i) through (viii) of subparagraph (b)(2) was left undone and so remained, incorrectly, as part of paragraph (b).

In this Order, corrections are effected which restate paragraph (b) of the rule accurately.

Another corrective measure is accomplished in § 73.1590 via this Order in subparagraph (a)(6) which requires FM stations to make equipment performance measurements on an annual basis and AM stations also to make such measurements on an annual basis and during the 4 month period prior to license renewal filings.

The FM requirement was eliminated in Gen. Docket 83-114, *supra*, and the pre-renewal measurement requirements for AM stations were enacted with the adoption of the Simplified Renewal Application (FCC Form 303-S). The previous AM renewal application form (303-R) required licensees to submit engineering exhibits which could be completed only as a result of these measurements. The Form 303-S does not require such exhibits.

Subparagraph (a)(6) is therefore amended to require AM stations to make such measurements only once each calendar year and the reference to FM stations is eliminated.

To accommodate the addition of a missing reference to the requirement to make measurements upon installing TV stereo or subcarrier transmission equipment pursuant to §§ 73.699 and 73.1690, a new subparagraph will be added herein and numbered (a)(5). Present paragraph (a)(5) is renumbered (a)(7) as a result of the new paragraph designations described above.

The final revisionary effort with this rule is directed to correcting an apparent CFR misstep wherein the redesignations of subparagraphs (c)(2), (3), (4) and (5) to (c)(1), (2), (3) and (4) in the Order adopted in August 1985 was mistakenly interpreted, and old (c)(6), which had been removed, was retained as new (c)(4) instead of old (c)(5) being converted to (c)(4).

Amendments, correcting the above inadvertencies, and remedial text revisions are accompanied herein to effect § 73.1590's improvement. (See appendix item 4).

(d) Questions have recently been received by staff members regarding type acceptance or notification for International broadcast stations (47 CFR Part 73, Subpart F). The questioners have assumed that references to equipment authorization procedures, stated in Subpart H of Part 73, may apply to International as well as AM, FM and TV broadcast stations.

These references do apply to International; there are no equipment authorization procedures for International broadcast stations. We will revise our reference to equipment authorization in §§ 73.1660 and 73.1665 to clearly state this. (See appendix items 5 and 6).

(e) When the Commission adopted the Simplified Renewal Application form and procedure for all broadcast stations in 1981, requirements to file future programming proposals with renewal applications were removed from the rules and from the new renewal form, 303-S, Application for Renewal of License for Commercial and Noncommercial Educational AM, FM and TV Broadcast Stations.[2] Also adopted in this proceeding were a procedure, and appropriate form, for the purpose of conducting a detailed audit of a small percentage of commercial TV and noncommercial AM, FM and TV stations which required inclusion of programming exhibits with application.

Subsequently, the TV "long form audit" (as it came to the designated colloquially) was discontinued pursuant to the Report and Order in the so called TV Deregulation proceeding[3] and the Form 303-C, Renewal Application Audit Form for Commercial TV Broadcast Stations was removed from the rules. On the same date (June 27, 1984) the Commission adopted the noncommercial educational radio and TV deregulation Report and Order,[4] and the "long form audit" for NCE AM, FM and TV stations was likewise eliminated. Form 303-N was removed from the rules.

Impact was made on several different parts of the rules, due to the above described Commission actions, which inadvertently went unmodified. Appropriate corrective amendments in §§ 73.3500 and 73.3578 are made herein, as follows:

Revision of Section 73.3578,[5] paragraph (a), will be made by removing that portion of the paragraph pertaining to renewal application amendments ". . . relating to future programs of a stations . . .."; and

Removal of FCC Form 303-N from the listing of Forms in § 73.3500 which, though ordered eliminated in the Report and Order in MM Docket 81-496, was unintentionally retained in the October 1, 1985 Title 47 Code of Federal Regulations. (See appendix items 7 and 8).

(f) Paragraph (a) of § 73.3536, Application for license to cover construction permit, states "The application for station license shall be filed by the permittee prior to program tests." This statement was negated as a result of the changes in the program test rule, § 73.1620, in January 1980.[6] In that amendment the Commission reduced the administrative work load of both the FCC and broadcasters, by removing certain procedural requirements pertaining to program test authority (PTA). Holders of construction permits, for nondirectional antennas, were allowed to commence program service, upon completion of construction, after notifying the FCC of their start of program service and by filing the application for license within 10 days thereafter.

This revised procedure was not reflected in paragraph (a) of § 73.3536; it is corrected herein. (See appendix item 9).

(g) The introductory text of subparagraph (d)(3) of § 73.3555, Multiple ownership, is, at some future

[1] *Second Report and Order*, General Docket 80-739, adopted November 8, 1983, 49 FR 2357, January 19, 1984.

[2] BC Docket 80-253, 46 FR 26237, May 11, 1981.

[3] MM Docket 83-670, 49 FR 33586, August 23, 1984.

[4] MM Docket 81-496, 49 FR 33658, August 24, 1984.

[5] Section 73.3578 Amendment to applications for renewal, assignment or transfer of control.

[6] *Order*, 76 FCC 2d 40.

date, likely to become erroneous. It refers to the subject paragraph (d) by stating "For purposes of paragraph (d) of this section:", instead of referring to *itself*, i.e., "For purposes of this paragraph:". A change in paragraph numbering, a movement to another part of the section or other amendments could make it likely that the present text would unintentionally not refer to itself. It is revised accordingly. [See appendix item 10].

(h) The text in subparagraph (d)(1) of § 74.780 was revised in the Report and Order in Gen. Docket 83-114,[1] adopted in November, 1984.

The change did not appear in the Code of Federal Regulations (October 1, 1985 edition). This oversight is corrected herein. (See appendix item 11).

(i) Section 76.5 contains definitions of subjects pertaining to the cable television service. Paragraph (ee) is headed "*Cable system operator or operator.* The twice-stated singular of "operator," an obvious aberration, is corrected herein. (See appendix item 12).

(j) The reference points for major and smaller television markets are listed in § 76.53 of the cable rules. The longitude given for Anniston, Alabama is incorrectly stated as 87 degrees 49'47". It is revised to read correctly 85 degrees 49'47". (See appendix item 13).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, it is ordered, That pursuant to section 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission Rules, Parts 73, 74 and 76 of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective on the date of publication in the Federal Register.

[1] Gen Docket No. 83-114, A Re-Examination of Technical Regulations, 49 FR 48206, December 12, 1984.

List of Subjects

47 CFR Part 73

Radio broadcasting.

47 CFR Part 74

Television.

47 CFR Part 76

Cable television.

Parts 73, 74 and 76 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—[AMENDED]

1. The authority citation for Parts 73, 74 and 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.182 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 73.182 Engineering standards of allocation.

(a) Sections 73.21 to 73.37 inclusive, govern allocation of facilities in the AM broadcast band of 535 to 1605 kc/s. Section 73.21 establishes three classes of channels in this band, namely, clear channels for the use of high-powered stations, regional channels for the use of medium powered stations, and local channels for the use of low-powered stations. The classes and power of AM broadcast stations which will be assigned to the various channels are set forth in § 73.21. The classification of the AM broadcast stations are as follows:

* * * * *

3. 47 CFR 73.603 is amended by revising paragraph (c) to read as follows:

§ 73.603 Numerical designation of TV channels.

* * * * *

(c) Channel 37, 608-614 MHz is reserved exclusively for the radio astronomy service.

* * * * *

4. 47 CFR 73.1590 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 73.1590 Equipment performance measurements.

(a) The licensee of each AM, FM and TV station, except licensees of Class D non-commercial educational FM stations authorized to operate with 10 watts or less output power, must make equipment performance measurements for each main transmitter as follows:

(1) Upon initial installation of a new or replacement main transmitter.

(2) Upon modification of an existing transmitter made under the provisions of § 73.1690, Modification of transmission systems, and specified therein.

(3) Installation of AM stereophonic transmission equipment pursuant to § 73.128.

(4) Installation of FM subcarrier or stereophonic transmission equipment pursuant to § 73.295, § 73.297, § 73.593 or § 73.597.

(5) Installation of TV stereophonic or subcarrier transmission equipment pursuant to §§ 73.699 and 73.1690.

(6) Annually, for AM stations, with not more than 14 months between measurements.

(7) When required by other provisions of the rules or the station license.

(b) Measurements for spurious and harmonic emissions must be made to show compliance with the transmission system requirements of § 73.44 for AM stations; § 73.317 for FM stations and § 73.687 for TV stations. Measurements must be made under all conditions of modulation expected to be encountered by the station whether transmitting monophonic or stereophonic programs and providing subsidiary communications services.

(c) TV visual equipment performance measurements must be made with the equipment adjusted for normal program operation at the transmitter antenna sampling port to yield the following information:

(1) Field strength or voltage of the lower side-band for a modulating frequency of 1.25 MHz or greater, (including 3.58 MHz for color), and of the upper side-band for a modulating frequency of 4.75 MHz or greater.

(2) Data showing that the waveform of the transmitted signal conforms to that specified by the standards for TV transmissions.

(3) Photographs of a test pattern taken from a receiver or monitor connected to the transmitter output.

(4) Data showing envelope delay characteristics of the radiated signal.

(5) Data showing the attenuation of spurious and harmonic radiation, if, after type acceptance, any changes have been made in the transmitter or associated equipment (filters, multiplexer, etc.) which could cause changes in its radiation products.

* * * * *

5. 47 CFR 73.1660 is amended by revising paragraph (a) to read as follows:

§ 73.1665 Acceptability of broadcast transmitters.

(a) An AM, FM or TV transmitter may be type accepted or notified upon the request of any manufacturer of transmitters following the procedures described in Part 2 of the FCC Rules. If acceptable, the transmitter will be included in the FCC's "Radio Equipment List, Equipment Acceptable for Licensing." Since March 5, 1984, these transmitters have been authorized under notification.

* * * * *

6. 47 CFR 73.1665 is amended by revising paragraph (a) to read as follows:

§ 73.1665 Main transmitters.

(a) Each AM, FM and TV broadcast station must have at least one main transmitter which complies with the provisions of the transmitter technical requirements for the type and class of station. A main transmitter is one which is used for regular program service having power ratings appropriate for the authorized operating power(s).

* * * * *

7. 47 CFR 73.3500 Application and report forms, is amended by removing Form 303–N and its title, Renewal Application Audit Form for Noncommercial Educational AM, FM and TV Broadcast Stations.

8. 47 CFR 73.3578 is amended by revising paragraph (a) to read as follows:

§ 73.3578 Amendments to applications for renewal, assignment or transfer of control.

(a) Any amendments to an application for renewal of any instrument of authorization shall be considered to be a minor amendment. However, the FCC may, within 15 days after tender for filing of any amendment, advise the applicant that the amendment is considered to be a major amendment and therefore is subject to the provisions of § 73.3580.

* * * * *

9. 47 CFR 73.3536 is amended by revising paragraph (a) to read as follows:

§ 73.3536 Application for license to cover construction permit.

(a) The application for station license shall be filed by the permittee pursuant to the requirements of § 73.1620 Program tests.

* * * * *

10. 47 CFR 73.3555 is amended by revising the introductory text of paragraph (d)(3) to read as follows:

§ 73.3555 Multiple Ownership.

* * * * *

(d) * * *

(3) For purposes of this paragraph:

PART 74—[AMENDED]

11. 47 CFR 74.750 is amended by revising paragraph (d)(1) to read as follows:

§ 74.750 Transmission system facilities.

* * * * *

(d) * * *

(1) The equipment shall meet the requirements of paragraphs (a)(1) and (b)(3) of § 73.687.

* * * * *

PART 76—[AMENDED]

12. 47 CFR 76.5 is amended by revising the title of paragraph (ee) to read as follows:

§ 76.5 Definitions.

* * * * *

(ee) *Cable system operator.* * * *

* * * * *

§ 76.53 [Amended]

13. 47 CFR 76.53, Reference points, is amended by correcting the Longitude reading for Anniston, Alabama to read 85 degrees 49'47".

William R. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 86–11281 Filed 5–19–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Sonora Chub To Be a Threatened Species and To Determine Its Critical Habitat

Correction

In FR Doc. 86–8669 beginning on page 16042 in the issue of Wednesday, April 30, 1986, make the following correction on page 16047 in § 17.95(e):

In the second column, paragraph 3, at the end of the last line, add "R.11E."

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60429–6069]

Fishery Conservation and Management; Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) issues emergency regulations to deviate from the schedule in the framework amendment to the Fishery Management Plan for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) to allocate coho salmon to troll and recreational fisheries north of Cape Falcon, Oregon, in 1986 and to modify framework provisions for inseason ocean salmon management off Washington, Oregon, and California in 1986. The regulations are necessary to protect depressed runs of chinook and coho salmon and to provide flexibility to maximize the opportunity for ocean harvest of salmon which are surplus to inside fishery and spawning needs. The regulations are intended to optimize the salmon harvest and to lessen depressed economic conditions in coastal communities associated with the fishing industry and related businesses.

EFFECTIVE DATE: This emergency rule is effective at 0001 hours local time, May 15, 1986 until 2400 hours local time, August 13, 1986.

ADDRESS: Comments on this emergency rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150, or E. Charles Fullerton, 213–548–2575.

SUPPLEMENTARY INFORMATION: The regulations implementing the framework amendment to the FMP were published on October 31, 1984 (49 FR 43679) and are codified at 50 CFR Part 661. The framework amendment provides the mechanism for making preseason and inseason adjustments to the regulations without annual amendments to the FMP. This emergency rule allocates coho salmon to ocean fisheries north of Cape Falcon and alters the mechanism for

making inseason adjustments to the regulations in 1986.

1986 Allocation of Coho Salmon North of Cape Falcon, Oregon

Since 1984, coho salmon have been allocated to commercial and recreational fisheries north of Cape Falcon, Oregon, according to a sliding scale in the framework amendment. The sliding scale would have allocated 144,300 coho to trollers and 353,600 coho to recreational fishermen in 1986 based on a total non-Indian allowable ocean harvest of 348,100 coho north of Cape Falcon.

The Council has requested that there be a slight deviation from the framework allocation scale in 1986. This emergency rule would allocate 140,000 coho to trollers and 357,500 coho to recreational fishermen north of Cape Falcon.

The 1986 allocation was agreed to by troll and recreational fishery representatives and is intended to minimize impacts on critical coho and chinook stocks and maximize ocean harvest by each user group north of Cape Falcon.

1986 Inseason Management Provisions

Under the framework amendment, the Pacific Fishery Management Council (Council) may authorize, during the preason process of setting regulations, the use of one or more of the following optional inseason management provisions:

1. Modification to coho quotas and seasons based on inseason reassessment of private hatchery contributions;
2. Modification to commercial coho quotas and seasons based on inseason assessment of coho hooking mortality during all-species seasons;
3. Modification to quotas and seasons based on inseason revisions to abundance estimates;
4. Reduction in quotas and seasons due to unanticipated salmon catches in the territorial sea;
5. Redistribution of quotas by area to achieve an overall quota;
6. Modification of area boundaries to promote attainment of quotas; and
7. Modification of recreational daily bag limits.

In 1985, the Council determined that all seven optional inseason management provisions should be available for use if conditions warranted. In addition, the Council requested, and the Secretary approved, an emergency regulation (50 FR 31847, August 7, 1985) to make an eighth inseason management action available for use in 1985:

Modification of the number of allowable days of recreational fishing per week.

This temporary inseason management provision was used twice before it expired automatically on October 31, 1985.

Although the eight optional provisions appear to provide considerable flexibility for inseason management, during the 1985 season it became apparent that these provisions are limited in scope and impact and thus do not provide all of the flexibility necessary for effective inseason management. In addition, some of these provisions are unclear as to what modifications can and cannot be made under them.

Several recommendations of the Council, its Salmon Plan Development Team, and the States could not be implemented through changes in Federal regulations in 1985. About half of the recommended management actions required an inseason interpretation by NMFS and NOAA's Regional Counsel as to whether they could be implemented under existing authority. Some of these recommendations were adopted through State landing laws in lieu of changes in the Federal regulations, and the differing State and Federal regulations caused confusion and enforcement problems.

The Council reviewed the 1985 inseason management problems during its March 1986 meeting in Portland, Oregon, and concluded that—

1. The scope and extent of inseason management authority should be clarified.
2. The scope and extent of inseason management authority should be broadened, to accommodate variations in the fishery.
3. Inseason management authority should not require data and analyses beyond that which are available within the timeframe and capability of the existing data system.
4. Inseason management actions should not overburden the capabilities of fishery managers to expeditiously process and implement the actions and advise affected persons, as well as to effectively ensure compliance with the changing regulations; and
5. Inseason management authority should not be used to circumvent the fishery management plan amendment process when the latter is more appropriate or required.

An FMP amendment scheduled for implementation in 1987 will consider modification of the optional inseason management provisions to address the management problems experienced in 1985. In the meantime, the Council requested by majority vote that the Secretary promulgate an emergency rule to clarify, broaden in scope and intent, and add optional provisions to the regulation so that the following regulatory adjustments would be authorized during the 1986 fishing season:

1. Modification of quotas and seasons, so long as the criteria specified below were met. [This would include redistribution of quotas, establishment of new quotas and seasons, and establishment or modification of hooking mortality and total allowable impact limitations. It does not include revisions in abundance estimates since methodology does not exist to determine the accuracy of preseason estimates during the season.]
2. Modifications in the species which may be caught and landed during specific seasons and the establishment or modification of limited retention regulations (e.g., changing from an all-species season to a single-species season, or requiring a specified number of one species to be delivered before a specified number of another species could be delivered).
3. Modification of the recreational bag limits and the recreational fishing days allowed per calendar week.
4. Establishment or modification of gear restrictions.
5. Modification of boundaries and establishment of closed areas.

These modified provisions are expected to be among the options proposed in the draft FMP amendment.

In order to take any inseason action in 1986 under this emergency rule, fishery managers must determine that the adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated treaty Indian fishing rights, and the ocean allocation scheme in the framework amendment. In addition, all inseason adjustments would be based on consideration of the following:

1. Predicted sizes of salmon runs.
2. Harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable.
3. Amount of recreational, commercial and treaty Indian catch for each species in the area to date.
4. Amount of recreational, commercial, and treaty Indian fishing effort in the area to date.
5. Estimated average daily catch per fisherman.

8. Predicted fishing effort for the area to the end of the scheduled season.

7. Other factors as appropriate.

Section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) authorizes the Secretary to promulgate emergency regulations when a Council finds that an emergency exists involving a fishery under its jurisdiction. The Secretary has agreed with the Council's determination that an emergency exists because of the depressed economic condition of coastal communities associated with the fishing industry and related businesses. This emergency rule will allocate coho salmon to ocean fisheries north of Cape Falcon, Oregon, and allow inseason adjustments in regulations to minimize impacts on critical coho and chinook stocks and to maximize the ocean harvest by recreational and commercial fisheries.

The States of Washington, Oregon, and California support the revised allocation of coho salmon north of Cape Falcon and the need for increasing Federal inseason management flexibility to protect the resource and lessen the economic hardship on fishermen, the fishing industry, and related businesses. The States currently have authority to change regulations on an emergency basis at any time during the season to meet needs of the resource and fishery participants. Differing State and Federal regulations cause confusion and enforcement problems.

This emergency rule will remain in effect for 90 days and may be extended for a second 90-day period.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to management needs and is consistent with the Magnuson Act and other applicable law. He has determined that continuation of the regulations now in force would not allow timely management response to the needs of the ocean recreational and commercial salmon fisheries and it is therefore necessary to promulgate this emergency rule immediately.

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable to provide prior notice and opportunity for public comment, or to delay for 30 days the effective date of these emergency regulations, as required by section 553 (b) and (d) of the Administrative Procedure Act. The public had the opportunity to comment on the substance of this emergency rule during the Council meeting on March 10–13, 1986.

The Assistant Administrator has determined that the regulations implementing the FMP as amended have no differing impact upon and, therefore, remain consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. This original determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. This rule is a minor extension to the final regulations and does not change that determination. Its application will have a positive impact on the salmon stocks and on recreational and commercial fishing industries and affected coastal communities.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

Issuance of this rule will not result in a significant adverse impact on the human environment and the impact would not be significantly different from that described in the final supplemental environmental impact statement prepared for the regulations implementing the FMP. As such, the Assistant Administrator has determined that it is categorically excluded from the requirement to prepare an environmental document, as provided by NOAA Directive 02–10.

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 15, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

For the reasons set out in the preamble, 50 CFR Part 661 and its Appendix are amended to read as follows:

1. The authority citation for Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.21, paragraphs (b) (1) through (7) are suspended from May 15, 1986, to August 13, 1986, and new paragraphs (b) (8) through (12) are added to be effective from May 15, 1986, to August 13, 1986, to read as follows:

§ 661.21 Inseason actions.

* * * * *

(b) * * *

(8) Modification of quotas and seasons, including but not limited to redistribution of quotas, establishment of new quotas and seasons, and establishment or modification of hooking mortality and total allowable impact limitations.

(9) Modifications in the species which may be caught and landed during specific seasons and the establishment or modification of limited retention regulations, including but not limited to changing from an all-species season to a single-species season, and requiring a specified number of fish of one species to be delivered before a specified number of fish of another species could be delivered.

(10) Modification of the recreational bag limits and the recreational fishing days allowed per calendar week.

(11) Establishment or modification of gear restrictions.

(12) Modification of boundaries and establishment of closed areas.

3. In the Appendix, Section II.B.2(a)(i), a line is added to the table to read as follows:

Appendix

* * * * *

II. Annual Changes to Management Specifications

* * * * *

B. Procedures for Establishing and Adjusting Management Measures.

* * * * *

2. Allocation of ocean harvest levels.

(a) *Coho and chinook from the U.S.-Canada border to Cape Falcon.*

(i) Allocation of coho and chinook salmon north of Cape Falcon, Oregon, will be based on the following schedule:

Allowable annual non-treaty ocean coho harvest (thousands of fish)	Coho harvest percentage [1]		Chinook harvest percentage [1]	
	Commercial	Recreational	Commercial	Recreational
• • •				
540.1	40.4	59.6	58.0	42.0
• • •				

4. In the Appendix, Section III.B.2. is suspended from May 15, 1986, until August 13, 1986, and a new Section III.B.3. is added, to be effective from May 15, 1986, until August 13, 1986, to read as follows:

Appendix

• • • • •

III. Inseason Changes to Management Measures

• • • • •

B. • • •

3. In the course of its annual determination of whether management specifications should be modified for the season, the Council also will determine which one or more, if any, of the inseason actions enumerated in § 661.21(b) should be employed to modify management measures during the season and will recommend same to the Secretary for implementation.

5. In the Appendix, Section III.B.2., the introductory text is suspended from May 15, 1986, to August 13, 1986; paragraphs (a) through (d) are redesignated during this period as paragraphs (b) through (e); and a new paragraph (a) is added, to be effective from May 15, 1986, to August 13, 1986, to read as follows:

Appendix

• • • • •

III. • • •

B. • • •

2. • • •

(a) The Regional Director may adjust fishing regulations during the season when he determines that it is necessary to help achieve management goals. Any inseason adjustment to the regulations must be consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation schemes in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors:

(i) Predicted sizes of salmon runs.

(ii) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable.

(iii) Amount of recreational, commercial, and treaty Indian catch for each species in the area to date.

(iv) Amount of recreational, commercial, and treaty Indian fishing effort in the area to date.

(v) Estimated average daily catch per fisherman.

(vi) Predicted fishing effort for the area to the end of the scheduled season.

(vii) Other factors as appropriate.

5. In the Appendix, Sections III.C. through III.F. are suspended from May 15, 1986, to August 13, 1986.

[FR Doc. 86-11340 Filed 5-15-86; 4:53 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 97
Tuesday, May 20, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 86-035]

Official Tests for Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the equine infectious anemia (EIA) regulations by including the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test as an official test for EIA, if conducted in a laboratory approved by the Deputy Administrator, Veterinary Services. This action appears warranted in order to provide an additional official test for EIA which has been determined to be adequate for its intended purpose.

DATE: Written comments must be received on or before June 19, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-035. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Special Diseases Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 75 (referred to below as the regulations) include provisions concerning the interstate movement of horses, asses, mules, ponies, and zebras found to be affected with equine infectious anemia (referred to below as EIA), also known as swamp fever. The regulations currently provide that the Agar gel immuno-diffusion test, conducted in a laboratory approved by the Deputy Administrator, Veterinary Services, is the official EIA test for determining whether horses, asses, mules, ponies, and zebras are affected with EIA. With respect to the approval of laboratories to conduct official tests, § 75.4(c)(1) of the regulations provides that:

> The Deputy Administrator will approve laboratories to conduct the official test only after consulting with the State animal health official in the State in which the laboratory is located and after determining that the laboratory: (i) Has technical personnel assigned to conduct the official test who have received training prescribed by the National Veterinary Services Laboratories; (ii) uses United States Department of Agriculture licensed antigen; (iii) follows standard test protocol prescribed by the National Veterinary Services Laboratories; (iv) meets check test proficiency requirements prescribed by the National Veterinary Services Laboratories; and (v) reports all official test results to the State animal health official and the Veterinarian in Charge. [footnote not included]

. It is proposed to amend the regulations by including the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test as an official EIA test, if conducted in a laboratory approved by the Deputy Administrator, Veterinary Services. This test, in field trials and other research, has been demonstrated to be at least as sensitive and specific a test for EIA as the test currently approved as an official EIA test.[1] Also, the provisions for the approval of laboratories would help ensure that the testing is conducted accurately.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and should have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

If adopted, this proposed amendment to the regulations would only provide for the use of an additional official EIA test as an option for use in determining whether an animal is infected with the disease. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 75

Animal diseases, Contagious Equine metritis, Dourine, Equine, Equine infectious anemia, Horses, Quarantine, Transportation.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, Part 75, Title 9, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 75 would continue to read as set forth below:

> Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, Paragraph (a), the definition of "Official test" would be revised to read:

---

[1] Copies of the results of research and of the test protocol for the CELISA test are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

§ 78.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities and research facilities.

(a) • • •

Official test. The Agar gel immunodiffusion test or the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) Test, conducted in a laboratory approved by the Deputy Administrator.

• • • • • •

Done at Washington, DC, this 14th day of May 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-11270 Filed 5-19-86; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 301, 312, 327 and 381

[Docket No. 85-001P]

Import Inspection; Requirements, Responsibilities and Procedures

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend certain provisions regarding inspection of imported meat and poultry products in the Federal meat inspection regulations and the poultry products inspection regulations to clarify import inspection procedures and to accommodate the recent transfer of import inspection management authority from FSIS' Meat and Poultry Inspection Operations to its International Programs. All proposed changes are administrative in nature or for clarification of procedures and would entail no changes in import inspection policies or procedures.

DATE: Comments must be received on or before July 21, 1986.

ADDRESS: Written comments to: Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3808, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (See also "Comments" under SUPPLEMENTARY INFORMATION).

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposal would only make various administrative changes to the Federal meat and poultry products inspection regulations to reflect the transfer of import inspection management authority within the Agency and to clarify the import inspection procedures.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 because the proposed changes are only administrative in nature or for clarification of procedures and would entail no changes in import inspection policies or procedures.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Policy Office. Please include the docket number that appears in the heading of this document. All comments submitted in response to this proposal will be made available for public viewing in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Under the provisions of the Federal Meat Inspection Act (21 U.S.C. 620) and the Poultry Products Inspection Act (21 U.S.C. 466), the Food Safety and Inspection Service is responsible for assuring that imported meat and poultry products imported into this country meet standards at least equal to those that are applied to domestic products. FSIS carries out its responsibility by conducting two activities: (1) The review of foreign inspection systems to evaluate and determine the "at least equal to" eligibility of countries for export to the United States, and (2) import inspection of meat and poultry products to ensure they meet United States standards.

Until recently, FSIS' Meat and Poultry Inspection Operations carried out both domestic and import inspection activities. However, on February 28, 1985, the Department approved the transfer of import inspection activities from Meat and Poultry Inspection Operations (MPIO) to International Programs (IP), effective April 28, 1985.

This transfer of authority also involved the transfer of some personnel from MPIO to IP and necessitated the establishment of a field management structure with geographic responsibilities that are different from those used by MPIO. A new Import Inspection Division under IP is now responsible for the overall management of its field inspection program. To reflect the transfer of import inspection authority, various administrative changes are needed in Parts 301, 312, and 327 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations. These changes would improve management communication, delineate clear lines of import inspection responsibility, provide new streamlined provisions for appeals from inspector decisions, and would provide for more consistent and clear import inspection procedures.

The proposed clarifying changes to the Federal meat inspection regulations and poultry products inspection regulations would be as follows:

1. Providing new definitions to be included in §§ 301.2 and 381.1 for:

—Import field office, including areas of authority.

—Import supervisor.

2. Adding an "appeals" section to the Federal meat import inspection regulations, similar to the "appeals" section in 9 CFR 306.5, and a new paragraph to the poultry products import inspection regulations, similar to the "appeals" section in 9 CFR 381.35, to delineate a clear route for appeals from decisions made by import inspectors.

3. Replacing the term import "facility" with import "establishment" wherever it appears.

4. Replacing all references to inspector-in-charge, area supervisor, regional director, and regional office with the new organizational terms—import supervisor and import field office.

5. Transferring § 312.5(b)—Official Seals for Transportation of (Imported) Products—to Part 327. Delete current cross-reference.

6. Adding a new paragraph for "Official Seals" to Part 381. Delete cross-reference.

7. Transferring § 312.7 and § 381.102—Official Import Inspection Marks and Devices—to Part 327 and § 381.204 respectively. Delete current cross-

references. Add new paragraph (e) to new § 327.26 to refer to § 317.3(c) of the Federal meat inspection regulations.

8. Adding a "denaturing" section to Part 327, similar to 9 CFR 325.13. Delete cross-reference to Part 327. Adding a "denaturing" paragraph to § 381.202, similar to 9 CFR 381.88.

9. Deleting a reference in § 327.6(m) to a nonexistent paragraph (n).

Accordingly, Parts 301, 312, and 327 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations would be amended as set forth below:

The Proposal

List of Subjects

9 CFR Part 301
Meat inspection, Definitions.

9 CFR Part 312
Official inspection marks and devices.

9 CFR Part 327
Imported products.

9 CFR Part 381
Poultry products inspection, Imported products.

PART 301—[AMENDED]

1. The authority citation for Part 301 is added to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

§ 301.2 [Amended]

2. Section 301.2 (9 CFR 301.2) would be amended by adding paragraph (yyy) and (zzz):

§ 301.2 Definitions.

* * * * *

(yyy) Import Field Office (IFO). The office of the supervisor of import inspection activities for a particular importing field area. The areas are as follows:

IFO #1. Boston, MA—Covering the States of Massachusetts, New York (excluding New York City), Connecticut, Rhode Island, Vermont, New Hampshire and Maine.
IFO #2. New York, NY—Covering the areas of New York City and northern New Jersey.
IFO #3. Philadelphia, PA—Covering the State of Pennsylvania and the area of southern New Jersey.
IFO #4. Baltimore, MD—Covering the States of Maryland, Delaware, West Virginia, Virginia and Kentucky.
IFO #5. Charleston, SC—Covering the States of Tennessee, North Carolina, South Carolina, Georgia and Florida (excluding south Florida).
IFO #6. Miami, FL—Covering the areas of southern Florida, Puerto Rico and the Virgin Islands.
IFO #7. New Orleans, LA—Covering the States of Louisiana, Mississippi, Alabama, Arkansas, Texas, Texas, Oklahoma, Kansas, New Mexico and Colorado.
IFO #8. San Pedro, CA—Covering of the States of Hawaii, Arizona, Utah, Nevada, the area of southern California, American Samoa, Guam, and the Northern Marianas.
IFO #9. Tacoma, WA—Covering the States of Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Alaska, and Nebraska, and the area of northern California.
IFO #10. Detroit, MI—Covering the States of Michigan, Wisconsin, Minnesota, Iowa, Missouri, Illinois, Indiana and Ohio.

(zzz) Import Supervisor. The official in charge of import inspection activities within each of the import field offices.

PART 312—[AMENDED]

3. The authority citation for Part 312 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

§ 312.7 [Redesignated]

4. Section 312.7 (9 CFR Part 312) would be transferred to Part 327 and redesignated as § 327.26, and revised to read as follows:

§ 327.26 Official import inspection marks and devices.

(a) When import inspections are performed in official import inspection establishments, the official inspection legend to be applied to imported meat and meat food products shall be in the appropriate form [1] as herein specified.

For application to cattle, sheep, swine, and goat carcasses, primal parts, and cuts, not in containers.

[1] The number "I-38" is given as an example only. The establishment number of the official import inspection establishment where the imported product is inspected shall be used in lieu thereof.

For application to outside containers of meat and meat food products prepared from cattle, sheep, swine, and goats.

For application to horse carcasses, primal parts, and cuts, not in containers.

For application to outside containers of horsemeat food products.

For application to inside and other (nonhorse) equine carcasses, primal parts, and cuts, not in containers.

For application to outside containers of equine meat food products.

(b) When import inspections are performed in official establishments, the official inspection legend to be applied to imported meat and meat food products, shall be the appropriate form as specified in §§ 312.2 and 312.3 of this subchapter.

(c) When products are refused entry into the United States, the official mark to be applied to the products refused entry shall be in the following form:

UNITED STATES
REFUSED ENTRY

(d) Devices for applying "United States Refused Entry" marks shall be furnished to the Program inspectors by the Department.

(e) The ordering and manufacture of brands containing official inspection legends shall be in accordance with the provisions contained in § 317.3(c) of the Federal meat inspection regulations.

§ 312.7 [Amended]

5. Section 312.7 would be removed and reserved for future use.

§ 312.5 [Redesignated]

6. Paragraph (b) of § 312.5 (9 CFR Part 312) is removed. The information would be transferred to § 327.22 and the paragraph (a) designation would be removed.

PART 327—[AMENDED]

7. The authority citation for Part 327 is revised to read as follows:

Authority: 26 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

8. Section 327.22 would be revised to read as follows:

§ 327.22 Official seals for transportation of products.

The official mark for use in sealing cars, trucks, other means of conveyance, or containers in which any imported product is conveyed shall be the inscription and a serial number hereinafter shown below,[1] and the import meat seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. Such device shall be attached to the means of conveyance only by a Program employee, or a Customs officer or his designee, and he shall also affix thereto a "Warning Tag" (Form MP-338-3).

Form (to Have U.S. F-351587 P)

§ 327.5 [Amended]

9. Paragraph (m) of § 327.5 (9 CFR Part 327) would be amended by removing the words "paragraphs (l) and (n)" and replacing them with the words "paragraph (l)."

10. Paragraphs (c), (d) and (f) of § 327.6 (9 CFR Part 327) would be amended by removing the words "facility" and "facilities" and inserting in their place, the words "establishment" and establishments" wherever they appear.

11. Paragraph (e) of § 327.6 (9 CFR Part 327) would be revised to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

* * * * *

(e) Owners or operators of establishments at which import inspections of product are to be made shall furnish adequate sanitary facilities and equipment for examination of such product. The requirements of §§ 304.2(e), 307.1, 307.2(b), (d), (f), (h), (k), and (l) and 308.3, 308.4, 308.5, 308.6, 308.7, 308.8, 308.11, 308.13, 308.14, and 308.15 of this subchapter shall apply as conditions for approval of establishments as official import inspection establishments to the same extent and in the same manner as they apply with respect to official establishments.

12. Paragraph (a) of § 327.5 (9 CFR Part 327) would be revised to read as follows:

§ 327.5 Importer to make application for inspection of products for importation; information required.

(a) Each importer shall apply for inspection of any product for importation by contacting the import field office covering the location where import inspection will take place. The import field office will provide specific application instructions. (See § 301.2 (yyy)).

* * * * *

§ 327.7 [Amended]

13. Paragraph (a)(1) of § 327.7 (9 CFR Part 327) would be amended by removing the words "area supervisor" and inserting, in their place, the words "import supervisor."

14. Paragraph (a)(2) of § 327.7 (9 CFR Part 327) would be amended by removing the term § 312.5(b)" and inserting, in its place, the term "§ 327.22"; and by removing the words "officer in charge" and inserting, in their place, the word "inspector."

§ 327.10 [Amended]

15. Paragraph (b) of § 327.10 (9 CFR Part 327) would be amended by removing the term "§ 312.7" and inserting, in its place, the term "§ 327.22."

§ 327.11 [Amended]

16. Section 327.11 (9 CFR Part 327) would be amended by removing the words "inspectors in charge" and inserting, in their place, the words "the inspectors."

§ 327.14 [Amended]

17. Paragraph (c) of § 327.14 (9 CFR Part 327) would be amended by removing the phrase "Labels and Packaging Staff, Meat and Poultry Inspection" and inserting, in its place, the phrase "Standards and Labeling

[1] The term "F-351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

Division, Meat and Poultry Inspection Technical Services" and by removing the words "inspector in charge" and inserting, in their place, the word "inspector."

§ 327.15 [Amended]

18. Paragraph (c) of 327.15 (9 CFR Part 327) would be amended by removing the term "§ 312.7" and inserting, in its place, the term "§ 327.25."

§ 327.17 [Amended]

19. Section 327.17 (9 CFR Part 327) would be amended by removing the words "Meat and Poultry Inspection Field Operations" and inserting, in their place, the words "International Programs."

§ 327.20 [Amended]

20. Section 327.20 (9 CFR Part 327) would be amended by removing the phrase "§ 325.13 of this subchapter" and inserting, in its place, the phrase "§ 327.25 of this Part."

21. Part 327 (9 CFR Part 327) would be amended by adding a new § 327.24 to read as follows:

§ 327.24 Appeals; how made

Any appeal from a decision of any program employee shall be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal, except as otherwise provided in the applicable rules of practice. Denial of a labeling application by the inspector shall not constitute a basis for an appeal under this section.

22. Part 327 (9 CFR Part 327) would be amended by adding a new § 327.25 to read as follows:

§ 327.25 Disposition procedures for product condemned or ordered destroyed under import inspection.

(a) Carcasses, parts thereof, meat and meat food products (other than rendered animal fats) that have been treated in accordance with the provisions of this section shall be considered denatured for the purposes of the regulations in this part, except as otherwise provided in Part 314 of this subchapter for articles condemned at official establishments or at official import inspection establishments.

(1) The following agents are prescribed for denaturing carcasses, parts thereof, meat or meat food products which are affected with any condition that would result in their condemnation and disposal under Part 314 of this subchapter if they were at an official establishment or at an official import inspection establishment: Crude carbolic acid; cresylic disinfectant; a formula consistent of 1 part FD&C green No. 3 coloring, 40 parts water, 40 parts liquid detergent, and 40 parts oil of citronella, or other proprietary substance approved by the Administrator in specific cases.[1]

(2) Meat may be denatured by dipping it in a solution of 0.0625 percent tannic acid, followed by immersion in a water bath, then dipping it in a solution of 0.0625 percent ferric acid; and except as provided in paragraph (3) and (5) of this section, the following agents are prescribed for denaturing other carcasses, parts thereof, meat and meat food products, for which denaturing is required by this part: FD&C green No. 3 coloring; FD&C blue No. 1 coloring; FD&C blue No. 2 coloring; finely powdered charcoal; or other proprietary substance approved by the Administrator in specific cases.[1] Carcasses (other than viscera), parts thereof, cuts of meat, and unground pieces of meat darkened by charcoal or other blacks dyes shall be deemed to be denatured pursuant to this section only if they contain at least that degree of darkness depicted by diagram 1 of the Meat Denaturing Guide (MP Form 91).[2]

(3) Tripe may be denaturing by dipping it in a 6 percent solution of tannic acid for 1 minute followed by immersion in a water bath, then immersing it for 1 minute in a solution of 0.022 percent FD&C yellow No. 5 coloring.

(4) When meat, meat byproducts, or meat food products are in ground form, 4 percent by weight of coarsely ground hard bone, which shall be in pieces no smaller than the opening size specified for No. 5 mesh in the standards issued by the U.S. Bureau of Standards or 6 percent by weight of coarsely ground hard bone, which shall be in pieces no smaller than the opening size specified for No. 8 mesh in said Standards, uniformly incorporated with the product, may be used in lieu of the agents prescribed in paragraph (a)(2) of this section.

(5) Before the denaturing agents are applied to articles in pieces more than 4 inches in diameter, the pieces shall be freely slashed or sectioned. (If the articles are in pieces not more than 4 inches in diameter, slashing or sectioning will not be necessary.) The application of any of the denaturing agents listed in paragraph (a) (1) or (2) of this section to the outer surface of molds or blocks of boneless meat, meat byproducts, or meat food products shall not be adequate. The denaturing agent must be mixed intimately with all the material to be denatured, and must be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

(b) Inedible rendered animal fats shall be denatured by thoroughly mixing therein denaturing oil, No. 2 fuel oil, brucine dissolved in a mixture of alcohol and pine oil or oil of rosemary, finely powdered charcoal, or any proprietary denaturing agency approved for the purpose by the Administrator in specific cases. The charcoal shall be used in no less quantity than 100 parts per million and shall be of such character that it will remain suspended indefinitely in the liquid fat. Sufficient of the chosen identifying agents shall be used to give the rendered fat so distinctive a color, odor, or taste that it cannot be confused with an article of human food.

PART 381—[AMENDED]

23. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended (21 U.S.C. 451 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

24. Paragraph (b) of § 381.1 (CFR 381.1) would be amended by adding paragraphs (61) and (62):

§ 381.1 Definitions.

* * * * *

(61) Import Field Office (IF)). The office of the supervisor of import inspection activities for a particular importing field area. The areas are as follows:

IFO #1 Boston, MA—Covering the States of Massachusetts, New York (excluding New York City), Connecticut, Rhode Island, Vermont, New Hampshire, and Maine.
IFO #2 New York, NY—Covering the areas of New York City and northern New Jersey.
IFO #3 Philadelphia, PA—Covering the State of Pennsylvania and the area of southern New Jersey.
IFO #4 Baltimore, MD—Covering the States of Maryland, Delaware, West Virginia, Virginia and Kentucky.
IFO #5 Charleston, SC—Covering the States of Tennessee, North Carolina, South

[1] Information as to approval of any proprietary denaturing substance may be obtained from the Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250

[2] Copies of MP Form 91 may be obtained, without charge, by writing to the Administrative Operations Branch, Food Safety and Inspection Service, U.S. Department of Agriculture, 123 East Grant Street, Minneapolis, Minnesota 55403. Diagrams 2 and 3 of the Meat Denaturing Guide are for comparison purposes only. The Meat Denaturing Guide has been approved for incorporation by reference by the Director, Office of the Federal Register, and is on file at the Federal Register Library.

Carolina, Georgia, and Florida (excluding south Florida).

IFO #6 Miami, FL—Covering the areas of southern Florida, Puerto Rico and the Virgin Islands.

IFO #7 New Orleans, LA—Covering the States of Louisiana, Mississippi, Alabama, Arkansas, Texas, Oklahoma, Kansas, New Mexico and Colorado.

IFO #8 San Pedro, CA—Covering the States of Hawaii, Arizona, Utah, Nevada, the area of southern California, American Samoa, Guam, and the Northern Marianas.

IFO #9 Tacoma, WA—Covering the States of Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Alaska, and Nebraska, and the area of northern California.

IFO #10 Detroit, MI—Covering the States of Michigan, Wisconsin, Minnesota, Iowa, Missouri, Illinois, Indiana and Ohio.

(62) Import Supervisor. The official in charge of import inspection activities within each of the import field offices.

25. Section 381.202 (9 CFR Part 381) would be amended by revising the section heading and adding new paragraphs (d) and (e) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

* * * * *

(d) Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision: *Provided*, That such appeal is filed within 48 hours from the time the decision was made. Any such appeal from a decision of an inspector shall be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal, and such supervisor shall determine whether the inspector's decision was correct. Review of such appeal determination, when requested, shall be made by the immediate supervisor of the employee of the Department making the appeal determination. The cost of any such appeal shall be borne by the appellant if the Administrator determines that the appeal is frivolous. The charges for such frivolous appeal shall be at the rate of $9.28 per hour for the time required to make the appeal inspection. The poultry or poultry products involved in any appeal shall be identified by U.S. retained tags and segregated in a manner approved by the inspector pending completion of an appeal inspection: *Provided, further*, That denial of a labeling application by the inspector shall not constitute a basis for an appeal under this section. This is similar to the procedure outlined in 9 CFR 381.35.

(e) All condemned carcasses, or condemned parts of carcasses, or other condemned poultry products, except those condemned for biological residues, shall be disposed of by one of the following methods, under the supervision of an inspector of the Inspection Service. (Facilities and materials for carrying out the requirements in this section shall be furnished by the official establishments.)

(1) Steam treatment (which shall be accomplished by processing the condemned product in a pressure tank under at least 40 pounds of steam pressure) or thorough cooking in a kettle or vat, a sufficient time to effectively destroy the product for human food purposes and preclude dissemination of disease through consumption by animals. (Tanks and equipment used for this purpose or for rendering or preparing inedible products shall be in rooms or compartments separate from those used for the preparation of edible products. There shall be no direct connection by means of pipes, or otherwise, between tanks containing inedible products and those containing edible products.)

(2) Incineration or complete destruction by burning.

(3) Chemical denaturing, which shall be accomplished by the liberal application to all carcasses and parts thereof, of:

(i) Crude carbolic acid,

(ii) Kerosene, fuel oil, or used crankcase oil, or

(iii) Any phenolic disinfectant conforming the commercial standards CS 70-41 or CS 71-41 which shall be used in at least 2 percent emulsion or solution.

(4) Any other substances or method that the Administrator approves in specific cases, which will denature the poultry product to the extent necessary to accomplish the purposes of this section.

(5) Carcasses and parts of carcasses condemned for biological residue shall be disposed of in accordance with paragraph (2) of this section or by burying under the supervision of an inspector.

§ 381.196 [Amended]

28. Section 381.196 (9 CFR Part 381) would be amended by removing the words "inspector in charge" and inserting, in their place, the words "import supervisor;" and by removing the words "import inspection office" and inserting, in their place, the words "import field office."

§ 381.200 [Amended]

27. Paragraph (c) of section 381.200 (9 CFR Part 381) would be amended by removing the term "§ 381.96" and inserting, in its place, the term "paragraph (h) of this section."

28. Section 381.200 (9 CFR Part 381) would be amended by revising the section heading and adding a new paragraph (h) to read as follows:

§ 381.200 Imported poultry products, retention in customs custody; delivery under bond; movement prior to inspection; sealing; handling; facilities and assistance; official seal.

* * * * *

(h) The official mark for use in sealing means of conveyance used in transporting poultry products under any requirement in this part shall be the inscription and a serial number as shown below,[1] and any seals approved by the Administrator for applying such mark shall be an official device.

29. Section 381.204 (9 CFR Part 381) would be amended by revising it to read as follows:

§ 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

(a) Poultry products which upon inspection are found to be acceptable for entry into the United States shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon such products only after completion of official import inspection and product acceptance.

(b) The official mark for marking poultry products offered for entry as "U.S" inspected and passed" shall be in the following form, and any device

[1] The term "F-351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

approval by the Administrator for applying such mark shall be an official device.[*]

FIGURE 1

(c) When products are refused entry into the United States, the official mark to be applied to the products refused entry shall be in the following form:

UNITED STATES
REFUSED ENTRY

FIGURE 2

(d) The import warning notice prescribed in § 381.200(c) is an official mark.

(e) The ordering and manufacture of brands shall be in accordance with the provisions contained in § 317.3(c) of the Federal meat inspection regulations.

§ 381.102 [Removed]

30. Section 381.102 (9 CFR Part 381) would be removed and reserved for future use.

§ 381.200 [Amended]

31. Paragraph (c) of section 381.200 (9 CFR Part 381) would be amended by removing the term "§ 381.98" and inserting, in its place, the term "paragraph (h) of this section."

Done at Washington, DC on May 7, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-10805 Filed 5-19-86; 8:45 am]

BILLING CODE 3410-DM-M

[*] The number "I-42" is given as an example only. The establishment number of the official establishment or official import inspection establishment where the product was inspected shall be shown on each stamp impression.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWP-8]

Battle Mountain, NV, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to enlarge the 1,200 foot transition area at Battle Mountain, Nevada, to encompass the holding pattern for aircraft holding southwest of the Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC). This will keep aircraft entirely within controlled airspace while in the holding pattern.

DATES: Comments must be received on or before July 1, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 86-AWP-8, Air Traffic Division, P.O. Box 92007, WWPC, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to enlarge the 1,200 foot transition area at Battle Mountain, Nevada. This action will provide the necessary controlled airspace for aircraft holding southwest of the Battle Mountain VORTAC. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

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so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Battle Mountain, NV—[Amended]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Lander County Airport (lat. 40°36'54" N., long. 116°52'26" W.) and within 5 miles each side of the Battle Mountain VORTAC 218° radial, extending from the VORTAC to 16 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 10 miles southeast and 13.5 miles northwest of the Battle Mountain 218° and 038° radials extending from the VORTAC to 25 miles southwest and 12 miles northeast of the VORTAC, and within 6.5 miles south and 9 miles north of the Battle Mountain VORTAC 077° and 257° radials, extending from 8 miles west to 16.5 miles east of the VORTAC.

Issued in Los Angeles, California on May 9, 1986.

James A. Halvorsen,

Acting Manager, Air Traffic Division.

[FR Doc. 86-11247 Filed 5-19-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 53

Hospitals and Medical Facilities Construction; Hill-Burton Loan Guarantees and Direct Loans—User Charges for Modification Requests

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish fees for processing requests to modify the terms of direct and guaranteed loans made for the construction of hospitals and medical facilities. The process fees are necessary in order to recover administrative expenses.

DATE: Comments on the proposed rule must be received on or before June 19, 1986.

ADDRESSES: Address comments in writing to: Richard R. Ashbaugh, Assistant Surgeon General, Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 11-03, Rockville, Maryland 20857, Attention: Ms. Tsui Doong. Comments will be available for public inspection in Room 11A-10 at the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (301 443-2468).

FOR FURTHER INFORMATION CONTACT: Ms. Tsui Doong, 301 443-3468.

SUPPLEMENTARY INFORMATION: Section 9701 of Title 31, U.S.C., commonly known as the User Charge Statute, authorizes agencies to establish by regulation, charges for each service or thing of value provided by an agency to persons outside the Government. Under the relevant court decisions interpreting this statute, not only must the Government activity be fairly characterized as being of value to the non-governmental person or entity, but such activity must also be a special benefit to the person or entity involved above and beyond the benefit that accrues to the general public.

Under Title VI of the Public Health Service Act, (the Hill-Burton Act), the Department administers programs for direct loans and loan guarantees for modernization and construction of hospitals and other medical facilities. The Act authorizes the Secretary to enter into agreements modifying the terms of such loans and loan guarantees to the extent it is determined to be consistent with the financial interest of the United States (42 U.S.C. 291j-3 (e)(2)). From time to time, the Department has received and reviewed requests from loan recipients for modifications in the loan documents. These modifications allow loan recipients greater financial flexibility and thus provide a special benefit to the loan recipient. Under the standard set out above, the Department has determined that the imposition of user fees for review of requests for modifications in the loan and loan guarantee documents is authorized and appropriate.

Accordingly, the Department is proposing to amend the Hill-Burton regulations applicable to loan guarantees and direct loans (42 CFR Part 53, Subpart N) by adding a new § 53.156 which would establish a fee for the processing of requests for parity and for major and minor modifications of the terms of the loan and loan guarantee documents.

The proposed amendment explains what constitutes a major or minor modification. Initially, the fee to process a major modification request would be $4,500, the fee for a minor modification request would be $1,500 and the fee for a parity request would be $5,500. The fees represent the costs to the Federal Government of performing its review of the request. These costs include expenses for personnel, travel, and overhead. The proposed rule provides for the fee to be submitted along with the request. The fee would be refundable if a request is withdrawn within 10 business days of its receipt by the Department. As revisions of a fee become necessary, notice of revisions in the amount of the fees would be published in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Analysis

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the order as any rule that has an annual effect on the national economy of $100 million or more, or certain other economic effects. The Secretary concludes that these regulations are not major rules within the meaning of the Executive Order, because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

The Regulatory Flexibility act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each proposed rule with a "significant economic impact on a substantial number of small entities" an initial analysis must be prepared describing the proposed rule's impact on small entities.

During Fiscal Year 1985 the Department reviewed approximately 15 requests for Hill-Burton loan modifications. these reviews required an estimated total of 2,520 hours of staff time which is euivalent to 1.2 full-time equivalent or $60,000. This sum is less than 1 percent of average hospital revenues of $5 million and thus would

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not represent a "significant" economic impact on a substantial number of small entities. The Secretary therefore certifies that an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

Section 3504(h) of the Paperwork Reduciton Act of 1980 requires that proposed rules containing information collection or recordkeeping requirements be subject to review and clearance by the Office of Management and Budget (OMB). This proposed rule does not contain any new information collection or recordkeeping requirements and is therefore not subject to OMB clearance.

List of Subjects in 42 CFR Part 53

Loan programs—health, fees.

Accordingly, the Assistant Secretary for Health of the Department of Health and Human Services with the approval of the Secretary, hereby proposes to amend 42 CFR Part 53 as set forth below.

Dated: March 25, 1986.

Donald Ian MacDonald,

Acting Assistant Secretary for Health.

Approved: April 29, 1986.

Otis R. Bowen,

Secretary.

PART 53—GRANTS, LOAN AND LOAN GUARANTEES FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS

1. The authority citation for 42 CFR Part 53 is revised and the citation following § 53.185 is removed.

Authority: Secs. 215, 603, 608, 621, 623, Public Health Service Act as amended 60 Stat. 895; 78 Stat. 451 and 455; 84 Stat. 2047 and 2048 (42 U.S.C. 216, 293c, 295i, 297j–1, and 297j–3; 31 U.S.C. 9701.

2. In Part 53, a new section 53.156 is added to Subpart N to read as follows:

§ 53.156 Fees for modification requests.

(a) Fees will be charged for the processing of requests for parity, and for major and minor modifications of the terms of documents evidencing and securing direct and guaranteed loans. The amount of the fee will be determined by the Secretary in accordance with the User Charge Statute, 31 U.S.C. 9701(b) and will be available from the Department upon request.

(1) As used in this section, a "request for parity" allows new debt to share lien position (i.e. collateral) with an existing Hill-Burton loan.

(2) As used in this section, a "major modification" is any modification involving the release of $100,000 or more of collateral; a corporate restructuring that involves a transfer of assets; lender/creditor requests; modifications to a sinking fund; defeasance requests and requests for additional secured indebtedness; and any other modification that involves a comparably significant use of Department resources.

(3) As used in this section, a "minor modification" is any modification involving the release of less than $100,000 of collateral; an easement; and any other modification that involves a comparable use of Department resources.

(b) A request for modification is to be accompanied by a certified check or money order in the amount of the appropriate fee, payable to the U.S. Treasury.

(c) A submitter may withdraw its request for modification within 10 business days following its receipt and receive a refund of the fee.

[FR Doc. 86–11215 Filed 5–19–86; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[CC Docket No. 86–182]

Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the adoption of automated reporting requirements for certain Class A and Tier 1 local exchange carriers. If adopted the carriers will be required to report certain data called for in Parts 31, 67 and 69 of our Rules. This proposal is made to enhance the ability of the Commission to monitor the industry and to manage the change toward a more competitive environment.

DATES: Comments must be submitted on or before June 30, 1986, reply comments on or before July 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donald Burrell, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, CC Docket 86–182, adopted May 1, 1986, and released May 7, 1986.

The full text of Commission proposals are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this proposal may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (NPRM), this Commission proposes to modify Parts 1.785 and 43.21 of the Rules to require local exchange carriers to file detailed cost data in computer readable submissions. We are proposing that the results of the USOA be reported in automated form to us by all Class A local exchange carriers with annual revenues in excess of $50 million and all non-class A, Tier 1[1] carriers. Furthermore, we are proposing that the results of Part 67 (jurisdictional separations) and Part 69 (access charges) be reported in automated form to this Commission by all tier 1 carriers.

2. The automated data reporting system would provide this Commission with timely access to data that would enhance our ability to take effective actions, especially those aimed at creating, to the maximum extent possible, an unregulated, competitive marketplace environment for the development of telecommunications. In addition, we would be able to closely monitor the results of our actions on the industry and, thus, to make corrections to our actions as necessary. Timely information and action is essential in a period of rapid change which this industry is undergoing. Finally, we believe that by implementing an automated system we would enhance our ability to provide service to the public in the most efficient and expeditious manner by (1) providing a convenient way for the carriers to supply the data and (2) providing a most effective way for us to assimilate and analyze the data.

3. We propose that automated reporting be done on a calendar year basis. This report would contain annual data with a breakdown on a monthly basis. It would further provide the Commission with sufficient detail to perform trend analysis and with the flexibility to analyze rate case test years

[1] Tier 1 Companies consist of those local exchange companies that earn more than $100 million in total company regulated annual revenues. Public Notice, Monitoring Plan, Mimeo 2133 (released January 23, 1985), at para. 7.

and tariff filings. We believe that, for the most part, this reporting requirement is consistent with the carriers existing financial and operational data systems, and is therefore not overly burdensome. We propose to implement automated data reporting requirements on January 1, 1987. The first filing would be required on April 30, 1988.

Ordering Clauses

4. Accordingly it is ordered, pursuant to the provisions of Sections 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), that there is hereby instituted a Notice of Proposed Rulemaking into the foregoing matters.

5. It is further ordered, that interested persons may file comments on the proposals discussed in the Notice on or before June 30, 1986. Reply comments shall be filed on or before July 15, 1986. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, DC.

6. It is further ordered, pursuant to section 220(i), that the Secretary shall serve a copy of this Notice on each state commission.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 would continue to read:

Authority: Secs. 4, 303, 48 stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 1.785 is proposed to be amended by adding new paragraph (d) to read as follows:

§ 1.785 Annual financial reports.

(d) Automated annual reports shall be filed by local exchange carriers as required by part 43 of this chapter on the following forms:

(1) FormXX, USOA company level data.

(2) Form XX, USOA study area level data.

(3) Form XX, Separations category/sub-category data.

(4) Form XX, Interstate access category/sub-category/access-element data.

(5) Form XX, Statistical information and operational data.

PART 43—[AMENDED]

3. The authority citation for Part 43 would continue to read:

Authority: Sec. 4, 48 stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

4. Section 43.21 is proposed to be amended by adding paragraph (e) and (f) to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

* * * * *

(e) Each local exchange telephone common carrier subject to Sections 201–205 of the Communications Act of 1934, as amended, and having total company regulated annual revenues in excess of $100 million shall file with this Commission supplemental automated annual reports with monthly breakdowns not later than April 30 of each year covering the preceding calendar year. The certified automated reports, covering USOA, separations, interstate access, statistical and operations data, shall be filed on the appropriate form prescribed by the Commission (see § 1.785 of this chapter) and shall contain full and specific answers to all questions and information requested in the currently effective automated reporting forms and media.

(f) Each Class A local exchange carrier with regulated annual revenues of between $50 and $100 million shall file with this Commission supplemental automated annual reports with monthly breakdowns not later than April 30 of each year covering the preceding calendar year. The certified automated reports, covering USOA data (see § 1.785 of this chapter), shall contain full and specific answers to all questions and information requested in the currently effective automated reporting forms and media.

[FR Doc. 86-11282 Filed 5-19-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[P.R. Docket No. 86-160, RM-5102]

Radio Service, Special; Available Additional Frequency Assignments for SMR systems in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This Commission is proposing to amend Part 90 of its rules to allow fully-loaded Specialized Mobile Radio systems to participate in inter-category frequency sharing in the 80 MHz band. This action would provide some frequency relief for those systems wishing to expand but unable to do so because of the present lack of available frequencies.

DATES: Comments must be submitted on or before June 30, 1986, reply comments on or before July 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, Pr Docket No. 86-160, adopted April 25, 1986, and released May 8, 1986. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washinton D.C. 20037. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037. Telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. On May 8, 1986 the Commission released a *Notice of Proposed Rule Making* (*Notice*) which proposes to amend § 90.621 of its rules to permit inter-category sharing of frequencies between the SMRS, Industrial/land Transportation, and Business categories in the 800 MHz band. The *Notice* is in response to a Petition for Rule Making submitted by the National Association of Business and Educational Radio, Inc. (NABER).

2. The Commission proposes to amend § 90.621(g), of its rules to allow fully-loaded, trunked 800 MHz SMR licensees to participate in inter-category sharing with the Industrial/Land Transportation and Business categories when frequencies are not available in the

SMRS category. The SMR licensee must demonstrate that it has current users equal to or greater than the present loading requirement, *i.e.*, 30 mobiles, portables, and control stations (units) per channel. Additionally, since it is believed that inter-category sharing should be reciprocal, the Commission is proposing to allow licensees in the Industrial/Land Transportation and Business categories, with fully loaded systems, to be eligible for inter-category sharing with the SMRS category when frequencies are not available in any non-SMRS category. SMRS licensees will not be able to access frequencies in Public Safety category.

3. Since inter-category frequency coordination is necessary to maintain an accurate data base, it is also proposed that SMR applicants requesting frequencies in the Industrial/Land Transportation or Business categories obtain frequency coordination from the coordinator for the category involved before the application is filed with the Commission. Similarly, a licensee with a fully-loaded system in either the Industrial/Land Transportation or Business category who desires to expand, must obtain a statement from all coordinators that no frequencies are available in the Industrial/Land Transportation, Business, and Public Safety categories before it requests a frequency in the SMRS category from the Commission.

4. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

6. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before June 30, 1986, and reply comments on or before July 15, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such informatin is noted in the report and order.

8. In accordance with the provision of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, NW., Washington, DC.

List of Subjects in 47 CFR Part 90

Private land mobile radio service, Radio.

William J. Tricarico,

Secretary.

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.621(g) is revised in its entirety to read:

§ 90.621 Section and assignment of frequencies.

* * * * *

(g) The channels listed as available for eligibles in the Public Safety, Industrial/Land Transportation, Business, and SMRS categories are available on a shared basis to all persons operating in the same geographical area and eligible in these categories under the following conditions:

(1) Channels in the Public Safety category will be available to eligibles in the Business and Industrial/Land Transportation categories only if there are no frequencies in these two categories and there are no public safety systems authorized on those channels under consideration to be shared.

(2) Channels in the Industrial/Land Transportation and Business categories will be available to fully-loaded SMR systems desiring to expand if no SMRS category frequencies are available. Evidence shall be provided that the SMR applicant has sufficient users to warrant the authorization of the number of requested channels.

(3) Channels in the SMRS category will be available to fully-loaded Industrial/Land Transportation and Business category systems desiring to expand if frequencies in their own category are not available. The licensee must demonstrate that it is eligible for additional frequencies and that it has obtained statements from coordinators in the Industrial/Land Transportation, Business, and Public Safety categories and that no frequencies are available in those categories.

(4) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

* * * * *

[FR Doc. 86-11283 Filed 5-19-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-67; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Interior Piping

Correction

In FR Doc. 86-9844, beginning on page 16362 in the issue of Friday, May 2, 1986, make the following corrections:

1. On page 16362, in the third column, in the third complete paragraph, the first word in the second line should read "thought" and the second initial in the thirteenth line should read "F".

2. On page 16363, in the first column, the second initial in the third line should read "S".

3. Also on page 16363, in the first column, in the last paragraph, in the fourth from last line, the third word should read "of".

BILLING CODE 1505-01-M

Urban Mass Transportation Administration

49 CFR Part 604

[Docket No. 82-I]

Charter Bus Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Reopening of comment period.

SUMMARY: On March 6, 1986, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking seeking public comment on a proposal to replace the existing UMTA regulation on Charter Bus Operations. Several trade associations representing UMTA grantees and Members of the Congress have asked UMTA to extend the public comment period on the proposed rule. Since the comment period closed on May 5, 1986, this notice reopens the public comment period on the proposed rule for an additional 30 days.

DATES: Comments are due on June 19, 1986.

ADDRESS: Comments must be submitted to UMTA Docket No. 82-I, 400 7th Street, SW., Room 9226, Washington, DC 20590. All comments and suggestions are available for examination in room 9226 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. UMTA will acknowledge the receipt of comments if the commenter includes a self-addressed, stamped postcard with the comment.

FOR FURTHER INFORMATION CONTACT: Douglas C. Gold, Office of the Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590; Telephone: (202) 426-1936.

SUPPLEMENTARY INFORMATION: On March 6, 1986, UMTA published a notice of proposed rulemaking (NPRM) to revise the existing restrictions on the permissible charter bus operations that UMTA's recipients can provide. The proposed revision would modify the existing regulation to ensure that federally assisted equipment is used to meet mass transit needs as intended by the Urban Mass Transportation Act of 1964, as amended, and to increase the protections for private charter bus operators.

UMTA originally established a 60-day comment period for the NPRM, which was scheduled to end on May 5, 1986. Several trade associations representing UMTA's recipients and Members of Congress have asked UMTA to extend the comment period. They have provided two reasons for their requests. First, they state that many recipients, particularly in rural areas, do not have immediate access to the Federal Register and will receive the news of the proposed changes too late to respond. Second, they state that due to the complexity of the issues and the extent of the changes proposed, additional time is needed to synthesize the comments of the associations' members.

UMTA agrees that an additional 30 days is warranted. Since, however, the comment period closed on May 5, 1986, it is not possible to extend the comment period. Instead, UMTA is reopening the comment period for an additional 30 days. Therefore, this notice reopens the comment period until June 19, 1986.

Issued: May 15, 1986.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 86-11347 Filed 5-19-86; 8:45 am]

BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 51, No. 97
Tuesday, May 20, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meetings on Proposed Land and Resource Management Plan and Draft Environmental Impact Statement for Lassen National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice.

Lassen National Forest will hold eight public briefings and two public hearings on its Proposed Land and Resource Management Plan and Draft Environmental Impact Statement.

Public briefings for the purpose of informing the public and answering questions on these two documents will be held:

June 12, Thursday, 7:00 p.m., Susanville: Lassen College, Humanities Building Lecture Hall.

June 16, Monday, 7:00 p.m., Fall River Mills: Fall River High School, Multi-Purpose Room.

June 17, Tuesday, 7:00 p.m., Redding: Civic Auditorium, 747 Auditorium Drive.

June 18, Wednesday, 7:00 p.m., Red Bluff: Agricultural Annex, 760 Walnut Street.

June 23, Monday, 7:00 p.m., Reno: University of Nevada, Reno, Business Building.

June 24, Tuesday, 7:00 p.m., Chester: Memorial Building, Stone & Gay Street.

June 25, Wednesday, 7:00 p.m., Chico: CARD Room, 545 Vallombrosa Avenue.

June 26, Thursday, 7:00 p.m., Westwood: Westwood Community Center, 3rd and Birch Street.

Public hearing for the purpose of receiving formal public comments on these two documents will be held:

June 29, Tuesday, 7:00 p.m., Chico: CARD Room, 545 Vallombrosa Avenue.

June 31, Thursday, 7:00 p.m., Susanville: Lassen College, Humanities Building Lecture Hall.

Each hearing will be conducted by a hearing officer. After an introduction by the Forest Service, the public may present oral and/or written comments. A court reporter will keep a verbatim record of all oral comments, and it will become part of the comments record on the Proposed Plan and Draft Environmental Impact Statement. Each speaker may be limited to five minutes. Speakers can pre-register by contacting the Receptionist at Lassen National Forest in Susanville, phone (916) 275–2151, in writing, or in person. Please specify your name, address, affiliation (if any), and which hearing. Speakers can also pre-register at the hearing from 6:30 until 7:00 pm. Forest Service officials will not comment or respond to statements made by the speakers. The Forest Service will respond to all public comments in the Final Environmental Impact Statement.

Written comments should be sent to Forest Supervisor Richard A. Henry, Lassen National Forest, 55 South Sacramento Street, Susanville, California 96130 by August 7, 1986.

For more information, contact Forest Supervisor Richard A. Henry at the above address.

Dated: May 9, 1986.

Merlin A. Johnson,

Acting Forest Supervisor.

[FR Doc. 86–11306 Filed 5–19–86; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Discontinuance of Milk Equivalent of Manufactured Dairy Products Series and the Supply and Utilization of Milk Series

The Department of Agriculture, National Agricultural Statistics Service (NASS), is proposing to discontinue the milk equivalent of manufactured dairy products published each year in *Dairy Products: Annual Summary*. Factors for converting manufactured product to required quantities of whole milk have not been updated for many years and do not reflect many current trade practices. Because of this, the validity of the data series is questionable. Funds are not available to update the conversion factors. If this proposal is adopted, it will be effective with the May 1987 release of *Dairy Products: Annual Summary* for the year 1986. Discontinuance of the milk equivalents will also eliminate the supply and utilization of milk table published annually in the *Milk Production, Disposition and Income* report.

Comments from data users or other members of the public regarding the proposed change should be sent to Robert L. Freie, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, Room 5897–S, NASS/USDA, Washington, DC 20250. The comment period will close June 16, 1986.

Done at Washington, DC this 15th day of May 1986.

W.E. Kibler,

Administrator.

[FR Doc. 86–11273 Filed 5–19–86; 8:45 am]

BILLING CODE 3410-20-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: June 4, 1986.

Time: 9:30 a.m.

Place: State Department Building, Washington, DC

Type of Meeting: Closed.

Contact Person: William B. Staples, Executive Secretary, U.S. Arms Control and Disarmament Agency, Room 5933, Washington, DC 20451, (202) 647–4787.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

June 4

AM Discuss the status of the Geneva negotiations, Strategic Defense Initiative and Verification and Non-Compliance issues.

PM Discuss Multilateral and Non-Proliferation issues.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated May 13, 1986, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 86-11250 Filed 5-19-86; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 332]

Resolution and Order Approving the Application of the County of Erie, NY, for a Foreign-Trade Subzone for the Ink Manufacturing Facilities of Greater Buffalo Press, Inc., in Chautauqua County, NY

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the County of Erie, New York, grantee of Foreign-Trade Zone 23, filed with the Foreign-Trade Zones Board (the Board) on June 10, 1985, requesting special-purpose subzone status for the ink manufacturing facilities of Greater Buffalo Press, Inc. (GBP) in Chautauqua County, New York, adjacent to the Buffalo-Niagara Falls Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application for five years from the commencement of subzone operations, subject to the following conditions: (1) Authority for the subzone may be extended after a review by the Board; (2) GBP must elect privileged foreign or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink to be sold in commercial quantities in the domestic market for use other than by GBP or a GBP subsidiary; (3) GBP must elect privileged foreign or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink, once shipments of ink containing foreign pigment to GBP or a GBP subsidiary exceed 21 million pounds on an annual basis; (4) GBP will make available to the Customs Service on request its records, or the records of any of its subsidiaries that relate to the production, shipment, and sale of ink and will post a bond deemed adequate by the Customs Service to protect the revenue; and, (5) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving printing ink or pigments.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board Washington, D.C., Grant of Authority

To Establish a Foreign-Trade Subzone at the Ink Manufacturing Facilities of Greater Buffalo Press, Inc., in Chautauqua County, New York, Adjacent to the Buffalo-Niagara Falls Customs Port of Entry.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 USC 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the County of Erie, New York, grantee of Foreign-Trade Zone No. 23, has made application (filed June 10, 1985, Docket No. 20-85, 50 FR 27472) in due and proper form to the Board for authority to establish a special-purpose foreign-trade subzone at the ink manufacturing facilities of Greater Buffalo Press, Inc., in Chautauqua County, New York;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed June 10, 1985, the Board hereby authorizes the establishment of a special-purpose subzone at the facilities of Greater Buffalo Press, Inc. in Dunkirk and Sheridan, Chautauqua County, New York, designated on the records of the Board as Foreign-Trade Subzone No. 23B at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 13th day of May 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

FR Doc. 86-11236 Filed 5-19-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-506]

Antidumping Preliminary Determination of Sales at Less Than Fair Value; Porcelain-on-Steel Cooking Ware From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that porcelain-on-steel cooking ware from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of porcelain-on-steel cooking ware from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by July 28, 1986.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3174 or 377–2438.

Preliminary Determination

We have preliminarily determined that porcelain-on-steel cooking ware from the PRC is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondents during the period of investigation. The weighted-average margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on December 24, 1985 (50 FR 53352) and notified the ITC of our action. On January 26, 1986, the ITC determined that there is a reasonable indication that imports of porcelain-on-steel cooking ware from the PRC are materially injuring a U.S. industry (51 FR 3882).

On January 27, 1986, we presented an antidumping duty questionnaire to China National Light Industrial Products Import and Export Corporation (CNLIP). Respondent was requested to answer the questionnaire in 30 days. On March 5, 1986, we amended our questionnaire and, at the request of the respondent, granted an extension of time for CNLIP to submit its response. Subsequently, an additional extension was granted, also at the respondent's request. We received a questionnaire response from CNLIP and its related partner in the United States, Excel United Corporation, on April 7, 1986.

On May 8, 1986, we requested additional information, as well as a reformulation of certain types of production information, from the companies under investigation. Supplemental information was received on May 12, 1986. We requested that the factors of production information be submitted by May 27, 1986.

Scope of Investigation

The products covered by this investigation are procelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0615, 654.0624, and 654.0627 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0628 of the TSUSA, is not subject to this investigation. We investigated sales made in the period July 1 to December 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. For foreign market value, we used the best information available as required by section 776(b) of the Act (19 U.S.C. 1677e(b)). For purposes of this preliminary determination, we used the date of sale to the first unrelated purchaser in the United States as the date of sale in the United States. At verification, we will evaluate whether these are appropriate dates for use in the final determination.

United States Price

In accordance with section 72(c) of the Act (19 U.S.C. 1677a(c)), we used exporter's sales price (ESP) to represent United States price because the merchandise was sold to unrelated purchasers after importation into the United States.

We calculated ESP based on the packed, F.O.B. prices to unrelated purchasers in the United States shown in the response of CNLIP. We used F.O.B., rather than ex-factory, prices because we lacked adequate surrogate information from which to develop a value for Chinese currency (RMB) denominated foreign inland freight charges in a non-controlled-economy country (see the "Foreign Market Value" section of this notice).

Where appropriate, we made deductions for brokerage charges, duties paid in the PRC and the United States, ocean freight and insurance, U.S. freight and insurance, commissions, U.S. selling expenses incurred in the PRC and in the United States, warranties, credit expenses, and advertising and discounts in the U.S. market. We will develop information for our final determination which will allow us to value RMB denominated costs in a non-state-controlled-economy country at a comparable level of economic development.

Foreign Market Value

In accordance with section 773(c) of the Act (19U.S.C. 1677b(c)), we used prices of porcelain-on-steel cooking ware imported into the United States as the basis for determining foreign market value.

Petitioners alleged that the economy of the PRC is state-controlled and that home market sales of the subject merchandise, therefore, may not be considered as a basis on which to determine foreign market value pursuant to section 773(a) of the Act (19 U.S.C.

1677b(a)]. Upon analysis of available information, including briefs submitted by the parties, we have preliminarily concluded that the economy of the PRC is state-controlled for purposes of this investigation because prices and production levels of porcelain-on-steel cooking ware, as well as prices of factors of production, are government controlled.

As a result, sesction 773(c) of the Act (19 U.S.C. 1677b(c)) requires us to use either the prices or constructed value of such or similar merhandise in a non-state-controlled-economy country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country. After an analysis of the economies of countries we identified as producing porcelain-on-steel cookware, we determined that Indonesia, Egypt, and Thailand were the countries at a stage of economic development comparable to the PRC.

We have been unable to obtain information on prices of porcelain-on-steel cooking ware produced in those countries. Lacking such information, we have based foreign market value on the prices of porcelain-on-steel cooking were imports into the United States. Import prices from countries currently the subject of porcelain-on-steel cooking ware antidumping and/or countervailing duty investigations by the Department were not considered as part of our foreign market value determination. We calculated the average unit value of imported porcelain-on-steel cooking ware from a basket of countries based on import statistics of the U.S. Census Bureau for the period of investigation. As best information available, we did not deduct foreign inland freight from this average price. We will continue to seek information which will enable us to deduct foreign inland freight charges from both the EPS and foreign market value.

Verification

We will verify all the information used in making our final determination in accordance with section 776(a) of the Act (19 U.S.C. 1677e(a)). We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Suspension of liquidation

In accordance with section 733(d) of the Act (19 U.S.C. 1673(d)), we are directing the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
China National Light Industrial Products Import and Export Corporation	81.38
All Others	81.38

ITC Notification

In accordance with section 733 (f) of the Act (19 U.S.C. 1673b(f)), we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access of all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry, before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m., on June 23, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice' publication. Requests should contain; (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In additon, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 16, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 35.40, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) on the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 13, 1986.

[FR Doc. 86-11333 Filed 5-19-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of porcelain-on-steel cooking ware from Mexico that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by July 28, 1986.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Betsy Killian or Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1673 or 377-0167.

Preliminary Determination

We have preliminarily determined that porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of

Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on approximately 84 percent of all sales of the class or kind of merchandise to the United States during the period of investigation, July 1 through December 31, 1985. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53352). On January 28, 1986, the ITC determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from Mexico are materially injuring a U.S. industry (51 FR 3862).

On January 27, 1986, we presented antidumping duty questionnaires to Cinsa, S.A. (Cinsa) and Troqueles y Esmaltes, S.A. (TRES). Respondents were requested to answer the questionnaire in 30 days. On February 18, 1986, the Embassy of Mexico and the Mexican exporters requested an extension for response submissions. We orally granted the respondents a two-week extension. On March 7, 1986, we amended our questionnaire and, at the request of the companies and of the Embassy of Mexico, granted a second two-week extension of time (from March 7) for response submissions. Subsequently, a third two-week extension was granted, also at the companies' request. We received responses from the companies on March 31 (Cinsa) and April 2, 1986 (TRES). In letters dated April 12 and 14, 1986, the Department requested supplemental information. Supplemental responses were submitted by the respondents on April 21, 1986. On May 9, 1986, a letter requesting correction of deficient information as well as a reformulation of certain types of information was presented to the companies under investigation. They have been requested to respond to that letter by May 20, 1986.

Scope of Investigation

The products covered by this investigation are procelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation. We investigated sales of procelain-on-steel cooking ware during the period July 1 through December 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for the companies under investigation using data provided in their responses.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated purchase price based on the packed, F.O.B., or ex-factory, prices to unrelated purchasers in the United States, as appropriate.

To determine Cinsa's purchase price, we made deductions for foreign inland freight, insurance and brokerage charges (in Mexico) as well as for the maximum discounts granted by Cinsa to U.S. purchasers. We used these discounts as best information available because Cinsa did not provide discount information on a sale-by-sale basis.

For Troqueles y Esmaltes we made no adjustments to the purchase price.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we used home market prices to determine foreign market value. The home market prices were based on packed prices (excluding the prices of defective items) to all home market purchasers. We included all home market sales regardless of the level of trade or customer relationship since we preliminarily determined that there is not a sufficiently strong correlation between the home market prices and the nature, or character, of the home market purchaser to justify alternative treatment. Numerous data input errors on the computer tapes also contributed to our decisions not to limit comparisons to an equivalent level of trade. We are seeking clarifying information.

We did not make adjustments for differences in physical characteristics under § 353.16 of our regulations because neither company provided sufficient information to form a basis for these adjustments. If additional verifiable information regarding these disallowed adjustments is received prior to May 20, 1986, these adjustments will be considered for the final determination.

To determine Cinsa's fair value, we made deductions for inland freight and insurance. We made circumstances of sale adjustments for differences in credit and advertising expenses in accordance with § 353.15 of our regulations. For the final determination, we may make adjustments for discounts and commissions to unrelated parties, if this information is submitted, as requested, in an acceptable form and can be verified.

For Troqueles y Esmaltes, we made deductions for inland freight, insurance and rebates as well as for quantity and early payment discounts. We also made a circumstance of sale adjustment for differences in credit expenses according to § 353.15 of our regulations. We disallowed an adjustment for fixed credit expenses because we consider it to be an indirect expense and not directly related to sales under consideration as required by § 353.15(a) of the Commerce Regulations. Finally, we made no adjustments for commission, because information submitted was improperly calculated. Commission and offset adjustments will be considered for the final determination, if they are submitted in proper form and can be verified.

Currency Conversion

In calculating foreign market value, we made currency conversions from Mexican pesos to United States dollars in accordance with § 353.56(a) of our regulations, using the daily official Mexican exchange rates certified by the Federal Reserve, for comparisons involving purchase price.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the companies under investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from Mexico that is entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Cinsa, S.A.	99.73
Troqueles y Esmaltes, S.A.	60.58
All Others	83.83

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all previleged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulation (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m., on June 26, 1986, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must sumbit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 16, 1986. Oral presentation will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 13, 1986.

[FR Doc. 86-11334 Filed 5-19-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-508]

Antidumping; Porcelain-on-Steel Cooking Ware From Taiwan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of porcelain-on-steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by July 28, 1986.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita of Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0189 or 377-0167.

Preliminary Determination

We have preliminarily determined that porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of theTariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, July 1 through December 31, 1985. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee on the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53353). On January 28, 1986, the ITC determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan are materially injuring a U.S. industry (51 FR 3862).

On February 6, 1986, we presented antidumping duty questionnaires to First Enamel Industrial Corp. (First Enamel), Tian Shine Enterprise Co., Ltd. (Tian Shine), Li-Fong Industrial Co., Ltd. (Li-Fong), Tou Tien Metal (Taiwan) Co., Ltd. (Tou Tien), Li-Mow Enamelling Co. Ltd. (Li-Mow), and Receive Will Industry Co. (Receive Will). Respondents were requested to answer the questionnaire in 30 days. On March 7, 1986, we amended our questionnaire, and, at the request of the companies, granted a two-week extension of time for response submissions. Subsequently, a second two-week extension was granted, also at the companies' request. The companies submitted responses on March 28 (Tian Shine), April 11 (Tou Tien), and April 14 (Li-Fong, Li-Mow and First Enamel), 1986. Receive Will submitted a response on May 9, 1986, which was not timely for this determination.

The Department sent out supplemental questionnaires to Tian Shine on April 15, 1986, and to Tou Tien, Li-Fong, Li-Mow and First Enamel on April 28, 1986. We received additional information from Tian Shine on April 14 and from Li-Fong and Li-Mow on April 21. Tian Shine responded to our supplemental questionnaire on April 22, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0615, 654.0624, and 654.0627 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0628 of the TSUSA, is not subject to this investigation. We investigated sales of porcelain-on-steel cooking ware during the period of July 1, 1985, through December 31, 1985.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for First Enamel, Tian Shine, Li-Fong, Tou Tien, and Li-Mow, using data provided in the responses. For purposes of this preliminary determination, we used the United States, home-market and third-country sales data, and constructed value provided in the responses.

Because Receive Will did not respond to our questionnaire in a timely fashion, we made our fair value comparisons using the best information available, in accordance with section 776(b) of the Act, for both United States price and foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was sold to unrelated U.S. purchaser prior to importation. We calculated purchase price based on the packed, FOB, CIF, or C&F price to unrelated purchasers in the United States, as appropriate.

For Tian Shine, we made deductions for foreign inland freight and brokerage charges. We made an addition for duty drawback. We did not allow adjustments for other expenses which were not defined in the questionnaire response.

For Tou Tien, we made a deduction for inland freight and an addition for duty drawback.

For Li-Mow, we made an addition for duty drawback.

The computer tapes for First Enamel and Li-Fong were improperly formatted. In addition, numerous data entry errors made the computerized data unusable. Therefore, we sampled Li-Fong's and First Enamel's purchase price sales to determine the United States price. We are seeking corrected data for the final determination.

For First Enamel, we made deductions for foreign inland freight, insurance and brokerage charges, and we made an addition for duty drawback. We did not allow adjustments for items identified in the computer tape as commissions, other expenses and other selling expenses because they were not adequately explained in the response.

For Li-Fong, we made a deduction for foreign inland freight.

For Receive Will, we used the information in the petition as the best information available, in accordance with section 776(b) of the Act. The petitioners supplied the prices at which manufacturers in Taiwan were selling or offering to sell porcelain-on-steel cooking ware as the United States price. Petitioners adjusted these prices adjusted downward three percent to account for inland freight, customs duty, brokerage fees, wharfage charges, and bank negotiation charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we used home market prices, third-country prices or constructed value to determine the foreign market value of the imported merchandise.

For Tian Shine, in accordance with section 733(a)(1)(B) of the Act, we calculated foreign market value based on third-country prices for those product groupings where there where sufficient third-country sales to determine foreign market value. When comparing similar merchandise, we made adjustments for differences in physical characteristics based on differences in costs of production in accordance with section 353.16 of our regulations. In those instances were cost-of-production data were not provided, we chose what we considered to be the most similar third-country product within a product grouping as the basis for foreign market value, in accordance with section 776(b). We made deductions for inland freight, brokerage and handling, and an addition for duty drawback.

We used constructed value as the basis for calculating foreign market value for the one product for which there were no sales of such or similar merchandise in the third country. Constructed value was based on the response, using actual material and fabrication costs. Actual general expenses were used since they were higher than the 10-percent statutory minimum. Since profits were greater than the statutory minimum of eight percent of the total of materials, fabrication and general expenses, we used actual profits. We added U.S. packing costs.

For Tou Tien, in accordance with section 773(a)(1) of the Act, we calculated foreign market value based on home market prices for those product groupings where there were home market sales of such or similar merchandise to determine foreign market value. Bacause Tou Tien did not submit information on which to base adjustments for differences in physical characteristics, we chose what we considered to be the most similar home market product within a product grouping as the basis for foreign market value, without making further adjustments for differences in physical characteristics. This method is in accordance with section 776(b) of the antidumping duty regulations. We made a deduction for inland freight and adjustments for packing. We made a circumstance of sale adjustment for advertising in accordance with section 353.15 of our regulations. We did not make adjustments for credit expenses, direct selling expenses or indirect selling expenses. We did not make an adjustment for credit expenses because Tou Tien did not report corresponding credit expenses for U.S. sales. We did not adjust for direct selling expenses because they involved commissions paid to employees of the company. We did not adjust for indirect selling expenses because they were not adequately explained in the response.

We used constructed value as the basis for calculating foreign market value where there were no sales of such or similar merchandise in the home market. Constructed value was based on the response, using actual material and fabrication costs. Actual general expenses were used since they were higher than the 10-percent statutory minimum. We used actual profit or the statutory minimum of eight percent of the total of materials, fabrication and general expenses, whichever was higher, for each product group. We added U.S. packing costs.

Li-Mow had no home-market sales. Therefore, in accordance with section 773(a) of the Act, we calculated foreign market value based on sales to third

countries. For products that were sold in both the U.S. and third countries, we selected third countries that had a sufficient volume of sales of the product under consideration. Because Li-Mow did not provide information on which to base adjustments for differences in physical characteristics, we chose what we considered to be the most similar home market product within a product grouping as the basis for foreign market value, without making further adjustments for differences in physical characteristics.

For First Enamel, we calculated foreign market value based on home market prices for those product groupings where there were sufficient home market sales on which to base foreign market value. When comparing similar merchandise, we made adjustments for differences in physical characteristics based on differences in costs of production in accordance with section 353.16 of our regulations. In those instances where cost-of-production data were not provided, we chose what we considered to be the most similar home market product within a product grouping as the basis for foreign market value, in accordance with section 776(b). We made deductions for foreign inland freight and insurance and adjustments for packing. We did not allow adjustments for commissions and selling expenses because they were not explained in the response.

We used constructed value as the basis for calculating foreign market value where there were no sales of such or similar merchandise in the home market. Constructed value was based on the response, using actual material and fabrication costs. We added the statutory minimum of 10 percent or the actual general expenses, whichever was higher, for each product group. Since no profits were reported, we used the statutory minimum of eight percent of the total of materials, fabrication and general expenses. We added U.S. packing costs.

Li-Fong did not have any home market sales or sufficient sales of such or similar merchandise in a third country to make valid comparisons in accordance with section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(2), we used constructed value as the basis for calculating foreign market value. Constructed value was based on the response, using actual material and fabrication costs. Actual general expenses were used since they were higher than the 10 percent statutory minimum. Since profits were greater than the statutory minimum of eight percent of the total of materials, fabrication and general expenses, we used the actual profits. We added U.S. packing costs.

In accordance with section 776(b) of the Act, we used petitioners' information as the best information available to determine foreign market value for Receive Will. Petitioners provided constructed-value estimates, based on the cost of raw materials and direct labor in Taiwan. Petitioners estimated the cost of production using their own costs adjusted for differences in Taiwan.

Currency Conversion

In calculating foreign market value, we made currency conversions from New Taiwan dollars to United States dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Tien Shine Enterprise Co., Ltd.	12.92
You Tien Metal (Taiwan) Co., Ltd.	24.09
Li-Mow Enamelling Co., Ltd.	26.98
First Enamel Industrial Corp.	11.27
Li-Fong Industrial Corp.	15.51
Receive Will Industry Co., Ltd.	53.00
All Others	23.10

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITCC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulation (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m., on June 19, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 12, 1986. Oral presentation will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 13, 1986.

[FR Doc. 86-11335 Filed 5-19-86; 8:45 am]
BILLING CODE 3510-DS-M

[A-559-502]

Postponement of Final Antidumping Duty Determinations; Certain Welded Carbon Steel Small Diameter and Light-Walled Rectangular Pipes and Tubes From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On April 25, 1986, we received a request from the only respondent in the antidumping duty investigations of certain welded carbon steel small diameter and light-walled rectangular pipes and tubes (small diameter and LWR pipes and tubes, respectively) that the final determinations be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determinations as to whether sales of small diameter and LWR pipes and tubes from Singapore have been made at less than fair value until not later than September 11, 1986.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4087.

SUPPLEMENTARY INFORMATION: On December 11, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), antidumping duty investigations to determine whether imports of small diameter and LWR pipes and tubes from Singapore are being, or are likely to be sold at less than fair value (50 FR 50853). We issued our preliminary affirmative determinations on April 22, 1986 (51 FR 15491). This notice stated that we would issue final determinations on or before July 7, 1986. On April 25, 1986, the single respondent requested that we extend the period for the final determinations until not later than the 135th day after the date of publication of our preliminary determinations in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a singificant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determinations until not later than September 11, 1986.

The public hearing is also being postponed until 10:00 a.m. on July 30, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW. Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by July 23, 1986.

This notice is published pursuant to section 735(d) of the Act.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 8, 1986.

[FR Doc. 86–11332 Filed 5–19–86; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received timely requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations with April anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2700.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews during the anniversary month of a proceeding. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumpting and countervailing duty orders, findings, and suspended investigations with April anniversary dates.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspended investigations. We intend to issue final results of these reviews not later than May 31, 1987.

Antidumping duty proceedings and firms	Periods to be reviewed
Sugar and Syrups from Canada:	
Lantic Sugar	04/85–03/86
Redpath	04/85–03/86
Sorbitol from France:	
Roquette Freres	04/85–03/86
Calcium Hypochlorite from Japan:	
Nankai	10/09/84–03/86
Nippon Soda	10/08/84–03/86
Nissin Denka	10/09/84–03/86
Cyanuric Acid from Japan:	
Shikoku Chemicals/Mitsubishi	04/85–03/86
Dichloroisocyanurates from Japan:	
Nissan Chemical Ind	04/85–03/86
Shikoku Chemicals/Mitsubishi	04/85–03/86
Trichloroisocyanuric Acid from Japan:	
Nissan Chemical Ind	04/85–03/86
Shikoku Chemicals/Mitsubishi	04/85–03/86
Roller Chain, Other Than Bicycle, from Japan:	
Daido Kogyoo/Daido Corp	04/85–03/86
Enuma Chain/Daido Corp	04/85–03/86
Pulton Chain	04/85–03/86
Pulton Chain/I & OC	04/85–03/86
Sugiyama	04/85–03/86
Sugiyama/Fuji Lumber	04/85–03/86
Sugiyama/San Fernando (Japan)	04/85–03/86
Sugiyama/Hokoku	04/85–03/86
Sugiyama/I & OC	04/85–03/86
Tsubakimoto Chain	04/85–03/86
Spun Acrylic Yarn from Japan:	
Asahi Chemical Industry	04/85–03/86
Diafibers	04/85–03/86
Japan Exlan	04/85–03/86
Mitsubishi Rayon	04/85–03/86
Bicycle Tires & Tubes from South Korea:	
Korea Inoue Kasei	04/85–03/86
Color Television Receivers from South Korea:	
Daewoo	04/85–03/86
Goldstar	04/85–03/86
Quantronics	04/85–03/86
Samsung	04/85–03/86
Color Television Receivers from Taiwan:	
AOC	04/85–03/86
Capetronic (BSR)	04/85–03/86
Fuisi	04/85–03/86
Hitachi Television (Taiwan)	04/85–03/86
Nettek	04/85–03/86
RCA Taiwan	04/85–03/86
Sampo	04/85–03/86
Sanyo Electric (Taiwan)	04/85–03/86
Shinlee	04/85–03/86
Shin-Shiesuns	04/85–03/86
Tatung	04/85–03/86

Countervailing duty Proceedings	Periods to be reviewed
Wool from Argentina	01/85–12/85
Leather Wearing Apparel from Colombia	07/85–12/85
Leather Wearing Apparel from Mexico	07/85–12/85

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: May 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-11270 Filed 5-19-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-412-602]

Stainless Steel Plate From the United Kingdom; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on stainless steel plate from the United Kingdom. The review covers the period from March 1, 1986. The petitioners have notified the Department that they are no longer interested in the countervailing duty order. This affirmative statement of no interest from domestic interested parties provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to stainless steel plate from the United Kingdom exported on or after March 1, 1986.

Interested parties are invited to comment on these preliminary results and tentative detemination to revoke.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Marselian or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 28690) a countervailing duty order on stainless steel plate from the United Kingdom.

The petitioners, Allegheny Ludlum Steel Corporation, Armco, Inc., Jessop Steel Company, LTV Specialty Steels, Inc., Cyclops Corporation, Washington Steel Corporation, and the United Steelworkers of America, informed the Department that they are no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of U.K. stainless steel plate currently classifiable under items 607.7605 and 607.9005 of the Tariff Schedules of the United States Annotated. Stainless steel plate is a flat-rolled product, whether or not corrugated or crimped, in coils or cut to length, 0.1875 inch or more in thickness and over 8 inches in width or, if cold-rolled, over 12 inches in width. The review covers the period from March 1, 1986.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statement of no interest in continuation of the countervailing duty order on stainless steel plate from the United Kingdom provides a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on stainless steel plate from the United Kindgom effective March 1, 1986. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after March 1, 1986, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of stainless steel plate from the United Kingdom which were exported prior to March 1, 1986, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 35 days after the date of publication or the last workday preceding. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: May 9, 1986.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-11269 Filed 5-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Carbon Hollow Drill Steel, Carbon Hollow Deformed Bar, and Alloy and Carbon Hollow Mining Drill Steel; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain hollow mining drill steel; and under Article 8 of the U.S.-EC Pipe and Tube Arrangement with respect to certain hollow drill steel, certain hollow deformed bar, and certain hollow mining drill steel. The request under Article 8 of the U.S.-EC Pipe and Tube Arrangement is for an extension of a previous short supply determination.

EFFECTIVE DATE: Comments must be submitted no later than May 30, 1986.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "... determines that because of

abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . . ."

Article 8 of the U.S.–EC Pipe and Tube Arrangement provides that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8, the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a short supply request under Article 8 of the U.S.–EC Arrangement on Certain Steel Products for certain alloy and carbon hollow mining drill steel of either a hexagonal or round shape: the hexagons ranging from ¾ ot 1¾ inches across flats with interior diameters ranging from 7/32 to ⅝ inch; the round hollows ranging from 1¼ to 1.420 inches in outside diameters and ⅝ to 7/16 inch in inside diameters. These products are used in the manufacture of mining drill rods.

We also have received a short supply request under Article 8 of the U.S.–EC Pipe and Tube Arrangement for the following products:

(a) Carbon hollow drill steel in round section, with outside diameters ranging from ⅛ to 1⅛ inches and interior diameters ranging from 1 1/32 to ⅛ inch, used to manufacture blast furnace tapping rods.

(b) Carbon hollow deformed bars with bar body diameters ranging from ¾ to 2 inches, diameters including the deformed pattern of 1 1/16 to 2 3/16 inches, and interior diameters ranging from ¼ to ⅛ inch, used as anchor bolts to reinforce or attach materials to layered rock formations.

(c) Alloy or carbon hollow mining drill steel of either a hexagonal or round shape: the hexagon hollows ranging from ⅞ to 1⅞ inches across flats with interior diameters of 7/32 to ¾ inch; the round hollows ranging from 1¼ to 2 9/32 inches in outside diameter and 1 1/32 to ¾ inch in inside diameters. These products are used in the manufacture of mining drill rods.

The request under Article 8 of the U.S.–EC Pipe and Tube Arrangement is for an extension of a previous affirmative short supply determination on those three products.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than ten days after the publication of this notice. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 14, 1986.

FR Doc. 86–11271 Filed 5–19–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammal Permit Application; Dr. Steven D. Feldkamp and Dr. Daniel P. Costa (P372A)

Notice is hereby given than an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the Fur Seal Act of 1966 (16 U.S.C. 1151–1187).

1. Applicant:

a. Name: Dr. Steven D. Feldkamp and Dr. Daniel P. Costa.

b. Address: Institute of Marine Sciences, University of California, Santa Cruz, California 95064.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Northern fur seals (Callorhinus ursinus) 70.

4. Type of Take: Thirty (30) lactating females will be taken by flipper tagging and/or color marking with dye, collecting a milk sample, attaching a radiotransmitter and maximum depth recorder, taking blood samples, release and recapture. Twenty (20) of these females will be entangled with net material. Thirty (30) pups will be incidentally taken by harassment during the tagging and collection of specimen material from the lactating females. Blood samples will be taken from ten of these pups for blood volume determinations. Blood samples will be taken from an additional ten sub-adult to adult males for blood volume determinations.

5. Location of Activity: Saint Paul Island, Alaska.

6. Period of Activity: 2 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted to connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whithaven Street NW., Washington, D.C.;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9, Juneau, Alaska 99801.

Director , Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 12, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–11313 Filed 5–19–86; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Marine Mammal to Permit Dr. Kenneth S. Norris, Mr. Randall S. Wells, and Dr. William T. Doyle

On January 27, 1986, notice was published in the **Federal Register** (51 FR 3391) that an application had been filed by Dr. Kenneth S. Norris, Mr. Randall S. Wells, and Dr. William T. Doyle to inadvertently harass Pacific white-sided dolphins (Lagenorhynchus obliquidens) during an observational study of social behavior and ecology of the species. Researchers will obtain audio and video recordings and sample prey species in the area.

Notice is hereby given that on May 9, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 13, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–11314 Filed 5–19–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China Concerning Certain Man-Made Fiber Textile Products

May 15, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 20, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On April 25, 1986, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of man-made fiber textile products in Categories 611 (cellulosic spun yarn fabric), 637 (playsuits) and 642 (skirts and culottes), produced or manufactured in China and exported to the United States.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754,), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 611, 637 and 642 under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a wajver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of man-made fiber textile products in the following categories during the ninety-day period which began on April 25, 1986 and extends through July 23, 1986 to the indicated levels:

Category	90-day restraint level
611	1,337,402 square yards.
637	80,398 dozen.
642	53,660 dozen.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period (July 24, 1986–July 23, 1987) to the indicated levels:

Category	12-mo restraint level
611	3,535,074 square yards.
637	179,239 dozen.
642	140,184 dozen.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 611, 637 and 642 exported during the ninety-day period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the Federal Register.

In the event the limits established for Categories 611, 637 and 642 for the ninety-day period are exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the levels defined in the agreement for the subsequent twelve-month period.

SUPPLEMENTARY INFORMATION: On December 30, 1985 a letter to the Commissioner of Customs was published in the Federal Register (50 FR 53182) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986. The notice which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 611, 637 and 642, which are not subject to specific ceilings and for which levels may be established during the year. In the letter to the Commissioner of Customs which follows

this notice, ninety-day levels are established for these categories.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 611—Cellulosic Spun Yarn Fabric

April 1986.

Summary and Conclusions

U.S. imports of Category 611—cellulosic spun yarn fabric—from China during the year ending February 1986 were 3.6 million square yards compared with 103,000 square yards a year earlier. Imports in 1984 were 103,000 square yards increasing to 2.7 million in 1985. China is the second largest supplier of Category 611 fabric, accounting for 10 percent of 1986 imports.

The U.S. market for cellulosic spun fabric has been disrupted by imports. China's position as a major supplier of these fabrics makes it a major contributor to the U.S. market disruption.

Production and Market Share

U.S. production of Category 611 dropped sharply in 1982 due to a substantial decline in the market for these types fabrics. Production declined from 592 million square yards in 1981 to 94 million in 1982 and continued to drop in 1983 to a level of 87 million square yards. Although production regained some of the loss in 1984, increasing to 113 million square yards, 1985 production fell to 100 million square yards, a decline of 11 percent.

The market for Category 611 has improved since 1982. However, there has been a distinct downward trend in the U.S. producers' share of the market. In 1981, the domestic producers provided 98 percent of the market; in 1985, they provided 73 percent.

Import and Import Penetration

U.S. imports of Category 611 from all sources increased 31 percent in 1985 to a record level 36.8 million square yards. Imports for the first two months of 1985 were up 93 percent over the comparable period of 1985.

The ratio of imports to domestic production doubled from 11.4 percent in 1982 to 21.6 percent in 1984. The ratio continued to rise in 1985, reaching 36.7 percent.

Duty-Paid Values and U.S. Producers' Prices

The duty-paid landed values of Category 611 imports from China are below the U.S. producers prices for comparable fabrics. Approximately 67 percent of China's Category 611 trade during January–February 1986 were lightweight apparel fabrics imported under TSUSA Number 338.5062.

China—Market Statement

Category 637—Man-Made Fiber Playsuits

April 1986.

Summary and Conclusions

U.S. imports of Category 637 from China were 220,000 dozens in year-ending February 1986, a 30 percent increase over the 177,000 dozens imported a year earlier. China is the fourth largest supplier of Category 637, accounting for 14 percent of total imports in this category. During the first two months of 1986, China's imports reached 156,000 dozen, twelve times the January-February 1985 level and nearly double their total 1985 level.

Increases of Category 637 imports from China are substantial in quantity and rate of growth and are disrupting the market for man-made fiber playsuits. Uncontrolled growth would intensify the market disruption.

U.S. Production and Market

U.S. production of Category 637 declined by 7.7 percent in 1983 to 4,976,000 dozens and again by 1.1 percent to 4,923,000 in 1984.

After declining by 167,000 dozens in 1983, the U.S. market for domestically produced and imported man-made fiber playsuits rebounded in 1984 by 283,000 dozens. Imports accounted for all of the growth and the U.S. producers' share of the market fell from 90.5 percent in 1982 to 81.0 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 637 have grown rapidly over the last several years. Between 1982 and 1984, the volume of imports doubled from 569,000 dozens to 1,154,000 dozens. In 1985, imports rose an additional 17 percent to 1,354,000 dozens. This upward trend continues into 1986. January-February imports were 587,000 dozens, up 93 percent from the same period in 1985.

The ratio of imports to production rose from 10.6 percent in 1982 to 23.4 percent in 1984.

Import and Domestic Values

Approximately 75 percent of Category 637 imports from China entered under the following two TSUSA numbers: 384.2540—infants MMF coveralls, overalls and jumpsuits, lace, net or ornamented knit; 384.9311—girls and infants MMF coveralls, overalls, etc., not knit, not ornamented. These garments entered the U.S. at landed, duty-paid values below U.S. producers' prices for comparable garments.

China—Market Statement

Category 642—Man-Made Fiber Skirts

Summary and Conclusions

U.S. imports of Category 642 from China were 154,000 dozens during year-ending February 1986, a 38 percent increase over the year-ending February 1985 level. China is the third largest supplier of Category 642, accounting for 8 percent of total imports. During the first two months of 1986, U.S. imports of Category 642 from China totaled 64,000 dozens, compared to 5,000 dozens a year earlier.

The sharp and substantial increase of low-valued Category 642 imports from China are disrupting the U.S. market for man-made fiber skirts.

U.S. Production and Market Share

U.S. Production of man-made fiber skirts declined by 10 percent in 1983 from 8.9 million dozens in 1982 to 8.2 million dozens in 1983. This downward trend continued into 1984 as production dropped an additional 4 percent to 8.0 million dozens. Production data for 1985 are not currently available, however, industry sources estimate another off year in 1985.

Between 1982 and 1984 the U.S. market for man-made fiber skirts, shrunk by 206,000 dozens. The U.S. producers' share fell from 92 percent in 1982 to 82 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 642 increased 121 percent between 1982 and 1984, rising from 592,000 dozens to 1,306,000 dozens. Imports continued to grow in 1985, rising 17 percent to 1,525,000 dozens. During the first two months of 1986, Category 642 imports totaled 526,000 dozens compared with 236,000 dozens in 1985. The import to production ratio rose from 9 percent in 1982 to 22 percent in 1984.

Domestic vs Import Values

Approximately 80 percent of Category 642 imports from China entered under TSUSA No. 384.9445 (previously 383.92 :5)—women's MMF skirts, not knit, not ornamented. These garments entered at landed, duty-paid values below U.S producers' prices for comparable blouses.

Committee for the Implementation of Textile Agreements

May 15, 1986

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 10, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 20, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Categories 611, 637 and 642, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on April 25, 1986 and extends though July 23, 1986, in excess of the following levels of restraint:

Category	Ninety-day restraint level [1]
611	1,237,402 square yards.
637	80,395 dozen.
642	53,800 dozen.

[1] The levels have not been adjusted to account for any imports exported after April 24, 1986.

Textile products in Categories 611, 637 and 642 which have been exported to the United States prior to April 25, 1986 shall not be subject to this directive.

Textile products in Categories 611, 637 and 642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 44607), December 30, 1983 (48 FR 57548), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 18, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1986).

In carrying out the above directions, the Commissioners of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11337 Filed 5-19-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 12, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the Aerospace Corporation, Los Angeles, CA, on June 11, 1986, from 8:30 am to 5:00 pm and on June 12, 1986, from 8:00 am to 3:00 pm.

The purpose of the meeting will be for the Sensors/Kinetic Energy Weapons Subpanel to hold classified panel discussions and begin preliminary report writing.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-11303 Filed 5-19-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 12, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the Pentagon, Washington, DC, on June 25, 1986, from 8:30 am to 5:00 pm.

The purpose of the meeting will be for Directed Energy Weapons Subpanel to hold classified panel discussions and begin preliminary report writing.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-11304 Filed 5-19-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 12, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the ANSER Corporation, Washington, DC, on June 26, 1986, from 8:30 am to 5:00 pm and on June 27, 1986, from 8:00 am to 3:00 pm.

The purpose of the meeting will be for the committee to receive reports of panel activities, conduct classified discussions and structure the report outline.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-11305 Filed 5-19-86; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 28, 1986 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:

1. *Broad Run Valley, Inc. D-85-27 CP.* An application for approval to pump an average of 0.77 million gallons per day (mgd) from Well W-3 for the increased irrigation and livestock needs of the Wilkinson Dairy Farm, New Garden Township, Chester County, Pennsylvania, and for a domestic supply system serving 150 existing and planned residential dwelling units adjacent to the farm. Current farm use is approximately 0.05 mgd from an off-site source; domestic use is approximately 0.01 mgd from individual on-lot wells. Well W-3 is located 150 feet north of Broad Run Road and 800 feet west of the intersection of Broad Run Road and Newark Road.

2. *Lehigh County Authority D-85-87 CP.* An application to amend the Commission's Comprehensive Plan by the addition of the applicant's new Well No. 17. The applicant does not request a separate allocation for Well No. 17 or an increase in existing total allocation, and acknowledges that approval must be obtained from PADER and under Section 3.8 of the Compact before the well may be placed into operation. The project is located in Upper Macungie Township, Lehigh County, Pennsylvania.

3. *Warren Energy Resource Company, Limited Partnership D-85-90.* A ground water withdrawal project to supply up to 17 million gallons (mg)/30 days of water to the Warren County New Jersey Resource Recovery Project from either new Well No. 1 or No. 2. The project is located in White Township, Warren County, New Jersey.

4. *Coastal Eagle Point Oil Company D-86-5.* An application by a new owner to continue operation of a withdrawal from the Delaware River of 175.104 million gallons per month of surface water for consumptive and nonconsumptive process use at the Eagle Point Refinery in the Township of West Deptford, Gloucester County, New Jersey. The surface water intake is located in Zone 4 of the Delaware River Estuary at River Mile 94.2 immediately downstream of Big Timber Creek.

5. *Lake Wynonah Municipal Authority D-86-12 CP.* An application for approval of a ground water withdrawal project to supply up to 7.34 mg/30 days of water to the applicant's

distribution system from new Well No. 3, and to retain the existing withdrawal limit from all wells of 10.5 mg/30 days. The project is located in South Manheim Township, Schuylkill County, Pennsylvania.

6. *Village of Deposit D–86–29 CP.* An application for approval of a ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's distribution system from new Well Nos. 3 and 4. The project is located in the Village of Deposit, Broome and Delaware Counties, New York.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,
Secretary.
May 13, 1986.

[FR Doc. 86–11319 Filed 5–19–86; 8:45 am]
BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangements; Austria and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/AT(EU)–68, from Kernforschungsanlage (KFA), in Juelich, the Federal Republic of Germany to Oesterreichisches Forschungszentrum Seibersdorf GmbH, Wien, Austria, 6 fuel spheres and 6 samples containing 50.6 grams of uranium enriched to 11.86 percent in U–235, 0.3 grams of plutonium, and 9.7 grams of thorium, for post-irradiation examination. The material is to be returned to KFA for disposal upon conclusion of the post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: May 15, 1986.
George J. Bradley, Jr.,
Acting Assistance Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–11343 Filed 5–19–86; 8:45 am]
BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangements; Brazil

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Brazil concerning Civil Uses of Atomic Energy, and under the authority of general license issued by the U.S. Nuclear Regulatory Commission.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale:

Contract Number S–BR–38, to CNEN, Brasilia, Brazil, 0.2922 grams of natural uranium contained in pitchblende, and 0.283 grams of thorium contained in monazite sand, for use as standand reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: May 15, 1986.
George J. Bradley, Jr.,
Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–11342 Filed 5–19–86; 8:45 am]
BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–EU–890, for the sale of 450,000 curies of tritium gas to Brandhurst Company, Ltd., England. The U.S. Nuclear Regulatory Commission has issued license number XB001230 for the export of this material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: May 15, 1986.
George J. Bradley, Jr.,
Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–11344 Filed 5–19–86; 8:45 am]
BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Japan and Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Agreement of Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(JA)–24, from Nippon Nuclear Fuel Development Co., Japan to the Institutt of Energiteknikk, Norway, 4,825 grams of uranium, enriched to 3.9 percent in the isotope uranium-235 for irradiation in the Halden research reactor and subsequent post-irradiation examination.

In accordance with section 131 of the Atomic Engergy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be

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inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: May 15, 1986.

George J. Bradley, Jr.,
Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-11345 Filed 5-19-86; 8:45 am]
BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Norway and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(EU)-61, for the retransfer from NUKEM, in Hanau, the Federal Republic of Germany to Kjeller, Norway of 231 kilograms of uranium enriched to 3.6 percent in the isotope uranium-235, for use as fuel in the JEPP research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: May 15, 1986.

George J. Bradley, Jr.,
Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-11346 Filed 5-19-86; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of status of Forms CE-189P, C, and S, under review by the Office of Management and Budget.

SUMMARY: On March 17, 1986, the Energy Information Administration notified the public (51 FR 9099) that Forms CE-189P, C, and S, "Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization," were sent to the Office of Management and Budget (OMB) for its approval, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). (The most recent OMB approval for these forms expired on April 30, 1986.) The Department of Energy (DOE) has not yet received a response to the request. In light of this and until respondents to the subject forms receive notification from the DOE, they are not requird to prepare and submit these forms.

Upon receipt of the "Notice of Office of Management and Budget Action" the public will be notified via the Federal Register.

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 (202) 252-2308.

Issued in Washington, DC, May 16, 1986.

Douglas R. Hale,
Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86-11402 Filed 5-19-86; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-149-006

East Tennessee Natural Gas Co.; Rate Filing

May 15, 1986.

Take notice that on May 6, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Eighteenth Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff.

East Tennessee states that the purpose of this filing is to place into effect revised Settlement Rates as determined pursuant to Section 1.3 of the Stipulation and Agreement dated November 22, 1985, in Docket No. RP85-149 (Stipulation). East Tennessee proposes that the tariff sheet become effective on May 1, 1986, conditioned on the Stipulation becoming effective pursuant to a final order of the Commission and without prejudice to East Tennessee's right to seek rehearing of the Commission's "Order Approving Offer of Settlement" of April 25, 1986, in this docket.

East Tennessee also states that copies of this filing were served on all parties to Docket No. RP85-149, on all jurisdictional customers and all affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11283 Filed 5-19-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-4-46-000]

Kentucky West Virginia Gas Co.; Technical Conference

May 15, 1986.

Take notice that pursuant to the Commission's suspension order issued April 30, 1986 in the above-captioned docket, an informal technical conference will be convened on Monday, June 2, 1986 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Account No. 191 issues will be discussed.

All interested persons and Staff will be permitted to attend.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11284 Filed 5-19-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-75-000]

Northern Natural Gas Co.; Proposed Change to FERC Gas Tariff

May 15, 1986.

Take Notice that on May 6, 1986 Northern Natural Gas Company (Northern) tendered for filing with the Commission the following tariff sheets

to Northern's FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2:

Third Revised Volume No. 1

First Revised Sheet No. 70d
Original Sheet No. 70d.1
Original Sheet No. 70d.2
Original Sheet No. 70d.3

Original Volume No. 2

Original Sheet No. 11.2a
Original Sheet No. 11.2b

This filing provides for the addition of section 18.61 to the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and section 1.61 of Original Volume No. 2. If approved, these proposed tariff provisions will allow Northern from time to time and any time at its sole discretion to adjust its Base Average Cost of Purchased Gas between its regular annual PGA filings to account in a more timely manner for the cost effect of known and measurable changes in Northern's Estimated Actual Cost of Purchased Gas from the rate established in the immediately preceding PGA filing.

Such adjustments shall be limited to the cost impact of known and measurable changes in gas costs and may reflect either an increase or decrease in Northern's Base Average Cost of Purchased Gas, although Northern would be precluded from adjusting its Base Average Cost of Purchased Gas, pursuant to the new section 18.61, Third Revised Volume No. 1 and section 1.61, Original Volume No. 2, above the level established in Northern's most recent annual PGA filing.

The tariff sheets being filed require Northern to file such changes with the FERC at least one (1) day prior to the proposed effective date. Such filing will not be subject to the Notice requirements established by the Commission's regulations. Further, Northern's proposed tariff sheets require it to demonstrate that its actions are appropriate and that it is entitled to recover the under-recovered purchase gas costs which may result from Northern's election to adjust its rates pursuant to these new sections 18.61, Third Revised Volume No. 1 and section 1.61, Original Volume No. 2.

To recognize that Northern is unable to control precisely its average cost of gas, Northern's potential liability and demonstration of appropriateness will be limited to only amounts in excess of three percent (3%) of the known and measurable changes in the actual cost of gas purchased during any PGA Adjustment period in which Northern elected to adjust its Base Average Cost of Purchased Gas pursuant to the proposed tariff sheets.

Copies of this filing have been mailed to Volume No. 1 and Volume No. 2 customers and the interested state commissions.

Northern proposes that the requested tariff sheets identified above become effective on June 7, 1986, which is not less than thirty (30) days after receipt of this filing by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11285 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-194-006]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 15, 1986.

Take notice that on May 12, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Appendix A

Fourth Substitute Fifty-Third Revised Sheet No. 3-A
Fourth Substitute Thirtieth Revised Sheet No. 3-B
Second Substitute Twenty-Third Revised Sheet No. 22
Second Substitute Fifteenth Revised Sheet No. 24-A
Second Substitute Twenty-Sixth Revised Sheet No. 25
Second Substitute Seventeenth Revised Sheet No. 29-B
Second Substitute Seventeenth Revised Sheet No. 29-E

Panhandle proposed an effective date of October 1, 1985.

Panhandle states that on March 28, 1986, the Commission issued an order "Rejecting Tariff Sheets" which rejected certain revised tariff sheets filed by Panhandle Eastern Pipe Line Company (Panhandle) on February 24, 1986 and directed Panhandle to file revised tariff sheets within forty-five days to eliminate variable costs from the minimum bills and separately state its purchased gas costs. On April 24, 1986 the Commission issued an order "Denying Rehearing and Motion for Summary Disposition" which *inter alia* directed Panhandle to comply with the Commission's Order of March 26, 1986.

The 3-A and 3-B tariff sheets reflect the separately stated gas cost and vairable cost components, based on the settlement cost of service as approved in Docket No. RP82-58, *et al.* Workpapers supporting the derivation of these cost components are also submitted herewith. Panhandle's filing herein is being made without prejudice to its claims for judicial review and its position in the above-referenced proceeding.

On November 19, 1985 and December 13, 1985 Panhandle filed revised tariff sheets in Docket Nos. TA86-1-28-000 and 001 which adjusted the GRI funding unit pursuant to Opinion No. 243 in Docket No. RP85-154-000 and in accordance with section 19 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1. These filings were accepted by Commission Orders dated December 17, 1985 and December 27, 1985, respectively.

In addition, on January 29, 1986, Panhandle filed revised tariff sheets in Docket Nos. TA86-2-28-000 and 001 which reflect Panhandle's regularly scheduled semi-annual PGA filing to be effective March 1, 1986. This filing was accepted subject to refund and conditions by Commission Order dated February 28, 1986.

Therefore, Panhandle also submits herewith for filing six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Appendix B

Second Substitute Fifty-Fourth Revised Sheet No. 3-A
Second Substitute Thirty-First Revised Sheet No. 3-B

Appendix C

First Substitute Fifty-Fifth Revised Sheet No. 3-A
First Substitute Thirty-Second Revised Sheet No. 3-B

Panhandle states that the proposed effective date of the tariff sheets listed in Appendix B is January 1, 1986. The proposed effective date of the tariff sheets listed in Appendix C is March 1, 1986. These revised tariff sheets to be

effective January 1, 1986 and March 1, 1986 separately state the gas costs and variable cost components as required by Commission Orders dated March 28, 1986 and April 24, 1986. These tariff sheets also are submitted, subject to Panhandle's position in and the outcome of the above-referenced proceeding and Panhandle's claim on judicial review.

To the extent required, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith to become effective October 1, 1985, January 1, 1986 and March 1, 1986.

Supporting computation sheets are enclosed and copies of this letter and enclosures are being served on all intervenors, jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 23, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11286 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-77-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 15, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on May 9, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets.

4th Revised Sheet No. 73
5th Revised Sheet No. 75
5th Revised Sheet No. 76

The above mentioned tariff sheets are being filed to revise sections 19.2(B)(2), 19.3(A) and 19.3(B) (1) and (2) of the General Terms and Conditions to specify that the calculation of the projected cost of gas be based on six month volumes instead of twelve month as currently provided.

The proposed effective date of the above tariff sheets is July 1, 1986.

Copies of this filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 23, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11287 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1991-001]

Douglas W. Tschappat; Application

May 14, 1986.

Take notice that on May 8, 1986, Douglas W. Tschappat filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Executive Vice President* and Director*—Ohio Edison Company
Director*—Pennsylvania Power Company
Director—Ohio Valley Electric Corporation
Director—Indiana-Kentucky Electric Corporation

*Mr. Tschappat was authorized to hold these positions under a previous order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 27, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11288 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL84-11-000, et al.]

Electric Rate and Corporate Regulation Filings; Aquenergy Systems et al.

Take notice that the following filings have been made with the Commission:

1. Aquenergy Systems

[Docket No. EL84-11-000]

May 12, 1986.

Take notice that on April 10, 1984, Aquenergy Systems, Inc. (Petitioner) filed a petition pursuant to 18 CFR 385.207(a)(2) requesting that the Commission issue an order declaring that the Petitioner's Coneross hydroelectric project is not subject to the Commission's jurisdiction under the Federal Power Act (Act) since the project will not involve the construction of a dam on a navigable waterway, will not require any post-1933 construction, and will not affect the interest of interstate or foreign commerce pursuant to section 23(b) of the Act, 16 U.S.C. 817. The Coneross project is located on Coneross Creek, near the town of Seneca in Oconee County, South Carolina. Correspondence concerning this petition should be addressed to: Mr. Ralph Walker, Jr., President, Aquenergy Systems, Inc., P.O. Box 8991, Greenville, South Carolina 29604, and Mr. Bradford W. Wyche, Burgess, Freeman & Parham, P.A., P.O. Box 10207, Greenville, South Carolina 29603.

As described in the petition, the project was constructed by the Seneca Manufacturing Company in the late 1890s or early 1900s to supply power to a mill located in the town of Seneca, South Carolina. The project was sold several times before being sold in 1952 to J.P. Stevens & Company, Inc. which continued to operate the project until 1953. The Petitioner states that the project has not been operated since 1953. The original project consisted of a reservoir, a dam, and two generating units rated at 600 kW and 300 kW, respectively. The Petitioner states that it will not perform any construction work on the project dam and that it will not significantly increase, decrease or alter the original elevation of the power pool or water surface area. The Petitioner also states that it intends to install at the project two turbines and two

generators whose total capacity will not exceed 900 kilowatts. The Petitioner will also use the existing penstock and tailrace.

Comment date: June 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Minnesota Power and Light Company

[Docket No. ER86-470-000]

May 14, 1986.

Take notice that on May 5, 1986 Minnesota Power and Light Company tendered for filing a Firm Power Service Agreement between Minnesota Power and Light Company and Northern States Power Company.

This transaction is for firm power interchange service under the Mid-Continent Area Power Pool Agreement, Service Schedule J. That MAPP Agreement was tendered for filing with the Commission in Docket No. FPC-77-34, which was terminated with the filing of Amendment No. 5 to the MAPP Agreement, and the same was accepted for filing. That MAPP Agreement has subsequently been amended in various proceedings before the Commission.

Comment date: May 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER86-304-000]

May 14, 1986.

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on May 7, 1986, tendered for filing supplemental information to Pacific's filing under FERC Docket No. ER86-304-000. Pacific's filing under Docket No. ER86-304-000 of its Revised Appendix 1 for the state of Washington dated August 14, 1985, omitted page 35 of the Washington Utilities and Transportation Commission's Order Cause No. U-84-65. Pacific's filing hereunder is to correct such omission.

Pacific respectfully requests to renew its request for an effective date of August 14, 1985, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Washington Utilities and Transportation Commission, and Bonneville's Direct Service Industrial Customers.

Comment date: May 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power Company

[Docket No. ER86-437-000]

May 14, 1986.

Take notice that on May 6, 1986, Pennsylvania Power Company (Company) tendered for filing a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure. The company requests permission to implement the provisions of its Transmission Service Agreement (TSA) to the Boroughs of Ellwood City and Grove City effective September 1, 1985, pending Commission Review.

Comment date: May 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb

Secretary

[FR Doc. 86-11280 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-812-002, et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co., et al.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP86-812-002]

May 13, 1986.

Take notice that on April 22, 1986, Colorado Interstate Gas Company (Petitioner), Post Office Box 1087, Colorado Springs Colorado 80944, filed in Docket No. CP85-812-002 pursuant to section 7(c) of the Natural Gas Act a petition to amend the Commission's order issued on December 26, 1985, in Docket No. CP85-812-000, so as to increase the maximum delivery volumes of gas transported for Public Service Company of Colorado (PSCo), all as more fully set forth in the petition to amend, which is on file with Commission and open to public inspection.

Petitioner states that pursuant to a September 27, 1985 transportation service agreement (transportation agreement) with PSCo, it transports natural gas for PSCo which Petitioner receives for PSCo's account at existing interconnections with Williston Basin Interstate Pipeline Company (Williston) in Park and Fremont Counties, Wyoming. Petitioner delivers the gas to PSCo at an existing interconnection in Denver County, Colorado. Petitioner further states pursuant to an April 14, 1986 amendments to the transportation agreement, the maximum delivery volumes were increased from 20,000 Mcf of natural gas per day to 40,000 Mcf per day.

Petitioner states that it has been advised by PSCo that PSCo has obtained additional natural gas supplies from Kock Hydrocarbon Company and that these supplies are on Williston's system and would be delivered to Petitioner pursuant to transportation authorization granted to Williston in Docket Nos. CP83-254-000 and CP83-335-000. Petitioner states that no new facilities are needed to effectuate the receipt and delivery of the additional gas supplies for PSCo. Petitioner states that it would charge PSCo its currently effective Rate Schedules EUS-1 rate, plus the GRI surchargd, subject to final Commission action in Docket No. RP85-122-000.

Comment date: June 3, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

2. Kentucky West Virginia Gas Company

[Docket No. CP86-463-000]

May 13, 1986.

Take notice that on April 18, 1986, Kentucky West Virginia Gas Company (Kentucky West), Plaza Bank Building, P.O. Box 1368, Ashland, Kentucky 41101, filed in Docket No CP86-463-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the sale of natural gas for 18 months under a new Rate Schedule MI-1, which provides for an experimental market incentive purchased gas cost rate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kentucky West requests authorization to initiate the new market incentive purchased gas cost rate under its Rate

Schedule MI–1 on a temporary basis. It is said that the rate schedule is experimental and the service is proposed to be effective for a limited term of 18 months. It is stated that the proposed service requires no additional facilities and that no customer would be adversely affected by implementation of the proposed incentive rate.

Kentucky West states that it has been experiencing a substantial decline in sales under its Rate Schedule PLS–1. In order to encourage optimum sales and to protect Kentucky West against potential take-or-pay liability, Kentucky West says it has devised an experimental market incentive rate for any sales in excess of 66–⅔ percent of its PLS–1 customers' maximum daily contract quantity of gas.

Kentucky West sets forth the following conditions in its proposal: (1) The sales would be made under the proposed market incentive purchased gas cost Rate Schedule MI–1. Such sales would be available for amounts of gas taken on any day in excess of the higher of 66–⅔ percent of the customers' maximum daily contract quantity of gas or the amount of gas nominated by the buyer for delivery under Rate Schedule PLS–1 for that day, up to the level of the maximum daily contract quantity of gas. (2) Additional amounts of gas would be available on an interruptible basis subject to the availability of surplus gas. (3) The availability of all gas would be subject to Kentucky West's ability to arrange with its gas supplies a reduced price to permit the sale of gas under Rate Schedule MI–1.

Since Rate Schedule MI–1 is experimental, Kentucky West requests authorization for a term of 18 months with abandonment to be effective at the end of that period. The request for a limited-term certificate, however, is made without prejudice to Kentucky West's seeking appropriate and timely certificate authority to continue such service upon expiration of the limited term, it is asserted.

Kentucky West states that the proposed market incentive rate for sales under Rate Schedule MI–1 would be subject to the availability of gas from Kentucky West's producer/suppliers in sufficient quantities to permit such sales. It is further stated that, assuming Kentucky West can obtain from its producer/suppliers the amounts of gas necessary to implement the market incentive sales, such sales would optimize, to the extent such reduced cost gas supplies are made available, the economic utilization of Kentucky West's system. Kentucky West states also that such sales would protect Kentucky West against potential take-or-pay liability with its producer/suppliers.

Comments date: June 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. MIGC, Inc.

[Docket NO. CP86–463–000]

May 14, 1986.

Take notice that on April 18, 1986, MIGC, Inc. (Applicant), 10701 Melody Drive, Northglenn, Colorado 80234, filed in Docket No. CP86–463–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Ecological Engineering Systems, Inc. (EES), as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a transportation agreement dated November 1, 1985, Applicant has agreed to transport on an interruptible basis, for a term of five years from the date of initial deliveries, up to 10,000 Mcf of natural gas per day for EES. It is alleged that the requested transportation service would facilitate the sale of gas by EES to Cheyenne Light, Fuel and Power Company (Cheyenne) for Cheyenne's system supply. Applicant would transport the subject volumes from three receipt points in Campbell County, Wyoming, to Colorado Interstate Gas Company (CIG) at the Powder River Station in Converse County Wyoming.

Applicant further requests authority to transport on an interruptible basis, for a term of five years from the date of initial deliveries, up to 30,000 Mcf of natural gas per day on behalf of EES as a seller of gas to Cominco American, Incorporated. Applicant would perform such service pursuant to a transportation agreement dated November 1, 1985. Applicant would transport the subject volumes from three receipt points in Campbell County, Wyoming to CIG at the Powder River Station in Converse County, Wyoming.

In accordance with the gas transportation agreements, Applicant proposes an initial transportation charge of 63.42 cents per MMBtu. Applicant asserts that this rate is in effect, as filed in its rate case at Docket No. RP84–15–000. Applicant further asserts that a portion of the revenue collected is subject to refund pending a final determination of its rate proceeding.

Comment date: June 4, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP86–472–000]

May 14, 1986.

Take notice that on April 24, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP86–472–000 a request pursuant to §§ 157.205 and 157.211 of the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install and operate a 2-inch sales tap on United's Jackson-Magnolia 6-inch line in Hinds County, Mississippi, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to install the tap to sell and deliver natural gas to Entex, Inc. (Entex), for resale and distribution in Entex's McComb-Summit, Mississippi, service area. It is stated that the tap is needed to alleviate operational problems experienced by Entex. It is indicated that the proposal would not increase United's daily or annual deliveries to Entex, which are made pursuant to United's Rate Schedule DG–N.

Comment date: June 30, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing

if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11201 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-703-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Tenneco Oil Co., et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

May 13, 1986.

Take notice that the following filings have been made with the Commission.

1. Tenneco Oil Company

[Docket No. QF86-703-000]

On May 1, 1986, Tenneco Oil Company (Applicant), of 10000 Ming Avenue, Bakersfield, California 93311, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Los Angeles County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam generators. Steam produced by the facility will be used for enhanced oil recovery. The net electric power production capacity of the facility will be 41,152 KW. The primary energy source will be natural gas. The installation of the facility will begin in the fourth quarter of 1987.

2. Earlsboro Oil and Gas Corporation

[Docket No. QF86-691-000]

On April 21, 1986, Earlsboro Oil and Gas Corporation (Applicant), of 6701 North Broadway, Suite 400 Oklahoma City, Oklahoma 73116, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Sequoyah, Oklahoma. The facility will consist of four gas engine generating units and waste heat recovery equipment. Heat will be recovered from the engine coolant and engine exhaust, and used in a gas treating process. The primary energy source of the facility will be natural gas. The electric power production capacity will be 2.6 MW. The installation of the facility will begin in late 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspeciton.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11202 Filed 5-19-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3019-1]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a three-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room #3 North (on the Ground Floor, near the EPA Washington Information Center), Waterside Mall, 401 M Street, SW, Washington, DC on June 9-11, 1986. The meeting will begin at 9:00 a.m. each day, and last until 5:00 p.m. on June 9-10 and until 3:00 p.m. on June 11.

The agenda on June 9 will consist of general Committee discussions. On June 10-11 the Committee will continue review of technical documents supporting Agency regulations for the reuse and disposal of municipal treatment plant sludges under section 405(d) of the Clean Water Act, and proposed revisions to the Agency's Ocean Dumping Regulations (40 CFR 220-229). Emphasis on June 10-11 will be placed on detailed review of (1) the technical rationale for dredged material disposal, (2) the overall risk assessment methodology for the various sludge disposal options, and (3) land-based options for the disposal of sludges.

The meeting is open to the public. Any member of the pubic wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, ot Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comments will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Torno prior to May 30, 1986, in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: May 12, 1986.

Terry F. Yosie

Director, Science Advisory Board.

[FR Doc. 86-11295 Filed 5-19-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 91087; FRL #2978-1]

Toxic and Hazardous Substances Control; 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates; Referral for Additional Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Section 9 Report to the Occupational Safety and Health Administration (OSHA).

SUMMARY: This notice describes EPA's intended action with respect to the manufacture and use of 2-methoxyethanol, 2-ethoxyethanol and their acetates (2-ME, 2-EE, 2-MEA, 2-EEA, respectively). These four chemicals are part of a class of chemicals known as glycol ethers. Their respective Chemical Abstract Service Registry Numbers are 109-86-4, 101-80-5, 110-49-6, and 111-15-9. EPA has reasonable basis to conclude that the risk of injury to worker health from exposure to these glycol ether during their manufacture and during processing and use is unreasonable and this risk may be prevented or reduced to a sufficient extent by action taken by OSHA under the Occupational Safety and Health Act (OSHAct). Accordingly, EPA is using this Federal Register notice as a report to OSHA under section 9(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2608(a), and OSHA consequently is required to respond to EPA within 180 days of the publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW, Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside USA: Operator-(202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

2-Methoxyethanol, 2-methoxyethanol acetate, 2-ethoxyethanol, and 2-ethoxyethanol acetate (2-ME, 2-MEA, 2-EE, 2-EEA, respectively) are chemicals produced at a rate of approximately 320 million pounds per year. They are used as solvents to produce such industrial products as paints and coatings, cleaners, inks and adhesives. Other industrial uses are as jet fuel additives, chemical intermediates, in printed circuit board and semiconductor manufacture, and pharmaceutical synthesis. They are also used in paints, coatings, cleaners, inks, lacquer thinners, and photographic developers. Half of the annual production of 2-ME is used as a deicing additive for military jet fuel. As intermediates, 2-EE and 2-ME are used to manufacture the ether acetates (2-EEA and 2-MEA) and certain plasticizers. Approximately 569,000 workers may be exposed to these glycol ethers. Over 145,000 workers are exposed to either 2-ME or 2-MEA and 206,000 workers to either 2-EE or 2-EEA at levels that EPA believes present an unreasonable risk from possible developmental or reproductive effects.

In an Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register of January 24, 1984 (49 FR 2921), EPA determined, based on animal studies, that adverse reproductive and developmental effects are associated with these glycol ethers at concentrations to which humans may be exposed. EPA also announced its intent to start a regulatory investigation under the authority of TSCA to reduce exposure to these glycol ethers. In order to assist EPA in its regulatory investigation, the Agency sought comments and available data on (1) the extent and nature of exposure; (2) substitutes for these glycol ethers; (3) the economic impact of alternative means of regulating these glycol ethers; (4) ways to control exposure; and (5) the toxicity of these glycol ethers.

Twenty organizations responded to the ANPR. Most manufacturers and users of these glycol ethers felt that regulation is unnecessary and that a ban would be harmful (circuit board manufacturers said that a ban would be disastrous), and that at any rate, because exposure is primarily to workers the problem is OSHA's. The manufacturers of potential substitutes see no technical impediment to using their solvents in place of the subject glycol ethers except for some electronic applications. The Environmental Defense Fund (EDF), the only non-industrial respondent, felt that the glycol ethers should either be restricted or banned.

Also on January 24, 1984, EPA sent its "Preregulatory Assessment of 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates" to scientists in business, academia, labor unions, and public interest groups asking for their comments on the Agency's preliminary assessment of glycol ethers' risk.

Many comments on the analysis of the data were received. The reviewers found the assessment generally credible, although there was considerable comment on the Agency's use of quantitative methods. The Agency has revised its assessment to reflect the comments received.

Following the issuance of the ANPR, the Agency continued its regulatory investigation by conducting further assessments of exposure to glycol ethers, risk control methods and costs, and the availability of substitutes for these glycol ethers. EPA considered various regulatory options, including prohibiting the use of the glycol ethers in some or all uses and imposing various forms of exposure controls in the workplace.

As a result of the information submittted in response to the ANPR and other information developed by EPA, the Agency has determined that a workplace standard of the same type as the current OSHA standard (permissible exposure limits, possibly combined with engineering controls, work practices and personal protective equipment) can reduce risk to a sufficient extent for workplace settings where these glycol ethers are either used, manufactured, formulated or processed. OSHA has authority to promulgate and enforce this type of standard; therefore, EPA, pursuant to section 9(a) of TSCA, is submitting to OSHA a report on the risks of occupational uses of these glycol ethers.

EPA's investigation of risks to consumers has led the Agency to conclude the current information will not support an unreasonable risk finding for consumer use. EPA will continue to consult with the Consumer Product Safety Commission pursuant to section 9(d) of TSCA to resolve outstanding issues, particularly the presence of these glycol ethers in consumer products.

II. Authority

TSCA provides EPA with broad authority to assess and regulate chemical substances in the environment, in the workplace, and in commercial products. Under section 6(a) of TSCA, EPA is authorized to impose regulatory controls if the Agency finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents or will present an unreasonable risk of injury to human health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against the social and economic costs of placing restrictions on the chemical. Specifically, as stated in section 6(c) of TSCA, this conclusion incorporates consideration of:

1. The effects of the chemical substance on health or the environment.

2. The magnitude of human or environmental exposure to the chemical substance.

3. The benefits of the chemical substance for various uses.

4. The availability of substitutes for such uses.

5. The reasonably ascertainable economic consequences of regulation, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

The Agency realizes that no single mathematical formula can be used to evaluate unreasonable risk, since the amount and nature of the information will differ in each case. Instead, EPA applies a case-by-case approach, weighing quantitative information with qualitative factors, and applying generlly accepted principles of responsible public health administration and prudent public policy.

If the EPA Administrator makes an unreasonable risk finding, one or more of several regulatory measures may be applied to the extent necessary to protect adequately against the risk. Those measures include: prohibiting or limiting the manufacture, processing or distribution in commerce; labeling; recordkeeping and testing; prohibiting or otherwise regulating any manner or method of commercial use or disposal; requiring the revision of quality control procedures; and a requirement that chemical manufacturers notify the public of unreasonable risk associated with a chemical. The EPA Administrator is required by TSCA to apply the least burdensome requirement(s) to protect adequately against such risk.

Under section 9(a)(1) of TSCA, the Administrator is required to submit a report to another Federal agency when two determinations are made. The first determination is that the Administrator has a reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Section 9(a)(1) provides that where the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers.

Accordingly, section 9(a)(1) requires a report requesting the other agency (1) to determine if the risk may be prevented or reduced to a sufficient extent by action taken under its authority, and (2) if so, to issue an order declaring whether or not the activities described in the report present the risk described in the report.

Under section 9(a)(2), EPA is prohibited from taking any action under section 6 or 7 with respect to the risk reported to another Federal agency pending a response to the report from the other Federal agency. There would be no similar restriction on EPA for any risks associated with a chemical substance or mixture that is not within the section 9(a)(1) determinations and therefore not part of the report submitted by EPA to the other Federal agency.

The second agency may take one of three possible actions set out below. The Administrator may not take any action under section 6 or 7 with respect to such risk if the other agency either:

a. Issues an "order" within the EPA deadline, stating that the activities EPA described do not present the "unreasonable risk" EPA has attributed to them; or

b. "Initiates" within 90 days of its response to EPA action to "protect against" the risk identified by EPA.

c. Takes no action within 90 days of its response to EPA to "protect against" the risk identified by EPA.

On the other hand, EPA may take further action if the other agency either:

a. Determines that its law does not authorize action to prevent or reduce the unreasonable risk to a sufficient extent; or

b. Explicitly defers to EPA despite the existence of adequate authority on its part (unless its own statutory authority precludes such action), presumably on the ground that action by EPA is preferable on practical or public policy grounds; or

c. Does nothing, in which case EPA, once the deadline has expired, remains free to act as before.

III. Findings Under Section 9(a)

In this unit, EPA discusses the findings used to support its decision to refer glycol ether risks to OSHA for action. Units III.A and B discuss the factors used to assess the potential risks to workers exposed to the glycol ethers. Unit III.C is a summary of the effect of these glycol ethers on the environment. Units III.D and E are a summary of the benefits of the continued use of the glycol ethers and the potential consequences of regulatory action. Units III.F and G present the conclusions with respect to the unreasonable risk determination and the determination that the risk from these glycol ethers can be reduced to a sufficient extent by OSHA.

A. The Effects of the Chemical Substance on Health

2-Methoxyethanol, 2-ethoxyethanol, and 2-ethoxyethanol acetate have been shown to produce adverse reproductive and developmental effects in a number of animal species at levels of exposure well below current OSHA standards. These adverse effects include effects on adult male testicular tissue, effects on the embryo or fetus, and effects on the pregnant female. 2-Methoxyethanol acetate has been shown to produce adverse testicular effects at relatively high doses. The fact that the great number of studies that have been conducted by many investigators in many countries, in several animal species, are in agreement in terms of the nature of the developmental and reproductive effects that these glycol ethers cause, gives EPA confidence in its conclusion that current exposure to these chemicals may pose a significant hazard to humans.

Additionally, data derived from laboratory animals demonstrate that exposure to 2–ME may result in a variety of toxic hematologic effects, including hemolysis, bone-marrow depression, and immunosuppression. Adverse hematologic effects have been seen in humans, although attributing the cause to 2–ME is made somewhat uncertain because the exposure involved other chemicals in addition to 2–ME. Some hematologic effects seen in animals from exposure to 2–ME have resulted from exposures at concentrations lower than those that produced developmental and reproductive effects. EPA's assessment of the hematologic effects of 2–ME are contained in the unpublished report "Review of Hematologic Effect of 2–Methoxyethanol" (Ref. 42).

1. *Animal studies.* EPA relied primarily on a number of studies of various animal species in its analysis of the toxicity of these glycol ethers (Refs. 10, 17 through 22, 34 through 40, 44 through 46, 61, 69, 70, and 72 through 74). These data from these studies upon which EPA relied are summarized and analyzed in detail in "Reproductive and Developmental Effects Assessment of 2–Methoxyethanol and 2–Ethoxyethanol" (Ref. 56). This report summarizes these studies and other studies that EPA relied upon to support its conclusions.

The data show that 2–ME is developmentally toxic in laboratory animals following exposure via inhalation. In rabbits, the most sensitive species tested to date, the minimally toxic embryo/fetal dose (embryo/fetal death or resorptions) is 10 parts per

million (ppm). The no observed effect level (NEOL) is 3 ppm. 2-ME is also maternally toxic in rabbits at 50 ppm (the highest dose level tested), and in rats at 3 ppm (the lowest dose level tested). Other fetal effects, such as skeletal and soft tissue abnormalities, occur at higher doest (50 ppm and above) in rabbits and rats. The expected toxicant in 2-ME activity is methoxyacetic acid, which is the major metabolite of 2-ME.

2-ME causes testicular atrophy in rats with deceased testicular weight following exposure via inhalation. The NOEL for reduced fertility is 100 ppm. 2-ME also produced testicular damage in the rabbit via inhalation at 100 ppm and orally in the rat at 100 mg/kg. The NEOLs for these effects were 30 ppm and 50 mg/kg, respectively. Significantly, 2-ME caused its effects (in the rat) after only two oral exposures at the lowest observed effect level (NEOL). At higher doses (250 mg/kg), a single exposure resulted in testicular damage. The data suggest that 2-ME may have a primary effect on the testis. 2-ME exposure also reduces fertility in the male rats at high doses.

Available data also show that 2-EE is developmentally toxic in laboratory animals. The NEOL for these effects is 50 ppm in both the rabbit and the rat following exposure via inhalation. Fetal effects occur at the highest dose tested in each species (175 ppm in the rabbit, 250 ppm in the rat). 2-EE is maternally toxic in rats at 250 ppm. Complete maternal data in rabbits are not available at present. 2-EE is also developmentally toxic following dermal exposure. Doses totaling 1.0 ml/day caused resorptions and visceral and skeletal abnormalities in rats. These effects were noted in the presence of maternal toxicity; they nevertheless indicate that dermal exposure to 2-EE presents a health hazard. Lastly, 2-EE caused behavioral and neurochemical changes in rat offspring at 100 ppm.

2-EE has been shown to cause testicular damage in the rat at oral doses of 500 mg/kg and higher, with 250 mg/kg being the NEOL. 2-EE was testicularly toxic in the rabbit via inhalation at concentrations of 400 ppm, although other toxic effects also occurred at this level.

Available developmental toxicity data on 2-EEA, 2-ME and methoxyacetic acid, as well as metabolism data on 2-ME, indicate that 2-MEA and 2-EEA are expected to show similar profiles of developmental and reproductive toxicity as 2-ME and 2-EE, since all four chemicals are metabolized to an alkoxyacetic acid. Such an acid, methoxyacetic acid, has shown to cause both reproductive and developmental effects similar to the parent compound.

EPA has considered what exposure times are necessary to cause developmental effects from exposure to these glycol ethers. The available data indicate the developmental effects can be caused by short term exposures to 2-ME and 2-EE. The shortest exposure tested for 2-ME, single oral doses, has been shown to cause developmental and testicular effects. The Agency is unable, however, to estimate the level of inhalation exposure that would result in adverse effects over a short term (defined as less than 8 hours).

All of these substances are believed to be rapidly absorbed through the skin into the blood, thus causing the same effects as oral doses. Measurements made on excised pieces of human skin show extremely rapid absorption of these glycol ethers. The rates observed are 1.6 to 2.8 milligrams per square centimeter per hour ($mg/cm^2/hr$) for 2-ME, 0.8 $mg/cm^2/hr$ for 2-EE, and 0.8 $mg/cm^2/hr$ for 2-EEA (Ref.14).

2. *Human studies.* EPA is not aware of any studies of the toxicity of these glycol ethers to humans that have examined developmental or reproductive effects.

B. Human Exposure and Risk

1. *Exposure sources*—a. *Manufacture.* Workers involved in manufacturing these glycol ethers are potentially exposed at several places in the manufacturing plant. The highest potential exposure occurs at packaging and drum filling locations, while all other locations are typically well controlled (closed systems, ventilated, etc.). Inhalation exposure at manufacturing plants ranges from 0.1 to 4.2 ppm. At a typical plant, EPA estimates 30 workers would be involved in these operations for less than 8 hours per day on a daily basis. There is also a high potential for dermal contact whenever container filling is not done automatically. However, most container filling is done automatically, ventilation is normally used, and protective equipment is normally worn (Ref. 60).

b. *Processing.* Glycol ethers are formulated in products under a much wider variety of conditions than those found in manufacturing plants. (Formulation of glycol ethers into products after their manufacture is considered "processing" under sec. 3 of TSCA.) In most cases, products are formulated under tightly controlled conditions (closed system, ventilation) where exposures are very low (non-detectable to less than 5 ppm.) However, some small quantity formulations of paints or other coatings are processed in open vessels where mean exposures can range up to 10 ppm. The potential for dermal contact in those situations can be quite high. In a typical plant, 20 workers are involved for less than 8 hours per day on a daily basis. Most establishments attempt to control exposures through the use of ventilation and personal protective equipment.

c. *Uses.* During the use of most glycol ether-containing products, the object is to evaporate the glycol ethers and other solvents from the coating, ink or cleaned surface. This evaporation results in a high potential for both dermal and inhalation exposure to glycol ethers.

i. *Trade users.* There are many products that may contain these substances used in a variety of trades. Prominent among these are inks used in printing, paints, varnishes, stains, lacquers, paint removers, and cleaning solvents used by woodworkers, painters, furniture finishers, and metal workers, and auto paints used in body shops. The inhalation exposures are known from observations made by NIOSH and OSHA to be at the level of 0 to 50 ppm for an 8-hour time-weighted average (TWA) (approximately 3 ppm average).

A typical case is the application of finishing or refinishing coatings on automobiles. Inhalation exposure levels may range from non-detectable to as high as 85 ppm. There is also a high potential for dermal contact. Workers are typically coating automobiles for 4 hours per day, 3 to 5 days a week. Most large shops control exposure through the use of ventilated spray booths and protective equipment. Small shops may not have this apparatus; frequently it is not well used or maintained (Ref. 47A).

ii. *Industrial users.* Industrial users are manufacturing establishments that apply glycol ether-containing paints and other coatings to products such as automobiles, appliances and furniture of use glycol ether-containing cleaners to clean a variety of machinery and work surfaces. This group also includes semi-conductor manufacturers who coat silicon wafers with photoresists. Most establishments attempt to control exposures through spray booths, exhaust hoods, general ventilation and personal protective equipment. Where glycol ether-containing cleaning products are used, the potential for dermal contact can be high.

iii. *Consumer Uses.* These glycol ethers are known to have been widely used in consumer products. However, because of wholesale switching to substitute solvents by EPA has not been able to identify manufacturers who currently use these glycol ethers in their

consumer products. Consequently, consumer exposure is irrelevant to the unreasonable risk finding contained in this report.

2. *Exposure analysis framework.* This picture of different causes and patterns of exposure among different people is the basis for dividing the exposed population into three major populations at risk. One population is the manufacturing, formulating and processing workers. Their exposure is characterized by processes where the release of glycol ether solvents is controlled and engineering and other controls are widely available. The second population at risk are the workers in major industries who use products containing the solvents. Their exposure is characterized by dissipative use of the solvents under conditions where exposure is prevented or reducted through engineering controls, special work practices and protective equipment. The third population at risk are what EPA is calling the trade workers using these products. Their exposure is characterized by dissipative use of the products under conditions where there frequently is little or no active removal of the vapors. The only limitations on their exposure are the relatively small amount of solvent used and the shorter and less consistent use of the glycol ether-containing products.

3. *Exposure levels.* Data on the exposure levels for men and women in trade uses, industrial uses, and glycol ethers manufacturing, formulating and processing are shown in the table "Populations at Risk" contained in this unit. The exposure data show that in most large industries the majority of exposures are relatively low (exposures below 0.03 ppm for 2–ME and below 1 ppm for 2–EE). What EPA has defined as trade uses, however, account for most of the highest exposure category (exposures above 3 ppm for 2–ME and 10 ppm for 3–EE).

Some trades that are likely to use these glycol ethers are not counted in the Agency's estimates either because EPA is not familiar with their use, or because EPA cannot estimate the number of people in the trade.

The exposure data in the table "Populations at Risk" are based solely on inhalation exposure to these glycol ethers, but dermal absorption will, in many cases, be a major contribution to the total exposure, and it can easily exceed the dose absorbed by inhalation.

4. *Risk analysis—a. Risk summary.* Based upon the results of animal studies, EPA has concluded that exposure at levels equal to current OSHA standards from the use of products containing these substances may cause both developmental toxicity effects and testicular damage in humans. In all cases 2–EE and its acetate are less potent in causing these effects than 2–ME and its acetate. EPA's evaluation of the safety of these substances shows that there is only a small or no margin of safety for many of their uses.

b. *Risk analysis methodology.* In its risk assessment (Ref. 78), EPA relies primarily on the analytical methodology of identifying the margin of safety, that is, the difference between worker exposure levels and the concentration levels at which no adverse, statistically significant effects were observed in test animals, i.e., the NOEL. This margin, which is equal to or some fraction of the NOEL, is a tool commonly used in evaluating the significance of human toxic exposures. To assure chemical safety, it has been standard Federal and state agency practice to establish a margin of 100 to allow for the possible greater sensitivity and variability of humans over the experimental animals. Exposures below this level have often been considered reasonably safe and above this level as possible hazardous. The Agency has analyzed the specific data on these glycol ethers and believes that a margin of safety of 100 is necessary to be reasonably confident of no human effects. The Agency's approach is consistent with its proposed guidelines for the health assessment of suspect developmental toxicants published in the Federal Register of November 23, 1984 (49 FR 46324). (This margin, combined with the economic impacts of achieving it, and other factors, is considered in making the finding of unreasonable risk discussed in Unit III.F below.)

In order to facilitate its analysis of the effectiveness of various control options, EPA divided the exposed populations according to ranges of margins of safety that applied to each group. Specifically, exposed worker populations were divided between trade users, industrial users, and workers in glycol ether manufacturing, formulating, and processing facilities. These groups were then subdivided between men and women (assuming 80 percent men and 20 percent women (Ref. 67) according to exposure levels that were (1) over one-tenth the NOEL for male or female effects respectively, (2) between one-tenth and one one-hundredth the male or female NOEL, (3) below one one-hundredth the male or female NOEL.

c. *Risk levels.* As the following table entitled "Populations at Risk" indicates, between 206,000 and 350,000 workers are exposed to levels of these glycol ethers that represent a margin of safety of less than 100. (The upper range assumes that none of the workers exposed to 2–EE and 2–EEA are also exposed to 2–ME and 2–MEA; the lower range assumes that all of the workers exposed to 2–EE and 2–EEA are also exposed to 2–ME and 2–MEA.) Approximately 90 percent of these higher risk workers are in the trade group.

TABLE—POPULATIONS AT RISK FROM 2–EE AND 2–ME

	Total[1]		Trade uses		Industrial		Manufacturing formulation, and processing	
	2-ME	2-EE	2-ME	2-EE	2-ME	2-EE	2-ME	2-EE
Number of Men at Risk, by use, Assuming Men Comprise 80 Percent of Exposed Population								
Margin of Safety less than 10	2,868				2,520		288	
Margin of Safety between 10 and 100	113,085	154,360	112,977	150,126	88	14,157		1,097
Margin of Safety greater than 100	184,488	257,772	62,807	111,976	120,988	182,173	1,730	83,622
Number of Women at Risk,[2] by use, Assuming Women Comprise 20 Percent of Exposed Population								
Margin of Safety less than 10	28,968	14,639	28,944	14,639	652		72	
Margin of Safety between 10 and 100	30	37,074		20,143		16,944	30	1,997
Margin of Safety greater than 100	46,997	61,325	15,701	27,994	32,462	28,998	403	4,493

[1] 2-ME and 2-EE are not additive because data includes people exposed to both chemicals. Data for 2-EE includes 2-EEA; data for 2-ME includes 2-MEA.
[2] For women, risk occurs during pregnancy.

Up to 46,000 workers are exposed to levels that represent a margin of safety of less than 10. Dermal exposures are not accounted for since EPA has no data for these exposures.

d. *Uncertainties.* Some of the sources of uncertainty in estimating the risks of testicular toxicity can be quantitatively estimated because both the biological site of action and the range of human

variability have been tentatively identified.

The biologic site of action of both 2–ME and 2–EE on the testis appear to be the primary germ cells. An extensive review by Meistrich (Ref. 32) suggests that it may be possible to estimate the reduction in the fertility of a human population exposed to 2–ME. He calculates that, at exposures between 1 and 5 ppm, the incidence of human infertility will increase from 15 percent of all couples to 16 percent of all couples.

The testicular effects of 2–EE can be considered to be similar to those of 2–ME but occur at approximately threefold higher exposure levels. The NOEL for all testicular effects is 100 ppm. This NOEL implies that exposures above 1 ppm would be considered by EPA to present a risk of testicular effects or that, by the Meistrich approach, infertility of couples will increase 1 percent from exposures between 5 and 25 ppm of 2–EE.

Because of a lack of data, dermal exposure has not been accounted for in determinating the risks. To the extent that there is significant dermal exposure and that exposure is not controlled, the risks are underestimated and some populations may actually be exposed to considerably higher levels than the Agency has determined based on inhalation data alone. A comparison of the risks from dermal and inhalation exposure can provide a perspective on the amount the risks may be underestimated. Fifteen minutes of absorption to a hand that is wet with 100 percent 2–ME will result in absorption of between 260 and 455 of 2–ME. This is the equivalent of exposure from inhalation to between 67 and 117 ppm of 2–ME for 15 minutes. Another comparision is that exposure to 1 ppm of 2–ME for 15 minutes (an exposure with a margin of safety of less than 10) is equivalent to immersion of less than 1 square inch of skin for 15 minutes.

Clearly, when no protection is used, dermal absorption can easily exceed inhalation exposure. This has especially important implications for controlling trade exposures where the nature of the product, and its hazards, may not be known and suitable protective clothing may not be readily available. It implies that there is a risk from all uses where there may be skin contact.

Additionally, while EPA has not established a safe or acceptable level of exposure to 2–ME with respect to hematologic effects, EPA believes that there is some risk to humans of incurring these effects through uncontrolled exposure to 2–ME.

c. *Conclusion.* The populations at a significant risk of reproductive and developmental effects are all men and women of childbearing age who on jobs that may use products containing 2–ME, 2–EE and their acetates. (These populations total as many as 350,000 in numbers.) The risk is especially high were there are no industrial ventilation controls or special protective equipment used.

EPA concludes that almost all trade users will have a significant risk of health effects from using these products.

C. The Effect of the Chemical Substance on the Environment

2-Ethoxyethanol and 2-methoxyethanol appear to be of only moderate to low concern regarding their toxicity of microorganisms and aquatic organisms (Refs. 50 and 51). EPA's PRL–1 reports (Refs. 54 and 55) also indicate that both 2-EE and 2–ME are biodegradable, with little or no tendency to bioaccumulate. More limited information on the effects of 2–EEA and 2–MEA on the environment are contained in the unpublished EPA reports "Chemical Hazard Information Profile Draft Report, 2-Methoxyethanol Acetate" and "Chemical Hazard Information Profile Draft Report, 2-Ethoxyethanol Acetate" (Refs. 52 and 53). Those reports indicate that 2–EEA was moderately biodegradable, whereas 2–MEA was slightly to moderately biodegradable.

D. Benefits of Glycol Ethers

1. *Background.* These glycol ethers have been used in commerce for over 50 years. Glycol ethers, as a family, are unique chemicals because they contain both the alcohol (—OH) and ether (—O—) moiety in the same molecule. This combination makes the glycol ethers useful in formulations containing organic and inorganic materials. Glycol ethers are useful solvents for a host of commonly used resins in the paint and coatings industry. In addition, they have relatively slow evaporation rates, which are desirable in terms of film formation.

2. *Uses.* Total domestic consumption of these glycol ethers is approximately 320 million pounds (Ref. 80). Domestic consumption of the glycol ethers can be divided into industrial uses that include chemical intermediates, industrial coatings, industrial solvents, and jet fuel additives and trade uses that include coatings and solvents used in trade industries.

a. *Industrial uses.* Chemical intermediates constitute the largest single application of glycol ethers, accounting for 36 percent of total domestic consumption. However, all but one-eighth of chemical intermediate use is directly associated with the production of glycol ether acetates. Production of 153 million pounds of 2–EEA requires 107 million pounds of 2–EE, and production of 1 million pounds of 2–MEA requires 0.7 million pounds of 2–ME. The one-eighth of glycol ethers used in chemical intermediate applications other than acetate production is nearly all accounted for by the 2–ME used in the production of the plasticizer di-methoxyethyl phthalate and the solvent ethylene glycol dimethyl ether.

Industrial coating formulations are the largest end-use category, accounting for 27 percent of domestic usage. Glycol ethers, primarily 2–EE and its acetate, are formulated into a wide array of industrial coatings. Protective finishes for cars, trucks, heavy equipment, and sheet sheet are among the largest uses of glycol ether-containing coatings. Original equipment manufacturers value glycol ethers for the smooth, glossy, durable finish they impart in both low temperature cure coatings and high temperature baked enamels. Formulators value glycol ethers for their compatibility with a variety of resins, their effectiveness in coupling resin polymers with colorants and additives, and their miscibility with both other solvents and water.

Industrial solvents represent the second largest end-use of glycol ethers, comprising 15 percent of domestic consumption. Electric circuit board manufacture, semiconductor manufacture, and textile dyeing are among the many industrial solvent applications. Electric circuit board manufacture is the largest single use in this category, accounting for consumption of 15 million pounds of glycol ethers. In this application, 2–ME serves as the carrier solvent for the catalyst in epoxy resins applied to a reinforcement material (e.g., fiberglass) during circuit board manufacture.

All four glycol ethers are used as solvents in cleaners in metal fabrication, manufacture of electrical and mechanical machinery, and miscellaneous applications. Glycol ethers are combined with other solvents and cleaners, or applied undiluted in cleaning applications. In some instances, the glycol ethers may be applied manually.

Jet fuel additives constitute the fourth largest domestic end-use of glycol ethers, accounting for 10 percent, or 33 million pounds, of total consumption. One part 2–ME is added to 1,000 parts jet fuel to prevent the fuel from freezing in jets without fuel heaters, and to act as

an antimicrobial agent in order to prevent clogging of fuel lines. Military uses dominate this market. Small private planes, such as Lear jets and Cessnas, represent a small part of the total. These additives are not employed in most commercial aircraft, which have in-line heaters.

b. *Trade uses.* Three trade industries—commercial printing, auto refinishing, and maintenance painting—together represent the third largest domestic end-use of glycol ethers. (All trade uses might constitute a larger end-user group than industrial solvents.) Altogether they account for 13 percent of domestic consumption. Glycol ether usage in printing inks has been declining in recent years to the extent that in 1982 this application was estimated to account for only 9 percent of trade industry consumption of glycol ethers. Three million pounds are used in rotogravure, flexographic, letterpress, and other printing processes. In addition, approximately 2 million pounds of 2–EE and 2–EEA are used as cleaning solvents in the printing industry.

Auto refinishing and maintenance paint formulations are functionally similar to industrial coatings, and are formulated by the same companies. Their distinguishing characteristic is that they are applied in non-industrial settings. Maintenance painters apply glycol ether-containing coatings to bridges, buildings, houses, ships, and highways.

3. *Substitutes*—a. *Summary.* In most cases, there are not one-for-one replacements for these glycol ethers. Blends of solvents would have to be used in order to achieve the cost/performance properties of these glycol ethers. The most likely substitutes would be blends of solvents that contain either the higher homologs of the ethylene oxide derived chemicals (e.g., ethylene glycol propyl ether, ethylene glycol butyl ether), or chemicals based on propylene oxide (e.g., propylene glycol methyl ether and propylene glycol methyl ether acetate). Other blend components would be aromatics, ketones, and esters. Much reformulation has been done in the area of paints and coatings. The biggest substitution problems would be in electronic applications 2–ME and industrial finishes containing 2–EEA. Coating manufacturers and users are concerned about the long-term impact of substitution on performance properties such as weathering and durability. In applications such as circuit board manufacture, solvency power of the substitute is the key consideration. Substitutes are available for most of the trade uses of these glycol ethers.

b. *Substitutes in glycol ether formulating and processing-intermediates.* With respect to intermediate use (other than glycol ether acetate manufacture), since glycol ethers become consumed in the manufacture of another chemical, substitution does not involve replacement of the glycol ether by the intermediate manufacturer but rather replacement of the chemical product itself at the point of end-use. For example, another plasticizer would need to be employed instead of di-methoxyethyl phthalate during vinyl plastics production.

i. *Industrial coatings.* Within industrial coatings, 2–EEA represents 80 percent of glycol ethers usage (among the four glycol ethers). Thus, to a large extent, replacement of these glycol ethers in coatings would mean substitution for 2–EEA, to a much lesser extent (17 percent) substitution for 2–EE, and to a minimal extent (3 percent) substitution for 2–ME.

The glycol ethers (and other solvents) are employed in three steps of the coating formulation process—resin production, pigment dispersion, and final mixing. During resin production, the glycol ethers act as chain transfer agents and therefore affect the characteristics of the polymer formed—its molecular weight average and distribution, extent of cross linking, and number of side branches. Since the polymer properties directly affect the formulated coating' rheology (flow properties), application properties, and durability, replacement of glycol ethers in this application is relatively difficult.

The second area of glycol ethers' use in coatings formulations is for pigment dispersion. Pigment dispersion solvents directly affect the stability, hue, and tinting strengths of the pigment. In addition, they affect the stability and application properties of the formulated coating. Replacement of glycol ethers as pigment dispersion solvents is considered to be less difficult than their replacement in resin production (Ref. 77).

The final glycol ether use in coatings formulation is as a let-down solvent during the mixing of the resin and pigment to produce the formulated paint. Glycol ethers in this application contribute to the overall solvent properties and the effectiveness of the coating application process. Use as a let-down solvent is considered to be the easiest use in which to replace these glycol ethers. Although comparable formulations can to some extent be reformulated as a group, each formulation ultimately requires individual attention and testing. Because coating formulations of each company are considered trade secrets, there is little direct sharing between companies of reformulation knowledge and experience. Some progress has been made in identifying potential substitutes for glycol ethers in coating formulations. Much of the work to date is described in the EPA report titled "Glycol Ethers and Acetates: Uses and Substitutes" (Ref. 77). Additional information is provided in responses to the glycol ethers ANPR. Industry representatives indicate that substitution will be accomplished on a case-by-case basis, and in most instances will involve a mixture of solvents.

ii. *Industrial solvents.* The substitution cancidates identified above have successfully replaced the glycol ethers in many of the industrial solvent applications. In other applications, however, feasible replacements for these glycol ethers have not yet been identified.

iii. *Electronics applications.* Glycol ethers perform a critical role in circuit board manufacture, and in other electronic applications. In the predominant method of circuit board manufacture, 2–ME retains the epoxy resin catalyst (usually dicyandiamide) used to cure epoxy resins in solution throughout the production process. Circuit board manufacturers claim that they have attempted to identify a substitute for 2–ME but have not been successful. One manufacturer indicates that propylene glycol methyl ether (PGME) has been used as a substitute solvent in some circuit board manufacture, occasionally in conjunction with a co-solvent such as dimethyl formamide.

Glycol ethers are employed in a number of other electronic applications. The American Electronics Association had indicated that approximately 175 products used in the electronics industry contain one or more of these glycol ethers. Individual companies have indicated their use of all four glycol ethers in semiconductor manufacture, with 2–EEA used in the greatest quantity.

2–EEA is used in photoresist solutions applied to silicon wafers during the manufacture of semiconductors. The photoresist is applied to the wafer, then selectively hardened into circuitry images through exposure to ultraviolet light that shines through diagrams contained in film. 2–EEA acts as a solvent for the film-forming materials in the photoresist. 2–EEA affects the ability

to construct rigidly defined chip construction parameters such as the angles of "walls" within the circuitry design. Although some efforts have been made to replace 2-EEA in this application, these efforts have not been successful to date. Thus, the banning of 2-EEA could have a serious impact on semiconductor manufacture.

iv. *Printing ink manufacture.* Printing industry representatives indicate that glycol ethers are used in flexographic, letterpress, gravure, screening, and labeling inks and for press cleanup. In recent years, ink companies have reformulated away from glycol ethers. Potential substitutes in ink applications include PGME, blends of PGME and dipropylene glycol methyl ether and propylene glycol methylene ether acetate.

c. *Substitutes for Industrial use.* Industrial uses of glycol ethers include the use of industrial coatings and industrial solvents containing glycol ethers. The use of substitute products will occur when the manufacturers of these products have successfully reformulated them.

d. *Trade product substitutes.* There are currently substitute products for most trade uses of these glycol ethers.

e. *Toxicity of substitutes.* With respect to the toxicity of substitutes, the Agency has examined the toxicity of the most likely substitutes for these glycol ethers in industrial, trade and consumer products (ethylene glycol butyl ether and its acetate, diethylene gylcol monomethyl ether and its acetate, propylene glycol methyl ether and its acetate, dipropylene glycol methyl ether and its acetate, and ethylene glycol propylether. The analysis shows that all have considerably lower toxicity (higher NOELS) than these glycol ethers. Developmental and reproductive effects either can be demonstrated only at much higher exposure to these substitutes or have not been demonstrated at all. The Agency is aware that there may be some hematologic risks from the use of these substitutes. EPA believes, however, that any risks from the substitutes are less than those presented by 2-ME, 2-EE, or their acetates and that use of substitutes will reduce overall risks to humans (Ref. 60).

E. The Reasonably Ascertainable Consequences of Potential Regulation

This unit describes the regulatory measures that could be used to control exposure to workers. As discussed below, EPA has concluded that some control methods are both technologically and economically feasible and could provide a reasonable margin of safety for manufacture, processing, and use of these glycol ethers.

1. *Control measures.* The Agency has examined a variety of control measures to determine their technical and economic feasibility and their effectiveness in reducing or eliminating exposure to these glycol ethers. Generally, the options can be grouped in the following categories:

a. A ban on some or all manufacture and use.

b. Workplace exposure limits for some or all manufacture and use.

c. Product concentration limits.

i. *Ban on Manufacture and Use.* EPA evaluated a full phase-out of manufacture and use of these glycol ethers. However, based on responses to the ANPR, EPA believes that certain manufacturers are manufacturing and using, and can continue to manufacture and use, these chemicals in a manner that provides adequate protection to worker health. In view of this assessment, the full ban option does not appear necessary to protect against risk. In particular, some industries, especially the electronics industry, may have severe problems in obtaining feasible substitutes.

ii. *Workplace Exposure Limits.* The control of employee exposure to dangerous materials is a standard part of most industrial production procedures. In addition, OSHA controls the industry concentrations of these glycol ethers in the plant atmosphere through permissible exposure limits (PELs) at less than the following 8-hour time weighted average (TWA) levels:

2-ME: 25 ppm
2-MEA: 25 ppm
2-EE: 200 ppm
2-EEA: 100 ppm

OSHA also requires that every precaution be taken to avoid skin contact. OSHA established the above control levels based on hematologic and neurologic effects, not the developmental and reproductive effects.

A lower TWA limit of 5 ppm recently has been recommended for all four glycol ethers by the American Conference of Governmental Industrial Hygienists, based on developmental and reproductive effects.

EPA evaluated current industrial control practices for glycol ethers, and identified additional control measures that could reduce exposures to a sufficient extent (Ref. 60). EPA identified possible control requirements for nine representative industrial facilities. In all facilities except for ink application, cleaning solvent use, and photographic applications, EPA found that exposure during industrial use of glycol ethers already has been controlled to 5 ppm or below. EPA evaluated a tenth facility, an electric circuit board manufacturer, at which glycol ether exposures in the 5 to 10 ppm range were reported.

Glycol ether usage at trade facilities is relatively small; their process operations are less well controlled; and such facilities may have a smaller financial base to recover fixed compliance costs than the industrial facilities. For these reasons, trade facilities might find it difficult to implement control equipment measures to achieve reduced levels of glycol ethers exposure. However, product substitution is an alternative in such settings.

iii. *Product concentration limits.* Product concentration limits were considered by EPA not to be a viable option because these glycol ethers generally are not useful except at concentrations (typically 10 to 100 percent) that can produce very significant exposures in all uncontrolled settings. In addition, specifying an allowable concentration level would be ineffective because the degree of exposure is considerably affected by factors other than concentration, such as air exchange rates, temperature, humidity, and mode of use.

2. *Cost of controls.*—a. *complete ban.* The direct costs of a general ban (excepting exports and jet fuel use) on all manufacture and use of these glycol ethers was estimated by calculating the direct costs of replacing these glycol ethers with substitutes. The potential costs are of two types, (1) reformulation efforts by product formulators and, (2) changes in formulator raw material costs. Total reformulation costs for a general ban would be about $300 million. The annual cost would be about $65 million if they were amortized over 10 years (the period that the coating and ink industries experience a nearly complete product turnover). EPA estimates that the annual increase in raw materials to be incurred under a general ban would be about $23 million.

b. *Trade ban.* The total annualized cost of banning just the trade uses of these glycol ethers would be about $22 million, of which $17 million would be reformulation costs and $5 million would be increased raw material costs.

c. *Lower permissible exposure limits for workplace manufacturing, processing or use.* EPA also evaluated the cost of imposing lower permissible exposure limits than those OSHA now requires for all workplace settings where glycol ethers exposue may occur. Each industrial user faced with these limits can either install and utilize

engineering controls and personal protective equipment or switch to a product that does not contain these glycol ethers.

If *all* workplaces—industrial and trade—installed engineering controls and used personal protective equipment, then capital costs for the control levels evaluated are between $44.2 million and $88.0 million; operating costs are high—$1.24 to $1.25 billion.

However, an option for any firm facing the exposure limits that provide an adequate margin of safety would be to substitute away from the glycol ethers. EPA concluded, based on its analysis of the cost of lower exposure limits versus substitution, that many firms may opt for subsitution. In two industrial sectors, electric circuit board manufacture and semiconductor fabrication, firms would be more likely to incur the costs of controlling exposures rather than replace the gylcol ethers. Consequently, the annualized costs of revised PELs for all workers would be $83 million (assuming the move by many firms to substitutes).

Reduced usage of these glycol ethers will vary among the three control options. A ban on all uses, except exports and jet fuel manufacture and use, would lead to a 280 million pound reduction in consumption and remove roughly 569,000 persons from any risk; a limited ban on trade use would lead to 45 million pound reduction and remove roughly 316,000 persons from any risk; and setting new exposure limits would reduce cosumption by 231 million pounds and reduce the risk to roughly 350,000 persons, based on a level that has margin of safety greater than 100. The relative reduction in the use of 2–ME represents the major difference between the general ban and reduced exposure limits. Under a new exposure limit EPA estimated a 19 percent reduction in the use of 2–ME, while a general ban would result in a 55 percent reduction of 2–ME. (Note that total persons removed from risk data cannot be obtained from the "Populations at Risk" table which presents data according to 2–EE/2–EEA and 2–ME/2–MEA exposures. These data are not additive because of double counting; see ref. 80.)

F. Unreasonable Risk From 2-Methoxyethanol, 2-Ethoxyethanol, and Their Acetates

1. *Industrial (manufacturing, processing and use).* EPA believes that the exposure levels associated with certain manufacture, processing, distribution in commerce, and use of these glycol ethers or mixtures containing these glycol ethers present an unreasonable risk to human health. Approximately 200,000 industrial workers are exposed to these glycol ethers, and as many as 4,000 of those workers are exposed to concentration levels that afford little or no margin of safety from incurring effects similar to those observed in test animals. A larger number—32,000 to 36,000—are exposed to concentration levels that EPA believes do not afford a sufficient margin of safety. EPA has also concluded that reasonable methods such as reduced workplace PELs, controlled work practices and protective equipment could be used to control exposure. The cost of instituting new PELs, for example, for all industrial workers is approximately $61 million annually.

2. *Trade uses.* As many as 43,000 trade workers are exposed to concentration levels that afford little or no margin of safety from incurring effects similar to those observed in test animals. Between 159,000 and 272,000 are exposed to concentrations levels that EPA believes do not afford a sufficient margin of safety.

Because of the high costs of engineering controls, work practices, and personal protetive equipment, occupational control standards that would substantially reduce trade worker risk from glycol ether exposure may result in trade users complying by substituting other products. The cost of complete substitution would be about $22 million annually.

To put this in perspective, a typical glycol ethers-containing paint costing $35 per gallon might increase 8¢ to 9¢ per gallon as the result of switching to a substitute. Reduced PELs, assuming compliance using engineering controls and personal protective equipment, on the other hand, might result in an increase of many dollars per gallon. Cessation of trade use also would eliminate 97 percent of the exposure to 2–ME at levels greater than 0.1 ppm (the limit of detection associated with the exposure data) and 68 percent of the exposure to 2–EE at levels greater than 0.5 ppm.

EPA believes that the estimated cost of substitution in trade uses is reasonable in view of the potential fetal lives saved and the sterility and other health effects avoided. EPA believes that there are effective substitutes for most if not all trade uses of these glycol ethers.

G. Prevention of Unreasonable Risk by OSHA

Based on the entire record developed during EPA's regulatory investigation, the Agency has determined that a reasonable basis exists to conclude that the current conditions of manufacture and use of glycol ethers present an unreasonable risk of injury to human health, and that the risk to workers can be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act (OSHA. Therefore, pursuant to section 9(a) of TSCA, the Agency is issuing this report. A response from OSHA to the Administrator of EPA is requested within 180 days of publication of this report in the **Federal Register.**

IV. Report Record

EPA has established a record for this proceeding (docket control number OPTS–01007). A public version of the record, without any confidential business information, is available to the public in the Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency also maintains a record of confidential information that is not a part of the public record. The Public Information Office is located in Rm. E-107, 401 M St., SW., Washington, DC 20460.

The record includes information considered by EPA in developing this report. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The **Federal Register** notices.
2. Support documents.
3. Reports.
4. Memoranda and letters.
5. Documents identified in Unit V, "References".

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(88) Yonemoto, J., Brown, X.I.A., Webb, M., Effects of Dimethoxythyl Phthalate, Monomethoxyethyl Phthalate, 2-Methoxyethanol and Methoxyacetic Acid on Post Implantation Rat Embryos in Culture. Toxicology Letters 21:97–102. 1984.

Dated: May 9, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–11299 Filed 5–19–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-51622; FRL 3014-3]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-10441 beginning on page 17232 in the issue of Friday, May 9, 1986, make the following corrections:

1. On page 17233, in the second column, under P 86-868, in the third line, the last word should read "Polyperfluoroalkyl".

2. On page 17234, in the second column, under P 86-871, in the second line, the last word should read "ether".

3. On the same page, under P 86-872, in the third column, in the first line, the last word should read "ether".

BILLING CODE 1505-01-M

[OPTS-59218A; FRL-3018-6]

Approval of Test Marketing Exemption for Acrylic Copolymer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-39. The test marketing conditions are described below.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M St. SW., Washington, DC 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-39. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-39. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 86-39.

Date of Receipt: April 10, 1986.

Notice of Receipt: April 25, 1985 (51 FR 15685).

Applicant: Confidential.

Chemical: (G) Acrylic copolymer.

Use: (G) Industrial coatings and inks.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacturing: dermal, a total of 3 workers, 2-3 hours/day for 1 day/year each. Use: dermal, a total of 20-30 workers, up to 1 hour/day up to 30 days/year each.

Test Marketing Period: Confidential.

Commencing on: May 12, 1986.

Risk Assessment: EPA identified no significant concerns for human health or environmental effects. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 12, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-11296 Filed 5-19-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59217A; FRL-3018-7]

Approval of Test Marketing Exemption for Nitrogen Heterocycle

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for testing marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below:

EFFECTIVE DATE: May 9, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth Moss, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613B, 401 M Street, SW., Washington, DC 20460, (202-382-3395).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves the following TME-86-38. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-36. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 86-36

Date of Receipt: April 1, 1986.

Notice of Receipt: April 11, 1986 (51 FR 12560).

Applicant: Confidential.

Chemical: (G) Nitrogen heterocycle.

Use: Corrosion inhibitor during natural gas production.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Nine months.

Commencing on: May 9, 1986.

Risk Assessment: No significant health concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA identified potential environmental concerns. However, no releases of the test market substance to the environment are anticipated. Therefore, under these conditions the test market substance will not pose any unreasonable environmental risk.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 9, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

FR Doc. 86-11247 Filed 5-19-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 12, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris Benz, FCC, (202) 632-7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 395-7231.

OMB No.: 3060-0022
Form No.: FCC 610A
Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States
Action: Revision

Estimated Annual Burden: 1,660 Responses; 137 Hours.

OMB No.: 3060-0009
Form No.: FCC 316
Title: Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License of Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License (Short Form)
Action: Reinstatement

Estimated Annual Burden: 956 Responses; 2,868 Hours.

OMB No.: 3060-0011
Form No.: FCC 330-L
Title: Application for Instructional Television Fixed Station License
Action: Reinstatement

Estimated Annual Burden: 353 Responses; 618 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

FR Doc. 86-11285 Filed 5-19-86; 8:45 am]

BILLING CODE 6712-01-M

Federal Advisory Committee for the 1987 ITU Administrative Radio Conference for the Mobile Services; Meeting

May 13, 1986.

The ninth meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Tuesday, June 24, 1986, at 9:30 A.M. in the Commission Meeting Room 856, 1919 M Street NW., Washington, DC.

The meeting agenda is:

1. Approval of meeting agenda.

2. Approval of the summary record of the May 9, 1986, meeting.

3. Report of administrative matters from designated federal employee.

4. Consideration of filing Reply Comments to Third Notice of Inquiry.

5. Reports on International meetings bearing on the Mobile WARC.

6. Discussion of future work of the Federal Advisory Committee.

7. Other business.

8. Selection of next meeting date anyone desiring further information should contact Robert McIntyre FCC/PRB at (202) 632-7175. These meetings are open to the public.

Anyone desiring further information should contact Robert McIntyre, FCC/PRB at (202) 632-7175. These meetings are open to the public.

Federal Communication Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-11286 Filed 5-19-86; 8:45 am]

BILLING CODE 6712-01-M

[REPORT NO. 1589]

Applications for Review of Action in Rule Making Proceeding

May 14, 1986.

Applications for Review have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-587-3800). Oppositions to these applications for review must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Subject: Amendment of § 73.504(a), Table of Assignments, Noncommercial Education FM Broadcast Stations. (Palm Desert, California), (MM 84-787).

Filed By: Lauren A. Colby, Attorney for Prairie Avenue Gospel Center, on 5-2-86.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-11287 Filed 5-19-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1986-2]

Filing Dates for New York Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for New York Special Election.

SUMMARY: Committees required to file reports in connection with the special election to be held on June 10, 1986, must file a 12-day pre-election report due on May 29, 1986, and a 30-day post-election report due on July 10, 1986, and a 30-day post-election report due on July 10, 1986. Committees that file these reports are not required to file the quarterly report due July 15, 1986. After filing these reports, committees should resume filing on a quarterly basis.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Warfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120, Toll Free: (800) 424-9530.

Filing Dates for Special Election, 6th Congressional District, New York

All principal campaign committees of candidates in the special election and all other political committees not filing monthly, which support candidates in the special election shall file a 12-day pre-election report due on May 29, 1986, with coverage dates from the closing date of the last report filed through May 21, 1986, and a 30-day post-election report due on July 10, 1986, with coverage dates from May 22, 1986, through June 30, 1986. Committees that file these reports are not required to file the quarterly report due July 15, 1986. After filing these reports, committees should resume filing on a quarterly basis.

Dated: May 15, 1986.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 86-11302 Filed 5-19-86; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0066
Title: Request for Fire Suppression Assistance
Abstract: When a Governor determines that fire suppression assistance is warranted, his/her request for assistance shall specify in detail the facts supporting the requests.
Type of Respondents: State or local governments
Number of Respondents: 5
Burden hours: 20

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1986.

Walter A. Girutanias,

Director, Administrative Support.

[FR Doc. 86-11258 Filed 5-19-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, (Pub. L. 92-463, as amended), notice is hereby given that the President's Advisory Committee on Mediation and Conciliation will meet at the Shoreham Hotel, Suite 740 on Thursday, May 29, 1986 from 10:00 a.m. to 12:00 Noon.

The proposed meeting is for the purpose of discussing and reviewing negotiation strategies and discussion of confidential bargaining and mediation information. Because the proposed meeting is likely to disclose: (1) Trade secrets and commercial or financial information obtained from persons which is privileged and confidential strategy; and (2) information the premature disclosure of which would significantly frustrate the implementation of proposed agency action, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4) and (9)(b) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, 2100 K Street NW., Washington, DC 20427 or call (202) 653-5290.

Kay McMurray,

Director.

[FR Doc. 86-11141 Filed 5-19-86; 8:45 am]

BILLING CODE 6735-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Thursday, June 12, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, May 14, 1986.

Charles H. Atherton,

Secretary.

FR Doc. 86-11310 Filed 5-19-86; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Funds for Fiscal Year 1986 Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS); Projects for HTLV-III/LAV Counseling and Testing Sites

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for cooperative agreements for Acquired Immunodeficiency Syndrome (AIDS) Projects for Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) Counseling and Testing Sites (formerly termed Alternate Sites to Blood Donation Facilities for HTLV-III/LAV Antibody Testing).

Authority

These projects are authorized under section 301(a) of the Public Health Sevice Act (42 U.S.C. 241(a)), as amended, section 311(b) of the Public Health Service Act (942 U.S.C. 243(b)), as amended, and Section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Program Background

The acquired immunodeficiency syndrome continues to grow as a major public health problem in the United States. Into April 1986, more than 19,000 cases have been reported and more than 10,000 persons have died from AIDS as defined by the CDC surveillance case definition for national reporting:

1. Presence of reliably diagnosed disease at least moderately indicative of underlying cellular immunodeficiency; and
2. Absence of all know underlying causes of cellular immunodeficiency (other than HTLV–III/LAV infection) and absence of all other causes of reduced resistance reported to be associated with the disease.

HTLV–III/LAV, the virus that causes AIDS, is transmitted sexually, through contaminated needles, through blood and blood components, and perinatally. A serologic test for HTLV–III/LAV antibody has been developed, and its use for donated blood and plasma has greatly decreased the risk of AIDS for transfusion recipients and hemophiliacs. These two groups account for approximately 3 percent of reported AIDS cases. Without a vaccine or therapy, the main bases for AIDS prevention in other groups are a thorough understanding of the risk factors for HTLV–III/LAV infection, and efforts to change the behaviors which contribute to those factors.

Purpose

The purpose of these projects is to help reduce the spread of HTLV–III/LAV and to continue protecting the nation's blood supply by helping State and local health departments to maintain counseling and testing services for individuals in risk groups for AIDS so they will not donate blood simply to receive a free HTLV–III/LAV antibody test. These counseling and testing sites are also intended to assure that individuals receive appropriate pretest counseling, posttest counseling, and referral for medical evaluation and for community-based support services that may be available to reinforce risk reducing behavorial change.

Eligible Applicants

Eligible applicants are the official public health agencies of States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa, and local governments which have reported at least 1,000 cases of AIDS meeting the CDC surveillance case definition as set forth above.

Cooperative Activities

A. Recipient Activities

1. Operate HTLV–III/LAV counseling and testing sites (for HTLV–III/LAV antibody testing) at places and times that are reasonably convenient for the majority of people in risk groups for AIDS.
2. Assure that counseling and testing site services are publicized to the extent that most people in risk groups for AIDS should be able to determine where and when services are available and how to go about scheduling an appointment or securing information about the program.
3. Provide sensitive and effective pretest counseling, posttest counseling of seronegative people who are at high risk for AIDS, and posttest counseling for seropositive patients.
4. When feasible, encourage seropositive patients to refer their sex or needle-sharing partners and offer them guidence in making referrals; and if they prefer, provide assistance by notifying their partners and counseling them regarding evaluation and/or testing.
5. Assure the confidentiality of all patient records and records of test results in accordance with the confidentiality requirements of section 318(a)(5) of the Public Health Service Act, as specified below, or through a system of anonymous testing and record keeping that minimizes the maintenance or use of name identified documents.
6. Maintain the laboratory capability to perform HTLV–III/LAV antibody testing using the latest approved technology, by assuring that a secondary testing procedure, i.e., Western blot or other appropriate tests; is already established or will be established within three months of the date funds are awarded and is, or will be, used routinely to process all specimens repeatedly reactive by the ELISA procedure.
7. Arrange for laboratories performing HTLV–III/LAV antibody tests in support of counseling and testing sites to report reactive ELISA tests by degree of reactivity to assist in the posttest counseling of seropositive patients.
8. Evaluate the population tested, test results, and counseling and partner referral efforts. Such efforts must preserve confidentiality or maintain anonymity.
9. Ensure coordination between this program and any current CDC cooperative agreements for AIDS.

B. Centers for Disease Control Activities

1. Provide training in counseling, sex partner referral, and laboratory procedures related to the ELISA and Western blot or other appropriate testing procedures.
2. Provide up-to-date scientific information regarding the risk/protective factors for HTLV–III/LAV, sensitivity and specificity of serologic tests, and other aspects of preventing transmission HTLV–III/LAV infection that may have impact on the nature and scope of operations at counseling and testing sites.
3. Provide technical assistance in the design, development, operations, and evaluation of counseling and testing sites.
4. Provide national and regional data on counseling and testing site volume, services, and results from the ongoing analysis of activity reports submitted by recipients.

Availability of Funds

Approximately $9,900,000 is available in Fiscal Year 1986 to fund 57 to 60 competing cooperative agreements ranging from approximately $5,500 to $1,200,000, with an average award of $168,000. It is expected that the cooperative agreements will begin on or about September 1, 1986, and will be funded for 12 months. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Funds may be used to support personnel, their training and travel, and to purchase supplies and services directly related to planning, organizing, and conducting AIDS projects described in this announcement.

Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered.

Funds may be expended for written materials, pictorials, and audiovisuals to support AIDS risk reduction education efforts associated with the operation of counseling and testing sites if approved in accordance with guidance provided below under the heading *Content of Written Materials, Pictorials, Audiovisuals.* Funds from the project

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may not be spent for research activities, for surveys, or for questionnaires except as may be needed to collect patent demographics to meet the basic evaluation requirements of this announcement. Also funds may not be used for group educational sessions except when pre- or posttest counseling involves communicating test-related information or instructions to more than one patient at a time.

Funds may be used to supplement (not substitute for) existing counseling and testing site activities described above. However, where the applicant can document that fixed duration emergency funding has been provided specifically to sustain certain counseling and testing site operations following expiration of funds from the previous CDC cooperative agreement for counseling and testing sites, funds under this announcement may be used to assume ongoing costs upon the termination of such emergency funds.

Funds shall not be used for purchasing computers, office equipment and furniture, and renting or leasing office space unless specifically approved.

Funds may not be used to support construction or renovation costs.

Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or treatment provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to the individual or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

Reporting Requirements

Progress reports are required on a quarterly basis and are due 30 days after the end of each quarter. The fourth quarter report will include a summary of the year's activities. Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

Recipient Financial Participation

This program has no statutory cost sharing formula. No specific matching funds are required; however, the application should include data on the applicant's contribution to the overall program costs.

Guidance—Content of Written Materials, Pictorials, Audiovisuals

The current lack of therapeutic or vaccine methods to control the spread of HTLV–III/LAV infection and AIDS requires the promotion of sexual and lifestyle behaviors for individuals which will reduce their risk of acquiring and spreading the virus. Behavioral science research suggests that expecting people to permanently alter any set of behaviors affecting their health is unrealistic unless the educational message provides acceptable alternatives to the behaviors creating the risk. Consequently, AIDS risk reduction efforts have focused on the promotion of responsible sex practices for individuals such a gay and bisexual men, for whom sexual activity is an important factor of risk in acquiring or spreading HTLV–III/LAV.

The adoption of "safer sex" practices is a practical concept of AIDS risk reduction and is being suggested as a strategy intended to minimize the spread of HTLV–III/LAV infection among sexually active individuals, including gay and bisexual men. The promotion of a "safer sex" risk reduction strategy may involve supporting the communication of suggestions using candid terms, some of which may be offensive to society at large. The Centers for Disease Control (CDC) is answerable for the use of Federal funds and broad support is vital to its public health mission. CDC also has an obligation to take actions designed to control the spread of HTVL–III/LAV. This guidance is meant to promote such actions, and to require local panels to consider the bounds of explicitness believed needed to communicate an effective message to those for whom it is intended.

I. Basic Principles

a. Language used in written material (i.e., pamphlets, brochures, fliers), audiovisual materials, (i.e., motion pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to explain "safer sex" practices and/or to contrast them with "unsafe sex" practices concerning AIDS should use terms or descriptors necessary for persons attending counseling and testing sites to understand the message.

b. Such terms or descriptors used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as gay men, about high risk sexual practices, would be judged by a reasonable person to be unoffensive to most educated adults beyond that group.

c. Audiovisual materials and pictorials in addition should communicate risk reduction messages by inference rather than through any display of the anogenital area of the body or overt depiction of the performance of "safer sex" or "unsafe sex" practices.

2. Program Review Panel

a. Prospective cooperative agreement recipients will be required to establish a program review panel whether the applicant plans to conduct the total program activities or plans to have part of them conducted through subvention to nongovernmental organization(s). This panel, guided by the CDC Basic Principles in conjunction with prevailing community standards, will review and approve all written materials, pictorials, and audiovisuals to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdiction. Specifically, applicants for cooperative agreements will be required to include in the application the following:

(1) Identification of a panel of no less than five persons representing a reasonable cross-section of the general community, not drawn predominantly from the target group or groups to whom the written materials, pictorials, and audiovisuals are directed; and

(2) A letter or memorandum from the proposed project director, countersigned by the business office, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

b. When a cooperative agreement is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment actual copies of written materials,

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pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel draft text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals proposed to be used;

(3) Provide to CDC a statement signed by all members of the Program Review Panel which itemizes their majority vote approval or disapproval of all proposed written materials, audiovisual materials and pictorials submitted to them for assessment as part of the proposed project plan.

The CDC award of funds for approved applications will restrict the expenditure of funds related to the ultimate program use of the materials until the signed statement of the Program Review Panel is received.

Applications

A. Application Content

1. *Compliance with Program Review Panel Requirement*—Applications which include written materials, pictorials, and audiovisuals, related to AIDS risk reduction for use with the operation of counseling and testing sites must contain the documentation required in paragraph 2.a under the subpart of this announcement entitled *Content of Written Materials, Pictorials, and Audiovisuals*.

2. *Narrative*—The application must include a narrative which details the following:

a. Progress report on HTLV–III/LAV counseling and testing activities performed and results achieved to date;

b. The background and need for project support, including information that relates to factors by which the applications will be evaluated;

c. The objective of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased;

d. The methods and activities which will be undertaken to accomplish the objectives;

e. The methods which will be used to evaluate the success of the project;

f. A description of how program activities are coordinated with other current CDC cooperative agreements for AIDS.

g. A budget and accompanying justification consistent with the purpose and objectives of the project; and

h. Any other information that will support the request for assistance.

i. A plan to assume the support and incorporate the activities of HTLV–III/LAV counseling and testing into an ongoing and comprehensive AIDS prevention program after the expiration of the project period.

B. Review and Evaluation Criteria

1. The application will be reviewed and evaluated according to the following criteria:

a. The total number of AIDS cases reported since June 1981 that meet the CDC surveillance case definition.

b. The patient response to counseling and testing sites established previously and the quality and extent of services provided (regardless of whether such sites are still in operation, and whether they are or were supported by local funds or through CDC cooperative agreement funds).

c. Whether the stated objectives are consistent with the purpose of the program.

d. The capability of the applicant to effectively provide sensitive and confidential pre- and posttest counseling.

e. When feasible, the commitment to encourage seropositive patients to refer their sex/needle-sharing partners by emphasizing that patients conduct such referrals and by making staff available to assist in notifying partners, if patients prefer.

f. The soundness and potential operational impact of collaborative efforts between the health department and organizations in the community which provide services to members of groups at high-risk for AIDS to carry out the counseling and testing site program.

g. Whether program activities are coordinated with other current CDC cooperative agreements for AIDS.

h. Whether the plan of operation communicates a sound approach to conducting and overseeing activities designed to meet project objectives.

i. The capability of the applicant to maintain public health facilities for the general public whose services to high-risk group members are appropriate and nonjudgmental and whose services are sought out by a reasonable number of such individuals from the community.

j. The capability of the applicant to carry out education and training activities to support HTLV–III/LAV counseling and testing site activities.

k. The assurance that a capability is established or will be established within three months of the date funds are awarded to perform the Western Blot or another appropriate secondary testing procedure and that it is, or will be, used to routinely process all specimens repeatedly reactive on ELISA.

l. The assurance that arrangements are made or will be developed for laboratories to report reactive ELISA test results by the degree of reactivity to assist in the posttest counseling of seropositive patients.

m. Whether the plan for evaluation is sound.

n. The degree to which confidentiality of all records related to counseling, sex partner referral, and clinical laboratory test results will be maintained.

o. The degree to which appropriate plans have been made to assume the support and incorporate the activities of HTLV–III/LAV counseling and testing into an ongoing and comprehensive AIDS prevention program after the expiration of the project period.

C. Application Submission and Deadline

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, on or before June 23, 1986.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

D. Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Nancy Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Willard Cates, M.D., M.P.H., Division of Sexually

Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2552 or FTS 236-2552.

Dated: May 15, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-11383 Filed 5-19-86; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreements; Preventive Health Services-Tuberculosis Control; Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for Cooperative Agreements for Tuberculosis Control Programs. The funds received by these programs are directed primarily to support outreach activities in high incidence population groups and selected geographical areas.

Authority

This program is authorized by section 317(a) of the Public Health Service (PHS) Act (42 U.S.C. 247b(a)), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b. Subpart A contains general provisions relating to these programs. The Catalog of Federal Domestic Assistance Number is 13.116.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Although new applications will be considered, priority for funding will be given to currently funded cooperative agreements because of the limited funds available in Fiscal Year 1986. New awards, if any, will be limited to (1) States which reported 100 or more new cases of tuberculosis for each of the years 1984 and 1985 or had an incidence rate greater than the national tuberculosis incidence rate reported in 1984 (9.4 per 100,000 population) for both 1984 and 1985, or (2) local health agencies which are not currently receiving assistance as a sub-recipient under a cooperative agreement and which are serving a high-priority urban area with a city of at least 250,000 population which reported 200 or more new cases of tuberculosis in each of the years 1984 and 1985 or had an incidence rate greater than the rate for United States cities over 250,000 population in 1984 (19.3 per 100,000 population) for both 1984 and 1985. Although certain local health agencies may be eligible for direct funding, eligible local health agencies within a State are strongly encouraged to include their request for assistance in the State application to ensure effective coordination of Federal/State/local resources.

Applicants must show that tuberculosis cooperative agreement funds will be directed primarily to support outreach activities in high incidence population groups and selected geographical areas with (1) a significant level of tuberculosis; (2) an incidence rate greater than the State as a whole.

Program Background and Objectives

In recent years, U.S. tuberculosis morbidity has been affected by: continued transmission and infection of children; the emergence of drug resistant tuberculosis and community outbreaks of drug resistant tuberculosis disease; turberculosis in immigrants, minorities, the elderly and the homeless; and an apparent increase in cases among persons with tuberculosis infection who also have Acquired Immunodeficiency Syndrome (AIDS) or Human T-Lymphotropic-Virus Type III/Lymphadenopathy-Associated Virus (HTLV III/LAV) infection.

The national goal in tuberculosis control is to continue an annual reduction of reported tuberculosis cases of at least 5 percent. The minimum short-term objectives needed to meet this goal include:

1. At least 75 percent of all initially infectious patients will become noninfectious (convert their sputum from positive to negative) within 3 months of starting treatment, and at least 95 percent will become noninfectious within 6 months.

2. At least 90 percent of all reported cases of tuberculosis will complete an American Thoracic Society/Centers for Disease Control (ATS/CDC) recommended regimen of antituberculosis drug therapy.

3. At least 95 percent of all close contacts to infectious cases will receive examinations, with at least 95 percent of all those under 15 years of age and 75 percent of all infected persons 15 years of age and over placed on preventive treatment.

4. For close contacts and other high-risk individuals placed on preventive therapy, at least 90 percent of those persons under 15 years of age and 75 percent of all others will complete a recommended course of preventive therapy.

Cooperative Activities

The collaborative and programmatic involvement or recipients of funds and CDC is as follows:

1. Recipient Activities

a. Reporting of all tuberculosis cases, suspects, and significant laboratory results by health care providers and laboratories in both the public and private sectors; analysis of reporting trends; and implementation of updated public health record systems needed to monitor the current care status of patients, suspects, contacts, and high-risk infected persons in the community.

b. Application or intensification of directly observed daily or intermittent drug treatment as a strategy for ensuring continuity and completion of therapy for patients who will not or cannot self-administer medications.

c. Deployment of outreach personnel for followup of patients and their contacts.

d. Providing tuberculosis diagnostic, treatment, and prevention services adapted to the characteristics of tuberculosis population subgroups; and implementation of special approaches to meet the needs of immigrants with inherent language and cultural barriers.

e. Development or continuation of cost effective, medically sound tuberculosis medical care and public health policies. A major policy component should be the use of recommended ATS/CDC treatment regimens.

f. Epidemiological analysis and rapid followup for laboratory reports of drug resistant organisms.

g. Providing evaluation of the effectiveness of program activities and achievements related to stated short term objectives.

h. Program evaluation and special epidemiological investigation/analysis of unique tuberculosis problems including problems related to tuberculosis and AIDS or HTLV III/LAV infection and problems related to tuberculosis in foreign born, drug resistance, etc. Activities should include analysis of the extent of the tuberculosis problem related to AIDS or HTLV III/LAV infection and detailed investigation of all cases in children to identify causes of community control failure and to design more effective prevention and control actions.

2. Centers for Disease Control Activities

a. Collaboration in the development and operation of tuberculosis case

reporting and program management record systems. Assistance in analysis and evaluation of morbidity, mortality, and program management information. Assistance in the investigation and analysis of special problems such as tuberculosis in institutions or in AIDS or HTLV III/LAV infected populations.

b. Assistance in improving program performance through onsite consultation and the provision of training materials for use by project staff.

c. Provision of onsite technical assistance in the planning, operation, and evaluation of program activities.

d. Provision of medical and programmatic consultation through telephone and written consultation.

e. Development and dissemination of public health and medical policies and recommendations for the diagnosis, treatment, and prevention of tuberculosis (including the development of joint ATS/CDC statements). Development of patient education and motivation materials.

Availability of Funds

Approximately $4.8 million is available in Fiscal Year 1986 to continue between 40 and 48 continuation cooperative agreements. Although new applications will be considered, priority for funding will be given to continuation of existing programs. The average award is expected to be $100,000, with individual awards ranging from $28,000 to $478,000. Cooperative agreements are usually funded for 12 months. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Cooperative agreement funds may be used to support both local personnel and individuals in direct assistance (i.e., "in lieu of cash") positions under section 317 of the PHS Act, and to purchase supplies and services directly related to project activities, particularly directly observed therapy, outreach, morbidity surveillance, and assessment. Project funds may not be used to supplant State or local funds available for tuberculosis control or to support construction costs or inpatient care.

Reporting Requirements

Semiannual narrative and performance statistical reports are required within 30 days after the end of the reporting period. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Recipient Financial Participation

No specific matching funds are required; however, the application should contain information on the applicant's contribution to the overall tuberculosis control program during its most recent accounting period pursuant to provisions of section 317(b)(2) of the PHS Act.

Applications

1. Application Content

a. Initial Application—The initial application for a new project period must include a narrative which details: (1) The background and need for support, including information that relates to factors by which the applications will be evaluated and the number of tuberculosis cases under current supervision with drugs resistant organisms; (2) long- and short-term objectives of the proposed project which are consistent with the national goal outlined above, and which are specific, measurable, realistic, and time-framed; (3) the activities and methods which will be employed to accomplish the objectives (of special importance will be the employment of outreach workers in high incidence areas for use in patient followup and directly observed therapy programs); (4) the procedures which will be employed to evaluate program activities (of special importance will be the surveillance and assessment of community tuberculosis problems related to AIDS and HTLV III/LAV infection); (5) fiscal information of the applicant pursuant to provisions of section 317(b)(2) of the PHS Act, although there are no matching or cost participation requirements; and (6) a budget and accompanying justification consistent with the purpose and objectives of the project, and any other information which will support the request for assistance.

b. Continued Funding—An application for continued funding of these activities within an approved project period should contain the following: (1) A progress report on activities performed during the prior budget period, including a discussion of progress or lack of progress in accomplishing the objectives of the prior budget period; statistical data from recent report periods compared to baseline statistical data provided in the original application; the number of patients treated with directly observed therapy regimens; the activities of outreach personnel employed through the cooperative agreement; populations served and special needs of those populations which have been met through the agreement (e.g., noncompliant patients, children, foreign-born, and persons at risk for both tuberculosis infection and AIDS or HTLV III/LAV infection); and other data and/or anecdotal situations which are exemplary of effectiveness of work performed, e.g., reductions in hospitalizations, clinic delinquency rates, costs of treatment, etc. (2) New short-term objectives, methods of operation and evaluation procedures for the new budget period; (3) a description of any change in the long-term objectives, methods of operation, need for grant support, and evaluation procedures compared to information provided in previous applications; (4) fiscal information of the applicant pursuant to provisions of section 317(b)(2) of the PHS Act; and (5) a budget and accompanying justification consistent with the purpose and objectives of the project. Continuation applications should also describe plans to assess the extent of community tuberculosis problems related to AIDS and HTLV III/LAV infection.

2. Application Review and Evaluation Criteria

a. The initial application for a new project period will be evaluated and priority for funding of new projects established, based upon the following factors, using data for both 1984 and 1985: (1) The total number of cases reported; (2) the number of bacteriologically confirmed cases reported; (3) the bacteriologically substantiated incidence rate of disease; (4) the number of tuberculosis cases among children 0–14 years of age; (5) significant levels of tuberculosis among individuals who were born in countries with high rates of tuberculosis; and (6) a significant increase in tuberculosis morbidity. The number of tuberculosis cases under current supervision with organisms resistent to one or more antituberculosis drugs will also be considered in evaluating and prioritizing projects for funding. In addition, the overall potential effectiveness of the applicant's plan of operation in meeting the objectives of the proposed project will be considered in evaluating and assigning priority to applications. These factors were chosen to establish the extent of applicant's tuberculosis problem and incorporate the intent of Congress for expenditure of these funds.

b. Continuation awards within the project period will be made on the basis of the following criteria: (1) satisfactory progress in meeting project objectives, (2) objectives for the new budget period are realistic, specific, and measurable; (3) proposed changes in described long-term objectives, methods of operation,

need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and (5) the budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

3. Application Submission and Deadline

The original and one copy of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, on or before June 25, 1986.

a. Deadline. Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

b. Late Applications. Applications which do not meet the criteria in either paragraph 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

c. Copies of Applications. A copy of the application should be simultaneously submitted to the appropriate Department of Health and Human Services Regional Office listed below. For applicants who are other than State agencies, the appropriate State health agency should be notified of the submission of the application.

Other Submission and Review Requirements

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Betty Feeley, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575, or FTS 236-6575. Technical assistance may be obtained from John J. Seggerson, Division of Tuberculosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 329-2508, or FTS 236-2508. Technical assistance is also available from the appropriate Department of Health and Human Services Regional Office.

Dated: May 15, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Center for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203 (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278 (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building No. 1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323 (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2001 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 86-11394 Filed 5-19-86; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreements for State-Based Diabetes Control Programs; Availability of Funds of Fiscal Year 1986

Introductory

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1986 for competitive applications for cooperative agreements for the development of comprehensive State-Based Diabetes Control Programs which address the prevention of blindness due to diabetes, adverse outcomes of pregnancy among diabetic women, lower extremity amputations due to diabetes, coexisting diabetes and hypertension, and the integration of these efforts into the health care delivery system.

Authority

This cooperative agreement is authorized by section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.988.

Eligible Applicants

Eligible applicants for this program are official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

Program Objectives Purpose

The purpose of this cooperative agreement program is to implement *comprehensive* programs which will ensure that persons with diabetes who are at high risk for certain complications of diabetes are identified, entered into the health care system, and received ongoing state-of-the-art preventive care and treatment. Persons with diabetes are an identifiable population with high rates of morbidity and premature mortality, and they have a high risk of diabetes-related complications, such as hypertension. A substantial proportion of morbidity and premature mortality among persons with diabetes can be prevented if existing technologies are fully utilized.

Applicants approve to receive assistance under this cooperative agreement program will develop comprehensive diabetes control programs designed to reduce morbidity and premature mortality among persons with diabetes through activities designed to impact on the health care system. In addition, programs will concurrently develop the core capacity to integrate these complication-specific

elements into a comprehensive package, and to integrate that package into the health care delivery system for persons with diabetes. These programs will include complication-specific elements for the prevention of visual loss due to diabetes *and* the prevention of at least one of three other major complication areas associated with diabetes which are described below. Emphasis should be placed on improving the delivery of health care an ensuring that persons with diabetes have access to comprehensive state-of-the-art care. It is anticipated that programs will develop the core capacity to address additional complication-specific areas.

Diabetic eye disease (*REQUIRED* COMPLICATION-SPECIFIC PROGRAM ELEMENT): Diabetes is the leading cause of legal blindness in adults under the age of 65 in the United States. It is estimated that 5,800 persons with diabetes become blind each year, however 60 percent of this blindness could be prevented by the application of current knowledge. Control strategies should be focused initially upon persons at high risk of blindness due to diabetes. Those at high risk are post-pubertal persons who are not examined annually by an ophthalmologist *and* who either have Type II diabetes or Type I diabetes of 5 or more years' duration.

Adverse Outcomes of Pregnancy (*OPTIONAL* COMPLICATION-SPECIFIC PROGRAM ELEMENT): Each year approximately 10,000 to 15,000 infants are born to women with overt diabetes in the United States. Compared to the offspring of women without diabetes, these infants are at increased risk for macrosomia, hypoglycemia, respiratory distress syndrome, and major congenital malformations. They also have increased rates of fetal and neonatal mortality. Recent studies suggest that increased rates of major congential anomalies can be reduced to rates experienced by the offspring of women without diabetes. All women of childbearing age with diabetes, generally between the age of 15 and 44, are considered at risk for adverse outcomes of pregnancy.

Lower Extremity Amputations Associated with Diabetes (*OPTIONAL* COMPLICATION-SPECIFIC PROGRAM ELEMENT): Annually, there are an estimated 40,000 lower extremity amputations among persons with diabetes. It is estimated that 50 percent of these amputations can be prevented by improving health care practices and reducing risk factors for amputation. The populations at high risk for amputation are persons with previous amputations, persons with previous ulcers or foot deformities, persons 40 years of age or older with diabetes, and persons with diabetes of 10 or more years' duration.

Diabetes and Hypertension (*OPTIONAL* COMPLICATION-SPECIFIC PROGRAM ELEMENT): Of the 5.5 million persons estimated to have diabetes in the United States, approximately 45 percent (2.5 million) are estimated to also have hypertension. This is approximately twice the rate found in the general population. Hypertension contributes to the 85,000 cases of coronary artery disease, 40,000 amputations, 23,000 cerebrovascular accidents, 5,800 cases of blindness, and 4,000 cases of end-stage renal disease which occur annually among persons with diabetes. Only about half the persons with both conditions have their hypertension under control. Programs should target all persons with diabetes since 45 percent either or will develop hypertension.

At least *one* program element from among those described above as *Optional* Complication-Specific Program Elements *MUST BE CHOSEN.*

Cooperative Activities

1. Recipient Activities

a. For the development of *core capacity*:

1. Develop a system to ensure that needs and problems of persons with diabetes will be identified and assessed.

2. Develop a program advisory group, and perform consensus-building activities.

3. Develop a statewide plan for diabetes control which will integrate complication-specific program elements and future program elements into a comprehensive system of care for persons with diabetes.

b. For *each* complication-specific program element to be undertaken:

1. Identify a/the high risk group within the target population.

2. Identify available diagnostic, treatment, and education resources within the target population.

3. Describe current patterns of care within the target population, with attention to primary care sources.

4. Define and coordinate the activities of State agencies and other groups participating in the project, such as professional and volunteer organizations and third-party payers.

5. Ensure that necessary referral and followup systems are in place which will assure that patients are treated through non-project resources, and integrated into the available health care delivery system.

6. Ensure that complication-specific quality patient education components are provided to high-risk patients, and are included in the general diabetes patient education available for persons with diabetes.

7. Ensure that relevant complication-specific professional education is provided to appropriate health care providers.

8. Develop measurable objectives reflecting reduction in morbidity, which are stated in relation to the targeted population and the population with diabetes in the State as a whole.

9. Develop a system to monitor and document the impact of the program on the health care delivery system and health status of persons with diabetes and on the high risk/target populations.

c. In addition, for the *required* program element dealing with the prevention of visual loss due to diabetes:

1. Ensure that high-risk patients are examined by sensitive diagnostic techniques. (Clinical examination through undilated pupils is not adequate to diagnose proliferative diabetic retinopathy.) Acceptable techniques to diagnose diabetic retinopathy include (in priority order):

a. Examination by general ophthalmologists or retinal specialists.

b. Examination by other health-care professionals who have demonstrated the ability to perform sensitive diagnostic examinations.

c. Fundus photography using standard fundus cameras.

d. Fundus photography using "non-mydriatic" cameras.

2. Ensure that examinations as described above also include acuity testing and tonometry, and blood pressure measurement.

3. Ensure that the monitoring systems to be developed will include data sufficient for measuring program impact and for tracking program objectives.

d. In addition, for the prevention of adverse outcomes of pregnancy, if this is the *optional* program element chosen:

1. Ensure that prepregnancy management and counseling is provided to diabetic women of childbearing age (15–44) in the target population, with particular attention to their need to normalize blood glucose levels prior to conception and throughout gestation.

2. Ensure that pregnant diabetic women are managed as high-risk pregnant patients.

3. Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

a. In addition, for the prevention of lower extremity amputations, if this is the *optional* program element chosen:

1. Ensure that a system is established whereby high risk persons with diabetes in the target population have their feet examined during each visit to a primary care practitioner; with such examinations no less than annually in all risk groups.

2. Ensure that persons with diabetes and foot complications have access to appropriate examinations, diagnosis, and therapy.

3. Ensure that the complication-specific patient education to be provided (in addition to principles of foot care, skin care, hygiene, and other components of quality diabetes education) also includes sections on smoking cessation, blood pressure control, and strategies to lower cholesterol.

4. Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

f. In addition, for the management of hypertension among persons with diabetes, if this is the *optional* program element chosen:

1. Ensure that the blood pressure of persons with diabetes is measured at each visit to a primary care provider, with such measurement no less than annually, and that hypertension is detected, evaluated, and treated in accordance with the recommendations of *The 1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure*, including nonpharmacologic therapy.

2. Ensure that the complication—specific patient education to be provided includes sections on inter-relationships between diabetes and hypertension, the importance of treatment, control and followup, weight control, and exercise, in addition to other components of quality education.

3. Ensure that mechanisms are in place to promote adherence to antihypertensive therapy in the target population, including followup.

4. Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

2. Centers for Disease Control Activities

a. Develop and disseminate public health recommendations for the diagnosis, prevention, and treatment of the complications of diabetes.

b. Collaborate in the planning, operation, and evaluation of program activities through onsite participation, telephone and written consultation.

c. Collaborate in the development of surveillance and data systems and in the State's analysis and evaluation of data.

d. Collaborate in the development of screening, referral, tracking, and monitoring program components.

e. Collaborate in the development of patient and professional education components.

f. Collaborate in the dissemination of complication-specific outcome indicators and their integration into program operation.

g. Collaborate in the establishment of specific morbility reduction objectives.

Availability of Funds

Approximately $4.5 million will be available in Fiscal Year 1986 to award from 20 to 25 cooperative agreements. The average award will be $200,000 with individual cooperative agreements ranging from approximately $75,000 to $250,000. It is expected that the cooperative agreements will begin on or about September 1, 1986. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Funds will not be awarded for the purchase or lease of land or buildings, for the construction of a facility, or for renovation of existing space. The purchase of equipment is discouraged and must be pre-approved by CDC. The only equipment which will be considered for approval will be that which is justified on the basis of being essential to the project and not available from any other source. Cooperative agreement funds shall not be used for treatment or treatment services.

Reporting Requirements

Progress reports must be submitted on a quarterly basis and are due 30 days after the end of each quarter. Financial status reports must be submitted no later than 90 days afar the end of each budget period. Final financial status and progress reports are required no later than 90 days after the end of the project period.

Recipient Financial Participation

This program has no statutory formula. No specific matching funds are required; however, the application should include data on the applicant's contribution to the overall program costs and a financial commitment to continuation of the program in future years.

Application Content

Applications for cooperative agreements must include a narrative which describes:

1. The background and need for support including a description of high-risk groups within the target populations and an assessment of the health care needs of these populations as they relate to complication-specific program areas.

2. Specific measurable objectives consistent with the purpose of the cooperative agreement, and evaluable, as per Section 4f, below. (Include a milestone-to-completion chart consistent with the timeframe of the project period.)

3. The methods and activities undertaken to accomplish complication-specific objectives including:

a. How high-risk groups and target populations will be/have been identified.

b. How currently available diagnostic, treatment, and education resources will be/have been identified and utilized.

c. How the high-risk populations' current patterns of care will be/have been assessed, with attention to patterns of care in the primary health care system.

d. How needs/deficits in provider knowledge and health care practices will be/have been assessed.

e. Identification of program activities designed to complement available diagnostic, education, and treatment resources.

f. How the target populations will be examined (as applicable) by sensitive diagnostic techniques.

g. How the target populations will be assured of treatment (as applicable), with treatment and treatment services provided through non-project resources.

4. The methods and activities undertaken to accomplish objectives related to the integration of complication-specific program elements into the health care delivery system for person with diabetes, including:

a. How linkages formed with other public health care programs, primary care providers and organizations, volunteer agencies, and other medical care providers will facilitate the integration of these program elements into the health care delivery system for persons with diabetes.

b. How a program advisory group will facilitate the integration of these complication-specific program elements into the health care delivery system for persons with diabetes.

c. How the needs and problems (and factors contributing to these) will be assessed in an ongoing manner to

ensure that the ability to integrate future complication-specific program elements into the program is maintained.

d. How the *National Standards for Diabetes Education Programs/CDC-State DCP Patient Education Guidelines* will be utilized to assess current patient education activities, to ensure the quality of education provided to patients at high risk for the complications, and how such patient education will be integrated into the health care delivery system for persons with diabetes.

e. How *The Guide for Primary Care Practitioners* and the *CDC-State DCP Professional Education Guidelines* will be used in relevant professional education, and how such professional education will facilitate the integration of these program elements into the health care delivery system for persons with diabetes.

f. How a system to monitor and document the impact of this program on the health care delivery system and health status of persons with diabetes, including the morbidity reduction objectives per Cooperative Activities, Section 1.b.8., will be developed and utilized.

g. How a Statewide plan for diabetes control will be developed to facilitate the integration of complication-specific program elements into a comprehensive program of care for persons with diabetes.

5. The level of professional and community support and involvement in the program. (Letters of support/commitment from care providers, voluntary agencies, and other relevant groups and individuals should be included.)

6. A budget justification, and any other information which will support the need for assistance.

7. Plans to become self-sustaining.

Application Review and Evaluation Criteria

Applications will be reviewed and evaluated based upon the following factors:

1. The need for support as demonstrated by the description of the high risk and target populations and of the health care needs/problems of these populations.

2. The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to complete the objectives, activities, and milestones of the project within the specified period.

3. The adequacy of the applicant's plans to ensure examination of high-risk individuals by sensitive diagnostic techniques, to refer (and followup on referrals) those in need of treatment, and to assure adequate treatment (paid for by non-project resources) for patients needing treatment.

4. The adequacy of the applicant's plans to ensure the integration of complication-specific program elements into the health care delivery system for persons with diabetes through the formation of program linkages, the development of a program advisory group, and the development of a statewide plan for diabetes control.

5. The adequacy of the applicant's plans to conduct and/or assure the provision of quality patient and professional education, and to ensure the integration of this education into the health care delivery system for persons with diabetes.

6. The adequacy of the applicant's plans to develop and maintain the capacity to identify target populations, define needs, and plan future complication-specific program elements.

7. The adequacy of the applicant's plans to set morbidity reduction objectives, monitor, and document the impact of the program, and the program's impact on the health care delivery system and the health status of persons with diabetes.

8. The ability of the applicant to identify staff for the program who are available and trained to carry out the required tasks.

9. The ability of the applicant to generate community and professional support and involvement in the program, to utilize available resources, and to coordinate the activities of groups participating in the program, including governmental agencies, professional and volunteer organizations, third-party payers, consultants, and the diabetes community at large.

10. The extent to which the budget is reasonable, consistent with the intended use of cooperative agreement funds, and includes a plan to become self-sustaining.

Application Submission and Deadline

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before July 1, 1986.

1. *Deadline:* Applications will be considered to meet the deadline if they are either:

a. Received at the above address on or before the deadline date or,

b. Sent on or before July 1, 1986, and received in time for submission to the independent review group. (Applicant should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Submission and Review Requirements

Applicants are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (New applications—60-day review period).

Where To Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, telephone (404) 262-6775, or FTS 236-6575.

Technical assistance may be obtained from Lisle S. House, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlantic, Georgia 30333, telephone (404) 329-1851, or FTS 236-1851.

Dated: May 15, 1986.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 86-11396 Filed 5-19-86; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

National Organ Transplant Act; Grants for Organ Procurement Organizations

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of availability of grant funds.

SUMMARY: This general notice announces that application for grants for assistance for Organ Procurement Organizations (OPOs) are being accepted for FY 1986. The grants are authorized by sections 371 and 374 of the Public Health Service (PHS) Act, as amended by section 201 of the National Organ Transplant Act, Pub. L. 98-507.

DATE: Applications (PHS Form 5161-1, Standard Form 424) must be received July 21, 1986, in order to be considered for funding.

ADDRESS: Application forms may be obtained from and should be returned to: Mr. Donald C. Parks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9–03, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2530).

FOR FURTHER INFORMATION CONTACT: Ms. Linda D. Sheaffer, Action Director, Office of Organ Transplantation, 5600 Fishers Lane, Rockville, Maryland 20857 (301/5443–7577).

SUPPLEMENTARY INFORMATION:

I. Background

The National Organ Transplant Act, Pub. L. 98–507, amended the PHS Act to authorize the establishment of a program of grants for the planning, establishment, initial operation and expansion of Organ Procurement Organizations (OPOs). Section 371 of the PHS Act authorized $5 million for fiscal year (FY) 1985, $8 million for FY 1986 and $12 million for FY 1987. The first year the Congress appropriated funds for OPOs was for FY 1986 in amount of $2.8 million.

Sections 371 and 374 of the PHS Act state that in awarding OPO grants the Secretary shall:

1. Take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act.
2. Give special consideration to applications which cover geographical areas which are not adequately served by existing OPOs.
3. Give priority to any applicant which has a formal agreement of cooperation with all the transplant centers in its proposed service area.
4. Give special consideration to organizations which met the requirements before the enactment of Pub. L. 98–507 of a qualified OPO as defined in section 371(b).
5. Not discriminate against an applicant solely because it provides health care services other than those related to organ procurement.

Section 374 of the Act also states that the Secretary may not make a grant for more than one OPO which serves the same service area.

II. Program Objective

The principal purpose of the grant program is to increase the availability of donor organs in this country by improving the overall organ procurement system. The Task Force on Organ Transplantation recommended that the program emphasize the need to increase substantially the number of organ donors and to encourage innovations which could be readily duplicated for national application. The Task Force recommended the following three priorities for the program:

1. Proposals to consolidate and coordinate organ procurement efforts where multiple programs currently exist.
2. Proposals to develop new approaches (for the applicant) to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors within a service area, e.g., professional education.
3. Proposals to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs, computerization of data, expanding services to serve dispersed rural areas.

III. Types of Grants

To accomplish the above objectives, the Secretary will award planning, initial operation and expansion grants consistent with the statutory guidelines as spelled out in Part I of this Notice and the Task Force recommendations as noted in Part II.

Planning grants will be available to organizations capable of conducting a feasibility study and preparing a detailed plan of how they will carry out the functions of a qualified OPO as described in section 371(b).

Initial operation grants will be available for organizations capable of operating as a qualified OPO and in need of financial assistance for the establishment and/or the initial operation of a qualified OPO as defined in section 371(b) of the PHS Act. Priority will be given to organizations that propose to consolidate and coordinate organ procurement efforts where multiple programs currently exist.

Expansion grants will be available for organizations that meet the statutory requirements of a qualified OPO as defined in section 371(b). In the awarding of expansion grants, priority will be given to (1) organizations that propose new approaches (for the applicant) to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors in a service area; and (2) organizations that propose to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs, computerization of data, expanding services to serve dispersed rural populations.

IV. Eligibility of Grants

As noted above, grants will be available to organizations that have the capability to be a qualified OPO as defined in section 371(b) or that meet the statutory requirements of a qualified OPO as defined in that section. Section 371(b) (1) and (2) of the Act specify the requirements of a qualified OPO as follows:

(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least fifty potential organ donors each year and which either include an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability,

(IV) a physician with knowledge, or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such centers and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

(iii) has no authority over any other activity of the organization.

(2) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial

majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all usable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network * under section 372(b)(2)(D),

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs among transplant centers and patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement and Transplantation Network * established under section 372,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors, and

(J) evaluate annually the effectiveness of the organization in acquiring available organs.

V. Evaluation Priorities

In selecting recipients for grant award, the Secretary intends to follow the statutory guidelines as discussed in Part I of this Notice of Availability of Grant Funds, and to pay close attention to the recommendations of the Task Force on Organ Transplantation as described in Part II of this Notice. The Secretary will give priority for funding to initial operation grants followed by expansion and then planning grants. The Secretary may choose not to fund under section 371 a new OPO, where an effective OPO presently exist in that same service area.

VI. Grant Review

The Secretary intends to appoint a Review Committee composed of Federal staff and no more than two non-Federal individuals to make recommendations to the granting official.

Grant applications will be reviewed according to the following criteria:

—The consistency with the program objectives and priorities;
—The adequacy of the method proposed to carry out the project;
—The appropriateness of the work plan and schedule for organizing and completing the project;
—The capability of the organization to complete the project as proposed;
—The adequacy of supporting documentation justifying the proposal;
—The reasonableness of the budget;
—The qualifications of the project director and staff; and
—The plan to continue beyond the grant period the activity or activities initiated under this grant including plans to secure other funding sources.

VII. General Application Information

1. Amount and Duration of Grants

The Department does not expect funding beyond one year. Because of the limited funds available in FY 1986 and the priorities determined by the Secretary, grant award will be less than the maximum amount permitted in section 374 of the Act. This will permit the Department to provide assistance to a larger number of organizations.

Planning grants will be for a period of one year and will not exceed $50,000.

Initial operation grants will be for a period of one year and will not exceed $350,000.

Expansion grants will be for a period of one year and not exceed $100,000.

2. Application Materials

Application kits are available from the Grants Management Officer at the address noted above.

The deadline date for receipt of applications (PHS Form 5161–1, Standard Form 424) is July 21, 1986. Applications will be considered as meeting the deadline if they are either: (1) Received on or before the deadline, or (2) postmarked on or before the deadline and received in time for submission to the Review Group.

A legibly dated receipt from a commercial carrier or United States Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

3. Subject to the availability of fund awards will be made by September 30, 1986.

A number has been requested for this program to be listed in the Catalog of Federal Domestic Assistance.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: May 15, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–11418 Filed 5–19–86; 8:45 am]

BILLING CODE 4160–15–M

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* Subject to the establishment and operation of the Organ Procurement and transplantation Network.

National Advisory Council on Migrant Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1986:

Name: National Advisory Council on Migrant Health

Date and Time: August 11–13, 1986, 9:00 a.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

The entire meeting is open.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda items include: (1) Review the Council's recommendations from the August 1986 meeting and the Secretary's response; (2) Present program update of administration management perspectives; (3) Delineate resource allocations to Migrant Health Centers and program; (4) Describe clinical strategy and current focus; and (5) Summarize Council's major concerns and recommendations.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Billy Sandlin, Executive Secretary, National Advisory Council on Migrant Health, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda items are subject to change as priorities dictate.

Dated: May 14, 1986.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86–11257 Filed 5–19–86; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Bureau of Mines. Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisons which have occurred since the publication of the material in the Federal Register on October 4, 1983 (48 FR 45315). The revised notice, which is titled "Personnel Security Files—Interior, Mines-7", is published in its entirety below.

In the portion of the system notice describing the categories of individuals, the statement is expanded to include contract personnel, employees engaged in foreign travel for the Bureau of Mines, and new employees who require a security check. The statement describing the categories of records is clarified to more accurately reflect the kinds of records maintained in the files.

The existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, the existing routine disclosure to congressional offices for responding to requests from individuals has been clarified.

The retention and disposal statement is amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum dated June 11, 1985, to Agency Records Officers. Also, the notice is amended to show that the Bureau's Security Officer is the system manager for the records.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget in its Circular A–130 requires a 60-day period in which to review such proposals. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before June 19, 1986, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: May 12, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/WBM–7

SYSTEM NAME:

Personnel Security Files—Interior, Mines—7.

SYSTEM LOCATION:

Bureau of Mines, Department of the Interior, 2401 E Street NW., Washington, DC 20241.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mines employees and contractors, and former employees and contractors whose duties have been designated Special-Sensitive, Critical-Sensitive and Noncritical-Sensitive for national security purposes and/or whose duties have been designated ADP Special-Sensitive, ADP Critical-Sensitive, ADP Noncritical-Sensitive or ADP Non-Sensitive. Employees traveling to foreign countries. Employees new to Federal employment whose duties have been designated Non-Sensitive. Executive Reservists whose duties have been designated one of the above three sensitive categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains copies of records for processing personnel security investigations. The following are representative of system documentation but other records pertinent to position and level of clearance may be a part of the file. Records include copies of SF–85 or SF–86 and/or SF–171 supplied by the individual concerned as well as copies of letters of transmittal, etc., between the Bureau of Mines, the Office of Personnel Management, the FBI, etc., concerning the individual's security investigation. Further, contains a copy of certification of clearance status, SF–189, and a Termination of Clearance Statement signed by the individual as appropriate. For those designated Non-Sensitive, the file contains a record of an NACI or NACIC investigation, adjudication, and determination of suitability if appropriate. For employees traveling outside the country, forms DI–1911 and DI–1175 and a foreign travel briefing/debriefing statement are maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended, Executive Order 11179, as amended, and Federal Personnel Manual 732, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

The primary use of the records is to identify individuals who have national security clearances and/or ADP access authorizations and their level of clearance. Disclosures outside the Department of the Interior may be made (1) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (2) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations or for enforcing or implementing the statute, rule, regulation, order or license; (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in a safe having a three-position dial-type, manipulation proof, combination lock, in the same manner as defense classified material.

RETENTION AND DISPOSAL:

Records are held in active status until the individual is debriefed or terminated. Records are destroyed by fire, shredder, disintegrator or pulverizer not later than five years after separation or transfer of the individual or upon notification of death. The records disposal schedules applicable to these records are: Bureau of Mines Schedule, 435 EBM 2.1, Appendix 1 (18)(e) and GRS 18, item 7.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Bureau of Mines, 2401 E Street NW., Washington, DC 20241.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records, write the System Manager. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained as well as data furnished by other Federal agencies on the person concerned.

[FR Doc. 86-11312 Filed 5-19-86; 8:45 am]

BILLING CODE 4310-RF-M

Bureau of Land Management

Proposed Mead/McCullough-Victorville/Adelanto Transmission Project; Final Environmental Impact Statement and Report

AGENCY: Bureau of Land Management, Department of the Interior (BLM), California Desert District.

ACTION: Notice of Availability of the Final Environmental Impact Statement/ Final Environmental Impact Report, hereinafter referred to as a Final Environmental Report (FER).

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act of 1969, a FER has been prepared for the proposed Mead/McCullough-Victorville/Adelanto Transmission Project in Clark County, Nevada and San Bernardino County, California.

SUPPLEMENTARY INFORMATION: BLM and the Los Angeles Department of Water and Power (DMP) have prepared a FER for the Mead/McCullough-Victorville/ Adelanto Transmission Project. DWP proposes to build, operate, and maintain a 215 mile long 500-kV DC transmission line from the Mead Substation near Boulder City, Nevada to Adelanto in Southern California. DWP, a member of the Southern California Public Power Authority (SCPPA), would participate in the project with Modesto-Santa Clara-Redding; U.S. Department of Energy, Western Area Power Administration; the Salt River Project; and other members of SCPPA.

The primary purpose of proposing to establish this 500-kV transmission line from the Boulder City area in Nevada to Adelanto, California is to enable the project proponents to purchase and sell electrical energy and capacity. The project will have station facilities capable of transmitting direct-current (DC) power, with a nominal capacity of 3000 MW.

The project would include the allocation of approximately 5,200 acres of land for right-of-way. In addition, from 120 to 180 acres would be required for a converter station at Adelanto.

The FER was prepared under contract by Dames & Moore.

FOR FURTHER INFORMATION CONTACT: William H. Collins, Project Leader, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507.

A limited number of copies of the FER may be obtained by contacting the California Desert District at the above address. Copies of the FER may be inspected at the following locations:

Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507
Bureau of Land Management, Needles Resource Area, 901 3rd Street, Needles, California 92363
Bureau of Land Management, Barstow Resource Area, 831 Barstow Road, Barstow, California 92311
Bureau of Land Management, Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada 89126
County of San Bernardino, Office of Planning, 3rd Floor, 385 North Arrowhead, San Bernardino, California 92415
Clark County Library, 1401 Flamingo Avenue, Las Vegas, Nevada 89101
Baker High School Library, Highway 120 and School Road, Baker, California 92309
Los Angeles Public Library, Department of Water and Power Branch, 111 North Hope Street, Los Angeles, California 90012
San Bernardino Central Library, 401 North Arrowhead, San Bernardino, California 92415
San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392
Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240
Bureau of Land Management, State Office, Federal Building, Room E-2915, 2800 Cottage Way, Sacramento, California 95825

DATE: The review period runs for 30 days from the date of this notice. Written comments must be submitted within this 30-day period.

ADDRESS: Comments should be addressed to Mr. Gerald E. Hillier, District Manager of the California Desert District at the address given above.

Dated: May 12, 1986.

Richard F. Johnson,

Acting State Director.

[FR Doc. 86-11307 Filed 5-19-86; 8:45 am]

BILLING CODE 4310-40-M

California Desert District, Notice of Realty Action, Exchange of Public and Private Lands in San Diego and San Bernardino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CA-17640, Exchange of Public and Private Lands.

SUMMARY: The following described lands in San Diego County have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 12S., R. 1 W.,
Sec. 4: SW¼, NW¼SE¼;
T. 13 S., R. 1E.,
Sec. 1: NE¼SE¼, S½SE¼;
Sec. 12: NE¼;
T. 13 S., R. 2E.,
Sec. 7: lots 1 and 2;

Comprising 560.60 acres of public land.

In exchange for these lands, the United States will acquire the following described lands in San Bernardino County from the Santa Fe Pacific Realty Corporation:

San Bernardino Meridian, California

T. 5N., R. 2E.,

Sec. 1: lots 1 through 4, S½ N½, S½;
T. 5N., R. 2E.,
Sec. 5: lots 1 through 8, S½ N½, S½;
Sec. 8: N½;
T. 5N., R. 4E.,
Sec. 5: lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, S½;
Sec. 9: lots 1 through 6, E½NE¼, NW¼, S½ S½;
T. 5N., R. 5E.,
Sec. 5: lots 1 through 3 of NE¼, lots 1 through 3 of NW¼, S½;
Sec. 9: lots 1 through 4, S½ N½, S½;
T. 6N., R. 2E.,
Sec. 1: lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, S½;
Sec. 13: All;
Sec. 25: N½, SW¼, N½ SE¼, SE¼; SE¼;
Sec. 33: All;
T. 6N., R. 3E.,
Sec. 5: lots 1 through 4, S½ N½, S½;
Sec. 9: NE¼ NE¼, NW¼ SW¼, S½ SW¼; SE¼ SE¼;
Sec. 13: All;
Sec. 17: All;
Sec. 21: All;
Sec. 29: All;
Sec. 33: All;
T. 6N., R. 4E.,
Sec. 1: lots 1 through 4, W½ E½, W½;
Sec. 5: All;
Sec. 9: All;
Sec. 13: lots 1 through 4, W½ E½, W½;
Sec. 17: lots 1 through 4, N½ S½, N½;
Sec. 21: lots 1 through 7, NE¼, E½ NW¼, NE¼ SW¼, N½ SE¼.
Sec. 29: All;
Sec. 33: All;
T. 7N., R. 3E.;
Sec. 33: All;
T. 7N., R. 4E.,
Sec. 25: lots 1 through 4, W½ E½, W½;
Sec. 33: All.

Comprising 10,240.79 acres of private land.

The purpose of this exchange is to acquire non-federal lands within the Johnson Valley Off-Road Vehicle Recreation Area to create a more logical and manageable public land unit. Disposal of the public lands by exchange is consistent with the management objectives of the Bureau of Land Management's Southern California Metropolitan Project Area and is in conformance with the Project's Escondido Management Framework Plan. The exchange would benefit both the private sector and the general public. The public interest will be well served by making the exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved by acreage adjustments or by payment to the United States by the Santa Fe Pacific Realty Corporation of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of federal ownership.

Lands to be transferred from the United States will be subject to the reservation of a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

By publication of the Preliminary Notice of Realty Action in the **Federal Register** on August 1, 1985, Volume 50, No. 148, pages 31253 and 31254, the public lands described above were segregated from settlement, location and entry under the public land laws, including the mining laws but not from mineral leasing. The segregative effect will terminate July 31, 1987 or upon issuance of patent.

Detailed information concerning the exchange, including the environmental assessment, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert at the above address. Objections will be reviewed by the State Director, who may sustain or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 9, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86-11309 Filed 5-19-86; 8:45 am]

BILLING CODE 4310-40-M

Recreation and Public Purposes Classification; Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The legal description for one of the listed parcels of land in Cass County, Minnesota, as published in the **Federal Register**, August 8, 1983, Vol. 48, No. 153, p. 36005, should be corrected as follows:

	Acres	Serial No.
T.140N., R.29W., Sec. 9, Lot 9	3.00	ES-31635

The purpose of the conveyance of 3.00 acres of land in Todd County, Minnesota (T.129N., R.32W., Section 30, Lot 1) to the Minnesota Department of Natural Resources as published in the **Federal Register**, August 8, 1983, Vol. 48, No. 153, p. 36005, should be corrected as follows:

The purpose of this conveyance is to provide the Department of Natural Resources access to Dohn Lake for fisheries management purposes.

FOR FURTHER INFORMATION CONTACT: Milwaukee District, Bureau of Land Management, Suite 225, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Mike Ford,

Acting District Manager.

[FR Doc. 86-11311 Filed 5-19-86; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 10, 1986. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 4, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Dallas County

Cahaba vicinity, *Adams Grove Presbyterian Church*, S. side of Cahaba-Greenville Rd.

Tuscaloosa County

Tuscaloosa, *Pinehurst Historic District*, 215 and 305 17th Ave., 1—28 and 6—9 Pinehurst Dr.

ARIZONA

Coconino County

Cameron vicinity, *Cameron Suspension Bridge*, US 89

Pima County

Tucson, *Rillito Racetrack—Chute*, 4502 N. First Ave.

Tucson, *University of Arizona Campus Historic District*, Roughly bounded by E. Speedway, N. Campbell, E. Fifth St., and S. Park Ave.

ARKANSAS

Scott County

Waldron vicinity, *Mount Pleasant Methodist Church*, AR 248

CONNECTICUT

Litchfield County

New Milford, *Merryall Union Evangelical Society Chapel*, Chapel Hill Rd.

New Haven County

New Haven, *Hall—Benedict Drug Company Building*, 763—767 Orange St.

FLORIDA

Dade County

Miami, *Miami Edison Senior High School*, 6101 NW Second Ave.

Sarasota County

Sarasota vicinity, *Field Estate*, Filed Rd. and Camino Real

GEORGIA

Fulton County

Atlanta, *Inman Park—Moreland Historic District*, N. Highland, Seminole, Euclid, Austin, Alta, Moreland, and Degress Aves.

Atlanta, *Peachtree Highlands Historic District*, Roughly bounded by Highland & Martins Drives, and E. Paces Ferry Rd. SE of Piedmont & Peachtree Intersection

KANSAS

Douglass County

Baldwin City, *Case Library*, Baker University, Eighth and Grove

Lawrence, *Duncan, Charles, House*, 933 Tennessee St.

Leavenworth County

Leavenworth, *Atchison, Topeka and Santa Fe Railroad Passenger Depot*, 761 Shawnee St.

Mitchell County

Cawker City, *Wisconsin Street Historic District*, 700 Blk. of Wisconsin St.

MASSACHUSETTS

Middlesex County

Arlington, *U.S. Post Office—Arlington Main*, 10 Court St.

Norfolk County

Weymouth, *Washington School*, 8 School St.

Plymouth County

Wareham, *Tobey Homestead*, Main St. and Sandwich Rd.

MICHIGAN

Lapeer County

Dryden, *Dryden Community Country Club—General Squire Historic Park Complex*, 4725 S. Mill Rd.

MISSOURI

Jackson County

Kansas City, *Dorson Apartment Building*, 912—918 Denton Blvd.

St. Louis (Independent City)

Forest Park Headquarters Building, 115 Union, Forest Park

NEW HAMPSHIRE

Carroll County

Sandwich vicinity, *North Sandwich Meeting House*, Quaker-Whiteface Rd.

Rockingham County

Chester, *Congregational Church*, 4 Chester St.

Sullivan County

Springfield, *Springfield Town Hall & Howard Memorial Methodist Church*, Four Corners Rd. SE of New London Rd.

NORTH CAROLINA

Pender County

Burgaw, *Burgaw Depot*, 102 E. Fremont

OHIO

Montgomery County

Dayton, *St. Ann's Hill Historic District*, Roughly bounded by Fourth, McClure, Josie, High and Detoit Sts.

Dayton, *Steele's Hill—Grafton Hill Historic District*, Roughly bounded by Grand, Plymouth, Forest and Salem

OREGON

Clatsop County

Astoria, *Bartlett, Robert Rensselaer, House*, 1215 Fifteenth St.

Astoria, *Flavel, Captain George Conrad, House*, 627 Fifteenth St.

Astoria, *Foord, Martin, House*, 690 Seventeenth St.

Astoria, *Warren Investment Company Housing Group*, 656, 674 and 690 Eleventh St.

Coos County

Powers, *Powers Hotel*, 310 Second Ave.

Lane County

Eugene, *University of Oregon Museum of Art*, University of Oregon off OR 99

Multnomah County

Gresham, *Zimmerman, Jacob, House*, 17111 NE Sandy Boulevard

Portland, *Fruit and Flower Mission*, 1809 SW Twelfth Ave.

Umatilla County

Milton-Freewater, *Frazier, Williams, Farmstead*, 1403 Chestnut St.

Yamhill County

Dundee, *Dundee Woman's Club Hall*, US 99 W

UTAH

Salt Lake County

Magna, *Magna Community Baptist Church*, 3500 S. 8000 West

Utah County

Provo, *Provo Canyon Guard Quarters*, Off US 189

VIRGIN ISLANDS

St. Croix County

Frederiksted vicinity, *Estate St. George Historic District*, Prince Quarter

VIRGINIA

Alexandria (Independent City)

Lee, Robert E., Boyhood Home, 607 Oronoco St.

Warren County

Front Royal vicinity, *Fairview Farm*, VA 658

[FR Doc. 86-11249 Filed 5-19-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Change of Mailing Address and Temporary Suspension of Service

May 14, 1986.

As a result of recent Commission space reallocations, effective May 21, 1986, pleadings and other nonfee items filed in Commission proceedings should be delivered to the Office of the Secretary, Case Control Branch, Room 1324.

Since several parts of the Office will be moving at this time, no decisions will be served on May 22, 1986. The ICC Register will be published on May 22, and will include part 2 only.

James H. Bayne,

Secretary.

[FR Doc. 86-11300 Filed 5-19-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Homer Smith Seafood Co.

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that on April 11, 1986, a proposed consent decree in *United States* v. *Homer Smith Seafood Company*, was lodged with the United States District Court for the Middle District of Florida. The proposed consent decree provides that Homer Smith shall construct a wastewater treatment system and pipeline to transport the treated water to an outlet in the St. James River, in accordance with a schedule set forth in the decree, by June 1987; that it will comply with interim discharge limitations, and that it will pay a $20,000 civil penalty in settlement of the government's claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Homer Smith Seafood Company*, D.J. Ref. 90-5-1-1-2493.

The proposed decree may be examined at the office of the United States Attorney, 410 Robert Timber Lake Building, 500 Zack Street, Tampa, Florida 33602 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia. Copies of the Consent

Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 9th and Pennsylvania Avenue, NW., Washington DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-11412 Filed 5-19-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on June 4-7, 1986, from 9:00 a.m. to 5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on June 6, from 3:30 p.m. to 5:30 p.m., to discuss policy and guidelines.

The remaining sessions of this meeting on June 4-5, from 9:00 a.m. to 5:30 p.m.; on June 6, from 9:00 a.m. to 3:30 p.m.; and on June 7, from 9:00 a.m—5:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: May 14, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-11316 Filed 5-19-86; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translators Fellowships Section) to the National Council on the Arts will be held on June 6, 1986, from 9:00 a.m. to 5:00 p.m., and on June 7, 1986, from 9:00 a.m.-1:00 p.m., in room 715 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on June 6, from 4:00 p.m. to 5:00 p.m., to discuss policy and guidelines.

The remaining sessions of this meeting on June 6, from 9:00 a.m. to 4:00 p.m., and on June 7, from 9:00 a.m. to 1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 522b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: May 13, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 11317 Filed 5-19-86; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement Section) to the National Council on the Arts will be held on June 6, 1986, from 9:00 a.m. to 5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-11318 Filed 5-19-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Electrical, Communications, and Systems Engineering; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Electrical, Communications, and Systems Engineering.

Date: June 2 and 3, 1986.

Time: June 2, 1986—1:30 PM to 5:30 PM; June 3, 1986—8:30 AM to 4:30 PM.

Place: June 2, 1986—National Science Foundation, Room 1242; June 3, 1986—Medical Society Building, 2007 Eye (I) Street, NW, Room A.

Type of meeting: Open.

Contact person: Dr. Frank L. Huband, Division Director, Division of Electrical, Communications and Systems Engineering, Room 1151, National Science Foundation, Washington, DC Telephone: 202—357-9618

Purpose of committee: To discuss research trends and opportunities and to advise on priorities in resource management.

Agenda:

—Presentations by individual ECSE Program Directors
—Management of resources
—Issues and priorities
—Trends and opportunities in electrical engineering research
—Relation to other NSF activities and new initiatives

M. Rebecca Winkler,

Committee Management Officer.

May 15, 1986.

[FR Doc. 86-11339 Filed 5-19-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revison.
2. The title of the information collection: 10 CFR Part 40, "Domestic Licensing of Source Material" and NRC Form 484, "Sample Format for Reporting Detecting Monitoring Data".
3. The form number if applicable: NRC Form 484.
4. How often the collection is required: Semiannually.
5. Who will be required or asked to report: Uranium milling and other uranium recovery facilities.
6. An estimate of the number of responses: 50.
7. An estimate of the total number of hours needed to complete the requirement or request: 335.
8. An indication of whether Section 3504 (h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: Proposed amendments to 10 CFR Part 40, as required by law, require additional monitoring data to be submitted. The submittal, using NRC Form 484, provides for more data on background ground water quality, ground water flow data, comprehensive statistical analytical methods, and possible increased numbers of hazardous constituents sample.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 15th day of May 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-11330 Filed 5-19-86; 8:45 am]

BILLING CODE 7590-01-M

[License No. 35-16191-01; EA 85-125]

Exam Co.; Order Imposing Civil Monetary Penalties

I

Exam Company, 115 West 41st Street, Tulsa, Oklahoma, (the "licensee") is the holder of License No. 35-16191-01 (the "license") issued by the Nuclear Regulatory Commission (the "NRC"). License No. 35-16191-01 authorizes use of byproduct material for industrial radiography and is due to expire December 31, 1986.

II

An inspection of the licensee's activities under its license was conducted on October 3 and 8, 1985. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with the conditions of its license. These results were discussed with licensee representatives during an enforcement conference on October 25, 1985.

A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 5, 1985. This Notice stated the nature of the violations, the license conditions that were violated, and the amount of civil penalties proposed. An answer dated December 26, 1985, to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the answers and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the total amount of Five Thousand Dollars within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A copy of any request for hearing also shall be sent to the Executive Legal Director, Office of the Executive Legal Director, at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, the 13th day of May, 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The violations and associated civil penalties were identified in the Notice of Violation and Proposed Imposition of Civil Penalties dated December 5, 1985. The NRC's evaluation and conclusions regarding the licensee's response dated December 26, 1985 are as follows:

Restatement of Violations

1. 10 CFR 20.101(b) states, in part, that a licensee may permit an individual in a restricted area to receive a total occupational

dose to the whole body greater than that permitted under paragraph (a) of 10 CFR 20.101 provided that during any calendar quarter the total occupational dose to the whole body shall not exceed 3 rem.

Contrary to the above, two radiographer's assistants received whole body doses of 3.20 and 4.80 rems, respectively, while performing radiography on September 28, 1985, at a field site in La Barge, Wyoming.

2. 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, sealed sources, handling tools, or conducts radiation surveys to determine that the source has been returned to the shielded position, it shall be under the personal supervision of the radiographer who shall watch the above operations.

Contrary to the above, the radiographer was in the dark room at the time the radiographer's assistants used the radiographic exposure device and, thus, the radiographer did not observe operations involving the device.

3. 10 CFR 34.43(b) requires that a radiation survey be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed, including the source guide tube.

Contrary to the above, no surveys were performed after radiographic exposures on September 28, 1985, to determine that the sealed source had returned to its shielded position. As a result, two radiographer's assistants received overexposures.

4. License Condition 18 requires that the licensee shall possess and use licensed material in accordance with statements, representations, and procedures contained in the license application dated December 27, 1978.

Section 5.1.5 of the licensee's procedure states that any individual whose pocket dosimeter goes off scale (over 200 mR) while using a source of radiation shall immediately stop work and make a complete radiation survey of the area, making certain to receive no additional radiation exposure. The following actions shall then be taken: If the source is in the exposed position, the individual shall restrict his activities to working outside the radiation area until he has (been) notified that his total exposure was not in excess of allowable limits.

Contrary to the above, when the pocket dosimeters of the two radiographer's assistants were observed to be discharged beyond their range on September 28, 1985, the two radiographer's assistants were permitted to continue radiographic operations using an exposed source prior to the determination of their total exposure.

The Licensee's Response to Violation #1

The licensee admits the first violation and states that it occurred because the workers failed to follow company procedures. The licensee further states that after the company's investigation, the employees involved were terminated immediately.

The NRC's Response

At the time of the special inspection resulting from the overexposure, the licensee stated that the particular project was complete and the individuals were allowed to return home or they were simply laid off, having been hired from the union hall for that particular job. The licensee now states that the individuals were terminated for cause. In any event, the licensee admits the violation.

The Licensee's Response to Violation #2

The licensee admits the second violation, but qualifies the admission by saying that the two individuals involved were indeed qualified and experienced radiographers.

The NRC's Response

The assistants had not completed the licensee's program for testing to be qualified as radiographers, therefore, they were assistant radiographers who were required to be under the direct supervision of a radiographer.

The Licensee's Response to Violation #3

The licensee admits the third violation, but believes the violation to be an isolated case.

The NRC's Response

The licensee states that the failure to survey was an isolated example and a source disconnect occurring at the same time was coincidental. This remains a violation. The whole purpose of surveying is to protect against the isolated case.

The Licensee's Response to Violation #4

The licensee admits the fourth violation, but qualifies the admission by stating that the individual responsible followed company procedures to the best of his understanding.

The NRC's Response

The fact that an individual performed "totally in accordance with his understanding" and yet a violation occurred means only that there was probably no wrongful intent or willfulness involved. By the licensee's admission, the procedures were vague. All of this points to the lack of adequate training in company procedures.

Licensee's Request for Mitigation

The licensee requests mitigation on the basis of prompt identification and reporting of the violations, prompt and extensive corrective action, and good prior performance. The NRC's evaluation of each of these arguments follows:

NRC's Evaluation Regarding Prompt Identification and Reporting

In arguing that it promptly identified and reported the violations, the licensee states that it made the notification of the overexposure within two days of verification that the overexposure occurred. NRC's first notification of a possible overexposure to the individuals came not from licensee management, but from another individual on the evening of September 28, 1985, the day of the incident. There was also contact from the State of Louisiana (the state had been notified by an individual giving details of the incident). As a result, reactive inspection by the NRC was being planned prior to notification by the licensee on October 2, 1985. Furthermore, the licensee's argument does not apply to Violations #2, #3, and #4 because these violations were identified by NRC inspectors. Therefore, the NRC concludes that mitigation on the basis of prompt identification and reporting is not warranted.

NRC's Evaluation Regarding Prompt, Extensive Corrective Action

The licensee states that its corrective action is extensive, has industry wide approval, was prompt, and will have a "monumental" effect on radiographers' respect for safety. As evidence, the licensee enclosed copies of letters and memoranda. They include (1) a letter to the union explaining why two individual were terminated, expressing concern, and soliciting recommendations on how to improve safety, (2) a memorandum to all company personel stating the policy to be followed in the event an individual's dosimeter is discharged, and (3) a memorandum to all company personnnel explaining what action the company will take if proper safety procedures are not followed.

The licensee's statement that the corrective action has industry wide approval is not supported. Memoranda have been sent to personnel explaining policies, but no mention is made of retraining personnel or covering such topics in safety meetings. Another memorandum states that the company expects perfection from individuals using exposure devices. It promises increased audits of reports and paperwork and (only if abnormalities are found) the possibility of increased field inspections. None of the violations identified as a result of the special inspection would have been revealed by these corrective actions above. The memorandum also describes strong disciplinary action the the company would take if it is found that an employee is not following correct safety procedures. Although a strong disciplinary program is important, the licensee's program does not suitably address methods to detect noncompliance in the field and the effective training of workers on company procedures. The licensee's corrective actions do not go beyond those normally expected and do not warrant mitigation of the penalties.

NRC Evaluation Regarding Prior Good Performance.

Failure to adequately survey the exposure device to determine that the source has been returned to its shielded position was cited during the most recent inspection and was a primary cause of the resulting overexposure. A similar failure was cited in 1982 when a civil penalty was imposed on the licensee. An inspection performed in 1983 identified no violations and an inspection in 1984 identified two violations, minor in nature. While the compliance history seems to be improving, it does not provide an adequate basis for mitigating the penalties.

Conclusion

The violations occurred as stated. No adequate basis for mitigation of the penalties has been provided. Consequently, the

proposed civil penalties of $5,000 should be imposed.

[FR Doc. 86-11329 Filed 5-19-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Heading

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-53 and DPR-69 issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would add a 72-hour action statement for an inoperable Diesel Fuel Oil Storage Tank (DFOST) to Technical Specification (TS) 3/4.8.1, "A.C. Sources," and reword Limiting Condition for Operation 3.8.1.1.b. The TS would be changed as follows: (1) TS 3.8.1.1.b, "Limiting Condition for Operation," would be changed by deleting the word "each" in reference to the two separate and independent diesel generators, and 3.8.1.1.b.1 and 3.8.1.1.b.3 would be changed by adding the phrase, "for each diesel generator" to the existing statements; and (2) TS 3/4.8.1, "A.C. Sources," would be changed by adding the following action statement:

f. With one Diesel Fuel Oil Storage Tank inoperable, demonstrate the OPERABILITY of the remaining tank by: (1) Performing Surveillance Requirement 4.8.1.1.2.a.2 (verifying 36,500 gallons) within 1 hour and at least once per 8 hours thereafter, and (2) verifying the flowpath from the OPERABLE fuel oil storage tank to the diesel generators within 1 hour. Restore two storage tanks to OPERABLE status within 72 hours or be in at least HOT STANDBY within the next 6 hours and in COLD SHUTDOWN within the following 30 hours.

Note.—If the tank is drained, maintain an 8,000-gallon alternate fuel source parked onsite.

At the present time, no remedial actions for the DFOSTs are specified in the TS and thus the reactor must be shut down within 6 hours should a DFOST be inoperable.

The proposed TS revision is in partial response to the licensee's application for amendments dated April 14, 1986. The remaining issues associated with the April 14, 1986 application will be addressed in separate actions.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 19, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularlity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission' Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Ashok C. Thadani: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page numbe of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D.A. Brune, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitioners, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated April 14, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 14 day of May 1986.

For the Nuclear Regulatory Commission.
Ashok C. Thadani,
Director, PWR Project Directorate No. 8, Division of PWR Licensing—B.
[FR Doc. 86-11227 Filed 5-19-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 57 to Facility Operating License No. NPF-9, and Amendment No. 38 to Facility Operating License No. NPF-17, issued to Duke Power Company (the licensee), which revised the Technical Specifications for operating of the McGuire Nuclear Station, Units 1 and 2 (the facility) located in Mecklenburg County, North Carolina. The amendments are effective as of the dates of their issuance.

The amendments change the Technical Specifications to permit operation up to full power with the Upper Head Injection System functionally disabled or physically removed.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notices of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action were published in the **Federal Register** on July 26, 1985 (50 FR 30548) and on February 4, 1986 (51 FR 4449). No request for a hearing or petition for leave to intervene was filed following these notices.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (51 FR 13574) related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1978 and its addendum dated January 1981.

For further details with respect to the action see (1) the application for amendment dated May 9, 1985, as supplemented October 2 and 14, December 17 and 23, 1985, January 14, March 17, and April 8, 1986, (2) Amendment No. 57 to License No. NPF-9 and Amendment No. 38 to License No. NPF-17, (3) the Commission's related Safety Evaluation and Environmental Assessment, and (4) the Advisory Committee on Reactor Safeguards letter dated April 16, 1986. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 13th day of May 1986.

For the Nuclear Regulatory Commission.
Paul W. O'Connor,
Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.
[FR Doc. 86-11243 Filed 5-19-86; 8:45 am]
BILLING CODE 7590-01-M

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning certain pleadings submitted to the Commission by Robert L. Anthony/Friends of the Earth on the Delaware Valley. The pleadings requested that the Commission stay the effectiveness of License Amendment No. 1 issued to the Philadelphia Electric Company on February 6, 1986. The Amendment extended the surveillance intervals for the testing of certain instrumentation line excess flow check valves in the Limerick Generating Station, Unit 1.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the request for stay. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206", DD-86-06, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 13th day of May 1986.

For the Nuclear Regulatory Commission.
Darrell G. Eisenhut,
Acting Director, Office of Nuclear Reactor Regulation.
[FR Doc. 86-11244 Filed 5-19-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric Co. et al.; Wolf Creek Generating Station; Withdrawal of Applications for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Kansas Gas and Electric Company, Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc. (the licensees) to withdraw their January 20 and March 27, 1986, applications of the Wolf Creek Generating Station located in Coffey County, Kansas.

The proposed amendments would have provided for deferments of certain surveillance intervals to allow continued operation of the plant until the first refueling outage. The Commission issued Notice of Consideration of Issuance of the amendments in the **Federal Register** on March 12, 1986 (51 FR 8596), April 9, 1986 (51 FR 12229), and April 23, 1986 (51 FR 15401). By letter dated April 30, 1986, the licensees requested, pursuant to 10 CFR 2.107, permission to withdraw their applications for the proposed amendments. The basis for withdrawal of the amendment requests was that a forced outage in early April 1986 allowed the licensees to perform the subject surveillances within the required time frame, thus alleviating the need for the proposed amendments. The Commission has considered the licensees' April 30, 1986, request and has determined that permission to withdraw the January 20 and March 27, 1986, applications for amendments should be granted.

For further details with respect to this action, see (1) the applications for amendments dated January 20 and March 27, 1986, (2) the licensees' letter dated April 30, 1986, withdrawing the applications for amendments and (3) our letter dated May 12, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street,

NW., Washington, DC and at the William Allen White Library, Emporia State University, Emporia, Kansas, and the Washburn University School of Law, Topeka, Kansas.

Dated at Bethesda, Maryland, this 13th day of May 1986.

For the Nuclear Regulatory Commission.

Paul O'Connor,

Acting Project Director, PWR Project Directorate No. #4, Division of PWR Licensing-A

[FR Doc. 86-11246 Filed 5-19-86; 8:45 am]

BILLING CODE 7590-01-M

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of schedular and permanent exemptions from the requirements of 10 CFR Part 50, Appendix J to the Connecticut Yankee Atomic Power Company (CYAPCO of the licensee) for the Haddam Neck Plant, located at the licensees' site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant permanent exemption from 10 CFR Part 50, Appendix J, for reduced pressure tests, for Type C tests of the steam generator blowdown and auxiliary feedwater penetrations and for reverse testing of the auxiliary spray penetration. In addition, the proposed action would grant schedular exemptions from the Type C testing requirements of Appendix J for the reactor coolant charging system and containment sump to residual heat removal system penetrations; reverse direction testing of the refueling cavity purification and pressurizer relief drain penetrations; water versus air testing of 20 additional containment penetrations; and high pressure testing of penetrations for the reactor coolant system (RCS) sampling, neutron shield fill and RCS loop fill systems. The licensee has determined that modifications to the above systems were necessary for the Haddam Neck Plant to meet the requirements of 10 CFR Part 50, Appendix J.

The Need for the Proposed Action

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50, Appendix J.

In an April 5, 1984 letter, the NRC staff noted that not all containment penetrations are tested in accordance with Appendix J. The staff concluded that it was acceptable to defer implementation of specific Appendix J and Appendix A modifications until an integrated assessment, i.e., Integrated Safety Assessment Program (ISAP), could be performed.

In a July 31, 1985 letter, the NRC Staff formally established the scope of the Haddam Neck Plant ISAP and designated the Appendix J issues as ISAP Topic 1.03, "Containment Penetration Evaluations." In this letter, the staff recognized that some issues require exemptions to defer action until such the Haddam Neck Plant ISAP could be completed.

By letter dated March 12, 1986, the licensee requested the exemptions presented above.

Environmental Impact of the Proposed Action

For the exemption requests that are strictly schedular, the exemptions would allow the current method of testing to continue until all required modifications are completed. For the permanent exemption requests, the exemptions would permit the licensee to use an alternate method or test to satisfy the requirements of Appendix J. The results of the current or alternate tests, in conjunction with the overall integrated containment leak rate test, provide reasonable assurance that containment integrity will be provided following a postulated accident.

Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the schedular exemptions would be to impose a shorter extension period than requested. Similarly, the principal alternative to the permanent exemptions would be to require specific compliance with the Appendix J requirements. In either case, such actions would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated March 12, 1986. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Bethesda, Maryland, this 14th day of May 1986.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Integrated Safety Assessment, Project Directorate, Division of PWR Licensing—B.

[FR Doc. 86-11245 Filed 5-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from a portion of the requirements of Appendix R to 10 CFR 50.48, Fire Protection, to Southern California Edison Company (the licensee) for the San Onofre Nuclear Generating Station (SONGS) Unit 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The exemption would permit the licensee to operate shutdown-related

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systems not meeting various requirements of 10 CFR Part 50, Appendix R—Section III.G by providing equivalent levels of protection.

The Need for the Proposed Action

The proposed exemption is needed in order to permit the licensee to use alternate fire protection configurations that achieve an equivalent level of safety compared to that attained by compliance with Section III.G of Appendix R.

Environmental Impact of the Proposed Action

The proposed Exemption would not degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative should be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and compliance with the rule and accrue unreasonable costs to the licensee without an increase in safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for San Onofre Unit 1.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an enviromental impact statement for the proposed exemption.

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated October 4 as amended December 31, 1985, and May 12, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Bethesda, Maryland, this 14th day of May 1986.

For the Nuclear Regulatory Commission.

George F. Lear,

Dirctor, PWR Project Directorate No. 1, Division of PWR Licensing—A.

[FR Doc. 86-11326 Filed 5-19-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Postponed

The ACRS Subcommittee on Regulatory Policies and Practices scheduled for May 27, 1986, 8:30 A.M., Room 1717 H Street, NW., Washington, DC has been postponed. This meeting notice was previously published May 15, 1986 (51 FR 17842).

Dated: May 15, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-11325 Filed 5-19-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, FC 416-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 7.9, "Standard Format and Content of Part 71 Applications for Approval of Packaging for Radioactive Material." The guide is being developed to identify the information needed by the NRC staff for evaluating applications for approval of packaging to be used for the shipment of type B and fissile radioactive material. The guide also provides a format for submitting this information.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Comments will be most helpful if received by July 25, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be

reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 13th day of May 1986.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 86-11328 Filed 5-19-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee Advisory Committee for Trade Negotiations Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held Tuesday, June 10, 1986, from 2:00 p.m. to 5:00 p.m.; the Advisory Committee for Trade Negotiations to be held Wednesday, June 25, 1986, from 1:00 p.m. to 4:00 p.m.; and the Investment Policy Advisory Committee to be held Wednesday, July 30, 1986, from 10:00 a.m. to 12:30 p.m. in Washington, D.C., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosures of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 86-11306 Filed 5-19-86; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB April 18, 1986–May 8, 1986.

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which are trasmitted by the Department of Transportation, during the period April 18, 1986–May 8, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT:

John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 426-1887,

OR

Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from April 18, 1986–May 8, 1986.

DOT No: 2729
OMB No: 2132-0011
By: Urban Mass Transportation Administration
Title: Environmental Assessments
Form(s): None
Frequency: On occasion
Respondents: State or Local Governments.

Need/Use: Environmental Assessments are prepared for proposed transit projects to evaluate the significance of the probable environmental impacts. The assessments allow UMTA decision makers to consider the environmental consequences of proposed transit projects before reaching decisions to proceed.

DOT No: 2731
OMB No: 2127-0003
By: National Highway Traffic Safety Administration
Title: Federal-Aid Agreement and Cost Summary Forms
Form(s): HS-62, 62A, 217
Frequency: Annually
Respondents: State and Local Governments

Need/Use: The Highway Safety Plan (HSP) identifies that State's traffic safety problems and describes the programs and projects to address those problems. It serves as the basis for the execution for a Federal-Aid Agreement.

DOT No: 2732
OMB No: 2125-0061
By: Federal Highway Administration
Title: Qualification Certificate
Form(s): None
Frequency: Three years (recordkeeping)
Respondents: Motor Carriers

Need/Use: To meet requirement that motor carriers retain in their files the driver's qualification certificate in lieu of other documentation if driver is employed by another motor carrier.

DOT No: 2733
OMB No: 2115-0054
By: United States Coast Guard
Title: Survivor Debriefing (Marine Casualty)
Form(s): N/A
Frequency: On occasion
Respondents: Survivors of civilian marine casualties

Need/Use: This information collection requirement is needed and used to obtain information to search for or rescue other victims.

DOT No: 2734
OMB No: 2115-0535
By: United States Coast Guard
Title: 33 CFR Part 132 Financial Responsibility for Oil Pollution—Outer Continental Shelf
Form(s): CG-5359-1, CGHQ-5350
Frequency: On occasion
Respondents: Owners/operators of vessels engaged in transporting oil on the Outer Continental Shelf

Need/Use: The information collection requirement is needed and used to ensure that vessels engaged in any segment of the transportation of oil produced from an off-shore facility on the Outer Continental Shelf can meet statutory liability for oil pollution.

DOT No: 2735
OMB No: 2137-0018
By: Research and Special Programs Administration
Title: Portable Tank and Cargo Tank Inspection and Testing
Form(s): None
Frequency: Until next retest
Respondents: Owners of portable tanks and testing

Need/Use: The Department, shippers, carriers, and owners of portable tanks and cargo tanks use these requirements to verify that the inspection, testing, and maintenance standards set forth in the regulations are met and that these containers are safe for continued use in hazardous materials service.

DOT No: 2737
OMB No: 2106-0031
By: OST-A
Title: Exemptions for Air Taxi Operations
Form(s): OST Form 4507 and OST Form 4521
Frequency: On occasion
Respondents: Air taxi operators and commuter air carriers

Need/Use: Air taxi operators and commuter air carriers must register and file proof of insurance and otherwise comply with Part 298 to obtain exemptions from some of the regulatory provisions of Title IV of the Federal Aviation Act of 1958, as amended.

DOT No: 2738
OMB No: 2127-0046
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders
Form(s): None
Frequency: On occasion
Respondents: Individuals/businesses

Need/Use: This regulation establishes procedures for filing petitions with the agency to commence rulemaking or to make a defect or noncompliance determination.

DOT No: 2739
OMB No: New
By: Department of Transportation/Research and Special Programs Administration/Office of Pipeline Safety
Title: Hazardous Liquid Pipeline Mileage
Form(s): None
Frequency: One time
Respondents: Operators of Hazardous Liquid Pipelines

Need/Use: Mileage information is needed to provide a basis for collecting user fees required by Publication No. 99-272, April 7, 1986.

DOT No: 2740
OMB No: 2115-0058
By: United States Coast Guard
Title: Declaration of Citizenship for Vessel Documentation and Ship Mortgage Purposes
Form(s): MA-999
Frequency: On occasion
Respondents: Vendees, Mortgagees, and transferees of vessels

Need/Use: A citizen declaration is needed and used by the Coast Guard vessel documentation officer for the purpose of establishing that (1) the respondents are citizens of the United States; and (2) there has been no violation of any of the provisions of section 9 of the Shipping Act.

DOT No: 2741
OMB No: 2115-0517
By: United States Coast Guard
Title: Record and Reports of Inspections
Form(s): CG-840-AA, CG-840BB, CG-2832, CG-841, CG-854, CG-858, CG-948, CG-3753, CG-4678
Frequency: On occasion
Respondents: Owners and operators of U.S. Merchant Vessels

Need/Use: This information collection contains a record-keeping requirement which is needed to enforce the Coast Guard's commercial vessel safety program as described in 46 CFR. The Coast Guard uses these records to document the inspection, construction, alteration, repair and maintenance of said vessels to insure the safety of life and property at sea.

DOT No: 2742
OMB No: 2137-0542
By: Research and Special Programs Administration
Title: Cryogenic Liquids Requirements
Form(s): None
Frequency: Each trip or 3 years
Respondents: Motor Carriers of Cryogenic Liquids
Need/Use: To assure that drivers in trucking operations involving cryogenic liquids are educated in transport of cryogenics and that cargo tanks (containers) are not overfilled and that there is no malfunction which would allow the product to heat up, thus causing a pressure increase and probable explosion of the tank.

DOT No: 2743
OMB No: 2115
By: United States Coast Guard
Title: Intervals for Drydocking and Tailshaft Examination on Inspected Vessels
Form(s): N/A
Frequency: On occasion
Respondents: Vessel Owners/Operators

Need/Use: This information collection requirement is three fold and is used to provide benefits to vessel owners/operators. It is used to (1) evaluate the condition of a vessel and to determine if an extension to the scheduled drydock examination can be granted without adversely affecting the safety of the vessel; (2) determine the overall condition of a vessel's hull and thus, the safety of the vessel; and (3) provide Coast Guard with ready means to determine to what extent the vessel's hull has deteriorated by comparing the current condition with the asbuilt condition.

DOT No: 2745
OMB No: 2127-0045
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 556, Petitions for Inconsequentiality
Form(s): None
Frequency: On occasion
Respondents: Businesses/organizations

Need/Use: This regulation establishes procedures for manufacturers to petition this agency for an exemption for the notice and remedy requirements of the Safety Act due to the inconsequentiality of the defect or noncompliance as it relates to motor vehicle safety.

Issued in Washington, DC, on May 14, 1986.

John E. Turner,
Director of Information Systems and Telecommunications.

Linda W. Semsen,
Certifying Officer.

[FR Doc. 86-11289 Filed 5-19-86; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Edrice Bram; Denial of Petition for Defect Remedy Hearing

This notice sets forth the reasons for the denial of petition by Edrice Bram of Northbrook, Illinois, to conduct a hearing to determine whether a manufacturer had reasonably met its obligation to remedy a safety-related defect (15 U.S.C. 1416).

On September 9, 1985, the agency received a petition by Ms. Bram, the owner of a 1984 Toyota Supra, alleging that the manufacturer had failed to notify her of the existence of a safety-related defect in the oil pressure sending unit in her car, and to remedy this defect without charge. NHTSA determined that the vehicle was covered by campaign 84V–108 and asked Toyota its views. Toyota responded that it had mailed a notification letter to Ms. Bram on October 3, 1984, and that it had not been returned. Toyota also described its representatives inspection of Ms. Bram's car which indicated that the problems of which she complained were not the result of the defect. NHTSA conducted an audit of the campaign and discovered, in comparision with campaigns on other vehicles 1 to 2 years old at time of recall, that an unusually high percentage of its audit letters were returned, that an unusually low rate of response to the campaign had occurred, and that a high rate of those who responded to NHTSA's audit said they had not received a recall notice. Toyota replied that it would reissue the notice to those owners who had not responded to the campaign. Because the outcome of a hearing of the nature requested by the petitioner would be an agency order to reissue the notice, and Toyota had already agreed to do so, Ms. Bram's petition was denied on February 3, 1986.

(Sec. 156, Pub. L. 93–492, 88 Stat. 1470 (15 USC 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on May 15, 1986.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 86–11322 Filed 5–19–86; 8:45 am]

BILLING CODE 4910-59-M

Change of Room for Public Proceeding Regarding Noncompliance Investigation; 1984–85 Gazelle Passenger Cars

On May 7, 1986, the National Highway Traffic Safety Administration published a notice announcing that pursuant to Section 152 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Pub. L. 93–492, 88 Stat. 1470), 15 U.S.C. 1412, the Associate Administrator for Enforcement of the National Highway Traffic Safety Administration has made an initial determination that all Gazelle passenger cars manufactured by Vintage Reproductions, Inc. from October 1, 1983, to November 1, 1985, fail to comply with 49 CFR 571.208 Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* (51 FR [illegible])

The notice further announced that a public proceeding will be held at 9:00 a.m. on Tuesday, June 3, 1986, in Room 2230 of the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC, at which time Vintage Reproductions, Inc. will be afforded an opportunity to present data, views and arguments to establish that the alleged noncompliance in these vehicles does not exist or is not safety related.

The purpose of this notice is the announcement that the room for the proceeding has been changed to Rooms 4234–38 and will be held on June 3, 1986, as indicated previously.

(Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on May 15, 1986.

George L. Parker,

Associate Administrator for Enforcement.

FR Doc. 86–11323 Filed 5–19–86; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains requests for two extensions and two revisions. The following information is listed for each: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 12, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management

Extensions

1. Department of Veterans Benefits.
2. Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary.
3. VA Form 21–601.
4. On occasion.
5. Individuals or households.
6. 3,750 responses.
7. 1,875 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Supplement to VA Forms 21–526, 21–534 and 21–535 (For Philippine Claims).
3. VA Form 21–4169.
4. On occasion.
5. Individuals or households.
6. 1,000 responses.
7. 500 hours.
8. Not applicable.

Revisions

1. Department of Veterans Benefits.
2. Request for Change of Program or Place of Training (Under Chapter 30, 32, or 34, 38 U.S.C. and Chapter 106, Title 10 U.S.C.).
3. VA Form 22–1995.
4. On occasion.
5. Individuals or households.
6. 120,000 responses.
7. 40,000 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Certification of Attendance (For Courses not Leading to a Standard College Degree and Farm Cooperative Courses Under Chapters 30, 32, 34 and 35, Title 38, U.S. Code; Chapter 106, Title 10, U.S. Code; and Section 903, Pub. L. 96–342).
3. VA Form 22–8553a.
4. On occasion; Monthly.
5. Individuals or households; State or local governments, Non-profit

institutions; Small businesses or organizations.

6. 383,222 responses.

7. 60,597 hours.

8. Not applicable.

[FR Doc. 86-11251 Filed 5-19-86; 8:45 am]

BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee; Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) that the charter for the Cooperative Studies Evaluation Committee has been renewed by the Administrator of Veterans Affairs for a two year period beginning May 2, 1986 to May 2, 1988.

Dated: May 5, 1986.

By direction of the Administrator.

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-11250 Filed 5-19-86; 8:45 am]

BILLING CODE 8320-01-M

Oklahoma Veterans Center, Claremore, OK; Environmental Statement Notice of Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a 250-bed Oklahoma Veterans Home in Claremore, Oklahoma. The estimated project cost is approximately $13 million. This is a magnitude estimate and is subject to revision.

A beneficial impact will be achieved through the addition of 250 beds which will provide health care services to Oklahoma veterans. The project will also provide additional employment and income for the local area surrounding the facility.

Construction related traffic may cause disruption of nearby traffic flow. In addition, construction noise associated with the development of the new nursing home facility is likely to cause annoyance to occupants of adjacent facilities. The impact of dust and fumes that will exist during construction will be of short effect lasting only during that phase of project development. In relation to both construction and operation, the new facility will be built in accordance with applicable Federal, State and local air quality standards.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40, CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of that document may do so at the following office: Associate Deputy Administrator for Logistics, room 863, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC (202/389-3544). Questions or requests for single copies of the Environmental Assessment may be addressed to the above.

Dated: May 5, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86-11252 Filed 5-19-86; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC, on June 12, 1986, at 8:30 a.m.

The committee will (1) review and make appropriate recommendations relative to the Veterans Administration's programs to assist Vietnam veterans who were exposed to herbicides; such recommendations may concern the information delivery system and outreach efforts, scheduling of Agent Orange-related examinations, essential follow-up activities, and other related matters; (2) advise the Administrator on VA Agent Orange-related programs, programs of the Federal Government, and State programs which are designed to assist veterans exposed to herbicides, and simultaneously, will minimize duplication of VA and other federal programs concerned with the Agent Orange issue; (3) receive and review information from veterans service organizations regarding services provided by the Veterans Administration to Vietnam veterans concerned about the possible adverse health effects of exposure to herbicides; (4) review and comment on proposals for research on the possible health effects to exposure to herbicides; and (5) serve as a forum for individual veterans to inform the Veterans Administration of their views on policy issues and on the operation of Agency programs designed to assist veterans exposed to herbicides and dioxins in Vietnam.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may direct questions, in writing, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10X21), Department of Medicine and Surgery, Veterans Administration Central Office, Washington, DC 20420. (Telephone: (202) 389-3432.)

Dated: May 5, 1986.

By direction of the Administrator.

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-11253 Filed 5-19-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 97
Tuesday, May 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 A.M.—MAY 19, 1986.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Use of High-Cube Containers in Japan.

John Robert Ewers,

Secretary.

[FR Doc. 86-11429 Filed 5-16-86; 3:25 pm]

BILLING CODE 6730-01-M

2

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 11:00 a.m., Tuesday, May 27, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of banks and bank holding company applications scheduled for the meeting.

Dated: May 16, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11436 Filed 5-16-86; 3:47 pm]

BILLING CODE 6210-01-M

3

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 3:30 p.m., Tuesday, May 13, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel Rules and practices), (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) and (c)(9)(B) (disclose information the premature disclosure of which would . . . be likely to significantly frustrate implementation of a proposed agency action . . .).

MATTERS TO BE CONSIDERED: Internal Personnel Policies and Procedures.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202 254-9430).

Dated, Washington, DC, May 14, 1986.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86-11428 Filed 5-16-86; 3:24 pm]

BILLING CODE 7545-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 19, 26, June 2, and 9, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 19

Tuesday, May 20

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, May 21

10:00 a.m.

Discussion of Policy Options on Mixed Radioactive and Hazardous Low-Level Wastes (Public Meeting)

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 & 6)

Thursday, May 22

3:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

4:00 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of May 26

Tentative

Wednesday, May 28

10:00 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.

Briefing on Pending Enforcement Action (Closed—Ex. 5 & 7)

Thursday, May 29

10:00 a.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of June 2

Tentative

Thursday, June 5

2:00 p.m.

Meeting with Advisory Committee on Reactor Safeguards (ARCS) on GESSAR II (Open/Portion may be Closed—Ex. 3 & 4)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Friday, June 6

10:00 a.m.

Briefing by Staff on Status of TVA (Open/Portion may be Closed—Ex. 5 & 7)

2:00 p.m.

Briefing by Davis-Besse Ad Hoc Review Group (Public Meeting)

Week of June 9

Tentative

Tuesday, June 10

2:00 p.m.

Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Wednesday, June 11

11:00 a.m.

Periodic Meeting with Advisory Panel on Decontamination of TMI-2 (Public Meeting)

2:00 p.m.

Briefing on Status of EEO Program (Public Meeting)

Thursday, June 12

2:00 p.m.

Briefing on Restart of San Onofre-1 (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Staff Briefing on Chernobyl Accident (Public Meeting) was held May 13. Discussion/Possible Vote on Full Power Operating License for Catawba-2 (Public Meeting) was held May 14.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

May 15, 1986.

Robert S. McOsker,

Office of the Secretary.

[FR Doc. 86–11443 Filed 5–16–86; 3:55 pm]

BILLING CODE 7590–01–M

5

SECURITIES AND EXCHANGE COMMISSION "FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published]

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Monday, May 12, 1986.

CHANGE IN THE MEETING: Time.

A closed meeting scheduled for Tuesday, May 20, 1986, following the 2:30 p.m. open meeting, has been changed to 10:00 a.m. that date.

An open meeting scheduled for Thursday, May 22, 1986, at 11:00 a.m., has been changed to 12:00 noon, that date in Room 1C30.

Consideration of developments over the last year in the internationalization of the world securities markets and what future actions should be taken in the internationalization area. For further information, please contact Andrew E. Feldman at (202) 272–2414.

Chairman Shad determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Schy at (202) 272–2468.

John S.R. Shad,

Chairman.

May 15, 1986.

FR Doc. 86–11341 Filed 5–15–86; 5:09 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
May 20, 1986

Part II

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Proposed Rule

VOL 51 ISS 97 MAY 20 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-2961-7]

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct primary aluminum and secondary aluminum operations. EPA agreed to propose these amendments in two settlement agreements which resolved the various lawsuits challenging the final nonferrous metals manufacturing phase I regulation for these subcategories. The regulation was promulgated by EPA on March 8, 1984, 49 FR 8742.

The proposed amendments include: (1) Certain modifications of the effluent limitations for "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES). After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted on or before June 19, 1986.

ADDRESS: Send comments to Ms. Eleanor J. Zimmerman, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: ITD Docket Clerk, Proposed Nonferrous Metals Manufacturing Phase I Rule (WH–552).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street SW., Washington, DC. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382–7128.

SUPPLEMENTARY INFORMATION:

Organization of this notice:

I. Legal authority
II. Background
  A. Rulemaking and Settlement Agreements
  B. Effect of the Settlement Agreements
III. Proposed Amendments to the Nonferrous Metals Manufacturing Phase I Regulation
IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Manufacturing Phase I Regulation
V. Economic Impact of the Proposed Amendments
VI. Solicitation of Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review

I. Legal Authority

The regulation described in this notice is proposed under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95–217).

II. Background

A. Rulemaking and Settlement Agreements

On February 17, 1983, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals manufacturing phase I point source category (48 FR 7032). EPA published the final nonferrous metals manufacturing phase I regulation on March 8, 1984 (49 FR 8742). Those regulations affected 80 direct dischargers and 85 indirect dischargers. The preambles to the proposed and final nonferrous metals manufacturing phase I regulation describe the history of the rulemaking.

After publication of the nonferrous metals manufacturing phase I regulation, the Aluminum Association, Inc., Kaiser Aluminum and Chemical Corp., Reynolds Metals Company, the Aluminum Recycling Association, the American Mining Congress, Kennecott, Amax, ASARCO Inc., Mallinckrodt, Inc., the Secondary Lead Smelters Association and intervenor Gulf Coast Lead, and St. Joe Minerals Corporation filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Fourth Circuit (*Kennecott* v. *EPA*, 4th Cir. No. 84–1286 and Consolidated Cases). On December 20, 1985 the Fourth Circuit denied petitions to review the regulations for the primary lead, primary zinc, primary copper, metallurgical acid plants, secondary lead and the columbium-tantalum subcategories (780 F. 2d 445).

Earlier in November of 1985 four aluminum parties in the consolidated lawsuits entered into two settlement agreements which resolved issues raised by the petitioners related to the primary aluminum and secondary aluminum regulations. In the Settlement Agreements, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain amendments to the final nonferrous metals manufacturing phase I regulation for these subcategories. If EPA promulgates amendments to the nonferrous metals manufacturing regulation and preamble language that are substantially the same as and do not alter the meaning of the proposed language, the petitioners have agreed to dismiss their lawsuits and not challenge the new amendments.

The amendments proposed today would allow increased discharges of pollutants for 24 direct discharging primary aluminum facilities, 14 indirect discharging secondary aluminum facilities, and 10 direct discharging secondary aluminum facilities. This proposal also affects new source performance standards for direct and indirect dischargers of these two subcategories.

B. Effect of the Settlement Agreements

As part of the Settlement Agreements, on November 25, 1985 the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of those portions of 40 CFR Part 421 which EPA is proposing to amend, pending final action by EPA on the proposed amendments. The Court has not yet acted on this request.

Copies of the Settlement Agreements have been sent to all EPA Regional Offices and to applicable State permit-issuing authorities. All limitations and standards contained in the final nonferrous metals manufacturing phase I regulation published on March 8, 1984 which are not specifically listed in the attached proposed regulation are not affected by today's rulemaking.

III. Proposed Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

Below are descriptions of the proposed amendments to the nonferrous metals manufacturing phase I regulation.

The proposed amendments are based upon proper operation of the same technologies as those which formed the basis of the final regulation that was promulgated on March 8, 1984. See the preamble to the regulation at 49 FR 8742, for the Agency's findings with respect to these technologies. Effluent limitations which do not change are signified by four asterisks in this proposed regulation.

A. Subpart B—Primary Aluminum Subcategory

1. *Benzo(a)pyrene Limitations and Standards.* EPA is proposing amendments to the BAT limitations and NSPS and PSNS for benzo(a)pyrene in §§ 421.23, 421.24, and 421.26. In 48 *FR* 7056 (February 17, 1983), the Agency proposed activated carbon adsorption as the model preliminary treatment technology for toxic organics, indicated by benzo(a)pyrene, in primary aluminum wastewaters. EPA proposed effluent limitations and standards based on an achievable concentration of 10 ug/1 for benzo(a)pyrene, the level from the bench-scale study on POTW wastewater spiked with polynuclear aromatic hydrocarbons.

In the final regulation, the Agency decided not to rely on activated carbon because of another pilot-scale study, discussed in 48 *FR* 50906 (November 4, 1983), which evaluated treatment of primary aluminum potline scrubber blowdown and cathode reprocessing wastewater. The results of this study indicated that the toxic organic pollutants present were controlled through lime, settle and multimedia filtration ("lime, settle, and filter") treatment technology; removals by this technology exceeded 99 percent of all toxic organics present. In addition, benzo(a)pyrene appeared to be removed to the quantification limit of 10 ug/1 by this technology. Thus, although the model treatment technology changed from activated carbon to lime, settle and filter, the concentration basis did not change between proposal and promulgation and no variability factors were adopted. We also proposed, in 1983, at-the-source limitations for toxic organic pollutants. These limitations were not promulgated because EPA was no longer relying on preliminary treatment to remove the toxic pollutants; rather, the model technology was centralized lime, settle and filter treatment.

In the final regulation, EPA applied the benzo(a)pyrene limitations to all of the processes since central treatment was expected (49 FR 8781 (March 8, 1984)). Under this approach processes which did not have benzo(a)pyrene present were also given a discharge allowance in order to assist permit writers in developing effluent limitations for combined wastestreams. EPA is proposing today to: (a) Adopt differing 1-day and monthly average limitations for benzo(a)pyrene; (b) provide mass allowances for benzo(a)pyrene only in those processes that actually generate it; (c) clarify that the rule does not mandate at-the-source limitations for benzo(a)pyrene; and (d) clarify how analytical values at or below the detection limit are to be treated for compliance purposes.

Petitioners asserted that it was inappropriate to promulgate the same 1-day and monthly limits for benzo(a)pyrene because the pilot plant study referred to above showed some variability in treatment of the compound. In addition, the model treatment technology, lime, settle and filter, has some associated operating variability. EPA agrees with these points, and accordingly is proposing to change the benzo(a)pyrene effluent limitations and standards by increasing the daily maximum from 0.010 mg/l to 0.0337 mg/l and by adding a monthly maximum average of 0.0156 mg/l. These limitations were determined on the basis of statistical analysis of data on the treatability of benzo(a)pyrene obtained in the pilot study referenced above.

As a result of these changes, the limitations allowance for the discharge of benzo(a)pyrene will apply only to those processes that generate it. As noted, EPA provided such an allowance to encourage centralized treatment (49 *FR* 8761).

As part of the Settlement Agreement, industry has agreed that an allowance for benzo(a)pyrene is only needed in the processes that generate it. Consequently, EPA is proposing that there be no allowance for benzo(a)pyrene in building blocks § 421.23(o), (q), and (r), and the corresponding building blocks in NSPS and PSNS.

For those processes where benzo(a)pyrene is not present, the rule states (in the footnote to each relevant process) that there shall be no discharge allowance for this pollutant. This means that in calculating effluent limitations at the end of a combined treatment system, no allowance for benzo(a)pyrene shall be provided for these processes. In addition, this regulation does not require permit writers or the control authority to impose monitoring of benzo(a)pyrene at these processes (i.e. so-called at-the-source monitoring). However, monitoring could be required at the discretion of the permitting or control authority. See 40 CFR 122.45(i).

EPA is also proposing to amend the specialized definition in § 421.21 to state that if a permittee chooses to analyze for benzo(a)pyrene using any EPA approved analytical method, then any non-detected values will be counted as zeros for purposes of determining compliance. This approach is consistent with the methodology for developing the benzo(a)pyrene limitations since the methodology used to develop the limitations treated the non-detected values from the pilot plant study as zeros. The detection limit for the approved EPA methods of GC/MS and gas chromatography are 0.0025 and 0.01 mg/l, respectively.

2. *Fluoride Limitations and Standards.* EPA is proposing amendments to the BAT limitations and NSPS and PSNS for fluoride in §§ 421.23, 421.24, and 421.26. In the final regulation for this subcategory, all of the fluoride limitations, except those for the cathode reprocessing segment (which were derived from the same pilot plant study described above), are based on long-term mean concentrations and variability factors obtained from the electrical and electronic component manufacturing phase II regulation with slight modifications (48 FR 55690 of December 14, 1983). The promulgated limits in the nonferrous regulation were 35 mg/l for the daily maximum and 20 mg/l for the monthly average with variability factors of 2.40 and 1.38, respectively.

Petitioners claimed that these limitations are not achievable in the primary aluminum subcategory because of the presence of complex fluoride ions and aluminum salts. In response, EPA is proposing to retain the long-term mean but to increase the variability factors (49 FR 8751, 8757). The fluoride limitations proposed today are based on the pooled variability factors calculated from data for seven metal pollutants in the combined metals data base. The variability factors EPA is now using are 4.10 and 1.82 for the daily and monthly variability factors, respectively.

The Agency believes that the variability associated with the metals data will more accurately represent the fluoride variability in this subcategory. These same variability factors were used to calculate the fluoride limitations in the final regulation for the cathode reprocessing building block (49 *FR* 8757). In addition, these are the same variability factors used for most other pollutants regulated in this subcategory, and in all other nonferrous metal manufacturing subcategories.

3. *Spent Potliner Leachate.* In the final regulations, EPA promulgated alternate treatment performance values for cathode reprocessing and potline scrubber liquor commingled with cathode reprocessing wastewaters. Petitioners have asserted that leachate resulting from runoff of spent potliners should also be subject to these alternate limitations under appropriate circumstances. Spent potliner leachate may receive the treatment performance values developed for cathode reprocessing provided:

(a) That the permit writer determines on a case-by-case basis that the wastewater matrices of cathode reprocessing and spent potliner leachate are compatible, and

(b) that the spent potliner leachate is not commingled with process or non-process wastewaters other than cathode reprocessing, or potline wet air pollution control operated in conjunction with cathode reprocessing.

Spent potliner leachate resulting from atmospheric precipitation runoff is considered to be a site-specific, non-scope waste stream by the Agency. For this reason, specific limitations are not provided for this waste stream in 40 CFR Part 421, §§ 421.23, 421.24, and 421.26. The brief guidance provided here was already implicit for direct dischargers in a permit writer's authority to establish limitations for non-scope flows on a case-by-case, Best Professional Judgement (BPJ) basis and for new source indirect dischargers, through application of the combined wastestream formula.

As part of the Settlement Agreement, petitioners retained the right to petition EPA to amend 40 CFR 421.23(k) based upon new information not presently in the record demonstrating that additional allowances are required for cathode reprocessing when spent potliners are brought in from another plant for chemical recovery of cryolite. Section 122.62(a)(3) of the NPDES regulations provides that a permit may be modified during its term if the effluent limitations guidelines regulations on which the permit was based have been changed by promulgation of amended effluent limitations guidelines regulations, provided the permittee requests such modification in accordance with § 124.5 within 90 days after Federal Register notice of the action on which the request is based. Permit writers may include a reopener clause in any permit specifically recognizing this cause for modification of the permit limitations based on an amendment to 40 CFR 421.23(k) as long as such cause for modification is authorized under the then applicable regulations.

4. *Direct Chill Casting Contact Cooling.* EPA is proposing to amend the pH standards for new sources in § 421.36(b). In the final NSPS regulation for direct chill casting contact cooling the pH range was 7.0 to 10.0 at all times. Petitioners asserted that this pH range does not coincide with state water quality standards which are usually 6 to 9 standard units. EPA is proposing to modify this pH range to 6.0 to 10.0 at all times provided this stream is not commingled with other process wastewaters. If direct chill casting contact cooling water is commingled with process waters, it is subject to a pH range of 7.0 to 10.0 at all times. The data the Agency collected on this waste stream indicate that it may sometimes be relatively clean and compliance with NSPS may be possible without adjusting the pH. See Chapter V of the Supplemental Development Document for Primary Aluminum. Accordingly, the Agency has agreed to propose a broader pH requirement for direct chill casting contact cooling water if it is discharged separately without commingling with any other wastewater since the wider pH range will not affect achieving the mass limitations under these limited circumstances.

B. Subpart C—Secondary Aluminum Subcategory

1. *Ingot Conveyor Casting.* EPA is proposing amendments to the BAT limitations and NSPS, PSES, and PSNS in §§ 421.33(g), 421.34(g), 421.35(g), and 421.36(g). The ingot conveyor casting regulatory flow allowance used to develop the final limitations for these sections was 43 l/kkg. The Aluminum Recyclers Association claimed that this flow allowance is in error due to data interpretation mistakes and because EPA unnecessarily excluded the water usage of plants that reported achieving zero discharge.

EPA is proposing an amended flow allowance of 67 l/kkg, which is based on corrected water usage data from five plants (these data involving water usage and operating schedules were interpreted incorrectly by EPA in constructing the flow allowance in the final rule) and including three plants' water usage that reported achieving zero discharge. This is consistent with EPA's methodology throughout the nonferrous metals rulemaking, where EPA typically used water usage at zero discharging plants in determining what degree of flow reduction represents BAT, PSES, NSPS, and PSNS.

2. *Demagging Wet Air Pollution Control.* EPA is proposing to amend the BAT limitations and NSPS, PSES, and PSNS in §§ 421.33(d), 421.34(d), 421.35(d), and 421.36(d). The demagging wet air pollution control flow allowance used to develop the final rule was 687 l/kkg. Secondary aluminum petitioners have asserted that this allowance is incorrect due to a data interpretation error regarding the number of scrubbers associated with the water usage for one facility. EPA agrees that it made an error in this calculation and is proposing to adjust the water usage for this plant upwards. EPA is proposing to correct this regulatory flow allowance to 771 l/kkg.

IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

The proposed amendments described above affect 46 facilities in the primary aluminum and secondary aluminum subcategories. These amendments would allow a greater discharge of pollutants for these facilities than was allowed by the March 1984 regulation. The increase in the mass of pollutants allowed to be discharged is not expected to be substantial, however. Each of these subcategories listed above is discussed below.

A. Primary Aluminum Subcategory

The proposed amendments for the primary aluminum subcategory would increase the limitations for the pollutants benzo(a)pyrene and fluoride, although, as noted earlier, for some processes there would be a decrease in the amount of benzo(a)pyrene which would be discharged, since EPA no longer is providing an allowance for processes not generating benzo(a)pyrene. The removal estimates for fluoride did not change because the long-term average treatment effectiveness value used to calculate the quantity of pollutant discharged is unchanged.

B. Secondary Aluminum Subcategory

The proposed amendments to the regulatory flow allowances for ingot conveyor casting contact cooling and demagging wet air pollution control flow allowances affect 24 facilities. Ten of these facilities are direct dischargers, while 14 are indirect dischargers.

The proposed amended ingot conveyor casting contact cooling regulatory flow would increase the allowable discharge of toxic metals by 0.2 kg/yr and 0.5 kg/yr for the indirect and direct dischargers, respectively. For the indirect dischargers, 0.9 kg/yr of additional aluminum could be discharged, while for the direct dischargers 2.1 kg/yr of additional

aluminum could be discharged. Increased discharge of the nonconventional pollutants ammonia and total phenols (as measured by the 4AAP method) is not expected from this proposed amendment since these pollutants are specific to other processes unaffected by this proposed rule.

For the direct discharging secondary aluminum plants, the proposed amendment for the demagging wet air pollution control flow allowance is expected to have only minor impact on the mass of pollutants discharged. Each of the direct dischargers is currently meeting the regulatory flow EPA is proposing for this waste stream. For the indirect dischargers, an additional 1.2 kg/yr of toxic metals and 4.0 kg/yr of aluminum are expected to be discharged. An increased discharge of ammonia and total phenols is not anticipated for the same reason given above.

V. Economic Impact of the Proposed Amendments

The proposed amendments do not alter the recommended technologies for complying with the nonferrous metals manufacturing phase I regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 49 FR 8742). EPA concluded at that time that the regulation was economically achievable.

Since today's proposed amendments would slightly reduce regulatory requirements, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the March 8, 1984 final nonferrous metals manufacturing phase I regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 *FR* 8775.) For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Managment and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, waste treatment and disposal.

Dated: May 1, 1986.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA proposes to amend 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 421.21 is amended by adding a new paragraph (c) to read as follows:

§ 421.21 Specialized definitions.

* * * * *

(c) If a permittee chooses to analyze for benzo(a)pyrene using any EPA approved method, then any "non-detected" measurements shall be considered zeros for the purpose of determining compliance with this regulation.

3. Section 421.23 is amended by revising the entries for benzo(a)pyrene and fluoride (if listed below) in paragraphs (a) through (h), (j) through (o), (q) and (r) to read as follows:

§ 421.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(a) Subpart B—Anode and Cathode Paste Plant Wet Air Pollution Control

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of paste produced	
Benzo(a)pyrene	0.005	0.002
* * *	*	*
* * *	*	*
Fluoride	8.092	3.591

(b) Subpart B—Anode Contact Cooling and Briquette Quenching

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of anodes cast	
Benzo(a)pyrene	0.007	0.003
* * *	*	*
* * *	*	*
Fluoride	12.440	5.518

(c) Subpart B—Anode Bake Plant Wet Air Pollution Control (Closed Top Ring Furnace)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene	0.148	0.067
* * *	*	*
* * *	*	*
Fluoride	257.300	114.200

(d) Subpart B—Anode Bake Plant Wet Air Pollution Control (Open Top Ring Furnace With Spray Tower Only)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene	0.002	0.001
* * *	*	*

BAT Effluent Limitations—Continued

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
Fluoride	2.975	1.320

(e) Subpart B—Anode Bake Plant Wet Air Pollution Control (Open Top Ring Furnace With Wet Electrostatic Precipitator and Spray Tower)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene	0.025	0.011
Fluoride	43.440	19.270

(f) Subpart B—Anode Bake Plant Wet Air Pollution Control (Tunnel Kiln)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene	0.036	0.016
Fluoride	67.710	30.050

(g) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Not Commingled With Other Process or Nonprocess Waters)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547

(h) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Commingled With Other Process or Nonprocess Waters)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547
Fluoride	2,064.000	924.800

(j) Subpart B—Potline Wet Air Pollution Control (Operated Without Cathode Reprocessing)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.028	0.013
Fluoride	49.860	22.130

(k) Subpart B—Potline Wet Air Pollution Control (Operated With Cathode Reprocessing and Not Commingled With Other Process or Nonprocess Waters)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.028	0.013

(l) Subpart B—Potline Wet Air Pollution Control (Operated With Cathode Reprocessing and Commingled With Other Process or Nonprocess Waters)

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.028	0.013
Fluoride	49.860	22.130

(m) Subpart B—Potroom Wet Air Pollution Control

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.056	0.026
Fluoride	98.770	43.830

(n) Subpart B—Potline So_2 Emissions Wet Air Pollution Control

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.045	0.021
Fluoride	79.790	35.400

(o) Subpart B—Degassing Wet Air Pollution Control

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	(1)	(1)
Fluoride	155.300	68.880

[1] There shall be no discharge allowance for this pollutant.

(q) Subpart B—Direct Chill Casting Contact Cooling

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from direct chill casting	
Benzo(a)pyrene	(1)	(1)
Fluoride	79.080	35.099

[1] There shall be no discharge allowance for this pollutant.

(r) Subpart B—Continuous Rod Casting Contact Cooling

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum product from rod casting	
Benzo(a)pyrene	(1)	(1)
Fluoride	6.198	2.746

1 There shall be no discharge allowance for this pollutant.

* * * * *

4. Section 421.24 is amended by revising the entries for benzo(a)pyrene, fluoride and pH (if listed below) in paragraphs (b), (d), (e), (h), (k) and (l) to read as follows:

§ 421.24 Standards of performance for new sources.

* * * * *

(b) Subpart B—Anode Contact Cooling and Briquette Quenching

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes cast	
Benzo(a)pyrene	0.007	0.003
Fluoride	12.440	5.518

(d) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Not Commingled With Other Process or Nonprocess Waters)

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547

(e) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Commingled With Other Process or Nonprocess Waters

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547
Fluoride	2,084.000	924.800

(h) Supbart B—Potline SO_2 Emissions Wet Air Pollution Control

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.045	0.021
Fluoride	79.790	35.400

* * * * *

(k) Subpart B—Direct Chill Casting Contact Cooling

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of aluminum produced from direct chill casting	
Benzo(a)pyrene	(1)	(1)
Fluoride	79.080	35.090
pH	(2)	(2)

1 There shall be no discharge allowance for this pollutant.
2 The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

(l) Subpart B—Continuous Rod Casting Contact Cooling

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of aluminum produced from rod casting	
Benzo(a)pyrene	(1)	(1)
Fluoride	6.198	2.746

NSPS—Continued

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average

1 There shall be no discharge allowance for this pollutant.

5. Section 421.26 is amended by revising the entries for benzo(a)pyrene and flouride (if listed below) for paragraphs (b), (d), (e), (h), (k), (l) to read as follows:

§ 421.26 Pretreatment standards for new sources.

* * * * *

(b) Subpart B—Anode Contact Cooling and Briquette Quenching.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes cast	
Benzo(a)pyrene	0.007	0.003
Fluoride	12.440	5.518

* * * * *

(d) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Not Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547

(e) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547
Fluoride	2,084.000	924.800

* * * * *

(h) Subpart B—Potline SO_2 Emissions Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.045	0.021
Fluoride	79.780	36.400

* * * * *

(k) Subpart B—Direct Chill Casting Contact Cooling.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from direct chill casting	
Benzo(A)pyrene	(1)	(1)
Fluoride	79.080	35.090

[1] There shall be no discharge allowance for this pollutant.

(l) Subpart B—Continuous Rod Casting Contact Cooling.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from rod casting	
Benzo(A)pyrene	(1)	(1)
Fluoride	6.156	2.748

[1] There shall be no discharge allowance for this pollutant.

* * * * *

6. Section 421.33 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Aluminum	4.711	2.080
Ammonia (as N)	102.800	45.160

* * * * *

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (1b/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Aluminum	0.409	0.182
Ammonia (as N)	8.931	3.926

* * * * *

7. Section 421.34 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.34 Standards of performance for new sources.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Aluminum	4.711	2.080
Ammonia (as N)	102.800	45.160
Total suspended solids	11.570	8.252
Oil and grease	7.710	7.710
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

* * * * *

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Aluminum	0.409	0.182
Ammonia (as N)	8.931	3.926
Total suspended solids	1.005	0.804
Oil and grease	0.670	0.670
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

* * * * *

8. Section 421.35 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.35 Pretreatment standards for existing sources.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Ammonia (as N)	102.800	45.160

* * * * *

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

PSES

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Ammonia (as N)	8.931	3.926

* * * * *

9. Section 421.36 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.36 Pretreatment standards for new sources.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Ammonia (as N)	102.800	45.160

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	Mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Ammonia (as N)	8.931	3.926

* * * * *

[FR Doc. 86-10449 Filed 5-19-86; 8:45 am]
BILLING CODE 6560-50-M

federal register

Tuesday
May 20, 1986

Part III

Environmental Protection Agency

40 CFR Part 60

Review and Amendment of Standards of Performance for New Stationary Sources; Kraft Pulp Mills; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2915-4]

Review and Amendment of Standards of Performance for New Stationary Sources; Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for kraft pulp mills were proposed on September 24, 1976 (41 FR 42012), and promulgated on February 23, 1978 (43 FR 7568). On January 19, 1984, revisions to the standards of performance for kraft pulp mills were proposed in the Federal Register (49 FR 2448). Today's action promulgates these revisions and announces the Agency's decision on other elements of the standard which were reviewed. The revised standards apply to new, modified, and reconstructed kraft pulp mills, for which construction was commenced after September 24, 1976. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that kraft pulp mills cause, or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed kraft pulp mills to achieve emission levels reflecting the best demonstrated system of continous emission reduction, considering costs, nonair quality health, and environmental and energy impact.

EFFECTIVE DATE: May 20, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Kraft Pulp Mills—Background Information for Promulgated Revisions to Standards" [EPA 450/3-85-020]. The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the revisions.

Docket. A docket, number A-82-30, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

For Policy Questions: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5578.

For Technical Questions: Mr. Kenneth Durkee or Mr. James Eddinger, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5601.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> . . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

On September 24, 1976, new source performance standards (NSPS) were proposed for kraft pulp mills under section 111 of the Clean Air Act (41 FR 42012). These regulations were promulgated on February 23, 1978 (43 FR 7568). The standards limit emissions of particulate matter (PM) and total reduced sulfur (TRS) from new or modified recovery furnaces, smelt dissolving tanks, lime kilns, digester systems, multiple effect evaporator systems, black liquor oxidation systems, brown stock washer systems, and condensate stripper systems that have been constructed, modified, or reconstructed after September 24, 1976.

The PM emission limits are: 0.10 grams per dry standard cubic meter (g/dscm) at 8 percent oxygen for recovery furnaces: 0.10 grams per kilogram of black liquor solids (dry weight) (g/kg BLS) for smelt dissolving tanks; 0.15 g/dscm at 10 percent oxygen for lime kilns burning gas; and 0.30 g/dscm at 10 percent oxygen for lime kilns burning oil. Visible emissions from recovery furnaces are limited to 35 percent opacity.

The TRS emission limits are: 5 parts per million by volume (ppmv) at 8 percent oxygen from straight kraft recovery furnaces; 25 ppmv at 8 percent oxygen from cross recovery furnaces; 8 ppmv at 10 percent oxygen from lime kilns; and 5 ppmv at the actual oxygen content of the untreated gas stream from digester systems, multiple-effect evaporator systems, brown stock washer systems, black liquor oxidation systems, and condensate stripper systems. The TRS emissions from smelt dissolving tanks are limited to 0.0084 g/kg BLS.

The standards also require continuous monitoring, recordkeeping, and excess emission reporting. The opacity of recovery furnace exhaust gases must be monitored continuously, and a record of these measurements must be maintained. The concentration of TRS emissions from recovery boilers and lime kilns must be monitored continuously and a record of these measurements must be maintained. The incineration temperature of effluent gases from digesters, brown stock washers, multiple-effect evaporators, black liquor oxidizers, or condensate strippers must be monitored. Finally, the gas stream pressure drop and liquid supply pressure for any scrubber controlling emissions from lime kilns or smelt dissolving tanks must be continuously monitored. Records of 12-hour average TRS concentrations and 12-hour oxygen concentrations must be maintained on a daily basis. Quarterly reports of excess TRS emissions, excess opacities, and inadequate incineration temperatures are required as well.

Today's rulemaking promulgates six revisions and two corrections to the standards. These revisions will: (1) Exempt black liquor oxidation systems from the standards; (2) revise the existing TRS standard for smelt dissolving tanks from 0.0084 g TRS per kg of black liquor solids (g TRS/kg BLS) to 0.016 g TRS/kg BLS; (3) revise the units of the TRS standard for smelt dissolving tanks; (4) delete the requirement to monitor the combustion

temperature in lime kilns, power boilers, or recovery furnaces; (5) change the frequency of excess emission reports from quarterly to semiannually; and (6) exempt diffusion washers from the TRS standard for brown stock washer systems. The corrections would: (1) Require measurements of temperature, pressure drops and liquid feed rates for control devices which must be monitored must also be recorded; and (2) correct the reference in § 60.284(d)(3)(ii) from § 60.283(a)(1)(ii) to § 60.283(a)(1)(iii). In this second instance, the original standard erroneously referred to reporting of excess emissions when recovery boilers are used as incineration devices. The corrected standard refers to facilities where incineration devices not subject to Subpart BB are used for incineration of TRS emissions from facilities subject to the standard.

In the overall context of this source category, all of the changes to the existing standards of performance are minor. Nevertheless, they are appropriate because they change the numerical emission limit for smelt dissolving tanks to reflect the performance of BDT, improve the overall cost effectiveness of the existing standards with little increase in TRS emissions, and reduce reporting and recordkeeping requirements.

II. Summary of Environmental, Energy, and Economic Impacts

The revisions will not significantly affect nationwide particulate matter emissions, solid waste generation, water quality, or energy consumption. Deleting the TRS standard for black liquor oxidation (BLO) tanks may increase TRS emissions from the only affected kraft pulp mill by up to 16 tons per year in the fifth year following proposal. The full increase of 16 tons would be equivalent to 42 percent of the mill's controlled TRS emissions, or about 0.5 percent of its uncontrolled emissions. The exemption of diffusion washers from the TRS standard for brown stock washers will cause no increase in TRS emissions. Changing the smelt tank TRS standard will increase TRS emissions by about 6 tons annually in the fifth year following proposal. This projection is based on the assumptions that the affected facility which failed previous tests for compliance with the original NSPS will continue to perform as it has in the past and that one similar affected facility will be constructed in the future. This increase represents 8 percent of a mill's controlled TRS emissions, or about 0.2 percent of its uncontrolled TRS emissions.

There will be a maximum cost savings of $500,000 associated with the removal of the TRS standard for BLO tanks. This projection is based on our finding that one mill may stop controlling TRS emissions from its BLO tank at promulgation of the revised standards. The savings is in operating costs, and has no capital component. The savings in annual costs which will result from exempting diffusion washers from the NSPS is estimated to be $610,000 in the fifth year. There will be no significant cost impacts associated with any of the other revisions to the NSPS.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the promulgated standards, "Kraft Pulp Mills—Background Information for Promulgated Revisions to Standards" [EPA 450/3–85–020].

III. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (48 FR 12825, March 28, 1983) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the revisions recommended for proposal. This meeting was held on April 27, 1983. The meeting was open to the public and each attendee was given an opportunity to comment on the revisions recommended for proposal. The proposed revisions were published in the **Federal Register** on January 19, 1984 (49 FR 2448). The preamble to the proposed revisions discussed the availability of the BID, "Review of New Source Performance Standards for Kraft Pulp Mills" [EPA 450/3–83–017], which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was scheduled for February 21, 1984, at Research Triangle Park, North Carolina. A hearing was not held because one was not requested. The public comment period was from January 20, 1984, to March 8, 1984.

Twenty-eight (28) comment letters were received relative to the proposed standards of performance for kraft pulp mills. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

IV. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, Federal agencies, State and local air pollution control agencies, and trade associations. A detailed discussion of these comments and responses can be found in the BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions which have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Emission Control Technology and Selection of Emission Limits.

Emission Control Technology

Diffusion Washers

Two comments contain the findings and resulting recommendations of a study performed by an industry council to quantify TRS emissions from diffusion washers. That study examined 9 diffusion washer vents and the mean mass emission rate was found to be 0.001 lb., or less, TRS per ton of air dried pulp (TADP). Such emission levels are two orders of magnitude less than those from uncontrolled vacuum drum washer systems. Using the same cost estimating procedures employed by EPA for the case of vacuum drum washer systems, the industry calculated the cost effectiveness (C/E) of further controlling these emissions to be $240,000 per ton of TRS removed. Three commenters said that those findings preclude EPA from reasonably supporting the need to control diffusion washer vent gases on an emission significance or economic basis. They note that there would be no advantage to setting mass emission limits and that imposing measurement and reporting requirements would be burdensome. Too commenters support the above findings and conclusions. One commenter noted that diffusion washers may meet the existing standards without a control device.

One commenter disagrees with the others and says that diffusion washers should not be exempted outright from having TRS controls. This commenter believes each individual source should be required to demonstrate that emissions from its uncontrolled diffusion washers can meet the same TRS standards as controlled vacuum washers.

The study submitted on TRS emissions from diffusion washers has

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been reviewed by the Agency. The Agency agrees that uncontrolled TRS emissions from diffusion washers are less than 0.001 lb TRS/TADP. This level is orders of magnitude less than that of uncontrolled vacuum drum washers (0.3 lb TRS/TADP) and is also many times lower than the mass equivalent of the NSPS. The equivalent mass emission rate for the 5 ppm NSPS, based on the vacuum drum washer, is about 0.09 lb TRS/TADP. Because of the low mass of TRS emissions controlled and the low air volumes treated, requiring control of TRS emissions from diffusion washers to the 5 ppm TRS level would result in a C/E in the range of $240,000 per ton of TRS removed. Therefore, the Agency has determined that requiring diffusion washers to meet the 5 ppmv TRS standard would be unreasonable.

For several reasons, revision of the NSPS to a mass equivalent TRS standard would also be unreasonable. As the available data indicated, uncontrolled TRS emissions from diffusion washers are many times lower than the mass equivalent of the NSPS. As such, requiring diffusion washers to demonstrate compliance with a mass equivalent NSPS would impose unnecessary costs for testing and reporting requirements. In addition, an EPA reference sampling method would have to be developed and promulgated since the present EPA Reference Method 1 is insufficient for sampling the low velocity, low volume, and cyclic gas stream emitted from a diffusion washer.

Development of a separate standard for TRS emissions from diffusion washers would require a major commitment of Agency resources to study a process which produces very low mass emissions. Such a standard would have to include a control technology which, in this case, would undoubtedly be incineration and the cost has been estimated to be in the range of $240,000 per ton TRS removed. Because projected control costs are high and potential benefits are negligible, the Agency has concluded that development of an NSPS for TRS emissions from diffusion washers is not appropriate.

Noncontact Recovery Furnaces With Wet-Bottom Electrostatic Precipitators (ESP's)

At the time the NSPS were developed, use of the direct contact furnace system was prevalent in the industry and available information indicated that the contacting of furnace flue gases with unoxidized black liquor in direct contact evaporators was causing high levels of TRS emissions. Therefore, the Agency tested direct contact furnaces equipped with BLO systems. Particulate emissions from these sources were controlled by wet-bottom ESP's through which the oxidized black liquor was passed. Also, the Agency tested a noncontact recovery furnace system, which eliminates the contact of flue gas and black liquor altogether, which in turn eliminates the need for BLO equipment. This furnace system had a dry-bottom ESP for control of particulate emissions. As a result of these tests, the BDT for control of TRS emissions from noncontact furnace systems was determined to be maintenance of proper combustion conditions and black liquor firing rates and, for direct contact furnace systems, was determined to be maintenance of proper combustion conditions and oxidation of black liquor. For both furnace types, ESP's were determined to be BDT for achieving the required limits for PM emissions.

Since the development of the NSPS, the paper industry's National Council for Air and Stream Improvement (NCASI) in 1978 investigated the possible use of unoxidized black liquor in wet-bottom ESP's and concluded that use of unoxidized black liquor in wet-bottom ESP's would not cause violations of the TRS emission limit. In 1979, another industry study concluded the wet-bottom ESP's were more reliable and less costly to operate than dry-bottom ESP's that were in use at that time. Following these studies, wet-bottom ESP's utilizing unoxidized black liquor were installed on ten noncontact recovery furnaces subject to the NSPS. In 1982 it became apparent that some of them were having difficulty in achieving the 5 ppmv TRS standard. During the same time period, four noncontact recovery furnaces were installed with dry-bottom ESP's. Two recovery furnaces of the direct contact design were equipped with wet-bottom ESP's which used oxidized black liquor in the bottoms. All six recovery furnaces which installed the technology upon which the NSPS were based have achieved those standards.

In early 1984, when the revisions resulting from the 4-year review were proposed, the extent of the problems with the wet-bottom ESP's and potential corrective measures were not fully understood. The NCASI was then in the midst of a major study which was conducted to identify the causes of TRS release from unoxidized black liquor and to develop means of eliminating excess emissions from the ESP's. In the proposal, the Agency stated that it was reasonable to delay completion of the review of the TRS standard for recovery furnaces long enough to allow NCASI sufficient time to perform its study.

Seven different commenters agreed with the EPA proposal to delay review of the existing TRS standards for recovery furnace systems as they pertain to facilities which have installed wet-bottom ESP's. All agreed that any possible changes which would take into consideration the performance of noncontact recovery furnaces equipped with wet-bottom ESP's using unoxidized black liquor should be delayed until NCASI completed its studies of these systems. One commenter noted that it has been demonstrated that wet-bottom ESP's can achieve the existing TRS standard. They conclude that any changes to the current TRS standard should pertain only to wet-bottom ESP's and that any possible changes should be delayed only until the NCASI study is complete. One commenter said that EPA should resist any change in the existing standards and that EPA should explore the use of non-TRS bearing water in the wet-bottom ESP's.

Since proposal, much work has been done by NCASI and by individual affected firms in an attempt to fully understand and correct the problem. The NCASI study has identified several factors which are contributing to the problem. These include inlet baffling design, liquor temperature, liquor level, degree of agitation, and liquor chemistry. To date, modifications to mitigate the first four factors have been made in most instances where they appeared feasible. The results of the modifications differed from mill to mill and were not always successful for reducing TRS emissions. Similarly, efforts by individual mills to control or modify the chemistry of liquors used in the wet ESP's have given mixed results. After making various combinations of modifications, some facilities have achieved, or have come very close to achieving, the 5 ppmv TRS standard. However, according to industry assessments, several furnaces appear unable to consistently achieve better than 15 ppmv and some appear unable to consistently achieve better than 25 ppmv while using unoxidized black liquor in the ESP.

The EPA has reviewed available data and the steps which industry have taken. It is clear from this that NCASI and individual firms have expended considerable resources in their attempts to identify and correct the causes of TRS release from unoxidized black liquor used in wet-bottom ESP's. The Agency agrees that the recovery furnace TRS standard is probably not consistently achievable at all sources when such liquor is used in the ESP's. However, based on its review of the industry

studies, the factors which are causing excess emissions, and of potential remedies. EPA has concluded that the standard for recovery furnace TRS emissions should not be revised. In reaching this conclusion, the Agency recognizes that the decisions to install the wet-bottom precipitators were made based on the available industry data which indicated that the TRS emission limit would not be violated. But, there were other options available and those options were employed at other facilities. Furthermore, retrofit options are available which will allow the sources with wet-bottom ESP's to achieve compliance with the TRS emission limit. For example, two mills have made piping changes which allow them to use fresh water in wet-bottom ESP's and the level of the NSPS for TRS has been achieved. In addition, mills have the option of converting the bottoms of their ESP's from the wet to the dry design. Although each of these options entails a retrofit with annualized costs ranging from $85,000 to $275,000 per mill and the associated TRS reduction could be small, EPA believes the costs of the retrofits are reasonable. When the annualized cost of installing and retrofitting a wet-bottom ESP are compared to the annualized costs of initially installing a dry-bottom ESP, the net difference in estimated annualized costs of retrofitting the wet-bottom ESP are reasonable and range from a savings of $40,000 to a cost of $100,000.

In conclusion, therefore, the Agency believes that changes to the NSPS for kraft recovery furnaces would be inappropriate and that those mills now out of compliance with the TRS standard should take the necessary steps to achieve compliance.

Degradation of Performance of ESP's

Three commenters disagree with the Agency's conclusion in the BID (EPA 450/3–83–017) that data from a 9-year-old ESP show that ESP's can reduce recovery furnace particulate emissions to NSPS levels over a long period of time when they are properly maintained. One commenter operates the ESP to which the three referred and this commenter says the data show that, even with maintenance, the ESP is not capable of achieving NSPS consistently. The commenter also said that it is inappropriate to draw conclusions about long-term performance of ESP's from data obtained from only one ESP.

A second commenter said that the data provided by the previous commenter clearly show an upward trend in emissions of PM with increasing age of the ESP and that EPA's judgment concerning the ability of ESP's to meet NSPS for particulate emissions over the long term is an inappropriate interpretation of data from a single location. The commenter presented long-term data from two other sources with ESP's designed to achieve emission levels similar or NSPS and said the data from all three sources showed an upward trend in particulate emissions with increasing age of the ESP's. The data from all three ESP's also showed that measured emissions, following major rebuilds of the ESP's were significantly higher than those achieved when the precipitators were new. The commenter attributed the increased emissions to such factors as buildups and corrosion in duct work, plenums and turning vanes, which can cause flow maldistributions.

The second commenter maintains that EPA has not thoroughly investigated the ESP degradation issue in its NSPS review. They also say that the Agency has not considered the costs of major rebuilds or lost production due to unscheduled repairs in the cost-effectiveness calculations.

The problem of gradual deterioration of ESP performance was investigated during the NSPS development and again during the NSPS review. During the NSPS development, the ESP vendors indicated that a properly maintained ESP should not deteriorate over the expected life of the unit. Problems encountered are usually due to operating the equipment at conditions for which it was not designed (i.e., higher gas volumes, higher inlet loadings, or lower inlet temperature). The main problem areas are corrosion and wire breakage.

The unit for which EPA obtained long-term particulate data, at the time it was installed, employed a new design which minimized wire breakage. This unit was tested by EPA as part of the data base for the NSPS. Additional data supplied by the State agency during the NSPS development indicated that the unit consistently achieved the NSPS level. During the NSPS review, the operator of this unit was again contacted to obtain information on maintenance costs and ESP performance. The maintenance costs for this unit had increased from 240 man-hours per year to an average of 913 manhours per year. These maintenance costs are higher than the estimate used by the Agency. If it could be shown that all of these costs are attributable to the NSPS, the incremental C/E of the NSPS is $200–$300 per ton, which is still reasonable. However, as noted, it is not clear that the increased maintenance costs are in fact due to the NSPS. The data indicated that after 10 years of operation, the unit was still capable of achieving the NSPS level. It is true, as the one commenter pointed out, that test data indicate that at times the unit has had emissions above the NSPS level. It must be pointed out that this unit is not subject to the NSPS and is only required to achieve a State regulation which is double the NSPS level. Therefore, this unit is maintained to achieve the State level as opposed to the NSPS level. It is the Agency's judgment that this unit could consistently achieve the NSPS if the frequency of maintenance were increased. The Agency's judgment is supported by the data supplied by one commenter which shows the performance of an ESP which is not subject to the NSPS but which is subject to a State standard about 25 percent lower than the NSPS. This latter unit has been operating for 10 years and has consistently achieved the NSPS levels.

The Agency's cost estimates do not include the cost of major rebuilds as was suggested by the commenters. The ESP's were widely used in the kraft pulp industry for recovery of process chemicals prior to establishment of NSPS and none of the information which has been reviewed indicates that major rebuilds are needed more frequently because of NSPS for PM. As a result of NSPS, new ESP's are designed with more plate area and additional maintenance costs for such items as replacement of broken wires would be possible. However, the need for major rebuilds, to repair corrosion damage, for example, is most likely attributable to process parameters, such as the flue gas temperature, and not related to the sizing of the EPS's. Since the NSPS does not affect the frequency of major rebuilds, it would be inappropriate to include the costs of rebuilds in the calculation of control costs.

Selection of Emission Limits

Smelt Dissolving Tanks (SDT)

Five different commenters were in agreement with EPA's decision to raise the TRS standard for SDT. However, they said that the increase should be greater than the one which was proposed. One commenter said that preliminary data from a new mill indicated that the proposed level needed to be doubled. In a follow-up letter, the commenter described the liquids being used in their scrubbers and noted that they planned to try and redirect sulfide-containing recycle streams from the SDT and scrubbers. In a third letter, the commenter said that efforts to modify their piping system to redirect sulfide

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bearing liquids away from the smelt tanks had been successful and that they had passed compliance tests. Thus, they withdrew their request for a higher TRS limit than that which was proposed.

A second commenter sent two letters describing experience at two of its mills. The commenter said that selection of the scrubbing liquid is the only known method of modifying TRS emissions associated with smelt tank vent gases. The commenter has examined the use of alternative scrubbing liquids and said that TRS emissions exceeded the standard even when fresh water was used in the scrubbers at one of the mills. They said their best results at the other mill were obtained when both the smelt tank scrubber and the lime kiln mud washer showers were operated on fresh water, which the commenter considers an artificial condition for that particular mill. The commenter submitted additional continuous monitoring data and said the new data showed variations similar to those in previously submitted information.

A third commenter said the proposed TRS level is a move in the right direction, but that two of its facilities cannot meet that level on a consistent basis. The commenter said that various scrubbing media had been tried but that no controllable process or control technology operating conditions had been identified which could limit TRS emissions from smelt tank vents. This commenter said its data (from 50 hours of continuous monitoring) supported a TRS limit well above the proposed level. Two comments by industry trade associations supported the first three commenters' observations and comments.

Emissions of TRS compounds are governed by the concentration of reduced sulfur compounds either in the smelt from the recovery furnace or in the water in the smelt tank. Additional TRS may be introduced if liquids contaminated with TRS compounds are introduced to the scrubbers used for control of PM. There is no means of controlling the introduction of reduced sulfur compounds via the smelt from the recovery furnace. However, the introduction of additional TRS compounds to the vent gases can be prevented, substantially reduced, by the selection of liquids to be used in the tanks and scrubbers. Preventing the introduction of TRS-contaminated liquids to the SDT system is the basis of BDT, which is, "to use a liquid that is low in sulfides and TRS compounds—such as fresh water or recycled water from the lime mud washer—in the smelt tank and particulate control device" (49 FR 2448). The data base used in the review to revise NSPS for TRS from 0.0084 g/kg BLS to 0.016 g/kg BLS includes two test reports from one mill which failed to comply with the 0.0084 g/kg emission limit. The operators of the mill indicated that they had used fresh water in their mud washers and that the weak wash had been used in both the smelt tank and scrubbers. Use of these types of liquids is considered to be BDT for reducing TRS emissions. They then experimented with various liquids in the scrubber, including fresh water. Since no reasons for the higher TRS emissions could be identified, and since the sources were applying BDT, the emission limit for TRS emissions was proposed to be raised to 0.016 g/kg BLS to reflect the results of these compliance tests.

Information supplied by the first commenter showed that relatively small flows of TRS-contaminated recycle streams were being introduced to the weak wash storage tanks and subsequently to the SDT's and scrubbers. The operators of the mill were reluctant to remove the recycle streams because they did not want to increase either water usage or the amount of wastewater to be treated. When the mill used BDT and removed the TRS contaminated liquids from the smelt dissolving system, they did pass tests for compliance with the current TRS standard. After passing the test, the commenter withdrew his initial comment that the TRS limit should be greater than 0.016 g/kg BLS.

The data supplied by the second commenter for one of their mills showed that they had been using contaminated condensate in their SDT scrubber recycle system. When the condensate was replaced with fresh water, TRS emissions began to drop. Later data from the same source showed that use of boiler blowdown (which is very low in residual sulfides) in the system reduced TRS emissions to NSPS levels. The commenter said that the best results were obtained when lime mud shower (which produces the weak wash used in the SDT) and SDT scrubber were operated on fresh water, but that this represents an artificial condition established solely to minimize TRS emissions. They say that operating in this manner causes an unusually high hydraulic loading on the effluent treatment system. The artificial condition described for the plant is what the Agency considers to be BDT. While the plant may not operate this way now, the Agency has concluded that using fresh water, or other liquids low in TRS compounds, to reduce TRS emissions is technically feasible and reasonable from a cost standpoint. The Agency continues to believe that if BDT is implemented, the TRS limit of 0.016 g TRS/kg BLS can be met.

The EPA disagrees with the second commenter's statement that selection of scrubbing liquid is the only known method of modifying TRS emissions associated with SDT vent gases. The mill which they were discussing had problems with excess TRS emissions and began testing different scrubbing liquids. Initially, they had been using weak white liquor, which is known to remove some polar compounds, such as H_2S. Thus, it is not surprising that TRS emissions increased when water, and various other liquids were substituted. However, the scrubber was installed for removal of PM, not TRS. The key point is that BDT for TRS is aimed at preventing introduction of TRS to vent gases by the dissolving liquid or scrubbing medium.

Both the second and third commenters said that the ranges in their TRS monitoring data were indicative that the proposed standard cannot be met on a consistent basis. The third commenter did not submit enough information for the Agency to draw any conclusions. It is noted that the two tanks to which they referred are not subject to NSPS and the comment letter suggested that water used in the SDT's was not of the quality required by BDT. The second commenter's data showed variation in TRS concentrations for individual samples, but when the data points were averaged, as they would be for a compliance test report, the emission levels were below the proposed TRS limitations.

Two commenters object to relaxing the existing TRS standard for SDT because of one or two failures to achieve compliance. One commenter suggests an alternative of allowing exemptions based upon site-specific studies and a requirement that Best Available Control Technology be employed.

These suggestions are inconsistent with the basis of the NSPS. An emission limit must be set at such a level that any facility which employs BDT can achieve that emission level during a performance test. A facility which was employing BDT failed two performance tests. In selecting an emission limit, variability of available test data must be taken into consideration. The Agency proposed to revise the TRS standard from 0.0084 g/kg BLS to 0.016 g/kg BLS in order that all facilities using BDT can meet the TRS standard.

Lime Kilns

Five different commenters suggest the current TRS standard for lime kilns needs to be revised to reflect the results of continuous monitoring. One commenter says the monitoring data from two of its NSPS facilities indicate that the standard needs to be revised to allow for exceedance of the TRS limit 3 percent of the reporting time to allow for normal variations in operating conditions. The commenter lists four factors which can influence TRS emissions from the kiln stack: (1) Kiln firing conditions; (2) treatment of noncondensable gases; (3) source of water used at the particulate scrubber; and (4) porosity of the mud at the filter (which controls oxidation of the residual sulfide content). This commenter stated that TRS emissions associated with the first three factors are straightforward and the control options are understood, but that the control of mud porosity at the filter is not completely understood.

One commenter stated that the current TRS standard can be met when the kiln and associated systems are operating normally, but that the nature of the process is such that unavoidable irregularities which can affect TRS emissions will occur 10 percent or less of the total operating time. He says that short-term "blips" or "spikes" are adequately reckoned by the averaging time, but that a 4 percent allowance for excess emissions appears reasonable for those infrequent, medium-term TRS excursions which are beyond the control of the operators. The commenter stated he is unaware of any evidence that the use of caustic soda (to control excess emissions) is effective and/or cost effective. He also doubts that lime mud oxidation is a cost-effective technique for controlling excess TRS emissions.

One commenter has been unable to explain variations in data from a certified continuous monitoring system. The commenter stated that 12-hour averages from this particular facility range from 2 to 30 ppmv TRS and the commenter is concerned that it may not be possible to meet the 8 ppmv limit continuously.

One commenter says that as more TRS monitoring systems come on-line, there will be additional information which will be useful in determining whether or not the current standard is appropriate. The commenter suggests that EPA should evaluate available continuous monitoring data from lime kilns equipped with wet scrubbers before making any final decisions on an NSPS.

Many of the comments were prompted by the requirement that lime kilns subject to the NSPS install and operate continuous emission monitors (CEM's) to measure TRS emission by July 20, 1984. After considering the comments, the Agency determined that it would be appropriate to obtain additional data. Subsequently, the first 6 months' CEM data for all 19 lime kilns subject to the NSPS were requested along with associated operational data and design parameters for the lime kilns and lime mud washing systems. The Agency has received additional information for 14 of the 19 lime kilns subject to the NSPS. Of the 14 submitting data, 3 were judged to be using BDT and had CEM data which were accompanied by information needed to ascertain the accuracy of the certification reports. The data from these 3 facilities indicate that the NSPS can be achieved when BDT is implemented.

During the data period, one of the three mills had only one excess emission and the excursion occurred when the addition of caustic was discontinued for testing of the CEM. A second mill, which previously achieved the NSPS TRS limit a high percentage of the time through good mud washing and process contol, began using caustic in recent months. The most recent excess emission reports show no excess emissions. The Agency considers this information to be indicative that caustic addition reduces excess TRS emissions.

Approximately half of the remaining data could not be used in making a decision because either data needed to determine if the CEM's had been properly certified was missing or the information provided showed that the CEM's had histories indicative of maintenance problems. The data from the rest of the mills were suggestive of failure to follow all of the practices which constitute BDT.

In general, the mills that have employed CEM'S on lime kilns for an extended period have been the most successful in continually achieving the NSPS. The EPA believes this shows that the ability to reliably operate CEM's and use the CEM's for process control plays a central role in identifying and preventing those process variations and upsets that cause excess emissions and that such ability is learned over time. The learning time is necessary to allow the owner/operator to identify the process variables that are leading to the periods of excess emissions. These process variables and their impacts on periods of excess emissions will be specific to each mill. The industry continues to believe it is possible in some cases that, even with experience and the use of BDT, there could continue to be periods of excess emissions. Although such a possibility may not be ruled out, the Agency has not received any data which would indicate that such is the case. The Agency expects that, as the operators of these facilities learn to use their CEM's to aid in controlling their processes, the periods of excess emissions caused by process upsets should be significantly reduced when BDT is fully implemented.

Industry representatives have expressed concern that reported excess emissions may be construed as violations of the Clean Air Act. Compliance or noncompliance with the Act is determined by performance testing. A detailed description of the Agency's intended use of CEM data was previously published in the Federal Register (43 FR 7568). The overall intent of the requirement to continuously monitor TRS emissions is to provide enforcement agencies with an instrument to determine that BDT has been implemented and is being practiced.

Two comments were received concerning the lime kiln controlled with an ESP which was described in the Proposed Rules. The commenters emphasized the uniqueness of this particular facility, at which an ESP was installed to meet local and State particulate limits that are site specific, and that an exemption should be granted for this facility. One commenter requested that the NSPS TRS limit be revised to require this particular facility to meet a TRS emission limit of 20 ppmv corrected to 10 percent oxygen, on a 12-hour basis, and not to be exceeded more than 2 percent of the time on a quarterly basis. The commenter also said that the stack gases from the ESP would disperse better than those from a venturi scrubber because the gases from the ESP are approximately 100° hotter.

The Agency has reviewed information on the lime kiln which is controlled with an ESP instead of a wet scrubber. Information reviewed by the Agency suggests that this particular facility can control TRS emissions to NSPS levels by making additional improvements in process controls and by raising the temperature of the cold end of the lime kiln by 100° F. During the review, the costs of implementing BDT were examined. These costs included the costs to increase cold end temperatures, and the Agency continues to believe these costs are reasonable.

V. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a

dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [section 307(d)(7)(A)].

The effective date of this regulation is May 20, 1986. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation.

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (41 FR 42028, dated September 24, 1976) that kraft pulp mills contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT.

This review was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291 (OMB Control No. 2060-0021). Any comments from OMB to EPA and any EPA response to those comments are available for inspection at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Since it is possible that some kraft pulp mills qualify as small businesses, the impacts of the standards on small businesses were considered. None of the four criteria which would signify significant impact were met. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference, Intergovernmental relations, and Paper and paper products industry.

Dated: May 9, 1986.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 301(a), Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.280, paragraphs (a) and (b) are revised to read as follows:

§ 60.280 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in kraft pulp mills: Digester system, brown stock washer system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of this subpart are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation.

(b) Except as noted in § 60.283(a)(1)(iv), any facility under paragraph (a) of this section that commences construction or modification after September 24, 1976, is subject to the requirements of this subpart.

* * * * *

3. In § 60.281, paragraph (e) is revised to read as follows:

§ 60.281 Definitions.

* * * * *

(e) "Brown stock washer system" means brown stock washers and associated knotters, vacuum pumps, and filtrate tanks used to wash the pulp following the digestion system. Diffusion washers are excluded from this definition.

* * * * *

4. In § 60.283, the introductory text of paragraph (a)(1) is revised and paragraphs (a)(1)(iv), (a)(1)(v), and (a)(4) are revised to read as indicated below:

§ 60.283 Standard for total reduced sulfur (TRS).

(a) * * *

(1) From any digester system, brown stock washer system, multiple-effect evaporator system, or condensate stripper system any gases which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to 10 percent oxygen, unless the following conditions are met:

* * * * *

(iv) It has been demonstrated to the Administrator's satisfaction by the owner or operator that incinerating the exhaust gases from a new, modified, or reconstructed brown stock washer system is technologically or economically unfeasible. Any exempt system will become subject to the provisions of this subpart if the facility is changed so that the gases can be incinerated.

(v) The gases from the digester system, brown stock washer system, or condensate stripper system are controlled by a means other than combustion. In this case, this system shall not discharge any gases to the atmosphere which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to the actual oxygen content of the untreated gas stream.

* * * * *

(4) From any smelt dissolving tank any gases which contain TRS in excess

of 0.016 g/kg black liquor solids as H_2S (0.033 lb/ton black liquor solids as H_2S).

* * * * *

5. In § 60.284, both the introductory text of paragraph (a)(2) and (b)(1) are revised to read as indicated below and paragraph (c)(4) is added. Additionally, the introductory text of paragraph (d) is revised, paragraph (d)(3) is revised, and paragraph (d)(3)(ii) is revised and add OMB number at the end of the section to read as follows:

§ 60.284 Monitoring of emissions and operations.

(a) * * *

(2) Continuous monitoring systems to monitor and record the concentration of TRS emissions on a dry basis and the percent of oxygen by volume on a dry basis in the gases discharged into the atmosphere from any lime kiln, recovery furnace, digester system, brown stock washer system, multiple-effect evaporator system, or condensate stripper system, except where the provisions of § 60.283(a)(1) (iii) or (iv) apply. These systems shall be located downstream of the control device(s) and the spans of these continuous monitoring system(s) shall be set:

* * * * *

(b) * * *

(1) For any incinerator, a monitoring device which measures and records the combustion temperature at the point of incineration of effluent gases which are emitted from any digester system, brown stock washer system, multiple-effect evaporator system, black liquor oxidation system, or condensate stripper system where the provisions of § 60.283(a)(1)(iii) apply. The monitoring device is to be certified by the manufacturer to be accurate within ±1 percent of the temperature being measured.

* * * * *

(c) * * *

(4) Record once per shift measurements obtained from the continuous monitoring devices installed under paragraph (b)(2) of this section.

* * * * *

(d) For the purpose of reports required under § 60.7(c), any owner or operator subject to the provisions of this subpart shall report semiannually periods of excess emissions as follows:

* * * * *

(3) For emissions from any digester system, brown stock washer system, multiple-effect evaporator system, or condensate stripper system periods of excess emissions are:

(i) * * *

(ii) All periods in excess of 5 minutes and their duration during which the combustion temperature at the point of incineration is less than 1200 °F, where the provisions of § 60.283(a)(1)(iii) apply.

* * * * *

(Reporting and recordkeeping requirements are approved by the Office of Management and Budget under Control No. 2060-0021)

[FR Doc. 86-11293 Filed 5-19-86; 8:45 am]
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federal register

Tuesday
May 20, 1986

Part IV

Department of Education

Rehabilitative Long-term Training Program; Funding Priorities; Notice

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DEPART

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Rehabilitation Long-Term Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Year 1986.

SUMMARY: The Secretary proposes an annual funding priority for long-term training grants in the field of Rehabilitation Workshop and Facility Personnel in order to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1986. The Secretary will give an absolute preference to applications that meet the terms of the proposed priority.

DATE: Comments must be received on or before May 20, 1986.

ADDRESS: All written comments and suggestions should be sent to Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3324–M/S 2312), Washington, DC 20202.

FOR FURTHER INFORMATION: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1332.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-term Training Program is to support projects designed to train personnel for employment in public and private agencies involved in the rehabilitation of physically and mentally disabled individuals, especially those who are severely disabled.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to long-term training applications submitted in the field of Rehabilitation Workshop and Facility Personnel in fiscal year 1986 that respond to the priority described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priority.

All applications submitted in the long-term training field of Rehabilitation Workshop and Facility Personnel must address the training of personnel who are employed by and provide direct rehabilitation services in vocationally oriented workshops and facilities. The training must focus on the development and upgrading of skills of such categorical types of workshop and facility personnel as vocational instructors, production supervisors and resident supervisors. The training must develop and upgrade the skills of such direct service delivery personnel to use new and innovative methods and techniques in the vocational training of physically and mentally disabled individuals and their placement into competitive employment. The training must increase the skills of those trained to provide transitional employment and supported employment services to disabled individuals.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priority. All comments submitted in response to the proposed priority will be available for public inspection, during and after the comment period, in Room 3324, Mary E. Switzer Building, 330 C Street, SW, Washington, DC between the hours of 8:30 a.m. and 4:00 p.m. (local time), Monday through Friday of each week, except Federal holidays.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: May 16, 1986.

William J. Bennett,

Secretary of Education.

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May 20, 1986

Part V

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1476

Special Disaster Payments for the 1983–1985 Crops of Rice, Upland Cotton, Feed Grains, and Wheat; Proposed Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1478

Special Disaster Payments for the 1983–1985 Crops of Rice, Upland Cotton, Feed Grains, and Wheat

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations found at 7 CFR Part 1478 applicable to the Commodity Credit Corporation's ("CCC") established criteria with respect to special disaster payments which may be made available to eligible producers of the 1983 through 1985 crops of rice, upland cotton, feed grains, and wheat.

DATE: Comments must be received on or before May 27, 1986 in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be available for further inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1478) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35.

This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 by Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

On August 15, 1985, the United States Court of Appeals for the Eighth Circuit issued an opinion in *The State of Iowa, et al.* v. *John R. Block, Secretary of Agriculture, et al.*, 771 F.2d 347, (8th Cir. 1985) which directed the Secretary of Agriculture to take certain actions with respect to discretionary disaster payments authorized to be made to producers participating in Commodity Credit Corporation ("CCC") price support and production adjustment programs. The case was remanded to the United District Court for the Southern District of Iowa and, on January 27, 1986, the District Court issued an order and judgment remanding " . . . this matter to the Secretary of Agriculture to promulgate and implement regulations consistent with the intent of Congress in enacting the Special Disaster Payment Program ("SDPP"), 7 U.S.C. 1444d(b)(2)(1982)." This proposed rule would establish the criteria for determining when CCC would make such discretionary disaster payments to eligible producers participating in the CCC price support and production adjustment programs established for the 1983 through 1985 crops.

Proposed Rule

The statutory authorization for this proposed rule is found at sections 101(i)(3)(D), 103(g)(4)(D), 105B(b)(2)(D), and 107B(b)(2)(D) of the Agricultural Act of 1949, as amended (the "1949 Act") (7 U.S.C. 1444(i)(3)(D), 1444(g)(4)(D), 1444d(b)(2)(D), and 1444b–1(b)(2)(D)), for rice, upland cotton, feed grains, and wheat, respectively. These sections provide:

Notwithstanding the provisions of subparagraph (C) of this paragraph, the Secretary may make disaster payments to producers on a farm under this paragraph whenever the Secretary determines that—

(i) as the result of drought, flood, or other natural disaster, or other condition beyond the control of the producers, producers on a farm have suffered substantial losses of production either from being prevented from planting [rice, upland cotton, feed grain, or wheat,] or other nonconserving crop or from reduced yields, and that such losses have created an economic emergency for the producers;

(ii) Federal crop insurance indemnity payments and other forms of assistance made available by the Federal Government to such producers for such losses are insufficient to alleviate such economic emergency, or no crop insurance covered the loss because of transitional problems attendant to the Federal crop insurance program; and

(iii) additional assistance must be made available to such producers to alleviate the economic emergency.

The Secretary may make such adjustments in the amount of payments made available under this subparagraph with respect to individual farms so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

The proposed rule provides that these payments would be made only to producers who are in a county in which a natural disaster or other similar condition has created an economic emergency and such producers have also incurred an economic emergency as the result of the natural disaster or similar occurrence. Section 1478.120(b) of the proposed rule sets forth definitions applicable to these discretionary disaster payments. A "natural disaster or other condition beyond the control of the producers" ("natural disaster") would be defined as an adverse weather condition or other similar occurrence which results in at least a 60 percent reduction in the yield of the applicable program crop on the farm and throughout a county, as applicable. An "economic emergency" would be defined as a loss of 60 percent or more of the value of all crop production, including hay and pasture on a farm and throughout a county, as applicable. "Insufficient assistance to alleviate the economic emergency"

would be defined as a situation in which an economic loss of 60 percent or more exists after taking into consideration the value of agricultural commodities produced and Federal assistance made available to producers on a farm and to producers throughout a county, as applicable.

Section 1476.123 of the proposed rule provides that an economic emergency would be determined to exist on a farm and in a county, as applicable, when a natural disaster has created an economic loss of 60 percent or more. By providing that such discretionary disaster payments would be made only after the occurrence of an economic emergency, a determination of economic necessity would not be subject solely to noneconomic events. For example, reductions in program crop yields due to seasonal fluctuations in productivity of 20 to 30 percent or more are not uncommon. Accordingly, the proposed rule provides for making a determination with respect to the availability of these payments by considering the crop yields produced in a county and on individual farms as well as the prices received for these crops and all forms of Federal assistance made available as the result of the natural disaster.

Section 1476.123 of the proposed rule also sets forth the criteria to be used to determine whether an economic emergency exists on a farm and in a county as the result of a natural disaster. Such a determination would be based upon a determination of the agricultural economic base of the farm and county in a normal year as compared to the year in which the natural disaster occurred. Accordingly, a normal year's and disaster year's yields, crop acreages, and price data for agricultural commodities would be determined by ASCS based upon, to the extent practicable, data furnished by the Statistical Reporting Service ("SRS"), USDA. However, if available, a disaster year's yield and prices would be the actual yield of the farm and the higher of the actual prices received by the producer or the average price received by producers in the county. A situation in which insufficient assistance to alleviate an economic emergency would be determined to exist in the county if the disaster year's "gross income" (crop yields times prices of the agricultural commodities produced in the county, plus Federal assistance made available in the county) is 40 percent or less than a normal year's "gross income" (crop yields times prices of agricultural commodities produced in the county). Section 1471.120 of the proposed rule provides that all forms of Federal assistance made available to producers shall be considered in making determinations of economic emergencies in a county or on a farm.

The unlimited availability of discretionary disaster payments would severely jeopardize the Federal Crop Insurance Corporation ("CCC") insurance program since producers would not have an incentive to purchase such insurance if "free crop insurance" in the form of discretionary disaster payments is available. Such a result would affect adversely the actuarial soundness of the FCIC insurance program. Accordingly, in order to assure the viability of an actuarially sound FCIC crop insurance program, while providing adequate assistance to producers who have been subjected to natural disasters which have created an economic situation for which FCIC insurance and other forms of Federal assistance are insufficient, § 1476.124 of the proposed rule provides that producers must have crop insurance on at least a portion of the affected program crop acreage if crop insurance is available to the producer. Similarly, § 1476.123 includes the availability of crop insurance as one of the criteria used to determine if an economic emergency exists.

Section 1471.122 of the proposed rule provides that with respect to the determination of the availability of the crop insurance CCC shall consider insurance offered at the highest indemnity for which Federal subsidation of insurance policy premiums exist. Thus, to the benefit of the producer, any insurance indemnities in excess of this amount will not be included in the determination of an economic loss which may have been incurred by a producer.

The respective provisions of the 1949 Act provide that these discretionary disaster payments be made in a manner "so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved." In order to assure the equitable allotment of these discretionary disaster payments among eligible producers, it is proposed that such producers must be in a county which the Secretary has determined has suffered an economic emergency as the result of a natural disaster. As noted by the Court of Appeals, the legislative history of these payments also speaks in terms of " . . . the *area* affected by the disaster . . . " (emphasis supplied) *See* S.Rep. No. 128, 97th Cong., 1st Sess. 78, *reprinted in* 1981 Code Long. Ad. News 1965, 2042–43.

The determination that discretionary disaster payments would be made only in a county in which an economic emergency as the result of a natural disaster has occurred also is consistent with the historical administration of virtually all CCC price support and production adjustment programs. These CCC programs are administered at the local level by producer-elected members of a county Agricultural Stabilization and Conservation ("ASC") committee which are established in accordance with the Soil Conservation and Domestic Allotment Act, as amended. In addition, CCC emergency haying and grazing and emergency feed and livestock programs are established on the occurrence of a natural disaster in a county.

Similarly, FCIC insurance rates and indemnity levels also are based upon the historical production of a commodity in a county. Further, Farmers Home Administration ("FmHA") emergency and disaster loans are made available to producers based upon the financial condition existing in a county as well as on a farm. Since CCC, FCIC, and FmHA are the primary agencies which provide assistance to producers, it is proposed that these discretionary disaster payments also be administered on a county basis in a manner similar to current practices.

These discretionary disaster payments are a benefit, such as deficiency, diversion and mandatory disaster payments and nonrecourse price support loans, which CCC makes available to producers who are otherwise eligible to receive benefits as a result of participation in the respective CCC price support and production adjustment programs. Section 1476.124 of the proposed rule provides that a producer in a county which has met the economic emergency requirements would be eligible to apply for these discretionary disaster payments if the producer was participating in, and in compliance with, the commodity price support and production adjustment programs set forth at 7 CFR Parts 713 and 770 which were in effect for the applicable crop years 1983–1985.

Section 1476.125 provides that if an eligible producer has experienced an economic emergency, discretionary disaster payments would be made to the producer. Section 1476.126 would provide that the payment rate for these discretionary disaster payments would be based upon the same rate established for mandatory prevented planting and reduced yield disaster payments.

Accordingly, Part 1478 of Title 7 of the Code of Federal Regulations is amended by adding a new subpart as follows:

PART 1478—[AMENDED]

Subpart—Special Disaster Payments for the 1983 Crops of Rice, Upland Cotton, Feed Grains, and Wheat

Sec.
1478.120 Special disaster payments.
1478.121 Availability of special disaster payments in a county.
1478.122 Designation by the Secretary of Agriculture.
1478.123 Determination of economic emergency.
1478.124 Producer eligibility.
1478.125 Determination of economic emergency for a producer.
1478.126 Special disaster payments to producers.
1478.127 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714b and 714c); Sec 101, 103, 105B, and 107B of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 85 Stat. 1294, as amended, 1242 as amended (7 U.S.C. 1441, 1444, 1444d, and 1445b–1).

§ 1478.120 Special disaster payments.

(a) If special disaster payments are available to producers participating in the 1983 through 1985 price support and production adjustment programs authorized by this title, in accordance with Part 795 of this title, the total amount of disaster payments which a person shall be entitled to receive annually under the rice, upland cotton, corn, grain sorghum, oats, barley, and wheat programs shall not exceed $100,000.

(b) For purposes of §§ 1478.120–1478.127:

(1) "Economic emergency" means a loss of 60 percent or more of the value of all crop production, including hay and pasture, of producers on the farm and in the county, respectively;

(2) "Insufficient assistance to alleviate the economic emergency" means an economic loss of 60 percent or more on the farm and in the county, respectively, after taking into consideration:

(i) The value of agricultural commodities produced on the farm and in the county, respectively, during the applicable crop year; and

(ii) Any Federal assistance provided to producers on the farm and in the county, respectively, including, but not limited to, the value of any Federal crop insurance indemnity coverage available to producers in the county, land diversion payments, deficiency payments, and noncash payments including in kind compensation; and

(3) "Natural disaster or other conditions beyond the control of the producers" means an occurence which results in a yield reduction of at least 60 percent as the result of adverse weather or other similar condition.

(c) References to the Administrator and the Secretary include such individual and any individual who has been delegated the authority to perform the duties of the Administrator and Secretary in implementing the provisions of this subpart.

§ 1478.121 Availability of special disaster payments in a county.

(a) Disaster payments may be made to producers on a farm when the Administrator determines that:

(1) As the result of drought, flood, or other natural disaster, or other conditions beyond the control of the producers in a county, such producers have suffered substantial losses of production for the crop year:

(i) Because the producers were prevented from planting applicable program crops or other nonconserving crops; or

(ii) Due to reduced program crop yields.

(2) Such losses have created an economic emergency in the county;

(3) Federal crop insurance indemnity payments and other forms of assistance made available by the Federal Government to producers in the county for such losses provided insufficient assistance to alleviate the economic emergency; and

(4) In accordance with paragraph (b) of this section, additional assistance must be made available to such producers to alleviate the economic emergency in the county.

(b) Producers in a county shall be eligible for payments made in accordance with §§ 1478.124–1478.126 if:

(1) A natural disaster or other condition beyond the control of the producers in the county has substantially and adversely affected producers in the county;

(2) A written request from the State Governor for a special disaster designation has been received by the Secretary within 90 days of the last day of the occurrence of the natural disaster; and

(3) The Administrator determines that unusual and adverse weather conditions or other causes beyond the control of producers, excluding flooding within flood plains or in flowage easement areas, have resulted in substantial crop production losses resulting in an economic emergency.

§ 1478.122 Designation by the Secretary of Agriculture.

(a) The Secretary of Agriculture may designate a county as a county eligible to receive special disaster payments when the requirements of § 1478.121 are met.

(b) Upon receipt of the Governor's request made in accordance with § 1478.121(b)(2), the Governor's request shall be acknowledged, and if any delay is anticipated in processing the request, the acknowledgment shall state the reasons for such delay and when action will be taken.

(c) The State Executive Director, ASCS, in the role of the Food and Agriculture Council ("FAC") Vice Chairperson, Emergency Programs will immediately:

(1) Notify the FAC to prepare a Damage Assessment Report ("DAR") in accordance with the Emergency Operations Handbook ("EOH") for the requested county; and

(2) Review each DAR and forward such DAR to the Deputy Administrator with a transmittal memorandum containing views, comments, and recommendations concerning the need or lack of need for special disaster payments to be made available.

(d) The local FAC Chairperson of an affected county shall forward DAR's to the FAC, Vice Chairperson, Emergency Programs. The DAR's shall be completed in accordance with instructions issued by the Deputy Administrator.

(e) Reports submitted in accordance with this section and any other evidence determined by the Administrator to be relevant shall be used to determine whether the requirements of § 1478.123 have been met. Such a determination shall take into consideration, but not be limited to, the value of all crops, including hay and pasture, in the affected county, the value of crop insurance available in the county (determined by multiplying the greater of (1) the acreage planted for harvest, or if a production adjustment program is in effect for the commodity, (2) the total permitted acreage for the commodity for the county, by the highest indemnity available for each commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act), and other Federal assistance available in the county.

(f) The Manager of the Federal Crop Insurance Corporation shall determine whether crop insurance offered under the Federal Crop Insurance Act is available to producers in the affected county and whether the coverage afforded by the insurance which is

available is adequate to indemnify the producers in such county for the damage incurred as a result of the disaster.

(g) The Administrator will review DAR's, all other pertinent data, the State Executive Director's recommendations, and the determinations made in accordance with paragraph (f) of this section. Based upon this data, a determination of whether an economic emergency exists shall be made in accordance with § 1476.123.

§ 1476.123 Determination of economic emergency.

(a) In determining whether an economic emergency exists in a county, the total value of all crops, including hay and pasture, grown in the county shall be taken into consideration. The total value of such crops shall be determined by converting yield losses into dollar losses in the manner specified in this section. In making such a determination, the following criteria shall be used:

(1) The value of crops produced in the county during normal years shall be determined by multiplying a normal year's yield for each commodity by a normal year's price for each such commodity.

(2) The normal year's yield for each commodity shall be the average yield in the county for such commodity based upon each of the 5 years immediately preceding the year in which the disaster occurred.

(3) The normal year's price for each commodity shall be the average of the market prices for each such commodity based upon the 3 years immediately preceding the year in which the disaster occurred.

(4) Yields, crop acreage, and price data used to establish the normal year's production shall be determined by the Administrator and, to the extent practicable, shall be obtained from the Statistical Reporting Service ("SRS"), USDA.

(5) Yields, crop acreages, and price data used to establish the disaster year's production shall be determined by the Administrator and may be obtained from the DAR's submitted in accordance with § 1476.122 or, if available, the actual production data for such year as determined by SRS except as otherwise provided in §§ 1476.120–1476.126.

(b) (1) The gross income for each commodity for the year in which the disaster occurred shall be determined by multiplying the total acres of the crop of each commodity planted in the county in the disaster year by the price of the commodity by the disaster year's yield for the crop. The gross income for the county will be the total of the individual commodity computations.

(2) The gross income for each commodity for the normal year shall be determined by multiplying the total acres planted and intended to be planted in the county in the disaster year by the price of the commodity by the normal year's yield for the crop. The gross income for the county will be the total of the individual commodity computations.

(3) A gross income gain will exclude the county from consideration. The gross income loss experienced in the county in the disaster year shall be determined by subtracting the disaster year's gross income from the normal year's gross income.

(4) The gross income loss determined in accordance with paragraph (b)(3) of this section shall be adjusted by the following:

(i) The total value of the Federal crop insurance available in the county (determined by multiplying the greater of (A) the acreage planted for harvest or, if a production adjustment program is in effect for the commodity, (B) the total permitted acreage for the commodity for the county, by the highest indemnity available for the commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act). The total FCIC adjustment will be the total for all commodities for which crop insurance is available in the county;

(ii) The value of all noncash payments, including in kind compensation, provided in the county;

(iii) The total value of Farmers Home Administration loans made available for the same disaster losses of crop production;

(iv) The value of any special emergency haying or grazing of acreage diverted to the acreage conservation reserve under the commodity production adjustment programs, or acreage subject to a contract under the Water Bank Program;

(v) The value of any emergency livestock feed made available in the county;

(vi) The value of any land diversion payments and deficiency payments made with respect to the crop; and

(vii) The value of any other forms of assistance made available by the Federal Government to such producers in a county for the same disaster losses of crop production.

(c) To determine whether a sufficient percentage of loss exists to constitute insufficient assistance to alleviate the economic emergency in the county, as defined in § 1476.120 to make a county eligible for special disaster payments, the adjusted gross income loss shall be divided by the normal year's gross income.

§ 1476.124 Producer eligibility.

(a) If the Secretary determines that the county has met the conditions set forth in §§ 1476.122 and 1476.123, the county committee may be authorized to make payments available to only those producers on a farm for which the operator of the farm:

(1) Submits a Form ASCS–574, Application for Disaster Credit, in the case of a reduced yield application or a Form ASCS–574–1, Prevented Planting Claim, in the case of a prevented planting application, in accordance with instructions issued by the Deputy Administrator;

(2) Submits a report in accordance with the provisions in § 1476.125;

(3) Meets the economic emergency requirements in § 1476.125; and

(4) Applies for payment on a form prescribed by the Deputy Administrator.

(b) Special disaster payments are authorized to be made to producers of wheat, corn, grain sorghum, oats, barley, upland cotton, and rice only if:

(1) For a crop of a commodity for which a production adjustment program has been established, such producer is in compliance with the regulations set forth as parts 713 and 770 of this title.

(2) The producer had a Federal Crop Insurance policy in effect on at least a part of the affected program crop acreage if such insurance is available for purchase by producers in the county; and

(3) The operator of the farm has complied with the requirements in paragraph (a) of this section; and

(4) The producer submits a report of any indemnity payments received for crops produced on the farm, and any other assistance made available by the Federal Government to such producers for such losses.

(c) In addition to the requirements of paragraph (b) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or other nonconserving crop, or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity, because of a drought, flood, other natural disaster or other condition beyond the control of the producers.

§ 1476.125 Determination of economic emergency for a producer.

(a) In determining whether a producer has suffered a loss which constitutes an

economic emergency, the total value of all crops produced on the farm, including hay and pasture, will be taken into consideration. The total value of such crops shall be determined by converting yield losses into dollar losses in accordance with this section.

(b)(1) The value of crops produced on the farm during normal years shall be determined by multiplying a normal year's yield for each commodity by a normal year's price for each such commodity.

(i) The normal year's yield for each commodity shall be the farm program payment yield established for program crops and, with respect to other crops, the yield established by the county committee in accordance with instructions issued by the Deputy Administrator taking into consideration actual production on the farm in the five years immediately preceding the disaster year and the average yields of such crops in the county for such years.

(ii) The normal year's price for each commodity shall be the average of the market prices for each such commodity based upon the 3 years immediately preceding the year in which the disaster occurred.

(2) The value of production from any acreage for the disaster year shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production.

(ii) The production from acreage which is harvested shall be the actual production of the farm. The farm program payment yield established in accordance with § 713.6 of this title shall be used with respect to any acreage for which production cannot be determined. If the county committee determines that the acreage of a farm was affected by a natural disaster, the farm yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield established in accordance with § 713.6 or the actual yield from the harvested acreage of the crop.

(iii) Producers shall report the production and disposition of all crops produced on the farm, including hay and pasture, in accordance with instructions issued by the Deputy Administrator.

(A) If there has been a disposition of crop production through commercial channels, the producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include such items as the original or copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries.

(B) If there has been disposition of crop production other than through commercial channels, the producer must furnish such documentary evidence as the county committee determines to be necessary in order to verify the information provided on the report. If the producer utilized any of the crops produced on the farm as feed, the producer must provide the number and type of livestock fed, the duration of the feeding period, the type of feed, and other documentation to substantiate the production on the farm in the disaster year.

(iv) Prices of commodities used to establish the disaster year's production will be the higher of the price the producer actually received for the crop or the average of the prices received by producers in the county as determined in accordance with instructions issued by the Deputy Administrator.

(3) (i) The gross income for each commodity for the year in which the disaster occurred shall be determined by multiplying the total acres of each commodity planted or intended to be planted which were affected by the disaster by the price of the commodity for the disaster year by the disaster year's yield for each crop. The gross income for the farm will be the total of the individual commodity components.

(ii) The gross income for each commodity in the normal year shall be determined by multiplying the total acres planted and intended to be planted in the county in the disaster year by the price of the commodity by the normal year's yield for the commodity. The gross income for the farm will be the total of the individual commodity components.

(iii) A gross income gain will exclude the producer from consideration. The gross income loss experienced by the producers on the farm shall be determined by subtracting the disaster year gross income from the normal year's gross income.

(iv) The gross income loss determined in accordance with paragraph (a)(3)(iii) of this section shall be adjusted to the following:

(A) The total value of the Federal crop insurance available for the farm (determined by multiplying the greater of (i) the acreage planted for harvest or, if a production adjustment program is in effect for the commodity, (ii) the total permitted acreage for the commodity on the farm, by the highest indemnity available for the commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act). The total FCIC adjustment will be the total for all commodities for which crop insurance is available on the farm whether or not the producer elected to purchase such crop;

(B) The value of all noncash payments, including in kind payments, received by such producer;

(C) The total value of Farmers Home Administration loans made available for the same disaster losses of crop production;

(D) The value of any special emergency haying or grazing of acreage diverted to the Acreage Conservation Reserve under the commodity production adjustment programs, or acreage subject to a contract under the Water Bank Program;

(E) The value of emergency livestock feed made available to such producers;

(F) The value of any land diversion payments and deficiency payments made with respect to the crop; and

(G) The value of any other forms of assistance made available by the Federal Government to the producer for the same disaster losses of crop production.

§ 1476.125 Special disaster payments to producers.

(a) *Applicability.* Special disaster payments may be made to eligible producers as soon as practicable after the extent of the crop loss is determined and payment is approved. Special disaster payments shall not exceed the amount necessary to alleviate the economic emergency of the producer on the farm, as defined in § 1476.120.

(b) *Prevented planting.* Producers who were prevented from planting a program crop shall receive special disaster payments in accordance with this section.

(1) *Payment rate.* The prevented payment rate is one-third of the established (target) price as provided for in § 713.105.

(2) *Acreage Eligible for Payment.* Acreage in flood plans or flowage easement areas is ineligible acreage for special disaster payment purposes. The acreage eligible for payment shall equal the smaller of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster or other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the

crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment Computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as determined in accordance with § 713.6 by the prevented planting payment rate.

(c) *Reduced Yield.* Producers on farms on which the yield of the program crop planted for harvest is reduced shall receive payments in accordance with this paragraph.

(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided for in § 713.106.

(2) *Payment Computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the result of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

§ 1476.127 OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1476) have been approved by the office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Signed at Washington, DC, on May 16, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-11460 Filed 5-16-86; 5:14 pm]

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S. 1818 / Pub. L. 99–303

To amend section 1153 of title 18, United States Code, to make felonious sexual molestation of a minor an offense within Indian country. (May 15, 1986; 100 Stat. 438; 1 page) Price: $1.00

S.J. Res. 289 / Pub. L. 99–304

To designate 1988 as the "Year of New Sweden" and to recognize the New Sweden 1988 American Committee. (May 15, 1986; 100 Stat. 439; 2 pages) Price: $1.00

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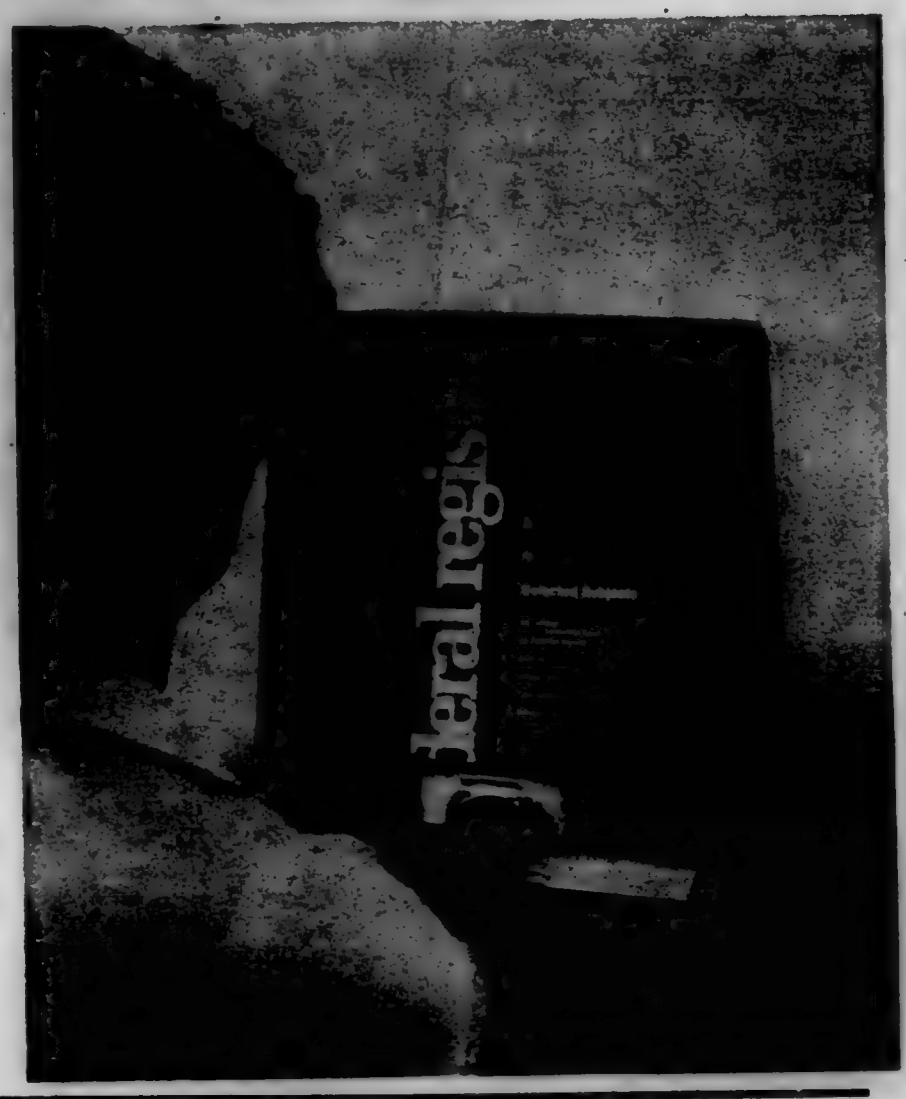

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Government Employees
Personnel Management Office
Government Procurement
Defense Department
Health Insurance
Personnel Management Office

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Presidential Documents

Title 3—

The President

Proclamation 5482 of May 19, 1986

World Trade Week, 1986

By the President of the United States of America

A Proclamation

Each year, World Trade Week provides an opportunity to celebrate the importance of international trade to our present prosperity and our future prospects. Indeed, it benefits us and all the nations with whom we do business.

American business initiative and ingenuity have never stopped at our borders. Since the birth of our Nation, we have been a dynamic force in international trade. That trade has helped us build the most productive economy in the history of mankind.

Today, America's prosperity depends as never before on our ability to compete in international markets. Our exports make a major contribution to domestic growth and employment. The United States is today the world's leading exporter. We export nearly 16 percent more goods to the world than our nearest competitor, yet we export far less of our total production than many other trading nations. We need to increase our exports to further strengthen our economy.

American companies need the same free and fair access to foreign markets that the United States offers to its trading partners. My Administration has stepped up its efforts to counter unfair trade practices and to open foreign markets that have raised barriers to American products. We will continue to do so.

Today, we are preparing for a new round of multilateral trade negotiations. Through those negotiations we will continue to press for open markets for the products of our manufacturing firms. We will also press for greater market access for the products of America's farms and the products of our fast-growing service industries.

In multilateral negotiations, and at home, we will continue to resist proposals for protectionist measures for the simple reason, proved by history and bitter experience, that they just do not work.

Export expansion also requires a sound, stable dollar and reliable exchange rates around the world. We have already achieved a great deal through our efforts to coordinate economic and monetary policies with our major trading partners. Upward revaluations of foreign currencies against the dollar are making American products more competitive around the world. We are continuing our policy discussions with America's major trading partners to enhance America's trading opportunities.

Government can only set the stage for increased trading. It is the job of American private enterprise to make trade grow. Over the past year, government actions have vastly improved the climate for trade. Aggressive exporters in our business community are calling today's trading climate an opportunity for a "renaissance in American competitiveness." Translating that golden opportunity into a reality depends upon all of America's businesses.

Given fair competitive conditions, American industry and labor can and will meet this challenge with renewed determination—reaching out to fulfill our potential as a great exporting nation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning May 18, 1986, as World Trade Week. I invite the people of the United States to join in appropriate observances to reaffirm the enormous potential of international trade for creating jobs and stimulating economic activity here while it helps to generate prosperity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11573
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VOL 51 ISS 98 MY 21 1986 UMI

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations governing the submission and adjudication of job-grading appeals under the Federal Wage System. These revisions will correct erroneous information in current regulations regarding available avenues of appeal. These revisions are the result of a Merit Systems Protection Board (MSPB) decision clarifying the job-grading appeals adjudication authority.

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Lee Hall, (202) 632-7830.

SUPPLEMENTARY INFORMATION: Notice of the proposed regulation changes governing the submission and adjudication of job-grading appeals under the Federal Wage System was published on September 16, 1985 (50 FR 37537). The public comment period ended November 15, 1985. We received two timely written comments—one from an employee organization and one from an individual. Other than several editorial changes, our proposed rules were not changed as a consequence of the issues raised by these comments.

1. *Concern was expressed that deletion of the reference to 5 CFR Part 532 would confuse employees and managers regarding the right of appeal to MSPB for actions which do not comport with law. It was suggested that further explanation be provided concerning appeals to MSPB.* We have revised § 532.701 to emphasize that the filing of a job-grading appeal does not negate any other employee appeal or grievance rights. We will further amplify an employee's appeal rights to MSPB in our guidance material published in FPM Supplement 532–1.

2. *A question was raised regarding the need to retain the 15-calendar day requirement for filing an appeal in order to be entitled to retroactive corrective action under § 532.703(b)(3). This was believed to be unnecessary now that grade and pay retention applies to nearly everyone.* The 15-calendar day requirement is retained to protect the entitlement to retroactive corrective action for employees who are not eligible for grade or pay retention.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Job-grading appeals.

U.S. Office of Personnel Management.
Constance Horner,
Director.

PART 532—PREVAILING RATE SYSTEMS

Accordingly, OPM is amending 5 CFR Part 532 as follows:

1. The authority citation for Part 532 is revised as set forth below and the authority citation following § 532.707 is removed:

Authority: 5 U.S.C. 5343, 5346; Section 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. Sections 532.701 and 532.703(b)(3) and (b)(8) are revised to read as follows:

§ 532.701 General.

A prevailing rate employee may at any time appeal the occupational series, grade, or title to which the employee's job is assigned, but may not appeal under this subpart the standards established for the job, nor other matters such as the accuracy of the job description, the rate of pay, or the propriety of a wage schedule rate. The filing of a job-grading appeal does not negate any other appeal or grievance rights which may be available under applicable law, rule, regulation, or negotiated agreement.

§ 532.703 Agency review.

* * * * *

(b) * * *

(3) An application may be filed at any time. However, when the application involves a downgrading or other job-grading action which resulted in a reduction in grade or loss or pay, in order to be entitled to retroactive corrective action, an employee must request a review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade.

* * * * *

(8) When an employee applies for a review of a downgrading or other job-grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job-grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted in accordance with paragraph (b)(3) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

* * * * *

3. Section 532.705(d) is revised to read as follows:

§ 532.705 Appeal to the Office of Personnel Management.

* * * * *

(d) The Office of Personnel Management shall notify the employee and the agency in writing of its decision. The effective date of a change in the series, title and grade of a job directed by the Office of Personnel Management shall be specified in the decision of the Office of Personnel Management, computed from the date the employee filed the application with the agency, and determined under § 532.703(b)(10). However, when the decision will result in a downgrading or other job-grading

action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation.

* * * * *

4. Also in § 532.705, the introductory text of paragraph (g) is revised to read as follows:

* * * * *

(g) The Director of the Office of Personnel Management may, at his or her discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

* * * * *

[FR Doc. 86-11470 Filed 5-20-86; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing revised regulations to improve the administrative process used by the Federal Employees Health Benefits Program (FEHBP) to resolve disputed health insurance claims. These regulations will strengthen OPM's control over the disputed claims process and will result in more efficient plan and OPM reviews.

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-0998.

SUPPLEMENTARY INFORMATION: On December 26, 1984, OPM published proposed rules in the **Federal Register** [49 FR 50404] with a request for comments from interested parties before publication as final regulations. OPM received eight comments, two from Government agencies, one from an FEHBP plan, one from an association representing retired Federal employees, one from an association of nurses, one from an association of Federal health organizations, and two from private individuals. The responses were in favor of an improved administrative process for resolving disputed claims and several offered suggestions concerning specific areas of the review process.

5 CFR 890.105

One comment concerned the change in the section heading for 5 CFR § 890.105 from "Review of claim for payment or service" to "Filing claims for payment or service." The commenter prefers the original title to the new one. While either title would be acceptable, we favor casting the title in terms of the action precipitating carrier/OPM review, that is, the enrollee's filing of a claim, request for reconsideration, and/or request for review by OPM.

Paragraph 890.105(b)

One comment concerned the timeframe for enrollees to provide additional information requested by the plan (60 days). The commenter believes that the regulations should provide for an extension of this timeframe if the claimant can show good cause for exceeding the time limit. We agree and have added a provision in the regulations which permits an extension of the timeframe if a compelling cause can be shown for doing so [890.105(b)(4)].

Paragraph 890.105(c)

One comment concerned the procedure for requesting reconsideration of a denied claim [§ 890.105(c)(1)]. The provision requires the enrollee to make the request in writing and give the reason he or she believes the claim should not have been denied. The respondent is concerned that the request for review may be rejected if the enrollee does not adequately explain why the claim should have been paid. The section referenced pertains to plan review, not review by OPM, as noted by the commenter. The provision in question has existed for some time and our experience shows that most enrollees are able to communicate why they think a claim should have been honored. Neither the plan nor OPM denies claims solely because they are inadequately explained. The provision is intended as procedural guidance for the enrollee and does not require denial of a claim if the enrollee cannot explain why he or she believes the claim should have been paid.

Two comments concerned the requirement that the enrollee's request for OPM review be received by OPM within 90 days after the date of the plan's reaffirmatiof of the original denial [890.105(c)(3)]. One respondent believes that a 90-day period is too short and suggests that the 90-day period begin upon receipt of the notice by the enrollee rather than from the date of the plan's notice to the enrollee that the denial was affirmed. The other respondent believes that the regulations should provide for an extension of the timeframe if the claimant can show good cause for exceeding the time limit. While we believe the proposed 90-day timeframe allows sufficient time for the enrollee to submit a request for review to OPM, we acknowledge that unexpected delays may occur. Consequently, we have added a provision which allows OPM to extend the time limit for a request for OPM review when the enrollee can prove that circumstances beyond his or her control prevented timely submission of the request [§ 890.105(d)(1)].

Paragraph 890.105(d)

With respect to procedures for requesting OPM review, one respondent stated that the 120-day timeframe is ambiguous [§ 890.105(d)(1)(ii)]. Minor editorial changes made to the final regulation respond to this concern. The countdown on the 120-day opportunity for seeking OPM review begins with the ". . . date of the enrollee's timely request for reconsideration by the plan. . . ." Absent regulatory requirements governing mailing procedure, the filing date of the enrollee's request is the date of the enrollee's letter.

The same respondent believes that the 120-day timeframe for requesting OPM review should be extended to allow the plan more time to reconsider the denied claim and to allow the enrollee more time to receive a reply from the plan or to request OPM review based on the plan's failure to act on the request for reconsideration or a submission of additional evidence. None of the FEHB plans informed OPM that they anticipated any problems with the timeframes for processing requests for reconsideration. We have, though, amended the regulation to extend the timeframe for enrollees to request OPM review in cases where additional information is requested by the plan. The final regulation specifies that when a plan has failed to respond to an enrollee within the timeframes specified, the enrollee may request OPM review within 120 days from either the date the enrollee submits a timely request to the plan for reconsideration, or the date the enrollee is notified that the plan is requesting additional information.

Another commenter noted that enrollees have no notice other than that contained in the regulations of the availability of OPM review. OPM has resolved this problem by amending the health benefit plan brochures to include notification of review by OPM.

One respondent commented that the regulations should clarify paragraphs 890.105(d)(1) (i) and (ii) to state that the applicable timeframe for requesting OPM review is the later of (i) 90 days

after the date of the plan's notice to the enrollee that the denial was affirmed; or (ii) within 120 days after the enrollee files a timely request for reconsideration by the plan. Such a statement would be erroneous. When a plan receives a reconsideration request, it has 30 days, under section 890.105(b)(2), to (1) reaffirm its previous denial; (2) request additional information needed to make a decision; or (3) pay the claim. If the plan affirms the initial denial, the 90-day right to OPM review commences with the date of the plan's notice to the enrollee which may occur less than 30 days after the enrollee's reconsideration request. A plan's failure to respond to a request for reconsideration constitutes a constructive affirmation of the previous denial after 30 days, which then activates the 90-day period for requesting OPM review. Accordingly, the latter-case enrollee has a full 120 days from the time a reconsideration request is filed with the plan during which to request a review by OPM. The regulatory provision should remain unchanged.

One respondent commented that paragraph 890.105(d) does not explicitly state that OPM will review the evidence needed to make a decision. Paragraph 890.105(d)(2) specifies the types of information OPM may request for its review and states that OPM "in reviewing a claim . . ." will "obtain any other information as may . . . be required to make a determination." If the information requested is needed to make a determination, then it must of necessity be reviewed before a determination may be made. We believe that it would be redundant to state that OPM will review the information needed to make a decision on the claim.

Another commenter believes that, in requesting additional information necessary to make its decision, OPM may unreasonably delay its review. Specifically, the commenter cites OPM's procedure for requesting Privacy Act releases and additional information from enrollees as promoting delays in processing. The respondent suggests that (1) the plan, if it reaffirms its denial, forward a Privacy Act release to the enrollee at the time it informs the enrollee of the right to request OPM review; or (2) OPM extend its processing time from 30 to 40 days and ensure that all necessary releases and information are requested and a determination made within that timeframe.

Privacy Act release forms must be completed by health care recipients only if the individual requesting review of, or information regarding, the claim is not the same person as the patient with respect to whom the claim was made or the patient's legal guardian. Accordingly, we do not believe the Privacy Act release form should be used routinely as a time-saving instrument. Regarding the second alternative, because OPM has no way of controlling responses from all possible sources of claim information (e.g., all providers of services, independent experts), we do not believe that it is appropriate to set a time limit on OPM decisions until all information necessary to make a determination is received.

Paragraph 890.105(d)(2)(ii) enables OPM to obtain an advisory opinion from an independent physician, if needed. One respondent commented that OPM should seek a medical and/or legal opinion not only for special cases, but for every claim. We believe that OPM's staff physician and claims reviewers are adequately qualified to review denied claims. Except in the most extraordinary cases, consultation with a medical or legal expert is not required to make a decision.

One comment concerns the provision requiring the plan to release information to OPM within 30 days of OPM's request, unless OPM specifies a different timeframe [§ 890.105(d)(3)]. The respondent would like OPM to drop the provision authorizing a different timeframe and add a provision for default judgment for the enrollee if the plan fails to respond to OPM within the 30-day period. The respondent assumes that this provision is intended exclusively to grant the plans more time to respond. On the contrary, the primary purpose of the provision is to enable OPM to specify a shorter timeframe when desired. The phrase "different time frame" was used rather than the term "shorter time frame" because, on rare occasions, a plan may have a valid reason for requiring additional time.

Two respondents believe that OPM should advise the enrollee when it requests additional information from the plan, that the plan should be required to notify the enrollee when it submits the information to OPM, and that the enrollee should be allowed a period of time to respond to the plan's submission.

Before reviewing a plan's reaffirmation of a denied claim, OPM routinely requests the patient to sign a medical release form giving OPM access to medical information related to the claim. This form also notifies the enrollee that information is being requested from the plan. Concerning the suggestion that the plan notify the enrollee when it submits the information requested to OPM and allow the enrollee 10 days to respond, we do not believe that the claims review process should be encumbered by requiring yet another communication from the enrollee. Accordingly, requiring the plan to notify the enrollee of its submission to OPM would be superfluous.

General

One commenter suggested that OPM conform its timeframes to those required for claims processing under the Employees Retirement Income Security Act (ERISA). Regulations governing the two programs focus on different aspects of the review process because the programs differ in their purpose and requirements. After reviewing the disputed claims process and considering the ERISA time standards, we have concluded that the timeframes as proposed by OPM are best suited to the requirements of the FEHBP disputed claims process. Therefore, we have not attempted to adopt the time standards required under ERISA.

Another general comment concerns the review of claims by the courts. The respondent suggests that OPM permit the enrollee to request a direct legal review by the courts in lieu of following administrative procedures for resolution of disputed claims. In the employee benefits area, OPM has traditionally argued for dismissal of court cases when the individual has failed to exhaust administrative remedies. The purposes of OPM's disputed claims review procedures is to assist enrollees in avoiding the costs and time delays associated with legal proceedings. Consequently, we do not favor a regulation calling for review by the courts before all administrative remedies have been exhausted.

Finally, OPM received a comment on the possibility of OPM's negotiating "deferral" arrangements with State insurance commissioners under which they would process disputed claim appeals. Section 8902(j) of title 5, United States Code, gives OPM authority to review carrier decisions on disputed claims and to reverse a carrier's decision if "the Office [OPM] finds" that the carrier has not followed the terms of the contract. We need not determine the issue of whether delegation of this authority is possible under the statute at this time because our experience with the program indicates that the best way to maintain benefit consistency is to have OPM carry out the review.

To ensure that enrollees are aware of what timeframes apply to consideration of a particular disputed claim, we have added a provision for the plan to notify the enrollee if it requests additional

information from a provider [§ 890.105(b)(2)].

OPM has taken the opportunity in these final regulations to add clarifying language to § 890.107 concerning the type of legal actions that may be brought against OPM. This section of the regulations gives notice that legal action may be brought against OPM for the review of the legality of OPM's regulations or of a decision made by OPM. We are adding a statement to this provision to make it clear that legal action may not be brought against OPM by an enrollee solely because OPM upholds a health plan's denial of a claim for benefits. The authority for waiving the general notice of proposed rulemaking for this portion of the regulations is section 553(b)(3)(A) of title 5 of the United States Code which exempts interpretive rules from public comment.

Upon consideration of the comments received and a review of the proposed regulations, we have made minor technical and editorial changes which, among other things, clarify that OPM's function is not to adjudicate disputed claims but to review carrier decisions on disputed claims. We have also added the phrase "or provider" to paragraph 890.105(b)(2) to make clear that information requested by a plan may be requested from the provider as well as from the enrollee.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations merely amend administrative procedures currently in use by FEHBP plans and OPM.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 890 as follows:

1. The authority citation for Part 890 continues to read as set forth below:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95-454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8906(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C.8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98-615, 98 Stat. 3196, and Title II of Pub. L. 99-251.

2. Section 890.101 is amended by redesignating paragraphs (a)(4) through (a)(11) as (a)(5) through (a)(12) and adding a new paragraph (a)(4) to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

(4) "Claim" means a request for (i) payment of a health-related bill; or (ii) provision of a health-related service or supply.

* * * * *

3. Section 890.105 is revised to read as follows:

§ 890.105 Filing claims for payment or service.

(a) *General.* Each health benefits plan adjudicates claims filed under the plan. An enrollee must initially submit all claims to the health benefits plan in which he or she is enrolled. If the plan denies a claim, the enrollee may ask the plan to reconsider the denial. If the plan affirms its denial or fails to respond as required by paragraph (b) of this section, the enrollee may ask OPM to review the claim.

(b) *Timeframes for reconsidering a claim.* (1) The plan must reconsider its initial denial of a claim (or a portion of a claim) when an enrollee submits a written request for reconsideration to the plan within 1 year after the date of the notice to the enrollee that the claim was denied.

(2) Within 30 days after the date of receipt of a timely-filed request for reconsideration, the plan must (i) affirm the denial in writing to the enrollee; (ii) pay the bill or provide the service; or (iii) request from the enrollee or provider additional information needed to make a decision on the claim. If a plan requests additional information from a provider, it must simultaneously notify the enrollee of the information requested. When additional information is requested, the plan must, within 30 days after the date the information is received, affirm the denial in writing to the enrollee or pay the bill or provide the service. If the enrollee or the provider does not respond within 60 days after the date of the plan's notice requesting additional information, the plan will make its decision based on the evidence it has. The plan must then send written notice to the enrollee of its decision on the claim. If the plan fails to act within 30 days after the enrollee's request for reconsideration or the plan's receipt of additional information, the enrollee may request OPM review as provided in paragraph (3) of this section.

(3) If a plan either affirms its denial of a claim or fails to respond to an enrollee's written request for reconsideration within 30 days after the date it receives the request or within 30 days after the date it receives additional information requested, the enrollee may write to OPM and request that OPM review the plan's decision. The enrollee must submit the request for OPM review within the timeframes specified in paragraph (d)(1) of this section.

(4) A plan may extend the time limit for an enrollee's submission of additional information to the plan when the enrollee shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.*

(1) When requesting the plan to reconsider a claim, the enrollee must put the request in writing and give the reason the claim should not have been denied.

(2) If the plan needs additional information from the enrollee to make a decision, it must (i) specifically identify the information needed; (ii) state the reason the information is required to make a decision on the claim; (iii) specify the timeframe (60 days after the date of the plan's request) for submitting the information; and (iv) state the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(3) If the plan affirms the initial denial, it must provide written notice to the enrollee. This notice must inform the enrollee of (i) the specific and detailed reasons for the denial; (ii) the enrollee's right to request a review by OPM; and (iii) the requirement that requests for OPM review must be received within 90 days after the date of the plan's notice of denial.

(d) *OPM review.* (1) OPM must accept a request for review that is received (i) within 90 days after the date of the plan's notice to the enrollee that the denial was affirmed; or (ii) if the plan fails to respond to the enrollee as provided in paragraph (b)(2) of this section, within 120 days after the date of the enrollee's timely request for reconsideration by the plan or the date the enrollee is notified that the plan is requesting additional information. OPM may extend the time limit for an enrollee's request for OPM review when the enrollee shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the

request for OPM review within the time limit.

(2) In reviewing a claim denied by a plan, OPM may (i) request that the enrollee submit additional information; (ii) obtain an advisory opinion from an independent physician; or (iii) obtain any other information as may in its judgment be required to make a determination. (OPM's request for an advisory opinion will not identify the enrollee or patient, the plan, or any medical institutions or physicians involved in the claim.)

(3) When OPM requests information from a plan, the plan must release the information within 30 days after the date of OPM's written request unless a different timeframe is specified by OPM in its request. Any evidence submitted by the enrollee or by the plan for review of the denied claim will be held as privileged information and will be reviewed only by persons having official need to see it.

(4) Within 30 days after receipt of the necessary evidence, OPM will give a written notice of its decision to the enrollee and the plan.

4. Section 890.107 is revised to read as follows:

§ 890.107 Legal actions.

An action to compel enrollment of an employee or annuitant not excluded by § 890.102(c) should be brought against the employing office. An action to recover on a claim for health benefits should be brought against the carrier of the health benefits plan. An action to review the legality of OMP's regulations under this part or of a decision made by OPM should be brought against the Office of Personnel Management, Washington, DC 20415. However, an enrollee's dispute of an OPM decision solely because it concurs in a health plan carrier's denial of a claim is not a challenge to the legality of OPM's decision. Therefore, any subsequent litigation to recover on the claim should be brought against the carrier, not against OPM.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

Avocados Grown in South Florida and Imported Avocados; Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes minimum maturity requirements for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States. The purpose of instituting maturity regulations is to prevent shipments of immature avocados to the fresh market. Providing fresh markets with mature fruit is important in creating and maintaining consumer satisfaction and sales. Such action is designed to promote orderly marketing conditions for avocados in the interest of producers and consumers. The requirements on imported avocados are required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Section 915.331 Florida Avocado Maturity Regulation becomes effective May 21, 1986. Section 944.30 Avocado Import Maturity Regulation becomes effective May 27, 1986. Comments which are received by June 20, 1986 will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this action. Comments should be sent in duplicate to the Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250. Telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

This action establishes minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida and imported avocados. These requirements are intended to prevent the shipment of immature avocados to improve buyer confidence in the marketplace.

It is estimated that about 34 handlers of avocados grown in South Florida are currently subject to regulation under the marketing order for South Florida avocados and that about 20 importers of avocados will be subject to this action under the avocado import regulation during the course of the current season and that the great majority of these groups may be classified as small entities. While regulations issued under the order and corresponding import requirements impose some costs on affected persons and the number of such persons may be substantial, the added burden on small entities, if present at all, is not significant.

The Florida avocado maturity regulation is issued under the marketing agreement, and Order No. 915, both as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee, at its April 9, 1986, meeting. The committee works with the Department in administering the marketing agreement and order program.

The Florida avocado maturity regulation is prescribed in § 915.331 which establishes maturity requirements for fresh shipments of Florida avocados for the 1986–87 season. These maturity requirements prescribe minimum weights or diameters for specified time periods during the shipping season for 60 varieties and 2 seedling types of avocados grown in Florida. Such requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature.

The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to

provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers. Similar Florida avocado maturity requirements were in effect during the 1985–86 season under § 915.330 (50 FR 21033, 28556). These requirements expired April 30, 1986. A minimum grade requirement of U.S. No. 2 is currently in effect on a continuous basis for Florida avocados under § 915.306 (50 FR 21031).

The Avocado Administrative Committee estimates fresh Florida avocado shipments at 1,200,000 bushels (55 pounds net weight) during the 1986–87 season compared with fresh shipments of 1,110,130 bushels shipped in 1985–86, 1,149,017 bushels in 1984–85, and 1,038,562 bushels in 1983–84. The 1986–87 season Florida avocado crop is expected to begin with light shipments of early varieties on or about May 21, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, which had shipments of 5,449,307 bushels during the 12-month period ending March 31, 1986. Avocados currently are imported into the United States in relatively small amounts from Chile, and from countries in the Carribean Basin, principally the Bahamas and the Dominican Republic.

The avocado import maturity regulation is issued under section 8e (7 U.S.C. 608e–1) of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. The avocado import regulation is prescribed in § 944.30 which establishes minimum maturity requirements for avocados imported into the United States, based on the maturity requirements specified in § 915.331 for avocados grown in Florida. Such maturity requirements based on skin color for certain varieties of avocados which turn to red or purple when mature shall apply to avocados imported from all foreign countries. Such maturity requirements based on minimum weights or diameters for various varieties of avocados for specified shipping periods shall apply to all avocados imported from all foreign countries, except for avocados grown in southern hemisphere countries. The import maturity requirements based on minimum weights or diameters are not applicable to avocados grown in the southern hemisphere countries such as Chile where all imported southern hemisphere avocados have originated to-date, because the avocado growing season and the varietal shipping schedules are different from that in Florida. On the other hand, the import maturity requirements based on minimum weights or diameters are applicable to avocados grown in northern hemisphere countries such as those in the Bahamas and the Dominican Republic where practically all northern hemisphere imported avocados have originated in recent years, because the growing season and the varietal shipping schedules are similar to that in Florida. The import maturity requirements based on skin color shall apply to avocados which turn red or purple when mature grown in both the southern and northern hemispheres, because these varieties turn color when mature regardless of where grown.

Avocado import maturity requirements were in effect during the 1985–86 season under § 944.29 (50 FR 21033, 28556). These requirements expired April 30, 1986. Avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (50 FR 21031). Such grade requirements specify that all avocados imported from all foreign countries must grade at least U.S. No. 2, which requires that the avocados be mature.

After consideration of all relevant matter presented, the information and recommendation submitted by the committee, and other available information, it is found that § 915.331 Florida Avocado Maturity Regulation, and § 944.30 Avocado Import Maturity Regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this interim final rule is based and the effective date necessary to effectuate the declared policy of the Act. Shipments of Florida avocados are expected to begin on or about May 21, 1986, and the regulation should be in effect by such date to prevent immature fruit from being shipped. Interested persons were given an opportunity to submit information and views on the maturity requirements for Florida avocados at a public meeting at which the committee unanimously recommended that the specified requirements be implemented. Florida avocado handlers have been apprised of the Florida avocado maturity regulation designed to cover all 1986–87 season shipments and need no advance notice to plan their operations. The avocado import requirements are mandatory under § 8e of the Act, and the required 3 days notice will be provided. The rule provides a 30-day comment period. All comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food Grades and standards, Imports, Avocados.

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 915.331 and 944.30 are added to read as follows: (§§ 915.331 and 944.30 expire April 30, 1987, and will not be published in the annual Code of Federal Regulations).

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.331 Florida avocado maturity regulation.

(a) During the period May 21, 1986, through April 30, 1987, no handler shall handle any variety of avocados grown in the production area unless:

(1) Any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the specified effective periods for each variety listed in the following TABLE I: *Provided*, That avocados may not be handled prior to the earliest date specified in column 2 of such table for the respective variety: *Provided further*, That up to a total of 10 percent, by count of the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: *Provided further*, That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

TABLE I

Avocado variety	Effective period		Minimum size	
	From—	Through—	Weight, (ounces)	Diameter, (inches)
Kosel	05-21-86	06-03-86	16	
	06-04-86	06-17-86	13	
Arue	05-21-86	06-03-86	16	
	06-04-86	07-06-86	14	3 9/16
Dannie	05-28-86	06-10-86	16	3 9/16
	06-11-86	07-06-86	14	3 9/16
Dr. Dupuis No. 2	06-04-86	06-17-86	16	3 9/16
	06-18-86	07-06-86	14	3 9/16
	07-09-86	07-22-86	12	3 9/16
Fuchs	06-11-86	06-24-86	14	3 9/16
	06-25-86	07-08-86	12	3
K-5	06-18-86	07-01-86	16	3 9/16
	07-02-86	07-15-86	14	3 9/16
Hardee	06-18-86	06-24-86	16	3 9/16
	06-25-86	07-01-86	16	3 9/16
	07-02-86	07-22-86	14	3 11/16
West Indian seedling [1]	06-25-86	07-22-86	16	
	07-23-86	08-26-86	16	
	06-27-86	08-22-86	14	
Pollock	06-25-86	07-08-86	18	3 11/16
	07-09-86	07-22-86	16	3 9/16
	07-23-86	08-05-86	14	3 9/16
Simmonds	06-25-86	07-08-86	16	3 9/16
	07-09-86	07-22-86	14	3 9/16
	07-23-86	08-05-86	12	3 9/16
Nadir	06-25-86	07-01-86	14	3 9/16
	07-02-86	07-08-86	12	3 9/16
	07-09-86	07-22-86	16	2 15/16
Gorham	07-09-86	07-22-86	29	4 1/16
	07-23-86	08-19-86	27	4 1/16
Day	07-09-86	07-22-86	14	3 9/16
	07-23-86	08-19-86	10	2 15/16
Reuhls	07-09-86	07-15-86	16	3 11/16
	07-16-86	07-22-86	16	3 9/16
	07-23-86	08-05-86	14	3 9/16
	08-06-86	08-12-86	12	3 9/16
	08-13-86	08-19-86	10	3 9/16
Peterson	07-16-86	07-22-86	14	3 9/16
	07-23-86	07-29-86	12	3 9/16
	07-30-86	08-12-86	10	3 9/16
Blonde	07-16-86	08-19-86	13	
Bernecker	07-23-86	08-05-86	18	3 9/16
	08-06-86	08-19-86	16	3 9/16
	08-20-86	09-02-86	14	3 9/16
232	07-23-86	08-05-86	14	
	08-06-86	08-19-86	12	
Findlt	07-23-86	08-05-86	18	3 11/16
	08-06-86	08-19-86	16	3 11/16
	08-06-86	08-19-86	12	3 9/16
Trapp	07-23-86	08-05-86	14	3 11/16
	08-06-86	08-19-86	12	3 9/16
Miguel (P)	07-23-86	08-05-86	22	3 11/16
	08-06-86	08-19-86	20	3 11/16
	08-20-86	09-02-86	18	3 11/16
Nesbitt	07-23-86	08-05-86	22	3 11/16
	08-06-86	08-12-86	16	3 9/16
	08-13-86	08-26-86	14	3 9/16
Bela	08-06-86	08-12-86	18	3 9/16
	08-13-86	08-26-86	16	3 9/16
K-9	08-06-86	08-26-86	16	
Tower 2	08-06-86	08-19-86	14	3 9/16
	08-20-86	09-09-86	12	3 9/16
Christine	08-06-86	08-26-86	11	2 15/16
Tonnage	08-06-86	08-19-86	16	3 9/16
	08-20-86	08-26-86	14	3 9/16
	08-27-86	09-02-86	12	3
Waldin	08-06-86	08-19-86	16	3 9/16
	08-20-86	08-02-86	14	3 9/16
	08-03-86	09-16-86	12	3 9/16
Lisa (P)	08-13-86	08-19-86	12	3 9/16
	08-20-86	08-26-86	11	3
Catalina	08-20-86	09-02-86	24	
	09-03-86	09-23-86	22	
Pinkerton (CP)	08-20-86	09-02-86	19	
	09-03-86	09-16-86	11	
	09-17-86	09-30-86	9	
Fairchild	08-20-86	09-02-86	16	3 11/16
	08-03-86	08-19-86	14	3 9/16
	08-17-86	09-23-86	12	3 9/16
Black Prince	08-20-86	09-02-86	28	4 1/16
	09-03-86	09-16-86	23	3 11/16
Lavella	08-17-86	10-07-86	18	3 9/16
	09-03-86	09-16-86	20	4 1/16
Blair	08-17-86	10-07-86	28	3 11/16
	08-03-86	08-16-86	16	3 9/16
Booth 8	08-17-86	10-07-86	14	3 9/16
	09-03-86	09-23-86	16	3 9/16
	09-24-86	10-07-86	14	3 9/16
	10-08-86	10-21-86	10	3 1/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From—	Through—	Weight, (ounces)	Diameter, (inches)
Booth 7	09-03-86	09-16-86	16	3 1/16
	09-17-86	09-30-86	16	3 1/16
	10-01-86	10-14-86	14	3 1/16
Booth 8	09-10-86	09-23-86	14	3 1/16
	09-24-86	10-07-86	12	3 1/16
Guatemalan seedling [2]	09-10-86	10-07-86	15	
	10-08-86	12-09-86	13	
Marcus	09-10-86	09-23-86	32	4 13/16
	09-24-86	11-04-86	24	4 1/16
Brooks 1978	09-10-86	09-16-86	12	3 1/16
	09-17-86	09-23-86	10	3 1/16
	09-24-86	10-14-86	8	2 15/16
Collinson	09-17-86	10-14-86	16	3 1/16
Pue	09-17-86	09-23-86	20	4 1/16
	09-24-86	10-07-86	24	3 1/16
	10-08-86	10-21-86	18	3 1/16
Hickson	09-17-86	09-30-86	12	3 1/16
	10-01-86	10-14-86	10	3
Simpson	09-24-86	10-14-86	16	3 1/16
Choquette	10-01-86	10-19-86	28	4 1/16
	10-22-86	11-04-86	24	4 1/16
	11-05-86	11-18-86	20	3 15/16
Winslowson	10-01-86	10-21-86	18	3 15/16
Leona	10-01-86	10-14-86	18	3 15/16
Hall	10-01-86	10-14-86	26	3 15/16
	10-15-86	10-28-86	20	3 1/16
	10-29-86	11-11-86	16	3 1/16
Hawaian	10-08-86	10-21-86	18	3 1/16
	10-22-86	11-04-86	14	3 1/16
Lula	10-08-86	10-21-86	18	3 15/16
	10-22-86	11-04-86	14	3 1/16
	11-05-86	11-18-86	12	3 1/16
Ajax (S-7)	10-15-86	11-04-86	16	3 15/16
Taylor	10-15-86	10-28-86	14	3 1/16
	10-29-86	11-11-86	12	3 1/16
Booth 3	10-15-86	10-21-86	16	3 1/16
	10-22-86	11-04-86	14	3 1/16
Linda	11-05-86	11-25-86	18	3 15/16
Monroe	11-12-86	11-25-86	26	4 1/16
	11-26-86	12-09-86	24	4 1/16
	12-10-86	12-23-86	20	3 15/16
	12-24-86	01-06-87	16	3 1/16
Booth 1	11-19-86	12-02-86	16	3 15/16
	12-03-86	12-16-86	12	3 1/16
Zio (P)	11-19-86	12-02-86	12	3 1/16
	12-03-86	12-16-86	10	2 15/16
Wagner	11-26-86	12-09-86	12	3 1/16
	12-10-86	12-23-86	10	3 1/16
Brookslate	12-17-86	12-30-86	18	3 15/16
	12-31-86	01-20-87	14	3 1/16
	01-21-87	02-03-87	12	3 1/16
	02-04-87	02-17-87	16	
Maya (P)	12-17-86	12-30-86	13	3 1/16
	12-31-86	01-13-87	11	3
Reed (CP)	01-14-87	01-27-87	14	
	01-28-87	02-10-87	12	
	02-11-87	02-17-87	10	

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

(b) The term "diameter" means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

PART 944—FRUITS; IMPORT REGULATIONS

§ 944.30 Avocado import maturity regulation.

(a) Pursuant to section 8e of the Act and Part 944–Fruits; Import Regulations, the importation into the United States of any avocados is prohibited during the period May 27, 1986 through April 30, 1987, unless such avocados meet the requirements specified in § 915.331 Florida Avocado Maturity Regulation, for avocados grown in South Florida under M.O. 915 (7 CFR Part 915): *Provided*, That the minimum weight or diameter maturity requirements for specific time periods for various varieties of avocados specified in paragraph (a)(2) of that section shall not apply to avocados grown in countries in the southern hemisphere. Avocados grown in southern hemisphere countries shall be exempt from the specified minimum weight or diameter maturity requirements, because the avocado growing season and the varietal maturity schedules in the southern hemisphere differ from that in Florida.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section.

(e) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

Dated: May 16, 1986.

Joseph A. Gribbin

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-11442 Filed 5-20-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Filing of Occupational Preference Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule changes the method by which a third preference, sixth preference or nonpreference priority date is established. Under current regulations, in the case of most third or sixth preference visa petitions, the priority date of the visa petition is the date the application for labor certification was accepted for

processing by an office within the employment system of the Department of Labor (DOL). That date establishes the alien's priority date for visa issuance purposes. Many deportable aliens and employers of deportable aliens choose not to file a visa petition with the Immigration and Naturalization Service ("the Service") upon issuance of the labor certification unless and until an immigrant visa is immediately available, in order to avoid making the alien known to the Service. This creates a situation in which the Government is inadvertently encouraging aliens to remain undetected. The final rule corrects this by requiring that unless a visa petition is filed with the Service within 60 days of the issuance of the labor certification, the priority date becomes the date on which the petition is actually submitted to the Service. Furthermore, if a petition is returned for additional information, it must be resubmitted within 60 days or the priority date becomes the date on which it is resubmitted. In this manner, the final rule removes the incentive for deportable aliens to avoid detection and promotes effective enforcement of the Immigration and Nationality Act.

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633-3048

For Specific Information: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536. Telephone: (202) 633-3240

SUPPLEMENTARY INFORMATION: Under section 212(a)(14) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1182(a)(14), certain aliens may not obtain an immigrant visa for entry into the United States to engage in permanent employment unless the Secretary of Labor has issued a labor certification stating that there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform the skilled or unskilled labor, and that the employment of these aliens will not adversely affect the wages and working conditions of similarly employed workers in the United States.

There are three alien immigrant classifications which require a labor certification. These are the third and sixth preference and, under various circumstances, nonpreference classifications (sections 203 (a)(3), (a)(6) and (a)(7) of the Act, 8 U.S.C. 1153). For third and sixth preference applicants, labor certification applications are filed by employers with a state employment service office unless the alien's occupation is a Schedule A occupation (already certified by the Secretary of Labor as in short supply in the United States). If a labor certification is issued or the beneficiary's occupation is on Schedule A, the employer (prospective or current) submits an immigrant visa petition to a district office of the Service. Section 203(c) of the Act (8 U.S.C. 1153(c)) provides that visas will be issued under section 203 (a)(1) through (6) to eligible immigrants in the order in which a petition is filed on behalf on each of these immigrants with the Attorney General as provided in section 204 of the Act (8 U.S.C. 1154). If a preference immigrant visa number is immediately available when the petition is approved, the alien beneficiary may be issued an immigrant visa with which to enter the United States for permanent residence, or, under certain circumstances, may be permitted to adjust status to that of a permanent resident while in the United States. If a preference immigrant visa number is not available at the time the petition is approved, the alien's name is instead placed on a waiting list. Petitions are then processed for permanent residence status by date filed. Thus the filing date has come to be known as the "priority date".

Originally the priority date was based strictly on the date the visa petition was filed with the Service. This rule was changed, however, because for a number of years their were varying backlogs and processing times among the offices of the DOL's employment service system. This meant that some alien beneficiaries received much later priority dates than others even though their prospective or current employers had submitted fully documented requests for labor certifications on earlier dates. In order to make the method of assigning priority dates fairer, the Service established the rule that the filing date would be construed as the date a qualified employer with appropriate documentation first submitted an application or petition to a government agency. In circumstances requiring an individual labor certification this means the date the application for a labor certification is accepted into the DOL employment service system. When the alien beneficiary is entitled to a Schedule A labor certification, the priority date is the date the visa petition is filed with the Service.

Congress has set a limitation on the number of immigrants who can enter the United States under the various preference categories. The current numerical limitation for third and sixth preference is 27,000 each, for a total of 54,000 per year. The nonpreference category is allocated unused visa numbers from other preference categories. Because of the heavy demand, visa numbers are unvailable for the nonpreference classification. There is also high demand for visa numbers in the third and sixth preference categories. These numbers are issued in chronological order based upon priority date (the actual or constructed filing date of the visa petition as explained above) and are often oversubscribed.

Because of the unavailability of visa numbers, the Service has noted that an increasing number of aliens work illegally in the United States while they wait for visa numbers to become available. Under current regulations, in some cases, an employer who intends to petition for an alien holds the approved labor certification until the alien's priority date (that is, the constructive date based on filing with the DOL) is reached. During this interim period, which could be as long as several years, the alien works without authority. When the alien's priority date is reached, the petitioner files the visa petition with the required labor certification attached. At that time, the Service first learns that the alien beneficiary has been illegally in the United States for an extended period of time.

To eliminate this abuse, on November 8, 1985 the service published in **Federal Register** at 50 FR 46441 a proposed rule, with a 60 day request for public comment, that would reverse 8 CFR 204 to provide that in the case of a third or sixth preference petition (except for an occupation listed on Schedule A in 20 CFR 656.10), the priority date be construed as being the date the application for labor certification was accepted, provided the petition is filed within 30 days of the approval date of the labor certification. Otherwise, the priority date would be the date the petition is currently filed with appropriate documentation at a Service office. In the case of an occupation listed on Schedule A in 20 CFR 656.10, the filing date of the petition would be the date the petition was properly filed with the appropriate Service office. Furthermore, if the petition must be returned to the petitioner for additional information, an additional 30 calendar

days would be allowed to re-file the petition. If the petition were not refiled within 30 days of the date on which it was returned, the date of resubmission would be the new priority date.

Under the proposed rule, in order to obtain a priority date based on the date the application for a labor certification was accepted for processing by the DOL, the alien beneficiary must be made known to the Service. If the beneficiary was out of status or would go out of status before the priority date is reached, the Service would then have the option of taking appropriate enforcement action. The employer and alien employee who concealed unauthorized employment by delaying the filing of the visa petition would not thereby receive more favorable treatment than an alien who does not engage in unauthorized employment or one who in essence surrenders by having the employer file a petition with the Service at the time a certification is issued.

The public comment period closed on January 7, 1986. The Service received a total of 87 separate written comments regarding the proposed rule, many of which recognized the problems enunciated in the proposed rulemaking and the need for corrective action. Of the 87 submissions, all but two were opposed to the proposal. One of the favorable comments was fully supportive of the proposed rule in both concept and content; the other supported it in concept; but suggested that the time period for submission/resubmission be extended to 60 days. Most of those opposed to the rule based their opposition on multiple reasons.

As a result of our review of the comments, the Service is publishing the proposed rule, with minor revisions, as a final rule. Those revisions are expansion from 30 days to 60 days of the period authorized for submission or resubmission of the petition, and addition of a paragraph limiting applicability of the rule to those cases in which the labor certification is issued on or after the effective date of the change of the regulation.

The commenters addressed six major areas of the proposed rulemaking. A summary of these comments and the Service responses follows:

(1) *Comment:* The time period is too short and does not take into account difficulties which can arise in submitting a visa petition. These difficulties include: (a) Delays in receiving the certification from the DOL (examples cited ranged from several days to as long as six months); (b) problems involved in obtaining documentation from overseas sources; (c) delays in obtaining evaluation of foreign educational credentials; (d) complications caused by the vacation, illness, workload, business trip, and other activities of the petitioner, the beneficiary and/or the attorney. Of those suggesting an alternate time period, seven recommended 60 days, twelve recomended 90 days, five recommended 120 days, one recommended 160 days, and two recommended 180 days.

Response: The Service recognizes that delays can occur in the process of preparing a petition for submission or resubmission, but finds that some commenters overstated the problem. In most instances, the issuance of a labor certification is an extended process taking several months. Judicious use of this time by the petitioner would greatly facilitate the expeditious submission of the petition following issuance of the certification. However, in order to further minimize the difficulties and to enhance the probability of the petitioner's preparing a complete and comprehensive petition, the final rule will allow 60 days for submission or resubmission of the petition instead of the 30 days as proposed.

(2) *Comment:* The rule is unnecessary to promote enforcement goals since the DOL should/does notify the Service directly each time a labor certification is issued. In the interest of government efficiency and public facilitation, it is recommended that the Service and the DOL coordinate activities to achieve the same result in a cheaper and simpler fashion.

Response: Although the DOL's Technical Assistance Guide No. 656 provides for notification to the Service by the certifying officer if he or she believes that an alien is illegally in the United States, the system has not proven itself to be either effective or efficient. The final rule will overcome the deficiencies in the existing system at no cost to the Government and only minor inconvenience to the public.

(3) *Comment:* Aliens who have received labor certifications are filling a need in the United States and should not be "targeted" by the Service for enforcement action. The proposal is contrary to the Service's recent clarification of its views regarding the ability of an alien to maintain nonimmigrant status while intending to immigrate at a later date.

Response: By requiring that aliens make themselves known to the Service, the Service is not necessarily "targeting" them for enforcement action, but is giving itself the option of taking appropriate action. In the case of bona fide nonimmigrants, the Service will adjudicate applications for extension of stay in accordance with relevant law, regulations and policies. In this sense, the final rule enhances, not contradicts, the recent temporary policy guidance alluded to in the comments.

(4) *Comment:* The proposal will be ineffective due to the Service's lack of resources to follow-up on cases and to readily apparent methods of circumventing the proposals.

Response: It is precisely because of the Service's limited resources that it must seek more efficient means of carrying out its mission. By bringing to the surface cases which had previously remained underground, the Service will be in a better position to allocate its resources. Similarly, although there may be ways in which certain employers will utilize aspects of the final rule to their own advantage, the final rule does correct a major flaw in the system which has led to significant abuse.

(5) *Comment:* The proposal will not promote Government efficiency in that it would result in an unnecessary increase in filing of visa petitions as currently many employers and/or employees opt not to follow through after receiving a labor certification due to lack of continued interest or to the availability of other avenues of immigration. Furthermore, it will prevent or discourage concurrent filing of visa petitions and adjustment of status applications; result in duplicate filing of visa petitions when visa numbers become available for those seeking to adjust their status prior to the adjudication of the initial petition; further complicate an already complex adjudication process; and add to the burden of consular officers by requiring re-examination of "stale" approvals.

Response: Although under the final rule there may be a slightly higher percentage of cases in which a petition is filed after receipt of labor certification, the impact will probably be offset by a decrease in the number of labor certifications sought on a purely speculative basis. Likewise, the number of petitions which will be pending at the time a visa number becomes available should actually decrease, since adjudication will have been completed in the majority of cases before visa number eligibility is reached.

(6) *Comment:* The proposal needs further development and clarification. Among those areas which should be addressed are the need for a "grandfather" clause to cover those who have already received labor certification and the need for clarification as to what

is meant by the term "correctly filed with appropriate documentation".

Response: Recognizing the need for a "grandfather" clause, the Service has included an additional paragraph relating to labor certifications issued before the effective date of this rule. It has also reverted to the established language of "properly filed" instead of "correctly filed with appropriate documentation", since the two phrases are basically synonomous and "properly filed" is utilized elsewhere in the section.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Petitions.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 103, 204, and 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1124 and 1182).

2. In § 204.1, paragraph (d)(2) is revised to read as follows:

§ 204.1 Petition.

* * * * *

(d) * * *

(2) *Filing date.*—(i) *Labor certification issued on or after May 21, 1986.* In the case of a third or sixth preference petition (except for an occupation listed in Schedule A), the filing date of the petition within the meaning of section 203(c) of the Act will be the date the application for labor certification was accepted by an office within the employment service system of the Department of Labor, provided the petition is filed with a Service office within 60 calendar days of the date of the approval of the labor certification. If the petition is filed after that time, the filing date will be the date the petition is properly filed at a Service office. In the case of a third or sixth preference petition for an occupation listed in Schedule A, the filing date of the petition will be the date it was properly filed at the Service office. If a petition must be returned to the petitioner for more information, and additional 60 calendar days will be allowed to refile the petition. If the petition is not within 60 calendar days, the subsequent filing date will become the new priority date. This policy applies to petitions supported by both individual and Schedule A labor certifications.

(ii) *Labor certification issued prior to May 21, 1986.* In the case of a third or sixth preference petition (except for an occupation listed in Schedule A), the filing date of the petition within the meaning of section 203(c) of the Act will be the date the request for the certification was accepted for processing by any office within the employment service system of the Department of Labor. In the case of a third or sixth preference petition for an occupation listed in schedule A, the filing date of the petition will be the date it was properly filed with the appropriate Service office.

* * * * *

Dated: May 13, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-11441 Filed 5-20-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-117-AD; Amdt. 39-5319]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires a one-time inspection and, if necessary, the replacement of certain engine thrust control cables. This AD is prompted by several recent reports of thrust control cable corrosion and breakage at the wing to fuselage pressure seal. In one case, one engine auto-accelerated to beyond the thrust setting of the other engines, due to a broken cable, turning the airplane off the runway, due to asymmetric thrust. Uncommanded thrust, increase or decrease, could adversely affect the controllability of the airplane.

DATE: Effective June 9, 1986.

ADDRESSES: The service bulletin specified in this AD may be otained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kanji K. Patel, Propulsion Branch, ANM-140S; telephone (206) 431-2973. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Boeing Company has received several reports of asymmetrical thrust due to broken engine thrust control cables. In one case, it was reported that, upon advancing the thrust levers for initial takeoff roll, one engine auto-accelerated to beyond the thrust setting of the other engines due to a broken cable, turning the airplane off the runway, due to asymmetric thrust. Investigation revealed a broken T1B-3 thrust control cable, due to corrosion at the pressure seal location. Additionally, a maintenance inspection on several other airplanes revealed heavy corrosion, multiple strand breakage, and missing and misaligned pressure seals at the wing to fuselage seal location.

Depending on which thrust control cable breaks, the imbalance preload on the cable loop could cause uncommanded thrust reduction or thrust increase for the affected engine. Uncommanded thrust, increase or decrease, could adversely affect the controllability of the airplane.

Boeing issued Alert Service Bulletin 747-76A2065, dated February 28, 1986, which describes a one-time inspection of all engine thrust control cables at the wing to fuselage pressure seals. The inspection of cables is to detect corrosion and broken cable strands, through the full range of throttle lever movement. Cables with broken strands or corrosion must be replaced with new cables.

Since this condition is likely to exist or develop on other airplanes of this type design, an airworthiness directive (AD) is being issued to require inspection within 10 days after the effective date, and replacement, if necessary, of engine thrust control cables, in accordance with Boeing Alert Service Bulletin 747-76A2065, dated February 28, 1986.

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This AD requires operators to report the results of inspections, and the time intervals between inspections, to the FAA. From this data, the FAA will determine if further rulemaking is necessary. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, line number 1 through 607, certificated in any category. To prevent failure of the engine thrust control cable and loss of control of an engine, accomplish the following:

A. Within the next 10 days after the effective date of this AD, unless accomplished within the last 3,000 hours, inspect and, if necessary, replace the engine thrust control cables in accordance with Boeing Alert Service Bulletin 747-78A2085, dated February 20, 1986, or later FAA-approved revision.

B. Inspections and replacement of thrust control cables accomplished in accordance with Boeing Service Letter 747-SL-78-15-A, dated December 19, 1985, are considered equivalent to accomplishing the procedures required by paragraph A. above, except that corroded cables, with or without broken strands, must also be replaced.

C. Report results of inspections and the time intervals between the inspections to the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, Propulsion Branch, Attention: Mr. Kanji K. Patel, ANM-140S, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2973.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 9, 1986.

Issued in Seattle, Washington, on May 14, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11380 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-4-AD; Amendment 39-5313]

Airworthiness Directives; British Aerospace Jetstream Model 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 85-19-08 applicable to British Aerospace Jetstream Model 3101 (includes Model 3100) airplanes and codifies the corresponding Priority Letter AD issued September 26, 1985, into the Federal Register. This AD requires inspection and repair of the forward wing to fuselage attachment fitting pin (spigot) and bushing. The AD is prompted by a report from an operator that the spigot became disengaged from the spigot housing on a BAe 3100 airplane. If left uncorrected, this disengagement could result in loss of control of the airplane.

DATES: Effective Date: May 26, 1986, to all persons except those to whom it has already been made effective by Priority Letter AD from the FAA issued September 26, 1985.

Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Mr. John Varoli, AEU-100, Brussels Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710, or Mr. John Dow, ACE-108, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: The FAA issued AD 85-19-08 via priority letter on September 26, 1985, because of a reported finding of a disengaged wing to fuselage attachment pin Part No. 13761B7 on a British Aerospace Model 3100 airplane. It was determined that if the pin became disengaged, loss of integrity of the wing front spar could occur and the result would be loss of control. The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the affected airplanes by priority letter AD issued September 26, 1985. The AD became effective immediately as to these individuals upon receipt of that letter and is identified as AD 85-19-08. Since the unsafe condition described therein may still exist on other British Aerospace Model 3101 (includes 3100) airplanes, the AD is being published in the Federal Register as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the priority letter notification. Because a situation still exists that requires the immediate adoption of this regulation it is found that notice and public procedure hereon are

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impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

British Aerospace: Applies to Model 3101 (includes Model 3100) airplanes (serial numbers 601 through 666) certificated in any category.

Compliance: Required within seven days after receipt of this AD unless already accomplished.

To prevent the possibility of wing droop development and structural damage to the forward wing spar fuselage attachment and resulting loss of control of the airplane, accomplish the following:

(a) Remove wing-to-fuselage fairing panels numbers F19 and F20.

(b) Using as a reference BAe Model 3100 Illustrated Parts Catalog, Chapter 57-00-00 Figure 3 wing installation and using a suitable light source, visually inspect and repair as required item number 210 spigot (pin) Part No. 13781B7 (LH and RH), in accordance with the following criteria:

(i) If no gap exists between the spigot flange and the fuselage post, and if the locking bolt, washer and nut (items 205, 200 and 195 respectively) securing the spigot are in position and secure, install panel number F19 and F20 and return the airplane to service.

(ii) If little or no gap exists between the spigot flange and the fuselage post, and if the locking bolt, washer and nut are not secure, prior to further flight accomplish the following:

(A) Remove the loading from the wing to the fuselage joint and push the spigot (pin) into the spigot housing, and

(B) Install the locking bolt (Part No. A102-18D) with the head forward, the nut (Part No. A128 D66) and the washer (Part No. SP124D). Replace panels F19 and F20 and return the airplane to service.

(C) If the locking bolt (Part No. A102-18D) cannot be installed without rotation of the spigot, prior to further flight accomplish the repair procedures described in paragraph (c) of this AD.

(iii) If a large gap exists between the spigot flange and the fuselage post which results in loss of engagement with the spigot housing plate (item 215 LH and 220 RH), prior to further flight accomplish the repair procedures described in paragraph (c) of this AD.

(iv) If other structural deformation or damage is observed relating to improper spigot installation, prior to further flight obtain and accomplish the repair procedures in accordance with paragraph (c) of this AD.

(v) If the fuselage vertical post outboard bushing is found to be displaced, prior to further flight repair in accordance with the instructions in Figure 1 of the British Aerospace Service Bulletin No. 57-A-JA 840917 dated January 25, 1985.

(c) Alternate methods of compliance and repair procedure may be used if approved by either the Manager of the FAA Brussels Aircraft Certification Office, FAA, AEU-100, c/o American Embassy, 1000 Brussels, Belgium, or the Manager of the Small Aircraft Certification Division, FAA, Central Region, ACE-100, 601 East 12th Street, Kansas City, Missouri 64106.

(d) Report, in writing, all defects found to the Manager, Small Aircraft Certification Division, FAA, Central Region, within 48 hours of the inspection. [Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.]

This amendment becomes effective May 28, 1986, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 85-19-06, issued September 26, 1985, which contained this amendment.

Issued in Kansas City, Missouri, on May 9, 1986.

Edward S. Harris,

Director, Central Region.

[FR Doc. 86-11353 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-10-AD; Amdt. 39-5316]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) AD 86-01-01R1, applicable to Cessna Model T303 airplanes and codifies the corresponding priority letter AD's dated January 2, 1986, and January 17, 1986, into the Federal Register. This AD removes approval for flight into known icing conditions for those Model T303 airplanes with icing flight approval. It also adds additional information to the emergency procedures section of the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual to aid in the event of an inadvertent icing encounter.

DATES: Effective Date: May 28, 1986, to all persons except those to whom it has already been made effective by priority letter AD's from the FAA dated January 2, 1986, and January 17, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: A copy of information pertaining to the AD is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Bennett L. Sorensen, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, ACE-160W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: There have been several reported occurrences in Cessna Model T303 airplanes of rudder/rudder pedal oscillations, pitch oscillations and uncommanded nose down pitch changes when conducting flight in icing conditions. The uncommanded nose down pitch changes may result in loss of control of the airplane.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by

priority letters dated January 2, 1986, and January 17, 1986. The AD became effective immediately as to those individuals upon receipt of those letters and is identified as AD 86-01-01 and 86-01-01R1.

Notwithstanding the operating rules, this AD removes approval for flight into known icing conditions for those airplanes with icing flight approval. In addition, for all airplanes, with or without icing approval, this AD adds to the emergency procedures section of the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual additional information to help avoid or reduce the effects of this condition in the event of an inadvertent icing encounter. AD 86-01-01 stated that "flight into known or forecast icing conditions is prohibited." AD 86-01-01R1 relaxed the statement to "flight into known icing conditions is prohibited." Since the AD included adequate procedures for handling inadvertent icing encounters the original AD was considered an unnecessary burden on operators of the T303 airplanes. Since the unsafe condition described herein may still exist of other Cessna Model T303 airplanes, AD 86-01-01R1 is hereby published in the Federal Register as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective as to all persons who did not receive the priority letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to Model T303 airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent hazardous flight characteristics due to accumulations of ice at the unprotected junctures of the horizontal and vertical tail, accomplish the following:

(a) Prior to further flight on those airplanes approved for flight into icing conditions:

(1) Fabricate and install on the instrument panel in clear view of the pilot the following placard using letters of a minimum of 0.10 inch in height: "FLIGHT INTO KNOWN ICING PROHIBITED."

(2) Revise the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement "Known Icing Equipment," Section 2, Limitations, by deleting the first paragraph and replacing with the sentence: "Flight into known icing conditions is prohibited."

(3) Cover the airplane operating placard statement, "This airplane is approved for flight into icing conditions if the proper optional equipment is installed and operational" with opaque tape.

(4) Operate the airplane in accordance with the above limitations.

(b) Prior to further flight on all airplanes with or without approval for flight into icing conditions, revise the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, section 3, Emergency Procedures "Icing—Inadvertent Encounter" to add the following information in addition to the current published inadvertent icing encounter procedures:

(1) "A small amount (⅛" to ¼" thickness) of ice on the unprotected junctures of the horizontal and vertical tail may disturb the airflow in such a way as to cause rudder/rudder pedal oscillations, pitch oscillations and possibly an uncommanded nose down pitch change requiring a higher than normal pull force to counteract. This phenomenon varies with certain combinations of airspeed, power setting, flap deflections, sideslips and type of icing conditions.

(2) If this condition is encountered the following action will reduce or eliminate the rudder oscillation and/or pitch change.

(i) Reducing airspeed (by either establishing a climb or reducing power) will reduce or eliminate the condition.

(ii) Reducing power will reduce or eliminate the condition at any given airspeed.

(iii) Reducing flap deflection will reduce or eliminate the condition at any given airspeed.

(iv) Reducing sideslip (improving coordination) will reduce the tendency for the condition to develop."

(c) The Pilot's Operating Handbook and FAA Approved Airplane Flight Manual revision requirements of paragraphs (a)(2) and (b) of this AD may be accomplished by inserting a copy of this AD in the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual. For additional information see Cessna Owner Advisory SNL85-03A, dated December 23, 1985.

(d) The requirements of Paragraph (a), (b), and (c) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FARs) on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(e) An equivalent method of compliance with this AD, if used, must be approved by the manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201 or the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 28, 1986, to all persons except those persons to whom it has already been made effective by priority letter from the FAA dated January 2, 1986, or January 17, 1986, and is identified as AD 86-01-01R1.

Issued in Kansas City, Missouri, on May 13, 1986.

Edwin S. Harris,
Director, Central Region.

[FR Doc. 86-11349 Filed 5-20-86; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-08-AD Amdt. 39-5315]

Airworthiness Directives; Fairchild (Swearingen) Models SA226 and SA227 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Fairchild (Swearingen) Models SA226 and SA227 airplanes

which requires removal of the present elevator gust lock belt. This AD is prompted by seven reports of elevator gust engagements on affected airplanes, during taxi or in flight, without warning to the pilot. This action will prevent inadvertent gust lock engagement which could result in loss of control of the airplane.

DATES: Effective Date: May 26, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation Service Bulletins (S/B) 226-27-041 revised February 18, 1986, and 227-27-016 revised February 18, 1986, applicable to this AD may be obtained from Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284; Telephone (512) 824-9421. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michelle Corning, (817) 877-2298, Airplane Certification Branch, ASW-150, Southwest Region, FAA, Post Office Box 1689, Fort Worth, Texas 76101.

SUPPLEMENTARY INFORMATION: This AD is prompted by seven reports of in-flight and ground engagements of the elevator gust lock on Fairchild Models SA226 and SA227 airplanes. The FAA has reviewed the design and installation of the elevator gust lock system on these model airplanes and the significant use of the airplanes as regional commuters in all types of weather conditions. Since the gust lock plunger assembly is exposed to the environment, the plunger assembly is subject to freezing or corrosion. This condition fails to give the pilot any warning that the lock may be stuck in an intermediate engage position, which may result in the lock engaging in flight. Inspection or lubrication of the elevator gust lock plunger is extremely difficult due to it's location. The manufacturer has also reviewed the service experience and system design of the control gust lock and issued service bulletins that provide for an alternate elevator control gust lock. Should the current elevator gust lock system components remain on the airplane, the elevator control lock may inadvertently engage in flight which could result in loss of control of the airplane.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the removal of the elevator gust lock components and the installation of an alternate gust lock belt on Fairchild Models SA226 and SA227 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Fairchild: Applies to Models SA226 and SA227 airplanes (Serial Numbers (S/N) SA226-T, S/N T201 through T275, T277 through T291; SA226-T(B), S/N T(B)276, T(B)292 through T(B)417; SA226-AT, S/N AT001 through AT074; SA226-TC, S/N TC201 through TC419; SA227-TT, S/N TT421 through TT555; SA227-AT, S/N AT423 through AT631B; SA227-AC, S/N AC409, AC415, AC416, and AC420 through AC532) airplanes certificated in any category.

Compliance: Required within the next 200 hours time-in-service or the next 30 calender days, which ever comes first, after the effective date of this AD, unless already accomplished.

To prevent the elevator gust lock from engaging in flight, accomplish the following:

(a) Remove the elevator gust lock system components and install the alternate elevator gust lock and associated hardware in accordance with the instructions in Fairchild Aircraft Corporation Service Bulletin (S/B) 226-27-041 revised February 18, 1986, for the SA226 airplane models, or S/B 227-27-016 revised February 18, 1986, for the SA227 airplane models.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance may be used if approved by the Manager of the Airplane Certification Branch, ASW-150, Southwest Regional Office, FAA, Fort Worth, Texas 76101; Telephone (817) 877-2070.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Amendment becomes effective on May 28, 1986.

Issued in Kansas City, Missouri, on May 13, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-11350 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-115-AD; Amdt. 39-5319]

Airworthiness Directives; McDonnell Douglas Model DC-9, MD-80, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1285

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time visual inspection of the emergency engine fire shutoff switch cams for proper installation position, and to reposition the cams, if necessary, on McDonnell Douglas Model DC-9, MD-80, and C-9 (Military) series airplanes. This AD is prompted by a report from an operator of an instance of inability to discharge the engine firex bottles after an engine fire indication due to the fire shutoff switch cams having been installed 180 degrees out of position. This AD is necessary to prevent inability to discharge the fire extinguishing agent in the event of an engine fire, which could result in an uncontrollable engine fire.

DATE: Effective June 9, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Izumikawa, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6327.

SUPPLEMENTARY INFORMATION: One operator has reported an instance of inability to discharge the emergency engine firex bottles after an engine fire indication. Investigation revealed that the fire shutoff switch cams were incorrectly installed 180 degrees out of position. The cams should be positioned outboard as shown in the Maintenance Manual and not inboard as shown in the Illustrated Parts Catalog. The Illustrated Parts Catalog will be revised by McDonnell Douglas Corporation by July 1, 1986. A one-time inspection of the fire shutoff switch cams will determine whether cams are installed properly. Repositioning, if necessary, will eliminate inability to discharge the fire extinguishing agent in the event of an engine fire which could result in an uncontrollable engine fire.

McDonnell Douglas Corporation Alert Service Bulletin A76–43, dated April 14, 1986, has been issued to provide operators with instructions to inspect the fire shutoff switch cams and to reposition the cams, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires that the emergency engine fire shutoff switch cams be inspected for proper installation position and repositioned if necessary, in accordance with McDonnell Douglas Alert Service Bulletin A76–43, dated April 14, 1986, or later FAA–approved revisions.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Fedeal Aviation Administration amends § 39.13 of Part 39 of the federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9, MD–80, and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inability to discharge the emergency engine fire extinguishing agent when necessary, accomplish the following:

A. Within 30 calendar days after the effective date of this Airworthiness Directive, conduct a one time visual inspection of the emergency engine fire shutoff switch cams for proper installation position, and reposition the cams, if necessary, in accordance with McDonnell Douglas Corporation Alert Service Bulletin A76–43, dated April 14, 1986, or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection or repositioning requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 9, 1986.

Issued in Seattle, Washington, on May 14, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–11361 Filed 5–20–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–11–AD; Amdt. 39–5317]

Airworthiness Directives; United Instruments, Inc., Altimeters, Part Numbers 5934, 5934A, 5934M, 5934AM, 5934P, 5934PA, 5934PM, 5934PAM, 5934D, 5934PD, 5934AD, and 5934PAD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) 86–05–02, applicable to United Instruments, Inc. Altimeters, Part Number 5934( ) and codifies the corresponding priority letter AD dated February 28, 1986, into the Federal Register. This AD is necessary to detect altimeters which could display erroneous altitude information to the pilot. Erroneous altitude information could lead to a landing accident or result in the loss of an aircraft. This AD requires immediate check of the adjustment knob system on installed altimeters to determine if the altitude indication pointers become disengaged with a slight pull on the knob and the return of all affected altimeters to United Instruments for rework.

DATES: Effective Date: May 28, 1986 to all persons except those to whom it has already been made effective by priority letter AD from the FAA dated February 28, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: United Instruments Service Bulletin (S/B) No. 2, dated February 24, 1986, may be obtained from United Instruments, Inc., 3625 Comotara Avenue, Wichita, Kansas 67226. This information may also be examined at FAA, Central Region, 601 East 12th Street, Kansas City, Missouri, or FAA Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: Reports have been received stating that upon adjusting the barometric pressure setting on United Instruments Part Number (P/N) Series 5934( ) altimeters, the adjustment knob became disengaged from the altitude indication pointers. This disengagement negates the coupled gear arrangement between the adjustment knob, barometric pressure indicator and the altitude indication pointers leading to an erroneous display to the pilot.

The FAA determined that this is an unsafe condition that could exist in other altimeters of the same type design. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, AD 86-05-02 was issued February 28, 1986, and was mailed by priority letter to all U.S. aircraft owners and operators.

This AD requires an immediate check of the adjustment knob system to determine if the altitude indication pointers have become disengaged. If disengagement is noted, the altimeter must be removed from service and returned to United Instruments. Regardless of the results of this check this AD also requires the eventual return for modification of all affected serial numbered altimeters to United Instruments, Inc., by July 1, 1986.

Since the unsafe condition described herein may still exist, the AD is being published in the Federal Register as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise an evaluation is not required).

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

United Instruments, Inc.: Applies to altimeter Part Numbers 5934, 5934A, 5934M, 5934AM, 5934P, 5934PA, 5934PM, 5934PAM, 5934D, 5934PD, 5934AD, and 5934PAD, with the following serial numbers:

6C461 thru 6C999
7C000 thru 7C999
8C000 thru 8C999
9C000 thru 9C999
0D000 thru 0D999
1D000 thru 1D999
2D000 thru 2D669

Note: This AD is applicable to pressure sensitive altimeters that do not have encoding capabilities. The affected altimeters were manufactured after February 1, 1985.

Compliance: Required as indicated, unless already accomplished.

To prevent possible erroneous altitude information from being displayed to the pilot, accomplish the following:

(a) For all altimeters that are installed in an aircraft, prior to further flight,

(1) Check each installed altimeter or check the aircraft's permanent maintenance record to determine if the altimeter falls within the Serial Number designations set forth in this AD. The owner/operator of the aircraft may make this check.

(2) If, as a result of this check, it is determined that the altimeter falls within these designations, check the altimeter by applying a slight outward pull on the adjustment knob while turning the knob and determine that the altitude indication pointers and the barometric pressure dial remain synchronized.

(3) The holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulation (FAR) may conduct this check on any airplane owned or operated by him. The person accomplishing this must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(4) If the altitude pointers do not move simultaneously with the barometric dial, prior to further flight remove the altimeter and return it to United Instruments, Inc., 3625 Comotara Avenue, Wichita, Kansas, 67226, no later than July 1, 1986. Replacement altimeters must be serviceable units.

Note 2: It is recommended but not required by this AD, that the above check for synchronized movement be accomplished each time the altimeter barometric pressure dial is adjusted.

(b) Regardless of the results of the check specified in paragraph (a) of this AD, on or before July 1, 1986, for all affected altimeters installed in an aircraft, remove the altimeter and return it to United Instruments, Inc. at the above address. Replacement altimeters must be serviceable units.

(c) For all affected altimeters not installed in an aircraft, prior to further use but no later than July 1, 1986, return the altimeter to United Instruments, Inc., at the above address, for examination and modification as required.

(d) For each altimeter returned to United Instruments, Inc. per the instructions of paragraphs (a), (b) and (c) above, the examination and rework by United Instruments, Inc. will be identified by a yellow dot approximately ¼ inch (6.4 mm) diameter on the lower half of the rear case and the letter "M", aproximately ⅛ inch (3.2 mm) in height stamped on the data plate just before the word "altimeter". Units that have been reworked and so marked may be used as serviceable replacement parts.

(e) Aircraft may be flown in accordance with Federal Aviation Regulation (FAR) 21.197 to a location where this AD can be accomplished. Prior to dispatch, set the altimeter to field elevation and do not reset in flight.

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209.

* United Instruments Service Bulletin No. 2, dated February 24, 1986, pertains to the subject of this AD.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to United Instruments, Inc., 3625 Comotara Avenue, Wichita, Kansas, 67226, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 28, 1986, to all persons except those

to whom it has already been made effective by priority letter AD from the FAA dated February 28, 1986, and is identified as AD 86-05-02.

Issued in Kansas City, Missouri, on May 13, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-11351 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-4]

Alteration of Transition Area, LaGrange, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the LaGrange, Georgia, transition area to accommodate a new instrument approach procedure which has been developed to serve Callaway Airport. This action will lower the base of controlled airspace, southeast of the airport, from 1,200 to 700 feet above the surface. This additional controlled airspace is required for protection of Instrument Flight Rules (IFR) aeronautical activities.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 12, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to altering the LaGrange, Georgia, transition area by designating additional controlled airspace southeast of Callaway Airport. This airspace is required to support IFR aeronautical activities in the LaGrange area (51 FR 8510). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the LaGrange, Georgia, transition area to accommodate a new instrument approach procedure.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

LaGrange, GA—[Revised]

That airspace extending upward from 700 feet above the surface with a 6.5-mile radius of Callaway Airport (Lat. 33°00'27" N., Long. 85°04'15" W.); within 1.5 miles each side of the LaGrange VORTAC 110° radial, extending from the 6.5-mile radius area to the VORTAC; within 4.5 miles southwest and 6.5 miles northeast of the Callaway Runway 31 localizer southeast course, extending from the localizer to 12.5 miles southeast of the outer marker, excluding that portion which coincides with the Pine Mountain, Georgia, transition area.

Issued in East Point, Georgia, on May 13, 1986.

Thomas H. Protive,

Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-11354 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-23229; File No. S7-626]

Securities Transactions Exempt from Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In connection with extending unlisted trading privileges to over-the-counter stocks and permitting listed securities to be concurrently designated National Market System Securities, the Commission is amending its rule governing transaction fees to exempt all transactions in National Market System Securities that are traded on an exchange (on a listed or unlisted trading privileges basis).

EFFECTIVE DATE: May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Leland H. Goss, Esq., (202) 272-2827, Room 5204, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Section 31 of the Securities Exchange Act of 1934 ("Act")[1] requires that every national securities exchange pay to the Commission a fee based on sales of securities transacted on that exchange.[2] In addition, section 31 requires payment of similar fees from broker-dealers for over-the-counter ("OTC") transactions in listed securities. The Section also gives the Commission authority to grant exemptions from the fee requirement.[3]

"Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: Provided, however, that no

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[1] 15 U.S.C. 78a *et seq.*, as amended.

[2] The text of Section 31, as amended, is:

[3] *Id.*

payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system."

On September 16, 1985, the Commission issued two releases that incidentally could subject transactions in certain OTC securities designated as National Market System ("NMS") Securities [4] to section 31 fees for the first time. First, the Commission has announced the terms and conditions for exchanges to commence trading NMS Securities on an unlisted trading privileges ("UTP") basis beginning January 1, 1986.[5] Second, the Commission has adopted amendments to the NMS Securities Rule to allow listed securities that are not reported in the consolidated transaction reporting system to be designated as NMS Securities beginning October 1, 1985.[6] Although OTC securities are not now generally subject to Section 31 fees, transactions in either listed NMS Securities or NMS Securities admitted to UTP would be subject to the section's fee requirement, whether effected on an exchange or in the OTC market.[7]

On January 10, 1986, the Commission issued a release ("Release")[8] seeking public comment on a proposed temporary amendment to Rule 31–1 to exempt transactions in NMS Securities traded on an exchange on a listed or UTP basis. The Commission received no comments in response to the Release and has determined to adopt the proposed temporary amendment to Rule 31–1.

II. Discussion

Because section 31 requires every national securities exchange to pay a fee calculated on the dollar amount of "sales of securities . . . transacted on such [exchange]," exchanges would pay fees on NMS Securities traded on that exchange pursuant to a grant of UTP. Furthermore, because section 12(f)(6) of the Act [9] deems any security admitted to UTP on a national securities exchange to be "registered" within the meaning of the Act, broker-dealers trading such securities in the OTC market would also have to pay section 31 fees.[10] Similarly, section 31 would also cover transactions in listed securities concurrently designated as NMS Securities after January 1, 1986. Therefore, once trading in these securities begins in multiple markets, all transactions in such NMS Securities, both on an exchange and OTC, would be subject to payment of section 31 fees.

The commencement of OTC/UTP trading and exchange traded NMS Securities raises the issue of the appropriateness of payment of section 31 fees on what are essentially OTC securities.[11] The Commission believes it should exempt from the application of section 31 the limited group of NMS Securities subject to UTP or concurrent exchange trading. Absent this exemption, the application of section 31 would depend entirely on exchange decisions on whether to obtain UTP. Once an exchange made such a decision, not only the exchanges but all OTC participants who trade the affected NMS Securities would automatically be subject to section 31 fees, even if there was little or no actual exchange trading. This is particularly a concern during the start-up period for exchange UTP in NMS Securities, where the number of NMS Securities subject to UTP will be limited and the Commission cannot predict that there will be substantial exchange trading. The Commission considers it preferable to address the application of section 31 fees to the OTC market directly, and not through the automatic application of section 31 as a result of granting UTP to NMS Securities or the concurrent exchange listing and NMS designation of a limited number of securities.

Accordingly, the Commission has determined to adopt temporary amendments to Rule 31–1 that would exempt from section 31 transactions in NMS Securities traded on an exchange on a listed or UTP basis. For the reasons discussed above, the Commission finds that these exemptions are consistent with the public interest, equal regulation of markets and broker-dealers and the development of a national market system. The amendments only affect transactions in those NMS Securities that are subject to either UTP or a concurrent exchange listing. The amendments will be effective for a period not to exceed two years to allow the Commission time to reach a conclusion regarding the applicability of section 31 fees to NMS Securities.

III. Effect on Competition and Regulatory Flexibility

Section 23(a)(2) of the Act [12] requires the Commission, in adopting rules under the Act, to consider anti-competitive effects of such rules, if any, and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. As noted above, the exemption will apply to both exchange and OTC transactions in NMS Securities. While adoption of the exemption means that transactions in other exchange-traded securities will be subject to section 31 fees while transactions in exchange-traded NMS Securities will not, the Commission believes those securities will have much different trading characteristics. In particular, as indicated above the Commission cannot predict at this time that there will be substantial exchange trading in the subject NMS Securities. The Commission has examined the amendment to Rule 31–1 in light of the standards set forth in section 23(a) and concludes that adoption of the amendment will have, at most, a minimal competitive impact and will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has prepared a Final Regulatory Flexibility Analysis

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[4] Rule 11Aa2–1 under the Act (17 CFR 240.11Aa2–1) ("NMS Securities Rule") sets forth the criteria and procedures by which certain OTC securities are designated as NMS Securities. *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 ("NMS Amendments Release"); Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("NMS Adoption Release"). The primary effect of designation as an NMS Security is that the security is subject to last sale reporting and confirmation requirements similar to those applicable to exchange traded securities. Transaction reports are collected and disseminated through the NASD's NASDAQ system pursuant to an effective transaction reporting plan administered by the NASD. These securities and listed securities included in the consolidated transaction reporting system are "reported securities." *See* 17 CFR 240.11Aa3–1(a)(4).

[5] Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 ("OTC/UTP Release").

[6] Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515 ("OTC/Listed NMS Securities Release"). At present, transactions in these securities are subject to payment of Section 31 fees. Because the great majority of the trading of these securities occurs OTC, the Commission believes it is simplest and most equitable to exempt both exchanges and OTC market makers from Section 31 fees on transactions in these securities at the current time.

[7] *See also* Section 12(f)(6) of the Act, 15 U.S.C. 78*l* and Rule 31–1 under Act, 17 CFR 240.31–1.

[8] *See* Securities Exchange Act Release No. 22787 (January 10, 1986), 51 FR 2521 ("Release").

[9] 15 U.S.C. 78*l*.

[10] *See also* 17 CFR 240.31–1.

[11] Although listed securities concurrently designated NMS technically may resemble any other listed securities which are traded off-board in the "third market" and are presently covered by Section 31, the former are predominantly traded in the OTC market, while the latter trade primarily on exchanges.

[12] 15 U.S.C. 78w(a)(2).

("FRFA")[13] regarding the proposed amendment to Rule 31–1. The FRFA notes that the proposed amendment would exempt from section 31 of the Act exchanges and broker-dealers engaging in transactions in NMS Securities subject to UTP or to concurrent exchange listing. The FRFA notes that the principal effect of this exemption would be to relieve exchanges and broker-dealers from payment of fees to which they otherwise would be subject. The FRFA states that, in order to determine the amount of fee owed under section 31, market participants would need to separately calculate dollar volume in NMS Securities and dollar volume in non-NMS Securities.

A copy of the FRFA may be obtained by contacting Leland H. Goss, Esq. (202) 272–2827, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IV. Statutory Basis and Text of Proposed Amendments.

The Commission amends Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 is amended by adding the following citation.

Authority: Section 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.31–1 is also authorized under section 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

2. Section 240.31–1 is amended by adding new paragraph (f) as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(f) Transactions in National Market System Securities as defined in § 240.11Aa2–1 (Rule 11Aa2–1 under the Act). The terms and provisions of this paragraph shall remain effective until May 6, 1988.

Dated: May 13, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 11406 Filed 5–20–86; 8:45 am]

BILLING CODE 8010–01–M

[13] 5 U.S.C. 601.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 330, 331, 332, and 357

[Docket No. 82N–0154]

Labeling of Drug Products for Over-the-Counter Human Use

Correction

In FR Doc. 86–9720, beginning on page 16258, in the issue of Thursday, May 1, 1986, make the following corrections:

1. On page 16258, first column, fourth line of "Supplementary Information", "exclusivity" was misspelled.

2. On the same page, second column, first complete paragraph, nineteenth line, after "policy" insert, ", FDA should continue the policy".

3. On page 16284, third column, third complete paragraph under "15.", second line from the bottom of the paragraph, "OT" should read "OTC".

BILLING CODE 1505–01–M

21 CFR Part 630

[Docket No. 86N–0113]

Biological Products; Corrections and Technical Amendments; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that contained miscellaneous amendments to its regulations on biological products (51 FR 15606; April 25, 1986). The current address of the Office of Biologics Research and Review was inadvertently omitted in one of the amendments. This document corrects that error.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph G. Wilczek, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–9119 appearing at page 15606 in the Federal Register of Friday, April 25, 1986, in the second column, amendment 18 is corrrected to read as follows:

§ 630.5 [Amended]

18. In § 630.5 *General requirements*, in the introductory text of paragraph (c) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

Dated: May 15, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–11371 Filed 5–20–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

34 CFR Parts 768, 769, 770, 771, and 772

Library Services and Construction Act; State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends regulations governing the State-Administered Program and the four direct grant programs under the Library Services and Construction Act. These amendments implement statutory changes contained in Pub. L. 99–159.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen, Director, Public Library Support Staff, U.S. Department of Education, 400 Maryland Avenue, SW., Room 728, Brown Building, Washington, DC 20202–1730. Telephone: (202) 254–9664.

SUPPLEMENTARY INFORMATION:

Background

These amendments implement recent changes to the Library Services and Construction Act (LSCA) (20 U.S.C. 351 *et seq.*) made by Title III of Pub. L. 99–159 (Library Services Program) of the National Science, Engineering, and Mathematics Authorization Act of 1986. The regulations being amended are those of:

(1) The LSCA Foreign Language Materials Acquisition Program, which assists State public libraries and local public libraries in the acquisition of foreign language materials; (2) the LSCA Library Literacy Program, which assists State public libraries and local public libraries in the development of literacy projects; (3) the LSCA State-Administered Program, which assists

States to extend and improve public library services, construct and renovate public libraries, and develop and strengthen interlibrary cooperation and resource sharing; and (4) the LSCA's other two direct grant programs; specifically, the LSCA Basic Grants to Indian Tribes and Hawaiian Natives Program and the LSCA Special Projects Grants to Indian Tribes and Hawaiian Natives Program, which are intended to establish or improve public library services to Indians and Hawaiian natives.

The regulations that govern the LSCA Foreign Language Materials Acquisition Program (34 CFR Part 768), the LSCA Library Literacy Program (34 CFR Part 769), the LSCA State-Administered Program (34 CFR Part 770), the LSCA Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771), and the LSCA Special Projects Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 772), were published in the Federal Register on August 16, 1985 (50 FR 33172).

Summary of Regulatory Amendments

The following amendments to the LSCA Program regulations implement technical amendments to the LSCA contained in Title III (Library Services Program) of Pub. L. 99–159.

(1) Amendment Applicable to the State-Administered Program and the Four Direct Grant Programs

Sections 768.4(c), 769.4(c), 770.4(c), and 771.4(b). The definition of the term "Act" has been revised to indicate that the term "means the Library Services and Construction Act, as amended".

(2) The Library Services and Construction Act State-Administered Program

(a) *Section 770.4(a).* In the definition of the term "long-range program," the phrase "except that this program may cover a period of not less than three nor more than five years." and the citation "(20 U.S.C. 351d)" have been deleted. The statutory definition of the term "long-range program", at section 3(12) of the LSCA, has been amended by section 301(a) of the Pub. L. 99–159, to read: "a program of not less than three nor more than five years." Section 3(12) of the LSCA now conforms to section 6(d)(1) of the LSCA.

(b) *Section 770.4(c).* In accordance with section 302(b) of Pub. L. 99–159, the term "Limited English-speaking proficiency," has the same meaning under this part as the same term defined in section 703(a) of the Bilingual Education Act (20 U.S.C. 3223(a)), and the full text of the definition is no longer included in the regulations.

(c) *Sections 770.24(b)(2)(i) and 770.40(d).* These sections have been amended to reflect section 304 of Pub. L. 99–159. Accordingly, these provisions now indicate that the sum appropriated under Title I of the LSCA, excluding the amounts which must be set aside for grants to Indian tribes and Hawaiian natives under Title IV, forms the basis for the calculation of whether States must reserve any Title I funds for major urban resource libraries. Prior to Pub. L. 99–159, States were required in effect to include the amount withheld for Indian tribes and Hawaiian natives in the calculation.

(d) *Section 770.43(b).* This section is amended in accordance with section 303(a) of Pub. L. 99–159, which provides that the reference to "such titles" in section 8 of the LSCA shall be construed to mean Titles I, II, and III.

Thus, § 770.43(b) of the regulations now provides that the calculation of the six percent maximum for purposes of administrative expenditures is to be based upon the sum of the amounts allotted to each State under Titles I, II, and III.

(e) *Section 770.43(c).* This section is amended in accordance with section 303(b) of Pub. L. 99–159 and section 8 of the LSCA. Section 770.43(c) now provides that a State agency may spend funds received under both Titles I and II for administration. As explained in paragraph (d) above, the calculation of the six percent would still be based on the sum of the amounts allotted under Titles I, II, and III.

(3) Amendments to the (A) Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program and (B) the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program

(a) *Section 771.4(b).* The definition of the term "Indian tribe" has been revised to indicate that the term means "an Indian tribe, band, nation, or other organized group or community recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians", in accordance with Section 301(b) of Pub. L. 99–159.

(b) *Section 771.4(b)(ii).* This portion of the definition of "Indian tribe" has been deleted in accordance with the Pub. L. 99–159 deletion of the phrase "as determined by the Secretary after consultation with the Secretary of the Interior." (Section 301(b)(2)).

(c) *Sections 771.1, 771.10(a)(9)(i), 771.20(c)(1), 772.1, 772.10(a)(9)(i), 772.20(c)(3)(i)(A), and 772.31(f)(2)(iv)(A).* These sections have been amended in accordance with section 305 of Pub. L. 99–159, which adds a new section 406 to the LSCA. Section 406 provides that Indian tribes and Indians in California, Oklahoma, and Alaska are now eligible to apply for basic grants and special project grants under Title IV of the LSCA. The present regulations restricted the group of eligibles under the Title IV programs to Hawaiian native organizations and to Indian tribes whose applications proposed the providing of services to Indians living on or near reservations.

(d) *Sections 771.10 and 772.10.* These sections have been amended in accordance with section 302(a)(2) of Pub. L. 99–159, which permits Hawaiian native organizations "to contract to provide public library services to native Hawaiians, and to carry out any other activities authorized under this sentence by contract." Prior to Pub. L. 99–159, pursuant to section 5(d)(2) of the LSCA, Hawaiian native organizations did not have the authority to contract for public library services.

(e) *Sections 771.20(d), 771.40 and 772.41.* These sections have been amended in accordance with section 302(a)(1) of Pub. L. 99–159, which imposes the LSCA section 402(b) maintenance-of-effort requirement on Hawaiian native organizations. Due to section 302(a)(1) of Pub. L. 99–159, any Hawaiian native organization supporting a public library system must provide an assurance, under § 771.20(d), that the organization will expend from Federal, State, and local sources an amount sufficient to meet the maintenance-of-effort requirements in §§ 771.40 and 772.41. Under the existing regulations and prior to Pub. L. 99–159, Hawaiian native organizations were not required to provide a maintenance-of-effort assurance under § 771.20(d), nor were they subject to the maintenance-of-effort requirements of §§ 771.40 and 772.41.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. However, because these new regulations reflect only statutory changes and minor technical

amendments, publication of this document as a proposed rule for public comment has been determined to be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These amendments conform the existing regulations to new statutory requirements. The scope of the changes is limited and will not have a significant economic impact on the entities affected by the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. (Please note that federally recognized Indian tribal governments are not subject to Executive Order 12372.)

List of Subjects

34 CFR Part 768

Education, Foreign language—library, Grant programs, Libraries, Reporting and recordkeeping requirements.

34 CFR Part 769

Education, Education of disadvantaged, Grant programs—education, Literacy program—libraries, Reporting and recordkeeping requirements.

34 CFR Part 770

Aging—libraries, Construction—libraries, Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries, Reporting and recordkeeping requirements.

34 CFR Part 771

Construction—libraries, Grants programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

34 CFR Part 772

Construction—libraries, Grant programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

Citations of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.034 (Library Services); 84.154 (Public Library Construction); 84.035 (Interlibrary Cooperation and Resource Sharing); 84.163 (Basic Grants to Indian Tribes and Hawaiian Natives Program and Special Projects Grants to Indian Tribes and Hawaiian Natives Program); 84.166 (Library Services and Construction Act Foreign Language Materials Acquisition Program); and 84.167 (Library Services and Construction Act Library Literacy Program))

Dated: May 15, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 768, 769, 770, 771, and 772 of Title 34 of the Code of Federal Regulations as follows:

PART 768—THE LIBRARY SERVICES AND CONSTRUCTION ACT FOREIGN LANGUAGE MATERIALS ACQUISITION PROGRAM

1. The authority citation for Part 768 is revised to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

2. In § 768.4, paragraph (c) is amended by revising the definition of the term "Act" to read as follows:

§768.4 What definitions apply to the Foreign Language Materials Program?

* * * * *

(c) * * *

"Act" means the Library Services and Construction Act, as amended.

* * * * *

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

3. The authority citation for Part 769 is revised to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

4. In § 769.4, paragraph (c) is amended by revising the definition of the term "Act" to read as follows:

§769.4 What definitions apply to the Library Literacy Program?

* * * * *

(c) * * *

"Act" means the Library Services and Construction Act, as amended.

* * * * *

PART 770—THE LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

5. The authority citation for part 770 is revised to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

6. In § 770.4, paragraph (a) is amended by removing the clause ", except that this program may cover a period of not fewer than three nor more than five years." and the citation "(20 U.S.C. 351d)" following the term "Long-range program" and paragraph (c) is amended by revising the definitions of the terms "Act" and "Limited English-speaking proficiency" to read as follows:

§770.4 What definitions apply to the State-Administered Program?

(a) * * *

Long-range program.

* * * * *

(c) * * *

"Act" means the Library Services and Construction Act, as amended.

* * * * *

"Limited English-speaking proficiency" is defined in section 703(a) of the Bilingual Education act (20 U.S.C. 3223(a)).

* * * * *

7. In § 770.24, paragraph (b)(2)(i) is revised to read as follows:

§770.24 What must a State include in an annual program?

* * * * *

(b) * * *

(2) * * *

(i) The sum appropriated for the year (excluding the amount made available for Indian tribes and Hawaiian natives) exceeds the amount specified in section 102(c)(1) of the Act; and

* * * * *

8. In § 770.40, paragraph (d) is revised to read as follows:

§ 770.40 What are a State's financial obligations under a Library Services grant?

* * * * *

(d) If the amount of the grant (excluding the amount made available for Indian tribes and Hawaiian natives) obligates the State to allocate funds to

support and expand library services of major urban resource libraries (see sections 102(a) (3) and (c) of the Act and § 770.24(b)(2)), the State may not reduce the amount it pays to an urban resource library below the amount the State paid to that library in the preceding year.

Authority: 20 U.S.C. 351c; 353; 364.

9. In §770.43, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 770.43 What administrative costs are allowable under this program?

* * * * *

(b) The total amount the agency may spend to carry out its administrative functions under all three of these grants during any fiscal year may not exceed the greater of—

(1) Six percent of the sum of the amounts allotted to that State under Titles I, II, and III for such fiscal year; or

(2) $60,000.

(c) The agency may spend funds received under Titles I and II of the Act for administrative costs in connection with the following activities:

* * * * *

PART 771—THE LIBRARY SERVICES AND CONSTRUCTION ACT BASIC GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

10. The authority citation for Part 771 is revised to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

11. Section 771.1 is revised to read as follows:

§ 771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Basic Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations, for Indian tribes and Indians in Oklahoma, California and Alaska, and for Hawaiian natives.

Authority: 20 U.S.C. 351; 351c (c)(1), (d); 361(c); 368.

12. In § 771.4, paragraph (b) is amended by revising the definitions of "Act" and "Indian tribe" to read as follows:

§ 771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

* * * * *

(b) * * *

"Act" means the Library Services and Construction Act, as amended.

* * * * *

"Indian tribes."

(1) This term means an Indian tribe, band, nation, or other organized group or community recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) The term includes an Alaskan Native village or regional or village corporation as defined in or established under the Alaskan Native Claims Settlement Act.

* * * * *

13. Section 771.10 is revised to read as follows:

§ 771.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to Indian tribes and Hawaiian native organizations to conduct one or more of the following projects:

(1) Assessment of tribal or Hawaiian native library needs.

(2) In-service or preservice training of Indians or Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians or Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Indians or Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (b) and (c) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations, to Indian tribes or Indians in Oklahoma, California, or Alaska, or to Hawaiian natives; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) As used in paragraph (a)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, equipment includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures of structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraph (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land).

(c) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

Authority: 20 U.S.C. 351a(2); 351c(d)(2); 362; 366.

14. In § 771.20, paragraphs (b), (c), and (d) are revised to read as follows:

§ 771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

* * * * *

(b) A description of the project or projects—from among those listed in § 771.10(a)—the applicant proposes to conduct under its grant.

(c) A description of how the proposed project is likely to establish or improve public library services for—

(1) Indians living on or near a reservation;

(2) Indian tribes or Indians in Oklahoma, California or Alaska; or

(3) Hawaiian natives.

(d) In the case of an Indian tribe or Hawaiian native organization that supports a public library system, an assurance that the grantee will expend from Federal, State, and local sources an amount sufficient to meet the maintenance-of-effort requirement in § 771.40.

Authority: 20 U.S.C. 351d(g)(1); 361; 362(b); 363; 366

* * * * *

15. Section 771.40 is revised to read as follows:

§ 771.40 What are the financial obligations of a grantee that supports a public library system?

If an Indian tribe or Hawaiian native organization that receives a grant under this program supports a public library system, the grantee shall expend from Federal, State, and local sources for public library services an amount not less than the amount the grantee expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the grantee under this program.

Authority: 20 U.S.C. 351c(d)(2); 362(b)).

PART 772—THE LIBRARY SERVICES AND CONSTRUCTION ACT SPECIAL PROJECTS GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

16. The authority citation for Part 772 is revised to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

17. Section 772.1 is revised to read as follows:

§ 772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Special Projects Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations, for Indian tribes and Indians living in Oklahoma, California and Alaska, and for Hawaiian natives.

Authority: 20 U.S.C. 351; 351c (c)(2), (d); 361(d); 366.

18. Section 772.10 is revised to read as follows:

§ 772.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to Indian tribes and Hawaiian native organizations to conduct one or more of the following projects:

(1) Assessment of tribal or Hawaiian native library needs.

(2) In-service or preservice training of Indians or Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians or Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Indians or Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (b) and (c) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations, to Indian tribes or Indians in Oklahoma, California, or Alaska, or to Hawaiian natives; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) As used in paragraph (a)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land).

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

Authority: 20 U.S.C. 351a(2); 351c(c)(2), (d)(2); 361(d); 362; 366, EO 11490, as amended.

19. In § 772.20, paragraphs (b)(2), (c)(3)(i)(A), and (c)(3)(iii)(B) are revised to read as follows:

§ 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

* * * * *

(b) * * *

(2) The project or projects the applicant proposes to carry out in its plan must be from among those listed in § 772.10(a).

(c) * * *

(3) * * *

(i) * * *

(A) Indians living on or near a reservation or Indians in Oklahoma, California or Alaska; or

(B) Hawaiian natives.

* * * * *

(iii) * * *

(B) The project or projects must be from among those listed in § 772.10(a).

* * * * *

Authority: 20 U.S.C. 351c(c)(2), (d)(2); 351d(g)(2); 361; 362; 364; 366.

* * * * *

20. In § 772.31, paragraphs (f)(1), and (f)(2)(iv)(A) are revised to read as follows:

§ 772.31 What selection criteria does the Secretary use?

* * * * *

(f) * * *

(1) The Secretary reviews each application to determine the need for the applicant to carry out the proposed public library services from among the projects listed in § 772.10(a).

(2) * * *

(iv) * * *

(A) Indians living on or near a reservation or Indians in Oklahoma, California, or Alaska; or

* * * * *

Authority: 20 U.S.C. 351c(c)(2), (d)(2); 351d(g)(2); 361(d); 364; 366.

* * * * *

21. Section 772.41 is revised to read as follows:

§ 772.41 What are the additional financial obligations of a grantee that supports a public library system?

If an Indian tribe or Hawaiian native organization that receives a grant under this program supports a public library system, the grantee shall expend from Federal, State, and local sources for public library services an amount not less than the amount the grantee expended from those sources for public library services during the second year preceding the year for which the

Secretary has approved a grant to the grantee under this program.

Authority: 20 U.S.C. 351c(d)(2); 362(b).

[FR Doc. 86-11320 Filed 5-20-86; 8:45 am]

[BILLING CODE 4000-01-M]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F3267/R841 (FRL-3016-3)]

Pesticide Tolerance for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide aluminum tris(O-ethylphosphonate) in or on citrus. The regulation was requested by Rhone-Poulenc, Inc. This regulation will allow the presence of residues of the fungicide in or on citrus resulting from the foliar application to citrus.

EFFECTIVE DATE: Effective on May 21, 1986.

ADDRESS: Written objections, identified by the document number [PP 5F3267/R841], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 31, 1985 (50 FR 31026), which announced that Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Monmouth Junction, NJ 08852, had submitted pesticide petition 5F3267 to the Agency proposing that the Administrator amend 40 CFR 180.415 by establishing a tolerance for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the raw agricultural commodity citrus at 0.1 part per million (ppm).

No comments were received in response to the notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The Agency concludes that the tolerance is adequate to protect the public health.

The toxicology data considered in support of the tolerance include:

1. An oncogenicity study in mice with no oncogenic effects induced at any dose level under the conditions of the study (the highest dose tested was 2,657/4,286 mg/kg body weight/day).

2. A rat chronic feeding/oncogenic study with a NOEL of 100 mg/kg body weight/day for systemic effects (oncogenic effects observed are discussed below).

3. A dog feeding study with a no-observed-effect level (NOEL) of 250 mg/kg body weight/day.

4. A reproduction study in rats with a NOEL of 300 mg/kg body weight/day.

5. Teratology studies in rabbits and rats with the teratogenic NOEL's of 500 mg/kg/day and 1,000 mg/kg/day respectively.

6. Ames mutagenicity assays, *E. Coli* phage induction tests, micronucleus tests in mice, DNA repair tests using *E. Coli*, and *Saccharomyces cervisiae* yeast assay that were all negative for mutagenic effects.

As stated in a notice, published in the Federal Register of November 2, 1983 (48 FR 50532), oncogenic effects were noted in the rat chronic feeding/ocogenic study. In this study, Charles River CD rats were dosed with aluminum tris(*O*-ethylphosphonate) at levels of 0, 2,000, 8,009 and 40,000/30,000 ppm for 2 years. The high dose level was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm.

The highest dose level of the chemical tested in the male Charles River CD-1 rats (40,000/30,000 ppm) in this study appeared to approximate a maximum tolerated dose (MTD) based on the finding of hyperplasia at this dose. Similarly, a MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high dose level of 40,000/30,000 ppm because of the weight loss (about 10 percent) incurred at 40,000 ppm during the first two weeks of the oncogenicity/chronic feeding study before the dose level was reduced to 30,000 ppm.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) at the highest dose level tested (40,000/30,000 ppm) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice. The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high dose male rats. No urinary bladder tumors were produced in female rats.

Based on the diagnosis of the pathologist at the test laboratory where the study was performed, aluminum tris(*O*-ethylphosphonate) appeared to produce a significantly elevated incidence of pheochromocytomas (adenomas and carcinomas combined) at the mid (8,000 ppm) and high (40,000/30,000 ppm) dose levels in the male Charles River CD-1 rats. The elevated pheochromoncytoma incidence was primarily due to an increase in the adenomas. This diagnosis was not confirmed by two other pathologists who reevaluated the data. These consulting pathologists reread the adrenal gland slides and did not find statistically significant dose-related increases in the incidence of pheochromocytomas to the male rats. The Agency attributed the difference in the pathological diagnoses to the fact that a high degree of variability exists in the interpretation of adrenal medullary neoplasia compared to adrenal medullary hyperplasia in identifying pheochromocytomas. None of the three pathologists reported a statistically significant increase in the combined incidence of the three types of adrenal medullary lesions (i.e., adenomas, carcinomas, and hyperplasia).

Based on the available information, the Agency concluded that aluminum tris (*O*-ethylphosphonate) did not produce pheochromocytomas in the high dose male rats. No adrenal gland tumors were produced in female rats.

The Agency has concluded that the available date provides limited evidence for the oncogenicity of aluminum tris (*O*-ethylphosphonate) in male rats, and has classified the pesticide as a Category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the Federal Register of November 23, 1984 (49 FR 46294). This classification is based on the conclusion that the pesticide produced oncogenic effects at the highest tolerated dose in only one sex and species of experimental animal. In reaching this conclusion, the Agency also considered that the pesticide did not show any positive responses in a variety of short term tests for mutagenicity, and did not produce positive oncogenic results when administrated in the diet to Charles River CD mice at dose levels ranging from 25,000 to 30,000 ppm. Similarly, the urinary metabolite of the chemical,

namely monosodium phosphite was not oncogenic when administered in the diet to Charles River CD rats at dose levels ranging from 2,000 to 32,000 ppm.

Based on the urinary bladder tumors, the estimated worst case oncogenic risk for this tolerance is in the range of 10^{-7} to 10^{-8}. This calculation is based on the assumption that residues are present at the tolerance level and that 100% of crop is treated. It is expected that the actual risk will be much lower.

Using a 100 fold safety factor and the NOEL of 100 mg/kg body weight/day determined by the 2-year rat feeding study, the allowable daily intake (ADI) is 1.0 mg/kg body weight/day. The maximum permissible intake (MPI) for a 60-kg person is 60.0 mg/day. The tolerance on citrus results in a theoretical maximum residue contribution (TMRC) of 0.0062 mg for 1.5 kg diet and utilizes less than 0.01 percent of the ADI.

The metabolism of aluminum tris (*O*-ethylphosphonate) is adequately understood. There is no reasonable expectation of residues occuring in milk and meat of livestock or poultry. An adequate enforcement method exists for this tolerance.

Based on the above information considered, the Agency concludes that establishing the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this notice in the **Federal Register**, file written objections with Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by ground legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 4 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CRF Part 180

Administrative practice and procedures, Raw agricultural commodities, Pesticides and pests.

Dated: May 8, 1986.

Steve Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.415 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.415 is amended by adding, and alphabetically inserting the commodity citrus to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

* * * * * * *

Commodities	Parts per million
Citrus	0.1

[FR Doc. 86-10940 Filed 5-20-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6615

[F-031025]

Alaska; Partial Revocation of Public Land Order Nos. 715 and 5187, as Amended; Lands Made Available for Conveyance to Kaktovik Inupiat Corporation and Arctic Slope Regional Corporation

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two public land orders insofar as they affect 103 acres of land within the Arctic National Wildlife Refuge and make the lands available for selection by and conveyance to Kaktovik Inupiat Corporation and Arctic Slope Regional Corporation. The lands remain closed to all other forms of appropriation under the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, Anchorage Alaska 99513, (907-271-5080).

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 715 of April 20, 1951, as amended, which withdrew lands for the use of the Department of the Air Force for military purposes, and Public Land Order No. 5187 of March 15, 1972, which withdrew lands in military reservations for classification and protection of the public interest, are hereby revoked insofar as they affect the following described lands:

Barter Island DEW Station

Umiat Meridian

A parcel of land situated within sections 18 and 19, Township 9 North, Range 34 East, Umiat Meridian, Barrow Recording District, Second Judicial District, State of Alaska; said parcel being more particularly described as follows:

COMMENCING at a point in section 18, Township 9 North, Range 34 East, Umiat Meridian, said point being common with Corner Point Number Three of U.S. Survey No. 4234, Townsite of Kaktovik;

Thence South 01°24' East, a distance of 902.80 feet, more or less, along the west boundary of said survey to the TRUE POINT OF BEGINNING;

Thence North 66°47'50" West, a distance of 275.00 feet, more or less;

Thence North 24°58'30" West, a distance of 250.00 feet, more or less;

Thence North 01°24' West, a distance of 115.50 feet, more or less;

Thence North 33°27' East, a distance of 175.00 feet, more or less;

Thence South 86°36' West, a distance of 550.00 feet, more or less;

Thence South 01°24' East, a distance of 2,008.96 feet, more or less;

Thence South 35°24' East, a distance of 3,520.00 feet, more or less;

Thence East, a distance of 1,250.00 feet, more or less, to a point on the Mean High Water Line of Kaktovik Lagoon;

Thence northeasterly, along the Mean High Water Line of said lagoon, to Meander Corner Number 1 of U.S. Survey No. 4234;

Thence North 35°24' West, along the southwesterly boundary of said survey, a distance of 219.65 feet, to the W.C.M.C. No. 1 of said survey;

Thence South 54°36' West, a distance of 360.00 feet, more or less;

Thence North 35°24' West, a distance of 3,588.65 feet, more or less;

Thence North 01°24' West, a distance of 1,275.00 feet, more or less, to the True Point of Beginning.

The area described contains approximately 103 acres.

2. The surface estate of the lands described in paragraph 1 may be

selected by and conveyed to Kaktovik Inupiat Corporation under the provisions of subsection 1431(g)(3) of the Alaska National Interest Lands Conservation Act (ANILCA). If the surface estate is selected by and conveyed to Kaktovik Inupiat Corporation, the subsurface estate of the same lands will be conveyed to Arctic Slope Regional Corporation in accordance with paragraph 3(c) of the agreement between Arctic Slope Regional Corporation and the United States of America of August 9, 1983.

3. The lands described in paragraph 1 of this order were withdrawn by Public Land Order No. 2214 of December 6, 1960, as part of the Arctic National Wildlife Range and were included as a part of the Arctic National Wildlife Refuge as established by subsection 303(2)(A) of the ANILCA, 16 U.S.C. 668dd. The lands remain closed to all other forms of appropriation under the public land laws, including the mining and mineral leasing laws except selection by the Native Village of Kaktovik Inupiat Corporation under the provision of section 1431(g)(3) of the ANILCA 94 Stat. 2371 at 2533. If these lands are conveyed to Kaktovik Inupiat Corporation and the subsurface is conveyed to Arctic Slope Regional Corporation, the lands will remain subject to the provisions of section 22(g) of the Alaska Native Claims Settlement Act, 85 Stat. 688 at 714 in accordance with the provisions of section 1431(g)(3) of the ANILCA.

J. Steven Griles,

Assistant Secretary of the Interior.

May 12, 1986

[FR Doc. 86-11375 Filed 5-20-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Limitation of Progress Payments; Correction

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects language contained in a final rule which was published April 21, 1986 (51 FR 13513).

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary Defense Acquisition Regulatory Council.

The Department of Defense is correcting language published at 51 FR 13513, April 2, 1986, to read as follows:

1. Section 232.502-4 is corrected by revising paragraph (S-73) to read as follows:

232.502-4 Contract Clauses.

* * * * *

(S-73) If the contract is with a small business concern, the contracting officer shall use the clause at 252.232-7007, Progress Payments, with its Alternate I.

* * * * *

2. Section 252.232-7007 is corrected by revising paragraph (j)(3)(i) of the clause, and by removing from the introductory text of Alternate I of the clause the parenthetical reference "(see FAR 32.501-1)", to read as follows:

252.232-7007 Progress Payments.

* * * * *

(j) * * *

(3) * * *

(i) Are substantially similar to the terms of this clause (or this clause with its Alternate I) for any subcontractor that is a small business concern;

* * * * *

[FR Doc. 86-11384 Filed 5-20-86; 8:45 am]

BILLING CODE 3810-01-M

48 CFR Part 246

Department of Defense, Federal Acquisition Regulatory Supplement; Weapon Systems Warranties

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DAR Council has approved changes to DoD FAR Supplement Part 246. Defense Acquisition Circular (DAC) #84-0, published in the Federal Register on 3 January 1985 (50 FR 274, January 3, 1985), provided interim guidance for the implementation of the requirements of 10 U.S.C. 2403, weapon systems warranties. Public comments on the rule were reviewed and considered in the formulation of this final rule.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Changes made in the temporary rule include: (1) A statement recognizing the relationship of the weapon system development program and production warranties; (2) a minor change to the definition of "essential performance requirements"; (3) addition of a reference to "repair, replace and redesign" as available warranty remedies; (4) an expansion of the discussion of the items appropriate for tailoring; (5) a revision of the language concerning the applicability of DFARS 246.770 to FMS procurements; (6) an expansion of the discussion of cost-benefit analysis; (7) various clarifications in the requirement for processing waivers; (8) relocating subsection 246.770-10(a) to 246.710(f); and (9) various administrative corrections.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Regulatory Flexibility Act Information

The Department of Defense certifies that the change to DFARS 246.7 does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the very limited number of small entities that may be required to provide warranties on weapon systems will be able to include the cost of warranty in their contract prices.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 246

Government procurement.

Charles W. Lloyd,

Exective Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

PART 246—QUALITY ASSURANCE

1. The authority for 48 CFR Part 246 continues to read as follows:

Authority: 5 U.S.C. 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

246.701 [Amended]

2. Section 246.701 is amended by changing the word "Defect" at the beginning of the second undesignated paragraph to "Defects".

3. Section 246.702 is amended by revising paragraph (d) to read as follows:

246.702 General.

(d) Planning is an essential step in obtaining an effective warranty. To be effective, warranties should be implemented as an integral part of an overall design, development, test, and production program.

* * * * *

246.703 [Amended]

4. Section 246.703 is amended by removing the last sentence.

5. Section 246.710 is added to read as follows:

246.710 Contract clauses.

(f) In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts when a fixed-price or cost-reimbursement contract is contemplated that will require data to be furnished. When this clause is not used, technical data is warranted under the clauses at FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246–6, Inspection—Time and Material and Labor Hour; FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(1) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate I.

(2) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate II.

246.770–1 [Amended]

6. Section 246.770–1 is amended by inserting the word "/or" between the word "capabilities and" and the word "maintenance" in the third undesignated paragraph; and by changing the word "terms" in the last sentence of the last undesignated paragraph to "term".

246.770–2 [Amended]

7. Section 246.770–2 is amended by removing the word "that" between the words "event" and "the" in subparagraph (a)(2); and by adding in subparagraph (a)(2)(i) between the words "necessary" and "at" the parenthetical phrase "(repair, replace and/or redesign)".

8. Section 246.770–3 is revised to read as follows:

246.770–3 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among weapon system acquisition programs, contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations, and duration; *Provided*, such are consistent with the specific requirements of this section (see also FAR 46.708). The duration specified in any warranty should be clearly related to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance. Contracting officers may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. All subsystems and components will be procured in such a manner so as not to invalidate the weapon system warranty. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous and in accordance with agency policy. Likewise, the contracting officer may narrow the scope of a warranty where such is appropriate (e.g., where it would be inequitable to require a warranty of all essential performance requirements because a contractor had not designed the system). It is Department of Defense policy not to include in warranty clauses any terms that cover liability for loss, damage or injury to third parties.

246.770–4 [Amended]

9. Section 246.770–4 is amended by changing the word "superceded" in the last sentence to "superseded".

246.770–5 [Amended]

10. Section 246.770–5 is amended by revising the reference reading "46.770–2(a)(3)" to read "46.770–2(a)(1)(iii)".

11. Section 246.770–7 is revised to read as follows:

246.770–7 Applicability to FMS.

The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. For all weapon systems procured for FMS requirements, the policy of the Department of Defense should be to obtain the same warranties on conformance to design and manufacturing requirements and against defects in materials and workmanship that are obtained for U.S. supplies. DoD will not normally obtain essential performance warranties for FMS purchasers. However, where the cost for the warranty of essential performance requirements cannot be practically separately identified, the foreign purchaser may be provided the same warranty that is obtained on the same equipment purchased for the U.S. If the FMS purchaser expressly requests a performance warranty in the Letter of Offer and Acceptance (LOA), the United States will exert its best efforts to obtain the same warranty obtained on U.S. equipment or, if specifically requested by the FMS purchaser, a unique warranty. It is anticipated that the costs for warranties for FMS purchasers may be different from the costs for such warranties for the United States due to such factors as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser. Special care must be exercised to ensure that the FMS purchaser shall bear all of the acquisition and administration costs of any warranties obtained.

12. Section 246.770–8 is revised to read as follows:

246.770–8 Cost-benefit analysis.

It is Department of Defense policy to only obtain warranties that are cost effective. If a specific warranty is considered not to be cost effective by the contracting officer, a waiver request shall be initiated under 246.770–9. In assessing the cost effectiveness of a proposed warranty, an analysis must be performed which considers both the quantitative and qualitative costs and benefits of the warranty. Costs include the warranty acquisition, administration, enforcement and user costs, weapon system life cycle costs with and without a warranty, and any costs resulting from limitations imposed by the warranty provisions. Costs incurred during development specifically for the purpose of reducing production warranty risks should also

be considered. Similarly, the cost-benefit analysis must also consider logistical/operational benefits expected as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty. Where possible, comparison should be made with the costs of obtaining and enforcing similar warranties on similar systems. The analysis should be documented in the contract file.

13. Section 246.770–9 is amended by inserting the words "to be" between the words "warranty" and "obtained" in the first sentence of the introductory paragraph; by revising the title in the second sentence of the introductory paragraph reading "Under Secretary of Defense (Research and Engineering)" to read "Assistant Secretary of Defense (Acquisition and Logistics)"; by revising subparagraph (d)(1)(ii); by adding subparagraph (d)(1)(iii); and by revising paragraph (d)(4) to read as follows:

246.770–9 Waiver and notification procedures.

* * * * *

(d)(2)

* * * * *

(ii) The specific warranty or warranties required by 246.770–2(a)(1) for which the waiver is requested, the duration of the waiver if it is to go beyond the instant contract, and rationale for the waiver.

(iii) A description of the warranties or other techniques to be employed to assure acceptable field performance of the weapon system.

* * * * *

(4) A copy of each notification and report to Congress shall be submitted concurrently to the Assistant Secretary of Defense (Acquisition and Logistics). For Class waivers this copy shall be submitted in advance of the transmittal to Congress.

246.770–10 [Amended]

14. Section 246.770–10 is amended by removing paragraph (a), subparagraphs (a)(1) and (a)(2) and by redesignating the existing paragraph (b) as paragraph (a).

[FR Doc. 86–11385 Filed 5–20–86; 8:45 am]
BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub #3)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services; 1986 Update; Clarification

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Through these final rules the Commission clarifies its fee schedule to make the filing fee previously adopted for certain exempt rail transactions [See 49 FR 18491 (5–1–84), 49 FR 39548 (10–9–84), and 50 FR 40026 (11–1–85)] applicable to exemptions involving acquisition and operation of certain rail lines under 49 U.S.C. 10901 established in Ex Parte No. 392 (Sub-No. 1), *Class Exemption For The Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 51 FR 2503, (1–17–86), or exemptions of railroads from securities regulations under 49 U.S.C. 11301 adopted in Ex Parte No. 397, *Exemption of Railroads From Securities Regulations Under 49 U.S.C. 11301*, 51 FR 4927 (2–10–86).

EFFECTIVE DATE: Upon publication in the Federal Register, on May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275–7428.

SUPPLEMENTARY INFORMATION: We believe that good cause exists under 5 U.S.C. 553(b) to make these fee schedule modifications effective immediately without public notice and comment. The new exemption procedures are already in effect. The fee that we are adopting has been established previously for notice of exemption proceedings through notice and comment in Ex Parte No. 246 (Sub-No. 2) *Regulations Governing Fees For Services Performed In Connection with Licensing and Related Services*, 49 FR 18491 (5–1–85). We are simply applying the fee to new notice of exemption categories. Immediate implementation of this fee change will remove any uncertainty about the appropriate fee for these new procedures and provide the public with a reduced fee for these procedures.

Accordingly, we find that good cause exists to waive notice and comment in this proceeding and to have these fee modifications become effective immediately because any delay in implementing this reduced fee would be contrary to the public interest.

This action will not have a significant economic impact on a substantial number of small entities because we are merely adopting an existing fee for a similar procedure.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Appendix

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Freedom of Information.

PART 1002—[AMENDED]

In 49 CFR 1002.2 paragraphs (f)(33) and (f)(54) are revised to read as follows:

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 553, 31 U.S.C. 9701, 49 U.S.C. 10321.

2. Paragraphs (f)(33) and (54) of § 1002.2 are revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

Type of proceeding	Fees
* * * * *	
(f) * * *	
(33)(a) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad 49 U.S.C. 10901	2,100
(b) Exempt transaction under 49 CFR 1150.31	450
* * * * *	
(54)(a) An application to issue securities, an application to assume obligation or liability in respect of the securities of another, an application or petition for modification of an outstanding authorization, or an application for exemption for competitive bidding requirements of ExParte No. 158, 49 U.S.C. 11301	950
(b) exempt transaction under 49 CFR Part 1175	450
* * * * *	

Decided: May 9, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–11380 Filed 5–20–86; 8:45 am]
BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 51, No. 98
Wednesday, May 21, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

Increase in License Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of proposed revision of regulations.

SUMMARY: The Department of Agriculture proposes a revision of the Regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act which increases the license fee. The purpose of the revision is to cover increased operating costs associated with administration of the program.

DATE: Written comments on this proposal should be filed by June 20, 1986.

ADDRESS: Written comments should be sent to Michael A. Clancy, P.A.C.A. Branch, Fruit and Vegetable Division, AMS, Room 2715, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael A. Clancy, Head, License Section, P.A.C.A. Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, Phone (202) 447–2814.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under the USDA procedures established in the Secretary's Memorandum 1512–1 and supplemental memorandum dated March 5, 1980, to implement Executive Order 12291 and has been classified as "non-major" because it does not meet any of the criteria identified under the Executive Order. The proposed action will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. The Administrator of the Agricultural Marketing Service has determined that the proposal is in response to an emergency funding situation and as such is considered to be an agency management decision.

Background

The Perishable Agricultural Commodities Act was enacted by Congress in 1930 so as to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing for the collection of damages from anyone who fails to meet contractual obligations. On May 7, 1984, an amendment to the PAC Pub. L. 98–273, impressed a statutory trust on licensees for perishable agricultural commodities received, products derived from, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers or agents who have not been paid.

The PACA is enforced through a licensing system. All commission merchant, dealers and brokers engaged in business subject to the Act must be licensed. The cost of administering the Act is financed entirely through the license fees paid by those engaging in business subject to the law. The Secretary is charged with setting the license fee at a level necessary to meet the expenses of administration within the maximum provided in the law by Congress. Amendments to the Act in 1981, permitted the Secretary to assess a base annual fee of up to $300 plus an assessment of up to $150 for each branch operation exceeding nine. The maximum aggregate annual license fee for any firm cannot exceed $3,000.

The administration of the new trust statute has increased the workload under the program along with related travel expenses. There has also been a significant increase in the filings of reparation actions by injured parties to recover damages under their contract. As a result, costs incurred by the program during Fiscal Year 1985, exceeded revenue by approximately $125,000. It is anticipated that the workload and travel requirements will continue to increase as more growers, shippers and distributors seek to utilize the benefits and protection of the new statute. Under the current fee assessment, it is estimated that the program will incur an additional deficit in excess of $200,000 by end of Fiscal Year 1988.

In order to assure continued and effective administration of the program, the license fees for firms dealing in commodities subject to the Perishable Agricultural Commodities Act must be amended to reflect the increased costs associated with the program in the coming fiscal years. The current license fee is $180 plus $72 for each branch or additional business facility operated by the applicant exceeding nine. The Secretary has determined that an increase in such fees to $216 and $108, respectively will cover the costs of the program, plus provide a reasonable reserve.

List of Subjects in 7 CFR Part 46

Agriculture commodities.

PART 46—[AMENDED]

1. The authority citation for Part 46 continues to read as follows:

Authority: Section 15, 46 State. 537; 7 U.S.C. 4990.

2. Section 46.6 is revised to read as follows:

§ 46.6 License fee.

The annual license fee is two hundred and sixteen (216) dollars plus one hundred eight (108) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed one thousand eight hundred (1,800) dollars. The Director may require that the fee be submitted in the form of a money order, bank draft, cashier's check or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Department may accept fees and issue receipts therefore.

Done at Washington, DC, on May 8, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 86–10845 Filed 5–20–86; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR PARTS 212 and 214

Documentary Requirements for Nonimmigrants; Waivers, Admission of Certain Inadmissible Aliens, Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend regulations of the Immigration and Naturalization Service relating to temporary alien workers seeking classification under section 101(a)(15)(H)(i) and section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101. The purpose of this proposed rule is to clarify and conform Service policy to the intent of Congress as it relates to these classes of nonimmigrants and to facilitate the entry into the United States of certain nonimmigrants needed by international businesses and other organizations which petition on their behalf.

A main objective of the rule is to clarify requirements for classification, admission, and maintenance of status under section 101(a)(15)(L) and to modify the blanket petition procedures to make it more useful to businesses. Under this classification, an alien employee of a qualifying organization may be admitted temporarily to the United States to continue employment with his/her same employer or an affiliate or subsidiary of that employer in a managerial, executive, or specialized knowledge capacity. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee, and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the qualifying organization. The rule would modify the blanket petition program to expand the criteria which petitioners must meet to file a blanket petition, broaden the class of aliens who seek L classification against blanket petitions, and reduce documentation requirements for petitioners. To facilitate the classification of aliens as intracompany transferees under blanket petitions, all beneficiaries of blanket petitions outside the United States, including Canadian nationals, would be required to apply for classification under section 101(a)(15)(L) and obtain a visa from a United States consular officer abroad. Determinations of L classification under blanket petitions would be made by the Service for those aliens who are already in the United States and requesting an extension of stay or change of status from some other nonimmigrant classification.

This rule would also revise H–1 and L requirements to change admission and/or extension time periods for an alien's stay in the United States, define temporariness, and clarify Service policy regarding the effect which approval of a labor certification or the filing of a preference petition has on the alien's H–1 or L nonimmigrant status.

Other technical changes designed to establish uniformity in the application of Service policy and to curb abuses in the H–1 and L classifications are proposed.

We believe that these revisions would reflect the intent of Congress in 1970 when it modified section 101(a)(15)(H)(i) and enacted section 101(a)(15)(L); would clarify Service policy in these nonimmigrant categories; and would benefit the public by facilitating the admission of needed personnel. These amendments would also allow businesses to plan their use of foreign personnel in these categories with a greater degree of certainty.

DATE: Interested persons are invited to submit written comments on this proposed rule on or before July 21, 1986.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 Eye Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC. 20536, Telephone: (202) 633–3048

For Specific Information: Flora T. Richardson, Immigration Examiner, Immigration and Naturalization Service, 425, Eye Street, NW., Washington, DC. 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: The legislative history (House Report 91–851, U.S. Code Cong. and Ad. News 2751–2755 (1970)) indicates that Congress amended the existing H–1 provision and established the L provision in 1970 to facilitate the entry into the United States of certain classes of nonimmigrant aliens needed by international businesses, universities and other organization. The H–1 category was modified to delete the requirement that the job which the alien is coming to fill be a temporary one. The petitioner may now temporarily employ an H–1 alien in a permanent or a temporary job. The L category was established to eliminate problems faced by the international companies having offices abroad in transferring key personnel freely within the organization. Prior to Pub. L. 91–225, international personnel coming to the United States for temporary assignment were forced to apply for immigrant visas, which in some cases were not available.

It is clear from the legislative history and the language of section 101(a)(15)(H)(i) and (L) that an alien admitted to the United States in these nonimmigrant categories is to be coming to the United States for a temporary period *with the intention to return abroad* voluntarily at the termination of his/her authorized stay if permanent status has not been accorded in the meantime. These proposed regulations set forth the procedures whereby the benefits under section 101(a)(15)(L) and section 101(a)(15)(H)(i) in part may be granted, denied, extended, revoked, or appealed.

Section 101(a)(15)(L) of the Immigration and Nationality Act was established to facilitate the temporary transfer of foreign nationals with management, executive, and specialized skills to the United States to continue employment with the same employer, its parent, or a branch, subsidiary or affiliate. Congress expected the number of persons in this category to be small and intended the Service to carefully regulate and monitor the eligibility of aliens for classification under section 101(a)(15)(L). The Service is concerned that current Service policy, on the one hand, restricts businesses and organizations in transferring and maintaining key personnel needed in the United States and, on the other hand, permits a number of organizations and alien beneficiaries to qualify under section 101(a)(15)(L) that were not contemplated by Congress when section 101(a)(15)(L) was enacted. The proposed revisions will address these concerns.

The Service has responsibility for determining whether the alien is eligible for classification under section 101(a)(15)(L) and whether the petitioner is a qualifying organization. Certain petitioners seeking the classification of aliens as intracompany transferees may file a blanket petition with the Service. Under the blanket petition procedure, the Service is responsible for determining whether the petitioner is a qualifying organization and has delegated to the Department of State responsibility for determining eligibility of the aliens for L classification except when the alien is in the United States.

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To ease the burden on inspectors at U.S. ports of entry and to facilitate entry for L.s, a visa for Canadians who seek L classification under blanket petitions would be provided.

The H–1 and L regulations would be amended to define temporariness and to include the "dual intent" concept for both employer and alien. "Temporary" would be defined for H–1 or L purposes as up to three years, with a possibility of extensions up to two years, not to exceed five years. One further extension up to one year may be granted in extraordinary circumstances. The approval of a permanent labor certification or the filing of a preference petition would not in and of itself be ground for denial of an initial or extended H–1 or L nonimmigrant visa petition or an application for extension of stay, when certain conditions are met.

The substantive amendments proposed by this document are discussed below:

Discussion of Proposed Amendments

1. Definitions

A. Managerial and executive capacity—These definitions would be modified to require that virtually all of the employee's time must be spent in performing managerial or executive duties. This requires a demonstration that a beneficiary will be primarily or solely engaged in directing the management of an organization or a customarily recognized division of an organization and any other duties performed must be incidental to those as a manager or as an executive. The beneficiary's job title alone would be insufficient to establish that he or she meets this criterion. Factors such as the actual duties performed, the size of the organization, and number of employees would be evaluated to make the determination. While it is reasonable in organizations for a manager or executive to perform incidental duties related to providing a service or product of the organization, we believe that a substantial percentage of working time in such activities is an indicator that the position is other than managerial or executive.

B. Specialized knowledge—The definition would be revised to require that the knowledge be narrowly held in the organization, unique, and involve a key process or function which enhances the organization's operation and competitiveness in the market. The Service, in a number of precedent decisions, has discussed the various requirements for specialized knowledge (*Matter of Michelin Tire Corp.*, 17 I & N Dec. 248 (R.C. 1978); *Matter of Penner*, I.D. 2365 (Com. 1982); *Matter of Colley*, I.D. 2361 (Comm. 1981)). The term "specialized knowledge" refers to persons who, due to their outstanding level of expertise or knowledge in a field, are essential to a firm's ongoing operation because they have expert knowledge of the firm's product, research, service, or decision-making structure and process. The term does not apply to persons who have general knowledge and expertise in a field which enables them to produce a product or provide a service.

C. Specialized knowledge professional—This new term relates only to an alien who seeks "L" classification against a blanket petition and means an individual who possesses specialized knowledge and is a member of the professions, as defined in section 101(a)(32) of the Act.

D. Qualifying organization—The term "qualifying organization" would be added, to refer to the petitioner and any related organizations found to meet the requirements of section 101(a)(15)(L).

E. Other terms—Definitions for intracompany transferee, parent, subsidiary, and affiliate have been added, since these terms are used throughout the regulations. These definitions reflect the Service's interpretation and application of these terms.

2. Petitioner's Status

The petitioner for an intracompany transferee must be a firm, corporation, or other legal entity, or a parent, branch, subsidiary or affiliate thereof which is seeking to transfer an employee to the United States temporarily from one of its operations outside the United States. The legislative history of section 101(a)(15)(L) (House Report 91–851; U.S. Code Cong. & Ad. News 2751–2755 (1970)) clearly indicates that Congress intended this provision to be utilized by international organizations. It was not intended to accommodate complete relocation of foreign enterprises to the United States. The Board of Immigration Appeals and the Service have held that the statute does not require the continuing existence of a foreign-based legal entity since no precise structure or organization outside the United States is mandated by the statute. *Matter of Chartier*, 16 I & N Dec. 284 (BIA 1977), and *Matter of Thompson* ID 2889 (Com., August 1981). However, to conform to the intent of section 101(a)(15)(L), a person or organization must be able to demonstrate the ongoing international nature of the petitioner and the existence of foreign operations to which the employee can reasonably be expected to be transferred at the end of his/her assignment in the United States. To formalize this policy this proposed rule would require the petitioning employer to be an international firm, corporation, or legal entity doing business with employees in the United States and at least one other country. For an intracompany transferee to retain eligibility under section 101(a)(15)(L) of the Act, the petitioner must maintain its status as an international entity for the duration of the alien's stay in the United States.

When a petitioner seeks to transfer an alien to the United States to open or to be employed in a new office, the rule would require that the petitioner would be approved for a period not to exceed one year, after which the petitioner must demonstrate that it is actually doing business in the United States in order to extend the validity of the petition. This provision would reduce the incidence of sham operations and enhance the Service's ability to assure that beneficiaries of such petitions maintain their status in the United States.

3. Blanket Petition Program

The blanket petition program allows a petitioner to seek continuing approval of itself, its parent, and its branches, subsidiaries, and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or some of its branches, subsidiaries and affiliates. Under the current blanket program, a number of employers have not taken advantage of this streamlined procedure because they believe that the threshold for qualifying is too limited; specialized knowledge is not covered; the documentation requirements are too onerous; and the period of petition approval is too short. The Service has considered employer concerns and Service operating experience under the blanket petition procedure and developed the following revisions as reflected in the proposed rule:

A. A petitioner would be able to file a blanket petition on behalf of itself, its parent and any number of its branches, subsidiaries, and affiliates as qualifying organizations if:

1. The petitioner, its parent, and those branches, subsidiaries, and affiliates are engaged in commercial trade or services;
2. The petitioner has an office in the United States that has been doing business for one year or more;
3. The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and
4. The petitioner and the other qualifying organizations have obtained

approval of petitions for at least 10 "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or have a United States workforce of at least 1000 employees.

B. Blanket petitions would be approved initially for three years and thereafter indefinitely if and so long as the qualifying organizations comply with the requirements of 8 CFR 214.2(l) and the terms of the petition.

C. The blanket procedure would be expanded to include persons who have specialized knowledge, but only if they are professionals as defined in section 101(a)(32) of the Act.

D. Requirements for proof of qualifying relationships would be simplified, and current requirements for documentation of the internal organizational structure and titles of positions would be eliminated.

E. A new form, specifically for L petitions, would be developed, in addition to a separate form (Certificate of Eligibility) to be used by petitioners to certify the eligibility of aliens against blanket petitions when they seek to transfer an alien to the United States.

The Service believes that the changes to the blanket petition program will increase the number of qualifying organizations and aliens who will utilize the blanket program. The requirements which a petitioner must meet to file a blanket petition have the effect of limiting participants in the program to medium to large organizations which provide goods or services for profit. Such organizations generally have clearly defined positions and organizational subdivisions. They regularly maintain systems, records, and other corporate documents such as annual reports, audits, and Securities and Exchange Commission filings in such a manner that their applications do not require the close scrutiny required for many others. It has been our experience that these organizations can readily document the relationship between entities, and their rotation of foreign personnel generally conforms to the requirements of section 101(a)(15)(L) and our regulations.

Under the blanket petition program, the Service is responsible for determining whether the petitioner and related entities are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of aliens. This proposed rule would increase the responsibilities of consular officers for determining the eligibility of aliens seeking classification and visas based on blanket petitions. Consular officers would determine whether the position in which the alien will be employed in the United States is with an organization named in the approval notice and whether the specific job is managerial, executive, or requires a specialized knowledge professional. The consular officer would determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the approval notice in a capacity that was managerial, executive or required a specialized knowlege professional, and whether the alien's prior training and experience qualifies him or her for the employment in the United States.

The inclusion of specialized knowledge along with managers and executives under the blanket petition program would increase the complexity of determinations which consular officers make under this program. A determination of specialized knowledge is frequently a difficult question requiring reference to case law and knowledge of the industry and the labor market in the United States. To limit this burden, only those professionals who possess specialized knowledge would be included under blanket petitions. The Service would continue to make determinations on individual petitions for all other applications under section 101(a)(15)(L).

This rule would also amend documentary requirements for nonimmigrants at 8 CFR 212.1(h) to require that an alien, including a Canadian national, seeking admission under section 101(a)(15)(L) of the Act as a beneficiary of a blanket petition must possess a nonimmigrant visa issued by an American consular officer classifying the alien under that section. Under the current blanket procedure, Canadian nationals and others who qualify for a visa waiver are considered for L classification at a United States port of entry. This determination will be more complex and time-consuming under the revised blanket program. Because of this, we believe that it is no longer feasible to have Service inspectors make the required determinations at a port of entry.

4. Temporariness and the Effect of Obtaining a Permanent Labor Certification or Filing a Preference Petition in the H–1 and L Classifications

It is clear from the legislative history and the language of section 101(a)(15)(H)(i) and (L) that aliens admitted to the United States in these nonimmigrant categories are to be coming to the United States for a temporary period *with the intention to return abroad.* When Congress established section 101(a)(15)(L) in 1970, its survey of international companies showed "a three-year admission would be sufficient [for an L]" but that "this should not be construed as a basis to deny bona fide requests for a renewal or extension, nor should the L visa holder be barred from due consideration of an application for adjustment of status if he should subsequently decide to seek permanent resident status in the United States". Congress was convinced that an international company would not jeopardize or endanger its future need for corporate executive rotation by attempting to misuse or abuse section 101(a)(15(L) as a vehicle for immigration.

Under the proposed regulation, the Service would define temporariness in the H–1 and L classification and specify that a petitioner may legitimately have the intent to use the services of an alien lawfully for a temporary period, and, in the future, to permanently employ the alien when and if the petitioner may lawfully do so; the alien may also legitimately have the intent to come to the United States temporarily and depart voluntarily at the end of his or her authorized stay unless, within that period, the alien has become a permanent resident of the United States. The temporary admission may not be sought, however, for the principal purpose of immigrating prematurely. The regulations clarify that the burden is on the petitioner/alien to establish the requisite intent.

Regarding "temporariness", we believe adoption of a generous but specific limit on what is regarded as temporary would best serve the interests of the Service and the affected public. The beneficiary of an H–1 or L petition would be admitted to the United States initially for a period up to three years. An extension of stay could be authorized for a period not to exceed two years. After five years, an extension of stay not to exceed one year could be granted under extraordinary circumstances after certification to the Administrative Appeals Unit. A new petition for the same alien would not be approved unless the alien departed voluntarily and resided outside the United States for one year.

The approval of a permanent labor certification or the filing of a preference petition for an alien would not by itself be ground to deny an H–1 or L petition or a request to extend an H–1 or L petition during the five (six)-year period, if the district director, in his judgment, determines that certain conditions are met. First, the dates of temporary employment must be within the

prescribed time limit. Second, the petitioner must establish that (a) the petitioner is not requesting the temporary classification for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number and (b), in the case of L classification, the petitioner will transfer the alien to an assignment abroad upon completion of the approved temporary employment, unless the alien has earlier been accorded permanent resident status or other authorization to work.

In deciding whether or not the foregoing conditions have been met, the district director would consider factors such as, but not limited to the following, as appropriate:

—Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization
—Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship
—Whether the organization has an established program for rotation of international personnel
—Whether the employer or a subsidiary, parent or affiliate has operations and an appropriate position abroad to which the alien will be transferred at the end of his/her authorized stay
—When the employee is a major stockholder or the sole proprietor of the petitioner, whether the petitioner has a record of international entrepreneurship.

The burden would be on the petitioner to submit adequate proof. For H–1 and L classification, the difference in job duties for permanent services and temporary services would not be relevant to the question of intent.

Similarly, the approval of a labor certification or the filing of a preference petition would also not by itself be ground to deny an alien's application for admission, change of status, or extension of stay if the district director, in his judgment, determines that certain conditions are met. The alien must demonstrate, in the case of an H–1, that he/she has not abandoned residence abroad and, in the case of an H–1 or an L, that he/she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization. In determining whether the alien meets these conditions, the district director would consider factors such as, but not limited to the following as appropriate:

—Evidence of a residence abroad such as home, bank accounts, or prospects of a job abroad at the end of the authorized stay
—Close family ties abroad
—History of previous stays in the United States and visa classifications; evidence that the alien has not entered or remained in the United States in violation of status or U.S. immigration laws
—Alien's employment history within and outside the United States
—Whether the employment appears to be an accommodation
—Whether the alien could reasonably be expected to continue his career outside the United States upon completion of his temporary employment.

The burden would be on the alien to submit adequate proof.

The Service believes that the proposed changes reflect Congressional intent as it relates to the H–1 and L nonimmigrant categories and that the public will benefit from the changes to the extent that they make these categories more useful to businesses and other organizations. They would also make clear Service policy regarding admission, the alien's temporary stay in the United States, and requirements for petitioners and beneficiaries who seek approval or classification under these nonimmigrant categories.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule will not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Chapter I of Title 8 Code of Federal Regulations would be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 continues to read as follows:

Authority: Secs. 101 and 212 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101 and 1182.

2. Section 212.1 would be amended by adding a new paragraph (h) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(h) *Beneficiaries of blanket intracompany transferee petitions.* Notwithstanding any of the provisions of this part, an alien seeking admission under section 101(a)(15)(L) of the Act as a beneficiary of a blanket petition shall possess a nonimmigrant visa issued by an American consular officer classifying the alien under that section.

* * * * *

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: Secs. 101 and 214 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 and 1184).

2. Section 214.2 would be amended by revising paragraph (h)(6)(i); renumbering paragraph (h)(6)(ii) as (h)(6)(v); adding new paragraphs (h)(6)(ii), (h)(6)(iii) and (h)(6)(iv); revising paragraph (h)(9); revising and renumbering paragraph (h)(10) as (h)(11); revising and renumbering paragraph (h)(12) as (h)(10); adding a new paragraph (h)(12); renumbering paragraph (h)(11) as (h)(13); renumbering paragraphs (h)(13) and (h)(14) as paragraphs (h)(14) and (h)(15), respectively; and revising (l).

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(6) *Approval of Petition*—(i) *General.* The district director shall consider all the evidence submitted and any other evidence as he may independently require to assist his adjudication. The district director shall notify the petitioner on Form I–171C of the approval of a petition filed on Form I–129B. Form I–171C shall include the beneficiary(ies), name(s), classification, and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part. Form I–171C shall cover only those beneficiaries approved for classification under section 101(a)(15)(H).

(ii) *H–1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the

beneficiary's temporary services, but not to exceed three years.

(iii) *H–2 petition.* If a certification by the Secretary of Labor or his designated representative is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition will not be valid beyond the date to which the certification is valid. When the certification does not state a validity period, approval of the petition will not exceed one year from the date on which the certification was issued.

(iv) *H–3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program.

* * * * *

(9) *Admission*—(i) *General.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the date of validity of the petition.

(ii) *H–1 limitation on admission.* An alien who has spent five or in some cases possibly six years in the United States under secton 101(a)(15)(H)(i) may not be readmitted to the United States under that visa classification unless the alien has resided outside the United States for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(H)(i) unless the alien has resided outside the United States for the immediate prior year.

(10) *Extension of visa petition validity*—(i) *General.* A visa petition under section 101(a)(15)(H) may be extended by filing a new Form I–129B with the number of the previously approved petition. If there is no change in the previously approved visa petition, supporting documents are not required unless requested by the Service.

(ii) *H–1 petition.* An H–1 petition may be extended for a period of up to two years; however, the total period of approvals including the initial approval may not exceed five years except in extraordinary circumstances. An additional extension not to exceed one year may be granted beyond five years under extraordinary circumstances. Extraordinary circumstances shall exist when it is found that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services will be in the national welfare, safety, or security interests of the United States. No further extensions may be granted. If the district director decides that approval of the petition extension up to six years is warranted, the decision shall be certified to the Administrative Appeals Unit.

(iii) *H–2 and H–3 petitions.* A visa petition extension for H–2 or H–3 classification may be authorized in increments of not more than 12 months each under the same terms and conditions that applied to the original approval.

(11) *Extension of Stay*—(i) *General.* If maintaining status, the beneficiary may apply for an extension of stay to the validity period of the approved visa petition by submitting Form I–539. An application for an extension of stay on behalf of a group of beneficiaries covered by the same original petition must be filed on Form I–539 by each individual alien, but only one Form I–129B for extension of visa petition validity is required. In the case of an extension of stay for an alien ensemble performing as a group, only one Form I–539 is required with an attached list of beneficiaries. A change in the previously authorized employment or training requires the filing of a new petition by the prospective employer or trainer and the filing of an I–539 by the beneficiary. The Forms I–539 and I–129B may be filed concurrently. There is no appeal from the denial of an alien's request for an extension of stay filed on Form I–539.

(ii) *H–1 extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H–1 petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. An extension of stay not to exceed one year may be granted beyond five years under the extraordinary circumstances required in the subparagraph (10)(ii) for extension of an H–1 visa petition. No further extensions may be granted. If the district director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit before service on the alien. No extension shall be granted to exceed the validity of the approved petition.

(iii) *H–2 extension of stay.* For an alien defined in section 101(a)(15)(H)(ii) of the Act, the application for extension of stay must be accompanied by a labor certification or a notice that the certification cannot be made, and the alien shall not be granted an extension which would result in an unbroken stay in the United States for more than three years. An application for an alien athlete or entertainer admitted under section 101(a)(15)(H)(ii) of the Act to perform services in the United States Virgin Islands cannot be approved for extension of stay beyond a total of 45 days.

(iv) *H–3 extension of stay.* An extension may be authorized in increments of not more than 12 months each under the same terms and conditions that apply to admission.

(12) *Effect of approval of a permanent labor certification or filing of a preference petition on H–1 classification*—(i) *Petitioner.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself ground to deny an H–1 petition or a request to extend an H–1 petition if the district director, in his judgment, determines that certain conditions are met.

(A) The dates of employment must be within the time limit for which an H–1 petition may be authorized or extended, and

(B) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(ii) *Beneficiary.* The approval of a labor certification or the filing of a preference petition is not by itself ground to deny an alien's application for admission, change of status, or extension of stay if the district director, in his judgment, determines that certain conditions are met.

(A) The alien must demonstrate that he/she has not abandoned residence abroad, and

(B) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization.

* * * * *

(l) *Intracompany transferees*—(1) *Admission of intracompany transferees*—(i) *General.* Under section 101(a)(15)(L) of the Act, an alien employee of a qualifying organization may be admitted temporarily to the United States to continue employment with his/her same employer or a parent, branch, affiliate or subsidiary of that employer in a managerial, executive, or specialized knowledge capacity. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee, and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsiblity for determining whether

the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth the procedures whereby these benefits may be applied for and granted, denied, extended or revoked. They also set forth procedures for appeal of adverse decisions and admission of intracompany transferees. Certain petitioners seeking the classification of aliens as intracompany transferees may file a blanket petition with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, subsidiaries, and affiliates specified are qualifying organizations. The Department of State, or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) *Definitions.*

(A) "Intracompany transferee" means an alien who, immediately preceding the time of his/her application for admission into the United States, has been employed abroad continuously for the immediate prior year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his/her services to the same employer or a parent, branch, subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for the same employer or a parent, branch, subsidiary or affiliate thereof shall not be interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement.

(B) "Managerial capacity" means an assignment within an organization in which the employee for virtually all of his/her time directs the organization or a department or subdivision of the organization, supervises and controls the work of supervisory, managerial or professional employees, has the authority to hire and fire or recommend those as well as other personnal actions (such as promotion and leave authorization), and exercises discretionary authority over day-to-day operations. Other duties performed must be incidental to those as a manager. The term manager does not include a first-line supervisor, unless the employees supervised are managerial or professional.

(C) "Executive capacity" means an assignment within an organization in which the employee for virtually all of his/her time directs the management of an organization or a major component of that organization and establishes organizational goals and policies, exercise wide latitude in discretionary decision-making, receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business, and supervises and controls the work of others acting in executive or managerial capacities. Other duties performed must be incidental to those as an executive.

(D) "Specialized knowledge" means knowledge possessed by an individual in an organization which is narrowly held within the organization and relates directly to the product or service of an organization or to the equipment, techniques, management, or other proprietary interests of the employer. The knowledge must be unique and involve a key process or function which enhances the organization's operation, expansion, and competitiveness in the market place.

(E) "Specialized knowledge professional" means an individual who has specialized knowledge and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

(F) "New office" means an office that has been in operation for less than one year.

(G) "Qualifying organization" means a United States or foreign firm, corporation or other legal entity which, for the duration of the alien's stay in the United States as an intracompany transferee, directly or through a parent, branch, affiliate, or subsidiary is or will be doing business in the United States and in at least one other country and which otherwise meets the requirements of section 101(a)(15)(L). A qualifying organization is not required to engage in international trade.

(H) "Doing business" means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and shall not include the mere presence of an agent or office of the qualifying organization in the United States or abroad.

(I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries and is not controlled by any other firm, corporation, or other legal entity.

(J) "Branch means an operating division of the same organization housed in a different location.

(K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns more than half of its stock and has managerial control of the entity; or owns 50 per cent of the stock of a 50–50 equity joint venture and has equal managerial control and veto power; or owns less than half its stock and controls the management of the entity because of extremely diverse holdings of minor stockholders or because it has proxy votes which give it a majority.

(L) "Affiliate" means one of two legal entities both of which are controlled by the same individual or legal entity.

(2) *Filing of petitions*—(i) Except as provided in paragraph (ii) below, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition in duplicate on Form I–129L with the district director having jurisdiction over the area where the alien will be employed.

(ii) A petitioner which meets the requirements of subparagraph (4) and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries or affiliates may file a blanket petition on Form I–1229L with the district director having jurisdiction over the area where the petitioner has its principal office in the United States.

(3) *Evidence for individual petitions.* As individual petition filed on Form I–129L shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in subparagraph (1)(ii)(G).

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, incuding a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization immediately preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

(v) It the petition indicates that the beneficiary is coming to open or to be employed in a new office in the United States, evidence that sufficient physical premises to house the new office have been secured by purchase, lease, or rental and that the petitioner has sufficient resources to remunerate the beneficiary.

(vi) If the beneficiary is an owner or major stockholder of the company the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

(vii) Such other evidence as the district director, in his or her discretion, may deem necessary.

(4) *Blanket Petitions*—(i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and its parent, branches, subsidiaries, and affiliates as qualifying organizations if:

(A) The petitioner and its parent, branches, subsidiaries, and affiliates are engaged in commercial trade or services; and

(B) The petitioner has an office in the United States that has been doing business for one year or more; and

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or have a United States workforce of at least 1000 employees.

(ii) Managers, executives, and specialized knowledge professionals employed by firms, corporations or other entities which have found to be qualifying organizations pursuant to an approved blanket petition may be classified as intracompany transferees and admitted to the United States as provided in subparagraphs (5) and (11).

(iii) An individual petition may be filed by the petitioner or any of its related entities only when the intended beneficiary is ineligible for "L" classification under the blanket petition procedure. In all other cases, when applying for or after obtaining approval of a blanket petition, the petitioner shall include (or amend to include) in the blanket petition all of its branches, subsidiaries, and affiliates which plan to seek to transfer aliens to the United States under section 101(a)(15)(L).

(iv) *Evidence.* A blanket petition filed on Form I–129L shall be accompanied by:

(A) Evidence that the petitioner meets the requirements of subparagraph (4)(i).

(B) Evidence that all entities for which approval is sought are qualifying organizations as defined in subparagraph (1)(ii)(G).

(C) Such other evidence as the district director, in his or her discretion, deems necessary in a particular case.

(5) *Certification and admission procedures for beneficiaries under blanket petition.*

(i) *Jurisdiction.* United States consular officers shall have authority to determine eligibility of individual beneficiaries outside the United States seeking L classification under blanket petitions, including Canadian nationals. An alien's change of status application in the United States from another nonimmigrant classification to L classification under a blanket petition shall be filed with the district office at which the blanket petition was filed.

(ii) *Procedures*—(A) When one qualifying organization listed in an approved blanket petition wishes to transfer an alien outside the United States to a qualifying organization in the United States, the petitioner listed in the blanket petition shall complete Form I–129S, Certificate of Eligibility for Intracompany Transferee under a Blanket Petition, in an original and three copies. The petitioner shall retain one copy for its records and send the original and two copies to the alien. A copy of the approved Form I–171C must be attached to the original and each copy of Form I–129S.

(B) After receipt of Form I–171C and Form I–129S, a qualified employee who is being transferred to the United States may use these documents to apply for visa issuance with the consular officer within six months of the date on Form I–129S.

(C) When the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I–129S, a copy of the approved Form I–171C and Form I–506 (Application for Change of Nonimmigrant Status) completed by the alien beneficiary at the district office with which the blanket petition was filed.

(D) The consular or Service officer shall determine whether the position in which the alien will be employed in the United States is with an organization named in the approved petition and whether the specific job is for a manager, executive, or specialized knowledge professional. The consular or Service officer shall determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the petition and was in a position as manager, executive or specialized knowledge professional and whether the alien's prior employment qualifies him or her to perform the intended services in the United States.

(E) Consular officers may grant "L" classification only in clearly approvable applications. If the consular officer determines that the alien is eligible for L classification to assume the intended employment in the United States, the consular officer may issue a nonimmigant visa, noting the visa classification "Blanket L–1" for the principal alien and "Blanket L–2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I–129S with the blanket L–1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I–129S shall be stamped to show a validity period not to exceed three years and the second copy collected for control purposes. Service officers who determine eligibility of aliens for L–1 classification under blanket petitions shall endorse both copies of Form I–129S with the blanket L–1 classification and the validity period not to exceed three years and retain the second copy for Service records.

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer's decision shall be final. The consular officer shall record the reasons for the denial on form I–129S, retain one copy, return the original of I–129S to the Service office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien with the district director having jurisdiction over the area of intended employment; the petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

(G) An alien admitted under an approved blanket petition may be reassigned to any organization listed in the approved petition in the same position without referral to the Service during his/her authorized stay. If the alien will be assigned to a new position, the petitioner shall complete a new Certificate of Eligibility and send it to the district director who approved the blanket petition for approval.

(6) *Certification of documents by attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and section 214.2(l) of this part may be accepted, without the original, if the copy bears a certification by an attorney in accordance with section 204.2(j) of

this chapter. However, the original document shall be submitted if requested by the Service.

(7) *Approval of petition*—(i) *General.* The district director shall notify the petitioner on Form I–171C of the approval of an individual or a blanket petition filed on Form I–129L. The original Form I–171C received from the Service with respect to an approval individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in subparagraph (h)(13) below.

(A) *Individual petition—(1)* Form I–171C shall include the beneficiary's name and classification and the petition's period of validity.

(2) An individual petition approved under this paragraph shall be valid for the period of established need for the beneficiary's temporary services, not to exceed three years, except where the beneficiary is coming to the United States to open or be employed in a new office.

(3) If the beneficiary is coming to the United States to open or to be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate that it is doing business as defined in subparagraph (1)(ii)(4) to extend the validity of the petition.

(B) *Blanket petition—(1)* Form I–171C shall identify the approval organizations included in the petition and the petition's period of validity.

(2) A blanket petition approved under this paragraph shall be valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with these regulations.

(3) A blanket petition may be approved in whole or in part and shall cover only qualifying organizations.

(4) From the date of approval of an indefinite blanket petition, the petitioner shall at the end of each three-year period provide the Service office at which the blanket petition was filed with a list of the aliens admitted under the blanket petition during the preceding three-year period, including all positions held by each during that period, the employing entity, and the dates of initial admission and final departure of each alien. Failure to provide reports may result in revocation of the petition

(C) *Amendments.* The petitioner shall file an amended petition with the district office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations, and any information which would affect the beneficiary's employment under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to the same nonimmigrant classification and length of stay as the beneficiary, if accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she is otherwise authorized to be employed pursuant to the Act.

(8) *Denial of petition*—(i) *Individual petition.* If an individual petition is denied, the petitioner shall be notified on Form I–291 of the denial, the reasons for the denial, and the right to appeal the denial.

(ii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified on Form I–292 of the decision, the reasons for the denial, and the right to appeal the denial. When the petition is denied in part, the Service office issuing the denial shall forward to the petitioner, along with the denial, a Form I–171C listing those organizations which were found to qualify. If the decision is reversed on appeal, a new Form I–171C shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) *Revocation of approval of individual and blanket petitions*—(i) *General.* The petitioner shall notify the Service of any changes in the relationship between approved entities and any changes in the employment of a beneficiary which would affect eligibility under section 101(a)(15)(L) and these regulations within 10 days of the change.

(ii) *Automatic revocation.* The approval of any individual or blanket petition is automatically revoked if the petitioner and the qualifying organizations cease to meet the requirements for filing the individual or blanket petition respectively, or the petitioner decides to withdraw the petition. The petitioner shall notify the Service in writing within 10 days if any of these events occur.

(iii) *Revocation on Notice*—(A) The district director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds:

(1) That one or more entities are no longer qualifying organizations; or

(2) That the alien is no longer eligible under section 101(a)(15)(L) of the Act; or

(3) That the petitioner failed to file reports on intracompany transferee admissions and departures as required by subparagraph (7) of this paragraph; or

(4) That qualifying organizations violated requirements of section 101(a)(15)(L) and these regulations; or

(5) That the statement of facts contained in the petition was not true and correct; or

(6) That approval of the petition was improvidently granted.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 15 days of the notice. The district director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I–171C shall be sent to the petitioner with the revocation notice.

(10) *Appeal of denial or revocation of individual or blanket petition*—(i) A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission.* A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual petition shall not be admitted for a date past the validity period of the petition. The beneficiary of a blanket petition may be admitted for three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. The admission period for any alien under section 101(a)(15)(L) shall not exceed three years unless an extension of stay is granted pursuant to subparagraph (15) of this paragraph.

(12) *L–1 limitation on admission.* An alien who has spent five or in some cases six years in the United States under section 101(a)(15)(L) may not be readmitted to the United States under that visa classification unless the alien has resided outside the United States for the immediate prior year. In view of this restriction, a new individual petition may not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(L) unless the alien worked outside the United States for the immediate prior year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five or six years in the United States unless the alien has worked outside the United States for the immediate prior year.

(13) *Beneficiary's use of Form I–171C and Form I–129S*—(i) *Beneficiary of an*

individual petition. The beneficiary of an individual petition who does not require a nonimmigrant visa may present a copy of Form I–171C at a port of entry to facilitate entry into the United States. The copy of Form I–171C shall be retained by the beneficiary and presented for entry during the validity of the petition provided that the beneficiary is entering or reentering the United States to resume the same employment with the same petitioner within the validity period of the petition and to apply for an extension to stay. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I–171C to apply for a new or revalidated visa during the validity period of the petition and to apply for an extension of stay.

(ii) *Beneficiary of a blanket petition.* Each alien seeking L classification under a blanket petition shall present a copy of Form I–171C and a Form I–129S from the petitioner which identifies the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties for both the new and former positions, and the positions, dates, and locations of previous L stays in the United States. A current copy of Form I–171C and Form I–129S should be retained by the beneficiary and used for leaving and reentering the United States to resume employment with a qualifying organization during his/her authorized period of stay, for applying for an extension of stay, for applying for a new or revalidated visa, or for applying for readmission at a port of entry. The alien may be readmitted even though reassigned to a different organization named on the Form I–171C than the one shown on Form I–129S if the position is the same.

(14) *Extension of visa petition validity*—(i) *Individual petition.* An individual petition under section 101(a)(15)(L) shall be automatically extended without the filing of Form I–129L, if the district director extends the stay of the alien beneficary in accordance with subparagraph (1)(15) below. A new form I–171C shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay.

(ii) *Blanket petitions.* A blanket petition may be extended indefinitely by filing a new Form I–129L with a copy of the previous approval notice and a report of admissions during the preceding three years. The report of admissions shall include a list of the aliens admitted under the blanket petition during the preceding three years, including position held during that period, the employing entity, and the dates of initial admission and final departure of each alien.

(15) *Extension of stay*—(i) *General.* An extension of stay may be authorized for a period of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years except in extraordinary circumstances. An extension of stay not to exceed one year may be granted beyond five years in extraordinary circumstances. Extraordinary circumstances shall exist when it is found that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services will be in the national welfare, safety, and security interests of the United States. No further extensions may be granted. If the district director decides that approval of a one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit before service on the alien. The spouse and minor children of an L–1 beneficiary may be included in the extension application and given extensions of stay to the same date as the beneficiary.

(ii) *Beneficiary of individual petition.* A beneficiary of an individual petition may apply for an extension of stay by submitting Form I–539, a copy of the original I–171C, and a letter from the petitioner which certifies that the terms and conditions of the original petition have not changed and specifies the new dates of employment requested.

(iii) *Beneficiary of blanket petition.* A beneficiary of a blanket petition may apply for an extension of stay by submitting Form I–539, his or her copy of Form I–171C and I–129S, and a letter from the petitioner which certifies that the terms and conditions of the petition and the alien's employment have not changed and specifies the new dates of employment requested.

(iv) A new Form I–171C or a revalidated Form I–129S as appropriate shall be sent to the applicant if the extension is approved. Form I–541 shall be sent if the extension is denied. There is no appeal from the denial of an extension of stay.

(16) *Effect of approval of a permanent labor certification or filing a preference petition on L–1 classification*—(i) *Petitioner.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself ground to deny an L petition or a request to extend an L petition if the district director, in his judgment, determines that certain conditions are met.

(A) The dates of temporary employment must be within the time limit for which a petition may be authorized or extended;

(B) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number; and

(C) The petitioner must establish that it will transfer the beneficiary to an assignment abroad upon completion of the approved temporary employment unless the alien has been accorded permanent resident status or other authorization to work.

(ii) *Beneficiary.* The approval of a labor certification or the filing of a preference petition is not by itself ground to deny an alien's application for admission, change of status, or extension of stay if the district director, in his judgment, determines that the alien has demonstrated that he/she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization.

* * * * *

Dated: May 5, 1986.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 86–11440 Filed 5–20–86; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–86–7]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part

11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before, July 21, 1986.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. —, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 15, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24027	Aircraft Owners and Pilots Association	*Description of Petition:* To amend the effective date of amendment 91-192 on MEL's from March 13, 1986, to July 1, 1986. To permit aircraft owners adequate time to become aware of the termination of suspension, to evaluate the need for an MEL, and if necessary apply for approval prior to the rule's effective date and enforcement. *Regulations Affected:* 14 CFR 91.30. *Petitioner's Reason for Rule:* In terminating the suspension of § 91.30 for MELs, the FAA provided 90 days from the FEDERAL REGISTER notice to the effective date of March 13, 1986. For a rule which has been in suspension since 1979, the FAA should have provided at least six months, until July 1, 1986, between notice and effect. Additionally, the comment period on the termination of suspension was approximately 60 days. These time periods do not permit wide dissemination of information to the pilot community and certainly do not provide adequate time for public comment. The FAA action gives the appearance of closed-mindedness and a disregard for the quality of public comment.
24084	Air Transport Association	*Description of Petition:* Amendment to Flight Time Limitations to allow accommodation of operational delays that occur in routine operations. The petitioner request reconsideration of the "Rest Must Begin" provision and recommends substituting the phrase "Must be Scheduled To Begin" no later than 24 hours after the commencement of the reduced rest period but must begin not later than 24 hours to resolve the matter. *Regulations Affected:* 14 CFR 121.471(c) (1), (2), (3) and 135.265(c) (1), (2), and (3). *Petitioner's Reason for Rule:* Petitioner states that the amendment would avoid introduction of a subtle risk factor that has played a role in a major aviation accident. The proposed amendment would also avoid unnecessary disruption of airline schedules without reducing rest provided for flight crewmembers.
24055	Fairchild Corporation	*Description of Petition:* Amendment to the oxygen requirements to allow supplemental oxygen quantities based on the projected need, with a minimum quantity of 45-minutes for each pilot on pressurized aircraft. *Regulations Affected:* 14 CFR 135.157. *Petitioner's Reason for Rule:* The amendment would relieve operators of the current economic burden of either carrying excessive oxygen quantities or of flying at inefficient altitudes.
24032	Aircraft Owners Pilots Association	*Description of Petition:* To extend the duration of a third-class airman medical certificate to 36 calendar months for non-commercial operations requiring a private or student pilot certificate. *Regulations Affected:* 14 CFR 61.23(c). *Petitioner's Reason for Rule:* Granting the amendment would reduce a regulatory and economic burden on the public and reduce the administrative cost and paperwork burden on the FAA, while maintaining current safety assurance.
24069	Beech Aircraft Corp	*Description of Petition:* To amend Part 45 of the Federal Aviation Regulation (FAR) to define the location of Nationality and Registration Marks on fixed-wing aircraft ina way that is not affected by aircraft configuration. *Regulations Affected:* 14 CFR 45.25. *Petitioner's Reason for Rule:* This proposal is prompted by airplane configurations that depart from the usual arrangement of having horizontal stabilizers on the aft end of the fuselage. Existing rules do not cover configurations with horizontal stabilizers located on the forward end of the fuselage or with engine nacelles mounted structurally to wings that blank out the normal fuselage location for marks. The changes to Part 45 proposed would eliminate the need for petitioning for exemption to the rule as currently written.
24060	National Rifle Assoc	*Description of Petition:* Amendment to the regulations to prohibit certificate holders from placing upon, or in any way attach to, the outside of checked baggage or any other checked parcel any markings of any kind which would indicate that the baggage or parcel contained a firearm. *Regulations Affected:* 14 CFR 108.11. *Petitioner's Reason for Rule:* Plainly, such a change is in the public interest since it will minimize the possibility of theft of baggage containing firearms of the theft of firearms themselves by eliminating what is tantamount to an invitation to steal. Notably, a day-glow orange tag on checked serves no beneficial purpose since its only purported purpose is as a form of declaration that the firearm being checked as baggage is unloaded, that the luggage containing the declared firearm is locked, and that the key to the luggage is in the possession of the passenger. Certainly, such a declaration could be made on a form which the passenger retained with his ticket. This proposed addition will also benefit airlines since it will minimize the change of the airline being sued for loss of a passenger's luggage or firearms.

[FR Doc. 86-11382 Filed 5-20-86; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-6-AD]

Airworthiness Directives; Beech 90 Series and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech Models 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, C90, C90A, E90, 100, A100, and B100 airplanes. Fatigue cracks have been found in the wing main spar lower cap. This AD would require inspection of the wing main spar and associated structure to prevent possible failure from undetected fatigue cracking.

DATE: Comments must be received on or before June 27, 1986.

ADDRESSES: Beech Structural Inspection and Repair Manual, P/N 98-39006, was mailed by the manufacturer to all owners of record in 1983. Additional

copies can be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201. A copy is also contained in the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No 86-CE-6-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should idenfity the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rule Docket No. 86-CE-6-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 70-25-04 requires inspection for fatigue cracks in the wing main spar lower cap of Beech Model 65-90 airplanes with Serial Nos. below LJ-68. Subsequent to issuance of this AD, approximately 1,589 additional Beech 90 and 100 Series airplanes have been manufactured with basically the same wing spar structure. These airplanes are operated in a broad spectrum of applications and structural susceptibility to possible fatigue cracking depends on operating use, flight hours and environmental factors. As a result, Beech issued Structural Inspection and Repair Manual, P/N 98-39006, dated December 1, 1982, which prescribes inspection procedures for spar caps and attach fittings for all Beech 90 and 100 series airplanes. The inspection schedules and requirements may vary from one model or series to another, but virtually the entire fleet is affected by the manual. Voluntary inspections per the Beech manual have revealed cracks in the main spar lower caps of three Model C90, an E90 and two Model 100 airplanes. Because of their location, the FAA considers these six to be fatigue cracks which would have grown in size, possibly causing failure of the spar, if not detected and repaired. Since the condition is likely to exist or develop in other Beech 90 and 100 series aircraft of the same design, an AD is being proposed which would require inspection, and when necessary the replacement, of the wing main spar structure in accordance with the Beech Structural Inspection and Repair Manual, P/N 98-39006. There are approximately 1,589 airplanes affected by the proposed AD. The cost of inspecting these airplanes per the proposed AD is estimated to be $1,500 per airplane. The total cost is estimated to be $2,353,500 to the private sector. The cost per airplane is less than the significant cost amount for those small entities operating one airplane. The FAA has determined, on the basis of the aircraft registration records, that less than 1% of the owners of the affected airplanes own more than one of the affected airplanes, which is less than the threshold for a substantial number of small entities.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation safety, Aircraft, safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Beech: Applies to Models 65-90 and 65-A90 (S/N LJ-68 thru LJ-317); 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, C90 (all S/N); C90A (S/N LJ-1063 thru LJ-1087, except LJ-1065); E90, 100, A100 and B100 (all S/N) airplanes, certificated in any category, including those airplanes equipped with spar reinforcing straps, incorporated by Supplemental or original type certificates.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect possible fatigue cracking of the wing main spar lower cap and associated structure accomplish the following:

(a) On all airplanes with more than 5,000 hours time-in-service (TIS), within the next 200 hours TIS, or within one calendar year, whichever occurs first, inspect the wing attach fittings, center section and outboard wing spar caps by visual, fluorescent penetrant and eddy current methods as specified in the applicable section of Beech Structural Inspection and Repair Manual, Part No. 98-39006, revised December 20, 1984, or later revision (BSIR Manual).

The inspection must be performed by personnel specifically trained by Beech Aircraft Corporation.

Note 1: A listing of approved maintenance facilities may be obtained from the sources listed in paragraph (f) of this AD.

(b) If any crack is found in a main spar lower cap or fitting, prior to further flight replace the defective part using the procedures specified in the BSIR Manual or with other instructions provided by Beech Aircraft Corporation.

(c) If a crack is found, a report must be submitted within one week to the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) The compliance time for the inspections specified in this AD may be extended to coincide with the next wing bolt inspection per AD 85-22-05 if applicable.

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification

Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Wichita, Kansas 67201 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 2: The wing bolt inspection and outboard wing corrosion inspections specified in the BSIR Manual are recommended but not required by this AD.

Issued in Kansas City, Missouri, on May 13, 1986.

Edwin S. Harris,

Director, Central Region.

FR Doc. 86-11352 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-113-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would amend an existing airworthiness directive (AD), applicable to certain Boeing Model 727 airplanes, which currently requires repetitive visual inspections for cracks and repair, if necessary, of the forward frame of the Number 3 cargo door cutout. This action is prompted by the development of a preventative modification that, if incorporated, would eliminate the potential for cracks developing in an undamaged frame.

DATE: Comments must be received on or before June 13, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-113-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-113-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

AD 84-21-04, Amendment 39-4938 (49 FR 40800), was issued October 10, 1984, to require inspection of the forward frame of the Number 3 cargo door cutout for fatigue cracks. Since issuing the AD, a preventative modification has been developed by the manufacturer that reduces the potential for cracking of the frame. This modification has been incorporated into Boeing Alert Service Bulletin 727-53A0169, Revision 1, dated March 28, 1986. This proposed amendment would terminate the repetitive inspection requirements of this AD for those airplanes that have incorporated the optional preventative modification.

Since this amendment would only provide an optional modification which, if incorporated, would relieve a repetitive inspection requirement, it would impose no additional cost on operators.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria for the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because it would only add an optional modification and would not impose an additional burden on any person. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 39 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Airworthiness Directive (AD) 84-21-04, Amendment 39-4938, (49 FR 40800; October 10, 1984), by adding a new paragraph F., which reads as follows:

"F. Installation of the Preventative Modification described in Figure 2 of Boeing Alert Service Bulletin 727-53A0169, Revision 1, dated March 28, 1986, terminates the repetitive inspection requirements of paragraphs A. and B. of this AD."

All persons affected by this proposal who have not already received copies of the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 14, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11357 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-18]

Proposed Alteration of Lewistown, Coppertown, Bozeman, Montana; Idaho Falls, Idaho; and Ogden Municipal Airport, Utah, Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the Lewistown, Coppertown, Bozeman, Montana; and Idaho Falls, Idaho, Control Zones from full-time to part-time. A temporary reduction in personnel staffing of the Flight Service Stations at these locations has resulted in weather observations not being available 24 hours a day. This action also deletes the specified effective hours from the Ogden Municipal Airport part-time control zone which will allow flexibility in extending or reducing the control zone hours without rulemaking action.

DATE: Comments must be received on or before July 1, 1986.

ADDRESSES: Send comments on the proposal to:

Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM-535, Federal Aviation Administration, Docket No. 86-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-18". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Lewistown, Coppertown, Bozeman, Montana; and Idaho Falls, Idaho, Control Zones from full-time to part-time. A temporary reduction in personnel staffing of the Flight Service Stations at these locations has resulted in weather observations not being available 24 hours a day. The amendment will also delete the specified effective hours from the Ogden Municipal Airport part-time control zone which will allow flexibility in extending or reducing the control zone hours without rulemaking action.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evalution as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.171 is amended as follows:

§ 71.171 [Amended]

Lewistown, Montana [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Coppertown, Montana [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Bozeman, Montana [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Idaho Falls, Idaho [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Ogden Municipal Airport, Utah [Amended]

Delete "from 0800 to 2200 hours, local time, daily."

Add "The control zone shall be effective during the specified dates and times

established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on May 12, 1986.

Temple H. Johnson, Jr.,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-11348 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASO-17]

Proposed Alteration of Transition Area, Erwin, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the size of the Erwin, North Carolina, transition area to accommodate a new instrument approach procedure which has been developed to serve Harnett County Airport. This action will lower the base of controlled airspace, northeast of the airport, from 1,200 to 700 feet above the surface. This additional controlled airspace is required for protection of Instrument Flight Rules (IFR) aeronautical activities.

DATE: Comments must be received on or before July 1, 1986.

ADDRESS: Send comments on the proposal in triplicate to Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 86-ASO-17, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will alter the Erwin, North Carolina, transition area by designating additional controlled airspace northeast of Harnett County Airport. This airspace is required to support IFR aeronautical activities in the Erwin area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.181 is amended as follows:

§ 71.181 [Amended]

Erwin, NC—[Revised]

Following . . . longitude 78°44'04" W.); . . . insert the following words: "within three miles each side of the 042° bearing from the Harnett RBN (lat. 35°25'59" N., long. 78°40'31"W.), extending from the 7.5 mile radius area to 8.5 miles northeast of the RBN; . . . .".

Issued in East Point, Georgia, on May 9, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-11355 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-SO-18]

Proposed Alteration of Transition Area, Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the size of the Smithfield, North Carolina, transition area to accommodate changes in an instrument approach procedure which serves

Johnston County Airport. This action will lower the floor of controlled airspace in an area northeast of the airport from 1,200 to 700 feet above the surface.

DATE: Comments must be received on or before July 1, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 86–ASO–18, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will alter the Smithfield, North Carolina, transition area by designating additional controlled airspace northeast of Johnston County Airport. This airspace is required to support Instrument Flight Rule aeronautical activities in the Smithfield area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Smithfield, NC—[Revised]

That airspace extending upward from 700 feet above the surface within a seven-mile radius of Johnston County Airport (lat. 35°32'36" N., long. 78°23'21" W.); within 3.5 miles each side of the 024° bearing from the Neuse RBN (lat. 35°36'24" N., long. 78°21'17" W.), extending from the seven-mile radius area to 9.5 miles northeast of the RBN.

Issued in East Point, Georgia, on May 9, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86–11356 Filed 5–20–86; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 303

[Docket No. 44015; Notice No. 86–3]

Exemption From Prior Approval Requirements for Certain Transactions

Correction

In FR Doc. 86–10735 beginning on page 17490 in the issue of Tuesday, May 13, 1986, make the following correction:

On page 17491, in the first column, the sixth line from the bottom should read "acquisitions of other air carriers should not".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

15 CFR Part 21

[Docket No. 60462–6062]

Federal Claims Collection; Debt Collection Act of 1982; Administrative Offset

AGENCY: Office of the Secretary, Commerce.

ACTION: Proposed rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97–365) authorizes the Federal Government of collect debts owed it by means of administrative offset. This proposed rule will implement the Act by establishing procedures which the Department of Commerce (hereinafter referred to as "the Department") will follow in making an administrative offset.

DATES: Comments must be received on or before June 20, 1986.

ADDRESS: Send comments to Sonya G. Stewart, Director, Office of Finance and Federal Assistance, Office of the Secretary, Deprtment of Commerce, Room 6627, Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Roger J. Mallet, telephone (202) 377–2324.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (the Act) amends the Federal Claims Collection Act of 1966 by enhancing the Government's ability to collect money owed it through the establishment of new debt collection techniques such as administrative offset. This proposed rule contains the Department's provisions to implement administrative offsets in collecting delinquent accounts. The provisions are consistent with the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office as final standards on March 9, 1984 (See 49 FR 8889).

The Act states that administrative offset is the withholding of money payable by the United States to, or held by the United States on behalf of a person, to satisfy a debt owed the United States by that person. For example, an administrative offset could be initiated by the Department against payments to be made by another Federal department or agency to a debtor on a Federal loan, contract, or a grant. For administrative offset, the Act requires that the agency observe notice and procedural requirements before any offset is made. Administrative offsets may be made to satisfy an outstanding debt up to ten years from the date the Government's right to collect the debt first accrued. In defining "person", the Act states that administrative offset does not apply to an agency of the United States Government, or of a State or local government.

The administrative offset procedures proposed by the Department cover such aspects of offset as: (1) Coordinating collection action with another Federal agency (for example, when the Commerce Department needs another Federal agency to collect the money by offset), (2) notifying debtors prior to offsets being made, (3) providing the debtor with the opportunity to review the Department's records related to the particular debt, (4) providing the debtor with the opportunity to enter into a debt repayment agreement with the Department, and (5) establishing time periods in which the debtor must notify the Department of his or her election of any of these procedures. Review of the record includes a review by the debtor of the written record pertaining to the debt, and, in some situations, an oral hearing. The conditions for these two procedures are outlined in this rule.

Pending adoption of this proposed rule, the Department may pursue administrative offsets against a debtor is (1) failure to take such action would substantially prejudice the Government's ability to collect the debt, or (2) the time before the payment is to be made to a debtor by another Federal agency does not reasonably permit final adoption of this proposed rule.

Specific interim procedures for offset against amounts payable from the Civil Service Retirement and Disability Fund are covered in this proposed rule. The Department will amend these procedures following publication of prescribed final amendments to (5 CFR 831) regulations by the Director, Office of Personnel Management (OPM). Proposed regulations were published on this subject by OPM on January 4, 1985 (50 *FR* 473).

Executive Order 12291

This proposed action has been reviewed and has been determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, Stat. 1164 (5 U.S.C. 605(b)). The General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information contained in this proposed regulation is not subject to the Office of Management and Budget review and approval.

List of Subjects in 15 CFR Part 21

Claims.

For the reasons set forth above, it is proposed that Part 21 be added to 15 CFR Subtitle A to read as follows:

PART 21—ADMINISTRATIVE OFFSET

Sec.

21.1 Definitions.
21.2 Purpose and scope.
21.3 Department responsibilities.
21.4 Notification requirements before offset.
21.5 Exceptions to notification requirements.
21.6 Written agreement to repay debt.
21.7 Review of Department records related to the debt.
21.8 Review within the Department of a determination of indebtedness.
21.9 Stay of offset.
21.10 Types of reviews.
21.11 Review procedures.
21.12 Determination of indebtedness and appeal from determination.
21.13 Coordinating administrative offset within the Department and with other federal agencies.
21.14 Notice of offset.
21.15 Procedures for administrative offset: single debt.
21.16 Procedures for administrative offset: multiple debts.
21.17 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
21.18 Collection against a judgment.
21.19 Liquidation of collateral.
21.20 Collection in installments.
21.21 Additional administrative collection action.

Authority: 31 U.S.C. 3711; 4 CFR 102.

§ 21.1 Definitions.

For purposes of this subpart:

(a) The term "administrative offset" means satisfying a debt by withholding of money payable by the Department to, or held by the Department on behalf of a person, to satisfy a debt owed the Federal Government by that person.

(b) The term "person" includes individuals, businesses, organizations and other entities, but does not include any agency of the United States, or any State or local government.

(c) The term "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or

entity, except another Federal agency, a State or local government, or Indian Tribal Government.

(d) Agency means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. § 101, 102, 103, or 104, respectively.

(2) The United States Postal Service; or

(3) The Postal Rate Commission.

(e) Debtor means the same as "person."

(f) "Department" means the Department of Commerce.

(g) "Secretary" means the Secretary of the Department of Commerce.

(h) "Assistant Secretary for Administration" means the Assistant Secretary for Administration of the Department of Commerce.

(i) "United States" includes an "agency" of the United States.

(j) "Waiver" means the cancellation, remission, forgiveness, on non-recovery of a debt allegedly owed by a person to the United States.

(k) "Departmental Unit" means an individual operating or administrative component within the Department of Commerce.

(l) "Departmental Unit Head" means the head of an individual operating or administrative component within the Department of Commerce responsible for debt collection.

(m) "Notice of Intent" means the second demand notice sent by the Department to the debtor indicating not only the amount due, but also the Department's intent to offset all or some of the amount due from other source(s) of Federal payment(s) that may be due a debtor.

(n) "Workout Group" means Departmental debt collection specialist(s) assigned to collection of a delinquent debt when the claim is 30 or more days past due.

§ 21.2 Purpose and scope.

(a) The proposed regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 3716. Among other things, this statute authorizes the head of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(b) Unless otherwise provided for by statute, these proposed regulations do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code of 1954 (26 U.S.C. 1–9602), the Social Security Act (42 U.S.C. 301–1397f), or the tariff laws of the United States; and to contracts covered by the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

(c) The proposed regulations cover debts owed to the United States from any person, organization or entity, including debts owed by current and former Department employees, or other Federal employee, while employed in one capacity or another by the Department of Commerce.

(d) Debts or payments which are not subject to administrative offset under 31 U.S.C. 3716, unless otherwise provided for by contract or law, may be collected by administrative offset under the common law or other applicable statutory authority.

(e) Departmental units heads (and designees) will use administrative offset to collect delinquent claims which are certain in amount in every instance and which collection is determined to be feasible and not prohibited by law.

§ 21.3 Department responsibilities.

(a) Each Department of Commerce unit which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset when appropriate and best suited to further and protect all the Government's interest.

(b) The Departmental unit head (or designee) will determine the feasibility and cost effectiveness of collection by administrative offset on a case-by-case basis, exercising sound discretion in pursuing such offsets, and will consider the following:

(1) The debtor's financial condition;

(2) Whether offset would substantially interfere with or defeat the purposes of the Federal program authorizing the payments against which offset is contemplated; and

(3) Whether offset best serves to further and protect all of the interest in the United States.

(c) Before advising the debtor that the delinquent debt will be subject to administrative offset, the Departmental unit workout groups shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Commerce units, or in such other instances as the Assistant Secretary for Administration or his/her designee may deem appropriate, the Assistant Secretary, or his or her designee, may determine which Departmental unit workout group or official(s) shall have responsibility for carrying out the provisions of this subpart.

(d) Administrative offset shall be considered by Department units only after attempting to collect a claim under section 3(a) of the Federal Claims Collection Act of 1966, as amended; except that no claim under this Act that has been outstanding for more than 10 years after the debt first accrued may be collected by means of administrative offset, unless facts, material to the right to collect the debt, were not known and could not reasonably have been known by the official of the Department who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 21.4 Notification requirements before offset.

A debt is considered delinquent by the Department if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date.

(a) The Departmental unit head (and designees) responsible for carrying out the provisions of this subpart with respect to the debt shall ensure that appropriate written demands are sent to the debtor in terms which inform the debtor of the consequences of failure to cooperate in payment of the debt. The first demand letter should be sent within ten (10) days after the date the debt becomes delinquent. A total of three progressively stronger written demand letters, at not more than 30 calendar day intervals, will normally be made unless a response to the first or second demand indicates that a further demand would be futile and/or the debtor's response does not require any or immediate rebuttal. In determining the timing of the demand letters, Departmental unit heads should give due regard to the need to act promptly; so as a general rule, if it is necessary to refer the debt to the Department of Justice for action, such referral can be made within one year of the final determination of the facts and the amount of the debt. When Departmental unit heads (and designees) deem it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from

expiring), written demand for payment may be preceded by other appropriate actions.

(b) The Department official responsible for collection of the debt (generally an accounting or finance officer) shall ensure that an initial written demand notice is sent to the debtor, informing such debtor of:

(1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the Department;

(2) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13);

(3) That the debtor has a right to inspect and copy Department records related to the debt, as determined by responsible Departmental official(s), and that such request to inspect and copy must be postmarked or received by the Department no later than 30 days after the date of the (first) demand letter;

(4) The name, mailing address, and telephone number of the department workout group employee who can provide a full explanation of the claim and answer all related questions, as well as explain procedures to the debtor for inspecting and copying records related to the debt.

(c) The responsible Department officials shall exercise due care to insure that demand letters are mailed or hand delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken by the Departmental unit workout group to obtain a current address, including skip-trace assistance from the Internal Revenue Service and/or private sector credit reporting bureaus.

(d) Where applicable, the Departmental unit workout group must inform the debtor in the second demand letter ("Notice of Intent") of:

(1) The nature and amount of the debt;

(2) That the Department intends to collect the debt by administrative offset until the debt and all accumulated interest and other charges are paid in full;

(3) That the debtor has a right to obtain review within the Department of the initial determination of indebtedness, and that such request to have a review of the basis of indebtedness must be postmarked or received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent); and

(4) That the debtor may enter into a written agreement with the responsible Department official(s) to repay the debt if such a request is made and received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent).

If the sum of the proposed offset does not fully cover the amount of the debt owed, the departmental unit workout group shall also include in this second demand letter ("Notice of Intent") the notice provisions to debtors required by the Debt Collection Act of 1982, and other regulations of the Department, pertaining to disclosure of the delinquent debt to credit reporting agencies, referral to private collection agencies, salary offset, possible Internal Revenue Service offset of tax refunds, and referral of the debt to the Justice Department for action to the extent inclusion of such is appropriate and practical.

(e) The third demand letter will inform the debtor that administrative offset will be taken and will give the date for such action (see § 21.14).

§ 21.5 Exceptions to notification requirements.

(a) In cases where the notice specified in § 21.4 already have been provided to the debtor in connection with the same debt under some other proceeding, such as a final audit resolution determination, the Department is not required to duplicate those requirements before effecting administrative offset.

(b) The departmental unit workout group may effect an administrative offset against a payment to be made to a debtor before final adoption of this proposed regulation if (1) failure to make the offset would substantially prejudice the Government's ability to collect the debt, and (2) the time before the payment is to be made to a debtor does not reasonably permit final adoption of this proposed regulation (See Comptroller General of the United States Published Decision, File B-219781, September 3, 1985). Amounts recovered by administrative offset during the proposed rulemaking period, but later found not to be owed by the debtor(s) to the agency, will be refunded promptly.

§ 21.6 Written agreement to repay debt.

A debtor will be provided with an opportunity to enter into a written agreement with the responsible Departmental official(s) to repay the debt owed if the following conditions are met and if specific conditions exist that limit his or her ability to immediately repay the debt.

(a) Notification by debtor. The debtor may, in response to the first written demand or Notice of Intent, propose a written agreement for delayed lump sum or installment payments to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a proposed written agreement signed by the debtor to repay the debt, including interest, penalties, and administrative costs determined by the Department as due. This proposed written agreement must be received by the workout group individual specified in § 21.4(b)(4) within 60 calendar days of the date of the Department's initial written demand letter, or if in response to the Notice of Intent, within 30 calendar days of the date of the Department's Notice of Intent.

(b) Department response. In response to timely notification by the debtor as described in the paragraph (a) of this section, the departmental unit head (or designee) will notify the debtor within 30 calendar days whether the debtor's proposed written agreement for repayment is acceptable. It is within the discretion of the departmental unit head (or designee) to accept a repayment agreement instead of proceeding by offset. However, if the debt is delinquent and the debtor has not disputed its existence or amount, the departmental unit head (or designed) should accept a repayment agreement instead of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. Before accepting a repayment agreement, the departmental unit head (or designee) will also consider factors such as the financial statements provided by the debtor, the amount of the debt, the length of the proposed repayment period (generally not to exceed 3 years), whether the debtor is willing to sign a confess-judgment note or give collateral, and past dealings with the debtor. In making this determination, the departmental unit head (or designee) will balance the Department's interest in collecting the debt against the financial hardship to the debtor (see § 21.20). A departmental unit had (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

§ 21.7 Review of Department records related to the debt.

(a) Notification by debtor. A debtor who intends to inspect or copy Department records related to the debt must send a letter to the departmental unit workout group employee specified in § 21.4(b)(4) stating his or her intentions. The letter must be postmarked or received by the Department within 30 calendar days of the date of the Department's first demand letter.

(b) Department response. In response to timely notification by the debtor as described in paragraph (a) of this section, the departmental unit workout group will notify the debtor within 10 days of the request of the location and time when the debtor may inspect or copy agency records related to the debt, as well as provide the debtor with the name and telephone number of the contact person who may provide assistance to the debtor for ensuring that copies are made of all appropriate documents related to the debt. The debtor may also request that such records be copied and mailed. The responsible Department official(s) will provide access to records within 15 days from the date of the debtor's request for access, or mail the records to the debtor within such time period. Mailing of records by departmental official(s) will be by certified or registered mail. The debtor will have 30 days from date of access, or receipt of records by mail, to review the records and petition the Department for a review of the determination of indebtedness.

§ 21.9 Review within the Department of a Determination of Indebtedness.

(a) Notification by debtor. A debtor who receives an initial demand for payment under the procedures, or a Notice of Intent (see § 21.4(d)), has the right to request Department review of the determination of indebtedness. To exercise this right, the debtor must send a letter requesting review to the departmental unit workout group individual identification § 21.4(b)(4). The letter must explain why the debtor seeks review and must be postmarked within 60 calendar days of the date of the first demand letter (or 30 days from the Notice of Intent), or if a request has been made by the debtor to copy or have relevant records mailed, within the 30 calendar-day time period provided in § 21.7(b), above.

(b) Department response. In response to a timely request for review of the initial determination of indebtedness, the Department unit head (or designee) will notify the debtor whether review will be by (1) oral hearing, or (2) by administrative review of the record. The notice to the debtor will include the procedures used by Departmental officials for administrative review of the record, or will include information on the date, location and procedures to be used if review is by an oral hearing.

§ 21.9 Stay of Offset.

If the debtor notifies the departmental unit head (or designee) within the 30-day time frame provided in § 21.6 and § 21.8 that he or she is exercising a right described in § 21.6 or § 21.8, the offset will be stayed until the departmental unit head (or designee) either makes a determination concerning the debtor's proposal to repay the debt or issues a written decision following review of the record or, where appropriate, an oral hearing. However, interest will continue to accrue during any stay provided by the Department.

§ 21.10 Types of reviews.

The Department will provide the debtor with an opportunity for an oral hearing, or an administrative review of the documentation relating to the debt, under the following conditions.

(a) Oral hearing. The Departmental unit head (or designee) will provide the debtor with a reasonable opportunity for hearing if:

(1) An applicable statute authorizes or requires the Department to consider waiver of the indebtedness, the debtor requests waiver of the indebtedness involved, and the waiver determination turns on credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the departmental unit head (or designee) determines that the question of the indebtedness cannot be resolved by review of the documentary evidence.

(3) An oral hearing need not be a formal (evidentiary type) hearing. However, hearing officials should carefully document all significant matters discussed at the hearing.

(b) Administrative Review of Written Record. Unless the departmental unit head (or designee) determines that an oral hearing is required (see paragraph (a) of this section), the agency head (or designee) will provide for a review of the written record(s) (a review of the documentary evidence related to the debt, in the form of a "paper hearing").

§ 21.11 Review procedures.

(a) The oral hearing will be conducted as follows:

(1) The hearing official will take necessary steps to ensure that the hearing is conducted in a fair and expeditious manner. If necessary, the hearing officer may administer oaths of affirmation.

(2) The hearing official need not use the formal rules of evidence with regard to admissibility of evidence or the use of evidence once admitted. However, parties may object to clearly irrelevant material.

(3) The hearing official will record all significant matters discussed at the hearing. There will be no "official" record or transcript provided for these hearings.

(4) A debtor may represent himself or herself or may be represented by an attorney or other person. The Department will be represented by the General Counsel or his designee.

(5) The General Counsel (or designee) will proceed first by presenting evidence on the relevant issues. The debtor then presents his or her evidence regarding these issues. The General Counsel then may offer evidence to rebut or clarify the evidence introduced by the debtor.

(b) Administrative Review of the Record: The departmental unit head (or designee) will designate an official of the Department as hearing official who will review administrative determinations of indebtedness which are not reviewable under criteria provided in § 21.10(a) for justifying an oral hearing. the hearing official will review all mateial related to the debt which is in the possession of the Department. The hearing official will make a determination based upon a review of this written record, which may include a request for reconsideration of the determination of indebtedness, or such other relevant material submitted by the debtor.

(c) The Department may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this section, if failure to take the offset would substantially prejudice the Department's ability to collect the debt. For example, if the time before the payment is to be made to the debtor by another Federal department or agency would not reasonably permit the completion of due process procedures, the offset may be accomplished by the Department. such offset prior to completion of due process review hearing will be promptly followed by the completion of review and decision by the hearing official on the validity of the debt. Amounts recovered by offset in these instances, but later found not owed to the agency, will be promptly refunded.

§ 21.12 Determination of indebtedness and appeal from determination.

(a) Following the hearing or the review of the record, the hearing official will issue a written decision which includes the supporting rationale for the decision. The decision of the hearing official is the Department unit's final action with regard to the particular administrative offset.

(b) Copies of the hearing official's decision will be distributed to the General Counsel (or designee) for the Department, the Director of the Department's Office of Finance and

Federal Assistance, the appropriate Departmental unit accounting/finance officer, the debtor and the debtor's attorney or other representative, if applicable.

(c) If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in the information to the extent such information differs from that provided in the initial notification under § 21.4.

(d) Nothing in this subpart shall preclude the Department, upon request of the debtor alleged by a Departmental unit to be responsible for a debt, or on its own initiative, from reviewing the obligation of such debtor, including an opportunity for reconsideration of the determination concerning th debt, including the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

§ 21.13 Coordinating administrative offset within the Department and with other Federal agencies.

Departmental units and offices will cooperate with other Federal departments and agencies in effecting collection by administrative offset. Whenever possible, Commerce offices should comply with requests from within the Department and from other Federal agencies to initiate administrative offset procedures to collect debts owed the United States, unless the requesting office or agency has not complied with the Federal Claims Collection Standards, or the agency's implementing regulations, or the request would otherwise be contrary to law or the best interests of the United States.

(a) When the Department is owed the debt. When the Department is owed a debt, but another Federal agency is responsible for making the payment to the debtor against which administrative offset is sought, the other agency will not initiate the requested administrative offset until the Department provides responsible officials at that agency with a written certification that the debtor owes the Department a debt (including the amount and basis for the debt and the due date of the payment) and that the Department has complied fully with Part 102, "Standards for the Administrative Collection of Claims", of the Federal Claims Collection Standards, as well as the Department's implementing regulations on administrative offsets.

(b) When another agency is owed the debt. The Department may administratively offset money it owes to a person who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis for the debt) and that the creditor agency has complied with the applicable Federal Claims Collection Standards, as well as the agency implementation regulations on administrative offsets. The reqdest from another Federal agency for Department cooperation in the offset should be sent to:

Director, Office of Finance and Federal Assistance, Room 6837, Herbert C. Hoover Building, Washington, DC. 20230.

§ 21.14 Notice of offset.

Prior to effecting an administrative offset, the Department official responsible for collecting the debt will advise the debtor of the impending offset. This will be the third and final notice to the debtor (see § 21.4). This notice should state that the debtor has been provided his/her rights under the Federal Claims Collection Standards, that a determination has been made that collection by administrative offset would be in the best interests of the United States, and state the amount of the offset, the source of funds from which the offset will be made, and the date the offset will be accomplished. The third notice need not be provided to those debtors that have been provided with a hearing on determination of indebtedness or under the exceptions provided under § 21.5.

§ 21.15 Procedures for administrative offset: single debts.

(a) Administrative offset will commerce 31 days after the debtor receives the Notice of Intent, unless the debtor has requested a hearing (see § 21.8) or has entered into a repayment agreement (see § 21.6).

(b) When there is review of the debt within the Department, administrative offset will begin after the hearing officer's determination has been issued under § 21.12 and a copy of the determination is received by the Departmental unit's accounting or finance office, except for the provision provided in § 21.11(c) when immediate action is determined necessary to ensure the Department's position in collection of the delinquent debt.

§ 21.16 Procedures for administrative offset: multiple debts.

The Departmental units will follow the procedures identified in (§ 21.15) for the administrative offset of multiple debts. However, when collecting multiple debts by administrative offset, responsible Departmental officials should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 21.17 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Department may request that monies which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the United States by the debtor. Such requests shall be made by the Departmental unit workout officials to the appropriate officials of the Office of Personnel Management (OPM) in accordance with their regulations and procedures.

(b) When making a request for administrative offset under paragraph (a) of the section, the responsible workout group debt collection official shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount and basis for the debt;

(2) The Department has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) the Department has comply with the requirements of the applicable provisions of the Federal Claims Collection Standards, this agency's implementing regulations, including any required hearing or review.

(c) If a Departmental unit workout group decides to request administrative offset under paragraph (a) of this section, the responsible debt collection official should make the request as soon a practical after completion of the applicable due process procedures so the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the fund, and if at least a year has elapsed since the administrative offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing to the appropriate Departmental unit head (or designee) that changed financial circumstances would render the offset unjust.

(d) If the Department collects part or all of the debt by other means before deductions are made or completed under paragraph (a) of this section, the Department official responsible for collecting the debt will act promptly to modify or terminate the agency's request for administrative offset under paragraph (a) of this section.

(e) In accordance with procedures established by the Office of Personnel Management, the Department may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

§ 21.18 Collection against a judgment.

Collection by administrative offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

§ 21.19 Liquidation of collateral.

If the Department holds security or collateral which may be liquidated through the exercise of a power of sale in the security instrument, or a nonjudicial foreclosure, liquidation should be accomplished by such procedures if the debtor fails to pay the debt within a 90-day period after demand, unless the cost of disposing of the collateral would be disproportionate to its value or special circumstances require judicial foreclosure. The Department collection official should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 21.20 Collection in installments.

(a) Whenever feasible, and unless otherwise provided by law, debts owed the United States, together with the interest, penalties, and administrative costs should be collected in one lump sum. This true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, the responsible Departmental official(s) may accept repayment in regular installments (See § 21.6). Prior to approving such repayments, financial statements shall be required from the debtor who represents that he/she is unable to pay the debt in one lump sum. A responsible Departmental official who agrees to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more then three years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the debt is an unsecured claim for administrative collection, attempts should be made to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, departmental units should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. A departmental unit head (or designee) may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Department debt collection official should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case paying special attention to applicable statutes of limitations.

§ 21.21 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

Dated: May 16, 1986.

Sonya Stewart,

Director, Office of Finance and Federal Assistance.

[FR Doc. 86–11435 Filed 5–20–86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and No. 16]

Social Security Benefits and Supplemental Security Income; Continued Payment of Benefits During Appeal

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations implement section 223(g) of the Social Security Act (the Act) as added by section 2 of Pub. L. 97–455 and amended by section 7 of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98–460 enacted in October 1984). The proposed regulations also implement section 1631 of the Act, as amended by section 7 of Pub. L. 98–460. These statutory provisions provide that the Secretary of Health and Human Services shall by regulations prescribe the manner, form, and time limit within which an individual may elect continued payment of disability benefits pending the outcome of his or her appeal of a determination by SSA that his or her physical or mental impairment(s) for which benefits were payable has ceased, never existed, or is no longer disabling. These proposed regulations provide the rules for electing continuation of benefits under these statutory provisions.

Under these proposed regulations, the option to elect to continue receiving benefits pending the outcome of a request for reconsideration or hearing before an administrative law judge on a medical cessation will be provided to the following:

—Recipients of disability insurance benefits (and their auxiliary dependents receiving benefits on the recipient's wage record).

—Recipients of disabled adult child's benefits.

—Recipients of disabled widow's and disabled widower's benefits.

—Mothers and fathers having in care a disabled adult child.

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—Mothers and fathers having in care a child, under age 18 but over age 15, who is disabled and receiving child's benefits.

—Recipients of SSI benefits based on disability or blindness.

DATE: Your comments will be considered if we receive them no later than July 21, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. They may also be delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 9301) 594–7456.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement section 223(g) and 1631 as amended by section 7 of Pub. L. 98–460 which temporarily extends the title II benefit continuation provisions of prior laws and permanently creates a statutory benefit continuation provision for title XVI medical cessation cases.

Section 223(a)(1)(D) of the Act provides that a Social Security title II disability insurance beneficiary found to be no longer disabled under the provisions of the Act will receive benefits for two months after the month in which his or her disability is determined to have ceased. Similarly, section 202(d)(1)(G) of the Act provides that a title II disabled child beneficiary (as defined by the Act) found to be no longer disabled under the provisions of the Act will receive benefits for two months after the month in which his or her disability is determined to have ceased. The regulations at 20 CFR 404.900 give these title II beneficiaries the right to appeal a determination of medical cessation through the administrative process. Prior to Pub. L. 97–455, title II beneficiaries were not eligible for payment of continued benefits during an appeal of a decision that they were no longer medically disabled. However, if the initial cessation determination was reversed on appeal, benefits were paid retroactively to the first month for which benefits were not paid as a result of the determination of disability cessation.

Section 1631(a)(5) of the Act similarly provides that a title XVI recipient of disability or blindness benefits will receive benefits for two months after the month in which his or her disability is determined to have ceased. Recently revised regulations at 20 CFR 416.1413(d) (51 FR 286; January 3, 1986) implementing sections 4 and 5 of Pub. L. 97–455 provide for an opportunity for a disability hearing at the reconsideration level when title XVI and concurrent title II/XVI individuals appeal a determination, based on medical factors, that he or she is not disabled (a medical cessation). These individuals retain the right to appeal this reconsideration decision through a hearing before an administrative law judge.

Prior to the enactment of Pub. L. 98–460, benefit continuation was provided in title XVI and concurrent title II/title XVI cases based on the U.S. Supreme Court decision in *Goldberg v. Kelly* (1970). Current regulations at 20 CFR 416.1336 provide that title XVI recipients found to be no longer disabled or blind can have their benefits continued through the first step of appeal.

Section 2 of Pub. L. 97–455

Section 2 of Pub. L. 97–455, enacted in January 1983 added a new subsection to section 223 of the Act. Under this provision, a title II disability insurance beneficiary or a child, widow, or widower entitled to benefits based on disability, who receives a determination that the physical or mental impairment(s) on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling may elect to have benefits continued during appeal of the cessation determination through the reconsideration level, and/or until a hearing decision or order of dismissal is issued by an administrative law judge. Section 2 of Pub. L. 97–455 also permits the beneficiary to elect continuation of any other benefits that are based on his or her wages and self-employment income, including benefits under title XVIII of the Act (Medicare). Any continued benefits paid under this provision, except for those made under title XVIII, are subject to recovery as overpayments, subject to the same waiver provisions in current law (section 204 of the Act) and regulations (20 CFR 404.501 *et. seq.*), where the medical cessation determination is upheld, on appeal, by the final decision of the Secretary. However, waiver of recovery of such an overpayment is considered only if the cessation determination was appealed in good faith.

This provision allows continued payment of benefits for months beginning in February 1983 for January 1983, or if later, the first month for which benefits were nc longer otherwise payable under the most recent medical cessation determination or order of remand.

This provision was originally effective for medical cessation determinations made after January 11, 1983 pending administrative review and prior to October 1, 1983. Continued benefits could only be paid through June 1984.

Section 2 of Pub. L. 98–118

This provision extended the sunset date of section 2 of Pub. L. 97–455 for continued payment of disability benefits during appeal to include medical cessation determinations made prior to December 7, 1983. However, payments still had to end with June 1984.

Section 7 of Pub. L. 98–460

This provision (which amends section 223(g)) extends the effective date of the provisions of Pub. L. 97–455 for title II cases to include determinations that the physical or mental impairment(s) on the basis of which such benefits are payable is found to have ceased, not to have existed or to no longer be disabling made prior to January 1, 1988. In no case can payments be made for months after June 1988. This provision also provides for the continuation of payment of benefits under title II and benefits under title XVIII to a father or mother who has in his or her care a child, over age 15, who is disabled and receiving child's benefits, based on such disability.

Section 7 of Pub. L. 98–460 also amends section 1631(a) of the Act to add a new paragraph (7). Under this provision, a recipient of supplemental security income benefits based on disability or blindness, who receives a determination that the physical or mental impairment(s) on the basis of which such benefits are payable is found to have ceased, not to have existed or to no longer be disabling may elect to have benefits continued during appeal of this determination. If elected, these benefits would be paid until the month before the month a decision is issued after an administrative law judge hearing or the month before the month no appeal for a review or hearing is pending, whichever is earlier. Supplemental security income benefits paid under this provision are subject to recovery as overpayments and to the waiver of recovery provisions pursuant to section 1631(b) of the Act if the initial

medical cessation determination is affirmed by a final decision of the Secretary. However, waiver of recovery of sch an overpayment will be considered only if the determination was appealed in good faith.

Proposed Regulatory Provisions

Title II

The proposed regulations at § 404.1597(b) explain that after we have made a determination that an individual's physical or mental impairment(s) has ceased, never existed, or is no longer disabling, the individual's title II benefits based on disability will be stopped. We will send the individual written notice of our determination that explains it, the right to appeal and the right to request continued benefits pending reconsideration and/or a hearing on the disability cessation determination.

For the purpose of the proposed regulations at § 404.1597(b) and § 404.1597a only, "benefits" means disability cash payments and/or Medicare, if applicable. "Election of benefits" means the election of disability cash payments and/or Medicare, if applicable.

Under these proposed regulations, title II individuals who receive a closed period of disability dtermination do not have the right to request continuation of benefits during appeal. A closed period of disability determination is a determination on an application for benefits that establishes a period of disability for only a specified period of time. In a closed period of disability, there is no determination of continuous entitlement. Since continuous entitlement has not been established, there is no issue ofmedical cessation. Also, under there proposed regulations, title II individuals who receive an unfavorable determination on their initial disability claim (that is their application for benefits based ondisability) do not have the right to request continuation of benefits during appeal since continued benefits are only available to claimants who were already receiving benefits.

The proposed regulations at § 404.1597a(a) and (b) explain that title II individuals who receive a medical cessation determination may elect to have benefits continued during appeal of that determination. Title II benefits may be continued only if the termination that the individual's physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made on or after January 12, 1983 (or before January 12, 1983 and a timely request for reconsideration or a hearing before an ALJ was pending on that date) and before January 1, 1988. If elected, title II benefits may be continued beginning with the month of Jaunary 1983 or the first month for which benefits are no longer otherwise payable following a medical cessation determination of the month of election, whichever is later.

The payments to a title II individual who has elected to have benefits continued will continue until the earlier of the month before the month a decision is issued after the ALJ hearing or the month before the month a new decision is issued by the ALJ (or final action by the Appeals Council on the ALJ's recommended decision) if the individual's case was sent back to an ALJ for further action, or until the month before the month no timely request is pending after notification of an unfavorable title II reconsideration determination, or June 1988.

The proposed regulations at § 404.1597a(c) explain that a title II beneficiary may also elect to have benefits continued for any title II auxiliary beneficiaries (e.g., eligible spouse or children) during this appeal. If elected, continued for the auxiliaries will be continued for the same time periods provided for the title II beneficiary. Under the proposed regulations, auxiliary beneficiaries may also elect whether they wish to receive continued payment of benefits, but the title II primary beneficiary must also elect to have their benefits continued in order for them to be paid. The right to also elect continued payment of benefits is given to title II auxiliary beneficiaries because these beneficiaries will be asked to repay any overpayment resulting from benefits continued pending the outcome of the appeal. Since the auxiliary beneficiaries may not be aware of the primary beneficiary's election of continued benefits on their behalf, they will be required to make a separate election to have their benefits continue.

The proposed regulations § 404.1597a(d) explain that we will notify the title II individual of his or her right to elect continued benefits if he or she requests reconsideration or a hearing on our disability cessation determination. If the individual requests reconsideration or a hearing, we will request a written statement of choice from the title II individual as to whether or not he or she wants benefits to continue during appeal, and whether or not he or she also wants title II benefits to continue to anyone else who is receiving benefits based on the title II individual's wages and self-employment income.

Title II beneficiaries may elect continuation of benefits at the time reconsideration is requested and again at the time a hearing before an administrative law judge is requested. In title II cases, a separate election must be made at each level of appeal.

If the title II beneficiary does not elect continuation of benefits at the time reconsideration is requested, but requests it at the time the administrative law judge hearing is requested, we will reinstate continued benefits effective with the month of the latest medical cessation determination rather than the first month of nonpayment after the initial medical cessation determination. The written statement of choice, which must be completed by the primary beneficiary, explains the provision.

The proposed regulations (§ 404.1597a(e)), explain that we also will contact the spouse and/or children of a title II individual, and obtain a statement in writing from them as to whether or not they wish to receive continued benefits. However, for the auxiliary beneficiaries (spouse or children) to receive continued benefits, the title II individual must also request that benefits be continued for them. Under these proposed regulations, title II auxiliary beneficiaries (spouse or children) who are living in a separate household and those in the same household will be asked to repay any overpayment resulting from benefits continued pending the outcome of the appeal. Since auxiliaries (spouse or children) may not be aware of the title II primary beneficiary's election of continued benefits on their behalf, these proposed regulations provide that a separate statement of choice to receive or not to receive continued benefits will also be required from auxiliary beneficiaries.

The proposed regulations § 404.1597a(f), (g), (h) and (i) explain that a title II individual must request continued benefits: (1) Within 10 days after he or she receives notice of our initial cessation determination along with requesting consideration of that initial determination (The 60-day period for requesting reconsideration is not affected by this provision.); (2) within 10 days after receiving notice of our reconsideration cessation determination along with requesting a hearing before an administrative law judge (The 60-day period for requesting a hearing is not affected by this provision.); or (3) within 10 days after receiving a notice of the option for continued benefits in connection with a decision (including court remand cases except those court remands which carry special benefit

continuation rights explained in section 2(e) of Pub. L. 98–460) that has been vacated and sent back (remanded) by the Appeals Council to an administrative law judge for further action.

Our experience with benefit continuation under Pub. L. 97–455 and 98–118, which utilized a 10-day time frame, showed that most eligible title II individuals made an election within the 10 days. Under these proposed regulations, these individuals are given the same period (10 days) for making such election. This 10-day time limit is consistent with longstanding title XVI continued payments policy based on *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), principles.

If the election for continued benefits is requested after the 10-day period, we will use the standards in current regulations, 20 CFR 404.911, to determine whether good cause exists for failing to request benefit continuation within the 10-day period. If the election for continued benefits is made after this 10-day period, continued benefits can only be paid if good cause is established for the delayed request. We apply a good cause exception with regard to other time limits in the appeals process. For consistency and recognizing that certain justifiable factors may prevent timely requests in this situation, we are using the same good cause considerations here.

The proposed regulations (§ 404.1597a(h)(2)) also explain that if the primary beneficiary requests continued title II benefits for a spouse or child, the spouse or child must also request continued benefits within 10 days after receipt of the notification of our determination. The standards in § 404.911 will be used to determine if good cause exists for the spouse's or child's request for continuation of benefits made after the 10-day period. We will consider their request to be timely and will pay the title II spouse or child continued benefits only if good cause for delay is found.

Under the proposed regulation (§ 404.1597a(i)), in decisions (including court remand cases except those court remands with special benefit continuation rights under section 2(e) of Pub. L. 98–460) vacated and sent back (remanded) by the Appeals Council to an administrative law judge for further action, benefit continuation is available effective with the first month of nonpayment based on the prior administrative law judge decision if benefits were previously elected at the administrative law judge level.

In such remanded cases, the prior administrative law judge's decision or dismissal order is vacated having no force or effect, and accordingly benefit continuation is again available for these title II beneficiaries. In these remanded cases, continued benefits will be reinstated without a new election if continued benefits were previously elected at the administrative law judge level. In these remanded cases reaching the administrative law judge, if the title II beneficiary did not previously elect benefit continuation at the administrative law judge level, continuation of benefits is available upon a new election by the beneficiary and effective for the month of the Appeals Council remand order.

If benefit continuation was previously elected at the administrative law judge level, we will automatically reinstate these same continued benefits and then update our records regarding events that may affect the right to receive benefits. If any of these events have occurred, then continued benefits will be stopped or adjusted accordingly. If benefit continuation was not previously elected at the administrative law judge level, we will verify whether all requirements are met before paying title II continued benefits. This updating of our records before payment is necessary because benefit continuation is intended to replace only those benefits received prior to the medical cessatoin, i.e., benefits for only those individuals who were entitled at the time of the cessation. If any events that may affect the right to receive benefits have occurred, then necessary adjustments to the benefits will be made before reinstatement. The individual who did not previously elect benefit continuation did not have to report any of these events to us, since they were not receiving any benefits.

The proposed regulations (§ 404.1597a(j)) explain that any title II continued benefits received during appeal (with the exception of Medicare benefits) are subject to the overpayment recovery and waiver provisions of Regulations 20 CFR Part 404, Subpart F, if the determination that the title II individual is no longer disabled is not changed by the final decision of the Secretary. The title II individuals who received continued benefits would then be asked to pay back these benefits. However, recovery of the continued benefits would be subject to the waiver provisions of Regulations at 20 CFR Part 404, Subpart F, only if the appeal was made in good faith. We will assume that an appeal was made in good faith unless an individual fails to cooperate in connection with an appeal, e.g., if he or she fails (without a good reason) to give us medical or other evidence, or to go for a physical or mental examination when requested.

If an individual has an appeal on a medical cessation pending under both title II and title XVI (that is, a concurrent claim), the title II portion will be handled in accordance with the title II proposed regulations, while the title XVI portion will be handled in accordance with the title XVI proposed regulations.

Title XVI

The proposed regulations at § 416.995 explain that after we have made a determination that an individual's physical or mental impairment(s) has ceased, never existed, or is no longer disabling, the individual's title XVI benefits based on disability or blindness will be stopped. We will send the title XVI individual written notice of our determination that explains it, the right to appeal and the right to request continued benefits pending reconsideration and/or a hearing on the disability cessation determination.

Under these proposed regulations, title XVI individuals who receive a determination on their application for benefits based on disability or blindness that they were disabled or blind for only a specified period of time (i.e., a closed period) do not have the right to request continuation of benefits during appeal. When disability has been established for only a specified period of time, there is no determination of continuous eligibility. Since continuous eligibility has not been established, there is no issue of medical cessation. Also, under these proposed regulations, title XVI individuals who receive an unfavorable determination on their initial disability or blindness claim (that is their application for benefits based on disability or blindness) do not have the right to request continuation of benefits during appeal since continued benefits ar only available to claimants who were already receiving benefits.

The proposed regulations at § 416.996(a) explain that title XVI individuals who receive a medical cessation determination may elect to have benefits continued during appeal of that determination. This provision applies to determinations that the individual's physical or mental impairment(s) has ceased, has never existed, or is no longer disabling made after October 1984. The payments to a title XVI individual who has elected to have benefits continued will continue until the earlier of the month before the month a decision is issued after the administrative law judge hearing or the month before the month a new decision

is issued by the ALJ (or final action by the Appeals Council in the ALJ's recommended decision) if the individual's case was sent back to an ALJ for further action, or until the month before the month no timely request for reconsideration or a hearing before an administrative law judge is pending after notification of an unfavorable title XVI initial or reconsideration cessation determination.

Regulations at 20 CFR 416.1413(d), (51 FR 288; January 3, 1986) which are effective for title XVI determinations made after January 3, 1986 provide a title XVI beneficiary an opportunity for a disability hearing at the reconsideration level when the beneficiary appeals an initial medical cessation determination. Before January 3, 1986, the first level of appeal for title XVI medical cessations was a hearing before an administrative law judge. The disability hearing regulations result in similar treatment of title II and title XVI beneficiaries in the appeals process, including the payment of continued benefits.

Individuals electing continuation of title XVI benefits, in States where Medicaid eligibility is based on receipt of title XVI benefits and for which SSA does Medicaid eligibility determinations, will also have Medicaid eligibility continued. In other States, they will be referred to the State Medicaid agency.

The proposed regulations at § 416.996(b) explain that we will notify the title XVI individual of his or her right to elect continued benefits if he or she requests a reconsideration or hearing before an administrative law judge on our disability cessation determination. If the individual requests a reconsideration or hearing, we will request a written statement of election as to whether or not he or she wants benefits to continue during appeal.

Title XVI individuals may elect continuation of benefits at the time reconsideration is requested and again at the time a hearing before an administrative law judge is requested. A separate election must be made at each level of appeal.

If the title XVI individual does not elect continuation of benefits at the time reconsideration is requested, but requests it at the time the administrative law judge hearing is requested, we will reinstate continued benefits effective with the month of the latest medical cessation determination rather than the first month of nonpayment after the initial medical cessation determination. The written statement of choice, which must be completed by the individual, explains this provision.

The proposed regulations at § 416.996(c) explain that a title XVI individual must request continued benefits within 10 days after receiving notice of an initial medical cessation determination along with requesting a reconsideration. The 60-day period for requesting a reconsideration is not affected by this provision.

The new section 1631(a)(7) of the Act, as added by section 7 of Pub. L. 98–460, requires that title XVI individuals now make an affirmative request to have benefits continued. The existing title XVI regulation (20 CFR 416.1336(b) which is based on the U.S. Supreme Court decision in the case of *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), provides that title XVI benefits would continue to be paid until a decision (or order of dismissal) was issued at the initial level of appeal if the appeal is filed within 10 days after receipt of notice of planned action to stop benefits. The new statutory authority for title XVI benefit continuation differs from the *Goldberg* v. *Kelly* approach by requiring that the individual affirmatively elect benefit continuation rather than assuming that the individual wants continued benefits if a hearing is requested within 10 days unless such benefits are waived. Under these proposed regulations, title XVI individuals are given the same period (per current regulations) of 10 days for making such election.

Our experience with providing the 10-day time frame for filing a request for hearing and receiving benefit continuation in title XVI cases undr the *Goldberg* v. *Kelly* procedures, which has been in effect since 1974, has proven that this is an adequate time frame for most all individuals.

The proposed title XVI regulations § 416.996(c) also explain that if continued benefits are requested after the 10-day period, we will use the standards in current regulations, 20 CFR 416.1411, to determine whether good cause exists for failing to request benefit continuation within the 10-day period. If the election for continued benefits is made late, we will consider the request to be timely and will pay continued benefits only if good cause for delay is found. We apply a good cause exception with regard to other time limits in the appeals process. For consistency and recognizing that certain justifiable factors may prevent timely requests in this situation, we are using the same good cause considerations here.

The proposed regulations § 416.996(d), explain that a title XVI individual must request continued benefits within 10 days after receiving notice of our reconsideration cessation determination along with requesting a hearing before an administrative law judge. The 60-day period for requesting a hearing is not affected by this provision.

If the request for continued benefits is made after the 10-day period, we will use the standards in current regulations, 20 CFR 416.1411, to determine whether good cause exists for failing to request benefit continuation timely. If the election for continued benefits is made late, we will consider the request to bet timely only if good cause for delay is found.

The proposed regulations at § 416.996(e) explain that in title XVI decisions (including court remand cases, except those court remands with special benefit continuation rights under section 2(e) of Pub. L. 98–460) vacated and sent back (remanded) by the Appeals Council to an administrative law judge for further action, benefits continuation may be available, without a new election, effective with the first month of nonpayment based on the prior administrative law judge decision if benefits were previously elected at the administrative law judge level. In such title XVI remanded cases, the prior administrative law judge's decision or dismissal order is vacated having no force or effect, and accordingly benefit continuation may be available again for these title XVI beneficiaries.

If the title XVI beneficiary did not previously elect benefit continuation at the administrative law judge level, continuation of benefits may be available upon a new election by the beneficiary and effective for the month of the Appeals Council remand order.

Before reinstating benefits in any remand case (including court remand cases, except those court remands with special benefit continuation rights under section 2(e) of Pub. L. 98–460), we will contact the title XVI individual to update our records regarding events that affect the right to receive, and the amount of, benefits, such as work activity, living arrangements, and income and resources. Before reinstatement, we will review and redetermine eligibility in all cases, whether or not benefits were previously elected at the administrative law judge level. This policy to do a redetermination before reinstatement is consistent with our responsibility to redetermine eligiblity contained in section 1611(c)(1) of the Social Security Act and the regulations at 20 CFR 416.204. The redetermination is necessary because we have not had recent contact with the individual during the period of nonpayment since the individual was not under any obligation to report changes in circumstances that

could affect eligibility or payment amount. Since the title XVI program is a program based on current needs, it is essential that a determination be made that the individual's current needs support the payment, as well as the amount, of title XVI benefits. Upon redetermination, if all eligibility factors are not met (other than disability or blindness or in certain cases, not engaging in substantial gainful activity), we will not reinstate benefits. Any retroactive continued benefits paid to concurrent title II and title XVI beneficiaries will be subject to the provisions of section 1127 of the Social Security Act, as amended. That section provides that, effective February 1985, benefits paid after a period of suspension or termination will be adjusted to reflect the title XVI benefits that would not be paid if the title II benefits were paid when due.

Prior to November 1984, in concurrent title II/title XVI medical cessation cases, under the provisions in 20 CFR 416.1336, an individual who had filed for a hearing within 10 days of receipt of the cessation notice, could waive his or her right to receive continued benefits pending the hearing decision. He or she could also restrict this waiver to either title II or title XVI benefits only. Therefore the claimant could continue to receive benefits under both titles or choose to receive benefits under only one title. This policy will be continued under these proposed regulations.

The proposed regulations at § 416.996(f) explain that any continued title XVI benefits received during appeal are subject to the overpayment recovery and waiver provisions of Regulations 20 CFR Part 416, Subpart E, if the determination that the title XVI individual is no longer disabled or blind is not changed by the final decision of the Secretary. The title XVI individuals who received continued benefits would then be asked to pay back these benefits. However, the continued benefits would be subject to the waiver provisions of Regulations 20 CFR Part 416, Subpart E, only if the appeal was made in good faith. We will assume that an appeal was made in good faith unless an individual fails to cooperate in connection with an appeal, e.g., if he or she fails (without a good reason) to give us medical or other evidence, or to go for a physical or mental examination when requested.

If an individual has an appeal on a medical cessation pending under both title XVI and title II (that is, concurrent claim), the title XVI portion will be handled in accordance with the title XVI proposed regulations while the title II portion will be handled in accordance with the title II proposed regulations.

Conforming changes will be made later in 20 CFR 416.1336 and 20 CFR 416.1415.

Regulatory Procedures

Executive Order 12291—The Secretary has determined that this is not a major rule under E.O. 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These proposed regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities since they primarily affect disability claimants. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance program, Supplemental Security Income (SSI).

Dated: October 24, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: December 20, 1985.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 404 of 20 CFR is amended as follows:

1. The authority citation for Supart P of Part 404 is revised to read as follows:

Authority: Secs. 205, 223, and 1102 of the Social Security Act, as amended 53 Stat. 1368, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended; 42 U.S.C. 405, 423, and 1302.

2. In Part 404, Subpart P, the existing § 404.1597 is redesignated paragraph (a) *General* and a new paragraph (b) is added to read as follows:

§ 404.1597 After we make a determination that you are not now disabled.

* * * * *

(b) *If we make a determination that your physical or mental impairment(s) has ceased, did not exist, or is no longer disabling (Medical Cessation Determination).* If we make a determination that the physical or mental impairment(s) on the basis of which benefits were payable has ceased, did not exist, or is no longer disabling (a medical cessation determination), your benefits will stop. As described in paragraph (a) of this section, you will receive a written notice explaining this determination and the month your benefits will stop. The written notice will also explain your right to appeal if you disagree with our determination and your right to request that your benefits and the benefits, if any, of your spouse or children, be continued under § 404.1597a. For the purpose of this section, "benefits" means disability cash payments and/or Medicare, if applicable. The continued benefit provisions of this section do not apply to an initial determination on an application for disability benefits, or to a determination that you were disabled only for a specified period of time.

3. In part 404, Subpart P, a new § 404.1597a is added to read as follows:

§ 404.1597a Continued benefits pending appeal of a medical cessation determination.

(a) *General.* If we determine that you are not entitled to benefits because the physical or mental impairment(s) on the basis of which such benefits were payable is found to have ceased, not to have existed, or to no longer be disabling, and you appeal that determination, you may choose to have your benefits continued pending reconsideration and/or a hearing before an administrative law judge on the disability cessation determination. For the purpose of this entire section, the election of "continued benefits" means the election of disability cash payments and/or Medicare, if applicable. You can also choose to have the benefits continued for anyone else receiving benefits based on your wages and self-employment income (and anyone else receiving benefits because of your entitlement to benefits based on disability).

(b) *The provisions of this section are available for a limited time only.* (1) Benefits may be continued under this section only if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made on or after January 12, 1983 (on before January 12, 1983, and a timely request for reconsideration or a hearing before an administrative law judge is pending on that date), and before January 1, 1988.

(2) Benefits may be continued under this section only for months beginning with January 1983, or the first month for which benefits are no longer otherwise

payable following our determination that your physical or mental impairments(s) has ceased, has never existed, or is no longer disabling, whichever is later.

(3) Continued payment of benefits under this section will stop effective with the earlier of:

(i) The month before the month in which an administrative law judge's hearing decision finds that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling or the month before the month of a new administrative law judge decision (or final action by the Appeal Council on the administrative law judge's recommended decision if your case was sent back to an administrative law judge is pending; or

(iii) June 1988.

(c) *Continuation of benefits for anyone else pending your appeal.* (1) When you file a request for reconsideration or hearing before an administrative law judge on your determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, or your case has been sent back (remanded) to an administrative law judge for further action, you may also choose to have benefits continue for anyone else who is receiving benefits based on your wages and self-employment income (and for anyone else receiving benefits because of your entitlement to benefits based on disability), pending the outcome of your appeal.

(2) If anyone else is receiving benefits based on your wages and self-employment income, we will notify him or her of the right to choose to have his or her benefits continue pending the outcome of your appeal. Such benefits can be continued for the time period in paragraph (b) of this section only if he or she chooses to have benefits continued and you also choose to have to have his or her benefits continued.

(d) *Statement of choice.* When you or another party request reconsideration under § 404.908(a) or a hearing before an administrative law judge under § 404.932(a) on our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, or if your case is sent back (remanded) to an administrative law judge for further action, we will explain your right to receive continued benefits and ask you to complete a statement specifying which benefits you wish to have continued pending the outcome of the reconsideration or hearing before an administrative law judge. You may elect to receive only Medicare benefits during appeal even if you do not want to receive continued disability benefits. If anyone else is receiving benefits based on your wages and self-employment income (or because of your entitlement to benefits based on disability), we will ask you to complete a statement specifying which benefits you wish to have continued for them, pending the outcome of the request for reconsideration or hearing before an administrative law judge. If you request appeal but you do not want to receive continued benefits, we will ask you to complete a statement declining continued benefits indicating that you do not want to have your benefits and those of your family, if any, continued during the appeal.

(e) *Your spouse's or children's statement of choice.* If you request, in accordance with paragraph (d) of this section, that benefits also be continued for anyone who had been receiving benefits based on your wages and self-employment, we will send them a written notice. The notice will explain their rights and ask them to complete a statement either declining continuing benefits, or specifying which benefits they wish to have continued, pending the outcome of the request for reconsideration or a hearing before an administrative law judge.

(f) *What you must do to receive continued benefits pending notice of our reconsideration determination.* (1) If you want to receive continued benefits pending the outcome of your request for reconsideration, you must request reconsideration and continuation of benefits no later than 10 days after the date you receive the notice of our initial determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. Reconsideration must be requested as provided in § 404.909, and you must request continued benefits using a statement in accordance with paragraph (d) of this section.

(2) If you fail to request reconsideration and continued benefits within the 10-day period required by paragraph (f)(1) of this section, but later ask that we continue your benefits pending a reconsidered determination, we will use the rules in § 404.911 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the notice of the initial cessation determination. If you request continued benefits after the 10-day period, we will consider the request to be timely and will pay continued benefits only if good cause for delay is established.

(g) *What you must do to receive continued benefits pending an administrative law judge's decision.* (1) To receive continued benefits pending an administrative law judge's decision on our reconsideration determination, you must request a hearing and continuation of benefits no later than 10 days after the date you receive the notice of our reconsideration determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. A hearing must be requested as provided in § 404.933, and you must request continued benefits using a statement in accordance with paragraph (d) of this section.

(2) If you request continued benefits pending an administrative law judge's decision but did not request continued benefits while we were reconsidering the initial cessation determination, your benefits will begin effective the month of the reconsideration determination.

(3) If you fail to request continued payment of benefits within the 10-day period required by paragraph (g)(1) of this section, but you later ask that we continue your benefits pending an administrative law judge's decision on our reconsidered determination, we will use the rules as provided in § 404.911 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the reconsideration determination. If you request continued benefits after the 10-day period, we will consider the request to be timely and will pay continued benefits only if good cause for delay is established.

(h) *What anyone else must do to receive continued benefits pending our reconsideration determination or an administrative law judge's decision.* (1) When you or another party (see § 404.908(a) and 404.932(a)) request a reconsideration or a hearing before an administrative law judge on our medical cessation determination or when your case is sent back (remanded) to an administrative law judge for further action, you may choose to have benefits continue for anyone else who is receiving benefits based on your wages and self-employment income. An eligible individual must also choose whether or not to have his or her benefits continue pending your appeal by completing a separate statement of election as described in paragraph (e) of this section.

(2) He or she must request continuation of benefits no later than 10 days after the date he or she receives notice of termination of benefits. He or she will then receive continued benefits beginning with the later of January 1983, or the first month for which benefits are no longer otherwise payable following

our initial or reconsideration determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. Continued benefits will continue until the earlier of:

(i) The month before the month in which an administrative law judge's hearing decision finds that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling or the month of the new administrative law judge decision (or final action by the Appeals Council on the administrative law judge's recommended decision if your case was sent back to an administrative law judge for further action); or

(ii) The month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending; or

(iii) June 1986.

(3) If he or she fails to request continuation of benefits within the 10-day period required by this paragraph, but requests continuation of benefits at a later date, we will use the rules as provided in § 404.911 to determine whether good cause exists for his or her failure to request continuation of benefits within 10 days after receipt of the notice of termination of his or her benefits. His or her late request will be considered to be timely and we will pay him or her continued benefits only if good cause for delay is established.

(4) If you choose not to have benefits continued for anyone else who is receiving benefits based on your wages and self-employment income, pending the appeal on our determination, we will not continue benefits to him or her.

(i) *What you must do when your case is remanded to an administrative law judge.* If we send back (remand) your case to an administrative law judge for further action under the rules provided in § 404.977, and the administrative law judge's decision or dismissal order issued on your medical cessation appeal is vacated and is no longer in effect, continued benefits are payable pending a new decision by the administrative law judge or final action by the Appeals Council on the administrative law judge's recommended decision.

(1) If you (and anyone else receiving benefits based on your wages and self-employment income or because of your disability) previously elected to receive continued benefits pending the administrative law judge's decision, we will automatically start these same continued benefits again. We will send you a notice telling you this, and that you do not have to do anything to have these same benefits continued until the month before the month the new decision or order of dismissal is issued by the administrative law judge or until the month before the month the Appeals Council takes final action on the administrative law judge's recommended decision. These benefits will begin again with the first month of nonpayment based on the prior administrative law judge hearing decision or dismissal order. Our notice explaining reinstatement of continued benefits will also tell you to report to us any changes or events that affect your receipt of benefits.

(2) After we automatically reinstate your continued benefits as described in paragraph (h)(1) of this section, we will contact you to determine if any adjustment is required to the amount of continued benefits payable due to events that affect the right to receive benefits involving you, your spouse and/or children. If you have returned to work, we will request additional information about this work activity. If you are working, your continued benefits will not be stopped while your appeal of the medical cessation of disability is still pending unless you have completed a trial work period and are engaging in substantial gainful activity. In this event, we will suspend your continued benefits. If any other changes have occurred which would require a reduction in benefit amounts, or nonpayment of benefits, we will send an advance notice to advise of any adverse change before the adjustment action is taken. The notice will also advise you of the right to explain why these benefits should not be adjusted or stopped. You will also receive a written notice of our determination. The notice will also explain your right to reconsideration if you disagree with this determination.

(3) If the final decision on your appeal of your medical cessation is a favorable one, we will send you a written notice in which we will advise you of your right to benefits, if any, before you engaged in substantial gainful activity and to reentitlement should you stop performing substantial gainful activity. If you disagree with our determination, you will have the right to appeal this decision.

(4) If the final decision on your appeal of your medical cessation is an unfavorable one (the cessation is affirmed), you will also be sent a written notice advising you of our determination, and your right to appeal if you think we are wrong. The notice you receive will also contain information regarding overpayments in accord with § 404.1597(j).

(5) If you (or the others receiving benefits based on your wages and self-employment income or because of your disability) did not previously elect to have benefits continued pending an administrative law judge decision, and you now want to elect continued benefits, you must request to do so no later than 10 days after you receive our notice telling you about continued benefits. If you make this new election, benefits may begin with the month of the order sending (remanding) your case back to the administrative law judge. Before we begin to pay you continued benefits as described in paragraph (h)(1) of this section we will contact you to determine if any adjustment is required to the amount of continued benefits payable due to events which may affect your right to benefits. If you have returned to work, we will request additional information about this work activity. If you are working continued benefits may be started and will not be stopped because of your work while your appeal of the medical cessation of your disability is still pending unless you have completed a trial work period and are engaging in substantial gainful activity. If any changes have occurred which establish a basis for not paying continued benefits or a reduction in benefit amount, we will send you a notice explaining the adjustment or the reason why we cannot pay continued benefits. The notice will also explain your right to reconsideration if you disagree with this determination. If the final decision on your appeal of your medical cessation is a favorable one, we will send you a written notice in which we will advise you of your right to benefits, if any, before you engaged in substantial gainful activity and to reentitlement should you stop performing substantial gainful activity. If you disagree with our determination, you will have the right to appeal this decision. If the final decision on your appeal of your medical cessation is an unfavorable one (the cessation is affirmed), you will also be sent a written notice advising you of our determination, and your right to appeal if you think we are wrong. The notice you receive will also contain information regarding overpayments in accordance with paragraph (j) of this section.

(6) If a court orders that your case be sent back (remanded) to the Appeals Council, which subsequently remands your case to an administrative law judge for further action under the rules provided in § 404.983, the administrative law judge's decision or dismissal order on your medical cessation appeal is vacated and is no longer in effect. Continued benefits are payable to you

and anyone else receiving benefits based on your wages and self-employment income or because of your disability pending a new decision by the administrative law judge or final action by the Appeals Council on the administrative law judge's recommended decision. In these court-remanded cases reaching the administrative law judge, we will follow the same rules provided in paragraphs (i)(1), (2), (3), (4) and (5) of this section.

(j) *Responsibility to pay back continued benefits.* (1) You will be asked to pay back any continued benefits you receive if our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is not changed by the final decision of the Secretary. However, you will have the right to ask that you not be required to pay back the benefits as described in the overpayment recovery and waiver provisions of Subpart F of this Part. You will not be asked to pay back any Medicare benefits you received during the appeal.

(2) Anyone else receiving benefits based on your wages and self-employment income (or because of your disability) will be asked to pay back any continued benefits he or she received if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, is not changed by the final decision of the Secretary. However, he or she will have the right to ask that he or she not be required to pay them back, as described in the overpayment recovery and waiver provisions of Subpart F of this Part. He or she will not be asked to pay back any Medicare benefits he or she received during the appeal.

(3) Waiver of recovery of an overpayment resulting from the continued benefits paid to you or anyone else receiving benefits based on your wages and self-employment income (or because of your disability) may be considered as long as the determination was appealed in good faith. It will be assumed that such appeal is made in good faith and, therefore, any overpaid individual has the right to waiver consideration unless such individual fails to cooperate in connection with the appeal, e.g., if the individual fails (without good reason) to give us medical or other evidence we request, or to go for a physical or mental examination when requested by us, in connection with the appeal.

Part 416 of 20 CFR is amended as follows:

1. The authority citation for Subpart I of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1614 and 1631 of the Social Security Act, as amended; 86 Stat. 1471, as amended by 86 Stat. 52, 86 Stat. 1475; 49 Stat. 647, as amended; 42 U.S.C. 1302, 1382c, and 1383.

2. In Part 416, Subpart I, a new § 416.995 is added to read as follows:

§ 416.995 If we make a determination that your physical or mental impairment(s) has ceased, did not exist or is no longer disabling, (Medical Cessation Determination).

If we make a determination that the physical or mental impairment(s) on the basis of which benefits were payable has ceased, did not exist or is no longer disabling (a medical cessation determination), your benefits will stop. You will receive a written notice explaining this determination and the month your benefits will stop. The written notice will also explain your right to appeal if you disagree with our determination and your right to request that your benefits be continued under § 416.996. The continued benefit provisions of this section do not apply to an initial determination on an application for disability benefits or to a determination that you were disabled only for a specified period of time.

3. In Part 416, Subpart I, a new § 416.996 is added to read as follows:

§ 416.996 Continued benefits pending appeal of a medical cessation determination.

(a) *General.* If we determine that you are not eligible for benefits because the physical or mental impairment(s) on the basis of which such benefits were payable is found to have ceased, not to have existed, or is no longer disabling, and you appeal that determination, you may choose to have your benefits continued pending reconsideration and/or a hearing before an administrative law judge on the disability cessation determination.

(1) Benefits may be continued under this section only if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made after October 1984.

(2) Continued benefits under this section will stop effective with the earlier of:

(i) The month before the month in which an administrative law judge's hearing decision finds that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling or the month before the month of a new administrative law judge decision (or final action by the Appeals Council on the administrative law judge's recommended decision if your case was sent back to an administrative law judge for further action); or

(ii) The month before the month in which no timely request for reconsideration of administrative law judge hearing is pending after notification of our initial or reconsideration cessation determination. These benefits may be stopped or adjusted because of any events (such as work activity, change in income or resources or your living arrangements) which may occur while you are receiving these continued benefits, in accordance with § 416.1336(b).

(b) *Statement of choice.* If you or another party (see § 416.1432(a)) request reconsideration under § 416.1409 or a hearing before an administrative law judge in accordance with § 416.1433 on our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, or if your case is sent back (remanded) to an administrative law judge for further action, we will explain your right to receive continued benefits and ask you to complete a statement indicating that you wish to have benefits continued pending the outcome of the reconsideration or administrative law judge hearing. If you request reconsideration and/or hearing but you do not want to receive continued benefits, we will ask you to complete a statement declining continued benefits indicating that you do not want to have your benefits continued during the appeal. A separate election must be made at each level of appeal.

(c) *What you must do to receive continued benefits pending notice of our reconsideration determination.* (1) If you want to receive continued benefits pending the outcome of your request for reconsideration, you must request reconsideration and continuation of benefits no later than 10 days after the date you receive the notice of our initial determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. Reconsideration must be requested as provided in § 416.1409, and you must request continued benefits using a statement in accordance with paragraph (b) of this section.

(2) If you fail to request reconsideration and continued benefits within the 10-day period required by paragraph (c)(1) of this section, but later ask that we continue your benefits pending a reconsidered determination, we will use the rules in § 416.1411 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt

of the notice of the initial cessation determination. If you request continued benefits after the 10-day period, we will consider the request to be timely and will pay continued benefits only if good cause for delay is established.

(d) *What you must do to receive continued benefits pending an administrative law judge hearing decision.* (1) To receive continued benefits pending an administrative law judge's decision on our reconsideration determination, you must request a hearing and continuation of benefits no later than 10 days after the date you receive the notice of our reconsideration determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. A hearing must be requested as provided in § 416.1433, and you must request continued benefits using a statement in accordance with paragraph (b) of this section.

(2) If you fail to request a hearing and continued benefits within the 10-day period required under paragraph (d)(1) of this section, but you later ask that we continue your benefits pending an administrative law judge's decision we will use the rules as provided in § 416.1411 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the reconsideration determination. If you request continued benefits after the 10-day period, we will consider the delayed request to be timely and will pay continued benefits only if good cause for delay is established.

(e) *What you must do when your case is remanded to an administrative law judge.* If we send back (remand) your case to an administrative law judge for further action under the rules provided in § 416.1477, and the administrative law judge's decision or dismissal order issued on your medical cessation appeal is vacated and is no longer in effect, and you may be eligible for continued benefits, pending a new decision by the administrative law judge or final action by the Appeals Council on the administrative law judge's recommended decision.

(1) When your case is remanded to an administrative law judge, and you have elected to receive continued benefits, we will contact you to update our file to verify that you continue to meet the nonmedical requirements to receive benefits based on disability or blindness. To determine your correct payment amount, we will ask you to provide information such as any changes in work activity, living arrangements, and income and resources since our last contact with you. If you have returned to work, we will request additional information about this work activity. Unless your earnings cause your income to be too much to receive benefits, your continued benefits will be paid while your appeal of the medical cessation of your disability is still pending, unless you have completed a trial work period and are engaging in substantial gainful activity. If you have completed a trial work period and previously received continued benefits, you may still be eligible for special benefits under § 416.261. If we determine that you no longer meet a requirement to receive benefits, we will send you a written notice. The written notice will explain why your continued benefits will not be reinstated or will be for an amount less than you received before the prior administrative law judge's decision. The notice will also explain your right to reconsideration under § 416.1407, if you disagree. If you request a reconsideration, you will have the chance to explain why you believe your benefits should be reinstated or should be at a higher amount. If the final decision on your appeal of your medical cessation is a favorable one, we will send you a written notice in which we will advise you of any right to reentitlement should you stop performing substantial gainful activity. If you disagree with our determination, you will have the right to appeal this decision.

(2) After we verify that you meet all the nonmedical requirements to receive benefits as stated in paragraph (e)(1) of this section, and if you previously elected to receive continued benefits pending the administrative law judge's decision, we will start continued benefits again. We will send you a notice telling you this. You do not have to complete a request to have these same benefits continued through the month before the month the new decision or order of dismissal is issued by the administrative law judge or through the month before the month the Appeals Council takes final action on the administrative law judge's recommended decision. These continued benefits will begin again with the first month of nonpayment based on the prior administrative law judge hearing decision or dismissal order. Our notice explaining continued benefits will also tell you to report to us any changes or events that affect your receipt of benefits.

(3) When your case is remanded to an administrative law judge, and if you did not previously elect to have benefits continued pending an administrative law judge decision, we will send you a notice telling you that if you want to change that election, you must request to do so no later than 10 days after you receive our notice. If you do make this new election, and after we verify that you meet all the nonmedical requirements as explained in paragraph (e)(1) of this section, benefits will begin with the month of the Appeals Council remand order and will continue as stated in paragraph (e)(2) of this section.

(4) If a court orders that your case be sent back (remanded) to the Appeals Council which subsequently remands your case to an administrative law judge for further action under the rules provided in § 416.1483, the administrative law judge's decision or dismissal order on your medical cessation appeal is vacated and is no longer in effect. You may be eligible for continued benefits pending a new decision by the administrative law judge or final action by the Appeals Council on the administrative law judge's recommended decision. In these court-remanded cases reaching the administrative law judge, we will follow the same rules provided in paragraphs (e)(1), (2), and (3) of this section.

(f) *Responsibility to pay back continued benefits.* (1) You will be asked to pay back any continued benefits you receive if our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is not changed by the final decision of the Secretary. However, you will have the right to ask that you not be required to pay back the benefits as described in the overpayment recovery and waiver provisions of Subpart E of this Part.

(2) Waiver of recovery of an overpayment resulting from continued benefits to you may be considered as long as the cessation determination was appealed in good faith. We will assume that your appeal was made in good faith and, therefore, you have the right to waiver consideration unless you fail to cooperate in connection with the appeal, e.g., if you fail (without good reason) to give us medical or other evidence we request, or to go for a physical or mental examination when requested, in connection with the appeal.

[FR Doc. 86-11449 Filed 5-20-86; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Wyoming to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of extensive revisions to nine chapters of the approved Wyoming regulations.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on June 20, 1986 will not necessarily be considered. A public hearing on the proposal will be held, if requested, on June 16, 1986, at the address listed below under "ADDRESSES". Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m. on June 5, 1986. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East "B" Street, Casper, Wyoming 82601-1918.

The public hearing, if requested, will be held at the Herschler Office Building, 122 West 25th Street, Casper, Wyoming 82002.

See "SUPPLEMENTARY INFORMATION" for address where copies of the Wyoming program amendment and administrative record on the Wyoming program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82601-1918, Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: Copies of the Wyoming program amendment, the Wyoming program and the administrative record on the Wyoming program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, Room 5124, 1100 L Street NW., Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82601-1918

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

Background

The general background on the permanent program, the general background on the State program approval process, the general background on the Wyoming program, and the conditional approval can be found in the Secretary's Findings and conditional approval published in the November 26, 1980 **Federal Register** (45 FR 78637-78634). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 950.11 and 950.15.

Proposed Amendment

On May 1, 1986, the State of Wyoming submitted to OSMRE amendment to its approved permanent regulatory program. The amendment packages consists of extensive revisions to nine separate chapters of the approval Wyoming regulations. The amended chapters and a brief description of the amended subject areas are as follows: Chapter I—Authorities and Definitions; Chapter II—Permit Applications; Chapter III—Permits for Special Categories for Surface Coal Mines; Chapter IV—Environmental Protection Performance Standards; Chapter IX—Variances for Surface Coal Mining Operations; Chapter XIII—Procedures Applicable to Surface Coal Mining Operations; Chapter XIV—Permit Revisions; Chapter XVII—Inspection, Enforcement and Penalties for Surface Coal Mining Operations and, Chapter XXIII—Required Studies for Surface Coal Mining Operations.

OSMRE is seeking comment on whether the Wyoming proposed modifications are no less effective than the requirements of the Federal provisions and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the program modification submitted by Wyoming for OSMRE's consideration is available for public review at the address listed under "ADDRESSES".

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no evironmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Excutive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 15, 1986.

Mark Boster,

Acting Deputy Director, Operations and Technical Services.

[FR Doc. 86-11390 Filed 5-20-86; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 86-20]

Marine Terminal Operations; Truck Detention at the Port of New York Increase in Penalty Charges

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a Petition for Rulemaking the Federal Maritime Commission proposes to amend its truck detention rules at the Port of New York to increase penalty charges for truck delays at marine terminals from $4.00-per-15-minutes to $8.00-per-15 minutes. The Commission is also inviting comment on whether there is a continuing regulatory need for Commission-mandated truck detention rules.

DATE: Comments due on or before July 31, 1986.

ADDRESS: Comments (original and 15 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: By Petition filed December 17, 1985, the New York Terminal Conference (NYTC) [1] has requested that the Commission amend its rules pertaining to truck detention at the Port of New York (46 CFR 530) to increase penalty charges for truck delays at marine terminal facilities in the Port from $4.00-per-15-minutes to $8.00-per-15-minutes. The Petition was filed at the urging of the Bi-State Harbor Carriers Conference.[2] The truck detention rules were originally published in the Federal Register on November 10, 1975 as General Order No. 35 and resulted from the proceeding in Docket No. 72-41, *Truck Detention at the Port of New York*, 19 F.M.C. 25. The rules became effective on December 10, 1975 and were codified as Part 551 of Title 46 of the Code of Federal Regulations. After the passage of the Shipping Act of 1984, 98 Stat. 67, the rules were recodified as Part 530 of Title 46.

The rules set forth guidelines to be followed by motor carriers (common, contract or private), terminal operators and steamship companies whose action or inaction otherwise impedes expeditious pickup and delivery of cargo by motor carriers at marine terminal facilities within Port of New York. Sections 530.7(f) and 530.7(g) of the rules presently set forth a $4.00-per-15-minutes penalty charge to be paid by the terminal operator or the motor carrier as the case may be for delays beyond the periods set forth in § 530.7(f). As noted above, the Petition requests that the $4.00-per-15-minutes penalty charge be increased to $8.00-per-15-minutes in both sections.

In support of its request, NYTC states that over 10 years have elapsed since the rules were first promulgated and no change has been made during that time. It states that while the $4.00 charge may have been adequate and appropriate in 1975, that amount is neither adequate nor appropriate now given the substantial increase in operating costs during the intervening period.

Notice of the filing of the Petition was published in the Federal Register and no opposing comments were received. The Bi-State Harbor Carriers Conference submitted a letter in support of the Petition.

Because over 10 years have elapsed since the penalty amount was established, and inasmuch as two Associations who represent terminal and trucking interests that are impacted by this rule have sught an increase, the Commission believes that such an increase may be warranted and is accordingly granting the Petition. At the same time, however, the Commission is also concerned that the passage of time may have changed the circumstances which originally prompted the promulgation of detention rules for the Port of New York.

As NYTC noted in its Petition, the factual predicate for the detention Rules was the record developed in Docket No. 72-41, *supra*. In that proceeding, as well as those which preceded it, it was determined that there were unusual delays in the handling and interchange of freight between ocean and motor carriers at the Port of New York.[3] The Commission, therefore, promulgated the rules in Part 530 to establish a uniform and equitable system to ameliorate the unfavorable situation arising from congestion and truck detention at New York. It is possible, however, that the conditions which gave rise to these rules would not reoccur if the rules were rescinded, or that changed circumstances such as shifts in cargo transportation patterns, new technologies or other conditions have obviated the need for uniform truck detention rules at the Port of New York. It is also possible that the industry cooperation and coordination which underlies the filing of the present Petition would permit commercial resolutions of matters which originally gave rise to the rules and make unnecessary any Commission-mandated regulations. Accordingly, the Commission is also inviting comment on whether there exists a continued regulatory need for Commission rules establishing uniform practices relating to the interchange of freight between ocean and motor carriers at the Port of New York.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An an annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical region; or

(3) Significant adverse effects on competition, employment, investment, productivity innovations, or on the ability of United States-based enterprises to compete in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3801-3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Part 530 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

Therefore, for the reasons set forth above, Part 530 of Title 46, Code of

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[1] NYTC is an organization of marine terminal operators located in the Ports of New York and New Jersey operating under F.M.C. Agreement No. 8005, as amended.

[2] This Conference is comprised of motor carriers whose primary business is serving marine terminals in the Ports of New York and New Jersey.

[3] The Commission also examined loading and unloading practices at the Port of New York in *Truck and Lighter Loading and Unloading Practices at New York Harbor*, 9 F.M.C. 505 (1966), *affirmed sub nom. American Export-Isbrandtsen Lines, et al. v. Federal Maritime Commission*, 389 F.2d 982 (D.C. Cir. 1968); *Truck and Lighter Loading and Unloading Practices at New York Harbor*, 12 F.M.C. 166 (1969); *affirmed sub nom. American Export-Isbrandtsen Lines, et al. v. Federal Maritime Commission*, 444 F.2d 824 (D.C. Cir. 1970).

Federal Regulations, is proposed to be amended as follows:

PART 530—[AMENDED]

1. The authority Citation to Part 530 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 841a, 1709 and 1716.

§ 530.7 [Amended]

2. In paragraphs (f) (1), (f) (2), and (g) of § 530.7, the $4.00-per-minutes penalty charge is increased to $3.00-per-15-minutes.

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-11417 Filed 5-20-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 86-164; FCC 86-256]

Common Carrier Services; Simplify Individual Licensing Procedures in the Domestic Public Air-Ground Radiotelephone Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Part 22 of its rules (which apply to the Public Mobile Services) to eliminate the application processing function for individual airborne mobile units (AMUs) in the Domestic Public Air-Ground Radiotelephone Service (DPAGRS). This rule change is proposed to ease the administrative burden on the public and to promote more efficient use of Commission resources.

DATES: Comments must be submitted on or before June 24, 1986, and reply comments on or before July 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard G. Owens, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: The collection of information requirement contained in this proposed rule change has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

This is a summary of the Commission's Notice of Proposed Rulemaking, adopted April 18, 1986, released April 30, 1986.

The full text of this Commission decision is available for inspection during normal business hours in the FCC Docket Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Proposed Rule

1. The Mobile Services Division currently licenses individual AMUs which are installed on board private aircraft and which communicate with the single, multi-frequency air-ground base stations serving major air hubs. The Division processes approximately 2700 individual AMU Form 409 applications per year. The individual applicant is not required to demonstrate financial or other qualifications, and there is no basis for comparative evaluation, so applications are routinely granted without lengthy review. The applicant must submit a letter of intent from a local wireline carrier setting forth the carrier's willingness to serve as a nationwide billing agent for the AMU, as well as the number of AMUs to be served, frequencies requested, and point of registry. The Commission has previously eliminated licensing of individual units in the land mobile and rural radio services.

2. The Mobile Services Division proposes to simplify the licensing of individual airborne mobile units (AMUs), by implementing a self-licensing procedure: the applicant would fill out an application, retain one copy, and mail the original to the Commission. The applicant would also be required to retain the carrier's letter of intent. The AMU license would be effective on the date the application is postmarked. The same procedure would be followed for modifications and renewals. We also invite comment on an alternative to this proposal—association of the AMU with the license of a specific DPAGS base station licensee. We further propose to eliminate assignment of individual AMU call signs by the Commission, substituting the official FAA registration number of the aircraft on which the AMUs is installed, with a prefix, as that AMU's call sign.

3. The mail-in licensing procedure is uniquely suited to AMUs. Interference complaints against users are rare, and no AMU license has ever been forfeited or revoked. Moreover, spectrum management in the DPAGRS is achieved through type acceptance and operating rules. The Commission would maintain a data base containing the information submitted on the Form 409 in order to investigate complaints, but the application processing function would be eliminated. Commission staff could be reassigned to more pressing matters.

4. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, this proceeding will affect air-ground licenses, air-ground radiotelephone equipment manufacturers and members of the public receiving air-ground service. Some of these may be small entities. Public comment is requested on the initial regulatory analysis set out in full in the Commission's complete decision.

6. Pursuant to applicable procedures set forth in §§1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 24, 1986, and reply comments on or before July 9, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

7. Accordingly, it is proposed, That 47 CFR 22.9(c)(2) be amended as set forth below.

List of Subjects in 47 CFR Part 22

Communications common carriers.

William J. Tricarico,

Secretary.

47 CFR Chapter I is amended as follows:

PART 22—PUBLIC MOBILE RADIO SERVICES

8. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

9. Section 22.9 is amended by revising paragraph (c)(2) to read as follows:

§ 22.9 Standard application forms for Public Land Mobile, Rural Radio, Domestic Public Cellular Radio Telecommunications, and Offshore Radio Services

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(c) * * *

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(2) Airborne mobile stations. Licenses for airborne mobile stations shall be granted upon mailing to the Commission

of a properly-completed FCC Form 409. The effective date of the license shall be the date on which the Form is mailed. This form shall also be used for the modification and renewal of such licenses. FCC Form 409 shall be accompanied by the supplemental showing set forth in § 22.15(i) (2) and (3).

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[FR Doc. 86-10530 Filed 5-20-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Listing of Blackside Dace as Threatened

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the blackside dace (*Phoxinus cumberlandensis*) as a threatened species under the Endangered Species Act of 1973 (Act), as amended. Historically, this fish likely inhabited many small cool-water streams in the upper Cumberland Rivers system in southeastern Kentucky and northeastern Tennessee. However, primarily due to the impacts of siltation from coal mining prior to adoption of current regulations, silviculture, agriculture, and road construction, and the impacts of unregulated acid mine drainage and impoundments, the species is now restricted to short stream reaches (an estimated total of 14 stream miles) in 30 streams.

Most of these streams are now threatened by many of the same factors that caused the species' original decline. Comments and information pertaining to this proposal are sought from the public.

DATES: Comments from all interested parties must be received by July 21, 1986. Public hearing requests must be received by July 7, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 24, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The blackside dace *(Phoxinus cumberlandensis)* was discovered in 1975 (a few misidentified specimens from old collections have now been found) and described by Starnes and Starnes (1978). This fish inhabits streams on both public and private property in the upper Cumberland River drainage (primarily above Cumberland Falls) in Pulaski, Laurel, McCreary, Whitley, Knox, Bell, Harlan, and Letcher Counties, Kentucky; and Scott, Campbell, and Claiborne Counties, Tennessee; where it inhabits small (7 to 15 feet wide) upland streams with moderate flows.

The extent of the blackside dace's historic distribution is unknown, but available records show that it has been extirpated from at least ten streams (O'Bara 1985). Starnes (1981) reported that, based on his physical habitat evaluation, it may have existed in at least 52 other streams, but was eliminated before it was discovered in these waters. Presently, it is known from a total of only about 14 stream miles in 30 separate streams (O'Bara 1985).

The areas of Kentucky and Tennessee inhabited by the fish are rich in coal reserves and forest resources. It is believed that impacts associated with the development of these resources has caused the loss of many blackside dace populations. Harker *et al.* (1980a) stated that many streams in the upper Cumberland River Basin have been affected by acid mine drainage. This report further stated that the major source of pollution in the area is the excessive siltation associated with strip mining, highway construction, and poor land use. Future mining of the area's coal reserves if not conducted in accordance with all existing regulations, increased silvicultural and agricultural activities, road and bridge construction, and other activities that are not conducted with the welfare of the species in mind are expected to further threaten the species.

The blackside dace is listed by the Kentucky Nature Preserves Commission (Harker *et al.* 1980b) as a "threatened (endemic)" species and by the Tennessee Heritage Program of the Tennessee Department of Conservation as "endangered." This small fish (less than 3 inches long) has a single black lateral stripe, a green/gold back with black specks, and a pale or sometimes brilliant scarlet belly (Starnes and Etnier 1980). The fish's fins are often bright yellow with metallic silver surrounding the base of the pelvic and pectoral fins. The species is generally associated with undercut banks and large rocks and is usually found within relatively stable, well-vegetated watersheds with good riparian vegetation (Starnes 1981). Stable watersheds help maintain cool temperatures and minimize silt to the benefit of the species. O'Bara (1985) also found that the fish's presence was apparently closely correlated with healthy riparian vegetation where canopy cover exceeded 70 percent and with stream flows that were of sufficient velocity to remove silt from areas just downstream of the riffles. The fish was not found in low gradient silty streams nor in high gradient mountain tributaries. The blackside dace spawns in May and June and is thought to feed on algae, detritus, and sometimes insects (Starnes 1981).

On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the blackside dace, along with 146 other fish species, was being considered for addition to the List of Endangered and Threatened Wildlife. On May 1, 1984 (received by the Service May 16, 1984), Mr. George Burgess, Secretary-Treasurer of the Southeastern Fishes Council, submitted a petition to list the species as threatened. The Service reviewed the petition and in the **Federal Register** of September 4, 1984 (49 FR 34878), announced its finding that the information submitted was substantial in indicating the petitioned action may be warranted. On January 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties of its review of the species' status. That notification requested information on the species' status and threats to its continued existence. Nine responses to the January 4, 1985, notification were received. Support for some measure of protection for the fish was contained in four letters, four letters outlined potential impacts on agency programs, and five letters commented on specific threats. On July 18, 1985, the Service published a notice in the **Federal Register** (50 FR 29238) concluding that the petition to list the species received from Mr. George Burgess on behalf of the Southeastern Fishes Council was warranted but was precluded from immediate proposal because of other pending actions to list, delist, or reclassify species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing

provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the blackside dace (*Phoxinus cumberlandensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As the blackside dace was not discovered until 1975 and relatively few historic fish collection records exist for the Upper Cumberland River Basin, the extent of the species' historic range and the number of populations that may have been lost are not known. However, based on available data, it can be concluded that the species' total distribution and the size of the extant population has been substantially diminished. Starnes (1981) sampled 168 upper Cumberland River Basin streams and reported the fish from only 27 streams. He concluded, based on the physical habitat requirements, that the fish could have been eliminated from at least 52 other waters before the fish's existence was known. O'Bara (1985) surveyed 193 upper Cumberland River Basin sites and reported the species present in 30 streams and extripated from 10. Most of the 30 extant populations are impacted by siltation or some other factor that seriously limits the population's size and vigor. As a result of limiting factors, O'Bara (1985) estimated that the fish now inhabits a total of about 14 stream miles in the 30 streams, and he considered only 9 streams (about 8 stream miles) to contain healthy populations. All the populations inhabited more than 1 stream mile, and some were limited to just a few hundred yards and were represented by the collection of only one fish (O'Bara 1985).

The upper Cumberland River Basin is rich in coal reserves and forested lands, and development of these natural resources with associated road and bridge construction has been extensive and can be expected to continue. The most frequently cited threat (O'Bara 1985) was coal-mining related problems, followed in order of threat by logging, road construction, agriculture, human development, and natural low flows. Only one of the streams described by O'Bara (1985) was not threatened by some factor. Unless the needs of the species are considered so that the impacts from these and other threats can be minimized, the loss of blackside dace populations will continue.

For proper evaluation of these threats, it should be noted that the Service has issued a no-jeopardy biological opinion under Section 7 of the Endangered Species Act for the State of Kentucky's and the Federal Office of Surface Mining's coal mine regulation program. Although no final determination could be made until and unless the blackside dace were listed and a consultation undertaken, the Service has no evidence that mining activities conducted in accordance with State and Federal regulations are a threat to the species. Rather, past unregulated activities have contributed to the decline of the blackside dace and current activities not in compliance with appropriate regulations may be a threat to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no history of this factor being a problem for the blackside dace. However, because of the interest in the species expected to be generated by the listing process, the Service is concerned that this problem may arise in the future. To help minimize this threat, the Service has not proposed critical habitat as this action requires delineation of the species' specific habitats (see "Critical Habitat" Section of this rule).

C. *Disease or predation.* There is no evidence of threats to this species from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Both the State of Tennessee and the State of Kentucky prohibit taking this fish for scientific purposes without a State collecting permit. Federal listing would provide additional protection by requiring Federal permits for taking the fish and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The southern redbelly dace (*Phoxinus erythrogaster*) is not a native to the upper Cumberland River Basin but is now present in many basin streams. Starnes and Starnes (1981) suggested that this fish "may have displaced the blackside dace to some degree in some of those steams that are less upland in character." They found that the redbelly dace had become established in areas where the water and habitat quality had been altered to create warmer and more turbid conditions. However, they stated that the blackside dace seemed able to persist in the better quality habitats.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the blackside dace (*Phoxinus cumberlandensis*) as a threatened species. Although specific historic records are lacking, available data from habitat evaluations indicate that this fish once likely inhabited many small cool-water streams throughout much of the upper Cumberland River Basin. However, the species is now known to exist in only about 14 stream miles in 30 separate stream. The many factors that brought the species to this condition are still threatening it. Because of the number of populations in existence, it is unlikely the species will become extinct in the forseeable future. Therefore, endangered species status is not appropriate. The reasons for not proposing critical habitat are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Although take of the blackside dace is presently not known to be a problem, the species could be vulnerable to this threat. The fish inhabits very small (7 to 15 feet wide) streams, occupies only short stream segments (most less than 1 mile), exists in small numbers in these stream reaches, and is known from only nine healthy populations. Most of the inhabited stream reaches are easily accessible by road. Because of potential and preceived conflicts with coal mining activities, substantial notoriety may develop from this proposed rule and subsequent Federal actions. Therefore, in light of these factors, the Service believes that publishing maps and text detailing the location of the blackside dace's specific habitat and constituent elements of that habitat, as required for any critical habitat designation, would increase the species' vulnerability to illegal taking and/or vandalism, further threaten the species, and increase the law enforcement problem. All appropriate local, State, and Federal agencies and governmental officials will be notified of the location and importance of protecting this species' habitat.

Protection of this species' habitat will also be addressed through the recovery

process and through the section 7 jeopardy standard (see below). Therefore, it would not be prudent to designate critical habitat for the blackside dace at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize, the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could impact the species and its habitat include, but are not limited to, the following: issuance of permits for surface mining, abandoned mine land reclamation, road and bridge construction, and timber management on Federal lands. It has been the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Mr. Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Harker, D.F., M.E. Medley, W.C. Houtcooper, and A. Phillippi. 1980b. Kentucky Natural Areas Plan, Appendix A. Kentucky Nature Preserves Commission, Frankfort, Kentucky.

Harker, D.F., M.L. Warren, Jr., K.E. Camburn, S.M. Call, G.J. Fallo, and P. Wigley. 1980a. Aquatic biota and water quality survey of the upper Cumberland River basin, Technical Report, Volume I, 409 pp. Prepared for Kentucky Division of Water Quality, Department of Natural Resources and Environmental Protection.

O'Bara, C.J. 1985. Status survey of the blackside dace *(Phoxinus cumberlandensis)*. Report to the U.S. Department of the Interior, Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina. 30 pp. plus Appendix.

Starnes, W.C. 1981. Listing package for the blackside dace *(Phoxinus cumberlandensis)*. Report to the U.S. Department of the Interior, Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina. 41 pp. plus Appendices A and B.

Starnes, W.C., and D.A. Etnier. 1980. Fishes. pp. 23–24. In: Eager, D.C., and R.M. Hatcher (eds.), Tennessee's Rare Wildlife, Vol. I: The Vertebrates. Tennessee Wildlife Resources Agency and Tennessee Conservation Department. 337 pp.

Starnes, W.C., and L.B. Starnes. 1978. A new cyprinid of the genus *Phoxinus* endemic to the upper Cumberland River drainage. Copeia 1978: 508–510.

Author

The primary author of this proposed rule is Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159; 93 Stat, 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Dace, blackside	Phoxinus cumberlandensis	U.S.A.(TN,KY)	Entire	T	NA	NA	

Dated: May 6, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–11304 Filed 5–21–86; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Florida Scrub Jay

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Florida scrub jay (*Aphelocoma coerulescens coerulescens*) is almost exclusively confined to scrub habitat in peninsular Florida that generally has high real estate value. Much of the coastal scrub formerly inhabited by the bird has been cleared for beachfront hotels, houses, and condominiums. Many areas in the interior of Florida are presently being developed for citrus groves and housing. Clearly, the major cause of decline has been habitat destruction. Other threats to the Florida scrub jay are malicious shooting of the birds by vandals, accidents with motor vehicles and unfavorable habitat succession problems in some areas. This proposal, if made final would implement the protection and recovery provisions of the Endangered Species Act of 1973, as amended, for the Florida scrub jay. The Service seeks data and comments from the pulic on this proposal.

DATES: Comments from all interested parties must be received by July 21, 1986. Public hearing requests must be received by July 7, 1986 at the office listed in the next paragraph.

ADDRESS: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (telephone 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Florida scrub jay (*Aphelocoma coerulescens coerulescens*) was originally named by Bosc, 1795, as *Corvus coerulescens*. The species *Aphelocoma coerulescens* is widely distributed in the western United States, but the Flordia Subspecies, *Aphelocoma coerulescens coerulescens*, an isolated form of the species, is restricted to scrub habitat areas of peninsular Florida. The Florida scrub jay is a 30 centimeter (12 inch), bluish-colored, crestless jay totally lacking the white-tipped wings and tail feathers of the more common and widespread blue jay (*Cyanocitta cristata*). A necklace of blue feathers separates the white throat from the grayer underparts, and a white line over the eye often blends into a whitish forehead. The tail is long and loose in appearance (Woolfenden *in* Kale 1978). The subspecies has been recorded only once from outside of peninsular Florida, on Jekyll Island, Georgia, (Moore 1975).

The following information on the biology of the Florida scrub jay is abstracted from information obtained by Cox (1984) and Woolfenden and Fitzpatrick (1984). Scrub jays are long-lived (10 years or more), sedentary, permanently monogamous inhabitants of oak scrub. They typically nest at the edge of an oak thicket, near an open area. Scrub jays rarely breed at one year of age, even though they are then physiologically mature; instead they may remain on their natal territories for a number of years and assist their parents in raising further broods. Scrub jay breeding pairs with helpers have significantly greater reproductive success than pairs without helpers. Males may remain with their parents as helpers for longer periods than females (up to six years). As the group's size increases, the territory grows. Eventually, a male helper may be able to claim part of the enlarged territory for his own breeding territory. Females rarely help for more than two years, and disperse within the local population as breeding vacanies arise. Scrub jays are omnivorours, eating almost anything they can catch, but they concentrate on lizards and arthropods in spring and summer, and acorns in fall and winter. Surplus acorns are frequently cached in the ground.

The Florida scrub jay lives only in the Florida scrub habitat, which occurs on fine, white, excessively drained sands. This type of sand occurs along present coastlines in Florida, and in dunes deposited during the past when sea levels were much higher than at present. The most important of these dune systems include the Atlantic coastal ridge along the Atlantic coast of Florida, the Lake Wales Ridge in Polk and Highlands Counties, and the extensive sand dunes of Ocala National Forest. Cox (1984) stated that the most commonly occupied type of scrub by scrub jays is "oak scrub." Oak scrub consists of a single layer of evergreen shrubs, usually dominated by three species of oaks—myrtle oak (*Quercus*

myrtifolia), and live oak (*Quercus geminata*), and Chapman oak (*Quercus chapmanii*). Scrub jays are rarely found as residents in habitat with more than 50% canopy cover that is over 3 meters (10 feet) tall. In summary, scrub jay habitat consists of dense thickets of scrub oaks less than 3 meters in height, interspersed with bare sand for foraging and storing acorns.

Scrub jays have been reported in the past from scrub habitat in each of the following Florida Counties: Alachua, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Dade, De Soto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia. Today, scrub jays have been completely eliminated from Broward, Dade, Duval, Pinellas, and St. Johns Counties, and their numbers have decreased drastically in Brevard, Highlands, Orange, Palm Beach, and Seminole Counties. In virtually every county where the species occurs, it is known to have declined in numbers. It has disappeared from fully 40% of the locations from which it was known historically, and the total population has probably dropped by half in the past century (Cox 1984). The major cause of the declines and disappearances is habitat destruction. The total number of Florida scrub jays estimated by Cox to survive in Florida today is between 15,000 and 22,000 birds, of which about 13,000 to 20,000 are on public lands, and about 2,000 or private property.

On March 16, 1984, Jeffrey A. Cox, Florida State Museum, University of Florida, Gainesville, Florida, petitioned the Service to list the Florida scrub jay as a threatened species. Dr. Cox provided a comprehensive report on the status of this species in support of the petition. The service found on May 4, 1984, that the petitioned action may be warranted and published the finding on July 13, 1984 (49 FR 28584). A 12-month finding was made on March 18, 1985, and published on July 18, 1985 (50 FR 24238), that the action requested was warranted but precluded by work on other pending proposals. Publication of this proposed rule constitutes the next and final 12-month finding for the Florida scrub jay, as required under section 4(b)(3)(c)(i) of the Act, that the petitioned action is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated (50 CFR Part 424) to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, are as follows (abstracted for Cox 1984):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The future of the Florida scrub jay depends on the continued existence of its scrub habitat. Unfortunately most scrub lands are in areas that give them high real estate value. Much of the coastal scrub has been cleared for beachfront hotels, houses, and condominiums. Scrub habitats in the interior of the Florida peninsula are subject to development for citrus groves and housing developments. Scrub jays have disappeared from 40% of the locations where they formerly occurred, and the total population has declined by half in the past 100 years. The major cause of the declines and disappearances is habitat destruction. Although housing and agricultural development has been occurring in Florida for many years, the pace of this development has accelerated since the 1960's. The human population of Florida nearly doubled from 1960 to 1980, from 4.95 million to 9.75 million (Terhune 1982). This trend will continue into the foreseeable future, placing even more pressures on natural habitats. Most of the housing developments that are located in scrub habitats are less than 20 years old. In many developments, scrub jays are barely hanging on, and they will probably disappear in a few years as land-clearing continues. The sites most likely to be destroyed by development in the near future are concentrated in Brevard, Highlands, and Palm Beach Counties. It is possible that no scrub jays will remain in Palm Beach County by 1990 (Cox 1984).

Of the 15,000 to 22,000 scrub jays that may survive in Florida at the present time, over 80% occur in only two general areas: Merritt Island/Cape Canaveral (Brevard County) and Ocala National Forest (Lake, Marion, and Putnam Counties). Elsewhere, only small populations are scattered locally throughout peninsular Florida.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* By far, habitat destruction has played the major role in the decline of the Florida scrub jay. Nevertheless, there is evidence (S.A. Grimes, in litt.) that, in St. Johns County at least, some scrub jays have been shot by vandals. Grimes has seen people with guns in the area along SR A1A, and a tame scrub jay would present a tempting target to vandals. In addition, the tameness and beauty of the bird make it desirable (although illegal) as a pet, and it is known to have been used for such purposes in the past.

C. *Disease or predation.* Disease and predation are not thought to be factors that have led to the scrub jay's decline.

D. *The inadequacy of existing regulatory mechanisms.* The Florida scrub jay is protected by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and by Florida State law (Chapter 39–27, Florida Administrative Code). These laws, however, do not protect the birds from habitat destruction, the major cause of the species' decline in Florida.

E. *Other natural or manmade factors affecting its continued existence.* Human interference with the natural functioning and development of an ecosystem has played an important part in the decline of the scrub jay in certain areas. Historically, fires caused by lightning were major factors in maintaining the sparse, low scrub vegetation preferred by the scrub jay. In some parts of the range of this species, human efforts to prevent and/or control natural fires have allowed the scrub to become too dense and tall to support populations of scrub jays. An example of such a situation is found in the miles of coastal barrier scrub in St. Johns County. Scrub jays were known to be resident in this area in the past, but none currently occur there. Fire suppression to protect human interests has allowed the scrub to become too dense for the scrub jays. Thus, a large area of coastal St. Johns County, which used to support a healthy population of the species, no longer contains suitable habitat.

Cox (1984) believes that, in St. Johns County at least, one of the factors in the extirpation of the scrub jay may have been accidental road kills from passing trucks and cars. Scrub jays frequently forage along roadsides and other openings in the scrub, and, since SR A1A runs directly down the middle of the scrub on the long, narrow, barrier island, there was a high potential for birds to be killed in this manner.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Florida scrub jay as a threatened species.

Threatened rather than endangered status was chosen for the following reasons. A high percentage of scrub jays occur on Federal lands that can be managed to benefit the birds. On the other hand, the facts that the birds no longer occurs at 40% of the localities where it once was found and has decreased in numbers by at least 50% in the past century, indicate that it is extremely vulnerable, and could become an endangered species unless surviving populations are protected and managed. Critical habitat is not being proposed for the Florida scrub jay for reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Florida scrub jay at this time. All concerned Federal agencies already know of the presence of the scrub jay on lands they manage, and are aware of the habitat needs of the bird. In addition, the Federal lands involved cover extensive areas, not all of which will be, or will remain, critical over extended periods of time. As scrub habitat is burned or clear-cut in some areas, scrub jay populations will move into other areas with more suitable habitat. As the burned or clear-cut areas grow back, jays will reinvade them. Thus, there is, and will continue to be, a periodic change in localities within the Federal lands occupied by the birds. It is impossible to predict when or where populations will be in residence at any particular time.

The rest of the populations of scrub jays (20% of the estimated total number of birds) are widely and thinly scattered over peninsular Florida in many small localities which would be nearly impossible to delineate in a meaningful or productive fashion. In addition, the tameness and beauty of the scrub jay make it a desirable bird for collectors. Although it is illegal to capture and hold the bird in captivity, such practices do occur. Finally the tameness and trusting nature of this species make it particularly vulnerable to malicious or random shooting. To point out precisely where the few remaining birds on private land occur, through a delineation of critical habitat and publication of locality maps, could enhance the possibility of such vandalism, and thus actually increase the threat to the species. For all of the above reasons, a determination of critical habitat is not prudent for the Florida scrub jay, either on Federal lands or on private lands.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At the present time, the Service knows, of four Federal agencies that may be affected if the scrub jay is listed as a threatened species. These are: (1) The U.S. Fish and Wildlife Service (Merritt Island National Wildlife Refuge), (2) the National Aeronautics and Space Administration (Kennedy Space Center), (3) the U.S. Air Force (Cape Canaveral Air Force Station), and (4) the U.S. Forest Service (Ocala National Forest). Impacts on these agencies, however, are expected to be minimal, and may be summarized as follows:

Merritt Island National Wildlife Refuge/Kennedy Space Center—The largest population of scrub jays occurs in this area; the Refuge includes the lands of the Kennedy Space Center. The Refuge has begun a program of controlling burning of all scrub on land under its jurisdiction. Unless the burning occurs too often, it should help to maintain the suitability of habitat for scrub jays. The Refuge will now need to take the interests of the scrub jay into consideration in its program of controlling burning of scrub. In addition, any expansion of Kennedy Space Center facilities will also need to consider the needs of the scrub jay before being undertaken.

Cape Canaveral Air Force Station—The scrub at this Station has suffered more clearing than at the Merritt Island National Wildlife Refuge. Aerial photos disclose that about 20% of the land on the Station has been cleared in the past several decades. Habitat clearing for construction in the future will need to consider the effect of such clearing on scrub jay populations before being undertaken. Also, it may be necessary to cut or burn existing scrub periodically to maintain its suitability as habitat for the scrub jay.

Ocala National Forest—The scrub jay population is scattered throughout the scrub portions of the Forest. The Forest Service clear-cuts on a rotational basis. This can have a beneficial effect on the scrub jays because it provides a continually changing mosaic of habitat within the forest. Wen scrub in one area becomes too old and dense, scrub jays may move on to colonize another more recently cleared site. Therefore, present Forest Service management practices seem compatible with the well-being of the scrub jay, and only minimal effect on this agency is anticipated.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations

governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the jay is already protected under the Migratory Bird Act, no economic hardship applications are expected.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on the Florida scrub jay will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1984 (48 FR 49244).

References Cited

Cox, J.A. 1984. Conservation and ecology of the Florida scrub jay. Unpublished Dissertation. Department of Zoology, University of Florida. 185 pp.

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Woolfenden, G.E., and J.W. Fitzpatrick. 1984. The Florida scrub jay. Monographs in Population Biology No. 30, Princeton University Press. 406 pp.

Author

The primary author of this proposed rule is John L. Paradiso, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (telephone 904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend §17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * * *

(h) * * *

Species			Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name							
Birds								
Jay, Florida scrub	Aphelocoma coerulescens coerulescens		U.S.A. (FL)	Entire	T		NA	NA

Dated: May 6, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–11365 Filed 5–20–86; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status and Critical Habitat for the Mount Graham Red Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status and critical habitat for the Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*), a small mammal found only in the Pinaleno Mountains of southeastern Arizona. Its isolated habitat has declined over the last century and may face additional losses to logging, recreational development, and construction of an astrophysical observatory. The red squirrel may also be in jeopardy because of its reduced numbers, and through competition with an introduced species of squirrel. This proposal, if made final, would extend the protection of the Endangered Species Act of 1973, as amended, to the Mount Graham red Squirrel and its critical habitat. The Service seeks data and comments from the public.

DATES: Comments must be received by July 21, 1986. Public hearing requests must be received by July 7, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Alisa M. Shull, Endangered Species Staff, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The red squirrel (*Tamiasciurus hudsonicus)* is found in most of Canada and Alaska, and in much of the western and northern parts of the conterminous United States (Hall 1981). It is an arboreal species, and, in the southern extremities of its range, is restricted mainly to montane forests. Its color is grayish brown, tinged with rusty or yellowish along the back. In summer, a dark lateral line separates the light colored underparts from the grayer or browner sides. The ears are slightly tufted in winter, and the tail is bushy (Spicer et al. 1985).

The two most southerly subspecies of the red squirrel are *T. h. mogollonensis*, which is found in much of the high country of Arizona and New Mexico, and *T. h. grahamensis*, the Mount Graham red squirrel, which is known only from the Pinaleno, or Graham, Mountains of Graham County, southeastern Arizona. The latter is slightly smaller than *T. h. mogollonensis*, has a relatively shorter tail, and differs in various skeletal characters. Ten adult specimens averaged 7¾ inches (196.0 millimeters) in head and body length, and 5⅓ inches (135.5 millimeters) in tail length (Spicer *et al.* 1985).

The range of the Mount Graham red squirrel lies entirely within the Safford Ranger District of the Coronado National Forest. This squirrel is now found primarily in stands of dense Engelmann spruce *(Picea engelmannii)* and/or fir, especially corkbark fir *(Abies lasiocarpa* var. *arizonica).* It now occurs mostly above an elevation of 10,000 feet (3,048 meters), but may also be present down to about 9,400 feet (2,865 meters) in drainages on north-facing slopes and in protected areas. Its diet consists largely of conifer seeds, and during the winter it depends on seed-bearing cones that it has stored at certain sites known as middens. These caches, usually associated with logs, snags, stumps, or a large live tree, are the focal points of individual territories, and the number of midden complexes offers an approximation of the number of resident red squirrels in a particular area. In good spruce-fir habitat in the Pinaleno Mountains, there is a population density of about one red squirrel per 8 acres (3.2 hectares), which is somewhat lower than has been found in most other areas where the species has been studied (Spicer *et al.* 1985).

The Mount Graham red squirrel was described by Allen in 1894, based on three specimens taken that same year on Mount Graham in the Pinalenos. Subsequent reports indicate that the subspecies was common around the turn of the century, but was declining by the 1920's and rare by the 1950's (Hoffmeister 1956). This situation apparently was associated with loss and disruption of forest habitat, and perhaps with competition from an introduced population of the tassel-eared, or Abert's, squirrel *(Sciurus aberti).* From 1958 to 1967, there was only a single report, unconfirmed, of *T. h. grahamensis*, and there was concern that the subspecies had become extinct. Later, however, the continued existence of the Mount Graham red squirrel was verified, and a Service-funded status survey in 1984–1985 located this mammal or its fresh sign at 16 localities in the Pinalenos (Spicer *et al.* 1985).

In both its original Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454–58460), and the revised version, published on September 18, 1985 (50 FR 37958–37967), the Service included the Mount Graham red squirrel in category 2, meaning that information then available indicated that a proposal to determine endangered or threatened status was possibly appropriate, but was not yet sufficiently substantial to biologically support such a proposal. Results of the recent survey have since become available, and provide a substantive basis for a proposed determination of endangered status. Although the squirrel does still survive, its range and numbers have been reduced, and its habitat is jeopardized by a number of factors, including proposed construction of an astrophysical observatory.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) are as follows (information taken from Spicer *et al.* 1985):

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Mount Graham red squirrel has always been naturally restricted to a relatively small area, and its range and numbers have evidently declined during the past century. In 1914 it was considered common above elevations of 8,500 feet (2,590 meters), and was found as low as 6,750 feet (2,057 meters). Feared extinct by the 1960's, it subsequently seemed to make a partial recovery, but probably has not reached its former numbers. It is now seldom found below 9,500 feet (2,900 meters), is nowhere abundant, and appears to be common only in small, scattered patches of the best habitat. Such habitat consists mainly of spruce-fir forest, of which there are 2,240 acres (906 hectares) in the Pinalenos. In this habitat, there is an estimated density of one red squirrel per 8 acres (3.2 hectares), though not all of the spruce-fir forest is uniformly occupied. The red squirrel also inhabits portions of the adjacent Douglas fir (*Pseudotsuga menziesii*)-white fir (*Abies concolor*) forest, of which there are 19,900 acres (8,055 hectares), but only at an estimated density of one individual per 124 acres (50 hectares). The total red squirrel population now in the Pinalenos may well number fewer than 500 individuals, possibly only 300.

Although not precisely documented, the apparent decline of the Mount Graham red squirrel seems to parallel the expansion of logging operations in the Pinalenos. Such activity began in the 1880's and was initially not widespread. By 1933, however, roads had been constructed to the crest of the mountains. By 1973, most of the accessible timber had been cut, thereby reducing the age structure and density of the red squirrel's forest habitat. The extent of future timber harvesting in the

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Pinalenos will depend on which alternative in the proposed Coronado National Forest Plan is implemented. The alternatives vary from no harvest to clear cutting of the spruce-fir forest for conversion to livestock forage. The latter procedure could eliminate food sources, midden sites, and cover, and result in a substantial decline of the red squirrel population.

The construction of a major astrophysical facility on Mount Graham has been proposed by Steward Observatory, University of Arizona. This facility would be located within a 3,500-acre (1,416-hectare) area encompassing most of the mountain above 9,400 feet (2,865 meters). It would include up to 18 telescopes, a visitor center, workshops, and other installations.

Additional losses to red squirrel habitat could result from forest fires, road construction and improvement, and recreational developments, and high elevation, including potential picnic areas, campgrounds, and ski facilities. It is not thought that any one of these, or the above, problems could by itself result in rapid extirpation of the Mount Graham red squirrel, but their cumulative effect could be severe over a period of time. Considering the squirrel's low numbers, restricted range, and past history of decline, new potential habitat disturbances may be cause for concern.

B. Overutilization of Commercial, Recreational, Scientific, or Educational Purposes

Tree squirrels (including the red squirrel) are legally hunted in the Pinalenos during October and November. Almost all hunters, however, seek the introduced tassel-eared squirrel. Investigations by the Arizona Game and Fish Department have found no substantial take of the red squirrel, and hunting is not now considered a threat to this species.

C. Disease or Predation

Nothing is known about diseases or parasites of the Mount Graham red squirrel. Other subspecies, however, are susceptible to a variety of diseases, including tularemia and those caused by infectious viruses. Predation is not known to have caused reductions in the red squirrel population of the Pinalenos, but a number of predatory mammals, birds, and reptiles are present in the area.

D. The Inadequacy of Existing Regulatory Mechanisms

Both the Arizona Game and Fish Department and the U.S. Forest Service, which manages the land inhabited by the Mount Graham red squirrel, are aware of the presence of this mammal and the problems it may face. Both agencies have policies and agreements that give some consideration to the welfare of this squirrel. There are; however, of State or Federal laws or regulatons that specifically require protection of the squirrel of its habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Mount Graham red squirrel may have suffered through competition with the tassel-eared squirrel, which was deliberately introducted in the Pinalenos from 1941 to 1943. The latter species now occupies nearly all coniferous forest in the area. Although little is known about interaction between these two kinds of squirrel, a number of authorities have suggested that competition has resulted in the exclusion of the red squirrel from habitat with ponderosa pine (*Pinus ponderosa*), to which the tassel-eared squirrel is particularly adapted. This process may have ultimately led to a substantial reduction in the range and numbers of the red squirrel.

The Mount Graham red squirrel has probably been isolated from other populations of *T. hudsonicus* for about 11,000 years. The nearest locality where the species is known to occur is 68 miles (110 kilometers, to the northeast, and is separated by a stretch of arid, unsuitable habitat. There is no possibility of natural immigration or genetic exchange. Because of these factors, and its restricted population size and distribution, the Mount Graham red squirrel is particularly vulnerable to any disturbance that might bring about further declines and weakening of genetic viability.

The decision to propose endangered status for the Mount Graham red squirrel was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. A decision to take no action would constitute failure to properly classify the Mount Graham red squirrel pursuant to the Endangered Species Act and would exclude this squirrel from protection provided by the Act. A decision to propose only threatened status would not adequately reflect the very small population size and distribution of this squirrel, its history of vulnerability and decline, and the multiplicity of problems that confront it. For the reasons given below, a critical habitat designation is included in this proposal

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a) (3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat proposed for the Mount Graham red squirrel to include three areas in the Coronado National Forest, Graham County, Arizona. These areas are precisely delineated below in the "Proposed Regulations Promulgation" section. The names applied to the areas—Hawk Peak/Mount Graham, Heliograph Peak, and Webb Peak—refer to prominent mountains. The areas have irregular shapes, but cover a total approximately 2,000 acres (800 hectares).

The three designated areas the major known concentration of the Mount Graham red squirrel, and the habitat necessary to its survival, including cover, food sources, nest sites, and midden sites. The winter survival of the red squirrel depends primarily on the availability of seeds of cones stored in middens. Therefore, an environment in which the midden-cached ones will stay cool and moist, and be prevented from opening and losing their seeds, is of critical importance. Such an environment is most often found in dense, shady forest above 10,000 feet (3,048 meters), and at lower elevations on north-facing slopes or in protected pockets and small basins (Spicer *et al.* 1985).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. As the Mount Graham red squirrel requires dense spruce-fir forest, it woud suffer through activities that destroy such habitat or substantially reduce forest density. Potential activities that could adversely affect the habitat include timber harvesting and recreational development that proceed without adequate consideration of the welfare of the squirrel, and construction of the

proposed astrophysical facility on Mount Graham. Any such activities that take place on national forests would require authorization by the U.S. Forest Service. Since all of the proposed critical habitat of the Mount Graham red squirrel is within a national forest, the activities in question could require appropriate forest Service conferral and/or consultation as described below under "Available Conservation Measures."

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation for the Mount Graham red squirrel in light of all additional relevant information obtained at the time of final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Fedeal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Fedeal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that may be affected in this regard with respect to the listing of the Mount Graham red squirrel, are described above in the "Critical Habitat" section.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not otherwise available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments and suggestions regarding any aspect of this proposal are hereby solicited from the public, concerned governmental agencies, the Scientific community, industry, and other interested parties. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) the location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the distribution of this species;

(4) current or planned activities in the involved area and their possible impacts on the subject species; and

(5) any foreseeable economic or other impacts resulting from the proposed designation of the critical habitat.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

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Allen, J.A. 1894. Descriptions of ten new North American mammals, and remarks of others. Bull. Amer. Mus. Nat. Hist. 6:320–321.

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Hoffmeister, D.F. 1956. Mammals of the Graham (Pinaleno) Mountains, Arizona. Amer. Midl. Nat. 55(2):257–288.

Spicer, R.B., J.C. de Vos, Jr., and R.L. Glinski. 1985. Status of the Mount Graham red squirrel, *Tamiasciurus hudsonicus grahamensis* (Allen), of southeastern Arizona. Report to Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico, 48 pp.

Author

The primary author of this proposed rule is Alisa M. Shull, Endangered Species Staff, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species			Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name							
MAMMALS								
Squirrel, Mount Graham red	*Tamiasciurus hudsonicus grahamensis*		U.S.A. (AZ)	Entire	E		17.95(a)	NA

3. It is further proposed to amend § 17.95(a) by adding critical habitat of the Mount Graham red squirrel, in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

* * * * *

Mount Graham Red Squirrel
(Tamiasciurus hudsonicus grahamensis)

Arizona. Areas of land, water, and airspace in the Coronado National Forest, T8S R24E and T9S R24E (Gila and Salt River Meridian), Graham County, with the following components:

1. *Hawk Peak-Mount Graham Area.* The area above the 10,000-foot (3,048-meter) contour surrounding Hawk Peak and Plain View Peak, plus the area above the 9,800-foot (2,987-meter) contour that is south of lines extending from the highest point of Plain View Peak eastward at 90° (from true north) and southwestward at 225° (from true north).

2. *Heliograph Peak Area.* The area on the north-facing slope of Heliograph Peak that is above the 9,200-foot (2,804-meter) contour surrounding Heliograph Peak and that is between a line extending at 15° (from true north) from a point 160 feet (49 meters) due south of the horizontal control station on Heliograph Peak and a line extending northwestward at 300° (from true north) from that same point.

3. *Webb Peak Area.* The area on the east-facing slope of Webb Peak that is above the 9,700-foot (2,957-meter) contour surrounding Webb Peak and that is east of a line extending due north and south through a point 160 feet (49 meters) due west of the horizontal control station on Webb Peak.

The major constituent element is dense stands of mature spruce-fir forest.

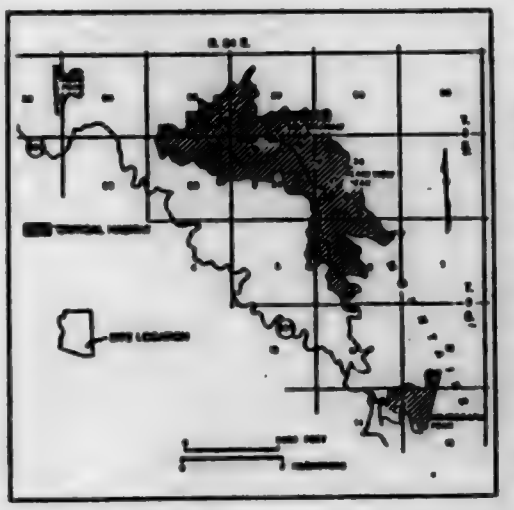

* * * * *

Dated: May 6, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–11386 Filed 5–20–86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 23

Endangered Species, Export; of American Alligators Taken in 1986 and Subsequent Harvest Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates internation trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of CITES may occur only if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if the MA is satisfied that the animals or plants were not obtained in violation of laws for their protection. This notice announces proposed findings by the SA and MA of the United States on the export of American alligators. The Fish and Wildlife Service (Service) intends to make these findings to cover 1986 and subsequent harvest seasons. The Service now requests comments on these proposed findings and information on the species involved.

DATE: The Service will consider comments received by June 20, 1986 in developing its final findings and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday, at the Office of the Scientific Authority, room 537, 1717 H Street NW, Washington, DC or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653–5948

Management Authority finding—Mr. Arthur W. Lazarowitz, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC. 20240, telephone (703)235–2418

Export Permits—Mr. Larry LaRochelle, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 235–1903.

SUPPLEMENTARY INFORMATION:

Beginning in 1977, the Service has employed the rulemaking process to develop and issue decisions on the export of certain species under CITES. The reason for this approach is that it is more effective to issue general decisions

in the export of all specimens harvested in a given State and seasons than to issue such decisions separately for each export permit application. This is true especially for CITES Appendix II species that are frequently exported, such as the American alligator (*Alligator mississippiensis*). This notice concerns proposed export findings on American alligators (hides, meat, and other parts) harvested in the 1986 and subsequent harvest seasons from the States of Flordia, Louisiana, and Texas.

Scientific Authority (SA) Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the SA and MA of the exporting country. The SA must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted.

The SA for the United States must develop such advice on nondetriment for the export of Appendix II animals in accordance with section 8A of the Endangered Species Act of 1973, as amended in 1982. The Act states that the Secretary of the Interior "shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professsionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators [CITES Article II.2(a)] and similarity in appearance to other crocodilians that are threatened with possible extinction [CITES Article II.2(b)]. The Regional 10-year review of the appendices confirmed the suitability of this treatment, as set forth in the proposal that the Conference of the Parties adopted in 1979 to transfer this species to Appendix II. The Service will address the issue of similarity in appearance through tagging of hides and documentation of shipments of meat and parts. Inasmuch as the alligator is listed partly because of a potential threat to its survival (based on previous population declines that have been reversed in most parts of its range in the United States), the Service also must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for SA advice on exports of alligators under the provisions of CITES Article II.2(a) have been revised to conform with the 1982 amendments to the Endangered Species Act (see 48 FR 16494, April 18, 1983). They are as follows:

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available.

(2) Information on total harvest of the species, each harvest season.

(3) Information on distribution of harvest.

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest with methods and seasons to be a matter of State choice.

(2) All hides, meat, and parts should be registered and marked accordingly.

(3) Harvest level objectives should be determined annually by the States.

In applying these guidelines, the Service considers the following types of information on the condition of the population: (a) A current estimate (if such information is available) of the total number of animals in the preharvest population derived by extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals where the number of animals per unit area is determined by direct count, by indirect indications of abundance in the State, or by population modeling; (b) a description of ongoing research being conducted to assess the distribution, abundance, or general condition of the species in the State, with a summarization of results obtained, including results of any analyses of age structure or reproductive parameters; and (c) an assessment of long-term poopulation trends of the species in the State, and the relationship of these trends to habitat condition, management practices, harvest pressure, and/or other factors.

Information on anticipated harvest to be considered by the Service should include: (a) The number of animals (by county or game management unit, if data are available at these local levels) to be harvested; (b) the number of alligator hunters expected to be licensed; and (c) the time of the harvest season.

In the case of the alligator, as with most other wild animals, the resource is monitored by a variety of techniques that yield information used in evaluating the condition of a population. As these data are accumulated over time, they reflect trends and call attention to changes in the populations. Habitat information, indices of population size, age and sex structure, and harvest information, are all used to evaluate population status. Although the Endangered Species Act Amendments of 1982 provide that population estimates are not to be required for the approval of export of Appendix II wildlife, if such estimates are provided by the States or available from other sources, the Act requires the Service to consider them. If available, population estimates will be considered together with information of the types listed above in making findings on nondetriment.

Based on the accumulated information on population condition, management, and harvest of the species addressed by this notice, the Service proposes to issue SA advice in favor of alligator export from certain States, identified below. The information on which the Service bases its proposed findings is contained in documents from each State. Due to their length, details of these documents are not published in the **Federal Register**; they are available for public inspection at the Office of Scientific Authority (address given above).

The status of the American alligator has dramatically improved throughout its range over the last 10 years. One of the primary reasons for this improvement has been the effective management programs run by State wildlife agencies in Florida, Louisiana, and Texas. The Service expects these management programs to continue to be effective in conserving the American alligator in the future, and the Service will work closely with these States to address any problem that may arise at a later date. The Service's monitoring efforts will enable the Service to assess the continued validity of these nondetriment findings.

Management Authority (MA) Findings

Exports of Appendix II species are to be allowed under CITES only if an SA has advised that the exports are not detrimental to the survival of the species and if the MA is satisfied that the specimens were not obtained in contravention of laws for the protection of the wildlife or plants. The Service, therefore, must be satisfied that alligator hides, meat, or parts were not obtained in violation of State or Federal law in order to allow export. The Service requires the State tagging program to apply locking nylons tags with embossed legends to legally harvested alligator hides as evidence of compliance with CITES regulations (50 CFR 17.42(A)).

The Service will supply suitable export tags free of charge for alligators harvested during the period covered by

these proposed findings, or each State may use its own Service-approved tags if they meet the tag requirements described in the export guidelines below.

The Service has adopted the following MA export guidelines (49 FR 1058; January 9, 1984) for the export of hides. The guidelines for the export of meat and parts are being proposed for the first time.

(1) Current State hunting, trapping, tagging, selling, and shipping regulations and sample hide export tag and "parts tag" must be on file with the Service (Federal Wildlife Permit Office);

(2) Hide export—

(a) The hide export tag must be durable and permanently locking, and must show State of origin, year of take, species, and be serially unique;

(b) The hide export tags must be applied to all hides within a minimum time after take, as specified by the State, and such time should be as short as possible to minimize movement of untagged hides;

(c) The hide export tag must be permanently attached as authorized and prescribed by the State;

(d) State-registered dealers or State-licensed takers allowed by the State to attach tags must account for tags received and must return unused tags to the State within a specified time after taking season closes; and

(e) Fully manufactured hide products may be exported from the United States when accompanied by State hide export tags removed from hides contained in the products; such tags must be surrendered to the Service prior to export.

(3) Meat export—

Meat from legally harvested and tagged alligators is to be packed in uniform containers, permanently sealed and labeled as required by State law. Bulk meat is to be marked with a State "parts tag" permanently attached. Container label or "parts tag" should indicate, as a minimum, State of origin, year of take, species, weight of package or unit, identification of State licensed harvester, and identification of State licensed processor or packer.

(4) Parts export—

Large individual parts should have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the package.

Alligator skulls should carry a "parts tag" and be marked with the original U.S.-CITES export tag number, as required by State law.

"Parts tags" used for alligator parts should supply the same information as described for such tags used to mark alligator meat.

Proposed Export Decisions

The Service proposes to approve exports of alligators (hides, meat, and other parts) harvested in 1986 and subsequent taking seasons in Florida, Louisiana, and Texas on the grounds that both SA and MA guidelines are satisfied.

Multiyear Findings

From monitoring existing State programs for the American alligator in Florida, Louisiana, and Texas, the Service expects these States will continue to satisfy CITES requirements. States seeking for the first time to establish a harvest program for alligators should apply for CITES export approval no later than January 31 of the year they plan to initiate such a program. To ensure that export-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management and export marking programs through evaluation of annual reports from the States (and export reports from the ports).

Comments Solicited

The Service requests comments on these proposed findings. Final findings will take into consideration the comments and any additional information received, and such consideration might lead to final findings that differ from this proposal.

This proposal is issued under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The primary authors are Dr. Richard M. Mitchell, Office of Scientific Authority, and S. Ronald Singer, Federal Wildlife Permit Office.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. (A determination on whether final findings are a major Federal action significantly affecting the quality of the human environment will be made before the final findings are published.) The Department also has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because this rule treats exports on a State-by-State basis and proposes to approve export in accordance with a State management program, this rule will have little effect on small entities in and of itself. This proposed rule does not contain any recordkeeping or information collection requirements as defined by the Paperwork Reduction Act of 1980.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

2. In § 23.57, add new paragraph (g) to read as follows:

§ 23.57 American alligator (*Alligator mississippiensis*).

* * * * *

(g) 1986 and subsequent harvests: Florida, Louisiana, and Texas.

Condition on export: Each hide must be clearly identified as to species, State or origin, and season of taking, and must be tagged by a permanently attached, serially numbered tag of a type approved by the Service that is attached under conditions established by the Service. Fully manufactured hide products may be exported from the United States when accompanied by State hide export tags removed from hides contained in the products; these tags must be surrendered to the Service prior to export.

Meat from legally harvested and tagged alligators is to be packed in uniform containers, permanently sealed and labeled as required by State law. Bulk meat is to be marked with a State "parts tag" permanently attached indicating, at a minimum, State of origin, year of take, species, weight of package or unit, identification of State licensed harvester, and identification of State licensed processor or packer.

Large individual parts should have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the package. Alligator skulls should carry a "parts tag" and be marked with the original U.S.-CITES export tag number, and other markings, as required by State law. "Parts tags" should supply the same information as described for such tags used to mark "alligator meat.

Dated: April 30, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-11369 Filed 5-20-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

Fishery Conservation and Management; Stone Crab Fishery of the Gulf of Mexico; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; correction.

SUMMARY: This document corrects the date for submitting comments on Amendment 3 to the Fishery Management Plan for the Stone Crab Fishery that was published May 8, 1986, 51 FR 17075.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, Regional Plan Coordinator, 813–893–3722.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–10394, page 17075, column two under the "DATE" heading, the sentence is corrected to read "Comments on the FMP revisions should be submitted on or before July 18, 1986."

Dated: May 16, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–11396 Filed 5–20–86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 98
Wednesday, May 21, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Use of Private Attorneys by Federal Agencies

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public hearing.

SUMMARY: The Administrative Conference is studying the use of private attorneys by federal agencies and departments. The study will include a survey of current agency policy and practice, an examination of the relevant law, and consideration of possible recommendations. To aid the Conference and its Committee on Governmental Processes in evaluating the issues involved in this study, the Conference will conduct a public hearing. The public hearing will take place on Thursday, May 29, 1986, in courtroom 10 of the United States Claims Court, 717 Madison Place, NW., Washington, D.C., commencing at 9:30 AM. Conference Chairman Marshall J. Breger will preside at the hearing.

Brief initial statements of views or relevant experiences will be followed by opportunities for questioning by the Chairman and Conference members in attendance. If time permits, witnesses may exchange views or reactions. The Conference is particularly interested in obtaining information and advice on the following questions:

1. Are there circumstances under which federal government agencies should retain the services of attorneys in private practice?

2. Are there circumstances under which federal government agencies have retained the services of private attorneys, where ensuing problems made this an unwise or inefficient decision?

3. Is greater oversight needed for hiring of private attorneys by agencies? Should there be centralized control of the hiring of private attorneys, located in the Department of Justice or elsewhere in the federal government?

4. Should there be uniform procedures among the agencies for the hiring of private attorneys? Are written guidelines needed? Is a formal competitive bidding process necessary?

5. Should there be a fixed limit on hourly fees?

6. Are there problems of professional responsibility relating specially to private attorneys hired by federal agencies.

7. Is there a "revolving door" problem, where an agency retains attorneys who have recently left service with the same agency?

A number of public officials and other public figures have been invited to appear at the hearing to discuss their views. Other persons may be allowed to make presentations if time permits. Persons wishing to testify should notify the Office of the Chairman of the Conference at least one day in advance, indicating the nature of their experience and an outline of the planned testimony. It would be helpful to the Conference for witnesses to submit written statements prior to the hearing. However, written statements pertinent to the subject of the hearing may be submitted at any time, before or after the hearing, by any person whether or not appearing at the hearing.

DATE: May 29, 1986.

Location: The public hearing will be held in courtroom 10 of the U.S. Claims Court, 717 Madison Place, NW, Washington, DC, at 9:30 AM.

Public Participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The committee chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037; telephone (202) 254-7065.

Dated: May 16, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86-11507 Filed 5-20-86; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 16, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

● *Agricultural Stabilization Conservation Service*

7 CFR Part 729/446—Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts

ASCS-101, -1002, -1007, -1008, -1010, -1012, -1030

On occasion

Farms; 638,715 responses; 159,469 hours; not applicable under 3504(h)
Paul P. Kume, (202) 447–9003

● *Agricultural Stabilization Conservation Service*

7 CFR Part 1427—Cotton and Seed Cotton Loan Program Regulations
CCC Cotton A, –A1, –A2, CCC–679, –813, –813–1, –813–2, –833, –837, –877, –879, –881, –881–1
Annually
Individuals or households; Farms; Businesses or other for-profit,
728,280 responses; 182,070
Joy C. Guest, (202) 447–8223.

Reinstatement

● *Rural Electrification Administration*

Statement of Construction, Telephone System-Outside Plant
REA 527
On occasion
Small businesses or organizations; 200 responses; 200 hours; not applicable under 3504(h)
John D. Soma, (202) 382–8529.

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 86–11436 Filed 5–20–86; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Privacy Act; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of deletion of Privacy Act Systems of Record.

SUMMARY: Notice is hereby given that USDA is deleting three systems of records maintained by the Foreign Agricultural Service, USDA. These systems of records are no longer operational.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Director, Personnel Division, Management, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: USDA hereby deletes three systems of records, USDA/FAS–1, "Applicant Files for Employment with International Organizations;" USDA/FAS–2, "Cooperator Employee Data; and USDA/FAS–3, "Visa and Passport Clearance Information Data."

Signed at Washington, DC on May 15, 1986.

Richard E. Lyng,
Secretary of Agriculture.
[FR Doc. 86–11437 Filed 5–20–86; 8:45 am]
BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Hearing on the Protection of Handicapped Newborns

Notice is hereby given pursant to the provision of the Civil Rights Act of 1983, Pub. L. 98–183, 97 Stat. 1304, that a public hearing before a subcommittee of the U.S. Commission on Civil Rights will be held on June 26, beginning at 1:30 p.m. and June 27, beginning at 9:30 a.m., in the fifth floor conference room at the U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC.

The purpose of the hearing is to hear testimony about civil rights issues affecting handicapped newborns.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC, May 16, 1986.

Clarence M. Pendleton, Jr.,
Chairman.
[FR Doc. 86–11430 Filed 5–20–86; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 15–86]

Proposed Foreign-Trade Zone; West Sacramento, Yolo County, CA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Sacramento-Yolo Port District (the Port), a political subdivision of the State of California, requesting authority to establish a general-purpose foreign-trade zone in West Sacramento, Yolo County, California, within the San Francisco-Oakland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 8, 1986. The applicant is authorized to make this proposal under section 6302 of the Government Code of California.

The proposed foreign-trade zone involves a 16-acre parcel within the Port's 500-acre terminal complex at Wharf No. 2, Terminal St. and Industrial Blvd. An existing warehouse is available for inital zone activity and additional facilities are planned. The zone will be operated by the Port.

The application contains evidence of the need for zone services in the Sacramento area. Specific interest has been expressed for activity involving the storage and distribution of machines and machinery parts. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 555 Battery St., San Francisco, CA 94126; and Colonel Wayne J. Scholl, District Engineer, U.S. Army Engineer District Sacramento, 670 Capitol Mall, Sacramento, CA 95814.

As part of its investigation, the examiners committee will hold a public hearing on June 19, 1986, beginning at 9:00 a.m., in the Sacramento City Council Chambers, 915 "I" Street, Sacramento.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by June 12. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 21, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Executive Offices, Port of Sacramento, World Trade Center, 2101 Stone Blvd., West Sacramento, CA 95691.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave., NW., Washington, DC 20230.

Dated: May 15, 1986.

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86–11433 Filed 5–20–86; 8:45 am]
BILLING CODE 3510–DS–M

International Trade Administration

[A-351-505]

Antidumping Duty Order: Malleable Cast Iron Pipe Fittings From Brazil

AGENCY: International Trade Administration Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning malleable cast iron pipe fittings (pipe fittings) from Brazil, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that pipe fittings from Brazil are being sold at less than fair value and that sales of pipe fittings from Brazil are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of pipe fittings from Brazil made on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1756 or 377–3965, respectively.

SUPPLEMENTARY INFORMATION: The merchandise covered by this order is certain malleable cast iron pipe fittings, currently classifiable in *Tariff Schedules of the United States Annotated* (TSUSA) under item numbers 610.7000 and 610.7400.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 14, 1986, the Department published its preliminary determination that there was reason to believe or suspect that pipe fittings from Brazil were being sold at less than fair value (51 FR 1544). On March 31, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 10897)

On May 12, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Brazil. These antidumping duties will be assessed on all unliquidated entries of pipe fittings entered, or withdrawn from warehouse, for consumpton on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Weighted-average (Percent)
Fundicao Tupy S.A.	5.64
All other manufacturers Producers/Exporters	5.64

This determination constitutes an antidumping duty order with respect to pipe fittings from Brazil, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 16, 1986.

[FR Doc. 86–11431 Filed 5–20–86; 8:45 am]

BILLING CODE 3510–DS–M

[A-570-503]

Antidumping Duty Order: Certain Steel Wire Nails From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Department of Commerce determined that certain steel wire nails (nails) from the People's Republic of China (PRC) were being sold at less than fair value within the meaning of the antidumping duty law.

In a separate investigation, the United States International Trade Commission (the ITC) determined that nails from the PRC are materially injuring a United States industry. Therefore, based on these findings, all unliquidating entries, or withdrawals from warehouse, for consumption of nails from the PRC made on or after January 9, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5288.

SUPPLEMENTARY INFORMATION: The products under investigation are steel wire nails from the PRC. These nails are: one-pice steel wire nails as currently provided for in the *Tariff Schedules of the United States* (TSUS) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under 0.065 inch in diameter as provided for in item number 646.3040 of the *Tariff Schedules of the United States Annotated* (TSUSA); two-piece steel wire nails provided for in item number 646.32 of the TSUS; and steel wire nails with lead heads provided for in item number 646.36 of the TSUS.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act)

(19 U.S.C. 1673b), on January 9, 1986, the Department published its preliminary determination that there was reason to believe or suspect that steep wire nails were being sold at less than fair value (51 FR 1025). On March 25, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 10247).

On May 8, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1763d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of nails from the PRC. These antidumping duties will be assessed on all unliquidated entries of nails entered, or withdrawn from warehouse, for consumption on or after January 9, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register (51 FR 1025).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Weighted-average margins (percent)
All Manufacturers, Producers, Exporters	0.33

This determination constitutes an antidumping order with respect to nails from the PRC, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 14, 1986.

[FR Doc. 86-11432 Filed 5-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Telecommunications Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held June 3, 1986, 9:00 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Introduction of members and attendees.
2. Review and approval of the minutes of April 14, 1986 meeting.
3. Presentation of papers or comments by the public.
4. Subcommittee Reports:
   a. Personnel.
   b. Work Program.
   c. Status/progress.
5. General Discussion and Adjourn.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. This meeting is called on short notice because of the need to obtain and consider the Committee's advice on proposals to revise the multilateral COCOM list.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, call (202) 377-4959.

Dated: May 16, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-11434 Filed 5-20-86; 8:45 am]

BILLING CODE 3510-DT-M

[A-588-501]

Antidumping Duty Order; Offshore Platform Jackets and Piles From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning offshore platform jackets and piles (jackets and piles) from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that jackets and piles from Japan are being sold at less than fair value and that sales of jackets and piles from Japan are materially injuring two United States industries. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of jackets and piles from Japan made on or after November 25, 1985, the date on which the Department published its "Preliminary Deterination" notice in the Federal Register, will be laible for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Crowe or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W.,

Washington, DC 20230; telephone: (202) 377–4087 ro 377–3965, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix offshore drilling and/or production platforms to the ocean floor. These products are used for "conventional" steel template platforms. Jackets and/or piles for "tower-type" platforms are not included in the scope of the investigation. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes and similar attachments. These jackets and piles are currently classified in the *Tariff Schedules of the United States* under item 652.97.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on November 25, 1985, the Department published its preliminary determination that there was reason to believe or suspect that jacket and piles from Japan were being sold at less than fair value (50 FR 48454). On April 7, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 11788).

On May 14, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations materially injure two United States industries.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Japan. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after November 25, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

Manufacturers/producers/exporters	Weighted-average (percent)
Hitachi-Zosen Corporation	8.99
Nippon Steel Corporation	8.84
All others	8.87

The margin of 8.84 for Nippon steel Corporation is a change from the original March 31, 1986, final determination figure of 9.19. This change was made based upon correction of clerical errors discovered in the calculation of the margin for the final determination. Accordingly, the previous "all other" margin of 8.92 is changed to 8.87.

This determination constitutes an antidumping duty order with respect to jackets and piles from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86-11558 Filed 5-20-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Antidumping Duty Order; Offshore Platform Jackets and Piles From Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning offshore platform jackets and piles (jackets and piles) from Korea, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that jackets and piles from Korea are being sold at less than fair value and that sales of jackets and piles from Korea are materially injuring two United States industries. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of jackets and piles from Korea made on or after November 25, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumpting duty order in the Federal Register.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Crowe or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4087 or 377–3965, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are steel jackets (templates) and/or piles of offshore platform, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix offshore drilling and/or production platforms to the ocean floor. These products are used for "conventional" steel template platforms. Jackets and/or piles for "tower-type" platforms are not included in the scope of the investigation. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes and similar attachment. These jackets and piles are currently classified in the *Tariff Schedules of the United States* under item 652.97.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on November 25, 1985, the Department published its preliminary determination that there was reason to believe or suspect that jacket and piles from Korea were being sold at less than fair value (50 FR 48452). On April 7, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 11788).

On May 14, 1986, in accordance with

section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations materially injure two United States industries.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Korea. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after November 25, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register.

On and after the date of publication of this Notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighed-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average (percent)
Daewoo	17.34
All others	17.34

This determination constitutes an antidumping duty order with respect to jackets and piles from Korea, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86-11555 Filed 5-20-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-504]

Countervailing Duty Order; Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning offshore platform jackets and piles (jackets and piles) from Korea, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that jackets and piles from Korea are receiving benefits which constitute subsidies within the meaning of the countervailing duty law, and that imports of jackets and piles from Korea are materially injuring two United States industries. Therefore, based on these findings, all unliquidated entries of jackets or piles which are entered or withdrawn from warehouse on or after July 19, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, and before November 15, 1985, the date we instructed the United States Customs Service to discontinue the suspension of liquidation, will be liable for the possible assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties must be made on all entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this countervailing duty order in Federal Register.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-0187 or 377-0161, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix offshore drilling and/or production platforms to the ocean floor. These products are used for "conventional" steel template platforms. Jackets and/or piles for "tower-type" platforms are not included in the scope of the investigation. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes and similar attachments. These jackets and piles are currently classified in the *Tariff Schedules of the United States* under item 652.97.

In accordance with section 703 of the Act (19 U.S.C. 1671b), on July 19, 1986, the Department published its preliminary determination that there was reason to believe or suspect that imports of jackets and piles from Korea received benefits which constitute subsidies within the meaning of the countervailing duty law (50 FR 29461). In accordance with section 705 of the Act (19 U.S.C. 1671d), on April 7, 1986, the Department published its final determination that these imports are being subsidized (51 FR 11779).

On May 14, 1986, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of jackets and piles from Korea are materially injuring two United States industries.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the net subsidy of all entries of jackets and piles from Korea. These countervailing duties will be assessed on all unliquidated entries of jackets and piles from Korea entered, or withdrawn from warehouse, for consumption on or after July 19, 1985, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the Federal Register, and before November 15, 1985, the date we instructed the United States Customs Service to discontinue the suspension of liquidation. We instructed Customs to discontinue the suspension of liquidation on November 15, 1985, because under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement of Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than 120 days. Thus, we could not impose a suspension of liquidation on the subject merchandise for more than 120 days without final determination of subsidization and injury.

On and after the date of publication of this notice, United States Customs officers must require, at the same time

as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to 3.22 percent *ad valorem* for Plaform Julius and a cash deposit equal to 4.42 percent *ad valorem* on any other import of jackets and piles.

This determination constitutes a countervailing duty order with respect to jackets and piles from Korea pursuant to section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 CFR 355.36).

We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377–2768.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86–11554 Filed 5–20–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMPS), NOAA, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, in consultation with the Department of State, finds that the Government of Mexico is in substantial conformance with U.S. regulations governing the taking of marine mammals incidental to commercial tuna purse seining operations. Because of this determination, the Assistant Administrator finds that the importation prohibition on yellowfin tuna imposed under the Marine Mammal Protection Act (MMPA) on February 1, 1981, is no longer appropriate and is hereby rescinded. However, as long as Mexican yellowfin tuna remains embargoed under other statutes, the exportation of tuna to the United States cannot commence until other prohibitions are lifted.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Species and Habitat Conservation, NMFS, Washington, DC 20235 (202/634–7529).

SUPPLEMENTARY INFORMATION:

Background

The NMFS published regulations in the **Federal Register** on December 23, 1977 (42 FR 64548–60) governing the taking of marine mammals incidental to commercial fishing operations. These regulations were repromulgated on October 31, 1980 (45 FR 72178–86). Included in these regulations are provisions concerning the importation of yellowfin tuna and tuna products from nations whose vessels participate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean (ETP). Effective January 1, 1978, these importation provisions made the importation of yellowfin tuna and tuna products from nations known to be involved in the ETP fishery contingent upon certain findings by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator). The Assistant Administrator must find (a) that the fishing operations of the nation concerned ". . . are conducted in conformance with U.S. regulations and standards . . ." or (b) that . . . "although not in conformance with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which results from U.S. fishing operations under these regulations." To ensure that the conditions under which the original finding was made continue to exist, the Assistant Administrator requires an annual update of the items listed in § 216.24(e)(5)(ii). Failure to supply this information may result in a revocation of a finding.

On October 27, 1977 (42 FR 56617), the Assistant Administrator made a determination that Mexico's tuna purse seine fleet was fishing in conformance with U.S. marine mammal regulations and on May 16, 1980, requested updated information, due September 1, 1980, pertaining to the 1979 fishing year. However, on July 15, 1980, the Department of the Treasury noted in the **Federal Register** (45 FR 47562) that effective July 14, 1980, "the entry for consumption . . . of tuna and tuna products from Mexico is prohibited until the Department of State notifies the Secretary of the Treasury that the reasons for this prohibition no longer prevail." This prohibition is imposed under section 205(a)(4)(C) of the Magnuson Fishery Conservation and Management Act which provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the United States. The seizure of a U.S. tuna vessel on July 9, 1980, by Mexico resulted in the imposition of this embargo. In consequence thereof, the Government of Mexico did not submit the information requested on May 16, 1980 and on February 1, 1981 (46 FR 10974, February 5, 1981) was also prohibited from exporting yellowfin tuna to the United States under section 101(a)(2) of the MMPA.

Finding of Conformance

On December 23, 1985, the Government of Mexico submitted information under 50 CFR 216.24(e) and requested that Mexican tuna purse seine operations be found in conformance with U.S. law. The NMFS has reviewed this information and has determined that Mexico is fishing in substantial conformance with U.S. regulations regarding the protection of porpoise. Therefore, the yellowfin tuna importation prohibition under the MMPA is no longer appropriate and is hereby rescinded. The information considered in Mexico's finding is summarized below.

(a) *Fleet.*—Mexico reports a purse seine fleet of 90 vessels, 66 of which have a carrying capacity greater than 400 tons. A total 37 vessels are presently inactive.

(b) *Gear and Techniques.*—Since 1977, Mexico has had an administrative measure requiring purse seine vessels to use 1¾ inch "Medina" panel or super protection panel, backdown procedures and other measures to aid in the release of porpoise. In addition, inquiries from captains operating Mexican flag vessels and some Mexican tuna vessels observed in San Diego indicate the presence of porpoise saving gear.

(c) *Porpoise Motality.*—Mexico agreed to participate in a Inter-American Tropical Tuna Commission's (IATTC) observation program in 1985. Under this agreement, the IATTC completed training for 42 Mexican

technicians in November, 1985. Placement of these technicans aboard Mexican tuna vessels began in January, 1986; 20 to 25 trips are expected to be completed during the year. Information collected by the observers will enable the IATTC to estimate, by direct means, the total porpoise mortality for the entire international tuna fleet fishing associated with porpoise in the eastern Pacific Ocean. The addition of the Mexican information is particularly significant since Mexico now has the largest tuna purse seine fleet operating in the eastern Pacific Ocean.

It should be noted that this finding of conformance will be valid only until such time as new regulations regarding purse seine caught yellowfin tuna from the ETP can be promulgated. At that time, all nations purse seine fishing in the ETP will be required to resubmit data in compliance with the 1984 amendment to the Marine Mammal Protection Act (see 49 FR 48821, November 29, 1984). The proposed rulemaking on this action is expected to be released within sixty days.

The information submitted by the Government of Mexico in requesting a finding of conformance by the United States, and further supplementary information used by the NMFS in support of the above finding is available to the public at the information contact address set out above.

Dated: May 15, 1986.

William G. Gordon

Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 86-11397 Filed 5-20-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Biogen Research Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Biogen Research Corporation, having a place of business at Fourteen Cambridge Center, Cambridge, MA 02142, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Purification of Uromodulin," U.S. Patent Application Serial No. 749,442. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-11455 Filed 5-20-86; 8:45 am]

BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Survey of Manufacturers and Importers of Chain Saws and Saw Chains

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey of manufacturers and importers of chain saws and saw chains to determine the extent to which their products conform with the anti-kickback provisions of the voluntary standard designated ANSI B 175.1, "Safety Requirements for Gasoline Powered Chain Saws," published by the American National Standards Institute.

In the **Federal Register** of January 23, 1986 (51 FR 3095), the Commission first announced that it had submitted the request for approval of this survey. Since substantial modifications have been made, the Commission is resubmitting the survey.

Chain saw "kickback" is the sudden upward or backward movement of a chain saw toward the operator which can result from interference with the movement of the chain. Kickback can propel the moving saw chain into contact with the person using the chain saw, with serious injuries often resulting. The Commission estimates that chain saw kickback causes approximately 22,000 injuries a year.

For several years, the Commission has been working to reduce risks of chain saw kickback injuries. In the **Federal Register** of May 5, 1982 (47 FR 19389), the Commission published an advance notice of proposed rulemaking (ANPR) to begin a proceeding for development of a consumer product safety standard to address risks of injury from rotational kickback of chain saws. This proceeding, if followed to completion, could have resulted in the issuance of a consumer product safety standard consisting of mandatory requirements for chain saws and saw chains. However, section 9 of the Consumer Product Safety Act (15 U.S.C. § 2058) provides that when a voluntary standard is in existence and addresses a risk of injury associated with a consumer product, the Commission may not issue a consumer product safety standard to address the same risk or injury unless the Commission concludes either that the voluntary standard is not likely to reduce the risk adequately, or that substantial compliance with the provision of the voluntary standard is not likely to occur.

In 1985, the American National Standards Institute adopted an amendment to its voluntary standard for gasoline-powered chain saws to require additional features intended to reduce injuries associated with chain saw kickback. This amendment was the culmination of several years of work by the chain saw and saw chain industry with assistance from the Commission staff. The Commission believes that the amended ANSI standard, if universally followed by the manufacturers of chain saws and saw chains, will substantially reduce the number of kickback injuries that occur each year. On the basis of currently available information, the Commission expects that a large portion of the chain saw industry will conform to the provisions of the amended voluntary standard. For these reasons the Commission published a notice in the **Federal Register** of August 30, 1985 (50 FR 35241) terminating the proceeding for development of a consumer product safety standard for chain saws.

The Commission will use the results from the proposed survey to determine the extent to which chain saws and saw chains produced and distributed for sale to or use by consumers conform to the requirements of the amended ANSI standard for gasoline powered chain saws. The Commission will consider this information to determine whether it should take further action to address risks of injury associated with rotational kickback of chain saws.

Additional Details About the Requested Approval for Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, N.W., Washington, D.C. 20207.

Title of information collection: Kickback Amendment to the American National Standard—Safety Requirements for Gasoline Powered Chain Saws (ANSI B 175.1).

Type of request: Approval of new plan.

Frequency of collection: One time.

General description of respondents: Manufacturers and importers of chain saws and saw chains; laboratories which perform third party certification of compliance with amendment ANSI standard.

Estimated number of respondents: 28.

Estimated number of hours for all respondents: 117.

Comments: Comments on this request for approval of a collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 2, 1986.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-11380 Filed 5-20-86; 8:45 am]

BILLING CODE 6355-1-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 85-4-84CD]

1984 Cable Royalty Distribution; Solicitation of Comments

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC. 20036, (202) 653-5175.

SUMMARY: The Tribunal solicits comments concerning whether a controversy exists with regard to the distribution of the 1984 cable copyright royalty fees.

DATE: All comments are due June 2, 1986.

SUPPLEMENTARY INFORMATION: On January 30, 1986, the Copyright Royalty Tribunal solicited comments from the claimants to the 1984 cable copyright fund as to whether a controversy exists with regard to the distribution of the 1984 cable copyright fees. The comments which the Tribunal received tended to indicate a desire on the part of many claimants to wait for publication by the Tribunal of its determination of the 1983 cable distribution controversy, after which efforts at settlement could be made. The Tribunal is aware the publication of the 1983 cable distribution determination on April 15, 1986, the claimants have been meeting to ascertain the extent of the controversy for 1984. By this Notice, the Tribunal once again solicits comments from the claimants whether a controversy exists with regard to the distribution of the 1984 cable copyright royalty fees. All comments are due June 2, 1986.

Dated: May 16, 1986.

Edward W. Ray,

Chairman.

[FR Doc. 86-11376 Filed 5-20-86; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Defense Initiative Organization; Intent to Establish Federally Funded R&D Center

ACTION: Notice of DOD intent to establish a federally funded research and development center (FFRDC).

SUMMARY: The Department of Defense announces its intention to establish a Federal Funded Research and Development Center (FFRDC) to support the Strategic Defense Initiative Organization (SDIO) and to designate the FFRDC as the Strategic Defense Initiative Institute (SDII). The purpose of this action is to make continuously available to the Strategic Defense Initiative Organization (SDIO) a relatively small but dedicated technical support unit that can facilitate the utilization, in a manner that is more timely, cost effective, and productive than currently possible, of the large national capability that must be applied to the Strategic Defense Initiative Program (SDIP). To accomplish this goal, the support unit personnel must have the across-the-board SDI-related technical skills and functional capabilities to perform a technology evaluation and integration role in support of the SDIO.

The SDII will seek flexible and innovative approaches to solving complex and multidimensional problems for the SDIP. In accomplishing this task, it will tap the broad base of talent, relevant experience, and perspectives available from addressing prior programmatic challenges. This will require contributions from a wide range of agencies and existing organizations, each of which already has some of the resources and skills in the needed areas, but no one of which can address SDIP technical support needs as a unified, coordinated whole.

The SDII must be free from actual, potential, or apparent individual or organizational conflicts of interest. It must gain no competitive advantage from its position over those whose efforts it is helping the SDIO oversee; nor lack objectivity as a result of having profit-seeking, manufacturing, or other conflicting organizational goals, such as a desire to serve other clients.

It has been decided, based on a careful comparative evaluation by the SDIO of all feasible institutional alternatives, that only a carefully designated, new Federally Funded Research and Development Center (FFRDC) within ready physical access of the SDIO can effectively satisfy the above purposes for the SDII. Accordingly, this announcement is being issued in compliance with the procedures of OFPP Policy Letter 84-1 of April 4, 1984, "Federally Funded Research and Development Centers."

The Mission Statement for the SDII is as follows:

Mission Statement

The specific mission of the SDII will be to perform, in a highly flexible manner, research, studies, and analyses of emerging technologies and system concepts relative to the Strategic Defense Initiative Program (SDIP); and to provide technical evaluation of basic and applied research efforts and program developments by other contractors. In particular, the scope and nature of the effort to be performed by the SDII in support of the SDIO will include, but not be limited to: (1) Identifying and evaluating existing and potential technical advances, technologies, and system concepts from all available sources; (2) Reducing the costs and increasing the effectiveness of basic and applied SDIP research; (3) Providing advice on the relative utility and integration implications of each of the complex technical aspects of the SDIP; (4) Assessing and helping to develop evolving technical requirements, architectures, and their related testbed needs; (5) Performing test and evaluation planning; (6) Integrating Offense/Defense scenarios and analyses into useful conclusions and framing of issues for decision by the SDIO; (7) Developing and maintaining a data base on active SDIP projects and capabilities, and continually analyzing

same for overlap, duplication, and opportunities for coodination; (8) Conducting SDIP-related studies and analyses; and (9) Coordinating and performinmg other technical and liaison tasks, including interface with the pertinent acquisition activities of the military services, related to performance of SDIP-related technical activities in industry, universities, government laboratories, and elsewhere.

This announcement is not a synopsis in accordance with Section 18 of the Office of Federal Procurement Policy Act, or otherwise a synopsis of sources sought in connection with a procurement. It is being published in response to Paragraph 6b(2) of the Office of Federal Procurement Policy policy letter on FFRDC's which provides for at least three notices over a 90-day period in the *Commerce Business Daily* and the Federal Register indicating an agency's intentions to sponsor an FFRDC and the scope and nature of the effort to be performed by the FFRDC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Sybert, Special Assistant to the Secretary, Executive Secretariat/ OSD, Pentagon 3E980, Washington, DC 20301–1000, telephone (202) 697–6366.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 86–11302 Filed 5–20–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee, DOD

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of P.L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 18 June 1986, 9:00 a.m. to 5:00 p.m..

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 15, 1986.

[FR Doc. 86–11382 Filed 5–20–86; 8:45 am]

BILLING CODE 3810-01-M

Graduate Medical Education Advisory Committee; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Open and Closed Meeting.

SUMMARY: Pursuant to the provisions of Pub. L. 92–463, notice is hereby given that an open and closed meeting of the Department of Defense Graduate Medical Education Advisory Committee has been scheduled as follows:

DATE: June 6, 1986, 10:00 a.m. to 5:00 p.m.

ADDRESS: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.

Notice of Closed Meeting

The Committee will meet in closed session from 8:00 a.m. to 9:30 a.m. on June 6, 1986, in room 3E287, the Pentagon, Washington, DC, to receive a classified briefing on issues affecting the sizing of the Services Graduate Medical Education programs in accordance with section 10(d) of 5 U.S.C. Appendix I.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Michael Herndon, Executive Secretary, DoD Graduate Medical Education Advisory Committee, Office of the Assistant Secretary of Defense (Health Affairs), Room 1B657, the Pentagon, Washington, DC 20301 [(202) 694–0748].

SUPPLEMENTARY INFORMATION: The open meeting will consist of briefing by the Services and DoD on the respective Graduate Medical Education program. Briefings on medical readiness issues and the proceedings of the Blue Ribbon Panel will likewise be presented.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

May 15, 1986.

[FR Doc. 86–11381 Filed 5–20–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE POSTAL SERVICE

Handicapped Persons; Uniform Federal Accessibility Standards

AGENCY: Postal Service, Department of Defense.

ACTION: Uniform Federal Accessibility Standards Document; Correction.

SUMMARY: This document corrects a previously published document that appeared in the Federal Register on Tuesday, August 7, 1984 (49 FR 31528), which presented uniform standards for the design, construction, and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. 4151–4157. This action is necessary to correct inadvertent errors in the document, the Uniform Federal Accessibility Standards (UFAS), which was subsequently adopted by the U.S. Postal Service (USPS) in Handbook RE–4, "Standards for Facility Accessibility by the Physically Handicapped," effective November 15, 1985, and by the Department of Defense (DOD) by revising Chapter 18 of DOD 4270.1–M, "Construction Criteria," by memorandum dated May 8, 1985. These errors include omission of words, typographical errors, and an incorrect term of measurement of door opening forces.

FOR FURTHER INFORMATION CONTACT: Judith Gilliom, Department of Defense, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), Room 3D284, The Pentagon, Washington, DC 20301–4000, (202) 697–8661; or Melinda Hulsey, Real Estate and Buildings Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–6424, (202) 268–3139. For TDD communications, call Ms. Gilliom. Please note that these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This document corrects several sections of the Uniform Federal Accessibility Standards (UFAS) published at pages 31528–31617 of the Federal Register on August 7, 1984. Identical corrections have been published in the Federal Register by the Department of Housing and Urban Development (HUD) and the General Services Administration (GSA), which are the other two agencies that developed and published the UFAS jointly with the USPS and DOD.

These corrections include removal of certain words inadvertently contained in the document (for example, where the Table of Contents section heading differed from the actual heading in the text); addition of words that were unintentionally omitted; correction of typrographical and numbering errors; and addition of asterisks where needed to correct references to the UFAS Appendix. It also substitutes Newtons for kilograms and foot pounds (1bf) for

pounds (lb) as the measure of door opening force. These are the appropriate measures for a dynamic force and are consistent with the American National Standards Institute ANSI A117.1 specification on which the UFAS is based.

In addition, corrections are made to certain illustrations to clarify or otherwise improve the drawings or their captions. Figure 34(a) is revised by extending to the wall the dimension line showing the maximum distance between the end of a grab bar and the wall at the head of the bathtub. As originally published, the line was incomplete and did not touch the wall. Figure 35(b) is revised by removing the dimension 15/380 from the drawing. This dimension was incorrectly included on the original drawing and has no application in this situation.

Other changes to illustrations include a revision to Figure 48(b) to remove the cross-hatching denoting a requirement for reinforcement for grab bars shown on the drawing of the wall at the head of the tub. Grab bars are not required in this situation, as indicated by the similar drawing at Figure 34(b). This change makes both figures consistent. A similar change is made to Figure 49(a), where cross-hatching incorrectly required reinforcement where none is needed (see the comparable drawing at Figure 37(a)). Revisions also are made to Figure 49(b), where the controls shown o the drawing of the back wall of the shower stall are removed, as well as the dimensions applicable to the placement of controls, and are shown instead on the side wall drawing. This makes Figure 49(b) consistent with the comparable drawing at Figure 37(b). In the UFAS Appendix, a figure number is added to the untitled drawings shown on page 31606 of the Federal Register.

Accordingly, the USPS and DOD are correcting the Uniform Federal Accessibility Standards document published in the Federal Register on August 7, 1984, at 49 FR 31528, as follows:

Uniform Federal Accessibility Standards

1. In the Table of Contents, the heading for Section 2.2 is corrected to read:

2.2 Provisions for Adults

2. The following corrections are made to 4.1.4. Occupancy Classifications: The introductory paragraph of paragraph (9) is amended by revising the phrase "in which people having physical or medical treatment or care" to read "in which people have physical or medical treatment or care"; paragraph (9)(b) is amended by revising "toilet" to read "toilets" each of the four times the word appears; and paragraph (12) is amended by removing the abbreviation "noncom" the two times it appears and adding in its place "noncombustible."

3. In 4.1.5 Accessible Buildings: Additions, the reference to "4.1.6" in paragraph (4) is revised to read "4.1.5."

4. In 4.1.6 Accessible Buildings: Alterations, paragraph (4)(d)(i) is amended by revising the phrase "of the latch side door stop" to read "for the latch side door stop".

5. In 4.5.3 Carpet: The phrase "*(see Fig. 8(f))*" is removed from where it appears, and is added at the end of the paragraph, before the period to the sentence.

6. Asterisks are added at paragraph designations 4.11*, 4.16.5* and 4.31.3.*

7. In 4.13.6 Maneuvering Clearances at Doors: The phrase "for doors" is removed and the phrase "at doors" is added in its place.

8. In 4.13.11* Door Opening Force: In paragraphs (2)(b) and (2)(c) the references to "lb" are revised to read "lbf" and the references to "2.3kg" are amended to read "22.2N".

9. In 4.13.12* Automatic Doors and Power-Assisted Doors: The reference to "(6.8K)" is revised to read "(66.6N)".

10. In 4.34.4 Consumer Information: The first paragraph (5) is amended by revising "Standard" to read "Standards".

11. In 4.34.5.3 Lavatory, Mirrors, and Medicine Cabinets: Paragraphs (1) and (2) are amended by revising the references to "4.22.7" to read "4.22.6."

12. In 8.4 Card Catalogs: The phrase "with a maximum height of 54 in (1370 mm) preferred" is revised to read "with a height of 48 in (1220 mm) preferred."

13. In 9.3 Self-Service Postal Centers: The word "user" is added following the term "wheelchair" in the second sentence.

14. In the Appendix to the UFAS, A4.5.1 is amended by revising "cobblestone" to read "cobblestones" in the first paragraph, and by revising "general" to read "generally" in the second paragraph.

15. In the Appendix to the UFAS, A4.6 is amended by adding the following new paragraph inadvertantly omitted from the published text:

A4.6.4 SIGNAGE. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

16. In the Appendix to the UFAS, A4.28 is amended by revising the title and numerical designation of paragraph "A4.28.3 VISUAL ALARMS" to "A4.28.4 AUXILARY ALARMS" and by removing "should" where it appears in the last sentence and adding "should be" between "also" and "equipped"; and by adding the following new paragraph A4.28.3 inadvertently omitted from the published text:

A4.28.3 VISUAL ALARMS. The specifications in this section do not preclude the use of zoned or coded alarm systems. In zoned systems, the emergency exit lights in an area will flash whenever an audible signal rings in the area.

17. In the Appendix to the UFAS, A4.33.2 is amended by adding "area" between "seating" and "are provided."

18. In the Appendix to the UFAS, A4.33.7 is amended by revising "move" to read "moved."

19. In the Appendix to the UFAS, A4.34.5 and A4.34.6 are amended by removing "adaptable" from the titles of both paragraphs.

20. In the Appendix to the UFAS, A4.34.6.1 is amended by revising "moved" to read "removed."

21. In the Appendix to the UFAS, A9 is amended by revising the title of "A9.2 General" to read "A9.2 Post Office Lobbies."

22. The following note is added to Fig. 19:

X is the 12 in minimum handrail extension required at each top riser.

Y is the minimum handrail extension of 12 in plus the width of one tread that is required at each bottom riser.

23. Fig. 34(a) is revised as shown below:

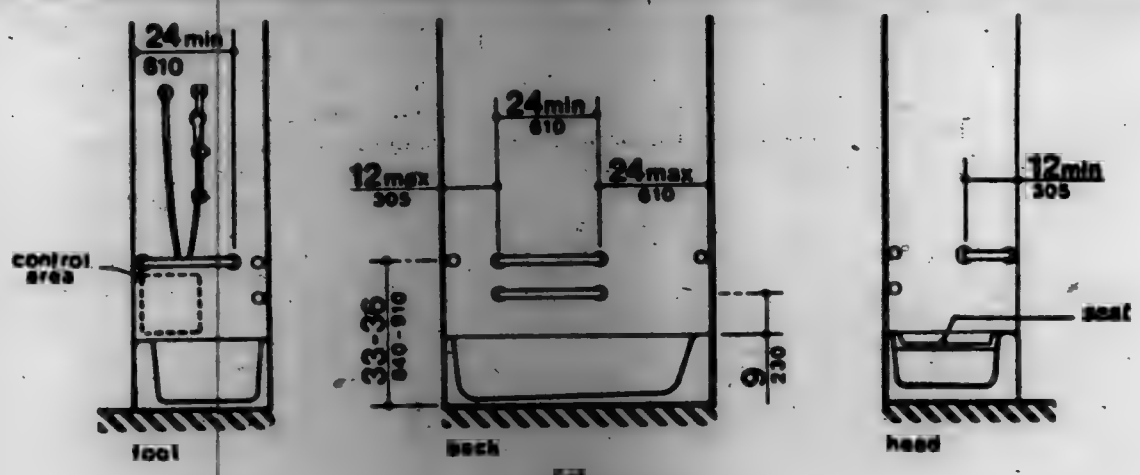

(a)
With Seat in Tub

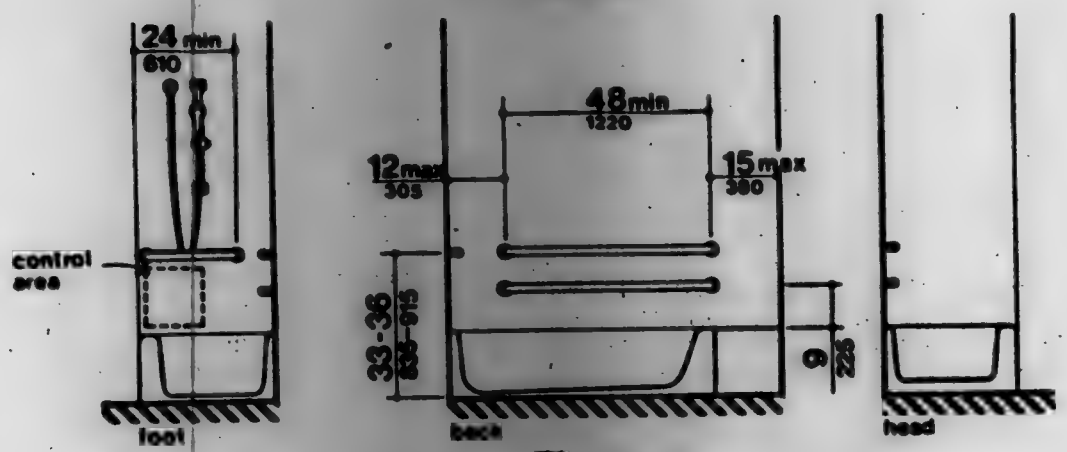

(b)
With Seat at Head of Tub

Fig. 34
Grab Bars at Bathtubs

24. Fig. 35(b) is amended by removing the dimensions "15" and "380".

25. Fig. 48(b) and revised as shown below:

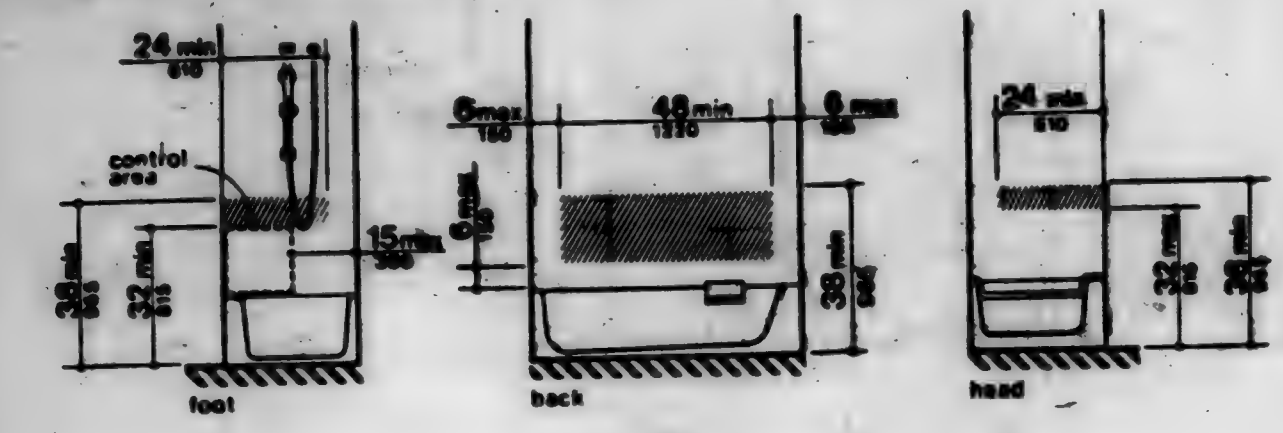

(a)
With Seat in Tub

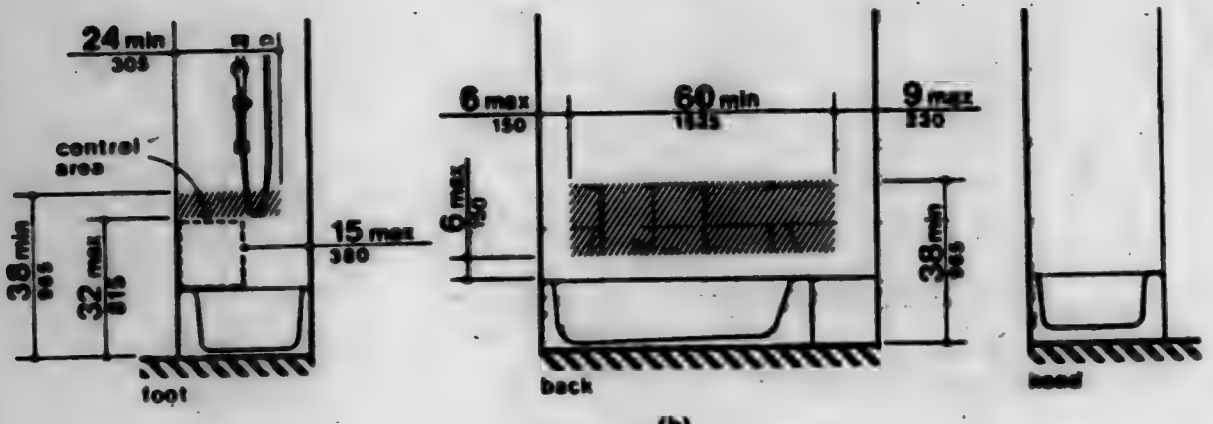

(b)
With Seat at Head of Tub

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 48
Location of Grab Bars and Controls of Adaptable Bathtubs

26. Fig. 49 (a) and (b) are revised as shown below:

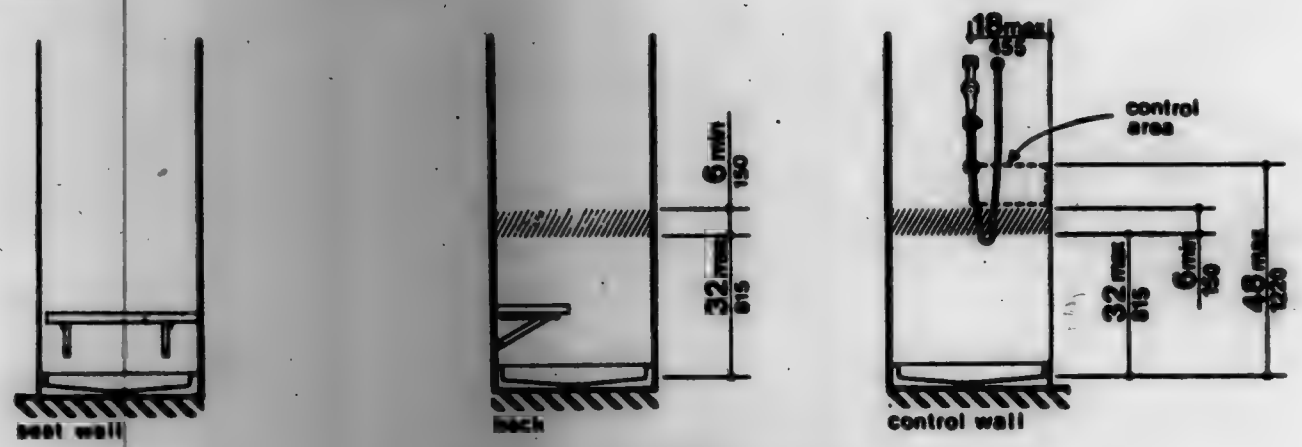

(a)
36-in by 36-in (915-mm by 915-mm) Stall

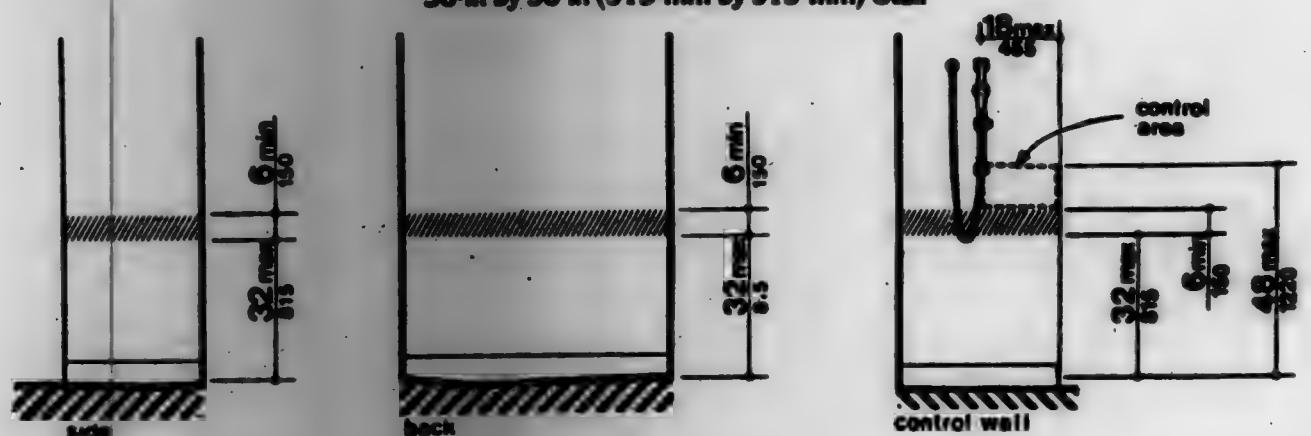

(b)
30-in by 60-in (750-mm by 1525-mm) Stall

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 49
Location of Grab Bars and Controls of Adaptable Showers

27. In the Appendix to the UFAS, unlabeled figure following and referenced in A4.2.5 and A4.2.6 is amended by adding the designation "Fig. A3(a)."

Dated: April 28, 1986.

Chapman B. Cox,

Assistant Secretary of Defense, (Force Management and Personnel).

Fred Eggleston,

Assistant General Counsel, Legislative Division, U.S. Postal Service.

[FR Doc. 86-11383 Filed 5-20-86; 8:45 a.m.]

BILLING CODE 7716-12-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training program; Availability of Grants

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal year 1986.

SUMMARY: The Secretary proposes an annual funding priority for training grants under the Experimental and Innovative Training Program in order to ensure effective use of program funds and to direct funds to an area of identified personnel need during fiscal year 1986. The Secretary will give an absolute preference to applications that need the terms of the proposed priority.

DATE: Comments must be received on or before June 20, 1986.

ADDRESS: All written comments and suggestions should be sent to Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3324–M/S 2312), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1332.

SUPPLEMENTARY INFORMATION: Grants for the experimental and Innovative Training Program are authorized by Title III, Section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of rehabilitation personnel and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely handicapped persons and to

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develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under the Experimental and Innovative Training Program in fiscal year 1986 that respond to the priority described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priority.

All applications submitted under the Experimental and Innovative Training Program must address the training of rehabilitation counselors employed by State vocational rehabilitation agencies. State vocational rehabilitation agencies have only recently begun to serve learning disabled adults. It is essential, therefore, that rehabilitation counselors develop and maintain skills that will enable them to identify adults who are learning disabled, determine the eligibility of those individuals to receive rehabilitation services, and plan rehabilitation programs for and deliver services to learning disabled individuals. The training must also emphasize improved coordination of services between special education and vocational rehabilitation service providers and the effective use of resources in the community to facilitate the transition of learning disabled individuals from school to employment.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final notice of priority. All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3324, Mary E. Switzer Building, 330 C Street, S.W. Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m. (local time), Monday through Friday of each week, except Federal holidays.

(29 U.S.C. 774)

Dated: May 16, 1986.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

William J. Bennett,

Secretary of Education.

[FR Doc. 86-11458 filed 5-20-86; 8:45 am]

BILLING CODE 4000-01-M

Application Notice for New Awards Under the Independent Living Services for Older Blind Individuals Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application Notice for New Awards Under the Independent Living Services for Older Blind Individuals Program for Fiscal Year 1986.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of new applications for Independent Living Services for Older Blind Individuals projects administered by the Department of Education under the Office of Special Education and Rehabilitative Services. Awards are made under this program to provide independent living services for older blind individuals to help them adjust to blindness and live more independently in the home and community. Eligible applicants for these new awards are State vocational rehabilitation agencies. Authority for these awards is section 721 of the Rehabilitation Act of 1973, as amended.

Section 721(b) of the Act specifies that no application under this program can be approved for funding unless it contains assurances that any new service methods and approaches developed by an approved project will be incorporated into the applicant's State plan under section 705 of the Rehabilitation Act.

The amount of funds available under this grant program in Fiscal Year 1986 is $4,785,000. It is expected that about 24 new projects will be approved for funding and that the average grant award will be approximately $200,000. All project periods will be for 12 months.

These estimates does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new grant awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.177), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Program regulations for this program have not as yet been promulgated. However, as authorized in Department of Education regulations, 34 CFR 75.1(b), this program initially will be implemented under the authorizing statute 29 U.S.C. 796f, and the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78 and 79.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

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In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 8, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.177), 400 Maryland Avenue, SW., Washington, DC 20202.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application Forms

Application forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3322, Mary E. Switzer Building, Washington, DC 20202. Telephone: (202) 732-1343.

Further Information

For further information contact Robert E. Jones, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324, Mary E. Switzer Building, Washington, DC 20202. Telephone: (202) 732-1345.

Program Authority: 29 U.S.C. 796f.

(Catalog of Federal Domestic Assistance Number 84.177 Independent Living Services for Older Blind Individuals Program)

Dated: May 16, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86-11406 Filed 5-20-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM85-1-000; (Parts A-B)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Archer-Daniels-Midland Co.; Order Denying Requests for Waiver

Issued May 15, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On April 8, 1986 and April 14, 1986, Archer-Daniels-Midland Company (ADM) filed petitions for clarification and/or waiver of § 284.223(g)(1) of the regulations adopted in Order No. 436.[1] ADM's two petitions request a waiver of the transitional provisions of Order No. 436 to permit the transportation of gas by Panhandle Eastern Pipe Line Company (Panhandle) to ADM's processing facilities in Peoria, Illinois and Mexico, Missouri pursuant to oral agreements with Panhandle to extend existing transportation agreements. We will deny ADM's two requests. ADM outlined the following facts and circumstances in its petitions.

April 8, 1986 Petition

On September 15, 1984, ADM, Panhandle, and Central Illinois Light Company entered into a transportation agreement providing for the transportation of natural gas to ADM's processing facility located in Peoria, Illinois for high-priority end use under § 157.309(a)(1)(A). Service under the agreement commenced during September, 1984, and the termination date is March 15, 1988.

On September 16, 1985, Panhandle forwarded a letter to ADM offering to extend the term of the transportation arrangement through December 31, 1988. Panhandle further stated that it could not obligate itself to continue transporting gas over the long term without first evaluating the final version of the final rule in Docket No. RM85-1-000.

On October 22, 1985, Panhandle and ADM executed a written letter agreement extending the term of the transportation agreement to five years. The letter agreement referred to the final rule in Docket No. RM85-1-000. No reference was made to a verbal agreement entered into prior to October 9, 1985.

ADM states that prior to October 9, 1985, it expended approximately $2,725,000 on its Peoria facility in reliance upon the continuance of transportation service under this agreement with Panhandle. ADM further states that absent a waiver of the transitional provisions of Order No. 436, it will be forced to purchase gas at prices so high as to prohibit its production of a competitively priced product, which may result in the shutting down of its facility and the laying-off of all 119 employees.

ADM requests a wavier or clarification to permit the transportation of gas by Panhandle to continue for the full five-year term pursuant to the October 22, 1985 agreement, or, alternatively, through December 31, 1988, pursuant to the September 16, 1985 letter.

April 14, 1986 Petition

On March 18, 1985, ADM, Panhandle, and Union Electric Company entered into a transportation agreement providing for the transportation of natural gas to ADM's soybean processing facility located in Mexico, Missouri for high-priority end use under § 157.309(a)(1)(A). Service under the agreement commenced on March 20, 1985 and the termination date under the agreement is March 15, 1988.

On April 4, 1985, Panhandle filed an initial report with the Commission pursuant to former § 157.309(g) of the Commission's regulations concerning the transportation agreement with ADM. In the initial report, Panhandle stated that the agreement was for an eighteen-month term ending in September, 1986, instead of a twelve-month term ending in March, 1986, as specified in the transportation agreement. The transportation agreement was not amended to reflect this change.

On September 16, 1985, Panhandle forwarded a letter to ADM offering to extend the term of the transportation arrangement through December 31, 1988. Panhandle further stated that it could not obligate itself to continue transporting gas over the long term without first evaluating the final version of the final rule in Docket No. RM85-1-000.

On October 22, 1985, Panhandle and ADM executed a written letter agreement extending the term of the transportation agreement to five years. The letter agreement referred to the final rule in Docket No. RM85-1-000. No reference was made to a verbal agreement entered into prior to October 9, 1985.

ADM states that on September 25, 1985, it expended approximately $72,750 on a boiler stack heat exchanger for its processing facility in Mexico, Missouri, in reliance on the continuance of transportation service under the agreement with Panhandle. ADM further states that absent a waiver of the transitional provisions of Order No. 436, it will be forced to purchase gas at prices so high as to prohibit its production of a competitively priced product, which may result in the

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[1] 33 FERC ¶ 61,367 (1985), 50 FR 42408 (October 18, 1985); Technical Corrections, FERC Statutes and Regulations ¶ 30,699, 50 FR 49507 (December 5, 1985).

shutting down of its facility and the laying-off of all 50 employees.

ADM requests a waiver or clarification to permit the transportation of gas by Panhandle to continue for the full five-year term pursuant to the October 22, 1985 agreement, or alternatively, through December 31, 1986, pursuant to the September 16, 1985 letter, or, alternatively, through September 15, 1986, pursuant to the initial report filed by Panhandle.

Discussion

As we stated in Order No. 436, § 284.223(g)(1) is a transitional rule for transportation arrangements that pre-dated Order No. 436. Section 284.223(g)(1) specifically provides that a transportation arrangement authorized under § 157.209(a)(1) which commenced on or before October 9, 1985, may continue.

ADM's two transportation agreements with Panhandle were scheduled to terminate on March 15, 1986. ADM relies on September 16, 1985 letters from Panhandle, concerning the respective contracts, as evidence of the intent of the parties, prior to October 9, 1985, to continue the transportation services beyond the original expiration dates. To the contrary, however, the letters do not profess to be agreements to extend the contracts, nor do they acknowledge any verbal agreements between the parties to continue transportation. On their face, the letters are merely *offers* to extend transportation until December 31, 1986. The letters further state Panhandle's unwillingness to obligate itself to continue transporting gas over the long term [i.e. five years] without first evaluating the final rule issued in Docket No. RM85-1-000. Because the transitional rule applies only to agreements, and not offers, the September 16 letters would not operate to effectively extend the period for transitional treatment beyond the March 15, 1986 contract expiration dates.

In that the two transportation agreements between ADM and Panhandle dated October 22, 1985 indicate, on their face, that the agreements were entered into only after Panhandle had sufficient time to evaluate Order No. 436, we conclude that they were not the manifestation of agreements reached prior to October 9, 1985. Accordingly, they would not qualify for transitional treatment under § 284.223(g)(1) of the Commission's regulations adopted in Order No. 436.

ADM argues that its two transportation agreements with Panhandle qualify for transitional treatment based on the "economic subetance test" in that ADM expended substantial funds on its two processing facilities in reliance on the continuance of transportation service under its agreements with Panhandle. In *CLARCO Gas Company, Inc.*,[8] *we clarified our policy concerning waivers of the restrictions in the transitional provisions of Order No. 436:*

> If gas hasn't flowed by October 9, 1986 the Commission will grant a waiver from the restrictions in the transitional provisions to the extent necessary to allow the transportation to commence if the parties executed a written gas transportation agreement prior to October 9, 1985, and expended significant funds or constructed significant facilities in *reliance on that agreement*, after the agreement was executed and prior to October 9, 1985.

We find that the facts and circumstances presented by ADM do not meet the *CLARCO* standard in that ADM did not execute written gas transportation agreements to extend its existing transportation arrangements prior to October 9, 1985. The two transportation agreements in effect prior to October 9, 1985 expired on March 15, 1986. The funds expended by ADM prior to October 9, 1985 were therefore not expended in reliance on a written transportation agreement effective beyond March 15, 1986. The two contracts expired without being extended prior to October 9, 1985, and therefore do not qualify under § 284.223(g)(1) for transitional treatment beyond March 15, 1986.[9]

Finally, ADM seeks clarification as to whether the transportation service for the facility in Mexico, Missouri qualifies for transitional treatment through September 15, 1986 based on the initial report Panhandle filed with the Commission. In that the contract was not amended to reflect such an extension, we conclude that the contract expired on March 15, 1986. The initial report did not operate to bind the parties for the reported extended term. The apparently erroneous date in the initial report does not constitute an amendment to the contract extending its term.

For the reasons stated above, we deny ADM's two requests for waiver.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11387 Filed 5-20-86 8:45 am]

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[8] Regulation Of Natural Gas Pipelines After Partial Wellhead Decontrol (CLARCO Gas Company, Inc.), 34 FERC ¶ 61,328 (issued March 28, 1986), 51 FR 11,468.

[9] Regulation Of National Gas Pipelines After Partial Wellhead Decontrol (U.S. Steel), 34 FERC ¶ 61,199 (issued February 13, 1986) 51, FR 6303.

[Docket No. TA86-1-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

May 15, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 14, 1986, the following revised tariff Sheets to Second Revised Volume No. 1 of its FERC gas tariff:

Proposed Tariff Sheets

Second Revised Volume No. 1 (Proposed to be Effective May 1, 1986)

Alternate Fortieth Revised Sheet No. 12
Alternate Thirty-Ninth Revised Sheet No. 15
Alternate Third Revised Sheet No. 15-A

Second Revised Volume No. 1 (Subject to motion to be made effective July 1, 1986 if pending settlement not approved).

Forty-First Revised Sheet No. 12
Fortieth Revised Sheet No. 15
Fourth Revised Sheet No. 15-A

The tariff sheets proposed to be effective May 1, 1986 reflect an overall decrease from the rates in effect immediately prior to May 1, 1986 of 81.4¢ per dt in the commodity or delivery charge of Transco's CD, S-2, ACQ and PS Rate Schedules and 81.4¢ per dt in Transco's G, OG and E Rate Schedules, and 12¢ in the Demand Charges under Rate Schedule CD. The 81.4¢ CD Rate Schedule commodity decrease is composed of (1) a 75.2¢ per dt decrease in the current gas cost portion of the commodity rates; and (2) a 6.2¢ per dt decrease to reflect elimination of the Deferred Adjustment which became effective November 1, 1985 in Transco's Docket No. TA86-1-29. The demand charge decrease is due to the elimination of 25% of the demand charges of a Canadian supplier, Sulpetro Limited, which heretofore have been passed through on an "as billed" basis pursuant to an Initial Decision issued on September 3, 1985 in Docket No. TA85-1-29 which decision is pending before the Commission on exceptions.

Transco states that the instant filing reflects a voluntary implementation, on interim basis, of reduced gas costs to the level provided in its pending offer of settlement. Specifically, it is stated that the purpose of the instant filing is to reflect immediately in the commodity or delivery charge of Transco's affected rate schedules only the $2.30/dt cost of gas and 14.8¢ transmission fuel charge which is an integral part of Transco's revised Offer of Settlement (Settlement) pending in Docket No. TA85-1-29-000, *et al.*, which Settlement was filed with the Commission on May 13, 1986, and likewise to reflect the reduction in

demand charges under Rate Schedule CD by 12¢ as provided in the pending Settlement in connection with resolution of issues concerning Transco's import purchases from Sulpetro.

The instant filing is requested to be effective May 1, 1986 and, if approved, will substitute for the rates also proposed to be effective May 1, 1986 pursuant to Transco's PGA filing of March 31, 1986 in Docket No. TA86–5–29 which was accepted subject to refund by Commission order issued April 30, 1986.

By the instant filing, Transco is requesting Commission approval, for a limited interim period, to charge its customers rates based (1) on the reduced $2.30 cost of gas and (2) on the elimination of the 53.4¢ Deferred Adjustment in Transco's March 31, 1986 PGA filing in this docket. It is stated that the filing has been made in order to permit Transco's customers to benefit from the lower rates provided under Transco's proposed Settlement while the Commission is considering such Settlement. It is stated that elimination of the 53.4¢ Deferred Adjustment is requested herein in anticipation of the fact that Article II, Section 3 of the Settlement provides for a separate monthly billing procedure for certain "Transition Gas Costs" which include those amounts which would otherwise be collected through the aforementioned 53.4¢ surcharge.

Transco states further that it is willing to accept the risk of undercollections of current gas costs to the extent its gas costs exceed the $2.30/dt during the period in which Transco voluntarily elects to reflect this lower gas cost prior to Commission action on the pending settlement. Transco also states, however, that the instant request to defer collection of the 53.4¢ Deferred Adjustment on a limited interim basis is contingent upon the Commission recognizing Transco's right to future recovery, in the event that the proposed Settlement is not approved by the Commission, of the amounts Transco will not have collected as a result of voluntarily deferring collection of such Deferred Adjustment. In that event, such amounts would be transferred to the appropriate subaccount of FERC Account No. 191 for recovery in Transco's regularly scheduled May 1, 1987 PGA.

With regard to the deferred collection of the deferred adjustment, Transco states that the transferring of such unrecovered amounts to a subsequent period is consistent with the operation of Transco's PGA mechanism because such method ensures that overrecoveries or underrecoveries of amounts underlaying Deferred Adjustments are transferred to the appropriate summer or winter period. Transco states that in the event the Commission accepts the instant filing, Transco's rates will not reflect the 53.4¢ per dt Deferred Adjustment during the period May and June of 1986. Thereafter, if the proposed Settlement is not approved by the Commission, Transco estimates that based on the sales estimate utilized in its March 31, 1986 filing in Docket No. TA86–5–29, it would defer and transfer approximately $27.0 million related to the months of May and June 1986. Transco states that it is willing to forego recovery of carrying charges on any amounts which are uncollected as the result of Transco's instant filing reflecting its voluntary election for a limited interim period not to collect through rates the 53.4¢ Deferred Adjustment.

Also contained in this amended filing are three tariff sheets proposed to be effective July 1, 1986 if the pending settlement is not approved. The rates contained on these tariff sheets are idential to those appearing on the like-numbered tariff sheets which were included in Transco's March 31, 1986 PGA filing in Docket No. TA86–5–29, and which were accepted, suspend and permitted to become effective pursuant to the Commission's April 30, 1986 order. It is stated that the purpose of these tariff sheets is to allow Transco to charge such rates effective July 1, 1986 should the proposed Settlement not be approved by the Commission by that time. Transco states further that should the Settlement not be approved by July 1, 1986, Transco will move that Forty-First Revised Sheet No. 12, Fortieth Revised Sheet No. 15 and Fourth Revised Sheet No. 15-A be made effective no earlier than July 1, 1986.

Transco requests such waivers as may be necessary in order that the proposed tariff sheets be made effective on May 1, 1986 as explained herein.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, interested state commissions, and parities to the proceeding. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business house, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Transco has requested that a shortened notice period be established. Under the circumstances, the Commission finds that good cause has been shown for a shortened notice period. Therefore, any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of practice and procedure (18 CFR § 385.211 and § 385.214). All such motions or protests should be filed on or before May 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11388 Filed 5–20–86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case Nos. RF–003 and RF–004]

Energy Conservation Program for Consumer Products; Petitions for Waiver of Refrigerator and Refrigerator-Freezer Test Procedure from Whirlpool Corporation

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes two "Petitions for Waiver" from Whirlpool Corporation (Whirlpool) of Benton Harbor, Michigan, requesting, in each case, a waiver from the Department of Energy (DOE) test procedure for refrigerators and refrigerator-freezers. Whirlpool is a manufacturer of home appliances, including refrigerator-freezers. Whirlpool has developed an electronic adaptive defrost control for refrigerator-freezers that initiates defrost cycles in response to operating conditions and usage patterns. Each petition requests DOE to grant Whirlpool relief from the DOE test procedure for refrigerators and refrigerator-freezers for its refrigerator-freezer models equipped with electronic adaptive defrost controls on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of such units. DOE is soliciting comments, data, and information regarding the petitions.

DATE: DOE will accept comments, data, and information not later than June 20, 1986.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case Nos. RF–003 and RF–004, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 253–8127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9513

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619, 92 Stat. 3266), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Assistant Secretary for Conservation and Renewable Energy may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Refrigerator-freezers are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of refrigerator-freezers, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of refrigerator-freezers to disclose on an EnergyGuide label on each unit to assist consumers in making a purchasing decision.

On November 14, 1984, Whirlpool filed a petition for waiver (Case No. RF–001) from the DOE test procedure for refrigerators and refrigerator-freezers on the grounds that the procedure yielded materially inaccurate estimates of the energy consumed by its refrigerator-freezers models equipped with what Whirlpool has termed electronic adaptive defrost controls (ADC). Whirlpool's ADC initiates defrost cycles on the basis of compressor run time, refrigerator and freezer door openings, and the length of the preceding defrost period. On August 23, 1985, DOE granted Whirlpool's petition. 50 FR 34166.

Whirlpool argued that the DOE test procedure has no provision for determining the interval between defrost cycles for ADC-equipped refrigerator-freezers which would be comparable to normal usage patterns. Also, the test procedure would likely underestimate the actual energy consumption of such products because low humidity conditions normally encountered within the product during the test and the lack of refrigerator and freezer compartment door openings during the test lengthens the period between defrost cycles beyond that which would be expected under normal usage conditions. Finally, this lengthening of the period between defrost cycles lengthens the duration of the test to the point that is unduely burdensome to conduct. Having evaluated the applicability of two alternate test methods, both intended to cover refrigerator-freezers equipped with so-called demand defrost controls, Whirlpool contended that no acceptable alternate test procedure existed for use in testing ADC equipped models and that the development of such an alternate test procedure should await field data reflecting the actual performances of such products under varying conditions of use and operation. DOE examined the available information and established an alternate test procedure.

On March 12, 1986, Whirlpool submitted a petition for waiver (Case No. RF–003) of DOE test procedure requirements for a new ADC-equipped basic model which is considered different from the basic model cited in the previous petition. Whirlpool's new basic model has a different capacity, 25.7 cubic feet, and does not have the SERVA-DOOR feature on the previous model.

On April 8, 1986, Whirlpool submitted a petition for waiver (Case No. RF–004) of DOE test procedure requirements for another refrigerator-freezer the Company has developed with a slightly revised adaptive defrost control system. With this design modification the actual interval between defrost cycles could be from six hours to approximately six days, whereas the ADC-equipped basic models addressed in Case Nos. RF–001 and RF–003 have an interval between defrost cycles from six hours to 12 days.

According to DOE's regulations, at 10 CFR 430.2, Whirlpool's new refrigerator-freezers constitute different "basic models" since different capacity and features affect energy consumption. Whirlpool seeks to use the same test procedure for testing its new ADC-equipped models as was granted in the earlier case discussed above. The arguments presented in the petitions as to faults with the existing DOE test procedure and the basis for an alternate procedure are the same as those presented in the previous petition.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petitions for Waiver" in their entirely. The petitions contain no confidential information. DOE solicits comments, data, and information respecting the petitions. The Department also is seeking comments, data and information concerning the advisability of granting a waiver of DOE test procedure requirements for all of Whirlpool's models equipped with an adaptive defrost control system as long as the defrost control itself is not changed or modified from model to model. Finally, DOE is seeking comments on the advisability of granting a waiver of DOE test procedure requirements for all of Whirlpool's models equipped with an adaptive defrost control system as long as any modifications to the defrost control are minor, i.e., adjusting the upper limit for intervals between defrost cycles.

Issued in Washington, DC, May 2, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

March 12, 1986.

Mr. Michael J. McCabe,
Branch Chief, Testing and Evaluation, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, NW., Room GF–217, Washington, DC. 20585

Gentlemen:

1. *Petition for Waiver*—In accordance with 10 CFR 430.27, this is a Petition for Waiver

from the test procedure specified in 10 CFR Part 430, Subpart B, Appendix A1, adopted August 10, 1982. Whirlpool Corporation has developed and marketed a refrigerator-freezer basic model with adaptive defrost controls, that was subject of Waiver Order No. RF–001. Whirlpool has developed and is planning to market an additional refrigerator-freezer basic model with the same adaptive defrost controls as that referenced in Order No. RF–001, but which is nevertheless a different basic model because it has a differing physical or functional characteristic which affects energy consumption. Without a waiver, that refrigerator-freezer must be tested under the provisions of 10 CFR Part 430, Subpart B, Appendix A1. 10 CFR 430.22 prohibits a manufacturer from making any representation regarding energy consumption of a refrigerator-freezer that is not based on results of test under Appendix A1. Further, 16 CFR 305.4 prohibits the manufacturer from selling or offering for sale a refrigerator-freezer that does not bear an Energyguide label specifying the estimated annual operating cost for that product based upon tests conducted in accordance with Appendix A1. In as much as Whirlpool may not make an energy representation regarding refrigerator-freezers unless such representation is based upon the results of tests conducted in accordance with Appendix A1, and Appendix A1 tests will not accurately represent the energy consumption of this refrigerator-freezer with electronic defrost controls, we submit this petition.

2. *General Description of Petitioner's Business*—Whirlpool Corporation is a manufacturer of home appliances including refrigerator-freezers.

3. *Electronic Adaptive Defrost Control Design Principles*—The electronic adaptive defrost control employs a microcomputer utilizing an algorithm that initiates defrost cycles on a non-timed basis depending on compressor run time, refrigerator and freezer door openings, and the length of the preceding defrost period. The actual interval between defrost cycles with this control could be from six (6) hours to twelve (12) days. The electronic adaptive defrost control is not a demand defrost system that initiates a defrost cycle based upon actual frost on the evaporator.

4. *Basic Model Under DOE Waiver No. RF–001 Has the Same Electronic Adaptive Defrost Controls.* The electronic adaptive defrost controls on the basic model covered by Waiver No. RF–001 is identical to the electronic adaptive defrost controls on the basic model addressed by this petition. The only differences between the two models which relate to energy source, electrical characteristics, or physical or functional characteristics affecting energy consumption are that the basic model addressed by this petition does not have a SERVA–DOOR and its volume is 25.7 cubic feet. While energy consumption may, therefore, be decreased, the electronic adaptive defrost has not been modified and this Petition for Waiver is based on the same considerations as those addressed by DOE Order No RF–001.

5. *DOE Test Does Not Adequately Determine the Period between Defrost Cycles*—There is no provision in the final refrigerator-freezer test procedure, 10 CFR, Part 430, Subpart B, Appendix A1, to determine the interval between defrost cycles for a refrigerator-freezer with an adaptive defrost control which would account for compressor run time, refrigerator and freezer compartment door openings and the length of time of the previous defrost cycle which would be comparable to normal usage patterns. Under the test room conditions specified in the test-procedure, intervals between defrost cycles with the Whirlpool adaptive defrost system will be considerably longer than would be expected to be encountered in normal usage, because of low humidity and lack of refrigerator and freezer compartment door openings. Thus, test times will increase significantly and results will likely underestimate the actual energy consumption of adaptive defrost products in normal usage patterns and be misleading to consumers.

6. *DOT Test is Unduly Burdensome*—In 10 CFR Part 430, Subpart B, Appendix A1, a refrigerator-freezer test period is defined as the time span from one point during the defrost period to the corresponding point in the next defrost period. For conventional automatic defrost refrigerator-freezer, total test time required for the stabilization and test period is typically on the order of three days or less. An automatic defrost refrigerator-freezer with an anti-sweat heater switch requires four tests to determine the total per cycle energy consumption for that unit. In order to achieve a 95% confidence level for a given model, a minimum of three products must be tested. Therefore to rate a given model having an anti-sweat heater switch at a 95% confidence level takes thirty-six test days. However, in the case of adaptive defrost refrigerator-freezers, the total test time required for the stabilization and testing appears to be nine days. Since this product incorporates an anti-sweat heater switch, four tests are also required. With a minumum of three units required to estblish a 95% confidence level, approximately 108 test days are required to test an adaptive defrost control utilizing the standard test procedure. Thus the testing burden has increased by three times in order to conduct required testing for these products. Furthermore, it is likely that the potential extremely long test duration might be impossible to accomplish due to the difficulty in controlling conditions in the test room within the tolerances required by the test procedure over long time periods.

7. *DOE Test May Mislead the Public and Be Unfair to Petitioner*—Whirlpool believes that testing refrigerator-freezers having the electronic adaptive defrost control system under the test room conditions specified in the test procedure will result in intervals between defrost cycles that will be considerably longer than would be expected to be encountered in normal usage because of low humidity conditions normally encountered within the product during the test and lack of refrigerator and freezer compartment door openings. If Whirlpool Corporation were required to conduct tests in accordance with Appendix A1 on refrigerator-freezers having the electronic adaptive defrost control, the results will likely underestimate the actual energy consumption of such products in normal usage patterns for the reasons cited above. This result would be unfair to both consumers and to Whirlpool. The consumer, when comparing operating costs, might be mislead into purchasing an adaptive defrost control product based on the incorrect labeling information. Whirlpool, on the other hand, would be placed in the position of providing cost of operation information for the Energy guide label, in accordance with the test procedure, which it believes is inaccurate. Thus, if Whirlpool Corporation were to attempt to conduct tests on refrigerator-freezers with electronic adaptive defrost controls in accordance with Appendix A1, the results would likely be misleading to consumers as well as unduly burdensome to Whirlpool Corporation. Failure to grant this petition will discourage future development if innovative control systems for not only refrigerator-freezers but other products as well since Whirlpool Corporation will realize that, unless the product is capable of being tested under the existing test procedures, it may well be actually or practically precluded from testing the product in order to comply with mandatory labeling or a minimum standard requirement.

8. *Proposed Alternate Test Method*—An alternate test procedure was prescribed in the previous Whirlpool adaptive defrost case (Waiver Order No. RF001) at 50 FR 34189 (August 23, 1985), paragraph (2). This equation is based upon a method of energy testing developed for timer-controlled defrost systems, but modified by incorporating a factor representing frequency of defrost for the control system being tested. The factor of .33 was specified by the Department of Energy using field test data for approximately 20 units located in southern Florida, Indiana and Michigan over a period of nine months. Ideally, the appropriate factor to represent defrost frequency should come from a laboratory test designed to simulate the "average" field usage. Until a test method is designed to determine the length of time between defrost cycles, field test data should be used to determine frequency of defrost. Since the adaptive defrost control on the basic model covered by Waiver No. RF–001 is identical to the adaptive defrost control on the basic model referred to in this petition, and the two models are similar with the exception of the SERVA–DOOR and interior volume, Whirlpool believes the factor of .33 specified in Waiver No. RF–001 should be applicable to this basic model as well.

9. *Public Policy*—The granting of this waiver will serve to further the nation's energy conservation policy by encouraging manufacturers to develop new and innovative control systems to provide more energy-efficient appliances which, in the long run, will serve to reduce the energy consumption of products.

10. *Other Manufacturers*—White Consolidated Industries has filed an Application for Temporary Exception and a Petition for Waiver on November 1, 1985, for the Frigidaire Model FPCI16TDWO which incorporates a non-timed initiated defrost system.

If additional information is required, please contact Andrew Talaco (616/925-3215) or Nancy Clifton (616/925-3480).

Respectfully,

A.J. Talaco.

April 8, 1986.

Mr. Michael J. McCabe,
Branch Chief, Testing and Evaluation, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, NW., Room GF-217, Washington, DC 20585

Gentlemen:

1. *Petition for Waiver*—In accordance with 10 CFR 430.27, this is a Petition for Waiver from the test procedure specified in 10 CFR Part 430, Subpart B, Appendix A1, adopted August 10, 1982. Concurrently with the filing of this Petition for Waiver, Whirlpool Corporation is filing an Application for Temporary Exception with the Office of Hearings and Appeals of the Department of Energy. A copy of the Application for Temporary Exception is attached hereto. Whirlpool Corporation has developed and marketed a refrigerator-freezer basic model with adaptive defrost controls, that was the subject of Waiver Order No. RF-001. Whirlpool has developed and is planning to market an additional refrigerator-freezer basic model with the same adaptive defrost controls as that referenced in Order No. RF-001, but which is nevertheless a different basic model because it has a differing physical or functional characteristic which affects energy consumption. Whirlpool filed a Petition for Waiver for that model on March 12, 1986.

Whirlpool has developed and is planning to market a new refrigerator-freezer with a slightly revised adaptive defrost control. Without a waiver, that refrigerator-freezer must be tested under the provisions of 10 CFR Part 430, Subpart B, Appendix A1. 10 CFR 430.22 prohibits a manufacturer from making any representation regarding energy consumption of a refrigerator-freezer that is not based on results of tests under Appendix A1. Further, 16 CFR 305.4 prohibits the manufacturer from selling or offering for sale a refrigerator-freezer that does not bear an Energyguide label specifying the estimated annual operating cost for that product based upon tests conducted in accordance with Appendix A1. In as much as Whirlpool may not make an energy representation regarding refrigerator-freezers unless such representation is based upon the results of tests conducted in accordance with Appendix A1, and Appendix A1 tests will not accurately represent the energy consumption of this refrigerator-freezer with electronic defrost controls, we submit this petition.

2. *General Description of Petitioner's Business*—Whirlpool Corporation is a manufacturer of home appliances including refrigerator-freezers.

3. *Electronic Adaptive Defrost Control Design Principles*—The electronic adaptive defrost control employs a microcomputer utilizing an algorithm that initiates defrost cycles on a non-timed basis depending on compressor run time, refrigerator and freezer door openings, and the length of the preceding defrost period. The actual interval between defrost cycles with this control could be from six (6) hours to approximately six (6) days (the basic model addressed by Order No. RF-001 has an actual interval between defrost cycles from six hours to 12 days). This change is expected to have a minor effect on energy savings. The electronic adaptive defrost control is not a demand defrost system that initiates a defrost cycle based upon actual frost on the evaporator.

4. *DOE Test Does Not Adequately Determine the Period between Defrost Cycles*—There is no provision in the final refrigerator-freezer test procedure, 10 CFR, Part 430, Subpart B, Appendix A1, to determine the interval between defrost cycles for a refrigerator-freezer with an adaptive defrost control which is based upon compressor run time, refrigerator and freezer compartment door openings and the length of time of the previous defrost cycle which would be comparable to normal usage patterns. Under the test room conditions specified in the test procedure, intervals between defrost cycles with the Whirlpool adaptive defrost system will be considerably longer than would be expected to be encountered in normal usage, because of low humidity and lack of refrigerator and freezer compartment door openings. Thus, test times will increase significantly and results will likely underestimate the actual energy consumption of adaptive defrost products in normal usage patterns and be misleading to consumers.

5. *DOE Test is Unduly Burdensome*—In 10 CFR Part 430, Subpart B, Appendix A1, a refrigerator-freezer test period is defined as the time span from one point during the defrost period to the corresponding point in the next defrost period. For a conventional automatic defrost refrigerator-freezer, total test time required for the stabilization and test period is typically on the order of three days or less. An automatic defrost refrigerator-freezer with an anti-sweat heater switch requires four tests to determine the total per cycle energy consumption for that unit. In order to achieve a 95% confidence level for a given model, a minimum of three products must be tested. Therefore to rate a given model having an anti-sweat heater switch at a 95% confidence level takes thrity-six test days. However, in the case of adaptive defrost refrigerator-freezers, the total test time required for the stabilization and testing appears to be nine days. Since this product incorporates an anti-sweat heater switch, four tests are also required. With a minimum of three units required to establish a 95% confidence level, approximately 108 test days are required to test an adaptive defrost control utilizing the standard test procedure. Thus the testing burden has increased by three times in order to conduct required testing for these products. Furthermore, it is likely that the potential extremely long test duration might be impossible to accomplish due to the difficulty in controlling conditions in the test room within the tolerances required by the test procedure over long time periods.

6. *DOE Test May Mislead the Public and Be Unfair to Petitioner*—Whirlpool believes that testing refrigerator-freezers having the electronic adaptive defrost control system under the test room conditions specified in the test procedure will result in intervals between defrost cycles that will be considerably longer than would be expected to be encountered in normal usage because of low humidity conditions normally encountered within the product during the test and lack of refrigerator and freezer compartment door openings. If Whirlpool Corporation were required to conduct tests in accordance with Appendix A1 on refrigerator-freezers having the electronic adaptive defrost control, the results will likely underestimate the actual energy consumption of such products in normal usage patterns for the reasons cited above. This result would be unfair to both consumers and to Whirlpool. The consumer, when comparing operating costs, might be misled into purchasing an adaptive defrost control product based on the incorrect labeling information. Whirlpool, on the other hand, would be placed in the position of providing cost of operation information for the Energyguide label, in accordance with the test procedure, which it believes is inaccurate. Thus, if Whirlpool Corporation were to attempt to conduct tests on refrigerator-freezers with electronic adaptive defrost controls in accordance with Appendix A1, the results would likely be misleading to consumers as well as unduly burdensome to Whirlpool Corporation. Failure to grant this petition will discourage future development if innovative control systems for not only refrigerator-freezers but other products as well since Whirlpool Corporation will realize that, unless the product is capable of being tested under the existing test procedures, it may well be actually or practically precluded from testing the product in order to comply with mandatory labeling or a minimum standard requirement.

7. *Proposed Alternate Test Method*—An alternate test method was prescribed in the Whirlpool case (Case No. RF-001) at 50 FR 34189 (August 23, 1985).

The equation used is based upon a method of energy testing developed for timer-controlled defrost systems, but modified by incorporating a factor representing frequency of defrost for the control system being tested. The factor of .33 was specified by the Department of Energy using field test data for approximately 20 units located in southern Florida, Indiana and Michigan over a period of nine months. Ideally, the appropriate factor to represent defrost frequency should come from a laboratory test designed to simulate "average" field usage. Until a test method is designed to determine the length of time between defrost cycles, field test data should be used to determine frequency of defrost. Since a new adaptive defrost control system is being applied, Whirlpool is planning to initiate another field test program to determine the time between defrosts. The sample will consist of approximately 25 products with approximately one-third in each of three locations, southern Florida, southern Indiana and Michigan. Whirlpool would be receptive to the use of an estimated factor representing the frequency of defrost until tests are completed.

8. *Public Policy*—The granting of this waiver will serve to further the nation's energy conservation policy by encouraging manufacturers to develop new and innovative control systems to provide more energy-efficient appliances which, in the long run, will serve to reduce the energy consumption of products.

9. *Other Manufacturers*—White Consolidated Industries has filed an Application for Temporary Exception and a Petition for Waiver on November 1, 1985, for the Frigidaire Model FPCI18TDWO which incorporates a non-timed initiated defrost system.

If additional information is required, please contact Andrew Takacs (616/926-3219) or Nancy Clifton (616/926-5490).

Respectfully,

A.J. Takacs.

[FR Doc. 86-11406 Filed 5-20-86; 8:45 am]

BILLING CODE 6450-01-M

[Case No. WH-003]

Energy Conservation Program for Consumer Products; Notice of Modification of a Decision and Order Granting Waiver From Water Heater Test Procedures to Ford Products Corp.

AGENCY: Department of Energy.

ACTION: Modification of a decision and order.

SUMMARY: The Decision and Order [Case No. WH-003] granting Ford Products Corporation a waiver for its Models CF and FG oil-fired water heaters from the existing DOE water heater test procedures is hereby modified.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6513.

SUPPLEMENTARY INFORMATION:

In accordance with subparagraph (iii) of Ford's Decision and Order (50 FR 50678), notice is hereby given of the issuance of modification to the Decision and Order set out below. In the Decision and Order, Ford Products Corporation has been granted a waiver for its Models CF and FG oil-fired water heaters, permitting the company to use a "simulated use" test method in lieu of the "cold-start recovery" test method in the existing test procedure. Today's notice makes some technical corrections to the Ford Decision and Order.

Issued in Washington, DC, April 25, 1986.

Donna E. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of Ford Products Corporation; Case No. WH-003.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

Section 430.27 allows the Department of Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadquate comparative data. 45 FR 64108 (September 26, 1980).

Ford Products Corporation (Ford), filed a "Petition for Waiver" in accordance with 430.27 or 10 CFR Part 430. The Ford petition asked to rate its oil-fired water heaters in the same manner that was allowed to a previous petitioner, Bock Water Heaters, Inc. Ford stated that its CF and FG Model series oil-fired water heaters have high thermal mass which leads to unrepresentative values of recovery efficiency. Ford sought relief from the DOE "cold-start" recovery efficiency test methodology. DOE published in the Federal Register the Ford petition and solicited comments, data, and information respecting the petition. 50 FR 32615 (August 13, 1985). No comments were received. DOE consulted with the Federal Trade Commission on August 20, 1985, concerning the Ford petition.

In the Bock Decision and Order, DOE allowed Bock to determine the recovery efficiency of its oil-fired water heaters by use of a "simulated use" test method (50 FR 47108, November 14, 1985). Accordingly, in the interest of consistency, and since DOE determined that the existing test method is inappropriate with regard to high thermal mass water heaters, Ford was allowed the use of the "simulated use" test method for its oil-fired models. The Ford Decision and Order was issued November 25, 1985. 50 FR 50678 (December 11, 1985).

Assertions and Determinations

Ford has objected to the allowed test method. Ford asserted in its letter of January 13, 1986, that the starting temperature and consecutive draw schedule of the allowed test method are inappropriate for oil-fired water heaters, and inaccurate estimates of recovery efficiency of up to 10 percentage points are possible. Further, Ford stated that this inappropriateness exists because the allowed test method was developed for heat pump water heaters. Ford suggested that it be allowed the use of the existing test procedure modified by a "warm" start method, i.e., where the start of the recovery efficiency test occurs when thermal equilibrium is reached.

By letter dated February 14, 1986, Bock responded to Ford. Bock believed the "simulated use" method, as granted to it, is acceptable when testing oil water heaters. Further, Bock does not agree with the magnitude of the possible inaccuracies stated in the Ford letter. Finally, Bock states that the "warm" start test method is far more complex than the "simulated use" method and does not show results which would be usable by the consumer as a comparison of operating characteristics.

DOE has asked the National Bureau of Standards (NBS) to investigate the Ford claims by testing a oil-fired water heater using the "simulated use" test method granted to Bock and Ford. The results of this investigation indicate that the method described in the Decision and Order is somewhat inappropriate regarding starting temperature for oil-fired water heaters. However, rather than prescribe a completely different test method, as Ford suggests, DOE believes the better remedy is to modify the Decision and Order by making some technical corrections. Specifically, the original Decision and Order requiring a "simulated use" test to begin immediately after cutout of the burner is replaced with a "simulated use" test to begin after the mean tank temperature reaches thermal equilibrium. Regarding the matter of the accentuated jacket losses caused by the three consecutive draw format, NBS determined, by testing, that the variability due to different draw format is well below the expected variability of the test data. Accordingly, today's notice does not modify the Ford Decision and Order regarding draw format.

It is therefore ordered that:

(1) The November 22, 1985, Decision and Order granting a waiver from water heater test procedures to Ford Products Corporation (50 FR 50678, December 11, 1985) is modified by revising subparagraph (i) as follows:

(i) Section 3.3.1 of Appendix E of 10 CFR Part 430, is waived for Ford Products Corporation, and the company is permitted to use the following provision.

Recovery Efficiency for Oil Water Heaters by the Simulated Use Methods

(i) The simulated use test involves withdrawing water from the hot water outlet of the water heater in three separate consecutive water draws. 21.4 gallons ±0.5 gallon of water shall be withdrawn from the water heater. The third water draw shall be of a sufficient volume to bring the total volume of water withdrawn from the water heater by means of these three water draws to 64.3 gallons ±0.5 gallon. Water shall be withdrawn at a rate of 3.0 ±0.25 gallons per minute for each of the three water draws. All water volume measurements shall be made

using the water flow meter specified in section 2 of Appendix E of 10 CFR Part 430.

Begin the simulated use test at the time a thermal equilibrium is achieved at the maximum mean tank temperature (in 4 places) by recording the mean tank temperature (T_m), in degrees F, recording the time, recording the water meter reading, commencing measurement of electrical and fossil fuel energy consumption by the water heater and starting the first water draw. During this draw and during all subsequent draws measure the temperature of the inlet and outlet water every minute commencing one minute after the start of the draw until the draw is complete. Immediately upon the conclusion of the first water draw record the water meter reading. Determine the first draw average inlet and outlet water temperatures (T_{mi} and T_{mo} respectively) by averaging the measured temperatures during the first draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the first water draw begin the second water draw. Immediately upon the conclusion of the second water draw record the water meter reading. Determine the second draw average inlet and outlet water temperatures (T_{mi} and T_{mo} respectively) by averaging the measured temperatures during the second draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the second water draw begin the third water draw. Immediately upon the conclusion of the third draw record the water meter reading and determine the third draw average inlet and outlet water temperatures (T_{mi} and T_{mo} respectively) by averaging the measured temperatures during the third draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of third draw, record the total amount of energy consumed by the water heater since the start of the test (Z_a), in Btu's (where 3,412 Btu equals 1 kilowatt-hours).

Determine the mean of the three outlet water temperature averages (T_{two}) and the mean of the three inlet water temperature averages (T_{twi}), in degrees F. Determine the total amount of water withdrawn from the water heater over all three water draws (V_{wo}), in gallons, from the appropriate recorded water meter readings.

(2) This modification of waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by applicant. This modification of waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, April 25, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-11403 Filed 5-20-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36120; FRL-3017-9]

Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Comments.

SUMMARY: EPA is making available, for public comment, proposed addenda to the following studies in the Pesticide Assessment Guidelines: Freshwater and marine invertebrate and vertebrate toxicity, chronic toxicity(dog), terrestrial field dissipation and plant metabolism. The addenda would supersede paragraphs in the Guidelines on data reporting and would provide a format for the preparation of study reports by those submitting data to EPA. This would increase the efficiency of pesticide registration and other regulatory activities. Copies of the proposed addenda are available at the address listed below for the Information Services Section.

DATE: Comments, identified by the document control number OPP-36120, must be received on or before July 21, 1986.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP-36120," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Va.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the draft guidelines are also available at this address.

FOR FURTHER INFORMATION CONTACT:

Elizabeth M.K. Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 807, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0576).

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines describe protocols for performing tests to support the registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. A description of the organization of these Guidelines and their relationship to data requirements, along with the necessary information for ordering them from the National Technical Information Service, appears in 40 CFR 158.115, published in the Federal Register of October 24, 1984 (49 FR 42856). The Data Reporting addenda will clarify sections in the Guidelines on data reporting and provide a format to guide pesticide registrants in report preparation resulting in consist reports. This will reduce the time spent by the Agency in reorganizing data, retrieving information, and resolving misunderstandings.

This is the second set of Data Reporting addenda which has been available for public comment. Public comment on the initial set of eight Data Reporting Guidelines was requested in the Federal Register of July 31, 1985 (50 FR 31010) and these comments are being reviewed. The specific subdivisions and series now being considered are: Subdivision E, Series 72-1 to 72-5 (Acute Toxicity of Freshwater Fish, Acute Toxicity Test for Freshwater Acquatic Invertebrates, Acute Toxicity Test for Estuarine and Marine Organisms, Acute Toxicity Test for Shrimp, Oyster Embryo Test, Shell Deposition Study for Oyster, Fish Early Life-Stage, Aquatic Invertebrate Life-Cycle, and Life-Cycle Test for Fish); Subdivision F, Series 83-1 (Chronic (Subchronic) Dog); Subdivision N, Series 164-1 (Terrestrial Field Dissipation Studies); and Subdivision O, Series 171-4 (a) (1) and (2) (Nature of the Residue: Plants).

Drafts have been sent to a number of organizations for preliminary comment and revisions were made in response to these comments. A list of the organizations, a copy of the comments and the Agency's response are available from the Information Services Section at the address given above. Comments on this set of reporting formats will be considered by the Agency in preparing a

final version which will be published by the National Technical Information Service.

Dated: April 28, 1986.

John W. Melone,

Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 86-11072 Filed 5-20-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59764; FRL-3016-1]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-10443 beginning on page 17235 in the issue of Friday, May 9, 1986, make the following correction:

On page 17236, in the first column, in the tenth line, the premanufacture notice number for Dynamit Nobels Chemical, Inc. was omitted and should read "Y 86-129".

BILLING CODE 1505-01-M

[FRL-3019-3]

An Open Meeting of the New Source Performance Standards for Residential Wood Combustion Units Negotiated Rulemaking Advisory Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), EPA is giving notice of an open meeting of the Advisory Committee on New Source Performance Standards for Residential Wood Combustion Units.

The meeting is scheduled on June 11 and 12, 1986, and will be held at the National Institute for Dispute Resolution, 1901 L Street, NW., Suite 600, Washington, DC 20036. Each day the meeting will begin at 9:00 a.m. and will run until completion.

The purpose of the June meeting is to work on substantive issues, including: (1) Catalyst replacement (what policies should be applied), (2) selecting the best developed technology, and (3) deciding on the level of the standard (including whether there should be separate standards for catalytic and non-catalytic stoves). At this meeting, we anticipate the group will continue working on the draft language of the proposed rule, possibly revisiting some of the issues from prior meetings.

If interested in attending, or in receiving more information, please contact Kathy Tyson at (202) 382-5352.

Dated: May 14, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-11518 Filed 5-20-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0125
Title: Request for Loan Information
Abstract: Used to obtain information required to determine fair and equitable sales price of a mobile home unit to a disaster victim. The ability to borrow money commercially is an important factor in determining the final sales price
Type of Respondents: Individual or households, small businesses or organizations
Number of Respondents: 500
Burden Hours: 83.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 464-2624, 500 C. Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 14, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-11367 Filed 5-20-86; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0163
Title: Individual and Family Grant (IFG) Program Information
Abstract: The forms presented for reapproval are checklists, reviews, and other management tools recommended for use by FEMA regional staff in fulfilling their requirements for monitoring and providing statistical reports on the IFG program. Some of the information is obtained from the State implementing the particular IFG program
Type of Respondents: State or local governments
Number of Respondents: 150
Burden Hours: 2,487.5.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 464-2624, 500 C. Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 14, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-11368 Filed 5-20-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Financial Institutions, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under §§ 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a) (1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Financial Institutions, Inc.*, Warsaw, New York; to engage through its subsidiary Financial Institutions Services, Inc., Warsaw, New York, in (1) acting as agent with agent with respect to any insurance, including but not limited to credit-related insurance, at offices of Applicant's bank subsidiaries that are located in communities with populations of 5,000 or less pursuant to section 4(c)(8)(C)(i) of the Bank Holding Company Act ("Act") and § 225.25(b)(8)(ii) of the Board's Regulation Y, inasmuch as Applicant's principal place of business is The Village of Warsaw, New York, the population of which was 3,619 in the 1980 decennial census, and (2) acting as agent, at offices of Applicant's subsidiaries located in communities with populations exceeding 5,000, with respect to life, disability and accident and health insurance directly related to extensions of credit by applicant's bank subsidiaries and any future non-bank subsidiaries pursuant to section 4(c)(8)(A) of the Act and § 225.25(b)(8)(A) of the Board's Regulation Y. The general insurance agency activities will be conducted in the geographic areas served by offices of subsidiaries of Applicant located in communities in New York state with populations of 5,000 or less. The credit insurance agency activities will be conducted in geographic areas served by offices of Applicant's subsidiaries, including offices located in communities with populations in excess of 5,000.

Board of Governors of the Federal Reserve System, May 15, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11373 Filed 5-20-86; 8:45 am]

BILLING CODE 6210-01-M

Marble Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 12, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President)-600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Marble Financial Corporation*, Rutland, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Marble Bank, Rutland, Vermont.

B. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cole Holding Company*, Harlan, Kentucky; to become a bank holding company be acquiring 35.5 percent of the voting shares of Harco Bankshares, Inc., Harlan, Kentucky, and thereby indirect acquire 35.5 percent of the voting shares of the Harlan National Bank, Harlan, Kentucky.

C. Federal Reserve Bank of (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *CB&T Financial Corp.*, Fairmont, West Virginia; to acquire 100 percent of the voting shares of The Oak Mound Bank, Clarksburg, West Virginia.

2. *National Bankshares, Inc.*, Blacksburg; to acquire 100 percent of the voting shares of the National Bank of Blacksburg, Blacksburg, Virginia.

D. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Farmers and Merchants Corporation*, Forest, Mississippi; to acquire 17.6 percent of the voting shares of First Mississippi National Corporation, Hattiesburg, Mississippi.

2. *Villa Rica Bancorp, Inc.*, Villa Rica, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of bank of Villa Rica, Villa Rica, Georgia.

E. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Treasure Bancorp, Inc.*, Plentywood, Montana; to become a bankholding company by acquiring 100 percent of the voting shares of Reserve Enterprises, Inc., Plentywood, Montana, and thereby indirectly acquiring Montana National Bank of Plentywood, Plentwood, Montana.

Board of Governors of the Federal Reserve System, May 15, 1986

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11373 Filed 5-20-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Radiologic Devices Panel

Date, time, and place. June 9, 9 a.m., Rm. 416 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.;

open committee discussion, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 a.m.; open committee discussion, 1 p.m. to 4:30 p.m.; Robert A. Phillips, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7514.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contract person before June 1, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for magnetic resonance imaging devices.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial information relevant to premarket approval applications for magnetic resonance imaging devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. June 19, 9:30 a.m. and June 20, 9 a.m., North Auditorium, Health and Human Services Bldg., 330 Independence Ave. SW. (enter at C St.), Washington, DC.

Type of meeting and contact person. Open public hearing, June 19, 9:30 a.m. to 10:30 a.m.; open committee discussion, 10:30 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; open public hearing, June 20, 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 3 p.m; closed presentation of data, 3 p.m. to 4 p.m.; Sherry Phillips, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 12, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for prosthetic ligament devices and a neuromuscular stimulation device for the treatment of scoliosis. The committee may also discuss guidelines for evaluation of prosthetic ligament devices, electronic bone growth stimulation devices, and a PMA for bone cement.

Closed presentation of data. The committee may review and/or discuss trade secret and/or confidential commercial information relevant to PMA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Allergenic Products Advisory Committee

Date, time, and place. June 26 and 27, 8:30 a.m., Conference Rm. 6, Bldg. 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 26, 8:30 a.m. to 9:30 a.m.; open committee discussion, June 26, 9:30 a.m. to 5 p.m.; closed committee discussion, June 27, 8:30 a.m. to 2 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views orally or in writing, on issues pending before the committee should communicate with the committee executive secretary.

Open committee discussion. Approximately one-half day will be devoted to each of the following topics: (1) Allergenic extracts of mites, *Dermatophagoides pteronyssinus* and *D. farinae*, to include an evaluation of data on appropriate source materials and reference preparations and (2) guidelines for the clinical testing of allergenic extracts for use in immunotherapy.

Closed committee discussion. The committee will receive FDA staff briefings on, and will discuss trade secret or confidential commercial information relevant to, pending biological product license applications for allergenic products such as modified allergenic extracts. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at

the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Docket Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Example of portions of FDA advisory committee meetings that ordinarily shall not be closed include: the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 15, 1986.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 86-11372 Filed 5-20-86; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration on Aging, Office of Human Development Services, HHS.

ACTION: Notice of amendment to statement of organization, functions, and delegations of authority.

SUMMARY: This notice amends Part D of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of Human Development Services (OHDS), Administration on Aging, to: (1) Combine the functions of the Office of Management and Policy Control (DGQ) (49 FR 17596) and the Office of Planning, Evaluation, and Dissemination (DGP) (49 FR 17596) into a new Office of Management and Policy (DGR); and to (2) revise DG.10. Organization (47 FR 54552) to update the organizational listing of the Administration on Aging.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Smith, Administration on Aging, Room 4737, HHS Building, 330 Independence Avenue, SW., Washington, DC 20201. Telephone 202-245-0351.

Amendment to Part D, Chapter DG, Administration on Aging (AOA), DG.10. Organization; and the Office of Management and Policy Control, and the Office of Planning, Evaluation, and Dissemination.

DG.10. Organization, as published in the Federal Register on December 3, 1982 (47 FR 54552); and the Office of Planning, Evaluation, and Dissemination (DGP), and the Office of Management and Policy Control (DGQ), as published in the Federal Register on April 24, 1984 (49 FR 17596), are deleted in their entirety and replaced by the following:

DG.10. Organization. The Administration on Aging is headed by the Commissioner on Aging and consists of:

Office of the Commissioner (DGA)
Office of Program Development (DGD)
  Division of Research and Demonstrations (DGD1)
  Division of Training and Development (DGD2)
Office of State and Tribal Programs (DGN)
  Division of Program Management and Regional Operations (DGN1)
  Division of Operations and Fiscal Analysis (DGN2)
Office of Management and Policy (DGR)
  Division of Policy, Planning, and Administration (DGR1)
  Division of Technical Information and Dissemination (DGR2)

Office of Management and Policy (DGR). Analyzes and interprets all issues related to AOA program policy; develops and interprets AOA goals, objectives, plans, legislation and regulations; performs statistical analyses related to the aging; plans and manages the AOA evaluation program; manages a program for the collection, analysis, and dissemination of information related to the aging. Prepares required reports to Congress; develops and justifies the budget; manages the Merit Pay and Employee Management Performance Systems; and executes a variety of administrative management tasks. Responds to inquiries from the public in the form of letters and telephone inquiries. Controls accounting and reprogramming of funds under the Older Americans Act. All functions are performed with appropriate subject matter input from the AOA program offices: Office of State and Tribal Programs, and Office of Program Development.

Division of Policy, Planning, and Administration (DGR1). Conducts policy studies on a wide range of issues affecting AOA programs and the elderly; solicits policy and strategy input from a wide spectrum of organizations concerned with the aging; develops and recommends priorities and strategies to

the Commissioner; develops and issues AOA goals and objectives; and coordinates the development of regulations.

Coordinates development of legislative proposals within AOA; develops testimony, background statements, and other policy documents for use by the Commissioner in legislative and other policy forums; in coordination with OHDS and OS legislative staff analyzes proposed and enacted legislation related directly or indirectly to the Older Americans Act; analyzes non-Federal legislative activity related to the elderly.

Prepares the AOA long and short range plans; provides interpretation and guidance for implementation of these plans to all AOA units; and reviews all AOA policy documents for consistency with agency policy.

Coordinates with the Office of the Commissioner, the AOA Office of Program Development, the HDS Office of Program Development, and other staff offices of HDS, and Departmental staff offices on policy, planning and legislative issues and development.

Translates the long and short range plans into procedural guidance for AOA components concerning performance appraisal planning, work planning, and budget preparation. By means of this system, coordinates the development of strategies for action and subsidiary plans as well as processes for monitoring and reporting on progress toward achieving stated objectives. Works with the HDS Office of Policy Development in the formulation, review and reporting of operational objectives.

Works with the Office of Management Services, OHDS, to prepare budget presentations for use at Departmental, Office of Management and Budget, and Congressional levels. Formulates the budget in accordance with Assistant Secretary (HDS) guidelines and instructions. Exercises funds control for all formula grants, discretionary grants and contracts, and salaries and expenses accounts. Processes AOA fiscal documents required to make and manage grants and contracts; and tracks financial status of all AOA programs and salaries and expenses funds. Based on formula grants management policies and procedures approved by the Assistant Secretary, HDS, controls administrative accounting and reprogramming of formula grant funds under the Older Americans Act. Is responsible for consultant services review (General Administration Manual, Chapter 8–15).

Develops AOA plans and priorities for evaluation of programs in consultation with appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AOA, with technical input from other AOA divisions.

Coordinates the AOA Central Office Merit Pay and employee appraisal systems in accordance with Department policy, and assists the Commissioner and other AOA units in implementing these systems. Manages the AOA Central Office merit pay pool, and coordinates the granting of incentive awards.

Analyzes organization and functions in AOA and recommends changes for more effective mission accomplishment, develops staffing plans, and manges the Automated Office System for AOA. Develops space utilization and communication plans, supervises timekeeping and payroll functions and maintains general liaison with personnel, management analysis and administrative services offices at the OHDS level. Plans and manages the internal AOA staff development activity. Assures equal employment opportunity within the Central Office of AOA. Serves as a central contact for responding to requests for administrative services.

Maintains internal agency communications systems, including coordinating and controlling the issuance of AOA policy documents (Program Instructions, Assistance Memoranda, and Information Memoranda).

Is responsible for reviewing requests for information under the Freedom of Information Act and arranging for appropriate responses to the requests.

Division of Technical Information and Dissemination (DGR2). Is responsible for the AOA technical and substantive information systems; provides technical input to the AOA planning, policy development and budget cycles on technical information systems. Edits and produces the Aging Magazine aimed at professionals and constituents in the field of aging.

Reviews all products from AOA and the Older Americans Act network to identify new findings which will be useful to older people and professionals operating in the field of aging, concentrating particularly on research, demonstration and evaluation findings. Determines the relative utility of each product, its potential users, and the most effective way to disseminate information to users. Coordinates preparation of the annual AOA report to the President and Congress. Plans and manages special dissemination projects, e.g., Older Americans Month.

Advises the Central and Regional Offices of AOA, State and Area Agencies on Aging, and other agencies and organizations on their statistical data needs, uses of data, and methods of collecting the data; maintains a knowledge of data generated by a wide range of agencies and organizations; provides chairperson and secretariat services to the Task Force on Statistics; in support of planning and program requirements, performs routine and special analyses of data for AOA offices, other Federal and non-Federal organizations, and the general public.

Responds to written, phone and personal inquiries from all sources dealing with services and needs of the aging; when appropriate, coordinates the provision of technical and policy interpretations from responsible organizational units within and outside AOA. In emergency situations, refers individuals or families to the appropriate State and/or Area Agency on Aging for assistance in meeting the needs of the older person.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

May 14, 1986.

[FR Doc. 86-11444 Filed 5-20-86; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-86-818; FR-2247]

Office of the Regional Administrator New York Regional Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator is designating officials who may serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of Regional Administrator/Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Adele S. Germain, Director, Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, N.Y. 10278, telephone (212)

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202-2781. (This is not a toll-free number.).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional Administrator/Regional Housing Commissioner, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator/Regional Housing Commissioner: Provided, that no official is authorized to serve as Acting Regional Administrator/Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator;
2. Director, Office of Public Housing;
3. Executive Assistant to the Regional Administrator;
4. Director, Office of Community Planning and Development;
5. Director, Office of Operational Support;
6. Regional Counsel;
7. Director, Office of Administration;
8. Director, Office of Fair Housing and Equal Opportunity.

This designation supersedes the designation effective October 31, 1984.

Authority: Delegation of Authority, 27 FR 4319 (1962); Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Interim Order 11, 31 FR 815 (1966).

Dated: April 22, 1986

Joseph D. Monticciolo,

Regional Administrator/Regional Housing Commissioner, Region II.

[FR Doc. 86-11399 Filed 5-20-86; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-86-1811]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposals; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what numbers of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Credit Reporting Form
Office: Administration
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 10,000
Status: New
Contact: John T. Stahl, HUD, (202) 755-5163; Robert Fishman, OMB, (202) 395-6880.

Proposal: Request for Acceptance of Changes in Approved Drawings and Specifications
Office: Housing
Form Number: HUD-92577
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 5,000
Status: Extension
Contact: Kenneth L. Crandall, HUD, (202) 426-7212; Robert Fishman, OMB, (202) 395-6880.

Proposal: Previous Participation Certificate
Office: Housing
Form Number: HUD-2530 and USDA FmHA-1944-37
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 5,400
Status: Extension
Contact: Jon Will Pitts, HUD, (202) 755-6779; Robert Fishman, OMB, (202) 395-6880.

Proposal: Survey of Mortgage Lending Activity
Office: Housing
Form Number: HUD-138
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 30,600
Status: Extension
Contact: John N. Dickie, HUD, (202) 755-7270; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 13, 1986.

Donald J. Kasch, Jr.,

Deputy Assistant Secretary.

[FR Doc. 86-11400 Filed 5-20-86; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-86-1810]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMD Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal:
1. Schedule of Pooled Loans—Manufactured Home Loans
2. Issuer Certification of Pool Composition—Manufactured Home Loans
Office: Government National Mortgage Association
Form Number: HUD–11725 and 11739
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 900
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755–5550, Robert Fishman, OMB, (202) 395–6880.

Proposal:
1. Schedule of Pooled Project Mortgage: and
2. Tandem Project Loan Pool Computation of GNMA Guaranty Fee
Office: Government National Mortgage Association
Form Number: HUD–11721 and 11745
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 55
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755–5550, Robert Fishman, OMB, (202) 395–6880.

Proposal: Application for Insurance of Advance of Mortgage Proceeds
Office: Housing
Form Number: HUD–92403
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit and Non-Profit Institutions
Estimated Burden Hours: 1,040
Status: Extension
Contact: Linda Cheatham, HUD, (202) 426–035, Robert Fishman, OMB, (202) 395–6880.

Proposal: State Agency Response to HUD Review Findings
Office: Housing
Form Number: None
Frequency of Submission: Biennially
Affected Public: State or Local Governments
Estimated Burden Hours: 100
Status: Extension
Contact: Conrad Egan, HUD, (202) 426–3966, Robert Fishman, OMB, (202) 395–6880.

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System; Modification to the Performance Funding System
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 30,400
Status: Extension
Contact: John Comerford, HUD, (202) 426–1872, Robert Fishman, OMB, (202) 395–6880.

Proposal: Change in Eligibility of Mortgages Involving a Dwelling Unit in a Cooperative Housing Development
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 1,500
Status: Revision
Contact: Joseph Emmi, HUD, (202) 426–0070, Robert Fishman, OMB, (202) 395–6880.

Proposal: Urban Homesteading Program
Office: Community Planning and Development
Form Number: HUD-4027.1 and 4027.2
Frequency of Submission: On Occasion and Monthly
Affected Public: State or Local Governments
Estimated Burden Hours: 2,400
Status: Revision
Contact: Richard R. Burk, HUD, (202) 755–5324, Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42, U.S.C. 3535(d).

Dated: April 25, 1986.

Dennis F. Geer,
Director, Office of Information Policies and Systems.

[FR Doc. 86–11401 Filed 5–20–86; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–5661–B]

Alaska Native Claims Selection: Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Eklutna, Inc. for approximately 2,539 acres. The lands involved are located in T. 17 N., R. 3 E., Seward Meridian, Alaska, in the vicinity of Eklutna.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until June 20, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

David Wickstrom,
Realty Specialist, Alaska Programs Staff.

[FR Doc. 86–11427 Filed 5–20–86; 8:45 am]
BILLING CODE 4310–JA–M

[AA-14918]

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Department regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 24,233 acres. The lands involved are within the Tongass National Forest.

Copper River Meridian, Alaska
T. 55 S., R. 73 E.
T. 56 S., R. 73 E.
T. 72 S., R. 81 E.
T. 73 S., R. 82 E.
T. 74 S., R. 85 E.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 20, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Divisionof Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,
Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–11460 Filed 5–20–86; 8:45 am]
BILLING CODE 4310–JA–M

California Desert Plan: Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the pre-planning analysis for the 1986 Amendments to the California Desert Plan and the Eastern San Diego County Management Framework Plan is available for public review and comment.

Six proposed amendments have been accepted for consideration by the 1986 amendment review of these plans.

The proposed amendments address the following actions: 1) Changes in motorized vehicle access; 2) adjustment in the boundary of an Area of Critical Environmental Concern (ACEC); 3) reduction in burro population; 4) movement of a portion of a utility corridor, and 5) reclassification of a small area in the Eastern San Diego County Planning Unit. The pre-plan describes the following topics:

1. Purpose and need for action;
2. Geographic setting;
3. Scope and level of analysis planned;
4. Significant resource values and issues;
5. Alternatives;
6. EIS preparation schedule; and
7. Public participation schedule.

Comments are being accepted from the public until 30 days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

Dated: May 14, 1986.

H.W. Riecken,
Acting District Manager.

[FR Doc. 86–11378 Filed 5–20–86; 8:45 am]
BILLING CODE 4310–40–M

Intent to Prepare an Environmental Impact Statement (EIS) on a Coal-fired Steam/Electric Generating Plant; Thousand Springs Energy Park Project

May 15, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent to Prepare an Environmental Impact Statement (EIS) on a Coal-fired Steam/Electric Generating Plant in Northeastern Nevada and Notice of Scoping Meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Elko District, will be directing the preparation of an Environmental Impact Statement (EIS) to be prepared by a third party contractor on the impacts of a proposed coal-fired steam/electric generating plant, the Thousand Springs Energy Park project, proposed on public and private lands in Elko County located in northeastern Nevada.

SUPPLEMENTARY INFORMATION: The Thousand Springs Energy Park (TSEP) project will be jointly owned by Sierra Pacific Resources (general partner) and a consortium of private interests (limited partners). It is anticipated that the energy output and capacity of the plant will serve California, Nevada, and other western states. Sierra Pacific Resources (SPR) will act as the Operating Manager for the proposed project.

The site selection study for the proposed plant was conducted in 1981. Several sites were identified in a Statewide survey as being environmentally and technically satisfactory for power plant development. Potential issues include air quality, social and economic impacts, ground and surface water quantity, waste disposal, wildlife and the land tenure adjustment.

The proposal includes construction of eight 250–megawatt generating units near Toano Draw in Thousand Springs Valley, Elko County, Nevada. Coal will be supplied from mines in Utah and Wyoming, and is proposed to be delivered to the plant site by rail via Cobre or Wells, Nevada. A total of six million tons per year are expected to be required at full capacity. The proposed plant site is located near the Southern Pacific Railroad. Studies are underway to determine the optimum rail spur location into the site.

The planned size and arrangement of the overall project takes into account the airshed capacity in the Toano Draw area. Meteorological and air quality monitoring has been conducted to document pre-project air quality which is considered good. Emissions control equipment will be employed to comply with Nevada State law and Environmental Projection Agency regulations. Ground level pollutant concentrations will not exceed levels permitted by National Ambient Air Quality Standards. The plant will require approximately 30,000 acre-feet of water annually. Water rights associated with SPR's land holdings in Thousand Spings Valley are expected to be sufficient to meet these requirements. Water is planned to be delivered from well fields to the plant using a system of pipelines.

Energy generated at the plant will be conveyed via new power transmission facilities. Transmission corridors and terminals for distributing power will not be finally determined until participating utilities have been identified. SPR plans to use designated and planned utility corridors as identified in Federal land use plans within Nevada to the maximum practical extent. Land use amendments may be necessary to accommodate some facilities.

Construction of the eight units will continue over approximately 20 years beginning in early 1989, with the first operating unit ready for commercial operation in 1993. Thereafter, successive units are planned to be ready for operation at two-year intervals. Estimates of the average and peak construction labor force, as well as the

plant operating force, are currently being developed. The proposed project will be constructed in a sparsely populated area and most of the project work force would be assembled from beyond reasonable commuting distances. Alternative project planning includes providing living accommodations for workers at the site, or in nearby communities.

Construction of the power plant is expected to require approximately 2,500 acres, of which the majority would be used for the coal stockpile and waste disposal ponds. Public lands (presently managed by the Bureau of Land Management) will be required for the TSEP project in addition to private land holdings. The public lands needed to accommodate the power plant proposal would be acquired by SPR through a land exchange with the Bureau of Land Management. The Toano Draw area, which has a checkerboard public/private land ownership pattern has been identified by SPR as best suited for the proposed project. In exchange for approximately 11,600 acres of public land in Toano Draw, the Bureau of Land Management would acquire approximately 11,500 acres of private land in the Snake Mountain Range west of Wells, Nevada. Those lands are considered to be high resource value lands that would provide important range, wildlife, watershed and recreation managment opportunities for the Bureau of Land Management and the public.

Alternatives to the proposed action that are being considered for analysis include: (1) No action, (2) Intermediate plant capacity, (3) Power generating and pollution control technologists, (4) Scheduling of units, (5) Power plant sites, (6) Transmission line routes, (7) Location of worker accommodations, (8) Fuel supply and transport, (9) Water supply, and (10) Plant equipment.

The tentative project schedule is as follows:

Begin Public Comment Period—April 1987.
File Final Environmental Impact Statement—August 1987.
Record of Decision—June 1988.
Complete Licensing and Permitting—July 1989.
Begin Construction of Unit 1—Early 1990.
Begin Commercial Operation of Unit 1—Early 1993.

The Bureau of Land Management's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives and (3) Notifying interested groups, individuals and agencies to that additional information concerning these issues can be obtained.

The scoping process will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action, alternatives and significant issues being considered to be distributed to selected parties and available upon request.

DATES: Two public Scoping Meetings will be held as follows:

7:00 p.m., June 24, 1986, at the Wells High School Auditorium, 115 Lake Avenue, Wells, Nevada and
7:00 p.m., June 25, 1986, at the Elko Convention Center, 700 Festival Way, Elko, Nevada.

Formal briefings will be conducted on June 23, 1986 for State agencies and Congressional representatives. An open house will be held on June 23, 1986 from 6–8:30 p.m. to respond to questions regarding the proposed project at the Holiday Inn, 1000 E. Sixth Street, Reno, Nevada.

Additional briefing meetings will be considered upon request.

ADDRESS: Written comments will be accepted until July 11, 1986. Comments should be sent to the District Manager, Bureau of Land Management, ATTN: Thousand Springs Energy Park Project, P.O. Box 831, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Nancy Phelps, (702) 738–4071.

[redacted] P. Spang,
State Director, Nevada.

[FR Doc. 86–11379 Filed 5–20–86; 8:45 am]
BILLING CODE 4310–HC–M

[Alaska AA–48558–AC

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48558–AC has been received covering the following lands:

Copper River Meridian, Alaska

T. 7 S., R. 1 W.,
Sec. 23, S½SW¼
Sec. 24, N½NW¼.
(120 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48558–AC as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1985, subject to the terms and conditions cited above.

Dated: May 13, 1986.

Robert D. Merrill,
Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86–11452 Filed 5–20–86; 8:45 am]
BILLING CODE 4310–JA–M

[Alaska AA–48747–AC]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48747–AC has been received covering the following lands:

Cooper River Meridian, Alaska

T. 7 S., R. 2 E.,
Sec. 5, NW¼SW¼.
40 acres.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from August 1, 1985, the date of termination, have been paid.

Having met all the requirements of reinstatement of lease AA–48747–AC as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1985, subject to the terms and conditions cited above.

Dated: May 13, 1986.

Kay F. Kletka,
Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86–11451 Filed 5–20–86; 8:45 am]
BILLING CODE 4310–JA–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration & Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1927, Block 103, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 9, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 8 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1978 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 13, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–11454 Filed 5–20–86; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Koch Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 7328 and 6231, Blocks 408 and 407, respectively, High Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 12, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 8 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1978, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: May 13, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–11453 Filed 5–20–86; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-227]

Annual Reports on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers; Correction

AGENCY: U.S. International trade Commission.

ACTION: Correction of filing date.

SUMMARY: The written statements relating to reports to be prepared in the years 1987 through 1990 should be submitted no later than May 1 of the respective year.

Notice of the investigation was published in the Federal Register of May 14, 1986 (Vol. 51, page 17678).

Issued: May 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–11425 Filed 5–20–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–278, 279, and 280 (Final)]

Certain Cast-Iron Pipe Fittings From Brazil, Korea, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930(19 U.S.C. 1673(b)), that an industry in the United States is materially injured [3] by reason of imports from

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[3] Commissioner Brunsdale determines that an industry in the United States is threatened with material injury by reason of the subject imports. She also determines, pursuant to section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), that no material injury would have been found but for any suspension of liquidation of entries of the merchandise.

Brazil, Korea, and Taiwan of certain nonalloy, malleable cast-iron pipe fittings,[4] whether or not advanced in condition by operations or processes (such as threading) subsequent to the casting process, provided for in items 610.70 and 610.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective January 13, 1986, following preliminary determinations by the Department of Commerce that imports of certain malleable cast-iron pipe fittings from Brazil, Korea, and Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 6, 1986 (51 FR 4650). The hearing was held in Washington, DC, on April 14, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 12, 1986. The views of the Commission are contained in USITC Publication 1845 (May 1986), entitled "Certain Cast-Iron Pipe Fittings from Brazil, The Republic of Korea, and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-278 through 280 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: May 13, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 86-11422 Filed 5-20-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-326 (Preliminary)]

Frozen Concentrated Orange Juice From Brazil; Import Investigation

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-326 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of frozen concentrated orange juice, provided for in item 165.29 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 23, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subpart A through E (19 CFR Part 201).

EFFECTIVE DATES: May 9, 1986.

FOR FURTHER INFORMATION CONTACT: David Coombs (202-523-1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 9, 1986 by Florida Citrus Mutual, Lakeland, Florida.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as indentified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 2, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact David Coombs (202-523-1376) or Lynn Featherstone (202-523-0242) not later than May 29, 1986 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submission

Any person may submit to the Commission on or before June 5, 1986 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

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[4] Such fittings are those with standard pressure ratings of 150 pounds per square inch (psi) and heavy-duty pressure ratings of 300 psi. Groove-lock fittings are not included.

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Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules [19 CFR 207.12].

Issued: May 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 86-11424 Filed 5-20-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-225]

Certain Multi-Level Touch Control Lighting Switches; Commission Determination To Review and Vacate Initial Determination Designating the Investigation More Complicated

AGENCY: International Trade Commission.

ACTION: Determination to review and vacate as moot an initial determination (ID) designating the investigation more complicated

SUMMARY: Notice is hereby given that the Commission has determined to review and vacate the administrative law judge's (ALJ) ID designating the above-captioned investigation more complicated and extending the deadline for completion of the investigation by two months.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1638.

SUPPLEMENTARY INFORMATION: On March 31, 1986, respondent Darjung Industrial Co., Ltd. (Darjung) filed a motion (Motion 225-37) for an extension of time, or in the alternative for an order designating the investigation more complicated. On April 11, 1986, the ALJ issued Order No. 30 granting Darjung's motion for extension of time. On the same day the ALJ issued an ID, Order No. 31, designating the investigation more complicated (and incorporating by reference Order No. 30). Petitions for review of the ID were received from complainant Southwest Laboratories, Inc., and the Commission investigative attorney.

On May 7, 1986, the ALJ issued Order No. 32 reopening the record to include Darjung's answer to the complaint and other documents. However, Darjung did not file a pre-hearing statement or exhibits by the April 30, 1986, deadline. The ALJ stated that no further evidence would be accepted from Darjung and, therefore, Orders Nos. 30 and 31 were no longer necessary.

The Commission has determined to review the ID (Order No. 31) and to vacate it as moot in light of Order No. 32. In making this determination, the Commission neither affirms nor reverse Order No. 31 and therefore does not adopt any of the language or rationale of Order No. 31.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: May 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-11423 Filed 5-20-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-236]

Certain Portable Bag Sewing Machines and Parts Thereof; Commission Decision Extending the Time for Determining Whether To Review Initial Determination Granting Stipulated Motion for Partial Summary Judgment

AGENCY: International Trade Commission.

ACTION: Extension of time to decide whether to review initial determination granting complainant's stipulated motion for partial summary determination (Order No. 13).

SUMMARY: Notice is hereby given that the Commission has determined to extend the period of time in which it will decide whether to review the initial determination (ID) of the presiding administrative law judge (ALJ) granting the complainant's stipulated motion for partial summary determination. The extension of time will make the timeframe for determining whether to review Order No. 13 coextensive with another ID (Order No. 16) terminating the entire investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0281.

SUPPLEMENTARY INFORMATION: On March 18, 1986, respondents American-Newlong, Inc., and Newlong Machine Works, Ltd., filed a motion (Motion No. 236-11) for leave to file admissions in lieu of discovery on the issue of economic injury. On March 24, 1986, complainant Axis, Incorporated, filed a stipulated motion (Motion No. 236-12) for summary determination that there is injury to the domestic industry. The complainant filed a supplement to its motion on April 2, 1986. On April 10, 1986, the presiding ALJ determined that there are no genuine issues of material fact that preclude summary determination on the issue of injury to the domestic industry, and he issued an initial determination granting the complainant's stipulated motion for summary determination. No petitions for review of the ID or Government agency or public comments have been received. On May 2, 1986, the ALJ issued Order No. 16 granting a joint motion to terminate the investigation in its entirety on the basis of a settlement agreement.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 201.14(b) and 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 201.14(b), 210.53).

Copies of the presiding ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: May 12, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-11421 Filed 5-20-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-229]

Certain Nut Jewelry and Parts Thereof; Commission Decision to Review and Remand Initial Determination Terminating Investigation as to One Respondent on the Basis of a Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Review and remand of initial determination concerning termination of investigation as to one respondent on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand an initial determination (ID)

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(Order No. 42) granting a joint motion to terminate the investigation as to respondent RDCO, Inc. (RDCO) on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0261.

SUPPLEMENTARY INFORMATION: On September 16, 1985, Kukui Nuts of Hawaii, Inc. (KNH) filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair in the importation and sale of nut jewelry and parts thereof. On February 28, 1986, complainant KHN, respondent RDCO, and the Commission investigative attorney filed a joint motion to terminate the investigation as to respondent RDCO on the basis of a consent order. On April 22, 1986, the presiding administrative law judge (ALJ) issued an ID granting the motion and terminating this investigation as to respondent RDCO on the basis of the consent order. No petitions for review or comments from the public or Government agencies concerning the ID were received. Subsequently, however, the ALJ, by Orders Nos. 47–50, denied apparently identical motions with respect to other respondents in this investigation. In light of the denial of these other motions, the Commission determined to review the ID and to remand it for reconsideration by the ALJ. This remand does not constitute an instruction as to the outcome of such reconsideration.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20437, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 15, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–11419 Filed 5–20–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–229]

Certain Nut Jewelry and Parts Thereof; Commission Decision To Review and Remand Initial Determination Terminating Investigation as to One Respondent on the Basis of a Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Review and remand of initial determination concerning termination of investigation as to one respondent on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand an initial determination (ID) (Order No. 35) granting a joint motion to terminate the investigation as to respondent Blair, Ltd. (Blair) on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0261.

SUPPLEMENTARY INFORMATION: On September 16, 1985, Kukui Nuts of Hawaii, Inc. (KNH) filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of nut jewerly and parts thereof. On February 18, 1986, complainant KHN, respondent Blair, and the Commission investigative attorney filed a joint motion to terminate the investigation as to respondent Blair on the basis of a consent order. On April 11, 1986, the presiding administrative law judge (ALJ) issued an ID (Order No. 35) granting the motion and terminating this investigation as to respondent Blair on the basis of the consent order. No petitions for review or comments from the public or Government agencies concerning the ID were received. Subsequently, however, the ALJ, by Orders Nos. 47–50, denied apparently identical motions with respect to other respondents in this investigation. In light of the denial of these other motions, the Commission determined to review the ID and to remand it for reconsideration by the ALJ. This remand does not constitute an instruction as to the outcome of such reconsideration.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523 061. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 15, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–11420 Filed 5–20–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-248 (Final) and 731-TA-258-260 (Final)]

Offshore Platform Jackets and Piles From the Republic of Korea and Japan; Import Investigation

Determinations

On the basis of the record [1] developed in the subject investigation,[2] the Commission determines,[3] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that industries in the United States are materially injured by reason of imports from the Republic of Korea (Korea) of offshore platform jackets and piles,[4] provided for in item 652.97 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Korea.[5]

The Commission further determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that industries in the United States are materially injured by reason of such imports from Korea [6] and

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern did not participate in these investigations in order to avoid any possibility or appearance of conflict of interest.

[3] In investigation No. 701-TA-248 (Final) Vice Chairman Liebeler finds that industries in the United States are not materially injured or threatened with material injury, and that the establishment of industries in the United States is not materially retarded, by reason of imports of subsidized offshore platform jackets and piles from Korea.

[4] These products are steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix offshore drilling and/or production platforms to the ocean floor. Appurtenances include grouting systems, boat landings, preinstalled conductor piples and similar attachments.

[5] Investigation No. 701-TA-248 (Final).

[6] Investigation No. 731-TA-259 (Final).

Japan,[7] which have been found by the Department of Commerce to be sold in the United States at less than fair value.[8]

Background

The Commission instituted investigation No. 701-TA-248 (Final) effective July 19, 1985, following a preliminary determination by the Department of Commerce that imports of offshore platform jackets and piles from Korea were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). The Commission instituted investigations Nos. 731-TA-259 and 260 (Final) effective November 25, 1985, following preliminary determinations by the Department of Commerce that such imports from Korea and Japan were being sold at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of these investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of August 7, 1985 and December 12, 1985 (50 FR 31932, 50854). The hearing was held in Washington, DC, on April 2, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 14, 1986. The views of the Commission are contained in USITC Publication 1848 (May 1986), entitled "Offshore Platform Jackets and Piles from the Republic of Korea and Japan: Determination of the Commission in Investigation No. 701-TA-248 (Final) and Determinations of the Commission in Investigations Nos. 731-TA-259 and 260 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: May 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-11428 Filed 5-20-86; 8:45 am]

BILLING CODE 7020-02-M

[7] Investigation No. 731-TA-260 (Final).

[8] In investigations Nos. 731-TA-259 and 260 (Final) Vice Chairman Liebeler finds that an industry in the United States is materially injured by reason of dumped imports of jackets from Korea and Japan, but that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of dumped imports of piles from Korea and Japan.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-18 (Sub 82X)]

The Chesapeake & Ohio Railway Co. Abandonment Exemption in Berrien County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by The Chesapeake and Ohio Railway Company of 2.46 miles of railroad in Berrien County, MI, subject to standard employee protective conditions.

DATES: This exemption will be effective on June 20, 1986. Petitions to stay must be filed by June 5, 1986, and petitions for reconsideration must be filed by June 16, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-18 (Sub-No. 82X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357. (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: May 13, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley commented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86-11381 Filed 5-20-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30826]

Port of Tillamook Bay Railroad; Trackage Rights Granted by Southern Pacific Transportation Company

Southern Pacific Transportation Company (SP) has agreed to grant local trackage rights to Port of Tillamook Bay Railroad over SP's line between Tillamook, OR (milepost 856.08) and Hillsboro, OR (milepost 765.50). The trackage rights are effective May 5, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 19, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-11621 Filed 5-20-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85-48]

Mary B. Jones, M.D., Nicholas, GA; Hearing

Notice is hereby given that on September 4, 1985, the Drug Enforcement Administration, Department of Justice, issued to Mary B. Jones, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke her DEA Certificate of Registration, AJ2362008, and deny her pending application for renewal of that registration, executed on December 1, 1984, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that the hearing in this matter is being rescheduled and will commence at 10:00 a.m. on Wednesday, June 11, 1986, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place NW., Washington, DC.

Dated: May 14, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-11398 Filed 5-20-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Supplement to California State Plan; Request for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for comment: California State Standard.

SUMMARY: This notice invites comment on the California standard for Ethylene Oxide (EtO). This standard was submitted on May 23, 1985 in response to a Federal program change under 29 CFR 1953.21. California's standard for EtO is substantively different from the Federal Occupational Safety and Health Administration (OSHA) standard found at 29 CFR 1910.1047. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" as the Federal standard. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment on whether the California standard meets the above requirements.

DATES: Written comments should be submitted by June 20, 1986.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3476, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations (29 CFR 1953.23(a)(1)) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**. A 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that State standards must be at least as effective as their Federal counterparts, and that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 1, 1973, notice was published in the **Federal Register** (38 FR 10717) of the approval of the California State plan and the adoption of Subpart K to Part 1952 containing the decision. The California State plan provides for the adoption of State standards in the following manner.

The Cal/OSHA Standards Board, comprised of 7 members representing management, labor, occupational safety, occupational health, and the general public, reviews new Federal standards, as well as proposed State-initiated standards presented by the California Division of Occupational Safety and Health, and those suggested by interested parties. The Standards Board appoints advisory committees with special expertise to develop a draft standard. Hearings are held to obtain input from the public. After a standard is adopted by the Standards Board, it is reviewed by the Office of Administrative Law and signed by the Secretary of State. The standard generally becomes effective 30 days after signing.

The Federal Ethylene Oxide standard was promulgated on June 22, 1984 (49 FR 25796). After public input, the California Standards Board adopted a standard for EtO on November 29, 1984. The standard became effective on January 18, 1985. By letter dated May 23, 1985, with attachments, from Dorothy Fowler, Assistant Program Manager, to Russell B. Swanson, Regional Administrator, the State submitted the standard (General Industry Safety Orders Section 5220) and incorporated the revision as part of its occupational safety and health plan.

B. Issues for Determination

The California standard in question is now review by the Assistant Secretary to determine whether it meets the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

(1) *"At least as effective" requirement.* OSHA has preliminarily determined that the California standard for EtO, although different, appears to be "at least as effective" as the comparable OSHA standard (29 CFR 1910.1047). Both the Federal and State standards set a permissible exposure limit of an 8-hour time-weighted average of 1 part per million. Both standards also set an action level, above which certain requirements for labeling and monitoring are in effect, of an 8-hour time-weighted average of .5 parts per million. The State standard, which applies to all industries, is broader in scope than the Federal standard, which does not apply to agriculture. However, it appears that there is minimal exposure to EtO in agricultural operations. The California standard also includes requirements not in the Federal standard concerning the reporting of the use of EtO and emergencies involving EtO. These reporting requirements are mandated by the State's Occupational Carcinogens Control Act of 1976. Finally, the State has made some editorial changes in the standard and has deleted parts of the Appendices to the Federal standard, which do not affect the requirements of the standard. Public comment on the effectiveness requirment is solicited for OSHA's consideration in its final decision on whether or not to approve the State's standards.

(2) *Product clause requirement.* OSHA is also seeking through this notice public comment on whether the California standard described above:

(a) Is applicable to products which are distributed or used in interstate commerce;

(b) Is required by compelling local conditions; and

(c) Unduly burdens interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be postmarked on or before June 25, 1986, and submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of

Labor, Room N3478, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments and requests submitted concerning the supplement and will thereafter publish notice of the decision approving or disapproving it.

D. Location of Supplement for Inspection and Copying

A copy of the California standard on EtO, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, 11349 Federal Building, 450 Golden Gate Avenue, P.O. Box 36017, San Francisco, California 94102; California Occupational Safety and Health Administration, Room 701, 525 Golden Gate Avenue, San Francisco, California 94102; and Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3476, 200 Constitution Avenue NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736).

Signed this 14th day of May, 1986, in Washington, DC.

Patrick R. Tyson,

Assistant Secretary of Labor.

[FR Doc. 86-11294 Filed 5-20-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, public meetings of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., on Monday and Tuesday, June 2 & 3, 1986, in Conference Room N-3437D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purpose of the meetings is to present, discuss and invite public comments on items on the Agenda as summarized below:

June 2, 1986 (Presentation, Public Comments)

1. Termination Task Force Report (Pension Plan Terminations with Asset Reversions)
2. Hay-Huggins Report (Pension Plan Terminations with Asset Reversions)
3. Public Comments

June 3, 1986 (Deliberations)

Termination Task Force Report (Pension Plan Terminations with Asset Reversions)

Individuals or representatives of organizations wishing to address the Advisory Council should submit requests on or before May 27, 1986 to William E. Morrow, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC. 20210, telephone (202) 523-8753. Oral presentations will be limited to ten minutes, however, written statements pertaining to items on the Agenda or any other aspects of ERISA may be submitted for the record.

Individuals or representatives of organizations not wishing to make an oral presentation but desiring to submit written statements pertaining to items on the Agenda or any other aspect of ERISA, should send 20 copies to William E. Morrow at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27, 1986.

Signed at Washington, DC, this 15th day of May, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86-11369 Filed 5-20-86; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

I. Background

Pursuant to Pub. L. (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on May 7, 1986 (51 FR 16919) through May 12, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Docket Room, 1717 H Street, N.W., Washington, DC.

By June 20, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing

Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)* petitioner's name and telephone number; date petition was mailed; plant name; and pulication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upn a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: March 5, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2 by modifying the schedule in Table 4.4.6.1.3–1 for the withdrawal of reactor vessel material specimens from the reactor vessel for fracture toughness surveillance. In addition, a requirement would be added to TS Section 4.4.6.1.3 to determine the cumulative effective full power years at least once every 18 months to support the reactor vessel material surveillance schedule.

The purpose of the material surveillance program required by 10 CFR 50, Appendix H is to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light-water nuclear power reactors resulting from exposure of these materials to neutron irradiation and the thermal environment. Under this program, fracture toughness test data is obtained from material specimens exposed in surveillance capsules, which are withdrawn periodically from the reactor vessel. This data is to be used as described in 10 CFR 50, Appendix G, Sections IV and V.

At the time Brunswick Units 1 and 2 were constructed, only three surveillance capsules were required by the regulations and the transition temperature shift was estimated to be less than 100 °F. Current radiation damage trend curves and vessel fluence projections indicate a greater than 100

°F transition temperature shift by the expiration of the operating license; therefore, an effort has been made to maximize information obtainable from the three capsules by revising the current specimen withdrawal schedule.

Currently, TS Table 4.4.6.1.3–1 for both Unit 1 and Unit 2 requires removal of one capsule at the end of 10 years and another at the end of 20 years. The third capsule is kept in reserve. The proposed modification to this table for Unit 1 would require removal of Capsule No. 3 at the end of 8 effective full power years (EFPY) and Capsule No. 2 at the end of 13 EFPY. For Unit 2, removal of Capsule No. 3 would be after 10 EFPY and Capsule No. 2 after 15 EFPY. For both Units, Capsule No. 1 would be kept in reserve.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (CP&L) has reviewed the proposed change to TS Table 4.4.6.1.3–1 and has determined that the requested amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes to TS Table 4.4.6.1.3–1 incorporates the latest NRC guidelines relative to irradiation surveillance testing. These changes are being requested to make the license conform to changes in regulations. These changes do not affect previously analyzed events or any parameters associated with plant operation. Therefore, it is concluded that the changes proposed in this request will not increase the probability of occurrence of any accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes to TS Table 4.4.6.1.3–1 do not adversely affect the operability of safety-related equipment. It is concluded that the probability or consequences of equipment important to safety malfunctioning will not be increased. Therefore, the proposed changes do not create the possibility of a new or different kind of accident than already evaluated.

(3) Does not involve a significant reduction in a margin a safety because predictions of neutron radiation effects on pressure vessel steel were considered in the design of Brunswick's nuclear power reactors. This proposed surveillance capsule withdrawal schedule permits more accurate monitoring of long-term effects. Testing of the surveillance capsules will permit verification of the adequacy and conservatism of Brunswick's reactor vessel pressure/temperature operational limits. The proposed surveillance capsule withdrawal schedule does not affect plant operation. It is intended to verify initial predictions of the surveillance material response to the actual radiation environment. Therefore, there is no significant reduction in a margin of safety as a result of this revision.

For the reasons stated above, CP&L has determined that the proposed amendment to TS Table 4.4.6.1.3–1 does not involve a significant hazards consideration.

The staff has reviewed the CP&L determination and finds that the proposed change to Table 4.4.6.1.3–1 meets the standards for determining whether a significant hazards condition exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided examples (48 FR 14870, April 6, 1983) of actions not likely to involve a significant hazards consideration. Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications would not likely constitute a significant hazard. The staff has reviewed the proposed change to TS Section 4.4.6.1.3 which adds the requirement to determine EFPY at least every 18 months, and has concluded that it falls within the envelope of Example (ii) since it adds a new surveillance requirement.

Based on the above discussion, the staff therefore proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: March 5, 1986, as supplemented by submittal dated March 28, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2. Changes are proposed to TS Section 3/4.3.5.5 to reflect modifications made to the chlorine detection system that provide for control room alarm and isolation in the event of high chlorine concentration either at the control room air intake or at the chlorine tank car siding. In addition, changes to the action statements regarding inoperable chlorine detectors have been revised to more adequately reflect the chlorine detection system design.

The system description and surveillance requirements of TS Sections 3/4.3.5.5 are expanded to reflect the current chlorine detection system which has two independent subsystems, each containing two redundant detectors. These detectors for the subsystems are located at the control room air intake and at the chlorine tank car siding. The frequency and type of surveillance would not be changed by the proposed amendment. The action statement for inoperable equipment in the chlorine detection system is, however, changed to reflect the increased system capability. The current action statement of TS Section 3.3.5.5a requires an inoperable chlorine detection system to be restored to OPERABLE status within eight hours or the plant shutdown if operability cannot be achieved. This action statement reflects a system design using only two chlorine detectors, both in the control room air intake. The proposed action statement would allow one chlorine detector of either or both subsystems to be inoperable for seven days, or both detectors of either subsystem to be inoperable for one hour before the control room must be isolated and operated in the recirculation mode.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (CP&L) has reviewed this request and determined that: The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated nor does it create the possibility of a new or different kind of accident than previously evaluated

because the modifications made to the chlorine detection system do not result in changes to the assumptions or results of any accident analyses previously performed. In fact, the safety evaluation in the Brunswick FSAR assumes failure of both chlorine detectors located near the tank car siding. The configuration of the chlorine detection system is consistent with descriptions provided in the Brunswick Control Room Habitability Study. The NRC issued a Safety Evaluation Report finding this design acceptable on October 16, 1983.

The revision to Action Statement 3.3.5.5.a, allowing operation for up to seven days with one chlorine detector of either or both subsystems inoperable, does not involve a significant increase in the probability or consequences of an accident previously evaluated nor does it create the possibility of a new or different kind of accident than previously evaluated because chlorine detection system redundancy will ensure control room isolation in the event of a chlorine leak. The chlorine detection system is designed so that failure of a single detector in either subsystem does not render that subsystem inoperable. The chlorine detection system redundancy is ensured by the proposed revision to Specification 3/4.3.5.5 through the requirement for four operable chlorine detectors, two per subsystem. This is more restrictive than the current specification which requires only two operable chlorine detectors and, thereby, offsets the seven day out-of-service allowance for a signal chlorine detector of either or both subsystems. Action Statement 3.3.5.5.b has been added to ensure that the control room is isolated within one hour should both detectors of a subsystem become inoperable. This is more conservative than the current Brunswick technical specification which allows operation for up to eight hours with an inoperable chlorine detection system prior to initiating shutdown of the plant. Requiring isolation of the control room rather than plant shutdown provides protection for the operators without placing the plant in an unnecessary operating transient.

The proposed amendment does not involve a significant reduction in a margin of safety because the modifications made to the plant provide for better chlorine detection capabilities. The clarification of the system design in the revised TS will help to avoid possible operator confusion. Operation with the control room isolated rather than shutting down the plant when the chlorine detection system is inoperable provides adequate operator protection in the unlikely event of a chlorine leak without placing the plant in an unnecessary operating transient. Allowing for operation for seven days with one detector in either or both chlorine detection system subsystems inoperable does not decrease the margin of safety because the system redundancy ensures control room isolation if required.

Based on the above reasoning, CP&L has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the CP&L determination and finds that the amendment request meets the standards for determining whether a significant hazards condition exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin safety.

Based on the above discussion the Commission proposed to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: March 17, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2. Changes are proposed to TS Sections 4.4.3.1.b and 4.4.3.2.a to delete from the surveillance requirements reactor coolant system leakage detection instrument tag numbers that are not part of the equipment required for monitoring reactor coolant system leakage.

The requested TS changes delete Tag Numbers G16–FY–K600 and G16–FY–K602 from the instrumentation tag numbers associated with (1) the primary containment sump flow integrating system referenced in TS 4.4.3.1.b and (2) the drywell and equipment drain sump flow system referenced in TS 4.4.3.2.a. Tag Number G16–FY–K600 and G16–FY–K602 specify square root converters that only provide an input to a flow recorder. These square root converters do not provide an input to the sump monitoring systems encompassed by the TS referred to above. The flow recorder is not used to satisfy the TS requirements for containment sump flow monitoring (i.e., reactor coolant system leakage detection), therefore, the flow recorder is not listed in the TS. Since the square root converters are not associated with indicators or recorders required by the TS, the licensee proposes to delete from the TS the tag numbers associated with these components.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (CP&L) has reviewed the request and determined that the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the deletion of the tag numbers for the square root converters does not affect the operability of containment sump monitoring equipment required by the TS. These square root converters only provide an input to recorders which are not required by the TS.

2. Create the possibility of a new or different kind of accident than previously evaluated because the proposed changes will not modify or alter an existing plant system. The proposed changes simply delete references to tag numbers for components that are not associated with recorders or indicators required by the TS.

3. Involve a significant reduction in the margin of safety because the proposed changes do not affect the operability or setpoints of existing equipment required by the TS nor the capability to monitor containment sump flow for detection of excess reactor coolant system leakage.

Based on the above reasoning, CP&L has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the CP&L determination and finds that the amendment request meets the standards for determining whether a significant hazards condition exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license for a

facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above discussion, the staff therefore proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power and Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 6, 1985.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H. B. Robinson Steam Electric Plant Unit No. 2. The proposed revision involves:

1. Editorial corrections to clarify ambiguities and provide consistency throughout the TS as follows:

(a) To provide consistency throughout the TS, specific references to TS Subsections 6.9.1.d.4 and 6.9.1.d.6 should be generalized to reference the overall section addressing the Semiannual Radioactive Effluent Release Report, TS 6.9.1.d. This change is required in a number of places within Table 3.5–6, Table 3.5–7, and TS Section 3.17.2.

(b) On page 3.5–24, item 1.b.b of Table 3.5–7 requires clarification of the requirements to analyze grab samples taken from the plant stack. The phrase "analyzed for radionoble gases once per 24 hours" has been changed to "within 24 hours." This change clarifies the intended meaning of the statement and standardizes the terminology to make it consistent with similar action statements within the TS.

(c) On page 3.5–25, item I.c.b. of Table 3.5–7 requires a minor change to improve the wording to read "as required by Table 4.10–2" instead of the original phrase "as provided by Table 4.10–2." Aside from being more accurate, the revised statement has a slightly stronger connotation. Any perceived altered meaning conveyed by the revised wording would be more restrictive than the existing text.

(d) Deletion of a reference to automatic control features to prevent exceeding allowable concentrations in the waste gas decay tank from the TS Basis to Section 3.16.4 and deletion of references to automatic diversion to recombiners. These changes are required to reflect actual plant conditions and make no changes to any limiting conditions.

2. Additional changes as follows:

(e) Correction of an error found for the allowed value of the limit or radioactive inventory in the waste gas decay tanks from less than or equal to 6.0E5 to less than or equal to 1.24E4 curies noble gas.

(f) Deletion of isolation features on the RMS–20 Radionoble Gas Monitor from item 5.a of Table 3.5–7 of the TS. The feature was intended to shut down the ventilation system in the lower level of the fuel building due to a high rod signal, however, the building is not airtight and therefore provides an unmonitored escape path.

Basis for proposed no significant hazards consideration determination: Editorial Changes (a), (b), (c) and (d). The licensee has reviewed the proposed editorial changes in accordance with 10 CFR 50.92 Significant Hazards Criteria and determined that they do not constitute a significant hazards consideration. These editorial changes improve the wording of the text and correct an error but do not provide any relief from the requirements of the TS or change the intended operation or administrative requirements of the plant. These changes have no effect on any plant safety parameters, accident mitigation capabilities, or procedures, nor do they adversely affect any components or systems which contribute to the safety of the plant or the ability to properly handle potential offsite releases.

The Commission has provided guidance to the NRC staff for such determinations by providing examples of amendments that are not likely to involve a significant hazards consideration. The proposed changes discussed above are proposed by the staff to be encompassed by example (i); purely administrative changes to the technical specifications. Since the proposed changes, (a), (b), (c) and (d) are similar to the examples which have been determined not likely to involve a significant hazards consideration, the staff proposes to determine that the application for amendments does not involve a significant hazards consideration.

Additional Changes

(e) Waste Gas Decay—Tank—Radioactive Inventory Limit Change. Technical Specification Section 3.16.5 "Waste Gas Decay Tank (Radioactive Materials)" establishes the administrative limits for the allowable radioactive inventory in the Waste Decay Tanks. A CP&L review has identified an error in the allowed value. CP&L has subsequently recomputed that allowable limit in accordance with the guidance provided by the Branch Technical Position ETSB 11–5 in NUREG–0800. The revised limits are provided by this proposed change.

The Commission has reviewed this proposed change in accordance with 10 CFR 50.92 criteria and determined that it does not constitute a significant hazards consideration for the following reasons:

1. Operation of the plant in accordance with the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because the only previously evaluated accident dependent upon the inventory or Radioactive Materials in the Waste Gas Decay Tanks is a failure of the integrity of the tank or system which would release the full contents of the tank to the lower level of the Fuel Handling Building. The tank inventory limit is established to ensure that the off-site consequences of precisely such an event do not exceed allowable limits. The proposed reduction in allowable inventory has been evaluated in accordance with the conservative methodology presented in ETSB 11–5 in NUREG–0800 and demonstrated to comply with the established worst-case off-site dose criteria of 0.5 Rem.

2. Operation of the plant in accordance with the proposed change would not create the possibility of a new or different kind of accident from any accident previously analyzed because the only credible accidents dependent upon the radioactive inventory of the Waste Gas Decay Tank would involve releases of this inventory to the environment as previously discussed. No new accident scenarios have been identified.

3. Operation of the plant in accordance with the proposed change would not involve a significant reduction in the margin of safety because the safety impact of the curie content in the tank is limited to the previously discussed accident. As discussed, the reduction of the limit as provided herein can only serve to increase any conceivable margin of safety.

(f) Lower Level Fuel Handling Building (FHB) Ventilation Isolation Change. As a result of an NRC inspection follow-up item, CP&L evaluated the usefulness of the isolation feature on the RMS–20 Radionoble Gas Monitor. That feature was intended to shutdown the ventilation system in the lower level of the FHB when a high radiation signal was received from RMS–20 which sampled the effluent from that ventilation system. It was originally intended that such isolation of the ventilation system would terminate any release of gaseous or airborne radioactivity which may be generated within that portion of the building. However, since the building is not airtight, it is not possible to terminate a release by containment within the building. The activity would eventually be released through unmonitored, unfiltered leakage from the building with the ventilation shut down.

CP&L concurred with the inspection recommendation that continued, monitored release via the ventilation system with the potentially mitigating benefits of the system filters, would be preferable to a slightly delayed but unmonitored, untreated release via fugitive emissions from the building when the ventilation system is isolated. Therefore, the change requested deletes the reference to this isolation feature as stated in item 5.a of Table 3.5–7.

The Commission has reviewed this change request in accordance with 10 CFR 50.92 criteria and determined that it does not constitute a significant hazards consideration for the following reasons:

1. Operation of the plant in accordance with the change will not significantly increase the possibility or consequences of a previously evaluated accident because previously analyzed accidents affected by this change involve postulated failures of the Waste Gas System containment vessels which are located in the area serviced by the subject ventilation system. The methodology for evaluation of the off-site consequences of a tank or component failure does not take credit for any containment, dispersion, or hold-up time attributable to isolation of the Fuel Handling Building ventilation. As such, the condition of the ventilation system during the postulated releases is irrelevant to the calculation which demonstrates the acceptability of the off-site consequences of that release. The actual off-site consequences, however, would be affected by the continuous operation of the ventilation system. The less favorable dispersion coefficient associated with the shorter duration release would increase the off-site dose to a value several times greater than would result in the previous condition with the ventilation system isolated. However, the worst case scenario calculations demonstrate that the associated dose would be below the allowable limit of 0.5R as established by Branch Technical Position ESTB 11–5, "Postulated Radioactive Releases Due to a Waste Gas System Leak or Failure." Therefore, the increased dose is not considered to be significant and is justified in order to provide release monitoring capability as specified by General Design Criteria 64 of 10 CFR 50, Appendix A.

2. Operation of the plant in accordance with the change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the service area for the ventilation system is limited to the lower levels of the FHB and the building layout does not provide any major interconnection between the upper and lower levels which could provide significant crossflow between those areas. Therefore, the potential safety impact of this ventilation system is limited to the monitoring, filtering, and potential containment (or delay in the release) of the activity contained within the lower level of the Fuel Handling Building. Since the currently evaluated accidents already consider the consequences of a worst case release of activity contained within the lower level of the FHB assuming no credit for the existence of the building, there is no conceivable new accident which has not been analyzed or shown to be bounded by existing analysis.

3. Operation of the plant in accordance with the proposed change would not involve a significant reduction in a margin of safety because any conceivable identified margins of safety would be involved with the previously evaluated off-site release accidents. Since no credit is taken for containment or other mitigating capabilities provided by the building or its ventilation, any margins of safety inherent in or computed for these accidents would not be significantly affected by this change.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: April 25, 1986.

Description of amendment request: The proposed license amendment adds a new Section 3.24 on "Reactor Coolant System (RCS) Leakage Detection Systems" and revises the existing Table 4.2–1, "Minimum Frequencies for Testing Calibration and/or Checking Instrument Channels," to include appropriate surveillance requirements for the leakage detection systems. This change complements the existing technical specifications on RCS leakage limits and is normally included in standard technical specifications.

Basis for proposed no significant hazards consideration determination: As part of NUREG–0828, Sections 4.16.1 and 4.16.2, the staff evaluated existing leakage detection systems for the Haddam Neck Plant. The conclusions stated that the Haddam Neck Plant should have at least one reliable method of leakage detection with the proper sensitivity and that it be seismically qualified, or that procedures exist that specify actions to be taken if a seismic event occurred.

Connecticut Yankee Atomic Power Company views this proposed change as a plant improvement in that the leakage detection systems for which limiting conditions of operations, action statements and surveillance requirements are being imposed have always been used to verify the RCS leakage limits in Technical Specification 3.14. The proposed change does not impact the way the equipment is operated nor any setpoints or alarms. Neither has it, in the case of the volume control tank level monitoring system, created the need to develop a procedure to do inventory balances.

The Commission has provided examples (48 FR 14870, April 6, 1983) of actions not likely to involve a significant hazards consideration. Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, for example, a more stringent surveillance requirement would not likely constitute a significant hazard. The staff has reviewed the proposed license amendment and concluded that it falls within the envelope of example (ii) since the proposed amendment adds additional operability and surveillance

requirements to the plant technical specifications concerning leakage detection systems.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: April 21, 1986.

Description of amendment request: The amendment would amend operating license NPF–16 to delete license condition 2.C.19 which required the licensee to submit and obtain approval of a new analysis that addresses the potential of large gap releases for extended burnup fuel before storing the extended burnup fuel in the modified spent fuel pool. The extended burnup fuel was defined as having a burnup greater than 38,000 MWD/MTU. The license condition was introduced as a result of the NRC review and approval to increase the storage capacity of the spent fuel pool from 675 to 1076 fuel assemblies, as discussed in the NRC October 16, 1984 letter to the licensee which forwarded Amendment No. 7.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in CFR 50.92 by providing certain examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the Federal Register on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazards considerations, (iv), relates to a relief granted upon demonstration of acceptable operation from an operation restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met. As described above, the license condition was introduced because the license did not demonstrate that extended burnup fuel could be placed in the modified spent fuel pool. The accident of concern in this matter was the fuel handling accident. The licensee, in his application to delete the license condition, provided a safety analysis addressing this issue. The licensee's safety analysis concludes that the existing St. Lucie Unit 2 Final Safety Analysis Report gas gap activities conservatively bound the gas gap activities for fuel assembly burnups out to 60,000 MWD/MTU. We have made a preliminary evaluation of the licensee's safety analysis, and it appears that extended burnup fuel can be placed in the modified spent fuel pool, and that the restriction in the license condition can be deleted. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: Ashok C. Thadani.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: April 15, 1986.

Description of amendments request: The proposed amendments would modify the design section of the Technical Specifications to allow the use of burnable poisons that are not in the form of discrete rod clusters but are integal to the fuel rods. Westinghouse Electric Corporation, Water Reactor Divison, issued Topical WCAP–10444–P–A, "Reference Core Report VANTAGE 5 Fuel Assembly" and received NRC approval in SER dated July 1985. In addition, Westinghouse issued Addendum 1 to WCAP–10444–P–A and received NRC approval on March 12, 1986. One feature of the VANTAGE 5 fuel assembly is the feature known as the Integral Fuel Burnable Absorber (IFBA). This type of burnable poison is not in the form of a discrete cluster rods but a boron coating applied to the fuel pellet. Turkey Point Nuclear Units 3 and 4 have demonstrated, through test assemblies, that the IFBA design performs as predicted. Approval of this request will allow the Turkey Point Nuclear Units 3 and 4 to utilize the IFBA feature in future reloads.

Basis for proposed no significant hazards consideration determination: The proposed change to the Turkey Point TS is:

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Reactor Core, Item 3, will be modified to indicate that burnable poisons can be integral to the fuel design as well as in the form of rod clusters which are located in vacant rod cluster control guide tubes.

The Commission has provided standards for determining whether a significant hazard consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences or an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in margin of safety.

(1) The proposed change will not significantly increase the probability or consequences of an accident previously evaluated since the use of IFBA will have no adverse effect on:

(a) Fuel assembly performance;

(b) Fuel rod mechanical design; and

(c) Thermal-hydraulic core design.

In addition, the proposed amendments require no change to the operational limits and the existing accident analysis remains valid.

(2) The proposed amendments will not create the possibility of a new or different kind of accident not previously evaluated, since this change does not modify the configuration or operation of the plant. Neither the licensee nor the staff could identify a new or different kind of accident.

(3) The proposed amendments will not involve a significant reduction in the margin of safety. As shown in the Westinghouse Topical Report, this design is bounded by the same margin of safety as previous designs and no change in operational limits or the previous accident analysis is required.

Therefore, the staff proposed to determine that the proposed amendments do not involve a significant hazards.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis,

Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: January 6, 1986, supplementing the submittals of September 13, 1985 and December 14 and 20, 1983.

Description of amendment request: This submittal supplement the submittals dated September 13, 1985 and December 14 and 20, 1983, which were noticed in the Federal Register on November 6, 1985 (50 FR 46213) and February 27, 1984 (49 FR 7161). This supplemental request for Technical Specification change relates to the proposed closure times for the scram discharge volume (SDV) vent and drain valves. The purpose of this change is to revise the proposed closure time requirements for these Unit 1 valves. Since the time of the previous submittals, further evaluation of the closure time has shown that different closure time is justified.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions involving no significant hazards considerations relates to a change which constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Since the current Technical Specifications do not have requirements for SDV valve closure times, this requested revision to previously proposed closure times still constitutes an additional limitation not presently in the Technical Specifications and fits this example (ii). The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: January 7, 1986, supplementing the submittal of August 20, 1985.

Description of amendment request: This submittal supplements the submittal dated August 20, 1985, which was noticed in the Federal Register on September 25, 1985 (50 FR 38915). This supplemental request for Technical Specification change relates to the proposed requirements concerning closure of containment purge and vent valves on high radiation signals. The supplemental request would modify a containment isolation valve table to show that the purge and vent valves are closed by a high radiation signal as well as by a Group 2 isolation signal.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions involving no significant hazards considerations relates to a change which constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Since the current Technical Specifications do not have requirements for closure of purge and vent valves upon a high radiation isolation signal, this requested revision still constitutes an additional limitation not presently in the Technical Specifications and fits example (ii) above. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 24, 1986.

Description of amendment request: The proposed amendment would make a temporary change to the Oyster Creek Security Plan to describe a special situation at the site protected area boundary. This change is being requested to facilitate construction of the Expanded Safety System Facility (ESSF) at the Oyster Creek site.

Basis for proposed no significant hazards consideration determination: The licensee is proposing a temporary change of the site protected area boundary. This change would not decrease the capability of the security system to provide for adequate protection of the Oyster Creek site because extensive compensatory measures have been proposed to compensate for any potential reduction of security experienced in implementing the temporary change. This temporary change would be in effect only during construction working hours for the ESSF at the site. Any additional description of the change beyond that stated above involves Safeguards Information which is being withheld from public disclosure pursuant to 10 CFR 73.21.

This amendment involves no change to a safety limit, a limiting condition for operation (LCO), or a surveillance requirement or equipment to operate the station.

Based on the above the staff has concluded that operation of the Oyster Creek plant, in accordance with the proposed amendment.

(1) *Does not involve a significant increase in the probability or consequences of a previously evaluated accident because:* The proposed amendment would provide measures to compensate for the change to the site protected area boundary. The proposed amendment also does not change a safety limit, an LCO or a surveillance requirement or equipment to operate the station.

(2) *Does not create the possibility of a new or different kind of accident from any accident previously analyzed because:* The proposed amendment would maintain a protected area barrier around the station. The proposed amendment also does not change a safety limit, an LCO or a surveillance requirement or equipment to operate the station.

(3) *Does not involve a significant reduction in a margin of safety because:* The proposed amendment would be temporary, apply only during construction working hours and provide measures to compensate for the change to the site protected area boundary. The proposed amendment also does not change a safety limit, an LCO or a surveillance requirement on equipment to operate the station.

Therefore, because the licensee's request meets the above three criteria in

10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: April 14, 1986 [TSCR 143].

Description of amendment request: Requests approval of a change to the Appendix A Technical Specifications (TS) pertaining to the surveillance of the instrument line flow check valves. This change is to TS 4.5.0 in Section 4.5, Containment, of the TS for excess flow check valves (EFCV) in instrument lines penetrating containment. The licensee is proposing to revise the TS conditions for which there must be an open position verification of the EFCV when an instrument line is returned to service. The licensee is proposing to revise these conditions in the following manner: (1) delete venting an instrument or instrument line and isolating an instrument and (2) add venting an isolated instrument or instrument line and installation of a new instrument or instrument line.

Basis for proposed no significant hazards consideration determination: The licensee has proposed Technical Specification Change Request (TSCR) No. 143 to revise the specific conditions in the surveillance requirements of the instrument line EFCV in TS 4.5.0 for which open position verification must be done when an instrument line is returned to service. The basis in the TS for these surveillance requirements is to assure the isolation capability for excess flow and the operability of the instrument sensor when required. The conditions for verification of the open position of the EFCV in a line after the instrument line is returned to service are to assure the operability and, therefore, the isolation capability of the EFCV. The conditions listed in the TS were conditions which could produce a pressure or flow disturbance in an instrument line. When the line was returned to service following the condition, the open position verification of the EFCV assured the isolation capability of the EFCV.

Instrumentation line piping which connects to the reactor coolant system (RCS) and penetrates the primary containment is dead-ended at instruments located in the Reactor Building. These lines are provided with EFCV and manual isolation valves which are operable from the Reactor Building. The EFCV prevents excess flow through an instrument line which would result if there were a broken line outside containment. Without the EFCV, this break would be a loss-of-coolant from the RCS and isolation of the leak could only be done by closing the manual isolation valve.

A pressure or flow disturbance in the instrument line could make the EFCV inoperable and block the line. This would prevent the instrument from communicating with the RCS and performing its intended function. The open position verification of the EFCV, each time an instrument is returned to service after any condition that could have produced a pressure or flow disturbance in that line, assures the operability of the EFCV, of the instrument line and of the instrument line sensor at the end of the line.

The procedures employed in isolating an instrument for testing or calibration should not produce flow disturbances. The instrument is isolated by closing the isolation valves and returned to service still filled with process fluid before the isolation valves are cracked open. Venting an isolated instrument or instrument line should not create a significant flow disturbance as the valves are slightly cracked open to vent air and then closed. Surveillance has proven and design requires that approximately 2 gpm flow is needed to close an EFCV. Isolating and subsequently unisolating an instrument or instrument line and venting an isolated instrument or instrument line should not cause sufficient flow to close the EFCV.

The surveillance requirements for EFCV open position verification should not be required each time an instrument or instrument line is isolated. This TSCR would reduce surveillance time, improve plant availability and reduce radiation exposure to personnel. Venting an unisolated instrument or instrument line may create a flow disturbance. Putting a new instrument or instrument line in service may also create a flow disturbance since, initially, the inlet line will not be filled with process fluid. Therefore, the excess flow check valve will require open position verification for these conditions.

The once per cycle requirement for an isolation test (EFCV functional test) is also performed. This test includes an open position verification test. This will ensure correct valve positioning and valve operability.

This TSCR Will not affect the safety of the plant because no system design, configuration or hardware changes will be made. This TSCR will not increase the potential for radioactive discharge to the atmosphere, since closing of the EFCV in case of high flow (approximately 2 gpm) will prevent significant discharge of fluid from the RCS.

The proposed change remains compatible with, and in some respects more restrictive than, the BWR Standard Technical Specifications (STS), NUREG 0123, Revision 3. The STS require that each instrumentation line EFCV be demonstrated operable one per 18 months.

It has been determined, based on the above, that this change request involves no significant hazards considerations in that operation of the Oyster Creek plant in accordance with the proposed amendment:

1. *Does not involve a significant increase in the probability or consequences of an accident previously evaluated because:*

Surveillance experience and practice indicates that (1) isolating an instrument or instrument line or (2) venting an isolated instrument or instrument line does not achieve sufficient flow to close an EFCV.

2. *Does not create the possibility of a new or different kind of accident from any accident previously evaluated because:*

This request involves no system design, configuration or hardware change.

3. *Does not involve a significant reduction in a margin of safety because:*

The remaining surveillance requirements and the additional conditions proposed are adequate to ensure EFCV operability and correct positioning.

Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: John A. Zwolinski.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416 Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 28, 1986.

Description of amendment request: The proposed amendment would make two changes in the facility Technical Specifications: (1) Change the maximum closing time of a containment isolation valve to reflect the results of ASME Code Section XI testing and delete the associated footnote; and, (2) add the location of an automatic sprinkler system to be installed in the auxiliary building.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has made an analysis of significant hazards considerations using the standards of 10 CFR 50.92 and has concluded that the proposed amendment does not involve a significant hazards consideration. The NRC staff has made a preliminary review of licensee's analysis and associated bases. Staff's discussion of the proposed amendment as it relates to the three standards follows.

Change (1) in the proposed amendment would change the maximum closing time in Technical Specification Table 3.6.4–1, "Containment and Drywell Isolation Valves" for containment isolation valve E12–F394 from 35 seconds to 43 seconds. This valve is the inboard containment isolation valve in the line from the residual heat removal (RHR) system to the reactor head spray. The footnote to this specification, which would be deleted by change (1), indicates that the present value is an initial value and the final value is to be determined during ASME Section XI testing. The proposed value is based on test data and an allowable ASME Section XI margin to assure operability of the valve as designed (Technical Specification Bases 3/4.6.4). Valve E12–F394 is closed during reactor power operation and would only be open during a cool down of the reactor when reactor pressure is less than RHR operating pressure. The change in specified closing time of this valve does not involve a significant increase in the probability or consequences of an accident previously evaluated because this valve is closed during power operation, the initial condition assumed in previously evaluated accidents. The change in specified closing time does not create the possibility of a new or different kind of accident from any accident previously evaluated because the ASME Section XI test criteria assure the valve will close as designed. The change does not involve a significant reduction in a margin of safety because closing time of this valve is not a consideration in the analysis of previously evaluated accidents.

Change (2), the addition of a sprinkler system in the auxiliary building (Technical Specification 3.7.6.2), results from a design change to install a wet pipe automatic sprinkler system in Fire Zone 1A424 that will be used to store combustibles during refueling operations and in Fire Zones 1A417 and 1A428 which are adjacent to Fire Zone 1A424. Both Fire Zones 1A417 and 1A428 contain Division I and Division II safe shut down components. Fire Zone 1A424 contains safety-related cables. Fire protection features presently available in these zones consist of smoke detectors, portable fire extinguishers and fire hoses. The sprinkler system is proposed to be added to fulfill a commitment made to the NRC in a July 16, 1982 letter. The NRC staff has previously evaluated fire hazards in Fire Zone 1A424 as a part of its review of fire protection prior to licensing Grand Gulf Nuclear Station (GGNS) Unit 1. In Supplement No. 3 to the GGNS Safety Evaluation Report (NUREG–0831), dated July 1982, the staff concluded that automatic sprinkler protection must be provided in Fire Zone 1A424 before refueling operations begin. Based on its preliminary review of the licensee's February 28, 1986, submittal, the staff concluded that change (2) would not involve a significant increase in the probability or consequences of an accident previously evaluated nor would the change create the possibility of a new or different kind of accident from any accident previously evaluated because the addition of automatic sprinklers in this area was previously considered and required by the staff and the design of the system meets applicable pipe code and seismic requirements. The proposed change does not involve a significant reduction in a margin of safety because the fire protection of safety-related cable and equipment provided by the addition of a sprinkler system offsets the fire hazard of combustible materials stored in the area during refueling.

Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416 Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 14, 1986.

Brief description of amendment: The amendment would make five changes in the Technical Specifications: (1) Change Figure 5.1.1–1 "Exclusion Area and Gaseous Effluent Release Points" to show the area for Unit 1 rather than the area for Unit 1 and Unit 2; (2) change the reference for shutdown reactivity calculational uncertainties and bases in Technical Specification 5.6.1.a from Final Safety Analysis Report (FSAR) Section 4.3 to FSAR Section 9.1; (3) change the Technical Specification Bases 3/4.3.2 "Isolation Actuation Instrumentation" to reflect a diesel generator start time that is consistent with the associated Technical Specification; (4) change a Halon panel number in Technical Specification Table 3.3.7.9–1 "Fire Detection Instrumentation" from 1H13–P930 to SH13–P930; and (5) add "control room to shutdown panel transfer switch" to Technical Specification Table 3.3.7.4–1 "Remote Shutdown System Controls."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its April 14, 1986 request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore involves no significant hazards consideration.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely and not likely, to involve a significant hazards consideration. These were published in the Federal Register on April 6, 1983 (48 FR 14870). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration (i) involves an administrative change to correct an error or achieve consistency throughout the Technical Specifications. Changes (1), (2), (3) and (4) are similar to this example. Change (1) would change the drawing of the exclusion area to be consistent with the label on the drawing which states that the exclusion area radius is 698 meters from the centerline of the Unit 1 reactor. The present drawing shows an exclusion area of which the northern part is formed by a semicircle with a radius of 698 meters from the centerline of the Unit 2 reactor, the southern part is formed by a semicircle with a radius of 698 meters from the centerline of Unit 1 reactor and the center part is the rectangular area between the two semicircles. The presently shown exclusion area would be applicable if both Units 1 and 2 were operating but it is incorrect with only Unit 1 operating. Change (2) would reference FSAR Section 9.1 for calculational uncertainties and biases for shutdown reactivity calculations for the spent fuel stored in the spent fuel pool. The present reference, FSAR Section 4.3, is incorrect because it describes shutdown reactivity for fuel when it is loaded into the reactor core and does not describe the spent fuel when it is stored in the storage racks. FSAR Section 9.1 describes these uncertainties for the spent fuel storage racks. Change (3) would change the Bases for Technical Specification 3.3.2 "Isolation Actuation Instrumentation" to be consistent with the associated Technical Specification which is based on a diesel generator start time of 10 seconds. When the Technical Specification was previously changed to reflect a start time of 10 seconds, the change to the Bases was inadvertently omitted. Change (4) would correct a number designating a Halon panel which is part of the fire detection instrumentation. A drawing review indicated the correct number is SH13–P930. The new designation indicates that this panel is shared for Units 1 and 2. However, the function of the cabinet would not change.

Another one of the examples involves no significant hazards consideration (v) relates to a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. Change (5) is similar to this example. License Condition 2.C.(22) requires that electrical isolation switches be installed between the control room and the Division 1 remote shutdown panel prior to startup following the first refueling outage. The installation of the "control room to shutdown panel transfer switch", which consists of 36 lockout relays and a master switch, is proposed by the licensee to fulfill this license condition. The proposed change (5) to the Technical Specifications is needed when the switch is installed and made operable, at which time relief from the operating restriction would be granted.

Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

Project Director: Walter R. Butler.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: March 31, 1986.

Description of amendment request: The proposed amendment would incorporate the new requirements related to an alternate shutdown system (ASDS) to be installed during the 1986 refueling outage to comply with the requirements of Appendix R to 10 CFR Part 50 in addition to other changes in the protection program. Specifically, these changes are:

1. Add Sections 3.13.H/4.13.H, the Limiting Conditions of Operation (LOC) and the Surveillance specifying Requirements for the operability of ASDS.

2. Include in Sections 3.13.C, 3.13.D, and Table 3.13.1, the fire protection features of the Reactor Building addition which houses safety related equipment. These include hose stations, yard hydrant, hose houses and fire detection instrumentation.

3. In Section 3.13.E, and Feedwater Pump Hatch Sprinkler Curtain to the list of sprinkler systems required to be operable.

4. Modify Section 3.13.G to allow penetration fire barrier inoperability when the equipment protected is not required to be operable by TS.

5. In Section 6.1 change the number of members of the shift organization required from four to three for safe shutdown of the reactor from outside the control room.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(C). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration.

In Item (1) above, the licensee states that the requested change is in response to NRC Generic Letter 81–12 and in complying with the requirements of Appendix R to 10 CFR Part 50. These proposed changes ensure that the installation of the ASDS panel will not affect the normal operation of the plant from the control room, and that in the unlikely even of fire in the control or cable spreading room, and alternate means of bringing the plant to safe shutdown exists from the ASDS panel. The licensee's analysis in accordance with 10 CFR 50.91 and 10 CFR 50.92 is as follows:

1. *The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The Alternate Shutdown System (ASDS) is designed and installed in response to the potential accident of a fire in the control room or cable spreading room as required under Appendix R to 10 CFR Part 50. It has no impact on the probability or consequences of other accidents evaluated for the Monticello Nuclear Generating Plant as isolation and electrical separation of the ASDS panel from the control room, except when in use in the event of a fire in the control room or cable spreading room, is

ensured by the panel design. The ASDS design was reviewed and approved by the NRC staff in a letter from D.B. Vassallo (NRC) to D.M. Musolf dated September 11, 1985. This isolation and electrical separation prevents the panel from causing any increase in the probability of an accident and causes no increase in the consequences of accidents previously evaluated as the control room is still capable of mitigating the accident as it would have prior to installation of the ASDS panel.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.* The ASDS provides an alternate yet similar means of control for achieving safe shutdown in the event of a fire in the control room or cable spreading room as could be accomplished utilizing system controls from the control room. The isolation and electrical separation prevents the ASDS from interfering with operation from the control room. The panel design is safety grade (Class 1–E) in maintaining the same high standards as the control room and represents no unknown technology. For the above reasons it is concluded that this amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.* The proposed amendment does not involve any reduction in the safety of those accidents previously analyzed.

The isolation and electrical separation of the ASDS panel from the control room [ensures that] the plant has the same capabilities to mitigate and/or prevent accidents as it had prior to the installation of the ASDS panel. This proposed amendment represents an increase in the margin of safety in the plants ability to now respond to a fire in the control room or cable spreading room.

For the reasons stated above, we have concluded that this portion of this license amendment does not involve a significant hazards consideration. The installation of the ASDS and this associated license amendment is intended to bring Monticello Nuclear Generating Plant into compliance with current NRC regulation.

In Item (2) above, the licensee requested to update those areas required to have hose station, yard hydrant hose house and fire detection instrumentation coverage because they contained safety-related equipment as a result of the Reactor Building addition. The licensee's no significant hazards consideration analysis is as follows:

1. *The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The Reactor Building addition fire protection features have been designed and installed consistent with similar fire protection features in other areas of the plant and in accordance with the applicable requirements of Appendix R to 10 CFR Part 50. These features and their inclusion in the technical specifications have no impact on the probability or consequences of accidents evaluated for the Monticello Nuclear Generating Plant.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.* The Reactor Building addition fire protection features have been designed and installed consistent with similar fire protection features in other areas of the plant and in accordance with the applicable requirements of Appendix R to 10 CFR Part 50. These features and their inclusion in the technical specifications do not create the possibility of a new or different kind of accident from any previously considered for the Monticello Nuclear Generating Plant.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.* The proposed amendment does not involve any reduction in the safety of those accidents previously analyzed.

The fire protection features in the Reactor Building addition provide the same level [of] protection as is provided for other equipment in the plant. This represents no impact in the margin of safety.

For the reasons stated above, we have concluded that this portion of this license amendment does not involve a significant hazards consideration. The installation of these fire protection features in accordance with the Monticello Fire Protection Program provides a level of safety equal to the remainder of the plant.

In Item (3), the licensee has added Feedwater Pump Hatch Sprinkler Curtain to the list of those sprinkler systems required to be operable following completion of the review of Monticello to the requirements of Appendix R to 10 CFR Part 50. In accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following no significant hazards analysis.

1. *The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The Feedwater Pump Hatch Sprinkler Curtain has been designed and installed consistent with similar fire protection features in other areas of the plant and in accordance with the applicable requirements of Appendix R to 10 CFR Part 50. These features and their inclusion in the technical specifications have no impact on the probability or consequence of accidents evaluated for the Monticello Nuclear Generating Plant.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.* The Feedwater Pump Hatch Sprinkler Curtain has been designed and installed consistent with similar fire protection features in other areas of the plant and in accordance with the applicable requirements of Appendix R to 10 CFR Part 50. The impact of operation (normal and inadvertent) of this system on equipment in the area has been considered. This system and its inclusion in the technical specifications does not create the possibility of a new or different kind of accident from any previously considered for the Monticello Nuclear Generating Plant.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.* The proposed amendment does not affect the ability of the plant or its equipment to perform as intended and therefore does not involve any reduction in the safety of those accidents previously analyzed.

The proposed change as stated in Item (4) reflects the need for operability requirements for penetration fire barriers in fire area boundaries based on whether the equipment contained in that fire area is required to be operable by the applicable system technical specifications for a given plant condition. This would allow, during refueling and maintenance outages, the ability to perform modifications to the plant without having to provide costly fire watches to protect equipment which is not required to be operable by the system technical specifications. The change also requests to allow a continuous fire watch on at least one side of the barrier or verify the operability of fire detectors on at least one side of the non-functional fire barrier and establish an hourly fire watch patrol. This would reduce the cost of continuous fire watch and recognize the inherent protection provided by the detection system already in the area.

The licensee's no significant hazards consideration analysis is as follows:

1. *The proposed amendment will not involve a significant increase in the*

probability or consequences of an accident previously evaluated. The allowing of penetration fire barrier(s) to be inoperable when equipment protected by that fire barrier(s) is not required by technical specifications does not impact the probability or consequences of an accident previously considered for the Monticello Nuclear Generating Plant as that equipments operability has been previously evaluated as part of the bases for the system technical specifications. The allowing of a continuous fire watch on one side of an inoperable barrier or an operable detection system on one side of an inoperable fire barrier and an hourly fire patrol provides equivalent levels of protection and therefore does not impact the probability or consequences of an accident previously evaluated for the Monticello Nuclear Generating Plant.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.* The allowing of penetration fire barrier(s) to be inoperable when equipment protected by that fire barrier(s) is not required by technical specifications does not create the possibility of a new or different kind of accident from any previously considered for the Monticello Nuclear Generating Plant as the ability to cope with certain equipment inoperable has been previously evaluated as part of the bases for the system technical specifications.

The allowing of a continuous fire watch on one side of an inoperable barrier or an operable detection system on one side of an inoperable fire barrier and an hourly fire patrol provides equivalent levels of protection and therefore does not create the possibility of a new or different kind of accident previously considered for the Monticello Nuclear Plant.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.* The proposed amendment does not involve any reduction in the safety of those accidents previously analyzed.

The systems protected by the penetration fire barriers will be protected when those systems are required to be operable and capable of performing their intended functions. This represents no impact in the margin of safety as when called on the systems will perform their intended functions.

The hourly fire patrols in conjunction with an operable detection system provides equivalent protection to a continuous fire watch. This represents no impact in the margin of safety.

For the reasons stated above, we have concluded that this license amendment does not involve a significant hazards consideration. The allowing of penetration fire barriers to be inoperable will not place accident analyses which form the basis for the technical specifications.

Item 5 reflects a reduction in the number of members of the shift organization required for safe shutdown of the reactor from outside the control room. The licensee states that this change recognizes the improved capability to perform safe shutdown of the reactor from outside the control room as a result of the installation of the ASDA in accordance with Appendix R to 10 CFR Part 50.

The licensee's no significant hazards analysis in accordance with 10 CFR 50.91 and 50.92 is as follows:

1. *The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The reduction from four to three members of the shift organization required for safe shutdown of the reactor from outside the control room does not impact the probability or consequences of an accident previously considered for the Monticello Nuclear Generating Plant. The alternate shutdown system panel has been designed to provide a single panel outside the control room from which control of the plant could be maintained. The installation of this panel significantly reduces the manpower requirements necessary to perform manual actions while providing an improved mechanism for achieving safe shutdown.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.* The reduction from four to three members of the shift organization required for safe shutdown of the reactor from outside the control room does not create the possibility of a new or different kind of accident from any previously considered plant for the Monticello Nuclear Generating Plant. The three members of the shift organization in performing the safe shutdown from the alternate shutdown system will be utilizing a system which more closely mimics their normal mode of operation from the control room than those introduced by having four members accomplishing shutdown by predominantly manual actions.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.* The proposed amendment does not involve any reduction in the safety of those accidents previously analyzed. The basic means of achieving safe shutdown has remained the same and a central location has been provided to allow performance of those actions required by three members of the shift organization in lieu of four.

For the reasons stated above, we have concluded that this license amendment does not involve a significant hazards consideration.

The reduction of the required shift organization for safe shutdown of the reactor from outside the control room from four to three does not compromise the ability of the plant to achieve safe shutdown because of the installation of the alternative shutdown system.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington DC 20036.

NRC Project Director: John A. Zwolinski.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendments request: February 21, 1986.

Description of amendments request: The proposed amendments would change the expiration date for the Unit 1 Operating License, DPR-2 from June 25, 2008, to August 9, 2013, and change the expiration date for the Unit 2 Operating License, DPR-60, from June 25, 2008, to October 23, 2014.

Basis for proposed no significant hazards consideration determination: The currently licensed term for Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 is 40 years commencing with issuance of the Provisional Construction Permits (June 25, 1968 for both units). Accounting for the time required for plant construction, this represents an effective operating license term of 34 years and 11 months for Unit 1 and 33 years and eight months for Unit 2. The licensee's application requests a 40-year operating license term for both Prairie Island Units.

The licensee's request for extension of the operating licenses is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated to maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices which have been implemented in accordance with the ASME code and the facility Technical Specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of 40 years of opertion at full power and a comprehensive vessel material surveillance program is maintained in accordance with 10 CFR Part 50 Appendix H. Analyses showing compliance with the NRC pressurized thermal shock screening criteria have demonstrated that expected cumulative neutron fluences will not be a limiting consideration. In addition to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analysis have been performed for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant.

The environmental impact associated with a 40 year operating period was considered in the licensing of the Prairie Island facility. Modifications to the plant and its surroundings during the last 15 years resulted in improving the reliability of plant safety and reducing the environmental impact of plant operations.

Based upon the above, it is concluded that extension of the operating licenses for the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no changes in the Technical Specifications or safety analyses, we conclude that the proposed amendment would not: (i) involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

Based upon the above, the Commission proposes to determine that the proposed amendments, which provide for a 40-year operating life for the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2, involves no significant hazards considerations.

Local Public Document Room location: Environmental Conservation Library Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 22036.

NRC Project Director: George E. Lear.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 28, 1986 as supplemented April 9, 1986.

Description of amendment request: The proposed amendment is in response to NRC's July 2, 1984 Generic Letter 84–15 entitled "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability." The changes, which are discussed in detail below, are intended to reduce the number of unnecessary disel generator cold fast starts, thus making them more reliable.

The amendment would change Technical Specification 2.4, Limiting Condition for Operation of the Containment Cooling System, part (2), Modification of Minimum Requirements. The existing Technical Specification allows, during power operation, the minimum requirements to be modified to allow a total of two of the components listed in a. and b. to be inoperable at any one time (in addition to one raw water pump) provided that the emergency diesel generator connected to the other engineered safeguards 4.16 KV bus (1a4 or 1A3) is started to demonstrate operability. The proposed Technical Specification removes the requirement that the emergency diesel be started.

The amendment would also change Technical Specification 3.1, "Instrumentation and Control," which applies to the checks, calibration, and testing of the reactor protective system (RPS), engineered safety features (ESF), and miscellaneous plant instrumentation and controls. Item 11 of Table 3–2 of the Specification addresses test requirements for the diesel generators. The test requirements are varied and they are performed on a monthly or refueling frequency, depending upon the nature of the specific test. These requirements will be spelled out in far greater detail in modified Specification 3.7. Therefore, the Item 11 of Table 3–2 will be modified to remove the specific test requirements and reference Technical Specification 3.7.

The amendment would modify Technical Specification 3.7(1) to allow for the diesel start (10 seconds) from ambient conditions to be performed at least once per 184 days. The other engine starts in this specification will be allowed to be preceded by an engine prelube period and/or other warm-up procedures recommended by the manufacturer so that mechanical stress and wear on the engine is minimized.

Finally, the amendment would delete Technical Specification 3.7.(1))(3). TS 3.7(1)(e) reads as follows: "Diesel Generator electric loads shall not be increased beyond the continuous rating of 2500 KW." The licensee considers this a design consideration, as addressed in the Fort Calhoun Station Safety Analysis Report, and that it should not be a surveillance requirement.

Basis for proposed no significant hazards consideration determination: The licensee has made a significant hazards consideration determination pursuant to 10 CFR 50.92. The licensee has stated that the proposed changes will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment previously evaluated because the changes are intended to reduce degradation of the emergency diesel generators caused by cold fast starts. In fact, the licensee believes that the probability of malfunction of equipment can be considered to have been lessened. The licensee states that the changes will not create the possibility of a new or different kind of accident from any previously evaluated because the proposed changes do not change the normal operating mode of any existing system, but only alter the testing mode. Finally, the licensee states that the proposed change will not involve a significant reduction in a margin of safety because the changes are intended to provide a less severe method of testing the diesel generators, thus decreasing the likelihood of degradation and wear. In fact, the licensee believes that the proposed changes could be viewed as increasing a margin of safety.

The staff has performed a preliminary review of the licensee's no significant hazards consideration analysis, and it

appears in our view that a no significant hazards consideration is involved. The proposed change to delete the starting of the emergency diesel of one train when the other safeguards train has certain equipment out of service appears to be consistent with the Generic Letter, and no significant hazards considerations appear to be involved. In addition, it appears that the requirements contained in Item 11 of Table 3-2 are now mainly covered under TS 3.7. Finally modifying the specification contained in Section 3.7 appears to be consistent with the recommendations of the Generic Letter, and no significant hazards considerations appear to be involved. Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve hazards considerations.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 25, 1986.

Description of amendment request: The amendment would authorize proposed changes to the Fort Calhoun Station, Unit No. 1 Technical Specifications for the reactor coolant system pressure-temperature limits to support the operation of the unit beyond 8.5 Effective Full Power Years (EFPY) to 15 EFPY. The current technical specifications permit operation to 8.5 FEPY. The proposed changes would change Figures 2-1A, RCS Press-Temp Limits Heatup, Reactor Not Critical; Figure 2-1B, RCS Press-Temp Limits Cooldown, Reactor Not Critical; and Figure 2-3, Predicted Radiation Induced NDTT Shift.

Basis for proposed no significant hazards consideration determination: The licensee has presented its discussion of significant hazards considerations pursuant to 10 CFR 50.92. The discussion is based upon recently obtained reactor vessel beltline weld chemical composition data for the Fort Calhoun Station and its impact on the pressurized thermal shock issue. In the past, the absence of specific weld chemical composition data required assumption of upper bound values for beltline weld copper and nickel content. The chemical composition of all Fort Calhoun reactor vessel beltline welds has recently been documented through searches to Combustion Engineering (CE) welding records and through analysis of physical weld samples removed from identical welds traced to the reactor vessel head. With specific weld chemical composition data, it is no longer necessary to assume the upper bound copper and nickel values for these welds. The effect of this additional information results in an analysis that ensures that fracture thoughness is maintained throughout all conditions of normal operation, including anticipated operational transients and system hydrostatic tests. This is reflected in the proposed 15 EFPY heatup and cooldown limit curves and Figure 2-3 for predicting the fluence induced temperature shift for the limiting reactor vessel beltline material.

Based on this, the licensee has stated that these proposed changes to the technical specifications do not involve a significant hazards consideration as defined in 10 CFR 50.92 because operation in accordance with these changes would not:

(1) Involve a significant increase in the probability or occurrences or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report because the change maintains conservative restrictions on pressure-temperature limits for the reactor vessel based on recently obtained beltline weld chemical composition data and the azimuthal flux distribution.

(2) Create the possibility of a new or different kind of accident than any previoulsy evaluated because this application only revises the heatup and cooldown curves that are bounded by the existing Safety Analysis Report.

(3) Involve a significant reduction in a margin of safety. The methodology of 10 CFR 50.61 has been used to determine the value of the RT_{NDT} shift. The use of the 10 CFR 50.61 methodology, and plant specific weld chemical composition data, enhances the accuracy of the RT_{NDT} shift calculation. This methodology provides the necessary margin of safety to assure that the limit will not be exceeded.

The staff has conducted a preliminary review of the licensee's submittal, including the supporting documentation, and agrees with the licensee that the use of recently obtained vessel beltline weld chemical composition data results in an analysis that meets the criteria of 10 CFR 50.92 in that it does not: (i) Involve any significant increases in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

Based on this the Commission proposes to determine that the proposed amendment, which provides for operating Fort Calhoun Station, Unit No. 1 for up to 15 EFPY, involves no significant hazards considerations.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Pennsylvania Power & Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2 Luzerne County, Pennsylvania

Date of amendment request: December 26, 1985.

Description of amendment request: The licensee in their December 26, 1985, submittal requested several Technical Specification changes for Units 1 and/or 2 which are administrative in nature. The Technical Specification changes are described below:

(1) Corrections to Table 3.6.3-1 (Units 1 and 2) (a) Containment Instrument Gas *Unit 1:* Page 3/4 6-25 of the Unit 1 Technical Specifications (TS) currently lists valve number 1-26-070 as an isolation valve in the Containment Instrument Gas System. The proposed change deletes this valve from the Table, and adds valve number 1-26-164.

The original design for the isolation valves on this one inch penetration was to have check valve 1-26-070 inside containment and a globe valve (SV-12071) outside containment. However, the check valve inside containment is subject to severe environmental conditions such as suppression pool dynamic loads. Therefore, check valve 1-26-164 was added outside containment between the penetration and the globe valve.

Since the arrangement did not explicitly meet the requirements of General Design Criteria (GDC) 56 of 10 CFR 50, Appendix A the licensee requested an exemption. The staff previously review this design and found it acceptable without requiring an exemption.

The licensee states that although valve 1-26-164 is not presently listed in the Unit 1 Technical Specification, that

the valve has been subject to all surveillance testing as if it had already been correctly incorporated into Table 3.6.3–1.

Unit 2: Page ¾ 6–25 of the Unit 2 Technical Specification lists both the 2–26–164 valve and the 2–26–070 valves as Containment Gas System isolation valves. Both valves included in the TS because approval of the aforementioned exemption for both units had not been received. As a conservatism the licensee included both valves in Table 3.6.3–1. For the same reasons discussed above for Unit 1, the licensee is proposing to delete valve 2–26–070 from the table.

(b) High Pressure Coolant Injection (HPCI) *Unit 1:* Page ¾ 6–26 lists HV–155F012 as a Minimum Recirculation Flow (penetration X–211) isolation valve. The licensee proposes to add valve HV–155F046 to this category.

The licensee states that this valve was inadvertently omitted from the Technical Specifications. This valve represents the outer isolation boundary on the X–211 penetration as documented in FSAR Table 6.2–22. Since this isolation arrangement represents a deviation from GDC 56 of 10 CFR 50 Appendix A the licensee requested specific approval. The staff approved the licensee specific design via the Safety Evaluation Report (NUREG–0776) and determined that a specific exemption was not necessary. The licensee states that the HV–155F046 valve is included in the surveillance program and has been properly leak tested.

Unit 2: Page ¾ 6–25: the licensee is requesting the same change as Unit 1 ((b) above) for Unit 2. All of the above justification for Unit 1 applies to Unit 2. The valve which will be added to the Unit 2 listing is HV–255F046.

(c) Reactor Core Isolation Cooling (RCIC) *Unit 1:* Page ¾ 6–26 lists HV149F019 as a RCIC minimum recirculation flow (penetration X–216) isolation valve. The licensee proposed to add HV–149F021 to this category.

The F021 valve was inadvertently omitted from the Technical Specifications. It represents the outer isolation boundary on the X–216 penetration as documented in FSAR Table 6.2–22. This isolation arrangement represented a deviation from GDC 56 of 10 CFR 50 Appendix A. The staff has previously approved this design in the staff's SER (NUREG–0776) and determined that a specific exemption was not necessary. The HV–149F021 valve is included in the surveillance program and has been property leak tested.

Unit 2: Page ¾ 6–25: the licensee is requesting the same change as Unit 1 ((c) above) for Unit 2. All of the above justification for Unit 1 applies to Unit 2. The valve which will be added to the Unit 2 listing is HV–249F021.

(d) Integrated Leak Rate Testing (ILRT) *Unit 1:* Page ¾ 6–24 contains a typographical error. Valve 1–57–195 should read 1–57–194. This valve is properly identified in FSAR Table 6.2–22 (Penetration X–61A), and has been properly identified in all controlling procedures/documents.

(2) Addition to Plant Operation Review Committee (PORC) Membership *Unit 1 and 2:* The licensee proposes that the Assistant Superintendent-Outages be added to the PORC Composition listing in Section 6.5.1.2.

The Assistant Superintendent-Outages meets the qualifications requirements of Plant Manager under ANSI/ANS–3. 1–1978, Paragraph 4.2.1 (Reference FSAR Subsection 13.1.3.1).

This expansion of PORC membership is intended to increase the experience/expertise base of the PORC. The addition of the Assistant Superintendent of Plant-Outages to the PORC membership list will vest in that position legal responsibilities to advise/recommend to the Superintendent on matters related to nuclear safety commensurate with those responsibilities inherent in managing nuclear power plant outage activities.

The qualification/education/training requirements for the Assistant Superintendent-Outages are the same as those for the "operating" Assistant Superintendent, thus making the Assistant Superintendent-Outages qualified for management of operating nuclear power plant activities.

(3) Deletion of Offsite Organization Position *Unit 1 and 2:* The deletion of the position "Vice President-Engineering and Constructional-Nuclear" and the subsequent realignment as indicated in the proposed change to Figure 6.2.1–1 reflects PP&L's shift from construction to operation of the Susquehanna plant.

The personnel requirements of ANSI/ANS 3.1–1978 do not apply to this change, since the scope of these guidelines does not rise above the functional level of "Manager."

(4) Generic Letter No. 85–19 *Units 1 and 2:* The licensee has requested changes for both Units 1 and 2 based on the recommendations of Generic Letter 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes". The licensee has added the appropriate information in accordance with Generic Letter 85–19.

(5) Snubbers *Unit 1:* Two changes are proposed by the licensee to specification 3/4.7.4: (1) Deletion of references to Table 3.7.4–1. Removal of the snubber table was approved by NRC via Amendment 36 to the Unit 1 Operating License. The references to it were inadvertently left in the text of Specification 3/4.7.4. (2) Correction of sampling expression. The correct expression is 35 (1+C/2). This typographical error was made in Amendment 36 to the Unit 1 operating license.

Basis for no significant hazards considerations determination: The licensee has stated that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. (1a) Containment Instrument Gas: The subject penetrations (Units 1 and 2) are required to meet NRC approved provisions for containment isolation. The analysis of how Susquehanna complies with these provisions is provided in the FSAR. The proposed changes, as described above, are consistent with the presently accepted analysis as contained in the staff's SER. (1b) HPCI: The Minimum Recirculation Flow penetrations have a configuration that represents a deviation from 10 CFR 50 Appendix A, GDC 56. The subject outer isolation valves were approved in the staff's original SER as a result of the licensee's exemption request. Therefore, addition of these valves to the respective Unit 1 and Unit 2 tables is consistent with prior analysis. (1c) RCIC: The Minimum Recirculation Flow penetrations have a configuration that represents a deviation from 10 CFR 50 Appendix A, GDC 56. The subject outer isolation valves were approved in the staff's original SER as a result of the licensee's exemption request. Therefore, addition of these valves to the respective Unit 1 and Unit 2 tables is consistent with prior analysis. (1b) ILRT: This change corrects a typographical error and is, therefore, administrative in nature.

2. Addition to PORC Membership: Changes in PORC membership are reviewed based on administrative requirements. They have no relationship to the accident analyses.

3. Deletion of Offsite Organization Position: Changes in organizational structure are reviewed based on administrative requirements. They have no relationship to the accident analyses.

4. Generic Letter No. 85–19: These changes are changes to reporting requirements, based on the changes to 10 CFR 50.72 and 73. This part of the change has no relationship to the accident analyses. With respect to the deletion of the shutdown requirement when specific activity limits are exceeded for 80 hours in a 12 month

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period, 10 CFR 50.72 as presently written will result in mitigating action much sooner should cladding failures occur. Therefore, implementation of the regulation changes, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

5. Snubbers: As described above, the changes to this specification involve an editorial change and the correction of a typographical error. These changes are therefore administrative.

The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated as all the above changes do not affect the licensee's presently acceptable accident analyses.

The proposed changes do not involve a significant reduction in a margin of safety for the reasons below:

Changes 1 a, b, and c were shown to be corrections which describe the basis for the as-built safety margin provide by the SSES Containment Isolation design. Therefore, these ensure the actual safety margin is maintained.

Changes 1d, 2, 3, and 5 are due to typos, editorial changes or changes in the organization; none of these types of administrative changes form the basis for the margin of safety inherent in the design of SSES.

Change 4 reflects changes in Federal Regulations which ensure certain reporting requirements are met and subsequent actions taken independent of TS. Since the control is simply moving from one document to another, both of which represent legal requirements, there is no loss in any safety margin.

The NRC staff agrees with the licensee's evaluation in these regards and proposes to find the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project director: Elinor G. Adensam.

Pennsylvania Power & Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: April 4, 1986.

Description of amendment request: The licensee in their April 4, 1986, submittal requested changes to the Susquehanna Unit 2 Technical Specifications. The proposed changes are intended to support plant modifications which will improve the containment isolation function and the testability of the Feed-water system. The proposed changes effect Table 3.6.1-1, "Primary Containment Isolation Valves". The proposed change to this table replaces the two valves listed as the Reactor Water Clean-up (RWCU) Return Manual isolation valves with two new valves. The valves being replaced (HV-244F042 and HV-244F104) are not being removed from the plant, but they will no longer serve as containment isolation valves. These valves are a significant contributor to leakage during local penetration testing due to their other function, throttling valve for the RWCU system operation. The new valves (HV-24182A&B) will assume the containment isolation function, and the existing FWCU valves will continue to serve as throttling valves for the RWCU system. Additionally, Table 3.6.4.2-1 "Motor-Operated Valves Thermal Overload Protection" has been modified to reflect the addition of the two new motor operated valves (HV-24182A&B). These new valves are equipped with thermal overload protection devices and as a result should be incorporated into Table 3.6.4.2-1 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The licensee finds that:

I. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

FSAR Section 5.4.6.2 states that the RWCU System is classified as a primary Power Generation System and is not an Engineered Safety Feature. The FSAR describes the function of the HV-244F042 and HV-244F104 system return valves as long term leakage control. Instantaneous reverse flow isolation is provided by the G33-2F039A&B check valves, further downstream in the RWCU piping. This modification will reassign the long term leakage control function from valves HV-244F042 and HV-244F104 to th new valves HV-24182A&B. The location of the new valves will be downstream from the G33-2F029A&B check valves and will not alter their present function of instantaneous reverse flow isolation. The motor-operated HV-24182A&B isolation valves will function as positive-closing containment isolation valves for the RWCU branch connections to Feedwater penetrations X-9A and X-9B and will not increase the probability of an accident or malfunction of equipment related to safety.

II. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons:

FSAR Section 5.4.6.2 describes the safety-related portions of the RWCU System. This modification will improve RWCU capability to serve these safety-related functions by reducing containment valve leakage via new containment isolation valves HV-24182A&B. FSAR Section 6.2.4.3.2.1 identifies the safety-related function of the Feedwater containment isolation valves. This modification will not alter the present function of the Feedwater valves nor create a possibility for an accident or malfunction of a different type than already evaluated in the FSAR.

III. The proposed changes do not involve a significant reduction in a margin of safety for the following reason:

As noted above, the containment isolation for the affected feedwater penetration will be improved by the addition of the new valves, because they will not be used for throttling purposes and, therefore, should be more leak tight. The margin of safety defined by the containment isolation function is, therefore, improved.

The NRC staff agrees with the licensee's evaluation in these regards and proposes to find the proposed changes to not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Project Director: Elinor G. Adensam.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 14, 1986.

Description of amendment request: The proposed change in the Technical Specifications (TSs) would remove working referring to the spent fuel pool storage and water level requirements and replace it with water level requirements that are based upon the

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wording in Standard Technical Specifications for Boiling Water Reactors (NUREG–0123, Revision 3). Specifically, the current Limiting Condition for Operation (LCO) in 3.10.C is intended to establish the minimum water coverage above the fuel while it is being transported by the fuel handling equipment. Therefore, the current TSs could be misinterpreted as meaning the minimum water coverage above the fuel while it is stored in the storage racks at the bottom of the pool which could conflict with the actual design of the storage pool. The Standard Technical Specifications provide a value for water coverage which is based on water coverage above the fuel in the storage in the storage racks. The proposed revisions to the Peach Bottom TSs and the associated bases would not change the design or operating procedures associated with the storage pool water level, but would result in standardizing the TSs language to more fully conform with the Standard TSs, thereby clarifying the intent of Section 3.10.C which is intended to assure a minimum inventory of water in the spent fuel pool.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed revision does not change the design or operating procedures associated with the storage pool water level. The lowest elevation of the pool overflow weir to the skimmer surge tank is such that more than 22 feet is always maintained above the fuel stored in the storage racks. The minimum water level above the stored fuel conforms to the Peach Bottom FSAR (Section 10.3) and recently was reevaluated and found to be acceptable by the staff by letter dated February 19, 1986. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not involve design or procedures changes but merely clarify the actual design and operating conditions of the facility in accordance with the staff's Standard TSs. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they do not change any previously approved design features or operating procedures but rather they would further clarify the intent of these design and operating features. Finally, these changes would not result in a significant reduction in a margin of safety since the proposed wording would further reduce the likelihood of a refueling accident during a below normal spent fuel water level condition.

On the basis of the above, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room Location: Government Publication Section, Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Director: Daniel R. Muller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: April 22, 1986.

Description of amendment request: The proposed change in the Technical Specification (TSs) would revise the licensee's earlier amendment request of February 21, 1985 which was noticed in the Federal Register on May 21, 1985 (50 FR 20985). The changes submitted on April 22, 1986 were requested as a result of the NRC staff's review of the February 21, 1985 submittal. The proposed changes include the following: (1) Incorporation of additional fire detectors into the table identifying the detectors subject to the operability and surveillance requirements of the Standard Technical Specifications (TSs), and (2) modification of the previously proposed fire barrier surveillance requirements to reflect the guidance of the Technical Specifications. The proposed changes are in five general areas as described below.

Basis for proposed significant hazards consideration determination: The first change deals with minor editorial and typographical revisions which insert a missing word (or) and to change Commission to NRC. The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7744). Example (i) of actions not likely to involve a significant hazards consideration involves a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed changes described above are consistent with Example (i) since they correct a error and change nomenclature. On this basis, the staff proposes to determine that the change does not involve a significant hazards consideration.

The second change is associated with the addition of thermal heat detection cable system as fire detectors in the list of fire detectors in Table 2.14.C.1. The Commission's Example (ii) of actions not likely to involve a significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement. The proposed change fits the above example since it would add surveillance and operability requirements to the thermal heat detection cable system which are presently not included in the TSs.

The third change is related to the surveillance frequency of fire doors. The February 22, 1985 proposed TSs would perform operability tests on fire doors on a quarterly interval. The NRC staff indicated that this deviation from the Standard Technical Specifications (TSs) surveillance frequencies was unacceptable. Thus the licensee has proposed an increased surveillance requirement of testing fire doors once per month in accordance with the STS. Since the current TSs surveillance requirements require surveillance only once per 18 months, the proposed changes would add additional limitations and controls not presently found in the Peach Bottom TSs and therefore, are more stringent. This change is consistent with Example (ii) of the Commission's guidance discussed above. On this basis, the staff proposes to determine that the change does not involve a significant hazards consideration.

The fourth change involves surveillance testing of penetration seals. The licensee proposed in its February 22, 1985 submittal that approximately 10 percent of the fire barrier penetration seals be subjected to an inspection every 18 months. After discussions with

the NRC staff, the licensee now proposes that TSs should be changed to read at least 10 percent of each type of fire barrier penetration seal be tested. This proposed change conforms with STS. The current TSs requirements require visual inspection of penetration fire barriers at least once per 18 months. The staff has proposed guidance in the form of STS which permit inspection of 10 percent of each type of fire barrier penetration seals once every 18 months. The licensee states:

The proposed change to inspect 10 percent of each type of fire barrier penetration seal ensures that a representative sample of each type of penetration seal is being periodically monitored to assure integrity of the fire barrier essential to plant safety. Broad protection of all penetrations is maintained by the Technical Specification that triggers additional inspections in the event penetration seal degradations are found. The specification, as proposed, is consistent with the NRC guidance provided in the Standard Technical Specifications. This change does not involve a significant hazards consideration since it does not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because this surveillance requirement assures the integrity of the penetration seals essential to mitigating the consequences of a fire.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated because the scope of a surveillance program does not establish a potential new accident precursor.

(3) involve a significant reduction in the margin of safety because the proposed surveillance program performs its intended function while minimizing the exposure of safety equipment to potential physical damage due to the inspection process.

The staff has reviewed the licensee's above statement and agrees with the licensee's conclusions. Therefore, the staff proposed to determine that the proposed change does not involve a significant hazards consideration.

The fifth change proposes that all dampers that do not require scaffolding for inspection or present ALARA concerns be inspected every 18 months. In addition, 25 percent of the excluded dampers should also be inspected every 18 months so that all excluded dampers are inspected at least once per 6 years (72 months). In its April 22, 1986 application the licensee states:

Of approximately 100 dampers subjected to these proposed surveillance requirements, approximately 70 dampers would be inspected every 18 months in accordance with the proposed specification 4.14.D.1.b. An estimated 31 dampers would be inspected over a six-year period (25 percent every 18 months) in accordance with proposed specification 4.14.D.1.c.

The NRC staff has reviewed the licensee's bases concerning the 31 dampers proposed not to be inspected every 18 months. The NRC staff finds that the licensee's arguments that most of these dampers are inaccessible which will minimize tampering and abuse, that previous inspections of these dampers indicate only one apparent damper failure [determined by visual inspection] since 1981, and that the majority of dampers will be inspected every 18 months support the following licensee's conclusions.

The proposed change to inspect 25 percent of the fire dampers requiring scaffolding for inspection, or involving ALARA concerns, every 18 months, does not involve a significant hazards consideration for the reasons previously enumerated in this application and because it does not:

(1) involve a significant increase in the probability or consequences of an accident because the surveillance requirement for the fire dampers assured the integrity of the fire barrier essential to mitigating the consequence of a fire.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated because the scope of a surveillance program does not establish a potential new accident precursor.

(3) involve a significant reduction in a margin of safety because the scope of the proposed inspection assures fire damper integrity while minimizing the exposure of safety-related equipment to potential physical damage due to the inspection process.

Therefore, the staff proposes to determine that the proposed action involves no significant hazards considerations.

On the basis of the above, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Director: Daniel R. Muller.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: April 19, 1985 and July 1, 1985 (reference PCN-183).

Description of amendment request: The proposed change would revise Technical Specification 3/4.3.3.6 "Accident Monitoring Instrumentation." Technical Specification 3/4.3.3.6 defines types of accident monitoring instrumentation, operability requirements, number of required channels to be operable, actions to be taken in the event that the operability requirements are not met, and periodic surveillance testing to verify operability. The operability of post accident monitoring instrumentation ensures that sufficient information is available on selected plant parameters to monitor and assess these variables following an accident. The proposed change would add an additional type of accident monitoring instrumentation subject to these requirements. Specifically, the proposed change would add the reactor vessel level monitoring system (RVLMS) to the technical specifications. The proposed change reflects the addition of the heated junction thermocouple (HJTC) system-reactor vessel level monitoring system. Two channels are required, one of which must be operable as a minimum. Each channel includes eight sensors in an HJTC probe. A channel is considered to be operable if four or more sensors (one in the reactor vessel upper head region and three sensors in the lower head region) are operable. Should these minimum operability requirements not be met, the proposed change defines actions to be taken. If one channel is inoperable, the proposed change would require that channel to be restored to operable status within seven days if repairs are feasible without shutting down the reactor, or a special report be submitted to the Commission within the following 30 days which outlines the action taken, the cause of the inoperability and the plans and schedule for restoring the system to operable status. If both channels are inoperable, the proposed change will require that one or both of the channels be restored to operable status within 48 hours if repairs are feasible without shutting down the reactor, or that an alternate means of monitoring reactor vessel inventory be initiated, a special report be submitted outlining actions taken, the cause of the inoperability and plans and schedule for restoring the system to operable status, and that both channels be restored to operable status at the next scheduled refueling outage. In addition, to verify operability of the system, the proposed change will require monthly channel checks and channel calibrations to be performed at refueling outage intervals.

Basis for proposed no significant hazards considerations determination: The Commission has provided guidance

concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications; for example, a more stringent surveillance requirement. The proposed change adds new limiting conditions for operation, actions and surveillance requirements for the heated junction thermocouple system-reactor vessel level monitoring system instrumentation. These requirements are not presently included in technical specifications. As such this change constitutes an additional restriction and is therefore similar to example (ii) of 48 FR 14870.

Local Public Document Room Location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for Licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 12, 1985 (Reference PCN–212).

Description of amendment request: The proposed change would revise Technical Specification 3/4.7.6 "Snubbers." Technical Specification 3/4.7.6 requires that snubbers be operable to ensure the integrity of safety related systems and specifies the frequency and type of periodic inspections required to verify snubber operability. The proposed change adds additional requirements for visual inspection acceptance criteria and transient event inspections. Currently, surveillance requirement 4.7.6.c, in part, requires that visual inspections verify that attachments to the foundation or supporting structure are secure. The proposed change would revise the visual inspection acceptance criteria to require, in addition, that the fasteners for attachment of the snubber to the component or pipe and the snubber anchorage are also secure.

Surveillance Requirement 4.7.6.j, "Refueling Outage Inspections," requires that during each refueling outage, an inspection be performed of snubbers attached to sections of safety systems and piping that has experienced unexpected potentially damaging transients as determined from a review of operational data and a visual inspection of the system. The proposed change would (1) retitle Surveillance Requirement 4.7.6.j, "Transient Event Inspections," (2) require that inspections be performed on all hydraulic and mechanical snubbers attached to sections of safety systems that have experienced unexpected, potentially damaging transients as determined from a review of operational data and (3) require visual inspection of the systems within six months following a determination that such an event has occurred. This proposed change will also require more frequent reviews of operational data than at the refueling outage interval currently specified.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement. The proposed change described above is similar to this example. The proposed change adds an additional requirement to inspect the fasteners which secure snubbers both to the protected component and the anchorage as is currently specified. The proposed change effectively increases the frequency at which operational data is evaluated to determine if potentially damaging transients have occurred from the refueling outage interval to a maximum of six months. Both of these changes constitute more restrictive surveillance requirements, thus the proposed change is similar to example (ii) of 48 FR 14870.

Local Public Document Room Location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: February 7, 1986 (Reference PCN–214).

Description of amendment request: The proposed change would revise Technical Specification 3/4.4.7, "Specific Activity," and Technical Specification 6.9.1.5, "Annual Reports." Technical Specification 3/4.4.7 defines allowable limits for concentrations of radioactive isotopes in the reactor coolant system (RCS), specifies a sampling and analysis program to verify RCS activity is within the limits, and defines actions to be taken in the event that RCS activity exceeds the specified limits. When the specified limits are exceeded, Technical Specification 3/4.4.7 allows continued operation for up to 48 continuous hours provided that RCS activity remains within the region of acceptable operation defined by Figure 3.4–1 and provided that the cumulative operating time does not exceed 800 hours in any consecutive 12-month period. In addition, a special report is required if 500 consecutive hours are exceeded in any consecutive six-month period. If the specific activity exceeds the specified limits for more than 48 consecutive hours, a plant shutdown would be required within the next six hours. The actions also require submittal of a licensee event report (LER) within the next 30 days. The LER is to include: (1) reactor power history starting 48 hours prior to the first sample in which the limit was exceeded; (2) fuel burnup by core region; (3) cleanup flow history starting 48 hours prior to the first sample in which the limit was exceeded; (4) history of de-gassing, if any, starting 48 hours prior to the first sample in which the limit was exceeded; and (5) the time duration when the RCS specific activity exceeded one microcurie per gram dose equivalent to iodine-131.

The proposed change would revise existing action requirements to delete the 800 hour per year limit on operation while exceeding the specific activity limit, eliminate the special reporting requirement when 500 hours are exceeded, and remove the requirement for an LER to be submitted within 30 days. Instead of requiring a licensee event report, the proposed change would revise Technical Specification 6.9.1.5 to

include the currently required information in the annual report.

The proposed change also removes redundancy between the existing action and surveillance requirements. In addition to specifying the reporting requirements, the action also specifies performance of the surveillance requirement sampling and analysis program. Performance of the surveillance is required regardless of whether the action is entered or not. Therefore, the proposed change deletes this redundancy from the action.

Basis for proposed no significant hazards considerations determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to technical specifications; for example, a change to achieve consistency throughout technical specifications, correction of an error, or a change in nomenclature. Example (vii) relates to a change to make a license conform to changes in the regulations where the license change results in very minor changes to facility operations currently in keeping with the regulations.

10 CFR 50.34 requires technical specifications covering a number of diverse aspects of facility operation. Conformance with the standard technical specifications provides an acceptable means of meeting the requirements of 10 CFR 50.34. NRC Generic Letter 85–19 dated September 27, 1985, revised the standard technical specifications relating to a specific activity. Generic Letter 85–19 incorporates the above proposed change into the standard technical specifications. This change will have a minor impact on facility operation since it only affects reporting requirements and actions to be taken when specific activity limits are exceeded. The specific activity limits are not revised by the proposed change. Because the proposed change has only a minor effect on facility operation and bring the technical specifications in conformance with the standard technical specifications, as revised by Generic Letter 85–19, the proposed change is similar to example (vii). The proposed change would eliminate redundancy between the existing action and surveillance requirements. This change is editorial and does not change existing requirements to perform sampling and analysis in accordance with the surveillance requirements; therefore, this change is similar to example (i). Because the proposed changes are similar to examples (i) and (vii), they do not involve significant hazards considerations.

Local Public Document Room Location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 28, 1985, as supplemended December 5, 1985.

Description of amendment request: The proposed change revises the Technical Specifications (TSs) that require the Company Nuclear Review Board (CNRB) to report to and advise the President and Chief Operating Officer. Under the proposed change, the CNRB would report to and advise the Senior Vice President, Nuclear. The application also proposes a title change for reporting of the Station Review Board to reflect the present organization.

Basis for proposed no significant hazards consideration determination: The current TSs require that the CNRB report to the President and Chief Operating Officer who in turn reports to the Chairman and Chief Executive Officer. It also provides that the Station Review Board have certain responsibilities to the Vice President, Nuclear. On July 1, 1985, a management organization change occurred at Toledo Edison. A new position of Senior Vice President, Nuclear, was established replacing Vice President, Nuclear. The proposed changes do not change lines of authority but only reflect changes in management structure and titles.

The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As noted previously, the proposed changes do not affect current lines of authority or responsibility but only reflect the changes in organization previously instituted. The licensee concluded that granting of the request would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. All lines of authority are maintained.

(2) Create the possibility of a new or different kind of accident previously evaluated. All accidents are still bounded by previous analysis and no new accidents are involved.

(3) Involve a significant reduction in a margin of safety. All margins of safety assumed in previous analysis remain unchanged.

The Commission's staff agrees with the licensee's evaluation in this regard, and accordingly, the staff proposes to find that these changes involve no significant hazards considerations.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: John F. Stolz.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 12, March 27, 1986 and May 9, 1986.

Description of amendment request: By letters dated March 12, March 27 and May 9, 1986, the licensee, Vermont Yankee Nuclear Power Corporation (VYNPC), submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications (TS) to (1) permit reactor operation with one recirculation loop out of service, (2) to include General Electric Company's (GE) Service Information Letter (SIL) 380, Revision 1 recommendations regarding thermal-hydraulic stability for dual loop and single operations, and (3) to incorporate administrative changes dealing with page continuity and correction of an error in the value of the break area

assured in ECCS analysis. Presently the VYNPC operating license requires a unit to be in cold shutdown within the succeeding 24 hours if an idle recirculation loop can not be returned to service within 24 hours. The licensee previously requested authorization for unlimited single loop operation of Vermont Yankee. Subsequently, Tennessee Valley Authority's operation of Browns Ferry Unit 1 (a boiling water reactor similar in design to VYNPC in the single loop mode of operation at 59% power lead to concerns related to thermal-hydraulic instability. GE, in SIL #380, Revision 1, addressed these concerns by providing the boiling water reactor licensee's generic guidance to obviate thermal-hydraulic stability induced neutron flux oscillations. The licensee has proposed TS in accordance with the guidance provided by GE in SIL–380, Revision 1.

Specifically, the proposed changes requested by the licensee consist of (1) deletion of the license condition restricting the single loop operation and, for single and dual loop operation, incorporating requirements in the TS to detect thermal-hydraulic instabilities induced by neutron oscillations and specifying operator response to the detected instabilities, (2) revision of the TS to provide Average Power Range Monitor (APRM) flux scram trip and rod block settings, and increase in the safety limit Minimum Critical Power Ratio (MCPR) value, and a revision to the allowable Average Planar Linear Heat Generation Rate (APLHGR) values, and (3) editorial revisions and correction of a typographical error.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have evaluated the licensee's request for the proposed TS for compliance with the above cited standards.

(1) Consideration of probability and consequences of accidents. Our evaluation of the proposed changes indicated that the principal accident associated with a single recirculation loop operating would be an inadvertent startup of the idle recirculation loop pump causing a transient. However, such a transient was evaluated in the Vermont Yankee Final Safety Analysis Report (FSAR) and found to satisfy the Commission's regulations. In addition the licensee has proposed more restrictive TS changes related to MCPR limits, flow-biased scram and rod block setpoints, and reduced MAPLHGR operating limits, to ensure that the probabilities and the consequences of accidents with single recirculation loop operation will not be significantly increased. We have also evaluated the inplication of thermal-hydraulic stability for both single dual loop operations after the licensee's proposed TS changes based on the GE recommendations in SIL 380, Revision 1 are incorporated. Our evaluation shows that the proposed changes would alleviate the concerns related to the thermal-hydraulic instability by adding surveillance requirements for detecting thermal-hydraulic instabilities and specifying the remedial operator actions for responding to them. Such operator actions will also assure that there will be no significant increase in the probability or consequences of an accident. Based on the above discussion, we find that the proposed changes are not expected to significantly increase the probability or consequences or previously evaluated accidents.

(2) Consideration of possibility of a new or different kind of accident. The Vermont Yankee operation with one recirculation loop is not expected to create the possibility of a new or different kind of accident from any previously analyzed, as all abnormal operating transients which could be initiated with single loop operation, such as an inadvertent startup of and idle recirculation pump or pump trip have already been analyzed in the FSAR, and reviewed and accepted by the staff.

For single and dual loop operation, the addition of the surveillance requirements and remedial actions for thermal-hydraulic instability detection and response involve normal plant operating practices and, therefore, are not expected to create a new or different kind of accident from any previously analyzed in the FSAR.

(3) Consideration of reduction in a margin of safety.

The licensee has proposed the revised operating limits, setpoints, and procedures for the proposed single and dual loop operation. Our evaluation of the licensee's proposal indicates that the proposed changes will ensure that the FSAR margins of safety will not be reduced during normal operation and with one recirculation pump not operating. Our conclusions are based on our review of the evaluations by GE in support of the Vermont Yankee operation presented in the GE report NEDO–30060.

For single and dual loop operation, the additional surveillance requirements and remedial actions required of the operator for detection of and response to thermal-hydraulic instability will increase the present margin of safety.

The editorial changes and typographical correction entail administrative changes and clearly satisfy the Commission standards for a "no significant hazards involved" finding.

Based on the above considerations the staff concludes that the proposed amendment meets the Commission's standards 10 CFR 50.92(c).

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attoney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: March 5, 1986.

Description of amendments request: The proposed amendments revise the Technical Specifications to change the reporting requirements for primary coolant iodine spikes from a short-term report (Special Report) to an item to be included in the Annual Results and Data Report. The proposed amendments would also delete the requirement to shut down the reactor immediately in reactor coolant activity exceeds 1.0 microcuries per gram Dose Equivalent I–131 (but is within the allowable limits of figure 15.3.1–5) and has exceeded 800 hours cumulative operating time in this condition during any consecutive 12 month period. The requirement to shut down the reactor after primary coolant activity exceeds 1.0 microcuries per gram Dose Equivalent I–131 (but is within the allowable limit) for greater than 48 hours and the requirement to shut down the reactor if primary coolant activity exceeds the allowable limit of figure 15.3.1–5 are still retained.

Basis for proposed no significant hazards consideration determination: The proposed amendments involve no significant hazards consideration if operation of the facility in accordance with the amendments would not: (1) Involve a significant increase in the probability or consequence of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. These amendments involve: (1) a change in reporting requirements and (2) a deletion of a requirement to shut down a plant when iodine limits are exceeded over a long term. The first change is purely administrative and does not meet the criteria of 10 50.92 as posing a significant hazards consideration. The second change involving deletion of the 800-hour shutdown requirement was previously evaluated on a generic basis by the NRC and the results were published on September 27, 1985 in Generic Letter 85–19 to all licensees. The staff determined that the 800–hour limit was no longer necessary because the improved quality of nuclear fuel coupled with existing reporting requirements should preclude licensees ever approaching the limit. Short term shutdown requirements for iodine coolant activity levels remain unaffected by the staff's determination. The deletion of the 800-hour cumulative shutdown limit would not involve a significant increase in the probability or consequences of an accident previously evaluated nor create the possibility of a new or different kind of accident from any accident previously evaluated nor would it involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, DC 20036.

NRC Project Director: George E. Lear.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: April 10, 1986.

Description of amendments request: The amendments revise the Technical Specifications concerning retention periods of plant operating records. They also revise plant organization charts to reflect changes in personnel, correct administrative and spelling errors or otherwise provide clarification for existing Technical Specifications and add two recordkeeping requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether actions involve significant hazards consideration by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration is example (i) a purely administrative change to the technical specifications: for example a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The staff has reviewed the proposed Technical Specifications and determined that they are all purely administrative changes.

Therefore, the staff proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, DC 20036.

NRC Project Director: George E. Lear.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: May 8, 1986.

Description of amendments request: The proposed amendments revise the Technical Specifications to allow a component cooling water (CCW) heat exchanger to be out-of-service for up to five days while installing an additional CCW heat exchanger during the period from July to September 1986.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendments permit a temporary extension of an out-of-service condition already permitted by the existing Technical Specifications. Accordingly, this action does not create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a reduction in the margin of safety already provided by the system. The CCW system for both units will remain in service at all times. It is only the capability to utilize the swing heat exchanger which will be temporarily unavailable. This condition is already permitted by the limiting conditions for operation. This change will extend this time period from a maximum of forty-eight hours, or two days, to five days.

The third criteria of 10 CFR 50.92 concerns the potential that the change involves a significant increase in the probability or consequences of an accident previously analyzed. Removing a standby component from service does not increase the probability of an accident. This probability remains a function of the collective failure frequencies of the system components and is not influenced by the probability of availability of standby component. This premise is recognized in the existing limiting condition for operation in several specifications which permits standby components to be removed from service temporarily for inspection or maintenance. The consequences of an accident could potentially be influenced by the amount of time a standby component is permitted to be out of service. In this situation, a failure of the in-service CCW heat exchanger at the same time the standby heat exchanger is removed from service precludes the ability to switch to the standby heat exchanger. This means that the affected unity would have to be shut down and placed in hot standby. Continued availability of the CCW system for that unit would not be needed since decay heat could be removed by means of the steam generators. There would, therefore, be no significant increase in potential off-site or on-site radiological consequences.

Based on the above, that staff proposes to determine that the amendments do not involve a significant hazards consideration. *Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, DC 20036.

NRC Project Director: George E. Lear.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 18, 1986.

Description of amendment request: The NRC Generic Letter 85-09 dated May 23, 1985, requested licensees to submit Technical Specifications (TS) to explicitly require independent testing of the reactor trip breaker undervoltage and shunt trip attachments during power operation and independent testing of the control room manual reactor trip switch contacts during each refueling outage. The licensee's submittal meets the intent of our Generic Letter 85-09.

Basis for proposed no significant hazards consideration determination: This change does not involve a significant hazards consideration because operation of the Kewaunee Nuclear Plant in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change provides for a more stringent shutdown requirement than currently in the KNPP Technical Specification. That is, if a reactor trip breaker cannot be replaced or restored to an operable status after 72 hours, the plant would be required to preceed to the hot shutdown condition. The KNPP Technical Specification currently allows a significantly longer time period. Therefore, this change does not increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from previously analyzed. This request is more restrictive than current requirements. Therefore, this change is bounded by current analysis and does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. Existing technical specifications for a reactor trip breaker being out of service were not explicit; however, a 37-day maximum was implicit. This submittal provides technical specifications as requested in Generic Letter 85-09. They are more restrictive and explicit than the current technical specifications and hence do not cause a reduction in the margin of safety.

This change is also similar to an example from the supplementary information of 10 CFR Part 2 section C.2.E. item (ii) as stated below:

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

Therefore, based on the above, we conclude that the proposed changes are consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards consideration, 10 CFR 50.92 (48 FR 14871). The proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident previously evaluated; or involve a significant reduction in margin of safety. In addition, the application for amendment involves a proposed change that is similar to an example for which a no significant hazards consideration exists. The Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicollet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 E. Wisconsin Avenue Milwaukee, Wisconsin 53202.

NRC Project Directorate: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notice were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issue involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendments request: October 30, 1985.

Brief description of amendments: The requested amendments proposed to change the combined Technical Specification for both Units (1) to increase the fuel storage capacity in each of the two spent fuel pools from the current 270 fuel assemblies to 1324 assemblies by installing high density fuel racks, (2) to specify the combination of initial enrichment and cumulative burnup for fuel assemblies stored in the pool, (3) to require a boron concentration of 2000 ppm in the pool, and (4) to limit the movement of a spent fuel cask in the fuel handling building.

Date of publication of individual notice in Federal Register: January 13, 1986 (51 FR 1451).

Expiration date of individual notice: February 12, 1986.

Local Public Document Room location: California Polytechnic State University Library, Document and Maps Departments, San Luis Obispo, California 93407.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and

(3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of application for amendment: January 24, 1986.

Brief description of amendment: The amendment revised the Technical Specifications of delete the tubular listing of snubbers in accordance with the NRC staff guidance contained in Generic Letter 84-13.

Date of Issuance: May 5, 1986.

Effective Date: May 5, 1986.

Amendment No.: 72

Facility Operating License No. NPF-6: Amendment revised the Technical Specifications.

Date of Initial Notice in Federal Register: March 12, 1986 (51 FR 8586). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Carolina Power & Light Company, Docket No. 50-324, Brunswick Steam Electric Plant, Unit, 2, Brunswick County, North Carolina

Date of application for amendment: December 20, 1985, as supplemented March 20, 1986.

Brief description of amendment: The amendment changes Technical Specifications (TS) by modifying the minimum critical power ration (MCPR) values and deleting references to 8x8 fuel type to support operation of Unit 2 in Fuel Cycle 7.

Date of issuance: April 30, 1986.

Effective date: April 30, 1986.

Amendment No.: 123.

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date initial notice in Federal Register: March 26, 1986 (51 FR 10453).

The subsequent submittal dated March 26, 1986, provided clarifying information, which is no way affects the content of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: December 20, 1985.

Brief description of amendment: The amendment changes Technical Specification Tables 3.3.3-1, 3.3.3-2, and 4.3.3-1 to reflect modifications to the Automatic Depressurization System (ADS) by removing the high pressure trip from the logic sequence and adding a manual inhibit switch thus eliminating the need for manual actuation to ensure core coverage.

Date of issuance: April 30, 1986.

Effective date: April 30, 1986.

Amendment No.: 124

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 12, 1986 (51 FR 5272). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: January 27, 1986.

Brief description of amendment: The amendment changes Technical Specifications (TS) to revise the TS Table 3.6.3-1 to reflect modifications being made during the current refueling outage to provide a dedicated purge system for post-accident combustible gas control.

Date of issuance: May 5, 1986.

Effective date: May 5, 1986.

Amendment No.: 125

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10454). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 28, 1985, as supplemented November 11, 1985.

Brief description of amendment: The amendment would add minimum RCS flow to Section 2.1 Bases and Figures 2.1-1 of the Technical Specifications.

Date of issuance: May 6, 1986.

Effective date: May 6, 1986.

Amendment No.: 98

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 15, 1986 (51 FR 1873) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1986.

No significant hazards consideration comment received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket Nos. 50-373, and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Dates of application for amendment: August 27, 1985, and April 4, 1985.

Brief description of amendment: The proposed amendment to Operating License NPF-11 and Operating License NPF-18 revise the La Salle Units 1 and 2 Technical Specifications to remove the upper limit on the accumulator setpoint from 940 psig+30,-0 psig to greater than or equal to 940 psig. The licensee withdrew its request to amend Technical Specification 3.1.3.5 to address inoperable pressure and level detectors associated with scram accumulators in its letter of April 4, 1986.

Date of issuance: May 6, 1986.

Effective date: May 6, 1986.

Amendment Nos: 30 and 21.

Facility Operating License No. NPF-11 and NPF-18. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1985 (50 FR 41245).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of application for amendment: October 22, 1985, as supplemented on March 21, 1986.

Brief description of amendment: The amendment revises the La Salle Unit 1 Technical Specifications to support the operation of La Salle County Station, Unit 1 at full rated power during the upcoming Cycle 2 operation. The amendment to support this reload changes the Technical Specifications in the following areas: (1) Establishes operating limits for all fuel types for the upcoming Cycle 2 operation; (2) establishes new safety limit minimum critical power ratio value; (3) establishes a new maximum average planar linear heat generation rate curve for the new fuel; (4) reflects the placement of approximately 30 percent of the core with new General Electric (GE) prepressurized barrier assemblies for the upcoming Cycle 2 operation; (5) modifies the bases to account for the use of the new GE fuel assemblies; and (6) addresses the area of thermal hydraulic stability for single loop operations.

This reload will consist of 764 fuel assemblies, 532 of which are once burned non-pressurized GE fuel assemblies and 232 of which are new GE prepressurized barrier fuel assemblies. This new fuel bundle design has been approved by the staff; however, a new enrichment is being used in the fuel assemblies for the La Salle Unit 1 reload. This new enrichment has been recently addressed in Amendment 13 in the GE Report, NEDE–24011–A–7, August 1985, "General Electric Standard Application for Reactor Fuel," (GESTAR II). This amendment is in the final processing of review, and the conclusion is that this new fuel enrichment is acceptable.

Thus, this core reload involves the use of fuel assemblies that are not significantly different from those found acceptable to the Commission. The proposed changes to the Technical Specifications reflect new operating limits associated with new fuel to be inserted into the core, are based on new core physics analyses, address the stability of single-loop operation and are within the acceptance criteria.

Date of issuance: May 9, 1986.

Effective date: Upon startup following the first refueling outage.

Amendment No: 40.

Facility Operating License No. NPF–11. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 20, 1985 (50 FR 47859) and April 9, 1986 (51 FR 12225).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Dates of amendment requests: November 13, 1985, as supplemented by letters dated January 3 and March 10, 1986.

Brief description of amendments: The amendments to Operating License NPF–11 and Operating License NPF–18 reflect a low and/or degraded grid voltage modification as required by License Condition 2.C.(20) for Unit 1 and License Condition 2.C.(11) for Unit 2. Modifications to all three electrical divisions of Unit 1 will be completed during the present first refueling outage, and modifications to two out of the three divisions have been completed for Unit 2. The third division will be modified prior to startup after the first Unit 2 refueling as required by License Condition 2.C.(11). The amendments incorporate changes to the La Salle Units 1 and 2 Technical Specifications to reflect the low and/or degreded grid voltage modifications. An action statement, Action 39, requested by the licensee to allow seven days of plant operation without automatic degraded voltage protection on an engineered safety feature bus was withdrawn by letter dated March 10, 1986, and changed to Action 37 which requires the inoperable instrument to be placed in the tripped condition within 1 hour or the associated emergency diesel generator to be declared inoperable and actions required by Technical Specifications 3.8.1.1 or 3.8.1.2 to be undertaken.

Date of issuance: May 9, 1986.

Effective date: For Unit 1 upon startup following the first Unit 1 refueling outage and for Unit 2 upon date of issuance.

Amendment Nos: 41 and 22.

Facility Operating License Nos. NPF–11 AND NPF–18. Amendments revised the Technical Specifications.

Date of initial notices in Federal Register: December 4, 1985 (50 FR 49764) and April 9, 1986 (51 FR 12228).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61346.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendments request: March 21, 1986.

Brief description of amendments: The amendments to Operating License NPF.11 and Operating License NPF–18 revise the La Salle Units 1 and 2 Technical Specifications to reflect the addition of backup overload protection devices required to satisfy License Condition 2.C.(23) for Unit 1. For Unit 2, these devices are installed and are being added to the Technical Specifications.

Date of issuance: May 9, 1986.

Effective date: For Unit 1, upon startup following the first refueling; and for Unit 2, upon date of issuance.

Amendment Nos.: 42 and 23.

Facility Operating License Nos. NPF–11 and NPF–18. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1986 (51 FR 12227) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 6348.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex county, Connecticut

Date of appliction for amendment: February 21, 1986.

Brief description of amendment: The license amendment incorporates into the Haddam Neck Plant technical specifications three new fire protection systems, which are required to protect safe shut down equipment. These fire protection systems include the directional spray water suppression system in the cable-spreading area hallway, the water curtain-type spray

system in the area of the service water pumps and two early warning fire detectors in the auxiliary feedwater pump room.

Date of issuance: April 29, 1986.
Effective date: April 29, 1986.
Amendment No. 75.
Facility Operating License No. DPR–61. Amendment revised the technical specifications.
Date of initial notice in Federal Register: March 26, 1986 (51 FR 10455).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 1214 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: April 15, 1985.
Brief description of amendment: The amendment adds a new condition to the Control Rod Drive surveillance testing to require all testing prior to startup following an outage greater than 120 days.
Date of issuance: May 6, 1986.
Effective date: May 6, 1986.
Amendment No. 84.
Facility Operating License No. DPR–6. This amendment revised the Technical Specifications.
Date of initial notice in Federal Register: May 21, 1985 (50 FR 20974).
The Commission's related evaluation of the amendment is contained in Safety Evaluation dated May, 6, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: February 12, 1986, as supplemented March 3, 4, 11, and 26, and April 9, 1986.
Brief description of amendment: The amendment changes the Technical Specifications to extend, on a one-time basis, by a maximum of five months those 18-month surveillances associated with the Engineered Safety Features which can only be conducted with Unit 1 in cold shutdown or refueling.
Date of issuance: April 24, 1986.
Effective date: April 24, 1986.
Amendment No.: 7.
Facility Operating License No. NPF–35: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: March 21, 1986 (51 FR 9905)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklingburg County, North Carolina

Dates of applications for amendments: January 10, 1986, and September 6, 1985.
Brief description of amendments: The amendments change the Technical Specifications to increase by one the number of operable and operating reactor coolant loops for operation in the hot standby mode, correct the Containment Pressure Control System (CPS) logic, and clarify the CPCS setpoints and allowable values and applicable Table headings.
Date of issuance: April 28, 1986
Effective date: April 28, 1986.
Amendment Nos. 56 and 37.
Facility Operating License Nos. NPF–9 and NPF–17. Amendments revised the Technical Specifications.
Dates of initial notices in Federal Register: February 26, 1986 (51 FR 6822) and March 26, 1986 (51 FR 10457).
The Commission's related evaluation of the amendment is contained in Safety Evaluation dated April 8, 1986.
No significant hazards consideration comments received: No
Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina, 28223.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 16, 1986.
Brief description of amendment: Removes the tabular list of hydraulic snubbers from the Technical Specifications.
Date of issuance: May 1, 1986.
Effective date: May 1, 1986.
Amendment No.: 80.
Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: February 26, 1986 (51 FR 6822), as corrected March 6, 1986 (51 FR 7861).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: December 30, 1985 as supplemented March 17, 1986.
Brief description of amendment: This amendment changes the Moderator Temperature Coefficient from 0.0×10^{-4} delta p/°F to $+0.3\times10^{-4}$ delta p/°F above 70% power to provide more operating flexibility and remove restrictive operational requirements.
Date of issuance: April 29, 1986.
Effective date: April 29, 1986.
Amendment No.: 14.
Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: March 26, 1986 (51 FR 10451 at 10459).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Florida Power and Light Company, Docket Nos. 50–250 and 50–241, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 21, 1985.
Brief description of amendments: These amendments revise the Technical Specification (TS) relating to snubbers. The list of snubbers has been deleted in accordance with the guidance provided in Generic Letter 84–13, "Technical Specifications for Snubbers." The TS has also been changed to modify the existing testing requirements for safety-related snubbers to define the snubber type, delete the test acceptance criteria regarding a 50% drag force increase, and add additional acceptance criteria for visual inspection and additional requirements for an engineering evaluation of functional test failures.
Date of issuance: May 6, 1986.

Effective date: May 6, 1986.
Amendment Nos.: 116 and 110.
Facility Operating License No. DPR–31 and DPR–41: Amendments revised the Technical Specifications.
Date of initial notice in Federal Register: March 12, 1986 (51 FR 8590).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 6, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: January 3, 1986, as supplemented January 31, 1986.
Brief description of amendment: This amendment replaces the requirement to submit a Special Report when Dose Equivalent I–131 is above a specified limit with a requirement to provide more detail in an Annual Report. It also deletes the requirement to immediately shut down the plant if Dose Equivalent I–131 exceeds a specified limit for more than 800 hours in a 12-month period.
Date of issuance: May 6, 1986.
Effective date: May 6, 1986.
Amendment No.: 117.
Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: March 12, 1986 (51 FR 8592).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 1, 1985, as supplemented December 10 and 27, 1985, and January 24, and February 23, 1986.
Brief description of amendment: The amendment changes License Condition 2.C.(28) by increasing the interval for inspection of the low pressure turbine discs.
Date of issuance: April 29, 1986.
Effective date: April 29, 1986.
Amendment No.: 12.
Facility Operating License No. NPF–29. Amendment revised the license.
Date of initial notice in Federal Register: February 26, 1986, (51 FR 6626) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: December 6, 1985, as supplemented January 13, 1986.
Brief description of amendment: The amendment modifies Technical Specification Section 3.1.7 to reflect the addition of Maximum Average Planar Linear Heat Generation Rate Limits for the General Electric fuel bundle, type P8DRB299.
Date of issuance: April 30, 1986.
Effective date: April 30, 1986.
Amendment No.: 81.
Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: February 12, 1986 (51 FR 5276).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 11, 1985.
Brief description of amendment: The amendment revises the Technical Specifications to (1) permit reactor operation with one recirculation loop out of service and (2) to include General Electric Company's Service Information Letter (SIL) 380, Revision 1 recommendations regarding thermal-hydraulic stability for dual loop and single loop operation.
Date of issuance: May 6, 1986.
Effective date: May 6, 1986.
Amendment No.: 98.
Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: December 4, 1985 (50 FR 49790).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 1, 1983, supplemented October 28, 1983.
Brief description of amendment: The amendment approves changes to the Technical Specifications which add the requirement to perform a periodic battery discharge test.
Date of issuance: May 8, 1986.
Effective date: May 8, 1986.
Amendment No.: 14.
Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: October 23, 1985 (50 FR 3034).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 11, 1985.
Brief description of amendments: The amendments modify License Condition 2.E for NA–1&2 by incorporating the latest revisions to the security, contingency, and guard training and qualification plans. The changes clarify License Condition 2.E and thereby avoid confusion by the licensee's personnel and NRC staff as to the plan versions currently in effect. The current revision of the NA Security Plan is revision No. 14 dated September 5, 1985. The current revision of the Guard Training and Qualification Plan is revision No. 9 dated August 30, 1985. The current revision of the Safeguards Contingency

Plan is Revision No. 14 (Chapter 8 of Security Plan) dated September 5, 1985.

Date of issuance: April 30, 1986.

Effective date: April 30, 1986.

Amendment Nos.: 77 and 66.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10471) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 2, 1984.

Brief description of amendments: The amendments revise the NA–1&2 TS to reflect changes in the current organization within the Nuclear Operation Department, Quality Assurance Department, Maintenance and Performance Services Department and Security Department. In addition, the changes reflect title changes to corporate officials and responsibilities and reporting requirements. The most significant change involved the creation of the Manager, Nuclear Programs and Licensing, and the Assistant Station Manager (Nuclear Safety and Licensing).

Date of issuance: May 8, 1986.

Effective date: May 8, 1986.

Amendment Nos.: 78 and 67.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1984 (49 FR 50828).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of application for amendment: April 25, 1985.

Brief description of amendment: This amendment revises the Technical Specifications of the WNP–2 Operating License NPF–21 to change the Surveillance Requirement 4.6.1.1. The change allows certain containment isolation valves to be excluded from routine surveillance requirements while the plant is at power. The purpose of the proposed change is to avoid unnecessary personnel hazards from both a safety and ALARA standpoint.

Date of issuance: May 2, 1986.

Amendment No.: 22.

Effective date: May 2, 1986.

Facility Operating License No. NPF–21: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 17, 1985 (50 FR 29021).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of application for amendment: October 14, 1985.

Brief description of amendment: This action amends the License Condition 2.C.(16), Attachment 2, item 3(b) to extend the deadline to the second refueling outage for implementing the requirements of Regulatory Guide 1.97, Revision 2, for flux monitoring.

Date of Issuance: May 5, 1986.

Effective Date: May 5, 1986.

Amendment No: 23.

Facility Operating License No. NPF–21: Amendment revised a License Condition.

Date of Initial Notice in the Federal Register: January 29, 1986 (51 FR 3721).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last bi-weekly notice, individual notices of issuance of amendments have been issued for the facilities listed below. These notices were previously published as separate individual notices. They are repeated here because this bi-weekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: February 4, 1986.

Brief description of amendment: This amendment revises the repair limits for the steam generator tubes under a very restrictive set of circumstances as described in the request. Basically, for certain defects located on the primary side of the tubes, the amendment changes the mandatory repair limit from 40% to 50% throughwall penetration providing the defect is less than 0.55 inches long. The amendment is also only effective until the next refueling outage at which time the steam generator tube repair criteria will be re-evaluated.

Date of issuance: April 18, 1986.

Effective date: April 18, 1986.

Amendment No. 116.

Facility Operating License No. DPR–50.

Date of individual notice in Federal Register: May 2, 1986 (51 FR 16411).

Dated at Bethesda, Maryland this 15th day of May 1986.

For the Nuclear Regulatory Commission.
Frank Schroeder,
Acting Director, Division of PWR Licensing-B.
FR Doc. 86-11377 Filed 5-20-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co. et al. Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35 and NPF-52, issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Although amendments will be issued for both Units 1 and 2, changes are proposed for Unit 1 only. Unit 2 is included in this notice only because the Technical Specifications are combined in one document for both units.

The amendments would extend, on a one-time basis and until the first refueling outage, the 18-month or 24-month technical specification (TS) surveillances for the following items which can only be conducted when Unit 1 is shut down:

1. Position Indicators for the Power-Operated Relief Valves (PORVs) and Associated Block Valves—TS Table 4.3-7, Items 11 and 12. Channel calibration would be extended from July 24, 1986, and would be performed prior to entering HOT STANDBY following first refueling.

2. High Range Radiation Monitor (EMF-53 A&B) for the Containment Area—TS Table 4.3-7, Item 18. Channel calibration would be extended from August 25, 1986, and would be performed prior to entering HOT STANDBY following first refueling.

3. Loose-Parts Detection Systems—TS 4.3.3.9C. Channel calibration would be extended from August 14, 1986, and would be performed prior to entering STARTUP following first refueling.

4. Turbine Overspeed Protection Instrumentation—TS 4.3.4.2C. Channel calibration would be extended from 8/19/86 and would be performed prior to entering HOT STANDBY following first refueling.

5. Reactor Coolant Leakage Detection Systems—TS 4.4.6.1b. Channel calibration of the containment floor and equipment pump level and flow monitoring subsystem would be extended from 8/9/86 and would be performed prior to entering HOT SHUTDOWN following first refueling.

6. Type C Tests for Containment Leakage—TS 4.6.1.2d. Local (Type C) leak testing of those penetrations identified in a new Table 3.6-1a would be extended from the present range of 8/19/86 through 8/22/86 and would be performed prior to entering HOT SHUTDOWN following first refueling. The penetration designations (and their associated services) identified in new Table 3.6-1a would be: M230 (nuclear service water from reactor coolant pump and lower containment ventilation units), M215 (breathing air), M219 (station air), M358 (refueling water pump suction), M356 (equipment decontamination line), M345 (recycle holdup tank from reactor coolant drain tank—valve 1 WL806 only), M204 (containment air addition), M259 (reactor makeup water flush header), E101 through 450 (electrical penetrations for various equipment), and M374 (containment floor sump and incore instrumentation sump pumps discharge). This extension would also be subject to the granting of a partial exemption from 10 CFR 50, Appendix J, pursuant to 10 CFR 50.12(a) (50 FR 50764).

7. Steam Generator Level Transmitter 1 CFLT 5632, TS 4.7.13.6. Channel calibration of this transmitter would be extended from 7/2/86 and would be performed prior to entering HOT STANDBY following first refueling.

8. Diesel Generator (DG), TS 4.8.1.1.2g.1. The inspection to procedures based upon the DG manufacturer's recommendations would be extended from 7/3/86 (for DG 1A) and 8/15/86 (for DG 1B) and would be performed prior to entering HOT SHUTDOWN following first refueling.

9. Containment Penetration Conductor Overcurrent Protective Devices, TS 4.8.4a. Channel calibration and various functional tests for the devices identified in TS table 3.8-1A would be extended from 8/2/86 and would be performed prior to entering HOT SHUTDOWN following first refueling.

Normally, since refueling outages occur about every 18 months, extension beyond the 18-month or 24-month surveillance interval required by the Technical Specifications for such calibrations and testing as in the above nine items is usually not necessary. However, due to the extended length of the Unit 1 startup program and cycle 1, the licensee must either request and receive an extension or shut down prior to the first scheduled refueling outage. Unit 1 is currently scheduled to enter its first refueling outage in late August 1986, but no later than September 28, 1986. Therefore, with the exception of the DG surveillance which involves an extension of about 4 months, the requested extensions entail a period of about 3 month or less.

The proposed amendments are in accordance with the licensee's request dated May 5, 1986. The changes would be accomplished by adding a footnote usually stating that this surveillance need not be performed until prior to entering HOT SHUTDOWN, HOT STANDBY or STARTUP, as applicable, following the Unit 1 first refueling outage, and clarifying that the footnote (i.e., the extension) applies to Unit 1 only.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the licensee has concluded and the Commission agrees that each technical specification change in the requested amendments does not involve a significant hazards consideration for the reasons set forth below:

1. Position Indicators for PORVs and Associate Block Valves. The extension to the surveillance interval for channel calibration would be for a relatively brief period (about 2 months). These indicators are designed, installed and maintained to standards which assure high reliability and operating experience to date has been most favorable. Other surveillances not changed by the proposed amendments require periodic operation of the PORV (TS 4.4.4.1b) and their block values (TS 4.4.4.2) through one complete cycle of full travel, and thus ensure continued operability of these values. The changes do not alter any design basis, safety limits, limiting safety system settings, or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendments involves no design change and no change in the method and manner of plant operations, it would not (3) create the possibility of a new or

different kind of accident from any accident previously evaluated.

2. High Range Radiation Monitor (EMF–53A and B) for the Containment Area. EMF–53A and B is a reliable radiation monitor whose purpose is to detect high levels of radiation which might be released during an accident. The extension to the surveillance interval for channel calibration would be brief (about one month). Monthly channel checks for EMF–53A and B required by TS Table 4.3–7 would not be altered by the proposed amendments and these checks ensure continued operability. The proposed amendments for EMF–53A and B would not change any design bases, safety limit, limiting safety system setpoints or limiting condition for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendment would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Loose-Parts Detection System. The extension in surveillance interval for channel calibration would be brief (about 1½ months). Other TS surveillance requirements for daily channel checks and monthly analog channel operational tests, plus system capability of overlap testing of the circuits, would not be changed by the proposed amendments and ensure continued operability of the system. The proposed amendments with respect to this system would not change any design bases, safety limits, limiting safety system setpoints or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendments would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

4. Turbine Overspeed Protection Instrumentation. The extension in surveillance interval for channel calibration of this instrumentation is brief (about 1½ months). Other TS surveillance requirements for weekly cycling of the high pressure turbine intermediate stop valves and low pressure turbine intercept valves, and for monthly cycling of the high pressure turbine control valves, would not be changed by the proposed amendments and will ensure continued operability of the system. The proposed amendments with respect to this instrumentation would not change any design bases, safety limits, limiting safety system setpoints or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendments would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

5. Reactor Coolant Leakage Detection Systems. The extension in surveillance interval for channel calibration of the containment floor and equipment sump level and flow monitoring subsystem would be brief (less than 2 months). Other TS surveillance requirements with respect to the containment atmosphere gaseous and particulate monitoring system and the containment ventilation unit condensate drain tank level monitoring subsystem would not be changed by the proposed amendments and assure adequate capability to monitor reactor coolant system leakage. The proposed amendments with respect to this system would not change any design bases, safety limits, limiting safety system setpoints or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendments would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

6. Type C Leak Rate Tests. The extension of the 24 month surveillance interval associated with leak rate testing of the several containment penetrations identified for the proposed amendments would be brief (about 1½ months). The previous leak rate test results for each of these penetrations were quite good, and there is no reason to suspect significant degradation would have occurred since the previous tests. The proposed amendments with respect to these tests would not change any design bases, safety limits, limiting safety system setpoints or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the propsoed amendments would not change the design or operation of the plant, it would not (3) create the possibility of a new different kind of accident from any accident previously evaluated. This extension request also requires a partial, one-time exemption from section III.D.3 of Appendix J to 10 CFR 50. Such exemption is currently being considered by the Commission based upon licensee's exemption request of May 9, 1986.

7. Steam Generator Level Transmitter 1 CFLT 5632. This transmitter provides indication within the Standby Shutdown Facility of the Steam Generator "C" wide range level. This is a non-safety related transmitter which provides Control Room indication but has no actuation capability. The extension of the surveillance interval for channel calibration would apply only to this single transmitter; the other three level transmitters (one per steam generator) would continue to be calibrated as presently required. The surveillance interval extension for transmitter 1 CFLT 5632 would be relativiely brief (about 3 months). The proposed amendments would not change existing TS requirements for monthly channel checks for all four level transmitters. The proposed amendments with respect to this transmitter would not change any design bases, safety limits, limiting safety system setpoints or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amemdents would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

8. DG Inspection—An extension of about 4 months (i.e., from July 3, 1986, to about October 28, 1986) would be provided by the proposed amendments

to complete the inspection of the first of the two diesel generators. The inspection to procedures prepared to the manufacturer's recommendations involves the dessembly of the diesel and normally reuires up to 30 days to perform. (Since one DG is required to be operable in COLD SHUTDOWM and REFUELING, the inspections must be performed one at a time, and the 30 days is included in the extension period to complete inspection of the first diesel starting September 28, 1986). During this time period, one diesel would remain operable and the appropriate surveillances would be conducted to assure its operability. Extensive inspections were performed on each diesel prior to Unit 1 startup (see SSER 4). All other required surveillances would continue to be performed (with the exception of those related to the ESF actuation surveillance interval extension previously granted by Amendment 7) and will provide assurance of continued diesel generator operability. The proposed amendments to extend this DG inspection interval would not change any design bases, safety limits, limiting safety system setpoints or limiting conditions for operation. Therefore, operation of the facility in accorance with this portion of the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendments would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

9. Containment Penetration Conductor Overcurrent Protective Devices. The proposed amendments would provide for a relatively beief extention (about 2 months) of the surveillance interval associated with channel calibration of certain protective relays and functional testing of a 10% sample of circuit breakers and fuses listed in TS Table 3.8–1A. The licensee reports that the breakers and fuses have been highly reliable with no failures or actuations recorded to date. The proposed amendments with respect to these devices would not change any design bases, safety limits, limiting safety systems setpoints or limiting conditions for operation. Therefore, operation of the facility in accordance with this portion of the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety. Because this portion of the proposed amendment would not change the design or operation of the plant, it would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated.

Accordingly, the commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

By June 19, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearhing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interestin the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matterof the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first rehearing conference scheduled in the proceeding, a petitioner shal file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B.J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. William Porter, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 15th day of May 1986.

For the Nuclear Regulatory Commission.

P. O'Connor,

Acting Director, PWR Project Directorate #4, Division of PWR Licensing-A, NRR.

[FR Doc. 86–11366 Filed 5–20–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–414]

Catawba Nuclear Station, Unit 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–52 to Duke Power Company, North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency (the licensees) which authorizes operation of the Catawba Nuclear Station, Unit 2, at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan.

On February 24, 1986, the Commission issued Facility Operating License No. NPF–48 to the licensees which authorized operation of Catawba Nuclear Station, Unit 2, to five percent of full power (170 megawatts thermal).

License No. NPF–52 supersedes NPF–48. NUREG–1181, Technical Specifications, issued in connection with NPF–52 supersedes NUREG–1182. However, the new Technical Specifications are identical to those issued with the previous license except as modified by license amendment number 7 issued on April 24, 1986, for Catawba Unit 1.

The Catawba Nuclear Station, Unit 2, is a pressurized water reactor located in York County, South Carolina, approximately 6 miles north of Rock Hill, South Carolina.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on June 25, 1981 (46 FR 32974). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of exemptions included in this license will have no significant impact on the environment (51 FR 5619).

For further details with respect to this action, see (1) Facility Operating License NPF–52; (2) Facility Operating License No. NPF–48; (3) the Commission's Safety Evaluation Report, dated February 1983 (NUREG–0954), and Supplements 1 through 6; (5) the final Safety Analysis Report and Amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Final Environmental Statement, dated January 1983 (NUREG–0921); (8) the Partial Initial Decision of the Atomic Safety and Licensing Board, dated June 22, 1984; (9) the Supplemental Partial Decision on Emergency Planning dated September 18, 1984; and (10) the Partial Initial Decision Resolving Foreman Override Concerns and Authorizing Issuance of Operating Licenses dated November 27, 1984.

These items are available at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of the Facility Operating License NPF–52 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–A. Copies of the Safety Evaluation Report and its supplements (NUREG–0954) and the Final Environmental Statement (NUREG–0921) may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 15th day of May 1986.

For the Nuclear Regulatory Commission
Paul O'Connor,
Acting Director, PWR Project Directorate #4, Division of PWR Licensing–A, NRR
[FR Doc. 86–11447 Filed 5–20–86; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 40–8027]

Sequoyah Fuels Corp; Receipt of Request for Action

Notice is hereby given that by Petition dated March 21, 1986, Thomas Carpenter of the Government Accountability Project, on behalf on Native Americans for a Clean Environment Council, Carlisle Citizens Association National Water Center, Arkansas Peace Center, and Fayetteville Peace and Justice Center has requested that the Commission immediately impose an indefinite suspension of the operating license for the Sequoyah Fuel Corporation's facility in Gore, OK. The Petition requests that the Commission take this action pending compliance of the facility with all licensing requirements, completion of an Interagency Task Force review of the accident which occurred at the facility on January 4, 1986, completion of all ongoing staff inspections and investigations, an independent inspection and review of the causes of the January 4 accident by a third party, and a management study to determine the cause of alleged noncompliance by the licensee with regulatory requirements. Additionally, the Petition requests that the Office of Inspector and Auditor (OIA) undertake a review of applicable NRC regulations to determine whether sufficient regulatory controls exist at the Core facility and whether NRC regulations are adequate to prevent occurrences such as that of January 4. The Petition is being treated as a request for action under 10 CFR 2.206 and, accordingly, the staff will take appropriate action on the request within a reasonable time.

A copy of the Petition is available for public inspection in the Commission's public document room at 1717 H Street, NW, Washington, D.C. 20555 and in the local public document for the facility located at Sallisaw City Library, 101 East Cherokee, Sallisaw, OK, 74955.

Dated at Bethesda, Maryland this 13th day of May, 1986.

For the Nuclear Regulatory Commission.
James M. Taylor,
Director, Office of Inspection and Enforcement.
[FR Doc. 86–11445 Filed 5–20–86 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for amendment to Facility Operating License No. DPR–3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station (the facility), located in Franklin County, Massachusetts.

The amendment, as proposed by the licensee, modified the facility Technical Specifications (TS) for the Safety Injection Tank Temperature, Steam Generator Blowdown Monitors, Containment Isolation Boundaries, ECCS Surveillance requirements, Reactor Vessel Fluence, the Carbon Dioxide fire suppression system, the plant on-site review committee composition, and the Radioactive Effluent monitoring system. The licensee's application for amendment was dated May 28, 1981, as revised January 23, 1984 and February 28, 1985. The requested changes were granted except for proposed changes dealing with a change to allow isolated loop charging, a request to delete a reference to TS 4.0.5, changes to the control room ventilation TS, a change to allow use of a temporary door in the Vapor Container Airlock, and a change that would have removed the requirement to sample for tritium after a core power change.

Notice of issuance of Amendment No. 92 will be published in the Commission's next regular **Federal Register** notice.

The portions of the application that were denied were:

(1) A request to allow isolated loop charging. The facility is currently not allowed to operate, according to their current TS, with an isolated loop under the conditions specified, i.e., above 1000 PSIG.

(2) A request to delete a reference to TS 4.0.5 since at the time of the request, TS 4.0.5 did not exist. TS 4.0.5 was subsequently issued in Amendment No. 81, and the reference to TS 4.0.5 should be kept in the TS.

(3) Changes to the control room ventilation TS. The request reflected operation that was susceptible to single failure and needed to be reevaluated by the licensee.

(4) A change to allow use of a temporary door in the Vapor Container Airlock. The proposed change was not sufficiently prescriptive in defining what constituted a temporary door, such that the consequences of a fuel handling accident would be adequately reduced by the temporary door.

(5) A request to remove the requirement to sample for tritium after a step change in reactor thermal power. Since tritium levels may change with power, the justification for this item is incorrect.

The licensee was notified of the Commission's denial of this request by letter dated May 14, 1986.

The licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. Such requests for hearing and leave to intervene must be received by June 24, 1986.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date.

A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 28, 1981, as revised January 23, 1984 and February 28, 1985, and (2) the Commission's letter to the licensee dated May 14, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of PWR Licensing–A.

Dated at Bethesda, Maryland, this 14th day of May 1986.

For the Nuclear Regulatory Commission.
George E. Lear,
Director Project Directorate #1 Division of PWR Licensing–A.
[FR Doc. 86–11446 Filed 5–20–86; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3534]

Application To Withdraw From Listing and Registration; American Broadcasting Companies, Inc. ("ABC"); 8.35% Sinking Fund Debentures due July 15, 2000

May 14, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On January 3, 1986, as a result of a merger, Capital Cities/ABC, Inc. ("Capital Cities"), through indirect wholly owned subsidiaries, acquired all of the issued and outstanding common stock of ABC. Prior thereto the common stock of ABC was listed for trading on the Exchange. A Report on Form 25 notifying the Commission of the removal of the ABC common stock from listing and registration on the Exchange was filed with the Commission by the Exchange on or about January 8, 1986. On February 3, 1986, ABC filed a request with the Commission for termination with respect to the ABC common stock.

The Debentures are not widely held and are owned principally by large institutional investors. Transfer records of ABC indicated that there are less than 50 holders of record. Based upon inquiries made by ABC's investment banking firm, ABC has learned that over $51,000 in principal amount of Debentures is held or controlled by Security Pacific National Bank. Further, the information available to ABC suggests that virtually all the Debentures are held by large institutions or by pension funds controlled by common trustees and that the number of beneficial holders of Debentures is not substantial.

During 1985, trading of Debentures on the Exchange was virtually non-existent. There was an aggregate of $357,000 in face amount of Debentures traded on the Exchange during 1985 in only 12 transactions.

Since ABC is no longer required to comply with the reporting requirements under the Exchange Act with respect to the ABC common stock and Capital Cities will not be required to separately report with respect to ABC, the continued requirement to maintain the listing and registration of the Debentures on the Exchange and with the Commission will constitute an unnecessary hardship on ABC and Capital Cities.

Any interested person may, on or before June 4, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11408 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-725]

Application and Opportunity for Hearing; Bellevue Corp.

Notice is hereby given that Bellevue Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under Section 15(d) of the 1934 Act.

For a detailed statement of the information presented all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons not later than June 9, 1986 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11409 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15097; File No. 812-6313]

Application and Opportunity for a Hearing; Mutual of America Life Insurance Co., et al.

May 14, 1986.

Notice is hereby given that Mutual of America Life Insurance Company (the "Company"), Mutual of America Separate Account No. 2 ("Account No. 2") and Mutual of America Investment Corporation (the "Fund"), (together, "Applicants") filed an application on February 20, 1986, and an amendment thereto on April 28, 1986, for an order pursuant to Section 17(b) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of Section 17(a) of the Act, and for an order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, approving certain transactions, to the extent necessary to permit each of the portfolios of Account No. 2 to transfer its assets to the Fund and the simultaneous reorganization of Account No. 2 into a unit investment trust; and for an order pursuant to Section 6(c) of the Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of distribution and mortality risk charges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

According to the application, the Company is a mutual life insurance company authorized to transact business in New York and in certain other jurisdictions. Applicants state that Account No. 2, a separate investment account of the Company, is divided into four distinct portfolios: the Account Money Market Portfolio, the Account Stock Portfolio, the Account Bond Portfolio and the Account Composite Portfolio. Account No. 2 is registered

with the Commission as an open-end diversified management investment company and is the funding vehicle for variable annutiy contracts issued by Account No. 2 and the Company. The application states that the Fund is an open-end diversified management investment company. Applicants state that the Fund will offer its shares to separate accounts of the Company to fund benefits under contracts being offered by the Company. Applicants state that in the future, the Fund may offer shares of its existing and any future portfolios to other separate accounts of the Company in order to fund pension plan contracts, thrift plan contracts and other funding agreements offered to its clients. Applicants state that it is expected the Company and the Fund will enter into an investment advisory agreement with the same terms and fees as the corresponding agreement currently in use by Account No. 2, subject to appropriate modifications to reflect the different parties and such other modifications as the Fund and the Company may reasonably deem appropriate. Applicants state that the advisory agreement will be subject to approval by Account No. 2's participants.

Applicants propose that, subject to approval by Account No. 2's participants, Account No. 2 will be reorganized as a unit investment trust ("UIT") each subaccount of which will invest exclusively in shares of the corresponding portfolio of the Fund. Applicants state that the Committee of Account No. 2 and the Company have entered into an Agreement and Plan of Reorganization (the "Plan"), subject to the consideration of and approval by the participants. Applicants state that pursuant to the Plan, on the proposed effective date of the reorganization, the Company, on behalf of Account No. 2, will transfer the portfolio assets and related liabilities of each of the portfolios of Account No. 2 to the Fund in return for shares of a corresponding portfolio of the Fund. Applicants state that the shares to be issued by the Fund to each portfolio of Account No. 2 in exchange for the assets of each such portfolio of Account No. 2, shall be registered with the Commission under the Securities Act of 1933 on Form N–14.*

*Applicants also state that the Company and Account No. 2 will file a post-effective amendment, on From S–6, to the Form N–2 registration statement, and will file a registration statement on Form N–8B–2, to reflect the reorganization to unit investment trust form.

I. Request for Exemption Pursuant to Section 17(b)

Applicants note that each Applicant may be deemed an affiliated person or an affiliated person of an affiliated person under Section 2(a)(3) of the Act, and the reorganization may be deemed to entail one or more purchases or sales of securities or other property between and among certain Applicants. Therefore, Applicants state, the Plan and the reorganization may require an exemption from Section 17(a) of the Act, pursuant to Section 17(b) of the Act. In this regard, Applicants assert that the terms of the proposed transactions, as described in the application and the Plan, are reasonable and fair (including the consideration to be paid and received), do not involve overreaching, are consistent with the investment policies of each of the portfolios of Account No. 2, and are consistent with the general purposes of the Act.

Applicants argue that the proposed reorganization will benefit existing and future participants in the Company's contracts by facilitating the future expansion of investment alternatives, and should result in economices of scale and administration. Applicants represent that this benefit is created at no cost to existing interests under the Contracts because the Company has undertaken to assume all costs relating to the reorganization and the establishment of the Fund, and to make a daily adjustment in policy values to fully offset the effect of any and all expenses of a type or in an amount which would not have been borne by Account No. 2 had the reorganization not occurred. Applicants state that the interests of the participants will be the same as their interests, respectively, in the portfolios of Account No. 2 immediately prior to the reorganization. Applicants represent that the transactions effecting transfer of the portfolio assets of Account No. 2 in return for shares of the Fund will be effected in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder. Applicants also note that the investment objectives and policies of the portfolios of Account No. 2 and with the corresponding portfolios of the Fund will be identical.

Applicants state that the reorganization will not require liquidation of any assets of Account No. 2 or the Fund; the only sales of Account No. 2's assets following the reorganization will be those arising in the ordinary course of business. Therefore, Applicants believe that neither Account No. 2 nor the Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Applicants also believe that the transfer of assets and the collective registration of the accounts will be tax-free events.

II. Request for an Order Pursuant to Section 17(d) and Rule 17d–1

The application notes that the reorganization may be deemed to be a transaction that is prohibited under Section 17(d). Thus, Applicants request an order pursuant to Rule 17d–1 of the Act approving the Plan and transactions to be effected in connection with the reorganization.

Applicants assert that the participation of each of the portfolios of Account No. 2 in the proposed Plan will be on an equal basis and will not result in advantages to any one of the portfolios of Account No. 2 to the detriment of any other portfolio. Each of the portfolios of Account No. 2 will have its assets transferred to a corresponding Fund portfolio with identical policies and restrictions. That fact should preclude any liquidation of assets of the portfolios of Account No. 2 or the Fund. Applicants therefore represent that none of the portfolios of Account No. 2 or the Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Further, Applicants note that none of the porfolios of Account No. 2 or the Fund bear any reorganization costs, and, therefore, there are no disparate results created by reorganization expenses.

Applicant state that the exchange of portfolio securities of each of the portfolios of Account No. 2 for corresponding Fund shares will be effected on the same basis, in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder. Thus, Applicants assert there will be no dilution of value for any of the portfolios of Account No. 2 or for the Fund. In addition, Applicants state that although the voting rights under the new structure will be different from the voting rights under the separate account structure, they believe these rights, in all fundamental respects, will be unaffected. Applicants assert that, for all practical purposes, participants will have the same voting power regardless of which structure is utilized.

III. Request for an Order Pursuant to Section 6(c) from Sections 26(a)(2) and 27(c)(2)

Applicants request an order pursuant to Section 6(c) of the 1940 Act, granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the Company to

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continue to deduct, from the net assets of each sub-account of the UIT, following the reorganization, the mortality risk charge and the distribution expense charge currently deducted from Account No. 2 in connection with its variable annuity contracts ("Contracts").

Applicants state that the Company assumes mortality risks under the Contracts by virtue of guaranteed annuity rates incorporated into the Contracts. To compensate for these risks, the Company has made a deduction each day at an anuual rate of 0.35% of the net assets of each portfolio in Account No. 2. The Application states that, similarly, the Company wishes to make a daily charge to the value of the net assets of each subaccount of the UIT at an ahnual rate of 0.35%.

Applicants state that the Company does not impose a sales charge at the time of purchase of a Contract or upon surrender of or withdrawals from the Contract. The Company, however, makes a deduction each day from the net assets of each portfolio in Account No. 2 for expenses associated with the distribution of the Contracts at an annual rate of 0.35%.

Applicants assert that the mortality risk charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. The Company states that this representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as current charges for the mortality risks, the existence of charge guarantees, and guaranteed annuity purchase rates. The Company represents that, as a condition for this relief, it will maintain at its principal office and make available to the Commission the memorandum and other documents used to support this representation. Applicants also represent that as a condition of this relief, Account No. 2 will invest only in an underlying mutual fund which undertakes to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b-1 of the Act to finance distribution expenses. Finally, Applicants state that the Company had concluded that its distribution financing arrangements will benefit Account No. 2 and its participants, and that the basis for this conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and which will be available to the Commission.

With respect to the distribution expense charge, Applicants submit that the deduction of such charge at a rate which is a very small fraction of the permitted front-end sales load charge (no such charge is being imposed on the Contracts) is much more favorable to the participants than imposition of a sales load of the permitted amount. Applicants state that the absolute aggregate amounts of the deductions from participants' accounts should be less under the distribution expense charge format than the aggregate amount of premium deductions which would be made under a sales load format; and, because of the small amounts which will be deducted during the lives of the Contracts for distribution expenses, more money will be made available for investment for the benefit of participants. Applicants state that the Company will monitor the Account to ensure that, with respect to any Participant, the accumulated charges of the .35% distribution fee will not exceed 9% of total contributions.

Notice is further given that any interested person wishing to request a hearing on the application may not later than June 9, 1986, at 5:30 p.m., do so by submitting a written request of the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11410 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15098 (811-1628)]

Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company; New America Fund, Inc.

May 15, 1986.

Notice is hereby given that New America Fund, Inc. ("Applicant"), Suite 835, 612 South Flower Street, Los Angeles, California 90017-2605, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on February 10, 1986, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it was organized as a Delaware corporation and that it filed a registration statement pursuant to Section 8(f) of the Act (under its former name, Fund of Letters, Inc.) on March 25, 1968, which became effective on September 20, 1968. Applicant represents that its Board of Directors adopted a Plan of Complete Liquidation and Dissolution ("Plan") which was approved by its stockholders on February 12, 1985. Applicant states that prior to its first distribution in partial liquidation on March 28, 1985, there were 1,805,053 shares outstanding with an aggregate net asset value of $80,539,641. Applicant represents that it had made a total of four liquidating distributions as of February 3, 1986, when it contributed all of its remaining net assets (less than $4 million) to the NAF Liquidating Trust ("Trust") as provided for by the Plan. Any cash not used to meet expenses or liabilities will be distributed to Beneficiaries of the Trust which are the shareholders of record as of January 20, 1986. Applicant states that the Trust will distribute all of its assets to or for the benefit of its shareholders and terminate no later than February 3, 1989. On February 6, 1986, Applicant filed a Certificate of Distribution with Delaware, its state of incorporation.

Applicant states that it now has no assets, debts or outstanding liabilities remaining and that it is not a party to any litigation. Applicant is engaged in an administrative dispute with the California Tax Board involving a past tax liability in the amount of $20,240 plus accrued interest. If Applicant prevails in this proceeding, the cash reserved to meet the claim will be distributed to Beneficiaries of the Trust. Further, Applicant states that it is not engaged, and does not intend to engage, in any activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested party wishing to request a hearing on the application may, not later than June 9, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler.

Secretary.

[FR Doc. 86-11411 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street NW., Washington, DC 20549.

New

One-Time Mutual Fund Organization Survey; File No. 270-301 One-Time Foreign Bank Broker-Dealer Subsidiaries Survey; File No. 270-301

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the Commission's one-time surveys of certain mutual fund organizations and certain foreign bank broker-dealer subsidiaries.

Submit comments to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Dated: May 15, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-11405 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23242; File No. SR-Amex-86-13]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating To Revision of its Original Listing Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to revise its original listing fee schedule (Section 140 of the Company Guide), to reduce the intitial fee charged companies listing on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc., and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of any basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Stautory Basis for, the Proposed Rule Change

(1) Purpose

New listings are the life blood of all markets since a certain percentage of companies will inevitably be lost due to mergers or otherwise go out of existence. While measuring price sensitivity to the listing decision is extremely difficult as fees are only one aspect of the equation, there is reason to believe that the Exchange's existing original listing fee schedule (Section 140 of the Company Guide) is set at an inappropriately high level. The Exchange is proposing to revise its original listing fee schedule to aid its ability to attract listed companies.

The revised fee schedule reduces the initial fee for listing by approximately 35% on average. It also simplifies the method of calculating fees by basing the cost of listing on the number of shares outstanding within set categories up to 100 million shares, thereby eliminating the need to calculate a particular fee using different per share amounts based on the total number of shares to be listed. The schedule is designed to achieve a reasonable balance between the Exchange's need to be competitive, while maintaining a reasonable level of listing revenue.

(2) Basis

The proposed rule change is consistent with section 6(b) in general and furthers the objectives of section 6(b)(4) in particular in that it achieves a reasonable balance between the Exchanges objective of attracting an adequate number of listed companies and its need for a reasonable level of listing revenue. This assures the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have no adverse impact on competition. On the contrary, it is intended to enhance competition between markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1986.

Dated: May 15, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11459 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

May 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Gottschalks Inc.
Common Stock, $.01 Par Value ((File No. 7-8958)

Lionel Corporation
Common Stock, $.10 Par Value (File No. 7-8959)

Pacific Tin Consolidated Corporation (Delware)
Common Stock, $1.00 Par Value (File No. 7-8960)

DLP Inc. (Holding Company)
Common Stock, $7.00 Par Value (File No. 7-8961)

Alberto-Culver Co.
Class B Common Stock, $.22 Par Value (File No. 7-8962)

Warnaco Inc.
Class A Common Stock, $.10 Par Value (File No. 7-8963)

American Business Products, Inc. (Georgia)
Common Stock, $2.00 Par Value (File No. 7-8964)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 4, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-11407 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23234; File No. SR-NASD-85-8]

Self-Regulatory Organizations; Order Approving Rule Change by National Association of Securities Dealers, Inc.

The National Association of Securities Dealers, Inc. ("NASD") on April 1, 1986 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend the Rules of Practice and Procedures for the Small Order Execution System ("SOES") and to modify the SOES facilities description in order to improve the efficiency of transactions in NASDAQ securities.

As modified, the SOES facilities description provides that unpreferenced orders entered in SOES will be executed in rotation against a SOES Market Maker only if its current quotation is best in SOES, that is, at or nearest to the best bid or offer currently displayed in the NASDAQ system. Previously, unpreferenced orders entered in SOES were executed in rotation against all active SOES Market Makers at the best price displayed in NASDAQ without regard to the market maker's current quotation in NASDAQ.

As amended, paragraph (c)(1)(B) of the SOES Rules of Practice and Procedures permit a SOES Order Entry Firm that is also a SOES Market Maker to enter in SOES self-preferenced orders. Previously, this conduct was prohibited.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23099 (51 FR 12430; Aprill 10, 1986). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the NASD and, in particular, sections 11Aa(1)(B), 11A(a)(1)(C)(i), 15A(b)(6), and 17A(a)(1)(B) and (C) of the Act and the rules and regulations thereunder. The rule change encourages the dissemination of competitive quotes in NASDAQ, while continuing to assure the execution of customer orders at the inside market. In addition, it enables smaller member firms that do not operate internal automated order routing and execution systems to take advantage of the processing and transaction reporting efficiencies of SOES by entering self-preferenced orders.

It is therefore ordered, pursuant to section 19(b)(2), that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, the the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 14, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11460 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15104; File No. 812-6264]

Central Securities Corporation; Application

May 15, 1986.

Notice is hereby given that Central Securities Corporation ("Applicant"), 375 Park Avenue, New York, New York 10022, a closed-end management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 19, 1985, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 2(a)(3)(D) of the Act in connection with Applicant's proposed purchases of limited partnership interests in various limited partnerships. All interested persons are referred to the application of file with

the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions thereof.

Applicant states that as of June 20, 1985, it had total investments of approximately $100 million, with $82 million invested in portfolio securities of unaffiliated issuers, $3.5 million invested in a controlled affiliate, $.8 million invested in other affiliates and $13.7 million invested in short-term obligations. Although Applicant has historically invested nearly all of its assets in common stocks issued by corporations, the application states that Applicant also seeks opportunities to invest from time to time in limited partnerships as a limited partner.

Applicant contends that if it were to become a limited partner of a limited partnership, the partnership and any partner of the partnership, and their respective affiliated persons could be deemed to be affiliated persons of Applicant (or affiliated persons of such persons) by virtue of section 2(a)(3)(D) of the Act, which defines an "affiliated person" of another person as "any officer, director, *partner, co-partner*, or employee of such other person." (Emphasis added.)

Applicant believes that if the limited partnership and its partners (other than Applicant) and their respective affiliated persons were affiliated persons of the Applicant (or affiliated persons of such persons) they would be subject to the provisions of section 17(a) and 17(d) of the Act and Rule 17d–1 thereunder, which would prohibit or severely restrict certain affiliated and joint transactions. Accordingly, absent exemptive relief, the partnership, its partners (other than Applicant) and their respective affiliates could not make investments, except in certain limited situations, in any enterprise in which Applicant or a company affiliated with Applicant was also an investor. Moreover, the partnership and each partner and their respective affiliates would need to check every party to every investment or other transaction they planned to make regardless of its nature, in order to ensure that Applicant or an affiliated company was not a party to such investment or transaction.

Applicant states that if it were to acquire a limited partnership interest any such investment would be limited to less than 5% of the equity of the partnership and would be made solely for investment purposes. Applicant will also limit its investment in limited partnerships to those in which (a) the management is vested exclusively in the general partner(s) and (b) it will have no power to control the affairs of the partnership or of the general partner(s).

According to the application, the relief sought relates solely to the terms "partner" and "copartner" appearing in section 2(a)(3)(D) of the Act. Furthermore, Applicant recognize that any transaction involving affiliated persons of Applicant (other than a limited partnership or its partners solely by reason of their status as such) or affiliated persons of such persons on the one hand, and Applicant or its affiliates, on the other hand, will continue to be subject to the limitations contained in sections 17 (a) and (d) of the Act and the rules and regulations thereunder notwithstanding issuance of the order requested. The exemptive relief sought is not directed to, nor limited to, any specific transaction but is general and prospective in character.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 9, 1986, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date on order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–11461 Filed 5–20–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15105; File No. 813–62]

First Boston Investment Limited Partnership No. 3, et al.; Application and Opportunity for Hearing

May 15, 1986.

Notice is hereby given that First Boston Investment Limited Partnership No. 3, a New York limited partnership (the "Partnership"), and FBGP, Inc., its general partner ("General Partner", collectively "Applicants"), Park Avenue Plaza, New York, New York 10055, filed an application on November 26, 1985, and an amendment thereto on March 14, 1986,[1] for an order of the Commission pursuant to sections 6(b) and 17(d) of the Act and Rule 17d–1 thereunder exempting the Partnership from the provisions of section 17(d) of the Act and Rule 17d–1 thereunder to the extent necessary to permit an arrangement whereby the Partnership, an "employees' securities company" as defined in the Act, and all similar partnerships offered to the same class of limited partner investors (such partnerships together with the Partnership, "Partnerships") would invest concurrently in the common stock of leveraged buy-out entities with a leveraged buy-out partnership organized by First Boston, Inc. ("FBI").

Applicants state that the Partnerships have been and will be formed to invest in risk capital opportunities, and have previously been granted an order (the "Prior Order") exempting them from all Sections of the Act other than certain sections, including section 17(d) (with certain exceptions) (Investment Company Act Release No. 14567, August 15, 1985). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of all applicable provisions thereof.

According to the application, FBI has recently formed a New York general partnership with a major United States insurance company, in which the insurance company owns a 99% interest and FBI, through a wholly-owned subsidiary ("FBLBO"), owns a nominal 1% interest (the "LBO Partnership"). Applicants state that the LBO Partnership was formed for the limited purpose of providing the "mezzanine" level financing at attractive rates for leveraged buy-out transactions arranged or sponsored by FBI and its affiliates (collectively, "First Boston") and to provide the insurance company partner the opportunity to participate in both the equity and debt portions of every leveraged buy-out arranged or sponsored by First Boston. Applicants further state that the LBO Partnership's committed capital is substantially in excess of $100,000,000 and that the capital will be contributed by the two partners in accordance with their respective partnership interests (99–1), and net gains or losses will be allocated to the partners in accordance with their partnership interests.

[1] By letter dated May 1, 1986, counsel for Applicants modified certain language in the application for purposes of classification. The language of the notice reflects these changes.

Applicants state that the principal investments of the LBO Partnership will be long-term debt and perferred stock, as well as a portion of the common stock purchased in each such leveraged buy-out acquisition. Applicants propose that in each instance where the LBO Partnership invests in common stock of a leveraged buy-out sponsored by First Boston, the then current Partnership or Partnerships will generally be offered the opportunity to purchase from the leveraged buy-out entity 50% of the amount of common stock purchased by the LBO Partnership, in each case on the same terms and at the same share price as so purchased by the LBO Partnership.

Applicants request an exemption from section 17(d) of the Act and Rule 17d–1 thereunder to permit the Partnerships to co-invest with the LBO Partnership in the situations described above. Applicants state that this exemption is requested because, due to the LBO Partnership's substantial capital (of which FBI is only contributing a nominal one percent), it is likely that the Partnerships will be offered opportunities to co-invest in such leveraged buy-outs in amounts exceeding 40% of their total assets, the co-investment amounts currently permitted in the Prior Order for situations of this type (the "40% of Assets Limitation"). Thus, Applicants request an exception from the 40% of Assets Limitation with request to co-investments made with the LBO Partnership in the common stock of leverage buy-out entities sponsored, structured or arranged by First Boston, to permit the Partnerships to co-invest up to 80% of their total assets in these leveraged buy-out opportunities. Applicants state that this exemption is requested subject to the proviso that the additional 40% of assets which would then be available for co-investment would only be co-invested in leveraged buy-out opportunities with the LBO Partnership and, in each such leveraged buy-out co-investment, the affiliated parties (i.e., a Partnership or Partnerships and the LBO Partnership) will purchase their respective shares of common stock at the same per share price and on the same terms.

Applicants state that management of the LBO Partnership is vested in FBLBO, which is responsible for managing the day-to-day affairs of the LBO Partnership, as well as all recordkeeping and other operational functions. According to the application, there is a five member LBO Partnership Committee, however, which oversees the approval of all acquisitions and dispositions of securities by the LBO Partnership. Three of its members are appointed by FBLBO, and two are appointed by the insurance company partner. Applicants state that unless a greater vote is required, all actions by the LBO Partnership Committee selecting investments require a majority vote.

In support of their request for exemption, Applicants represent that the General Partner, a wholly-owned subsidiary of FBI, must own at least 70% of the capital of each Partnership. Thus, in all instances where there would be a co-investment by virtue of FBI's nominal interest in the LBO Partnership, FBI would also be investing substantial amounts through the Partnerships by virtue of its minimum 70% interest. Applicants further represent that the investment committee of the board of directors of the General Partner of the purchasing Partnerships will make a determination at the time of such investment, to be recorded in the minutes of the meeting, that the terms of such investment by the investing Partnerships do not involve overreaching of those Partnerships on the part of any person concerned, including the LBO Partnership. Applicants state that the General Partner also undertakes to obtain in each such co-investment situation a commitment from the LBO Partnership not to dispose of its common stock interest in the LBO entity without giving sufficient, but not less than one day's, notice to the General Partner so that the Partnerships have the opportunity to dispose of their common stock interest in the LBO entity concurrently. Applicants further state that all such shares of common stock purchased by a Partnership will be consistent with the investment policies of that Partnership.

Applicants represent that the proposed arrangement, subject to the aforementioned conditions, is consistent with the provisions, policies and purposes of the Act and is designed to insure that participation by the Partnerships with the LBO Partnership in the acquisition of common stock will be on the same basis, and on terms not less advantageous than that offered to other participants in any leveraged buy-out acquisition where such co-investment may occur.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 6, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–11462 Filed 5–20–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15102; (812-6356)]

Sequoyah-XI Limited Partnership et al.; Application for Exemption of Three-Tier Real Estate Limited Partnership

May 15, 1986.

Notice is hereby given that Sequoyah-XI Limited Partnership ("Partnership"), Sequoyah-Sumter Limited Partnership and Sequoyah-Hilton Head Limited Partnership ("Middle-Tier Partnerships"), Sequoyah Financial Corporation, ("SFC") and Charles T. Carlisle, Jr. ("Carlisle") (Partnership, Middle-Tier Partnerships, SFC and Carlisle, collectively, "Applicants"), 1200 Plaza Tower, Knoxville, TN 37929, filed an application on April 24, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained herein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Partnership was formed on January 1, 1986, under the District of Columbia Uniform Limited Partnership Act ("Partnership Act") as a vehicle for equity investment in government-assisted rental housing pursuant to a "three-tier" arrangement. The Middle-Tier Partnerships, which will serve as conduits for the Partnership's investments, are also District of Columbia limited partnerships and were formed on October 1, 1985. Sumter Villas Limited Partnership and the Hilton Head Garden Limited Partnership ("Local Limited Partnership"), both Georgia limited partnerships, were formed on October 31, 1985, and will

invest directly in the rental housing. Applicants represent that the Partnership is organized pursuant to an arrangement whereby a 1% general partner interest in the limited partnership is held by SFC (.01%), Carlisle (.215%) and Sequoyah General Corporation (.775%) ("General Partners"), and a 99% limited partnership interest will be held by the anticipated investors (98.25%) and Prudential Bache Properties, Inc. (.75%). SFC will act as managing general partner to the Partnership and each Middle-Tier Partnership. Applicants further represent that the Partnership has a 99% limited partner interest and a .99% general partner interest in the Middle-Tier Partnership, and each Middle-Tier Partnership has, in turn, a 98.99% limited partner interest in one Local Limited Partnership. Thus, Applicants submit that for purposes of control and other rights, as well as for purposes of beneficial ownership of the Local Limited Partnerships, the Partnerships investment in each Local Limited Partnership through the applicable Middle-Tier Partnership is tantamount to direct investment by the Partnership in each Local Limited Partnership. Applicants state that the Partnership, the Middle-Tier Partnerships and the Local Limited Partnerships are organized as limited partnerships in order to provide investors with both liability limited to their capital investments and the ability to claim on their tax returns the deductions, losses, credits, and other tax items that originate from the Partnership's interest in the Local Limited Partnerships.

According to the application, the Partnership has invested, through the applicable Middle-Tier Partnership, in the Local Limited Partnerships, each of which is the beneficial owner of one government assisted apartment complex acquired by the Local Limited Partnerships on December 30, 1985 ("Developments"). The Developments are operated for low or moderate income families and individuals. Through its investment in the Local Limited Partnerships, the Partnership intends to realize (i) a potential increase in its equity in the Developments through amortization of the Developments' mortgage indebtedness, (ii) cash flow from operations, (iii) potential appreciation in the value of the Developments, (iv) cash distributions from sale or refinancing of the Developments and (v) certain tax benefits.

In reliance upon Regulation D and Rule 506 under section 4(2) of the Securities Act of 1933, the Partnership plans to offer 104 units of limited partnership interest ("Units") at $50,000 per Unit. Purchasers of Units will become limited partners of the Partnership ("Limited Partners"). Prudential-Bache Securities Inc. will act as selling agent for the offering of Units and subscriptions for half Units may be accepted at the sole discretion of the Partnership's General Partners.

Applicants state that the form of subscription agreement for Units provides that each subscriber must represent, among other things, either that (1) for each Unit purchased the purchaser has either a net worth (exclusive of home, home furnishings and automobiles) in excess of $175,000 for each Unit purchased and anticipates that some part of the purchaser's income (without regard to the investment) through 1990 would be subject to federal income tax, under current law, at the rate of 42% or more, or (2) the subscriber has either (a) a net worth, or joint net worth with his or her spouse, in excess of $1,000,000 as of the date of the subscription agreement, or (b) had individual gross income (exclusive of gross income of his or her spouse) in excess of $200,000 in 1984 and 1985, and reasonably expects to have individual gross income (exclusive of gross income of his or her spouse) in excess of $200,000 in 1986, or (c) will purchase at least $150,000 of the security being offered, where the total purchase price does not exceed 20% of his or her net worth at the time of the sale, or joint net worth with his or her spouse. According to the application, any prospective transferee of a Unit will be required to make substantially similar representations in writing to the Partnership as to investment suitability.

Applicants assert that the three-tier arrangement described above is desirable and appropriate to secure potential tax advantages which result from the acquisition of the Developments having occurred in 1985, while facilitating marketing of the Middle-Tier Partnerships' investments in both Local Limited Partnerships. Applicants state that subsequent to the acquisition of the Developments by the Local Limited Partnerships, it was determined that interests in both Local Limited Partnerships should be sold in a single offering. Applicants further state that it was not deemed feasible for the Partnership to replace the Middle-Tier Partnerships directly as the limited partner in each of the Local Limited Partnerships as a means to achieve this result. According to the application, such a change of the limited partner holding a 98.99% interest in each Local Limited Partnership would have resulted in the termination, for federal tax purposes, of each of the Local Limited Partnerships after January 1, 1986. Such tax terminations after January 1, 1986, would have potentially forfeited certain tax benefits available under current law as a result of the acquisition of the Developments having occurred in 1985. Forfeiture of these tax benefits would result if tax reform legislation passed by the U.S. House of Representatives were to be enacted into law. Applicants assert that the use of such three-tier arrangement is able to achieve the result of offering investments in both Developments in a single offering without this potentially adverse tax result because the charge made in the partners of the Middle-Tier Partnerships to include the Partnership does not result in the tax termination of the Local Limited Partnerships.

Applicants represent that the Partnership's Agreement of Limited Partnership ("Partnership Agreement") and its Private Placement Memorandum ("Memorandum") will contain numerous provisions designed to ensure fair dealing by the General Partners with the Partnership's Limited Partners. Applicants state that all potential conflicts of interest between the General Partners and the Limited Partners will be disclosed in the Memorandum, including the receipt of commissions, fees, and other compensation by the General Partners and their affiliates. Applicants believe that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Applicants further state that the Memorandum, the Partnership Agreement and the partnership agreements of the Middle-Tier Partnerships will contain various provisions designed to eliminate or significantly reduce potential conflicts of interest. According to the application, the Partnership Agreement will provide that a majority in interest of the Limited Partners may, without the concurrence of the General Partners: (1) Amend the Partnership Agreement (with certain restrictions); (2) remove any General Partner and elect a replacement (unless the removed General Partner was the sole remaining General Partner); and (3) dissolve the Partnership; provided that such actions shall not be effective until the Partnership has received an opinion of counsel that such action is permitted by the Partnership Act and will not impair the limited liability of the Limited Partners or adversely affect the

classification of the Partnership as a partnership for federal income tax purposes.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request exemption from all provisions thereof. Applicants submit that the contemplated arrangement is not susceptible to abuses of the sort the Act was designed to remedy. Applicants state that the investment suitability standards, the requirements for fair dealing provided by the Partnership's and the Middle-Tier Partnerships' governing instruments, and pertinent governmental regulations imposed on the Local Limited Partnerships by the federal government, provide protection to investors in Units comparable to and perhaps greater than that provided by the Act. Applicants further submit that the Partnership, by investing in government assisted housing owned by the Local Limited Partnerships, furthers the congressionally declared national housing goal of providing a decent home and a suitable environment for every American family.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 9, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchanged Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis

Assistant Secretary.

[FR Doc. 86-11463 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15163; File No. 812-6295]

National Bank of Canada; Application

May 15, 1986.

Notice is hereby given that National Bank of Canada ("Applicant") filed an application on January 31, 1986, c/o Abraham L. Zylberberg, Esq., Sage Gray Todd & Simms, Two World Trade Center—100th Floor, New York, New York 10048, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicant and a proposed Delaware finance corporation to be wholly owned by Applicant ("Proposed Subsidiary") from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for a statement of the relevant provisions thereof.

Applicant is a Canadian chartered bank which directly and through subsidiary and affiliated companies operates a network of offices in Canada and around the world. Applicant states that its principal activities are substantially similar to those conducted by a large American bank. The applications states that the business of banking in Canada is a matter of federal jurisdiction and is extensively regulated by the Bank Act of 1980 ("Bank Act") which governs in detail the organization, powers, and activities of each Canadian chartered bank.

According to the application, the Proposed Subsidiary will be a corporation organized under the laws of the State of Delaware. All of the issued and outstanding shares of capital stock of the Proposed Subsidiary will be owned by Applicant. It is intended that the principal business of the Proposed Subsidiary will be the raising of funds for Applicant and wholly-owned subsidiaries of Applicant. Accordingly, substantially all of the Proposed Subsidiary's assets will consist of accounts receivable from Applicant and its wholly-owned subsidiaries.

Applicant proposes to issue U.S. dollar denominated short term promissory notes commonly known as commercial paper ("Notes"). The Notes would either be issued directly by the Applicant or would be issued by the Proposed Sudsidiary. Notes issues by the Applicant will be direct and unconditional obligations of Applicant, and Notes issued by the Proposed Subsidiary will be direct and unconditional obligations of the Proposed Subsidiary and will be unconditionally guaranteed by Applicant. The Notes will have those characteristics, including maturity and minimum denomination, which will enable them to qualify for the exemption from registration under section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant does not propose to register the Notes or cause the Proposed Subsidiary to register the Notes of any guarantees thereof under the 1933 Act. However, neither Applicant nor the Proposed Subsidiary will offer or sell any Notes in the United States until Applicant has received a written opinion of its U.S. legal counsel to the effect that the Notes and any guarantee thereof are entitled to the section 3(a)(3) exemption. Applicant does not request the Commissions' review or approval of such opinion.

Applicant states that the Notes, and any future issue by it or the Proposed Subsidiary of securities in the United States, will have received, prior to issuance, one of the three highest short-term investment grade ratings from at least one nationally-recognized statistical rating organization, and Applicant's U.S. legal counsel shall have certified in writing that such rating has been received. No such rating will be obtained, however, if, in the opinion of Applicant's legal counsel, an exemption from registration is available under section 4(2) of the 1933 Act after due consideration of the doctrine of "integration".

Notes issued by Applicant will be direct liabilities of Applicant and will park *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant, including deposit liabilities other then indebtedness to the United States, Canada or any province of Canada. The Notes issued by Applicant will rank prior to any subordinated indebtedness of Applicant and to the rights of shareholders.

Notes issued by the Proposed Subsidiary will be direct liabilities of the Proposed Subsidiary and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtednes of the Proposed Subsidiary other than indebtedness to the United States. The Notes will rank prior to any subordinated indebtedness of the Proposed Subsidiary and to the rights of shareholder. The guarantees by Applicant of notes issued by the Proposed Subsidiary will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant, including deposit liabilities other than indebtedness to the United States, Canada or any province of Canada. The guarantees will rank prior to any subordinated indebtedness of Applicant and to the rights of shareholders.

The Notes will be sold through one or more of the major registered securities dealers experienced in the marketing of commercial paper to the types of institutional and other sophisticated

investors that ordinarily participate in the United States commercial paper market, and the Notes will not be advertised or otherwise offered for sale to the general public. Applicant undertakes on behalf of itself and the Proposed Subsidiary to ensure that each dealer in the United States through which the Notes are sold will provide to each offeree who has indicated an interest in the Notes, and prior to any sale of the Notes to such offeree, a memorandum which describes Applicant's business and, where appropriate, the Proposed Subsidiary's business and contains a balance sheet and income statement of Applicant and, where appropriate, the Proposed Subsidiary for the most recent fiscal year and, as publicly available, for the most recent fiscal quarter. The memorandum and financial statements will be as comprehensive as those customarily used in commercial paper offerings in the United States, will describe any material applicable to chartered banks and generally accepted U.S. accounting principles applicable to commercial banks and will be updated periodically to reflect material changes in the financial status of Applicant and, where appropriate the Proposed Subsidiary.

While it has no present intention of doing so, Applicant may in the future offer, or cause the Proposed Subsidiary to offer, other debt securities for sale in the United States. Any such future offering will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration, and will be made on the basis of a disclosure document appropriate and customary for such registration or exemption, and in any event as comprehensive as those used in offerings of similar debt secutiries by U.S. issuers in the United States. Applicant undertakes on behalf of itself and, where appropriate, on behalf of the Proposed Subsidiary, such a disclosure document will be provided to each offeree who has indicated an interest in such securities prior to any sale of such securities to such offeree.

In connection with the issuance and sale of the Notes, Applicant and the Proposed Subsidiary will appoint a bank or trust company having an office in New York City as issuing agent. Applicant and the Proposed Subsidiary will expressly submit to the jurisdiction of those New York State and Federal courts which sit in the City and County of New York for the purpose of any suit, action or proceeding brought on the Notes or with respect to the offer or sale of the Notes or the guarantees of the Notes issued by the Proposed Subsidiary and, in that connection, will appoint an agent to accept service of process in any such suit, action or proceeding, and an agent to accept service of process will be continuously maintained, until all amounts due and to become due in respect of the Notes or the guarantees have been paid or set aside. However, the foregoing will not restrict the right of any holder of a Note to bring suit in any court having jurisdiction over Applicant or the Proposed Subsidiary by virtue of the offer and sale of the Notes, the guarantees or otherwise. Applicant on behalf of itself and the Proposed Subsidiary represents that each will be subject to suit in any other court in the United States which shall have jurisdiction over Applicant or the Proposed Subsidiary by virtue of the manner of the offering of the Notes or the guarantees of the Notes issued by the Proposed Subsidiary, any future offerings or the guarantees in connection therewith or otherwise. Applicant and the Proposed Subsidiary will also, in connection with any future offering of their debt securities in the United States, appoint and maintain an agent for service of process and submit to the jurisdiction of New York State and Federal courts to the same extent as with respect to the Notes.

Applicant consents on behalf of itself and the Proposed Subsidiary to any order of exemption requested pursuant to section 6(c) being expressly conditioned upon Applicant's and the Proposed Subsidiary's compliance with the foregoing undertakings. Applicant believes that the exemption requested is necessary and appropriate in the public interest and consistent with the protection of investors and with the purposes fairly intended by the policy provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 9, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86 11464 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24095]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 15, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 9, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Kentucky Power Company (70-6921)

Kentucky Power Company ("Kentucky"), a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment with his Commission pursuant to sections 6 (a), (b) and 7 of the Act and Rules 50(a)(2) and 50(a)(5) thereunder.

By order dated February 28, 1986, HCAR No. 24032, Kentucky was authorized to issue notes to banks of up to $40 million at any one time outstanding through January 1, 1987.

Kentucky now proposes that it be authorized to issue and sell a combination of commercial paper and notes in the same aggregate principal amount of $40 million for the same period.

American Electric Power Company, Inc., et al. (70–7183)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned service company, American Electric Power Services Corporation ("AEPSC"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment, pursuant to sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder, to the previously filed joint application-declaration.

AEPSC procures virtually all required insurance protection for the AEP system companies. AEPSC is required to provide Insurance Company of North America ("INA") with an irrevocable letter of credit in favor of INA in order to secure certain unfunded liabilities of AEPSC covered by a general and automobile INA insurance program. By order dated December 13, 1985 (HCAR No. 23948), AEPSC was authorized to obtain such letter of credit, and AEP was authorized to guarantee AEP's obligations, up to a maximum amount of $21 million.

INA subsequently informed AEPSC that certain unfunded liabilities totalling $13,776,506, secured in prior years by surety bonds, would now have to be collateralized by letter of credit. It is therefore requested that the $21 million limitation previously authorized be increased to $35 million to reflect these additional unfunded liabilities.

Alabama Power Company (70–7212)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

Alabama has entered into a Firm Power Purchase Contract ("Power Contract") with Alabama Municipal Electric Authority ("AMEA") which obligates Alabama to supply specified amounts of capacity to AMEA for a term of fifteen years and AMEA to pay to Alabama a one-time capacity payment in the amount of $100,000,000. The power contract also provides that in the event Alabama breaches its obligation to provide such capacity, AMEA is entitled to liquidated damages from Alabama. In order to secure the payment of such liquidated damages, Alabama proposes to issue its Liquidated Damages Note. The amount of liquidated damages payable thereunder is set forth in a schedule to the note, with a maximum principal amount of $113,300,000 and descending amounts thereafter. In order to secure its performance under the note, Alabama proposes to issue $113,300,000 principal amount of its first mortgage bonds which Alabama will deposit with an escrow agent. Neither the note nor the bonds will bear any interest unless and until a default occurs under the Power Contract. In such event, the note and the bonds will bear interest at a rate equal to the highest rate borne by AMEA's bonds issued by it to finance the purchase of capacity under the Power Contract. Based upon current market conditions, such a rate is expected to be approximately 8%. Upon Alabama's performance of its obligations under the power contract and the decline of the balance payable under the note, the escrow agent will deliver annually to Alabama to commensurate amount of the bonds for cancellation.

Consolidated Natural Gas Company, et al. (70–7258)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222; The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania 15222; Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301; CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130; West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802; CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244; The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44114; Hope Gas, Inc., and Union National Center West, Clarksburg, West Virginia 26301 ("subsidiary companies"), have filed an application-declaration subject to sections 6, 7, 9(a), 9(c), 10, and 12 of the Act and Rules 43, 45(a), 45(b)(1) and 50(a)(3) thereunder.

The applicants-declarants propose to establish a System Money Pool ("Pool") to be administered by Consolidated Natural Gas Service Company, Inc. The Pool will consist of funds that may be loaned on a short-term basis to those subsidiary companies which have a need for short-term funds, other than Consolidated.

Consolidated will be a participant not a borrower. After satisfaction of the borrowing needs of the subsidiary companies and after any possible prepayments of outstanding indebtedness, Consolidated Natural Gas Service Company, Inc., as agent of the Pool, will invest excess funds and allocate the earnings among those applicants-declarants providing such excess funds.

Potomac Edison Company (70–7259)

The Potomac Edison Company ("PE"), Downsville Pike, Hagerstown, Maryland 21740, an electric utility subsidiary of Allegheny Power System, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6, 7 and 12(c) of the Act and Rules 42 and 50 thereunder.

PE proposes, on or prior to December 31, 1986, to issue and sell up to $30 million of new preferred stock, by competitive bidding, in one or more series. In the event that competitive bidding is impractical or undesirable due to market conditions, the size of any series or other conditions, PE, proposes, subject to authorization by the Commission by further order, either to privately place the stock with institutional investors or to negotiate with underwriters for the sale of the stock.

Consolidated Natural Gas Company, et al. (70–7260)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, The Peoples Natural Gas Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44114, Hope Gas, Inc. and Union Natural Gas Center West, Clarksburg, West Virginia 26301, have filed an application-declaration subject to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

Consolidated proposes to finance its subsidiary companies as follows:

(a) Consolidated, in order to meet inventory gas financing and working capital requirements, proposes to issue and sell from time to time through June 15, 1987, short-term bearer notes to Merrill Lynch Money Market, Inc., a dealer in commercial paper, in a maximum principal amount of $300 million outstanding at any one time.

(b) If it becomes impractical to issue commercial paper, Consolidated proposes to make short-term bank borrowings from time to time through June 15, 1987. Consolidated would borrow (i) from Chase Manhattan Bank, N.A. ("Chase") up to an aggregate principal amount of $75 million at any one time outstanding, and (ii) from Citibank, N.A. ("Citibank") up to an aggregate principal amount of $50 million at any one time outstanding.

(c) Consolidated also proposes to borrow from time to time through June 15, 1987, up to $175 million from banks on its unsecured promissory notes.

(d) In addition, Consolidated proposes to make, from time to time, through June 15, 1987, open account advances not exceeding $570 million at any one time outstanding to the subsidiary companies set forth below up to the following principal amounts:

Company	Amount
CNG Development Co	[illegible]
CNG Energy Co	[illegible]
CNG Producing Co	[illegible]
Consolidated Gas Transmission Corp	[illegible]
Consolidated Natural Gas Service Co	[illegible]
Hope Gas, Inc	[illegible]
The East Ohio Gas Co	[illegible]
The Peoples Natural Gas Co	[illegible]
The River Gas Co	[illegible]
West Ohio Gas Co	[illegible]
Total	$570,000,000

In order to have outstanding at any one time up to $300 million aggregate principal amount of short-term notes, Consolidated seeks to have the 5% limitation under section 6(b) of the Act raised to 32% from the order date through June 15, 1987.

(e) Consolidated further proposes, to make long-term loans from time to time through June 15, 1987, of up to $93,750,000 to the subsidiary companies set forth below up to the following principal amounts:

Company	Amount
CNG Producing Co	[illegible]
Consolidated Gas Transmission	[illegible]
Hope Gas, Inc	[illegible]
The East Ohio Gas Co	[illegible]
The Peoples Natural Gas Co	[illegible]
West Ohio Gas Co	[illegible]

Company	Amount
Total	$93,750,000

(f) Consolidated also proposes to make through June 15, 1987 revolving credit allowances not exceeding $214,500,000 at any one time outstanding to the subsidiary companies set forth below up to the following principal amounts:

Company	Amount
CNG Development Co	$16,000,000
CNG Producing Co	98,000,000
Consolidated Gas Transmission Corp	30,000,000
The East Ohio Gas Co	50,000,000
The Peoples Natural Gas Co	20,000,000
The River Gas Co	500,000
Total	214,500,000

The Columbia Gas System, Inc. (70-7251)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, 20 Montchanin Road, Wilmington, Delaware 19807, has filed an application pursuant to sections 9(a)(1) and 10 of the Act.

Colombia proposes to acquire 13,333 shares of common stock of ACE Limited ("Limited") a Cayman Islands corporation, for an anticipated purchase price of $150 per share, or an aggregate purchase price not exceeding $2 million. Limited owns all of the common stock of Ace Insurance Company, Ltd. ("ACE"), a Cayman Islands insurance company organized to underwrite general liability and directors' and officers' liability insurance. Columbia requests authorization to subscribe to shares in Limited in order to replace amounts of liability insuracne no longer available to the Columbia system. In order to obtain insurance from ACE, which will not be a licensed insurer in the United States, nonsponsor policyholders must subscribe for shares of Limited's common stock in an amount equal to a percentage of the policyholder's gross first-year premium. Columbia states that its proposed ownership interest in Limited will be less than 1%. As a participant in ACE, Columbia's liability would be limited to its capital investment in Limited in the event that ACE incurs underwriting losses in excess of accumulated capital and surplus.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11465 Filed 5-20-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of forms, request for clearance (S.F. 83), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-7231.

Title: Health Benefits Survey
Frequency: Non recurring
Description of Respondents: Data on the relative costs of health benefits in small and large firms are needed to evaluate the effect of current and proposed federal programs.
Annual Responses: 1,000
Annual Burden Hours: 400
Type of Request: New collection

Title: Liability Certificate
Form No.: SBA 856
Frequency: Extension
Description of Respondents: This form is prepared by the licensee and is used during the course of SBIC examinations by audit personnel.
Annual Responses: 500
Annual Burden Hours: 500
Type of Request: Extension

Dated: May 15, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-11414 Filed 5-20-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0118]

Affiliated Investment Fund, Ltd.; License Surrender

Notice is hereby given that Affiliated Investment Fund, Ltd., 225 Shurfine Drive, College Park, Georgia 30337, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Affiliated Investment Fund, Ltd. was licensed by the Small Business Administration on September 24, 1975. Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 2, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 14, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-11415 Filed 5-20-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0302]

Transatlantic Capital Corp.; License Surrender

Notice is hereby given that Transatlantic Capital Corporation, 185 Devonshire Street, Boston, Massachusetts 02110 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Transatlantic Capital Corporation, was licensed by the Small Business Administration on October 24, 1979.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 7, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-11416 Filed 5-20-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Revocation of Certificates of United Air Carriers, Inc., d.b.a. National Airlines, Inc., or Overseas National Airways

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause, (Order 86-5-59), Dockets 36840, 41336, and 41627.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of United Air Carriers, Inc. d/b/a National Airlines, Inc., or Overseas National Airways, issued under sections 401 and 418 of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than June 5, 1986.

ADDRESSES: Responses should be filed in Dockets 36840, 41336, and 41627 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 755-3812.

Dated: May 15, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-11413 Filed 5-20-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Department Circular—Public Debt Series—No. 19-86]

Treasury Notes of May 31, 1988, Series Z-1988

Washington, May 15, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of May 31, 1988, Series Z-1988 (CUSIP No. 912827 TR 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated June 2, 1986, and will accrue interest from that date, payable on a semiannual basis on November 30, 1986, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 21, 1986. Non competitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 20, 1986, and received no later than Monday, June 2, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks or other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank of a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and them competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accpet or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, June 2, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bill, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 29, 1986. In addition, Treasury Tax and Loan Note Otion Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax or Loan Note Accounts on of before Monday, June 2, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under pay, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representatives, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax

returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form or registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 86-11543 Filed 5-19-86; 3:10 p.m.]
BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval of information collection activities in support of the internal monitoring of the Central American Program of Undergraduate Scholarships (CAMPUS).

DATE: Comments must be received by May 31, 1986. If you intend to comment but cannot prepare comments before the deadline, please advise the OMB reviewer and the Agency Clearance Officer promptly.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB. Attention: Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street S.W., Washington, D.C. 20547, telephone (202) 485-8676. OMB Review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395-3785.

SUPPLEMENTARY INFORMATION: Title: Progress Reports of CAMPUS Program. In the interest of sound program administration, USIA is monitoring the CAMPUS Program with the assistance of project directors. Toward this end, project directors will provide the Agency with quarterly student progress reports on all CAMPUS students at the twelve participating colleges and universities.

Dated: May 16, 1986.

Charles N. Canestro,
Federal Register Liaison.

[FR Doc. 86-11466 Filed 5-20-86; 8:45 am]
BILLING CODE 8230-01-M

VOL 51 ISS 98 MY 21 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 98
Wednesday, May 21, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Thursday, May 15, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Citizens State Bank of St. Francis, St. Francis, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, May 15, 1986; (2) accept the bid for the transaction submitted by St. Francis State Bank and Trust Company, St. Francis, Kansas, a newly-chartered State nonmember bank; (3) approve the applications of St. Francis State Bank and Trust Company, St. Francis, Kansas, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in The Citizens State Bank of St. Francis, St. Francis, Kansas, and for consent to exercise full trust powers; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 2:08 p.m., and at 7:45 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted: (1) A resolution (a) making funds available for the payment of insured deposits made in Saddleback National Bank, Laguna Hills, California, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, May 15, 1986; (b) accepting the bid of Landmark Bank, La Habra, California, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; (c) designating Landmark Bank as the agent for the Corporation for the payment of the insured and fully secured or preferred deposits of the closed bank; (d) making funds available for an advance payment to uninsured depositors and other general creditors of the closed bank equal to 65 percent of their uninsured claims; and (2) an Order approving the application of Landmark Bank, La Habra, California, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Saddleback National Bank, Laguna Hills, California, and for consent to establish the sole office of Saddleback National Bank as a branch of Landmark Bank.

In reconvening the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 19, 1986.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-11544 Filed 5-19-86; 2:44 pm]
BILLING CODE 6714-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-21]

TIME AND DATE: Tuesday, May 27, 1986, at 10:00 a.m.

PLACE: ROOM 117, 701 E. STREET, NW., WASHINGTON, DC. 20436.

STATUS: OPEN TO THE PUBLIC.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain Non-Contract Laser Precision Dimensional Measuring Devies and Components Thereof (Docket Number 1312).
5. Investigation 731-TA-270 [Final] (64K Dynamic random access memory components from Japan)—briefing and vote.
6. Investigation 701-TA-255 [Final] and 731-TA-275/277 [Final] (Oil country tubular goods from Argentina, Canada, and Taiwan)—briefing and vote
7. Items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, (202) 523-0161.

Kenneth R. Mason,
Secretary.
May 16, 1986.

[FR Doc. 86-11472 Filed 5-19-86; 8:45am]
BILLING CODE 7020-02-M

3

NATIONAL CREDIT UNION ADMINISTRATION

Previously Held Emergency Meeting

TIME AND DATE: 2:15 p.m., Thursday, May 15, 1986.

PLACE: 1776 G Street, NW., Washington, DC 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Delegation of Authority.

The Board unanimously voted that the Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under exemptions (8) and (9)(A)(ii). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady

Secretary of the Board.

[FR Doc. 86-11524 Filed 5-19-86; 8:45 am]

BILLING CODE 1505-01-M

4

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.-5:00 p.m., Tuesday, June 3, 1986.

PLACE: National Courts Building, Room 309 (Courtroom 9), 717 Madison Place NW., Washington, DC 20005.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code).

AGENDA (TENTATIVE): Meeting of Board of Directors convened. Matters to be considered: (1) Report on Irish Peace Institute conference; (2) personnel matters; (3) preliminary procedures for the submission, selection, and management of proposals for funding; and (4) essay contest.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: May 14, 1986.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 86-11536 Filed 5-19-86; 8:45 am]

BILLING CODE 6820-PA-M

federal register

Wednesday
May 21, 1986

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

[PHS-1476]

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the Health Education Assistance Loan (HEAL) program, authorized by the Public Health Service Act (the Act). These proposed revisions would improve the procedures at schools and lending institutions for making, servicing, and collecting HEAL loans and would clarify the rights and responsibilities of lenders, schools, borrowers, and the Federal Government.

DATE: As discussed below, comments are invited. To be considered, comments must be received by July 21, 1986.

ADDRESSES: Written comments should be addressed to Mr. Thomas D. Hatch, Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7-74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, BHPr; telephone: 301 443-4540.

SUPPLEMENTARY INFORMATION: On August 28, 1985, the Department published final regulations amending 42 CFR Part 60, which governs the HEAL program. The final regulations incorporated a number of technical changes resulting from the enactment of Pub. L. 97-35, as well as responding to public comments received on the interim-final regulations published on August 13, 1978.

Recent reviews and assessments of the HEAL program by the Department have identified a number of problems in the program's administration. For example, because of the high cost of borrowing under the HEAL program and the large loan amounts that students receive, some HEAL borrowers following graduation may face large debt burdens that they may not be able to repay. In addition to their HEAL indebtedness, many students who receive HEAL loans also receive Health Professions Student Loans, as well as loans under programs administered by the Department of Education. Although a certain level of indebtedness is generally expected for health professions students to complete their education, it has been found the some students borrow in excess of what is required to cover their educational expenses. The proposed regulations would increase each HEAL school's authority and responsibility to limit loan amounts, as school officials would be required to compare the full financial assets of each HEAL applicant with the estimated cost of attendance at the school.

This proposed rule would also impose additional responsibilities on HEAL schools to better prepare students for their responsibilities as HEAL borrowers. HEAL lenders and borrowers are frequently located in different geographic areas and, therefore, many lenders do not conduct personal interviews with HEAL loan applicants. However, since each HEAL loan applicant must be enrolled or accepted for enrollment at a school before applying for a HEAL loan, school officials are able to meet face-to-face with the students. Accordingly, the proposed revisions to the regulations would further enlarge the school's role in the loan-making process and the loan servicing procedures.

The Department has found that some of the loan servicing and collection activities currently employed by lenders have not been effective. Thus, this proposed rule would broaden the debt management responsibilities of the lenders to encourage practices which would more effectively prevent default of HEAL loans and require that each lender follow procedures as stringent as it follows when it makes loans which are not guaranteed.

The Secretary believes that these changes will significantly strengthen the working relationship and cooperation that exists among the borrowers, lenders, schools, and the Department by requiring more active relationships. The Secretary invites public comments on these proposed revisions to the regulations and welcomes suggestions of any additional revisions to strengthen the lenders' debt management and loan collection practices, the schools' role in the program administration, and discourage HEAL borrowers from defaulting on their loans.

This notice of proposed rulemaking does not include the modifications required by Pub. L. 99-129, enacted on October 22, 1985, because the Department intends to publish other regulations to implement those statutory changes.

In addition to the proposed revisions discussed below, the Secretary is considering a proposal to set-aside a percentage of the total insurance authority to be used to provide contracts for lenders with low default rates. There are several methods by which each lender's default rate might be calculated and the set-aside distributed. For example, the average default rate of all lenders might be determined, or the average rate of comprehensive and standard lenders might be calculated separately and set-aside authority distributed to the lenders with default rates below the average. The Secretary believes that this set-aside would be an incentive to every lender to use debt management procedures which would result in the lowest possible default rate. The Secretary invites comments on the set-aside proposal, on the method of calculation of each lender's default rate, and the appropriate percentage of the total authority which should be set-aside for this purpose.

The proposed revisions are summarized below according to the section numbers and titles of the regulations.

Section 60.1 What is the HEAL program?

Paragraph (c) of this section generally discusses the Secretary's role in the HEAL program. This notice proposes to revise that paragraph to indicate that the Secretary will report HEAL loan defaulters to consumer credit reporting agencies and, where appropriate, to the Internal Revenue Service or to the Department of Justice for litigation when pursuing collections on loans assigned to the United States.

Paragraph (d) is proposed to be added as a general penalty warning statement concerning possible consequencies of illegal actions.

Section 60.5 Who is an eligible student borrower?

Section 731(a)(1)(A) of the Act states that a student must agree that all funds received under a HEAL loan must be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses. Section 60.5(g), which implements this statutory provision, has been misinterpreted as allowing the use of loan funds for vacation trips and other personal expenses not necessary to attend the

school. The Department intends to prevent such abuse of loan funds by simplifying paragraph (g) to stress the test of reasonableness of education and living expenses, and through other regulatory revisions discussed below. The Department, however, does not wish to prohibit the use of HEAL funds for supplies and equipment which the school considers necessary for all students, and are included as reasonable educational expenses.

Section 60.5(g) is being further amended to delete the provision that a student may receive a HEAL loan to pay interest on HEAL loans. This revision is based on the Department's interpretation of section 731(a)(1)(B) of the statute as indicating that HEAL loans for the payment of interest on HEAL loans are intended for nonstudents who received HEAL loans prior to August 13, 1981, as provided in § 60.6

To ensure that HEAL borrowers do not receive more loan money than is actually needed for education and related expenses, the Secretary proposes that, to be eligible to receive a HEAL loan, a student must demonstrate a financial need. This regulation proposes to require school officials to determine the maximum loan amount by calculating the difference between the costs of the education and all financial assets of the applicant, including student aid or other financial assistance (including income of the applicant; the applicant's spouse, and the applicant's family) that the applicant has received or will receive during the period of the loan. The HEAL program is not limited specifically to students who can qualify for need-based scholarships, nor is it a loan program with interest subsidies. However, sound debt management and the HEAL statute dictate that HEAL funds be used only for educational costs, reasonable living expenses, directly related to the education. This notice would add a new paragraph (h) to this section to indicate this eligibility criterion to be implemented by the HEAL school.

Section 60.7 The loan application process.

Although students applying for HEAL loans are generally considered to be independent, it is recognized that many have spouses who work and many other receive some parental support—either as loans or outright gifts. Thus, in calculating the student's need for a HEAL loan, it is important to consider any student's income that is or can be derived from all sources, including family contributions. The Secretary proposes to insert new paragraphs (a)(2) and (c)(2) to state that each time the applicant seeks a loan, the applicant will be informed of the Federal debt collection activities and must sign a certification statement attesting that he or she has been notified of the actions the lender or the Federal Government can take in the event that the applicant fails to meet the schedule payments. This statement is to be kept by the lender. Paragraphs (a)(4) and (c)(5) are proposed to require that the applicant certify on the application that information provided reflects the applicant's total assets and indebtness. The Secretary proposes to revise paragraph (a)(3)(iii) to provide information on other student assistance which is required in the HEAL application to determine the financial assets of the applicant.

Section 60.8 What are the borrower's major rights and responsibilities?

Currently, the holder is required to notify the borrower of the sale of a loan or the identity of a servicing party other than the lender only if the borrower is required to direct loan payments or other correspondence on loan matters to a new address. The Secretary proposes to revise paragraph (a)(5) of this section to indicate that the borrower must be informed in all cases where the HEAL loan is sold or where the loan is serviced by a party other than the lender. This proposed revision is more fully described in § 60.38 of this preamble.

A second revision to this section involves the borrower's right to forbearance of his or her loan payments. The Secretary believes that the judicious use of forbearance can encourage and assist a borrower to remain in good standing regarding the loan rather than having little choice other than to default. Currently, most lenders and assignees do grant forbearance for situations described in § 60.37, but a few lenders do not. To promote the use of forbearance as a mechanism to avoid default, the Secretary is proposing to require a lender to grant forbearance in some instances. This change is reflected in paragraph (a)(11) of this section and more fully described in § 60.37 of this preamble.

This notice also proposes to revise paragraph (b)(5) of this section to clarify the 5-year prohibition against the discharge of a HEAL loan in bankruptcy contained in section 733(g) of the Act. There has been some confusion in the interpretation of the current regulations since the provision does not specifically prohibit discharge in bankruptcies filed under Chapter 7 or Chapter 13 of the Bankruptcy Act. The Secretary has revised the provision to indicate that the prohibition applies to bankruptcy under any chapter of the Bankruptcy Act.

Section 60.10 How much can be borrowed?

The Secretary believes that permitting a borrower to receive in one lump sum the maximum loan amount for 1 academic year, up to $20,000 for some students, places an unnecessary burden on the student to manage those funds over an entire year and to incur interest unnecessarily. This notice proposes to revise paragraph (a) to allow the borrower to receive under each loan only that amount which is needed over a maximum period of 6 months, reducing the current maximum HEAL loan period of 1 academic year. This change allows the school to verify more frequently the student's continued eligibiity for a HEAL program loan and the student's financial status. The Secretary chooses to specify 6 months rather than a portion of the academic year, such as a semester or quarter, because of the wide variety of academic calendars with which the HEAL program must deal.

Section 60.11 Terms of repayment.

Although the existing regulations permit lenders to establish repayment schedules requiring monthly or less frequent installments, most HEAL lenders have traditionally established repayment schedules requiring monthly installments. The Secretary believes that this practice of establishing monthly repayment schedules is useful in preventing defaults. Therefore, the Secretary proposes to revise paragraph (e) of this section to require monthly repayment schedules.

Paragraph (e) is also revised to specify that the borrower must contact the lender between 30 and 60 days before the commencement of the repayment period. Current regulations state only that this contact occur during the grace period. Another revision proposed allows the lender to establish a monthly repayment schedule with substantially equal installment payments if the borrower does not respond to the contact.

Section 60.14 The insurance premium.

Section 732(c) of the Act authorizes the Secretary to charge each lender an insurance premium for insurance against the default, death, disability of the borrower, or in the event that the loan is discharged in bankruptcy. The lender may pass the cost of the insurance on to the borrower. The Secretary is proposing to continue the current insurance premium and to clarify that it is due to the Secretary on the date of

disbursement of the loan and in all cases must be received by the Secretary within 60 days of disbursement to establish the guarantee of the Federal government, thereby avoiding the withholding of insurance coverage from the lender. For premiums not received within 30 days but received within 60 days of disbursement, the Secretary will charge the lender a late fee on a daily basis at the same rate as the interest rate that the lender charges for the HEAL loan for which the insurance premium is past due. The lender must pay this charge and may not pass it on to the borrower.

The Secretary is proposing to eliminate the requirement in the current regulations for quarterly notifications published in the Federal Register when the insurance premium rate remains unchanged by modifying the regulation to state that the rate of the insurance premium shall not exceed the statutory maximum.

Section 60.15 Other charges to the borrower.

In an effort to encourage borrowers to make each installment payment when due, this section is revised to require lenders to charge a late charge when the borrower fails to pay the installment payment within 10 days after its due date. Current regulations state that the lender may charge a late charge. Further, the Secretary has deleted the reference to State law to facilitate program management and to maintain a consistent policy regarding late charges throughout the United States.

Section 60.19 Forms.

This section currently states that all HEAL forms are provided by the Secretary. Several lenders and assignees, particularly the Student Loan Marketing Association, have expressed the desire to print certain HEAL forms for their own use. The Secretary proposes to accept the proposal and to revise this section accordingly.

The Secretary is also proposing to include language which state that any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

Section 60.20 The Secretary's collection efforts after payment of a default claim.

The Secretary is proposing to revise this section to incorporate the current reference to the Federal Claims Collection Standards, the OMB Circular A–129, issued May 9, 1985, and the Department's proposed Claims Collection Regulation, published on May 2, 1985 (50 FR 18694).

Section 60.31 The application to be a HEAL lender.

To be a HEAL lender, an eligible organization must submit an application to the Secretary. In addition to the existing requirements, the Secretary is proposing to require each applicant to submit written procedures for approving, servicing and collecting HEAL loans. These procedures must be at least as stringent as the procedures set out in §§ 60.33 through 60.35; however, lenders must use procedures which are as stringent or more stringent than those included in the regulations if the lender has demonstrated the effectiveness of such procedures and if the lender uses those procedures on loans for which the lender has no Federal, State, or other third party guarantee.

Section 60.32 The HEAL lender insurance contract.

This notice proposes to clarify paragraph (a)(2) of this section to specify that HEAL insurance is conditioned on compliance by holders of the loan with the HEAL statute, regulations, and administrative policies established by the Secretary and each lender's own loan management procedures, as submitted to the Secretary under § 60.31. It would also require that the lender's loan management procedures for HEAL program loans be at least as stringent as the procedures used for managing similar loans for which the lender has no Federal, State, or other third party guarantee. This paragraph of the existing regulations references only the requirement for compliance with the regulations.

Paragraph (c)(2) has been added to clarify to lenders that the Secretary will revoke the comprehensive contract of any lender who utilizes procedures inconsistent with HEAL statute, regulations, policies, or its own loan management procedures submitted to the Secretary under § 60.31. However, the Secretary does not wish to penalize those schools and borrowers who rely on the lender for HEAL loans. Consequently, the Secretary may allow the lender to continue to disburse loans, but only under a standard contract until the lender's procedures are in compliance. This paragraph in no way negates any provisions of § 60.43, entitled "*Limitation, suspension, or termination of the eligibility of a HEAL lender.*"

The Secretary also proposes to add new paragraphs (c)(3) (i) and (ii) to this section which would permit the Secretary to set aside a percentage from the total insurance authority to be used to provide contracts for lenders who will make HEAL loans at a rate of interest at least one-half percentage point below the maximum permitted under § 60.13. The amount set aside would be announced in the Federal Register and would remain available until March 31 of each fiscal year or until it became exhausted, whichever occurred first. After this date, any amount remaining in the set-aside would be available to any eligible applicant. The Secretary normally acts on lender applications within a week of receipt. In taking action on applications received within this time-frame, the Secretary proposes to approve an application from a reduced rate lender in preference to one from a full-rate lender if there is insufficient authority to approve both.

An insurance contract made to a lender who agreed to make loans at least one-half percentage point below the maximum rate would be in effect only so long as that lender did not exceed this interest rate, and otherwise complied with the terms of its contract with the Secretary. Further, the Secretary believes that it would be helpful to make borrowers and schools aware of the lower interest rate agreed to by the lender and the Secretary so that students could seek HEAL loans from the lender with the lowest interest rates. Thus, lenders would be required to inform the student and the school at the time of application as to the current interest rate ceiling agreed to by the lender and the Secretary.

Section 60.33 Making a HEAL loan.

Current regulations allow the lender to rely in good faith upon statements in the application papers. Proposed revisions in the regulations would limit this reliance to statements which are not in conflict with the report of the applicant's credit history, financial aid transcript(s), or other information available to the lender. Thus, the lender would be required to exercise sound business judgment in its loan-making decisions, including the use of procedures which are at least as stringent as those used for similar loans for which the lender has no Federal, State, or other third party guarantee.

The Secretary proposes to further revise this section to require lenders to determine the applicant's credit worthiness prior to making the HEAL

loan. The Secretary proposes to require that HEAL lenders obtain a report of the applicant's credit history from a national consumer credit reporting agency and a copy of a student applicant's financial aid transcript(s) for use in making this determination. The lender would not be permitted to determine that an applicant is credit worthy if the applicant is currently in default on any loan (commercial, consumer, or educational) or if the applicant is delinquent on any Federal debt(s) until the delinquent account is made current or satisfactory arrangements are made between the affected lender(s) or agency (agencies) and the debtor. The lender must receive a letter from the authorized official(s) of the affected lender(s) or agency (agencies) stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter.

Although existing regulations allow the lender to make the check payable to the student borrower alone, virtually all lenders require that the borrower authorize joint payment of the proceeds. The Department believes that this is proper management of loan funds. Thus, the Secretary also proposes to revise this section to require that the lender disburse the HEAL loan proceeds only by means of a check payable jointly to the student borrower and the HEAL school.

Section 60.34 HEAL loan account servicing.

The Secretary proposes to eliminate late conversion of loans to repayment status. The proposed regulation, therefore, would require lenders to contact borrowers 30 to 60 days before the commencement of the repayment period to establish the terms of repayment, and would provide that lenders may not charge borrowers for the additional interest, penalties, charges, or fees that accrue when a lender does not contact the borrower within this time period and a late conversion results.

To encourage payment of some of the accrued debt or interest at an early stage, the Secretary proposes to add a new paragraph (c) to this section to require lenders to notify the borrower every 6 months of the balance owed for the HEAL loan. The purpose of this notice is to: (1) Make borrowers aware of the significant amount of debt that continues at accrue as interest is compounded; (2) encourage borrowers to make payments prior to the onset of the repayment period; and (3) remind them of the option to pay all or part of the loan at any time without penalty.

Section 60.35 HEAL loan collection.

The Secretary proposes to make a number of changes in the regulations to strengthen the due diligence procedures required of lenders in the collection of loans. These revisions are intended to reduce default claims by increasing efforts to locate and contact delinquent borrowers. Some of these methods have been used successfully by the Secretary in obtaining payment from the borrower during the preclaim assistance and after the Federal Government has paid a default claim to the lender. Therefore, the Secretary proposes that these methods should be instituted by the lender before the claim is filed.

The Secretary proposes to revise § 60.35 to require that lenders contact the borrower who is late in payment and any endorser in writing, as part of each of the four follow-up notices that are now required during the 120-day period of delinquency following the first missed payment of the 120-day period. The second demand notice for a delinquent account shall inform the borrower that the account will be referred to consumer credit reporting agencies if payment is not made. The last contact must also consist of a telephone or personal contact. Currently, § 60.35(a) requires lenders to "attempt to contact" the borrower and endorser.

The Secretary believes that some lenders are not using effective skip-tracing techniques since preclaim assistance has been successful in locating borowers which the lenders claimed were "lost". This revision proposes to require that the lenders use skip-tracing activities which are at least as stringent or more stringent as those used by commercial lenders to locate borrowers delinquent in the repayment of loans for which the lender has no Federal, State, or other third party guarantee. Lenders would be required to use several skip-tracing procedures, such as contacting any school attended by the borrower and checking lists of members of professional associations. The Secretary believes that the borrower is more likely to be located under the proposed procedures.

Further, paragraph (b) is revised to require lenders to request preclaim assistance when a borrower is 90 days delinquent in making a payment. Existing regulations require the lender to make this request when the borrower is 60 days delinquent. The Secretary believes that by allowing the lenders the extra 30 days for their skip-tracing and loan collection activities, many requests for preclaim assistance will be averted.

The Secretary proposes that lenders use collection practices that are as extensive and as effective as those used in the collection of other loans by commercial lenders. The Secretary proposes that lenders: (1) Use collection agents; (2) institute legal proceedings, where possible, against borrowers before filing a default claim; and (3) notify a national consumer credit reporting agency of accounts overdue by more than 60 days.

Section 60.37 Forbearance.

The existing regulations provide that a lender may grant forbearance whenever unemployment, health, other personal problems, or study that is ineligible for deferment temporarily affects the borrower's ability to make scheduled payments on a HEAL loan. The Secretary proposes to revise this section to require that a lender must grant forbearance: (1) Whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan; and (2) whenever the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. The Secretary believes that this proposed revision may prevent a borrower from defaulting on his or her loan because of temporary financial hardship, e.g., a borrower may fully intend to repay the loan, but may be able to make no or only partial payments on the loan during a specific short period of time.

A lender would not be required to grant forbearance, however, if the lender determined that default of the borrower is inevitable and that forbearance would be ineffective in preventing default. In this case, the lender would submit a claim to the Secretary. If the Secretary is not in agreement with the lender, the claim will be returned to the lender as disapproved and the lender would be required to grant forbearance.

Paragraph (b) is proposed to be revised to eliminate the provision that forbearance must be exercised in accordance with the minimum annual payment requirement described in § 60.11(d). Section 60.11(d) provides that the borrower must pay at least the amount of interest that accrues during the year on all of his or her outstanding HEAL loans. In the early years of a typical HEAL loan, the annual repayment requirement consists almost entirely of interest that accrues during the year. As described above, the purpose of forbearance is to temporarily relieve the borrower of a repayment requirement that both the borrower and the lender agree is excessive given the

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borrower's circumstances at the time. To maintain the current minimum annual payment requirement would effectively negate the purpose of forbearance; consequently, the Secretary proposes to eliminate it.

Under the proposed regulation, each period of forbearance granted by the lender to any borrower must not exceed 6 months and the total period must not exceed 2 years. However, when the borrower and the lender believe that there are bona fide reasons why this period should be extended, the lender may request a reasonable extension beyond the 2-year period from the Secretary. This request must document the reasons why the extension should be granted. The lender may grant the extension for the approved time period if the Secretary approves the extension request.

Section 60.38 Assignment of a HEAL loan.

The Secretary proposes to revise paragraph (a) of this section to change the buyer's notification requirements. The existing regulations require that the buyer notify: (1) The Secretary of the assignment of a loan within 30 days of the transaction; and (2) the borrower, if the assignment results in the borrower being required to make payments or direct other matters connected with the loan to a party other than the seller.

The Secretary is proposing to expand this notification process by requiring that the buyer notify the following parties in all instances of the assignment within 15 days of the transaction: (1) The Secretary; (2) the borrower; (3) the borrower's school, if the borrower is enrolled in school; and (4) other schools, if known, that the borrower attended while receiving the HEAL loan(s) from the lender.

The Secretary believes that 15 days is sufficient for the buyer to notify the parties. Further, this revision is proposed to make the provision consistent with § 60.7, setting forth the borrower's right to notification of an assignment, and to assist in keeping all interested parties informed of the loan's current status.

Section 60.40 Procedures for filing claims.

Existing regulations provide that insurance claims must be accompanied by the promissory note, the HEAL application, and a history of all payments, and that failure to submit the required documentation may result in the insurance claim not being honored. The proposed revisions would require that the lender comply with the HEAL statute, regulations, and policies. This is consistent with other similar revisions discussed previously under § 60.32.

The Secretary is proposing revisions of paragraphs (c)(1) (i) and (ii) of this section to clarify when the Secretary determines a default claim is eligible for payment and to list the documents minimally required by the Secretary for default claims.

Currently paragraphs (c)(1)(i), (c)(2), and (c)(3) of this section state that the lender has 60 days after the appropriate determination has been made to file a default claim, death claim, or disability claim. The Secretary, however, believes that 10 days is sufficient time to allow the lender to file the claim.

If the lender files a default claim and subsequently receives a notice of the first meeting of creditors, the existing paragraph (c)(1)(iii) of this section does not allow the lender to file a proof of claim with the bankruptcy court. The Secretary believes, however, that it is appropriate for the lender to file both a proof of claim and an objection to the discharge or compromise of the loan if the insurance claim has not been paid when the lender receives the notice. Further, the lender should forward this notice to the Secretary within 10 days. If the Secretary has paid the claim, the Secretary believes that the lender should file a statement to that effect with the court. The Secretary is, therefore, proposing to revise paragraph (c)(1)(iii), accordingly.

A revision proposed to paragraph (c)(2) would require that the lender submit an official copy of the Death Certificate with the death claim. A revision proposed to paragraph (c)(3) would require that the lender submit evidence of the Secretary's determination that the borrower is totally and permanently disabled with the disability claim.

Other revisions are proposed to paragraph (c)(4) of this section which affect the bankruptcy claim. To allow the Secretary sufficient time to initiate appropriate activities, the proposal states that the bankruptcy claim must be filed with the Secretary within 10 days after the lender receives a notice of the first meeting of creditors. Current regulations allow each lender 60 days in which to file the claim, but the Secretary believes 10 days to be sufficient. Further, the existing regulations require the lender to file proof of claim with the bankruptcy court; the Secretary is, however, proposing to require that the lender also file an objection to the discharge or compromise of the HEAL loan.

Section 60.42 Records, reports, and inspection requirements for HEAL lenders.

Paragraph (a)(1) is proposed to be revised to require that lenders maintain easily retrievable records of HEAL borrowers, similar to a requirement which currently exists for records maintained by schools.

As discussed above in § 60.33, the Secretary is proposing to require that, prior to making a loan, the lender determine the credit worthiness of the applicant based on the applicant's credit report and the student applicant s financial aid transcript(s) obtained from the student's school(s). The Secretary is, therefore, proposing to revise paragraph (a)(1) of this section to require that lenders keep records of the evidence of the borrower's credit worthiness, including the borrower's credit report and a copy of the student borrower's financial aid transcript(s).

The Secretary is also proposing that each lender comply with the Department's biennial audit requirements of section 705 of the Act.

Further, the Secretary is proposing that any lender who has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

Section 60.50 Which schools are eligible to be HEAL schools?

The Secretary is proposing to modify the list of approved accrediting agencies to reflect the change in the name of the Council of Podiatry Education to the Council of Podiatric Medical Education.

Section 60.51 The student loan application.

The Secretary believes that because of the school's close proximity to the student, as compared with the lender's often distant location, the school is more capable than the lender of assuring that the student fully understands his or her responsibilities under the HEAL program. Consequently, the Secretary is proposing to enlarge the school's role in the loan-making process to require that the school conduct an entrance interview with the student in which information regarding the HEAL loan would be discussed with the student. Where feasible, this interview should be conducted face-to-face, but interview by telephone is permissible. The Secretary proposes to further revise § 60.51 to require that the school: (1) Obtain comprehensive financial aid

transcript(s) on each HEAL applicant and forward a copy of each to the HEAL lender (new paragraph (d)); and (2) attest that it has no reason to believe that the borrower will not, or may not be able to, comply with the repayment requirements of the HEAL loan (new paragraph (e)). The latter requirement would provide the school with an opportunity to indicate to the lender its reservations regarding the likelihood that the borrower will repay, in cases where the school has reason to believe, based on its knowledge of the borrower and his or her circumstances, that the borrower may become a collection problem for the lender.

Also included in this section is the proposed new requirement, as referenced in § 60.5, that the HEAL loan is necessary for the borrower to pursue his or her education at the school by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13 (new paragraph (f)). The Secretary believes that some borrowers may consider the program a source of discretionary money which may be used for any expense. Some borrowers may create a debt burden which is far too great for their future incomes and may then default on these loans when payments become due. Requiring the school to determine the maximum loan amount approvable for each borrower will assist in assuring that each student borrows only what is minimally necessary to pay educational expenses.

Section 60.52 The student's loan check.

The Secretary is proposing to delete the instructions to the school for dealing with checks payable only to the student to be consistent with the changes proposed in § 60.33 which require joint payment of the check. Currently, when a school receives a check payable jointly to the school and the student, the school is allowed to endorse the instrument and transmit it to the student. The Secretary believes that this does not encourage borrowers to use the HEAL money only for educational expenses. Thus, the Secretary is proposing to require that the student endorse the instrument, allow the school to collect money due to it directly, and then give the remaining funds to the student.

Section 60.53 Notification to lender of change in enrollment status.

Currently, this section states that each school must notify the holder of the loan note within 60 days following a change in the student's enrollment status. The Secretary believes, however, that 15 days is sufficient time to allow the school to notify the holder. Also, the Secretary believes that the notice should include the student's full name under which the loan was received, the current name (if different), and other necessary information. The notice, therefore, proposes to revise this section accordingly.

Section 60.56 Records.

As discussed previously, the Secretary is proposing to require a school to maintain complete and accurate records which document its increased activity and responsibility relating to each loan. This notice, therefore, proposes to revise this section accordingly.

The Secretary is also proposing to add a paragraph (c) which would require that the school must comply with the Department's biennial audit requirements of section 705 of the Act.

Section 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

Paragraph (c)(1) of this section which referred to § 60.61, a section which did not exist, is deleted.

Section 60.61 Responsibilities of a HEAL school.

As previously discussed, the Secretary is proposing a much broader role with greater responsibilities for each HEAL school. The Secretary proposes to require schools to: (1) Conduct and document an entrance interview with the applicant student to provide information about the HEAL loan; (2) conduct and document an exit interview with the student to assure that the student is informed of all his or her responsibilities as a borrower under the HEAL program; (3) verify the accuracy and completeness of information on the HEAL application by comparing information provided by the student on the HEAL application with information which the student provided on other forms used by the school; (4) develop and utilize procedures for the receipt and disbursement of HEAL loan checks which promote the security of HEAL funds; (5) maintain and safeguard HEAL records; (6) maintain a standard student budget system to be used in the determination of the maximum loan amount approvable; and (7) notify the HEAL lender of changes in student borrower information.

Further, the Secretary is proposing that any school which has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed new requirements in these regulations to improve debt management practices and due diligence procedures for making, servicing, and collecting HEAL loans are minimal in comparison to the overall resources of the lenders and the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders and schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the proposed rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

Section 60.56(a) contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980 and assigned control number 0915-0054.

Sections 60.7, 60.8(a)(5) and (b)(3), 60.11(e), 60.14(a)(2), 60.31(c), 60.32(b), 60.32(c)(3)(ii), 60.33(c), (e) and (g), 60.34(b) and (c), 60.35(a)(1) and (2), 60.35(c)(3), 60.37(a), 60.38(a), 60.40(a) and (c)(1), (2), (3) and (4), 60.42(a)(1), (d) and (e), 60.51, 60.51(d) and (f)(2), 60.52(a)(1), 60.53, 60.56(a) and (c), and 60.61(a) and (b) contain information collection requirements which are subject to review by OMB under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to OMB for its review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and

dental schools. Reporting requirements. Student aid.

Accordingly, 42 CFR Part 60 is proposed to be revised as follow:

(*Catalog of Federal Domestic Assistance*, No. 13.100, Health Education Assistance Loan Program)

Dated: January 27, 1986.

Donald Ian Macdonald,

Assistant Secretary for Health.

Approved: March 5, 1986.

Otis R. Bowen,

Secretary.

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The table of contents is revised to read as follows:

Subpart A—General Program Description

Sec.
60.1 What is the HEAL program?

Subpart B—The Borrower

60.5 Who is an eligible student borrower?
60.6 Who is eligible nonstudent borrower?
60.7 The loan application process.
60.8 What are the borrower's major rights and responsibilities?

Subpart C—The Loan

60.10 How much can be borrowed?
60.11 Terms of repayment.
60.12 Deferment.
60.13 Interest.
60.14 The insurance premium.
60.15 Other charges to the borrower.
60.16 Power of attorney.
60.17 Security and endorsement.
60.18 Consolidation of HEAL loans.
60.19 Forms.
60.20 The Secretary's collection efforts after payment of default claim.
60.21 Refunds.

Subpart D—The Lender

60.30 Which organizations are eligible to apply to be HEAL lenders?
60.31 The application to be a HEAL lender.
60.32 The HEAL lender insurance contract.
60.33 Making a HEAL loan.
60.34 HEAL loan account servicing.
60.35 HEAL loan collection.
60.36 Consequence of using an agent.
60.37 Forbearance.
60.38 Assignment of a HEAL loan.
60.39 Death and disability claims.
60.40 Procedures for filing claims.
60.41 Determination of amount of loss on claims.
60.42 Records, reports and inspection requirements for HEAL lenders.
60.43 Limitation, suspension, or termination of the eligibility of a HEAL Lender.

Subpart E—The School

60.50 Which schools are eligible to be HEAL schools?
60.51 The students loan application.
60.52 The student loan check.
60.53 Notification to lender of change in enrollment status.
60.54 Payment of refunds by schools.
Sec.
60.55 Administrative and fiscal procedures.
60.56 Records.
60.57 Reports.
60.58 Federal Access to school records.
60.59 Records and federal access after a school is no longer a HEAL school.
60.60 Limitation, or termination of the eligibility of a HEAL School.

2. The authority citation for Part 60 continues to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–730 of the Public Health Service Act, 93 Stat. 582 (41 U.S.C. 294–294*l*).

3. In § 60.1, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 60.1 What is the HEAL program?

* * * * *

(c) The Secretary insures each lender for the losses it may incur in the event that a borrower dies, becomes disabled, files bankruptcy, or defaults on his or her loan. If a borrower defaults on a loan and the lender has complied with all HEAL statutes, regulations, and administrative policies and the Secretary pays the amount of loss to the lender, the borrower's loan is then assigned to the Secretary. Only at that time, the United States Government becomes the borrower's direct creditor and will actively pursue the borrower for repayment of the debt, including reporting the borrower's default on the loan to national consumer credit reporting agencies or to the Internal Revenue Service for purposes of locating such taxpayer or for income tax refund offset, and referral to the Department of Justice for litigation.

(d) Any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudlently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

4. In § 60.5, paragraph (g) is revised and a new paragraph (h) is added to read as follows:

§ 60.5 Who is an eligible student borrower?

* * * * *

(g) He or she must agree that all funds received under the proposed loan will be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, reasonable living expenses, and the HEAL insurance premium.

(h) He or she must require the loan to pursue the course of study at the school. This determination of the maximum amount of the loan will be made by the school, applying the considerations in § 60.51(f).

5. In § 60.7, paragraphs (a)(2), (a)(4), (c)(2) and (c)(5) are added and existing paragraphs (a)(2), (c)(2) and (c)(3) are redesignated as (a)(3), (c)(3) and (c)(4), respectively, and paragraph (a)(3)(iii) is revised, as follows:

§ 60.7 The loan applicant process.

(a) * * *

(2) The student applicant must be informed of the Federal debt collection policies and procedures in accordance with the Department's proposed Claims Collection Regulation (45 CFR Part 30) prior to the student receiving the loan. The applicant must sign a certification statement attesting that the applicant has been notified of the actions the Federal Government can take in the event that the applicant fails to meet the scheduled payments. This signed statement will be forwarded by the school to the lender and maintained by the lender as part of the borrower's official file.

(3) * * *

(iii) All financial assets of the applicant, including any student aid, familial, spousal, or personal income or financial assistance of which the school or the applicant is aware that would legally or contractually be available to the applicant or that the applicant has received or will receive during the period covered by the proposed HEAL loan.

(4) The student applicant must certify on the application that the information provided reflects the applicant's total assets and indebtedness and that the applicant has no other financial resources that are legally or contractually available to the applicant or that the applicant will receive for the period covered by the proposed HEAL loan.

* * * * *

(c) * * *

(2) The nonstudent applicant must be informed of the Federal debt collection policies and procedures in accordance with the Department's proposed Claims Collection Regulation (45 CFR Part 30) prior to the nonstudent receiving the loan. The applicant must sign a certification statement attesting that the applicant has been notified of the actions the Federal Government and the lender can take in the event that the applicant fails to meet the scheduled payments. This signed statement will be maintained by the lender as part of the borrower's official file.

* * * * *

(5) The nonstudent applicant must certify on the application that the information provided reflects the applicant's total assets and indebtedness.

6. In § 60.8, paragraphs (a)(3), (a)(5), (a)(11), (b)(3) introductory text, and (b)(5) are revised to read as follows:

§ 60.8 What are the borrower's major rights and responsibilities?

(a) * * *

(3) A lender must disburse HEAL loan proceeds as described in § 60.33(f).

* * * * *

(5) If the loan is sold from one lender to another lender, or if the loan is serviced by a party other than the lender, the holder must notify the borrower within 15 days of the transaction.

* * * * *

(11) To assist the borrower in avoiding default, the lender may grant the borrower forbearance. Forbearance, including circumstances in which the lender must grant forbearance, is more fully described in § 60.37.

(b) * * *

(3) The borrower must immediately notify the lender in writing in the event of:

* * * * *

(5) A borrower may not have a HEAL loan discharged in bankruptcy during the first 5 years of the repayment period. This prohibition against the discharge of a HEAL loan applies to bankruptcy under *any* chapter of the Bankruptcy Act, including Chapter 13. A borrower may have a HEAL loan discharged in bankruptcy after the first 5 years of the repayment period only upon a finding by the Bankruptcy Court that the non-discharge of such debt would be unconscionable and upon the condition that the Secretary shall not have waived his or her rights to reduce any Federal reimbursements or Federal payments for health services under any Federal law in amounts up to the balance of the loan.

* * * * *

7. In § 60.10, paragraph (a) introductory text is revised to read as follows:

§ 60.10 How much can be borrowed?

(a) *Student Borrower.* An eligible student may borrow an amount to be used solely for expenses, as described in § 60.5(g) incurred or to be incurred over a period of up to 6 months. The maximum amount he or she may receive for that period shall be determined by the school in accordance with § 60.51 within the following limitations:

* * * * *

8. In § 60.11, paragraph (e) is revised to read as follows:

§ 60.11 Terms of repayment.

* * * * *

(e) *Repayment schedule agreement.* At least 30 and not more than 60 days before the commencement of the repayment period, a borrower must contact the holder of the loan to establish the precise terms of repayment. The borrower may select a monthly repayment schedule with substantially equal installment payments or a monthly repayment schedule with graduated installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than five times greater than any other installment. If the borrower does not contact the lender and does not respond to contacts from the lender, the lender may establish a monthly repayment schedule with substantially equal installment payments, subject to the terms of the borrower's HEAL note.

* * * * *

9. Section 60.14 is amended by revising paragraphs (a)(1), (a)(2), and (b), redesignating (a)(3) and (a)(4) as (a)(4) and (a)(5), respectively, and adding new paragraph (a)(3) to read as follows:

§ 60.14 The insurance premium.

(a) *General.* (1) The Secretary insures each lender of a HEAL loan against losses it may suffer if the borrower defaults on the loan, dies, or becomes totally or permanently disabled, or the loan is discharged in bankruptcy. For this insurance, the Secretary will charge the lender an insurance premium, in an amount to be determined by the Secretary, for the period of time represented by the borrower's combined in-school (exclusive of deferments) and grace period. The insurance premium is due to the Secretary on the date of disbursement of the HEAL loan.

(2) The lender may charge the borrower an amount equal to the cost of the insurance premium. The cost of the insurance premium may be charged to the borrower by the lender in the form of a one-time special charge with no subsequent adjustments required. The lender may bill the borrower separately for the insurance premium or may deduct an amount attributable to it from the loan proceeds before the loan is disbursed. In either case, the lender must clearly identify to the borrower the amount of the insurance premium and the method of calculation.

(3) If the lender does not pay the insurance premium on or before 30 days after disbursement of the loan, a late fee will be charged on a daily basis at the same rate as the interest rate that the lender charges for the HEAL loan for which the insurance premium is past due. The lender may not pass on this late fee to the borrower.

* * * * *

(b) *Rate.* The rate of the insurance premium shall not exceed the statutory maximum.

* * * * *

10. Section 60.15 is amended by revising paragraph (a) to read as follows:

§ 60.15 Other charges to the borrower.

(a) *Late charges.* The lender will require that the borrower pay a late charge if the borrower fails to pay all of a required installment payment within 10 days after it due date or fails to provide written evidence that verifies eligibility for the deferment of the payment. A late charge must be equal to 5 percent of the payment due.

* * * * *

11. Section 60.19 is revised to read as follows:

§ 60.19 Forms.

All HEAL forms are approved by the Secretary and may not be changed without prior approval by the Secretary. HEAL forms shall not be signed in blank by a borrower, a school, a lender, or an agent of any of these. The Secretary may prescribe who must complete the forms, and when and to whom the forms must be sent. All HEAL forms must contain a statement that any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

12. The introductory paragraph in § 60.20 is revised to read as follows:

§ 60.20 The Secretary's collection efforts after payments of a default claim.

After paying a default claim on a HEAL loan, the Secretary attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105), the Office of Management and Budget Circular A–129, issued May 9, 1985, and the Department's proposed Claims Collection Regulation, published on May 2, 1985 (50 FR 18694). The Secretary

attempts collection of all unpaid principal, interest, penalties, administrative costs, and other charges or fees, except in the following situations:

* * * * *

13. Section 60.31 is amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 60.31 The application to be a HEAL lender.

(c) The applicant must submit to the Secretary its written procedures for making, servicing and collecting HEAL loans. In place of one or more of the procedures outlined in §§ 60.33, 60.34, and 60.35, the applicant must substitute procedures that the applicant considers as stringent or more stringent as those the applicant uses for loans on which it has no Federal, State, or other third party guarantee, but only after the applicant has demonstrated the effectiveness of each procedure and obtained written approval from the Secretary.

* * * * *

14. Section 60.32 is amended by revising paragraph (a)(2), redesignating paragraph (c) as (c)(1), and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 60.32 The HEAL lender insurance contract.

(a) * * *

(2) HEAL insurance, however, is not unconditional. The Secretary issues HEAL insurance on the implied representations of the lender that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by the holder of the loan with the HEAL statute, regulations, and administrative policies and its own loan management procedures submitted to the Secretary under § 60.31. The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or hold. Each HEAL lender has either a standard insurance contract or a comprehensive insurance contract with the Secretary, as described below.

* * * * *

(c) *Comprehensive insurance contract.* (1) * * *

(2) The Secretary will revoke the comprehensive contract of any lender who utilizes procedure which are inconsistent with the statute, regulations, or administrative policies of the HEAL program and require that such lenders disburse HEAL loans only under a standard contract. When the Secretary determines that the lender is in compliance with the HEAL statute, regulations, administrative policies, and its own loan management procedures submitted to the Secretary under § 60.31, the lender may reapply for a comprehensive contract.

(3)(i) From the total insurance authority for any fiscal year the Secretary will set aside a percentage to be used to provide comprehensive contracts to lenders who will make HEAL loans at a rate of interest at least one-half percentage point below the maximum permitted under § 60.13. The Secretary will announce the amount set aside for this purpose by a notice published in the Federal Register at or near the beginning of the Federal fiscal year. The amount set aside will remain available for this purpose until March 31 of the announced fiscal year or until it is exhausted, whichever occurs first. Any portion of this amount not used for this purpose by March 31 will be made generally available after March 31. If at any time during the fiscal year, the Secretary receives an application during the same week from a lender who will make a HEAL loan at a rate of interest at least one-half percentage point below the maximum permitted rate and from lender who will make loans at the maximum rate, and there is authority sufficient to enter into only one of the two proposed contracts, the former applicant will receive a contract. A comprehensive contract made with a lender who agrees to make loans at an interest rate at least one-half percentage point below the maximum permissible rate will except from insurance coverage any loan made at a higher interest rate.

(ii) Lenders receiving contracts under paragraph (c)(3)(i) of this section must notify loan applicants and schools at the time of application that they are making HEAL loans at a rate of interest at least one-half percentage point below the maximum permissible.

15. Section 60.33 is amended by revising the introductory paragraph, redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively, adding new paragraphs (c) and (g), and revising newly designated paragraphs (e)(1) and (f)(1)(i) to read as follows:

§ 60.33 Making a HEAL loan.

The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, determination of a borrower's credit worthiness, the determination of the loan amount (not to exceed the amount approved by the school), the explanation to a borrower of his or her responsibilities under the loan, the execution of the promissory note, and the disbursement of the loan proceeds. A lender may rely in good faith upon statements of an applicant and the HEAL school contained in the loan application papers, except where those statements are in conflict with information obtained from the report on the applicant's credit history, financial aid transcript(s), or other information available to the lender. Except where the statements are in conflict with information obtained from the applicant's credit history or other information available to the lender, a lender making loans to nonstudent borrowers may rely in good faith upon statements by the borrower and authorizing officials of internship, residency, or other programs for which a borrower may receive a deferment.

* * * * *

(c) *Lender determination of the borrower's credit worthiness.* The lender may make HEAL loans only to borrowers that the lender has determined to be credit worthy. The lender must determine the applicant's credit worthiness using procedures at least as stringent as the procedures normally used by financial institutions in determining whether to make similar loans for which the lender has no Federal, State, or other third party guarantee. The lender may not determine that an applicant is credit worthy if the applicant is currently in default on any loan (commercial, consumer, or educational) until the delinquent account is made current or satisfactory arrangements are made between the affected lender(s) and the debtor. The lender must receive a letter from the authorized official(s) of the affected lender(s) stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter. No loan may be made to an applicant who is delinquent on any Federal debt(s) until the delinquent account is made current or satisfactory arrangements are made between the affected agency (agencies) and the debtor. The lender must receive a letter from the authorized Federal official(s) of the affected Federal agency (agencies) stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter. The absence of any previous credit, however, is not an indication that the applicant is not credit worthy and is not to be used as a reason to deny the status of credit worthy to an applicant.

The lender must determine the credit worthiness of the applicant using, at a minimum, the following:

(1) A report of the applicant's credit history obtained from a national consumer credit reporting agency;

(2) For student applicants only, financial aid transcript(s) described in § 60.51(d) obtained from an applicant's school(s); and

(3) For student applicants only, the certification made by the applicant's school under § 60.51(e).

* * * * *

(e) *Promissory note.* (1) Each loan must be evidenced by a promissory note approved by the Secretary. A lender must obtain the Secretary's prior approval of the note form before it makes a HEAL loan evidenced by a promissory note containing any deviation from the provisions of the form most currently approved by the Secretary. The lender must give the borrower a copy of each executed note.

* * * * *

(f) * * *

(1) * * *

(i) To a student borrower, by means of a check or draft payable jointly to the student borrower and the HEAL school. Except where a lender is also a school, a lender must mail the check or draft to the school. A lender may not disburse the loan proceeds earlier than is reasonably necessary to meet the cost of education for the period for which the loan is made.

* * * * *

(g) If the lender determines that the applicant is not credit worthy, pursuant to paragraph (c) of this section, the lender must not approve the HEAL loan request. If the applicant is a student, the lender must notify the applicant and the applicant's school named on the application form of the denial of a HEAL loan.

16. Section 60.34 is amended by revising the section title, and paragraph (b)(1), and adding a new introductory paragraph and new paragraphs (c) and (d) to read as follows:

§ 60.34 HEAL loan account servicing.

HEAL loan account servicing involves the proper maintenance of files, and the proper review and management of accounts. Generally accepted account servicing standards ensure that collections are received and accounted for, delinquent accounts are identified promptly, and reports are produced comparing actual results to previously established objectives.

* * * * *

(b) *Conversion of loan to repayment status.* (1) At least 30 and not more than 60 days before the commencement of the repayment period, the lender must contact the borrower in writing to establish the terms of repayment. Lenders may not charge borrowers for the additional interest or other charges, penalties, or fees that accrue when a lender does not contact the borrower within this time period and a late conversion results.

* * * * *

(c) *Borrower contacts.* The lender must notify each borrower by a letter, which has an address correction request on the envelope, of the balance owed for principal, interest, insurance premiums, and any other charges or fees owed to the lender, every 6 months from the time the loan is disbursed. The lender must use this notice to remind the borrower of the option, without penalty, to pay all or part of the principal and accrued interest at any time.

(d) *Skip-tracing.* If, at any time, the lender is unable to locate a borrower, the lender must initiate skip-tracing procedures as described in § 60.35(a)(2).

17. Section 60.35 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (e) as paragraphs (e) and (f), respectively, adding a new paragraph (c), and revising paragraph (d) to read as follows:

§ 60.35 HEAL loan collection.

* * * * *

(a)(1) When a borrower is delinquent in making a payment, the lender must remind the borrower within 15 days of the date the payment was due by means of a letter. If payments do not resume, the lender must contact both the borrower and any endorser at least 3 more times at regular intervals during the 120-day delinquent period following the first missed payment of that 120-day period. The second demand notice for a deliquent account shall inform the borrower that the account shall be referred to consumer credit reporting agencies if payment is not made. Each of the required four contacts must consist of at least a letter which has an address correction request on the envelope. The last contact must consist of a telephone or other personal contact, in addition to the required letter. A record must be made of each attempt to contact and each actual contact, and that record must be placed in the borrower's file. Each contact must become progressively firmer in tone. If the lender is unable to locate the borrower and the endorser at any time during this period when the borrower is delinquent, the lender must initiate the skip-tracing procedures described in paragraph (a)(2) of this section.

(2) If the lender is unable to locate either the borrower or the endorser at any time, the lender must initiate and use skip-tracing activities which are at least as extensive and effective as those used by commercial lenders to locate borrowers delinquent in the repayment of loans for which the lender has no Federal, State, or other third party guarantee. To determine the correct address of the borrower, these skip-tracing procedures should include, but need not be limited to, contacting any other individual named on the borrower's HEAL application or promissory note, using such sources as telephone directories, city directories, postmasters, drivers license records in State and local government agencies, records of members of professional associations, consumer credit reporting agencies, skip locator services, and records at any school attended by the borrower. All skip-tracing activities used must be documented. This documentation must consist of a written record of the action taken and its date and must be presented to the Secretary when requesting preclaim assistance or when filing a default claim for HEAL insurance.

(b) When a borrower is 90 days delinquent in making a payment, the lender must immediately request preclaim assistance from the Public Health Service. The Secretary does not pay a default claim if the lender fails to request preclaim assistance.

(c) Prior to the filing of a default claim, a lender must use, at a minimum, written collection practices that are at least as extensive and effective as those used by commercial lenders in the collection of other loans. These practices must include, but need not be limited to:

(1) Using collection agents, who may be internal collection agents;

(2) Instituting legal proceedings against borrowers after collection attempts have failed and before filing a default claim, provided that such litigation is appropriate; and

(3) Immediately notifying a national consumer credit reporting agency regarding accounts overdue by more than 60 days.

(d) If the Public Health Service preclaim assistance locates the borrower, the lender must implement the loan collection procedures described in this section. When the Public Health Service preclaim assistance is unable to locate the borrower, a default claim may be filed by the lender (described in § 60.40). The Secretary does not pay a

default claim if the lender has not complied with the HEAL statutes, regulations, and policies.

* * * * *

18. In § 60.37, paragraphs (a) and (b) are revised and a new paragraph (c)(4) is added to read as follows:

§ 60.37 Forbearance.

(a) "Forbearance" means an extension of time for making loan payments or the acceptance of smaller payments than were previously scheduled to prevent a borrower from defaulting on his or her payment obligations. A lender must notify each borrower of the right to request forbearance.

(1) Except as provided in paragraph (a)(2) of this section, a lender must grant forbearance whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan and the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. Any circumstance which affects the borrower's ability to repay the loan must be fully documented.

(2) If the lender determines that the default of the borrower is inevitable and that forbearance will be ineffective in preventing default, the lender may submit a claim to the Secretary rather than grant forbearance. If the Secretary is not in agreement with the determination of the lender, the claim will be returned to the lender as disapproved and forbearance must be granted.

(b) A lender must exercise forbearance in accordance with terms that are consistent with the 25- and 33-year limitations on the length of repayment (described in § 60.11) if the lender and borrower agree in writing to the new terms. Each forbearance period may not exceed 6 months.

(c) * * *

(4) The total period of forbearance (with or without interruption) granted by the lender to any borrower must not exceed 2 years. However, when the borrower and the lender believe that there are bona fide reasons why this period should be extended, the lender may request a reasonable extension beyond the 2-year period from the Secretary. This request must document the reasons why the extension should be granted. The lender may grant the extension for the approved time period if the Secretary approves the extension request.

19. In §60.38, paragraph (a) is revised to read as follows:

§ 60.38 Assignment of a HEAL loan.

* * * * *

(a) *Procedure.* A HEAL note assigned from one lender to another must be subject to a blanket endorsement together with other HEAL notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the HEAL note must be signed and dated by an authorized official of the seller. Within 15 days of the transaction, the buyer must notify the following parties of the assignment.

(1) The Secretary;

(2) The borrower. The notice to the borrower must contain a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller subsequent to receipt of the notice;

(3) The borrower's school, as shown on the application form supporting the loan purchased by the buyer, if the borrower is enrolled in school; and

(4) Other schools, if known, that the borrower attended while receiving the HEAL loan(s) from the lender.

* * * * *

20. In § 60.40, paragraphs (a) and (c) are revised to read as follows:

§ 60.40 Procedures for filing claims.

(a) A lender must file an insurance claim on a form approved by the Secretary. The lender must attach to the claim all documentation necessary to litigate a default, including any documents required to be submitted by the Federal Claims Collection Standards, and which the Secretary may require. Failure to submit the required documentation and to comply with the HEAL statute, regulations, and policies will result in a claim not being honored. The Secretary may deny a claim that is not filed within the period specified in this section. The Secretary requires for all claims at least the following documentation:

(1) The original promissory note;

(2) An assignment to the United States of America of all right, title, and interest of the lender in the note;

(3) The loan application;

(4) The history of the loan activities from the date of loan disbursement through the date of claim, including any payments made; and

(5) A Borrower Status Form (HRSA–508), documenting each deferment granted under § 60.12 or a written statement from an appropriate official attesting that the borrower is engaged in an activity for which he or she is entitled to receive a deferment.

* * * * *

(c) In addition, the lender must comply with the following requirements for the filing of default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) If a lender determines that it is not appropriate to file suit against a defaulted borrower pursuant to § 60.35(c)(2), it must file a default claim with the Secretary within 10 days after a loan has been determined to be in default. "Default" means the persistent failure of the borrower to make a payment when due or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Secretary finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay the loan. In case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days.

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim at least the following:

(A) Repayment schedule(s);

(B) A collection history, if any;

(C) A final demand letter;

(D) The original or a copy of all correspondence relevant to the HEAL loan to or from the borrower (whether received by the original lender, a subsequent holder, or an independent servicing agent); and

(E) A claims collection litigation report.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the borrower's bankruptcy, the lender must forward within 10 days that notice to the Secretary. If the Secretary has not paid the claim at the time the lender receives that notice, upon receipt of the notice, the lender must file with the bankruptcy court a proof of claim and an objection to the discharge or compromise of the HEAL loan. If the Secretary has paid the claim, the lender must file a statement to that effect with the court.

(2) *Death claims.* A lender must file a death claim with the Secretary within 10 days after the lender obtains documentation that a borrower is dead. In addition to the documentation required for all claims, the lender must submit with its death claim those documents which verify the death, including an official copy of the Death Certificate.

(3) *Disability claims.* A lender must file a disability claim with the Secretary within 10 days after it has been notified that the Secretary has determined a borrower to be totally and permanently disabled. In addition to the documentation required for all claims, the lender must submit with its claim evidence of the Secretary's determination that the borrower is totally and permanently disabled.

(4) *Bankruptcy claims.* A lender must file a bankruptcy claim with the Secretary within 10 days after the lender receives a notice of the first meeting of creditors in a borrower's bankruptcy proceeding. The lender must file with the bankruptcy court a proof of claim and an objection to the discharge or compromise of the HEAL loan. In addition to the documentation required for all claims, with its claim the lender must submit to the Secretary at least the following:

(i) Repayment schedule(s);

(ii) A collection history, if any;

(iii) A proof of claim;

(iv) An assignment to the United States of America of its proof of claim;

(v) All pertinent documents sent to or received from the bankruptcy court; and

(vi) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

21. In § 60.42, paragraph (a)(1) introductory text and (a)(i)(viii) and (ix) are revised, paragraph (a)(1)(x), paragraphs (a)(4), (d) and (e) are added to read as follows:

§ 60.42 Records, reports and inspection requirements for HEAL lenders

(a) *Records.* (1) A lender must keep complete and accurate records of each HEAL loan which it holds. The records must be organized in a way that permits them to be easily retrievable and allows the ready identification of the current status of each loan. The required records include:

* * * * *

(viii) The documents required for the exercise of forbearance;

(ix) Documentation of the assignment of the loan; and

(x) Evidence of a borrower's credit worthiness, including the borrower's credit report and a copy of the student borrower's financial aid transcript(s).

* * * * *

(4) The lender must maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be maintained under security and protected from fire, flood, water leakage, other environmental threats, electronic data system failures or power fluctuations, unauthorized intrusion for use, and theft.

* * * * *

(d) The lender must comply with the Department's biennial audit requirements of section 705 of the Act.

(e) Any lender who has information which indicates potential or actual commission of fraud or other offenses against the United States, involving these loan funds, must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

22. In § 60.50, paragraph (a)(2)(ii)(F) is revised to read as follows:

§ 60.50 Which schools are eligible to be HEAL schools?

(a) * * *

(2) * * *

(ii) * * *

(F) Council on Podiatric Medical Education.

* * * * *

23. Section 60.51 is revised to read as follows:

§ 60.51 The student loan application.

Prior to certifying a student's HEAL application, the school must conduct an entrance interview which provides the student information about the HEAL loan, including an explanation about the borrower's rights and responsibilities. When the student completes his or her portion of the student loan application and submits it to the school, the school must do the following:

(a) Accurately and completely fill out its portion of the HEAL application;

(b) Verify, to the best of its ability, the information provided by the student on the HEAL application, including, but not limited to, citizenship status by using a notarized copy of the applicant's birth certificate or the applicant's I–151 or I–551, if the applicant is required to possess such identification by the United States, and social security number by using the applicant's original Social Security card or copy issued by the Federal Government;

(c) Certify that the student is eligible to receive a HEAL loan, according to the requirements of § 60.5;

(d) Obtain from the student and forward to the lender a copy of the financial aid transcript(s) which include(s) at least the following data:

(1) Student's name;

(2) Amounts and sources of all educational loans and grants, including Federal and non-Federal, previously received by the student for study at an institution of higher education;

(3) Whether the student is in default on any of these loans, or owes a refund on any grants;

(4) The outstanding principal of these loans;

(5) Certification from each institution attended by the student that the student has received no financial aid, if applicable; and

(6) From each institution attended, the signature of an official authorized by the institution to sign such transcripts on behalf of the institution.

(e) Attest that it has no reason to believe that the borrower will not, or may not be able to, comply with any requirements, including the repayment requirements, of the Heal loan;

(f) Make reasonable determinations of the maximum loan amount approvable, based on the student's circumstances. The student applicant determines the amount he or she wishes to borrow, up to this maximum amount. Only then may the school certify an eligible application. In determining the maximum loan amount approvable, the school will calculate the difference between:

(1) All financial assets of the applicant, including any student aid, familial, spousal, or personal income or financial assistance of which the school or the applicant is aware that is legally or contractually available to the applicant or that the applicant has received or will receive for the period covered by the proposed HEAL loan, in addition to other information which the school has obtained regarding the student's financial status by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13; and

(2) The costs reasonably necessary for each student to pursue the same or similar curriculum or program within the same class year at the school by using a standard student budget system. Educational expenses or other costs which could legally be paid by money obtained through a HEAL loan, but which have already been paid must not be used in the calculation. The school must maintain in the student's record the criteria used for determining the reasonable costs.

(g) Comply with the requirements of § 60.61.

24. In § 60.52, paragraph (a) is removed paragraphs (b) and (c) are redesignated as (a) and (b), respectively, and newly designated paragraph (a)(1) is revised to read as follows:

§ 60.52 The student's loan check.

(a) * * *

(1) If the school receives the instrument after the student is enrolled, obtain the student's endorsement, retain that portion of funds due the school, and

disburse the remaining funds to the student.

* * * * *

25. Section 60.53 is revised to read as follows:

§ 60.53 Notification to lender of change in enrollment status.

Each school must notify the holder of a HEAL loan of any change in the student's enrollment status within 15 days following the change in status. Each notice must contain the student's full name under which the loan was received, the student's current name (if different), the date of the student's graduation, formal withdrawal, or failure to enroll as scheduled for any academic period as a full-time student, the student's latest known permanent and temporary addresses, and other information which the school decides is necessary to identify or locate the student. If the school does not know the identity of the current holder of the HEAL loan, it must notify the HEAL Program Office of a change in the student's enrollment status.

26. Section 60.56 is amended by revising paragraphs (a) introductory text and (a)(4), by redesignating paragraphs (a)(9) and (a)(10) as (a)(17) and (a)(18), respectively, and adding new paragraphs (a)(9) through (a)(16) and (c) and by revising newly designated (a)(18) to read as follows:

§ 60.56 Records.

(a) In addition to complying with the requirements of section 739(b) of the Act, each school must maintain an accurate, complete, and easily retrievable record with respect to each student who has a HEAL loan. The record must contain all of the following information:

* * * * *

(4) Amount and source of other financial assistance received by the student during the period for which the HEAL loan was made;

* * * * *

(9) Written procedures followed by the school for the receipt, verification of amount, and disbursement of HEAL checks or drafts;

(10) List(s) of all items discussed during each entrance interview, the date(s) of the entrance interview(s), the signature of the borrower indicating that the entrance interview(s) was (were) conducted;

(11) List(s) of all items discussed during the exist interview, the date of the exit interview, the signature of the borrower indicating that the exit interview was conducted;

(12) Notarized copy of the borrower's birth certificate or a photocopy made by the school of the borrower's I-151 or I-551, if the borrower is required to possess such identification by the United States, and a photocopy made by the school of the borrower's original Social Security card or copy issued by the Federal Government;

(13) Documentation of the calculations made which compare the financial resources of the applicant with the cost of his or her education at the school;

(14) Copy(s) of the financial aid transcript(s) which was (were) sent to the lender(s);

(15) Documentation of the criteria used to prepare the cost of attendance which reflect costs reasonably necessary for the student to pursue his or her education at the school (see § 60.51);

(16) Copies of all correspondence between the school and the borrower or between the school and the lender or its assignee regarding the loan;

* * * * *

(18) Postgraduate destination of borrower.

* * * * *

(c) The school must comply with the Department's biennial audit requirements of section 705 of the Act.

27. In § 60.60, paragraph (c) is revised to read as follows:

§ 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

* * * * *

(c) This section does not apply to administrative action by the Department of Health and Human Services based on any alleged violation of The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended), as governed by 34 CFR Part 99.

28. A new § 60.61 is added to read as follows:

§ 60.61 Responsibilities of a HEAL School.

(a) A HEAL school is required to carry out the following activities for each HEAL applicant or borrower:

(1) Conduct an entrance interview with each student applying for a HEAL loan, regardless of whether the student has had a previous HEAL loan, and maintain a list of all items discussed during each entrance interview, the date of each entrance interview, and the signature of the borrower for each entrace interview indicating that each entrance interview was conducted. The school must inform the student during the entrance interview of his or her rights and responsibilities under a HEAL loan, including the consequences for noncompliance with those responsibilities.

(2) Conduct an exit interview with each HEAL loan recipient within 60 days before the student's anticipated graduation date or other date for the student's departure from the school and maintain a list of all items discussed during the exit interview, the date of the exit interview, and the signature of the borrower indicating that the exit interview was conducted. The school must inform the borrower in the exit interview of his or her rights and responsibilities under each HEAL loan, including the consequences for noncompliance with those responsibilities. A copy of the documentation of the exit interview and any other information required by the Secretary regarding the exit interview must be sent to the lender of each HEAL loan within 15 days of the exit interview. If the borrower departs from the school prior to the anticipated date and does not receive an exit interview, the exit interview information must be mailed to the borrower by the school. In this event, the lender(s) must be so notified within 15 days of the school's knowledge of the departure.

(3) Verify the accuracy and completeness of information provided by each student on the HEAL loan application, particularly in regard to the HEAL eligibility requirements, by comparing the information with previous loan applications or other records or information provided by the student to the school. Notify the potential lender of any discrepancies which were not resolved between the school and the student.

(4) Develop and implement procedures relating to check receipt and release which keep these functions separate from the application preparation and approval process and assure that the amount of the HEAL loan check(s) does(do) not exceed the approved total amount of the loan and the statutory maximums. Checks must not be cashed without the borrower's personal endorsement. Documentation of these procedures and their usage shall be maintained by the school.

(5) Maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be maintained under security and protected from fire, flood, water leakage, other environmental threats, electronic data system failures or power fluctuations, unauthorized intrusion for use, and theft.

(6) Maintain a standard student budget system and maintain in each HEAL borrower's record a copy of the budgetary calculations which were actually used in the determination of the maximum loan amount approvable for the student, as described in § 60.51.

(7) Notify the lender or its assignee of any changes in the student's name, address, status, or other information pertinent to the HEAL loan not more than 15 days after receiving information indicating such a change.

(b) Any school which has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(c) The school will be considered responsible and the Secretary may seek reimbursement from any school for the amount of a loan in default on which the Secretary has paid an insurance claim, if the Secretary finds that the school did not comply with the applicable HEAL statute, regulations and policies.

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 276, 279, and 286

Food Stamp Program; the Food Security Act of 1985; Nondiscretionary Provisions; Final Rule and Correction

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 276, 279 and 285

[Amdt. No. 274]

Food Stamp Program; The Food Security Act of 1985—Nondiscretionary Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and correction.

SUMMARY: The Food Security Act of 1985 includes numerous provisions which amend the Food Stamp Program. This final rule implements those nondiscretionary provisions pertaining to: (1) Mandatory monthly reporting/retrospective budgeting (MRRB); (2) standard utility allowances and the treatment of indirect energy assistance payments; (3) eligibility for the homeless; (4) annualizing self-employment income; (5) eligibility of participants in the Job Training Partnership Act; (6) the definition of the disabled; (7) certification of information (perjury statement); (8) the Puerto Rico block grant; (9) overissuance liability of all household members; and (10) the administrative and judicial reviews for State agencies and retailer/wholesalers.

This rule also includes statutory waiver provisions pertaining to the MRRB rules which resulted from the Omnibus Budget Reconciliation Act of 1981, the Omnibus Budget Reconciliation Act of 1982 and the Food Stamp Amendments of 1983.

In addition, this rule contains a technical amendment to correct errors which appeared in a final rule published on March 28, 1986, entitled *Food Stamp Program: Eligibility, Certification and Notice Provisions and Technical Amendments of 1985.* This rule also corrects a final rule published on April 1, 1986 entitled *Food Stamp Program: Provisions on Earned Income, Shelter and Dependent Care Deductions, Resource Limits and Sales Tax on Food Stamp Purchases.* This correction is being made to include a conforming amendment to the resource provisions of that rule which was inadvertently overlooked.

DATES: The provisions at § 276.7(j) and § 279.10(d) from the Food Security Act of 1985 are retroactive to December 23, 1985. The provisions from the Food Security Act of 1985 at § 273.18, § 285.2 and § 285.3 are effective June 20, 1986. The provisions from the Food Security Act of 1985 which reflect current policy at § 273.2(f)(1)vi), § 273.2(i)(4)(i), 272.3, § 273.11(a)(1)(i) and § 274.1(a) are effective May 21, 1986. All other provisions from the Food Security Act of 1985 reflected in this rulemaking are effective June 20, 1986 to be implemented no earlier than the effective date and no later than August 1, 1986. The remaining provisions in this rulemaking pertain to statutory waiver authority and have been in effect since the enactment of the applicable law. Therefore, the provisions at § 273.21(a)(4)(i)(A) and the second sentence at § 273.10(f)(7) are effective retroactive to August 31, 1981. Section 273.21(a)(4)(ii)(A) and the first two sentences of § 273.21(a)(4)(ii)(B) are retroactive to September 8, 1982. The provisions at § 272.3, § 273.21(a)(4)(i)(B), § 273.21(a), § 273.21(a)(3), the third sentence at § 273.10(f)(7) and the last two sentences of § 273.21(a)(4)(ii)(B) are effective retroactive to December 2, 1983.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria Virginia, 22302, (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The rule will affect the economy by less than $100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified the rule as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. *10.551.* For the reasons set forth in the Final rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that some small entities will be affected by the provision concerning stays of administrative action by FNS against retailers and wholesalers. While the economic impact on some of these small stores could be significant, there will not be a substantial economic impact on a large number of small entities. All other provisions in the rulemaking will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp recipients and the State and local agencies which administer the Program.

Paperwork Reduction Act

This final rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date Justification

This rule implements provisions of Pub. L. 99–198, 97–35, 97–253 and 98–204, which are nondiscretionary. That is to say that the provisions of this rulemaking are specifically prescribed by law and cannot be affected by public comment. For these reasons, the Department has determined, in accordance with 5 U.S.C. 553(b), that notice of proposed rulemaking and public comment are unnecessary and contrary to public interest. Further, since this rulemaking merely implements the cited statutory provisions it constitutes an interpretative rule for which notice and public comment are not required under 5 U.S.C. 553.

This final rulemaking includes several amendments reflecting self-implementing provisions of law which were effective upon the enactment of the statute as specified in the section of this preamble titled "Implementation." The Department is issuing regulations pertaining to these sections in order to provide an overall view of program policy. Therefore, the Department has determined, in accordance with 5 U.S.C. 553(d), that an implementation period for these provisions is unnecessary. All other provisions of this rulemaking are effective no less than 30 days after publication.

Background

The Food Security Act of 1985 (Pub. L. 99–198) was enacted on December 23, 1985. Pub. L. 99–198 made a number of

nondiscretionary changes to the Food Stamp Act of 1977, as amended. This final rulemaking contains these nondiscretionary changes and these are discussed below.

State agencies have been able to exercise the statutory waiver provisions authorized through the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253) and the Food Stamp Amendments of 1983 (Pub. L. 98–204) since the enactment of the statutes. As will be discussed, this final rulemaking includes language pertaining to the statutory waiver authority.

Definition of Disabled—§ 271.2

Under current regulations, persons defined as disabled receive special treatment in their eligibility and coupon allotment determinations. The special treatment includes: (1) The right to claim allowable medical expenses as a deduction from income; (2) the ability to claim excess shelter costs as a deduction from income without regard to the dollar limit imposed on other households; and (3) an exemption from the food stamp gross income eligibility test.

The current definition of disabled persons contained in section 3(r) of the Food Stamp Act (7 U.S.C. 2012(r)), and reflected in § 271.2 of the food stamp regulations, is limited to those persons who are permanently or totally disabled. Section 1504 of Pub. L. 99–198 adds four additional categories to the definition of disabled persons. These categories are: (1) Recipients of State or federally administered Supplemental Security Income (SSI) payments under section 1616(a) of the Social Security Act (optional State supplementation) provided that eligibility to receive the benefits is based upon the disability or blindness criteria used under title 16 of the Social Security Act or payments under section 212(a) of Pub. L. 93–66 (mandatory minimum State supplementation of SSI benefits); (2) veterans receiving pensions for non-service connected disability; (3) recipients of Federal, State or local public disability retirement pensions who have a disability considered permanent under section 221(i) of the Social Security Act; and (4) Railroad Retirement disability annuitants who either meet the social security disability criteria in order to receive their annuity or who are determined to quality for Medicare by the Railroad Retirement Board.

Accordingly, this rulemaking amends 7 CFR 271.2 to include the four additional categories of disabled persons specified in Section 1504 of Pub. L. 99–198. Section 273.2(f)(1)(viii)(A) of 7 CFR is revised to clarify the mandatory verification requirements the household must complete in the application process. Finally, this rulemaking amends the current definition of "Supplemental Security Income (SSI)" at 7 CFR 271.2 to bring the definition into conformance with the SSI recipients specified above.

Certification of Information—Perjury Statement—§ 273.2

Under current regulations at 7 CFR 273.2(b), the food stamp application form must contain a statement that the information provided by the applicant is subject to verification by Federal, State, and local officials. The form must also state that if any such information is incorrect, food stamps may be denied and the applicant may be subject to criminal prosecution if he or she knowingly provided incorrect information. Finally, the application must include a description of the civil and criminal provisions and penalties for violation of the Food Stamp Act.

This rule implements a provision enacted by Pub. L. 99–198 (section 1525) concerning applicant perjury. This provision requires one adult member in all applicant households to certify in writing, under penalty of perjury, the truth of the information contained in the application for the household's coupon allotment. This perjury statement does not alter any of the required statements which currently appear on the application. The legislative history (Senate Rept. No. 99–145, pg. 256) indicates that the perjury statement is intended to improve program administration and aid in the prosecution of fraudulent participation.

Accordingly, this rulemaking amends 7 CFR 273.2 to require that food stamp applications contain a perjury statement which must be signed by one adult member of the household.

Eligibility of the Homeless—Residency Requirement—§§ 273.2, 273.3, and 274.1

The regulations currently governing food stamp eligibility at 7 CFR 273.3 require that households reside in a project area where an application is submitted unless the State agency makes other arrangements. However, current regulations prohibit the State agencies from imposing a durational, fixed, or permanent residency requirement. Therefore, a household cannot be denied participation in the Food Stamp Program because it lacks a fixed address.

In order to further ensure that food stamp benefits are made available to eligible homeless households, section 1529 of the Food Security Act requires that State agencies provide a method to certify and issue coupons to eligible households that do not reside in a permanent dwelling or have a fixed mailing address. In addition, the legislative history (H. Rept. 99–271, pg. 134) emphasizes that the prohibition against a fixed residency requirement does not relieve the States of their responsibility to protect against program abuse, including multiple participation. Therefore, if applicant households are homeless, State agencies will not be able to monitor duplicate participation through an address as currently permitted by 7 CFR 274.1(d)(1). However, the State agency must continue to ensure that no individual participates in the program more than once a month. The legislation (section 1529) also specifies that the State agency should ensure that participation is limited to eligible households.

Accordingly, this rulemaking amends 7 CFR 273.3 to clarify that States may not require an applicant household to have a fixed mailing address as a condition of eligibility. Section 274.1(a) of 7 CFR is revised to require that a State agency's issuance system provides benefits to individuals who do not reside at a fixed mailing address. Finally, 7 CFR 273.2(f)(1)(vi) and 273.2(i)(4)(i) are amended to clarify that a State agency may not deny an applicant homeless household participation in the program when residency cannot be verified.

Student Eligibility—Job Training Partnership Act Participation—§ 273.5

The current regulations at 7 CFR 273.5(a) define a student as anyone who is: (1) Between the ages of 18 and 60; (2) physically and mentally fit; and (3) enrolled at least half-time in an institution of higher education. In order to be eligible to participate in the Food Stamp Program, a student must meet at least one of the criteria prescribed at 7 CFR 273.5(b)(1). These criteria are: (1) Employment for a minimum of 20 hours per week; (2) participation in a federally financed work study program (e.g., Title IV–C of the Higher Education Act of 1965) during the regular school year; (3) responsibility for the care of a dependent household member under the age of six; (4) responsibility for the care of a dependent household member between the ages of six and eleven for whom the State agency has determined that adequate child care is not available; or (5) receipt of benefits under the Aid to Families with Dependent Children Program.

The Food Security Act of 1985 (section 1516(4)) adds one category of eligibility

to § 273.5(b)(1). Under this provision, students who are assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act may be eligible to participate in the Food Stamp Program.

Therefore, this rulemaking amends 7 CFR 273.5(b)(1) of the regulations to include this category of eligible students as specified in section 1516(4) of Pub. L. 99–198.

Standard Utility Allowance (SUA) Energy Assistance Payments—§ 273.9

The Food Security Act of 1985 in section 1511 contains several provisions which affect the treatment of Low Income Home Energy Assistance Act (LIHEAA) or similar energy assistance payments when computing the shelter cost deduction in the food stamp coupon allotment and eligibility determinations. The provisions simplify program administration and ensure that the option to claim a SUA is provided to all households who are eligible to receive the SUA. These provisions are described below.

1. Allowable Expenses.

The Low Income Home Energy Assistance Act of 1981 specifically requires that payments received under the Act cannot be counted as income or resources under any Federal or State law relating to taxation, food stamps, public assistance or welfare programs. Depending on the State's management of LIHEAA payments, a food stamp household may either receive LIHEAA payments directly or have its payments transferred to the energy assistance provider. The latter method is often referred to as an "indirect" or "vendor" payment. Indirect payments are currently excluded as an allowable deduction under regulations at 7 CFR 273.10(d)(1) which prohibit indirect payments as a deductible expense. Therefore, households that receive their LIHEAA or similar energy assistance payments "indirectly" are currently unable to claim any portion of the expenses covered by the LIHEAA payments toward a SUA which includes a heating and/or cooling component.

Section 1511 of Pub. L. 99–198 provides that households which incur out-of-pocket heating or cooling expenses over and above their indirect LIHEAA or similar energy assistance payments in any month are entitled to receive the SUA which includes a heating or cooling cost as prescribed at 7 CFR 273.9(d)(6). Accordingly, this rulemaking revises 7 CFR 273.9(d)(6) to clarify how indirect energy assistance payments pertain to the shelter cost deduction.

2. Proration.

Section 1511 of Pub. L. 99–198 specifies that LIHEAA payments must be prorated on a monthly basis over the entire heating or cooling season for which it was provided. The legislative history (H. Conf. Rept. No. 99–447, 99th Cong., 1st Sess., 562 (1985)) indicates that the intent of this proration is to ensure that the SUA or actual utility costs are handled equitably despite State variations in the distribution of LIHEAA or similar energy assistance payments.

Accordingly, this final rulemaking amend 7 CFR 273.10(d) of the regulations to specify that LIHEAA and other energy assistance payments must be prorated.

3. Developing Standard Utility Allowances.

As previously noted, an SUA must be made available to those households which continue to incur out-of-pocket heating or cooling expenses after their LIHEAA or similar energy assistance payments have been prorated over the entire heating or cooling season. Under current rules relating to the SUA, the State agency may either develop a single SUA which includes the heating and/or cooling component or develop standards for each allowable expense.

Section 1511 of Pub. L. 99–198 provides that State agencies may use a single SUA with an additional option. In order to provide equitable treatment for participating households, State agencies may now elect to develop two SUAs for households incurring heating or cooling expenses—one for households not receiving indirect energy assistance payments and a second which would apply to households receiving indirect energy assistance payments and incurring any out-of-pocket heating or cooling expenses. If the State agency chooses to develop two SUAs for households incurring heating or cooling expenses, the SUA reflecting indirect energy assistance payments must be based on an average of the out-of-pocket heating or cooling expenses incurred by these households. If the State agency does not elect to develop two single SUAs, but continues to use a single SUA, the full amount of the single SUA must be made available to those households which receive indirect LIHEAA or similar energy assistance payments and incur any out-of-pocket heating or cooling expenses.

Accordingly, this final rulemaking amends 7 CFR 273.9(d)(6) to reflect this option.

4. Switching.

Under current regulations prescribed at 7 CFR 273.9(d)(6), the State agency must allow the household to switch between the use of the SUA and actual costs at the time of recertification except in States which use an annualized standard. If the State agency uses the annualized SUA, the household is not allowed to switch between the SUA and actual costs except at twelve-month intervals after the initial certification action.

The Food Security Act of 1985 alters this requirement. Under section 1511 of Pub. L. 99–198, the State agency is required to allow the household to switch between the SUA and actual utility costs at each recertification action and one additional time during each twelve-month period following the initial certification action.

Accordingly, the final rulemaking revises 7 CFR 273.9(d)(6) of the current regulations to clarify when the household may switch between actual costs and the SUA.

Self-employment Income—§ 373.11

The Food Security Act of 1985 in section 1512 includes a provision which mandates that self-employment income be treated in the manner prescribed at 7 CFR 273.11(a)(1)(i) of the current regulations.

Section 273.11(a)(1)(i) of 7 CFR requires that self-employment income be annualized over a 12-month period even if the income is received within a short period of time during the 12 months. In order to arrive at an average monthly income which will be available to a household during the period of its food stamp eligibility, the regulations require that the monthly average be calculated on the basis of either current data or anticipated circumstances. For example, if the household expects to earn approximately the same income in the current year as it earned in the previous year it would be appropriate to use the household's current income (i.e., current data) to determine average monthly income and eligibility. However, if the household has experienced a recent increase or decrease in business, or anticipates such an increase or decrease in income, then the annualized and average monthly income figures must reflect anticipated earnings as opposed to current earnings. The State agency should not base food stamp calculations solely on past income tax returns when the household has experienced a recent substantial change in self-employment earnings. (See Senate Rept. 99–145, pg. 240).

This rulemaking amends 7 CFR 273.11(a)(1)(i) to further clarify the proper treatment of annualized self-employment income.

Liability for Overissuance of Coupons—§ 273.18

State agencies are currently required to initiate collection action for claims for overissued coupons against the household containing the majority of individuals who were members of the original household. If the majority of the original household cannot be located, collection action is initiated against the household currently containing the individual who was head of the household at the time of the overissuance. In the case of overisssuances resulting from intentional program violations, State agencies have the option of initiating collection action against the household containing the disqualified person rather than against the household containing the majority of the original household members. If State agencies do not exercise this option and cannot locate the household with the majority, collection action is initiated against the household currently containing the individual who was head of the household at the time of the overissuance.

This rule implements section 1533 of the Food Security Act of 1985 which makes all adult household members jointly and severally liable for the value of any overissuance of benefits to the household. This is true, regardless of whether the overissuance resulted from an inadvertent error, an administrative error or an intentional program violation. The provision clarifies that any adult member of a household is liable for the overissuance to the entire household. Thus, collection could be pursued from the income or resources of any or all of the adult household members. For example, if a five-person household containing three adult members has a claim against it in the amount of $1,000, the State agency could initiate collection action against any or all three of the adults based on the income and resources of each individual. However, in no event could a State agency collect an amount above the amount of the claim. The provision also permits State agencies to simultaneously pursue claims against several different households which contain adult members of a household which originally obtained an overpayment of benefits, to the extent permitted by the Act. This means that the State agency could recoup payment for a claim for the allotments of several different households at the same time. This rulemaking does not affect any other terms of existing regulations that relate to claims against households. (See 7 CFR 273.18 (a) and (f).)

Legislative History of MRRB Waiver Authority

The Food Stamp Act of 1977, as amended, contains several provisions under which MRRB requirements may be waived. Under the provisions of sections 5(f) and 6(c)(5), waivers may be approved for the purpose of achieving consistency between the retrospective budgeting and monthly reporting requirements in the Food Stamp and AFDC Programs. The authority for budgeting waivers was contained in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). The authority for monthly reporting waivers was provided by the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253). The waiver authorities are currently specified in regulation § 272.3(c). This final rulemaking included language in § 273.21(a)(4) of the regulations which further clarifies the statutory waiver authority.

Pub. L. 97–253 also expanded MRRB waiver authority by amending section 6(c)(1) of the Food Stamp Act to allow State agencies, with prior approval of the Secretary, to select categories of households which may report at less frequent than monthly intervals if monthly reporting would result in unwarranted expenditures. Pub. L. 98–204, enacted on December 2, 1983, further expanded State agency options with respect to households reporting at less frequent than monthly intervals. Under Pub. L. 98–204, the Secretary may permit State agencies to accept as satisfying the requirement that households report at less frequent intervals: recertifications; interviews conducted during the certification period; written reports filed by the household; or other documentation which the Secretary may prescribe. The Secretary may also permit State agencies to waive retrospective budgeting for households who have been waived from the monthly reporting requirement. This waiver authority is currently specified in the regulations at § 272.2(c). Further clarifying language has been added to § 273.21(a)(4) in this final rulemaking.

As will be discussed later in this preamble, the Food Security Act of 1985 retains the statutory waiver authority provided for in Pub. L. 97–253 and 98–204 to exempt categories of households subject to MRRB. The legislative history (Conf. Rept. No. 99–447, pg. 527) indicates that Congress intended that *all* or a part of certain household categories subject to MRRB may be waived if cost-effectiveness is proven.

Pub. L. 98–204 further amended section 6(c)(3) of the Food Stamp Act to require that the monthly report is the sole reporting requirement for information that is required to be reported monthly. As a result, State agencies were given the opportunity to narrow the focus of information required to be reported monthly and to concentrate on those circumstances that may fluctuate. Waivers to exclude required information from the monthly report were authorized under § 272.3(c) of the current regulations.

This final rule further includes language at 7 CFR 273.21 to ensure that State agencies do not subject households to dual reporting requirements as prohibited by section 6(c)(3) of the Food Stamp Act. In other words, a household may report a change on the monthly report as prescribed at 7 CFR 273.21, or through a change report as prescribed at 7 CFR 273.12. However, the State agency may not require the household to report the same change through both reporting methods. As a result of this provision, households that report information monthly may not be required to report any changes prior to the submission of their next monthly report.

This final rulemaking also contains a conforming requirement at 7 CFR 273.21(c) which requires the State agency to explain to the household at the time of certification what information is required to be reported on the monthly report. This should further clarify the household's reporting requirements.

Finally, section 3(c) of the Food Stamp Act was amended by Pub. L. 97–35 to allow waivers of the 12-month certification limit. Section 3(c) of the Food Stamp Act was further amended by Pub. L. 98–204 to allow waivers of the six-month minimum certification period for households subject to monthly reporting. Language to reflect the waiver authority relative to section 3(c) of the Act has been added to 7 CFR 272.3(c), 273.10(f) and 273.21(a)(3) in this final rulemaking.

Monthly Reporting/Retrospective Budgeting (MRRB)—§ 273.21

Under current procedures, all households except migrant farmworker households and households in which all adult members are elderly or disabled and have no earned income are required to submit a monthly report unless a waiver is sought by the State agency and approved. The State agency must also budget the household's monthly allotment retrospectively (i.e., must base the household's allotment on its income and circumstances in a previous month) if the household is subject to monthly

reporting. Households in which all adult members are elderly or disabled and have no earned income are subject to retrospective budgeting, even though they are not subject to monthly reporting. Migrant farmworker households, on the other hand, must have their allotments budgeted prospectively (i.e., on anticipated earnings and circumstances in the coming months).

Section 1513 of the Food Security Act of 1985 contains several provisions which modify the MRRB requirements. The first provision limits mandatory MRRB to those households with earnings and a recent work history. These households tend to have the greatest fluctuations in earnings and circumstances. As noted in the legislative history, this provision is intended to increase the effectiveness of existing statutory waiver provisions. Although the statutory waiver system is intended to enhance program integrity and efficiency, experience has shown that many States must spend a great deal of time justifying waivers for households whose income and circumstances do not fluctuate significantly from month to month. Therefore, by limiting mandatory MRRB to those households with the greatest fluctuation in circumstances, the provision effectively targets MRRB and reduces the need for State agencies to submit waiver requests. As previously discussed, the Food Security Act of 1985 retains the statutory waiver authority to exclude categories of households otherwise subject to MRRB.

Limiting mandatory MRRB also increases consistency with the Aid to Families with Dependent Children (AFDC) Program because the AFDC Program limits mandatory MRRB to households with earnings or a recent work history. In order to further enhance consistency between the two programs, this rulemaking establishes that the State agency must adopt the recent work history definition that is used in its AFDC Program for public and non-public assistance households. This requirement reflects Congressional intent to conform the programs and increase State agency flexibility. Accordingly, this rulemaking amends 7 CFR 273.21(b)(1) to incorporate the mandatory MRRB and recent work history requirements.

A second provision of the Food Security Act of 1985 which modifies the MRRB system requires households in which all adult members are elderly or disabled and have no earned income to have their allotment computations budgeted on a prospective basis. This provision clarifies that those households which are excluded by law from monthly reporting are also prohibited from having their allotment computations budgeted retrospectively. This final rulemaking revises the current regulations at 7 CFR 273.21(b)(2) to include this provision.

The last provision of the Food Security Act of 1985 pertaining to MRRB permits State agencies to expand retrospective budgeting, monthly reporting, or both, to all other households which are not statutorily exempt from MRRB. Therefore, certain household categories may, at the discretion of the State agency, be required to report monthly and have their allotments budgeted retrospectively. Furthermore, the State agency may require that the household report changes as prescribed at 7 CFR 273.12 (i.e., within 10 days of becoming aware of the change) but budget the allotment retrospectively. However, the Food Security Act does not change the existing statutory requirement that households required to report monthly must have their allotments budgeted retrospectively.

Judicial Reviews—§ 276.7(j) and § 279.10(d)

This rule also codifies a change in the Food Stamp Act relating to the administrative and judicial review of negative actions taken by FNS against a retail or wholesale firm or a claim levied by FNS against a State agency. Section 14 of the Food Stamp Act, and current regulations, require that retail and wholesale firms whose applications for authorization are denied or withdrawn, who are disqualified or who have civil money penalties levied against them be allowed an administrative review of their case prior to the penalty being put into effect. State agencies that have claims levied against them also have the same opportunity for review given to them. Section 14 also provides that any entity aggrieved by the determination of the review may obtain a judicial review of the determination. Should a judicial review be sought, the negative action is to remain in force unless a stay of the action is granted. The amendment to section 14, contained in section 1530 of Pub. L. 99-198, pertains to the granting of such stays.

Prior to the enactment of Pub. L. 99-198, a stay could be granted upon a showing that the determination would result in irreparable injury. The amendment to Section 14 requires that stays be granted only upon a showing that the applicant is likely to prevail on the merits and of irreparable injury.

Puerto Rico Block Grant—§ 285.2 and § 285.3

This rule implements provisions of the Food Security Act of 1985 which amend section 19 of the Food Stamp Act of 1977 to provide increases in block grant funding levels for the Commonwealth of Puerto Rico through Fiscal Year 1990, and permit the Commonwealth to designate more than one agency to administer, or supervise the administration of, the food assistance program in Puerto Rico.

Due to concerns regarding the dislocating effect the massive flow of food coupons may have had on the Puerto Rican economy prior to the block grant program, Congress indicated in legislative history, accompanying the Omnibus Budget Reconciliation Act of 1981, that a portion of the grant could be used for the purpose of agricultural development in Puerto Rico. A small portion of the grant has been used for this purpose and is managed by a different government agency in Puerto Rico from the agency that handles the bulk of the nutrition assistance program. This split responsibility necessitated the modification to the Act with regard to the single agency requirement for supervision of the grant program in Puerto Rico. This rule implements the requirements of the Food Security Act of 1985 using language which permits the Commonwealth to designate more than one government agency to supervise programs funded under the nutrition assistance grant. The law mandates that a single plan of operation be submitted by the Commonwealth encompassing all programs funded under the nutrition assistance grant. Final approval authority for this plan of operation rests with the Department's Food and Nutrition Service. Consequently, while the Department acknowledges the Commonwealth's prerogative to designate which agency(ies) of its government should administer the different programs specified in its plan of operation, the Department can foresee situations in which these designations may not always prove to be compatible with Departmental administration and supervision of the nutrition assistance grant. These rules, therefore, permit Puerto Rico to designate the agency(ies) which it feels should administer the various programs funded by the grant while concurrently allowing the Department the prerogative of making the final determination, under its plan of operation approval authority, as to which Commonwealth agency(ies) should administer the various programs and with which agency(ies) of the

Department they are to cooperate in fulfilling the various requirements under the grant.

In an effort to curtail rising program costs in Puerto Rico, Congress instituted a nutrition assistance grant program for the Commonwealth to be funded at a specified capped annual rate. Previous regulations specifically delineated the actual annual dollar amounts of this funding. However, in order to eliminate the necessity of amending the specific dollar amounts contained in the regulations each time Congress amends these amounts through legislation, the Department is amending 7 CFR 285.2 to state that the amount of grant funds provided to Puerto Rico shall not exceed amounts appropriated for this purpose.

The Food Security Act of 1985 also permitted the Commonwealth of Puerto Rico to continue operation of a cash benefit system in providing food assistance under its nutrition assistance grant program. Current regulations in Part 285 do not mandate the type of benefit delivery system which the Commonwealth must employ. There is, therefore, no need to amend the current rules as written.

Implementation

The provisions of this action relating to: (1) The definition of disabled; (2) eligibility for Job Training Partnership Act participants; (3) the treatment of indirect energy assistance payments; and (4) prospective budgeting for households in which all adult members are elderly or disabled and have no earned income shall be implemented no earlier than the effective date of this rule and no later than August 1, 1986 for the current caseload and all new applicants. If, for any reason, a State agency fails to implement these provisions on this date, households shall be provided the lost benefits which they would have received if the State agency had implemented these provisions as required.

The provisions of this action relating to: (1) Mandatory MRRB for households with earnings and a recent work history; (2) optional MRRB for households which are not statutorily exempt from MRRB; (3) the perjury statement included on the application; and (4) the household's option to switch between actual utility costs and the SUA shall also be implemented no earlier than the effective date and no later than August 1, 1986. These provisions do not require an active case file review. However, a case shall be reviewed upon the request of a recipient household to switch between actual utility costs and the SUA.

The provisions of this action pertaining to eligibility and issuance for the homeless at §§ 273.3, 273.2(f)(1)(vi), 273.2(i)(4)(i) and 274.1(a) and annualizing self-employment income at § 273.11(a)(1)(i) reflect current policy and therefore an implementation period is not required. The collection procedures authorized by § 273.18 apply to all claims established for overissuances that occurred after the effective date of this provision. Finally, the provisions relating to the Puerto Rico Block Grant shall be effective June 20, 1985.

The statutory provisions relating to the administrative review process are self-implementing and were effective as of the date the statute was enacted. Accordingly, the provisions at § 276.7(j), and 279.10(d) are effective retroactive to December 23, 1985 when Pub. L. 99–198 was enacted.

The statutory waiver authority pertaining to MRRB was also self-implementing. Accordingly, the provision at § 273.21(a)(4)(i)(A) and the second sentence of § 273.10(f)(7) are effective retroactive to August 31, 1981 when Pub. L. 97–35 was enacted. The provision at § 273.21(a)(4)(ii)(A) and the first two sentences of § 273.21(a)(4)(ii)(B) described in this action are retroactive to September 8, 1982 when Pub. L. 97–253 was enacted. The provisions at § 272.3, 273.21(a)(4)(i)(B), 273.21(a), 273.21(a)(3), the third sentence at § 273.10(f)(7) and the last two sentences of § 273.21(a)(4)(ii)(B) prescribed in this action are effective retroactive to December 2, 1983 when Pub. L. 98–204 was enacted.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedures, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedures, Food stamps, Fraud, Grant programs—Social programs, Penalties.

7 CFR Part 279

Administrative practice and procedures, Food stamps, Groceries—retail groceries, General line—wholesaler.

7 CFR Part 285

Accounting, Food assistance programs, Grant programs—Agriculture, Grant programs—social programs, Intergovernmental relations, Puerto Rico, Technical assistance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 272, 273, 274, 276, 279 and 285 are amended as follows:

1. The authority citation of parts 271, 272, 273, 274, 276, 279 and 285 continues to read as follows:

Authority: 91 Stat 958 (7 U.S.C. 2011–2029).

PART 271—GENERAL INFORMATION AND REGULATIONS

§ 271.2 [Amended]

2. In § 271.2:

a. The definition of *"Elderly or disabled member"* is amended by redesignating paragraphs (3) through (6) as paragraphs (6) through (9) respectively, and adding new paragraphs (3), (4) and (5)

b. A new paragraph (10) is added to the definition of *"Elderly or disabled member."*

c. Newly redesignated paragraph (6) of the *"Elderly and disabled member"* definition is amended by adding the phrase "or non-service connected" after the word, "service-connected."

d. The definition of *"Supplemental Security Income (SSI)"* is revised. The additions and revisions read as follows:

§ 271.2 Definitions.

* * * * *

"Elderly or disabled member" * * * (3) receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act; (4) receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93–66; (5) receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act. * * * (10) receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 *and* is

determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.

* * * * *

"Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93-66.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(76) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(76) Amendment No. 274. (i) The provisions of this amendment at §§ 271.2, 273.2, 273.5, 273.9, 273.10(d)(6), and 273.21(b) shall be implemented for all new applications and the current caseload no later than August 1, 1986. If, for any reason, a State agency fails to implement these provisions on this date, households shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

(ii) The provisions of this amendment at §§ 273.16 and 285 shall be implemented June 20, 1986.

(iii) The provisions of this amendment at § 273.21(a)(4)(i)(A) and the second sentence in § 273.10(f)(7) are effective retroactive to August 31, 1981. Section § 273.21(a)(4)(ii)(A) and the first two sentences of § 273.21(a)(4)(ii)(B) described in this amendment are retroactive to September 8, 1982. The provisions of this amendment at §§ 272.3, 273.21(a), 273.21(a)(3), 273.21(a)(4)(i)(B), the third sentence at § 273.10(f)(7), and the last two sentences of § 273(a)(4)(ii)(B) are effective retroactive to December 2, 1983. The provision of this amendment at § 276.7(j) is effective retroactive to December 23, 1985.

4. In § 272.3, paragraph (c) is amended by redesignating paragraphs (c)(5) and (c)(6) as paragraphs (c)(6) and (c)(7), respectively, and adding a new paragraph (c)(5) to read as follows:

§ 272.3 Operating guidelines and forms.

* * * * *

(c) *Waivers* * * *

(5) Notwithstanding the preceding paragraphs, waivers of the certification period timeframes as described in § 273.10(f) may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 3(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

5. In § 273.2:

a. Paragraph (b) is amended by adding a new sentence between the third and fourth sentences.

b. The first sentence in paragraph (f)(1)(vi) is revised.

c. Paragraph (f)(1)(viii)(A)(*1*) is amended by replacing the phrase, "paragraph (2)" with the phrase, "paragraphs (2), (3) and (4)".

d. Paragraph (f)(1)(viii)(A)(*2*) is amended by replacing the phrase, "paragraph (3)" with the phrase, "paragraph (6)".

e. Paragraph (f)(1)(viii)(A)(*3*) is amended by replacing the phrase, "paragraphs (4) and (5)" with the phrase, "paragraphs (7) and (8)".

f. Paragraph (f)(1)(viii)(A)(*4*) is amended by replacing the phrase, "paragraph (6)" with the phrase, "paragraphs (5) and (9)" wherever it appears.

g. A new paragraph (f)(1)(viii)(A)(*5*) is added.

h. The first sentence in paragraph (i)(4)(i)(B) is amended by replacing the phrase, "the household's residency," with the phrase, "the household's residency in accordance with § 273.2(f)(1)(vi),".

The additions and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.* * * *

The application shall also contain a statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application. * * *

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(vi) *Residency.* The residency requirements of § 273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. * * *

* * * * *

(viii) *Disability* (A) * * *

(*5*) For individuals to be considered disabled under paragraph (10) of the definition, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board *and* has been determined to quality for Medicare.

* * * * *

6. In § 273.3, the fifth sentence is revised to read as follows:

§ 273.3 Residency.

* * * The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. * * *

7. In § 273.5, paragraph (b)(1) is amended by adding a new paragraph (vi). The paragraph reads as follows:

§ 273.5 Students.

* * * * *

(b) *Eligibility Requirements.*

(1) * * *

(vi) Be assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act.

* * * * *

§ 273.9 [Amended]

8. In § 273.9:

a. Paragraph (d)(6)(i) is amended by removing the second sentence and adding two new sentences after the first sentence.

b. Paragraphs (d)(6)(ii) through (d)(6)(vii) are redesignated as paragraphs (d)(6)(iii) through (d)(6)(viii) respectively

c. Newly amended paragraph (d)(6)(i) is further amended by designating the fifth sentence which begins with the phrase, "The standard utility allowance which includes a heating . . .", and all that follows as paragraph (d)(6)(ii).

d. A new second sentence is added after the first sentence in newly redesignated paragraph (d)(6)(ii).

e. Newly redesignated introductory paragraph (d)(6)(v) is revised.

f. Newly redesignated introductory paragraph (d)(6)(v)(B) is revised.

g. Newly redesignated paragraph (d)(6)(vii) is amended by replacing the reference to "(d)(6)(iv)(C)" with "(d)(6)(v)(C)", the second and third sentences are revised, and the last sentence is removed.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(6) *Standard utility allowance* (i) * * * The State agency may establish either: (A) a separate standard utility allowance for individual utility expenses defined in paragraph (d)(5)(iii) of this section; (B) a single standard utility allowance which includes a heating or cooling component and which is available to all households which incur out-of-pocket heating or cooling expenses; or (C) two single standard utility allowances which include a heating or cooling component.

If the State agency chooses to develop two standard utility allowances for households which incur heating or cooling expenses, one standard shall be used for those households not receiving indirect energy assistance payments and the second standard shall only be used for those households which receive indirect energy assistance payments (e.g., Low Income Home Energy Assistance Act) and incur out-of-pocket heating or cooling expenses. * * *

(ii) * * * The standard utility allowance shall also be made available to those households receiving indirect energy assistance payments but who continue to incur out-of-pocket heating or cooling expenses during any month covered by the certification period.

* * *

* * * * *

(v) The State agency may establish standard utility allowances as prescribed in paragraph (d)(6)(i) of this section.

* * * * *

(B) If the State agency establishes one or two single standard allowances, it shall include the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection. If the State agency elects to develop a single standard for those households which receive indirect energy assistance payments, the standard shall reflect the average out-of-pocket heating or cooling expense for such households.

* * * * *

(vii) * * * The State agency shall further advise the household when it has the right to switch between the use of actual utility costs and the standard utility allowance. The State agency shall permit the household to switch between actual utility costs and the standard utility allowance at the time of recertification and one additional time during each twelve-month period.

* * * * * *

§ 273. [Amended]

9. In § 273.10:

a. Paragraph (d) is amended by adding a new paragraph (d)(6).

b. Paragraph (f) is amended by adding a new paragraph (f)(7).

The addition and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions* * * *

(6) *Energy Assistance Payments.* The State agency shall prorate energy assistance payments (e.g., Low Income Home Energy Assistance Act) as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

* * * * *

(f) *Certification periods* * * *

(7) Households required to submit monthly reports in accordance with § 273.21(b) shall be certified for not less than six months and not more than 12 months. The limit of 12 months may be waived for these households if the State agency can demonstrate that such a waiver would result in improved administration of the Program. The six-month minimum may be waived for households subject to less frequent than monthly reporting if the State agency can demonstrate that such a waiver would result in improved administration of the Program.

* * * * *

10. In § 273.11, paragraph (a)(1)(i) is amended by adding two new sentences after the second sentence to read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

(1) *Annualizing self-employment income*

(i) * * * However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income on anticipated earnings. The State agency shall not calculate self-employment income on the basis of prior income (e.g. income tax returns) when the household has experienced a substantial increase or decrease in business. * * *

* * * * *

11. In § 273.18, introductory paragraph (a) and paragraph (f) are revised.

The addition and revision read as follows:

§ 273.18 Claims against households.

(a) *Establishing claims against households.* All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

* * * * *

(f) *Change in household composition.* State agencies shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, State agencies may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The State agency may also offset amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may a State agency collect more than the amount of the claim. In pursuing claims, the State agency may use any of the appropriate methods of collecting payments in § 273.18(g).

* * * * *

§ 273.21 [Amended]

12. In § 273.21:

a. Introductory paragraph (a) is amended by adding two new sentences after the third sentence.

b. Paragraph (a)(3) is amended by adding a new sentence to the end of the paragraph.

c. A new paragraph (a)(4) is added.

d. Paragraphs (b)(1) and (b)(2) are revised.

e. Paragraphs (c)(3) through (c)(5) are redesignated as paragraphs (c)(4) through (c)(6) respectively and a new paragraph (c)(3) is added. The additions and revisions read as follows:

§ 273.21 Monthly reporting retrospective budgeting (MRRB).

(a) *System design.* * * * The monthly report shall be the sole reporting requirement for such information included on the monthly report. The State agency shall not require the household to report any changes included on the monthly report prior to the submission of the next monthly report. * * *

* * * * *

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(3) * * * These limits may be waived for certain categories of households if the State agency can demonstrate that the waiver will improve the administration of the program.

(4) *Waivers* (i) FNS may approve waivers of the budgeting requirements of this section under the following criteria:

(A) Waivers may be approved to conform budgeting procedures in the AFDC Program.

(B) Waivers from retrospective budgeting may be approved for households waived from monthly reporting under paragraph (a)(4)(ii) of this section upon a showing by the State agency that the waiver will improve the administration of the Program.

(ii) FNS may approve waivers from monthly reporting under the following criteria:

(A) Waivers from monthly reporting may be approved for those categories of PA households which are not subject to monthly reporting in the AFDC Program under Title IV of the Social Security Act, as amended; not subject to monthly reporting under 45 CFR Part 233.36; or waived from monthly reporting in the AFDC Program by the Office of Family Assistance.

(B) FNS may approve proposals by the State agency to select categories of households for less frequent than monthly reporting. Approval is subject to the submission of data by the State agency indicating that the proposal will result in a net cost savings to the Federal Government. Subject to FNS approval, the State agency may designate alternative methods of reporting for households reporting at less frequent than monthly intervals under this paragraph. Such alternative methods include written reports, recertification interviews and interviews during the certification period.

(b) *Included and excluded households.* * * * (1) An MRRB system shall include all households with earnings and a recent work history. The State agency shall use the recent work history definition that is used in its AFDC Program for public and non-public assistance households. The State agency may extend retrospective budgeting, monthly reporting, or both to other categories of households, except where prohibited by paragraph (b)(2) of this section. However, a household required to monthly report shall be subject to retrospective budgeting.

(2) An MRRB system shall exclude migrant farmworker households while they are in the job stream and households in which all adult members are elderly or disabled and have no earned income.

* * * * *

(c) *Information on MRRB* * * *

(3) An explanation that information required to be reported on the monthly report is the only reporting requirement for such information;

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

13. In § 274.1, paragraph (a) is revised to read as follows:

§ 274.1 State Agency issuance responsibilities.

(a) *Basic issuance requirements.* Each State agency is responsible for the timely and accurate issuance of benefits to certified households in accordance with these regulations. Households comprised of elderly or disabled members who have difficulty reaching an issuance office to obtain their coupon allotments, and households which do not reside in a permanent dwelling or at a fixed mailing address, shall be given assistance in obtaining their coupons. State agencies shall assist these households by arranging for mail issuance or direct delivery of coupons to them, by assisting the households in finding authorized representatives who can act on their behalf or by using other appropriate means to assure delivery of benefits. The State agency shall establish an issuance and accountability system which will ensure that (1) only certified households receive benefits; (2) all certified households have access to their benefits; (3) benefits are timely distributed in the correct amounts; (4) coupons are accepted and stored with due security after their delivery to receiving points within the State; and (5) coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

14. In § 276.7, the last sentence in paragraph (j) is revised to read as follows:

§ 276.7 Administrative review process.

* * * * *

(j) *Judicial review.* * * * The final determination shall remain in effect during the period the judicial review or any appeal therefrom is pending unless the court temporarily stays such administrative action after a showing that irreparable injury will occur absent a stay and that the State agency is likely to prevail on the merits of the case.

* * * * *

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND WHOLESALERS

15. In § 279.10, paragraph (d) is revised to read as follows:

Subpart C—Judicial Review

§ 279.10 Judicial review.

* * * * *

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case.

16. In § 279.11, the undesignated paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 279.11 Implementation of amendments relating to administrative and judicial review.

* * * * *

(b) *Amendment No. 274.* The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

§ 285.2 [Amended]

17. In § 285.2, paragraph (a) is amended by replacing in the second sentence the phrase, "$825,000,000 for each fiscal year except that the amount payable to Puerto Rico for final quarter of fiscal year 1982 shall be $206,500,000." with the phrase, "amounts appropriated for this purpose for each fiscal year.".

§ 285.3 [Amended]

18. In § 285.3, paragraph (b)(1) is amended by replacing in the first and second lines of the paragraph the phrase, "a single agency which shall be" with the phrase, "the agency or agencies directly".

Corrections

19. In FR Doc. 86-6486, appearing at page 10764, as Part V, in the issue of Friday, March 28, 1986, make the following corrections:

a. On page 10764, in column one, a typographical error is being corrected.

The reference to the date of "October 3, 1961" appearing in the section entitled "DATES", is corrected to Read "October 3, 1984".

§ 273.1 [Corrected]

b. On page 10783, in the third column, § 273.1(c)(1), the phrase "elderly or disabled children" should read "elderly or disabled parents". The provision at § 273.1(a)(2) of the March 28 final rule pertinent to this phrase does not contain a provision relative to children living with elderly or disabled parents.

§273.11 [Corrected]

c. On page 10784, in the second column, § 273.11(h)(2)(ii), the regulatory references to "(h)(2)(i)(B) and (h)(2)(i)(C)" should read "(h)(2)(i)(A), and "(h)(2)(i)(B)", respectively. There is no paragraph (h)(2)(i)(C) at 7 CFR 273.11.

20. In FR Doc. 86–7135, appearing at page 11009, in the issue of Tuesday, April 1, 1986, make the following correction:

§ 273.8 [Corrected]

On page 11011, in the third column, amendatory statement number 3(b) appearing under § 273.8 should read: paragraph (i)(4) is amended by replacing the references of "$1,250" and "$1,500" with $1,750" and "$2,000", respectively.

Dated: May 14, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–11256 Filed 5–20–86; 8:45 am]

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S.J. Res. 324 / Pub. L. 99–306

To designate the week beginning May 18, 1986, as "National Digestive Diseases Awareness Week." (May 19, 1986; 100 Stat. 442; 2 pages) Price: $1.00

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Presidential Documents

Title 3—

The President

Proclamation 5483 of May 20, 1986

Just Say No To Drugs Week, 1986

By the President of the United States of America

A Proclamation

People all across America are becoming increasingly aware of the terrible dangers of drug abuse. Permissive attitudes about drug use have been replaced by deepening concern and—what is more important—action. People of all ages and from all walks of life are rallying against this terrible scourge. Many young people are taking a leading role in the effort to help other young people from "getting hooked," and in assisting addicts to break the chains of their addiction.

Although young people are exposed to far too many opportunities to experiment with drugs, an ever-increasing number are saying no to drugs and to alcohol. They are joining together to learn how, and to make it stick. They are forming "JUST SAY NO" clubs to help them resist temptation and to encourage their peers to stay drug-free. On May 22, many thousands of children and teenagers will Walk Against Drugs to encourage others to join them in saying "No" to drugs.

These young people of America are demonstrating that healthy and productive lives are possible when you "Just Say No." Many other children of the world share this commitment to put a stop to drug abuse; in Great Britain, Canada, Ireland, Costa Rica, and Sweden, children are actively pursuing this same idea—JUST SAY NO!

We, as adults, owe a debt of gratitude to our children for setting such a fine example; for leading the way to a better future for future generations. I congratulate our young people for their courage and zeal in this crusade. I challenge the adults of the world to encourage and support them, and to follow their lead in saying "No" to drugs. I am confident that, working together, we will conquer drug abuse.

To recognize those American young people who are publicly fighting drug abuse by saying "No" to drugs and thereby contributing to the end of this plague in America, the Congress, by Senate Joint Resolution 337, has designated the week beginning May 18, 1986, as "Just Say No To Drugs Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 18 through May 24, 1986, as Just Say No To Drugs Week. I ask each person to make a personal commitment to saying "No" to drug and alcohol abuse; and I call on all Americans to join me in observing this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11557
Filed 5-20-86; 2:08 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of May 20 on signing Proclamation 5483, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 21).

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Presidential Documents

Proclamation 5484 of May 20, 1986

Andrei Sakharov Day

By the President of the United States of America

A Proclamation

May 21, 1986, is the 65th birthday of Andrei Sakharov. At this time, let us recall and acclaim the courage and dedication of this giant of the twentieth century. Let us rededicate ourselves to the values of peace and justice and human dignity he has come to symbolize for all who love freedom throughout the world.

Since we last honored this brave man, we are pleased that Dr. Sakharov's wife, Yelena Bonner, has been allowed to travel here to see her family and to obtain needed medical care. We welcome the fact that several separated husbands and wives were at last given permission to join their spouses in the United States. We welcome the release of Anatoly Shcharansky.

Unfortunately, these positive developments only serve to underscore the overall grim human rights situation that continues to prevail in the Soviet Union. For his efforts on behalf of human rights and world peace, Dr. Sakharov himself remains isolated in Gorky, deprived of contact with friends and family, and barred from carrying out scientific research. The Soviet authorities have succeeded in eliminating the main vehicle for human rights activism, the Helsinki Monitors. Yury Orlov and many other monitors are now serving long terms of imprisonment or exile. Religious groups continue to be major targets of persecution: Orthodox believers, Baptists, Roman Catholics, Ukrainian rite Catholics, Uniates, Pentecostalists, and other groups have been subjected to arrest and harassment. The crackdown on Hebrew teachers and cultural activists continues. Emigration remains at low levels. Many more families remain separated. The basic freedoms of speech, assembly, and press are systematically denied, yet, as Sakharov has recognized, these are the essential means by which people can ensure that their own governments act peacefully and in the people's interests.

In October 1977, in an appeal to the Parliaments of all Helsinki-signatory states, Dr. Sakharov wrote:

> "We are living through a period of history in which decisive support of the principles of freedom of conscience, an open society and the rights of man is an absolute necessity. The alternative is surrender to totalitarianism, the loss of all precious freedom and political, economic and moral degradation. The West, its political and moral leaders, its free and decent peoples, must not allow this."

I believe we can best honor Dr. Sakharov on his 65th birthday by taking his message to heart and by continuing our own vigorous efforts in pursuit of a just peace, including respect for human rights. We must act on his behalf to ensure that his message of hope, freedom, justice, and the inviolability of the human conscience will not be silenced.

The Congress, by Senate Joint Resolution 323, has designated May 21, 1986, as "Andrei Sakharov Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 21, 1986, as Andrei Sakharov Day. I call upon the people of the United States and Federal, State, and local government

officials to observe this day with appropriate programs, ceremonies, and activities designed to honor this hero of humanity.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11771
Filed 5-21-86; 11:27 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5485 of May 20, 1986

National Maritime Day, 1986

By the President of the United States of America

A Proclamation

From the very beginning, America has been a seafaring Nation. In fact, the discovery of our continent was the result of one of the most daring seafaring adventures in human history. Even before the founding of the Republic, our people looked to the sea—for peaceful trade and to ensure prosperity.

The sea-lanes were the pathways to new beginnings in a new world for millions who came to our shores and helped to build a country already rich in trading and seafaring traditions.

American maritime leadership was also reflected in ship design. The fabled "Yankee Clippers" of the early 19th century represented the first major innovation in wind-powered craft since the 15th century. They dashed across the seas at unprecedented speeds, making them the ultimate in merchant sail. And when steam-powered vessels began to eclipse sailing ships in the latter part of the 19th century, it was largely the result of pioneering work by two Americans, John Fitch and Robert Fulton.

Since America fronted on the world's two largest oceans, it was fitting that an American naval officer, Alfred Thayer Mahan, should have been the author of the first major historical study of the influence of sea power in geopolitics. Theodore Roosevelt, who as a young man was the first to review Mahan's book, later, as President, took the lead in providing the United States with its first world-class navy. From this rich heritage, America emerged as the greatest trading Nation on earth.

All of us today owe a debt of gratitude to the civilian merchant mariners who have braved the perils of the sea and the assaults of enemies who threatened our way of life. Through the centuries, untold numbers sacrificed their lives to preserve American freedom. In World War II alone, nearly 6,000 U.S. merchant seamen aboard 733 American ships were lost in enemy attacks. But our sea-lane lifelines remained open.

It is appropriate that we pause to pay tribute to those civilian sailors, past and present, in our commercial fleet and to all other Americans who support them and guard the lifelines of the sea that sustain us all.

In recognition of the importance of the American merchant marine, the Congress, by joint resolution approved May 20, 1933, designated May 22 of each year as "National Maritime Day" and authorized and requested the President to issue annually a proclamation calling for its appropriate observance. This date was chosen to commemorate the day in 1819 when the SS SAVANNAH departed Savannah, Georgia, on the first transatlantic steamship voyage.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 22, 1986, as National Maritime Day, and I urge the people of the United States to observe this day by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11772
Filed 5-21-86; 11:28 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12559 of May 20, 1986

Exclusions From the Federal Labor-Management Relations Program

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows: Executive Order No. 12171, as amended, is further amended by deleting Section 1–209 and inserting in its place:

Section 1–209. Agencies or subdivisions of the Department of Justice:

a. The Office of Enforcement and the Office of Intelligence, including all domestic field offices and intelligence units, of the Drug Enforcement Administration.

b. The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in Offices of the United States Marshals in the United States Marshals Service.

Ronald Reagan

THE WHITE HOUSE,
May 20, 1986.

[FR Doc. 86-11778
Filed 5-21-86; 11:29 am]
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Rules and Regulations

Federal Register
Vol. 51, No. 99
Thursday, May 22, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) adds a regulation which provides for the election of County Committee Members. This action is needed to comply with section 1311 of the Food Security Act of 1985 (Pub. L. 99–198). The intended effect of this action is to give farmers an opportunity to choose two persons from their area as County Committee Members.

DATES: Interim rule effective May 22, 1986; comments must be received on or before June 23, 1986.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection at the above address during regular office hours.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6440, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250; telephone (202) 382-1051.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA Procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making because FmHA intends to implement immediately the procedures whereby County Committee Members can be elected in accordance with Pub. L. 99–198.

Environmental Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation Statement

This action affects the following Catalog of Federal Domestic Assistance numbers and programs:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.421 Indian Tribes and Tribal Corporation Loans.

For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Any delay in implementing this rule would be contrary to the public interest. The FmHA County Committee process is integral to the Agency's farm loan programs. Terms for County Committee Members will be expiring at the end of June. If the election procedures are not in place in time for this transition, the Agency will be faced with over 2,000 vacancies needed to be filled. With the expectation of receiving many more farm loans to process this year than last year, work of the County Committees will be greatly increased. Filling the County Committee's with temporary committee members will mean a lack of continuity in the process and possible unacceptable delays in dealing with the increased workload. Should this occur, it would place a significant hardship on the farm communities. In addition, the expiration of terms for County Committee Members is set to take place after farmers have completed spring planting. A delay in the election process would push the elections into a time period that would be disruptive to normal farm activities. A delay in the first year's elections would also result in disruption to future election cycles. Furthermore, pursuant to the Administrative Procedure Act, 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this action are impracticable; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register.

Discussion of Action

County committee members assist local FmHA offices by determining the eligibility of applicants for Farmer Program (FP) loans. Currently, the members of these committees are appointed by FmHA officials. Section 1311 of Pub. L. 99–198, however, requires two of the three members to ". . . be elected, from among their number, by farmers deriving the principal part of their income from farming who reside within the county or area . . ." FmHA hereby issues regulations for the nomination, election, appointment, pay

and functions of county and/or area committee members.

Paperwork Reduction Action

The paperwork requirements in this regulation have been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0575–0117.

List of Subjects in 7 CFR Part 2054

Agriculture, County committee members.

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended by adding Part 2054 as follows:

PART 2054—EMPLOYMENT

Subparts A–V—[Reserved]

Sec.
2054.1–2054.1100 [Reserved]

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

2054.1101 General.
2054.1102 Establishment and composition of county and/or area committees.
2054.1103 Functions of the county committee.
2054.1104 Eligibility to hold office.
2054.1105 Election requirements.
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2054.1107–2054.1110 [Reserved]
2054.1111 Conducting elections.
2054.1112–2054.1114 [Reserved]
2054.1115 Prohibition of employee participation in committee elections.
2054.1116 Ballots.
2054.1117 Absentee ballots.
2054.1118 Ballot boxes and safekeeping of returned ballots.
2054.1119 Basic requirements for ballot count.
2054.1120 Counting ballots and announcing results.
2054.1121–2054.11222 [Reserved]
2054.1123 Notifying candidates of election results.
2054.1124 Safekeeping and disposition of election records.
2054.1125 [Reserved]
2054.1126 Appointment.
2054.1127 Compensation.
2054.1128 Certification of services.
2054.1129 Termination of services.
2054.1130–2054.1149 [Reserved]
2054.1150–OMB Control Number.

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.22; 7 CFR 2.70.

Subparts A–V—[Reserved]

§§ 2054.1–2054.1100 [Reserved]

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

§ 2054.1101 General.

This subpart provides instructions for selection of county committee members. Discrimination on the basis of race, color, sex, religion, national origin, age, political affiliation, marital status, and/or handicap is prohibited.

§ 2054.1102 Establishment and composition of county and/or area committees.

(a) *General.* In each county or area in which FmHA activities are carried out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected, by farmers deriving the principal part of their income from farming and have their principal farming operation within the county or area. "Principal part of their income" means more than 50 percent of their gross income must come from agricultural production. One member, who shall reside within the county or area, shall be designated by the State Director. Designations also may be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting the designated member of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of the farmers in the county or area. Designated committee members must be in sympathy and accord with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the objectives of FmHA. Designated members and alternates may be nonfarmers engaged in local business or professional work who reside in the county or area in which activities of the county committee are carried out. Eligible minorities and females will be designated, wherever possible, on county and/or area committees. Efforts will be made to obtain recommendations from civil and women's rights organizations. Some minority representation is expected where minorities comprise 20 percent or more of the rural or farm operator population, whichever is greater.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts of two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low; or

(3) More than one county office is necessary to service the workload in an individual county.

For the first election and all subsequent elections when a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before a county committee election takes place.

(c) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting.

(d) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order to succession; e.g., first alternate, second alternate, and third alternate. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(e) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies, or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections.

§ 2054.1103 Functions of the county committee.

(a) The major functions to be performed by FmHA County Committees, which are more specifically set out in the FmHA regulations relating to various program activities, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans, irrigation and drainage loans and loans to grazing associations;

(2) Making recommendations on resolving problem cases;

(3) Conferring with the County Supervisor on the servicing of FmHA loans and with respect to borrowers who should be referred to other credit sources, including graduation;

(4) Making recommendations regarding applications for compromise, adjustment or cancellation of debts owed to FmHA;

(5) When requested by the County Supervisor, advising the County Supervisor, debtors and their creditors in connection with voluntary debt adjustment; and

(6) Attending appeal hearings authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and will attend appeal hearings and training meetings in accordance with FmHA regulations. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county or area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in paragraph 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify county committee members of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) The County Supervisor will prepare Form FmHA 2054–7, "Record of County Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meeting as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and derive the principal part of their income from farming (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternate are found in § 2054.1105(a)(2) of this subpart. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not be an officer or employee of a political party, or be active in the management or affairs of any political club, organization, or committee. Committee members are also subject to the prohibitions contained in several Executive Orders and the policy of the U.S. Department of Agriculture (USDA) with respect to holding public office. The general rules are contained in § 2045.1410 of FmHA Instruction 2045–CC (available in any FmHA office). Employees of FmHA, Agricultural Stabilization and Conservation Service, Soil Conservation Service, Extension Service or agents, or members of advisory boards or committees for these agencies are ineligible for appointment as FmHA county committee members.

(e) Not have served on other committees which make recommendations for approval of Federal Land Bank or Production Credit Association loans since FmHA may be involved in participation loans with such Farm Credit System loans. If serving on such other committees, county committee members may serve the remainder of their term on those committees provided they do not participate in any county committee actions which require a certification or recommendation on FmHA loan to applicants who are also obtaining Farm Credit System loans.

(f) Not be an individual (or spouse or dependent child of such an individual), stockholder of a corporation, member of a cooperative, joint operator of a joint operation, or partner in a partnership with an outstanding loan insured or guaranteed by FmHA, except as provided in FmHA Instruction 2045–BB (available in any FmHA office).

(g) Not perform any of the following functions for an FmHA-financed association or organization if he or she will continue such services after appointment:

(1) Serve as an official; or

(2) Perform administrative or employee functions, including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(h) Meet the legal or regulatory requirements for appointment to Federal employment. (See §§ 2054.1125 and 2054.1126 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* At the first election of county committee members, one member shall be elected for a term of one year and one member shall be elected for a term of two years. The individual receiving the highest votes will serve the two year term. Thereafter, elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the area, and, if possible, through public service announcements on radio and/or television stations serving the area.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "Farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers.

(b) Derive the principal part of their income from farming (as defined in § 2054.1102(a)(1) of this subpart).

(c) Have their principal farming operation within the county or area for which the election is being held.

§ 2054.1107-2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Election calendar (Exhibit C of this subpart,* available in any FmHA office).

(1) Election calendar provides a schedule of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is, however, automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition should begin 45 days and end 20 days before the election date.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving county or area and, if possible, through public service announcements on radio and television stations serving the area. In addition, notices shall be posted in all FmHA offices within the area. The Notice Of Right To Nominate By Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office).

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations to complete the slate.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating petition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 20 days before the election date, whether delivered in person or by mail.

(4) Accompanied by a signed statement from the nominee certifying that he or she meets the criteria to hold office.

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations for enough candidates to complete the slate.

(1) The petitions will be returned to the County Office for execution of Form FmHA 2054-5, "Nominating Petition."

(2) The completed Form FmHA 2054-5 must be in the County Office no later than 20 days before the election. Attach all petitions and other documents as applicable.

(3) County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member. See FmHA Guide Letter No. 2054-1 (available in any FmHA office).

(4) If less than the required minimum number of valid nominations are made by petition, the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held. In no case will a pro tem appointment be made for more than 120 days.

§§ 2054.1112-2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candidate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in official county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State will supplement this section if additional notices are needed. The announcement must be made a least 10 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots should be returned. Ballots shall also be available at the county office. Ballots should be mailed to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS voter list and checked off from that list. The ASCS voter list will be used by FmHA only as an indicator that the prospective voter is a farmer. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. If a prospective voters' name is found on the ASCS list, and the individual submits a ballot, the prospective voter has self certified that he or she meets the criteria, and the ballot should be counted. If the prospective voter is not on the voter list, but can provide information that shows he or she is otherwise eligible, the voter's name should be added to the voter list and he or she permitted to vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope with the county office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope. The name of the voter will be verified against a ASCS voter list and checked off that list. If the prospective voter is not on the ASCS voter list, the County Supervisor will hold the ballot in abeyance and write the individual advising that he or she must either bring documentation in person to the county office or provide written evidence that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time frame permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed. All verified mailed ballots will be placed unopened in the ballot box by the county staff.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each county office holding an election will provide a ballot box in the county office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot counting by county office staff:

(a) Ballots shall be counted within 7 days after the election.

(b) The counting process should be public. This can be done by counting it in the county office during regular work hours.

§ 2054.1120 Counting ballots and announcing results.

The county office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses.

(c) Examine the ballots and determine whether each meets the election requirements.

(d) Separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart.

(e) Call out the votes shown on the ballots.

(f) Review the final vote count and determine the candidates elected.

(g) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

§§ 2054.1121–2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify candidates of election results in writing. See FmHA Guide Letter No. 2054–2.

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Contents of containers should be retained for 30 days after the elections and then destroyed if no complaint or investigation is received.

(c) Voter lists, and other election documents should be retained in the county office files and disposed of after a period of 3 years.

§ 2054.1125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, § 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither Retirement nor Social Security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) A person may be appointed and paid as a county committee member while also holding another Federal appointment in an agency on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(d) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.* The State Director will make the necessary determinations in such cases in accordance with FPM Chapter 550, Subchapter 6, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(c) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form 171, "Application for Federal Employment," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054–6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. On Standard Form 171, in connection with the answers to questions on veteran's preference, the nominee should be told that he/she does not need to submit proof of military service.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on Standard Form 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review Standard Form 171 for completeness and conformity with requirements and will process Form AD–350A, "Personnel Action Input." The State Director will send a copy of Forms AD–350A, AD–349, "Declaration Sheet," with Part A completed, Treasury Form W–4, "Employee's Withholding Exemption Certificate," and State income tax withholding form, where applicable, to the County Supervisor. The copy of Form AD–350A will be retained in the county office committee file. FmHA Instruction 2045–BB and the USDA Employee Handbook entitled, "You and Your Job," and Appendix 1, "Employee Responsibilities & Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing the Form AD–349, Treasury Form W–4, and State withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit should be recorded on Form AD–321–3, "Time and Attendance Report," before Form AD–349 is forwarded to the State Director. Failure to enter the date of Appointment Affidavit on the Time and Attendance Report will delay the county committee member's pay. Form AD–349 must be executed in its entirety, including the continuation of Part C on the reverse. The State Director will forward the "Employee Copy" of Standard Form 50B printout produced by National Finance Center (NFC) to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment.

§ 2054.1127 Compensation.

(a) *Computing time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county committee members who, at the request of County Supervisors, attend county committee meetings for training purposes are entitled to compensation even if all three regular county committee members are present. The fact that alternates cannot take any official part in county committee functions under such circumstances does not preclude entitlement to compensation.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some

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cases as outlined in § 2054.1128(b) (3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $21.00 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the county office or other place where county committee meetings are normally held, as provided below:

One-way mileage from residence to meeting place	Salary	Allowance	Total
25 or less	$21.00	$6.00	$27.00
25–50	21.00	9.00	30.00
51 and over	21.00	12.00	33.00

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or the place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after the change in residence or the first meeting at the new regular location. Changes in the allowance in lieu of travel and subsistence will not be made for attendance at training meetings, appeal hearings or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form FmHA 2054–6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by § 2054.1128(a) of this subpart are submitted.

(3) A revised certification on Form FmHA 2054–6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking speedometer readings. Otherwise, the certification will be based on actual speedometer readings.

(5) The speedometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile (for example: 20.4 = 20; 20.5 = 21; 20.7 = 21). All certification will be prepared in duplicate, with a copy retained in the county office.

§ 2054.1128 Certification of services.

The County Supervisor will certify bi-weekly on Form AD–321–3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to expiration of the appointment, the State Director will process Form AD–350A. The Employee's Copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054–4, "Separation Notice to the County Area Committee members," or other suitable letter from the State Director to the committee member. If other than the form letter is used, a copy should be provided for the county committee file. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be accepted by official action. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible.

(b) *Other separations.* (1) The County Supervisors will inform members that they no longer meet eligibility requirements when they enter military service or move from the area and will also notify the State Director. If a resignation is not submitted promptly, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If the County Supervisor or other FmHA officials have information concerning personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report with recommendations to the Administrator. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) Where termination is due to the expiration of the term of appointment, a termination action is not necessary. NFC will automatically drop the county committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§§ 2054.1130–2054.1149 [Reserved]

§ 2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0117.

Dated: April 7, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–11508 Filed 5–21–86; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

Documentary Requirements; Nonimmigrants, Waivers, Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of countries for which transit without visa privileges are unavailable to include Libya. This action is necessitated by the increase in Libyan sponsored terrorism.

EFFECTIVE DATE: May 22, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information:

Loretta J. Shogren, Director, Policy Directives and Instructions,

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Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

For General Information:
Dennis M. McCloskey, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2680.

SUPPLEMENTARY INFORMATION: Recent state-sponsored activities by Libyan terrorists directed at American citizens, and in particular at airport facilities and air passengers have necessitated increased airport security measures. Libyans seeking admission into the United States undergo stringent visa application procedures prior to visa issuance and subsequent application for admission into the United States. 8 CFR 212.1(e) allows citizens and nationals of certain countries to transit through the United States without a formal visa application or issuance. In some instances, the individuals apply for admission into the United States and, if admitted, are allowed to access airport facilities to complete the necessary transfer to effect departure to a foreign destination. At certain locations within the United States, these individuals do not apply for admission into the United States, but remain sequestered in sterile transit lounge facilities until the onward flight to a foreign destination is ready for the boarding of passengers. In light of recent developments, the availability of this means of access into the United States without a formal visa application and review process by the Department of State is prejudicial to the safety and national welfare of the United States. Paragraph three (3) of 8 CFR 212.1(e) list the countries for which transit privileges are unavailable. Historically, this list has been amended to reflect changes brought on by a substantial abuse of transit privileges. This form of abuse primarily has been noncompliance with the conditions of administrative transit agreements.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule is related to foreign affairs functions of the United States.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. This rule is not a rule within the definition of section 1 (a) of E.O. 12291 as it relates to the foreign affairs function of the United States

List of Subjects in 8 CFR Part 212

Documentary requirements, Nonimmigrant visas, Transit conditions, Waivers, Parole of aliens.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 continues to read as follows:

Authority: Secs. 101, 103, 212, 214, 235, 236, 238, 242, 66 Stat. 166, 173, 182, as amended, 189, 198, 200, 202, 208, as amended, 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c, unless otherwise noted.

§ 212.1 [Amended]

2. Section 212.1(e)(3) is amended by adding the country Libya, after the country Iraq.

Dated: May 13, 1986.

Concurred by:

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

Concurred by:

Joan M. Clark,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 86-11608 Filed 5-21-86; 8:45 am]

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8 CFR Part 238

Contracts with Transportation Lines; Addition of Air BC

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of AirBC.

EFFECTIVE DATE: May 14, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (703) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with AirBC to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name "AirBC", in alphabetical order, under the column "at Vancouver."

* * * * *

Dated: May 15, 1986.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Sevice.

[FR Doc. 86-11514 Filed 5-21-86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 16

[Docket No. 86-12]

Securities Offering Disclosure Rules; Technical Amendments

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is publishing technical amendments to its Securities Offering Disclosure Rules codified at 12

CFR Part 16. The technical amendments involve changes in references to provisions of the Office's Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11. This action is necessary because a major recent amendment to Part 11 included a change in the format of that regulation. As a result, certain Part 16 references to sections in Part 11 are inaccurate. The intended effect of this final rule is to make Part 16 refer to appropriate sections in Part 11.

EFFECTIVE DATE: May 22, 1986.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Attorney, Securities and Corporate Practices Division, telephone (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office is publishing this final rule which makes technical changes to its Securities Offering Disclosure Rules, 12 CFR Part 16. This final rule changes obsolete references to provisions of the Office's Securities Exchange Act Disclosure Rules (Part 11). On Wednesday, October 30, 1985, the Office published in the Federal Register (50 FR 45272) a final rule revising and restructuring Part 11. As a result of that final rule, several references in Part 16 to provisions of Part 11 are now inaccurate.

A. Regulatory Impact Analysis

Pursuant to Executive Order 12291 the Office has determined that this final rule does not constitute a major rule. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other small entities.

C. Adoption Without Notice and Comment

The Office has found that notice and comment procedures concerning this rulemaking are unnecessary. This rulemaking merely makes technical changes intended to eliminate confusion. There is no substantive effect.

D. Reason for Immediate Effective Date

This final rule is technical in nature, will have no substantive impact, and will eliminate confusion caused by references to obsolete provisions of Part 11. Therefore, an immediate effective date is in the public interest.

List of Subjects in 12 CFR Part 16

National banks, Securities, Disclosure.

Authority and Issuance:

For the reasons set out in the preamble, Part 16, of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§ 16.2 [Amended]

2. Section 16.2(g) is amended by changing the reference from "12 CFR 11.4(g)" to "12 CFR 11.403(a)–(d)."

§ 16.4 [Amended]

3. Section 16.4(b) is amended by changing the references from "12 CFR 11.5 and 11.51" to "12 CFR 11.501–11.512 and 11.560."

4. Section 16.4(f) is amended by changing the reference from "Item 7(a), including Instructions 1 and 2; Item 7(d); and Item 7(e) of 12 CFR 11.51" to "12 CFR 11.842(a) and 11.844(a) and (c)."

§ 16.6 [Amended]

5. Section 16.6(b), Item 13 is amended by changing the reference from "Item 7 of 12 CFR 11.51" to "12 CFR 11.842 and 11.844(a) and (c)."

Dated: May 14, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-11597 Filed 5-21-86; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-163-AD; Amdt. 39-5320]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection and modification, as necessary, of the horizontal stabilizer center section rear spar upper chord on certain Boeing 737 airplanes. An existing AD requires similar inspection and modifications on airplanes, line numbers 1 through 208, because of a history of cracking. Later airplanes are of a similar design and may also be subject to cracking. Such cracking, if undetected, could lead to failure of the horizontal stabilizer.

DATE: Effective June 30, 1986.

ADDRESS: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and repair, as necessary, of the horizontal stabilizer center section rear spar upper chord on certain Boeing Model 737 series airplanes was published in the Federal Register on February 4, 1986 (51 FR 4383). The comment period for the proposal closed on March 28, 1986.

Interested persons have been afforded an opportunity to participate in the making of this AD and due consideration has been given to all comments received.

The Air Transport Association of America (ATA), on behalf of its affiliates, commented that Boeing Service Bulletin 737-53-1034, dated April 12, 1985, refers to modification of uncracked chords only. Therefore, paragraph B. of the proposed AD, which prescribes corrective action for cracked parts, should delete any reference to modification. The FAA concurs with the recommendation and the reference to the modification has been relocated to a more appropriate position in the final rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the change as previously mentioned.

It is estimated that 218 airplanes of U.S. registry will be affected by this AD, that approximately 8 manhours per airplane will be required to accomplish the necessary inspections, and that the average labor cost will be $40 per manhour. Based on these estimates, the total cost to the U.S. operators will be $69,760 per inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 737-55-1034, dated April 12, 1985.

To detect cracking in the horizontal stabilizer center section rear spar upper chord, accomplish the following prior to the accumulation of 50,000 landings; or prior to the accumulation of 30,000 landings after chord replacement; or prior to the accumulation of 35,000 landings after modification in accordance with Boeing Service Bulletin 737-55-1034, Part II, dated April 12, 1985; or within 500 landings after the effective date of this AD; whichever occurs latest, unless accomplished within the last 4,000 landings:

A. Eddy current inspect the horizontal stabilizer center section rear spar upper chord for cracks in the areas of each beam gusset plate in accordance with the Flight Safety Inspection Program in Boeing Service Bulletin 737-55-1034, dated April 12, 1985, or later FAA-approved revisions. Repeat the inspections at intervals not to exceed 4,500 landings.

B. If cracks are found in the horizontal stabilizer center section rear spar upper chord, repair in accordance with Part II, or replace in accordance with Part III, of the Accomplishment Instructions in Boeing Service Bulletin 737-55-1034, dated April 12, 1985, or later FAA-approved revisions. Resume the inspections required by paragraph A., above, no later than 9,000 landings after repair, or 50,000 landings after replacement, as appropriate.

C. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time for takeoff to landing for the airplane type.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 30, 1986.

Issued in Seattle, Washington, on May 15, 1986.

David E. Jones,

Acting Manager, Northwest Mountain Region.

[FR Doc. 86-11474 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-162-AD; Amdt. 39-5321]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 737 airplanes which requires inspection and replacement, if necessary, of the horizontal stabilizer center section rear spar upper chord attach lugs. An existing AD requires similar inspections on earlier airplanes of this model because of a history of cracking. Later airplanes are of a similar design and may also be subject to cracking. Cracks, if undetected, could lead to loss of the horizontal stabilizer.

DATE: Effective June 30, 1986.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and replacement, if necessary, of the horizontal stabilizer center section rear spar upper chord attach lugs on certain Boeing Model 737 series airplanes was published in the Federal Register on February 4, 1986 (51 FR 4384). The comment period for the proposal closed on March 28, 1986.

Interested parties have been afforded an opportunity to participate in the making of this AD, and due consideration has been given to all comments received.

The Air Transport Association of America (ATA) in behalf of one affiliate operator, commented that Boeing Service Bulletin 737-55-1033, dated April 12, 1985, provides for modification of uncracked lugs. This modification procedure includes replacement of lug bushings. The operator recommended that the final rule be revised to extend the compliance time for airplanes modified in accordance with this procedure. The FAA concurs with this recommendation and the final rule has been amended accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the change mentioned previously.

It is estimated that 219 airplanes of U.S. registry will be affected by this AD, and that approximately 4 manhours per airplane will be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. operators will be $35,040 per inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 of significant

under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has ben placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes listed in Boeing Service Bulletin 737-55-1033, dated April 12, 1985, certificated in any category. To detect cracking in the horizontal stabilizer center section rear spar upper chord attach lugs, accomplish the following prior to the accumulation of 40,000 landings; or prior to the accumulation of 40,000 landings after a chord replacement or modification in accordance with Boeing Service Bulletin 737-55-1033, Option I, dated April 12, 1985; or within 200 landings after the effective date of this AD; whichever occurs latest, unless accomplished within the last 5,500 landings.

A. Eddy current inspect the horizontal stabilizer center section rear spar upper chord attach lug for cracks in accordance with the Flight Safety Inspection Program specified in Boeing Service Bulletin 737-55-1033, dated April 12, 1985, or later FAA-approved revisions. Repeat at intervals not to exceed 5,700 landings.

B. If cracks are found, replace the horizontal stabilizer center section rear spar upper chord in accordance with Boeing Service Bulletin 737-55-1033, dated April 12, 1985, or later FAA-approved revisions. Resume the inspections required by paragraph A., above, prior to the accumulation of 40,000 landings after the chord replacement, or modification in accordance with Boeing Service Bulletin 737-55-1033, Option I, dated April 12, 1985.

C. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 30, 1986.

Issued in Seattle, Washington, on May 15, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11475 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-6]

Alteration of Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Orlando, Florida, transition area to accommodate changes in an instrument approach procedure which serves Orlando Executive Airport. This alteration will lower the floor of controlled airspace in an area northwest of the airport from 1,200 to 700 feet above the surface.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 26, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the Orlando, Florida, transition area to designate additional controlled airspace northwest of Orlando Executive Airport. This airspace is required to support Instrument Flight Rule (IFR) aeronautical activities in the Orlando area (51 FR 10409). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the Orlando, Florida, transition area to accommodate revised instrument approach procedures serving Orlando Executive Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (51 FR 5968), is further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Orlando, FL—[Amended]

Following . . . long. 81°19'30"W.); . . . insert the following words: "within three miles each side of Orlando VORTAC 327° radial, extending from the 6.5-mile radius area to 14 miles northwest of the VORTAC."

Issued in East Point, Georgia, on May 12, 1986.

James L. Wright,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 86-11476 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-7]

Alteration of Transition Area, Prentiss, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Prentiss, Mississippi, transition area to accommodate Instrument Flight Rule (IFR) operations at Prentiss-Jefferson Davis County Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Prentiss Non-direction Radio Beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 3, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Prentiss, Mississippi, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Prentiss-Jefferson Davis County Airport. The operating status of the airport is changed to IFR (51 FR 11455). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Prentiss, Mississippi, transition area and lowers the base of controlled airspace in the vicinity of Prentiss-Jefferson Davis County Airport from 1,200 to 700 feet above the surface.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Prentiss, MS—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Prentiss-Jefferson Davis County Airport (Lat. 31°35'47"N., Long. 89°54'24"W.); within three miles each side of the 129° bearing from the Prentiss RBN (Lat. 31°35'45"N., Long. 89°54'18"W.), extending from the 6.5-mile radius area to 8.5 miles southeast of the RBN.

Issued in East Point, Georgia, on May 12, 1986.

James L. Wright,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 86-11477 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 370 and 373

[Docket No. 51068-6047]

Export Controls on the Republic of South Africa

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The special licensing procedures outlined in Part 373 of the Export Administration Regulations allow persons or firms to make multiple shipments of designated classes of goods, and in some cases technical data to approved consignees. This rule prohibits the use of those licenses for goods that are to be used in a nuclear production or utilization facility in the Republic of South Africa or Namibia pursuant to Executive Order 12532 of September 9, 1985, which specifies that the procedures shall be effective on October 11, 1985.

This rule limits the use of all outstanding and future special licenses in the manner described above.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Joan Sitnik, Strategic Policy & Planning Division, Export Administration, Department of Commerce, Washington, DC (Telephone: (202) 377-3160.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, Export Administration has determined that:

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those

requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (6 copies) should be submitted to Betty Ferrell, Office of Technology & Policy Analysis, Export Administration, Department of Commerce, Washington DC 20230.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

15 CFR Part 370

Administrative Practices and Procedures.

15 CFR Part 373

Exports.

Accordingly, Parts 370 and 373 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1.(a) The authority citation for 15 CFR Part 370 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

(b) The authority citation for 15 CFR Part 373 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) Pub. L. 95–223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. Section 370.2 is amended by adding two new terms in alphabetical order as set forth below:

§ 370.2 Definition of terms.

* * * * *

Production Facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, production facility means any nuclear reactor or plant specially designed or used to produce special nuclear material through the irradiation of source material or special nuclear material, the separation of isotopes or the chemical reprocessing or irradiated source or special nuclear material.

* * * * *

Utilization Facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, utilization facility means any nuclear reactor, other than one that is a production facility, and the following major components of a nuclear reactor:

Pressure vessels designed to contain the core of a nuclear reactor;

Primary coolant pumps;

Fuel charging or discharging machines; and Control rods.

A utilization facility does not include the steam turbine generator portion of a nuclear power plant.

* * * * *

3. In § 373.1, paragraph (a)(1) is amended by adding a paragraph (iv) as follows:

§ 373.1 Introduction.

* * * * *

(a) Special Limitations.

(1) * * *

(i) * * *

(ii) * * *

(iii) * * *

(iv) Export or reexport any commodity to a nuclear production or utilization facility (as defined in section 370.2 of the EAR) in the Republic of South Africa or Namibia.

* * * * *

Dated: May 19, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86–11506 Filed 5–21–86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F-0109]

Indirect Food Additives; Polymers

Correction

In FR Doc. 86–10167, beginning on page 16827, in the issue of Wednesday, May 7, 1986, make the following corrections:

1. On page 16828, first column, second line of "Dates", "June 7, 1986", should read "June 6, 1986".

2. On the same page, third column, second paragraph, third line, "June 7, 1986" should read "June 6, 1986".

BILLING CODE 1505-01-M

21 CFR Parts 182 and 186

[Docket No. 78N-0032]

Tall Oil; Affirmation of GRAS Status as Indirect Human Food Ingredient

Correction

In FR Doc. 86–10168, beginning on page 16829, in the issue of Wednesday, May 7, 1986, make the following corrections:

1. On page 16829, second column, in the "Effective Date" line, "June 7, 1986" should read "June 6, 1986".

2. On page, 16830, first column, first line of amendatory instruction 1, after "for" insert "21".

BILLING CODE 1505-01-M

DEPARTMENT OF STATE

22 CFR Part 41

[Department Regulation 108.650]

Withdrawal of Nonimmigrant Visa Documentary Waivers

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends 22 CFR 41.6(e) to withdraw the privilege of transiting the United States without visas (TWOV) from citizens of Libya. The TWOV privilege normally facilitates passage through the United States of aliens in transit to third countries. Withdrawal of the privilege will require Libyan citizens to be in possession of visas and valid passports in order to transit the United States upon the effective date of this rule.

EFFECTIVE DATE: May 22, 1986.

ADDRESS: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520 (202) 632–1900.

FOR FURTHER INFORMATION CONTACT: Guida Evans-Magher, Legislation and Regulations Division, Visa Services, (202) 632–2907.

SUPPLEMENTARY INFORMATION: Under present regulations citizens of Libya who desire to travel through the United

States in transit from one country to another without the need of obtaining a visa may do so under the visa waiver provisions of § 41.6(e). Pursuant to paragraph (g) of Executive Order 12543, of January 7, 1986, (51 FR 875), which directed U.S. Government agencies to take appropriate measures to carry out the provisions of that Order, and given the nature and seriousness of Libyan sponsored terrorism against U.S. citizens and property, the Department has determined that it is in the national interest to withdraw the privilege to transit without a visa from citizens of Libya. Upon the effective date of this rule, all Libyans entering the United States for any purpose will be required to be in possession of valid visas and passports. The Immigration and Naturalization Service has also amended its regulations at 8 CFR 212.1(e) to withdraw this privilege from citizens of Libya. Because of the threat to United States national interests, the Department and the Immigration and Naturalization Service, acting jointly, amend the regulations to withdraw the transit without visa privilege as it applies to citizens of Libya and add its name to the list of countries whose nationals are precluded from transiting through the United States without a visa.

Due to the emergency nature of these actions relating to foreign affair functions the provisions of the Administrative Procedure Act, 5 U.S.C. 553, relative to notice of proposed rulemaking are impracticable and contrary to the public interest in this instance. In addition, this final rule is exempt from the requirements of Executive Order 12291 on the same basis. This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Waivers.

In view of the foregoing, Part 41 is amended to read:

PART 41—PASSPORTS AND VISAS NOT REQUIRED FOR CERTAIN NONIMMIGRANTS

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 101, 84 Stat. 116, 8 U.S.C. 1101; 109(b), 91 Stat. 847; 104, 66 Stat. 174, 8 U.S.C. 1104.

2. The second sentence in § 41.6(e)(1) is revised to read:

§ 41.6 Nonimmigrants not required to present passports, visas, or border-crossing identification cards.

* * * * *

(e) *Aliens in immediate transit—(1) Aliens in bonded transit.* * * * This waiver of visa and passport requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan or Sri Lanka. * * *

* * * * * *

Dated: May 19, 1986.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 86-11609 Filed 5-21-86; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8069]

Income Taxes; Investment Credit Limitation in Regulated Companies; Synchronization of Interest

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the limitation on the investment credit in the case of certain regulated companies. Questions have arisen concerning the permissibility of "synchronization of interest" and the "zero-cost capital" method under the ratable flow-through method of accounting for the investment credit with respect to public utility property. The regulations provide guidance on these issues and affect regulated companies that use the ratable flow-through method of accounting for the investment credit with respect to public utility property.

DATE: The regulations are generally effective with respect to public utility property constructed or acquired by the taxpayer after August 15, 1971.

FOR FURTHER INFORMATION CONTACT: Paulette Chernyshev of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, 202-566-3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1985, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 46(f) of the Internal Revenue Code were published in the Federal Register (50 FR 26385). The amendments were proposed to clarify the manner in which the limitation imposed by section 46(f) applies in the case of regulated companies that use the ratable flow-through method of accounting for the investment credit with respect to public utility property.

Many written comments were received with respect to the proposed amendments, and a public hearing on the amendments was held on August 28, 1985. After consideration of all comments and testimony received on the proposed amendments, the amendments are adopted as revised by this Treasury decision.

Interest Synchronization

Section 46(f)(2) permits the use of a ratable flow-through method of accounting for the investment credit with respect to public utility property. Under this method of accounting, the taxpayer's cost of service for ratemaking purposes may be reduced by a ratable portion of the investment credit. The credit is disallowed, however, if the taxpayer's cost of service is reduced by more than a ratable portion of the credit or if the base to which the taxpayer's rate of return for ratemaking purposes is applied ("rate base") is reduced by any portion of the credit.

In determining whether a credit has been used to reduce rate base, § 1.46-6(b)(3) of the regulations requires reference to "any accounting treatment that affects the permitted return on investment by treating the credit in any way other than as though it were capital supplied by common shareholders to which a 'cost of capital' rate is assigned that is not less than the taxpayer's overall cost of capital rate." This requirement appears only in the definition of rate base and it is unclear whether the credit also must be treated as capital provided by common shareholders in determining cost of service. As a result, the Service has received a number of ruling requests asking whether a portion of the return on the rate base attributable to the credit may be characterized as interest expense and taken into account in computing Federal income tax expense for ratemaking purposes ("interest synchronization" or "synchronization of interest").

This issue is addressed, either directly or indirectly, in several cases reviewing rate orders. Although the permissibility of synchronization of interest was an issue in these reviews, the Internal Revenue Service was not a party to the

cases and the decisions did not determine the actual tax liability of the regulated companies. Two Federal Courts of Appeal have determined that interest synchronization does not violate section 46(f)(2) or the existing regulations. *Union Electric v. FERC*, 668 F.2d 389 (8th Cir. 1981); *Nepco Municipal Rate Commission v. FERC*, 668 F.2d 1327 (D.C. Cir. 1981); *Public Service of New Mexico v. FERC*, 653 F.2d 681 (D.C. Cir. 1981). In addition, several state courts have approved the use of interest synchronization in ratemaking proceedings. *See, e.g., Narragansett Electric Company v. Burke*, 475 A.2d 1379 (R.I. 1984); *New England Telephone & Telegraph Company v. Public Utilities Commission*, 448 A.2d 272 (Me. 1982). Other courts, however, have concluded that synchronization of interest is not permitted under section 46(f)(2) and the existing regulations. *See, e.g., Utilities Commission v. Carolina Telephone & Telegraph*, 300 S.E. 2d 395 (Ct. App. N.C. 1983).

The proposed regulations provided that interest synchronization would not constitute a reduction in cost of service for purposes of section 46(f)(2); thus generally permitting interest synchronization for purposes of the ratable flow-through method of accounting for the investment credit. The preamble of the notice of proposed rulemaking set forth two reasons for this provision. The first was the Service's conclusion that synchronization of interest does not result in a reduction of cost of service that is attributable to the credit. This conclusion is consistent with financial market realities since, in the absence of the credit, the additional capital needed to finance the investment property generally would be obtained from a similar proportion of debt and equity as in the existing capital structure of the utility. Synchronization of interest properly takes account of the additional interest expense that would have been incurred in those circumstances.

In addition, the Service believed that synchronization of interest under section 46(f)(2) would result in an appropriate accounting for the credit in establishing rates. The basis for this conclusion may be illustrated by a comparison of the rates that would be established without synchronization of interest with the rates that would be established if the credit were unavailable. Under certain factual circumstances (e.g., long-lived assets with respect to which the credit was allowed), the rates that would be established without synchronization of interest may actually exceed in one or more service years the rates that would be established if the credit were unavailable. In contrast, the rates that would be established with synchronization of interest cannot exceed in any year the rates that would be established if the credit were unavailable.

The Service received a number of comments from public service commissions and other regulatory authorities generally supporting the position in the proposed regulations. On the other hand, the Service also received many comments from regulated public utilities and their representatives, which, with some exceptions, opposed interest synchronization on the ground that it constitutes an impermissible reduction in cost of service under section 46(f)(2). After careful consideration of all comments received, the Service has concluded that interest synchronization should be permitted for the reasons stated in the preamble of the notice of proposed rulemaking. Accordingly, the final regulations clarify that interest synchronization is permitted under a ratable flow-through method of accounting.

Zero-Cost Capital

Another issue addressed by the public comments concerned the effect of "zero-cost capital" on the rate of return assigned to the credit. The issue arises if, for example, the reserve for deferred taxes established under sections 167 and 168 is included in rate base as no-cost capital, as permitted under section 1.167(e) of the regulations. The issue may similarly arise, for example, if non-interest-bearing liabilities such as customer deposits are included in a taxpayer's rate base. In such situations, a ratemaking commission may reduce the overall rate of return on account of the zero-cost capital (*e.g.*, deferred taxes or non-interest-bearing liabilities) included in rate base. The issue raised by the public comments is whether the rate of return assigned to the credit under section 46(f)(2)(B) may also be reduced on account of such zero-cost capital.

The proposed regulations provided that the cost of capital assigned to the credit must be at least equal to the overall cost of the capital, determined on the basis of a weighted average, that would have been provided by common and preferred shareholders and long-term creditors if the credit were unavailable. Under the proposed regulations, the composition of such capital depended, generally, on all the relevant facts and circumstances; however, a safe-harbor provision permitted determinations that additional capital would have been provided in the same proportions and at the same rates of return as the capital actually provided by shareholders and long-term creditors. Neither the general rule nor the safe-harbor provision of the proposed regulations would have permitted any reduction in the rate of return assigned to the investment credit on account of zero-cost capital. This position was based on the assumption that items of zero-cost capital would not increase if the credit were unavailable.

After consideration of the comments the Service has concluded that, although this assumption regarding zero-cost capital is generally true, it is not strictly correct in certain situations. For example, if the basis of a utility's property has been reduced under section 48(q), the additional capital provided if the credit were unavailable would include not only equity and long-term debt, but also deferred taxes. This occurs because the utility's basis in the property would increase if the credit were unavailable, eventually resulting in a greater amount of deferred taxes. Accordingly, the final regulations permit zero-cost capital to be taken into account for purposes of determining the cost of capital assigned to the credit, but only to the extent that additional amounts of such capital would be provided if the credit were unavailable. In the case of a utility that has a basis reduction under section 48(q), for example, the amount of capital provided in the form of deferred taxes will, as explained above, generally be less in each period than the amount of deferred taxes that would be provided if the credit were unavailable. For any period, the difference between these two amounts is the amount of additional deferred taxes that would be provided if the credit were unavailable. The regulations provide that only the amount of additional deferred taxes for a period may be taken into account in determining the rate of return assigned to the credit for that period. Thus, the deferred taxes actually included in the utility's rate base may not be taken into account for this purpose. Under the regulations, any amount of additional zero-cost capital must also be taken into account for purposes of determining the amount of additional interest that the taxpayer would pay or accrue if the credit were unavailable, thus reducing the amount subject to interest synchronization.

The Service continues to believe that additional capital typically would be provided primarily in the form of equity and long-term debt if the credit were unavailable. Accordingly, the safe-

harbor provision of the proposed regulations is generally unchanged, except to clarify that the safe harbor applies only if it is used to determine both the cost of capital assigned to the credit and the amount subject to interest synchronization.

Hypothetical Capital Structure

An additional issue raised by the public comments concerned the effect of using a hypothetical capital structure to determine a utility's overall rate of return. A hypothetical capital structure may be used if, for example, a regulatory commission determines that the actual capital structure of a utility does not include sufficient debt and imputes debt of a parent holding company to the utility. The issue in such cases is whether the composition of the capital that would be provided if the credit were unavailable is determined by reference to the change that would occur in the actual capital structure of the utility or, instead, by reference to the change in the hypothetical capital structure used by the ratemaking commission. The final regulations clarify that it is the change in the hypothetical capital structure that is taken into account for this purpose.

Transitional Rule

The Service received a number of inquiries requesting clarification of the transitional rule in § 1.46–6(b)(iii) of the proposed regulations. In general, this rule (as revised by this Treasury decision) provides that rate orders put into effect before June 23, 1986 do not violate section 46(f) if they satisfy the requirements of either the amended regulations or the regulations in effect before the amendment. This is significant because the regulations in effect before the amendment provided that the overall cost of capital rate depends on the practice of the regulatory body. The Internal Revenue Service is aware that certain ratemaking commissions, relying on this language, have required utilities to use zero-cost capital in determining the earnings rate to be assigned to the credit in a manner inconsistent with the amended regulations. The use of zero-cost capital in such cases will not be treated as a violation of section 46(f)(2) under the regulations in effect before the amendments.

Amendments Not Covered by These Proposed Regulations

The amendments do not reflect amendments made to section 46 after the enactment of the Revenue Act of 1971, other than the redesignation of section 46(e) as section 46(f) by the Tax Reduction Act of 1975. In addition, the regulations do not reflect the amendment made to section 167(l)(2)(C) by section 209(d)(3) of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34; 95 Stat. 227). That amendment has the effect of eliminating the special rule for immediate flow-through under section 46(f)(3) for property placed in service after December 31, 1980.

Regulatory Flexibility Act; Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Paulette Chernyshev of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.0–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.46–6 also issued under 26 U.S.C. 46(f)(7).

Par. 2. Section 1.46–6 is amended by revising paragraph (b)(2)(i), (3), and (4)(ii) to read as follows:

§ 1.46–6 Limitation in case of certain regulated companies.

* * * * *

(b) *Definitions.* * * *

(2) *Cost of service.* (i) (A) For purposes of this section, "cost of service" is the amount required by a taxpayer to provide regulated goods or services. Cost of service includes operating expenses (including salaries, cost of materials, etc.) maintenance expenses, depreciation expenses, tax expenses, and interest expenses. For purposes of this section, any effect on a taxpayer's permitted return on investment that results from a reduction in the taxpayer's rate base does not constitute a reduction in cost of service, even though, as a technical ratemaking term, "cost of service" ordinarily includes a permitted return on investment. In addition, taking into account a deduction for the additional interest that the taxpayer would pay or accrue if the credit were unavailable in determining Federal income tax expense ("synchronization of interest") does not constitute a reduction in cost of service for purposes of section 46(f)(2). This adjustment to Federal income tax expense may be taken into account in determining cost of service for the regulated accounting period or periods that include the taxable year to which the adjustment relates or for any subsequent regulated accounting period.

(B) See paragraph (b)(3)(ii)(B) of this section for rules relating to the amount of additional interest that the taxpayer would pay or accrue if the credit were unavailable.

* * * * *

(3) *Rate base.* (i) For purposes of this section, "rate base" is the monetary amount that is multiplied by a rate of return to determine the permitted return on investment.

(ii)(A) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that reduces the permitted return on investment by treating the credit less favorably than the capital that would have been provided if the credit were unavailable. Thus, the credit may not be assigned a "cost of capital" rate that is less than the overall cost of capital rate, determined on the basis of a weighted average, for the capital that would have been provided if the credit were unavailable.

(B) For purposes of determining the cost of capital rate assigned to the credit and the amount of additional interest that the taxpayer would pay or accrue, the composition of the capital that would have been provided if the credit were unavailable may be determined—

(*1*) On the basis of all the relevant facts and circumstances; or

(*2*) By assuming for both such

purposes that such capital would be provided solely by common shareholders, preferred shareholders, and long-term creditors in the same proportions and at the same rates of return as the capital actually provided to the taxpayer by such shareholders and creditors.

For purposes of this section, capital provided by long-term creditors does not include deferred taxes as described in section 167(a)(2)(C) or 168(e)(3)(B)(ii).

(C) If a taxpayer's overall rate of return is based on a deemed or hypothetical capital structure, paragraph (b)(3)(i)(B) of this section shall be applied by treating the deemed or hypothetical capital as if it were the capital actually provided to the taxpayer and determining the composition of the capital that would have been provided if the credit were unavailable in a manner consistent with such treatment.

(iii) Whether, or to what extent, a credit has been used to reduce rate base for any period to which pre-June 23, 1986 rates apply will be determined under 25 CFR 1.46-6(b) (3) and (4) (revised as of April 1, 1985) if such a determination avoids disallowance of a credit that would be disallowed under paragraph (b)(3)(ii) or (4)(ii) of this section. For this purpose, a period of which pre-June 23, 1986 rates apply is any period for which the effect of the credit on rate base for ratemaking purposes is established under a determination put into effect (within the meaning of paragraph (f) of this section) before June 23, 1986.

(4) *Indirect reductions to cost of service or rate base.* * * *

(ii) One type of such indirect reduction is any ratemaking decision in which the credit is treated as operating income (subject to ratemaking regulation) or is treated less favorably than the capital that would have been provided if the credit were unavailable. For example, if the credit is accounted for as nonoperating income on a company's regulated books of account but a ratemaking decision has the effect of treating the credit as operating income in determining rate of return to common shareholders, then cost of service has been indirectly reduced by reason of the credit.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: May 5, 1986.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 86-11288 Filed 5-21-86; 8:45 am]
BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Final Procedural Regulation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is amending its procedural regulations to reflect a change in delegations of authority for issuance of administrative determinations on charges brought under Title VII of the Civil Rights Act of 1964, as amended.

EFFECTIVE DATE: May 22, 1986.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, Legal Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507 (202) 634-6592.

SUPPLEMENTARY INFORMATION: Authority for issuing letters of determination on charges filed under Title VII of the Civil Rights Act generally has been delegated to Commission field offices. In the past the delegation in 29 CFR 1601.21(d) has included authority to issue determinations where previously issued Commission decisions or guidelines serve as precedent for the determination. In order to more effectively address issues of concern to the Commission, the Commission is amending its delegation of authority to issue letters of determination. The Commission will no longer use the criterion of existing decision or guideline precedent to determine when field offices are delegated authority to issue determinations on charges. Rather, the Commission periodically will identify issues which it wants to review and will delegate authority to issue determinations in all cases except those that contain such an issue. Those issues will be contained in Appendix A of Section 603 of Volume II of the EEOC Compliance Manual. Consistent with the change in delegation of authority in 29 CFR 1601.21(d), the Commission is amending 29 CFR 1601.77, to explain that the Commission will individually review charges closed by 706 agencies that contain an issue designated by the Commission for review.

This regulation has been reviewed in accordance with Executive Order 12291. It is not a major rule and does not require a regulatory impact analysis under section 3 of that Order. Similarly, the Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Inter-governmental Relations.

By virtue of the authority vested in the Commission under section 713(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-12(a), the Equal Employment Opportunity Commission hereby publishes the amendment to § 1601.21 and § 1601.77 of its procedural regulations.

For the Commission.

Clarence Thomas,
Chairman.

Accordingly, EEOC amends 29 CFR Part 1601 as follows:

1. The authority citation for Part 1601 continues to read as follows:

Authority: Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12(a), otherwise noted.

§ 1601.21 [Amended]

2. Section 1601.21(d) introductory text is amended by removing the clause "in those cases in which previously issued Commission Decisions serve as precedent for the determination and in those cases in which the Commission's Guidelines provide a statement of policy which serves as authority for the determination" and replacing it with the clause "except in those cases involving issues currently designated by the Commission for priority review."

§ 1601.77 [Amended]

3. Section 1601.77 is amended by removing the clause "or where no previously issued Commission decision serves as precedent for the determination in the charge" and replacing it with the clause "or where the charge involves an issue currently designated by the Commission for priority review."

[FR Doc. 86-11370 Filed 5-21-86; 8:45 am]
BILLING CODE 6570-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 732

Nonnaval Medical and Dental Care

AGENCY: Naval Medical Command, Navy, DOD.

ACTION: Final rule.

SUMMARY: The Naval Medical Command promulgated this regulation to disseminate the authority and policies involved in obtaining and having the Navy pay for nonnaval medical and dental care of active duty naval personnel and outpatient care from nonnaval sources for active duty members of North Atlantic Treaty Organization nations. Regulation also sets forth Third Party Liability Program recoupment for benefits received and collection action for subsistence furnished while such members are hospitalized in nonnaval facilities.

EFFECTIVE DATE: July 13, 1986.

FOR FURTHER INFORMATION CONTACT: Herbert L. Pelham, Program Analyst, Naval Medical Command, Washington, DC 20372–5120, (202) 653–1179.

SUPPLEMENTARY INFORMATION: This revision relates to internal naval management and personnel practices and largely reflects nonsubstantive changes adopted in NAVMEDCOMINST 6320.1. It was determined that invitation of public comment on these changes prior to adoption would be impracticable and is therefore not required under public rulemaking provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 732

Dental health, Health care, Military personnel.

Dated: May 15, 1986.

William F. Roos, Jr.,

Lt, JAGC, USNR Federal Register Liaison Officer.

Accordingly, 32 CFR Part 732 is revised to read as follows:

PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

Sec.
732.1 Purpose.
732.2 Scope.
732.3 Background.
732.4 Action.

Subpart B—Medical and Dental Care From Nonnaval Sources

732.11 Definitions.
732.12 Program management.
732.13 General.
732.14 Authorized care.
732.15 Unauthorized care.
732.16 Authorizations.
732.17 NAVMED 6320/10, Statement of Civilian Medical/Dental Care.
732.18 Claims.
732.19 Medical board.
732.20 Recovery of medical care payments.
732.21 Collection for subsistence.
732.22 Appeal of denied claims.
732.23 Records.

Authority: 5 U.S.C. 301; 10 U.S.C. 1071–1090, 5031, 6148, 6201–6203, and 8140; and 32 CFR 700.1202.

Subpart A—General

§ 732.1 Purpose.

To delineate and promulgate the authority and policies concerning inpatient and outpatient medical and dental care obtained from nonnaval sources by active duty Navy and Marine Corps members and outpatient care from nonnaval sources for active duty members of North Atlantic Treaty Organization (NATO) nations. Provides the conditions under which the costs of such care may be borne by the Navy.

§ 732.2 Scope.

The provisions of this part are applicable for:

(a) Both inpatient and outpatient medical and dental care of U.S. Navy and Marine Corps personnel who incur disease or injury while on active duty. Reservists are entitled to care under the provisions of this part for conditions occurring during active duty for training and inactive duty training (drill), including travel to and from training sites.

(b) The outpatient care of naval members of NATO Status of Forces Agreement (SOFA) nations (Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom) who are stationed in or passing through the United States in connection with their official duties.

§ 732.3 Background.

(a) The special authority of the Manual of the Medical Department (MANMED), article 11–7(3)(b), applicable to patients under the jurisdiction of commanding officers of naval hospitals, remains in effect and is to be used for nonnaval medical and dental care of such patients. Guidelines concerning care for other eligible beneficiaries, not authorized care by this part, are contained in BUMED INST 6320.58 and Part 728 of this chapter. Subpart B provides guidelines and procedures whereby naval commands may:

(1) Arrange for appropriate care in other than naval facilities for authorized members under their jurisdiction.

(2) Assist in those instances when authorized personnel obtain civilian medical or dental care for themselves and seek reimbursement from the Navy.

(3) Authorize payment directly to providers of care when payment has not been made by the member or by someone acting on behalf of the member.

(4) Assist active duty Navy and Marine Corps maternity patients in obtaining care in civilian facilities, when appropriate, and arranging for payment of charges for the member and the routine care of the newborn in accordance with the Assistant Secretary of Defense for Health Affairs memo of 16 May 1979, Inpatient routine newborn care: Active duty female maternity episode, and Assistant Secretary of Defense for Health Affairs memo of 18 July 1979, Active duty female maternity episode.

(b) Subpart B also delineates areas over which geographic naval medical commands have responsibilities for administration of nonnaval medical and dental care program functions. Program management is vested in the Commander, Naval Medical Command, Washington, DC (MEDCOM–333).

(c) The Assistant Secretary of Defense (Comptroller) memo of 12 March 1981, Reimbursement for inpatient medical care provided foreign military and diplomatic personnel of their dependents in military hospitals in the United States, outlines the provisions of Pub. L. 96–527. This memo provides that inpatient care of foreign military members in the United States shall not be rendered at the expense of the United States Government. Accordingly, only the cost of outpatient care shall be paid under the provisions of this part for active duty members of NATO nations who are stationed in or passing through the United States in connection with their official duties.

§ 732.4 Action.

All commands shall ensure that personnel under their cognizance are made aware of the contents of this part. Failure to comply with the prescribed requirements could result in the Navy's denial of financial responsibility for the expenses of medical or dental care obtained.

Subpart B—Medical and Dental Care From Nonnaval Sources

§ 732.11 Definitions.

Unless otherwise qualified herein, the following terms when used throughout this part are defined as follows:

(a) *Active Duty.* Full-time duty in the active military service of the United States. This includes duty on the active list; full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active Duty for Training.* A period of duty performed in the active military service by a member of a reserve component under orders by competent authority for a specified period which provides for automatic reversion to inactive duty when the specified period of active duty is completed. Includes not only the period of time from reporting to the time of release but also the time of travel to and from the duty station, not in excess of the allowable constructive travel time (see SECNAVINST 1770.3 and DOD Military Pay and Allowances Entitlements Manual (DODPM) paragraphs 10242 and 10243).

(c) *Constructive Return.* For purposes of medical and dental care, return of an unauthorized absentee to military control may be accomplished through notification of appropriate military authorities (§ 732.13(e) amplifies).

(d) *Designated Uniformed Services Treatment Facilities (Designated USTFs).* In accordance with Pub. L. 97–99, the following former U.S. Public Health Service (USPHS) facilities are now "designated USTFs" for the purpose of rendering medical and dental care to all categories of individuals entitled to care under the provisions of this part.

(1) *Hospitals.* (i) Wyman Park Health Systems, 3100 Wyman Park Drive, Baltimore, MD 21211, Telephone (301) 338–3000.

(ii) Allston-Brighton Aid and Health Group, 77 Warren Street, Boston, MA 02135, Telephone (617) 782–3400.

(iii) Hospital of St. John, 2050 Space Park Drive, Nassau Bay, TX 77058, Telephone (713) 757–7430.

(iv) Seattle Public Health Hospital, 1131 14th Avenue South, Seattle, WA 98144, Telephone (206) 324–7650.

(v) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304, Telephone (212) 447–3010.

(2) *Clinics.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103, Telephone (207) 780–3210.

(ii) Lutheran Medical Center, Downtown Health Care Services, New Post Office Bldg., W. 3rd Street and Prospect Avenue, Cleveland, OH 44113, Telephone (216) 522–4524.

(iii) St. Mary's Hospital, 440 Avenue North, Galveston, TX 77550, Telephone (713) 787–7430.

(iv) St. Joseph Ambulatory Care Center, 204 U.S. Customs Bldg., 701 San Jacinto Street, Houston, TX 77002, Telephone (713) 757–7430.

(v) Family Practice Center, Port Arthur, TX 77640, Telephone (713) 757–7430.

(e) *Duty Status.* The performance category of the claimant at the time medical or dental care is received, either active duty or nonactive duty. Members, including reservists, on leave or liberty are considered in a duty status. Reservists, when performing active duty for training or inactive duty for training, are considered in a duty status, including their allowable constructive travel time to and from training.

(f) *Emergency.* A situation where the need or apparent need for medical or dental attention is such that time does not permit obtaining prior approval for civilian medical care.

(g) *Inactive Duty Training (Drill).* Includes that period between muster, dismissal, and allowable constructive travel time to and from such drills (see DODPM paragraphs 10242 and 10243).

(h) *Maternity Emergency.* A condition commencing or exacerbating during pregnancy in a manner such that a delay caused by referral to a USMTF or designated USTF would jeopardize the welfare of the mother or her unborn child.

(i) *Medical Management.* When an active duty member presents for treatment at a naval MTF, that patient is considered under the medical management of a naval physician when a naval physician exercises primary and continuing decision authority regarding diagnosis and treatment, regardless of whether the patient is actually treated by that physician.

(j) *Non-Federal Care.* Medical or dental care provided by civilian sources (includes State, local, and foreign MTFs).

(k) *Nonnaval Care.* Medical or dental care provided by other than naval MTFs. Includes care in other USMTFs, VA facilities, as well as from civilian sources.

(l) *Office of Medical Affairs (OMA) or Office of Dental Affairs (ODA).* Designated offices, under the program management control of COMNAVMEDCOM (MEDCOM–333) and the direct control of regional medical commands, responsible for the continued administration of the requirements of this part.

(m) *Prior Approval.* Permission granted to an individual for a specific episode of necessary but nonemergent maternity, medical, or dental care.

(n) *Reservist.* A member of the Naval or Marine Corps Reserve.

(o) *Supplemental Care.* When an active duty member is under the medical management (see § 732.11(i)) of a naval MTF physician and required care is not available at that facility, any additional materials or professional and personal services ordered by qualified naval MTF providers and obtained for the care of that patient are supplemental. This includes necessary referrals to civilian sources. Costs are chargeable to the operation and maintenance funds available for operation of the facility requesting care or services. For the exception to this policy, see § 732.18(c)(4).

(p) *Unauthorized Absence.* Absence without authority from a member's command or departure without authority from the assigned place of duty.

(q) *Uniformed Services Medical Treatment Facilities (USMTF).* Health care facilities of the Army, Air Force, Coast Guard, Navy, and the former U.S. Public Health Service facilities listed in § 732.11(d) that have been designated as USTFs in accordance with DOD and Department of Health and Human Services directives.

§ 732.12 Program management.

(a) *In the 48 Contiguous United States and Alaska.* Under program management control of COMNAVMEDCOM (MEDCOM–333) and direct control of regional medical commands, OMAs and the ODA listed in § 732.18(f)(1) shall:

(1) Exercise coordination over this program within their areas of responsibility including:

(i) Granting or denying approval for the procurement of nonemergency care from civilian sources.

(ii) Adjudicating medical and dental care claims.

(iii) Notifying COMNAVMEDCOM (MEDCOM–333, Autovon 294–1127 or Commercial 202–653–1127) in a situational report (MED 6320–30) when it appears that an episode of non-Federal care will extend beyond 15 days or will cost more than $25,000. Before calling, be prepared to furnish the following concerning the patient:

(A) Name, grade or rate, and social security number.

(B) Name of non-Federal medical facility rendering treatment.

(C) Date admitted.

(D) Reason patient cannot be or has not been moved to a Federal facility.

(E) Expected duration of non-Federal treatment.

(F) Expected total cost of non-Federal care.

(iv) Determining the need for medical boards subsequent to completion of nonnaval medical care and notifying COMNAVMEDCOM (MEDCOM–25), via the regional medical command, of the determination (see § 732.19 for further amplification).

(v) Issuing letters, upon written request, to recruiting offices far removed from USMTFs and designated USTFs granting blanket approval for civilian medical care of active duty recruiting office personnel. With a full realization that such blanket approval is an authorization to obligate the Government without individual prior approval, OMAs and the ODA shall ensure that:

(A) Each letter specifies a maximum dollar amount allowable in each instance of care.

(B) The location of each recruiting office authorized to obligate is clearly delineated.

(C) Travel distance and time required to reach the nearest USMTF, designated USTF, or VA facility have been considered.

(D) Certain conditions are specifically excluded, e.g., psychiatric care and elective surgical procedures. These conditions will continue to require individual prior approval.

(E) All requests for blanket authorization from other than recruiting offices are forwarded to COMNAVMEDCOM (MEDCOM–333), via the chain of command, for concurrence.

(F) COMNAVMEDCOM (MEDCOM–333) is made an information addressee on each letter of authorization.

(2) Furnish a monthly letter report (MED 6320–23) to COMNAVMEDCOM (MEDCOM–333), with a copy of the dental portion to MEDCOM–32, to reach the Command no later than the 15th day of the month following the month being reported. The report shall reflect the total cost of claims adjudicated and:

(i) The number of:

(A) Claims approved.

(B) Hospital days and dollar value of each.

(C) Outpatient visits and dollar value of each.

(D) Dental visits and dollar value of each.

(E) Ambulance trips and dollar value of each.

(F) Unadjudicated claims on hand at both the beginning and end of month.

(G) Claims on hand more than 30 days.

(H) Inpatient days, outpatient visits, and dollar value of each category of care provided by designated USTFs.

(I) Inpatient hospital days and dollar value of care provided by designated USTFs.

(J) Pharmacy, laboratory, and X-ray services (paid separately from care in § 732.12(a)(2)(i) (B) and (D)). Include the average cost of each and the total cost of all.

(K) Maternity episodes and average cost.

(ii) Name, grade or rate, social security number, and disposition (date and type) of each patient for whom notification is required in accordance with § 732.12(a)(1)(iii).

(iii) Amount of returned checks and overpayments submitted to OMA or ODA and fiscal year to which funds are being credited.

(iv) Personnel changes in OMA or ODA for the month.

(3) Coordinate, with each member and each member's command, convalescent leave granted in accordance with the Naval Military Personnel Manual (MILPERSMAN) and Marine Corps Order P1050.3E.

(4) Assume medical cognizance responsibility for members hospitalized in nonnaval facilities within the OMA's geographical area of responsibility.

(b) *Outside the 48 Contiguous United States and Alaska.* (1) In areas outside the 48 contiguous United States and Alaska, individual commanding officers are authorized to obtain required non-Federal care for members under their command when there are no Federal or NATO SOFA facilities available, or if available, are unable to render required care. If the commanding officer considers it in the best interest of the United States, immediate payment may be effected for such services. When payment is made out of any funds other than those specified for non-Federal medical or dental care, the commanding officer shall apply for reimbursement in accordance with the provisions of this part.

(2) The adjudicating authority at activities listed in § 732.18(f)(2) shall:

(i) Exercise coordination and technical control over this program outside the 48 contiguous United States and Alaska, including the coordination and cognizance responsibilities listed in § 732.12(a) (3) and (4), as appropriate.

(ii) Adjudicate medical and dental care claims.

(iii) Report non-Federal care expenditures as delineated in § 732.12(a)(1)(iii) and § 732.12(a)(2).

§ 732.13 General.

If medical or dental care is required and there are no naval facilities available, initial application shall always be made to other available Federal medical or dental facilities.

(FEDERAL FACILITIES: NAVY, ARMY, AIR FORCE, VETERANS ADMINISTRATION, AND DESIGNATED FORMER U.S. PUBLIC HEALTH SERVICE FACILITIES listed in § 732.11(d).)

Additionally, members shall obtain emergency and nonemergency care from military facilities of the host country, or if applicable, from civilian sources under the NATO SOFA when U.S. facilities are not available and the member is stationed in or passing through a NATO SOFA nation. When either emergency or nonemergency care is required and there are no Federal or NATO SOFA facilities available, care may be obtained from civilian sources under the following conditions:

(a) *Emergency Care.*—(1) *Maternity Emergency.* When a condition commences or exacerbates during pregnancy in a manner that a delay, caused by referral to a uniformed services or designated uniformed services medical treatment facility, would jeopardize the welfare of the mother or her unborn child, the following constitutes indications for admission to a non-Federal facility:

(i) Medical or surgical conditions which would constitute an emergency in the nonpregnant state.

(ii) Obstetric conditions:

(A) Spontaneous abortion, with first trimester hemorrhage.

(B) Premature term labor with delivery.

(C) Severe pre-eclampsia.

(D) Hemorrhage, second and third trimester.

(E) Ectopic pregnancy with cardiovascular instability.

(F) Premature rupture of membranes with prolapse of the umbilical cord.

(G) Obstetric sepsis.

(H) Any other obstetrical condition that, by definition, constitutes an emergent circumstance.

(2) *Medical or Dental.* A situation where the need or apparent need for medical or dental attention is such that time does not permit obtaining authority in advance.

(3) *Authority to Adjudicate.* Only in such a defined emergency shall medical, dental, or maternity services be obtained under this part by or on behalf of eligible personnel without the prior authority covered below. As soon as possible after obtaining such care, the

appropriate OMA or ODA listed in § 732.18(f) shall be provided the following information. This information will be used to make arrangements for transfer of the member and, if appropriate, newborn infant(s), to a Federal facility or for such other action as is appropriate. For the purpose of this part, this information shall be provided to the OMA or ODA in addition to the requirements of article 4210100 of MILPERSMAN or Marine Corps Order 6320.3B

(i) Name, grade or rate, and social security number of patient.

(ii) Name of non-Federal medical or dental facility rendering treatment.

(iii) Date(s) of such treatment.

(iv) Nature and extent of treatment or care already furnished.

(v) Need or apparent need for further treatment (for maternity patients, need or apparent need for further care of infant(s) also).

(vi) Earliest date on which transfer to a Federal facility can be effected.

(b) *Nonemergency Care.* The health benefits advisor (HBA) serving the regional medical command assigned responsibility for the OMA or ODA function shall:

(1) Receive information to complete sections I and III of NAVMED 6320/10's for coordination of requests for prior or after the fact approval of nonemergent medical or dental care and requests for approval of nonemergency maternity care (§ 732.13(f)).

(2) By endorsement, forward the request to the appropriate chief of service explaining non-Federal care regulations as they pertain to the request. The chief of service shall respond to the request within 24 hours.

(3) Upon return by the chief of service of an approved or disapproved NAVMED 6320/10 request for prior approval of nonemergency medical, dental, or maternity care, the HBA shall forward the original form to the member, a copy to the OMA or ODA, and retain a copy on file.

(c) *Eligibility.*—(1) *Regular Members.* To be eligible for non-Federal medical, dental, or emergency maternity care at Government expense. Regular active duty naval members must be in a duty status at the time care is provided.

(2) *Reservists.* Reservists on active duty for training and inactive duty training (drill), including leave and liberty therefrom, are considered to be in a duty status while participating in such training and while en route to and from such training. Accordingly, they are entitled to care for illnesses and injuries occurring while in such a status.

(3) *Absent Without Authority.* Naval members absent without authority during an entire episode of treatment are not eligible. The only exception occurs when the member's illness or injury is determined to have been the direct cause of the unauthorized absentee status. In such an instance eligibility shall be determined to have existed from the day and hour of such injury or illness, provided the member was not in an unauthorized absentee status prior to the initiation of treatment and the member is directly returned to military control.

(4) *Constructive Return.* When constructive return is effected in accordance with § 732.13(e), entitlement will be determined to have existed from 0001 of the day constructive return was accomplished, not necessarily the day and hour care was initiated.

(d) *Notification of Illness or Injury.* If able, members must notify or cause their parent command or the nearest naval activity to be notified of the circumstances requiring medical or dental attention in a non-Federal facility. The member's exact location shall be conveyed to facilitate movement, if appropriate, to a Federal facility. Transfer to a Federal facility shall be accomplished as soon as possible to ensure that disability benefits are not jeopardized. Should movement be delayed due to actions of the member of the member's family, payment may be denied for all care received after provision of written notification by the OMA or ODA. Denial shall be for care received after the member's condition has stabilized and after the cognizant OMA or ODA has made a request to the attending physician and hospital administration for the member's release from the civilian facility. This notification must specify the date and time the Navy will terminate its responsibility for payment. Care rendered subsequent to receipt of the written notification shall be at the expense of the member.

(1) When it becomes known that a member intends to seek medical care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the use of the Nonnaval Medical and Dental Care Program, the member must be counseled by, or in the presence of, a Medical Department officer. The member should be requested to sign a statement on a Standard Form 600, Chronological Record of Medical Care, for inclusion in the member's Health Record, that counseling has been accomplished and that the member understands the significance of receiving civilian care which is unauthorized. This must be accomplished when either personal funds or third party payor (insurance) funds are intended to be used to defray the cost of care. Counseling shall include:

(i) Availability of care from a Federal source.

(ii) The requirement for prior approval if the Government may be expected to defray any of the cost of such care.

(iii) Information regarding the possible compromise of disability benefits should a therapeutic misadventure occur.

(iv) Notification that should hospitalization become necessary, or other time is lost from the member's place of duty, such lost time will be chargeable as "ordinary leave".

(v) Notification that the Government cannot be responsible for out-of-pocket expenses which may be required by the insurance carrier of when the member does not have insurance which covers the cost of contemplated care.

(vi) Direction to report to a uniformed services medical officer (preferably Navy) upon completion of treatment for determination of member's fitness for duty.

(2) When it becomes known that a member has already had non-Federal medical care without prior authorization, the member must be referred to a uniformed services medical officer (preferably Navy) to determine fitness for duty. At this time, the counseling measures delineated in § 732.13(d)(1) (iii), (iv), and (v) must be taken.

(e) *Constructive Return.* See § 732.11(c) for definition.

(1) For members in an unauthorized absentee status, constructive return to military control for the purpose of providing medical or dental care at Navy expense is effected when one of the following has occurred:

(i) A naval activity informs a civilian provider of medical or dental care, orally or in writing, that the Navy accepts responsibility for a naval member's care. The naval activity that provides this information shall also provide documentation of such notification to the appropriate OMA or ODA.

(ii) A member has been apprehended by civil authorities at the specific request of naval authorities and naval authorities have been notified that the member can be released to military custody.

(iii) A naval member has been arrested by civil authorities for a civil offense and naval authorities have been notified that the member can be released to military control.

(2) When a naval member has been arrested for a civil offense while in an unauthorized absentee status and the

offense does not allow release to military control, constructive return is not accomplished. The individual is thus responsible for medical or dental care required prior to arrest and the incarcerating jurisdiction is responsible for care required after arrest.

(f) *Maternity Care.* (1) All pregnant active duty members who reside outside the Military Health Services System (MHSS) catchment areas of uniformed services facilities with inpatient capability are permitted to choose whether to deliver in a closer civilian hospital or travel to a uniformed services facility. If the Government is to assume financial responsibility for non-Federal maternity care of any member regardless of where she resides, the member shall obtain authorization in accordance with §§ 732.13(b)(1) and 732.16. OMA officials shall not approve requests for care in non-Federal facilities for members residing within an MHSS catchment area unless:

(i) Capability does not (did not) exist at the uniformed services or other Federal MTF.

(ii) An emergency situation (as outlined in § 732.13(a)(1)) necessitated delivery or other treatment in a non-Federal facility.

(2) Inasmuch as confinement and delivery are foreseeable, prior approval shall be obtained for delivery in a non-Federal facility at Government expense. This approval shall be obtained from the HBA serving the OMA delineated in § 732.18(f) for the area where the duty station of the member is located. The provisions of this subpart do not apply to maternity emergency situations.

(i) Requests for prior approval shall be disapproved when members (residing in an MHSS catchment area) have been granted annual leave to commence just prior to the expected delivery date and to end after the expected delivery date. Requests for after-the-fact approval shall likewise not be honored in instances of normal delivery.

(ii) Members requiring maternity care while in a travel status in the execution of permanent change of station (PCS) orders shall be granted either prior or retroactive approval as the situation warrants.

(3) Normal delivery at or near the expected delivery date shall not be considered an emergency for members residing within an MHSS catchment area wherein delivery was expected to have occurred and, unless provided for in this part, shall not be reason for delivery in a civilian facility at Government expense.

(4) In a maternity emergency, the provisions of § 732.13(a)(3), relative to arrangements for transfer of the member, also apply to the newborn infant(s).

§ 732.14 Authorized care.

(a) *Medical.* Consultation and treatment provided by physicians or at medical facilities, as well as procedures not involving treatment when directed by COMNAVMED COM are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc.

(b) *Maternity Episode.* If an active duty Navy of Marine Corps member qualifies for care under the provisions of § 732.13(f) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test, etc.) is a part of the mother's admission expenses. Regardless of the circumstances which necessitated delivery in a civilian facility or the way in which the charges are separated on the bill, the charges shall be paid from funds available for the care of the mother. Should the infant become a patient in his or her own right—either through an extension of the birthing hospital stay because of complications, transfer to another facility, or subsequent admission—BUMEDINST 6320.58 or Part 728 of this chapter are applicable.

(c) *Dental.* (1) Includes:

(i) All types of treatment rendered (including operative, restorative, and oral surgical) to relieve pain and abort infection.

(ii) Prosthetic treatment rendered to restore extensive loss of masticatory function or the replacement of anterior teeth for esthetic reasons.

(iii) Repair of an existing dental prosthesis when neglect of the repair would result in unservice ability of the prosthesis.

(iv) Any type of treatment rendered as an adjunct to medical or surgical care.

(v) All x-rays, drugs, etc., required to accomplish treatment or care in § 732.14(c)(1)(i) through 732.14(c)(1)(iv).

(2) In emergencies (no prior approval), excluded are all measures except those appropriate to relieve pain or abort infection.

(d) *Eye Refractions and Spectacles.* Includes refractions of eyes by physicians and optometrists and the furnishing and repair of spectacles.

(1) *Refractions.* A refraction may be obtained from a civilian source only when Federal facilities are not available and no suitable prescription is in the member's Health Record.

(2) *Spectacles.* When a member has no suitable spectacles and the lack thereof, combined with the delay resulting from obtaining them from a Federal source, would prevent the performance of duty; repair, replacement, or procurement from a civilian source may be authorized upon initiation of a request in accordance with § 732.16. Otherwise, the prescription from the refractionist, with proper facial measurements, must be sent for fabrication to the appropriate dispensing activity set forth in BUMED INST 6810.4G.

(3) *Contact Lenses.* Neither examination for nor procurement of contact lenses is authorized by this part.

§ 732.15 Unauthorized care.

The following are not authorized by this part:

(a) Chiropractic services.

(b) Vasectomies.

(c) Tubal ligations.

(d) Breast augmentations or reductions.

(e) Psychiatric care, beyond the initial evaluation.

(f) Court ordered care.

(g) Other elective procedures.

§ 732.16 Authorizations.

Requests for prior or after the fact authorization shall be made on NAVMED 6320/10 and shall be submitted to the cognizant HBA after completion of sections I and III. The HAB will take the action indicated in § 732.13(b).

§ 732.17 NAVMED 6320/10, Statement of Civilian Medical/Dental Care.

In addition to its use as an authorization document (§ 732.16), a NAVMED 6320/10 is required in connection with payment for each instance of sickness, injury, or maternity care (except for the waiver outlined in § 732.18(b)) when treatment is received from a non-Federal source.

(a) *Preparation.* In preparation of claims for payment of nonnaval medical or dental care expenses, NAVMED 6320/10 shall be prepared in triplicate by a naval medical or dental officer, when practicable, by the senior officer present where a naval medical or dental officer is not on duty, or by the individual concerned when on detached duty where a senior officer is not present. The diagnosis shall be included and if prior approval was not obtained for the use of non-Federal facilities, the circumstances which necessitated their use shall also be stated.

(b) *Signing.* Signature by the certifying officer on the NAVMED 6320/10 will be considered certification that documentation has been entered in the

member's Health Record as directed in MANMED article 18-24. This responsibility is incumbent on the certifying offices for each episode of nonnaval medical or dental care. Signature by the member requesting reimbursement or payment implies agreement for release of information to the OMA or ODA receiving the claim for processing.

§ 732.18 Claims.

(a) *Preparation.* Claims shall be prepared using NAVMED 6320/10 and shall be submitted to the appropriate OMA or ODA. If a request has been made for prior or after the fact authorization in accordance with § 732.16, the NAVMED 6320/10 containing the approval shall be completed and submitted with the claim. Additionally, each claim shall include:

(1) Itemized bills submitted in quadruplicate to show:

(i) Dates on or between which services were rendered or supplies furnished.

(ii) Nature of and charges for each item.

(iii) Diagnosis.

(2) Acknowledgement of receipt of the services or supplies on the face of the bill, by separate certificate of the person receiving treatment or services, or by an officer having cognizance of the circumstances. This acknowledgement must include the statement "Services were received and were satisfactory."

(3) Separate bills for providers of care who charge on a "fee for service" basis unless the bill which includes such services is accompanied by:

(i) Receipts showing that the expenses have been defrayed by the physician, dentist, or other source of care submitting the bill.

(ii) A statement that the individual charging on a "fee for service" basis is a full-time employee of the payee.

(4) The complete address to which the check is to be mailed and the amount to be paid. This shall be indicated in sections IV and V of the NAVMED 6320/10.

(5) Paid receipts as well as itemized bills when expenses have already been paid by an individual, including a service member. In lieu of submission of paid receipts or itemized bills, the member may sign the face of the NAV COMPT Form 2160 as required by NAVCOMPT Manual 046383-1. Standard Form 1164, prepared in accordance with NAVCOMPT Manual 046377-2a and b, may be used to fill the requirement for a signed claim. Paid invoices supporting a claim for reimbursement on a Standard Form 1164 do not require certification. OMAs and the ODA shall certify the Standard Form 1164 and insert appropriate accounting classification thereon.

(b) *Processing.* Itemized bills, claims, or other documentary evidence of care received from non-Federal sources should be processed for payment by the cognizant OMA or ODA within 30 days of receipt. Advice on unusual or questionable instances of care may be requested from COM NAVMEDCOM (MEDCOM-333). When OMAs or the ODA already have information from messages or other correspondence which supports payment of a claim, the requirement for a NAVMED 6320/10 may be waived and the claim adjudicated. Claimants shall be advised by the OMA or ODA of any delay experienced in processing claims.

(c) *Adjudication of Claims.* When required documents have been received by the OMA or ODA; a determination shall be made whether:

(1) Claimant is entitled to benefits (i.e., was on active duty, active duty for training, inactive duty training (drill), was not an unauthorized absentee, etc.)

(2) Medical or dental care was rendered due to a bona fide emergency. Where questions arise as to the emergent nature of the care, the claim and all documentation shall be forwarded to the appropriate clinical specialist at the nearest naval hospital for review.

(3) Prior approval had been granted for the medical or dental care if a bona fide emergency did not exist. If prior approval was not obtained and the condition treated is determined to have been nonemergent, the claim shall be denied.

(4) Claimed medical or dental benefits resulted from a referral by a USMTF. Should it be determined that the member was an inpatient or an outpatient in a USMTF immediately prior to being referred to a civilian source of care, the care is supplemental and is the responsibility of the referring USMTF. EXCEPTION: the local USMTF will not assume financial responsibility (i) when the civilian health care *is not* supplemental to continuing health care that was being provided by the local USMTF, and (ii) when the local USMTF is not organized nor authorized to provide the needed health care services (e.g., a patient needing inpatient care is diagnosed at a clinic without inpatient capability). Under the latter two circumstances, the civilian care is payable under the provisions of this part. Saturation of USMTF services or facilities does not fall within this exception.

(5) Medical or dental care is payable under the provisions of this part. If a determination is made to disapprove a claim, the member (and provider of care, when applicable) shall be provided a prompt and courteous letter stating the reason for the denial. The appropriate avenues of appeal (§ 732.22) will be included in the denial letter.

(d) *Disbursing Activity.* Upon receipt of an approved claim, disbursing activities will forward a check to the appropriate payee and furnish the Authorization Accounting Activity (AAA) servicing COMNAVMEDCOM (i.e., NAVMEDCOM, National Capital Region, Bethesda, MD 20814) with copies of the NAVMED 6320/10 and with accounting data. OMAs, the ODA, and disbursing activities shall take precautions against duplicate payments in accordance with NAVCOMPT Manual 046073. For completion of the appropriate accounting classification data on the NAVMED 6320/10, the following are applicable:

Accounting Classification Code. This code shall include accounting data in the following sequence:

1	2	3	4	5	6	7	8	9
17*1804	1890	000	00018	0	000189	2D	000600	Cost Code.**

* "For the third digit in coding element 1, enter the *last digit of the fiscal year current at the time claim is approved for payment*, e.g., a claim approved in November 1983 for care rendered in December 1982 would have the number "4" as the third digit in coding element 1, i.e., "1741804" wherein the third digit is the last digit of fiscal year 1984.

** This cost code, coding element 9, is a 12 digit coding element constructed as follows:

Digits	Data entry
1 thru 5	"99002" will always be entered.
6	"O" if the services were inpatient, outpatient, or dental, and "E" if for ambulance service.
7	"1" if the patient was active duty Navy. "2" if the patient was active duty Marine Corps.

Digits	Data entry
	"3" if the patient was Navy, Reservist.
	"4" if the patient was Marine Corps, Reservist.
	"5" for all others.
8***	"1" for inpatient care; "2" for outpatient care; "3" for dental care.
9 and 10	Number of visits, occupied bed days, ambulance trips, or dental procedures, e.g., the entry for ten occupied bed days would be "10", and for three outpatient visits "03". Enter "00" for invoices involving services related to but billed separately from hospitalization charges.
11	"A" for medical and dental care rendered in the District of Columbia, Maryland, West Virginia, the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; and the Virginia cities of Alexandria, Fairfax, and Falls Church.
	"B" for medical care rendered in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, and Wisconsin.
	"C" for medical care rendered in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
	"D" for medical care rendered in Connecticut and New York.
	"E" for medical care rendered in Delaware, New Jersey, Ohio, and Pennsylvania.
	"F" for dental care rendered in the entire Northeast Region which includes the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin.
	"G" for medical and dental care rendered in the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties.
	"H" for medical and dental care rendered in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
	"I" for medical and dental care rendered in the States of Arizona, Nevada, and New Mexico and the counties of Kern, San Luis, Obispo, San Bernadino, Santa Barbara, and all other counties of California south thereof.
	"J" for medical care rendered in the States of Colorado, Kansas, and Utah and the counties of Inyo, Kings, Tulare, and all other counties of California north thereof.
	"K" for medical and dental care rendered in the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming.
	"L" for medical and dental care rendered in the Pacific Region.
	"M" for medical and dental care rendered in the European Region.
	"N" for medical and dental care rendered in all other areas.
12	Last digit of the fiscal year in which claim is approved.

***Ambulance trips shall be coded as "1", "2", or "3" according to subsequent treatment.

(e) *Amount Payable.* Amounts payable shall be those considered reasonable by the OMA or ODA after taking into consideration all facts. Normally, payment should be approved at rates generally prevailing within the geographic area where the services or supplies were furnished. Although rates specially established by the Veterans Administration or those used in Medicare are not controlling, they may be considered along with other facts.

(1) *Excessive Charges.* If any charge is considered excessive, the provider of care should be apprised of the conclusion reached and provided an opportunity to voluntarily reduce the amount of the claim. If this does not result in a proper reduction of the bill and the claim is that of a physician or dentist, the difference in opinions should be referred to the grievance committee of the provider's professional group for an opinion of the reasonableness of the charge. If satisfactory settlement of any claim cannot thus be made, all documentation should be forwarded to COMNAVMEDCOM (MEDCOM–333) for decision. Any charges above the allowable amount or charges for noncovered services are the responsibility of the service member.

(2) *Third Party Payment.* Payment shall not be withheld to seek payment from health benefit plans or from insurance policies for which premiums are paid privately by service members (see § 732.20 for possible recovery of payments action).

(3) *No-Fault Insurance.* In States with no-fault automobile insurance requirements, the OMA or ODA shall notify the insurance carrier identified in item 16 of the NAVMED 6320/10 that Federal payment of the benefits in this part is secondary to any no-fault insurance coverage available to the potentially covered member.

(f) *Adjudication Authority.*—(1) *In the United States (Less Hawaii).* For the 48 contiguous United States, the District of Columbia, and Alaska, the following six regions have been designated as cohesive units to accept responsibility for medical cognizance, medical and dental claims processing and adjudication, and prior or after the fact approval or disapproval of requests for nonemergent medical, dental, or maternity care within their areas of responsibility. In accordance with MANMED articles 2–22 and 6–54, controlling activities for medical care have been designated as "offices of medical affairs" (OMA) and for dental care, "office of dental affairs" (ODA). It is incumbent upon commanders of regional medical commands to communicate with other commands within their regions to ensure that proper messages and medical cognizance reports are furnished in accordance with higher authority directives.

(i) *Northeast Region.* The States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are served by 1 ODA, 1 OMA, and 2 field office OMAs:

(A) Responsibility for dental matters for all States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Dental Affairs, Naval Hospital, Great Lakes, IL 60088, Tele: (A) 792–3940, (C) 312–688–3940.

(B) Responsibility for medical matters for the States of Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Rhode Island, Vermont, and Wisconsin is also vested in: Commander, Naval Medical Command, Northeast Region, Office of Medical Affairs, Naval Hospital, Great Lakes, IL 60088, Tele: (A) 792–3950, (C) 312–688–3950.

(C) Responsibility for medical matters for the States of Connecticut and New York is vested in: Commanding Officer, Office of Medical Affairs, Naval Station, 207 Flushing Avenue, Brooklyn, NY 11251, Tele: (A) 456–2716, 2343, or 2612, (C) 212–834–2716, 2343, or 2612.

(D) Responsibility for medical matter for the States of Delaware, New Jersey, Ohio, and Pennsylvania is vested: Commanding Officer, Naval Hospital, 17th Street and Pattison Avenue, Philadelphia, PA 19145, Attn: Office of Medical Affiairs, Tele: (A) 443–6236, (C) 215–755–6236.

(ii) *National Capital Region.* For the States of Maryland and West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; the Virginia cities of Alexandria, Falls Church, and Fairfax; and the District of Columbia, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, National Capital Region, Office of Medical Affairs, Bethesda, MD 20814, Tele: (A) 295–5322, (C) 301–295–5322.

(iii) *Mid-Atlantic Region.* For the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, Mid-Atlantic Region, 6500 Hampton Boulevard, Norfolk, VA 23502, Attn: Office of Medical/Dental Affairs, Tele: (A) 565–1074 and 1075, (C) 804–445–1074 and 1075.

(iv) *Southeast Region.* For the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, medical and dental responsibilities are vested in: Commanding Officer Naval Medical Clinic, Code 01A, New Orleans, LA 70146, Tele: (A) 485–2406, 2407, and 2408, (C) 504–361–2406, 2407, and 2408.

(v) *Southwest Region.* For the States of Arizona, Nevada, and New Mexico, the counties of Kern, San Bernadino, San Luis Obispo, Santa Barbara, and all other California counties south thereof, medical and dental responsibilities are vested in: Commander, Naval Medical

Command, Southwest Region, Office of Medical Affairs, San Diego, CA 92134, Tele: (A) 957-3831, (C) 619-225-3011.

(vi) *Northwest Region.* The States of Alaska, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and the counties of Inyo, Kings, Tulare, and all other counties of California north thereof are served by 2 OMAs:

(A) Responsibility for medical and dental matters for the States of Colorado, Kansas, and Utah, and the California counties of Inyo, Kings, Tulare and all other counties of California north thereof is vested in: Commanding Officer, Naval Hospital, Oakland, CA 94627, Attn: Office of Medical Affairs, Tele: (A) 855-5705, (C) 415-633-5705.

(B) Responsibility for medical and dental matters for the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming is vested in: Commanding Officer, Naval Medical Clinic, Naval Station, Seattle, WA 98115, Attn: Office of Medical/Dental Affairs, Tele: (A) 941-3823, (C) 206-526-3823.

(2) *Outside the Contiguous 48 United States, Except Alaska.* In all areas outside the contiguous 48 United States except Alaska, the following activities have been vested with responsibility for approval or disapproval of medical and dental care claims and requests for care:

(i) Executive Director, OCHAMPUSEUR, U.S. Army Medical Command, APO New York 09102, for care rendered within the U.S. European Command, Africa, the Malagasy Republic, and the Middle East.

(ii) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96652, for care rendered in Afghanistan, Bangladesh, Hong Kong, India, Nepal, Pakistan, the Philippines, Southeast Asia, Sri Lanka and Taiwan.

(iii) Commanding Officer, U.S. Naval Hospital, FPO Seattle 98765, for care rendered in Japan, Korea, and Okinawa.

(iv) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96668, for care rendered in New Zealand and Guam.

(v) Commanding Officer, U.S. Naval Communications Station, FPO San Francisco 96668, for care rendered in Australia.

(vi) Commanding Officer, U.S. Naval Air Station, FPO New York 09580, for care rendered in Bermuda.

(vii) Commander, U.S. Naval Forces, Southern Command, FPO Miami 34050, for care rendered in Central and South America.

(viii) Commanding Officer, U.S. Naval Hospital, FPO Miami 34051, for medical care and Commanding Officer, U.S. Naval Regional Dental Center, FPO Miami 34051, for dental care rendered in Puerto Rico, Virgin Islands, and other Caribbean Islands.

(ix) Commanding Officer, Naval Medical Clinic, Box 121, Pearl Harbor, HI 96860, for medical care and Commanding Officer, Naval Regional Dental Center, Box 111, Pearl Harbor, HI 96860, for dental care rendered in the State of Hawaii, Midway Island, and the Central Pacific basin.

(x) The OMA for either the Southeast Region, § 732.18(f)(1)(iv), or the Southwest Region, § 732.18(f)(1)(v) for care rendered in Mexico to members stationed within the respective areas of responsibility of these OMAs. Forward claims for care rendered in Mexico to all other personnel to Commander, Naval Medical Command, Washington, DC 20372 [MEDCOM-333].

(xi) Commander, Naval Medical Command, Washington, DC 20372 [MEDCOM-333]:

(A) For inpatient and outpatient care of active duty Navy and Marine Corps members in Canada.

(B) For outpatient care rendered to NATO active duty personnel in accordance with the Assistant Secretary of Defense (Comptroller) memo of 12 March 1981, Reimbursement for inpatient medical care provided foreign military and diplomatic personnel or their dependents in military hospitals in the United States.

(C) In unusual circumstances requiring Departmental level review prior to approval, adjudication, or payment.

(xii) Outside the 50 United States, commanding officers of operational units may either approve claims and direct payment by the disbursing officer serving the command or forward claims to the appropriate naval medical command enumerated in § 732.18(f)(1)(i) through 732.18(f)(2)(x). This is a local policy decision to enhance the maintenance of good public relations.

(xiii) The commanding officer authorizing the care in geographical areas not specifically delineated in § 732.18(f)(1)(i) through 732.18(f)(2)(ix).

(xiv) The appropriate command enumerated in § 732.18(f)(2)(i) through 732.18(f)(2)(x) for care rendered aboard commercial vessels en route to a location within any of the geographical areas enumerated in those subparts.

(g) *Standard Document Number.* (1) To enhance accountability procedures and facilitate identification of documents in the accounting and disbursement process, each NAVMED 6320/10 approved for payment shall be assigned a unique 15 position alpha/numeric standard document number composed in accordance with the following example: N0016883MD00025.

1	2 thru 6	7 & 8	9 & 10	11 thru 15
N	00168	83	MD	00025

Position	Data entry
1	"N" identifies Navy.
2 thru 6	Unit Identification Code of document issuing activity.
7 and 8	Last two digits of the fiscal year in which the basic document was issued.
9 and 10	"MD" is the document type code identifying this as a Miscellaneous Financial Document.
11 thru 15	Serial Number (In the example, "00025" identifies the 25th miscellaneous document prepared in fiscal year 83 by the activity.)

(2) This standard document number shall be prominently displayed on the NAVCOMPT Form 2160, Public Voucher for Medical Services, and on all other accompanying documentation of the claim. Diligent use of this number facilitates the establishment of an auditing trail and thus reduces opportunities for fraud.

§ 732.19 Medical board.

When the adjudication process uncovers conditions which may be chronic or otherwise potentially disabling, a determination shall be made by OMAs (in conjunction with appropriate clinical specialists) as to the need for a medical board. MANMED, chapter 18 and the Medical Disposition and Physical Standards Notes, available from COMNAVMEDCOM (MEDCOM-25), provide guidance.

(a) Chronic conditions requiring a medical board include (but are not limited to): (1) Peptic ulcer disease, (2) asthma, (3) hypertension, (4) arthritis, (5) alcoholism, (6) diabetes, (7) psychiatric conditions, (8) gout, (9) heart disease, and (10) allergic conditions requiring desensitization.

(b) Other potentially disabling or chronic conditions may be referred to a medical board by the OMA with the concurrence of an appropriate naval clinical specialist and regional commander.

§ 732.20 Recovery of medical care payments.

Evidence of payments shall be submitted to the action JAG designee in accordance with JAG manual, chapter 24, in each instance of payment where a third party may be legally liable for causing the injury or disease treated, or when a Government claim is possible under workmen's compensation, no-

fault insurance, or under medical payments insurance (all automobile accident cases).

(a) To assist in identifying possible third party liability cases, item 16 of each NAVMED 6320/10 shall be completed whenever benefits are received in connection with a vehicle accident. OMAs and the ODA shall return for completion, as applicable, any claim received without item 16 completed.

(b) The front of a NAVJAG Form 5890/12 (Hospital and Medical Care, 3rd Party Liability Case) shall be completed and submitted by OMAs and the ODA with evidence of payment. Block 4 of this form requires an appended statement of the patient or an accident report, if available. To ensure that Privacy Act procedures are accomplished and documented, the person securing such a statement from a recipient of care shall show the recipient the Privacy Act statement printed at the bottom of the form prior to securing such a statement. The member shall be asked to sign his or her name beneath the statement.

(c) In States with no-fault insurance laws, the procedures outlined in § 732.18(e)(3) shall also be followed.

§ 732.21 Collection for subsistence.

(a) *General.* Each OMA shall initiate subsistence collection action for enlisted personnel upon receipt of a bill for inpatient care from nonnaval facilities or under circumstances described in § 732.21(c)(3). OMAs shall also ensure that pay adjustment action has been initiated by the member's command, as appropriate. Commands submitting claims to OMAs without a locally prepared pay checkage form or a DD 139 shall be requested to provide a copy. If the claim is otherwise payable, payment action shall be held in abeyance pending receipt of the form.

(b) *Officers.* The accounts of officers (Navy and Marine Corps) receiving treatment in Veterans Administration facilities, the Canal Zone Hospital, or in civilian hospitals at the Department of the Navy's expense are required to be checked for subsistence. Collection action is initiated by completion and submission of a DD Form 139, Pay Adjustment Authorization, by the officer's commanding officer or the Pay/Personnel Administrative Support System (PASS) office to the disbursing officer having custody of the member's pay record. The Pay/Personnel Administrative Support System officer is responsible for ensuring that checkage has been accomplished in accordance with DOD Military Pay and Allowances Entitlements Manual 30137. When officers are hospitalized in an Army, Air Force, or designated USTF, the charge for subsistence will be collected by the facility.

(c) *Enlisted Members.* (1) The passage of the Defense Officer Personnel Management Act (DOPMA) placed a requirement on the uniformed services to collect subsistence from hospitalized enlisted personnel. To accomplish collection, it is necessary establish a pay checkage system similar to that described in § 732.21(b) for officers. Generally, the DD Form 139 can be used for this purpose; however, the Medical Department representative (or other appropriate individual) who completes or assists in the preparation of the NAVMED 6320/10 may attach thereto a locally prepared statement in the following format before submission of the claim to the OMA:

(i) Name, rate, and social security number of the hospitalized member.

(ii) Inclusive dates of hospitalization.

(iii) "NAVMEDCOM 00016", COMNAVMEDCOM's Unit Identification Code (UIC), as the organization providing meals.

(iv) Date forwarded to disbursing office.

(2) The pay checkage form shall be forwarded to the disbursing officer (DO) or Personnel Support Detachment (PSD) holding the member's pay record. Copies shall be provided COMNAVMEDCOM (MEDCOM–112) and shall accompany each inpatient claim submitted to an OMA.

§ 732.22 Appeal of Denied Claims.

When a claim for care under this part is initially denied, the member shall be advised of the appeal procedure in the denial letter specified in § 732.18(c)(5). Responses at all levels shall be prompt and courteous. The appeal procedure consists of three levels:

(a) Reconsideration by the OMA or ODA making the initial denial. The member should submit any additional information that may mitigate the initial denial.

(b) Consideration by the commander of the regional medical command having cognizance over the OMA or ODA which upheld the initial denial on reconsideration.

(c) The third level is consideration by COMNAVEMED COM (MEDCOM–333).

§ 712.23 Records.

The NAVMED 6320/10 or a copy of the Public Voucher for Medical Services (NAVCOMPT Form 2160) or other paid voucher and the Accounting Card (NAVCOMPT Form 632) containing the accounting classification and cost code information received from Navy finance centers, provide all the management information needed by COMNAVMEDCOM under normal circumstances. Except for the monthly letter report required in § 732.12(a)(2), no other records need be forwarded to COMNAVMEDCOM by approving authorities except, when in the judgment of the approving officer, copies of correspondence of other pertinent documents of a controversial nature might assist in improving administration of the program.

[FR Doc. 86–11315 Filed 5–21–86; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 86–02]

Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing operation of the City of Seattle's drawbridges across the Lake Washington Ship Canal by permitting the draws to remain in the closed position, after receiving an opening request, for periods of up to ten minutes, if needed to pass accumulated vehicular traffic. Bridges affected by this change are the: Ballard Bridge, Fremont Bridge, University Bridge, and Montlake Bridge. This will relieve vehicular traffic congestion and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on June 23, 1986.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442–5864.

SUPPLEMENTARY INFORMATION: On February 10, 1986, the Coast Guard published proposed rules (51 FR 4933) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a public notice dated February 19, 1986. In each notice interested parties were given until March 27, 1986 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

BEST COPY AVAILABLE

Discussion of Comments

Five comments were received in response to the Federal Register and Coast Guard notices. Two were from federal agencies who offered no objections to the proposal. One was from a towboat company and another was from an association of towboat companies; both supported the proposal. One, from a company engaged in shipyard and towing operations, felt that the exemption provided to towing vessels should extend to all commercial vessels. There does not appear to be sufficient justification to warrant this change.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR 11034); February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Based on the results of a 60 day trial period using a temporary regulation to evaluate the effects of the change, the proposed rule was modified to exempt vessels engaged in towing fom the potential ten minute delay. Other than general vehicular traffic and navigation interests, there are no known businesses, including small entities, that would be affected by the change. There are only minimal impacts on navigation, and roadway traffic would benefit from improved traffic flow. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

PART 117—[AMENDED]

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g).

PART 117—DRAWBRIDGE OPERATION REGULATIONS

2. Section 117.1051(d) is revised to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard (15th Avenue) Bridge, mile 1.1, Fremont Avenue Bridge, mile 2.6, University Bridge, mile 4.3, and Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draws need not be opened for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draws shall open without delay, when requested by vessels engaged in towing operations.

(2) The draws need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified.

(3) Between the hours of 11 p.m. and 7 a.m. the draws shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue Bridge.

Dated: May 6, 1986.

R.R. Garrett,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 86-11537 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-14-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1150

Compliance With Standards for Access to and Use of Buildings by Handicapped Persons

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (hereinafter ATBCB) is revising its regulation relating to Compliance with Standards for Access to and Use of Buildings by Handicapped, Subpart E-Proceedings Prior to Hearings; Pleadings and Motions, 36 CFR Part 1150.41. The changes are designed to extend the time period allowable for the informal resolution of complaints filed with the ATBCB indicating any violation of standards for accessibility and usability prescribed under the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 USC 4151 et seq, from 90 to 180 days. Additionally, the time period will now commence at the time the ATBCB receives a complete complaint, not after receipt of the complaint by all affected agencies, as currently required. These revisions will make ATBCB's regulations consistent with similar regulations for the federally conducted programs of most Federal agencies.

DATES: This rule is effective May 22, 1986. Written comments must be received on or before July 21, 1986.

ADDRESS: Written comments may be mailed to the Executive Director, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Washington, DC, 20202.

FOR FURTHER INFORMATION CONTACT: Nicholas L. Chiarkas, General Counsel, (202) 245-1801 (voice or TDD). This is not a toll-free number. Copies of this notice are available on tape for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The ATBCB was established under section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391. Section 502(d) [29 USC 792(d)] provides that the ATBCB shall hold hearings and issue orders it deems necessary to ensure compliance with standards of buildings and facilities issued under the Architectural Barriers Act of 1968, as amended. The provisions of subchapter II of Chapter 5 and Chapter 7 of Title 5, United States Code apply to the ATBCB procedures. An order of compliance issued by ATBCB is a final order of compliance for purposes of judicial review. Pub. L. 93-516, 58 Stat. 1621, the Rehabilitation Act Amendments of 1974, provides that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with the applicable standards.

The 1978 Act provides that an order of compliance issued by an administrative law judge shall be deemed an order of the Board and shall be a final order for the purpose of judicial review. The 1978 Act also provides that any complainant or participant may obtain review of a final order. The 1978 Act vests in the Executive Director on behalf of the ATBCB the final authority with respect to the investigation of alleged noncompliance in the issuance of formal complaints. The 1978 Act also authorizes the ATBCB to direct the Executive Director to bring court actions to enforce compliance orders.

The ATBCB in 1978 adopted procedures to enable it to implement its enforcement responsibility with respect to buildings subject to section 502. 41 FR

55441 (1976). A review of the regulation was precipitated by the enactment of the 1978 Act. On April 30, 1980, revisions were proposed to various sections of the regulation. 45 FR 28969–28977. Comments were invited until June 30, 1980; a total of eight written comments were received containing suggestions. Final rules were published on November 25, 1980. 45 FR 78472–78480.

Summary of Changes

In the revised regulation, the time period allowed for the informal resolution of complaints filed with the ATBCB indicating any violation of standards for accessibility and usability prescribed under the Architectural Barriers Act of 1968, as amended, is extended from 90 to 180 days. This time period will commence at the time the ATBCB receives a complete complaint, not after receipt of the complaint by all affected agencies, as currently required.

The ATBCB considers these revisions necessary in order to assure more consistency with similar section 504 regulations for the federally conducted programs of most Federal agencies. Most section 504 regulations provide a 180-day time frame for the resolution of such complaints. In April, 1985, the Department of Justice asked the ATBCB to consider whether it should extend the time for complaint resolution to eliminate any conflict between investigatory time frames of the ATBCB and another agency, when both are conducting simultaneous investigations of the same facility. In response to this request, the ATBCB informed the Department of Justice that should such a conflict arise, the ATBCB time frame would be extended to equal that of the other agency. This rule eliminates the need to make such special arrangements on a case-by-case basis.

List of Subjects in 36 CFR Part 1150

Handicapped, Compliance hearings, Administrative practice and procedure.

Charles Hausot,

Chairperson, Architectural and Transportation Barriers Compliance Board.

PART 1150—[AMENDED]

Therefore, Title 36 CFR Part 1150 is amended as follows:

1. The authority citation for Part 1150 continues to read as follows:

Authority: Sec. 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended 87 Stat. 391 (29 U.S.C. 792).

§ 1150.41 [Amended]

2. Section 1150.41 is amended by changing "ninety (90) days" to "one hundred eighty (180) days" in paragraphs (f), (g), and (h).

3. Paragraph (i) of § 1150.41 is amended by changing "one hundred (100) days" to "one hundred ninety (190) days."

[FR Doc. 86–11469 Filed 5–21–86; 8:45 am]
BILLING CODE 8820-BP-M

VETERANS ADMINISTRATION

38 CFR Parts 8 and 8

Implementation of the Balanced Budget and Emergency Deficit Control Act of 1985, Government Life Insurance; Policy Loan Reductions

AGENCY: Veterans Administration.

ACTION: Notice of Policy Loan Reduction under the Government life insurance programs.

SUMMARY: The Veterans Administration (VA) is giving notice that a change is being made to existing policy concerning the issuance of loans to policyholders under the United States Government Life Insurance (USGLI), Veterans Reopened Insurance (VRI), and Service-Disabled Veterans Insurance (S–DVI) programs. Effective April 1, 1986, and continuing through the fiscal year ending September 30, 1986, the percentage of reserve value (i.e., cash value) that a policyholder under the aforementioned programs may borrow against is reduced from 94 percent to the following levels:

Program	Percent of reserve
USGLI	10
VRI	50
S–DVI	75

These limitations apply only to the issuance of new policy loans under the USGLI, VRI, and S–DVI programs. Existing loans under these programs remain unchanged. However, policies with loans which exceed the above limits will have no further loan value until the loans are reduced below the applicable limit. The National Service Life Insurance (NSLI) program, Veterans Special Life Insurance (VSLI) program and the Veterans Insurance and Indemnities (VI&I) Appropriation are not affected by this change. The policy loan rate will remain at 11 percent for all programs except USGLI, which is statutorily fixed at 5 percent.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paul F. Koons, Assistant Director for Insurance (29), VA Regional Office and Insurance Center, Post Office Box 8079, Philadelphia, PA 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: When certain targeted Federal budget deficits are not met for a fiscal year, section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires that the President issue an order sequestering a portion of the monies appropriated for payments under several VA administered programs. The Comptroller General has determined that policy loans under the Government life insurance programs are subject to the ceiling limitations imposed by the Act. An order sequestering funds under several VA programs, including policy loans under the six Government life insurance programs, was issued February 1, 1986. The changes affecting the Government life insurance programs made pursuant to the order are effective April 1, 1986.

In order to reduce the policy loan obligation to the level imposed under the Act, policy loans for each insurance program must be reduced by 4.3 percent from the VA's fiscal year 1986 estimates. To accomplish this, the policy loan rate will be maintained at the current level of 11 percent for all programs, except USGLI, which is set by law at 5 percent. For those programs where maintenance of the current rate will not enable us to meet the reduced ceiling, the maximum loan value will be reduced from 94 percent of reserve to a lower percentage of reserve, based on the amount of loan activity projected for the individual program during the balance of the fiscal year.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Catalog of Federal Domestic Assistance Program number 64.103.

Approved: May 15, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86–11515 Filed 5–21–86; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400

[OMB-007-F]

Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

Correction

In FR Doc. 86-7180, beginning on page 11581, in the issue of Friday, April 4, 1986, make the following correction:

On page 11582, second column, in the sixth line from the bottom of the table, on § 473.18, "474.30" should read "473.36".

BILLING CODE 1505-01-M

Office of the Secretary

42 CFR Part 420

45 CFR Part 101

Medicare Program; Physician Fee Freeze Sanctions

AGENCY: Office of the Secretary, HHS; Office of Inspector General (OIG).

ACTION: Final rule.

SUMMARY: This final rule sets forth OIG procedures for the imposition of civil money penalties and Medicare program exclusions on physicians who have chosen not to be participating physicians and who have raised charges to Medicare beneficiaries in violation of the freeze on such fees contained in section 2306 of Pub. L. 98-369, the Deficit Reduction Act (DEFRA). This final rule also modifies existing regulations to permit the OIG to impose civil money penalties and assessments on those individuals who have chosen to be participating physicians under the Medicare program and who have violated their participation agreements set forth in section 2306.

EFFECTIVE DATE: May 22, 1986.

FOR FURTHER INFORMATION CONTACT: James Patton (301) 594-3857.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 2306 of Pub. L. 98-369, new sections 1842(b)(4) and 1842(j) were added to the Social Security Act, respectively, (i) imposing a freeze on Medicare reimbursement for physician services for a period of 15 months, beginning July 1, 1984, and (ii) providing the Secretary with discretionary authority to exclude a non-participating physician from Medicare participation, impose a civil money penalty and assessment (as described in section 1128A of the Act), or both, if a non-participating physician knowingly and willfully bills Medicare beneficiaries during the 15-month period, beginning July 1, 1984, for charges in excess of such physician's actual charges for the calendar quarter beginning April 1, 1984.

In addition, section 2306 of DEFRA added section 1842 (h) and (i) to the Act by establishing a participating physician and supplier program under Medicare. A participating physician or supplier is one who voluntarily enters into an agreement to accept assignment of all services provided to Medicare patients during the period covered by the agreement. Under this section, the participating physician or supplier would be in violation of the participation agreement if the party collected or attempted to collect from the beneficiary any amount in excess of the applicable deductible and coinsurance. A participating physician or supplier would also be in violation of the agreement if the party refused to accept assignment for an item or service that is reimbursable under Medicare. Section 1128A(a) of the Act was also amended by section 2306 of DEFRA to provide that a participating physician or supplier may be subject to civil money penalties and assessments if he or she violates the participation agreement.

Temporary extensions of the physician fee freeze provision were passed by Congress under the Emergency Extension Act of 1985 (Pub. L. 99-107) and the Temporary Debt Limit Extension Act of 1985 (Pub. L. 99-155), extending this authority through December 14, 1985. A further extension of the physician fee freeze provision to March 15, 1986 was enacted as part of Pub. L. 99-201.

II. Summary of Proposed Rule

Proposed regulations were published in the **Federal Register** on September 13, 1985 (50 FR 37386). Specifically, these proposed regulations:

- Included a new section 42 CFR 420.102 stating that the OIG would utilize existing procedures contained in the current regulatory provisions pertaining to fraud and abuse determinations when determining the length of an exclusion and the amount of the money penalty and assessment applicable to physicians who are to be sanctioned. The notification, effectuation and appeal procedures under existing regulations would also be used for the fee freeze provisions.
- Specified that exclusions from the Medicare program based on violations of the fee freeze would be for a period not exceeding 5 years. The proposed regulations stated that any physician excluded from program participation under this provision would not be automatically reinstated into Medicare program participation until application for reinstatement was made under procedures set forth in 42 CFR 420.130 through 420.136.
- Provided that if an exclusion was for the full 5 years, the OIG would have to automatically approve an application for reinstatement. If the physician was also excluded for a longer period of time under another sanction provision, the 5 year maximum exclusion period would not be applicable.
- Stated that the OIG would not impose an exclusion if the physician is a sole community physician or the sole source of essential specialized services in a community (42 CFR 420.103). Where it is determined that such a physician has violated the fee freeze provision, the OIG would only impose a money penalty and assessment.
- Modified the regulations at 45 CFR 101.102 to include violations of a participation agreement as a basis for imposing penalties.

III. Response to Public Comments

In response to this notice of proposed rulemaking, we received a total of two public comments. Set forth below is a summary of those comments and our response to those concerns.

Comment: One commenter disagreed in general with the overall physician fee freeze concept. The commenter indicated that physicians and patients should be allowed the freedom to reach whatever contract for health care services they find mutually agreeable, and that there should be no interference by Medicare.

Response: The commenter's concern deals generally with dissatisfaction over congressional enactment of section 2306 of DEFRA and not specifically with this rulemaking activity. As indicated above, these regulations simply reflect congressional intent and the statutory change made by DEFRA to impose penalties and sanctions on those physicians who violate the Medicare physician fee freeze or their participation agreement.

Comment: A second commenter pointed out that section 1842(j)(4) of the Act permits the Secretary, out of any money penalties and assessments collected, to reimburse the beneficiary for the amount of excess charges billed by the sanctioned physician to the beneficiary. The commenter recommended that this provision be included in appropriate regulations.

Response: This comment has not been accepted. We believe that the provision

in question is simple, clear and straightforward, and can be implemented without a regulation. The Health Care Financing Administration, which has responsibility for implementing this provision, is currently developing the necessary administrative procedures for this purpose.

IV. Impact Analysis

Executive Order 12291

We have determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291 because they will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry or a geographic region; or cause significant adverse effects on business or employment. We do not expect these regulations to have such an effect.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, U.S.C. 604(a)), we prepare a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities, and to develop lower cost or burden alternatives. The law on which these regulations are based is specific, and there is little leeway in implementing the requirements. Some of the sanctions that the Federal Government will impose as a result of these regulations will have an impact on physicians. However, we do not anticipate that a substantial number of physicians will be significantly affected by these regulations. Therefore, the Secretary certifies that a regulatory flexibility analysis is not required for this rulemaking.

List of Subjects

42 CFR Part 420

Abuse, Administration practice and procedures, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health maintenance organizations, Health professions, Health suppliers, Information (Disclosure), Lawyers, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements, Supervision, Utilization and quality control Peer Review Organizations.

42 CFR Part 101

Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and child health, Medicaid, Medicare, Penalties.

TITLE 42—PUBLIC HEALTH

A. 42 CFR Chapter IV, Part 420 is amended as set forth below:

PART 420—PROGRAM INTEGRITY

1. The authority citation for Part 420 is revised to read as follows:

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2)(D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395u(j), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)), unless otherwise noted.

2. The Table of Contents for Subpart B is amended by adding entries for §§ 420.102 and 420.103.

Subpart B—Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals

Sec.

* * * * *

420.102 Sanction for violation of the freeze on physician charges.

420.103 Exclusion for violation of the freeze on physician charges.

* * * * *

3. In Subpart B, the authority citation and § 420.100 is revised to read as follows:

Subpart B—Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2)(D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395u(j), 1395y(d), 1395(e), 1395cc(b)(2)(D),(E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)).

§ 420.100 Basis and scope.

This subpart implements Sections 1128, 1842(j), and 1862 (d) and (e) of the Act. It sets forth criteria and procedures for (a) excluding practitioners, providers, and suppliers of services who have defrauded or abused the Medicare program or, for those physician practitioners who are not participating physicians, who have violated the billing restrictions of section 1842(j) of the Act, and (b) for suspending practitioners and other individuals convicted of crimes related to their participation in the delivery of medical care or services under the Medicare, Medicaid or the social services programs. It also specifies the appeal rights of a suspended individual and the procedures for reinstatement of excluded and suspended individuals. The procedures set forth in § 420.101 through 420.115 also apply to terminations of provider agreements under § 489.53(a) (6), (7), or (8) of this chapter.

4. Subpart B is amended by adding new §§ 420.102 and 420.103 to read as follows:

§ 420.102 Sanctions for violations of the freeze on physician charges.

(a) Whenever the OIG determines that a physician, who is not a participating physician under section 1842(h) of the Act, has during the statutory period of the freeze (1) provided services to a beneficiary and (2) knowingly and willfully billed that beneficiary for actual charges that are in excess of the physician's actual charges for the calendar quarter beginning on April 1, 1984, the OIG may exclude the physician from program participation for a period of up to five years, impose a monetary penalty or assessment against the physician, or both.

(b) If the OIG makes a determination under paragraph (a) of this section that involves a monetary penalty or assessment, the OIG will use the penalty determination, notification, effectuation, and appeal procedures contained in 45 CFR 101.100 through 101.133.

(c) If the OIG makes a determination under paragraph (a) of this section and proposes to exclude a physician from Medicare program participation without imposing a monetary penalty or assessment, the OIG will use the determination, notification, effectuation, appeal, and reinstatement procedures contained in § 420.100 through § 420.115 and § 420.130 through § 420.134.

§ 420.103 Exclusion for violations of the freeze on physician charges.

(a) In excluding a physician under § 420.102, the exclusion period determined under § 420.114 may not exceed five years.

(b) The OIG will not impose an exclusion under § 420.102 if it determines that the physician is the sole source of essential specialized service or a sole community physician.

5. In Subpart B, § 420.134 is amended by adding a new paragraph (e) to read as follows:

§ 420.134 Notice of action on request for reinstatement.

* * * * *

(e) The OIG must automatically reinstate a physician excluded only on the basis of § 420.102 if that exclusion has been in effect for five (5) years.

TITLE 45—PUBLIC WELFARE

B. 45 CFR, Subtitle A, Part 101 is amended as set forth below:

PART 101—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 101 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A and 1842(j) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a and 1395u(j)).

2. In § 101.100, paragraph (a) is revised to read as follows.

§ 101.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, and 1842(j) of the Social Security Act (42 U.S.C. 1320a–7(c), 1320a–7a, and 1395u(j)).

* * * * *

3. In § 101.102, is amended by revising paragraph (b) to read as follows:

§ 101.102 Basis for civil money penalties and assessments.

* * * * *

(b) The Department may impose a penalty against any person whom it determines in accordance with this part:

(1) Has presented or caused to be presented a request for payment in violation of the terms of:

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged; or

(iii) An agreement to be a participating physician or supplier under section 1842(h)(1); or

(2) Is a non-participating physician under section 1842(j) of the Act and has knowingly and willfully billed individuals enrolled under Part B of Title XVIII of the Act, during the statutory period of the freeze, for actual charges in excess of such physicians, actual charges for the calendar quarter beginning on April 1, 1984.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 13.744, Medicare—Supplementary Medical Insurance Program)

Dated: January 17, 1986.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: March 6, 1986.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86–11054 Filed 5–21–86; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 81–893]

Common Carrier Services; Resolution of Dispute Concerning Reimbursement for Customer Premises Equipment Repair Parts Transferred to AT&T Information Systems, Inc. by the Bell Operating Companies at Divestiture

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order Clarifying Requirements.

SUMMARY: This action clarifies the Commission's requirements regarding the amount AT&T Information Systems, Inc. owes the Bell Operating Companies (BOCs), for customer premises equipment repair parts which it received from the BOCs at divestiture. It was in response to a Petition for Clarification or Further Partial Reconsideration of our *Memorandum Opinion and Order on Reconsideration,* published March 6, 1985 (50 FR 9016).

EFFECTIVE DATE: AT&T–IS is to reimburse the BOCs in accordance with paragraph 7 of this summary, and the appendix, by May 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Burrell, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, CC Docket 81–893, adopted May 6, 1986, and released May 13, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. American Telephone and Telegraph Co., Information Systems, Inc., (AT&T–IS) filed a "Petition for Clarification on Further Partial Reconsideration" of our *Memorandum Opinion and Order on Reconsideration, (Reconsideration Order)* concerning reimbursement to the Bell Operating Companies (BOCs) by AT&T–IS for exempt material expense. Specifically, AT&T–IS requests clarification regarding the definition of the phrase "exempt materials" and, depending on our intended meaning of this phrase, requests that we reconsider the formula used to calculate the amount of AT&T–IS's reimbursement.

2. In the *Second Computer Inquiry* (Computer II) we determined that the BOCs' customer premises equipment (CPE) should be removed from tariff regulation. We instituted our proceeding in Docket No. 81–893 to carry out the detariffing of the embedded CPE. While we were thus engaged in the implementation of our Computer II decisions, the United States District Court for the District of Columbia entered the Modification of the Final Judgement (MFJ) which required AT&T to divest itself of the BOCs and most of the assets held by those companies. Under the Plan of Reorganization which the Court approved, the embedded base of CPE owned by the BOCs was to be transferred to AT&T–IS at divestiture. As a result of the interplay between Computer II and the MFJ, we decided to make detariffing of the BOC embedded base effective at the time of divestiture and were obliged to resolve valuation questions in order to ensure that the transfer was implemented in a manner that was consistent with the rights of ratepayers and investors.

3. On January 30, 1984, AT&T–IS filed a petition for partial reconsideration of this order. AT&T–IS argued that the exempt materials expense in question was associated, not with the transferred CPE investment, but with station connections investment retained by the BOCs at divestiture. In the petition AT&T–IS suggested that the Commission may have intended to refer to "other expensed materials", which are minor items used in the repair and maintenance of CPE instead of "exempt materials". After considering the AT&T–IS petition and the comments of the BOCs and others, this Commission released its *Reconsideration Order* on January 28, 1985. In that order this Commission defined exempt materials and revised our formula for reimbursement of refurbishment costs, but we did not revise the formula for reimbursement of exempt materials expense.

4. On April 5, 1985, AT&T–IS filed a second petition for classification and further partial reconsideration. The BOCs filed comments opposing the AT&T–IS petition. AT&T–IS filed reply comments.

5. AT&T–IS stated that in the *Reconsideration Order* this Commission defined "exempt materials" to refer to the inventory of CPE repair parts transferred to AT&T–IS at divestiture. On the other hand, in their comments the BOCs state that the term "exempt

materials" in the *Reconsideration Order* referred to the BOCs' entire 1983 exempt materials expense, not just the inventory of this account at divestiture.

6. In the *Reconsideration Order*, we explicitly referred to the *inventory* of material and supplies only, and not to the portion of this account which had already been installed on telephone sets either on customer premises or in the telephone company warehouses and vans. AT&T–IS' interpretation of our use of "exempt materials" is correct.

7. In its petition AT&T–IS requested that, if this Commission should interpret "exempt materials" as the cost of the inventory of CPE repair parts transferred to AT&T–IS at divestiture, we should change the reimbursement formula, which currently calls for reimbursement of only 50% of these costs, to 100% of these costs. We agree with AT&T–IS that it is unreasonable to reimburse the BOCs for only half of the value of the exempt materials inventory transferred at the time of divestiture. We therefore order AT&T–IS to reimburse the BOCs for the full value of the exempt materials inventory that was transferred at divestiture.

8. *Valuation of "exempt materials" inventory.* One further matter must be resolved: What was the cost of the exempt material expense inventory at divestiture? In its petition AT&T–IS stated that the BOCs maintained an inventory of complete CPE units sufficient for approximately 32 days, and that repair parts were generally maintained for lesser periods than were the complete CPE units. The BOCs did not dispute AT&T–IS' assertion of a 32 day inventory for complete CPE. They did argue that the inventory period for repair parts is unrelated to that of complete CPE units, but they failed to provide any information as to how we could reasonably determine what the level of repair parts inventory might have been. Absent additional information, we find AT&T–IS' analysis and conclusions to be reasonable. Accordingly, we will use a 32 day inventory level to determine the value of the exempt materials inventory.

9. The BOCs also disputed the AT&T–IS figures as to the total level of the 1983 exempt materials expense. AT&T–IS estimated the figure to be $152 million while the BOCs stated the actual figure was approximately $201 million.

10. In its reply comments AT&T–IS accepted all but $23 million of the BOC 1983 exempt material expense estimate. AT&T–IS claimed that the BOCs had provided insufficient data to support reimbursement based on this amount. Because of the dispute, our staff requested and analyzed additional information and determined that some of the $23 million was, in fact, exempt materials expense related to CPE, but that a substantial portion of the associated equipment was not transferred to AT&T–IS at divestiture, rather it was retained by the BOCs as official equipment. The staff analysis shows that approximately $14 million of the $23 million was associated with equipment retained by the BOCs at divestiture. We therefore find that the $201 million proposed by the BOCs should be reduced by $14 million to approximately $186 million.

11. We estimate the value of the exempt materials expense inventory at divestiture to be the product of the 1983 BOC exempt materials expense and the ratio of the inventory period to 365 days, or $16.3 million. The portion of the $16.3 million attributable to each of the seven Bell Regional Holding Companies has been identified in the Appendix.

12. In their comments, the BOCs state that they are entitled to recover interest charges from January 1, 1984, on the funds used to purchase the materials and supplies defined as "exempt materials." The amounts that have become due for exempt materials transferred with the inventory of CPE transferred is nothing more than a part of a continuing series of adjustments that have become necessary as a result of divestiture. This process is one of great complexity, and one completely without precedent. These adjustments involve obligations whose nature and amounts become clear only as the consequence of the divestiture are identified. We do not believe that interest should accrue on obligations arising from the true-up process until such time as the amount of an obligation, and to whom it is owed, is determined. We consequently reject the BOCs claim that they are entitled to interest from January 1, 1984, on the amounts attributed to exempt materials expenses.

13. Accordingly, it is hereby ordered, that the Petition for Clarification or Further Partial Reconsideration is granted.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Regional Holding Co.	Reimbursement amount ($000)
Ameritech	2,321
Bell Atlantic	2,926
BellSouth	3,136
NYNEX	1,578
Pacific Telesis	2,306

Appendix—Continued

Regional Holding Co.	Reimbursement amount ($000)
Southwestern Bell	2,410
U.S. West	1,553
	16,331

[FR Doc. 86–11284 Filed 5–21–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–24; RM–5164]

Radio Broadcasting Services; Ardmore, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 243A in lieu of Channel 221A at Ardmore, Oklahoma, and modifies the license of Station KEBQ (FM) to specify the new channel, at the request of Waters Broadcasting Company, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–24, adopted April 22, 1986, and released April 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by revising the following entry:

§ 73.202(b) Table of allotments.

* * * * *

(b) * * *

City	Channel No.
Ardmore, Oklahoma	229, 243A

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 86-11488 Filed 5-21-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-252; RM-5011]

Radio Broadcasting Services; Neillsville, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 224A to Neillsville, WI, as that community's second FM service at the request of Foster Broadcasting. Supporting comments were filed by the petitioner and Bob Zank. With this action, the proceeding is terminated.

DATES: *Effective Date:* June 6, 1986. The window period for filing applications will open on June 9, 1986, and close on July 9, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-252, adopted April 22, 1986, and released April 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 is revised to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b) is amended by revising the following:

§ 73.202 Table of allotments.

* * * * *

(b) * * *

City	Channel No.
Neillsville, Wisconsin	224A, 296

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 86-11489 Filed 5-21-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket 85-302; FCC 86-232]

Private Land Mobile Radio Services; Revision and Simplification of Rule Governing Modification Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules governing application procedures for Specialized Mobile Radio Service (SMRS) operators and end-users in the 800 MHz private land mobile band. This amendment reduces the number of instances when modification applications are required to be filed by SMR end-users.

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: W. Riley Hollingsworth, Jr., Chief, Compliance Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket 85-302, adopted May 5, 1986, and released May 12, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On October 17, 1985, the FCC released a Notice of Proposed Rule Making, PR Docket No. 85-302 (50 FR 42732, October 22, 1985) proposing to simplify the requirements contained in Rule § 90.135, 47 CFR § 90.135, which governs license modification procedures in the Private Land Mobile Radio Service. This rule required, among other things, both SMR operators and their end-users to file modification applications when: (i) A base station is sold to another operator; (ii) there is either an increase or decrease in the number of base station channel assignments; and (iii) an end-user obtains service from an additional base station.

2. The Report and Order in PR Docket 85-302 simplifies the Commission's application filing procedures in these three instances by eliminating the requirement that SMRS end-users file modification applications. However, when a base station is sold to another SMR operator, the assignee will be required to file a list of end-users with the Commission and when an end-user obtains service from more than one base station, the end-user will have to so notify the Commission by letter. If an end-user is obtaining service from more than one base station and wishes to be counted for loading purposes on more than one base station, then the end-user must file a modification application.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of the Management and Budget as prescribed by the Act.

Ordering Clause

5. Accordingly, it is ordered, that effective June 18, 1986, Part 90 is amended as shown at the end of this document and that this proceeding is terminated. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Specialized mobile radio service, Application filing requirements.

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.135 is amended by redesignating existing paragraphs (c)(1) and (c)(2) as (c)(2) and (c)(3) respectively, and by adding a new paragraph (c)(1).

§ 90.135 Modification of license.

* * * * *

(c)(1) No notification or application is required where a change noted in paragraphs (a)(1), (a)(6), or (a)(7) is made to an 800 MHz SMRS user license and is necessitated by: (1) An increase or reduction in frequencies assigned to an associated SMRS base station; (ii) the user licensee acquiring service from additional SMRS base stations without making changes in unit loading distribution; (iii) an assignment of the associated SMRS base station without a change of its call sign. If any changes are made that affect a user licensee's unit loading distribution, a Form 574 application must be filed for modification. If the call sign of an assigned SMRS base station will be changed as a result of the assignment, a list of all user licensees having stations loaded on the assigned SMRS must accompany the SMRS base station assignment application.

* * * * *

William J. Tricarico,

Secretary.

[FR Doc. 86-11481 Filed 5-21-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 17]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

Correction

In FR Doc. 86-9647 beginning on page 16325 in the issue of Friday, May 2, 1986, make the following correction: On page 16328, in the first column, in § 571.108, paragraph S4.1.1.30(f), in the sixth line, "HBS" should read "HB3".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60477-60771]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the non-Indian commercial salmon fishery in the fishery conservation zone (FCZ) from the U.S.-Canada border to Cape Falcon, Oregon, at midnight, May 19, 1986, because the chinook salmon quota has been met. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) that the commercial fishery quota of 33,700 chinook salmon for the area was reached by midnight, May 19, 1986. This closure is intended to ensure conservation of chinook salmon.

DATES: Closure of the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours Pacific Daylight Time, May 19, 1986. Comments on this notice will be received until June 3, 1986.

ADDRESS: Comments may be mailed to the Northwest Regional Office, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1986 were published on May 5, 1986 (51 FR 16520). The 1986 May non-Indian commercial fishery for all salmon species except coho in the FCZ from the U.S.-Canada border to Cape Falcon is separated into two seasons, May 1 through May 10, and May 14 through May 31, with both seasons subject to closure upon attainment of a quota of 33,700 chinook salmon. Based on the best available information, the non-Indian commercial fishery catch in the area was projected to reach the quota of 33,700 chinook salmon by midnight, May 19, 1986. This information was not available until after the close of business on Friday, May 16. The Secretary therefore issues this notice closing the non-Indian commercial fishery in the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, at midnight, May 19, 1986. This notice does not apply to treaty Indian fisheries operating in the same area or to other fisheries which may be operating in other areas.

The Regional Director consulted with the Directors of WDF and ODFW regarding this closure. The Directors of WDF and ODFW have confirmed that Washington and Oregon closed the non-Indian commercial fishery in State waters adjacent to this area of the FCZ at midnight, May 17, 1986.

Other Matters

This action is taken under §§ 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 19, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-11593 Filed 5-19-86; 4:55 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 99
Thursday, May 22, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Proposed Amendment No. 1 to Handling Regulation

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit handlers to ship up to 200 hundredweight per day of yellow fleshed Finnish-type potatoes exempt from grade, size, maturity, pack, and inspection requirements, and permit prepeeled potatoes to be handled without a Certificate of Privilege. Yellow fleshed Finnish-type potatoes often fail marketing order requirements although there is a small specialized market for them. There is a limited market for prepeeled potatoes and the committee could obtain information needed to obtain compliance without a Certificate of Privilege. The proposed rule would reduce the regulatory and paperwork burdens of production area handlers.

DATE: Comments must be received by June 23, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been received under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 100 handlers of potatoes will be subject to regulation under the Idaho-Eastern Oregon Potato Marketing Order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden imposed on small entities by this amendment, if present at all, is not significant.

Marketing Agreement No. 98 and Order No. 945 regulate the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon.

The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Potato Committee, established under the order, is responsible for its local administration.

At its meeting on January 15, 1986, the committee recommended that yellow fleshed Finnish-type potatoes be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation. These potatoes are generally small and often misshapen, and frequently do not meet the quality requirements of the order. However, there is a small but specialized market for this product which is often marketed as "organically grown." The committee believes that by permitting handlers to ship up to 200 hundredweight per day of these potatoes a small part of the consuming public could be served and a few growers and handlers could benefit, all with no adverse impact on the marketing of potatoes. There are few growers and even fewer handlers presently involved with this type of potato. If, however, the shipments of this type of potato reached a significant level, the committee would review the situation and would make any necessary changes at that time.

The committee also recommended that handlers be permitted to ship prepeeled potatoes without a Certificate of Privilege. According to committee sources, there is only one active prepeeler in the area, and the committee believes compliance would not present a problem. The market for prepeeled potatoes is limited, with most going to local restaurants throughout the production area and nearby locations. By removing the requirement for obtaining a Certificate of Privilege prior to shipment, the paperwork burden on handlers would be reduced.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.341 is hereby amended by revising (e)(1) introductory text to include "prepeeled potatoes," (f)(1) introductory text to exclude potatoes for prepeeling, and revising (g) to include yellow-fleshed Finnish potatoes as follows:

§ 945.341 Handling regulation.

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b) and (c) of this section shall not be applicable to shipments of prepeeled potatoes as defined in paragraph (h) of this section or potatoes for any of the following purposes:

* * * * *

(f) *Safeguards.* (1) Each handler making shipments of potatoes for charity, experimentation, or export pursuant to paragraph (e) of this section shall.

* * * * *

(g) *Minimum quantity exemption.* Each handler may ship up to but not to exceed, five hundredweight of potatoes, except yellow fleshed Finnish-type potatoes, any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment that exceeds five hundredweight of potatoes. Handlers of potatoes commonly known as yellow fleshed Finnish potatoes may handle up to 200 hundredweight per day of such potatoes relieved of the requirements set forth in paragraphs (a), (b), (c), and (d) of this section.

* * * * *

Dated: May 15, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-11439 Filed 5-21-86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R-0572]

Regulation Y; Conditions Imposed on Acquisition of Thrift Institutions by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of public comments.

SUMMARY: The Federal Reserve Board is soliciting comments on whether the Board should modify and grant relief from the conditions it imposes on the acquisition of thrift institutions by bank holding companies under the Bank Holding Company Act and the Garn-St Germain Depository Institutions Act of 1982 to permit bank holding companies to conduct joint marketing and sales operations between thrift subsidiaries and other affiliates, advertise through thrift subsidiaries the services and products offered by its other affiliates, and engage in certain transactions between thrift and other affiliates.

DATES: All comments should be received by the Board by June 27, 1986.

ADDRESSES: All comments, which should refer to Docket No. R-0572, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC. 20551, or delivered to the courtyard entrance, Eccles Building, 20th Street, NW., between "C" Street and Constitution Avenue, Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430); Melanie L. Fein, Senior Counsel (202/452-3594), or Scott G. Alvarez, Senior Attorney (202/452-3583), Legal Division; or, for users of Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Since 1982, the Board has approved several applications by bank holding companies to acquire thrift institutions pursuant to the provisions of the Garn-St Germain Depository Institutions Act of 1982 and the Bank Holding Company Act ("BHC Act"). In approving these cases, the Board established a number of conditions designed to guard against possible adverse effects that may result from the affiliation of a thrift institution and a bank holding company. *See Citicorp (Fidelity Federal Savings and Loan Association)*, 68 Federal Reserve Bulletin 658 (1982).

These conditions were developed in the context of specific applications pending before the Board and after informal public hearings and public comment that included comments from local and national bank and thrift trade associations, state regulatory authorities, local community groups, competing bank holding companies and thrift institutions, and members of Congress. The conditions have been adopted in each case involving a thrift acquisition by a bank holding company since 1982.

The conditions were designed to assure that the thrift continued to be operated as a separate and independent institution engaged primarily in mortgage lending activities and did not operate in fact as a bank in violation of the interstate banking prohibitions of the BHC Act. The conditions were also designed to prevent the acquiring bank holding company from obtaining an unfair competitive advantage over other banks and thrift institutions by using the thrift to conduct activities not permitted to bank holding companies or conducting banking activities through the thrift that are not permitted to a savings and loan association.

Among the conditions to the Board's approval adopted to accomplish these purposes are restrictions on certain operations between thrift institutions and their bank holding company affiliates. These conditions require that:

(a) the thrift institution be operated as a separate, independent, profit-oriented corporate entity and not be operated in tandem with any other subsidiary of the bank holding company. The thrift institution and bank holding company must limit their operations to effect this condition, and must observe the following conditions:

(1) no banking or other subsidiary of the bank holding company shall link its deposit-taking activities to accounts at the thrift institution in a sweeping arrangement or similar arrangement, and

(2) neither the bank holding company nor any of its subsidiaries shall solicit deposits or loans for the thrift institution, nor shall the thrift institution solicit deposits or loans for any other subsidiary of the bank holding company; and

(b) to the extent necessary to ensure independent operation of the thrift institution and prevent the improper diversion of funds, there shall be no transactions between the thrift institution and the bank holding company or any of its subsidiaries without the prior approval of the appropriate Federal Reserve Bank. This limitation encompasses the transfer, purchase, sale or loan of any assets or liabilities, but does not include infusions of capital by the bank holding company, the payment of dividends or the sale of residential real estate loans from the thrift institution to any subsidiary of the bank holding company.

Citicorp, which has acquired thrift institutions in California, Illinois, and Florida subject to these conditions, has requested relief from the above conditions in three general areas, so as to permit its thrifts to jointly market and sell products and services with other Citicorp affiliates, to cross-advertise the services and products of its affiliates through its thrifts, and to conduct certain limited transactions with other Citicorp affiliates. Citicorp contends that the conditions place the bank holding company and its subsidiary thrift institutions at a competitive disadvantage compared to local thrift insitutions and bank holding companies as well as out-of-state bank holding companies with nonbanking operations in those markets, none of whom are subject to the Board's conditions.

In this regard, Citicorp asserts that it will only conduct cooperative programs that are permissible under the BHC Act between Citicorp's other subsidiaries. Citicorp states that its thrifts will not be operated as banks for purposes of the BHC Act or branches of Citicorp's subsidiary banks for purposes of the McFadden Act. Citicorp states that the conditions in (a)(1) and (a)(2) above assure this by prohibiting the linking of deposit-taking activities of thrift institutions in any arrangement with affiliates, and by prohibiting the solicitation of deposits by the thrift institution for its affiliates or by its affiliates for the thrift institution.

In urging establishment of the conditions, commenters asserted that the restrictions on operations are neccessary to prevent bank holding

companies owning thrift institutions from operating the thrift institution as a bank, and from gaining a competitive advantage over local thrift institutions by permitting the thrift institution to appear to the local consumer to be offering commercial banking and other services that thrift institutions are generally unable or not legally permitted to offer. Commenters argued that joint marketing, cross-advertising of products and services available from affiliates, and transactions with bank holding company affiliates also may permit a thrift to avoid restrictions imposed by the Garn-St Germain Act on the activities of Federal S&Ls. Commenters argue further that the use of joint marketing or cross-advertising may permit the thrift institution to operate in effect as branches for soliciting deposits or loans for its bank affiliates, thereby undermining the interstate banking prohibitions.

The Board believes that the recent requests for relief from the above restrictions on operations present a framework for evaluating whether the conditions have accomplished their intended purposes and the continued appropriateness of the conditions. Commenters are requested to evaluate these matters taking into account, among other things, the significance of the deregulation of interest rate differentials, increasing similarity in the powers of banks and thrifts, and the spread of interstate deposit-taking in both the thrift and banking industries. The Board believes that, in considering action in this area, it is appropriate to seek public comment, in light of the significant public participation that surrounded the original development of the conditions.

Accordingly, the Board seeks public comment on whether the restrictions, other than the restrictions on linking deposit-taking activities and cross-solicitation of deposits, should be retained, modified of removed. In order to permit the Board to evaluate the conditions, the Board requests comment on whether it continues to be necessary and appropriate to limit thrifts affiliated with bank holding companies from conducting activities and marketing services that both thrifts and bank holding companies are otherwise permitted to conduct and market under applicable Federal law in order to accomplish the goals of avoiding the undermining of limitations on interstate deposit-taking and on preventing unfair competition. In this connection, the Board also notes that affiliation of bank holding companies with thrift institutions does not raise the same concerns regarding the separation of banking and commerce that has motivated consideration of similar restrictions on operations between a commercial organization and a bank or thrift affiliate that is contemplated by currently pending legislation and commmenters are requested to take these differences into account in formulating their comments.

The Board also requests comment on whether the deregulation of interest rate differentials, expansion of the powers of thrifts, the growing number of states authorizing interstate banking, and similar events since the formulation of the Board's conditions have affected the need for the restrictions to accomplish their objectives. In this regard, the acquisition of a thrift by a bank holding company that is located in the same state or that is authorized under state law to acquire a bank in the state in which the thrift is located does not raise the concern that the acquisition may evade the BHC Act's limitations on interstate bank acquisitions. The Board requests comment on the extent to which the restrictions should be modified in these situations.

The Board also requests comment on whether modification of the restrictions in any of the following areas would adversely affect their policy goals:

Joint Marketing and Sales: Specifically, the Board requests comment on whether thrift institutions owned by bank holding companies should be permitted to conduct joint marketing and sales activities with their bank holding company affiliates. For example, should a thrift institution and a bank holding company real estate lending affiliate be permitted to jointly solicit business from a real estate developer, with the real estate lending affiliate offering to provide construction lending for a building project and the thrift offering to provide end loan financing for prospective purchasers of the real estate project. In addition, should a holding company affiliate be permitted to introduce existing corporate customers to the thrift institution for the purpose of obtaining relocation assistance or other products and services available through the thrift institution.

In this regard, the Board requests comment on whether any adverse effects that may result from conducting joint marketing and sales activities are sufficiently limited by retaining the condition prohibiting the linking of deposit-taking activities, and by requiring that the terms and pricing of services not be tied in any way and be the same regardless of whether the prospective customer obtains services from both the thrift institution and its affiliate or from only one of the institutions.

Cross Advertising and Referral: The Board also requests comment on whether thrift institutions should be permitted to offer access to services and products of its bank holding company affiliates, and bank holding company affiliates should be permitted to offer access to services and products offered by the thrift institutions. For example, should a thrift institution be permitted to make applications available to its customers for credit cards marketed by and student loans underwritten by its bank holding company affiliates; advertise the products and services of its affiliates by placing brochures and posters in branch offices of the thrift institution and by including advertising inserts in monthly statements of customers of the thrift institution; provide customer lists to its bank holding company affiliates; and, refer its customers to affiliates and provide promotional material and a toll-free number for the affiliate. Similarly, should bank holding company affiliates of the thrift institutions be permitted to advertise the products and services of the thrift institutions.

The Board also seeks comment on whether any adverse effects that may result from cross-advertising and referral activities may be limited by maintaining the current conditions prohibiting the thrift institution from soliciting deposits for its bank holding company affiliates and prohibiting bank holding company affiliates from soliciting deposits for the thrift institution, and by imposing conditions preventing the thrift institution from providing credit analysis in connection with loans provided to customers of the thrift by a bank holding company affiliate, from disbursing credit funds on such loans, and from otherwise acting as a branch or loan production office of any holding company affiliate.

Transactions with Affiliates: The Board also requests comment on whether thrift institutions should be permitted to use services and products of bank holding company affiliates for the benefit of the thrift or its customers. For example, should a thrift institution be permitted to locate a branch office in a building owned by an affiliate and in which holding company affiliates also have offices with separate access?

Board of Governors of the Federal Reserve System, May 16, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-11400 Filed 5-21-86; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ANE-50]

Airworthiness Directives; Allison Gas Turbine Division Model 501-D13, -D13A, -D13D, and -D13H Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require replacing certain thrust sensitive switch assemblies installed in Allison Gas Turbine Division Model 501-D13, -D13A, -D13D, and -D13H engines. The proposed AD is needed to prevent unwanted autofeather (resulting in loss of thrust) or the inability to autofeather when required (resulting in excessive drag in the case of an engine failure), either of which could result in loss of the aircraft. A previous NPRM which provided a choice of two compliance action options has been withdrawn because it became apparent that one of the specified options did not improve airworthiness.

DATE: Comments must be received on or before June 23, 1986.

ADDRESS: Comments on the proposal may be mailed in duplicate to: Office of Regional Counsel, FAA, ATTN: Rules Docket No. 86-ANE-50, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to the above address, to Room No. 311.

Comments delivered must be marked: Docket No. 86-ANE-50.

Comments may be inspected at Room No. 311 on weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

The applicable service bulletin may be obtained from Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, Indiana 46206-0420.

A copy of this bulletin is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 86-ANE-50, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ty Krolicki, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, FAA, 2300 East Devon Avenue, Des Plains, Illinois 60018; telephone (312) 694-7032.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contract regarding the substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 86-ANE-50." The post card will be date/time stamped and returned to the commenter.

The FAA has determined that Allison Model 501-D13, -D13A, -D13D, and -D13H turboprop engine reduction gear assemblies with thrust sensitive switch assembly P/Ns 6792891, 6794122, 6794359, 6807776, 23005483, or 23005485 are subject to malfunction. Failure of the thrust sensitive switch can result in contact being made internally causing unwanted autofeather or in an electrical short circuit which opens a circuit breaker rendering the autofeather system inoperative.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require replacement of the thrust sensitive switch assemblies with a different P/N assembly containing a single carbon contact switch instead of the two microswitches contained in each assembly being replaced. Extensive experience obtained in operation of T56 series engines, the military counterpart of the civilian 501 series engine, which utilize the carbon contact switch shows that it improves reliability by a factor of at least ten, compared to the microswitch.

The FAA had previously published an NPRM on this matter on January 17, 1983, Docket No. 82-ANE-50. One of the proposed compliance action options contained in that NPRM was replacement of the thrust sensitive switch assembly with P/N 23005483 or P/N 23005485 in accordance with Allison Commercial Engine Alter Bulletin CEB-A-73-82. The NPRM was held abeyance after it became apparent that the replacement switches specified by this bulletin did not improve airworthiness, in that they were experiencing failures and premature wear. Forty-three rejections of the replacement switches specified in CEB-A-73-82 were reported. Allison cancelled CEB-A-73-82 on March 6, 1984. The FAA is withdrawing the January 17, 1983, NPRM in a separate action.

Conclusion

The FAA has determined that only 11 small entities will be affected significantly by this regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

Allison Gas Turbine Division, General Motors Corp. (Allison, formerly Detroit Diesel Allison): Applies to Allison 501-D13, -D13A, -D13D, and -D13H engine reduction gear assemblies equipped with thrust sensitive switch assembly, P/Ns 6792691, 6794122, 6794369, 6807776, 23005483, or 23005485.

Compliance is required within 60 days after the effective date of this AD, unless already accomplished.

To prevent the possibility of unwanted autofeather or the inability to autofeather when required, accomplish the following:

Replace thrust sensitive switch assemblies, P/Ns 6792691, 6794122, 6794369, 6807776, 23005483, and 23005485 with P/N 6870599, a single carbon contact switch assembly, in accordance with the detailed instructions provided in Allison Commercial Engine Alert Bulletin CEB-A-73-34, Revision 2, dated October 1, 1984, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FARs 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliances with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60021.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's service bulletin identified and described in this document.

Issued in Burlington, Massachusetts, on March 10, 1986.

Clyde M. DeHart,

Acting Director, New England Region.

[FR Doc. 86-11473 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 43 and 91

[Docket No. 22320]

Inoperative Instruments or Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the public concerning the operation of aircraft in general aviation operations with inoperative instruments and equipment. The information and views learned at the meeting will be used by the Federal Aviation Administration to address pending issues raised in Notice of Proposed Rulemaking (NPRM) No. 81-14 (46 FR 52278; October 26, 1981), an NPRM concerning the operation of aircraft with inoperative instruments and equipment. The information gathered at this meeting may also be used to explore possible alternatives to the minimum equipment list concept that may provide increased flexibility for those aircraft operators with inoperative instruments and equipment.

DATES: Written material to be presented orally during the meeting on June 17, 1986, must be submitted to the FAA by June 5, 1986. Later requests to make presentations will be accepted on a space-available basis only. Persons or organizations not able to attend this meeting may mail their comments (in duplicate) to the Federal Aviation Administration at the address noted in the "ADDRESSES" section of this document. This meeting is scheduled to begin at 9 a.m. and adjourn at 3 p.m. on June 17, 1986.

ADDRESSES: The meeting will be held at FAA Headquarters, Room 1010, 800 Independence Avenue, SW., Washington, DC. Comments on the subject matter of this meeting may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Docket No. 22320, 800 Independence Avenue, SW., Washington DC 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments must be marked, "Docket No. 22320." Comments may be inspected at Room 916 between 8:30 a.m. and 5 p.m., Mondays through Fridays (excluding Federal holidays).

FOR FURTHER INFORMATION CONTACT: For requests to be heard at the meeting and for questions about the logistics of the meeting, contact Miss Jean Casciano, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 426-8357.

For questions concerning the subject matter of this meeting, contact Mr. John Lynch or Mr. Thomas E. Stuckey, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 426-8150.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1979, the Federal Aviation Administration (FAA) issued Amendment No. 91-157 (44 43714; July 26, 1979). This amendment added a new § 91.30 for multiengine aircraft to be operated with inoperative instruments and equipment. Also, this amendment partially addressed the proposed establishment of Equipment Deviation Lists for Parts 23, 25, 27, and 29 aircraft as proposed in Notice of Proposed Rulemaking (NPRM) No. 75-20, "Type Certification Standards; Equipment Deviation List" (40 FR 22110; May 20, 1975). New § 91.30 applied only to operators of multiengine aircraft and was consistent with § 135.179. However, the FAA determined that based on the experience gained with §§ 91.30 and 135.179, it would reevaluate the need for a new minimum equipment list (MEL) rule for the other types of aircraft. Although this new § 91.30 was to become effective on November 1, 1979, it was suspended indefinitely by Amendment No. 91-160 (44 FR 62384; November 1, 1979) to permit time for the development of an adequate number of master minimum equipment lists (MMEL) for multiengine aircraft and to avoid confusion among aircraft operators regarding operation with inoperative instruments and equipment.

On September 16, 1981, FAA issued NPRM No. 81-14 (46 FR 52278; October 26, 1981). This notice proposed to permit the operation of powered civil aircraft with inoperative instruments and equipment that the Administrator found were not essential for the safe operation of the aircraft under certain conditions. The proposal included provisions to consolidate MEL requirements that were contained in Parts 121, 125, and 135 of the Federal Aviation Regulations (FAR) into Part 91. It also proposed to allow the operation of aircraft without an MEL with certain instruments or items of equipment inoperative in accordance with an FAA-approved aircraft flight manual or FAA-approved operating limitations statement. This proposal would have permitted the operation of an aircraft with certain instruments or items of equipment inoperative, if the inoperative instruments or equipment were properly identified, an appropriate entry was made in the aircraft maintenance record, and the maintenance record was available to the pilot before the flight. Even though this notice received mostly favorable comments, the general aviation community still had concerns and objections, and the FAA decided that the notice needed further changes.

The reinstatement of § 91.30 of the FAR effective March 13, 1986 (50 FR 51188; December 13, 1985), allowed Part 91 operators of multiengine aircraft,

under certain conditions, to operate their aircraft with inoperative instruments and equipment. The FAA, in making the decision to reinstate § 91.30, determined that the reasons for suspending the rule no longer existed since an adequate number of MMEL's had been developed. As was the case when § 91.30 was originally adopted, aircraft for which an MMEL had not been developed were excluded. Considering the significant number of exemptions sought and granted since § 91.30 was suspended, the FAA decided that to provide immediate relief to operators of multiengine aircraft, it would reinstate § 91.30 and take additional time to address the unresolved questions regarding other types of aircraft.

Before the FAA reinstated § 91.30, operators desiring use of an MEL petitioned for an exemption from the regulations. This procedure allowed operators to obtain individual approval to operate multiengine aircraft with inoperative instruments and equipment. The FAA was able to gain valuable information on the usefulness and safety aspects of MEL's when used in Part 91 operations during this time period. Before the FAA reinstated § 91.30, over 350 individual petitions for exemption were processed and granted.

The FAA recognizes that flight operations can be safely conducted with certain instruments and equipment inoperative under specified conditions; thus, the MEL concept was adopted. Presently, the MEL concept extends to air carrier, commercial, and general aviation operators of multiengine aircraft, but only if that type of aircraft has an MMEL.

Throughout this MEL rulemaking process, the FAA has worked closely with the general aviation community to encourage public comments. The FAA, by holding this meeting, is establishing a review process to further encourage the public to participate in a meaningful dialog concerning the further development of the MEL concept and alternatives to that concept. The FAA intends to examine the effectiveness of § 91.30 and solicit ideas and opinions from the public on the efficacy of broadening and extending the MEL concept and/or alternatives to the operators of all categories of aircraft. In consideration of this initiative, the FAA requests comments on the safety issues involved when permitting aircraft to be dispatched with certain inoperative instruments and equipment and, also, on the following questions.

1. To what extent do your operations require rulemaking to permit operations with inoperable instruments and equipment?

2. Current § 91.30 applies only to those multiengine aircraft for which an MMEL has been developed. Should other regulatory revisions be developed to provide for similar relief for other types of aircraft for which an MMEL has not been developed? If so, what revisions do you recommend?

3. The FAA's alternative to the MEL concept was proposed in NPRM No. 81-14. This notice intended to permit Part 91 operators of those types of aircraft for which an MMEL had not been developed to operate their aircraft with inoperative instruments and equipment under certain conditions. Does a need exist to continue to pursue an alternative to the MEL concept for these aircraft? If so, explain your ideas and thoughts on the method you would recommend.

The FAA requests the participation of all interested persons to make this a meaningful review. All comments will be considered in any future rulemaking action by the FAA.

Requests To Be Heard

Persons wishing to make formal presentations at the meeting are requested to provide the FAA an abstract or summary of the material to be presented by June 5, 1986. The material should include an estimate of the time needed to make the presentation and should be mailed to the person identified in the "FOR FURTHER INFORMATION CONTACT" section of this document.

Following receipt of the presentation material, the FAA will develop a detailed agenda that will be available at the meeting. Requests for time to make a presentation received after June 5, 1986, will be honored on a space-available basis and may not appear on the written agenda.

Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures that are established to facilitate the workings of the meeting:

1. Registration will be from 8 a.m. to 8:45 a.m. on June 17, 1986.

2. The meeting will be open to all persons who register. If necessary to complete the agenda, the meeting may be accelerated to enable adjournment at the scheduled time.

3. A panel of FAA personnel who are involved in this rulemaking project will be present to answer questions.

4. The FAA will consider all material presented at the meeting by participants or comments forwarded to the public docket. Position papers or other handout material may be accepted at the discretion of the chairperson. However, enough copies should be provided for distribution to all participants.

5. Statements by FAA personnel at the meeting will be made to facilitate discussion and should not be taken as expressing a final FAA position.

6. The meeting will be recorded by a court reporter. Anyone interested in purchasing a copy of the transcript should contact the court reporter directly.

Issued in Washington, DC, on May 16, 1986.

Carol S. Rayburn,

Acting Director of Flight Standards.

[FR Doc. 86-11476 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 60228-6028]

General License GTDA; Technical Data Available To All Destinations

Correction

In FR Doc. 86-11106 beginning on page 17986 in the issue of Friday, May 16, 1986, make the following correction: On page 17988, in the first column, in § 379.1(b)(2)(iv), in the fifth line, "repaid" should read "repair".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Proposed Customs Regulations Amendment Relating to Carrier Liabilities for Unlawful Lading, Exportation or Disposition of Export-Controlled Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the assessment of liquidated damages under the international carrier's bond for unlawfully lading, exporting, or disposing of merchandise which is subject to the export control laws. Under the new bond provision, Customs would demand the redelivery of merchandise which has been seized or detained for violations of the export

control laws. Customs would also demand the redelivery of merchandise which has been exported and is subsequently discovered or suspected to be in violation of the export control laws, but which is still in the carrier's possession on the date of the demand for redelivery. Failure to comply with these demands would result in the assessment of liquidated damages in an amount equal to three times the value of the merchandise that is not redelivered. This amendment is necessary for more effective enforcement of the export control laws.

DATE: Comments must be received on or before July 21, 1986.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Elaine Colley, Entry Procedures and Penalties Division (202-566-8317), or William Lawlor, Carriers Drawback and Bonds Division (202-566-8858), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations contained in title 15, Code of Federal Regulations, Parts 368 through 399 (15 CFR Parts 368–399), and the International Traffic in Arms Regulations found in title 22, Code of Federal Regulations, Parts 120 through 130 (22 CFR Parts 120–130), provide for sanctions in the event that export-controlled merchandise is exported or attempted to be exported without a valid license issued by either the Department of Commerce of the Department of State. Among these sanctions are the issuance of monetary penalties against those responsible for the illegal attempted or completed exportation, seizure and forfeiture of the merchandise involved, and subsequent denial of export privileges. In addition, title 22, United States Code, section 401 (22 U.S.C. 401), provides for the seizure and detention of any vessel, vehicle or aircraft which is being used or attempted to be used or has been used in an illegal exportation of munitions of war or other export-controlled merchandise. Also, title 18, United States Code, section 549 (18 U.S.C. 549), provides for criminal penalties for unlawfully removing any merchandise from Customs custody.

Customs has been delegated the authority to enforce the Export Administration Regulations and the International Traffic in Arms Regulations pursuant to 15 CFR 388.8 and 22 CFR 127.4, respectively. Under this authority Customs may demand, pursuant to 15 CFR 388.8, the redelivery or retention of merchandise which is known or suspected to be in violation of the export control regulations.

Customs also has the authority to enforce the export control regulations by virtue of the authority granted the Secretary of the Treasury, pursuant to 22 U.S.C. 401, to seize and forfeit illegal exportations of war materials and other articles, as well as the conveyances used to export the articles. Also, under section 113 of the Export Administration Amendments Act of 1985 (Pub. L. 99-64), effective July 12, 1985, Customs was given additional authority to enforce the export control regulations.

Customs has been enforcing the export control laws and regulations under its Operation Exodus program. This enforcement effort has necessarily depended, to a large extent, upon the cooperation of the exporting carriers in (1) not exporting or otherwise disposing of merchandise which Customs has placed under seizure of detention pending a determination as to whether a valid export license covering the merchandise has been issued and (2) redelivering to Customs or retaining merchandise which has been exported and is subsequently found or suspected to be in violation of the export control laws. During the past two years, however, Customs has become aware that some carriers are exporting detained or seized merchandise, despite the presence of warning labels on the merchandise indicating that it is under Customs seizure or detention, and despite notification to the carrier management of the detention or seizure. There have also been instances where carriers have not complied with Customs demand to redeliver or retain already exported merchandise subsequently found or suspected to be in violation of the export control laws, even though it is still in the carriers' possession.

Although the carriers' action may subject the conveyance to seizure and forfeiture under 22 U.S.C. 401 for its use in the illegal exportation, Customs views this as a drastic remedy which would entail much time and resources expended in effecting the seizure. Instead, it is believed that seeking liquidated damages under the international carrier's bond for exportations in violation of the export control laws, would be more expeditious, effective, and less of a drain upon Customs resources. Also, this sanction is within Customs control and can be used for every transgression, whereas a seizure action would require the U.S. Attorney to institute legal proceedings which is very time consuming.

The provisions of the international carrier's bond are contained in § 113.64, Customs Regulations (19 CFR 113.64). In § 113.64, however, there is no existing provision setting forth liquidated damages for illegal exportations of export-controlled merchandise. Customs has the authority to enact such a provision by virtue of section 623(a), Tariff Act of 1930, as amended (19 U.S.C. 1623(a)), which provides that "In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce." Pursuant to 15 CFR 388.8 and 22 CFR 127.4, Customs is authorized to enforce the export control laws and regulations. Under the authority of 19 U.S.C. 1623(a), Customs may therefore require a bond to assure compliance with these laws and regulations.

Proposal

Accordingly, Customs proposes to amend Part 113, Customs Regulations (19 CFR Part 113), to include a provision in the international carrier's bond that sets forth liquidated damages for illegal exportations under the export control laws. It is proposed to add a new paragraph (e) to § 113.64 (19 CFR 113.64), that would require the carrier to redeliver to Customs, within 30 days after a demand for redelivery: (1) Illegally disposed of, laded or exported merchandise that has been placed under seizure or detention; and/or (2) merchandise which has been exported and is subsequently found or suspected to be in violation of the export control laws, but which is still in the carrier's possession. The demand for redelivery would be made within 20 days of Customs discovery of the unlawful or suspected unlawful disposition or exportation. Any demand under proposed paragraph (e) would specify the terms and conditions of compliance. If the carrier fails to comply with the redelivery notice, it would be liable for liquidated damages in an amount equal to three times the value of the merchandise that is not redelivered.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 113

Carriers, Exports, Bonds.

Proposed Amendment

It is proposed to amend Part 113, Customs Regulations (19 CFR Part 113), as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484.

2. It is proposed to amend § 113.64 by adding a new paragraph (e), to read as follows:

§ 113.64 International Carrier Bond Conditions.

* * * * *

(e) *Unlawful disposition, lading or exportation.* (1) Principal agrees that it will not allow seized or detained merchandise, marked with warning labels of the fact of seizure or detention, to be placed on board a vessel, vehicle or aircraft for exportation or to be otherwise disposed of without written permission from Customs, and that if it fails to prevent such placement or other disposition, it will redeliver the merchandise to Customs within 30 days, upon demand made within 20 days of Customs discovery of the unlawful placement or other disposition.

(2) Principal agrees that it will act, in regard to merchandise in its possession on the date the redelivery demand is issued, in accordance with any Customs demand for redelivery made within 20 days of Customs discovery that the merchandise was or may have been exported in violation of the export control laws.

(3) Obligors agree that if the principal defaults in either of these obligations, they will pay, as liquidated damages, an amount equal to three times the value of the merchandise which was not redelivered.

William von Raab,
Commissioner of Customs.

Approved: May 8, 1986.
Francis A. Keating, II,
Assistant Secretary of the Treasury.
[FR Doc. 86-11535 Filed 5-21-86; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 86-56]

Safety Zone Regulations; Northville Industries Offshore Platform, Riverhead, Long Island, NY

AGENCY: Coast Guard, DOT.
ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone around the Northville Industries Offshore Platform, Riverhead, Long Island, New York. This zone is needed to protect vessels from the possible dangers and hazards associated with a Liquid Petroleum Gas (LPG) Carrier, while it is moored at the Northville Industries Offshore Platform. Entry into this area will be prohibited unless authorized by the Captain of the Port, New Haven.

DATES: Comments must be received on or before July 7, 1986.

ADDRESSES: Comments should be mailed to U.S. Coast Guard, Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512. The comments and other materials referenced in this notice will be available for inspection and copying at 120 Woodward Avenue, New Haven, CT. Normal office hours are between 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTjg MacMillan, Captain of the Port, New Haven (203) 773-2464.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CDG3 86-56) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade R. O. MacMillan, Project Officer for the Captain of the Port, and Ms. M. A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulation

This action is being considered in view of the hazards associated with liquid petroleum gas. Liquid petroleum gas is generally carried aboard vessels as a liquid at reduced temperatures. In its natural state it is a colorless gas with a weak odor. This proposed safety zone is part of an overall safety program implemented by the Captain of the Port, New Haven, CT to enhance the safety of liquefied petroleum gas operations. Under present procedures, the Captain of the Port, New Haven issues a temporary safety zone each time an LPG vessel is moored at Northville Industries Offshore Platform, specifying the time and date it will be moored and describing the area of the zone. The area described is the same each time since these LPG transfers are at the Northville Industries Offshore Platform. Because of the recurring nature of the zone, the Coast Guard proposes to issue a permanent safety zone regulation. This safety zone will be in effect whenever an LPG vessel is moored at the

Northville Industries Offshore Platform and will remain in effect until the vessel departs.

Mariners will be provided notice of scheduled arrivals and departures via a Marine Safety Information Broadcast Notice to Mariners. For each LPG vessel arrival the Captain of the Port, New Haven has exercised his authority and established a temporary safety zone describing conditions similar to those contained in this notice of rulemaking. The Coast Guard believes that establishing this safety zone as a permanent rule will enhance its effectiveness through greater dissemination. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR Part 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary since the theory and practice of establishing a safety zone around an LPG vessel has been in effect for a few years. The maritime community in the area is accustomed to planning vessel movement around scheduled LPG vessel Safety Zones with minimum economic impact. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

PART 165—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.305 is added to read as follows:

§ 165.305 Northville Industries Offshore Platform, Riverhead, Long Island, New York—Safety Zone.

(a) The following area is established as a Safety Zone during the specified condition:

(1) The waters within a 500 yard radius of the Northville Industries Offshore Platform, Long Island, New York, 1 mile North of the Riverhead shoreline at 41°00" N., 072°36" W., while a Liquefied Petroleum Gas (LPG) vessel is moored at the Offshore Platform. The Safety Zone remains in effect until the LPG vessel departs the Offshore Platform.

(b) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(c) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing notice of scheduled moorings at the Offshore Platform of LPG vessels via Marine Safety Information Radio Broadcast.

Dated: May 6, 1986.

D.H. Lyon,

Commander, U.S. Coast Guard, Captain of the Port, New Haven.

[FR Doc. 86-11536 Filed 5-21-86; 8:45 am]

BILLING CODE 7910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3019-2]

Michigan; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Delayed Determination on Michigan's Application for Final Authorization under the Resource Conservation and Recovery Act.

SUMMARY: This notice announces the decision by the United States Environmental Protection Agency (U.S. EPA) to delay its determination on granting final authorization to the State of Michigan. Michigan has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). In the February 11, 1986, **Federal Register** (51 FR 5095), U.S. EPA proposed to tentatively approve the Michigan final authorization application upon receipt and review of the State's Official Response to U.S. EPA's Consolidated Comments on the application. Under 40 CFR 271.201(e), U.S. EPA's decision should have been issued by May 7, 1986; however, U.S. EPA is presently waiting for receipt of the Official Response from the State. U.S. EPA will publish a final determination in the **Federal Register** after receipt and review of the State's Official Response.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Sharrow, Regulatory Specialist, U.S. EPA, Region V, Waste Management Division, 230 S. Dearborn Street, 5HS–JCK–13, Chicago, Illinois 60604, (312) 886–3718 (FTS: 8–886–3718).

SUPPLEMENTARY INFORMATION: Michigan did not apply for interim authorization to operate its hazardous waste program in lieu of the Federal program. However, on July 24, 1985, Michigan submitted a draft application for final authorization. The complete application for final authorization was submitted on November 7, 1985.

On January 22, 1986, U.S. EPA transmitted Consolidated Comments to Michigan on the State's complete application for final authorization. In the February 11, 1986, **Federal Register** (51 FR 5095), U.S. EPA proposed to tentatively approve Michigan's application, provided the State adequately responded to U.S. EPA's Consolidated Comments. A public hearing on U.S. EPA's tentative decision was held on March 14, 1986.

In the tentative approval, U.S. EPA identified five areas that required clarification. Under 40 CFR 271.20(e), U.S. EPA should have published a final decision by May 7, 1986; however, we are presently waiting for receipt of the State's Official Response to U.S. EPA's Consolidated Comments. U.S. EPA will publish a final determination in the **Federal Register** after receipt and review of the Official Response from the State of Michigan.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this notice will not have a significant economic impact on a substantial number of small entities. This notice announces to the public U.S. EPA's postponement of its determination on granting final authorization to Michigan. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of Section 3, Executive Order 12291.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.

Dated: May 13, 1986.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 86-11519 Filed 5-21-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

Smoking Regulations

AGENCY: General Service Administration.

ACTION: Proposed rule.

SUMMARY: This regulation provides for revised smoking regulations in buildings controlled by GSA. It has become necessary to regulate smoking in certain areas of Federal buildings because smoke in a confined area may be irritating and annoying to non-smokers. In addition, the Office of the Surgeon General has indicated that current scientific evidence suggests that exposure to ambient tobacco smoke can be hazardous to non-smokers and may create a potential hazard to those suffering from heart and respiratory diseases or allergies. GSA also recognizes the right of individuals to smoke in such buildings provided such action does not cause discomfort or unreasonable annoyance to non-smokers or infringe upon their rights. The intent of this regulation is to provide a reasonably smoke-free environment for those working and visiting GSA-controlled buildings.

DATE: Comments must be received on or before July 21, 1986.

ADDRESS: Written comments should be sent to the General Services Administration (PMPS), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Marsden, Acting Director, Facility Management Division, (202-566-1563).

SUPPLEMENTARY INFORMATION: The General Service Administration has determined that this rule is not a major rule for the purpose of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximum the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-20

Smoking, Federal buildings and facilities.

GSA proposes to amend Part 101-20 as follows:

PART 101-20—MANAGEMENT OF BUILDINGS AND GROUNDS

1. The authority citation for Part 101-20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)

Subpart 101-20.1—Building Operations, Maintenance, Protection, and Alterations

2. Section 101-20.109-10 is revised to read as follows:

§ 101-20.109-10 Regulation of smoking.

Regulations for controlling smoking in GSA-controlled buildings and facilities are set forth below. Agencies are encouraged to develop additional guidelines for internal use for action when violations of these regulations occur. Nothing in these regulations precludes an agency from establishing more stringent guidelines. For purposes of these regulations, general office space is defined as space occupied by personnel performing their daily work functions; this includes, but is not limited to: ADP areas, mail rooms, file rooms, duplicating areas, court and jury rooms, office space, etc.

(a) Smoking is prohibited in the following areas, except as designated pursuant to paragraph (b)(1) below:

(1) General office space.

(2) Auditoriums, classrooms, and conference rooms.

(3) Elevators. "No smoking" signs shall be posted in elevators, adequate receptacles shall be placed outside the entrances.

(4) Corridors, lobbies and restrooms.

(5) Medical care facilities such as medical clinics and health units.

(6) Libraries.

(7) Hazardous areas. Each agency shall post and enforce "no smoking" rules in any location under its jurisdiction which involves flammable liquids, flammable gases, or flammable vapors, or in all other locations where there is a collection of readily ignitible, combustible materials.

(b) Smoking is permitted in the following designated "smoking areas:

(1) Agency heads will be responsible for establishment of designated "smoking" areas, in addition to monitoring and controlling these areas. Agencies are responsible for ensuring that designated "smoking" areas are identified by appropriate signs. Agencies in multi-tenant buildings are encouraged to work together to identify these designated "smoking" areas.

(2) "Smoking" areas shall be established in cafeterias, including Randolph-Sheppard vending facilities and automatic vending areas. These areas shall be designated as "smoking" areas by each buildings manager, in collaboration with the heads of the occupant agencies. The areas designated shall be based upon an estimate of the number of smoking and non-smoking patrons served. This may be adjusted on the basis of local experience. The designated "smoking" areas shall be identified by appropriate signs.

(3) A private office may be declared a "smoking" area by the agency.

(c) Agencies are responsible for providing adequate ash trays or receptacles in the designated "smoking" areas.

(d) Suitable, uniform signs reading "No Smoking Except in Designated Areas" shall be placed on or near entrance doors of buildings subject to these regulations. It should not be necessary to display a sign in every room of such buildings.

(e) An agency is not required by this regulation to make any expenditures for structural changes to accommodate the preferences of non-smoking employees.

Dated: April 17, 1986.

W.F. Sullivan,

Commissioner, Public Buildings Service.

[FR Doc. 86-11670 Filed 5-21-86; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 86-020]

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the Great Lakes Pilotage Regulations. These amendments propose an increase in the basic pilotage rates of thirteen percent in District 1 and six percent in District 3. No change is proposed in District 2. These changes are proposed in order to increase the revenue received by the pilot organizations so that they may meet their operating costs. They also provide for comparability between the three Districts regarding the recognition of the types of expenses incurred in providing pilotage services.

DATE: Comments must be received on or before June 23, 1986.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 86-020), U.S. Coast Guard, Washington DC 20593. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington 20593, (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426-2985.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 86-020), the name and address of the persons submitting the comments, and the specific section of the proposal to which each comment is addressed. Persons desiring acknowledgement that their comment has been received should enclose a stamped, self addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal. No public hearings are planned, but they may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Merchant Marine Safety, and Commander Ronald C. Zabel, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The Coast Guard is proposing to increase U.S. Great Lakes Pilotage rates by 13% in District 1 and by 6% in District 3. No change is proposed in District 2. The rates for §§ 401.420 and 401.428 which provide charges for cancellation, delay or interruption in services, and charges for carrying a pilot beyond a normal change point, have been increased by 13%. The amount of revenue generated by these two rate provisions is minimal and thus the Coast Guard does not believe it is necessary to individualize these two rates for each District.

U.S. registered pilots are private entrepreneurs, and as such, their services must be priced so as to enable them to recover the costs of providing that service.

The Coast Guard has completed a review of revenues earned and expenses incurred by the three U.S. Great Lakes pilot organizations and has developed estimated expenses and revenue requirements for 1986 taking into account the sum of all operating costs. Estimated revenue requirements include administration, dispatching, pilot boats, pilot travel, pilot training, and target pilot compensation. A guideline followed in the development of the pilot compensation figure is that the target compensation for U.S. pilots should be comparable to the earnings of their licensed counterparts on U.S. Great Lakes vessels. A further guideline is that pilots providing services in designated waters (46 CFR 401.405) should earn compensation equivalent to that of a master on a U.S. Great Lakes vessel, and pilots providing services in undesignated waters (46 CFR 401.410) should earn compensation equivalent to that of a first mate on a U.S. Great Lakes vessel.

Projected traffic for 1986 was derived by reviewing traffic trends of prior years and by obtaining the views of knowledgeable interested persons including the pilots and the users of pilotage services. That analysis suggested that the number of vessels, their size, and route patterns for 1986 are expected to be similar to those in 1985 although in 1985 there was a substantial decrease for the previous year. Estimated revenue requirements, taken in conjunction with projected traffic volume, yield the basic rates that are required to enable the U.S. pilotage system to be self-supporting.

During this rate review, special emphasis was placed upon an examination of the concepts of pilot workload standards and target pilot compensation. This review also included special consideration of the administrative expenses in District 1 for which recovery should be authorized. This is in response to a 1984 request by district 1 to insure that the manner in which the 3 U.S. pilot associations organize themselves is not a factor in how such expenses are treated. The preamble to the final rule establishing pilotage rates for the 1985 season recognized certain non-uniform conditions but an across the board rate adjustment was made pending this current review.

The review process involved discussions between Coast Guard officials and representatives of industry and labor organizations regarding the compensation of Great Lakes masters and mates, and meetings between Coast Guard officials and the pilots in each of the three Districts to discuss compensation targets, workload standards and expense items. Coast Guard officials also accompanied pilots on pilotage assignments in each District in order to assess general operating conditions.

As indicated, the proposed pilotage rates were developed by determining the following for each Area and District:

a. Total operating costs.

b. Target pilot compensation (based on comparability with counterparts on U.S. Great Lakes vessels, and whether the services are provided in designated or undesignated waters).

c. The number of pilots required (based on the pilot workload standards of 1,000 hours per pilot per season in designated waters, and 2,000 hours per pilot per season in undesignated waters).

d. The individual target pilot compensation figure multiplied by the number of pilots required equals total target pilot compensation.

e. Total operating costs plus total target pilot compensation equals the total cost to be recovered.

f. Total estimated revenue at existing rates (in this instance we have estimated 1986 revenue to be the same as 1985 revenue).

g. Where total estimated costs exceed total estimated revenue, the difference between them is the additional amount

by which the rates must be increased to permit the pilot organizations to cover all of their costs.

Table 1 shows the derivation of proposed target pilot compensation for 1986.

Considering comparability with U.S. Great Lakes masters and first mates, the Daily Rate used in computing the master's and first mate's wages is an average of all master's and first mate's wages paid on Great Lakes vessels in 1985. These wages are not expected to increase in 1986.

TABLE 1—TARGET PILOT COMPENSATION

Union compensation component	Master	First mate
Daily Rate:		
$295.25 x 300 days	$81,575	
$124.49 x 300 days		$37,347
Bonus:		
10% of daily rate x 200 days	4,108	2,490
Medical	3,878	3,878
Pension	8,470	8,470
Holiday pay (5 days)	0	934
Clerical	0	1,252
Self unloader differential	0	300
Saturday and Sunday overtime	0	3,267
Total	[1] 77,829	[2] 58,028

[1] Target pilot compensation for designated waters.
[2] Target pilot compensation for undesignated waters.

Revenue for 1986 at current rates is estimated to be the same as 1985. The 1985 revenue was obtained from the three pilot organizations shortly after the close of the 1985 season.

The Coast Guard reviewed the pilot workload standards of 1,000 hours per pilot per season in designated waters, and 2,000 hours per pilot per season in undesignated waters, and is of the opinion that those workload standards are reasonable and should be retained. The number of pilots estimated to be required from adherence to those standards is calculated in Table 2.

TABLE 2—PROJECTION OF REQUIRED NUMBER OF PILOTS FOR 1986 BY AREA AND DISTRICT

[Hours and Number of Pilots Based on Pilot Workload Standards and Reduced by the Projected Change in Traffic from 1984 to 1986]

	1984		Projected change in traffic [2] (Percent)	1986	
	Hours [1]	Pilots [2]		Hours	Pilots
District 1					
Area I	7,764	8	−16.41	6,488	7
Area II	8,481	5	+.61	8,513	5
		13			12
District 2					
Area IV	13,300	7	−14.28	11,396	6
Area V	14,910	13	−14.39	13,754	13
		22			19
District 3					
Area VI	27,160	14	−20.39	21,476	11
Area VII	4,785	5	−20.66	3,781	4
Area VIII	16,671	9	−20.99	16,304	7
		28			22

[1] 1984 actual hours.
[2] Number of pilots resulting from dividing the actual hours by the pilot workload standards of 1,000 hours in designated waters and 2,000 hours in undesignated waters. (Areas I, V, and VII are designated waters; Areas II, IV, VI, and VIII are undesignated waters).
[3] This is the change in gross revenue between 1984 and 1985. 1986 is expected to be similar to 1985.

Table 3 presents estimated 1986 expenses, by District, segregated by expense category. These expenses are 1984 actual expenses increased by a 4% inflation factor for 1985 and for 1986 (actual 1985 expenses are not available at this time). For District 1, these figures include several new items added under Administration and Travel. These additional expense items are a portion of the amounts requested by District 1 and have been accepted after thorough Coast Guard evaluation.

TABLE 3—ESTIMATED EXPENSES—1986

[Excluding Pilot Compensation]

	District 1	District 2	District 3
Administration	$283,800	$220,900	$547,800
Dispatching	141,200	104,300	527,700
Pilot Boats	146,900	348,200	447,500
Travel	156,500	148,300	422,200
Training	41,000	70,000	105,000
Sub Total	769,400	891,700	2,050,200
Expense Recovery	0	[1] −173,800	[2] −295,800
Total	769,400	817,900	1,754,800

[1] Pilot Boat recovery $130,800; Dispatching recovery $38,400; Radio Charge Elimination $4,600.
[2] Canada $253,100; Property Rental $12,500.

Table 4 shows the derivation of the proposed rate adjustment, including estimated revenues and expenses. The pilot compensation figure is computed using the pilot workload standards of 1,000 (designated waters) and 2,000 (undesignated waters) hours per pilot per season in conjuction with the projected traffic for 1986, and multiplying the resulting number by the target pilot compensation standards of $77,829 and $58,028.

TABLE 4—ESTIMATED REVENUES AND EXPENSES, AND PROPOSED RATE ADJUSTMENT—1986

	Estimated operating expenses [1]	No. of Pilots [2]	Pilot compensation [3]	Total estimated expenses	Total estimated revenue [4]	Rate adjustment [5] (Percent)
Area I	$384,100	7	$544,803	$928,903	$864,900	7
Area II	385,240	5	290,130	675,370	581,200	23
District 1	769,400	12	834,933	1,604,333	1,416,200	13
Area IV	237,100	6	348,156	585,256	830,400	(29)
Area V	580,800	13	1,011,777	1,592,577	1,415,800	13
District 2	817,900	19	1,359,933	2,177,833	2,246,200	(3)
Area VI	770,200	11	638,286	1,408,486	1,309,400	8
Area VII	501,300	4	311,316	812,616	710,700	14
Area VIII	483,100	7	406,182	889,282	929,000	(4)
District 3	1,754,800	22	1,355,784	3,110,384	2,949,100	6

[1] From Table 3.
[2] From Table 2.
[3] Number of pilots from Table 2 multiplied by the appropriate target pilot compensation figure contained in Table 1.
[4] 1985 revenues based on 1985 rates and traffic.
[5] Items in ( ) are reductions.

We recognize that the rate increase will not be in effect for the entire season, therefore, if the projected traffic and the estimated expense levels are accurate, the pilot compensation target would not be met. However, based on past experience, considerable variation in traffic patterns and expenses are not unusual, therefore, the Coast Guard is not proposing to adjust the rate increases to compensate for the partial season. Additionally, adjustments for a partial season may distort pilotage rates for future years.

Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 7:30 a.m. and 3:30 p.m., Monday through Friday. Copies may also be obtained by contacting John J. Hartke, Room 1210, same address, telephone number (202) 426–2985. The estimated cost of this proposal is $384,300. This figure is the amount of additional revenue the U.S. pilots should receive under this regulation based on the projected 1986 traffic and is the increased amount that shippers would have to pay for pilotage services on the Great Lakes. This pilotage rate adjustment would result in an overall

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system rate increase of 5.8% if the proposed rate increases were in effect for the entire season. It has been estimated, and widely accepted, that pilotage fees represent somewhere between 2% to 5% of total shipping costs. The estimated 5.8% overall rate increase multiplied by the 5% portion of total shipping costs (assuming the highest end of the scale) equals less than a three tenths of a percent increase in total shipping costs, which will not have a significant impact on the shipping industry. As this proposal would not be in effect for the entire season, the impact for 1986 would be decreased accordingly. The benefit of this rule is the value of avoiding or minimizing costly delays and disruptions in shipping attributable to the failure to retain qualified pilots and to attract new qualified pilots. Almost all of the vessels transiting the system which are required to use registered pilots are foreign flag vessels. Similar size U.S. vessels have daily ship operating expenses in the range of $10,000 to $15,000. Although the daily ship operating expenses for comparable foreign vessels are typically lower, it is clear that delays in transiting the system can result in substantial additional costs to the vessel. The overall efficiency and safety of the pilotage system is enhanced by having an appropriate number of pilots available to provide the required services.

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164) requires an initial regulatory flexibility analysis for regulations having a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Act, it is cetified that this regulation will not have a significant economic impact on a substantial number of small entitites.

In the development of this rate adjustment, U.S. and Canadian shipping associations and pilots organizations were consulted.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Reporting requirements, Seamen.

PART 401—[AMENDED]

In consideration of the foregoing it is proposed that Part 401 of Title 46 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 401 continues to read as follows:

Authority: 46 U.S.C. 2105, 2303, 2304; 49 CFR 1.46a.

2. by revising § 401.405 to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) District 1:

(1) For passage through the District or any part thereof, $10.32 for each statute mile, plus $128 for each lock transited, but with a minimum basic rate of $301 and a maximum basic rate for a through trip of $1,322.

(2) For a movage in any harbor—$453.

(b) District 2:

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal—$823.

(2) Between points on Lake Erie west of Southeast Shoal—$388.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat—$1,085

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River—$823.

(5) Southeast Shoal to Detroit Pilot Boat—$451.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat—$1,257.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River—$800.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat—$823.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River—$368.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River—$816.

(11) Detroit Pilot Boat to any point on the St. Clair River—$816.

(12) Detroit Pilot Boat to Port Huron Change Point—$634.

(13) Between points on the St. Clair River—$368.

(14) Port Huron Change Point to any point on the St. Clair River—$451.

(c) District 3:

(1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario—$1,129.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf—$94.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan—$425.

(4) For a movage in any harbor—$425.

3. Section 401.410 is amended by revising paragraph (a), adding a new paragraph (b), and redesignating existing paragraphs (b) and (c) as (c) and (d) respectively, to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided under § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(1) In Lake Ontario—$243.

(2) In Lake Erie—$206.

(3) In Lakes Huron, Michigan and Superior—$228.

(b) Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of:

(1) In District 1—$232.

(2) In District 2—$206.

(3) In District 3—$217.

(c) Between Buffalo and any point on the Niagara River below the Black Rock Lock—$523

* * * * *

4. Section 401.420 is revised to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of $601 for each continuous 24 hour period during which the interruption continues. There is no charge for an interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 6th of the following April. No charge shall be made for an interruption if the total interruption ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after

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the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $601 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $227;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour, with a maximum basic rate of $601 for each 24 hour period.

5. Section 401.428 is revised to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point the pilot shall be paid at the rate of $232 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

Dated: May 19, 1986

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 86-11539 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-158, RM-5245]

Radio Broadcasting Services; Boonville, NY

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition by Oswego-Jefferson Broadcasting to substitute Channel 267A for Channel 268A at Boonville, New York. The change in channel could permit petitioner to relocate its transmitter for a new station on Channel 269A at Pulaski, New York, so as to operate with maximum Class A facilities.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald E. Martin, Esq., Suite 200, 2000 L Street, NW., Washington, DC 20036 (Counsel to petitioner).

DATES: Comments must be filed on or before June 23, 1986, and reply comments on or before July 8, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-158, adopted April 17, 1986, and released April 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decison may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Charles Robert,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-11485 Filed 5-21-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-159, RM-4979]

Radio Broadcasting Services, Redfield, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition by Victoria Broadcasting System, Inc. to substitute Channel 279C2 for Channel 279 at Redfield, South Dakota

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003 Washington, DC 20033 (Counsel to petitioner).

DATES: Comments must be filed on or before June 23, 1986, and reply comments on or before July 8, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-159, adopted April 17, 1986, and released April 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions to the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 86-11694 Filed 5-21-86; 8:45 am]
BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 6 and 19

Federal Acquisition Regulation; Small Business Set-Aside Determinations (Rule of Two)

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Proposed rule.

SUMMARY: OFPP is requesting comments on a proposed change to the Federal Acquisition Regulation (FAR) on Small Business Set-Aside Determinations to implement provisions of the Competition in Contracting Act of 1984 (Pub. L. 98-369).

DATE: Comments are due on or before July 21, 1986.

ADDRESS: All interested parties are invited to comment on this proposed regulation change. Comments should be forwarded to William S. Coleman, Jr., Office of Federal Procurement Policy, OMB, 726 Jackson Place, NW., Washington, DC 20503 on or before July 21, 1986. Mr. Coleman may be contacted by phone on (202) 395-3501.

FOR FURTHER INFORMATION CONTACT: William S. Coleman, Jr., Office of Federal Procurement Policy, OMB, 726 Jackson Place, NW., Washington, DC 20503, (202-395-3501).

SUPPLEMENTARY INFORMATION:

A. Background

Prior to the Federal Acquisition Regulation (FAR), the Federal Procurement Regulation (FPR) and the Defense Acquisition Regulation (DAR) contained different criteria for making a total small business set-aside determination.

The DAR provided that if ". . . there is a reasonable expectation that (i) offers will be obtained from *at least two* responsible small business concerns offering the products of different small business concerns and (ii) awards will be made *at reasonable prices* . . ." a set-aside shall be made. (Emphasis added)

The FPR provide that ". . . there must be a reasonable expectation that bids or proposals will be obtained from *a sufficient number* of responsible concerns, organizations, and individuals so that awards will be made *at reasonable prices.*" (Emphasis added)

When the small business section of the FAR was first published for public comment (July 1982), it contained the FPR "sufficient number" standard. Comments received supported a change to the DAR "rule of two" standard. Accordingly, when the final version of the FAR was published on April 1, 1984, it contained the "rule of two" standard.

In July 1984, following the issuance of the FAR, the Competition in Contracting Act of 1984 (CICA) was passed by Congress and signed into law by the President. The CICA contained the following requirement (section 2732):

". . . the head of each Executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices:
(1) increase the use of full and open competition in the procurement of property and services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a *sufficient number* of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the *lowest reasonable cost* considering the nature of the property or service procured." (Emphasis added).

The explanatory statement of the managers of the Conference Report on this amendment stated that:

"This requirement applies to all agency procurements, *including those made under set-aside programs." H.R. Rep. No. 98-861, 98th Cong. 2d Sess. 1984. (Emphasis added.)*

On February 21, 1986, OFPP submitted a proposed regulation to the Department of Defense, General Services Administration, and the National Aeronautics and Space Administration, and directed that it be published in the Federal Register for a 30-day comment period. The purpose of the regulation was to replace the "rule of two" criteria now in the FAR with the "sufficient number" criteria specified in the above provision of the Competition in Contracting Act. On March 29, 1986, the Deputy Assistant Secretary of Defense for Procurement advised OFPP that DOD, GSA, and NASA had concluded that ". . . since you have been the proponent of the change, it would be preferable for you to publish the policy directly." Accordingly, pursuant to the authorities granted in section 6 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 401, et seq.), notice is hereby given that DOD, GSA, and NASA have failed to issue regulations in a timely manner and it is OFPP's intent to prescribe the following proposed regulation in the FAR due consideration of all comments received in response hereto.

B. Regulatory Flexibility Act

The proposed revision of FAR Parts 6 and 19 is not expected to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Adoption of the "sufficient number/lower reasonable cost" formula should not reduce the number of small business set-asides. Executive branch agencies will continue to be charged with the obligation to insure a fair proportion of Government contracts be placed with small business concerns, as is required by the Business Act. The regulations will still continue to require that contracting officers review acquisitions to determine if they can be set-aside and will still provide for review of proposed acquisitions by procurement center SBA representatives and Small and Disadvantaged Business Utilization Specialists of the contracting agency.

Contracting officials will still evaluate the nature of the proposed buy to determine if it lends itself to performance by small business. They will also continue to review the purchase history of the item or service to determine if it has previously supplied by small business. They will look at the price history and current market information to determine a reasonable cost range for the item or service. After this review, they will determine if a "sufficient number" of offers can be obtained from small business sources to obtain the "lowest reasonable cost," under a procurement reserved exclusively for competition by small business. In fact, the "sufficient number" standard has been utilized for many years in small business set-asides. Prior to the FAR, all civilian agencies utilized the sufficient number standard. DOD's utilization of the "rule of two" commenced only about 5 years before the FAR.

Establishing that an agency will receive the "lowest reasonable cost" under a small business set-aside requires use of the same good judgment by contracting officials as the current standard of "reasonable price." It should be noted that in many instances, small business is the actual manufacturer of the items or suppliers of the service and, as such, is in a better position to respond than large business. Further, Congress has stated that small business set-asides meet the definition of full and open competition (Pub. L. 98-369, the

Competition in Contracting Act of 1984, and Pub. L. 98–577, the Small Business and Federal Procurement Competition Enhancement Act of 1984). Once it is established that reasonable cost can be obtained under a set-aside procurement, procurement officials are then required to award at the lowest reasonable cost. Only under circumstances where the price from a large business would be substantially lower than that proposed by small business would a set-aside be cancelled. This is the case under current regulations as well.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR Parts 6 and 19 do not impose any additional reporting or recordkeeping requirements or collection of information form offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 6 and 19

Government procurement.

It is proposed to amend 48 CFR Parts 6 and 19 as follows:

1. The authority citation for Parts 6 and 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C. and 42 U.S.C. 2453(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.101 is amended by adding paragraph (c) to read as follows:

6.101 Policy

* * * * *

(c) 41 U.S.C. 414 requires the establishment of policies, procedures and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured. This requirement applies to all agency procurements, including those made under set-aside programs.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

3. Section 19.501 is amended by revising paragraph (g) to read as follows:

19.501 General.

* * * * *

(g) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall be acquired by repetitive set-aside if the contracting officer provides a written determination reaffirming that the original basis for concluding that full and open competition, consistent with the provisions of 41 U.S.C. 414, will apply to each subsequent procurement in that class.

* * * * *

4. Section 19.502–2 is revised to read as follows:

19.502–2 Total Set-asides.

The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-aside, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that full and open competition, consistent with the provisions of 41 U.S.C. 414, will result. The contracting officer's determination must demonstrate that under set-aside conditions, a sufficient number of responsible small business concerns will respond to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost, considering the nature of the property or service acquired. Compliance with the presumption of sufficiency will vary, taking into account the size, character and complexity of each procurement and the pool of prospective bidders. Total set-asides shall not be made unless such a reasonable expectation exists. Although past acquisition history or an item or similar items is important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In determining that an entire class of acquisitions may be set aside, the contracting officer shall provide a written determination establishing the basis for concluding that full and open competition, consistent with the provisions of 41 U.S.C. 414, can be achieved on each procurement in that class, evaluating in detail the quality, timeliness and cost factors noted above.

David F. Baker,

Acting Administrator.

Dated: May 15, 1986.

[FR Doc. 86–11534 Filed 5–21–86; 8:45 am]

BILLING CODE 3110–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 347 (Sub-2)]

Rate Guidelines, Non-Coal Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy.

SUMMARY: The Commission proposes to adopt maximum rate reasonableness guidelines for captive, non-coal commodities. In addition, the Commission is requesting comments on alternative guidelines for small shippers, including small coal shippers.

DATES: Notices of intent to participate will be due June 2, 1986. A service list will then be prepared and distributed. Comments must be submitted by July 21, 1986. Reply comments will be due 45 days thereafter.

ADDRESS: An original and 15 copies of comments and replies should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. and served on all parties of record.

FOR FURTHER INFORMATION CONTACT:

Leslie J. Selzer, (202) 275–7627;

or

Thomas J. Stilling, (202) 275–7442.

SUPPLEMENTARY INFORMATION: By decision served September 3, 1985, (50 FR 35562) in Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines, Nationwide, (Coal Rate Guidelines)* the Commission adopted guidelines for determining the reasonableness of captive coal rates. During the pendency of that proceeding the Commission, by and large with the concurrence of the affected parties, has deferred decision on much of its maximum rate docket. A petition to set guidelines for commodities other than coal was likewise dismissed as premature.[1] With the conclusion of the

[1] Ex Parte No. 454, *Petition for Determination of Maximum Reasonableness Guidelines for Non-Coal Commodities*, (not printed) served May 3, 1984.

Coal Rate Guidelines rulemaking, maximum rate cases involving coal have now been reactiviated, and it is appropriate to address the issue of standards for non-coal cases on a priority basis.

It was originally thought that the transportation characteristics of coal might be such as to require the adoption of one set of rate review guidelines for coal cases and another set for other commodities. This view reflected the fact that the coal guidelines arose out of a request to set rate standards for high-volume shipments from newly-developed reserves in the Western United States. We acknowledge that the specifics of the guidelines finally adopted are particularly well suited to high-volume, long-term movements, where the cost and complexity of rate regulation are not disproportionate to the public and private interest in developing economically efficient rates. It is our preliminary view, however, that the economic concepts underlying the coal rate guidelines appear to be equally applicable to all other commodities. Nevertheless, we are concerned that shippers of non-coal commodities or small coal shippers may question the viability of the *Coal Rate Guidelines* in their individual situations or the costs of presenting a case under these guidelines. For this reason, we are soliciting comments on these matters.

Shippers of commodities other than coal might argue that the *Coal Rate Guidelines* will not produce reasonable rates in all cases. Thus, the first issue that should be addressed is whether the *Coal Rate Guidelines* should be applied to non-coal rate cases. Just as Constrained Market Pricing, the methodology adopted in *Coal Rate Guidelines*, has several aspects, so does the foregoing issue. Respondents may wish to discuss separately those aspects of the guidelines which are believed to be inapplicable to non-coal commodities. For those rate cases where the *Coal Rate Guidelines* are believed to be inappropriate, respondents are requested to explain the basis for that belief, and to suggest alternatives, either by way of general rules or solutions designed to address specifically the circumstances of known and pending cases. (Any comments of the latter variety should be filed simultaneously in this docket and in the related complaint of investigation proceeding.)

The second issue that should be addressed is whether the use of the *Coal Rate Guidelines* would place upon small shippers (including Coal shippers whose movement are infrequent or small) too great a burden in the form of litigation costs. Notwithstanding the adoption of *Coal Rate Guidelines*, the Commission does not now foreclose the use of any defensible methods relied upon in pre-Staggers Act rate cases, so long as they are consistent with the statute. However, we are particularly concerned with the administrative cost of the rate regulation for small shippers and for isolated movements, and we will entertain all responsible suggestions for minimizing those costs. We are not predisposed against the use of novel solutions, such as the provision of public counsel, or the use of arbitration procedures, but here again we must be able to conclude that the outcome will be consistent with the statute. We will also consider the empanelling of an advisory committee to review our procedures and evidentiary requirements, if there is sufficient support for such an undertaking. Our purpose here is to develop a process that is accessible, inexpensive and consistent with balancing the interests of captive shippers, railroads and the general public. It is important, though, that commenters who suggest alternative treatment and procedures for rate cases involving small shippers, explain how such alternative treatment would be legally defensible.

This human action will not significantly affect either the quality of the human environment or energy conservation.

As we are proposing a general policy, not a rule under 5 U.S.C. 553(b), we need not conduct a separate regulatory flexibility analysis. 5 U.S.C. 604.

Authority: 49 U.S.C. 10301, 10321, 10328, 10701a, 10704, 10707, and 11701, and 5 U.S.C. 553.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre and Lamboley. Commissioner Andre voted to reject the notice as premature. He felt that before considering whether or how to extend the *Coal Rate Guidelines* methodologies to other products, the Commission should give itself and potential commenters a reasonable period to see how, and if they work for coal.

Dated: May 7, 1986.

James H. Bayne,

Secretary.

[FR Doc. 86-11513 Filed 5-21-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

Intent To Prepare an Environmental Impact Statement on Proposed Regulatory Changes Dealing With Permits and Migratory Birds, Including Those Implementing the Endangered Species Act Exemption for Certain Raptors, for Raptor Propagation and Special Purpose Permits and Setting Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Public meeting and request for comments.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for regulatory changes dealing with permit issuance, revocation, amendment and enforcement and with migratory birds, including those regulations and permits implementing the Endangered Species Act exemption for certain raptors; for falconry, raptor propagation and special purposes; and setting Federal falconry standards. This action is of national scope and impact. A notice of intent to review the regulations was published January 4, 1985 (50 FR 518), with an extension of the comment period published February 4, 1985 (50 FR 4877).

A public meeting regarding this proposal and the preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and from the public on the scope of the issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments are encouraged and should be received by June 23, 1986. A public meeting will be held in Washington, DC, on Tuesday, June 24, 1986, at 9:30 a.m. until 4:00 p.m.

ADDRESSES: Comments should be addressed to: Director, U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, DC 20005.

The public meeting on June 24, 1986, will be held in the following location:

The Penthouse, Room 8068, Department of the Interior Building, 18th and C Streets NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Kathleen King, Enforcement Specialist, U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, DC 20005, Telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION: Kathleen King is the primary author of this document. FWS, Department of the Interior, proposes changes in the regulations which govern the issuance, revocation, amendment, administration and appeal procedures related to all general permits issued by FWS and is considering especially proposal of changes related to permits and regulations related to migratory birds, including those which implement exemptions allowed certain raptors by the Endangered Species Act of 1973, as amended; which govern falconry, raptor propagation and special purpose activities with those raptors, and which set Federal falconry standards. In 1983 certain changes were implemented in the migratory bird regulations which allowed specific activities related to falconry and raptor propagation, including regulations related to marking of individual birds taken or captive bred and the sale, exchange, or barter of certain raptors. The changes also imposed recordkeeping and reporting duties upon permittees and subjected them to the requirements of inspections as a condition of the permit.

The FWS, based upon enforcement experience and public comments, is considering whether to eliminate sales of raptors, to eliminate sales of selected species which are endangered or threatened or otherwise specially protected, to eliminate controls on all but a few raptor species when the raptors are subject to uses for falconry or raptor propagation purposes, or to impose fees for permit issuance and inspections. Any changes in the taking requirements would be limited to concepts of uses of live raptors; no consideration will be given to allowing expansion of taking as part of a hunting or any other procedure involving killing of the birds. The FWS has received diverse comments since implementation of the 1983 changes in the regulations and wishes to be responsive, within its statutory mandate to protect and conserve migratory species, to genuine public concern.

It is the FWS position that the key to effective protection and conservation lies in effective and efficient regulatory mechanisms to achieve statutory protections. Faced with budget and personnel limitations, the FWS must identify ways and means to accomplish statutory responsibilities within those constraints; further, the FWS is advised that the states, which usually share burdens of enforcement in areas of wildlife protection, face similar diminishments in funds and people to protect wildlife resources. The FWS therefore solicits public participation and contribution to its review of a need for regulatory reform related to the permit process and especially to the migratory bird permits and regulations related to the take, use, possession, transportation, barter, sale, exchange and propagation of raptors. Before making a decision upon changes in the existing regulations, the Service desires to identify all possible alternatives and to asess potential environmental impacts of any selected alternatives.

The first obvious alternative is to take no action, leaving the present regulations in place. However, the FWS has received complaints that the present regulations either are too onerous upon those persons who desire or who do possess raptors for falconry or raptor propagation purposes or are not sufficiently strict to protect the species. Biological data for some species of raptors indicate that they are apparently doing well and may not require the same classes or degrees of regulatory protection that other species may; the sufficiency and reliability of these data must be assessed. Enforcement experience indicates that some regulatory requirements may not be effective, or may benefit from technical advances or changes that may increase effectiveness, particularly in the areas of identification and marking of raptors or in recordkeeping and reporting requirements. Enforcement experience also indicates that administrative procedures related to the permit process and to other requirements require updating. All of these observations suggest that other alternatives should be identified and public reaction solicited as part of the scoping process before decisions related to changes are made.

Therefore, the FWS solicits written comments upon the issues outlined, including proposed solutions or alternatives, and invites public participation at the public meeting to discuss, explain, elaborate upon, or question the commentors and the issues.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500-1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate that the Draft Environmental Impact Statement (DEIS) will be made available to the public by December 15, 1986.

Dated: May 14, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-11255 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 99
Thursday, May 22, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Student Service-Learning Project Guidelines; Final Notice

AGENCY: ACTION.

ACTION: Final Notice of Student Service-Learning Project Guidelines.

SUMMARY: This notice outlines the guidelines under which student service-learning projects will operate. The Guidelines are divided into seven parts which deal with the overall program philosophy, responsibilities of the sponsor, staff, volunteers, and volunteer placement sites. It also includes basic data on the administration of a student service-learning project.

DATE: The student service-learning project guidelines shall take effect July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Suzanne Gibson Wise, Director of VISTA/Service-Learning Programs, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C., (202) 634–9445.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guidelines, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30 day comment period. These guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551, et seq.), may, in whole or in part, be required by our Act to be published in proposed form for comments.

The student service-learning project guidelines were published in proposed form in the **Federal Register** for comment on March 17, 1986 (51 FR. 9083–9086).

ACTION has determined that student service-learning project guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule.

Student service-learning project guidelines are noted in the Catalog of Federal Domestic Assistance, number 72.005.

Discussion of Comments and Response

The Agency received one comment from the general public recommending that each project application discuss anticipated learning outcomes and specific ways in which those outcomes will be achieved. This selection criterion has been added to Part III, Item f.

Agency staff questioned the lack of specific age restrictions in the guidelines, indicating that a "student" could be of any age, not necessarily young. No such restriction is included since it is felt that the target age group is adequately identified by statements cited in Section II, such as "It is the intent of student service-learning projects to join community, school and *youth* in developing the scope and nature of volunteer experiences . . ." and, "Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis." Additionally, Section IIIe, states: "Community representation in the project's operation, including representatives of *youth groups*, school systems, educational institutions, etc., must be identified in the grant application" (emphases added).

Student Service-Learning Project Guidelines

I. Introduction

This Notice sets forth the guidelines under which student service-learning projects will operate. Student service-learning project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Young Volunteers in ACTION (YVA) Program Guidelines published in the **Federal Register**, dated August 12, 1982, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). However, existing YVA grantees eligible for second year renewal will be permitted to apply for second year funding under YVA Program Guidelines published in the **Federal Register** dated August 12, 1982, and must abide by requirements and procedures as outlined therein.

II. Purpose

Student service-learning projects are authorized under Title I, Part B, Sec. 111 and Sec. 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of student service-learning projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining experiences through service in poverty communities which relate to classroom, vocational, or other learning needs.

It is the intent of student service-learning projects to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded after federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources can be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fund raising and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be employed by ACTION staff in the selection and approval of student service-learning projects:

a. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student service-learning project grant.

b. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

c. Grant funds must be used to initiate or expand a student volunteer service-learning project which addresses the needs of the low-income community.

d. The grantee must develop and maintain community support for the student service-learning project through a planned program including public awareness and communications.

e. Community representation in the project's operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application

f. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

g. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

h. The grantee must identify resources which will permit continuation of the service-learning project upon the conclusion of Federal funding as outlined in Part II.

i. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer placement sites as discussed in Part VI. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government.

j. The grantee must ensure compliance with the restrictions outlined in Part VII.

IV. Grant Application Procedures

A. Scope of Grant

Student service-learning project grants are awarded for up to a twelve month period. Requests for second or third year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their student service-learning projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. ACTION State Offices will provide applicant organizations with technical assistance regarding this requirement.

B. Procedures for New Grantees

Project application forms are available from ACTION State or Regional Offices which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which is available from the ACTION State or Regional Offices.

Applications will be submitted to the appropriate ACTION State Office for programmatic and technical review. ACTION Regional Offices will review all new applications recommended for funding by the State Offices and send them, along with Regional recommendations, to the Director of VISTA/Service-Learning Programs. The Director of VISTA/Service-Learning will render final decisions on new student service-learning project grant applications.

Regional Grants and Contracts Officers will issue Notices of Grant Awards upon notification from the Director of VISTA/Service-Learning Programs.

C. Procedures for Renewal Grantees

Applications for renewal will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Renewal applications from first and second year grantees are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the renewal application is denied, the sponsor will be notified that ACTION intends to deny the application for renewal and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The student service-learning project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the 3-

year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.
2. The number of volunteers participating in the project during the quarter.
3. The number of volunteer hours generated during the quarter.
4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible for ensuring that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the Project Director. A full-time Director is desirable yet fiscal realities or project needs may dictate otherwise. A rationale for less than a full-time Project Director must be included with the project application. Supervision of the Project Director is the responsibility of the sponsor.

Student service-learning project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Public Awareness: A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and Project Director should inform community, city and county officials, and the media about development, growth and success of the student service-learning project.

2. Volunteer Recognition: With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals.

3. Community support: A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, United Way, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Service-Learning Project Grantees

1. *Political Activities:* a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. *Lobbying:* a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. *Special Restriction on State or Local Government Employees:* If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at

which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. *Non-discrimination:* No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. *Religious Activities:* Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. *Labor and Anti-Labor Activity:* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. *Non-displacement of Employed Workers:* A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. *Non-compensation for Services:* No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute or to solicit contribution to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. *Volunteer Status:* Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. *Nepotism:* Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Region Office, 441 Stuart Street, 9th Floor, Boston, MA 02116
ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103
ACTION State Office, Federal Bldg., Rm 210, 76 Pearl Street, Portland, ME 04101
ACTION State Office, 441 Stuart Street, 9th Floor, Boston MA 02116

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301
ACTION State Office, John E Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903

Region II

ACTION Region Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1611, New. York, NY 10278
ACTION State Office, 402 East State St., Rm 246, Broad Street Bank Bldg., Trenton, NJ 08608

(Metropolitan New York)

ACTION State Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1609, New York, NY 12207

(Upstate New York)

ACTION State Office, US Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico Gatau Federal Ofc. Bldg. Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918

Region III

ACTION Region Office, U.S. Customs House, 2d and Chestnut St., Rm 108, Philadelphia, PA
ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202
ACTION State Office, Federal Office, Federal Building, 31 Hopkins Plaza, Room 918H, Baltimore, MD 21201
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215
ACTION State Office, US Customs House, Room 108, 2d and Chestnut Streets, Philadelphia, PA 19106

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240

Region IV

ACTION State Office, 603 Morris Street, 2d Floor, Charleston, WV 25305
ACTION Region Office, 101 Marietta St., N.W., Suite 1003, Atlanta, GA 30323
ACTION State Office, 2121 8th Avenue North, Rm 722, Birmingham, AL 35203
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803
ACTION State Office, 75 Piedmont Ave., NE, Suite 412, Atlanta, GA 30303
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203

Region V

ACTION Region Office, 10 West Jackson Blvd., 3rd Floor, Chicago, IL 60604
ACTION State Office, 10 West Jackson Blvd., 3rd Floor, Chicago, IL 60604
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204
ACTION State Office, Federal Building, Room 339, 210 Walnut, Des Moines, IA 50309
ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202

Region VI

ACTION Region Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201
ACTION State Office, Federal Building, Room 171, 444 S.E. Quincy, Topeka, KS 66603
ACTION State Office, 628 Main Street, Suite 102, Baton Rouge, LA 70801
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106
ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501
ACTION State Office, 722 North Broadway, Room 101, Oklahoma City, OK 73102
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701

Region VIII (No Region VII)

ACTION Region Office, Executive Tower Bldg., Su 2930, 1405 Curtis Street, Denver, Colorado 80202
ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203
ACTION State Office, Federal Building, Room, 8036, 2120 Capitol Avenue, Cheyenne, WY 82001
ACTION State Office, Federal Bldg., Drawer 10051, 301 South Park, Room 192, Helena, MT 59626
ACTION State Office, Federal Bldg., Room, 293, 100 Centennial Mall North, Lincoln, NE 68508

(North & South Dakota)

ACTION State Office, Federal Building, Room, 213, 225 S. Pierre Street, Pierre, SD 57501

ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 107, Salt Lake City, UT 84101

Region IX

ACTION Region Office, 211 Main Street, Rm 530, San Francisco, CA 94105

ACTION State Office, 522 North Central, Room 306–A, Phoenix, AZ 85004

ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105

ACTION State Office, Federal Bldg, Room, 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024

(Hawaii/Guam/American Samoa)

ACTION State Office, Federal Building, P.O. Box 50024 Honolulu, HI 96850

ACTION State Office, 4600 Kaitzke Lane, Suite E–141, Reno, NV 89502

Region X

ACTION Region Office, 909 First Avenue, Seattle, WA 98174

ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702

(Alaska)

ACTION State Office, Federal Office Building, 909 First Avenue, Suite 3030, Seattle, WA 98174

ACTION State Office, Federal Bldg., Room 647, 511 N.W. Broadway, Portland, OR 97209

ACTION State Office, Federal Office Building, 909 First Avenue, Suite 3030, Seattle, WA 98174

Signed in Washington, D.C., this 14th day of May, 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86–11182 Filed 5–21–86; 8:45 am]

BILLING CODE 6155–25–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding Management of Historical Properties, Operation and Management of the Chief Joseph Dam Project, Washington

AGENCY: Advisory Council and Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memoradum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Seattle District, Corps of Engineers, and the Washington State Historic Preservation Officer for the management of historical properties affected by the operation and maintenance of the Chief Joseph Dam project in eastern Washington. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historical properties will be identified, evaluated, monitored, and protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: June 23, 1986.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, Suite 450, 730 Simms Street, Golden, Colorado 80401.

Dated: May 16, 1986.

John M. Fowler,

Acting Executive Director.

[FR Doc. 86–11530 Filed 5–21–86; 8:45 am]

BILLING CODE 4310–10–M

Meeting

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with § 800.6(d)(3) of the regulations of the Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that a panel of five members of the Council will meet on May 30, 1986 to consider the proposed construction of a visitors' center and parking facility at Arlington National Cemetery, Arlington, Virginia by the U.S. Army Corps of Engineers. It has been determined that this undertaking will adversely affect the Arlington House, Arlington National Cemetery, the Lincoln Memorial, and the Arlington Memorial Bridge. These properties are either included in or eligible for inclusion in the National Register of Historic Places. This review by the Council is taking place in accordance with Section 106 of the National Historic Preservation Act. The meeting will be held in Room M–07, in the Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC at 9:00 a.m.

The panel will consider written and oral statements from concerned parties. Written statements should be submitted to the Council by May 26, 1986. Persons wishing to make oral statements should notify the Council by May 26, 1986.

Additional information concerning the meeting or submission of statements is available from: The Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Ave., NW, Washington, DC 20004 (202–786–0505); ATTN. Ms. Eleni Silverman.

Dated: May 21, 1986.

John M. Fowler,

Acting Executive Director.

[FR Doc. 86–11740 Filed 5–21–86; 10:29 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mount St. Helens Scientific Advisory Board; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9:30 a.m., July 10, 1986, at the Forest Supervisor's Office, Gifford Pinchot National Forest, 500 West 12 Street, Vancouver, Washington 98660, to receive information on and discuss the following:

1. A review of the recommendation made on July 7, 1983, to place a 5-year moratorium on fish stocking of lakes within the National Volcanic Monument (NVM).

2. A review of the recommendation made on July 7, 1983, to place a 5-year moratorium on removal of natural blockages to anadromous fish migrations in the Green River.

3. Discussion of the NVM Science Panel as recommended by the Comprehensive Management Plan.

4. Initiate plans for NVM Research Workshop in Fall 1986.

5. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, 206–696–7570. Written statements may be filed with the Board before or after the meeting.

Dated: May 14, 1986.

Allan O. Lampi,

Acting Regional Forester.

[FR Doc. 86–11488 Filed 5–21–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice that the Census Advisory Committee on Agriculture Statistics will convene on June 18, 1986, at 9 a.m. The

Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

This Committee advises the Director, Bureau of the Census, concerning the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural reports; and presents the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee and a representative from the Department of Agriculture.

The agenda for the meeting, which is scheduled to adjourn at 4 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census; (2) staff changes and Census Bureau organization; (3) update on the Census Bureau's agriculture programs; (4) 1987 Agriculture Census content test results; (5) 1987 Agriculture Census content and collection procedure; (6) computer bulletin board and compact disc-read only memory demonstrations; (7) 1987 Agriculture Census methodology; and (8) Committee recommendations.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days before the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. George Pierce, Agriculture Division, Bureau of the Census, Room 3009, Federal Building 4, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–7731.

Dated: May 10, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–11505 Filed 5–21–86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Short Supply Review on Certain Steel Wire Rope; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain steel wire rope.

EFFECTIVE DATE: Comments must be submitted no later than June 2, 1986.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th ad Constitution Ave., NW, Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230, Room 3099, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . . ."

We have received a short supply request for certain high strength steel wire rope, whether or not galvanized, with nominal diameters ranging from ⅝ to 1¾ inches, that is used as hoist lines for offshore rig and platform cranes.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 15, 1986.

[FR Doc. 86–11561 Filed 5–21–86; 8:45 am]

BILLING CODE 3510-DS-M

Industrial Nitrocellulose From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Societe Nationale des Poudres et Explosifs, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers the one known exporter of this merchandise to the United States and the period May 13, 1983 through July 31, 1984. The review indicates the existence of *de minimis* dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 22, 1986.

FOR FURTHER INFORMATION CONTACT: Craig Daugherty of Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 36303) and antidumping duty order on industrial nitrocellulose from France. The Department received a request for an administrative review from Societe Nationale des Poudres et Explosifs ("SNPE"), in accordance with § 353.53a(a) of the Commerce Regulations, and we published a notice of initiation of the antidumping duty administrative review in the **Federal Register** on November 27, 1985 (50 FR 48825].

Scope of the Review

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing

inks. Such merchandise is currently classifiable under item 445.2500 of the Tariff Schedules of the United States Annotated. The review covers the one known French exporter of industrial nitrocellulose to the United States, Societe Nationale des Poudres et Explosifs, and the period May 13, 1983 through July 31, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the c.i.f. packed price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, foreign inland insurance, foreign brokerage and handling, ocean freight and marine insurance. No other deductions were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, inland insurance, rebates, commissions, differences in the physical characteristics of the merchandise, credit and packing.

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a weighted-average margin of .17 percent exists for SNPE for the period May 13, 1983 through July 31, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the margin for SNPE is less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as provided for by § 353.48(b) of the Commerce Regulations, on shipments of French industrial nitrocellulose entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: May 16, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-11560 Filed 5-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Numbers 2639-01, 2639-02, 2639-03]

Export Privileges in the Matter of Suin, S.A., et al.

Order

On May 13, 1986, the Administrative Law Judge entered an Order adopting and implementing the consent proposal submitted by the parties in the above matter. The Order was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended, for final action.

Having examined the record and based on facts adduced in this case, I affirm the Order of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated: May 20, 1986.

Paul Freedenberg

In the matter of Suin, S.A., SIC, S.A., Carlos Mira Gallart, Respondents.

Appearance for Respondents: Mark N. Rae, Esq., Stroock & Stroock & Lavan, 1150 17th Street NW., Washington, DC 20036

Appearance for Government: Thomas C. Barbour, Esq., Office of the Assistant General Counsel for Export Administration, U.S. Department of Commerce, Washington, DC. 20230.

Order

By Charging Letter dated March 29, 1984, the Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (Agency), initiated an administrative proceeding [1] against Carlos Mira Gallart (also known as Carlos Mira), SIC, S.A. and Suin, S.A. (hereinafter collectively referred to as Respondents) pursuant to sections 11(c) and 13(c) of the Export Administration Act of 1979, (50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985)) (the Act), and the Export Administration Regulations (15 CFR Parts 368–399 (1985)) (the Regulations), alleging that: (1) between December 20, 1978 and October 22, 1980, Respondents reexported or caused to be reexported from Spain to Bulgaria seven shipments of U.S.—origin integrated circuit testing equipment without having obtained reexport authorization from the Office of Export Administration which Respondents knew, or had reason to know, was required, and (2) on April 15, 1980, and March 3, 1982, Respondent Mira made false representations of material facts to United States Government officials in the course of an investigation under the Act.

The Agency and Respondents having entered into a Consent Agreement whereby the parties have agreed to settle this matter: (1) By Respondents' paying to the Agency a civil penalty of $80,000; and (2) by denying Respondents' export privileges for a period of 10 years following the date of entry of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and;

It Is Therefore Ordered,

First, that Respondents shall pay to the Agency a civil penalty of $80,000. Payment to the Agency shall be made in accordance with the following schedule: $10,000 on or before June 1, 1986, $6,000 on or before December 1, 1986, with the remainder to be paid in four equal installments of $16,000, each due on or before December 1, 1987, December 1, 1988, December 1, 1989, and December 1, 1990, respectively. Each payment shall be made in the manner specified in the attached instructions.

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[1] A Temporary Denial Order had been issued naming Respondents Carlos Mira Gallart and Suin, S.A. on October 14, 1982 (47 FR 47876, Oct. 21, 1982). SIC, S.A. was added on Feb. 28, 1984 (49 FR 8057, Mar. 5, 1984).

Second, all outstanding validated export licenses in which any Respondent or any related party appears or participates in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

Third, for a period of 10 years from the date of entry of this Order, Respondents:

Suin, S.A., with addresses at both Calle Clot 194 Barcelona 27, Spain

and

Paseo and Manual Girona, 11 Bajos, Ctra. N–340 km 243'400, Vilaseca (Tarragona), Spain

Carlos Mira Gallart, a/k/a Carlos Mira, with addresses at both Barcelona and Tarragona, Spain

and

Hernandez Inglesias No. 4, Madrid 27, Spain

and

SIC, S.A., Avda De Chile 40, 2–0 1–A, Barcelona 28, Spain,

their successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any transaction involving commodities or technical data exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Agency, (ii) preparing or filing with the Agency any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States, and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

Fourth, after notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. Business organizations and individuals now known to be affiliated with one or more of the above-named Respondents in the conduct of trade or related services, and which are accordingly subject to the provisions of this Order, are:

Ciec, S.A., Avenida Madrid 68, 5–3, Barcelona, Spain 08028

Commercial R.M.S., S.A., Calle Clot 194, Barcelona 27, Spain

Famisa, S.A., Maestre Valls, 8, Valencia, Spain

Intelco, S.A., Barcelona, Spain

Juan Jose Ciuro Munoz, Avda De Chile 40, 2–0 1–A, Barcelona 28, Spain

Juan Antonio Perez Olle, Calle Corcega 361, Barcelona, Spain

Fifth, no person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any Respondent or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

Sixth, that the Charging Letter, the Consent Agreement and this Order shall be made available to the public.

Seventh, this Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to Section 13(c) of the 1985 Amendments to the Export Administration Act, at which time the outstanding Temporary Denial Orders, which are referenced above, will be terminated.

Hugh J. Dolan,
Administrative Law Judge.
Dated: May 13, 1986.

Attachment to Administrative Law Judge's Order

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of Assistant General Counsel for Export Administration, Room H–3845, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

[FR Doc. 86–11559 Filed 5–21–86; 8:45 am]
BILLING CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Limit for Certain Man-Made Fiber Luggage Produced or Manufactured in the People's Republic of China

May 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 16, 1986. For further information contact Diana B. Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S Department of Commerce, (202)377–4212.

Background

On December 26, 1985 a notice was published in the **Federal Register** (50 FR 52824) announcing establishment of a level of 12,042,805 pounds for braided and unbraided luggage of man-made fibers in Category 670 pt. (only T.S.U.S.A. numbers 706.3420, 706.4144, and 706.4152), produced or manufactured in China and exported during the twelve-month period which began on September 3, 1985, and extends through September 2, 1986. CITA has indications that the trade data reported to Census on which this level was based were understated. Consequently, as an interim measure, pending completion of a data investigation to determine the correct trade base, the level is being increased by 2,000,000 pounds to 14,042,805 pounds. A further adjustment in the

form of an increase or a decrease may be made in this level depending on the outcome of the data investigation.

In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to increase the current level to 14,042,805 pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44872), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 16, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 19, 1985, which directed you to prohibit entry of man-made fiber textile products in Category 670 pt.[1], produced or manufactured in China and exported during the twelve-month period which began on September 3, 1985 and extends through September 2, 1986.

Effective on May 16, 1986, the directive of December 19, 1985 is hereby amended to increase the import restraint level of Category 670 pt.[1] to 14,042,805 pounds.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11525 Filed 5-21-86; 8:45 am]

BILLING CODE 3510-DR-M

New Limit for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China; Correction

May 19, 1986.

Footnote 2 in the letter to the Commissioner of Customs dated February 20, 1986 (51 FR 7313, March 3, 1986) should be corrected to refer to Category 652, instead of Category 651.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11520 Filed 5-21-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 670 only T.S.U.S.A. numbers 706.3420, 706.4144 and 706.4152.

[2] The level has not been adjusted to account for any imports exported after September 2, 1985.

Import Levels for Certain Cotton Textile Products Produced or Manufactured in the Philippines

May 19, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 23, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 26, 1985, a notice was published in the Federal Register (50 FR 52830) which established import control limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to also control imports of cottom textile products in Categories 363 (terry and other pile towels) and 369 (other cotton manufactures), produced or manufactured in the Philippines and exported during the same twelve-month period, at levels of 2,763,348 numbers (Category 363) and 1,350,611 pounds (Category 369).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 19, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 20, 1985 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines.

Effective May 23, 1986, the directive of December 20, 1985 is hereby amended to include levels for cotton textile products in Category 363 at 2,763,348 numbers and Category 369 at 1,350,611 pounds.[1]

Textile products in Categories 363 and 369 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Categories 363 and 369 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a) (1) (A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11527 Filed 5-21-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Wool Textile Products Produced or Manufactured in Uruguay

May 19, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 23, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Governments of the United States and Uruguay have agreed to further amend their Bilateral Wool Textile

[1] The levels have not been adjusted to account for any imports exported after December 31, 1986.

Agreement of December 30, 1983 and January 23, 1984, as amened, to establish specific limits of 2,100,000 square yards for woolen and worsted fabric in Category 410 produced or manufactured in Uruguay and exported during the twelve-month period which began on February 1, 1986 and extends through January 31, 1987, and 13,500 dozen for wool skirts in Category 442, produced or manufactured in Uruguay and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986. The United States Government has decided to control imports at the new limits. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to establish these limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 F.R. 38754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

May 19, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 23, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 410 and 442, produced or manufactured in Uruguay and exported during the indicated periods in excess of:

Category	Restraint limit [1]	Period
410	2,100,000 square yards	Feb. 1, 1986–Jan. 31, 1987.
442	13,500 dozen	Jan. 1, 1986–June 30, 1986.

[1] The limits have not been adjusted to reflect any import exported after January 31, 1986 (Category 410) or after December 31, 1985 (Category 442). Imports during the period February 1 through March 31, 1986 have amounted to 216,959 square yards (Category 410) and during the period January 1 through March 31, 1986, 22 dozen (Category 442).

Textile products in Category 410 produced or manufactured in Uruguay and exported to the United States on or after February 1, 1985 and extending through January 31, 1986, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during that twelve month period. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter. Textile products in Category 442 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Categories 410 and 442 which have been been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

These limits are subject to adjustment in the future according to the provisions of the bilateral agreement of December 30, 1983 and January 23, 1984, which provide, in part, that: (1) Specific limit may be adjusted for carryover and carryforward and (2) administrative arrangements of adjustment may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the implementation of Textile Agreements has determined that the actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86-11528 Filed 5-21-86; 8:45 am]

BILLING CODE 3510-DR-M

May 19, 1986.

Requesting Public Comment on Bilateral Textile Consultations With the Government of Pakistan Concerning Category 613-C

On April 27, 1986, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Pakistan to enter into consultations concerning exports to the United States of lightweight, plainweave polyester/cotton fabric in Category 613-C (only TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059), produced or manufactured in Pakistan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Pakistan, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of lightweight, plainweave ployester/cotton fabric in Category 613-C, produced or manufactured in Pakistan and exported to the United States during the twelve-month period which began on April 27, 1986 and extends through April 26, 1987 at a level of 14,049,876 square yards.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 613-C under the agreement with Pakistan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreement.

Market Statement

Category 613pt.—Lightweight, Plainweave, Polyester/Cotton Fabric; Pakistan, April 1986

Summary and Conclusions

U.S. imports of Category 613pt.—TSUSA No. 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059, from Pakistan was 19.0 million square yards during the year ending February 1986 compared with only 420,000 square yards a year earlier. Most of the year ending February 1986 imports, 13.7 million square yards, were imported during December 1985 through February 1986.

Pakistan accounted for 14.5 percent of the year ending February 1986 total imports when it was the second largest supplier. It was the largest supplier in the first two months of 1986 when it accounted for 30 percent of the total imports.

This sharp and substantial increase in low valued imports is disrupting the U.S. market for these type fabrics.

U.S. Market

The U.S. lightweight, plainweave ployester/cotton gray fabric market is adversely affected by imports. The U.S. producer's share of the market for domestically produced and imported Category 613pt. declined in 1985. The market continues to be disrupted by imports in 1986 and Pakistan's position as a major supplier of these fabrics makes it a major contributor to the market disruption.

U.S. Production

U.S. production of lightweight, plainweave polyester/cotton gray fabric declined in 1985 by 34 percent.

U.S. Imports and Import Penetration

Total U.S. imports of these fabrics increased from 88.6 million square yards in 1984 to 115.8 million in 1985. These imports were nearly equal to domestic production in 1984 and nearly double the 1985 domestic production.

Import Values vs Domestic Producer's Price

Approximately 88 percent of Category 613pt.—lightweight, plainweave ployester/cotton fabric—from Pakistan enter under TSUSA No. 338.5048, polyester/cotton printcloth not over 5 oz. per square yard. These imports enter at duty-paid values below the U.S. producer price for comparable fabric.

[FR Doc. 86-11529 Filed 5-21-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986, Proposed Additions and Deletions

Correction

In FR Doc. 86-10461, appearing on page 17226 in the issue of Friday, May 9, 1986, make the following correction: In the first column under the heading "Additions", in the sixteenth line, the number "415" should read, "4415".

BILLING CODE 1505-01-M

Procurement List 1986, Additions and Deletions

Correction

In FR Doc. 86-10460, appearing on page 17225, in the issue of Friday, May 9, 1986, make the following correction:

In the third column under the heading "Additions", in the twenty-sixth line is corrected to read: "Curtain, Showeer: 7230-00-849-9838, 7230-00-".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Number

Registration for Scientific and Technical Services; DD Form 1540

This form provides a uniform registration procedure for access to certain DoD technical information by U.S. Government activities and their contractor community from the Defense Technical Information Center (DTIC) and other DoD dissemination activities. It warrants that the applicant's responsibilities require this access and specifies to which subject areas. Public affected—The U.S. Government and its contractor community.

U.S. Government and Its Contractor Community Responses 2,850

Burden hours 950

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301-1155, telephone number (202) 694-0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Hazel T. Horton, DTIC-FDR, Room 5B454, Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145, telephone number (202) 274-7065.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 19, 1986.

[FR Doc. 86-11585 Filed 5-21-86; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to

provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Number

Facility Clearance Register, DD Form 1541

This form certifies the security clearance level and safeguarding ability of the facility of a U.S. Government contractor who wishes to access classified material from the Defense Technical Information Center (DTIC). The signed form serves as authority to release classified material to that contractor at that facility.

U.S. Government Contractor Community
Responses 500
Burden hours 42

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301-1155, telephone number (202) 694-0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Hazel T. Horton, DTIC-FDR, Room 5B454, Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145, telephone number (202) 274-7065.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
May 19, 1986.

[FR Doc. 86-11536 Filed 5-21-86; 8:45 am]
BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, June 3, 1986; Tuesday, June 10, 1986; Tuesday, June 17, 1986; and Tuesday, June 24, 1986 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
May 19, 1986.

[FR Doc. 86-11537 Filed 5-21-86; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Under Ice Warfare Requirements will meet on June 17-18, 1986 at the Naval Research Laboratory, Washington, DC. The meeting will commence at 8:00 a.m. and terminate at 3:00 p.m. on June 17, and commence at 8:00 a.m. and terminate at 5:00 p.m. on June 18, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to understand, deal with, and exploit environmental surveillance issues in polar waters, identify what study has been done on the subject thus far, identify promising technologies, and drive operational requirements to deal with under ice anti-submarine warfare. The agenda will include technical briefings on the threat, maritime strategy and environmental considerations. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N) 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 19, 1986.

William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-11541 Filed 5-21-86; 8:45 am]
BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Automated Submarine Detection will meet on June 10-13, 1986, at the Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on June 10 and 11; commence at 8:00 a.m. and terminate at 6:00 p.m. on June 12; and commence at 8:00 a.m. and terminate at 5:00 p.m. on June 13, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review present undersea surveillance automated submarine detection and classification techniques and capabilities. The agenda will include

technical briefings on the threat, maritime strategy, and industry overviews of past, present and future automated efforts. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwinded as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 19, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–11542 Filed 5–21–86; 8:45 am]

BILLING CODE 3810-AE-M

Secretary of the Navy's Advisory Board on Education and Training (SABET); Meeting Cancellation

Notice was given on May 1, 1986, at 51 FR 16187, of a meeting of the Secretary of the Navy's Advisory Board on Education and Training (SABET) on June 10, 11, and 12, 1986. This meeting has been cancelled.

Dated: May 19, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–11540 Filed 5–21–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II Of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective June 1, 1986. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, DC 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British thermal units (Btu's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama [1]	$1.90
Arizona [1]	1.71
Arkansas [1]	1.93
California	1.69
Colorado [2]	1.87
Connecticut [1]	1.86
Delaware [1]	2.04
Florida	1.75
Georgia	1.84
Idaho [1]	1.87
Illinois	1.87
Indiana [1]	1.94
Iowa [1]	2.03
Kansas	1.83
Kentucky [1]	1.84
Louisiana	1.88
Maine [1]	1.85
Maryland [1]	2.04
Massachusetts	1.71
Michigan [1]	1.94
Minnesota [1]	2.03
Mississippi	1.88
Missouri	1.81
Montana [1]	1.87
Nebraska	2.00
Nevada [1]	1.71
New Hampshire [1]	1.86
New Jersey [1]	2.04
New Mexico [1]	1.93
New York	2.00
North Carolina [1]	1.90
North Dakota [1]	2.03
Ohio	1.89
Oklahoma [1]	1.93
Oregon	1.52
Pennsylvania [1]	2.04
Rhode Island [1]	1.86
South Carolina [1]	1.91
South Dakota [1]	2.03
Tennessee [1]	1.90
Texas	1.69
Utah [2]	1.87
Vermont [1]	1.86
Virginia [1]	1.90
Washington [1]	1.71
West Virginia	1.91
Wisconsin [1]	1.94
Wyoming [2]	1.87

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II.—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during March 1986 was $21.87 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending May 14, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of March 1986. This lag adjustment factor was applied to the March price yielding $17.76 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of Btu's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective June 1, 1986, is $3.98 per million Btu's.

Section III.—Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No.

RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contingent States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the month of January 1986, February 1986, and March 1986.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective June 1, 1986 (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, January 1986, February 1986, and March 1986. Reported prices for sales in January 1986 were adjusted by the percent change in the nationwide volume-weighted average price from January 1986 to March 1986. Prices for February 1986 were similarly adjusted by the percent change in the nationwide volume-weighted average price from February 1986 to March 1986. The volume-weighted 3-month average of the adjusted January 1986 and February 1986, and the reported March 1986 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B. (2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million Btu's).

There were insufficient sales reported in Region G for the months of January 1986, February 1986, and March 1986. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending May 14, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of March 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	

Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	

Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	

Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, DC, May 16, 1986.

L.A. Pettis,

Deputy Administrator, Energy Information Administration.

[FR Doc. 86–11620 Filed 5–21–86; 8:45 am]

BILLING CODE 6450-01-M

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

BEST COPY AVAILABLE

Federal Energy Regulatory Commission

[Docket Nos. ER86-483-000 et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power and Light Co. et al.

May 16, 1986.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power and Light Company

[Docket No. ER86-483-000]

Take notice that on May 13, 1986, Arkansas Power and Light Company (APL) submitted for filing Agreements between APaL and the Cities of Conway, Osceola and West Memphis, Arkansas. The Agreements describe the costs associated with the Grand Gulf Nuclear Plant Unit 1.

APL requests that the Commission waive any requirements with which APL has not already complied.

Comment date: May 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER86-481-000]

Take notice that Commonwealth Edison Company on May 12, 1986 tendered for filing Amendment No. 1 dated March 31, 1986 to an Agreement dated August 15, 1985 between Commonwealth Edison Company (Commonwealth), Consumers Power Compan; and the Detroit Edison Company (Michigan Companies).

The Amendment No. 1 to August 15, 1985 Agreement extends the period through December 31, 1986 during which Commonwealth would supply Experimental Off-Peak Energy to the Michigan Companies in order to effect economies of operation among the parties. It will be the responsibility of the Michigan Companies to make arrangements for the extension of an existing agreement with a third party to transfer such energy through the system of a third party having interconnections with both Commonwealth and the Michigan Companies.

Copies of the filing were served upon Consumers Power Company, the Detroit Edison Company, the Michigan Public Service Commission and the Illinois Commerce Commission.

Comment date: May 30, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER86-320-000]

Take notice that Iowa Public Service Company on May 12, 1986, tendered for filing a revision to an executed Firm Power Interchange Service Agreement dated August 21, 1985, whereby Iowa Public Service Company will supply the City of Independence, Missouri with firm electric capacity, commencing June 1, 1986 and continuing through May 21, 2006, which Agreement was tendered for filing with FERC on March 18, 1986. Copies of this filing have been mailed to each of the parties to this Agreement and the Iowa State Commerce Commission and the Missouri Public Service Commission.

An effective date of June 1, 1986 is requested for the revised Agreement, as is a waiver or the Commission's notice requirement, if needed.

Comment date: May 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ER86-478-000]

Takle notice that Kansas Gas and Electric Company (KG&E) on May 12, 1986 tendered for filing a proposed Generating Municipal Electric Service Agreement superseding FERC Rate Schedule No. 135 between KG&E and the City of Oxford, Kansas (City).

This filing is necessary because the City desires to cancel its existing Agreement which provides for full requirements service and to began receiving service as a partial requirements customer. KG&E has requested an effective date of May 12, 1986.

Copies of the filing were served upon the City of Oxford, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: May 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER86-482-000]

Take Notice that Pacific Power & Light Compay (Pacific), as assumed business name of PacifiCorp, on May 12, 1986, tendered for filing, in accordance with Section 35 of the Commission's Regulations, Notices of Cancellation of Service Agreement Nos. 4 and 6 to Pacific's FERC Electric Tariff, Original Volume No. 4 (Tariff) and First Revised Sheet Nos. 10, 11, 13 and 14 superseding Original Sheet Nos. 10, 11, 13 and 14 respectively, of the Tariff.

Pacific states that these Service Agreements have been terminated by mutual agreement or appropriate notice in accordance with the terms of the agreements. The FERC Rate Schedule Designations are as follows:

FERC Rate Schedule Number and Party

Service Agreement No. 4 under FERC Electric Tariff Original Volume No. 4 (Redesignation of Rate Schedule FPC No. 119)—City of Powell, Wyoming

Service Agreement No. 6 under FERC Electric Tariff Original Volume No. 4 (Redesignation of Rate Schedule FERC No. 207)—Svilar Light and Power, Inc.

Pacific requests waiver of Commission's notice requirements to permit Service Agreement No. 4 to terminate on May 21, 1986, and Service Agreement No. 6 to terminate on February 14, 1986, which it claims are the dates of termination of service.

Comment date: May 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER86-449-000]

Take notice that on April 28, 1986 Puget Sound Power and Light Company (Puget) tendered for filing documents demonstrating the calculation of Average System Cost (ASC) for Puget for the Exchange Period effective October 1, 1985 through January 31, 1986.

Comment date: May 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER86-480-000]

Take notice that South Carolina Electric & Gas Company on May 12, 1986, tendered for filing proposed changes in its September 4, 1973, and August 13, 1973, service agreements with Central Electric Power Cooperative, Inc.

Under the proposed changes, South Carolina Electric and Gas Company proposes to replace the current Exhibit A dated September 4, 1973, for the McClellanville delivery point, the current exhibit A dated September 4 1973, for the John's Island delivery point, the current exhibit A dated September 4, 1973, for the Jedburg delivery point, and the current exhibit A dated August 13, 1973 for the Limehouse delivery point with the revised Exhibits A. These Exhibits A have been changed to reflect the current terms and conditions of service to these delivery points. South Carolina Electric and Gas also proposes to terminate the current Exhibit A dated September 4, 1973 for the Mt. Pleasant delivery point and replace with the Exhibit A for the Hamlin Substation delivery point.

Copies of this filing were served upon Central Electric Power Cooperative, Inc.

Comment date: May 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Company

[Docket No. ER86-479-000]

Take notice that Tucson Electric Power Company ("Tucson") on May 12, 1986, tendered for filing a Short Term Energy Agreement between Tucson and Southern California Edison Company ("Edison"). The primary purpose of this Agreement is to provide the terms and conditions relating to the sale by Tucson and the purchase by Edison of energy between May 1, 1986 and midnight, April 30, 1987. Tucson states that copies of the filing were served upon Edison.

Comment date: May 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11574 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5068-001 et al.]

Hydroelectric Applications [Vermont Public Power Supply Authority et al.]; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Surrender of License.

b. Project No.: 5068-001.

c. Date Filed: December 20, 1985.

d. Applicants: Vermont Public Power Supply Authority.

e. Name of Project: North Troy Project.

f. Location: On the Missisquoi River in Orleans County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Howland, Vermont Public Power Supply Authority, P.O. Box 425, Williston, VT 05495, (802) 878-5274.

i. Comment Date: June 26, 1986.

j. Description of Proposed Surrender: The proposed project would have consisted of: (1) An existing concrete overflow dam, with a height of 12 feet and a length of 80 feet; (2) the existing reservoir having a storage capacity of 25 acre-feet and a dam crest elevation of 536.7 feet (NGVD); (3) a proposed powerhouse with one generating unit with a capacity of 600 kW; (4) a new tailrace channel; and (5) appurtenant facilities.

The Applicant estimates the average annual energy would have been 2,200,000 kWh. Vermont Public Power Supply Authority would have wheeled all of the project's power over Citizens Utilities lines to its member utilities.

k. This notice also consists of the following standard paragraphs: B, C, & D2.

2 a. Type of Application: Transfer of License (Minor).

b. Project No: 5297-003.

c. Date Filed: March 20, 1986.

d. Applicants: Forte Brothers, Inc., and Manville Hydro Co., Inc.

e. Name of Project: Manville Dam.

f. Location: On the Blackstone River in Providence County, Rhode Island.

g. Filed Pursuant: Section 9 of the Federal Power Act sections 791(a)-825(r).

h. Contact Person: Mr. Michael A. Kelly, Adler Pollock & Sheehan, Inc., 2300 Hospital Trust Power, Providence, RI 02903, (401) 333-3400.

i. Comment Date: June 16, 1986.

j. Description of Project: On August 29, 1983, a minor license was issued to the Forte Brothers, Inc. to construct, operate, and maintain the Manville Dam Project No. 5297. Forte Brothers, Inc. intends to sell its interest in the project to the Manville Hydro Company, Inc. For that reason, the Forte Brothers, Inc. and the Manville Hydro Company, Inc. filed a request that the project license be transferred to the Manville Hydro Company, Inc.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Conduit Exemption.

b. Project No: 9701-000.

c. Date Filed: December 20, 1985.

d. Applicant: Irvine Ranch Water District.

e. Name of Project: Sand Canyon.

f. Location: On a conduit used to supply domestic and irrigation water to the Sand Canyon pipeline in Block 119 of Irvine's Subdivision in Orange County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Arthur E. Bruington, General Manager, Irvine Ranch Water District, 16802 Bardeen Avenue, Irvine, CA 92715, (714) 838-1223.

i. Comment Date: June 16, 1986.

j. Description of Project: The proposed project would use an existing conduit from the ST-03 turnout of the Municipal Water District of Orange County Allen-McColloch pipeline and would consist of a powerhouse containing one generating unit having a capacity of 500 kW and an average annual generation of 1.9 GWh.

k. Purpose of Exemption: An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

4 a. Type of Application: Transfer of License.

b. Project No.: 2593-006.

c. Date Filed: April 7, 1986.

d. Applicant: Beaver Falls Power Company (licensee) and Missisquoi Associates (transferee).

e. Name of Project: Beaver Falls.

f. Location: On the Missisquoi River in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John P. Borgwardt, Boise Cascade Corporation, P.O. Box 1414, Portland, OR 97207, (503) 224-7250.

i. Comment Date: June 16, 1986.

j. Description of Transfer:

On April 7, 1986, Beaver Falls Power Company (licensee), and Missisquoi Associates (transferee), filed a joint application for transfer of a minor license for the Beaver Falls Project No. 2593.

The purpose of the proposed transfer of the license is to facilitate the financing of the Missisquoi Associates' Sheldon Springs Project No. 7186. The transferee states that the positive cash flow from the Beaver Falls project will enable Missisquoi Associates to expedite construction of its Sheldon Springs project.

No changes to the operation of the project would occur as a result of the transfer. The transferee has proposed to operate the existing project in accordance with the license. The

transferee states that it would comply with all the terms and the conditions of the license.

k. This notice also consists of the following standard paragraphs: B & C.

5 a. Type of Application: Transfer of License.

b. Project No.: 2823–002.

c. Date Filed: April 7, 1986.

d. Applicant: Beaver Falls Power Company (licensee) and Missisquoi Associates (transferee).

e. Name of Project: Lower Beaver Falls.

f. Location: On the Missisquoi River in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John P. Borgwardt, Boise Cascade Corporation, P.O. Box 1414, Portland, OR 97207 (503) 224–7250.

i. Comment Date: June 16, 1986.

j. Description of Transfer:

On April 7, 1986, Beaver Falls Power Company (licensee), and Missisquoi Associates (transferee), filed a joint application for transfer of a minor license for the Lower Beaver Falls Project No. 2823.

The purpose of the proposed transfer of the license is to facilitate the financing of the Missisquoi Associates' Sheldon Springs Project No. 7186. The transferee states that the positive cash flow from the Lower Beaver Falls project will enable Missisquoi Associates to expedite construction of its Sheldon Springs project.

No changes to the operation of the project would occur as a result of the transfer. The transferee has proposed to operate the existing project in accordance with the license. The transferee states that it would comply with all the terms and the conditions of the license.

k. This notice also consists of the following standard paragraphs: B & C.

6 a. Type of Application: Exemption.

b. Project No: 9691–000.

c. Date Filed: December 18, 1985.

d. Applicant: Matthew W. Foley and Elizabeth E. Rapalee.

e. Name of Project: Wadhams Hydroelectric Project.

f. Location: On the Boquet River in Essex County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708, as amended.

h. Contact Person: Matthew W. Foley or Elizabeth E. Rapalee, Riverat Glass & Electric, Church Street, Wadhams, NY 12990, (518) 962–4514.

i. Comment Date: June 20, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing 140-foot-long, reinforced concrete dam with a maximum height of 7 feet; (2) the the spillway crest elevation of 342.6 feet msl is surmounted by 6 to 12 inches of flashboards; (3) the existing 15-acre reservoir with 75 acre-feet of storage capacity; (4) a proposed 400-foot-long, 66-inch-diameter penstock; (5) an existing powerhouse which contains two generating units with a combined generating capacity of 410-kW; (6) the proposed installation of a 150-kW generating unit into the powerhouse thereby increasing the total installed generation capacity to 560-kW; (7) an existing 70-foot-long, 4.8 kV transmission line connection; and (8) appurtenant facilities.

k. The Applicant intends to sell the power output to the Niagra Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D, 3A.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7 a. Type of Application: Amendment of License.

b. Project No.: 803–014.

c. Date Filed: December 24, 1985.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: DeSabla—Centerville Water Power Project.

f. Location: On Butte Creek and West Branch Feather River, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Stephen P. Reynolds Vice-President, Rates, Pacific Gas & Electric Company, 77 Beale Street, Room 1065, San Francisco, CA 94106.

i. Comment Date: June 19, 1986.

j. Description of Project: The proposed amendment to Pacific Gas and Electric Company's (PG&E) existing licensed Project No. 803 would consist of:

A. DeSabla Powerhouse Unit 2 Development comprising: (1) A 24-inch-diameter, 125-foot-long steel penstock; (2) a 45-inch-diameter, 11,200-foot-long steel or concrete siphon pipeline; (3) adding one generating unit with an installed capacity of 4.2 MW to the existing DeSabla Powerhouse operating under a head of 1,540 feet; and (4) appurtenant facilities.

B. Centerville Powerhouse Development comprising: (1) Replacing the existing penstock with a 66-inch-diameter, 2,600-foot-long steel penstock; (2) replacing the existing Centerville Powerhouse with a new Centerville Powerhouse with one generating unit with an installed capacity of 8.5 MW operating under a head of 590 feet; and (3) appurtenant facilities.

The project cost of the developments has been estimated to be about $24.9 million. No additional recreational facilities are proposed by PG&E.

k. This notice also consists of the following standard paragraphs: B and C:

8 a. Type of Application: Surrender of License.

b. Project No.: 2930–010.

c. Date Filed: April 4, 1986.

d. Applicant: Idaho Power Company.

e. Name of Project: North Fork Payette River.

f. Location: On the North Fork of the Payette River in Boise, Valley, and Gem Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Nicolas R. Ysursa, Attorney, Idaho Power Company, Box 70, Boise, ID 83707, (208) 383–2878.

i. Comment Date: June 20, 1986.

j. Description of Project: The project would have consisted of two developments. The Ferncroft Development consists of: (1) A 36-foot-high concrete gravity diversion dam, having a crest length of 110 feet at elevation of 4,458 feet, impounding a reservoir with a storage capacity of about 17 acre-feet; (2) a gated spillway, with one 30-foot-long, 10-foot-high overflow flap gate and one 20-foot-long, 25-foot-high radial gate; (3) a 16-foot-horseshoe shaped concrete-lined power tunnel extending 38,000 feet from its intake to an underground surge-tank; (4) a 12-foot-diameter vertical steel penstock with a 920-foot vertical drop and a 200-foot horizontal length; (5) a 180-foot-long, 100-foot-high underground powerhouse containing three identical generating units, each rated at 66.4 MW; and (6) a 3,600-foot-long, 20-foot-wide tailrace tunnel.

The Banks Development consists of: (1) A 36-foot-high concrete gravity diversion dam, having a crest length of 110 feet at elevation of 3,431 feet, impounding a reservoir with a storage capacity of about 17 acre-feet; (2) a gated spillway with one 30-foot-long, 10-foot-high overflow flap gate and one 20-foot-long, 25-foot-high radial gate; (3) a 16-foot horseshoe shaped concrete-lined power tunnel extending 22,000 feet from its intake to an underground surge-tank; (4) a 12-foot-diameter vertical steel penstock with a 465-foot vertical drop and a 200-foot horizontal length; (5) a 180-foot-long, 100-foot-high underground powerhouse containing three identical

generating units, each rated 36.9 MW; and (6) a 760-foot-long, 20-foot-wide tailrace tunnel.

The project would have also included (1) 13.8-kV generator leads for the Ferncroft Unit; (2) three (3) three-phase 13.8/230-kV, 75 MVA step-up transformers; (3) 13.8-kV generator leads for the Banks Unit; (4) one three-phase 13.8/230-kV, 120 MVA step-up transformer; (5) a 10-mile-long, 230-kV transmission line from the Ferncroft Unit Switchyard to the Banks Unit Switchyard; and (6) a 24-mile-long, 230-kV transmission line from the Banks Unit Switchyard to the proposed Shellrock Switching Station.

The licensee states that its evaluation of the need for power indicates that construction and operation of the project is not feasible at this time. Therefore, the licensee requests that its license be terminated.

k. This notice also consists of the following standard paragraphs: B, C and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. It an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 19, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11575 Filed 5–21–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP74–192–009 et al.]

Natural Gas Certificate Filings; Florida Gas Transmission Co. et al.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP74–192–009]

May 15, 1986.

Take notice that on April 9, 1986, as supplemented on April 17, 1986 and April 23, 1986, Florida Gas Transmission Company (Petitioner), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP74–192–009 a petition to amend the authorization issued in Docket Nos. CP–74–192–005 and CP74–192–007, *et al.*, Opinion Nos. 144 and 144–A, so as to be authorized to construct and operate

approximately 51 miles of pipeline and related compressor station modifications necessary to complete or "stitch" Petitioner's 30-inch and 26-inch system between Baton Rouge, Louisiana, and Miami, Florida, and to vacate the remaining authorizations issued in Opinion Nos. 144 and 144–A, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Petitioner states that the Commission's Opinion Nos. 144 and 144–A authorized the

(a) Construction and operation of facilities to complete or "stitch" its 30-inch and 26-inch pipeline system;

(b) Construction and operation of additional 30-inch loops necessary to provide its system with an annual average capacity of 725,000 Mcf per day;

(c) Abandonment from natural gas service of that portion of Petitioner's 24-inch line between Baton Rouge, Louisiana, and Port Everglades, Florida, by transfer to Petitioner's affiliate, Transgulf Pipeline Company (Transgulf), for use in the transportation of liquid petroleum products (LPP) from the Gulf Coast to various points in Florida; and

(d) Variant accounting and rate base treatment, as detailed in the Commission's opinions.

Petitioner states that the Transgulf LPP conversion project has been abandoned and that in light of the cancellation of that project, it requests the Commission to vacate items (b), (c), and (d) above. Petitioner is currently seeking authority to perform only the acts contemplated by item (a). Petitioner asserts that this would involve the construction of approximately 51 miles of pipeline and related modifications to piping at four compressor stations at an approximate cost of $28,400,000. The addition of the "stitching" facilities in item (a) to Petitioner's current system would add capacity of approximately 100,000 Mcf per day thus raising Petitioner's total system capacity to 825,000 Mcf per day, it is stated. This additional capacity would be utilized to serve new and incremental demand for natural gas in Petitioner's Florida markets, it is asserted.

Furthermore, Petitioner states that the Commission adopted as part of its previous authorization twenty-eight environmental conditions which were listed in 13 FERC ¶ 63,048 at 65,279–80. Petitioner asserts as a result of the instant request to vacate and amend Opinion Nos. 144 and No. 144–A that the environmental conditions Nos. 4, 8 thru 12, 25 and 26 as well as the portion of condition No. 6 pertaining to the Tangipahoa River crossing should remain in effect; the other environmental conditions listed would become moot upon issuance of the requested amended certificate, it is asserted.

Comment date: June 5, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP86–479–000]

May 19, 1986.

Take notice that on April 23, 1986, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939–0245, filed in Docket No. CP86–479–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) that Applicant be allowed to establish, construct, and operate new delivery points for Tennessee-Virginia Energy Corporation (Tennessee-Virginia) and Roanoke Gas Company (Roanoke) under the certificate issued in Docket No. CP82–412–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to establish the new delivery points for Tennessee-Virginia, on its Johnson City-Elizabethton lateral in the Boone's Creek community in Washington County, Tennessee; and the new delivery point for Roanoke in the Cave Springs community on Applicant's 3300 Line in Roanoke County, Virginia. The new delivery points would enable Tennessee-Virginia and Roanoke to serve the Boone's Creek area and southwest Roanoke County, respectively, two areas which presently do not have natural gas service. It is stated that the cost of all of the proposed facilities is estimated to be $57,800 and would be paid from funds on hand. It is further stated that all gas to be sold through the proposed new facilities would be within existing contract volume and/or curtailment period quantity entitlements.

Comment date: July 3, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP86–458–000]

May 19, 1986.

Take notice that on April 18, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–458–000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment, authorizing the transportation of natural gas for Bickerstaff Clay Products Company, Inc. (Bickerstaff), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 2.2 billion Btu of natural gas per day for Bickerstaff, on an interruptible basis, for a one-year term. It is indicated that Bickerstaff would purchase the gas from SNG Trading Inc. (SNG Trading). Applicant states that it would receive the gas for the account of Bickerstaff at various existing points on Southern's system in East Plaquemines Parish, Louisiana, and in Walthall County, Mississippi. Applicant proposes to redeliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas, to Bickerstaff at the Brickyard Meter Station and Dixieland Meter Station in Russell County, Alabama.

Applicant proposes to charge Bickerstaff a transportation rate of 64.9 cents per million Btu of gas redelivered by Southern. In addition Applicant proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Applicant states that the proposed transportation arrangement would enable Bickerstaff to diversity its natural gas supply sources and to obtain gas at competitive prices. It is alleged that Applicant's entire system will benefit by retaining Bickerstaff as a customer on the system. In addition, Applicant will obtain take-or-pay relief of the gas Bickerstaff may obtain from its suppliers.

Applicant also requests flexible authority to add delivery points in the event that Bickerstaff obtains alternative sources of supply. It is stated that the redelivery point, the recipient and the maximum daily transportation volume would remain unchanged. It is further stated that Applicant would file periodic reports providing certain information with regard to the addition of any delivery points.

Comment date: June 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP86–459–000]

May 19, 1986.

Take notice that on April 18, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–459–000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-

granted abandonment, authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta), acting as agent for Bickerstaff Clay Products Company, Inc. (Bickerstaff), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 1.5 billion Btu of natural gas per day for Atlanta, as agent for Bickerstaff, on an interruptible basis, for a one-year term. It is indicated that Bickerstaff would purchase the gas from SNG Trading Inc. (SNG Trading). Applicant states that it would receive the gas for the account of Bickerstaff at various existing points on Southern's system in Desoto Parish, Louisiana; Shelby County, Texas; East Plaquemines Parish, Louisiana; and Walthall County, Mississippi. Applicant proposes to redeliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas, to Atlanta at the existing Atlanta Area Delivery Point.

Applicant proposes to charge Atlanta a transportation rate of 48.2 cents per million Btu where the aggregate of the volumes transported by Applicant for Atlanta under any and all transportation agreements between Applicant and Atlanta, when added to the volumes of gas delivered under Applicant's Rate Schedule OCD, does not exceed Atlanta's daily contract demand from Applicant. For those volumes that exceed Atlanta's daily contract demand, Applicant proposes to charge 77.6 cents per million Btu. In addition Applicant proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Applicant states that the proposed transportation arrangement would enable Bickerstaff to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Applicant indicates that it would obtain take-or-pay credit on all volumes transported under the arrangement.

Applicant also requests flexible authority to add delivery points in the event that Bickerstaff obtains alternative sources of supply. It is stated that the redelivery point, the recipient and the maximum daily transportation volume would remain unchanged. It is further stated that Applicant would file periodic reports providing certain information with regard to the addition of any delivery points.

Comment date: June 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP86-460-000]

May 19, 1986.

Take notice that on April 18, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-460-000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment, authorizing the transportation of natural gas for the Utilities Board of City of Phenix City, Alabama (Phenix City), acting as agent for Bickerstaff Clay Products Company, Inc. (Bickerstaff), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on an interruptible basis, up to 1.5 billion Btu of natural gas per day for Phenix City, as agent for Bickerstaff for a one-year term. It is indicated that Bickerstaff would purchase the gas from SNG Trading Inc. (SNG). Applicant states that it would receive the gas for the account of Bickerstaff at various existing points on Southern's system in Desoto Parish and East Plaquemines Parish, Louisiana, Walthall County, Mississippi, and Shelby County, Texas. Applicant proposes to redeliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas, at an existing delivery points to Phenix City at the Phenix City Meter Stations No. 1, 2 and 3 in Russell County, Alabama.

Applicant proposes to charge Phenix City a transportation rate of 39.9 cents per million Btu where the aggregate of the volumes transported by Applicant to Phenix City under any and all transportation agreements between Applicant and Phenix City, when added to the volumes of gas delivered under Applicant's Rate Schedule OCD, does not exceed Atlanta's daily contract demand from Applicant. For those volumes that exceed Phenix City's daily contract demand, Applicant proposes to charge 64.9 cents per million Btu. In addition Applicant proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Applicant states that the proposed transportation arrangement would enable Phenix City to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Applicant indicates that it would obtain take-or-pay credit on all volumes transported under the arrangement.

Applicant also requests flexible authority to add delivery points in the event that Phenix City obtains alternative sources of supply. It is stated that at the redelivery point, the recipient and the maximum daily transportation volume would remain unchanged. It is further stated that Applicant would file a report providing certain information with regard to the addition of any delivery points.

Comment date: June 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP86-461-000]

May 19, 1986.

Take notice that on April 18, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-461-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta), acting as agent for Packaging Corporation of America (Packaging), and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport on an interruptible basis up to 2,000 MMBtu of natural gas per day for Atlanta for a term of one year from the date of any order issued herein. It is stated that Packaging would purchase the gas from Consolidated Fuel Supply, Inc. Applicant states that Atlanta would cause the gas to be delivered to Southern at various existing points of interconnection located in Breton Sound Area and Main Pass Area, offshore Louisiana, and in DeSoto and Jefferson Parishes, Louisiana. Applicant states that it would redeliver the gas to Atlanta at the Macon Area Delivery Point in Georgia, less 3.25 percent for compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Atlanta's *pro-rata* share of any gas delivered for Atlanta's account which is lost or vented for any reason.

Applicant states that it would charge Atlanta each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Atlanta under any and all transportation agreements with Applicant, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta do not exceed the daily contract demand of Atlanta, the

transportation rate would be 40.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Atlanta under any and all transportation agreements with Applicant, when added to the volumes of gas delivered under Applicant's Rate Schedule OCD on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes would be 77.6 cents per MMBtu.

Applicant would collect from Atlanta the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Applicant also requests flexible authority to provide transportation from additional delivery points in the event that Packaging would obtain alternative sources of supply of natural gas. The additional transportation service would be to the same redelivery point, the same recipient, and within the same maximum daily transportation volume of gas as stated in the application. Applicant would file periodic reports providing certain information with regard to the addition of any delivery points.

Comment date: June 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP86-406-000]

May 19, 1986.

Take notice that on April 21, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-406-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of the Utilities Board of the City of Sylacauga, Alabama (Sylacauga), all are more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Sylacauga in accordance with the terms and conditions of a transportation agreement between Sylacauga and Southern dated April 14, 1986. Southern states it has agreed to transport on an interruptible basis up to 3 billion Btu of gas per day purchased by Sylacauga from SNG Trading Inc., subject to the receipt of all necessary governmental authorizations. Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

Southern states that the transportation agreement provides for Sylacauga to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Breton Sound and East Cameron Areas, offshore Louisiana, and St. Mary, St. Martin, and St. Bernard Parishes, Louisiana. Southern would redeliver to Sylacauga at the Sylacauga Meter Station, Talladega County, Alabama, an equivalent of gas less 3.25 percent of such amount which would have been deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Sylacauga's pro-rate share of any gas delivered for Sylacauga's account which is lost or vented for any reason.

Southern states that Sylacauga has agreed to pay Southern each month the following tranportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Sylacauga under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Sylacauga do not exceed the daily contract demand of Sylacauga, the transportation rate would be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Sylacauga under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Sylacauga exceed the daily contract demand of Sylacauga, the transportation rate for the excess volumes would be 64.9 cents per MMBtu.

Additionally, Southern would collect from Sylacauga the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Sylacauga obtains alternative sources of supply of natural gas. The additional transportation service would be to the same redelivery point, the same recipient, and within the maximum daily transportation volume of gas as stated in the application. Furthermore, Southern would file a report providing information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Sylacauga to diversity its natural gas supply sources and to obtain gas at competitive prices. Also, Southern would be able to obtain take-or-pay relief on the gas Sylacauga may obtain from Southern's suppliers. Southern explains it would release for resale by others gas in NGPA Categories 102(c), 103 and 107. Additionally Southern would release section 102(d) gas subject to receipt of appropriate abandonment authorization.

Southern states that Sylacauga has advised Southern that the gas to be transported pursuant to the transportation agreement would be used to supply certain of its industrial customers who have the installed capability to utilize fuel oil. It is asserted that because of the recent precipitous decline in the prices of fuel oil, many of these industrial customers have switched to fuel oil for substantially all of their energy requirements. It is stated Sylacauga has advised Southern that unless it is able to obtain the transportation services for which authorization is requested by Southern, it would be unable to offer natural gas to these customers at a price that is competitive with fuel oil. It is further stated that, as a result, these industria customers would continue to utilize fuel oil to the maximum extent possible causing a corresponding loss of throughput on Southern's system. Southern avers, to the extent the transportation service proposed herein would enable Sylacauga, and ultimately its customers, to obtain access to competitively priced natural gas, the entire Southern system would benefit by retaining Sylacauga as a customer on the system.

Comment date: June 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in

any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if on motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is field and not withdrawn within 30 days after the time allowed for flining a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11576 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-715-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.; Gerald L. & Lois R. Sims et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

May 19, 1986.Q04

Take notice that the following filings have been made with the Commission.

1. Gerald L. & Lois R. Sims

[Docket No. QF86-715-000]

On May 2, 1986, Gerald L. & Lois R. Simms (Applicant), of 6907 216th Street, S.W., Lynnwood, Washington 98036, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.6 megawatts facility (FERC P. 7182) will be located on the Davis Creek, Lewis County, Washington.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. SNC Hydro Inc.

[Docket No. QF86-696-001]

On April 25, 1986, SNC Hydro Inc. (Applicant), of 125 Wolf Road, Albany, New York 12205, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,230 kilowatt hydroelectric facility (FERC P. 7153) will be located on Fish Creek, Saratoga County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Waycot Systems North Carolina, Inc.

[Docket No. QF86-714-000]

On May 5, 1986, Waycot Systems North Carolina, Inc. (Applicant), of 2021 K. Street, NW., Washington, DC 20006 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Washington County, North Carolina. The net electric power production capacity will be 13 megawatts. The primary energy source will be biomass in the form of wood chips. Pre-treated #6 fuel oil and diesel fuel will be used for trim combustion and combustor pre heating (5.6%, 25% of the total annual heat input to the facility respectively). The facility will not utilized natural gas or coal.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11578 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-413-000]

Application of ANR Gathering Company for Blanket Certificate of Public Convenience and Necessity and for order Permitting and approving Pre-Granted Abandonment and Request for Temporary Authority

May 19, 1986.

Take notice that on May 6, 1986, ANR Gathering Company (Gathering) applied for a blanket certificate of public convenience and necessity authorizing (1) Gathering to make sales for resale in interstate commerce of gas subject to the Commission's Natural Gas Act (NGA) jurisdiction, (2) authorizing sales of natural gas by others to Gathering for resale in interstate commerce, (3) authorizing sales for resale of natural gas by others through Gathering acting as their agent, and (4) authorizing the pregranted abandonment of all sales for resale for which sales certificate

authority is requested herein. Gathering also requests temporary authority to undertake the services set forth herein. This application is filed pursuant to Sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of Title 18 of the Code of Federal Regulations.

The certificate and abandonment authority sought herein, if granted, will enable Gathering to sell natural gas it purchases from various producers or for whom it has authority to act, to various purchasers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11579 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-418-000]

Application of ANR Supply Company for Blanket Certificate of Public Convenience and Necessity and for Order Permitting and Approving Pre-Granted Abandonment and Request for Temporary Authority

May 19, 1986.

Take Notice that on May 9, 1986, ANR Supply Company (Supply) applied for a blanket certificate of public convenience and necessity authorizing (1) Supply to make sales for resale in interstate commerce of gas subject to the Commission's Natural Gas Act (NGA) jurisdiction, (2) authorizing sales of natural gas by others to Supply for resale in interstate commerce, (3) authorizing sales for resale of natural gas by others through Supply acting as their agent, and (4) authorizing the pregranted abandonment of all sales for resale for which sales certificate authority is requested herein. Supply also requests temporary authority to undertake the services set forth herein. This application is filed pursuant to Sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of Title 18 of the Code of Federal Regulations.

The certificate and abandonment authority sought herein, if granted, will enable Supply to sell natural gas it purchases from various producers or for whom it has authority to act, to various purchasers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11580 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-425-000]

Application of Energy Marketing Exchange, Inc. To Amend Blanket Certificate of Public Convenience and Necessity and for an Order Approving Pre-Granted Abandonment

May 19, 1986.

Take notice that on May 12, 1986, Energy Marketing Exchange Inc. ("EME") pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717z (1982) (NGA) and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), applied for a one (1) year extension of the limited-term sales and abandonment authority granted in this proceeding. EME states that such an extension is in the public interest as it will allow a smooth transition into the abandonment procedures established in Order No. 436.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11582 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-421-000]

Application of Texcol Industrial Sales Co.; Inc. for Blanket Certificate of Public Convenience and Necessity and for Order Permitting and Approving Abandonment and Pre-Granted Abandonment and Request for Temporary Authority

May 19, 1986.

Take Notice that on May 12, 1986, Texcol Industrial Sales Company Inc. (TISCO) applied for a blanket certificate of public convenience and necessity authorizing (1) TISCO to make sales for resale in interstate commerce of gas subject to the Commission's Natural Gas Act (NGA) jurisdiction, (2) authorizing sales of natural gas by others to TISCO for resale in interstate commerce, (3) authorizing sales for resale of natural gas by others through TISCO acting as their agent, and (4) authorizing the pregranted abandonment of all sales for resale for which sales certificate authority is requested herein. This application is filed pursuant to Sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of Title 18 of the Code of Federal Regulations.

The certificate and abandonment authority sought herein, if granted, will enable TISCO to sell natural gas it purchases from various producers, or for whom it has authority to act, to various purchasers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-11584 Filed 5-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-23-000]

Eastern Shore Natural Gas Co. Technical Conference

May 14, 1986.

Take notice that pursuant to the Commission's suspension order issued May 7, 1986 in the above-captioned docket, an informal technical conference will be convened on Wednesday, May 28, 1986 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11581 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-32-000, etc.]

Minerals Management Service; Preliminary Finding

May 15, 1986.

In the matter of Minerals Management Service, Louisiana, Section 102(d) NGPA Determination, Taylor Energy Company, West Delta Block 133, MMS Docket G4-4440; FERC No. JD85-31411 MMS Docket G4-4581; FERC No. JD86-01307 MMS Docket G4-4433; FERC No. JD86-01308 MMS Docket G4-4328; FERC No. JD86-01309.

On December 17, 1985, the Minerals Management Service, Department of Interior (MMS) at Metrairie, Louisiana, submitted to the Commission notices of determination. These notices state that gas produced from certain wells located on the Outer Continental Shelf (OCS), offshore Louisiana, (West Delta Block 133 Field) owned by Taylor Energy Company (Taylor) meets all the requirements of section 102(d) of the Natural Gas Policy Act of 1978 (NGPA).[1]

Under section 102(d)(1) of the NGPA, natural gas produced from an old lease on the OCS qualifies for the new natural gas ceiling price if the natural gas is produced from a reservoir which was not discovered before July 27, 1976. Section 102(d)(2) states that a reservoir that was penetrated by a well before July 27, 1976, will be considered to have been discovered before July 27, 1976, if any of the criteria in subsection 102(d)(2)(B), concerning production tests and evidence regarding production capability, are satisfied. The section 102(d) criteria specifically refer to the requirements of OCS Order No. 4.[2]

The record shows that Taylor purchased the lease from Shell Oil Company (Shell) in 1983. Shell penetrated three of the four reservoirs involved in this proceeding prior to July 27, 1976. At that time, Shell conducted induction-electric log tests for the wells in question which showed the presence of a zone of commerically producible sand. In September 1985, MMS issued notices of negative determinations for the three penetrated reservoirs based upon this evidence. However, in December 1985, MMS issued notices of positive determinations superseding the September notices stating, "Shell Oil Company has furnished an affidavit which states that Shell believed the West Delta Block 133 Field to be non-economical and sold it to the Taylor Energy Company for a negative value."

On January 31, 1986, prior to expiration of the forty-five day period for review of MMS' determinations, a tolling letter was issued to MMS requesting that it furnish a statement pursuant to § 271.104(a)(6) of the Commission's regulations explaining the basis of its conclusion that the reservoirs were not discovered prior to July 27, 1976.

On March 31, 1986, MMS furnished a statement explaining the basis for its reversal of the negative determination. It stated that the original determination was based upon an economic analysis which did not permit the inclusion of the costs of marketing, such as pipelines. Upon reconsideration, MMS, relying upon a legal memorandum from the Solicitor's Office, Department of the Interior, concluded that these costs are proper costs in determining whether revenues exceed costs, and that with the inclusion of these costs, the reservoirs in question would not have been "commercially producible" when the wells in question were logged.

In this case there was evidence which appeared to satisfy the production capability test, within the meaning of section 102(d)(2)(B)(iii), since the induction-electric log test showed that the reservoirs contained a zone of producible sand when the reservoirs were penetrated prior to July 27, 1976. Under section 102(d)(4)(B) of the NGPA, where evidence regarding production capability exists, the producer has the burden of showing that the evidence does not provide the applicable indication specified in 102(d)(2) of the NGPA that the reservoir was commercially producible. Here, Taylor has failed to do so.

Accordingly, the Commission hereby makes a preliminary finding (pursaunt to 18 CFR § 275.202(a)(1)(i) that the determinations submitted by the MMS are not supported by substantial evidence in the record on which the determinations were made.[3]

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11577 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] U.S.C. 3312(d) (1985).

[2] NGPA section 102(d)(5) defines OCS Order No. 4 as "the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, approved by the Chief of the Conservation Division on August 28, 1968." Order No. 4 sets forth certain tests, which if satisfied, permit an extension of an OCS lease beyond its primary term in the absence of actual production.

[3] There was no evidance showing that the Q8 Reservoir G, included in MMS Docket G4-4440, was penetrated prior to July 27, 1976. Accordingly, this notice of preliminary finding shall not apply to that portion of production attributable to that reservoir.

[Docket No. ER86-354-000]

Niagara Mohawk Power Corporation; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motions To Reject, Denying Request for Summary Disposition, and Establishing Hearing Procedures

Issued: May 16, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On March 17, 1986, Niagara Mohawk Power Corporation (Niagara) submitted for filing an increase in rates for transmission service to the Power Authority of the State of New York (PASNY).[1] The proposed rates would increase transmission revenues by approximately $6.0 million (59%) based on a twelve-month test period ending March 31, 1987. Niagara requests that its

[1] *See* Attachment for affected PASNY customers and rate schedule designations.

proposed rates become effective on May 19, 1986.

Notice of the filing was published in the Federal Register,[1] with comments due, after extension, on or before April 8, 1986. Timely motions to intervene were filed by PASNY; the City of New York (NYC); the County of Westchester Public Utility Service Agency (COW/PUSA); the Metropolitan Transit Authority (MTA); the Municipal Electric Utilities Association of New York State (MEUA); the New York State Rural Electric Cooperative Association, Inc. (NYSRECA); Allegheny Electric Cooperative, Inc. (Allegheny); American Municipal Power-Ohio, the Connecticut Municipal Electric Energy Cooperative, and the Massachusetts Municipal Wholesale Electric Company (collectively referred to as Municipals); and the New Jersey Public Power Association (NJPPA). In addition, an untimely motion to intervene was filed by General Motors Corporation (GM).

PASNY, GM COW/PUSA, and NYC request intervenor status, but raise no specific issues for investigation. COW/PUSA and NYC further request a five month suspension. NYC states that the propesed increase will significantly impair its efforts to strengthen marginally-economic energy-intensive manufacturing firms and to attract new industrial and commercial customers.

On April 9, 1986, Niagara filed an answer to NYC's pleading, contending that it had not supported its request for maximum suspension in terms of the Commission's *West Texas* criteria.[2] Niagara also disputes the allegation of irreparable harm.

The MTA requests maximum suspension, alleging that the return on common equity is excessive and that Niagara has understated the revenue credit associated with wheeling revenues received from the New York Power Pool.

MEUA, NYSRECA, Allegheny, the Municipals, and the NJPPA request issuance of a deficiency letter or, in the alternative, a maximum suspension of the rates. They allege that the instant filing is deficient in that Niagara failed to submit complete statements and workpapers as required by § 35.13 of the Commission's regulations. If a deficiency letter is not issued, they request a five month suspension of the rates, raising a variety of cost of service issues, including: (1) Return on common equity; (2) demand projections; (3) use of a 12 CP allocator rather than a 1 CP allocator; (4) elimination of separate rates based on delivery voltage; (5) rate discrimination between MEUA and replacement energy customers, who are currently being served at rates below those proposed herein; (6) inclusion in the cost of service of payments made to the PJM pool for unscheduled transmission service; (7) use of revenue credits rather han direct cost allocations to account for firm wheeling services not at issue here; (8) use of a 45-day lag for cash work capital; (9) failure to provide a depreciation study to support new depreciation rates; and (10) failure to justify the differential between PASNY in-state and out-of-state rates. The Municipals also request summary rejection of Niagara's inclusion of compensating bank balances in determining the cash working capital allowance.

On April 23, 1986, Niagara filed an answer to the motions to intervene. Niagara contends that its submittal is in compliance with the filing requirements and denies that a five month suspension is warranted. Niagara also disputes the specific objections to the filing raised by the intervenors.

Discussion

Under Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make NYC, COW/PUSA, the MTA, MEUA, NYSRECA, Allegheny, the Municipals, and the NJPPA parties to this proceeding. Furthermore, we find that good cause exists to grant GM's untimely intervention, given its stated interest, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

In support of the requests for rejection, the intervenors cite a number of alleged omissions from Niagara's filing. Having evaluated Niagara's submittal, we find that it minimally complies with our threshold filing requirements and is not patently deficient. Absent any other basis for rejection, we shall therefore deny the requests for rejection. In addition, we conclude that the Municipals have not justified their cryptic request for summary disposition as to the inclusion of compensating bank balances in determining the working capital allowance. This request will also be denied.

Our review of Niagara's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co., supra,* we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas,* we would generally impose a nominal suspension. Here, our examination suggests that the rates may not yield substantially excessive revenues. Therefore we shall suspend Niagara's rates for one day, to become effective, subject to refund, on May 20, 1986.

The Commission orders

(A) GM's untimely motion to intervene is hereby granted, subject to the Commission's rules of practice and procedure.

(B) The motions to reject Niagra's filing are hereby denied.

(C) The Municipals' request for summary disposition is hereby denied.

(D) Niagara's proposed rates are hereby accepted for filing and suspended for one day, to become effective, subject to refund, on May 20, 1986.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara's rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(H) Subdocket No. 000 of Docket No. ER86-354 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86-354-001.

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[1] 51 FR 10,919 (1986).

[2] *See West Texas Utilities Co.*, 18 FERC ¶ 61,160 (1982).

(I) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Niagara Mohawk Power Corporation, Docket No. ER86-354-000

Rate Schedule Designations

Designation	Description
(1) Supplement No. 1 to Rate Schedule FERC No. 134.	Rate Schedule S.
(2) Supplement No. 4 to Supplement No. 2 to Rate Schedule FPC No. 85.	Rate Schedule A.
(3) Supplement No. 5 to Rate Schedule FPC No. 19 (Supersedes Supplement No. 3).	Rate Schedule A.
(4) Supplement No. 3 to Supplement No. 2 to Rate Schedule FPC No. 18.	Rate Schedule A.

[FR Doc. 86-11583 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-361-000]

Upper Peninsula Power Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, and Establishing Hearing Procedures

Issued May 16, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On March 17, 1986, Upper Peninsula Power Company (UPPCO) submitted for filing a proposed rate increase for firm service to eight wholesale customers.[1] The proposed rates would increase revenues by approximately $278,600 (4.8%) based upon a test period ending December 31, 1986. UPPCO requests that the proposed rates become effective on May 17, 1986.

Notice of UPPCO's filing was published in the Federal Register,[2] with comments due on or before April 4, 1986. Alger Delta Cooperative and Ontonagon County Rural Electrification Association (Cooperatives) timely filed a joint protest and motion to intervene, requesting a five month suspension of the proposed rate increase and a hearing. In support of their requests, the Cooperatives allege that: (1) UPPCO's proposed common equity return exceeds the advisory benchmark allowance for this filing period; (2) UPPCO erred in its allocation of cash working capital to the wholesale class; and (3) UPPCO erred in developing its labor allocator.[3]

On April 16, 1986, UPPCO filed an answer to the Cooperatives' motion. While UPPCO does not oppose their intervention, it denies the Cooperatives' substantive allegations and further denies that a five month suspension is warranted.

Discussion

Pursuant to Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214), the timely, unopposed motion to intervene makes the Cooperatives parties to this proceeding.

Our preliminary examination of UPPCO's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. Accordingly, we shall suspend those rates for five months, to become effective, subject to refund, on October 17, 1986.

The Commission Orders

(A) UPPCO's proposed rates are hereby accepted for filing and are suspended for five months, to become effective on October 17, 1986, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of UPPCO's rates.

(C) The Commission staff shall serve top sheets in this proceeding within 10 days of the date of this order.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(E) Subdocket 000 in Docket No. ER86-361 is hereby terminated. Docket No. ER86-361-001 is assigned to the evidentiary hearing ordered herein.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Upper Peninsula Power Company Rate Schedule Designations

Docket No. ER86-361-000

Designation	Other party
Supplement No. 28 to Rate Schedule FPC No. 14 (Supersedes Supplement No. 27).	Alger-Delta Cooperative Electric Association.
Supplement No. 29 to Rate Schedule FPC No. 15 (Supersedes Supplement No. 28).	The Ontonagon County Rural Electrification Association.
Supplement No. 15 to Rate Schedule FERC No. 23 (Supersedes Supplement No. 14).	City of Gladstone.
Supplement No. 5 to Rate Schedule FERC No. 25 (Supersedes Supplement No. 2 & 3).	Village of Berage.
Supplement No. 28 to Rate Schedule FPC No. 7 (Supersedes Supplement No. 27).	Village of L'Anse.
Supplement No. 26 to Rate Schedule FPC No. 7 (Supersedes Supplemental No. 25).	City of Negaunee.
Supplement No. 28 to Rate Schedule FPC No. 2 (Supersedes Supplement No. 27).	Wisconsin Electric Power Company.
Supplement No. 29 to Rate Schedule FPC No. 3 (Supersedes Supplement No. 28).	Wisconsin Electric Power Company.
Supplement No. 3 to Rate Schedule FERC No. 26 (Supersedes Supplement No. 1).	City of Escanaba.

[FR Doc. 86-11585 Filed 5-21-86; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* Attachment for rate schedule designations and affected customers.

[2] 51 F.R. 10,920 (1986).

[3] On May 9, 1986, the Cooperative filed an amendment to their motion to intervene, contending that UPPCO has erred with respect to the allocation of (1) non-fuel production O&M expenses and (2) transmission plant.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3030-8]

Science Advisory Board; Environmental Effects, Transport and Fate Committee, Municipal Waste Combustion Subcommittee, Open Meeting—May 29–30, 1986; Amended Notice

Notice is hereby given in accordance with Pub. L. 92–463 of a change in the date of the meeting of the Municipal Waste Combustion Subcommittee of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board. Publication of the original notice appeared in the Federal Register on Monday, May 12, 1986, Volume 51, Number 91, page 17407. The amended notice is to inform the public that the two day meeting will be held from 1:30 p.m. to 4:30 p.m. on May 29 and from 8:30 a.m. to approximately 2:00 p.m. on May 30. The meeting will be held at the College of Wiliam and Mary Alumni House, Main Room, 500 Richmond Road, Williamsburg, Virginia.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna A. Foellmer located at 401 M Street, SW, Washington, D.C. 20460 or call (202) 382–4126 by close of business May 22, 1986.

Dated: May 16, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86–11653 Filed 5–21–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180694; FRL-3019-9]

Department of the Interior, Fish and Wildlife Service; Receipt of Applications for Specific Exemptions To Use a Pesticide for an Unregistered Use; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the United States Department of the Interior, Fish and Wildlife Service (hereafter referred to as USDI) for use of sodium cyanide in the M–44 device. One request proposes use of the M–44 device to control coyotes and red foxes in the Grays Lake National Wildlife Refuge in Idaho for the protection of the endangered whooping crane, and the other proposes use of the M–44 device to control coyotes and foxes on the Mississippi Sandhill Crane National Wildlife Refuge in Jackson County, Mississippi, for the protection of the endangered Mississippi Sandhill Crane. EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

DATE: Comments must be received on or before May 27, 1986.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP–180694," should be submitted—

By mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION:

By mail: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

USDI has requested the Administrator to issue specific exemptions to permit the use of sodium cyanide in the M–44 device to control wild canids for the purpose of protecting the endangered whooping crane and Mississippi Sandhill crane. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

USDI has requested the use of the product M–44 Cyanide Capsules, EPA Reg. No. 6704–75, in M–44 devices. One capsule per device will be used. A maximum of 40 M–44 devices and 800 sodium cyanide capsules is requested for use on 3,000 acres of land and marsh at the Grays Lake Wildlife Refuge and a maximum of 100 M–44 devices and 300 sodium cyanide capsules is requested for use on 10,000 acres of land at the Mississippi Sandhill Crane National Wildlife Refuge. Only trained USDI personnel will hand-place the devices. All applicable precautions and restrictions governing the use of sodium cyanide registrations will be adhered to. USDI has requested authorization to use sodium cyanide for a one-year period.

The use of sodium cyanide is being requested to aid in establishing populations of the endangered whooping crane and the endangered Mississippi Sandhill Crane within the wildlife refuges. In order to effectively accomplish this, USDI claims that it is necessary to remove the wild canids which prey on the birds and eggs. Although a number of means are available with which to accomplish this, they are often disruptive to the cranes, are manpower intensive and/or too costly.

USDI has requested and received similar exemptions for this use of sodium cyanide for use at the Gray's Lake site since 1977. Use of sodium cyanide at the Mississippi Sandhill Crane site was authorized under a specific exemption for the first time last year; however, all M–44 devices were removed in December after a Mississippi Sandhill Crane died from cyanide poisoning from an M–44 device. As a result, USDI has reexamined its procedures and conducted an intra-service consultation under Section 7 of the Endangered Species Act. Preventative measures and guidelines have been developed regarding the use of the M–44 device which will minimize the possibility of another such occurrence. The Section 7 consultation determined that the use of the M–44 device ". . . is not likely to jeopardize the existence of the Mississippi sandhill crane or result in the destruction or adverse modification of habitat for this species."

The use of sodium cyanide for predator control was cancelled in 1972 due, in part, to the adverse effects of this pesticide on nontarget species. In 1975, EPA modified that decision to permit

use of sodium cyanide in a springloaded ejector device known as the M–44 to control certain wild canid predators, subject to a number of restrictions. These restrictions include one which prohibits the use of M–44's in wildlife refuges, national wilderness, State and Federal parks, and similar areas. Subsequently, the Agency registered this use in accordance with this decision.

On March 19, 1986, the Agency announced in the Federal Register (51 FR 9518) that it would hold a hearing, in accordance with the Subpart D procedures, to consider substantial new evidence presented by USDI which may warrant further modification of the 1972 cancellation order. Specifically, the hearing will be to determine whether to permit the use of sodium cyanide in the M–44 device to protect endangered/threatened species in areas where such use is currently prohibited.

At the same time, the Agency announced its intent to modify ten restrictions governing the use of sodium cyanide in the M–44 device which had been requested by USDI. Although these modifications were not subject to Subpart D and therefore did not require that a hearing be held, the Agency provided the opportunity for any affected person to request that one or more of these modifications be included in the adjudicatory hearing. Subsequently, these modifications have been included in the hearing at the request of the National Audubon Society, the Environmental Defense Fund, and the Defenders of Wildlife. The date on which the evidentiary phase of the hearing will begin has not been determined.

This notice does not constitute a decision by EPA on the application itself. Interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before May 27, 1986, and should bear the identifying notation "OPP–180694." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the United States Department of the Interior.

Dated: May 16, 1986.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 86–11654 Filed 5–21–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No.: FEMA–REP–7–IA–1]

The Iowa Radiological Emergency Response Plan Site-Specific for the Quad Cities Nuclear Power Station

ACTION: Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Iowa submitted its plans relating to the Quad Cities Nuclear Power Station to the Director of FEMA Region VII on March 28, 1983, for FEMA review and approval. On August 31, 1983, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. However, areas requiring action by the Iowa Office of Disaster Services in order to complete processing of the State's submission were not resolved until January 3, 1986. Included in the August 20, 1983, evaluation is a review of exercises conducted on May 20, 1981, August 24, 1982 and May 11, 1983, in accordance with § 350.9 of the FEMA rule; and, a report of the public meeting held on June 17, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA ruie. In addition there was a review of exercises conducted on August 28/29, 1984 and August 27, 1985.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Quad Cities Nuclear Power Station are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. However, while there is a public alert and notification (A&N) system in place and operational, this approval is conditional upon FEMA's verification of the A&N system in accordance with the criteria of Appendix 3 of NUREG–0654/FEMA–REP–1, Rev. 1; and, FEMA–REP–10, "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants".

FEMA will continue to review the status of offsite plans and preparedness associated with the Quad Cities Nuclear Power Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–7–IA–1 maintained by the Regional Director, FEMA Region VII, 911 Walnut Street, Kansas City, Missouri 64106.

Dated: March 20, 1986.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs Support.

[FR Doc. 86–11490 Filed 5–21–86; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004166–003.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Pasha Properties, Inc. (Pasha)

Synopsis: The proposed amendment would modify the agreement to provide for the Port's review and discussion with Pasha of the extension of the agreement to September 30, 1994 at the end of its present term. It would also provide for increases in the minimum annual compensation to $800,000.00 and the breakpoint sum to $1,250,000 effective February 1, 1986 and for a two percent reduction in Pasha's retention or tariff charges for automobile cargo and vessel operations upon the Port's completion of certain bridge improvements on the assigned premises.

Agreement No.: 202–008848A–031.
Title: Inter-American Freight Conference.
Parties:
A. Bottachi S.A. De Navegacion C.F.I.e.I.
Antilles and Amazon Line
A/S Ivarans Rederi
Brazil-America Container Line
Companhia Maritima Nacional
Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritimas Netumar
Empresa Lineas Maritimas Argentinas S/A
Empresa De Navagacao Alliance S.A.
Flota Mercante Del Estado
Frota Amazonica S.A.
Georgia-Aztec Line
Van Nievelt Goudriaan & Co. B.V.
J. Lauritzen Holding A/S
Kimberly Navigation Company
Passaat Line N.V.
Reefer Express Lines Pty. Ltd.
R.M.C. Lines, Inc.
Ship Operators (International) Inc.
Transportaction Maritima Mexicana S.A.
United States Lines (S.A.), Inc.
Synopsis: The proposed amendment would provide that the actions of nember lines and any future modifications of the agreement are subject to governmental requirements and review on a section-by-section basis rather than a conference-wide review.

Agreement No.: 202–010093–012.
Title: Florida/Caribbean Liner Association.
Parties:
Bernuth Lines Ltd.
Tecmarine Lines, Inc.
West Indies Shipping Corp.
Shipping Corporation of Trinidad and Tobago
Sea-Land Service, Inc.
Concorde Caribe Lines, Ltd.
Synopsis: The proposed amendment would delete Jacksonville, Florida, the Leeward/Windward Islands, Surinam and Guyana from the geographic scope of the agreement. It would also change the voting requirement provisions of the agreement to reflect the reduced geographic scope. The parties have requested a shortened review period.

Agreement No.: 213–010786–002.
Title: Costa/Transatlantica Space Charter and Sailing Agreement.
Parties:
Costa Container Lines, S.p.A.
Compania Transatlantica Espanola, S.A.
Synopsis: The proposed amendment would permit the parties to discuss and agree upon rates, terms of service and service contracts in all or any portion of the agreement trade (between U.S. Gulf, Florida and Puerto Rico Ports and ports in Italy, France, Spain, Portugal and the Canary Islands and between interior and coastal points served via such ports) in which neither party is a member of a conference. The parties have requested a shortened review period.

Agreement No.: 224–010940.
Title: Port Everglades Lease Agreement.
Parties:
Port Everglades Authority (Lessor)
Sea-Land Service, Inc. (Lessee)
Synopsis: The proposed agreement would provide for the use by the Lessee of the Demised Premises devoted to receiving, dispatching, handling, documentation, processing, storage, maintenance and security of loaded and empty cargo containers, container chassis and related vehicles. The term of this lease shall be for a period of two (2) years and 364 days beginning at 12:00 Noon, EST, on the day the agreement becomes effective.

Agreement No.: 218–010941.
Title: Nonexclusive Transshipment Agreement Between American President Lines, Ltd. and Totem Ocean Trailer Express, Inc.
Parties:
American President Lines, Ltd.
Totem Ocean Trailer Express, Inc.
Synopsis: The proposed agreement would establish a non-exclusive, intermodal transshipment arrangement between the parties in the trade between points in Alaska and points in the Far East, with transshipment at Seattle or Tacoma, Washington.

By Order of the Federal Maritime Commission.
Dated: May 19, 1986.
John Robert Ewers,
Secretary.
[FR Doc. 86–11504 Filed 5–21–86; 8:45 am]
BILLING CODE 6730–01–M

Intent To Terminate Approval of Agreement

Agreement No.: 206–006020.
Title: Continental/Mediterranean Westbound Conferences Joint Agreement
Parties:
West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference
Marseilles/North Atlantic Westbound Freight Conference
Continental North Atlantic Westbound Freight Conference
Synopsis: Two of the three member conferences no longer exist thus rendering Agreement No. 206–006020 defunct. The Commission, therefore, gives notice of its intent to terminate its prior approval of this agreement.

By Order of the Federal Maritime Commission.
Dated: May 19, 1986.
John Robert Ewers,
Secretary.
[FR Doc. 86–11505 Filed 5–21–86; 8:45 am]
BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Procedures for Ordering Fiscal Year 1987 Updates to the 1984 Looseleaf Edition of the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of procedures for Federal agencies/departments to order FY 1987 updates to the looseleaf edition of the FIRMR.

SUMMARY: This notice is to advise Federal agencies/departments to submit their FY 1987 copy requirements for the looseleaf edition of the FIRMR to the Government Printing Office (GPO). Individual agency offices are responsible for making their requirements known to their agency GPO liaison Officer. Agency GPO Liaison Officers are responsible for submitting agency copy requirements to GPO through their Printing and Publishing Official. Agencies failing to submit orders will not receive FIRMR updates distributed in FY 1987.

DATE: The looseleaf edition of the FIRMR is distributed to agencies by GPO based on agency-established copy requirements. Copy requirements are submitted to GPO annually. Agencies must submit their FY 1987 FIRMR copy requirements to GPO by June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) The Federal Information Resources Management Regulation (FIRMR) established on April 1, 1984, is located in the Code of Federal Regulation at Title 41, Chapter 201. It provides Governmentwide regulations for the management, acquisition, and use of information resources (including automatic data processing, office automation, records management, and telecommunications).

(2) The basic 1984 Looseleaf Edition of the FIRMR was distributed to agencies by the GPO in March of 1985, based on agency-established copy requirements for FY 1985. Updates to the basic edition were distributed in FY 1985, also based on agency-established copy requirements for that year. GPO now requires agencies to submit their FY 1987 FIRMR copy requirements by June 20, 1986. Agencies not submitting copy-requirements for 1987 will no longer receive FIRMR updates after September 30, 1986.

(3) Agency GPO Liaison Officers responsible for managing FIRMR distribution are being reminded to consolidate their agency's FY 1987 FIRMR copy requirements and make those requirements known to GPO through their agency Printing and Publication Official. By Circular Number 266, dated April 30, 1986, GPO advised Federal Printing and Publications Officials to submit their agencies' FY 1987 copy requirements for all open requisitions (including the FIRMR) by June 20, 1986.

(4) FIRMR materials issued in FY 1987 will consist of updates to the basic looseleaf edition only. The basic 1984 Looseleaf Edition of the FIRMR and updates distributed prior to October 1, 1986, will not be reprinted for distribution prior to FY 1987. Federal employees unable to obtain the basic looseleaf edition and updates distributed in FY 1985 and 1986 through their agency GPO Liaison Officer may subscribe to the FIRMR directly with GPO by following the procedures in paragraph six below.

(5) FIRMR updates in FY 1987 will continue to be issued under Transmittal Circulars (TC's) which will include amendments, temporary regulations, and bulletins and other informational guides. TC's will continue to contain "Transmittal Circular 84–X" as part of the title to indicate that attachments should be filed in the basic 1984 Looseleaf Edition of the FIRMR text. All FY 1987 production costs will be prorated to participating agencies by GPO. Based on previous year estimates, costs for FY 1987 are expected to be between $10.00 and $12.00 per user.

(6) Private sector companies, associations, businesses, and other interested parties wishing to receive the basic 1984 Looseleaf edition of the FIRMR and all updates may place subscription orders with GPO by writing or calling, Superintendent of Documents, Government Printing Office, Washington, DC 20405, telephone (202) 783–3238. The price for each subscription order is $66.00 domestic and $82.50 foreign. (GPO requires payment in advance unless charged to MasterCard, Visa, or GPO charge account.) Individuals already having a FIRMR subscription with GPO will continue to receive FIRMR updates in FY 1987 and are not required to reorder at this time.

Dated: May 14, 1986.

Larry L. Jackson,

Director, Policy and Regulations Division.

[FR Doc. 86–11523 Filed 5–21–86; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Federally Assisted Health Professions and Nurse Teaching Facilities; Federal Right of Recovery and Calculation of Recovery Amount and Interest Charges

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Department's policy regarding the recovery of Federal funds when a health professions or nurse training facility assisted under Title VII or Title VIII of the Public Health Service (PHS) Act undergoes a change in ownership, control, or use. This policy implements the provisions of the Health Professions Training Assistance Act of 1985 and the Nurse Education Amendments of 1985 regarding written notification to the Secretary of changes in status or use, imposition of interest charges on the recovery amount, and waiver of the right of recovery.

FOR FURTHER INFORMATION CONTACT: Richard R. Ashbaugh, Assistant Surgeon General, Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 11–03, Rockville, Maryland 20857, Attention: Ms. Tuei Doong, 301–443–3465.

SUPPLEMENTARY INFORMATION: The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129) amended section 723 of Title VII of the PHS Act, and the Nurse Education Amendments of 1985 (Pub. L. 99–92) amended section 804 of Title VIII. Pub. L. 99–92 also redesignated section 804 as section 858. Sections 723 and 858 still provide for recovery of Federal funds if, within 20 years after completion of construction, (1) an owner of an assisted facility ceases to be a public or nonprofit agency, school, or entity; (2) the assisted facility ceases to be used for the teaching or training purposes for which it was constructed; or (3) the assisted facility is used for sectarian instruction or as a place for religious worship.

The amendments to sections 723 and 858 may be summarized as follows: (1) The owner of a facility that received construction assistance under Title VII Title VIII and which undergoes a change in ownership, control or use within 20 years after the completion of the grant assisted construction must provide written notice of such change to the Secretary within 10 days after the change occurs. (2) Where such timely notice is provided and the Secretary determines that a recovery of Federal funds is appropriate, the facility and the Department have a period of time (190 days after the change occurs) within which to agree upon the amount the United States is entitled to recover. If agreement is not reached within that time frame, the United States is entitled to charge interest on any eventual recovery amount. The interest rate is based on the average of the bond equivalent rates of 91-day Treasury bills auctioned during the interest period. The interest period will begin 191 days after the date of change in status or use and will end on the date the recovery amount is collected.

(3) If the owner does not provide timely, written notice to the Secretary of the change in status or use, the interest period will begin 11 days after the date of such change, and will end on the date the recovery amount is collected. However, sections 723 and 858 provide that the interest period will in no case begin earlier than 181 days after enactment of the pertinent amendments. The date of enactment for section 723 was October 22, 1985 and the date of enactment for section 858 was August 16, 1985.

These amendments are similar to the provisions related to the Federal right of recovery of funds provided under Title VI and Title XVI of the PHS Act which were enacted by the Deficit Reduction Act of 1984 (Pub. L. 98–369). The Department has issued regulations to implement the provisions of Pub. L. 98–369 at 42 CFR Part 124 Subpart H (51 FR 7935, March 7, 1986). Given the similarity in statutory language, the Department has determined that the requirements of the Titles VI and XVI regulations regarding the content of the notice of change in status or use (42 CFR 124.704 (b) and (c)) and the facility valuation methods (42 CFR 124.705) also will be applied by the Department to Title VII and Title VIII assisted facilities

which undergo a change in status or use for which a recovery may be appropriate. The requirements regarding the content of the Notice of change (42 CFR 124.704(b)) are as follows:

(b) Content of Notice. The notice required by paragraph (a) of this section shall be sent to the Secretary by certified mail, and shall contain or be accompanied by

(1) The date of the sale, transfer, or other event that gives rise to the notice;

(2) Copies of any sales contracts, lease agreements, management contracts or other documents pertinent to the event giving rise to the notice;

(3) Estimates of current assets, current liabilities, book value of equipment, the expected value of land on the new owner's books, and the remaining depreciation for all fixed assets involved in the transaction calculated on a straigth line basis using commonly adopted expected useful lifetimes.

No other requirements of 42 CFR Part 124 Subpart H will be applied to recovery of funds provided under Titles VII and VIII. The information collection requirements for the Notice of Change for Titles VII and VIII are subject to OMB approval under the Paperwork Reduction Act of 1980 and have been approved under control number 0915–0108.

It should be noted that sections 723 and 859 retained the Secretary's authority to waive the right of recovery for good cause in cases where a facility is converted to a use different from the purpose for which it was constructed. The conditions under which such a waiver may be granted have been previously established in regulations (for facilities assisted under Title VII see 42 CFR 57.109 and for facilities assisted under Title VIII see 42 CFR 57.409).

Dated: May 19, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–11531 Filed 5–21–86; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 774]

California; Filing of Plat of Survey

May 12, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Alpine County

T. 11 N., R. 19 E.

2. This plat, representing the dependent resurvey of the Second Standard Parellel North along a portion of the south boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sec. 35, Township 11 North, Range 9 East, Mount Diablo Meridian, California, under Group No. 774, was accepted May 2, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is avaialble to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–11490 Filed 5–21–86; 8:45 am]

BILLING CODE 4310–40–M

[C–3–86]

California; Filing of Plat of Survey

May 12, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Sacramento County

T. 8 N., R. 5 E. (M.S. 6882)

2. This supplemental plat, of Mineral Survey No. 6882, showing the subdivision of the Geyser Vew No. 2 placer, with identifying lot designations, is based upon the plat approved September 1, 1961, was accepted May 6, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–11497 Filed 5–21–86; 8:45 am]

BILLING CODE 4310–40–M

[Group 944]

California; Filing of Plat of Survey

May 12, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Yuba County

T. 19 N., R. 6 E.

2. This plat, representing the dependent resurvey of a portion of the boundaries of Mineral Survey No. 5893, and a portion of Lots 30 and 31 (former Lot 10), and the metes-and-bounds survey of Lot 30, section 10, Township 19 North, Range 6 East, Mount Diablo Meridian, California, under Group No. 944, was accepted April 30, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–11498 Filed 5–21–86; 8:45 am]

BILLING CODE 4310–40–M

[ES–036152, Group 91]

Michigan; Filing of Plat of Island Survey, Section 1

May 16, 1986.

1. On May 2, 1986, the plat representing the survey of an island in Rennie Lake, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on June 30, 1986.

The tract shown below describes the island omitted from the original survey.

Michigan Meridian, Michigan

T. 28 N., R. 10 W.
Tract 37

2. The island described above is separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

3. Tract 37 rises approximately 3 feet above the oridinary high water mark of Rennie Lake and is composed of sandy loam. Tree species consist of white pine,

red pine, jack pine, birch, and aspen. The understory consists of aspen, maple, pine, and oak.

4. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the island along with the depth and width of the channel between the upland and the island are considered evidence that the island did exist in 1837, the year Michigan was admitted into the Union.

5. Tract 37 is more than 50% upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). Therefore, the island is held to be public land.

6. Except for valid existing rights, this island will not be subject to application, petition, location, or selection under any public law until June 30, 1986.

7. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director of Cadastral Survey, Bureau of Land Management, Eastern States Office, prior to 7:30 a.m., June 30, 1986.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for lands and Renewable Resources, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, after June 30, 1986.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-11509 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-036150, Group 93]

Michigan; Filing of Plat of Island Survey, Section 9

May 16, 1986.

1. On May 2, 1986, the plat representing the survey of an island in Arbutus Lake, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on June 30, 1986.

The tract shown below describes the island omitted from the original survey.

Michigan Meridian, Michigan

T. 28 N., R. 19 W.,
Tract 39

2. The island described above is separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

3. Tract 39 rises approximately 35 feet above the ordinary high water mark of Arbutus Lake and is composed of sandy loam. Tree species consist of white pine, red pine, jack pine, birch, red oak, and white oak. The understory consists of aspen, hazel, maple, pine, and oak.

4. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the island along with the depth and width of the channel between the upland and the island are considered evidence that the island did exist in 1837, the year Michigan was admitted into the Union.

Tract 39 is more than 50% upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). Therefore, the island is held to be public land.

6. Except for valid existing rights, this island will not be subject to application, petition, location, or selection under any public law until June 30, 1986.

7. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Bureau of Land Management, Eastern States Office, prior to 7:30 a.m., June 30, 1986.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, after June 30, 1986.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-11510 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-036151, Group 94]

Michigan; Filing of Plat of Island Survey, Section 31

May 16, 1986.

1. On May 2, 1986, the plat representing the survey of an island in Island Lake, which was omitted from the original survey was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 30, 1986.

The tract shown below describes the island omitted from the original survey.

Michigan Meridian, Michigan

T. 27 N., R. 9 W.
Tract 37

2. The island described above is separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

3. Tract 37 rises approximately 15 feet above the ordinary high water mark of Island Lake and is composed of sandy loam. Tree species consist of white pine, red pine, jack pine, aspen, birch, cedar, white oak, red oak, and maple. The understory consists of aspen, maple, pine, and hazel.

4. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the island along with the depth and width of the channel between the upland and the island are considered evidence that the island did exist in 1837, the year Michigan was admitted into the Union.

5. Tract 37 is more than 50% upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). Therefore, the island is held to be public land.

6. Except for valid existing rights, this island will not be subject to application, petition, location, or selection under any public law until June 30, 1986.

7. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted to the Deputy State Director for Cadastral Survey, Bureau of Land Management, Eastern States Office, prior to 7:30 a.m., June 30, 1986.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Bureau of Land Management, Eastern States Office, 350 South Picket Street, Alexandria, Virginia 22304, after June 30, 1986.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-11511 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-GJ-M

[F-14630-A]

Alaska Native Claims Selection; Bethel Native Corp.

In accordance with Department regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Bethel Native Corporation. The lands involved are in the vicinity of Bethel, Alaska.

Serial No.	Land description	Approximate acreage
AA-50370	A parcel of land within U.S. Survey No. 4117, lot 35, Alaska.	10.91
AA-50374	A parcel of land within U.S. Survey No. 4117, lot 26, Alaska.	102.62
AA-50373	Seward Meridian, Alaska, T. 8 N., R. 72 W. (Partially Surveyed) A parcel of land located within Secs. 11, 14, and 15.	230.00

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in The Tundra Drums. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until June 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-11401 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-JA-M

Designation of the Ione Tertiary Oxisol Area of Critical Environmental Concern, Folsom Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice that certain public lands in the Folsom Resource Area, Bakersfield District, California are designated as an Area of Critical Environmental Concern (ACEC).

SUMMARY: Notice is hereby given pursuant to authority in the Federal Land Policy and Management Act of 1976 (section 202(c)(3)), 43 CFR Part 1610, and land use decisions developed in the Sierra Management Framework Plan (February 1983), that public lands near Ione, California are designated as an Area of Critical Environmental Concern. The approximately 90 acres of public land are described as follows:

Mount Diablo Meridian, California

T. 5 N., R. 10 E.,
Sec. 16, NW¼SW¼;
Sec. 17, N½N½SE¼ and N½S½NE¼SE¼.

SUPPLEMENTARY INFORMATION: The Ione Tertiary Oxisol Soils ACEC area is located in Amador County about 5 miles southeast of Ione, within the Folsom Resource Area of the Bakersfield District.

This ACEC is established to protect a unique soil profile. An intensely weathered soil (an Oxisol) was formed during the Eocene epoch (part of the Tertiary period) when a tropical climate predominated parts of central California. A few hundred acres of the oxisol near Ione were exhumed by natural erosion, thereby exposing a soil with all the properties of soils that are only found in the tropics. No other soil exists like this within 2,000 miles of California.

Management of this area as a ACEC will include the following:

1. Withdraw the area from mineral entry.
2. Prohibit mineral material sales or mineral leasing.
3. Prohibit issuance of grazing leases.
4. Allow a total of only 5 acres to be disturbed by scientific study.

Opportunities for public participation were provided through the Management Framework Plan process and by a special public meeting held on March 28, 1985 (50 FR 7839, February 26, 1985) to discuss protection of this area as an ACEC.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630; (916) 985–4474.

Dated: May 15, 1986.

Ed Hastey,

State Director, California.

[FR Doc. 86-11402 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-40-M

[Serial Number MT-020-LUP-86]

Permit of Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—FLPMA section 302 Permit.

SUMMARY: The following described tract of land has been examined and through land use planning identified as suitable for permit pursuant to section 302 of the Federal Land Policy and Management Act.

Principal Meridian, Montana

T. 9 S., R. 40 E.,
Sec. 7: SESE;
Sec. 8: N½SW¼, SW¼SW¼.

(Totaling approximately 160 acres)

This Notice of Realty Action proposes the permitting of lands under the jurisdiction of the Bureau of Land Management near the town of Decker, Big Horn County, Montana. The permit is intended to authorize use of these lands by the Decker Coal Company in conjunction with neighboring coal leases. The public lands involved are included in the mining use mitigation plan signed by Decker Coal Company and the Montana Department of Fish, Wildlife and Parks in 1985.

The permit is a noncompetitive offer at fair market value pursuant to completion of future investigation into the exchange of surface ownership and/or long-term FLPMA lease.

Permittee Qualifications

The Permittee must be legally capable of holding and conveying lands or interest therein under the laws of the State of Montana.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action, including the Environmental Assessment, Land Report and Decision Record, is available for review at the Miles City District, Powder River Resource Area Office, Miles City Plaza, Miles City, Montana 59301, or call Steve Durkee at (406) 232–7000.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the above address. Any adverse comments will be evaluated by the Miles City District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Miles City District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 15, 1986.

David Swogger,

Acting District Manager.

[FR Doc. 86-11403 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-DN-M

Realty Action—Exchange; Oregon

May 15, 1986.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 13 S., R. 3 E.,
Sec. 20, W½.
Containing 320.00 acres in Linn County.

In exchange for this parcel, the United States will acquire the following described lands and interest in lands from Willamette Industries, Inc.:

Willamette Meridian, Oregon

T. 7 S., R. 4 E.,
Secs. 26 and 27 (reserved timber only).
T. 14 S., R. 8 W.,
Sec. 33, all that portion of the NW¼SE¼ and Lot 2 lying northerly of the center of Little Lobster Creek.
T. 15 S., R. 7 W.,
Sec. 6, Lot 7, SE¼SW¼, S½SE¼.
T. 15 S., R. 8 W.,
Sec. 23, S½NE¼, S½N½SW¼NW¼, S½SW¼NW¼, SE¼NW¼.
Sec. 26, SE¼.
Containing 196.00 acres in Benton County and 310.00 acres in Lane County.

The purpose of the exchange is to improve both the resource management program of the Bureau of Land Management and the timber management program of the company. The public land that will be exchange is a relatively isolated parcel. Although the company does not own the adjoining lands, it does operate lumber and plywood mills nearby. The company lands and interest in lands have important timber and anadromous fish habitat values. These lands will be managed for multiple use along with the adjoining public lands. The exchange proposal has been given public exposure and no adverse comments were received. The exchange is in the public interest.

The fair market values of the lands and interest in lands are either approximately equal or the acreage will be adjusted to bring the values as close as possible. Full equalization of values will be achieved by payment to the United States of funds in the amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights will be transferred with the surface estate.

The public land will be subject to the following terms and conditions:

1. Valid, existing rights, including any right-of-way, easement, or lease of record.

2. A reservation to the United States for right-of-way for ditches and canals under the Act of Agust 30, 1890.

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning this exchange, including the environmental assessment and the record of public discussions, is available for review at the Salem District Office, P.O. Box 3227 (1717 Fabry Road SE), Salem, Oregon 97302.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Salem District Manager at the above address. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Edward S. Lewis III,
Acting District Manager.

[FR Doc. 86-11494 Filed 5-21-86; 8:45 am]
BILLING CODE 4310-33-M

[W-57410]

Realty Action; Receipt of Exchange Proposal (Amended); Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended Notice of Receipt of Exchange Proposal between Laurance S. Rockefeller and the Department of the Interior.

SUMMARY: The proposed exchange of a scenic easement of approximately 902 acres of the Heartland Area of Laurance Rockefeller's J–Y Ranch, an inholding in the Grand Teton National Park, for federal coal has been amended to include an additional 200 acres of land.

These additional acres are described by metes and bounds but lie in portions of section 5, 6, and 8 of T. 42 N., R. 116 W., 6th P.M. Teton County, Wyoming.

In addition to the Youngs Creek area of Sheridan County, alternate areas of federal coal reserves are being considered in this exchange proposal.

The soliciting of comments described in 51 FR 16234, May 1, 1986 by the Casper District Bureau of Land Management has been extended to June 23, 1986.

FOR FURTHER INFORMATION CONTACT: All comments or any further information should be addressed to: Chuck Wilkie, Special Project Team Leader, Casper District Office, Bureau of Land Management, 951 North Poplar, Casper, WY 82601 (307) 261–5554.

Dated: May 14, 1986.

William H. Mortimer,
Acting District Manager.

[FR Doc. 86-11495 Filed 5-21-86; 8:45 am]
BILLING CODE 4310-22-M

New Mexico; Intent To Prepare Resource Management Plan and Invitation To Participate in Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare resource management plan.

SUMMARY: The Bureau of Land Management, Taos Resource Area, New Mexico, is resuming the preparation of a Resource Management Plan (RMP), which will include the preparation of an Environmental Impact Statement (EIS), initially begun in 1984. The Plan will establish the basis for future management actions on approximately 24,000 square miles of public land and mineral resources by the BLM's Taos Resource Area. The Code of Federal Regulations, Title 43, Subpart 1600, will be followed for this planning effort. The public is invited to participate in this planning process.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until June 27, 1986.

ADDRESS: Send comments to: Bureau of Land Management, Taos Resource Area, P.O. Box 1045, Taos, NM 87571–1045.

FOR FURTHER INFORMATION CONTACT: Dan Wood, Area Manager or Mary Zuschlag, RMP Team Leader, Taos Resource Area, (505) 758–8851.

SUPPLEMENTARY INFORMATION: The planning area will include the public land and Federal mineral ownership in all, or parts of, Union, Mora, Rio Arriba, Colfax, San Miguel, Los Alamos, Harding, Taos, and Santa Fe Counties. This encompasses approximately 564,000 acres of BLM-administered surface and approximately 1,600,000 acres of Federal minerals under Federal, State, or private subsurface in the nine-county area. The Taos RMP is an issue-

BEST COPY AVAILABLE

based document. To date, five issues have been identified which will be addressed in the Taos RMP. They include, but are not limited to, the following: (1) *Land Ownership Adjustments:* Identifying those portions of the Taos Resource Area where land ownership adjustments may be needed to achieve more efficient management and utilization of public resources; (2) *Rights-of-Way Corridors:* Ensuring that development of linear rights-of-way does not result in undesirable impacts on other public resources and natural resource values; (3) *Transportation:* Determining the appropriate levels of access for all the public land in the Taos Resource Area to minimize conflicts with wildlife, range, and private land ownership, and to avoid damage to sensitive watershed; (4) *Special Management Areas:* Identifying areas which may require special management attention through special designation; and (5) *Vegetative Uses:* Changing management in some livestock grazing allotments in order to reduce conflicts between livestock grazing and other important natural resource uses and values.

These preliminary issues are not final and may be further defined by direct imput through active public participation. The Taos RMP will be prepared by an inter-disciplinary team which will include a team leader, technical coordinator, writer-editor, range conservationists, realty specialists, a wildlife biologist, an outdoor recreation planner, an archaeologist, a hydrologist, a geologist, a forester, and an economist, with additional technical support to be provided by other specialists as needed.

Five public meetings have been held, in different communities within the Resource Area. The anticipated issues were presented and comments were requested. A total of 74 individuals attended these public meetings, and their comments were generally favorable to both the planning effort and the identified issues. Only a few written comments were received. No further public meetings are anticipated, unless specifically requested. Written comments, however, will be accepted until June 27, 1986. Complete records of all phases of the planning process will be available for public review at the Taos Resource Area Office throughout the preparation of the Taos RMP. Draft and final documents will be published, the Draft RMP/EIS anticipated in March 1987.

Dated: May 15, 1986.

Charles W. Luecher,

State Director.

[FR Doc. 86-11546 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-FB-M

[AA-10532]

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(1), 14(h)(7) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613 (h)(1), 1613(h)(7), 1621(j), will be issued to Sealaska Corporation for approximately 12.9 acres. The lands involved are in the Tongass National Forest within Sec. 31, T. 25 S., R. 35 E., Copper River Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks in the *Juneau Empire*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-11547 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-6980-A]

Alaska Native Claims Selection; Huna Totem Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue patent under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Huna Totem Corporation for 2.90 acres. The lands involved are in the vicinity of Hoonah, Alaska, within U.S. Survey No. 1620, Tracts A and B.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Juneau Empire*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-11548 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-JA-M

Camping and Firearms Use Restriction Order for the South Yuba Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping, Day Use, and Firearms Use Restriction Order on Public Lands within the South Yuba Recreation Area of the Folsom Resource Area, Bakersfield District, California.

SUMMARY: The South Yuba Recreation Area camping, day use and firearms use restrictions will be as follows:

1. Day use only will be allowed one quarter mile downstream and one-half mile downstream from Edwards Crossing.
2. Camping will be authorized for a period not to exceed 14 days in any 90-day period outside the day use area.
3. Each campsite in the South Yuba Campground may have no more than two motor vehicles, or combination of a motor vehicle and a recreation vehicle; and a maximum of 4 adults (16 years and older).
4. Discharge of firearms is prohibited within ¼ mile of all developed campgrounds, day use areas, and ¼ mile of the center of the river for all public lands along the South Yuba River.

For the purpose of this order, a firearm is defined as under Title 18,

U.S.C., Chapter 44, section 921(a)(3). Federal, State and local law enforcement officers are exempt from this order in the course of their official duties. This order goes into effect on May 31, 1986

DATE: This order is in effect on May 31, 1986.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. Telephone (916) 985–4474.

SUPPLEMENTARY INFORMATION: The purpose of this order is to protect resources of the public land, persons and property, and augument the Camping and Occupancy Restriction Order published in the **Federal Register** Volume 48, No. 208, October 26, 1983, 49555. Authority for this restriction order is contained in CFR Title 43, Chapter II, subpart 8364, §§ 8364.1 and 8365.1–2(a).

Any person who fails to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

Dated: May 15, 1986.

Deane K. Swickard,

Resource Area Manager.

[FR Doc. 86–11553 Filed 5–21–86; 8:45 am]

BILLING CODE 4310-40-M

Notice of Intent To Prepare Environmental Impact Statement; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM), Albuquerque District, is participating in the preparation of an Environmental Impact Statement (EIS) for a Molybdenum Tailings Disposal Facility near Questa, New Mexico. The EIS will determine if the proposal will result in any unnecessary or undue degradation of the public lands.

Scoping meetings will be conducted to inform the public of the proposed development and EIS process, and to elicit public comment on the resource concerns to be addressed. Informal open house scoping meetings are scheduled to take place in Taos, New Mexico, on July 22, 1986, at The Kachina Lodge, North Pueblo Road, beginning at 1:00 p.m. and 7:00 p.m., and Questa, New Mexico, on July 23, 1986, at the Municipal Building, room no. 7, formally State Highway 3, beginning at 1:00 p.m. and 7:00 p.m.

SUPPLEMENTARY INFORMATION: Molycorp Inc. has applied for 1320-acre millsite location on Guadalupe Mountain near Questa, New Mexico pursuant to 30 U.S.C. section 42 (1976). The Bureau of Land Management has prepared an Environmental Assessment on the proposal and subsequently issued a Record of Decision (ROD) on September 25, 1985, requiring an EIS for the proposal. The EIS will be prepared by a third party contractor with the Bureau of Land Management responsible for content and quality control of the EIS. Bids and proposals were accepted, and ERT, A Resource Engineering Company, was selected as the contractor to prepare the EIS.

The Bureau of Land Management contact for the Proposed Tailing Disposal Facility is: Gene Tatum, Bureau of Land Management, Albuquerque District Office, 505 Marquette NW., P.O. Box 6770, Albuquerque, NM 87197–6770, Telephone: Commercial (505) 766–3114, FTS 474–3114.

Charles W. Luschar,

State Director.

Dated: May 15, 1986.

[FR Doc. 86–11550 Filed 5–21–86; 8:45 am]

BILLING CODE 4310-FB-M

[NM 63247]

Realty Action; Modified Competitive Sale of Public Lands, New Mexico

The following described land has been identified through the East Chaves Management Framework Plan and found suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value.

New Mexico Principal Meridian

Legal description	Acreage	Appraised fair market value
T. 5 S., R. 27 E., sec. 10, SE¼NW¼	40	$800

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until a patent is issued or 270 days from the date of publication of this notice, whichever occurs first.

The above described lands will be offered for sale at public auction at 2:00 p.m., on Wednesday, August 13, 1986 at the Roswell Resource Area Conference Room, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

Because the tract to be offered is isolated, has no legal access, and is predominently within the ranch boundaries of Fred and Louise Van Eaton, the sale will be a modified competitive sale, i.e., the Van Eatons will be given the opportunity to meet the highest bid received at the public auction.

Bidding must be submitted to the BLM's Roswell Resource Area office in an envelope clearly marked "Bid for Public Sale NM 63247" no later than 4:30 p.m. August 12, 1986. No bids will be accepted for less than the fair market value specified in this notice. Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than 10% of the amount bid. Federal law requires that all bidders be United States citizens, or in the case of corporations, be subject to the laws of any State in the United States Proof of these requirements must accompany the bid. An apparent high bid will be declared at the auction. The apparent high bidder and the designated bidder (Fred and Louise Van Eaton), will be notified. The designated bidder shall have 14 days from the date of the sale to exercise their preference consideration. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the tract will be sold to the apparent high bidder.

The successful bidder must pay the balance of the full bid price within 180 days of notification by the BLM. Failure to pay the full price within 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

Terms and conditions applicable to the sale are:

(1) The patent will contain a reservation to the United States for ditches and canals constructed under the Authority of the Act of August 30, 1890 (27 Stat. 391, 43 U.S.C. 945).

(2) All minerals, together with the right to prospect for, mine and remove the minerals shall be reserved to the United States.

(3) The patent will be subject to those rights granted to the existing mineral lessee to use as much of the surface as is necessary for exploration, development, and production of the mineral estate.

(4) The patent will be subject to the right of the BLM to manage existing grazing lease rights issued through 2/28/1995, unless waived by the lessee.

Detailed information concerning the sale, including the reservations, conditions of sale, and planning and environmental documents are available at the Roswell Resource Area office, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Roswell District, P.O. Box 1397, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Francis R. Cherry Jr.,
District Manager.
[FR Doc. 86-11549 Filed 5-21-86; 8:45 am]
BILLING CODE 4310-FB-M

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49443-AT has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 20 S., R. 4 E.,
Sec. 27, SW¼NW¼, SW¼.
(200 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acres per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-49443-AT as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1985, subject to the terms and conditions cited above.

Dated: May 14, 1986.
Kay F. Kletka,
Acting Chief, Branch of Mineral Adjudication.
[FR Doc. 86-11562 Filed 5-21-86; 8:45 am]
BILLING CODE 4310-JA-M

[CA 19824]

Realty Action; Land Exchange in Trinity County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under the provisions of section 206 of the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1716):

T. 33 N., R. 9 W., M.D.B.&M.,
Sec. 14, W½.
(containing 320 acres)

In exchange for these lands, the United States will acquire the following described lands from Santa Fe Pacific Timber Company, 1626 Court Street, Redding, California 96001:

T. 32 N., R. 10 W., M.D.B.&M.
Sec. 1, SW¼SW¼.
(containing 40 acres)
T. 33 N., R. 9 W., M.D.B.&M.,
Sec. 31, SE¼NE¼and the NE¼SE¼.
(containing 80 acres).
T. 33 N., R. 9 W., M.D.B.&M.,
Sec. 29, E½SE¼.
(containing 80 acres)
T. 33 N., R. 10 W., M.D.B.&M.
Sec. 33, SE¼SW¼ and the SE¼.
(containing 200 acres)

The purpose of this exchange is to acquire these private lands which have high public values for recreation purposes. These parcels lie along the Trinity River, a designated "recreation river" under the Wild and Scenic Rivers Act (Pub. L. 95-625). Acquisition is consistent with the approved Trinity River Recreation Area Management Plan (which provides for land tenure adjustments through exchange), and the Redding Resources Area Land Use Plans.

The values of the lands to be exchanged are approximately equal; Full equalization of values will be in accordance with regulations cited in 43 CFR 2201.3. Appraisal values will be available prior to consummation of the exchange at the BLM area office, Redding, California.

Publication of this notice in the Federal Register segregates the public land described herein from all forms of appropriation under the public land laws, including the mining laws, for a period of two years from the date of first publication.

Evidence of title acceptable to the Department of Justice is required on private land conveyed to the United States.

Detailed information concerning the exchange, including the Land Report, environmental assessment, and the record of non-federal participation, is available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

DATE: For a period of 45 days from the date of first publication, interested parties may submit comments to Robert J. Bainbridge, Area Manager, Redding Resource Area.

ADDRESS: Comments should be sent to: Area Manager, Redding Resource Area, Bureau of Land Management, 355 Hemsted Drive, Redding, Califpmia 96002.

Objections will be reviewed by the California State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246-5325.

Dated: May 8, 1986.
Marion J. Francis, Jr.,
Acting Area Manager.
[FR Doc. 86-11551 Filed 5-21-86; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document; Pennzoil Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pennzoil Producing Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 2062 and 2439, Blocks 334 and 335, respectively, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 13, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 15, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11489 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Chevron, U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1634, Block 144, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on May 14, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: May 15, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11557 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the West Delta Block 73 Federal Unit Agreement Nos. 14-08-0001-8915, 14-08-0001-8916, 14-08-0001-11677, 14-08-0001-11679, and 14-08-0001-11680, submitted on April 29, 1986, and May 12, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the West Delta Block 73 Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays, 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 16, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11558 Filed 5-21-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-236]

Certain Portable Bag Sewing Machines and Parts Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: American-Newlong, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 6, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: May 19, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–11630 Filed 5–21–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30618]

The Denver and Rio Grande Western Railroad Co., Trackage Rights Exemption; Missouri Pacific Railroad

The Missouri Pacific Railroad has agreed to grant overhead trackage rights to The Denver and Rio Grande Western Railroad Company, between M.P. 276.66 at Rock Creek Junction and M.P. 277.90 at Southwest Junction, on the Sedalia Subdivision, a distance of 1.02 miles; and between a point of switch connection at said M.P. 277.90 and the point of switch connection at M.P. 278.59 at Southwest Junction on the Kansas City Subdivision, a distance of .36 miles. The trackage rights will be effective on June 16, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), and modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 16, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–11622 Filed 5–12–86; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., in Washington, D.C. on June 16 and 17, 1986, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss recommended questions for the Joint Board's examinations referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1986 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass scores. A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1986 Joint Board basic examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

In addition, there will be a discussion of (1) the concept of open book examinations for future Joint Board examinations and (2) an increase in the fees structure for participation in Joint Board examinations. The portion of the meeting dealing with the discussion of these topics will be open to the public as space is available. Such discussion will commence at 1:30 p.m. on June 16 and will continue until the discussion is finished but not beyond the 3:30 p.m. that day.

Time permitting, after discussion of the open meeting agenda items by Committee members, interested persons may make statements germane to the subjects under consideration. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Advisory Committee and the Joint Board by sending it to the Committee Management Office. Notifications and statements should be received no later than June 9, 1986. They should be sent to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220. Telephone inquiries may be directed to Mr. Shapiro at (202) 535–0787.

Dated: May 19, 1986.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 86–11570 Filed 5–21–86; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

May 19, 1986.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into new forms, revisions, or extensions. Each entry contains the following information: The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required on asked to report; an estimate of the number or responses; an estimate of the total number of hours needed to fill out the form; an indication of whether section 3504(h) of Pub. L. 96–511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent

you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312

Existing Collection In Use Without an OMB Control Number

(1) Larry E. Miesse, 202/633-4312
(2) Office of Justice Programs, Department of Justice
(3) Guidelines for the Mariel-Cuban State Reimbursement Program
(4) n/a
(5) One-time
(6) State or local governments. Data required by Immigration and Naturalization Service via Office of Justice Programs to determine whether specific inmates are indeed Marlels and to determine months of incarceration for reimbursement.
(7) 16 respondents
(8) 3,200 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633-4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Age, Sex, Race and Ethnic Origin of Persons Arrested
(4) DO-62/62a
(5) Monthly
(6) State or local governments. Needed to collect information regarding the number of persons arrested by law enforcement agencies throughout the United States.
(7) 1,371 respondents
(8) 8,226 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Issuance of Refugee Travel Document
(4) I-570
(5) On occasion
(6) Individuals or households. Used to determine an applicant's eligibility for refugee travel document issuance.
(7) 11,000 respondents
(8) 11,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Biographic Information
(4) G-325
(5) On occasion
(6) Individuals or households. Used where necessary to check other agency records (FBI, CIS) on applications or petitions submitted for benefits under the Imigration and Nationality Act.
(7) 500,000 respondents
(8) 125,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Change of Nonimmigrant Status
(4) I-506
(5) On occasion
(6) Individuals or households. Used to determine if an applicant for change of nonimmigrant status is eligible for change.
(7) 50,000 respondents
(8) 25,000 burdern hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Status as Pemanent Resident
(4) I-485
(5) On occasion
(6) Individuals or households. Data required to adjust status to that of a lawful permanent resident.
(7) 175,000 respondents
(8) 87,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Larry E. Miesse,
Clearance Officer, Department of Justice.
[FR Doc. 86-11545 Filed 5-21-86; 8:45 am]
BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, Notice is hereby given that on May 9, 1986 a proposed Consent Decree in *United States* v. *Ben's Truck and Equipment, Inc. and P&M Cedar Products, Inc.*, Civil Action No. S-84-1672-MLS, was lodged with the United States Court for the Eastern District of California. The proposed Consent Decree concerns the prevention of visible emissions and the proper procedures to be followed during demolition operations involving the removal of friable asbestos material. The proposed Consent Decree only relates to defendant Ben's Truck and Equipment, Inc. and requires Ben's Truck to pay a civil penalty of $25,000 and enjoins Ben's Truck from further violations of various Sections of the Clean Air Act and the National Emission Standard for Hazardous Air Pollutants for asbestos.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ben's Truck and Equipment, Inc., and P&M Cedar Products, Inc.*, D.J. Ref. 90-5-2-1-743.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of California, 650 Capitol Mall, Sacramento, California 95814 and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California. Copies of the Consent Decree also may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 86-11500 Filed 5-21-86; 8:45 am]
BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 CFR 50.7, Notice is hereby given that on May 13, 1986 a proposed Consent Decree in *United States* v. *City of Key West, Florida*, and *State of Florida*, Civil Action No. 85-3332-Civ-Scott, was lodged with the United States Court for the Southern District of Florida. The proposed Consent Decree concerns prevention of the discharge of pollutants by the City of Key West into the Atlantic Ocean in violation of the Clean Water Act. The proposed Consent Decree relates only to defendant City of Key West and requires Key West to pay a civil penalty of $500,000, to rehabilitate its existing sewer system, to construct a wastewater treatment plant, to comply with interim effluent limitations until completion of the treatment plant and then to comply with

final effluent limitations contained in the City's NPDES permit, to report any violations of the Consent Decree and subjects Key West to certain stipulated contempt penalties for violation of the provisions of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Key West, Florida* and *State of Florida*, D.J. Ref. 90-5-1-1-2457.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Florida, 155 South Miami Avenue, Suite 700, Miami, Florida 33130 and at the Region 4 Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. Copies of the Consent Decree also may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-11501 Filed 5-21-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated March 3, 1986, and published in the **Federal Register** on March 10, 1986; (51 FR 3257), Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pethidine (meperidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 16, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-11533 Filed 5-21-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-47]

Medicine Shoppe; Denial of Application

On September 4, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to the Medicine Shoppe, 206 Donelson Pike, Donelson, Tennessee 37214 (Respondent). The Order to Show Cause sought to deny the application for DEA registration executed by Daniel C. Dickson on behalf of the Medicine Shoppe on August 13, 1985. The statutory predicate for the Order to Show Cause was that Daniel C. Dickson, owner of the Medicine Shoppe, had been convicted, in the Criminal Court of Davidson County Tennessee, of four counts of illegal sale of controlled substances, felonies relating to controlled substances; and that he had materially falsified four applications for renewal of the pharmacy's DEA Certificate of Registration, indicating that he had not been convicted of a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. After prehearing proceedings, a hearing was held in Nashville, Tennessee on November 19, 1985. On February 5, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Government counsel filed exceptions to the Administrative Law Judge's opinion and recommended decision. In response to the Government's exceptions, Judge Young issued a supplemental opinion and recommendation. On April 11, 1986, the Administrative Law Judge transmitted the record of the proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Daniel C. Dickson, owner of the Medicine Shoppe has been employed as a pharmacist in Nashville, Tennessee since 1971. In 1973, he began to operate a Medicine Shoppe pharmacy under a franchise. Investigation of Mr. Dickson by the Tennessee Bureau of Investigation in 1980 and 1981 established that he wrongfully filled prescriptions for controlled substances at his pharmacy. An agent of the Tennessee Bureau of Investigation, acting in an undercover capacity, obtained at least 13 refills of a prescription for Ionamin. Ionamin is a Schedule IV controlled substance. The original prescribing physician had not authorized any refills of the prescription. Further investigation by the Tennessee Bureau of Investigation disclosed additional prescriptions for controlled substances which had been refilled without authorization of a physician, one prescription having been refilled on 32 occasions and another on 24 occasions.

In April, 1981, a search warrant was executed at the Medicine Shoppe by agents of the Tennessee Bureau of Investigation (TBI). Certain prescriptions were seized from the pharmacy files, and Mr. Dickson was questioned by agents after being advised of his rights. When Dickson was asked why he had refilled many of the above-cited controlled substance prescriptions, he indicated that it was neglect. When specifically told by a TBI Agent that the physician had not authorized a prescription, Mr. Dickson stated that he had been unable to contact the physician.

On April 8 and 9, 1981, investigators from the Tennessee Board of Pharmacy conducted an audit of controlled substances at the Medicine Shoppe. A verification of purchase invoices by the investigators revealed that Mr. Dickson had failed to provide all relevant invoices for the receipt of Schedule III and IV controlled substances. The wholesaler's records indicated that it had provided the Medicine Shoppe with a greater quantity of controlled substances than the pharmacy's records acknowledged. The audit results for a two year period showed shortages and overages of Schedule II, III, and IV controlled substances. Among these were a shortage of 14,945 tables of Valium 5 mg., being 13.4 percent of the amount of this drug for which the pharmacy was accountable; a shortage of 10,526 tablets of Valium 10 mg., being 22 percent of the total accountable; and

a shortage of 3,151 dosage units of propoxyphene compound 65 mg., being 28.6 percent of the total accountable. Several controlled substances showed overages, the records indicating that the pharmacy could account for more of a specific controlled substance than was available. The Administrator notes that while these audit results do not, in and of themselves, establish any illegal dispensing of distributing, they do, at the very least, establish Mr. Dickson's failure to adequately maintain the records required by law to be kept at the pharmacy.

The Administrator finds that Daniel C. Dickson was indicted by the Grand Jury of Davision County, Tennessee in July, 1981 of 92 counts of dispensing controlled substances without the authorization of a practitioner. In September, 1981, Dickson was convicted of four counts of feloniously dispensing controlled substances without authorization of a practitioner, after entering a plea of guilty to those charges. These are felony offenses relating to controlled substances. Mr. Dickson was sentenced to two years at hard labor in the State Penitentiary, but actually served no time and was placed on five years probation. Mr. Dickson also entered into a Consent Order with the Tennessee Board of Pharmacy which imposed three years of probation, community service and a fine. Dickson has successfully fulfilled the Tennessee Board's probationary requirements, and both he and the Medicine Shoppe are currently licensed and in good standing in Tennessee.

On December 21, 1981, December 13, 1982, December 19, 1983, and December 20, 1984, Daniel C. Dickson signed applications for renewal of the Medicine Shoppe's DEA Certificate of registration. The first of these was executed just three months after his conviction in 1981. There are a series of questions appearing on each application form. One question asks whether the applicant has been convicted of a felony in connection with controlled substances under state or Federal law. On each of the four applications for renewal of the pharmacy's DEA Certificate of Registration, the question was answered "no." Each application was signed by Daniel C. Dickson. Each application was materially incorrect. Each application was processed by DEA since there was no indicator on the application that the status of the pharmacy had changed. The pharmacy remained registered until the registration was revoked, effective August 26, 1985, by the Administrator of DEA. (Prior to the instant proceeding, an Order to Show Cause proposing to revoke the then-current DEA Certificate of Registration of the Respondent pharmacy was issued based on the same grounds as the current action. At that time, Daniel Dickson, on behalf of the pharmacy, specifically waived a hearing and submitted a written statement. After consideration of the entire investigative file and the written statement submitted by Mr. Dickson, the Administrator revoked the pharmacy's registration. See 50 FR 30533 (July 26, 1985).)

Evidence presented at the hearing indicated that Daniel Dickson is held in high regard in his community. Other pharmacists in the area who have known him and worked with him express high regard for his pharmacy skills. Other members of the medical community believe Daniel Dickson to be a competent pharmacist. A number of persons who know Daniel Dickson, his pharmacy and the community believe that he does not pose a risk to the public, but rather is a valuable asset to the community which he serves. Patients rely on Daniel Dickson as a pharmacist. He enjoys a reputation for honesty and truthfulness in his community. The evidence presented at the hearing indicated that since his conviction in 1981, Mr. Dickson has complied with all state and Federal regulations with regard to dispensing controlled substances, with the exception of the four erroneous applications which he filed with DEA. Mr. Dickson testified at the hearing that if the pharmacy is not granted a DEA registration, he may have to close the store or lose the franchise. His current inability to dispense controlled substances has caused his business to decline.

The Administrative Law Judge found that Daniel Dickson pled guilty to the crime of feloniously dispensing the controlled substance, phentermine. He also found that the audit of controlled substances conducted at the Respondent pharmacy revealed sizable shortages and overages of several such substances. The audit results demonstrate, at the very least, an extraordinary carelessness and sloppiness in recordkeeping. The Administrative Law Judge concluded that recordkeeping is a most serious matter in a pharmacy. Controlled substances are controlled because they are potentially dangerous. They must be kept in legitimate therapeutic channels. They cannot be permitted to become diverted into the hands of those who will abuse them to their own harm or the harm of others. It is obvious that Dickson was making little, if any, effort to keep track of the controlled substances audited by the Tennessee State Board of Pharmacy. The extent of the neglect of responsibility found by the audit increases the serious doubts raised as to Dickson's fitness to hold a DEA registration. Even after such recordkeeping failures had been brough to Mr. Dickson's attention, he continued to submit incorrectly filled-out applications for renewal of his DEA registration. The preponderance of the evidence is to the effect that Dickson himself did not prepare these forms incorrectly—this was done by others. This, however, does not relieve him of the responsibility for the contents of these applications since he signed and submitted them. Dickson says that he did not read the renewal applications prepared by others prior to signing them. He should have since he is responsible for their contents. Dickson's failure to examine these documents, at best, reveals neglect of responsibility that increases still further the serious doubts already existing as to his fitness to hold a DEA registration. Based upon his prior convictions, the autlit results, and his failure to properly complete the DEA registration applications, the Administrative Law Judge recommended that Respondent pharmacy, owned by Dickson, should not be entrusted with a DEA registration. The Administrator agrees with the recommendation of the Administrative Law Judge and adopts his findings of fact, conclusion of law and recommended decision in its entirety.

The Administrator concludes that the registration of Mr. Dickson's Medicine Shoppe would be inconsistent with the public interest, upon consideration of the applicant's experience in dispensing controlled substances, the applicant's conviction record, the applicant's record of noncompliance with applicable law relating to controlled substances, and the applicant's negligent conduct discussed above which threatens the public health.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) orders that the application for DEA Certificate of Registration, executed by Daniel C. Dickson on behalf of the Medicing Shoppe in Donelson, Tennessee on August 13, 1985, and any other outstanding applications for registration executed by Mr. Dickson, be and are hereby denied.

This order is effective May 22, 1986.

Dated: May 16, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-11532 Filed 5-21-86; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Advisory Policy Board National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on June 4-5, 1986, from 9 a.m. until 5 p.m. at the Raffles Hotel Denver, Southeast, 3200 South Parker Road, Aurora, Colorado 80014.

The major topics to be discussed include:

(1) Presentations of proposals recommended by state and local users of the NCIC System to enhance the quality and completeness of records in the System.

(2) Status report and future testing plans for the Interstate Identification Index.

(3) Status report on the contractor's methodology of conducting the NCIC 2000 Study.

The meeting will be open to the public with approximately 30 seats available for seating on a first-come-first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-2606.

William H. Webster,

Director.

[FR Doc. 86-11502 Filed 5-21-86; 8:45 am]

BILLING CODE 4410-02-M

MERIT SYSTEMS PROTECTION BOARD

Federal Employees; Review of Effect of *Simmons* v. *Merit Systems Protection Board*, 768 F.2d 323 (Fed. Cir. 1985); Opportunity to File Amicus Briefs in Board Proceedings

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to file amicus briefs addressing issue related to awards of attorney fees.

SUMMARY: The Merit Systems Protection Board is providing an opportunity for interested parties to file amicus briefs concerning the issue of whether the Board should give retroactive effect to a court decision holding that the Board may award attorney fees in retirement cases.

DATE: Amicus briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before June 23, 1986.

ADDRESS: All briefs shall be captioned "Amicus Brief, Attorney Fee Awards." A signed original and ten (10) copies of each amicus brief submitted in response to this notice shall be filed with the Office of the Clerk of the Board and addressed to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, Attention: Attorney Fee Awards, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: In *Williams* v. *Office of Personnel Management*, 718 F.2d 1553 (1983), the U.S. Court of Appeals for the Federal Circuit held that the Board lacked authority to grant attorney fees under 5 U.S.C. § 7701(g)(1) in physical disability retirement cases. *Id.* at 1554. That holding was overruled by *Simmons* v. *Merit Systems Protection Board*, 768 F.2d 323 (Fed. Cir. 1985). Since the latter decision was issued, appellants whose cases were decided under *Williams* have requested that the Board apply *Simmons* retroactively and award attorney fees in their cases, even though the MSPB decisions in their cases became final before *Simmons* was issued. The Board has reopened these cases and is now offering, through this notice, to receive and consider amicus briefs from interested parties on whether it should apply *Simmons* to those cases.

Dated: May 19, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-11502 Filed 5-21-86; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Accident Reports Issued

Aircraft Accident Report: Galaxy Airlines, Inc., Lockheed Electra-L-188C, N5532, Reno, Nevada, Janaury 21, 1985. (NTSB/AAR-86/01) (NTIS Order No. PB86-910401).

Marine Accident Report: Grounding of the Panamanian-Flag Passenger Carferry M/V A. REGINA, Mona Island, Puerto Rico, February 15, 1985. (NTSB/MAR-86/02) (NTIS Order No. PB86-916402).

Marine Accident Report: Collision between the Fishing Vessel GULF QUEEN and the Crewboat M/V ALAN MCCALL in the Gulf of Mexico, March 9, 1985. (NTSB/MAR-86/04). (NTIS Order No. PB86-916404).

Pipeline Accident Report: Continental Pipe Line Company Pipeline Rupture and Fire, Kaycee, Wyoming, July 23, 1985. (NTSB/PAR-86/01) (NTIS Order No. PB86-916501).

Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports, call 703-487-4650 and to order subscriptions to reports, call 703-487-4630.

Catherine T. Kaputa,

Federal Register Liaison Officer.

May 16, 1986.

[FR Doc. 86-11503 Filed 5-21-86; 8:45 am]

BILLING CODE 7533-01-M

SAFETY RECOMMENDATIONS ISSUED

Recommendation No.	Respondent	Date	Subject
A-85-57 and -58	Federal Aviation Administration (FAA)	9/10/85	Piston connecting rods on Teledyne Continental Model TSIO-360 -E, -F, and -G engines installed in 1977, 1978, and 1979 model airplanes. Design review of engines in Piper Model PA-28R-201T Turbo III Cherokee Arrow, PA-28RT-201T Turbo IV Cherokee Arrow, and PA-28-201T Turbo Dakota airplanes.
A-85-59 through -65	....do	9/20/85	Passenger revenue operations: compliance with traffic advisory practice at uncontrolled airports; instrument approaches; standard instrument approach procedures; IFR flight plans; Traffic Alert and Collision Avoiding System.
A-85-72	Helicopter Association International and the Aerospace Industries Association of America.	10/1/85	Review and analysis of accident data and the crashworthiness of each current helicopter design; occupant protection improvements.
A-85-120 and -121	FAA	11/8/85	Pratt & Whitney JT8D-series engines; integral sleeve spacer at all six locations in the high-pressure compressor rotor.
A-85-118 and -119	....do	11/8/85	Magnetic particle inspection of all collective sleeve assemblies on Bell 214B/214ST model helicopters.
A-85-129 through -132	....do	11/27/85	Lockheed L-1011 passenger oxygen system.
A-85-85133 through -137	....do	12/5/85	Boeing 747 empennage design; structural integrity of the aft pressure bulkhead.
A-85-105 through -107	Regional Airlines Association	12/17/85	Passenger safety briefings.
A-85-105 and -106	Selected airlines which are not members of the Air Transport Association or the Regional Airline Association.	12/17/85	Passenger safety briefings.
A-86-19	FAA	2/11/86	Piper PA-34-200 airplanes; nose gear centering spring bolt.
A-86-21	U.S. Department of Defense	2/14/86	Passenger and baggage weights on commercial contract carriers of military personnel.
A-86-20	FAA	2/14/86	Passenger and baggage weights (actual versus average) for air carriers.
A-86-22 and -23	....do	3/26/86	Throttle opening springs on Cessna single-engine airplanes with carbureted engines.
A-86-14 through -19	....do	3/4/86	Air staft access doors on Lockheed Electras; operator surveillance; emergency procedures; cockpit resource management.
A-86-25 through -29	....do	4/7/86	Combustion chambers on Pratt & Whitney JT8D-1 through -17AR engines; engine condition monitoring (ECM) programs; replacement of stage 7-8, 8-9, and 9-10 removable sleeve spacers between high-pressure compressor are replaced with integral sleeve spacers; maintenance reliability programs.
A-86-24	....do	4/17/86	One-time ultrasonic or eddy current inspection of Parsons Company main rotor blades with more than 3,000 hours accumulated time used on hiller Aviation model UH-12 helicopters.
HIGHWAY			
H-85-48 and -50	Governors and Legislative Leaders of the 50 States and Puerto Rico, Mayor and Council Chairman of the District of Columbia.	12/6/85	Improved reporting of alcohol involvement in highway crashes.
H-86-27 through -29	Federal Highway Administration	10/16/85	Underwater structural elements of bridges.
H-86-7	Virginia Department of Education	3/22/86	Physical standards for schoolbus drivers.
H-86-19	American Bus Association and Trucking Associations, Inc.	9/10/85	Duty status records for motor carrier drivers; addition of all time worked by a commercial vehicle driver for all full time and part time employers to the definition of "on-duty" time.
MARINE			
M-86-27 through -29	U.S. Coast Guard	3/28/86	Qualification of ocean operators as radar observers; signals while underway or at anchor during periods of limited visibility due to high speed vessels servicing offshore structures in the Gulf of Mexico; manning requirements on Certificates of Inspection for small passenger vessels.
M-86-26	Phillips Petroleum Co	3/28/86	Mobile offshore drilling unit operating procedures.
M-86-25	Global Marine Drilling Co	3/28/86	Mobile offshore drilling unit procedures; shutting off well flow when the low level methane gas alarm is sounded.
M-86-22 through -24	Otis Engineering Corp	3/28/86	Inspection, maintenance, and assembly procedures for the crude oil burner in well testing operations; quality control standards and procedures; dedicated, separate, compressed air source to supply air to crude oil burners; device to prohibit the backflow of well hydrocarbons that may enter the compressed air piping.
M-86-20 and -21	International Association of Classification Societies	3/28/86	Certification and inspection of crude oil burners and their component parts for the maintenance of safe condition; prohibition of well hydrocarbons that may enter the compressed air piping.
M-86-18 and -19	U.S. Coast Guard	3/28/86	Inspection of crude oil burners and their compondent parts to ensure that equipment is maintained in a safe condition.
M-86-30 and -31	Cameron Boat Rentals, Inc	3/28/86	Crewboat speeds and lockouts during periods of limited visibility.
M-86-12 through -14	Dominican Fenlee	2/27/86	Navigation watches at sea; requirement that vessel masters and watchstanding officers report when they are taking any medication.
M-86-17	Commonwealth of Puerto Rico	2/27/86	Coordination among agencies participating in search and rescue emergency and nonemergency situations on the Puerto Rican offshore islands.
M-86-15 and -16	U.S. Coast Guard	2/27/86	Requirement that vessel masters and watchstanding officers on U.S. passenger vessels carrying 50 or more passengers report when they are taking any medication.
M-86-32	Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.	4/7/86	Blood alcohol concentration for recreational boat operators; toxicological tests of operators and of all persons fatally intoxicated in a recreational boating accident.
RAILROAD			
R-86-122	Burlington Northern Railroad Co	1/15/86	Inspection practices for suspected leaking or venting hazardous materials tankcars.
PIPELINE			
P-86-01 and -02	Texas Eastern Corp	2/27/86	Construction specifications for gas pipeline support; backfill procedures.
P-86-13	American Society of Mechanical Engineers; American Petroleum Institute.	4/17/86	Guidelines for the safe raising and recoating of pipelines while in service.
P-86-12	American Gas Association; Interstate Natural Gas Association; American Petroleum Institute.	4/17/86	Procedures for recoating pipelines, particularly on the inspection of exposed girth welds before fully lifting the pipe and to minimize the potential for a single event destroying all onsite communications equipment.
P-86-8 through -11	Continental Pipe Line Co	4/17/86	Procedures for safely raising pipelines from their foundations; training for personnel qualified to perform pipeline recoating operations; inspection and work standards.
P-86-3 through -5	Alabama Gas Corp	4/17/86	Maintenance of operating equipment at optimum condition; emergency procedures; currency of engineering flowsheets and manuals for natural gas liquefaction plants.

Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kepsta,
Federal Register Liaison Officer.
May 16, 1986.
[FR Doc. 86-11504 Filed 5-21-86; 8:45 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations."

3. The form number if applicable: Not applicable.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years.

5. Who will be required or asked to report: Persons holding or applying for a license for the use of byproduct material for purposes of industrial radiography.

6. An estimate of the number of responses: 400.

7. An estimate of the total number of hours needed to complete the requirement or request: 54,482.

8. An indication of whether section 3504 (h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 34 establishes rules governing the domestic licensing of byproduct material for use in industrial radiography.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 19th day of May 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 86-11505 Filed 5-21-86; 8:45 am]
BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Medical License Occupational ALARA Program.

3. The form number if applicable: Not applicable.

4. How often the collection is required: This information is only submitted once with an application for a license.

5. Who will be required or asked to report: Applicants for and holders of an NRC specific medical license for human use of radioactive byproduct material.

6. An estimate of the number of responses: 200.

7. An estimate of the total number of hours needed to complete the requirement or request: 800.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Medical licensees and applicants are requested to establish and submit a formal program for maintaining occupational exposures as low as reasonably achievable (ALARA).

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 19th day of May 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 86-11507 Filed 5-21-86; 8:45 am]
BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR Part 61—Licensing Requirements for Land Disposal of Radioactive Waste.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for licenses are submitted once. Applications for renewal or amendment are submitted as needed. Other reports are submitted annually and as other events require.

5. Who will be required or asked to report: Applicants for and holders of an NRC license for land disposal of low-level radioactive waste.

6. An estimate of the number of responses: 350,015.

7. An estimate of the total number of hours needed to complete the requirement or request: 14,785.

8. An indication of whether section 3504 (h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive wastes.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 19th day of May 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 86-11587 Filed 5-21-86; 8:45 am]
BILLING CODE 7590-01-M

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 19th day of May 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-11588 Filed 5-21-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23241; File No. SR-NYSE-86-13]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Fees for Share Rights Plan Securities.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The text of the proposed rule change appears below. Paragraph 902.02 of the NYSE Listed Company Manual is amended for the purpose of adding the following:

Listing Fee for Share Rights

A minimum fee of $1,270 will be charged for share rights plans that become effective subsequent to May 1, 1986.

Upon the share rights becoming exercisable and tradable separately from the common stock:

- An initial fee would be charged on the share rights then outstanding and on additional issuances of rights.
- Share rights would be subject to the Exchange's continuing annual fee schedule.

Companies whose share rights plans became effective on or before May 1, 1986, must pay the full initial fee, but will not be subject to any additional fees until the rights become exercisable and tradable separately from the common stock, at which time there will be a fee for additional issuances of rights and the Exchange's continuing annual listing fee schedule will become applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A),(B) and (C) below, of the most significant aspects of such statements.

(A) *Purpose*—The purpose of this proposed rule change is to establish a separate fee applicable to share rights Better known as "poison pill" securities, (and also known as "warrant dividends") share rights typically are not exercisable until certain triggering events occur. These triggering events usually pertain to the announcement of a tender offer for the issuer's shares or the purchase of a specific percentage of the issuer's shares. Prior to the time the share rights are excercisable, they do not trade separately from the common stock, and they are evidenced by the transferable only with the common stock.

The Exchange has been listing share rights since August, 1984 and has been charging the currently applicable initial listing fees as set forth in paragraph 902.02 of the NYSE Listed Company Manual. The proposed fee would result in a one-time charge of $1,270 for share rights plans that have become effective subsequent to May 1, 1986. Should the rights subsequently become exercisable and tradable separate from the common stock, the Exchange's standard initial listing fee schedule would be applied as would its continuing annual fee schedule.

Companies whose share rights plans became effective on or before May 1, 1986, must pay the full initial fee, but will not be subject to any additional fees until the rights become exercisable and tradable separately from the common stock, at which time there will be a fee for additional issuances of rights and the Exchange's continuing annual listing fee schedule will become applicable.

Statutory Basis—The basis under the 1934 Act for this proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 12, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 15, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11512 Filed 5-21-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-86-11]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 16, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 16, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
24639	Experimental Aircraft Association	14 CFR 91.30	To allow petitioner to operate specified aircraft for which no master minimum equipment list exists, with certain inoperative items of equipment.
13639	Air Transport Association/Trans World Airline	14 CFR 121.361(a)	To amend Exemption No. 2081 to allow TWA to be included in the provisions which allows dispatch with a single HF on certain oceanic routes between the Northeastern United States and the San Juan ARTCC.
24548	United States Parachute Association	14 CFR 91.47	To permit the petitioner to carry a normal crew plus 40 passengers on Douglas DC-3/C-47 aircraft. Petitioner further requests this exemption for the period between June 20 and July 14, 1986, when the U.S. National Skydiving Championships are to be held in Muskogee, OK.
24688	John L. Gallo	14 CFR 135.293(a)(2), 135.293(b), 135.337(a)(2), 135.337(a)(3), and 135.337(a)(4).	To allow petitioner to serve as check airmen under certain limitations for "On-Demand" air carriers who operate under the provisions of part 135 of the Federal Aviation Regulations without meeting, in each case, all provisions of the FAR.
21015	Ransome Airlines	14 CFR 135.63(c)	To permit petitioner during scheduled passenger-carrying operations conducted under part 135, to takeoff with a load manifest lacking the identification of crewmembers and their crew position assignments, subject to certain conditions.
7908	TRW Aircraft Components Group	14 CFR 21.231	Amendment to Exemption No. 674 to allow petitioner to obtain delegation option authorization for Hartzell propellers manufactured for use on turbopropeller and reciprocating engines of not more than 1,500 brake horsepower. Exemption 674 currently allows 1,000 brake horsepower.
24684	Air Logistics	14 CFR 135.439	To allow petitioner to operate aircraft equipped with nine or less seating configurations when maintained in accordance with § 135.411(a)(2).
23771	Cessna Aircraft Co.	14 CFR 91.213 and 91.31	Extension of Exemption No. 4060 to allow the operation by one pilot without a second in command, of Cessna Models 560, S560, and 552, subject to certain conditions and limitations. Exemption 4060 as amended, expires July 31.
24608	Fairchild Aircraft Corp.	14 CFR 21.17	To permit certification of petitioner's Model SA227-400 under Special Federal Aviation Regulation 41. This would permit petitioner to extend its type certification program beyond the 3-year period ending in September 1986.
24674	Aspac, Inc.	14 CFR 121.309	To allow petitioner an extension of 90 days beyond the August 1 compliance date to install emergency medical kits.
24654	Seattle Jet Center	14 CFR 135.267	To allow petitioner to operate its fixed wing aircraft in Hospital Emergency Medical Transport Service without meeting the flight and duty time limitations.
24644	New Mexico Junior College	14 CFR 61.3 and 91.27	To allow foreign pilots and foreign built gliders to participate in the Second National Sports Class Soaring Championships sponsored by the National Soaring Foundation.
24641	The Perris Valley Skydiving Society, Inc.	14 CFR 105.43	To allow foreign parachutists to participate in parachute jumps without complying with the parachute equipment and packing requirements.
6429	Northern Air Cargo, Inc.	14 CFR 91.209(c) and 121.157	Extension and amendment of Exemption No. 770 to allow petitioner to carry outsize cargo on C-82 restricted category aircraft within the State of Alaska. To allow deletions of those provisions of Condition No. 2, which preclude operations with C-82 aircraft into airports within Alaska into which standard category aircraft can be operated with the same outsize cargo on board.
24657	Wackenhut Services, Inc.	14 CFR 61.161	To allow petitioner to apply for an airline transport pilot certificate with a rotorcraft category rating without meeting the requirement of at least 1,200 hours of flight time within the preceding 8 years.
24652	Millen Air, Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 until hush kits are installed.
24652	Albuquerque International Balloon Fiesta	14 CFR 91.209 and 91.27	To allow certain foreign balloon pilots and foreign balloons to participate in the 15th Annual Albuquerque International Balloon Fiesta, Albuquerque, NM, October 4-12, 1986, without complying with the pilot certification and airworthiness requirements.

Petitions for Exemption—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
23653	The University of North Dakota	14 CFR Portions of part 41 appendixes A, C, D, F, and H.	To permit aviation students of the University of North Dakota to graduate from the appropriate courses when they have been trained to a specific performance level rather than the minimum flight time requirements including the minimum solo cross-country flight time requirements.
24306-2	Skyster	14 CFR 91.303	To allow petitioner to operate two Stage 1 Boeing 707 aircraft until hush kits are installed but not later than December 31, 1986.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24684	Lewis County, WA sheriff's office	14 CFR 91.79(c)	To allow petitioner to operate a public aircraft closer than 500 feet to persons, vessels, vehicles, or structures for the purposes of search and rescue operations. DENIED 4/14/86.
22635	Sierra Academy of Aeronautics	14 CFR portions of part 63, appendix C, section (a)(3)(vi)(a).	Extension of Exemption 3584 to allow petitioner to reduce the required 5 hours of flight training in an airplane to not less than 2 hours of intensive flight training in an airplane by incorporating the remaining time in a static airplane for applicants who do not possess a commercial flight certificate with an instrument rating, subject to certain conditions and limitations. DENIED 4/22/86.
23908	Piedmont Airlines	14 CFR 121.371 and 121.378	To allow petitioner to use engines, components, and spare parts on its Fokker F-28 aircraft that have been manufactured, repaired, overhauled, or inspected by persons outside of the United States who do not hold U.S. airman certificates. GRANTED 4/22/86.
22468	Western Airlines	14 CFR 61.157(e) and appendix H	To extend the March 31, 1986, termination date of Exemption 3713 and amend its conditions and limitations. The exemption would allow petitioner to use a Phase II B-727 simulator instead of an aircraft for certain pilot flight checks. PARTIAL GRANT 4/23/86.
24662	Terre A. Hultgren	14 CFR 121.311(b)	To allow petitioner to hold her daughter on her lap during takeoff and landing and when so requested by the pilot in lieu of her daughter sitting in a seat alone. GRANTED 4/25/86.
24684	Ramon Navarro	14 CFR 61.3(3)	To allow petitioner to act as a required pilot flight crewmember, without a current and valid medical certificate, for the purpose of acting as a safety pilot, during simulated instrument flight conditions, when instructing airplane instrument students, when the student holds a private or commercial pilot certificate with the appropriate category and class ratings, and is current and qualified in that aircraft. DENIED 4/24/86.
22286	Mid Pacific Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize all Nippon Airways Company, Ltd., Air Asia Company, Ltd., and Toa Domestic Airlines and its affiliate Nitto Maintenance Company for the inspection and overhaul of aircraft, including certain selected airframe accessories and appliances. GRANTED 4/24/86.
13199	American Airlines Training Corp. (AATC)	14 CFR 61.63(d) (2) and (3)	To allow petitioner to use an approved visual simulator for applicants for a Cessna 500 (CE-500) type rating who have completed AATC's Federal Aviation Administration (FAA)-approved training course, pursuant to § 121.424(d), even though AATC does not have an operating certificate issued under part 121. PARTIAL GRANT 4/25/86.
21780	Civil Air Patrol	14 CFR 91.116	Extension of Exemption 4042, to allow petitioner's members who hold private pilot certificates to be reimbursed for fuel, oil, and maintenance while serving on official CAP mission. GRANTED 4/24/86.
21168	Executive Air Fleet Corp.	14 CFR 135.297(d)	To allow petitioner to use pilots-in-command who have completed an instrument proficiency check within the preceding 12 calendar months if they have satisfactorily completed either an instrument proficiency check or training to proficiency in an approved aircraft simulator within the preceding 6 months. GRANTED 4/30/86.
20044	Air Transport Association of America	14 CFR 61.63 (b) and (c)	To allow pilots employed by part 121 certificate holders to be issued additional category and class ratings based on normal upgrade training to second-in command. GRANTED 4/30/86.
23453	Reader Flying Service, Inc.	14 CFR 43.3(g)	To amend the name on and extend Exemption 3749 to permit petitioner's certificated pilots to remove, check, and reinstall magnetic chip detector plugs installed on Allison 250 series turbine engines, aircraft transmissions, and tail rotor gearboxes of its Bell 206B helicopters, subject to certain conditions. GRANTED 4/28/86.
23804	Kenneth B. Sharman	14 CFR portions of part 63	To establish special rules for military flight navigators or former military flight navigators to permit the issuance of Federal Aviation Administration (FAA) flight navigator certificates based primarily on military flight navigator training and experience in a component of the Armed Forces of the United States. DENIED 4/28/86.
24186-1	Arrow Air, Inc.	14 CFR 91.303	To extend the January 1, 1985, noise level compliance date. AMENDED GRANT 4/25/86.
24048	Anglo Airlines	14 CFR 91.303	To allow petitioner operating a Boeing 707-338C, make one technical stop at Honolulu, Hawaii for fuel enroute to New Zealand without meeting the specified noise standards. Petitioner states that it has a hush kit contract with Comtran for this Aircraft. GRANTED 4/30/86.
24418	Aeroservicios Ecuatorianos, C.A.	14 CFR 91.303	To extend the January 1, 1985, noiselevel compliance date. AMENDED GRANT 5/2/86.
24972	Lone Star Industries	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: BAC-1-11; NSLC until January 1, 1988. GRANTED 4/23/86.

[FR Doc. 86-11479 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Removal From Roster of Approved Trustees

Notice is hereby given pursuant to 46 CFR 221.27 that on May 23, 1983, the Bank of New Orleans and Trust Company, New Orleans, Louisiana, merged with First National Bank of Commerce, New Orleans, Louisiana. First National Bank of Commerce is on the Roster of Approved Trustees. Therefore, the Bank of New Orleans and Trust Company has been removed from the Roster of Approved Trustees, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

This Notice shall become effective on the date of publication.

Dated: May 19, 1986.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 86-11562 Filed 5-21-86; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 16, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0085.
Form Number: CF 247.
Type of Review: Revision.
Title: U.S. Customs Service Cost Submission.

Clearance Officer: Vince Olive (202) 566-9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New.
Title: Quality Project Survey.

OMB Number: 1545-0203.
Form Number: IRS Form 5329.
Type of Review: Extension.
Title: Return for Individual Retirement Arrangement Taxes.

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86-11591 Filed 5-21-86; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains requests for two new collections and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: A waiver for the 60-day comment period has been granted. Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 16, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

New

1. Department of Medicine and Surgery
2. Financial Worksheet
3. VA Form 10-10f
4. On occasion
5. Individuals or households
6. 140,000 responses
7. 70,000 hours
8. Not applicable

* * * *

1. Department of Medicine and Surgery
2. Insurance Information
3. VA Form 10-10i
4. On occasion
5. Individuals or households
6. 80,000 response
7. 12,000 hours
8. Not applicable.

[FR Doc. 86-11516 Filed 5-21-86; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a request for an extension and revision of a form and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 13, 1986.

By direction of the Administrator.

Jack J. Sharkey,

Director, Office of Data Management and Telecommunications.

Revision/Extension

1. Department of Veterans Benefits.

2. Enrollment Certification (Under Chapters 30, 32, 34, or 35, 38 U.S.C. and Chapter 106, 10 U.S.C.).

3. VA Forms: 22–1999, 22–1999–1, 22–1999–2.

4. On occasion; Quarterly; School term or semester.

5. Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small Businesses or organizations.

6. 786,134 responses.

7. 131,022 hours.

8. Not applicable.

[FR Doc. 86–11563 Filed 5–21–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 99
Thursday, May 22, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Deposit Insurance Corporation	1
Federal Maritime Commission	2
Merit Systems Protection Board	3

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:50 a.m. on Monday, May 19, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration on the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(9)(A)(i) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(A)(i) and (c)(9)(B)).

Dated: May 20, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-11651 Filed 5-20-86; 2:52 pm]

BILLING CODE 6714-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., May 28, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 86-11—"Neutral Container Rule" —U.S. Atlantic—North Europe Conference—Consideration of Motion to Amend Order of Investigation and Hearing.

2. Special Docket No. 1354—Application of U.S. Atlantic North Europe Conference for the benefit of Ford Motor Company—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary, (202) 523-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-11604 Filed 5-20-86; 3:36 pm]

BILLING CODE 6730-01-M

3

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:20 a.m., Tuesday, June 3, 1986.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Hearing in *Woods* v. *U.S. Customs Service*, MSPB Docket No. PH07528310145.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: May 20, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-11640 Filed 5-20-86; 1:39 pm]

BILLING CODE 7400-01-M

federal register

Thursday
May 22, 1986

Part II

Department of Energy

10 CFR Part 503

Powerplant and Industrial Fuel Use Act; Cogeneration Exemption; New Facilities; Interim Rule With Request for Comments

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines; Notice of Proposed Amendments

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DEPARTMENT OF ENERGY

10 CFR Part 503

[Docket No. ERA-C&E 86-35]

Powerplant and Industrial Fuel Use Act; Cogeneration Exemption; New Facilities

AGENCY: Department of Energy.

ACTION: Interim rule with request for comments.

SUMMARY: Department of Energy (DOE) is amending its final rules governing the cogeneration exemption under the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (46 FR 59872, 59914, December 7, 1981, as amended at 47 FR 29208, July 6, 1982) ("final rules"). The amendment modifies § 503.13(b) of the final rules by adding the cogeneration exemption to the list of exemption types available using an environmental checklist in lieu of more detailed environmental documentation.

DATES: Effective May 22, 1986. Written comments are due on or before June 23, 1986.

ADDRESS: All comments should be addressed to Docket No. ERA-C&E-86-35, Department of Energy, Economic Regulatory Administration, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard Ransom, Department of Energy, Economic Regulatory Administration, Coal and Electricity Division, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-4811

Henry K. Garson, Esq., Department of Energy, Office of General Counsel, Room 6A-113, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Pending final adoption or rejection this action will go into effect on an interim basis on May 22, 1986 in the Federal Register.

List of Subjects in 10 CFR Part 503

Business and industry, Electric power plants, Energy conservation, Natural gas, Petroleum, Reporting and recordkeeping requirements.

PART 503—[AMENDED]

10 CFR Part 503 is amended as follows:

1. The authority citation for Part 503 continues to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701); E.O. 12009, 42 FR 46267, Sept. 15, 1977.

§ 503.13 [Amended]

2. Inserting "cogeneration," after "emergency purposes" in § 503.13(b) introductory text.

Issued in Washington, DC, on May 7, 1986.

Marshall A. Staunton,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 86-11517 Filed 5-21-86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of Proposed Amendments to the Department of Energy's NEPA Guidelines.

SUMMARY: The Department of Energy proposes to amend Section D of its NEPA guidelines by adding the permanent cogeneration exemption authorized under Title II of the Fuel Use Act to its list of categorical exclusions. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). Public comment is invited on this proposal. Pending final adoption or rejection of the proposed amendments, the Department of Energy will utilize the categorical exclusion process for permanent cogeneration exemptions.

DATE: Comments by June 23, 1986.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Director, Office of Environmental Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 3G–092, Washington, DC 20585, (202) 252–4600

Henry Garson, Esq., Assistant General Counsel for Environmental, GC–11, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 6A–113, Washington, DC 20585, (202) 252–6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** (45 FR 20695) final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1509). In accordance with these regulations Section D of the DOE guidelines lists three classes of agency action: (1) Those which normally require environmental impact statements (EIS); (2) those which normally require environmental assessments (EA) but not necessarily environmental impact statements and; (3) those which normally do not require either environmental assessments or environmental impact statements. This third class was identified pursuant to § 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." The CEQ regulations defines a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The regulations permit agency discretion, in that "an agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect."

The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in section D based on experience gained during the implementation of the CEQ regulations and these guidelines." Pursuant to the guidelines, substantive revisions are to be published in the **Federal Register** and adopted only after opportunity for public review. The last amendments to section D were published in the **Federal Register** on February 5, 1985.

B. Proposed Amendments

The Department proposes to further amend section D of its guidelines by adding to the list of categorical exclusions in section D, the grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95–620) for any new cogeneration powerplant. This exemption is authorized by section 212(c) of the Act.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from the grant or denial of a specific cogeneration exemption, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an environmental assessment or environmental impact statement would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. To assist DOE in making this determination, DOE is concurrently amending, in a document published elsewhere in this **Federal Register**, its regulations covering applications for cogeneration exemptions by requiring a petitioner for this exemption to (1) certify that he will comply with all applicable environmental permits and approvals prior to operating the facility; and (2) complete an environmental checklist designed to determine whether the facility in question will have an impact in certain areas regulated by specified laws which impose consultation requirements on DOE (10 CFR 503.13(b)(2)). This will allow DOE to verify that either no significant impact will result, or that the categorical exclusion does not apply.

Under section 500.2 of DOE's final rule as amended (47 FR 29209, July 6, 1982), a "cogeneration facility" is an electric powerplant or a major fuel burning installation that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

In its revised rulemaking of July 6, 1982 (47 FR 29209) (final rule) the DOE recognized the important role cogeneration technologies can play in assisting the nation to meet the energy goals of increased fuel efficiency and oil and natural gas savings. The final rule included a table by which potential cogeneration exemption applicants could determine the oil and gas savings that could be expected, on a regional basis, for electricity backed off the grid through cogeneration. The table displayed oil and gas savings, based on Btu/kWh for 11 regions. Examples of expected oil and gas savings by electric region, per Btu/kWh range from 300 in the Southeastern Electric Reliability Council (Virginia, N. Carolina, S. Carolina, etc.) a region in which the majority of the utility-generated electricity is from coal and nuclear, to 7,000 for the Western Systems Coordinating Council (California, Oregon, Washington, etc.), an area heavily dedicated to the use of oil and gas for electricity generation.

To date 94 cogeneration exemption requests have been submitted to the DOE (during 1985 alone, 38 petitions were accepted). Of this number, four were rejected for lack of sufficient information and three were terminated because the facilities did not require FUA exemptions. The remaining 86 facilities have either been granted cogeneration exemptions or the exemption requests are currently being acted upon by the DOE. Only 29 of these facilities have not been located in California.

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Number of facilities	State
1	Alaska.
1	Arkansas.
3	Colorado.
3	Louisiana.
1	Massachusetts.
2	Michigan.
1	New Hampshire.
1	New Jersey.
1	Oklahoma.
14	Texas.
1	Washington.

These exemption petitions have effectively backed-out substantial quantities of electricity. In 1979, the first year after enactment of FUA, 185 megawatts of electricity were backed-off the grid. In 1985, 2926 megawatts were backed-off (the average unit size was 75 megawatts).

All cogeneration exemption petitions must be reviewed for compliance with NEPA requirements. In some, but not all approved cases, some added impact has been involved. Based on DOE's experience to date, the following generalities can be drawn in each of four main categories of impacts.

Air Quality

In general, natural gas or oil firing has resulted at worst in only very minor increases in air emissions. Often, the offsetting reduction in emissions resulting from the operation of a new cogeneration unit will cause a net decrease as compared to the preoperation condition. This has been achieved in many cases through the retirement of old units which the new cogenerator replaces. Even in those cases where no units are replaced, operation of a new cogeneration system will inherently result in the reduction of emissions from existing utility sources. Under the Fuel Use Act, a cogeneration exemption can be granted only if it will result in less oil and gas being consumed. Thus, cogeneration results in less fuel consumption for an equal amount of produced electricity and other useable energy. Although the offsetting utility emission reductions are not always equal to the emissions of the new cogenerator, because of pollution control requirements and relative system efficiencies, any net increases have been so minor that the threshhold levels necessary to qualify for New Source Review have not been exceeded.

Water Resources and Quality

Given the nature of cogeneration, the majority of cogeneration exemption petitions are for facilities to be constructed at existing industrial sites, and the systems for water supply and disposal are usually already in place. Even though water requirements of a cogeneration facility can be large, it generally represents an insignificant additional demand on supply.

Land Use

Land proposed for a new cogeneration facility is generally within an existing plant boundary on an already industrialized site. Usually little or no undeveloped land is affected. For a proposed facility sited outside of such areas, usually only a few acres of undeveloped land are affected.

Other Impacts

Cogeneration facilities have rarely been found to cause significant impacts on other environmental or socio-economic parameters such as solid waste, noise, cultural resources, threatened and endangered species, floodplains and wetlands, employment, industrial development, etc.

The granting of a cogeneration exemption generally results in no significant impact to the environment, while the denial of a cogeneration exemption results in no net change to the environment. The DOE, therefore, based on public comment on the above findings, proposes to add cogeneration to its list of Fuel Use Act exemptions subject to NEPA categorical exclusion.

Comments concerning the proposed amendments to Section D of the Department's NEPA guidelines should be submitted to Dr. Robert J. Stern at the above cited address.

Pending final adoption or rejection of the proposed action, the Department of Energy will effect the proposal on an interim basis.

Issued in Washington, DC, on May 7, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety, & Health.

[FR Doc. 86-10062 Filed 5-21-86; 8:45 am]

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H.R. 739 / Pub. L. 99–307

To make miscellaneous changes in laws affecting the United States Coast Guard, and for other purposes. (May 19, 1986; 100 Stat. 444; 5 pages) Price: $1.00

S. 49 / Pub. L. 99–308

Firearms Owners' Protection Act. (May 19, 1986; 100 Stat. 449; 13 pages) Price: $1.00

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Designating May 18–24, as "Just Say No to Drugs Week." (May 20, 1986; 100 Stat. 462; 1 page)

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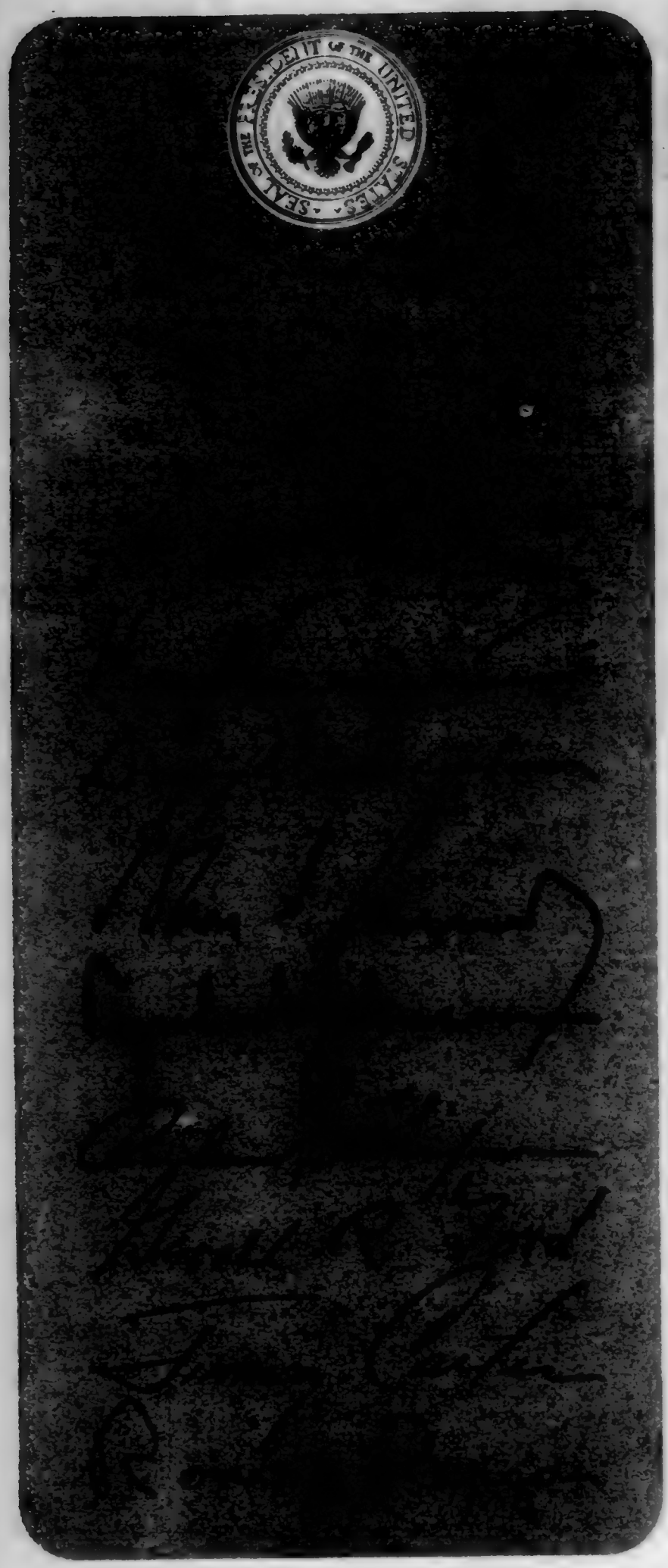

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Commerce Department

Airmen
Federal Aviation Administration

Animal Drugs
Food and Drug Administration

Authority Delegations (Government Agencies)
Federal Reserve System
Securities and Exchange Commission

Aviation Safety
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Coal
Land Management Bureau

Equal Access to Justice
Commodity Futures Trading Commission

Fisheries
National Oceanic and Atmospheric Administration

Food Additives
Food and Drug Administration

Grants Administration
Commerce Department

Handicapped
Transportation Department

Marine Safety
Coast Guard

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Agricultural Marketing Service

Trade Practices
Federal Trade Commission

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Title 3—

The President

Proclamation 5496 of May 21, 1986

Better Hearing and Speech Month, 1986

By the President of the United States of America

A Proclamation

Sounds, whether we produce them or receive them, are an integral part of our lives. Musical sounds bring us a whole range of delight. Much of our knowledge of the world around us we learn through sounds: conversations allow us to gather and convey information, to question and to receive answers; ringing fire alarms warn us to clear a burning building. Sounds—both the ones we hear and the ones we make—help us to understand others and be understood.

More than fifteen million Americans strive daily to surmount the isolation that hearing impairment so often brings. Over ten million Americans endeavor to communicate despite speech disorders. We can help people with communicative disorders fulfill their potential by identifying and removing the man-made obstacles that limit their educational and occupational opportunities. Our efforts will enrich not only their lives, but our own.

Today, in medical institutions across the country, scientists supported by the National Institute of Neurological and Communicative Disorders and Stroke and by numerous voluntary health agencies are carrying out a wide range of research to find better ways to prevent, treat, and cure hearing and speech disorders. Investigators have discovered much about the structure and function of the systems involved in hearing and speech. They have developed new devices and medications that offer hope where before there was none. Still, much remains to be learned.

To heighten public awareness of hearing and speech disorders, the Congress, by Senate Joint Resolution 284, has designated the month of May 1986 as "Better Hearing and Speech Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1986 as Better Hearing and Speech Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11654
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Presidential Documents

Proclamation 5487 of May 21, 1986

National Tourism Week, 1986

By the President of the United States of America

A Proclamation

Tourism is vital to the United States. It contributes significantly to our economic prosperity. It creates jobs and helps out on our balance of payments. Most of all, it creates better understanding of this Nation's social and cultural realities, including our history.

People are central to the travel industry. It supports, directly or indirectly, almost 7 million jobs. Travel and tourism have grown substantially over the years. The industry now generates business receipts of approximately $260 billion annually. Payroll income alone is $60 billion, and tax revenue is $33 billion. Indeed, international tourism now ranks as this Nation's largest business "export" in the service industries.

This Nation is blessed with a magnificent and varied array of tourist attractions: our extraordinarily diversified landscape, and some of the world's most vibrant cities, cultural attractions, and natural wonders. Nowhere else but in America can you find such beautiful coastlines and beaches, majestic mountains, lush valleys, rugged woods, rolling plains, awesome canyons, scenic deserts, tropical islands, and Arctic snowscapes. No wonder the world wants to come and see where we live. Let us welcome them and treat them as honored guests.

In recognition of the many educational, economic, and recreational benefits of tourism to the people of this country, the Congress, by Public Law 99-96, has designated the week beginning May 18 through May 24, 1986, as "National Tourism Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 18 through May 24, 1986, as National Tourism Week, and I call upon the people of the United States to observe such week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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Presidential Documents

Proclamation 5488 of May 21, 1986

Older Americans Melanoma/Skin Cancer Detection and Prevention Week, 1986

By the President of the United States of America

A Proclamation

Skin cancer is the most common form of cancer, and its incidence is rising. Fortunately, it is also the most preventable form of cancer and the easiest to detect early and treat successfully. The risk of developing skin cancer increases throughout adult life, with the highest incidence occurring among people over 50.

There are two basic types of skin cancer: the common basal cell and squamous cell cancers, and the less common but far more serious type called melanoma. More than 400,000 new cases of nonmelanoma skin cancer are diagnosed in the United States each year. These cancers have a high cure rate, especially with early detection and prompt treatment. Most can be treated in the doctor's office.

Occurrence of nonmelanoma skin cancers varies directly with exposure to ultraviolet light from the sun (and "sun lamps" of various kinds), and indirectly with skin pigmentation. Older Americans can reduce their risk of skin cancer by avoiding excessive exposure to sunlight, particularly if they are fair-skinned; by avoiding exposure during the 10 a.m. to 2 p.m. hours; by wearing protective clothing; and by using sunscreen lotions and ointments. Prudent avoidance of too much sunlight is fully compatible with enjoyment of the great outdoors.

Older Americans may mistake the signs of skin cancer for normal skin changes due to aging, and they should be alert to these signs. Many skin growths are noncancerous, but any new growth on the skin, or a sore that does not heal, should promptly be brought to a doctor's attention. Skin cancer has many different appearances, but it occurs most frequently on sun-exposed areas of the body.

Melanoma is a far more serious health problem, but it also is highly curable when detected and treated early. About 23,000 new cases will be diagnosed this year. Melanoma is also related to exposure to ultraviolet light but not as directly as nonmelanoma skin cancers. Older Americans should be alert for changes in the size or color of a mole or rapid darkening, ulceration or scaliness or changes in the shape or outline of a mole, or development of a new pigmented lesion or bulge in a normal skin area. These are some of the most common signs that may signal melanoma, and a doctor should be consulted without delay.

The American Academy of Dermatology and other dermatologic organizations are committed to educating the public about all types of skin cancers. This year marks the Second Annual National Melanoma and Skin Cancer Detection and Prevention Program, a coordinated national effort of professional dermatologic organizations to reduce the increasing incidence of skin cancers and to better control these cancers by prompt diagnosis and appropriate treatment.

The Congress, by Senate Joint Resolution 267, has designated the week of May 26 through June 1, 1986, as "Older Americans Melanoma/Skin Cancer Detection and Prevention Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 26 through June 1, 1986, as Older Americans Melanoma/Skin Cancer Detection and Prevention Week, and I invite all Americans to observe the week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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VOL 51 ISS 100 MAY 23 1986 UMI

Rules and Regulations

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

Voluntary Standards and Grades for Poultry

Correction

In FR Doc. 86–10334, beginning on page 17278, in the issue of Friday, May 9, 1986, make the following corrections:

1. On page 17280, in the first column, in the second complete paragraph, fourth line, "no" should read "not".

2. In the next paragraph, in the tenth line from the bottom of the paragraph, "note" should read "not".

3. On page 17281, in the third column, in § 70.221 (e), in the second line, "of" should read "on".

BILLING CODE 1505-01-M

7 CFR Part 908

[Valencia Orange Reg. 364]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 364 establishes the quantity of such fruit that may be shipped to market during the period May 23–29, 1986. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 364 (§ 908.664) is effective for the period May 23–29, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on May 20, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.664 is added to read as follows:

§ 908.664 Valencia Orange Regulation 364.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 23, 1986, through May 29, 1986, are established as follows:

(a) District 1: 384,000 cartons;

(b) District 2: 416,000 cartons;

(c) District 3: Unlimited cartons.

Dated: May 21, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–11627 Filed 5–22–86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Official Staff Commentary Update

Correction

In FR Doc. 86-6848, beginning on page 11432, in the issue of Thursday, April 3, 1986, make the following correction:

On page 11425, in the third column, following the ninth line, insert the following phrase: "Items which are not penalties include, for example:"

BILLING CODE 1505-01

12 CFR Part 265

[Docket No. R-0573]

Rules Regarding Delegation of Authority; Delegation of Authority to Secretary of the Board To Act on Certain Applications Requiring Prior Approval of the Board

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority, 12 CFR Part 265, to delegate to the Secretary of the Board the authority to act on certain membership applications requiring prior approval of the Board. The amendment authorizes the Secretary to take action on a membership application when a Reserve Bank could take action on the application under delegated authority but a director or senior officer of any holding company, bank, or company involved in the transaction is a director of the Federal Reserve Bank or branch. It is expected that this delegation of authority will expedite processing of membership applications when such an interlock exists.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard F. Fabrizio, Senior Financial Analyst (202/452-3423), Domestic Applications Section, Division of Banking Supervision and Regulation; John Harry Jorgenson, Senior Attorney (202/452-3778), Legal Division; or for users of Telecommunications Device for the Deaf (TDD) Earnestine Hill or Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 9 of the Federal Reserve Act (12 U.S.C. 321, et seq.) provides that state-chartered banks may make application to the Board, under such rules and regulations as the Board may prescribe, for approval to become a member of the Federal Reserve. The Board's Regulation H, Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208), prescribes eligibility requirements (§ 208.3), application requirements (§ 208.4), and matters to be considered by the Board before acting on such an application (§ 208.5). Under § 265.2(f)(28) of the Board's Rules Regarding Delegation of Authority (12 CFR Part 265), Reserve Banks have delegated authority to approve applications for membership provided specified criteria are met.

Section 265.2(a)(2) of the Board's Rules Regarding Delegation of Authority provides that the Secretary of the Board, rather than the Reserve Bank, may act on a bank holding company application that otherwise meets the criteria for delegated action unless a director or senior officer of a holding company, bank, or other company involved in the transaction is also a director of a Federal Reserve Bank or branch. The Rules, however, do not contain a similar provision applicable to membership applications that could be delegated. The Board is amending § 265.2(a)(2) to provide that the Secretary may act on membership applications with such a management interlock in the same manner as bank holding company applications with such an interlock may be delegated.

The amendment to the Board's Delegation Rules would expedite and simplify processing of membership applications and would decrease the number of cases considered directly by the Board that do not present significant issues, while ensuring that cases involving Reserve Bank management interlocks are not acted upon exclusively by the Reserve Bank.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No 96-354, 5 U.S.C. 601 et seq.), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

Public Comment

The provisons of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date, have not been followed in connection with the adoption of this amendment because the change affects the Board's internal procedures and practices and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority, delegations (Government agencies), Banks, Banking, Federal Reserve System.

PART 265—[AMENDED]

Pursuant to its authority under sections 9(l) and 11(j) AND (k) of the Federal Reserve Act (12 U.S.C. 321, 248(j), and 248(k)) to exercise general supervision over Reserve Banks and to delegate functions to members and employees of the Board and to the Reserve Banks, the Board amends its Rules Regarding Delegation of Authority (12 CFR Part 265) as follows:

1. The authority citation for Part 265 its revised to read as follows:

Authority: Section 11(k); 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by revising paragraph (a)(2) as follows:

§ 265.2 Specific Functions Delegated to Board Employees and to Federal Reserve Banks.

(a) * * *

(2) Under the provisons of sections 18(c) and 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c) and 1828(c)(4), sections 3(a), 4(c)(8), and 4(c)(14) of the Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c)(8), and 1843(c)(14)), sections 5(a), 5(b), and 7(d) of the Bank Service Corporation Act (12 U.S.C. 1865(a), 1865(b), and 1867(d)), the Change in Bank Control Act (12 U.S.C. 1817(j)), and sections 9, 25, and 25(a) of the Federal Reserve Act (12 U.S.C. 321 et seq., 601-604a, and 611 et seq.), and § 225.14, 225.23, and 225.41-43 of Regulation Y (12 CFR 225.14, 225.23, and 225.41-43), and sections 211.3(a), 211.4(c), 211.5(c), and 211.34 of Regulation K (12 CFR 211.3(a), 211.4(c), 211.5(c), and 211.34), to furnish reports on competitive factors involved in a bank merger to the Comptroller of the Currency and the Federal Deposit Insurance Corporation and to take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director or senior officer of any holding company, bank, or company involved in the transaction is a director of a Federal Reserve Bank or branch.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 19, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-11611 Filed 5-22-86; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24994; Amdt. No. 1021]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number. This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 16, 1986.
John S. Kern,
Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, amd 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

[§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB-DME; § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective 31 July 1986

Hawthorne, CA—Hawthorne Muni, VOR RWY 25, Amdt. 14
Hawthorne, CA—Hawthorne Muni, LOC RWY 25, Amdt. 7
Benton Harbor, MI—Ross Field-Twin Cities, LOC BC RWY 9, Amdt. 6
Kent, OH—Kent State Univ, VOR-A, Amdt. 11
Kent, OH—Kent State Univ, NDB RWY 1, Amdt. 10
Youngstown, OH—Youngstown Executive, VOR RWY 11, Amdt. 4
Youngstown, OH—Youngstown Executive, VOR/DME-A, Amdt. 8
Ardmore, OK—Ardmore Downtown Executive, RNAV RWY 17, Amdt. 3
Ardmore, OK—Ardmore Downtown Executive, RNAV RWY 35, Amdt. 3
Big Spring, TX—Big Spring McMahon-Wrinkle, VOR RWY 17, Amdt. 4
Big Spring, TX—Big Spring McMahon-Wrinkle, VOR RWY 35, Amdt. 4
Dallas, TX—Dallas-Love Field, ILS RWY 13R, Orig.
El Campo, TX—El Campo Metro Airport, Inc, VOR/DME RWY 35, Amdt. 3
Gainsville, TX—Gainsville Muni, NDB RWY 17, Amdt. 4
Houston, TX—Houston Intercontinental, ILS RWY 32R, Amdt. 8
Houston, TX—William P. Hobby, ILS RWY 4, Amdt. 24

. . . Effective 3 July 1986

Alabaster, AL—Shelby County, VOR-A, Amdt. 5
Gadsden, AL—Gadsden Muni, NDB RWY 6, Amdt. 9, CANCELLED
Jasper, AL—Walker County-Bevill Field, VOR/DME-A, Amdt. 2
Tuscaloosa, AL—Tuscaloosa Muni, VOR RWY 4, Amdt. 8
Tuscaloosa, AL—Tuscaloosa Muni, VOR RWY 22, Amdt. 10
Tuscaloosa, AL—Tuscaloosa Muni, NDB RWY 4, Amdt. 7
Tuscaloosa, AL—Tuscaloosa Muni, ILS RWY 4, Amdt. 9
Farewell, AK—Farewell, NDB-A, Orig., CANCELLED
Grass Valley, CA—Nevada County Air Park, VOR-A, Amdt. 2, CANCELLED
Grass Valley, CA—Nevada County Air Park, VOR RWY 7, Orig.
Lincoln, CA—Lincoln Muni, VOR RWY 15, Amdt. 2
Marysville, CA—Yuba County, VOR RWY 14, Amdt. 8
Marysville, CA—Yuba County, VOR RWY 32, Amdt. 9
Marysville, CA—Yuba County, NDB RWY 14, Amdt. 2
Marysville, CA—Yuba County, ILS RWY 14, Amdt. 3
Oroville, CA—Oroville Muni, VOR-A, Amdt. 4
Denver, CO—Centennial, NDB RWY 35R, Amdt. 7
Daytona Beach, FL—Daytona Beach Regional, VOR RWY 34, Amdt. 3, CANCELLED
Jacksonville, FL—Jacksonville INTL, NDB RWY 7, Amdt. 8
Jacksonville, FL—Jacksonville INTL, ILS RWY 7, Amdt. 9
Lake City, FL—Lake City Muni, VOR/DME-A, Amdt. 3
Venice, FL—Venice Muni, VOR/DME-A, Amdt. 3
Winter Haven, FL—Winter Haven's Gilbert, VOR/DME-A, Amdt. 4
Atlanta, GA—DeKalb-Peachtree, ILS RWY 20L, Amdt. 5
Homerville, GA—Homerville, VOR/DME-A, Amdt. 3
Homerville, GA—Homerville, NDB RWY 14, Amdt. 1
Rome, GA—Richard B. Russell, VOR/DME RWY 12, Amdt. 4
Rome, GA—Richard B. Russell, VOR/DME RWY 30, Amdt. 5
Rome, GA—Richard B. Russell, NDB-A, Amdt. 3
Boise, ID—Boise Air Terminal (Gowen Field), VOR RWY 10R, Amdt. 19, CANCELLED
Boise, ID—Boise Air Terminal (Gowen Field), VOR RWY 18R, Orig.
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME RWY 10R, Amdt. 5, CANCELLED
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME RWY 10R, Orig.
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME or TACAN RWY 28L, Amdt. 8, CANCELLED
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME or TACAN RWY 28L, Orig.
Boise, ID—Boise Air Terminal (Gowen Field), LOC/DME BC RWY 28L, Amdt. 4
Boise, ID—Boise Air Terminal (Gowen Field), NDB RWY 10R, Amdt. 28
Boise, ID—Boise Air Terminal (Gowen Field), ILS RWY 10R, Amdt. 6
Caldwell, ID—Caldwell Industrial, NDB RWY 30, Amdt. 1
Mountain Home, ID—Mountain Home Muni, NDB RWY 23, Amdt. 1
Nampa, ID—Nampa Muni, NDB RWY 11, Amdt. 1
Bloomington-Normal, IL—Bloomington-Normal, VOR RWY 11, Amdt. 9
Bloomington-Normal, IL—Bloomington-Normal, LOC BC RWY 11, Amdt. 6
Jacksonville, FL—Jacksonville Muni, VOR RWY 13, Amdt. 6, CANCELLED
Jacksonville, FL—Jacksonville Muni, VOR RWY 13, Orig.
Paxton, IL—Paxton, VOR RWY 18, Orig.
Evansville, IN—Evansville Dress Regional, NDB RWY 18, Amdt. 1, CANCELLED
Evansville, IN—Evansville Dress Regional, NDB RWY 36, Amdt. 1, CANCELLED
Storm Lake, IA—Storm Lake Muni, NDB RWY 35, Amdt. 3, CANCELLED
Wichita, KS—Cessna Acft Field, RNAV RWY 17L, Orig., CANCELLED
Wichita, KS—Cessna Acft Field, RNAV RWY 35R, Orig., CANCELLED
Albert Lea, MN—Alberta Lea Muni, VOR RWY 18, Amdt. 7
Albert Lea, MN—Alberta Lea Muni, VOR/DME RWY 36, Orig.
Hibbing, MN—Chisholm-Hibbing, VOR RWY 13, Amdt. 11
Hibbing, MN—Chisholm-Hibbing, VOR RWY 31, Amdt. 15
Lakeville, MN—Airlake, VOR-A, Amdt. 2
Lakeville, MN—Airlake, ILS RWY 29, Orig.
Lakeville, MN—Airlake, RNAV RWY 29, Amdt. 2
Warroad, MN—Warrod Intl-Swede Carlson Field, NDB RWY 31, Amdt. 3
Warroad, MN—Warrod Intl-Swede Carlson Field, RNAV RWY 31, Orig.
Louisville, MS—Louisville Winston County, NDB RWY 17, Amdt. 3
Winner, SD—Bob Wiley Field, VOR-A, Amdt. 5
Carthage, TX—Panola County-Sharp Field, VOR/DME-A, Amdt. 3, CANCELLED
College Station, TX—Easterwood Field, NDB RWY 34, Amdt. 7
College Station, TX—Easterwood Field, ILS RWY 34, Amdt. 7
Longview, TX—Gregg County, VOR/DME or TACAN RWY 35, Amdt. 5, CANCELLED

. . . Effective 12 May 1986

Warrensburg, MO—Skyhaven, VOR RWY 13, Amdt. 3
Dayton, OH—James M. Cox Dayton Intl, ILS RWY 24L, Amdt. 5

. . . Effective 8 May 1986

Fort Wayne, IN—Fort Wayne Muni (Baer Fld), RADAR-1, Amdt. 20
Alexandria, MN—Chandler Field, VOR RWY 22, Amdt. 13

. . . Effective 1 May 1986

Troy, AL—Troy Muni, NDB RWY 7, Amdt. 6

[FR Doc. 86-11601 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 3

[Docket No. 60232-6032]

Rules of Procedure for Handling Contract Appeals

AGENCY: Office of the Secretary, Commerce.

ACTION: Revocation.

SUMMARY: The Appeals Board for the Department of Commerce was abolished on October 14, 1980 and its functions relating to adjudications under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, are now being performed by the General Services Administration Board of Contract Appeals pursuant to interagency agreement. This Notice revokes 15 CFR Part 3, which contains

procedures governing contract appeals of the abolished Appeals Board.

DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce H. Segal, Attorney-Advisor; Office of the Assistant General Counsel for Finance and Litigation, Herbert C. Hoover Building, Room 5893, Washington, DC 20230, Telephone (202) 377-1122.

SUPPLEMENTARY INFORMATION: 15 CFR Part 3 prescribed procedures governing contract appeals to the Appeals Board for the Department of Commerce. The procedure applied to decisions of contracting officers arising under contracts which contained provisions requiring the determination of appeals by the Secretary of Commerce or his duly authorized representative or board. The Appeals Board, established under 40 FR 17771 (1975), was abolished on October 14, 1980 (See Revocation Notice of Department Organization Order 20-11). The contract appeals functions are now performed by the General Services Administration Board of Contract Appeals, which has its own procedures governing the adjudication of contact disputes. In addition, the Part 3 procedures are obsolete because they do not conform to current dispute resolution requirements of the Contract Disputes Act of 1978. This notice revokes Part 3.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Section 553 of the Administrative Procedure Act does not require that notice and an opportunity for comment be given for this rule because it is a rule of agency procedure (5 U.S.C. 553(b)(A)). Since notice and opportunity for comment are not required under section 553 of the Administrative Procedure Act (5 U.S.C. 553) and since no other law requires that notice and an opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this notice revokes a procedural rule rather than a substantive rule, under section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the revocation may be made effective immediately.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 3

Administrative practice and procedure, Government procurement.

Under the authority of the Secretary of Commerce contained in 5 U.S.C. 301, and Department Organization Order 10-5, as amended August 27, 1984, 15 CFR Part 3 is hereby revoked and reserved.

Dated: May 14, 1986.

Katharine M. Below,

Assistant Secretary for Administration.

[FR Doc. 86-11015 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-17-M

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15 CFR Part 8a

[Docket No. 50695-6096]

Audit Requirements for State and Local Governments

AGENCY: Department of Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms as a final rule the interim rule relating to audit requirements for state and local governments.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, U.S. Department of Commerce, Office of Finance and Federal Assistance, 14th and Constitution Avenue, NW., Rm: 6204, Washington, DC 20230, Telephone No: (202) 377-5817.

SUPPLEMENTARY INFORMATION: On July 26, 1985, the Department of Commerce issued an interim rule known as Audit Requirements for State and Local Governments (50 FR 30418). The primary purpose of that interim rule was to implement the requirements for auditing State and local governments as required by the Single Audit Act of 1984, Pub. L. 98-502. The Act established audit requirements for State and local governments that receive Federal aid and defines Federal responsibilities for implementing and monitoring those requirements.

The interim rule invited written comments, however, none were received; therefore, this notice makes the interim rule final. As stated in the interim notice, this regulation is not a major rule as defined in Executive Order 12291.

Paperwork Reduction Act

This rule contains a collection of information for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 2507). The collection of this information has been approved by the Office of Management and Budget under control number 0607-0518.

Lists of Subjects in 15 CFR Part 8a

Grants program, Grants administration, Loan programs, Intergovernmental relations.

Accordingly, the interim regulation establishing 15 CFR Part 8a which was published July 26, 1985 (50 FR 30418) is adopted as final without changes.

Dated: May 18, 1986.

Sonya G. Stewart,

Director, Office of Finance and Federal Assistance, U.S. Department of Commerce.

[FR Doc 86-11025 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-FS-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 148

Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules governing the implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission. These amendments will conform the rules to the Equal Access to Justice Act, as recently amended by the Equal Access to Justice Act Amendments, and will make certain minor clarifying changes.

EFFECTIVE DATE: The revisions shall take effect on June 23, 1986.

FOR FURTHER INFORMATION CONTACT: James T. Kelly, Assistant Chief, Opinions Section, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-7110.

SUPPLEMENTARY INFORMATION: The Commission recently proposed

amendments to its procedural rules to govern the processing of applications under the Equal Access to Justice Act ("EAJ") Act, Pub. L. No. 96-481, 94 Stat. 2325, as amended by the Equal Access to Justice Act Amendments, Pub. L. No. 99-80, 99 Stat. 183. *See* 5 U.S.C. 504 and 28 U.S.C. 2412. *See also* 51 FR 6262 (Feb. 21, 1986, reprinted in [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,923 and codified in 17 CFR Part 148. In addition, the Commission consulted with the Administrative Conference of the United States about the proposed changes. No comments were filed in response to the Federal Register notice of proposed rulemaking and the Commission has decided to adopt the proposed rules without modification.

The Commission notes that the provisions of the Regulatory Flexibility Act do not apply to these rule modifications. The rules are procedural in nature and have a potential beneficial, rather than adverse, impact on small businesses. Accordingly, the Chairman, on behalf of the Commission, certifies that the rules adopted in this notice will not have a significant economic impact on a substantial number of small entities. Moreover, the provisions of the Paperwork Reduction Act do not apply to these rule modifications. The rules do not call for the collection of information from the general public by the Commission, but simply implement statutory changes in the context of particular adjudicatory proceedings.

List of Subjects in 17 CFR Part 148

Claims, Equal access to justice, Lawyers.

PART 148—[AMENDED]

The Commission amends Part 148 of Chapter I of Title 17 of the Code of Federal Regulations, as specified below:

1. The authority citation for 17 CFR Part 148 is revised to read as follows:

Authority: Equal Access to Justice Act, 5 U.S.C. 504(c)(1) and sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5).

Subpart A—General Provisions

2. Section 148.1 is revised as follows:

§ 148.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this Part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

3. Section 148.2 is revised as follows:

§ 148.2 When the Act applies.

The Act applies to any covered adjudicatory proceeding pending before the Commission on or after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date. Awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

4. Section 148.3, paragraphs (a) and (b), are revised as follows:

§ 148.3 Proceedings covered.

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Reparation proceedings under section 14 of the Commodity Exchange Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under section 8c of the Commodity Exchange Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, are not covered by the Act. Proceedings brought to determine whether or not to grant or renew registrations pursuant to sections 8a or 17(*o*), of the Commodity Exchange Act, 7 U.S.C. 8, 12a and 21(*o*), or contract market designations pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8, are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings. For the Commission, the types of proceedings generally covered are adjudicatory proceedings as defined in § 10.2(b) of this Chapter; Part 14 proceedings, if they involve a hearing, are also covered.

(b) The Commission's decision not to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

5. Section 148.4 is amended by changing the dollar amounts in paragraphs (b) (1) and (2) to read "$2 million", and "$7 million", respectively, and by revising paragraphs (b)(5) and (e) to read as follows. Paragraph (b) introductory text is shown for user convenience only.

§ 148.4 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

* * * * *

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

(e) The employees of an applicant include all persons who regularly perform services for compensation for the applicant, under the applicant's direction and control. The term "employee" also embraces all the agents of an applicant, by whatever title or label they may be known, for whose acts or omissions the applicant may be held liable under the Commodity Exchange Act. *See* 7 U.S.C. 4. Part-time employees shall be included on a proportional basis.

* * * * *

6. Section 148.5, paragraph (a), is revised as follows:

§ 148.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adjudicatory proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Commission was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the Commission upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission.

* * * * *

Subpart B—Information Required From Applicants

7. Section 148.11, paragraph (a) and the introductory text of paragraph (b), are revised as follows:

§ 148.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adjudicatory proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

Subpart C—Procedures for Considering Applications

* * * * *

8. Section 148.26, paragraph (a), is revised as follows:

§ 148.26 Further Proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Commission was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought. No discovery and/or evidentiary proceedings shall be permitted into the question of whether the agency's position was substantially justified.

* * * * *

9. Section 148.28 is revised as follows:

§ 148.28 Appeal to the Commission.

(a) Either the applicant or counsel for the Commission or for another relevant agency may appeal the initial decision on the fee application by complying with the requirements of this section. An appealing party shall serve upon opposing parties and shall file with the Proceedings Clerk a notice of appeal within fifteen (15) days after service of the initial decision. The notice need consist only of a brief statement indicating the filing party's intent to appeal the initial decision, and shall include the date upon which the initial decision was rendered, the name of the proceeding, and the docket number of the proceeding. The failure of a party timely to file and serve a notice of appeal in accordance with this paragraph, or to perfect the appeal in accordance with paragraph (b) of this section, shall constitute a voluntary waiver of any objection to the initial decision, and of all further administrative or judicial review under these rules and the Equal Access to Justice Act.

(b) An appeal shall be perfected by the appealing party by timely filing with the Proceedings Clerk an appeal brief which meets the requirements of paragraphs (b) and (d) of this section. An original and one copy of the appeal brief shall be filed within thirty (30) days after filing of the notice of appeal. By motion of the appealing party, the Commission may, for good cause shown, extend the time for filing the appeal brief. If the appeal brief is not filed within the time prescribed in this subparagraph, the Commission may, upon its own motion or upon motion by a party, dismiss the appeal, in which event the initial decision shall become the final decision and order of the Commission, effective upon service of the order of dismissal.

(c) The opposing party may, within thirty (30) days after service of the appeal brief, file an original and one copy of an answering brief, and serve one copy thereof, unless the time limit is extended by the Commission upon motion of the party and for good cause shown.

(d) Parties filing an appeal brief or answering brief shall meet the requirements of § 10.12 of this Chapter as to form. The content of briefs shall satisfy the requirements of § 10.102(d) of this Chapter, except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without advance leave of the Commission.

(e) On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

Dated: May 19, 1986.

Jean A. Webb,

Secretary to the Commission, Commodity Futures Trading Commission.

[FR Doc. 86-11034 Filed 5-22-86; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33-6844]

Delegations of Authority to Director of Division of Corporation Finance and Regional Administrators

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules relating to general organization to delegate to the Director of the Division of Corporation Finance authority to waive the disqualification provisions of Regulation D under the Securities Act of 1933 (the "Securities Act"). In addition, the Commission is amending the extent of the delegation of authority to its Regional Administrators with respect to confidential treatment applications filed under the Securities Act. The changes will enable the Commission and its staff to process the waiver requests and confidential treatment applications expeditiously and result in savings of time for the Commission and the public.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff, (202) 272-2644, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The exemption provided by Rule 505 of Regulation D (17 CFR 230.501—230.506) under the Securities Act governing limited offers and sales of securities not exceeding five million dollars is not available if any persons identified in Rule 252 (c), (d), (e) and (f) of Regulation A (17 CFR 230.251—230.264) are involved in the offering. The Commission may determine not to apply such disqualification provision upon a showing of good cause that under the circumstances the Rule 505 exemption should not be denied.

In order to facilitate the processing of waiver requests under Regulation D, as described above, the Commission is amending its delegation of authority rules to indicate that the Director of the

Division of Corporation Finance may grant such applications under Regulation D by specifically referring to Rule 505.

Rule 242 (17 CFR 230.242) under the Securities Act provided an exemption from the registration provisions of such Act for certain limited offers and sales by qualified issuers. That rule was a predecessor and model for Rule 505 of Regulation D. The Director of the Division of Corporation Finance was given the delegated authority to grant applications for relief from the issuer disqualification provisions of Rule 242. These provisions, as with Rule 505, tie into Regulation A, Rule 252 (c), (d), (e) and (f) [17 CFR 230.252 (c), (d), (e) and (f)] under the Securities Act. In view of the delegation of authority relative to Rule 505 and the removal of Rule 242 [Release No. 33-6389 (March 8, 1982) [47 FR 11251]], it is apparent that the delegation of authority to the Director of the Division of Corporation Finance, relative to Rule 242 may be deleted.

Rule 406 (17 CFR 230.406) under the Securities Act provides a method whereby provisions of material contracts may be accorded confidential treatment where it is shown and the Commission determines that disclosure would impair the contract's value and is not necessary for the protection of investors. Pursuant to delegated authority, both the Director of the Division of Corporation Finance and the Commission's Regional Administrators have the power to grant such applications for confidential treatment (17 CFR 200.30-1(a)(3), 200.30-6(a)(3)). The Director of the Division of Corporation Finance, but not the Regional Administrators, now has the power to deny certain confidential treatment applications or schedule hearings with regard to possible denial of such applications (17 CFR 200.30-1(a)(3)). The Commission finds it to be appropriate that the Regional Administrators have parallel authority to the Director of the Division of Corporation Finance with respect to confidential treatment applications made under the Securities Act.

The Commission also finds, in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)) that the foregoing action relates solely to agency organization, procedure or practice, and that such section makes unnecessary the notice and prior publication required by the Act (5 U.S.C. 553). In view of the foregoing, and the expeditious processing which will result in time savings to both the Commission and the public, good cause exists for dispensing with the normal thirty day delay in effectiveness. Accordingly, the amendments to Rules 30-1 and 30-6 are effective immediately.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendment

Accordingly, Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 791, 77sss, 80a-37, 80b-11, unless otherwise noted. § 200.30-1 is also issued under secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 209(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; secs. 202, 68 Stat. 683; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37; Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2. § 200.30-3 is also issued under secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; c. 122, 59 Stat. 167; Pub. L. 91-565, 84 Stat. 1480; 15 U.S.C. 77c(b), 77s(a) 78d-1, 78n, 80a-37; secs. 2, 17 and 23 thereof (15 U.S.C. 78b, 78q and 78w).

2. Section 200.30-1 is amended by revising paragraph (d) as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) With respect to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and Regulation D thereunder (§ 230.501, et seq. of this chapter), to authorize the granting of applications under Rule 505(b)(2)(iii)(C), (§ 230.505(b)(2)(iii)(C) of this chapter) upon a showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

3. Section 200.30-6 is amended by revising paragraph (a)(3) as follows:

§ 200.30-6 Delegation of authority to Regional Administrators.

(a) * * *

(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act; to issue orders scheduling hearings on such application and to deny any such application as to which the applicant waives his right to a hearing, provided such applicant is advised of his right to have such denial reviewed by the Commission.

By the Commission.

Shirley E. Hollis,
Assistant Secretary.
May 19, 1986.

[FR Doc. 86-11721 Filed 5-22-86; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 82

[Docket Nos. 83C-0012 and 84C-0426]

Confirmation of Effective Date for D&C Green No. 6 as a Color Additive for Coloring Absorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 22, 1986, for the final rule that amended the color additive regulations to provided for an increase in the level at which D&C Green No. 6 can be used to color certain polyglycolic acid surgical sutures and to provide for its use for coloring poly(glycolic acid-*co*-trimethylene carbonate) absorable sutures for general surgical use. These actions responded to two petitions filed by American Cyanamid Co.

EFFECTIVE DATE: Effective date confirmed: April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 21, 1986 (51 FR 9780), FDA amended the color additive regulations to provide for an increase in the level at which D&C Green No. 6 can be used to color certain surgical sutures.

FDA gave interested persons until April 21, 1986, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule

published in the Federal Register of March 21, 1986, should be confirmed.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the March 21, 1986, final rule. Accordingly, the amendments promulgated thereby became effective April 22, 1986.

Dated: May 19, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–11606 Filed 5–22–86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Diagnostic Data, Inc., to DDI Pharmaceuticals, Inc.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: DDI Pharmaceuticals, Inc., formerly Diagnostic Data, Inc., 518 Logue Ave., Mountain View, CA 94043, has filed a supplemental NADA informing FDA of the change in sponsor name for NADA 45–863 (orgotein for injection). The NADA is amended to reflect the change. The regulations in 21 CFR 510.600 are amended accordingly.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by revising the entry for "Diagnostic Data, Inc.," and in paragraph (c)(2) by revising the entry for "024991" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
DDI Pharmaceuticals, Inc., 518 Logue Ave., Mountain View, CA 94043	024991

(2) * * *

Drug labeler code	Firm name and address
024991	DDI Pharmaceuticals, Inc., 518 Logue Ave., Mountain View, CA 94043.

Dated: May 16, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–11604 Filed 5–22–86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Sulfadimethoxine, Ormetoprim

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for the use of an approved Type A medicated article containing 113.5 grams of sulfadimethoxine and 22.7 grams of ormetoprim per pound to manufacture Type C medicated feed for control of enteric septicemia of catfish caused by *Edwardsiella ictaluri* strains susceptible to sulfadimethoxine and ormetoprim combination.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 125–933 for Romet™ –30 (sulfadimethoxine 113.5 grams (25 percent) and ormetoprim 22.7 grams (5 percent) per pound). The product is a Type A medicated article currently approved for manufacture of a Type C medicated feed intended for control of the bacterial infection furunculosis in salmonids (trout and salmon) caused by *Aeromonas salmonicida*. The supplemental NADA extends use of the product to manufacture a Type C medicated feed intended for control of enteric septicemia of catfish caused by *Edwardsiella ictaluri*. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. Additionally, the regulations are amended to establish a tolerance for sulfadimethoxine and ormetoprim in catfish.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the

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action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By revising § 556.490 to read as follows:

§ 556.490 Ormetoprim.

A tolerance of 0.1 part per million is established for negligible residues of ormetoprim in the edible tissues of chickens, turkeys, ducks, salmonids, and catfish.

3. Section 556.640 is amended by revising paragraph (a) to read as follows:

§ 556.640 Sulfadimethoxine.

* * * * *

(a) In the uncooked edible tissues of chickens, turkeys, cattle, ducks, salmonids, and catfish at 0.1 part per million (negligible residue).

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

5. Section 558.575 is amended by adding new paragraph (c)(6) to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

* * * * *

(c) * * *

(6) *Catfish*—(i) *Amount.* 50 milligrams of active ingredients per kilogram of body weight per day.

(ii) *Indications for use.* For control of enteric septicemia of catfish caused by *Edwardsiella ictaluri* strains susceptible to sulfadimethoxine and ormetoprim combination.

(iii) *Limitations.* Administer for 5 consecutive days; withdraw 3 days before slaughter or release as stocker fish.

Dated: May 19, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–11605 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

29 CFR Part 12

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Correction

AGENCY: Department of Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on relocation assistance and real property acquisition that appeared at page 7012 in the Federal Register of Thursday, February 27, 1986, (51 FR 7000). This action is necessary to correct amendatory language in that document.

EFFECTIVE DATE: April 28, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph McGovern, Office of Space and Telecommunications Management, 200 Constitution Avenue, NW., Washington, DC 20210, (FTS or 202) 523–6405.

On page 7012, column two, the fourth paragraph is corrected to read "Title 29 of the Code of Federal Regulations is amended by revising Part 12 to read as set forth at the end of this document."

Signed at Washington, DC, this 16th day of May, 1986.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

[FR Doc. 86–11713 Filed 5–22–86; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

Correction

In FR Doc. 86–11097 beginning on page 18260 in the issue of Friday, May 16, 1986, make the following corrections:

1. On page 18261, in the third column, in *Section 357.26 Payments.* (b), in the fifteenth line, "indemnity" should read "indemnify".

2. On page 18268, in the third column, in § 357.22(b)(2), in the sixth line "law and the terms of the" should read "law of the deceased owner's".

3. On page 18269, in the second column, in § 357.24(c), in the fifth line, "identify" should read "identity".

4. On page 18272, in the second column, in § 357.28(c)(3)(ii)(C), in the first line, "minor" should read "minors"; in § 357.28(d)(1), in the sixth line, "unicorporate" should read "unincorporated".

5. On page 18273, in the second column, in § 357.31(c)(3), in the twelfth line, "upper" should read "under".

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3420 and 3480

[Circular No. 2562]

Coal Management—General; Competitive Leasing; and Environment; Amendments Implementing Certain Recommendations of the Commission on Fair Market Value for Federal Coal Leasing and Options Suggested by the Office of Technology Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the Federal coal management regulations to implement certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and policy options suggested by the Office of Technology Assessment. This final rulemaking combines the proposed rulemakings which appeared in the Federal Register on November 5, 1984 (49 FR 44221) and on March 5, 1985 (50 FR 10506), respectively. The amendments are designed to improve

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the procedures used in leasing Federal coal.

EFFECTIVE DATE: June 23, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (650), Bureau of Land Management, Room 3600, Main Interior Bldg, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Thomas Walker (202) 343–4636
or
Robert C. Bruce (202) 343–6735

SUPPLEMENTARY INFORMATION: This final rulemaking combines two proposed rulemakings that would make amendments to the Federal coal leasing program and reflects the decisions of the Secretary of the Interior of February 21, 1986, on modifications of the coal leasing program. The first proposed rulemaking implemented certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and was published in the Federal Register on November 5, 1984 (49 FR 44221) with a 60-day comment period. The comment period was reopened on March 15, 1985, and extended to May 9, 1985, to coincide with the publication of the comment period on the Federal coal management program environmental impact statement supplement. The first proposed rulemaking was sent to State Governors and major interest groups at their request in July 1984. Following this distribution, informational briefings were held in July and December 1984 and January 1985.

The second proposed rulemaking implemented certain policy options suggested by the Office of Technology Assessment and was published in the Federal Register on March 15, 1985 (50 FR 10508) with a 30-day comment period, which was later extended to May 9, 1985. This second proposed rulemaking was sent to State Governors and interest groups in November 1984 and was available for comment at the December 1984 and January 1985 informational briefings.

The two proposed rulemakings were the subject of 16 comments, 10 on the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and 6 on the policy options suggested by the Office of Technology Assessment. The comments came from the following sources: three from energy companies; two from industry trade associations; two from conservation groups; one from a State government; one from a Federal agency; and one from an individual. The comments dealt with three of the recommendations of the Commission on Fair Market Value for Federal Coal Leasing and four on the options suggested by the Office of Technology Assessment and each comment is discussed in connection with the section covered.

No comment opposed the amendment made to § 3400.4 by the proposed rulemaking implementing certain policy options suggested by the Office of Technology Assessment which would make regional coal team recommendations rebuttable presumptions. Two of the comments did, however, state that the public must be allowed sufficient time to comment on all regional coal team meetings and the recommendations made at the meetings and the regional coal team must respond to all public comments. The comments also expressed the view that those making comments should be informed of the action taken on those comments. The instructions provided regional coal teams will emphasize that all regional coal team meetings are public meetings, that a comment period of sufficient length to give the public adequate opportunity to comment on the actions of the regional coal team must be provided and that public comments should be addressed in the recommendations of the regional coal team. The final rulemaking has adopted the change made to § 3400.4 without change. The final rulemaking also changes the language of § 3400.4(d) to bring it into agreement with the Secretary of the Interior's coal program decisions of February 21, 1986.

In connection with the revision made by the proposed rulemaking implementing certain policy options suggested by the Office of Technology Assessment which added § 3400.6, one comment suggested a review of all existing coal management regulations for the purpose of inserting at each point where public comment is required a minimum time period for such comment. The purpose of this comment is answered by the requirement added by § 3400.6 that the minimum period for public comment will be 30 days unless otherwise specified. The final rulemaking has adopted § 3400.6 without change.

The reinstatement of the threshold concept in § 3420.1–4 of the proposed rulemaking, which implemented the policy options of the Office of Technology Assessment, received six comments. The comments argued either that not enough of a change was being proposed or that too much change was being proposed. The comments from the conservation groups wanted to see the threshold levels applied twice, once during land use planning and a second time during the preparation of individual coal lease sale environmental impact statements. On the other hand, comments from industry groups, while supporting environmental protection, expressed the view that the provisions of the existing regulations, if fully implemented, would provide sufficient safeguards for environmental values.

One of the comments on the threshold issue expressed concerns about the overall land use planning and regional leasing process. In a lengthy discussion, the comment expressed the concern that the whole effort of land use and activity planning was to reduce the number of coal-bearing lands available for leasing, with no opportunity for reinstatement of those lands that were perceived to have defects. The comment went on to state that the effect of applying all the coal screens and then the threshold analysis during the land use planning process would be to force decisions that should not be made until the mining permit stage. The comment expressed the view that if a coal lease met all of the regulatory requirements, then a coal lessee should have a guaranteed right of development.

This comment directly relates to the issue of data adequacy, i.e., at what stage are data adequate for the purposes intended. The purpose of applying coal screens and threshold analyses to lands whose resources and other values are being considered during land use planning is to eliminate those coal-bearing lands with significant resource conflicts or those with resources protected by statute or regulation. For instance, surface mining methods could not be used on coal-bearing lands supporting critical habitat for an endangered species of plant or animal. This would be true whether or not the endangered species unsuitability criteria existed, since the critical habitats of endangered species are protected by statute. Leasing those lands for coal development would be useless, since the lessee could not mine the coal in those lands using surface mining methods.

Not all resource conflicts can properly be determined during land use and activity planning. One unsuitability criterion that generally is not applied at the land use planning stage is whether or not the lands being studied are located in an alluvial valley floor chiefly valuable for farming. In addition, the final judgment on whether the lands could be reclaimed to the standards of the Surface Mining Control and Reclamation Act of 1977 is best made at a later point in the process. The Secretary of the Interior determined in

1979 that reclamation feasibility is most efficiently determined at the mine permit stage.

For the reasons set out above, lessees cannot have a guaranteed right of development. Lessees assume certain risks when they obtain a Federal coal lease, or any lease for that matter, and all circumstances which might hinder or prevent coal development cannot be known years before development will occur. However, careful application of coal screens and thresholds during land use planning should minimize the possibility that a coal lease could not be mined because of resource conflicts.

After a careful review of the comments on the amendments made by the proposed rulemaking implementing policy options suggested by the Office of Technology Assessment to § 3420.1–4, the final rulemaking reinstates the threshold concept in the Coal Management regulations. In response to one comment that suggested that the language was ambiguous, the final rulemaking has adopted a clarifying amendment to § 3240.1–4(f).

There were four comments on the amendment to § 3420.3–4(b)(1) made by the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing recommending a change in what was studied in the regional coal leasing environmental impact statements from "preferred alternative" to "proposed action." Three of the comments supported the change, viewing it as merely a change in semantics.

The fourth comment opposed the change on the basis it was contrary to the National Environmental Policy Act of 1969 and its implementing regulations. The comment noted that the designation of a "preferred alternative" by an agency need not indicate to the public that a final decision had been made prematurely. In fact, some of the regional coal leasing environmental impact statements contained explicit language noting that the preferred alternative did not bind the Secretary of the Interior in any way in reaching a final coal leasing decision. Despite these statements, certain groups continued to accuse the Department of the Interior of writing regional coal leasing environmental impact statements that supported already-made decisions. Therefore, the change of wording from "preferred alternative" to "proposed action," while not a comprehensive solution to the public perception problem, was put forward in the proposed rulemaking as a remedy. The change is consistent with the regulations of the Council on Environmental Quality because it is based on Chapter 516 of the Department of the Interior's Manual which implements the Council on Environmental Quality regulations and which was approved by the Council after public review and comment. The final rulemaking has adopted the amendment to § 3420.3–4(b)(1) without change.

Seven comments were directed to the amendment made to § 3422.1(c)(2) by the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing. The Commission recommended changing the basis for calculating minimum bids. The majority of the comments opposed the establishment of minimum bids on a regional basis and the expression of those bids in cents-per-ton. The comments that supported the regional minimum bid concept expressed the view that regional minimum bids made sense and are justified by regional differences in coal quality and quantity. Those that opposed the change argued that intraregional differences may be as great as interregional differences. Those in opposition to the change supported the status quo or the establishment of minimum bids on a tract-by-tract basis. Two of the comments made the point that, if the purpose of minimum bids is to screen out nuisance bids, then elaborate regional minimum bids are unnecessary. Finally, two of the comments were extremely wary of the Department of the Interior's intentions in proposing a minimum bid system on a regional basis, viewing it as an attempt to eliminate minimum bids altogether and to sell Federal coal for less than it is worth.

In an effort to analyze the available options concerning minimum bids for coal, the Department of the Interior studied the development of the concept of minimum bids and the objectives which minimum bids might serve. The study revealed that historically minimum bids, which were initially termed "minimum acceptable bids," have served several purposes. These purposes were not all enunciated at the same time, but became blurred and intermingled as time passed. The purposes are not mutually exclusive, although certain objectives may be better expressed regionally or nationally, in dollars-per-acre or cents-per-ton, or as fees rather than as minimum bids.

Initially, in the offshore oil and gas leasing program, where the concept of minimum bids originated, minimum bids were designed to recover the costs of bringing lease tracts to sale. The July 19, 1979, regulations on Federal Coal Management stated the following objectives for minimum bids for Federal coal lease tracts: to dissuade non-serious bidders from disrupting coal lease sales; to recover the costs of bringing Federal coal lease tracts to offering at Federal coal lease sales; and to set a floor below which Federal coal would not be leased.

After careful consideration of the comments and of the objectives to be served by minimum bids, the final rulemaking retains a minimum bid of at least $100 per acre or its equivalent in cents-per-ton and allows the minimum bid to be expressed either regionally or nationally. The minimum bid may be set at more than $100 per acre in a region when analyses by a regional coal team indicates that a higher amount is appropriate. The minimum bid is not intended to represent fair market value for any tract. Fair market value is not established until after the sale is held.

Five comments were directed to the elimination of the requirement to announce the amounts bid at Federal coal lease sales made in the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing. Two of the comments expressed support for the change without further comment; three opposed the change, with two of those comments strongly opposing it.

The change was made in response to two situations, one being when there is a lease sale in which both multiple-bid and single-bid tracts occurred and the other when intertract bidding is used as the bidding method.

In sales where there were both multiple-bid and single-bid tracts, the Commission on Fair Market Value for Federal Coal Leasing expressed the view that bids received on multiple-bid tracts would be an important information source for the sale panel in determining whether or not the single-bids constituted fair market value for those tracts. Withholding the amounts bid on single-bid tracts from the sale panel was suggested as a means of not unduly influencing its fair market value determinations. Sequestering the sale panel for the length of the post-sale review was suggested as a means of witholding these amounts. Because such sequestering is impractical, opening the bids but delaying bid announcements on single-bid tracts was then suggested as a means of implementing this recommendation of the Commission.

The second situation involves intertract bidding. One of the principles of intertract bidding is that not all coal lease tracts offered through intertract

bidding will be leased. Some tracts for which bids would be received would not be leased. If these bids represented the bidder's best estimate of the value of the tract, revealing the bid amounts might provide the bidder's competitors with valuable information about the bidder's financial situation and position in the industry in the area. In this case, the bid amount would be protected from disclosure under the provisions of the Freedom of Information Act.

Those comments opposing this change expressed the view that the public had a right to know all amounts bid and would file requests under the Freedom of Information Act to obtain the amounts. These comments termed the change a "gag rule" and feared the change would create the possibility of collusion between the personnel of the Department of the Interior and the bidders.

This proposed change was specifically discussed and was the subject of strenuous objections at the January 1985 informational briefing. It was pointed out in that briefing that the Commission on Fair Market Value for Federal Coal Leasing did not discuss or consider the change in any of its meetings. Further, the Commission's report mentioned it only briefly and did not strongly emphasize or consider it.

After careful consideration of the comments and a review of the analysis of this issue prepared by the Department of the Interior, the change made by the proposed rulemaking has not been adopted by the final rulemaking, leaving the existing regulation unchanged.

In order to implement the recommendation of the Commission on Fair Market Value Policy for Federal Coal Leasing on withholding bid amounts from the sale panel discussed earlier, the Department of the Interior is currently developing an administrative procedure for a two-stage lease sale process which will not require a regulatory change. If a sale involves several lease tracts and some of them receive multiple bids and the other receive single bids, then only the bids on the multiple tracts would be opened and announced at the first stage of the sale. The single bids would not be opened or announced at that time. The sale panel would use the amounts bid on the tracts receiving multiple bids in a postsale appraisal. The results of the postsale appraisal would then be used to reappraise the single-bid tracts. After this, a second stage of the sale would occur at which the single bids would be opened and announced.

Editorial and grammatical changes as needed have been made.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking should not affect small businesses in the coal mining industry to any greater degree than they should affect all coal mining businesses. Studying "proposed actions" rather than "preferred alternatives" in regional coal leasing environmental impact statements, establishing minimum periods for public comments, making regional coal team recommendations rebuttable presumptions, and allowing public comment on the application of the unsuitability criteria should not affect the number or frequency of small business set-aside coal leases offered for sale at regional coal lease sales. Retaining a minimum bid of at least $100 per acre, whether expressed nationally or regionally or in dollars-per-acre or cents-per-ton, should retain the status quo and not affect small business bidding opportunities at Federal coal lease sales to any greater or lesser extent than those opportunities are now affected.

There are no additional information collection requirements in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3460

Coal, Environmental protection, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351—359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–2075), and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.), Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set out below.

May 1, 1986.

J. Steven Griles,
Assistant Secretary of the Interior.

PART 3400—[AMENDED]

1. The authority citation for Part 3400 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

2. Section 3400.4 is amended by:

a. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g) respectively; and

b. Adding a new paragraph (d) to read:

* * * * *

§ 3400.4 Federal/state government cooperation.

* * * * *

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3–4(g) shall be accepted except: (1) In the case of an overriding national interest; or (2) in the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4–3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

* * * * *

3. A new § 3400.6 is added to read:

§ 3400.6 Minimum comment period.

Unless otherwise required in group 3400 of this title, a minimum period of 30

days shall be allowed for public review and comment where such review is required for Federal coal management program activities under group 3400 of this title.

PART 3420—[AMENDED]

4. The authority citation for Part 3420 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.1–2 [Amended]

5. Section 3420.1–2 is amended by:

a. Revising the heading to read:

§ 3240.1–2 Call for coal resource and other resource information.

b. Amending paragraph (a) by removing the phrase "Call for Coal Resource Information "where it appears and replacing it with the phrase "Call for Coal and Other Resource Information" and by removing the phrase "coal resource development potential" where it appears and replacing it with the phrase "coal resource development potential and on other resources which may be affected by coal development";

c. Amending paragraph (b) by removing the phrase "Call for Coal Resource Information" where it appears and replacing it with the phrase "Call for Coal and Other Resource Information"; and

d. Amending paragraph (c) by removing the phrase "Call for Coal Resource Information" in the two places it appears and replacing it with the phrase "Call for Coal and Other Resource Information".

§ 3420.1–4 [Amended]

6. Section 3420.1–4 is amended by adding a new paragraph (f) to read:

* * * * *

(f) In its review of cumulative impacts of coal development, the regional coal team shall consider any threshold analysis performed during land-use planning as required by § 1610.4–4 of this title and shall apply this analysis, where appropriate, to the region as a whole.

§ 3420.1–6 [Amended]

7. Section 3420.1–6 is amended by:

a. Adding the figure "(a)" at the beginning of the existing text; and

b. Adding a new paragraph (b) to read:

* * * * *

(b) Activity planning shall begin with a regional coal team meeting to review market analyses and land-use planning summaries. The market analyses and land-use planning summaries shall be available at least 45 days prior to such meeting.

§ 3420.3–4 [Amended]

8. Section 3420.3–4(b)(1) is amended by inserting after the first sentence of the section the sentence "One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental impact statement." and by removing from the second sentence the phrase "and shall identify the preferred alternative in the environmental impact statement".

9. Section 342.21(c)(2) is revised to read:

§ 3422.1 Fair market value and maximum economic recovery.

* * * * *

(c)(1) * * *

(2) Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than $100 per acre or its equivalent in cents-per-ton.

§ 3422.1–1 [Removed]

10. Section 3422.1–1 is removed in its entirety.

PART 3460—[AMENDED]

11. The authority citation for Part 3460 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521– 531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

12. Section 3461.3–1(a) is amended by:

a. Redesignating paragraph (a)(2) as paragraph (a)(3); and

b. Adding a new paragraph (a)(2) to read:

(a) * * *

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the Federal Register. This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

* * * * *

[FR Doc. 86–11071 Filed 5–22–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 205

General Administration of Public Assistance Programs; Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System in the Aid to Families With Dependent Children Program

Correction

In FR Doc. 86–8419 beginning on page 13001 in the issue of Thursday, April 17, 1986, make the following corrections:

1. On page 13001, in the second column, in the **SUMMARY** paragraph, in the eighth line, "96–264" should read "96–265".

2. On page 13002, in the first column, in the first paragraph, in the fourteenth line, "percent on" should read "percent FFP on".

3. On page 13004, in the second column, in the *Response* paragraph under "*Issue: Annually Updated APD.*", in the second line, "updates" should read "updated" and in the fourth line, "updated" should read "updates".

4. On page 13004, in the third column, in the *Response* paragraph under "*Issue: Facilitation of Integrated Systems.*", in the third line, "or" should read "of".

5. On page 13005, in the second column, in the third complete paragraph, in the twelfth line, "ADP" should read "APD".

6. On page 13008, in the first column, in § 205.35(b), in the definition "*Hardware*", in the first line, "produced" should read "produces".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 79-163]

Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This action corrects errors in Note 3 of § 1.1306, §§ 1.1308(d) and 1.1311(b) in the Report and Order regarding the Amendment of Environmental Rules in Response to New Regulations Issued by the Counsel on Environmental Quality, 51 FR 14999 (April 22, 1986).

FOR FURTHER INFORMATION CONTACT: Holly Kaufman, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

Correction

Released: May 15, 1986.

On April 22, 1986 (51 FR 14999), the Commission published a final rule in this proceeding concerning amendment of environmental rules. This document corrects errors in that final rule.

1. In § 1.1306, Note 3 is correctly added to read as follows:

§ 1.1306 Actions which are Categorically Excluded from Environmental Processing.

* * * * *

Note.—The construction of an antenna tower or supporting structure in an established "antenna farm": (i.e., an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm), will be categorically excluded unless *one or more of the antennas to be mounted on the tower or structure are subject to the provisions of § 1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure* would cause human exposure in excess of the applicable health and safety *guidelines* cited in § 1.1307(b).

§ 1.1308 [Corrected]

2. In § 1.1308(d), the reference to the CEQ regulation is corrected to read "40 CFR 1501.4 and 1506.6".

3. Section 1.1311(b) is correctly revised to read as follows:

§ 1.1311 Environmental information to be included in the Environmental Assessment (EA).

* * * * *

(b) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission or Bureau, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (*e.g.*, wilderness areas, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed, or eligible for listing, in the National Register of Historic Places. It shall also detail any substantial change in the character of the land utilized (*e.g.*, deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (*e.g.*, necessitated by the operation and maintenance of the facilities).

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-11462 Filed 5-22-86; 8:45 am]

BILLING CODE 6712-01-M

VOL 51 ISS 100 MY 23 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AO-265-A5]

Tomatoes Grown in Florida; Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on a proposed amendment of the marketing agreement and Marketing Order 966 (7 CFR Part 966), covering tomatoes grown in Florida. The proposal would provide authority for production research and promotion including paid advertising, to accept assessments in advance, to borrow money or to accept voluntary contributions, to allow for interchangeable alternates within districts, to limit committee tenure, and to require periodic referenda on the order.

DATE: Written exceptions to this recommended decision must be received by June 9, 1986.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing on proposed rule—Issued December 16, 1985, and published December 20, 1985 (50 FR 51872).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Small businesses. The Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the notice of hearing, interested persons were invited to present evidence at a hearing on the probable regulatory and information impact of the proposed rule on small businesses for purposes of the RFA.

During the fiscal year ending July 31, 1985, 103 handlers regulated under M.O. 966 handled tomatoes with an estimated crop value of approximately $314.4 million. The average value per handler was approximately $3,052,000. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000) almost all of the handlers of tomatoes would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The proposed amendments to the order include provisions which will provide more frequent opportunity for producer votes, opportunity for broad base representation on the committee, and greater flexibility for the committee in accepting contributions and advance assessments. The proposed amendment to order § 966.48 makes it possible for the committee to fund production research and paid advertising to promote consumer awareness and sales of Florida tomatoes. The present § 966.48 provides for market research and development projects but makes no provision for paid advertising and promotion, and production research. In the past, these activities have been sponsored by the Florida Tomato Exchange—a nonprofit voluntary cooperative association of first handlers of fresh tomatoes produced in Florida. Most handlers regulated under Marketing Order 966 are members of the Exchange. The Exchange establishes and finances projects involving production research, marketing research and development projects, and marketing promotion and paid advertising projects to assist Florida tomato produces and promote the consumption of Florida tomatoes.

Active members of the Tomato Exchange handle a substantial amount of the tomatoes produced in the production area. These handlers pay assessments directly to the Exchange which are used to finance the costs of such projects. The small percentage of handlers who contribute no funds to the Exchange get all of the benefits from the results of these research projects without incurring any of the costs. If authority is added to the marketing order for production research and marketing promotion including paid advertising, all handlers would pay assessments through the existing order assessment provisions to finance such projects. This would result in everyone paying their fair share of the expenses for these research and promotion projects. This action would not impose substantial costs on affected small businesses because a substantial number of small businesses are already voluntarily funding such projects, and research, promotion and advertising projects could be greatly expanded without substantial increases to individual handler costs.

Based on the foregoing, it is hereby determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida Tomato Committee has requested a mid-June referendum. Growers and handlers in the production area will be shutting down their operations for the current season and leaving the area for the summer. In order to determine producer support for the proposed amendment of M.O. 966, as many producers as possible should be in the area to participate in the referendum. By allowing a 15-day comment period, thus expediting the formal rulemaking process, we may be able to conduct a mid-June referendum.

A comment period of 15 days is provided. A longer period would unnecessarily delay the amendatory process and possibly prevent the proposed changes from being implemented by the industry in time for the beginning of the 1986-87 marketing season.

Preliminary statement. Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of marketing agreement and Order No. 966 regulating the handling of tomatoes grown in Florida and the opportunity to file written exceptions thereto. Copies of this decision may be obtained from Ronald L. Cioffi whose address is listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

On January 14, 1986, a public hearing was held on proposed further amendment of the marketing agreement, as amended, and Order No. 966, as amended. The hearing was held in Orlando, Florida, pursuant to the provisions of the Act and the applicable rules of practice. Notice of this hearing was published in the Federal Register on December 20, 1985 (50 FR 51872). The notice of hearing contained a proposal by the Florida Tomato Committee, which operates under the order, to amend the order to authorize production research and promotion including paid advertisting, allow the committee to accept voluntary contributions for research and promotion projects, accept assessments in advance or to borrow money, limit the tenure of committee members and alternates, allow for interchange of alternates within districts at meetings, and provide for periodic referenda. The notice included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, authorizing it to make any necessary conforming changes.

Material issues: The material issues presented on the record of the hearing are: (1) Whether the committee should be authorized under the order to engage in production research and marketing promotion including paid advertising to promote the marketing, distribution and consumption of tomatoes; (2) whether the committee should be provided the authority to accept assessments in advance or ot borrow money; (3) whether the committee should be provided the authority to accept voluntary contributions for research and promotion projects; (4) whether a limit should be established on the tenure of committee members and alternates; (5) whether the order should allow for interchange of alternates within districts at meeting; (6) whether periodic continuance referenda should be held on the order; and (7) whether certain minor administrative changes and conforming changes should be made to the order.

Findings and conclusions. The findings and conclusions on the material issues, all of which are based on the evidence presented at the hearing and the record thereof, are as follows:

(1) Currently, § 966.48 of the marketing order for Florida tomates provides that the committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. Puruant to this authority, the tomato industry has conducted several market research and development projects to solve some of its marketing problems and expand sales.

The Agricultural Marketing Agreement Act of 1937, the authority for the marketing order, also provides authority for the conduct of production research projects to help producers more efficiently produce tomatoes, and for the conduct of marketing promotion including paid advertising projects to assist, imporve, or promote the marketing, distribution, and consumption of tomatoes. The authority for production research projects was added to the Act in 1970 and the authority for marketing promotion, including paid advertising projects for tomatoes was added in 1971.

The evidence of record is that § 966.48 should be amended to enable the Florida tomato industry to take advantage of these authorities in solving its production and marketing problems. This would enable the tomato industry to engage in any form of research and market development and market promotion including paid advertising.

Testimony indicates that tomatoes compete with many other fresh and processed fruits and vegetables for their space in supermarkets and in smaller retail grocery stores throughout the country. Many of these competing commodities are nationally advertised and promoted. In competition for display space and local advertising, Florida tomatoes have been at a disadvantage since no vehicle has existed to require mandatory assessments for industry-wide advertisement and promotion. The industry has been similarly disadvantaged in solving its production problems.

Testimony at the hearing also revealed that the industry has attempted to solve its production problems and to conduct promotion, including paid advertising, with voluntary programs conducted by the Florida Tomato Exchange. The Exchange is a nonprofit cooperative association composed of first handlers of fresh tomatoes in Florida and is incorporated under Chapter 619, Florida Statutes. The Exchange was incorporated in December 1974 to complement activities of the Florida Tomato Committee. One of the major objectives is to provide collective action with respect to the orderly marketing and distribution of fresh Florida tomatoes.

The financial structure of the Exchange is separate from the Florida Tomato Committee and Exchange members are billed directly for assessments payable to the Exchange. Active members of the Exchange handle a substantial quantity of the volume of tomatoes produced each year from the production area as defined under M.O. 966. Growers and handlers who are not members of the Exchange get all of the benefits from the results of the Exchange's efforts including production research and marketing promotion including paid advertising without incurring any of the costs. Experience has shown that voluntary programs like this have not always been successful in the long run when only part of the industry funds the programs and all of the industry benefits from the program.

The addition of authority to the tomato marketing order for these types of projects and mandatory assessments for industry-wide participation will be more equitable than the voluntary programs. Under the added marketing order authority all handlers will be required to participate in the funding and that should help the industry greatly expand such programs without big increases in the handlers' costs.

As indicated earlier, the tomato industry is faced with several production problems and should have the means of funding such projects to help solve those problems under the marketing order program. Some of the objective of production research would be to help growers develop more efficient methods to lower their costs, and to produce better quality tomatoes and higher yielding varieties.

The ability of the tomato industry to conduct industry-wide promotion programs including paid advertising, should also be of benefit to the industry as a whole. The objective of promotional and advertising programs for tomatoes would be to increase the demand for tomatoes and thereby contribute to improved returns to producers.

The types of advertising and promotion activities which may be required to meet the needs of the Florida tomato industry cannot be foreseen with certainty. Therefore, the authority for the committee to undertake, with the approval of the Secretary, such paid advertising and promotion activities as are authorized by the Act should be broad and flexible.

Proponents stated that public relation and publicity-type activities directed toward food editors would be most practical. This method would be relatively inexpensive but should be effective for disseminating information on the nutritional value of tomatoes, their availability, method of preparation, receipes and serving suggestions.

Testimony also indicates that another effective method of promoting Florida tomatoes would be through merchandising and point of sale material. Many fruit and vegetable organizations employ field service representatives to work with fresh produce merchandisers in major consuming areas where promotional activities are scheduled. Such field service persons for tomatoes could provide a variety of services, including distribution and display of point of sale material and merchandising aids, informing the trade of advertising programs, and helping with special promotions. They could also furnish the committee valuable information on arrival condition of tomatoes and attitudes of the trade and of consumers regarding tomatoes.

Other possibilities noted in the record would be for the committee to tie in with other allied trade factors for use of more expensive advertising media which might be impractical without this cooperative effort.

Many marketing order committees formulate subcommittees to study carefully and plan advertising and research and promotion programs. A subcommittee on production and market research and promotion and paid advertising should be appointed to plan and propose programs to be approved by the Florida Tomato Committee. Such programs would also require approval be the Secretary before being adopted.

If the committee engages the services of a research or advertising agency for performance of a specific program, the progress and such activity will be reviewed and a separate written report submitted at least annually, and the contracting agency is required to maintain record of funds received from the committee and the expenditures made. Copies of such reports should also be furnished to the Secretary.

In addition, the funds to cover the costs of any research, promotion and advertising activities will be obtained from assessments on shipments; the same as for other committee expenses, or, if approved in this proceeding, any voluntary contributions as discussed in material issue (3). Such research, promotion and advertising expenses must be included in the committee's annual budget of expenses, or in amended budgets of expenses, submitted to the Secretary for approved.

Since the Act authorizes production research and advertising and promotion for tomatoes under the Federal marketing order, and since Florida tomato producers have requested that such authority be added to the marketing order, and the record has demonstrated the need for such authority in order to effectuate the declared purpose of the Act, it is concluded that § 966.48, Research and development, of the order should be amended, as hereinafter set forth, to authorize the establishment of production research, marketing research and development projects and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of tomatoes.

(2) The order should be amended, as hereinafter set forth, to authorize the committee to accept the payment of assessments in advance, and to borrow money on a short-term basis to meet current obligations.

There may be time when the committee has insufficient funds at the beginning of a marketing year to enable it to operate. For example, this could occur prior to the collection of sufficient funds to meet the committee's expenses.

Hearing testimony indicates that the shipping season for Florida tomatoes begins in early October and continues until early June. The actual shipping dates will vary slightly from season to season, depending on weather conditons; but historically, tomato shipments leaving the southern part of the production area will be light in October, and early November, and heavier in late November, December, and January. This represents the winter tomato crop. February and March represent a transition period between the winter crop and the spring tomato crop. Thus, shipments in February and March are light, with the majority of the spring crop being harvested in April, May, and June from the northern section of the production area. More than half of the assessment income is collected from March through June. However, bills and projects dealing with production research and marketing promotion including paid advertising will be ongoing throughout the year.

In order to pay financial obligations as they occur, it may be necessary from time to time for the Florida Tomato Committee to accept the payment of the assessments in advance or to borrow money on a short-term basis to meet current obligations.

The proposed borrowing authority does not allow the Florida Tomato Committee to obligate itself now or bind future tomato committees to repay large sums of money over extended periods of time. Borrowing authority will be used sparingly to meet obligations as they occur and allow the committee a season to adjust its reserve needs to meet current obligations. The Committee should rely primarily on assessment funds to meet its obligations. The Secretary of Agriculture must approve the tomato committee's annual budget at the beginning of each season. In authorizing this borrowing authority, the Secretary will assure that extended indebtedness does not occur by requiring the committee to settle all obligations at the end of each marketing order fiscal period. Thus, it is not contemplated that the committee will carry debts forward from one season to another. It is, of course, the responsibility of the committee to adhere to the conditions of this provision. Therefore, the proposed amendment gives the committee authority to accept assessments in advance or to borrow funds on a short-term basis under these conditions.

(3) The order should be amended, as hereinafter set forth, to provide for the receipt of voluntary contributions to be used only for production research projects and market research and development projects and marketing promotion including paid advertising (§ 966.48). Record evidence indicates that research, market development, and marketing promotion including paid advertising projects for Florida tomatoes should directly benefit growers of that commodity and secondarily benefit other groups and businesses whose interests are allied with the production and marketing of tomatoes. These groups frequently desire to make contributions or donations to help defray the costs of such projects. This is particularly true when research projects are designed to evaluate the effectiveness of certain products. Testimony indicates that voluntary contributions could include money, chemical compounds, mulch applications, containers, machinery, equipment, or any other components

used in the production, harvesting, packing, or marketing of fresh market tomatoes. It is important, however, that the committee have complete control over the use of any contributions, and that the acceptance of contributions by the committee not give rise to allegations of discrimination or undue influence. In order to insulate the committee from undue influence, the committee shall not accept contributions from regulated handlers or any persons who could reasonably be assumed to be in a position to benefit from favorable committee action or any person whose contribution would constitute a conflict of interest.

(4) The order should be amended, as hereinafter set forth, to establish a limit of six years on the tenure of committee members and alternates.

The Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for limiting committee tenure of members and alternates. The Department's policy pursuant to the guidelines is that committee members only may serve a total of six consecutive years. The marketing orders for California kiwifruit and California-Arizona navel oranges have been changed to limit the term of office for committee members and alternates in compliance with the guidelines. It is the Department's view that a limit on tenure improves representation on marketing order committees by allowing for different and more contemporary ideas, and will be benefical to the committee's operation. The tomato committee was advised by the Department prior to the initiation of this proceeding that limiting committee members' tenure to six full consecutive terms is required by Departmental policy and that such limitation would better effectuate the proposes of the Act.

The tenure proposal made by the Florida Tomato Committee was to limit tenure to ten years rather than six years. However, during the hearing witnesses who also served as members of the committee testified in opposition to any tenure limitation. There was considerable testimony that it is unnecessary to limit tenure of members and alternates because not everyone is willing to serve on the tomato committee and growers should have the right to nominate and vote for whomever they want to represent them and not be restricted by limiting the number of terms a person can serve.

Although the record contains considerable testimony in opposition to a tenure requirement, the adoption of this position would be inconsistent with established Department guidelines. Furthermore, a six year tenure limitation is not an undue or unreasonable restriction on grower participation in the nomination and selection process. The Department's goal is to encourage and foster to the maximum extent possible broad based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a tenure limitation.

Therefore, in accordance with the Secretary's Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders and to effectuate the declared policy of the Act, the order should be ameded to limit tenure of members and alternates to six full consecutive terms. Any member or alternate member becomes ineligible to serve on the committee after having served six full consecutive terms. Such members and alternate members can again become eligible to serve on the committee by not serving on the committee for one full term as either a member or alternate member. For example, if a person serves three full consecutive terms as a member on the committee and then two full consecutive terms as an alternate, that person would only have one additional year of eligibility to serve on the committee as either a member or alternate before becoming ineligible.

The hearing record also indicates that the Secretary should retain the authority to exempt an individual from the tenure limitation if the position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve. Nevertheless, it would seem clear that such an exception would be made only in special and unusual circumstances and should not be expected as a matter of course.

(5) The order should be amended, as hereinafter set forth, to provide authority for interchange of alternates within districts at Florida Tomato Committee meetings. The committee is composed of 12 producer members. Currently there are four producer districts established in the production area. Meetings of the committee are rotated between districts so it is possible for a member or his alternate to travel 200 miles one way to attend a meeting. If both the member and alternate are absent, the possible attendance of voting members is reduced and in some cases it is difficult to assemble eight members or alternates, the necessary members required for a quorum. This amendment would allow an alternate to serve in a voting capacity if both a member and his designated alternate were absent, and he was an alternate from the same district as the absent member and alternate. This action would permit better representation at all Florida Tomato Committee meetings and tend to better effectuate the declared policy of the Act.

(6) The order should be amended, as hereinafter set forth, to require referenda to be held relative to continuance of the order every six years.

Currently the order and the Act provide that the Secretary shall terminate the program if a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market. Since past experience demonstrates that less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. Thus, in order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 966.84 to authorize continuance referenda. Current paragraph (d) should be redesignated as paragraph (e). The results of such referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to voter approval of the issuance of a marketing agreement and order, 7 U.S.C. 608c(8), 608c(19). A vote approving continuation of the order would require approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a representative period.

The Secretary of Agriculture has determined that continuation referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. In the event that the requisite majority of producers, by number or volume of production represented in the referendum, do not approve continuation of an order, the Secretary should consider termination of the order but would not be required to terminate.

In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote of producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act

requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order should be announced on or before the last day of the then current fiscal period. This date precedes the beginning of the committee's operation for a new fiscal period and is considered to be an appropriate time to wind down the operations of the order.

The Florida Tomato Committee was advised by the Department prior to the initiation of the proceeding that periodic referenda every six years are consistent with the Secretary's Guidelines and the policy of USDA. The tomato committee proposed an amendment to provide for periodic referenda every 10 years. There was opposition testimony at the hearing which indicated that referenda are expensive, time-consuming, and wasteful. Testimony also supports that current provisions in the order are adequate to allow the tomato industry to ask for referenda whenever the need arises. Although the record contains considerable testimony in opposition to the period referenda requirement, the adoption of this position is inconsistent with Department guidelines. The Secretary's 1982 "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity periodically to indicate their support for or rejection of the order. It is the position of the Department that periodic referenda ensure that the program continues to be accountable to the producers and obligates producers to evaluate their program periodically and so involve them more closely in its operations.

It is the Department's policy pursuant to the Secretary's Guidelines of 1982 that periodic referenda be held every six years. The proposed amendment for referenda every ten years is felt to be too great a length of time to insure that the referenda will reflect producer support or opposition in the face of potentially rapid market changes. A referendum every six years will allow producers an opportunity to vote in favor of or in opposition to the order as changes occur in the industry yet will not be wasteful of the committee's resources. For these reasons, the order should be amended to provide for periodic referenda every six years.

(7) In the December 20, 1985, Notice of Hearing, the Department of Agriculture made a proposal to authorize it to make such other changes as may be necessary to make the entire order conform with any amendments that may have resulted from the hearing. None were necessary.

Rulings on briefs of interested persons. The presiding officer at the hearing set March 3, 1986, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. Within the time prescribed, one substantive brief and many form letter-type briefs were filed. These briefs and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied.

General findings. Upon the basis of the evidence presented at the hearing and the record thereof it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The amended marketing agreement and order, as both are hereby proposed to be further amended, regulate the handling of tomatoes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in the marketing order upon which a hearing has been held;

(3) The amended marketing agreement and order, as both are hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The amended agreement and order, as both are hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in different parts of the production area; and

(5) All handling of tomatoes grown in the production area, as defined in the amended marketing agreement and order, as hereby proposed to be further amended, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

PART 966—[AMENDED]

1. The authority citation for 7 CFR Part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Recommended further amendment of the marketing agreement and order. The following amendment of the said marketing agreement and order is recommended as the detailed means by which the aforesaid conclusions may be carried out:

Proposal No. 1 *Committee tenure.*

1. Revise § 966.23 to read as follows:

§ 966.23 Term of office.

* * * * *

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified: *Provided*, that from the date this amended section becomes effective, no member or alternate shall serve more than six full consecutive terms without approval of the Secretary.

Proposal No. 2 *Alternate members.*

2. Section 966.322 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b to read as follows:

§ 966.22 Procedure.

* * * * *

(b) If both a member and respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present from the same district to serve in place of the absent member.

* * * * *

Proposal No. 3 *Borrowing money.*

3. Section 966.42 is revised by adding a new paragraph (e) as follows:

§ 966.42 Assessments.

* * * * *

(e) In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, or may borrow money on a short-term

basis not to exceed one full year coinciding with the existing committee's term of office. The authority of the committee to borrow money may be used only to meet financial obligations as they occur and to allow the committee a season to adjust its reserve funds to meet any additional obligations.

Proposal No. 4 *Accepting gifts.*

4. Add new § 966.45 as follows:

§ 966.45 Contributions.

The committee may accept voluntary contributions but these shall only be used for production research, market research and development and marketing and promotion including paid advertising pursuant to § 966.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use. The committee is prohibited from accepting contributions from handlers subject to the order, or any person whose contributions would constitute a conflict of interest.

Proposal No. 5.

5. Revise § 966.48 to read as follows:

§ 966.48 Research and promotion.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of projects including production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve or promote the marketing, distribution and consumption or efficient production of tomatoes. The expense of such projects shall be paid by funds collected pursuant to §§ 966.42 and 966.45. Upon conclusion of each project, but at least annually, the committee shall summarize the program status and accomplishments, to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any project carried out under this section. Also, for each project the contracting party shall be required to maintain records of money received and expenditures and such shall be available to the committee and the Secretary.

Proposal No. 6 *Periodic referenda.*

6. Section 966.64 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) as follows:

§ 966.64 Termination.

* * * * *

(d) The Secretary shall conduct a referendum as soon as practicable beginning on the effective date hereof and every sixth year thereafter, to ascertain whether continuance of this order is favored by tomato producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during as representative period determined by the Secretary, have been engaged in the production for market of tomatoes in the production area: Except that termination of the order shall be effective only if announced on or before the last day of the current fiscal period. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination and such majority produced more than 50 percent of the tomatoes for market.

* * * * *

Proposal No. 7 *Conforming changes.*

Make such other changes as may be necessary to make the entire order conform with any amendments thereto that may result from this hearing. No such changes were necessary.

Signed at Washington, DC, on May 20, 1986.

James C. Handley,

Administrator.

[FR Doc. 86-11727 Filed 5-22-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ASO-10]

Proposed Alteration of VOR Federal Airway V-512

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke that portion of V-512 which is aligned from Lexington, KY, to Elkins, WV. This airway is not utilized and except for one segment is identical to existing airways.

DATES: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86-ASO-10, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Peter DiVenere, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must

identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke that portion of V-512 which is aligned from Lexington, KY, to Elkins, WV, via Newcombe, KY, and Charleston, WV. The airway is not utilized and except for one segment is identical to other existing airways. Revocation will preclude dual numbering and will resolve current boundary as well as air traffic control computer problems being experienced between Charleston and Elkins. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant prepartion of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. V-512—[Amended]

By removing the words "Lexington; Newcombe, KY; Charleston, WV; INT Charleston 083° and Elkins, WV, 225° radials; to Elkins" and by substituting the words "to Lexington."

Issued in Washington, DC, on May 16, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11600 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-16]

Proposed Alteration of VOR Federal Airways; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the alternate airway designations for three Federal Airways in the southeastern United States and renumber those segments with the designators of existing overlapping airways. This action is in concert with the national program to simplify airway designations by eliminating alternate Federal airways.

DATES: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the alternate airway designations for VOR Federal Airways V-51W, V-54N, and V-115E. The V-51W segment between Corce, GA, and Hinch Mountain, SC, would be renamed as V-311 by extending V-311 from Corce to Hinch Mountain. The V-54N segment between Texarkana and Little Rock, AR, is identical to the overlapping segment of V-573; therefore, redesignation is not required. The V-54N segment between Muscle Shoals, AL, and Chattanooga, TN, would be revoked. The V-115E

segment between Trust, AL, over Chattanooga, TN, would be redesignated as V-209 by extending V-209 from Vulcan, AL, to Chattanooga, TN, via the track of segment of V-115E which is being revoked. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g); (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

§ 71.123 [Amended]

V-51—[Amended]

By removing the words "Hinch Mountain, TN, including a west alternate from the INT Anderson, SC, 274° and Athens 340° radials to Hinch Mountain via INT Anderson 274° and Hinch Mountain 160° radials;" and by substituting the words "Hinch Mountain, TN;"

V-211—[Amended]

By removing the words "From INT Toccoa, GA, 222° and Electric City, SC, 274° radials; Electric City," and by substituting the words "From Hinch Mountain, TN; INT Hinch Mountain 160°T(162°M) and Electric City, SC, 274°T(274°M) radials; Electric City;"

V-54—[Amended]

By removing the words "Little Rock, including a N alternate via INT Texarkana 037° and Hot Springs, AR, 225° radials and Hot Springs;" and by substituting the words "Little Rock;" and also by removing the words "Rocket, AL, including a N alternate via INT Muscle Shoals 067° and Rocket 282° radials; Chattanooga, TN, including alternate;" and by substituting the words "Rocket, AL; Chattanooga, TN;"

V-115—[Amended]

By removing the words "Chattanooga, TN, including an E alternate via INT Vulcan 097° and Gadsden, AL, 233° radials, Gadsden and INT Gadsden 042° and Chattanooga 214° radials;" and by substituting the words "Chattanooga, TN;"

V-209—[Amended]

By removing the words "Vulcan, AL" and by substituting the words "Vulcan, AL, INT Vulcan 097°T(095°M) and Gadsden, AL, 233°T(231°M) radials, Gadsden; and INT Gadsden 042°T(040°M) and Chattanooga, TN, 214°T(213°M) radials; Chattanooga".

Issued in Washington, DC, on May 16, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11599 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9178]

Bass Brothers Enterprises, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Fort Worth, Texas, producer of carbon black to obtain prior FTC approval for the acquisition of securities or assets of any company over a certain size in the U.S. carbon black business.

DATE: Comments must be received on or before July 22, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L-502, Edward F. Glynn, Jr., Washington, DC 20580. (202) 634-6608.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Carbon black, Trade practices.

Before Federal Trade Commission

[Docket No. 9178]

Agreement Containing Consent Order

In the matter of Bass Brothers Enterprises, Inc. et al.

The agreement herein, by and between the corporations Bass Brothers Enterprises, Inc. and Sid Richardson Carbon & Gasoline Co. by their duly authorized officers, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance with those rules the parties hereby agree that:

1. Respondent Bass Brothers Enterprises, Inc. is a corporation organized and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

2. Respondent Sid Richardson Carbon & Gasoline Co. is a corporation organized and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

3. Respondents have been served with copies of the complaint issued by the Federal Trade Commission (the "Commission") charging them, with violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and have filed an answer to said complaint denying said charges.

4. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

5. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a

statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint issued by the Commission.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

9. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this order the following definitions shall apply:

"Carbon black" means furnace-process and thermal-process carbon black, whether used for rubber or other applications.

"Bass Brothers" means Bass Brothers Enterprises, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"SRCG" means Sid Richardson Carbon & Gasoline Co., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"Ashland" means Ashland Oil, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"Production capacity" means the practical annual productive capacity of all units, including units currently in operation and units that could be put into operation with or without time delay or additional investment.

I

It is ordered, That, unless Bass Brothers and SRCG have already done so, they will, not later than fourteen (14) days after this Order becomes final, terminate any agreement that provides for or contemplates the acquisition of Ashland's carbon black business by Bass Brothers or SRCG, including but not limited to the letter of intent signed on or about November 15, 1983, withdraw the premerger notification filing submitted to the Federal Trade Commission with respect to that letter of intent, return or destroy all documents containing or recording confidential information provided to Bass Brothers or SRCG by Ashland, and recover from Ashland all documents containing or recording confidential information provided to Ashland by Bass Brothers and SRCG, in connection with acquisition negotiations or agreements. Nothing herein contained shall relieve Bass Brothers or SRCG from any obligation of confidentiality imposed by agreement among Bass Brothers, SRCG and Ashland.

II

It is further ordered, That for a period of five (5) years from the date this Order becomes final, neither Bass Brothers nor SRCG shall acquire, directly or indirectly, without the prior approval of the Commission, any part of the United States carbon black business of any other person or corporation, whether represented by securities or assets, other than products or securities obtained in the regular course of business, if as a result of such acquisition Bass Brothers or SRCG would cumulatively increase its United States carbon black production capacity by more than 130 million pounds.

III

It is further ordered, That while Paragraph II of this Order is effective, Bass Brothers or SRCG shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, that may affect compliance obligations arising out of this Order.

IV

It is further ordered, That Bass Brothers or SRCG shall, within thirty (30) days after making an acquisition of United States carbon black production capacity permitted under this Order while Paragraph II of this Order is effective, file with the Commission a written report describing such acquisition.

V

It is further ordered, That Bass Brothers and SRCG shall, within sixty (60) days after service upon them of this Order, file with the Commission a written report setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Bass Brothers Enterprises, Inc., and Sid Richardson Carbon & Gasoline Co. (together "BBE").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should

withdraw from the agreement or make final the agreement's proposed order.

The complaint, which was issued May 8, 1984, challenges, as violations of Section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, the proposed acquisition by BBE of assets of Ashland Chemical Co., a division of Ashland Oil, Inc. ("Ashland"). The complaint alleges that both BBE and Ashland are substantial competitors in the United States carbon black market; that the United States carbon black market is highly concentrated, and that barriers to entry into the production and distribution of carbon black are substantial. The complaint alleges that the effects of the proposed acquisition would be to eliminate substantial actual competition between BBE and Ashland, and eliminate Ashland as a substantial competitor in the carbon black market; to substantially increase concentration in an already highly concentrated market and encourage additional mergers or acquisitions in that market, thus increasing the likelihood of collusion; to tend to reduce the degree of price competition and to reduce the volume of production below competitive levels; and to tend to reduce the actual competition among other companies engaged in the production and distribution of carbon black. The complaint charges that the proposed acquisition constitutes a violation of section 5 of the Federal Trade Commission Act, and if consummated, would constitute a violation of Section 7 of the Clayton Act.

The proposed order requires BBE to obtain prior Commission approval for a period of five years for acquisition of securities or assets of a competitor in the United States carbon black business. The order covers acquisitions in both the rubber carbon black and the "industrial," non-rubber carbon black businesses. No prior approval is required if the cumulative total capacity added through acquisitions is less than 130 million pounds. BBE is required to notify the Commission within 30 days after making any carbon black acquisitions for which prior approval is not required.

The order's terms are substantively identical to those contained in the final order against Columbian Enterprises, Inc. in the litigation involving another acquisition in the carbon black business, Docket No. 9176.

The agreement is for purposes of settlement only; it does not constitute an admission by BBE that the law has been violated as alleged in the Complaint.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-11618 Filed 5-22-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mines; Electricity

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of preproposal draft.

SUMMARY: The Mine Safety and Health Administration (MSHA) has developed a preproposal draft of revisions to existing electrical standards for underground coal mines. This review is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Department of Labor's initiatives with respect to improving regulations. MSHA seeks written comments on this preproposal draft from all interested parties.

DATES: Written comments on the preproposal draft must be received on or before July 22, 1986.

ADDRESSES: Please send requests for and written comments on the preproposal draft to the Office of Standards, Regulations and Variances, MSHA Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 235-1910.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On July 9, 1982, MSHA published an Advance Notice of Proposed Rulemaking in the **Federal Register** (47 FR 30025) announcing a comprehensive review of the underground coal mining standards in 30 CFR Part 75. The Agency is reviewing the standards to eliminate unnecessary reporting and recordkeeping requirements, minimize conflicting provisions, delete irrelevent standards, simplify and consolidate existing standards, update standards to conform to state-of-the-art technology, and to clarify and reorganize standards, where necessary.

This review is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Department of Labor's initiatives with respect to improving regulations. MSHA considers early public participation in this standards review process to be particularly important.

MSHA has now completed development of a preproposal draft for underground coal mine electrical standards. The Agency requests comments on the substance of the preproposal standards, as well as on the reorganization of the standards. The Agency is also interested in receiving comments from coal mining State agencies, particularly on the provisions related to electrical and cable splice qualification. In addition, the Agency is interested in economic data and other regulatory impact information.

Copies of the preproposal draft have been mailed to persons and organizations known to be interested. Other interested persons and organizations may obtain a copy of the draft by either oral or written request to the address provided above. The document contains the Agency's intended revisions, a comparison with existing provisions, and brief explanations of the draft changes.

MSHA welcomes written comments relevant to issues concerning the preproposal draft. Upon close of the comment period, review of the comments, and any economic data and other regulatory impact information received, MSHA will develop revised standards which will be published as a proposed rule in the **Federal Register**. The proposal will be followed by a comment period and public hearings. In issuing its final rule, MSHA will make every effort to be responsive to the concerns of the coal mining community and to advance the goals of regulatory reform and improved miner safety and health.

Dated: May 20, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-11720 Filed 5-22-86; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

[CGD 84-099A]

Operation of a Vessel While Intoxicated; Advance Notice of Proposed Rulemaking

AGENCY: Coast Guard, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard invites comments on the problem of drug and alcohol use by individuals operating recreational vessels and the options available for regulatory or other action. Recent legislation provides civil and criminal penalties for an individual who is intoxicated while operating a vessel as determined under standards prescribed by the Secretary. The Coast Guard is considering various approaches to promulgating a standard applicable to the operation of a recreational vessel. After evaluation of the responses to this Advance Notice, proposed regulations would be published in the Federal Register and additional comments invited.

DATE: Comments must be received on or before August 21, 1986.

ADDRESSES: Comment should be submitted to Commandant (G-CMC/21), (CGD 84-099), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Boating Safety Division (G-BBS/43), Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1060 (after July 14, 1986, 267-0992), between 9 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The purpose of this Advance Notice is to solicit information and views on the problem of intoxicant use by individuals operating recreational vessels and the appropriate means of prescribing a standard for determining intoxication, as required by statute. Interested persons are invited to submit written views, data or arguments. Persons submitting comments should include their names and addresses. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

The Coast Guard is required by the provisions of the Coast Guard Authorization Act of 1984 (Pub. L. 98-557) to establish appropriate standards for determining whether an individual is intoxicated while operating a vessel. This Act amended Title 46 United States Code 2302(c) to provide that "An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—(1) liable to the United States Government for a civil penalty of not more than $1,000; or (2) fined not more than $5,000, imprisoned for not more than one year, or both." The Act also amended Section 6101 and 6102 of title 46 United States Code to require that marine casualty reports include information as to whether the use of alcohol contributed to the casualty.

Comments are requested on all or any portion of this Advance Notice, including the portions of the Advance Notice that are directed at the extent and seriousness of the alcohol problem, and on any additional options or issues that affect maritime safety.

This Advance Notice sets forth in summary form available information concerning the extent of this problem, the status of State efforts to address this problem, some options available for Federal regulatory action, and some of the various legal and practical issues presented by the options.

This Advance Notice addresses implementation of the provisions of Title 46 U.S.C. 2302 as it applies to individuals who operate recreational vessels.

The Coast Guard is proposing regulations in regard to alcohol and drug use by licensed individuals and other members of the crew of commercial vessels. The proposed rules affecting commercial vessel personnel are contained in a separate rulemaking (CG 84-099) published elsewhere in this issue of the Federal Register. The proposed regulations also include changes to the reporting of marine casualties, including those involving recreational vessels, to carry out the mandate of Pub. L. 98-557, and would allow Coast Guard Boarding Officers to take immediate and reasonable steps including terminating further use of the vessel based upon obvious operator intoxication.

Background

Data on recreational boating accidents compiled by the Coast Guard indicates that alcohol consumption is a causal or contributing factor in approximately ten percent of the more than 1200 fatalities which result from boating accidents each year. Accident reports submitted to the Coast Guard under the provisions of 33 CFR Part 173 and 174 currently understate the extent of alcohol involvement. The procedures and requirements for investigations vary from State to State and locality to locality. Accident reports are submitted by individuals and by State or local authorities. Some of these reported accidents have undergone extensive investigation while other have had only cursory examination. Furthermore, individuals submitting reports may have strong reasons not to volunteer information about alcohol involvement.

Not all States require that toxicological tests be taken in accidental deaths. Based upon toxicological testing by States which have a mandatory requirement for these tests in cases of accidental deaths, and studies conducted by the Coast Guard and the National Transportation Safety Board, the Coast Guard believes that the involvement of alcohol is much greater than indicated by current reports and that some degree of impairment by alcohol may be involved in as many as fifty percent of recreational boating fatalities.

The Coast Guard has not maintained separate data on the involvement of drugs in recreational boating accidents; however, it seems reasonable that the use of drugs by boaters is similar to that of persons driving automobiles. According to preliminary data on fatal motor vehicle accidents compiled by the National Highway Traffic Safety Administration, in 5% to 15% of accidents resulting in driver fatalities and approximately 10% of accidents causing driver injuries, there was evidence of drug use by the driver.

In the recreational boating area, the Coast Guard has concentrated on educational efforts to combat the problem. The Coast Guard and State enforcement officials have recognized that the consumption of alcoholic beverages among recreational boaters is widespread. Drinking is facilitated because there are no laws prohibiting the consumption of alcoholic beverages while underway in a boat; picnic coolers or galley facilities are frequently available to store and serve alcoholic beverages; and, whether fishing, cruising, or sailing, there are lengthy periods of time when the boaters, including the operator, are not fully occupied. The slow speed of most boating activity, compared to operation of an automobile, and the relatively unconfined nature of most waterways

have contributed to a lack of awareness of the risks involved. The educational effort has concentrated on making boaters aware that "Boating and alcohol don't mix."

The Coast Guard and National Transportation Safety Board have worked in concert with the various States and boating organizations to address the alcohol problem. The National Safe Boating Council, Inc. with a volunteer membership of 39 organizations including the Coast Guard Auxiliary, U.S. Power Squadrons, American Red Cross, Boy Scouts, Girl Scouts, YMCA, other Federal agencies concerned with boating safety, and numerous manufacturer and boating organizations, sponsors National Safe Boating Week. For the past two years the theme of National Safe Boating Week has been "Be a responsible boat operator." The slogan used was "Think before you drink."

The Coast Guard has emphasized and will continue to emphasize the alcohol problem in its educational efforts. Under the provision of 46 U.S.C. 13102(c)(4), States are now required to have an alcohol awareness educational program in order to receive Federal financial assistance.

In addition to the educational efforts, the Coast Guard and the States have coordinated law enforcement efforts and have recommended improvements in boating safety laws, including laws directed towards intoxicated operators. At its meeting on October 3, 1984, the National Association of State Boating Law Administrators issued guidelines for State programs to attack the problem. These guidelines included suggestions for State laws.

In one form or another, all of the States have passed laws which prohibit the operation of vessels while intoxicated. Within the past several years there has been an increasing awareness of the problem by State legislatures and several States have strengthened their laws. Twenty-one states have specified an intoxication level for individuals operating vessels. One State has a blood alcohol content (BAC) level of .08 percent. One State has a BAC level of .06 percent as prima facie evidence of operating under the influence, and a .13 percent BAC level as prima facie evidence for operating while intoxicated. The other 19 States have a .10 percent BAC level for intoxication.

Recent studies have shown that impairment may occur at lower BAC levels. These studies are addressed in the rulemaking concerning standards for commercial operation (CGD 84-099) published elsewhere in this issue of the Federal Register.

Approach

The Coast Guard is in the process of determining its proper regulatory role. There are at least three different regulatory approaches which the Coast Guard is considering: (1) The Coast Guard could adopt a mandatory Federal standard; (2) the Coast Guard could prescribe a standard that would apply only in the absence of a State standard; or (3) the Coast Guard could adopt State standards. Under each of these approaches several questions need to be answered.

Federal vs. State Standards for Recreational Vessels

Incorporating State law standards would be less intrusive than setting Federal standards. This seems reasonable with law enforcement conducted primarily by State and local officials. However, it also means the Coast Guard would be enforcing different standards, dependent on which State's waters were involved. The Coast Guard also exercises jurisdiction in waters outside the jurisdiction of any State. Recreational boaters and law enforcement personnel alike, operating in the vicinity of adjoining States' seaward boundary or three mile limit, may have difficulty determining which standard applies. Setting a Federal standard would give the Coast Guard a tool to use during routine boarding when an intoxicated operator is encountered. It would not preempt any equivalent or stricter State standard.

Questions

1. Should the Federal Regulations promulgate a national standard for operating a vessel while intoxicated?
2. Should the Federal Regulations adopt State laws by reference, so that where a State has prescribed a standard for intoxication, Federal law would not conflict?
3. If State laws are adopted by reference, what Federal standard should apply on the high seas (33 CFR 2.05.1(a)) and on waters subject to the jurisdiction of the United States (33 CFR 2.05.30) but not of any state (i.e., Federal enclaves) or on waters located within National Parks (16 U.S.C. 1a.2(h)?

Definition of "Intoxication" For Recreational Vessels

State laws range from general prohibition of operating a vessel while intoxicated to application of the State motor vehicle laws to vessels, and include BAC levels, behavioral standards, both or neither. The Coast Guard is required to establish the criteria by which a person may be determined to have violated the Federal law.

Questions

1. Should any Federal rule specify a blood alcohol concentration (BAC) that would constitute presumptive evidence of intoxication? What level is appropriate? Should the Coast Guard adopt the BAC level adopted by a majority of the States for motor vehicle operation (i.e., .10 percent)?
2. Should a Federal rule be developed which would define a behavioral definition of intoxication? For example, "An individual may not operate or be in actual physical control of the movement of a vessel while under the influence of drugs or alcohol to a degree which impairs his or her physical or mental responses and activities."
3. Should a Federal rule include both a behavioral definition and BAC level?
4. For a State that has only a behavioral definition, should there be a Federal BAC standad to supplement State law.
5. Should a Federal standard include drugs?

Enforcement for Recreational Vessels

The Coast Guard anticipates that the primary enforcement of laws or regulations concerning the operation of recreational vessels by persons who are intoxicated will be by State and local officials. While the Coast Guard will be encouraging an aggressive enforcement program against intoxicated operation of recreational vessels, no additional Federal resources are anticipated. However, because the Coast Guard is concerned about the injuries and deaths caused by intoxicated individuals operating recreational vesseal, at a minimum, Coast Guard Boarding Officers would enforce these standards when an intoxicated operator is encountered during routine boardings.

Questions

1. Since the primary enforcement of boating laws is conducted by State and local agencies, what is the proper Coast Guard enforcement role? A determination must be made on the extent it is practical to combine this role with other Coast Guard law enforcement functions.
2. If testing for blood alcohol concentration (BAC) is adopted, how and under what circumstances should concentrations be measured? Who should administer the tests?
3. In a separate rulemaking, the Coast Guard is proposing that if a person

operating a commercial vessel refuses to take a test for intoxication, the individual will be presumed to have been intoxicated for the purposes of any subsequent administrative proceeding. Should refusal of the operator of a recreational vessel to take a test be a separate violation or admission of intoxication?

4. Should testing for drug intoxication be conducted in the field? If so, how and under what circumstances should the drug presence and concentration be measured? Who should administer the tests?

Regulating the use of alcohol by recreational boaters is a new program for the Coast Guard. The Coast Guard has solicited the views of other Federal agencies, State and local agencies, and the National Transportation Safety Board. The National Boating Safety Advisory Council has been alerted to the existence of the new law and that this Advance Notice would be available for its consideration. Although this Advance Notice raises various options and approaches, additional approaches and combinations of approaches may warrant consideration. The Coast Guard is interested in improving the data available on the scope and extent of the problem of persons operating a vessel while intoxicated. Therefore, public comment is requested on all measures that could be taken to alleviate the drug and alcohol problem as it affects recreational boating. Copies of accident data or research studies conducted would be particularly helpful. Your participation will assist the Coast Guard in the development of any proposed regulations resulting from this Advance Notice.

Regulatory Evaluation

This proposal has been determined to be non-major under Executive Order 12291. However, this proposal is considered significant under the DOT rgulatory policies and procedures (44 FR 11034) because it would initiate a substantial regulatory program. In issuing the Advance Notice, the Coast Guard is seeking public reaction to a wide range of regulatory options, which could, depending on the option selected, range in impact from negligible to one significantly affecting the recreational boating public.

The Coast Guard anticipates that responses to the ANPRM will help it determine appropriate approaches to take in regulating intoxicated operation of recreational vessels. Accordingly, no detailed regulatory evaluation has been attempted at this stage. However, the Coast Guard is aware of the potential for significant impacts from this proposed rulemaking should various regulatory options eventually be chosen. Information collection and reporting associated with the proposal is expected to be minimal.

Dated: May 19, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 86-11389 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 95, 146, 150, 173, and 177

46 CFR Parts 4, 5, 35, 78, 97, 109, 167, 185, 196, and 197

[CGD 84-099]

Boating Safety; Operating a Vessel While Intoxicated

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes regulations designed to monitor, control and reduce alcohol and drug use in both recreational vessel operation and commercial marine operations including operations of the Outer Continental shelf and at deepwater ports. Recent legislations provides civil and criminal penalties for an individual who is intoxicated while operating a vessel, as determined under standards prescribed by the Secretary. This Notice proposes standards applicable to commercial vessels and vessels subject to a statutory manning requirement for determined intoxication caused by alcohol or drugs, either based on a percentage of alcohol in the blood or on observations of the individual's demeanor or performance. Standards applicable to recreational operations are being addressed in a separate rulemaking [CGD 84-099A] appearing elsewhere in this issue of the Federal Register. In addition the Coast Guard proposes: (1) To prohibit crewmembers on vessel subject to inspection from performing any duties while intoxicated or within four hours of consuming any alcohol; (2) civil penalties for owners, charterers, managing operators, agents, masters or individuals in charge of vessels subject to inspection that allow crewmembers to perform any duties while intoxicated; (3) to allow personnel licensed, documented or certificated by the Coast Guard to seek rehabilitation prior to being subject to a proceeding to suspend or revoke the license, certificate, or document; (4) to allow Coast Guard personnel to terminate the use of certain vessels when the operator is under the influence of an intoxicant to the extent that further operation of the vessel creates an unsafe condition; and (5) to amend the regulations requiring reports of all marine casualties to include specific information on the role of alcohol or drugs in the casualty. These proposals are based on the belief by the Coast Guard and alcohol and/or drugs are involved in a substantial number of recreational boating casualties and contribute to numerous commercial marine casualties. The proposals are intended to reduce recreational and commercial marine casualties caused by intoxication.

DATES: Comments must be received on or before August 21, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-099), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council; (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: CDR George Naccara or LCDR Joseph Steen, Merchant Vessel Personnal Division (G-MVP/12), (202) 426-2240 (after July 14, 1986 (202) 267-0225), for information on commercial vessel operating requirements.

LCDR David Wallace, Marine Investigation Division (G-MMI/24), (202) 426-2215 (after July 14, 1986 (202) 267-1420), for information on commercial vessel casualty reporting and the rehabilitation program.

Mr. Carlton Perry, Boating Safety Division (G-BBS-3/43), (202) 426-1060 (after July 14, 1986 (202) 267-0982, for information on recreational boating casualty reporting and the terminations of unsafe use.

The above persons can be contacted at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 9 a.m. and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to propose regulations concerning intoxicant use by individuals operating vessels. Interested persons are invited to submit written views, data or arguments. Persons submitting comments should include their names and addresses, identify this Notice (CGD 84-099) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons desiring acknowledgment that their comments

have been received should include a stamped, self-addressed postcard or envelope.

No public hearing has been scheduled but one may be held if requested by persons raising a genuine issue and it is determined that the rulemaking will benefit from oral presentations.

Background

The Coast Guard has the authority to investigate marine casualties and take appropriate action against the responsible person. The Coast Guard has dealt with the problem of alcohol and drug use on vessels through civil penalty or criminal enforcement action for negligent operation of a vessel under 46 U.S.C. 2302 and its predecessor statutes. Also, the Coast Guard may suspend or revoke the license, certificate or document of maritime personnel under 46 U.S.C. 7701 and its predecessor statutes, if they use dangerous drugs or are intoxicated when performing duties.

To assist in determining the causes of marine casualties, the Coast Guard maintains two casualty reporting systems: One addressing recreational vessel casualties (33 CFR Parts 173 and 174); and one addressing commercial marine casualties, including commercial vessels (46 CFR Part 4), commercial operations on the Outer Continental Shelf (33 CFR Part 146), deepwater ports (33 CFR Part 150), and commercial diving operations (46 CFR Part 197).

Data on recreational boating accidents compiled by the Coast Guard indicates that alcohol consumption is a causal or contributing factor in approximately ten percent of the more than 1200 fatalities which result from boating accidents each year. Accident reports submitted to the Coast Guard under the provisions of 33 CFR Parts 173 and 174 currently understate the extent of alcohol involvement. The procedures and requirements for investigations vary from State to State and locality to locality. Accident reports are submitted by individuals and by State or local authorities. Some of these reported accidents have undergone extensive investigation while others have had only cursory examination. Furthermore, individuals submitting reports may have strong reasons not to volunteer information about alcohol involvement.

Not all States require that toxicological tests be taken in accidental deaths. Based upon toxicological testing by States which have a mandatory requirement for these tests in cases of accidental deaths, and studies conducted by the Coast Guard and the National Transportation Safety Board, the Coast Guard believes that the involvement of alcohol is much greater than indicated by current reports and that some degree of impairment by alcohol may be involved in as many as fifty percent of recreational boating fatalities.

The Coast Guard has not maintained separate data on the involvement of drugs in recreational boating accidents. Since recreational boaters come from the same general population that owns and operates motor vehicles, it may be assumed that the use of drugs by boaters is similar to that of persons driving automobiles. According to preliminary data on fatal motor vehicle accidents compiled by the National Highway Traffic Traffic Safety Administration, in 5% to 15% of accidents resulting in driver fatalities and approximately 10% of accidents causing driver injuries, there was evidence of drug use by the driver.

Although not specifically identified previously as a major causal factor in commercial vessel losses or casualty damage, the use of alcohol has had an impact on marine safety. From 1981 to the present, vessel casualty records reveal 44 deaths, 3 persons missing, and 33 injuries attributable to the use of alcohol. During the period 1982 through 1984 the Coast Guard took suspension or revocation action against 72 seamen for alcohol-related incidents.

The present casualty reporting program does not identify drug-related casualties; however, during the period 1982 through 1984, 101 hearings on the suspension or revocation of licenses, certificates, or documents resulted in findings of use of drugs or association with drugs. Reports have been received indicating that some shipping companies which have been screening their crews for drug usage have found that a significant number of their employees were users of drugs. An advance Notice of Proposed Rulemaking regarding the Certification of Seamen, (CGD 84-068) 50 FR 4875, February 4, 1985, solicited comments on drug and alcohol screening for all professional seamen. The comments received indicate drug use is significant.

In this rulemaking, the Coast Guard is proposing changes to the reporting system for recreational boating accidents and to the reports required for marine casualties involving commercial vessels to obtain better data on the involvement of alcohol and/or drugs in these areas.

For many years the Coast Guard has been enforcing statutes which prohibit the operation of a vessel in a negligent manner. The Motorboat Act of 1940 provided that no person shall operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Under this section the word "negligent" has been held to mean failure to use that care which a reasonable person would exercise under similar circumstances. (U.S. v. Meckling, 141 F. Supp. 906, D. Md. 1956). The provisions were amended with the passage of the Federal Boat Safety Act of 1971 and criminal penalties were prescribed for a person who willfully violates the statute.

The prohibition against negligent operation was continued with the codification of Subtitle II of Title 46, United States Code, Shipping (Pub. L. 98-89, August 26, 1983). The prohibition against negligent operation is now contained in 46 U.S.C. 2302.

The instructions to Coast Guard Boarding Officers concerning enforcement procedures with respect to negligent operation of a vessel have contained provisions with respect to operating a vessel while intoxicated. The "Boarding Manual" issued on September 14, 1977 contained examples of situations which were considered negligent operation, including operating erratically under the influence of intoxicants or drugs.

Under the general authority contained in Parts E and F of Title 46, United States Code, the Coast Guard has been delegated the responsibility by the Secretary of Transportation to issue licenses, certificates, and documents to qualified individuals, and to determine the necessary complement of licensed individuals and crew for safe operation of certain vessels. The Coast Guard has promulgated regulations to implement the statutes in Title 46 of the Code of Federal Regulations, primarily in Parts 10, 12, 157, 186 and 187. The regulations apply to Coast Guard inspected vessels, uninspected commercial vessels and other vessels subject to a manning requirement under Part F of Title 46 U.S. Code which range in size and type from small charter fishing boats and towing vessels to drilling units and large tank ships.

Under Chapter 77, Title 46, United States Code, the Coast Guard has the authority to suspend or revoke any license, certificate or document issued to a person if that person is found to be incompetent, or to have committed acts of misconduct or negligence. Intoxication while performing duties under the authority of a license, certificate, or document has been long considered an act of misconduct. The administrative actions against a license, certificate, or document are remedial, to help maintain standards of competence and conduct essential to the promotion of safety at sea.

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Section 7 of the Coast Guard Authorization Act of 1984 (CGAA), (Pub. L. 98-447 October 30, 1984), added emphasis to the existing statutes under which the Coast Guard addressed intoxication while operating a vessel by adding paragraph (c) to 46 U.S.C. 2302 which provides that:

"An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—

(1) Liable to the United States Government for a civil penalty of not more than $1,000; or

(2) Fined not more than $5,000, imprisoned for not more than one year, or both."

Section 7(b) amended 46 U.S.C. 6101(b), to require that reports of marine casualties include information as to whether the use of alcohol contributed to the casualty. It also amended the provisions of the State marine casualty reporting system (46 U.S.C. 6102) to require that States submitting reports include information and statistics concerning the number of casualties in which the use of alcohol contributed to the casualty.

The CGAA also amended 46 U.S.C. 13102(c)(4), to require States to have an alcohol awareness educational program in order to receive Federal financial assistance.

This rulemaking proposes rules to define "intoxicated" to implement 46 U.S.C 2302(c) as it pertains to commercial vessel operations and individuals licenses certificates documented by the Coast Guard that are serving under the authority of their license certificate or document. It also proposes rules which will emphasize the responsibility of the owner, operator, master, or person in charge of a vessel to prevent intoxicated persons from operating a vessel, and proposes limitations on the consumption of alcohol by crewmembers of vessels subject to Coast Guard manning requirements.

As previously indicated, this rulemaking addresses improved casualty reporting, including implementing the amendments to 46 U.S.C. 6101(b) and 46 U.S.C. 6102. No additional action is required to implement 46 U.S.C. 13102(c)(4), since each year the Coast Guard enters into contractual agreement with each State that desires to participate in the financial assistance program. In these agreements each State assures the Coast Guard that it includes alcohol awareness in its educational program.

The Coast Guard has examined the problems associated with toxicological testing for blood alcohol concentration levels and drug ingestion. A primary problem is to prevent refusal to submit to testing from being to the individual's advantage in civil proceedings. The prevailing reason for refusal of testing is believed to be the individual's concern that the test results will be adverse—that he or she will "fail' the test and that subsequently the test results will be used to support a determination that the individual was, in fact, intoxicated.

To encourage cooperation most States have have, by statute, created an "implied consent" to testing by licensed drivers—failure to submit to or cooperate in testing is a basis for withdrawal of driving privileges. This approach is not available for the majority of commercial vessel operations because many personnel involved in commercial operations such as those in the fishing industry and most crewmembers on inspected small passenger vessels and uninspected towing and passenger vessels are not required to have a license under Federal law. For those crewmembers who are required to have a license, the statutory grounds for revocation do not include refusal to submit to testing. To prevent refusal of testing from being to the individual's advantage, the Coast Guard is proposing that refusal to submit to or cooperate in testing will be admissible in evidence at administrative proceedings and, under certain circumstances, will support a presumption that the individual was intoxicated. In other words, proof of intoxication may be established solely by the refusal to submit to testing.

The Coast Guard is sensitive to unwarranted infringement of an individual's right to refuse to submit to testing. The presumption of intoxication would be applied only when a timely test was directed by a law enforcement officer or investigating officer who had reasonable belief that the individual to be subjected to testing was intoxicated. In view of the variety of circumstances under which tests may be administered, and the different types of current tests and others under development, the Coast Guard is not proposing a time limit on testing. Timeliness would be determined on a case by case basis by the hearing officer or Administrative Law Judge. Law enforcement officers and investigating officers have training in observing and dealing with persons who may be intoxicated and do not have a personal interest in the outcome of testing. They may be expected to direct testing only in appropriate instances, where there is logical basis for the presumption of intoxication if the individual refuses. Where an untrained, and perhaps not impartial master or person in charge directs testing of a crew member, no presumption would arise out of refusal. The fact of refusal would be admissible in an administrative proceeding, but the weight to be given that fact would depend on the total circumstances.

The penalties for operating a vessel while intoxicated include civil or criminal penalities and suspension or revocation of merchant mariners' licenses, documents or certificates. It is emphasized that nothing in the proposed regulations authorizes the non-consensual testing of an individual, but this does not affect the authority of law enforcement officers to compel testing when there exists probable cause to believe that evidence of a crime will be found. Also these proposed regulations do not address whether a refusal to voluntarily submit to testing would be admissible in a criminal proceeding.

Defining Intoxication

It is necessary to set a standard before any enforcement of 46 U.S.C. 2302(c) can take place. Implementation of 46 U.S.C. 2302 and its predecessor statutes has been delegated to the Coast Guard. The statute applies to all vessels operated on waters subject to the jurisdiction of the United States (including foreign and domestic vessels used for recreation or in commercial service) and to all vessels that are owned in the United States while the vessel is on the high seas. However, the standard proposed in this rulemaking applies only to commercial vessels and other vessels subject to statutory manning requirements. It is noted that the penalties provided by this statute do not apply while a vessel is in the territorial waters of another country.

As mentioned above, prior to the enactment of 46 U.S.C. 2302(c), the Coast Guard has, under the authority of 46 U.S.C. 7701–7705 and its predecessors, suspended or revoked the licenses, documents or certificates of merchant marine personnel for incidents involving intoxication. The Coast Guard also has operational requirements that prohibit intoxicated persons serving on a vessel carrying hazardous liquid cargo in bulk (46 CFR 35.05–25). These actions were taken without a standard of intoxication prescribed by regulation. The evidence used to establish violations typically consists of observations of the individual's behavior or demeanor by other crewmembers. Testing equipment has not been and is not currently available on commercial vessels. The standards proposed in this Notice would become applicable to suspension and

revocation proceedings and operational requirements addressing intoxication.

The Coast Guard is proposing a blood alcohol concentration (BAC) level of .10 percent for vessels which are not subject to manning requirements under Part F of Title 46 United States Code (46 U.S.C. 8101–8307) (hereinafter Part F). A BAC of .10 percent is the level adopted by 19 of the 21 States who have adopted BAC standards. This is the level which has been almost universally adopted by the States in their motor vehicle statutes.

The Coast Guard proposes to prohibit a person from serving as a crewmember on a vessel subject to the manning requirements of Part F while having a BAC level of .04 percent or higher. The .04 percent alcohol content standard for crewmembers is designed to ensure that the persons operating the majority of commercial vessels, both foreign and domestic, are not impaired by alcohol. The reasons for this are simple. Commercial vessels subject to the manning requirements of Part F will normally be carrying a larger number of persons on board than other commercial vessels, and frequently carry hazardous cargo or oil. In the event of an accident, there is greater risk of loss of life or damage to property or the environment. In addition, persons who are employed to perform duties aboard these ships should have an obligation to ensure that their capacity to perform those duties is not even slightly impaired by the voluntary consumption of alcohol.

Considerable data from experimental or clinical settings support the proposition that low levels of alcohol can, and regularly do, have detrimental effects on human performance, including divided attention skills and information processing. Although detrimental effects are reported at lower levels, and even after alcohol is eliminated from the body (the so-called "hangover effect"), the consensus of scientific and professional opinion appears to be that material detrimental effects on human performance begin at least in the range of .04 percent. See, *e.g.*, American Medical Association, *Alcohol and the Impaired Driver* at 58–59 and research summarized at 56–57 (1970, reprinted by National Safety Council 1976); Bjerver, B.M., and Goldberg, L., "Effect of Alcohol Ingestion on Driving Ability," *Quarterly Journal of Alcohol Studies*, 11:1–30, 1950; Billings, C.E. *et al.*, "Effects of Alcohol Ingestion on Driving Ability," *Aerospace Medicine*, 44:379–382, 1973; Laurell, Hans, "Effects of Small Doses of Alcohol on Driver Performance in Emergency Traffic Situations," *Accident Analysis and Prevention*, 9:191–201, 1977; *Alcohol and Highway Safety, 1984*, at 16–23 (National Highway Traffic Safety Administration); *Alcohol and Highway Safety, 1978*, at 15–19 (National Highway Traffic Safety Administration).

Although low levels of alcohol may not appreciably affect simple reaction time in most persons, they may appreciably affect choice reaction time (response in divided attention situations, of the kind experienced by operators of transportation vehicles). See, *e.g.*, Huntley, M.S., Jr., "Effects of Alcohol and Fixation Task Difficulty on Choice Reaction Time to Extrafoveal Stimulation," *Quarterly Journal of Studies on Alcohol*, 34(1):89–103, 1973. Indeed, some studies suggest that significant decreased performance may be measurable at BAC's below .04 percent. See, *e.g.*, Moskowitz, H., "Skills Performance at Low Blood Alcohol Concentrations" (Southern California Research Institute, May 1984; unpublished); Flanagan, N.G., "The Effects of Low Doses of Alcohol on Driving Performance," *Medical Science Law*, 23(3): 203–209, 1983. It is noted that the .04 percent BAC standard has been adopted by the Federal Railroad Administration and the Federal Aviation Administration as the limit for crews involved in commercial operations.

Although marine-specific studies are not available, persons operating vessels perform tasks similar to many of those performed by subjects of the above alcohol studies, requiring that they be free from the known physiological effects of even low levels of alcohol.

In addition to proposing a blood alcohol concentration standard, the Coast Guard is proposing to define intoxication in terms of observed behavior and appearance of an individual, thereby formalizing past practices. A behavioral standard, although less precise than a BAC standard, is essential for several reasons. First, in many instances testing for blood alcohol level may not be available within an acceptable time frame or the person may refuse to consent to the test. Second, intoxication may be caused by drugs, or a combination of drugs and alcohol where the BAC standard is not exceeded. In addition, while the proposed BAC levels are statistically sound, there may be individuals with a susceptibility to alcohol or drug/alcohol combinations such that they are seriously impaired at levels lower than the proposed BAC standards. The behavioral standard may also be used as a measure of what constitutes reasonable cause to test a person for drugs or alcohol.

There are many variations in the statutes defining intoxication in terms of observed behavior. The Coast Guard in proposing that a person is intoxicated when "under the influence of an intoxicant to the degree that the effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation." This is based on the definition in section 4–2(14), Code of Virginia. This particular definition has been upheld by both the Virginia courts and Federal courts, which have also recognized that a behavioral definition and a BAC standard can co-exist. See: United States v. Gholson, (319 F. Supp. 499, E.D. Va. 1970).

It must be stressed that the behavioral standard is independent of the BAC standard. A person may be tested and may not reach the thresholds of .10 percent or .04 percent, or test results may not be available, yet the person may be found to have been intoxicated under the behavioral standard. Intoxication can occur without exceeding the BAC standards when the individual has a low tolerance for alcohol or when it is due to a combination of drugs, including lawfully prescribed drugs, and alcohol. Thus, the standards take into account a person's ability to "mask" intoxication or a person's susceptibility to intoxication. However, evidence that the BAC standard was not exceeded would be considered in determining whether intoxication has been established.

Defining "Operating a Vessel"

Defining who is "operating a vessel" under 46 U.S.C. 2302, by regulation, is not feasible. For small commercial vessels whose power and steering are controllable by a single person at a central location, that person is clearly the person operating the vessel. However, for larger commercial vessels, where persons are on deck and engineering watches, and the entire crew is available for emergency duty, the difference between operators and non-operators is difficult to distinguish. The same can also be said of sailing vessels, which may have several persons assisting with the sails. Thus, for vessels which are not subject to the manning requirements under Part F, the determination of whether an individual is "operating a vessel" must be conducted on a case by case basis. For the majority of commercial vessels not subject to manning requirements, all the persons in the crew on duty or watch will normally be considered to be operating the vessel. For vessels subject

to manning requirements, all members of the crew required to be on board for routine or emergency duties will normally be considered to be operating the vessel. The Coast Guard intends to interpret this as including those members of the crew who are not listed on the Certificate of Inspection, such as bartenders, waiters, etc. These crewmembers may be assigned emergency duties, and passengers will look to them for assistance and guidance during an emergency.

The requirement to be "operating a vessel" is essential only for the imposition of civil or criminal penalties under 46 U.S.C. 2302(c). As noted above, the standard for intoxication applies to suspension and revocation proceedings and to the ability to serve as a required member of the crew.

Additional Rules and Requirements

The Coast Guard has additional authority to set restrictions on crewmembers of certain vessels. There is authority for setting operating requirements for vessels subject to inspection in 46 U.S.C. 3306. Regulations issued under this statute can not apply to any uninspected vessels which include, among others; the majority of commercial fishing vessels, towboats, and vessels carrying six passengers or less.

All inspected vessels and many uninspected vessels are also subject to manning requirements under Part F. Under 46 U.S.C. 8105 there is broad authority for regulations to carry out Part F. The Coast Guard considers that this authority, coupled with our authority to set qualifying requirements for licensed and certificated personnel under 46 U.S.C. 7101, and our authority to prescribe regulations regarding qualifications for documented personnel under 46 U.S.C. Chapter 73, provide sufficient authority for the Coast Guard to specify that a person required to be present under Part F is unavailable for service when intoxicated.

The Coast Guard is thus proposing requirements for inspected vessels and regulations concerning compliance with the manning requirements under Part F. These regulations are considered necessary for the same reasons as the proposed .04 percent BAC standard. Personnel on a vessel subject to the manning requirement of Part F must be held to a higher degree of responsibility, since such operations usually involve a larger risk to both passengers and crew and greater hazards to property or the environment. In addition, the manning requirements under Part F would be ineffective if intoxicated persons could fill required positions.

Crewmembers of inspected vessels will not be allowed to consume alcohol within four (4) hours of scheduled watch or duties, or while on watch or duty. These rules define readily observable actions, and are designed to facilitate compliance with the strict intoxication standard for personnel on commercial vessels, without completely prohibiting the consumption of alcoholic beverages.

The Coast Guard proposes a rule that, if a person is intoxicated, that person may not be counted towards meeting the vessel's complement under the manning requirements of Part F. The owner, operator, master, person in charge, person in command of a watch, and possibly others, may be subject to civil penalties, as well as suspension or revocation of licenses, certificates, or merchant mariner's documents, if they knowingly allow an intoxicated person to assume a watch or perform duty. It will always be the responsibility of the owner, operator, master, or person in charge of a vessel to prevent an intoxicated person from operating a vessel. It may also be an act of misconduct by other crewmembers if they fail to report persons who they know are intoxicated to the owner, charterer, operator, agent, master, or person in charge.

If an inspected vessel is deprived of a crewmember's services due to intoxication, the vessel may not meet the manning requirements in Part F. If this occurs prior to sailing, 46 U.S.C. 8101 requires a replacement to be obtained if available. If the master finds the vessel sufficiently manned for the voyage, and replacements are not available, the vessel may proceed on its voyage but the master must report the decision to sail "short" to the Coast Guard. When authorized by 46 U.S.C. 8101, there is no penalty for sailing short but the decision is subject to review by the Coast Guard and the master, owner, or operator would be responsible for the consequences of an inappropriate decision. In addition, there is a penalty for failing to report sailing "short".

These rules should encourage all owners to implement screening of employees to prevent intoxicated individuals from assuming watches or duties. Owners are further encouraged to post information concerning the possible penalties that could come from operating a vessel while intoxicated, the effect on the safety of the vessel, and the obligations of all crewmembers to ensure that the standards are complied with. Owners are also encouraged to implement a total ban on the use of intoxicants on their vessels, with the exception of prescription drugs.

Nothing in this proposal should be construed as banning the employment of individuals using prescription drugs, or the proper use or possession of validly procured prescription drugs, if the medical practitioner dispensing the drugs has made a good faith determination that the drugs will not interfere with the crewmember's ability to perform assigned duties. Each crewmember should inform the master or person in charge of the vessel of his or her use of prescription drugs, and the possible side effects, at the beginning of each voyage or on change of command of the vessel.

Casualty Reporting

The current reporting system contained in the regulations is not an effective tool for measuring the contributing role of alcohol or drugs in vessel casualties. The Coast Guard is proposing to amend Part 173 of Title 33 Code of Federal Regulations and Part 4 of Title 46 Code of Federal Regulations to require all marine casualty reports, including State casualty reporting systems, to include information as to whether or not alcohol or drugs was a cause or contributed to the cause of a casualty, and to encourage post-casualty testing for intoxicants.

To provide the information on alcohol or drug involvement that is required be reported to the Coast Guard, this proposal provides for post-casualty tests for the presence of alcohol or drugs. These tests would be administered at the direction of a Coast Guard law enforcement officer or investigating officer or any law enforcement officer authorized to obtain a test under State or local law.

The Coast Guard is also proposing that refusal of a crewmember of a commercial vessel to submit to testing to determine the presence of alcohol or drugs will be admissible as evidence of intoxication at any administrative proceeding. This provisions would apply to post-casualty testing and testing on reasonable belief of observed intoxication. The weight to be given this evidence would be at the discretion of the hearing officer and would depend on the circumstances surrounding the refusal. In the Advance NPRM for recreational vessels, comments are requested as to whether similar provisions should be considered for the operation of recreational vessels.

The investigation of commercial marine casualties is handled by the Coast Guard; however, since most casualties occur far from a Coast Guard facility, Coast Guard investigating officers or other law enforcement

personnel are rarely available to determine if alcohol or drugs contributed to the casualty. For this reason, the proposal requires the owner, charterer, managing operator, agent, master or person in charge of the vessel to determine whether any person directly involved in the casualty was under the influence of alcohol or drugs. The proposal provides for the master or person in charge of a commercial vessel to direct a member of the crew to undergo testing to determine the presence of alcohol or drugs.

The following guidelines are given for determining the persons typically directly involved in a casualty.

(1) For a vessel casualty such as a collision, ramming, or grounding; the master, person in charge of the vessel, pilot, deck or engineroom watchstanders, lookouts, or any other person who may have been performing duties involved with the operation of the vessel, as appropriate, may be directly involved.

(2) For a vessel equipment casualty, such as a failure of propulsion, steering equipment, or auxiliary machinery; the chief engineer, engineroom watchstanders, and any other person involved in causing the casualty, may be directly involved.

(3) For fires and explosions; the master, chief engineer, and any other person involved in causing the casualty, may be directly involved.

(4) For injuries or death; the injured or deceased person(s), the person's supervisor, if the person was performing duties when the injury or death occurred, and any other person involved in the accident, may be directly involved.

The Coast Guard desires as much information relating to alcohol and drug use as can reasonably be obtained. Determinations of alcohol and drug involvement may be made by:

(1) Personal or reported observation of alcohol or drug use;

(2) Personal or reported observation of a person's manner, disposition, speech, muscular movement, bodily odors, general appearance or behavior; or

(3) Toxicological methods including breath analysis, urine or blood sample testing.

For accidents involving the use of alcohol, it is important that blood and urine sampling be conducted as soon as possible. If the use of a blood test or a urine test is not possible, as will normally be the case if the vessel is not in reasonable proximity to a port, a breath analysis test may be used. Since the cost of breath analysis equipment is not prohibitive and this equipment requires only minimal training to operate, vessel owners are encouraged to provide these devices and training in their use. The known availability of breath analysis equipment would further reinforce alcohol abstinence during or prior to duty hours.

When an individual is apparently intoxicated and there is no indication of alcohol use, drug use should be considered. Where use of drugs is suspected, blood or urine tests should be conducted as soon as reasonably possible. Blood sampling for either alcohol or drug testing must be conducted by qualified medical personnel. To establish proper identification, a proper chain of custody of all blood and urine samples should be maintained from the time of sampling through completion of legal proceedings.

The Coast Guard is also proposing to change the Report of Marine Accident, Injury or Death, Form CG–2692, by adding blocks for alcohol involvement and drug involvement in item 21, and by adding the following instuctions in item 41:

"List all persons directly involved in the casualty who used or were under the influence of alcohol or drugs. Explain how the determination was made, including observable behavior. If toxicological testing was directed, include results."

Enforcement

The actions available to enforce the proposed regulations can be broken down into four categories. First, there are the civil and criminal penalties specified in 46 U.S.C. 2302(c) that can be imposed against the person who is intoxicated while operating a vessel.

The second enforcement method is suspension and revocation proceedings against a licensed, certificated, or documented person who is intoxicated. Suspension or revocation of a license, certificate, or document will prevent a person who has demonstrated a lack of responsibility by being intoxicated while serving on a commercial vessel from continuing to serve. This action is also possible against the license, certificate, or document of the master, or any person supervising other crewmembers, if they knowingly allow a person to operate a vessel while intoxicated, and against other crewmembers who fail to report known intoxication. The intent is to make the entire crew responsible for the safe operation of the vessel. Suspension or revocation action could also be brought against the master or person in charge of a vessel for failure to submit Form CG–2692 and the required information concerning drug and alcohol involvement.

Penalties can be brought against a vessel, or the vessel's owner, operator, master, or person in charge, if a person operates a vessel while intoxicated or if a required crewmember performs duties while intoxicated. Civil penalties can also be brought against the vessel's owner, charterer, managing operator, agent, master, or person in charge of the vessel for failing to submit a Form CG–2692 for marine casualties; for failing to determine whether there is any alcohol or drug involvement by those directly involved in the casualty; or for failing to provide information concerning these determinations. These penalties are designed to ensure that the owners and management officials are involved in eliminating the use of intoxicants on their vessels.

Finally, the Coast Guard is proposing to amend Part 177 of Title 33 Code of Federal Regulations. This Part, titled "Correction of Especially Hazardous Conditions" applies to recreational vessels and uninspected passenger vessels. Under this Part, a Coast Guard Boarding Officer may suspend further use of a vessel until an especially hazardous condition is corrected. The Coast Guard is proposing to include as an especially hazardous condition, operating a vessel while under the influence of alcohol or drugs to the extent that further operation of the vessel is unsafe. Under this provision, the Coast Guard Boarding Officer could take immediate and reasonable steps including terminating further use of the vessel based upon observed operator intoxication.

Alcohol and Drug Rehabilitation

The Coast Guard believes that the voluntary and successful rehabilitation of seaman who abuse alcohol and drugs will result in a safer marine industry. For that reason, the Coast Guard is proposing amendments to 46 CFR Part 5 to permit a seamen to voluntarily deposit his or her license, certificate, or document while undergoing drug or alcohol rehabilitation. The Coast Guard anticipates that these proposals will encourage alcohol and drug abusers to come forward voluntarily, and will provide an opportunity for other persons to identify drug and alcohol abusers with minimal consequences to the reported on individual.

Under 46 U.S.C. 7704, if it is shown at a hearing that a person has been convicted of a drug offense, the person's license, certificate, or document must be revoked. If the person is shown to be a user of or addicted to drugs, the license, certificate, or document must also be revoked unless the holder provides

satisfactory proof that the holder is cured. There are no similar statutory restraints on the action to be taken when only alcohol is involved.

The Coast Guard is proposing to hold suspension and revocation proceedings in abeyance for persons voluntarily depositing their license, certificate, or document while undergoing a rehabilitation program. Since the voluntary deposit prevents the holder from serving aboard vessels under the authority of the license, certificate, or document, safety is not affected by holding the hearing in abeyance. To further ensure that the program is not abused, it will not be available if: (1) The holder caused or contributed to a casualty; (2) the holder's use of drugs or alcohol was discovered pursuant to an investigation; or (3) the holder has previously voluntarily deposited his or her license, certificate, or document for drug use. The limitation on prior voluntary surrender would not apply to alcohol use.

Under the proposal, the license, certificate, or document would not be returned until the holder demonstrates satisfactory completion of a rehabilitation program and meets the physical and professional requirements for issuance of the license, certificate or document. In cases of drug use, the holder would also be required to demonstrate complete non-association with drugs for six months after completion of the rehabilitation program. For both alcohol and drug involvement, the holder would be required to be participating in a monitoring program.

The Coast Guard also proposes amendments to the regulations concerning the issuance of new licenses. Under current regulations, if a license, certificate, or document is revoked or surrended in lieu of a hearing for simple use or possession of drugs or addiction to alcohol, a new license, certificate, or document will not be reissued in less than three years. The Coast Guard is proposing a waiver of this waiting period upon completion of a rehabilitation program and participation in a monitoring program. For drug offenses, the holder would also be required to demonstrate complete non-association with dangerous drugs for a period of one year after completion of a rehabilitation program.

The Coast Guard is also considering whether to hold suspension and revocation proceedings in abeyance when the holder of a license, certificate or document has been convicted of a simple minor offense involving the use or possession of drugs. If this is adopted, the holder would have to demonstrate complete non-association with drugs for an extended period of time—probably in excess of three years. Under no circumstances would suspension or revocation proceedings be held in abeyance when the conviction involved the sale or transfer of drugs. The Coast Guard is particularly interest in comments on whether the program would be adopted in the final rule and, if so, what conditions or limitations should apply.

Miscellaneous Amendments

In conjunction with the amendments in this proposal the Coast Guard is correcting statutory references and eliminating duplicative provisions contained elsewhere in Titles 33 and 46, Code of Federal Regulations

The codification of Title 46, United States Code, made certain regulations, which this rulemaking is otherwise amending, inconsistent with the statutory citation or requirements. These inconsistencies are being corrected in this rulemaking. They include requirements that casualty reports be submitted within 5 days and that the owner, charterer, managing operator, agent, master, or person in charge of a vessel submit the casualty report.

Regulatory Evaluation

It has been determined that this rulemaking is not a major regulation under Executive Order 12291, however, this rule is considered significant under the Department of Transporation Regulatory Policies and Procedures (44 FR 11034: Feb. 26, 1979). It is expected that the establishment of an intoxication standard, restrictions on alcohol use by crewmembers on commerical vessels and other vessels subject to manning requirements and the provision for terminating the use of certain vessels if the operator is under the influence of an intoxicant will deter a person from operating any vessel, and from acting or attempting to act as crew member on board a commerical vessel while intoxicated. This should prevent some accidents that might otherwise occur. The exact number of accidents prevented is impossible to calculate. The amendments to the casualty reporting system should provide the Coast Guard with better data with which to evaluate the role of alcohol and drugs in vessel casualties and to develop effective information, education and enforcement programs to deal with the problem. These proposed rules do not increase the number of casualty reports and boating accident reports required to be submitted. While there will be some minor costs incurred in obtaining the required information concerning alcohol or drug involvement and reporting this to the Coast Guard, if even one death is prevented, the benefits are greater than the relatively small costs involved. Compliance with these proposed rules will not impose any other cost or burden or seamen or persons operating a vessel. Since these amendments have a minor cost impact and primarily apply to individuals rather than businesses or other small entities, the Coast Guard certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that these amendments will not have a significant impact on a substantial number of small entities. A regulatory evaulation has been prepared for this action, and is contained in the regulatory docket. A copy may be obtained by contacting the Commandant (G-CMC/21) as indicated under "ADDRESSES."

Paperwork Reduction Act

The rules proposed in this document revised information collection requirements in 46 CFR Part 4 and 33 CFR Part 173. The Office of Management and Budget (OMB) has approved the information collection currently required. Control number OMB-2115-0003 has been assigned for casualty reports and control number OMB-2115-0010 has been assigned for boating accident reports. Although the report forms are being changed to reflect specific alcohol or drug involvement in casualties, this is considered merely a clarification of existing reporting requirements and a minor change to the reporting burden.

List of Subjects

33 CFR Part 95

Marine safety, Vessels, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 146

Continental shelf, Marine safety, Occupational safety and Health, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 150

Deepwater ports, Marine safety, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 173

Marine safety, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 177

Marine safety, Recreational vessels, Unsafe conditions, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 4

Administrative practice and procedures, Investigations, Accidents, Marine safety, National Transportation Safety Board, Reporting requirements, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 5

Administrative practice and procedures, Investigations, Administrative law judge, Investigating officer, Seaman, License certificate, Document, Rehabilitation, Administrative hearings, Suspension and revocation, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 26

Marine safety, Penalties, Reporting requirements, Vessels, Naviation (water), Passenger vessels, Fishing vessels, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 35

Cargo vessels, Marine safety, Seaman, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Passenger vessels, Penalties, Reporting requirements, Navigation (water), Alcohol and alcoholic beverages, Drugs.

46 CFR Part 97

Cargo vessels, Marine safety, Reporting requirements, Navigation (water), Penalties, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 109

Continental shelf, Oil and gas exploration, Marine safety, Marine resources, Reporting requirements, Vessels, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 167

Fire prevention, Reporting requirements, Marine safety, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 185

Marine safety, Passenger Vessel, Reporting requirements, Navigation (water), Alcohol and alcoholic beverages, Drugs.

46 CFR Part 196

Marine safety, Oceanographic vessel, Reporting requirements, Navigation (water), Penalties, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 197

Diving, Marine safety, Occupational safety and health, Vessels, Alcohol and alcoholic beverages, Drugs.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 33, Code of Federal Regulations and Chapter 1 of Title 46, Code of Federal Regulations as set forth below:

CHAPTER I—[AMENDED]

1. By adding a new Subchapter F—Vessel Operating Regulations to read as follows:

SUBCHAPTER F—VESSEL OPERATING REGULATIONS

PART 95—OPERATING A VESSEL WHILE INTOXICATED

Sec.

95.001 Purpose.
95.005 Applicability.
95.010 Definition of terms used in this part.
95.015 Standard of intoxication.
95.017 Determination of intoxication.
95.020 General Operating rules for vessels subject to inspection under Chapter 33 of Title 46, United States Code.
95.022 Prohibition for vessels subject to manning requirements of Part F of Title 46, United States Code.
95.025 Responsibility for compliance.
95.030 Penalties.

Authority: 46 U.S.C. 2302, 3306, 7101, 7301, 77011 and 8105; 49 CFR 1.46(b).

§ 95.001 Purpose.

The purpose of this part is to establish intoxication standards under 46 U.S.C. 2302, which prohibits operation of a vessel while intoxicated, and to prescribe restrictions and responsibilities for personnel serving on vessels required to be manned by licensed, certificated, or documented personnel. This part does not pre-empt enforcement of state laws and regulations concerning operation of a vessel while intoxicated.

§ 95.005 Applicability.

(a) This part is applicable to all commercial vessels operating on waters subject to the jurisdiction of the United States and vessels owned in the United States on the high seas. This includes foreign commercial vessels operating on waters subject to the jurisdiction of the United States.

(b) This part is also applicable to all vessels required by Part F of Subtitle II of Title 46, United States Code to be manned by licensed, or certificated, or documented personnel, whenever a deck and/or engineering watch is being maintained.

§ 95.010 Definition of terms used in this part.

"Alcohol" means any form or derivative of ethyl alcohol (ethanol).

"Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (CFR Part 1308).

"Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance, and including, but not limited to, controlled substances.

"Intoxicant" means any form of alcohol or drug or combination thereof.

"Vessel owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel (owned by a citizen of the United States) that is not documented or numbered by any nation.

§ 95.015 Standard of intoxication.

An individual is intoxicated when operating a vessel subject to this part when—

(a) The individual has an essential role in the operation of a vessel not subject to the manning requirements of Part F of Subtitle II of Title 46, United States Code including, but not limited to, navigation of the vessel and functioning of the vessel's propulsion system, and is under the influence of an intoxicant to the degree that:

(1) The individual has .10 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech muscular movement, general appearance or behavior is apparent to observation.

(b) The individual is a crewmember, pilot, or watchstander not a regular member of the crew, of a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code and is under the influence of an intoxicant to the degree that:

(1) The individual has .04 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

§ 95.017 Determination of intoxication.

(a) A determination of intoxication may be made by the following:

(1) Personal or reported observation of alcohol or drug use;

(2) Personal or reported observation of a person's manner, disposition, speech,

muscular movement, general appearance or behavior; or,

(3) Toxicological methods including breath analysis, urine, or blood sample testing.

(b) Testing may be directed by a Coast Guard law enforcement officer, investigating officer, or any law enforcement officer authorized to obtain a test under State or local law. If an individual refuses to submit to or cooperate in the administration of a timely toxicological test, when directed by a law enforcement officer or investigating officer having reasonable basis for believing the individual to be intoxicated, evidence of the refusal is admissible in any administrative proceeding and the individual will be presumed to have been intoxicated.

(c) The master or person in charge, in addition to those persons identified in paragraph (b) of this section, may direct such testing. Evidence of refusal to submit to or cooperate in the administration of a timely toxicological test is admissible in evidence in any administrative proceeding.

§ 95.020 General operating rules for vessels subject to inspection under Chapter 33 of Title 46 United States Code.

(a) A person may not perform or attempt to perform any scheduled duties as a crewmember within four hours of consuming any alcohol.

(b) Crewmembers on board the vessel shall not be intoxicated at any time while the vessel is operating.

(c) Crewmembers may not consume any intoxicant while on watch or duty except a drug prescribed or authorized by a medical practitioner used at the specified dosage. The prescription or authorization must be based on a good faith judgment, with knowledge of the person's duties, that use of the drug at the specified dosage is consistent with the safe performance of those duties.

(d) If any crewmember cannot perform duties due to compliance with paragraph (a) of this section or is not in compliance with paragraph (b) of this section, the vessel is considered, for purposes of 46 U.S.C. 8101(e), to be deprived of the services of a member of its complement. If the inability or failure to comply is without the consent, fault, or collision of the owner, chartered, managing operator, agent, master, or person in charge of the vessel, the master shall take the action required by 46 U.S.C. 8101(e).

§ 95.022 Prohibitions for vessels subject to manning requirements of Part F of Subtitle II of Title 46, United States Code.

Crewmembers, pilots, or watchstanders not a regular member of the crew on board a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code shall not be intoxicated while the vessel is operating.

§ 95.025 Responsibility for compliance.

The owner, charterer, managing operator, agent, master or person in charge of a vessel to which Part F of Subtitle II of Title 46, United States Code applies, shall execise due diligence to assure compliance with the applicable provisions of this part.

§ 95.030 Penalties.

(a) An individual who is intoxicated when operating a vessel in violation of 46 U.S.C. 2302(c), shall be—

(1) Liable to the United States Government for a civil penalty of not more than $1,000; or,

(2) Fined not more than $5,000, imprisoned for not more than one year, or both.

(b) When an owner, charterer, managing operator, agent, master, or person in charge of a vessel to which Part F of Subtitle II of Title 46, United States Code applies, having actual knowledge, requires or permits an individual to commence service or remain in service if that individual is intoxicated or in violation of §§ 95.002(a), the vessel is considered to be without the services of such an individual. The owner, charterer, managing operator, agent, master or person in charge of the vessel is liable for the appropriate penalties prescribed by Part F due to the deficiency of personnel.

PART 146—[AMENDED]

2. The authority citation for Part 146 continues to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347, 1348; 49 CFR 1.46(z).

3. Section 146.35 is amended by adding a new paragraph (a)(7) to read as follows:

§ 146.35 Written report of casualty.

(a) * * *

(7) Includes information relating to alcohol or drug involvement as specified in the vessel casualty reporting requirements of 46 CFR 4.05–12.

* * * * *

PART 150—[AMENDED]

4. The authority citation for Part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1509(a)(b); 49 CFR 1.46.

5. Section 150.711 is amended by adding a new paragraph (b)(9) to read as follows:

§ 150.711 Casualty or accident.

* * * * *

(b) * * *

(9) The vessel casualty reporting requirements relating to alcohol or drug involvement as specified in the vessel casualty reporting requiremens of 46 CFR 4.50–12.

* * * * *

PART 173—[AMENDED]

6. The authority citation for Part 173 is revised to read as follows and all other authority citations within this part are removed:

Authority: 46 U.S.C. 6101 and 12121; 49 CFR 1.46(n)(1).

§ 173.51 [Amended]

7. In § 173.51 paragraph (b) is revised to read as follows:

* * * * *

(b) This subpart does not apply to a vessel subject to inspection under Title 46 U.S.C. Chapter 33.

8. In § 173.57, paragraph (v) is revised to read as follows:

§ 173.57 Casualty or accident report.

* * * * *

(v) The opinion of the person making the report as to the cause of the casualty, including whether or not alcohol or drugs, or both, was a cause or contributed to causing the casualty.

* * * * *

PART 177—[AMENDED]

9. The authority citation for Part 177 is revised to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46(n)(1).

10. Section 177.01 is amended by revising the introductory text to read as follows:

§ 177.01 Purpose and applicability.

This part prescribes rules to implement section 4308 of Title 46 United States Code which governs the correction of especially hazardous conditions on recreational vessels and uninspected passenger vessels on waters subject to the jurisdiction of the United States and, for a vessel owned in the United States, on the high seas, except operators of:

* * * * *

§ 177.03 [Amended]

11. Section 177.03 is amended by removing and reserving paragraph (a).

12. In § 177.05, the introductory text is revised to read as follows:

§ 117.05 Action to correct an especially hazardous condition.

An operator of a boat who is directed by a Coast Guard Boarding Officer to take immediate and reasonable steps necessary for the safety of those aboard the vessel, under section 4308 of Title 46, United States Code, shall follow the direction of the Coast Guard Boarding Officer, which may include direction to:

* * * * *

13. Section 177.07 is amended by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 177.07 Other unsafe conditions.

For the purpose of section 4308 of Title 46, United States Code, "other unsafe condition" means a boat:

* * * * *

(b) That is operated by an individual who is apparently under the influence of an intoxicant, as defined in § 95.010 of this chapter, to the extent that, in the boarding officer's discretion, the continued operation of the vessel would create an unsafe condition.

(c) Has a fuel leakage from either the fuel system or engine, or has an accumulation of fuel in the bilges.

* * * * *

PART 4—[AMENDED]

14. The authority citation for Part 4 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2306, 6101, 6301, 6305, 80 U.S.C. 198; 49 CFR 1.46 (b) and (z), except subpart 4.40 for which the authority is: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46(n)(10)(i).

15. Subpart 4.03 is amended by adding § 4.03–35 to read as follows:

§ 4.03–35 Nuclear vessel.

The term "nuclear vessel" means any vessel in which power for propulsion, or for any other purpose, is derived from nuclear energy; or any vessel handling or processing substantial amounts of radioactive material other than as cargo.

6. Subpart 4.05 is amended by revising § 4.05–10 and adding §§ 4.05–12 and 4.05–35 and to read as follows:

Subpart 4.05—Notice of Marine Casualty and Voyage Records

* * * * *

§ 4.05–10 Written report of marine casualty.

(a) In addition to the notice required by § 4.05–1, the owner, charterer, managing operator, agent, master, or person in charge of a vessel shall, within five days, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or the nearest port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 4.05–1.

§ 4.05–12 Alcohol or drug involvement.

(a) For each casualty required to be reported by § 4.05–10, the owner, charterer, managing operator, agent, master, or person in charge of the vessel shall determine whether there is any alcohol or drug involvement by persons directly involved in the casualty.

(b) The owner, charterer, managing operator, agent, master, or person in charge of the vessel shall include in the written report, Form CG–2692, submitted for the casualty information which:

(1) Identifies each person determined to be intoxicated; and,

(2) The method used to make this determination, such as by personal or reported observation of alcohol or drug use, personal or reported observation of the individual, or by toxicological testing.

(c) An entry shall be made in the official log book pertaining to those individuals determined to be under the influence of alcohol or drugs.

(d) The refusal to submit to a toxicological test to determine the degree of impairment from either alcohol or drug use when required to do so by the person in charge of the vessel, a Coast Guard official, or any law enforcement official authorized to conduct said test(s) under Federal, State, or local law for intoxication, shall be noted in the official log book, if carried, and in the written report and shall be admissible as evidence of intoxication in administrative hearings.

* * * * *

§ 4.05–35 Incidents involving nuclear vessels.

The master of any nuclear vessel shall immediately inform the Commandant in the event of any accident or casualty to the nuclear vessel which may lead to an environmental hazard. The master shall also immediately inform the competent governmental authority of the country in whose waters the vessel may be or whose waters the vessel approaches in a damaged condition.

PART 5—[AMENDED]

17. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7301, 7310, 7701; 80 U.S.C. 198; 49 CFR 1.46(b).

18. Subpart E is amended by revising § 5.201 and adding § 5.205 to read as follows:

Subpart E—Deposit or Surrender of License, Certificate, or Document

§ 5.201 Voluntary deposits in event of mental or physical incompetence.

(a) A holder may deposit a license, certificate, or document with the Coast Guard in any case where there is evidence of mental or physical incompetence. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the holder, which specifies the conditions upon which the Coast Guard will return the license, certificate, or document to the holder.

(b) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use of or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bonafide drug rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty;

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, state, or local government investigation; and

(4) The holder has not voluntarily deposited or surrendered a license, certificate, or document, or had a license, certificate or a document revoked for a drug related offense on a prior occasion.

(c) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bonafide alcohol rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty; and

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, state, or local government investigation.

(d) Where the conditions of paragraphs (b) and (c) of this section are not met, the holder may only surrender such license, certificate or document in accordance with § 5.203.

* * * * *

§ 5.905 Return of Papers or Issuance of New Papers.

(a) A person may request the return of a voluntarily deposited license, certificate, or document at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and complies with the physical and professional requirements for issuance of a license, certificate, or document.

(b) Where the voluntary deposit is based on incompetence due to drug abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bonafide drug abuse rehabilitation program;

(2) Demonstrates complete non-association with dangerous drugs for a minimum of six months after completion of the rehabilitation program; and

(3) Is actively participating in a bonafide drug monitoring program.

(c) Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bonafide alcohol abuse rehabilitation program; and

(2) Is actively participating in a bonafide monitoring program similar to Alcoholics Anonymous.

(d) The voluntary surrender of a license, certificate, or document is the equivalent of the revocation of such papers. A holder who voluntarily surrenders such papers must comply with provisions of § 5.901 and § 5.903 when applying for the issuance of new papers.

19. Subpart L is amended by adding paragraphs (d), (e), and (f) to § 5.901 to read as follows:

Subpart L—Issuance of New Licenses, Certificates or Documents After Revocation or Surrender

§ 5.901 Time limitations.

* * * * *

(d) For a person whose license, certificate, or document has been revoked or surrendered for the wrongful simple possession or use of dangerous drugs, the three year time period may be waived by the Commandant upon a showing that the individual:

(1) Has successfully completed a substance abuse rehabilitation program;

(2) Has demonstrated compete non-association with dangerous drugs for a minimum of one year following completion of the rehabilitation program; and

(3) Is actively participating in a bonafide drug monitoring program.

(e) For a person whose license, certificate, or document has been revoked or surrendered for offenses related to alcohol abuse, the waiting period may be waived by the Commandant upon a showing that the individual has successfully completed an alcohol abuse rehabilitation program and is actively participating in a bonafide monitoring program similar to Alcoholics Anonymous.

(f) The waivers specified under subparagraphs (d) or (e) of this section may only be granted once to each person.

PART 26—[AMENDED]

20. The authority citation for Subpart 26.08 is revised to read as follows:

Authority: 46 U.S.C. 6101; 46 CFR 1.46(b).

21. Subpart 26.08 is revised to read as follows:

Subpart 26.08—Notice and Reporting of Casualty and Voyage Records

§ 26.08–1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 35—[AMENDED]

22. The authority citation for Part 35 continues to read as follows:

Authority: 46 U.S.C. 3306 and 3703; 49 CFR 1.46.

23. Subpart 35.15 is revised to read as follows:

Subpart 35.15—Notice and Reporting of Casualty and Voyage Records

§ 35.15–1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 78—[AMENDED]

24. The authority citation for Subpart 78.07 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

25. Subpart 78.07 is revised to read as follows:

Subpart 78.07—Notice and Reporting of Casualty and Voyage Records

§ 78.07–1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 97—[AMENDED]

26. The authority citation for Part 97 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

27. Subpart 97.07 is revised to read as follows:

Subpart 97.07—Notice and Reporting of Casualty and Voyage Records

§ 97.07–1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 109—[AMENDED]

28. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46 (b) and (n)(6).

29. Subpart D of Part 109 is amended by removing §§ 109.413 and 109.417 and revising § 109.411 to read as follows:

§ 109.411 Notice and reporting of casualty.

The requirements for providing notice and reporting of marine casualties are contained in Part 4 of this chapter.

PART 167—[AMENDED]

30. The authority citation for Part 167 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Section 167.65–65 is revised to read as follows:

§ 167.65–65 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 185—[AMENDED]

32. The authority citation for Part 185 is revised to read as follows and all other authority citations in the Part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

33. Subpart 185.15 is revised to read as follows:

Subpart 185.15—Notice and Reporting of Casualty and Voyage Records

§ 185.15–1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 196—[AMENDED]

34. The authority citation for Part 196 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

35. Subpart 196.07 is revised to read as follows:

Subpart 196.07—Notice and Reporting of Casualty and Voyage Records

§ 196.07–1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 197—[AMENDED]

36. The authority citation for Part 197 is revised to read as follows:

Authority: 33 U.S.C. 1509(b); 43 U.S.C. 1333; 46 U.S.C. 3306, 6101; 49 CFR 1.46 (b) and (s).

37. Section 197.486 is amended by adding paragraph (d) to read as follows:

§ 196.486 Written report of casualty.

* * * * *

(d) The report required by this section must include information relating to alcohol and drug involvement as required by § 4.05–12 of this chapter.

Dated: May 19, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86–11590 Filed 5–22–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–3020–1; OPP–300144A]

Pesticide Tolerance for Daminozide; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period on a proposal to reduce, on an interim basis, the existing tolerance for the herbicide daminozide [butanedioic acid mono [2, 2-dimethylhydrazide)] in or on the raw agricultural commodity apples. The National Resources Defense Council requested the extension.

DATE: Comments, identified by the document control number (OPP–300144A), must be received on or before May 27, 1986.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued, in the Federal Register of April 16, 1986 (51 FR 12889), a proposed rule to amend 40 CFR 180.246 by reducing the tolerance for residues of daminozide in or on apples from 30 ppm to 20 ppm on an interim basis, with the tolerance to expire on July 31, 1987. The comment period was 30 days—the expiration date being May 16, 1986.

The National Resources Defense Council, 25 Kearny St., San Francisco, CA, has requested additional time to prepare comments responding to the proposed rule. EPA is granting this request for extension of the comment period.

Therefore, the proposed amendment to 40 CFR 180.246 *Daminozide; tolerances for residues*, published in the Federal Register of April 16, 1986 (51 FR 12889), is modified to extend the comment period to May 27, 1986.

(21 U.S.C. 346a)

Dated: May 16, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 11655 Filed 5–22–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery; Availability of Fishery Management Plan and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues notice that the New England Fishery Management Council (Council) has resubmitted a Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for Secretarial review and is requesting comments from the public. Copies of the plan may be obtained from the address below.

DATE: Comments on the plan should be submitted on or before June 20, 1986.

ADDRESS: All comments should be sent to Mr. Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on the Multispecies FMP."

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Groundfish Coordinator, 617–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*) requires that each fishery management council submit any fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan.

This plan will replace the Interim FMP for Atlantic Groundfish and proposes to: (1) Establish new minimum size regulations for seven major commercial species; (2) establish minimum sizes for

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recreationally caught cod and haddock; (3) implement major extensions of closed spawning areas on Georges Bank; (4) establish a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) make major changes in the regulations governing small mesh fisheries; (6) implement a major increase in the mesh size of mobile trawl gear; (7) establish a marking requirement for gillnet gear; and (8) increase the spawning potential for redfish.

Regulations proposed by the Council and based on this plan are scheduled to be published within 10 days.

(16 U.S.C. 1801 *et seq.*)

Dated: May 19, 1986.

Richard B. Roe,

Director, Office of Fisheries Management.

[FR Doc. 86-11858 Filed 5-20-86; 3:29 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreement: Iowa State University

AGENCY: Office of International Cooperation and Development, USDA.
ACTION: Notice of intent to enter into a cooperative agreement.

ACTIVITY: The Office of International Cooperation and Development intends to enter into a cooperative agreement with Iowa State University to carry out research and technical services related to improving the data bases and capacity for undertaking consumption effects analyses in low income countries.

Authority

Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development announces the availability of funds during Fiscal Year 1986 to enter into a cooperative agreement with Iowa State University to carry out research and technical services related to improving the data bases and capacity for undertaking consumption effects analyses in low income countries. The purpose of this agreement is to cooperatively plan and then collaboratively develop a series of handbooks which can be used as references for training analysts in developing countries on how to process and edit income and expenditure and consumption survey data, and how and when to apply selected analytical techniques to such data to answer important food and nutrition policy questions. This work will be carried out in two stages. Stage one activities will include: (a) Planning the handbook series; (b) establishing an advisory committee; and (c) preparing and reviewing sample chapters. Implementation of stage two—handbooks—will depend on the availability of funds as well as the amount of interest generated by the output from stage one.
handbooks—will depend on the availability of funds as well as the amount of interest generated by the output from stage one.

This is a joint activity which is part of a program of activities designed to assist developing countries improve their data bases and capabilities for undertaking consumption effects analyses. Iowa State University is already successfully collaborating with this Agency in several efforts in this area and will be able to build upon as well as generalize from these experiences in the development of these handbooks.

Based on the above, this is not a formal request for applications. It is estimated that approximately $30,000 will be available during Fiscal Year 1986 to carry out stage one. Development of the handbooks, themselves, is expected to be founded over a period of years—the exact number of years and amounts dependent on fund avaibility and future decision with respect to the number of handbooks of be developed.

Information may be obtained from: Ms. Roberta van Haeften, Nutrition Economics Group, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture, (58–319R–6–027).

Dated: May 1, 1986.

Nancy J. Croft,
Contract Specialist, Management Services Branch, OICD.

[FR Doc. 86–11631 Filed 5–22–86; 8:45 am]

BILLING CODE 3410-09-M

Agricultural Marketing Service

Renewal of the National Advisory Committee for Tobacco Inspection Services

Notice is hereby given that the Secretary of Agriculture has renewed the National Advisory Committee for Tobacco Inspection Services for an additional period of two years.

This Committee advises the Secretary of the level of services needed under the Tobacco Inspection Act and the establishment of fees and charges to recover the cost of such services.

The Committee consists of 14 producers of tobacco representing all production areas, and shall meet at the call of the Secretary.

The authority for this Committee is Section 5 of the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App. I).

Dated: May 15, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 86–11619 Filed 5–22–86; 8:45 am]

BILLING CODE 3410-02-M

National Advisory Committee for Tobacco Inspection Service; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: June 9, 1986.

Time: 1 p.m.

Place: U.S. Department of Agriculture, Agricultural Marketing Service, Tobacco Division, Training Laboratory, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services, that is, the number of sets of graders for the flue-cured and burley markets, and the fees and charges associated with providing these services.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, Washington, DC 20250, (202) 447–2567.

Dated: May 21, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 86–11848 Filed 5–22–86; 10:50 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission previously scheduled for May 23, 1986, convening at 9:00 a.m. and adjourning at 5:00 p.m., at the Federal Building, Room C-114, 701 "C" Street, Anchorage, Alaska [FR Doc. 86-10795, Page 17662] has a new room number.

The meeting date, location, convening and adjourning times will remain the same. The room number of the meeting will change to Room F-278.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-11043 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 6:30 p.m. on June 6, 1986, at the Holiday Inn Downtown, International Room, 175 Piedmont Avenue NE., Atlanta, Georgia. The purpose of the meeting is to discuss and formulate results of community forum on the status of working women in Georgia and to plan activities for FY 86-87.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John Ruffin or Bobby Doctor Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-11044 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee, Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on June 12, 1986, at the U.S. Commission on Civil Rights, Room, 3280, 230 S. Dearborn Street, Chicago, Illinois. The purpose of the meeting is to plan for the upcoming community forum on the civil rights of hearing-impaired people.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzberg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2186). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-11045 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on May 29, 1986, at the Galt House, Corn Island Room, 4th Street at River Road, Louisville, Kentucky. The purpose of the meeting is to review, for approval, the draft of the briefing memorandum regarding the desegregation of public housing in Louisville and Lexington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter Peeples or Bobby Doctor Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional programs.

[FR Doc. 86-11046 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on June 20, 1986, at the Sheraton Oaks, 27000 Sheraton Drive, Novi, Michigan. The purpose of the meeting is to discuss the status of civil rights in Michigan and plan for Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2186). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-11047 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

North Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on June 11, 1986, at the University Sheraton, Room 1005, 3800 Middleton Avenue, Durham, North Carolina. The purpose of the meeting is to discuss the revised concept for the

proposed public school desegregation project, and the proposal. In addition, the committee will provide an update on the status of the briefing memorandum on State employment.

Person desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Horowitz or Bobby Doctor, Director of the Southern Regional Office at (404)221-4301, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-11648 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on June 4, 1986, at the Henry M. Jackson Federal, Room 1848, 915 Second Avenue, Seattle, Washington. A factfinding meeting will be held on Indian education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Arnold Manseth or Susan McDuffie Director of the Northwestern Regional Office at (206)442-1246, (TDD 206/442-4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-11649 Filed 5-22-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Caribbean Basin Initiative Export Declaration

Form Number: Agency—ITA-370; OMB-N/A

Type of Request: New Collection

Burden: 200 respondents; 3,200 reporting hours

Needs and Uses: On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products made form fabric formed and cut in the United States. Firms participating in the Caribbean Basin Initiative program must certify that the textile products assembled meet the criteria of the program. The Customs Service will use the information provided to conduct audits and detect fraud

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Worldwide Services Program

Form Number: Agency—ITA-4099P; OMB—0625-0127

Type of Request: Required to obtain or retain a benefit

Burden: 200 respondents; 67 reporting hours

Needs and Uses: Information collected from firms is used to promote their services overseas through U.S. consular posts. The information obtained is disseminated to potential buyers/agents overseas through direct mail or commercial newsletters prepared by the posts

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 19, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-11616 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-580-507]

Antidumping Duty Order; Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning malleable cast iron pipe fittings, other than grooved (pipe fittings), from Korea, the United States Department of Commerce (the Department) and the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that pipe fittings from Korea are being sold at less than fair value and that sales of pipe fittings from Korea are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of pipe fittings from Korea made on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro or Mary Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5332 or (202) 377-1769.

SUPPLEMENTARY INFORMATION: The products covered by this order are malleable cast iron pipe fittings, other than grooved, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.7000, and 610.7400.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 14, 1986, the Department published its preliminary determination that there was reason to believe or suspect that pipe fittings from Korea are being sold at less than fair value (51 FR 1546). On March 31, 1986, the Department published its final determination that these imports are being sold at less than fair value (51 FR 10930).

On May 12, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry. Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Korea. Antidumping duties will be assessed on all unliquidated entries of pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register (15 FR 1546).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 12.48 percent. This rate is applicable to all pipe fittings imported from Korea.

This determination constitutes an antidumping duty order with respect to pipe fittings from Korea, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86-11861 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-597]

Antidumping Duty Order: Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning malleable cast iron pipe fittings, other than grooved (pipe fittings), from Taiwan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that pipe fittings from Taiwan are being sold at less than fair value and that sales of pipe fittings from Taiwan are materially injuring a United States industry. Additionally, the Department found that "critical circumstances" do not exist with respect to pipe fittings from Taiwan. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of pipe fittings from Taiwan made on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Shimabukuro or Mary Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3333 or (202) 377-1766.

SUPPLEMENTARY INFORMATION: The products covered by this order are malleable cast iron pipe fittings, other than grooved, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.7000, and 610.7400.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C 1673b), on January 14, 1986, the Department published its preliminary determination that there was reason to believe or suspect that pipe fittings from Taiwan are being sold at less than fair value (51 FR 1547). We preliminary determined that "critical circumstances" do not exist within the meaning of section 733(e) of the Act (19 U.S.C. 1673(e)). On March 31, 1986, the Department published its final determination that these imports are being sold at less than fair value and that "critical circumstances" do not exist with respect to pipe fittings from Taiwan (51 FR 10901).

On May 12, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Taiwan. Antidumping duties will be assessed on all unliquidated entries of pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register 51 FR 1547).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below.

Manufacturers/producers/exporters	Weighted-average percent
Sun Yang	58.57
De Ho	13.12
Tai Yang	37.99
Kwang Yu	7.93
Young Shiang	58.00
All others	44.67

This determination constitutes an antidumping duty order with respect to pipe fittings from Taiwan, pursuant to

section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86-11682 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-507-502]

Certain In-Shell Pistachios From Iran Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain in-shell pistachios (pistachios) from Iran are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of this determination, whether these imports are materially injuring, or are threatening material injury to, a U.S. industry.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro (202-377-5332) or Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that in-shell pistachios from Iran are being, or are likely to be sold, in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We found that all sales during the period of investigation were at less than fair value, and the weighted-average margin is 241.14 percent. We have determined that "critical circumstances" exist with respect to raw in-shell pistachios from Iran.

Case History

On September 26, 1985, we received a petition filed in proper form from the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Kern Pistachio Hulling & Drying Co-op., Los Rancho de Poco Pedro, Pistachio Producers of California, and T.M. Duche' Nut Co., Inc., on behalf of the industry consisting of domestic pistachio growers and processors of domestically grown pistachios. In compliance with the filing requirements of § 353.36 of the Commerce regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Iran are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673) and that these imports are materially injuring, or threatening material injury to, a U.S. industry. The petitioners also alleged that "critical circumstances" exist with respect to raw pistachios.

After reviewing the petition we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on October 15, 1985 (50 FR 42978), and notified the ITC of our action.

On November 12, 1985, the ITC found that there is a reasonable indication that imports of pistachios from Iran are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1777, November 1985).

On October 25, 1985, we presented a questionnaire to the Rafsanjan Pistachio Cooperative, the only known seller of pistachios from Iran. On January 10, 15, and 24, 1986, we received responses to our questionnaire. By letter dated January 30, 1986, we informed the Embassy of Algeria that the information it submitted to us on behalf of the Government of Iran was inadequate for purposes of a preliminary determination since the respondent did not know the destination of the pistachios it sold. On January 30, 1986, the Department sent questionnaires to the Rafsanjan Pistachio Cooperative to be forwarded to its customers who export pistachios to the United States. We did not receive any further responses.

We published the preliminary determination of sales at less than fair value on March 11, 1986 (51 FR 8342). A hearing, requested by the petitioners and importers, was held on April 8, 1986. Arguments raised in the briefs of all parties were considered for the final determination.

Scope of Investigation

The products covered by this investigation are certain raw and roasted in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, currently classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under items 145.2600 and 145.5300. The period of investigation is April 1 through September 30, 1985.

Scope of Investigation Issues

In the present investigation questions arose at the time of the Department's preliminary determination as to whether roasted in-shell pistachios were included within the scope of its investigation. It was brought to the Department's attention that the TSUSA item included in its notices, 145.2600, covered only one variety of in-shell pistachios, raw, that was being imported into the United States. Inasmuch as the Department seeks to include all products that are of the same class or kind within the scope of its investigations as are necessary to ensure that it investigates all imports that may be sold within the United States at less than fair value, we requested comments to help in determining whether the Department's intent to include roasted in-shell pistachios within its scope was made apparent throughout the investigation. In addition, we requested comments on the issue of whether roasted in-shell pistachios are within the same class or kind as raw in-shell pistachios and as such, properly within the scope of this investigation.

Importers of raw in-shell pistachios from Iran argued (1) that prior notices have specifically referred to in-shell pistachios provided for under TSUSA item 145.2600 and (2) the ITC limited its preliminary determination to raw in-shell pistachios. The principal importer of roasted in-shell pistachios from Iran, who accounted for eighty percent of the imports of such pistachios from September through December 1985, argued (1) that its imports were not an

attempt at circumvention and there is little possibility of substantial circumvention in the future because of the limited roasting facilities in Europe, where the roasting is done, and (2) that since it has relied on prior determinations and notices, with respect to roasted in-shell pistachios from Iran, to include such pistachios in the scope of the investigation at this time would be an unfair denial of due process.

The importers of raw in-shell pistachios and the importer of roasted in-shell pistachios argue (1) that the Department's determinations of product scope in other investigations do not support inclusion of roasted pistachios in this investigation, and (2) that the roasted in-shell pistachios were previously sold in the free market of Europe and therefore are exports from Europe.

In-shell pistachios are marketed as a snack food and are generally roasted for this purpose. Thus the ultimate use of roasted and raw in-shell pistachios, as well as the expectations of the consumer, are the same for the two products. Additionally, both products are part of the same channel of trade, the end purpose of which is to provide for consumption a roasted edible nut. Roasting of raw in-shell pistachios is not a substantial transformation of that product since roasting is essentially a preparation of the product for use as a snack food. Though the Department is not bound by Customs Service determinations regarding substantial transformation, we note that in its notice of September 18, 1985, *Country of Origin Markings for Pistachio Nuts* (50 FR 37842), the Customs Service found roasting not to be a substantial transformation. The Customs Service also found that the cost of transforming raw in-shell pistachios to roasted in-shell pistachios was insignificant, the process costing 2.5 cents to 3 cents per pound. Based upon these reasons, the Department has determined that roasted and raw in-shell pistachios are within the same class or kind.

The Department further notes that it has never limited the scope in the investigation to raw in-shell pistachio nuts. The Department recognized the need to clarify the scope in this case because of its use of the single TSUSA item 145.2800 in its notices. TSUSA items serve as aids in describing products under investigation but are not binding upon the Department in scope determinations. In fact, the Department may add an item number to cover a product under investigation where the omission of that item would be inconsistent with the products under investigation.

With respect to the parties' point regarding country of exportation, the Department considers pistachios grown in Iran as products of Iran, whether or not they have been sold or roasted in the European market. Both parties have referred to section 773(g) of the Tariff Act of 1930, as amended. That provision deals with the exportation from an intermediate country. That provision states that if a reseller purchases merchandise from a producer who does not know at the time of the sale the destination of the merchansise, and that merchandise is initially exported by or on the behalf of the reseller to a country other than the United States, where it is not subetantially transformed, and the merchandise is subsequently exported to the United States, that merchandise will be treated for purposes of that section, which deals with foreign market value, as an export from that intermediate country.

The provision is not relevant to the issue of whether in-shell pistachios are properly classified as products of Iran. The provision provides that the intermediate country will be considered as the country of exportation for foreign market value calculations. In *Synthetic Methionine from Japan* (47 FR 15622, April 12, 1982), an administrative review two years before the provisions was added to the antidumping law, the Department explained its policy at that time with regard to intermediate country exportation as not removing certain products from the scope of a proceeding because they were exported from a third country. Accordingly, the Department does not consider roasted in-shell pistachios as imports from Europe for purposes of the scope of these proceedings.

Regarding the allegation of the importer of roasted in-shell pistachios that it was denied due process, we note that all interested parties were aware that the Department was considering clarification of the scope regarding roasted in-shell pistachios shortly after the preliminary determination. At that time the only known importer of roasted in-shell pistachios entered appearance as an interested party and had the opportunity to comment upon all aspects of the investigation, including matters not involving scope.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with foreign market value, also based on the best information available. We used the best information available, as required by section 776(b) of the Act, because appropriate responses were not submitted.

United States Price

For our determination we did not use sales data presented by respondents to calculate United States price since they did not include data regarding specific quantities and prices for pistachios sold for export to the United States. We determined United States price on the basis of the average F.A.S. value for the six-month period of investigation as derived from the IM145 statistics compiled by the Bureau of Census.

Foreign Market Value

We used price information provided in the petition, as the best information available, pursuant to section 776(b) of the Act since we did not have specific data regarding quantities and prices for pistachios sold in the home market. The price information used from the petition was the price for a representative grade in May 1985.

Petitioners' Comment

Comment: Petitioners argue that, for the preliminary determination, the Department inadvertently based foreign market value on an average price for the period March 1984 to March 1985, instead of the price of a representative grade in May 1985.

DOC Response: We agree. Foreign market value for the final determination is based on the May 1985 price of a representative grade within the period of review.

Importers' Comment

Comment: Importers argue that the sales price of in-shell pistachios in Iran was converted to U.S. dollars at an improper rate of exchange. The law requires that such conversion be made at a rate which reflects the actual market value of the currency and not at the rate proclaimed by the foreign government when that rate has no relation to the actual value of the currency. Further, the law does not contemplate that agencies of the U.S. government blindly accept values reported by the Federal Reserve Bank when there is evidence that the reported rate is grossly overstated or understated.

DOC Response: Section 522 of the Trade Act of 1930 requires the Department to use the exchange rate furnished by the Federal Reserve Bank of New York. The applicable regulation and statutory provision do not grant the

Department the authority to disregard exchange rate information furnished by the Federal Reserve Bank of New York.

Verification

Verification in accordance with section 776(a) of the Act was not conducted since timely and complete responses were not filed.

Final Affirmative Determination of Critical Circumstances

Petitioners have alleged that imports of certain raw in-shell pistachio nuts present "critical circumstances" within the meaning of section 735(a)(3) of the Act. Critical circumstances exist when the Department finds that: (a) There is a history of dumping in the United States or elsehwere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known tht the exporter was selling the merchandise under investigation at less than its fair value; and (c) there have been massive imports of merchandise under investigation over a relatively short period. In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of the first two of these three factors, we have determined that imports from Iran have been massive.

In determining whether there is a history of dumping of pistachios from Iran, in the United States or elsewhere, we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries made available through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no final determination on pistachios from Iran. Therefore, we did not find the requisite history of dumping of the class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margin in this case exceeds this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

For the reasons described above we determine that critical circumstances exist with respect to raw in-shell pistachios from Iran. Since, however, there was no allegation of critical circumstances for roasted in-shell pistachios we did not make such a determination for roasted in-shell pistachios.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of raw in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption, on or after December 11, 1985. Suspension of liquidation shall be continued for all entries of roasted in-shell pistachios from Iran that are entered, or withdrawn, from warehouse, for consumption on or after March 11, 1986, the date of publication of the preliminary determination (51 FR 8342). The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. In the case of in-shell pistachios from Iran the rate is 241.14 percent. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on pistachios from Iran will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on pistachios from Iran which were entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price, less the amount of the countervailing duty.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 19, 1986.

[FR Doc. 86-11683 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision of Application for Duty-Free Entry of Scientific Instrument; Columbia University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-285. Applicant: Columbia University, New York City, NY 10027. Instrument: Stereomicroscope, Model M5A with accessories. Manufacturer: Leitz (Wild-Heerbrugg), Switzerland. Intended use: See notice at 50 FR 41380.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high imaging clarity and a large transmitted light base. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11080 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; U.S. Geological Survey

This decision is make pursant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-172R. Applicant: U.S. Geological Survey, Lawrence, KS 66046. Manufacturer: Geonics Limited, Canada. Instrument: Terrain Conductivity Meter. Original notice of this resubmitted application was published in the Federal Register of June 11, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of in situ conductivity measurements under varying climatic and geological conditions such as the capability of measuring ground conductivity in the presence of inhomogeneous localized resistivity. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11081 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Harvard University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-190. Applicant: Harvard University, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Electron Microscope, Model JEM-1200EX/SEG with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used for the study of the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells and kidney tissues. The experiments to be conducted include but are not limited to studies of:

(1) Cytoskeletal characteristics of resting and stimulated leukocytes.

(2) Cytoskeletal characteristics of cells from blood vessels.

(3) Characterization of the lysosomal system in vascular smooth muscle cells.

(4) Characterization of the non-lysosomal acid-hydrolase-containing compartment in vascular smooth muscle cells.

(5) Morphological component of the effect of heparin on cells from blood vessels.

(6) Organization of "artificial blood vessels" in tissue culture.

(7) Morphology and cytochemical changes in a drug-induced model of kidney damage.

Application Received by Commissioner of Customs: April 18, 1986.

Docket No. 86-194. Applicant: University of Wisconsin-Milwaukee, Department of Biological Sciences, Lapham Hall, Room 252, P.O. Box 413, Milwaukee, WI 53201. Instrument: Electron Microscope, Model H-600 CR/CR with Accessories. Manufacturer: Hitachi, Japan. Intended use: The instrument is intended to be used to perform research on a variety of biological specimens, e.g., membrane formation in facultative photosynthetic bacteria, replication of DNA synthesis in the F plasmid in *Escherichia coli*, factors that affect the immune response in fish, and regulation of gene expression in two model systems, the developmentally regulated synthesis of a protein, globin, in the insect *Chironomous thummi*, and the regulation of the synthesis of ribosomal components in somatic cell hybrids. In addition, the instrument will be used for class instruction for undergraduate and graduate student research at the master's and doctoral level. Application Received by Commissioner of Customs: April 23, 1986.

Docket No. 86-195. Applicant: Calcilex Corporation, 10605 Carnegie Avenue, Cleveland, OH 44106. Instrument: Kidney Lithotripter. Manufacturer: Dornier, West Germany. Intended use: The instrument is intended to be used to conduct research concerning the clinical efficacy, morbidity and mortality and the cost of effectiveness of extracorporeal shock wave lithotripsy and alternative therapies in the treatment and management of urinary calculi. The instrument will also be used in the training and education of physicians, resident surgeons in post-graduate training, medical students, and allied health care personnel. Application Received by Commissioner of Customs: April 23, 1986.

Docket No. 86-196. Applicant: Pomona Valley Community Hospital, Ltd., 1798 North Garey Avenue, Pomona, CA 91767. Instrument: Kidney Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: The instrument is intended to be used to treat patients with kidney stone disease, to research and develop further guidelines for its use and to train physicians, nurses and other ancillary medical personnel in the applications of extracorporeal shock-wave lithotripsy as a less risky and less costly alternative to the removal of kidney and urinary tract stones. Application Received by Commissioner of Customs: April 25, 1986.

Docket No. 86-198. Applicant: The Medical College of Wisconsin, 8701 Watertown Plank Road, Milwaukee, WI 53226. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended use: The instrument will be used to study the ultrastructural morphology of tissues and cell cultures derived from various regions of the eye.

infection, in inflammatory conditions and after exposure to potentially toxic substances. In animal models of vitreoretinal pathology and glaucoma, the morphology of the retina and the optic nerve will be studied. In all investigations, the ultrastructure of both the cellular and the extracellular matrix constituents will be examined. Application Received by Commissioner of Customs: April 30, 1986.

Docket No. 86-199. Applicant: University of Medicine and Dentistry of New Jersey, Rutgers Medical School, Department of Anatomy, P.O. Box 101, Piscataway, NJ 08854. Instrument: Electron Microscope, Model CM 12/STEM with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for studies of the individual molecules (gangliosides) and mediators of neuritogenesis in order to understand their mechanisms. Other studies will include changes in microtubule distribution and other cytoskeletal structure during cell division and electron microscopic examination of the degeneration of nigral neuronal terminals and synapses in the caudate nucleus. In most of the studies the major objectives are to determine the structure/function relationships of cellular processes. In addition, the instrument will be used for educational purposes in three major graduate programs: Zoology-Cell and Developmental Biology, Physiology-Neurobiology and Biochemistry. Application Received by Commissioner of Customs: April 30, 1986.

Docket No. 86-200. Applicant: Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. Instrument: Optical Microscope. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument is intended to be used for the study of embryonic, normal adult and cancer cells. Living cells are penetrated with one or more ultrafine microelectrodes under visual control. A primary goal of the studies is to analyze mechanisms of intracellular communication, which is important in development, growth control and electrical signalling between excitable cells of, for example, brain, heart and pancreatic islets. The instrument will also be involved in graduate and postdoctoral teaching in that research instruments are shared and a vital part of this advanced education is hands-on research experience. Application Received by Commissioner of Customs: April 30, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11687 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Purdue University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-006. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Free Flow Electrophoresis Apparatus, Model Elphor Vap 22 with Accessories. Manufacturer: Bender and Hobein GmbH, West Germany. Intended use: See notice at 50 FR 45647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can collect 15 distinct fractions over a separation distance of 1.0 centimeter rapidly and at a controlled temperature of +4 to +25 degrees centigrade. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivilent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11694 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; State University of New York at Stony Brook

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-291. Applicant: State University of New York at Stony Brook, Stony Brook, NY 11794. Instrument: Reflex Light Microscope. Manufacturer: Reflex Measurement Limited, United Kingdom. Intended use: See notice at 50 FR 41381.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides three-dimensional measurements of very small objects with a horizontal repeatability of pointing to a well-defined point of 0.002 millimeters and 0.015 in the vertical direction. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11692 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Maine at Orono

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-115. Applicant: University of Maine at Orono, Orono, ME 04469. Instrument: Custom Surface Analysis System, Model LHS-10. Manufacturer: Leybold-Heraeus GmbH.

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West Germany. Intended use: See notice at 51 FR 8578.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides for in situ photoelectron spectroscopy of surfaces at ambient pressures of 5 mbar.

This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11683 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Texas

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-066R. Applicant: University of Texas, Austin, TX 78712. Instrument: X-ray Photoelectron Spectrometer (ESCALAB 5). Manufacturer: VG Scientific Limited, United Kingdom. Original notice of this resubmitted application was published in the Federal Register of December 14, 1982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a guaranteed minimum sensitivity of 30 000 counts/second on the Ag 3d ⅝ at resolution 0.88 eV (FMHM). The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument, at time of purchase (October 4, 1982), for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11685 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Wyoming

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-064R. Applicant: University of Wyoming, Laramie, WY 82071. Instrument: Thermal Ionization Mass Spectrometer, Model IS 117. Manufacturer: VG Isotopes Limited, United Kingdom. Original notice of this resubmitted application was published in the Federal Register of February 27, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a precision in the measurement of Sr and Nd of 30 parts per million. The National Bureau of Standards advises in its memorandum dated March 27, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or approval of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11686 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Micromanipulators; Virginia Commonwealth University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC.

Docket Number: 85-298. Applicant: Virginia Commonwealth University/ Medical College of Virginia. Intended Use: See notice at 50 FR 41379.

Docket Number: 85-302. Applicant: Virginia Commonwealth University/ Medical College of Virginia. Intended Use: See notice at 50 FR 43045.

Article: Micromanipulator.

Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Advice submitted by: National Institutes of Health: April 3, 1986.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. Reasons: The foreign instruments provide precise and smooth movements in increments of 2.0 micrometers on any of three axes with a singly controlled variable-ratio hydraulic mechanism. The National Institutes of Health advises in the cited memoranda that (1) this capability is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11688 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 60630-6139]

Federal Information Processing Standard 119, Ada Programming Language

AGENCY: National Bureau of Standards, Commerce.

ACTION: Final notice; correction.

SUMMARY: In FR Doc. 85-26700, appearing on pages 40472-40474, in the issue of Friday, November 8, 1985, a portion of a sentence was inadvertently

omitted which is now being added as shown below.

On page 46474, first column, section 11.1 *Acquisition of Ada Processors* which continues into the middle column on that page, the concluding paragraph in section 11.1 should read as follows:

"A transition period provides time for industry to produce Ada processors conforming to the standard. The transition period begins on the effective date and continues for one year (1) thereafter. The provisions of this publication apply to orders placed after the effective date; however, an Ada language processor not conforming to FIPS Ada may be acquired for interim use during the transition period."

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–2431.

Dated: May 20, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–11638 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Subcommittee will convene separate public meetings, June 10–12, 1986 at Fort Christiansvaern, at Christiansted, St. Croix, U.S. Virgin Islands, as follows:

Council—will convene its 56th regular public meeting, June 11, 1986, at 9 a.m., adjourn at 5 p.m., reconvene June 12 at 9 a.m., and adjourn at noon, to consider fishery management plans under development, and other technical and administrative matters related to Council operations.

Administrative Subcommittee—will convene June 10 at 2 p.m. and adjourn at 5 p.m., to discuss issues related to its regular administrative operations.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: (809) 763–4928.

Dated: May 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86–11672 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Permit Review and Domestic Annual Processing (DAP) Estimating Committees will convene separate public meetings, June 5–6, 1986, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, Room 2079, Seattle, WA, as follows:

Permit Review Committee—will convene June 5 at 9 a.m., to review the Council's current joint venture policy and discuss the need for company limits on both bycatch and target species and develop recommendations for Council review in late June.

DAP Estimating Committee—will convene June 6 at 1 p.m. The DAP Estimating Committee was established to develop ways to improve the DAP reporting system from industry. At this first meeting, the Committee will receive a report from the NMFS on their progress in developing ways to obtain more reliable DAP estimates. The Committee also may draft alternatives for public review.

For further information contact Clarence Pautzke, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: May 20, 1986.

Richard B. Roe,

Director Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86–11673 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Additions to Procurement List 1986

SUMMARY: This action adds to Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 23, 1986.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Addition to the Procurement list of the commodity and services listed below was published in the Federal Register on February 18, March 14, and March 28, 1986 (51 FR 5753, 51 FR 8868, and 51 FR 10651). One comment was received in response to the notice proposing the addition to the Procurement List of Janitorial/Custodial, Jacob K. Javits Federal Building including U.S. Court of International Trade, 26 Federal Plaza and Centre Street Garage, 203–209 Centre Street, New York, New York. The commentor indicated that his firm is minority owned and employs disadvantaged individuals in the New York area. He stated that the service should be set-aside for contracting under the SBA 8(a) program. This service is currently performed by Federal employees and has not been contracted for. The Committee considered the comment received and determined that the addition of this service to the Procurement List would not cause severe impact.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities and services listed.

c. The action will result in authorizing small entities to produce the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1986:

Commodities

Enamel

8010–00–067–5436
8010–00–067–5437
8010–00–079–2750
8010–00–079–2752
8010–01–303–7803
8010–01–303–7804
8010–00–079–3750
8010–00–079–3752

8010-00-079-3758
8010-00-079-3759
8010-00-079-3758
8010-00-079-3709
8010-00-079-3782
8010-00-079-3784

Services

Elevator Operation Service, Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania
Janitorial/Custodial, Jacob K. Javits Federal Building, including U.S. Court of International Trade, 26 Federal Plaza and Centre Street Garage, 203–209 Centre Street, New York, New York
Operation of Postal Service Center Minot Air Force Base, North Dakota.

E. R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 86-11681 Filed 5-22-86; 8:45 am]
BILLING CODE 6820-33-M

Proposed Additions to Procurement List 1986

SUMMARY: The Committee has received proposals to add to Procurement List 1986 a commodity to be produced by and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: June 25, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1986, October 15, 1985 (50 FR 41689):

Commodity

Handkerchief, Man's
8440-00-201-4246

Services

Commissary Shelf Stocking, Naval Air Station, Pensacola, Florida
Rehabilitation of Recorder Covers (Requirements of U.S. Geological Survey, Bay St. Louis, Mississippi only).

E. R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 86-11642 Filed 5-22-86; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Industrial Security Inspection Report; DD Form 695

The Defense Investigative Service (DIS) uses the Inspection Report to assist in arriving at a determination that DoD contractors participating in the Defense Industrial Security Program are adequately safeguarding classified information. The report is completed in its entirety by DoD industrial security representatives at their official duty stations to reflect results of individual inspection of contractor's security programs.

Contractor facilities inspection.
Responses 13,600.
Burden Hours 100,918.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Richard A. Brushwood, DIS Industrial Security Programs Division, Room 5338, 1900 Half St., SW., Washington, DC 20324–1700, telephone (202) 475–0906.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

[FR Doc. 86-11697 Filed 5-22-86; 8:45 am]
BILLING CODE 3810-01-M

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Arms, Ammunition, and Explosives (AA&E) Inspection/Survey Report; DIS Form 90

The Defense Investigative Service (DIS) uses the Inspection/Survey Report to assess DoD contractor compliance with the physical security requirements of contracts involving AA&E. The report is completed onsite at Defense contractor plants by DIS industrial security representatives. Information obtained identifies contract security compliance problems which require resolution or military department attention.

Contractors facilities inspected by DIS.
Responses 200.
Burden Hours 200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Everett S. Johnson, Jr., DIS Industrial Facilities Protection Programs Division, Room 5333, 1900 Half Street, SW., Washington, DC 20324–1700, telephone (202) 475–0906.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1988.

[FR Doc. 88–11668 Filed 5–22–88; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal my be obtained.

Extension

Significant AA&E Incident Report; DIS Form 91

The Defense Investigative Service (DIS) uses the Significant AA&E Incident Report to record significant incidents pertaining to the loss, theft, and recovery of conventional AA&E at Defense contract facilities. The reports completed by DIS Industrial Security Representatives after telephonic notification of such incidents by contractors possessing AA&E. Information obtained provides a basis for evaluating adequacy of contractor physical security systems.

Contractors facilities eligible to report incidents.

Responses 200.

Burden Hours 200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Everett S. Johnson, Jr., DIS Industrial Facilities Protection Programs Division, Room 5333, 1900 Half Street, SW., Washington, DC 20324–1700, telephone (202) 475–0906.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1988.

[FR Doc. 88–11731 Filed 5–22–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Air Force (DAF), DoD.

ACTION: Notice of deletion and amendment of Air Force Systems of Records Notices.

SUMMARY: The Air Force proposes to delete 2 systems of records notices, amend 7 and add 1. Changes are summarized below and the rewritten notices follow in their entirety. The added system was formerly published by the Department of the Army as system A0708.16USREDCOM at 50 FR 22180, May 29, 1985. The added notice is being republished here due to the transfer of support responsibility for the US Readiness Command to the Department of the Air Force.

EFFECTIVE DATE: The deletions are effective immediately May 20, 1988 and the amendments shall be effective without further notice June 23, 1988, unless public comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAQD(S), the Pentagon, Washington, DC 20330–5024, telephone: 202/694–3431.

SUPPLEMENTARY INFORMATION: The Air Force systems of records inventory subject to the Privacy Act of 1974, Title 5, United States Code, Section 552a (Pub. L. 93–579; 44 Stat. 1898 *et seq.*) has been published in the Federal Register as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985
FR Doc. 85–14122 (50 FR 24672) June 12, 1985
FR Doc. 85–15062 (50 FR 25737) June 21, 1985
FR Doc. 85–26775 (50 FR 40477) November 8, 1985
FR Doc. 85–29261 (50 FR 50337) December 10, 1985
FR Doc. 86–2527 (51 FR 4531) February 5, 1986
FR Doc. 86–4546 (51 FR 7371) March 3, 1986
FR Doc. 86–10044 (51 FR 16735) May 6, 1986.

None of the proposed changes or the added system require a report as mandated by 5 U.S.C. 552a(o). The added system does not duplicate any now in use within the Department of the Air Force.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1988.

DELETIONS

F010 MAC A

System Name:

Correspondence, Message, Project Files (Civil Reserve Air Fleet (50 FR 22337) May 29, 1985.

Reason:

This system has been discontinued.

F030 TAC A

System Name:

Base Automated Mobility System (BAMS) Personnel Extract Tape (50 FR 22371) May 29, 1985.

Reason:

This system has been replaced by F030 AF MP D, Contingency Operations System (COMPES) (50 FR 22360). May 29, 1985.

AMENDMENTS

F030 AF MP A

System Name:

Personnel Data System (50 FR 22350) May 29, 1985.

Changes:

Categories of individuals covered by the system:

Delete "nonappropriated fund employees," and add at end, "DOD contractors and foreign military personnel on liaison or support duty."

F035 AF MP C

System Name:

Military Personnel Records System (50 FR 22373) May 29, 1985.

Change:

Routine uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Add, "Used by the Veterans Administration for research."

F045 MPC A

System Name:

Educational Delay Board Findings (50 FR 22438) May 29, 1985.

Authority for Maintenance of the System:

Change to, "10 USC 2108, Advanced standing; interruption of Training; delay in starting obligated service; release from program, and 50 Appendix USC 456, Deferments and exemptions from training and service."

F125 AF SP K

System Name:

Vehicle Administration Records (50 FR 22501) May 29, 1985

Change:

Purpose(s):

Add at end, "Note: In the State of Alaska, the system is also used to ensure that individuals comply with state law on the Alaskan Emission Inspection Program."

F160 DODMERB A

System Name:

Department of Defense Medical Examination Review Board Medical Examination Files (50 FR 49485) May 29, 1985.

Changes:

System Location:

Add, "and Camp Hill PA."

Categories of Individuals Covered by the System:

Change to read, "All applicants to the five service Academies; the Four Year Reserve Officer Training Corps (ROTC) Scholarship Program; Uniform Services University of the Health Sciences (USUHS); Army, Navy, Air Force College Scholarship Program (CSP)."

Categories of Records in the System:

Change to read, "Report of the Medical Examination, Report of Medical History, Report of Dental Examination, to include dental x-rays and any associated civilian forms or medical tests that have been accomplished; may also contain personal correspondence between DODMERB and the applicant, parents/guardian concerning the applicant's medical history or qualification status."

Purpose(s):

Change to read, "The medical examination in computer form is used to determine medical acceptability for one or more of the five service academies or the ROTC, USUHS, CSP for the Air Force, and/or POC Program for Air Force ROTC. The computer also produces products to advise each program manager of initial medical status and all update actions on the applicant."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Add, "Medical consultation may be necessary with parent/legal guardians to clarify/explain applicant's medical status. Examinations may be released to civilian contract agents of the government and private physicians associated with medically certifying applicants for military service."

Storage:

Change to read, "Stored in computer and electronic digital imaging system."

F215 AFA A

System Name:

Library Authorized Patron File (50 FR 22556) May 29, 1985.

Changes:

Categories of Records in the System:

Change to read, "Social Security Number, name, library card number, base and/or home address, privilege code, statistical code, base organizational affiliation code, telephone number(s), expiration date, number of cards issued, service code (if appropriate), graduate school code (if appropriate) for special borrowers, and difsiv training code (if appropriate)."

Purpose(s):

Change, "Library," to "Library and Visual Information Services."

Retention and Disposal:

Add, "Paper forms are destroyed when no longer needed."

F900 TAC A

System Name:

Special Awards File (50 FR 22562) May 29, 1985.

Changes:

System Manager(s) and Address:

Change "Director of Personnel" to "Deputy Chief of Staff, Personnel."

ADDITIONS

F030 REDCOM A

System Name:

USREDCOM Military Personnel Data File.

Reason:

Support responsibilities for the US Readiness Command have been transferred from the Department of the Army to the Department of the Air Force. This was formally Army system A0708.16 USREDCOM (50 FR 221891) May 29, 1985.

F030 REDCOM A

SYSTEM NAME:

030 REDCOM A USREDCOM Military Personnel Data File.

SYSTEM LOCATION:

US Readiness Command, MacDill AFB FL 33608-8001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Marine Corps, and Air Force personnel assigned for duty with USREDCOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, SSN, rank, pay grade, date of rank, branch of service, basic pay entry date, date of birth, organization and division, alert status-joint task force, immunization dates, weapons qualification, primary and secondary military specialty, duty MOS/AFSC, marital status, officer evaluation report/enlisted efficiency report date, reserve regular status, duty telephone number, home address and telephone number, date arrived at USREDCOM, projected loss date, expiration term of service, foreign service availability code, human personal reliability screening date, language proficiency, enlisted evaluation report weighted average, name of OER/EER rater, duty title, permanent grade, date of rank, rated category, highest professional military and civilian education, source of commission, mandatory retirement date (officers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

To maintain a consolidated joint personnel file on personnel assigned to the USREDCOM. Although each service has its own personnel system, USREDCOM requires basic data for Command Manning Rosters, Joint Task Force Deployment Rosters, and similar management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Department of the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On-line disk storage backed up by magnetic tape.

RETRIEVABILITY:

Data is retrieved by SSN.

SAFEGUARDS:

All personnel who maintain the system are cleared for Top Secret. Access to the data is controlled by system software. Outputs are labeled.

RETENTION AND DISPOSAL:

Records are deleted when individuals depart USREDCOM.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Readiness Command, MacDill AFB FL 33608-6001.

NOTIFICATION PROCEDURE:

Individuals wishing to know if the system contains information on them may write the system manager, ATTN: Directorate of Personnel, JI (ATTN: RCJi–MP). Individuals must furnish full name, SSN, current address and telephone number, and a signature.

RECORD ACCESS PROCEDURES:

Individual may obtain assistance by writing the address and providing the information listed under Notification procedure.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information is obtained from military personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Amended Systems

F030 AF MP A

SYSTEM NAME:

030 AF MP A Personnel Data System (PDS).

SYSTEM LOCATION:

Headquarters United States Air Force, Washington, DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150. Air Reserve Personnel Center, Denver, CO 80280. Headquarters of major commands and separate operating agencies and consolidated base personnel offices, central civilian personnel offices (CCPOs) and consolidated reserve personnel offices. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty and retired military personnel. Air Force Reserve and Air National Guard personnel. Air Force Academy cadets. Air Force Civilian employees. Certain surviving dependents of deceased members of the US Air Force and predecessor organizations; potential Air Force enlistees; candidates for commission enrolled in college level Air Force Reserve Officer Training Corps Programs; Deceased members of the Air Force and predecessor organizations; Separated members of the US Air Force, the Air National Guard (ANG) and Air Force Reserve (USAFR); ANG and USAFR Technicians; Prospective, pending, current, and former Air Force civilian employees, except Air National Guard Technicians-current and former civilian employees from other Governmental agencies that are serviced at CCPOs may be included at the option of servicing CCPO: DOD contractors and foreign military personnel on liasion or support duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

The principal digital record maintained at each PDS operating level is the master personnel record, which contains the following categories of information: 1. Accession data pertaining to an individual's entry into the Air Force (place of enlistment source of commission, home of record, date of enlistment, place from which ordered to EAD). 2. Education and training data, describing the level and type of education and training, civilian or military (academic education level, major academic specialty, professional specialty courses completed, professional military education received). 3. Utilization data used in assigning and reassigning the individual, determining skill qualifications, awarding Air Force Specialty Codes, determining duty location and job assignment, screening/selecting individual for overseas assignment, performing strength accounting processes, etc. (Primary Air Force Specialty code, Duty and Control Air Force Specialty Code, personnel accounting symbol, duty location, up to 24 previous duty assignments, aeronautical rating, date departed last duty station, short tour return date, reserve section, current/last oversea tour). 4. Evaluation Data on members of the Air Force during their career (Office Effectiveness Report dates and ratings, Airman Performance Report dates and ratings, result of various qualification tests, an "Unfavorable Information" indicator, and Drug and Alcohol Abuse data). 5. Promotion Data including promotion history, current grade and/or selection for promotion (current grade, date of rank and effective date; up to 10 previous grades, dates of rank and effective dates; projected temporary grade, key "service dates"). 6. Compensation data—although PDS does not deal directly with paying Air Force members, military pay is largely predicated on personnel data maintained in PDS and provided to the Air Force Accounting and Finance Center (AFAFC) as described in ROUTINE USES below (pay date, Aviation Service Code, sex, grade, proficiency pay status. 7. Sustentation data—information dealing with programs provided or actions taken to improve the life, personal growth and moral of Air Force members (awards and decorations, marital status, number of dependents, religious denomination of member and spouse, race relations education). 8. Separation and retirements data, which identifies an individual's eligibility for and reason for separation (date of separation, mandatory retirement date, projected or actual separation program designator and character of discharge). At the central processing site (AFMPC), other subsidiary files or processes are operated which are integral parts of PDS: 1. Procurement Management Information System (PROMIS) is an automated system designed to enable the USAF to exercise effective management and control of the personnel procurement personnel required to meet the total scheduled

manpower requirements necessary to accomplish the Air Force mission. The system provides the recruiter with job requirement data such as necessary test scores, Air Force Specialty Code, sex, date of enlistment, and the recruiter enters personal data on the applicant—SSN, name, date of birth, etc.—to reserve the job for him or her. 2. Career Airman Reenlistment Reservation System (CAREERS) is a selective reenlistment process that manages and controls the numbers by skill of first-term airmen that can enter the career force to meet established objectives for accomplishing the Air Force mission. A Centralized data bank contains the actual number, by quarter, for each Air Force Specialty Code (AFSC) that can be allowed to reenlist during that period. The individual requests reenlistment by stating his eligibility (AFSC, grade, active military service time, etc.). If a vacancy exists, a reservation—by name, SSN, etc.—will be made and issued to the CBPO processing the reenlistment. 3. Airman Accessions provides the process to capture a new enlistee's initial personal data (entire personnel record) to establish a personnel data record and gain it to the Master Personnel File of the Air Force. The initial record data is captured through the established interface with the Processing and Classification of Enlistees System (PACE) at Basic Military Training, Lackland Air Force Base, for non-prior service; for prior service enlistees the basic data (name, SSN, DOE, grade, etc.) is input directly by USAF Recruiting Service and updated and completed by the initial gaining CBPO. 4. Officer Accessions is the process whereby each of the various Air Force sources of commissioning (AF Academy, AFROTC, Officer Training School, etc.) project their graduates in advance allowing management to select by skill, academic specialty, etc. which and how many will be called to active duty when, by entering into the record an initial assignment and projected entry onto Active Duty date. On that date the individual's record is accessed to the active Master Personnel File of the Air Force. 5. Technical Training Management Information System (TRAMIS) is a system dealing with the Technical Training activities controlled by Air Training Command. The purpose of the system is to integrate the training program, quota control and student accounting into the personnel data system. TRAMIS consists of numerous files which constitute "quota banks" of available training spaces, in specific courses, projected for future use based on estimated training requirements. Files include such data as: Course Identification Numbers, Class Start and Graduation Dates, Length of Training, Weapon System Identification, Training Priority Designators, Responsible Training Centers, Trainee Names, SSN (and other pertinent personnel data) on individuals scheduled to attend classes. 6. Training Pipeline Management Information System (TRAPMIS) is an automated quota allocating system which deals with specialized combat aircrew training and aircrew survival training. Its files constitute a "quota bank" against which training requirements are matched and satisfied and through which trainees are scheduled in "pipeline" fashion to accommodate the individual's scheduled geographical movement from school to school to end assignment. Files contain data concerning the courses monitored as well as names, SSNs and other pertinent personnel data on members being trained. 7. Air Force Institute of Technology (AFIT) Quota Bank File reflects program quotas by academic specialty for each fiscal year (current plus two future fiscal years, plus the past fiscal year programs for historical purposes). Also, this file reflects the total number of quotas for each academic specialty. Officer assignment transactions process against the AFIT Quota Bank file to reflect the fill of AFIT Quotas. Examples of data maintained are: Academic Specialty, Program Level, Fiscal Year, Name of Incumbent selected, projected, filling AFIT Quota. 8. Job File is derived from the Authorization Record and is accessible by Position Number. Resource managers can use the Job File to validate authorizations by Position Number for assignment actions and also to make job offers to individual officers. Internal suspensing within the Job File occurs based upon Resource Managers update transactions. Data in the file includes: Position Number, Duty AFSC, Functional Account Code, Program Element, Location, and name of incumbent. 9. Casualty subsystem is composed of transactions which may be input at Headquarters Air Force and/or CBPOs to report death or serious illness of members from all components. A special file is maintained in the system to record information on individuals who have died. Basic identification data and unique data such as country of occurrence, date of incident, casualty group, aircraft involved in the incident and military status are recorded and maintained in this file. 10. Awards/Decorations are recorded and maintained on all component personnel in the headquarters Air Force master files: All approved decorations are input at CBPOs whereas disapproved decorations are input at MAJCOM/HAF. A decorations statistical file is built at AFMPC which reflects an aggregation of approvals/disapprovals by category of decoration. This file does not contain any individually identifiable data. All individually identifiable data on decorations is maintained in the Master Personnel File. Such information as the type of decoration, awarding authority, special order number and date of award are identified in an individual's record. Seven occurrences for all decorations are stored; however only specific data on the last decoration of a particular type is maintained. 11. Point Credit Accounting and Reporting System (PCARS). This system is an Air National Guard/Air Force Reserve Unique supported by PDS. Its basic purpose is to maintain and account for retirement/retention points accrued as a result of participating in Drills/Training. The system stores basic personal identification data which is associated with a calendar of points, earned by participation in the Reserve program. Each year an individual's record is closed and point totals are accumulated in history, and a point earning statement is provided the individual and various records custodians. 12. Human Reliability/Personnel Reliability File: This file is maintained at Headquarters Air Force in support of Air Force Regulation 35–99. It is not part of the Master Personnel Files but a free standing file which is updated by transactions from CBPOs. The file was established to specifically identify individuals who have become permanently disqualified under the provisions of the above regulations. A record is maintained on each disqualified individual which includes basic identification data, service component, Personnel/Human reliability status and date, and reason for disqualification. 13. Variable Incentive Pay (VIP) File for medical officers: Contains about 125 character record on all Air Force physicians and is specifically used to identify whether the individual is participating in the Continuation Pay or Variable Incentive Pay programs. Update to this file is provided by the Surgeon (AFMPC), the Air Force Accounting and Finance Center and directly from changes to the Master Personnel File. Besides basic identification data an individual's record includes source of appointment, graduate medical location status, amount of VIP or Continuation Pay and the dates of authorization and the dates and reason for separation. 15. Weighted

Airman Promotion System: (a) The Test Scoring and Reporting Subsystem (TSRS) provides for: Identifying at the CBPO individuals eligible for testing; providing output to the Base Test Control Officer and the CBPO to control, monitor, and operate WAPS testing functions; editing and scoring WAPS test answer cards at AFMPC; providing output for maintaining historical and analytical files at AFMPC and the Human Resources Laboratory (HRL) and includes the central identification at AFMPC of individuals eligible for testing. (b) The Personnel Data Reporting Subsystem (PDRS) provides for: Identifying promotion eligibles at AFMPC; verifying these eligibles and selection promotion data; merging test and weighted promotion data at AFMPC to effect promotion scoring, assigning the promon objective and aligning selectees in promotion priority sequence; maintaining projections on promotion selectees at AFMPC, MAJCOM, and the CBPO; updating these projections monthly; creating output products to monitor the flow of data in the system; maintaining promotion historical and analytical files and reports at AFMPC. (c) Basically, identification data along with time in grade, test scores, decoration information, time in service, and airman performance report history is used to support this program. 16. Retired Personnel Data System (RPDS) is made up of four files—Retired Officer Management File and Retired Airman Management File containing records on members in retired status and the Retired Officer and Airman Loss Files containing records on former retirees who have been lost from rolls, usually through death. The RPDS is used to produce address listings for the Retired Newsletter and Policy letter, statistical reports for budgeting, to manage the Advancement Program, the Temporary Disability Retired List, Age 59 rosters for ARPC, General Officer roster, and statistical digest data for management analysis functions. Data is extracted from the master files upon retirement from Active Duty or Reserves. Data includes: name, SSN, grade data, service data, education data, retirement data and address. 17. Separated Officer File contains historical information on officers who leave the Air Force via separation, retirement, or death. Copies are sent to Human Resources Lab and Washington offices for research purposes. The data comprises the Master Personnel Record in its entirety and is captured 30 to 60 days after separation from the Air Force. 18. Airman Gain/loss File includes data extracted from the Airman Master file when accession and separation (gains and losses) occur. This file, like the Separated Officer File, is used for historical reports regarding strength changes. Data includes name, SSN, and other data, that reflects strength, i.e., promotions, reassignment data, specialty codes, etc. 19. Officer and Airman Separation Subsystem is used to process, track, approve, disapprove and project separations from the Air Force and transfers between components of the Air Force. This subsystem uses the Active, Guard, and Reserve MPFs. Data includes that specifically related to separations, e.g., Data of Separation, Separation Program Designator, waivers, etc. 20. The Retirements Subsystem is used to process and track applications for and approval/disapproval and projections of retirements. This subsystem uses the Master Files for Active Duty and Reserve officers and airmen. Data specifically related to retirements includes application data, date of separation, waiver codes, disapproval reason codes, Separation Program Designator, Title 10 U.S.C. section, etc. 21. Retired Orders Log is a computer produced retirement orders routine. Orders are automatically produced when approval, verification of service dates, and physical clearance have been entered in system. The orders log contains data found in administrative orders for retirement, including name, SSN, grade, order number, effective dates, etc. The log is used to control assignment of order number, and as a cross-reference between orders, revocations, and amendments. 22. General Officer Subsystem of PDS contains data extracted from the Master Personnel File and language qualification data and assignment hisory data maintained by the Assistant for General Officer matters. A record is maintained on each general officer and general officer selectee. The general officer files are updated monthly and is used to produce products used in the selection/identification of general officers for applicable assignments. 23. Officer Structure Simulation Model (OSSM) provides officer force descriptions in various formats for existing, predictive or manipulated structures. It functions as a planning tool against which policy options can be applied so as to determine the impact of such policy decisions. The OSSM input records contain individual identification data from the Master Personnel Record, but all output is statistical. 24. Widow's File is maintained on magnetic tape and updated by the office of primary Responsibility. When required, address lables and listings are produced by employing selected PDS utility programs. The address labels are used to forward the Retired Newsletter to widows of active duty and retired personnel. The listings are used for management control of the program. Contained in the file are the name, address, and SSN of the widow. Additionally, the deceased sponsor's name, SSN, date of death, and status at time of death are maintained. 25. Historical Files are files with a retention period of 365 days or more. They consist of copies of active master files, and are used primarily for aggregation and analysis of statistical data, although individual records may be accessed to meet ad hoc requirements. 26. Miscellaneous files, records, and processes are a number of work files, inactive files with a less-than-365 day retention period, intermediate records, and processes relating to statistical compilations computer operation, quality control and problem diagnosis. Although they may contain individual-identifying data, they do so only as a function of system operation, and are not used in making decisions about people. 27. Civilian employment information including authorization for position, personnel data, suspense information; position control information; projected information and historical information; civilian education and training data; performance appraisal, ratings, evaluations of potential; civilian historical files covering job experience, training and transactions; civilian awards information; merit promotion plan work files; career programs files for such functional areas as procurement, logistics, civilian personnel, etc., civilian separation and retirement data for reports and to determine eligibility; adverse and disciplinary data for statistical analysis and employee assistance; stand alone files, as for complaints, enrollee programs; extract files from which to produce statistical reports in hard copy, or for immediate access display on remote computer terminals; miscellaneous files, as described in item 26, above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 265, policies and regulations: Participation of reserve officers in preparation and administration; 269, Ready reserve: Placement in; transfer from; 275, Personnel records; 278, Dissemination of information; 279, Training Reports; Chapter 31, Enlistments; 564, Warrant officers: effect

of second failure of promotion; 555, Commissioned officers: appointment, how made; term; 651, Members: Required service; 671, Members not to be assigned outside US before completing training; 673, Ready reserve; Chapter 47, Uniform Code of Military Justice, Sections 835, Art. 35. Service of Charges, 837, Art. 37. Unlawfully influencing action of court; 885, Art. 85. Desertion; 886, Art. 86. Absence without leave; 887, Art. 87. Missing movement; 972, Enlisted members: Required to make up time lost; 1005, Commissioned officers: Retention until completion of required service; 1163, Reserve components: Members; limitations on separation; 1164, Warrant officers; separation for age; 1166, Regular warrant officers: Elimination for unfitness or unsatisfactory performance; Chapter 61, Retirement—Physical disability; Chapter 63, Retirement for Age, Section 1263—Age 62: Warrant officers; Chapter 65, Retirement for Length of Service; 1293, Twenty years or more: warrant officers; 1305, Thirty years or more: Regular warrant officers; Chapter 67, Retired pay; 1331, Computation of years of service in determining entitlement to retired pay; 1332, Age and service requirements; 1333, Computation of years of service in computing retired pay; Chapter 79, Correction of Military Records; Chapter 165, Accountability and responsibility, Section 2771, Final settlement of accounts: Deceased members; 9012, Secretary of the Air force: powers and duties; delegation by; Chapter 805, The Air Staff, Sections 8032, General duties; and Section 8033, Reserve components of Air Force; policies and regulations for government for government of: Functions of National Guard Bureau with respect to Air National Guard; Chapter 831, Strength, Section 8224, Air National Guard of the United States; Chapter 833, Enlistments; 835, Appointments in the Regular Air Force, 8284, Commissioned officers: appointment, how made; 8285, Commissioned officers: Original appointment; qualifications; 8296, Promotion lists: Promotion-list officer defined; determination of place upon transfer or promotion; 8297, Selection boards; 8303, commissioned officers: Effect of failure of promotion to captain, major, or lieutenant colonel; Chapter 837, Appointments as Reserve Officers; 8360, Commissioned officers: Promotion service; 8362, Commissioned officers: selection boards; 8363, Commissioned officers: Selection boards; general procedures; 8366, Commissioned officers: Promotion to captain, major or lieutenant colonel; 8376, Commissioned officers: promotion when serving in temporary grade higher than reserve grade: Chapter 839, Temporary Appointments, 8442, Commissioned officers; regular and reserve components: Appointment in higher grade; 8447, Appointments in commissioned grade: How made; how terminated; Chapter 841, Active Duty, 8485, Air National Guard of United States Commissioned officers; duty in National Guard Bureau; Chapter 853, Rights and benefits, Section 8691, Flying officer rating: Qualifications; Chapter 857, Decorations and Awards; Chapter 859, Separation, 8796, Officer considerd for removal: Voluntary retirement or honorable discharge; severance benefits; 8796, Officers considered for removal: Retirement or discharge; Seperation or Transfer to Retired Reserve, 8840, Deferred Officers; 8848, 25 years: Reserve first lieutenants, captains, majors, and lieutenant colonels; 8851, Thirty years or five years in grade: reserve colonels and brigadier generals; 8852, Thirty-five years or five years in grade: Reserve major generals; 8853, Computation of years of service; Chapter 865, Retirement for Age, 8883, Age 60; regular commissioned officers below major general; 8884, Age 60: Regular major generals whose retirement has been deferred; 8885, Age 62: Regular major generals; 8886, regular major generals whose retirement has been deferred; Chapter 867, Retirement for Length of Service, 8911, Twenty years or more; regular or reserve commissioned officers; 8913, Twenty years or more: Deferred officers not recommended for promotion; 8914, twenty to thirty years: regular enlisted members; 8915, Twenty-five years: Female majors except those designated under section 8067(a)–(d) or (g)–(i) of this title; 8916, twenty-eight years: Promotion-list lieutenant colonels; 8917, Thirty years or more: Regular enlisted members; 8918, Thirty years or more: Regular commissioned officers; 8921, Thirty years or five years in grade: Promotion-list colonels; 8922, Thirty years or five years in grade: regular brigadier generals; 8923, Thirty-five years or five years in grade: Regular major generals; 8924, Forty years or more: Air Force officers; Chapter 901, Training generally, 9301, Members of Air Force: Detail as students, observers and investigators at educational institutions, industrial plants, and hospitals; and 9302, Enlisted members of Air Force: Schools; Chapter 903, United States Air Force Academy, 9342, Cadet: Appointment; numbers, territorial distribution; 9344, Selection of persons from Canada and American Republics; 9345, Selection of Filipinos; Chapter 1, Organization, 102, General policy; and 104, units: Location; organization; command; Chapter 3, Personnel, 307, Federal recognition of officers: Examination, certification of eligibility; Chapter 7, Services, supplies, etc., 708, Caretakers and clerks; Chapter 3, Basic Pay, 308, Special pay: Reenlistment bonus; 313, Special pay: Medical officers who execute active duty agreements; Chapter 7, Allowances, 407, Travel and transportation allowances: Dislocation allowance; Chapter 10; Air Force Manual 30-3, Vol I–V, Mechanized Personnel Procedures, Air Force Manual 30-130, Base Level Military Personnel System, and Air Force Manual 300-4, Standard Data Elements and Codes.

PURPOSE(S):

The Air Force operates a centralized personnel management system in an environment that is widely dispersed geographically and encompasses a population that is diverse in terms of qualifications, experience, military status and needs. There are three major centers of Air Force personnel management: Washington, DC, where most major policy and long-range planning/programming decisions are made; the Air Force Manpower and Personnel Center at Randolph Air Force Base, TX, which performs most personnel operations-type functions for the active duty components of the force; and the Air Reserve Personnel Center at Denver Co., which performs certain operational functions for the Reserve components of the force. Offices at Major Command Headquarters, State Adjutant General, and Air Force Bases perform operational task pertaining to the population for which they are responsible. The structure of the Air Force and its personnel management system, the composition of the Force, and the Air Force's stated objective of treating its people as individuals, i.e., giving due consideration to their desires, needs and goals, demand a dynamic data system that is capable of supporting the varying needs of the personnel managers at each echelon and operating locations. It is to this purpose that the data in the Personnel Data System is collected, maintained, and used. A. *Routine uses within the Air Force—Internal to the Personnel Community: HQ USAF, Washington, DC:* Deputy Chief of Staff, Personnel and his immediate staff; Director of Personnel Plans; Director of Personal Programs; Assistant for General Officer Matters; Assistant for Colonel Assignments; Reserve Personnel Division; Air National Guard Personnel

Division; and The Surgeon General, the Chief of AF Chaplains and the Staff Judge Advocate, each of which perform certain Personnel functions within their area of responsibility. Data from the central data base at the AFMPC is furnished Washington area agencies by retrieval from the computer at Randolph via remote access devices and by provision of recurring products containing required management information, including computer tape files which are used as input to unique systems with which PDS interfaces. Although most of the data is used by policy makers to develop long-term plans and programs and tack progress toward established goals, some individual data is provided/retrieved to support actions taken on certain categories of persons managed by offices in the headquarters e.g., General Officers, Colonels, Air National Guard personnel, etc. *Air Force Manpower and Personnel center (AFMPC), Randolph Air Force Base, TX.* Personnel managers at AFMPC use the data in PDS to make decisions on individual actions to be taken in areas such as personnel procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, casualty and personal affairs, separation and retirement. *Air Reserve Personnel Center (ARPC), Denver, Colorado.* Personnel managers at ARPC perform many of the same functions for the Reserve components of the Air Force as the managers at AFMPC perform for the active duty force. As with the Washington area, ARPC obtains data from the central data base at AFMPC by retrieval through remote terminals and recurring output products containing information necessary to their management processes. *Major Command Headquarters.* Major command headquarters personnel operations are supported by the standard content of PDS records provided them by AFMPC. In addition, there is provided in the PDS record an "add-on area" which the commands are authorized to use for the storage of data which will assist them in fulfilling unique personnel management requirements generated by their mission, structure, geographical location, etc. The standard functions performed fall generally under the same classifications as those in AFMPC, e.g. assignment, classification, separation, etc. Non-standard usages include provisions of unique aircrew data, production of specially-tailored name listing, control of threatre oriented training, etc. Some commands use PDS data—both standard and add-on as input to unique command systems, which are separately described in the **Federal Register**. *Consolidated Base Personnel Offices (CBPO).* CBPOs, which represent the base-level aspect of PDS, are the prime point of system-to-people interface. Supplied with a standard data base and system, CBPOs provide personnel management support to commanders and supervisors on a daily basis. Acting on receipt of data from higher headquarters, primarily by means of transactions processed through PDS, they notify people of selection for reassignment, promotion, approval/disapproval of requests for separation and retirement, and similar personnel actions. When certain events occur on an individual at the local level, e.g., volunteer for overseas duty, reduction in grade, change in marital status, application for retirement, etc., the CBPO enters transactions into the vertical system to transmit the requisite information to other management levels and update the automated records resident at those levels. CBPOs too are allotted an "add-on" area in the computer record which they use to support local management unique requirements such as local training scheduling, unique locator listing, urinalysis testing scheduling, etc. B. *Routine uses within the Air Force—External to the Personnel Community 1. Headquarters USAF/AFMPC Interfaces:* Automated interfaces exist between the PDS cental site files and the following systems of other functions: a. The Flight Records Data System (FRDS) maintained by the Air Force Inspection and Safety Center (AFISC) at Norton Air Force Base, CA. (1) Certain personnel identification data on rated officers is transferred monthly to the FRDS. This data flow creates the basic identifying data in the FRDS, insurers compatibility with the PDS, and precludes duplicative data collection and input generation by the AFISC. (2) Update of the personnel data to the FRDS generates return flow of flying hour data which is used at AFMPC for rated resource distribution management. b. The Master Military Pay Account (MMPA), is the Joint Uniform Military Pay System (JUMPS) centralized pay file maintained by the Air Force Accounting and Finance Center (AFAFC) at Denver, CO. The PDS transfers certain pay related data as changes occur to update the MMPA, e.g., promotions, accessions, separations/retirements, name, SSN, grade. These data provide criteria for the AFAFC to determine specific pay entitlements. c. The AFAFC maintains a separate pay system for Air National Guard and Air Force Reserve personnel called the Air Reserve Pay and Allowances System (ARPAS). (1) PDS outputs certain pay related data to ARPAS as changes occur, e.g., retirements/ separations, promotions, name, SSN, grade. These data form the criteria for the AFAFC to determine specific Reserve pay entitlements. (2) ARPAS outputs data which affect accumulated point credits for Air National Guard/ Reserve participation to AFMPC for update of the Point Credit Accounting and Reporting System (PCARS), a component of PDS. PCARS also receives monthly input from Hq Air University which updates point credits as a result of completing an Extension Courses Institute correspondence program. d. AFAFC provides data on Variable Incentive Pay (VIP) for Medical Officers which is used to update a special control file within PDS and produce necessary reports for management of the VIP program. e. Air Training Command operates a system called PACE (Processing and Classification of Enlistees) at Lackland Air Force Base, TX. From that system data is fed to AFMPC to initially establish the PDS record on an Air Force enlistee. f. On a monthly basis, copies of the PDS master Personnel File are provided to the Human Resources Laboratory at Brooks Air Force Base, TX, where they are used as a statistical data base for research purposes. g. On a quarterly basis, AFMPC provides the USAF School of Aerospace Medicine with data concerning name, SSN and changes in base and command of assignment of flying personnel. The data reflects significant medical problems in the flying population. h. A complete printout of PDS data pertaining to an individual is included in his Master Personnel Record when it is forwarded to National Personnel Records Center. i. PDS data is provided to the Contingency Planning Support Capability (CPSC) at six major command headquarters: Tactical Air Command, Strategic Air Command, Military Airlift Command, Air Force Communications Command, United States Air Forces, Europe, and Pacific Air Forces. A record identifiable by individual's name and SSN provides contingency and/or mannning assistance temporary duty (TDY) being performed by the individual. Record is destroyed upon completion of the TDY. Statistical records (gross statistics by skill and unit) are also generated for CPSC from PDS providing force availability estimates. CPSC is described separately in the **Federal Register**. 2. *Base Level (CBPO) Interfaces:* Certain interfaces have been established at base level to pass data

from one functional system to another. The particular mode of interface depends on the needs of the receiving function and the capabilities of the system to produce the necessary data: a. The Flight Management Data System (FMDS) receives an automated flow of selected personnel data on flying personnel as changes occur. This data consists primarily of assignment data and service dates which the base flight manager uses to determine appropriate category of aviation duty which is reflected by designation of an Aviation Service Code. The FMDS outputs aviation service data as changes occur to the BLMPS. These data subsequently flow to the PDS central site files at AFMPC so it is available for resource management decisions. b. The Medical Administration Management System (MAMS), currently being developed and tested, will receive flow of selected assignment data as changes occur for personnel assigned to medical activities. MAMS will use these data to align assigned personnel with various cost accounting work centers within the medical activity and thus be able to track manpower expenditure by sub-activities. c. The Automated Vehicle Operator Record (AVOR) is being developed to support motor vehicle operator management. Approximately 115 characters of vehicle operator data will be incorporated into the BLMPS data base during FY76 for both military and civilian personnel authorized to operate government motor vehicles and selected personnel data items (basic identification data) will be authorized for access by the vehicle operator managers. d. Monthly, a magnetic tape is extracted from BLMPS containing selected assignment data on all assigned personnel. This tape is transferred to the basic Accounting and Finance Office for input into the Accounting Operations System. This system uses these data to derive aggregate base manpower cost data. e. A procedure is designed into BLMPS to output selected background data in a pre-defined printed format for personnel being administrated military justice. This output is initiated upon notification by the base legal office. The data is forwarded to the major command where it is input into the Automated Military Justice Analysis and Management System (AMJAMS). f. The BLMPS output (on a event-oriented basis) pay-affecting transactions such as certain promotions, accessions, and assignments/reassignments, to AFAFC, where the data is entered into the JUMPS. C. *Routine uses external to the Air Force, to the Office of the Secretary of Defense (OSD).* 1. Individual information is provided to offices in OSD on a recurring basis to support top-level management requirements within the Department of Defense. Examples are the DOD Recruiter File to the Assistant Secretary for Manpower and Reserve Affairs, (M&RA), a magnetic tape extract of military personnel records (RCS: DDM(SA) 1221) to M&RA, input to the Reserve Component Common Personnel Data System to M&RA, and the Post Career Data File to M&RA. 2. *To other Defense Agencies.* PDS supports other components of DOD by provision of individual data in support of programs operated by those agencies. Examples are the Selected Officer List to the Defense Intelligence Agency for use in monitoring a classified training program and the Defense System Management School (DSMS) Track Record System to DSMS for use in evaluating the performance of graduates of that institution. And extract file on Air National Guard Technicians is provided the National Guard Computer Center. 3. *Other Government-Quasi-Government Agencies.* Information used in analyzing officer/airman retention is provided RAND Corporation. Data on prior service personnel with military service obligations is forwarded to the National Security Agency. Lists of officers selected for promotion and/or appointment in the Regular Air Force are sent to the Office of the President and/or the Congress of the United States for review and confirmation. Certain other personnel information is provided these and other government agencies upon request when such data is required in the performance of official duties. Selected personnel data is provided foregin governments, US governmental agencis, and other Uniformed Services on USAF personnel assigned or attached to them for duty. Examples: The government of Canada, Federal Aviation Administration, US Army, Navy, etc.) 4. *Litigation.* 5. *Miscellaneous.* Lists of individuals selected for promotion or appointment, who are being reassigned, who die, or who are retiring are provided to unofficial publications such as the Air Force Times, along with other information of interest to the general Air Force public. Information from PDS support a world-wide locator system which responds to queries as to the location of individuals in the Air Force. Locator information pertinent to personnel on active duty may be furnished to a recognized welfare agency such as the American Red Cross or the Air Force Aid Society. For civilian personnel—to provide automated system support to Air Force officials at all levels from that part of the Office of Personnel Management required personnel management and records keeping system that pertains to evaluation, authorization and position control, position management, staffing skills inventory, career management, training, retirement, employee services, rights and bnefits, merit promotion, demotions, reductions in force, complaints resolution, labor management relations, and the suspensions and processing of personnel actions; to provide for transmission of such records between employing activities within the Department of Defense—to provide individual record and reports to OPM; to provide information required by OPM for the transfer between federal activities; to provide reports of military reserve status to other armed services for contingency planning—to obtain statistical data on the work force to fulfill internal and external report requirements and to provide Air Force offices with information needed to plan for and evaluate manpower, budget and civilian personnel programs—to provide minority group designator codes to the Office of Personnel Management's automated data file—to provide the Office of the Assistant Secretary of Defense Manpower and Reserve Affairs with data to access the effectiveness of the program for employment of women in executive level positions—to obtain listings of employees by function or area for locator and inventory purposes by Air Force offices—to assess the effect or probable impact of personnel program changes by simulation and modeling exercises—to obtain employee duty locations and other employee data for personnel program management purposes—to obtain employee duty locations and other information releasable under OPM rules and Freedom of Information Act to respond to request from Air Force offices, other Federal agencies and the public—to provide individual records to other components of the Department of Defense in the concuct of their official personnel management program responsibilities—to provide records to OPM for file reconciliation and maintenance purposes—and to provide information to employee unions as required by negotiated contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, card files, on computer magnetic tapes, disks or computer paper printouts or microfiche.

RETRIEVABILITY:

Filed by name, or Social Security Number (SSN). The primary individual record identifier in PDS is SSN. Some files are sequenced and retrieved from by other identifiers; for instance, the assignment action record is identified by an assignment action number. Additionally, at each echelon there exists computer programs to permit extraction of data from the system by constructing an inquiry containing parameters against which to match and select records. As an example, an inquiry can be written to select all Captains who are F–15 pilots, married, stationed at Randolph AFB, who possess a master's degree in Business Administration; then display name, SSN, number of dependents and duty location. There is the added capability of selecting an individual's record or certain pre-formatted information by SSN on an immediate basis using a teletype or cathode ray tube display device. High-speed line printers located in the Washington, DC, area, at Major Comm and Headquarters, and at ARPC permit the transfer of volume products to and for the use of Personnel managers at those locations.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in the performance of their official duties where authorized, and properly screened and cleared for need-to-known, and by commanders of medical centers and hospitals. Records are stored in security file containers/cabinets, safes, vaults and locked cabinets or rooms. Records are protected by guards. Records are controlled by personnel screening visitor registers and computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Preceding retention statement applies to Analog output products of the Personnel Data System. Data stored digitally within system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Files with a retention period of 364 days of less are automatically released at the end of their specified retention period. "Permanent history" files are retained for 10 years. Files 365 or more days old are defined as "historical files" and are not automatically released. Retention periods for categories of PDS files are as follows: If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be use for processing of next daily, then the retention will be not greater than 10 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be use for processing of next daily, which is also used for processing of weekly runs, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, then the retention will not be greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series or programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of quarterly runs, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of Semi-Annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is monthly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program of series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of semi-annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If created magnetic tape file will be used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, then the retention will be not greater than 365 days. If cycle is which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If the program or series of programs creating output is a one time run, and the file will be used for processing as required, then the retention will be lowest possible

retention commensurate to job completion. If the program or series of programs creating output is compile card image or SOLT tapes, and the created magnetic tape file will be used for processing as required run, then the retention will be not greater than 90 days maximum. If cycle in which a program or series of programs creating output is as required runs, and the created magnetic tape file will be used for processing as required, the retention will be lowest possible retention commensurate to job completion. If the program or series of programs creating output is test files, and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 30 days. If the program or series of programs creating output is print/punch backup and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 10 days. In addition, for civilian personnel at base level (CCPO), master personnel files for prospective employees are transfered to the active file upon appointment of the employee or in the event the employee is not appointed and will no longer be considered a candidate for appointment, are destroyed by degaussing—master personnel files for active employees are transferred to the separated employee history file where they are retained for three years subsequent to separation and then destroyed by degaussing. The notification of personnel action—Standard Form 50—is disposed of as directed by OPM—work files and records such as the employee career brief, position survey work sheet, retention register work sheet, alphabetic and Social Security Number locator files, and personnel and position control register are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning-work sheets pertaining to qualification and retention registers are disposed of as directed by OPM—transitory files such as pending files, and recovery files are destroyed after use by degaussing—files and records retrieved through general retrieval systems are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning. Those records at AF Manpower and Personnel Center for the end of each fiscal year quarter are retained for five years before destroying by deletion—the separated employee file retains employee information at time of separation for five years after which the employee's record is destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Manpower and Personnel, Headquarters United States Air Force. Subordinate System Managers are: A. Director of Personnel Data Systems, Assistant Deputy Chief of Staff for Personnel for Military Personnel, Air Force Manpower and Personnel Center (AFMPC), Randolph Air Force Base, TX, 78150. He is responsible for overall PDS design, maintenance and operation, and is designated the Automated Data Processing System Manager for all Air Force personnel data system. B. The Director of Personnel Data Systems at each Major Command headquarters for systems operated at that level. C. The Chief, CBPO, at Air Force installations for systems operated at the level. D. The Civilian Personnel officer at Air Force installations for civilian systems operated at that level.

NOTIFICATION PROCEDURE:

Requests from individuals for notification as to whether the system contains a record on them should be addressed to the System Manager of the operating level with which they are concerned. Persons submitting such a request, either personally or in writing, must provide SSN, name, and military status (active, ANG/USAFR, retired, etc. ANG members not on extended active duty may submit such requests to the appropriate State Adjutant General or the Chief of the servicing ANG CBPO. USAFR personnel not on extended active duty may submit such requests to ARPC, Denver, CO, 80280 or, if unit assigned, to the Chief of the servicing CBPO or Consolidated Reserve Personnel Office. Personal visits to obtain notification may be made to the Military Records Review Room, Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150, the Military Records Review Room, Air Reserve Personnel Center, Denver, CO 80280; The Office of the Director, National Personnel Records Center (NPRC), 111 Winnebago St., St. Louis, MO, 63118; the office of the Director of Personnel Data Systems at the appropriate major command headquarters; or the office of the Chief of his servicing CBPO. Identification will be based on presentation of DD Form 2AF, Military Identification Card. Air Force civilian employees must provide SSN, full name, previous names if any, last date and location of Air Force civilian employment if not currently employed by the Air Force—current employees should submit such requests to their CCPO—former employees of the Air Force should submit such requests to the CCPO for the last Air Force installation at which they were employed. Authorizations for a person other than the data subject to have access to an individual's records must be based on a notarized statement signed by the data subject.

RECORD ACCESS PROCEDURE:

Assistance in gaining access to his records will be provided the individual by the appropriate subordinate System Manager at AFMPC, ARPC, NRPC, major command or CBPO/CRPO/CCPO.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, medical institutions, automated system interfaces, police and investigating officers, the bureau of motor vehicles, a state or local government and source documents such as reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F035 AF MP C

SYSTEM NAME:

035 AF MP C Military Personnel Records System.

SYSTEM LOCATION:

Headquarters United States Air Force, Washington DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150. Air Reserve Personnel Center, Denver, CO 80280. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Headquarters of the major commands and separate operating agencies. At consolidated base personnel offices and other installation units. At State Adjutant General Office of each respective State, District of Columbia or Commonwealth of Puerto Rico. At Air Force Reserve and Air National Guard units. Official mailing addresses are in the Department of Defense Directory in the Appendix to the Air Force's Systems Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military peronnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Correspondence and Miscellaneous Document Group (C&M) at Air Force Military Personnel Center (AFMPC); Headquarters United States Air Force (HQ USAF) Selection Record Group (SR) at HQ USAF Assistant for General Officer Matters; Retired Air Force general officers. Master Personnel Record Group (MPeRGp) at AFMPC: active duty colonels at HQ USAF, Assistant for Senior Officer Management, C&M at AFMPC Air Force active duty officer personnel. MPeRGp at AFMPC Officer Command Selection Record Group (OCSR) at the respective major command or separate operating agency, Field Record Group (FRGp) at the respective Air Force base of assignment/servicing Consolidated Base Personnel Office (CBPO); Air Force active duty enlisted personnel. MPeRGp at AFMPC, FRGp at respective servicing CBPO, Senior Noncommissioned Officer (NCO) Selection Folder at the respective servicing CBPO; personnel in Temporary Disability Retired List (TDRL) status, Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls (DFR), MPeRGp at AFMPC; Reserve officers MPeRGp at Air Reserve Personnel Center (ARPC), OCSR at the respective Air Force (AF) major command (MAJCOM) when applicable, FRGp at the respective unit of assignment or servicing CBPO or Consolidated Reserve Personnel Office (CRPO); Reserve airmen MPeRGp at ARPC, FRGp at the respective unit of assignment or servicing CBPO/CRPO; Air National Guard (ANGUS) officers MPeRGp at ARPC, OCSR at the respective State Adjutant General Office, FRGp at the respective unit of assignment, ANGUS airmen MPerGp at the respective State Adjutant General Office FRGp at the respective unit of assignment; Retired Air Force military personnel; Discharged personnel MPerGp at National Personnel Records Center (NPRC); Air Force Academy cadets MPerGp at unit of assignment CBPO. System contains substantiating documentation such as forms, certificates, administrative orders and correspondence pertaining to appointment as a commissioned officer, warrant officer, Regular AF, AF Reserve or ANGUS; enlistment/reenlistment/extension or enlistment; assignment Permanent Change of Station (PCS)/Temporary Duty (TDY); promotion/demotion; identification card requests; casualty; duty status changes—Absent Without Leave (AWOL)/MIA/POW-Missing-Deserter; military test administration/results; service dates; separation; discharge; retirement; security; training, Precision Measurement Equipment (PME), On-The-Job Training (OJT), Technical, General Military Training (GMT), commissioning, driver; academic education; performance/effectiveness reports; records corrections—formal/informal; medical or dental treatment/examination; flying/rated status administration; extended active duty; emergency data; line of duty determinations; human/personnel reliability; career counseling; records transmittal; AF reserve administration; Air National Guard administration; board proceedings; personnel history statements; Veterans Administration compensations; disciplinary actions; record extracts; locator information; personal clothing/equipment items; passport; classification; grade data; Career Reserve application/cancellations; traffic safety; Unit Military Training; travel voucher for TDY to Republic of Vietnam; dependent data; professional achievements; Geneva Convention cards; drug abuse; Federal insurance; travel and duty restrictions; Conscientious Objector status; decorations and awards; badges; Favorable Communications (colonels only); Inter-Service transfers; pay and allowances; combat duty; leave; photographs; Personnel Data System products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Power and duties; delegation by; implemented by Air Force Regulation 35-55, Military Personnel Records System.

PURPOSE(S):

Military Personnel Records are used at all levels of Air Force personnel management within the agency for actions/processes related to procurement, education and training, classification, assignment, career development, evalution, promotion, compensation, sustentation, separation and retirement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Compensation claims submitted to Veterans Administration Regional Offices; dependents and survivors requesting issuance or determination of eligibility for identification card privileges; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) eligibility and benefits requests—copies are provided to CHAMPUS, Denver, CO; Immigration and Naturalization—copies are provided to respective local immigration Office; Unemployment Compensation Requests—verification of service related information provided to State Unemployment Compensation (UCX) Office; Vietnam State Bonus—information provided to respective local State offices; Civil Service requests for verification of military service for benefits; leave or Reduction in Force (RIF) purposes—Worldwide locator inquiries; Dual compensation cases involving former officers—provided to establish Civil Service employee tenure and leave accrual rate; Social Security Retirement Credit Verification—verification of service data provided to substantiate applicant's credit for Social Security compensation; Soldiers and Sailors Civil Relief Act requests—verification of service—Information as to current military address and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur. Information is provided to the US Department of Agriculture for investigative and audit procedures. Separation information provided to the Veteran's Administration and Selective Service Agencies. American National Red Cross—information to local Red Cross offices for emergency assistance to military members, dependents, relatives or other persons if conditions are compelling. Department of Labor, Bureau of Employees' compensation—medical information for claims of civilian employees formerly in military services; Employment and Training Administration—verification of service-related information for unemployment compensation claims; Labor Management Services Administration for investigations of possible violations of labor laws and pre-employment investigations; National Research Council—for medical research purposes; U.S. Soldiers' and Airman's Home—service information to determine

eligibility; used by Veterans Administration for research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, placed in metal file containers or on open shelves. Microfiche placed in rotary power files; computer disk resident data file consists of Social Security Number (SSN) and disk location of the associated image record which includes document data describing document type, date, location, and number of pages in each document.

RETRIEVABILITY:

Information in the system is retrieved by last name, first name, middle initial and Social Security Number (SSN). Records stored at National Personnel Records Center are retrieved by registry number, last name, first name, middle initial and SSN.

SAFEGUARDS:

The prescribing directive for the Military Personnel Records System requires those records to be stored (after duty hours) in a locked building, room or filing cabinets. Access is specifically limited to those personnel designated by the Consolidated Base Personnel Office (CBPO) Chief and those provisions for access and release of information contained in Air Force Regulation 12–35 and 31–4.

RETENTION AND DISPOSAL:

Users who are granted access to the microfiche files are screened by computer software. Those documents designated as Temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status, or retires) when they are removed and provided to the individual data subject. Those documents designated as Permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph Air Force Base, TX 78150.

NOTIFICATION PROCEDURE: The individual data subject may be notified that a record exists on him by submitting a request to or appearing in person at the responsible officials office or the respective repository for records for personnel in particular category during normal duty house any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. Response to written requests will be provided not later than ten days following receipt of request. The System Manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas.

RECORD ACCESS PROCEDURES:

The same written notification or personal visit procedures which apply to notification also apply to access.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system include data subject's applications, requests, personal history statements, supervisors' evaluations, correspondence generated within the agency in the conduct of official business, medical treatment records, educational institutions, civil authorities, other service departments, and interface with the Personnel Data System.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F045 MPC A

SYSTEM NAME:

045 MPC A Educational Delay Board Findings.

SYSTEM LOCATION:

Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Officers' Training Corps (AFROTC) Cadets and/or AFROTC graduates (officers)

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for delay in entering extended active duty status to pursue advanced degrees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2106, Advanced standing; interruption of training; delay in starting obligated service; release from program, and 50 Appendix 456, Deferments and exemptions from training and service, as implemented by Air Force Regulation 33–3, Enlistment in the United States Air Force.

PURPOSE(S):

Used to inform applicants of results of Board action on their request for delay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained invisible file binders/ cabinets.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Disapproved applications are destroyed after 6 months; approved applications are destroyed on completion of delay.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/ Manpower and Personnel for Military Personnel, Randolph Air Force Base, TX 78150.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Member's application.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F125 AF SP K

SYSTEM NAME:

125 AF SP K Vehicle Administration Records.

SYSTEM LOCATION:

Chief of Security Police at the installation where an individual registers or frequently operates a vehicle. Information copies of some portions of this system may be kept an an individual's assigned unit. Official mailing addresses are in the Department of Defense Directory in the appendix to the Air Forces' system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who frequently drive or register vehicles on an Air Force installation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle registration records, driver records, letters of suspension or revocation as applicable, and forms or letters which are necessary in the vehicle administration program for driver improvement actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to record an individual's statement of understanding on financial responsibilities with regard to operation of a vehnicle on an Air Force installation. Driver records are maintained to record information about motor vehicle accidents and moving traffic violations that are used to provide for traffic point assessment, suspension, or revocation, or other driver improvement actions affecting driving privileges on Air Force installations.

Note. In the State of Alaska, the system is also used to ensure that individuals comply with state law on the Alaskan Emission Inspection Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Records from this system of records may be disclosed to state or local law enforcement agencies or to motor vehicle bureaus.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files and and on computer and computer output products.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their offical duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets and maintained on computer and computer output products. Manual records are stored in locked cabinets or rooms. Automated records are controlled by computer system software.

RETENTION AND DISPOSAL:

Private vehicle registration documentation is destroyed after departure of the registrant to a new duty station, upon termination of an individual vehicle registration, or at the end of the particular registration period. Driver records on employees are transferred to gaining installations when an individual is reassigned or transferred. These are destroyed on permanent separation from active service, termination of employment, or upon deletion of all entries. Destruction of these forms is done by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Office of Security Police, Kirtland Air Force Base, NM 87117.

NOTIFICATION PROCEDURE:

Contact the installation Chief of Security Police for information. When requesting information in writing, individual should include full name, Social Security Number, military, status, home address, and the letter must be notarized. During a personal visit, individual will be required to produce military ID, if applicable, a valid drivers license, or other appropriate proof of identity.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Contact the Chief of Security Police at the appropriate installation. Mailing addresses are in the Deprtment of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from police and investigating officers and from the bureau of motor vehicles.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F160 DODMERB A

SYSTEM NAME:

160 DODMERB A Department of Defense Medical Examination Review Board Medical Examination Files.

SYSTEM LOCATION:

Department of Defense Medical Examination Review Board (DODMERB) US Air Force Academy, CO 80840-6518 and Camp Hill, PA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants to the five service academies, the Four year Reserve Officer Training Corps (ROTC) Scholarship Program for, Uniform Services University of Health Sciences (USUHS), Army, Navy, Air Force College Scholarship Program (CSP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of the Medical Examination, Report of Medical History, Report of Dental Examination, to include dental x-rays and any associated civilian forms or medical tests that have been accomplished; may also contain personal correspondence between the DODMERB and the applicant, parents/guardian concerning the applicant's medical history or qualification status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Executive department.

PURPOSE(S):

The medical examination in computer form is used to determine medical accceptability for one or more of the five military service academies or the ROTC, USUHS, CSP for the Air Force, Army and Navy ROTC. The computer also produces products to advise each program manager of initial status and all update actions on the applicant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Medical consultations concerning may be necessary with parents/legal guardians may be necessary to clarify/explain applicant's medical status. Examinations may be released to civilian contract agents of the government and private physicians associated with medically certifying applicants for military service. Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in computer and electronic digital imaging storage system.

RETRIEVABILITY:

Filed by Name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Computer is in a controlled area with restricted access and data is protected by computer system software.

RETENTION AND DISPOSAL:

A paper copy of medical and dental records will be generated by computer on all appointed candidates and will be forwarded to each program the applicant is medically certified for. Computer and optical disk files for all applicants will be retained for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Defense Medical Examination Review Board, US Air Force Academy, CO 80840-2518.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulations 12-35.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F215 AFA A

SYSTEM NAME:

215 AFA A Library Authorized Patron File.

SYSTEM LOCATION:

USAF Academy Library, United States Air Force Academy, Colorado Springs CO 80840-5721.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Academy military and civilian personnel and cadets, specially authorized nonbase library patrons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social security number, library card number, name, base or home address, privilege code, statistical code, base organizational affiliation code, telephone number(s), expiration date, number of cards issued, service code (if appropriate), graduate school code (if appropriate) for special borrowers, and dfsiv training code (if appropriate). Expiration data for special borrower privileges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 United States Code Chapter 903, United States Air Force Academy.

PURPOSE(S):

Used by Library and Visual Information personnel to fully identify patrons to whom library material is charged in operation of the Library's automated circulation control system, to follow up on delinquent borrowers by generation of overdue notices, and to clear departing patrons and delete their names from the file, and to issue library cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer and computer output products, and on paper application forms.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for library circulation control operation in the performance of their office duties. Computer storage devices are protected by computer system software. Paper files are stored in locked cabinets in restricted areas.

RETENTION AND DISPOSAL:

Partron data is deleted from master files maintained on computer when outgoing clearance is accomplished. Paper forms are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Academy Libraries, USAF Academy, Colorado Springs CO 80840.

NOTIFICATION PROCEDURE:

Request from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and is published in Air Force Regulation 12-35.

RECORD SOURCE CATEGORIES:

Individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F900 TAC A

SYSTEM NAME:

900 TAC A Special Awards File.

SYSTEM LOCATION:

Headquarters Tactical Air Command, Langley Air Force Base, VA 23665.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, civilian employees and retired Air Force officers who are or were formerly assigned to Tactical Air Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical file containing limited award and biographical data on TAC personnel where awards have been approved and may be used for reference in future. File is informational in nature and action does not result therefrom.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by and 8074, Commands: Territorial

organization, and Air Force Regulation 900–48, Decorations, Service and Achievement Awards, Unit Awards; Special Badges, and Devices, TAC Sup 1, and Air Force Regulation 900–29, Special Trophies and Awards, TAC Sup 1.

PURPOSE(S):

Used by Command Awards Branch for reference.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, Personnel, Tactical Air Command, Langley Air Force Base, VA 23665.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers and source documents such as reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–11696 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 14, 1986.

The USAF Scientific Advisory Board Weapons Panel will meet at the Center for Naval Analyses, 4401 Ford Ave, Alexandria, VA on June 18–19, 1986, from 8:00 A.M. to 5:00 P.M. each day.

The purpose of this meeting is to discuss topics identified by Project Forecast II for possible technology development programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at [202] 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11630 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 16, 1986.

The meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Current and Potential Future Technology to Protect Air Force Space Missions from Current and Future Space Debris, published in the **Federal Register** May 8, 1986 (51 FR 17078) has been changed to July 8 and 9, 1986. Meeting location has also been changed to the Pentagon, Washington, DC. All other information remains the same.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11624 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,462,103 entitled "Tunable CW Semiconductor Platlet Laser," issued 24 July 1984 to Michael M. Salour, Charles B. Roxlo and Dick Bebelaar.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324, Telephone No. 202–475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11626 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,495,782 entitled "Transmissive Dewar Cooling Chamber For Optically Pumped Semiconductor Ring Laser," issued 29 January 1985 to Michael M. Salour and Adrian Fuchs.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW.,

Washington, DC 20324, Telephone No. 202-475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-11626 Filed 5-22-86; 8:45 am]

BILLING CODE 3910-01-M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,481,008 entitled "Synchronously Pumped Mode-Locked Platelet Laser," issued 17 July 1984 to Michael M. Salour and Charles B. Roxlo.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324, Telephone No. 202-475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-11627 Filed 5-22-86; 8:45 am]

BILLING CODE 3910-01-M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,626,484 entitled "DEWAR Cooling Chamber For Semiconductor Platlets," issued 11 October 1983 to Michael M. Salour and Charles B. Roxlo.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324, Telephone No. 202-475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-11628 Filed 5-22-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB to review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Membership in Military Affiliate Radio System (MARS)

DD 630

The information is necessary to assess the applicant's qualifications to meet membership criteria outlined in Naval Telecommunications Procedures Manual. Information gathered is used by officials to certify eligibility for membership.

Individuals

Responses 1,000.
Burden hours 375.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. A.R. Delperdang, Naval Telecommunications Command Headquarters (MARS), 4401 Massachusetts Avenue, NW., Washington, DC 20390, telephone (301) 238-2236.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

[FR Doc. 86-11629 Filed 5-22-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 23, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 20, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Chapter 1 of the Education Consolidation and Improvement Act—Final Regulations.

Agency Form Number: NA.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Response: 5,000; Burden Hours: 20,000.

Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0.

Abstract: Chapter 1 of Education Consolidation and Improvement Act requires local educational agencies (LEAs) to consult with parents as they design and implement their Chapter 1 projects. To meet this requirement, LEAs must develop written policies to ensure parental participation.

[FR Doc. 86-11708 Filed 5-22-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Application Notice Establishing Closing Date for Transmittal of New Experimental and Innovative Training Project Applications for Fiscal Year 1986

AGENCY: Department of Education.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of applications for new projects under the Experimental and Innovative Training Program administered by the Department of Education under the Office of Special Education and Rehabilitative Services. Awards are made under the program to support projects to: (1) Develop new types of rehabilitation personnel and demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely disabled persons; and (2) develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies. Eligible applicants are State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. The authority for this program is section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774)

The total amount of funds available for rehabilitation training in fiscal year 1986 is $25,836,000. Of this amount, approximately $500,000 will be reserved for experimental and innovative training projects that address the proposed priority published in this issue of the Federal Register. It is estimated that 4 projects will be funded at an average cost of $125,000.

These estimates do not bind the Department to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

All applications will be evaluated according to selection criteria which appear in program regulations in 34 CFR 387.30.

Instructions for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.129Y), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant for a new award will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building ROB #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 on the closing date.

Application Forms: Application forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Mary E. Switzer Building, (2312), Washington, DC 20202. Telephone: (202) 732-1342.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Experimental and Innovative Training Program (34 CFR Parts 385 and 387). A notice of proposed priority was published on May 21, 1986 at 51 FR 18651. If substantive changes are made to the proposed funding priority when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priority.

Further Information: Delores L. Watkins, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3324-M/S 2312, Mary E. Switzer Building), Washington, DC 20202. Telephone: (202) 732-1332.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

(29 U.S.C. 774)

Dated: May 21, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86-11700 Filed 5-22-86; 8:45 am]

BILLING CODE 4000-01-M

Application Establishing Closing Date for Transmittal of New Rehabilitation Long-Term Training Project Applications for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of new rehabilitation long-term training project applications for fiscal year 1986.

BEST COPY AVAILABLE

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of programmatic and fiscal information and the closing date for the transmittal of applications for new projects in the field of Rehabilitation Workshop and Facility Personnel under the Rehabilitation Long-Term Training Program. Awards are made under the program to support projects to train personnel for employment in public and private agencies involved in the rehabilitation of physically and mentally disabled individuals, especially those who are the most severely disabled. Eligible applicants are State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. The authority for this program is section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774.)

The total amount of funds available for rehabilitation training in fiscal year 1986 is $25,838,000, including $6,669,000 for the funding of new rehabilitation long-term training projects. Of this amount, approximately $500,000 will be reserved for rehabilitation workshop and facility personnel projects that respond to the proposed priority published in this issue of the Federal Register. It is estimated that 5 projects will be funded at a average cost of $100,000.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

All applications will be evaluated according to selection criteria which appear in program regulations in 35 CFR 386.30.

Instructions for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.129X), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant for a new award will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC) daily, except Saturdays Sundays, and Federal holidays. An application that is hand-delivered will not accepted after 4:30 p.m. on the closing date.

Application Forms: Applications forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Room 3332, Mary E. Switzer Building (2312), Washington, DC 20202. Telephone: (202) 732-1343.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386). A notice of proposed priorty was published on May 20, 1986 at 51 FR 18549. If substantive changes are made to the proposed funding priority when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priority.

Further Information: Delores L. Watkins, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3324–M/S 2312, Mary E. Switzer Building), Washington, DC 20202. Telephone: (202) 732–1332.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

Dated: May 20, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–11709 Filed 5–22–86; 8:45 am]

BILLING CODE 4000-1-M

Application Establishing Closing Date for Transmittal of New Rehabilitation Long-Term Training Project Applications for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of new rehabilitation long-term training project applications for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of applications for new projects in the field of Rehabilitation Counseling under the Rehabilitation Long-Term Training Program. Awards are made under this program to support projects to train personnel for employment in public and private agencies involved in the rehabilitation of physically and mentally disabled individuals, especially those who are the most severely disabled. Eligible applicants are State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. The authority for this program is Section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774.)

The total amount of funds available for rehabilitation training in fiscal year 1986 is $25,838,000, including $6,669,000 for the funding of new rehabilitation long-term training projects. Of this amount, approximately $2,700,000 will be reserved for and distributed among rehabilitation counseling projects that respond to proposed priorities published on April 25, 1986 at 51 FR 15665–15666. It is expected that funds to be made available in the field of rehabilitation counseling will be distributed among the 3 proposed priority areas published in the Federal Register as follows: *Priority 1*—$1,800,000 for rehabilitation counseling training that emphasizes linkages with business and industry; *Priority 2*—$500,000 for rehabilitation counseling personnel training with an emphasis on specialization in providing supported employment services; and *Priority 3*—$400,000 for rehabilitation counseling training at the doctoral level. An estimated 40 projects will be funded at an average cost of $65,000.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statue or regulations.

All applications will be evaluated according to selection criteria which appear in program regulations in 34 CFR 386.30.

Instructions for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.129B), 400 Maryland Avenue, SW., Washington, DC 20202.

BEST COPY AVAILABLE

Each late applicant for a new award will be notifed that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington DC. time) daily, except Saturdays, Sundays, and Federal hoildiays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Application Forms: Application forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Mary E. Switzer Building (2312), Washington, DC 20202. Telephone: (202) 732-1343.

Application forms and program information packages for new awards will be mailed to grantees who are completing long-term training projects in the field of rehabilitation counseling during the 1985-1986 academic year.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Adminsitrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386). A notice of proposed priorities was published on April 25, 1986 at 51 FR 15665-15666. If substantive changes are made to the proposed funding priorities when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priorities.

Further Information: Delores L. Watkins, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3324-M/S 2312, Mary E. Switzer Building), Washington, DC 20202. Telephone: (202) 732-1332.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

Dated: May 20, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86-11710 Filed 5-22-86; 8:45 am]

BILLING CODE [illegible]

Office of Special Education and Rehabilitation Services

Rehabilitation Long-Term Training Program

Correction

In FR Doc. 86-11457 appearing on page 18549 in the issue of Tuesday, May 20, 1986, the DATE caption should read: "DATE: Comments must be received on or before June 19, 1986."

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Oil and Gas Outlook will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Oil and Gas Outlook will function as the coordinating and integrating function of the task group activities. It will also be responsible for development of recommendations as to actions which are indicated for avoiding or mitigating future crises with respect to oil and gas supply and demand.

The Coordinating Subcommittee on U.S. Oil and Gas Outlook will hold its second meeting on Tuesday, June 24, 1986, immediately following the adjournment of the Committee on U.S. Oil and Gas Outlook meeting, which will begin at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Oil and Gas Outlook meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 16, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-11669 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will be addressing the current activities of all task groups and providing guidance for future studies. Its analysis and findings will be basd on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Petroleum Refining will hold its twelfth meeting on Tuesday, June 10, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Petroleum Refining meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Petroleum Refining is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public

who wishes to file a written statement with the Coordinating Subcommittee on U.S. Petroleum Refining will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 10, 1986.

Donald L. Beaver,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–11667 Filed 5–22–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Future Supply/Demand Factors Task Group; Meeting

Notice is hereby given that the Future Supply/Demand Factors Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Future Supply/Demand Factors Task Group's activities will be to identify the major factors that will affect the U.S.'s future supply and demand of oil and gas and to evaluate the influence such factors could have on the vulnerability of the U.S. to future energy crises.

The Future Supply/Demand Factors Task Group will hold its second meeting on Monday, June 23, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Future Supply/Demand Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group study assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Future Supply/Demand Factors Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly, conduct of business. Any member of the public who wishes to file a written statement with the Future Supply/Demand Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickerson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 16, 1986.

Donald L. Beaver,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–11668 Filed 5–22–86; 8:45 am]

BILLING CODE 6450–01–M

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Working Party (IWP) of the International Energy Agency (IEA) will be held on June 2, 1986, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. New chairman.
3. Oil trading methods, their impact on the industry and on the market.
4. Monitoring, analysis and presentation of oil price trends.
5. How to present refinery utilization trends.
6. Future work program.

II. A meeting of the IWP will be held on June 2, 1986, at the offices of the IEA at the aforesaid address beginning at 2:00 p.m. and continuing on June 3. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IWP at a meeting of the IEA Standing Group on the Oil Market (SOM) which is bing held in Paris on those dates. The agenda for the meeting is under the control of the SOM. It is expected that the following agenda will be followed:

1. Adoption of provisional agenda.
2. Approval of the Summary Record of the 51st Session.
3. Current oil market developments.

(a) —1985 Annual Oil Market Report.
—End-May Oil Market Report.
—Complementary oral report by the IEA Secretariat.

(b) —Short- and medium-term oil market outlook.
—Consultation with Petro-Canada Ltd.: Presentation by Mr. W.H. Hopper, Chairman of the Board and Chief Executive Officer.

4. Impact of lower oil prices.

(a) Assessment of short- and medium-term impact on the oil consumption, production, and upstream investment in OECD countries.
—Secretariat introduction and country presentations.

(b) Impact of lower oil prices on oil company finances.
—Presentation by Mr. Dillard Spriggs, President, Petroleum Analysis Ltd.

5. Oil pricing and trading.

(a) Recent trends in oil pricing and trading.
—Secretariat note.
—Analysis of latest Crude Oil Register data.
—Comments by the IWP.

(b) Trading methods and market transparency.
—Presentation by Mr. M.S. Robinson, President, Shell International Trading Company.

6. Monitoring of oil product markets and related developments.

(a) Recent developments in oil product supply and refining.
—IEA Secretariat Quarterly Report.
—Comments by the IWP on the oil producte monitoring methodology.

(b) Presentations by delegations on the refining sector, product supply market structure, and relevant government practices.

7. Round-table reports.
—Country presentations on notable developments in the oil sector and member countries.
8. SOM program of work for 1987.
—Secretariat note.
9. Date of next meeting.

It is expected that representatives of the IWP will be present for discussion of agenda items 5(a) and 6(a) and possibly other agenda items.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IWP meeting is open only to representatives of members of the IWP, their counsel, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the Genera Accounting Office,

representatives of committees of Congress, employees of the IEA, representatives of the Commission of the European Communities, and invitees of the IWP or the IEA. The SOM meeting is open only to the aforesaid persons, representatives of members of the SOM, and invitees of the SOM.

Issued in Washington, DC, May 20, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86-11755 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-33-NG]

Phibro Energy, Inc.; Application to Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 1, 1986, of an application filed by Phibro Energy Inc. (Phibro), a wholly-owned subsidiary of Phibro-Salomon Inc., for blanket authorization to import up to 200 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers, including gas distributors, pipelines, electric utilities, and industrial or agricultural users. Phibro would act either as an importer or reseller, as agent on behalf of Canadian producers and pipeline, or as agent on behalf of domestic purchasers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. Phibro proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on June 23, 1986.

FOR FURTHER INFORMATION:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6050

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9478. They must be filed no later than 4:30 p.m., June 23, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If any additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Phibro's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc 86-11636 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES86-40-000 et al.]

Electric Rate and Corporate Regulation Filings; MDU Resources Group, Inc., et al.

May 19, 1986.

Take notice that the following filings have been made with the Commission:

1. MDU Resources Group, Inc.

[Docket No. ES86-40-000]

Take notice that on May 6, 1986, MDU Resources Group, Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of Federal Power Act, seeking an Order authorizing the issuance of approximately 18,000,000 shares of Common Stock, par values $5,

in connection with a two-for-one Common Stock split.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. MDU Resources Group, Inc.

[Docket No. ES86-41-000]

Take notice that on May 8, 1986, MDU Resources Group, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act (Act), seeking an Order authorizing the issuance of an aggregate of no more than $100,000,000 principal amount of one or more series of its First Mortgage Bonds and an exemption from competitive bidding.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Upper Peninsula Generating Company

[Docket No. ES86-38-000]

Take notice that on May 5, 1986, Upper Peninsula Generating Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue short-term notes and banker's acceptance in an aggregate principal amount up to $60,000,000 to be issued on or before July 1, 1988, and will have a final maturity date not later than July 1, 1990.

Comment date: June 4, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11074 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2185-000]

John N. Nordstrom; Amended Filing

May 19, 1986.

Take notice that on May 1, 1986, John N. Nordstrom tendered for filing an amended application for authority to hold the following interlocking directorates:

Position	Name of corporation	Classification
Director	Puget Sound Power and Light Company.	Public Utility
Director	Seafirst Corporation.	a subsidiary of Seafirst's parent corporation has placed commercial paper or certain public utilities as a placement agent for the issuer; a foreign third-tier subsidiary of Seafirst's parent corporation has underwritten or participated in the marketing of public utility securities outside of the United States; and other foreign second-, third-, and fourth-tier subsidiaries and affiliates of Seafirst's parent corporation are authorized to participate in the marketing of public utility securities outside of the United States.
Director	Seattle First National.	a subsidiary of parent corporation Bank has placed commercial paper of certain public utilities as placement agent for the issuer; a foreign third-tier subsidiary of parent corporation's parent corporation has underwritten or participated in the marketing of public utility securities outside of the United States; and other foreign second-, third-, and fourth-tier subsidiaries and affiliates of parent corporation's parent corporations are authorized to participate in the marketing of public utility securities outside of the United States.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 4, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11077 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Texas Eastern Transmission Corp.) Order Granting Request for Waiver

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued: May 19, 1986

On April 11, 1986, Texas Eastern Transmission Corporation filed a request for waiver of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction to be performed under former § 284.221 of the Commission's Regulations. We will grant Texas Eastern's request.

On October 1, 1985, Texas Eastern entered into a written agreement with Tennessee Gas Pipeline Company, a Division of Tenneco Inc., whereby Tennessee agreed to transport natural gas for Texas Eastern pursuant to former § 284.221 of the Commission's Regulations under authoriation issued on February 21, 1980, in Docket No. CP80-132, 10 FERC ¶ 61,166. The gas to be transported by Tennessee is purchased by Texas Eastern from three wells in Wharton County, Texas.

On September 23, 1985, Texas Eastern commenced constructing a pipeline in order to connect one of these wells to Tennessee's system. Construction was completed on October 8 at an approximate cost of $135,000.

We find that Texas Eastern, in its role as a purchaser, has expended substantial funds and constructed significant facilities before October 9, 1985, in reliance on a transportation agreement executed prior to that date.[2] Accordingly, we hereby waive the restrictions in § 284.105 to the extent necessary to permit the transportation

[1] 33 FERC ¶ 61,007 (1985), FERC Statutes and Regulations ¶ 30,665 (1985).

[2] *See* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (CLARCO Gas Company, Inc.), 34 FERC ¶ 61,366 (March 28, 1986).

transaction identified in Texas Eastern's petition to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11679 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Transok, Inc.); Order Denying Clarification

Issued: May 19, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 21, 1986, Transok, Inc., an Oklahoma intrastate pipeline company, filed a request for clarification with respect to the reporting requirements under Order No. 436 for continuing transportation arrangements under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Specifically, Transok requests clarification on whether it may continue transporting gas under section 311 for existing transactions beyond the transition period simply by filing a subsequent report pursuant to § 284.126(b), or at most, an initial report pursuant to § 284.126(a). Transok states that the Commission should not view the continuation of these existing "grandfathered" transactions as new transactions because they are merely a continuation of existing transactions. Transok states that if the Commission treats the continuation of these arrangements as new transactions, Transok would be required to pay $2,800 in filing fees.

We deny Transok's petition. Under the transition provisions, existing section 311 transportation arrangements terminate on the earlier of either (1) the original or extended term of the arrangement, or (2) October 9, 1987. Once those transportation arrangements terminate, they can be continued only as a new arrangement under Order No. 436 and are subject to the filing requirements and fees for new transportation arrangements. When the pipeline converts its on-going section 311 transportation to transportation under Order No. 436, it will have to file both an initial report under § 284.126(a) and the rate information under § 284.123.[1] A subsequent report is not appropriate under these circumstances because the transportation would be performed under new authorization, the authorization in Order No. 436.[2]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11680 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[1] We note that under our current fees regulations, the pipeline's fee is the higher of these two fees, and not the sum of these fees. § 381.303(c)

[2] *See Phenix Transmission Company*, 35 FERC ¶ 61,124 (1986).

[Docket No. RP86-84-001]

Algonquin Gas Transmission Co.; Compliance Filing

May 21, 1986.

Take notice that on May 12, 1986, Algonquin Gas Transmission Company (Algonquin) tendered for filing Original Sheet No. 551 to its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with the Commission's Letter Order issued in the above-referenced docket on April 30, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 15, 1986.

Algonquin states that Original Sheet No. 551 complies with the Commission's directive by deleting the language "(after making allowance for applicable fuel reimbursement)". The effective date of the sheet is October 31, 1985.

Copies of this filing have been provided to Algonquin's customers under its FERC Gas Tariff, Second Revised Volume No. 1 and on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 28, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11706 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-89-001]

East Tennessee Natural Gas Co.; Tariff Revisions

May 21, 1986.

Take notice that on May 12, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Substitute First Revised Sheet No. 123 and Substitute Original Sheet No. 123A to Original Volume No. 1 of its FERC Gas Tariff, to be effective April 12, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 14, 1986.

East Tennessee states that the revised tariff sheets are in compliance with Ordering Paragraph (D) of the Commission's April 11, 1986, order issued on this proceeding and modify the new section 22.4 to its PGA provision to permit it to revise its rates on an interim basis in accord with the April 11th order.

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 28, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11704 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-11-001]

K N Energy, Inc.; Motion To Place Tariff Sheets Into Effect

May 21, 1986.

Take notice that on May 13, 1986, K N Energy, Inc. (K N) filed a Motion to Place Tariff Sheets Into Effect in accordance with the Commission orders issued November 29, 1985 and April 30, 1986. K N submitted the following tariff

sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Twenty-Third Revised Sheet No. 4
Substitute Second Revised Sheet No. 4B

According to § 381.103(b)(2)(iii), of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 15, 1986.

The rates shown on these tariff sheets reflect the elimination of the cost-of-service effect of all facilities not in service as of March 31, 1986. An effective date of May 1, 1986 is requested.

K N further states that no changes were required to be made to Third Revised Sheet No. 27B, Fourth Revised Sheet No. 27C and First Revised Sheet No. 27C, as filed in Docket No. RP86-11 and suspended by the Commission's November 29, 1985 order. Therefore, K N requests these sheets also be made effective May 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11707 Filed 5-22-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-58-002]

Midwestern Gas Transmission Co.; Tariff Revisions

May 21, 1986.

Take notice that on May 12, 1986, Midwestern Gas Transmission Company (Midwestern) tendered for filing Substitute Second Revised Sheet No. 164, Substitute Second Revised Sheet No. 165 and Substitute Original Sheet No. 165A to Original Volume No. 1 of its FERC Gas Tariff, to be effective April 12, 1986. According to § 381.103(b)(2) (iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 14, 1986.

Midwestern states that the revised tariff sheets are in compliance with Ordering Paragraph (D) of the Commission's April 11, 1986, order issued on this proceeding and modify the new Section 4 to its PGA provision to permit it to revise its rates on an interim basis in accord with the April 11th order.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 28, 1986 (18 CFR § 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11706 Filed 5-22-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-489-000]

Transcontinental Gas Pipe Line Corp.; Application

May 20, 1986.

Take notice that on May 7, 1986, as supplemented on May 12, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP86-489-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) a certain transportation service with "flexible authority" to add and/or delete sources of gas and/or receipt points, and (2) the operation of certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport on behalf of Lynchburg Gas Company (Lynchburg), on an interruptible basis, up to 10,000 dt equivalent of natural gas per day pursuant to a transportation agreement between Applicant and Lynchburg dated March 21, 1986, as amended April 1, 1986. Applicant states that Lynchburg has contracts to purchase such quantities of gas from Energy Marketing Exchange, Inc. (EME) and Transco Energy Marketing Company (TEMCO).

It is stated that pursuant to the transportation agreement, Applicant would receive the gas that Lynchburg purchases from EME at the existing interconnections between the facilities of Applicant and the facilities of

(1) Columbia Gas Transmission Corporation at Clinton County, Pennsylvania and Terrebonne Parish, Louisiana;

(2) Tennessee Gas Pipeline Company at Crowley, Acadia Parish, Louisiana;

(3) The Texaco Inc. gathering line in Clinton County, Pennsylvania;

(4) Delhi Gas Pipeline Corporation in Victoria County, Texas; and

(5) Sun Exploration and Production Company in Starr and Jim Wells Counties, Texas.

Applicant states that it would receive the gas purchased from TEMCO at the points of interconnection between the facilities of Applicant and the facilities of the TEMCO producer sellers.

Applicant further states that it would redeliver equivalent quantities, less compressor fuel and line loss make-up, to Lynchburg at the existing points of interconnection between the facilities of Applicant and Lynchburg in Virginia.

Applicant states that for this transportation service, it would retain a percentage of the gas quantities it receives for compressor fuel and line loss make-up and would charge Lynchburg a transportation rate based on Applicant's currently applicable Rate Schedule T-I rate and as such rate may be legally amended or superseded from time-to-time.[1] Applicant further states that Lynchburg would reimburse Applicant for any fees which Applicant pays to the Commission in connection with the proposed transportation. The transportation agreement would remain in effect for a primary term of ten years from the date of initial deliveries and year-to-year thereafter unless and until

[1] Applicant's current Rate Schedule T-1 rate is 10 cents per dt within and 8 cents per dt in excess of Lynchburg's firm sales level for transportation from the Clinton County, Pennsylvania, receipt points and 30 cents per dt within and 28.7 cents dt in excess of Lynchburg's firm sales level for transportation from the receipt points in Texas and Louisiana. Applicant's Rate Schedule T-1 currently provides for 0.9 percent of the gas transported from the Clinton County receipt points and 5.8 percent of the gas transported from the Texas and Louisiana receipt points to be retained for compressor fuel and line loss make-up.

terminated by either party's giving proper notice.

Applicant further states that Lynchburg is considering alternatives in its source of supply of natural gas. Such alternatives could involve different suppliers and/or changes in receipt points, but would not involve any increase in peak day volumes to be transported by Applicant. Applicant also requests "flexible authority" whereby it would undertake certain filing requirements to advise the Commission in the event Lynchburg obtains different sources of supply or if additions or deletions of receipt points are required in furtherance of the transportation authority requested. Applicant states that upon implementation of "flexible authority", it would file by May 1 of each year appropriate tariff sheet revisions with the Commission reflecting sources of gas and/or receipt points added during the preceding calendar year.

Applicant further requests authority to operate a dual 4-inch measuring and regulating station, tap and appurtenant facilities at milepost 1466.39 on Applicant's pipeline system in Appomattox County, Virginia, as one of the points of delivery to Lynchburg for the proposed transportation service.[2] Applicant states that such facilities were constructed and installed pursuant to Subpart B of Part 284 of the Commission's Regulations as part of a transportation service rendered by Applicant for Lynchburg and reported to the Commission in Docket No. ST86-776-000. Applicant states that it would continue to operate such facilities solely for the purpose of providing such transportation service pursuant to Subpart B of Part 284 until the Commission grants the requested certificate.

Applicant states that by filing this application it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations, promulgated in Order No. 436, Docket No. RM85-1-000.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessary. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11078 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA83-18-001]

Transcontinental Gas Pipe Line Corp; Order Establishing Hearing Procedures

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Issued: May 8, 1986.

Under the Natural Gas Act,[1] every natural gas company must file such annual and other periodic or special reports as the Commission prescribes as necessary or appropriate to assist in the proper administration of the Act.

Commission staff (staff) recently performed an audit of Transcontinental Gas Pipe Line Corporation (Transco). In a letter order issued February 5, 1986,[2] the Commission noted that Transco had not agreed to adopt the staff's recommendations relating to the company's accounting, reporting and tariff (purchased gas adjustment clause) billing practices. Staff's position, as stated in the letter order, is that Transco failed to record the proper amount of deferred state income taxes in its accounts and reports to the Commission, and did not use the proper amount of deferred income taxes in computing carrying charges on unrecovered purchased gas costs.

The letter order requested Transco to notify the Commission within 30 days as to whether it would consent to disposition of the accounting and tariff matters in accordance with the shortened procedure set forth in Part 158 of the Commission's regulations.[3] Under the shortened procedure, the Commission would rule on the matter solely on pleadings submitted by interested parties and staff. By letter dated March 7, 1986, Transco notified the Commission that it did not consent to the use of the shortened procedure. Consequently, we now set these matters for hearing.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

The Commission Orders

(A) Pursuant to the Natural Gas Act, particularly sections 8 and 10 thereof, the Commission's Rules of Practice and Procedure, and the regulations under the Natural Gas Act, a public hearing shall be held concerning the appropriateness of Transco's accounting reporting and tariff billing practices as discussed above.

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on motions as provided in the Commission's regulations.

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[2] Lynchburg has advised Applicant that it may also wish to utilize such facilities in the future to receive gas which it may purchase from Applicant for transport under Applicant's Rate Schedule MDQ if such rate schedule is ultimately approved by the Commission as part of Applicant's settlement filed on March 28, 1986, in Docket Nos. TA86-1-29-000, TA86-9-29-000, TA86-1-29-000, RP82-127-000 and CP85-160-000.

[1] 15 U.S.C. 717i (1976).

[2] 34 FERC ¶61,128 (1986).

[3] 18 C.F.R. 158.2, *et seq.* (1985).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11675 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-37-001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff Tariff

May 21, 1986.

Take notice that on May 12, 1986, Mississippi River Transmission Corporation ("Mississippi") submitted for filing the tariff sheets listed below to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheets	Proposed effective date
Original Sheet Nos. 222 through 226	April 12, 1986.

Mississippi states that the purpose of the filing is to effectuate tariff sheets regarding the tranportation on an interruptible basis of up to 10,000 Mcf of natural gas per day for Texas Gas Transmission Corporation (Texas Gas) as authorized by Commission order dated March 20, 1986. Mississippi has requested waiver of the notice requirements in order to allow the filed tariff sheets to become effective on the date proposed.

Copies of the filing have been served upon Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11701 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-76-000]

Texas Eastern Transmission Corp.; Request for Authorization of the Limited Waiver of Certain Tariff Provisions

May 21, 1986.

On May 9, 1986, Texas Eastern Transmission Corporation (Texas Eastern) filed a request for authorization of the limited waiver of its gas storage Rate Schedules ISS-3 and SS-3. Rate Schedule SS-3 is a new rate schedule which enlarges and extends the limited term storage rendered by Texas Eastern under Rate Schedule ISS-3, which expired April 15, 1986. Texas Eastern provides storage service for its local gas distributor customers under these rate schedules. The storage services Texas Eastern renders to its local gas distributor customers are subject to storage service rendered by Consolidated Gas Transmission Corp. (Consolidated) to Texas Eastern. Consolidated's storage agreement with Texas Eastern authorizes Consolidated to charge Texas Eastern a roll-over charge for injections and withdrawals of gas remaining in storage on expiration of Texas Eastern's Limited Term Storage Service Agreement. Texas Eastern's ISS-3 customers have until June 15, 1986 to withdraw any gas balance remaining in storage as of April 15, 1986, and must pay a withdrawal charge for that service. Rate Schedule SS-3 customers must pay an injection charge for injections under Rate Schedule SS-3.

Texas Eastern asks the Commission to waive such provisions of Rate Schedules ISS-3 and SS-3 as may be necessary to: (1) Permit six local gas distributor customers [1] to roll-over to Rate Schedule SS-3 the quantities of gas in storage for their account under Rate Schedule ISS-3 as of June 15, 1986; and (2) to flow through and collect from such electing customers on a prorated basis, the amount Consolidated charges Texas Eastern for such roll-over under the Storage Service Agreement between Eastern and Consolidated in lieu of Texas Eastern's charging injection and withdrawal charges under Rate Schedules ISS-3 and SS-3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11703 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Algonquin Gas Transmission Co., Central Hudson Gas & Electric Corp., Long Island Lighting Co., N.J. Natural Gas Co., Philadelphia Gas Works, and Public Service Electric & Gas Co.

[Docket No. CP86-37-000]

Texas Railroad Commission, NGPA Section 103 Determination, MR Oil Co. and University Section 30 No. 2 Well, TRC Docket No. F-03-062389, FERC No. JD 86-18383; Preliminary Finding

May 5, 1986

On March 21, 1986, the Texas Railroad Commission (TRC) submitted to the Commission a notice of determination that University Section 30 No. 2 Well (U-2 Well) operated by MR Oil Company (MR) qualifies as a new, onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA).[1] For a well to qualify as a new, onshore production well, the surface drilling must have begun on or after February 19, 1977. The TRC notice states that the subject well satisfies this requirement.

A review of the evidence submitted to TRC reveals that the U-2 Well was originally drilled in March, 1967, to a depth of 5,159 feet, and was plugged on March 24, 1967 as a dry hole. On August 24, 1982, MR reentered the well and made no additional drilling, but merely ran production casing to 5,174 feet,[2] tubing to 5,043 feet, and acidized and perforated from 5,003 to 5,009 feet in the same formation. MR indicated that the tangible, intangible, and acquisition costs to complete and equip this well totalled $90,377. MR stated that this cost is within the range of costs for drilling and completing a new well in the same geographic area. MR also stated that to the best of its knowledge the well did

[1] 15 U.S.C. 3313 (1982).

[2] MR stated on the recompletion form that it submitted to TRC that it had performed no additional drilling. The fifteen-foot discrepancy between the stated depth of the original drilling (5,159 feet) and the depth of MR's production casing (5,174 feet) could have been caused by any one of a number of different reasons, such as different methods of calculating depth, or using different measuring equipment.

not produce gas prior to the reentry. However, neither MR nor TRC submitted any data relative to the cost of drilling a new well in the West Texas area to a similar depth for the relevant time period.

In *L&B Oil Co. v. Federal Energy Regulatory Commission,*[3] the court concluded that a well could qualify as a "new, onshore production well" even if it was not literally spudded [4] on or after February 19, 1977. In deciding *L&B* the court considered the following factors: (1) Surface drilling commenced when L&B drilled out the surface plug on reentry; (2) L&B did not merely reactivate or deepen a previously spudded well; (3) L&B used little of the original hole before deviating to over 7,000 feet; (4) L&B incurred almost the entirety of normal exploration costs and production effort; and (5) L&B discovered and produced gas where none had previously been produced. In determining whether a reentered well qualifies under section 103, the Commission considers all the *L&B* factors to see whether on balance a particular well satisfies the test.[5]

In applying this test the Commission has held that there must be substantial new drilling for a reentered well to qualify under section 103, and has considered both the amount of the increase in depth, as well as the costs. Where there is more than a 50% increase in well depth, or if there is less than a 50% increase but the costs on reentry are comparable to the cost of drilling a new well, we have found the test satisfied.[6] In this case MR entered the subject well without deviation from, or variation in the depth of, the existing wellbore. MR made more than minimal use of the existing wellbore upon reentry. Further, although MR states that the $90,000 reentry costs are comparable to the costs of drilling a new well, there is no record evidence to support the claim, and published reports indicate that the average cost of a new 5,000-foot well drilled in that area in 1982 exceeded $250,000.[7] Thus the sole element to support TRC's finding appears to be that gas was produced from a well which had not previously produced gas. Under the circumstances presented we do not believe this factor is sufficient to justify a finding that the well is a new, onshore production well under section 103.

Accordingly, the Commission hereby makes a preliminary finding pursuant to 18 CFR 275.202(a)(1)(i) (1985) that the determination submitted by TRC is not supported by substantial evidence in the record on which the determination was made, and pursuant to 18 CFR 275.202(f) (1985) any party may, within 30 days of the issuance of this Notice, submit written comments to the Commission and request an informal conference with the Commission staff.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11676 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[3] 685 F.2d 758 (5th Cir. 1982).

[4] Spudding refers to the initial boring of the hole, to a depth of approximately 100 feet, in drilling an oil or gas well. H. Williams & C. Meyers, *Manual of Oil and Gas Terms* 884 (4th ed. 1976).

[5] Phillips Petroleum Co., 32 FERC ¶ 61,104 (1985).

[6] *Id.*

[7] The Joint Association Survey on Drilling Costs, published by the American Petroleum Institute (at 30) indicates that the average cost of drilling and equipping a gas well in 1982 in the West Texas area was $230,307 for the 3,750–4,999 foot range, and $368,140 for the 5,000–7,499 foot range. The Index of Domestic Well Costs by the Energy Information Administration (at 49) indicates an average cost of approximately $276,000 to drill a 5,000 foot well in West Texas in 1982.

[Docket No. CP81-83-010]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

May 31, 1986.

Take notice that on May 13, 1986, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheets	Proposed effective date
First Revised Sheet Nos. 2407, 2408, 240, 2411, 2412, 2413, 2414, 2415, [illegible], and 2417.	Mar. 20, 1986.

Transco states that the subject tariff sheets reflect revisions to Transco's Rate Schedule X-240, which is a transportation agreement between Transco and Southern Natural Gas Company (Southern), dated September 30, 1980, (as amended March 4, 1981 and July 12, 1985), and authorized by the Commission in a certificate issued in Docket No. CP81-83 on February 8, 1982, as amended. In the amendatory agreement date July 12, 1985, Transco and Southern agreed to revise their transportation arrangement to include two additional points of delivery for gas which Transco transports for Southern. On October 2, 1985, Transco filed a petition to amend certificate in the aforementioned proceeding to obtain authorization for the additions, and the July 12, 1985 amendatory agreement was included therein as Amended Exhibit P. On March 20, 1986, the Commission issued an order in Docket No. CP81-83-004 authorizing the additional points.

A copy of the instant filing has been served upon Southern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11702 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-418-000 et al.]

El Paso Natural Gas Co. et al.; Applications for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment

May 20, 1986.

Take notice that on May 9, 1986, as supplemented on May 19, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed, on behalf of producer-suppliers currently selling gas to El Paso pursuant to certificates of public convenience and necessity, applications in Docket Nos. CI86-418-000 and CI86-424-000. In Docket No. CI86-424-000 El Paso requests the Commission issue an order under section 7(b) of the Natural Gas Act (NGA), to be effective for three (3) years from the date of issuance, authorizing blanket limited-term abandonment by El Paso's producer-suppliers of certain sales for resale of natural gas in interstate commerce. In Docket No. CI86-418-000 El Paso requests a blanket limited-term certificate of public convenience and necessity under section 7(c) of the NGA authorizing the sale for resale of natural gas in interstate commerce by those producer-suppliers with pre-granted abandonment. El Paso also requests, on behalf of those producer-suppliers, waiver of certain Commission Regulations, including those at §§ 154.94

(h) and (k), and in Parts 154 and 271 of the Commission's Regulations. El Paso Gas Marketing Co. (EPGM) requests a declaration of its status if it offers and performs limited functions in connection with El Paso's proposal, all as more fully set forth in the applications on file with the Commission and open for public inspection.

It is stated that the applications are filed as a necessary corollary to El Paso's evolution from a merchant of natural gas into a supplier/open-access transporter of natural gas. El Paso states these applications, and the authorizations requested, are essential to the proper and efficient functioning of the market served by El Paso, for without the authorizations requested, willing sellers of natural gas cannot be appropriately matched with willing buyers, and El Paso's efforts to provide open-access transportation pursuant to the Commission's Order Nos. 436, *et seq.*, will be partially frustrated.

The applications further state that the transportation volumes moving through the El Paso system displace El Paso's system sales. El Paso states that its inability to hold the market with system sales volumes reflects the competitive disadvantages suffered by El Paso as an interstate natural gas pipeline subject to the rigidities inherent in regulation (as to immediate price responsiveness, implementation of new rate structures, acceptance of new customers, realignment of facilities, and so forth), and contractual rigidities built into El Paso's long-term gas supply contracts entered into over the course of the preceding decades. El Paso states that in recognition that it could not utilize its facilities fully and efficiently in the changing market conditions unless it moved definitively in the direction of open-access transportation, El Paso opened its system on January 17, 1986, under the terms and conditions set forth in Commission Order Nos. 436, *et seq.* Thereafter, El Paso states it formulated and filed tariffs and rate schedules, at Docket No. RP86-45-000, necessary to implement open-access transportation, and these filings now await final Commission action.

El Paso's applications state further that as El Paso continues the transition from a merchant to a supplier/open-access transporter, there are specific and serious problems which must still be adequately addressed and appropriately resolved. In essence, El Paso states the decline in El Paso's sales market poses risks to El Paso (and ultimately its customers) through the build-up of potential take-or-pay liabilities which may arise under El Paso's existing long-term contracts with producer-suppliers.[1] Secondly, El Paso states the cash flow to producer-suppliers on the El Paso system has been severely impacted as El Paso's purchases have declined. El Paso states that almost two-thirds of its deliverability is shut-in on an average day. El Paso states that it is concerned, as are the producer-suppliers and the Commission, that inadequate cash flow will cause not only an impairment of present deliverability, but also inadequate development to ensure reliable and adequate long-term supplies of natural gas. El Paso states it proposes a program designed to mitigate the dual problem of take-or-pay and lowered producer-supplier revenues. The proposal herein advanced is stated to be an expansion of an experimental program open by El Paso in the last half of 1985 called the "Spot Market Release Program" (the Program).

Under the Program, El Paso states the seller of gas from non-NGA wells, that is, wells that produce gas the first sale of which is not subject to the Commission's jurisdiction under the NGA, by operation of section 601 of the Natural Gas Policy Act of 1978 (NGPA), is offered the opportunity to obtain a share of the spot market demand secured by EPGM, or to make its own marketing arrangements and sell gas surplus to El Paso's needs in the spot market. El Paso states the seller receives a price that is net of all costs of moving the gas from the wellhead to the market.

El Paso proposes to implement the Program, upon receipt of appropriate authorizations, substantially as has been done with its existing Program, except the NGA gas would be eligible for participation, and subject to the following general terms and conditions: (1) Participation in the Program by a producer-supplier shall be wholly voluntary; (2) Participation in the Program by producer-suppliers shall be on a month-to-month basis or for such longer periods as El Paso and individual producer-suppliers may agree upon, subject to El Paso's need for such gas to supply its traditional market. Participation in the Program for any period of time shall not alter the participating producer-supplier's contractual relationship with El Paso, other than as to take-or-pay credit for volumes sold into the Program; (3) The price of gas sold through the Program shall not exceed the applicable maximum lawful price prescribed by the NGPA and the Commission's implementing regulations; (4) El Paso will receive credit against its take-or-pay obligations for all gas sold by producer-suppliers through the expanded Program; (5) Participation in the Program will not be available if any facility modifications, abandonments or additions are required on the part of El Paso, or if participation would reduce the utilization of El Paso's existing facilities; (6) Gas released under the Program will be available only for purchase in El Paso's existing market area; and (7) The services of EPGM will be available to a participating producer-supplier, but utilization of those services will not be a pre-condition to participation in the Program.

It is stated that EPGM presently functions as a non-jurisdictional broker, agent, or purchaser/reseller of non-NGA gas. It is anticipated that EPGM would continue to provide the services as and when requested. With respect to the expansion of the Program to include NGA gas, EPGM will offer services as an agent to producer-suppliers to facilitate spot market sales of NGA gas. In so acting, however, EPGM will not undertake to purchase and resell gas in interstate commerce for resale. Accordingly, EPGM requests confirmation from the Commission that its contemplated activities will not make EPGM a "natural-gas company," nor subject EPGM to Commission certificate and rate regulations which apply to natural gas companies.

The applications further state that Commission approval would constitute issuance to El Paso's participating producer-suppliers of the requisite blanket abandonment and sales certificate authorizations, under section 7 of the NGA and such other authorizations, if any, as are necessary to implement the marketing of all released gas supplies which are subject to the Commission's NGA jurisdiction. El Paso states it will file with the Commission, and serve on its customers, statements identifying producer-suppliers which become eligible to participate in the expanded Program through grant of the requested authorizations. Further, El Paso states it shall file or cause to be filed with the Commission, on a quarterly basis, information as to released quantities subject to the Commission's NGA jurisdiction. El Paso states that any or all of the gas which is currently committed to El Paso under contract with participating producer-suppliers and subject to NGA jurisdiction would be covered by the abandonment and sales authorizations sought herein; *i.e.*,

[1] El Paso states that is potential take-or-pay exposure for 1985 could be several hundred million dollars and El Paso's sales volumes are still declining.

these applications contemplate the possible release and sale of all NGPA categories of gas, including NGPA section 104, section 106 and section 109 gas. However, El Paso states that because it has implemented a least-cost production scheduling program, only very small quantities of gas subject to the NGPA section 104 "flowing gas" and "replacement contract gas" maximum lawful prices, or to the maximum lawful price under NGPA section 106 will actually be available for release into the Program. El Paso estimates that 450 MMbtu per day of NGPA section 104 flowing and replacement contract gas and 106 gas might be available for release into the expanded release gas program during the balance of 1986.

The applications also state that El Paso requests that the Commission waive its regulations under the NGA as to the establishment and maintenance by participating producer-suppliers of rate schedules under Part 154 of the Commission's Regulations. El Paso states the blanket sales certificate issued to participating producer-suppliers by Commission approval of these applications could be conditioned so that the rates charged in the authorized sales would be limited by the applicable maximum lawful price prescribed by the NGPA, including any rate that the participating producer-suppliers have established the right to collect pursuant to Parts 273, 274 or 275 of the Commission's Regulations. In addition, El Paso states automatic collection of the appropriate monthly adjustments should be permitted, and El Paso requests that in approving these applications the Commission waive the requirement that participation producer-suppliers qualify for collection of any applicable allowances under section 110 of the NGPA. El Paso further requests that the Commission waive the requirement that the participating producer-suppliers comply with § 154.94(k) and Part 271 of the Commission's Regulations.

El Paso states that no transportation authority is sought in these applications. El Paso states transportation on El Paso's system of any gas released and sold under the authorizations sought herein would be accomplished under the terms of El Paso's Order Nos. 436 and 436–A tariff filing at Docket No. RP86–45–000, providing such tariff is approved by the Commission as proposed through El Paso's pending offer of settlement in that docket.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not seve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso or EPGM to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11833 Filed 5–22–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3019–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed May 12, 1986 Through May 16, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860187, Final, BLM, NV, CA, Mead/McCollough-Victorville/Adelanto 500kV Transmission Line, Design, Construction, Operation and Maintenance, Clark County, NV and San Bernardino County, CA, Due: June 23, 1986, Contact: William Collins (714) 351–6373.

EIS No. 860188, DSuppl, FHW, RI, RI–138 Improvement, Jamestown Bridge Replacement to Newport Bridge Toll Plaza, Safety and Traffic Improvement Alternatives, Newport County, Due: July 11, 1986, Contact: Robert Dyer (401) 528–4544.

EIS No. 860189, Draft, FHW, MD, MD–100 Construction, I–95 to MD–3/I–97, Howard and Anne Arundel Counties, Due: July 7, 1986, Contact: Edward Terry (301) 962–4010.

EIS No. 860190, Draft, ASC, PRO, United States Acreage Adjustment Programs for Agricultural Commodities, Reducing Production of Surplus Crops, Due: July 21, 1986, Contact: Phillip Yasnowsky (202) 447–7787.

EIS No. 860191, Draft, DOE, WA, Hanford Site, Plutonium and Uranium Extraction (PUREX) Plant, Process Facility Modifications, Construction and Operation, Due: July 7, 1986, Contact: Steven Leroy (509) 376–7378.

EIS No. 860192, Final, AFS, MT, Deerlodge National Forest, Individual Lodgepole Pine Trees Protection from Mountain Pine Beetle Attacks, Jefferson County, Due: July 7, 1986, Contact: Richard Smith (406) 287–3223.

EIS No. 860193, Final, DEA, PRO, United States and Hawaii Non-Federal and Indian Lands, Cannabis Eradication Program, Due: June 23, 1986, Contact: Rodolfo Ramirez (202) 633–5628.

Dated: May 20, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–11728 Filed 5–22–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3019–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 5, 1986 through May 9, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–AFS–J82002–MT, Rating EC2, Deerlodge Nat'l Forest, Individual Lodgepole Pine Trees Protection From Mountain Pine Beetle Attacks, MT. Summary: EPA is concerned that the effects of carbaryl on bees was not discussed. Further mitigation measures to prevent and correct accidental spills and exposures, applicator training and certification requirements, and procedures for disposing of spent pesticide containers should be described.

ERP No. D-AFS-J65094-00, Rating EC2, Intermountain Region Nat'l Forest System Lands, Noxious Weeds and Poisonous Plants Control Program, Continuation, CA, WY, ID, UT, NV, and CO. Summary: EPA thought potential human health effects were adequately addressed, but felt the draft EIS did not fully address the broader environmental risks. EPA also questioned the use of amitrole, due to its higher potential for adverse human impacts, emphasizing that it is a restricted use pesticide.

ERP No. D-AFS-K65073-AZ, Rating EC2, Apache-Sitgreaves Nat'l Forests, Land and Resource Mgmt. Plan, AZ. Summary: EPA expressed concerns about potential impacts to water quality and riparian habitat, especially from grazing activities.

ERP No. D-AFS-K65099-CA, Rating EC1, Plumas Nat'l Forest, Land and Resource Mgmt. Plan, CA. Summary: EPA expressed concerns that forest management activities could interfere with water quality restoration and protection. EPA indicated that water quality protection/restoration should be a priority item, since 30% of the water draining the forest does not meet State water quality standards.

ERP No. DS-AFS-L65095-AK, Rating EC2, 1988-90 Alaska Pulp Long-Term Sale Area, Operating Plan, Designation, Tongass Nat'l Forest, AK. Summary: EPA's primary concerns continue to be with the sale's impact on water quality. Since the environmental consequences section remains unchanged from the draft EIS, EPA has no additional comments.

ERP No. D-AFS-L65101-OR, Rating EC2, Deschutes Nat'l Forest, Land and Resource Mgmt. Plan, OR. Summary: EPA is concerned that the Forest Plan be consistent with the adopted Statewide Water Quality Management Plan for Forest Practices required by the Clean Water Act. The water quality management discussions in both the DEIS and Plan are insufficient to evaluate potential impacts. There are no specific information or data summaries to support the general statements about riparian areas and water quality. In addition, the final EIS and Plan should include the policy and program directions for the monitoring plan and how the monitoring will be used to make forest management decisions.

ERP No. D-BLM-J70006-CO, Rating EO2, Little Snake Resource Area, Resource Mgmt. Plan, CO. Summary: The EPA review was primarily concerned with protection and improvement where needed of water, air, and wetland-riparian related values. EPA identified several commendable resource management initiatives. EPA recommended several corrective actions, such as: better description of consistency with water quality standards; more definitive objectives for wetland identification and wetland-riparian area restoration and improvements; further development of mineral activity guidance and impact assessment; stronger correlation of grazing direction to protection of rangeland resource values; and inclusion of a more specific comprehensive resource monitoring strategy. EPA requested follow-up consultation.

ERP No. D-FHW-J40113-MT, Rating EC1, Bozeman Arterials Development, N. 19th Avenue Construction, Durston Rd. to Oak St.; Oak Street Construction, N. 19th Ave. to N. 7th Ave.; and Kagy Blvd. Construction, S. 3rd Ave. to S. 19th Ave., 404 Permit, MT. Summary: EPA requested that the final EIS include a commitment to construct stormwater detention facilities. EPA also indicated that further comments regarding wetlands may be appropriate after an upcoming wetland coordination meeting.

ERP No. DS-FHW-K40031-CA, Rating EC2, CA-15 Reconstruction, I-805 to I-8, New Preferred Alternative, CA. Summary: EPA expressed concerns about the potential violation of the National Ambient Air Quality Standard for carbon monoxide. EPA requested alternatives and/or mitigation that would avoid creating a violation be developed and be included in the final EIS.

ERP No. D-FHW-K40153-CA, Rating EC2, I-5/Santa Ana Freeway Widening and Interchange Reconstruction, I-405 to CA-55, 404 Permit, CA. Summary: EPA expressed concerns about the potential for increased sedimentation in Newport Bay and the need for additional air quality analysis and mitigation.

ERP No. DC-IBR-J61127-ND, Rating EU2, Garrison Diversion Unit, New Irrigation Areas and New Project Features, Operation and Maintenance, Pick-Sloan Missouri Basin Program, James R., ND. Summary: EPA's review of the proposed project as recommended by the Congressional Commission in 1984 and evaluated in this supplemental EIS identified major environmental improvements over the previous plan, however, EPA has two significant environmental concerns with the proposed action: (1) The proposed wetland replacement plan fails to meet EPA's interpretation of the requirements of the 404(b)(1) Guidelines for replacement based upon acre-for-acre compensation; (2) Salinity standards are predicted to be exceeded for the full project size of 113,000 irrigated acres at the 90th percentile and maximum probable salinity conditions for the James River in South Dakota. Violation of the State of South Dakota's antidegradation policy for the mean and median water quality conditions are also predicted and reported in the draft supplemental EIS. EPA also identified additional information needs including the need to analyze selenium mobility from the newly irrigated soils, review the alternative Municipal and Industrial water supply options recommended by the Commission, address the options for Indian Land water development as recommended by the Commission, and to specify the Best Management Practices as required by State legislation and as offered in the 1979 and 1983 EIS's. Due to these concerns EPA found the project to be environmentally satisfactory. EPA did note, however, that should the proposed Reformulation Bill become law for the Garrison Diversion Unit, most of these deficiencies in the mitigation aspects of the irrigation project would be corrected. EPA would review the subsequent revised draft EIS and determine if the rating of environmentally unsatisfactory should be withdrawn.

ERP No. D-MMS-A02116-00, Rating EC2, January 1987-December 1991 OCS Oil and Gas Lease Sales, 5 Year Program, Offshore the Atlantic, Pacific, Gulf of Mexico, and Alaska Regions, US. Summary: EPA recommended that the subarea deferrals proposed for Alternatives I and II be deferred from the Final Program, and endorsed Alternative VI, which would defer oil and gas lease sales from six planning areas altogether. EPA also recommended against holding a sale in the Straits of Florida. EPA believes that the draft EIS for the program should be revised to remove inconsistencies in analyses among OCS regions.

Final EISs

ERP No. F-BLM-L61151-ID, Shoshone and Sun Valley Wilderness Study Area, Wilderness Designation, ID. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. FB-COE-H36029-NB, Papillion Creek and Tributaries Lakes, Flood Control Plan and Recreational Improvements, Papillion Creek Basin, NB. Summary: EPA has no objections to the selected plan. Previously expressed concerns regarding proposed reservoir alternatives have been adequately addressed by selection of a channel improvement alternative as the recommended plan.

ERP No. FS-COE-K85029-HI, West Beach Resort Development, Construction of Marina and Beach Lagoons, Permit, Oahu Island, HI. Summary: EPA noted that its prior concerns on ground water impacts and project alternatives were adequately addressed, but expressed continuing concerns about adverse impacts to water quality and marine ecosystems.

Dated: May 20, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-11729 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30268; FRL-3013-9]

Applications To Register Pesticide Products; Certain Companies; Pennwalt Corp. et al.

Correction

In FR Doc. 86-10444, beginning on page 17069, in the issue of Wednesday, May 14, 1986, make the following correction:

In the "Dates" caption, "May 29, 1986" should read "June 13, 1986".

BILLING CODE 1505-01-M

[OPTS-59215A; FRL-3015-8]

Certain Chemical Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-32. The test marketing conditions are described below:

EFFECTIVE DATE: May 9, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Payer, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M Street, SW., Washington, DC 20460, (202-382-3380).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TMS-86-32. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-32. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T-86-32

Date of Receipt: March 19, 1986.

Notice of Receipt: March 28, 1986 (51 FR 10681).

Applicant: Confidential.

Chemical: (G) Cationic aliphatic condensate.

Use: (G) Paper additive.

Production Volume: 18,000 pounds.

Number of Customers: One.

Worker Exposure: Import: None. Processing and use: dermal, a total of 8 workers up to 90 days/yr.

Test Marketing Period: 90 days. *Commencing on* May 9, 1986.

Risk assessment: EPA identified no significant concerns for human health effects. Therefore, the test market substance will not pose any unreasonable risk of injury to health. The Agency did identify potential adverse effects to aquatic organisms. However, since wastes from processing will be recycled, the test market substance will not pose any unreasonable risk of injury to the environment.

Public Comments: None.

The agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 9, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-11298 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59766; FRL-3020-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-145 and 86-146—June 1, 1986.

Y 86-147 and 86-148—June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential

version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-143

Importer. Confidential.
Chemical. (G) Isoyanate polymer with polyalkyloxy compound, substituted propanoic acid, and a diamine.
Use/Import. (S) Industrial color fixing agent for leather. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Use: Dermal and ocular, a total of 1 worker.
Environmental Release/Disposal. Release during clean-up operations. Disposal by publicly owned treatment works (POTW) and on-site biological treatment.

Y 86-146

Manufacturer. Confidential.
Chemical. (G) Water reducible air-dry alkyd resin.
Use/Production. (S) Industrial warter reducible binder for air-dry finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-147

Manufacturer. E.I. duPont de Nemours and Company, Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Fast cure polymer. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-148

Manufacturer. Confidential.
Chemical. (G) Polymer from poly(alkylene ether)glycol and methylene bis-cyclohexyl isocyanate.
Use/Production. (G) Coating or film. Prod., range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: May 16, 1986.

Denise Devoe,

Acting Director, Information and Manganent Division.

[FR Doc. 86-11062 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51624; FRL-3039-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1014 and 86-1015—August 6, 1986.
P 86-1016, 86-1017, 86-1018, 86-1019, 86-1020, 86-1021, 86-1022, 86-1023, 86-1024 and 86-1025—August 9, 1986;
P 86-1026, 86-1027, 86-1028, 86-1029, 86-1030, 86-1031, 86-1032 and 86-1033—August 10, 1986;
P 86-1034, 86-1035 and 86-1036—August 11, 1986;
P 86-1037, 86-1038, 86-1039, 86-1040, 86-1041 and 86-1042—August 12, 1986;
Written comments by:
P 86-1014 and 86-1015—July 7, 1986;
P 86-1016, 86-1017, 86-1018, 86-1019, 86-1020, 86-1021, 86-1022, 86-1023, 86-1024 and 86-1025—July 10, 1986;
P 86-1026, 86-1027, 86-1028, 86-1029, 86-1030, 86-1031, 86-1032 and 86-1033—July 11, 1986;
P 86-1034, 86-1035 and 86-1036—July 12, 1986;
P 86-1037, 86-1038, 86-1039, 86-1040, 86-1041 and 86-1042—July 13, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51624]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1014

Importer. American Cyanamid Company.
Chemical. (G) Substituted phosphine oxide.
Use/Import. (G) Chemical extractant. Import range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; acute dermal: >2 g/kg; Irritation: Skin—Severe, Eye—Mild; Ames test: Nonmutagenic.
Exposure. Processing: A total of 10 workers, up to 4 hrs/da, up to 300 da/yr.
Environmental Release/Disposal. Minimal.

P 86-1015

Importer. American Cyanamid Company.
Chemical. (G) Substituted phosphine oxide.
Use/Import. (G) Chemical extractant. Import range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Severe, Eye—Mild; Ames test: Nonmutagenic.
Exposure. Processing: A total of 10 workers, up to 4 hrs/da, up to 300 da/yr.
Environmental Release/Disposal. Minimal.

P 86-1016

Importer. Marubeni America Corporation.
Chemical. (S) N,N-Dimethylaminopropylacrylamide.
Use/Import. (G) Coating resin for open, non-dipersive use. Import range: 10,000-100,000 kg/yr.
Toxicity Data. Acute oral: 3.9 g/kg; Acute dermal >2.0 g/kg; Irritation: Skin—Severe, Eye—Severe; Ames test: Nonmutagenic; Inhalation: 5.9 mg/ml.
Exposure. Processing: A total of 20 workers, up to 8 hrs/da.
Environmental Release/Disposal. Minimal release to water. Disposal by standard waste disposal means.

P 86-1017

Importer. Confidential.
Chemical. (G) Isocyanate polymer with polyalkyloxy compound, substituted propanic acid, and a diamine.
Use/Import. (S) Industrial color fixing agent for leather. Import range: Confidential.

Toxicity Data. No data submitted.
Exposure. Processing: Dermal, a total of 1 worker, up to 15 min/da.
Environmental Release/Disposal. Release to water. Disposal by publicly owned treatments works (POTW) and biological treatment system.

P 86-1018

Importer. Nuodex Inc.
Chemical. (G) Unsaturated polyester resin from dibasic acids and polyols.
Use/Import. (S) Industrial coatings and adhesives. Import range: 30,000–150,000 kg/yr.
Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-1019

Manufacturer. Confidential.
Chemical. (G) Cyclotetra(2-hydroxy-5-tert-butylbenzene).
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: A total of 10 workers.
Environmental Release/Disposal. 0.05 to 0.15 kg/batch released to land. Sent to a disposal facility.

P 86-1020

Manufacturer. Confidential.
Chemical. (G) Hydroxymethyl tetramer of substituted phenol.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: A total of 10 workers.
Environmental Release/Disposal. 0.05 to 0.15 kg/batch released to land. Sent to a disposal facility.

P 86-1021

Manufacturer. Confidential.
Chemical. (G) Transition metal trichalcogenide.
Use/Production. (G) Sealed energy source component. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 gm/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative.
Exposure. Manufacture: A total of 4 workers, up to 260 da/yr.
Environmental Release/Disposal. Minimal.

P 86-1022

Manufacturer. Confidential.
Chemical. (S) Polymer of acetoacetate of hydroxy ethyl methacrylate, methyl methacrylate, styrene, butyl methacrylate.
Use/Production. (G) Polymer for industrial finishing. Prod. range: 9,000–45,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal and inhalation, a total of 4 workers, up to 3 hrs/da, up to 7 da/yr.
Environmental Release/Disposal. Release to air, sewer and land. Disposal by POTW and venting with 20 kg/batch incinerated.

P 86-1023

Manufacturer. Confidential.
Chemical. (S) Polymer of dipropylene glycol, diethylene glycol, ethylene glycol, trimethylol propane, phthalic anhydride, terephthalic acid, tall oil fatty acid.
Use/Production. (S) Industrial polymer for industrial metal coatings. Prod. range: 90,000–160,000 kg/yr.
Toxicity Data. Confidential.
Exposure. Manufacture: Dermal and inhalation, a total of 4 workers, up to 3 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. Release to air, sewer and land. Disposal by POTW and venting with 20 kg/batch incinerated.

P 86-1024

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Acrylic polyelectrolyte.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 11 workers.
Environmental Release/Disposal. No release. Disposal by public incineration.

P 86-1025

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Acrylic polyelectrolyte.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 11 workers.
Environmental Release/Disposal. No release. Disposal by public incineration.

P 86-1026

Manufacturer. Confidential.
Chemical. (G) Alkyl esters.
Use/Production. (G) Intermediate, surfactant and textile processing aid. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 86-1027

Manufacturer. Confidential.
Chemical. (G) Alkyl esters.
Use/Production. (G) Intermediate, surfactant and textile processing aid. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 86-1028

Manufacturer. Amoco Corporation.
Chemical. (S) 2, 6-dimethyl naphthalene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >13,430 mg/kg; Acute dermal: >3,000 mg/kg; Skin—Non-irritant, Eye—Mild.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P 86-1029

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Aromatic terpene phenol resin.
Use/Production. (S) Industrial tackifiers for adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 0.25 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 1 to 3 kg/batch to air and water. Disposal by waste water treatment, mechanical filter system and settling pond.

P 86-1030

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Aromatic hydrocarbons, phenol polymer.
Use/Production. (S) Industrial tackifiers for adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 0.25 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 3 kg/batch released to air. Disposal by mechanical filter system and settling pond.

P86-1031

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Hydroxyl containing acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.
Environmental Release/Disposal. Disposal by incineration.

P 86-1555

Manufacturer. Rohm and Haas Company.
Chemical. (G) Functionalized acrylic-vinyl aromatic copolymer.
Use/Production. (G) Polymeric processing aids in a contained use. Prod range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 86-1553

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified acrylic-vinyl aromatic copolymer.
Use/Production. (G) Polymeric processing aids for destructive and non-destructive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW and biological treatment system.

P 86-1554

Manufacturer. Confidential.
Chemical. (G) Moleated, phenolic rosin ester, calcium salt.
Use/Production. (G) Resin vehicle for printing inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1555

Manufacturer. Confidential.
Chemical. (G) Polymer of aromatic diisocyanate, aliphatic diacid and alkanediols.
Use/Production. (S) Site-limited used for production of urethane elastomers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 12 workers.
Environmental Release/Disposal. 0.4 to 1.0 kg/day released to land. Disposal by foaming a solid PUR product.

P 86-1556

Manufacturer. Confidential.
Chemical. (G) Cyanoacrylate ester polymer.
Use/Production. (G) Intermediate for adhesive. Prod. Range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1557

Manufacturer. Confidential.
Chemical. (G) Polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol.
Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1558

Manufacturer. Confidential.
Chemical. (G) Oxime blocked polyether urethane.
Use/Production. (G) Industrial polymer used in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 44 workers, up to 8 hrs/da, up to 260 da/yr.
Environmental Release/Disposal. 2 to 200 kg/batch released to land. Disposal by incineration, approved landfill and commercial disposer.

P 86-1559

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Open use for industrial paint product. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 53 workers, up to 8 hrs/da, up to 232 da/yr.
Environmental Release/Disposal. 5 to 182 kg/batch released to land. Disposal by incineration, approved landfill and commercial disposer.

P 86-1560

Manufacturer. Confidential.
Chemical. (G) Vinyl toluene alkyd.
Use/Production. (S) Industrial coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 86-1561

Manufacturer. Quantum Composites, Inc.
Chemical. (G) Amine salt.
Use/Production. (G) Accelerator for cross linking resin systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-1562

Manufacturer. Mona Industries, Inc.
Chemical. (S) Mixed mono- and di-phosphate esters of 1H-imidazole propanoic acid, 4,5-dihydro-1-(2-hydroxyethyl)-,2-undecyl mixed di- and tri-potassium salt.
Use/Production. (S) Exempt use (cosmetics), textile fiber producer finish, surfactant in fabrics and surface cleaners for industrial, commercial and consumer use. Prod. range: 8,750-39-375 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 3 workers, up to 2 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 0.2 to 2 kg/batch released to water. Disposal by POTW.

Dated: May 16, 1986.

Denise Devos,
Acting Director, Information Management Division.

[FR Doc. 86-11063 Filed 5-22-86; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3020-8]

Management Advisory Group Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Management Advisory Group to the EPA Construction Grants Program (MAG) will be held on June 10-11, 1986, at Falmouth and the Woods Hole Oceanographic Institution in Massachusetts.

The meeting will take place at the Sheraton Hotel in Falmouth on June 10 from 9 a.m. to 5 p.m., and from 8 a.m. to 1 p.m. on June 11. The meeting will be continued at the Woods Hole Oceanographic Institution, at Woods Hole from 2 p.m. to 4:30 p.m. on June 11.

The agenda will include meetings of the MAG Task Forces on Sludge Management, Infiltration/Inflow, and the Clean Water Act Reauthorization. There will be presentations and discussion on sewage treatment in reference to the Buzzards Bay estuary and the sole source aquifer in Cape Cod. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. For additional information, please contact Georgette Brown at (202) 382-5859.

Dated: May 16, 1986.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 86-11665 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59222; FRL-3020-4]

Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of five applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by June 9, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59222]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hannett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-43

Close of Review Period. June 26, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted dialkylamino alkylazo carbonate.

Use Production. (S) Dyeing agent for use in liquid crystal displays. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No release.

T 86-44

Close of Review Period. June 26, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted alkylazo benzoate.

Use Production. (S) Dyeing agent for use in liquid crystal displays. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No release.

T 86-45

Close of Review Period. June 26, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted alkylphenyl alkyl tetrahydro alkylazo benzoate.

Use Production. (S) Dyeing agent for use in liquid crystal displays. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No release.

T 86-46

Close of Review Period. June 29, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted benzenesulfonamide.

Use/Production. (G) A component of a vehicle used in printing ink. Prod. range: 1,360 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing. Minimal.

Environmental Release/Disposal. Disposal by publicly owned treatment works (POTW).

T 86-47

Close of Review Period. June 29, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted benzenesulfonyl chloride.

Use/Production. (G) Site-limited intermediate. Prod. range: 1,750 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Minimal

Environmental Release/Disposal. Disposal by POTW.

Dated: May 16, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-11661 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Agency Information Collection Activities Under OMB Review; Thrift Industry Report

Dated: May 19, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a revised information collection request, "Thrift Industry Report", formerly designated as "Periodic Reports of Saving & Loan, Sections A,B,C,D,E,F,G,H,I and K", to the Office of Management and Budget for expedited approval in accordance with the Paperwork Reduction Act (44 U.S.C Chapter 35).

COMMENTS: Comments on the information collection request we welcome and should be submitted within 15 days of publication of this notice in the Federal Register. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Parker Jayne, Office of Examinations and Supervision, (202) 377-6486, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Jeff Sconyers,

Secretary.

[FR Doc. 86-11610 Filed 5-22-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Bank of New England Corp., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.15) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than June 13, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston Massachusetts; to acquire 100 percent of the voting shares of Consumer Savings Bank, Worcester, Massachusetts. Comments on this application must be received not later than June 16, 1986.

2. *United Vermont Bancorporation*, Rutland, Vermont; to acquire 66.9 percent of the voting shares of The Green Mountain Bank, Winhall Township, Vermont.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation*, Atlanta, Georgia, and Citizens and Southern Florida Corporation, Fort Lauderdale, Florida; to acquire 100 percent of the voting shares of Landmark Bank of Seminole County, Casselberry, Florida, a *de novo* bank.

2. *Genala Banc, Inc.*, Geneva, Alabama; to become a bank holding company by aquiring 80 percent of the voting shares of The Citizens Bank, Geneva, Alabama.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizen Fidelity Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of First Midwest Bancorp, New Albany, Indiana, and thereby indirectly acquire First Midwest Bank and Trust, New Albany, Indiana.

Board of Governors of the Federal Reserve System, May 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 11812 Filed 5-22-86; 8:45 am]

BILLING CODE 6210-01-M

BankEast Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BankEast Corporation*, Manchester, New Hampshire; to engage *de novo* through its subsidiary BankEast Leasing Corp., Manchester, New Hampshire, in leasing personal or real property or acting as agent, broker, or advisor in leasing such property pursuant to section 225.25(b)(5) of the Board's Regulation Y.

2. *BayBanks, Inc.*, Boston, Massachusetts; to engage *de novo* through its subsidiary BayBanks Credit Corporation, Dedham, Massachusetts, in processing and servicing consumer loans pursuant to section 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp*, Reading, Pennsylvania; to engage directly in the making, acquiring, servicing and soliciting of loans.

Board of Governors of the Federal Reserve System, May 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11013 Filed 5-22-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Service (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 16, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Centers for Disease Control

Subject: Birth Defects and/or Genetic Disease Surveillance—Extension—(0920–0010)
Respondents: Individuals or households
Subject: Reproductive Study of Women Who Work With Video Display Terminals—New
Respondents: Individuals or households

Office of the Assistant Secretary for Health

Subject: National Hospital Discharge Survey—Extension—(0937–0004)
Respondents: State and local governments, businesses, nonprofit institutions and small businesses
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of packages)
Subject: Disclosure of Ownership and Financial Interest Statement—HCFA–1513—Revision—(0938–0066)
Respondents: Providers
Subject: Request for Certification as a Supplier of Portable X-ray Services and the Portable X-ray Survey Report Form—HCFA 1880 and 1882—Extension—(0938–0027)
Respondents: Suppliers of portable X-ray services
Subject: Histocompatibility Testing Laboratories Survey Report Form—HCFA 445—Extension—(0938–0376)
Respondents: States
Subject: Home Health Agency—Home Health Visit Questions—HCFA–R–7—Existing Collection—
Respondents: Individuals
Subject: Corrective Action Plan (Medicaid Eligibility Quality Control)—HCFA–320—Extension—(0938–0144)
Respondents: States
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)
Subject: Report to U.S. Social Security Administration by Person Receiving Benefits for Child or Adult Unable to Handle Funds, SSA–7161, and Reports to U.S. Social Security Administration, SSA—7162—Extension—(0960–0049)
Respondents: Individuals
Subject: Reconsideration Report for Disability Cessation, SSA–782—Extension—(0960–0350)
Respondents: Individuals
Subject: Cessation or Continuance of Disability or Blindness Determination and Transmittal, SSA–832—Existing Collection—
Respondents: State and local governments
Subject: Representation Payee Evaluation Report, SSA–624—Extension—(0960–0069)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503
Attn: (name of OMB Desk Officer).

Dated: May 20, 1986.

K. Jacqueline Hola,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–11711 Filed 5–22–86; 8:45am]

BILLING CODE 4150–04–M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Atlanta District Office, chaired by John H. Turner, District Director. The topics to be discussed are Health Claims on Food Labels and Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Tuesday, June 3, 1986, 9 a.m. to 12 noon

ADDRESS: Margaret Cameron Spain Auditorium, 19th and 7th Ave. South, Birmingham, AL 35020.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–7355.

Atlanta District Office, chaired by John H. Turner, District Director. The topics to be discussed are Health Claims on Food Labels and Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Thursday, June 5, 1986, 9 a.m. to 12 noon

ADDRESS: Conference Rm., Charles Stone Agricultural Center, 819 Cook Ave., Huntsville, AL 35801.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–7355.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 19, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–11607 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Vital and Health Statistics National Committee; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Uniform Minimum Health Data Sets established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, June 4, 1986 from 9:00 a.m. to 4:30 p.m. in Room 423A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will continue to examine the merits of recommending the inclusion or exclusion of individual items in the proposed long term care minimum data set.

Further information regarding the Subcommittee may be obtained by contacting Henry S. Mount, National Center for Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: May 14, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86–11712 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–17–M

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Facilities Improvement and Repair Priority List for Fiscal Year 1986.

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of facilities improvement and repair priority list for fiscal year 1986.

This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Facility Improvement and Repair list has been prepared for fiscal year 1986 in accordance with House Report Number 98-888, page 52, "To avoid some of the problems experienced in the past year, the Committee directs the Bureau to revise the FI&R priority system by publishing in the Federal Register by October 1 of each fiscal year, the national list of projects expected to be accomplished that year within the available funds."

This notice for FY 1986 provides the approved list of FI&R projects. Construction of these projects is subject to the availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the Federal Register/Vol. 51, No. 30/ Thursday, February 13, 1986/Notice 5415:

The Projects for FY 1986 are:

1. Pierre Indian Learning Center
2. Turtle Mountain L&O Facility
3. Blackfeet Dormintory
4. Carter Seminary Airconditioning
5. Sells L&O Facility
6. Owyhee L&O Facility
7. Fort Apache L&O Facility
8. Hopi/Moencopi Day School
9. Mescalero Agency Headquarters
10. Greasewood School
11. Chi-Chil-Tah Boarding School
12. Chinle Boarding School—Phase I
13. Warm Springs Headquarters
14. Bogue Chitto Boarding School
15. Conehatta School
16. Redwater Day School
17. Choctaw Headquarters

[redacted] O. Swimmer,

Assistant Secretary—Indian Affairs.

May 13, 1986.

[FR Doc. 86-11623 Filed 5-22-86; 8:45 am]

[redacted] CODE 4310-02-M

Bureau of Land Management

[AA-8964-A]

Alaska Native Claims Selection; English Bay Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to The English Bay Corporation for approximately 1 acre. The lands involved are in the vicinity of English Bay, Alaska.

Seward Meridian, Alaska

T. 9 S., R. 16 W. (Surveyed)
Sec. 1, those lands formerly within ANCSA Sec. 3(e) application AA-8963.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Anchorage Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-11603 Filed 5-22-86; 8:45 am]

[redacted] CODE 4310-JA-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Applications for Permits; California Academy of Sciences et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-704241

Applicant: California Academy of Sciences, San Francisco, CA.

The applicant requests a permit to export six Asian bonytongues (*Sclerapages formosus*) to the Vancouver Public Aquarium for enhancement of propagation and survival of the species.

PRT-706875

Applicant: Native Gardens, Greenback, TN.

The applicant requests a permit to sell in interstate commerce artificially propagated Tennessee purple coneflower (*Echinacea tennesseensis*) derived from cultivated stock and plants rescued from the wild for the purpose of enhancement of propagation of the species.

PRT-707023

Applicant: Melissa Josey Gribble, Rosston, TX.

The applicant requests a permit to purchase two pairs of captive born red siskins (*Carduelis* (=*Spinus*) *cucullata*) from Pat Demko of Pittsburgh, PA, for the enhancement of propagation.

PRT-707271

Applicant: Louisiana Purchase Gardens & Zoo, Monroe, LA.

The applicant requests a permit to export one pair of captive born margays (*Felis wiedii*) to Ardastra Gardens, Nassau, Bahamas, for the purpose of enhancement of propagation.

PRT-707241

Applicant: I & K Productions, Inc. Washington, DC.

The applicant requests a permit to purchase one male and four female Asian elephants (*Elephas maximus*) from Diamond "O" Ranch, Canton, Ohio, for the purpose of enhancement of propagation.

PRT-706846

Applicant: St. Paul's Como Zoo, St. Paul, MN.

The applicant requests a permit to purchase in interstate commerce one female orangutan (*Pongo pygmaeus*) from Gladys Porter Zoo, Brownsville, TX, for the purpose of enhancement of propagation.

PRT-707005

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to purchase in interstate commerce and export to the Taipei Municipal Zoo, Taiwan a pair of ocelots (*Felis pardalis*) for the purpose of enhancement of the propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road,

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Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 16, 1986.

R.T. Kravetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-11722 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species; Receipt of Application for Permit; Donald B. Siniff

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

File no. PRT-707066

Applicant Name: Donald B. Siniff, University of Minnesota, Minneapolis, MN.

Type of Permit: Scientific Research

Name and Number of Animals: California sea otters—*Enhydra lutris nereis* 40

Summary of Activity to be Authorized: The applicant proposes to take these animals for the purpose of determining the effects of introducing animals rescued from oil spill areas into other sea otter populations. Up to 40 sea otters of various ages and both sexes will be captured, drugged and tagged. Blood and a premolar tooth will be extracted from 35, and up to 15 will be implanted with radio transmitters for the purpose of tracking after translocation.

Source of Marine Mammals for Research: Wild—off the coast of California

Period of Activity: 1 year

Concurrent with the publication of this notice in the Federal Register, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: May 16, 1986.

R.T. Kravetsky,

Acting Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 86-11723 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Gates of the Arctic National Parks Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting on Tuesday, June 17, 1986, from 9:00 A.M. to 5:00 P.M. and ending Wednesday afternoon, June 18, 1986.

Location: Sophie Station, 1717 University Avenue, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call meeting to order
2. Roll call
3. Introduction of visitors and guests
4. Approval of minutes
5. Agency reports
6. Committee workshops
   a. Access
   b. Eligibility
   c. Traditional use areas
7. Committee reports
8. Public/Agency testimony
9. Resolutions
10. Hunting program draft recommendations
11. New business
12. Chairperson election
13. Meeting schedule
14. Commissioner comments
15. Adjournment

Written comments and recommendations received prior to June 17, 1986, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: May 16, 1986.

Robert L. Peterson,

Acting Regional Director.

[FR Doc. 86-11733 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area, Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30(PST) on Thursday, June 5, 1986 at Tamalpais High School Student Center, Mill Valley, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Ms. Daphne Green
Mr. Burr. Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items are: review of the environmental assessment of the Eucalyptus Removal Program for GGNRA and consideration of the staff report and the Marin Committee recommendations on the Coast Guard's proposed move to East Fort Baker.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, CA 94123.

Minutes for the meeting will be available for public inspection by July 5, 1986, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: April 29, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86-11735 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area, Public Hearing and Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing and meeting of the Golden Gate National Recreation Area Advisory Commission will be held in two parts. The first part will be held in San Francisco at 7:30 p.m. (PST) on Thursday, May 22, 1986 at Building 201, Fort Mason, San Francisco, California. The second part will be held in Marin County on June 5, 1986, at 7:30 p.m. (PST) at Tamalpais High School Student Center, Mill Valley, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel form members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Ms. Daphane Greene
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items for the San Francisco meeting are: consideration of the staff report and the San Francisco Committee recommendations on the design of the Phillip Burton Memorial at Fort Mason and a public hearing for consideration of the National Park Service staff report and recommendations on the proposed Child Care Center in the Presidio of San Francisco.

The meeting is open to the public. Any member of the public may file with the commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by June 22, 1986, in the office of the General Superintendent, Golden Gate National Recretion Area, Fort Mason, San Francisco, CA 94123.

Date: March 20, 1986.

W. Lowell White,

Acting Regional Director.

[FR Doc. 86-11734 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Decision and Statement of Reasons for Decisions of Red Rim Unsuitability Petition

SUMMARY: The Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) has reached a decision on a petition to designate Federal lands as unsuitable for surface coal mining operations in the Red Rim area of Wyoming.

ADDRESSES: Copies of the Statement of Decision and the Statement of Reasons for the decision may be obtained from Mark Boster, Chief, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, or Allen D. Klein, Administrator, Western Technical Center, Office of Surface Mining Reclamation and Enforcement, Brooks Tower, Second Floor, 1020 15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Mark Boster, Chief, Division of Permit and Environmental Analysis; Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343-1480.

SUPPLEMENTARY INFORMATION: The National Wildlife Federation and the Wyoming Wildlife Federation filed a petition with OSMRE on September 27, 1982, to designate approximately 9,000 acres of Federal lands in the Red Rim area of Wyoming as unsuitable for surface coal mining operations. The Federations also petitioned the State of Wyoming to designate approximately 2,000 acres of private lands within the Red Rim area as unsuitable for surface coal mining operations. The Federal petition was filed in accordance with section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations at 30 CFR Part 769. The petition alleged: (1) That reclamation of the area was not technologically and economically feasible; and (2) that Federal lands within the area were fragile lands, as defined at 30 CFR 762.5. Pursuant to 30 CFR Part 769, OSMRE analyzed the allegations of the petition, and on January 22 and 23, 1985, held a public hearing. OSMRE published the final petition evaluation document and environmental impact statement (PED/EIS) in November 1985.

A copy of the Statement of Decision signed by the Director appears as an appendix to this notice. Additional copies of the Statement of Decision and copies of the Statement of Reasons (not attached to this notice) are available at no cost from the Offices listed above under ADDRESSES. OSMRE has sent copies of these documents to all interested parties of record.

Additional information on the petition can be found in Federal Register notices of January 5, 1983 (Receipt of a Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations, 48 FR 523); June 29, 1983 (Notice of Intent to Prepare Environmental Impact Statement, 48 FR 29961); October 20, 1983 (Notice of public hearing, 48 FR 48724); January 4, 1984 (notice of postponement of the public hearing, 49 FR 521); March 5, 1984 (Notice of rescheduling of public hearing, 49 FR 8092); April 4, 1984 (Notice of postponement of public hearing, 49 FR 13440); and December 19, 1984 (Notice of public hearing, 49 FR 49366).

Dated: May 19, 1986.

Ted D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

Statement of Decision

Under section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272, the Office of Surface Mining Reclamation and Enforcement (OSMRE) was petitioned by the National Wildlife Federation and the Wyoming Wildlife Federation to designate certain Federal lands in the Red Rim area of southcentral Wyoming as unsuitable for all types of surface coal mining operations. The Federations also petitioned the State of

Wyoming with respect to certain private lands in the same area. Rocky Mountain Energy Company, the owner of private coal underlying the petition area, and Taylor Lawrence, the owner of the majority of private surface comprising the area and the lessee of the majority of the Federal grazing allotments within it, intervened in opposition to the petition.

As required by sections 522(c) and 522(d) of SMCRA, OSMRE sought public comment on the petition. With the State of Wyoming, OSMRE held a public hearing in Rawlins, Wyoming, which is located near the petition area. OSMRE also prepared a detailed petition evaluation document/environmental impact statement (PED/EIS) evaluating the petition and all reasonable decision alternatives.

In reaching my decision on the Red Rim unsuitability petition, I have considered all of the information in the Administrative Record for this proceeding, including the PED/EIS, the recommendation of the Federal land management agency, and the information provided by the petitioners, intervenors, government agencies, the State of Wyoming, industry and the public. Based upon this information, I have reached the following decision:

1. I find that, as the petitioners allege, Federal lands within the petition area are fragile lands which surface coal mining operations would affect, potentially resulting in significant damage to important natural systems. The fragile lands and important natural systems at issue in the petition include portions of the Red Rim critical winter range delineated by the Wyoming Game and Fish Department for the Baggs Herd of pronghorn. In accordance with section 522(a)(3) of SMCRA, the decision whether to designate those fragile Federal lands within the petition area as unsuitable for certain types of surface coal mining operations is subject to my discretion.

2. Exercising this discretion, I decline to designate all or any part of the Red Rim petition area as unsuitable for surface coal mining operations, but hereby require that the approval of any Federal mining plan for the petition area include a condition that restricts from development the pronghorn winter range located within the south portion of the petition area until reclamation of pronghorn winter habitat in the north portion of the petition area has been demonstrated to be successful.

3. Reclamation in the north portion of the petition area shall be demonstrated to be successful when the Department of the Interior finds in writing that the operator/lessee has (1) demonstrated its capability to restore the carrying capacity of the critical winter range, (2) met the requirements of SMCRA, the applicable regulatory program, and the Bureau of Land Management's (BLM's) land-use planning decisions for the petition area, and (3) demonstrated that postmining vegetation would provide for pronghorn forage production equal to or greater than premining conditions. The postmining vegetation (composition and diversity (structural and species-specific)) must approximate premining conditions and be self-renewing when subjected to foraging use. The north portion of the petition area consists of secs. 24, 26, and 34, T. 21 N., R. 89 W.; secs. 4, 6, 8, and 18, T. 20 N., R. 89 W.; and secs. 12, 14, 22, and 24, T. 20 N., R. 90 W. The south portion of the petition area consists of secs. 26, 28, 32, and 34, T. 20 N., R. 90 W.; secs. 4, 6, 8, 18, and 30, T. 19 N., R. 90 W.; and secs. 24 and 26, T. 19 N., R. 91 W.

4. I find that there is insufficient evidence to demonstrate that, as the petitioners allege, reclamation of surface coal mining operations in the petition area pursuant to the requirements of SMCRA is not technologically and economically feasible. I, therefore, decline to designate all or any part of the Red Rim petition area as unsuitable for either surface or underground coal mining operations based on the technological and economic feasibility criterion of section 522(a)(2) of SMCRA.

My *Statement of reasons* explains the basis for my decision not to designate the Red Rim petition area unsuitable for either surface or underground coal mining operations. This decision is final on the date signed. Any appeal from this decision must be filed within 60 days of that date in the United States District Court for the District of Wyoming, as provided in section 526(a)(1) of SMCRA. Copies of this decision will be sent by certified mail to all parties to this proceeding.

Dated: May 19, 1986.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-11617 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Panama, Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Republic of Panama as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in the Republic of Panama. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Republic of Panama

Project: 525-HG-012—$10,000,000.00

Attention: Dr. Eduardo Dudley, Director

Ministry of Planning and Economic Policy

Apartado 2994, Zona 3, Panama, Republic of Panama, Telephone: 69-4962 or 69-2169

Telex: 3638 (System: Intel)

Interested investors should telegram their bids to the Borrower's representative on June 3, 1986 but no later than 12:00 noon Eastern Standard Time. Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. William Gelman, RHUDO/PSA, USAID/Panama, Ave. Manuel Espinosa Batista, Apartado 0959, Panama 5, Republic of Panama

Telex: c/o American Embassy, USAID/Panama, Panama City, Republic of Panama

Michael G. Kitay, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, D.C. 20523

Telex No.: 892703 AID WSA.

Each proposal should consider the following terms:

(a) *Amount:* U.S. $10.0 million. The borrowing should be so structured that the sum of the principal disbursed to the Borrower and interest unpaid, accrued and capitalized during the grace period should not exceed $10.0 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years.

(d) *Grace Period on Interest:* Proposals should be made with a grace period up to three years on interest payments. Interest earned during the grace period will be capitalized and added to the principal to be amortized starting at the end of the ten year grace period for payments on principal.

(e) *Interest Rate:* Proposals should include both fixed rate and variable rate alternatives on interest. An option for Borrower to convert from variable to fixed interest rate should be maintained.

(f) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing through an escrow account. Notwithstanding, proposals with disbursements of 50 percent of borrowing's net proceeds upon signing and the remaining 50 percent to be disbursed six months later will be welcome.

(g) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(h) *Investment Expense:* Borrower has agreed to pay for all investment expenses, fees, and costs at closing from the proceeds of the loan. All such costs, fees, and commissions shall be clearly specified in each proposal.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Director, Office of Housing and Urban Program, Agency for International Development, Room 3208 N.S., Washington, D.C. 20523, Telephone: (202) 647-3662.

Dated: May 21, 1986.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86-11650 Filed 5-22-86; 8:45 am]

BILLING CODE 4116-01-M

DEPARTMENT OF JUSTICE

Lodging of Amended Consent Decree Pursuant to the Clean Water Act; Saline Sewer Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 14, 1986, a proposed Amended Consent Decree in *United States* v. *Saline Sewer Company*, Civil Action No. 80-0948C(C), was lodged with the United States District Court for the Eastern District of Missouri. The proposed decree concerns violations by defendant of the Consent Decree entered on December 21, 1981, by discharging pollutants in excess of specified effluent limitations, by discharging pollutants from unpermitted locations, and by failing to comply with the implementation schedule of said Decree. The proposed Amended Decree imposes a civil penalty of one hundred twenty seven dollars ($127.00) and requires Saline to undertake and complete a program to maintain compliance with the Clean Water Act and the State of Missouri Clean Water Law.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Divison, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Saline Sewer Company*, D.J. Ref. 90-5-1-1-1323.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 414, U.S. Court and Custom House, 114 Market Street, St. Louis, MO. 63101, and at the Region VII Office of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-11632 Filed 5-22-86; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgment; Battery Council International et al.

Notice is hereby given that Battery Council International (as successor to the Association of American Battery Manufacturers), Sears, Roebuck and Co., Globe Battery Division of Johnson Controls, Inc. (formerly Globe-Union, Inc.), B.F. Goodrich Company, Goodyear Tire & Rubber Co., Inc., Firestone Tire & Rubber Company, NL Industries, Inc. (formerly National Lead Company), Wickes Companies, Inc. (as successor to Gamble Skogmo, Inc.), Western Auto Supply Co., Montgomery Ward & Co., and Exide Corporation (purchaser of Willard Storage Battery Co.) have filed with the United States District Court for the Western District of Missouri a motion to terminate the final judgment in *United States* v. *The Association of American Battery Manufacturers, et al.*, Civil No. 6199; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on February 6, 1950) alleged that the defendants had combined and conspired to monopolize the manufacture and sale of automobile batteries.

The judgment (entered on December 10, 1953) dissolved the Lead Disposal Company and limited membership in the defendant association to battery manufacturers. In addition the defendants were enjoined from agreeing to fix prices for the sale of used batteries sold to third persons, to divide, allocate, or assign customers of territories, to sell to any purchaser approved or designated by any person other than the seller, to restrict, hinder, or prevent the movement of used batteries to battery rebuilders, to sell or provide for the sale of used batteries or the lead salvaged therefrom only to certain designated third persons, to require or cause the destruction of used batteries, and to collect, compile, or disseminate any statistics, figures, or percentages on used batteries sold by or collected from a particular soure or the amount of lead salvaged therefrom.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, the defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202-633-2481), and at the office of the Clerk of the United States District Court for the Western District of Missouri, Western Division, Federal Courthouse, 811 Grand Avenue, Kansas City, Missouri 64106. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Professions and Intellectual Property Section, Antitrust Division, Department

of Justice, Washington, DC 20530 (telephone 202–724–6335).

Dated: May 13, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–11724 Filed 5–22–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Steering Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 10, 1986, 9:30 a.m., Rm S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallé, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC, this 15th day of May 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86–11716 Filed 5–22–86; 8:45 am]

BILLING CODE 4510–28–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Georgia:
GA86–3 (Jan. 3, 1986)..... pp. 212–213.
Pennsylvania:
PA86–2 (Jan. 3, 1986)..... pp. 804, 807, p. 814.
PA86–3 (Jan. 3, 1986)..... pp. 816–818.
PA86–17 (Jan. 3, 1986)..... p. 900.
Rhode Island:
RI86–1 (Jan. 3, 1986)..... p. 905.
Virginia
VA86–3 (Jan. 3, 1986)..... p. 1060.
West Virginia:
WV86–2 (Jan. 3, 1986)..... pp. 1122, 1128, p.1137.

Volume II:

Arkansas:
AR86–7 (Jan. 3, 1986)..... p. 21.
Indiana:
IN86–2 (Jan. 3, 1986)..... p. 237.
IN86–3 (Jan. 3, 1986)..... p. 251–252.
IN86–4 (Jan. 3, 1986)..... p. 264.
IN86–6 (Jan. 3, 1986)..... pp. 284–285.
Minnesota:
MN86–5 (Jan. 3, 1986)..... pp. 497–500.
MN86–7 (Jan. 3, 1986)..... pp. 507–508, pp. 510–514, pp. 518–520.
MN86–8 (Jan. 3, 1986)..... pp. 525–531, pp. 537–538.
Missouri:
MO86–1 (Jan. 3, 1986)..... p. 542.
MO86–10 (Jan. 3, 1986)..... p. 606.

Nebraska:
NE86-3 (Jan. 3, 1986) ..... p. 624.
Ohio:
OH86-1 (Jan. 3, 1986) ..... pp. 662–666.
OH86-2 (Jan. 3, 1986) ..... pp. 676–682, p. 684, pp. 689, 691.
OH86-9 (Jan. 3, 1986) ..... pp. 697
OH86-29 (Jan. 3, 1986) ..... pp. 757–758, pp. 760–771, pp. 781, 795.
Wisconsin:
WI86-10 (Jan. 3, 1986) ..... pp. 991–992.

Volume III:

Alaska:
AK86-1 (Jan. 3, 1986) ..... pp. 2–9.
Colorado:
CO86-1 (Jan. 3, 1986) ..... p. 66.
Montana:
MT86-1 (Jan. 3, 1986) ..... p. 154.
MT86-2 (Jan. 3, 1986) ..... p. 172.
North Dakota:
ND86-1 (Jan. 3, 1986) ..... p.204.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 60 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th day of May 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–11446 Filed 5–22–86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M–86–44–C]

Pontiki Coal Corp.; Petition for Modification of Application Mandatory Safety Standard

Pontiki Coal Corporation, P.O. Box 190, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Pontiki No. 1 Mine (I.D. No. 15–08413) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric equipment.

2. Petitioner states that the heights in the mine are inconsistent ranging from 36 to 72 inches, with many dips and hills.

3. Installation of cabs or canopies on the equipment would limit the operator's vision and could damage energized cables hung overhead.

4. For these reasons, petitioner requests a modification of the standard in mining heights less than 48 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 23, 1986. Copies of the petition are available for inspection at that address.

Dated: April 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–11715 Filed 5–22–86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–86–47–C]

Whitaker Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Whitaker Coal Corporation, P.O. Box 5001, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its EAS No. 1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to hazardous roof conditions and the length and age of the workings it is hazardous for miners to make the weekly examinations.

3. As an alternate method petitioner proposes to establish ventilation check points at specific locations.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 23, 1986. Copies of the petition are available for inspection at that address.

Dated: April 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–11716 Filed 5–22–86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86–64; Exemption Application No. D–6167 et al.]

Grant of Individual Exemptions; Intrec, Inc., Money Purchase Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public

inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 86–64; Intrec, Inc. Money Purchase Pension Plan and Intrec, Inc. Defined Benefit Pension Plan (the Plans) Located in Santa Monica, California Exemption Application Nos. D–6167 and D–6168]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (A) through (E) of the Code, shall not apply to the sale for cash by the Plans of certain real property to Questor, Inc., a party in interest with respect to the Plans, provided that the price received is not less than the fair market value of the real property on the date of the sale, and provided further that the net cash proceeds to the Plans are at least equal to the Plans' cash outlay for the property to the date of sale plus interest on funds advanced by the Plans at 1% per annum over the 1-year Treasury Bill rate on the date of advance.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1986 at 51 FR 9292.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Mandel-Kahn Industries, Inc. Profit Sharing Plan (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 86–65; Exemption Application No. D–6450]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loans of money (the Loans) by the Plan to its sponsor, Mandel-Kahn Industries, Inc. (the Company), nor to the personal guarantees of the Company's obligation for the term of the Loans by Joel H. Mandel and Jack B. Kahn, parties in interest with respect to the Plan.

Effective Date: This exemption is effective February 10, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1986 at 51 FR 9293.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Shoney's, Inc. Profit Sharing Plan (the Plan) Located in Nashville, Tennessee

[Prohibited Transaction Exemption 86–66; Exemption Application No. D–6561]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real estate located at 5012 South Third Street, Louisville, Kentucky (the Property) to Shoney's, Inc. for $282,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1986 at 51 FR 11370.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–11717 Filed 5–22–86; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D-6170]

Withdrawal of the Proposed Exemption Involving Kenneth M. Spain, D.D.S., M.S., P.C. Pension Plan (the Plan) Located in Bozeman, MT

In the Federal Register dated February 21, 1986 (51 FR 6336), the Department of Labor published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned a proposed purchase by the Plan of a parcel of unimproved real property from Donna M. Spain, a trustee of the Plan.

By letter dated March 31, 1986, the applicant requests that the exemption application be withdrawn.

Accordingly, the notice of pendency is hereby withdrawn.

Signed at Washington, DC, this 9th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration.

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BILLING CODE 4510-29-M

[Application No. D-6121 et al.]

Proposed Exemptions; Wynn & Graff, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendancy before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearings Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendancy, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wynn and Graff, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Wynn and Graff, Inc. Pension Plan (the Pension Plan; Collectively, the Plans) Located in Nashville, Tennessee

[Application No. D-6121]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the proposed exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the June 29, 1979 cash sale by the Pension Plan to the Profit Sharing Plan of an undivided, one-half collective interest (the Interest) in certain real property (the Real Property) for $150,000, provided the price paid for the Interest was not less than its fair market value at the time the transaction was consummated.

In addition, if the proposed exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Profit Sharing Plan to Wynn and Graff, Inc. (the Employer) of the Real Property, for the total consideration of $450,000, provided the price paid for the Real Property is not less than its fair market value at the time the transaction is consummated.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective June 29, 1979 with respect to the sale to the Profit Sharing Plan by the Pension Plan of the Interest in the Real Property.

Summary of Facts and Representations

1. The Plans, which share common participants, consist of the Pension Plan and the Profit Sharing Plan. As of August 15, 1985, the Pension Plan had 40 participants and total assets having a fair market value of $755,420. Also on that date, the Profit Sharing Plan had 44 participants and total assets having a fair market value of approximately $1,154,971. The applicant represents that the Plans are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

2. The trustee of the Plans (the Trustee) is the Third National Bank in Nashville located in Nashville, Tennessee. The Trustee makes investment decisions for the Plans. The Employer, which is engaged in the wholesale business of upholstery, maintains its principal place of business at 223-229 Boscobel Street, Nashville, Tennessee.

3. Four parcels or improved and unimproved property comprise the Real Property. On March 15, 1985, the Profit Sharing Plan acquired two parcels of the Real Property from Wynn Properties, Inc. (Wynn Properties), a subsidiary of the Employer. On June 30, 1985, Wynn Properties sold a third parcel of the Real Property to the Profit Sharing Plan for $2,200. On August 11, 1986, the Profit Sharing Plan sold an undivided one-half interest in the three parcels of the Real Property to the Pension Plan. On

December 28, 1973, the Employer sold an undivided one-half interest in a fourth parcel of the Real Property to the Profit Sharing Plan and an undivided one-half interest in the same parcel to the Pension Plan for the total consideration of $98,167.

4. On December 28, 1973, the Plans executed a formal lease (the Lease) of the Real Property to the Employer for a term of 15 years. The Lease, which became effective on January 1, 1974, provided for an annual rental of $30,000 for the first five years. On January 1, 1979 and January 1, 1984, the annual rental was increased to $33,000 and $36,000, respectively. The Lease has required the Employer to pay all taxes assessed against its business as well as insurance premiums, utilities and repair costs.[1]

5. On June 29, 1979, the Profit Sharing Plan acquired the Pension Plan's collective Interest in the Real Property for $150,000. The purchase price, which was paid in cash, was determined to be the fair market value of the Interest under the terms of an appraisal of the Real Property performed on January 5, 1979 by Mr. Frank W. Bainbridge, M.A.I., S.R.P.A., an independent appraiser from Nashville, Tennessee. The Profit Sharing Plan and the Pension Plan incurred no real estate fees or commissions as a result of the sale. Further, at the time of the sale, the Trustee determined that it was in the best interests of the Profit Sharing Plan and the Pension Plan that the Profit Sharing Plan purchase from the Pension Plan the Interest. Following the sale, the Profit Sharing Plan became the exclusive lessor to the Employer.

6. The Employer desires to terminate its existing leasing arrangement with the Profit Sharing Plan by purchasing the Real Property for cash in the amount of $450,000. The Profit Sharing Plan will not be required to pay any real estate fees or commissions in connection with the proposed transaction.

7. The value of the Real Property was initially established on January 6, 1984 by Mr. Joseph M. Draper, M.A.I. (Mr. Draper), an independent appraiser from Nashville, Tennessee. Based on data contained in his appraisal report, Mr. Draper placed the fair market value of the Real Property at $425,000 and the net fair market rental value of the Real Property at $51,000 per annum. In an appraisal report dated May 23, 1985, two independent M.A.I. appraisers, Messers. Marvin A. Maes and James L. Harper, also from Nashville, Tennessee, revalued the Real Property at $450,000 as of March 6, 1985 and established its fair market rental value at $56,000 per annum.

8. In addition to purchasing the Real Property, the Employer states that at the time of closing, it will pay the Profit Sharing Plan $17,296. (This amount reflects the difference between the rentals that have been paid under the Lease at the rate of $3,025 per month from July 1, 1984 through June 30, 1985 and the rental rate as determined by the 1984 and 1985 appraisals.) The Employer also represents that for the period July 1, 1985 to the date of closing, it will pay the Profit Sharing Plan an amount representing the difference between the rent required under the Lease and the fair market rental value of the Real Property as determined by the 1985 appraisal. The Employer further states that at closing, it will pay the Profit Sharing Plan an amount reflecting interest on the rental deficiencies. Finally, the Employer represents that it will pay any excise taxes that may be owed to the Internal Revenue Service (the Service) by reason of the leasing of the Real Property within 60 days of the granting of the exemption.

9. In summary, it is represented that the transactions have satisfied or will satisfy the criteria of section 408(a) of the Act because: (a) The June 1979 sale of the Interest by the Pension Plan to the Profit Sharing Plan was made pursuant to an independent appraisal and a determination by the Trustee that the sale was in the best interests of the Plans; (b) the prospective sale of the Real Property by the Profit Sharing Plan to the Employer will be a one-time transaction for cash; (c) the Profit Sharing Plan will not incur any real estate fees or commissions in connection with the proposed sale; (d) the purchase price for the Real Property will be based on its most recent appraised value as determined by an independent appraiser; (e) at the time of closing, the Employer will pay the Profit Sharing Plan all deficient rent plus interest with respect to the leasing of the Real Property; and (f) the Employer will pay the Service all applicable excise taxes which may be due within 60 days of the granting of the exemption.

For further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[1] The applicant states that the Lease has satisfied the requirements of section 414(c)(2) of the Act and as such, it believes the transaction is statutorily exempt from the restrictions of section 406 and 407(a) of the Act. However, the Department expresses no opinion on whether these conditions of section 414(c)(2) have been satisfied.

M&M Metals, Inc. Profit Sharing Plan (the Profit Sharing Plan) and Beryl Merritt Money Purchase Pension Plan (the Money Purchase Plan; collectively, the Plans) Located in Cincinnati, Ohio

[Application Nos. D-6572 and D-6573]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed lease of a certain portion of a parcel of improved real property (the Property) by the Plans to M&M Metals International, Inc. (M&M Metals), the sponsor of the Profit Sharing Plan, provided that the terms of the lease are at least as favorable to the Plans as an arm's-length transaction with an unrelated party; and (2) the proposed sale of the Property to M&M Metals pursuant to an option to purchase the Property under the lease, provided that the sales price is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are defined contribution plans. The Profit Sharing Plan has only one participant, Mr. Jerry Mellman (Mr. Mellman), and total plan assets of $584,966.03 as of February 28, 1986. The Money Purchase Plan also has only one participant, Mr. Beryl Merritt (Mr. Merritt), and total plan assets of $1,401,164 as of October 31, 1985. Mr. Mellman and Mr. Merritt are the trustees of their respective Plans. M&M Metals is an Ohio corporation engaged in the business of the recycling metal and selling scrap. Mr. Mellman and Mr. Merritt each own one-third of the outstanding stock of M&M Metals.

2. The Property consists of three buildings and an adjacent parking lot located at 841 Delway Street, Cincinnati, Ohio. The Plans purchased the Property in May, 1986 from the Seybold Company, an unrelated party, for $75,000. The Plans have incurred a total cost, including the purchase and the subsequent construction of a new building, of approximately $275,000 with respect to the Property. The applicant represents that there has been substantial deterioration to the Property and the surrounding neighborhood since

the time of purchase. The Property was sold on October 16, 1981 to Sigma-Tri-State Industries, Inc., another unrelated party, for $197,000, and carried a mortgage of $140,000. The mortgage was defaulted upon and the Property had to be reacquired by deed in lieu of foreclosure in December 1982.

The applicant states that a portion of the Property, consisting of an office building of approximately 2,000 square feet, another building containing approximately 8,400 square feet, and the land between the two buildings, is currently being leased to Tom Butcha, Inc., an unrelated third Party, (the Butcha Lease) at an annual rental of $15,000. The applicant states further that the remaining portion of the Property has been vacant for many months with no prospective tenants. M&M Metals proposes to lease the portion of the Property currently vacant (The Vacant Parcel), consisting of a small concrete block building and an adjacent parking lot.

3. The Property was appraised on November 1, 1985 by Mr. M. Robert Garfield, Executive Vice President of West Shell, Inc. (Mr. Garfield), an independent real estate appraiser in Cincinnati, Ohio, as having a fair market value of $200,000. Mr. Garfield represents that the fair market rental value for the Vacant Parcel would be $12,000 per year. Thus, Mr. Garfield states that the $15,000 per year from the Butscha Lease and the potential $12,000 per year for the Vacant Parcel would yield a $27,000 per annum gross return for the Property, which compares favorably with similar commercial properties in the area.

4. The applicant represents that the Vacant Parcel will be leased to M&M Metals for $12,000 per year in accordance with Mr. Garfield's appraisal. The proposed lease (the Lease) will be for a five year term with no renewals. M&M Metals, as lessee, will have an option to purchase the Property (the Option) at any time during the five year term. The applicant states that the Lease will provide that the purchase of the Property pursuant to the Option will be for cash at a price no less than the fair market value of the Property on the date that the Option is exercised, as established by an independent qualified appraiser. The Lease will provide further that M&M Metal will have a right of first refusal upon ten days' notice of a sale of the Property to the third party that will allow M&M Metals to buy the Property for cash at the terms under which the Plans propose to sell the Property to such third party. In addition, M&M Metals will pay for all insurance and taxes on the Property under the Lease and all repairs not required to be paid under the Butscha Lease.

5. The applicant states that the transaction would be in the best interests of the Plans and their respective participants because it would allow the utilization of the Vacant Parcel and enable the Property to be sold in the future at fair market value. The applicant represents that since the price a potential buyer of commercial property is willing to pay is a function of the rental income that property is producing, the current inability of the Plans to fully rent the Property would likely produce an inadequate price if the Property were to be listed for sale. The applicant believes that it would be benefical to the Plans if M&M Metals decided to exercise the Option to be contained in the Lease, since the sales price under the Option would be the fair market value for the Property as established by an independent appraiser. The Plans would thereby reduce their risk from the investment in the Property and could use the proceeds from the sale of the Property to achieve greater diversification in their investments. The Plans will pay no commissions or other expenses with respect to the sale of the Property.

6. The Profit Sharing Plan's one-half ownership interest in the Property represents only approximately 17 percent of its assets, based on the fair market value of the Property as appraised by Mr. Garfield. Further, the Money Purchase Plan's one-half ownership interest in the Property represents only approximately 7 percent of its assets, based on the Property's fair market value as appraised by Mr. Garfield.

7. The applicant states that there is little chance of there ever being any participants in either of the Plans other than Mr. Merrill or Mr. Merritt. However, if there are ever any other participants in the Plans, a separate defined contribution plan for such employee will be established by the employer containing provisions comparable to those contained in the existing Plan of that employer.

8. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Plans will be able to lease the Vacant Parcel at its fair market rental value as determined by an independent appraiser; (b) the sale of the Property to M&M Metals under the Option will be at a price which is no less than the Property's fair market value as established by an independent, qualified appraiser at the time the Option is exercised; (c) the Plans will not pay any expenses with respect to the proposed sale of the Property to M&M Metals; and (d) Mr. Mellman and Mr. Merritt, as the sole participants of their respective Plans and the only participants to be affected by the transaction, have determined that the transaction is in the best interest of the Plans and desire that the transaction be consummated.

Notice to Interested Persons: Because Mr. Mellman and Mr. Merritt are the only participants in their respective Plans to be affected by the proposed transaction, it has been determined that their is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Bear, Stearns & Co., Inc. and Custodial Trust Company

[Application No. D-6833]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 20, 1975). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Bear, Stearns & Co., Inc. (Bear Stearns) by employee benefit plans for which Custodial Trust Company (CTC) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by CTC in connection with these transactions, if the conditions incorporated in the representations set forth below are met.

Summary of Facts and Representations

1. Bear Stearns, a wholly owned subsidiary of the Bear Stearns Companies, Inc., is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and also a member of the National Association of Securities Dealers. Bear Stearns is one of the

largest investment firms in the United States, with consolidated capital (equity and subordinated debt) of over $700 million.

2. Bear Stearns, acting as principal, facilitates securities loans made by institutions to brokerage firms and other entities which need a particular security for a certain period of time in order to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. Bear Stearns is one of the largest institutional securities lenders in the United States, lending securities equal in value to approximately $2 billion on an average daily basis. In making such loans, Bear Stearns carefully reviews the credit worthiness of the borrowing brokers.

3. CTC is a wholly owned subsidiary of the Bear Stearns Companies, Inc., which is also the parent company of Bear Stearns. CTC is organized as a trust company in New Jersey which provides fiduciary services to institutions, including serving as trustee or custodian to employee benefit plans. CTC also has been offering securities lending services to institutions. As of March 1, 1986, CTC served as securities lending agent for approximately $350 million in lendable securities. As securities lending agent, CTC assures that the required collateral is received by CTC and that adequate levels of collateral are maintained. All of CTC's procedures for lending securities are designed to comply with the applicable conditions of Prohibited Transaction Exemption (PTE) 81–6 and PTE 82–63.[1]

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. Where a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity.

5. CTC requests an exemption for the lending of securities owned by certain pension plans for which it serves as directed trustee or custodian (client-plans) to Bear Stearns, following disclosure of its affiliation with Bear Stearns, under either of two arrangements described as Plan A and Plan B and for the receipt of compensation in connection with such transactions. CTC will have no discretionary authority or control over the investment decisions of these plans. Its discretion will be limited to activities such as negotiating the terms of the securities loans with Bear Stearns and investing any cash collateral on the loans. Because Bear Stearns is a subsidiary of the parent company of CTC, the lending of securities to Bear Stearns by plans for which CTC serves as trustee or custodian may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[2]

6. When a loan is collateralized with cash, CTC will invest the cash in short-term securities or interest-bearing accounts and will rebate a portion of the earnings to Bear Stearns on behalf of the plan. Bear Stearns will pay a fee to the lending plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under both Plan A and Plan B, the plan will pay a fee to CTC for providing lending services to the plan which will reduce the income earned by the plan from the lending of securities to Bear Stearns. The plan and CTC will agree in advance to this fee which will represent a percentage of the income the plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the plan assets involved in the transactions. In addition, the applicant represents that each of the two arrangements incorporates the relevant conditions contained in PTE 81–6 and PTE 82–63.

7. *Plan A.* A fiduciary of a client-plan who is independent of CTC and Bear Stearns must sign a Securities Lending Authorization before the plan may particpate in CTC's securities lending program. This authorization describes the operation of the landing program and allows CTC to lend securities held by the client-plan to securities brokers, including Bear Stearns, as selected by CTC. The authorization also sets forth, in an attachment, the basis and rate for CTC's compensation from the plan for the performance of securities lending services.

8. The independent fiduciary also must sign a Bear Stearns Lending Authorization before CTC may include security loans to Bear Stearns in the lending activities of the client-plan. The Bear Stearns Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates) and the maximum rebate rate payable to Bear Stearns. A client-plan may terminate both the Securities Lending Authorization and the Bear Stearns Lending Authorization at any time.

9. CTC, as securities lending agent, will negotiate a Customer Securities Loan Agreement (basic loan agreement) with Bear Stearns on behalf of its client-plans. An independent fiduciary of a client-plan will approve the terms of the agreement before that fiduciary executes the Bear Stearns Lending Authorization. The basic loan agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the plan's rights in the event of any default by Bear Stearns. The agreement will explain the basis for compensation to the plan for lending securities to Bear Stearns under each category of collateral. The agreement also will contain a requirement that Bear Stearns must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into the basic loan agreement, Bear Stearns will furnish its most recent available audited and unaudited financial statements to CTC, who, in turn, will provide the statements to a client-plan before the plan is asked to approve the terms of the agreement. The agreement will contain a requirement that Bear Stearns must promptly notify lenders at the time of a loan of any material adverse changes in

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[1] PTE 81–6 (46 FR 7527, January, 23, 1981) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties-in-interest.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1) (E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[2] Condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

its financial condition. If any such changes have taken place, CTC will request that an independent fiduciary of the plan approve the loan in view of the changed financial condition.

11. The client-plan and CTC will agree to the fee CTC will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by CTC to provide securities lending services to a client-plan will be in writing and subject to prior written approval of a fiduciary of the client-plan who is independent of Bear Stearns and CTC.[3] The agreement will allow termination by the plan without penalty to the plan within five business days of written notice. Before entering into an agreement, CTC will provide the plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a plan loans securities to Bear Stearns pursuant to the basic loan agreement, Bear Stearns will execute a designation letter specifying, in part, the securities to be loaned, the necessary amount of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of an arm's-length transaction would be between unrelated parties.

13. CTC will credit to the account of the client-plan all interest, dividends and the like on the loaned securities, including distributions and rights of any kind. The basic loan agreement will provide that the plan may terminate any loan at any time. Upon a termination, Bear Stearns will deliver the loaned securities back to the client-plan within five business days of written notification. If Bear Stearns fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the agreement.

14. CTC will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion CTC would have in negotiating securities loans to Bear Stearns. Loans to Bear Stearns on that day will be made at rates on the daily schedule or at rates which may be more advantageous to the client-plans. In no case will loans be made to Bear Stearns at rates below those on the schedule. The daily rate schedule will be based on two variables: the current value of short-term funds, and market conditions as reflected by demand for securities by borrowers other than Bear Stearns.

15. CTC will also adopt a maximum daily rebate rate for cash collateral payable to Bear Stearns on behalf of a plan. This maximum rebate will not exceed a stated percentage of the mean between the bid and asked quotations of the "broker call rate" published daily in the Wall Street Journal for the previous day. Moreover, when cash is used as collateral, the daily rebate rate will always be at least 50 basis points lower than the rate of return available to CTC from authorized investments for cash collateral.[4] If interest rates rise, the rebate applicable to Bear Stearns will never be increased above the daily rate at which a loan was originnally made. CTC will submit the formula for determining the maximum daily rebate rate to an independent fiduciary of a client-plan for approval before lending any securities to Bear Stearns on behalf of the plan.

16. For collateral other than cash, the rate charged by CTC the previous day is reviewed for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and is currently one percent of the current value of the collateral. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers, the competitiveness of CTC's rate schedule will be continuously tested in the marketplace. Accordingly, loans to Bear Stearns should result in competitive rate income to the lending client-plan.

17. CTC will loan securities available for lending to borrowers on a first come, first served basis. This will provide additional assurance of uniformity of treatment among borrowing brokers.

18. Bear Stearns will make a guarantee to each lending client-plan that the plan will incur no loss on its loans of securities to Bear Stearns. Accordingly, Bear Stearns will assure the plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to Bear Stearns. The applicant contends that, as a result of this guarantee, the rate of return earned by client-plans from lending to Bear Stearns will in total exceed the return from lending securities to other brokers.

19. CTC will receive collateral from Bear Stearns by physical delivery or book entry in a securities depository by the close of business on the day the loaned securities are delivered to Bear Stearns. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit issued by a person other than Bear Stearns or its affiliates. The market value of the collateral on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securites. The basic loan agreement will give the client-plan a continuing security interest in and a lien on the collateral. CTC will monitor the level of the collateral daily to ensure that it is maintained at no less than 102 percent. If the market value of the collateral falls below 102 percent of that of the loaned securities, CTC will require Bear Stearns to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

20. A client-plan that loans securities to Bear Stearns will recieve a weekly report with which to monitor lending activity, rates on loans to Bear Stearns compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to Bear Stearns and to other borrowers as compared to the total collateral held for both categories of loans.

21. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to Bear Stearns compared with those at which securities are loaned to other bankers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

22. CTC also will send a monthly report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will show each security loaned, the number of shares involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

23. Only client-plans with assets having an aggregate market value of at least $50 million will be permitted to

[3] This closely parallels conditions c and d of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary."

[4] These short-term investments include repurchase agreements, certificates of deposit, and Treasury bills.

loan securities to Bear Stearns. The applicant maintains that this restriction is intended to assure that any lending to Bear Stearns will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

24. CTC will record on audio tape all telephone traffic between its securities lending department and all borrowers, including Bear Stearns. The telephone tapes will be retained for a period of at least six months. This recording procedure will enable client-plans and the Department to review CTC's adherence to its policy of lending securities at or above the daily specified rates to the first interested borrower.

25. *Plan B.* Bear Stearns will directly negotiate "exclusive borrowing" agreements with client-plans for which CTC serves as directed trustee or custodian. Under such an agreement, Bear Stearns will have exclusive access for a specified period of time to borrow certain securities of a client-plan pursuant to certain conditions. CTC will not participate in the negotiation of the agreement. The involvement of CTC will be limited to such activities as handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports.

26. Upon delivery of loaned securities to Bear Stearns, CTC, as securities lending agent for a plan, will receive from Bear Stearns the same day by physical delivery or book entry in a securities depository collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81–6. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. CTC will monitor the level of the collateral daily and, if its market value falls below 102 percent, will require Bear Stearns to deliver sufficient additional collateral on the following day. CTC will provide a weekly report to the client-plan showing, on a daily basis, the aggregate market value of all outstanding security loans to Bear Stearns and the aggregate market value of the collateral.

27. Before entering into an agreement, Bear Stearns will furnish to the plan the most recent audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by Bear Stearns that for each time it borrows securities, there have been no material adverse changes in its financial condition.

28. In exchange for the exclusive right to borrow certain securities from a client-plan, Bear Stearns will pay the plan either a flat fee or a minimum flat fee plus a prior negotiated percentage based on the total balance outstanding of borrowed securities. In light of this fee arrangement, all earnings generated by cash collateral will be returned to Bear Stearns. CTC will credit to the account of the plan all interest, dividends or other distributions on any borrowed securities.

29. The "exclusive borrowing" agreement may be terminated by either party to the agreement at any time. Upon termination, Bear Stearns will deliver any borrowed securities back to the plan within five business days of written notice of termination. If Bear Stearns fails to return the securities or equivalent, the plan has certain rights under the agreement. Bear Stearns will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

30. CTC will receive a fee for its lending services which will be computed as a percentage of the income earned by the client-plan from its securities lending activity. The plan and CTC will agree in advance to the fee. The agreement for CTC to provide securities lending services to the client-plan will be in writing and subject to prior written approval of a plan fiduciary who is independent of Bear Stearns and CTC. The agreement will allow termination by the plan within five business days of written notice without penalty to the plan except for the return to Bear Stearns of part of the flat fee paid by Bear Stearns to the plan, if the plan also has terminated its "exclusive borrowing" agreement with Bear Stearns. Before entering into an agreement with a client-plan to provide securities lending services to the plan, CTC will furnish to the plan any reasonably available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

31. In summary, the applicant represents that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) Plan A requires approval of the basic loan agreement and the Bear Stearns Lending Authorization by a plan fiduciary independent of Bear Stearns and CTC before a client-plan lends any securities to Bear Stearns, while under Plan B Bear Stearns will directly negotiate "exclusive borrowing" agreements with a client-plan; (2) the lending arrangements will permit the client-plans to benefit from Bear Stearns' substantial market position as a securities lender and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (3) Bear Stearns will provide sufficient information concerning its financial condition to a client-plan before the plan lends any securities to Bear Stearns; (4) the collateral on each loan to Bear Stearns will be at least 102 percent of the market value of the loaned securities, which exceeds the 100 percent collateral required under PTE 81–6, and will be monitored daily by CTC; (5) CTC will furnish a weekly report and a monthly report to the client-plans so that an independent fiduciary may monitor a plan's lending activity to Bear Stearns in comparison with the lending to other brokers; (6) security loans to Bear Stearns, under Plan A, will not exceed 50 percent on average of the total loan volume, so that the competitiveness of the daily rate schedule may be tested; (7) only client-plans for which CTC serves as directed trustee or custodian will lend securities to Bear Stearns; (8) the terms of each loan will be at least as favorable to the plans as those of an arm's-length transaction between unrelated parties; and (9) all the procedures under Plans A and B will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Pincus, Schissel, Barricks and Alexander, M.D. Self-Employed Retirement Plan (the Plan) Located in Minneapolis, Minnesota

[Application No. D–6652]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan of $45,000 to Dr. Robert L. Barricks (Dr. Barricks) from his individually directed account (the Account) in the Plan, under the terms describerd in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Dr.

Barricks is an owner-employee with respect to the Plan as defined in section 401(c)(3) of the Code due to his 25% ownership of Plexus, Sublease, Barricks and Alexander, M.D. (the Employer), a medical partnership which is the plan sponsor. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975(c)(2) of the Code.

Summary of Facts and Representations

1. The Plan is a Keogh plan established by the Employer. The Employer has four equal 25% partners, one of whom is Dr. Barricks. The Plan has 11 participants. Dr. Barricks currently has $198,500 in the Account. The Plan Administrator is the Richfield Bank and Trust Company of Richfield, Minnesota (the Bank). The Plan provides for segregated accounts and for participant direction of the investment of the accounts.

2. Dr. Barricks owns a residence at 4825 Sheridan Avenue S., Minneapolis, Minnesota (the Property). The first mortgage on the Property is held by GMAC Mortgage Corporation, and had a principal balance of $128,619 as of December 31, 1985.

3. Dr. Barricks wishes to borrow $45,000 from his Account in order to replace the existing second mortgage on the Property. The loan would be at an interest rate of 11.25% amortized over 30 years. The United Mortgage Corporation of Bloomington, Minnesota, has represented that this is its current rate for 30 year second mortgages.

4. The loan from the Account will be secured by a second mortgage on the Property. The Property has been appraised by Mr. William F. Rieckhoff, an independent realtor with Realty Center of Minneapolis, Minnesota, as having a fair market value of $320,000 as of February 18, 1986. Thus, the Property has a fair market value approximately $200,000 greater than the principal balance of the first mortgage. The Property's fair market value will be approximately 190% of the principal amount of all encumbrances upon it. The second mortgage will be recorded with the Hennepin County Recorder.

5. The Bank, which is the trustee for the Plan, has reviewed the proposed transaction, and represents that the transaction is in the best interests of the Account. The Bank notes that Dr. Barricks is the only Plan participant to be affected by the transaction, and that the interest rate and security for the loan are appropriate. The Bank will monitor the loan and take whatever action is necessary in order to enforce the Account's rights under the terms of the loan, including foreclosure on the mortgage in the event of default.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because (1) the loan represents less than 25% of the assets of the Account; (2) the interest rate for the loan is identical to that required by a local independent mortgage corporation; (3) the loan will be secured by a second mortgage on the Property, which has been appraised as having a fair market value approximately 190% of the principal amount of all encumbrances upon it; (4) the Plan's independent trustee has determined that the transaction is appropriate for the Plan and in the best interests of the Account; (5) the Bank will monitor the loan and take whatever action is necessary to enforce the Account's rights under the loan; and (6) Dr. Barricks is the only participants to be affected by the transaction, and he desires that it be consummated.

Notice to Interested Persons: Because Dr. Barricks is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute this notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-11719 Filed 5-22-86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1985; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health or safety). During the fourth quarter of calendar year 1985, the following incidents were determined to be abnormal occurrences using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG-0090,

Vol. 8, No. 4 ("Report to Congress on Abnormal Occurrences: October-December 1985"). This report will be available in the NRC's Public Document Room, 1717 H Street NW. Washington, DC 20555, about three weeks after the publication date of this Federal Register Notice.

Nuclear Power Plants

Inoperable Main Steam Isolation Valves

One of the general abnormal occurence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place—On September 27, 1985, during main steam isolation valve (MSIV) surveillance testing at Burnswick Unit 2, Carolina Power and Light Company (the licensee) discovered that MSIVs F028A, F022C and F028C would not fast close. At the time of the event, the plant was in cold shutdown following a controlled shutdown from power on September 26, 1985, as a precautionary measure in advance of the approaching hurricane Gloria. Brunswick Unit 2 is a General Electric-designed boiling water reactor located in Brunswick County, North Carolina.

Nature and Probable Consequences—The main steam line isolation system includes isolation valves that, individually or collectively, are designed to:

1. Close within the time established by design basis accident (DBA) analysis to limit the release of reactor collant or radioactive materials;
2. Close when required, despite the single failure of either valve or the associated controls, to provide a high level of reliability for the safety function;
3. Use separate energy sources, as the motive force, to independently close the redundant isolation valves in each individual steam line;
4. Use local storage energy (compressed air and/or springs) to close at least one isolation valve in each steam line without relying on continuity of any variety of electrical power for the motive force to achieve closure;
5. Be able to close during or after design basis seismic loadings to assure isolation; and
6. Be testable during normal operating conditions, to demonstrate that the valves will function.

Two MSIVs (F022 and F028) are welded in a horizontal run of each of the four main steam lines (A-D), with one valve as close as possible to the primary containment barrier inside, and the other just outside the barrier. The valves, when closed, form part of the nuclear system process barrier for openings outside the primary containment, and part of the primary containment barrier for nuclear system breaks inside the containment.

The valve is held open by pneumatic pressure and loss of air allows a spring assist to close the valve. The control unit is attached to an air cylinder and contains the pneumatic, ac, and dc control valves for opening, closing, and slow speed exercising of the main valve. The control power for each valve is supplied at 120 volts ac, 60 Hz, and 125 volts dc. Remote manual switches in the control room enable the reactor operator to operate each valve at fast speed (3 to 10 seconds) or at slow speed (45 to 60 seconds) for exercising or testing.

In the event that the main steam line should rupture downstream from the valve, the stream flow quickly increases to 200 percent of rated flow and is limited from further increase by the venturi flow restrictor upstream of the valves.

During approximately the first 75 percent of closing, the valve has little effect in reducing flow because the flow is choked by the venturi restrictor upstream from the valves. After the valve is more than about 75 percent closed, flow is reduced as a function of the valve area versus travel characteristic.

The safety objectives of the MSIVs are to:

1. Prevent damage to the fuel barrier by limiting the loss of reactor coolant in case of a major leak from the steam piping outside the primary containment;
2. Limit release of radioactive materials by closing the nuclear system process barrier in case of gross release of radioactive materials from the reactor fuel to the reactor cooling water and steam; and
3. Limit release of radioactive materials by closing the primary containment barrier in case of a major leak from the nuclear system inside the primary containment.

In the direct cycle boiling water nuclear power plant, the reactor steam goes to the turbine and to other equipment outside the reactor containments. Radioactive materials in the steam are released to the environs through process openings in the steam system, or they can escape from accidental openings. A large break in the steam system can void the water from the reactor core faster than it is replaced by feedwater. The analysis of a complete, sudden steam line break outside the primary containment shows that the fuel barrier is protected against loss of cooling if MSIV closure takes 10.5 seconds or less (including as much as 0.5 seconds for the instrumentation to initiate valve closure after the break).

Double isolation valves are provided on each of the main steam lines to minimize the potential leakage paths from the containment in case of a line break. Only one valve in each line is required to maintain the integrity of the containment. The Technical Specification surveillance requirements are based on the operating history of this type valve. The maximum closure time of five seconds has been selected to contain fission products and to ensure the core is not uncovered following line breaks.

Initial investigation determined a problem existed within the double solenoid valve on the actuator of MSIV F028A. In addition, a subsequent fast closure test of MSIV F028C revealed a closure time of approximately 45 seconds. A decision was made not to troubleshoot the F022C valve until it could be removed and diassembled. On September 28, 1985, the licensee began to disassemble, visually inspect, and collect samples of foreign materials in the double solenoid valves of the three subject MSIVs.

From the visual inspection, it was concluded the F028C valve had failed to fast close due to the exhaust port being blocked. The F022C valve failed to fast close because the solenoid valve disc was adhered to the valve seat and the valve could not move. The F028A valve failed either because the solenoid valve disc was stuck to its seat or because disc material had broken off and plugged the exhaust port.

An evaluation of the solenoid valve from the F028C by the valve vendor, ASCO, concluded the valve elastomer had degraded due to contamination. The vendor did not determine the contaminant; however, it is felt it was not introduced during manufacture or assembly of the solenoid valve assembly.

On September 28, 1985, a systems engineering task force was established by the licensee to determine the cause of the failures and to recommend and implement corrective actions.

The pilot valves that failed are ASCO Model 8323A36E double solenoid valves. Each valve has one ac and one dc coil. Both solenoids must be deenergized for the value to close the supply port and open the exhaust port. The valves operate with both solenoids normally energized. This model was installed in Unit 1 in June 1983 and in Unit 2 in August 1984. They are environmentally qualified replacements for nearly identical valves which used Buna N as the elastomer. These valves utilize

ethylene propylene (EP) in place of the Buna N. The EP material is rated for higher temperature use and has much higher radiation resistance than Buna N.

Because EP is resistant to high levels of radiation, it is the material of choice for environmentally qualified (EQ) applications. However, EP absorbs hydrocarbons and, like a sponge, softens and swells up. Laboratory analysis of the three subject solenoid valves showed a significant amount of hydrocarbons in the valve body of the F028C solenoid valve. The precise hydrocarbon has not yet been identified.

Cause or Causes—The precise failure mechanism of the elastomer material has not yet been identified; however, it is believed that temperature, contamination, and internal geometry played a part in the failure mechanism. Temperature alone can reproduce the failure mechanism but not at a temperature that is reasonably expected to occur in the plant. The physical evidence showed signs of swelling of the EP, which is known to occur when it is exposed to hydrocarbons. The geometry is such that the EP can swell and fill the exhaust port, thus blocking that path and providing a frictional force in opposition to the valve opening force. In addition, exposure to hydrocarbons may cause the elastomer in EP to vaporize at a lower temperature. Valves that are not subjected to the same conditions of temperature, contamination, and internal geometry are not expected to experience this failure.

Actions Taken to Prevent Recurrence

Licensee—The Unit 2 MSIV solenoid valves have been replaced with valves utilizing viton as the elastomer. The valves on Unit 1 were replaced during the ongoing 1986 Unit 1 refueling/maintenance outage by valves utilizing viton. Viton is impervious to the hydrocarbon contamination and licensee tests have shown that it can withstand temperatures that will degrade EP. While the geometry of the viton valves is the same as the EP, reduction of two of the three effects (i.e., temperature, contamination, and geometry) provides an increased degree of confidence that the viton valves will not fail in this mode. Viton, however, is less resistant to radiation than EP by a factor of ten; therefore, the material needs replacing more frequently.

During the next scheduled outage of sufficient length following six months of operation for either unit, a sampling of the MSIV double solenoid valves will be replaced. The removed solenoids will be evaluated as part of the continuing failure analysis of the ASCO solenoids. It is expected the solenoid valves will be replaced at approximately three-year intervals due to the radiation susceptibility of viton.

NRC—A detailed inspection to review the licensee actions with respect to the solenoid failures was conducted by NRC Region II. Inspectors from NRC Region II and NRC headquarters reviewed test results at both the site and the utility's research facility. An Inspection and Enforcement Information Notice regarding this event is under consideration.

Management Deficiencies at Fermi Nuclear Power Station

One of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On December 24, 1985, NRC Region III issued a letter under 10 CFR 50.54(f) seeking information from Detroit Edison Company on plans to improve the regulatory performance of its Fermi Unit 2 Nuclear Power Station. The letter identified a series of operational and equipment problems occurring at Fermi Unit 2 and attributed them to ineffective management systems. The plant, which utilizes a General Electric-designed boiling water reactor, is located in Monroe County, Michigan.

Nature and Probable Consequences—In July 1985 the licensee began to experience a series of operational problems, some of which were the result of personnel errors.

On July 1, 1985, during startup of the reactor, a reactor operator failed to follow the procedure for withdrawing control rods from the reactor core. The operator withdrew 11 rods to their fully withdrawn position (position 48) instead of to the next intermediate position (position 04). As a result the reactor went critical (i.e., a sustained nuclear chain reaction was started) earlier in the startup procedures than planned.

When instrumentation indicated unexpected conditions in the reactor, the operator reinserted the control rods to stop the chain reaction. Later, the startup was resumed and criticality occurred at the expected point. Later analysis showed that the reactor had gone critical when the 11 rods were withdrawn.

The NRC's inspection and review of this premature criticality event identified nine apparent violations of NRC requirements associated with it. Because the plant had just achieved its initial criticality on June 21, 1985, and therefore had little residual radioactivity in the reactor core, this event was of minimal safety consequences. No damage to the fuel would be expected under these circumstances.

Subsequently, additional problems occurred at the plant, some of which were caused by personnel errors while others were strictly equipment failures. These problems included:

1. The South Reactor Feedwater Pump turbine was damaged during testing on July 22, 1985. The pump turbine had a history of excessive vibration during preoperational testing. The second feedwater pump was not affected by the vibration problem. Operation at power levels up to 50 percent is possible with only one feedwater pump in operation.

2. On July 28, 1985, while a diesel generator was undergoing testing, a low flow of cooling water for the diesel was observed. The diesel was shut off, and the licensee's subsequent investigation determined that a cooling tower bypass valve was closed. This valuve is required to be open for the flow of cooling water to the diesel generator and to other safety system equipment in Division 1, including the core spray system and the residual heat removal system.

The licensee determined that the valve had been left in the closed position while running the Reactor Heat Removal Service Water System on July 23, 1985. The plant is required to have both Divisions of its emergency core cooling system operable, while the plant is in startup or operating status. The plant was in a startup mode when the valve was closed, but shut down later because of the previously reported feedwater pump turbine problem. (The shutdown fortuitously avoided further violation of the plant Technical Specification requirement that the plant be placed in cold shutdown if one ECCS division is inoperable.)

3. On September 2, 1985, the licensee discovered that a Containment Monitoring System Valve was open and uncapped, thus providing a breach of the primary reactor containment. The valve was left open following installation of the valve in June 1985. (This event was described in Appendix C, "Other Events of Interest," in the Abnormal Occurrence Report to Congress for the Third Quarter 1985, i.e., NUREG–0090, Vol. 8, No. 3.)

4. Since receiving an operating license in March 1985, Fermi Unit 2 has experienced numerous personnel errors. Of 78 Licensee Event Reports submitted by the licensee between March and November 1985, 41 involved personnel errors.

5. NRC inspectors, in an inspection report covering the events listed above as well as other problems at the Fermi

Unit 2 facility, identified 28 items of apparent violation of NRC requirements. Enforcement action on these items is pending.

The unit was shut down on October 10, 1985, for the installation of a remote shutdown control panel to meet an NRC requirement for the capability of shutting the plant down safely from a point outside the main control room.

During the outage, significant problems were encountered with the facility's emergency diesel generators. During testing of the No. 13 diesel generator in November 1985, excessive noise and vibration were detected. The diesel generator was shut down, and an examination showed evidence of bearing damage. Subsequent inspections of two additional diesel generators (the site has a total of four) showed similar damage. The plant had previously encountered bearing problems with two diesel generators in January 1985 and the equipment was repaired.

The licensee and the diesel vendor, Fairbanks Morse, believe the damage is attributable to an insufficient break-in period. Further testing of the diesels is underway, and the root cause of the bearing problems remains under review by the licensee, its consultants, and the NRC.

Cause or Causes—The principal cause is attributed to ineffective management systems as reflected in a series of operational and equipment problems, and numerous personnel errors and violations of technical requirements.

Actions Taken to Prevent Recurrence

Licensee—The licensee has instituted various measures to improve its regulatory performance, including retraining of personnel and revision of procedures. An independent overview committee of consultants has been formed by the licensee to review the management and operation of the Fermi facility.

NRC—Following the July 1, 1985, premature critically incident, NRC Region III issued a Confirmatory Action Letter on July 26, 1985, to Detroit Edison, confirming the licensee's agreement not to operate the unit above five percent power until the premature criticality incident was fully analyzed and corrective action taken. Operation above five percent power would not occur without authorization from NRC Region III. That restriction was not lifted prior to the October 10, 1985, outage.

The December 24, 1985, request for information under 10 CFR 50.54(f) sought the licensee's response on the adequacy of management and management structures, on changes in controls needed to improve regulatory performance, and on actions planned to ensure readiness of the facility to resume operations and testing activities.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On August 14, 1985, a patient at the Letterman Army Medical Center, Presidio of San Francisco, California, was inadvertently given the wrong radiopharmaceutical for a scheduled thyroid uptake study and scan. This resulted in an administered dose which exceeded the prescribed dose by approximately a factor of 30.

Nature and Probable Consequences—The attending physician mistakenly prescribed a dose of 150 microcuries of I–131 instead of I–123. The radiopharmacy misinterpreted the prescribed dose as 5 millicuries of I–131. The 5 millicuries of I–131 were administered to the patient on August 14, 1985. The mistake was identified on August 16, 1985, when the patient returned to the hospital for the uptake study and scan.

The level of radiopharmaceutical administered is commonly given to patients for certain other diagnostic procedures, and, despite the mistake, the diagnostic scan and uptake desired for this patient were able to be accomplished without administration of any additional radiation beyond the initial dose. Also, the patient had previously undergone a partial thyroidectomy and was taking thyroid hormones for thyroid gland suppression. The licensee states that, because of these circumstances, no adverse clinical symptoms were expected as a result of the misadministration.

The patient and the attending physicians were notified of the misadministration and the licensee began an immediate investigation to determine what factors and circumstances may have contributed to the incident.

Cause or Causes—The misadministration was caused when the attending physician prescribed the wrong radiopharmaceutical which was further misinterpreted by the radiopharmacy as a request for 5 millicuries of I–131.

Actions Taken to Prevent Recurrence

Licensee—Effective August 16, 1985, the licensee instituted a new hospital procedure which would require that only the nuclear medicine staff would administer radiopharmaceuticals and the radiopharmacist must authorize the release of radiopharmaceuticals from the pharmacy. All prescriptions will be in writing.

NRC—The circumstances of the misadministration were discussed with the licensee. The licensee's corrective actions were determined to be acceptable. The NRC does not plan any further actions.

Therapeutic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On October 9, 1985, at the Queen's Medical Center, Honolulu, Hawaii, a patient was to receive 1000 rads to the lateral limbal area of the right eye using a Sr–90 applicator; however, the medial limbal area of the right eye was treated.

Nature and Probable Consequences—The attending physician realized the error when the patient returned for his second treatment on October 16, 1985. The patient and referring physician were informed of the error immediately. According to the attending physicians, there are no complications to be anticipated due to the incorrect treatment.

Cause or Causes—The misadministration was caused when the attending physician misinterpreted an area containing scar tissue in the medial limbal area of the right eye as the area to be treated. There were no written treatment instructions for the attending physician.

Actions Taken to Prevent Recurrence

Licensee—Effective November 20, 1985, the hospital has made it mandatory that a written requisition must be submitted by the referring physician prior to treatment. This requisition must include the patient's name and a deacription of the intended treatment area clearly identified. The physician must then sign and date the requisition. This requisition shall be kept in the patient's chart along with the treatment summary.

NRC—The circumstances of the misadministration were reviewed during a visit to the hospital on December 18, 1985, by members of the NRC Region V management staff. The licensee's corrective actions were determined to be acceptable. The NRC does not plan any further actions.

Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On December 9, 1985, a patient at Hospital Universitario, San Juan, Puerto Rico, received 4.96 millicuries of iodine-131 instead of a 10 to 15 microcuries dose usually given for a 24-hour thyroid uptake test.

Nature and Probable Consequences—The patient arrived at the hospital's Nuclear Medicine Division on December 9, 1985, to receive iodine-131 for a 24-hour thyroid test. The test was part of the physician's plan to evaluate the patient for hyperthyroidism. The usual dose for such a diagnostic procedure at the Nuclear Medicine Division is 10 to 15 microcuries. Instead, the technologist mistakenly administered a dose of 4.96 millicuries which is the dose usually given for whole body scans with iodine-131.

The patient's referring physician was notified of the misadministration. Based on statements from the physician, the patient was a likely candidate for iodine-131 therapy for treatment of the hyperthyroid condition; therefore, the probable consequences for the patient would be consistent with the projected medical treatment.

Cause or Causes—As discussed above, the reason for the misadministration was due to an error by the technologist.

Actions Taken to Prevent Recurrence

Licensee—Review with the nuclear medicine staff the protocol used for hyperthyroid patients dosed with radioiodine.

NRC—The incident and the licensee's protocol will be reviewed during the next NRC routine inspection.

Dated in Washington, DC, this 20th day of May 1986.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-11086 Filed 5-22-86; 8:45 am]

BILLING CODE 7590-01-M

Public Service Company of New Hampshire, et al.; Receipt of Additional Antitrust Information; Time for Submission of Views on Antitrust Matters

Public Service Company of New Hampshire, *et al.*, pursuant to section 105 of the Atomic Energy Act, as amended, has filed information requested by the Attorney General for antitrust review as required by 10 CFR Part 50, Appendix L. This information concerns a proposed new owner, EUA Power Corporation (EUA Power), in the Seabrook Station, Units 1 and 2 located in Rockingham County, New Hampshire. The filing is precipitated by the proposed transfer of ownership shares of the Seabrook Station to EUA Power presently held by the following owners: Central Vermont Public Service Corporation; Central Maine Power Company; Bangor Hydro-Electric Company; and the Maine Public Service Corporation.

The Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicants' Environmental Report; Time for Submission of Views on Antitrust Matters was published in the Federal Register on August 9, 1973 (38 FR 21522). The Notice of Receipt of Facility Operating Licenses was published in the Federal Register on October 19, 1981 (46 FR 51330).

Copies of the instant filing and the documents listed above are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03833.

Any person who wishes to have views on antitrust matters with respect to the EUA Power Corporation presented to the Attorney General for consideration or who desires additional information regarding the matters covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before July 22, 1986.

Dated at Bethesda, Maryland, this 20th day of May, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-11052 Filed 5-22-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Proposed Guidance on the Privacy Act Implications of "Call Detail" Programs to Manage Employees' Use of the Government's Telecommunications Systems

AGENCY: Office of Management and Budget.

ACTION: Notice and request for public comment on Proposed Guidance implementing the Privacy Act of 1974.

SUMMARY: Pursuant to its responsibilities in section 6 of the Privacy Act of 1974 (Pub. L. 93-579), OMB has developed proposed guidance on how the recordkeeping provisions of that Act affect agencies' programs (so-called "call detail programs") to collect and use information relating to their employees' use of long distance telephone systems. This proposal:

- Describes the purposes of call detail programs and explains how they work.
- Notes that call detail records that contain only telephone numbers are not Privacy Act records, but that when linked with a name, they become Privacy Act records.
- Notes that when agencies start retrieving by reference to a linked number or name, they are operating a system of records.
- Urges agencies not to create artificial filing and retrieval schemes to avoid the Act.
- Suggests agencies establish an agency-wide system in which to maintain these records, and provides a model notice for them to use.
- Discusses the disclosure provisions of the Act as they would pertain to such a call detail system, especially emphasizing that intra-agency disclosures for improper employee surveillance purposes or to identify and harass whistleblowers are not sanctioned under section (b)(1).

Interested parties are invited to provide comments on this proposal.

DATE: Comments must be received before June 30, 1986.

ADDRESS: Send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Information Policy Branch, OIRA, 202-395-4814.

Proposed Guidance:

1. *Purpose.*

This guidance is being offered in conjunction with guidance on call detailing published by the General Services Administration. Whereas GSA's guidance focuses on how to create and operate such programs, this document explains the ways in which the Privacy Act of 1974 affects any records generated during the course of call detail programs.

Nothing in this guidance should be construed to (a) authorize activities that are not permitted by law; or (b) prohibit

activities expressly required to be performed by law. Complying with these Guidelines, moreover, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited herein.

2. *Scope.*

These Guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a).

3. *Effective Date.*

These Guidelines are effective on the date of their issuance.

4. *Definitions.*

For the purposes of these Guidelines:

• All the terms defined in the Privacy Act of 1974 apply.

• "Call detail report"—This is the initial report of long-distance calls made during a specified period. A call detail report may be provided by a telephone company, the General Services Administration, or it may originate from a PBX (Private Branch Exchange) on an agency's premises. *No monitoring of conversations takes place during the collection of data for this report.* The report may contain such technical information as the originating number, destination number, destination city and State, date and time of day a call was made, the duration of the call, and cost of the call if made on commercial lines. At this stage, a call detail report contains no information directly identifying the individuals making or receiving calls.

• "Call Detail Information" or "Call Detail Records." These are records generated from call detail reports through administrative, technical or investigative follow-up. In some cases call detail information or records will contain *no* individually identifiable information and there for no Privacy Act considerations will apply. In other cases, the information and records will be linked with individuals and the Privacy Act must be taken into consideration.

5. *Background.*

Rapid growth in automated data processing and telecommunications technologies has created new and special problems relating to the Federal Government's creation and maintenance of information about individuals. At times, the capabilities of these technologies have appeared to run ahead of statutes designed to manage this kind of information, particularly the Privacy Act. An example is the establishment of *call detail* programs to help agencies control the costs of operating their long distance telephone systems. Call detail programs develop information about how an agency's telecommunications system is being used. The information may come from a number of sources, e.g., from agency installed or utilized devices to record usage information (pen registers or agency switching equipment); from central agency managers such as the General Services Administration or the Defense Communications Agency; or directly from the providers of telecommunications services.

There are many different purposes for call detail programs. Agency managers may use call detail information to help them choose more efficient and cost-effective ways of communicating. The information may be used to make decisions about acquiring hardware, software, or services, and to develop management strategies for using existing telecommunications capacity more efficiently. One aspect of this latter use may be the development of programs to identify unofficial use of the agency's telephone system. To this end, call detail programs work by collecting information about the use of agency telephone systems and then attempting to assign responsibility for particular calls to individual employees. Their two-fold purpose is to deter use of the system for unofficial purposes and to recoup for the government the cost of unofficial calls.

Soon, the establishment of call detail programs will become a government-wide priority as part of a management initiative on reducing the government's administrative costs.

6. *Privacy Act Implications.*

a. *Call Detail Records as Privacy Act Records.*

The Privacy Act of 1974 is the primary statute controlling the government's use of information about individuals. Not all individually identifiable information, however, qualifies for the Act's protections. With but few exceptions, only information that consists of "records" as defined by the Act, and which is maintained by an agency in a "system of records," triggers the Act's provisions. The Privacy Act defines a "record" as "* * * any item, collection or grouping of information about an individual that is maintained by an agency including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph * * *."

A "system of records" is—a group of any such records from which information is retrieved by the name of the individual or other identifying particular.

As we have indicated in our original Privacy Act implementing Guidelines (40 FR 28949, July 9, 1975), the mere capability of retrieving records by an identifying particular is not enough to create a system of records; *the agency must actually be doing so.*

The threshold question for call detail information, then, is whether a telephone number is a record within the meaning of the Privacy Act. The answer to this question depends upon how the telephone number is maintained.

Standing alone, a telephone number, is *not* a Privacy Act record. To achieve the status of a Privacy Act record, a telephone number must be maintained in a way that links it to an individual's name or some other identifying particular such as a Social Security Account Number.

When an agency assigns a specific phone number to an employee and maintains that information in a way that the name and number are inseparably connected, there is sufficient identification linkage that a Privacy Act record is created. (It should be noted that the Privacy Act does not require that the record be unique to the individual, only that it be "about" him or her and include his or her name or other indentifying particular. Thus, a telephone number could be shared by several individuals and still meet the Privacy Act "record" definition).

The initial call detail reports which contain only technical information about telephone usage do not consist of records within the meaning of the Privacy Act and they will therefore never reach the level of a system of records. For many areas of telecommunications management, the information in call detail reports will never become systems of records and the Privacy Act will have no application.

When, however, call detail records are used in management programs designed to control costs and determine *individual* accountability for telephone calls, Privacy Act considerations must be addressed. In order to carry out these kinds of call detail programs, agencies will have to link numbers and names so that they can determine who is responsible for what call. It is at this point, that the telephone number meets the Privacy Act definition of a "record."

b. *Call Detail Records in Privacy Act Systems of Records.*

The next question, then, is when do files consisting of Privacy Act records created by linking a telephone number and an individual's name become a system of records? This occurs when agencies use the Privacy Act record as a

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key to retrieve information from these files.

While it is important to remember that not every data base containing call detail records will be a Privacy Act system of records, agencies are cautioned against creating artificial filing schemes merely to avoid the effect of the Act when the establishment of a system of records would be appropriate. Since these records are clearly intended to establish *individual* responsibility for long distance telephone use, their use by the agency could have serious financial or disciplinary consequences for individual employees. By maintaining these records in conformance with the provisions of the Privacy Act, agencies can make certain that legitimate concerns about the implementation of call detail programs (e.g., improper use of the records for surveillance or employee harassment, unfairness, and record accuracy) are dealt with in a procedural framework that was designed to deal with such concerns.

Therefore, we recommend strongly that agencies create an agency-wide Privacy Act system of records in which to maintain call detail records that contain information about individuals and are used to determine accountability for telephone usage.

Such a system might contain the following kinds of records:

• The initial call detail monthly listing (in whatever form it is kept, e.g., on paper, magnetic tape or diskettes);

• Locator information showing where in the agency specific telephones are located;

• Records relating to the identification of individual employees, and (1) linking them with specific calling numbers; (2) linking them with specific called numbers.

Notes that not all Privacy Act records generated as a result of call detail programs would become a part of *this* system of records. Thus, investigative records of the Office of the Inspector General, personnel records reflecting administrative or disciplinary actions, finance and accounting records relating to cost attribution and recoveries, and the like, that are generated from call detail programs might be filed in appropriate existing systems and subjected to their particular disclosure/safeguarding provisions. In other instances, records (name and telephone number, for example) may be common to the call detail system and other systems.

To help the agencies in its construction, we offer a model system notice in Appendix I.

c. *Disclosing from Call Detail Records Systems under Section (b) of the Privacy Act.*

The Privacy Act provides 12 exceptions to its basic requirement that agencies must obtain the written consent of the record subject before disclosing information from a system of records. The following exceptions are the ones most relevant to the proposed Call Detail system of records:

• Section (b)(1). "To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." This exception does not contemplate unrestricted disclosures within the agency. Intra-agency disclosure of call detail records may be made *only when there is an official need to know the information.* The following are examples of disclosures that (b)(1) would permit:

—To individual supervisors to determine responsibility for specific telephone calls.

—To employees of the agency to review the call detail lists and identify calls made by the employee. Note that the other option for this kind of disclosure is a routine use (Section (b)(3)). Agencies that are concerned about establishing that employee A has an official need to know about the calls made from employee B's telephone may wish to adopt a routine use authorizing the disclosures.

—To the employees of the Office of the Inspector General who are conducting investigations into abuse of the FTS system;

—To employees of the Office of Finance and Accounting for processing of reimbursements for personal calls or for processing of administrative offsets of pay pursuant to the provisions of the Debt Collection Act;

—To Freedom of Information Act Officers and legal advisers.

Some examples of disclosures that (b)(1) would *not* authorize are:

—To agency personnel to identify and harass whistleblowers;

—To agency personnel who are merely curious to know who is calling whom.

• Section (b)(2). "Required under Section 552 of this title." Information may be disclosed both inside and outside the agency to the extent that the disclosure would be *required* by the Freedom of Information Act. Prior to the ruling of the Court of Appeals for the D.C. Circuit in *Bartel v. FAA*, 725 F.2d 1403 (D.C. Cir. 1984), longstanding agency practices and OMB interpretation treated this section as permitting agencies to *initiate* disclosure of material that they would be "required" to release under the FOIA. Disclosure under this interpretation did not depend on the existence of a FOIA request for the records; the mere finding that no FOIA exemption could apply and that the agency would therefore have no choice but to disclose, was sufficient. In fact, agencies relied upon this interpretation of the requirements of section (b)(2) to make routine disclosures of many documents, especially those traditionally thought to be in the public domain such as press releases, final orders, telephone books, and the like.

In *Bartel*, however, the court held that an agency must have received an actual FOIA request before disclosing pursuant to section (b)(2). In that case, the plaintiff, Bartel, brought a Privacy Act action asserting that his supervisor had gratuitously disclosed to three former colleagues the fact that Bartel had improperly obtained copies of their personnel records. The court interpreted the standard for (b)(2) disclosures to other than a conditional one, i.e., not merely that the agency *would* have to disclose *if* such a request were received, but that the agency must have to do so because an actual FOIA request for the records *has been* made. Under this ruling, agency-initiated requests of FOIA releasable material would be improper.

The court noted, however, that material traditionally held to be in the public domain might constitute an exception to its FOIA-request-in-hand interpretation. In guidance issued in May of 1985 (Memorandum from Robert P. Bedell to Senior Agency Officials for Information Resources Management, Subject: Privacy Act Guidance—Update, dated May 24, 1985) OMB suggested (without agreeing with the ruling) that agencies continue to make disclosure of these kinds of records without having received a FOIA request. We cautioned, however, that agencies should be careful about making gratuitous releases of sensitive classes of Privacy Act records without having received a request for them.

Applying the *Bartel* ruling to call detail information, there appear to be three distinct categories of records which could be considered for release under section (b)(2):

—Records which clearly fall into the "public domain" category. We suggest that these would be releasable either at the agency's initiation or in response to a FOIA request: The former because they are of the "traditionally released" class; the latter, because no FOIA exemption would prevent their disclosure. An example would be the names and

office telephone numbers of agency employees. These are generally considered public information (obviously there may be exceptions for investigative and intelligence organizations), and the only applicable FOIA exemption, (b)(6), the personal privacy exemption, would not apply. Thus, disclosures of an employee's name and office telephone number would be appropriate under Privacy Act section (b)(2).

—Records which could be withheld under an applicable FOIA exemption and which, therefore, would not be required to be released. These could be, for example, records which contain sensitive information relating to ongoing investigative or personnel matters such as records relating to the investigation of an employee for abuse of the agency's long distance telephone system. Such records could reasonably be withheld under FOIA exemption (b)(6) and, therefore, would not be releasable under section (b)(2) of the Privacy Act. An agency would not release these kinds of records either at its own initiative or in response to a FOIA request. It should be noted, however, that such records might be released under other sections of the Act, such as (b)(3), "for a routine use," or (b)(7) at the request of the head of an agency for an authorized civil or criminal law enforcement activity.

—Records for which no FOIA exemption applies but which contain sensitive information, e.g., records which reflect the results of official actions taken as a consequence of investigations of abuses of the telephone system. We suggest that agencies should be very cautious about initiating disclosure of these records without receiving a FOIA request since they appear to be of the category of records that concerned the *Bartel* court. Even with a request, agencies will have to determine that the interest of the public in having the record clearly outweighs the privacy interest of the record subject in order to overcome the applicability of FOIA exemption (b)(6).

• Section (b)(3). "For a routine use." See the routine use section of the model system notice at Appendix I. A routine use is a disclosure of information that will be used for a purpose that is compatible with the purpose for which the information was originally collected.

The concept of compatibility comprises both *functionally equivalent uses:*

—For example, routine use (5) in the model notice would authorize disclosure to the Department of Justice to prosecute an egregious abuser of an agency's long distance telecommunications system. This disclosure is functionally compatible since one of the purposes of the system is to identify abusers and subject them to administrative or legal consequences.

as well as other *uses that are necessary and proper:*

—For example, routine use (2) in the model notice authorizes disclosure to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections pursuant to a specific statutory charter. Their purpose is in no way functionally equivalent to the purpose for which the system was established; it is, however, clearly necessary and proper.

• Section (b)(12). "To a consumer reporting agency." This disclosure exception was added to the origiunal 11 by the Debt Collection Act of 1982. It authorizes agencies to disclose bad debt information to credit bureaus. Before doing so, however, agencies must complete a series of due process steps designed to validate the debt and to offer the individual the chance to repay it (see OMB Guidelines on the Debt Collection Act, published in the **Federal Register** on April 11, 1983 (48 FR 15556). It is possible that agencies will wish to disclose information from call detail systems of records documenting an individual's responsibility for unofficial long distance calls as part of the bad debt disclosure. For this reason, the model system notice at Appendix I contains a statement identifying the system as one from which such disclosures can be made.

7. Contact Point for Guidance.

Refer any questions about this guidance to Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, 395-4814.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

Appendix I—Proposed Model System Notice for Call Detail Records

This is a proposed notice; agencies should modify it as appropriate.

System Name:

Call Detail Records.

System Location:

Records are stored at (name of Headquarters Office containing central files) and at (insert component locations).

Categories of Individuals Covered by the System:

Agency employees who make long distance calls and individuals who received telephone calls placed from agency telephones.

Categories of Records in the System:

Records relating to use of the agency telephones to place long distance calls, records indicating assignment of telephone numbers to employees; records relating to location of telephones.

Authority for Maintenance of the System:

(Cite appropriate agency "housekeeping" statute authorizing the agency head to create, collect and keep such records as are necessary to manage the agency).

Routine Uses of Records Maintained in the System:

Records and data may be disclosed, as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) to an appropriate Federal, State or local law enforcement agency responsible for investigating, prosecuting, or defending an action where there is an indication of actual or potential violation of any government action; (6) to employees of the agency to determine their individual responsibility for telephone calls, but only to the extent that such disclosures consist of comprehensive lists of called and calling numbers; (7) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter. (Agencies should refrain from

automatically applying all of their blanket routine uses to this system).

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in System:

Storage:

(Describe agency methods of storage).

Retrievability:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

Safeguards:

(Describe methods for safeguarding).

Retention and Disposal:

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

System Manager(s) and Address(es):

(List central system manager and component subsystem managers, if appropriate).

Notification Procedures:

(Explain notification procedures).

Record Access Procedures:

(Explain how individuals may obtain access to their records).

Record Source Categories:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

Systems Exempted from Certain Provisions of the Act: None.

[FR Doc. 86-11633 Filed 5-22-86; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B, and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6217.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 2, 1986 (51 FR 16412). Individual authorities established or revoked under Schedule A, B or C between April 1, 1986, and April 30, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established during April. However, the following exceptions are revoked:

Department of State

Schedule A excepted appointing authority for part-time or intermittent gauge readers employed by the International Boundary and Water Commission, United States and Mexico, was revoked because it is no longer used. Effective April 16, 1986.

General Services Administration

The Schedule A excepted appointing authority for custodians, guards, and related employees engaged in the custody and preservation of surplus facilities pending their disposal was revoked because it is no longer used. Effective April 8, 1986.

Schedule B

The following exception is established:

Department of Treasury

Not to exceed 10 positions engaged in functions mandated by Public Law 99-190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years. Effective April 9, 1986.

Schedule C

The following exceptions are established:

Department of Agriculture

One Staff Assistant to the Secretary. Effective April 4, 1986.

One Confidential Assistant to the Secretary. Effective April 4, 1986.

One Confidential Assistant to the Secretary. Effective April 30, 1986.

Department of Commerce

One Confidential Assistant to the Director, Minority Business Development Agency. Effective April 4, 1986.

One Confidential Assistant to the Deputy Assistant Secretary, Import Administration, International Trade Administration. Effective April 17, 1986.

One Special Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective April 18, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Science and Electronics, International Trade Administration. Effective April 21, 1986.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective April 25, 1986.

One Associate Director to the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration. Effective April 29, 1986.

Department of Defense

One Special Assistant to the Ambassador and Political/Military Counselor. Effective April 30, 1986.

Department of Education

One Confidential Assistant to the Under Secretary. Effective April 2, 1986.

One Special Assistant to the Secretary's Regional Representative. Effective April 14, 1986.

One Special Assistant to the Assistant Secretary for Legislation. Effective April 17, 1986.

One Confidential Assistant to the Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective April 23, 1986.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective April 28, 1986.

Department of Energy

One Research Assistant to the Special Assistant to the Secretary. Effective April 3, 1986.

One Private Secretary to a Member of the Federal Energy Regulatory Commission. Effective April 15, 1986.

One Staff Assistant to the Director of Communications, Office of Congressional, Intergovernmental and Public Affairs. Effective April 23, 1986.

One Confidential Assistant to the Under Secretary. Effective April 30, 1986.

Department of Health and Human Services

One Special Assistant to the Director, Office of Policy and Legislation, Office of Human Development Services. Effective April 9, 1986.

One Special Assistant to the Commissioner, Administration on Developmental Disabilities. Effective April 11, 1986.

One Special Assistant to the Secretary. Effective April 23, 1986.

One Confidential Staff Assistant to the Secretary. Effective April 23, 1986.

One Confidential Assistant to the Secretary. Effective April 23, 1986.

One Steward to the Secretary. Effective April 23, 1986.

One Special Assistant/Advisory Committee Officer to the Under Secretary. Effective April 24, 1986.

One Special Assistant for Liaison to the Deputy Commissioner, Food and Drug Administration. Effective April 25, 1986.

Department of Housing and Urban Development

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs, Office of Housing. Effective April 4, 1986.

One Special Assistant to the Deputy Assistant Secretary for Single Family Housing. Effective April 7, 1986.

Four Special Assistants to the Secretary. Effective April 16, 1986.

One Special Assistant to the Regional Administrator. Effective April 16, 1986.

Department of Interior

One Special Assistant to the Director, National Park Service. Effective April 1, 1986.

One Director of Congressional and Legislative Affairs to the Commissioner, Bureau of Reclamation. Effective April 1, 1986.

One Staff Assistant to the Director, Office of External Affairs, Bureau of Land Management. Effective April 2, 1986.

One Assistant to the Director Office of External Affairs, Bureau of Land Management. Effective April 2, 1986.

One Supervisory Public Affairs Specialist to the Director, Office of External Affairs, Bureau of Land Management. Effective April 4, 1986.

One Congressional Affairs Officer to the Director, Office of External Affairs, Bureau of Land Management. Effective April 4, 1986.

One Special Assistant to the Commissioner, Bureau of Reclamation. Effective April 23, 1986.

One Executive Assistant to the Commissioner, Bureau of Reclamation. Effective April 23, 1986.

Department of Justice

One Special Assistant to the Director, National Institute of Justice. Effective April 8, 1986.

One Congressional and Public Liaison Officer to the Deputy Assistant Attorney General, Office of Justice Programs. Effective April 9, 1986.

One Confidential Assistant to the Assistant Attorney General, Office of Legal Policy. Effective April 28, 1986.

One Special Assistant to the Attorney General. Effective April 28, 1986.

Department of Labor

One Special Assistant to the Deputy Under Secretary, Public and Intergovernmental Affairs. Effective April 1, 1986.

One Special Assistant to the Director, Office of Federal Contract Compliance Programs. Effective April 1, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective April 9, 1986.

One Special Assistant to the Director, Women's Bureau. Effective April 15, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective April 15, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective April 18, 1986.

One Regional Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective April 28, 1986.

Department of State

One Secretary (Stenography) to the Director, Bureau of Politico-Military Affairs. Effective April 11, 1986.

Department of Transportation

One Staff Assistant to the Associate Deputy Secretary. Effective April 8, 1986.

One Special Assistant to the Director of External Affairs, Maritime Administration. Effective April 21, 1986.

Department of Treasury

One Confidential Assistant to the Assistant Secretary for Legislative Affairs. Effective April 11, 1986.

One Special Assistant to the Deputy Assistant Secretary for Administration. Effective April 16, 1986.

One Special Assistant to the Assistant Secretary for Legislative Affairs. Effective April 25, 1986.

ACTION

One Confidential Assistant to the Deputy Director. Effective April 28, 1986.

Agency for International Development

One Program Operations Assistant to the Director, Office of Private and Voluntary Cooperation. Effective April 21, 1986.

One Special Assistant to the Director, Office of Private and Voluntary Cooperation. Effective April 29, 1986.

U.S. Arms Control and Disarmament Agency

One Secretary (Typing) to the Assistant Director, Strategic Programs Bureau. Effective April 4, 1986.

One Special Assistant to the Director. Effective April 4, 1986.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective April 1, 1986.

One Supervisory Public Affairs Specialist to the Staff Director. Effective April 3, 1986.

Equal Employment Opportunity Commission

One Media Contact Specialist (Bilingual) to the Director of Communications. Effective April 9, 1986.

One Media Contact Specialist to the Director of Communications. Effective April 28, 1986.

Federal Mine Safety & Health Review Commission

One Confidential Secretary to a Commissioner. Effective April 4, 1986.

General Services Administration

One Confidential Assistant to the Associate Administrator for Congressional Affairs. Effective April 15, 1986.

One Executive Assistant to the Associate Administrator for Operations. Effective April 15, 1986.

One Confidential Assistant to the Regional Administrator. Effective April 15, 1986.

One Confidential Assistant to the Commissioner, Public Buildings Service. Effective April 16, 1986.

Office of Management and Budget

One Confidential Assistant to the Director. Effective April 7, 1986.

Office of Personnel Management

One Staff Assistant to the Assistant Director for Executive Administration. Effective April 25, 1986.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective April 7, 1986.

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective April 25, 1986.

United States Information Agency

One Special Assistant to the Associate Director for Programs. Effective April 4, 1986.

One Program Assistant to the Coordinator, President's U.S.-Soviet Exchange Initiative. Effective April 14, 1986.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-11730 Filed 5-22-86; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Procedure for Responding to Petitions for Rulemaking To Revise Power Plan

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Proposed policy and opportunity to comment.

SUMMARY: The Northwest Power Planning Council propose the following procedures for responding to petitions for rulemaking to revise the Northwest Conservation and Electric Power Plan.

DATES: Comments must be submitted on or before June 6, 1986.

ADDRESS: Send comments to Janet C. Hanson, Associate Counsel, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Copies of this notice and the final procedures may be obtained by contacting Dulcy Mahar, Director of Public Information and Involvement at Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or at (503) 222-5161, or (toll-free) 1-800-222-3355 (in Montana, Idaho or Washington) or 1-800-452-2324 in Oregon.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedures Act (APA), 5 U.S.C. 553(e), requires administrative agencies to give interested persons the right to petition for the issuance, amendment or repeal of an administrative rule. The Council is at this time considering adoption of a formal policy for responding to petitions to enter rulemaking to revise the Northwest Conservation and Electric Power Plan (Power Plan).

Although the APA requires that persons be given the right to petition for rulemaking, it does not prescribe any particular procedures to be followed in this process. This policy has been drafted based upon procedures for petitions for rulemaking used by other agencies.

This process will no doubt become increasingly important if the Council schedules less frequent major revisions to the Power Plan, which, pursuant to section 4(d)(1) of the Northwest Power Act, 16 U.S.C. 839(d)(1), is an administrative rule. If, for example, the Council decides to make major revisions as infrequently as every five years (the statutory maximum for review of the Plan), it may be increasingly necessary to have in place a procedure for responding to requests during the interim period to re-examine parts of the Power Plan. A procedure for handling petitions for rulemaking would clarify the process for interested persons to request the Council to review additional data and other information as it becomes available.

It is proposed that any recommendation or petition to amend the Council's Columbia River Basin Fish and Wildlife Program will continue to be handled separately under section 4(h) of the Northwest Power Act, 16 U.S.C. 839b(h), and sections 1400-1404 of the Fish and Wildlife Program. According to these sections, prior to a major revision of the Power Plan, the Council must request recommendations for amendment of the Fish and Wildlife Program. The Council also may consider applications for amendment to the Fish and Wildlife Program which are submitted at other times, as well as considering Fish and Wildlife Program amendments on its own motion. The Council will consider modifying the procedures contained in sections 1400-1404 of the Program if it determines that any of those procedures are incompatible with this policy or otherwise require improvement or clarification. The Council requests comment on this proposed treatment of Fish and Wildlife Program amendments and welcomes suggestions for possible modifications to section 1400-1404 of the Program.

If adopted by the Council, the proposed policy would be as follows:

Procedures for Responding to Petitions for Rulemaking To Revise Power Plan

The following procedures are to be followed for handling requests that the Council enter rulemaking for purposes of revising the Council's Power Plan:

1. Any interested person may petition the Council to initiate a proceeding for the issuance, amendment or repeal of a rule according to 5 U.S.C. 553 in order to revise the Council's Power Plan.

2. Such a petition must be submitted to the General Counsel, Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205.

3. The petition must:

(a) Set forth the substance or text of a proposed rule or amendment, or identify the rule requested to be repealed;

(b) Explain the interest of the petitioner in the action sought; and

(c) Set forth the facts, reasons and new information, not previously available, which the petitioner claims establish that it is necessary to issue, amend or repeal a rule promulgated by the Council.

4. The Council will conduct such investigation or proceeding as it deems appropriate in order to determine whether a petition should be granted. This proceeding may, but need not, include preparing and releasing a staff issue paper and holding one or more public hearings.

5. Within 120 days after receipt of a petition described in paragraph 1, the Council will either grant or deny the petition. Any final decision on a petition will be made at a public Council meeting in accordance with the notice provisions of the Government in the Sunshine Act and with the Council's normal practice of providing opportunity for public comment on its agenda items. If the Council grants the petition, the Council will promptly notify the petitioner and will commence a rulemaking proceeding. If the Council denies a petition, it will promptly notify the petitioner of the denial and the reasons therefor.

6. If the Council decides to enter rulemaking, it will proceed expeditiously to publish notice of a proposed rule in the **Federal Register** and to conduct such rulemaking in accordance with the Administrative Procedures Act and the Northwest Power Act.

7. The Council will make all reasonable efforts to take final action on the proposed rule within seven months after the Council's decision to enter rulemaking. The Council will take final action on the proposed rule within this

time, unless it finds that additional information or analysis is needed.

Edward Sheets,

Executive Director.

[FR Doc. 86-11614 Filed 5-22-86; 9:55 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The delegation orders listed below are revised to reflect the authorities redelegated to the newly designated Associate Chief Counsel (International) and Assistant Commissioner (International) and other officials in their respective organizations. In addition, other changes have been made, where appropriate, to reflect the abolishment of the Assistant Commission (Support and Services).

Order No.	Title
4 (Rev. 17)	Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions.
5 (Rev. 11)	Emergency Order to Succession and Delegation of Authority.
8 (Rev. 9)	Authority to Sign Agreements as to Liability for Personal Holding Company Tax.
11 (Rev. 16)	Authority to Accept or Reject Offers in Compromise.
14 (Rev. 3)	Granting Extension of Time for Filing Statements in Accordance with 26 CFR 1.534-2.
16 (Rev. 6)	Authorization to Approve Confidential Expenditures.
19 (Rev. 14)	Payment of Expenses Incident to Transfer or Appointments of Employees to New Official Stations, Tour Renewal Agreement Travel, and Similar Items.
20 (Rev. 1)	Extension of Time to Pay Excess Profits, Estate and Gift Taxes.
21 (Rev. 1)	Extension of Time for Filing Returns and Paying Certain Excise Taxes.
24 (Rev. 1)	Authority to Require Records to be Kept.
27 (Rev. 10)	Authority to Administer Oaths Required by Law in Connection with Employment in the Federal Service.
29 (Rev. 3)	Certification and Approval of Internal Revenue Collections.
35 (Rev. 13)	Agreements as Determinations Under Section 1313(a)(4) of the Internal Revenue Code of 1954.
40 (Rev. 3)	Credits and Refunds.
42 (Rev. 20)	Authority to Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939 and 1954 Internal Revenue Codes.
48 (Rev. 11)	Foreign Travel.
50 (Rev. 1)	Withholding Compensation Due Personnel.
56 (Rev. 1)	Gasoline and Lubricating Oil Bonds.
57 (Rev. 7)	Notice of Additional Inspection of Taxpayers Books of Account Under Section 7605(b), Internal Revenue Code 1954.
60 (Rev. 6)	26 CFR 601.106: Appeals Functions, Settlement of Cases Docketed in the United States Tax Court.
66 (Rev. 11)	Authority of Regional Director of Appeals in Protested and Tax Court Cases.
68 (Rev. 4)	Allowances and Differentials in Employee Serving in Foreign Areas.
[illegible]	Designating Employees Who May Certify That Commercial Long Distance Calls Were Necessary in the Interest of the Government.
77 (Rev. 19)	Authority to Issue Statutory Notices of Deficiency.
91 (Rev. 1)	Service Agreement Between the Internal Revenue Service and the Agency for International Development (AID).
92 (Rev. 7)	Delegation of Authority in Training and Development Matters.
97 (Rev. 25)	Closing Agreements Concerning Internal Revenue Tax Liability.
100 (Rev. 4)	Furnishing Special Statistical Studies, Compilations, Return and Return Information, Training and Training Aids.
101 (Rev. 7)	Delegation of Authority in Labor-Management Relations Matters.
103 (Rev. 8)	Premium Pay for Administratively Uncontrollable Overtime.
106 (Rev. 11)	Delegation of Procurement Authority.
107 (Rev. 7)	Authority to Determine that Certain "Savings Institutions" do not Intend to Avoid Taxes by Paying Dividends or Interest for Periods Representing More than 12 Months.
113 (Rev. 10)	Authority to Issue Exempt Organization Determination Letters.
114 (Rev. 6)	Designation to Act as "Competent Authority" Under Tax Treaties and Exchange of Information Agreements Authorized Under the Caribbean Basin Economic Recovery Act.
115 (Rev. 5)	Audit and Settlement for Accountable Officers' Accounts-Revenue Accounting.
119 (Rev. 6)	Delegation of Authority to Grant Extension of Time to File Income and Estate Tax Returns.
122 (Rev. 1)	Assignment of Personnel Under Intergovernmental Personnel Act.
134 (Rev. 1)	Authority to Discharge an Executor From Personal Liability for Certain Income, Estate and Gift Taxes and to Issue Estate Tax Closing Letters.
139 (Rev. 5)	Authority to Sign Agreements Under Revenue Procedure 74-8 With Respect to Exercise by Trustee of Administrative and Investment Powers.
143 (Rev. 3)	Authority to Perform Certain Functions to Enforce 31 CFR 103 (Bank Secrecy Act Regulations.
146 (Rev. 2)	Authority to Issue Transfer Certificates in Certain Estate Tax Cases.
150 (Rev. 6)	Decision on Reports of Refunds and Credits to the Joint Committee on Internal Revenue Taxation.
152 (Rev. 7)	Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents.
157 (Rev. 4)	Seizure and Forfeiture of Personal Property.
163 (Rev. 3)	Authority to Perform Functions with Respect to the Northern Mariana Islands Social Security Tax.
171 (Rev. 5)	Authority of Regional Directors of Appeals Under 26 CFR 301.6511 and 26 CFR 301.6532.
173 (Rev. 4)	Nationwide Authority to Make Determinations on Certain Aluminum, Phosphate, Salt and Sisal Related Issues.
176 (Rev. 3)	Authority to Obligate Funds for Payment to third Parties who Request Reimbursement for Cost of Complying with Summons.
187 (Rev. 1)	Determining Imprest Fund Requirements.
188 (Rev. 2)	Authority to Affix the Official Seal of Office of the Internal Revenue Service and to Certify to the Authenticity of Official Documents.
189 (Rev. 1)	Authority to Enter Into Interagency Reimbursement Agreements with the Department of State Relative to the On-Site Support of Overseas Offices of the Assistant Commissioner (International).
194 (Rev. 1)	Authority to Approve Rewards for Information Relating to Violations of Internal Revenue Laws.
195 (Rev. 1)	Consensual Monitoring of Wire and Non-Wire Conversations in Criminal Investigations.
198 (Rev. 1)	Delegated Responsibility for Referral Authority in Organized Crime Drug Enforcement Task Force Cases.
200 (Rev. 2)	Delegation of Authority in Partnership and S—Corporation Matters.
210 (Rev. 1)	Certain Determinations With Respect to Abusive Tax Shelter Partnerships.
213 (Rev. 1)	Authority to Issue Formal Document Requests.

The delegation orders are on file and may be reviewed in the IRS Freedom of Information (FOI) Reading Room, located at 1111 Constitution Ave., NW., Washington, DC 20024, Room 1545, or interested parties may contact the Disclosure officer at the appropriate IRS Regional office.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Arsenio Martinez, OP:EX:N, 1111 Constitution Ave. NW., Room 2517, Washington, DC 20024 (202) 566-6755 (Not a Toll-Free number).

William C. Roth,

Director, Office of National and International Programs.

The following delegation orders are revised:

Number		
4	60	136
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Dated: May 5, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 86-11594 Filed 5-22-86; 8:45 am]

BILLING CODE 4830-01-M

[Policy Statement P-5-39 and Delegation Order No. 23 (Rev. 9)]

Policy Statement and Delegation of Authority; District Directors et al.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Policy Statement P-5-39 and Delegation Order No. 23 (Rev. 9).

SUMMARY: Policy Statement P-5-39 reflects that, in accordance with 31 U.S.C. 3723, The Small Claims Act, a

taxpayer may file a claim for reimbursement of certain expenses incurred due to an error by the Internal Revenue Service. Delegation Order No. 23 (Rev. 9) authorizes District Directors and Service Center Directors to consider, ascertain, adjust and determine, under U.S.C. 3723, claims for reimbursement of bank charges arising out of erroneous Service levies. The text of the policy statement and delegation order appears below.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: G. Stephen Ellis, C:PRP, Room 7212, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202 566-4943, (not a toll-free telephone number).

Linda Martin,

Director, Problem Resolution Staff.

Order No. 23 (Rev. 9)

Effective date: 5-3-86

Settlement of Tort Claims, Claims Under the Small Claims Act, and Claims Made by an Employee of the Internal Revenue Service for Damage to or Loss of Personal Property Incident to Service

1. Pursuant to Treasury Department Order No. 145 as revised, and Treasury Department Order No. 177-22 as revised, (Rev. 2), there is hereby delegated to the officials listed below the authority to handle the claims and amounts of claims as specified:

(a) Safety and Occupational Health Manager, National Office:

(1) The authority, under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, compromise, settle, and pay or transmit for payment claims for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Internal Revenue Service;

(2) The authority to consider, ascertain, adjust, and determine claims under 31 U.S.C. 3722;

(3) The authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee of the Internal Revenue Service for damage to or loss of personal property incident to his/her service.

(b) Chief, Facilities Management Branch, each Regional Office, the authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee within the respective regions in any amount of $500 and less, for damage to or loss of personal property incident to his/her service.

(c) District Directors and Service Center Directors, the authority to consider, ascertain, adjust and determine under 31 U.S.C. 3723 claims for reimbursement of bank charges arising out of erroneous Service levies.

2. This authority may not be redelegated.

3. Delegation Order No. 23 (Rev. 8) issued October 31, 1985, is superseded.

Dated: May 2, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

Reimbursement of Bank Charges Due to Erroneous Levy

The Service recognizes that there are circumstances when an erroneous use of its unique enforcement powers may cause taxpayers to incur certain bank charges. Taxpayers who incur bank charges due to an erroneous levy may file a claim for reimbursement of those expenses. Bank charges include a financial institution's customary charge for complying with the levy instructions and charges for overdrafts that are a direct consequence of an erroneous levy. The charges must have been paid by the taxpayer and must not have been waived or reimbursed by the financial institution. Claims must be filed with the District Director or Service Center Director within one year after accrual of the expense.

The following criteria must be present in all cases:

(1) The error was caused by the Service;

(2) the taxpayers must not have contributed to the continuation or compounding of the error; and

(3) prior to the levy the taxpayers must have timely responded to any contact from the Service and have timely provided the Service with any requested documentation or documentation sufficient to establish their position.

Dated: May 2, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 86-11595 Filed 5-22-86; 8:45 am]

BILLING CODE 4810-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 17588, dated May 13, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, May 19, 1986.

CHANGES IN THE MEETING: The following matters were postponed from the open portion of the meeting added to the closed session:

"Proposed Contracts for Expert Services in Connection with Court Cases" A majority of the entire membership of the Commission determined by vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:
Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred W. Alvarez, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634-6748.

Dated: May 20, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This Notice Issued May 20, 1986.

[FR Doc. 86-11789 Filed 5-21-86; 10:57 am]
BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, June 2, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washigton, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations [Optional]
3. Proposed FY 1987 Funding Principles for State and Local Fair Employment Practices Agencies

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: May 21, 1986.

Cynthia C. Matthews,
Executive Officer Executive Secretariat.

[FR Doc. 86-11809 Filed 5-21-86; 3:42 pm]
BILLING CODE 6750-06-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 28, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. (A) Proposed amendments to Regulation J (Collection of Checks and Other Items and Transfers of Funds) (proposed earlier for public comment; Docket Nos. R-0544 and R-0552); and (B) proposals to: (1) Eliminate or recover float attributable to nonstandard holidays and (2) establish a standard holiday schedule for Federal Reserve Banks (proposed earlier for public comment; Docket No. R-0556).
2. Publication for comment of a proposed standard format for wire transfers of funds on the FEDWIRE network.
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 21, 1986.

James McAfee
Associate Secretary of the Board.

[FR Doc. 86-11774 Filed 5-21-86; 11:40 am]
BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, May 28, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11675 Filed 5-21-86; 11:40 am]

BILLING CODE 6210-01-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 18401, May 19, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, May 28, 1986.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda to be discussed in closed session.

5. *Opinion and Order:* Administrator v. Schwontkowski, Docket SE-6818; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: H. Ray Smith (202) 382-6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

May 20, 1986.

[FR Doc. 86-11732 Filed 5-21-86; 9:10 am]

BILLING CODE 7533-01-M

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 17652, (May 15, 1986).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 29, 1986 at 10:00 a.m.

CHANGES IN THE MEETING: The meeting has been rescheduled for Tuesday, May 27, 1986 at 10:00 a.m. In addition to the announced topic, the Commission also will consider possible revisions to the Commission's Rules of Procedure, Subpart M. Simplified Proceedings. 29 CFR 2200.200 through 2200.212.

Dated: May 21, 1986.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 86-11799 Filed 5-21-86; 3:10 pm]

BILLING CODE 7600-01-M

7

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 442b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, June 3, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, June 2, 1986, but it will consist entirely of briefings and not open to the public.

Agenda

Tuesday Session

June 3, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 5-6, 1986.
2. Remarks of the Postmaster General.
3. Report of the Chief Postal Inspector.
   (Mr. Clauson, Chief Postal Inspector, will make present this item.)
4. Chief Inspector's Report on Consumer Protection (Pub. L. 98-186).
   (Mr. Clauson will make this presentation.)
5. Tentative agenda for July 7-8, 1986, meeting in Washington, DC.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 86-11700 Filed 5-21-86; 11:23 am]

BILLING CODE 7710-12-M

federal register

Friday
May 23, 1986

Part II

Department of Transportation

Office of the Secretary

49 CFR Parts 27 and 609
Nondiscrimination on the Basis of Handicap in Financial Assistance Programs; Final and Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 86x; Amdt. No. 27-3]

Nondiscrimination on the Basis of Handicap in the Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule requires recipients of financial assistance from the Department of Transportation for urban mass transportation to establish programs to provide transit services to handicapped persons. The service must meet certain service criteria. The rule also establishes a limit on the amount of money a recipient must spend to meet these criteria. The rule carries out section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C 1612(d)), as they apply to the Department's financial assistance program for urban mass transportation. In an accompanying notice of proposed rulemaking, the Department is proposing provisions concerning commuter rail systems and certain other matters.

EFFECTIVE DATE: This final rule is effective June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulations and Enforcement , U.S. Department of Transportation, Room 10424, 400 7th Street, SW., Washington, DC 20590; (202) 426–4723 (voice) or (202) 755–7687 (TDD). The Department is currently in the process of installing a new telephone system. As a result, the voice information number is expected to change, during July 1986, to (202) 366–9305. The TDD number is not expected to change. This rule has been taped for use by visually-impaired persons. Requests for taped copies of the rule should be made to Mr. Ashby.

SUPPLEMENTARY INFORMATION:

Highlights of the Rule

This final rule creates a new Subpart E of 49 CFR Part 27, Department's rule on nondiscrimination on the basis of handicap in financial assistance programs. The rule carries out section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)), as they apply to the Department's financial assistance program for urban mass transportation. The new Subpart E replaces the present § 27.77, which originated in a July 1981 interim final rule.

With a few exceptions, the new rule requires each recipient of financial assistance from the Urban Mass Transporatation Administration (UMTA) to prepare a program for providing transportation services to handicapped persons. The recipient must go through a public participation process, including consultation with handicapped persons. Within a year from the effective date of this rule, the recipient must transmit the program to UMTA for approval.

Recipients may fulfill their obligations under the rule by choosing either a special service (e.g., dial-a-van, taxi voucher), an accessible bus system (either a scheduled or on-call accessible bus system), or a mixed system (i.e., a system having both special service and accessible bus elements). Whatever type of service the recipient elects to provide, the service must meet the following six service criteria:

(1) All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public must be eligible to use the service for handicapped persons;

(2) Service must be provided to a handicapped person within 24 hours of a request of it;

(3) Restrictions or priorities based on trip purpose are prohibited;

(4) Fares must be comparable to fares charged the general public for the same or a similar trip;

(5) The service for handicapped persons must operate throughout the same days and hours as the service for the general public; and

(6) The service for handicapped persons must be available throughout the same service area as the service for the general public.

The rule spells out how the six criteria apply to each kind of transportation system.

The rules establishes a limit on the amount of money a recipient is required to spend to meet these service requirements. This limit on required expenditures is calculated by taking 3.0 percent of the recipient's average operating costs; over the current and two previous fiscal years.

If the recipient cannot meet the six criteria for the type of service it chooses without exceeding this limit on required expenditures, the recipient may modify its service to keep its expenditures within the limit, after consultation through its public participation process.

The rest of the rule's provisions are primarily administrative in nature. They concern such subjects as the expenses eligible to be counted in determining whether a recipient has exceeded its limit on required expenditures, UMTA monitoring of recipients' actions, special provisions for small recipients and multi-recipient regions, and technical exemption procedures.

The Department has performed a Regulatory Impact Analysis (RIA) in connection with this rule. This analysis, based on case studies of several existing systems and a computer model study of a large sample of systems, projects the annual and long-term costs and cost-effectiveness of various approaches to providing transportation service to disabled persons. A copy of the RIA has been placed in the docket for this rulemaking.

In an accompanying notice of proposed rulemaking (NPRM), the Department is proposing requirements for commuter rail systems, on which comments are being requested for 90 days. The NPRM also proposes to incorporate vehicle and fixed facility standards, as well as the reduced fare requirement for elderly and handicapped passengers, from 49 CFR Part 609, which would be withdrawn.

Background of the Rulemaking

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in federally-assisted programs. The Department's existing regulation, 49 CFR Part 27, implements this statute in the Department's mass transit programs. This 1979 regulation imposed accessibility requirements for DOT-assisted highways, airports, intercity rail service, and mass transit.

In *American Public Transit Association* v. *Lewis*, 556 F.2d 1271 (D.C. Cir., 1981), the U.S. Court of Appeals for the District of Columbia Circuit held that, under section 504, a transit authority might be required to take "modest, affirmative steps to accommodate handicapped persons". The Court said, however, that the 1979 regulation, as applied to mass transit, exceeded the Department's section 504 authority because it required overly costly efforts to modify existing systems.

The Department reviewed the rule and determined that its policy is that recipients of Federal assistance for mass transit must provide transportation that handicapped persons can use but that local communities have the major responsibility for deciding how this transportation should be provided.

Consistent with this policy and the Court decision, the Department issued

an interim final rule in July 1981. It deleted the mass transit requirements of the original regulation and substituted a new § 27.77. This section required recipients to certify that special efforts are being made in their service area to provide transportation that handicapped persons can use.

In 1983 Congress passed section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)). It provides as follows:

> In carrying out subsection (a) of this section [section 16(a) of the Urban Mass Transportation Act of 1964, as amended] section 165(b) of the Federal-Aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973 (consistent with any applicable government-wide standards for the implementation of such section 504), the Secretary shall, not later than 90 days after the date of enactment of this subsection, publish in the Federal Register for public comment, proposed regulations and, not later than 180 days after the date of such enactment, promulgate final regulations, establishing (1) minimum criteria for the provision of transportation services to handicapped and elderly individuals by recipients of Federal financial assistance under this Act or any provisions of law referred to in section 165(b) of the Federal-Aid Highway Act of 1973, and (2) procedures for the Secretary to monitor recipients' compliance with such criteria. Such regulations shall include provisions ensuring that organizations and groups representing such individuals are given adequate notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations.

In order to implement this statute, as well as to replace the interim final rule with a permanent regulation, the Department published a notice of proposed rulemaking (NPRM) on September 8, 1983 (48 FR 40694). The NPRM proposed that recipients' service for handicapped persons had to meet a series of service criteria, but recipients were not required to spend more than a certain amount in a given year to provide this service.

The Department received more than 650 comments on the NPRM. The commenters included handicapped persons and groups representing them, local transit authorities and state transportation agencies, other transportation providers, private and public human service agencies, members of Congress, and members of the general public.

Legal Background and Issues

Basic Statutes

The legal authority for DOT's regulatory efforts in the area of mass transit service for handicapped persons comes from three statutes in addition to section 317(c). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) provides that

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

Section 165(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)) provides that

> It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this Act) should contain provisions implementing this policy.

Section 165(b) of the Federal-aid Highway Act of 1973, as amended, applies a similar requirement to mass transit projects funded under the Federal-aid Highway Act's interstate transfer provisions.

Court Interpretations of Section 504 and Section 16(a)

Since the mid-1970s, numerous court decisions have interpreted section 504 and section 16(a). The case law generally supports the proposition that these statutes do not require specific facilities or vehicles to be made accessible (e.g., there is no statutory right to bus accessibility). *See, e.g., United Handicapped Federation* v. *Andre*, 558 F.2d 413 (8th Cir. 1977); *Leary* v. *Crapsey*, 566 F.2d 863 (2nd Cir. 1977); *Vanko* v. *Finley*, 440 F. Supp. 656 (N.D. Ohio 1977); *Dopico* v. *Goldschmidt*, 518 F. Supp. 1161 (S.D.N.Y. 1981), *rev'd on other grounds* 687 F.2d 644; *Lloyd* v. *Chicago Regional Transportation Authority*, 518 F. Supp. 575 (N.D. Ill. 1982).

This same line of cases holds that the rights of handicapped users of federally-assisted mass transit services, and the obligations of transit authorities, are defined by DOT's regulations. These cases emphasize the Secretary's discretion in carrying out the statutes. In addition to the cases cited above, see also *Atlantis Community* v. *Adams*, 453 F. Supp. 831 (D. Colo., 1978) and *Michigan Paralyzed Veterans* v. *Coleman*, 451 F. Supp. 7 (E.D. Mich. S.D., 1977). This proposition was most recently reaffirmed in *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority (RIPTA)*, 718 F.2d 490 (1st Cir., 1983), where the court explicitly held that a transit authority that complied with the present 49 CFR 27.77 had met its statutory obligations.

The courts have held that an agency's discretion in fashioning rules in this area has some limits, however. This line of cases began with *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979).

Davis involved a federally-funded nurse training program. The hearing-impaired plaintiff was denied entry into the training program on the ground that her hearing disability made it unsafe for her to practice as a nurse and to participate safely in normal clinical training programs.

The Supreme Court held that it was not a violation of section 504 for the College to deny plaintiff's entry into the training program, saying that section 504 does not mandate "affirmative action" to accommodate the needs of handicapped individuals. 442 U.S. at 441. The court noted that:

> Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances may also enable attainment of these goals without imposing undue financial and administrative burdens on a state. Thus situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory.

442 U.S. at 412–413.

Davis was applied to the Department of Transportation's 1979 section 504 regulation by *APTA, supra*. The Court of Appeals held that section 504 did not provide authority to the Department for the regulation it had issued. Citing the portions of the *Davis* case quoted above, the court said:

> Applying these standards to public transit, we note that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities.

695 F.2d at 1278.

The court remanded the rule to the Department to consider whether section 16(a) and 165(b) would independently support the 1979 requirements. The preamble to the July 1981 interim final rule noted that "while the court allowed the Department to consider whether section 16 and section 165, among other statutes, might support the requirements of Subpart E, we believe that these statutes do not mandate, although they

may permit, the kinds of affirmative action that Subpart E contained." (46 FR 27491, July 20, 1981).

The *Dopico* case further elaborated the scope of obligations that can be imposed under section 504. The Second Circuit Court said that, while section 504 does not authorize massive relief, the statute can authorize some portion of the relief plaintiffs asked for, within appropriate statutory limits. The court stated that the *APTA* case only

> Sketches the outer limits, in the mass transportation context, of the limitation laid down by the Supreme Court in *Davis*. The key issue is whether *Davis* not only proscribed forcing massive restructuring of transportation programs, but in fact prohibits any . . . prospective relief in this setting.

687 F.2d at 651.

The court commented that since, according to *APTA*, section 504 may require "modest affirmative steps" to accommodate handicapped persons in public transportation, it is logical to assume that Congress intended that some steps could be required to be taken to effectuate the intent of the statute.

In the *Davis* fact situation, the court pointed out, the college would have had to restructure its training program to render unnecessary a nursing student's ability to hear. This was a fundamental change in the nature of the program. In *Dopico*, however,

> Plaintiffs do not seek fundamental changes in the nature of a program by means of alterations in its standards. They do not, to adapt the [*Davis*] example. . . . demand that the physical qualifications for the job of bus driver or motorman be altered so the handicapped are not excluded. The existing barriers to the "participation" of the wheelchair-bound are incidental to the design of facilities and allocation of services rather than being integral to the nature of the public transportation itself, just as a flight of stairs is incidental to a law school's construction but has no bearing on the ability of a otherwise qualified handicapped student to study law . . . The issue here is purely economic and administrative—how much accommodation is called for by regulations implementing the Rehabilitation Act . . . While it is bounded, after *Davis*, by a general proscription against "massive" expenditures, the question is one of the degree of effort necessary rather than whether any effort at all is required.

687 F.2nd at 653. *See also Lloyd*, 548 F. Supp. at 584–85.

A recent Supreme Court decision, *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), elaborated further on the "undue burdens" standard originating in the *Davis* and *APTA* cases.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*Id.* at 721) and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration(s) in the nature of a program.' " (*Id.*, n.20, citations omitted).

Because *Alexander* was decided after the comment period on the proposed regulation closed, the Department would have allowed additional comments if it believed that a change in the rule was necessary. *Alexander*, however, supports the position, based on *Davis*, *APTA*, and other cases, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens, that the refusal to undertake the accommodations is not discriminatory. Thus, the failure to include an "undue burdens" provision like § 27.97 could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Therefore, the *Alexander* case does not significantly alter the legal bases for the rule. The limit on required expenditures of § 27.97 ensures that the rule will not unduly burden recipients, and further changes to or comments upon the rule are not necessary in response to *Alexander*.

Section 317(c) and its Legislative History

An amendment to the Surface Transportation Assistance Act of 1982 concerning transportation services for elderly and handicapped persons was introduced by Senator Alan Cranston, for himself and Senator Donald Riegle, as floor amendment No. 5011 on December 14, 1982 (128 Cong. Rec. S 14740). The text of amendment No. 5011, which differs in a number of ways from the enacted version of section 317(c), is as follows:

> In carrying out subsection (a) of this section, section 165(b) of the Federal-aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973, the Secretary, not later than 90 days after the date of the enactment of this paragraph, shall publish in the Federal Register for public comment, proposed regulations and, not later than 180 days after the date of such enactment, shall promulgate final regulations, establishing (A) minimum criteria for each recipient of Federal financial assistance under this Act or the Federal-aid Highway Act of 1973 to provide handicapped and elderly individuals with transportation services that such individuals can use and that are the same as or comparable to those which such recipient provides to the general public, and (B) procedures for the Secretary to monitor and ensure compliance with such criteria. Such regulations shall include provisions for ensuring that organizations and groups representing such individuals are fully consulted by such recipients in the process of determining and carrying out actions to provide such transportation services to such individuals.

Senators Cranston and Riegle, in discussing their proposed amendment, made several points. First, they made it clear that their amendment did not mandate a return to the full accessibility standards of the Department's 1979 section 504 regulation. For example, Senator Riegle said

> I am not proposing an enormously costly burden for transit systems or requiring an immediate return to the controversial, tough standards that were in place before July 1981. (128 Cong. Rec. S15714).

Second, the sponsors of the amendment said that provision of service by recipients under the Department's July 1981 Interim Final Rule was inadequate. They cited a General Accounting Office (GAO) survey of 84 transit systems. This survey showed, they said, that only 30 of the systems surveyed intended to have 50 percent or more of their buses lift-equipped. Of the 66 that offered paratransit service, 22 had waiting lists, 61 required 24 hours or more advance notice, 38 set service priorities by trip purpose and only 6 did not deny requests for service. Compared to the bus service in these 66 systems, 45 systems had shorter service hours, 35 operated on fewer days, and the geographical area covered by paratransit service was less extensive in 15 cases. In addition, 25 percent of the paratransit vehicles these systems used were not wheelchair accessible. (128 Cong. Rec. S14741, statement of Sen. Cranston). Both Senator Riegle and Senator Cranston later referred to the survey as showing "wide-spread deficiencies" in paratransit service. (128 Cong. Rec. S14719, S15716).

The sponsors of the amendment proposed the minimum service criteria requirement as a response to these perceived deficiencies. In describing this requirement, Senator Cranston said

> It would require the Secretary to establish national criteria for providing handicapped and elderly persons with compatible usable transportation services. In this regard, I would note that the Secretary would have broad discretion to formulate those criteria, and I am not sure that I or many others deeply concerned about these issues would

necessarily be satisfied with the criteria that the Secretary would develop. But I believe it is even less productive to have regulations implementing section 504 and UMTA section 16 that set no minimum standards, no bottom line. (128 Cong. Rec. S14742, S15715).

Senator Riegle described the kinds of issues that the "comparability" standard raises:

> Services for handicapped and elderly persons should cover the same general geographic area as do services for the general public. The fares charged handicapped and elderly persons should not on the average exceed the fares charged the general public for trips between the same destinations. Services for handicapped and elderly persons should not be denied or delayed based on the purpose of their trips.
>
> The response time for services for handicapped and elderly persons should not impose an undue burden upon them. I would hope the Secretary would allow no more than 24 hours advance notice—preferably less—to be required. He could provide for progressively diminishing advance-notice maximums. (128 Cong. Rec. S15715).

The sponsors denied proposing an "enormously costly burden for transit systems." (128 Cong. Rec. S14741). As a means of dealing with the costs of providing such service, the Senators referred to the discretionary 3.5 percent "set-aside" provision of their amendment. In this context, Senator Cranston said

> Recognizing that the proposed gas tax would provide a new source of funding for transit for capital improvements, this amendment would authorize—but not require—the Secretary of Transportation to set aside a modest portion of that new funding for capital improvements specifically for the purpose of enabling the needs of elderly and handicapped persons to be met . . . These funds could well be spent to help correct the situation (128 Cong. Rec. S 14742; see also 128 Cong. Rec. S 15714–15715, statement of Sen. Riegle).

Senator Riegle also commented on the issue of costs, saying that

> With respect to the requirement that regulations be promulgated, as I am sure Senators can appreciate, since the criteria that this amendment would require would be developed by the Secretary of Transportation, it is not possible to forecast specifically what cost they might entail for transit systems. Obviously, for those systems that have continued to make progress toward providing adequate service for handicapped persons, the costs would be minimal. For those who have neglected the needs of these individuals the costs can be expected to be more substantial. In any event, through the use of the discretionary set-aside, the Secretary would be able to minimize the cost impact. (128 Cong. Rec. S15715).

A Conference Committee wrote the final version of the statute. The Committee dropped the "same or comparable" language and substituted minimum criteria "for the provision of transportation services to elderly and handicapped individuals." In addition, the Conference Committee version requires that elderly and handicapped individuals be "given notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations," instead of being "fully consulted" about "determining and carrying out" recipients' actions.

In discussing the Conference version of section 317, Senator Cranston made several points. He mentioned again that the Secretary has the authority "to set aside up to 3.5 percent [of UMTA appropriations] for the provision of section 16(b) assistance for handicapped and elderly individuals' transportation."

Senator Cranston also asserted that the provision in the compromise version was

> Faithful to the purposes of the Senate-passed amendment—to make clear the fundamental Federal responsibility to make provision for the transportation needs of handicapped and elderly individuals. It requires the Secretary of Transportation to establish national uniform criteria for the provision of transportation services to handicapped and elderly persons: thus the compromise rejects as unsatisfactory the Department of Transportation's July 1981 Interim Final Rule, which fails to establish any such criteria. (128 Cong. Rec. S16029).

Senator Cranston's statement does not mention the deletion of the "same or comparable" language.

Senator Cranston also said that the Conference version requires that

> The Secretary's regulations establish procedures for monitoring transit system activities in order to ensure compliance with the newly established criteria and include provisions for ensuring that handicapped and elderly persons are provided, through groups representing them, with a meaningful role in the planning of services meeting their needs by requiring that they be afforded adequate notice of and the opportunity to comment on proposed activities of recipients to achieve compliance with the new criteria. (*Id.*)

Neither Senator Cranston's proposed amendment nor anything similar to it was ever independently considered by the House of Representatives. Consequently, there is no legislative history from the House.

Legal Issues Affecting the Final Rule

(a) *"Comparability".* Many commenters asserted that key portions of the NPRM were legally wrong. The American Public Transit Association (APTA) provided the most thorough statement of transit industry arguments. Representative statements of the position of advocacy groups for disabled persons are found in the comments of the Disability Rights Education and Defense Fund and the Paralyzed Veterans of America.

APTA's first major argument is that the service criteria of the NPRM, taken singly or together, create, in effect, a requirement for providing the same or comparable service. Referring to the deletion in conference of the "same or comparable" language of the original Senate version of section 317(c), APTA argues that the statute cannot be viewed as a justification for criteria having this effect. APTA also asserts that the criteria represent an overly expansive response to section 317(c), saying that

> There is no evidence or justification for the inclusion of regulatory language covering any or all of the six specific criteria included in the proposal. Achieving compliance with the service criteria, as presently proposed, even under a cost cap, is likely to result in fundamental alterations to recipients' existing programs . . ., in direct contradiction of the Supreme Court decision in *Southeastern Community College* vs. *Davis*. . . .

The deletion by the Conference Committee of the "same or comparable" language of the original version of the amendment may reasonably be interpreted as meaning that the minimum criteria required by this statute do not have to result in service for handicapped persons that is the same as or comparable to that provided to the general public. However, it is not reasonable to read the statute as saying that the Department is prohibited from establishing criteria that, to some degree, approach having that effect. Senator Cranston's post-conference statement specifically said that the statute was faithful to the purposes of his amendment, and that it required the Secretary to establish "national uniform criteria" for the provision of transportation services to handicapped persons. (128 Cong. Rec. S 16028).

(b) *Service Criteria.* APTA's claim that "there is no evidence or justification for the inclusion of regulatory language covering any or all the six specific criteria included in the proposal" is at odds with the legislative history of section 317(c). The criteria address, for example, several of the deficiencies in service in current service cited by Senators Cranston and Riegle on the basis of the GAO Study. The two Senators explicitly sought to correct these deficiencies through the service criteria provision of their amendment. The criteria also are very similar to those incorporated in 1980 legislative proposals on this subject, which formed

an important part of the background for the amendment.

(c) *"Fundamental Alteration" of Transit Programs.* We do not agree that achieving compliance with the NPRM's service criteria, given the limit on required expenditures, would result in a "fundamental alteration to recipients' existing programs." The Circuit Court in *Dopico* made a persuasive distinction between fundamental changes, in the sense discussed by *Davis*, and other changes to accommodate handicapped persons in mass transit systems. The plaintiffs in *Dopico*, the court said, were not seeking fundamental changes in the nature of a program analogous to those in *Davis*. Rather, in the court's view, they were simply seeking to eliminate incidental physical barriers to the participation of handicapped persons in a program that would continue to operate in its usual way. *See* 687 F.2nd at 683.

A nursing program without a clinical component is clearly a very different kind of program. There is no such dramatic qualitative difference between an inaccessible bus system and a bus system that handicapped people can use because its buses have lifts. A paratransit system that provides curb-to-curb service to wheelchair users is not fundamentally changed by a requirement that it provide that same service on weekends as well as Monday through Friday. Under these circumstances, the nature of the program does not undergo a fundamental change.

(d) *Undue Financial Burden.* APTA also said that expenditures to comply with the NPRM, even though constrained by the regulatory cost limit, would represent such a significant increase in funding devoted to transportation for elderly and handicapped persons as to constitute an "undue financial and administrative burden" on recipients, contrary to the D.C. Circuit Court's ruling in the *APTA* case.

The court in *APTA* was quite specific about the things it considered to impose unacceptably heavy burdens. The court said that the 1979 regulations

> Require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities. Every new bus or subway car must be accessible to wheelchair users regardless of cost; elevators and other modifications must be added to existing subways. . . . These are the kinds of burdensome modifications that the *Davis* court held to be beyond the scope of section 504.

695 F.2nd at 1260.

This final rule differs markedly from the 1979 regulations. Recipients have a choice of how to meet their obligations and can choose a less costly, rather than more costly, approach to compliance. Even if a recipient chooses to comply through bus accessibility, every new bus need not be accessible to wheelchair users. Only those buses needed to meet service criteria must be accessible. Accessibility requirements are not "regardless of cost;" a limit is explicitly provided to constrain the cost exposure of recipients. Accessibility modifications to subway facilities and vehicles are not required at all.

As noted in the section of the preamble concerning the cost limit, many recipients are likely to be able to comply for less than their "limit" amounts. This is particularly true for recipients in larger cities and those who choose a less costly and more cost-effective means of providing service, such as user-side subsidies through private sector service providers. The phase-in period of up to six years will prevent recipients from having to incur unreasonably high start-up costs, or from having abruptly to increase their expenditures. The overall projected costs of this rule are far lower than those of the 1979 rule. We project the following 30-year discounted present value:

1979 rule (DOT estimate)—$3.99 billion
1979 rule (Congressional Budget Office estimate)—$9.04 billion
1986 rule cost limit (3.0% of nationwide operating costs)—$2.37 billion
1986 rule, Paratransit alternative costs—$.98 billion
1986 rule, 50% accessible bus system costs—$.59 billion

All costs are expressed in 1983 dollars.

We would also point out that the rule, and its requirements for service criteria, rest, in addition to section 504, on section 317(c), a statute passed since the *APTA* case, and section 16(a), to which the *APTA* holding does not specifically apply. While the Department may reasonably consider and limit the cost impacts of a regulation promulgated under all these authorities, the *APTA* "undue burdens" strictures apply directly only to section 504.

(e) *Consistency of a Limit on Required Expenditures with Section 317(c).* Many handicapped commenters argued that it was inconsistent with section 317(c) for the Department to provide a cost cap to limit the expenditures that transit authorities are required to make in meeting the regulation's service criteria. The Disability Rights Education and Defense Fund, for example, said that

> The two concepts, minimum service criteria and spending limitation, are mutually exclusive. If service criteria can be traded-off for cost considerations, there is no minimum level of service. Therefore, the DOT proposed rule does not adequately implement section 317(c).

In other words, the Fund contends, section 317(c) requires the Secretary to establish "minimum" criteria for the provision of transportation service to handicapped persons. If a recipient is able to avoid meeting some of the prescribed criteria because it has reached a certain level of expenditure, then the criteria are not truly "minimums."

Because the *APTA* case's "undue burdens" language was not specifically applied to section 16 and section 165(b), the Fund believes, the Department's view that regulations should be designed to avoid the imposition of undue financial and administrative burdens is mistaken. Though none of the commenters making this argument explicitly say so, their argument clearly implies that the Department has an obligation under section 16 to impose minimum service criteria without any regard to the cost of compliance.

Much of the weight of these commenters' position that the Department cannot establish a limit on required expenditures rests on what is, in context, an overly literal reading of the word "minimum." We do not believe that this reading will bear the weight. The Department's approach is consistent with the directions of Congress.

Case law, and section 317(c) itself, suggest that recipients' obligations under all the relevant statutes should be viewed together. There is no evidence that Congress considered, let lone intended to mandate, that section 317(c) would require the Department to do what it is prohibited from doing under section 504—impose open-ended, undue administrative and financial burdens in order to improve service for handicapped persons. Indeed, section 317(c) says that this rule must be "consistent with any applicable government-wide standard for the implementation of [section 504]. . . ." These standards, of course, are read in light of the *Davis* and *APTA* cases.

Both sponsors of section 317(c) said "I am not proposing an enormously costly burden for transit systems. . . ." (128 Cong. Rec. S 14741, S 15719). Senator Riegle differentiated between recipients that have already made progress toward making adequate service for handicapped persons, saying that their costs would be minimal, and recipients who have neglected the needs of handicapped individuals, whose costs could be expected to be more substantial (128 Cong. Rec. S 15715).

This statement recognizes that costs will be imposed on transit authorities, in varying degrees, but does not suggest that these costs cannot be limited. Indeed, Senator Riegle said that "since the criteria that this amendment requires would be developed by the Secretary of Transportation, it is not possible to forecast specifically what cost they may entail for transit systems." *(Id.)* This statement suggests that the sponsors of the amendment contemplated that the Secretary could exercise discretion and control with respect to the imposition of costs.

As noted above, both Senators referred to the authorized 3.5 percent set-aside under the section 317(a) of UMTA discretionary funds for use in transportation for elderly and handicapped persons. The maximum amount available to the Secretary under this set-aside would have been approximately 43 million dollars for fiscal year 1984 and 38 million dollars for fiscal years 1985 and 1986. If these amounts would be able to "help" or "minimize" the cost impact of the criteria established by the Secretary, then the sponsors of the amendment did not contemplate that the Secretary's criteria would have massive, open-ended cost impacts on recipients.

Senator Cranston, after noting that the Secretary would have discretion to formulate criteria, said that even if he might not be satisfied with the criteria the Secretary established, it was "even less productive to have regulations implementing section 504 and UMTA section 16 that set no minimum standards, no bottom line." (128 Cong. Rec. S14712). In discussing the conference version of the amendment, he added that it rejected as "unsatisfactory the Department of Transportation's July 1981 Interim Final Rule which fails to establish any such criteria." (128 Cong. Rec. S16028). From these and similar statements in the legislative history, it is clear that the central thrust of the amendment was to ensure the replacement of the interim final rule with a regulation that had a "bottom line." A rule incorporating a set of specific service criteria, and a limit on the money that recipients are required to spend to achieve them, constitutes a "bottom line" approach that differs substantially from the approach of the 1981 interim final regulation and is consistent with section 317(c).

Section-by-Section Analysis

This portion of the preamble discusses each section of the final rule, focusing on the significant comments on each issue, the Department's response to these comments, and the Department's reasons for making the decisions incorporated in the final rule. Additional guidance concerning the Department's interpretations of the regulatory provisions themselves is found in the appendix that follows the text of the regulations.

Amendments to Section 27.5 Definitions.

In addition to creating a new Subpart E of 49 CFR Part 27, the Department has decided to add two new terms to the definitions in § 27.5 of the regulation. These two terms, "special service system" and "mixed system," are used frequently in Subpart E, making the publication of definitions useful for the sake of clarity.

"Special service system" is defined as a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are unable to use mass transit systems designed for the use of the general public. This definition encompasses a wide variety of ways of providing service. The second sentence of the definition is intended to identify the typical characteristics of a special service system.

The Department recognizes that some recipients will probably choose not to use the same mode of providing service to handicapped persons at all times and in all places. For instance, a recipient might provide transit authority operated dial-a-van service during peak hours, but rely on a user-side subsidy system through private providers for off-peak service. A number of combinations of accessible bus and special service are possible. A "mixed system" is any one of these combinations.

Section 27.61 Program requirement.

The NPRM required that all recipients create a program for the provision of transportation services to handicapped persons. This requirement attracted little comment. In the Department's view, this requirement is necessary in order to serve as a focus for the planning process and to produce documentation that the public, the Metropolitan Planning Organization (MPO), and UMTA can review to ensure that the recipient's service for handicapped persons will be adequate and consistent with regulatory requirements.

In response to suggestions from transit authorities and other commenters that the regulation should allow a phase-in period for substantive compliance with this rule, the Department has decided to permit recipients to take up to six years to reach the full performance level, if this time is necessary. The recipient will be expected to plan to provide service at the full performance level as soon as reasonably feasible, within this six year period. This phase-in period is set forth in section 27.95 of this Subpart. Consistent with this provision, paragraph (a) requires the recipient's program to call for providing service at the full performance level within the phase-in period. In addition, in response to comments from handicapped advocacy groups and planning agencies, paragraph (a) requires recipients' programs to include "milestones" showing how, year-by-year, the recipient will progress toward the full performance level.

The NPRM proposed that section 18 recipients (section 18 of the UMT Act establishes a program of financial assistance to small urban and rural areas) would not have to create a program like that of urban mass transit authorities, since the needs for service and the resources and means for providing service and administering Federal regulatory requirements in rural areas are likely to differ from the situation of cities.

Almost all the transit agencies commenting on this issue supported the NPRM approach, and there were few objections from handicapped persons. The Department will continue to treat section 18 recipients separately. Several commenters suggested that we extend the separate treatment afforded section 18 recipients to small rural and urban systems which may also receive funds under other UMTA programs. We have decided to adopt this comment, and the reference to recipients covered by § 27.91(a) excepts from the program requirement all recipients which do not serve an urban area of over 50,000 population.

Some commenters were concerned about recipients which do not themselves provide transportation services, but merely pass on UMTA funds to other transit providers. For example, an MPO or a city government may receive section 9 money, which it passes on to a transit authority. Only the transit authority actually provides service. Paragraph (a) requires only the public agency that actually provides the service to prepare and submit a program. This provision is intended to ensure that local agencies do not have to duplicate one another's efforts.

In addition, a few rail-only operators, whose service facilities are either already accessible pursuant to Architectural Barriers Act requirements or whose rail systems are not covered by the rule, said that the rule should not impose program requirements on them. We agree. Therefore, the program

requirement will apply only to recipients which provide transportation services to the public by bus.

A few comments discussed special problems of section 16(b)(2) recipients. These recipients (normally private, non-profit social service agencies) typically provide services only to handicapped persons. One recipient, whose UMTA funds come from sources other than section 16(b)(2), also said that its system served only elderly and handicapped persons, the rest of the public being served by a privately-operated bus system.

The Department agrees that section 16(b)(2) recipients, and other recipients who provide service only to elderly and/or handicapped persons, are a special case, and they will not have to submit programs under this section.

Section 27.83 Public participation and coordination.

Section 27.77(g)(1)–(4) of the NPRM set forth public participation requirements. Recipients were to consult with handicapped persons and other interested individuals and groups, have a 60-day public comment period and at least one public hearing, submit their program to the local MPO for comment, and respond to the significant comments made by the public or the MPO.

A large number of handicapped persons and groups representing handicapped persons commented on this portion of the NPRM. Relatively few transit authorities addressed the section. Some social service agencies, private transportation providers, and other persons also commented on public participation.

Almost all of the handicapped commenters said that the public participation mechanism of the proposed rule was inadequate. A primary reason for this inadequacy, they said, is that it required public participation only at the time that the recipient was putting its program together. Public participation should be required, according to these commenters, at all stages of the planning and implementation of the recipients' service.

The Conference Committee version of section 317(c), unlike the original amendment, required only an opportunity for notice and comment on the recipient's program. This is precisely what the NPRM proposed. However, the Department believes that a reasonable degree of continuing public participation is valuable to the effective implementation of recipients' programs. Continuing participation permits users of the services, and other interested persons, to have access to the recipient with respect to questions and problems that arise concerning the provision of service. In addition to allowing the voices of consumers to be heard, such participation can also provide useful information to the recipient that will help it to respond quickly and appropriately to service-related problems.

Therefore, the Department has added a provision that requires the recipient to establish a mechanism for continuing public participation. This provision is drawn from § 27.107(b) of the Department's 1979 section 504 regulation. Recipients appeared to have little problem with establishing such mechanisms under the 1979 rule; several recipients commented to the docket that they had such mechanisms in operation. The Department believes that this requirement will create little additional burden for recipients.

Many handicapped commenters wanted further requirements in this area, suggesting that DOT mandate the creation of handicapped advisory committees. Some of these comments also requested that DOT establish rules for the membership and operation of these committees and require recipients to obtain the committees' approval for their programs.

The Department is not adopting these suggestions. Advisory committees can be a useful tool. Many such committees already exist, and the Department encourages their formation and effective use. However, the Department does not believe it should be mandatory for all recipients to establish such committees. In some localities, other mechanisms could be equally effective in ensuring continuing public participation.

Some comments mentioned problems with some existing advisory committees. For example, it is alleged that recipients have "packed" advisory committees with individuals who favored the recipients' positions, excluding critics. It is also alleged that recipients have failed to provide the committees with adequate information, or have ignored the committees' recommendations.

The Department believes that it would not be feasible to impose a Federal requirement concerning the membership of advisory committees. A reasonable specific membership requirement would be very difficult to devise on a national basis, and a more general requirement would be difficult to interpret and implement. Any such requirement would be very intrusive. While a broadly representative committee is desirable, its membership should be determined locally.

Advisory committees, and other mechanisms for continuing public participation, are intended to provide advice and recommendations. A prudent transit authority will thoroughly consider and make appropriate use of the advice and recommendations it receives. However, UMTA does not require transit authorities to be bound by consumer and interest group input concerning any aspect of public mass transportation. Giving any local group a veto over transit decisions would not be consistent with the way the UMTA program is designed.

The NPRM proposed requiring that the recipient pursue a public participation process, like the one required for the initial program submission, for significant changes in the recipient's program. Almost all handicapped commenters addressing public participation favored this requirement; a few transit operators opposed the requirement as adding an unnecessary administrative burden. The Department believes this requirement is necessary, lest a significant alteration in the nature or direction of a recipient's service undermine the utility of public participation. For example, a recipient might follow the public participation process and submit a program for a paratransit system, which UMTA approves. The next year, after a change in leadership, the transit authority might decide that it made more sense to comply with the rule by creating an accessible bus system. In such a situation, the public should not lose its opportunity to participate because the transit authority was making its second, rather than its first, decision on the subject.

The NPRM proposed that recipients respond to comments made during the public participation process. The formulation of this response—that recipients would accommodate significant comments or explain why they did not—is very similar to that used by Federal agencies in rulemaking or in intergovernmental relations matters. Most handicapped commenters who addressed this issue favored the requirement; a few transit industry commenters opposed it, saying that it was an inappropriate intrusion in the local planning process as well as an administrative burden.

This provision of the rule asks no more of recipients than the Department is required to do in a rulemaking. The provision, which has been modified from the NPRM version to stress that recipients are not required to adopt commenters' suggestions, requires responses only to significant comments (i.e., those of some substantive

importance, not comments that are trivial or irrelevant).

Section 27.85 Submission and review of program.

This section is derived from, and modifies, §§ 27.77(a) (1) and (3) and (g)(5)–(7) of the NPRM. Section 27.77(a)(1) provided that all section 3, 5, 9, and 9A recipients would certify that they had in effect a program meeting the requirements of the regulation. Section 27.77(a)(3) provided that this certification would be regarded by the Department as constituting compliance with recipients' obligations under section 504 and section 16.

Section 27.77(g)(5)–(7) provided that, along with its certification, a recipient would have to submit to UMTA a copy of its program, cost estimates, and public comments on the program and the recipient's response to the comments. This material had to be submitted within nine months of the effective date of the final rule. UMTA could reject the program or require the recipient to modify it, but the certification and its accompanying material would be deemed to be accepted if UMTA has not done so within 90 days of its submission.

A substantial number of handicapped commenters said that DOT should require recipients of all DOT funds, not only mass transit funds, to certify their compliance with section 504. This comment appears to be based on a misunderstanding of this rulemaking, which is concerned solely with mass transit services. Other DOT financial assistance programs (e.g., intercity rail service, airport and highway construction) are already covered under 49 CFR Part 27. Most of the relatively few transit authorities that commented on certification acceptance favored the NPRM approach. A few transit authorities also said that submitting the certification and its accompanying material was an administrative burden.

A substantial number of comments from disabled persons and groups representing them opposed certification acceptance, saying that certification acceptance would permit transit authorities to get away with providing inadequate service. In addition, some commenters expressed the concern that because UMTA would have a heavy workload in reviewing recipients' submissions, inadequate programs might go into effect by default if UMTA staff had not had time to review them within 90 days. A number of commenters wanted UMTA, MPOs, or handicapped persons' organizations to review and approve recipient's programs instead of, or in addition to, the proposed certification acceptance by UMTA.

The Department has decided to require recipients to submit their programs for prior approval by UMTA. There are several reasons for this decision. First, the transportation systems that recipients will establish for providing service to handicapped persons will probably be in place for a substantial period of time. The Department believes that it is important that these programs be reviewed carefully to ensure that the service they call for will be fully adequate and consistent with the regulation.

Second, the problem of inadequate programs going into effect by default could be a real one. We recognize that a prior approval approach may have the corresponding problem of delays in program approval and implementation. However, UMTA is committed to employing sufficient resources to minimize any such problems. The regulation establishes a 120-day deadline for UMTA action on programs that are submitted.

Third, the major reason for establishing a certification acceptance approach in any regulation is to reduce administrative burdens for recipients. In a "pure" certification acceptance system, the recipient sends only its certification, and is not required to prepare or submit any additional information. The approach proposed by the NPRM was far from a "pure" certification acceptance approach, and some transit industry comments suggested that the Department should establish something more similar to a pure certification acceptance system.

The Department decided that it was not feasible to take a pure certification acceptance approach. Such an approach would virtually eliminate the accountability of recipients concerning the substance of their programs and the procedures for adopting them. While we might attempt to compensate by increasing accountability measures at the local level (e.g., by requiring the MPO or a handicapped advisory committee to approve the program), it is likely that this would be at least as burdensome as submitting material to UMTA. Given the emphasis on DOT oversight and monitoring in section 317(c), it could also be difficult to reconcile this approach with the intent of Congress.

The Department, therefore, does not believe that it is practicable to reduce the program submission requirement to less than it was in the NPRM. The final rule, though it replaces a certification acceptance approach with a prior approval approach, demands nothing more of recipients than the NPRM with respect to the material required to be prepared and transmitted to UMTA. The content of the recipient's submission to UMTA, specified in paragraph (b), closely follows the proposals of § 27.77(g)(5) of the NPRM. In response to some transit industry comments, UMTA will accept reasonable summaries of public comments in lieu of copies of the actual comments.

A substantial number of transit authorities, state transportation agencies, and other transportation providers commented on the issue of what the deadline should be for recipients to submit their programs after this rule goes into effect. About two-fifths of the commenters believed the NPRM's proposal of nine months was adequate. The remainder favored extending the deadline to a year or more. There was also support in these comments for a provision allowing recipients to apply to UMTA for an extension of up to six months, for good cause, or to automatically receive such an extension if they wanted it.

In response to these comments, the Department has decided to increase the time permitted for recipients to submit their programs to 12 months from the effective date of the regulation. This increase is made in recognition of the legitimate problems transit authorities could have in planning and obtaining local approval of a program before submitting it to UMTA.

However, the Department does not believe it is necessary or advisable to extend the deadline further or permit individual recipients to extend the deadline. Doing so could unreasonably prolong the planning period. Reasonably tight deadlines are one way of ensuring that work does not "slip" unnecessarily. This problem would be especially acute if recipients could automatically extend the deadline by six months. This would effectively make the deadline 18 rather than 12 months, and would still not guarantee timely submission of programs.

Permitting applications to UMTA for "good cause" extensions of the deadline could have two additional negative effects: transit authorities might divert time and effort away from the job of completing their programs to produce justifications of why the programs could not be completed in a timely manner, and UMTA might be faced with potentially difficult, time-consuming decisions to make on extension requests at the same time as other transit authorities were submitting their programs for approval.

Section 27.87 Provision of service.

This section is derived from two paragraphs of the NPRM: § 27.77(f), "provision of service", and § 27.77(i), "disparate treatment". Because the subjects of these provisions are closely related, the Department decided to combine them.

A substantial number of handicapped persons objected to the provision of service paragraph of the NPRM, which stated that recipients must ensure that services are provided to handicapped persons as set forth in the recipient's program. These commenters objected because providing the service set forth in the program might not be the same thing as providing service meeting the service criteria of the regulation.

The Department believes that this concern has been adequately addressed in the final regulation. UMTA will review and approve the recipient's program. UMTA will not approve any recipient's program that does not meet all of the requirements of the regulation, including the service criteria (subject to the limit on required expenditures). Consequently, a recipient providing service as set forth in its program, as approved by UMTA, will be meeting the requirements of the regulation.

The NPRM also required recipients to ensure that equipment is maintained, personnel are properly trained and supervised, and program administration is carried out in a manner that does not permit actual service to fall below the level set forth in the recipient's program. Some comments asked for greater specificity in these requirements, particularly with respect to the maintenance of lift-equipped buses. For the sake of clarity, the final rule spells out these requirements in greater detail. They concern maintenance of vehicles and equipment, provision of sufficient spare vehicles, training of personnel, and provision of sufficient assistance and information concerning the use of service to handicapped users.

Several comments, primarily from handicapped individuals and groups representing them, requested a specific provision concerning interim service. Some of these comments requested the reissuance of the interim accessible service provision of the 1979 DOT regulation. The Department does not believe it is necessary to reintroduce the 1979 provision; moreover, such a specific interim transportation requirement would be too difficult to apply accurately to the choices recipients would make under this rule.

Finally, several commenters requested that the rule include a "maintenance of effort" provision. Section 27.77(g)(8) of the NPRM proposed that the recipient's certification under the July 1981 interim final rule remain in effect until its new program goes into effect. The Department believes that this requirement is sufficient for "maintenance of effort" purposes under this section. Therefore, the final rule provides that, in the time between the effective date of this rule and the recipient's achievement of the full performance level, the recipient's certification under the July 1981 interim final rule—and the service provided pursuant to that certification—must remain in effect.

Most of the relatively small number of comments on the "disparate treatment" section of the NPRM, from handicapped persons and other commenters, favored the retention of this requirement. The Department will retain the requirement, with only minor editorial changes from the language proposed in the NPRM.

Section 27.89 Monitoring.

The NPRM's monitoring provision would have required each recipient to send an annual report to UMTA containing information about transportation services provided, any problems meeting the service criteria in light of the cost cap, the recipient's progress toward meeting its service requirements, any changes in the program, and a description of any actual or expected alterations in service to handicapped persons. Both handicapped persons and their groups and transit authorities objected to this proposal.

The principal objection to the annual report provision from handicapped persons was that the reporting requirement was too passive. What these parties meant by "monitoring," they said, was an active effort by UMTA to conduct compliance reviews of recipients. Anything less would be inadequate from a programmatic point of view and would fail to carry out the intent of Congress.

Most of the transit authority commenters argued that an annual report was administratively burdensome. They suggested that the monitoring or reporting function be carried out in conjunction with section 9 audits or evaluations, the transportation improvement program process, or other existing reporting or monitoring requirements.

The monitoring provision of the final rule responds, in part, to both lines of comment. An annual report will not be required. This will reduce the paperwork burden on recipients. Monitoring will take place, as transit authorities requested, in connection with the section 9 triennial review and evaluation process. As handicapped commenters requested, this review and evaluation will be performed by UMTA personnel, and will constitute, in effect, a compliance review of the recipient's activities with respect to transportation services. In connection with the reviews, UMTA may, of course, request that certain materials be provided by recipients. This will be an "active" monitoring process by UMTA, but will not occur so frequently as to constitute an additional, significant burden upon transit authorities.

In establishing this triennial review process, the Department was concerned that it might not become aware of problems happening in the intervening years unless a complaint were filed with the Department. Consequently, the final rule establishes a "slippage report." If the recipient falls behind its UMTA-approved implementation schedule, or below its approved level of service, the recipient must forward a report to UMTA no later than the anniversary date of the approval of its program. The report would describe the delay or problem, explain the reasons for it, and set forth the recipient's corrective action. On the basis of this report UMTA could, it necessary, undertake a special compliance review or other corrective action.

The Department is concerned that, as UMTA reviews and evaluates the compliance of recipients with their obligations under this regulation, users and other interested members of the public have the opportunity for input. Consequently, as part of its review and evaluation, UMTA will consult informally with persons involved in the continuing public participation mechanism established under § 27.83 of this regulation.

Section 27.91 Requirements for small recipients.

Section 27.77(a)(2) of the NPRM proposed that, instead of following the requirements of the proposed rule applicable to other recipients, recipients of funds only under section 18 of the UMT Act would certify that special efforts were being made in their service area to provide transportation service for handicapped persons.

Section 18 is an UMTA program for rural and small urban areas. The NPRM proposed that the service that section 18 recipients make available to handicapped persons would have to be reasonable in comparison to that provided to the general public and would have to meet a significant fraction of the actual transportation needs of handicapped persons. These

two criteria are substantively identical to those that section 18 recipients were required to meet under the July 1981 interim final rule and the Federal Highway Administration/UMTA rules that previously governed the section 18 program.

Relatively few commenters addressed requirements for section 18 recipients. Many of the state and local transportation agencies that commented supported the NPRM provision. Some of these commenters suggested that the coverage of the provision be expanded to cover section 18 recipients who also receive funds under section 3 or 9 or other recipients serving small cities. For example, commenters suggested that the "small recipients" provision should apply to all recipients with 50 or fewer buses, or who served areas of up to 50,000 or 200,000 population.

Other commenters recommended that the final rule include more stringent provisions for small recipients than the NPRM did. Some of the suggestions for additional requirements included annual recertifications of compliance, additional public participation and planning requirements, application of the six proposed service criteria and cost cap to small recipients, a specific requirement to furnish accessible vehicles, and greater reporting by recipients and monitoring by UMTA to ensure compliance.

The Department believes that the NPRM's basic approach is sound. Section 18 recipients operate diverse services in areas of low population concentration, usually with little administrative staff and budget. It makes sense to establish separate, more flexible, less administration-intensive requirements for these smaller recipients.

Therefore, the Department will retain the certification acceptance approach for small recipients who, unlike their counterparts in larger cities, will not be required to submit or to obtain prior UMTA approval of a program for providing transportation service to handicapped persons. As suggested by some commenters, the Department will make this provision applicable to any recipients who serve only non-urbanized areas, even if they receive UMTA funds from sources other than section 18. The Department did not extend the reach of this section farther, however, since we were not persuaded by the comments that cities of up to 200,000 did not share important characteristics with larger cities with respect to providing transportation service to handicapped persons.

We did not adopt additional or more stringent requirements because doing so would go counter to the objective of fashioning a more flexible, less burdensome set of requirements for small recipients. In addition, some of the suggestions (e.g., annual recertifications) would add paperwork without improving service for handicapped persons.

The Department has, however, responded to concerns about public participation and monitoring by adding new provisions to this section. Following the statutory language of section 317(c), this section will now require small recipients to ensure adequate notice of and opportunity to comment on the recipients' present and proposed activities for complying with this regulation. This requirement also applies to significant changes in the recipient's service. In order to permit UMTA monitoring of the more than 900 small recipients, these recipients will be required to submit brief status reports (a year after this Subpart goes in effect) and updates (every three years thereafter) concerning their service. For section 18 recipients, these reports will be submitted to the designated section 18 state agency, where UMTA personnel will periodically review them. Other UMTA recipients in areas of less than 50,000 population will submit these reports to the UMTA Regional Administrator. Finally, the section specifies that the provision of service (§ 27.87) requirements apply to small recipients as well as to their larger-city counterparts.

Several comments, particularly from handicapped commenters, requested precise definitions for terms such as "reasonable in comparison" or "significant fraction," saying that these terms were too vague. The Department has decided that it would not be appropriate to define these terms more precisely. In order for this section to apply to small recipients with appropriate flexibility, the Department believes that the generality of these terms is advantageous. They constitute minimum service criteria that UMTA can apply, on a case-by-case basis, to the great variety of local situations and types of service that exist in the section 18 program.

Moreover, these terms have governed the section 18 program for several years, and recipients are familiar with them. In the absence of compelling evidence that these terms have caused serious problems that can be remedied by the introduction of regulatory definitions, the Department believes that it is better to leave them as they are.

Section 27.83 Multi-recipient areas.

Several recipients and MPOs from major urban areas having several transit providers requested that the rule include some provision permitting multi-recipient regions to be treated as a single entity for purposes of compliance with the Department's final regulation. The rationale for this request was that, in a major urbanized area with several recipients providing service, it would be very difficult for individual recipients to plan rationally for efficient service to the area's handicapped persons. A combined approach, these commenters reasoned, would permit better planning, a more efficient use of resources, and service that was well-coordinated and easier to use.

The Department agrees that a unified regional approach to transportation for handicapped persons would have important benefits. The Department also believes that it is important that a regional approach has the full support and cooperation of the area's recipients, provides a mechanism that will ensure adequate service and funding for the service, and does not permit recipients to evade their responsibility for complying with the requirements of this regulation. The Department has therefore decided to permit the recipients in a given urbanized area to form a compact for purposes of compliance with this rule. If a compact is not formed, then each of the recipients in the urbanized area is individually responsible for meeting the requirements of the rule.

Section 27.95 Full performance level.

Section 317(c) of the STAA requires the Department to establish minimum criteria for the provision of transportation service to handicapped and elderly persons. This section prescribes the minimum criteria that each recipient has to meet in order to comply with this Part. For convenience, we use the term "full performance level" to describe the situation of a recipient that is meeting all the criteria that apply to it, subject to the limit on required expenditures.

Timing

Section 27.77(g)(8) of the NPRM provided that the recipient's program should "go into effect" on the first day of the recipient's next fiscal year following the date the recipient was required to submit its certification and program material to the UMTA Administrator.

Approximately equal numbers of commenters took the position that the NPRM's effective date provision was reasonable and the contrary position

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that the effective date of recipients' programs should be extended or that a phase-in period should be provided. Another group of commenters sought clarification of the NPRM provision. Finally, a smaller group of handicapped and other commenters said that the total time from the effective date of the regulation to the point where service meeting the criteria was operating was too long.

A number of transit industry commenters also alleged that the transition between compliance with the present § 27.77 and compliance with the NPRM's provisions could be a very large and abrupt one. That is, a transit authority spending at a level equivalent to 3.5 percent of its FY 1983 section 5 funds the year before the final rule goes into effect might have to spend five times that amount the next year in order to meet the service criteria, even with the NPRM's cost limit in effect. This rapid increase itself, these commenters argued, would constitute an undue financial burden.

The Department does not necessarily accept the commenters' estimates of cost increases that would be caused by compliance with this regulation. However, we do recognize that, where an increase in recipient spending would be necessary to comply with this rule, requiring a rapid, abrupt increase in spending levels could create some hardship even though the overall amount of expenditure would not be unreasonable. This consideration, in addition to the comments on the NPRM's effective date provision, has led us to put a phase-in period into this final rule. The phase-in period will permit a gradual, orderly, well-planned transition to the full-performance level.

Commenters had varying suggestions for how long a phase-in period should be, ranging from several months to several years. The Department has chosen a maximum six-year period. The six-year figure derives fromn UMTA's experience with bus procurements. Typically, the expected useful life of a transit bus is twelve years. In six years, it is reasonable to expect, as a general matter, that most transit authorities would be able to replace up to half of their non-accessible buses with accessible buses as part of their normal bus replacement cycles, without having to retrofit older buses. This should be sufficient to permit most recipients to acquire sufficient new vehicles to meet the full performance level.

The phase-in period is intended to be for a maximum of six years. Recipients are required to plan for service at the full performance level at the earliest reasonably feasible time. Depending on the amount of work and time needed to bring the recipient from where it is to the full performance level, UMTA will approve a phase-in period of up to the six-year maximum. The phase-in period approved by UMTA might well be less than the maximum for a recipient who had little left to accomplish to get to the full performance level, however.

The Department believes that it is reasonable to permit the same phase-in period for special service or mixed systems as for accessible bus systems. In addition to maintaining parity among the options available to recipients, the phase-in period is likely to reduce overall, long-term costs of compliance with this regulation.

For example, if all recipients were forced to phase in service at the full performance level within one year instead of within six years of the approval by UMTA of their plan, the 30-year discounted present value of the accessible bus option would rise about $190 million and the comparable cost for paratransit would rise about $270 million.

Service Options

The remainder of § 27.95 establishes the service criteria applicable to various kinds of systems. This section describes how these criteria apply to special service, accessible bus, and mixed systems. Recipients may elect to comply with the regulation by meeting the full performance level for any one of these three approaches. This local discretion to choose the mode of compliance is consistent with the Department's policy, stated in the NPRM, of permitting local areas to choose how they will provide transportation services to handicapped persons.

Generally speaking, transit industry commenters strongly favored this policy, as did some handicapped and other commenters. Providers and users of existing paratransit services also favored local discretion. The majority of handicapped commenters, however, said that local option would not result in adequate, nondiscriminatory service. They argued that accessible bus service should be mandatory. Failure to so require, it was argued, would result in a segregated, "separate but equal," system that would also fail to provide adequate service. A number of handicapped commenters, recognizing that accessible bus systems could not serve the needs of all handicapped persons, suggested that both accessible bus and supplementary special service be required. Finally, a number of handicapped and other commenters said that the final rule should require that light, rapid, and commuter rail systems (particularly new systems) be required to be accessible.

The Department's 1979 regulation on this subject took the approach advocated by many of these commenters. In the Department's experience, this approach was not successful. The high cost of making old rail systems accessible was one of the most important factors leading the Court of Appeals in the *APTA* case to declare that the 1979 rule imposed undue burdens. Also, urban light and rapid rail systems typically cover the same basic geographic service area as the local bus system. Consequently, as long as an accessible bus or special service system provides transportation to disabled persons in the area, disabled persons are not denied transportation. (See discussion of commuter rail in the NPRM accompanying this final rule.) We are aware that bus or other motor vehicle transportation may not be as fast or convenient as rail transportation. However, section 317(c) does not require that service available to disabled persons be the same as service for the general public, and we believe that the rule, as drafted, satisfies our statutory responsibilities.

Where accessible rail systems exist, recipients may use the service these systems provide to help meet their service criteria, whether their service to disabled persons is by accessible bus or special service. See § 27.95(f) and the appendix discussion of it for further information on this point.

The *APTA* v. *Lewis* decision aside, the Department has been impressed by the variety of different local conditions, preferences, and programs in the area of transportation services for handicapped persons, and by the difficulty of forcing all these differing situations into a single, made-in-Washington, mold. The reaction to the 1979 rule, including the 1980 Congressional initiatives to provide greater flexibility to localities, as well as the comments to the docket for this rulemaking, strongly support the proposition that local discretion is essential. Moreover, the statutory and case law does not support the proposition that the Department must mandate mainline accessibility. Of course, facilities of recipients subject to the Architectural Barriers Act of 1968, as amended (e.g., new rail facilities), must be constructed in accordance with accessibility requirements under that law.

Special Service Criteria

There are six service criteria for special service systems. A majority of comments on this subject approved the

service criteria in the NPRM, though many of the comments from handicapped persons objected to the relationship between the criteria and the limitation on required expenditures.

As noted in the discussion of legal issues concerning the rulemaking, the Department does not agree with transit industry comments that the criteria are not legally proper. One of the themes running through transit industry comments on the service criteria was that local transit authorities should have the discretion to decide for themselves the operational issues affected by the service criteria. While the Department favors local discretion, Congress has directed that the Department establish uniform nationwide criteria. Such criteria necessarily constrain local discretion to some extent.

Transit industry commenters also said that applying the service criteria to special service systems "biased" the regulation in favor of accessible bus service. That is, a recipient could comply more cheaply by making its bus system accessible and hence would have an incentive to do so, even if a special service system would provide better service.

The NPRM proposed that 50 percent of a recipient's bus fleet would have to be accessible, and the Department's economic studies of accessible bus systems were based on that proposal. As discussed in greater detail below, the final rule does not establish a specific minimum percentage of accessible buses that a recipient must have. Nevertheless, we believe that the Department's information is useful in estimating regulatory compliance costs. Under the final rule, it is very likely that the average percentage of buses needed to comply with the service criteria would be 50 percent or less. Consequently, the Department's cost estimates for 50 percent accessible bus service are likely to represent a reasonable upper limit of average accessible bus compliance costs under the final rule.

The Department's studies indicate that creating a 50 percent accessible bus system would be less costly, in cities under about 250,000 population, than a special service system meeting the service criteria. In larger cities, the reverse is true, if the special system is a user-side subsidy (e.g., taxi voucher) system. Transit authority-operated paratransit, with its own vehicles and drivers, is the most expensive option in all cases. The Department has modified some of the NPRM criteria in order to reduce the cost differences among the various service options.

We conclude that there is no across-the-board "bias" toward accessible bus service inherent in the Department's regulation. At the same time, we believe that there is nothing improper or unwise about offering recipients and the public a choice among different options of providing service, even though the costs of these modes may differ. We believe it is appropriate for recipients to take all cost and service factors into account in planning the service that they will provide.

A number of commenters, primarily handicapped persons and their groups, advocated additional service criteria. Those most frequently mentioned concerned dwell time (i.e., how long a vehicle remains at a given stop), ride length time, quality of phone service for paratransit (e.g., sufficient phone capacity to handle incoming calls for service in a timely fashion; use of TDDs to facilitate communication with hearing-impaired individuals), service across jurisdictional lines, training for transit personnel, maintenance of facilities and vehicles, transfer frequency, adequate marketing of and publicity for service to handicapped persons, provision for out-of-town visitors and persons with temporary disabilities, and a general requirement for "same or comparable" service.

The Department has incorporated some of these suggestions in § 27.87, "Provision of Service," since it concerns steps that recipients would take to ensure that the service they plan is delivered adequately. Section 27.87 requires, for example, that vehicles and facilities be adequately maintained, that personnel be appropriately trained, that assistance and information be available to persons with vision and hearing impairments and that there be sufficient communications capacity to enable users to get information about and obtain service. The question of service to out-of-town visitors and persons with temporary disabilities is discussed in connection with the service criterion on eligibility.

We decided not to incorporate several of the other suggestions. As noted in the discussion of legal issues, section 317(c) does not require "same or comparable" service. Dwell time, ride length time, marketing and transfer frequency are all legitimate concerns of transit users. However, it would be very difficult to devise meaningful service criteria on these aspects of service that did not involve more detailed "micromanagement" of transit operations or recordkeeping than the Department believes is practical or desirable. In addition, the Department does not believe these factors are as central to the provision of quality service for handicapped persons as the criteria included in the rule.

The Department strongly urges recipients who provide service in a given region to work together to coordinate their service so that jurisdictional lines do not create barriers to the movement of disabled persons, even where recipients do not form a compact under § 27.93. The Department believes, however, that a regulatory service criterion on the subject of interjurisdictional coordination would be neither enforceable nor particularly meaningful.

A number of the service criteria involve relationships between special service and the recipient's mass transit service for the general public. Several commenters asked whether the recipient's rail service was the point of reference. As these comments pointed out, the service characteristics of rail service often differ from bus service. In addition, this rule does not impose any specific service requirements concerning rapid or light rail systems. Special service, which, like bus transportation, uses road vehicles and public highways, is more readily compared to bus service than to rail service. For these reasons, we do not believe it would be appropriate to base service criteria for special service systems on comparisons to rail systems, and the service criteria explicitly refer to bus service. Of course, this refinement of the language of the criteria will not affect the vast majority of UMTA recipients, who have no rail service.

Eligibility

Section 27.77(b)(2) of the NPRM proposed that all elderly and handicapped persons in the recipient's service area who are unable, by reason of their handicap or age, to use the recipient's service for the general public would be eligible to use the recipient's special service system.

A substantial number of comments from handicapped persons, transit authorities and other transportation providers, social service agencies, and other commenters supported the NPRM's criterion. A majority of the transit authority commenters, however, said either that eligibility should be restricted (e.g., to persons with mobility handicaps) or that transit authorities should have the discretion to establish their own criteria for eligibility.

Among the types of eligibility standards mentioned by commenters were so-called functional standards. For example, a transit authority might regard as eligible persons who could not walk ¼ mile, wait outdoors in moderate

temperatures for more than 10 minutes, or negotiate bus steps.

Some transit authority commenters said that the eligibility requirement would force recipients to serve a larger number of people with special service than with an accessible bus system. The result, the commenters said, would be higher costs for special service systems.

Other comments by a smaller number of commenters suggested that elderly persons should be permitted eligibility only if their mobility were limited, that eligibility should be expanded beyond the NPRM criterion, and that there was no objection to the establishment by recipients of appropriate procedures for certifying eligibility.

Eligibility is a key determinant of the capacity and cost of special service systems. For example, the Department's information indicates that approximately 1.4 million persons can be regarded as "severely disabled" (essentially, persons with physical disabilities making them unable to use regular mass transit service). Another six million persons are regarded as "transportation handicapped" (i.e., persons whose disabilities in any way makes their use of transit more difficult, but not impossible). The Department's studies indicate that making these additional persons eligible could increase operating costs of special service systems, on average, about 60 percent, or between $80,000 and $325,000, depending on the size of the city involved. If the Department required all elderly and handicapped persons to be eligible, another 21.9 million persons would have to be accommodated, raising costs even higher.

This being the case, the Department does not believe it would be feasible to broaden the NPRM's eligibility requirement to include transportation for all elderly and handicapped persons. In addition, the Department believes that there is merit to the comment that requiring a recipient to transport all persons who may not be as readily capable of using the bus system as able bodied members of the general public could effectively be so cost prohibitive to remove any real prospect that the recipient would choose a special service system over an accessible bus system.

In this regard, there are a substantial number of persons whose inability to use the bus system for the general public, due to cognitive disabilities, age or illness, would not be helped by making that system physically accessible. For example, the Regulatory Impact Analysis indicates that up to four million mentally or developmentally disabled persons (not included among the 1.4 million persons in the "severely disabled" population referred to in the Analysis) may fall into this category. Inclusion of people in this category could increase special service costs by 10 to 38 percent and could clearly affect the recipient's choice among modes of service.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, however, would be able to use the regular system with appropriate training. The Department encourages recipients to provide such training. It is expected that drivers would also have to be trained to understand, be patient with, and appropriately respond to questions from mentally retarded persons.

Consistent with other parts of this regulation, this provision does not require recipients to provide special service to able-bodied persons with mental disabilities. Recipients may, however, choose to provide transportation to them even though their condition does not render them physically unable to use the bus service for the general public. In this situation, it would be inappropriate for the recipient to count costs for this special service towards the limit on required expenditures.

The final rule, therefore, requires the recipients choosing special service systems to treat as eligible only those persons who, by reason of handicap, are physically unable to use the bus system for the general public. These are the individuals who would be likely to benefit from an accessible bus system.

Section 16 speaks of transportation service for elderly and handicapped persons. This criterion, however, is not intended to make elderly persons eligible for special service solely on the basis of age. As noted above, doing so would substantially increase costs. Moreover, the Department does not believe that it is necessary, under the statute, to require that special service be provided for elderly persons who are, in fact, physically capable of using the regular service for the general public.

Waiting Lists

Section 27.77(c)(6) of the NPRM proposed that there could not be a waiting list for the provision of service to eligible users. Relatively few comments addressed this criterion; most of those that did favored retaining it. Most of the transit authorities commenting opposed the criterion or said they preferred local option concerning waiting lists. Based on the comments, it appears that waiting lists are not a subject of major concern to the transit industry or to consumers; it also appears that relatively few recipients actually use waiting lists. (The GAO study cited in Congress found only 22.)

As a result, the Department has decided not to include a criterion concerning waiting lists in the final rule. It does not appear that waiting lists are a major, central concern on a level with the other subjects of service criteria in the final rule. Like dwell time, ride length time, and other such relevant but relatively less important service characteristics, the subject of waiting lists does not, in our view, warrant a separate service criterion. A specific service criterion on this subject is unnecessary, in any event, given the eligibility criterion and the provision of service requirement.

Response Time

Section 27.77(c)(5) of the NPRM proposed that users of the special service shall not be required to wait for the service more than a reasonable time. The NPRM asked for comment on whether there should be a regulatory maximum waiting period.

Most of the comments on this criterion came from transit authorities and handicapped commenters. Most of the latter favored including a regulatory maximum waiting period; most of the former opposed doing so, saying that this was an issue that should be decided at the local level without a Federal criterion.

Commenters had varying ideas on the appropriate length for a regulatory maximum waiting period. Twenty-four hours was the time mentioned most frequently by commenters. A majority of these comments said that the maximum waiting period should be no more than 24 hours; others said that the maximum waiting period should be no less than 24 hours. Some handicapped commenters recommended shorter maximums, in the one to four hour range. Another suggestion was that the waiting time should not be longer than that encountered by the public generally for regular mass transit.

The Department studied the effect of different response time requirements on recipients' costs. The studies showed that requiring a response time shorter than 24 hours would add considerably to the costs of providing special service. For transit-authority operated paratransit, a shorter response time would increase costs about 70 percent on the average, adding $104,000 to $324,000 to operating costs, depending on city size.

The Department believes that a specific maximum will be easier to understand and enforce than the

"reasonable time" proposed in the NPRM. In a special service system, 24 hours seems a reasonable time for providers to schedule and "package" trips in an efficient manner. We believe that a response time longer than 24 hours could unduly inconvenience users. We also note that prolonged response times were one of the "deficiencies" in current systems mentioned in the legislative history of 317(c). These considerations all favor establishing a 24-hour response requirement.

Restrictions or Priorities Based on Trip Purpose

Section 27.77(c)(4) of the NPRM proposed that use of special service could not be restricted by priorities or conditions based on trip purpose. The preamble to the NPRM noted that this provision was intended to prevent recipients from refusing to provide service for some trip purposes, or providing service for certain purposes only after demand for trips with other purposes is satisfied.

Most handicapped commenters favored this service criterion. Most transit industry commenters opposed it, or recommended that the decision about restrictions and priorities be a matter of local discretion. Other commenters were roughly evenly divided on the issue.

The Department has decided to retain this criterion. The general public can use the recipient's mass transit system at any time that it operates, for any purpose. We believe that it is inappropriate for recipients to administratively limit transportation service for disabled persons to certain purposes. For a transit authority to decide that some trip purposes are more deserving of service than others can involve a kind of paternalism that disabled individuals understandably may resent.

The Department understands the concern of some commenters that, taken literally, this criterion might be thought to foreclose subscription service for work or other essential trips, which our studies show to be a very cost-effective form of special service. The Department does not intend, through this subparagraph, to prohibit recipients from providing this kind of service.

The Department's studies did not directly estimate the costs of providing service without trip purpose restrictions. However, they did include data on so-called "many-to-few" systems, in which transportation service is provided from multiple origin points to a limited number of destinations (e.g., universities, hospitals, employment centers). There are clear differences between a "many-to-few" system (which provides service for any purpose to a limited number of points) and a system with trip purpose restrictions (which provides service for the approved purposes to any point). As noted in the discussion of the trip purpose restrictions criterion in the appendix, a "many-to-few" system would not be consistent with this criterion.

However, cost data about many-to-few systems may serve as a rough surrogate for cost data about systems with trip purpose restrictions. The Department's data indicates that a "many-to-few" paratransit system operated by a recipient would cost about $75–195 thousand less per year than a destination-unrestricted system, depending on city size. The Department does not view this level of potential savings as sufficient to justify eliminating this service criterion.

Fares

Section 27.77(c)(3) of the NPRM proposed that the cost of a trip on the special service would have to be comparable to a trip of similar length, at a similar time of day, to a user of the recipient's service to the general public. The preamble explained that this did not mean the fares had to be identical; rather, the variance between the regular and special service should be relatively small and be justifiable in terms of the actual differences in cost between the two types of service.

A majority of the comments expressing approval or disapproval of the NPRM provision (including most from handicapped commenters) favored it. Some of the handicapped commenters wanted the criterion strengthened, so that it would require special service fares to be no higher than fares for similar trips on the regular mass transit system. The others, including most transit industry comments, opposed the proposed criterion or said that local discretion should be permitted concerning fares. Another sizeable group of comments asked for clarification of what a "comparable" fare was, suggesting that retaining the NPRM language would lead to uncertainty about the meaning of the criterion.

The Department considered retaining the NPRM criterion. This long-established standard is familiar to transit providers and provides a general guideline to recipients and the public and can forestall outlandish fare differentials without involving any potentially arbitrary arithmetical formula. This approach does require some exercise of judgment on a case-by-case basis, however.

The Department also considered a variety of ideas suggested by commenters, such as fares based on a percentage or regular transit fare box recovery, multiples or percentages of regular transit fares, or a specific dollar ceiling. All of these suggestions are likely to be too difficult to apply reasonably under the wide variety of local situations to which the rule must apply. They could also result in handicapped persons having to pay disproportionately high fares in some cases.

The Department also considered comments which said that the charge to the handicapped person from Point A to Point B should be the same, regardless of the mode of service. This approach has the advantages of simplicity and apparent equality. However, the approach could increase net costs of operating a special service system 40 percent or more and, by encouraging marginal trips, increase gross costs as well. This effect could help to "tilt" recipients in the direction of an accessible bus system, contrary to the Department's desire to give recipients an even-handed choice among modes of transportation service.

The Department has decided to retain the "comparable fares" criterion of the NPRM. This approach recognizes the need to keep special service fares within reasonable bounds, compared to regular transit fares. It also recognizes, however, that special service is different from bus service in a number of respects, including convenience of service and cost. Recipients should not have to charge exactly the same prices for different services. While it is necessary to work out the implications of the comparable fares requirement on a case-by-case basis, we believe that the disadvantages of other, less flexible, approaches are more serious.

Hours and Days of Service

Section 27.77(c)(2) of the NPRM proposed that the recipient's special service would have to be available on the same days and during the same hours as the recipient's service for the general public. A majority of transit industry commenters opposed the criterion, or thought that localities should have discretion concerning this service characteristic. A majority of handicapped commenters favored retaining the criterion, and other commenters divided roughly equally.

Commenters opposing this criterion said that it would not be cost-effective to maintain the availability of special service during certain non-peak hours, such as late at night or on weekends.

The Department believes that the cost-effectiveness of service during times of relatively low demand can be improved significantly by the use of user-side subsidy systems to cover those periods. For example, a transit authority that runs a relatively costly paratransit system during peak hours might shut down that system after the evening rush hour and substitute a taxi voucher system.

The Department's national computer model study did not include data from which estimates could be made of the incremental cost impact of this criterion. Neither did commenters present any information useful for analysis on this point. Data from four of the case studies suggests that this criterion could increase costs of a special service system from two to 15 percent in those cities. However, given that the rule includes a limitation on required expenditures by recipients, the inclusion of this criterion will not, in any event, result in undue financial burdens being imposed on transit providers.

Disabled persons, like other members of the public, have use for public transportation on evenings and weekends. The times when service is available is one of the key determinants of the utility of mass transit to its users. Consequently, the Department has decided to retain this criterion.

Service Area

Section 27.77(c)(1) of the NPRM proposed that special service would have to be available throughout the same service area as the recipient's service for the general public. The preamble asked for comment on how the final rule should treat extended commuter service that went well outside the normal service area.

The largest group of commenters on this issued favored a requirement for providing special service within the same area that the system for the general public serves. These commenters included some transit authorities as well as handicapped individuals and groups representing them, social service agencies, paratransit providers, and other members of the public. A few commenters said that the decision about the area served should be left to local discretion.

Almost all handicapped commenters on the issue of "extended" service said that service going beyond the normal service area should be accessible or that special service should be available. Almost all transit authorities said this matter should be left to local decision, or that requirements for service beyond the normal service area should be less stringent. There was also some comment on the question of how the "service area" should be defined. Some commenters favored defining the service area as the urbanized area, or alternatively, the "normal urban area" in which the recipient provides service to the general public. Others asked for clarification of the requirements for special service within the normal service area—did the criterion mean that special service must serve any points within the urbanized area, or did the special service have to serve only points along bus routes? Some transit authorities said the definition should be left to local discretion. A few of these pointed out that certain existing special service systems already serve a larger area than the regular bus system, asserting that a "same service area" criterion could reduce the geographic area now served.

The Department's information shows that permitting recipients to restrict the geographic area they serve to an area smaller than is served by the regular transit system can reduce expenditures. A geographic area-restricted paratransit system operated by a recipient, on average, would cost between $70 and $200 thousand less per year, depending on city size, than a similar system serving the same geographic area as the regular transit system. The corresponding difference for the less costly user-side subsidy approach would range from $20 to $45 thousand annually.

Principally because of this cost differential, the Department seriously considered eliminating or modifying the service area criterion. However, in view of the decision to include a limit on recipients' required expenditures, the Department decided that the cost differential was not sufficient to outweigh the importance of the criterion in ensuring adequate service for handicapped persons. The absence of geographic restrictions on service is among the most important factors making special service genuinely useful for disabled riders. For example, in many localities, the bus system serves a central city and its surrounding suburbs. If the special service system serves only the central city, or provides service only within certain jurisdictional or "zone" boundaries, the ability of a handicapped person to move around the area by mass transit is severely limited.

Consequently, we are retaining this criterion in the final rule. In terms of defining the service area, we have decided to adopt the suggestion to use the normal area served by the recipient's bus system (exclusive of extended commuter runs). This area is the best analog to the area in which service is available to the general public.

We recognize that it is somewhat more difficult for recipients to "draw the map" of their service area than to use the urbanized area as the basis for the service area. The boundaries of the urbanized area, as determined by the Bureau of the Census, are clearly defined. However, the Department's studies indicate that the service areas in which many recipients actually run their bus systems are smaller than urbanized areas, and using the urbanized area definition could force them to expand their service for handicapped persons well beyond the area in which the general public is served. This is not necessary as a matter of equity, and it would increase costs.

Service is required to be "throughout" the service area. Limiting service to bus stops or to areas within a certain distance of bus routes would not, therefore, meet this criterion. With respect to "extended" service, the Department believes, as handicapped commenters argued, that disabled persons should be able to take advantage of "extended" service. At the same time, the Department agrees that requirements for special service outside the normal service area should be less stringent. Therefore, the Department will require recipients to provide service for handicapped persons to only those points (e.g., terminals, bus stops) reached directly by the bus service extending outside the normal service area.

Service Criteria for Accessible Bus Systems

Section 27.77(b)(2) of the NPRM proposed that one of the ways a recipient could comply with the rule was to make 50 percent of its fixed route bus service accessible. Fifty percent of the fixed route service would be deemed accessible when half the buses the recipient used during both peak and off-peak times were accessible. The preamble explained that this meant that 50 percent of the buses "on the street" at any time had to be accessible, adding that this meant that a sufficient number of accessible buses would have to exist in the reserve fleet to ensure that 50 percent of the buses actually operating were accessible.

The preamble also asked two questions with respect to accessible bus service. First, should recipients be required to permit semiambulatory persons to use lifts? Second, how would the service criteria apply to bus service?

As a response to handicapped commenters' requests for 100 percent accessible service, and to recipients' concern that the relatively low cost of accessible bus service "biased" the rule in its favor, the Department considered requiring 100 percent accessible service, which would provide the level of service requested by the handicapped commenters while substantially reducing or eliminating the cost differential between bus and paratransit modes.

Depending on city size, the Department projects that 100 percent accessible bus service would cost between $40 and $420 thousand more per year than 50 percent accessible service, for the average transit authority. While this would reduce the cost differential with paratransit, the Department is not persuaded that it would be cost-effective to require 100 percent accessible service. It is reasonable to believe that, while a 100 percent accessible system would be more convenient for handicapped persons to use, a majority of the persons who would use accessible bus service at all would use a system in which substantially fewer than 100 percent of the buses were accessible. The overall higher costs of 100 percent accessible bus service are themselves a reason for choosing not to require service at this level.

The Department was aware that recipients will have to have some accessible buses in their reserve fleets. The NPRM mentioned this fact, and the Department's cost estimates for accessible bus service have taken it into consideration. The Department is not persuaded, however, that 50 percent accessible bus service is too costly. The Department's data indicates that such service can, in most cases, be provided well within the rule's cost limit.

There were also several comments that accessible bus service would not be fully adequate to meet the needs of disabled persons. These comments pointed out that not all handicapped persons could use accessible bus service, for reasons such as distance from bus stops, inability to use a lift, physical barriers between the bus stop and the user's origin or destination, bad weather, etc.

The Department is aware that not all handicapped persons can use accessible fixed route buses, and we agree that the ideal transportation system for handicapped persons would include both 100 percent accessible fixed route service and a substantial amount of special service. However, given the limitations of Federal and local resources, and the constraints of the *Davis* and *APTA* cases, the Department believes that it is not in a position to mandate an "ideal" system.

Rather, we believe that by giving localities a choice among various approaches that are reasonably effective, even if short of ideal, we will comply with the intent of Congress and improve considerably the services available to disabled persons. An accessible bus system meeting the final rule's service criteria is one of these reasonably effective approaches.

A number of transit authorities said that if 50 percent of the recipient's fleet was accessible, it should be regarded as in compliance, whether or not 50 percent of the buses actually operating on the street were accessible. However, accessible buses sitting in the garage or on the parking lot do not provide transportation services to handicapped persons. Use, as well as ownership, of accessible buses is necessary for the accessible bus option to work. This is as true under the final rule as under the 50 percent requirement proposed in the NPRM. In this connection, it should be remembered that, in conformity with section 317(c), the Department is required to establish criteria for the provision of service, not simply for the possession of equipment.

Some handicapped commenters said that, during off-peak hours, all buses should be accessible, or that the recipient's accessible buses should be used before inaccessible buses (this latter requirement was part of the Department's 1979 rule). It is true that off-peak schedules involve less frequent service. Consequently, off-peak accessible service could be very infrequent. Therefore, the Department encourages recipients to deploy their buses so that as many as possible of the buses in use during non-peak hours are accessible, to make service for handicapped persons more convenient.

However, the Department does not believe that it is appropriate to establish a regulatory requirement to this effect. Such a requirement is less compatible with the service criteria-centered approach of the final rule than the 50 percent accessibility proposal of the NPRM. Also, the deployment of additional accessible buses during off-peak hours is a matter best left to the discretion of local operators.

The final rule does not require that 50 percent or any other fixed percentage of the recipient's buses be accessible. Rather, the final rule requires that the recipient operate, on the street, a sufficient number of accessible buses to meet the other service criteria for bus systems. The Department has decided to take this approach because, consistent with section 317(c), the emphasis of this rule is on meeting service criteria. There is no magic percentage of buses that will ensure that the service criteria are met.

The Department is aware that recipients now operate accessible bus service in two principal ways. The majority do so by making part of their scheduled bus service accessible. However, it is also possible for a recipient to provide "on-call" accessible bus service. That is, a user calls the recipient and says that he would like an accessible bus to be on a particular route at a particular time. The recipient makes sure that the accessible bus is provided.

In the preamble to the NPRM, the Department mentioned such an arrangement as an example of a mixed system. We believe, however, that it is more reasonable to treat such an approach as a type of accessible bus system, since it is based on the use of regular accessible transit buses on regular bus routes.

It is the Department's intention to establish, as Congress intended, a set of uniform national service criteria for transportation service to handicapped persons. This is important for reasons of equity to users and providers alike. Inherent characteristics of various modes of transportation require some modifications in the way the criteria are stated, however.

Three of the six service criteria are met automatically by a scheduled accessible bus system. Scheduled accessible bus systems have no administrative eligibility requirements. They do not restrict or prioritize the availability of service based on trip purpose. Buses meet schedules, rather than arriving in response to a specific request for service. This satisfies the purpose of the response time criterion.

Of the remaining criteria, the first requires service throughout the same days and hours as the recipient's bus service for the general public. This criterion, like its parallel for special service, is designed to ensure that a recipient does not make accessible service available during only a part of the time it makes service available to the general public (e.g., peak hours).

The "reasonable intervals" language, like the requirement that the service be provided "throughout" the same days and hours as service for the general public, responds to comments that the effectiveness of some existing accessible systems has been limited by the irregularity and infrequency of accessible bus service. At the same time, this language avoids the objection of transit industry commenters to very

specific service distribution and scheduling requirements. This language is included in this criterion because intervals between vehicles is a special characteristic of a scheduled bus system not present in demand-responsive modes of service.

Accessible bus service is limited to certain routes, and does not directly serve origins and destinations throughout a circumferential area. The service area for scheduled accessible bus service, therefore, states that service must be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the rule's planning process.

The reference to the planning and public participation process, also unique to this mode of providing service, responds to those commenters who stressed the need for local flexibility in the design of accessible service and the need to avoid a rigid requirement for service on routes on which there is no demand for it.

In an accessible bus system, all passengers use the same vehicle and travel the same routes. Therefore, the differences between bus and special service that led us to require "comparable" rather than the same fares for the latter do not apply in this context. Recipients must therefore charge all passengers, including handicapped persons, the same fare for the same trip (leaving aside, of course, the off-peak half fares required for elderly and handicapped persons by 49 CFR 609.23).

Some of the criteria for on-call accessible bus service are identical to those for special service. The eligibility, response time, and restrictions or priorities based on trip purpose criteria fall into this category. The fares criterion is identical to the fares criterion for scheduled accessible bus service. The "same days and hours" criterion is the same as the first sentence of the corresponding provision for scheduled accessible bus service. The second sentence is dropped because it is not meaningful to talk of "reasonable intervals" in the context of demand-responsive accessible bus service.

The service area criterion is somewhat different than its scheduled accessible bus service counterpart. In the scheduled accessible bus service context, the schedule of accessible buses which run regularly on various routes at various times is a matter for the planning process. In an on-call accessible bus system, however, the need for and scheduling of accessible service is determined by calls requesting such service in each specific instance. Consequently, the statement of the service area criterion for on-call accessible bus service simply requires accessible service to be provided on all the recipient's routes, upon request.

This criterion also addresses a unique feature of on-call accessible bus service by stating that "all the buses needed to complete the handicapped person's trip" must be provided. Obviously, on-call accessible bus service will not be useful to a handicapped person if the first bus he or she needs to get to his or her destination is accessible, but the bus he or she needs to transfer to in order to complete the trip is inaccessible.

Some handicapped and other commenters suggested various additional criteria concerning the use of accessible buses. For example, every other bus could be required to be accessible. There could be requirements governing transfer frequency or trip length.

The "every other bus" criterion would be a surrogate for the "same days and hours" and "same service area" criteria. However, it could be unduly rigid in application, denying recipients and other participants in the planning process the opportunity to concentrate accessible service where it is most needed. In addition, it could be confusing to state the service criteria in a markedly different way for this mode. For these reasons, we decided not to adopt such a criterion. We also decided against including transfer frequency and trip length criteria, believing that these matters are best determined as a part of the local planning process.

One of the most vexing issues concerning accessible bus service is whether there should be a service criterion requiring recipients to permit semiambulatory persons and other standees to use bus lifts. At the present time, transit authority practices, as described in the comments, appear to vary widely.

Virtually all transit industry comments on this issue said that the operator should have the discretion to decide whether semiambulatory persons should be able to use lifts or that the Department should prohibit the use of lifts by such persons. Virtually all the handicapped commenters urged the Department to require recipients to allow semiambulatory persons to use lifts. A few other comments suggested that UMTA sponsor research into lifts that standees can use safely, that the Department require additional safety devices for lifts, or that semiambulatory persons be permitted to use lifts if they sign a waiver of liability.

Both major positions on this issue have merit. It is true, as handicapped commenters pointed out, that unless semiambulatory persons are permitted to use lifts of a recipient who complies through an accessible bus system, these individuals will have no access to public transportation. This is contrary to the intent of the statute and regulation, the commenters assert.

It is also true, as transit industry commenters point out, that at least some kinds of lifts are not designed to accommodate standees. Not all lifts, for example, have handrails a standee can grasp. Some may operate in a fashion that makes retaining one's balance while standing difficult, particularly for some elderly or handicapped persons. Other lifts may enter the bus at a level, relative to the door opening, that could cause a standee of a certain height to hit his or her head on the entranceway. Transit authorities are properly concerned about the safety and legal liability implications of these problems.

The Department does not have, at this time, sufficient information to evaluate the safety implications of requiring recipients to allow semiambulatory persons and other standees to use lifts. Nor are we now in a position to establish design or performance standards, or safety feature requirements, for lifts. Particularly in view of the Department's policy emphasis on transportation safety, we do not believe that it would be advisable for us to require a practice that could create safety hazards for the individuals that the rule is intended to help.

For this reason, the final rule does not include such a requirement. However, the Department will consider further the safety implications of standee use of lifts and determine what, if any, additional steps are appropriate to address this problem.

Service Criteria for Mixed Systems

Section 27.77(b)(3) of the NPRM proposed that recipients could comply with the rule by establishing a mix of accessible bus and special service. The preamble discussion of this proposed section stated that the accessible bus and special service components of the mixed system, taken together, would have to meet all the service criteria. The preamble also suggested that, in a mixed system, the recipient would not have to provide both accessible bus and paratransit service between the same two points, and it asked whether the final rule should contain any requirements concerning transfer frequency.

There was relatively little comment on this provision. Most of these comments did not object to the notion of a mixed system envisioned by the NPRM and appeared to like the flexibility that such systems provide.

A few commenters objected to the preamble's suggestion that accessible bus and special service components of a mixed system would not have to duplicate one another's routes and efforts. The idea of non-duplication, however, is essential to a mixed system. If a recipient could have a mixed system only if it provided both sorts of service everywhere at all times, then there would be little reason for the recipient to establish a mixed system.

The final rule (see amendment to section 27.5) defines a "mixed system" simply as one that provides accessible bus service at certain times in certain areas and special service at other times and/or in other areas. The full performance level for a mixed system is reached when, subject to the overall limit on required expenditures, each component of that system meets the service criteria applicable to accessible bus systems or special service systems, as the case may be.

Comments from handicapped persons emphasized the importance of convenient travel using all components of a mixed system, and most of these comments favored some limitation on the number of transfers that could be required. Most transit industry commenters favored local discretion on this matter.

The Department does not believe that a discrete national limit on transfers is feasible. The variables are too numerous, and the comparison between the mass transit system for the general public and a mixed system for handicapped persons too difficult, to make such a criterion workable in the great variety of local circumstances to which this rule has to apply. On the other hand, we believe that recipients have a responsibility to coordinate the parts of mixed systems to minimize inconvenience to users, including inconvenience related to transfers. Therefore the Department will require the recipient to ensure such coordination.

Section 27.97 Limit on required expenditures.

Section 27.77(d) of the NPRM proposed that no recipient would be required, in order to meet the NPRM's service criteria, to spend more than a certain annual sum. The NPRM set forth two different ways of calculating that sum for comment, both averaged over the current and two previous fiscal years: 7.1 percent of the recipient's annual UMTA assistance, and 3.0 percent of the recipient's operating budget.

Many commenters addressed the cost limitation issue. The largest group of comments, including virtually all those from handicapped commenters as well as members of most other categories (especially social service agencies), opposed the concept of a limitation on recipient costs like that proposed by the NPRM. As a policy matter, these comments asserted, the limit would vitiate the effect of the service criteria and result in inadequate transportation service for handicapped persons. As a legal matter, these comments said, the proposal would be inconsistent with section 317(c). If there were a limitation on required costs for recipients, many of these same commenters said, it should be set at a higher level. Some of the comments recommended setting the limit as high as 30 percent of the recipient's Federal assistance or 15 percent of its overall operating budget.

On the other hand, virtually all the transit authority comments on the subject, as well as several comments in other categories, approved the concept of the limit on required expenditures. However, these commenters said that the limit was too high to avoid the imposition of undue financial burdens.

Many of the transit industry comments suggested that the Department should ensure that recipients be required to spend no more than they would have to spend under the present § 27.77. To accomplish this objective, several comments suggested that the cost limit be established at about two percent of section 9 funds.

Transit authorities' comments about the base for the cost limit were divided. A majority favored a Federal assistance-based approach. Several MPOs and commenters in other categories also favored a Federal assistance-based limit.

One argument that proponents of a Federal assistance-based cap made was that of proportionality. That is, the amount they spend on complying with a Federal regulatory requirement should remain proportional to the amount of Federal assistance they receive.

All handicapped commenters commenting on the subject, plus about a quarter of the transit authority comments and several comments from commenters in other categories, favored an operating budget approach to the limitation on recipient expenditures. Two main arguments were advanced for this preference. First, the recipient's operating budget was viewed as a relatively more stable base for calculating the limit, since it is drawn from a variety of sources and appears less subject to fluctuation than Federal assistance. Second, these commenters view the transit service for handicapped persons as simply one aspect of a transit authority's overall service to the public. From this viewpoint, fairness requires a reasonable portion of the transit authority's overall resources to be devoted to that portion of the service to the public that handicapped persons can use.

A smaller number of commenters, from various categories, favored either letting recipients choose which base for the limit would apply in their case, or calculating both and using the higher figure. Because this approach would involve more paperwork, and create greater uncertainty, than choosing a single cost limit, the Department did not adopt this suggestion.

The Department has decided to adopt a limit on required expenditures. We have done so for a number of reasons. First, under section 504, as interpreted by the courts, the Department cannot impose undue financial burdens on recipients. The limit is designed to prevent such undue burdens.

Second, predictability is important in planning and budgeting for any public expenditure. The provision will ensure that recipients know, and can plan on the basis of, a predictable limit to their cost exposure for compliance with this rule.

Third, the provision will avoid, to a substantial degree, inequities among recipients. From the information available to the Department, it appears that the cost of providing various sorts of service to handicapped persons may vary substantially from recipient to recipient. In the absence of a limit on required expenditures, the compliance cost to one recipient (even among recipients the populations of whose service areas are similar) could be much higher than for another. The limit will help to avoid major discrepancies in the proportion of resources that recipients must devote to transportation for handicapped persons.

In addition, the Department is convinced that the limit will not result in the failure of this regulation to achieve its principal purpose—the improvement of transportation services for handicapped persons, consistent with the Department's service criteria. The Department's studies show that many recipients, including those serving the largest urban populations in the country, should be able to meet all service criteria for less than the cost limit regardless of which approach to service

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they choose. By choosing cost-effective alternatives (such as user-side subsidy or coordination/brokerage programs), many other recipients can do so as well. Other recipients will make tradeoffs which still result in substantially improved service; in these situations, the public participation process is available to help determine the most productive allocation of resources.

One alternative to a limit on required expenditures that the Department considered was to provide for individual, case-by-case, "undue hardship" waivers of the requirements of the rule. Some commenters said this approach was preferable to the proposed cost limit because it did not establish an across-the-board "exemption" from the service criteria. This approach has several problems. First, the Department would have to devise neutral, broadly applicable standards for what constitutes an undue hardship or burden. Such standards might well have to include a cost limit-like threshold expenditure level. Also, the lack of clear legal definition of what constitutes an undue hardship could make standard-setting very difficult.

Second, the Department would have to deal with what, based on experience in previous rulemakings, could be a large number of waiver requests. Processing these requests could be a very time-consuming and burdensome job for the Department, leading to substantial uncertainty about and delay in providing the services for handicapped persons. In effect, the Department would be substituting a series of rulemakings of particular applicability for a rule of general applicability. Moreover, this approach would shift the emphasis in decisionmaking about service from local areas to Washington, which is contrary to the Administration's policy.

Third, it would probably be necessary to eliminate or scale back some of the service criteria in order to prevent the overall compliance costs of the rule from becoming too large. This would be undesirable, particularly in that it could result in less improvement of service in those many localities that can meet all the criteria without exceeding the limit on required expenditures.

With respect to the alternatives for the limit on required expenditures and their effects on projected recipient costs, the Department presents the following tables, based on information it gathered in studies made in connection with the Department's Regulatory Impact Analysis (RIA). These figures, and the way they were derived, are discussed in greater detail in the RIA.

TABLE 1.—ANNUAL COSTS OF SERVICE MEETING ALL SERVICE CRITERIA

City size	3.0 limit	7.1 limit	Para-transit	User-side subsidy	50 percent bus
(1) Less than 250,000	61	78	247	92	35
(2) 250,000 to 500,000	193	194	393	128	193
(3) 500,000 to 1,000,000	356	356	515	165	300
(4) Over 1 million [1]	2,400	3,456	1,918	196	885

[1] Does not include data from New York, Chicago, Los Angeles, Philadelphia, San Francisco, and Boston.

The data in Table 1 are expressed in thousands of 1983 dollars, and represent annual operating and capital costs and cost limit figures for a system serving an average-sized city in each city size category. The accessible bus costs assume a six-year phase-in period and a 25 percent spare ratio. The user-side subsidy costs assume that supplementary lift-equipped vehicle service would be provided for persons unable to use regular taxis. The paratransit (i.e., transit authority-operated paratransit) and user side subsidy figures are projections of the cost of systems in which the service criteria are as close as possible, given the data available, to those required by the final rule. The 7.1 percent cost limit is based on all UMTA assistance in FY 1985. The 3.0 percent cost limit is based on recipient operating costs as shown in the 1981–82 reports under Section 15 of the UMT Act.

becoming too large. This would be

Table 2.—Nationwide, 30-Year Present Value of Compliance Costs

Paratransit	.98
50 percent Accessible Bus	.69
7.1 percent cost limit	2.72
3.0 cost limit	2.37

This table covers all cities, including the six largest, and assumes that all cities chose one option or the other. The numbers are expressed in billions of 1983 dollars and are based on 1983 UMTA assistance and operating budget levels. The cost limits and service figures are computed as in Table 1.

TABLE 3.—DATA FROM SEVEN CASE STUDIES

City	Present costs	Adjusted costs	7.1 percent limit	3.0 percent limit	2.0 percent of 3.0 limit
Cleveland	3,800	3,119	5,300	3,165	800
Pittsburgh	2,700	2,550	7,350	3,300	850
Seattle	1,218	1,260	2,500	3,250	885
Kansas City (Missouri)	1,079	956	887	783	185
Akron (Ohio)	1,145	242	312	547	85
Hampton (Virginia)	93	103	305	162	58
Brockton (Mass.)	585	245	129	159	28

The figures in Table 3 are expressed in thousands of FY 1983 dollars (except the present costs figures for Cleveland and Seattle (Calendar Year 1980 dollars) and Akron (Calendar Year 1982 dollars). The present costs to which the table refers are the costs of the recipient's existing service for elderly and handicapped persons, whether or not the service meets the criteria of this rule. The adjusted costs are the Department's projection of what it would cost each city to operate a system meeting the service criteria while serving the eligible population defined by the rule. The costs cited are total costs. In the case studies, the systems were credited with all capital costs from 1970–present, and, although annualized, overstate actual compliance costs under the final rule. The 3.0 percent cost limit is based on 1983 total operating expenditures. The 7.1 percent cost limit is based on 1984 section 9 grant apportionments and section 3 capital funds. The 2.0 percent of section 9 limit, suggested by transit industry comments, is shown for purposes of comparison (calculated in FY 1984 funds).

Looking first at the overall, long-term picture (Table 2), the Department's figures show that, over 30 years, the present value of recipients' aggregate maximum cost exposure under the final rule would be about a third of a billion dollars less under the NPRM's 3.0 percent of operating costs limit than under the 7.1 percent of all UMTA assistance alternative. What is more interesting in Table 2 is that the 30-year present value of aggregate compliance costs for either transit authority-operated paratransit or 50 percent bus accessibility is far less than either of the proposed cost limits. (These figures are projections of what the nationwide compliance cost would be if all recipients chose one mode or the other.)

Table 1 projects the annual costs of compliance and cost limits in average-sized cities in each of four city size categories. The 3.0 percent cost limit results in a lower potential cost exposure in city size categories 1 and 4, an equal potential exposure in city size category 3, and a slightly higher potential cost exposure in category 2.

In city size categories 2, 3, and 4, both a user-side subsidy and a 50 percent accessible bus system, meeting all service criteria of the final rule, could be provided for less than either proposed cost limit amount. In each case, the user-side subsidy approach would be less costly. Transit authority-operated paratransit meeting the service criteria, in every case the most expensive alternative, could be provided for less than the cost limit amounts only in cities of more than 1,000,000 population (category 4), though cities in category 3 could come close.

Small cities would have the most difficult time meeting all the criteria for less than their cost limit amounts.

According to Table 1, the cities in category 1 (under 250,000 population) would be able to meet the criteria without exceeding the cost limit only by using an accessible bus system. Even a user side subsidy system's costs would exceed the limit on required expenditures to some extent, and a transit authority-operated paratransit system would exceed the cost limit level substantially.

One of the interesting results of the case studies displayed in Table 3 is that the present expenditures of four of the cities (Cleveland, Kansas City, Akron, and Brockton) are higher than one or both of the proposed limits on required expenditures. These expenditures are not mandated by Federal regulation. It is difficult to argue that expenditures at the cost limit levels proposed by the NPRM would constitute "undue financial burdens" for cities which have already voluntarily exceeded these levels.

Six of the seven cities (all except Brockton) could comply with the all of the final rule's service criteria by spending less than the 3.0 percent cost limit figure applicable to them. Five of the seven cities could comply with all the final rule's service criteria by spending less than the 7.1 percent cost limit figure applicable to them. The exceptions are Cleveland and Brockton. These results suggest that the proposed approaches to limiting recipients' required expenditures are reasonably related to the provision of transportation services meeting the final rule's service criteria. The figures show that cities' costs of compliance do vary substantially, which supports the argument that a cost limit is useful to prevent cities with higher costs (e.g., Cleveland) from suffering substantially higher compliance burdens than other cities.

On the other hand, the 2.0 percent of section 9 funding basis for the limit on required expenditures, recommended by transit industry comments, would fall far short of either the seven systems' current expenditures or the expenditures necessary to meet all service criteria under the final regulation. The 2.0 percent limit amounts for the seven systems average 30.9 percent of the systems' current expenditures. The same 2.0 percent limit amounts average 42 percent of the adjusted compliance costs for the seven systems. It is clear that, if the Department were to adopt the 2.0 percent of section 9 basis for the cost limit, the seven systems could comply with the regulation while providing much less service than they do now or would provide under the 3.0 or 7.1 percent cost limits.

The Department has concluded that the 2.0 percent of section 9 approach to establishing a limit on required expenditures would not be adequate. Congress clearly intended, through section 317(c), that the Department should publish a rule that would result in improved transportation services for disabled persons. The 2.0 percent of section 9 approach is explicitly intended to avoid any required increase in the aggregate resources devoted to such services. It is unlikely that expenditures at this level could improve service as Congress intended. As Table 3 shows, expenditures at this level could drastically reduce services below present levels in many cases.

The Department has decided that of the two proposed approaches to the limit on required expenditures, the 3.0 percent of operating costs approach is preferable. First, the Department is persuaded that the greater likelihood of stability, from year to year, in a figure based on overall operating costs is a significant programatic advantage. This stability should facilitate recipients' planning for service to disabled persons. It should help to avoid fluctuations in that service that would disrupt the transportation opportunities of its users. Second, the overall potential cost exposure to the transit industry is significantly less under this approach than under the 7.1 percent of UMTA assistance alternative, based on 1985 program levels. Not only is this true for the 30-year cost limit level, but it is also true in two of the three city size categories on an annual basis in which the two differ.

In addition, the Department agrees with those commenters who said that service to handicapped persons should be viewed—and funded—simply as one portion of the recipient's overall service to the public. The Department believes that it is equitable to relate the limit on required expenditures to the funds the recipient expends on services for the entire public.

Finally, this way of calculating the cost cap is based on a standardized, readily available source (UMTA section 15 data). This will facilitate administration and monitoring of the cost limit.

We understand the argument, made by proponents of linking the cost limit to UMTA assistance, that the Department should maintain proportionality between Federal funds and expenditures for Federally-mandated service. However, we do not believe that this argument outweighs the considerations favoring the 3.0 percent of operating costs basis for the limit on required expenditures.

Some commenters recommended deleting, from the base from which the cost limit is calculated, expenditures specifically for service to handicapped persons, such as the costs of a special service system or the incremental costs of operating an accessible bus system. The basic rationale of this suggestion appears to be that to use these costs as part of the base for calculating the cost limit would be a sort of double counting. We have not adopted this suggestion. The cost limit relates to the overall operating expenses of the recipient for all purposes, including transportation provided to all users. It would be inconsistent with this rationale, and with the idea that service to handicapped persons is simply one facet of service to the public, to base the cost limit on three percent of 97 percent of the recipient's operating expenses. Doing so would also make administering the rule more complicated.

The NPRM proposed that the recipient could average its operating costs for the two previous fiscal years and its projected operating cost for the current fiscal year in order to form the base from which the cost limit is calculated. The rationale of this provision was to permit greater predictability and stability in the cost limit figures (e.g., to smooth out "bumps" in cost limit levels that might be caused by short-term changes in operating costs). Relatively few comments addressed this proposal, and most of them were favorable. The final rule retains this feature.

The preamble of the NPRM also asked for comment on so-called "carryover credit." This idea would involve permitting a recipient which voluntarily spends more than its cost limit in one year to take credit for the overage in subsequent years. For example, a recipient that made heavy capital expenditures in one year, spending $100,000 over its cost limit figure, would be able to comply with the rule the following year even though it spent up to $100,000 less than its cost limit figure.

The majority of the comments on carryover credit, most of which came from transit authorities, favored the concept. Other commenters favored various ways of amortizing capital investments over a period of time. The Department agrees with commenters who expressed concern that crediting the total amount of capital purchases in the year in which the purchases took place would create an uneven pattern in reported expenditures. This could result

in a recipient exceeding its cost limit some years and not others because of capital expenditures, causing fluctuations in the level of service.

As a result, we have decided to require recipients to annualize capital expenditures over the expected useful life of the item. This requirement is expected to result in less fluctuation and greater predictability of eligible expense levels, as they relate to the limit on required expenditures. This approach will also, we believe, accommodate the concerns of those commenters who favored a "carryover credit" approach.

Section 27.89 Eligible expenses.

Since the rule includes a limitation on the costs recipients are required to incur to comply with the regulation, it is necessary to establish what kinds of expenditures by the recipient may be counted in determining whether the recipient has reached the limit.

Section 27.77(e) of the NPRM said that incremental operating costs of accessible rolling stock, operating costs of special service, capital costs for special service components and accessible rolling stock, payment of expenses of indirect methods of providing service, and incremental costs of training and coordinating service were eligible. Other costs, even if related to service for handicapped persons, were not. For example, if recipients served both eligible handicapped persons and other persons with the same service, then only the portion of the cost of the service attributable to the former could be counted. The preamble to the NPRM added that only expenditures by the recipient itself, and not expenditures by other parties, could be counted.

The latter point was a major focus of comment. Virtually all transit industry commenters said that expenditures by agencies other than the recipient itself should be counted as eligible expenses. These comments said, first, that such expenditures were intended to provide transportation service to handicapped persons. Second, the comment alleged that the cost limitation provision acted, in effect, as a minimum expenditure criterion, and, like the minimum expenditure guideline in the July 1981 interim final rule and its 1976 predecessor, should permit expenditures by other agencies to be counted. Third, the comments said that NPRM's proposal would discourage effective coordination between the recipients' services and those provided by other agencies. The larger number of handicapped commenters addressing this subject were equally united in asserting that only expenses incurred by the recipient itself should be counted.

The Department has concluded that only expenditures by recipients of their own funds should count in determining whether a recipient has reached its limit on required compliance expenditures. This conclusion follows directly from the nature of the limit on required expenditures itself.

The limit's reason for being is to prevent the requirements of this rule from imposing an undue financial burden on recipients. A recipient can suffer an undue financial burden only if it has to expend too many of its own dollars on compliance with the regulation. If a United Fund agency or a state or local public social service agency spends its dollars on transportation services for disabled individuals, the recipient's revenues are not any further depleted or burdened. If a transit authority buys ten accessible buses, the cost it has to incur is not increased by the fact that the local Center for Independent Living has bought a van. In logic and in reality, no one suffers a burden because someone else spends money.

We disagree with the objections of transit industry commenters to this approach. It is true, of course, that the expenditures of other public or private agencies for transportation services for disabled persons have a purpose similar to the purpose of this rule. But this rule imposes requirements and compliance costs only on UMTA recipients. Services provided by other agencies, and funded from other sources, create no additional costs for the UMTA recipients.

To the extent that the comments characterize the limit on required expenditures as a "minimum expenditure" provision, we believe they are mistaken. A minimum expenditure provision would require recipients to spend (or to ensure that they and some combination of other agencies spend) a certain amount of money, regardless of what service is provided.

For example, the Department's analysis projects that an average city of between 500,000 and 1,000,000 population could meet special service criteria through a user-side subsidy system for about $200,000 per year. The limit on required expenditures for such a city would be $508,000. If the cost limit were instead a minimum expenditure requirement, the city would be required to spend another $300,000 per year, notwithstanding the fact that it had already met all service criteria. Obviously, such an approach would penalize recipients who selected an economical mode of compliance with the rule.

The rule establishes minimum criteria for service; recipients can meet these criteria in a variety of ways. Given the variety of means open to recipients to comply with the rule, which can result in compliance costs below the cost limit levels in many instances, we do not believe it fair to say, even figuratively, that § 27.97 creates a minimum expenditure requirement.

We are also unpersuaded that this approach to eligible project expenses will harm coordination efforts. The recipient's program must ensure that service meeting the service criteria is provided to disabled persons. It does not matter who provides this service. That is, while expenditures made by other agencies are not eligible to be counted in connection with the recipient's limit on required expenditures, service provided by other agencies can help to meet the service requirements imposed by this rule. If there is a significant amount of service provided by various public and private agencies in an urbanized area, the recipient may coordinate that service, supplement it as needed to meet the service criteria, and possibly spend a relatively low amount of transit authority funds (see § 27.95(e)). This situation creates a strong incentive, not a disincentive, for coordination of transportation services for disabled persons, since it will help to reduce the cost of compliance for recipients.

The final rule provides that only those expenditures incurred specifically to comply with the requirements of this Subpart are eligible in connection with the limitation on required recipient expenditures. This regulation does not compel any transit authority to expend funds except to comply with its own requirements. The fact that another Federal, state, or local legal requirement or policy choice may result in expenditures beyond those required by this regulation does not convert these additional costs into burdens imposed by this regulation.

Some commenters said that costs related to improving accessibility of rail systems (e.g., facilities and vehicles for light rail and subway systems) should be eligible. This rule, however, imposes no requirements related to rail systems. No recipient has to make any changes in its rapid or light rail system in order to comply with this regulation. Therefore, any costs the recipient incurs to improve its rail system cannot be construed as burdens imposed by this rule, although the costs of improvements to permit the transfer of disabled persons between

accessible rail systems and bus or special service systems can be eligible. (As noted above, service provided on accessible rail systems can help to meet service requirements, however.) The same principle applies to costs incurred by recipients to comply with the Architectural Barriers Act or state or local accessibility laws. These costs are not burdens of compliance with this regulation.

This principle is stated in paragraph (a) and elaborated in paragraphs (b) and (c) of this section. For example, only "incremental" capital costs of accessible buses are eligible (e.g., the extra cost of a lift-equipped bus over the bus without a lift, not the entire cost of the bus). Only the costs of a special service system attributable to transporting persons required to be treated as eligible under this regulation, and not the costs of carrying additional persons (e.g., non-handicapped elderly persons) can be counted.

Several comments from handicapped commenters said that administrative expenses should not be eligible. We do not agree. Ensuring that programs are properly administered is a very important part of ensuring that transportation services are provided effectively. Those administrative expenditures directly related to service to handicapped persons should be counted just as other expenditures for operating a transportation service.

Some handicapped and transit authority commenters mentioned "half-fare" subsidies to elderly and handicapped persons as a cost item, the former opposing considering it as an eligible expense and the latter favoring doing so. The half-fare requirement of 49 CFR Part 609 remains in effect, and we are proposing in the NPRM to incorporate it into this Part. It is clearly a program specifically designed to assist elderly and handicapped persons, which the Department requires recipients to implement. It is therefore reasonable to regard the incremental costs of compliance as eligible, and the Department has decided to do so.

Section 27.101 Technical exemptions.

The Department has drafted this rule with the intent of providing substantial flexibility to recipients. Nevertheless, we realize that there may be a few unusual situations in which application of the general requirements of the rule could prove unduly burdensome or unreasonable. The Department, therefore, has decided to include an exemption provision in the rule. The Department's experience under the 1979 regulation on this subject, as well as under other rules, suggests that it is valuable to have a stated procedure for technical exemptions and standards for decision to guide recipients' applications and the Department's responses to them.

Section 27.103 Alternate Procedures for Recipients in States Administering Section 5, 9, and 9A Programs.

The Department has added a new procedural section for recipients in states which have elected to administer certain UMTA funding programs. The recipients have the same obligations as all other recipients, but they will send their program materials and other submissions to the state rather than to UMTA.

Technical Amendments to Part 27

Part 27, as published in 1979, refers throughout to the American National Standards Institute (ANSI) standards for physical accessibility of structures and other facilities. This reference is now obsolete. For purposes of all of Part 27, the new Uniform Federal Accessibility Standards (UFAS) are now the relevant accessibility standards. The General Services Administration has incorporated the UFAS into its mandatory accessibility standards for Federal and Federally-assisted facilities. These standards are already binding on DOT grantees, and we wish to update Part 27 to refer to them. This should help to avoid confusion.

Therefore, all references to the ANSI standards in Part 27 have been changed to refer to the UFAS. The language of the change to § 27.67, incorporating the principal UFAS reference, is drawn from a Department of Justice model amendment on the subject. The language of the various sections affected by this technical change is not changed substantively. However, we have inserted the word "apparent" in §§ 27.71(a) and 27.73(a) (". . . where there is *apparent* ambiguity or contradiction . . .") to emphasize that the intent of the rule is to read the UFAS and specific provisions of the DOT rule together, and that the one is not intended to allow noncompliance with the other.

When the Department published its section 504 rule in 1979, the section concerning the Federal Aviation Administration's airport programs contained a reference to "jetways." Subsequently, we learned that, like "Xerox" and "Kleenex," "Jetway" is a trade name not properly used in a generic sense. We promised to correct the oversight quite a while ago and, even though this rulemaking has to do with mass transit rather than airports, this seems like a good time to do it.

Comment Period

The Department originally established a 60-day comment period for the September 8, 1983, NPRM, which was scheduled to end on November 8. However, the Department received a number of requests, mostly from handicapped persons and their groups, requesting that the comment period be extended. These commenters suggested that the extension was needed in order to permit commenters—particularly disabled commenters—adequate time to frame their responses to the Department's proposal. The Department did extend its comment period for another 30 days, with the comment period closing on December 8, 1983.

Public Hearings

A number of commenters, primarily disabled persons and groups representing them, requested that the Department hold public hearings about the proposed regulation. In informal rulemaking under 5 U.S.C. 553, public hearings are not required by law. The Department decided that such hearings were not warranted in this rulemaking. The extended comment period gave all interested parties a fair opportunity to present their views, and the 650 persons and organizations who commented appear to represent a broad spectrum of points of view on the issues. Between the comments, and the studies that the Department conducted on transportation services for handicapped persons to provide more information on issues raised by the comments, the Department believes it has obtained the information it needs on which to base a reasonable final rule.

Impact on Small Entities

This rule could have a significant economic impact on a substantial number of small entities. The Department is required to consider and analyze such impacts by the Regulatory Flexibility Act. The small entities potentially affected include small UMTA recipients (including section 18 subrecipients), social service organizations, private transportation providers, and manufacturers of lifts and other specialized equipment used in transportation services for handicapped persons.

Transit systems in rural areas and cities under 50,000 population are not significantly affected by this regulation. These recipients of section 18 funds are subject to a special provision for small recipients, which imposes requirements less stringent and more flexible than those applying to larger cities. The small recipients will have no more substantive

requirements to meet than under present regulations. They will have small additional reporting burdens, though these too are less burdensome than the reporting requirements with which larger systems must comply.

Proportionately speaking, the rule will create the heaviest burdens on cities between 50–200 thousand population. That is, systems in these cities will have the most difficult time meeting the rule's service criteria for relatively low costs. The rule's limit on required expenditures is designed to prevent such systems from incurring undue financial burdens, by limiting required expenditures to 3.0 percent of the recipient's operating costs, as reflected in its section 15 report to UMTA. This "cost limit" device allows recipients to scale down services to those they can provide with a reasonable expenditure of resources.

The rule is likely to have a favorable impact on a number of small businesses, such as lift manufacturers, shops that customize small vehicles for use by handicapped persons, and private providers of transit services to handicapped persons (e.g., taxi cab companies, firms that operate specialized vans). The rule, by requiring more and better transportation for disabled persons, will increase the market for the products and services these businesses provide.

Notice of Proposed Rulemaking on Commuter Rail

The Department made no specific proposals concerning commuter rail systems in the September 1983 NPRM. That NPRM did request comment on what, if anything, the Department should require in the commuter rail area. The Department received few comments on this issue, most of which were from handicapped persons who wanted commuter and other rail systems to be accessible or from transit providers who said there should be no requirements concerning commuter rail.

These comments presented little, if any, data on the need for accessible commuter rail service, the population to be served, or the costs and other advantages and disadvantages of different approaches to commuter rail service. The Department does not have such data of its own, at the present time. In the absence of this information, it would be premature to promulgate a final rule.

Consequently, the Department decided to publish a new NPRM concerning commuter rail. This notice requests comment on specific alternatives for providing commuter rail service to disabled persons. In addition, it requests information concerning the need for and costs of such service. Before making a decision on whether to proceed to a final rule on this subject, the Department also intends to undertake or review studies on commuter rail accessibility, in order to ascertain whether there is a sufficient basis for such action.

This NPRM will also propose incorporation of some portions of 49 CFR Part 609 in 49 CFR Part 27 and to remove the rest of Part 609.

Environmental Considerations: Finding of No Significant Impact

The Department of Transporation finds, under the standards of the National Environmental Policy Act, that the implementation of this rule will not have a significant impact on the human environment. The regulation requires improvements in services for handicapped persons; these improvements will increase the mobility of handicapped persons, but should not have any significant impacts on the environments of communities generally. The economic impacts of the rule are discussed in detail in the Regulatory Impact Analysis.

In connection with its 1979 rule on this subject, the Department produced an Environmental Impact Statement (EIS). With respect to bus systems, the EIS considered the impacts of a 100 percent accessible bus system. (Since this rule does not require 100 percent bus accessibility, its impacts would be smaller than those of the 1979 rule). The 1979 EIS found that, to the extent that lift-assisted bus boardings cause traffic delays, additional carbon monoxide (CO) emissions would occur from the vehicles following the bus. In all cases analyzed, total annual additional CO emissions amounted to a very small fraction of areawide CO emissions. The increase in bus weight due to the lift would result in slightly increased nitrogen oxide (NO) emissions; the increase is estimated at 0.24 percent to 0.40 percent of total roadway NO emissions. The macroscale impact of this increase would be imperceptible. Construction to provide access to fixed facilities would cause short-term increases in suspended particulates only within 100 feet of the construction. These increases were well below EPA standards for suspended particulates.

The Department also considered potential impacts for paratransit systems. The most important air quality impact from paratransit services would be the additional emissions from this new fleet of vehicles added to general urban traffic. Depending upon the vehicles used for the paratransit service and the number of trips served, total CO emissions, if all recipients used paratransit, could vary from about 3,000 to 75,000 tons per year in urban areas across the country. The areawide CO emissions from paratransit would be insignificant compared to the total areawide CO emissions from all vehicles and other sources.

The likely noise impacts from accessible transit systems, such as those from operation of the lift and slightly increased dwell times, were found to be insignificant. Construction activities to make fixed facilities accessible might result in some very short-term impacts with peak noise levels exceeding recommended EPA levels, but not in the hearing loss range. Exposure to noise would be short since the activities creating those noise levels (such as operation of a jack hammer) are short-term and the unprotected passerby would not be in the immediate vicinity for long periods. Mitigation measures such as barrier enclosure or scheduling the work to reduce the number of passersby exposed would reduce the impacts.

For these reasons, we have concluded that there would be no significant impact on the human environment, and we have therefore not prepared an EIS for this rule.

Regulatory Process Matters

This rule is a significant rule under the Department of Transportation Regulatory Policies and Procedures and a major rule under Executive Order 12291. As a result, the Department has prepared a Regulatory Impact Analysis in connection with this rule. The analysis is available for public review in the rulemaking docket.

The Office of Management and Budget has approved, in connection with the NPRM for this rule, the information collection requirements it contains. These information collection requirements are virtually the same in the final rule as they were in the NPRM. The OMB Paperwork Reduction Act number for these information collection requirements is 2132–0530. The current OMB clearance for these requirements expires April 30, 1989.

The Department of Justice has reviewed and approved this rule under Executive Order 12250 and OMB has reviewed and approved the rule under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 19th day of May, 1986, at Washington, DC.

Elizabeth Hanford Dole,
Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transporation takes the following actions:

PART 27—[AMENDED]

1. The authority citation for Part 27 is revised to read:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142nt. Subpart E is also issued under section 317 (c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

1a. Paragraph (a) of the definition of "Accessible" in § 27.5, in Subpart A of Part 27, in Title 49 of the Code of Federal Regulations, is revised to read as follows:

§ 27.5 Definitions.

* * * * *

"Accessible" means (a) with respect to new facilities, (1) conforming to the accessibility standards referenced in § 27.67(d) of this Part, with respect to buildings and facilities to which these standards are applicable; and (2) with respect to vehicles other moving conveyances, (or fixed facilities to which the standards referenced in § 27.67(d) of this Part do not apply,) able to be entered and used by a handicapped person;

* * * * *

2. Paragraph (d) of § 27.67, in Part 27 of Title 49 of the Code of Federal Regulations, is retitled *"Accessibility Standards"* and revised to read as follows:

§ 27.67 [Amended]

* * * * *

(d) *Accessibility standards.* Effective as of the effective date of this Subpart, design, construction, or alteration of buildings or other fixed facilities in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings or other fixed facilities. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building or other fixed facilities is provided.

(1) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(2) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

3. Paragraph (a)(1) of § 27.71, in Part 27 of Title 49 of the Code of Federal Regulations, is amended by removing the last two words of the first sentence and the second sentence. The following language is substituted:

§ 27.71 [Amended]

(a) * * *

(1) * * * accessibility standards referenced in § 27.67(d) of this Part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(2) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section.

* * * * *

4. Paragraph (a)(1)(i) of section 27.73 in Part 27 of Title 49 of the Code of Federal Regulations is amended by removing, the last two words of the first sentence and the second sentence. The following language is substituted:

§ 27.73 [Amended]

(a) * * *

(1) * * *

(i) * * * accessibility standards referenced in § 27.67(d) of this Part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(1)(ii) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section.

§§ 27.71, 27.73, and 27.75 [Amended]

5. In each of paragraphs 27.71(a)(2) introductory text, 27.71(a)(2)(ix), 27.71(a)(2)(xii), 27.73(a)(1)(ii) introductory text, 27.73(a)(1)(ii)(L), and 27.75(a)(1), all of which are in Part 27 of Title 49, Code of Federal Regulations, the words "ANSI standards" are removed, and the following words are substituted: "accessibility standards referenced in § 27.67(d) of this Part."

6. Paragraph 27.71(a)(2)(v), in Subpart D of 49 CFR Part 27, is amended by removing the word "jetways" therefrom and substituting the words "level entry boarding platforms".

§ 27.77 and Appendix B to Subpart D [Removed]

7. Section 27.77, in Subpart D of Part 27 and Appendix B to that Subpart, in Title 49 of the Code of Federal Regulations, are removed.

8. In Part 27, in Title 49 of the Code of Federal Regulations, the words "Mass Transit" are removed from the title of Subpart D.

9. The table of contents for Part 27 of Title 49 of the Code of Federal Regulations is amended by adding the following:

Subpart E—Mass Transportation Services for Handicapped Persons

Sec.
27.81 Program requirement.
27.83 Public participation and coordination.
27.85 Submission and review of program.
27.87 Provision of service.
27.89 Monitoring.
27.91 Requirements for small recipients.
27.93 Multi-recipient areas.
27.95 Full performance level.
27.97 Limit on required expenditures.
27.99 Eligible expenses.
27.101 Technical exemptions.
27.103 Alternate procedures for recipients in States. Administering the section 5, 9, and 9A programs.
27.105–119 [Reserved]
Appendix to Subpart E.

10. Part 27 of Title 49 of the Code of Federal Regulations is amended by adding the following definitions to § 27.5 thereof, placing them in alphabetical order among the existing definitions of that section:

§ 27.5 [Amended]

* * * * *

"Mixed System" means a transportation system that provides accessible bus service to handicapped persons in certain areas or during certain hours and provides special service to handicapped persons in the other areas or during the other hours in which the transportation system operates.

* * * * *

"Special service system" means a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are physically unable to use bus systems designed for use by the general public. Special service is characterized by the use of vehicles smaller than a standard transit bus which are usable by handicapped persons, demand-

responsive service, point of origin to point of destination service, and flexible routing and scheduling.

* * * * *

11. Part 27 of Title 49, Code of Federal Regulations, is amended by adding a new Subpart E, which reads as follows:

Subpart E—Mass Transportation Services for Handicapped Persons

§ 27.81 Program requirement.

Except as provided in § 27.91(a) of this Subpart, each recipient of UMTA financial assistance under sections 3, 5, 9, or 9A of the UMT Act, which provides transportation services to the general public by bus, shall establish a program meeting the requirements of this Subpart. The program shall ensure provision of service to handicapped persons at the full performance level required by § 27.95 of this Subpart within the time called for by that section. The program shall include milestones describing the progress the recipient shall make each year until it achieves the full performance level.

§ 27.83 Public participation and coordination.

(a) Each recipient required to submit a program under this Subpart shall develop its program through a public participation process that includes, as a minimum, the following steps:

(1) The recipient shall consult, as early as possible in the planning process, with handicapped persons and groups representing them, transportation and social service organizations, concerned state and local officials, and the Metropolitan Planning Organization (MPO). This consultation shall concern the needs for service to handicapped persons in the area served by the recipient, any weaknesses or problems in present service or plans for service, and the types and characteristics of service to be provided under the recipient's program. In connection with this consultation, all cost estimates, plans, working papers, and other information pertaining to the recipient's program planning and service for handicapped persons shall be made available to all interested persons.

(2) The recipient shall provide a public comment period of at least 60 days upon the recipient's proposed program.

(3) The recipient shall hold at least one public hearing, to take place during the public comment period. Notice of the hearing shall be provided no fewer than 30 days before its scheduled date. The hearing shall be held in a facility accessible to handicapped persons, and the recipient shall take appropriate steps to facilitate the participation of handicapped persons in the hearing, including persons with impaired vision or hearing.

(4) The recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use.

(b) The recipient shall coordinate the development of its program with the MPO and submit its proposed program to the MPO for comment at the same time as the proposed program is made available for public comment.

(c) The recipient shall make efforts to accommodate, but is not required to adopt, significant comments on its proposed program made by the MPO and by the public, as part of the public participation and coordination process. The recipient shall make available to the public, no later than the time it adopts a program for transmittal to UMTA, a response to significant comments. This response shall include the recipient's reasons for not accommodating significant comments from the MPO and the public.

(d) All recipients subject to the program requirement of § 27.81 shall provide a mechanism for continuing public participation in the development and operation of its system of transportation for handicapped persons. The mechanism shall ensure consultation, with respect to planning, implementation, and operation, with handicapped persons, available advocacy groups of handicapped persons, public and private social service agencies, public and private operators of transportation services for handicapped persons, and other interested persons.

(e) Before making significant changes to its program, the recipient shall follow the public participation process outlined in paragraphs (a)–(c) of this section and secure UMTA approval of the altered program as provided in § 27.85 of this Subpart for initial program submissions.

§ 27.85 Submission and review of program.

(a) Each recipient required to establish a program under § 27.81 of this Subpart shall submit the following materials to the appropriate UMTA Regional Administrator within 12 months of the effective date of this Subpart:

(1) A copy of the program;

(2) The comments of the public (including handicapped persons and the MPO) on the program, together with the recipient's responses to these comments, or summaries thereof;

(3) Documentation of the projected costs of implementing the recipient's program, the costs of alternatives considered by the recipient, the projected amounts of the limitation on required expenditures for the recipient, and the rationale for any reduction of service quality below a level meeting fully the service criteria of § 27.95 (b), (c), or (d), as applicable.

(b) UMTA shall complete review of each recipient's program submission within 120 days of receiving it. UMTA may extend this review period; if UMTA does so, UMTA shall send the recipient a letter, before the end of the 120-day period, explaining the reasons for the extension and providing an estimated date for the completion of review.

(c) After UMTA has completed its review on each recipient's program submission, it shall notify the recipient, in writing, that the program is either approved as submitted, requires certain specified changes in order to be approved, or is disapproved. If the program is not approved as submitted, the notification shall set a time, not less than 30 nor more than 90 days from the date of the notification, within which the recipient shall submit a modified program to UMTA for approval. UMTA may condition approval of the resubmitted program on specified changes to its content or additional public participation activities.

§ 27.87 Provision of service.

(a) Each recipient shall, at all times, provide the service called for by its program, as approved by UMTA, or under its certification pursuant to § 27.91, as applicable, to all eligible handicapped persons.

(b) The recipient's obligation to ensure the provision of such service includes, but is not limited to, the following:

(1) Ensuring that vehicles and equipment are capable of accommodating all the users for which the service is designed, and are maintained in proper operating condition;

(2) Ensuring that sufficient spare vehicles are available to maintain the levels of service called for in the program, or as provided under the § 27.91 certification;

(3) Ensuring that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat handicapped users of the service in a courteous and respectful way; and

(4) Ensuring that adequate assistance and information concerning the use of the service is available to handicapped persons, including those with vision or

hearing impairments. This obligation includes making adequate communications capacity available to enable users to obtain information about and to schedule service. In the case of a scheduled accessible bus system, this obligation also includes providing information on bus schedules and other sources of information about the service concerning which runs are made with accessible buses.

(5) Ensuring that service is provided in a timely manner, in accordance with scheduled pickup times.

(c) Notwithstanding the provision of any special service to handicapped persons, a recipient shall not, on the basis of handicap, deny to any handicapped person the opportunity to use the recipient's system of mass transportation for the general public, if the handicapped person is capable of using that system. Nor shall a recipient otherwise discriminate against a handicapped person in connection with the provision of its transportation service for the general public.

(d) In the time between the effective date of this Subpart and the recipient's achievement of the full performance level established by § 27.95, service at least at the level provided pursuant to the recipient's certification under former § 27.77 of this Part (46 FR 37488; July 20, 1981), as amended, shall remain in effect.

§ 27.89 Monitoring.

(a) In connection with the triennial section 9 review and evaluation of the recipient's activities conducted by UMTA under 49 U.S.C. 1607a(g)(2), UMTA shall review and evaluate compliance of the recipient with this Subpart and its approved program for providing transportation services to handicapped persons.

(b) With respect to any recipient required to submit a program under § 27.81 of this Subpart, but which is not subject to a section 9 triennial review audit, UMTA shall conduct a triennial review and evaluation of the recipient's compliance with this Subpart and its approved program for providing transportation services to handicapped persons.

(c) If the recipient has fallen behind its approved schedule for implementing service to handicapped persons or has fallen below its full performance level for that service, the recipient shall submit a report to the appropriate UMTA Regional Administrator on the annual anniversary date of the approval of its program. The report shall describe the problem or delay experienced, explain the reasons for it, and set forth the corrective action the recipient has taken or is taking to ensure that its approved implementation schedule or its full performance level is met.

§ 27.91 Requirements for small recipients.

(a) This section applies to all recipients which provide service to the general public only in areas of 50,000 population or less. Recipients in this category shall follow the requirements of this section instead of the other requirements of this Subpart, except that § 27.87 shall apply to recipients in this category.

(b) Within 12 months of the effective date of this Subpart, each recipient shall certify that special efforts are being made in its service area to provide transportation that handicapped persons, unable to use the recipient's service for the general public, can use. This transportation service shall be reasonable in comparison to the service provided to the general public and shall meet a significant fraction of the actual transportation needs of such persons within a reasonable time. Recipients who have a current certification to this effect are not required to recertify.

(c) Within nine months of the effective date of this Subpart, each recipient shall ensure that handicapped persons and groups representing them have adequate notice of and opportunity to comment on the present and proposed activities of the recipient for achieving compliance with the requirements of paragraph (b) of this section. This notice and opportunity for comment shall take place before the submission of the certification required by paragraph (b) of this section and the report required by paragraph (d) of this section. Each recipient shall also ensure that there is adequate notice and the opportunity for public comment on any subsequent significant changes to its service for handicapped persons.

(d) Within 12 months of the effective date of this Subpart, each recipient shall submit a status report including:

(1) A description of the service currently being provided to handicapped persons, as compared to the service for the general public;

(2) Copies or a summary of the comments of handicapped persons received in response to the opportunity for comment;

(3) A statement of any plans to modify the service significantly; and

(4) A statement of the resources devoted to the service for handicapped persons.

(e) Each recipient shall submit update reports concerning its service for handicapped persons. The recipient shall provide such a report every three years, on a schedule determined by UMTA. Each report will include the following information:

(1) A description of the service currently provided to handicapped persons, as compared to the service for the general public;

(2) Any significant modifications made in the service since the previous report, or planned for the next three-year period;

(3) Copies of a summary of the comments on any significant changes made in the service since the previous report; and

(4) A description of the resources that have been devoted to service for handicapped persons each year since the previous report and that are planned to be devoted to this purpose in each of the next three years.

(f) All certifications and reports under this section shall be submitted to the designated state section 18 agency or, for recipients who do not receive section 18 funds, to the appropriate UMTA Regional Administrator.

§ 27.93 Multi-recipient areas.

(a) This section applies to any multi-recipient area; i.e., an urbanized area including two or more recipients required to establish a program under § 27.81 of this Subpart.

(b) The recipients in a multi-recipient area may enter into a compact for purposes of compliance with this Subpart. The compact shall meet the following standards:

(1) The compact shall establish a cooperative mechanism among the recipients to ensure the provision of combined and/or coordinated service to handicapped persons that meet all requirements of this Subpart.

(2) The compact shall ensure the provision and sharing of funding adequate to provide such service.

(3) The compact shall include a reasonable dispute resolution mechanism concerning funding and service matters.

(4) The compact shall be a formal written document, signed by all participating recipients.

(c) In order for UMTA to recognize the compact as the means through which recipients in the multi-recipient area will comply with this Subpart, the members of a compact shall submit a copy of the signed compact to the appropriate UMTA Regional Administrator within six months of the effective date of this Subpart. Following such timely submission, UMTA shall acknowledge receipt of the compact within 30 days and then regard the members of the compact as if they constitute a single

recipient for purposes of all requirements of this Subpart.

(d) The deadline for the submission of a program under § 27.85 by a multi-recipient area compact shall be 12 months from the date on which the copy of the compact is acknowledged by UMTA under paragraph (c) of this section.

§ 27.95 Full performance level.

(a) *Scope and timing.* Each recipient shall provide transportation service to handicapped persons at the full performance level. The full performance level is defined as meeting the criteria set forth in either paragraph (b), paragraph (c), or paragraph (d) of this section, subject to the limit on required expenditures provided for in § 27.97 of this Subpart. The recipient shall meet this requirement as soon as reasonably feasible, as determined by UMTA, but in any case within six years of the initial determination by UMTA concerning the approval of its program.

(b) *Criteria for special service systems.* The following minimum service criteria apply to special service systems:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service.

(2) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the special service.

(4) *Fares.* The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the recipient's bus service for the general public.

(5) *Hours and days of service.* The special service shall be available throughout the same hours of days as the recipient's bus service for the general public.

(6) *Service area.* The special service shall be available throughout the circumferential service area in which the recipient provides bus service (exclusive of extended express or commuter bus service) to the general public. The recipient shall also ensure that service to points outside this service area served by the recipient's extended express or commuter bus service shall be available to handicapped persons.

(c) *Criteria for accessible bus systems.* The following minimum service criteria apply to accessible bus systems:

(1) *Number of buses.* The recipient shall operate on the street a number of accessible buses sufficient to meet the other service criteria of paragraph (c)(2) and/or (3) of this section, as applicable.

(2) *Criteria for scheduled accessible bus systems.*

(i) *Hours and days of service.* Scheduled accessible bus service shall be available throughout the same hours and days as the recipient's bus service for the general public. The service shall be provided at reasonable intervals that make practicable the ready use of the accessible bus service by handicapped persons.

(ii) *Service area.* Accessible bus service shall be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the planning and public participation process set forth in § 27.83.

(iii) *Fares.* The fare for a trip charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(3) *Criteria for on-call accessible bus service.*

(i) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's on-call accessible bus service.

(ii) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(iii) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the on-call accessible bus service.

(iv) *Fares.* The fare charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(v) *Hours and days of service.* On-call accessible bus service shall be available throughout the same days and hours as the recipient's bus service for the general public.

(vi) *Service area.* On-call accessible bus service, including all buses needed to complete each handicapped person's trip, shall be provided, upon request, on all the recipient's bus routes.

(d) *Criteria for mixed systems.* The service criteria of paragraphs (b) and (c) of this section apply to the special service and accessible bus components of the system, respectively, for the portions of the service area, and/or days and times, in which each operates. The recipient shall ensure that the accessible bus and special service components of the mixed system are coordinated (including transfers between the components) so that inconvenience to handicapped users of the mixed system is minimized.

(e) *Services by other agencies and modes of transportation.* In meeting the service criteria, the recipient may use services provided, and funded, by agencies other than the recipient, and services delivered through other modes of transportation, if the services provided by the other agencies or through other modes of service are part of a system of transportation coordinated by the recipient.

§ 27.97 Limit on required expenditures.

(a) *Calculation.* To determine its limit on required expenditures for a given fiscal year, the recipient shall calculate 3.0 percent of its total annual average operating costs (as reported to UMTA in compliance with requirements under section 15 of the Urban Mass Transportation Act, as amended) it reasonably expects to incur in the current fiscal year and did incur during the previous two fiscal years.

(b) *Effect.* A recipient is not required, in any fiscal year, to spend more than the amount of its limit on required expenditures for that fiscal year in order to comply with this Subpart, even if, as a result, the recipient cannot provide service to handicapped persons that fully meets the service criteria specified by § 27.95 (b), (c) or (d), as applicable. Each recipient shall, in all cases, comply with § 27.95 (b)(1) or (c)(3)(i), as applicable.

(c) *Consultation.* In determining how to reduce service levels in order to avoid exceeding the limit on required expenditures, the recipient shall consult with handicapped persons and the public through the public participation mechanism established under § 27.83(d) of this Subpart.

§ 27.99 Eligible expenses.

(a) Only expenditures by the recipient of its own funds, specifically to comply with the requirements of this Subpart, are eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(b) The expenditures by the recipient that may be counted in determining whether the recipient has exceeded its limitation on required expenditures are limited to those listed in this paragraph.

No other expenditures may be counted for this purpose:

(1) Capital and operating costs for special services systems;

(2) Incremental capital and operating costs for accessible bus systems;

(3) Administrative costs directly attributable to coordinating services for handicapped persons.

(4) Incremental costs of training the recipient's personnel to provide services to handicapped persons.

(5) Incremental costs of compliance with 49 CFR 609.23.

(6) Incremental costs of construction or modification of facilities to enable handicapped persons to transfer readily between accessible bus or special service systems and accessible rail systems, provided that such construction or modification is part of the recipient's program approved under § 27.85 of this Subpart.

(c) With respect to service provided to both handicapped persons eligible to receive service under this Subpart and to other persons, only expenditures attributable to the transportation of the eligible handicapped persons may be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(d) Expenditures for the purchase of vehicles and other major capital expenditures shall be annualized over the expected useful life of the item. Only the portion of the expenditure attributable to a given fiscal year may be counted in determining the recipient's eligible expenses for that year.

§ 27.101 Technical exemptions.

(a) A recipient may request a technical exemption from any provision of this Subpart. Such a request shall be made in writing, to the Administrator of the Urban Mass Transportation Administration, through the appropriate UMTA Regional Administrator. The request may be made in conjunction with the submission of the recipient's program under § 27.85 of this Subpart.

(b) The Administrator may grant the request if—

(1) The recipient has demonstrated that special local circumstances, not contemplated or taken into account in the rulemaking establishing this Subpart, make it unduly burdensome or unreasonable for the recipient to comply with a generally applicable requirement; and

(2) The recipient has agreed to take action which the Administrator determines will result in substantial compliance with this Subpart despite the grant of a technical exemption from a particular provision of this Subpart.

(c) The Administrator may grant, partially grant, or deny any request for a technical exemption. The Administrator may also place any reasonable conditions upon the grant of a technical exemption. The Administrator's actions are subject to the concurrence of the Assistant Secretary for Policy and International Affairs.

§ 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.

(a) If a state has elected to administer UMTA's section 5, 9, and 9A programs for UMTA, the recipient shall submit the materials required by §§ 27.85, 27.89(c), 27.91(f), and 27.93(c) of this Subpart to the designated state agency rather than to UMTA. The designated state agency shall act for UMTA to review and approve, as required, the materials submitted by the recipients. The time limits and procedures imposed on UMTA in these provisions shall apply to the designated state agencies.

(b) After the designated state agency has approved the recipient's program under § 27.85, it shall certify to UMTA that the recipient is in compliance with this Subpart. This certification is due to UMTA within 30 days of the approval of the program and it shall state whether the recipient has entered into a compact under § 27.93.

§§ 27.105–110 [Reserved]

Appendix to Subpart E

The material in this appendix describes the Department's interpretation of the provisions of this regulation. (For additional information concerning these provisions, please refer to the preamble published with this regulation in the Federal Register.) This material may be supplemented or modified, in the future, by additional guidance from the Department, including UMTA, as questions arise during the implementation of the regulation.

Section 27.81 Program requirement.

This section directs UMTA recipients who receive funds under sections 3, 5, 9, or 9A; serve the general public; and operate a bus system in an urbanized area to establish a program, consistent with this regulation's requirements, for providing transportation services to handicapped persons. Each of the qualifications of this requirement is intended and important.

Recipients receiving funds only under another section (e.g., section 8 planning funds; section 18 small urban and rural transportation program funds) do not need to create a program.

Recipients who do not provide federally-assisted transportation services at all (e.g., an MPO that receives section 9 funds but merely passes them through to a transit provider) are not required to establish a program. "Providing transportation services," in this context, is not limited to actually operating a fleet of the recipient's own vehicles with the recipient's own personnel. For example, private provider may operate federally-assisted service (e.g., as part of a private-sector participation initiative). The recipient would be providing transportation service for purposes of this section, and be responsible for ensuring that service to handicapped persons that fully meets regulatory requirements is provided, directly or through the private provider.

Only recipients providing transportation services to the general public (as distinct from providing services only to elderly or handicapped persons) are required to establish a program. Even though section 16(b)(2) funds are taken from section 3 appropriations, agencies receiving funds solely under this program are not covered by this section's requirements.

Recipients under other UMTA funding programs, if they serve only elderly and/or handicapped persons, are exempted from this requirement for the same reason. Also, recipients who do not provide transit services "by bus" (i.e., rail-only operators) are not covered by this requirement.

Section 27.91(a) creates a separate, simpler system through which section 18 recipients and other recipients in non-urbanized areas (even though they receive some section 3,5,9, or 9A funds) will comply with the requirements of this Subpart. That section, and not § 27.81, applies to recipients providing service only in areas of less than 50,000 population.

The recipient's program must provide for meeting the full performance level for services to handicapped persons within the phase-in period provided for by § 27.85. The program must include "milestones": statements of the progress a recipient will make each year toward the full performance level.

For example, a recipient planning to comply by making its buses accessible would set forth how many accessible buses it would have by the end of year one, year two, etc., and to what degree it would meet each of the various service criteria at each stage. Similar items would be presented for other needed tasks, such as driver training, structural improvements to facilities, or information services. In its review of recipients' programs, UMTA will consider whether the milestones are realistic and provide for an appropriately phased build-up to the full performance level.

These milestones are very important, and recipients should think them out very carefully. The milestones in a recipient's program, once they are approved by UMTA, became the benchmarks against which the recipient's compliance is evaluated during the phase-in period. That is, the milestones to which a recipient commits itself during the phase-in period, like the full performance level subsequently, are the levels of performance that the recipient must meet to be considered in compliance.

The recipient has to include other information in its submission, along with the program itself. Much of the required information is listed in § 27.85. Other material that should be submitted, if applicable, concerns the continuing public participation mechanism, the criteria and procedure for

determining eligibility, and accessible bus system routing and scheduling.

Section 27.89 Public participation and coordination.

The requirements for this section apply only to those recipients which must submit a program, since the section mostly pertains to the public participation and coordination process involved with preparing and adopting a program. The requirements of this section are minimum requirements. Recipients may go beyond them (e.g., a comment period longer than 60 days).

Subparagraph (a)(1) requires recipients to consult, as early as possible in the planning process, with interested people and groups. The idea of early consultation is important. Handicapped persons and groups, transportation and social services agencies, state and local officials, and the Metropolitan Planning Organization (MPO) should be regarded as partners in the planning process from the outset, not simply as commenters upon a proposed program that is already fully developed by the recipient.

The recipient's consultation should deal with the entire spectrum of concerns involved in planning service for handicapped individuals. Subsection (a) (1) mentions specifically service needs, weaknesses or problems in present service or existing plans for service, and the types and characteristics of service to be provided under the recipient's program.

Some recipients may already have a public participation mechanism in place, such as an advisory committee. The recipient may use such an existing mechanism. However, the recipient should ensure that all relevant parties have the opportunity to be included in the consultation process, even if they have not regularly participated in the advisory committee. For example, a recipient may have an advisory committee with membership drawn from several, but not all, organizations concerned with disability issues in the area, but in which the MPO is not normally represented. The recipient could base its consultation required by this subparagraph on the advisory committee, being sure that members of the additional organizations of disabled persons, social service agencies, and the MPO also were consulted and had the opportunity to participate.

The last sentence of subparagraph (a)(1) provides that cost estimates, plans, working papers and other information pertaining to the recipient's program and service for handicapped persons must be made available to all interested individuals and groups. In order to participate constructively in the planning process, those parties with whom the recipient is working need to have access to the information available to and the thinking of members of the recipient's staff. Information relevant to service cannot be viewed as "classified" or withheld from interested persons. This requirement also applies to the continuing public participation process (e.g., relevant information must be provided to an advisory committee).

In the remainder of this section, there are several references to the recipient's "proposed program." A proposed program is a document that the recipient has developed through its planning process. It should reflect the view of the recipient concerning such key subjects as the type and characteristics of service, schedule for implementing the service, and the funding of the service. The proposed program should not be merely a general request for views or represent an immutable decision by the recipient on what it will provide. The proposal should be sufficiently thorough and detailed to permit commenters and speakers at the public hearing to make informed criticisms and suggestions for improving the recipient's plans.

Subparagraph (a)(2) requires the recipient to provide a public comment period of at least 60 days on the proposed program. During the 60-day comment period, subparagraph (a)(2) provides that the recipient shall hold at least one public hearing. Notice of the hearing must be provided at least 30 days before the date on which the hearing is scheduled. The recipient could, for example, in notifying the public of the comment period, set a date, at least 30 days later, for the hearing, thereby avoiding the necessity for a second notice.

All hearings must be held in an accessible facility, and, if it is reasonably anticipated that persons with vision or hearing impairments will participate in the hearing, the recipient must take appropriate steps to facilitate their participation. For example, the recipient would have to ensure that an interpreter for deaf persons, or an individual to help communicate information contained on charts, graphs, or other visual aids to blind persons, was present at the hearing. The recipient should also select a time and place for the hearing that maximizes convenience to handicapped persons.

The regulation does not require that the public hearing involved be dedicated solely to the recipient's proposed program. Adequate time should be provided to ensure that all interested parties who wish to participate in the hearing have the opportunity to do so. The recipient must ensure that participation concerning the recipient's proposed program is not deterred by such techniques as the placement of its discussion at the end of a lengthy and time-consuming agenda. The program need not be the only, but should be the primary, matter discussed at any hearing held to meet the requirements of this section.

Subparagraph (a)(4) provides that the recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use. This implies notice being given in print (i.e., notices, placards in buses, newspaper advertisements, etc.) and by oral means (e.g., radio spots). For written materials other than notices of the comment period and the hearing, such as program documents and supporting information, the recipient should ensure that there are means of assisting visually handicapped individuals in learning the contents of these materials. It should be emphasized that this does not mean the recipient's personnel necessarily have to be used for this purpose. The recipient could also work with local voluntary or social service organizations to ensure that this service is provided.

Paragraph (b) requires the recipient to coordinate the development of its program with the MPO as well as to submit the proposed program to the MPO for comment at the same time as it is submitted to the public. The MPO, and concerned state and local governments, are intended to work with the recipient throughout the planning and implementation of the program.

Paragraph (c) of this section is the so-called "accommodate or explain" requirement. It should be emphasized that this paragraph does not require a recipient to make a point-by-point response to every comment. Nor does it require a recipient to agree with or adopt any or all comments it has received. The recipient is required to respond to "significant" comments it receives. That is, the recipient should respond to comments raising important substantive issues about the proposed program. Nonsubstantive or trivial comments need not receive responses.

Recipients' responses to comments may be relatively brief, so long as they give cogent reasons for the recipient's decision not to adopt a particular comment, to make a change requested by a comment, or to respond to a concern expressed by a commenter in a way different from that a commenter suggested.

The recipient may respond to comments in a variety of ways, such as letters to commenters, a preamble to the final program submitted to UMTA and made available to the public, or a separate document made available to all interested commenters and other members of the public. This document or documents should make clear to the public and to UMTA which commenters (and/or categories of commenters, in the case of individuals) made certain comments and the reasons for the recipient's responses.

Paragraph (d) concerns continuing public participation. This paragraph is not, as such, a requirement for an advisory committee. The recipient, as part of its program, may decide upon a mechanism to assure continuing public participation other than an advisory committee. The adequacy of any such mechanism would, of course, be reviewed by UMTA as part of its review of the recipient's program submission.

In setting up its advisory committee or other mechanism, the recipient should ensure its mechanism is widely representative of groups, interests and points of view on its service. Sharing of all relevant information is extremely important. An advisory committee or other public participation mechanism is of little use—and is inconsistent with the intent of this regulation—if its members are kept in the dark and their recommendations are ignored.

However, the views of the advisory committee or other continuing public participation mechanism are not required to be more than advice or recommendations. The rule does not require that the recipient adopt the suggestions of the participants in the process, or that an advisory committee be given veto or "sign-off" authority. Recipients may provide for stronger or more extensive

roles for the participants in the continuing public participation process than the rule requires, however.

Paragraph (a) requires the recipient to follow the same public participation process for significant changes to its program as in the adoption of its initial program submitted to UMTA. The intent of this requirement is to ensure that interested persons and groups have the same opportunity to participate when the recipient makes significant changes in its program as when the initial program is put together. A re-run of the public participation process in this situation would not postpone the time at which the recipient is responsible for meeting the full performance level of § 27.95, however.

The Department intends this requirement to apply only to major alterations in the scope or direction of the recipient's program and service. It would apply, for example, if the recipient, having adopted, in its original program, a transit authority-operated paratransit system, decided to change to an accessible bus system. Even if the recipient was not changing the mode of delivering transit services to handicapped persons, the requirement could apply in the case of a major cutback or realignment of its existing service.

Recipients would not have to renew the public participation process in the case of fine tuning of or routine adjustments to service. (The recipient would have to consult through the continuing public participation mechanism on such changes, however.) If the recipient is in doubt about whether or not it should renew the public participation process of paragraph (a)–(c), the recipient should consult the UMTA Regional Office for guidance.

Section 27.85 Submission and review of program.

Paragraph (a) of this section directs all UMTA recipients who must create a program under § 27.81 to submit certain materials to the appropriate UMTA Regional Administrator for review and approval within 12 months of the effective date of this rule. Timely performance of this duty is a condition of compliance with the regulation.

Subparagraphs (a) [1] and [2] require the recipient to submit to UMTA copies of the comments on the recipient's program and the recipient's responses to these comments. The recipient could submit photocopies of the comment letters it received and the responses it sent back to commenters to whom the recipient replied by letter. The recipient could submit summaries of comments and responses. The recipient could send a copy of the transcript of the public hearing. The recipient could send summaries of the comments and its responses to them, including summaries of presentations at the public hearing. It is not intended that informal replies made by the recipient's officers and employees at a hearing would be sufficient to constitute replies to comments for purposes of the "accommodate or explain" requirement, however. Whatever way the information is provided, it should allow UMTA to learn the substance of the comments and the identity of the persons or groups making the comments.

The planning process should involve a thorough analysis of the alternatives for providing transportation services to handicapped persons. The supporting documentation for the program submission should clearly reflect this analysis of alternatives (see subparagraph (a)(3)). Given what appear to be potential significant cost and cost-effectiveness advantages for private-sector related alternatives like user-side subsidies and coordination of services, and consistent with UMTA policy statements on private sector participation and user-side subsidies, UMTA will pay particular attention to recipients' consideration of these alternatives.

In looking at the costs of alternatives, including the alternative recommended in the recipient's program, the recipient should document expected eligible costs, including recurring as well as one-time capital and operating costs. This consideration of costs should cover the phase-in period to the full performance level, as well as the projected cost of providing service at the full performance level.

Subparagraph (a)(3) also requires recipients to calculate their limit on required expenditures. These limits should be estimated for at least the phase-in period and the first year of service at the full performance level. Recipients requesting approval of programs providing service that does not fully meet the service criteria should also include information about the cost, and cost-effectiveness, of trade-offs that recipients propose to make in order to permit their costs to remain below the cost limits, as well as of alternative trade-offs that the recipients considered.

The Department emphasizes that the choice of the mode of service for handicapped persons is the recipient's. However, UMTA may question the planning process or its conclusions and, as part of its response to recipients' submissions, call for additional analytic work or a reconsideration of the recipient's recommendations.

Paragraph (b) sets a 120-day deadline for UMTA to complete review of recipients' programs. If UMTA fails to meet this deadline, it has the obligation to inform the recipient of an extension of the review period before the 120 days have passed. The written notice must state the reason for the extension. It will also include a reasonable estimate of the date on which UMTA will conclude review.

UMTA will carefully scrutinize the recipient's program to ensure that it provides for meeting the full performance level as soon as reasonably feasible, but within the 8-year maximum phase-in period in any event. (UMTA will have the final decision on the appropriate length of the phase-in period.) UMTA will also check the program to ensure that its milestones lead realistically toward the full performance level. UMTA will not approve a program that does not meet these tests.

When UMTA does complete review, paragraph (c) provides that it will send one of three responses to the recipient. First, UMTA can tell the recipient that its program is approved as submitted. In this case, the program may go into effect at once, and the program's schedule for the implementation of service begins to run on the date of UMTA's approval notice. Second, UMTA can specify certain changes that need to be made in the program before it can be approved. Such a response can require both substantive changes (e.g., a change in the time, place, or manner of providing service) and procedural changes (e.g., additional public participation or recipient response to comments if UMTA concludes that procedures had not been fully adequate). UMTA can also require the recipient to revise its analysis or conduct additional analytic work.

The phase-in period would begin at the time of the original UMTA decision not to approve the program as submitted. It would not be appropriate to permit the time necessary for the recipient to fix program deficiencies to delay the implementation of full service to disabled persons. Finally, if it appears to UMTA that the program is so seriously deficient that the recipient needs to completely rework it, or it has been submitted in bad faith, UMTA may disapprove the program. UMTA has the discretion to begin enforcement action under Subpart F at this point.

If the program is not approved as submitted, UMTA's notice will give the recipient a certain amount of time—between 30 and 90 days—to make necessary changes and resubmit it. Like failure to submit a program on time in the first place, failure to resubmit a modified program in the time required by UMTA subjects the recipient to being found in noncompliance with this rule. The time and notice provisions of paragraphs (c) and (d) apply to resubmissions just as they apply to initial submissions.

However, UMTA is not obligated to "bounce" deficient programs back to recipients indefinitely. UMTA may disapprove an original or a resubmitted program, conclude that the recipient is in noncompliance, and begin enforcement proceedings.

Section 27.87 Provision of service.

Recipients have the obligation to actually provide the service to disabled persons that their programs promise. Paragraph (a) of this section makes the general statement that each recipient shall, at all times, provide the service described in its program. The "at all times" language is intended to ensure the continuity of service. For example, a recipient could not, consistent with the requirements of this section, provide service meeting all the requirements of this regulation and its program for the first 2½ weeks of a given month and then provide no service for the remainder of the month. Nor could the recipient provide the service for only 8 months out of the year. The service, moreover, must be provided to all eligible persons. It would not be consistent with this requirement for the recipient to provide service to some eligible persons but not to others.

Paragraph (b) sets out in greater detail some of the specific obligations that compliance with the general service provision requirement of paragraph (a) entails. The first of these is ensuring that

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vehicles and equipment are capable of being used by the users to which the service is directed, and are maintained in proper operating condition.

The recipient must ensure that all vehicles the recipient operates or relies upon to meet its obligations under this Subpart are consistently maintained so that the vehicles can get to where they need to go in order to provide service. The recipient must also ensure that lifts and other specialized equipment needed to make vehicles useable by handicapped persons work consistently so that handicapped persons can actually use the vehicles.

This paragraph also requires that the vehicles and equipment used by the recipient be capable of accommodating all users for which the service is designed. For example, a recipient which chose to comply with the rule by making its bus fleet accessible would have to ensure that the lifts, securement devices, etc. on its buses could accommodate all types of wheelchairs in common use. A lift which accommodates manual wheelchairs, but fails to accommodate common models of electric wheelchairs (including, for example, the increasingly popular three-wheel designs) does not make the buses accessible. Providing only such limited-use lifts is inconsistent with this section. (Of course, if a special services component of a mixed system transported persons whose wheelchairs could not use the lifts to all destinations in the service area, and otherwise met the service criteria, the limitation on the use of the lifts would be permissible.)

UMTA will not mandate a particular spare ratio; the recipient's obligation, however, is to ensure that it has sufficient numbers of vehicles in operating condition in reserve, so that if "front line" vehicles must be taken off the road for maintenance or repair, there will be no interruption or decrease in service to handicapped individuals.

The attitudes and skills of providers' personnel are one of the most significant factors in determining whether service for handicapped persons will be good or inadequate. The recipient must ensure that all personnel who may deal with handicapped individuals (whether as drivers or as administrative personnel) know, as necessary, how to operate lifts and other equipment properly, know how to recognize and deal with the different kinds of disabling conditions that the users may have, and deal with handicapped individuals respectfully and courteously. It is the responsibility of the recipient to make sure that this training does take place, and that handicapped users of the service are not treated poorly as the result of inadequate training.

In order to use a transportation system, any individual needs adequate information concerning that service. This is particularly true of handicapped individuals. This provision requires recipients operating scheduled accessible bus systems to provide information on schedules and in other sources of information concerning which bus runs are accessible. It is clear that, unless a potential user knows which bus on which route will be accessible, the user will be unable to take advantage of the service. A recipient need do nothing elaborate to comply with this requirement. For example, an asterisk or other symbol next to accessible bus runs on printed schedules would be adequate in most cases. If the recipient has a telephone information service for the public concerning routes and schedules, that service should provide the same information, and do so in a way useful to hearing-impaired persons (e.g., via a telecommunications device for deaf persons).

In addition to making sure that information and communications links are established, the recipient must also make sure that the communications links have sufficient capacity to accommodate the demand for their use. A paratransit system requiring phone-in reservations that has only one telephone, which is chronically busy, probably cannot provide the kind of service that the recipient's program calls for.

Paragraph (c) of this section is intended to make explicit that the regulation does not permit recipients to engage in disparate treatment, to the disadvantage of handicapped persons, with respect to transportation on the recipient's regular mass transit system. Even though the recipient may also provide special services for handicapped individuals, if a handicapped person is capable of using the recipient's regular service for the general public, then the transit operator cannot deny the service to the handicapped person on the ground of handicap. This means, for example, that a recipient must permit a person using means of assistance such as dog guides or crutches to use its vehicles and services for the general public, if the person can do so. This requirement and the nondiscrimination requirement of Subpart A would also bar actions by recipients that impose unreasonably different or separate treatment for handicapped persons (e.g., an unjustified requirement that a handicapped person, who is able to travel independently, travel with an attendant).

Because this regulation permits a phase-in period between the approval by UMTA of the recipient's program and the achievement by the recipient of the full performance level, paragraph (d) is intended to ensure that there will not be a gap in the provision of any service to handicapped persons by the recipient. In reviewing and approving programs, UMTA will, of course, seek to ensure that the recipient's service to meet the requirements of this Subpart is phased in at a reasonable pace so as to provide for a steady increase in the amount and quality of service provided up to the full performance level. If the recipient is phasing out its former type of service, and phasing in a new type of service, the exact point at which the new service has been phased in, such that the old service can be phased out, will be left to the recipient's judgment, subject to UMTA oversight.

Section 27.89 Monitoring.

Under section 9 of the UMT Act (49 U.S.C. 1607a (g)(2)), UMTA is required, every three years, to review and evaluate the entire spectrum of each recipient's federally-assisted mass transit activities. These triennial reviews will be held on a schedule to be determined by the UMTA Administrator; in all likelihood, they will be held in a staggered basis, so that approximately a third of all recipients are reviewed each year.

Paragraph (a) of this section declares that the review and evaluation of recipients' activities under this regulation will be conducted at the same time as the section 9 review and evaluation. The review and evaluation of transportation services for handicapped persons will be performed by, or at the direction of, UMTA personnel. UMTA may issue further guidance to recipients concerning the recipient's responsibilities in this process. This guidance may include, either on a general or a recipient-specific basis, requests for information necessary to assist the UMTA personnel in the review.

Some recipients will receive their first review and evaluation of performance under this regulation in the second year that their program has been in effect. Others will not receive their review and evaluation until sometime during the third or fourth year after their program has been reviewed and approved. Each recipient will, however, receive subsequent reviews and evaluations every three years after their first review occurs.

Paragraph (b) of this section concerns what is likely to be a very small group of recipients: recipients who are required to submit a program under § 27.81 of this regulation but who, for some reason, do not receive section 9 funds or otherwise are not required to go through a section 9 review and evaluation every three years. Some small recipients, for example, could fall into this category. For recipients in this category, UMTA will conduct a triennial review and evaluation of performance under this regulation just as if such a review were in conjunction with the section 9 review process.

Paragraph (c) of this section concerns what might be called a "slippage report." In its program, each recipient is required to establish a schedule for phasing in its service for handicapped persons until it reaches the full performance level. If recipients fall behind this schedule, paragraph (c) requires them to submit a report to UMTA no later than the program approval anniversary date of any year in which such slippage occurs. The report must detail the kind and degree of slippage that occurred, explain the reason for the problem, and set forth the corrective action that the recipient has taken or is taking to correct the problem and bring its entire program back on schedule. This same reporting requirement applies in any year, after achievement of the full performance level, in which the recipient's service, for any reason, falls below the full performance level.

This reporting requirement is a condition of compliance with the regulation. Failure to make the required report to UMTA is, in itself, a ground for a recipient being found in noncompliance with its obligations under the rule and being subject to sanctions under Subpart F.

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Section 27.91 Requirements for small recipients.

This section sets forth a separate set of requirements that apply to section 18 recipients and other recipients (regardless of what UMTA funds they receive) which provide service to the general public only in non-urbanized areas (i.e., areas of 50,000 population or less). As with the requirements for recipients in urbanized areas, these requirements apply only to recipients that provide service to the general public. This section does not apply to section 16(b)(2) recipients or other recipients providing service only to elderly and/or handicapped persons. Recipients covered by this section are not required to follow the requirements of the rest of this Subpart, except for § 27.87, "Provision of Service."

For purposes of this section, the term "recipient" should be understood to refer to the local government agencies and other organizations actually providing transportation service in nonurbanized areas. We are aware that, in the section 18 program, a state agency is the initial recipient of UMTA funds, which the state then passes through to subrecipient service providers. However, the requirements of this section are not intended to apply to the state agencies involved.

Paragraph (b) requires all recipients covered by this section to certify, within a year of the effective date of this Subpart, that they are in compliance with this rule. If a certification of the kind required by this subsection has already been provided by the recipient under the July 1981, interim final rule, and is still in effect, a new certification need not be provided. This should be the case for present section 18 recipients. Otherwise, the certification must be provided within 12 months of the effective date of the Subpart.

The effect of this requirement is that recipients have service in place within the 12-month period following the effective date of this Subpart. Given the relatively small scale of operations by recipients in this category, the 12-month period should be sufficient. This constitutes the "reasonable time" mentioned in the regulation. A similar amount of time would be permitted future new recipients.

The substance of the transportation service that recipients are required to provide in order to be able to make this certification is similar to that required for section 18 recipients under the July 1981 interim final rule. Special efforts must be made to provide transportation that those handicapped persons unable to use the recipient's service for the general public can use. It should be noted that these efforts do not have to be made by the recipient itself; the certification goes to the presence of the "special efforts" service in the service area, not to whom is providing it.

The service provided by recipients must be "reasonable in comparison to the service provided to the general public." This statement embodies a minimum service criterion for the recipient's service to handicapped persons. It requires that the characteristics of service made available to handicapped persons be reasonably comparable to the characteristics of service for the general public. UMTA's monitoring of recipients' service will focus, on a case-by-case basis, on recipients' compliance with this criterion.

The second minimum service criterion requires that the service must meet a "significant fraction of the actual transportation needs" of handicapped persons. While the criterion stops short of requiring that all transportation needs of handicapped persons or all demand for service must be met, it does require that substantially more than a token effort be made to meet that demand. Rural and small urban systems are seldom designed to meet all transportation needs of the people of the service area. In monitoring recipients' service, however, UMTA will review whether the service proportionately meets the needs of handicapped as well as non-handicapped members of the community.

Paragraph (c) follows the statutory language of section 317(c) by directing recipients to ensure that handicapped persons and groups representing them have adequate notice of and the opportunity to comment on the present and proposed activities of recipients for achieving compliance with the requirements of this regulation. This notice and comment process may take place at any time within the first nine months after the effective date of this Subpart, but must precede the submission of any of the required certifications or reports.

This requirement applies to all recipients covered by this section, including present section 18 recipients who already have made the appropriate certificate of compliance. In the case of a present section 18 recipient or other provider of existing service, the purpose of the notice and comment period would be to identify problems in and suggest improvements to the existing service.

The same public participation requirement also applies whenever the recipient proposes significant changes in its service. The participation must occur before the change is finally decided upon and implemented.

Paragraph (d) requires each section 18 recipient to provide a one-time status report on its service. This requirement applies to all recipients covered by this section, including present section 18 recipients who have already made the certification of compliance. The report is intended to be a short summary of information concerning the four listed items.

In order to permit UMTA to continue monitoring the recipient's activities, each recipient is required, under paragraph (e), to provide a similar update report at three-year intervals. UMTA will establish a schedule for the transmission of these reports: some recipients will provide their first such report after the second year this Subpart has been in effect; others will not have to do so until after the third or fourth year. Reports under this section normally go to the designated state transportation agency (paragraph (f)). UMTA will review their reports in conjunction with its normal oversight of the section 18 program.

Section 27.93 Multi-recipient areas.

Paragraph (a) provides that this section applies to recipients in any multi-recipient area. A multi-recipient area is an urbanized area that includes two or more recipients required to prepare a program under § 27.81. The purpose of the section is to provide recipients in such an area the opportunity to combine their resources to provide service for handicapped persons on a regional basis.

This section is not mandatory. Recipients are not required to join a compact and provide service in conjunction with other recipients in their area, and recipients are free to comply with regulatory requirements on an individual basis.

In most cases, all recipients in the urbanized area required to prepare a program would have to be members of the compact in order for the compact to be workable. There could be cases in which a compact with less-than-unanimous membership could be viable, however; recipients should work with their UMTA regional office to ensure that any compact which is formed would be capable of providing service meeting the requirements of this rule. Recipients outside the urbanized area, or recipients who do not have to prepare a program, may also be members of a compact.

The compact must establish a cooperative mechanism among all its signatories to ensure the provision of combined and/or coordinated service meeting all regulatory requirements. Such a mechanism could take many forms, and this section does not attempt to prescribe the institutional form the arrangement would take.

In any multi-recipient or multi-jurisdictional agreement, a key question concerns where the money is coming from. The compact must answer this question. It must provide for how the costs of service for handicapped persons in the area would be apportioned among the members of the compact, ensure the provision of adequate funding, and include reasonable decision and dispute-resolution mechanisms concerning funding and service matters. The compact must be a formal, binding, written document, signed by each participating recipient. An informal understanding among recipients in an area is not sufficient for purposes of this section.

The recipients in an urbanized area have six months following the effective date of this Subpart to form a compact and submit their agreement to UMTA. If the recipients fail to reach agreement and do not submit a compact within the six-month period, then each recipient must comply with regulatory requirements (including the 12-month deadline for program submittal) on its own. This means that recipients should not, while negotiating about forming a compact, neglect the early stages of planning service of their own.

If a compact meeting the standards of this section is submitted to UMTA in a timely fashion, then the members of the compact are treated by UMTA as if they were a single recipient for all purposes under this Subpart, including planning, public participation, service provision, calculation of the limit on required expenditures, monitoring, and compliance and enforcement. It is important for recipients to understand that one of the consequences of joining a compact is that the members of the compact may be treated by

UMTA as collectively responsible for the failure of the compact to provide the service required by the regulation and called for by the compact's approved program.

After UMTA acknowledges the compact within 30 days of its receipt, the members of the compact would submit to UMTA a single combined program for approval under § 27.85. The program submitted on behalf of the compact's members would have to reach UMTA 12 months after the date the signed compact was acknowledged by UMTA, rather than 12 months after the effective date of this regulation. This provision is intended to permit adequate time for planning on an areawide basis.

If, subsequent to the six-month period, recipients that did not originally form a compact decided to do so, UMTA has the discretion to acknowledge it. However, in such a case, the compact members would have to submit, for UMTA's review and approval, a new, joint program for providing service to handicapped persons. This program would need to provide adequate information on how the transition from individual compliance to joint compliance with the rule would work. The individual programs that had been previously approved, and the service provided according to them, would remain in effect until the new combined program was approved.

By the same token, if an existing compact dissolves, the members would then have to submit individual programs to UMTA for approval. The same would hold true for a member that pulled out of a compact. If a recipient were to drop out of a compact, it would be required to continue to provide its services per the compact agreement until its own, new, independent program were approved and in operation.

Section 27.95 Full performance level.

(a) Timing. Under section 27.85, recipients have a year from the effective date of the new Subpart E to submit their program to UMTA. UMTA has 120 days to review it. Assuming UMTA acts on the program within that time (approval, disapproval, or remand to the recipient to fix deficiencies), the phase-in period would begin to run no later than 16 months from the effective date of the rule.

During this period, recipients are obligated to phase in their service. This is not intended to be a period of delay and inaction; the recipient is obligated to implement service according to the milestones set forth in its program on time (see discussion of § 27.81).

The phase-in period may run for a maximum of six years. Many recipients (e.g., those who are starting a new system or switching to a different mode of providing service) might need all or nearly all of the six-year period. On the other hand, some recipients have systems that may come close to meeting the full performance level at the present time. It would be contrary to the intent of the rule, for example, to permit a recipient that had 90 percent of the buses it needed to meet the service criteria for an accessible bus system to take six years to acquire the other ten percent.

The rule provides that the recipient's plan and milestones must provide for attaining the full performance level as soon as reasonably feasible. UMTA, in reviewing plans, will approve phase-in periods for each transit authority on a case-by-case basis, reflecting this policy as well as the realistic needs of each recipient for time to phase-in its service, up to the six-year maximum.

This paragraph notes that a recipient can comply by meeting the requirements of either paragraph (b), or (c), or (d). This language is intended to emphasize that the recipient may decide to operate either a special service system, an accessible bus system (of either type), or a mixed system. A recipient, for example, is not required to have both an accessible bus system and a special service system. The decision on which service option to implement is intended to be made by the local recipient.

The remainder of this section lists the service criteria applicable to special service, accessible bus, and mixed systems. The Department has established six service criteria that apply to all the modes of service to handicapped persons. These concern eligibility, hours and days of service, service area, fares, restrictions and priorities based on trip purpose, and response time. Paragraphs (b), (c), and (d) explain how these six basic criteria apply, specifically, to each mode of service. Though the criteria are essentially the same, the detail of their application to the various modes of service vary somewhat in order to make sense in view of the differing characteristics of the different types of transportation.

(b) Service criteria for special service systems. The following criteria apply no matter what type of special service the recipient provides (e.g., transit authority-operated paratransit, user-side subsidy).

(1) Eligibility. The eligibility criterion provides that the recipient must treat as eligible any individual who, at the time he or she would receive service is, by reason of a disability, physically unable to use the recipient's bus service for the general public. A recipient may, of course, voluntarily provide service to other persons as well, such as non-disabled elderly persons or mentally handicapped individuals. However, the cost of providing this service to additional users is not an eligible expense under § 27.99.

This provision is not intended to permit recipients to turn away from their special service systems users who would be unable to use an accessible bus system for reasons unrelated to the system's accessibility. For example, physical or terrain barriers, bad weather, or distance may prevent some handicapped persons from getting to a bus stop. These persons are still required to be treated as eligible for special service, because they could board and use fully accessible buses if they were able to get to a bus stop.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, would be able to use the regular system with appropriate training, and the Department encourages the development and implementation of such training programs to increase the transportation opportunities for mentally handicapped persons. It is also necessary that training be provided for the drivers so that they will better understand, be patient with, and appropriately respond to questions from mentally retarded persons.

The rule does not specify the means a recipient may use to determine physical inability to use the regular bus system, although reasonable "functional criteria" may be used. The means the recipient would use to determine physical inability to use the regular bus system would be incorporated in the program submitted for UMTA approval.

The Department does not intend to require recipients to use age, by itself, as a basis for determining that an individual is physically unable to use the regular bus system. No one need be presumed to be physically unable to use the regular bus system just because he or she has reached a certain birthday. Many elerly persons may suffer mobility impairments or other handicaps that physically prevent them from using the regular bus system, but it is these disabilities, not age itself, that determines eligibility.

The key is whether or not a particular elderly person can physically use the service for the general public. Some 80 year old individuals may be able to physically use the service for the general public, and some 65 year old individuals may be unable to do so. If, because of age, an individual is physically unable to use the regular service—even if that individual does not have a specific medical condition—that individual is eligible for the special service.

A similar analysis applies to young children. If, because the recipient has a reasonable, nondiscriminatory policy against permitting very young children to ride buses unaccompanied, or because such children cannot read destination signs, such individuals cannot use the bus system, these facts do not make them eligible to use the special service. This is because their youth, rather than a handicap, caused their inability to use the regular bus system (which is not, in any event, a physical inability).

It would not be consistent with this rule, however, for a recipient to deny a non-disabled child the opportunity to accompany a disabled parent or other adult on the special service system. This could be very important, for example, in allowing the parent to take the child to a medical appointment. The converse is also true. A non-disabled parent or other adult would have to be given the opportunity to travel with a disabled child.

The rule does not prescribe any particular procedures that recipients must use to determine eligibility. Existing systems use such means as letters from a doctor, certifications by social service organizations, and eligibility determinations (e.g., concerning meeting functional criteria) by the transit provider itself. Whatever procedure is used, the recipient needs to ensure that the procedure is prompt, avoids unnecessary procedural obstacles, does not impose more than nominal costs on potential users, and is consistent with the dignity of handicapped persons applying for eligibility. The eligibility procedure should be spelled out in the recipient's program.

Section 27.97 provides that recipients must meet this eligibility criterion in all cases, regardless of whether the recipient can meet

all service criteria without exceeding the limit on required expenditures. In other words, the eligibility requirement of this rule is not subject to "tradeoff" in order to reduce recipient expenditures below the cost limit.

The Department intends that all users eligible under the Department's standard be permitted to use a recipient's special service, regardless of the user's place of residence. A visiting wheelchair user from City A is just as eligible, under the terms of this section and § 27.87, as a wheelchair user from City B to use the latter city's special service system. Recipients may need to waive or abbreviate the certification procedures they use for their regular local riders. The same point applies to persons with temporary, as opposed to permanent, disabilities.

(2) Response time. By response time, we mean the total period from the time the disabled person calls the special service provider to request service to the time the service is actually provided to the handicapped person (i.e., pickup). Recipients are obligated to provide, as well as schedule, service, within the required period. (see also § 27.87(b)(5), concerning timely provision of service).

We do not intend, however, to view recipients as being in noncompliance solely because of an occasional late pickup. Repeated, chronic failure to provide service within 24 hours of a request, however, is inconsistent with this criterion and with the recipient's obligations under this criterion.

The Department intends that this criterion be administered with reasonable administrative flexibility, for the benefit of both users and providers. For example, it may not be reasonable for a recipient to insist that a user call the recipient at 7:30 a.m. on Monday in order to get service at 7:30 a.m. Tuesday, even though this insistence would be literally consistent with the 24-hour response time criterion. A call at any point on Monday morning should usually be sufficient to permit the recipient to do the advance planning necessary for its morning trips on Tuesday.

Likewise, a recipient with no weekend bus service might not provide special service on weekends. Literally interpreted, the 24-hour criterion would force the recipient to open its call-in reservation office on Sunday to take reservations for Monday trips. The Department intends, in such a situation, that the recipient be able to keep its office closed on the weekend, taking reservations for Monday on the previous Friday.

The Department, then, interprets the 24-hour criterion to mean "a reasonable time on the previous business day" in many cases. In addition, this criterion is not intended to prohibit advance sign-up requirements for special-purpose trips (e.g., for a group field trip). Nor is it intended to prohibit a recipient from allowing a user to make a reservation for more than a day in advance (e.g., from calling on Monday to reserve a trip for Thursday).

(3) Restrictions or priorities based on trip purpose. This criterion is intended to prohibit recipients from determining that they will not provide service for certain sorts of trips, which they have determined to be of relatively low importance, or from providing trips for such purposes only after requests for the trips they deem to be of higher importance have been fulfilled. This criterion, however, is not intended to preclude recipients from establishing subscription services. Trips on the subscription service may be limited to certain purposes (e.g., recurring work or medical trips). However, a recipient which operates a subscription service may not deny or delay transportation to other individuals, for other purposes, on the ground that all capacity is exhausted by subscription service and still meet this criterion.

If a recipient cannot provide service that fully meets the criteria without exceeding its limit on required expenditures, it may make tradeoffs concerning trip purpose restrictions or priorities. For example, if after serving subscription work trips and medical trips, the recipient does not have enough other capacity to serve persons wishing trips for other purposes during peak hours, the recipient could "time-shift" the trips for other purposes to non-peak hours. The "time-shifted" trips would still be served during the requested day, at a non-peak time convenient for the user.

(4) Fares. The fare charged for a trip to a user of the special service is required to be comparable to a trip of similar length, at a similar time of day, on the recipient's bus system. We recognize that, in most cases, a trip taken on special service will not be identical, in route or in length, to similar trip taken on the regular bus system. We recognize also that the cost and convenience characteristics of special service systems differ from those of bus systems.

The key to determining an appropriate fare for the special service trip would be to calculate the cost of a similar trip on the regular bus system that the individual would take to get from his origin to his destination, if he or she were not handicapped, including the cost of transfers, if any (or zone change charges, express bus fares, etc.). Should there not be any reasonably equivalent trip that a user of the bus system could take, then the bus fare used for purposes of comparison would be derived by comparing the special service trip taken by the handicapped person to a bus trip of similar length elsewhere in the recipient's bus system.

Determining "comparability" between the bus fare for a similar trip and the special service fare is not an exact science. Decisions must be made on a case-by-case basis, taking into account such factors as the relative costs of providing the service, the time and convenience factors affecting users, and the Department's policy against pricing service out of the reach of users. It is likely, for example, that a $1.50 fare for special service would not be out of line, compared to a basic 50 cent fare for a similar bus trip, in most cases. At the other end of the scale, charging a special services user $20 for the same trip would be far removed from "comparability," because it would be grossly disproportionate to the bus fare and would deter disabled persons from using the service.

In doubtful cases falling in the middle of the scale, recipients should consult with UMTA. Fare levels for special service are, of course, one of the items that recipients should cover in their program submissions. While determinations are case-by-case, it is likely that UMTA would question fare levels that rose above two or three times the bus fare for a similar trip at a similar time of day.

This criterion deals with the fare charged the individual disabled user of the special service. If the bus fare between Point A and Point B is 80 cents, then the recipient can charge a special service user no more than a comparable fare for a similar bus trip. However, this requirement is not intended to preclude the common arrangements between recipients and social service agencies in which the social service agency subsidizes a considerable portion of the cost of a trip. The amount of such a subsidy is a matter between the recipient and the agency.

(5) Hours and days of service. If a recipient operates its bus service from 6:00 a.m. to midnight, seven days a week, then special service (e.g., paratransit or user-side subsidy) must be available throughout at least the hours 6:00 a.m. to midnight, seven days a week. By saying "throughout" this period, the Department intends that service be available at any time during these hours. Providing service only during peak hours, or only from 6–7 a.m. and 10–11 p.m. would not be consistent with this requirement.

This criterion is subject to "tradeoff" in a situation in which a recipient cannot meet all applicable service criteria without exceeding its limit on required expenditures. For example, a tradeoff (affecting the service area as well as the hours of service standard) might involve providing service to an area smaller than the urbanized area late at night and on Sundays, even though the regular bus system was operating at those times.

(6) Service area. A recipient must provide special service "throughout" the "circumferential" service area in which it provides regular bus service. This means that the recipient must provide this service not just along transportation corridors served by buses, but to all points of origin and destination within this area. (This is not intended to literally require door-to-door service, however. As long as the service is from the building or other location of origin to the building or other destination location, the criterion would be satisfied. Actually assisting a handicapped person from the door to the curb, for example, is not required.) A "many-to-few" system, with limited origins or destinations within the urbanized area, would not be consistent with the requirement to provide service "throughout" the area.

The recipient could determine the extent of the "circumferential" service area in a number of ways. As the term implies, the recipient could simply draw on a map a circle encompassing the area in which all its regular bus routes operate. Alternatively, a recipient could take the outer termination points of its routes and "connect the dots," resulting in boundaries for the service area that more precisely follow the contours of the actual bus service area. Where the normal service is within the urbanized area, the Department would also have no objection, in many cases, to a recipient using the urbanized area as a service area for this purpose. Particularly for a recipient that already provided bus service

to most parts of the suburban area, this approach could be administratively simpler.

In determining the extent of its service area, the recipient need not encompass extended commuter or express bus routes. For example, many recipients may have a city/suburban service area that is served regularly during peak and non-peak hours. In addition, the recipient may have peak-hour express commuter service to more distant exurban points. These commuter bus "spokes" do not extend the circumferential "hub" area that the recipient must serve with origin-to-destination special service.

For service (e.g., commuter bus) extending outside the basic service area, the recipient is required to provide service to handicapped persons only to and from the same points (e.g., bus stops) served by its buses for the general public. This service could be by special service following the bus route or accessible commuter bus, and would have to run only at the times when the commuter buses operated. Service to other origins and destinations outside the basic service area is not required.

The circumferential service area need not necessarily be the same at all times of the day or week. For example, some recipients might not offer any late-night or weekend bus service on many routes outside the central city. The service area for special service could shrink proportionately at these times.

The service area criterion is subject to "tradeoff" in the event that the recipient could not meet all applicable service criteria without exceeding its limit on required expenditures. As part of a tradeoff, a many-to-few system, a fixed route-deviation system, or another variation on special service that did not serve all origins or destinations could be employed.

(c) *Service criteria for accessible bus systems.* The final rule does not contain any specific requirement for the number of accessible buses a recipient must own and operate. Rather, subparagraph (1) of this paragraph says that the recipient must operate, on the street, enough buses to ensure that it meets the service criteria of subparagraphs (2) and/or (3).

To operate the number of buses on the street, recipients will need to consider the number of accessible buses they need in their reserve fleets. It is clear that in order to maintain the appropriate number of accessible buses on the street, a recipient will need to have some accessible buses in reserve in order to cover maintenance down time and other contingencies. A recipient would not comply with this subparagraph (or with § 27.89) if it owned sufficient accessible buses to meet the service criteria when all was operating, but, for lack of reserve accessible buses, was unable to keep enough buses actually on the street to meet the criteria at all times.

Subparagraph (2) sets forth the other service criteria for scheduled accessible bus systems. A scheduled accessible bus system is simply one in which accessible buses are scheduled to be used for (and are used for) certain runs on certain routes. This use must be regular and consistent.

Subparagraph (2)(i) requires the scheduled accessible bus service to be available throughout the same days and hours as the recipient's bus service for the general public. For example, if a recipient's regular bus service runs from 6 a.m. to 12 midnight, then the scheduled accessible bus service must be available throughout this 18-hour period. Running accessible buses only during peak hours, or having only the first and last bus runs on a route accessible, would not be consistent with this criterion.

The scheduled accessible bus service running throughout this 18-hour period would have to be provided at reasonable intervals that make readily practicable the use of the service by handicapped persons. The regulation does not establish a specific requirement for what these intervals must be. The recipient's judgment about appropriate intervals, which should be informed by the rule's public participation and planning process and which is subject to UMTA review as part of the recipient's program submission, may vary according to such factors as demand for accessible service on a particular route and the time of day.

Every interval on every route in the system need not be the same. But intervals so wide or irregular as to provide merely token or perfunctory service, or which are significantly inconsistent with demand for accessible service, would not comply with this criterion.

Subparagraph (2)(ii) requires accessible bus service to be provided on all routes throughout the recipient's service area on which a need for service has been established through the rule's planning and public participation process. By saying "throughout the service area," this provision is not limited to service within the basic circumferential service area. Any route on which the recipient provides regular bus service (including extended commuter routes and express bus service) is potentially required to have accessible service.

Whether the potential requirement for accessible service on a given route becomes actual depends on whether the planning and public participation process shows that a need exists for accessible service on that route. The Department intends that a need for accessible service on a route be regarded as having been established when it is shown that one or more handicapped persons are likely to make reasonably regular use of bus service along some part of the route.

For example, bus routes serving centers for independent living, important transportation terminals, major medical facilities, universities, major employment centers, and other origins and destinations that are likely to generate trips by handicapped persons would probably need to have accessible service. However, a need for accessible service could also arise on a suburban route because one or more handicapped persons wished to use that route for trips to work, shopping, or other purposes on a reasonably regular basis.

The Department believes that it would be desirable for recipients choosing a scheduled accessible bus system to make some provision for providing services to disabled persons whose origin or destination is not on an accessible route. The form of such service is up to the recipient, however.

As with service intervals, the routes served by accessible bus service may change over time, as new service needs arise and former service needs disappear. Changes in the route structure of accessible service are also appropriate subjects for consultation through the continuing public participation process.

Subparagraph (2)(iii) provides that the fare for a handicapped person using the accessible bus system cannot be higher than the bus fare paid by other passengers. Everyone who gets on the bus to go from Point A to Point B pays the same fare, except that the elderly and handicapped half-fare program of 49 CFR § 609.23 continues to apply in the accessible bus context.

Subparagraph (3) contains service criteria for on-call bus service. An on-call accessible bus system is one in which accessible buses are not regularly scheduled on any particular routes or runs. Instead, handicapped persons wanting to use accessible buses call the transit provider and arrange for an accessible bus to come by a particular bus stop on a given route at a certain time.

Some of the criteria for on-call accessible bus service are virtually identical to the special service criteria. The eligibility (subparagraph (3)(i)), response time (subparagraph (3)(ii)), and the restrictions and priorities based on trip purpose criterion (subparagraph (3)(iii)) are in this category. The fares criterion (subparagraph (3)(iv)) is identical to the fares criterion for scheduled accessible bus service.

Subparagraph (3)(v) concerns days and hours of service. Like its counterpart in the scheduled accessible bus service context, it requires service to be provided throughout the same days and hours as the recipient's bus service for the general public. This means that a handicapped person can request that any bus run the recipient makes, during any time the run is made for the general public, be made with an accessible bus. The recipient is obligated to fulfill the request. There is no provision concerning the intervals at which service is to be provided. Service is provided in response to all requests made for it.

The service area criterion (subparagraph (3)(vii)) requires accessible service to be provided on all the recipient's routes, on request. This means that when the recipient receives a request from a handicapped person for accessible service, the recipient must fulfill this request regardless of the route on which the service is requested (including extended commuter routes and express bus runs).

There is, however, no reference to establishing the need for bus service on particular routes through the planning process. This is because, in an on-call accessible bus system, need for service is established by each individual request for it, rather than on a generic basis for scheduled service on a route.

This subparagraph also specifies that "all buses needed to complete the handicapped person's trip" have to be provided. For example, suppose a handicapped person has to take a bus on route A to a given stop, and then transfer to a route B bus, in order to reach his or her destination. The recipient

must ensure that the B bus, as well as the A bus, is provided at the appropriate time.

A recipient may comply with the rule by setting up an accessible bus system incorporating elements of both scheduled and on-call accessible service. For example, the recipient could operate scheduled accessible bus service during peak hours while using on-call service during off-peak hours. A recipient could operate scheduled service on certain heavily-used corridors while using on-call service elsehwhere. The scheduled and on-call components of the service would each have to meet the service criteria for the respective types of service, and there could not be "gaps" in the overall service that left some routes, times, etc. unserved for handicapped persons.

For purposes of this rule, an accessible bus is one of that a handicapped person, including a wheelchair user, can enter and use. Currently, an accessible bus usually means a bus equipped with a lift. The Department does not intend to mandate the use of a particular piece of technology, however. If a device or bus design other than a lift-equipped standard transit bus can produce the same or better results for handicapped persons than present technology, then the Department will be willing to consider regarding it as meeting the accessible bus requirement.

(d) Service criteria for mixed systems. A mixed system is simply one in which some parts of the service area, or some days or times of day, are served by an accessible bus system, and others are served by a special service system. The key thing to remember about a mixed system is that each component must meet all criteria pertaining to that component. The overall system cannot have "gaps" that leave some areas, times, etc., unserved by service for handicapped persons.

In a mixed system, the special service and accessible bus components are not required to duplicate each other's efforts. Consequently, the special service system would not have to provide parallel service along accessible bus corridors. For example, the special service system would not have to honor a request from a handicapped person to be picked up at his home, situated reasonably close to a bus stop on an accessible corridor, and be transported to a destination served by a bus route using that stop.

The recipient might also reduce the scope of the special service it had to provide by linking the ends of or other strategic points on accessible routes with an accessible shuttle service, so that someone wanting to travel from a point along Route A to a destination at the end of Route B could complete his trip using only accessible buses and the shuttle. Except where it would duplicate accessible bus service, however, the recipient's special service would have to meet all service criteria applicable to any special service system (e.g., the special service system would have to pick up the same handicapped person from his or her home if he or she were going to a location not on the nearby accessible route or one accessibly connected with it).

The recipient is responsible for coordinating the components of its mixed system so as to minimize inconvenience to handicapped users. This coordination should include consideration of transfers between components. The coordination of mixed system components is one of the features UMTA will evaluate as it reviews the program submissions of recipients planning mixed systems.

(e) Services of other providers and through other modes. Paragraph (e) states the principle, for all service modes, that a recipient may count the services of other providers toward meeting the full performance level. This is true even though the expenditures of these other providers are not eligible expenses under § 27.99.

For example, suppose that a social service agency operates a subscription service that transports wheelchair users who need kidney dialysis to medical facilities where the treatment takes place. As part of a coordinated transportation system for handicapped persons in the urbanized area, the recipient is able to refer persons in this category to the social service agency, which provides the dialysis trips instead of the recipient itself. The recipient can count this service as part of the service meeting its full performance level.

This paragraph also provides that service provided through other modes of transportation may be counted toward meeting the service criteria. For instance, suppose a transit authority operates an accessible rail system. The recipient chooses to meet the full performance level through making its bus system accessible. Like many bus/rail operators, however, the recipient uses its buses to feed passengers into and out of the rail system. The recipient could feed disabled passengers into the accessible rail system in the same manner as it did other passengers, and would not have to run bus service that duplicated the rail lines. The recipient could treat both its bus service from Point A to a rail station and the accessible rail service from the station to Point B as contributing to meeting the service criteria.

The key is coordination by the recipient of these services into a coherent whole. The mere facts that a social service organization may be providing some transportation somewhere in the urbanized area, or that there may be an accessible rail system in the same area, unless these services are in a system coordinated by the recipient, are irrelevant to the recipient's ability to meet the full performance level.

Section 27.97 Limit on required expenditures.

Paragraph (a) sets forth the method recipients will use to calculate the limit on their required expenditures. First, the recipient calculates its average operating expenditures. It adds the operating costs reported to UMTA for the previous two fiscal years under section 15 to its projected operating costs for the current fiscal year and divides by three.

The estimate of operating costs for the current fiscal year must be a reasonable one, consistent with the budget estimates the transit authority makes for other purposes. (Obviously, the projection must concern the costs that will be reported under section 15.) An unrealistically low estimate, one at odds with the transit authority's recent operating cost experience, or one that differs significantly from estimates prepared for other local budgetary purposes, is not acceptable for this purpose.

Paragraph (b) concerns the effect of the cost limit. If a recipient can meet all the service criteria, for an amount less than the cost limit, then the cost limit is ignored during the fiscal year in question. However, the recipient is not required to spend more than the cost limit amount, even if, as a result, it cannot meet all the service criteria for the mode of service it has chosen.

For example, suppose a transit authority determined that meeting all the service criteria for its paratransit system would cost $800,000. If its cost limit is $650,000, it can voluntarily spend the entire $800,000 to meet all service criteria. However, this regulation does not require it to do so.

After consulting through the public participation mechanism established under § 27.83 of the final rule, the recipient could make decisions about the respects in which it paratransit service would fall short of one or more of the service criteria. For example, the recipient in the above example might determine that it could save $150,000 by not running the paratransit service on Sunday, raising fares above the level charged for similar bus trips, and not providing service to one segment of the service area which has relatively low demand for trips by handicapped persons. (In making tradeoffs, the recipient would have to act reasonably. For example, a recipient would not act reasonably in a tradeoff situation by raising fares to $30.00 a trip or restricting service to a 2 square block area.) These changes, though they result in service that does not fully meet the criteria, are allowed under the rule since the recipient need not spend more than $650,000 to comply with the rule.

Section 27.99 Eligible expenses.

To be eligible to count in determining whether the recipient has exceeded the § 27.97 limitation on required expenditures, an expenditure must meet two basis criteria. First, it must be an expenditure by the recipient of its own funds (including the UMTA assistance it receives). The total expenditures the recipient makes, not just the net expenditures after farebox revenues are considered, are counted. Second, it must be an expenditure specifically to comply with the requirements of 49 CFR Part 27, Subpart E.

This means that expenditures by other agencies (e.g., state and local government agencies, private social service organizations) on transportation services for handicapped persons cannot be counted for this purpose. As described in the discussion of § 27.95(e), the transportation services for disabled individuals that these other agencies provide can be "counted" by the recipient as part of the transportation services meeting the service criteria, however.

The same principle applies to the costs of operating an accessible rail system. No recipient need operate an accessible rail system to comply with this rule. However, a rail recipient may use an accessible rail

system to help meet its service requirements. But the expenses of building and operating the accessible rail system are not attributable to meeting these regulatory requirements, and they are not, therefore, eligible expenses.

Subparagraph (b)(2) provides, however, that the incremental cost of construction of modification of facilities to enable handicapped persons to transfer between accessible modes of transportation is an eligible expense, if the improvement is approved as part of the recipient's program. For example, suppose that a recipient is voluntarily making a rail line or station accessible. The cost of making the rail line or station accessible is not an eligible expense, since this cost is not incurred to meet the requirements of this rule. However, the incremental cost of a new or relocated bus stop to serve the station or line, together with curb cuts, signs for the use of handicapped persons, or other accessibility-related improvements that help disabled persons transfer between the accessible rail and accessible bus systems would be eligible. It is important to emphasize that only the incremental costs of such improvements, attributable to features specifically related to service for disabled persons, are eligible. In reviewing recipients' programs, UMTA will scrutinize closely plans for "interface" improvements of this sort to ensure that only eligible costs are claimed for purposes of the limit on required expenditures.

Only expenditures specifically to comply with the requirements of this regulation are eligible. If a recipient chooses to provide service above and beyond what this regulation requires, only the expenditures actually needed to meet the Federal regulatory requirements are eligible.

For example, the rule does not require non-handicapped elderly persons to receive service from a special service system. If a recipient provides service to non-handicapped elderly persons, in addition to eligible handicapped persons, only the costs of the special service system attributable to carrying the latter may be counted.

Only those items necessary to meet the full performance level for the mode of service selected by the recipient will be eligible expenses. "Gold-plating" (the practice of attributing to service for handicapped persons the cost of items that generally improve the recipient's entire service to the public or loading down the service to handicapped persons with features or facilities not essential to meeting the service criteria) will not be permitted to drive up the reported eligible expenses service for handicapped persons to the detriment of providing service meeting the criteria.

This provision applies even if the things the recipient does above and beyond the regulation's requirements are required by another legal authority, such as the Architectural Barriers Act of 1968 or state or local law. For example, a recipient might, as the result of the Architectural Barriers Act, install an elevator in an existing subway station where it has otherwise modified the means of vertical access. Such an expenditure would not be the result of the requirements of this rule; the cost of installing the elevator would not be a financial burden imposed by the Department of Transportation in order to comply with section 504 and section 317(c). Consequently, the cost of the elevator could not be counted in determining whether the recipient had exceeded the § 27.97 limitation on required expenditures by recipients.

Section 27.99(b) mentions that the capital and operating costs for special service systems, and the incremental capital and operating costs of accessible bus systems, are eligible expenditures. The language of the section does not explicitly mention mixed systems. A mixed system is, by definition, a system made up of accessible bus and special service components. In determining whether the costs of a mixed system exceed the limitation on required recipient expenditures, the recipient would add the capital and operating costs for the special service component of its system and the incremental capital and operating costs of the accessible bus component of its system.

By "incremental" capital and operating costs of an accessible bus system, we mean those costs of meeting the service criteria for accessible bus systems that are in addition to the costs of operating an inaccessible bus system. For example, suppose a lift-equipped bus costs $130,000. Without a lift, and other equipment necessary to make the vehicle safe and accessible for handicapped persons (e.g., wheelchair tiedowns), the bus costs $108,000. The incremental cost of buying the accessible bus is $12,000. Only that amount, not the entire cost of the bus, is an eligible expense. The same principle applies to operating costs. If maintaining the lift on an accessible bus can be demonstrated to take 20 work hours in a certain period of time, the wages of the mechanics for those 20 hours can be counted, but not the wages of the mechanics for the total number of work hours required on the entire bus during that period.

Section 27.99(b)(2) specifies that administrative costs of coordinating services are eligible. In addition, reasonable administrative costs of a special service system or an accessible bus system may be considered as a part of the eligible operating costs of such systems. UMTA will consider, on a case-by-case basis, whether specific administrative costs are eligible, following the general rule that if a cost is generally an allowable cost for reimbursement with UMTA funds, that part of it directly attributable to providing service for handicapped persons can be counted for purposes of this section.

Section 27.99(b)(4) specifies that the incremental cost of training personnel to provide service to handicapped persons is an eligible item. Again, by "incremental cost" we mean the portion of the cost of training directly attributable to service for handicapped persons. For example, if four hours of a bus driver training course are devoted to operating the lift and otherwise accommodating handicapped persons on an accessible bus system, the cost of those four hours of training, but not the cost of the entire course, is eligible.

Section 27.99(d) requires recipients to annualize the cost of capital expenditures, such as the purchase of vehicles, over the expected useful life of the item. This provision would also apply to other major capital items (e.g., a new fixed facility specifically devoted to the garaging and maintenance of special service vehicles), but not to minor or routine purchases of supplies, parts, and other equipment. In doubtful cases, recipients should contact their UMTA regional office for guidance.

The Department is aware that there may be a number of methods, of varying degrees of accounting sophistication, for annualizing a capital expenditure. In the interest of simplicity, however, the Department intends that recipients simply divide the number of years in the expected useful life of the item into its cost, and then count the result toward the cost limit in each of the years involved.

For example, suppose that the incremental cost of a lift-equipped bus is $12,000, and that the expected useful life of a bus is 12 years. The annualized cost of the bus would be $1,000. Therefore, the recipient would count $1,000 in its calculation of eligible expenses for year 1, year 2, and so forth, through year 12.

Where there is not a generally accepted industry standard (e.g., 12 years for buses) for a given capital item, recipients should consult with their UMTA regional office for guidance on how many years should be regarded as the item's expected useful life.

Section 27.101 Technical exemptions.

This provision permits any recipient to request a technical exemption from any provision of this Subpart. Such a request can be made at any time, as an independent request. It is also possible for a recipient to submit a technical exemption request as part of, or in connection with, the recipient's program submission. Section 27.101(b) clearly sets forth the standards for granting exemptions under this rule. These standards are consistent with the standards DOT has applied to requests for exemptions in the past. First, there must be special local circumstances. That is, the reasons specified for the requested exemption must be, if not literally unique, quite specific to the local area requesting the exemption. The Department will not grant an exemption based on circumstances common to a broad class of recipients. An exemption from a regulatory requirement based on circumstances common to many recipients would constitute, in effect, a rulemaking of general applicability, which may be made only through normal rulemaking procedures.

Second, the circumstances used to support the exemption request must involve matters not contemplated, or taken into account, as part of the rulemaking process for this rule. The Department is aware that it probably has not thought of all possible issues or situations that can arise. This exemption procedure is intended to apply to matters not dealt with in this rulemaking. If, on the other hand, the Department has received and considered comments on how a certain issue or situation has been handled, and then made a decision, the exemption process is not a mechanism for reconsidering a regulatory decision the Department has made.

Third, the applicant for an exemption must demonstrate that the circumstances cited

make compliance with the rule unduly burdensome or unreasonable. The undue burdens or unreasonableness, consistent with the two standards discussed above, must be specific to the particular grantee, and not something affecting grantees, or a broad class of them, in common.

Fourth, the recipient must show that, if it is granted the exemption, it will take some alternate action that will substantially comply with the regulation. The grant of an exemption is not a license for noncompliance; it is agreement by the Department and the recipient that the recipient will take action adequate to provide transportation services to handicapped persons, even though it is, in some respects, excused from following the letter of the regulation. It should be emphasized, however, that the exemption provision is not intended to permit recipients to fashion "do-it-yourself" modifications of the requirements of the regulation.

The Department may grant a request for a technical exemption, in whole or in part, or deny it. The Department may also place any reasonable conditions on the grant of the exemption. The UMTA Administrator will sign grants or denials of exemption requests, and such requests should be addressed to the Administrator. In keeping with existing DOT practice, the Assistant Secretary for Policy and International Affairs must concur in grants or denials of exemption requests under this rule.

Section 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs

Section 27.103 provides a slightly different procedure for submitting documents under this Subpart if a state has elected to administer UMTA's sections 5, 9, and 9A programs for UMTA. This procedure applies to urbanized areas of under 200,000 population. If a state has made this election, the designated state agency is the actual recipient of the UMTA funds and the state agency, in turn, passes them through to the urbanized area. This is similar to the section 18 program.

If the election is made, the local recipient must send the program required under § 27.85, the slippage report under § 27.89(c), the certification and report under § 27.91(f), and any compact under § 27.93(c) to the designated state agency and not to UMTA. (The state would have to inform UMTA when a slippage report was received). The designated state agency acts for UMTA to review and, as necessary, approve these documents. In doing so, any deadlines which the regulation imposes on UMTA apply to the designated state agency. For example, the designated state agency would, under § 27.85(b), have to complete its review of the local recipient's program within 120 days of its submission. Similarly, the time extensions under § 27.85(c) would also apply to the designated state agency.

Section 27.103(b) requires the designated state agency to certify to UMTA that the recipients in its state are in compliance with this Subpart. This certification can cover more than one recipient, but it is due to UMTA no later than 30 days after the designated state agency approves the recipient's program.

It is important to note that the state's election to administer these programs is voluntary. Any recipient located in a state not so electing must send its material to UMTA. Also, the provisions in this section do not apply to small recipients covered by § 27.91.

Enforcement Procedures

Subpart F (§§ 27.121–27.129) of 49 CFR Part 27 concerns enforcement of the obligations of recipients under Subpart E, the mass transit program requirements, as well as all the other Subparts of this regulation. Briefly, Subpart F provides that when, as a result of a complaint, investigation or compliance review, the Department learns that a recipient appears to be in noncompliance, the Department first attempts to resolve the problem informally.

This informal resolution step is the most important part of the enforcement process, from the Department's view. At this stage, the Department works with the recipient to solve the planning, management, or operational problems that led to the enforcement action. The aim of the process is not to impose sanctions on the recipient, but to correct the situation so that the recipient provides service to handicapped persons as the regulation requires. Only if informal resolution fails does the Department resort to formal enforcement proceedings.

If there is reasonable cause for the Department to believe that the recipient is in noncompliance, and that the noncompliance cannot be resolved informally, the Department notifies the recipient that it proposes to suspend, terminate, or refuse to provide Federal financial assistance to the recipient. The recipient has the opportunity to present its case at a hearing before an administrative law judge. The judge makes a recommended decision to the Secretary, who may accept, reject, or modify the recommended decision. The Secretary's decision is administratively final (it may be reviewed by a Federal court under the Administrative Procedure Act) and the sanctions the Secretary orders remain in effect until the recipient comes into compliance with the regulation.

Any person who wishes to submit a complaint alleging that a recipient is in noncompliance with this regulation should send the complaint to the following address: Director, Departmental Office of Civil Rights, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Noncompliance should be understood simply as the failure by a recipient to do what the regulations require of it, or action by a recipient contrary to regulatory prohibitions. The following are examples (not intended to be an exhaustive or exclusive list) of conduct under Subpart E that could be regarded as noncompliance, for recipients to which the various requirements apply:

- Failure to have a program consistent with the requirements of § 27.81;
- Failure to follow any of the public participation requirements of § 27.83;
- Failure to submit the program documents to UMTA within the time frames of § 27.85;
- Failure to make timely changes in a program UMTA did not approve as submitted under § 27.85, such that UMTA can approve the program as consistent with this regulation;
- Failure to provide service, as required under § 27.87;
- Failure to submit a "slippage report" in the circumstances in which § 27.89(c) requires one;
- Failure by a small recipient to certify, provide for public participation, or provide reports as required under § 27.91.

The OMB Paperwork Reduction Act number for the information collection requirements in Subpart E is 2132–0530.

[FR Doc. 86–11571 Filed 5–20–86; 8:45 am]
BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27 and 609

[Docket No. 56d; Notice 86-5]

Nondiscrimination on the Basis of Handicap in Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) requests comment on proposed requirements for service to handicapped persons on commuter rail systems. The proposed rule would implement section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)) in commuter rail programs receiving financial assistance from the Department. The notice also proposes to remove 49 CFR Part 609 and incorporate certain of its provisions into 49 CFR Part 27.

DATE: Comments should be received by August 21, 1986.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 56d, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC, 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 7th Street, SW., Washington, DC 20590; (202) 426–4723 (voice) or (202) 755–7687 (TDD). The Department of Transportation is currently installing a new telephone system. As a result, the voice number is expected to change, during July 1986, to (202) 366–9306. The TDD number is not expected to change. This NPRM has been taped for use by visually-impaired persons. Requests for taped copies of the rule should be made to Mr. Ashby.

SUPPLEMENTARY INFORMATION: The purpose of this NPRM is to request comments on several actions the Department is considering taking that are related to the final rule published today on mass transit services for handicapped persons. The September 3, 1985, NPRM that led to the final rule did not request comments on these specific proposals, and we received few comments relating to them. In addition, with respect to requirements for commuter rail systems, the Department does not have, at the present time, the information and analysis we need to decide whether to promulgate a final rule.

Commuter Rail

The preamble to the NPRM asked what, if any, provisions the regulation should include concerning commuter rail operations. The preamble also asked what form such a provision should take (e.g., a requirement for key station accessibility, special service, or a choice between the two).

Virtually all the handicapped commenters on this issue objected to the absence of specific commuter rail provisions from the NPRM, saying that commuter rail systems should be required to be fully accessible or that some alternative service be mandated. Some of these comments suggested that commuter rail services be required to meet the same criteria as other urban mass transit services. Others said that the interface between commuter rail and urban mass transit systems should also be required to be accessible, lest transfers from one to the other be precluded. A few social service organizations and other commenters took similar positions.

The relatively few transit industry comments suggested either that there be no commuter rail provisions in the final rule or that, if there were such requirements, the type of service be determined locally. Some transit industry comments also favored being able to count commuter rail accessibility costs toward the cost cap.

A few comments, from commenters in various categories, favored the "key stations/accessible rail vehicles" approach to commuter rail service. Others favored alternative service as a substitute for, or addition to, accessible mainline service.

In the final rule published today, the Department decided against requiring recipients to make urban mass transit rail systems, such as subways, other rapid rail systems, and light rail systems, accessible. Urban subway, rapid rail, and light rail systems provide service within an urbanized area which, in most cases, is also served by a recipient's bus system. An accessible bus system, or a special service system meeting service criteria keyed to the bus system, can provide service to handicapped persons throughout the area in which rail service is available to the general public.

Commuter rail may be a different case. While portions of commuter rail lines obviously lie within urbanized areas served by urban mass transportation systems, the major function of commuter rail lines is to bring commuters to an urban center from exurban areas often far outside the area served by urban mass transit bus or rail systems. A handicapped commuter living outside the urban mass transit service area would have no UMTA-assisted commuter rail service available to him or her at all, unless the commuter rail service itself were accessible or some substitute were provided for it. Consequently, the Department has decided to consider adding commuter rail requirements.

It should be emphasized that the Department has not made a decision concerning what, if any, commuter rail requirements we should promulgate. Therefore, we are proposing for comment various alternative provisions on important commuter rail issues. These options include mainline accessibility with all stations or with key stations made accessible, substitute service, and a provision that would allow recipients to choose between mainline accessibility and substitute service. The Department also seeks comment on other alternatives. If it appears that there is not sufficient justification for imposing commuter rail requirements, the Department could also decide not to promulgate a final rule on this subject.

The commuter rail provisions proposed in this NPRM include the following:

Section 27.5 Definitions. The definition of commuter rail, originally published as part of the Department's 1979 section 504 rule, and deleted by the July 1981 interim final rule (since it did not refer to commuter rail systems), would be restored. Because the vehicle standards proposed for incorporation from 49 CFR Part 609 (see discussion below) refer to "rapid rail" and "light rail," those definitions would likewise be restored.

Section 27.81 Program Requirement. A new paragraph (b) added to the end of this section would make the requirement to have a program under Subpart E of 49 CFR Part 27 applicable to recipients of financial assistance from the Department for commuter rail systems.

Section 27.85 Submission and Review of Program. A sentence added to paragraph (a) of this section would provide that commuter rail operators

would make their program submissions by 12 months from the effective date of this admendment to Subpart E.

Section 27.95 Full Performance Level. The NPRM proposes a new paragraph (e) to this section, setting forth requirements for commuter rail service. The NPRM proposes five alternatives for comment.

The first alternative is to make key stations, and at least one car per train, accessible to handicapped persons. The "key station" idea was developed as part of the Department's 1979 section 504 rule, and its purpose is to result in the most important stations being made accessible without causing the recipient to incur the expense of making all stations accessible. The key station criteria are also drawn from the 1979 rule. The Department estimated, for purposes of the 1979 rule, that these criteria would result in about 40 percent of stations becoming accessible. The Department seeks comment on whether, if this alternative is adopted, these criteria should be modified.

Because making a commuter rail line accessible is likely to be a relatively capital-intensive effort, this option would give recipients 30 years, rather than six, to meet the service criteria. This lengthened compliance period, which also was drawn from the 1979 rule, is intended to make compliance through this approach financially less burdensome. However, the recipient would, as some comments suggested, have to provide interim service (e.g., by demand-responsive motor vehicle) during the 30-year phase-in period. The Department seeks comment on whether this phase-in period is appropriate for commuter rail.

The second alternative is similar to the first, except that all stations, rather than only key stations, would have to be accessible. This would result in greater convenience for disabled users, possibly increasing ridership. However, costs for recipients would also be higher than under the first option.

The third proposed approach to meeting commuter rail requirements is substitute service. Substitute service would involve providing service by accessible motor vehicle from the commuter rail station nearest or most convenient to the person's point of origin to the station nearest or most convenient to his or her destination. There would be the same maximum six-year phase-in period as for other modes of mass transit. As some commenters to the September 1983 NPRM suggested, this station-to-station service would have to meet the same six service cirteria that apply to other modes of service under Subpart E of the regulation. The language of the criteria would be modified slightly to fit the commuter rail context (e.g., to refer to commuter rail lines and stations).

The fourth option would allow recipients to choose between substitute service and accessible mainline service. This approach would let each recipient choose, for each of its commuter rail lines, to comply either by meeting the requirements for accessible mainline service (as in option 1 or 2) or the requirements for substitute service (as in option 3). The only constraint on the recipient's discretion would be that all of any given commuter rail line would have to comply in the same way. Under all of the options, a commuter rail line that already met the requirements of § 27.73 (requirements for intercity rail systems) would be deemed to comply with the commuter rail requirements.

The Department also seeks comment on other options or variations of the options described above. For example, should the Department require feeder service to transport handicapped persons to accessible commuter rail stations? To improve cost-effectiveness of service, should recipients be able to terminate their accessible rail or substitute service at the first connecting point with other urban mass transit services that handicapped persons can use? On the other hand, would requiring handicapped persons to transfer in this situation be too inconvenient? Other suggestions are welcome.

The fifth option under consideration is a no-action alternative, under which no commuter rail provision would be added in the rule.

It is the Department's understanding that, like other mass transit programs, Federally-assisted commuter rail systems use their UMTA assistance to support overall operations. The Federally-assisted program or activity, therefore, is the entire commuter rail system. Section 504 of the Rehabilitation Act of 1973 is a basis for imposing requirements only on the specific program or activity for which Federal assistance is provided. If a particular commuter rail line, for example, does not receive Federal financial assistance, it is not covered under section 504. This is true even if the operator receives Federal assistance for other activities.

Section 27.97 Limit on Required Expenditures. A number of commenters on the September 1983 NPRM suggested that the limit on required expenditures apply to commuter rail systems, or that costs of commuter rail services for handicapped persons count toward recipients' overall cost limit. For the same reasons that we applied a cost limit to other modes of service for disabled persons, we are proposing that a cost limit should apply to commuter rail. For purposes of this NPRM, we are proposing two options for how the cost limit would apply to commuter rail.

We are concerned that counting costs of both commuter rail accessibility or substitute service and urban accessible bus or special service toward the same limit on required expenditures could create problems, such as a lack of balance between commuter rail and urban transit expenditures, that could impede progress toward the full performance level in one of the systems. Consequently, the Department's first option is that recipients which have both commuter rail and other urban mass transit systems would calculate the limit on required expenditures separately for each.

The Department's second option would modify this approach somewhat. It is possible that, for some recipients who operate both commuter rail and other urban mass transit systems, it would be more cost-effective to divert resources from commuter rail accessibility to other transit services for handicapped persons. A provision permitting recipients to lower their commuter rail cost limit by an amount equivalent to expenditures above their urban mass transit cost limit could give recipients greater flexibility in such situations. The Department also seeks comment on whether, if such a system were put into place, there should be a limit to "transfers" of this kind.

Section 27.99 Eligible Expenses. This section would be amended to provide that the capital and operating expenses of substitute service systems for commuter rail, and the incremental capital and operating expenses of accessible commuter rail systems, are eligible expenses. They would be eligible with respect to the separate commuter rail cost limit. This section would also regard costs of compliance with the facility and vehicle standards of §§ 27.105 and 27.107 as eligible.

Questions for Regulatory Analysis. In preparing a regulatory impact analysis or evaluation concerning commuter rail service for disabled persons, the Department will seek information to answer the following questions, among others:

1. How many handicapped persons live in corridors now served by commuter rail systems?

2. How many of these persons are unable, by reason of handicap, to use the existing commuter rail service?

3. How many of these persons now use other means of transportation for

destinations served by commuter rail service (e.g., private cars, van pools)?

4. How many of these persons would be likely to use an accessible commuter rail service in which (a) key stations, or (b) all stations, were accessible?

5. How many of these persons would be likely to use a motor vehicle-based substitute service system?

6. Given the likely user population, how many annual trips by handicapped persons who cannot now use the commuter rail system would be generated by (a) an accessible commuter rail system with key stations accessible, (b) an accessible commuter rail system with all stations accessible, or (c) a motor vehicle-based substitute service system?

7. What are likely to be the incremental capital and operating costs (per year and over 30 years) of the three alternatives described in question 6?

8. What is the likelihood that the benefits (i.e., usage) of the various alternatives under discussion will justify the costs?

The Department requests assistance from commenters in providing information to help answer these and other relevant questions. The Department is aware of two significant studies on commuter rail accessibility that are now underway. The Department hopes to make use of these studies and, to the extent still relevant, data from studies the Department has conducted in the past (e.g., the so-called "321 Studies" conducted some years ago). If the information from these studies is not sufficient to enable the Department to make a final decision on this subject, we anticipate performing a study (analogous to those used in the Regulatory Impact Analysis for the final rule published today) that would provide the information needed as a basis for a final decision.

Withdrawal of 49 CFR Part 609

49 CFR Part 609 contains a variety of standards for vehicles and fixed facilities, as well as procedural sections concerning special efforts to be made in providing transportation services to handicapped persons. There has been some confusion about the legal status of this Part. The preamble to the Department's 1979 section 504 rule mentioned that Part 609 had been "superseded," but Part 609 was never withdrawn from the Code of Federal Regulations. The Department's July 1981 interim final rule withdrew the mass transit portion of the 1979 rule, noting that Part 609 had never been withdrawn but not otherwise clarifying its status.

The Department believes that many of the provisions of Part 609 are obsolete and/or cover matters now covered by the new Subpart E. For these reasons, these provisions should be withdrawn. On the other hand, as discussed below, the provisions of Part 609 concerning vehicle and facility standards and the reduced fare program are still important. They should be retained and any uncertainty about their legal status ended (it is the Department's position that they remain in effect). For these reasons, the Department is proposing to withdraw Part 609 and to add to the new 49 CFR Part 27, Subpart E, revised and updated versions of Part 609's vehicle and facility standards and reduced fare program provision.

Facility and Vehicle Standards; Reduced Fare Program

The Department proposes to add a new § 27.105 to the regulation, which would incorporate fixed facility standards now found in § 609.13. This inclusion responds to requests by commenters on the September 1983 NPRM for fixed facility standards in the rule. These standards have been in place for some time, are familiar to recipients, and are not onerous or costly to comply with. This section would contain a provision concerning the station-rail car interface, which a commenter cited as a continuing problem in some new rail systems.

The proposed § 27.107 would contain standards related to accessibility features for bus, rapid rail, light rail, and other vehicles. The four paragraphs of this section would incorporate the substance of §§ 609.15–609.21.

There would be only one substantive change in these provisions. The NPRM would delete § 609.15(a) through (c), which deals with the so-called "Transbus" specifications, which the Department determined, in 1979, could not practically be implemented, and a requirement for an accessibility option on all transit buses, which is obsolete in light of the publication of the new Subpart E. It should be pointed out that the standards of § 27.107 would apply to all new vehicles in the categories covered by the section, not just those that are purchased specifically to meet the full performance level of § 27.95.

The Department seeks comment on any additional accessibility features which should be included in these provisions, or any modifications or deletions which the Department should make to these provisions.

The current 49 CFR 609.23 requires recipients to provide half fares for elderly and handicapped persons during off-peak travel times. This provision would be incorporated in the new 49 CFR 27.109. The only change between the present and proposed version of the provision involved the substitution of a reference to the current section 9 program for a reference to the section 5 program, which it replaced.

Definition of "Accessible"

The Department is proposing to delete, from § 27.5, the definition of "accessible." The rationale for this proposal is that the specific requirements for various modes of transportation and facilities, together with the references to the Uniform Federal Accessibility Standards (UFAS) now incorporated in Part 27, make this definition unnecessary. The Department seeks comment on whether there is any remaining need for this definition.

Regulatory Process Matters

This NPRM is a significant regulation under the Department's Regulatory Policies and Procedures, since its commuter rail provisions may be costly and controversial. The rule may be a major rule under Executive Order 12291; because the Department does not have sufficient data concerning the costs of compliance with its proposed commuter rail requirements, we are unsure of whether it would result in costs of over $100 million per year. The Department does not have sufficient information on which to base a regulatory evaluation or impact analysis, and we have not prepared such a document at this time. If we decide to promulgate a final rule on commuter rail systems, we intend to prepare a regulatory evaluation or impact analysis, as appropriate.

The other proposals in this NPRM—concerning the withdrawal of Part 609 and incorporation of some of its provisions in Part 27—are not expected to have any significant economic impacts. They basically involve moving existing provisions to a different part of the Code of Federal Regulations. We do not anticipate preparing a regulatory impact analysis or evaluation on these subjects.

The Department certifies under the criteria of the Regulatory Flexibility Act that this proposal, if promulgated as a final rule, would not have a significant effect on a substantial number of small entities. Only the commuter rail portion of this NPRM would have a significant economic effect. There are no commuter rail operators, to our knowledge, that could be considered small entities.

This NPRM has been reviewed and approved by the Department of Justice under Executive Order 12250 and by the Office of Management and Budget under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 19th day of May, 1986, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons described in the preamble, the Department proposes the following:

PART 609—[REMOVED]

1. To amend Title 49, Code of Federal Regulations, by removing Part 609 thereof.

PART 27—[AMENDED]

1a. The authority citation for Part 27 continues to read:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142nt. Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

§ 27.5 [Amended]

2. To amend § 27.5 ("Definitions"), in Title 49, Code of Federal Regulations, by adding the following paragraphs, to be inserted among the existing paragraphs in alphabetical order:

"Commuter rail" means that portion of mainline railroad transportation operations which encompasses urban passenger train services for local short-distance travel between a central city and adjacent suburbs and which is characterized by multi-trip tickets, specific station-to-station fares, railroad employment practices, and usually only one or two stations in the central business district.

"Light rail" means a streetcar type transit vehicle railway operated on city streets, semi-private rights-of-way, or exclusive private rights-of-way.

"Rapid rail" means a subway-type transit vehicle railway operated on exclusive rights-of-way with high-level platform stations.

3. To amend § 27.5 ("Definitions") in Title 49, Code of Federal Regulations, by deleting the definition of "accessible."

4. To amend § 27.61 ("Program Requirement"), in Title 49, Code of Federal Regulations, by designating the existing paragraph of this section as paragraph (a) thereof, and by adding the following paragraph (b):

§ 27.61 [Amended]

* * * * *

(b) Recipients of financial assistance from the Department of Transportation for commuter rail systems shall establish a program meeting the requirements of paragraph (a) of this section. However, a recipient is not required to establish such a program concerning any commuter rail line which, on the date the program would otherwise be due, is in full compliance with the requirements of 49 CFR 27.73.

5. To amend § 27.65 ("Submission and Review of Program"), in Title 49, Code of Federal Regulations, by adding the following paragraph (d):

§ 27.65 [Amended]

* * * * *

(d) (1) With respect to commuter rail systems, commuter rail operators shall submit their programs and supporting materials within 12 months of the effective date of this paragraph.

(2) A commuter rail operator which, because a commuter rail line is in full compliance with 49 CFR 27.73 within 12 months of the effective date of this paragraph, is not required to establish a program with respect to that line shall submit, in lieu of a program, a certification of its compliance with § 27.73.

(3) If a commuter rail operator receives its federal financial assistance from the Federal Railroad Administration (FRA) rather than from UMTA, the recipient shall submit all required materials to FRA.

6. To amend § 27.95 ("Full Performance Level"), in Title 49, Code of Federal Regulations, by adding a new paragraph (f), to read as follows:

§ 27.95 [Amended]

* * * * *

Option 1

(f) *Criteria for Commuter Rail Systems.* The criteria applicable to each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation are the following:

(1) All stations shall be accessible to handicapped persons who can use steps, and key stations shall be accessible to wheelchair users. For purposes of commuter rail service, key stations are those that are:

(i) Transfer points on a rail line or between rail lines;

(ii) Major interchange points with other transportation modes;

(iii) End stations, unless an end station is close to another accessible station;

(iv) Stations serving major activity centers, including government and employment centers, institutions of higher education, and hospitals or other major health care facilities;

(v) Stations that are special trip generators for large numbers of handicapped persons; and

(vi) Stations that are distant from other accessible stations.

(2) Existing key stations shall be deemed to be accessible for purposes of this paragraph if they—

(i) Include, or are altered to include, the features listed in sections 4.1.6(3)(a)—(d) and section 4.1.6(4) of the standards referenced in § 27.67(d) of this Part; and

(ii) Include the features described in § 27.73(a)(1)(ii) of this Part.

(3) Existing non-key stations shall be deemed to be accessible if they meet the requirements applicable to key stations, except that otherwise accessible routes that do not comply with section 4.3.8 of the standards referenced in § 27.67(d) of this Part shall comply with sections 4.9.2—4.9.6 of those standards.

(4) All vehicles shall be accessible to handicapped persons who can use steps, and at least one vehicle per train must be accessible to wheelchair users. All vehicles on commuter rail trains shall have clearly marked priority seating for handicapped persons, and vehicles accessible to wheelchair users shall display the international accessibility symbol.

(5) The fares charged handicapped persons using the accessible commuter rail service shall be no higher than those charged other users for a trip between the same stations at the same time. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on the accessible commuter rail service.

(6) The recipient shall ensure that each accessible commuter rail line meets the requirements of this section by a date 30 years from the date UMTA approves its program. In the meantime, the recipient shall provide interim service by accessible motor vehicle which meets a significant fraction of the actual transportation needs of handicapped persons who cannot use the commuter rail line until it is made accessible.

Option 2

(f) *Criteria for Commuter Rail Systems.* The criteria applicable to each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation are the following:

(1) All stations shall be accessible to handicapped persons who can use steps and to wheelchair users.

(2) Stations shall be deemed to be accessible for purposes of this paragraph if they

(i) Include, or are altered to include, the features listed in sections 4.1.6(3)(a)—(d) and section 4.1.6(4) of the standards referenced in §27.67(d) of this Part; and

(ii) Include the features described in §27.73(a)(1)(ii) of this Part.

(3) All vehicles shall be accessible to handicapped persons who can use steps, and at least one vehicle per train must be accessible to wheelchair users. All vehicles on commuter rail trains shall have clearly marked priority seating for handicapped persons, and vehicles accessible to wheelchair users shall display the international accessibility symbol.

(4) The fares charged handicapped persons using the accessible commuter rail service shall be no higher than those charged other users for a trip between the same stations at the same time. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on the accessible commuter rail service.

(5) The recipient shall ensure that each accessible commuter rail line meets the requirements of this section by a date 30 years from the date UMTA approves its program. In the meantime, the recipient shall provide interim service by accessible motor vehicle which meets a significant fraction of the actual transportation needs of handicapped persons who cannot use the commuter rail line until it is made accessible.

Option 3

(f) *Criteria for Commuter Rail Systems.* Each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation shall provide, on the request of an eligible handicapped person, substitute service by accessible motor vehicle from the commuter rail station nearest or most convenient to the handicapped person's point of origin to the commuter rail station nearest or most convenient to the person's destination. The substitute service shall meet the following service criteria:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's commuter rail system shall be eligible to use the recipient's substitute service.

(2) *Response Time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or Priorities Based on Trip Purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the substitute service.

(4) *Service Area.* Substitute service shall be provided, upon request, among all stations served by the recipient's commuter rail service.

(5) *Fares.* The fare for a trip charged a handicapped person using the substitute service shall be comparable to that charged other users of the recipient's commuter rail service for a trip between the same stations at the same time.

(6) *Hours and Days of Service.* Substitute service shall be available throughout the same days and hours as the recipient's commuter rail service for the general public.

Option 4

(f) *Criteria for Commuter Rail Systems.* Each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation shall consist of meeting the criteria of either subparagraph (1) [i.e., requirements for mainline accessibility] or subparagraph (2) [i.e., requirements for substitute service] of this paragraph. Each line shall meet the requirements of the applicable subparagraph for its entire length. A commuter rail line which is in full compliance with the requirements of § 27.73 shall be deemed to comply with this paragraph.

Option 5

No further regulatory action.

7. To amend § 27.97 ("Limit on Required Expenditures") in Title 49, Code of Federal Regulations, by adding a new paragraph (d), to read as follows:

§ 27.97 [Amended]

* * * * *

Option 1

(d) *Commuter Rail.* The limit on required expenditures for commuter rail service shall be computed separately by any recipient that provides both commuter rail service and urban mass transportation service by bus or other means.

Option 2

(d) *Commuter Rail.* The limit on required expenditures for commuter rail service shall be computed separately by any recipient that provides both commuter rail service and urban mass transportation service by bus or other means. *Provided,* that such a recipient may reduce the amount of its commuter rail limit on required expenditures for a given fiscal year by the amount in excess of its limit on required expenditures for other mass transit services for handicapped persons it expended for such services in the previous fiscal year.

§ 27.99 [Amended]

8. To amend § 27.99 ("Eligible Expenses") in Title 49, Code of Federal Regulations, by removing, in paragraph (b)(5) thereof, the words "49 CFR 609.23." and substituting the words "49 CFR 27.109."

9. To amend § 27.99 ("Eligible Expenses"), in Title 49, Code of Federal Regulations, by adding new subparagraphs (b)(7) and (b)(8) thereof, to read as follows:

(b) * * *

(7) Capital and operating costs of substitute service systems for commuter rail; incremental capital and operating costs of accessible commuter rail systems.

(8) Incremental costs of compliance with §§ 27.105 and 27.107 of this Subpart.

10. To amend Subpart E, in Title 49, Code of Federal Regulations, Part 27, by adding new §§ 27.105, 27.107, and 27.109, to read as follows:

§ 27.105 Standards for fixed facilities.

(a) Except as otherwise provided in paragraph (c) of this section, every fixed facility—including every station, terminal, building or other facility—designed, constructed, or altered after the effective date of this section with UMTA assistance, the intended use for which either will require that such fixed facility be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed, constructed, or altered in accordance with the accessibility standards referenced in § 27.67(d) of this Part.

(b) In addition to the standards of paragraph (a) of this section, the following standards apply to rail facilities covered by that paragraph:

(1) *Travel distance for wheelchair users.* In designing new underground or elevated transit stations, careful attention should be given to the location and number of elevators or other vertical circulation devices in order to minimize the extra distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to nonhandicapped persons.

(2) *International accessibility symbol.* The international accessibility symbol shall be displayed at wheelchair accessible entrance(s) to buildings that meet the standards.

(3) *Fare vending and collection systems.* Transit fare vending and collection systems shall be designed so as not to prevent effective utilization of the transportation system by elderly and

handicapped persons. Each station shall include a fare control area with at least one entrance with a clear opening at least 32 inches wide when open.

(4) *Boarding platforms.* All boarding platform edges bordering a drop-off or other dangerous condition shall be marked with a warning device consisting of a strip of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms for level-entry vehicles shall be coordinated with the vehicle design in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(c) The standards established in paragraphs (a) and (b) of this section do not apply to:

(1) The design, construction, or alteration of any portion of a fixed facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing fixed facility to the extent that the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installation or improvements to accommodate the physically handicapped (the standards do not apply to unaltered elements or spaces of an existing fixed facility except as called for by section 4.1.6(3), of the standards referenced in § 27.67(d)(2);

(3) The alteration of an existing fixed facility, or of such portions thereof, to which application of the standards is not structurally possible; and

(4) The construction or alteration of a fixed facility for which a recipient has, prior to the effective date of this section, issued a formal invitation for bids to perform such construction or alteration.

(d) The final project application for any project that includes the design, construction, or alteration of a fixed facility subject to paragraph (a) of this section shall contain one of the following: (1) An assurance that the standards of paragraph (a) of this section will be adhered to in the design, construction, or alteration of such facility; (2) a request for a finding that the project is within one of the exceptions set out in paragraph (c) of this section (the specific exception being identified), with appropriate supporting material; or (3) a request pursuant to § 27.101 for the technical exemption from the standards of paragraphs (a) and (b) of this section, with appropriate supporting material (including, where applicable, a request for a waiver of the requirements of the Architectural Barriers Act of 1968, as amended).

§ 27.107 Standards for vehicles.

(a) *Buses.* The following standards apply to all new transit buses exceeding 22 feet in length for which procurement solicitations are issued after the date this section becomes effective:

(1) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that seats in the front of the vehicle are priority seats for elderly and handicapped persons, and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(2) *Interior handrails and stanchions.* (i) Handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration which allows elderly and handicapped persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection processes. The configuration of the passenger assist system shall include a rail across the front of the interior of the vehicle which shall serve both as an assist and as a barrier to reduce the possibility of passengers sustaining injuries on the fare collection device or windshield in the event of sudden deceleration. The rail shall be located to allow passengers to lean against it for security while paying fares.

(ii) Overhead handrails shall be provided which shall be continuous except for a gap at the rear doorway.

(iii) Handrails and stanchions shall be provided which shall be sufficient to permit safe onboard circulation, seating and standing assistance, and upboarding by elderly and handicapped persons.

(3) *Floor and step surfaces.* (i) All floors and steps shall have slip-resistant surfaces.

(ii) All step edges shall have a band of bright contrasting color(s) running the full width of the step.

(4) *Lighting.* (i) Any stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(ii) Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(iii) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

(5) *Fare collection.* The farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule.

(6) *Destination and route signs.* Each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) *Rapid Rail Vehicles.* The following standards apply to all rapid rail vehicles for which procurement solicitations are issued after the effective date of this section:

(1) *Doorways.* (i) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(ii) The international accessibility symbol shall be displayed on the exterior of each vehicle operating on a wheelchair accessible rapid rail system.

(iii) Audible warning signals shall be provided to alert elderly and handicapped persons of closing doors.

(iv) Where the vehicle will operate in a wheelchair accessible station, the design of vehicles shall be coordinated with the boarding platform design in order to minimize the gap between vehicle doorway and the platform and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(2) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that certain seats are priority seats for elderly and handicapped persons and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(3) *Interior handrails and stanchions.* (i) Handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by elderly and handicapped persons.

(ii) Handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers.

(iii) *Floor surfaces.* All floors shall have slip-resistant surfaces.

(c) *Light Rail Vehicles.* The following standards apply to all light rail vehicles for which procurement solicitations are issued after the effective date of this section:

(1) *Doorways.* (i) Passenger doorways on vehicles shall have clear openings at least 32 inches wide when open.

(ii) The international accessibility symbol shall be displayed on the exterior of each vehicle operating on a wheelchair accessible light rail system.

(iii) Audible warning signals shall be provided to alert elderly and handicapped persons of closing doors.

(iv) The design of level-entry vehicles shall be coordinated with the boarding platform design in order to minimize the gap between the vehicle doorway and the platform and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(2) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that certain seats are priority seats for elderly and handicapped persons and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(3) *Interior handrails and stanchions.* (i) On vehicles which require use of steps in the boarding process, handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration which allows elderly and handicapped persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process.

(ii) On level-entry vehicles, handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers.

(iii) On all vehicles, handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by elderly and handicapped persons.

(4) *Floor and step surfaces.* (i) All floors and steps shall have slip-resistant surfaces.

(ii) Any step edges shall have a band of bright contrasting color(s) running the full width of the step.

(5) *Lighting in step-entry.* (i) Any stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(ii) Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(iii) The vehicle doorways shall have outside lights which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

(d) *Other Vehicles.* Requirements for vehicles not covered by this section will be determined by UMTA on a case-by-case basis as part of the project approval process.

§ 37.139 Reduced fares.

Applicants for or recipients of financial assistance under section 9 of the Urban Mass Transportation Act of 1964, as amended, shall, as a condition of receiving such assistance, give satisfactory assurances, in such manner and form as may be required by the Urban Mass Transportation Administrator, that the rates charged elderly and handicapped persons during nonpeak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under section 9 will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.

[FR Doc 86-11572 Filed 5-20-86; 8:45 am]
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federal register

Friday
May 23, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 67

Review of Medical Standards and Certification Procedures; Availability of Report and Request for Comments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. 23190]

Review of Medical Standards and Certification Procedures; Availability of Report and Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of the availability of a report and request for comments.

SUMMARY: This notice announces the availability of a report by the American Medical Association on its professional review of the medical standards for civil airmen. The report was produced as part of the Federal Aviation Administration's comprehensive review of the medical standards contained in Part 67 of the Federal Aviation Regulations. Interested persons are invited to submit comments.

DATES: Comments should be submitted on or before August 21, 1986.

ADDRESS: Comments regarding this report may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23190, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: William H. Hark, M.D., Aeromedical Standards Division (AAM-200), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 426-3802.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1982, the Federal Air Surgeon announced (47 FR 30795; July 15, 1982) the initial step of a comprehensive review of the medical standards contained in Part 67 of the Federal Aviation Regulations (FAR). Interested persons were invited to submit to the Federal Aviation Administration (FAA) (Docket No. 23190) for consideration during future rulemaking actions any comments or suggestions, either on a specific section or sections or on Part 67 in general. That docket will remain open until the date specified under "DATES," above. All comments received are available for inspection in the FAA Rules Docket.

As part of the review process, the FAA initiated a contract with the American Medical Association (AMA) for provision of the necessary professional and technical information. The FAA specified that the AMA's final report detail the results of a total and comprehensive review of the medical standards for airman medical certification and their application to enable the FAA to determine the medical fitness of applicants for exercise of airman privileges. The FAA directed that the report consider pertinent advances in the field of medicine since 1959, determine what changes in FAA medical standards, if any, are warranted, and explain the rationale for such changes.

The AMA presented its report, "Review of Part 67 of the Federal Air Regulations and the Medical Certification of Civilian Airmen," on March 26, 1986. A synopsis of the 750-page, 2-volume study was published in the Journal of the American Medical Association (JAMA Vol. 255, No. 12, pp. 1589-1599) on March 28, 1986, and is available at many libraries. Copies of the synopsis also may be obtained without charge from Alan L. Engelberg, M.D., Department of Public Health Policy, American Medical Association, 535 North Dearborn Street, Chicago, Illinois 60610, or from William H. Hark, M.D., Aeromedical Standards Division (AAM-200), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Copies of the full report will be available from Dr. Hark until July 1, 1986. A check in the amount of $37.70, payable to the Treasurer of the United States, must accompany all requests for the full report. After July 1, 1986, the full report will be available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 (accession numbers AD A166 464, Volume I, and AD A166 465, Volume II).

Comments Invited

Interested persons are invited to submit comments or suggestions, either on a specific section or sections of the FAR or to the AMA report in general. Comments should include the commenter's name and specifically identify the section of the FAR or the element of the AMA report being addressed. Comments will not be answered individually but will be considered during future rulemaking actions. All comments received will be available for inspection in the FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC, between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays. Persons who wish their comments to be considered should submit them on or before the close of the comment period indicated under "DATES," above.

Persons interested in being placed on the mailing list for future rulemaking actions resulting from this review should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure. The advisory circular may be obtained by writing to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591 or by calling (202) 426-8058.

Issued in Washington, DC, on May 16, 1986.

Frank H. Austin, Jr.,

Federal Air Surgeon.

[FR Doc. 86-11602 Filed 5-22-86; 8:45 am]

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federal register

Friday
May 23, 1986

Part IV

Department of the Interior

Minerals Management Service

Gulf of Mexico OCS Region; Proposed 1988 Lease Sales; Call for Information and Nominations and Notice of Intent To Prepare an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1988 Lease Sales in the
Gulf of Mexico OCS Region
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343), as amended, and regulations appearing at 30 CFR 256.23 with regard to proposed OCS Lease Sales 113, 115, and 116, tentatively scheduled for March, August, and November 1988, respectively. The proposed lease sales are identified in the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for January 1987 through December 1991, dated February 1986.

This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this Notice does not indicate a preliminary decision to lease in the areas described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for August 1986.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent to Prepare an EIS which covers scoping is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Gulf Coast States' Coastal Management Programs (CMP).

Description of Area

The general area of this Call covers the entire Gulf of Mexico which lies between approximately 81° W. longitude on the east and approximately 97° W. longitude on the west and extends from the Federal-State boundaries seaward to approximately 26° N. latitude and to approximately 24° N. latitude for southwest Florida. The entire Call area is offshore the states of Texas, Louisiana, Mississippi, Alabama, and Florida. This area is divided into three planning areas for individual 1988 lease sales in the Central, Western, and Eastern Gulf of Mexico.

The Central Gulf of Mexico (CGOM) planning area is bounded on the east by approximately 86° W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28° N. latitude, thence east to approximately 92° W. longitude, and thence south to approximately 26° N. latitude. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area extends south to approximately 26° N. latitude.

The Western Gulf of Mexico (WGOM) planning area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf of Mexico planning area. The area extends south to approximately 26° N. latitude.

The Eastern Gulf of Mexico (EGOM) planning area is described as follows: South from the territorial sea at approximately 87° 45' W. longitude to approximately 29° N. latitude thence west to approximately 87° 55' W. longitude thence south to approximately 26° N. latitude thence east to approximately 86° 55' W. longitude thence south to the limit of U.S. jurisdiction thence southeast to approximately 83° 58' W. longitude at approximately 23° 55' N. latitude thence east to 83° W. longitude thence north to the limits of the territorial sea thence east to approximately 82° 25' W. longitude thence north and east along the territorial sea to the limits of U.S. jurisdiction thence along the territorial sea to the point of origin.

The following list comprises the Leasing Maps and the OCS Official Protraction Diagrams used in identifying this Call area. These maps and diagrams may be purchased from the Public Information Unit, Gulf of Mexico OCS Region, at the address stated below under "Instructions on Call".

1. Central Gulf of Mexico (CGOM)

Leasing Maps

Outer Continental Shelf Leasing Maps - Louisiana Nos. 1 through 12.

This set of 27 maps sells for $17.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

		Revision Date
NH 15-12	Ewing Bank	December 2, 1976
NH 16-4	Mobile	April 19, 1983
NH 16-7	Viosca Knoll	December 2, 1976
NH 16-10	Mississippi Canyon	December 2, 1976
NG 15-3	Green Canyon	December 2, 1976
NG 15-6	Walker Ridge	December 2, 1976
NG 16-1	Atwater Valley	November 10, 1983
NG 16-4	(No Name)	December 2, 1976

2. Western Gulf of Mexico (WGOM)

Leasing Maps

Outer Continental Shelf Leasing Maps - South Texas Nos. 1 through 4. This set of seven maps sells for $5.00

Outer Continental Shelf Leasing Maps - East Texas Nos. 5 through 8. This set of nine maps sells for $7.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

		Revision Date
NG 14-3	Corpus Christi	January 27, 1976
NG 14-6	Port Isabel	January 27, 1976
NG 15-1	East Breaks	January 27, 1976
NG 15-2	Garden Banks	December 2, 1976
NG 15-4	Alaminos Canyon	March 26, 1976
NG 15-5	Keathley Canyon	December 2, 1976

3. Eastern Gulf of Mexico (EGOM)

Outer Continental Shelf Official Protraction Diagrams

These Diagrams sell for $2.00 each.

		Approval or Revision Date
NG 16-3	The Elbow	Revised December 2, 1976
NG 16-5	(No Name)	Approved December 2, 1976
NG 16-6	Vernon Basin	Revised November 10, 1983
NG 16-9	Howell Hook	Approved April 18, 1979
NG 16-12	Rankin	Revised December 16, 1985

		Approval or Revision Date
NG 17-1	St. Petersburg	Revised June 2, 1983
NG 17-4	Charlotte Harbor	Revised June 2, 1983
NG 17-7	Pulley Ridge	Approved October 24, 1978
NG 17-8	Miami	Approved October 24, 1978
NG 17-10	Dry Tortugas	Approved April 8, 1981
NG 17-11	Key West	Approved January 29, 1979
NH 16-5	Pensacola	Revised June 2, 1983
NH 16-8	Destin Dome	Revised December 2, 1976
NH 16-9	Apalachicola	Revised June 2, 1983
NH 16-11	DeSoto Canyon	Revised December 2, 1976
NH 16-12	Florida Middle Ground	Revised December 2, 1976
NH 17-7	Gainesville	Revised June 2, 1983
NH 17-10	Tarpon Springs	Revised June 2, 1983

Areas Deferred from this Call

1. Seagrass beds - offshore Florida (EGOM).

2. Florida Middle Ground - offshore Florida (EGOM).

3. Naval Deferral Area, in NH 16-8, Destin Dome Area, includes the following blocks (EGOM) deferred for carrier operations in Warning Area W-155.

Blocks	Blocks
133 through 148	485 through 500
177 through 192	529 through 544
221 through 234	573 through 588
265 through 279	618 through 632
309 through 324	662 through 676
353 through 368	705 through 720
397 through 412	749 through 764
441 through 456	793 through 808

4. High Island Area, East Addition, South Extension, dated October 19, 1981, (Flower Gardens), Block A-375 and Block A-398 (WGOM).

Instructions on Call

A standard Call map specific to this event delineates the Call area and shows the area identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in the 1988 Lease Sales. Boundaries of the Call area are shown on the standard Call for Information Map available free from the Public Information

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Unit, Gulf of Mexico OCS Region, Minerals Management Service, Post Office Box 7944, 3301 N. Causeway Blvd., Metairie, Louisiana 70010, telephone (504) 838-0519. Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map. Interest should be shown by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area in which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated any priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information concerning both location and priority of interest submitted by individual companies will be held proprietary and will be used as criteria in determining the areas to be analyzed in the EIS. In addition to the indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

Comments are requested on the technology presently available or anticipated for exploration and development operations in deepwater areas.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, socioeconomic conditions, conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State CMP's. If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in the terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed 1988 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1988 Lease Sales in the Gulf of Mexico."

The standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above under "Instructions on Call."

Tentative Schedule

Final delineation of the areas for possible leasing will be made at a later date only after compliance with established Departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and the OCSLA, as amended. A final Notice of Sale for each sale held will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede these sales, proposed for 1988:

	CGOM Sale 113	WGOM Sale 115	EGOM Sale 116
Comments due on the Call	July 1986	July 1986	July 1986
Area Identification	August 1986	August 1986	August 1986
Scoping comments due	July 1986	July 1986	July 1986
Draft EIS published	April 1987	April 1987	April 1987
Hearings held on draft EIS	May 1987	May 1987	May 1987
Final EIS published	October 1987	October 1987	October 1987
Proposed Notice of Sale published	November 1987	April 1988	July 1988
Governor's comments due on proposed Notice	January 1988	June 1988	September 1988
Final Notice of Sale published	February 1988	July 1988	October 1988
Sale	March 1988	August 1988	November 1988

Existing Information

Information already available includes that previously gathered during the EIS process for the Proposed 5-Year Oil and Gas Leasing Program. In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used. The following is a list of other information which will be available to the DOI for consideration regarding the proposed 1988 OCS Lease Sales in the Gulf of Mexico.

Gulf of Mexico Indices and Summary Reports

1. Gulf of Mexico Index, December 1980 through August 1982, prepared for MMS.
2. Gulf of Mexico Index, September 1982 through July 1983, prepared for MMS.
3. Gulf of Mexico Summary Report, September 1983, prepared for MMS.
4. Gulf of Mexico Summary Report, September 1984, prepared for MMS.
5. Gulf of Mexico Summary Report, September 1985, prepared for MMS.

Environmental Studies Program Information in the Central, Western, and Eastern Gulf of Mexico

The DOI initiated studies in these areas in 1973. The emphasis, including continuing studies, has been on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of oil and gas activities. These studies will provide useful information for a number of environmental issues, including topographic features, deepwater biological communities on the continental slope, and coastal wetland habitats.

A complete listing of available study reports and information for ordering copies can be obtained from the Gulf of Mexico Regional Office at the address stated under "Instructions on Call," or by telephone at (504) 838-0519, Public Information Unit. The reports may also be ordered for a fee directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico Regional Office at the address stated under "Instructions on Call" or by telephone at (504) 838-0896.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulation (40 CFR 1501.7) implementing the procedural provision of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposals known as Sale 113 in the Central Gulf of Mexico, Sale 115 in the Western Gulf of Mexico, and Sale 116 in the Eastern Gulf of Mexico . The Notice of Intent also serves to announce the scoping process which will be followed for the EIS. The scoping process is intended to involve Federal, State and local governments and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Instructions on Call" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Proposed 1988 Lease Sales in the Gulf of Mexico. Comments are due no later than 45 days from the publication of this Notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Wm D Bettenberg

Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

J. Steven Griles

Assistant Secretary - Land and Minerals Management

MAY 20 1986

Date

[FR Doc. 86-11726 Filed 5-22-86; 8:45 am]

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Friday
May 23, 1986

Part V

Department of Energy

Minority Economic Impact Office

Minority Educational Institution Assistance Program; Notice

DEPARTMENT OF ENERGY

Office of Minority Economic Impact

Minority Educational Institution Assistance Program

AGENCY: Office of Minority Economic Impact, Energy.

ACTION: Notice of Program Interest.

General Information

The Department of Energy (DOE), Office of Minority Economic Impact, through the Oak Ridge Operations Office, in order to further the Office's goals of providing technical assistance to minority educational institutions, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Educational Institution Assistanc Program at minority educational institutions. Such support is authorized by 42 U.S.C. 7141(d) and 7256(a); Executive Order 12320, which states that the Director of the Office of Minority Economic Impact may provide technical assistance to minority educational institutions. It is intended, in particular, to obtain proposals relating to the objectives identified below, from qualified minority educational institutions, or from teams of organizations including minority educational institutions. For purposes of this notice, a qualified minority educational institution is a school of higher learning (such as a college or university) that is a non-profit entity with more than 50 percent total minority enrollment. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

Nature of Proposals Sought

With this notice, it is DOE's intent to stimulate proposals for minority educational institution assistance for management and technical infrastructure support that would address the following program objectives:

1. Initiate energy-related research and development collaboration using the cluster model involving minority educational institutions.

2. Develop energy-related science and technology research centers at minority educational institutions.

3. Identify and institute arrangements between minority educational institutions that expand the private sector support provided to these institutions.

4. Develop linkages between minority community, technical, and junior colleges and minority four-year institutions to increase the pool of minorities engaged in science and technology.

5. Support the development of joint activities between minority educational institutions and the private sector.

Eligibility

Institution

To be eligible to participate in this program, an institution must have more than 50 percent minority enrollment, and award a masters degree or doctoral degree in the physical sciences or engineering. This program is open only to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a university, university system, or other institution are separately eligible.

Principal Investigator

The Principal Investigator should be the President/Chancellor of the applicant institution or another high-ranking official designated as the surrogate for the purpose of this award. The Principal Investigator is the representative and spokesperson for the institution in matters concerning the award. The Principal Investigator should be available for consultation with the Program Manager and assist in resolving issues or problems encountered by the Program Manager in the management of the project.

Award Size and Duration

The FY 1986 budget for this program is $300,000, and the FY 1987 budget is $350,000. It is estimated that these combined funds will support awards as follows:

1. Infrastructure Support—Two awards over a 24-month period.

2. Private Sector Interrelationships—Two awards over an 18-month period.

These estimates do not bind the U.S. Department of Energy to a specific number of awards unless otherwise specified by statute or regulations. Renewals of the awards may be negotiated not to exceed 24 months subject to availability of funds.

Evaluation Process and Selection Criteria

Proposals may be subjected to external review following preliminary screening based on the criteria listed below. Projects will be selected for funding based on their quality as determined by DOE staff evaluation of the merit of the proposal using the following general criteria as required by the Department of Energy Financial Assistance Regulations, 10 CFR Part 600, and the specific evaluation criteria outlined in the Guide for the Preparation of Proposals for the Minority Educational Institution Assistance Program—1986.

—The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.

—Evidence of overall merit.

—Unique capabilities, related experience, facilities, techniques of the university staff, or combinations of these, as integral factors for achieving the scientific, technical, or socioeconomic objectives of the proposal.

—Use of unique, innovative, or meritorious methods, approaches, or ideas

—Qualifications, capabilities, and experience of the proposed principal university investigator and key personnel who are considered to be critical in achieving proposal objectives.

More specific evaluation criteria will be available in the "Guide for the Preparation of Proposals for the Minority Educational Institution Assistance Program—1986."

Proposal Preparation Guidelines

Unsolicited proposals submitted in response to this notice shall contain the information required in the "Guide for the Preparation of Proposals for the Minority Educational Institution Assistance Program—1986," Notice of Program Interest Number DE–PI05–86MI10093. Copies of the guide are expected to be ready for mailing by April 30, 1986. Qualified applicants may obtain a copy of the guide by writing to the U.S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, Attention: Marlena Clark, 200 Administration Road, P.O. Box E, Oak Ridge, Tennessee 37831; Telephone Number: (615) 576–7599.

DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Closing Date for Submission of Proposals

To be eligible, proposals must be received by the Department of Energy at the Oak Ridge, Tennessee address in the preceding section by 4:30 p.m., June 30, 1986.

FOR FURTHER INFORMATION CONTACT: All technical questions concerning this Notice of Program Interest should be directed to Mr. Rufus Smith, EEO

Manager, Oak Ridge Operations, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37831; Telephone: (615) 576–4668. All other inquiries should be directed to Mr. Charles Crowe, Contracting Officer, Procurement and Contracts Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37831; Telephone: (615) 576–0794.

Dated: April 21, 1986.

Peter D. Dayton,

Director, Procurement and Contracts Division.

[FR Doc. 86–11637 Filed 5–22–86; 8:45 am]

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H.J. Res. 427 / Pub. L. 99–310

Designating the week beginning on May 11, 1986, as "National Asthma and Allergy Awareness Week." (May 20, 1986; 100 Stat. 483; 1 page) Price: $1.00

H.R. 1207 / Pub. L. 99–311

To award a special gold medal to the family of Harry

Chapin. (May 20, 1986; 100 Stat. 464; 1 page) Price: $1.00

S.J. Res. 347 / Pub. L. 99-313

To designate the week of June 1 through through June 7, 1986, as "National Theatre Week." (May 20, 1986; 100 Stat. 465; 1 page) Price: $1.00

S.J. Res. 351 / Pub. L. 99-312

To designate the week of May 11, 1986, through May 17, 1986, as "National Science Week, 1986." (May 20, 1986; 100 Stat. 466; 2 pages) Price: $1.00

S.J. Res. 323 / Pub. L. 99-314

To designate May 21, 1986, as "National Arched Eyebrows Day." (May 20, 1986; 100 Stat. 468; 2 pages) Price: $1.00

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Revenue Sharing Office

Surface Mining
Surface Mining Reclamation and Enforcement Office

Water Pollution Control
Environmental Protection Agency

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium, Fourth Floor, Federal Building, 915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle 206-442-0570
Tacoma 206-383-5230
Portland 503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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Tuesday, May 27, 1986

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Title 3—

The President

Proclamation 5488 of May 21, 1986

National Farm Safety Week, 1986

By the President of the United States of America

A Proclamation

Our remarkable agricultural system has enabled our Nation to make great strides in efforts to conquer hunger and to meet the food and fiber needs of our people as well as countless others around the world. But we cannot afford to let up in the battle against accidental injuries and illnesses that take an unduly high toll of those whose toil is responsible for this abundance.

Each year, many thousands of farm and ranch residents and workers are seriously or fatally injured at work, in the home, during recreation, and in traffic accidents.

Although much has been accomplished over the years to make farm life safer and healthier, much more remains to be done. Everyone in the agricultural community should make renewed efforts to be informed about potential hazards and take steps to minimize those dangers. This includes the conscientious use of mechanical safeguards like protective equipment and safety belts. I commend our farm equipment manufacturers for their emphasis on building safeguards into their equipment and warning of possible hazards in operational misuse, but there is no substitute for vigilance and common sense in using equipment. Awareness, on the job and off, is the surest way to avert mishaps and tragedies.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 21 through September 27, 1986, as National Farm Safety Week. I urge all those who live and work on farms or ranches to take necessary precautions to protect their safety and health—on the job and off. I also urge leaders in the agricultural community to bolster safety and health efforts in your area by example and by educational programs. I encourage all Americans to participate in appropriate events and activities in observance of National Farm Safety Week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11887
Filed 5-23-86; 12:56 pm]
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Rules and Regulations

Federal Register
Vol. 51, No. 101
Tuesday, May 27, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1965

Sale of Unsuitable Single Family Housing (SFH) Inventory Property

Correction

In FR Doc. 86-11331, beginning on page 18435 in the issue of Tuesday, May 20, 1986, the effective date should have read "May 20, 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-1, Amdt. 39-5311]

Airworthiness Directives; General Electric Company (GE) CF6-50 and -45 Turbofan Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the removal from service of certain high pressure turbine rotor (HPTR) stage 1 disks installed on certain GE CF6-50 and -45 turbofan engines. The AD is needed to prevent crack initiation in the HPTR stage 1 disk forward embossment radii which could result in an uncontained HPTR stage 1 disk failure.

DATES: Effective June 29, 1986. Compliance required as indicated in the body of the AD. Incorporation by Reference—Approved by the Director of the Federal Register on June 29, 1986.

ADDRESSES: The applicable service bulletin (SB) may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215.

A copy of the SB is contained in the Rules Docket, Number 86-ANE-1, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Blazey, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7090.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which would require the removal from service of certain HPTR stage 1 disks installed on certain GE CF6-50 and -45 turbofan engines was published in the Federal Register on March 11, 1986, (51 FR 8332).

The proposal was prompted by the finding that certain CF6-50 and -45 HPTR stage 1 disks may contain forward embossment radii contours which do not conform to the FAA approved type design. This condition adversely affects the fatigue strength of the disk, requiring its removal from service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. The commenter was in agreement with the proposal. Accordingly, the proposal is adopted without change to the compliance requirements.

Conclusion

The FAA has determined that this regulation involves 99 HPTR stage 1 disks installed in some CF6-50 and -45 engines, core modules, or stocked as spares, and that the approximate cost per disk is $99,000. It was also determined that a substantial number of small entities are not affected as these engines are installed on large transport aircraft, the operators of which are not small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulation (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric (GE) CF6-50 and -45 turbofan engines.

To prevent possible failure of high pressure turbine rotor (HPTR) stage 1 disk, accomplish the following:

(a) Remove from service, in accordance with General Electric (GE) Alert Service Bulletin (SB) A72-650, Revision 1, dated January 1, 1986, those HPTR stage 1 disks identified by specific serial numbers listed in GE Alert SB A72-650, Revision 1, under Paragraph 2., Table 1, for inspection to determine conformance with the FAA approved type design.

(b) Compliance required as follows:

(1) For those disks with less than 5,400 flight cycles since new on the effective date of this AD, comply prior to the accumulation of 5,500 flight cycles

(2) For those disks with 5,400 or greater flight cycles since new on the effective date of this AD, comply within the next 10 flight cycles.

(c) Those HPTR stage 1 disks which do not conform to the FAA approved type design will be retired from services.

(d) Those HPTR stage 1 disks which conform to the FAA approved type design may be returned to service.

Note: For the purpose of this AD, the number of flight cycles equals the number of

flights that involve an engine operating sequence consisting of engine starting, takeoff operation, landing and engine shutdown.

Aircraft may be ferried in accordance with the provisions of FAR Part 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office may adjust the compliance time specified in this AD.

GE Alert SB A72-253, Revision 1, dated January 1, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

This amendment becomes effective on June 23, 1986.

Issued in Burlington, Massachusetts, on May 8, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-11821 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-7]

Alteration of Control Zone and Transition Area; Muncie, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Muncie, Indiana, control zone and transition area to accommodate increasing turbojet operations at Delaware County-Johnson Field, Indiana.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

This docket action is being processed simultaneously along with control zone/transition area alterations at Alexandria and Anderson, Indiana, Docket Nos. 86-AGL-5 and 86-AGL-6, respectively.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heape, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 25, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Muncie, Indiana, control zone and transition area (51 FR 10225).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.8B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Muncie, Indiana, control zone and transition area to accommodate increasing turbojet operations at Delaware County-Johnson Field. The control zone is being expanded to the southeast and north and is being reduced to the northwest. The transition area radius is being expanded 1.5 miles and all extensions are being deleted.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C 106(g) (Revised Pub. L. 97-449), January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Muncie, IN [Amended]

Within a 5-mile radius of Delaware County-Johnson Field (lat. 40°14'31" N., long. 85°23'47" W.); within 3 miles each side of the Muncie VORTAC 125 radial, extending from the 5-mile radius zone to 8.5 miles southeast of the VORTAC; within 3 miles each side of the Muncie VORTAC 014 radial, extending from the 5-mile radius zone to 8.5 miles north of the VORTAC; and within 3 miles each side of the Muncie VORTAC 321 radial, extending from the 5-mile radius zone to 8.5 miles northwest of the VORTAC. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Muncie, IN [Amended]

That airspace extending upward from 700 feet above the surface, within an 8.5-mile radius of Delaware County-Johnson Field (lat. 40°14'31" N., long. 85°23'47" W.).

Issued in Des Plaines, Illinois, on May 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-11823 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-5]

Alteration of Transition Area—Alexandria, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Alexandria, Indiana, transition area to accommodate an existing VOR Runway 27 Standard Instrument Approach Procedure (SIAP) to Alexandria, Indiana, Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

This docket action is being processed simultaneously along with control zone/transition area alterations at Anderson and Muncie, Indiana, Docket Nos. 86-AGL-6 and 86-AGL-7, respectively.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7300.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 25, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Alexandria, Indiana, transition area (51 FR 10224).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Alexandria, Indiana, transition area to accommodate an existing VOR Runway 27 SIAP to Alexandria, Indiana, Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

Alexandria, IN [Amended]

That airspace extending upward from 700 feet above the surface, within a 5 mile radius of Alexandria Airport (lat. 40°14'00" N., long. 85°38'15" W.) and within 1.5 miles each side of the 090° bearing from the airport, extending from the 5 mile radius area to 13 miles east of the airport excluding that portion which overlies the Anderson, Indiana, and Muncie, Indiana, transition areas.

Issued in Des Plaines, Illinois, on May 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-11824 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-6]

Alteration of Control Zone and Transition Area, Anderson, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Anderson, Indiana, control zone and transition area to accommodate increasing turbojet operations at Anderson Municipal Airport.

The intent of this action is to eliminate the extensions to the control zone and transition area.

This docket action is being processed simultaneously along with control zone/transition area alterations at Alexandria and Muncie, Indiana, Docket Nos. 86-AGL-5 and 86-AGL-7, respectively.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7300.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 25, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Anderson, Indiana, control zone and transition area (51 FR 10226).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Anderson, Indiana, control zone and transition area to accommodate increasing turbojet operations at Anderson Municipal Airport. This action eliminates all control zone and transition area extensions which were found to be unwarranted in accordance with present control zone and transition area criteria.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Anderson, IN [Amended]

Within a 5-mile radius of Anderson Municipal Airport (lat. 40°06'32" N., long. 85°36'57" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Anderson, IN [Amended]

That airspace extending upward from 700 feet above the surface, within an 8.5-mile radius of Anderson Municipal Airport (lat. 40°06'32" N., long. 85°36'57" W.).

Issued in Des Plaines, Illinois, on May 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-11822 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-9]

Alteration of Transition Area; Bellaire, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Bellaire, Michigan, transition area to accommodate a new VOR Runway 2 Standard Instrument Approach Procedure (SIAP) to Antrim County Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 25, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Bellaire, Michigan, transition area (51 FR 10228).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Bellaire, Michigan, transition area to accommodate a new VOR Runway 2 SIAP to Antrim County Airport. The alteration consists of an extension from the 11-mile radius to 27 miles southwest of the airport with a 4.75 mile width each side of the Traverse City VORTAC 037 radial.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Bellaire, MI [Amended]

That airspace extending upward from 700 feet above the surface, within an 11-mile radius of Antrim County Airport (lat. 44°59'19" N., long. 85°11'54" W.) and within 3 miles each side of the 166° bearing from the airport and extending from the 11-mile radius area to 14 miles south of the airport and within 4.75 miles each side of the Traverse City, MI VORTAC 037 radial, extending from the 11-mile radius to 27 miles southwest of the airport, excluding that portion which overlies the Traverse City, Michigan, transition area.

Issued in Des Plaines, Illinois, on May 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-11825 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-10]

Alteration of Transition Area; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Rice Lake, Wisconsin, transition area to accommodate a new VOR Runway 36 Standard Instrument Approach Procedure (SIAP) to Rice Lake Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 25, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Rice Lake, Wisconsin, transition area (51 FR 10227).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Rice Lake, Wisconsin, transition area to accommodate a new VOR Runway 36 SIAP to Rice Lake Municipal Airport. The alteration consists of an 8.5 miles expansion to the south of the VOR from the 5-mile radius with a width of 3 miles each side of the VOR 174 radial.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rice Lake, WI [Amended]

Add the words "; and within 3 miles each side of the Rice Lake VOR 174 radial extending from the 5-mile radius area to 8.5 miles south of the VOR." to the end of the present transition area description.

Issued in Des Plaines, Illinois, on May 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86–11826 Filed 5–23–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–ANM–22]

Alteration of Billings, MT, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the size of the Billings, Montana, Control Zone. During an annual review, it was determined that the Billings Control Zone could be reduced in size and still contain the instrument approaches to the Logan Field Airport.

EFFECTIVE DATES: 0901 UTC, July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM–535, Federal Aviation Administration, Docket No. 86–ANM–22, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

On February 28, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the size of the Billings, Montana, Control Zone (51 FR 7061).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the size of the Billings, Montana, Control Zone to contain all Instrument Flight Rule arrivals and departures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

PART 71—[AMENDED]

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.171 is amended as follows:

Billings, Montana [Revised]

Within a 5-mile radius of the Logan International Airport (45°48'29" N lat./108°32'25" W long.) and within 2 miles each side of the 113° bearing from the airport extending from the 5-mile radius area to 7 miles east of the airport; and that airspace between the 220° bearing clockwise to the 170° bearing from the airport extending from the 5-mile radius area to a 6-mile radius.

Issued in Seattle, Washington, on May 14, 1986.

Temple H. Johnson, Jr.,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-11555 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 385

[Docket No. 60501-6091]

Export Licensing; Controls on Exports to South Africa; Information Collection Control Numbers

AGENCY: Export Administration, Commerce.

ACTION: Final rule; notice of OMB approval.

SUMMARY: The Export Administration Regulations (EAR) contain provisions relating to the licensing of all exports to the South African military and police and prohibits the exports of all computers, computer software, or goods or technology to service computers to all apartheid enforcing entities of the South African Government. The final rule containing these provisions was published in the Federal Register on November 18, 1985 (50 FR 47363) with an effective date of October 11, 1985. This document adds the Office of Management and Budget (OMB) control number 0625-0156 to the information collection requirements of the rule.

DATE: The regulation became effective on October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Betty Ferrell, Regulations Branch, Export Administration, Telephone: (202)377-3856.

SUPPLEMENTARY INFORMATION: OMB control number 0625-0156.

As required by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, Export Administration submitted this regulation to OMB for approval of the reporting requirement on prohibiting the export of computers, computer software, or goods or technology to service computers to all apartheid enforcing entities of the South African Government, even though the export could be made under general license to other parties in South Africa. A license authorizing resale within the Republic of South Africa or Namibia, may also require identification of customers to whom the ultimate consignees have sold the computers, with further identification of customers at six month intervals until all computers exported under the license have been sold. As stated in the final rule, the approval of this reporting requirement was pending with OMB. On December 30, 1985, OMB approved this collection of information assigned control number 0625-0156.

List of Subjects in 15 CFR Part 385

Communist countries, Exports, Reporting and recordkeeping requirements.

Accordingly, Part 385 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 385—[AMENDED]

1. The authority citation for 15 CFR Part 385 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app 2401 *et. seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 99-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. OMB control number 0625-0156 is added to the end of § 385.4 to read as follows:

§ 385.4 Country Groups T & V.

* * * * *

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 0625-0156)

Dated: May 20, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-11741 Filed 5-23-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 85F-0298]

Indirect Food Additives; Paper and Paperboard Components; Slimicide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *n*-dodecylguanidine hydrochloride as a slimicide in paper and paperboard intended for use in contact with food. This action responds to a petition filed by Betz Laboratories, Inc.

DATES: Effective May 27, 1986; objections by June 26, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFT-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 13, 1985 (50 FR 37437), FDA announced that a petition (FAP 5B3947) had been filed by Betz Laboratories, Inc., Trevose, PA 19047, proposing that § 176.300 *Slimicides* (21 CFR 176.300) be amended to provide for the safe use of *n*-dodecylguanidine hydrochloride as a slimicide in paper and paperboard intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before June 26, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.300(c) by alphabetically inserting a new item in the list of substances to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* * *
n-Dodecylguanidine hydrochloride.	At a maximum level of 0.50 pound per ton of dry weight fiber.
* * *	* * *

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11765 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR PART 177

[Docket No. 85F-0518]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethyleneacrylic acid copolymers containing up to 25 weight-percent of polymer units derived from acrylic acid in contact with food. This action responds to a petition filed by the The Dow Chemical Co.

DATES: Effective May 27, 1986; objections by June 26, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 9, 1985 (50 FR 50233), FDA announced that a petition (FAP 5B3677) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 177.1310 *Ethylene acrylic acid copolymers* (21 CFR 177.1310) be amended to provide for the safe use of ethylene-acrylic copolymers containing up to 25 weight-percent of polymer units derived from acrylic acid in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before June 26, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 177.1310 by revising paragraphs (a) and (b), by redesignating existing paragraph (c) as paragraph (d), and by adding new paragraph (c) to read as follows:

§ 177.1310 Ethylene-acrylic acid copolymers.

* * * * *

(a) The ethylene-acrylic acid copolymers consist of basic copolymers produced by the copolymerization of ethylene and acrylic acid such that the finished basic copolymers contain no more than:

(1) 10 weight-percent of total polymer units derived from acrylic acid when used in accordance with paragraph (b) of this section; and

(2) 25 weight-percent of total polymer units derived from acrylic acid when used in accordance with paragraph (c) of this section.

(b) The finished food-contact articles made with no more than 10 percent total polymer units derived from acrylic acid, when extracted with the solvent or solvents characterizing the type of food and under the conditions of its intended use as determined from tables 1 and 2 of § 176.170(c) of this chapter, yield net acidified chloroform-soluble extractives not to exceed 0.5 milligram per square inch of food-contact surface when tested by the methods prescribed in § 177.1330(c), except that net acidified chloroform-soluble extractives from paper and paperboard complying with § 176.170 of this chapter may be corrected for wax, petrolatum, and mineral oil as provided in § 176.170(d)(5)(iii)(b) of this chapter. If the finished food-contact article is itself the subject of a regulation in Parts 174, 175, 176, 177, 178 and § 179.45 of this chapter, it shall also comply with any specifications and limitations prescribed for it by that regulation.

Note.—In testing the finished food-contact article, use a separate test sample for each extracting solvent.

(c) The finished food-contact layer made with basic copolymers containing more than 10 weight-percent but no more than 25 weight-percent of total polymer units derived from acrylic acid and with a maximum thickness of 0.0025 inch (2.5 mils) may be used in contact with food types I, II, IVB, VIA, VIB, VIIB, and VIII identified in table 1 of § 176.170(c) of the chapter under conditions of use B through H as described in table 2 of § 176.170(c) of this chapter, and in contact with food types III, IVA, V, VIIA, and IX identified in table 1 of § 176.170(c) of this chapter under conditions of use E through G as described in table 2 of § 176.170(c) of this chapter.

* * * * *

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11700 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0360]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of butyric acid, 3,3-bis(3-*tert*-butyl-4-hydroxyphenyl)ethylene ester as an antioxidant for olefin polymers. This action responds to a petition filed by American Hoechst Corp.

DATES: Effective May 27, 1986. Objections by June 26, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 24, 1981 (46 FR 57645), FDA announced that a petition (FAP 1B3584) had been filed by American Hoechst Corp., Somerville, NJ 08876, proposing that 21 CFR 178.2010 of the food additive regulations be amended to provide for the safe use of butyric acid, 3,3-bis(3-*tert*-butyl-4-hydroxyphenyl)ethylene ester as an antioxidant and/or stabilizer for olefin polymers by removing current restrictions on food type and temperature.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before June 26, 1986 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a

waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives; Food packaging; Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by revising the entry for "Butyric acid, 3,3-bis(3-*tert*-butyl-4-hydroxyphenyl)ethylene ester" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
Butyric acid, 3,3-bis(3-*tert*-butyl-4-hydroxyphenyl)ethylene ester (CAS Reg. No. 32509-66-3).	For use only: 1. At levels not to exceed 0.5 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1 and 3.2 except that when used in contact with foods described as types III, IV-A, V, VII-A, and IX in Table 1 of § 176.170(c) of this chapter, the olefin copolymers may only be used under conditions of use E, F, and G set forth in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.5 percent by weight of olefin polymers complying with § 177.1630(e) of this chapter, items 3.1, 3.1, or 3.2 (where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight-percent of polymer units derived from propylene). 3. At levels not to exceed 0.2 percent by weight of olefin polymers complying with § 177.1630(e) of this chapter, items 2.1, 2.2, 2.1, and 2.2.

* * * * *

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11764 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 883

[Docket No. R-86-1292; FR-1675]

Section 8 Housing Assistance Payments Program—State Housing Agencies

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This rule corrects an erroneous cross reference in 24 CFR Part 883—Section 8 Housing Assistance Program—State Housing Agencies.

DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Grady Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: 24 CFR 883.406(b) deals with the possible effect that delays during the period an assisted project is being constructed or rehabilitated may have on section 8 contract rents. Through an error, reference is made in the paragraph to "paragraph (d) of this section". The reference should be to "§ 883.305(b)(2)".

This rule makes the necessary correction, which is technical only and is not intended to have any substantive effect, since the rule as amended on March 26, 1986 (48 FR 12709) was originally intended to make the same cross reference as this document supplies. (This conclusion is supported by the parallel provisions found in Part 880. In § 880.401(b), a cross-reference correctly identifies § 880.204(b)(2) as the provision stating the grounds for allowing an increase in contract rents where there are construction delays. Section 880.401(b) is parallel to § 883.406(b), the rule corrected here, and § 880.204(b)(2) is parallel to the corrected cross-reference provision—§ 883.305(b)(2).)

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 12036); under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program number is 14.156.

Under 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 24 CFR Part 883

Grant programs—Housing and community development, Rent subsidies, New construction and substantial rehabilitation.

Accordingly, 24 CFR Part 883 is amended to read as follows:

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

1. Paragraph (b) of § 883.406 is revised to read as follows:

§ 883.406 Construction or rehabilitation period.

* * * * *

(b) Delays. Extensions of time may be granted for the reasons specified in the Agreement. However, contract rents will be increased only for the reasons stated in § 883.305(b)(2) of this part.

* * * * *

Dated: May 19, 1986.

Silvia J. Baltodanonis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-11798 Filed 5-23-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8062]

Procedure and Administration; Definition of Partnership Item; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains two corrections to the final regulations that were published in the Federal Register on April 18, 1986 (51 FR 13212). Those regulations, issued as Treasury Decision 8062, relate to the definition of "partnership item" under the rules for the tax treatment of partnership items.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3318 (not a tollfree number).

SUPPLEMENTARY INFORMATION:

Background

Section 6231(a)(3) of the Internal Revenue Code provides that a "partnership item" is any item that must be taken into account for a taxable year of a partnership under any income tax provision to the extent that the regulations provide that the item is more appropriately determined at the partnership level rather than at the partner level. Treasury Decision 8062 set forth items that the Internal Revenue Service considers to be more appropriately determined at the partnership level.

Need for Correction

As published, T.D. 8062, in two locations, used the word "determination" when the intended word was "item".

Correction of Publication

Accordingly, the publication of Treasury Decision 8062, which was the subject of FR Doc. 86-8762, is corrected as follows:

§ 301.6231 [Corrected]

Paragraph 1. In § 301.6231(a)(3)-1, on page 13214, third column, in the 9th line of the flush material following paragraph (c)(2)(iv), the language "determination is not a partnership item." is removed and the language "item is not a partnership item." is added in its place.

§ 301.6231 [Corrected]

Par. 2. In § 301.6231(a)(3)-1, on page 13215, first column, in the first sentence of the flush material that follows paragraph (c)(3)(iv), the language "therefore, the determination" is removed and the language "therefore, that item" is added in its place.

Donald E. Osteen,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-11795 Filed 5-23-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service is amending 30 CFR 218.154 to correct cross-references to certain paragraphs in 30 CFR 250.12 resulting from previous amendments to that regulation.

EFFECTIVE DATE: May 27, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION:

I. Background

Revisions to regulations in 1979 resulted in paragraphs (c) and (d) of 30 CFR 250.12 being redesignated as paragraphs (a) and (b). (44 FR 61668 October 26, 1979). In addition, a new paragraph (c) was added to 30 CFR 250.12 in 1984 covering deepwater leases. (49 FR 17449 April 24, 1984). The current 30 CFR 218.154 contains references to certain 30 CFR 250.12 paragraphs numbered prior to the 1979 and 1984 revisions. The following amendments to 30 CFR 218.154 are necessary to correct the cross-references to 30 CFR 250.12:

Paragraph	Current reference	Correct reference
218.154(a)	30 CFR 250.12(c).	30 CFR 250.12(a)(1)(ii).
	30 CFR 250.12(d)(1).	30 CFR 250.12(a)(1)(iii).
	30 CFR 250.12(d)(4).	30 CFR 250.12(a)(1)(iv).
218.154(b)(1)	30 CFR 250.12(d)(1).	30 CFR 250.12(b)(1).
	None	30 CFR 250.12(c).
218.154(b)(2)	30 CFR 250.12(d)(3).	30 CFR 250.12(a)(1)(i).
	None	30 CFR 250.12(c).

II. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are technical corrections only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)].

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

Under authority of the Secretary of the Interior contained in 43 U.S.C. 1334,

30 CFR Part 218 is hereby amended as set forth below:

Dated: May 14, 1986.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

Subchapter A—Royalty Management

PART 218—[AMENDED]

30 CFR 218 is amended as follows:

1. The authority citation for Part 218 is revised as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396g), as amended; the Act of February 26, 1931 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), as amended; Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; Secretarial Order 3087, as amended; The Indian Mineral Development Act of 1982 (25 U.S.C. 2010 *et seq.*); and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

2. In § 218.154, paragraphs (a) and (b) are revised to read as follows:

§ 218.154 Effect of suspensions on royalty and rental.

(a) If under the provisions of 30 CFR 250.12(a)(1) (ii), (iii) or (iv), the Director, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

(b) The lessee shall not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension if the Director:

(1) Under the provisions of 30 CFR 250.12 (b)(1) or (c) approves, at the request of a lessee, the suspension of operations or production, or both, or

(2) Under the provisions of 30 CFR 250.12 (a)(1)(i) or (c) suspends any operation, including production.

* * * * *

[FR Doc. 86–11749 Filed 5–23–86; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments, submitted on August 3, 1984 and revised on October 12, 1984, pertain to the cancellation of surety bonds on undisturbed areas of permits which are not in compliance with all contemporaneous reclamation standards.

After providing for public comment and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving them. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this action. This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 27, 1986.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kentucky program (47 FR 21404–21435) on May 18, 1982. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the May 18, 1982 **Federal Register**. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Amendments

On August 3, 1984, Kentucky submitted a number of proposed amendments for OSMRE review (Administrative Record No. KY–592). These materials included Senate Bill 285, revising Sections 350.066 through 350.070 of the Kentucky Revised Statutes (KRS), and a new subchapter (405 KAR 10:035) of the Kentucky Administrative Regulations (KAR) to implement the statutory revisions. On August 31, 1984, OSMRE announced receipt of the proposed amendments and opened the public comment period (49 FR 34529–34530). Since only one person expressed an interest in a public hearing, a public meeting was held on September 25, 1984 in place of the scheduled hearing. A summary of the meeting can be found in the Kentucky Administrative Record (KY–603). On October 12, 1984, Kentucky submitted a revised version of 405 KAR 10:035, partially in response to concerns raised at the public meeting (Administrative Record No. KY–604). Accordingly, on January 23, 1985, OSMRE reopened the public comment period for 15 days (50 FR 2998).

On June 5, 1985, OSMRE notified Kentucky of its concerns with the proposed amendments and requested further clarification, which the Commonwealth provided by letter of July 24, 1985 (Administrative Record No. KY–652).

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendments, as submitted on August 3, 1984 and revised on October 12, 1984, are no less stringent than SMCRA and no less effective than the Federal regulations.

Senate Bill 285 amends KRS 350.066 through 350.070 to provide that, upon receipt of a copy of a notice of noncompliance issued to a permittee for failure to maintain contemporaneous reclamation, a surety may notify the permittee that surety on any area disturbed after thirty days from the

effective date of the surety's notice may be refused unless the violation is abated. The bill further provides that the surety's notice shall become effective upon approval by the Natural Resources and Environmental Protection Cabinet ("NREPC" or "Cabinet") and that within thirty days of receipt of a notice of cancellation, the Cabinet shall: (1) Accept a suitable substitute bond or bonds, (2) amend the permit to delete the unbonded acreage or (3) revoke the permit for lack of bond.

The proposed regulations at 405 KAR 10:035 implement the provisions of Senate Bill 285 by requiring two separate notices with different effective dates. After issuance of a notice of noncompliance for failure to maintain contemporaneous reclamation, the surety may send a notice ("notice of intent to cancel") to the permittee and the Department of Surface Mining Reclamation and Enforcement ("Department") of its intent to request cancellation of bond coverage on any area disturbed after thirty days from the effective date of the surety's notice of intent to cancel, if the violation is not abated by that date. The effective date of this notice is the date of receipt by the insured or seven days after mailing, whichever occurs first. If the surety desires to cancel the bond after the thirty-day notice period, it must send a separate notice of cancellation to the permittee and the Department. This notice does not take effect until approved by the Cabinet. The regulations further provide that the Cabinet shall approve the notice of cancellation only if the operator has not abated the violation, the surety has complied with all notice requirements and the Cabinet has (1) revoked the permit, (2) deleted the area subject to cancellation from the permit, or (3) accepted and approved a substitute bond. To ensure that there is no confusion as to the extent of residual bond coverage, 405 KAR 10:035 section 1(2)(b)(8) requires that the surety acknowledge in the notice of cancellation that it will not be relieved of liability for areas disturbed prior to the State's approval of the cancellation, i.e., liability is not limited to lands disturbed prior to thirty days following the effective date of the notice of intent to cancel.

While the permittee may request a hearing on any order revoking the permit or revising its area, 405 KAR 10:035 section 2(2)(b) provides that the order shall be affirmed unless the permittee can establish that bond coverage was not cancelled and that the violation was abated at the time the order was issued, or that a substitute bond was approved by the Cabinet. At 405 KAR 10:035 section 3, Kentucky also forbids any release of bond after cancellation until the entire area originally covered by the bond has been reclaimed in accordance with the criteria and requirements of 405 KAR 10:040 section 2, unless a substitute bond is obtained.

The Federal regulations at 30 CFR 800.20(b) allow the cancellation of surety bond coverage on undisturbed lands upon request of the permittee, if approved by the regulatory authority. They also require that the regulatory authority decide whether to approve such a request within thirty days after receipt of a notice of cancellation. The regulations proposed by Kentucky (405 KAR 10:035 section 3) similarly require the Cabinet to act upon a notice of cancellation within thirty days of receipt. Therefore, while there is no direct Federal counterpart to this proposed amendment, the Director finds that Senate Bill 285 and 405 KAR 10:035, as submitted on August 3, 1984 and revised on October 12, 1984, are no less stringent than the requirements of section 509 of SMCRA and no less effective than the Federal regulations concerning bonding at 30 CFR Part 800.

IV. Public Comment

The Director solicited public comments on the proposed amendments by Federal Register notice published on August 31, 1984 (49 FR 34529–34530) and on revisions to those amendments by notice in the January 23, 1985 Federal Register (50 FR 2996). One person requested a public hearing, in response to which OSMRE held a public meeting on September 25, 1984, which was attended by two individuals, Leon Ellis and Mark McGraw, representing one surety company. A summary of the meeting appears in the Kentucky Administrative Record (KY–603). During the two comment periods (August 31, 1984 through October 1, 1984 and January 23, 1985 through February 7, 1985), OSMRE received written comments from the Surety Association of America and from Thomas J. FitzGerald. Comments of the latter party were submitted on behalf of the Kentucky Governmental Accountability Project of the Kentucky Resources Council, the Kentucky Conservation Committee and the Cumberland Chapter of the Sierra Club.

A summary of the comments received and the Director's response to them appears below.

1. The Surety Association of America states that the operator should be barred from disturbing additional land immediately upon receipt of the notice of noncompliance and that sureties should have the unilateral right to cancel a bond (without the prior approval of the Cabinet) by serving proper notice to the obligee and the principal. Mr. Ellis and Mr. McGraw also reiterated the latter point in the public meeting. As discussed in the Director's Findings section of this notice, the Federal regulations at 30 CFR 800.20(b) require that any proposed cancellation of a surety bond take effect only upon approval by the regulatory authority. In addition, the Director believes that the nature of the remedial action specified in any notice of noncompliance for noncontemporaneous reclamation is best determined on a site-specific basis at the discretion of the regulatory authority. An operator may be capable of both continued mining and timely abatement of the violation. Under such circumstances, barring the disturbance of any additional area might be inappropriate.

2. Mr. Ellis and Mr. McGraw objected to the requirement that the surety serve notice on the permittee by certified mail, stating that regular mail should be sufficient, or that provisions should be made for situations where certified service could not be made. In the revised version of 405 KAR 10:035 section 1(1)(b) submitted October 12, 1984, Kentucky has retained the requirement that both notices be sent to the permittee by certified mail; however, it has provided that the effective date of the notice of intent to cancel shall be the date of receipt by the permittee or seven days after mailing, whichever occurs first. In addition, the effective date of the notice of cancellation is dependent only upon the date of approval by the Cabinet, not the date of receipt by the permittee. Therefore, the commenter's objections have been addressed by the State.

3. Mr. Ellis and Mr. McGraw state that the length of time between the surety's mailing of a notice of cancellation and the Cabinet's approval of that notice is unknown and that the operator could continue to increase the area of disturbance and the surety's liability during the processing period. The Director agrees with this statement, but he finds that it is not in conflict with or less effective than any Federal requirement.

4. Mr. Ellis and Mr. McGraw expressed concern that certain provisions of 405 KAR 10:035 section 3, which requires that the bond for the entire permitted area at the time of cancellation be forfeited if the permit is revoked, will act as a disincentive to

sureties considering use of this amendment.

Without evaluating the validity of the commenters' concern, the Director finds that these provisions neither conflict with nor are no less effective than any Federal requirement.

5. Mr: Ellis and Mr. McGraw state that the escrow provisions of the State bond forfeiture program are unworkable and inequitable. Since this amendment does not involve the escrow provisions of the State forfeiture program, the Director is not addressing this comment.

6. Mr. FitzGerald states that Senate Bill 285 is internally inconsistent with respect to when bond coverage actually ceases and that the attempt of 405 KAR 10:035 to resolve this conflict is subject to attack as being *ultra vires*, especially under the provisions of Kentucky House Bill 334, which, Mr. FitzGerald alleges, strictly prohibits regulations from interpreting or expanding upon statutes. Specifically, he states that the statute does not clearly authorize the use of two separate notices. The Director agrees that the statute contains ambiguities, but he believes that the proposed regulations reasonably harmonize these differences and that no irreconcilable conflicts exist. In addition, the Director evaluates proposed State program amendments only for consistency with the approved State program, SMCRA and the Federal regulations, not for consistency with any State statutes (such as House Bill 334) or regulations governing the issuance of State regulations in general. Until otherwise adjudicated, the Director presumes that all regulations have been or will be promulgated in accordance with all applicable State legal requirements.

7. Mr. FitzGerald also states that Senate Bill 285 is arbitrary, unduly punitive and inconsistent with Federal law in that it has the effect of categorically limiting the time for abatement of a noncontemporaneous reclamation violation to thirty days without regard to conditions beyond the operator's control. The Director does not agree. The statute and proposed regulations do not alter the abatement periods available to the operator; they provide only that the surety may cancel bond coverage on undisturbed areas if the violation has not been abated by the time the Cabinet acts upon the surety's notice of cancellation. Although the time period during which the operator may abate the violation and avoid bond cancellation is indefinite, it may frequently be shorter than the time period for abatement specified in the notice of noncompliance. However, the Director finds that such provisions do not conflict with and are not less effective than the Federal requirements.

8. Mr. FitzGerald states that the provisions of this amendment requiring that, after cancellation, the surety remain obligated to the full extent of the bond, even where the Cabinet deletes all undisturbed acreage from the permit, presents an irreconcilable conflict with KRS 350.070(1), which requires that the Cabinet release the bond for each acre by which a permit is reduced. The Director is not convinced that a conflict exists, since KRS 350.070(1) applies to permit revision applications submitted by the permittee, not mandatory deletions by the Cabinet, and since Senate Bill 285 would take precedence by virtue of its more recent origin. Furthermore, even if the provisions of KRS 350.070(1) should prevail, the proposed amendment would still be no less effective than the Federal requirements since the Federal regulations at 30 CFR 800.20(b) and 800.15(c) allow the cancellation of surety bond coverage on undisturbed areas, with a concomitant reduction in bond amount upon approval by the regulatory authority.

9. Mr. FitzGerald expresses concern that, while the proposed amendment does not prohibit the permittee from further disturbing areas *not* deleted from the permit area, it does exempt the surety from any liability for such disturbances. The Director finds that the commenter is misinterpreting the term "disturbed area" and defined at 405 KAR 7:020 section 1(30) and is misreading the statute, which states that "Nothing contained herein shall be construed to relieve the surety of its liability for areas disturbed within the thirty day notice period. The surety shall remain obligated for the full extent of the bond for reclamation of all areas disturbed prior to the Cabinet's approval of the cancellation." The statute provides no liability exemption for disturbed areas redisturbed after cancellation; indeed, such redisturbance is a necessary part of reclamation. Proposed 405 KAR 10:035 section 3(1) provides that the Cabinet shall not release any portion of a bond for a permit area or increment thereof after cancellation unless and until all disturbed areas on the permit or increment have been reclaimed in accordance with the criteria and requirements of 405 KAR 10:040, or until a substitute bond is filed and approved. The definition of "disturbed area" at 405 KAR 7:020 section 1(30) provides that, once disturbed, an area remains classified as disturbed until reclamation is complete and the performance bond is released. Hence, the commenter's concerns are unfounded.

10. Mr. FitzGerald also states that the provisions of the proposed amendment which would allow cancellation of the bond and revocation of the permit to occur simultaneously without prior hearing conflict with KRS 350.028(4), and that an operator might thus be able to continue operating without bond while challenging the revocation of his permit. The Director believes that this scenario will not occur since KRS 350.028(4), which requires a public hearing prior to permit revocation, applies only to permit revocation proceedings resulting from pattern of violations determinations. While the general provisions of 405 KAR 7:090 section 1 may be interpreted as requiring a hearing prior to any permit revocation, proposed 405 KAR 10:035 section 2 specifically provides otherwise.

V. Director's Decision

The Director, based on the above findings, is approving the proposed amendments as submitted on August 3, 1984 and revised on October 12, 1984. The Federal rules at 30 CFR Part 917 are being amended to implement this decision.

VI. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

BEST COPY AVAILABLE

2. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 20, 1986.

James W. Workman,
Deputy Director, Operations and Technical Services.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.15 is amended by adding a new paragraph (s) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(s) The following amendments concerning surety bond cancellation on permits in noncompliance with contemporaneous reclamation requirements, as submitted on August 3, 1984 and revised on October 12, 1984, are approved, effective May 27, 1986. Revisions to the Kentucky Revised Statutes at 350.060 through 350.070 as contained in Senate Bill 265, and the addition of a new subchapter to the Kentucky Administrative Regulations at 405 KAR 10:035.

[FR Doc. 86-11769 Filed 5-23-86; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6714]

Suspension of Community Eligibility; Withdrawal

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule, withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing the final rule published on Tuesday, May 13, 1986, 51 FR 17483 due to technical error. The communities listed in this rule that are in noncompliance on May 15, 1986, will be given an additional 30 days to comply with the National Flood Insurance Program (NFIP) regulations of FEMA. Each community will be notified by letter and publication in the Federal Register.

EFFECTIVE DATE: May 27, 1986.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 64.6 [Amended]

2. Section 64.6 is amended by removing the entries added to the table as listed in the rule published at 51 FR 17483.

Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.

[FR Doc. 86-11778 Filed 5-23-86; 8:45 am]

BILLING CODE 6718-03-M

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Proposed Rules

Federal Register
Vol. 51, No. 101
Tuesday, May 27, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0 and 2

Revision to Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 28, 1986 (51 FR 10393), the NRC published for public comment a proposed rule to revise its procedures dealing with ex parte communications and separation of adjudicatory and nonadjudicatory functions. The comment period for this proposed rule is to expire on May 27, 1986. The law firm of Shaw, Pittman, Potts & Trowbridge, on behalf of a number of its electric utility clients, has requested a thirty-day extension of the comment period. The request is granted. However, in view of the importance of the proposed rule and the desirability of developing a final rule as soon as practicable, the NRC will not grant any further extensions of the comment period. The extended comment period now expires on June 26, 1986.

DATE: The comment period has been extended and now expires June 26, 1986. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–3224.

Dated at Washington, DC, this 20th day of May 1986.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Assistance Secretary of the Commission.

[FR Doc. 86–11810 Filed 5–23–86; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–ASO–21]

Proposed Designation of Transition Area, Falmouth, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Falmouth, Kentucky, transition area to accommodate Instrument Flight Rule (IFR) operations at Gene Snyder Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for IFR aeronautical activities.

DATE: Comments must be received on or before: July 15, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 86–ASO–21, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7640.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASO–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specific closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the

Federal Aviation Regulations (14 CFR Part 71) that will designate the Falmouth, Kentucky, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Gene Snyder Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6S dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449), January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. §71.181 is amended as follows:

Falmouth, KY—[New]

That Airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Gene Snyder Airport (Lat. 38°42'12" N., Long. 84°23'33" W); excluding that portion which coincides with the Cincinnati, KY, transition area.

Issued in East Point, Georgia, on May 15, 1986.

Thomas H. Prative,

Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-11831 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-7]

Proposed Amendment to the Fort Huachuca, AZ, Transition Area

AGENCY: Federal Aviation Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the description of the Fort Huachuca, Arizona, transition area. This action will expand the 700 foot transition area west of the Libby AAF/Sierra Vista Municipal Airport (lat. 31°35'00" N., long. 110°20'30" W.). This will provide controlled airspace for military radar approaches to Libby AAF.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 86-AWP-7, Air Traffic Division, P.O. Box 92007 WWPC, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, Air Traffic Division, P.O. Box 92007 Worldway Postal Center, Los Angeles, California 90009. Communication must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Fort Huachuca, Arizona, transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not

warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety/transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 C.F.R. 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Fort Huachuca, AZ—[Amended]

After "Fort Huachuca, AZ. (lat. 31°35'00" N., long. 110°20'30" W.)" add "within 5 miles each side of the Libby AAF VOR 275° radial, extending from the VOR to 12 miles west of the VOR."

Issued in Los Angeles, California, on May 15, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division.

[FR Doc. 86-11830 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-14]

Proposed Establishment of Transition Area; Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Pontiac, Illinois, transition area to accommodate a new VOR-A Instrument Approach Procedure (IAP) to Pontiac Municipal Airport.

DATE: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heape, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-3058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition airspace area near Pontiac, Illinios.

The development of a new VOR-A IAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Pontiac, Illinois [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Pontiac Municipal Airport (Lat. 40°51'30" N., Long. 88°38'15" W.) and within 2 miles either side of the Pontiac VORTAC 035 radial extending from the 5 mile radius southwest to Pontiac VORTAC.

Issued in Des Plaines, Illinois, on May 15, 1986.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 86-11529 Filed 5-23-86; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-13]

Proposed Establishment of Transition Area; Peru, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Peru, Illinois transition area to accommodate a new NDB Runway 36 Standard Instrument Approach Procedure (SIAP) to Illinois Valley Regional—Walter A. Duncan Field.

DATE: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7300.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspect of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-13." The postcard will be dated/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition airspace area near Peru, Illinois.

The development of a new NDB Runway 36 SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Peru, Illinois [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Illinois Valley Regional—Walter A. Duncan Field (Lat. 41°20'58" N., Long. 89°08'14" W.) and within 3 miles either side of the Valley NDB (VYS) 205° bearing extending from the 5 mile radius area to 8.5 miles southwest of the airport.

Issued in Des Plaines, Illinois, on May 13, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-11528 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 204 and 291

[Docket No. 44036, Notice No. 86-4]

Aviation Proceedings; Limitation on Fitness Determination; Revocation of Operating Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to adopt a rule that would automatically revoke the authority of carriers who do not begin operations within one year of being found fit or who, having began and then ceased operations, remain dormant for any subsequent one-year period. It would do so by substituting provisions to this effect for the existing 204.8 and 291.15. These sections currently required a new fitness determination for dormant carriers proposing to start operations, but they do not terminate the authority of carriers that choose not to start service at all or that, having started and stopped, choose not to resume.

DATE: Comments on this proposed rule must be received on or before June 26, 1986.

ADDRESS: Comments should be directed to the Documentary Services Division, Docket 44036, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Room #107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Gaynes or Patricia T. Szrom, Office of Aviation Operations, Department of Transportation, 400 Seventh Street, SW., Room 6402, Washington, DC 20590. (202) 472-5418 or (202) 755-3812.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 44036. The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Assistant Secretary For Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in the rules docket both before and after the closing date for comments. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

Under section 401(r) of the Federal Aviation Act of 1958, as amended, the fitness requirement for those carriers holding a certificate under section 401 is a continuing one. The Department of Transportation has the authority under section 401(r), after notice and hearing, to modify, suspend, or revoke an air carrier's certificate if it is no longer fit, willing, and able to operate, or if it violates any Department reporting requirements to implement the continuing fitness requirement. Similar provisions apply to commuter air carriers and section 418 all-cargo carriers. The FAA and the Department can directly monitor the continuing fitness of carriers that are actually operating in air transportation. Carriers that are not operating, even though they have been certificated or otherwise authorized to provide service for which a fitness finding is needed, pose a special problem of how to review their continuing fitness.

In June 1982, the Civil Aeronautics Board sought to address this problem by amending Parts 204 and 291 of the Board's Economic Regulations.[1]

The new rules, condified as §§ 204.8 and 291.15 of the Regulations, sought to ensure that carriers who had been found fit but who had not operated for two years or more would have their fitness reevaluated before they could begin (or resume) operations.

The Board's action rested on the assumption that when a carrier did not begin service for an extended period following a fitness determination, the carrier's plans that formed the basis of the fitness determination would have greatly changed. The Board thus had "no assurance that the applicant found fit is essentially the same applicant that begins service years later." 45 FR 73068, November 4, 1980. The Board concluded that two years was the longest time that it could reasonably assume that a fitness finding remained valid. Beyond two years, a new fitness evaluation was necessary. New data must be submitted to permit such an evaluation.

In the meantime, though, the carrier would retain its certificate. That is to say, while the carrier could not operate under the certificate until the new fitness review was complete, the certificate itself would not be revoked. The new rules required a fitness reevaluation only when dormant carriers actually planned to begin operations. Thus, nothing in the rules barred dormant certificated carriers without plans to operate from keeping their certificates indefinitely. In short, the rule did not in any way address the intrinsic merits or demerits of certificate dormancy *per se*.

Several factors explain this approach. One important factor was procedural. At the time the new rules were developed, the Board subjected most new certificate applicants to oral evidentiary hearings. These could be complex, lengthy, and burdensome to the applicant, as well as a drain on Board resources. Once an applicant had successfully passed through this process and been certificated, the Board understandably felt that while an extended period of dormancy might cast doubt on a carrier's current fitness to operate, simplified (show cause/non-hearing) procedures were preferred in establishing whether the doubts were justified. The carrier generally should not be subjected to another oral hearing. If the carrier's certificate had been revoked for dormancy and the carrier later reapplied, it would have stood in the guise of a new applicant and been subjected to the rigorous initial certification procedures. The new rules, by leaving the dormant applicant still certificated, provided an acceptable "half-way" approach. By not requiring certification *de novo*, they allowed for much greater administrative flexibility and an easing of the regulatory burden.

They also served the Board's then prevailing regulatory philosophy. Although adopted in 1982, the new rules originated in a Notice of Proposed Rulemaking adopted in October 1980.[2]

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[1] Regulations ER-1307 and ER-1308, 47 FR 52979 and 52981, November 24, 1982.

[2] 45 FR 73065, November 4, 1980.

This was still at a critical early period of airline deregulation. The focus at that time was still very much on relieving to the extent possible the legacy of 40 years of restricted market entry. The Board did not want to appear to detract from deregulatory principles by placing a threat of revocation over new entrants. Revocation for dormancy would have been seen as arguably inconsistent with this philosophy, especially when viewed in the light of the just described procedural burdens places upon new applicants.

Most important, though, at the time the new rules were developed, the Board's experience under deregulation was still relatively limited. The Board had yet to realize the vast numbers of carriers that would secure authority but then not use it. Nor could the Board appreciate the full impact this would have on its ability to perform the continuing fitness function. Thus, the Board as yet had no concrete basis on which to conclude that the mere fact of dormancy might justify a carrier's loss of authority. In these circumstances, it chose to leave aside the issue of dormancy *per se* and to address dormancy only as it related to the imminent starting of operations.

By 1984, the Board's experience had grown considerably. So had the number of dormant certificate holders. The Board realized it was facing an ever increasing problem of simply keeping abreast of the universe of certificated carriers. Unless it could correct this situation, fulfilment of its 401(r) responsibilities would be jeopardized. Gradually, the Board was coming to realize that dormancy *per se* could be a problem. The Board responded with a compromise approach that sought to meet the growing problem without upsetting the policies that had guided the 1982 rules.

Specifically, the Board canvassed its records for carriers that had been dormat for extended periods—generally one year or more. It then sent the carriers letters by certified mail seeking to learn if the carriers still wished to retain their authority. If a carrier responded affirmatively, no further action was taken. If a carrier responded negatively or failed to respond, the Board issued a show cause order to revoke its authority under section 401(r). If a carrier objected, the tentative decision to revoke was rescinded. Only if a carrier did not object did the Board revoke its authority. Objecting carriers did not have to show immediate plans to operate nor submit new fitness data. In essence, they needed do little more than answer their mail. If they did, they theoretically could remain non-operational in perpetuity.

Thus, the new approach retained the spirit of the 1982 regulations in not attacking dormancy *per se*. At the same time, it succeeded in eliminating the limited segment of dormat certificates in the hands of entities that had become moribund or had lost any remaining interest in commencing air operations. As such, it was helpful in reducing somewhat the scope of the universe that the Board had to monitor under section 401(r) of the Act.

The Board followed the approach in a number of 1984 orders.[3] After sunset, having encountered the same difficulties that had motivated the Board, we continued the approach.[4]

Just as with the Board, though, as our experience has grown, so has our awareness of the problems in fulfilling our section 401(r) mandate. While a useful step, the approach developed by the Board in 1984, and that we have since followed, still does not answer our current concerns. We must go further in the direction that the Board had already begun.

For we have come tentatively to conclude what the Board in 1984 was intuitively beginning to sense: namely, that long dormat certificates present inherent problems, and that keeping them alive on mere request, subject to evaluation only when operations are imminent, presents serious risks incompatible with the performance of our continuing fitness review function.

We recently discussed one aspect of this problem at length. In Order 86–1–11, at 3–4, we said:

> [T]here are important fitness concerns which do not arise from a dormant carrier's imminent operations and which section 204.8 does not address—and was not intended to address. Our principal problem in this area had been that certificates of long-dormant carriers have been, and continue to be, a source for those who seek to avoid our fitness requirements by buying an existing but unused certificate. We had to address this problem in a series of regulatory actions earlier this year. *See* Orders 85–5–45 and 85–2–4. We currently are investigating several other incidents of this nature. The common thread in all these cases has been the central role played by a dormant certificate. While we could, of course, continue to respond in an *ad hoc*, after-the-fact fashion, experience has demonstrated the need for administrative action that limits the potential for harm to the public and makes such future corrective responses unnecessary.

It is precisely such action that we propose to implement by this rulemaking.

But our concerns go beyond the problem of potential trafficking in certificates alluded to above. They go to something far more fundamental. For we now have come to realize that in a universe so full of dormant certificates, we simply cannot rely upon a system that leaves retention of a certificate solely to the discretion of a dormant carrier to advise us of developments affecting its certificate authority. In the CAB's and our own desire to ease the reporting burden on certificated carriers—a policy we intend to maintain—we have left ourselves in a position where we often remain uninformed of even the most fundamental changes affecting dormant carriers during the period of their dormancy. In these circumstances, a period of two years after our initial fitness finding now appears to be too long to permit carriers to begin operations without our taking a fresh look at their fitness.

We now believe, based on our own and the CAB's accumulated experience, that after one year, fitness findings for dormant carriers are essentially no longer valid. We have decided that the best way to deal with our section 401(r) responsibilities is to ensure that authority that is supported by stale fitness findings automatically ceases to exist. The device we are proposing here, automatic revocation for dormancy after one year, will give us a key tool to carry out our section 401(r) responsibilities.

Where a certificate has long been dormant, our very ability to monitor the holder's status is seriously compromised. During an extended period of dormancy, carriers tend to undergo substantial changes in management, financial resources, and even compliance disposition. They often fail to comply with our insurance and reporting requirements. They may move their offices (often without notifying us), enter into receivership, or even cease to exist. Meanwhile, they retain their certificates, a retention which implies to the world that they have continued to be found fit by the U.S. Government. The nature of these changes, of course, is not new. Indeed, some of these changes were cited in the rulemaking establishing §§ 204.8 and 291.15. What *is* new is the unforeseenably high number of carriers who have sought authority but then failed to use it.

As of April 1, 1986, there were 288 carriers holding certificates under section 401 or 418. Of these, 103 were dormant. Only 14 of the 103 were

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[3] *See, e.g.*, Orders 84–12–101, 84–12–17, and 84–9–16.

[4] *See*, Orders 86–1–11 and 85–3–77.

certificated within the preceding twelve months. Eliminating from the 103 those carriers whose certificates were in the process of revocation under the Board's 1984 approach, and those carriers who had undergone two-year fitness reviews or other recent evaluations, there still remained over 70 dormant carriers that we would need to monitor. With so many carriers, many or all of which are undergoing the types of changes we described, it has become difficult if not impossible for us to say with confidence that a dormant carrier remains fit. At a time of staff shortages and severe budgetary constraints, we simply cannot oversee so broad a universe of dormant authority and be confident that the public is fully protected.

The Rule

To respond to the problems just described, we are proposing to rescind §§ 204.8 and 291.15 and to establish a new rule whereby all air carriers receiving authority for which a fitness determination is required must either begin operations within one year of its receipt, or be deemed no longer fit and have their authority automatically revoked.

Furthermore, carriers who secure authority, begin operations within the year, but then cease operating would have one year from the date they ceased operations to begin again. If they did not resume, their authority would be revoked. If they sought to resume within the year, they could do so only after notice to the Department. Such notice must include information of any substantial changes in operations as well as in the carrier's management, financial position, or compliance disposition, as prescribed by our regulations. The Department would conduct fitness inquiries where appropriate.

Existing carriers, regardless of when they received their last fitness evaluation, would get one year from the effective date of the rule in which to operate, but they must in every instance file a notice and updated fitness information as just described, before they could begin operations.

The procedures for these notice/information requirements would parallel those currently in effect under §§ 204.8 and 291.15, although the advance filing period would be shortened (from 90 days to 45 days) to ease the burden on carriers actively interested in starting or resuming service. Exemptions from even the shorter period could be granted for good cause shown. While we must provide our staff with an adequate opportunity to review the information we receive and to clarify any unresolved questions, we do not intend our rule to prevent carriers whose continuing fitness can be readily established from quickly resuming operations. Thus, for example, if a carrier had a planned structural reorganization that called for a brief system-wide shutdown and rapid resumption of service, such as within a matter of just a few days, we would expect that an exemption from the 45-day advance filing requirement normally would be available to allow for service to resume as the carrier intended.

By "begin operations", we would mean using any authority of the same type for which fitness findings had been made, *i.e.*, authority of a type that would not represent a "substantial change" under our regulations. Thus, if a carrier had been found fit and received a section 401 certificate for scheduled foreign air transportation but was not serving all of its foreign routes, the rule would not call for revocation of the dormant foreign route authority.[5] But if a carrier had been found fit both for charter and for scheduled foreign air transportation and was only using the charter authority, then the scheduled authority would be revoked. Similarly, if a carrier had been found fit for both section 401 passenger operations and section 418 cargo operations but had not operated under the section 401 certificate, then its passenger authority would be revoked.

Furthermore, we intend "begin operations" to mean actually conducting flights.[6] We do not want to encourage carriers to engage in the various activities associated with providing air service, such as advertising, taking reservations, selling, ticketing etc., solely for the purpose of avoiding revocation at a time when they have no genuine plans to fly.

Saying this, we recognize that a certain amount of lead time is essential before a new or long dormant carrier can put its flights in the air. Where good cause is shown, we will be prepared to grant exemptions from this rule to accommodate the needs of carriers seriously endeavoring to inaugurate air service.

We do not expect to be granting such requests frequently or routinely, however. Our experience has shown that of the 89 previously non-operating carriers certificated since the 1978 Airline Deregulation Act that actually began operating and currently hold authority, 69—nearly 80 percent of the total—inaugurated service within one year of certification.[7] Most of the remaining 20 carriers that eventually operated began within the first half of the second year following certification; they almost certainly were advanced enough in their preparations at the twelve-month mark following certification to have made an adequate showing for an exemption from the start-up rule.

We thus see the new rule as having virtually no negative impact on the carriers that are truly interested in entering the marketplace and commencing operations. The carriers who will be affected—and this is precisely our intent—are those carriers who, while having undergone initial and sometimes subsequent fitness determinations, have simply remained dormant and appear destined to do so for the foreseeable future. In light of the difficulties we described above, when we balance the benefits of keeping alive these long dormant certificates against the costs in terms of our ability to fulfill our continuing fitness role, and the potential harm to the public if we fail in that role, we tentatively conclude that a revocation policy is now essential.

In saying this, we do not mean to imply any weakening in our commitment to the liberal entry principles of deregulation. A critical predicate to our tentative conclusions here is the fundamental change that has occurred between DOT and CAB procedures on certification of new entrants. As we noted above, the CAB subjected new entrants to lengthy and burdensome fitness proceedings. The more streamlined procedures of §§ 204.8 and 291.15 were at least a partial response to this.

The Department has followed an altogether different approach. We have eschewed oral hearing procedures except in the most extraordinary circumstances. We have processed virtually all initial fitness applications on a purely paper record and generally without the multiple rounds of exhibits and briefs associated with formal proceedings. The result has been that new applicants are being certificated

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[5] This does not mean, however, that we might not choose to revoke the authority for other reasons, such as under section 401(g)(3) of the Act.

[6] In this connection, we intend to work closely with the FAA in monitoring the status of previously dormant carriers.

[7] When the CAB adopted §§ 204.8 and 291.15, it naturally had only limited experience on which to base its assessment of the time new carriers normally would need to begin operations. It thus looked to a prominent case, Midway Airlines, which involved an 18 month startup, in concluding that a two year period might be necessary. The experience we have now developed shows that the Midway example was in fact atypical and that a one-year period should be sufficient in nearly all instances to allow time for startup.

quickly and with a minimum of regulatory interference.

The obvious consequence of this simplified approach is that revocation need no longer represent a significant procedural barrier to future entry. A carrier that obtained a fitness determination, failed to operate, and thus lost its authority, could reapply without prejudice. If the authority sought in its new application were comparable to that sought in the old, and if previously submitted materials were still valid, the carrier would have little more to do than what had been required under §§ 204.8 or 291.15. The major distinction would be that until the carrier reapplied, and pending completion of the new certificate process, the carrier would be without a certificate. From a practical standpoint, this should not represent a significant difference to the carrier. In terms of the carrier's ability quickly to enter the marketplace, little will have changed.[8] But it represents a critical difference to the Department, since that is one less dormant certificate we must monitor.

Thus, under the proposed rule, the procompetitive policies of the Act will be preserved. But they will be preserved in a way fully consistent with our duty under the fitness function to protect the traveling and shipping public. This need to balance a liberal entry policy with a heightened vigilance on fitness was at the very heart of the amendments to section 401(r) in the Airline Deregulation Act. What we propose today simply represents an additional mid-course correction, following upon corrective steps already begun by the CAB, and based upon the additional years of deregulation experiance. It is thus no more than a further step designed to achieve the balance that Cngress plainly intended all along.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would result in no net change in reporting burden for certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[9] The ability of such entities to engage in certificate operations essentially will be unaffected by the proposed regulation.

Economic Impact Analysis

Because of the Department's streamlined certification procedures, carriers needing to reapply for certificate authority by virtue of this rule would face filing requirements and procedures closely comparable to those that exist under the Department's current continuing fitness rule. The proposed rule's impact therefore should be minimal and a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 204

Air Carriers, Reporting and recordkeeping requirements.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and recordkeeping requirements.

Proposed Rule

For these reasons, the Department proposes to amend 14 CFR Chapter II as follows:

PART 204—[AMENDED]

1. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 204, 401, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1389.

2. The existing § 204.8 in Subpart A of 14 CFR Part 204, Data to support fitness determinations, would be rescinded, and a new § 204.8 would be added, to read as follows:

§ 204.8 Revocation for dormancy.

(a) Except as provided in paragraph (b), an air carrier that has not begun initial operations to provide the air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Department or by the Civil Aeronautics Board, within one year of the date of that finding, or that, for any period of one year after the date of such finding, has not provided any air transportation for which that type of finding is required, shall be deemed no longer to continue to be fit to provide such air transportation and, accordingly, its authority to provide such air transportation shall be revoked automatically.

(b) For all air carriers that were the object of fitness findings made by the Department of Transportation before the effective date of this rule, or made by the Civil Aeronautics Board, the one-year periods referred to in paragraph (a) of this section shall each run from the effective date of this rule and not from the date of those fitness findings.

(c) An air carrier found fit by the Department of Transportation after the effective date of this rule and that begins initial operations within one year but then ceases operations, shall not resume operations without first filing all the data required by §204.4 or §204.7, as applicable, at least 45 days before it intends to provide any such air transportation. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in data submitted previously in connection with a prior evaluation of the carrier's fitness, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Chief, Special Authorities Division, Office of Aviation Operations, to find out what data are already available to the Department and need not be included in the refiling. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department either decides that the carrier continues to meet that

[8] It might be argued that at least one thing will have changed. Under the old rules, during months 13–24, dormant carriers could enter the marketplace with no regulatory involvement whatsoever. Now, they conceivably could have to undergo new—albeit streamlined—fitness evaluations if still dormant in that period. However, as we pointed out, an exemption would be available on proper showing. More important, even under the Board-adopted rules, dormant carriers were not assured they would enjoy a full two years before having to resubmit to a fitness determination. The Board's NPRM stated expressly that "If necessary, the fitness of a carrier could be reassessed before the two year period has elapsed." 48 FR 79268, November 4, 1983.

[9] For purposes of its aviation economic regulations Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act.

requirement, or finds that the carrier is fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the revocation period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, a new one-year revocation period will begin, effective as of the date of the Department's decision or finding.

(d) The provisions of paragraph (c) of this section shall apply to all air carriers that were the object of fitness findings made by the Department before the effective date of this rule or made by the Civil Aeronautics Board, who either are not now operating under the authority for which they were found fit or who are operating under such authority but later cease operations and seek to resume before expiration of the one-year revocation period.

(e) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, then the date of such letter.

(f) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

PART 291—[AMENDED]

3. The authority citation for Part 291 continues to read as follows:

Authority: Secs. 101, 102, 204, 401, 407, 408, 416, 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388, unless otherwise noted.

4. The existing § 291.15 in Subpart B of 14 CFR Part 291, Domestic Cargo Transportation, would be rescinded, and a new § 291.15 would be added, to read as follows:

§ 291.15 Revocation for dormancy.

(a) Except as provided in paragraph (b), an all-cargo air carrier that has not begun initial operations to provide the air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Department or by the Civil Aeronautics Board, within one year of the date of that finding, or that, for any period of one year from the date of the most recent such findings, has not provided any air transportation for which that type of finding is required, shall be deemed no longer to continue to be fit to provide such air transportation and, accordingly, its authority to provide such air transportation shall revoked automatically.

(b) For all all-cargo air carriers that were the object of fitness findings made by the Department of Transportation before the effective date of this rule, or made by the Civil Aeronautics Board, the one-year periods referred to in paragraph (a) of this section shall each run from the effective date of this rule and not from the date of those fitness findings.

(c) An all-cargo air carrier found fit by the Department of Transportation after the effective date of this rule and that begins initial operations within one year but then ceases operations, shall not resume operations without first filing all the data required by § 291.11 at least 45 days before it intends to provide any such air transportation. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in the data submitted previously in connection with a prior evaluation of the carrier's fitness, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Chief, Special Authorities Division, Office of Aviation Operations, to find out what data are already available to the Department and need not be included in the refiling. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department either decides that the carrier continues to meet that requirement, or finds that the carrier is fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the revocation period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, a new one-year revocation period will begin, effective as of the date of the Department's decision or finding.

(d) The provisions of paragraph (c) of this section shall apply to all-cargo air carriers that were the object of fitness findings made by the Department before the effective date of this rule or made by the Civil Aeronautics Board, who either are not now operating under the authority for which they were found fit or who are operating under such authority but later cease operations and seek to resume before expiration of the one-year revocation period.

(e) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, then the date of such letter.

(f) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

Authority: 49 U.S.C. 1324, 1371, 1377, 1386, 1388, 1389.

Issued in Washington, DC, on May 16, 1986

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-11568 Filed 5-23-86; 8:45am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 60457-6057]

Revision of Trademark Fees

Correction

In FR Doc. 86-11193, beginning on page 18290 in the issue of Friday, May 16, 1986, make the following correction: On page 18291, in the middle column, in the first line of the third complete paragraph, "paragraph (g)" should read "paragraph (q)".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW-FRL-3021-2]

Water Pollution Control; National Primary Drinking Water Regulations; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, notice of public meeting.

SUMMARY: A one day public meeting will be held to discuss aspects of the National Primary Drinking Water Regulations. The purpose of the meeting is to discuse regulatory issues regarding potential use of point-of-use treatment devices (POU), point-of-entry treatment devices (POE), or bottled water by public water systems to meet the

National Primary Drinking Water Regulations.

EPA proposed criteria and procedures for public water systems using POU, POE, and bottled water to meet proposed volatile synthetic organic chemical maximum contaminant levels (Federal Register of November 13, 1985, Vol. 50, No. 219 on page 46880). The preamble to the proposed rulemaking for the revised primary drinking water standard for fluoride (Federal Register of November 14, 1985, Vol. 50, No. 220 on page 47162) also discussed POU, POE, and bottled water. These notices proposed conditions under which POU and POE might be considered suitable means of compliance. The use of bottled water was rejected as a suitable means of compliance, but could be allowed as an interim means of reducing an "unreasonable risk" to health. The final rule for fluoride (Federal Register of April 2, 1986, Vol. 51, No. 63 on page 11400) did not address the use of decentralized technologies, but deferred this decision to a later date. The Agency has received and is currently considering a number of comments on these aspects of the proposed rules. These are novel concepts in the development of drinking water regulations. Consequently, the Agency has decided to conduct a public meeting to discuss the issues and hear the opinions of interested parties.

The fundamental issues EPA would like to discuss include: (1) Whether POU, POE, and bottled water can be considered best technology generally available (BTGA); (2) whether (a) POU, POE, and bottled water can be considered suitable means of compliance, (b) only POE and POU can be considered suitable means of compliance, (c) only POE can be considered suitable means of compliance, or (d) none of these options can be considered suitable means of compliance, and (3) whether POU and bottled water can be considered as interim means of compliance during a short-term emergency or during the term of a variance or an exemption. Public comments are requested on these issues by June 15, 1986.

Those who are encouraged to attend include: Interested citizens, public health officials, water utility managers, engineers, scientists, bottled water suppliers, public interest groups, equipment manufacturers, consultants, and anyone else interested in the application of POU, POE, or bottled water as methods of compliance with drinking water regulations.

DATE: Thursday, June 5, 1986, from 9:00 am to 4:00 pm

ADDRESS: The meeting will be held at: Environmental Protection Agency, Room 3, North Conference Area, Waterside Mall Level, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mrs. Nancy Dillon, Office of Drinking Water (WH-550D), 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room EB-55, Waterside Mall, Washington, DC (202) 382-3022.

SUPPLEMENTARY INFORMATION: The meeting will start with a presentation by EPA on the use of POU, POE, and bottled water. Members of the public who wish to make statements or presentations on these issues will be next on the program. The program of presentations will be followed by an informal open discussion of the issues. Any member of the public wishing to attend the public meeting is encouraged to register in advance. Please contact Mrs. Nancy Dillon at the telephone number mentioned above. At that time, please let Mrs. Dillon know if you wish to make a presentation. A paper entitled "Point-of-Use Treatment Devices, Point-of-Entry Treatment Devices, and Bottled Water Issues Related to the Revised National Primary Drinking Water Regulations" which provides a brief explanation of the issues and possible options is also available from Mrs. Dillon at the above address and telephone number.

Dated: May 15, 1986.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 86-11788 Filed 5-23-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 141

[OW-FRL-3021-3]

National Primary Drinking Water Regulations; Volatile Synthetic Organic Chemicals; Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of information pertaining to a proposed rule; request for comment.

SUMMARY: EPA is making available additional laboratory performance data for analytical methods used to analyze volatile synthetic organic chemicals (VOCs) in drinking water. The Agency proposed Maximum Contaminant Levels (MCLs) for VOCs in the Federal Register of November 13, 1985, 50 FR 46902. The Agency is also requesting comment on the possible approval of other additional methods for analyzing VOCs.

DATE: Comments on these data must be submitted on or before July 11, 1986.

ADDRESS: Send written comments to Comments Clerk, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Supporting data are available for inspection during normal business hours at the EPA, Room 55 East Tower, 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, ODW (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202-382-7575).

SUPPLEMENTARY INFORMATION: In the Federal Register of November 13, 1985, 50 FR 46902, EPA proposed Maximum Contaminant Levels (MCLs) for eight volatile synthetic organic chemicals (VOCs). An MCL for tetrachloroethylene (another VOC) was not proposed at that time as new data relating to the Recommended Maximum Contaminant Level (RMCL) were made available for a 45 day public comment period. EPA proposed approving several analytical methods for use in measuring the MCL for the eight VOCs and tetrachloroethylene.

EPA provided laboratory performance data for seven VOCs in the proposal (table 3, page 46907) to support the proposed laboratory performance requirements and the determination of the MCL. These data were summarized from Water Pollution Performance Evaluation Studies using the 600 series methods (i.e., EPA's wastewater methods for volatile synthetic organic compounds; Methods 601, 602 and 624). EPA did not have performance data at that time from performance evaluation studies for vinyl chloride and 1,1-dichloroethylene. In the proposal, EPA stated that it was conducting additional laboratory performance data-gathering activities for the VOCs. This effort involved the inclusion of performance evaluation samples for all nine VOCs in Water Supply Performance Evaluation Study #17. Laboratories were requested to use the 600 series methods (i.e., EPA's drinking water methods for volatile synthetic organic chemicals; Methods 502.1, 503.1 and 524.1). The summary results of this study for participating EPA and State laboratories are summarized in table 1, and these data (in complete form) are in the public record for this rulemaking.

TABLE 1—PERFORMANCE OF EPA AND STATE LABORATORIES IN WATER SUPPLY PERFORMANCE EVALUATION STUDY #17

Contaminant	T.V.[1] (ug/L)	Mean (ug/l)	Range of reported values	No. of labs	No. of labs outside ±20% T.V.	No. of labs outside ±40% T.V.
Vinyl Chloride	1.88	2.12	0.69 to 5.86	34	10	11
	6.75	5.97	3.55 to 10.5	28	14	9
	14.7	16.6	7.69 to 42.1	37	15	7
1,1-Dichloroethylene	5.88	5.10	0.70 to 13.0	30	10	10
	4.75	6.20	2.05 to 22.2	33	15	8
1,2-Dichloroethane	5.61	5.27	0.99 to 5.99	33	12	6
	5.39	5.39	1.42 to 9.82	37	4	3
1,1,1-Trichloroethane	2.64	2.67	1.59 to 4.55	37	12	7
	200	221	83.9 to 999	37	11	4
Carbon Tetrachloride	2.51	2.48	0.35 to 7.24	37	20	9
	6.69	6.37	4.0 to 10.8	28	15	3
Trichloroethylene	1.74	1.76	0.35 to 3.29	35	10	1
	5.59	5.39	3.4 to 8.19	36	7	2
Benzene	2.76	2.85	1.23 to 5.65	37	11	4
	8.69	8.21	5.3 to 11.3	37	12	5
Tetrachloroethylene	2.18	2.64	0.73 to 24.9	37	10	2
	5.71	5.65	1.09 to 10.3	28	4	1
P-Dichlorobenzene	3.84	3.55	1.3 to 5.63	31	13	4
	779	739	420 to 1160	32	14	2

[1] T.V. = "true value."

A number of public comments were received concerning EPA's proposal for use of the three 500 series methods (Methods 502.1, 503.1 and 524.1) in the monitoring requirements. Several commenters stated that in addition to the 500 series, the three 500 series methods (Methods 601, 602 and 624) should be included as approved analytical methods for use in the monitoring requirements. The commenters noted that many laboratories were already using the 600 series methods, the methods were essentially the same as the 500 series methods, and the 600 series methods had been validated. In addition, it was suggested that quality control (QC) requirements be included in the 500 series methods, similar to the 600 series methods. EPA is considering these comments and requests further public comment on whether to approve the 600 series methods for measuring drinking water contaminants and whether to adopt the QC requirements in the 600 series methods methods to the 500 series methods. EPA has placed in the public record for this rulemaking: (1) The three 600 series methods, (2) their validation studies, and (3) laboratory performance evaluation data from laboratories using these methods. Public comments are requested on all related issues, including the text of these methods, the QC requirements and data establishing laboratory performance.

The complete data are available for inspection during normal business hours at the address given above.

Dated: May 15, 1996.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 96-11787 Filed 5-22-96; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 51, No. 101
Tuesday, May 27, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Northern Virginia Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI), with respect to a project proposed by Northern Virginia Electric Cooperative, Inc. (NOVEC) of Manassas, Virginia. The project consists of the construction of a new district office building with associated facilities to be located in Prince William County, Virginia, in the community of Gainesville, approximately 457.3 meters (1,500 feet) southeast of the intersection of State Route 674 and U.S. Highway 29/211.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from the office of Mr. Joseph R. Binder, Director, Northeast Area-Electric, REA, South Agriculture Building, Room 0241, Washington, D.C. 20250, telephone: (202) 382–1420, or at NOVEC's office (Mr. Harry K. Bowman, Manager), P.O. Box 2710, Manassa, Virginia 22110, telephone: (703) 368–9111.

SUPPLEMENTARY INFORMATION: REA has reviewed NOVEC's Borrower's Environmental Report (BER) and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. NOVEC's project consists of an office building, including a parking garage; a vehicle maintenance garage; a warehouse; employee and visitor parking areas; an outside storage yard; a storm water retention pond; and a microwave tower. The total land area to be affected by the proposed construction activity will be 6 hectares (14.77 acres).

REA determined that the proposed project will have no effect on cultural resources; it will have no effect on threatened or endangered species or critical habitat; it will have no effect on prime forestland or rangeland; and it will not be located in a floodplain or wetland area. The proposed project site consist of approximately sixty (60) percent prime farmland soils. However, the site cannot be considered viable as prime farmland because it is zoned for industrial use and economically unavailable for agricultural production. The construction site is bordered by State Route 674 to the south, commercial and industrial development to the east and west, and a railroad track to the north. Such land does not constitute prime farmland under the regulations (7 CFR Part 658) implementing the Farmland Protection Policy Act (7 U.S.C. Part 4201 *et seq.*). No other matters of environmental concern are raised by the project.

Alternatives considered for the proposed office building and associated facilities were no action, expansion of the existing headquarters facility, and alternative sites.

In accordance with REA's 7 CFR Part 1794, NOVEC advertised and requested comments on the environmental aspects of the proposed project. No comments were received. Also, in accordance with REA's 7 CFR Part 1794, NOVEC's BER is serving as REA's EA. REA has made an independent evaluation, based on NOVEC's BER, of the environmental impacts of the proposed project and concurs in the BER's scope and content. REA has concluded that approval to construct the project would not constitute a major Federal action significantly affecting the quality of the human environment. Consequently, an Environmetal Impact Statement is not necessary.

This program is listed in the Catalog of Federal Assistance as 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consulation with State and local officials.

Dated: May 20 1986.

Harold V. Hunter,

Administrator.

[FR Doc. 86–11777 Filed 5–23–86; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board.

Dates of meeting: Wednesday–Friday, 11–13 June 1986.

Times of meeting: 0830–1630 hours.

Places: LOGCEN, Ft. Lee, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for TRADOC Operations Research Activity (TORA) (TRADOC Analysis Center (TRAC)) will meet for briefings by analytic agencies. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–11876 Filed 5–23–86; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Endowment Grant Program; Establishment of Fiscal Year 1986 Deadline Date for Raising Matching Funds Under the Endowment Grant Program

The Secretary establishes July 15, 1987 as the deadline date by which an institution of higher education selected to receive an endowment grant under the Endowment Grant Program Fiscal Year 1986 funding competition must raise its required matching funds.

The Endowment Grant Program is authorized by section 333 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1065a. Under that program, the Secretary awards matching grants to eligible institutions of higher education to enable them to establish or increase endowment funds. In order to receive the proceeds of an endowment grant, the grantee institution must match the Federal grant on a dollar-for-dollar basis. Under § 628.41(b) of the Endowment Grant Program regulations, 34 CFR 628.41(b) the Secretary annually establishes a deadline date by which an institution must raise the required matching funds.

The Department of Education Appropriation Act, 1986, Pub. L. 99–178, provides that the funds appropriated under that Act for the Endowment Grant Program are available for obligation until September 30, 1987. The Secretary, however, has established July 15, 1987 as the deadline date by which an institution selected to receive an endowment grant under the Fiscal Year 1986 funding competition must raise its required matching funds. The July 15 date has proven to be one that allows a reasonable time period for an institution to raise matching funds while also allowing sufficient time for processing of the grants.

Subject to other limitations in the statute, the maximum endowment grant an institution may receive is an amount equal to the amount of matching funds it raises by July 15, 1987.

Available Funds.

The Department of Education Appropriation Act, 1986, appropriated $23,206,000 for the Endowment Grant Program for Fiscal Year 1986. However, the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177, has reduced this amount to $22,210,000.

Further Information.

For further information, contact Dr. Caroline J. Gillin, Director, Division of Institutional Development or Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–3335.

(20 U.S.C. 1064–1069c)

Dated: May 21, 1986

William J. Bennett

Secretary of Education

[FR Doc. 86–11794 Filed 5–23–86; 8:45 am]

BILLING CODE 4000-01-M

Working Group of the National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of a "working group" of the National Advisory Committee on Accreditation and Institutional Eligibility. The first part of this meeting will be open to the public. After an initial discussion of the items on the agenda and the opportunity for public participation, the meeting will be closed to prevent the premature and possibly unwarranted disclosure of adverse information regarding the practices and procedures of some accrediting agencies. This notice describes the functions of the NACAIE Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

DATES: June 12 and 13, 1986.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW. (ROB–3, Room 4082), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James B. Williams, Special Assistant, Office of the Deputy Assistant Secretary for Higher Education Programs, Office of Postsecondary Education, 400 Maryland Avenue, SW. (Room 3915, ROB–3), Washington, DC 20202 (202/245/9700).

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by section 1205 of the Higher Education Act, as amended by Pub. L. 98–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting both recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs. The part of the meeting on June 12 and 13 devoted to the taking of and discussion of testimony will be open to the public.

Agenda Topics

The principal agenda topics, which are based on the Secretary's charge to the Working Group, include:

- What, if anything, should each accrediting agency require as a condition of accreditation of all institutions it accredits in terms of minimum standards irrespective of the institutions' particular mission and purpose?
- What institutional and student output measurements should accrediting agencies use to determine whether institutions are meeting their stated objectives and how best to measure the outputs?
- Should the Criteria for Recognition contain specific requirements related to the "consumer protection" and "truth-in-advertising" practices of an institution in its relationship with its students?
- Whether standards of reciprocity should be established among accrediting agencies for recognizing an institution which has lost or been denied accreditation by another agency?
- Should the Secretary require a recognition criterion to ensure that the Department is notified on a timely basis of an adverse action taken by accrediting agencies against an institution?

The "working group" assumes control of the agenda once the meeting begins, and may consider other matters related to accreditation and institutional eligibility that fall within the Committee's purview.

Advisory Information

The "working group" will meet from 9:30 a.m. to 4:30 p.m. on Thursday, June 12, and from 9:30 a.m. to 3:30 p.m. on Friday, June 13, local time. The "working group" requests written testimony on the issues before it. To be considered by the "working group" all written testimony must be received by June 3, 1986. Requests to testify orally will be considered by the "working group," but only from those persons or groups presenting written testimony. Requests to testify orally must accompany the written testimony, and must be received by June 3.

A record will be made of the proceedings and will be available for

public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3015, FOB–3), Washington, DC between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Signed at Washington, DC, on May 21, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86–11761 Filed 5–23–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Notice of Intent to Grant Partially Exclusive Patent License; Corazonix Corp.

Notice is hereby given of an intent to grant to Corazonix Corporation, of Oklahoma City, Oklahoma, a partially exclusive license to practice in the United States the invention described in U.S. Patent No. 4,413,531, entitled "Doppler Flowmeter". The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e., limited to the field of use of biomedical applications and subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously in the field of use of biomedical applications.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on May 16, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86–11757 Filed 5–23–86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date & Time: June 16, 1986 from 9:00 a.m. to 6:00 p.m., June 17, 1986 from 8:30 a.m. to 12:00 noon.

Place: University of Washington, Administration Building, Room 142 Seattle, WA 98195.

Contact: John R. Erskine, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545, (301) 353–3613.

Purpose of the Committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

June 16

- Budget presentation from DOE and NSF.
- Presentation and discussion of the draft report from the Subcommittee on Facility Construction, which is charged to review proposals for the upgrade of research facilities at the University of Illinois, Lawrence Berkeley Laboratory, Massachusetts Institute of Technology, and Oak Ridge National Laboratory, and to review the scientific capabilities of the planned Relativistic Heavy Ion Collider facility at Brookhaven National Laboratory.
- Public comment.

June 17

- Discussion deliberation, and action on the draft report of the Subcommittee of Facility Construction.

Discussion and possible activation of the proposed NSAC Subcommittee on Nuclear Theory and the NSAC Instrumentation Subcommittee.

- Public comment.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact John Erskine at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 21, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–11758 Filed 5–23–86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Proposed Post–1989 Allocation of Power; Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Proposed allocation of power from the Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas project.

SUMMARY: The Post-1989 General Power Marketing and Allocation Criteria (Criteria) for the sale of energy with capacity from the Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) and the Fryingpan-Arkansas Project (Fry-Ark) by the Western Area Power Administration (Western) were published in the Federal Register on January 31, 1986 (51 FR 4012). Within these Criteria was a call for applications for power. Applications for power were accepted at Western's Loveland Area Office (LAO) until the close of business on April 1, 1986. The proposed energy with capacity allocations published herein are the result of these applications.

DATES: Comments must be received in writing no later than the close of business on July 28, 1986. A public comment forum is scheduled for June 10, 1986, in Denver, Colorado.

ADDRESS: Comments should be sent to: Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539. (303) 224–7201.

SUPPLEMENTARY INFORMATION:

I. Regulatory Procedural Requirements.
II. Background of the Allocation Procedures.
III. Proposed Post-1989 Power Allocations.
A. Marketable Resources.
B. Salt Lake City Area Office Allocations.
C. Proposed Post-1989 Allocations of Energy with Capacity.
D. Contractual Arrangements.
IV. Action Required by Allottees.

I. Regulatory Procedural Requirements

These allocations are based upon the provisions of the Reclamation Act of 1902, approved June 17, 1902 (ch. 1093, 32 Stat. 388); the Reclamation Project Act of 1939, approved August 4, 1939 (43 U.S.C. 485h(c)); and the Department of Energy Organization Act of 1977, approved August 4, 1977 (42 U.S.C. 7152, 7191); and are more specifically based upon the provisions of the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 891); the Fryingpan-Arkansas Projects Acts of 1962 and 1974, approved August 16, 1962 (Pub. L. 87-590, 76 Stat. 389), and October 27, 1974 (Pub. L. 93-493, 88 Stat. 1497); and acts amending or supplementing all of the foregoing legislation.

II. Background of the Allocation Procedures

Power is presently marketed by the LAO under three separate marketing plans. These are: The Pick-Sloan Missouri Basin Program power marketing plan, the Fry-Ark marketing plan, and the power marketing plan for the sale of P-SMBP-WD excess capacity (P-SMBP-WD Excess Capacity). Under each plan customers were allocated seasonal Contract Rates of Delivery (CROD). The P-SMBP-WD marketing plan went into effect in 1962. The Fry-Ark marketing plan was published on June 23, 1961 (46 FR 32491), and the P-SMBP-WD Excess Capacity marketing plan was published on August 30, 1982 (47 FR 38187). Of these three marketing plans, only the P-SMBP-WD marketing plan provided for the sale of capacity and energy. The two other marketing plans provided only for the sale of capacity. The energy associated with the marketed capacity was either provided from non-Federal resources or was provided by Federal resources with the provision that the energy was to be returned to the Federal System in the form of pump-back water. Contracts for all three marketing plans expire on the last day of the September billing period in 1989.

The Proposed Post-1989 General Marketing Criteria were published in the Federal Register on August 23, 1985 (48 FR 38279). This publication included an announcement of public information and public comment forums on the Proposed Criteria and a final request for Applicant Profile Data (APD). The APD were required for any applicant to be considered eligible for an allocation of energy with capacity from the P-SMBP-WD and Fry-Ark under the proposed Criteria. Interested parties were initially given until November 15, 1985, to submit this data. The deadline was later extended to December 30, 1985 (48 FR 54880, December 7, 1983). The final Criteria were published January 31, 1986 (51 FR 4012). In the final Criteria two additional areas were added to the original LAO marketing area. These are the Mountain Parks Rural Electric Association service area in Colorado west of the Continental Divide, and that portion of the State of Kansas located in the Arkansas River Basin west of the eastern borders of the counties intersected by the 100th Meridian. Interested parties within these additional areas had until April 1, 1986, to submit APD. The Criteria also required all interested parties to submit a request for the capacity to be associated with their energy allocation by close of business on April 1, 1986.

III. Proposed Post-1989 Power Allocation

The proposed allocations for energy with capacity are based on the principles set forth in the "General Power Marketing and Allocation Criteria" published in the Federal Register on January 31, 1986 (51 FR 4012).

A. Marketable Resources

The LAO markets power generated at 18 powerplants located in Colorado, Wyoming, and Montana. These resources were divided between potential new and existing customers. The marketable resources available seasonally, per group, by operationally integrating these powerplants are:

	Winter		Summer	
	Energy (MWH)	Capacity (MW)	Energy (MWH)	Capacity (MW)
New Customers	75,750	51.9	92,844	58.2
Existing Customers	856,791	586.6	1,061,456	658.3
Totals	932,541	638.5	1,155,300	716.5

B. Salt Lake City Area Office Allocations

Allocations from the Salt Lake City Area (SLCA) Integrated Projects will be allocated by Western's Salt Lake City Area Office (SLCAO) in the near future. Notwithstanding the statement in the final General Power Marketing and Allocation Criteria regarding limitations on energy allocations, the proposed allocations for the P-SMBP-WD and Fry-Ark contained in this Federal Register notice do not consider allocations from the Colorado River Storage Project or the SLCA Integrated Projects. Allocations from all other Federal resources were considered in accordance with the final LAO marketing criteria. The SLCAO will consider these proposed LAO allocations when calculating proposed allocations from the Integrated Projects to customers who may receive energy with capacity allocations from the LAO and SLCAO.

C. Proposed Post-1989 Allocations of Energy with Capacity

With the exception of the Project Use and Existing Special Use loads defined in section VI.C of the Criteria and Warren Air Force Base, whose existing contract will not terminate prior to the effective date of the Criteria, all eligible applicants have been allocated energy with capacity hereunder as defined in section V.C. of the Criteria. The seasonal energy reserved for existing customers was allocated according to the proportion each existing customer's long-term firm CROD, in effect on April 1, 1986, from P-SMBP-WD and Fry-Ark resources, bears to the total of all existing customers' long-term firm CRODs. The seasonal energy reserved for new customers was allocated according to the proportion each new customer's average energy consumption in 1980, 1981, and 1982, bears to the total of all new customer's average energy consumption in the same period. The summer allocation to the Northern Colorado Water Conservancy District was based on the estimated average energy it would have used had it been allowed to operate during the years 1980 through 1982. The estimated energy use figures were based on the actual hydrology for those 3 years. This special treatment recognizes the fact that pumps operated by the Northern Colorado Water Conservancy District create more energy for the LAO to market to all customers.

Capacity was allocated based on the eligible customers; capacity requests. Since there was not enough capacity available to meet all requests from existing customers, those customers who requested less than the system plant factors of 33.4 percent in the winter and 36.7 percent in the summer had their capacity requests limited proportionally.

The proposed individual allocations are:

Existing Customers

	Winter		Summer	
	Energy (MWh)	Capacity (kW)	Energy (MWh)	Capacity (kW)
Colorado				
Burlington	1,570	1,000	2,530	1,510
Colorado Springs	99,600	57,552	110,884	61,766
Denver Water Board	2,551	2,164	4,114	2,540
Fleming	395	0.324	495	0.352
Fort Morgan	10,410	10,000	10,511	10,723
Frederick	437	0.162	446	0.166
Holyoke	987	0.650	1,212	0.726
Holyoke	2,160	1.894	3,482	2.660
Julesburg	710	0.460	1,110	0.662
Lyons	423	0.295	356	0.204
Wray	2,722	2.000	3,542	4.000
Yuma	2,530	1.752	3,004	2.213
Nebraska				
Alliance	3,535	2.161	5,229	3.003
Bayard	3,343	2.223	3,071	1.940
Bridgeport	994	0.397	830	0.467
Bridgeport	2,256	1.554	2,530	1.300
Chappell	2,307	1.725	2,460	1.545
Gering	12,600	11.161	14,111	10.000
Imperial Public Power District	4,000	2.002	4,000	3.000
Kimball	1,410	2.250	1,000	2.113
Lyman	1,057	0.760	1,079	0.979
Mitchell	3,007	2.000	2,005	1.341
Morrill	3,535	2.420	3,004	2.367
Sidney	2,115	2.410	2,000	2.004
Wauneta	1,410	0.971	1,000	0.000
Wyoming				
Gillette	12,400	4.000	13,004	4.407
Torrington	8,000	3.412	8,077	3.240
Government Agencies				
Department of Energy: Rocky Flats	10,410	7.140	8,403	5.046
Peterson AFB	14,000	4.300	13,010	4.401
Joint Action Agencies or Cooperatives				
Arkansas River Power Authority	31,011	22.672	43,036	26.000
Colorado-Ute Electric Association, Inc.	81,004	51.102	77,573	38.010
Kansas Electric Power Cooperative	42,003	12.040	44,005	13.020
Municipal Energy Agency of Nebraska	5,044	0.000	7,200	0.140
Nebraska Public Power District	20,000	11.701	27,107	17.003
Platte River Power Authority	50,005	32.317	53,540	30.704
Rushmore Electric Company	41,701	24.003	41,110	24.254
Tri-State G&T	302,304	270.035	400,074	336.031
Wilwood L&P	204	0.113	100	0.000
Wyoming Municipal Power Agency	13,003	11.000	14,170	10.050
[1] Totals	000,700	000,002	1,001,405	000,200

[1] Totals include 8,415 MWh of energy and 3,300 MW of capacity for both winter and summer seasons contractually committed to F.E. Warren Air Force Base.

New Customers

	Winter		Summer	
	Energy (MWh)	Capacity (kW)	Energy (MWh)	Capacity (kW)
Colorado				
Center	572	0.254	905	0.221
Nebraska				
Grant	000	0.040	704	0.340
Lodgepole	103	0.005	130	0.070
Sutton	231	0.100	200	0.111
Wyoming				
Powell	1,004	2.042	1,010	1.773
University of Wyoming	2,307	0.004	2,200	0.542
Government Agencies				
Lowry AFB	4,577	1.010	0,105	1.002
USAF Academy	5,004	1.702	5,440	1.721
Northern Colorado Water Conservancy District	0	0.000	5,054	3.136
Kansas				
Alma	200	0.203	307	0.240
Arcadia	101	0.000	111	0.000
Ashland	402	0.210	071	0.410
Baldwin City	704	0.500	074	0.004
Belleville	1,177	0.007	1,023	0.045
Beloit	1,007	1.302	2,007	1.556
Burlingame	421	0.206	522	0.324
Caldwell City	211	0.145	200	0.170
Centralia	105	0.100	174	0.100
Clay Center	2,204	1.000	2,000	1.052
Colby	2,354	1.013	2,702	1.713
Dighton	004	0.000	005	0.000
Enterprise	200	0.140	270	0.177
Garden City	7,205	5.000	7,020	4.301
Gardner	1,002	0.007	1,300	0.012
Garnett	1,221	0.007	1,072	1.007
Gibson	200	0.142	200	0.102
Glen Elder	170	0.122	237	0.147
Herington	1,100	0.001	1,301	0.057
Hill City	011	0.000	1,073	0.000
Holton	1,302	0.034	1,700	1.001
Horton	001	0.400	702	0.473
Hugoton	1,257	0.002	1,002	1.000
Jamesco	330	0.230	404	0.200
Johnson City	035	0.435	744	0.402
Kansas City	7,205	5.000	0,050	5.000
Lakin	007	0.410	713	0.443
Lecti	2,011	1.370	2,157	1.330
Lincoln	347	0.100	075	0.410
Lindsborg	1,000	0.700	1,003	0.002
Lucas	100	0.110	203	0.130
Marietta	427	0.202	033	0.331
Norton	1,330	0.010	0,002	1.230
Oakley	1,110	0.700	1,201	0.001
Oberlin	700	0.525	1,001	0.040
Osage City	1,071	0.730	1,417	0.070
Osawatomie	1,200	0.004	1,502	0.000
Osborne	740	0.513	030	0.502
Ottawa	4,100	2.005	5,000	3.530
Russell	3,015	2.015	4,000	3.044
St. Francis	000	0.400	002	0.423
St. Marys	007	0.457	013	0.504
Seneca	077	0.070	1,217	0.705
Sharon Springs	201	0.200	424	0.200
Stockton	005	0.300	711	0.441
Syracuse	030	0.300	004	0.424
Tribune	300	0.242	302	0.243
Wamego	1,217	0.003	1,010	0.000
Washington	035	0.307	712	0.442
Totals	75,750	47.700	00,044	54.020

D. Contractual Arrangements

Western plans to publish the final energy with capacity allocations during the summer of 1986. Allottees will then be sent draft contracts. Executable contracts will be available to all customers in the spring of 1987. Allottees will have 6 months, or until September 30, 1987, to execute these contracts, whichever is later.

IV. Action Required by Allottees

Western will accept comments on these allocations from all interested parties until the close of business on July 28, 1986. A public comment forum is scheduled for June 10, 1986, at 9 a.m., at the Clarion Hotel, 3202 Quebec Street, Denver, Colorado. All comments on these proposed allocations should be directed to: Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3706, Loveland, Colorado 80539, (303) 224-7201.

Issued at Golden, Colorado, May 14, 1986.

William H. Clagett,
Administrator.

[FR Doc. 81-11750 Filed 5-23-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3021-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of the Administrator

Title: Nondiscrimination in EPA Assisted Programs: Recordkeeping Requirements and Report Form (EPA ICR No. 0275). (This is a revision of a currently approved collection; there are no changes to the applicable regulation.)

Abstract: EPA reviews all wastewater grant applicants to determine pre-award compliance with laws prohibiting discrimination on the basis of handicap, race, color, national origin, sex, and age.

Respondents: Wastewater grant applicants.

Office of Air

Title: Importation of Nonconforming Motor Vehicles Subject to Federal Air

Pollution Control Regulations (EPA ICR No. 0223). (This is an extension of a currently approved collection without any change.)

Abstract: Importers of motor vehicles must submit documentation of conformity with U.S. air pollution control regulations, including a declaration form to U.S. Customs and the posting of bond for the vehicle. EPA reviews the declaration and either a proof of modification, air pollution control test results, or an exemption claim before releasing the vehicle.

Respondents: Importers of motor vehicles.

Title: NSPS for Metallic Processing Plants (Subpart LL) (EPA ICR No. 0982). (This is an extension of a currently approved collection without any change.)

Abstract: Owners/operators of metallic mineral processing plants must notify EPA of construction, modifications, startups, and other information. If wet scrubbing device(s) are used, they must install, calibrate, and maintain continuous monitoring devices to measure pressure drop and flow rate, maintain weekly records, and submit semiannual reports when the drop and rate differ 30% from the most recent performance test.

Respondents: Owners and operators of metallic mineral processing plants.

Title: Farm Labor Survey—Farm Equipment Use Segment (EPA ICR No. 1299). (This is a new collection.

Abstract: Farmers will respond to questions (contained in an addition to the Farm Labor Survey) about the use(s) of gasoline tractors, diesel tractors, combines, and trucks in farm operations. EPA will use this information to determine the ratio of heavy, medium, and light uses in order to assess the impact of the lead phase-down program on farm machinery.

Respondents: Farmers.

* * * * *

Comments on all parts of this notice may be sent to:

Nanette Liepman,
U.S. Environmental Protection Agency,
Office of Standards and Regulations (PM–223),
Information and Regulatory Systems Division,
401 M Street, SW.,
Washington, DC 20460

and

Rick Otis (No. 0275) and Wayne Leiss (No. 0223, No. 0982, No. 1299),
Office of Management and Budget,
Office of Information and Regulatory Affairs,
New Executive Office Building (Room 3223),
726 Jackson Place, NW,
Washington, DC 20503.

Dated: May 19, 1986.

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86–11664 Filed 5–23–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30257A; FRL–3015–5]

Merck and Co.; Approval of Pesticide Products Registration

Correction

In FR Doc. 86–10829, beginning on page 17671, in the issue of Wednesday, May 14, 1986, make the following corrections:

On page 17672, in the first and second columns, in the formulas for pesticide products, the capital letter "O" should be a zero "0" wherever it appears.

BILLING CODE 1505–01–M

[OPTS–59188C; FRL–3022–1]

Certain Chemical; Extension of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's extension of a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–31. The new test marketing conditions are described below.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, RM. E–611E, 401 M St. SW., Washington, DC 20460, (202–382–3391).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufature notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby extends TME–85–31. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the original TME application and extension, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All conditions and restrictions described in the original application and in this notice must be met.

The following additional restrictions apply to TME–85–31. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–85–31

Date of Receipt: March 19, 1985.

Notice of Receipt: March 29, 1985 (50 FR 12628).

Applicant: Confidential.

Chemical: (G) Functional acrylate type polymer.

Use: (G) Industrial paint ingredient.

Production Volume: 82,000 kilograms.

Number of Customers: Four.

Worker Exposure: Manufacture: dermal, a total of 20 workers, up to 8 hrs/day up to 26 days a year.

Notice of Approval of Test Marketing Exemption: May 7, 1985 (50 FR 19228).

Original Test Marketing Period: Eight months.

Modified Test Marketing Period: Six months.

Commencing on: May 19, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 12, 1986.

Dan R. Clay

Director, Office of Toxic Substances.

[FR Doc. 86-11760 Filed 5-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-61013 FRL-3021-6]

Toxic and Hazardous Substances Control; Availability of Printed Version of TSCA Chemical Substance Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is publishing the "TSCA Chemical Substance Inventory: 1985 Edition." This publication includes chemical identities for all substances reported to EPA under the Toxic Substances Control Act (TSCA) as manufactured, imported, or processed for commercial purposes in the United States since 1975.

DATE: The Inventory is now available for purchase from the Government Printing Office.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800-424-9065), In Washington, DC: (554-1404), Outside the U.S.A: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act requires EPA to identify, compile, keep current and publish a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. EPA compiled this list in accordance with its Inventory Reporting Regulations (40 CFR Part 710), promulgated in 1977, and published a printed version of the Inventory in 1979, supplemented in 1980 and 1982.

EPA has added to the inventory new substances whose commencement of manufacture of import has been reported to the Agency under its Premanufacture Notification Regulations (40 CFR Part 720) and has removed from the Inventory substances which have been shown to be incorrectly reported or listed. The "TSCA Inventory: 1985 Edition," superseding the 1979 edition and all supplements, incorporates these additions to and deletions from the Inventory as of July 1985.

The complete list of chemical identities reported to EPA is maintained by the Agency in its Master Inventory File. However, some of the identities reported to the Agency were claimed as confidential. The printed version of the Inventory contains generic, rather than specific, identities for confidential substances.

The "TSCA Chemical Substance Inventory: 1985 Edition" is organized into five volumes:

(a) Volume I contains Chemical Abstracts Service (CAS) Preferred or Index Names and CAS Registry Numbers for these substances, in CAS Registry Number order, plus appendices of chemical substance definitions and generic names for confidential substances.

(b) Volumes II and III contain a Substance Name Index which lists CAS Preferred Names alphabetically, along with industry-reported or CAS-derived synonyms.

(c) Volume IV, the Molecular Formula Index, lists molecular formulae for most inventory substances.

(d) Volume V contains the UVCB Index (identities for substances of Unknown or Variable composition, Complex reaction products, and Biological materials) as well as indices of substances regulated under sections 4, 5(a) (2), 5(e), 5(f) and 6(a) of TSCA.

The "TSCA Chemical Substance Inventory: 1985 Edition" may be purchased from Superintendent of Documents, Government Printing Office, Washington, DC. 20402 (202-783-3238). The price is $161.00 ($201.25 for foreign sales). When contacting GPO, refer to stock number 055-000-00254-1. Allow 6 weeks for delivery (longer outside the U.S.).

The Inventory will also be available in computer-tape form in June or July of 1986. This version contains 1977 production and site data. For details contact the TSCA Assistance Office at the address or telephone number given under "FOR FURTHER INFORMATION CONTACT."

Dated: May 19, 1986.

Dan R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-11761 Filed 5-23-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-479]

Palmetto State Savings Assoc. Camden, SC; Final Action; Approval of Conversion Application

Dated: May 20, 1986.

Notice is hereby given that on May 9, 1986, the Office of General Counsel of the Federal Home Loan Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Palmetto State Savings Association, Camden, South Caroline, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 11736 Filed 5-23-86; 8:45 am]

BILLING CODE 6720-01-M

Westwood Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Westwood Savings and Loan Association, Los Angeles, California on March 27, 1986.

Dated: May 21, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-11800 Filed 5-23-86; 8:45 am]

BILLING CODE 6720-01-M

United Bank, S.S.B.; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for United Bank, S.S.B. San Francisco, California on March 27, 1986.

Dated: May 21, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-11801 Filed 5-23-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003158.003.

Title: The Port Authority of New York and New Jersey Lease Agreement.

Parties:

The Port Authority of New York and New Jersey

Ecuadorian Line, Inc.

Synopsis: The proposed amendment would modify the agreement to provide for an addition to the premises retaining a mutual right of termination of thirty days.

Agreement No.: 224-003930-002.

Title: Port of New York and New Jersey Terminal Agreement.

Parties:

Port of New York and New Jersey

Universal Maritime Service Corp.

Synopsis: The proposed amendment provides for the reconfiguration of the terminal by the demolition of an existing structure, the construction and installation of improvements and a corresponding adjustment in rental payments. The amendment calls for the adjusted rental to be in effect as of March 1, 1986, with payment to be deferred until after the amendment becomes effective. The parties have requested a shortened review period.

Agreement No.: 213-010942.

Title: Barber Blue Sea/ScanCarriers Agreement.

Parties:

Barber Blue Sea (BBS)

ScanCarriers

General Manager: ScanBarber A/S.

Synopsis: The proposed agreement would permit the parties to coordinate sailings, and cross-charter twelve (12) RO/RO vessels ranging in size from 30,000 DWT to 45,000 DWT for the carriage of cargo covering ports in the United States, Hong Kong, Japan, Macao, Korea, Taiwan, Siberia, U.S.S.R., the People's Republic of China, Thailand, Vietnam, Democratic Kampuchea (Cambodia), Laos, Burma, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei, Papua New Guinea, the Republic of Indonesia, Australia, New Zealand, Islands of the South Pacific, Republic of South Africa, Canada, all countries of Central and South America, and the European Continent. The parties have requested a shortened review period.

Agreement No.: 207-010943.

Title: ScanCarriers Agreement.

Parties:

Wilh. Wilhelmsen Limited A/S

The East Asiatic Company Limited A/S

Rederiaktiebolaget Transocean

General Manager: ScanBarber A/S.

Synopsis: The proposed agreement would establish a joint service to be operated by the parties in the trade between U.S. Atlantic and Gulf Ports, and inland U.S. points via such ports, and ports and points in Central and South America, Australia, New Zealand, the Republic of South Africa, the Islands of the South Pacific and (outbound only) the Far East. The service may utilize up to twelve vessels, ranging in size up to 45,000 DWT. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: May 21, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-11770 Filed 5-23-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First of America Bank Corp., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal cap "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan; to expand the activities of its subsidiary, First of America Insurance Company, Phoenix, Arizona, and thereby expand its approved credit life and credit disability reinsurance underwriting activity in Michigan to include activities directly related to extensions of credit in Illinois, Indiana, Ohio and Wisconsin. Applicant also proposes to provide open end credit card and lines of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. The activities related to credit cards and lines of credit will be conducted nationwide except New Hampshire and North Carolina.

Board of Governors of the Federal Reserve System, May 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11739 Filed 5-23-86; 8:45 am]

BILLING CODE 6210-01-M

BEST COPY AVAILABLE

First National Bancshares of Wetumpka, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 16, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Bancshares of Wetumpka, Inc.*, Wetumpka, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Wetumpka, Wetumpka, Alabama.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Financial Services Corporation*, Menomonee Falls, Wisconsin; to acquire 92 percent of the voting shares of Rural Financial Services, Inc., Dousman, Wisconsin, and thereby indirectly acquire Dousman State Bank, Dousman, Wisconsin, and Mansfield State Bank, Johnson Creek, Wisconsin. Comments on this application must be received not later than June 13, 1986.

2. *Republic Bancorp, Inc.*, Flint, Michigan; to acquire 88.07 percent of the voting shares of Bellaire State Bank, Bellaire, Michigan. Comments on this application must be received by June 12, 1986.

3. *Villa Park Trust & Savings Bank Employees' Stock Ownership Plan*, Villa Park, Illinois; to become a bank holding company by acquiring 30 percent of the voting shares of Edville Bankcorp, Inc., Villa Park, Illinois, and thereby indirectly acquire Villa Park Trust & Savings Bank, Villa Park, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Community Corporation*, Oklahoma City, Oklahoma; to merge with CitiBancshares, Inc., Muskogee, Oklahoma, and thereby indirectly acquire CitiBank Holding Company, Inc., Muskogee, Oklahoma, and City Bank, Muskogee, Oklahoma.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bonneville Bancorp Employee Stock Option Plan and Trust*, Provo, Utah; to become a bank holding company by acquiring 35.97 percent of the voting shares of Bonneville Bancorp, Provo, Utah. Comments on this application must be received not later than June 16, 1986.

Board of Governors of the Federal Reserve System, May 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11737 Filed 5-23-86; 8:45 am]

BILLING CODE 6210-01-M

Mellon Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Mellon Bank Community Development Corporation, Pittsburgh, Pennsylvania, in making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low and moderate income areas by providing housing, services, or jobs for residents, throughout the market areas serviced by Applicant's banking subsidiaries pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted primarily throughout the states of Pennsylvania, Delaware and Maryland, and will be conducted at Mellon Bank Center, Pittsburgh, Pennsylvania. Comments on this application must be received by June 13, 1986.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Peoples Ban Corporation*, Seattle, Washington; to engage *de novo* through its subsidiary Peoples Discount Brokerage Company, Seattle, Washington, in providing securities brokerage services, and related securities credit activities pursuant to § 225.24(b)(15) of the Board's Regulation Y.

BEST COPY AVAILABLE

Board of Governors of the Federal Reserve System, May 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11759 Filed 5-23-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86F-0188]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a stabilizer in articles or components of articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3922) has been filed by Ciba-Geigy Corp., Three Skyline Dr. Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) and § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to expand present uses and to add additional uses of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a stabilizer in articles or components of articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11767 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0185]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for additional uses of *N,N'*-hexamethylenebis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as a stabilizer in articles or components of articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3927) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that §178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to permit additional use of *N,N*-hexamethylenebis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as a stabilizer in articles or components of articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petiton results in a regulation, the natice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: May 15, 1986.

Richard J. Ronk

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11768 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Cooperative Agreements With Statewide Organizations for Development of Comprehensive Primary Health Care Services

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing that applications are being accepted from qualified Statewide organizations for cooperative agreements to provide assistance in the planning and development of comprehensive primary health care services in areas that lack adequate health manpower or have populations lacking access to primary care services. It is expected that approximately $3 million will be available for these agreements, which will be entered into under the authority of section 333(g) of the Public Health Service Act.

DATE: All applications must be delivered to the contact designated in this announcement or postmarked by July 25, 1986, and received in time for orderly processing.

FOR FURTHER INFORMATION CONTACT: Application kits (Form PHS-5161 with revised facesheet DHHS Form 424) and additional information may be obtained from, and completed applications should be sent to: Chief, Grants Management Branch, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A-08, 5600 Fishers Lane, Rockville, Maryland, 20857, (301) 443-1440.

SUPPLEMENTARY INFORMATION: In addition to the Federal responsibilities under the cooperative agreements, the qualifications, expected activities, evaluation criteria, and application procedures for Statewide organizations are delineated in the Notice published in the Federal Register on July 11, 1985 (50 FR 28267).

Other Award Information

All agreements to be established under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS (Form PHS-5161 with revised facesheet DHHS Form 424) will contain a listing of States which have chosen to set up such a review

system and will provide a point of contact in the States for that review. At the latest, States should receive applications from grantees at the same time that they are due to the Chief of the Grants Management Branch in the Bureau of Health Care Delivery and Assistance. The comments from the States must be delivered to the Chief of the Grants Management Branch at the aforementioned address, or postmarked by September 23, 1986, and received in time for orderly processing.

The cooperative agreements for development of comprehensive primary health care services are listed as No. 13.130 in the OMB *Catalog of Federal Domestic Assistance*.

Dated: April 16, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-11782 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-15-M

Application Announcement for Grants for Two-Year Programs of Schools of Medicine or Osteopathy

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986 Grants for Two-Year Programs of Schools of Medicine or Osteopathy are now being accepted under the authority of section 788(a), of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 788(a) authorizes the award of grants to maintain and improve schools which provide the first or last two years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this authority to schools that were in existence on September 30, 1965, may be used for construction and purchase of equipment.

To be eligible for a grant under this authority, the applicant must be a public or nonprofit school providing the first or last two years of education leading to the degree of doctor of medicine or osteopathy and be accredited or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

There is approximately $479,000.00 available in Fiscal Year 1986 to fund this program.

Application materials will be sent only upon request. Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D16), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

The deadline for receipt of applications is June 27, 1986. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date, and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Should additional programmatic information be desired, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3626.

This is a new program and is not listed in the Catalog of Federal Domestic Assistance, therefore, no catalog number has been assigned. Applications submitted in response to this announcement that request construction assistance are subject to Intergovernmental Review under provisions of Executive Order 12372, as supplemented by 42 CFR Part 100, Intergovernmental Review of Federal Programs. Applications submitted for program support only are not subject to Intergovernmental Review under these provisions.

Dated: April 16, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-11781 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-15-M

Low Income Levels for Health Careers Opportunity Program, Financial Assistance for Disadvantaged Health Professions Students and Nursing Special Project Grants

This Notice updates the income levels that are used to define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Program, and the program of Financial Assistance for Disadvantaged Health Professions Students, and section 820, Nursing Special Project Grants of the Public Health Service Act, as amended.

Sections 57.1804(b)(2) and 57.1905(b)(2) of the program regulations (42 CFR Part 57, Subparts S and T) require that the Secretary publish periodically in the Federal Register the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantaged backgrounds.

The Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, amended section 787 to include stipends under subsections (a)(2)(F) and (b) to individuals from disadvantaged backgrounds and of exceptional financial need (as defined by regulations issued by the Secretary under section 758), who are students at schools of medicine, osteopathy or dentistry.

The income figures below were taken from low income levels, published by the U.S. Bureau of Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1985.

Size of parents family [1]	Income level [2]
1	$7,200.00
2	9,400.00
3	11,100.00
4	14,200.00
5	16,800.00
6 or more	18,900.00

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1985.

Dated: May 15, 1986.

John Kelso,

Acting Administrator.

[FR Doc. 86-11748 Filed 5-23-86; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 19-20, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892. This meeting will be open to the public on June 19, from 8:30

a.m. to 9:00 a.m. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 19 from 9:00 a.m. to recess and June 20 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and a roster of committee members, upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will provide program information.

Dated: May 9, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–11802 Filed 5–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Clinical Cancer Program Project Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, National Institutes of Health, July 17–18, 1986, Hyatt Regency, 1 Bethesda Metro Center, Bethesda, Maryland 20814. This meeting will be open to the Public on July 17 from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 17, from approximately 9:00 a.m. to recess; and on July 18, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Robert D. Hammond, Executive Secretary, Clinical Cancer Program Project Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7924) will furnish substantive program information.

Dated: May 9, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–11803 Filed 5–27–86; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Eye Council; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Eye Council on June 2–3, 1986, Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland, which was published on May 1, 1986 (51 FR 16208). The meeting will be closed to the public from approximately 12:00 noon until recess on Monday, June 2, and from 9:00 a.m. to adjournment on Tuesday, June 3.

The Council was to convene in closed session under sections 552b(c)(4) and 552b(c)(6) for the review, discussion and evaluation of individual grant applications. In addition, it has become necessary to close a portion of the meeting under section 552b(c)(9)(B), Title 5, U.S. Code, for the discussion and preparation of comments Council wishes to submit to the Director, NIH, for inclusion in the biennial report to the Congress.

Dated: May 21, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–11804 Filed 5–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting

Notice is hereby given that a committee of NIH staff, augmented by expert consultants, will meet to conduct an administrative review of the research programs of the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) to determine if any of such programs could be more effectively and efficiently managed by other national research institutes. Specifically, the committee will:

(1) Review the current administrative structure of the NIDDK to assure that recent program realignments resulting from the creation of the new National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) has not resulted in inappropriate or ineffective organizational arrangements;

(2) Identify any factors that may be operating within the current organizational structure to reduce the effectiveness of the scientific program;

(3) Determine whether evidence exists to suggest that the growth, development and scientific productivity of any of the scientific programs placed within the present structure of the NIDDK would be enhanced if administered or conducted by some other component of the NIH; and

(4) Assess the degree to which the present administrative framework provides an integrative focus for the existing broad array of scientific programs and suggest any modifications that would improve program performance.

As part of these deliberations, the afternoon of July 1, from 1:00 p.m. to recess, will be devoted to a public briefing in which the committee will receive testimony from interested parties. The meetings will be held in Building 31, Conference Room 8, at the National Institutes of Health, Bethesda, Maryland. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or present statements at these public briefings should notify, in writing, Mr. Edward Lynch, National Institutes of Health, Building 1, Room 228, 9000 Rockville Pike, Bethesda, Maryland 20892, by June 6, 1986.

Those planning to make a presentation must file a one-page summary of their presentation with Mr. Lynch before June 13, 1986. Each speaker will be limited to a maximum of ten minutes. Additional information may be obtained by calling (301) 496–1454.

Dated: May 19, 1986.
Betty J. Beveridge,
BDM Construction Management Officer.
[FR Doc. 86-11805 Filed 5-27-86; 8:45 am]
BILLING CODE 4310-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6663-A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Ekwok Natives Limited for approximately 1,203.20 acres. The lands involved are in the vicinity of Ekwok, Alaska.

Seward Meridian, Alaska
T. 9 S., R. 50 W. (Surveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Anchorage Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until June 26, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,
Section Chief, Branch of ANCSA Adjudication.
[FR Doc. 86-11792 Filed 5-23-86; 8:45 am]
BILLING CODE 4310-JA-M

Wyoming; Rawlins District Advisory Council Meeting

AGENCY: Bureau of Land Management, Rawlins District Office, Rawlins, Wyoming.

ACTION: Notice of Meeting of the Rawlins District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Rawlins District Advisory Council will be held. This meeting will consist of a field trip to Muddy Creek and adjacent areas.

DATE: June 25, 1986.

ADDRESS: Rawlins District Office, 1300 3rd Street, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: Gordon Warren, Public Affairs Specialist, or Mike Karbs, Associate District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324-7171.

SUPPLEMENTARY INFORMATION: The field trip will begin at 10:00 a.m. at the Rawlins District Office. The purpose of the field trip is to review the Muddy Creek Watershed Improvement Project and to review the Willows/Sand Dune area. Other items to be discussed during this meeting include.

1. Medicine Bow Resource Area Resource Management Plan;
2. Hunter Access/Operation Respect Program; and
3. Election of Officers.

This meeting/field trip is open to the public; however, interested persons must furnish their own 4-wheel drive transportation and lunch. The Council will convene at the Rawlins District Office at 4:00 p.m. to receive comments. Anyone interested in attending this meeting must notify the District Manager by June 18, 1986. Written statements may also be filed before the meeting for the Board's consideration.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District Office. Copies of the minutes may be obtained for the cost of duplication.

Michael J. Karbs,
Acting District Manager.
[FR Doc. 86-11790 Filed 5-23-86; 8:45 am]
BILLING CODE 4310-22-M

Notice of Realty Action; Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action (CA 18779).

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3 S., R. 4 E.,
Sec. 32, NE¼NE¼,
Containing 40 acres of public land.

In exchange for these lands the United States will acquire a like value of land from The Nature Conservancy, located within the following described area:

San Bernardino Meridian, California

T. 4 S., R. 6 E.,
Sec. 11, all.
Sec. 12, W½.
Containing 960 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,020 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source requried for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be conducted on a value for value basis. Following an appraisal, full equalization of values will be achieved by acreage adjustments or by a payment to the Untied States by The Nature Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transfetred out of Federal ownership.

Land to be transferred from the United States will be subject to the following reservations, terms, and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil, gas, and geothermal steam and associated geothermal resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM Office.

2. A right-of-way for a Federal Aid Highway, Serial No. LA 0152980, under the Act of November 9, 1921. (42 Stat. 216; 23 U.S.C. 18).

4. The patent will be subject to those rights granted by oil and gas lease CA 10758, issued under the Act of February 25, 1920, as amended (41 Stat. 437, 30 U.S.C. 181).

FOR FURTHER INFORMATION CONTACT: John Sullivan, Indio Resource Area (714) 351-6863. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: May 13, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86-11779 Filed 5-23-86; 8:45 am]

BILLING CODE 4310-84-M

[NM 38814]

New Mexico; Order Providing for Opening of Public Lands; Correction

In FR Doc. 86-8661 appearing on page 13294 in the issue of Friday, April 18, 1986, make the following correction: Under T. 29 N., R. 10 E., the entry for "Sec. 22" should read "N½NE¼ and NW¼" and under T. 31 N., R. 11 E., the third line, "Sec. 31" should read "Sec. 30."

Dated: May 12, 1986.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-11778 Filed 5-23-86; 8:45 am]

BILLING CODE 4310-FB-M

[NM 63431-OK]

Recreation and Public Purposes Sale; Noble County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Land classification notice.

SUMMARY: The Tulsa District proposes to dispose of 40.00 acres of public land in Noble County, Oklahoma, to the Otoe-Missouria Tribe for environmental education.

DATE: For a period of 45 days after the date of publication of this Notice in the Federal Register, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area Headquarters, 405-231-5491.

The following described land has been examined and is classified as suitable for sale under the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.), and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1781):

T. 23 N., R. 2 E., IM, Oklahoma.
Sec. 12, NE¼NW¼.
Containing 40.00 acres.

Publication of this Notice will segregate the subject land from all appropriations under the public land laws, including locations under the mining laws, but not from application under the mineral leasing laws and the R&PP Act. This segregation will terminate upon issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination.

Jim Sims,

District Manager.

[FR Doc. 86-11780 Filed 5-23-86; 8:45 am]

BILLING CODE 4310-FB-M

[Nev-038798]

Proposed Continuation of Withdrawal, Nevada

Correction

In FR Doc. 86-9798 appearing on page 16238 in the issue of Thursday, May 1, 1986, make the following correction:

In the first column, in the SUPPLEMENTARY INFORMATION, in the sixth line, "10" should read "20".

BILLING CODE 1505-01-M

[Nev-051745]

Proposed Continuation of Withdrawal, Nevada

Correction

In FR Doc. 86-10931 beginning on page 17253 in the issue of Friday, May 9, 1986, make the following correction:

On page 17253, in the second column, the last line should read "Secs. 25 ¹,".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment; Bendix Aviation Corp. et al.

Notice is hereby given that Allied Corporation (Allied), as successor to Bendix Aviation Corporation, Hydraulic Brake Company and Bendix-Westinghouse Automotive Air Brake Co. (The Bendix Companies), American Standard Inc., as successor to Westinghouse Air Brake Company, and McGraw-Edison Company, as successor to Wagner Electric Corporation, (the "defendants") have filed with the United States District Court for the Southern District of New York motions to terminate the final judgments in *United States* v. *Bendix Aviation Corporation et al.*, Civil No. 44-294; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the judgments, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on December 9, 1947) alleged that defendants had combined and conspired to restrain, and attempted to and did monopolize, trade and commerce in the fields of mechanical, hydraulic and power braking systems. The judgments (entered on December 22, 1994 and October 7, 1953) order defendants to license since-expired patents on certain conditions and enjoin them (1) from entering into anticompetitive agreements with other braking system manufacturers, (2) from inducing or coercing others not to compete in braking systems, and (3) as to Allied, as successor to The Bendix Companies, from entering into any joint venture with other braking system or vehicle manufacturers.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaint and final judgments, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the Court in connection with these motions

will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the final judgments to the Department. Such comments must be received within sixty (60) days, and will be filed with the Court. Comments should be addressed to John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, Department of Justice, 11400 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 (telephone: 215-597-7405).

Dated: May 20, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-11797 Filed 5-23-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Office of the Secretary of Labor.

ACTION: Amendment of Privacy Act systems of records, Office of the Assistant Secretary for Administration and Management.

SUMMARY: The Department of Labor is hereby amending the system of records notice for DOL/OASAM-1, entitled Attendance, Leave, and Payroll File. Specifically, the section on "System Location" is being changed to add that copies of employee time cards may be maintained by office time keepers.

DATE: Persons wishing to comment on this notice may do so by June 26, 1986.

EFFECTIVE DATE: Unless otherwise noticed in the **Federal Register**, this notice shall become effective June 26, 1986.

ADDRESS: Seth D. Zinman, Associate Solicitor, Office of the Solicitor, Division of Legislation and Legal Counsel, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Peters, Counsel for Administrative Legal Services, Office of the Solicitor, Department of Labor, Room N-2428, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-6188.

Amendment of System Location For DOL/OASAM-1

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, The Department of Labor hereby amends the **SYSTEM LOCATION** paragraph applicable to a system of records maintained by the Office of the Assistant Secretary for Administration and Management, previously published at 47 FR 30368 (July 13, 1982). The paragraph entitled "system location" is amended by adding paragraph "C" to read as follows:

DOL/OASAM-1

SYSTEM NAME:

Attendance, Leave, and Payroll File.

SYSTEM LOCATION:

* * * * *

C. Copies of time cards may be maintained by office time keepers, as appropriate.

* * * * *

Signed at Washington, DC, this 30th day of April 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-11808 Filed 5-23-86; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by June 6, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianne Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianne Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests OMB approval of the Application Guidelines and Supplemental Information Sheets listed below:

Music Professional Training/Music Recording/Centers for New Music Resources.

Purpose: Application for benefits.

Frequency of Collection: One-time.

Respondents: Nonprofit institutions.

Use: Guideline instructions and applications elicit relevant information from nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 195.

Estimated Hours for Respondents to Provide Information: 8,406.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86-11747 Filed 5-23-86; 8:45 am]

BILLING CODE 7537-01-M

Artists in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Artists in Education Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 11-12, 1986, from 8:15 a.m. to 9:30 p.m., and on June 13, 1986, from 8:45 a.m.-5:00 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506.

A portion of this meeting will be open to the public on June 11, from 8:15 a.m. to 8:45 p.m., and on June 13, from 3:00 p.m.-5:00 p.m., for an orientation and policy discussion.

The remaining sessions of this meeting on June 11, from 8:45 a.m. to 9:30 p.m.; on June 12, from 8:15 a.m.-9:30 p.m.; and on June 13, from 8:45 a.m.-3:00 p.m. are for the purpose of Panel review,

discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b to Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–11752 Filed 5–23–86; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(c)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Exploration/Research Section) to the National Council on the Arts will be held on June 12, 1986, from 9:00 a.m. to 6:00 p.m., in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: May 19, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–11753 Filed 5–23–86; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Community Foundation Initiative Section) to the National Council on the Arts will be held on June 9, 1986, from 9:15 a.m. to 5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on June 9, from 9:15 a.m. to 10:00 a.m., and from 4:30 p.m.–5:30 p.m., to discuss general Program overview and policy.

The remaining sessions of this meeting on June 10, from 10:00 a.m. to 4.30 p.m.; are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW. Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–11751 Filed 5–23–86; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field/Challenge Section) to the National Council on the Arts will be held on June 10, 1986, from 9:15 a.m. to 6:00 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 10, from 9:15 a.m. to 9:45 a.m., and from 4:45 p.m.–6:00 p.m., to discuss general Program overview and policy.

The remaining sessions of this meeting on June 10, from 9:45 a.m. to 4:45 p.m.; are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–11754 Filed 5–23–86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Meeting on Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985

AGENCY: Nuclear Regulatory Commission.

ACTION: Meeting on Low-Level Radioactive Waste Policy Amendments Act [LLRWPAA] of 1985.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a meeting on the Low-Level Radioactive Waste Policy Amendments Act of 1985 as part of NRC's continuing effort to foster the implementation of the Act's provisions. The purpose of this meeting will be to discuss with selected State officials NRC responsibilities under the Act, including the approach being taken and progress being made in fulfilling NRC responsibilities. The NRC staff wishes to obtain State views on technical and institutional issues associated with NRC and the State implementation of the LLRWPAA and to determine any additional areas in which the NRC can be of assistance in the development of disposal facilities. The meeting is open to the public. Following the discussions of the NRC and State representatives, members of the public will have the opportunity to ask questions.

DATES: June 24–25, 1986.

FOR FURTHER INFORMATION CONTACT: Donald A. Nussbaumer, Assistant Director for State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301–492–7787.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda for Meeting with State Representatives On Low Level Radioactive Waste Policy Amendments Act of 1985, June 24–25, 1986, Holiday Inn, Bethesda, Maryland.

June 24, 1986

Topic

Proposed Speaker

8:30—I. Welcome and Introduction
G. Wayne Kerr, Director, Office of State Programs
8:45—II. Low-Level Waste Management Issues and Perspectives
John Davis, Director Nuclear Material Safety and Safeguards
9:15—III. NRC Roles in Implementing the Low-Level Radioactive Waste Policy Amendments of 1985 [This session will include topics such as approach to dealing with below regulatory concern, emergency access, greater than Class C waste, State certifications, etc.)
Robert Browning, Director, Division of Waste Management and Staff
11:00—IV. NRC's Technical Assistance Programs to States and Compacts [This session will address the letters and FR notice on this subject—FR 3886 Vol. 51, No. 20)
Nuclear Material, Safety and Safeguards, Staff
12:00—Lunch
1:00—V. Agreement State Issues
1:00 This session will address the following items: 1. Concerns over Regulatory vs. Management Responsibilities under LLRWPAA for Agreement States; 2. Limited Agreements option; 3. Training and State efforts to establish capability to process license applications; 4. Additional State issues
Donald Nussbaumer, Assistant Director for State Agreements Program, and Staff
2:30—VI. State/Compact Perspective: 1. Critical siting activities and problems; 2. Development of State licensing capability; 3. Identification of needed NRC support
State Representatives
4:30 Adjourn

June 25, 1986

8:30—VII. Licensing of Alternative Disposal Methods [This session will address the FR notice issued on this subject, FR 7868, Vol. 51, No. 44)
NMSS Staff and selected State Representatives
11:30 Public participation
12:30 Close

Conduct of the Meeting

Mr. Donald Nussbaumer, Assistant Director, for State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, will serve as Chairman at the meeting. Mr. Nussbaumer will conduct the meeting in a manner that will facilitate the orderly conduct of business. Seating for the public will be on a first come-first served basis. A transcript of the meeting and written comments will be available for inspection and copying for a fee, at the NRC Public Document Room, 1717 H Street, NW. Washington, DC 20555 on or about August 20, 1986.

Dated at Bethesda, Maryland, this 16th day of May, 1986.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 86–11811 Filed 5–23–86; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension of Approval

Rule 15c2–11
No. 270–190

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c2–11 (17 CFR 240.15c2–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which regulates the initiation or resumption of quotations in a quotation medium by a broker-dealer for over-the-counter securities. The potential affected persons are securities brokers and dealers.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395–3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Shirley E. Hollis,

Assistant Secretary.

May 20, 1986.

[FR Doc. 86–11818 Filed 5–23–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23244; File No. SR–OCC–86–06]

Self-Regulatory Organizations; Options Clearing Corporation; Order Granting Accelerated Approval to a Proposed Rule Change

The Options Clearing Corporation ("OCC") on March 24, 1986, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC requested accelerated approval of the proposal. The Commission published notice of the proposal in the Federal Register on April 22, 1986, to solicit public comment.[1] The Commission received four comment letters.[2] While all commenters supported the proposal, one commenter [3] stated that the proposal's additional calculations required of custodian banks would burden their operations significantly and urged OCC to consider other alternatives.[4] This point is discussed below. This Order approves the proposal on an accelerated basis.

The proposal would amend OCC's index option and stock option escrow receipt forms [5] to provide an alternative

[1] Securities Exchange Act Release No. 23128 (April 15, 1986), 51 FR 15065 (April 22, 1986).

[2] Comments were received from the Chicago Board Options Exchange, Inc. ("CBOE"); Walsh, Greenwood & Company; Baker & McKenzie ("Baker") on behalf of State Street Bank and Trust Company ("State Street"); and the Northern Trust Company.

[3] *See* Baker's letter in File No. SR–OCC–86–06.

[4] Baker also advocated several technical changes in the escrow receipt forms. The Commission has referred those changes to OCC for consideration.

[5] *See* Securities Exchange Act Release No. 22234 (August 13, 1985), 50 FR 33443 (August 19, 1985), amending OCC Rule 1801 to permit, on a pilot basis, OCC Clearing Members to deposit with OCC

Continued

formula for calculating the amount of escrow receipts that a custodian bank may have outstanding at any one time. The proposal also would update the stock option escrow receipt form, adopting improved language from the more recently drafted index option escrow receipt form.

I. Description of the Proposal

To place an outer limit on OCC's known financial exposure if a bank issuing escrow receipts for OCC Clearing Members should fail, OCC currently requires OCC-approved escrow banks, when issuing an escrow receipt, to warrant that the total value of collateral, *i.e.*, cash, cash equivalents and securities (at market value), deposited under all outstanding escrow receipts and option guarantee letters, does not exceed 25 percent of the bank's shareholders' equity.[6] Escrow banks agree to this limitation, among others, by executing an OCC Escrow Receipt Form.

OCC's proposal would revise its escrow receipt forms to provide escrow banks an alternative, less restrictive formula for limiting the amount of escrow receipts that they may have outstanding. Specifically, new clause (c)(ii) of the forms would use the escrow-related option's "intrinsic" value, *i.e.*, the "in-the-money' amount, as the formula's basis. Thus, escrow banks could continue to issue escrow receipts until the "in-the-money" value of the escrow-related short options reach 25 percent of shareholders' equity. Banks choosing to use the new formula would be required to calculate daily the percentage of the aggregate "in-the-money" amount of the escrow-related options to shareholders' equity and to provide the results of the calculations to OCC each month.

The proposal also would make several technical revisions in OCC's stock option escrow receipt. Specifically, the proposal expressly recognizes that: (i) An escrow bank can be authorized to act on behalf of a customer's agent (the form currently provides only that the bank is authorized on behalf of the customer); (ii) a short options position covered by an escrow receipt may be assigned in part; and (iii) an escrow bank may issue escrow receipts on securities held in its account at a financial intermediary (*e.g.*, a securities depository). Finally, the amended form would expressly prohibit an escrow bank from asserting any lien or right of offset with respect to securities underlying escrow receipts and would require the bank to notify OCC and other interested parties if any third party asserts a claim against those securities.

II. OCC's Rationale for the Proposal

OCC believes the proposal is consistent with the purposes and requirements of section 17A of the Act because it would increase escrow banks' capacity for issuing stock index option related escrow receipts, thereby facilitating greater institutional participation in the index options markets, while providing reasonable safeguards for OCC's protection. In addition, OCC believes that the proposed changes in the stock option escrow receipt form would update the form consistent with the newer index option escrow receipt form.

OCC states that there is good cause for approving the proposed rule change on an accelerated basis because several financial institutions have exhausted their capacity for issuing escrow receipts under the existing limitation. OCC believes it is in the best interest of the marketplace to allow such institutions to resume issuing escrow receipts.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act and is approving it. As discussed below, the Commission agrees with OCC that the proposal should facilitate greater institutional participation in the index options markets by increasing escrow banks' capacity for issuing escrow receipts, while, at the same time, maintaining OCC's high level of financial protection.

The Commission believes it appropriate for OCC to change the formula limiting the amount of escrow receipts that a custodian bank may have outstanding to help ensure the continuing liquidity of the index options market. OCC notes in its filing, and the Commission acknowledges, that since last summer, many institutional investors with diversified stock portfolios have begun large-scale covered index call writing programs to enhance portfolio returns and to hedge against downward market movements. This increased participation in the index options market by institutional investors has been due, in large part, to the ability of those investors to cover short index options positions with assets underlying escrow receipts. That increased activity, however, has caused some escrow banks to exhaust their capacity for issuing escrow receipts under OCC's present formula. Thus, institutional investors' ability to participate actively in the index options markets has been hampered. The Commission believes that OCC's proposal will facilitate continued active index options market participation by institutional investors.

The Commission also agrees wth OCC that the proposal reflects more accurately OCC's exposure from the escrow receipt program. The Commission recognizes that in the unlikely event of the contemporaneous failure of the investor's OCC member firm and the escrow issuing bank, OCC would be at risk. In that situation, the Commission agrees with OCC that OCC's exposure would be best measured by using the index options' intrinsic value, *i.e.*, the "in-the-money" amount of the options covered by the escrow receipt, rather than the gross value of the deposited collateral. As guarantor of option writers' performance, OCC would be at risk for essentially the "in-the-money" amount in this situation.[7] While the Commission commends OCC's conservative approach to risk management, as illustrated by the initial formula's resulting overcollateralization of short call index options, the Commission also appreciates the need for OCC to modify its systems to reflect changing conditions and experience. This proposal accomplishes that result.[8]

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escrow receipts, collateralized by any combination of cash, cash equivalents, and exchange-listed or over-the-counter margin stocks, in lieu of OCC margin on short index call option positions carried for customer accounts. Under the terms of the escrow receipt, the customer on whose behalf a Clearing Member makes a deposit authorizes the liquidation of the deposit to the extent necessary to perform the issuing bank's obligations to OCC. The bank must monitor the value of deposited assets and notify OCC if the assets' value falls to less than 30 percent of the number of option contracts covered by the deposit times the aggregate current index value of the underlying index. At that time, OCC may disregard the escrow receipt and require the Clearing Member to deposit OCC margin regarding the short positions previously covered by the escrow receipt. *See also* OCC Rule 610, which governs generally the deposit of underlying securities for margin purposes.

[6] In calculating the value of deposited property, cash equivalents and common stocks are valued at their closing sale prices (if subject to last sale reporting) or closing bid prices (if not subject to last sale reporting) on the day the bank issues an escrow receipt.

[7] *See* Securities Exchange Act Release No. 19400 (February 4, 1983), 48 FR 6219 (Feburary 10, 1983), approving File No. SR–OCC–82–19 for an explanation of OCC's obligations with respect to the issuance, clearance and settlement of index options transactions and the processing and settlement of index options exercises.

[8] The proposal provides escrow banks flexibility. Those banks that are unable or unwilling to modify their automated systems to perform the more complex calculations required by the proposal may stay with the existing formula and lower ceiling on their escrow activity.

The Commission also recognizes that, under the proposal, a volatile market could cause the value of the index options relating to issued receipts (as measured by either formula) (the "position value") to increase well beyond the 25% of shareholders' equity limitation, even if the bank stops issuing escrow receipts consistent with the limitation. Nonetheless, the Commission believes that OCC is adequately protected. The unchanged terms of the escrow receipt require the escrow-issuing bank to monitor closely the value of the escrowed assets and to notify OCC whenever that value falls to less than 105% of the current position value (the "105% provision"). OCC then can disregard the escrow recipt and require the appropriate Clearing Member to deposit OCC margin regarding the previously covered short position. The Comission believes that the operation of the 105% provision should ensure that OCC always will have sufficient collateral to secure its true risk, *i.e.*, the "in-the-money" amount.

OCC's risks from its escrow receipt program are met in other ways. First, state fiduciary and banking law and (when applicable) federal banking regulations operate to protect OCC. These laws [9] generally require custodian banks to segregate customer-owned assets on their books and records. These customer-identified assets are not considered bank assets and should be free from bank creditor claims in a liquidation proceeding.[10] Second, even if the insolvent bank were to commingle assets, OCC, under Article VIII of its By-Laws, either could pledge clearing fund assets for a short-term bank loan or assess *pro rata* Clearing Members' Clearing Fund contributions.

Finally, the Commission appreciates State Street's comments. As noted above, State Street believes that the proposal's additional calculations would burden unnecessarily bank operations. State Street suggests that Clearing Members should be responsible for these calculations. State street further suggests that large custodian banks, *i.e.*, with at least $100 million shareholders' equity, be exempt from any limitation on the amount of outstanding escrow receipts. The Commission, however, believes that only escrow issuing banks can make these calculations. Only the bank can calculate its shareholders' equity and only the bank is aware of the extent of its outstanding escrow receipts. The Commission also believes it appropriate for OCC to limit the amount of escrow receipts that can be issued by any issuing bank in light of OCC's financial risk and its self-regulatory responsibilities under the Act.

On the basis of the foregoing, the Commission finds OCC's proposed amendments to its escrow receipt forms consistent with the Act and, in particular, with section 17A of the Act.[11]

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposed amendments (File No. SR-OCC-86-06) be, and hereby are, approved on an accelerated basis.[12]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 18, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11813 Filed 5-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22245; File No. SR-OCC-86-6]

Self-Regulatory Organizations; Options Clearing Corp.; Order Granting Accelerated Approval of Proposed Rule Change

On March 19, 1986, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), amending its margin systems to permit margin credits for equity options to offset partially margin requirements for non-equity options ("NEO") positions and NEO margin credits to offset partially margin requirements for equity options.[1] OCC requested in its filing that the Commission approve the proposal on an accelerated basis.[2] This Order approves the proposal.

I. Description

The proposed rule change, for the first time, enables OCC Clearing Members to "cross-over" margin credits between its equity and NEO margin systems. Currently, OCC calculates separately Clearing Members' equity options and NEO margin requirements. Thus, net margin credits generated by one system cannot be offset against margin requirements in the other system. OCC stated in its filing that it has not permitted cross-over credits because its margin systems were not designed to accommodate them. OCC now has redesigned those systems to enable credits from one system to be used to offset margin requirements in the other. OCC, however, will reduce equity option and NEO margin credits by 50% before applying them against the other system's margin requirement.

II. OCC's Rationale

OCC states in its filing that, because its equity-option and NEO margin systems have been separate and their design could not accommodate the application of margin credits in one system against margin requirements in the other, OCC often has held large amounts of unused margin collateral in the form of "excess long value." Because OCC has redesigned its margin systems, it believes that it now can permit Clearing Members to cross-over margin credits. OCC believes that its Clearing Members will benefit substantially from the proposal. Clearing Members' margin collateral requirements will be reduced, thus freeing up assets for more productive purposes. OCC believes it particularly crucial in a bull market that Members use fully the excess long value credits in their accounts. Otherwise, Clearing Members would need to continue to lock-up appreciating assets, increasing the over-collateralization of their margin requirements. While OCC recognizes that market-maker Clearing Members could pledge options through

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[9] *See, e.g.*, 12 CFR 9.8, 9.13 and 344.3. *See also* Ill. Ann. Stat. ch. 17, ¶ 1670, § 6, ¶ 2052, § 2 and 2055, § 3 (Smith & Hurd 1981); Penn. Stat. Ann., ch. 4, § 453(a) (Purdon 1967); and N.Y.E.P.T.L. bk. 17B, art. 77, §§ 11—1.8 and 1.9 (McKinney 1986 Supp.).

[10] *See, e.g.*, July 10, 1984, letter from Carroll R. Stoffert, Assistant General Counsel, Federal Deposit Insurance Corporation, to Donald N. Ringsmuth, Assistant General Counsel, Federal Reserve Bank of New York. Although this letter deals with the more complex situation of bank-entry-only U.S. Government Securities in the custodian bank insolvency context, identical principles apply to customer-identified certificated securities.

[11] The Commission also is approving OCC's proposed changes in the stock option escrow receipt form that update the form, consistent with the newer index option escrow receipt form.

[12] OCC has represented that several financial institutions have exhausted their capacity for issuing escrow receipts under the existing limitation. The Commission agrees with OCC that there is good cause for approving the proposed rule change on an accelerated basis. The Commission believes that, with the safeguards contained in the amended forms of escrow receipt, it is in the public interest to allow such institutions to resume issuing escrow receipts as soon as possible.

[1] On March 31, 1986, OCC amended the proposed rule change to incorporate the proposal into its substantially revised NEO margin systems. *See* Securities and Exchange Act Release No. 23107 (April 22, 1986), 51 FR 15627 (April 30, 1986) (approving File No. SR-OCC-85-21).

[2] Notice of the proposed rule change was published on April 8, 1986. *See* Securities and Exchange Act Release No. 23107 (April 8, 1986), 51 FR 12389 (April 28, 1986). No comments were received.

OCC's market-maker pledge program, OCC believes that it is more appropriate to offer all Clearing Members some financial benefit from maintaining excess long value in their OCC margin accounts.

OCC believes that the proposed rule change is consistent with section 17A of the Act in that the proposal ensures the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible. OCC stated that the proposed rule change would not reduce OCC's comprehensive safeguarding scheme against financial exposure from Clearing Member default. In fact, OCC represents that the long options positions that comprise "excess long value" offer OCC greater protection in a rising market and present minimal increased risk to OCC in a falling market because, under the proposal, only 50% of any excess long value in one system could be applied against margin requirements in the other system. Moreover, because Clearing Members are encouraged to maintain their long positions in an OCC margin account, OCC's ability to meet its financial obligations in the event of Clearing Member insolvency would be enhanced.

OCC requested that the Commission approve the proposed rule change on an accelerated basis. OCC believes that the proposal is non-controversial and will not expose it to significant increased risk. OCC stated that the only reason it did not implement cross-crediting of excess long value previously was because its systems design could not accommodate it. Now, since OCC has redesigned its systems, it wishes to provide immediate relief to its Clearing Members.

III. Discussion

To approve OCC's proposed rule change, the Commission must determine that the modification to OCC's margin systems is consistent with section 17A of the Act; in particular, whether the proposal will assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible. For the reasons discussed below, the Commission believes that OCC's proposal is consistent with the Act.

The Commission believes that permitting cross-crediting of excess long value between NEO and equity option positions should pose no greater risk to OCC than does permitting unrelated NEO positions to offset each other or unrelated equity option positions to offset each other. OCC's margin systems always have allowed Clearing Members' excess long value to be credited, at least in part, against their OCC margin obligations within each margin system.[3] In OCC's equity options margin system, Members are able to offset, partially, excess long value in one class of options against short value in other classes. Specifically, if the excess long value for the class is greater than the margin required for the class, the excess long value is reduced by 50% and applied only against any OCC margin requirements for other equity options classes. Similarly, under OCC's revised NEO margin system, OCC credits NEO Clearing Members for the long value in their accounts. Among product groups and class groups that are not part of product groups,[4] any excess long value, *i.e.*, excess OCC margin credit, also is reduced by 50% and applied against the Clearing Member's margin requirements for other NEO classes and product groups. OCC's conservative approach in reducing excess long value provides it with an extra cushion protecting OCC against an unfavorable price change in the long value. OCC reduces the excess long value because unrelated options positions that offset each other cannot necessarily be expected to exhibit similar price changes over a given period.

Moreover, the Commission believes that the proposed degree of reduction is appropriate. As discussed above, OCC's current 50% reduction has protected OCC well against unexpected changes in the value of offsetting positions. The Commission agrees with OCC that it will likewise give adequate protection to OCC when OCC permits cross-crediting of NEO and equity option excess long value.

While each OCC margin system traditionally has allowed some excess long value in one options class to offset margin requirements of another class, both margin systems, as OCC notes above, are separate. Each system is designed to measure and protect OCC against its discrete financial exposure from every Clearing Member's separate equity option and NEO activity. This approach to risk management carries through OCC's safeguarding scheme. For example, OCC's Clearing Funds (the Stock Clearing Fund and the Non-Equity Securities Clearing Fund) are one of OCC's secondary backstops against financial risk. OCC calculates every Clearing Member's required contribution to each Clearing Fund separately on the basis of the Member's equity option and NEO activity, and OCC maintains each Fund separately. In addition, at no time can the Clearing Fund deposits of a solvent "Stock Clearing Member" be charged for the outstanding obligations of a "Non-Equity Securities Clearing Member" or *vice versa*.[5] At first blush, the cross-crediting proposal seems to run counter to OCC's general approach. The Commission, however, is not concerned about this apparent contradiction. The proposal should not compromise the integrity of OCC's safeguarding scheme; OCC will continue to measure separately its financial exposure from equity options and NEO activity and will continue to ensure that each Member is exposed only to a degree of financial exposure from OCC membership consistent with the Member's business, *i.e.*, the amount of its activity.

Finally, the Commission agrees with OCC that cross-credits should economically benefit OCC Members. By allowing OCC Members to apply margin collateral more effectively, cross-crediting should reduce the amount of assets needed for members to secure their OCC margin requirements. In turn, assets that otherwise would be earmarked to satisfy those requirements could be available for more productive use. In fact, those assets could flow into the marketplace, thus increasing its depth and liquidity.

OCC requested that the Commission approve this proposal on an accelerated basis under section 19(b)(2) of the Act. The Commission finds good cause for approving the proposal prior to the thirtieth day after publication of notice of the proposal. The Commission has not received any comments on the proposal and believes that the proposal will benefit Clearing Members substantially in the present bull market by freeing up Member's assets for more productive use.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change in File No. SR–OCC–86–5 is consistent with the Act. In particular, the Commission finds that the proposed rule change is consistent with Section 17A and the rules and regulations applicable to clearing agencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

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[3] *See* OCC Rules 601–602A.

[4] OCC organizes all classes of NEO options (*i.e.*, puts and calls, and European and American-style options) on the same underlying asset into a "class group." Class groups that exhibit close price correlation are organized into "product groups."

[5] *See generally*, Article VIII of OCC's By-laws.

Dated: May 19, 1986.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 86-11824 Filed 5-23-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-23358; File No. SR-OCC-86-7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1986, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

The proposal amends OCC's facilities management rules.[1] These rules had required a Facilities Management Agreement ("Agreement") to provide that the Agreement would not be terminated until OCC was provided with 30 days written notice from both the Managed Clearing Member and the Managing Clearing Member. Under the proposal, the Agreement must provide that it will not be terminated until 30 days after written notice of termination is provided by the terminating party to OCC and, if the terminating party is the Managing Clearing Member, by the terminating party to the Managed Clearing Member.

OCC states in its filing that the proposal should continue to give a Managed Clearing Member advance notice if its Managing Clearing Member is terminating a facilities management arrangement and should provide time for the Managed Clearing Member to make new facilities management arrangements. OCC also states that the proposal would require a Managed Clearing Member to give notice to OCC of termination of an Agreement, but would not require notice to the Managing Firm.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by June 17, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 19, 1986.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 86-11815 Filed 5-23-86; 8:45 am]
BILLING CODE 8010-01-M

[1] See OCC By-Law Article V, § 1, Interpretation and Policy No. 4, approved in Securities Exchange Act Release No. 22238 (July 18, 1985), 50 FR 29777 (July 22, 1985).

SMALL BUSINESS ADMINISTRATION

[License Application No. 02/02-5497]

Hanam Capital Corp. Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Hanam Capital Corporation, One Penn Plaza, Suite 3330, New York, New York 10119, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1986).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Percent of ownership
Chang Yul Chang, Apt. 2D K, 5800 Arlington Ave., Riverdale, NY 10471.	Chairman of the Board, President, Manager, Director.	55
Yoshihiko Endo, Apt. 2530, 481 Eighth Avenue, New York, NY 10001.	Vice President, Secretary, Director.	45
Glenn T. Nygreen, 97 Highland Road, Scarsdale, NY 10583.	Director	
Joseph Francis Periconi, 1733 Astor Avenue, Bronx, NY 10469.	Director	

The Applicant, a New York corporation, will begin operations with a capitalization of $1,020,000 and will conduct its operations principally in the State of New York.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and managerial assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 14, 1986.
Robert G. Lineberry,
Deputy Associate Administrator for Investment.
[FR Doc. 86-11742 Filed 5-23-86; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 03/03-0171]

Madison Venture Capital Corp.; Application for License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act). (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Madison Venture Capital Corporation.

Address: 26515 Carmel Rancho Blvd., Suite 201, Carmel, California 93923.

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Norman C. Schultz, 17 Ring Lane, Carmel Valley, CA 93924.	President	62
Gordon Paul Smith, 253 Del Mesa, Carmel, CA 93921.	Director	0
Megan Schultz, 17 Ring Lane, Carmel Valley, CA 93924.	Director	0
Lawre A. Machado-Breen, 15470 Westwood Way, Salinas, CA 93908.	Secretary	0
Norman C. Schultz, Trust for Craig Schultz, Bostmens First National Bank, Kansas City, MO.	Custodian	0
Norman C. Schultz, Trust for Lisa Schultz, Bostmens First National Bank, Kansas City, MO.	Custodian	0

The Applicant, a California corporation, will begin operations with $2,500,000 in private capital and conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Carmel, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 14, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-11743 Filed 5-23-86; 8:45 am]

BILLING CODE 8025-10-M

[License No. 06/06-0288]

Wesbanc Ventures, Ltd., Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Wesbanc Ventures, Ltd. (Wesbanc), 2401 Fountainview, Houston, Texas 77057, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration (SBA) pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1986)) for approval of a conflict of interest transaction.

The conflict of interest arises because of a proposed $500,000 financing by Wesbanc of Specter, Inc., 5446 Highway 290 W. #205, Austin, Texas 78735. The financing is in the form of a 6 year, 13 percent subordinated converible debenture, convertible into common stock. The affiliation arises because Mr. Stuart Schube, General Partner of Wesbanc, owns 14.09 percent of the common stock of Specter, Inc. Additionally, Mr. E. H. Batey, a member of the Investment Committee of Wesbanc, is a Director of Specter, Inc., and owns 3.83 percent of the common stock of Specter, Inc. Because of the above, this transaction is subject to the prior written approval of SBA pursuant to Section 107.903 of SBA Regulations.

Notice is hereby given that any interested person may, no later than (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Austin, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Companies)

Dated: May 19, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-11744 Filed 5-23-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0170]

American Capital, Inc.; Surrender of License

Notice is hereby given that American Capital, Inc., 300 North Kanawha Street, Suite 103, Beckley, West Virginia 25801 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). American Capital, Inc., was licensed by the Small Business Administration on May 9, 1984. Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accpeted on April 11, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-11746 Filed 5-23-86; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on May 30, 1986, at 10:15 a.m. until 12:00 p.m., at the Nevada Economic Development Company, 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109, with Committee members, representatives from the large corporate sector, small and small minority entrepreneurs, local officials and associations to discuss availability of procurement, capitalization and marketing assistance from the private sector. The meeting will be open to all interested persons, however, space is limited.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, Small Business Administration, 1441 L Street, NW.,

Room 822, Washington, DC 20590, telephone (202) 653-6538.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86-11748 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-01-M

DEPARTMENT OF TRANSPORTATION

Application of Hageland Aviation Services, Inc.; For Certificate Authority Under Subpart Q

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order To Show Cause (Order 86-5-71), Docket 43189.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Hageland Aviation Services, Inc., fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so no later than June 9, 1986; answers to objections shall be filed no later than June 18, 1986.

ADDRESSES: Objections and answers to objections should be filed in Docket 43189 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 and should be served on the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Special Authorities Division, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 755-3512.

Dated: May 19, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-11749 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-62-M

Agreements Filed With the Department of Transportation During the Week Ending May 16, 1986

Answers my be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
May 15, 1986	44029 R-1—R-9	Members of International Air Transport Association	U.S.—So. Pacific Currency	June 1, 1986
May 15, 1986	44031	Members of International Air Transport Association	Lebanon—Adjustment Factors	June 1, 1986

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-11820 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-62-M

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held July 14, 1986, at 5:30 p.m. at the Cathedral Hill Hotel, Golden Gate Room, 1100 Van Ness Ave., San Francisco, CA. The agenda for the meeting is as follows:

—Potential for Concessions Project

—Review of Financial Assistance Projects

—Pending Maritime Project for the West Coast

—Role of Women-owned Business Enterprises in Transportation-related Activities.

Attendence is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Josie Grazziadio, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW, Washington, DC 20590, telephone (202) 426-1902. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on May 20, 1986.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 86-11819 Filed 5-23-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 25-XX; Guidance for Installations of Miscellaneous Nonrequired Electrical Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to installations of miscellaneous, nonrequired electrical equipment. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before August 25, 1986.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The proposed AC provides guidance for the installation of miscellaneous, nonrequired electrical equipment and components which are primarily located in the passenger cabin. Examples of such equipment and components are video projection systems, cathode ray tube (CRT) entertainment systems, telephones, stereo systems, refreshment

bars, galleys, aerial cameras, logo lights and games. An appendix provides a more detailed galley certification procedure as a result of the increased electrical loads and higher temperatures resulting from such installations. The AC is not intended to cover equipment or components which provide flight information to the flightcrew.

Issued in Seattle, Washington, on May 12, 1986.

Leroy A. Keith, Manager,
Aircraft Certification Division, ANM-100.

[FR Doc. 86-11832 Filed 5-23-86; 8:45 am]

BILLING CODE [illegible]

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-279)]

Burlington Northern Railroad Company—Abandonment—in Morton, Grant, and Hettinger Counties, ND

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 99.4-mile rail line between Mandan (milepost 0.70) and Mott (milepost 91.13) in Morton, Grant, and Hettinger Counties, ND. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 86-11879 Filed 5-23-86; 8:45 am]

BILLING CODE [illegible]

Sunshine Act Meetings

Federal Register
Vol. 51, No. 101
Tuesday, May 27, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL ENERGY REGULATORY COMMISSION

May 22, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: May 29, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 836th Meeting—May 29, 1986, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 2205-005, Central Vermont Public Service Corporation
CAP-2.
Project No. 4183-005, Shorock Hydro, Inc.
CAP-3.
Project No. 3195-008, Joseph M. Keating
CAP-4.
Project Nos. 9507-003 and 004, Hazard Creek Conservationists
Project Nos. 9508-002 and 003, Hard Creek Conservationists
CAP-5.
Project No. 9449-001, Eugene Water and Electric Board
CAP-6.
Project No. 9405-001, Francis A. Smith
CAP-7.
Project No. 8332-001, city of Ellensburg, Washington
Project No. 9402-001, Easton Associates
CAP-8.
Project No. 7478-001 and Docket No. EL84-42-001, Deep River Hydro, Inc.
CAP-9.
Project No. 9813-001, ASHUELOT HYDRO PARTNERS, LTD.
CAP-10.
Project No. 9182-001, TORREY ASSOCIATES
CAP-11.
Project No. 3749-004, MITEX, INC.
CAP-12.
Project Nos. 8022-000, 8023-000, 8024-000, 8025-000, 8026-000 and 8027-000, West Slope Hydro Partners
Project Nos. 8034-000, 8035-000, 8036-000, 8037-000, 8038-000 and 8039-000, Energenics Systems, Inc.
Project Nos. 8039-000 and 8041-000, Uncompahgre Valley Water Users Association and Montrose Partners
Project Nos. 9113-000, 9114-000, 9115-000, 9116-000 adn 9117-000, town of Norwood, Colorado
CAP-13.
Docket No. ER86-277-002, Central and South West Services, Inc.
CAP-14
Docket Nos. ER86-309-002 and ER86-310-002, Arizona Public Service Company
CAP-15.
Docket Nos. ER86-341-000, ER85-598-001, ER86-282-001, ER85-634-001, ER85-763-001, ER85-807-001, ER85-821-001 and ER85-840-001, Hudson Gas & Electric Corporation
CAP-16.
Docket No. ER86-350-000, Pacific Gas and Electric Company
CAP-17.
Docket No. ER86-370-000, New York State Electric & Gas Corporation
CAP-18.
Docket No. ER86-383-000, Florida Power and Light Company
CAP-19.
Docket Nos. ER86-387-000 and ER85-785-001, Wisconsin Electric Power Company
CAP-20.
Docket No. ER85-725-001, Northern States Power Company—Wisconsin
CAP-21.
Docket No. ER85-400-008, Virginia Electric and Power Company
CAP-22.
Docket Nos. ER85-659-001, 003, ER85-660-001 and ER86-285-000, Georgia Power Company
Docket No. EL85-40-001, Oglethorpe Power Corporation v. Georgia Power Company
CAP-23.
Docket No. ER86-93-001, the Washington Water Power Company
CAP-24.
Docket Nos. ER85-738-001 and 004, Pacific Gas and Electric Company
CAP-25.
Docket No. QF86-209-001, Babcock and Wilcox (Danville)
CAP-26.
Docket No. EC86-11-000, Iowa-Illinois Gas and Electric Company
CAP-27.
(A) Docket No. IR-000-1004, Public Works Commission, Fayetteville, North Carolina
(B) Docket No. IR-000-1191, Public Lighting Department of Detroit, Michigan
(C) Docket No. IR-000-370, Pacific Northwest Generating Company
(D) Docket No. IR-000-980, California Department of Water Resources
CAP-28.
Docket No. RE82-21-003, Public Service Electric and Gas Company
CAP-29.
Docket No. RE84-11-002, Appalachian Power Company
CAP-30.
Docket No. ER81-179-024 (Phase I), Arizona Public Service Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA84-29-000, Iowa Electric Light and Power Company
CAM-2.
Docket Nos. RM86-6-001, 002 and 003, construction work in progress—anticompetitive implications
CAM-3.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Tennessee Gas Pipeline Company, a division of Tenneco Inc.)
CAM-4.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Natural Gas Pipeline Company of America)
CAM-5.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Cranberry Pipeline Corporation)
CAM-6.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Transamerican Natural Gas Corporation)
CAM-7.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (U.S. Steel)
CAM-8.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Natural Gas Pipeline Company of America—Texoma)
CAM-9.
Docket No. RM79-76-247 (Texas—16 addition), high-cost gas produced from tight formations
CAM-10.
Docket No. RA84-3-001, Caribou Four Corners, Inc.
CAM-11.

Docket Nos. RA85-1-001 and RC85-3-001 (consolidated), Petro-Thermo Corporation

CAM-12.
Docket No. RC86-15-000, J.R. Cone

CAM-13.
Docket No. RC86-15-002, Keystone Fuel Oil Company

Consent Gas Agenda

CAG-1.
Docket No. RP86-57-001, Northwest Pipeline Corporation

CAG-2.
Docket No. RP86-35-002, Great Lakes Gas Transmission Company

CAG-3.
Docket Nos. RP86-10-007, et al., TA85-23-000, et al., TC85-17-000, et al. and TA86-3-49-000, Williston Basin Interstate Pipeline Company

CAG-4.
Docket No. RP85-88-000, Mid Louisiana Gas Company

CAG-5.
Docket No. RP86-71-000, Valley Gas Transmission, Inc.

CAG-6.
Docket No. RP86-72-000, Pacific Interstate Transmission Company

CAG-7.
Docket No. RP85-178-009, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-8.
Docket No. RP86-73-000, Algonquin Gas Transmission Company

CAG-9.
Docket Nos. TA88-3-58-000, 001 and TA86-1-58-000 (PGA86-2), Valero Interstate Transmission Company

CAG-10.
Docket Nos. TA86-3-55-000 and 001, Mountain Fuel Resources, Inc.

CAG-11.
Docket Nos. TA86-3-11-000 and 001, United Gas Pipe Line Company

CAG-12.
Docket Nos. TA85-3-57-000 and 001 (PGA86-2), Western Transmission Corporation

CAG-13.
Docket No. TA86-3-32-002, Colorado Interstate Gas Company

CAG-14.
Docket No. TA86-1-32-003, Consolidated Gas Transmission Corporation

CAG-15.
Docket Nos. RP83-71-017, TA83-1-58-002, TA84-1-58-005 and TA85-1-58-003, Northern Natural Gas Company, division of Internorth, Inc.

CAG-16.
Docket No. TA82-2-46-008, Kentucky West Virginia Gas Company

CAG-17.
Docket No. RP82-61-005, Mid Louisiana Gas Company

CAG-18.
Docket Nos. CP85-381-002 and 003, Colorado Interstate Gas Company

CAG-19.
Docket No. RP85-199-001, Algonquin Gas Transmission Company

CAG-20.
Docket No. TA85-1-1-005, Alabama-Tennessee Natural Gas Company

CAG-21.
Docket Nos. RP85-88-000 and 010, Natural Gas Pipeline Company of America

CAG-22.
Docket Nos. RP86-59-000, 003 and 004, Northwest Pipeline Corporation v. Colorado Interstate Gas Company
Docket Nos. RP85-13-000, 001 and 012, Northwest Pipeline Corporation

CAG-23.
Docket No. RP84-1-001, ANR Pipeline Company

CAG-24.
Docket Nos. RI76-188-000 and R175-21-075, Independent Oil & Gas Association of West Virginia

CAG-25.
Docket No. CI84-36-014, Gulf Oil Corporation

CAG-26.
Docket No. IN86-4-000, Amoco Production Company

CAG-27.
Docket Nos. TC79-8-002, 003, 004 and 005, Transcontinental Gas Pipe Line Corporation

CAG-28.
Docket No. RP85-114-000, National By-Products, Inc. v. Northern Natural Gas Company, division of Internorth, Inc.
Docket No. CP82-401-000, Northern Natural Gas Company, Division of Internorth, Inc.

CAG-29.
Docket No. CP85-406-000, Carnegie Natural Gas Company
Docket No. CP85-804-000, Texas Eastern Transmission Corporation

CAG-30.
Docket No. CP86-339-000, Northern Natural Gas Company, division of Internorth, Inc.

CAG-31.
Docket No. CP85-805-000, Texas Eastern Transmission Corporation

CAG-32.
Docket No. CP86-424-000, Crown Zellerbach Corporation and Gaylord Container Limited

CAG-33.
Docket No. CP86-65-000, Consolidated Gas Transmission Corporation
Docket No. CP86-46-000, Texas Eastern Transmission Corporation

CAG-34.
Docket No. CP86-211-000, Transwestern Pipeline Company

CAG-35.
Docket No. CP85-346-000, Consolidated Gas Transmission Corporation

CAG-36.
Docket No. CP85-845-000, Penn-York Energy Corporation and National Fuel Gas Supply Corporation

CAG-37.
Docket No. CP86-325-000, Northern Natural Gas Company, division of Internorth, Inc.

I. Licensed Project Matters

P-1.
Project No. 5090-004, City of Idaho Falls, Idaho

P-2.
Project No. 199-067, South Carolina Public Service Authority

P-3.
Project No. 4832-003, Clifton Power Corporation

II. Electric Rate Matters

ER-1.
Reserved

Miscellaneous Agenda

M-1.
Docket Nos. RM85-19-001 through 006, generic determination of rate of return on common equity for public utilities

M-2.
Reserved

M-3.
Reserved

M-4.
Docket No. RM86-3-000, ceiling prices; old gas pricing structure

M-5.
Docket No. RM83-71-039, elimination of variable costs from certain natural gas pipeline minimum commodity bill provisions

M-6.
Docket Nos. RM85-1-172 and 173 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Claroo Gas Company, Inc.)

M-7.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Endevco, Inc., Vessels Oil and Gas Company, Santo Resources, Inc. and Petro-Energy Exploration, Inc., Standard Gas Marketing Company, Kaiser-Francis Oil Company, Essex Exploration Company, Quintana Petroleum Company, Panda Resources, Inc., Trinity Pipeline Company, Moody Gas Gathering System, Tejas Power Corporation, TXO Production Corp., Creole Gas Pipeline Corporation and Texas Gas Exploration Corporation

M-8.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Freeport Sulphur Company)

M-9.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Hamilton Brothers Oil Company and French Petroleum Corporation)

M-10.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (North Central Public Service Company)

M-11.
Docket No. RM80-82-001, American Cyanamid Company, Section 206(d), exemption for mechanical cogeneration facilities from the incremental pricing provisions of the Natural Gas Policy Act of 1978

Pipeline Rate Matters

RP-1.
Docket No. RP86-45-000, El Paso Natural Gas Company

RP-2.

Docket Nos. OR79-1-011, 042 and 043, Trans Alaska Pipeline System
Docket No. IS84-13-000, Sohio Pipe Line Company

II. Producer Rate Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP85-811-000 and 003, Algonquin Gas Transmission Company
CP-2.
Docket No. CP86-270-000, ANR Pipeline Company
CP-3.
Docket No. CP86-281-000, Southern Natural Gas Company
CP-4.
Docket No. CP86-803-000, Texas Eastern Transmission Corporation
Docket No. CP84-812-001, Algonquin Gas Transmission Company
CP-5.
(A) Docket No. CP86-277-000, Southern Natural Gas Company
(B) Docket No. CP86-308-000, Southern Natural Gas Company

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11880 Filed 5-22-86; 8:45 am]
BILLING CODE 6717-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 26, 1986.

Open meetings will be held on Tuesday, May 27, 1986, at 2:30 p.m., and Thursday, May 29, 1986, at 3:30 p.m., in Room 1C30. Closed meetings will be held on Wednesday, May 28, 1986, at 2:30 p.m. and Thursday, May 29, 1986, following the 3:30 p.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the open meeting scheduled for Tuesday, May 27, 1986, at 2:30 p.m., will be:

1. Consideration of whether to endorse the Investment Advisers Amendments Act of 1986, which would (i) respond to the U.S. Supreme Court's decision in *Lowe* v. *SEC*, (ii) facilitate sharing of adviser investigation and inspection information with state and federal law enforcement officials, (iii) increase fees for registrants, (iv) grant the Commission explicit statutory authority to prescribe the form of any records of filings required under the Act, and (v) make minor revisions to clarify that advisers exempt from registration by rule are treated on the same terms as those exempt by statute. For further information, please contact Gerald Lins at (202) 272-2099.

2. Consideration of whether to issue an order authorizing: (i) Middle South Energy, Inc. ("MSE"), a public utility subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, under the Public Utility Holding Company Act of 1935, to issue and sell up to $300 million of first mortgage bonds, (ii) the operating utility subsidiaries of MSU to consent to the assignment of the Availability Agreement by MSE as security for the bonds, and (iii) MSU to consent to the assignment of the Capital Funds Agreement by MSE as security for the bonds. The Commission will also consider the comments and request for a hearing in this matter filed by Arkansas Public Service Commission. For further information, please contact William C. Weeden at (202) 272-7063.

3. Consideration of whether to propose for comment: (1) New Rule 14b-2, relating to banks' obligations in connection with forwarding communications to beneficial owners; (2) corresponding and clarifying amendments to Rules 14a-1, 14a-13, 14b-1, 14c-1 and 14c-7; (3) amendments to Rules 14a-13 and 14c-7 that would permit registrants to request from both brokers and banks beneficial owner lists that exclude persons who purchased securities through an employee benefit plan; and (4) amendments to Rules 14a-3 and 14c-2 regarding when and under what conditions registrants are no longer obligated to deliver annual reports or proxy or information statements to security holders. For further information, please contact Sarah A. Miller at (202) 272-2589.

The subject matter of the closed meeting scheduled for Wednesday, May 28, 1986, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Report of investigation.

The subject matter of the open meeting scheduled for Thursday, May 29, 1986, at 3:30 p.m., will be:

The Commission will hear oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, May 29, 1986, following the 3:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

John Wheeler,
Secretary.
May 21, 1986.

[FR Doc. 86-11812 Filed 5-21-86; 4:00 pm]
BILLING CODE 8010-01-M

federal register

Tuesday
May 27, 1986

Part II

Nuclear Regulatory Commission

10 CFR Parts 2, 19, 20, 21, 51, 70, 72, 73, 75 and 150

Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste; Proposed Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 51, 70, 72, 73, 75 and 150

Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Waste Policy Act of 1982 (NWPA) requires that monitored retrievable storage facilities (MRS) for spent nuclear fuel and high-level radioactive waste (HLW) be subject to licensing by the Nuclear Regulatory Commission (NRC), if Congress approves their construction. The NRC is proposing to add language to its regulations in 10 CFR Part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS. The Commission intends to have the appropriate regulations to fulfill the requirements of the NWPA in place in a timely manner. The proposed rule would also clarify certain issues that have arisen since Part 72 was made effective on November 28, 1980.

DATE: Comment period expires August 25, 1986.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 ATTN: Docketing and Service Branch. Deliver comments to Room 1121, 1717 H Street NW., Washington, DC between 8:15 a.m. and 5:00 p.m. weekdays. Copies of comments received, the environmental assessment, other referenced NUREGs, and a draft regulatory analysis may be examined at the NRC Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: William R. Pearson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443–7663.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1980, the NRC published in the Federal Register (45 FR 74693) a final rule, 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI)," covering the storage of spent fuel. The NRC is proposing minor amendments to clarify matters that have arisen since Part 72 was made effective on 11/28/80 and additions to address certain provisions of the Nuclear Waste Policy Act of 1982 (NWPA), as discussed below.

Issued Addressed

1. *Need for the Proposed Rule at this time.* On January 7, 1983 the Nuclear Waste Policy Act of 1982 (NWPA) was signed into law (Pub. L. 97–425). The major purpose of the NWPA was to provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel. Title I of the NWPA includes four main subtitles and stipulates requirements to ensure that the following four areas are properly addressed: (A) Repositories for the disposal of high-level radioactive waste and spent nuclear fuel, (B) the Federal interim storage program for spent nuclear fuel, (C) monitored retrievable storage of high-level radioactive waste and spent nuclear fuel, and (D) low-level radioactive waste. The requirements for licensing pertinent to B and C above are contained in this proposed rule.

The NWPA directed the Department of Energy (DOE) to complete a detailed study of the need for and feasibility of, and to submit to Congress by June 1, 1985 a proposal for construction of one or more monitored retrievable storage facilities (MRS). DOE prepared a proposal, which was submitted to the Commission for review and comment prior to submittal to Congress. DOE planned to submit the proposal to Congress in February 1986, but the State of Tennessee obtained a Federal court injunction preventing DOE from submitting the proposal if it contained any reference to siting an MRS in Tennessee. DOE has appealed the injunction to a Circuit Court of Appeals. It is expected that a trial date will be set for late July or early August. Congress will determine whether to authorize construction of an MRS after submittal of the proposal. The role of the MRS is to provide safe and reliable management of spent nuclear fuel and high-level radioactive waste (HLW) pending further processing or disposal. The NWPA specifies that an MRS must be designed to:

a. Accommodate spent nuclear fuel and HLW resulting from civilian nuclear activities;

b. Permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

c. Provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

d. Safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

If an MRS is authorized by Congress, the installation will be subject to the NRC licensing process under section 141 of the NWPA (42 U.S.C. 10161). Storage of only spent fuel in an MRS could be licensed under 10 CFR Part 72, because in this case an MRS is an ISFSI under DOE control. Currently, Part 72 could not be used to license the storage of high-level radioactive waste (HLW). From a technical stand-point storage of solidified HLW is not significantly different from storage of spent fuel because (1) HLW would be solidified in containers which can be handled and stored in the same manner as spent fuel containers, (2) the HLW form will be at least equivalent to spent fuel as a potential leaching barrier, (3) the heat and radioactivity associated with the HLW package will be equivalent or less than the heat and radioactivity associated with the packaged spent fuel, (4) there is no criticality problem because the special nuclear material content is so low, and (5) no radioactive gases and little radioactive iodine are associated with solidified HLW. Additions to Part 72 are needed to explicitly cover the storage of HLW in a monitored retrievable storage installation. It should be noted that under proposed § 72.1, the MRS rules would not apply unless Congress authorizes contruction of such an installation pursuant to section 141 of the Nuclear Waste Policy Act.

2. *Purpose and Scope of Part 72.* Currently Part 72 is limited in scope to the storage of spent fuel and radioactive material associated with the storage of spent fuel in an independent spent fuel storage installation (ISFSI) specifically designed for this purpose. Part 72 prescribes the regulatory requirements for this activity whether conducted by a nuclear utility, the Department of Energy, or some other entity.

The terms "monitored retrievable storage installation (MRS)" and "high-level radioactive waste (HLW)" would be added to Part 72, in appropriate places, to specifically include a monitored retrievable storage facility, as provided for by section 141 by the NWPA. The scope of this rule is deemed to apply to a monitored retrievable storage installation (MRS) or any other facility that might be proposed by DOE for storage of spent fuel and high-level

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radioactive waste that is subject to licensing under section 202(3) of the Energy Reorganization Act of 1974. This facility would be used for the storage of spent nuclear fuel or high-level radioactive waste resulting from civilian nuclear activities pending shipment to a HLW repository or other disposal. An MRS would provide a backup option for the handling and storage of spent fuel and high-level radioactive waste if there should be delays in the HLW repository program. The MRS may also serve other functions in the DOE waste management program such as packaging of spent fuel and high-level radioactive waste in preparation for eventual disposal. The NWPA does not contemplate the MRS as a substitute for the repository. The NWPA states that the development of a repository for the disposal of spent nuclear fuel and high-level radioactive waste should proceed regardless of any construction of a MRS. The MRS, if authorized by Congress, will be owned and operated by the Department of Energy.

The existing Part 72 only allows for the storage of spent fuel and other radioactive materials associated with the spent fuel. The proposed Part 72 would include the storage of high-level radioactive waste in an MRS. An environmental assessment has been performed to determine the impact of storing high-level radioactive waste with spent nuclear fuel in an MRS. This assessment, NUREG–1092, "Environmental Assessment for 10 CFR Part 72" "Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste," concludes that solid high-level radioactive waste is comparable to spent nuclear fuel in its heat generation and in its radioactivity content on a per metric ton basis and that the storage of high-level radioactive waste in an MRS does not significantly affect the environment.

In the proposed rule, DOE has been exempted from certain financial requirements such as providing annual financial reports, creditor information, and financial plans for decommissioning. It is assumed that government agencies will have adequate funds to carry out their statutory responsibilities. Following the precedent in 10 CFR Part 60, DOE has also been exempted from the requirements to submit a license application under oath or affirmation. Instead, DOE would be required to have each application for a license or license amendment signed by the Secretary of Energy or an authorized representative.

A license to receive and possess spent nuclear fuel has always included the authority to transfer the spent fuel to an authorized recipient. In order to make this clear, the term "transfer" has been added to § 72.1, Purpose, of the proposed regulation.

Minor amendments are proposed to clarify Part 72's applicability to the Federal Interim Storage Program, authorized by Subtitle B of the NWPA. Under this program the Department of Energy would provide Federal interim storage for spent nuclear fuel from utilities that the Commission finds are unable to provide adequate storage capacity onsite. Section 136 of the Nuclear Waste Policy Act of 1982 limits the Federal interim storage program to 1900 metric tons of spent nuclear fuel. Section 135 authorizes the Department of Energy to use available storage capacity at one or more facilities owned by the Federal Government on January 7, 1983, the date of enactment of the NWPA, for this purpose and exempts these facilities from licensing. These provisions are reflected in proposed § 72.2(e). However, section 135 does require a Commission determination that DOE's use of available storage capacity at an existing Federally owned facility will adequately protect the public health and safety. As explained in the preamble of the Commission's final rule promulgating "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity," 10 CFR Parts 1 and 53, the "Commission will consider what procedures may be appropriate for making that determination in the event that the Secretary proposes to provide interim Federal storage capacity by that method." 50 FR 5548 at 5550–5551, February 11, 1985.

3. *Licensing Actions:* There is now one facility which has been licensed as an ISFSI under the existing Part 72. This is the General Electric Company, Morris Operations at Morris, Ill. This facility was originally built under a Part 50 Construction Permit authorization as a reprocessing plant. It received an initial license for storage of spent fuel under Part 70 and a subsequent license renewal under Part 72 on May 4, 1982 (Docket 72–1). Under the proposed rule, the Morris facility would still be considered an ISFSI and no changes or additional reviews of its license would be required at this time.

Two Part 50 licensees have submitted applications under Part 72 for the storage of spent fuel at an ISFSI. These applications are from Virginia Power (formerly Virginia Electric and Power Company) for construction of an ISFSI at their Surry power station and from Carolina Power and Light Company at their Robinson site. The proposed rule would not delay or necessitate any additional review of these applications.

4. *MRS—Opportunity for Hearing Prior to the First Receipt of Spent Fuel or High-Level Radioactive Waste (HLW).* Part 72 is a one-stage licensing process that provides for issuance, prior to initiation of construction, of a materials license that authorizes receipt and possession of spent fuel for storage. It does not contain a requirement for a formal finding that construction of an ISFSI has been completed in accordance with the application prior to the initial receipt of spent fuel. NRC inspection and enforcement authorities are relied on to provide assurance that construction is conducted in accordance with the approved design and that licensees and contractors adhere to the approved QA program and related QC procedures. In addition, Part 72 requires an update of the safety analysis report (SAR) every 6 months during the construction period and submittal of the finalized SAR at least 90 days before initial operations. Section 72.34(a) requires that a notice of hearing in accordance with § 2.104 or a notice of proposed action in accordance with §§ 2.105 or 2.1107, as appropriate, be issued in connection with each application for a license under Part 72. In view of the relatively long time period projected for construction of an MRS (presently estimated by DOE to be about four years), circumstances might arise in which it would be prudent from the standpoint of public health and safety to provide further opportunity for public review before the first shipment of spent fuel or HLW is received at an MRS. A new paragraph (c) would be added to § 72.34, Public hearings, to provide that after the final updating and submittal by DOE of the safety analysis report (SAR), as required by § 72.50(a), the Commission may provide a further opportunity for hearing prior to the first receipt of spent fuel or HLW at an MRS if the Commission finds that an apportunity for hearing is required in the public interest. In making this determination the Commission would consider, among other things, whether the MRS has been constructed in conformity with the SAR and whether any significant new information important to the safety of the MRS operations has been revealed since issuance of the license.

Because the MRS will be a new type of facility, the Commission is particularly interested in receiving public comments on the following:

1. The need for the Commission to make a finding before MRS operation that construction conforms to the license application;

2. Provisions for second stage hearing rights to the extent necessary to address specific new issues which could not have been litigated at the first stage and/or new information which has been revealed since issuance of the license; and

3. The format for the hearing, if held.

5. *Cladding Degradation.* Section 72.72, currently requires that the fuel cladding "be protected against degradation and gross rupture." This requirement means that the cladding must be protected against degradation during normal operations and storage which could lead to gross rupture of the fuel rods and could result in the release of significant quantities of fuel material and fission products to the storage environment.

A definition of gross rupture is based on the potential consequences of chemical and radioactive releases and their effect on handling of the fuel rods during loading and unloading operations. If additional filtration, confinement or handling equipment would be required because of the material released via the rupture, then the rupture may be considered excessive.

NUREG–1092 analyzes the impact on storage and handling operations if the cladding is allowed to deteriorate. The assessment shows that for storage of spent fuel the cladding need not be maintained if additional confinement is provided. The main concern is during the handling operations involving the removal of the spent fuel from its storage structure and its transfer to casks for shipment. During these operations, if the spent fuel is not properly confined, unnecessary exposure to radioactive material could occur to the worker. One way this additional exposure could be prevented is by using a canister. The canister could act as a replacement for the cladding. Proposed § 72.92(h)(1) reflects this change.

6. *High-Level Radioactive Waste Definition.* The definition of high-level radioactive waste contained in § 72.3 of the proposed rule is the same as that of the MWPA. This definition allows both liquid and solid material to be designated as high-level radioactive waste. However, under the requirements of proposed § 72.91, only solid high-level radioactive wastes could be accepted in an MRS.

It is anticipated that an MRS would be used for storage of HLW in preparation for shipment to a HLW Repository for disposal. The criteria for the waste package to be emplaced in a HLW Repository specifies that the HLW must be in a solid form and placed in a sealed container (see 10 CFR Part 60, § 60.135(c)).

At this time, there is no reason for the storage of liquid wastes in a MRS because chemical reprocessing of spent fuel is not within the MRS scope, thus no liquid high-level radioactive waste would be generated at the MRS and solidification processes are being developed that would solidify liquid wastes, which exist elsewhere, before transfer to an MRS. If storage of liquid high-level waste is anticipated, new design requirements concerning confinement and monitoring would be required. Thus, the general design criteria in Part 72 would require that only solid high-level radioactive wastes be stored in the MRS.

The Commission recognizes that under the MWPA it may define as HLW other wastes that require permanent isolation. Should other materials be determined to require permanent isolation, a separate rulemaking will be conducted. The technical criteria of the proposed Part 72 are considered adequate to accommodate the receipt and storage of such other solid material that may be defined as HLW.

7. *Siting Limitations.* The NWPA sets forth specific siting limitations for a Federally owned ISFSI and MRS. Section 72.75 of the proposed rule accommodates these requirements. The limitations are derived from paragraphs 114(d), 135(a)(2), and 141(g) of the NWPA.

8. *General Design Criteria.* There were four changes made to the overall requirements of the general design criteria (proposed § 72.92). The first is the requirement to consider tornado missiles on the design of the ISFSI or MRS. The existing Part 72 states that an ISFSI need not be protected from tornado missiles. This was based on the fact that the water in a water basin facility would reduce the impact of any tornado missile onto the spent fuel assemblies. It was also assumed that the water basin would be below grade and therefore tornado missiles could not penetrate the walls of the basin. During the past three years, many alternate designs have been proposed for spent fuel storage which include metal casks, concrete silos, drywells, tunnel types, and air-cooled vaults. Many of these concepts are above grade level or have components or systems exposed to possible tornado missiles. It was therefore decided that the design should take into account tornado missile protection unless it can be shown that the missiles will not have any effect on structures, systems, and components important to safety.

The second change made in proposed § 72.92 concerns maintaining the fuel cladding as a confinement barrier. This subject is discussed in section 5 above.

The third change is related to Section 141(b)(1)(B) of the MWPA which requires that the monitored retrievable storage be designed to permit continuous monitoring, management, and maintenance of the spent fuel and high-level radioactive waste for the foreseeable future. The new paragraphs § 72.92(h) (4) and (5) address this requirement.

The last change is concerned with the requirements for retrievability. Section 141(b)(1)(C) of the NWPA requires that the MRS be designed to provide for the ready retrieval of spent fuel and high-level radioactive waste for further processing or disposal. Not only must the MRS be designed for removal of the spent fuel or high-level radioactive waste, but an ISFSI must meet the same criteria for the stored spent fuel. The spent fuel at an ISFSI must also be retrievable for transport to either the MRS or HLW repository whenever they become available. Paragraph 72.92(l) was added to accommodate this requirement.

9. *Quality Assurance.* The existing Part 72 refers to 10 CFR Part 50, Appendix B for the criteria for a quality assurance program. Rather than continuing this reference to Part 50, Subpart G in the proposed rule incorporates specific quality assurance requirements appropriate for an ISFSI or MRS. Licensees who have an NRC approved Appendix B quality assurance program need only state in the application that this approved program will be applied to the ISFSI.

The phrases "safety-related" and "important to safety" are used interchangeably in existing Part 72 in referring to design and quality assurance criteria for components, systems, and structures. For clarity, the term "important to safety" is defined in § 72.3 and will be used exclusively in the proposed rule.

10. *Emergency Planning.* Currently Section 72.19 references Appendix E to Part 50 for the elements that should be contained in an emergency plan. Rather than continuing this reference to 10 CFR Part 50, Section 72.19 is rewritten to set forth explicit requirements for emergency planning that are appropriate for an ISFSI or MRS.

The NRC has evaluated the consequences of potential accidents involving the storage of spent fuel in

water pools in NUREG–0575, "Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuels," August 1979. NUREG–0575 concluded that the largest radioactive release would be caused by a tornado driven utility pole striking a pool and rupturing a 45-foot row of fuel assemblies. The release was calculated to be up to 19,000 curies of krypton-85 and 0.00006 curies of iodine-129. Assuming a ground level release, stable atmosphere conditions, low wind speed, and no building wake (which are conservative meteorological assumptions), doses at an assumed site boundary distance of 275 meters would be 0.057 rem to the skin and 0.029 rem to the thyroid for a person standing on the plume centerline.

The NRC has also published a more recent site-specific analysis in NUREG–0709, "Safety Evaluation Report Related to the Renewal of Material License SNM–1265 for the Receipt, Storage, and Transfer of Spent Fuel Pursuant to 10 CFR Part 72—Morris Operation—General Electric Company—Docket Nos. 70–1308 and 72–1," July 1981. NUREG–0709 considered the most serious accident to be the drop of a fuel storage basket in the water of the storage pool, a drop of up to 7 meters. NUREG–0709 assumed all the fuel rods in four PRW fuel bundles would rupture and that all the plenum gases would be released to the pool water. NUREG–0709 calculated the release to be 6000 curies of krypton-85 and 0.00006 curies of iodine-129. Doses at 150 meters were calculated to be 0.016 rem whole body and 0.0004 rem thyroid.

In connection with a separate ongoing rulemaking related to emergency preparedness for fuel-cycle licenses, the staff reevaluated consequences of potential accidents involving spent fuel storage in dry casks, (NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees"). The accident assumed for the dry cask storage analysis is the removal of the lid from a cask in which all fuel rods have been damaged. The gaseous activity in the gap between the fuel and the cladding is assumed to be released. Using the same assumptions as in NUREG–0575 (VI, section 4.2.3.2), 10% of the krypton-85 and 1% of the iodine-129 activities are assumed to be present in the gap. The cask is assumed to hold 24 PWR spent fuel assemblies at less than 5% uranium-235 enrichment. The fuel burnup is assumed to be 33,000 megawatt-days per metric ton of uranium. The spent fuel is assumed to have been removed from the reactor core 5 years prior to storage in a cask. Due to heat load design criteria, spent fuel may have to age about 5 years before it can be stored in dry casks. Using these assumptions the activity released from the cask would be about 8,000 curies of krypton-85 and 0.004 curies of iodine-129. Using the same meteorological assumptions as in NUREG–0575, but with a building wake factor for a 5m×5m building, the effective dose equivalent at 100m is estimated to be 0.003 rem and the thyroid dose 0.04 rem. The reevaluation revealed no reason to increase the estimated doses in NUREG–0575 and NUREG–0709 and the staff determined that the release from day cask storage is of a comparable magnitude to that for wet storage.

The above evaluations support the conclusion that special offsite emergency preparedness is not necessary for spent fuel storage because doses calculated to result from potential accidents are far below the protective action guides set forth by the Environmental Protection Agency for implementing protective actions for nuclear incidents. Nevertheless, the Commission believes that it is prudent to maintain a channel of communications with local authorities in case of emergency, even though significant offsite consequences are not expected. The proposed rule would require licensees to notify emergency organizations that might be expected to respond in case of emergency.

A licensee's emergency plan must assure that (1) a capability exists for measuring and assessing the significance of accidental releases of radioactive materials, (2) appropriate emergency equipment and procedures are provided onsite to protect workers against radiation hazards that might be encountered following an accident, (3) notifications are promptly made to offsite response organizations, (4) information on the situation and recommended actions, including recommending that the public be informed as appropriate, are provided to organizations that might be expected to respond in case of an emergency, and (5) necessary recovery actions are taken in a timely manner to return a plant to a safe condition following an accident. ISFSI licensees are currently required to submit emergency plans. In addition, in order to ensure that offsite response organizations expected to respond to an accident have been consulted in the formation of the plan, the licensee would be required to allow such offsite response organization 60 days to comment on the plan and provide these comments to NRC. For reasons set forth previously, storage of high-level radioactive waste (HLW) is not significantly different technically from storage of spent fuel. Since an MRS would store spent fuel and could store HLW, emergency planning required for MRS would be the same as for ISFSI.

11. *Increase of Licensing Period for the MRS.* The license period for an ISFSI will remain at 20 years in this proposed rule. The NWPA specifies that the monitored retrievable storage facility provide for the long-term storage of spent nuclear fuel or high-level radioactive waste. An MRS must be designed to accommodate spent nuclear fuel and high-level radioactive waste from civilian nuclear activities; to permit continuous monitoring, management, and maintenance of such spent fuel and waste; to provide for the ready retrieval of spent fuel and waste for further processing or disposal; and to safely store such material as long as may be necessary through appropriate maintenance or replacement of the installation, if required. It is clearly intended that the MRS be capable of providing the requisite safe storage for a relatively long period of time.

Although Congress did not specify a license term for the MRS option, the Commission believes that the choice of an appropriate license term should be guided by the different purposes and time frames for the MRS provided for the NWPA. Accordingly, the proposed revision specifies a 40-year license term for the storage of spent fuel and high-level radioactive waste in an MRS.

12. *Provision of MRS Information to State Governments and Indian Tribes.*

Sections 141(h) and 117(a) of the NWPA require that the Commission provide timely and complete information regarding determinations or plans made with respect to siting, development, design, licensing, construction, operation, regulation, or decommissioning of an MRS to affected State Governments and Indian tribes. A new subpart J would be added to Part 72 to explicitly set forth procedures to meet this requirement.

13. *Records.* Proposed §§ 72.53 and 72.54 are being updated to conform to current requirements and procedures. Proposed §§ 72.35, 72.51, 72.55, 72.71, 72.133, 72.201, and 72.203 would establish fixed periods for retention of records, which is required by the Paperwork Reduction Act of 1980 and the Office of Management and Budget regulations.

14. *Redesignation of Certain Sections.* Various sections have been redesignated because of new sections

being added and to allow for additional expansion in the future. The sections in existing Part 72 that have been redesignated are identified in the following table.

REDESIGNATION TABLE

Old Section	Redesignated as new section
72.01	72.70
72.02	72.71
72.03	72.73
	72.75
72.04	72.77
72.05	72.79
72.06	72.81
72.07	72.83
72.09	72.85
72.09 (Deleted)	72.87 (Reserved)
72.10	72.89
72.11	72.91
72.12	72.92
72.13	72.93
72.14	72.94
72.15	72.95
72.16	72.96
72.17	72.100–106
72.18	72.204
72.19	72.206
72.20	72.208
72.21	72.209
72.31	72.201
72.32	72.202
72.33	72.210

Finding of No Significant Environment Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste."

NUREG–0575, "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Reactor Fuel," August 1979, was issued in support of the final rule promulgating 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI)," which became effective November 28, 1980. On January 7, 1983 the Nuclear Waste Policy Act of 1982 was signed into law. A major provision of this law is that the Department of Energy (DOE) shall complete a detailed study of the need for and feasibility of, and submit to Congress a proposal for, the construction of one or more monitored retrievable storage facilities (MRS) for high-level radioactive waste and spent nuclear fuel. If Congress approves the construction of an MRS, DOE would be required to obtain a license from the Commission for the facility. The NRC staff has concluded that although existing 10 CFR Part 72 is generally applicable to the design, construction, operation, and decommissioning of MRS, additions are necessary to explicitly cover the licensing of spent nuclear fuel and high-level radioactive waste storage in a MRS. In August 1984, the NRC published an environmental assessment for this proposed revision of Part 72, NUREG–1092, "Environmental Assessment for 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste." NUREG–1092 discusses the major issues of the proposed rule and the potential impact on the environment. The findings of the environmental assessment are "(1) past experience with water pool storage of spent fuel establishes the technology for long-term storage of spent fuel without affecting the health and safety of the public, (2) the proposed rulemaking to include the criteria of 10 CFR Part 72 of storing spent nuclear fuel and high-level radiocative waste does not significantly affect the environment, (3) solid high-level waste is comparable to spent fuel in its heat generation and in its radioactivity content on a per metric ton basis, and (4) knowledge of material degradation mechanisms under dry storage conditions and the ability to institute repairs in a reasonable manner without endangering the health [and safety] of the public shows dry storage technology options do not significantly impact the environment." The assessment concludes that, among other things, there are no significant environmental impacts as a result of promulgation of these proposed revisions of 10 CFR Part 72. NUREG–1092 is available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC.

Based on the above assessment the Commission concludes that the proposed rulemaking action will not have a significant incremental environmental impact on the quality of the human environment.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submited to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed rule. The analysis examines the benefits and alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from W.B. Pearson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–443–7663).

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared. This proposed rule affects only the licensing and operation of independent spent fuel storage installations and of monitored retrievable storage installations. The owners of these installations, nuclear power plant utilities or DOE, do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act or within the definition of "small business" in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Nuclear Waste Policy Act of 1982, the NRC is proposing to adopt the following revision to 10 CFR Part 72 and related conforming amendments to 10 CFR Parts 2, 19, 20, 21, 51, 70, 73, 75, and 150.

1. 10 CFR Part 72 is revised to read as follows:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

Subpart A—General Provisions

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72.3 Definitions.
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72.6 License required; types of licenses.
72.7 Specific exemptions.
72.8 Denial of licensing by Agreement States.
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Sec.
72.10 Employee protection.

Subpart B—License Applications, Form, and Contents

72.11 Filing of applications for specific licenses.
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72.13 Public inspection of applications.
72.14 Contents of application: General and financial information.
72.15 Contents of application: Technical information.
72.16 Contents of application: Technical specifications.
72.17 Contents of application: Applicants' technical qualifications.
72.18 Decommissioning plan, including financing.
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72.21 [Reserved]

Subpart C—Issuance and Conditions of Licenses

72.31 Issuance of licenses.
72.32 Duration of license; renewal.
72.33 License conditions.
72.34 Public hearings.
72.35 Changes, tests, and experiments.
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72.39 Application for amendment of license.
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72.52 Reports of accidential criticality or loss of special nuclear material.
72.53 Material status reports.
72.54 Nuclear material transfer reports.
72.55 Other records and reports.
72.56 Inspections and tests.
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Subpart E—Siting Evaluation Factors

72.70 General considerations.
72.71 Design basis external natural events.
72.73 Design basis external man-induced event.
72.75 Siting limitations.
72.77 Identifying regions around an ISFSI or MRS site.
72.79 Defining potential effects of the ISFSI or MRS on the region.
72.81 Geological and seismological characteristics.
72.83 Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.
72.85 Controlled area of an ISFSI or MRS.
72.87 [Reserved]
72.89 Spent fuel or high-level radioactive waste transportation.

Subpart F—General Design Criteria

72.91 General considerations.
72.92 Overall requirements.
72.93 Criteria for nuclear criticality safety.
72.94 Criteria for radiological protection.
72.95 Criteria for spent fuel, high-level radioactive waste, and other radioactive waste storage and handling.
72.96 Criteria for decommissioning.

Subpart G—Quality Assurance

72.100 Quality assurance requirements.
72.101 Quality assurance organization.
72.103 Quality assurance program.
72.105 Design control.
72.107 Procurement document control.
72.109 Instructions, procedures, and drawings.
72.111 Document control.
72.113 Control of purchased material, equipment, and services.
72.115 Identification and control of materials, parts, and components.
72.117 Control of special processes.
72.119 Licensee inspection.
72.121 Test control.
72.123 Control of measuring and test equipment.
72.125 Handling, storage, and shipping control.
72.127 Inspection, test and operating status.
72.129 Nonconforming materials, parts, or components.
72.131 Corrective action.
72.133 Quality assurance records.
72.135 Audits.

Subpart H—Physical Protection

72.201 Physical security plan.
72.202 Design for physical protection.
72.203 Safeguards contingency plan.
72.204 Changes to physical security and safeguards contingency plans.

Subpart I—Training and Certification of Personnel

72.301 Operator requirements.
72.302 Operator training and certification program.
72.303 Physical requirements.

Subpart J—Provision of MRS Information to State Governments and Indian Tribes

72.310 Provision of MRS information.
72.312 Participation in license reviews.
72.314 Notice to States.
72.316 Representation.

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021). Sec. 201, as amended, 202, 206, 88 Stat. 1242, 1243, 1246, as amended (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161). Section 72.34 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134 Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.8, 72.14, 72.15, 72.17(d), 72.19, 72.33(b)(1), (4), (5), (e), (f), 72.36(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10, 72.15, 72.17(d), 72.33(c), (d)(1), (2), (e), 72.201, 72.203, 72.204(a), 72.301 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.19(c), 72.33(b)(3), (d)(3), (f), 72.35(b), 72.50–72.52, 72.53(a), 72.54(a), 72.55, 72.56, 72.133, 72.204(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with the spent fuel storage in an independent spent fuel storage installation (ISFSI) and the terms and conditions under which the Commission will issue such licenses, including a license to the U.S. Department of Energy (DOE) for the provision of not more than 1900 metric tons of spent fuel storage capacity for the Federal interim storage program under Subtitle B—Interim Storage Program of the Nuclear Waste Policy Act of 1982 (NWPA). The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to DOE to receive, transfer, package, and possess pwoer reactor spent fuel, high-level radiocative waste, and other radioactive materials associated with the spent fuel and high-level radioactive waste storage, in a monitored retrievable storage installation (MRS) if authorized by Congress pursuant to section 141 of the Nuclear Waste Policy Act of 1982.

§ 72.2 Scope.

(a) Except as provided in § 72.6(b), licenses issued under this part are limited to the receipt, transfer, packaging, and possession of (1) power reactor spent fuel to be stored in a complex that is designed and constructed specifically for storage of power reactor spent fuel aged for at least one year, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI); or (2) power reactor spent fuel to be stored in a complex owned by DOE that is designed and constructed specifically for the storage of spent fuel aged for at least one year, high-level radioactive waste that is in a solid form, and other radiocative materials associated with spent fuel or high-level radioactive waste storage. The term "Monitored

Retrievable Storage Installation" or "MRS", as defined § 72.3, is derived from the NWPA and includes any facility that meets this definition.

(b) The regulations in this part pertaining to an independent spent fuel storage installation (ISFSI) apply to all persons in the United States, including persons in Agreement States. The regulations in this part pertaining to a monitored retrievable storage installation (MRS) apply only to DOE.

(c) The requirements of this regulation are applicable, as appropriate, to both wet and dry modes of storage of (1) spent fuel in an independent spent fuel storage installation (ISFSI) and (2) spent fuel and solid high-level radioactive waste in a monitored retrievable storage installation (MRS).

(d) Licenses covering the storage of spent fuel in an existing spent fuel storage installation shall be issued in accordance with the requirements of this part as stated in § 72.31, as applicable.

(e) As provided in section 135 of the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 96 Stat. 2201 at 2232 (42 U.S.C. 10155) the U.S. Department of Energy is not required to obtain a license under the regulations in this part to use available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, for the storage of spent nuclear fuel from civilian nuclear power reactors.

§ 72.3 Definitions.

As used in this part:

"Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

"Affected Indian tribe" means any Indian tribe—(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located; (B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"As low as is reasonably achievable" (ALARA) means as low as is reasonably achievable taking into account the state of technology, and the economics of improvements in relation to (1) benefits to the public health and safety, (2) other societal and socioeconomic considerations, and (3) the utilization of atomic energy in the public interest.

"Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

"Byproduct material" means any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to, the radiation incident to the process of producing or utilizing special nuclear material.

"Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site, but does not mean:

(1) Changes desirable for the temporary use of the land for public recreational uses, necessary borings or excavations to determine subsurface materials and foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;

(2) Construction of environmental monitoring facilities;

(3) Procurement or manufacture of components of the installation; or

(4) Construction of means of access to the site as may be necessary to accomplish the objectives of paragraphs (1) and (2) above.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Confinement systems" means those systems, including ventilation, that act as barriers between areas containing radioactive substances and the environment.

"Controlled area" means that area immediately surrounding an ISFSI or MRS for which the licensee exercises authority over its use and within which ISFSI or MRS operations are performed.

"Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

"Design bases" means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include: (1) estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved and (2) estimates of severe external man-induced events to be used for deriving design bases that will be based on analysis of human activity in the region taking into account the site characteristics and the risks associated with the event.

"Design capacity" means the quantity of spent fuel or high-level radioactive waste, the maximum burnup of the spent fuel in MWD/MTU, the curie content of the waste, and the total heat generation in BTU per hour that the storage installation is designed to accommodate.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. Areas subject to a one percent or greater chance of flooding in any given year are included.

"High-level radioactive waste" or "HLW" means (A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

"Historical data" means a compilation of the available published and unpublished information concerning a particular type of event.

"Independent spent fuel storage installation" or "ISFSI" means a complex designed and constructed for the interim storage of spent nuclear fuel and other radioactive materials associated with spent fuel storage. An ISFSI which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with such other facility and still be considered independent: *Provided*, that such sharing of utilities and services or physical connections does not: (1) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or (2) reduce the margin of safety as defined in the basis for any technical specification of either facility.

"Indian Tribe" means an Indian tribe as defined in the Indian Self Determination and Education Assistance Act (Public Law 93–638).

"Monitored Retrievable Storage Installation" or "MRS" means a complex designed, constructed, and operated by DOE for the receipt, transfer, handling, packaging, possession, safeguarding, and storage of spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities, pending shipment to a HLW respository or other disposal.

"NEPA" means the National Environmental Policy Act of 1969 including any amendments thereto.

"NWPA" means the Nuclear Waste Policy Act of 1982 including any amendments thereto.

"Persons" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Nuclear Regulatory Commission or the Department of Energy (DOE), except that the DOE shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974, as amended (88 Stat. 1244), and sections 131, 132, 133, 135, 137, and 141 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2229, 2230, 2232, 2241); (2) any State; any political subdivision of a State, or any political entity within a State; (3) any foreign government or nation,or any political subdivision of any such government or nation, or other entity; and (4) any legal successor, representative, agent, or agency of the foregoing.

"Population" means the people that may be affected by the change in environmental conditions due to the construction, operation, or decommissioning of an ISFSI or MRS.

"Region" means the geographical area surrounding and including the site, which is large enough to contain (1) all the features related to a phenomenon or to a particular event that could potentially impact the safety of the ISFSI or MRS and (2) all measurable effects of environmental impact, both radiological and nonradiological, that are due to the construction, operation, or decommissioning of an ISFSI or MRS.

"Reservation" means (1) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code; or (2) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

"Site" means the real property on which the ISFSI or MRS is located.

"Source material" means (1) uranium or thorium, or any combination thereof, in any physical or chemical form or (2) ores that contain by weight one-twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Source material does not includes special nuclear material.

"Special nuclear material" means (1) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or (2) any material artifically enriched by any of the foregoing but does not include source material.

"Spent Nuclear Fuel" or "Spent Fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year decay since being used as a source in a power reactor of energy and has not been separated into its constitutent, elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

"Structures, systems, and components important to safety" mean those features of the ISFSI or MRS whose function is (1) to maintain the conditions required to store spent fuel or high-level radioactive waste safely, (2) to prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage, or (3) to provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications, reports, and applications may be delivered in person at the Commission's Offices at 7915 Eastern Avenue, Silver Spring, Maryland, or at 1717 H Street NW., Washington, DC.

§ 72.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 72.6 License required; types of licenses.

(a) Licenses for the receipt, handling, storage, and transfer of spent fuel or high-level radioactive waste are of two types: general and specific. Any general license provided in this part is effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to regulations in this part.

(b) A general license is hereby issued to receive title to and own spent fuel or high-level radioactive waste without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this paragraph is not authorized to acquire, deliver, receive, possess, use, or transfer spent fuel or high-level radioactive waste except as authorized in a specific license.

(c) No person may acquire, receive, or possess (1) spent fuel or radioactive material associated with spent fuel for the purpose of storage in an ISFSI, or (2) spent fuel, high-level radioactive waste, or radioctive material associated with spent fuel or high-level radioactive waste for the purpose of storage in a MRS, except as authorized in a specific license issued by the Commission in accordance with the regulations in this part.

§ 72.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 72.8 Denial of licensing by Agreement States.

Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI or the storage of spent fuel and high-level radioactive waste in a MRS.

§ 72.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150-0132.

(b) The approved information collection requirements contained in this part appear in §§ 72.11, 72.14 through 72.20, 72.32, 72.33, 72.35 through 72.39, 72.42, 72.50 through 72.58, 72.70, 72.71, 72.73, 72.77, 72.79, 72.81, 72.83, 72.88, 72.91, 72.94, 72.100 through 72.135, 72.201 through 72.204, and 72.302.

§ 72.10 Employee protection.

(a) Discrimination by a Commisson licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or 1954, as amended or the Energy Reorganization Act.

(1) The protected activities include but are not limited to—

(i) Providing the Commission information about possible violations or requirements imposed under either of the above statutes;

(ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements; or

(iii) Testifying in any Commission proceeding.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in the protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 30 days after an alleged violation occurs by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant, may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each licensee and each applicant shall post Form NRC–3, "Notice to Employees," on its premises. Posting must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of Form NRC–3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D, Part 20 of this chapter or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Subpart B—License Application, Form, and Contents

§ 72.11 Filing of applications for specific licenses.

(a) *Place of filing.* Each application for a license, or amendment thereof, under this part should be filed with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications, communications, reports, and correspondence may also be delivered in person at the Commission's offices at 7915 Eastern Avenue, Silver Spring, Maryland, or at 1717 H Street NW., Washington, DC.

(b) *Oath or affirmation.* Each application for a license of license amendment (including amendments to such applications), except for those filed by DOE, must be executed in an original signed by the applicant or duly authorized officer thereof under oath or affirmation. Each application for a license or license amendment (including amendments to such applications) filed by DOE must be signed by the Secretary of Energy or the Secretary's authorized representative.

(c) *Number of copies of applications.* Each filing of an application for a license or license amendment under this part (including amendments to such applications) must include, in addition to a signed original, 25 copies of each portion of such application, safety analysis report, environmental report, and any amendments. Another 125 copies shall be retained by the applicant for distribution in accordance with instruction from the Director or the Director's designee.

(d) *Fees.* The application, amendment, and renewal fees applicable to a license covering the storage of spent fuel in an ISFSI are those shown in § 170.31 of this chapter.

§ 72.12 Elimination of repetition.

In any application under this part, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: *Provided,* that such references are clear and specific.

§ 72.13 Public inspection of applications.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in Part 2 and Part 9 of this chapter.

§ 72.14 Contents of application: General and financial information.

Each application must state:

(a) Full name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d) If applicant is:

(1) An individual: Citizenship and age;

(2) A partnership: Name, citizenship, and address of each partner and the principal location at which the partnership does business;

(3) A corporation or an unincorporated association:

(i) The State in which it is incorporated or organized and the principal location at which it does business; and

(ii) The names, addresses, and citizenship of its directors and principal officers;

(4) Acting as an agent or representative of another person in filing the application: The identification of the principal and the information required under this paragraph with respect to such principal.

(5) The Department of Energy: The identification of the DOE organization responsible for the construction and operation of the ISFSI or MRS, including a description of any delegations of authority and assignments of responsibilities.

(e) Except when the applicant is the DOE, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in the chapter, the activities for which the license is sought. The information must state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds; or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

(1) Estimated construction costs;

(2) Estimated operating costs over the planned life of the ISFSI complex; and

(3) Estimated shutdown and decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that shutdown, decontamination, and decommissioning will be carried out after the removal of spent fuel from storage.

§ 72.15 Contents of application: Technical information.

Each application for a license under this part must include a Safety Analysis Report describing the proposed ISFSI or MRS for the receipt, handling, packaging, and storage of spent fuel or high-level radioactive waste, including how the ISFSI or MRS will be operated. The minimum information to be included in this report must consist of the following:

(a) A description and safety assessment of the site on which the ISFSI or MRS is to be located, with appropriate attention to the design bases for external events. Such assessment must contain an analysis and evaluation of the major structures, systems, and components of the ISFSI or MRS that bear on the suitability of the site when the ISFSI or MRS is operated at its design capacity. If the proposed ISFSI or MRS is to be located on the site of a nuclear power plant or other licensed facility, the potential interactions between the ISFSI or MRS and such other facility must be evaluated.

(b) A description and discussion of the ISFSI or MRS structures with special attention to design and operating characteristics, unusual or novel design features, and principal safety considerations.

(c) The design of the ISFSI or MRS in sufficient detail to support the findings in § 72.31, including:

(1) The design criteria for the ISFSI or MRS pursuant to Subpart F of this part, with identification and justification for any additions to or departures from the general design criteria;

(2) The design bases and the relation of the design bases to the design criteria;

(3) Information relative to materials of construction, general arrangement, dimensions of principal structures, and description of all structures, systems, and components important to safety, in sufficient detail to support a finding the the ISFSI or MRS will satisfy the design bases with an adequate margin for safety; and

(4) Applicable codes and standards.

(d) An analysis and evaluation of the design and performance of structures, systems, and components important to safety, with the objective of assessing the impact on public health and safety resulting from operation of the ISFSI or MRS and including determination of:

(1) The margins of safety during normal operations and expected operational occurrences during the life of the ISFSI or MRS; and

(2) The adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents, including natural and manmade phenomena and events.

(e) The means for controlling and limiting occupational radiation exposures within the limits given in Part 20 of this chapter, and for meeting the objective of maintaining exposures as low as is reasonably achievable.

(f) The features of ISFSI or MRS design and operating modes to reduce to the extent practicable radioactive waste volumes generated at the installation.

(g) An identification and justification for the selection of those subjects that will be probable license conditions and technical specifications. These subjects must cover the design, construction, preoperational testing, operation, and decommissioning of the ISFSI or MRS.

(h) A plan for the conduct of operations, including the planned managerial and administrative controls system, and the applicant's organization, and program for training of personnel pursuant to Subpart I.

(i) If the proposed ISFSI or MRS incorporates structures, systems, or components important to safety whose functional adequacy or reliability have not been demonstrated by prior use for that purpose or cannot be demonstrated by reference to performance data in related applications or to widely accepted engineering principles—an identification of these structures, systems, or components along with a schedule showing how safety questions will be resolved prior to the initial receipt of spent fuel or high-level radioactive waste for storage at the ISFSI or MRS.

(j) The technical qualifications of the applicant to engage in the proposed activities, as required by § 72.17.

(k) A description of the applicant's plans for coping with emergencies, as required by § 72.19.

(l) A description of the equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal operations and expected operational occurrences. The description must identify the design objectives and the means to be used for keeping levels of radioactive material in effluents to the environment as low as is reasonably achievable and within the exposure limits stated in § 72.83. The description must include:

(1) An estimate of the quantity of each of the principal radio-nuclides expected to be released annually to the environment in liquid and gaseous effluents produced during normal ISFSI or MRS operations; and prior to the first receipt of spent fuel, a second estimate confirming the original estimate, if the expected releases and exposures are significantly different from the original estimate.

(2) A description of the equipment and processes used in radioactive waste systems; and

(3) A general description of the provisions for packaging, storage, and disposal of solid wastes containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(m) An analysis of the potential dose or dose commitment to an individual outside the controlled area from accidents or natural phenomena events

that result in the release of radioactive material to the environment or direct radiation from the ISFSI or MRS. The calculations of individual dose or dose commitment must be performed for direct exposure, inhalation, and ingestion occurring as a result of the postulated design basis event.

(n) A description of the quality assurance program that satisfies the requirements of Subpart G to be applied to the design, fabrication, construction, testing, operation, modification, and decommissioning of the structures, systems, and components of the ISFSI or MRS important to safety. The description must identify the structures, systems, and components important to safety. The program must also apply to managerial and administrative controls used to assure safe operation of the ISFSI or MRS.

(o) A description of the detailed security measures for physical protection, including design features and the plans required by Subpart H. For an application from DOE for an ISFSI or MRS, DOE will provide a description of the physical security plan for protection against radiological sabotage as required by Subpart H. An application submitted by DOE for an ISFSI or MRS must include a certification that it will provide at the ISFSI or MRS such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security.

(p) A description of the program covering preoperational testing and initial operations.

(q) A description of the decommissioning plan required under § 72.18.

§ 72.16 Contents of application: Technical specifications.

Each application under this part shall include proposed technical specifications in accordance with the requirements of § 72.33 and a summary statement of the bases and justifications for these technical specifications.

§ 72.17 Contents of application: Applicant's technical qualifications.

Each application under this part must include:

(a) The technical qualifications, including training and experience, of the applicant to engage in the proposed activities.

(b) A description of the personnel training program required under Subpart I.

(c) A description of the applicant's operating organization, delegations of responsibility and authority, and the minimum skills and experience qualifications relevant to the various levels of responsibility and authority.

(d) A commitment by the applicant to have and maintain an adequate complement of trained and certified installation personnel prior to the receipt of spent fuel or high-level radioactive waste for storage.

§ 72.18 Decommissioning plan, including financing.

(a) Each application under this part must include a proposed decommissioning plan that contains sufficient information on proposed practices and procedures for the decontamination of the site and facilities and for disposal of residual radioactive materials after all spent fuel or high-level radioactive waste has been removed, in order to provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public. This plan must identify and discuss those design features of the ISFSI or MRS that facilitate its decontamination and decommissioning at the end of its useful life.

(b) The decommissioning plan must include the financial arrangements made by the applicant to provide reasonable assurance that the planned decontamination and decommissioning of the ISFSI will be carried out. The plan submitted by DOE will not have to provide this discussion of financial arrangements.

§ 72.19 Emergency plan.

An application to store spent fuel in an ISFSI or to store spent fuel and high-level radioactive waste in an MRS must include plans for coping with emergencies.

(a) An emergency plan must include the following:

(1) A brief description of the licensee's facility, site, and area near the site;

(2) Identification of each type of accident for which an emergency response may be needed;

(3) Identification of methods for detecting these accidents in a timely manner;

(4) A brief description of methods and equipment for mitigating the consequences of accidents, including those provided to protect workers onsite against radiation hazards, and a description of the program for maintaining the equipment;

(5) A brief description of the methods and equipment to measure and assess accidental releases of radioactive materials;

(6) A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC;

(7) A brief description of the methods for promptly notifying offsite response organizations and requesting assistance, including medical assistance;

(8) A brief description of the types of information on facility status, radioactive releases, and recommended actions, as appropriate to be given to offsite response organizations and to the NRC;

(9) A brief discription of any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency response personnel;

(10) A brief description of the means of restoring the facility to a safe condition after an accident; and

(11) Provisions for conducting onsite quarterly communications checks and biennial drills and for identifying and correcting deficiencies in the plan.

(b) The licensee shall allow the offsite response organizations expected to respond in case of emergency 60 days to comment on the licensee's emergency plan before submitting the plan to NRC for approval. The licensee shall provide any comments that have been received within the 60 days to the NRC with the emergency plan.

(c) For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

§ 72.20 Environmental report.

Each application for an ISFSI or MRS license under this part must be accompanied by an Environmental Report which meets the requirements of Subpart A of Part 51 of this chapter.

§ 72.21 [Reserved]

Subpart C—Issuance and Conditions of Licenses

§ 72.31 Issuance of licenses.

(a) Except as provided in paragraph (c) of this section, the Commission will issue a license under this part upon a determination that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that:

(1) The applicant's proposed ISFSI or MRS design complies with Subpart F;

(2) The proposed site complies with the criteria in Subpart E;

(3) If on the site of a nuclear power plant or other licensed activity or facility, the proposed ISFSI would not pose an undue risk to the safe operation of such nuclear power plant or other licensed activity or facility;

(4) The applicant is qualified by reason of training and experience to conduct the operation covered by the regulations in this part;

(5) The applicant proposed operating procedures to protect health and to minimize danger to life or property are adequate;

(6) The applicant for an ISFSI, except for DOE, is financially qualified to engage in the proposed activities in accordance with the regulations in this part;

(7) The applicant's quality assurance plan complies with Subpart G;

(8) The applicant's physical protection provisions comply with Subpart H. DOE has complied with the safeguards and physical security provisions identified in § 72.15(o);

(9) The applicant's personnel training program complies with Subpart I;

(10) The applicant's decommissioning plan and its financing pursuant to § 72.18 provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public;

(11) The applicant's emergency plan complies with § 72.19;

(12) The applicable provisions of Part 170 of this chapter have been satisfied;

(13) There is reasonable assurance that (i) the activities authorized by the license can be conducted without endangering the health and safety of the public and (ii) these activities will be conducted in compliance with the applicable regulations of this chapter; and

(14) The issuance of the license will not be inimical to the common defense and security.

(b) Grounds for denial of a license to store spent fuel in the proposed ISFSI or to store spent fuel and high-level radioactive waste in the proposed MRS may be the commencement of construction prior to a conclusion or finding by the Director of the Office of Nuclear Materials Safety and Safeguards or designee or after a public hearing by the presiding officer, Atomic Safety and Licensing Board, Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter or in the case of an MRS on the basis of evaluations made pursuant to section 141(c) of NWPA, and after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values.

(c) For facilities that have been covered under previous licensing actions including the issuance of a construction permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated.

§ 72.22 Duration of license; renewal.

(a) Each license issued under this part must be for a fixed period of time to be specified in the license. The license for an ISFSI must not exceed 20 years from the date of issuance. The license for an MRS must not exceed 40 years from the date of issuance. Licenses for either type of installation may be renewed by the Commission at the expiration of the license period upon application by the licensee.

(b) Applications for renewal of a license should be filed in accordance with the applicable provisions of Subpart B at least two years prior to the expiration of the existing license. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference: *Provided*, that such references are clear and specific.

(c) In any case in which a licensee, not less than two years prior to expiration of its existing license, has filed an application in proper form for renewal of a license, the existing license shall not expire until a final decision concerning the application for renewal has been made by the Commission.

§ 72.23 License conditions.

(a) Each license issued under this part must include license conditions. The license conditions may be derived from the analyses and evaluations included in the Safety Analysis Report and amendments thereto submitted pursuant to § 72.15. License conditions pertain to design, construction and operation. The Commission may also include additional license conditions as it finds appropriate.

(b) Each license issued under this part must be subject to the following conditions, even if they are not explicitly stated therein:

(1) Neither the license nor any right thereunder shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and give its consent in writing.

(2) The license must be subject to revocation, suspension, modification, or amendment in accordance with the procedures provided by the Atomic Energy Act of 1954, as amended, and Commission regulations.

(3) Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(4) Prior to the receipt of spent fuel for storage at an ISFSI or the receipt of spent fuel and high-level radioactive waste for storage at an MRS, the licensee shall have in effect an NRC-approved program covering the training and certification of personnel that meets the requirements of Subpart I.

(5) The licensee shall permit the operation of the equipment and controls that are important to safety of the ISFSI or the MRS only by personnel whom the licensee has certified as being adequately trained to perform such operations, or by uncertified personnel who are under the direct visual supervision of a certified individual.

(c) Technical specifications submitted pursuant to § 72.16 must include requirements in the following categories:

(1) *Function and operating limits and monitoring instruments and limiting control settings.* (i) Functional and operating limits for an ISFSI or MRS are limits on fuel or waste handling and storage conditions that are found to be necessary to protect the integrity of the stored fuel or waste container, to protect employees against occupational exposures and to guard against the uncontrolled release of radioactive materials; and (ii) Monitoring instruments and limiting control settings for an ISFSI or MRS are those related to fuel or waste handling and storage conditions having significant safety functions.

(2) *Limiting conditions.* Limiting conditions are the lowest functional capability or performance levels of equipment required for safe operation.

(3) *Surveillance requirements.* Surveillance requirements include: (i) Inspection or monitoring of spent fuel or high-level radioactive waste in storage; (ii) inspection, test and calibration activities to ensure that the necessary integrity of required systems and components is maintained; (iii) confirmation that operation of the ISFSI or MRS is within the required functional and operating limits; and (iv) confirmation that the limiting conditions required for safe storage are met.

(4) *Design features.* Design features include items that would have a significant effect on safety if altered or modified, such as materials of construction and geometric arrangements.

(5) *Administrative controls.* Administrative controls include the organization and management procedures, recordkeeping, review and audit, and reporting necessary to assure that the operations involved in the storage of spent fuel in an ISFSI and the storage of spent fuel and high-level radioactive waste in an MRS are performed in a safe manner.

(d) Each license authorizing the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications that, in addition to stating the limits on the release of radioactive materials for compliance with limits of Part 20 of this chapter and the "as low as is reasonably achievable" objectives for effluents, require that:

(1) Operating procedures for control of effluents be established and followed, and equipment in the radioactive waste treatment systems be maintained and used, to meet the requirements of § 72.63;

(2) An environmental monitoring program be established to ensure compliance with the technical specifications of effluents; and

(3) An annual report be submitted to the appropriate regional office specified in Appendix D of Part 20 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, within 60 days after January 1 of each year, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate.

(e) The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.201 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.30. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within two months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of two years from the date of the change.

(f) A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission. The licensee may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan. Within twelve months after any change is made, the licensee shall submit a report containing a description of any changes made in the plan to the appropriate NRC regional office specified in Appendix D to Part 20 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards. Proposed changes that decrease the effectiveness of the approved emergency plan must not be implemented unless the licensee has received prior approval of such changes from the Commission.

§ 72.34 Public hearings.

(a) In connection with each application for a license or an amendment to a license under this part, the Commission shall issue or cause to be issued a notice of hearing in accordance with § 2.104, or a notice of proposed action in accordance with § 2.105 or 2.1107 of this chapter, as appropriate. Except as provided in paragraph (b) of this section, a hearing may not be held until after 30 days' notice and publication once in the Federal Register.

(b) In the absence of a request for hearing by any person whose interest may be affected, the Commission may issue a license or an amendment to a license without a hearing upon 30 days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with the 30 days' notice and publication with respect to an application for an amendment to a license issued under this part upon a determination by the Commission that the amendment does not involve a significant hazards consideration or an unreviewed safety question.

(c) Following final completion and submittal by DOE of the safety analysis report (SAR) for an MRS as required by § 72.50(a), and if the Commission finds that an opportunity for hearing prior to the first receipt of spent fuel or high-level radioactive waste at an MRS is required in the public interest, the Commission will issue a notice of opportunity for hearing. In making the finding that an opportunity for hearing is required in the public interest the Commission will consider, among other things, whether the MRS has been constructed in conformity with the SAR and whether any significant new information important to the safety of the MRS operations has been revealed since issuance of the license.

§ 72.36 Changes, tests, and experiments.

(a) (1) The holder of a license issued under this part may, without prior Commission approval unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, significant increase in occupational exposure or a significant unreviewed environmental impact: (i) Make changes in the ISFSI or MRS described in the Safety Analysis Report, (ii) make changes in the procedures described in the Safety Analysis Report, or (iii) conduct tests or experiments not described in the Safety Analysis Report.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased; (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced.

(b) (1) The licensee shall maintain records of changes in the ISFSI or MRS and of changes in procedures made pursuant to this section if these changes constitute changes in the ISFSI or MRS or procedures described in the Safety Analysis Report. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records must include a written safety

evaluation that provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question. The records of changes in the ISFSI or MRS and of changes in procedures and records of tests must be maintained until the Commission terminates the license.

(2) Annually, or at such shorter interval as may be specified in the license, the licensee shall furnish to the appropriate regional office, specified in Appendix D of Part 20 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, a report containing a brief description of changes, tests, and experiments made under paragraph (a) of the section, including a summary of the safety evaluation of each. Any report submitted by a licensee pursuant to this paragraph will be made a part of the public record pertaining to this license.

(c) The holder of a license issued under this part who desires (1) to change the license conditions, (2) to change the ISFSI or MRS or the procedures described in the Safety Analysis Report, or (3) to conduct tests or experiments not described in the Safety Analysis Report that involve an unreviewed safety question, a significant increase in occupational exposure, or significant unreviewed environmental impact, shall submit an application for amendment of the license, pursuant to § 72.39.

§ 72.36 Transfer of licenses.

(a) No license or any right included in a license issued under this part for an ISFSI or MRS shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b) (1) An application for transfer of a license must include as much of the information described in §§ 72.14 and 72.17 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The application must also include a statement of the purposes for which the transfer of the license is requested and the nature of the transaction necessitating or making desirable the transfer of the license.

(2) The Commission may require any person who submits an application for the transfer of a license pursuant to the provisions of this section to file a written consent from the existing licensee, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right—subject to the licensing requirements of the Act and these regulations—to possession of the radioactive materials and the storage installation involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines that:

(1) The proposed transferee is qualified to be the holder of the license; and

(2) Transfer of the license is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission.

§ 72.37 Creditor regulations.

(a) This section does not apply to an ISFSI or MRS constructed and operated by DOE.

(b) Pursuant to section 184 of the Act, the Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien on special nuclear material contained in spent fuel not owned by the United States that is the subject of a license or on any interest in special nuclear material in spent fuel; *Provided:*

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to the licensee pursuant to the provisions of the license, the Atomic Energy Act of 1954, as amended, and regulations issued by the Commission pursuant to said Act; and

(2) That no creditor to secured may take possession of the spent fuel pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing possession or the transfer of the license.

(c) Any creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to § 72.36(b). The Commission will act upon the application pursuant to § 72.36(c).

(d) Nothing contained in this regulation shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(e) As used in this section, "creditor" includes, without implied limitation, the trustee under any mortgage, pledge, or lien on spent fuel in storage made to secure any creditor; any trustee or receiver of spent fuel appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, pledge, or lien; any purchaser of the spent fuel at the sale thereof upon foreclosure of the mortgage, pledge, or lien or upon exercise of any power of sale contained therein; or any assignee of any such purchaser.

§ 72.38 Applications for termination of licenses.

(a) The licensee shall apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI or MRS and dispose of the materials stored therein. The Commission may require information, including information as to proposed procedures for the disposal of radioactive material and decontamination of the site, to determine whether there is reasonable assurance that the decommissioning and disposal will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

(b) Upon a finding of reasonable assurance that the decommissioning of the ISFSI or MRS and disposal of the materials stored therein will be performed in accordance with the regulations in this chapter and will provide adequate protection to the health and safety of the public, and after notice to interested persons, the Commission will authorize decommissioning and disposal and terminate the license upon completion of decommissioning procedures in accordance with any conditions specified in the authorization.

§ 72.39 Application for amendment of license.

Whenever a holder of a license desires to amend the license, an application for an amendment shall be filed with the Commission fully describing the changes desired and the reasons for such changes, and following as far as applicable the form prescribed for original applications.

§ 72.40 Issuance of amendment.

In determining whether an amendment to a license will be issued to the applicant, the Commission will be guided by the considerations that govern the issuance of initial licenses.

§ 72.41 Modification, revocation, and suspension of licenses.

(a) The terms and conditions of all licenses are subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, as amended, or by reason of rules, regulations, or orders issued in

accordance with the Act or any amendments thereto.

(b) Any license may be modified, revoked, or suspended in whole or in part for any of the following:

(1) Any material false statement in the application or in any statement of fact required under Section 182 of the Act;

(2) Conditions revealed by the application or statement of fact or any report, record, inspection or other means which would warrant the Commission to refuse to grant a license on an original application;

(3) Failure to operate an ISFSI or MRS in accordance with the terms of the license;

(4) Violation of, or failure to observe, any of the terms and conditions of the act, or of any applicable regulation, license, or order of the Commission.

(c) Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission prior to following any of the procedures provided under sections 551–558 of Title 5 of the United States Code, may cause the taking of possession of any special nuclear material contained in spent fuel held by the licensee.

§ 72.42 Backfitting.

(a) The Commission may require the backfitting of an ISFSI or MRS if it finds that such action will provide substantial additional protection to the environment, or occupational or public health and safety. As used in this section "backfiting" means the addition, elimination, or modification of structures, systems, or components of an ISFSI or MRS after the license has been issued.

(b) The Commission may at any time require a holder of a license to submit such information concerning the backfitting or the proposed backfitting of the ISFSI or MRS as it deems appropriate.

Subpart D—Records, Reports, Inspections, and Enforcement

§ 72.50 Safety analysis report updating.

(a) The design, description of planned operations, and other information submitted in the Safety Analysis Report shall be updated by the licensee and submitted to the Commission at least once every six months after issuance of the license during final design and construction, until preoperational teisting is completed, with final completion and submittal to the Commission at least 90 days prior to the planned receipt of spent fuel or high-level radioactive waste. The final submittal must include a final analysis and evaluation of the design and performance of structures, systems, and components that are important to safety taking into account any pertinent information developed since the submittal of the license application. Changes affecting safety margins will require Commission approval prior to the receipt of spent fuel or high-level radio active waste.

(b) After the first receipt of spent fuel or high-level radioactive waste for storage, the Safety Analysis Report must be updated annually and submitted to the Commission by the licensee. This submittal must include the following:

(1) New or revised information relating to applicable site evaluation factors, including the results of environmental monitoring programs.

(2) A description and analysis of changes in the structures, systems, and components of the ISFSI or MRS, with emphasis upon (i) performance requirements, (ii) the bases, with technical justification therefor upon which such requirements have been established, and (iii) evaluations showing that safety functions will be accomplished.

(3) An analysis of the significance of any changes to codes, standards, regulations, or regulatory guides which the licensee has committed to meeting the requirements of which are applicable to the design, construction, or operation of the ISFSI or MRS.

§ 72.51 Material balance, inventory, and records requirements for stored materials.

(a) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, and transfer of all spent fuel and high-level radioactive waste in storage. The records must include as a minimum the name of shipper of the material to the ISFSI or MRS, the estimated quantity of radioactive material per item (including special nuclear material in spent fuel), item identification and seal number, storage location, onsite movements of each fuel assembly or storage canister, and ultimate disposal. These records for spent fuel at an ISFSI or for spent fuel and high-level radioactive waste at a MRS must be retained for as long as the material is stored and for a period of five years after the material is disposed of or transferred out of the ISFSI or MRS.

(b) Each licensee shall conduct a physical inventory of all spent fuel in storage at intervals not to exceed 12 months unless otherwise directed by the Commission. The licensee shall retain a copy of the current inventory as a record until the Commission terminates the license.

(c) Each licensee shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the spent fuel in storage. The licensee shall retain a copy of the current material control and accounting procedures until the Commission terminates the license.

(d) Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destory both sets of records. Records of spent fuel transferred out of an ISFSI or of spent fuel or high-level radioactive waste transferred out of an MRS must be preserved for a period of five years after the date of transfer.

§ 72.52 Reports of accidental criticality or loss of special nuclear material.

Each licensee shall report immediately to the appropriate NRC regional office specified in Appendix D of Part 20 of this chapter by telephone and telegram or teletype, any case of accidental criticality and any loss of special nuclear material.

§ 72.53 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete and submit to the Commission (on DOE/NRC Form–742, Material Balance Report) material balance reports in accordance with the printed instructions for completing the form. These reports must provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit Material Status Reports at other times.

(b) Any licensee who is required to submit routine material status reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.54 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on DOE/NRC Form–741 in accordance with printed instructions for completing the form. Each licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of DOE/NRC Form–741, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form.

(b) Any licensee who is required to submit inventory change reports on DOE/NRC Form–741 pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.55 Other records and reports.

(a) Each licensee shall maintain any records and make any reports that may be required by the conditions of the license or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act.

(b) Each licensee, except DOE, shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission.

(c) Records that are required by the regulations in this part or by the license conditions must be maintained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified, the above records must be maintained until the Commission terminates the license.

(d) Any record that must be maintained pursuant to this part may be either the original or a reproduced copy or microform provided that any reproduced copy or microform is duly authenticated by authorized personnel and that the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations.

§ 72.56 Inspections and tests.

(a) Each licensee under this part shall permit inspection by duly authorized representatives of the Commission of its records, premises, and activities and of spent fuel or high-level radioactive waste in its possession related to the specific license as may be necessary to effectuate the purposes of the Act, including section 105 of the Act.

(b) Each licensee under this part shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, packaging, or transfer of spent fuel or high-level radioactive waste.

(c)(1) Each licensee under this part shall upon request by the Director, Office of Inspection and Enforcement provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee. The office must be convenient to and have full access to the installation and provide the ispector both visual and acoustic privacy.

(2) For a site with a single storage installation the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary, and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 sq. ft., either within the site's office complex or in an office trailer, or other on-site space, is suggested as a guide. For sites containing multiple facilities, additional space may be requested to accommodate additional full-time inspectors. The office space that is provided must be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies and Commission equipment will be furnished by the Commission.

(3) Each licensee under this part shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Administrator as likely to inspect the installation, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

(d) Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part.

(e) A report of the preoperational test acceptance criteria and test results must be submitted to the appropriate regional office specified in Appendix D of Part 20 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards at least 30 days prior to the receipt of spent fuel or high-level radioactive waste.

§ 72.57 Violation.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganiation Act of 1974, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Atomic Energy Act for violation of section 53, 57, 62, 63, 81, or 82 of the Atomic Energy Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Atomic Energy Act. Any person who willfully violates any provision of the Atomic Energy Act, or any regulation or order issued thereunder, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart E—Siting Evaluation Factors

§ 72.70 General considerations.

(a) Site characteristics that may directly affect the safety or environmental impact of the ISFSI or MRS must be investigated and assessed.

(b) Proposed sites for the ISFSI or MRS must be examined with respect to the frequency and the severity of external natural and maninduced events that could affect the safe operation of the ISFSI or MRS.

(c) Design basis external events must be determined for each combination of proposed site and proposed ISFSI or MRS design.

(d) Proposed sites with design basis external events for which adequate protection cannot be provided through ISFSI or MRS design shall be deemed unsuitable for the location of the ISFSI or MRS.

(e) Pursuant to Subpart A of Part 51 of this chapter for each proposed site for an ISFSI and pursuant to section 141 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2241, 42 U.S.C. 10161) for each proposed site for an MRS, the potential for radiological and other envirnomental impacts on the region must be evaluated with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.

(f) The facility must be sited so as to avoid to the extent possible the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains.

§ 72.71 Design basis external natural events.

(a) Natural phenomena that may exist or that can occur in the region of a proposed site must be identified and assessed according to their potential effects on the safe operation of the ISFSI or MRS. The important natural phenomena that affect the ISFSI or MRS design must be identified.

(b) Records of the occurrence and severity of those important natural phenomena must be collected for the region and evaluated for reliability, accuracy, and completeness. The applicant shall retain these records until the license is issued.

(c) Appropriate methods must be adopted for evaluating the design basis external natural events based on the characteristics of the region and the current state of knowledge about such events.

§ 72.73 Design basis external man-induced events.

(a) The region must be examined for both past and present man-made facilities and activities that might endanger the proposed ISFSI or MRS. The important potential man-induced events that affect the ISFSI or MRS design must be indentified.

(b) Information concerning the potential occurrence and severity of such events must be collected and evaluated for reliability, accuracy, and completeness.

(c) Appropriate methods must be adopted for evaluating the design basis external man-induced events, based on the current state of knowledge about such events.

§ 72.75 Siting limitations.

(a) An ISFSI which is owned and operated by DOE must not be located at any Federal or non-federal site within which there is a candidate site for a HLW repository. This limitation shall apply until such time as DOE decides that such candidate site is no longer a candidate site under consideration for development as a HLW repository.

(b) An MRS must not be sited in any state in which there is located any site approved for site characterization for a HLW repository. This limitation shall apply until such time as DOE decides that the candidate site is no longer a candidate site under consideration for development as a repository. This limitation shall continue to apply to any site selected for construction as a repository.

(c) If an MRS is located, or is planned to be located, within 50 miles of the first HLW repository, any Commission decision approving the first HLW repository application must limit the quantity of spent fuel or high-level radioactive waste that may be stored. This limitation shall prohibit the storage of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal, or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel, in both the repository and the MRS until such time as a second repository is in operation.

§ 72.77 Identifying regions around an ISFSI or MRS site.

(a) The regional extent of external phenomena, man-made or natural, that are used as a basis for the design of the ISFSI or MRS must be defined.

(b) The potenial regional impact due to the construction, operation or decommissioning of the ISFSI or MRS must be identified. The extent of regional impacts must be determined on the basis of potential measurable effects on the population or the environment from ISFSI or MRS activities.

(c) These regions identified pursuant to paragraphs (a) and (b) of this section must be investigated as appropriate with respect to (1) the present and future character and the distribution of populations, (2) consideration of present and projected future uses of land and water within the region, and (3) any special characteristics that may influence the potential consequences of a release of radioactive material during the operational lifetime of the ISFSI or MRS.

§ 72.79 Defining potential effects of the ISFSI or MRS on the region.

(a) The proposed site must be evaluated with respect to the effects on populations in the region resulting from the release of radioactive materials under normal and accident conditions during operation and decommissioning to the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics shall be taken into account.

(b) Each site must be evaluated with respect to the effects on the regional environment resulting from construction, operation, and decommissioning for the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics must be taken into account.

§ 72.81 Geological and seismological characteristics.

(a) *Massive water basin, air-cooled canyon and vault, and tunnel types of of ISFSI and MRS designs.* (1) East of the Rocky Mountain Front (east of approximately 104° west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, Mo., Charleston, S.C., and Attica, N.Y., sites will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) West of the Rocky Mountain Front (west of approximately 104° west longitude), and in other areas of known potential seismic activity, seismicity will be evaluated by the techniques of Appendix A of Part 100 of this chapter. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided.

(3) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(4) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(5) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(6) The design earthquake (DE) for use in the design of structures must be determined as follow:

(i) For sites that have been evaluated under the criteria of Appendix A of 10 CFR Part 100, the DE must be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.

(ii) For those sites that have not been evaluated under the criteria of Appendix A of 10 CFR Part 100, that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized DE described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by Appendix A of Part 100 of this chapter.

(iii) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

(b) *Other types of ISFSI and MRS designs.* For ISFSI and MRS designs that do not use the massive water basin, air-cooled canyon and vault, or tunnel type design, such as but not limited to canisters, casks, drywells, or silos, a site

specific investigation is required to establish site suitability commensurate with the specific requirements of the proposed ISFSI or MRS. Vault type structures related to these designs, such as but not limited to receiving and handling and lag storage facilities, require seismic evaluations equivalent to those specified in paragraph (a) of this section.

§ 72.83 Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.

(a) During normal operations and anticipated occurences, the annual dose equivalent to any real individual who is located beyond the controlled area must not exceed 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other organ as a result of exposure to: (1) Planned discharges of radioactive materials, radon and its daughters excepted, to the general environment, (2) direct radiation from ISFSI or MRS operations, and (3) any other radiation from uranium fuel cycle operations within the region.

(b) Operational restrictions must be established to meet as low as is reasonably achievable objectives or radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations.

(c) Operational limits must be established for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations to meet the limits given in paragraph (a) of this section.

§ 72.85 Controlled area of an ISFSI or MRS.

(a) For each ISFSI or MRS site, controlled area must be established.

(b) Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident. The minimum distance from the spent fuel or high-level radioactive waste handling and storage facilities to the nearest boundary of the controlled area shall be at least 100 meters.

(c) The controlled area may be traversed by a highway, railroad or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect the public health and safety.

§ 72.87 [Reserved]

§ 72.89 Spent fuel or high-level radioactive waste transportation.

The proposed ISFSI or MRS must be evaluated with respect to the potential impact on the environment of spent fuel or high-level radioactive waste being transported into the region.

Subpart F—General Design Criteria

§ 72.91 General considerations.

(a) Pursuant to the provisions of § 72.15, an application to store spent fuel in an ISFSI or to store spent fuel or high-level radioactive waste in an MRS must include the design criteria for the proposed storage installation. These design criteria establish the design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety as defined in § 72.3. The general design criteria identified in this subpart establish minimum requirements for the design criteria for an ISFSI or MRS. Any omissions in these general design criteria do not relieve the applicant from the requirement of providing the necessary safety features in the design of the ISFSI or MRS.

(b) The MRS must be designed to store either spent fuel or solid high-level radioactive wastes. Liquid high-level radioactive wastes may not be received or stored in an MRS. If the MRS is a water-pool type facility, the solidified waste form shall be such that it will not react or dissolve in the water.

§ 72.92 Overall requirements.

(a) *Quality Standards.* Structures, systems, and components important to safety must be designed, fabricated, erected, and tested to quality standards commensurate with the importance to safety of the function to be performed.

(b) *Protection against environmental conditions and natural phenomena.* (1) Structures, systems, and components important to safety must be designed to accommodate the effects of, and to be compatible with, site characteristics and environmental conditions associated with normal operation, maintenance, and testing of the ISFSI or MRS and to withstand postulated accidents.

(2) Structures, systems, and components important to safety must be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, lightning, hurricanes, floods, tsunami, and seiches, without impairing their capability to perform safety functions. The design bases for these structures, systems, and components must reflect (i) appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated, and (ii) appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena. The ISFSI or MRS should also be designed to prevent massive collapse of building structures or the dropping of heavy objects as a result of building structural failure on to the spent fuel or high-level radioactive waste or on to structures, systems, and components important to safety.

(3) Capability must be provided for determining the intensity of natural phenomena that may occur for comparison with design bases of structures, systems, and components important to safety.

(4) If the ISFSI or MRS is located over an aquifer which is a major water resource, measures must be taken to preclude the transport of radioactive materials to the environment through this potential pathway.

(c) *Protection against fires and explosions.* Structures, systems, and components important to safety must be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions. Noncombustible and heat-resistant materials must be used wherever practical throughout the ISFSI or MRS, particularly in locations vital to the control of radioactive materials and to the maintenance of safety control functions. Explosion and fire detection, alarm, and suppression systems shall be designed and provided with sufficient capacity and capability to minimize the adverse effects of fires and explosions on structures, systems, and components important to safety. The design of the ISFSI or MRS must include provisions to protect against adverse effects that might result from either the operation or the failure of the fire suppression system.

(d) *Sharing of structures, systems, and components.* Structures, systems, and components important to safety must not be shared between an ISFSI or MRS and other facilities unless it is shown that such sharing will not impair the capability of either facility to perform its safety functions, including the ability to return to a safe condition in the event of an accident.

(e) *Proximity of sites.* An ISFSI or MRS located near other nuclear facilities must be designed and operated to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

(f) *Testing and maintenance of systems and components.* Systems and components that are important to safety

must be designed to permit inspection, maintenance, and testing.

(g) *Emergency capability.* Structures, systems, and components important to safety must be designed for emergencies. The design must provide for accessibility to the equipment of onsite and available offsite emergency facilities and services such as hospitals, fire and police departments, ambulance service, and other emergency agencies.

(h) *Confinement barriers and systems.* (1) The spent fuel cladding must be protected during storage against degradation that leads to gross rupture or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage. This may be accomplished by canning of consolidated fuel rods or unconsolidated assemblies or other means as appropriate.

(2) For underwater storage of spent fuel or high-level radioactive waste in which the pool water serves as a shield and a confinement medium for radioactive materials, systems designed for maintaining water purity and the pool water level must be designed so that any abnormal operations or failure in those systems from any cause will not cause the water level to fall below safe limits. The design must preclude installations of drains, permanently connected systems, and other features that could, by abnormal operations or failure, cause a significant loss of water. Pool water level equipment must be provided to alarm in a continuously manned location if the water level in the storage pools falls below a predetermined level.

(3) Ventilation and off-gas systems must be provided where necessary to ensure the confinement of airborne radioactive particulate materials during normal or off-normal conditions.

(4) Storage confinement systems must be continuously monitored in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions.

(5) The high-level radioactive waste must be packaged in a manner that allows handling and retrievability without the release of radioactive materials to the environment or radiation exposures in excess of Part 20 limits. The package must be designed to confine the high-level radioactive waste for the life of the installation.

(i) *Instrumentation and control systems.* Instrumentation and control systems must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report.

(j) *Control room or control area.* A control room or control area, if appropriate for the ISFSI or MRS design, must be designed to permit occupancy and actions to be taken to monitor the ISFSI or MRS safety under normal conditions, and to provide safe control of the ISFSI or MRS under off-normal or accident conditions.

(k) *Utility or other services.* (1) Each utility service system must be designed to meet emergency conditions. The design of utility services and distribution systems that are important to safety must include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(2) Emergency utility services must be designed to permit testing of the functional operability and capacity, including the full operational sequence, of each system for transfer between normal and emergency supply sources; and to permit the operation of associated safety systems.

(3) Provisions must be made so that, in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power will be provided to instruments, utility service systems, the central security alarm station, and operating systems, in amounts sufficient to allow safe storage conditions to be maintained and to permit continued functioning of all systems essential to safe storage.

(4) An ISFSI or MRS which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with the other facility; however, the sharing of utilities and services or the physical connection must not significantly (i) increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or (ii) reduce the margin of safety as defined in the basis for any technical specifications of either facility.

(l) *Retrievability.* Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.

§ 72.33 Criteria for nuclear criticality safety.

(a) *Design for criticality safety.* Spent fuel handling, packaging, transfer, and storage systems must be designed to be maintained subcritical and to prevent a nuclear criticality accident. The design of handling, packaging, transfer, and storage systems must include margins of safety for the nuclear criticality parameters that are commensurate with the uncertainties in the handling, packaging, transfer and storage conditions in the data and methods used in calculations, and in the nature of the immediate environment under accident conditions.

(b) *Methods of criticality control.* The design of an ISFSI or MRS must be based on favorable geometry (spacing), permanently fixed neutron absorbing materials (poisons), or both. In criticality design analyses, credit can be taken for fixed neutron absorbing material present within the storage structure.

§ 72.34 Criteria for radiological protection.

(a) *Exposure control.* Radiation protection systems must be provided for all areas and operations where onsite personnel may be exposed to radiation or airborne radioactive materials. Structures, systems, and components for which operation, maintenance, and required inspections may involve occupational exposure must be designed, fabricated, located, shielded, controlled, and tested so as to control external and internal radiation exposures to personnel. The design must include means to:

(1) Prevent the accumulation of radioactive material in those systems requiring access;

(2) Decontaminate those systems to which access is required;

(3) Control access to areas of potential contamination or high radiation within the ISFSI or MRS;

(4) Measure and control contamination of areas requiring access;

(5) Minimize the time required to perform work in the vicinity of radioactive components; for example, by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(6) Shield personnel from radiation exposure.

(b) *Radiological alarm systems.* Radiological alarm systems must be provided in accessible work areas as appropriate to warn operating personnel of radiation and airborne radioactivity levels above a given setpoint and of concentration of radioactive material in effluents above control limits. Radiation alarm systems must be designed with provisions for calibration and testing their operability.

(c) *Effluent and direct radiation monitoring.* (1) As appropriate for the handling and storage system, effluent systems must be provided. Means for measuring the amount of radionuclides

in effluents during normal operations and under accident conditions must be provided for these system. A means of measuring the flow of the diluting medium, either air or water, must also be provided.

(2) Areas containing radioactive materials must be provided with systems for measuring the direct radiation levels in and around these areas.

(d) *Effluent control.* The ISFSI or MRS must be designed to provide means to limit to levels as low as is reasonably achievable the release of radioactive materials in effluents during normal operations; and control the release of radioactive materials under accident conditions. Analyses must be make to show that release to the general environment during normal operations and anticipated occurrences will be within the exposure limits given in § 72.83. Analyses of design basis accidents must be made, to show that releases to the general environment will be within the exposure limits given in § 72.85. Systems designed to monitor the release of radioactive materials must have means for calibration and testing their operability.

§ 72.95 Criteria for spent fuel, high-level radioactive waste, and other radioactive waste storage and handling.

(a) *Spent fuel and high-level radioactive waste storage and handling systems.* Spent fuel storage, high-level radioactive waste storage, and other systems that might contain or handle radioactive materials associated with spent fuel or high-level radioactive waste, must be designed to ensure adequate safety under normal and accident conditions. These systems must be designed with (1) a capability to test and monitor components important to safety, (2) suitable shielding for radiation protection under normal and accident conditions, (3) confinement structures and systems, (4) a heat-removal capability having testability and reliability consistent with its importance to safety, and (5) means to minimize the quantity of radioactive wastes generated.

(b) *Waste treatment.* Radioactive waste treatment facilities must be provided. Provisions must be made for the packaging of site-generated low-level wastes in a form suitable for storage onsite awaiting transfer to disposal sites.

§ 72.96 Criteria for decommissioning.

The ISFSI or MRS must be designed for decommissioning. Provisions must be made to facilitate decontamination of structures and equipment, minimize the quantity of radioactive wastes and contaminated equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the ISFSI or MRS is permanently decommissioned.

Subpart G—Quality Assurance

§ 72.100 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, modification of structures, systems, and components, and decommissioning that are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee[1] shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's activities. The licensee shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety. The quality assurance program must cover the activities identified in § 72.15(n) throughout the life of the licensed activity, from the site selection through decommissioning, prior to termination of the license.

(c) *Approval of Program.* Prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

[1] While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, construction, fabrication, assembly, and testing is accomplished with respect to structures, systems, and components prior to the time a license is issued.

(d) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of Appendix B to Part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section. Prior to first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of its intent to apply its previously approved Appendix B program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

§ 72.101 Quality assurance organization.

The licensee shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate in writing the authority and duties of persons and organizations performing activities affecting the functions of structures, systems and components which are important to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions. The quality assurance functions are (a) assuring that an appropriate quality assurance program is established and effectively executed and (b) verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed. The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. The persons and organizations performing quality assurance functions shall report to a management level that ensures that the required authority and organizational freedom, including sufficient independence from cost and schedule considerations when these considerations are opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure

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for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this section are being performed must have direct access to the levels of management necessary to perform this function.

§ 72.103 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this section. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with these procedures throughout the period during which the ISFSI or MRS is licensed. The licensee shall identify the structures, systems, and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified structures, systems, and components to an extent commensurate with the importance to safety, and as necessary to ensure conformance to the approved design of each ISFSI or MRS. The licensee shall ensure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools and skills to attain the required quality and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the structures, systems, or components:

(1) The impact of malfunction or failure of the item on safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to ensure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing.

§ 72.105 Design control.

(a) The licensee shall establish measures to ensure that applicable regulatory requirements and the design, as specified in the license for those structures, systems, and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to ensure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the functions of the structures, systems, and components which are important to safety.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following: criticality physics, radiation, shielding, stress, thermal, hydraulic, and accident analyses; compatibility of materials; accessibility for inservice inspection, maintenance, and repair; features to facilitate decontamination; and delineation of acceptance criteria for inspection tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the license require NRC approval.

§ 72.107 Procurement document control.

The licensee shall establish measures to assure that applicable regulatory requirements, design bases, and other requirements which are necessary to assure adequate quality are included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this part.

§ 72.109 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 72.111 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must ensure that changes to documents are reviewed and approved.

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§ 72.113 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to assure that purchased material, equipment and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications prior to installation or use of the material and equipment. The licensee shall retain or have available this documentary evidence for the life of ISFSI or MRS. The licensee shall ensure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee or designee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 72.115 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must ensure that identification of the item is maintained by heat number, part number, serial number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 72.117 Control of special processes.

The licensee shall establish measures to ensure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 72.119 Licensee inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products is not carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 72.121 Test control.

The licensee shall establish a test program to ensure that all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this part and the requirements and acceptance limits contained in the ISFSI or MRS license. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to ensure that test requirements have been satisfied.

§ 72.123 Control of measuring and test equipment.

The licensee shall establish measures to ensure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified time to maintain accuracy within necessary limits.

§ 72.125 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with work and inspection instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 72.127 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of marking such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the ISFSI or MRS. These measures must provide for the identification of items which have satisfactorily passed required inspections and tests where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of structures, systems, and components of the ISFSI or MRS, such as tagging valves and switches, to prevent inadvertent operation.

§ 72.129 Nonconforming materials, parts or components.

The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 72.131 Corrective action.

The licensee shall establish measures to ensure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must ensure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 72.133 Quality assurance records.

The licensee shall maintain sufficient written records to furnish evidence of activities affecting quality. The records must include the following: design records, records of use and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records must include closely related data such as qualifications of personnel, procedures,

and equipment. Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any noted deficiencies. Records must be identifiable and retrievable. Records pertaining to the design, fabrication, erection, testing, maintenance, and use of structures, systems, and components important to safety shall be maintained by or under the control of the licensee until the Commission terminates the license.

§ 72.136 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action including re-audit of deficient areas, must be taken where indicated.

Subpart H—Physical Protection

§ 72.201 Physical security plan.

The licensee shall establish a detailed plan for security measures for physical protection. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. This plan must consist of two parts. Part I must demonstrate how the applicant plans to comply with the applicable requirements of Part 73 of this chapter during transportation to and from the proposed ISFSI or MRS and must include the design for physical protection and the licensee's safeguards contingency plan and guard training plan. Part II must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

§ 72.202 Design for physical protection.

The design for physical protection must show the site layout and the design features provided to protect the ISFSI or MRS from sabotage. It must include:

(a) The design criteria for the physical protection of the proposed ISFSI or MRS;

(b) The design bases and the relation of the design bases to the design criteria submitted pursuant to paragraph (a) of this section; and

(c) Information relative to materials of construction, equipment, general arrangement, and proposed quality assurance program sufficient to provide reasonable assurance that the final security system will conform to the design bases for the principal design criteria submitted pursuant to paragraph (a) of this section.

§ 72.203 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for dealing with threats and radiological sabotage must be as defined in § 73.40(b) of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first, four categories of information relating to nuclear facilities licensed under Part 50 of this chapter. (The fifth category of information, Procedures, does not have to be submitted for approval.)

(b) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to 10 CFR Part 73 for effecting the actions and decisions contained in the Responsibility Matrix of the licensee's safeguards contingency plan. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

§ 72.204 Change to physical security and safeguards contingency plans.

(a) The licensee shall make no change that would decrease the safeguards effectiveness of the physical security plan, guard training plan or the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the licensee safeguards contingency plan without prior approval of the Commission. A licensee desiring to make a change must submit an application for a license amendment pursuant to § 72.30.

(b) The licensee may, without prior Commission approval, make changes to the physical security plan, guard training plan, or the safeguards contingency plan, if the changes do not decrease the safeguards effectiveness of these plans. The licensee shall maintain records of changes to any such plan made without prior approval for a period of two years from the date of the change and shall furnish to the Regional Administrator of the appropriate NRC Regional Office specified in Appendix A of Part 73 of this Chapter, with a copy to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a description of each change within two months after the change is made.

Subpart I—Training and Certification of Personnel

§ 72.301 Operator requirements.

Operation of equipment and controls that have been identified as important to safety in the Safety Analysis Report and in the license must be limited to trained and certified personnel or be under the direct visual supervision of an individual with training and certification in the operation. Supervisory personnel who personally direct the operation of equipment and controls that are important to safety must also be certified in such operations.

§ 72.302 Operator training and certification program.

The applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application.

§ 72.303 Physical requirements.

The physical condition and the general health of personnel certified for the operation of equipment and controls that are important to safety must not be such as might cause operational errors that could endanger other in-plant personnel or the public health and safety. Any condition that might cause impaired judgment or motor coordination must be considered in the selection of personnel for activities that are important to safety. These conditions need not categorically disqualify a person, if appropriate provisions are made to accommodate such defect.

Subpart J—Provision of MRS Information to State Governments and Indian Tribes

§ 72.310 Provision of MRS information.

(a) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee shall provide to the Governor and legislature of any State in which a monitored retrievable storage facility authorized under section 141 of the Nuclear Waste Policy Act of 1982 is or may be located, and to the governing body of any affected Indian tribe, timely and complete information regarding

determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility.

(b) Notwithstanding paragraph (a) of this section, the Director or the Director's designee is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(c) Copies of all communications by the Director or the Director's designee under this section shall be placed in the Commission's Public Document Room shall be furnished to DOE.

§ 72.312 Participation in license reviews.

State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

§ 72.314 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and the legislature separately.

§ 72.316 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in such representative capacity.

Conforming Amendments

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

2. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 835, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300-2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 544. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under sec. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

3. In § 2.764, paragraph (c) is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) under 10 CFR Part 72 of this chapter shall not become effective until review by the Commission has been completed. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) under 10 CFR Part 72 of this chapter until expressly authorized to do so by the Commission.

* * * * *

4. In Appendix C, Table 1A, footnote 3 is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

TABLE 1A—BASE CIVIL PENALTIES

* * * * *

3. Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material. Includes independent spent fuel installations (ISFSI) and monitored retrievable storage installations (MRS) as applicable under Part 72.

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

58. The authority citation for Part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

7. In § 19.3, paragraph (d) is revised to read as follows;

§ 19.3 Definitions.

* * * * *

(d) "License" means a license issued under the regulations in Parts 30 through 35, 40, 60, 61, 70, or 72 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter. "Licensee" means the holder of such a license.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

8. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), §§ 20.101, 20.102, 20.103 (a), (b), and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 20.102,

20.201(a), 20.403–20.407, 20.408(b) and 20.409 are issued under sec. 161o, 68 Stat. 950, as amended, [42 U.S.C. 2201(o)].

9. Section 20.2 is revised to read as follows:

§ 20.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed pursuant to the regulations in Parts 30 through 35, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

10. In § 20.408, paragraph (a)(5) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) * * *

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) or to possess spent fuel or high level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter; or

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

11. The authority citation for Part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Sec. 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.8, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 21.21, 21.41 and 21.51 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 40, 60, 61, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate and/or transfer within the United States, any production or utilization facility, or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS), and to each director [see § 21.3(f)] and responsible officer [see § 21.3(j)] of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs [see § 21.3(c)] a production or utilization facility licensed for manufacture, construction or operation [see § 21.3(h)] pursuant to Part 50 of this chapter, an independent spent fuel storage installation (ISFSI) for the storage of spent fuel licensed pursuant to Part 72 of this chapter or a monitored retrievable storage installation (MRS) for the storage of spent fuel or high-level radioactive waste licensed pursuant to Part 72 of this chapter, or supplies [see § 21.3(l)] basic components [see § 21.3(a)] for a facility or activity licensed, other than for export, under Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter. Nothing in these regulations should be deemed to preclude either an individual or a manufacturer/supplier of a commercial grade item [see § 21.3(a–1)] not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.[1]

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

13. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3039 (42 U.S.C. 2021).

14. In § 51.20, paragraphs (b)(9) and (b)(10) are revised to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

(9) Issuance of a license pursuant to Part 72 of this chapter for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor, or for the storage of spent fuel or high-level radioactive waste in a monitored retrievable storage installation (MRS).

(10) Issuance of a license amendment authorizing the decommissioning of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

15. In § 51.30, a new paragraph (c), is added to read as follows:

§ 51.30 Environmental assessment.

* * * * *

(c) An environmental assessment for a proposed action regarding a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS as set forth in section 141(b)(1) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2242).

16. In § 51.60, paragraphs (a), (b)(1)(iii) and (b)(4) are revised to read as follows:

§ 51.60 Environmental report—Materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1)–(b)(6) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the

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[1] NRC Regional Offices will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers (for nights and holidays as well as regular hours) are listed below (by region):

I: Philadelphia, (215) 337–5000.
II: Atlanta, (404) 331–4503.
III: Chicago, (312) 790–5590.
IV: Dallas, (817) 860–8160.
IV: Uranium Recovery Field Office (Denver), (303) 234–7232.
V: San Francisco, (415) 943–3700.

information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate.

(b) * * *

(1) * * *

(iii) Storage of spent fuel in an independent spent fuel storage installation (ISFSI) or the storage of spent fuel or high-level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

(4) Amendment of license to authorize the decommissioning of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

17. Section 51.61 is revised to read as follows:

§ 51.61 Environmental report—independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) or for the storage of spent nuclear fuel and high-level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report—ISFSI License" or "Applicant's Environmental Report—MRS License," as appropriate. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate. The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in Subpart E of Part 72 of this chapter. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond the term of the license or amendment applied for is required in an environmental report submitted by an applicant for a initial license for storage of spent fuel in an ISFSI, or any amendment thereto.

18. In § 51.80, paragraph(b) is revised to read as follows:

§ 51.80 Draft environmental impact [illegible]—Material license.

* * * * *

(b)(1) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a draft environmental impact statement on the issuance of an initial license for storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel only for the term of the license or amendment applied for.

(2) *Monitored retrievable storage installation (MRS).* As provided in sections 141(c), (d), and (e) of the Nuclear Waste Policy Act of 1982 (NWPA) (96 Stat. 2242, 2243) a draft environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS as set forth in section 141(b)(1) of the NWPA (96 Stat. 2242) but may consider alternative facility designs which are consistent with these design criteria.

19. In § 51.97, a new paragraph (b) is added to read as follows:

§ 51.97 Final environmental impact statement—Material license.

* * * * *

(b) *Monitored retrievable storage facility (MRS).* As provided in sections 141(c), (d), and (e) of the Nuclear Waste Policy Act of 1982 (NWPA) (96 Stat. 2242, 2243) a final environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS as set forth in section 141(b)(1) of the NWPA (96 Stat. 2242) but may consider alternative facility designs which are consistent with these design criteria.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

20. the authorty citation for Part 70 is revised to read as follows:

Authority: Sections 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 68 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); sec. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24 (a) and (b), 70.32(a)(3), (5) and (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.38, 70.51(c)-(g), 70.58, 70.57 (b) and (d), 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i); and §§ 70.20b (d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.56(g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat 950, as amended (42 U.S.C. 2201(o)).

21. In § 70.1, paragraph (c) is revised to read as follows:

§ 70.1 Purpose.

* * * * *

(c) The regulations in Part 72 of this chapter establish requirements, procedures, and criteria for the issuance of licenses to possess (1) spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), or (2) spent fuel, high-level radioactive waste, and other radioactive materials associated with the storage in a monitored retrievable storage installation (MRS), and the terms and conditions under which the Commission will issue such licenses.

22. In § 70.20a, paragraph (b) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(b) Notwithstanding any other provision of this chapter, the general license issued under this section does not authorize any person to conduct any activity that would be authorized by a license issued pursuant to Parts 30 through 35, 40, 50, 72, 110, or other sections of this part.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

23. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948 as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Sec. 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

For the purpose of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 73.21, 73.37(g) and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.30(c)(1), 73.36(b)(1), 73.36(b)(3), (h)(6), and (k)(4), 73.37 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46(g)(6) and (b)(2), 73.50(g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(b), 73.70, 73.71 and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

24. In § 73.1, paragraph (b)(6) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(6) This part prescribes requirements for the physical protection of spent fuel stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) licensed under Part 72 of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

25. The authority citation for Part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, Pub. L. 83–703, 68 Stat. 930, 932, 936, 937, 939, 948; sec. 5, Pub. L. 86–489, 70 Stat. 602; secs. 4, 5, Pub. L. 91–560, 84 Stat. 1472 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

26. In § 75.4 paragraph (k)(4) is revised to read as follows:

§ 75.4 Definitions.

* * * * *

(k) * * *

(4) An independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) as defined in § 72.3 of this chapter; or

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

27. The authority citation for Part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, as amended, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32, also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3039, 3039 (42 U.S.C 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purpose of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.15–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

28. In § 150.15, paragraph (a)(7) is revised to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(7) The storage of (i) spent fuel in an independent spent fuel storage installation (ISFSI) or (ii) spent fuel and high level radioactive waste in a monitored retrievable storage installation (MRS) licensed pursuant to Part 72 of this chapter.

* * * * *

Dated at Washington, DC, this 20 day of May, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–11685 Filed 5–23–86; 8:45 am]

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federal register

Tuesday
May 27, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Air Carriers Certification and Operations; Carry-on Baggage Program; Notice of Proposed Rulemaking and Public Meeting

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24998; Ref. Docket No. 24220; NPRM 86-6]

Air Carriers Certification and Operations; Carry-on Baggage Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; notice of public meeting.

SUMMARY: This notice proposes to require Part 121 certificate holders which carry passengers to develop and use an approved carry-on baggage program after [180 days after effective date]. This proposal would also require the certificate holder to verify, before the passenger entry doors are closed in preparation for taxi or pushback, that each article of baggage is properly stowed. This proposed regulation would enhance safety aboard aircraft by ensuring that all baggage brought aboard can be safely stowed. This proposal was prompted by a petition from the Association of Flight Attendants.

DATES: Comments must be received on or before July 28, 1986. The public meeting will be held on July 16, 1986. Requests to be heard should be submitted by July 3, 1986.

ADDRESSES: Comments on the proposal are to be marked "Docket No. 24998" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24998, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The public meeting will be held at the FAA Headquarters Auditorium (3rd Floor), 800 Independence Avenue, SW., Washington, DC 20591.

Requests to be heard during the public meeting should be addressed to Miss Jean Casciano, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposal, contact: Mr. Roger E. Riviere, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 426-8096.

For information concerning the public meeting, contact: Miss Jean Casciano, Safety Regulations Division (APR-200), Office of Program and Regulations Management, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 426-8157.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24998." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. In addition, the FAA plans to hold a public meeting on July 16, 1986, to solicit information or comments from the public concerning the carry-on baggage problem. Comments are specifically invited on the safety issues connected with this subject. The proposals contained in this notice may be changed in light of comments received, either in writing or at the public meeting. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. In addition, a transcript of the proceedings of the public meeting will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Requests must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On August 31, 1984, Mr. Matthew Finucane, Director of Air Safety, Association of Flight Attendants (AFA), petitioned for a rule change to § 121.589 of the Federal Aviation Regulations (FAR) to limit the amount and size of carry-on baggage on aircraft. According to the petition, no piece of carry-on baggage should exceed the dimensions of 9 inches by 16 inches by 20 inches. These dimensions are generally accepted as the available storage space beneath the typical airline seat. If an airline could demonstrate to the FAA that additional, suitable storage space for carry-on baggage was available on its aircraft, then that airline could allow the boarding of garment bags with a width of less than 3 inches on its aircraft. As justification for such a change, the petitioner states the following regarding carry-on baggage:

(1) It can dislodge in a crash and block exits and strike passengers and crew;

(2) It can dislodge in turbulence and strike passengers and crew;

(3) It can make it impossible to reach emergency equipment when it is crammed into spaces where such equipment is stored;

(4) It can impede evacuation when passengers attempt to carry large items out of an aircraft after impact as they repeatedly have;

(5) It can affect the weight and performance of the aircraft;

(6) It can block access to life vests under passenger seats;

(7) It can cause back and hand injuries to flight attendants who may be rendered unable to assist in safety emergencies;

(8) It can keep flight attendants busy finding stowage places for the baggage when they should be performing other safety duties, or when they should be seated at their stations, where they are most likely to be able to assist in an evacuation; and

(9) It can fuel a cabin fire.

A summary of AFA's petition for rulemaking was published in the Federal Register on September 21, 1984 (49 FR 37109). Numerous comments on AFA's proposals have been submitted to Regulatory Docket No. 24220. The majority of these comments (293) favor a

tightening of the carry-on baggage rule; only 42 comments oppose a reduction of carry-on baggage. People Express opposes the petitioner's proposal because it would impose regulation upon an area best governed by consumer choice and because it would have no impact on the safety of air travel. The Air Transport Association (ATA), representing a number of air carriers which carry the majority of air travelers in the United States, also opposes the petition's proposed changes. ATA states that the AFA petition demonstrates that the major intent is to minimize the flight attendants' monitoring of the amount and placement of carry-on baggage in the cabin. It also states that the AFA's attempt to mask this intent under the cover of improving safety falls far short of the mark. Of the favorable comments on the petition, approximately 69 mention aviation safety as a reason for limiting the size and amount of carry-on baggage permitted aboard air carrier aircraft. The remainder of the public comments on the petition cite inconvenience and discomfort created by those individuals carrying on excessive baggage.

On July 11, 1985, the FAA held a public seminar on the subject of carry-on baggage. Attendees included airline trade organizations, labor organizations, and consumer group representatives. During this seminar, the FAA distributed a "working paper" outlining a possible carry-on baggage rule. This "working paper" was based in large part on the AFA petition. At this seminar, the FAA invited discussion on the carry-on baggage issue generally, as well as on its "working paper." (A transcript of this seminar was placed in Docket No. 24220.)

Shortly after this seminar, the ATA, in conjunction with some member airlines, sent a letter to frequent flyers on the subject of carry-on baggage. The letter did not describe the AFA proposal of the FAA "working paper." However, it did imply that carriage of briefcases and garment bags would be restricted, if not banned. The FAA notes that the letter did not accurately reflect the FAA position.

In response to the ATA letter, several thousand frequent flyers wrote to the FAA and Members of Congress. Approximately 20 percent of these letters support stricter carry-on baggage rules, citing cramped conditions and potential safety hazards caused by excessive carry-on baggage. Another 20 percent oppose stricter rules, citing a need to carry a briefcase and garment bag. Of course, this would still be possible under this proposal since it is most unlikely that any carrier's approved program would not allow for these items. Finally, most of the remaining letters oppose any new carry-on bag restrictions. However, none of those who responded to ATA's letter were made aware of the specifics of AFA's petition or of this proposal. Few, if any, would actually be inconvenienced by the proposed rules since almost all said they carry two or fewer bags. However, the FAA has taken the views of these respondents into account in developing this proposal.

The Current Carry-on Baggage Rule

Section 121.589(a) of the FAR now requires that a certificate holder ensure that carry-on baggage is not brought aboard an aircraft unless it can be properly stowed. All carry-on baggage must be properly stowed prior to take off and landing. Sections 121.589 and 121.285 contain specifics on how carry-on baggage must be stowed.

Despite the requirement of § 121.589(a), the FAA's National Air transportation Inspection Program conducted between March 4 and June 5, 1984, showed that some passengers are carrying excessive amounts of baggage on passenger flights, creating potential safety problems and causing undue confusion in their effort to find stowage space for their baggage. This conclusion was supported by many of the commenters on the AFA petition. This excessive amount of baggage many times exceeds the volume and/or weight capacity of approved baggage storage areas. In many instances, this baggage is not stowed or is not stowed properly. As the volume of baggage has increased, the number of violations of the baggage stowage requirements has increased.

Apparently the current requirements do not provide sufficiently precise standards for air carriers, air carrier personnel, and passengers to ensure that baggage brought onto aircraft can be stowed safely. Therefore, the FAA now proposes to require air carriers to develop specific standards to screen and limit carry-on baggage. The ATA's response to the petition leads the FAA to believe that the air carriers' current practice is primarily to rely on the flight attendants on the aircraft to monitor carry-on baggage carried on board for size and quantity. This practice may distract the flight attendants from their required preflight safety duties and may also place substantial pressure on flight attendants to find stowage space for baggage, even if in unapproved areas. For example, the FAA has received reports of baggage being improperly stowed in lavatories and galleys. Passengers who have gotten excess carry-on baggage on board may be unwilling to allow flight attendants to check it. Flight attendants state in their comments that some flight attendants may hesitate to refuse to stow oversize or excessive carry-on baggage, even though approved stowage space is not available, for fear of retaliation from the airline. Shorter ground time for aircraft may even mean that all baggage will not be stowed prior to taxi. In this event, the flight attendant may not have time to ensure that baggage is stowed properly and will have no effective choice but to stow carry-on baggage wherever space may be found. In all these cases, effective control of carry-on baggage outside the aircraft cabin should minimize the problem and make control aboard the aircraft manageable. Consequently, the FAA is proposing to require air carriers to develop programs to control, outside the aircraft, the baggage that will be permitted to be carried on board.

The FAA believes that this alternative is better than that proposed in AFA's petition for rulemaking, which would have imposed specific, inflexible standards on all airlines' carry-on baggage practices. This proposal would allow each carrier to develop a carry-on baggage program tailored to its peculiar circumstances. The program would have to be reviewed and approved by its principal inspectors. This type of approval is necessary because of the wide variety of aircraft, gate structures, terminal arrangements, and security arrangements that exist throughout the country. In fact, it might vary from airport to airport with each carrier. A carrier would be able to change its program in response to changes in its operations or equipment. This flexibility should encourage carriers to develop innovative ways to safely control carry-on baggage. It should also encourage aircraft manufacturers to develop new means of safely stowing carry-on baggage. Finally, this proposal would eliminate the need for requests for exemption from fixed regulatory standards.

While the agency believes that such programs will limit the number and size of carry-on items brought onto aircraft, it remains critical to the safety of all passengers that an airplane not move from the gate until all baggage is properly stowed. Therefore, the agency is proposing to require that a designated carrier employee verify that all carry-on baggage is properly stowed before the aircraft passenger door is closed in preparation for pushback or taxi. The FAA does not believe that the person should be a required crewmember. This

proposal has been incorporated into the proposed rule; the FAA specifically requests comments regarding it, including the person to fulfill this responsibility.

The AFA petition urged restrictions on carry-on baggage for safety reasons. In addition, this proposal would likely reduce the volume and flow of oversized baggage past security screening points and reduce confusion during the boarding process. Reduced confusion during boarding would ensure that, in the event of an emergency, flight attendants may more readily move to a particular area in the cabin to perform their safety-related duties. Any benefit from increased security, however, would be greatly outweighed by the safety benefits of this proposal.

Discussion of the Proposals

Section 121.589(a)

The FAA proposes to control the size and quantity of carry-on baggage permitted on board an aircraft in accordance with an air carrier's FAA-approved carry-on baggage program that must be instituted on later than [180 days after effective date]. Under the proposal, the duty to inspect baggage to control the size and quantity of carry-on baggage would be primarily the responsibility of the certificate holder; however, it also would be the individual passenger's responsibility to comply with the air carrier's carry-on baggage requirements. Policy guidance to the certificate holders on acceptable carry-on baggage programs and procedures will be made available if this proposed rule is adopted. The FAA anticipates that an air carrier's approved program would encompass at least the following areas of concern:

(a) At least one baggage control point located outside the aircraft (but not located at the passenger security screening point);

(b) Types of aircraft operated by the carrier;

(c) Volume and weight capability of onboard storage;

(d) Consistency with existing FAR;

(e) Ensuring that procedures for handling carry-on baggage that cannot be stowed properly will be included in the approved program;

(f) Method of ensuring that all carry-on baggage will be properly stowed;

(g) Anticipated load factor;

(h) Methods of stowing carry-on baggage in passenger compartment;

(i) Aircraft weight-and-balance assessment of carry-on baggage;

(j) Area of operation, including terminal facilities (This should include charter operations);

(k) Facilities for handling excess carry-on baggage;

(l) Training of crewmembers; and

(m) Training of station personnel.

The FAA anticipates that there may be substantial differences among air carriers' approved programs. Comments are invited on the specific points mentioned above and any additional points which should be included in an approved carry-on baggage program. Each air carrier would be required to develop its program in conjunction with its principal inspectors, who will have final approval authority for such a program. As in other situations, individual programs will be monitored at FAA Headquarters to ensure compliance with agency objectives. A statement of authorization or denial of authorization for use of an approved carry-on baggage program would be included in an air carrier's operations specifications. The specifics of the approved program would either be included in the operations specifications or referenced to the pertinent sections of the carrier's operations manual. Although certificate holders would be required to have an approved program no later than [180 days after the effective date of the amendment], they would be encouraged to begin using approved programs as soon as possible.

Economic Evaluation

The FAA proposes to require Part 121 certificate holders which carry passengers to develop and use an approved carry-on baggage program after [180 days after effective date].

The proposed amendments to § 121.589 specify that no certificate holder may allow the boarding of carry-on baggage on aircraft unless each passenger's baggage has been scanned to control the size and amount carried on board in accordance with an approved carry-on baggage program in its operations specifications.

This proposal is in response to the August 31, 1984, petition submitted by the AFA to change § 121.589 of the FAR to limit the amount and size of carry-on baggage on aircraft. The AFA petition and a recent FAA study of carry-on baggage aboard Part 121 air carriers indicated that the size and volume of carry-on baggage frequently exceeds the stowage capacity in the passenger compartments. The excess baggage cannot be safely stowed, giving rise to a potential safety hazard. The proposal also responds to the large number of public complaints addressing the unsafe stowage of large and heavy items and the clutter created by excess carry-on baggage.

Most affected air carriers will elect to develop FAA-approved carry-on baggage programs prior to the compliance date specified in this notice. This analysis estimates that the total cost of compliance to the 140 affected Part 121 certificate holders with the carry-on baggage program requirements of this notice is $480,000 in 1984 dollars.

The primary benefits of this proposal will be the prevention of fatalities and injuries resulting from improperly stowed items obstructing rapid passenger egress in otherwise survivable impacts and from prevention of improperly stowed items dislodging and striking passengers and crew when abrupt aircraft deceleration or attitudinal changes occur.

Quantification of these benefits is not possible because the safety records of the FAA and the National Transportation Safety Board do not detail the extent to which improperly stowed items have contributed to fatalities and injuries in air carrier accidents.

However, the estimated $480,000 cost of compliance can be fully recovered if only one life valued at $670,000 is saved in an otherwise survivable impact accident as a result of the safe baggage stowage provisions of this proposal. Hence, if one fatality is prevented as a result of this proposal during the 10-year period following implementation of the rule, the benefits of this proposal will be 1.4 times greater than the costs.

The proposal to require an airline employee to verify that baggage is properly stowed prior to movement of the aircraft should not result in any costs for the carriers. Carriers are already required to comply with carry-on baggage regulations. Airline ground employees often board aircraft to count passengers or make announcements.

The FAA has determined that this proposal is not likely to affect international trade, nor is it expected to have a significant economic impact on a substantial number of small entities.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FAA Order 2100.14, *Regulatory Flexibility Criteria and Guidance* (dated July 15, 1983), prescribes standards for determining whether or not a rule will result in "a significant economic impact on a substantial number of small entities" as required by the RFA.

The small entities affected by the proposal are the small air carriers

regulated under 14 CFR Part 121. FAA Order 2100.14 has established criteria describing what is considered a significant economic impact on a small air carrier and what is considered a substantial number of small air carriers for purposes of complying with the RFA. That order stipulates a size threshold of nine or fewer operating aircraft as the standard for small air carriers. FAA data indicate that as of December 1984, there were 45 passenger air carriers (both scheduled and nonscheduled) subject to Part 121 which operated 9 or fewer aircraft.

Based upon the costing assumptions discussed previously in the economic evaluation, the one-time cost of developing an FAA-approved carry-on baggage program for a small air carrier is approximately $960. Therefore, based on the criteria of FAA Order 2100.14 and as fully discussed in the regulatory evaluation for this rulemaking, this proposal is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

Conclusion

Compliance with the proposed rule would involve only a one-time cost on the part of air carriers to develop an FAA-approved carry-on baggage program. Because these proposals, if adopted, are not likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs for consumers; industry; or Federal, State, or local government agencies, it has been determined that these are not major proposals under Executive Order 12291. In addition, the proposals, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Since the proposals concern a matter on which there is a substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, as noted above, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

A draft regulatory evaluation of the proposals, including a Regulatory Flexibility determination and Trade Impact assessment, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airports, Cargo, Handicapped, Transportation, Common carriers.

The Proposed Rule

Accordingly, the Federal Aviation Administration proposes to amend Part 121 of the Federal Aviation Regulations (14 CFR Part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By amending § 121.589 by redesignating current paragraphs (a) through (e) as (c) through (g), by adding new paragraphs (a) and (b), and by revising redesignated paragraphs (c) and (e) through (g) introductory text to read as follows:

§ 121.589 Carry-on baggage.

(a) After [180 days after effective date], no certificate holder may allow the boarding of carry-on baggage on an aircraft unless each passenger's baggage has been scanned to control the size and amount carried on board in accordance with an approved carry-on baggage program in its operations specifications. In addition, no passenger may board an aircraft if his/her carry-on baggage exceeds the baggage allowance prescribed in the carry-on baggage program in the certificate holder's operations specifications.

(b) No certificate holder may allow all passenger entry doors of an aircraft to be closed in preparation for taxi or pushback unless an employee of the certificate holder, other than a required crewmember, has verified that each article of baggage is stowed in accordance with this section and § 121.285(c).

(c) No certificate holder may allow an aircraft to take off or land unless each article of baggage is stowed—

(1) In a suitable closet or baggage or cargo stowage compartment placarded for its maximum weight and providing proper restraint for all baggage or cargo stowed within, and in a manner that does not hinder the possible use of any emergency equipment; or

(2) As provided in § 121.285(c); or

(3) Under a passenger seat.

* * * * *

(e) Each passenger must comply with instructions given by crewmembers regarding compliance with paragraphs (a), (b), (c), (d), and (g) of this section.

(f) Each passenger seat under which baggage is allowed to be stowed shall be fitted with a means to prevent articles of baggage stowed under it from sliding forward. In addition, each aisle seat shall be fitted with a means to prevent articles of baggage stowed under it from sliding sideward into the aisle under crash impacts severe enough to induce the ultimate inertia forces specified in the emergency landing condition regulations under which the aircraft was type certificated.

(g) In addition to the methods of stowage in paragraph (c) of this section, flexible travel canes carried by blind individuals may be stowed—

* * * * *

Issued in Washington, DC, on May 19, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86–11817 Filed 5–22–86; 9:22 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Airworthiness Standards; Independent Power Source for Public Address System in Transport Category Airplanes; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 25 and 121

[Docket No. 24095; Notice No. 86-6]

Airworthiness Standards; Independent Power Source for Public Address System in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness standards for transport category airplanes and the operating rules for air carrier and air taxi operators of such airplanes by requiring an independent power source for the public address (PA) system. The requirement would be applicable to airplanes that are required to have a PA system for use in air carrier or air taxi service and that are manufactured after a specified date, regardless of the date of application for type certificate. This proposed amendment is considered necessary in order to ensure PA system availability during emergency conditions.

DATE: Comments must be received on or before November 24, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24095, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 24095. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert F. Hall, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2143.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24095." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 426-3058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Section 25.1411(a)(2) of Part 25 of the Federal Aviation Regulations (FAR), as amended by Amendment 25-53 (45 FR 41593; June 19, 1980), specifies that, for a required PA system, at least one microphone must be positioned adjacent to a flight attendant seat that is located near each floor level emergency exit. Sections 121.318 and 135.149 of the FAR, in turn, presently require the installation of a PA system on airplanes with a seating capacity of more than 19 passengers when used in air carrier or air taxi service. A functioning PA system is considered essential for initiating and directing emergency evacuations and for providing pre- and post-impact instructions to passengers; however, Parts 25, 121, and 135 currently do not require a specific power source for the PA system.

In special study NTSB-AAS-74-3, "Safety Aspects of Emergency Evacuations from Air Carrier Aircraft," dated November 13, 1974, the National Transportation Safety Board (NTSB) cited emergency conditions associated with both takeoff and landing incidents in which the PA system was inoperative and recommended that the FAA require an independent power source for the PA system. In response to the NTSB recommendation, the FAA proposed a requirement for an independent power source for the PA system in Notice No. 81-1 (46 FR 5487; January 19, 1981), Operations Review Program, Proposal No. 11-7. This proposal, which was one of a number of proposals contained in Notice No. 81-1, would have required a power source for the PA system which is independent of the main power supply for all airplanes required to have a PA system (i.e., those having a seating capacity of more than 19 passengers and used in air carrier or air taxi service). As proposed, the independent power source would have been required for such airplanes currently in service, as well as those in such service in the future.

As discussed in the preamble to Amendment 121-178 (47 FR 33284; August 2, 1982), which was one of a number of amendments resulting from Notice 81-1, a number of commenters supported adoption of the proposed rule because they believed that the availability of the PA system is vital for directing emergency evacuations and providing pre-impact instruction. They also pointed out that situations had occurred where megaphones had been used by flight attendants for directing evacuations because the PA system was not functioning. One commenter did, however, label the proposal "vague and ambiguous" and stated that the proposal could jeopardize the inflight emergency electrical power system load capacity. This commenter also asserted that the proposal could result in a substantial economic burden, presumably due to the cost of retrofit on all affected airplanes. After review, the FAA determined that the cost of the proposal would outweigh the expected safety benefits and withdrew the proposal. However, the FAA stated in the preamble that the proposal would be reviewed to

determine whether it would be cost effective for future production airplanes.

Discussion

Upon further review, the FAA had concluded that it would be cost-effective to require an independent power source for the PA system on airplanes having a seating capacity of more than 19 passengers which are operated in air carrier or air taxi service when they are manufactured on or after a date one year from the effective date of the proposed amendments. The amendments proposed in this notice would not require the retrofit of any airplanes already in service.

The FAA proposes to amend Part 25 to require a power source for a required PA system which is: (1) Independent of engine and auxiliary power unit (APU) operation, the forward motion of the airplane, and all normal means used by the flightcrew for power source disconnection; and (2) capable of powering the PA system for an aggregate time duration of at least 10 minutes, including at least 5 minutes of announcements made by flight and cabin crewmembers. In determining this capability, all loads which may remain powered by the same source when all other power sources become inoperative must be considered. In addition, if the same source is required as an emergency power source for loads which are essential to safety of flight or required during emergency conditions, that source must also be capable of powering the added PA system load for an additional time duration that is appropriate or required for those essential or emergency loads. The proposed rule provides that, in all cases, the PA system load would be considered as that which exists during its standby state, except for an aggregate time duration of at least 5 minutes during announcements.

Power dependent on the forward motion of the airplane, such as that produced by a ram air turbine, would not be acceptable for the PA system because such power would not be available on the ground under normal or emergency conditions. Similarly, power dependent on engine or APU operation would not be acceptable because the engines and APU would not be operable on the ground in many emergency situations. The expression "all normal means used by the flightcrew for power source disconnection" in proposed § 25.1423 means all switches or like devices which are provided for that purpose including, but not necessarily limited to, the generator, APU, and battery switches. In this regard, the deactivation of circuit breakers is not considered to be a normal means for power source disconnection. Additionally, the use of the expression does not propose any requirements pertaining to the disconnection or connection of *loads*, however accomplished. The expression "standby state" in proposed § 25.1423 means that condition during which power for making announcements is supplied are *not* being made.

This proposal would not affect the capability of the flightcrew to disconect the PA system by using its electrical power switch or circuit breaker(s): (1) If there is an electrical fault in that system, to clear smoke and protect the airplane against possible fires; or (2) if all other power sources become inoperative, to conserve the remaining power source's capacity for systems, equipment, and instruments which are powered by the same source and are more essential to safety of flight or of higher priority under emergency conditions. Since undisciplined use of the PA system when all other power sources have become inoperative could result in a hazardous, premature depletion of the capacity of the remaining power source, comments are specifically invited concerning whether operational procedures or flight and cabin crew training programs may be necessary to complement this proposal.

The FAA considers the availability of the PA system for announcements for an aggregate time duration of at least 5 minutes to be reasonable. Commenters are specifically invited to express their opinions in this regard.

The proposed rule would allow innovation in providing an acceptable independent power source; however, as a matter of practicality, the normal airplane battery or another battery would most likely be used as a PA system power source.

The FAA has also considered whether the megaphones presently required by § 121.309(f) could serve as an adequate means of communication in the event the PA system is disabled. Such use of the megaphones by the flightcrew is not considered feasible in view of the workload during emergency conditions, the directionality of megaphone output relative to the flightcrew's forward location and forward-facing position, and the fact that the flight compartment door is normally locked.

Proposed § 25.1423 would apply only to certain airplanes which are operated in air carrier (Part 121) and air taxi (Part 135) service when these airplanes are manufactured after a certain date, regardless of the date of application for type certificate.

The FAA also proposes to amend § 25.1411(a)(2) to clarify that the PA system microphone accessibility requirement is applicable only when a PA system is required by this chapter. This would impose no additional regulatory or economic burden on any person.

Section 121.318 requires airplanes that have a seating capacity of more than 19 passengers and that are used in air carrier service to be equipped with a PA system. Section 135.149 incorporates § 121.318 by reference and thereby imposes the same requirements on air taxi operators. The FAA proposes to amend § 121.318 to require such airplanes, newly manufactured on or after a date one year from the effective date of the proposed amendment, to have independent power sources for their PA systems. The one year compliance period is intended to provide manufacturers with adequate time to design new systems, evaluate their feasibility, conduct necessary qualification tests and procure components. While this process sometimes requires more than one year, a compliance time of one year from the effective date of the proposed rule has been selected due to the relatively minor nature of any electrical system redesign required by the rule, and the substantial enhancement to cabin safety afforded by this simple requirement. Comments are specifically invited regarding the adequacy of the proposed one year compliance period. Such comments should include specific data, if any, regarding lead-time for design, testing and procurement of necessary components together with other impacts, positive or negative, resulting from the one year compliance period. The proposed amendment would not require retroactive installation of an independent power source for airplanes currently in service or for those manufactured within one year of the effective date. For simplification, reference to dates that have already passed would be removed from § 121.318.

Regulatory Evaluation

The FAA proposes to require an independent power source for the public address system (PA) in transport category airplanes that are required to have a PA system for use in air carrier or air taxi service and that are manufactured one year or more after the effective date of the proposed amendment. The intent of this proposal is to ensure PA system availability during emergency conditions. There have been some incidents in which the

PA system has been rendered inoperative either by the flightcrew or by an electrical power source failure, thereby posing a potential danger to passengers.

The cost impact for one of the manufacturers has been estimated at $108,000 over a one-year period. In addition to these one-time costs for redesigning the electrical circuitry of the PA system, this manufacturer will incur an additional production cost per airplane of no more than $50. The total incremental cost over the 1985–1994 period has been estimated at $550 per airplane.

Another manufacturer estimated that no incremental cost would be incurred because its airplane fleet is already in compliance. Although no cost data were received from the third major manufacturer of these airplanes, the FAA expects its costs to be of the same approximate order of magnitude in view of the minor nature of any redesign of electrical systems that would likely be required. If this assumption is correct, the overall cost of the proposal to the industry would be about $210,000 over a one year period. The FAA invites all affected parties to submit data pertaining to the proposal's economic impact.

The FAA is not aware of any injuries or fatalities that were specifically caused by a loss of electrical power to the PA system. Although the extent to which the safety of passengers would be enhanced cannot therefore be quantified, it is worth noting that the proposal would more than pay for itself if it prevented as few as 12 minor injuries or 3 serious injuries over the next 10 years. These estimates are based on values derived by the FAA to represent the economic costs of various types of injury, ranging from $18,700 for a minor one up to $76,000 for a serious one. Such a small number of preventable injuries could easily occur as a result of a failure to adequately inform passengers about evacuation procedures and best methods of egress in a single accident involving a survivable emergency landing.

The FAA has determined that the proposal will not have a significant economic impact on a substantial number of small entities and that the proposal will not affect international trade.

With respect to airplane manufacturers, the FAA has determined that airplane and airplane parts manufacturers are small if they have 75 or fewer employees. The airplane manufacturers subject to the terms of this proposal are all large firms. Only five current U.S. firms have certificated airplanes under Part 25, and the smallest, Gates Lear Jet, has an estimated 6,500 employees. (Million Dollar Directory—1983, Dunn and Bradstreet Inc.)

Since the proposal may add a small amount to the price of new airplanes, there may be an impact on small entities which are operators of airplanes. The FAA has determined that for operators of airplanes for hire, small entities are those which own nine or fewer airplanes. The significant cost thresholds for "operators of airplanes for hire" are $85,070 for scheduled operators with airplanes having 60 or more seats, $47,506 for other scheduled operators and $3,315 for unscheduled operators (1983 values). The cost increase for new airplanes manufactured under the standards of this proposal is expected to be under $550 per airplane. The typical small entity operator of large airplanes would have to buy so many airplanes per year to reach this level of impact, that the operator would cease to be a small entity. There are thousands of small entities who are unscheduled operators, but only a few which operate large airplanes. In this type of entity, the cost increase could seemingly reach a level of significant economic impact because of the low annual cost threshold. However, the overwhelming majority of unscheduled operators are on-demand air taxis, which operate small airplanes that are not subject to the requirements of this proposal.

In view of the above, the FAA finds that compliance with these proposals would not result in a significant economic impact for a substantial number of small entities.

This proposal, if adopted, would have little or no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S. The proposal affects the rules for certificating new airplanes. Also, newly manufactured airplanes for the U.S. market, whether made by U.S. or foreign manufacturers, would have to comply with the rule. Any cost of compliance is negligible, however, when compared to the cost of a new airplane.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has also determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it has been determined under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Crashworthiness, Emergency evacuation, Public address system.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Transportation, Common carriers, Crashworthiness, Emergency evacuation, Public address system.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR Parts 25 and 121, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.1411 by revising the paragraph heading for (a) and paragraph (a)(2) to read as follows:

§ 25.1411 General.

(a) *Accessibility requirements.* * * *

(2) If a public address system is required by the chapter, at least one PA system microphone intended for flight attendant use must be positioned adjacent to a flight attendant seat that is located near each required floor level emergency exit in the passenger compartment and be readily accessible to the seated flight attendant.

* * * * *

3. By adding a new § 25.1423 to read as follows:

§ 25.1423 Public address system.

If a public address system is required by the chapter, it must be powered by a source which is—

(a) Independent of engine operation, auxiliary power unit operation, the forward motion of the airplane, and all normal means used by the flightcrew for power source disconnection; and

(b) Capable of powering the public address system—

(1) For a time duration of at least 10 minutes, including an aggregate time duration of at least 5 minutes of

announcements by flight and cabin crewmembers, considering all other loads which may remain powered by the same source when all other power sources become inoperative; and

(2) For an additional time duration in its standby state that is appropriate or required for any other loads that are powered by the same source and are essential to safety of flight or required during emergency conditions.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

4. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 49 CFR 1.47(a).

5. By amending § 121.318 by revising the introductory text of paragraph (a) and paragraphs (b) (2), (3) and (4), and by adding a new paragraph (b)(5) to read as follows:

§ 121.318 Public address system.

(a) No person may operate an airplane with a seating capacity of more than 19 passengers unless the airplane is equipped with a public address system that:

* * * * *

(b) * * *

(2) It must be accessible for use from at least one normal flight attendant station in the passenger compartment, and each public address system microphone intended for flight attendant use must be positioned adjacent to a flight attendant seat that is located near each required floor level emergency exit in the passenger compartment and be readily accessible to the seated flight attendant;

(3) It must be capable of operation within ten seconds by a flight attendant at those stations in the passenger compartment from which its use is accessible;

(4) Transmission must be audible at all passenger seats, lavatories, and flight attendant seats and work stations; and

(5) For airplanes manufactured on or after (a date one year from the effective date of this amendment), it must meet the requirements of § 25.1423 of Part 25 of this Chapter.

Issued in Seattle, Washington, on May 19, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-11616 Filed 5-22-86; 9:22 am]

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federal register

Tuesday
May 27, 1986

Part V

Department of the Treasury

Office of Revenue Sharing

31 CFR Part 51

Revenue Sharing Regulations; Financial Assistance to Local Governments; Entitlement Period 17; Data Challenges; Interim Rule

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DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Revenue Sharing Regulations

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule.

SUMMARY: The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, provides in part for the repeal of the Revenue Sharing Act (31 U.S.C. 6701-24). This rule establishes that data challenges for Entitlement Period 17 must be filed before June 2, 1986.

EFFECTIVE DATE: May 27, 1986.

Comment period: Written comments will be considered if received on or before June 26, 1986.

ADDRESS: Send comments to: Chief Counsel, Office of Revenue Sharing, Treasury Department, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard S. Iasi, Chief Counsel, or Jacqueline L. Jackson, Attorney, Office of Chief Counsel for Revenue Sharing, Department of the Treasury, Washington, DC 20226, Telephone: (202) 634-5182.

SUPPLEMENTARY INFORMATION:

Background

Title XIV of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272 (COBRA), repeals the Revenue Sharing Act [31 U.S.C. 6701-6724] effective December 31, 1986 or the adjournment *sine die* of the 99th Congress, whichever is earlier, unless the Revenue Sharing Program is reauthorized before that date. The Act preserves the legal obligations of the Office of Revenue Sharing and recipient governments with respect to funds paid under the Revenue Sharing Program. The current authorization provides for Revenue Sharing payments through fiscal year 1986, which ends September 30, 1986 (Pub. L. 99-180). Section 14001(a)(4) of the Act sets June 2, 1986, as the date by which challenges to the accuracy of the data elements used for Entitlement Period 17 (October 1, 1985—September 30, 1986) must be made by the Director or a recipient government.

Currently, challenges for adjustments due to overpayments or underpayments for an entitlement period for any reason can be made up to one year after the end of the entitlement period. With the absence of new funding authority for the Revenue Sharing Program, this would not be practical or consistent with the authorization in COBRA of administrative funds for only one year of wind-down, i.e., fiscal year 1987. Moreover, the Office of Revenue Sharing already has made every effort to provide recipient governments with the data used for payments. The data for recipient governments were mailed to them for review in September of 1985 and January of 1986. To implement section 14001(c)(4), the interim rule requires challenges for payment adjustments due to data errors, including failure to provide reports to the Bureau of the Census or any other data-related concerns, to be made before June 2, 1986. Challenges for adjustments to allocations or payments for Entitlement Period 17 not related to data used for payments may be made by a recipient government or the Director through September 30, 1987.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that regulations with significant economic impact on a substantial number of "small entities" should undergo regulatory flexibility analyses. With respect to the Revenue Sharing Program, small entities are defined as recipient governments with populations below 50,000. The interim rule is not expected to have a significant economic impact on small governmental units. It is hereby certified that this interim rule does not have a significant economic impact on small governmental units.

Executive Order 12291—"Federal Regulation"

The interim rule does not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291, entitled "Federal Regulation." Therefore, regulatory analysis is not required.

Need for Immediate Guidance

This interim rule is needed to provide immediate guidance to recipient governments. The Treasury Department has less than 60 days to implement the "before June 2, 1986" close of data for the current entitlement period contained in section 14001(a)(4) of COBRA. Accordingly, compliance with the notice of proposed rule-making provisions of 5 U.S.C. 553(b) or the effective date limitations of 5 U.S.C. 553(d) would be impractical and contrary to the public interest.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue Sharing, Reporting and Recordkeeping requirements.

31 CFR Part 51, is, therefore, amended in the manner set forth below.

Dated: April 24, 1986.

Kent A. Peterson,

Acting Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. The authority citation for part 51 continues to read as follows:

Authority: 31 U.S.C. 6701 to 6724 and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103-1 dated March 18, 1982.

2. Section 51.26(b) is amended by revising § 51.26(b)(2) to read as follows:

§ 51.26 Reservation of funds; adjustment of entitlements and allocations.

* * * * *

(b) Adjustment to entitlement payments.

* * * * *

(2) Allocations for an entitlement period shall be calculated to reflect the most recent data available in accordance with the time periods specified in section 51.29.

* * * * *

3. Section 51.29 is amended by the addition of a new paragraph (c) to read as follows:

§ 51.29 Notification and adjustment of data factors.

* * * * *

(c) *Special rule for Entitlement Period Seventeen.* Notwithstanding any other provision of this subpart with respect to the time limit for changes to the data, no adjustment based on the data factors used in computing allocations of funds shall be made to increase or decrease an entitlement payment to a recipient government for Entitlement Period Seventeen (October 1, 1985 to September 30, 1986) unless a challenge to the data is made by the Director or the recipient government before June 2, 1986. Demands by a recipient government or the Director for payment adjustments for other reasons may be made up to one year after the end of Entitlement Period Seventeen.

[FR Doc. 86-11986 Filed 5-23-86; 12:37 pm]

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H.R. 4767/Pub. L. 99-316

To deauthorize the project for improvements at Racine Harbor, Wisconsin. (May 21, 1986; 100 Stat. 470; 1 page) Price: $1.00

S.J. Res. 267/Pub. L. 99-318

Designating the week of May 26, 1986, through June 1, 1986, as "Older Americans Melanoma/Skin Cancer Detection and Prevention Week." (May 21, 1986; 100 Stat. 471; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

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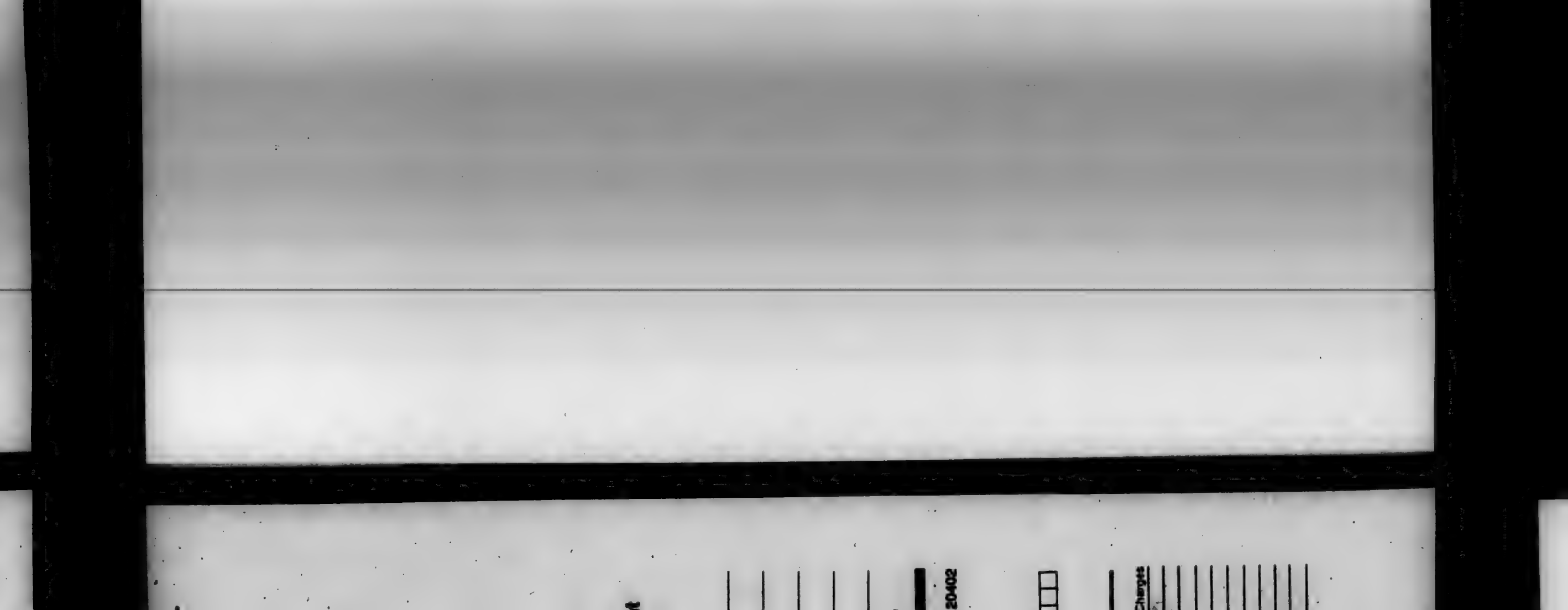

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Wednesday, May 28, 1986

Presidential Documents

Title 3—

The President

Proclamation 5490 of May 22, 1986

Prayer for Peace
Memorial Day, 1986

By the President of the United States of America

A Proclamation

Memorial Day is an occasion of special importance to all Americans, because it is a day sacred to the memory of all those Americans who made the supreme sacrifice for the liberties we enjoy. We will never forget or fail to honor these heroes to whom we owe so much. We honor them best when we resolve to cherish and defend the liberties for which they gave their lives. Let us resolve to do all in our power to assure the survival and the success of liberty so that our children and their children for generations to come can live in an America in which freedom's light continues to shine.

The Congress, in establishing Memorial Day, called for it to be a day of tribute to America's fallen, and also a day of national prayer for lasting peace. This Nation has always sought true peace. We seek it still. Our goal is peace in which the highest aspirations of our people, and people everywhere, are secure: peace with freedom, with justice, and with opportunity for human development. This is the permanent peace for which we pray, not only for ourselves but for all generations.

The defense of peace, like the defense of liberty, requires more than lip service. It requires vigilance, military strength, and the willingness to take risks and to make sacrifices. The surest guarantor of both peace and liberty is our unflinching resolve to defend that which has been purchased for us by our fallen heroes.

On Memorial Day, let us pray for peace—not only for ourselves, but for all those who seek freedom and justice.

In recognition of those brave Americans to whom we pay tribute today, the Congress, by joint resolution approved May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Memorial Day, Monday, May 26, 1986, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also direct all appropriate Federal officials, and request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12019
Filed 5-23-86; 2:58 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5491 of May 22, 1986

National Birds of Prey Month, 1986

By the President of the United States of America

A Proclamation

The skies of our United States are host to hundreds of species of birds, but among the most awe-inspiring and magnificent are the more than fifty species known collectively as the birds of prey. These include the hawks, the owls, and our national symbol, the bald eagle.

These birds are not only some of the most graceful and impressive flyers, they play a vital role in the ecological balance by maintaining predator-prey relationships so essential to the stability of the natural world.

While nearly all Americans today recognize the beauty and value of these great birds, this recognition was long in coming. As we settled the land and developed our Nation, we were slow to heed what loss of habitat and indiscriminate shooting could do to this priceless resource. Fortunately, however, our knowledge and appreciation of these splendid creatures has deepened, as have our efforts to protect them. We now see the bald eagle nesting populations increasing each year. Once again, the peregrine falcon is a fairly common sight for bird-watchers along our coasts and even in several of our major cities. Motorists along our interstate highways can enjoy the frequent sighting of redtailed hawks resting in trees along the rights of way. Indeed, bird-watching for birds of prey is becoming an economic plus to many local economies.

Thanks to increased public interest and effective conservation law enforcement, illegal shooting of these great birds is on the decline. More and more, our citizens grow to understand the importance of these creatures to the American landscape and to treasure the spirit of strength, freedom, and boldness they represent.

To celebrate the continuing restoration of this magnificent resource, and to remind our citizens of the abiding need for wildlife conservation, the Congress, by Senate Joint Resolution 288, has designated the month of May 1986 as "National Birds of Prey Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1986 as National Birds of Prey Month. I encourage all Americans to observe this month by participating in appropriate events and activities sponsored by government agencies, individuals, and private associations and organizations throughout the country to promote the appreciation and conservation of America's birds of prey.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12050
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Presidential Documents

Proclamation 5482 of May 23, 1986

National Food Bank Week, 1986

By the President of the United States of America

A Proclamation

In communities all across the United States, food banks have been established to help provide wholesome food for people in need.

These unique institutions are in the best tradition of American voluntarism. They have brought together public agencies, private industry, church groups, various associations, and individual Americans in a concerted drive to meet a basic human need. America's food banks provide immediate, temporary assistance at a neighborhood level to individuals and families who often do not know anywhere else to turn.

Private donors of food have greatly assisted in the maintenance and expansion of these worthwhile programs. Schools and neighborhood groups have contributed thousands of hours of manpower by helping collect and distribute the vast quantity of foodstuffs that food banks handle each year. The food banks themselves are staffed by dedicated citizens who seek nothing for themselves but the satisfaction of knowing that they have served as an invaluable resource to their fellowman. Without the humanitarian and charitable concern of all those involved in this mission, the sense of community and brotherly love that is indispensable to the quality of life in our cities and towns would be undermined.

In recognition of the many contributions of food banks and the selfless Americans who help organize and operate them, the Congress, by House Joint Resolution 234, has designated the week beginning May 18 through May 24, 1986, as "National Food Bank Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 18 through May 24, 1986, as National Food Bank Week. I call upon all Americans to join in recognizing the accomplishments of these food banks.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12071
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Presidential Documents

Proclamation 5493 of May 23, 1986

Hands Across America Day, 1986

By the President of the United States of America

A Proclamation

Time and again in American history the people of this great Nation have joined together in demonstrations of concern for the plight of their fellowman. Throughout the world, the people of the United States are known for their tradition of generosity and voluntary service to others. The strength of this tradition, which has been revitalized in the 1980s, lies in a key insight: The well-being of each and every individual in our society is a matter not only of public interest, but of personal responsibility as well. No form of charitable endeavor can truly succeed if it is not grounded in the recognition that the benefits it confers are as important to the giver as they are to the recipient.

On May 25, 1986, millions of Americans will participate in "Hands Across America," a visible symbol of the determination that unites Americans in the fight against hunger and homelessness. By joining together in this way, in cities and towns, along the back roads and mountain highways, from sea to shining sea, the people of this blessed land are reaffirming their willingness to sacrifice so that adequate food and shelter are available to all. This occasion represents an opportunity for all Americans to reflect on the root causes of these persistent problems, and to rededicate ourselves to finding lasting solutions that will allow everyone to live, eat, and work in circumstances befitting their dignity as human beings.

On this day, then, let us join not only our hands but our hearts and our prayers in efforts to ensure that America's God-given abundance is shared with those in need.

The Congress, by Senate Joint Resolution 246, has designated May 25, 1986, as "Hands Across America Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 25, 1986, as Hands Across America Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12073
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Presidential Documents

Memorandum of May 23, 1986

Western Red Cedar Shakes and Shingles Import Relief Determination

Memorandum for the United States Trade Representative

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)), I have determined the action I will take with respect to the report of the United States International Trade Commission (ITC), transmitted to me on March 25, 1986, concerning the results of its investigation of a petition for import relief filed by the Northwest Independent Forest Manufacturers on behalf of the domestic industry producing wood shakes and shingles, provided for in item 200.85 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those set forth in Section 202(c) of the Trade Act of 1974, I have determined that provision of import relief in the form of a tariff for up to 5 years is in the national economic interest. The tariff will apply to all U.S. imports of western red cedar shakes and shingles. The additional duty will be 35 percent ad valorem for the first 30 months of the period, 20 percent ad valorem for months 30 through 54, and 8 percent ad valorem for months 54 through 60. This 5-year relief program should be sufficient to enable the domestic producers of red cedar shakes and shingles to adjust to competition during the relief period.

In conjunction with providing import relief, I hereby direct you to request that the ITC advise me of the probable economic effect on the domestic industry of the termination of import relief after 30 months. This advice is to include a review of the progress and specific efforts being made by the domestic producers of western red cedar shakes and shingles to adjust to import competition. I also direct you to request, on my behalf, advice regarding termination of relief from the Secretaries of Commerce and Labor. The ITC, Commerce, and Labor advice is to be provided to me, through you, 3 months prior to the expiration of the 30-month period. It is my intention to continue relief for the entire 5-year period if general market conditions continue to warrant relief and if the domestic producers have begun to make reasonable progress toward adjustment during the first 30-month period.

As required by Section 203(e)(1) of the Trade Act of 1974, this tariff will be implemented by Presidential Proclamation no later than June 7, 1986, which is the 15th day after the date of this determination.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 23, 1986.

[FR Doc. 86-12078
Filed 5-27-86; 8:59 am]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12560 of May 24, 1986

Administration of Foreign Relations and Related Functions

By the authority vested in me as President by the Constitution and the statutes of the United States of America, including section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of title 3 of the United States Code, and in order to delegate certain functions concerning foreign assistance to the Secretary of State, the Secretary of Defense, and the Director of the International Development Cooperation Agency, it is hereby ordered as follows:

Section 1. Section 1-102(a) of Executive Order No. 12163, as amended, is further amended by deleting paragraph "(6)" and adding the following new paragraphs at the end thereof:

"(6) section 903(b) of the International Security and Development Cooperation Act of 1985 (hereinafter referred to as "ISDCA of 1985");

"(7) section 709 of the ISDCA of 1985, which authority shall be exercised in consultation with the Secretary of State and the Secretary of Defense;

"(8) sections 1205(b) and 1210 of the ISDCA of 1985;"

"(9) section 541 of the Foreign Assistance and Related Programs Appropriations Act, 1986 (as enacted in Public Law 99-190), to be exercised by the Administrator of the Agency for International Development within IDCA;"

"(10) the first proviso under the heading "Population, Development Assistance" contained in Title II of the Foreign Assistance and Related Programs Appropriations Act, 1986 (as enacted in Public Law 99-190), to be exercised by the Administrator of the Agency for International Development within IDCA.".

Sec. 2. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by deleting paragraphs "(7)", "(22)", "(23)", "(25)", "(26)", and "(27)", renumbering the remaining paragraphs accordingly, and inserting the following new paragraphs at the end thereof:

"(23) sections 462, 464(d)(2), 620E(e), and 660(d) of the Act;

"(24) section 126(b) of the ISDCA of 1985, which shall be exercised in consultation with the Secretary of Defense and the Director of the Arms Control and Disarmament Agency;

"(25) sections 207, 552(b), 611, 612(a), 617(c), 702(c), 703(a), 705 (b) and (c), 708, 722(j), 813(b) and 1006 of the ISDCA of 1985;".

Sec. 3. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by deleting "481, and 502B," from paragraph (1) and inserting "section 305" in lieu thereof, and inserting the following new paragraphs at the end thereof:

"(26) chapter 8 of part I of the Act, except for section 481(h), which is reserved to the President";

"(27) section 502B of the Act;" and

"(28) sections 527, 528, 537, 543 and 547 of the Foreign Assistance and Related Programs Appropriations Act, 1986 (as enacted in Public Law 99-190).".

Sec. 4. Section 1-201(a)(3) of Executive Order No. 12163, as amended, is further amended to read as follows:

"(3) section 505(a) relating to other provisions which may be required by the President, and sections 505 (d), (e), (f) and (g) of the Act.".

Sec. 5. Section 1–201(a)(22) of Executive Order No. 12163, as redesignated by this Order, is further amended by inserting immediately after "(Public Law 99–525)" the phrase "as amended by section 306 of the Department of Defense Authorization Act, 1986 (Public Law 99–145),".

Sec. 6. Section 1–201(a)(15) of Executive Order No. 12163, as amended, as redesignated by this Order, is further amended by deleting "(other than chapter 4 thereof)".

Sec. 7. Section 1–301 of Executive Order No. 12163, as amended, is further amended by adding the following paragraph at the end thereof:

"(e) Those functions conferred upon the President under section 616 of the ISDCA of 1985.".

Sec. 8. Section 1–301(c) of Executive Order No. 12163, as amended, is further amended to read as follows:

"(c) Those functions under section 634A of the Act, to the extent they relate to notifications to the Congress concerning changes in programs under part II of the Act (except chapters 4, 6, and 8 thereof) and under the Arms Export Control Act, as amended, subject to prior consultation with the Secretary of State.".

Sec. 9. Section 1–701(d) of Executive Order No. 12163, as amended, is further amended by inserting "465(b)" immediately after "303," and by inserting "552(c), 552(e)," immediately after "506(a),".

Sec. 10. Section 1–701(g) of Executive Order No. 12163, as amended, is amended to read as follows:

"(g) Those under sections 130, 131, 504 and 505 of the ISDCA of 1985 and under section 529 of the Foreign Assistance and Related Programs Appropriations Act, 1986.".

Sec. 11. Section 1(d) of Executive Order No. 11958, as amended, is further amended to read as follows:

"(d) Those under Sections 22(a), 29, 30 and 30A of the Act to the Secretary of Defense.".

Sec. 12. Section 1(e) of Executive Order No. 11958, as amended, is further amended to read as follows:

"(e) Those under Section 23 of the Act to the Secretary of Defense, to be exercised in consultation with the Secretary of State and the Secretary of the Treasury, except that the President shall determine any rate of interest to be charged which is less than the market rate of interest.".

Sec. 13. Section 1(f) of Executive Order No. 11958, as amended, is further amended to read as follows:

"(f) Those under Sections 24, 27, and 28 of the Act to the Secretary of Defense. The Secretary of Defense, in implementing the functions delegated to him under Sections 24 and 27, shall consult with the Secretary of State and the Secretary of the Treasury.".

Ronald Reagan

THE WHITE HOUSE,
May 24, 1986.

[FR Doc. 86-12121
Filed 5-27-86; 11:36 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 102
Wednesday, May 28, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

New York Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(2) (49 FR 30065) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new room number and mailing address for the Authority's New York, New York Regional Office. The New York Regional Office street location and telephone numbers have not been changed.

EFFECTIVE DATE: May 16, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel (202) 382-0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new room number and mailing address of the New York, New York Regional Office of the Authority. The New York Regional Office street location and telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(2) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(2) *New York, New York*—26 Federal Plaza, Room 3700, New York, New York 10278, Telephone: FTS—264-4934 Commercial—(212) 264-4934

* * * * *

(5 U.S.C. 7134)

Dated May 20, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86-11853 Filed 5-27-86; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 86-050]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of tuberculosis by raising the designation of Wisconsin from a modified accredited area to an accredited-free State. It has been determined that Wisconsin meets the criteria for designation as an accredited-free State.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States of modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

DATES: Effective date of the interim rule is May 28, 1986. Written comments must be received on or before July 28, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-050. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hoeker, Cattle Diseases Staff, VS, APHIS, USDA, Room 816, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of turberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdictions designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States is contained in the document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Sections 77.7 and 77.8 of the regulations provide the following with respect to the interstate movement of

cattle not known to the affected with or exposed to tuberculosis:

Section 77.7 Movement from accredited-free States and modified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

Section 77.8 Movement from nonmodified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

Prior to the effective date of this document, Wisconsin, among other States, was designated under § 77.5 of the regulations as a modified accredited area. The Deputy Administrator has determined that Wisconsin meets the criteria for designation as an accredited-free State. Therefore, this document amends the regulations by adding Wisconsin to the list of accredited-free States in § 77.4.

As noted above, the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers often prefer to buy cattle from accredited-free States.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Wisconsin will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to change the regulations immediately so that they accurately reflect the current tuberculosis status of Wisconsin and thereby provide prospective cattle buyers with accurate and up-to-date information which may affect the marketability of cattle.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the Federal Register.

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, 9 CFR Part 77 is amended as follows:

1. The authority citation for Part 77 continues to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.4 [Amended]

2. In paragraph (b) of § 77.4, "Wisconsin," is added immediately before "Wyoming".

Done at Washington, DC, this 19th day of May 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-11659 Filed 5-27-86; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 86-041]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, the entire State of Arizona was designated as Class A. This document amends the regulations to designate those portions of Mohave and Coconino Counties north of the Grand Canyon (also known as the "Arizona Strip") in Arizona, as Class Free. This rule is necessary because it has been determined that the Area consisting of these portions of Mohave and Coconino Counties meets the standards for Class Free Status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the Area in Arizona redesignated as Class Free.

DATES: Effective date of the interim rule is May 28, 1986. Written comments must be received on or before July 28, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 86-041. Written comments may be inspected at Room

728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. Hugh Metcalf, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and for cattle at slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the entire State of Arizona was classified as Class A. Pursuant to a request from State officials of Arizona, this document divides the State into two brucellosis classification areas, a Class Free Area consisting of those portions of Mohave and Coconino Counties north of the Grand Canyon, and a Class A Area consisting of the rest of the State.

In a document published in the Federal Register on December 13, 1982 (47 FR 55636-55656), the Department set forth a basis for dividing States into two brucellosis classification areas. In this connection, the document at 47 FR 55638-55639 provided that:

> Some large States have distinctly different rates of infections in different parts of the State. Two classification areas would enable animals moving between such areas to be controlled, and thereby keep brucellosis from spreading from the areas of high infection rate to areas of low infection.
>
> The individual States will have to control such intrastate movements as the Department does not have such authority. This State control will be provided for in cooperative agreements between each State and the Department. If a State with 2 Areas within its boundaries failed to control movements between those areas the higher classified area would be reclassified to be the same as the lower area.

The division of Arizona into two classification Areas, as explained above, is in compliance with this criteria.

Further, to attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12-month period and the adjusted MCI reactor prevalence rate for such 12-month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). A review of brucellosis program records establishes that this Area in Arizona meets the criteria for classification as Class Free.

Therefore, this document changes the classification of the Area in Arizona consisting of those portions of Mohave and Coconino Counties located north of the Grand Canyon (also known as the Arizona Strip) from Class A to Class Free. The rest of Arizona remains designated as Class A.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information complied by the Department, it has been determined that this rule will not have a signficant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For the action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of a portion of the State of Arizona reduces certain requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the portions of Mohave and Coconino Counties north of the Grand Canyon in Arizona.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause

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that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the Federal Register.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(a) is amended by adding "Arizona (those portions of Mohave and Coconino Counties north of the Grand Canyon);" immediately before "Connecticut."

3. In § 78.20(b), "Arizona," is revised to read: "Arizona (except those portions of Mohave and Coconino Counties north of the Grand Canyon),".

Done at Washington, DC, this 19th day of May 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–11858 Filed 5–27–86; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 32

[Docket No. 86–9]

National Banks' Lending Limits; Request for Comment

Correction

In FR Doc. 86–9057 beginning on page 15303 in the issue of Wednesday, April 23, 1986, make the following correction:

On page 15304, in the third column, the seventh line should read: "(For use until January 1, 1993)".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24692; Amdt. No. 93–51]

Anchorage, Alaska, Special Airport Traffic Area

Correction

In FR Doc. 86–11134 beginning on page 16310 in the issue of Monday, May 19, 1986, make the following correction: On page 16312 in the first column "§ 93.8 [Amended]" should read "§ 93.61 [Amended]".

BILLING CODE 1505–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–000 (Texas–6 Addition 8); Order No. 469]

High-Cost Gas Produced From Tight Formations; Texas Order Modifying and Adopting Jurisdictional Agency Recommendation

Issued May 23, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order modifying and adopting recommendation.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission modifies and adopts the recommendation of the Railroad Commission of Texas that the Travis Peak Formation, located in Districts 5 and 6 of the State of Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357–9115; or Walter W. Lawson, (202) 357–8737.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 2, 1981, the Federal Energy Regulatory Commission (Commission) received a recommendation pursuant to § 271.703 of the Commission's regulations [1] from the Railroad Commission of Texas (Texas) that the Travis Peak Formation [2] underlying 47 counties in Districts 5 and 6 in the northeastern part of the State of Texas, be designated as a tight formation. The recommendation was proposed in a Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation (Director), issued on December 15, 1981.[3] On January 22, 1982, Commission staff informed Texas by letter that the recommendation did not meet the Commission's guidelines for tight formation designation. On September 19, 1983, Texas submitted an amended recommendation. An Amended Notice of Proposed Rulemaking was issued on November 14, 1983.[4]

Background

Under applicable NGPA regulations,[5] it is the Commission's policy to designate as a tight formation any formation recommended by a jurisdictional agency if the Commission finds that substantial evidence in the record shows that the average gas permeability, stabilized pre-stimulation natural gas flow rate, and the pre-stimulation oil flow rate of the formation do not exceed designated limits.

Texas' original recommendation was based on data from 606 gas wells. These data were obtained from operators and public records, but were listed by code number so that specific well identities and locations were not disclosed. Staff analysis revealed that the formation's average permeability and stabilized

[1] 18 CFR 271.703 (1985).

[2] The Travis Peak is the basal formation of the Lower Cretaceous series and is encountered immediately below the last limestone zone of the Sligo-Pettit Formation. It overlies the Jurassic Cotton Valley Group and is composed of lenticular, alternating sandstone and shale beds. Its thickness ranges from 800 to 2500 feet throughout the proposed area; the depth to the top of the formation varies from 3,140 feet to 10,850 feet.

[3] 46 FR 62069 (Dec. 22, 1981). Comments in support of the recommendation were filed by Mitchell Energy Corporation, Champlin Petroleum Company, and Husky Oil Company.

[4] 48 FR 52462 (Nov. 18, 1983). Comments in support of the amended recommendation were filed by Champlin Petroleum Company and Crystal Oil Company. No party requested a hearing, and a hearing was not held.

[5] 18 CFR 271.703(c)(2)(i)(A)–(C) (1985). Incentive pricing under section 107(c)(5) of the NGPA is provided to encourage the exploration for and development of unconventional gas supplies.

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natural gas flow rate exceeded the permissible levels. With respect to the oil flow rate criterion, Texas' recommendation was not supported by any data. Texas simply noted that as of 1980 there were 183 active oil wells completed in the recommended area.

In its September 1983 amended recommendation, Texas continued to recommend that the entire Travis Peak Formation be designated as a tight formation. However, Texas suggested as an alternative that the top 200 feet of 45 specific gas wells be excluded from the recommended area, as well as all oil wells producing in the area. Texas' alternative recommendation contained no new data and continued to list all wells by code number.[6] Analysis of the alternative recommendation revealed that the formation's average permeability and stabilized natural gas flow rate still exceeded the permissible levels.

On December 13, 1985, Commission staff met with members of the Texas staff to discuss the Travis Peak recommendation. Commission staff learned that the application filed by Texas Oil and Gas Corporation (TXO) contained summary data and that all well identities were coded by TXO for proprietary reasons. Since it was not possible to determine the location of the data wells, neither Texas staff nor the Commission staff could properly analyze TXO's application. However, in order to facilitate Commission consideration of the recommendation, TXO provided Commission staff with additional permeability and flow rate data, referenced by code number, in 1985.

Review of the data submitted by TXO reveals that a large number of high permeability and high flow rate wells are located in two Panola County fields, the Bethany Field and the Carthage Field. Specifically, 31 of 44 data wells in the Bethany Field and 40 of 65 data wells in the Carthage Field exceed either the permeability or flow rate guidelines. These two fields thus represent "sweet spots" within an otherwise tight formation and are proposed to be excluded by Commission staff. Further analysis reveals that 31 other gas wells located throughout the recommended area have very high permeability values or high pre-stimulation flow rates and should be excluded to bring the remaining area within Commission guidelines.[7] Since there are still no specific flow rate data with respect to oil production, staff recommends that all oil wells be excluded from the recommended area.[8]

On December 6, 1985, Commission staff notified Texas of the proposed exclusions. Texas replied by letter of January 7, 1986, that the data analyzed by the Commission staff were never filed with or through Texas. Texas stated that it could not support any designation which would exclude any areas and/or wells from the area originally recommended.

Discussion

Under the tight formation program, as detailed in Order No. 99,[9] tight formation recommendations submitted to the Commission are approved under the Commission's rulemaking authority. The Commission is not limited by the evidence in the record presented to it by the jurisdictional agency and the various commenters, and accordingly is free to request or to develop any additional evidence which it deems necessary in order for it to issue a rule. Based on the supplemental information it has received and analyzed, the Commission finds that it is reasonable and necessary for it to modify Texas' recommendation.

The information submitted by TXO demonstrates that much of the Travis Peak Formation qualifies as a tight formation. Given the Commission's broad rulemaking authority, it would be unreasonable for the Commission to ignore the evidence which it has received simply because that evidence was never made available to Texas. Accordingly, Texas' recommendation must be modified to exclude (1) all oil wells (2) two gas fields in Panola County and (3) 31 other gas wells located throughout the recommended area. The exclusions are specifically described in the § 271.703 (d)(36)(v)(C). As discussed earlier, these exclusions result in an average permeability and natural gas flow rate throughout the remaining recommended area which are within the levels established under section 271.703(d). This action does not preclude Texas from requesting at a future date that some or all of the oil wells should be included in the designated area, if data are presented showing that the oil wells meet the Commission's guidelines.

The Commission Orders

Based on the discussion herein, the Commission adopts the recommendation of the Railroad Commission of Texas that a portion of the Travis Peak Formation, as modified by this order, be designated as a tight formation under section 271.703(d).

This amendment shall become effective June 23, 1986.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(36)(v) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(36) *Travis Peak Formation in Texas.* RM79–76 (Texas–6) and (Texas–6 Addition and Additions II, III, IV and VI).

* * * * *

(v) *Railroad Commission Districts 5 and 6.*—(A) *Delineation of formation.* The Travis Peak Formation is found in northeast Texas and includes all of Railroad Commission Districts 5 and 6 which contains 47 counties. A specified area of Panola County, 31 gas wells located throughout the formation, and

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[6] Texas also stated that average permeability should be based on a geometric mean rather than an arithmetic average. The issue of geometric v. arithmetic averaging was the subject of a public hearing before the Commission on November 12, 1982, in Docket No. RM79-76-[illegible], *et al.* The geometric mean of a statistically diverse sample containing extremely high and low values will be lower than the arithmetic average of the same sample. The Commission has consistently required that a formation's average permeability be derived by arithmetically averaging representative permeability values.

[7] The 31 gas wells are those wells among the remaining data wells which exceed either the permeability or flow rate guidelines by the greatest magnitude.

[8] Commission guidelines provide that the pre-stimulation oil flow rate of all wells in a tight formation may not exceed 5 barrels of oil per day. Texas' recommendation states that 88 percent of total production from the recommended area on a Btu basis is natural gas, twenty percent of the wells are oil wells, and 11 percent of the wells may produce as much as 5 barrels of oil per day. It is therefore reasonable to conclude that the flow rate of some oil wells may be within permissible levels. Based on the limited information available, however, excluding all oil wells from the recommended area ensures that the guidelines are met.

[9] Docket No. RM79-76, issued August 22, 1980, FERC Statutes and Regulations ¶ 30,162.

all wells that have been designated as oil wells are excluded. These exclusions are described and listed in paragraph (d)(36)(v)(C) of this section.

(B) *Depth.* The top of the Travis Peak Formation is found at a depth of 2,140 feet in Lamar County in the northern area of the east Texas basin and at 10,500 feet in the southern part of the basin in Cherokee County. The formation ranges in thickness from approximately 500 feet in the north to 2,500 feet in the south.

(C) *Areas not covered by the tight formation designation in Docket No. RM79-76-060 (Texas-6 Addition II).*[1]

(1) The following natural gas wells:

Well name	Field	County
G.J. Hall #1	Cyril (TP 7500)	Rusk.
Fields-Sessom 2C	Madison (TP)	Harrison.
J.M. Pash 1-T	Madison (TP-1)	Harrison.
Carl Rackley 1	Cyril (TP 7500)	Rusk.
Allard-Markey #1	Jarrell Creek (TP)	Rusk.
Wm. Whitaker Gas Unit #1.	E. Oak Hill (TP)	Rusk.
H.A. Dunn B #1	Whelan (TP Proposed)	Harrison.
C.A. Hennessy Est 1-U.	Providence (TP)	Panola.
J.M. Harrell 1-C	Opelika (TP)	Henderson.
Texie Young B #4	Tri-Cities (TP Lower)	Henderson.
Ivy Williams Heirs 2T	N. Lansing (TP)	Harrison.
Margaret Suggs #1	N. Lansing (TP)	Harrison.
Dynum SL	Henderson (Rusk Co TP).	Rusk.
D.J. Tucker A1T	Pattonville (TP)	Limestone.
W.M. Taylor 1T	Joaquin (TP)	Shelby.
Hinton 1	Willow Spring (TP)	Gregg.
B.A White et al Unit 1T.	Bow Church (TP)	Limestone.
Shiloh Gas Unit 10-1	Shiloh (TP)	Rusk.
Lee Tipps Estate 1	Pone (TP Gas)	Rusk.
Skipper Unit 1	Willow Springs (TP)	Gregg.
Henry Hogue 1	Tri-Cities (TP Lower)	Henderson.
J.W. Hanson 1R	Joaquin (TP)	Shelby.
William H. Lane GU 3	Gooch (TP)	Harrison.
F.C. Green 2	Woodlawn (TP-A)	Harrison.
M.E. Sparkman 1	Minden (TP)	Rusk.
Ester Brown Estate 1	S. Henderson (TP-A)	Rusk.
O.L. Gay (TP Unit) 1	Joaquin (TP)	Shelby.
Northern Gas Unit 1	Reed (TP)	Freestone.
Bidwell 1	E. Minden (TP)	Rusk.
Pappo-Beech 2	S.W. Whelan (TP, LO).	Harrison.
J.R. Tutle 1	S.W. Woodlawn (TP)	Harrison.

(2) Specifically, that area within these described boundaries: starting at the NE corner of Panola County south along the border of Texas and Louisiana to the south line of the J.N. Bowman survey, then west along the south line of the J.N. Bowman survey and the James Matthews survey to the west line of the James Matthews survey, then north along the west line of the James Matthews survey to the north line of the Wm. English Hrs. survey, then west along the north line of the Wm. English Hrs. survey to the west line of the Wm. English Hrs. survey, then south along the west line of the Wm. English Hrs. survey and the Wm. G. Anderson survey to the north line of the Willis Vaughn survey, then northwest to the west line of the Willis Vaughn survey, then south along the west line of the Willis Vaughn survey and the west line of the Adam Legrone survey and the east line of the Barley Anderson survey to the north line of the Thomas Powdrill survey, then east along the north line of the Thomas Powdrill survey to the east line of the Thomas Powdrill survey, then south along the east line of the Thomas Powdrill survey to the north line of the Hampton Anderson survey, then southeast along the north line of the Hampton Anderson survey to the east line of the Hampton Anderson survey, then southwest along the east line of the Hampton Anderson survey to the south line of the Hampton Anderson survey, then northwest along the south line of the Hampton Anderson survey to the east line of the W.B. Hooker survey, then south along the east line of the W.B. Hooker survey to the south line of the W.B. Hooker survey, then west along the south line of the W.B. Hooker survey and the Julia Scape survey and the A.G. Hudson survey to the east line of the A.G. Hudson survey, then south along the east line of the A.G. Hudson survey to the south line of the A.G. Hudson survey, then west along the south line of the A.G. Hudson survey to the west line of the A.G. Hudson survey, then north along the west line of the A.G. Hudson survey to the north line of the L.A. Choate survey, then west along the north line of the L.A. Choate survey to the east line of the I. Moore survey, then north along the east line of the I. Moore, J.J. Scape and A. Smith surveys to the north line of the A. Smith survey, then west along the north line of the A. Smith survey to the east line of the Wiet Anderson survey, then north along the east line of the Wiet Anderson survey to the north line of the Wiet Anderson survey, then west along the north line of the Wiet Anderson survey to the west line of the Wiet Anderson survey, then south along the west line of the Wiet Anderson survey to the north line of the Mathew Payne survey, then west along the north line of the Mathew Payne survey, the L. Shield survey and the Sabella Hanks survey to the west line of the G.N. Graves survey, then north along the west line of the G.N. Graves survey and the A. Moorman survey to the north line of the M. Smith survey, then west along the north line of the M. Smith survey to the west line of the J.A. Powers survey, then north along the west line of the J.A. Powers survey to the north line of the J.A. Powers survey, then east along the north line of the J.A. Powers survey to the west line of the Sam Duncan survey, then north along the west line of the Sam Duncan survey to the south line of the David Blankenship survey, then west along the south line of the David Blankenship survey to the west line of the David Blankenship survey, then north along the west line of the David Blankenship survey to the north line of the David Blankenship survey, then east along the north line of the David Blankenship survey to the east line of the David Blankenship survey, then south along the east line of the David Blankenship survey to the south line of the L. Bowker survey, then northeast along the south line of the L. Bowker survey and the Wm. McFadden survey to the west line of the Antwine Duboise, Sr. survey, then northwest along the west line of the Antwine Duboise, Sr. survey and the Antwine Duboise, Jr. survey to the north line of the Antwine Duboise, Jr. survey, then northeast along the north line of the Antwine Duboise Jr. survey and the south line of the Medom Yates survey to the east line of the Medom Yates survey, then northwest along the east line of the Medom Yates survey to the north line of the Medom Yates survey, then northeast along the north line of the TCRR Co. survey to the west line of the T.T. Williamson survey, then north along the west line of the T.T. Williamson survey to the north line of the T.T. Williamson survey, then east along the north line of the T.T. Williamson survey to the west line of the Felix G. Timmin survey, then northeast along the west line of the Felix G. Timmin survey to the Panola County line, then east along the Panola County north line to the Texas and Louisiana border.

(3) All wells that have been designated as oil wells.

* * * * *

[FR Doc. 86-11886 Filed 5-27-86; 8:45 am]

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[1] The recommendation of Texas in Docket No. RM79-76-188 (Texas-6 Addition V), concerning the Pinehill, S.E. Field, is rendered moot because the Pinehill Field is included within the area designated as a tight formation by section 271.703(d)(36)(v). Accordingly, Docket No. RM79-76-188 is terminated.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 86-106]

Customs Regulations Amendment Relating to Entry Numbers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect recent

changes in the assignment and format of entry numbers used by the international trade community in submitting entry documentation for processing by the Customs Service. The public was informed of changes to the entry number procedures by documents published in the Federal Register in 1985. However, the regulations were not amended. After a further review of the matter, it has been determined that the new entry number procedures should be included in the regulations. This amendment is one of the numerous initiatives Customs has undertaken relating to the development of a comprehensive integrated Automated Commercial System. When fully implemented, the changes will ensure entry processing efficiency.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202–535–4141), U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of entry type codes and entry number are desirable.

Accordingly, by notice published in the Federal Register on January 13, 1984 (49 FR 1740), Customs proposed new procedures for both entry type codes and entry numbers and invited interested parties to submit comments. Although comments were received on both procedures, Customs published a final rule as T.D. 85–5 in the Federal Register on January 11, 1985 (50 FR 1499), which concerned only the changes to entry type codes. Those comments relating to the entry number proposal were still being analyzed. That analysis has been completed and the final changes to the entry numbers are the subject of T.D. 85–112, published in the Federal Register on July 8, 1985 (50 FR 27818). That document amended Part 142, Customs Regulations, by removing § 142.3a.

However, after further review of the matter, Customs has determined that the new entry number procedures should be included in Part 142, Customs Regulations (19 CFR Part 142), relating to the entry process. Accordingly, this document adds a new § 142.3a, Customs Regulations (19 CFR 142.3a) to reflect these new changes. In addition, the document establishes a new effective date of October 1, 1986, which supercedes the original effective date of October 1, 1985, which appeared in T.D. 85–112. Compliance with the original effective date was waived by Customs in order to allow brokers and importers additional time to implement the new entry number procedures.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the changes set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection, Imports.

Amendment to the Regulations

PART 142—ENTRY PROCESS

1. The authority citation for Part 142, Customs Regulations (19 CFR Part 142), continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Part 142 is amended by adding a new § 142.3a to read as follows:

§ 142.3a Entry numbers.

(a) *Placement on Customs Forms.* The importer or broker shall place an 11 character entry number on the entry and corresponding entry summary documentation. For documentation prepared on data processing equipment, the number shall be printed directly on the form. For manually prepared documentation, the number shall be pre-printed in a machine readable format specified by Customs. The same number shall not be used for more than one entry transaction.

(b) *Format.* The following format, including hyphens, must be used when showing the entry number:

XXX–NNNNNNN–N

XXX represents an entry filer code assigned by Customs, NNNNNNN is a unique number which is assigned by the broker or importer, and N is a check digit computed from the first 10 characters based on a formula provided by Customs.

(1) *Assignment of Entry Filer Code.* Customs will assign a unique 3 character (alphabetic, numeric, or alpha numeric) entry filer code to all licensed brokers filing Customs entries. Customs will assign an entry filer code to certain importers filing Customs entries based on importer entry volume, frequency of entry filing, and other considerations. The broker or importer shall use this assigned code as the beginning three characters of the number for all Customs entries, regardless of where the entries are filed.

(2) *Entry Filer Assigned Number.* For each entry, the broker or importer shall assign a unique 7 digit number. This number shall not be assigned to more than one transaction.

(3) *Check Digit.* The broker or importer is responsible for ensuring that the check digit is computed by data processing equipment.

(c) *Misuse of the Entry Filer Code.* The district director may refuse to allow use of an assigned entry filer code if it is misused by the importer or broker.

(d) *Alternative Procedure.* If an importer does not have an assigned entry filer code, or if the district director, in accordance with paragraph (c) of this section refuses to allow use of an assigned entry filer code, the importer or broker shall obtain forms with a Customs assigned pre-printed machine readable entry number with a computed check digit. These forms will be available for sale by Customs and must be obtained and used before the

merchandise may be released from Customs custody.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved May 14, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 86-11881 Filed 5-27-86; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0177]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,1'-[(6-phenyl-1,3,5-triazine-2,4-diyl)diimino]bis-9,10-anthracenedione as a colorant in polyethylene phthalate polymers for food-contact use. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 28, 1986; objections by June 27, 1986.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 19, 1985 (50 FR 25467), FDA announced that a petition (FAP 5B3864) had been filed by Ciba-Geigy, Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that the food additive regulations be amended to provide for the safe use of 1,1'-[(6-phenyl-1,3,5-triazine-2,4-diyl)diimino]bis-9,10-anthracenedione as a colorant in polyethylene phthalate polymers for food-contact use.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.51a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before June 27, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3297 is amended in paragraph (e) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
1,1'-[(6-Phenyl-1,3,5-triazine-2,4-diyl)diimino]bis-9,10-anthracenedione (CAS Reg. No. 4118-16-5).	For use at levels not to exceed 0.25 percent by weight of polyethylene phthalate polymers that comply with § 177.1630 of this chapter. The finished articles are to contact food only under conditions of use E, F, and G described in table 2, § 176.170(c) of this chapter, except, when such articles are used with food types III, IV-A, and V, described in table 1, § 176.170(c) of this chapter, the finished articles are to contact food only under conditions of use D, E, F, and G.

* * * * *

Dated: May 15, 1986.

Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11882 Filed 5-27-86; 8:45 am]
BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[PP4H5444/R629; FRL-3019-5]

(Alpha RS, 2R)-fluvalinate [(RS)-Alpha-cyano-3-phenoxybenzyl(R)-2-[2-chloro-4-(trifluoromethyl) anilino]-3-methylbutanoate]; Food Additive Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Correction.

SUMMARY: This document corrects the section number of a regulation that established tolerances for an insectide

on the feed commodities cottonseed hulls and cottonseed oil (crude and refined).

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-603, 401 M St. SW., Washington, DC 20460, (202) 382-2253.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-9189 appearing on page 15317 in the Federal Register of April 23, 1986, the following correction is made: § 561.437, entitled *"(Alpha RS, 2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl(R)-2-[2-chloro-4-(trifluoromethyl) anilino]-3-methylbutanoate],"* is corrected to read § 561.438.

Dated: May 15, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-11521 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures; Final Date for Voluntary Relocation Application; Eligibility

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Interim final rule with request for comments.

SUMMARY: Pursuant to Pub. L. 93-531, the Navajo and Hopi Indian Relocation Commission submitted a *Report and Plan to Congress* in 1981. That report provided that applications for relocation would be accepted until July 7, 1986. In 1985, the Interior Appropriations Bill (Pub. L. 99-190) contained language establishing July 7, 1985 as the final date for the receipt of applications for voluntary relocation. The Commission published a regulation consistent with the Appropriations Law. That regulation was challenged in court and the Court ordered the Commission to continue to accept applications until July 7, 1986. This rule implements the court order and restates Commission policy as it was prior to the 1985 Appropriations Act.

DATES: Interim rule effective May 28, 1986. Comments must be received on or before June 27, 1986.

ADDRESSES: Comments may be mailed to the Executive Director, Navajo and Hopi Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

FOR FURTHER INFORMATION CONTACT: Sue Crystal (Attorney), Navajo and Hopi Indian Relocation Commission, at (602) 779-2721.

SUPPLEMENTARY INFORMATION: In 1985, pursuant to Congressional directive, the Commission proposed a rule establishing July 7, 1985 as the deadline for the receipt of applications for voluntary relocation. This regulation was challenged in court in the case of Zah v. Navajo and Hopi Indian Relocation Commission (CIV.85-1615, District Court—Phx.). In its order on the Motion for Preliminary Injunction, the Court determined that the Commission should continue to accept applications for relocation benefits until July 7, 1986. The Commission published notices of the application deadline and sent letters to the last-known addresses of anyone of whom the Commission had knowledge who might be subject to relocation. The purpose of this proposed rule is to clarify the existing situation as a result of the Court's order.

The rule provides that in order to be considered for voluntary relocation assistance, individuals must apply by July 7, 1986. To be eligible for benefits, individuals must meet the Commission's eligibility requirements as of July 7, 1986. This means that people must have achieved head-of-household status by that date to qualify for relocation benefits. The Commission has been publishing notices throughout the last year notifying those who might be subject to relocation that they should apply by July 7, 1986.

Provision has been made in § 700.138 for those individuals who are physically residing on land partitioned to the Tribe of which they are not members, but who have not applied for relocation benefits by July 7, 1986. The Commission has deleted the existing § 700.138 and replaced it with a section that delineates the actions that will be taken regarding those families who have not applied for voluntary benefits. Those persons who do not apply by July 7, 1986 will be contacted by the Commission as soon as practicable following July 7, 1986. Consistent with 25 U.S.C., 640d-14(d)(3), the Commission will request that those heads-of-households who are full time residents on land partitioned to a Tribe of which they are not members, who have not applied, choose an available area for relocation and contract with the Commission for relocation. By full time resident, the Commission means individuals who are currently physically residing on land partitioned to the Tribe of which they are not members who have no other place of residence. Relocatees will be offered suitable housing consistent with the Commission's benefit levels and the Commission will purchase improvements that they own on the land partitioned to the Tribe of which they are not members. Individuals will be requested to choose their own relocation site and will have the discretion to select housing from the Commission's housing plans. If an individual identified as physically residing on land partitioned to a Tribe of which they are not a member does not agree to move and fails to make arrangements with the Commission, the Commission will identify the funds necessary for the construction of a relocation house or construct housing for these individuals. At the time that such housing is available or the funds necessary to construct the house have been identified and set aside, the Commission will issue a notice stating the date by which the person will be required to move. If at the end of that 90-day period, the individual still does not agree to move, the Commission will exercise the Referral for Action provision of § 700.139. This section provides that the Commission will send a list of names of those individuals who refuse to move to the Secretary of the Interior and to the U.S. Attorney for the District of Arizona for action as they deem appropriate. The Commission will assure the availability of relocation assistance for those individuals.

The Commission is also by this rule amending § 700.147 by adding a new subsection. This subsection provides that relocation assistance benefits are restricted to those people who meet the head-of-household criteria as of July 7, 1986. This section is added to the eligibility regulations to clarify the cutoff date for the establishment of eligibility. This section is designed to reiterate what is included in § 700.137(b).

The Commission has determined that there is good cause to make this regulation effective immediately. This action is necessitated because of a court action resulting in an order directing the Commission to continue to accept applications until July 7, 1986. It was only recently agreed by the parties to the court action that no further action would be taken in that lawsuit. At the time the court order was issued, all parties of whom the Commission had knowledge were informed of the extension of the deadline by personal letter. Notices were also published in newspapers which served the affected population. Those parties affected have been on notice since February of the extended deadline. Because of the

impending July 7, 1986 deadline, this rule will become effective immediately upon publication. The Commission will receive all public comment after publiction and incorporate any changes prior to the publication of the final rule. The provisions of § 700.138 are consistent with the Commission's existing regulations and do not present any major change from existing rules. Those existing rules have been in effect for a year and the individuals affected have already had time to comment during their publication period in the spring of 1985.

The Commission's policy since its inception has been to accept applications for voluntary relocation until July 7, 1986. It has also been the Commission's policy that such date represents a cutoff for the determination of eligibility. The purpose of this regulation is to clarify any ambiguity which resulted from the regulations which were published in the spring of 1985. It should be stressed that the Commission has published notices and sent letters to individuals designed to notify people of the final date for the receipt of applications for voluntary relocation. This rule is designed to formalize that notice by inclusion in the Federal Register.

The principal author of this final rulemaking is Susan Crystal, Attorney, Navajo and Hopi Relocation Commission.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interests, Freedom of Information, Grant program—Indians, Indian—claims, Privacy, Real property acquisition, Relocation Assistance.

Accordingly, the Commission amends Part 700 as follows:

PART 700—AMENDMENTS

1. The authority citation for Part 700 continues to read as follows:

Authority: 25 U.S.C. 640d, Pub. L. 93–531, 25 U.S.C. 640d–14, Pub. L. 99–398.

2. Sections 700.137 and 700.138 are revised, and § 700.147(e) is added to read as follows:

§ 700.137 Final date for voluntary relocation application.

(a) In order to be considered for voluntary relocation assistance benefits, an applicant must have filed a completed application form with the Commission by the close of business on July 7, 1986.

(b) To qualify for relocation assistance, individuals must meet the eligibility requirements as of July 7, 1986.

§ 700.138 Persons who have not applied for voluntary relocation by July 7, 1986.

(a) Pursuant to 25 U.S.C. 640d–14 (d)(3) heads-of-household who do not make timely arrangements for relocation by filing an application by July 7, 1986, shall be provided a replacement home by the Commission. To be eligible for benefits (Housing and Moving Expenses), such persons must be, as of July 7, 1986, physically residing full time on land partitioned to a tribe of which they are not members and they must also otherwise meet all other current eligibility criteria.

(b) The Commission shall utilize amounts payable with respect to such households pursuant to 25 U.S.C. 640d–14(b)(2) and 25 U.S.C. 640d–34(a) for the construction or acquisition of a home and related facilities for such households.

(c) Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable after July 7, 1986. At such time, the Commission shall—

(1) Request that the head-of-household choose an available area for relocation, and contract with the Commission for relocation; and

(2) Offer the relocatee suitable housing; and

(3) Offer to purchase from the head-of-household the habitation and improvements; and

(4) Offer provisions for the head-of-household and his family to be moved (e.g., moving expenses, etc.)

(d) If a person so identified fails to agree to move after the actions outlined in this section are taken by the Commission and suitable housing is available (or sufficient funds are available to assure the relocation assistance to which the relocatee may be entitled), the Commission will issue a ninety-day notice stating the date by which the person will be required to vacate the area partitioned to the Tribe of which he is not a member.

§ 700.147 [Amended]

* * * * *

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

Ralph A. Watkins, Jr.,

Chairman, Navajo and Hopi Indian Relocation Commission.

[FR Doc. 86–11976 Filed 5–23–86; 11:58 am]

BILLING CODE 7535-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Office of Postsecondary Education

34 CFR Part 208

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction under Title II of the Education for Economic Security Act. These final regulations implement technical amendments made to Title II by the National Science, Engineering, and Mathematics Authorization Act of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Allen Schmieder, Chief, Mathematics/Science Section, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2011, FOB–6, Mail Stop 6264), Washington, D.C. 20202. Telephone: (202) 755–0410.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1985, the Department published, at 50 FR 43542–57 (34 CFR Part 208), final regulations governing State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction under Title II of the Education for Economic Security Act, 20 U.S.C. 3961 *et seq.* On November 22, 1985, the President signed into law technical amendments to Title II made by the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L. 99–159. The final regulations in this document implement those changes, where necessary.

Effect of Reauthorization

Pub. L. 99–159 extends the authorization for Title II through fiscal year 1988. These regulations, however, do not change the conditions that must be met to receive funds for fiscal years 1987 and 1988. The Secretary believes that this approach facilitates implementation of the program with minimum burden to States. Thus, once a State has submitted its application and assessment of need in accordance with §§ 208.11–208.13, the State need not resubmit those documents in order to receive funds. Of course, if the State makes significant and relevant changes in its Title II programs, it must amend its application in accordance with § 208.12(b) and 34 CFR 76.140–76.141 of the Education Department General Administrative Regulations.

Similarly, the conditions a local educational agency (LEA) must meet to receive funds remain the same. The LEA is not required to resubmit its application or assessment of need. However, to receive a renewal of funds each year, the LEA must submit the information required in § 208.32(b).

Sections Requiring Changes as a Result of Pub. L. 99–159

Section 208.21 Allotment to States.

Paragraph (c) implements that portion of section 223(a) of Pub. L. 99–159 that requires the Secretary to reserve one percent of the funds appropriated under Title II for each fiscal year to carry out the provisions of section 204(c) of Title II concerning children in Indian schools and the Insular Areas.

Section 208.23 Allotment to the Insular Areas.

Paragraph (a)(1) implements section 223(b) of Pub. L. 99–159. According to that section, from the one percent reserved to carry out the provisions of section 204(c) of Title II, the Secretary must allot not less than one-half of that amount for programs for children in elementary and secondary schools operated for Indian children by the Department of the Interior. The Secretary must allot the remaining amount among the Insular Areas. Although this language is slightly different, there is no substantive change from the previous provision in Title II. Moreover, under the new provision, the Secretary may still allot one-half of the amount reserved for section 204(c) for Indian schools and one-half for the Insular Areas, as he did for fiscal year 1985 funds.

Section 208.24 Allotment to the Bureau of Indian Affairs.

Paragraph (a) references § 208.21(c), added as a result of Pub. L. 99–159.

Section 208.32 LEA application and renewal.

Paragraph (a)(3) implements section 224(b)(3) of Pub. L. 99–159, which authorizes an LEA to conduct training programs. Title II, as originally enacted, authorized only inservice training and retraining.

Section 208.34 Allocation of funds.

Paragraph (a)(1) implements section 224(c) of Pub. L. 99–159, which gives a State educational agency (SEA) the option of calculating "relative enrollments," for the purpose of allocating funds to LEAs, on the basis of the total number of children enrolled in public schools and the number of children enrolled in either (1) all private nonprofit schools or (2) private nonprofit schools desiring that their children and teachers participate in Title II projects. Paragraph (a)(1) also incorporates the language in section 224(c) of Pub. L. 99–159 reiterating the responsibility of LEAs to contact, on an annual basis, appropriate private school officials to determine whether they desire that their children and teachers participate in Title II projects.

Section 208.35 Use of funds by LEAs.

Section 208.35 implements a number of changes made by Pub. L. 99–159. First, paragraphs (a), (b) (1) and (2)(i), and (c)(1)(i) implement sections 224(a), 224(b)(1), and 228(1) of Pub. L. 99–150 and indicate that training, inservice training, and retraining are all authorized activities for LEAs under Title II. Second, paragraphs (b)(1) and (2)(i) implement section 228(2) of Pub. L. 99–159, which indicates that an LEA may request a waiver under section 210(c) of Title II if the LEA does not need all or a portion of its Title II funds to meet its needs for training, inservice training, and retraining in mathematics and science. Essentially, these changes in paragraph (b) incorporate statutory changes that affirm the interpretation previously articulated in this section of the regulations. Finally, the changes in paragraphs (c)(1) (i) and (ii) conform paragraph (c) to changes made to section 206(b)(1)(B) of Title II by section 224(b)(1) of Pub. L. 99–159.

Section 208.42 Use of funds by SAHEs.

Paragraph (a)(1) implements section 225(c)(2) of Pub. L. 99–159, which authorizes State agencies for higher education (SAHEs) to conduct cooperative programs in computer learning as well as in mathematics, science, and critical foreign languages.

Section 208.43 Use of funds by IHEs.

Section 208.43 implements section 225 (a) and (b) of Pub. L. 99–159, which authorizes institutions of higher education (IHEs) to provide retraining and inservice training in foreign languages as well as in mathematics, science, and computer learning.

Section 208.61 Participation of children and teachers in private schools.

Paragraph (d) implements section 228A of Pub. L. 99–159, which clarifies that only children and teachers in private elementary and secondary schools which are nonprofit may participate in Title II projects.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. Because these regulations merely incorporate changes made by statute, however, public comment could have no effect. Therefore, publication of this document as a proposed rule for public comment has been determined to be unnecessary under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These amendments merely conform the existing regulations to new statutory requirements. The scope of the changes is limited and will not have a significant economic impact on the entities affected by the regulations.

Paperwork Reduction Act of 1980

These amendments do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 208

Colleges and universities, Education, Education of disadvantaged, Elementary and secondary education, Foreign languages, Grant programs—education, Private schools, Reporting and recordkeeping requirements, Science and technology, Teachers, Training program, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations. Unless otherwise noted, the citations refer to sections of the Education for Economic Security Act.

(Catalog of Federal Domestic Assistance No. 84.164, State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction)

Dated: May 21, 1986.

William J. Bennett,

Secretary of Education.

PART 208—STATE GRANTS FOR STRENGTHENING THE SKILLS OF TEACHERS AND INSTRUCTION IN MATHEMATICS, SCIENCE, FOREIGN LANGUAGES, AND COMPUTER LEARNING AND FOR INCREASING THE ACCESS OF ALL STUDENTS TO THAT INSTRUCTION

The Secretary amends Part 208 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 208 is revised to read as follows:

Authority: 20 U.S.C. 3801–3871, 3878, unless otherwise noted.

2. Section 208.21 is amended by adding a new paragraph (c) to read as follows:

§ 208.21 Allotment to States.

* * * * *

(c) The Secretary reserves one (1) percent of the funds appropriated under Title II for each fiscal year to carry out the provisions of section 294(c) of Title II.

(20 U.S.C. 3864(a), 3865)

3. Section 208.23 is amended by revising paragraph (a)(1) and the citation of authority to read as follows:

§ 208.23 Allotment to the Insular Areas.

(a)(1) From the amount available under § 208.21(c), the Secretary allots the amount remaining after implementing § 208.24 among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance under Title II.

* * * * *

(20 U.S.C. 3864(a)(2)(B), (c))

4. Section 208.24 is amended by revising paragraph (a) and the citation of authority to read as follows:

§ 208.24 Allotment to the Bureau of Indian Affairs.

(a) From the amount available under § 208.21(c), the Secretary allots not less than one-half of that amount to the Bureau of Indian Affairs for programs under this part for children in elementary and secondary schools operated for Indian children by the U.S. Department of the Interior.

* * * * *

(20 U.S.C. 3864(a)(2)(B), (c))

5. Section 208.32 is amended by revising paragraph (a)(3) to read as follows:

§ 208.32 LEA application and renewal.

(a) * * *

(3) An assurance that programs of training, inservice training, and retraining will take into account the need for greater access to and participation in mathematics, science, and computer learning programs and careers for students from historically underrepresented and underserved populations.

* * * * *

6. Section 208.34 is amended by revising paragraph (a)(1) to read as follows:

§ 208.34 Allocation of funds.

(a) * * *

(1)(i) Fifty (50) percent of the funds must be distributed according to the relative enrollments in public and private nonprofit schools within the school districts of the LEAs. Relative enrollments may be calculated, at the option of the SEA, on the basis of the total number of children enrolled in public schools and—

(A) Private nonprofit schools; or

(B) Private nonprofit schools desiring that their children and teachers participate in Title II programs or projects.

(ii) Nothing in paragraph (a)(1)(i) of this section diminishes the responsibility of an LEA to contact, on an annual basis, appropriate officials of private nonprofit schools within its school district to determine whether those officials desire that their children and teachers participate in Title II programs or projects.

* * * * *

7. Section 208.35 is revised to read as follows:

§ 208.35 Use of funds by LEAs.

(a) Except as provided in paragraphs (b) and (c) of this section, an LEA shall use the funds it receives under § 208.34(a) for the expansion and improvement of training, inservice training, and retraining in the fields of mathematics and science of teachers and other appropriate school personnel, including vocational education teachers who use mathematics and science in teaching vocational education courses.

(b)(1) If an LEA determines that it does not need all or a portion of the funds it receives under this part to meet the needs identified in its assessment of need for training, inservice training, and retraining specified in paragraph (a) of this section, the LEA may request the SEA to waive to the extent necessary the provisions in paragraph (a) of this section in order that LEA may use funds not needed under paragraph (a) of this section for programs under paragraph (c) of this section.

(2)(i) If the SEA determines that the LEA does not need all or a portion of the funds the LEA receives under this part to meet the needs identified in the LEA's assessment of need for the training, inservice training, and retraining specified in paragraph (a) of this section, the SEA shall grant the LEA's request for a waiver.

(ii) In granting a waiver, the SEA shall ensure that the LEA will meet the requirements for the equitable participation of children and teachers in private schools in accordance with section 211 of Title II and 34 CFR 76.651–76.662.

(c)(1) Except as provided in paragraph (c)(2) of this section, if an LEA receives a waiver under paragraph (b) of this section, the LEA shall use funds not needed under paragraph (a) of this section for—

(i) Training, inservice training, and retraining in the fields of—

(A) Computer learning; and

(B) Foreign languages;

(ii) Acquisition of instructional materials and equipment related to mathematics and science instruction.

(2) Of the funds an LEA receives under § 208.34(a), an LEA may not use more then—

(i) Thirty (30) percent for the purchase of computers and computer-related instructional equipment; and

(ii) Fifteen (15) percent to strengthen instruction in foreign languages.

(d) An LEA may carry out the training and instruction under this section—

(1) Through agreements with public agencies, private industry, IHEs, and nonprofit organizations; and

(2) In conjunction with one or more LEAs within the State, with the SEA, or with both LEAs and the SEA.

(20 U.S.C. 3866 (b), (c), 3870(c), 3871)

8. Section 208.42 is amended by revising paragraph (a)(1) to read as follows:

§ 208.42 Use of funds by SAHEs.

(a)(1) Subject to the requirement in paragraph (a)(2) of this section, a SAHE shall use not less than twenty (20) percent of the funds made available for higher education programs under § 208.21(b)(2) for cooperative programs among IHEs, LEAs, SEAs, private industry, and nonprofit organizations for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, computer learning, and critical foreign languages.

* * * * *

9. Section 208.43 is revised to read as follows:

§ 208.43 Use of funds by IHEs.

(a) Subject to the requirement in paragraph (b) of this section, an IHE shall use the funds awarded under § 208.41(a) for—

(1) Establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level;

(2) Retraining secondary school teachers, who specialize in disciplines other than the teaching of mathematics, science, foreign languages, or computer learning, to specialize in the teaching of mathematics science, foreign languages, or computer learning, including provision of stipends for participation in institutes authorized under Title I of the EESA; and

(3) Inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics, science, foreign languages, and computer learning, including stipends for participation in institutes authorized under Title I of the EESA.

(b) To receive funds for programs under paragraphs (a) (2) and (3) of this section, an IHE shall enter into an agreement with an LEA, or a consortium of LEAs, to provide inservice training and retraining for elementary and secondary school teachers in public and private schools in the LEA or LEAs.

(c) Each IHE receiving funds under § 208.41(a) shall assure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics, science, foreign languages, and computer learning and careers for—

(1) Students from historically underrepresented and underserved populations; and

(2) Gifted and talented students.

(20 U.S.C. 3867(b))

10. Section 208.61 is amended by adding a new paragraph (d) to read as follows:

§ 208.61 Participation of children and teachers in private schools.

* * * * *

(d) *Nonprofit status.* In accordance with section 711 of Title II, the regulations in this part only apply to children and teachers in private nonprofit elementary and secondary schools.

* * * * *

[FR Doc. 86-11863 Filed 5-27-86; 8:45 am]
BILLING CODE 4000-01-M

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34 CFR Parts 230 and 231

Asbestos Detection and Control: Local and State Educational Agencies; Removal of Obsolete Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary removes obsolete regulations from the Code of Federal Regulations (CFR). When Congress enacted the Asbestos School Hazard Abatement Act of 1984, authorizing an asbestos program in the Environmental Protection Agency, it allowed the authorization for the Department of Education asbestos program to lapse. This effectively terminated the Department of Education program and the implementing regulations in 34 CFR Parts 230 and 231 are no longer needed.

EFFECTIVE DATE: May 28, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-6272. Telephone: (202) 245-1975.

SUPPLEMENTARY INFORMATION: The Asbestos School Hazards Detection and Control Act of 1980 (Pub. L. 96-270, 20 U.S.C. 3601-3611) authorized asbestos programs in the Department of Education through fiscal year (FY) 1982. That authorization was extended through FY 1984 by section 528(6) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). When the Congress enacted the Asbestos School Hazard Abatement Act of 1984, authorizing a similar asbestos program in the Environmental Protection Agency, it allowed the authorization for the Department of Education program to lapse. This effectively terminated the Department of Education program and the implementing regulations in 34 CFR Parts 230 and 231 are no longer needed.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of this document as a proposed rule for public comment is unnecessary under 5 U.S.C. 553(b)(B) because it is without substantive effect and concerns only the removal of obsolete regulations from the CFR.

List of Subjects

34 CFR Part 230

Asbestos, Grant programs-education, Grant programs-health, Hazardous substances, Loan programs-education, Loan programs-health, Reporting and recordkeeping requirements, Schools.

34 CFR Part 231

Asbestos, Grant programs-education, Grant programs-health, Hazardous substances, Reporting and recordkeeping requirements, Schools.

(Catalog of Federal Domestic Assistance No. does not apply)

Dated: May 21, 1986.

The Secretary amends Title 34 of the Code of Federal Regulations by moving Parts 230 and 231.

PART 200—ASBESTOS DETECTION AND CONTROL: LOCAL EDUCATIONAL AGENCIES [REMOVED]

1. 36 CFR Part 200 is removed.

PART 201—ASBESTOS DETECTION AND STATE PLAN: STATE EDUCATIONAL AGENCIES [REMOVED]

2. 36 CFR Part 201 is removed.

[FR Doc. 86-11709 Filed 5-27-86; 8:45 am]
BILLING CODE 6820-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-180186; FRL 3021-8]

Advocacy of Pesticide Uses Which Do Not Appear on Registered Pesticide Labels; Amendment to the Statement of Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of amendment to policy.

SUMMARY: This notice amends a policy statement published in the Federal Register on October 22, 1981 (46 FR 51745) (October 1981 policy) and affects persons who distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver any antimicrobial pesticide. If any such person makes any claims for an antimicrobial pesticide product, targeted against microbial human pathogens, which differ from those made in conjunction with that product's registration, the EPA will regard that person as having violated section 12(a)(1)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), even when such claims are for uses allowed by FIFRA section 2(ee).

DATE: This policy is effective June 27, 1986.

FOR FURTHER INFORMATION CONTACT:
Daniel A. Helfgott (enforcement information), Office of Compliance Monitoring (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202-382-7807).
D. Jean Jenkins (technical information), Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703-557-7443).

SUPPLEMENTARY INFORMATION:

I. Policy

FIFRA section 12(a)(1)(B) states that it is unlawful for a person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver a registered pesticide, to make any claims for that product which differ substantially from those claims made in conjunction with that product's registration. The term "claims" includes, but is not limited to, claims appearing in advertising, literature, letters, or other documents, as well as oral statements.

Under section 2(ee) of FIFRA it is not a misuse to:

1. Apply a pesticide at any dosage, concentration, or frequency less than that specified on the labeling.
2. Apply a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling (unless the label states that the pesticide may be used only against pests specified on the label).
3. Employ any method of application not prohibited by the labeling.

In the October 1981 policy, EPA stated its policy that, since a FIFRA section 2(ee) use is not a misuse, any claim made regarding FIFRA section 2(ee) uses would not be treated as a violation of FIFRA section 12(a)(1)(B) unless the registered pesticide's labeling specifically prohibits that use.

EPA has reconsidered its policy on FIFRA section 12(a)(1)(B) with respect to certain claims made for uses not on the labeling. This notice informs the public that a person with financial interest in the use of an antimicrobial pesticide product, targeted against human pathogens, may not make any claims for the product which differ from those on the product's approved labeling. This policy does not affect the applicability of the October 1981 policy to any pesticides other than those specified in this notice.

The Agency believes that efficacy claims for antimicrobial products that are not supported by efficacy data submitted in conjunction with that pesticide's registration may foster a false sense of security among health care professionals relying on that product. Additionally, since the presence of the target microorganism cannot be readily discerned by users, the users cannot easily judge for themselves the effectiveness of that product (see 40 CFR 162.183). Therefore, claims made for antimicrobial products which substantially differ from those made in conjunction with registration could pose a serious public health threat.

Since pesticides intended for use against microorganisms are now excluded from the October 1981 policy, the Agency will take appropriate enforcement action, pursuant to FIFRA, against any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any antimicrobial pesticide if any claims made for it as part of its distribution or sale, substantially differ from those made in conjunction with its registration. Additionally, any person who recommends a FIFRA section 2(ee) use for an antimicrobial pesticide remains liable for possible civil damages arising out of his own negligence.

II. Background

EPA is currently concerned about unwarranted claims for antimicrobial pesticides used against human pathogens, especially against hepatitis-B virus (HBV), the causative agent of serum hepatitis, and human T-lymphotropic virus type III/lymphadenopathy-associated virus (HTLV-III/LAV), the apparent etiologic agent for acquired immune deficiency syndrome (AIDS). Most of the inquiries EPA has received concerning control of HBV and HTLV-III/LAV pertain to sterilizer and disinfectant products. Sterilizers are antimicrobial products ". . . intended to destroy viruses and all living bacteria, fungi and their spores, on inanimate surfaces" (40 CFR 162.3(ff)(2)(i)(D)). Sterilization is an absolute term and denotes killing of all microorganisms, including the most resistant spore forms, against which these products are tested. Disinfectants are antimicrobial products ". . . intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects" (40 CFR 162.3 (ff)(2)(i)(A)). In contrast to sterilizers, disinfectants are intended for effectiveness only against representative groups of vegetative bacteria and pathogenic fungi, and against specifically tested viruses. Some antimicrobial products are registered with label directions allowing use as a sterilizer if one treatment regimen is used (e.g., immersion for 10 hours) or as a disinfectant if a less stringent regimen is used (e.g., immersion for 10 minutes).

FIFRA section 3(c)(5)(A) states that the Administrator shall register a pesticide if he determines that ". . . its composition is such as to warrant the proposed claims for it." In addition, 40 CFR 158.160(b)(1), published in the Federal Register of November 13, 1985

(50 FR 40765), states that efficacy data are required to support all claims ". . . to control pest microorganisms that pose a threat to human health and whose presence cannot be readily observed by the user, including but not limited to, microorganisms infectious to man in any area of the inanimate environment." EPA requires the following data prior to registering a product with a virucidal label claim: (1) Demonstrated recovery of the infective form of the particular virus dried on an inanimate surface, and (2) availability and use of suitable assay methods to demonstrate absence of the dried virus after treatment of the surface with the antimicrobial product (Pesticide Assessment Guidelines, Subdivision G—Product Performance, Section 91–30 (d)(5), National Technical Information Service Order Number PB 83–153924).

To register a product with a label claim that the product can be used as a sterilizer, EPA requires data showing that the product is sporicidal. (Pesticide Assessment Guidelines, as above, Section 91–30(a)(1).) Since spores are the most resistant form of microorganism, no additional data are needed to support virucidal claims for products that are already registered as sterilizers. While HBV is a relatively well understood human pathogen, there are only limited experimental data concerning viral recovery and inactivation by disinfectants on hard surfaces. This is due to lack of a suitable assay method for determining whether the infective virus remains on hard surfaces after disinfection. To determine this, the experimenter must attempt to grow the virus in a host system.

The only known nonhuman host system is the chimpanzee, and chimpanzees are practically unavailable for such experiments. In 1983 the Centers for Disease Control (CDC) published findings of a clinical study in which five chimpanzees were injected with dried HBV-infected plasma treated with each of five different germicides (J. Clinical Microbiology, 18(3): 535–538, 1983). Though the chimpanzees did not show evidence of HBV infection after 9 months, these data are too limited to be conclusive. Therefore, the data are inadequate to demonstrate that disinfection provides adequate control against HBV contamination when sterilization may be the only effective control measure. This discrepancy in control procedures [i.e. disinfection rather than sterilization] could result in failure to reduce HBV contamination, thereby increasing public health risks.

The only known routes of transmission for AIDS virus, which was isolated and identified in 1984, are through sexual contact, blood products, or from mother to newborn. Transmission of AIDS via casual contact has not been demonstrated (New England Journal of Medicine, 314(6):344–349, 1986). Recently, data have become available which indicate that HTLV–III/LAV may be recovered after drying on inanimate surfaces for extended periods (Journal of the American Medical Association, 25A:1887–1891, 1986). These findings advance the possibility that the virus may be transmitted via such surfaces. Given the insidious and fatal nature of AIDS, hospitals and other health-care facilities are seeking guidance on the effectiveness of antimicrobial chemicals in controlling the spread of HTLV–III/LAV. Researchers at both CDC (J. Infectious Diseases, 152(2):400–403, 1985) and the Pasteur Institute (Lancet, 2:899–901, 1984) have conducted studies demonstrating that certain chemicals effectively kill HTLV–III/LAV in liquid suspensions. The CDC issued a report to advise interested parties of their recommendations for preventing transmission of HTLV–III/LAV in the workplace (Morbidity and Mortality Weekly Report: 34(45):681–685, November 15, 1985). The report emphasizes that the recommendations for preventing transmission of AIDS are directed towards people who may be exposed to blood or body fluids from persons who may be infected with HTLV–III/LAV. The report provides certain broad recommendations for sterilizing or disinfecting inanimate surfaces or objects that have been in contact with blood or other body fluids of an AIDS patient.

If HTLV–III/LAV can be recovered from inanimate surfaces, it appears that an acceptable protocol can be developed to test the efficacy of antimicrobial products (Journal of Immunological Methods 76:171-183, 1985). However, since no acceptable protocol has been developed, and no data submitted, no claims have been accepted against AIDS virus for any product.

III. Summary

Given the available evidence and methodology concerning these viruses, EPA lacks sufficient basis to approve HBV or HTLV–III/LAV virucidal claims for any disinfectant product. This situation may change as research on the AIDS and HBV viruses continues and registrants develop acceptable protocols to demonstrate virus isolation and disinfectant product efficacy.

EPA will allow registrants to make HBV and HTLV–III/LAV virucidal claims for sterilizer products when used in accordance with label directions for the sterilization procedure, and when approved in connection with the specific product registration.

Dated: May 16, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–11785 Filed 5–27–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 6F3335/R840; FRL–3019–6]

Pesticide Tolerance for Diclofop-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide diclofop-methyl and its metabolites in or on the raw agricultural commodity pea seeds (dry). This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the American Hoechst Corp.

EFFECTIVE DATE: Effective on May 28, 1986.

ADDRESS: Written objections, identified by the document control number [PP 6F3335/R840], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, room 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Environmental Protection Agency 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM No. 2, 1921 Jefferson Davis Highway Arlington, VA. (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 19, 1986 (51 FR 6034), which announced that American Hoechst Corp., Agricultural Division, Rte. 202–206, North Somerville, NJ 08876, had filed pesticide petition 6F3335 to EPA proposing to amend 40 CFR 180.395 by establishing a tolerance for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy)phenoxy]propanoate) and its metabolites 2-[4-(2,4-dichlorophenoxy)phenoxy]propanoic acid and 2-[4-(2,4-dichloro-5-hydroxyphenoxy)phenoxy]propanoic

acid, each expressed as diclofop-methyl, in or on the commodity pea seeds (dry) at 0.1 part per million (ppm).

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a rat oral median lethal dose (LD_{50}) study with an LD_{50} of 557 to 580 milligrams per kilogram (mg/kg); a dominant lethal mutagenicity study, negative at 100 mg/kg/day (highest level tested); a microsnuclevs mutagenicity study, negative at 100 mg/kg/day (highest level tested); an Ames test, negative at 5.0 mg/plate (highest level tested); a mutagenicity study with *Schizosaccharomyces pombe*, negative; a gene conversion study in *Saccharomyces cerevisiae*, negative; and unscheduled DNA synthesis study, negative; a rat teratology study with a teratogentic no-observed-effect level (NOEL) of 100 ppm (highest dose tested) (equivalent to 5.0 mg/kg of body weight (bwt); a rabbit teratology study with a teratogenetic NOEL of 3 mg/kg/day (highest dose tested) and a NOEL for fetotoxicity of 3.0 mg/kg/day; a 3-generation rat reproduction study with NOEL of 30.0 ppm (1.5 mg/kg of bwt); a 2-year rat feeding/oncogenicity study with a NOEL of 20 ppm (1.0 mg/kg of bwt) (highest level tested) and no oncogenic effects under the conditions of the study; a 2-year mouse feeding/oncogenicity study with a systemic NOEL of 2 ppm, (0.3 mg/kg of bwt) and a significant increase in liver neoplasms in males at the highest dose tested, 20 ppm (3.0 mg/kg/day); and a 15-month dog feeding study with a NOEL of 8 ppm (0.2 mg/kg of bwt).

The Agency has evaluated dietary exposure to diclofo-pmethyl residues for the commodity proposed. Assuming that 100 percent of the pea crop will have residues at the tolerance level (0.1 ppm), using a multi-stage model the "worst case" incremental dietary oncogenic risk is calculated to be 1 incidence in 100,000 (10^{-5}). Actual risk will be less, since not all of the dry pea crop will be treated, and those crops treated and sold will have residues less than 0.1 ppm (the level of detection).

Based on the NOEL of 0.3 mg/kg in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.003 mg/kg/day with a maximum permissible intake (MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a theoretical maximum residue concentration (TMRC) of 0.01815 mg/day in a 1.5-kg diet and use 10.04 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood and an adequate analytical method, gas chromatography using an electron capture detector, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry, and eggs. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 15, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.385 is amended by adding and alphabetically inserting the commodity pea seeds (dry), to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Pea seeds (dry)	0.1
* * * * *	

[FR Doc. 86-11530 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 265

[SW-FRL-3022-2]

Hazardous Waste Management System; Final Codification Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The Office of Solid Waste is making a technical correction to the Final Codification rule (FR Doc. 85-13094) that amended EPA's existing hazardous waste regulations to reflect those statutory provisions that have immediate or short-term effects on the regulated community. This correction removes the designation of "reserved" from the paragraph of the regulation under which bulk hazardous and containerized liquid wastes are prohibited from disposal in a landfill, and reinserts language requiring the use of the Paint Filter Liquids Test to determine whether free liquids are present in a waste that will be landfilled."

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hazardous Waste Hotline, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (800) 424-9346 (382-3000 in Washington, D.C.). For specific information on this amendment, contact Paul Cassidy, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-4662.

SUPPLEMENTARY INFORMATION: In the Federal Register published on July 15, 1985 (FR Doc. 85-13094), at page 28750, § 265.314(d) was inadvertently reserved. This section was originally promulgated on April 30, 1985 (FR Doc. 85-10278), and stated that the Paint Filter Liquids Test is to be used to determine the absence

or presence of free liquids in either a bulk or a containerized waste. The reserving of paragraph (d), which presents the Paint Filter Liquids Test requirement, was unintentional and is now being corrected. The Paint Filter Liquids Test has been in effect continuously since June 14, 1985, and remains in effect.

The amendatory language in paragraph 50 on page 28750 of the Federal Register is correced by removing the reference to paragraph (d). Paragraph (d) of § 265.314 remains as added at page 18374 in the Federal Register published on April 30, 1985, (FR Doc. 85–10278).

Dated: May 13, 1986.

J.W. McGraw,

Acting Assistant Administrator.

Accordingly, in the Federal Register of July 15, 1985, (FR Doc. 85–13094), on page 28750, second column, paragraph 50, is corrected by changing the comma after the word "respectively" to a period, and by removing the words "and paragraph (d) is reserved."

For the convenience of the user, the text of § 265.314(d) is reprinted as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." [EPA Publication No. SW–846].

* * * * *

[FR Doc. 86–11828 Filed 5–27–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[BERC–106–F]

Medicaid Program—Mental Retardation; Definition of "Persons With Related Conditions"

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule amends a definition in Medicaid regulations concerning intermediate care facilities for the mentally retarded (ICF/MR) and persons with related conditions. The definition of "persons with related conditions" contained in our regulations was tied to the definition of developmental disability included in the Developmental Disabilities Assistance and Bill of Rights Act (DDABRA) as amended in 1978. The DDABRA, as amended, however, also included the mentally ill within the definition of developmental disability. The prior cross-reference in our regulations to the DDABRA definition resulted in confusion about the kind of care covered by the ICF/MR benefit. To avoid misunderstandings in the future, this rule establishes an independent Medicaid definition of persons with conditions related to mental retardation.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 594–0445.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1904 of the Social Security Act (Act) authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). ICFs are facilities that provide health-related care to individuals who do not need the degree of care commonly provided in hospitals or skilled nursing facilities, but who do require care and services, above the level of room and board, which can only be made available to them through institutional facilities. Section 1905(d) of the Act indicates that the term "intermediate care facility services" may include services in a public institution for the mentally retarded or "persons with related conditions" (ICF/MR). This statutory provision is reflected in current regulations at 42 CFR 435.1009 and 440.150.

Initial Medicaid regulations published in 1974 defined "persons with related conditions" by using a cross-reference to the definition of developmental disability in the Developmental Disabilities Services and Facilities Construction Act (DDSFC), Pub. L. 91–517, enacted on October 30, 1970 (changed to the Developmental Disabilities Assistance and Bill of Rights Act in 1975, (DDABRA)). That definition of developmental disability used specific diagnoses to limit its scope to impairments closely related to mental retardation. The definition read ". . . a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, whose disability originates before such individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual."

Since 1970, the DDABRA definition of developmental disability has been amended twice. In 1975, Pub. L. 94–103 amended the definition to:

(1) Add autism to the list of specific conditions; dyslexia resulting from a disability otherwise specified in the definition was also added;

(2) Expand the reference to "other neurological conditions" to cover any conditions closely related to mental retardation by virtue of a similar impairment or a requirement for similar treatment; and

(3) Relate "substantial handicap" to the ability to function normally in society.

On October 1, 1978, an amendment to DDABRA, Pub. L. 95–602 revised the definition of developmental disability even further to read as follows:

"The term 'developmental disability' means a severe, chronic disability of a person which—

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(a) Self-care.

(b) Receptive and expressive language.

(c) Learning.

(d) Mobility.

(e) Self-direction.

(f) Capacity for independent living.

(g) Economic self-sufficiency.

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

This last amendment changed the focus of the definition from a categorical to a functional one. Thus, the definition no longer listed specific diagnoses that previously had been used to limit the definition to those impairments closely resembling mental retardation, but included any person with a mental or physical impairment that limits the person's functional ability in certain activities. Furthermore, the age by which a condition must manifest itself was changed from 18 to 22.

In 1974, Medicaid regulations were promulgated to implement the ICF/MR benefit under Medicaid. The DDABRA (then, DDSFCA) definition of "developmental disability" was adopted

for the Medicaid definition of "persons with related conditions" because it seemed to be an appropriate and convenient means of defining the term. However, when all existing Medicaid regulations were recodified, effective October 1, 1978, as part of the Department's initiative to rewrite regulations in a clear, concise, easily understandable format, the cross-reference to DDABRA inadvertently included the words "as amended" after the phrase "Pub. L. 91-517 enacted on 10/30/70".

The 1978 regulations intended to make "no substantive change" to prior Medicaid regulations. However, the cross-reference to the DDABRA arguably produced the unintended result of incorporating into Medicaid regulations the revision to the definition of the developmentally disabled created by the 1978 amendments to the DDABRA. This arguably resulted in an unintended substantive policy change in the recodified regulations that, in effect, appeared to broaden the Medicaid ICF/MR benefit to include coverage of facilities serving persons with mental or physical impairments that limit functional ability in certain activities.

Coverage of care provided in facilities for the mentally ill is addressed under the Medicaid statute at section 1905(a)(14) and 1905(a)(16) of the Social Security Act. These provisions, respectively, allow Medicaid coverage "for individuals 65 years of age or over in an institution for tuberculosis or mental disease" and "for individuals under 21 years of age" in psychiatric facilities. In the paragraph following section 1905(a)(16), with the exception of individuals under 21 in psychiatric facilities, the statute clearly excludes Medicaid coverage for "any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental disease." Therefore, the statute limits Medicaid coverage of inpatient psychiatric care to individuals within specified age groups in specified inpatient settings. Since these restrictions do not apply to ICFs/MR, it follows that Medicaid was not intended to include institutions for mental diseases as ICFs/MR. This conclusion is reinforced by the language in section 1905(c), which specifically excludes services in an institution for mental diseases or mental defects from the definition of intermediate care facility services. Furthermore, the definition of intermediate care facility services for the mentally retarded in section 1905(d) of the Act does not include services in an institution for mental diseases.

The DDABRA definition, as amended by Pub. L. 95-602, caused confusion about the kind of care covered under the ICF/MR benefit. Therefore, HCFA proposed amendments to 42 CFR 435.1009 (48 FR 7589, February 23, 1983) to set forth a new definition of "persons with related conditions". This definition combines many of the features of the 1975 developmental disability definition in the DDABRA with elements of the 1978 definition. In addition, this definition of "related conditions" was designed to:

(1) Be consistent with statutory provisions of the Medicaid program;

(2) Be independent of the DDABRA definition of developmental disability;

(3) Delineate specific diagnoses that for this purpose, we consider related to mental retardation; and

(4) Exclude mental illness.

Comments received on our February 1983 proposal and our responses to those comments are discussed in section III of this document.

II. Provisions of the Final Rules

These final regulations change our proposed language for the Medicaid definition of "persons with related conditions" by excluding autism and changing the word "or" to "and" in the description of a disability attributable to "any other condition" (§ 435.1009(a)(2) and paragraph (1)(b) below). An explanation of these changes is provided later in this preamble. Thus "persons with related conditions" is defined as persons who have a severe, chronic disability that meets all of the following conditions:

(1) The disability is attributable to—

(a) Cerebral palsy, epilepsy, or

(b) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(2) It is manifested before the person reaches age 22.

(3) It is likely to continue indefinitely.

(4) It results in substantial functional limitations in three or more of the following areas of major life activity:

(a) Self-care.

(b) Understanding and use of language.

(c) Learning.

(d) Mobility.

(e) Self-direction.

(f) Capacity for independent living.

This definition combines some of the specific diagnoses from the 1975 amendments (cerebral palsy and epilepsy) with the requirement for functional limitations and other provisions contained in the 1978 amendment to the DDABRA. The new definition delineates diagnoses that are considered closely related to mental retardation, while indicating that these conditions must be severe enough to limit the individual's ability to function normally. By combining the major provisions of the two previous definitions, we avoid the vagueness and excessively broad scope of the 1978 approach and also provide a basis for distinguishing among individuals in the diagnostic categories in terms of functional disability.

This definition encompasses individuals with severe physical impairments associated with disorders such as spina bifida and muscular dystrophy, or those with multiple handicaps such as deaf-blindness or severe learning disabilities. Under this definition, individuals who are dually handicapped, that is, individuals who are mentally retarded or have a related condition and who are also mentally ill, and meet the other criteria in the definition, may be appropriately cared for in an ICF/MR. Finally, the provision on substantial functional impairments in three or more major life activities will facilitate application of the definition by reinforcing the concept that individuals with "related conditions" are chronically and substantially disabled by those conditions that have a significant impact on their ability to function normally in society.

III. Public Comments

Our proposed rule published on February 23, 1983 sought comments on the detailed provisions of the new definition. Approximately 60 comments were received from Members of Congress, State agencies, professional organizations, Medicaid providers and other interested individuals. The majority of comments received voiced opposition to the proposed regulations on the basis that the mentally ill should not be excluded from the definition. The remaining comments supported the proposed definition and requested clarifications of specific aspects of the regulation. All comments were considered in drafting this final regulation.

1. General Comments

Comment: Many respondents questioned the reason for the delay in correcting the error that resulted in the use of the current DDABRA definition of developmental disability under Medicaid.

Response: The potential for misunderstanding in this area was not immediately evident at the time, given the clear language in the statute concerning funding for institutions for mental diseases. Once the effect of the 1978 amendment to the DDABRA definition was assessed, HCFA began drafting a technical revision to correct the error. Upon consideration, we determined that a new definition of "persons with related conditions" was needed specifically for the Medicaid program and that public comment on such a definition was appropriate. Prior to publishing the proposed definition, HCFA met with representatives from the Administration on Developmental Disabilities and the National Institute for Mental Health to obtain advice on a Medicaid definition of "related conditions" and its relationship to Medicaid benefits for the mentally ill and programs under the aegis of the DDABRA. Careful consideration of the advice from these sources delayed issuance of the proposed regulation and the solicitation of public comment.

Comment: Two commenters indicated that the discussion in the preamble of the proposed rule did not adequately justify the reason for the new definition.

Response: We disagree and believe that sufficient justification for the definition was provided in the preamble of the NPRM. However, we have supplied additional explanation and discussion in this preamble.

Comment: A hospital program director stated that because 5 years have passed since the DDABRA definition of developmental disability changed, HCFA has set a precedent for covering the mentally ill under the ICF/MR provision and cannot exclude them now.

Response: As detailed earlier in this preamble under the background discussion, the Medicaid statute places specific limits on coverage of care of the mentally ill to specified age groups and certain institutions. The Department cannot override the statutory restrictions when issuing program regulations; thus, HCFA's action or inaction cannot change that authority. HCFA is issuing the new definition of "persons with related conditions" to avoid future misunderstandings.

Comment: Two commenters indicated that 30 days was an insufficient amount of time to research the effect of the proposed definition. Another respondent requested that the comment period be extended 60 days.

Response: Commenters had 30 days after publication of our proposal to submit their comments. We do not agree that additional time for extensive research was needed because, as we fully explained, these regulations reflect statutory intent. Additionally, States are currently implementing this provision.

Comment: One Congressman asked that we delay final action regarding the proposed definition until a policy and economic analysis can be conducted.

Response: A policy and economic analysis is conducted on all proposed regulations as required by section 1(b) of Executive Order 12291 and 5 U.S.C. 605(b). The results of the analysis were presented in the NPRM, and we believe additional analysis is not required.

2. Programmatic Effects of the Definition

Comment: The majority of commenters opposed the proposed regulations on the grounds that they will exclude mentally ill individuals from the definition of "persons with related conditions". They believe that this will result in the elimination of Medicaid coverage for children and adolescents who are emotionally disturbed or have other psychiatric conditions. One particular State had many respondents, including Members of Congress who were concerned that they would be unable to place or serve numerous children with chronic emotional/psychiatric disorders and that a significant amount of Federal funds would be lost upon adoption of the proposed definition.

Response: These comments reflect confusion about the settings for the services which Medicaid covers and the purpose of this rule. The term being defined, "persons with related conditions", is part of the Medicaid provision for intermediate care facility services for the mentally retarded and persons with related conditions (ICFs/MR) in section 1905(d) of the Act. As discussed earlier, coverage for inpatient psychiatric care for individuals under 21 is provided for under a separate provision. For this reason, we proposed to clarify this definition of "persons with related conditions" to prevent any confusion.

Comment: Two representatives from a private non-profit provider of residential and other services to mentally retarded and emotionally disturbed persons commented that emotionally disturbed individuals have substantial limitations in major life activities and benefit from training and habilitation programs. They added that these individuals are not in need of hospital or skilled nursing care, but rather ICF/MR services.

Response: We agree that emotionally disabled persons can benefit from individually developed care plans but do not support the contention that emotionally disturbed individuals, who may have average or above average intelligence, generally should be placed in facilities which are designed for mentally retarded persons. Emotionally disturbed individuals who need institutionalization are usually best treated in a licensed psychiatric facility at the level of care (i.e. hospital, SNF or ICF) appropriate to their illness, rather than in a facility designed primarily for the care of mentally retarded persons. Also it is clear from the statutory limitations on funding of services in institutions for mental diseases, that Congress did not intend that services provided in those institutions be funded under the ICF/MR coverage provision.

Comment: Two respondents stated that the proposed definition discriminates against the mentally ill as a class while including individuals with cerebral palsy, epilepsy, autism, spina bifida, muscular dystrophy, deaf-blindness and severe learning disabilities.

Response: We do not believe that the proposed definition is discriminatory. Rather, as mentioned earlier, the Department cannot override statutory limitations. We think that this definition accurately implements statutory provisions (such as the definition of intermediate care facility services for the mentally retarded in section 1905(d) of the Act) and encourages treatment in appropriate settings. We chose to list two specific conditions as examples of "related conditions". It is important to note that this provision is applicable only to the definition of "intermediate care facility services for the mentally retarded or persons with related conditions" also defined in 42 CFR 435.1009 and 440.150(c). And, as discussed earlier, ICF/MR services may not include treatment of individuals who have a condition of mental illness only.

Comment: One official from a State human services department asserted that the proposed definition would reduce the number of individuals eligible to receive home and community-based services since they have already included the emotionally disturbed individuals being served by their ICFs/MR under a home and community-based waiver. Therefore, the commenter asserts that we are violating the intent of section 2176 of Pub. L. 97-35 (the Omnibus Budget Reconciliation Act of 1981).

Response: Section 2176 enacted section 1915(c) of the Act. The intent of Section 2176 is to offer home and community-based services as an alternative to nursing home care which otherwise would have been reimbursed under the State Medicaid Plan. The new

definition of "persons with related conditions" will not interfere with a State's option to seek approval of a waiver to provide home and community-based services for the mentally retarded or persons with related conditions, or the mentally ill if they otherwise would have required ICF or SNF level of care and the Medicaid program properly would have paid for that care. Regulations implementing Section 1915(c) are set forth in 42 CFR Part 441, Subpart G.

Comment: Several respondents questioned the effect of the new definition on an individual who has been determined to be mentally ill and has a "related condition" such as cerebral palsy.

Response: This question concerns the status of dually handicapped persons and the purpose of the regulations. Individuals who are mentally retarded or have a "related condition," as indicated in the definition, and are also mentally ill, may be appropriately served in an ICF/MR when it is determined, in individual cases, that care provided in a psychiatric facility is unnecessary or inappropriate. However, as discussed earlier, a facility designed primarily to serve mentally ill persons is not appropriately classified as a Medicaid ICF/MR.

Comment: One commenter questioned the effect of the definition on the ICF/MR service population. Specifically, the commenter questioned whether the definition would expand Medicaid ICF/MR coverage to a category of individuals neither intellectually nor behaviorally impaired but who need similar services.

Response: Although our initial intent was to avoid excluding any category of individuals that might appropriately be cared for in ICFs/MR, this commenter has indicated some confusion may result from this part of the definition and thus we have changed the wording in 42 CFR 435.1009(a)(2). We believe that all conditions which would be appropriate for ICFs/MR will be covered in the revised language. Section 435.1009(a)(2) now reads as follows: ". . . Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons."

3. Financial and Administrative Effects of the Definition

Comment: Two respondents concluded that the proposed definition would result in increased costs to Medicaid because many emotionally disturbed children and adolescents would be placed in psychiatric hospitals which are more restrictive and expensive than ICFs/MR.

Response: The Medicaid inpatient benefit for children with chronic emotional/psychiatric disorders is specified in current regulations at 42 CFR Part 441, Subpart D. Since this optional benefit may be provided in various levels of psychiatric facilities accredited by the Joint Commission on Accreditation of Hospitals (JCAH), costs need not be increased.

Comment: Two commenters questioned whether HCFA has considered the financial impact of changing the definition on States which are planning to or have already implemented the 1978 definition.

Response: Based on information obtained through HCFA regional offices, only one State changed its Medicaid program to adopt the 1978 definition. As discussed in response to the previous comment, this definition of "persons with related conditions" will facilitate more appropriate placement of individuals in need of inpatient services.

Comment: One State cited the lack of a HCFA definition for mental retardation and the possible conflict with various States using different professionally developed definitions. One commenter stated that most professionally developed definitions of mental retardation require the presence of significant impairments in both intellectual functioning and adaptive behavior and suggested that HCFA's definition of persons with related conditions should be consistent with this requirement.

Response: We are reviewing the state-of-the-art in the field of developmental disabilities in relation to defining mental retardation. If we find that it is warranted, we will publish such a proposed definition for comment in a notice of proposed rulemaking. For purposes of defining "persons with related conditions", we believe that the requirement of a significant impairment in both intellectual functioning and adaptive behavior would be too restrictive because the related condition may not affect the individual's intellectual ability.

Comment: Two commenters questioned how HCFA will ensure compliance with the new definition generally, and also under approved Medicaid waivers for home and community-based services.

Response: Although the administration of all aspects of a State's Medicaid plan is the responsibility of the State's Medicaid agency, enforcement of this definition is the responsibility of each State's survey agency in the first instance. The survey agency is responsible for determining whether the facilities under its purview are appropriately certified. Once the facility is correctly certified, on-going reviews are conducted by the State's Medicaid agency to ascertain medical and treatment needs for the disabled individuals being served by these facilities.

In addition, as changes in the statutes, regulations, policies or procedures occur, each HCFA regional office is given specific instruction by HCFA central office for monitoring State implementation of such changes. These instructions are transmitted on an annual basis through State Assessment Target Review Guides. In this instance once the final regulation is issued, monitoring State implementation of the new definition will become part of the target areas for review of the State assessment process. With regard to Medicaid waivers for home and community-based services (under section 1915(c) of the Act), HCFA regional offices have special instructions for monitoring States' implementation and proper operation of home and community-based services programs through the annual State assessment process.

4. Provisions of the New Definition

Comment: The National Mental Health Association stated that it is a serious regression to emphasize specific diagnoses over functional limitations. They believe this practice is contrary to good judgment and ignores the findings of the House Conference Report (No. 95-1780) recommendations which preceded the 1978 DDABRA amendments.

Response: The House Conference Report addressed the disability amendments, not the Medicaid program; however, the new definition incorporates those functional limitations contained in the current DDABRA definition that are appropriate for the Medicaid program. The two specific diagnoses merely present examples of conditions which we believe are similar to mental retardation.

Comment: One respondent suggested that inserting "mental or physical" *before* the first "other" at the beginning of the sentence, would strengthen the meaning of the regulation text at 42 CFR 435.1009(a)(2) which reads ". . . Any other condition, other than mental illness, found to be closely related to mental retardation . . . ."

Response: We do not agree and have not adopted this suggestion. We do not believe that this addition would strengthen the statement but rather would create additional confusion. The reason for the exclusion of mental illness from this definition is the statutory restriction related to payment for services in institutions for mental diseases. There is no comparable restriction relating to other types of illnesses.

Comment: One hospital program director asserted that including individuals with autism, which is categorized as a mental illness, directly conflicts with the decision to exclude other mental illnesses from the definition.

Response: We had planned to continue to include autism as a related condition because it has been specifically identified in the developmental disability definition since the 1975 amendments. Since it is classified as a mental illness, however, we have deleted this specific diagnosis from the final regulations. Despite this approach, many autistic individuals are functionally retarded and may require the services provided by an ICF/MR to treat them. These individuals may continue to be cared for in this setting since such care is appropriate for them.

Comment: The National Mental Health Association indicated that economic self-sufficiency should be included as a criterion because it is a substantial functional limitation and should be one of the factors in determining those individuals who may need and should be eligible for care in ICFs/MR.

Response: Although both programs are geared toward providing services which assist an individual in reaching the maximum level of functioning, the Medicaid definition of persons with related conditions is applicable only to the services provided by an ICF/MR whereas the DDABRA and its definition of developmental disabilities is applicable to a host of other categories of service such as education, vocational rehabilitation, and alternative community living arrangements, in which economic sufficiency is generally an integral part of the service system. Based on the need for which an ICF/MR is designed (health-related care in an institutional setting), we do not believe economic self-sufficiency is an appropriate criterion for defining ICF/MR services. Moreover, all Medicaid recipients have, by definition, economic difficulties that make them unable to meet their medical costs without assistance.

IV. Impact Analysis

We have determined that this final rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this rule would not have an annual effect on the economy of $100 million or more; or result in a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This final rule corrects a regulation drafting error which unintentionally appeared to cross-reference the 1978 DDABRA definition of developmental disability for use in defining persons with related conditions. The new definition of this term reflects in regulations the policies States now generally follow in connection with ICF/MR benefits. The rule will, therefore, have little, if any, fiscal impact on program operations and does not meet the criteria for a major rule under Executive Order 12291.

For these reasons, the Secretary also certifies, pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354) that the regulations will not have a significant economic impact on a substantial number of small entities.

Recordkeeping and Reporting Requirements

This final rule does not contain information collection requirements. Therefore, a review by the Office of Management and Budget (OMB) as specified under section 3504(h) of the Paperwork Reduction Act of 1980 is not necessary.

List of Subjects in 42 CFR Part 435

Aid to families with dependent children, Grant programs—health, Medicaid, Supplemental Security Income (SSI).

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

42 CFR Part 435 is amended as set forth below:

The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Section 435.1009 is amended by revising the definition of "Persons with related conditions" to read as follows:

§ 435.1009 Definitions relating to institutional status.

* * * * *

"Persons with related conditions" means individuals who have a severe, chronic disability that meets all of the following conditions:

(a) It is attributable to—

(1) Cerebral palsy or epilepsy; or

(2) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

(d) It results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self-care.

(2) Understanding and use of language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 25, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 29, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-11725 Filed 5-27-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
CALIFORNIA	
Camarillo (City) Ventura County (FEMA Docket No. 6514)	
Beardsley Wash: At upstream side of Dawson Drive	*189
Calleguas Creek: At centerline of Mission Oaks Boulevard	*143
Camarillo Hills Drain: At centerline of Rosewood Avenue	*194
Conejo Creek: At centerline of U.S. Highway 101 eastbound	*195
Las Posas Estates Drain: At western corporate limit	*110
Maps available for inspection at Department of Engineering Services, 601 Carmen Drive, Camarillo, California.	
Moorpark (City), Ventura County (FEMA Docket No. 6514)	
Arroyo Simi: 50 feet upstream from the center of New Los Angeles Avenue	*827
Peach Hills Wash: 50 feet upstream from the center of Bellcanto Ranch Road	*477
Maps available for inspection at Public Works Department, 799 Moorpark Avenue, Moorpark, California.	
San Buenaventura (City), Ventura County (FEMA Docket No. 6520)	
Santa Clara River: 700 feet south along Ventura Road from the intersection with the Southern Pacific Railroad	*84
Ventura River: 50 feet upstream from the centerline of West Main Street	*21
Harmon Barranca: Centerline of Bristol Road	*159
Brown Barranca:	
50 feet upstream from the centerline of Telegraph Road	*241
Intersection of Santa Paula Freeway (State Highway 126) and South Wells Road	*185
Intersection of Pajaro Avenue and Citrus Drive	*189
Intersection of North Wells Road and Citrus Drive	#1
Mills Road Drain:	
Intersection of Stanley Avenue and Rexford Street	#1
Intersection of Lemon Grove Avenue and Channel Drive	*88
Barlow Barranca: Intersection of East Main Street and Interchange Ramp for Santa Paula Freeway (State Highway 126)	#1
Pacific Ocean:	
At mouth of Ventura River	#3
At Ventura Marina	#3
Maps available at the Office of the Chief Engineer, 501 Poli Street, San Buenaventura, California.	
COLORADO	
Jefferson County (Unincorporated Areas) (FEMA Docket No. 6508)	
Bear Creek (Below Mt. Carbon Dam): 600 feet north of the intersection of South Oak Court and Bear Creek Drive	*5,486
Bear Creek (at Alvadore): 100 feet upstream from center of Soda Lake Road	*5,734
Bear Creek (at Alvadore): On Miller Lane, 150 feet northwest of its intersection with Bear Creek Road	*6,413
Bear Creek (Hillcrest to Evergreen):	
At the intersection of Avenue D and Creek Court	*6,852
On Upper Bear Creek Road, 200 feet south of its intersection with Meadow Drive	#2
Bear Creek (Above Evergreen Lake): 50 feet upstream from center of Upper Bear Creek Road	*7,610
Bear Creek Tributary Number 1:	
At the intersection of Pinewood and Meadow Drive	*7,080
40 feet east of the centerline of Meadow Drive, 575 feet southeast of its intersection with Elk Drive	#2
Bear Creek Tributary Number 2: 50 feet upstream from center of Independence Trail	*7,660
Bear Creek Tributary Number 3:	
50 feet upstream from center of Dedisse Park Road	*7,198
On Scenic Drive, 100 feet west of the intersection with State Highway 74	#2
Bear Creek Tributary Number 5: 100 feet upstream from Ward Canal crossing	*5,600
Bear Creek Tributary Number 6: 25 feet upstream from center of State Highway 9 (Morrison Road)	*5,457
Bergen Creek: Intersection of Aspen Lane and Lewis Ridge Road	*7,214
Big Dry Creek: Intersection of creek and center of Indiana Street	*5,600
Bullock Creek: Intersection of creek and center of South Decker Road	*5,602
Clear Creek: 50 feet upstream from center of Mckelvey Street	*5,588
Cold Spring Gulch: 100 feet upstream from center of Bear Creek Road	*5,591
Coon Creek: Intersection of creek and center of South Kipling Street	*5,592
Cub Creek: Intersection of creek and center of Stransky Road	*7,595
Deer Creek: 50 feet upstream from center of Grizzly Drive	*5,560
Dutch Creek:	
Intersection of West Weaver Drive and South Eaton Court	*5,439
Intersection of South Webster Street and West Coal Mine Road	#3
Elk Creek (at Pine): 50 feet upstream from center of South Deckers Road	*5,729
Elk Creek (at Sphinx Park): On South Elk Creek Road, approximately 5,300 feet north of its intersection with Pine Street	*5,587
Jackson Gulch: Intersection of creek and center of County Highway 93	*5,189
Kennaya Run: On 12th Street, approximately 700 feet northeast of its intersection with Ford Street	*5,681
Kerr Gulch: 100 feet upstream from center of Wheler Road	*7,389
Lena Gulch:	
Intersection of D and E Streets	*5,566
Intersection of Denver West Boulevard and Interstate Highway 70	#1
Lena Gulch Tributary:	
50 feet upstream from center of Orchard Street	*5,894
On West 14th Place, 250 feet north of its intersection with West 14th Avenue	#1
Leyden Creek:	
170 feet upstream from center of 75th Place	*5,469
Intersection of West 73th Place and Allore Street	#1
Lilley Gulch:	
Intersection of creek and center of West Peakview Drive	*5,514
200 feet west from center of South Wadsworth Boulevard, 600 feet north of its intersection with West Peakview Drive	#2
Little Cub Creek: 30 feet upstream from center of Silver Spruce Lane	*7,068
Mossey Dear Tributary: 100 feet upstream from center of South Gaylord Street	*5,636
Mount Vernon Creek: 100 feet upstream from center of Red Rocks Park Access Road	*6,101
Myers Gulch: At Center Drive as it crosses stream	*5,629

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
North Branch Glen Creek:	
Intersection of creek and center of South Miller Street	*5,870
Intersection of South Kipling Street and West Montgomery Avenue	#1
North Fork South Platte River: Intersection of river and center of Jefferson Street	*5,731
North Turkey Creek: Intersection of North Turkey Creek and Matamua Drive	*7,385
Parmalee Gulch: Intersection of creek and center of Santa Clara Road	*5,813
Pine Gulch: 50 feet upstream from center of County Highway 126	*5,794
Rooney Gulch: Intersection of creek and center of Old Morrison Road	*5,842
Rooney Gulch Spillway: Approximately 100 feet east from center of Rooney Road, at a point 575 feet south of the intersection with West Alameda Parkway	*5,886
Sand Draw: Intersection of creek and center of Sherman Road	*5,727
Sawmill Gulch: At the intersection of creek and center of South Grapevine Road	*5,881
SACD #100: Intersection of creek and center of Kendall Boulevard	*5,492
SACD #200: Intersection of creek and center of South Pierce Street	*5,484
SACD #200 North Tributary:	
South Kendall Boulevard	*5,497
Intersection of West Caryl Avenue and South Ames Way	#1
South Platte River: Intersection of river and center of County Highway 126	*5,388
Swede Gulch: 70 feet upstream from center of Ken Gulch Road	*7,999
Switzer Gulch: On South Deer Creek Canyon Road, 450 feet north of its intersection with Homewood Park Avenue	*9,897
Troublesome Creek: 50 feet upstream from center of State Highway 74	*7,704
Turkey Creek (Above Bear Creek Lake): 100 feet upstream from center of Soda Lake Road	*5,740
Turkey Creek (At Tiny Town): Intersection of South Turkey Creek Road and Rose Road	*5,891
Van Bibber Creek:	
Intersection of creek and center of Foothills Road	*5,677
100 feet west of Ulysses Street, 600 feet south of its intersection with West 69th Avenue	#1
Van Bibber Creek Tributary: 50 feet upstream from center of Ulysses Street	*5,699
Weaver Creek:	
Intersection of creek and center of South Simms Street	*5,638
Intersection of West Quincy Avenue and South Simms Street	#1
Wilmot Creek: Intersection of creek and center of High School Entrance Road	*7,188
Wilmot Creek Tributary: 30 feet upstream from center of Hazel Road	*7,213
Maps available for inspection at Planning Department, 1700 Arapahoe Street, Golden, Colorado.	

Pueblo (City), Pueblo County (FEMA Docket No. 6346)

Arkansas River: 50 feet downstream from the center of Interstate Highway 25 (U.S. Highways 85 and 87)	*4,649
Fountain Creek:	
20 feet upstream from the center of the Atchison, Topeka & Santa Fe Railway	*4,689
30 feet downstream from the center of State Highway 47	*4,797
Intersection of 3rd Street and Grand Avenue	*4,891
Intersection of Fountain Avenue	#1
Fountain Creek East Bank Overflow: Intersection of Fountain Avenue and 7th Street	*4,682
University Park Tributary: 20 feet upstream from the center of Jerry Murphy Road	*4,769
Wild Horse-Dry Creek: 20 feet upstream from the center of 18th Street	*4,769
Lake Minnequa:	
Center of Lakeshore Avenue, 200 feet north from its intersection with Iowa Avenue	*4,682
Center of Lakeshore Avenue 100 feet north from its intersection with Minnequa Avenue	#2

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Zoning and Public Works Department, 211 East D Street, Pueblo, Colorado.	

MASSACHUSETTS

Cohasset (Town), Norfolk County (FEMA Docket No. 6346)

Massachusetts Bay: Shoreline at Deep Run (extended)	*26
Entire shoreline of Sandy Cove	*16
At intersection of Nichols Road and Atlantic Avenue	*11
Shallow Flooding: Areas of sheetflow along Massachusetts Bay	#1 & #2
The Gulf:	
Shoreline approximately 400 feet south of River Road (extended)	*8
Western shoreline of Government Island south at Border Street	*11
Straits Pond: Entire shoreline within community	*9
Walnut Hill Stream:	
Approximately 400 feet downstream of Main Street	*8
Approximately 100 feet upstream of Beechwood Street	*32
Rattlesnake Run:	
At confluence with Straits Pond	*9
Approximately 460 feet upstream of Jerusalem Road	*15
Turkey Hill Run:	
Downstream corporate limits	*18
Upstream corporate limits	*26
James Brook:	
Upstream side of Smith Place	*11
Approximately 10 feet downstream of Schier Street	*14
Lily Pond Stream:	
At confluence with Lily Pond	*45
Approximately 1,066 feet upstream of Tupelo Road	*63
Sound Brook: At downstream corporate limits	*32
Richardsons Brook: Approximately 1,000 feet upstream of Jerusalem Road	*11
Maps available for inspection at the office of Christine Bassett, Chairman of the Planning Board, Town Hall, Cohasset, Massachusetts.	

Scituate (Town), Plymouth County (FEMA Docket No. 6276)

Massachusetts Bay:	
At intersection of Spaulding Avenue and Otis Street	*10
At intersection of Egypt Avenue and Priscilla Avenue	*13
Shoreline at Carver Avenue (extended)	*18
Shoreline at east end of Prospect Avenue (extended)	*25
Shoreline east of intersection of Parker Avenue and Collier Road	*25
Dune areas along Massachusetts Bay Shoreline	#1 & #2
600 feet southwest of intersection of Ocean Side Drive and 6th Avenue	*13
North River:	
Shoreline 100 feet east of State Route 3A	*10
Approximately 0.5 mile south of intersection of Collier Road and Brown Road	*16
South River:	
Approximately 1,500 feet west of intersection of Silver Road and Central Avenue	*12
At intersection of Central Avenue and Cliff Road	*10
Herring River:	
Approximately 1,000 feet south of intersection of The Driftway and Old Driftway	*12
Approximately 600 feet southwest of intersection of Cliff Avenue and Moorland Road	*16
Musquashcut Brook:	
Shoreline approximately 600 feet downstream of Hollet Street	*8
Shoreline approximately 1,000 feet upstream of Hollet Street	*12
Musquashcut Pond:	
At Old Farm Road	*13
At Seagate Circle	*13
Branch of Musquashcut Brook:	
At Gannet Road	*8

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,000 feet upstream of Hollet Street	*9
The Gulf:	
Approximately 750 feet north of intersection of Wood Island Road and Gardner Road	*11
Approximately 500 feet downstream of Mordecai Lincoln Road	*6
Bound Brook:	
Upstream side of Mordecai Lincoln Road	*15
Upstream side of Country Way	*19
At upstream corporate limits	*31
Satuit Brook:	
Approximately 1,000 feet upstream of Front Street	*11
At downstream side of Stockbridge Road	*21
At downstream side of Beaver Dam Road	*25
At upstream side of Abandoned Railroad Culvert	*34
First Herring Brook:	
Approximately 50 feet upstream of The Driftway	*11
Approximately 50 feet downstream of State Route 3A	*43
Approximately 150 feet upstream of Grove Street	*65
At upstream corporate limits	*67
Maps available for inspection at the Town Engineering Department, Town Hall, Route 3A, Scituate, Massachusetts.	

NEW JERSEY

Lincoln Park (Borough), Morris County (FEMA Docket No. 6056)

Passaic River:	
At downstream corporate limits	*173
At upstream corporate limits	*173
Pompton River:	
At confluence with Passaic River	*173
Upstream side of CONRAIL bridge	*176
At upstream corporate limits	*181
Beaver Dam Brook:	
At downstream corporate limits	*180
At upstream corporate limits	*180
West Ditch:	
At confluence with Beaver Dam Brook	*180
Upstream side of Square Place bridge	*180
At upstream corporate limits	*182
East Ditch:	
At confluence with Beaver Dam Brook	*180
At upstream corporate limits	*180
Maps available for inspection at the Lincoln Park Municipal Building, 34 Chapel Hill Road, Lincoln Park, New Jersey.	

Wayne (Township), Passaic County (FEMA Docket No. 6056)

Passaic River:	
At downstream corporate limits	*137
At upstream face of Beattles Dam	*166
At upstream face of State Route 23	*170
At upstream corporate limits	*173
Pompton River:	
At confluence with Passaic River	*173
At upstream face of State Route 23	*183
At confluence of Ramapo and Pequannock Rivers	*186
Ramapo River:	
At confluence with Pompton River	*186
At upstream corporate limits	*209
Singac Brook:	
At confluence with Passaic River	*172
At upstream face of French Hill Road bridge	*180
At upstream face of Preakness Avenue bridge	*200
At upstream face of Ratzer Road bridge	*241
At upstream face of Paterson Hamburg Turnpike bridge	*268
Approximately 1,400 feet downstream of upstream crossing of Valley Road	*310
Jones Brook:	
At confluence with Ramapo River	*207
At confluence of Haycock Brook	*214
At downstream face of Vale Road bridge	*230
Approximately 190 feet upstream of Tulip Terrace bridge	*316
Haycock Brook:	
At confluence with Jones Brook	*214
Downstream face of Pines Lake Drive	*231

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At upstream face of dam at Pines Lake	*289
At upstream face of West Pines Lake Drive bridge	*292
At upstream face of Baywood Avenue bridge	*314
Approximately 60 feet downstream of Brier Drive	*345
Mecklenburg Brook:	
At confluence with Stegos Brook	*175
At upstream face of Private Dam	*187
At upstream face of Chadwick Road bridge	*262
At upstream side of Sutters Lane	*323
Approximately 285 feet upstream of last Access Road bridge	*351
Tributary 1 to Stegos Brook:	
At confluence with Stegos Brook	*209
Approximately 600 feet upstream of confluence with Stegos Brook	*218
Tributary 3 to Stegos Brook:	
At confluence with Stegos Brook	*181
At upstream face of MacDonald Drive	*190
Approximately 120 feet downstream of Woodstock Road	*217
Maps available for inspection at the Municipal Building, Wayne, New Jersey.	

TEXAS

Brazoria County (FEMA Docket No. 6648)

Austin Bayou:	
Approximately .84 mile upstream of FM 2004	*9
Upstream of County Route 208	*13
Upstream of Missouri Pacific Railroad	*21
Upstream side of State Route 35	*27
Approximately 2.8 miles upstream of County Route 39	*36
Bastrop Bayou:	
Approximately .74 mile downstream of FM 523	*7
Upstream of State Route 288	*11
At confluence of Bastrop Bayou East and West Tributaries	*18
Bastrop Bayou West Tributary:	
At upstream corporate limits of Lake Jackson	*18
Approximately 3.2 miles upstream of confluence of Bastrop Bayou East Tributary	*29
Bastrop Bayou East Tributary:	
At confluence with Bastrop Bayou	*18
Downstream side of Airport Access Road	*23
Approximately .56 mile upstream of County Route 288	*34
Bell Creek:	
At confluence with San Bernard River	*25
Upstream side of State Route 36	*26
Approximately 1.1 miles upstream of FM 1301	*33
Brazos River:	
Approximately 4.75 miles downstream at confluence of Buffalo Camp Bayou	*13
Upstream side of FM 521	*25
Upstream side of State Route 36	*33
Approximately 10 miles upstream of State Route 36	*40
At confluence of Cow Creek	*53
At upstream County boundary	*59
Brushy Bayou:	
Upstream side of County Route 210	*18
Upstream side of County Route 443	*23
Upstream side of County Route 428	*29
Upstream side of County Route 341	*32
Downstream side of County Route 288	*39
Buffalo Camp Bayou:	
At confluence with Brazos River	*18
Approximately .86 mile downstream of Missouri Pacific Railroad	*26
Cedar Lake Creek:	
Approximately 2.2 miles downstream of FM 2611	*9
Approximately 2.7 miles downstream of FM 521	*14
Approximately 350' upstream of FM 521	*19
Chocolate Bayou:	
Approximately .87 mile downstream of County Route 171	*16
Approximately 1.5 miles upstream of Missouri Pacific Railroad	*20
Upstream side of State Route 35	*24
Approximately 2.37 miles upstream of County Route 172	*29
Upstream side of FM 1462	*34
At confluence of Unnamed Tributary to Chocolate Bayou	*37
Approximately 700 feet upstream of corporate limits for the City of Manvel	*40
Clear Creek:	
Approximately 2,000 feet downstream of Stone Road	*51
Approximately 2,000 feet upstream of State Route 288 (South Freeway)	*57
Approximately .57 mile upstream of County boundary at Almeda School Road Crossing	*62
Cocklebur Slough:	
Approximately 4.2 miles downstream of FM 2611	*19
Upstream side of FM 2611	*22
Upstream side of County Route 403	*26
Upstream side of FM 884	*28
Cow Creek:	
At confluence with Brazos River	*52
Approximately 1.5 miles upstream of County Route 17	*55
Flores Bayou:	
At confluence with Austin Bayou	*10
Upstream side of County Route 210	*14
Upstream side of Missouri Pacific Railroad	*21
Approximately 1.4 miles upstream of County Route 45	*30
Halls Bayou:	
Approximately 1.2 miles downstream of Halls Bayou Road	*11
Downstream side of County Route 167	*24
Upstream side of County Route 166	*27
Hayes Creek:	
Confluence with Chocolate Bayou	*36
Upstream side of County Route 571	*41
At State Route 288	*48
Approximately 1,000 feet upstream of most upstream corporate limits for Town of Iowa Colony	*55
Linville Bayou:	
Upstream side of County Route 321	*27
Downstream side of Missouri Pacific Railroad	*33
Downstream side of State Route 35	*36
Upstream side of County Route 749	*41
Approximately 2 miles upstream of most upstream Access Road	*47
Manys Creek:	
Approximately 760 feet downstream of corporate limits within City of Pearland	*50
Upstream side of County Route 109	*52
Approximately 100 feet upstream of Old Chocolate Bayou Road	*55
Mound Creek:	
Confluence with San Bernard River	*19
Approximately 1 mile upstream of County Route 460	*24
Upstream side of County Route 5	*34
Approximately 1 mile upstream of County Route 772	*48
Mustang Bayou:	
Approximately .59 mile downstream of most downstream Private Road	*18
Downstream side of second upstream Access Road	*27
Upstream side Missouri Pacific Railroad	*31
At first downstream corporate limits located downstream of State Route 35	*40
Upstream side of County Route 986	*48
Downstream side of County Route 95	*61
Approximately 1,200 feet downstream of irrigation canal, at upstream corporate limits of Manvel	*65
Downstream side of Access Road located 1,700 feet downstream of County Route 48	*68
At upstream County boundary	*68
Oyster Creek:	
Approximately 1.7 miles downstream of County Route 226	*11
At downstream corporate limits of City of Richwood	*15
Approximately 1.2 miles upstream of FM 2004	*23
At downstream corporate limits of Town of Balleys Prairie	*30
At upstream corporate limits of Town of Balleys Prairie	*33
Downstream side of County Route 30	*36
Upstream side of FM 1462	*49
At County boundary	*59
San Bernard River:	
Approximately 1 mile downstream of FM 2611	*11
Upstream side of FM 521	*17
Downstream side of Missouri Pacific Railroad	*18
At confluence of Stevenson Slough	*23
Downstream side of State Route 36	*25
Stevenson Slough:	
Approximately 570 feet downstream of FM 1459	*23
Upstream side of upstream County Route 332	*25
At most upstream corporate limits of City of Sweeny	*37
Approximately 60 feet upstream of County Route 321	*37
Unnamed Tributary to Chocolate Bayou:	
Confluence with Chocolate Bayou	*37
Approximately 900 feet downstream of County Route 67 at downstream corporate limits with Town of Iowa Colony	*43
Approximately 300 feet upstream of County Route 62	*47
Upstream side of State Route 288	*49
Upstream side of County Route 64	*51
Varner Creek:	
Confluence with Brazos River	*31
Upstream side of State Route 36	*36
Approximately 2.9 miles upstream of County Route 5	*47
West Fork Chocolate Bayou:	
Confluence with Chocolate Bayou	*40
Downstream side of County Route 64	*46
Approximately 250 feet downstream of State Route 288	*53
At County boundary	*60
West Bay:	
Shoreline at northwestern boundary near Cow Bayou	*17
At Alligator Point	*18
Gulf of Mexico:	
San Luis Pass	*10
Drum Point	*15
At the confluence of the Brazos River	*15
San Bernard River	*15
Southwestern County boundary near Cedar Lakes	*15
Shallow Flooding:	
Southwest of Flores Bayou near Missouri Pacific Railroad	#1
Southwest of Austin Bayou southeast of McCollough Lake	#1
Between Missouri Pacific Railroad and Lazy C-Z Reservoir	#1
East of Oyster Creek, west of County Route 44, south of County Route 31 and north of County Route 28	#1
South of County Route 341, west of Angleton and northeast of County Route 44	#1
East of Oyster Creek and south of Balleys Prairie	#1
Between Bastrop Bayou West Tributary and Oyster Creek	#1
East of Lake Jackson and west of County Route 288	#1
Northeast of Brazos River and west of State Route 332	#1
South of Clute and southwest of Lake Jackson	#1
West of Clute, south of Oyster Creek and north, east, and west of Freeport	#1
North of Oyster Creek in vicinity of Follett Lake	#1
In vicinity of Lake Bend	#1
Between Stevenson Slough and San Bernard River	#1
Between San Bernard River and Sweeney	#1
Between FM 2918, Cocklebur Slough and County Route 306	#1
Maps available for inspection at the Brazoria County Courthouse, Angleton, Texas.	

Comal County (FEMA Docket No. 6649)

Alligator Creek:	
Downstream County boundary	*839
Upstream side of FM 1101	*850
Upstream side of Interstate 35	*867
Downstream side of Missouri-Pacific Railroad	*709
Approximately 400 feet downstream of Hoffman Lane	*712
Cibolo Creek:	
Upstream side of Missouri-Pacific Railroad	*787

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3.2 miles upstream of County boundary	*800
Approximately 4.4 miles upstream of County boundary	*819
Approximately 6.1 miles upstream of County boundary	*849
Approximately 8.5 miles upstream of County boundary	*886
Approximately 11.5 miles upstream of County boundary	*910
Approximately 14.9 miles upstream of County boundary	*940
Upstream side of FM 1863 (1st upstream crossing)	*962
At confluence of Lewis Creek	*962
Approximately 3.1 miles upstream of confluence with Lewis Creek	*1,020
Approximately 700 feet upstream of U.S. Route 281	*1,095
Approximately .7 mile upstream of confluence with Indian Creek	*1,099
Confluence with Muesback Creek	*1,100
Approximately 100 feet downstream of Blanco Road	*1,127
Approximately 1.2 miles downstream of Ralph Fair Road	*1,228
Upstream side of Ralph Fair Road	*1,260
Approximately 400 feet upstream of County boundary	*1,298
Cibolo Tributary:	
Confluence with Cibolo Creek	*1,242
Upstream side of Ralph Fair Road	*1,255
Approximately 1,000 feet upstream of Ralph Fair Road	*1,269
Indian Creek:	
Confluence with Cibolo Creek	*1,672
Confluence of Indian Creek Tributary A	*1,682
Approximately 0.9 mile upstream the confluence of Indian Creek Tributary A	*1,110
Approximately 1.9 mile upstream the confluence of Indian Creek Tributary A	*1,134
Indian Creek Tributary A:	
Confluence with Indian Creek	*1,083
Approximately .6 mile upstream of confluence with Indian Creek	*1,098
Indian Creek Tributary B:	
Confluence with Indian Creek	*1,083
Approximately 1.8 miles upstream of confluence with Indian Creek	*1,118
Bracken Tributary:	
Upstream side of Missouri-Pacific Railroad	*799
Approximately 1.2 miles upstream Missouri-Pacific Railroad	*820
Approximately 2.0 miles upstream Missouri-Pacific Railroad	*845
Garden Ridge Tributary:	
Upstream side of Missouri-Pacific Railroad	*807
Downstream side of Bat Cave Road	*838
Guadalupe River (Upper Reach):	
Approximately 1.0 mile downstream of Rebecca Creek Road	*948
Confluence of Miller Creek	*965
Upstream side of State Route 311	*984
Upstream side of U.S. Route 281	*1,011
Confluence of Spring Branch	*1,026
Confluence of Cony Creek	*1,046
Upstream County boundary	*1,066
Approximately .4 mile upstream County boundary	*1,079
Guadalupe River (Lower Reach):	
Upstream side of Missouri-Kansas-Texas Railroad	*625
Confluence of Elm Creek	*645
Upstream side of River Road (3rd downstream crossing)	*676
Confluence of Turkey Creek	*702
Confluence of Sattler Creek	*725
Downstream side of Hydeshice Falls	*733
Approximately 1.4 miles upstream of Hydeshice Falls	*767
Sattler Tributary:	
Confluence with Guadalupe River	*733
Upstream side of FM 2673	*795
Approximately .7 mile upstream of FM 2673	*805
Elm Creek:	
Approximately 0.4 mile upstream confluence with Guadalupe River	*651
Approximately 1.0 mile upstream confluence with Guadalupe River	*705
Approximately 1.7 miles upstream confluence with Guadalupe River	*750
Approximately 2.8 miles upstream confluence with Guadalupe River	*800
Approximately 3.8 miles upstream confluence with Guadalupe River	*850
Approximately 5.1 miles upstream confluence with Guadalupe River	*900
Approximately 6.6 miles upstream confluence with Guadalupe River	*973
Dry Comal Creek:	
Approximately 400 feet downstream of County boundary	*643
Downstream side of Solms Road	*652
Approximately 2.9 miles upstream of Solms Road	*670
Approximately 4.6 miles upstream of Solms Road	*691
Upstream side of Missouri-Pacific Railroad	*697
Confluence with Bear Creek	*734
Confluence of Upper Dry Comal Creek	*765
West Fork:	
Confluence of West Fork Tributary	*802
Approximately 2.0 miles upstream confluence with West Fork Tributary	*864
Upper Dry Comal Creek:	
Confluence with Dry Comal Creek	*765
Approximately 1.1 miles upstream confluence with Dry Comal Creek	*789
West Fork Tributary:	
Confluence with West Fork	*802
Approximately 1.2 miles upstream confluence with West Fork	*851
Rebecca Creek:	
Approximately .9 mile upstream of confluence with Canyon Lake	*946
Approximately .8 mile downstream confluence of Cherry Creek	*980
Approximately 60 feet downstream confluence of Puter Creek	*1,017
Approximately 3.1 miles upstream confluence of Puter Creek	*1,162
York Creek:	
Approximately 440 feet at most downstream County boundary	*589
Upstream side of York Creek Road	*598
At Missouri-Kansas-Texas Railroad	*620
Approximately .9 mile upstream of confluence of Bullhead Hollow	*667
South Guadalupe Tributary:	
At County boundary	*661
Approximately 100 feet upstream FM 1044	*671
Canyon Lake: Entire shoreline	*946
Maps available for inspection at the Comal County Courthouse, New Braunfels, Texas.	

Edgecliff (Village), Tarrant County (FEMA Docket No. 6848)

Edgecliff Branch:	
At downstream corporate limits	*652
Approximately 100 feet upstream of Sycamore Creek Road	*674
Just upstream of FM 731 (Crowley Road)	*697
At upstream corporate limits	*709
Maps available for inspection at the Edgecliff City Hall, 1605 Edgecliff Road, Fort Worth, Texas.	

The Colony (City), Denton County (FEMA Docket No. 6852)

Office Creek:	
855 feet downstream of downstream corporate limits	*527
Upstream side of FM 423	*571
950 feet upstream of Blair Oaks Road	*585
Stream SC-1:	
Approximately 875 feet downstream of corporate limits	*540
Upstream side of North Colony Boulevard	*563
Approximately 870 feet upstream of Paige Road	*586
Stream SC-1A:	
At downstream corporate limits	*537
Approximately 100 feet upstream of Squires Drive	*561
Upstream side of Taylor Street	*584
Approximately 1,300 feet upstream of North Colony Boulevard	*594
Stream SC-2:	
Approximately 240 feet downstream of downstream corporate limits	*566
Upstream side of Turner Street	*577
At upstream corporate limits	*591
Lewisville Lake: Entire portion of community affected by Lewisville Lake	*537
Maps available for inspection at the City Hall, 5576 North Colony Boulevard, The Colony, Texas.	

UTAH

Richfield (City), Sevier County (FEMA Docket No. 6866)

Cottonwood Creek: At the center of the intersection of 700 North and 500 East	#1
Daisy Canyon: At the center of the intersection of 900 West and 625 South	#1
Maps available for inspection at the Office of the City Administrator, City Hall, Richfield, Utah.	

WEST VIRGINIA

Parkersburg (City), Wood County (FEMA Docket No. 6848)

Ohio River:	
Confluence of Little Kanawha River	*610
Upstream side of Lake View Drive (extended)	*612
Little Kanawha River:	
Confluence with Ohio River	*610
Upstream side of Interstate Route 77	*610
Worthington Creek:	
Confluence with Little Kanawha River	*610
Upstream confluence of Holmes Creek	*610
Neal Run:	
Confluence with Little Kanawha River	*610
Upstream side of State Route 95	*610
Wards Run:	
Upstream side of Camden Avenue	*610
Approximately 50 feet upstream of 15th Avenue	*615
Upstream side of Niagara Street	*621
Pond Run Lower Reach:	
Upstream side of Cheese System	*590
Downstream side of Memorial Highway bridge approach	*598
Holmes Run:	
Confluence with Worthington Creek	*610
Upstream side of Stella Street	*617
Upstream side of Emerson Avenue	*637
Approximately 630 feet upstream of Emerson Avenue	*643
Maps available for inspection at the Parkersburg City Hall, 1 Government Square, Parkersburg, West Virginia.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Dallas County (Unincorporated Areas), (FEMA Docket No. 6868)	
Alabama River:	
About 3.0 miles downstream of confluence of Bogue Chitto Creek	*97

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At the Dallas-Autauga-Lowndes County line	*139
Bogue Chitto Creek: Within community	*98
White Oak Creek: Within community	*109
Catoma River:	
At mouth	*112
About 8.4 miles upstream of the Louisville and Nashville Railroad	*123
Children Creek:	
At mouth	*115
At mouth of Children Creek Tributary	*168
Children Creek Tributary:	
At mouth	*168
About 1.3 miles upstream of Persimmon Tree Road	*284
Valley Creek:	
About 1.4 miles downstream of Summerfield Road	*128
About 0.9 mile upstream of County Road 16	*158
Beech Creek: Within community	*132
Maps available for inspection at the Dallas County Commission, Selma, Alabama.	

Hollywood (Town), Jackson County, (FEMA Docket No. 6558)

Dry Creek:	
About 6,600 feet downstream of U.S. Highway 72	*614
Just downstream of Norfolk Southern Railway	*622
Tiller Fit Creek:	
At mouth	*621
About 3,200 feet upstream of Norfolk Southern Railway	*650
Town Creek:	
About 800 feet downstream of Unnamed Tributary	*632
Just downstream of County Highway 35	*630
Maps available for inspection at the City Hall, Hollywood, Alabama.	

ARIZONA

Bullhead City (City), Mohave County (FEMA Docket No. 6558)

Davis Wash: At State Highway 95	#2
Williams Wash: At the intersection of Palm Way and Locust Boulevard	#2
Highland Wash: At the intersection of Locust Boulevard and State Highway 95	#2
Green Wash: At the intersection of Grande Road and Bueno Road	#2
Thumb Butte Wash: At Bullhead City Airport	#2
Buck Wash: At Bullhead City Airport	#1
Black Wash: At the intersection of Long Avenue and 6th Street	#3
Bullhead Wash: At the intersection of 5th Street and Palm Avenue	#2
Secret Pass Wash: At the intersection of Topock-Davis Dam Road and Secret Pass Canyon Road	#4
Dump Wash: At State Route 95	#2
Silver Creek Wash: At State Route 95	#3
Montana Wash: At the intersection of Ramar Road and Collins Drive	#2
Big Montana Wash: At the intersection of Alta Vista Road and State Route 95	#2
Chaparral Wash: At Mohave Circle	#2
Bonanza-Fair Wash: At Friendly Place	#1
Soto Wash: At Mohave Valley Highway	#1
Fort Mohave Wash: 2,600 feet east of Richards Avenue/Mohave Valley Highway intersection on Richards Avenue	#3
Maps Available for inspection at Planning and Zoning Department, City Hall, Bullhead City, Arizona.	

ARKANSAS

Fort Smith (City), Sebastian County (FEMA Docket No. 6558)

Arkansas River:	
Downstream corporate limits	*405
Downstream of Interstate Route 540	*410
Upstream corporate limits	*417
Massard Creek:	
Confluence with Arkansas River	*406
Upstream of South 62nd Street	*414
Upstream corporate limits	*422
Little Massard Creek:	
Confluence with Massard Creek	*406
Upstream of South 81st Street	*410
Upstream of Massard Road	*419
Upstream of South 74th Street	*425
Upstream of South Loadsville	*432
Spivey Creek:	
Confluence with Massard Creek	*414
Upstream of Baker Road	*435
Upstream of Missouri Pacific Railroad	*441
Sunnymede Creek:	
Confluence with Arkansas River	*409
Upstream of Waldron Road	*413
Upstream of Albert Pike Avenue	*423
Upstream of Blinks Avenue	*438
No Name Creek:	
Confluence with Sunnymede Creek	*409
River mile 0.46	*419
Upstream of Interstate Route 540	*429
Upstream of Free Ferry Road	*448
Upstream of Duncan Road	*455
Downstream of Esper Lane	*462
River miles 2.66	*511
No Name Tributary:	
Confluence with No Name Creek	*460
Upstream of Rogers Avenue	*482
River mile 0.719	*505
Oak Park Tributary:	
Confluence with Arkansas River	*412
Upstream of Newton Road	*417
River mile 0.951	*484
May Branch:	
Confluence with Arkansas River	*418
Upstream of North L Street	*432
Upstream of Bellevue Road	*462
Poteau River:	
Confluence with Arkansas River	*417
Confluence of Mill Creek	*418
Mill Creek:	
Confluence with Poteau River	*418
Upstream of Towson Avenue	*439
Upstream of State Route 59	*468
Upstream of Cavanaugh Road	*476
Upstream of upstream crossing of Jenny Lind Road	*489
River mile 6.82	*516
Mill Creek Tributary:	
Confluence with Mill Creek	*454
Upstream of downstream Missouri Pacific Railroad	*466
Upstream of Vicksburg Street	*473
Upstream of Tulsa Street	*480
Maps available for inspection at 623 Garrison, Fort Smith, Arkansas.	

Lavaca (City), Sebastian County (FEMA Docket No. 6558)

Car Creek:	
Downstream corporate limits	*401
Downstream side of North Davis Street	*406
Maps available for inspection at the City Hall, Main Street, Lavaca, Arkansas.	

CALIFORNIA

Chula Vista (City), San Diego County (FEMA Docket No. 6578)

Sweetwater River: On the downstream side of Willow Road as it crosses stream	*94
Telegraph Canyon: 80 feet downstream of the centerline of Second Avenue as it crosses stream	*105
Telegraph Shallow Flooding:	
At the intersection of Colorado Avenue and J Street	*21
At the intersection of Colorado Avenue and K Street	#1
Otay River: 220 feet west of the centerline of Interstate 805 at a point 1,200 feet south of its crossing of Main Street	*98
Poggi Canyon Creek: At the centerline of Otay Valley Road as it crosses stream	*128
San Diego Bay: 400 feet southwest of the intersection of Bay Boulevard and J Street	*5
Maps available for inspection at Engineering Department, 276 4th Avenue, Chula Vista, California.	

Crescent City (City), Del Norte County (FEMA Docket No. 6578)

Pacific Ocean: Intersection of Front Street and K Street	*13
Maps available for inspection at the Public Works Department, 450 H Street, Crescent City, California.	

Humboldt County (Unincorporated Areas) (FEMA Docket No. 6578)

Humboldt Bay: At the southeastern terminus of Perch Street at King Salmon	*6
Maps available for inspection at Department of Planning, 3015 H Street, Eureka, California.	

Kern County (Unincorporated Areas) (FEMA Docket No. 6566)

Antelope Creek: Approximately 75 feet downstream from the center of State Highway 202	*3,899
Blackburn Creek: 70 feet upstream from the confluence of Antelope Creek	*3,903
Byron Avenue Creek:	
Shallow Flooding: Approximately 185 feet upstream from the center of Bellaire Avenue	*2,466
Breckenridge:	
Shallow Flooding: Approximately 250 feet southeast along Atchison, Topeka + Santa Fe Railroad from the center of Morning Drive	*456
Caliente Creek: At the crossing of Atchison, Topeka + Santa Fe and Southern Pacific Railroad over Caliente Bodfish Road	*1,914
Caliente Creek:	
Shallow Flooding: Approximately 300 feet south along Rock Pile Road from its intersection with Mountain View Road	*830
Calvert Wash:	
Shallow Flooding: Approximately 600 feet upstream from the center of Pusher Street	*2,400
Claymine Wash:	
Shallow Flooding: Approximately 150 feet south on Granada Street from its intersection with Glendower Avenue	*2,298
Cuddy Creek: Approximately 80 feet downstream from the center of Border Street	*5,111
Erskine Creek: At the center of Lake Isabella Boulevard and Erskine Creek	*2,462
Grapevine Canyon Creek:	
Shallow Flooding: At the center of the intersection of Heather Avenue and Avenida Del Sol	#2
Indian Wells Canyon Creek:	
Shallow Flooding: At the center of the intersection of Sierra Vista Street and Three Pines Canyon Avenue	#3
Jawbone Canyon Wash: Approximately 30 feet downstream from center of Naumilla Road	*2,017
Kelso Creek: Approximately 150 feet upstream from the center of Kelso Valley Road	*2,804
Kern River at Bakersfield: Approximately 150 feet east along River Road from its intersection with Elk Road	*481
Kern River at Kernville: Approximately 100 feet upstream from the center of Kernville Road	*2,844
Little Dixie Wash: Approximately 100 feet upstream from the center of Ward Street	*2,427
North El Paso Wash:	
Shallow Flooding: At the center of Thorn Street and North El Paso Wash	*2,408
North Ridgecrest Wash:	
Shallow Flooding: At the center of the intersection of Campbell Road and Felspar Avenue (Halichrist Avenue)	*2,396
Paso Creek: Approximately 100 feet upstream from the center of Zerker Road	*475
Ranger Station Creek: Approximately 80 feet downstream from the center of Pine Road	*5,193
Sandy Creek: Approximately 80 feet downstream from the center of Mikkel Road	*1,170
Short Canyon Creek:	
Shallow Flooding: At the center of the intersection of Lasher Road and Placer Street	#2

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
South Branch Pizzo Creek: Approximately 700 feet west along Kimberlina Road from its intersection with Zachary Avenue	*446
South El Rizzo Wash:	
Shallow Flooding: At the center of the intersection of Drumsond Avenue (Selma Avenue) and Jacks Ranch Road	*2,388
South Fork Kern River: Approximately 65 feet downstream from the center of Doyle Ranch Road	*2,758
South Fork Kern River:	
Shallow Flooding: At the center of the intersection of Cozort Lane and Poplar Street	#2
South Ridgecrest Wash:	
Shallow Flooding: Approximately 100 feet downstream from the center of West Upjohn Avenue	*2,439
Twenty Mule Team Creek:	
Shallow Flooding: Approximately 125 feet upstream from the center of Boron Avenue	*2,446
Sycamore Creek: Approximately 50 feet downstream from the center of Bear Valley Road	*4,068
Shallow Flooding Near South of Bakersfield: At the intersection of Dejorgio Road and Fairfax Road	#1
Shallow Flooding Near Tehachapi: Approximately 220 feet south on Turl Street from its intersection with Highline Road	*4,125
Shallow Flooding Near McFarland: Approximately 200 feet north of intersection of Whisler Road and State Highway 99	*262
Shallow Flooding Near Tehachapi: Approximately 220 feet south of the center of the intersection of Turl Street and Highline Road	*4,186
Shallow Flooding Near Twenty Mule Team Creek: At the center of the intersection of Sierra Vista Street	#2

Maps available for inspection at Public Works Department, 1415 Truxtun Avenue, Bakersfield, California.

McFarland (City), Kern County (FEMA Docket No. 6566)

Shallow Flooding: Intersection of Browning Road and Perkins Avenue | *269

Maps available for inspection at the Office of the Mayor, 401 West Kern Avenue, McFarland, California.

San Mateo County (Unincorporated Areas) (FEMA Docket No. 6575)

Pacific Ocean: Intersection of Magellan Avenue and Miranda Road | *27

Maps available for inspection at Department of Public Works, 401 Marshall Street, Redwood City, California.

Seaside (City), Monterey County (FEMA Docket No. 6575)

Pacific Ocean: 200 feet north of the intersection of Humboldt Street and Sand Dunes Drive | *21

Maps available for inspection at City Hall, Seaside, California.

Sonoma County (Unincorporated Areas) (FEMA Docket No. 6575)

Bodega Harbor: At Spud Point | *11
Salmon Creek: At State Highway 1 crossing over Salmon Creek | *11

Maps available for inspection at Sonoma County Water Agency, 2425 Cleveland Avenue, Santa Rosa, California.

Tulare County, (Unincorporated Areas) (FEMA Docket No. 6566)

King River: 50 feet upstream from the center of Southern Pacific Railroad | *269
St. Johns River: 100 feet upstream from the center of Friant-Kern Canal | *482
Shallow Flooding: At the center of the intersection of Road 170 and Avenue 304 | #1

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Lower Kaweah River: 50 feet upstream from the center of Southern Pacific Railroad	*268
Shallow Flooding:	
At the center of the intersection of Road 192 and Avenue 304	#2
100 feet west from the center of the intersection of Avenue 312 and Atchison, Topeka & Santa Fe Railroad	*405
Middle Fork Kaweah River: 10 feet upstream from the center of South Dinuba Drive	*896
South Fork Kaweah River: 50 feet upstream from the center of South Fork Drive	*957
North Fork Kaweah River: 50 feet upstream from the center of North Fork Drive	*971
Elk Bayou: 50 feet upstream from the center of State Highway 99	*257
Lower Tule River: 50 feet upstream from the center of Plano Street	*459
Shallow Flooding:	
100 feet west from the center of the intersection of Crenshaw Street and Putnam Avenue	#1
At the center of the intersection of Plano Street and Henderson Avenue	*448
Upper Tule River: 50 feet upstream from the center of Globe Road	*777
Upper Tule River Northern Branch: At confluence with Upper Tule River	*701
Graham Creek: 100 feet upstream from the center of Globe Drive	*690
Campbell Creek: 50 feet upstream from the center of County Highway J23	*744
Fountain Springs Creek: 50 feet upstream from the center of Avenue 56	*515
Sand Creek-Shallow Flooding:	
At the center of the intersection of Avenue 432 and Road 132	#1
100 feet northwest from the center of the intersection of Ione Road and El Monte Avenue	#2
At the center of the intersection of Avenue 408 and Road 120	*358
Alta East Branch-Shallow Flooding:	
At the center of the intersection of Road 136 and Avenue 422	#1
500 feet north from the center of the intersection of Avenue 424 and Road 128	#2
Antelope Creek-Shallow Flooding: At the center of the intersection of Road 212 and Avenue 368	*464
East Overflow Antelope Creek-Shallow Flooding: 700 feet north from the center of the intersection of Watchumna Avenue and City of Woodlake corporate limits	*453
West Overflow Antelope Creek-Shallow Flooding: 100 feet southwest from the center of the intersection of Cajon Avenue and Olivera Drive	*456
Lewis Creek-Shallow Flooding: 100 feet northwest from the center of Lindmore Street crossing of Friant-Kern Canal	*416
Packer Creek-Shallow Flooding:	
At the center of intersection of Olive Drive and F Avenue	*420
At the center of intersection of Ninth Avenue and Road 228	#1
White River-Shallow Flooding: At the center of intersection of Road 124 and White Rock Avenue	*290
Porter Slough-Shallow Flooding:	
100 feet west from the center of the intersection of Crenshaw Street and Putnam Avenue	#1
At the center of the intersection of Plano Street and Henderson Avenue	*448
Mill Creek-Shallow Flooding: At the intersection of Goshen Avenue and Boyer Lane	#2
Redwood Creek-Shallow Flooding: 100 feet southwest from the intersection of Melrietta Avenue and Oakdale Avenue	*744
Wooten Creek: 100 feet northeast from the intersection of Valley Road and Avenue 464	*439
Orange Cove Drain: 100 feet southeast from the intersection of Avenue 400 and Valley Road	*434

Maps available for inspection at County Department of Public Works, County Courthouse, Visalia, California.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
COLORADO	
La Veta (Town), Huerfano County (FEMA Docket No. 6566)	
Cucharas River: 50 feet upstream of the center of Francisco Street	*7,029
Middle Creek: 50 feet upstream of the confluence with the Cucharas River	*6,976
Cucharas River (Shallow Flooding): 200 feet north of the intersection of Main Street and Ryus Avenue	#1

Maps available for inspection at Town Hall, 204 South Main, La Veta, Colorado.

Mancos (Town), Montezuma County (FEMA Docket No. 6566)

Mancos River: Approximately 50 feet upstream from center of Grand Avenue Bridge | *7,033
Chicken Creek: Approximately 800 feet north of the intersection of Monte Street and U.S. Highway 160 along Monte Street Extended | *6,905

Maps available for inspection at the Town Hall, Box 487, Mancos, Colorado.

Walsenburg (City), Huerfano County (FEMA Docket No. 6566)

Cucharas River: At the center of the intersection of 6th Street and Willis Avenue | *5,176
Bear Creek: Approximately 50 feet upstream of the center of U.S. Highway 160 | *5,164
North Walsenburg Flood Control Dam Overflow: At the center of the intersection of 4th and Main Street | *5,182

Maps available for inspection at the Office of City Building Inspector, 525, South Albert, Walsenburg, Colorado.

CONNECTICUT

Fairfield (Town), Fairfield County (FEMA Docket No. 6575)

Long Island Sound:
- 6 shoreline of Sasco Creek at Connecticut Turnpike | *11
- 6 shoreline approximately 1,400 feet east of Sasco Creek | *17
- 6 Shoreline at Willow Street (extended) | *15
- 6 shoreline of Mill River at Harbor Road | *11
- 6 shoreline at Pine Creek | *17
- 7 shoreline at Birch Road (extended) | *17
- 7 shoreline at Ash Creek at Black Rock Turnpike | *11

Grasmere Brook:
- Upstream side of Home Street | *11
- Downstream side of dam near Yarrow Road | *33
- Upstream side of Jennings Road | *48
- Upstream side of Osborn Hill Road | *65
- Approximately 100 feet upstream of Stony Brook Road | *86

Rooster River:
- Downstream side of Black Rock Turnpike | *11
- Upstream side of Interstate 95 | *17
- Approximately 100 feet upstream of Stratfield Road | *45
- Approximately 1,300 feet upstream of Cornell Road | *76

Horse Tavern Brook:
- At confluence with Rooster River | *79
- Upstream side of Merritt Street | *101
- At upstream corporate limits | *120

Londons Brook:
- At confluence with Rooster River | *76
- Upstream side of dam | *87
- Approximately 950 feet upstream of Fairfield Woods Road | *107

Brown's Brook:
- Confluence with Mill River | *21
- Upstream side of Wayside Court | *53
- Approximately 550 feet upstream of Governor's Lane | *89

Maps available for inspection at the Town Planning and Zoning Department, Independence Hall, Fairfield, Connecticut.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Farmington (Town), Hartford County (FEMA Docket No. 6566)	
Farmington River:	
At downstream corporate limits	*160
At Farmington Avenue (State Route 4)	*171
At downstream side of CONRAIL	*176
Approximately 300 feet upstream of South Main Street/State Route 177	*188
Approximately 900 feet upstream of Main Street/State Route 4/179	*200
Approximately 1,900 feet upstream of Main Street/State Route 4/179	*213
At upstream corporate limits	*220
Pequabuck River:	
At confluence with Farmington River	*172
At upstream corporate limits	*182
Rocky Brook:	
At confluence with Farmington River	*186
Upstream side of Keyes Street	*205
At downstream side of Golf Cart Bridge	*220
At upstream corporate limits	*240
Unionville Brook:	
At confluence with Farmington River	*200
Approximately 50 feet upstream of River Road	*211
At downstream side of Burlington Road	*254
Approximately 300 feet upstream of Burlington Road	*256
Scott Swamp Brook:	
At downstream corporate limits	*172
Approximately 30 feet upstream of Hyde Road	*178
Approximately 60 feet upstream of Scott Swamp Road	*200
Approximately 40 feet downstream of Mowa Road	*260
Poplar Swamp Brook:	
At confluence with Farmington River	*171
Approximately 600 feet upstream of dam	*171
Approximately 425 feet upstream of New Development Road	*185
Woodridge Lake Inlet:	
At downstream corporate limits	*171
Upstream side of Woodpond Road	*176
Approximately 940 feet upstream of Shady Lane	*226
Maps available at the Town Clerk's Office and Town Engineer's Office.	
Greenwich (Town), Fairfield County (FEMA Docket No. 6545)	
Byram River:	
At CONRAIL bridge	*12
Approximately 1,000 feet upstream of second crossing of Putnam Avenue	*19
Downstream side of first upstream dam	*43
Upstream side of Glenville Road	*110
At confluence of East Branch Byram River	*133
East Branch Byram River:	
At confluence with Byram River	*153
Upstream side of Merritt Parkway	*185
At confluence of Converse Pond Brook	*189
Converse Pond Brook:	
At confluence with East Branch Byram River	*189
Downstream side of second upstream crossing of Merritt Parkway	*213
Upstream side of fourth upstream crossing of Merritt Parkway	*252
Downstream side of Old Mill Road	*288
Downstream side of Lake Avenue bridge	*321
Approximately 0.4 mile upstream of Lake Avenue	*334
Horseneck Brook:	
Downstream side of Interstate 95	*13
Upstream side of Bridge Street	*30
Upstream side of Valley Drive	*88
Upstream side of Mead Lane	*110
Upstream side of Winding Lane	*136
Upstream side of Round Hill Road	*181
Downstream side of Clapboard Ridge Road	*234
Upstream side of Delcroft Road	*270
Downstream side of Butternut Hollow Road culvert	*304
Approximately .5 mile upstream of Merritt Parkway	*335
East Brothers Brook:	
Upstream side of Interstate 95 dam	*13
Upstream side of East Putnam Avenue	*30
Approximately 1,300 feet upstream of Cardinal Road	*57
West Brothers Brook:	
At confluence with East Brothers Brook	*26
Downstream side of Old Church Road	*71
Upstream side of Ridgebrook Road	*87
Upstream side of dam approximately 300 feet upstream of Husted Lane	*135
Upstream side of Laurel Lane	*171
Rockwood Lake Brook:	
At confluence with East Brothers Brook	*84
Upstream side of Doubling Road	*152
Upstream side of dam approximately 1,700 feet upstream of Doubling Road	*161
Upstream side of Dingletown Road	*170
Approximately 70 feet downstream of the Interlaken Drive	*188
Stickland Brook:	
At confluence of Cos Cob Harbor	*12
Upstream side of Orchard Street	*16
At Bargo Street (extended)	*29
Upstream Montgomery Lane	*66
Approximately 400 feet upstream of Pinetum Lane	*78
Mianus River:	
Upstream side of Mianus Pond Dam	*17
Upstream side of Palmer Hill Road	*27
Upstream side of dam approximately 1,460 feet downstream of Valley Road	*60
At upstream corporate limits	*73
Cider Mill Brook:	
Upstream side of Sound Beach Avenue	*12
Upstream side of Chasmar Road	*25
Upstream side of Connecticut Turnpike	*32
Approximately 1,000 feet upstream of East Putnam Avenue	*35
Maps available for inspection at the Office of Selectman, Greenwich, Connecticut.	
Guilford (Town), New Haven County (FEMA Docket No. 6566)	
Long Island Sound:	
At intersection of Rosemary Lane and Summer Street	*11
At intersection of Seaside Avenue and Field Road	*13
At intersection of Andrews Road and Little Harbor Road	*14
Shoreline at Indian Cove	*18
West River:	
Upstream side of U.S. Route 1	*11
Upstream side of Sawmill Road	*28
Downstream side of Flat Meadow Road	*55
Approximately 1.0 mile downstream of State Route 80	*113
Downstream side of State Route 80	*144
Approximately 1.0 mile upstream of Race Hill Road	*176
East River:	
Upstream side of Bear House Hill Road	*11
Upstream side of White Birch Drive	*16
Approximately 2,200 feet upstream of North Madison Road	*53
Little Meadow Brook:	
At confluence with East River	*28
Approximately 30 feet upstream of North Madison Road	*30
Approximately 0.5 mile upstream of North Madison Road	*53
Downstream side of Little Meadow Road	*78
Upstream side of Meadow Hills Drive	*98
Approximately 1,170 feet upstream of Melleye Pond Dam	*108
Neck River:	
Approximately 600 feet downstream of Opening Hill Road	*66
Downstream side of Gaulds Pond Dam	*77
Maps available for inspection at the Office of Selectman, Guilford, Connecticut.	
Norwalk (City), Fairfield County (FEMA Docket No. 6546)	
Long Island Sound:	
Shoreline at Roton Avenue (extended)	*17
At intersection of Water Street and Fort Point Street	*11
Norwalk River:	
Downstream side of Wall Street	*12
At confluence of Silvermine River	*54
At upstream corporate limits	*184
Silvermine River:	
At confluence with Norwalk River	*54
Upstream side of Merritt Parkway	*89
At upstream corporate limits	*132
Five Mile River:	
Upstream side of Cuttlipp Street	*12
Upstream side of Connecticut Turnpike	*48
Approximately 100 feet upstream of Fillow Street	*103
At upstream corporate limits	*143
Keeler Brook:	
At confluence with Five Mile River	*29
Upstream side of Flax Hill Road	*60
Approximately 1,000 feet upstream of Connecticut Turnpike	*89
Stony Brook:	
At downstream corporate limits	*54
Upstream side of Field Street	*123
Bells Pond Brook:	
At confluence with Norwalk River	*11
Downstream side of Cannon Street	*37
Approximately 0.5 mile upstream of Stake Street	*58
Maps available for inspection at the Code Coordination Office of the Department of Code Enforcement, City Hall Annex, Roger's Square, East Norwalk, Connecticut.	
DELAWARE	
New Castle County, Unincorporated Areas (FEMA Docket No. 6566)	
Christina River:	
Downstream county boundary	*10
Upstream side of Wilson Road	*20
Upstream side of State Route 72	*40
Upstream county boundary	*69
Red Clay Creek:	
At confluence with White Clay Creek	*19
Upstream side of Kirkwood Highway	*55
Upstream side of Lancaster Pike	*96
Upstream side of Hillsborough Road	*126
Upstream side of Ashland Road	*152
Upstream side of Dam No. 10 at county boundary	*193
White Clay Creek:	
At confluence with Christina River	*13
At confluence of Pike Creek	*34
Upstream side of State Route 2	*54
Upstream side of Dam No. 5	*81
At upstream State Boundary	*118
Tributary to White Clay Creek:	
At confluence with White Clay Creek	*13
Downstream side of AMTRAK crossing	*13
At State Route 4	*20
Mill Creek:	
At confluence with White Clay Creek	*19
Upstream side of Kirkwood Highway	*48
Upstream side of Limestone Road	*104
Upstream side of West End Camp Wright Road	*186
Upstream side of Brackenville Road	*227
Upstream side of Old Lancaster Pike	*259
Upstream county boundary	*310
Pike Creek:	
At confluence with White Clay Creek	*24
Upstream side of Henderson Road	*73
Upstream side of Granville Road	*139
At State Route 72	*160
Little Mill Creek:	
At confluence with Christina River	*19
Upstream side of Maryland Avenue	*20
Upstream side of Dupont Road	*68
Upstream side of Chessie System	*75
At State Route 141	*81
Chestnut Run:	
At confluence with Little Mill Creek	*77
Upstream side of State Route 2	*82
At Faulkland Road	*88
Brandywine Creek (Downstream Portion):	
At downstream corporate limits	*39
Approximately 600 feet upstream of fourth upstream dam	*81

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Brandywine Creek (Upstream Portion):	
Approximately 180 feet downstream of downstream State boundary	*156
Approximately 50 feet upstream of most upstream State boundary	*186
Delaware River:	
Entire length within county affected by tidal flooding	*10
Maps available for inspection in Drafting Room Number 205, County Engineering Building, 2701 Capitol Trail, Newark, Delaware.	
GEORGIA	
Tybee Island (City), Chatham County, (FEMA Docket No. 6866)	
Atlantic Ocean:	
Along Jones Avenue from 14th Street to 4th Street	*12
At U.S. Route 80 bridge over Lazaretto Creek	*16
Along eastern shoreline	*20
Maps available for inspection at the Building Inspector's Office, City Hall, Tybee Island, Georgia.	
ILLINOIS	
Chandlerville (Village), Cass County, (FEMA Docket No. 6866)	
Panther Creek:	
About 0.8 mile downstream of State Route 78	*469
About 0.7 mile upstream of Main Street	*478
Sangamon River:	
About 0.5 mile downstream of State Route 78	*469
Just upstream of State Route 78	*480
Maps available for inspection at the Clerk's Office, Chandlerville, Illinois.	
Cissna Park (Village), Iroquois County, (FEMA Docket No. 6866)	
Pigeon Creek:	
About 2,000 feet downstream of Missouri Pacific Railroad	*691
At confluence of Pigeon Creek Tributary No. 1	*694
Pigeon Creek Tributary No. 1:	
At confluence with Pigeon Creek	*694
About 400 feet upstream of West Street	*695
Maps available for inspection at the Cissna Park News, 119 West Garfield, Cissna Park, Illinois.	
Hull (Village), Pike County, (FEMA Docket No. 6866)	
Mississippi River:	
About 0.8 mile upstream of Dam 22	*472
About 2.1 miles upstream of Dam 22	*478
Maps available for inspection at the Hull Motel-Cafe, Rt. 36, Hull, Illinois.	
Milford (Village), Iroquois County, (FEMA Docket No. 6866)	
Sugar Creek:	
About 3,600 feet downstream of State Route 1	*645
About 2,700 feet upstream of Missouri Pacific Railroad	*651
Maps available for inspection at the Milford Village Hall, South West Avenue, Milford, Illinois.	
New Haven (Village), Gallatin County (FEMA Docket No. 6866)	
Ohio River: Within community	*359
Maps available for inspection at the Town Hall, Vine Street, New Haven, Illinois.	
Petersburg (City), Menard County, (FEMA Docket No. 6866)	
Sangamon River:	
About 0.8 mile downstream of State Route 123	*533
About 1.2 miles upstream of State Route 123	*595
Maps available for inspection at the City Water Department, City Hall, Petersburg, Illinois.	
Streator (City), La Salle and Livingston Counties, (FEMA Docket No. 6866)	
Vermilion River:	
About 1.2 miles downstream of Main Street	*573
About 0.8 mile upstream of Bridge Street	*580
Prairie Creek:	
About 0.7 mile downstream of Kelly Street	*573
About 0.5 mile upstream of Otter Creek Road	*638
Coal Run Creek:	
At mouth	*579
Just upstream of Otter Creek Road	*617
South Branch Coal Run Creek: Within community	*617
Maps available for inspection at the City Clerk's Office, City Administration Building, 204 South Bloomington, Streator, Illinois.	
INDIANA	
Amboy (Town), Miami County, (FEMA Docket No. 6866)	
Honey Creek:	
About 500 feet downstream of Main Street	*805
Just upstream of Conrail	*811
Maps available for inspection at the Amboy Clerk Treasurer's Office (Vickie Cameron), North Street, Amboy, Indiana.	
Miami County (Unincorporated Areas), (FEMA Docket No. 6866)	
Wabash River:	
At westernmost County Boundary	*826
About 0.95 mile upstream of U.S. Route 31	*854
Deer Creek:	
Just downstream of U.S. Route 31	*778
Just downstream of 150 West Road	*786
Dolin Young Ditch:	
Just upstream of 1,300 South Road	*804
Just downstream of 1,400 South Road	*821
Honey Creek:	
Just upstream of confluence of Overman Ditch	*787
Just downstream of 700 East Road	*812
Eel River:	
Just upstream of U.S. Route 31	*667
About 1.9 mile upstream of 400 North Road	*676
Miscellaneous River	
Just downstream of State Route 124	*668
About 2.6 miles upstream of Frances Slocum Trail	*670
Maps available for inspection at the Miami County Plan Commission, County Courthouse, Room 103, Peru, Indiana.	
North Manchester (City), Wabash County, (FEMA Docket No. 6866)	
Clear Creek:	
Just downstream of State Route 13 (downstream crossing)	*766
About 900 feet upstream of State Route 13 (upstream crossing)	*780
Eel River:	
About 2,300 feet downstream of abandoned railroad	*746
About 6,600 feet upstream of State Route 114	*756
Pony Creek:	
At confluence with Eel River	*750
About 1,200 feet upstream of State Route 113	*759
Maps available for inspection at the Office of the Clerk Treasurer, Town Hall, 109 East Main Street, North Manchester, Indiana.	
Wabash County (Unincorporated Areas), (FEMA Docket No. 6866)	
Eel River:	
About 550 feet downstream of confluence of Round Lake Tributary	*734
At county boundary	*767
Pony Creek:	
Just upstream of confluence with Eel River	*750
Just downstream of 1100 North Road	*758
Grant Creek:	
Just upstream of confluence with Badger Creek	*762
Just downstream of 1050 South Road	*818
Clear Creek:	
Just upstream of confluence with Eel River	*743
Just downstream of 100 West Road	*808
Wabash River:	
At county boundary	*662
About 750 feet upstream of Norfolk Southern Railway	*662
Maps available for inspection at the Wabash County Plan Commission, County Courthouse, Wabash, Indiana.	
IOWA	
Atlantic (City), Cass County (FEMA Docket No. 6866)	
East Nishnabotna River:	
About 2.6 miles downstream of 6th Street	*1,130
About 1,300 feet upstream of Buck Road	*1,155
Troublesome Creek:	
About 0.6 miles downstream of Olive Street	*1,155
About 1.1 miles upstream of Olive Street	*1,163
Maps available for inspection at the City Hall, 23 East 4th Street, Atlantic, Iowa.	
Muscatine County (Unincorporated Areas)	
Mississippi River:	
At downstream county boundary	*566
At upstream county boundary	*581
Cedar River:	
About 2.1 miles downstream of confluence of Sugar Creek	*632
At upstream county boundary	*647
Wapsihonoc Creek:	
Just downstream of county road	*639
At upstream county boundary	*666
West Branch Wapsihonoc Creek:	
At mouth	*645
About 4.1 miles upstream of U.S. Highway 6	*669
East Branch Wapsihonoc Creek:	
At mouth	*660
At upstream county boundary	*671
Mud Creek:	
Just upstream of U.S. Highway 6	*652
About 2.4 miles upstream of Liberty Street	*662
Hockey's Slough:	
At mouth	*618
About 300 feet downstream of County Road	*619
Just upstream of County Road	*624
Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*634
Maps available for inspection at the County Engineer's Office, 1651 Iseli Avenue, Muscatine, Iowa.	
New Hartford (City), Butler County, (FEMA Docket No. 6866)	
Beaver Creek:	
About 0.4 mile downstream of Broadway Street	*898
About 1.2 miles upstream of Broadway Street	*901
Maps available for inspection at the City Hall, 909 Packwaukee, New Hartford, Iowa.	
Nichols (City), Muscatine County	
Hockey's Slough:	
About 1,225 feet downstream of State Highway 70	*680
Just upstream of Abandoned Railroad	*684
Maps available for inspection at the City Hall, Nichols, Iowa.	
West Liberty (City), Muscatine County	
Wapsihonoc Creek:	
About 250 feet downstream of Chicago, Rock Island and Pacific Railroad	*953
About 1,900 feet downstream of Rainbow Drive	*958
West Branch Wapsihonoc Creek:	
Just downstream of Chicago, Rock Island and Pacific Railroad	*950
About 1,100 feet upstream of Prairie Street	*955

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the City Hall, West Liberty, Iowa.	
KANSAS	
Syracuse (City), Hamilton County	
Arkansas River:	
About 1,200 feet downstream of State Highway 27	*3,235
About 1,400 feet upstream of State Highway 27	*3,239
Shallow Flooding (overflow from Syracuse Creek):	
About 600 feet south of Atchison, Topeka and Santa Fe Railroad along western corporate limits	#3
Shallow Flooding (ponding from overflow of Syracuse Creek):	
Just north of Atchison, Topeka and Santa Fe Railroad	*3,248
Just north of Avenue D	*3,248
Maps available for inspection at the City Offices, 259 North Main Street, Syracuse, Kansas.	
KENTUCKY	
Ghent (Town), Carroll County, (FEMA Docket No. 6868)	
Ohio River:	
Along McCools Creek within community	*470
Along Ohio River back within community	*471
Maps available for inspection at the Post Office, Ghent, Kentucky.	
Ivanhoe (City), Wolfe County (FEMA Docket No. 6868)	
Middle Fork:	
About 600 feet upstream of mouth	*984
About 1,200 feet upstream of mouth	*986
Maps available for inspection at the City Hall, Ivanhoe, Kentucky.	
Milton (City), Trimble County, (FEMA Docket No. 6868)	
Ohio River:	
About 0.7 mile downstream of U.S. Highway 421	*464
About 0.8 mile upstream of U.S. Highway 421	*465
Maps available for inspection at the City Hall, Milton, Kentucky.	
Prestonville (Town), Carroll County, (FEMA Docket No. 6868)	
Ohio River: Within community	*469
Maps available for inspection at the Whitestick Fire Department, Prestonville, Kentucky.	
Warfield (Town), Martin County (FEMA Docket No. 6868)	
Tug Fork:	
About 600 feet downstream of Norfolk Southern Railway	*633
Just upstream of confluence of Collins Creek	*634
Buck Creek: Within community	*634
Collins Creek:	
At mouth	*634
About 475 feet upstream of confluence of Unnamed Tributary	*668
Maps available for inspection at the Town Hall, Warfield, Kentucky.	
MAINE	
Phippsburg (Town), Sagadahoc County (FEMA Docket No. 6868)	
Atlantic Ocean:	
Entire shoreline at Small Point	*16
Mainland shoreline north of Seal Island	*22
Marshy area surrounding Campbell Island	*16
Shoreline at Popham Beach	*15
Casco Bay:	
Shoreline at Head Cove	*10
Mainland shoreline east of Gooseberry Island	*16
Entire shoreline of Cape Small Harbor	*10
Shoreline at Silver Point	*15
Mainland shoreline east of Bates Cove Island	*9
Kennebec River:	
East shoreline at Fort Popham State Park	*10
Entire shoreline of Elis Island	*10
Entire shoreline of Mill Pond	*10
Entire western shoreline of Drummore Bay	*10
Entire shoreline of Fiddler Reach within community	*9
New Meadows River:	
Shoreline at Ridleys Landing Road (extended)	*9
Shoreline of Bolgkamo Cove within the community	*9
Shallow Flooding	#1-#2
Maps available for inspection at the Town Office, Phippsburg, Maine (Hours are Wednesday Evenings from 7:00 p.m. to 9:00 p.m.).	
Portland (City), Cumberland County (FEMA Docket No. 6868)	
Casco Bay:	
Shoreline of Martin Point	*27
Shoreline at Lennox Road (extended)	*14
Shoreline at Fish Point	*13
Shoreline at Moody Street (extended)	*18
Shoreline of Great Diamond Island at Lamson Cove	*11
West shoreline of Great Diamond Island	*9
Shoreline of Great Diamond Island at Indian Cove	*14
Shoreline of Great Diamond Island approximately 1,000 feet south of Diamond Cove	*27
Southwest shoreline of Cushing Island	*28
Shoreline of Cushing Island at Big Beach	*11
West shoreline of Peaks Island	*9
Shoreline of Peaks Island approximately 600 feet east of Wharf Cove	*21
Shoreline of Peaks Island approximately 800 feet north of Josiah's Cove	*28
Shoreline of Long Island at Beach Avenue (extended)	*21
Shoreline of Long Island at Cushing Point	*11
Shoreline of Long Island at Eastern Avenue (extended east)	*24
Shoreline of Long Island at Andrews Hubble	*26
Shoreline of Long Island at Beach Avenue (extended southeast)	*15
Southeast side of Overset Island	*28
West shoreline of Cliff Island	*11
Easternmost side of Cliff Island	*28
Shoreline of Cliff Island approximately 0.35 mile northeast of Island Avenue (extended east)	*18
West shoreline of Jewell Island	*9
East shoreline of Jewell Island	*28
Back Cove: Northwest shoreline of Back Cove	*11
Fore River: Shoreline at Thompson Point	*16
Shallow Flooding:	
Area 300 feet east of Jerry Point	#2
Area approximately 0.6 mile northeast of southern end of Island Avenue on Cliff Island	#1
Area approximately 0.55 mile northeast of southern end of Island Avenue on Cliff Island	#2
Presumpscot River:	
At downstream corporate limits	*22
At second upstream crossing of corporate limits	*24
At Interstate Route 95	*22
At Forest Avenue	*24
At fourth upstream corporate limits	*25
Stroudwater River:	
Downstream side of Westbrook Street	*10
Downstream side of Congress Street	*25
Approximately 0.7 mile upstream of Congress Street	*27
Fall Brook:	
Approximately 600 feet upstream of Baxter Boulevard	*11
Upstream side of Murray Street	*31
Upstream side of Washington Avenue	*33
At Ray Road	*38
Upstream side of Drake Street	*39
Approximately 300 feet upstream of Allen Street	*39
Capisic Brook:	
At Congress Street	*10
Downstream side of Capisic Street	*34
Downstream side of Lucas Street	*38
Upstream side of Dennett Road	*44
At Penwood Drive (extended)	*48
Approximately 0.5 mile upstream of Penwood Drive (extended)	*52
Nasons Brook:	
At confluence with Capisic Brook	*10
Downstream side of Webb Street	*48
Upstream side of Portland Terminal Railroad	*54
Maps available for inspection at the City Hall Planning Department, Portland, Maine.	
MARYLAND	
Berlin (Town), Worcester County (FEMA Docket No. 6868)	
Alls Branch:	
At downstream corporate limits	*17
Upstream side of Ocean City Boulevard/State Route 346	*21
At upstream corporate limits	*23
Maps available for inspection at the Town Hall, 10 Williams Street, Berlin, Maryland.	
MASSACHUSETTS	
Essex (Town), Essex County (FEMA Docket No. 6848)	
Atlantic Ocean Affecting Essex Bay:	
Shoreline at east side of Dilly Island	*14
Shoreline at Middle Road near Conomo Point (extended)	*12
Entire shoreline of Bull Island	*10
Shoreline of Castle Neck River at State Route 133	*10
Shoreline of Essex River at State Route 133	*10
Maps available for inspection at the Essex Library and Essex Selectmen's Office, Town Hall, Essex, Massachusetts.	
Manchester (Town), Essex County (FEMA Docket No. 6884)	
Massachusetts Bay:	
Shoreline 600 feet south of Harbor Street extended	*17
Shoreline at Proctor Street extended	*14
Shoreline at Pickworth Point	*22
Shoreline at Cobb Avenue extended	*18
Shoreline 1,600 feet east of Beach Street extended	*20
Entire shoreline of Kettle Cove	*14
Shoreline at Butler Avenue extended at Magnolia Harbor	*15
South of Boston and Maine Railroad between Ashland Avenue and Beach Street	*9
Maps available for inspection at the Building Inspector's Office, Town Hall, Manchester, Massachusetts.	
Melrose (City), Middlesex County (FEMA Docket No. 6868)	
Lower Spot Pond Brook:	
At downstream corporate limits	*37
Approximately 460 feet upstream of Kingsley Avenue extended	*49
Ell Pond: Entire Shoreline	*54
Maps available for inspection at the Engineering Vault, Melrose, Massachusetts.	
Newbury (Town), Essex County (FEMA Docket No. 6848)	
Atlantic Ocean:	
Shoreline at northern corporate limits	*14
Shoreline at Columbia Way (extended)	*16
Shoreline at Fordham Way (extended)	*20
Shoreline at southern corporate limits	*14
Newburyport Turnpike at Parker River	*9
Parker River:	
Approximately 200 feet downstream of Central Street	*9
Upstream side of Dam D8	*27
Upstream side of Dam D7	*42
Approximately 40 feet upstream of washed out bridge	*52
At upstream corporate limits	*53
Mill River: 50 feet upstream of Newburyport Turnpike	*9

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Office of Benjamin Pearson, Chairman of the Conservation Commission, Newbury, Massachusetts.	
Orleans (Town), Barnstable County (FEMA Docket No. 6648)	
Atlantic Ocean:	
Shoreline approximately .38 mile south of the north corporate limits	*14
Shoreline at Beach Road (extended)	*23
Shoreline east of Little Pochet Island	*17
Shoreline east of Sampson Island	*25
Shoreline approximately .19 mile north of the south corporate limits	*20
Approximately 200 feet east of intersection of Aspinet and Beach Roads	*10
Shallow Flooding:	
Dune area approximately 600 feet northeast of intersection of Aspinet and Beach Roads	#2
Dune area along the parking lot at Beach Road	#2
Dune area along Pochet Road (extended)	#2
Dune area northeast of Little Pochet Island	#2
Dune area along Jeep Trail south of Little Pochet Island	#2
Dune area from the south corporate limits north approximately 1.5 miles	#2
Cape Cod Bay:	
Shoreline at the mouth of Little Namskaket Creek	*17
Shoreline at the mouth of Namskaket Creek	*16
Area around Skaket Circle	*12
Rock Harbor Creek: Entire shoreline within community	*12
Town Cove:	
Shoreline on eastside of Snow Point	*16
Shoreline of Town Cove between Causeway Road (extended) and approximately 400 feet east of the intersection of Main Street and South Orleans Road	*10
Pleasant Bay:	
Shoreline at the south corporate limits	*12
Shoreline between Tar Lilin Road and Davis Road (extended)	*10
West shoreline of Sipson Island	*8
Little Pleasant Bay and east branch:	
Entire west shoreline of Little Pleasant Bay	*10
Area along Namequoit Road at Paw Wah Pond	*8
The River:	
Shoreline at the mouth of The River	*10
Shoreline at Frost Fish Cove	*8
Namequoit River: Entire shoreline	*8
Maps available for inspection at the Office of Eleanor Bennison, Administrative Assistant, Town Hall, Orleans, Massachusetts.	
Plymouth (Town), Plymouth County (FEMA Docket No. 6648)	
Massachusetts Bay:	
Shoreline of Saquish Neck at Duxbury-Plymouth corporate limits	*17
Shoreline of Saquish Neck approximately 2,500 feet south of Duxbury-Plymouth corporate limits	*23
Southern shoreline of Saquish Neck	*16
Northern shoreline of Saquish Neck	*11
Southeast shoreline of Clarks Island	*14
Shoreline at Hedge Road (extended)	*15
Shoreline at confluence of Town Brook	*12
Shoreline of west side of Long Beach	*11
Shoreline east of breakwater on Long Beach	*17
Shoreline at Gate Road (extended)	*27
Area along eastern shoreline of Saquish Neck	#2
Area of Warren Avenue approximately 1,200 feet northeast of intersection with Clifford Road	#2
Shoreline approximately 1,800 feet east of Gate Road (extended)	*30
Cape Cod Bay:	
Shoreline at Waverdale Road (extended)	*30
Shoreline at Horster Avenue (extended)	*15
Shoreline at Hiawatha Road (extended)	*10
Shoreline at Indian Hill Road (extended)	*30
Shoreline at George Street (extended)	*25
Shallow flooding areas along shoreline	#2
Bartlett Pond: Entire shoreline of Bartlett Pond	*11
Ship Pond: Entire shoreline of Ship Pond	
Eel River:	
At River Street	*11
Upstream side Old Sandwich Road	*13
Downstream side State Route 3 northbound	*36
Upstream side of Russell Millpond Road	*31
Approximately 350 feet upstream of Russell Millpond Road	*58
Buttermilk Bay: Red Brook at upstream side of Red Brook Lane	*15
Town Brook:	
At Water Street	*11
Upstream side Newfield Road	*35
Downstream side Billington Street	*79
Approximately 600 feet upstream of Little Pond Road	*88
Branch of Eel River:	
Approximately 500 feet downstream of Clifford Road	*11
Upstream side of Old Sandwich Road	*21
Indian Brook:	
Downstream side of Seaview Drive	*19
Downstream side State Route 3A	*29
Beaver Dam Brook:	
Approximately 1,000 feet downstream of Brook Road	*11
Approximately 2,750 feet upstream of State Route 3A	*30
Kings Pond: Entire shoreline of Kings Pond	*123
Billington Sea: Entire shoreline of Billington Sea	*83
Maps available for inspection at the Town Clerk's Office, Plymouth, Massachusetts.	
Rowley (Town), Essex County (FEMA Docket No. 6648)	
Atlantic Ocean:	
Entire shoreline within corporate limits	*14
Downstream side of Newburyport Turnpike bridge over the Mill River at northern corporate limits	*8
Upstream side of Boston and Maine Railroad bridge over the Rowley River	*10
Downstream side of Boston and Maine Railroad bridge at southern corporate limits	*9
Mill River:	
Upstream side of Newburyport Turnpike	*9
Upstream side of Glen Street	*18
Downstream side of Mill Dam	*19
Upstream side of Mill Dam	*22
Maps available for inspection at the Planning Board, Town Hall, Rowley, Massachusetts.	
Salisbury (Town), Essex County (FEMA Docket No. 6648)	
Merrimack River:	
At upstream corporate limits	*10
Approximately 1 mile downstream of upstream corporate limits	*9
Atlantic Ocean:	
Shoreline at north corporate limits	*15
At intersection of North End Boulevard and Beach Road	*9
Shoreline at Ocean Street (extended)	*16
Shoreline east of Railroad Avenue and Atlantic Avenue intersection	*15
Shoreline at mouth of Merrimack River at south corporate limits	*12
Shoreline of Merrimack River at confluence of Shad Creek	*9
At U.S. Route 1 crossing over Merrimack River	*9
Shallow Flooding:	
Area east of intersection of 16th Street West and North End Boulevard	#1
Area approximately 150 feet southeast of intersection of Central Avenue and North End Boulevard	#1
Area northeast of Drift Way and Central Avenue intersection	#1
Maps available for inspection at the Office of the Building Inspector's, Salisbury, Massachusetts.	
Somerville (City), Middlesex County (FEMA Docket No. 6602)	
Mystic River:	
Upstream side of Amelia Earhart Dam	*4
At Interstate Route 93 and corporate limit	*5
At confluence of Alewife Brook	*8
Alewife Brook: At Henderson Street	*8
Atlantic Ocean: Downstream side of Amelia Earhart Dam and at corporate limit	*10
Maps available for inspection at the Clerk's Office, City Hall, Somerville, Massachusetts.	
Swansea (Town), Bristol County (FEMA Docket No. 6648)	
Palmer River and Tributary to the Barrington River:	
Shoreline at Old Providence Road	*10
Shoreline at southern River corporate limits	*12
1,200 feet northwest along southern corporate limits from New Meadow Road	*13
Cole River:	
Shoreline at Toad Avenue (extended)	*21
Shoreline at Ian Avenue (extended)	*17
Shoreline at Milford Road	*15
Entire shoreline of Milford Pond	*28
Shoreline at Island Road	*16
Shoreline at Terry Avenue (extended)	*20
Mount Hope Bay:	
600 feet southeast of intersection of Harbor Road and New Gardners Neck Road	*15
Shoreline at New Gardners Neck Road (extended)	*21
Lee River:	
Shoreline at Lawrence Street (extended)	*21
Shoreline at 3rd Street (extended)	*15
Rocky Run:	
At upstream corporate limits	*25
At downstream corporate limits	*27
Warren Reservoir: Entire shoreline	*10
Heath Brook: At southern corporate limits	*10
Maps available for inspection at the Town Clerk's Office, Swansea, Massachusetts.	
MICHIGAN	
Huron (Township), Wayne County	
North Branch Swan Creek:	
About 400 feet upstream from Will Carleton Drive	*613
About 300 feet downstream of confluence of Townline Drain	*620
Hand Drain:	
Just upstream of confluence with Silver Creek	*608
Just downstream of Versailles Lane	*616
Maps available for inspection at the Supervisor's Office, Huron Township Hall, 37280 Huron River Drive, New Boston, Michigan.	
Taylor (City), Wayne County (FEMA Docket No. 6768)	
Sexton—Kibbil Drain:	
Just upstream of Pelham Road	*602
About 1,750 feet upstream of Holland Road	*624
North Branch Ecorse Creek:	
Just upstream of Pelham Road	*604
About 775 feet upstream of Harold Road	*621
Frank and Post Drain:	
Just upstream of Allen Road	*601
Just downstream of Inkster Road	*624
Sulfi and Kenapo Drain:	
Just upstream of North Line Road	*609
Just downstream of Inkster Road	*627
Blakely Drain:	
Just upstream of Pennsylvania Road (near Conrail)	*609
Just downstream of Pennsylvania Road (at upstream corporate limits)	*615
Brighton Drain: Within community	*606
Maps available for inspection at the Director of Public Works Office, City Hall, 23555 Goddard, Taylor, Michigan.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
MINNESOTA	
Detroit Lakes (City), Becker County, (FEMA Docket No. 6566)	
Pelican River:	
Just upstream of confluence with Detroit Lake	*1,236
About 1,500 feet downstream of State Highway 34	*1,240
Detroit Lake: Shoreline	*1,236
Maps available for inspection at the City Hall, Detroit Lakes, Minnesota.	
Kennedy (City), Kittson County (FEMA Docket No. 6569)	
County Ditch No. 4:	
About 650 feet downstream from Burlington Northern railroad	*823
About 0.6 mile upstream from 5th Street	*838
Maps available for inspection at City Hall, Kennedy, Minnesota.	
Tintah (City), Traverse County, (FEMA Docket No. 6569)	
Judicial Ditch No. 12:	
About 3,500 feet downstream of 4th Street	*998
About 600 feet upstream of County Highway 16	*1,001
Maps available for inspection at the City Hall, Tintah, Minnesota.	
MISSOURI	
Carroll County (Unincorporated Areas) (FEMA Docket No. 6782)	
Missouri River:	
At confluence of Grand River	*648
About 1.8 miles upstream of confluence of Tabo Creek	*662
Maps available for inspection at the County Assessor's Office, County Courthouse, Carrollton, Missouri.	
Gladstone (City), Clay County (FEMA Docket No. 6569)	
East Creek:	
About 125 feet downstream of NW 38th Street	*866
Just downstream of Main Street	*867
Just upstream of Main Street	*882
About 450 feet upstream of Apartment Driveway	*900
Mill Creek:	
About 300 feet downstream of Antioch Road	*866
Just downstream of North Garfield	*901
Just upstream of North Garfield	*906
Just downstream of North Highland Street	*912
Just upstream of North Highland Street	*917
About 0.61 mile upstream of North Highland Street	*947
Rock Creek Tributary:	
About 0.19 mile downstream of North Myrtle	*849
Just downstream of North Indiana	*862
Just upstream of North Indiana	*867
Just downstream of Prospect Avenue North	*894
Just upstream of Prospect Avenue North	*899
About 1.21 miles upstream of Prospect Avenue North	*939
Shoal Creek:	
About 0.29 mile downstream of Antioch Road	*822
About 0.59 mile upstream of Antioch Road	*839
Maps available for inspection at the City Engineer's Office, City Hall, 7010 North Holmes, Gladstone, Missouri.	
Kansas City (City), Clay, Platte & Jackson Counties (FEMA Docket No. 6569)	
Todd Creek:	
About 0.28 mile downstream of Unnamed Road	*816
About 1.4 miles upstream of Northwest Prairie View Road	*839
Hillcrest Branch:	
At confluence with Todd Creek	*823
About 1.5 miles upstream of Northwest 128th Street	*839

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Flint Creek:	
About 0.76 mile downstream of Northwest 128th Street (at corporate limits)	*960
Just upstream of Northwest Boughman Road	*970
Second Creek:	
About 2.65 miles downstream of Cookingham Drive (at corporate limits)	*895
Just downstream of Cookingham Drive	*924
Just upstream of Cookingham Drive	*931
Just downstream of Northwest 100th Street	*979
Just upstream of Northwest 100th Street	*984
Second Creek West Branch:	
At confluence with Second Creek	*943
About 1.10 miles upstream of Northwest 108th Street	*970
Rocky Branch:	
Just downstream of Northeast 136nd Street	*887
About 1.38 miles upstream of Northeast 136nd Street	*918
Brush Creek (Platte County):	
About 1.76 miles downstream of Hampton Road (at corporate limits)	*824
About 1.75 miles upstream of North Childress Avenue	*920
Line Creek:	
About 300 feet downstream of Interstate 29	*769
About 1.75 miles upstream of Northwest 69th Street	*895
Waukomis Lake Tributary:	
At confluence with Line Creek	*838
About 0.84 mile upstream of Northwest Bryan Avenue	*879
East Fork Line Creek:	
At confluence with Line Creek	*769
About 0.81 mile upstream of Hidden Lakes Drive	*884
Old Mable Creek:	
At confluence with Line Creek	*776
Just downstream of Northwest Waukomis Drive	*784
Just upstream of Northwest Waukomis Drive	*794
About 0.95 mile upstream of Platte County-Clay County Boundary	*898
East Creek:	
About 650 feet downstream of U.S. Highway 69	*769
Just downstream of Interstate 29	*782
Just upstream of Interstate 29	*787
Just downstream of Englewood Bridge Road	*830
Just upstream of Englewood Bridge Road	*835
Just downstream of U.S. Highway 169	*903
Just upstream of U.S. Highway 169	*908
Just upstream of Northeast 58th Street	*957
Burlington Creek:	
About 1270 feet downstream of Northwest 83rd Terrace	*787
Just upstream of North Helena Avenue	*857
Shoal Creek:	
Just downstream of Burlington Northern railroad	*735
Just downstream of North Oak Street	*887
Little Shoal Creek:	
Just downstream of Interstate 35	*769
About 1.42 miles upstream of Northeast 76th Street	*838
Mill Creek:	
About 495 feet downstream of confluence of Mill Creek Tributary	*791
Just downstream of Cypress Road	*839
Just upstream of Cypress Road	*844
Just upstream of Northeast 68th Street	*899
Rock Creek Tributary:	
At confluence with Mill Creek	*838
About 1.09 miles upstream of confluence with Mill Creek	*849
East Fork Shoal Creek:	
At confluence with Shoal Creek	*788
About 1265 feet upstream of Northeast Stanley Road	*885
Fishing River:	
About 0.43 mile downstream of Home Street (at corporate limits)	*881
Just downstream of North Stark Avenue	*909
Missouri River:	
About 5.80 miles downstream of Harry S. Truman Bridge	*734
About 3.30 miles upstream of Broadway Highway Bridge (at corporate limits)	*757
Rock Creek (Avondale):	
About 160 feet downstream of Antioch Road	*778
Just downstream of Interstate 35	*811

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just upstream of Interstate 35	*815
Just downstream of North Parvin Road	*815
Just upstream of North Parvin Road	*821
About 650 feet upstream of North Parvin Road	*832
Buckeye Creek:	
At confluence with Missouri River	*743
About 0.25 mile upstream of Northeast 38th Street	*760
Stacey Branch:	
At confluence with Missouri River	*745
Just downstream of State Highway 210 Access Road	*743
Just upstream of State Highway 210 Access Road	*748
Just downstream of Nine Street	*750
Just upstream of Nine Street	*755
Just downstream of Russell Road	*775
Just upstream of Russell Road	*780
Just downstream of Parvin Road	*784
Just upstream of Parvin Road	*785
Unnamed Creek at Randall East Branch:	
At confluence with Missouri River	*742
About 0.16 mile upstream of Birmingham Road	*744
Unnamed Creek at Randall North Branch:	
Just downstream of Interstate 435 southbound	*761
About 650 feet upstream of Interstate 435 southbound	*771
Blue River:	
About 1.25 miles downstream of Interstate 435 (at corporate limits)	*740
About 0.77 mile upstream of Hannah Road (at corporate limits)	*878
Round Grove Creek:	
At confluence with Blue River	*769
About 0.49 mile upstream of Raytown Road	*862
Unnamed Tributary No. 1:	
At confluence with Round Grove Creek	*802
Just downstream of Oklahoma, Kansas and Texas Railroad	*826
Just upstream of Oklahoma, Kansas and Texas Railroad	*836
About 400 feet upstream of 42nd Street	*864
Unnamed Tributary No. 2:	
At confluence with Round Grove Creek	*848
Just downstream of Pittman Road	*878
Just upstream of Pittman Road	*883
Just downstream of Sterling Avenue	*886
Just upstream of Sterling Avenue	*844
About 800 feet upstream of Claremont Avenue	*878
Brush Creek (Jackson County):	
At confluence with Blue River	*771
Just downstream of Prospect Avenue	*774
Just upstream of Prospect Avenue	*784
Just downstream of Woodland Avenue	*788
Just upstream of Woodland Avenue	*793
Just downstream of Paseo Boulevard	*796
Just upstream of Paseo Boulevard	*808
Just downstream of State Line Road	*852
Town Fork Creek:	
Just downstream of Swope Parkway	*771
Just upstream of Swope Parkway	*788
Just downstream of 51st Street	*788
Just upstream of 51st Street	*784
Just downstream of 55th Street	*787
Just upstream of 55th Street	*805
Just downstream of 57th Street	*806
Just upstream of 57th Street	*812
Just downstream of 59th Street	*826
Just upstream of 59th Street	*833
Just downstream of Citadel Drive	*854
Indian Creek:	
At confluence with Blue River	*820
About 0.47 mile upstream of 103rd Street (at corporate limits)	*830
Dyke Branch:	
At confluence with Indian Creek	*800
Just downstream of southbound Ward Parkway	*848
Little Blue River:	
About 300 feet upstream of Lost's Summit Road	*784
Just downstream of Longview Lake Dam	*824
About 4.90 miles upstream of Longview Lake Dam (at corporate limits)	*908
Little Cedar Creek:	
At confluence with Little Blue River	*800
About 1.3 miles upstream of Rhinehart Road	*808
White Oak Creek:	
At confluence with Little Blue River	*808
About 0.5 mile upstream of Military Club Road	*868

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lumpkins Fork:	
At confluence with Little Blue River	*807
Just downstream of 155th Street	*846
Mehrmen Mills Creek:	
At confluence with Blue River	*795
About 2900 feet upstream of Burlington Northern railroad	*805
Shallow Flooding (ponding behind Birmingham District Levee):	
At intersection of Northeast 48th Street and Northeast Birmingham Road	*795
About 600 feet northeast of intersection of Northeast Vrooman Drive and North Maywood Avenue	*732
Shallow Flooding (ponding behind Norfolk Southern Railway and Oklahoma Kansas and Texas Railroad): About 1000 feet southwest of intersection of Northeast Elden Avenue and State Highway 210	#2
Shallow Flooding (ponding behind Northeast Industrial District Levee):	
About 360 feet west of intersection of Harry S. Truman Bridge and a road atop the Northeast Industrial District Levee	*739
At intersection of Kenworth Avenue and Southern Road	*739
At intersection of Gardner Avenue and Monroe Avenue	*740
Shallow Flooding (ponding behind North Kansas City Levee):	
At intersection of Hartem Road and Walnut Street	*742
Shallow Flooding (ponding behind Central Industrial District Levee):	
At intersection of 8th Street and Wyoming Street	*747
Shallow Flooding (sheet flow near Central Business District):	
At intersection of 15th Street and Wyoming Street	#1
At intersection of Kansas City Terminal Railway and Burlington Northern south of 25th Street	#2
At intersection of 29th Street and Southwest Boulevard	#3
Maps available for inspection at City Hall, 414 East 12th Street, Kansas City, Missouri.	
Lafayette County (Unincorporated Areas) (FEMA Docket No. 6696)	
Missouri River:	
About 6.5 miles downstream of U.S. Highway 65	*670
About 14 miles upstream of State Highway 13	*711
Maps available for inspection at the Lafayette County Courthouse, Second Floor, Lexington, Missouri.	
Lake Winnebago (City), Cass County, (FEMA Docket No. 6696)	
Lake Winnebago: Within community	*862
Maps available for inspection at the City Hall, 75 Paddock Lane, Lake Winnebago, Missouri.	
Malsano (Village), Callaway County, (FEMA Docket No. 6696)	
Missouri River: Within community	*699
Maps available for inspection at the City Clerk's Office, City Hall, Malsano, Missouri.	
Montrose County (Unincorporated Areas) (FEMA Docket No. 6706)	
Missouri River:	
About 3.4 miles downstream of confluence of Factory Creek	*672
About 3.7 miles upstream of confluence of Petite Saline Creek	*696
Maps available for inspection at the County Commission, California, Missouri.	
Morrison (City), Gasconade County, (FEMA Docket No. 6696)	
Missouri River: Within community	*739
Maps available for inspection at the City Clerk's Office, Morrison, Missouri.	
NEBRASKA	
Hall County (Unincorporated Areas), (FEMA Docket No. 6696)	
Middle Channel Platte River:	
About 600 feet above U.S. Highway 34	*1,840
At western county boundary	*2,010
South Channel Platte River:	
About 0.6 mile downstream of State Highway 2	*1,835
About 0.4 mile upstream of County Road 7	*1,968
Prairie Creek:	
About 1.6 miles upstream of U.S. Highway 281	*1,881
About 2.2 miles upstream of Burlington Northern Railroad	*1,901
Silver Creek:	
About 1.0 mile upstream of County Road 141	*1,855
About 2.8 miles upstream of U.S. Government Railroad	*1,899
Moores Creek:	
Just upstream of County Road 141	*1,846
About 0.6 mile upstream of U.S. Highway 281	*1,869
Wood River:	
About 0.6 mile downstream of Shady Bend Road	*1,850
About 4.5 miles upstream of U.S. Highway 30	*1,996
Maps available for inspection at the Regional Planning Commission, City Hall, Grand Island, Nebraska.	
Ralo (City), Richardson County, (FEMA Docket No. 6696)	
Missouri River:	
About 1.2 miles downstream of U.S. Highway 159	*881
About 1.2 miles upstream of Burlington Northern Railroad	*884
Maps available for inspection at the City Clerk's Office, Ralo, Nebraska.	
Wood River (City), Hall County, (FEMA Docket No. 6696)	
Wood River:	
About 0.7 mile downstream of County Highway 38	*1,956
About 1.7 miles upstream of District 83 Road	*1,973
Maps available for inspection at the City Hall, Wood River, Nebraska.	
NEW HAMPSHIRE	
Lisbon (Town), Grafton County (FEMA Docket No. 6696)	
Ammonoosuc River:	
Downstream corporate limits	*560
Upstream side of dam	*578
Upstream side of U.S. Route 302	*601
Confluence of Gale River	*609
Downstream side of Sherman Road	*662
Upstream corporate limits	*680
Maps available for inspection at the Board of Selectmen's Office, 21 School Street, Lisbon, New Hampshire.	
New Castle (Town), Rockingham County (FEMA Docket No. 6649)	
Atlantic Ocean:	
Shoreline on east side of Jaffrey Point	*16
Shoreline at Ocean Avenue (extended)	*14
North shoreline of Goat Island	*11
Shoreline at Laurel Lane	*9
Entire shoreline of Campbells Island	*9
Maps available for inspection at the Clerk's Vault, Town Hall, New Castle, New Hampshire.	
Seabrook Beach Village District, Rockingham County (FEMA Docket No. 6696)	
Atlantic Ocean:	
Approximately 100 feet east of Tilton Street at eastern corporate limits	*12
Intersection of Portsmouth Avenue and Woodstock Street	*8
Old Beach Road at western corporate limits	*9
Maps available for inspection at the Warren West Building, Route 1A, Seabrook, New Hampshire.	
NEW JERSEY	
Rockaway (Township), Morris County (FEMA Docket No. 6696)	
Rockaway River:	
At downstream corporate limits	*541
At the first upstream corporate limits	*559
At the second upstream corporate limits	*660
At the third upstream corporate limits	*662
Pequannock River:	
At downstream corporate limits	*744
At upstream side of New York-Susquehanna and Western Railroad	*749
At upstream corporate limits	*769
Beaver Brook:	
At downstream corporate limits	*519
At upstream side of Old Beach Glen Road	*523
Approximately 1,000 feet downstream of Mardan-Lyonsville Road	*536
Green Pond Brook:	
At confluence with Rockaway River	*512
At downstream side of Interstate Route 80 access ramp to State Route 15	*625
Upstream side of Conrail culvert	*644
At upstream corporate limits	*694
Hibernia Brook:	
At confluence with Beaver Brook	*521
At upstream side of Green Pond Road	*548
White Meadow Brook:	
At confluence with Beaver Brook	*519
At upstream side of dam located between Green Pond Road and Omaha Avenue	*573
At upstream side of Omaha Avenue	*630
At upstream side of Upper Mountain Avenue	*713
At upstream side of White Meadow Lake Dam	*753
At upstream side of South Brookside Drive	*781
At upstream side of Mount Hope Lake Dam	*801
Tributary to Pequannock River:	
At confluence with Pequannock River	*749
At upstream side of Green Pond Road	*795
Tanglewood Brook:	
At corporate limits	*575
At upstream side of Malsad Drive	*605
Maps available for inspection at 65 Mount Hope Road, Rockaway, New Jersey.	
NEW MEXICO	
Las Vegas (City), San Miguel County (FEMA Docket No. 6696)	
Gallinas Creek:	
Downstream corporate limits	*6,376
Upstream side of Grand Avenue	*6,401
Upstream side of National Street	*6,433
Upstream side of Mills Avenue	*6,458
Approximately 575 feet upstream of upstream corporate limits	*6,473
Gallinas Creek Shallow Flooding Area:	
Intersection of Lincoln and Tenth Street	#1
Intersection of Jackson and Tenth Street	#2
Intersection of Bridge and Twelfth	#3
Arroyo Pecos:	
Downstream corporate limits	*6,378
Upstream side of State Routes 65 and 104	*6,392
Upstream side of Interstate 25	*6,427
Approximately 600 feet upstream of Atchison, Topeka, and Santa Fe Railroad bridge	*6,436
Upstream side of U.S. Route 85	*6,451
Approximately 250 feet upstream of U.S. Route 85	*6,455
Arroyo Hermanos:	
Confluence with Gallinas Creek	*6,439
Approximately 20 feet upstream of North Gonzales Street	*6,445
Upstream side of Church Street	*6,481
40 Feet upstream of Lopez Street	*6,491
Arroyo Pajarito:	
Confluence with Gallinas Creek	*6,414
Upstream side of South Pacific Street	*6,429
Upstream side of New Mexico Avenue	*6,446

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Downstream side of Skinner Street	*5,473
Maps available for inspection at the City Administration Building, 1768 North Grand, Las Vegas, New Mexico.	
NEW YORK	
Brewster (Village), Putnam County (FEMA Docket No. 6982)	
East Branch Croton River:	
At confluence of Tonetta Brook	*315
At upstream corporate limits	*334
Tonetta Brook:	
At confluence with East Branch Croton River	*315
Upstream side of Marvin Avenue	*350
Downstream side of New York Route 6	*404
At upstream corporate limits	*411
Maps available for inspection at the Brewster Village Hall, 266 East Main Street, Brewster, New York.	
Candor (Town), Tioga County (FEMA Docket No. 6986)	
Owego Creek:	
Approximately 425 feet downstream of corporate limits	*857
At confluence of West Branch Owego Creek	*861
West Branch Owego Creek:	
At confluence with Owego Creek	*861
Approximately 120 feet downstream of Blewer Road	*884
Upstream side of West Newark Cross Road	*884
Approximately 2.7 miles upstream of West Newark Cross Road	*1,000
Catatonk Creek:	
Approximately 280 feet downstream of corporate limits	*844
Approximately 80 feet upstream of corporate limits	*846
Maps available for inspection at the Candor Town Hall, Candor, New York.	
Chester (Town), Orange County (FEMA Docket No. 6983)	
Black Meadow Creek:	
At most downstream corporate limits	*406
First upstream corporate limits	*460
At most upstream corporate limits	*480
Black Meadow Creek Tributary 4:	
At confluence with Black Meadow Creek	*475
Upstream side of Pine Hill Road	*512
Seely Brook:	
At downstream corporate limits	*426
Upstream side of New York Route 17	*431
Trout Brook:	
Approximately 0.75 mile downstream of Able Noble Drive	*443
Upstream side of Able Noble Drive	*461
Approximately 40 feet upstream of Bull Mills Road	*461
Upstream side of Larce Road	*520
Upstream side of Trout Brook Road	*580
Upstream side of Tyler Place	*805
Upstream side of New York Route 6	*832
Upstream corporate limits	*842
Maps available for inspection at the Chester Town Hall, Kings Highway, Chester, New York.	
Chester (Village), Orange County (FEMA Docket No. 6986)	
Black Meadow Creek:	
At downstream corporate limits	*460
Upstream side of New York Route 17	*468
At upstream corporate limits	*475
Black Meadow Creek Tributary 3:	
At confluence with Black Meadow Creek	*475
Approximately 200 feet upstream of Conrail	*479
Black Meadow Creek Tributary 4:	
At confluence with Black Meadow Creek	*475
At upstream corporate limits	*476
Maps available for inspection at the Village Hall, 47 Main Street, Chester, New York.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
OHIO	
Evendale (Village), Hamilton County, (FEMA Docket No. 6986)	
Mill Creek:	
About 0.5 mile downstream of Evendale Drive	*567
About 1.2 miles upstream of Glendale-Milford Road	*576
Sharon Creek:	
At mouth	*570
Just upstream of Conrail	*576
Sharon Creek Tributary:	
At mouth	*576
About 0.08 mile upstream of mouth	*579
Maps available for inspection at the Municipal Building, 10600 Reading Road, Evendale, Ohio.	
Harris College Hill (City), Hamilton County, (FEMA Docket No. 6986)	
West Fork Lake Tributary:	
About 660 feet downstream of Foxwood Drive	*784
Just downstream of Foxwood Drive	*787
Just upstream of Foxwood Drive	*788
Just upstream of Sundale Avenue	*829
Just downstream of Emerson Avenue	*839
About 360 feet upstream of Emerson Avenue	*846
Tributary A:	
At mouth	*785
Just downstream of Southridge Drive	*802
Shallow Flooding (ponding from rainfall): At intersection of Hamilton Avenue and Cetelpe Avenue	*829
Maps available for inspection at the Municipal Building, 1648 West Galbraith Road, Cincinnati, Ohio.	
TEXAS	
Clarendon (City), Donley County (FEMA Docket No. 6986)	
Clarendon Creek East:	
Approximately 350 feet upstream of Clarendon Lake	*2,714
Upstream corporate limits	*2,759
Clarendon Creek West:	
Approximately 350 feet upstream of Clarendon Lake	*2,714
At Third Street	*2,726
Tributary 1:	
At confluence with Clarendon Creek East	*2,738
Upstream corporate limits	*2,775
Tributary 1A:	
At confluence with Tributary 1A	*2,771
Approximately 420 feet downstream of corporate limits	*2,782
Tributary 2:	
Upstream of Fourth Street at confluence with Clarendon Creek East	*2,734
Downstream of McClelland Street	*2,753
Tributary 3:	
At confluence with Clarendon Creek East	*2,715
Approximately 300 feet upstream of upstream corporate limits	*2,740
Western Tributary:	
Approximately 680 feet downstream of downstream corporate limits	*2,752
Upstream corporate limits	*2,783
Sheet runoff—(Clarendon Creek East): South of 2nd and 3rd Streets and north of 4th Street and between 100 feet west of Ellerbe Street and Gorst Street	#1
Maps available for inspection at the City Hall, Clarendon, Texas.	
NEW YORK	
Concord (Town), Erie County (FEMA Docket No. 6986)	
Spring Brook:	
At upstream side of North Street	*1,348
Approximately 0.8 mile upstream of North Street	*1,356
At downstream side of Middle Road	*1,380

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Clerk's Office, Town Hall, 88 Franklin Street, Springville, New York.	
Horseheads (Town), Chemung County (FEMA Docket No. 6986)	
Newtown Creek:	
Downstream corporate limits	*849
Approximately 300 feet upstream State Route 17	*880
Upstream side of State Route 13	*936
Upstream side of Bowman Hill Road	*991
At First Street	*1,050
North Branch Newtown Creek:	
Confluence with Newtown Creek	*932
Upstream side of State Route 223	*962
Corporate limits	*1,002
Beaver Brook:	
Confluence with Newtown Creek	*875
Upstream side of Access Road Bridge	*887
Upstream side of State Route 13	*911
Upstream side of Bowman Hill Terrace	*948
Bowman Hill Road	*954
Catherine Creek:	
Downstream corporate limits	*886
Upstream side of Middle Road	*903
Upstream corporate limits	*951
Tributary No. 5 to Catcliffe Creek:	
Confluence with Catherine Creek	*956
Upstream side of Ridge Road	*958
Corporate limits	*986
Prospect Creek:	
Downstream corporate limits	*843
Upstream side of Hickory Grove Road	*856
Upstream side of footbridge	*868
Upstream side of Quarry Road	*880
Upstream corporate limits	*881
McCann's Tributary:	
Approximately 550 feet downstream of footbridge to school	*861
Footbridge to school	*864
Approximately 200 feet upstream of Lenox Avenue	*875
Halderman Hollow Creek:	
Camden Avenue	*876
Oakwood Avenue	*887
State Route 328	*905
Upstream side of Lenox Avenue	*926
Shallow Flooding: South of Abandoned Railroad	#2
Maps available for inspection at the Town Hall, 150 Wygent Road, Horseheads, New York.	
Horseheads (Village), Chemung County (FEMA Docket No. 6986)	
Newtown Creek:	
Downstream corporate limits	*874
Upstream side of Route 17	*880
Upstream side of West Mill Street	*886
Upstream corporate limits	*893
Prospect Creek:	
Upstream side of North Main Street	*887
Upstream side of Conrail	*901
Upstream side of Gardner Road	*926
Upstream side of Westinghouse Road	*937
Upstream corporate limits	*943
Beaver Brook:	
Upstream side of Access Road	*887
At most upstream corporate limits	*895
Catherine Creek:	
Portion of Old Chemung Canal within community	*892
Approximately 700 feet west of Old Chemung Canal at northern corporate limits	*894
Maps available for inspection at the Village Hall, 202 South Main Street, Horseheads, New York.	
Kent (Town), Putnam County (FEMA Docket No. 6982)	
Middle Branch Croton River:	
At downstream corporate limits	*511
Upstream side of New York Route 46	*590
Approximately 60 feet upstream of dam	*622
Stamp Pond Stream:	
At confluence with Lake Carmel	*622
Upstream side of Bowen Road	*673

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Upstream side of Route I-84	*703
At upstream corporate limits	*780
Maps available for inspection at the Kent Town Hall, 280 Sweetbeck Avenue, Carmel, New York 10512.	
Mount Kisco (Village), Westchester County (FEMA Docket No. 6570)	
Kisco River:	
At downstream corporate limits	*275
At confluence with Branch Brook	*281
At confluence with Kisco River Tributary 1	*283
Upstream side of Lexington Avenue	*294
Upstream side of NY Route 117	*336
Approximately 60 feet upstream of Sylvan Lake Road	*344
Kisco River Tributary 1:	
At confluence with Kisco River	*283
At upstream corporate limits	*295
Branch Brook:	
At confluence with Kisco River	*281
Upstream side of NY Route 133 and West Main Street	*295
At upstream corporate limits	*299
Maps available for inspection at the Village Engineer's Office, Village Hall, 104 Main, Mount Kisco, New York.	
Nichols (Village), Tioga County (FEMA Docket No. 6560)	
Susquehanna River:	
Downstream corporate limits (extended)	*709
Approximately 580 feet downstream of confluence of Wappasening Creek	*785
Wappasening Creek: Entire shoreline of Wappasening Creek within community	*785
Maps available for inspection at the Village Hall, Nichols, New York.	
Oneonta (Town), Otsego County (FEMA Docket No. 6560)	
Susquehanna River:	
Area northwest of State Route 7 at corporate limits extending .5 mile along road	*1,057
Downstream corporate limits	*1,058
Confluence of Otego Creek	*1,059
Area north of Interstate 88 and south of the Delaware and Hudson Railway from City of Oneonta corporate limits to State Route 23	#2
Approximately 200 feet upstream of State Route 23	*1,068
Approximately .1 mile upstream of State Route 23	*1,069
Downstream side of Main Street	*1,079
Downstream side of Grand Avenue	*1,081
Downstream side of dam	*1,084
Upstream side of dam	*1,088
Upstream side of Abandoned Railroad	*1,097
Confluence of Charlotte Creek	*1,101
Downstream side of County Route 47	*1,104
Upstream corporate limits	*1,110
Otego Creek:	
Confluence with the Susquehanna River	*1,059
Approximately 250 feet upstream of Pony Farm Road	*1,060
Downstream side of County Route 8	*1,068
Approximately 330 feet downstream of confluence of Beckers Canal	*1,069
Upstream side of State Route 23	*1,071
Approximately 50 feet upstream of confluence of Harrison Creek	*1,075
Upstream corporate limits	*1,081
Beckers Canal:	
Confluence with Otego Creek	*1,069
Downstream side of State Route 23-205	*1,083
Approximately 60 feet upstream of State Route 23-205	*1,084
Downstream side of Chestnut Street	*1,110
Approximately 50 feet downstream of Weeks Hill Road	*1,122
Area south of mill building and northeast of Chestnut Street bridge	#1
Charlotte Creek:	
Confluence with Susquehanna River	*1,101
Approximately 400 feet southwest of end of Hemlock Road	*1,122
Confluence of Prosser Hollow	*1,144
Upstream corporate limits	*1,159
Maps available for inspection at the Oneonta Town Hall, Oneonta, New York.	
Putnam (Town), Washington County (FEMA Docket No. 6560)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Putnam Town Hall, Putnam Station, New York.	
Somers (Town), Westchester County (FEMA Docket No. 6560)	
Muscoot River:	
At confluence with Amawalk Reservoir	*397
Upstream side of Conrail	*459
Upstream side of Mahopac Avenue	*480
At upstream corporate limits	*513
Plum Brook:	
At confluence with New Croton Reservoir	*201
Upstream side of Brick Mill Road	*270
Upstream side of New York Route 202	*311
At confluence of Plum Brook Tributary 1	*403
At upstream corporate limits	*489
Plum Brook Tributary 1:	
At confluence with Plum Brook	*403
Approximately 310 feet upstream of Lake Shore Drive	*476
Broom Brook:	
At confluence with New Croton Reservoir	*194
Upstream side of New York Route 202	*246
Upstream side of Heritage Hills Drive	*279
Upstream side of Green Briar Lane	*353
Approximately .8 mile upstream of Warren Street	*427
Maps available for inspection at The Elephant Hotel, Routes 202 and 100, Somers, New York.	
Southeast (Town), Putnam County (FEMA Docket No. 6570)	
Middle Branch Croton River:	
At confluence with Middle Branch Croton Reservoir	*375
Upstream side of Barrett Road	*436
At upstream corporate limits	*495
East Branch Croton River:	
At confluence with Diverting Reservoir	*312
Downstream side of Interstate 84	*341
Approximately 450 feet upstream of Interstate Route 684 and NY Route 22	*405
At confluence with East Branch Reservoir	*419
At upstream corporate limits	*429
Tonetta Brook:	
At downstream corporate limits	*411
Upstream side of Brewster North Station Road	*439
Approximately 400 feet upstream of Pumphouse Road	*448
Holly Stream:	
At confluence with East Branch Croton River	*273
Upstream side of NY Routes 22 and 202	*285
Upstream side of Guinea Road	*295
Upstream side of Interstate Route 684	*309
Approximately 600 feet upstream of Interstate Route 684	*313
Maps available for inspection at the Southeast Town Hall, Main Street, Brewster, New York.	
Springville (Village), Erie County (FEMA Docket No. 6560)	
Spring Brook:	
At upstream side of South Buffalo Street	*1,308
At downstream side of Main Street culvert	*1,317
At North Street	*1,344
Maps available for inspection at the Village Hall, Springville, New York.	
Thurman (Town), Warren County (FEMA Docket No. 6560)	
Hudson River:	
At State Route 418	*618
Approximately 4.0 miles upstream of State Route 418	*650
Approximately 7.8 miles upstream of State Route 418	*715
Maps available for inspection at the Thurman Town Hall, Athol, New York.	
Wallkill (Town), Orange County (FEMA Docket No. 6570)	
Wallkill River:	
At downstream corporate limits	*360
At confluence with Wallkill River Tributary I	*362
At confluence with Wallkill River Tributary II	*365
At confluence with Masonic Creek	*365
At upstream corporate limits	*366
Wallkill River Tributary I:	
At confluence with Wallkill River	*362
Upstream side of Route 84	*383
At upstream corporate limits	*396
Wallkill River Tributary II:	
At confluence with Wallkill River	*365
Upstream side of NY Route 17	*437
Upstream side of Route 84	*449
Upstream side of Ballard Road	*463
Upstream side of Conrail	*503
Upstream side of NY Route 211	*544
Masonic Creek:	
At confluence with Wallkill River	*365
Upstream side of Route 84	*404
Upstream side of Main Street	*443
Upstream side of 1st Conrail crossing	*475
Upstream side of NY Route 211	*520
Upstream side of 2nd Conrail crossing	*536
Upstream side of dam just upstream of Bloch Road	*578
Upstream side of NY Route 302	*597
Upstream side of Bowser Road	*631
Minnisquam #2:	
At downstream corporate limits	*357
Upstream side of second crossing of Vanemburgh Road	*396
At most upstream corporate limits	*409
Shawangunk #2:	
At downstream corporate limits	*420
At confluence with Shawangunk Kill Tributary I	*448
Upstream side of Hubbard Road	*482
At confluence with Little Shawangunk Kill	*515
Upstream side of Meyer Road	*541
At upstream corporate limits	*565
Shawangunk Kill Tributary I:	
At confluence with Shawangunk Kill	*448
Upstream side of York Road	*509
Upstream side of dam just upstream of Prosperous Valley Road	*563
Approximately 50 feet upstream of Dosen Road	*604
Shawangunk Kill Tributary II:	
At downstream corporate limits	*448
Upstream side of 1st NY Route 17K crossing	*469
Upstream side of second NY Route 17K crossing	*549
Upstream side of third NY Route 17K crossing	*574
Little Shawangunk #2:	
At confluence with Shawangunk Kill	*515
Upstream side of Brois Road	*554
At upstream corporate limits	*592
Maps available for inspection at the Town Hall, 600 Route 211 East, Middletown, New York.	
NORTH CAROLINA	
Bald Head Island (Village), Brunswick County (FEMA Docket No. 6570)	
Atlantic Ocean:	
At intersection of Sabal Palm Trail and Steele Bonnet Wynd	*9
Along shoreline	*16
Maps available for inspection at the Bald Head Island Limited, Southport, North Carolina.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Cowlitz County (Unincorporated Areas) (FEMA Docket No. 6768)	
Atlantic Ocean: At the intersection of 4th Street and Charleston Avenue	*10
Entire shoreline within Unincorporated limits	*16
Cape Fear River: Within Unincorporated limits	*10
Maps available for inspection at the Town Hall, Carolina Beach, North Carolina.	
NORTH DAKOTA	
Beach (City), Golden Valley County (FEMA Docket No. 6768)	
Little Beaver Creek: Approximately 50 feet upstream from center of State Highway 16 Bridge	*2,746
Main Tributary: Approximately 30 feet upstream from center of Second Street Bridge	*2,769
Northwest Tributary: Approximately 50 feet upstream from center of Fourth Street North Bridge	*2,787
Maps available for inspection at City Hall, East Main Street, Beach, North Dakota.	
OHIO	
Lockland (Village), Hamilton County (FEMA Docket No. 6768)	
Mill Creek: About 300 feet downstream of Davis Avenue	*544
About 500 feet downstream of Smalley Avenue	*561
West Fork Mill Creek: About 1600 feet downstream of Interstate 75	*559
Just downstream of Chessie System	*561
Maps available for inspection at the Municipal Building, Wyoming and Cooper Avenues, Lockland, Ohio.	
Woodlawn (Village), Hamilton County (FEMA Docket No. 6768)	
West Fork Mill Creek: About 2600 feet downstream of Springfield Pike	*566
About 1.6 miles upstream of Riddle Road	*621
West Fork Mill Creek North Tributary: At mouth	*569
About 330 feet upstream of Linden Avenue	*586
West Fork Mill Creek South Tributary: Just upstream of confluence with West Fork Mill Creek	*566
About 0.35 mile above mouth	*623
About 0.48 mile above mouth	*656
Maps available for inspection at the Municipal Building, 10145 Woodlawn Boulevard, Cincinnati, Ohio.	
OKLAHOMA	
Claremore (City), Rogers County (FEMA Docket No. 6768)	
Dog Creek: Approximately 3,000 feet downstream of State Route 20	*585
Upstream side of Blue Starr Drive	*594
Approximately 600 feet upstream of Blue Starr Drive	*595
Cat Creek: Upstream side of Will Rogers Turnpike	*560
Downstream side of Muskogee Avenue	*583
Downstream side of U.S. Route 66	*589
Upstream side of Will Rogers Boulevard	*600
Downstream side of Industrial Boulevard	*614
Approximately 1,400 feet upstream of Lowry Road	*621
Maps available for inspection at the City Hall, 104 South Muskogee, Claremore, Oklahoma.	
Coweta (City), Wagoner County (FEMA Docket No. 6768)	
Coweta Creek: At downstream corporate limits	*579
Upstream face of South Street	*589
Downstream face of North Street	*618
Downstream face of 121st Street	*636
Middle Branch: At confluence with Coweta Creek	*569
Upstream face of North Street	*580
At upstream corporate limits	*649
South Branch: At confluence with Middle Branch	*610
Upstream face of Missouri-Kansas and Texas Railway	*627
Approximately 250 feet upstream of Avenue F	*691
Tributary A: At confluence with Coweta Creek	*588
Upstream face of Division Street	*669
Maps available for inspection at the City Hall, 210 Sandhola, Coweta, Oklahoma.	
OREGON	
Benton County (Unincorporated areas) (FEMA Docket No. 6768)	
Willamette River: At the intersection of U.S. Highway 20 and Juniper Lane	*304
Marys River: Approximately 300 feet upstream from center of State Highway (Alsea Highway)	*276
North Fork Alsea River: Approximately 75 feet upstream from center of Alsea-Deadwood Highway (State Highway 201)	*288
Newton Creek: Approximately 50 feet upstream from center of Southern Pacific Railroad	*288
Oak Creek: Approximately 100 feet upstream from center of Southern Pacific Railroad	*234
Soap Creek: Immediately upstream of unnamed road, which is approximately 12,000 feet upstream from Old Portland and Umpqua Valley Road	*246
Frazier Creek: Approximately 50 feet upstream from center of Southern Pacific Railroad	*229
Jackson Creek: Approximately 50 feet upstream from center of Northwest Highland Drive	*269
Millrace: At divergence from Marys River	*224
Millrace Overflow: At Crystal Lake Drive	*221
Maps available for inspection at Public Works Department, 360 S.W. Avery, Corvallis, Oregon.	
Chiloquin (City), Columbia County (FEMA Docket No. 6768)	
Chiloquin River: 200 feet upstream from center of U.S. Highway 20	*18
Coopers Creek: 560 feet east of intersection of Nahalem Street and the southernmost corporate limit	*17
Maps available for inspection at the Office of the City Administrator, City Hall, Chiloquin, Oregon.	
Hermiston (City), Umatilla County (FEMA Docket No. 6768)	
Umatilla River: Approximately 770 feet west, then approximately 210 feet south of the center of the intersection of Butler Creek Highway and Umatilla River Road	*419
Maps available for inspection at the City Manager Office, 255 East Main, Hermiston, Oregon.	
Eugene (City), Lane County (FEMA Docket No. 6768)	
Willamette River: 100 feet upstream from the center of Interstate Highway 105	*409
Deadlet Slough: 100 feet upstream from the center of the downstream Goodpasture Island Road	*396
Amazon Creek: 80 feet upstream from the center of Olive Street	*430
Shallow Flooding: At the intersection of Polk Street and 18th Avenue	#1
Channel A2: 200 feet upstream from the center of Belshaw Road	*382
Maps available for inspection at Engineer's Office, 777 Pearl Street, Eugene, Oregon.	
Linn County (Unincorporated Areas) (FEMA Docket No. 6768)	
Areas Creek: Approximately 250 feet upstream from center of road approximately 200 feet upstream from City of Sweet Home corporate limits	*589
Calapooia River: Approximately 100 feet upstream from center of State Route 99E Bridge	*246
Calapooia River Spill Flow: Approximately 1500 feet upstream from center of 53rd Avenue in the City of Albany	*215
Oak Creek: Approximately 100 feet upstream from center of Columbus Street Bridge	*228
Oak Creek: Approximately 150 feet upstream from center of Vaughn Lane Bridge	*249
Peters Ditch: Approximately 100 feet upstream from center of State Route 228 Bridge	*315
Santiam River: Approximately 50 feet upstream from center of Southern Pacific Railroad Bridge	*220
North Santiam River: At center of Greens Bridge	*256
North Santiam River: Approximately 100 feet upstream of South First Avenue Bridge	*440
North Santiam River: Approximately 100 feet upstream from center of State Highway 226 Bridge	*619
North Santiam River: At center of Scio Avenue Bridge	*687
North Santiam River: Approximately 50 feet upstream from center of Blowout Street Bridge	*1,586
South Santiam River: Approximately 200 feet upstream from center of Sanderson Bridge	*267
Thomas Creek: At intersection of Bill 6th Avenue and Hawthorne Street	*305
Thorn Creek: Approximately 250 feet upstream from center of Clover Ridge Road Bridge	*220
Willamette River: At the intersection of State Highway 34 (Corvallis-Lebanon Highway) and Smith Street	*225
Maps available for inspection at the Linn County Planning and Building Department Courthouse Room 114, Albany, Oregon.	
Malheur County (Unincorporated Areas) (FEMA Docket No. 6768)	
Snake River (Vicinity of Annex): At the intersection of 1st Street and River Road	*2,103
Snake River (Vicinity of Ontario): At Union Pacific Railroad	*2,142
Snake River (Vicinity of Adrian): At County Road 454	*2,301
Malheur River (Vicinity of Ontario): At the intersection of Malheur Drive and Clark Boulevard	*2,158
Malheur River (Vicinity of Vale): At the center of the west bound lane of U.S. Highway 20 and 26	*2,258
Bully Creek: At the center of U.S. Highway 20	*2,259
Willow Creek: At the intersection of road and Vale View Road, 200 feet north of southeast corner of Section 8, T18S, R46E	*2,252
Willow Creek Shallow Flooding: 200 feet north from the intersection of Foothill Drive and Pioneer Lane	*2,259
Jordan Creek: Approximately 1,530 feet southeast on U.S. Highway 95 from the intersection of U.S. Highway 95 and Ackerman Road	*4,367
Maps are available for inspection at the Malheur County Courthouse, 251 B Street SW, Vale, Oregon.	
Salem (City), Marion County (FEMA Docket No. 6768)	
Claggett Creek: 300 feet downstream of Southern Pacific Railroad	*138
East Fork Pringle Creek: 870 feet downstream of a private road which intersects on the north with Ewald Avenue S.E.	*169
Maps available for inspection at Public Works Department, 555 Liberty Street, Salem, Oregon.	
Siuslaw (City), Benton County (FEMA Docket No. 6768)	
Squaw Creek: Approximately fifty feet upstream from center of U.S. Highway 20	*2,172

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at City Hall, Salem, Oregon.	
St. Helens (City), Columbia County (FEMA Docket No. 6698)	
Columbia River: 1,600 feet east of the center of the intersection of Plymouth Street and 6th Street	*23
Milton Creek: Center of U.S. Highway 30 (Columbia River Highway)	*169
McNulty Creek: Approximately 45 feet upstream of the center of Burlington Northern Railroad	*77
Maps available for inspection at the Office of the City Administrator, City Hall, St. Helens, Oregon 97051.	
PENNSYLVANIA	
Pocono (Township), Monroe County (FEMA Docket No. 6698)	
Pocono Creek:	
At downstream corporate limits	*738
Approximately 50 feet upstream of second crossing of State Route 611	*792
Approximately 145 feet downstream of Stadden Road	*821
Approximately 105 feet upstream of Warner Drive	*848
Upstream side of Interstate Route 80 (eastbound)	*885
Upstream side of second crossing of Spur E. Camelback/LR 45024	*1,135
Approximately 0.5 mile upstream of second crossing Spur E. Camelback/LR 45024	*1,210
Southeast Creek:	
Approximately 60 feet downstream of first crossing of corporate limits	*829
At second crossing of corporate limits	*868
Approximately 60 feet upstream of third crossing of corporate limits	*1,085
At upstream side of State Route 611	*1,141
Approximately 70 feet upstream of State Route 314	*1,504
Scot Run:	
At confluence with Pocono Creek	*849
At upstream side of Scot Run Avenue	*861
At upstream side of dam	*1,005
Approximately 130 feet upstream of fourth crossing of State Route 611	*1,085
Bulgers Run:	
At confluence with Pocono Creek	*830
At upstream side of Cherry Lane Road	*842
At upstream side of White Oak Drive	*863
At upstream side of access road located upstream of White Oak Drive	*884
Cranberry Creek:	
At confluence with Pocono Creek	*795
Approximately 100 feet downstream of State Route 611	*822
At downstream side of Cranberry Road	*880
Tributary 4 to Pocono Creek:	
At confluence with Pocono Creek	*866
At upstream side of Fish Hill Road	*892
Approximately 62 feet upstream of access road located upstream of Fish Hill Road	*914
Maps available for inspection at the Township Building, Tannersville, Pennsylvania.	
Scalp Level (Borough), Cambria County (FEMA Docket No. 6700)	
Paint Creek:	
Downstream corporate limits	*1,548
Upstream side of State Route 56	*1,610
At confluence of Little Paint Creek	*1,659
Little Paint Creek:	
At confluence with Paint Creek	*1,626
Upstream side of Bridge Street	*1,674
Upstream corporate limits	*1,736
Street Run: South of Conrail and north of Brandy Road	#1
Maps available for inspection at the Borough Building, 152 Richland Avenue, Scalp Level, Pennsylvania	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Windber (Borough), Somerset County (FEMA Docket No. 6698)	
Paint Creek:	
Downstream corporate limits	*1,670
Downstream side of Graham Avenue	*1,683
Approximately 0.3 mile upstream of Somerset Avenue	*1,700
Upstream side of access road	*1,755
Approximately 0.2 mile upstream of access road	*1,759
Seese Run:	
Confluence with Paint Creek	*1,689
Approximately 50 feet upstream of 24th Street	*1,705
Upstream corporate limits	*1,741
Weaver Run:	
Confluence with Seese Run	*1,695
Approximately 0.4 mile upstream of State Route 56	*1,713
Maps available for inspection at the Borough Building, 1409 Somerset Avenue, Windber, Pennsylvania.	
SOUTH CAROLINA	
Beaufort County (Unincorporated Areas), (FEMA Docket No. 6698)	
Atlantic Ocean:	
At the intersection of U.S. Route 17 and County Route 3	*8
On Port Royal Island at Shell Point	*15
Along the shoreline of Daufuskie Island from the mouth of New River to the mouth of Calibogue Sound	*22
Along the shoreline on the northeastern end of Harbor Island	*22
Maps available for inspection at the County Courthouse, Beaufort, South Carolina.	
Beaufort (City), Beaufort County, (FEMA Docket No. 6698)	
Atlantic Ocean:	
Near intersection of Mossy Oaks Road and Battery Creek Road	*13
On Sand Island	*15
Maps available for inspection at the Town Hall, Beaufort, South Carolina.	
Hilton Head Island (Town), Beaufort County, (FEMA Docket No. 6698)	
Atlantic Ocean:	
Near intersection of Lighthouse Road and Plantation Drive	*14
About 2,000 feet southeast of intersection of Beach City Road and Dillon Road	*14
Along shore from Braddock Point to Port Royal Sound	*22
Maps available for inspection at the Town Hall, Hilton Head Island, South Carolina.	
Hollywood (Town), Charleston County (FEMA Docket No. 6700)	
Atlantic Ocean:	
Just downstream of U.S. Route 17 bridge over Wallace River (about 1.85 miles east of the intersection of State Route 162 and U.S. Route 17)	*7
At the mouth of Log Bridge Creek	*12
At the intersection of Baptist Hill Road and Toogoodoo Road	*12
Maps available for inspection at the City Hall, Hollywood, South Carolina.	
Isle of Palms (City), Charleston County (FEMA Docket No. 6700)	
Atlantic Ocean:	
At the intersection of Palm Boulevard and 30th Avenue	*12
At the intersection of Palmetto Drive and Racquet Club Road	*13
Along shoreline	*19
Maps available for inspection at the Town Hall, Isle of Palms, South Carolina.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Jasper County (Unincorporated Areas), (FEMA Docket No. 6698)	
Atlantic Ocean:	
About 4,000 feet south of intersection of U.S. Route 17 and U.S. Route 17A	*11
At intersection of State Route 170 and State Route 46	*11
At mouth of Clydesdale Creek	*12
About 3,000 feet east of intersection of State Route 69 and State Route 170	*12
About 4,000 feet east of intersection of U.S. Route 278 and Seaboard Coast Line Railroad	*14
About 1.7 miles south of intersection of State Route 193 and State Route 92	*14
At confluence of Fields Cut with Wright River	*15
About 3,000 feet downstream of confluence of East Branch Creek with Boyd Creek	*18
Along southeast coast of Turtle Island	*22
Savannah River:	
Just upstream of U.S. Route 17	*12
About 6.1 miles upstream of U.S. Route 17	*15
Maps available for inspection at the Jasper County Courthouse, Ridgeland, South Carolina.	
Meggett (Town), Charleston County	
Atlantic Ocean:	
At the confluence of Lower Toogoodoo Creek with Toogoodoo Creek	*12
At the intersection of Church Street and State Route 165	*12
About 1.0 mile south of the intersection of Little Britton Road and Kings Point Road	*15
Maps available for inspection at the City Hall, Meggett, South Carolina.	
Mount Pleasant (Town), Charleston County (FEMA Docket No. 6703)	
Atlantic Ocean:	
At the intersection of Cassique Province and Charlonwee Round	*11
Along Shem Creek from Bowman Road to U.S. Route 17	*12
At the intersection of Center Street and Yonge Street	*13
Just upstream of U.S. Route 17 bridge over Cooper River	*14
About 600 feet south of the intersection of William Street and Pitt Street	*15
Maps available for inspection at the Town Hall, Mt. Pleasant, South Carolina.	
Port Royal (Town), Beaufort County (FEMA Docket No. 6698)	
Atlantic Ocean:	
At intersection of 12th Street and Richmond Avenue	*13
At State Route 281 bridge over Battery Creek	*15
Maps available for inspection at the Town Hall, Port Royal, South Carolina.	
Sullivans Island (Township), Charleston County (FEMA Docket No. 6703)	
Atlantic Ocean:	
At the intersection of Middle Street and Station 18 Street	*12
At the intersection of Conquest Avenue and Middle Street	*14
Along shoreline from about 1,500 feet south of intersection of Atlantic Avenue and Station 17 Street to about 400 feet east of the intersection of Station 30 Street and Marshall Boulevard	*19
Maps available for inspection at the Town Hall, 1610 Middle Street, Sullivans Island, South Carolina.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
SOUTH DAKOTA	
Custer County (Unincorporated Areas) (FEMA Docket No. 6558)	
Battle Creek: Approximately 50 feet upstream from center of State Highway 79 Bridge	*3,307
French Creek:	
Approximately 50 feet upstream from the center of sewage disposal plant road bridge	*3,888
Approximately 50 feet upstream from center of County Road 385 bridge	*3,844
Grace Coolidge Creek: Approximately 50 feet upstream from center of State Highway 36 bridge	*3,879
Laughing Water Creek: Approximately 500 feet upstream from center of Lincoln Street Bridge in the City of Custer	*3,399
Maps available for inspection at the Office of the District Director, Southwest Emergency and Disaster Services, 480 Mt. Rushmore Road, Custer, South Dakota.	
TEXAS	
Albany (City), Shackelford County (FEMA Docket No. 6558)	
North Fork Salt Prong Hubbard Creek:	
2,000 feet downstream from corporate limits	*1,380
At upstream side of South Main Street	*1,400
At upstream corporate limits	*1,419
Pelan Reynolds Creek:	
At confluence with North Fork Salt Prong Hubbard Creek	*1,391
At downstream side of Pecan Street	*1,415
1,200 feet upstream of North 16th Street	*1,446
Webb Memorial Creek:	
At confluence with North Fork Salt Prong Hubbard Creek	*1,404
At upstream side of Central Street	*1,417
At upstream corporate limits	*1,433
Maps available for inspection at the City Hall, Albany, Texas.	
Big Oaks Municipal Utility District, Fort Bend County (FEMA Docket No. 6558)	
Cloding Ditch:	
Approximately 100 feet south of a point 1,000 feet west of intersection of FM 1464 and Southern Pacific Railroad	*80
At southwest corner of district limits	*83
Maps available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	
Canton (City) Van Zandt County (FEMA Docket No. 6558)	
Mill Creek:	
Approximately 350 feet downstream of State Route 64	*457
At upstream side of State Route 243	*468
At downstream side of Lake Canton dam	*473
Dry Creek:	
At downstream corporate limits	*480
Approximately 100 feet downstream of State Route 64	*477
Approximately 300 feet upstream of West College Street	*484
At upstream side of State Route 243	*507
At upstream corporate limits	*511
Stream DC-1:	
At confluence with Dry Creek	*486
At upstream side of Edgewood Road	*488
At upstream corporate limits	*487
Stream DC-2:	
At confluence with Dry Creek	*482
At upstream side of City Lake Dam	*483
At upstream corporate limits	*489
Stream DC-2A: At confluence with Stream DC-2	*493
Stream DC-3:	
Approximately 250 feet upstream of confluence with Dry Creek	*480
At upstream side of Towne Drive	*504
At upstream corporate limits	*506
Stream DC-3A:	
At confluence with Stream DC-3	*502
At upstream side of State Route 243	*509
At upstream corporate limits	*511
Maps available for inspection at the City Hall, Canton, Texas.	
Chateau Woods (City), Montgomery County (FEMA Docket No. 6551)	
White Oak Creek-West:	
Approximately 200 feet downstream of Longleaf Drive (extended)	*118
Downstream side of Chateau Woods Parkway	*118
White Oak Creek-West Tributary No. 1:	
At confluence with White Oak Creek-West	*115
Approximately 300 feet upstream of Ashway Drive	*118
Downstream side of Springwood Drive	*134
Maps available for inspection at City Hall or The Civic Club, 10824 Fairview Street, Chateau Woods, Texas.	
Flower Mound (Town), Denton County (FEMA Docket No. 6558)	
Bakers Branch:	
At downstream corporate limits	*471
Approximately 1.0 mile upstream of corporate limits	*489
Approximately 1,720 feet downstream of Garsult Road	*510
Upstream side Garsult Road	*589
Approximately 0.84 mile upstream of Garsult Road	*580
Sharps Branch:	
At corporate limits	*564
Approximately 0.9 mile upstream of corporate limits	*561
Approximately 1.4 miles upstream of corporate limits	*561
Stream SB-1:	
At confluence with Sharps Branch	*564
Approximately 0.8 mile upstream of confluence with Sharps Branch	*576
Stream TC-2:	
At confluence with Timber Creek	*534
Upstream side of Garden Road	*570
Upstream side of Long Prairie Road	*600
Approximately 0.41 mile upstream of Long Prairie Road	*609
Timber Creek:	
At downstream corporate limits	*533
Approximately 100 feet downstream of Old Abandoned Road	*556
Upstream side of Timber Creek Road South	*567
Upstream side of Morris Road	*579
Upstream side of Mesquite Street	*590
Approximately 2,000 feet upstream of upstream corporate limits	*601
Denton Creek:	
Approximately 1,800 feet upstream of confluence of Bakers Branch	*471
Approximately 0.9 mile upstream of confluence of Bakers Branch	*472
Grapevine Lake: Entire shoreline within community	*564
Maps available for inspection at the Town Hall, 3121 Cross Timbers Road, Flower Mound, Texas.	
Fort Bend (County) (FEMA Docket No. 6558)	
Brazos River:	
At confluence of Caw Creek	*53
Upstream side of Atchison Topeka and Santa Fe Railway	*64
Downstream side of U.S. Route 59	*74
Upstream side of Southern Pacific Railroad (downstream crossing)	*82
Upstream side of FM 723	*91
Approximately 0.8 miles upstream of FM 723	*95
Approximately 4.5 miles downstream of FM 1093	*109
Approximately 7.7 miles upstream of Southern Pacific Railroad (upstream crossing)	*112
At upstream county boundary	*117
Clear Creek:	
Approximately 0.46 mile downstream of State Route 288	*61
Upstream side of FM 2004 (downstream crossing)	*65
Approximately 1.1 miles upstream of FM 2004 (upstream crossing)	*69
Cloding Ditch:	
Approximately 2,000 feet downstream of confluence of Tributary to Cloding Ditch	*82
Approximately 2.2 miles upstream of Harlem Road	*85
Cow Creek:	
Approximately 100 feet downstream of Bend Road	*52
Downstream side of Southern Pacific Railroad (downstream crossing)	*58
Approximately 600 feet upstream of Cottonwood Church Road	*100
Downstream side of Rendon Road	*108
Caw Creek:	
Confluence with Brazos River	*53
Approximately 1.6 miles upstream of County Route 17	*64
Dry Creek:	
Approximately 1,150 feet downstream of Bryan Road	*89
Downstream side of Bryan Road	*91
Niagara Bayou:	
Upstream side of Bellrap Road	*96
Approximately 0.82 mile upstream of Gaines Road	*98
Little Prong Buffalo Bayou:	
At confluence with Willow Fork Buffalo Bayou	*107
Approximately 1,800 feet downstream of Kelly-Gaston Road crossing	*117
Long Point Creek:	
Upstream side of Brazos Canal	*60
Upstream side of State Route 6	*64
Approximately 0.5 mile upstream of Ebenezer Road	*71
Long Point Creek East Fork:	
At confluence with Long Point Creek	*65
Approximately 0.76 mile upstream of Ebenezer Road	*72
Mustang Bayou:	
Approximately 0.66 mile downstream of State Route 288	*68
Downstream side of Evergreen Road	*72
Approximately 500 feet upstream of City of Missouri City corporate limits	*75
Oyster Creek:	
Upstream side of Lester Road	*67
Downstream side of U.S. Route 59	*72
At confluence of Red Gully	*76
Approximately 700 feet downstream of confluence with Jones Creek	*81
Red Gully:	
At confluence with Oyster Creek	*76
Approximately 0.66 mile upstream of Old Richmond Road	*82
Downstream side of FM 1464	*86
Seabourne Creek:	
Approximately 2,100 feet downstream of State Route 35 (upstream crossing)	*82
Approximately 1,800 feet east of Southern Pacific Railroad crossing of Cottonwood Road	*96
Approximately 3,750 feet downstream of Old U.S. Route 90	*103
Upstream side of Kressenne Road	*104
Stafford Run:	
At City of Missouri City corporate limits	*71
Upstream side of System A Canal	*76
Approximately 1,000 feet downstream of Brand Road	*79
Willow Fork Buffalo Bayou:	
Approximately 1.5 miles downstream of confluence of Little Prong Buffalo Bayou	*101
Confluence of Little Prong Buffalo Bayou	*107
Upstream side of Green Bush Road	*129
Upstream side of FM 1489	*136
Approximately 2.1 miles upstream of FM 1489	*148
Maps available for inspection at Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Galliad (City), Galliad County (FEMA Docket No. 6998)	
Maddox Branch:	
Approximately 540 feet downstream of Fannin Street	*1136
Approximately 40 feet downstream of Southern Pacific Railroad	*1142
Approximately 1,800 feet upstream of East Oak Street	*1169
At upstream corporate limits	*1202
Sparrow Branch:	
At downstream corporate limits	*1149
At upstream side of East Franklin Street	*1184
Approximately 80 feet upstream of North Church Street	*1185
At upstream corporate limits	*1196
Southeast City Drain:	
At downstream corporate limits	*1141
At downstream side of Pecos Street (U.S. Route 59)	*1162
Approximately 200 feet upstream of West Oak Street	*1184
Maps available for inspection at the City Hall, Galliad, Texas.	
Hearne (City), Robertson County (FEMA Docket No. 6998)	
Little Brazos River:	
Approximately 940 feet downstream of Southern Pacific Railroad bridge	*268
Approximately 1,120 feet upstream of Southern Pacific Railroad bridge	*270
Approximately .5 mile upstream of U.S. Highway 79	*274
Sandy Creek:	
At downstream corporate limits	*267
At downstream side of Southern Pacific Railroad bridge	*269
Approximately 490 feet above upstream corporate limits	*284
Leal Creek:	
At downstream corporate limits	*272
At downstream side of Cedar Street	*286
Approximately 240 feet upstream of San Gabriel Street	*295
At first upstream corporate limings crossing	*305
At upstream corporate limits	*320
Maps available for inspection at the City Hall, 210 Cedar Street, Hearne, Texas.	
Kingsbridge Municipal Utility District, Fort Bend and Harris Counties (FEMA Docket No. 6982)	
Keegans Bayou:	
Upstream side of Sugarland Howell Road	*96
Downstream side of Gaines Road	*97
Maps available for inspection at the Office of Mr. Nottes, Vinson & Elkins Law firm, 2800 First City Tower, 1001 Fannin Street, Houston, Texas.	
Kirbyville (City), Jasper County (FEMA Docket No. 6998)	
Trout Creek:	
Downstream corporate limits	*99
Approximately .5 mile upstream of U.S. Route 96	*105
Pin Oak Creek:	
Approximately .4 mile downstream of Gulf Colorado and Santa Fe RR	*99
Approximately .5 mile upstream of most upstream corporate limits	*111
Maps available for inspection at the City Hall, Kirbyville, Texas.	
Lake Dallas (City), Denton County (FEMA Docket No. 6998)	
Lewisville Lake: Entire shoreline within community	*537
Stocker Creek:	
Upstream side of North Shady Shores Road	*537
Upstream side of Wembly Road (extended)	*539

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Downstream side of Oak Lane (extended)	*546
Downstream side of dam at corporate limits	*560
Maps available for inspection at the City Hall, 303 Alamo, Lake Dallas, Texas.	
Levee Improvement District No. 7, Fort Bend County (FEMA Docket No. 6998)	
Brazos River:	
Approximately 920 feet downstream of U.S. Route 59	*74
Approximately 2.84 miles downstream of U.S. Route 59	*77
Maps available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	
Municipal Utility District No. 34, Fort Bend County (FEMA Docket No. 6998)	
Little Prong Buffalo Bayou:	
Upstream of canal crossing	*112
Approximately 850 feet downstream of Katy-Gaston Road crossing	*117
Maps available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	
Municipal Utility District No. 36, Fort Bend County (FEMA Docket No. 6998)	
Little Prong Buffalo Bayou:	
Upstream of canal crossing	*112
Approximately 850 feet downstream of Katy-Gaston Road crossing	*117
Maps available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	
Municipal Utility District No. 41, Fort Bend County (FEMA Docket No. 6998)	
Red Gully:	
Approximately 1.80 miles downstream of FM 1464	*82
Approximately 1.42 miles downstream of FM 1464	*82
Maps available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	
Weatherford (City), Parker County (FEMA Docket No. 6998)	
Town Creek:	
Approximately 225 feet downstream of the downstream corporate limits	*831
Approximately 490 feet downstream of the confluence with Holland Lake Creek	*852
Approximately 600 feet downstream of Missouri and Pacific Railroad	*860
Approximately 100 feet downstream of Interstate Highway 20/180	*898
Approximately 60 feet downstream of Main Street	*1,000
Approximately 300 feet upstream of Franklin Street	*1,016
Approximately 2,060 feet downstream of North Bowie Drive	*1,081
At upstream corporate limits	*1,045
Willow Creek:	
At downstream corporate limits	*891
Approximately 0.8 mile upstream of Interstate Highway 20	*910
At upstream corporate limits	*921
Holland Lake Creek:	
At confluence with Town Creek	*854
Approximately 550 feet downstream of Holland Lake Drive	*868
Approximately 280 feet upstream of Clear Lake Road	*1,015
South Holland Lake Creek:	
At confluence with Holland Lake Creek	*1,005
Approximately 460 feet upstream of Clear Lake Road	*1,011
Black Wanior Branch:	
At confluence with Town Creek	*880

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,830 feet upstream of Eureka Street	*1,050
Approximately 1,150 feet upstream of Main Street	*1,691
Pogue Branch:	
At confluence with Town Creek	*1,038
Approximately 2,000 feet upstream of confluence with Town Creek	*1,052
Approximately 350 feet upstream of FM 920	*1,066
Clear Fork Trinity River:	
Approximately 660 feet downstream of corporate limits	*836
At Lake Weatherford Dam	*906
Lake Weatherford: Entire shoreline	*909
Maps available for inspection at the City Manager's Office, 119 Palo Pinto Street, Weatherford, Texas.	
White Settlement (City), Tarrant County (FEMA Docket No. 6998)	
Farmers Branch:	
Approximately 300 feet downstream of Grant Lane	*694
At downstream side of Meadow Park Drive	*697
At upstream side of Las Vegas Trail	*702
At upstream corporate limits	*718
Stream FB-1:	
At confluence with Farmers Branch	*692
At upstream side of George Street	*710
Stream WF-11:	
At downstream corporate limits	*614
At upstream side of Silver Creek Road	*635
At upstream side of Clifford Avenue	*670
Approximately 60 feet downstream of upstream corporate limits	*711
Maps available for inspection at the City Hall, 214 Meadow Park Drive, White Settlement, Texas.	
UTAH	
Salina (City), Sevier County (FEMA Docket No. 6998)	
Salina Creek: At the center of State Street (U.S. Highway 89)	*5,162
Tasaipie Draw and Cemetery Draw: 50 feet west from the intersection of Trunk Ditch	#1
Maps available for inspection at City Hall, 90 West Main, Salina, Utah.	
VERMONT	
Addison (Town), Addison County (FEMA Docket No. 6998)	
Otter Creek:	
At downstream corporate limits	*145
At upstream corporate limits	*148
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Clerk's Office, Vergennes, Vermont.	
Arlington (Town), Bennington County (FEMA Docket No. 6982)	
Batten Kill:	
Downstream corporate limits	*522
Upstream side of River Road	*533
Upstream side of Covered Bridge	*550
Upstream side of Benedict Crossing	*577
Upstream side of West Mountain Road	*596
Upstream corporate limits	*637
Green River:	
Confluence with Batten Kill	*580
Approximately 600 feet downstream of upstream corporate limits	*635
Roaring Brook:	
Confluence with Batten Kill	*629
Upstream side of Vermont Railway	*648
Confluence of Warm Brook	*695
Warm Brook:	
Confluence with Roaring Brook	*695
Upstream side of East Arlington Road	*721
Upstream side of Maple Hill Road	*758
Upstream corporate limits	*773
Fayville Branch:	
Confluence with Warm Brook	*717

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of Church Street	*736
Upstream corporate limits	*761
Maps available for inspection at the Town Hall, Route 7A, Arlington, Vermont.	
Bristol (Town), Addison County (FEMA Docket No. 6868)	
New Haven River:	
Downstream corporate limits	*323
Downstream side of State Route 116 (1st upstream crossing)	*332
Downstream side of State Route 5	*427
Upstream corporate limits of the Village of Bristol	*544
Downstream side of State Routes 17 and 116 (3rd upstream crossing)	*614
Upstream side of Falls	*661
Approximately 140 feet upstream of upstream corporate limits	*843
Maps available for inspection at the Municipal Building, Manager's Office, South Street, Bristol, Vermont.	
Bristol (Village), Addison County (FEMA Docket No. 6868)	
New Haven River:	
Approximately 60 feet downstream of downstream corporate limits	*442
Upstream side of River Street	*468
Approximately 350 feet upstream of upstream corporate limits	*547
Maps available for inspection at the Municipal Building, Manager's Office, South Street, Bristol, Vermont.	
Ferrisburg (Town), Addison County (FEMA Docket No. 6868)	
Lake Champlain: Entire shoreline within community	*102
Otter Creek:	
Confluence with Lake Champlain	*102
Approximately .85 mile upstream of corporate limits	*105
Maps available for inspection at the Town Clerk's Office, Ferrisburg, Vermont 05457.	
Lincoln (Town), Addison County (FEMA Docket No. 6868)	
New Haven River:	
Approximately 70 feet downstream of the downstream corporate limits	*840
Approximately 40 feet upstream of York Hill Road	*868
At confluence of Beaver Meadow Brook	*950
Downstream side of Cove Hill Road	*958
Downstream side of Mountain Road (2nd upstream crossing)	*1,038
Approximately 0.6 mile upstream confluence of Cooly Brook	*1,091
Maps available for inspection at the Town Office, Quaker Street, Bristol, Vermont.	
Manchester (Village), Bennington County (FEMA Docket No. 6868)	
Battion Kill:	
Approximately 660 feet downstream of River Road	*850
Upstream side of Union Street	*868
Approximately 0.4 mile upstream of confluence of Munson Brook	*891
Maps available for inspection at the Mark Skinner Library, Manchester, Vermont.	
Panton (Town), Addison County (FEMA Docket No. 6868)	
Otter Creek:	
Downstream corporate limits	*104
Third corporate limits crossing	*142
At upstream corporate limits	*145
Lake Champlain: Entire shoreline within community	*102

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Office, Panton Road, Panton, Vermont.	
Stockbridge (Town), Windsor County (FEMA Docket No. 6868)	
White River:	
Downstream corporate limits	*582
Confluence with Lillieville Brook	*600
Upstream side of Gaysville Bridge	*640
Confluence of Little Stony Brook	*669
Downstream side of Blackmers Boulevard	*687
Upstream side of confluence of Tweed River	*736
Upstream corporate limits	*756
Tweed River:	
Confluence with White River	*736
Upstream side of State Route 107	*747
Upstream side of South Hill Road	*786
Upstream corporate limits	*786
Maps available for inspection at the Town Clerk's Vault, Town of Stockbridge, Vermont.	
Vergennes (City), Addison County (FEMA Docket No. 6868)	
Otter Creek:	
Downstream corporate limits	*105
Downstream side of Vergennes Dam	*108
230 feet upstream of State Route 22A	*141
Upstream corporate limits	*142
Maps available for inspection at the City Hall, Vergennes, Vermont.	
Waltham (Town), Addison County (FEMA Docket No. 6862)	
Otter Creek:	
At downstream corporate limits	*142
At upstream corporate limits	*148
Maps available for inspection at the Town Clerk's Office, Mildred Fleming's House, Waltham, Vermont.	
Weybridge (Town), Addison County (FEMA Docket No. 6868)	
Otter Creek:	
Downstream corporate limits	*148
Downstream side of downstream span of State Route 2	*169
Upstream corporate limits	*179
Maps available for inspection at the Town Clerk's Office, Quaker Village Road, Weybridge, Vermont.	
VIRGINIA	
Pennington Gap (Town), Lee County (FEMA Docket No. 6868)	
North Fork Powell River:	
Downstream corporate limits	*1,253
Approximately 0.8 mile downstream of upstream corporate limits	*1,262
At upstream corporate limits	*1,271
Cane Creek:	
At confluence with North Fork Powell River	*1,254
Upstream side of Harvell Street	*1,361
Upstream side of Ford Street	*1,366
Approximately 0.8 mile upstream of upstream corporate limits	*1,378
Maps available for inspection at 130 East Willow Road, Pennington Gap, Virginia.	
Rockingham County (FEMA Docket No. 6868)	
North Fork Shenandoah River:	
At downstream County Boundary	*862
Downstream side of State Route 617	*1,036
Downstream side of State Route 612	*1,143
At confluence of Capon Run	*1,232
At confluence of German River	*1,413
Little Dry River:	
At confluence with North Fork Shenandoah River	*1,171
Approximately 50 feet upstream of State Route 631	*1,400
At confluence of Old Road Hollow	*1,570

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 20 feet upstream of confluence of Big Bear Hollow	*1,875
Runion Creek:	
At confluence with North Fork Shenandoah River	*1,092
Upstream side of State Route 612	*1,143
At confluence of Eston Hollow	*1,186
Approximately 2.7 miles upstream of confluence of Eston Hollow	*1,300
Approximately 1,350 feet downstream of County Boundary	*1,407
Capon Run:	
At confluence with North Fork Shenandoah River	*1,232
Downstream side of State Route 259 (First crossing)	*1,468
At State Route 259 (Second crossing)	*1,507
German River:	
At confluence with North Fork Shenandoah River	*1,413
Upstream side of State Route 700	*1,514
Downstream side of State Route 688 (Second crossing)	*1,804
At confluence of Persimmon Run	*1,861
At confluence of Cold Spring River	*1,763
Bennett Run:	
At confluence with Crab Run	*1,432
At confluence of Overly Run	*1,508
Downstream side of State Route 685	*1,589
Downstream side of State Route 684 (First crossing)	*1,660
Downstream side of State Route 684 (Second crossing)	*1,773
Crab Run:	
At confluence with North Fork Shenandoah River	*1,413
Approximately 1.0 mile upstream of confluence of Bennett Run	*1,490
At confluence of Strike Run	*1,516
At upstream County Boundary	*1,562
Overly Run:	
At confluence with Bennett Run	*1,508
Upstream side of State Route 623	*1,580
Approximately .7 mile upstream of State Route 623	*1,661
South Fork Shenandoah River:	
At downstream County Boundary	*801
At confluence of Quail Run	*838
At confluence of Hawksbill Creek	*866
At State Route 649	*889
At confluence of Lower Lewis Run	*1,045
At confluence of North River and South River	*1,061
Elk Run:	
Confluence with South Fork Shenandoah River	*852
At confluence of West Swift Run	*1,089
Downstream side of State Route 634	*1,170
Approximately 1.2 miles upstream of State Route 634	*1,356
West Swift Run:	
At confluence with Elk Run	*1,089
Approximately 125 feet upstream of U.S. Route 33 (eastbound)	*1,239
Approximately 1.0 mile upstream of U.S. Route 33 (westbound)	*1,360
Wolf Run:	
At confluence with Elk Run	*1,062
Approximately 730 feet upstream of State Route 633	*1,140
Naked Creek:	
At confluence with South Fork Shenandoah River	*823
Approximately 50 feet upstream of State Route 603	*848
Downstream side of State Route 607	*1,005
At confluence of South Branch Naked Creek	*1,075
South Branch Naked Creek:	
At confluence with Naked Creek	*1,075
Approximately .6 mile upstream of confluence with Naked Creek	*1,110
Approximately 1.2 miles upstream of confluence with Naked Creek	*1,166
Dry Run:	
At confluence with South Fork Shenandoah River	*841
Approximately 1.2 miles downstream of State Route 759	*1,070
Upstream side of State Route 759	*1,178

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 4.1 miles upstream of State Route 758	*1,300
Approximately 2.2 miles upstream of State Route 758	*1,449
Lee Run:	
At confluence with Elk Run	*1,145
Approximately .4 mile upstream of confluence with Elk Run	*1,202
Hawksbill Creek:	
At confluence with South Fork Shenandoah River	*966
At confluence of East Hawksbill Creek	*1,161
Approximately 250 feet upstream of State Route 628	*1,280
Approximately 2.9 miles upstream of State Route 628	*1,445
East Hawksbill Creek:	
At confluence with Hawksbill Creek	*1,161
Upstream side of State Route 669	*1,219
Approximately 1.4 miles upstream of State Route 628	*1,457
Big Run:	
Confluence with South Fork Shenandoah River	*1,014
Approximately .9 mile upstream of U.S. Route 340	*1,099
Madison Run:	
At confluence with South Fork Shenandoah River	*1,089
Approximately 1.0 mile upstream of U.S. Route 340	*1,191
Approximately 2.1 miles upstream of U.S. Route 340	*1,272
Overmile Run:	
At confluence with South Fork Shenandoah River	*1,008
Approximately 1.1 miles upstream of confluence with South Fork Shenandoah River	*1,115
Thornton Run:	
At confluence with South Fork Shenandoah River	*966
Approximately 1,150 feet upstream of U.S. Route 340	*1,090
Approximately 1.5 miles upstream of U.S. Route 340	*1,192
Cub Run:	
At confluence with South Fork Shenandoah River	*1,016
Upstream side of State Route 662	*1,059
Approximately 50 feet upstream of State Route 672	*1,100
Approximately 180 feet upstream of State Route 665	*1,174
At Chesapeake and Western Railway	*1,288
Approximately 1.8 miles upstream of Chesapeake and Western Railway	*1,466
Boone Run:	
At confluence with Quail Run	*948
Downstream side of State Route 602	*980
Approximately 1.9 mile upstream of State Route 602	*1,087
Approximately 2.5 miles upstream of State Route 662	*1,266
Quail Run:	
At confluence with South Fork Shenandoah River	*939
Downstream side of State Route 636	*959
Upstream side of State Route 662	*1,040
Approximately .7 mile upstream of State Route 646	*1,156
Bloomer Spring Run:	
At confluence with Boone Run	*966
Approximately 1.2 miles upstream of confluence with Boone Run	*1,089
Story Run:	
At confluence with South Fork Shenandoah River	*1,006
Approximately 75 feet upstream of State Route 641	*1,060
Approximately 100 feet upstream of State Route 666	*1,128
Approximately 1.2 miles upstream of State Route 23	*1,295
Shoemaker River:	
At confluence with South Fork Shenandoah River	*1,103
Approximately .29 miles upstream of confluence with South Fork Shenandoah River	*1,169
At State Route 612 (First crossing)	*1,200
Approximately 1.4 miles upstream of State Route 612 (Second crossing)	*1,260
Approximately 1,220 feet upstream of confluence of Long Run	*1,491
North River:	
At confluence with South Fork Shenandoah River	*1,081
Approximately 200 feet upstream of State Route 668	*1,080
Approximately 100 feet upstream of State Route 276	*1,104
At confluence of Pleasant Run	*1,159
Downstream side of State Route 727	*1,154
At confluence of Dry River	*1,169
Upstream side of State Route 613	*1,236
At upstream County Boundary	*1,277
Mill Creek:	
At confluence with North River	*1,070
Approximately 1,680 feet upstream of State Route 659 (Second crossing)	*1,158
Rogers Creek:	
At confluence with Mill Creek	*1,120
Approximately 1.0 mile downstream of State Route 276	*1,178
Approximately .7 mile upstream of State Route 276	*1,278
Pleasant Run:	
At confluence with North River	*1,139
Approximately 80 feet downstream of State Route 668 (Second crossing)	*1,214
Approximately .6 mile upstream of State Route 704 (Second crossing)	*1,327
Dark Run:	
At confluence of Mill Creek	*1,116
Approximately 1,280 feet upstream of State Route 708	*1,123
Cooks Creek:	
At confluence of Blacks Run	*1,171
Downstream side of State Route 701	*1,201
At confluence of West Fork Cooks Creek	*1,231
Approximately 140 feet downstream of U.S. Route 33	*1,269
Approximately 1.5 miles upstream of U.S. Route 33	*1,344
Blacks Run:	
At confluence with Cooks Creek	*1,171
Upstream side of State Route 704	*1,180
Approximately 675 feet upstream County boundary	*1,207
West Fork Cooks Creek:	
At confluence of Cooks Creek	*1,231
Approximately 1,730 feet upstream of State Route 732	*1,250
Sunset Heights Branch:	
At confluence of Cooks Creek	*1,202
Approximately 150 feet upstream of State Route 42	*1,250
At upstream County Boundary	*1,284
Big River:	
At confluence with North River	*1,199
Upstream side of State Route 752	*1,269
Approximately 75 feet downstream of State Route 613	*1,430
Approximately 2.0 miles upstream of State Route 613	*1,531
Approximately 1.2 miles upstream of State Route 647	*1,676
Muddy Creek:	
At confluence with Dry River	*1,275
At U.S. Route 33	*1,336
Approximately 80 feet downstream of State Route 726	*1,372
Approximately 140 feet upstream of State Route 613	*1,440
Approximately .4 mile upstream of State Route 772	*1,578
Butterwilk Run:	
At confluence with War Branch	*1,355
Approximately 1.1 miles upstream of State Route 613	*1,454
Shipp Creek:	
At confluence with Muddy Creek	*1,408
Approximately .9 mile upstream of State Route 252 (Second crossing)	*1,468
War Branch:	
At confluence with Muddy Creek	*1,334
Approximately 1.9 mile upstream of U.S. Route 33	*1,389
Linville Creek:	
At confluence with North Fork Shenandoah River	*1,032
Approximately 500 feet upstream of State Route 809	*1,085
At State Route 782	*1,139
Downstream side of State Route 780	*1,181
Approximately 1,000 feet upstream of State Route 42 (Second crossing)	*1,213
West Fork Creek:	
At confluence with Linville Creek	*1,181
Approximately 1.3 miles upstream of confluence with Linville Creek	*1,231
Joes Creek:	
At confluence with Linville Creek	*1,151
Approximately 1.0 mile upstream of confluence with Linville Creek	*1,199
Approximately 1.9 miles upstream of confluence with Linville Creek	*1,241
Smith Creek:	
At downstream County Boundary	*973
Upstream side of State Route 766	*1,024
At confluence of Dry Fork	*1,064
At confluence of Mountain Run	*1,169
Approximately 3.6 miles upstream of Mountain Run	*1,263
Mountain Run:	
At confluence with Smith Creek	*1,169
At State Route 620	*1,843
Approximately .6 mile upstream of State Route 620	*1,898
Dry Fork:	
At confluence with Smith Creek	*1,064
Approximately 70 feet downstream of U.S. Route 11 (First crossing)	*1,169
Approximately 225 feet downstream of Interstate Route 81 access ramp	*1,250
Approximately 2.3 miles upstream of Interstate Route 81 access ramp	*1,305
South River:	
At confluence with South Fork Shenandoah River	*1,061
Approximately 4.1 miles upstream of confluence with South Fork Shenandoah River	*1,089
Briery Branch:	
At confluence with North River	*1,228
Upstream side of State Route 613	*1,305
Approximately 0.8 mile upstream of State Route 613	*1,345
Upstream side of State Route 755	*1,405
Upstream side of State Routes 257 and 731	*1,469
Approximately 0.9 mile upstream of State Routes 257 and 731	*1,880
Approximately 2.3 miles upstream of State Routes 257 and 731	*1,845
Mossy Creek:	
At confluence with North River	*1,221
Upstream side of State Route 747	*1,231
Approximately 0.8 mile upstream of State Route 747	*1,235

Maps available for inspection at the Public Works Department, County Office Building, Harrisonburg, Virginia.

St. Charles (Town), Lee County (FEMA Docket No. 6698)

Straight Creek:	
At downstream corporate limits	*1,521
Upstream side of State Route 332	*1,528
At upstream corporate limits	*1,536
Big Branch:	
At downstream corporate limits	*1,338
Approximately 320 feet upstream of State Route 332	*1,349
At upstream corporate limits	*1,378
Baileys Trace:	
At confluence of Straight Creek	*1,528
At upstream side of Southern Railway Bridge	*1,532
At upstream corporate limits	*1,536

Maps available for inspection at the Town Hall, St. Charles, Virginia.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
WASHINGTON	
Cathlamet (Town), Wahkiakum County (FEMA Docket No. 6866)	
Columbia River (Cathlamet Channel): 300 feet southwest of the center of the intersection of Division Street and River Street along Division Street	*11
Maps available for inspection at the Town Hall, 100 Main Street, Cathlamet, Washington.	
Grays Harbor County (Unincorporated Areas) (FEMA Docket No. 6866)	
Bush Creek: At the downstream road casing of Cloquallum Road	*102
Chehalis River: Approximately 400 feet southwest from the intersection of Fairway Park Road and Montesano-Aberdeen Road	*10
Cloquallum Creek: Approximately 110 feet upstream from the centerline of State Highway 8	*88
Grays Harbor Backwater on Chehalis River: At the intersection of Wager Street and Geddes Street	*10
Hanis Creek: Approximately 70 feet upstream from the centerline of Elma Gate Road East	*79
Newman Creek: At the western road casing of O'Neill Road approximately 2,170 feet north of the intersection of Montesano Road and O'Neill Road	*48
Shallow Flooding on Newman Creek: At Montesano-Elma Road	#1
Pacific Ocean at Mocljo: Wishbon Avenue extended at shoreline	*22
Pacific Ocean at Pacific Beach: Main Street extended at shoreline	*25
Pacific Ocean at Copalis Head over Copalis River at Copalis Beach: Approximately 1.5 miles north of bridge along State Highway 109, then west approximately 360 feet along centerline of unnamed road	*20
Pacific Ocean at Copalis Beach: Second Avenue extended at shoreline	*21
Pacific Ocean at Grayland: Approximately 300 feet west from the center of the intersection of Marine Drive and Salt Aire Boulevard	*28
Pacific Ocean at South Bay: Approximately 1,000 feet west from the intersection of State Highway 105 and Hunt Club Road	*10
Roundhouse Creek: At Burlington Northern Railroad	*88
Satsop River: Approximately 200 feet upstream from the centerline of Montesano-Elma Road	*40
Wynoochee River: Approximately 200 feet downstream from the intersection of Wynoochee Road and Mooney Road	*41
Maps available for inspection at the Grays Harbor County Planning Department, P.O. Box 390, Montesano, Washington.	
La Center (City), Clark County (FEMA Docket No. 6866)	
East Fork Lewis River: At La Center Bridge	*30
Maps available for inspection at The Lewis River News, P.O. Box 39, Woodland, Washington 98674.	
WEST VIRGINIA	
Buckhannon (City), Upshur County (FEMA Docket No. 6866)	
Buckhannon River:	
At downstream corporate limits	*1,415
Upstream side of Florida Street	*1,416
At upstream corporate limits	*1,418
Maps available for inspection at the City Hall, Main and Florida Streets, Buckhannon, West Virginia.	
Cameron (City), Marshall County (FEMA Docket No. 6866)	
Grave Creek:	
At downstream corporate limits	*1,025
At downstream side of Adaline Avenue	*1,045
At upstream corporate limits	*1,078

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at 44 West Main Street, Cameron, West Virginia.	
McDowell County (FEMA Docket No. 6866)	
Tug Fork:	
Downstream County boundary	*920
At confluence with Shortpole Branch	*945
At upstream corporate limits of the City of Iaeger	*986
At confluence of Snipe Branch	*1,023
Upstream side of County Route 52-1	*1,082
Upstream side of County Route 99	*1,157
At upstream corporate limits of the Town of Davy	*1,200
Upstream side of Elm Street	*1,269
At upstream corporate limits of the City of Welch	*1,317
At downstream corporate limits of the City of Gary	*1,371
Downstream side of State Route 161	*1,395
At downstream corporate limits of the Town of Anawalt	*1,640
At upstream corporate limits of the Town of Anawalt	*1,703
Dry Fork:	
At upstream County boundary	*965
Downstream side of County Route 99-2	*1,007
Downstream side of County Route 2	*1,140
At confluence of Little Slate Creek	*1,200
Upstream side of County Route 99-14	*1,279
At downstream corporate limits of the Town of War	*1,388
Approximately 250 feet upstream confluence with Big Branch	*1,498
Elkhorn Creek:	
Downstream County boundary	*1,321
Downstream side of State Route 92	*1,388
Downstream corporate limits of the Town of Kimball	*1,478
At confluence with Bottom Creek	*1,512
At downstream corporate limits of the Town of Keystone	*1,620
Approximately 680 feet upstream corporate limits of the Town of Northfork	*1,733
Bottom Creek:	
At confluence with Elkhorn Creek	*1,512
Upstream side of Bottom Creek Road (4th upstream crossing)	*1,661
Approximately 125 feet upstream of Bottom Creek Road (7th upstream crossing)	*1,701
Browns Creek:	
Approximately 400 feet downstream confluence with Puncheoncamp Branch	*1,427
Approximately 0.8 mile upstream confluence with Puncheoncamp Branch	*1,510
Davy Branch:	
Approximately 1 mile upstream confluence with Tug Fork	*1,281
Approximately 1.1 miles upstream confluence with Tug Fork	*1,299
Maps available for inspection at the County Courthouse, Welch, West Virginia.	
Philippi (City), Barbour County (FEMA Docket No. 6866)	
Tygart Valley River:	
Approximately 0.5 mile downstream of Walnut Street	*1,304
Downstream side of Main Street	*1,308
Approximately 0.6 mile upstream of confluence of Anglins Run	*1,308
Shoote Run:	
At confluence with Tygart Valley River	*1,307
Approximately 0.31 mile upstream of U.S. Route 119	*1,360
Upstream side of Park Street	*1,420
Approximately 20 feet upstream of upstream corporate limits	*1,425
Anglins Run:	
At confluence with Tygart Valley River	*1,307
Upstream side of Hall Street	*1,310
Upstream side of Dayton. Street	*1,320
Approximately 1,040 feet upstream of Dayton Street	*1,345
Approximately 40 feet upstream of upstream corporate limits	*1,373

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the City Hall, 108 North Main Street, Philippi, West Virginia.	
WISCONSIN	
Brookfield (C), Waukesha County, (FEMA Docket No. 6866)	
Fox River:	
Just upstream of Springdale Road	*824
About 1,800 feet upstream of confluence of Sussex Creek	*826
Poplar Creek:	
At mouth	*824
Just downstream of South Barker Road	*830
Deer Creek:	
About 2,300 feet downstream of Brookfield Road	*828
Just downstream of Greenfield Avenue	*839
Underwood Creek:	
Just downstream of North Avenue	*751
Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*802
Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*808
About 0.6 mile upstream of confluence of Dousman Ditch	*825
North Branch Underwood Creek:	
At mouth	*754
About 0.5 mile upstream of Burleigh Road	*757
South Branch Underwood Creek:	
About 500 feet downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*720
Just downstream of Interstate 94	*722
Dousman Ditch:	
At mouth	*823
Just downstream of North Calhoun Road	*836
Butler Ditch:	
Just upstream of Hampton Road	*762
Just downstream of Lisbon Road	*774
Butler Ditch South Branch:	
At mouth	*762
Just downstream of Capitol Drive	*767
Maps available for inspection at the City Engineer's Office, City Hall, 2000 North Calhoun Road, Brookfield, Wisconsin.	
Downing (Village), Dunn County (FEMA Docket No. 6866)	
Tiffany Creek:	
About 1.0 mile downstream of Soo Line Railroad	*973
Just downstream of State Highway 170	*983
Beaver Creek:	
At mouth	*978
About 1.1 miles upstream of County Highway Q	*993
Sandy Creek:	
At mouth	*977
About 1,700 feet upstream of Soo Line Railroad	*981
Maps available for inspection at the Village Hall, Downing, Wisconsin.	
Fitchburg (City), Dane County (FEMA Docket No. 6866)	
Nine Springs Creek:	
About 0.9 mile downstream of County Highway MM	*851
About 1.0 mile upstream of Syene Road	*864
Maps available for inspection at the City Hall, 2377 South Fishhatchery Road, Fitchburg, Wisconsin.	
Glenwood City (City), St. Croix County (FEMA Docket No. 6866)	
Tiffany Creek:	
About 1,400 feet downstream of Town Road	*995
About 3,200 feet upstream of Syme Avenue	*1,054
Glenhaven Creek:	
At mouth	*997
About 1,100 feet upstream of Oak Street	*1,022
Maps available for inspection at the City Hall, 830 1st Avenue, Glenwood City, Wisconsin.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Kendall (Village), Monroe County (FEMA Docket No. 6666)	
Main Branch Baraboo River:	
About 2,400 feet downstream of State Highway 71	*1,005
About 1,700 feet upstream of County Highway P	*1,018
West Branch Baraboo River:	
At mouth	*1,015
About 600 feet upstream of West Street	*1,035
North-west Branch Baraboo River:	
At mouth	*1,020
About 500 feet upstream of Spring Street	*1,024
Maps available for inspection at the Municipal Building, Kendall, Wisconsin.	
Madison (City), Dane County (FEMA Docket No. 6666)	
Starkweather Creek:	
At mouth	*848
At confluence of East Branch Starkweather Creek	*849
West Branch Starkweather Creek:	
At confluence of East Branch Starkweather Creek	*849
About 0.5 mile upstream of U.S. Highway 51	*851
East Branch Starkweather Creek:	
At mouth	*849
About 1,000 feet upstream of Lien Road	*855
Portage Road Tributary:	
At mouth	*850
About 1,350 feet upstream of Hayes Road	*891
Unnamed Tributary to Lake Wingra:	
About 1,000 feet downstream of U.S. Highway 51	*850
About 0.6 mile upstream of Marsh Road	*860
Milwaukee Street Tributary:	
Just upstream of mouth	*853
About 0.7 mile upstream of mouth	*853
Yahara River:	
Just upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad	*848
About 2 miles upstream of State Highway 113	*854
Nine Springs Creek:	
At mouth	*848
About 800 feet upstream of Syene Road	*854
Murphy Creek: Within corporate limits	*848
Lake Mendota: Along shoreline	*852
Lake Monona: Along shoreline	*849
Lake Waubesa: Along shoreline	*847
Maps available for inspection at the Planning and Zoning Department, City County Building, Madison, Wisconsin.	

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in meters above ground. Elevation in meters (MSL)
COMMONWEALTH OF PUERTO RICO.	
Río Grande de Patillas and Río Guamani Basin (FEMA Docket No. 6666)	
Río Grande de Patillas: Along Puerto Rico Highway 3 and 181 as it crosses bridge over stream	*20.1
Quebrada Maney: At the intersection of Calle Riggi and Calle Jesus T Pinero	*20.8
Río Nigua (at Arroyo): At the intersection of Puerto Rico Highway 3 and Calle B	*18.2
Río Nigua (at Hidalgo): Along Access Road, 200 feet east of its intersection with Puerto Rico Highway 753	*80.3
Río Guamani: At the intersection of Calle P Doria and Calle Monserrate	*83.8
Río Sisco: On Puerto Rico Highway 715, 700 feet north of its intersection with Puerto Rico Highway 3	*17.0
Río Malanis: At intersection of Calle D and unnamed road, located 1,200 feet north of Puerto Rico Highway 3	*9.1
Caribbean Sea: At intersection of Calle San Felipe and Calle Munoz Rivera	*1.9
Río Nigua (Shallow Flooding): At intersection of Calle Virgilio Sanchez and Calle General Brooke	#0.7
Río Matanti (Shallow Flooding): At the intersection of Puerto Rico Highways 3 and 707	#0.9
Maps available for inspection at the Planning Board, P.O. Box 4119, Minillas Station, D-Diego Avenue, Santurce, Puerto Rico.	
Piedras Basin (FEMA Docket No. 6666)	
Canal Puerto Nuevo: 20 meters upstream of Avenida Franklin D. Roosevelt (Puerto Rico Highway 22)	*5.0
Río Piedras: Intersection of Calle Notre Dame and Calle Fordham	*8.0
Quebrada Margarita: Intersection of Calle Riverside and Calle San Patricio	*9.5
Quebrada Dona Ana: Intersection of Avenida De Diego and Calle 40	*15.2
Quebrada Josefina: Intersection of stream and Avenida De Diego	*19.7
Quebrada Guaracanal: At confluence with Quebrada del Ausetro	*23.7
Quebrada Capero: 10 meters upstream of Venus Gardens Entrance Road	*45.0
Quebrada Juan Mendez: Intersection of Calle Olot and Calle Cruz	*11.2
Atlantic Ocean: Intersection of Avenida Nereidas and Calle Barbosa	*1.8
Maps available for inspection at the Planning Board, P.O. Box 41119, Minillas Station, D-Diego Avenue, Santurce, Puerto Rico.	
Río Majada Basin (FEMA Docket No. 6670)	
Río Algus: Intersection of Palmer and Miguel Rivera	*10.0
Caribbean Sea: Intersection of Puerto Rico Highway 1 and Río Jueyes	*2.3
Maps available for inspection at the Planning Board, P.O. Box 41119, Minillas Station, D-Diego Avenue, Santurce, Puerto Rico.	

Issued: May 20, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-11779 Filed 5-27-86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 60590-6090]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fisheries in the Gulf of Alaska, because (1) the best available biological and socioeconomic information indicates that the current optimum yields (OYs) for five species need modification and (2) Pacific ocean perch (POP), and "other rockfish" are fully utilized by U.S. fish processors, preventing allocations for bycatch under existing rules. The Secretary, therefore, (1) amends the currently incorrect OYs, including the OY for the "other species" category as required by formula under the fishery management plan, and (2) establishes prohibited species catch (PSC) limits for "other rockfish" and POP in joint venture and foreign fisheries and also for sablefish in foreign fisheries. The amended OYs are necessary to prevent biological and socioeconomic harm, which could otherwise occur if harvests were to occur at the current OY levels. The PSC limits are necessary to minimize the incidental catch of species fully utilized by U.S. fish processors and to avoid underutilization of large amounts of target groundfish species that would otherwise occur if joint venture or foreign fisheries were prohibited. These actions are intended as conservation measures that respond to the best available biological and socioeconomic information on the status of the groundfish fishery, while providing for full development and utilization of the existing Gulf of Alaska groundfish resources.

DATES: In § 611.92, paragraphs (b)(2), (c)(2)(i)(A) and (D), (c)(2)(ii)(A), (B) and (C), (e)(3)(ii), and (f)(2)(i) are suspended from May 22, 1986 until August 20, 1986. In § 611.92, new paragraphs (b)(5), (c)(2)(i)(F), (G), and (H), (c)(2)(ii)(D), (E), and (F), and (i) are added; in § 672.20(a) Table 1 is revised and a new paragraph

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(a)(4) is added; and a new § 672.21 is added, to be effective from May 22, 1986, until August 20, 1986.

ADDRESS: The environmental assessment prepared for this emergency rule may be obtained from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

Adjustments in Optimum Yields

The domestic and foreign groundfish fishery in the fishery conservation zone (3–200 miles offshore) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 and Part 672.

Regulations implementing the FMP establish OYs for each groundfish category and apportion them among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF). Under § 611.93(c)(1) and § 672.20, initial apportionments of the OYs specified for the groundfish species listed in § 672.20, Table 1, are published by the Secretary by January 1 of each year. The Secretary published interim initial apportionments for the 1986 fishing year (51 FR 958, January 9, 1986) with a request for public comments; no comments were received.

The interim initial apportionments were based on outdated 1985 OYs, some of which conflict with the most recent best available information. The Council, at its December 10–14, 1985, meeting, recommended that OYs for certain species—pollock, Pacific cod, flounder, POP, and sablefish—be adjusted. The Council made these recommendations after considering reports from the Gulf of Alaska Plan Team (Team), the Council's Scientific and Statistical Committee (SSC) and Advisory Panel, and testimony from the public. However, under the FMP, OYs can only be changed by an amendment to the FMP. Based on the following information and rationale, the Secretary is amending the OYs of certain groundfish species, listed below in Table I, by emergency interim rule. Both the new OYs and the current 1985 OYs are included in Table I for comparison.

Apportionments of these OYs that were recommended by the Council at its December meeting have been approved by the Secretary and are provided at § 672.20(a), Table 1. Biological information considered by the Council when it recommended adjustments to OYs is summarized from the environmental assessment prepared for this emergency interim rule as follows:

Pollock—The pollock biomass in the Western/Central Regulatory Area of the Gulf of Alaska is projected to decline to about 439,000 metric tons (mt) for 1986, well below the recommended threshold level (the level below which strong year classes will not be produced) of 600,000 to 700,000 mt. This projection is based on results of the 1985 hydroacoustic survey in Shelikof Strait, which suggests that abundance has declined from a high of 2,770,000 mt in 1981 to 700,000 mt in 1985. The 1985 biomass is a 62 percent decline from the 1984 biomass estimate of 1,848,000 mt. Contradicting the projection, however, is the trend in catch per unit of effort experienced by the 1985 joint venture fishery and the results of the 1984 triennial bottom trawl survey. This survey indicated a biomass of 1.2 million mt, consisting of age 3 fish and older. Thus, the difference between the 1985 hydroacoustic survey and the 1984 bottom trawl survey is 500,000 mt. No ready explanation exists to account for this large difference, although the hydroacoustic survey is known not to detect about 7–14 percent of the fish within two fathoms of the bottom. If the 1984 biomass estimate is more nearly correct, then hydroacoustic surveys underestimate biomass.

The Council's SSC recommended that the OY should be set at 100,000 mt. The Council accepted the SSC's recommendations and adopted a 1986 OY in the Western/Central area of 100,000 mt (Table I). The OY in the Eastern area of 16,000 mt is unchanged.

TABLE I.—CURRENT (1985) AND NEW (1986) OPTIMUM YIELDS (METRIC TONS) FOR POLLOCK, PACIFIC COD, FLOUNDER, PACIFIC OCEAN PERCH, SABLEFISH, AND "OTHER" SPECIES IN THE REGULATION AREAS AND DISTRICTS OF THE GULF OF ALASKA

Species	Area/district	Current	New
Pollock	Western/Central	305,000	100,000
	Eastern	16,850	16,850
Pacific cod	Western	19,590	25,951
	Central	23,543	39,648
	Eastern	9,900	12,999
Flounder	Western	10,400	5,200
	Central	14,700	5,000
	Eastern	8,400	4,030
Pacific ocean perch	Western	1,302	1,316
	Central	3,906	1,511
	Eastern	675	675
Sablefish	Western	1,670	2,850
	Central	3,060	5,150
	West Yakutat	1,080	2,560
	East Yakutat	850-1,135	1,104
	S.E. Outside	470-1,436	2,346
Other species	Gulf-wide	22,460	12,186

Pacific cod—The acceptable biological catch (ABC) is estimated to be 136,600 mt in all areas. In previous years, the OY has been set lower than the ABC to prevent excessive incidental catches of Pacific halibut. The Council recommended a 1986 OY to 75,950 mt distributed among the regulatory areas in proportion to the biomass in each area as follows: Western—25,951 mt, Central—39,049 mt, and Eastern—12,000 mt.

Flounder—The ABC is estimated to be equal to the maximum sustained yield (MSY) of 141,000 mt, because the stocks are in good condition due to high biomass and relatively low exploitation rates. In previous years, the OY has been set at 50 percent of the ABC to prevent excessive incidental catches of Pacific halibut. For 1986, the Council again recommended that the 1986 OY be substantially reduced to control the incidental catch of Pacific halibut. The Council recommended a 1986 OY of 14,380 mt distributed among the regulatory areas in proportion to the biomass in each area as follows: Western—5,300 mt, Central—5,000 mt, and Eastern—4,030 mt.

Pacific ocean perch—The condition of POP *(Sebastes alutus)* remains depressed. To protect this species, the Team recommended that the 1986 ABC for the Pacific ocean perch complex, which is composed of five species, be set equal to the ABC for *S. alutus* only, or 8,500 mt Gulf-wide, to be apportioned among the management areas according to biomas distribution. In order to promote rebuilding, however, the Council recommended a 1986 OY of 3,702 mt Gulf-wide. It recommended an OY in the Western area of 1,316 mt, which is a minor change from the current OY of 1,302 mt. However, it recommended a 1986 OY in the Central area of 1,511 mt, which is a substantial reduction from the current OY of 3,906 mt. It recommended no changes in the OY in the Eastern area, which is currently 675 mt.

Sablefish—The Team estimated the sablefish ABC to be 18,800 mt, which is the midpoint between the low end (12,820 mt for 1982–1985) and the high end (25,000 mt) of the ABC range. The biomass in the Gulf of Alaska is estimated to be 537,000 mt. A large portion of this biomass is attributed to a large 1980 or 1981 year class. The Council recommended a Gulf-wide 1986 OY of 15,000 mt be distributed among the management areas as follows: Western—2,850 mt, Central—6,150 mt, West Yakutat—2,560 mt; East Yakutat—1,104 mt; and Southeast Outside—2,346 mt. This new OY is a substantial increase over the current 1985 Gulf-wide OY of 8,890 mt, reflecting a significant

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improvement in the condition of sablefish stocks.

Other species—FMP procedures specify that OYs for this group be set at 5 percent of the sum of OYs established for the designated species categories. On the basis of the sum of the 1986 OYs recommended by the Council, the 1986 OY for "other species" would be 12,186 mt.

Findings of the Secretary

The Secretary has reviewed the biological data pertaining to the above species and has determined that the potential adverse effects on the biological condition of some stocks and the negative economic effects of underutilizing other stocks constitute an emergency within the meaning of section 305(e) of the Magnuson Act. Therefore, the Secretary, by this emergency rule, is adjusting the OYs for these species. The Secretary's specific findings for each species follow:

Pollock—the status of pollock stocks indicates that fishing at the current OY level of 305,000 mt in the Western/Central Regulatory Area, which is three times higher than the recommended 1986 OY, could harm the pollock stocks and possibly result in overfishing. Overfishing is considered to be the level of fishing mortality that jeopardizes the capacity of a stock to recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing environmental conditions (see Guidelines for Fishery Management Plans, 48 FR 7402, February 18, 1983).

Pacific cod—The status of Pacific cod indicates that substantial amounts of fish are available for harvest. If fishermen were constrained by the current OY of 60,000 mt instead of the recommended 1986 OY of 75,000 mt, they could suffer unnecessary economic harm. At 1985 prices of $163 to $454 per metric ton paid to fishermen for Pacific cod, the difference of 15,000 mt could mean a loss of gross revenue of between $2,445,000 and $6,810,000, assuming independent price effects.

Flounders—Although the condition of flounders is good, fishing at the current OY of 33,500 mt instead of the recommended 1986 OY of 14,550 mt could result in unacceptable bycatchs of juvenile and adult Pacific halibut. Since Pacific halibut are of great commercial importance to the domestic hook-and-line industry, unacceptable economic harm could result to this industry. The recommended 1986 OY for flounders represents the projected potential harvest by domestic fishermen based on NMFS industry surveys and public testimony. Therefore, domestic fishermen ought not to be adversely affected even though the 1986 OY is reduced 57 percent from its 1985 level.

Pacific ocean perch—The condition of POP *(S. alutus)* remains depressed. Fishing at the current OY of 5,206 mt for the species complex instead of 2,827 mt in the Western and Central Regulatory Areas would jeopardize the rebuilding of POP stocks intended by the Council. The OY in the Eastern area of 875 mt is unchanged.

Sablefish—The condition of sablefish indicates that substantially increased amounts are available for harvest in 1986. If fishermen were constrained by the current OY of 8,890 mt instead of the new OY of 15,000 mt, they would suffer unnecessary economic harm. Under Amendment 14 to the FMP (50 FR 43193, October 24, 1985), the sablefish OYs are allocated to certain legal gear types, as follows: hook-and-line gear—55 percent in the Western and Central areas, 95 percent in the Eastern area; trawl gear—20 percent in the Western and Central areas, 5 percent in the Eastern areas; and pot gear—25 percent in the Western and Central areas, none in the Eastern area. Allocations for all areas based on the current OYs (the percent for the gear times the OY for the area) would be as follows: hook-and-line gear—6,638 mt; trawl gear—1,159 mt; and pot gear—1,183 mt. Allocations for all areas based on the new OY amounts recommended by the Council (Table I) are as follows: hook-and-line gear—10,650 mt; trawl gear—2,100 mt; and pot gear—2,250 mt. Hence, the differences between the current and new OY allocations for hook-and-line gear, trawl gear, and pot gear are 4,012 mt, 941 mt, and 1,067 mt, respectively. At 1985 prices of $1,278 per metric ton paid to fishermen for sablefish, the gross revenue that could be foregone by gear type could be as follows, assuming independent price effects: hook-and-line gear—$5,127,336; trawl gear—$1,202,598; and pot gear—$1,363,635.

Prohibited Species Catch Limits

The Secretary has determined that three species will be fully utilized by U.S. fish processors in 1986: sablefish, POP, and "other rockfish", as defined in § 672.2. His determination is based on (1) a NMFS-conducted survey of the U.S. fishing industry's intent to harvest and process these species, and (2) comments received by the Council at its December 1985 meeting. Hence, the DAP specification for each of these species is equal to its OY.

Under the Magnuson Act sections 201(d)(2) and 204(b)(6)(B)(ii), species harvested by U.S. fishermen that will be fully utilized by domestic processors may not be allocated for harvest in joint venture or foreign fisheries. Any taking of these species that would exceed their OYs would be inconsistent with the provisions of the FMP, which provide only that total fishing mortality of any groundfish species must not exceed the specified OY for any species category. Hence, no joint venture or foreign fishery could be allowed without accounting for the bycatch mortality of these species.

Mortality of these species as a result of being caught during joint venture operations could be accounted for without this emergency rule, because the Secretary could count any catches of these species againt DAP. A U.S. vessel engaged in joint ventures may still deliver its catch of sablefish, POP, and "other rockfish" for sale as DAP unless the OY for these species has been reached. As a practical matter, such vessels are not likely to return to port to make these deliveries. They would just discard their catches at sea. These discards would still be counted against DAP, with no profit accruing to fishermen who land their catches in U.S. ports and who could otherwise have targeted on them. This emergency rule will allow POP and "other rockfish" to be discarded at sea after being delivered to, and sorted on, foreign processors; they will then be counted against the PSC limit, not the OY. Under § 611.11, catches of a prohibited species must be sorted promptly and returned to the sea with a minimum of injury, regardless of condition, after recording and allowing for sampling by an observer. U.S. vessels, however, are encouraged to land their catches of POP or "other rockfish" when practicable to minimize wastage that would otherwise occur when these fish are discarded at sea.

Foreign catches of any species for which DAP is equal to the OY, however, cannot be counted against DAP and, thus, no foreign fishery in the Gulf of Alaska could be allowed without an amendment to the FMP or an emergency rule that would also authorize treating these species as prohibited species under § 611.11. Establishing PSC limits by this emergency rule means that such species, when taken as bycatch in the foreign fisheries, can be treated as prohibited species under § 611.11 as discussed above.

The Secretary, through this emergency rule, is establishing PSC limits for POP and "other rockfish" that apply to joint venture fisheries; he also is establishing PSC limits for sablefish, POP, and "other rockfish" that apply to foreign fisheries (Table II). He is doing so on the basis of data pertaining to (1) bycatches of POP

and "other rockfish" by joint venture operations in 1985 and (2) bycatches of sablefish, POP, and "other rockfish" by the Japanese hook-and-line fleet during February through April 1986 when it was targeting on Pacific cod. He has also considered the best available information on the status of these species, and the need to promote an orderly fishery by providing adequate PSC amounts of these species.

TABLE 2.—ACCEPTABLE BIOLOGICAL CATCHES (ABCs), OPTIMUM YIELDS (OYs), AND PROHIBITED SPECIES CATCH (PSC) LIMITS IN THE JOINT VENTURE (JVP) AND FOREIGN (TALFF) FISHERIES FOR SABLEFISH, PACIFIC OCEAN PERCH, AND "OTHER ROCKFISH" IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (FIGURES ARE IN METRIC TONS).

	ABC	OY	PSC	
			JVP	TALFF
Sablefish:				
Western	2,000	2,000	N/A	30
Central	6,150	6,150	N/A	0
Pacific Ocean Perch:				
Western	2,000	1,216	200	10
Central	3,380	1,516	35	15
Other Rockfish:				
Gulf-wide	(1)	4,800	50	3

[1] Unknown.

The Secretary has determined that these PSCs, when added to the OYs of sablefish, POP, and other rockfish, will not result in overfishing of these species. These PSC levels will promote an orderly joint venture fishery without imposing a burden on domestic fishermen. They will allow vessels of Japan to harvest their Pacific cod allocations as long as their incidental catch of species that are fully utilized by the U.S. industry remains below the PSC limit.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. The new OYs implemented by this rule are based on the best available information that takes into account the biomasses determined by 1985 trawl and hydroacoustic surveys. Pollock stocks could be overfished and the Council's intended rebuilding of POP stocks could be jeopardized should fishing be allowed to proceed to the 1985 OY level. Establishing PSCs by this action will prevent overfishing while avoiding the disruption in foreign fishing and wastage of groundfish that would otherwise occur.

The Assistant Administrator also finds that beginning and ending the foreign hook-and-line fishery as early as possible in 1986 is desirable because fewer sablefish, POP, and "other rockfish" are caught early in the year. It will constrain joint venture fisheries to bycatches only of POP and rockfish, thus allowing U.S. fishermen delivering to U.S. fish processors to fully utilize OYs for these species.

The Assistant Administrator finds that promulgation of this rule on an emergency basis for the reasons given below make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment, or to delay the effective date of this rule for 30 days, as required by section 553 (b) and (d) of the Administrative Procedure Act. Early implementation of the rule is desirable, because it conveys a benefit to the fishing industry which has a need to base its planning operations on the best available information. Immediate issuance of this emergency rule is needed to avoid disruption of Japanese hook-and-line fisheries for Pacific cod that traditionally occur early in the year when low incidental catches of sablefish, POP, and "other rockfish" are experienced. The Assistant Administrator recognizes that the public has had opportunity to comment on the OY changes at the Council's December 1985 meeting when this subject was discussed during public hearings. Foreign nations may find that a lengthy delay in their directed fishing operations would cause them to forego all fishing in the Gulf of Alaska for the remainder of 1986, which would jeopardize joint venture agreements. Such a delay could also jeopardize purchasing agreements by foreign nations to buy U.S.-processed products if foreign nations ceased fishing operations. Severe socioeconomic harm could be incurred by both the domestic and foreign fishing industries by providing a prior comment period or a delayed effectiveness period.

The Regional Director prepared an environmental assessment (EA) for this action and concluded that no significant impact on the human environment will result from its implementation. The OY adjustments are based on the best available information on the status of the stocks. The PSC limits are based on recent catch rates experienced by joint venture and foreign fisheries and on reevaluations of ABCs for each species. Copies of the EA are available at the address above.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why following the procedures of that order is not possible.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by Alaska's Office of Management and Budget under section 307 of the Coastal Zone Management Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

Dated: May 22, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, Parts 611 and 672 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In 611.92, paragraphs (b)(2); (c)(2)(i)(A) and (D); (c)(2)(ii)(A), (B) and (C); (e)(3)(ii); and (f)(2)(i) are suspended from May 22, 1986, until August 20, 1986. New paragraphs (b)(5); (c)(2)(i)(F), (G), and (H); (c)(2)(ii)(D), (E), and (F); and (i) are added, effective from May 22, 1986 until August 20, 1986, to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(b) * * *

(5) "Target species" are the species that are commercially important and are

generally targeted on by the foreign groundfish fishery. They include pollock, Pacific cod, flounders, Pacific ocean perch, other rockfish, sablefish, Atka mackerel, squid, and thornyhead rockfish. Sufficient data on each species or species group exist for it to be managed separately from the others. Records of the catch of each target species or species group must be kept. Pacific ocean perch, "other rockfish", and sablefish are prohibited to foreign vessels, and must be treated in accordance with § 611.11 and paragraph (i) of this section.

(c) * * *

(2) * * *

(i) * * *

(F) When a nation's foreign fishing vessels using hook-and-line gear have taken their applicable share of a prohibited species provided for by paragraph (i) of this section for sablefish, Pacific ocean perch, or other rockfish, or their allocation of Pacific cod is reached, fishing by that nation is prohibited in that regulatory area.

(G) When foreign fishing vessels of a nation have caught the amount of the allocation of that nation for any groundfish species or species group in any regulatory area, fishing for groundfish using other than hook-and-line gear in that regulatory area by vessels of that nation is prohibited, even if allocations of other species for that nation in the regulatory area have not been reached or the nation has not received a notice issued under § 611.13(c) prohibiting fishing by vessels of that nation in that regulatory area.

(H) When the area allocation of any groundfish species or species group other than Pacific cod is reached, unless the fishery is closed under other provisions of this section, any subsequent catch of that species in that area by vessels fishing with hook-and-line gear will be considered catch of a prohibited species and treated in accordance with the provisions of § 611.11. Catches of those species or species groups in the target and "other species" categories that become prohibited species must be recorded and reported as required by § 611.9.

(ii) * * *

(D) TALFF for any groundfish species, species group, or category in a regulatory area or district: the Secretary will issue a notice prohibiting through December 31 fishing using trawl gear for groundfish in that regulatory area or district, except that if the TALFF for Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

(E) The allocation of a nation for any groundfish species, species group, or species category in a regulatory area or district: the Secretary will issue a notice prohibiting through December 31 in that regulatory area of district, fishing using trawl gear for groundfish by vessels of that nation and retention of that species, species group, or species category by vessels of that nation using hook-and-line gear. However, if a national allocation for Pacific cod in a regulatory area of district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels of that nation through December 31.

(F) The prohibited species share of a nation for sablefish, Pacific ocean perch, or rockfish in a regulatory area: the Secretary will issue a notice prohibiting through December 31 further fishing by vessels of that nation in that regulatory area.

(i) Prohibited species catch limits. When during any fishing year the hook-and-line vessels of a nation have taken incidentally that nation's current share of the PSC for sablefish, Pacific ocean perch, or other rockfish in a regulatory area as determined from § 672.21 of this chapter, the entire regulatory area will be closed to hook-and-line fishing by vessels of that nation for the remainder of the fishing year.

PART 672—[AMENDED]

3. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In Part 672, in the table of contents, a new section is added, to read as follows:

* * * * *

Sec.

672.21 Catch limitations.

* * * * *

5. In § 672.20, Table 1 at paragraph (a) is amended and paragraph (a)(4) is added, to read as follows:

§ 672.20 Optimum yield.

(a) * * *

TABLE 1.—INITIAL (AS OF JAN. 1, EACH YEAR) OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY=DAH+RESERVE+TALFF; DAH=DAP+JVP.

Species/species code	OY	DAH	DAP	JVP	Reserve	TALFF
Gulf of Alaska Groundfish Fishery						
Pollock 701:						
W/C	100,000	80,000	40,000	40,000	20,000	0
Eastern	16,000	13,280	1,841	11,439	3,320	0
Total	116,000	93,280	41,841	51,439	23,280	0
Pacific cod 702:						
Western	29,861	12,321	9,800	2,521	5,980	11,560
Central	33,046	22,569	16,800	5,769	5,676	3,801
Eastern	12,093	9,600	5,600	4,000	2,400	0
Total	75,000	44,480	30,000	9,480	15,000	15,020
Flounders 120:						
Western	5,300	4,266	3,252	1,014	1,012	0
Central	5,000	4,000	2,916	1,084	1,000	0
Eastern	4,050	3,216	3,216	0	804	0
Total	14,350	11,504	9,384	2,120	2,870	0
Pacific Ocean perch 706:						
Western	1,316	1,316	1,316	0	0	0
Central	1,511	1,511	1,511	0	0	0
Eastern	875	875	875	0	0	0
Total	3,702	3,702	3,702	0	0	0
Sablefish 703:						
Western	2,850	2,850	2,850	0	0	0
Central	6,150	6,150	6,150	0	0	0
W Yakutat	2,560	2,560	2,560	0	0	0
E Yakutat	1,104	1,104	1,104	0	0	0
Southeast	2,346	2,346	2,346	0	0	0
Total	15,000	15,000	15,000	0	0	0
• • • • • • •						
Other Species Gulf-Wide 400	12,188	9,749	4,875	4,874	2,437	0

(4) If a joint venture prohibited species catch limit, set forth in § 672.21 for Pacific ocean perch or "other rockfish" for the Western or Central Regulatory Area, is taken by U.S. vessels while fishing in joint ventures for delivery to foreign vessels, that entire regulatory area will be closed to further delivery by U.S. vessels of groundfish to foreign vessels.

* * * * *

6. A new § 672.21 is added, to read as follows:

§ 672.21 Catch limitations.

Prohibited species catch (PSC) limits. PSC limits in the regulatory areas of the Gulf of Alaska are set forth in Table 2.

TABLE 2.—PROHIBITED SPECIES CATCH LIMITS FOR SABLEFISH, PACIFIC OCEAN PERCH, AND "OTHER ROCKFISH" (METRIC TONS)

Species	Regulatory area		Gulf-wide
	Western	Central	
Sablefish:			
TALFF	140	31	
Pacific ocean perch:			
JVP	200	10	
TALFF	36	10	
Rockfish:			
JVP			50
TALFF			10

* * * * *

[FR Doc. 86-11902 Filed 5-22-86; 4:31 pm]

BILLING CODE 3510-22-M

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50 CFR Part 641

[Docket No. 51191-6067]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the implementing regulations for the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Persons fishing from headboats were exempted from the minimum size limit and incidental catch allowance for red snapper until May 8, 1986. This rule extends the exemption period one year until May 8, 1987, and makes minor word changes in the effort limitations section. The intent of the rule is to provide additional time to conduct survival studies for undersized red snapper and to evaluate the economics of these measures.

EFFECTIVE DATES: Section 641.23(b)(2) is effective from May 8, 1986, through May 8, 1987. Section 641.25 is effective May 8, 1986.

ADDRESS: A copy of the combined final regulatory flexibility analysis/regulatory impact review for the regulation implementing the FMP may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was approved June 3, 1984 and implemented on October 9, 1984 (49 FR 39553). The implementing rule contained an exemption from the minimum size limit and incidental catch allowance for undersized red snapper for persons fishing from headboats until May 8, 1986. Proposed rules to extend the headboat exemption were published on February 18, 1986 (51 FR 5748). Comments on the proposed rule were invited through March 20, 1986. A complete discussion of the reasons for the extension of the minimum size limit for the headboat fishery is found in the proposed rule and is not repeated here.

Twelve written responses were received during the comment period. Three of these responses, one from a headboat business and one from the Texas Parks and Wildlife Department, fully supported the one year extension of the exemption. The Gulf of Mexico Fishery Management Council (Council), originator of the FMP, requested an additional 6-month deferral to the proposed one year deferral (until November 8, 1987) because of a time-lag in obtaining data needed to update reef fish stock assessments.

Nine responses objected to extending the deferral for headboats and came from charter boat operators, private boat recreational fishermen, the Galveston Chapter of Gulf Coast Conservation Association, the Florida Marine Fisheries Commission, a commercial dealer, and a fish trap manufacturing company. Two common remarks woven into all of the objections were that any continuation of the deferral for headboats was unfair to the other sectors of the fishery that are currently regulated by the size limit and incidental catch allowance for red snapper, and the reliance of headboats on catches of small red snapper is evidence that this sector is perpetrating extensive damage to an already overfished resource.

The 18-month exemption for headboats was initially authorized because of the number of small red snapper taken and the lack of data that would allow specification of economic impacts on the headboats sector of the fishery, coupled with the uncertainty of the survival of the undersized fish that would have to be released by headboat passengers. Other sectors of the fishery were not exempted from the size limit because they had greater flexibility in shifting effort to areas where larger fish were available, or because their fishing activities were conducted in shallower waters where survival rates of released undersized fish were expected to be reasonably high.

When the regulations for the FMP were implemented there was a limited amount of evidence that an acceptable number of hooked and released red snapper would survive, but most data was indirect evidence based upon mark-recapture studies. During the 18-month period of deferral (October 1984–April 1986) additional studies were conducted by NMFS to try to determine survival rates of fish hooked at various depths and released at the surface. Results to date have not been conclusive as to the survival rates for undersize (less than 12 inches fork length) red snapper in waters greater than 100 feet in depth, although data to indicate reduced survival with increasing depth. Unaccounted factors could further lower these survival rates. Analyses by NMFS indicates that to increase yield per recruit (the intent of the size limit) survival must equal or exceed 60 percent if natural mortality (M)=0.35, or 50 percent if M=0.25.

One commenter suggested that for commercial boats the catch "limit" for undersized red snapper be prorated on a daily basis rather than a per trip basis, since many small fish are killed by the high speed of retrieval from deep waters. This would result in a reduced

waste or small fish as the boats fish up to two weeks per trip. The incidental catch allowance was instituted to discourage fishing in areas heavily populated by small fish and should not be viewed as a "limit" to be achieved. Hopefully, fishermen catching large numbers of undersized fish would shift their effort to areas populated by larger fish. At any rate, modifying the incidental catch allowance is outside the scope of the proposed rule and is an issue more appropriately addressed by the Council during the FMP amendment process.

The proposed rule to extend the deferral for headboats was initially prepared in response to a June 18, 1985 request by the Council. The Council request indicated that they were in the process of amending the FMP, and rather than preparing a separate amendment addressing size limits, chose to incorporate this issue in the general FMP amendment that would cover a number of other issues. The general FMP amendment schedule is dependent upon the availability of new stock assessment data, and data from the survival studies to evaluate changes in yield per recruit. These data could lead to a respecification of the size limit or the institution of size limits that vary geographically in accordance with size distribution of red snapper. Since the stock assessments are 6 months behind schedule, the Council has requested an additional 6 months extension of the headboat exemption so that the size limit issue can be addressed in the general FMP amendment.

NOAA believes that the proposed 12-month extension will be adequate time for the remaining field and laboratory research and data analysis to be completed in, and therefore does not agree that an 18-month extension is required. Based on the above, the Secretary therefore extends the size limit exemption to the headboat fishery for 12 more months.

Also, the text in § 641.25 is revised to clarify that the limitation of 200 traps applies to those traps actually assigned to a vessel.

Classification

The Assistant Administrator for Fisheries, NOAA, has previously determined that the FMP and implementing regulations, of which this final rule is to be a part, is consistent with the national standards and other provisions of the Magnuson Act and other applicable law (49 FR 39548, October 9, 1984).

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) that rules to implement the FMP are not major under Executive Order 12291. The RIR and RFA were summarized in the preamble to the final rule for the FMP (see 49 FR 39548) and are not repeated here. This is an extension of the time period for a measure in the final rule and, therefore, a supplemental RIR has not been prepared.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because the rule simply extends an existing deferral for headboats from size limit restrictions in the implementing regulations. The rule will lessen impacts on the headboat fleet for a specified period of time.

Because this is a continuation of a substantive rule which relieves a restriction, the 30-day delayed effectiveness provisions of the Administrative Procedure Act do not apply.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing.

Dated: May 22, 1986.

[redacted] J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

PART 641—[AMENDED]

For reasons set forth in the preamble, 50 CFR Part 641 is amended as follows:

1. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.23, paragraph (b)(2) is revised to read as follows:

§ 641.23 Size and incidental catch restrictions.

* * * * *

(b) * * *

(2) Persons fishing from headboats in the FCZ are exempt from the minimum size limit and incidental catch limit for red snapper until May 8, 1987.

* * * * *

3. Section 641.25 is revised to read as follows:

§ 641.25 Effort limitations.

The maximum number of fish traps that may be assigned to a vessel in the FCZ is 200.

[FR Doc. 86-11901 Filed 5-22-86; 4:34 pm]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 21021-316]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This rule deletes any remaining language applicable to the terminated requirement for observers aboard purse seine vessels.

EFFECTIVE DATE: May 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: NOAA published a final rule February 4, 1983 (48 FR 5270), to implement the FMP. The final rule at § 642.24(b) required observers to be aboard vessels using purse seines to fish for Spanish and king mackerel. The FMP authorized this observer requirement for a three year period which ended February 3, 1986. The observer requirement was removed from the regulations by a technical amendment (51 FR 12857, April 16, 1986), by removing § 642.24(b) and renumbering § 642.24(c) as a new paragraph (b).

Through an oversight, the technical amendment did not delete all reference to the requirement for observers in the renumbered paragraph (b). Therefore, NOAA amends the rule to remove all remaining language concerning observers from the renumbered paragraph (b).

Other Matters

This action is taken under the authority of 50 CFR Part 642 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 21, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

PART 642—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 642.24 is amended by revising paragraph (b) to read as follows:

§ 642.24 Vessel, gear, and equipment limitations.

* * * * *

(b) *Purse seine catch allowance.* A vessel with a purse seine aboard during a king or Spanish mackerel purse seine closure effected in accordance with § 642.22(a) will be considered to have been fishing for king or Spanish mackerel in violation of the closure when such vessel possesses or lands king or Spanish mackerel in excess of one percent or ten percent, respectively, by weight or number (whichever allows the lesser amount of king or Spanish mackerel) of all fish aboard or landed. King or Spanish mackerel in quantities less than one percent or ten percent are subject to the prohibition on sale provided for under § 642.22(a).

[FR Doc. 86-11699 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 649

[Docket No. 60336-6086]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing Amendment 1 (amendment) to the Fishery Management Plan for the American Lobster Fishery (FMP). These regulations implement the amendment by: (1) Instituting a uniform lobster fishing gear marking system for the offshore lobster fishery; (2) providing the Regional Director the authority to grant research exemptions from any lobster FMP regulations and/or establish closed areas for research purposes; and (3) distinguishing red crab fishing gear, operating deeper than 200 fathoms, from gear capable of taking lobster. The intended effect is to promote fishing efficiency by reducing the incidence of gear conflicts and ensuring that red crab gear is not unnecessarily included in measures intended for the lobster fishery.

EFFECTIVE DATE: June 27, 1986.

ADDRESS: Copies of the amendment, the environmental assessment, and the regulatory impact analysis are available from Mr. Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Resource Policy Analyst, 617–231–3600, ext. 331; or Kathi L. Rodrigues, Resource Management Specialist, 617–281–3600, ext. 324.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the American Lobster Fishery was prepared by the New England Fishery Management Council (Council). Amendment 1 to the FMP was partially approved by the Administrator of NOAA on May 8, 1986. The approved portions of the amendment: (1) Establish a uniform and identifiable gear marking system that will afford mobile gear operators a chance to avoid fixed lobster gear; (2) provide authority to the Regional Director to allow exemptions from the regulations and to close areas for the purpose of conducting research that will be beneficial to the lobster resource; and (3) clarify that red crab fishing gear, operating deeper than 200 fathoms, is gear not capable of taking lobster, and therefore not subject to the lobster regulations.

The need for a gear marking system arises from the increase in utilization of fishery resources by different gear types which, in turn, increases competition and congestion on fishing grounds and results in a greater incidence of gear conflicts. Gear conflicts are costly in terms of lost fishing gear and fishing time.

The minimum marking standards contained within the amendment consist of the following: (1) The westernmost end of a lobster trawl must be marked by an 8 inch (or larger) standard tetrahedral corner radar reflector and a single flag or pennant; (2) the easternmost end of a trawl must be marked by an 8 inch (or larger) standard tetrahedral corner radar reflector only. In addition, lobster trawls are limited to a length of 1.5 miles.

The amendment provides authority to the Regional Director, upon the recommendation of the New England Fishery Management Council, to allow exemptions from any provisions of the regulations and to close areas to fishing in order to conduct research beneficial to the lobster resource. Closures are to be implemented through a regulatory amendment. If the area to be closed is within the jurisdiction of the Mid-Atlantic Fishery Management Council, then this Council must concur with the recommendation of the New England Fishery Management Council in order for the closure to occur.

The amendment also draws a distinction between red crab fishing gear which is operated deeper than 200 fathoms, and gear capable of taking lobsters. All available evidence indicates that the red crab fishery is devoid of any lobster bycatch and operates in an area where there is no mobile gear. Therefore, it should not be subject to the regulations of the FMP. Such restrictions would preclude the operation of an economically viable red crab fishery.

The Acting Regional Director has disapproved that portion of the amendment which proposed to exempt certain trap gear from the venting requirement of the lobster regulations because that proposal was not necessary and appropriate for the conservation and management of the lobster resource, and it was inconsistent with National Standards. The disapproved provision exempted trap gear capable of taking lobster from the venting requirement of the regulations, if such gear is: (1) Fished in an area south of Barnegat Light, NJ, and shoreward of the 30 fathom contour; (2) fished in an unbaited condition; and (3) subject to a maximum bycatch of one hundred pounds of lobster per trip.

The intended effect of this provision is to exempt fish trap fishermen, who fish principally for black sea bass, from the trap venting requirement because a certain portion of marketable fish escape through the vent. However, this provision of the amendment, as written and submitted by the Council, has the unintended effect of creating a geographical area where all traps fished, including lobster traps, would be exempt from the venting requirement.

One of the principal deficiencies of this provision is that it is not based on a substantial weight of evidence to conclude, in accordance with Section 303 of the Magnuson Act, that it is necessary and appropriate for the conservation and management of the lobster resource. Evidence to support the one hundred pound bycatch trip allowance is deficient. At this level of bycatch, a directed fishery for lobsters could develop. While the Council states that the impact on the lobster resource as a whole is minimal, it has failed to examine the impact on the local lobster fishery within the exempted area.

The exemption also raises issues with respect to National Standard 6 because it does not provide for any variations or contingencies either in the overall lobster fishery, or those discreet lobster populations that may reside within the bounds of the exempted area. For example, an increase in the lobster resource could result in a much higher juvenile mortality than was contemplated in the amendment.

The exemption provision is inconsistent with Executive Order 12291 and National Standard 7 since it fails to provide any ability to enforce its terms to any meaningful and practical degree. There are no means to identify those individuals who are seeking the advantage of the exemption, nor to constrain individuals to fish only in the exempted area. As written, the provision would allow anyone to set unlimited traps in the area specified and land up to one hundred pounds of lobster per fishing trip. The benefits of this provision are ostensibly minimal and the costs of enforcing it are substantial.

Proposed regulations to implement the amendment were published on March 10, 1986 (51 FR 8220). The public comment period ended on April 18, 1986. One written comment was received.

Response to Public Comments

Written comments were received from the New England Fishery Management Council. The Council pointed out an error in § 649.21(b)(4)(ii) of the proposed rule, which describes the Georges Bank gear marking area. NOAA acknowledges this error and has made the necessary correction to the final rule.

Additionally, the Council raised a concern regarding the language of § 649.22 in the proposed rule, in which the authority to close areas in the Mid-Atlantic is based solely on a recommendation from the Mid-Atlantic Fishery Management Council. Because the New England Fishery Management Council is the lead council for lobster management, NOAA has revised the final rule to address the Council's concern and provide it a lead role in recommending closures to the Regional Director. However, if the closure is within the Mid-Atlantic Council's area of jurisdiction, then that Council must concur with the recommendation of the New England Council before any action may be taken by the Regional Director.

Changes to the Proposed Regulations

Section 649.7, Prohibitions, has been revised for consistency with Amendment 1 and the existing regulations. In paragraph (a)(6), the word "identified" has been added between "not" and "marked" for consistency with the amendment. The phrases "fishing for" and "or from" have been added to paragraph (b)(2) for consistency with other sections of the existing regulations, and now reads "To use any vessel for taking, catching, harvesting, *fishing for,* or landing of any American lobster in, *or from,* the FCZ . . . .". Without the phrase, "fishing for", it could be argued that a vessel is in violation of the regulation only if it is successful in the context of the definition of taking, catching, and harvesting. This is inconsistent with § 649.4 which requires a vessel to have a permit to fish for lobsters, even if such fishing, by definition, does not result in the taking or retaining of the lobster. The phrase "or from" has been added to this same paragraph for consistency with the existing sections of the regulations, and to clarify that it is a violation to offload in State waters lobsters that were illegally taken in the fishery conservation zone (FCZ).

Several revisions have been made to § 649.21 in the final regulations. Paragraph (b)(2) has been revised to clarify the dimensions of the radar reflectors and to indicate that they must be made of metal. In paragraph (b)(4), the areas of applicability have been entitled "gear areas" (for example, Mid-Atlantic Gear Area) to avoid confusion with other geographical definitions. In addition, references to depth contours have been deleted; instead the final regulations require that gear be marked, if set at depths equal to or greater than the respective depth contour.

In the proposed regulations, § 649.21(b)(4)(ii) incorrectly described the gear marking area for Georges Bank as all the waters of the FCZ south of 42°20′ N. latitude and east of 70°00′ W. longitude and seaward of the 25 fathom depth contour. It should have read "all the waters of the FCZ south if 42°20′ N. latitude and east of 70°00′ W. longitude or the outer boundary of the territorial sea, whichever lies further east." The final regulations have been corrected.

Also, the Mid-Atlantic Gear Area, at § 649.21(b)(4)(iv) has been revised to include a southern boundary. Otherwise, it could be interpreted that the gear marking requirement is applicable in the area south of the geographic jurisdiction of the Mid-Atlantic Fishery Management Council, which is not the intent of the amendment.

Lastly, because the trap vent exemption proposed in the amendment was disapproved, the regulatory language contained in § 649.21(c) regarding the exemption has not been included in the final regulations.

As a result of the comment received from the New England Fishery Management Council, § 649.22 has been revised to provide that Council the lead role to recommend area closures. However, the final rule also provides that if an area to be closed is within the jurisdiction of the Mid-Atlantic Council, that Council must concur with the recommendation of the New England Council before action may be taken by the Regional Director.

Classification

The Administrator of NOAA determined that the approved portions of the amendment are necessary and appropriate for the conservation and management of the lobster resource, and are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address given above.

The Administrator of NOAA determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary was published at 51 FR 8220.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities (summary published at 51 FR 8220). As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Delaware, Maryland, New Jersey, and North Carolina. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act. The State agencies agreed with this determinination, except for Maine, Maryland, and North Carolina which failed to comment within the statutory time period.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: May 22, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 649—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 649 is proposed to be amended as follows:

1. The authority citation for 50 CFR Part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§§ 649.21 and 649.22 [Amended]

2. The Table of Contents is amended by revising the title of § 649.21 to read "Gear identification, marking, and escape vent requirement.", and adding a new section title that reads "§ 649.22 Exemption and area closure.".

3. Section 649.1 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 649.1 Purpose and scope.

* * * Red crab fishing gear which is fished deeper than 200 fathoms is gear not capable of taking lobsters, and is not subject to the provisions of these regulations.

4. Section 649.7 is amended by revising paragraphs (a) introductory text, (a)(6), and (b) (2) to read as follows:

§ 649.7 Prohibitions.

(a) It is unlawful for any person issued a permit under § 649.4, or for any person fishing in the FCZ—

* * * * *

(6) To possess, deploy, haul, harvest lobster from, or carry aboard a vessel any gear not identified, marked and vented in accordance with the requirements specified in § 649.21;

* * * * *

(b) * * *

(2) To use any vessel for taking, catching, harvesting, fishing for, or landing of any American lobster in, or from, the FCZ unless the vessel or operator has a valid permit issued under this part, and the permit is aboard the vessel;

* * * * *

5. Section 649.21 is revised to read as follows:

§ 649.21 Gear identification, marking, and escape vent requirements.

(a) *Identification.* All lobster gear deployed in the FCZ or possessed by a person whose vessel is permitted for fishing in the FCZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) The vessel's Federal fishery permit number; and/or

(2) Whatever positive identification marking is required by the vessel's homeport State.

(b) *Marking.* In the areas of the FCZ described in paragraph (b)(4) below, lobster pot trawls are to be marked as follows:

(1) Lobster pot trawls of three or less pots must be marked with a single buoy.

(2) Lobster pot trawls consisting of more than three pots must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west to and including north), while the easternmost end (marking the half compass circle from magnetic north through east to and including south) of a lobster trawl must be marked with a radar reflector only. Standard tetrahedral corner radar reflectors (see Figure 1) of at least 8 inches (both in height and width and made from metal) must be employed.

(3) No lobster pot trawl shall exceed 1.5 miles in length as measured from buoy to buoy.

(4) Gear marking requirements apply in the following areas:

(i) *Gulf of Maine Gear Area.* All waters of the FCZ north of 42°20' N. latitude seaward of a line drawn 12 miles from the baseline of the territorial sea;

(ii) *Georges Bank Gear Area.* All waters of the FCZ south of 42°20' N. latitude and east of 70°00' W. longitude or the outer boundary of the territorial sea, whichever lies further east;

(iii) *Southern New England Gear Area.* All waters of the FCZ west of 70°00' W. longitude, east of 71°30' W. longitude at a depth greater than 25 fathoms; and

(iv) *Mid-Atlantic Gear Area.* All waters of the FCZ, west of 71°30' W. longitude and north of 36°33' N. latitude at a depth greater than 40 fathoms.

(c) *Escape Vents.* All lobster traps deployed in the FCZ or possessed by a person whose vessel is permitted for fishing in the FCZ must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) A rectangular portal with an unobstructed opening not less than 1¾ inches (44.5 mm) by six inches (152.5 mm);

(2) Two circular portals with unobstructed openings not less than 2¼ inches (57.2 mm) in diameter; or

(3) Any other vent certified by the Regional Director to release a substantial number of lobsters under 3¼₃₂ inches carapace length from the trap.

(d) *Enforcement action.* Unidentified, unmarked, unvented, or improperly vented lobster traps will be seized and disposed of in accordance with the provisions of 50 CFR Part 219.

6. A new § 649.22 is added to read as follows:

§ 649.22 Exemption and area closure.

(a) *Exemption.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of research of education beneficial to the lobster resource or lobster fishery.

(2) The Regional Director may not grant such exemption unless he determines that the purpose, design and administration of the exemption is consistent with the objectives of the American Lobster Fishery Management Plan, the provisions of the Magnuson Act and other applicable law, and that granting the exemption will not—

(i) Have a detrimental effect on the lobster resource and fishery; or

(ii) Create significant enforcement problems.

(3) Each vessel participating in any exempt activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

(b) *Area closure.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may close an area of the FCZ to fishing, through a regulatory amendment, for the conduct of scientific research provided that such closure will not—

(i) Increase gear conflicts; or

(ii) Interfere significantly with common fishing practices.

(2) If the area to be closed is within the jurisdiction of the Mid-Atlantic Fishery Management Council, then that Council must concur with the recommendation of the New England Fishery Management Council before the Regional Director may close the area.

[FR Doc. 86-11929 Filed 5-23-86; 4:51 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 102
Wednesday, May 28, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Grade Standards for Flue-cured Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: The Agricultural Marketing Service proposes to amend the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92, to more accurately describe tobacco as it presently appears at the marketplace. This proposal would: (1) Add definitions to provide adequate descriptions that are significant to the industry; (2) add grades which will more accurately describe whitish-lemon colored and scorched tobacco; and (3) delete certain grades determined to be no longer necessary. These amendments are based on the Department's continuous review and evaluation and in response to recommendations by an Ad Hoc Committee appointed by the Senate Agriculture Committee.

DATE: Comments are due on or before June 12, 1986.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, Washington, DC 20250. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The standards for flue-cured tobacco were last revised in 1984. During the past two marketing seasons, a recurring need has arisen for some changes which would more accurately describe the tobacco. In addition, the Senate appointed Ad Hoc Committee has submitted recommendations that the standards include adequate descriptions that are significant to the industry and distinguish between papery body and regular body in the P (Primings) and X (Lugs), and C (Cutters) stalk positions.

This proposal would add definitions to describe "papery" as a thin-bodied silken tobacco usually associated with whitish-lemon color and "excessively scorched" as a lot containing over 50 percent or unripe scorched tobacco.

In 1985, the standards were revised to develop grades X4L and C4L to describe a whitish-yellow (L) color produced during wet growing seasons. Since then, more third quality Lugs and fifth quality Cutters in whitish-lemon color has been appearing at the marketplace in significantly increased volume. This proposal would establish grades X3L and C3L to properly describe these two qualities of whitish-lemon colored tobacco. In addition, the maturity would be changed to unripe and the leaf structure changed to firm.

Current standards provide that if a lot contains 20 to 100 percent of unripe scorched tobacco it shall be designated by the color symbol "KM" and graded accordingly. This extreme range in the allowable amount of scorched tobacco has been a major contributing factor to confusion within the industry and difficulty in blending these grades in processing plants. These factors also appear to have an unwarranted adverse effect on the prices of tobacco. Grades C4KK, B3KK, B4KK, B5KK and I5KK would be established to distinguish lots containing over 50 percent of unripe scorched tobacco.

Grades C5KM, H3L, H5L and H6I would be deleted. In recent years tobacco characteristic of these grades has appeared in insufficient volume to justify retention of these grades.

Finally, editorial changes would be made in the citation of authority.

These proposed rules have been reviewed under USDA procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and have been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity, and effectiveness has been completed.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this proposed rule. A number of firms which are affected by these proposed regulations do not meet the definition of small business either because of their individual size or because of their dominant position in one or more marketing areas. The Administrator, Agricultural Marketing Service, has determined that these actions will have no significant economic impact upon all entities, small or large, and will not substantially affect the normal movement of the commodity in the marketplace.

Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, has determined that an emergency situation exists which warrants less than a 30-day comment period on this proposal. The shorter comment period is necessary to provide sufficient lead time to train inspection personnel on the revisions in the grade standards and to allow the Commodity Credit Corporation to establish and annouce the flue-cured price supports by grade prior to the opening of the 1986 marketing season. Therefore, a 15-day comment period will be provided on this proposal.

All persons who desire to submit written data, views, or arguments for consideration in conection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, Room 502 Annex Building, United States Department of Agriculture, Washington, DC 20250 not later than June 12, 1986.

List of Subjects in 7 CFR Part 29

Tobacco.

PART 29—[AMENDED]

It is proposed that the regulations at 7 CFR Part 29, Subpart C, be amended as follows:

PART 29—[AMENDED]

1. The authority citation for 7 CFR Part 29, Subpart C, "Official Standard Grades for Flue-Cured Tobacco (U.S. Types 11, 12, 13, 14, and Foreign Type (2)" is revised to as follows:

Authority: Sections 29.1001, to 29.1225 are issued under sec. 14, 49 Stat. 734, as amended (7 U.S.C. 511m); sec. 213, 97 Stat. 1149 (7 U.S.C. 511r).

§ 29.1008 [Amended]

2. Section 29.1008 is amended to add to the end thereof the words "KK-excessively scorched".

§§ 29.1016—29.1047 [Redesignated as §§ 27.1017—29.1048]

3. Current §§ 29.1016 through 29.1047 are redesignated as §§ 29.1017 through 29.1048, respectively.

4. A new § 29.1016 is added to read as follows:

§ 29.1016 Excessively scorched.

As applied to flue-cured tobacco, the combination symbol "KK" when used as the third factor of a grademark denotes that a lot contains over 50 percent of unripe scorched tobacco.

§§ 29.1048—29.1063 [Redesignated as §§ 29.1050—29.1065]

5. Current §§ 29.1048 through 29.1063 are redesignated as §§ 29.1050 through 29.1065, resectively.

6. A new § 29.1048 is added to read as follows:

§ 29.1048 Papery.

A term used to describe thin-bodied, oilless tobacco usually associated with whitish-lemon color.

§ 29.1122 [Amended]

7. Section 29.1122 is amended to add to the end thereof the sentence "Any lot of unripe tobacco in the C, or B groups which is under 20 percent greenish or green but which contains 50 percent or more of scorched tobacco shall be classified as excessively scorched and designated by the combination symbol "KK."

§ 29.1162 [Amended]

8. Section 29.1162 is amended to add 4 new grades following the grade "B6KM—Poor Quality Variegated Mixed Leaf" to read as follows:

B3KK Good Quality Excessively Scorched Leaf
Unripe, close leaf structure, heavy, heavy, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 80 percent; injury tolerance, 15 percent.

B4KK Fair Quality Excessively Scorched Leaf
Unripe, close leaf structure, heavy, normal width. Uniformity, 70 percent; injury tolerance 20 percent, of which not over 5 percent may be waste.

B5KK Low Quality Excessively Scorched Leaf
Unripe, tight leaf structure, heavy, narrow. Uniformity, 70 percent; injury tolerance 30 percent, of which not over 10 percent may be waste.

B6KK Poor Quality Excessively Scorched Leaf
Unripe, tight leaf structure, heavy, stringy. Uniformity, 70 percent; injury tolerance 40 percent, of which not over 20 percent may be waste.

§ 29.1163 [Amended]

9. Section 29.1163 is amended to remove the 4 grades "H3L–Good Quality Lemon Smoking Leaf", "H4L–Fair Quality Lemon Smoking Leaf", "H5L–Low Quality Lemon Smoking Leaf", and "H6L–Poor Quality Lemon Smoking Leaf"

§ 29.1164 [Amended]

10. Section 29.1164 is amended in the paragraph under the heading "C4LL–Fair Quality Whitish-Lemon Cutters" to remove the words "Ripe, open leaf structure, thin" and add in the place thereof the words "Unripe, firm leaf structure, thin (papery)".

11. Section 29.1164 is further amended to add a new grade following the grade "C4LL-Fair Quality Whitish-Lemon Cutters" to read as follows:

C5LL Low Quality Whitish-Lemon Cutters
Unripe, firm leaf structure, thin (papery), lean in oil, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 70 percent; injury tolerance 30 percent, of which not over 10 percent may be waste.

12. Section 29.1164 is further amended to remove the grade "C3KM-Good Quality Variegated Mixed Cutters"

13. Section 29.1164 is further amended to add a new grade following the grade "C4KM-Fair Quality Variegated Mixed Cutters" to read as follows:

C4KK Fair Quality Excessively Scorched Cutters
Unripe, close leaf structure, medium body, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 70 percent; injury tolerance 20 pecent, of which not over 5 percent may be waste.

§ 29.1165 [Amended]

14. Section 29.1165 is amended to add a new grade following the grade "X5L-Low Quality Lemon Lugs" to read as follows:

X3LL Good Quality Whitish-Lemon Lugs
Unripe, firm leaf structure, thin (papery), lean in oil. Uniformity, 70 percent; injury tolerance 40 percent, of which not over 20 percent may be waste.

15. Section 29.1165 is further amended in the paragraph under the heading "X4LL—Fair Quality Whitish-Lemon Lugs" to remove the words, "Ripe, open leaf structure, thin" and add in the place thereof the words "Unripe, firm leaf structure, thin (paperly)".

§ 29.1181 [Amended]

16. Section 29.1181 is amended as follows:

(a) Change the heading "14 Grades of Smoking Leaf to read as follows: "10 Grades of Smoking Leaf" and removing the first column of entry reading "H3L, H4L, H5L and H6L".

(b) Change the heading "6 Grades of Variegated Mixed" to read as follows: "7 Grades of Variegated Mixed" and removing the entry "C3KM" from the second column.

(c) Change the heading "2 Grades of Whitish-Lemon" to read as follows: "4 Grades of Whitish-Lemon" and add the new grades "X3LL" above grade "X4LL" and "C5LL" below grade "C4LL".

(d) Following the table "6 Grades of Variegated Red or Scorched" add a new table for the category of excessively scorched grades to read as follows:

5 Grades of Excessively Scorched	
B3KK	
B4KK	C4KK
B5KK	
B6KK	

§ 29.1225 [Amended]

17. Section 29.1225 is amended under the heading *"Combination Symbols"*, by changing the symbol "FR" to read "FF", and adding the words "KK"—Excessively scorched" at the end thereof.

Dated: May 22, 1986.

James C. Hendley,
Administrator.

[FR Doc. 86-11887 Filed 5-27-86; 8:45 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1478

Special Indemnity Programs; Special Disaster Payments for the 1983–1985 Crops of Rice, Upland Cotton, Feed Grains, and Wheat

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule, extension of comment period.

SUMMARY: A proposed rule was published in the Federal Register on Tuesday, May 20, 1986, at 51 FR 18552. The comment period for the proposed rule originally was limited to ten days because an Order of the District Court

for the Southern District of Iowa required that a final rule be made effective on or before June 2, 1986. The ten-day period included only five working days. On the Government's motion, the Court has extended the deadline for filing of a final rule to June 9, 1986. Accordingly, the comment period is hereby extended to June 2, 1986, in order to give the public more time to comment on the proposed rule.

DATES: Comments on the proposed rule must be received on or before June 2, 1986, in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be available for further inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

Signed at Washington, DC on May 23, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–12075 Filed 5–23–86; 4:59 pm]

BILLING CODE 3410–05–M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345–28, REA Specification for Seven Wire Galvanized Steel Strand, PE–37

AGENCY: Rural Electrification Administration, Department of Agriculture.

ACTION: Proposed Rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference revised REA Bulletin 345–28, REA Specification for Seven Wire Galvanized Steel Strand, by adopting, with a minor modification by REA, ASTM A475–78, an industry standard for seven wire galvanized steel strand. Concurrently, REA proposes to withdraw REA's PE–37, a proprietary REA standard addressing the same product.

The American Society for Testing and Materials (ASTM) is a scientific and technical organization formed for the development of standards on characteristics and performance of materials, products, systems and services. ASTM is the world's largest single source of voluntary consensus standards. An ASTM standard represents a common viewpoint of those parties concerned with its provisions, namely, producers, users, and general interest groups. It is intended to aid industry, government agencies, and the general public.

This proposed action will have very little impact on the manufacturers of strand. It would not affect the current designs or manufacturing techniques of strand. Such action would also be the most effective method of assuring current state of the art technology for strand to benefit REA telephone borrowers.

DATE: Public comments must be received by REA no later than July 28, 1986.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8663. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference revised REA Bulletin 345–28 (previous issue dated January 22, 1963), REA Specification for Seven Wire Galvanized Steel Strand.

REA will request approval for Incorporation by Reference from the Director of the Federal Register. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of the document are available upon request from the address indicated above. Interested persons are invited to submit comments on this action. Written comments must be sent to the address stated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Copies of ASTM A475–78 will be available for a nominal fee from the American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to revise Bulletin 345–28, the REA Specification for Seven Wire Galvanized Steel Strand by adopting, with major modification by

REA, the American Society for Testing and Materials standard for seven wire galvanized steel strand, ASTM A475-78, to replace REA's Specification PE-37 for the same product. The PE-37 designation is an arbitrary set of letters and numbers assigned by REA to identify telephone materials and equipment specifications. PE-37 would be withdrawn with this action.

It is REA policy to use the standards, rules and regulations of such engineering and standard groups as ASTM, the American National Standards Institute (ANSI), and the various national engineering societies, and such references as the National Electrical Safety Code (NESC), and the National Electrical Code (NEC), to the greatest extent practical as determined by REA. REA is also guided by OMB Circular No. A-119, Federal Participation in the Development and Use of Voluntary Standards in its activities. When there are no national standards, or where REA determines that existing national standards are not satisfactory for REA purposes, REA prepares the standards for materials and equipment as necessary.

REA has determined that the ASTM Standard for galvanized steel strand, with a minor modification, is satisfactory for REA purposes. The modification is an additional marking requirement that all coils and reels of strand having Class B and Class C coatings shall be marked with a stripe of deep colored paint about 3 inches wide and 6 inches long as indicated below:

Class of coating	Color of paint
B	Green.
C	Orange.

This marking shall be applied to the exposed convolutions of strand in the eye of coils and located near the midpoint on the outside layer of strand on reels.

The proposed action would have very little impact on the manufacturers of strand since it would require no changes in the current designs or manufacturing techniques of strand. The REA telephone borrowers will benefit from assurance of current state of the art technology for strand.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

PART 1772—[AMENDED]

In view of the above, REA is proposing to amend 7 CFR Part 1772 by incorporating by reference revised REA Bulletin 345-38.

1. The authority cited for Part 1772 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 et seq.

2. The table in § 1772.97 would be amended by adding the entry 345-38 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345-38...REA Specification for Seven Wire Galvanized Steel Strand.

* * * * *

Dated: May 21, 1986.

Harold V. Hunter,

Administrator.

[FR Doc. 86-11835 Filed 5-27-86; 8:45 am]

BILLING CODE 3410-15-M

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7 CFR Part 1772

REA Bulletin 345-47, REA Specification for Seven Wire Aluminum-Clad Steel Strand, PE-49

AGENCY: Rural Electrification Administration, Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference revised REA Bulletin 345-47, REA Specification for Seven Wire Aluminum-Clad Wire Strand, by adopting, with a minor modification by REA, ASTM B415-86, an industry standard for seven wire aluminum-clad steel strand. Concurrently, REA proposes to withdraw REA's PE-49, a proprietary REA standard addressing the same product.

The American Society for Testing and Materials (ASTM) is a scientific and technical organization formed for the development of standards on characteristics and performance of materials, products, systems and services. ASTM is the world's largest single source of voluntary consensus standards. An ASTM standard represents a common viewpoint of those parties concerned with its provisions, namely, producers, users, and general interest groups. It is intended to aid industry, government agencies, and the general public.

This proposed action will have every little impact on the manufacturers of strand. It would not affect the current designs or manufacturing techniques of strand. Such action would also be the most effective method of assuring current state of the art technology for strand to benefit REA telephone borrowers.

DATE: Public comments must be received by REA no later than July 28, 1986.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8663. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone standards and Specifications, by incorporating by reference revised REA Bulletin 345-47 (previous issue dated April 1, 1966), REA Specification for Seven Wire Aluminum-Clad Steel Strand. REA Will request approval for Incorporation by Reference from the Director of the Federal Register. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.*, (1976)), and therefore, does not require an environmental impact statement or an environmental assessment. This regulation contains no information or record keeping requirement which

requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of the document are available upon request from the address indicated above. Interested persons are invited to submit comments on this action. Written comments must be sent to the address stated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Copies of ASTM B415–69 will be available for a normal fee from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures and requirements for administering its loan and loan guarantee programs and the security instruments which provide and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to revise Bulletin 345–47, the REA Specification for Seven Wire Aluminum-Clad Steel Strand by adopting, with minor modification by REA, the American Society for Testing and Materials standard for seven wire aluminum-clad steel strand, ASTM B415–69, to replace REA's Specification PE–49 for the same product. The PE–49 designation is an arbitrary set of letters and numbers assigned by REA to identify telephone materials and equipment specifications. PE–49 would be withdrawn with this action.

It is REA policy to use the standards, rules and regulations of such engineering and standard groups as ASTM, the American National Standards Institute (ANSI), and the various national engineering societies, and such references as the National Electrical Safety Codes (NESC), and the National Electrical Code (NEC), to the greatest extent practical as determined by REA. REA is also guided by OMB Circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards in its activities. When there are no national standards, or where REA determines that existing national standards are not satisfactory for REA purposes, REA prepares the standards for materials and equipment as necessary.

REA has determined that the ASTM Standard for aluminum-clad steel strand, with a minor modification, is satisfactory for REA purposes. The modification is an additional marking requirement that all coils and reels of strand manufactured under this standard be marked with a stripe of deep red colored paint about 3 inches wide and 6 inches long. This marking would be applied to the exposed convolutions of strand in the eye of coils and located near the midpoint on the outside layer of strand on reels.

This proposed action would have very little impact on the manufacturers of strand since it would require no changes in the current designs or manufacturing techniques of strand. The REA telephone borrowers will benefit from assurance of current state of the art technology for strand.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

PART 1772—[AMENDED]

In view of the above, REA is proposing to amend 7 CFR Part 1772 by incorporating by reference revised REA Bulletin 345–47.

1. The authority cited for Part 1772 is revised to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1772.97 would be amended by adding the entry 345–47 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345–47...REA Specification for Seven Wire Aluminum-Clad Steel Strand.

* * * * *

Dated: May 21, 1986.

Harold V. Hunter,

Administrator.

[FR Doc. 86–11926 Filed 5–27–86; 8:45 am]

BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule: correction.

SUMMARY: The Farmers Home Administration (FmHA's) corrects a proposed rule published April 22, 1986 (51 FR 15010). In the revision to FmHA's regulation regarding section 502 rural housing loans (Subpart A of Part 1944), the word "associate" should read "associated" in the introductory text of § 1944.10(a)(2), the word "excession" should read "excess of" in § 1944.10(a)(2)(ii), and the word "will" which was inadvertently omitted from the revision should be inserted between the phrases "and each" and "be considered" in the revision of § 1944.10(c). Additionally, the wording between "the Bureau of the Census" and "and the following" is deleted and replaced by "any special population census conducted by the Bureau of the Census" in the revision of § 1944.10(d). The intent of this action is to correct errors and to restore the language that had been originally selected for this proposed rule.

FOR FURTHER INFORMATION CONTACT: Frank Colon, Chief, Home Ownership Branch, Room 5342, Telephone (202) 382–1482 or Nancy Monesson, Room 5334, Telephone (202) 382–1474, at the following address: Single Family Housing Processing Division, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The following correction are made in FR Doc. 86–8867 appearing on pages 15010 to 15012 in the issue of April 22, 1986.

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. The introductory text of paragraph (a)(2), paragraph (a)(2)(ii), paragraph (c) and the introductory text of paragraph

(d) of § 1944.19 are correctly revised to read as follows:

§ 1944.19 Rural area designation.

(a) * * *

(2) Any town, village, city, or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

* * * * *

(ii) Has a population is excess of 10,000 but not in in excess of 20,000, and

* * * * *

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each will be considered seperately if they are not otherwise associated with each other, and their densely populated areas are not contiguous, as determined after consideration of paragraphs (a) and (b) of this section.

(d) Population count in any area will be taken from the decennial U.S. Census of Population, national population updates published by the Bureau of the Census, any special population census conducted by the Bureau of the Census, and the following:

* * * * *

Dated: May 5, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-11851 Filed 5-27-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

10 CFR Part 810

Unclassified Activities in Foreign Atomic Energy Programs

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to revise its regulations 10 CFR Part 810 concerning unclassified assistance in foreign atomic energy activities. The primary aims of the proposed revision are to clarify, simplify, and reduce uncertainties about which activities are generally authorized and which require specific authorization. The present regulations would be substantially altered in language and structure but much of the substantive content is retained. In regard to general authorization, the proposed regulations first describe activities generally authorized for all countries and then activities generally authorized except for certain designated countries. The present list of countries to which certain general authorizations do not apply would be reduced by eliminating a number of non-nuclear-weapon states which have become parties to the Treaty on the Non-Proliferation of Nuclear Weapon (*NPT*) since the last revision of February 4, 1983 and certain general authorizations would be withdrawn for a number of countries which have been added to the list for foreign policy reasons. Another proposed change expands the general authorization for helping to prevent or correct a radiological emergency, which currently is limited to a radiological emergency in an operating nuclear power plant. Another proposed change narrows the general authorization for participating in international meetings which would proscribe participation that assists in production reactors or the four sensitive areas of enrichment, reprocessing, plutonium fuel fabrication, and heavy water production. Other significant new features include a proposed definition for "Public information," proposed reporting requirements on specifically authorized activities, and notice that DOE may make public a decision granting an authorization unless the applicant shows that disclosure will cause substantial harm to its competitive position. DOE is soliciting public comments on the proposed revision within 45 days. Following consideration of submitted views, DOE intends to publish a revised Part 810 Final Rule as promptly as possible.

DATES: Comments are requested and must be received no later than July 14, 1986.

Comments on information collections must be submitted on or before June 9, 1986.

ADDRESSES: Written comments (six copies when possible) should be sent to: Mr. A. Bryan Siebert, Director, Office of International Security Affairs, DP-33, U.S. Department of Energy, Washington, DC 20585: telephone (202) 252-2100.

Comments concerning information collections should be submitted to the person listed below: Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, DC 20530, Telephone: (202) 395-7313.

FOR FURTHER INFORMATION CONTACT:

Mr. John M. Rooney, Chief, Operations Branch, Office of International Security Affairs, DP-332.1, U.S. Department of Energy, Telephone (202) 252-2129

Mr. Robert Newton, Acting Assistant General Counsel, Office of the General Counsel, GC-31, U.S. Department of Energy, Telephone (202) 252-6975

For information collections in the proposed rule, contact: Mr. Howard H. Raiken, Director, Management Systems Analysis Division (MA-213), U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 252-0363.

SUPPLEMENTARY INFORMATION:

1. Background

10 CFR Part 810 implements section 57b(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2077), as amended by section 305 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C. 2155) and section 309 of the NNPA (42 U.S.C. 2157). These sections require that U.S. persons who engage directly or indirectly in production of special nuclear material outside the United States be authorized to do so by the Secretary of Energy. The Secretary has issued general authorizations for certain activities, but other activities require specific authorization. All requests to the Secretary for specific authorization to engage directly or indirectly in the production of special nuclear material outside the United States are handled in accordance with the procedures required by Section 302 of the NNPA and agreed to by the Departments of Energy, State, Commerce and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission. These implementing procedures were published in the Federal Register May 16, 1994, under the title "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (49 FR 20780).

2. Regulatory Changes

The major proposed changes to Part 810 are summarized below:

A. Proposed § 810.2 Scope. Examples of persons, locations, and activities to which the regulation apply are explained in greater detail.

B. Proposed § 810.3 Definitions. DOE proposes to delete the definitions for "Commission," "Department," "Nuclear material," "Retransfer," and "Secretary." Proposed definitions are added for "General authorization," "Public information," "Production reactor," "Special nuclear material," and "Specific authorization." Minor and nonsubstantive changes in wording are proposed in the definitions of "Act," "Classified information," "Nuclear reactor," "Person," "Sensitive nuclear technology," and "Source material."

C. Proposed § 810.5 Interpretations. DOE proposes to recodify the current procedure which allows members of the public to request an opinion from the Department by transferring the

procedure from § 810.11 [Additional information] to this proposed section.

D. The present regulations combine both generally authorized and specifically authorized activities in one section. The revision separates them into two different sections: Proposed § 810.7 concerns "Generally authorized activities" and proposed § 810.8 treats "Activities requiring specific authorization."

In proposed § 810.7, the general authorization to assist in nuclear power plant emergencies is expanded to cover any current or imminent radiological emergency posing a significant danger to public health or safety, provided the Department of Energy is notified in advance. The general authorization for participating in exchange programs approved by the Department of State is conditioned to require consultation with the Department of Energy. The general authorization for participation in international meetings is narrowed to participation in a manner that does not provide assistance in production reactors, enrichment, reprocessing, fabrication of nuclear fuel containing plutonium, or production of heavy water. The list of countries for which certain general authorizations do not apply (contained in the new § 810.8) is reduced by eliminating a number of nonnuclear-weapon states now party to the NPT. Participation approved by a U.S. Government agency in IAEA programs, and activities by IAEA employees whose employment was approved by the U.S. Government are explicitly stated to be generally authorized.

E. Proposed § 810.8 Activities requiring specific authorization. This section requires specific authorization for engaging directly or indirectly in the production of special nuclear material for the listed countries. For unlisted countries, specific authorization is required only for certain kinds of activities.

F. Proposed § 810.9 Restrictions on general and specific authorizations. A provision is added barring assistance when a person knows or has reason to know that the activity is intended to assist in a nuclear explosives program.

G. Proposed § 810.10 Grant of specific authorization. This section provides notice that a decision granting specific authorization may be publicly disclosed unless the recipient shows that disclosure will cause substantial harm to its competitive position.

H. Proposed § 810.12 Information required in an application for specific authorization. The applicant is now required to designate any "proprietary information" in an application.

I. Proposed § 810.13 Reports. Reporting requirements are added for some activities and eliminated for others. Reports will be required on all specifically authorized activities. Instead of listing generally authorized activities which require reports and those which do not, the revision lists only those which do.

3. Statutory Requirements

Pursuant to section 57b. of the Atomic Energy Act as amended by the NNPA, with the concurrence of the Department of State and after consultations with the Departments of Commerce and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, the Secretary of Energy has determined that to authorize this proposed revision of 10 CFR Part 810 will not be inimical to the interest of the United States.

4. Savings Clause

Except for actions taken by DOE pursuant to proposed § 810.11, this proposed revision shall not affect specific authorizations granted under the present regulations or generally authorized activities under the present regulations for which the contracts, purchase orders, or licensing arrangements are already in effect on the date of publication of this proposed rule. However, persons engaging in activities generally authorized under the present regulations but requiring specific authorization when the proposed revision takes effect are required to notify DOE.

5. Rulemaking Requirements

Section 501(a)(1) of the DOE Organization Act (Pub. L. 95–91) provides that the provisions of subchapter II of chapter 5 of title 5, United States Code (Administrative Procedure Act, "APA") shall apply in accordance with their terms to any rule or regulation issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary of Energy. Section 553(a)(1) of the APA provides an exemption to the normal notice and comment procedures or rules involving a foreign affairs function of the United States.

Because Part 810 deals with nuclear-related exports and activities that assist in the production of special nuclear material abroad, this revision involves the foreign affairs functions of the United States. Therefore, the exemption of section 553(a)(1) applies and notice and comment are not required. Nevertheless, DOE is providing interested persons 45 days in which to submit comments on this proposed rule.

Because notice and comment is not required for this rule, this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* as provided in section 601(2). This rule is also not subject to the requirements of Executive Order 12291 [46 FR 13193, February 19, 1981], because it relates to a foreign affairs function of the United States. See section 1(a)(2).

6. Paperwork Reduction Act

DOE plans to request the Office of Management and Budget (OMB) to review and approve the information collections in this proposed rule. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), DOE will consider comments on information collections in this proposed rule that affect the public.

7. Public Comment Procedures

The period for submission of comments will close on July 14, 1986. All interested persons who desire to submit written comments or suggestions for consideration should submit them to the address indicated in the "ADDRESSES" section of the preamble. Six copies should be submitted.

Any information or data submitted considered to be confidential must be so identified in writing. DOE reserves the right to determine the confidential status of such information or data and to treat it according to the determination.

All comments received, except those determined to be confidential, will be available for public inspection in the DOE Reading Room, Room 1E–190, James Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 810 of Title 10 of the Code of Federal Regulations is proposed to be revised as set forth below.

Issued at Washington, DC May 16, 1986.

D. Ofte,

Acting, Assistant Secretary for Defense Programs.

It is proposed to revise 10 CFR Part 810 to read as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

Sec.
810.1 Purpose.
810.2 Scope.
810.3 Definitions.
810.4 Communications.
810.5 Interpretations.
810.6 Authorization requirement.
810.7 Generally authorized activities.
810.8 Activities requiring specific authorization.
810.9 Restrictions on general and specific authorization.
810.10 Grant of specific authorization.
810.11 Revocation, suspension or modification of authorization.
810.12 Information required in an application for specific authorization.
810.13 Reports.
810.14 Additional information.
810.15 Violations.
810.16 Effective date.

Authority: Sections 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, 88 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273); Sec. 104, of the Energy Reorganization Act of 1974, Pub. L. 93–438; Sec. 301, Department of Energy Organization Act, Pub. L. 95–91 (41 U.S.C. 7101).

§ 810.1 Purpose.

These regulations implement section 57b of the Atomic Energy Act. Their purpose is to:

(a) Indicate activities which have been generally authorized by the Secretary of Energy and thus require no further authorization;

(b) Indicate activities which require specific authorization by the Secretary and explain how to request authorization; and

(c) Explain reporting requirements for various activities.

§ 810.2 Scope.

10 CFR Part 810 applies to all persons subject to the jurisdiction of the United States who engage in activities that may reasonably be expected to assist directly or indirectly in the production of special nuclear material outside the United States; its scope includes assistance provided either in the United States or abroad under the direction, supervision, responsibility or control of such persons (licensees, contractors or subsidiaries, for example). The scope of Part 810 includes, but is not limited to, assistance for nuclear reactors and other nuclear fuel cycle facilities for the following: Fluoride or nitrate conversion; isotope separation (enrichment); the chemical, physical or metallurgical processing, fabricating, or alloying of special nuclear material; production of heavy water, zirconium (hafnium-free or low-hafnium), nuclear-grade graphite, or reactor-grade beryllium; production of reactor-grade uranium dioxide from yellowcake; and certain uranium milling activities.

§ 810.3 Definitions.

As used in this part:

"Agreement for cooperation" means an agreement with another nation or group nations concluded under Section 123 of the Atomic Energy Act.

"Atomic Energy Act" means the Atomic Energy Act of 1954, as amended.

"Classified information" means National Security Information classified under Executive Order 12356 or any superseding order, or Restricted Data classified under the Atomic Energy Act.

"General authorization" means an authorization granted by the Secretary of Energy under section 57b(2) of the Atomic Energy Act to provide certain assistance to foreign atomic energy activites and which is effective without a specific request to the Secretary or the issuance of an authorization to a particular person.

"IAEA" means the International Atomic Energy Agency.

"NNPA" means the Nuclear Non-Proliferation Act of 1978.

"NPT" means the Treaty on the Non-Proliferation of Nuclear Weapons.

"Nuclear reactor" means an apparatus, other than nuclear explosive device, designed or used to sustain nuclear fission in self-supporting chain reaction.

"Person means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Department of Energy, state or political entity within a state; and (2) any authorized representative of the foregoing.

"Production reactor" means a nuclear reactor specially designed or used to produce special nuclear material through the irradiation of source material or special nuclear material.

"Public information" means information available to any U.S. person in such places as public libraries, public reading rooms, public document rooms, public archives, or public data banks, or information generally available in university courses, before it is transmitted to a foreign recipient. It is information which is available without regard to its intrinsic value at a cost no greater than its approximate publication and dissemintion cost. It includes information contained in an application filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184 or which has been made available under 5 U.S.C. 552, the Freedom of Information Act, or which has been made available internationally without restriction on its further dissemination. Public information does not include any embellishment, enhancement, explanation or interpretation of such information, or information subject to sections 147 and 148 of the Atomic Energy Act.

"Restricted Data" means all data concerning: (1) Design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

"Sensitive nuclear technology" means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not public information and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility, or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to Chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services.

"Source Material" means: (1) Uranium or thorium, other than special nuclear material or (2) ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

"Special nuclear material" means: (1) Plutonium, (2) uranium–233, or (3) uranium enriched above 0.711 percent by weight in the isotope uranium-235.

"Specific authorization" means an authorization granted by the Secretary of Energy under section 57b(2) of the Atomic Energy Act to a person to provide specified assistance to a foreign atomic energy activity in response to an application filed under 10 CFR Part 810.

"United States", when used in a geographical sense, includes all territories and possessions of the United States.

§ 810.4 Communications.

All communications concerning these regulations should be addressed to:

U.S. Department of Energy, Washington, DC 20585
Attention: Director, Division of Politico-Military Security Affairs, DP–232, Office of International Security Affairs, Telephone: (202) 252–2112

Communications also may be delivered to the Department's headquarters at 1000 Independence Avenue, SW., Washington, DC All clearly marked proprietary information will be given the maximum protection allowed by law.

§ 810.6 Interpretations.

A person may request the advice of the Division of Politico-Military Security Affairs on whether a proposed activity is generally authorized under § 810.7 or requires specific authorization under § 810.8 and 810.9; however, unless authorized by the Secretary of Energy in writing, no interpretation of these regulations other than a written interpretation by the General Counsel is binding upon the Department.

§ 810.8 Authorization requirement.

Section 57b of the Atomic Energy Act provides that:

It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except: (1) As specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided*, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense.

§ 810.7 Generally authorized activities.

In accordance with section 57(b)(2) of the Atomic Energy Act, the Secretary of Energy has determined that the following activities are generally authorized, provided no sensitive nuclear technology is transferred:

(a) Furnishing public information is defined in Section 810.3;

(b) Furnishing information or assistance to prevent or correct a current or imminent radiological emergency posing a significant danger to public health and safety, provided the Department of Energy is notified in advance;

(c) Implementing the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States;

(d) Participation in exchange programs approved by the Department of State in consultation with the Department of Energy;

(e) Participation approved by a U.S. Government agency in IAEA programs and activities by IAEA employees whose employment was approved by the U.S. Government;

(f) Participation in international meetings sponsored by educational, scientific, technical or other institutions in a manner that does not provide assistance in the activities described in Section 810.8(b)(1) through (4); or

(g) Furnishing assistance that: (1) Does not involve any of the countries listed in section 810.8(a) and (2) does not involve production reactors, enrichment, reprocessing, fabrication of nuclear fuel containing plutonium, or production of heavy water, as described in section 810.8(b)(1) through (4).

§ 810.8 Activities requiring specific authorization.

Unless generally authorized by § 810.7, a person requires specific authorization by the Secretary of Energy before:

(a) Engaging directly or indirectly in the production of special nuclear material in any of the countries listed below:

Afghanistan	Laos
Albania	Latvia
Algeria	Libya
Andorra	Lithuania
Angola	Mauritania
Argentina	Monaco
Bahrain	Mongolian People's Democratic Republic
Brazil	Mozambique
Bulgaria	Nicaragua
Burma	Niger
Chile	Oman
China	Pakistan
China, People's Republic of	Poland
Comoros	Qatar
Cuba	Romania
Czechoslovakia	St. Christopher and Nevis
Djibouti	Saudi Arabia
Estonia	South Africa
German Democratic Republic (and East Berlin)	Soviet Union
Guyana	Syria
Hungary	Tanzania
India	United Arab Emirates
Iran	Vanuatu
Iraq	Vietnam
Israel	Yemen Arab Republic
Kampuchea	Yemen, People's Democratic Republic of
Korea, People's Democratic Republic of	Zambia
Kuwait	Zimbabwe

Countries may be removed from or added to this list by amendments published in the Federal Register;

(b) Engaging in or providing assistance in any of the following activities with respect to any foreign country.

(1) Designing production reactors or facilities for the separation of isotopes of source or special nuclear material, chemical processing of irradiated special nuclear material, the fabrication of nuclear fuel containing plutonium, or the production of heavy water;

(2) Constructing, fabricating, operating, or maintaining such reactors or facilities;

(3) Designing, constructing, fabricating, operating, or maintaining equipment or components especially designed, modified, or adapted for use in such reactors or facilities;

(4) Training in design, construction, fabrication, operation or maintenance of such reactors or facilities, equipment, or components; or

(5) Participating in an international meeting in a manner that assists in any of the activities listed in paragraphs (b)(1) through (b)(4) of this section.

§ 810.9 Restriction on general and specific authorization.

A general or specific authorization granted by the Secretary of Energy under these regulations:

(a) Is limited to activities involving only unclassified information and does not permit furnishing Restricted Data or other classified information;

(b) Does not relieve a person from complying with relevant laws or the regulations of other Government agencies applicable to exports;

(c) Does not authorize a person to engage in any activity when the person knows or has reason to know that the activity is intended to provide assistance in designing, developing, fabricating or testing a nuclear explosive device.

§ 810.10 Grant of specific authorization.

(a) Any person proposing to provide assistance for which Section 810.8 indicates specific authorization is required may apply for the authorization to the U.S. Department of Energy, Washington, DC 20585, Attention: Director, Division of Politico-Military Security Affairs, DP–332, Office of International Security Affairs.

(b) The Secretary of Energy will approve an application for specific authorization if he determines, with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense, that the activity will not be inimical to the interest of the United States. In making this determination, the Secretary will take into account:

(1) Whether the United States has an agreement for nuclear cooperation with the nation or group of nations involved;

(2) Whether the country involved is a party to the NPT, or a country for which the Treaty for the Prohibition of Nuclear

Weapons in Latin America (Treaty of Tlatelolco) is in force;

(3) Whether the country involved has entered into an agreement with the IAEA for the application of safeguards on all its peaceful nuclear activities;

(4) Whether the country involved, if it has not entered into such an agreement, has agreed to accept IAEA safeguards when applicable to the proposed activity;

(5) Other nonproliferation controls or conditions applicable to the proposed activity;

(6) The relative significance of the proposed activity;

(7) The availability of comparable assistance from other sources;

(8) Any other factors that may bear upon the political, economic, or security interests of the United States, including U.S. obligations under international agreements or treaties.

(c) If the proposed assistance involves the export of "Sensitive nuclear technology" as defined in Section 810.3, the requirements of section 127 and 128 of the Atomic Energy Act and of any applicable U.S. international commitments must also be met.

(d) Thirty days after the Secretary's grant of a specific authorization, a copy of the Secretary's determination may be provided to any person requesting it from the Department, unless the applicant submits information showing that public disclosure will cause substantial harm to its competitive position. This provision does not affect any other authority provided by law for the Department not to disclose information.

§ 810.11 Revocation, suspension, and modification of authorization.

The Secretary may revoke, suspend, or modify a general or specific authorization:

(a) For any material false statement in an application for specific authorization or in any additional information submitted in its support;

(b) For failing to provide a report or for any material false statement in a report submitted pursuant to § 810.13;

(c) If any authorized assistance is subsequently determined to be inimical to the interest of the United states or otherwise no longer meets the legal criteria for approval; or

(d) Pursuant to section 129 of the Atomic Energy Act.

§ 810.12 Information required in an application for specific authorization.

Each application shall contain:

(a) The name, address, and citizenship of the applicant, and complete disclosure of all real parties in interest; if the applicant is a corporation or other legal entity, where it is incorporated or organized, the location of its principal office, and the degree of any control or ownership by any foreign person or entity;

(b) A complete description of the proposed activity, including its approximate monetary value, the name and location of any facility or project involved, the name and address of the person or legal entity for which the activity is to be performed, and a detailed description of any specific project to which the activity relates;

(c) Any information the applicant may wish to provide concerning the factors listed in § 810.10 (b); and

(d) Designation of any information considered priorietary whose public disclosure would cause substantial harm to the competitive position of the applicant.

§ 810.13 Reports.

(a) Any person who has received a specific authorization shall within 30 days after beginning the authorized activity provide to the Department of Energy a report containing the following information:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person or entity for which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A copy of the Department of Energy's letter authorizing the activity.

(b) Any person, within 30 days after beginning any generally authorized activity under § 810.7(b) or (g), shall provide to the Department of Energy:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person or entity for which the activity is being performed; and

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion.

(c) All reports should be sent to:

U.S. Department of Energy, Washington, DC 20585

Attention: Director, Division of Politico-Military Security Affairs, DP-332, Office of International Security Affairs

§ 810.14 Additional information.

The Department of Energy may at any time require a person engaging in any generally or specifically authorized activity to submit additional information.

§ 810.15 Violations.

(a) The Atomic Energy Act provides that:

(1) Permanent or temporary injunctions or restraining orders may be granted to prevent any person from violating any provision of the Atomic Energy Act or its implementing regulations.

(2) Any person convicted of violating or conspiring or attempting to violate any provision of section 57 of the Atomic Energy Act may be fined up to $10,000 or imprisoned up to 10 years, or both. If the offense is committed with intent to injure the United States or to aid any foreign nation, the penalty could be up to life imprisonment and a $20,000 fine.

(b) Title 18 of the United States Code, section 1001, provides that persons convicted or willfully falsifying, concealing, or covering up a material fact or making false, fictitious or fradulent statements or representations may be fined up to $10,000 or imprisoned up to five years, or both.

§ 810.16 Effective date.

These regulations are effective upon publication as final rule, 1986. Except for any action taken by DOE pursuant to § 810.11, this revision shall not affect: (a) The validity or terms of any specific authorization granted under the regulations previously in effect, or (b) generally authorized activities for which contracts, orders or licensing arrangements were in place prior to [date of publication as final rule].

[FR Doc. 86-11666 Filed 5-27-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3022-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to approve a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision, if finally approved, would provide an extended compliance schedule for American Can Corporation's (American Can) Hoopeston facility which is located in Hoopeston, Illinois. This SIP revision would allow American Can additional time to reformulate the coatings used in

manufacturing cans. This action is taken in response to a May 6, 1985, request from the State of Illinois.

DATES: Comments on this revision and on the proposed USEPA action must be received by June 27, 1986.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible).

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan (312) 886–6031.

SUPPLEMENTARY INFORMATION: On May 6, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for American Can's Hoopeston facility located in Hoopeston, Illinois. This SIP revision is in the form of a January 24, 1985, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 84–106. It grants American Can a compliance date extension for VOC control requirements from October 1, 1984, until December 31, 1987, and provides a legally enforceable compliance program. The variance is intended to provide American Can with additional time to comply through development of low solvent technology. However, if American Can cannot develop such technology by the extended compliance date, American Can must install add on control technology.

Under the existing federally approved SIP, each of American Can's side seam spray coating operation is subject to a limit of 5.5 pounds of VOC per gallon (lbs of VOC/gal), the emission limitation contained in Rule 205(n)(1))B)(v) of Chapter 2: Air Pollution, of the Illinois Pollution Control Board Rules and Regulations. In addition, each of American Can's end-sealing compound operations is subject to the 3.7 lbs of VOC/gal emission limitation contained in IPCB Rule 205 (n)(1)(B)(iv). Final compliance with these emission limitations was required by December 31, 1982. The proposed SIP revision would extend the date for final compliance by American Can to December 31, 1987.

USEPA's policy on approving compliance date extensions for controlling VOC emissions from certain can manufacturing processes was published in the March 10, 1982, Federal Register (47 FR 10293). The policy states that USEPA will approve compliance date extensions for control of VOC emissions from can coating operations in those cases where the extension will facilitate the expeditious conversion to low solvent technology. These extensions may be granted for a period up to December 31, 1985, where an expeditious, legally enforceable compliance program has been developed. In addition, an approvable compliance date extension must be consistent with the reasonable further progress (RFP) requirements of the Clean Air Act and must not prevent the area from attaining the ozone national ambient air quality standard by the area's attainment date.

USEPA has not issued subsequent general guidance allowing extensions past 1985 nor has the Agency indicated that (1) 3.7 lbs of VOC/gal no longer constitutes reasonably available control technology (RACT) for high fat resistant end sealing compounds or that (2) 5.5 lbs of VOC/gal no longer constitutes RACT for side sealing operations.

Although the present VOC emissions from American Can's side sealing and end-sealing compound operation do not indicate a RACT level of control, USEPA is approving this proposed SIP revision extended compliance for the following reasons: (1) American Can is located in Vermillion County which has always been designated as an attainment area for the pollutant ozone, (2) this proposed SIP revision does not include a permanent relaxation or a compliance date extension past 1987 and (3) approval of this proposed SIP revision will not produce any increase in emissions and therefore will not interfere with the maintenance of the ozone NAAQS. Any limitations imposed by USEPA policy with regard to compliance date extensions is directed toward those areas not having attained the NAAQS and are not applicable to this revision because Vermillion County is now and has always been attainment for Ozone. With this approval, the waiver from the requirement of one year of preconstruction ozone monitoring required by the Prevention of Significant Deterioration (PSD) regulations is terminated for Vermillion County.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before June 27, 1986, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: December 20, 1985.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 86–11871 Filed 5–27–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[A–3–FRL–3022–5]

Air Quality Implementation Plans; Delayed Compliance Orders; Proposed Approval of an Administrative Order Issued By the Pennsylvania Department of Environmental Resources

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA is proposing to approve an Administrative Order, as a Delayed Compliance Order (Order), issued by the Pennsylvania Department of Environmental Resources to Reading Body Works, Inc. The Order requires the company to bring air emissions from its Reading Body Works, Inc., facility located in Reading, Berks County, Pennsylvania, into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Compliance shall be achieved by April 21, 1986 utilizing low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will

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constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the enforcement provisions of section 113 of the Act or citizen suit provisions, under section 304 of the Act, for violations of the SIP regulations covered by the Order. The purpose of this Notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before June 27, 1986.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal business hours.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597-6553.

SUPPLEMENTARY INFORMATION: On February 18, 1986, the Pennsylvania Department of Environmental Resources (PADER) entered into a Delayed Compliance Order (DCO) with the Reading Body Works, Inc. The Order is now subject to public comment and other State procedural requirements before it becomes a final State action. Under the EPA parallel processing procedures for public comment on this Order, EPA will work closely with the PADER as it finalizes this Order through the State process. EPA, Region III will consult with all other appropriate EPA offices as the Order is being developed and during the State and Federal rulemaking process to ensure that all issues are identified before final adoption by the State. If the PADER or EPA obtain no information that would require significant changes to the Order, it will be finally adopted by the PADER and submitted to EPA for final approval. Only after Pennsylvania's submission of the final Order would EPA take final action approving the Order. If significant changes are made to the Order during the State rulemaking proceeding, EPA will propose appropriate action on the resulting final Order.

Reading Body Works, Inc., operates a miscellaneous metal parts painting facility in Reading, Berks County, Pennsylvania. The Order under consideration addresses emissions from the surface coating processes, which are subject to § 129.52 Table 1, Nos. 10(g) and 10(e) of Title 25 of the Pennsylvania Code regulating the Reading Body Works Inc., to reduce the emissions into the outdoor atmosphere of Volatile Organic Compounds (VOC) from the Reading Body Works, Inc., miscellaneous painting operations to 3.0 lbs. per gallon (minus water) for the coatings which are baked dry and 3.5 lbs per gallon (minus water) for the coatings which are air dryed. The regulations limited the emissions of volatile organic compounds (VOC), and are part of the federally approved Pennsylvania State Implementation Plan for the control of ozone. The Order is to require final compliance with the regulation by April 21, 1988, through the use of low solvent technology (LST) and April 21, 1987, should LST be abandoned and add-on controls installed.

Because this Order be issued to a major source of VOC emissions and permit a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order and under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this section of the Act.

EPA's review indicates that the Reading Body Works, Inc., miscellaneous metal parts painting facility is a major source of VOC emissions. The facility is located in the Northeast Pennsylvania Upper Delaware Valley Interstate (New Jersey-Pennsylvania) Air Quality Control Region, essentially a nonattainment area for the National Ambient Air Quality Standard for ozone excluding the attainment counties of Tioga, Bradford and Sullivan. The facility, as presently constructed, has been unable to comply with regulations limiting emissions of VOC's codified at 129.52 Table 1, Nos. 10(g) and 10(e), of Title 25 of the Pennsylvania Code part of the federally approved State Implementation Plan, because low solvent coatings are still being developed.

Through a public notice, dated January 8, 1986, the PADER has provided an opportunity for public comment and hearing on the Order. No public comments or request for public hearing were received. However, the issuance of the Order by PADER is an appealable action under the State Air Pollution Control Act. The appeal period extends for 30 days following the date of publication of the Notice of Action in the *Pennsylvania Bulletin*.

The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting requirements, and provides for interim emission reduction requirements as required by section 113(d)(5) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7)(A) of the Clean Air Act. The first increment of progress, which requires Reading Body Works, Inc., to submit to PADER's Norristown Regional Office two copies of an application for Plan approval for the electrocathodic painting system ("EPD") has been completed. The 1984 estimated VOC emission of 61.0 tons/year (T/Y) will be reduced to 38.1 T/Y by April 21, 1988 if low solvent coatings are chosen, but in any event no later than April 21, 1987 should add-on controls be installed.

The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP. This interim system provides substantial emission reduction in a manner which permits the Company to move toward the use of either low solvent coatings or facility alterations to install add-on controls.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). The order notifies Reading Body Works, Inc., of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420 as required by section 113(d)(1)(E) of the Act.

If the Order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2)(B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order.

BEST COPY AVAILABLE

After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 55.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

(Authority: 42 U.S.C. 7413, 7601)

Dated: May 15, 1986.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 86-11872 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 64a

Obligated Service for Mental Health Traineeships

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend regulations implementing the provisions of section 303 of the Public Health Service (PHS) Act (42 U.S.C. 242a), as amended by section 803 of the Mental Health Systems Act, regarding the service payback obligations of individuals who receive clinical traineeships in psychology, psychiatry, social work or nursing (that are not of limited duration or experimental nature). The proposed rules would amend Part 64a of Title 42 of the Code of Federal Regulations to establish a uniform rate of interest for all individuals who receive clinical traineeships, clarify the fact that funds owed to the Government become a debt when the trainee fails to complete the obligation, require that training institutions conduct entrance and exit interviews with trainees to inform them of the seriousness of their service obligations, and provide guidelines for hardship deferrals.

DATE: Comments must be received on or before July 28, 1986.

ADDRESS: Submit written comments to: Joan W. Jenkins, Ph. D., Office of Policy Analysis and Coordination, National Institute of Mental Health, Room 17C-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments will be available for public inspection at this location between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diana Trunnel, Grants Management Specialist, National Institute of Mental Health, Room 7C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-4524.

SUPPLEMENTARY INFORMATION: The Public Health Service proposes to amend § 64a.105(g) to provide that interest accrues from the date on which the trainee fails to undertake or complete the service obligation, and continues to accrue until the total amount due is repaid. It is also proposed to require trainees who do not fulfill their obligations to pay interest on outstanding indebtedness at a rate certified by the Secretary of the Treasury for use by the National Research Service Award (NRSA) program.

Many of the conditions established under the current regulations follow those which govern obligated service for recipients of NRSA research training support under section 472 of the Public Health Service Act, 42 U.S.C. 289*l*-1, and the NRSA regulations, 42 CFR Part 66. The proposed amendments would continue to parallel the conditions imposed under the NRSA program where it is legally permissible and deemed appropriate as a matter of policy.

Interest Rates

The existing regulation creates confusion over which interest rate applies to an outstanding debt. It provides that the maximum prevailing (monthly) legal rate in effect at the time and place of payment of the traineeship award would be applied to the debt. This conceivably could result in 50 different rates being in effect throughout the country, with disputes ensuing over what the maximum rate is within each jurisdiction.

A number of established interest rates were examined in an attempt to determine which one could fairly be characterized as approaching a "maximum legal rate," would be fair and equitable to trainees, and could be easily identified by the public. The rate certified by the Secretary of the Treasury for use with the National Research Service Awards (NRSA) was selected because it represents the highest rate assessed by the Government that appears appropriate for this type of program. This rate is established quarterly by the Federal Reserve Board after reviewing the private consumer lending rates of several major banks and is certified by the Treasury Department as the rate for use by NRSA. The rate is published in a Federal Reserve Board release entitled "Interest Rates on Selected Consumer Installment Loans at Reporting Commercial Banks," and can be obtained by the public by contacting the individual listed above under "further information." The fact that the NRSA program is similar in many respects to this program also influenced our decision. Since this rate represents the cost of funds from private commercial concerns, and is used by at least one other similar Federal program, this Department believes it would be equitable to have defaulting recipients pay their debts at this rate.

Repayment Terms

Individuals who have received clinical traineeships under the existing regulations are allowed up to 2 years after termination of their traineeship to begin their obligated service. If an individual does not perform obligated service, he or she has an additional 3 years to make monetary payback. At the end of the 3-year period, any unpaid amount becomes a debt with interest accruing. PHS believes that a 5-year interest-free period is too long and proposes to modify this provision.

Under the proposed regulations, the trainee will be charged interest from the date on which the trainee fails to meet the service obligation, thus eliminating the 3-year interest-free period. However, the proposed regulations will continue the policy of not charging interest during the 2-year period during which trainees may begin their obligated service so long as the trainee intends to perform service. Thus, a trainee who is unable to find suitable service and decides at the end of the 2-year period to make monetary payback will not be penalized by the charging of interest during that period.

In those instances where a trainee has incurred other conflicting service obligations (National Health Service Corps or NRSA), the current regulations (42 CFR 64a.105(f)) provide that the starting date for the metal health traineeship may be deferred for a corresponding length of time. This provision will remain unchanged by the proposed amendments.

Interviews

The existing regulations require that training institution give written notice of the service payback and recovery provisions to each individual at the time the individual becomes a candidate for the traineeship. Before awarding the traineeship, the institution is required to obtain the individual's written assurance that the service obligation will be satisfied. The PHS has found

however, that training institutions are failing to follow these regulations and that, in some cases, trainees are not required to sign payback agreements until after their appointment.

These amended regulations require that training institutions conduct entrance and exit interviews for recipients and document those interviews on existing forms: the form containing the individual's written assurance for the entrance interview, and the termination form for the exit interview. During the entrance interview, an individual is to be thoroughly informed of the service obligation and the consequence of failing to fulfill this obligation before the agreement is signed and the funds received. These amendments also require that an exit interview be conducted where the recipient is reminded of the service obligation, warned of the consequences of failing to fulfill it, and told that the Secretary has been notified of the termination of the traineeship.

Delay

The existing regulations authorize the Secretary to grant delays in performing the service obligation because of individual hardship, but do not establish any criteria for determining the existence of hardship. The amended regulations utilize the standards used for National Research Service Awards (42 CFR 66.111) as guidance for making this determination.

Economic Impact of Regulatory Requirements

Because the proposed rule would not impose a significant burden on training institutions, it is anticipated that compliance with the rule would not impose any new major expenditures on their part. The proposed change in the method of calculating the interest rate would affect solely individual trainees and, in the aggregate, is not expected to be substantial although it may be significant in individual cases. Therefore, these regulations will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis under the Regulatory Flexibilty Act of 1980 is not required. Further, since these regulations do not meet any criteria for a major regulation under Executive Order 12291, a Regulatory Impact Analysis is not required.

Paperwork Reduction Act

Sections 64a.104 and 64a.105 of this proposed rule contain information collection requirements. Three forms necessary for the information collection have been approved for use through June 30, 1988 (OMB–0930–0074). The additional burden imposed by this NPRM is that of documenting entrance and exit interviews with individual trainees. As required by the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these additional requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears under "futher information," and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for HHS.

List of Subjects in 42 CFR Part 64a

Health professions, Manpower training programs, Mental health programs, Clinical traineeships, Obligated service.

Dated: March 18, 1986.

Donald Ian Macdonald,

Acting Assistant Secretary for Health.

Approved: April 24, 1986.

Otis R. Bowen,

Secretary.

PART 64a—[AMENDED]

Therefore, it is proposed that Subchapter E of Chapter I of Title 42 of the Code of Federal Regulations be amended in Part 64a to read as follows:

1. The authority citation for Part 64a continues to read as follows:

Authority: Section 803, Pub. L. 99–398, 94 Stat. 1607–1608 (42 U.S.C. 242a).

2. In § 64a.104, paragraphs (b) and (c) are revised to read as follows:

§ 64a.104 What requirements are imposed upon grantees?

* * * * *

(b) Before awarding a clinical traineeship, conduct an entrance interview with the individual in order to explain and emphasize the service obligation the individual is incurring, obtain the individual's written assurance that he or she will satisfy the requirements of § 64a.105, and document, in accordance with paragraph (d) of this section, the entrance interview on the form containing the individual's written assurance.

(c) At the time of termination of the clinical traineeship,

(1) Notify the Secretary in writing of the date on which the individual's traineeship is terminated;

(2) Conduct an exit interview with the individual to remind the trainee of the service obligation, to fully explain the consequences that will incur should the trainee fail to satisfy the obligation, and, to tell the individual that the Secretary has been notified of the date of termination of the traineeship; and

(3) Document, in accordance with paragraph (d) of this section, the exit interview on the form notifying the Secretary of the termination of the traineeship.

(d) Document the entrance and exit interviews with at least the following information: the date of the interview, the names of the participants involved in the interview, and a statement that the interview included an explanation to the individual of the service payback requirement and the consequences of failing to fulfill the service payback requirement.

(Approved by the Office of Management and Budget under Control No. 0930–0074.)

§ 64a.105 [Amended]

3. Section 64a.105(e)(1) is proposed to be amended to include a subparagraph (iii) which reads as follows:

(e) *Conditions for deferral or break in service, waiver, or cancellation.* (1)

* * *

(iii) In making determinations under § 64a.105(e)(1)(i)(C), the Secretary will take into consideration the following factors:

(A) The individual's present financial resources and obligations;

(B) The individual's estimated future financial resources and obligations;

(C) The reasons for the individual's failure to complete the requirements within the prescribed period, such as problems of a personal nature;

(D) The unavailability of employment opportunities appropriate to the individual's education and training; and

(E) Any other extenuating circumstances.

4. Section 64a.105(g) is proposed to be revised as follows:

* * * * *

(g) *Recovery for failure to perform obligated service.*

(1) If an individual fails to begin or complete the obligated service in accordance with the requirements of paragraphs (a) through (f) of this section, that individual is obligated to repay the United States an amount equal to three times the cost of the award (including stipends and other trainee allowances) plus interest on that amount calculated for the total period since the trainee failed to perform the obligated service at the rate set by the Secretary of the Treasury for National Research Service

Awards prevailing on the date on which the period of appointment begins, multiplied, in any case in which the service that was required has been performed in part, by the percentage which the length of service that was not performed is to the length of the service that was required to be performed. The amount will be determined under the following formula:

$$A = 3(\theta + m\theta)\frac{(t-s)}{(t)}$$

where

A = The amount the United States is entitled to recover;

θ = The cost of the clinical traineeship (including stipends and other trainee allowances);

m = The number of months since the trainee failed to perform obligated service;

3 = The National Research Service Award rate on the date which the period of appointment begins divided by twelve;

t = The total number of months of the service obligation;

s = The number of months that have been served.

(2) Unless the Secretary extends the repayment period as provided in paragraph (e) of this section, the individual shall pay to the United States the total amount which the United States is entitled to recover under paragraph (g)(1), immediately upon the date that the individual fails to begin or complete the period of obligated service (including failing to comply with the applicable terms and conditions of an extension or break in service granted the individual) or upon the date that the individual indicates his or her intention not to fulfill the service obligation as determined by the Secretary. The amount is considered a debt owed to the United States, with interest accruing monthly upon the total debt as provided under paragraph (g)(1).

(Approved by the Office of Management and Budget Under Control No. 0990-0074.)

[FR Doc. 86-11871 Filed 5-27-86; 8:45 am]

BILLING CODE 4160-17-M

Health Care Financing Administration

42 CFR Parts 431 and 433

[BPO-053-P]

Medicaid Program; Identification of Third Party Liability Resources for Medical Assistance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise regulations governing a Medicaid State agency's responsibility to take reasonable measures to determine the legal liability of third parties to pay for services under the plan. These proposed regulations would require that the agency at a minimum: (1) Obtain certain health insurance information for Medicaid applicants or recipients during the initial application and redetermination processes; (2) attempt to secure agreements to conduct certain types of data exchanges with specific State and Federal agencies, or in some cases alternate sources, to identify legally liable third parties; (3) conduct diagnosis and trauma code edits to identify third party resources; and (4) follow other specified procedures regarding frequency of conducting the above activities, follow up, safeguarding information obtained and exchanged, and reporting and reimbursement requirements.

The objectives of these requirements are to improve State agency performance in the identification of third party resources and to assure the timely incorporation of this resource information into the third party claims payment processing system.

DATES: To Be considered, comments must be received at an appropriate address as provided below by 5:00 p.m. on June 27, 1986.

ADDRESS: Address comments in writing to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-053-P, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BPO-053-P.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202-245-7890).

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503. Attention: Fay Iudicello.

FOR FURTHER INFORMATION CONTACT: Al Czeraki (301) 597-0463.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

A third party is any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan. Examples of liable third parties include commercial insurance companies through employment-related or privately purchased health insurance or through casualty coverage resulting from an accidental injury; payments received directly from an individual who has either voluntarily accepted or been assigned legal responsibility for the health care of one or more Medicaid recipients; fraternal groups; unions; or State Workers' Compensation commissions.

B. Statute-General

Section 1902(a)(25) of the Social Security Act (the Act), prior to the enactment of the Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99-272, April 8, 1986), required that State or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services furnished to Medicaid recipients. This section required the agency to seek reimbursement from a third party to the extent that the party is legally liable for Medicaid covered services "arising out of an injury, disease, or disability."

Section 1903(o) of the Act prohibits Federal matching of State Medicaid payments if a private insurer would have been liable to pay for the medical care, except that the insurance contract limits or excludes liability when the individual is eligible for Medicaid. Section 1903(d)(2) of the Act provides for consideration of the Federal share of any amounts already recovered by a State from a third party for medical assistance as an overpayment to the State, and for appropriate adjustment of the quarterly Medicaid payments made by the Federal government to the State.

C. Deficit Reduction Act (DEFRA) of 1984

The Deficit Reduction Act of 1984 (Pub. L. 98-369, July 18, 1984) made several changes to the statute that affect requirements as they relate to third party liability.

Section 2367 of DEFRA added a new section 1902(a)(45) to the Act to provide,

as a Medicaid State plan requirement, for mandatory assignment of rights to payments for medical support and other medical care owed to recipients in accordance with section 1912 of the Act. Section 2357 also amended section 1912 of the Act to require (rather than allow as an option) that the Medicaid plan provide that (1) as a condition of eligibility for medical assistance, individuals assign to the State their rights to any medical support or other payments for medical care and that they cooperate with the State in establishing paternity and in obtaining third party payments; and (2) States enter into cooperative agreements for the enforcement of rights to and collection of third party benefits. These agreements may be with State child support enforcement (title IV–D) agencies, any other appropriate agency of a State, and appropriate courts and law enforcement officials. In addition, section 2651 of DEFRA added a new section 1137 to the Act. This section, in part, requires State agencies that administer the Unemployment Compensation program, the Food Stamp program, the Aid to Families with Dependent Children (AFDC) program, the adult assistance programs (Titles I, X, XIV, and XVI (AABD) of the Act) and the Medicaid program to have in effect an income and eligibility verification system (IEVS) under which certain income and other relevant information would be exchanged and utilized among the above agencies for the purpose of verifying eligibility and benefit amounts under the programs administered by those agencies (section 1137(a)(2) of the Act). Section 2651 also provides that such information be targeted to uses most likely to identify and prevent erroneous eligibility determinations and incorrect payments, (section 1137(a)(4)(C) of the Act).

We interpret the language of section 1137 of the Act to mean that State Medicaid agencies must use relevant information available under that section to the extent it is useful, as determined by the Secretary in the indentification and pursuit of legally liable third party payers of medical expenses, since this affects the correct amount of payment made under Medicaid.

D. Consolidated Omnibus Reconciliation Act (COBRA) of 1985

Section 9503 of COBRA, in part, amended Section 1902(a)(25) of the Act by adding a new provision under section 1902(a)(25)(A)(i) to specify that the Medicaid State plan must provide for the collection of sufficient information to enable the State to pursue claims against third parties, with such information being collected at the time of any application or redetermination process with regard to eligibility for medical assistance.

Section 9503 of COBRA provided for certain other requirements with respect to third party liability. Some of those provisions are already contained in current regulations and others will be dealt with in future Federal Register publications.

E. Current Third Party Regulations

Regulations containing third party liability requirements are located at 42 CFR Part 433, Subpart D. For purposes of the provisions proposed in this document, the relevant regulations sections to be considered are §§ 433.138 through 43.140. Section 433.138 requires the State agency to take reasonable measures to determine the legal liability of third parties to pay for services covered under the State's Medicaid State plan. Section 433.139 (as amended recently under final regulations published on November 12, 1985 (50 FR 46652), sets forth provisions for payment of claims involving liable third parties. Before publication of these final regulations, States had the flexibility to use either of two methods for paying claims. Under the first method, cost avoidance, if the amount of third party liability is established, the agency pays only to the extent that payment allowed under the agency's payment schedule exceeds the amount of the third party liability. The claim is then returned to the provider with the information necessary for the provider to bill the third party. The second method, "pay and chase", permits the agency to pay the total amount allowed under the agency's payment schedule and then seek reimbursement on a post-payment basis (within 30 days after the end of the month in which payment is made) from liable third parties. Final regulation § 433.139 now requires State agencies to use only the cost avoidance method of payment and certain specified procedures when the agency has established the probable existence of third party liability at the time the claim is filed. These requirements apply unless a waiver is appropriately requested by the State and approved by HCFA.

Under section 433.140, one of the requirements for Federal financial participation in Medicaid payments is that the State agency has fulfilled the requirements of §§ 433.138 and 433.139.

F. Program Experience

States, under current regulations, have been given significant flexibility in the administration of the third party liability provisions. However, we believe that areas of potential savings with respect to third party liability resources have not been consistently pursued by States. For example, program experience indicates a lack of systematic efforts by States in identifying liable third party resources through the use of available data sources identified during initial application and redetermination processes, and in coordinating with other entities such as social service agencies and other compensation programs to obtain relevant third party information. There have also been problems with incorporating identified third party resource information into State third party data bases or recovery units for proper claims processing. In addition, program experience has shown that it is more cost effective for States to use the cost avoidance method of claims payment whenever possible and that failure to do so or failure to consistently seek recovery from known third party resources after claims payment, has resulted in a loss in potential program savings.

G. Recent Initiatives.

In an effort to improve the administration of the Medicaid program and implement the sections of DEFRA with respect to third party liability, we have undertaken several initiatives.

As a joint effort, HCFA and a State work group developed and published a guide composed of the more successful State agency TPL practices. State practices identified in the guide, *A Guide to Successful State Agency Practices—TPL in The Medicaid Program*, were selected based on the States' documentation of the cost effectiveness of implementation and ongoing operation as well as long range TPL savings and recoveries to the States. The guide was distributed to all State Medicaid agencies in March 1985 to be used as a management tool to assist States in upgrading and improving State Medicaid TPL programs. It also provides an indication to States of the costs and benefits some States have experienced in initiating some of these practices and we continue to encourage States to refer to this guide in considering any changes to their current TPL programs.

On February 28, 1986, we and the Departments of Labor and Agriculture published jointly in the Federal Register (51 FR 7178) a final rule implementing section 2651 of DEFRA. This rule requires that States develop IEVS meeting certain statutory and regulatory requirements for the purpose of verifying eligibility and correct payment amounts.

In addition, HCFA and the Social Security Administration (SSA), based on the success of an earlier pilot project, have entered into an agreement to make available to interested State Medicaid agencies a third party liability program. Under this program, SSA field offices will collect, for purposes of identifying legally liable third parties, certain health insurance information from SSI individuals who are also Medicaid eligible. A more detailed discussion of this project follows under section II.A.1.

Also, in connection with third party liability resource initiatives, the Office of Child Support Enforcement (OCSE) published a final rule on October 16, 1985 (50 FR 41867), which implements section 16 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378). This rule, in part, requires State IV-D agencies to obtain basic medical support information and provide this information to the State Medicaid agency. Also, if the custodial parent does not have satisfactory health insurance coverage, the IV-D agency must petition the court or administrative authority to include medical support in the form of health insurance in new or modified support orders and inform the State Medicaid agency of orders that include a medical support obligation. Finally, the IV-D agency must take steps to enforce health insurance coverage for dependent children which has been ordered by the court. These activities increase the use of available third party resources in the form of private health insurance, thus increasing medical cost savings to State and Federal government under the Medicaid program.

II. Major Provisions of Proposed Regulations

In an effort to further improve program efficiency and reduce Medicaid expenditures through increased third party liability savings and to implement certain portions of section 9503 of COBRA that relate to the identification of third parties, we are now proposing additional changes to the regulations located at Part 431, Subpart F and § 433.138. In developing these regulations we have relied on the statutory authority set out in I. B., C. and D. above, as well as program experience. We would expect State Medicaid agencies to carry out the provisions of this rule within existing information systems, making modifications only as necessary to meet the new requirements.

The regulations we are now proposing would provide that the State Medicaid agency take reasonable measures to determine the legal obligation of third parties to pay for services under the plan, at a minimum providing for the following:

A. Obtaining Health Insurance Information: Initial Application and Redetermination Processes

1. Collection by SSA

Under section 1634 of the Act, the Social Security Administration is authorized to enter into agreements with interested State Medicaid agencies to determine Medicaid eligibility for individuals who receive Supplemental Security Income (SSI) benefits under title XVI. Currently there are 32 Medicaid State agencies under such contractual agreements.

As mentioned earlier in section I.G. *Recent Initiatives*, based on the success of a previous pilot project, HCFA and SSA have entered into an agreement to make available to all section 1634 States, a program whereby SSA field offices will collect from SSI applicants or recipients certain health insurance information during the initial application and redetermination processes and will transmit that information to State Medicaid agencies.

States interested in this project, which became effective April 1, 1985, must execute an agreement with HCFA to participate. The effective date of an agreement would be no earlier than two months following the execution of the agreement. HCFA agreements with States will also incorporate by reference any modified section 1634 agreements entered into by States with SSA prior to February 1, 1985, with regard to the collection of health insurance information.

Currently 25 States and the District of Columbia have begun participation in the project. In order to implement section 1902(a)(25)(A)(i) of the Act as amended by COBRA, we are now proposing that all States having section 1634 agreements with SSA be required to participate in the joint SSA/HCFA third party program. Regulations located at § 433.138 would be amended by adding a paragraph (b)(2) to require States to enter into an agreement with HCFA (or prior to February 1, 1985, have executed a modified section 1634 agreement with SSA that is still in effect) to—

a. Provide for collection, from the SSI applicant or recipient during the initial and redetermination processes as described above, of health insurance information in the form and manner specified by the Secretary; and

b. Transmit the information to the Medicaid agency.

Instructions concerning the procedures to be followed by SSA with respect to this joint project are contained within the Program Operations Manual System, Part 05, Chapter 17, Subchapter 30—SSA Determinations of Medicaid Eligibility.

We are also proposing similar requirements for obtaining health insurance information in those instances in which eligibility is determined by the Medicaid agency or any other State agency.

2. Collection by State Agencies Other Than the Medicaid Agency

Under § 431.10(d) of current regulations, the State plan must provide for written agreements between the Medicaid agency and other State agencies that determine Medicaid eligibility; e.g., the State agency administering State supplemental payments under section 1616 of the Act or the State agency administering the AFDC program. The agreement must state the relationships and respective responsibilities of the agencies. In order to implement section 1902(a)(25)(A)(i) of the Act, with respect to State agencies (other than the Medicaid agency itself) that determine Medicaid eligibility in accordance with a written agreement, we are proposing under § 433.138(b)(3) that the Medicaid agency must modify its agreement to provide for the collection, during the initial application and each redetermination process for eligibility, of health insurance information. This information would then be forwarded to the Medicaid agency. The Medicaid agency would have flexibility in determining the type of information to be collected; however, the health insurance information must be in a form which is useful in identifying legally liable third party resources so that the Medicaid agency may process claims under the third party claims payment provisions specified in section 433.139 (b) through (f) as amended under the November 12, 1985 final rule. Some examples of appropriate health insurance information are: name of policy holder, his or her relationship to the claimant or recipient, relevant social security numbers (SSNs), name and address of insurance company, policy number, etc. Under section 1137 of the Act, States must require that each applicant and recipient of benefits furnish to the State their social security number(s) (SSNs) as a condition of eligibility. While States may, in connection with obtaining health insurance data, request the SSN of any person with legal responsibility (other than the applicant/recipient) for any member of the unit applying for or receiving benefits, they may not require that the applicant/recipient disclose

such numbers as a condition of eligibility. States requesting voluntary disclosure of SSNs must do so in compliance with section 7 of the Privacy Act, Pub. L. 93-579.

With respect to obtaining health insurance information, some applicants or recipients are not aware of potential health insurance coverage that may be available to them; therefore, in some cases it is not sufficient to simply ask during the initial application or redetermination processes if health insurance is available. Some examples of questions that have proven to be effective in identifying the potential existence of health insurance are—

- Is the Medicaid applicant or recipient or member of the family working or a member of a labor union?
- Is the Medicaid applicant or recipient or family member in the military?
- Is health insurance available through an absent parent?

3. Collection by State Medicaid Agency

If the State Medicaid agency determines Medicaid eligibility, we would require the agency itself to collect the health information described above during the initial application and each redetermination process. (§ 433.138(b)(1))

4. Followup Procedures

With respect to the health insurance information obtained by agencies, we would require that within 30 days the agency must follow up on such information (if appropriate) in order to identify legally liable third party resources and incorporate such information into the eligibility case file and into its third party data base and third party recovery unit so the agency can process claims under the third party liability payment procedures specified in § 433.139 (b) through (f). We would require the State to describe in their State plan the methods the agency would use to meet these requirements. In some cases followup may not be required since the applicant or recipient may supply complete identifying information during the eligibility determination or redetermination processes. (§ 435.138(a)(2))

B. Data Exchanges With State Wage Information Collection Agencies (SWICAs), the SSA Wage and Earnings Files and State Title IV-A Agencies

1. General

We are also proposing changes to § 433.138 which would require use of information obtained from certain data exchanges which each State is now required to have under the final IEVS regulations published in the Federal Register February 28, 1986. As discussed earlier, this final rule implements section 1137 of the Act by requiring Federally-funded State administered programs such as Medicaid, AFDC, food stamps, etc., to have in effect an income and eligibility verification system (IEVS) under which certain wage and other relevant information must be exchanged and utilized among those program agencies for purposes of verifying eligibility and benefit amounts under those programs.

Under § 435.948(a) (1) and (2) of the final Medicaid IEVS regulations, the Medicaid agency, when it determines Medicaid eligibility, is required to obtain and utilize information for those purposes from SWICAs during the application period and at least on a quarterly basis and from the SSA wage and earnings files for applicants during the application period and for the recipients for whom the information has not previously been requested. (A State title IV-A agency, the other agency responsible for administering the AFDC programs, is also required under IEVS regulations located at 45 CFR 205.55 to conduct similar data exchanges with respect to its AFDC population, a population automatically eligible for Medicaid services.)

As set forth in the IEVS final rule, a SWICA is the State agency administering the State unemployment compensation law; a separate agency administering a quarterly wage reporting system; or a State agency administering an acceptable alternative system. SWICAs that do not use reported wages for unemployment insurance benefit calculations or that is an alternative system approved by the Secretary of Labor are required (and other SWICAs are strongly encouraged) to maintain and exchange wage information that identifies the SSN, full name, wages earned, and an identifier of the employer (for example, name and address) (§ 435.4.). The SSA wage and earnings files are nationwide files of wages, including those paid by Federal government, earnings from self-employment and pension benefits.

Also, under § 435.948(a)(6)(i) of the IEVS regulations the Medicaid agency must request any additional income, resource, or eligibility information relevant to determinations concerning eligibility or correct amount of medical assistance payments available from certain State agencies, including the title IV-A agency.

We interpret the language contained in section 1137 to require the Medicaid agency when it determines Medicaid eligibility to utilize, through direct data exchanges, available SWICA and SSA wage and earnings files information to the extent it is useful, as determined by HCFA, and to request and utilize relevant information from title IV-A agencies in identifying legally liable third parties since it affects benefit amounts. Therefore, in conjunction with the requirements set forth under §§ 435.4 and 435.948 of the final IEVS regulations, we would incorporate into § 433.138 new paragraphs (c) and (d)(1) through (d)(3) containing the requirements described in preamble sections B.2. through B.5 following.

2. Social Security Numbers of Absent or Custodial Parents

The Agency would be required, under a new paragraph (c), to incorporate into the Medicaid eligibility case file the names and SSNs of absent or custodial parents of recipients to the extent available for the purpose of conducting data matches with SWICAs, the SSA wage and earnings file and the Workers' Compensation or Industrial Accident Commissions. The agency will have already obtained available names and SSNs of absent or custodial parents through the health insurance information gathering processes mentioned in paragraph II.A. of this preamble. These names and SSNs would also be available (under section 1137 of the Act and the recently published IEVS regulations located at 42 CFR 435.948(a)(6)) from the State agencies administering title IV-A and (under section 452(d) of the Act and the recently published OCSE regulations located at 45 CFR 306.50) from the State IV-D agencies that administer the Child Support Enforcement program.

We realize that there may be some duplication of information involving absent parents resulting from the requirements just mentioned due to the final rule discussed earlier published by OCSE on October 18, 1985. That rule requires State IV-D agencies to collect information if it is available or can be obtained on IV-D case for which an assignment is in effect under title IV-A or IV-E of the Act. If the IV-D case does not have an assignment in effect under Title IV-A or IV-E of the Act, the State IV-D agency is required to collect information if the custodial parent is a Medicaid applicant or recipient. However, the data exchange required by this proposed rule will yield additional benefits. The match will identify some employed absent parents that IV-D was unable to locate. It will also reveal some absent parents who have changed employers without the knowledge of IV-D. In addition, there will be some

instances where the Medicaid recipient or custodial parent has not filed application with IV–D but the absent parent is working and may have health insurance available. Further duplication would result from the data matches with SWICA and the SSA wage and earnings files since State wage information would also be contained in the SSA wage and earnings files. However, the SSA wage and earnings files would pick up those Medicaid recipients and absent parents who are Federal employees, self-employed or employed in another State which would not be picked up under the SWICA data exchange. We believe that the benefits of conducting these matches will outweigh the administrative burden of some duplication of effort.

3. Data Exchanges With SWICAs and SSA Wage and Earnings Files

The agency must (for purposes of identifying third parties) as part of the SWICA and SSA wage and earnings files data exchange requirements, use the information that identifies those Medicaid recipients that are employed and their employer(s) and, the agency must also (assuming that it has obtained the names and SSNs of absent or custodial parents of Medicaid recipients) obtain information that identifies those absent or custodial parents of recipients that are employed and their employer(s), unless the agency can demonstrate to HCFA that it has an alternate source of information that can be obtained as timely and is as complete and useful for identifying third parties as SWICA and SSA information. (§ 433.138(d) (1) and (2))

4. Data Exchanges With State Title IV–A Agencies

The Medicaid agency must, as required under the final IEVS regulations § 435.948(a)(6)(i), request from the State title IV–A agency income information obtained from the title IV–A agency SWICAs and SSA wage and earnings files data exchanges. As mentioned earlier, the IV–A agency, in accordance with a written agreement with the State Medicaid agency under § 431.10(d) of the regulations make Medicaid eligibility determinations. Under section 1137 of the Act, the IV–A agency is required to conduct data exchanges with SWICAs and the SSA wage and earnings files for their AFDC population which is also automatically eligible for Medicaid. By requesting the information obtained under these data exchanges, the Medicaid State agency will be able to identify those Medicaid recipients that are employed and their employer(s). (§ 433.138(d)(3))

5. Followup Procedures

With respect to the information obtained from the data exchanges with the SWICAs, the SSA wage and earnings files and title IV–A agencies, followup requirements are the same as discussed under section II.A.5 for obtaining health insurance information. (§ 433.138(g)(1))

6. Frequency of Exchanges

The frequency of the Medicaid agency's data exchanges with regard to SWICAs and SSA wage and earnings files have already been set under the final IEVS regulations. the frequency of title IV–A agency data exchanges with SWICAs and SSA wage and earnings files under the IEVS regulations are located at 45 CFR 205.56(a)(1) and (a)(3). With regard to the Medicaid agency obtaining information under § 435.948(a)(6)(i) from the State title IV–A agency, we would require that the information be obtained from the title IV–A agency on a timely basis that is consistent with the intervals specified in § 205.56(a)(1) and (a)(3).

In most cases, follow up would include contact with the identified employed individual's employer to obtain information regarding the availability of health insurance for the Medicaid recipient. We would expect that in the interest of efficiency, this information should be gathered when the case worker is following up with an employer to verify income and eligibility requirements under IEVS regulations to avoid two employer contacts for the same individual. If the eligibility case file already contains information regarding health insurance available through the individual's employer(s) it is not necessary to do the additional followups.

C. Other Data Exchanges

Sections 1137 and 1902(a)(25) of the Act do not specifically provide for data exchanges with certain additional State agencies, such as State Workers' Compensation or Industrial Accident Commissions or Motor Vehicle Departments. However, we believe that such additional data exchanges constitute "reasonable measures to ascertain the legal liability of third parties" for purposes of section 1902(a)(25) of the Act, and that, therefore, such exchanges would be appropriate complements to the mandated SWICA and SSA Earnings file exchanges. Many States, on their own initiative, have adopted various practices to identify third party resources. We have selected the two examples identified above for incorporation into regulations as a requirement because they have been successful in identifying liable third parties, and have proved cost effective to the Medicaid program in those States that have implemented them.

Therefore we are proposing to require that State Medicaid agencies attempt to secure agreements with these two agencies (to the extent permitted by State law) to conduct data exchanges as discussed below.

1. State Workers' Compensation or Industrial Accident Commission Files

Assuming that an agreement can be reached, and such exchanges comply with applicable State and Federal law, data exchanges would entail matching identifying information (for example, name, SSN) for Medicaid recipients and (assuming names and SSNs have been obtained) absent or custodial parents of Medicaid recipients with Workers' Compensation or Industrial Accident files to identify those individuals with employment-related injuries or illnesses (§ 433.138(d)(4)(i)). A match with a Medicaid recipient may indicate that the individual was involved in a job-related injury and that the Worker's Compensation or Industrial Accident Commission may be a liable third party resource for the cost for care and services furnished to the recipient. A match involving an absent parent or custodial parent could indicate that the parent is or was employed and that third party resources may be available through health insurance provided by their employer.

2. State Motor Vehicle Accident Report Files

Required data exchanges would involve matching identifying information for Medicaid recipients with State motor vehicle accident report files to identify those recipients injured in motor vehicle accidents, whether injured as pedestrians, drivers or passengers in motor vehicles, or as bicyclists (§ 433.138(d)(4)(ii). A match may indicate that third party resources would be available through an automobile or liability insurance policy.

3. Securing Agreements

We would require the Medicaid agency to attempt to secure agreements with the above two agencies. If unable to secure agreements, the agency must submit documentation to the regional office that demonstrates that the agency made a reasonable attempt to secure them. If HCFA determines that a reasonable attempt was made, the requirements concerning data

exchanges with these two agencies would be deemed to be met (§ 433.138(d)(5)). In this context we would not require, but strongly encourage States to seek other alternative sources for obtaining similar information with respect to identifying liable third parties. Such activities could produce significant combined Federal and State cost savings in expenditures under Medicaid. An example of one alternative is demonstrated by California and Iowa which have adopted legislation requiring that attorneys representing Medicaid recipients in a liability-related accident notify the State Medicaid agency of such activity. This practice would encompass cases involving automobile accidents, Workers' Compensation claims, as well as other accidential injury claims and has resulted in substantial savings to the Medicaid program both in the Federal and State share.

4. Frequency of Exchange

Under our proposed regulations at § 433.138(f), if agreements have been secured, States would be required to conduct data exchanges with the above two agencies on a routine and timely basis. The State Medicaid agency would have the flexibility to develop a plan (as part of its State plan) defining the frequency of the exchanges.

5. Followup Procedures

a. *State Workers' Compensation or Industrial Accident Commission Files.* Followup requirements are the same as discussed before under section II.A.5 for obtaining and acting on health insurance information. States would have flexibility in developing a plan for followups. We expect that followup methods will vary depending on the nature of the match. For example, a match involving a Medicaid recipient with Workers' Compensation files may involve followup with the commission, whereas a similar match with an absent parent would probably involve followup with the employed individual's employer(s) to obtain information regarding the availability of health insurance for the Medicaid recipient. (§ 433.138(g)(2))

b. *State Motor Vehicle Accident Report Files.* With respect to the information obtained from the State Motor Vehicle Accident Report files, we would require the agency to develop and submit a plan (as part of its State plan) that describes its methods for following up on this information in order to identify legally liable third party resources so the agency can process claims under the third party liability payment procedures specified in § 433.139(b) through (f). Also, after followup, the agency would be required to incorporate that information into the eligibility case file and into its third party data base and third party recovery unit within timeframes specified in the State plan. (§ 433.138(g)(3))

We are providing more flexibility in State followup procedures for State Motor Vehicle exchanges because followup on the information obtained from the State Motor Vehicle Accident Report files may be extensive. Therefore, we have given the States flexibility in developing methods and timeframes for followup. In most instances, the Medicaid agency would receive a listing of all individuals injured in accidents. Since States do not require that SSNs be included on accident reports, the Medicaid agency would have to manually match the names of insured individuals against the names of Medicaid recipients. Once a match is established, the Medicaid agency would be required to followup to determine liability for the accident. This may involve obtaining and reviewing police reports, interviewing witnesses, etc. to establish legal liability.

D. Diagnosis and Trauma Code Edits

1. General

We are proposing to amend § 433.138 by adding a new paragraph (e) to include a requirement regarding diagnosis and trauma code edits. As part of the Medicaid claims payment process, providers submit claims to the State agency for payment. Claims are compiled for entry into the claims payment processing system. State claims data which are generated periodically include a listing of claims paid, the amount of the claim and the diagnosis code under which the claim was submitted. These diagnosis codes can be found in the International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD–9–CM). Within this coding system there are specific codes (800–999 inclusive) that could denote a possible trauma-related injury. An example would be code 809 that denotes a fracture of the vertebral column with spinal cord injury. With regard to paid claims with these codes, if the trauma occurred as result of, for example, a criminal act, a car accident or employment-related injury, third parties such as the State Crime Compensation Commission, the Workers' Compensation Commission or a commercial health insurance company may be liable for payment for services provided under Medicaid.

Therefore, under the authority of section 1902(a)(25) of the Act, we are proposing to require in § 433.138(e) that State agencies take action to identify those paid claims that contain diagnosis or trauma codes 800–999, inclusive, and follow up on that information for purposes of identifying liable third parties.

2. Frequency of Trauma Edits and Followup

We would require agencies to conduct these edits on a routine and timely basis and develop and specify in the plan the frequency of the edits performed (§ 433.138(f)) and the methods used to followup. As part of the followup procedures, we are also proposing that States periodically take action to identify those trauma codes which have yielded the highest third party collections. Based on these findings, future followup procedures would give higher priority to those codes likely to be the most productive.

In the case of followup with trauma edits, we are providing States with flexibility in developing methods and timeframes for followup due to the nature of the followup. States would most likely have to begin followup by contacting the recipient by phone or questionnaire to determine the nature of the trauma and then followup with insurance companies, attorneys, witnesses, etc., to establish liability depending on the situation. After followup the agency must incorporate all information identifying legally liable third parties (so the agency can process claims under the third party liability payment procedures specified in § 433.139(b)) through (f)) into the eligibility case file and its third party data base and recovery unit within timeframes specified in the plan. (§ 433.138(g)(4))

E. Safeguarding of Information

1. Background

Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. Current regulations located at 42 CFR Part 431, Subpart F implement this requirement by specifying State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

We believe that these current regulations adequately specify requirements to safeguard information

and need very little revision to protect information received under § 433.138 concerning third party liability. However, we do propose two changes to Part 431, Subpart F as discussed below.

2. General Safeguards

Current regulations at 42 CFR 431.306 (as amended under the IEVS final rule) specify that the data to be safeguarded must include, at least, names and addresses, medical services provided, social and economic conditions, agency evaluation of personal information, medical data, and any information received for verifying income eligibility and the amount of medical assistance payments under § 435.940ff. We would amend § 431.305 by adding a new subparagraph (7) to specifically state that the agency must also have criteria that govern the safeguards of third party liability data received under proposed § 433.138. We would also add a new paragraph (h)(1) to proposed § 433.138 to indicate that the agency must safeguard information obtained under § 433.138 in accordance with regulations at Part 431, Subpart F.

3. Data Exchanges

Also, as background to the change we are now proposing to § 431.306, Release of information, the final IEVS regulations added to § 431.306 a new paragraph (g) that requires, as a safeguarding measure, that the State Medicaid agency have a written agreement (as specified in § 435.945(f) of the IEVS regulations) with any agency with which it exchanges data under section 1137 of the Act. Under § 435.945(f), those agreements at a minimum must specify—

(1) The information to be exchanged and the titles of officials with authority to request the information;

(2) The methods and timing for requesting and providing information;

(3) Safeguards limiting the use and disclosure of information; and

(4) Methods in reimbursing agencies for the cost of furnishing information.

Because our proposed third party liability regulations at § 433.138 contain data exchanges falling within the scope of IEVS, as well as other similar exchanges, we are proposing two changes to regulations. We would add a new paragraph (h) to § 431.306 to require that the State Medicaid agency have a written agreement as specified in a new paragraph 433.138(h)(2) before requesting information from, or releasing information to, other agencies to identify legally liable third party resources under data exchange requirements contained in § 433.138(d) of the regulations. The written agreement requirements in the new § 433.138(h)(2) would parallel the requirements contained in the final IEVS regulations § 435.945(f).

F. Reimbursement and Reports

We would add new paragraphs (i) and (j) to § 433.138 to provide for reimbursement to agencies for furnishing information and for reports with respect to certain activities.

1. Reimbursement

We would require under paragraph (i), State Medicaid agencies to reimburse agencies, upon request, for reasonable costs incurred in furnishing information to the Medicaid agency. Also, in connection with reimbursement, as mentioned earlier, we would require each State Medicaid agency to specify when entering into an agreement with another agency to obtain data, how it would reimburse reasonable costs for those activities (§ 433.138(h)(2)). Each State would be expected to maintain some type of accounting method so that appropriate costs and reimbursement amounts can be calculated. We believe that these requirements are necessary to ensure that program agencies providing data receive reimbursement from the agency receiving data and also because we believe adequate reimbursement mechanisms may be an important determining factor in an agency's willingness to enter into an agreement with State Medicaid agencies to perform certain services with respect to third party liability.

2. Reports.

Finally, under § 433.138(j), we would require State Medicaid agencies to provide such reports as the Secretary prescribes for purposes of determining compliance with requirements in § 433.138, and evaluating the effectiveness of the third party liability identification system. We would highlight the reporting requirements for the data exchanges set forth in final IEVS regulations at § 435.945(e) as they relate to third party activities and also require reports for the State Workers' Compensation and State Motor Vehicle data exchanges and for trauma code edit activities.

III. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is likely to result in a significant reduction of Federal Medicaid program expenditures. Additionally, while there may be moderate increases in State Administrative costs, such costs would be offset by larger savings to States due to more effective identification of liable third parties.

Implementation of this rule would result in program savings to the extent that liable third parties are identified and payments are made for services that would otherwise be paid for by the Medicaid program under existing TPL identification programs. It is difficult to estimate precisely the overall impact of this rule due to the flexible nature of many of the proposed requirements, a lack of sufficient data on existing State TPL programs, and the overlapping nature of this regulation with other regulations that affect TPL collections.

We have, however, made a rough estimate of the impact based on a study prepared under contract with HCFA by Maximum, Inc. (Contract No. 500–79–0500) titled *Evaluation of the Cost-Effectiveness of the Collection of Third-Party Liability by State Medicaid Agencies*, completed in 1981. Based on the findings of that study, we concluded that between 1.0 and 2.5 percent of annual Federal Medicaid expenditures could be eliminated through better use of TPL information collection and related State agency procedures. We attempted to take into account the impact of related regulations discussed elsewhere in this preamble, and developed low and high approximations, reflecting 1.0 percent and 2.5 percent reductions respectively, of savings that could be achieved if all the TPL-related regulations were implemented. We then apportioned that estimate to each of the regulations under development. Below, we provide our best high and low approximations illustrating the range of potential savings that would result from implementing the provisions of this proposed rule.

SAVINGS PER FISCAL YEAR

(Rounded to nearest $25 million)

1986*	1987*	1988	1989	1990
Low negligible**.....	50	100	125	125
High negligible**.....	125	275	300	325

* Amounts in FY 1986 and 1987 are set at ¼ and ½ of ultimate levels to account for lags in implementation and impact.

** Both the low and high estimates for FY 86 are less than $12.5 million.

In total, we estimate that implementation of this rule would result in Federal Medicaid savings of between $450 million and $1.15 billion during the next five-year period. Because potential annual savings would exceed the $100 million threshold under E.O. 12291, this is considered a major rule and an initial regulatory impact analysis is necessary.

While each proposed requirement is discussed previously in this preamble, fulfilling some of the requirements of an initial impact analysis, we are highlighting below the areas that may produce the greatest impact. We invite States and others to comment on them and to provide additional data and analyses related to their impact.

The costs of implementation and operation of a revised TPL identification program will vary from State to State. We recognize that in some States the costs will be high. However, it is these States that we believe will benefit the most from the proposed requirements. The States that already have effective TPL identification and collection procedures will not benefit as much. On the other hand, implementation costs for them will be relatively small.

The main factors that will affect the magnitude of savings achieved by implementation of these proposals are:

- The effectiveness of agencies in obtaining liability information at the time of application or redetermination.
- The intensity of followup actions taken by the State Medicaid agency to bring about actual payments from liable third parties.
- The degree of success in obtaining agreements with other agencies for exchanging relevant data.
- The relative usefulness and frequency of utilizing diagnosis codes related to trauma in identifying liable third parties.

This proposed rule should have no effect on Medicaid eligibility determinations. It is intended to provide assistance and incentives to States for the identification of alternative sources of payment for health services provided to Medicaid participants. It is further possible that may making Medicaid enrollees more aware of other health insurance coverage available to them, access to care may be enhanced.

B. Regulatory Flexibility Act

Consistant with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small entities.

The primary impact of this proposed rule would fall on State Medicaid agencies and on other, primarily private, insurers. For purposes of the RFA, States are not considered small entities. Further, we do not believe that increased payments on the part of other insurers or payers would represent a significant portion of their total payments. The Department generally uses 3 percent as a threshold in determining whether the impact is significant under the RFA. We estimate that private insurance companies, in calendar year 1984, paid out about $111.8 billion in the form of benefits to enrollees. Thus, even the high estimate of $325 million eventual additional annual payments by other payers is significantly less than the 3 percent criteria. Additionally, the increased payments by third parties would not be a result of revised payment policies. These would be payments for which the third parties are presently liable but ineffectively identified and billed. For these reasons, we have determined, and the Secretary certifies, that this regulation would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

IV. Information Collection Requirements

Sections 431.305(b), 431.306(h), 433.138 (b) through (h), and 433.138(j) of this proposed rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to OMB as indicated in the **ADDRESS** section of this document.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Chapter IV, Subchapter C would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

* * * * *

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

A. Part 431, Subpart F would be amended as set forth below:

1. In § 431.305, the introductory text to paragraph (b) is republished and a new paragraph (b)(7) is added to read as follows:

§ 431.305 Types of information to be safeguarded.

* * * * *

(b) This information must include at least—

* * * * *

(7) Any information received in connection with the identification of legally liable third party resources under § 433.138 of this chapter.

2. In § 431.306, a new paragraph (h) is added to read as follows:

§ 431.306 Release of information.

* * * * *

(h) Before requesting information from, or releasing information to, other agencies to identify legally liable third party resources under § 433.138(d) of this chapter, the agency must execute data exchanges agreements, as specified in § 433.138(h)(2) of this chapter.

PART 433—STATE FISCAL ADMINISTRATION

The authority citation for Part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302.

1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(3), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

B. In Part 433, Subpart D, § 433.138 is revised to read as follows:

§ 433.139 Determining liability of third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of third parties to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (j) of this section.

(b) *Obtaining health insurance information: Initial application and redetermination processes for Medicaid eligibility.* (1) If the Medicaid agency determines eligibility for Medicaid, it must, during the initial application and each redetermination process, obtain from the applicant or recipient such health insurance information as would be useful in identifying legally liable third party resources so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f). Health insurance information may include, but is not limited to, the name of the policy holder, his or her relationship to the applicant or recipient, the social security number (SSN) of the policy holder, and the name and address of insurance company and policy number.

(2) If Medicaid eligibility is determined by the Federal agency administering the supplemental security income program under title XVI in accordance with a written agreement under section 1634 of the Act, the Medicaid agency must take the following action. It must enter into an agreement with HCFA or must have, prior to February 1, 1965, executed a modified section 1634 agreement that is still in effect to provide for—

(i) Collection, from the applicant or recipient during the initial application and each redetermination process, of health insurance information in the form and manner specified by the Secretary; and

(ii) Transmittal of the information to the Medicaid agency.

(3) If Medicaid eligibility is determined by any other agency in accordance with a written agreement, the Medicaid agency must modify the agreement to provide for—

(i) Collection, from the applicant or recipient during the initial application and each redetermination process, of such health insurance information as would be useful in identifying legally liable third party resources so that the Medicaid agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f). Health insurance information may include, but is not limited to, those elements described in paragraph (b)(1) of this section; and

(ii) Transmittal of the informatioin to the Medicaid agency.

(c) *Obtaining other information.* The agency must, for purposes of implementing the requirements in paragraph (d)(1)(ii) and (d)(4)(i) of this section, incorporate into the eligibility case file the names and SSNs of absent or custodial parents of Medicaid recipients to the extent such information is available.

(d) *Exchange of data.* To obtain and use information for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f), the agency must take the following actions:

(1) Except as specified in paragraph (d)(2) of this section, as part of the data exchange requirements under § 435.945 of this chapter, from the State wage information collection agency (SWICA) defined in § 435.4 of this chapter and from the SSA wage and earnings files data as specified in § 435.948(a)(2) of this chapter, the agency must—

(i) Use the information that identifies Medicaid recipients that are employed and their employer(s); and

(ii) Obtain and use, if their names and SSNs are available to the agency under paragraph (c) of this section, information that identifies absent or custodial parents of recipients that are employed and their employer(s).

(2) If the agency can demonstrate to HCFA that it has an alternate source of information that furnishes information as timely, complete and useful as the SWICA and SSA wage and earnings files in determining the legal liability of third parties, the requirements of paragraph (d)(1) of this section are deemed to be met.

(3) The agency must request, as required under § 435.948(a)(6)(i), from the State title IV–A agency, information that identifies those Medicaid recipients that are employed and their employer(s).

(4) Except as specified in paragraph (d)(5) of this section, the agency must attempt to secure agreements (to the extent permitted by State law) to provide for obtaining—

(i) From State Workers' Compensation or Industrial Accident Commission files, information that identifies Medicaid recipients and, (if their names and SSNs were avaialble to the Agency under paragraph (c) of this section) absent or custodial parent of Medicaid recipients with employment related injuries or illnesses; and

(ii) From State Motor Vehicle accident report files, information that identifies those Medicaid recipients injured in motor vehicle accidents, whether injured as pedestrians, drivers, passengers, or bicyclists.

(5) If unable to secure agreements as specified in paragraph (d)(4) of this section, the agency must submit documentation to the regional office that demonstrates the agency made a reasonable attempt to secure these agreements. If HCFA determines that a reasonable attempt was made, the requirements of paragraph (d)(4) of this section are deemed to be met.

(e) *Diagnosis and trauma code edits.* The agency must take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 (ICD–9–CM) International Classification of Disease, 9th Revision, Clinical Modification, Volume 1) inclusive, for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f).

(f) *Data exchange and trauma code edits; Frequency.* The agency must conduct the data exchange required in paragraph (d)(1) of this section in accordance with the intervals specified in § 435.948 of this chapter; the data exchanges required in paragraph (d)(3) of this section on a timely basis that is consistent with the intervals specified in 45 CFR 205.55 (a)(1) and (a)(3); and must conduct the data exchanges and diagnosis and trauma edits required in paragraphs (d)(4) and (e) of this section on a routine and timely basis. The State plan must specify the frequency of these activities.

(g) *Followup procedures for identifying legally liable third party resources.*— (1) *SWICA, SSA wage and earnings files, and title IV–A data exchanges.* With respect to information obtained under paragraphs (d)(1) through (d)(3) of this section—

(i) Within 30 days, the agency must followup (if appropriate) on such information in order to identify legally liable third party resources and incorporate such information into the eligibility case file and into its third party data base and third party recovery unit so the agency may process claims under the third party liability payment

procedures specified in § 433.139 (b) through (f); and

(ii) The State plan must describe the methods the agency uses for meeting the requirements of pargraph (g)(1)(i) of this section.

(2) *Health insurance information and worker's compensation data exchanges.* With respect to information obtained under paragraphs (b) and (d)(40(i) of this section—

(i) Within 30 days, the agency must followup on such information (if appropriate) in order to identify legally liable third party resources and incorporate such information into the eligibility case file and into its third party data base and third party recovery unit so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f); and

(ii) The State plan must describe the methods the agency uses for meeting the requirements of paragraph (g)(2)(i) of this section.

(3) *State motor vehicle accident report file data exchanges.* With respect to information obtained under paragraph (d)(4)(ii) of this section—

(i) The State plan must describe the methods the agency uses for following up on such information in order to identify legally liable third party resources so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f);

(ii) After followup, the agency must incorporate all information that identifies legally liable third party resources into the eligibility case file and into its third party data base and third party recovery unit; and

(iii) The State plan must specify timeframes for incorporation of the information.

(4) *Diagnosis and trauma code edits.* With respect to the paid claims identified under paragraph (e) of this section—

(i) The State plan must describe the methods the agency uses to follow up on such claims in order to identify legally liable third party resources so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f) (Methods must include a procedure for periodically identifying those trauma codes that yield the highest third party collections and giving priority to following up on those codes.);

(ii) After followup, the agency must incorporate all information that identifies legally liable third party resources into the eligibility case file and into its third party data base and third party recovery unit; and

(iii) The State plan must specify the timeframes for incorporation of the information.

(h) *Obtaining other information and data exchanges: Safeguarding information.* (1) The agency must safeguard information obtained from and exchanged under this section with other agencies in accordance with the requirements set forth in Part 431, Subpart F of this chapter.

(2) Before requesting information from, or releasing information to other agencies to identify legally liable third party resources under paragraph (d) of this section the agency must execute data exchange agreements with those agencies. The agreements, at a minimum, must specify—

(i) The information to be exchanged;

(ii) The titles of all agency officials with the authority to request third party information;

(iii) The methods, including the formats to be used, and the timing for requesting and providing the information;

(iv) The safeguards limiting the use and disclosure of the information as required by Federal or State law or regulations; and

(v) The method the agency will use to reimburse reasonable costs of furnishing the information if payment is requested.

(i) *Reimbursement.* The agency must, upon request, reimburse and agency for the reasonable costs incurred in furnishing information under this section to the Medicaid agency.

(j) *Reports.* The agency must provide such reports with respect to the data exchanges and trauma code edits set forth in paragraphs (d)(1) through (d)(4) and paragraph (e) of this section, respectively, as the Secretary prescribes for the purpose of determining compliance under § 433.138 of the regulations and evaluating the effectiveness of the third party liability identification system.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 13, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 31, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-11899 Filed 5-27-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 86-169; RM-5103; FCC 86-216]

Amendment of Part 90 of the Commission's Rules and Regulations To Permit Expanded Use of the 450 MHz 12.5 kHz Offset Channels in the Special Industrial Radio Service

Correction

IN FR Doc. 86-10552 beginning on page 17367 in the issue of Monday, May 12, 1986, the Docket No. should read as it appears in the heading above.

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Federal Acquisition Regulation Supplement; Industrial Modernization Incentives Program (IMIP)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering coverage in the DoD Federal Acquisition Regulation Supplement (DFARS) for the Industrial Modernization Incentives Program (IMIP). This program when implemented will benefit both the contractor and DoD in the form of increased manufacturing efficiencies based upon the terms and conditions established in a mutually agreed upon IMIP Business Agreement.

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than (July 28, 1986), to be considered in the formulation of the final rule. Please cite DAR Case 85-167 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7268.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense, in its DoD Directive 5000.44 of April 16, 1986, established policy covering the Industrial Modernization Incentives Program (IMIP). The objective of the program is to stimulate additional defense contractor capital investment and productivity improvement efforts that result in reduced DoD acquisition costs.

B. Regulatory Flexibility Act Information

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is believed that this rule will not have a significant impact on a substantial number of small entities. There will be a requirement for a "report" in that those businesses desiring to participate in IMIP will be required to submit IMIP agreement proposals. However, the data submitted in the proposals will be generated from cost data already contained in the contractor's recordkeeping systems.

C. Paperwork Reduction Act Information

The rule contains information collection requirements which require approval of OMB under 44 U.S.C. 3501, et seq, the collection of information requirements have been submitted to OMB for review pursuant to Section 3504(h) of the Act. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for DoD.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 215 and 252 be amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.872 is revised to read as follows:

§ 215.872 Capital investment incentives.

(a) *Policy.* Although DoD profit and competition policies are intended to provide adequate incentives to the contractor for capital investment and productivity, it is also recognized that individual cases will arise when additional incentives may be appropriate. In these individual cases, it is the policy of DoD that industrial modernization incentives may be negotiated and included in contracts for research, development, and/or production of weapons systems, major components, or material. The purpose is to motivate the contractor to invest in facilities modernization and to undertake related productivity improvement efforts it would not have otherwise undertaken or to invest earlier than it otherwise would have done.

(b) *General.* Any industrial modernization incentives program (IMIP) shall be accomplished in accordance with this coverage and with DoD Directive 5000.44 and DoD Guide 5000.44–G. Sufficient flexibility is provided in the directive and guide to allow the IMIP to be tailored to the requirements of an individual situation. The incentives may be in the form of productivity savings rewards, contractor investment protection, and/or other appropriate forms. They may be used separately or in combination, as addressed in subparagraphs (b) (1), (2), and (3) of this subsection. However, in no event, shall an IMIP agreement be made between DoD and a contractor until careful analyses have been conducted and reduced acquisition costs or equivalent benefits (such as improved quality, as a result of the application of the IMIP) are clearly evident. It may be generally desirable to initially negotiate a memorandum of understanding (MOU) to establish guidelines and criteria against which to analyze and negotiate a specific IMIP.

(1) *Productivity Savings Reward (PSR).* This incentive shares the savings achieved from facilities modernization and related productivity improvement efforts. This incentive may be used to encourage productivity improvements in all facets of the production process including major cost driving areas such as labor, materials, overhead, support systems (including software), and organizations. In order for these to be considered viable projects that are beneficial for both the Government and the contractor, the contractor must show that PSR is required for project implementation and that these projects are over and above requirements to meet normal contractual obligations. The scope and limitation of productivity savings rewards are as follows:

(i) Productivity savings rewards in conjunction with contractor capital investment will be based on an internal rate of return analysis. The productivity savings rewards should be sufficient to allow the contractor to obtain an equitable return on the investment. Nonserverable plant equipment and real property may be included on a limited basis as part of the contractor's investment basis for calculating the appropriate return on investment. The effect of any Government funding provided in conjunction with modernization efforts must be included in the contractor's return on investment (ROI), and no contractor costs or expenses otherwise allocable and allowable to any specific DoD contract may be included.

(ii) Productivity savings rewards providing the contractor a reward for productivity improvements other than through capital investment will be based on an economic analysis of the benefits to the Government and the contractor. The negotiated sharing amount or percentage shall be based on benefits and risks to both parties. It will be paid only for savings that are validated, and will be negotiated for a period normally no longer than five years after the date of implementation.

(iii) Productivity savings rewards shall not constitute fee within the meaning of the limitations imposed by 10 U.S.C. 2306(d).

(2) *Contractor Investment Protection.* If formally agreed to by the parties, this incentive would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. This incentive may permit the Government to acquire specific capital investments at no more than the undepreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable depreciation costs pursuant to cost principles established in FAR Part 31. The scope and limitations are as follows:

(i) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in FAR Part 45.

(ii) This investment incentive is designed primarily for the situation when one program dominates the business base and the contractor may bear unacceptable monetary risk from the modernization effort. The program must provide for a sufficient buy to

allow for amortization of the planned investment.

(iii) Capital assets which may be covered by such an investment incentive include only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property.

(iv) The exact value and nomenclature of each piece of capital equipment must be included in the contract documents.

(v) The fiscal authority who commits funds to the resultant contract must certify that the approval authority has approved by fiscal year the amount of contingent Government liability and that the approval authority has notified the Congress in advance that the technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(vi) Approval for use of this investment incentive must be obtained from the Secretary of the Military Departments or the Director of DLA. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, ONAS, or AMC.

(vii) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the approval authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation.

(3) *Other appropriate incentives.* Other incentives such as award fees, direct Government funding, and the productivity reward factor under the weighted guidelines, based on IMIP methodologies, may be provided under IMIP when appropriate.

(c) *Contracting Officer Evaluation.* The contracting officer must evaluate the proposed IMIP agreement to determine that benefits to the U.S. Government can be expected. A contractor statement that the investments or actions would not be undertaken without, or will be accelerated with, the use of the incentive may be required. The evaluation should include the following elements:

(1) A cost/benefit analysis of the investment or action and the overall cost savings or other benefits to the Government, including the payback quantities and payback periods and how the savings will be reflected in the pricing of individual contracts.

(2) An analysis of the contractor's past investments and capital investment profiles, and the relationship of specific projects to the contractor's factory analysis.

(3) Other considerations such as:

(i) Interaction with other incentives provided on the contract.

(ii) Effects of variations in procurement quantities on the incentives.

(iii) How the incentive techniques are integrated with the overall acquisition strategy, including items such as second sourcing plans and multiyear procurement.

(iv) Effects on overhead and indirect costs.

(d) *Negotiation.* (1) The Government objective should be to provide only those incentives sufficient to motivate the contractor to implement the desired investment or action. Ceiling should normally be provided to establish a maximum incentive amount.

(2) Emphasis should be placed on flowing down requirements or involvement to subcontractors and vendors where appropriate.

(3) Provisions should be provided establishing the extent to which the contractor may use equipment for commercial purposes. This should be reflected in the amount of incentive provided.

(4) The extent of disclosure or dissemination of technologies or processes contained in the IMIP are subject to negotiation and agreement.

(e) *Contractual requirements.* (1) Specific contract requirements should be structured to match the circumstances of the individual acquisition.

(2) Measurement and verification requirements should be addressed contractually, and systems established that match the incentives used and the needs in this area. Contractors should be required to develop, maintain, and provide data supporting any measurement of savings achieved.

(f) *Contract clause.* The contracting officer shall include the clause at 252.215–7001, "IMIP Productivity Savings Reward", in all solicitations involving the acquisition of supplies (i.e., weapon systems, equipment, and material) expected to result in contracts or contract modifications greater than $1 million. The clause is discretionary for inclusion in solicitations less than $1 million. Inclusion of the clause does not in itself result in the payment of any productivity savings reward amounts to the contractor—the clause becomes operable only when an IMIP business agreement has been executed establishing all the terms and conditions for payment of the productivity savings rewards.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7001 is added to read as follows:

252.215–7001 IMIP Productivity Savings Rewards.

As prescribed at § 215.872(f), insert the following clause: IMIP PRODUCTIVITY SAVINGS REWARDS (1986).

(a) *Purpose.* The purpose of this clause is to permit a contractor to be paid Productivity Savings Rewards (PSR) in accordance with the terms and conditions of an Industrial Modernization Incentives Program (IMIP) business agreement contained in this contract or which benefits this contract. PSR constitutes the Contractor's incentives paid from the total DoD net benefits (savings/cost avoidances).

(b) *Applicability.* This clause provides conditions for payment of the PSR amount applicable to this contract pursuant to the provisions of the IMIP business agreement. Inclusion of this clause in this contract does not in itself result in the payment of any PSR amounts to the Contractor. This clause shall become operable only when an IMIP business agreement has been established and placed in an IMIP contract, or incorporated into this contract, including all of the terms and conditions for payment of the PSR, the total amount of the PSR, and specifying that this total amount has not been earned through previous contracts. This agreement may be directly between DoD and the Contractor, or between the Contractor and a lower-tier DoD Contractor; *Provided,* DoD approval has been obtained for the subcontract program.

(1) *Payment.* The Contracting Officer is authorized to approve payment of PSR amounts under this contract during the sharing period as defined in the IMIP business agreement. PSR amounts may be calculated and paid through a protected sharing, a sharing factor, or other approach as agreed to in the IMIP business agreement. The amount of PSR allocable to this contract along with the frequency of payment will be determined in accordance with the terms and conditions of the IMIP business agreement. When these conditions are met and verified, as determined by the Contracting Officer,

the Contractor shall be paid PSR amounts on this contract. The Contractor or subcontractor shall keep records acceptable to the Contracting Officer of all PSR payments received under a specific IMIP business agreement. The Contractor is authorized to request payment of PSR in accordance with terms specified in the IMIP business agreement.

(2) *Sharing Factor Certification.* When a sharing factor approach is used, the Contractor shall include the following certification on each invoice for payment of a PSR share:

It is hereby certified that the PSR amount requested on this invoice represents an incremental share of the total PSR amount agreed to in the IMIP Business Agreement or this contract Dated, ——————— between the Government and , for which no entitlement has been previously paid. ———————

(3) *Subcontract Applicability.* The Contractor shall include this clause (suitably modified, except for the certification requirement, to meet the circumstances of the subcontract concerned), and shall provide payment of PSR amounts for any subcontract wherein the subcontractor is participating in a DoD-approved IMIP business agreement. All subcontractor cost/price reductions attributable to an IMIP after establishment of the PSR shall be directly and entirely passed through to the Government.

(End of clause.)

[FR Doc. 86-11918 Filed 5-27-86; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 51, No. 102
Wednesday, May 28, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Demonstration Program; Acceptance of Proposals

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: Notice is hereby given that effective on the date of this published notice, the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) will accept proposals for the initiation of the section 502 Housing Demonstration Program as authorized by Title V 1949 Housing Act, as amended. Section 506(b). Under this section of the Act, FmHA may provide funding for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10,000,000 in any fiscal year.

FOR FURTHER INFORMATION CONTACT: Mathies J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenues, SW., Room 5343, South Building, Washington, DC 20250, Telephone 202-382-1543 or Cliff J. Herron, Senior Loan Officer, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenues, SW., Room 5343, South Building, Washington, DC 20250, Telephone 333-382-1484.

SUPPLEMENTARY INFORMATION: The primary objective of the demonstration is to increase the availability of affordable housing for low-income families, through innovative designs and systems. Under current standards, rules, regulations, and policies many low-income rural families lack sufficient incomes to afford adequate housing.

To expedite the demonstration, Farmers Home Administration State Directors are authorized to accept proposed demonstration concept plans and specifications from nonprofits, profit organizations and individuals. The State Directors will evaluate the proposals and make recommendations to the National Office.

Approximately 300 units will be funded for this fiscal year. Proposal concepts will be evaluated by FmHA on a first-come first-served basis. Each state will initially have a demonstration set aside of approximately $180,000. However, the National Office reserves the right to make appropriate adjustments to the initial appropriation as it deems necessary. Funding is available for fiscal year 1986 only, and any future commitments are based upon availability of funds.

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires the intergovernmental consultation with state and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the state in which the proposal will be submitted for evaluation. The government will not reimburse or be liable for any expenses incurred by respondents in the development and submission of applications. Following is a list of State Directors and their addresses.

State and Address

Alabama

State Director, Farmers Home Administration, Room 717, Arnaov Building, 474 South Court Street, Montgomery, Alabama 36104

Alaska

State Director, Farmers Home Administration, Post Office Box 1289, Palmer, Alaska 99720

Arizona

State Director, Farmers Home Administration, Room 3433, Federal Building, 230 North First Avenue, Phoenix, Arizona 85025

Arkansas

State Director, Farmers Home Administration, 5529 Federal Office Building, 700 West Capitol, Little Rock, Arkansas 72201

California

State Director, Farmers Home Administration, 459 Cleveland Street, Woodland, California 95695

Colorado

State Director, Farmers Home Administration, Room 231 #1 Diamond Plaza, 2490 West 26th Avenue, Denver, Colorado 80211

Delaware/Maryland

State Director, Farmers Home Administration, 2319 S. Dupont Highway, Dover, Delaware 19901

Florida

State Director, Farmers Home Administration, Room 212, Federal Building, 401 S.E. First Street, Gainesville, Florida 32602

Georgia

State Director, Farmers Home Administration, 355 E. Hancock Street, Athens, Georgia 30601

Hawaii

State Director, Farmers Home Administration, Room 311, Federal Building, Waianuenue Avenue, Hilo, Hawaii 96720

Idaho

State Director, Farmers Home Administration, Room 429, Federal Building, Boise, Idaho 83702

Illinois

State Director, Farmers Home Administration, 2010 W. Springfield Avenue, Champaign, Illinois 61820

Indiana

State Director, Farmers Home Administration, Suite 700, 5610 Crawfordsville Road, Indianapolis, Indiana 46224

Iowa

State Director, Farmers Home Administration, Room 873, Federal

Building, 210 Walnut, Des Moines, Iowa 50309

Kansas

State Director, Farmers Home Administration, 444 South East Quincy Street, Topeka, Kansas 66683

Kentucky

State Director, Farmers Home Administration, 333 Waller Avenue, Lexington, Kentucky 40504

Louisiana

State Director, Farmers Home Administration, 3727 Government Street, Alexandria, Louisiana 71301

Maine

State Director, Farmers Home Administration, USDA Office Building, Orono, Maine 04473

Massachusetts/Connecticut

Rhode Island

State Director, Farmers Home Administration, 451 West Street, Amherst, Massachusetts 01002

Michigan

State Director, Farmers Home Administration, Room 209, 1405 South Harrison Road, East Lansing, Michigan 48823

Minnesota

State Director, Farmers Home Administration, 252 Federal Office Building, and U.S. Courthouse, Saint Paul, Minnesota 55101

Mississippi

State Director, Farmers Home Administration, Room 823, Milner Building, Jackson, Mississippi 39201

Missouri

State Director, Farmers Home Administration, 555 Vandiver Drive, Columbia, Missouri 65201

Montana

State Director, Farmers Home Administration, Federal Building, Post Office Box 850, Bozeman, Montana 59715

Nebraska

State Director, Farmers Home Administration, Room 308, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508

New Jersey

State Director, Farmers Home Administration, Suite 100, 100 High Street, Mount Holly, New Jersey 08060

New Mexico

State Director, Farmers Home Administration, Room 3414, Federal Building, 517 Gold Avenue, S.W., Albuquerque, New Mexico 87102

New York

State Director, Farmers Home Administration, U.S. Courthouse and Federal Building, 100 South Clinton Street, Syracuse, New York 13202

North Carolina

State Director, Farmers Home Administration, Room 514, 310 New Bern Avenue, Raleigh, North Caroline 27601

North Dakota

State Director, Farmers Home Administration, Room 208, Federal Building, Third and Rosser, Bismark, North Dakota 58501

Ohio

State Director, Farmers Home Administration, Federal Building 507, 200 North High Street, Columbus, Ohio 43215

Oklahoma

State Director, Farmers Home Administration, Agricultural Center Office Building, Stillwater, Oklahoma 74074

Oregon

State Director, Farmers Home Administration, Room 1590, Federal Building, 1220 SW. 3rd Street, Portland, Oregon 97204

Pennsylvania

State Director, Farmers Home Administration, Room 728, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108

Puerto Rico

State Director, Farmers Home Administration, Room 621, Federal Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918

South Carolina

State Director, Farmers Home Administration, 240 Stonebridge Road, Columbia, South Carolina 29221

South Dakota

State Director, Farmers Home Administration, Room 208, Huron Federal Building 200 4th Street, SW., Huron, South Dakota 57350

Tennessee

State Director, Farmers Home Administration, 538 U.S. Courthouse Building, 801 Broadway, Nashville, Tennessee 37350

Texas

State Director, Farmers Home Administration, W.R. Poage Building, 101 South Main Street, Temple, Texas 76501

Utah/Nevada

State Director, Farmers Home Administration, Room 5311, Federal Building, 125 South State Street, Salt Lake City, Utah 84138

Vermont/New Hampshire

State Director, Farmers Home Administration, 141 Main Street, Montpelier, Vermont 05602

Virginia

State Director, Farmers Home Administration, Room 5213, Federal Building, 400 North Eight Street, Richmond, Virginia 23240

Washington

State Director, Farmers Home Administration, Room 319, Federal Office Building, 301 Yakima Street, Wenatchee, Washington 98801

West Virginia

State Director, Farmers Home Administration, Room 320, Federal Building, 75 High Street, Morgantown, West Virginia 26505

Wisconsin

State Director, Farmers Home Administration, 1257 Main Street, Stevens Point, Wisconsin 54481

Wyoming

State Director, Farmers Home Administration, Room 3213, Federal Building 100 East B. Street, Casper, Wyoming 82601

The reporting and recordkeeping requirements in this Notice have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0114.

Dated: March 24, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–11852 Filed 5–27–86; 8:45 am]

BILLING CODE 3410–07–M

Soil Conservation Service

Adaman Farm Irrigation Measure, Arizona; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Adaman Farm Irrigation Measure, Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, USDA Soil Conservation Service, 201 East Indianola Avenue, Suite 200, Phoenix, AZ 85012, Telephone (602) 241–2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal action indicates that the exchange will not cause significant local, regional or national impacts on

the environment. As a result of these findings, Verne M. Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this measure plan.

This activity concerns the on-going efforts of area farmers to limit groundwater use by lining canals and taking advantage of available surface water. The use of groundwater causes land subsidence and is very expensive. This measure will reduce subsidence and will improve the profit potential of the benefited farms. Approximately two and one-half miles of earthen ditch will be concrete lined.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single copy requests. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne M. Bathurst.

No administrative action on implementation of this measure plan will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development, and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 19, 1986.

Verne M. Bathurst,

State Conservationist.

[FR Doc. 86-11838 Filed 5-27-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Cornell University, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-197. Applicant: Cornell University, Department of Geological Sciences, Snee Hall, Ithaca, NY 14853-1504. Instrument: Mass Spectrometer, Model VG Sector with Accessories. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: The instrument is intended to be used for the study of naturally occurring geologic materials, include isotopic compositions and trace element abundances. These studies will involve isotopic composition of radiogenic elements in rock and mineral specimens, primarily of terrestrial origin. Elements of interest will be separated chemically from the rock/mineral and from each other and their isotopic compositions measured by the mass spectrometer. Application received by Commissioner of Customs: April 30, 1986.

Docket No. 86-201. Applicant: The Solomon R. Guggenheim Foundation, 223 Broadway, New York, NY 10279. Instrument: Light Microscope with Accessories. Manufacturer: Carl Zeiss, West German. Intended use: The instrument is intended to be used for investigations of paint polymers, papers and fabrics incorporated in modern art works. The study will have great educational benefits by providing the public with additional information about the art they are viewing, and by providing them with greater insight into the artistic process. In addition, graduate students in the laboratory will use the instrument while learning basic techniques of microscopy and its application to the conservation process. Application received by Commissioner of Customs: May 2, 1986.

Docket No. 86-202. Applicant: Mount Sinai School of Medicine, One Gustave L. Levy Place, New York, NY 10029. Instrument: Laser Microprobe Mass Analyzer. Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended use: The instrument is intended to be used for trace element analysis of biomedical tissues during investigations of pathogenetic mechanisms of disease states. Application received by Commissioner of Customs: May 5, 1986.

Docket No. 86-203. Applicant: Brigham Young University, Chemistry Department, Business Office, 105 NICB, Provo, UT 84602. Instrument: Annular Diffusion Denuder with Accessories. Manufacturer: Gruppo Flow S.P.A., Italy. Intended use: The instrument is intended to be used for characterization of nitric acid chemistry in the plume of gasfired power plant with emphasis on chemistry in the ambient environment. The primary educational benefits will relate to Chemistry 597, Research Techniques, for about 10 to 12 graduate students. Application received by Commissioner of Customs: May 5, 1986.

Docket No. 86-205. Applicant: Yale University School of Medicine, Department of Molecular Biophysics and Biochemistry, P.O. Box 6666, New Haven, CT 06511. Instrument: Small Animal NMR Spectrometer/Imager, Model Biospec 300/4.7T. Manufacturer: Oxford Research Systems, United Kingdom. Intended use: The instrument is intended to be used for metabolic studies on living animals. Methods for acquiring 13C and 1H spectra from brain, heart, liver and kidney of living animals will be the most important of these studies. Techniques in nuclear magnetic resonance spectroscopy will be developed and used for the following:

(1) Investigation of cerebral metabolism in the brains of living rabbits.

(2) Investigation of renal metabolism, in the rat, *in vivo*.

(3) Determination of the stoichiometric relationship between sodium transport and energy utilization in the mammalian kidney.

(4) Quantitation of the *in vivo* rates of hearts glycogen synthesis and breakdown in both normal and diabetic animals.

In addition, the instrument will be used for an occasional demonstration in courses on NMR in medicine. Application received by Commissioner of Customs: May 5, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11915 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 24, 1986 at 2:30 P.M. to 4:30 P.M., in Room 406 of the Princeton Club, 15 West 43rd Street, New York City. The Committee provides advice about ways to promote increased exports in U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; recent foreign restrictions affecting

textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen LaGrande (202) 377–3737.

Dated: May 20, 1986.

William H. Houston III,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 86–11900 Filed 5–27–86; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene separate public meetings of its Mackerel Management and Swordfish Management Committees as follows:

Mackerel Management Committee will convene June 10–11, 1986, to discuss development of the Mackerel Fishery Management Plan (FMP) Amendment Options Paper for proposed amendments to the Mackerel FMP. The meeting will be held in the Gulf of Mexico Fishery Management Council's conference room, Suite 881, Lincoln Center, 5401 West Kennedy Boulevard, Tampa, FL; telephone: (813) 228–2815.

Swordfish Management Committee will convene June 17, 1986, to review data and conclusions of the Swordfish Working Panel and to recommend to the South Atlantic Fishery Management Council, on behalf of the Gulf of Mexico Council, a seasonal closure and other actions to protect undersized swordfish in the Gulf of Mexico. The meeting will be held at the Holiday Inn, Route 9, Highway 49 and I–10, Gulfport, MS.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: May 21, 1986.

Richard B. Roe, Director,

Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–11904 Filed 5–27–86; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings at the Holiday Inn, 495 Brickell Avenue, Miami, FL, as follows:

Council will review the Mackerel Fishery Management Plan (FMP) Amendment Options Paper; review public comment and take final action on the Spiny Lobster FMP, amendment as well as discuss federal and state management of the red drum fishery; will convene July 9 and 10, 1986, at 8:30 a.m. and recess at 5 p.m., both days; reconvene July 11, at 8:30 a.m. and adjourn at noon.

Committees will convene July 7, at 1 p.m. with an Intercouncil (Gulf of Mexico and South Atlantic Fishery Management Councils) Spiny Lobster Management Committee meeting, and recess at 5 p.m.; reconvene July 8 at 8 a.m. and adjourn at noon.

Subsequent to the above Intercouncil Spiny Lobster Management Committee meeting, other Council Committees also will convene: Budget Committee from 1 p.m. to 3 p.m.; Reef Fish Committee from 3 p.m. to 3:30 p.m., and the Mackerel Management Committee, from 3 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: May 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–11905 Filed 5–27–86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Advisory Subpanel and Anchovy Plan Development Team will convene jointly a public meeting at 10 a.m., June 13, 1986, at the Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA, to discuss the 1986 anchovy spawning biomass and fishing quotas which may be derived from it. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6552.

Dated: May 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–11906 Filed 5–27–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Apparel Products From the Democratic Socialist Republic of Sri Lanka

Correction

In FR Doc. 86–11102, beginning on page 18015, in the issue of Friday, May 16, 1986, make the following correction:

On page 18016, first column, second paragraph, first line, "May 29, 1986" should read "May 19, 1986".

BILLING CODE 1505-01-M

Export Visa for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, has issued the directive published below the Commissioner of Customs to be effective on May 29, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

A CITA directive dated May 27, 1983 (48 FR 25257), as amended, established a new export visa requiement and exempt certification for certain cotton textiles and cotton textile products and man-made fiber work gloves in Category 631 pt. (only TSUSA numbers 704.3215, 704.8525, 704.8550, and 704.9000), produced or manufactured in Pakistan. The Goverments of the United States and Pakistan have exchanged letters further amending the visa arrangement, effective on May 29, 1986, to provide for the use of a new visa form, which will be the Special Customs Invoice Form 5515, printed on green guilloche patterned background paper for merchandise exported on and after December 31, 1985.

The visa and certification stamps are not being changed at this time. In the following letter, the Chairman of CITA

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directs the Commissioner of Customs to permit entry of the previously designated cotton and man-made fiber textile products visaed using the new form.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of textile agreements

May 22, 1986.

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 27, 1983, as amended, which established an export visa requirement for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan.

Effective on May 28, 1986, the Government of Pakistan will use a new visa form which will be the Special Customs Invoice Form 5515, printed on green guilloche patterned background paper for merchandise currently subject to the export visa requirement, exported on and after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11908 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Export Visa Requirement for Additional Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

May 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Effective on June 1, 1986, pursuant to the terms of the visa and exempt certification mechanism established under the Bilateral Textile Agreement of December 30, 1983 and January 23, 1984, between the Governments of the United States and the Republic of Uruguay, as amended, export visas will be required for women's, girls' and infants' cotton coats in Category 335, men's and boys' wool coats in Categories 433 and 434, and wool skirts in Category 442, in addition to those categories previously designated, e.g., Categories 410, 435 and 444. (See 50 FR 6232.) The new requirement will be effective for goods in the foregoing categories, exported on and after June 1, 1986. Textile products in these categories, exported before June 1, 1986, will not be denied entry, or withdrawal from warehouse for consumption in the United States for lack of a visa.

The visa stamp and officials authorized to issue visas for the Government of the Republic of Uruguay are not being changed at this time.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of February 8, 1985, which directed you to prohibit entry of certain specified categories of wool textile products, produced or manufactured in Uruguay and exported on and after January 1, 1985.

Effective on June 1, 1986, the directive of February 8, 1985 is hereby amended to require export visas for cotton and wool textile products in Categories 335, 433, 434, and 442, produced or manufactured in Uruguay and exported on and after June 1, 1986. Merchandise in these categories which has been exported before June 1, 1986 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11909 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Czechoslovakia Concerning Category 443

May 22, 1986.

On April 29, 1986, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and the Agreement Regarding Trade in Textiles and Consultations on Market Disruption of March 22 and March 28, 1977, requested consultations with the Government of the Czechoslovak Socialist Republic concerning exports to the United States of men's and boys' wool suits in Category 443, produced or manufactured in Czechoslovakia.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Czechoslovakia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of such products, produced or manufactured in Czechoslovakia and exported to the United States during the twelve-month period which began on April 29, 1986 and extends through April 28, 1987 at a level of 4,401 dozen.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 443 or on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

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The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect to the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Czechoslovakia—

Market Statement—Category 443—Men's and Boys' Wool Suits

April 1986.

Summary and Conclusions

U.S. imports of Category 443 from Czechoslovakia were 5,039 dozens during year-ending February 1986, almost three times the number imported in year-ending February 1985.

The substantial increase of low-valued Category 443 imports from Czechoslovakia is contributing to the disruption of the U.S. market for men's and boys' wool suits.

U.S. Production and Market

U.S. production of wool suits declined 9 percent between 1981 and 1983. Production rose slightly in 1984 to 285,000 dozens, but remained 3,000 dozens below the level of 1981. Production data for 1985 are not currently available, however industry sources estimate a substantial decline in production.

During the 1981–1984 period, the market for men's and boys' wool suits expanded by 84,000 dozens. However, the U.S. producers' share of the market steadily eroded. In 1981, the domestic share accounted for 71 percent of the market, but by 1984 their share had dropped to 58 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 443 grew from 115,000 dozens in 1981 to 202,000 dozens in 1984, a 76 percent increase. Imports continued to grow in 1985, increasing 4 percent to 209,000 dozens. The ratio of imports to domestic production rose from 40 percent in 1981 to 71 percent in 1984.

Import and Domestic Values

Approximately 96 percent of Czechoslovakia's 1985 imports of Category 443 entered under TSUSA No. 381.8359 (previously 379.8359)—men's and boys' wool suits over 4 U.S. dollars per pound, not knit or ornamented. These garments enter the U.S. at landed duty-paid values below the U.S. producers' price for comparable items.

[FR Doc. 86-11810 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Japan To Review Trade in Categories 314, 341/361 and 613

May 22, 1986.

On April 30, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested consultations with the Government of Japan with respect to cotton poplin and broadcloth in Category 314, women's girls' and infants' cotton and man-made fiber woven blouses and shirts in Category 341/641, and spun noncellulosic fabric in Category 613, produced or manufactured in Japan.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 314, 341/641 and 613, produced or manufactured in Japan and exported to the United States during the twelve-month period which began on April 30, 1986 and extends through April 29, 1987 of 17,369,414 square yards (Category 314), 466,528 dozen (Category 341/641), and 16,952,306 square yards (Category 613).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or informaton regarding the treatment of these categories, or to comment on domestic production of availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile agreement considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Japan—Market Statement

Category 314—Cotton Poplin and Broadcloth

April 1986.

Summary and Conclusions

United States imports of cotton poplin and broadcloth—Category 314—from Japan were 18.5 million yards for the year ending February 1986. This compares with 17.5 million yards for the same period one year earlier. Japan was the largest supplier, accounting for 23.7 percent of the YE February 1986 imports.

The market for Category 314 is being disrupted by imports and imports from Japan contributed to the market disruption. Continuation of the growth of imports from Japan would further the disruption.

Production and Market Share

U.S. production of cotton poplin and broadcloth continued its sharp decline from its 1983 level. Production in 1984 declined 10.5 percent from it's 1983 level and experienced an additional 12.5 percent decline in 1985.

The U.S. producers share of the market for domestically produced and imported fabric dropped from 63 percent in 1983 to 50 in 1984 percent. The domestic producers market share in 1985 was further reduced and represented only 48 percent.

Imports and Import Penetration

U.S. imports of Category 314 from all sources attained their highest levels ever in 1984 and 1985 at 73.4 and 71.2 million square yards, respectively. The 1985 level was 45 percent above the 1983 level. Imports continued reaching record levels increasing to 77.9 million square yards for year ending February 1986.

The ratio of imports to domestic production increased from 59.7 percent in 1983 to 99.4 percent in 1984, and reached 110.1 percent in 1985.

Import Values

Approximately 55 percent of Japan's Category 314 imports are entered under TSUSA's 322.2923, 322.3923, and 322.4923. These are cotton colored poplin/broadcloth not over 5.9 oz. per square yard of 20 to 40 yarn count. The landed duty-paid import values of these fabrics from Japan are near those of other low cost major suppliers.

Japan—Market Statement

Categories 341/641—WGI Cotton and Man-made Fiber Woven Blouses

April 1986.

Summary and Conclusions

U.S. imports of categories 341/641 from Japan were 489,000 dozens during year-ending February 1986, 32 percent greater than the 371,000 dozens imported during year-ending February, 1985. Full year 1985 imports

from Japan totaled 426,000 dozens, compared with 378,580 dozens in 1984.

The sharp and substantial increase of low valued categories 341/641 imports from Japan are disrupting the U.S. market for WCI cotton and man-made fiber woven blouses.

U.S. Production and Market Share

After rising in 1983, U.S. production declined 7 percent in 1984 to 25.8 million dozens.

Industry sources have indicated that production continued to fall in 1985. U.S. production worker employment in the women's, misses', and juniors' blouse manufacturing industry declined 4.5 percent in 1985.

Between 1982 and 1984 the U.S. market expanded by 5.6 million dozen. However, the U.S. producers' share of the market declined from 67 percent in 1982 to 61 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Categories 341/641 increased 36 percent between 1982 and 1984. Imports continued to increase in 1985, rising an additional 27 percent to 20.7 million dozens. The import to production ratio correspondingly rose from 49 percent in 1982 to 94 percent in 1984.

Duty-Paid Values and U.S. Producer Price

Approximately 79 percent of the recent Categories 341/641 imports from Japan entered under the following two TSUSA Numbers: (Category 341) 384.4809—women's other cotton blouses, not knit, not ornamented, nspf; (Category 641) 384.9115—women's man-made fiber blouses and shirts, not knit, not ornamented. These garments entered the U.S. at landed, duty-paid values below U.S. producers' prices for comparable garments.

Japan—Market Statement

Category 613—Spun Noncellulosic Fabrics

April 1986.

Summary and Conclusions

U.S. imports of Category 613 from Japan were 17.1 million square yards during year ending February 1986, up 12.8 percent from a year earlier. Over a third of the imports from Japan were lightweight, plainweave polyester/cotton fabrics. These Japanese imports increased 48 percent during the year ending February 1986. In 1985, the lightweight plainweave polyester/cotton fabric portion of Category 613 has a ratio of imports to domestic production of 197.1 percent. For the entire Category 613, domestic production declined over 30 percent in 1985 and imports equaled about 4 percent of U.S. production.

The substantial increase in imports of Category 613 from Japan disrupted the U.S. market for such fabrics.

Production

U.S. production of Category 613 increased in 1984 but dropped sharply in 1985. Market conditions during the last half of 1985 were slack. Production in the third and fourth quarters of 1985 for both the category as a whole and lightweight plain weave polyester/cotton fabric were well below comparable period 1984 production.

Domestic production of lightweight, plainweave polyester/cotton fabric declined 34 percent in 1985.

Imports

U.S. imports of Category 613 increased sharply over the 1982/1985 period, rising from 104 million square yards to 189 million square yards.

Imports of lightweight plainweave polyester/cotton fabrics increased from 80 million square yards in 1984 to 116 million in 1985. These imports were equal to domestic production in 1984 and nearly double 1985 domestic production.

Import Penetration

The ratio of imports to domestic production for Category 613 doubled over a two year period, rising from 1.9 percent in 1983 to 3.9 percent in 1985. The imports of lightweight plainweave polyester/cotton fabrics were nearly equal to domestic production in 1984 and nearly double the 1985 production.

Import Values and U.S. Producer Prices

Japan is a low cost supplier of Category 613 fabrics. TSUSA Numbers 338.3902 and 338.3943 are typical lightweight polyester/cotton plainweave fabrics imported from Japan. The duty-paid import value of these fabrics from Japan are near those of other low-cost major suppliers.

[FR Doc. 86-11011 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka To Review Trade in Category 644

May 22, 1986.

On April 29, 1986, the Government of the United States requested consultations with the Government of Sri Lanka with respect to man-made fiber textile products in Category 644 (women's, girls' and infants' suits). This request was made on the basis of the agreement between the Governments of the United States and Sri Lanka of May 10, 1983, as amended, relating to trade in cotton, wool and man-made fiber textile products. The agreement provides for consultations when imports, due to market disruption, or the threat thereof, threaten to impede the orderly development of trade between the two countries.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 644 exported during the 90-day consultation period which began on April 29, 1986 and extends through July 27, 1986 at the prescribed limit of 4,332 dozen.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit covering the current agreement year, which ends May 31, 1986. According to the terms of the bilateral agreement, if no solution is reached during consultations, the United States also may establish a twelve month specific limit covering the subsequent agreement year.

In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the limit established during the subsequent restraint period.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Sri Lanka, further notice will be published in the Federal Register.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Category 644 under the agreement with Sri Lanka, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Sri Lanka—Market Statement

Category 644—WGI Man-made Fiber Suits

April 1986.

Summary and Conclusions

U.S. imports of Category 644 from Sri Lanka were 16,000 dozens during year-ending February 1986, a four fold increase over the number imported in year-ending February, 1985. During the first two months of 1986, 6,000 dozens were imported, compared with zero trade for the same period in 1985.

The rapid increase of Category 644 imports from Sri Lanka is contributing to the disruption of the WGI man-made fiber suit market.

U.S. Production and Market Share

U.S. production of Category 644 has steadily declined. In 1984, production fell 5 percent from 890,000 dozens to 850,000 dozens. This trend continued into 1984 declining another 18 percent to 695,000 dozens.

After expanding by 136,000 dozens in 1983, the U.S. market for WGI man-made fiber suits declined by 113,000 dozens in 1984. The U.S. producers' share of this market shrunk in both years from 79 percent in 1982 to 67 percent in 1983 to 60 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 644 increased 21 percent from 394,000 dozens during year-ending February, 1985 to 478,000 dozens during year-ending February, 1986. During the first two months of 1986, world imports were 130,000 dozens, 71 percent greater than in the same period a year earlier. The import to production ratio increased from 27.1 percent in 1982 to 68.0 percent in 1984.

Domestic and Import Values

Approximately 80 percent of Category 644 imports from Sri Lanka entered under TSUSA No. 384.9162 (previously 383.9062)—women's, girls' and infants' and other man-made fiber suits, not knit, not ornamented. These garments entered the U.S. at landed, duty-paid values below U.S. producers' prices for comparable items.

Committee for the Implementation of Textile Agreements

May 22, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 29, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 644, produced or manufactured in Sri Lanka and exported during the ninety-day period which began on April 29, 1986 and extends through July 27, 1986, in excess of the following limit:

Category	90 day limit [1]
644	4,922 dozen.

[1] The limit has not been adjusted to account for any imports exported after April 28, 1986.

Textile products in Category 644 which have been exported to the United States prior to April 29, 1986 shall not be subject to this directive.

Textile products in Category 644 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607) December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11912 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Turkey on Categories 341 and 369-S

May 22, 1986.

On April 28, 1986, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Turkey to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton blouses in Category 341 and cotton shop towels in Category 369-S (T.S.U.S.A. 366.2040), produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Turkey the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of women's, girls' and infants' cotton blouses in Category 341 and cotton shop towels in Category 369-S, produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on April 28, 1986 and extends through April 27, 1987 at levels of 311,376 dozen (Category 341) and 971,962 pounds (Category 369-S).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any aspect of the exemption contained in 5 U.S.C. 533(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Category 341—WGI Cotton Woven Blouses

April 1986

Summary and Conclusion

U.S. imports of Category 341 from Turkey were 342,353 dozens during year-ending February 1986, more than four times the number imported in year-ending February 1985. During calendar year 1985, 251,669 dozens were imported from Turkey, compared to 46,308 a year earlier.

The sharp and substantial increase of low-valued Category 341 imports from Turkey is disrupting the U.S. market for WGI cotton woven blouses. Category 341 imports from Turkey must be controlled before further injury is sustained.

U.S. Production and Market Share

After rising in 1982 and 1983, U.S. production leveled off in 1984 at 7,050,000 dozens, only 2 percent above the 1983 level. Betwen 1982 and 1984, the market for WGI cotton blouses grew by 3,966,000 dozens, however, the U.S. producers' share of this market dropped from 46 percent to 42 percent as imports grew faster.

U.S. Cutting Data

Production data for 1985 are not currently available, however, government cuttings data are reported. These data show cuttings of women's blouses [1] down 16 percent in 1985 compared to the previous year.

Employment Data

Government sources report that in 1985, total employment in the women's and misses' blouse and waist industries (SIC 2331) fell 2.6 percent. The decline in production worker employment was more severe, 4.3 percent, and the average manhours worked fell 4.0 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 341 increased 41 percent between 1982 and 1984, rising from 6,852,000 dozens to 9,628,000 dozens. This upward trend continued into 1985 as imports reached 11,376,000 dozens, an 18 percent increase over the 1984 level. The import to production ratio increased from 117 percent in 1982 to 137 percent in 1984.

Duty-Paid Value and U.S. Producer Price

Approximately 72 percent of Category 341 imports from Turkey during 1985 entered under TSUSA No. 384.4609 (previously 383.4709)—women's other cotton woven blouses, not ornamented. These garments entered at landed, duty-paid values below U.S. producers' prices for comparable blouses.

[1] Cuttings data are for cotton, wool and man-made fiber blouses and include both wovens and knits, excluding knit tops.

Turkey—Market Statement

Category 369 Part—Cotton Shop Towels

April 1986.

Summary and Conclusions

During the first two months of 1986, U.S. imports of cotton shop towels—Category 369 Pt.—from Turkey were 388,000 pounds. This was more than half the amount imported from Turkey in calendar year 1985. This is a sharp and substantial increase of imports in a sector already adversely affected by imports. Turkey was the largest supplier of cotton shop towels, accounting for 28 percent of the total imports in 1985.

U.S. Market

The U.S. cotton shop towel market is adversely affected by imports. The U.S. producer's share of the market for domestically produced and imported cotton shop towels in 1985 was 48 percent compared with 59 percent in 1981. The U.S. market for shop towels was disrupted by imports in 1985. The market continues to be disrupted by imports in 1986 and Turkey's position as a major supplier of these towels makes it a major contributor to the market disruption.

U.S. Production

U.S. production of cotton shop towels declined from 162 million units in 1981 to 125 million units in the 1982 recession year, a decrease of 22 percent. Production regained some of the loss in 1983 and 1984, reaching a level of 138 million units in 1984, up 10 percent over the 1981 recession level, but 15 percent below the 1982 level and lower than any level on record prior to 1982. Production in 1985 was 131 million units, down 5 percent from 1984.

U.S. Imports

U.S. imports of Category 369 Pt., after remaining relatively flat at 94 million units during 1982 and 1983 due in part to the soft domestic market and the antidumping and countervailing duty actions initiated by the United States with specific major suppliers, increased substantially in 1984. Imports in 1984 soared to a record high of 156 million units. Although imports in 1985 were down, due to the imposition of limits on two major suppliers, import penetration continues at the same high rate as in 1984.

Import Penetration

The ratio of imports to domestic production increased from 69 percent in 1982 to 106 percent in 1985.

Import Value

Imports from Turkey are entered under TSUSA No. 366.2740-cotton shop towels, other than pile or tuft construction. The duty-paid landed value of these imports from Turkey are below the U.S. producer price for comparable towels.

[FR Doc. 86-11913 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Exported From the Dominican Republic

May 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983 between the Governments of the United States and the Dominican Republic establishes specific limits for Categories 340 (men's and boys' woven cotton shirts), 351 (pajamas and other nightwear), 639 (women's, girls, and infants' knit shirts of man-made fibers), 644 (women's, girls' and infants' suits of man-made fibers), and 649 (brassieres of man-made fibers), exported during the agreement year beginning on June 1, 1986 and extending through May 31, 1987. The following letter directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption in the United States of textile products in the forgoing categories in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. members was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken purusant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to

assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 351, 639, 644, and 649, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on June 1, 1986 and extending through May 31, 1987, in excess of the following restraint limits:

Category	12-mo. limit [1]
340	196,007 dozen.
351	465,716 dozen.
639	442,561 dozen.
644	49,771 dozen.
649	2,200,330 dozen.

[1] The restraint limits have not been adjusted to reflect any imports exported after May 31, 1986.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in the Dominican Republic, which have been exported to the United States during the period which began on June 1, 1985 and extended through May 31, 1986, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 30, 1983, between the Governments of the United States and the Dominican Republic which provide, in part, that: (1) Specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carryforward. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983, (48 FR 57584), April 4, 1984, (49 FR 13397), June 28, 1984, (49 FR 26822), July 16, 1984, (49 FR 28754), November 9, 1984, (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11919 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products, Produced or Manufactured in Sri Lanka

May 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, between the Governments of the United States and Sri Lanka establishes specific restraint limits for cotton and man-made fiber gloves and mittens in Categories 331 and 631, men's other coats of cotton and man-made fibers in Categories 334 and 634, women's, girls' and infants' cotton and man-made fiber coats in Categories 335 and 635, cotton dresses in Category 336, cotton playsuits in Category 337, cotton knit skirts in Categories 338 and 339, woven shirts and blouses of cotton and man-made fibers in Categories 340, 341, 640 and 641, cotton skirts in Category 342, cotton and man-made fiber trousers in Categories 347, 348, 647, and 648, cotton towels in Category 363, shop towels in Category 363pt. (T.S.U.S.A. number 366.2040), and wool and man-made fiber sweaters in Categories 445/446 and 645/646, produced or manufactured in Sri Lanka and exported to the United States during the twelve-month period beginning on June 1, 1986 and extending through May 31, 1987. The limit for Category 341 has been reduced by 29,732 dozen to account for carryforward used in the previous agreement year.

The agreement also provides a consultation mechanism for categories of textile products which are not subject to specific ceilings and for which levels may be established during the year upon agreement between the two governments.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on June 1, 1986, in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended in April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, between the

Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on June 1, 1986, and extending through May 31, 1987, in excess of the indicated restraint limits:

Category	12-month limit
331	1,021,322 dozen pairs.
334	199,094 dozen.
335	146,904 dozen.
336	67,416 dozen.
337	112,360 dozen.
338	245,920 dozen.
339	424,002 dozen.
340	534,994 dozen.
341	495,524 dozen.
342	190,800 dozen.
347	393,553 dozen.
348	291,810 dozen.
363	6,380,000 numbers.
369pt.[1]	647,756 pounds.
445/446	93,072 dozen.
631	309,694 dozen pairs.
634	119,102 dozen.
635	166,518 dozen.
640	102,406 dozen.
641	325,256 dozen.
645/646	107,191 dozen of which not more than 71,461 dozen shall be in Category 646.
647	376,300 dozen.
648	178,682 dozen.

[1] In Category 369, only TSUSA number 366.2940.

In carrying out this directive, entries of cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Sri Lanka, and exported during the period that ends on May 31, 1986, shall, to the extent of any unfilled balances, be charged to the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The limits set forth above are subject to the adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, which provide, in part, that (1) any specific limits and sublimit may be exceeded by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement, any of the adjustments referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 15, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15178), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 8, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-11920 Filed 5-27-86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety, CPSC.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on July 10 and 11, 1986, in Washington, DC, to review testing conducted by the National Bureau of Standards to measure ignition propensity of cigarettes; to discuss the status of the benefit-cost study; and to hear and discuss comments pertaining to implementation of the Cigarette Safety Act of 1984.

DATE: The meeting will be on July 10 and 11, 1986, from 9:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be in the Auditorium, first floor of the Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tawanna Segears, Office of Program Management, Consumer Production Safety Commission, Washington, DC. 20207; telephone: (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on July 10 and 11, 1986, to discuss the following topics:

(1) The portion of the meeting to be held on July 10 will consist of a review of testing conducted by the National Bureau of Standards to measure ignition propensity of cigarettes. The Technical Study Group will also discuss the status of the benefit-cost analysis required by the Cigarette Safety Act, and other matters pertaining to implementation of the act.

The July 10 portion of meeting will be open to observation by members of the Public, but only members of the Technical Study Group may participate in the discussion.

(2) The portion of the meeting to be held on July 11, 1986 will be devoted to hearing from any member of the public who wishes to present information or views of the implementation of the Cigarette Safety Act. Examples of the kinds of information which might be presented by interested members of the public include presentations about patented inventions intended to reduce the potential hazard of cigarettes as a source of ignition of upholstered furniture and mattresses, and information about studies or research concerning cigarettes as a source of ignition. The presentation of information previously provided to the Technical Study Group, for example information provided to the Technical Study Group at its public meeting last year on July 11, 1985, should not be repeated due to time constraints.

Each person desiring to make a presentation should provide a brief summary to Colin Church, Consumer Product Safety Commission, Room 420, Washington, DC 20207 by July 1, 1986. Presentations will be limited to approximately 20 minutes. Additional restriction on the length of presentations may be imposed depending on the number of people who wish to speak. The Technical Study Group is neighter soliciting nor expecting to discuss confidential business information.

Dated: May 22, 1986.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 86-11918 Filed 5-27-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Procurement; Air Force Activity for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Operations and Maintenance function of Class II and III Ranges at Cannon AFB, NM; England AFB, LA; Holloman AFB, NM; Mt Home AFB, ID; and Shaw AFB, SC will be converted to contract.

FOR FURTHER INFORMATION CONTACT: HQ TAC Manpower Office, Langley AFB, VA, Mr. Ross Clark, (804) 764–5174/2722.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11837 Filed 5–27–86; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday, 18 June 1986.

Times of Meeting: 0800–1700 hours.

Places: R&D Associates, Marina Del Rey, CA.

Agenda: The Army Science Board AHSG on MICOM Lab Effectiveness Review will meet at R&D Associates for the purpose of finalizing the report covering the effectiveness review. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–11877 Filed 5–27–86; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday and Thursday, 18–19 June 1986.

Times of Meeting: 0830–1630 hours.

Places: TRADOC Analysis Center, White Sands Missile Range, NM.

Agenda: The Army Science Board AHSG on Army Combat Models will meet for briefings by analytic agencies and government laboratories. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–11878 Filed 5–27–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Alaska Power Administration

Snettisham Project; Proposal to Adjust Wholesale Power Rate

AGENCY: Department of Energy, Alaska Power Administration.

ACTION: Notice of Proposal to Adjust Wholesale Power Rates Snettisham Project, Alaska.

SUMMARY: Proposal to adjust rate schedule SN–F2 increasing the energy rate from 25 mills per kilowatt-hour to approximately 29.3 mills per kilowatt-hour. Included in the proposal will be a new rate schedule SN–IN1, establishing a rate for interruptible energy at approximately 20 mills per kilowatt-hour. The proposed rates will be submitted to the Deputy Secretary of Energy for final approval from the Federal Energy Regulatory Commission.

DATES: Written comments will be considered for 90 days from the date of publication. Interim basis rates are expected to be in effect by October 1, 1986.

To Submit Written Comments or for Further Information Contact

Gordon Hallum, Chief, Power Division, Alaska Power Administration, Department of Energy, Room 825, Federal Building, P.O. Box 50, Juneau, AK 99802, (907) 586–7405

or

Darlene Low, Public Utilities Specialist, Alaska Power Administration, Department of Energy, Room 825, Federal Building, P.O. Box 50, Juneau, AK 99802, (907) 586–7405.

SUPPLEMENTARY INFORMATION: Preliminary studies show that an increased rate is necessary to meet cost recovery criteria, including repayment of deferred interest, and to offset inflation-related cost increases in O&M. The interruptible rate is being established as an incentive rate for conservation of fuel oils and efficient utilization of electric energy resources that would otherwise spill and be wasted during periods of surplus hydroelectric energy.

The Rate Proposal and supporting studies will be available June 15, 1986 in the Alaska Power Administration's headquarters office, Room 825, Federal Building, Juneau, Alaska.

Formal meetings with the utility customers will be scheduled for late June 1986. A public information and comment forum is scheduled for July 8, 1986, 7:30 p.m., Room 117, Federal Building, Juneau, Alaska.

All comments will be considered and the proposed rate may be revised on the basis of public input.

Dated: May 19, 1986.

Robert J. Cross,

Administrator.

[FR Doc. 86–11866 Filed 5–27–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–25–NG-]

Great Lakes Gas Transmission Co.; Application To Amend Authorization To Import and Export Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application to Amend Authorization to Import and Export Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 10, 1986, of an application filed by Great Lakes Gas Transmission Company (Great Lakes) requesting an amendment to its natural gas import/export authorization granted by the ERA in Opinion and Orders No. 61 and 61–A issued May 9, 1985, and July 24, 1985, respectively. The amendment for which Great Lakes seeks approval would permit it to increase the volumes of natural gas it presently imports and exports for TransCanada Pipelines Limited (TransCanada) from 825,000 Mcf per day to 887,500 Mcf per day for a term ending November 1, 2005.

Great Lakes would import all of the volumes under the TransCanada contract at the U.S.-Canadian boundary near Emerson, Manitoba, Canada for transport from Minnesota to the U.S.-Canadian boundary near Sault Ste.

Marie and St. Clair, Michigan. There, the gas would be exported back into Canada for redelivery to TransCanada and its customers. None of the gas volumes, including the additional 62,500 Mcf in daily contract quantities Great Lakes requests to import and export, would be delivered to markets in the United States.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on June 27, 1986.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9560;

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines and Delegation Order No. 0204–111 (49 FR 6684, February 22, 1984). Parties that may oppose this application should demonstrate to the ERA that granting Great Lakes an authorization to import gas and export that some gas back into Canada without taking ownership to the gas would not be in the public interest.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9478. They must be filed no later than 4:30 p.m., June 27, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Great Lakes' application is available for inspection and copying in the Natural Gas Division Docket Room GA–076, (202) 252–9478, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C., May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11865 Filed 5–27–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. RM86–1–172; RM86–1–173]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; CLARCO Gas Company, Inc.; Order Granting Rehearing for Further Consideration

Issued May 22, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Moody Gas Gathering System and Endevco, Inc. have filed timely requests for rehearing of the order issued March 28, 1986, in *CLARCO Gas Company, Inc.*, 34 FERC ¶ 61,384. That order denied CLARCO's request for a waiver of certain of the transitional provisions of Order No. 436.[1] Rehearing is granted solely for the purpose of affording the Commission additional time to consider the requests for rehearing. Pursuant to Rule 713(b) of the Commission's procedural rules, no answer to this order, or to the requests for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary

[FR Doc. 86–11866 Filed 5–27–86; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket Nos. CI86–378–000 et al.]

Arkla, Inc. (Exploration and Production Division et al.) Applications for Blanket Abandonment and Blanket Certificates With Pre-Granted Abandonment

May 21, 1986.

Take notice that on April 23, 1986, as supplemented on April 30, 1986, the Exploration and Production Division of Arkla, Inc. (Arkla E & P) and Arkla Energy Marketing Company (AEM) (Applicants), P.O. Box 21734, Shreveport, Louisiana 71151, filed applications in Docket Nos. CI86–378–000 and CI86–397–000. In Docket No. CI86–397–000 Arkla E & P requests blanket authorization to abandon for an indefinite period certain of its obligations to supply gas from company-owned reserves dedicated to the system supply of Arkla Energy Resources, a division of Arkla, Inc., (AER), which gas is released by AER because it is in excess of quantities required from time to time by AER. All wells and properties

[1] FERC Statutes and Regulations, Regulations Preambles 1982–1985, ¶ 30,665 (1985), 50 FR 42,408 (October 16, 1985).

subject to this applications are listed in the attached Exhibits A and B. In Docket No. CI86-378-000 Arkla E & P and AEM request blanket certificates with pre-granted abandonment for resale of the released gas. AEM is a wholly-owned subsidiary of Arkla, Inc.

Applicants state that Arkla E & P expects to be restricted due to depressed market conditions from being able to produce for delivery to AER any more than 15% of current total deliverability for at least the next year. Such reduced production it is avered will cause loss of cash-flow and potential permanent loss of certain reserves through drainage and engineering problems such as "trapping" of gas in partial water-drive reservoirs.

Applicants requests authorization pursuant to a December 31, 1985, amendment to a February 27, 1986, intracompany operating agreement between AER's production division and AER's pipeline division whereby the pipeline division released gas in excess of its system supply requirements, provided such gas is priced in excess of the replacement cost of gas available on AER's system, for a primary period extending through December 31, 1988, and continuing on a month-to-month basis until terminated by either party. The December 31, 1985, amendment provides that the production division in return has agreed to release the pipeline division from take-or-pay liabilities, credit released gas sold to a third party against future take-or-pay obligations and insert market responsive pricing provisions in the February 27, 1986, intracompany operating agreement to the extent not previously provided. Such provisions include a ceiling of $2.35 MMBtu through December 31, 1988, with periodic renegotiations at six-month intervals.

Arkla E & P states that it intends to sell released gas to AEM or other purchasers. Arkla E & P further states that AER has reserved the right to recall supplies needed to meet system requirements.

If the Commission issues certificates to other natural gas companies authorizing blanket interstate transportation of gas abandoned under similar programs, Applicants request blanket certificate authorization with pre-granted abandonment for transportation by interstate pipelines of the subject released gas.

Waiver of Parts 154 and 271 of the Commission's regulations is requested so Applicants will not be required to file and maintain rate schedules for the sales of released gas but price will not exceed applicable maximum lawful prices.

Exhibits to the applications indicate the gas involved is priced under NGPA section 104, 108 or 109 (see Exhibits A and B attached hereto).[1] Applicants state that since it is not absolutely clear whether pipeline production which was consumed in the state of production as of November 8, 1978, but is currently flowing across state lines, is subject to the abandonment requirements of the NGA, such gas has been included in this application.

If the Commission desires, Applicants state they will file quarterly reports detailing the transactions.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-11891 Filed 5-27-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. FA86-13-001]

Canal Electric Co. Order Establishing Hearing Procedures

Issued: May 21, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Under the Federal Power Act (Act) every public utility or licensee must keep such accounts, records of cost-accounting procedures, and any other records as the Commission may prescribe as necessary or appropriate for the administration of the Act. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited.

Commission staff (staff) recently performed an audit of Canal Electric Company (Canal). In a letter order issued February 28, 1986,[1] the Commission noted that Canal had not agreed to adopt the recommendations relating to the staff's determination that Canal had overcapitalized the allowance for funds used during construction (AFUDC) applicable to its ownership interest in the Seabrook Nuclear Station. Staff's position, as stated in the letter order, is that the overcapitalization results from Canal's failure to reduce its AFUDC base by construction related deferred income taxes not deducted from rate base.

The letter order requested Canal to notify the Commission within 30 days as to whether it would consent to disposition of the contested accounting matter in accordance with the shortened procedure set forth in Part 41, of the Commission's regulations. Under the shortened procedure, the Commission would rule on the matter solely on pleadings submitted by interested parties and staff. By letter dated March 28, 1986, Canal notified the Commission that it did not consent to the use of the shortened procedure. Consequently, we now set these matters for hearing.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's rule of practice and procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

The Commission orders:

(A) Pursuant to the provisions of the Federal Power Act, particularly section 301 thereof, and pursuant to the Commission's regulations thereunder, a public hearing shall be held concerning the appropriateness of Canal's accounting as discussed above.

(B) A Presiding Administration Law Judge, to be designated by the Chief Administrative Law Judge, shall

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[1] These exhibits are not being published in the Federal Register but are available from the Commission's Division of Public Information. Exhibit A is 19 pages and Exhibit B is 12 pages.

[1] 34 FERC ¶ 61,305 (1986).

convene a conference in this proceeding to be held within 30 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on motions as provided in the Commission's regulations.

(C) Secretary shall promptly publish this Order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11862 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-43-000 et al.]

Electric Rate and Corporate Regulation Filings; Central Corporation et al.

Take notice that the following filings have been made with the Commission:

1. Central Corporation

[Docket No. ES86-43-000]

May 21, 1986.

Take notice that on May 16, 1986, Central Corporation (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act (ACT), seeking an Order authorizing the issuance of up to $60,000,000 aggregate principal amount of unsecured notes or debentures.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Utilities Company

[Docket No. ES86-42-000]

May 21, 1986.

Take notice that on May 14, 1986, Citizens Utilities Company (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act (ACT), authorizing the issuance of not more than $50,000,000 of First Mortgage Bonds and Collateral Trust Bonds, and request exemption from compliance with competitive bidding requirements.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas & Electric Company

[Docket No. ES86-484-000]

May 21, 1986.

Take notice that on May 14, 1986, Pacific Gas and Electric Company (PG and E) tendered for filing actual 1985 and 1986 thermal capacity charges in response to a request by the Commission for acutal 1985, 1984 and 1985 thermal capacity charges accompanied by appropriate data and the charges. PG and E said the 1985 actual thermal capacity charge is not currently available pending completion of the 1985 study to determine PG and E's cost of thermal electric capacity ($/kW-mo). PG and E said as soon as the study is completed, the acutal charge and cost computation will be sent.

Comment date: June 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ES86-485-000]

May 20, 1986.

Take notice that South Carolina Electric & Gas Company on May 14, 1986, tendered for filing proposed cancellation of its Rate Schedule 36 (FERC).

Under the proposal, South Carolina Electric & Gas Company Rate Schedule 36 (FERC), contract between South Carolina Electric & Gas Company and Savannah Electric Power Company for purchase of 50 megawatts of capacity and associated energy effective June 28, 1984, is to be cancelled effective May 31, 1985.

Copies of this filing were served upon Savannah Electric Power Company.

Comment date: June 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11857 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-399-000]

Electric Rates; El Paso Electric Co.; Order Accepting for Filing and Suspending Rates in Part, Granting Motion To Reject, Noting Interventions, Ordering Summary Disposition in Part, and Establishing Hearing and Price Squeeze Procedures; Mobile-Sierra

Issued: May 22, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On March 26, 1986, El Paso Electric Company (EPE) tendered for filing a proposed two-phase increase in its rates to one full requirements customer, Rio Grande Electric Cooperative, Inc. (Rio Grande), and two partial requirements customers, Texas-New Mexico Power Company (TNP) and Imperial Irrigation District (Imperial).[1] The proposed Phase I rates would increase revenues by approximately $22 million (7%) based upon the calendar 1985 test period. The proposed Phase II rates would increase revenues by an additional $10.2 million, for a total increase of approximately $432.2 million (10.6%). EPE requests effective dates of May 20, 1986, for Phase I, and May 27, 1986, for Phase II. EPE further requests that if both phases are suspended for the same period, Phase I be deemed withdrawn.

Notice of EPE's filing was published in the Federal Register,[2] with comments due on or before April 11, 1986. Timely motions to intervene were filed by Rio Grande, TNP, and Imperial. In addition, the New Mexico Public Service Commission (New Mexico Commission) filed a timely notice of intervention.

Rio Grande requests that the filing be rejected on the grounds that it violates a settlement agreement between Rio Grande and EPE in two respects: first, that EPE has impermissibly included costs associated with Palo Verde Nuclear Generating Station Unit No. 2 (Palo Verde 2) period to commencement of the unit's commercial operation; and second, that the company has failed to advance some mechanism to "phase-in" the costs associated with the Palo Verde project. Rio Grande alternatively requests a five month suspension of the rates, that the issue of decommissioning the Palo Verde project be addressed in a separate proceeding, and that Rule 717 procedures not be instituted. Finally, Rio Grande reqests that price squeeze procedures be instituted.

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[1] *See* Attachment for rate schedule designations.

[2] 51 FR 11,971 (1986).

TNP requests that both phases be suspended for five months and that phased hearing procedures be developed, with the first phase expedited and devoted to developing a rate moderation or phase-in program. In support of this request, TNP alleges that EPE's proposed rate increase would result in a price squeeze and, further, would "wreak catastrophic adverse consequences" on the company and the local economy. TNP states that the bulk of its revenues are derived from power sales to copper mining companies, and that the copper industry is currently economically depressed. EPE's filing, TNP asserts, would only serve to make the situation worse.[3]

Imperial requests rejection of EPE's filing in light of three issues; alternatively Imperial seeks summary disposition as to these issues: depreciation rates, nuclear decommissioning costs, and the inclusion of a revenue shortfall provision in the company's tariff. Imperial further requests a five month suspension of the proposed rates.

The New Mexico Commission filed supplemental comments on May 8, 1986. It requests that both Phase I and Phase II be suspended for five months and that the filing be set for hearing. In support of this request, the New Mexico Commission argues that the proposed rate increase could have a devastating impact on New Mexico consumers and the State's economy. It also requests a phased hearing procedure, with the first phase devoted to the development of a rate moderation plan. In addition, Rio Grande, Imperial, TNP, and the New Mexico Commission raise a variety of cost of service and rate design issues.[4]

On April 28, 1986, EPE filed an answer. While not opposing the motions to intervene, EPE denies that a five month suspension is warranted. EPE asserts that many of the objections to the filing present questions of fact best resolved at hearing. The company opposes the motions to reject its filing or to order summary disposition as to the three issues raised by Imperial. It also opposes Rio Grande's motion for rejection due to the absence of a phase-in plan for the costs of the Palo Verde projects. However, EPE concedes that Palo Verde 2 costs should not be included in its rates to Rio Grande prior to commercial operation, and accepts summary disposition on this issue. In addition, the company states that it accepts summary disposition as to six other issues raised by the intervenors in their pleadings.[5]

Discussion

Under Rule 214 of the Commission's rules of practice and procedure,[6] the timely, unopposed pleadings serve to make Rio Grande, TNP, Imperial, and the New Mexico Commission parties to this proceeding.

We find that EPE's filing minimally complies with our threshold filing requirements and, except as discussed below with respect to Rio Grande, no other basis for rejection has been shown. Imperial requests rejection or summary disposition regarding EPE's alleged failure to file studies to support its requested depreciation rates for non-nuclear plant. The company has included a capital recovery study as required by section 35.13 of the Commission's regulations. To the extent that Imperial does not find the study sufficient, it is free to seek more detailed information in discovery. We do not, however, find a basis in Imperial's allegations for rejection or summary disposition.

As to the question of whether EPE's filing violates the provision in its settlement agreement with Rio Grande in Docket No. ER84-236-000 [7] concerning phasing-in the costs of the Palo Verde project, section 4.2 of that agreement provides:

> The Company will negotiate a phase-in of the Palo Verde nuclear project to wholesale electric rate base on terms no less favorable to Rio Grande than any other phase-in method agreed to by the Company, recognizing, however, that previous rate payments made by other jurisdictions might justify a different phase-in methodology. . . . If the Company and Rio Grande are unable to agree, the Company will file rates with the Commission reflecting the Company's views of the appropriate phase-in consistent with the principles stated here . . . .

Rio Grande contends that EPE's filing should be rejected because the company has not proposed any phase-in procedure as part of its filing. EPE argues that the settlement agreement requires EPE to include a phase-in plan only when one has been agreed to, and that this has not yet occurred. The company states that the phase-in plan presently under consideration at the retail level in New Mexico is merely proposed, not "agreed to."

We find that EPE's filing does not conflict with the settlement agreement with Rio Grande and we shall reject the rates as applicable to that customer. As EPE admits, it has submitted a phase-in plan for consideration at the retail level. Construing section 4.2, we believe that it is reasonable to conclude that, inasmuch as EPE has offered a plan at the retail level, it has "agreed to" a retail phase-in as intended by this provision of the settlement. However, it is unnecessary to make such a determination. Even if EPE has not specifically "agreed to" a phase-in plan at the retail level, the settlement agreement clearly required EPE to engage in negotiations with Rio Grande on the issue; since the company has not secured the customer's agreement, it was obligated, under any reasonable construction of the settlement, to propose some phase-in plan for Rio Grande "consistent with the principles" in the settlement agreement.[8]

We further find that summary disposition is warranted concerning the "revenue shortfall" provision, which would permit EPE to retroactively increase charges to reflect the outcome of the Commission's ultimate decision on demand allocation. In EPE's Phase I rates, EPE has allocated demand-related costs to TNP on the basis of TNP's coincident demand. In its Phase II rates, the company has allocated demand

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[3] Both Rio Grande and TNP filed supplements to their motions to intervene in which they elaborated upon several of the points raised in their initial pleadings. EPE opposes these submissions as untimely. Rio Grande's and TNP's actions have not resulted in undue prejudice to EPE, as evidenced by the company's response to those pleadings in its answer. We shall not reject the pleadings. Pursuant to Rule 213(d)(2) of the Commission's rules of practice and procedure, therefore, the pleadings are deemed effective.

[4] The issues raised include: (1) The rate of return on common equity; (2) O&M expenses; (3) the treatment of investment tax credits; (4) revenue credits for off-system sales; (5) the computation of deferred income taxes; (6) the prudence of EPE's continued involvement in the Palo Verde project; (7) computation of income taxes; (8) allocation of regulatory expenses; and (9) cash working capital.

[5] Specifically, EPE agrees that: (1) It made an error in amortizing investment tax credits, resulting in a negative flow-back to the customers of $2.26 million; (2) it made an error in synchronizing the amount added to accumulated deferred taxes for AFUDC interest with the $18.1 million in deferred taxes on AFUDC interest; (3) it erroneously included some O&M expenses for retired Rio Grande Units 2, 4, and 5 as a result of not adjusting budgeted expenses to reflect the decision to retire the units; (4) it erroneously used unratcheted billing determinants in designing the rates to Rio Grande; (5) it should have used the 40 year license life as the life of the plant for Palo Verde Nos. 1 and 2; and (6) it erroneously depreciated interim additions to Palo Verde.

[6] 18 CFR 385.214.

[7] 28 FERC ¶ 61,091 (1984).

[8] As noted, Rio Grande also requests that summary disposition be granted on its claim that EPE's filing violates the settlement agreement because the costs of Palo Verde No. 2 are included prematurely. It also asks that Rule 717 procedures not be instituted and that the issue of Palo Verde decommissioning costs be phased or addressed in a separate docket. EPE agrees to accept summary disposition on the first of these issues as well as its use of unratcheted billing determinants in designing its rates to Rio Grande. It is not necessary to decide these issues, since we are rejecting EPE's filing as to Rio Grande because of the absence of a phase-in provision.

costs to TNP on the basis of TNP's contract demands. TNP's contract demand is about 58% higher than its coincident demand. If the Commission approves the allocation of demand costs to TNP on the basis of TNP's contract demand, EPE contends that it will have understated its Phase I rates to TNP, and the company proposes that it be permitted to collect any revenue shortfall from TNP. On the other hand, if the Commission requires the use of coincident demand, EPE's Phase II rates to Rio Grande and Imperial will allegedly be understated, in which case EPE proposes to collect any shortfall from Rio Grande and Imperial. EPE contends that the revenue shortfall provision is not unlawful because, by filing it now as part of its proposed tariff, any amounts collected would be in accordance with the filed rate and after timely notice to its customers.

In essence, EPE seeks to shield itself from any adverse effects of its approach to demand allocation. The manner in which EPE has proposed to allocate demand costs in its various rate phases was a matter of the company's choice. However, having made that choice, the selection of allocation methods must necessarily factor into the Commission's evaluation of the filing, including its suspension decision.[9] To endorse EPE's *ex post facto* adjustment proposal would undermine the bases for the Commission's analysis; it would also subject certain customers to what we consider to be an inequitable, continuing surcharge liability arising out of the company's own choice. This is contrary to Commission practice generally and no compelling justification has been provided for the proposal which, in effect, would substitute a fixed, filed rate ceiling with an uncertain and variable cap. We are compelled to conclude that EPE must bear the risks of its filing decisions and that this make-up provision must be rejected. *See FPC* v. *Tennessee Gas Co.*, 371 U.S. 145 (1962).

We also find that summary disposition is warranted on the other issues affecting the rates to TNP and Imperial as to which the company concedes error. Within thirty (30) days of the date of this order, EPE shall file revised rate schedules reflecting our determinations on all the issues noted above.

Our preliminary examination of EPE's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the Phase I and Phase II rates to Imperial may not yield substantially excessive revenues. EPE has requested that the Phase I rates be deemed withdrawn if the same suspension period would be imposed for both Phase I and Phase II. Therefore, we shall deem Phase I withdrawn as to Imperial and shall suspend Phase II as to Imperial, as modified by summary disposition, for one day, to become effective on May 28, 1986, subject to refund. As to the rates for TNP, our examination suggests that the Phase I rates, as modified, may not yield substantially excessive revenues, while the Phase II rates may be substantially excessive. Therefore, we shall suspend Phase I as to TNP, as modified, for one day, to become effective on May 27, 1986, subject to refund, and Phase II, as modified, for five months, to become effective on October 27, 1986, subject to refund.[10]

We note that EPE proposes, in its filing, to flow the costs of an unsuccessful uranium venture through its fuel adjustment clause. The company's proposal has been questioned in a recent audit by the Commission's Office of Chief Accountant.[11] We shall also set this issue for hearing.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors.[12]

The Commission Orders

(A) The pleadings filed by Rio Grande on April 16, 1986, by TNP on April 17, 1986, and by the New Mexico Commission on May 8, 1986, are hereby accepted.

(B) EPE's proposed rates for service to Rio Grande are hereby rejected.

(C) Summary disposition is hereby ordered, as noted in the body of this order, with respect to (1) the revenue shortfall provision; (2) the amortization of investment tax credits; (3) the error in synchronizing the amount added to accumulated deferred taxes for AFUDC interest with the $16.1 million in deferred taxes on AFUDC interest; (4) the O&M expenses for retired Rio Grande units 3, 4, and 5; (5) the life of the plant for Palo Verde Nos. 1 and 2; and (6) the depreciation of interim additions to Palo Verde. EPE is hereby directed to submit revised rate schedules and cost support reflecting these determinations within thirty (30) days of the date of this order.

(D) All other motions for rejection of EPE's filing or summary disposition are hereby denied.

(E) EPE's proposed rates are hereby accepted for filing, as modified by summary disposition; the Phase II rates to Imperial are suspended for one day, to become effective May 28, 1986, subject to refund, and the Phase I rates to Imperial are deemed withdrawn. The Phase I rates to TNP are suspended for one day, to become effective on May 27, 1986, subject to refund. The Phase II rates to TNP are suspended for five months, to become effective on October 27, 1986, subject to refund.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of EPE's rates.

(G) The Commission staff shall serve top sheets within ten (10) days of the date of this order.

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[9] It is noted that the distinction in demand allocation method is a major cost of service distinction between Phase I and II rates to TNP.

[10] TNP requests that EPE's rates be suspended for five months due to an alleged price squeeze. As the Commission has noted on a number of occasions, in the absence of extraordinary circumstances unproved price squeeze allegations are not considered in determining an appropriate suspension period. We are not persuaded that TNP has demonstrated extraordinary circumstances in this case.

[11] Letter Directive of December 20, 1985. By letter dated January 24, 1986, EPE responded to the Chief Accountant and requested that its proposed accounting for these costs be approved.

[12] As noted, TNP requests that this case be phased, with the first phase to consider rate moderation plans in order to eliminate an alleged price squeeze, and that the Commission decide the matter on an expedited basis during the suspension period. The New Mexico Commission also asks that the first phase be devoted to a rate moderation plan. Under *Arkansas Power & Light Co.*, the presiding judge is free to depart from the usual phasing procedure for good cause. We believe, therefore, that TNP's arguments are more appropriately considered, in the first instance, by the presiding judge.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Such conference shall be held for purposes of establishing a procedural schedule, including the submission of EPE's case-in-chief. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(I) Subdocket 000 in Docket No. ER84-236-000 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER84-236-001.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

El Paso Electric Company, Rate Schedule Designations, Docket No. ER86-368-000

Filed: March 28, 1986.

Designation	Description	Other party
(1) Supplement No. 13 to Rate Schedule FERC No. 18 (Supersedes Supplement No. 12).	Phase I rate increase.	Rio Grande-Dell City.
(2) Supplement No. 14 to Rate Schedule FERC No. 19 (Supersedes Supplement No. 13).	do	Rio Grande-Van Horns.
(3) Supplement No. 7 to Rate Schedule FERC No. 36 (Supersedes Supplement No. 6).	do	TNP.
(4) Supplement No. 7 to Rate Schedule FERC No. 39 (Supersedes Supplement No. 6).	do	Imperial.
(5) Supplement No. 14 to Rate Schedule FERC No. 18 (Supersedes Supplement No. 13).	Phase II rate increase.	Rio Grande-Dell City.
(6) Supplement No. 15 to Rate Schedule FERC No. 19 (Supersedes Supplement No. 14).	do	Rio Grande-Van Horns.
(7) Supplement No. 8 to Rate Schedule FERC No. 36 (Supersedes Supplement No. 7).	do	TNP.
(8) Supplement No. 8 to Rate Schedule FERC No. 39 (Supersedes Supplement No. 7).	do	Imperial.

[FR Doc. 86-11889 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5334-001]

Joint Ypsilanti Recreation Organization; Application for Approval of Completed Development of Project Lands

May 21, 1986.

Take notice that the Joint Ypsilanti Recreation Organization (JYRO), licensee, for the Ford Lake Project No. 5334, has completed developing Phase I of certain lands designated as the North Bay Reclamation Project, located on the Huron River in Washtenaw County, Michigan.

On November 19, 1984, the Commission issued a public notice for JYRO's proposed North Bay Reclamation Project. The purpose of the proposed project was to enhance recreational opportunities in the North Bay through dredging to create a usable water depth. This work was to be achieved through a 3-phase process. Since then, JYRO has substantially revised its reclamation project. In early 1985, JYRO completed construction of Phase I, which consisted of 3 islands and approximately 23,500 cubic yards of shoreline filling. Phase I was constructed as a mitigation measure to enhance fish and wildlife habitat and increase shoreline fishing area in order to offset the loss of lake surface area resulting from disposal of dredge material in the lake as originally proposed in Phase II. Initially, Phase I consisted of creating 11.75 acres of wetlands, filling 1.5 acres of islands and shoreline, dredging 8.7 acres of channel area to depths of 9 feet to 12 feet, and constructing three-foot bridges between the islands. Currently, Phases II and III are in the conceptual stage. JYRO will file an application for Commission approval of the proposed work in Phases II and III after the plans are finalized.

Correspondence with the licensee should be directed to: Mr. Kenneth R. Oscarson, Orhcard, Hiltz and McCliment, Inc., 34935 Schoolcraft Road, Livonia, Michigan 48150.

Agency Comments.—Federal, State, and local agencies are invited to file comments on the completed Phase I of the project. A copy of the plans for completed Phase I of the reclamation project may be obtained by agencies directly from the licensee. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 38.211 or 385.214, 47 FR 19025-26 (1983). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before July 2, 1986.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 203 RB at the above address. A copy of any motion to intervene must also be served upon each

representative of the licensees specified in the third paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11880 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-6-000]

Mobil Exploration and Producing North America, Inc.; Modification of Caption and Paragraph K of Show Cause Order

Issued May 21, 1986.

On April 21, 1986, the Commission commenced a show cause proceeding (Show Cause Order) against Mobil Oil Corporation (Mobil). The Show Cause Order was for the purpose of determining whether a change by Mobil in the method of accounting for plant volume reduction of natural gas sold by Mobil from an allocation on a weighted average basis, to one allocated to the lowest price gas may have resulted in sales of natural gas at unlawfully high rates in violation of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982) (NGPA).

The Show Cause Order provided for the bifurcation of the proceeding into two phases. Phase I was to determine the legal issue of whether the actions that are the subject of the above-referenced proceeding are consistent with the NGPA. If a violation is found, Phase II would resolve the issue of the extent of the violations, and the appropriate monetary remedies to be imposed. Paragraph (K) of the Show Cause Order required Mobil to respond to the data request specified therein, within thirty days, *i.e.*, May 21, 1986.

On May 13, 1986, Mobil filed a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, to modify the Show Cause Order in two respects. The first sought to change the caption of the proceeding to "Mobil Exploration and Producing North America, Inc." since the natural gas processing plants that are the subject of this proceeding were owned by The Superior Oil Company (Superior). Effective April 24, 1986, Superior was merged into Mobil Exploration and Producing North America, Inc. (MEPNA), an affiliate of Mobil, and MEPNA is the successor to Superior. Mobil has had no direct involvement with the plants that are the subject of the Show Cause Order and thus should not be named as the respondent.

The second request was that the Commission defer the date to respond to the data request specified in Paragraph K of the Show Cause Order until Phase II commences, since the data sought bears only upon the issues relating to Phase II.

On May 15, 1986, the Enforcement Section, Office of General Counsel filed its response stating it had no objection to Mobil's requests for modification. Accordingly, the Show Cause Order of April 21, 1986, is hereby modified by:

1. Changing the caption to Mobil Exploration and Producing North America, Inc.; and

2. Changing Paragraph (K) to state that Mobil Exploration and Producing North America, Inc. shall produce the documents only after Phase II of the proceeding has commenced.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11894 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL86-11-000]

Cities of Newark, New Castle, and Milford, DE, and Town of Smyrna, DE v. Delmarva Power and Light Co; Order Setting Matter for Investigation and Hearing

Issued: May 21, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 27, 1985, the Cities of Newark, New Castle, and Milford, Delaware and the Town of Smyrna Delaware (Municipalities) filed a complaint pursuant to Rule 206 of the Commission's rules of practice and procedure against Delmarva Power and Light Company (DP&L). The Municipalities allege that DP&L violated a settlement agreement between DP&L and the Municipalities.

The Municipalities own and operate municipal electric utilities in Delaware and are currently partial requirements customers of DP&L. On February 2, 1983, the Municipalities filed with the Commission an agreement with DP&L which settled in part four cases pending before the Commission [1] and settled antitrust cases brought by the Municipalities against DP&L.[2]

The Municipalities characterize the settlement as having established a comprehensive mechanism to equalize the rates of return between DP&L's GS-P tariff, applicable to large industrial customers, and the wholesale rates to the Municipalities. According to the Municipalities, when DP&L files wholesale rates, it must provide a rate of return comparision with its filing. The Municipalities state that the agreement then requires DP&L to furnish to the Municipalities, within ten days following a Commission order establishing the effective date for wholesale rates applicable to the Municipalities, a further rate of return comparison between the wholesale rates and the retail GS-P rate which DP&L expects will be in effect as of the effective date of the wholesale rates. They state that the agreement provides that if the rate of return comparison indicates that DP&L would receive a greater return on the Municipalities' wholesale rates than on the GS-P rate, DP&L and the Municipalities must file with the Commission a joint request for decreased interim wholesale rates applicable to the Municipalities at the level necessary to indicate equal rates of return. According to the Municipalities, the agreement further provides that if the Commission fails to approve a decrease in wholesale rates coincidentally with a decrease in retail GS-P rates, DP&L and the Municipalities would seek to adjust interim wholesale rates so that the Municipalities would receive reimbursement, plus interest, of the difference between the effective rates and the rates required to eliminate price squeeze based upon a rate of return comparison.

The crux of the Municipalities' complaint is that DP&L has, since March of 1984, issued six refunds or rate decreases to its retail customers, while making only one rate reduction to the Municipalities during the same period. The Municipalities allege that pursuant to the settlement agreement, DP&L was obligated to file wholesale rate decreases corresponding to each of the retail rate reductions. The Municipalities allege that a rate reduction of approximately $2,800,000 is due them. They request that the Commission order DP&L to file reduced rates or refunds in that amount, plus interest. In the alternative, they request that the Commission order DP&L to reduce rates to the Municipalities and order a hearing to determine the amount of the rate reduction.

Notice of the Municipalities' complaint was published in the Federal

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[1] Docket Nos. ER78-414, ER80-365, ER81-504, and ER82-751.

[2] *City of Newark* v. *DP&L*, Civ. A. No. 77-254 (D. Del.) and *City of New Castle* v. *DP&L*, Civ. A. No. 77-286 (D. Del.). By order issued on May 31, 1983, the Commission approved the agreement. 23 FERC ¶ 61,363 (1983). Among other things, the agreement addressed the question of future price squeeze disputes and related procedures before the Commission.

Register,[3] with comments due on or before January 13, 1986. On December 23, 1985, the Municipalities filed a motion to defer all procedural dates pending settlement negotiations. On February 26, 1986, the Municipalities filed a motion requesting that the Commission address its complaint, inasmuch as the parties had been unsuccessful in their attempts to settle the issues in this proceeding.

Old Dominion Electric Cooperative (ODEC) filed a motion to intervene in this proceeding on March 3, 1986. ODEC states that as a wholesale customer of DP&L, it has a direct interest in any rate reductions that may be ordered by the Commission for DP&L wholesale customers in this proceeding. On March 17, 1986, OP&L filed an answer in opposition to ODEC's motion to intervene. DP&L opposes ODEC's intervention on the grounds that ODEC is not a party to the settlement agreement and does not have standing to challenge DP&L's compliance with a settlement agreement to which it is not a party.[4] On March 26, 1986, the Commission issued a notice establishing a deadline for protests, interventions, and answers of April 14, 1986.[5]

DP&L filed a timely answer to the Municipalities' complaint. DP&L states that the complaint is based on an incorrect interpretation of the settlement agreement. The company denies the allegation that the settlement agreement requires DP&L to file reduced wholesale rates to create equal rates of return between its GS–P retail rate and the Municipalities' wholesale rates whenever there is a reduction in retail rates. DP&L asserts that the settlement agreement provides for the adjustment of interim wholesale rates only while a wholesale rate case is pending before the Commission. DP&L admits that it issued refunds and rate decreases to its Delaware retail customers on the dates alleged in the compliant.[6] However, DP&L argues that because there was not a wholesale rate case pending before the Commission during these periods, DP&L was not required to adjust its wholesale rates to correspond with such retail rate reductions. DP&L states that its actions have been conisistent with its obligations under the settlement agreement and requests that the Commission summarily dispose of this proceeding by dismissing the complaint. In the alternative, the company requests that the Commission set the matter for hearing.

On April 30, 1986, the Municipalities filed a motion for leave to file a late opposition to DP&L's motion for summary disposition. In the response, they present a point-by-point argument concerning their interpretation of the settlement agreement and also dispute DP&L's quantification of its retail rate reductions. The Municipalities state that they must obtain information through discovery to determine the exact amount of one of DP&L's retail reductions. They request that the Commission grant summary disposition for the Municipalities on the question of DP&L's alleged violation of the settlement agreement, and order a hearing to determine the proper amount of wholesale rated reduction or refunds.

Discussion

Notwithstanding DP&L's opposition to ODEC's intervention, we find that good cause exists to grant its motion. Although the Municipalities' complaint focuses principally on an interpretation of *their* earlier settlement agreement with DP&L, we are not prepared to conclude that ODEC has not legitimate interest in the outcome of this proceeding, particularly in view of the scope of the hearing which we discuss below. In this context, ODEC's participation may be in the public interest and we shall therefore grant the motion to intervene.

Because of the apparent absence of any undue prejudice or delay, we shall grant the Municipalities' motion to file an untimely reply to DP&L's motion for summary disposition. We do so somewhat reluctantly, however, because the Municipalities have provided no explanation for their untimeliness and because the response does not provide any new facts or information which could not have been included in their original complaint; rather, it merely sets forth a more detailed argument on their interpretation of the settlement agreement.

This controversy centers on the proper interpretation of a settlement agreement between the parties. As noted, the Municipalities argue that DP&L is required to initiate actions necessary to equalize the rates of return between GS–P retail rates and wholesale rates to the Municipalities whenever DP&L makes a retail rate reduction. DP&L, on the other hand, argues that such procedures are triggered only after a wholesale rate filing has already been made.

Whatever the objectives of the parties might have been when they entered into the settlement agreement three years ago, we are unable to find a clear indication within the four corners of that document that the provisions referred to by the Municipalities impose any separate and direct obligation on DP&L to initiate wholesale rate change proceedings. Rather, by their terms, the provisions appear to control only after such a filing has first been made, and to address procedures for amending interim rate levels while the filing is pending.[7] Nonetheless, the pleadings are somewhat cryptic and we are not prepared to determine conclusively that there is room for only one interpretation. Further, we would, in any case, consider it reasonable to initiate a hearing on the assumption that the Municipalities are alleging, albeit indirectly, on ongoing price squeeze concern which might be remedied prospectively, if not under the terms of the settlement.[8] Therefore, we shall set the complaint for hearing with the expectation that issues such as burden of proof and appropriate relief, if any, shall be considered in the proceeding.

The Commission Orders

(A) ODEC's motion to intervene is hereby granted.

(B) The motions for summary disposition filed by DP&L and the Municipalities are hereby denied.

(C) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(c) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the issues presented by the Municipalities' complaint filed against DP&L.

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[3] 50 FR 52,365 (1985).

[4] On March 25, 1986, ODEC filed a supplement to its motion to intervene in repeonse to DP&L's opposition to its intervention. On April 7, 1986, DP&L filed an answer to ODEC's supplemental pleading. Because the Commission's Rules of Practice and Procedure do not permit the filing of a responsive pleading to an answer, we shall disregard these pleadings. 18 CFR 385.213(a)(2).

[5] 51 FR 10,917 (1986).

[6] We note, however, that the amounts, percentages, and types of rate reductions claimed by DP&L do not correspond to those alleged by the Municipalities.

[7] Conceivably, the preeminent issue at the time of the settlement involved rate increases rather than decreases, but we need not so speculate as to motives.

[8] While this option would be available in any event under section 206 of the Federal Power Act, we note that the settlement specifically reserves to the Municipalities the right to file complaints and to bring price squeeze actions before the Commission. We also note that a hearing would be required, in any case, to resolve the dispute as to the magnitude of DP&L's various retail rate reductions.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates, including the initial submission of testimony and exhibits by the Municipalities, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) Subdocket 009 of Docket No. EL85-11 is hereby terminated. Docket No. EL86-11-001 is hereby assigned to the evidentiary hearing ordered herein.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11883 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-78-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

May 22, 1986.

Take notice that on May 15, 1986, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0900, tendered for filing in Docket No. RP86-78, Eighteenth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Eighteenth Revised Sheet No. 5 reflecting a decrease in current demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to its four U.S. purchasers, Northern Natural Gas Company, a Division of Enron Corp. ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), United Gas Pipe Line Company ("United"), and Pacific Interstate Transmission Company ("PIT") under Rate Schedules X-1, X-2, X-3, and X-4, respectively. Total demand charges for Northern, Panhandle, and United increase due to a larger demand charge adjustment than in the January-June 1986 period, while total demand charges for PIT are less.

Northwest Alaskan states that it is submitting Eighteenth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X-1, X-2, X-3, and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1986 through December 31, 1986) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Eighteenth Revised Sheet No. 5 become effective July 1, 1986.

Northwest Alaskan states that a copy of this filing is being served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11885 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA86-3-28-005 and TA86-3-28-003]

Panhandle Eastern Pipe Line Co.; Change in Tariff

May 22, 1986.

Take notice that on May 15, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Fourth Revised Sheet No. 43-2.1
Fourteenth Revised Sheet No. 43-4

The proposed effective date of these revised sheets is December 1, 1986.

Panhandle states that the purpose of the revisions to Panhandle's purchased gas adjustment tariff language is to implement the Commission's new methodology to account for out-of-balance concurrent exchange transactions. Panhandle is proposing to implement this "adjusted methodology" together with the attendant tariff language beginning December 1, 1986. Accordingly, a December 1, 1986 effective date is proposed for First Substitute Fourth Revised Sheet No. 43-2.1 and Fourteenth Revised Sheet No. 43-4.

Panhandle respectfully requests waiver of § 154.22 of the Commission's Regulations together with any other such waivers as may be necessary, for the acceptance of First Substitute Fourth Revised Sheet No. 43-2.1 and Fourteenth Revised Sheet No. 43-4 submitted herewith to become effective December 1, 1986.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11849 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Stampede Division, Washoe Project; Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rate—Stampede Division, Washoe Project.

SUMMARY: The Sacramento Area Office of the Western Area Power Administration (Western) is proposing a minor rate adjustment for a new service from the Stampede Division, Washoe Project (Stampede). The Bureau of Reclamation (Reclamation) is currently constructing the Stampede Powerplant as part of the Stampede Division. The powerplant, a 3.65-MW hydroelectric facility producing only nonfirm energy, is expected to be operable by August 15, 1986. The nonfirm energy will be marketed by Western to Truckee-Donner Public Utility District (TDPUD)

pursuant to the final Power Marketing Plan (50 FR 21350, May 23, 1985) and final allocation (50 FR 43456, October 25, 1985).

Proposed Rates

Two alternative rates are now being considered to recover the costs associated with the nonfirm Stampede energy. In the event that the Government operates and maintains the Stampede power-related facilities, the customer will pay the SNF–1 rate. In the event the customer operates and maintains the Stampede power related facilities at its own expense, the customer will pay the SNF–2 rate.

The customer will pay one of these proposed alternative rates for each kWh of nonfirm energy delivered to the customer at the Stampede Powerplant, except for the energy designated to service the project loads. The determination of the rate which will be applicable will be dependent upon whether the customer agrees to operate and maintain the Stampede Powerplant at its own expense. Both of the rates and the effective dates are shown below.

	Date effective	Nonfirm energy charge (mills/kWh)
SNF–1	The first day of commercial service of Stampede Powerplant.	40.85
SNF–2	do	28.38

EFFECTIVE DATE: The new rate will become effective on the date that Stampede Powerplant is placed in commercial service. In the event that the powerplant becomes commercially operable prior to the issuance of the rate order applicable to the rates described herein the rate may be applied retoractively.

DATES: The consultation and comment period will begin with publication of this notice in the Federal Register and will end 30 days thereafter. The alternative rates described herein are expected to become effective at such time that Stampede Powerplant is placed in commercial service. Written comments may be submitted to the address below on or before the end of the consultation and comment period.

ADDRESS: For further information contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, Phone: (916) 978–4418.

SUPPLEMENTARY INFORMATION: Power rates for the Stampede Division are established pursuant to the Department of Energy (DOE) Organization Act of August 4, 1977 (42 U.S.C. 7101 *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Act of August 1, 1966, 70 Stat. 775, authorizing construction of the Washoe Project.

The DOE Delegation Order No. 0204–108 (48 FR 55664, December 14, 1983) delegates to the Administrator of Western, on a nonexclusive basis, the authority to develop power and transmission rates. The order also delegates to the Deputy Secretary, on a nonexclusive basis, the authority to confirm, approve, and place in effect, on an interim basis, power and transmission rates.

Western is developing these rates for Stampede Division, Washoe Project, in accordance with Reclamation Law, DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2, September 20, 1979), and the procedures for public participation in rate adjustments found in Title 10 CFR Part 903 (1985).

This notice initiates the public proceedings for a minor new service, announcing the rates under consideration and the beginning of the 30-day consultation and comment period. A public information and comment forum will not be held. Under DOE procedures, such forums are optional for minor rate adjustments, which include rate adjustments for power systems with installed capacity of less than 20,000 kW. Stampede Powerplant capacity is 3,650 kW, well under the 20,000 kW limit, making the forums optional for Stampede. Western's decision not to hold public forums is primarily due to the absence of public interest and involvement during the power marketing proceedings.

Rate Components

The two alternative rates will be based on power related costs associated with the Stampede nonfirm energy, as delivered to the customer at the Stampede Powerplant Switchyard.

a. *SNF–1.* In the event that the Government operates and maintains the Stampede facilities, the customer will pay full cost of service, now calculated at 40.85 mills per kWh. The customer will pay this rate for each kWh of nonfirm energy delivered to the customer at the Stampede Powerplant, except for the energy designated to service the project loads. The full cost of service is defined as payment of the following costs, as allocated to the commercial power function: (1) The annual operation and maintenance (O&M) expenses, to be repaid in the year of occurrence; (2) the annual interest expenses, to be repaid in the year of occurrence; (3) the replacement costs, to be repaid over the service lives of the replaceable items or 50 years, whichever is shorter, such replacements to be repaid with interest; and (4) the power investment and associated planning costs, to be repaid over a 50-year repayment period at the Stampede power facility's authorized 2.591 percent interest rate.

b. *SNF–2.* In the event that the customer operates and maintains all of the Stampede Powerplant facilities at its own expense, the customer will pay the cost of service, less the O&M expenses, now calculated at 28.38 mills per kWh. The customer will pay this rate for each kWh of nonfirm energy delivered to the customer at the Stampede Powerplant, except for the energy designated to service the project loads. The costs to be repaid by the SNF–2 rate are the same costs as those defined for the SNF–1 rate, excluding the annual O&M expenses.

Background

Stampede Dam and Reservoir are located on the Little Truckee River approximately 8 miles above the confluence of the Little Truckee and Truckee Rivers. The dam and reservoir are in Sierra County, California, about 11 miles northeast of the town of Truckee. The water source for Stampede Reservoir is the Little Truckee River drainage basin containing about 126 square miles of dense wooded slopes and grass meadowlands.

When the Stampede Dam and Reservoir project was authorized in 1956, hydroelectirc power development was included. However, power facilities were not constructed at the time Stampede Dam was built during the period 1966 to 1970 because the power function was not economically justified. Nevertheless, provisions were made to facilitate the addition of power facilities at a later date.

A preliminary reevaluation of a powerplant at Stampede was published in a special Reclamation report, "Adding Powerplants at Existing Federal Dams in California," July 1978. The report recommended construction of a Stampede Powerplant. As a result, definite plan studies were initiated in fiscal year 1977 and construction of the powerplant is nearly complete.

Stampede Dam and Reservoir are presently operated to fulfill three purposes: flood control, fisheries enhancement, and recreation. Power generation, resulting from the addition

of the 3.65-MW powerplant at the dam, will add a fourth purpose. It is estimated Stampede Powerplant will provide approximately 9.6 million kWh annually. The powerplant will be operated as an unattended plant with automatic means for maintaining relatively constant downstream water releases in the event of unit shutdown. Generator control is completely automatic with capability for complete shutdown.

Under contract with Western, the Sierra Pacific Power Company (Sierra) constructed a ½ mile 60-kV transmission line between the Stampede power facility and Sierra's existing 60-kV transmission system for the purpose of delivering energy to Sierra's system. All plant and switchyard controls are centrally located inside the powerplant.

The energy generated by the Stampede Powerplant has an initial priority reservation for designated Washoe Project loads. The Lahontan National Fish Hatchery and the Marble Bluff Fish Facility have been designated by Reclamation and Western as project loads of the Washoe Project. Such designation makes the Fish and Wildlife Service facilities eligible to be served by the Stampede Powerplant on a priority basis. The projected demand of these facilities should not exceed 500-kW peakload and 2 million kWh annually. Energy generated at the Stampede Powerplant will be nonfirm in nature and, except for the energy designated to service the project loads, will be sold to the TDPUD as a preference agency.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for Stampede relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate for Stampede power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 and DOE regulations published in the Federal Register (45 FR 20694–20701, as amended), Western has reviewed the environmental impacts of the proposed ratesetting for Stampede Division and has determined that it does not involve a major Federal action having a significant adverse impact on the human environment. The preparation of an environmental assessment or environmental impact statement is not required.

Executive Order 12291

The purpose of Executive Order 12291, dated February 17, 1981, is

> . . . to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations . . . .

The DOE has determined that this is not a major rule pursuant to the criteria of section 1(b) of the Order. Furthermore, Western has received an exemption from sections 3, 4, and 7 of Executive Order 12291 and therefore has not prepared a regulatory impact statement.

Availability of Information

All brochures, studies, comments, letters, memorandums and other documents made or kept by Western for the purpose of developing the proposed alternative rates are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, California 95825, (916) 978–4418.

Issued at Golden, Colorado, May 8, 1986.

William H. Clagett,
Administrator.

[FR Doc. 86-11580 Filed 5-27-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ORD-FRL-3012-4]

Air Quality Criteria; Addendum to the Health Assessment Document for Tetrachloroethylene (Perchloroethylene, PERC, PCE)

AGENCY: Environmental Protection Agency.

ACTION: Reopening of the Public Comment Period.

SUMMARY: This notice announces the reopening of the public comment period for the external review draft of the Addendum to the Health Assessment Document for Tetrachloroethylene (Perchloroethylene): Updated Carcinogenicity Assessment for Tetrachloroethylene (Perchloroethylene, PERC, PCE), EPA/600/8–82–005FA, dated April 1986. On April 8, 1986 a notice was published in the Federal Register (51 FR 12202) announcing the Addendum as being available for public comment from April 7, 1986 through May 5, 1986.

DATES: The Agency will make this document available for public review and comment from the date of this notice through July 30, 1986.

ADDRESSES: To obtain a copy of the draft document, interested parties should contact the ORD Publications Center, CERI–FRN, Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268, (513) 569–7562, and request the external review draft of the Addendum to the Health Assessment Document for Tetrachloroethylene (Perchloroethylene, PERC, PCE), EPA document number EPA–600/8–82–005FA. Please provide your name, mailing address, and the EPA document number when requesting a copy of the draft document.

The draft document will also be available for public inspection and copying at the EPA Library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC 20460.

Comments on the draft document should be sent to: Project Manager for Tetrachloroethylene, Carcinogen Assessment Group (RD–689), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Technical Information Staff, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202/382–7343.

SUPPLEMENTARY INFORMATION: The Health Assessment Document for Tetrachloroethylene is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650. The NTIS ordering number is PB85–248704.

Dated: May 20, 1986.

Norbert A. Jaworski,
Acting Assistant Administrator for Research and Development.

[FR Doc. 86-11579 Filed 5-27-86; 8:45 am]
BILLING CODE 6560-50-M

[OPP-66131; FRL-3018-4]

Phorate; Intent To Cancel Registrations of Certain Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel.

SUMMARY: EPA has issued a Guidance Document for pesticide products containing the active ingredient phorate. This Guidance Document indicated that certain label changes implementing risk reduction measures were necessary to assure that continued use of phorate would not cause unreasonable adverse effects on the environment. This Notice announces EPA's intent to cancel the registrations of six pesticide products whose registrants have failed to make labeling changes specified in the Guidance Document, and to prohibit sale or distribution of existing stocks of those products. The products are called Agro-Chem Brand Granules, Phorate 15-G Soil and Systemic Insecticide, Phorate 10-G Soil and Systemic Insecticide, 7-10-14+0.50% T Contains 0.50% Thimet 6-8-6+0.10% T Contains 0.10% Thimet, and El Blanco Brand Terraclor Thimet 6.5—6.5 Soil Fungicide Systemic Insecticide Granular. Persons who would be adversely affected by such actions may request that EPA hold a hearing.

DATE: A request for a hearing submitted by a registrant or an applicant for registration of an affected product must be received on or before June 27, 1986, or within 30 days after receipt by mail of this notice, whichever is the later date. A request for a hearing submitted by any other adversely affected person must be received on or before June 27, 1986.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: William H. Miller, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 211, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2600).

SUPPLEMENTARY INFORMATION: Pesticide products containing the active ingredient phorate have been registered in the United States since about 1966. There are currently 21 registered pesticide products containing phorate used either to control insects on a wide variety of crops or to control nematodes on commercially grown ornamentals.

As part of its ongoing program to reexamine previously registered pesticides, EPA conducted a comprehensive review of the existing data on registered pesticide products containing phorate. Based on this review, EPA decided to impose data requirements and to state the conditions and label modifications necessary for products containing that active ingredient to comply with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA's conclusions on these matters were set forth in a Guidance Document on phorate dated August 1984, a copy of which was sent to all registrants of products containing phorate.

The Guidance Document identified a number of revisions in the labels of phorate products necessary to maintain these registrations in compliance with FIFRA. Most registrants have made the changes, but four registrants have not. This Notice announces the Agency's intent to cancel the registrations of the six phorate products which have not been revised to comply with the provisions of the phorate Guidance Document.

I. Legal Background

In order to reregister a pesticide under FIFRA, a registrant must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined in section 2(bb)(b) of FIFRA as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice.

The proponents of registration have the burden of proving that a pesticide satisfies the standard for registration, both at the time of initial registration and as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may issue a Notice of Intent to Cancel the registration of a pesticide, or to cancel it unless the terms and conditions of registration are modified, whenever it appears that the pesticide causes unreasonable adverse effects on the environment.

In determining whether the use of a currently registered pesticide poses risks which are greater than its benefits, the Agency considers possible changes to its terms and conditions of registration which can reduce risks and the impacts of such modifications on the benefits of use. FIFRA section 6(b) expressly states that "in taking any final action under this subsection, the Administrator shall consider restricting a pesticide's use or uses as an alternative to cancellation . . . ."

The Agency's authority to classify pesticides for restricted use is contained in FIFRA section 3(d)(1)(C) and is implemented by regulations at 40 CFR 162.11(c), 162.30, and 162.31. If some or all uses of a pesticide are classified for restricted use, the use of a product labeled for such uses may be limited only to certified applicators or individuals under their direct supervision, as provided by FIFRA section 3(d)(1)(c) and 40 CFR 162.11(c)(5). A person may become certified to apply restricted-use pesticides only by demonstrating his competency, usually at the end of a State or Federal training program, to use these potentially dangerous pesticides safely and effectively, under FIFRA section 4 and 40 CFR Part 171. Section 3(d)(1)(C) of FIFRA provides that a restricted use classification "will" be imposed on a pesticide (or some of its uses) if the Administrator determines that without such restriction the pesticide "may generally cause unreasonable adverse effects on the environment."

EPA's regulations at 40 CFR 126.11(c)(2) and (3) elaborate upon these statutory standards and state that a pesticide will be classified for restricted use if, among other things, the pesticide is used in non-domestic settings, it is extremely toxic on skin contact or when inhaled, and its labeling does not adequately mitigate the risk. Hazards to nontarget wildlife and other hazards may also provide a basis for restricting the use of a pesticide under § 62.11(c) (2) and (4).

The Agency's authority to require specified labeling on pesticide products is derived from FIFRA sections 3(c)(5)(B) and 2(q)(1) (E), (F), and (G) and is implemented by regulations at 40 CFR 162.10.

If the Agency determines that changes in the label of a pesticide—for example, a statement that the pesticide is classified for use by certified applicators only, or imposing other conditions on its continued registration—are necessary to

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reduce the risks to a level where the benefits will outweigh the risks, the Agency may inform the registrant that he must request amendments to the registration to make those changes. If any registrant fails to comply, EPA may issue a Notice of Intent to Cancel the registrations in question.

II. Determination of Unreasonable Adverse Effects

As explained in Unit II.A EPA has determined that continued unrestricted use of certain pesticide products containing phorate is likely to result in unreasonable adverse effects on the environment, and in accordance with FIFRA section 6(b)(1), EPA is issuing this Notice of its intent to cancel the registrations of the products and to prohibit sale or distribution by registrants of existing stocks of such products. The following discussion of the risks and benefits of phorate summarizes information in the Phorate Registration Standard and supporting science chapters. For information regarding the availability of "The Guidance for the Registration of Manufacturing-Use and Certain End-Use Pesticide Products Containing Phorate, August 1984" call Catherine Grimes at (703-557-3240).

A. Risks

Phorate is acutely toxic to humans and wildlife. Due to its acute toxicity, EPA has concluded that there is a substantial risk that mixer-loaders and applicators of phorate and other farmworkers will suffer adverse effects as a result of their exposure to phorate. Even instances of minor failures to follow directions for use and disposal of phorate products could result in serious adverse effects to individuals through accidental ingestion, inhalation of dust from broken granules of pesticide, or dermal contact.

Due to phorate's very high toxicity, EPA has also concluded that use of phorate poses a risk to endangered species including: Attwater's greater prairie chicken, Aleutian goose, Everglades kite, slackwater darter, woundfin, freshwater mussels, valley elderberry, longhorn, beetle, delta green ground beetle and Kern primrose sphinx moth.

Risks to applicators and to endangered species could be reduced by revising the labels of phorate products as provided in the Guidance Document on phorate. This is accomplished by providing persons trained in the proper use of pesticides with specific directions for use which limit exposure to those at risk.

B. Risk Reduction Measures

To mitigate these risks EPA specified the following labeling statements for all manufacturing-use products:

Warnings and precautionary statements applicable to products in Toxicity Category I, as required in 40 CFR 162.10(h).

Wear protective clothing, rubber gloves and goggles. Wear a pesticide respirator jointly approved by the Mining Enforcement and Safety Administration (formerly the U.S. Bureau of Mines) and by the National Institute for Occupational Safety and Health under provisions of 30 CFR Part 11 for organic phosphate protection.

For formulation into end-use insecticide and/or nematicide products intended for [specify the appropriate use pattern listed in section F.3 of the Guidance Document on phorate].

Do not discharge effluent containing this product directly into lakes, streams, ponds, estuaries, oceans or public waters unless this product is specifically identifieid and addressed in an NPDES permit. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the Environmental Protection Agency.

Further, EPA specified that end-use products must contain certain additional labeling statement, depending on the toxicity, type of formulation and/or use pattern:

(All formulations)

Warnings and precautionary statements depending on toxicity category of the product, as required in 40 CFR 162.10(h).

Do not reenter treated fields before 24 hours after application. If reentry prior to 24 hours is required, take the same precautions as an applicator of the product including use of protective clothing, gloves and goggles."

Not for use or storage in or around the home.

Restricted Use Pesticide

For retail sale to and use only by Certified Appplicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

Food/feed crops other than those registered for use with phorate may not be planted in phorate-treated soil.

(Granular formulations)

When applying product, wear protective clothing, gloves and goggles.

(EC formulations)

When applying product, wear protective clothing, rubber gloves and goggles. Wear a pesticide respirator jointly approved by the Mining Enforcement and Safety Administration (formerly the U.S. Bureau of Mines) and by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11 for organic phosphate protection.

(*Greenhouse Uses*)

Wear a pesticide respirator jointly approved by the Mining Enforcement and Safety Administration (formerly the U.S. Bureau of Mines) and by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11 for organic phosphate protection.

(*Terrestrial Crops Other Than Rice*)

This pesticide is toxic to fish and wildlife. Birds and other wildlife feeding in treated areas may be killed. Do not apply directly to water or wetlands. Runoff and drift from treated areas may be hazardous to aquatic organisms in adjacent sites. Do not contaminate water by cleaning of equipment or disposal of wastes. Cover or incorporate spills.

(*Rice Uses*)

This pesticide is toxic to fish and wildlife. Aquatic organisms may be killed at the recommended application rate. Do not contaminate water by cleaning of equipment or disposal of wastes. Cover and incorporate spills.

Adding these label statements will better inform users about the risk presented by use of phorate. Imposition of reentry intervals and protective clothing requirements will reduce applicator and farmworker exposure. Reducing exposure will result in a substantially lower level of risk to these parties. Moreover, since the use of phorate would be restricted to certified applicators, EPA expects that users will follow use directions more carefully and that such actions will mitigate or eliminate the risks to humans and to the nontarget wildlife which are the subject of the label requirements.

C. Benefits

As explained more fully in Unit II.D, EPA believes that requiring registered products containing phorate to bear the label statements set forth above will have no significant impact on the benefits of using phorate pesticides. Specifically, the Agency does not anticipate any substantial adverse impact on users or the agricultural economy as a result of this action.

Although registrants of 6 products out of 21 currently registered products subject to the labeling requirements have not sought to amend their registrations to make the specified

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changes, the remaining products are in compliance. Because there are currently registered products containing phorate which are in compliance with the above labeling requirements, EPA concludes that cancellation of noncomplying products would have no impact on the availability of phorate.

Moreover, the incorporation of the labeling statements specified above would be unlikely to have an impact on the availability or benefits of phorate. Phorate products would still be available for use on all sites that are currently registered. The labeling statements would not impair the users' ability to apply the product when needed for pest control.

D. Risk/Benefit Balance

EPA concludes that phorate products which do not bear the label statements specified in Unit II.B will cause unreasonable adverse effects on the environment. This conclusion rests on the determination that the risks of using phorate, without the proposed restrictions, outweigh the benefits of such use. EPA has further determined that these risks can be substantially diminished or eliminated by adding certain label statements and that such changes would not significantly reduce the benefits of the product. With such restrictions, EPA concludes that the risks would be reduced to the point where the benefits would outweigh the risks of using the product. Accordingly, the Agency is issuing this notice of intent to cancel the registration of phorate pesticides that do not comply with the applicable label requirements specified in Unit II.B of this Notice.

E. Existing Stocks

This unit of the Notice sets forth EPA's determination regarding further sale or distribution of existing stocks of phorate products cancelled by operation of this Notice. The term "existing stocks" refers to any quantity of phorate product which is in the physical custody of any registrant on the date this Notice becomes effective by operation of law.

No registrant may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver any existing stocks of a pesticide product containing phorate after the date on which the registration of that product is cancelled by operation of law (See Unit IV.C). Any other quantity of a pesticide product containing phorate that has been cancelled (e.g., quantities in distributors' and users' possession) may be sold, distributed, or used according to label directions until December 31, 1986.

The purpose of this provision governing existing stocks is to clear the channels of trade of non-complying phorate products as quickly as possible without unreasonably penalizing distributors and users for the registrants' failure to adopt the specified labeling. Registrants are not being allowed any period of time to sell or distribute their existing stocks of phorate in view of EPA's conclusion that these products cause unreasonable adverse effects on the environment and the lengthy period during which registrants have been on notice of EPA's intention to cancel the registration of phorate products which did not bear the specified label statements. EPA believes that the amount of existing stocks in the hands of distributors and retailers is relatively limited. Sale and eventual use of such stocks should not significantly add to the risks to the environment.

III. Statutory Review

Sections 25(d) and 6(b) of FIFRA require that, prior to issuing a notice of intent to cancel the registration of any pesticide product, EPA shall notify the Scientific Advisory Panel (Panel) and the U.S. Department of Agriculture (USDA) of the proposed action. Following such notice, the Panel waived its right to comment on this Notice by memorandum dated January 9, 1986. USDA indicated by memorandum dated March 31, 1986 that it had no objection to this Notice.

IV. Procedural Matters

This unit of the Notice describes the different procedures by which EPA will implement the regulatory decision described in Unit II. Specifically, this unit announces EPA's intent to cancel the registration of affected phorate products unless the changes required by Unit II.A of this Notice are made. Under section 6(b)(1) of FIFRA, registrants and certain other adversely affected parties may request a hearing on the cancellation action that this Notice initiates. Unless the registrant makes the required change(s) or a hearing is properly requested with regard to a particular registration, the registration will be cancelled by operation of law.

A. Procedure for Amending Registration

Registrants can avoid cancellation of product numbers 1528-492, 23486-65, 23486-66, 9659-240, 9659-242 and 11656-29 by submitting an application for product labeling revised as specified in the August 1984 phorate Guidance Document, within 30 days from receipt of this Notice or its publication in the Federal Register, whichever is later. To do so, a registrant should submit an Application for Amended Pesticide Registration (EPA Form 8570-1) along with two copies of draft labeling, including the label and associated brochures.

Send application for amended registration to: William H. Miller, PM 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

B. Procedure for Requesting a Hearing

To contest any provision of this Notice, registrants may request a hearing within 30 days of receipt of this Notice or within 30 days from publication of this Notice in the Federal Register, whichever occurs later. Any other person adversely affected by the cancellation action described in this Notice, may request a hearing within 30 days of publication of this Notice in the Federal Register.

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require, among other things, that each request must identify the specific registration(s) by registration number(s) and the specific use(s) for which a hearing is requested, and that each request must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. A request for a hearing must also be accompanied by objections specific to each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Consequences of Filing or Failing to File a Hearing Request

1. *Consequences of filing a timely and effective hearing request.* If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

In the event of a hearing, the specific use or uses of the specific registered

product which is the subject of the hearing will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing or pursuant to an Accelerated Decision issued under 40 CFR 164.91.

2. *Consequence of failure to file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period registration of that product will automatically be cancelled by operation of law unless the registrant files a request for an amended registration within the statutory period.

If the registration of a product is cancelled by operation of law, no quantity of that product produced after the effective date of cancellation may be sold or distributed in commerce by the registrant. Any quantity of a cancelled pesticide that has been put into channels of trade by the registrant before the effective date of this notice may be sold or distributed with its existing labeling by persons other than the registrant.

D. Separation of Functions

The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives.

Accordingly, the following Agency offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of the Agency in any administrative hearing on this Notice of Intent to Cancel: the office of the Administrative Law Judge, the office of the Judicial Officer, the Administrator, Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any interested person not employed by EPA, on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Dated: May 7, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-11522 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66127A; FRL-3020-6]

Techne Weed-D; Intent To Cancel Registration; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This document corrects a notice of voluntary cancellations of registrations of pesticide products. The Company withdrew its voluntary cancellation request for the registration of Techne Weed-D within the 30 day comment period.

FOR FURTHER INFORMATION CONTACT: John Richards, Chief, Federal Register Staff (TS-788), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202-382-2253).

SUPPLEMENTARY INFORMATION: In FR Doc. 86-850, appearing in the Federal Register of January 22, 1986 (51 FR 2959), the product below was listed for voluntary cancellation: After the publication, the Agency received a request within the 30 day comment period to withdraw the product from the voluntary cancellation category.

Registration No.	Product name	Registrant	Date registered
1990-434	Techne Weed-D	Farmland Industries, P.O. Box 7305, Kansas City, MO 64116.	June 7, 1982.

Therefore, registration number 1990-434 for Techne Weed-D has not been cancelled.

Dated: May 15, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-11660 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66122A; FRL-3020-5]

Furadan 75 Wettable Powder; Intent to Cancel Registration; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This document corrects a notice of voluntary cancellation that inadvertently cancelled the registration for Furadan 75 Wettable Powder that was published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John Richards, Chief, Federal Register Staff (TS-788), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 (202-382-2253).

SUPPLEMENTARY INFORMATION: In FR Doc. 85-20307, appearing in the Federal Register of August 28, 1985 (50 FR 34908), the product below was inadvertently listed as voluntarily cancelled:

Registration No.	Product name	Registrant	Date registered
279-2575	Furadan 75 Wettable Powder	FMC Corporation, Agricultural Chem. Group, 2000 Market St., Philadelphia, PA 19103.	March 7, 1972.

Registration number 279-2575 for Furadan 75 Wettable Powder was erroneously listed; it has not been cancelled.

Dated: May 15, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-11658 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66117A; FRL-3020-2]

Malathion 50 Emulsifiable Liquid; Intent to Cancel Registration; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This document corrects a notice of voluntary cancellation that inadvertently cancelled the registration for Malathion 50 Emulsifiable Liquid that was published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John Richards, Chief, Federal Register Staff (TS-788), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 (202-382-2253).

SUPPLEMENTARY INFORMATION: In FR Doc. 85-3227, appearing in the Federal Register of February 13, 1985 (50 FR 6045), the product below was inadvertently listed as voluntarily cancelled:

Registration No.	Product name	Registrant	Date registered
934-250	Malathion 50 Emulsifiable Liquid.	Penn-Gabriel Division, Miller Chemical and Fertilizer Corp., 264 21st Ave., Paterson, NJ 07509.	January 21, 1964.

Registration number 904–259 for Malathion 50 Emulsifiable Liquid was erroneously listed; it has not been cancelled.

Dated: May 16, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86–11659 Filed 5–27–86; 8:45 am]

BILLING CODE 6560–50–M

[PP 5G3173/T518; FRL–3021–5]

Dow Chemical Co.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the residues of the herbicide 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)oxirane and its metabolite in or on certain raw agricultural commodities. These temporary tolerances were requested by Dow Chemical Co.

DATE: These temporary tolerances expire April 9, 1988.

FOR FURTHER INFORMATION CONTACT:

By Mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1800).

SUPPLEMENTARY INFORMATION: Dow Chemical Co., Agricultural Products Dept. P.O. Box 1706, Midland, MI 48640, has requested in pesticide petition PP 5G3173 the establishment of temporary tolerances for the combined residues of the herbicide 2-(3,5-dichlorophenyl)(2-2,2,2-trichloroethyl)oxirane and its metabolite 3,5-dichlorobenzoic acid in or on the raw agricultural commodities grain sorghum, grain, forage and fodder at 0.05 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 464–EUP–85, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Dow Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 9, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 19, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–11762 Filed 5–27–86; 8:45 am]

BILLING CODE 6560–50–M

[PP 4G3085/T517; FRL–3021–7]

Shell Oil Co.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide *exo*-1-methyl-4-(1-methylethyl)-2-[(2-methylphenyl)metyoxy]-7-oxabicyclo[2.2.1] heptane and its five mono-hydroxylated metabolites, in or on certain raw agricultural commodities. These temporary tolerances were requested by Shell Oil Co.

DATE: These temporary tolerances expire April 4, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1800).

SUPPLEMENTARY INFORMATION: Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036, has requested in pesticide petition PP 4G3085 the establishment of temporary tolerances for the combined residues of the herbicide *exo*-1-methyl-4-(1-methylethyl)-2-[(2-methylphenyl)metyoxy]-7-oxabicyclo [2.2.1] heptane and its five mono-hydroxylated metabolites, 7-oxabicyclo [2.2.1] heptane-1-methanol, alpha, alpha, 4-trimethyl-3,2-[(2-methylphenyl]metyoxyl]-*exo;* 7-oxabicyclo [2.2.1.] heptane-2-ol, *exo*-1-methyl-4-methyl-1-(1-methylethyl)-5-[(2-methylphenyl]metyoxy]-, *exo, exo-*; benzenemethanol, 2-[(1-methyl-4-(1-methylethyl)-7-oxabicyclo (2.2.1) hept-2-yloxy)methyl]-, *exo-*; phenol, 4-methyl-3-[(1-methyl-4-(1-methylethyl)-7-oxabicyclo (2.2.1) hept-2-yloxy) methyl]-, *exo-;* and phenol, 3-methyl-4-[(1-methyl-4-(1-methylethyl)-7-oxabicyclo (2.2.1) hept-2-yloxy)-methyl]-, *exo,* in or on the raw agricultural commodities soybeans, soybean forage, soybean fodder, cottonseed, peanuts, peanut hulls, peanut forage and peanut hay at 0.1 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 201–EUP–79, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Shell Oil Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 4, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 19, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-11783 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

Office of Pesticides and Toxic Substances

[OPP-30000 (FRL-3021-6)]

Issuance of Experimental Use Permits; American Cyanamid Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-116. Issuance. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 547.5 pounds of the herbicide imazaquin and 2,190 pounds of the herbicide pendimethalin on soybeans to evaluate the control of broadleaf weeds and annual grasses. A total of 4,380 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 17, 1986 to April 17, 1987. A permanent tolerance for residues of the active ingredients in or on soybeans has been established (40 CFR 180.361). (Robert Taylor, PM 25, Rm. 245, CM# 2, (703-557-1800))

279-EUP-101. Renewal. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 886.5 pounds of the insecticide cyclopropanecarboxylic acid, 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-(3-methyl-[1,1'-biphenyl]-3-yl)methyl ester on alfalfa, cotton, field corn, potatoes, sorghum, soybeans, and tobacco to evaluate the control of various insect pests. A total of 1,147 acres are involved; the program is authorized in the States of Alabama, Arizona, Arkansas, California, Connecticut, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakaot, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. The experimental use permit was previously effective from April 1, 1986 to April 1, 1986. The permit is now effective from April 21, 1986 to April 21, 1987. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (George LaRocca, PM 2, Rm. 204, CM# 2, (703-557-2400))

10163-EUP-1. Issuance. Gowan Company, P.O. Box 5569, Yuma AZ 85364. This experimental use permit allows the use of 1,200 pounds of the insecticide sodium fluoaluminate on grapes to evaluate the control of grapes leafhopper, omnivorous leafroller, and grape leaf skeletonizer. A total of 200 acres are involved; the program is authorized in the State of California. The experimental use permit is effective from April 10, 1986 to April 10, 1987. A permanent tolerance for residues of the active ingredient in or on grapes has been established (40 CFR 180.145) William Miller, PM 16, Rm. 211 CM# 2 (703-557-2000))

53219-EUP-1. Extention: Mycogen Corporation, P.O. Box 5128, Valdosta, GA 31603-5128. This experimental use permit allows the use of 92.5 pounds of the fungus *alternaria cassiae* on peanuts and soybeans to evaluate the control of sicklepod. A total of 185 acreas are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisana, Mississippi, and North Caroline. The experimental use permit is effective from May 10, 1986 to May 10, 1987. A temporary tolerance for residues of the active ingredient in or on peanuts and soybeans has been established. (Richard Mountfort, PM 23, Rm. 245, CM# 2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits

should be directed to the persons cited above. It is suggested that interested perons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: May 19, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-11764 Filed 5-27-86; 8:45 am]

BILLING CODE [illegible]

[OPTS-59218B; FRL-3022-9]

Toxic and Hazardous Substances Controls; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-38. The test marketing conditions are described below.

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Michelle Roddy, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-609B, 401 M Street, SW., Washington, DC 20460, (202-475-8935).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-38. EPA has determined that test marketing of the new technical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, uses and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-38. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available to EPA for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T-86-38

Date of Receipt: April 10, 1986.

Notice of Receipt: April 25, 1986 (51 FR 15885).

Applicant: Confidential.

Chemical: (G) Functionalized styrenated acrylic polymer.

Use: (G) Industrial resin for products having an open use.

Production Volume: 7,000 kg.

Number of Customers: One.

Worker Exposure: Manufacturing: Dermal, a total of 3 workers, 2 hours/day for 3 days/year. Processing: Dermal, a total of 2 workers, 2 hours/day for 10 days/year each. Use: Dermal/Inhalation, a total of 5 workers, 7 hours/day for 10 days/year each.

Test Marketing Period: Sixty days.

Commencing on: May 20, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 20, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-11907 Filed 5-27-86; 8:45 am]

BILLING CODE [illegible]

[OW-FRL-3022-3]

Water Quality Criteria; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on ambient aquatic life water quality criteria documents.

SUMMARY: EPA announces the availability for public comment and provides a summary of an ambient aquatic life water quality criteria document for zinc. When published in final form after the review of public comments, these water quality criteria may form the basis for enforceable standards. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act.

DATES: Written comments should be submitted to the person listed directly below by July 28, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 245-3030.

Availability of Documents: This notice contains a summary of a document containing proposed ambient water quality criteria for the protection of aquatic life and its uses. Copies of the complete criteria documents may be obtained upon requests from the person listed above. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M St., SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria beginning in 1973 with the publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (FR 49: 5831) completing the coverage of the 65 priority pollutants listed in 307(a)(1). Nine ambient water quality criteria documents, including revision of seven of the 1980 documents, were released on July 29, 1985 (50 FR 30784). A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012).

Today EPA is announcing the availability for public comment of a proposed ambient aquatic life water quality criteria document for zinc. This document, upon final publication will update and revise appropriate sections of the 1980 criteria document.

The document announced today will not contain information on the effects of zinc on human health. An advisory will be issued to update the human health section of the 1980 ambient water quality criteria document for zinc, if a review of the available information indicates that such a revision is necessary. Both the criteria document announced today and the water quality advisory addressing human health may form the basis for enforceable standards, when published in final form.

Dated: May 12, 1986.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

Zinc

Freshwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration (in μg/l) of zinc does not exceed the numerical value given by $e^{(0.8545\ [\ln(\text{hardness})]+0.7614)}$ more than once every three years on the average and if the one-hour average concentration (in μg/l) does not exceed the numerical value given by $e^{(0.8545\ [\ln(\text{hardness})]+0.7614)}$ more than once every three years on the average. For example, at hardnesses of 50, 100, and 200 mg/l as $CaCO_3$ the four-day average concentrations of zinc are 49, 86, and 150 μg/l, respectively, and the one-hour average concentrations are 54, 95, and 170 μg/l.

Saltwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of zinc does not exceed 70 μg/l more than once every three years on the average and if the one-hour average concentration does not exceed 67 μg/l more than once every three years on the average.

EPA believes that "acid-soluble" is probably the best measurement at present for expressing criteria for metals and the criteria for zinc were developed on this basis. However, at this time, no EPA approved method for such a measurement is available to implement criteria for metals through the regulatory programs of the Agency and the States. The Agency is considering development and approval of a method for a measurement such as "acid-soluble". Until one is approved, however, EPA recommends applying criteria for metals using the total recoverable method. This has two impacts: (1) Certain species of some metals cannot be measured because the total recoverable method cannot distinguish between individual oxidation states, and (2) in some cases these criteria might be overly protective when based on the total recoverable method.

The allowed average excursion frequency of three years is the Agency's best scientific judgment of the average amount of time it will take an unstressed aquatic ecosystem to recover from a pollution event in which exposure to zinc exceeds the criterion. Stressed systems, for example, one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resiliencies of ecosystems and their abilities to recover differ greatly, however, and site-specific criteria may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends interim use of 1Q5 and 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 and 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state models for unstressed and stressed systems, respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA 1985).

[FR Doc. 86-11674 Filed 5-27-86; 8:45 am]
BILLING CODE 6560-50-M

[OPP-36123; (FRL-3021-4)]

Tuberculocidal Activity Testing Methods for Antimicrobial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Policy on Testing Methods.

SUMMARY: This notice announces three tuberculocidal activity testing options that will be permitted by the Agency. Applicants/registrants of all antimicrobial pesticides with proposed or existing tuberculocidal claims for their stressed (re-used) and/or non-stressed (discarded daily) product solutions must choose one testing approach for the development of data to substantiate tuberculocidal effectiveness.

EFFECTIVE DATE: May 28, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: D. Jean Jenkins, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703-557-7443).

SUPPLEMENTARY INFORMATION: Since 1976 the Agency has been advised by numerous registrants, testing laboratories, researchers, and other scientific groups that inconsistent test results were being obtained when glutaraldehyde-based products were tested by the Association of Official Analytical Chemists (AOAC) Tuberculocidal Activity Method at 20°C at 10 minutes exposure. Such findings were not reported for other chemical classes (i.e., phenolics, iodine). Researchers have indicated that glutaraldehyde-based products require longer exposure times and/or higher temperatures for tuberculocidal activity than those specified in the AOAC Tuberculocidal Activity Method. Similar

inconsistencies were experienced in the preregistration tuberculocidal testing of antimicrobial pesticides by the EPA microbiological testing facility in Beltsville, Maryland between 1971 and 1979. Adverse tuberculocidal data on glutaraldehyde-based products, developed by the established AOAC method, were submitted to the Agency under FIFRA section 6(a)(2) in 1979 and 1983.

Quaternary ammonium compounds are generally considered to be non-tuberculocidal. However, registrations have been issued for products in this chemical class which bear tuberculocidal efficacy claims, based on tuberculocidal data developed by the AOAC procedure and submitted in support of registration. The EPA tuberculocidal testing facility also obtained inconsistent test results when products in this chemical class were tested for tuberculocidal activity by the AOAC procedure.

In 1983, the AOAC Associate Referee for the AOAC Tuberculocidal Activity Method submitted a new quantitative tuberculocidal procedure for Agency consideration as an alternative testing method. The Agency distributed this new quantitative tuberculocidal procedure on May 21, 1984, in conjunction with the Label Improvement Program for registrants of glutaraldehyde-based hospital sterilant/disinfectant products. The new procedure was identified as an option alternative to the AOAC Tuberculocidal Activity Method for glutaraldehyde-based disinfectant products.

Subsequently, controversy arose concerning the validity of the new quantitative procedure and of the established AOAC method. In September 1984, an EPA Scientific Advisory Panel (SAP) Subpanel was established to evaluate the new procedure. The consensus of this Subpanel was that the new procedure had scientific merit but that more testing was needed before adoption as a standard method. In July 1985, a new SAP Subpanel was selected to provide a comparative assessment of the existing AOAC Tuberculocidal Activity Method and the new quantitative tuberculocidal procedure. A public meeting of the SAP Subpanel was held on September 30, 1985, and comments were solicited from the public and interested parties.

Having received the findings of the first and second SAP Subpanel and public comments relative to the tuberculocidal activity testing methods, the Agency announces the following regulatory policy:

1. Manufacturers/registrants/applicants of all antimicrobial pesticides with proposed or existing tuberculocidal claims for their stressed (re-used) and/or non-stressed (discarded daily) product solutions must choose one of three available tuberculocidal testing options to substantiate claims of tuberculocidal effectiveness. The testing options are as follow:

a. Use of the new quantitative tuberculocidal procedure.

b. Use of the existing AOAC Tuberculocidal Activity Method, but with modification of the standard test conditions of contact/exposure time and/or temperature that are necessary to achieve tuberculocidal effectiveness.

c. Use of the existing AOAC Tuberculocidal Activity Method, employing the standard test conditions of 10 minutes exposure time and 20° C. Since the tuberculocidal efficacy of glutaraldehyde-based products at 10 minutes exposure time and 20° C is questionable, selection of option (c) for glutaraldehyde-based products must be accompanied by validation data, based on the same test conditions (10 minutes at 20°C), from a second testing facility, (other than the laboratory that developed the original data). Registrants and/or applicants for registration are advised that withholding test results from the Agency which indicate failing tuberculocidal efficacy at 10 minutes and 20°C constitutes violation of FIFRA section 6(a)(2) concerning information required to be reported to the Agency.

2. Registrants and applicants for products with existing or proposed tuberculocidal claims, that are formulated with quaternary ammonium compounds will be permitted to base their tuberculocidal claims on data developed by optional procedures (a), (b), or (c) above. However, validation testing from a different laboratory will be required for any optional procedure chosen by the registrant/applicant for this chemical class of products. This validation testing requirement is considered necessary and warranted since it is questionable that quaternary ammonium compounds are tuberculocidal under any test conditions.

3. Registrants or applicants for products with existing or proposed tuberculocidal efficacy claims, that are formulated with chemical groups other than glutaraldehyde or quaternary ammonium compounds, are permitted at this time to base their tuberculocidal claims on any one of the three optional test procedures ((a), (b), or (c)) without the required validation testing. Validation testing is not necessary since it has been currently determined that reliable and reproducible test results are obtained for chemicals other than glutaraldehyde or quaternary ammonium compounds, using test conditions of 10 minutes contact time and 20°C. Should the tuberculocidal efficacy of other chemicals at 10 minutes exposure and 20°C be considered questionable in the future, validation testing will be required.

4. The contact/exposure time and temperature necessary to achieve effective use of the product must be reflected in the directions for use on the product label.

5. Applicants for registration of new antimicrobial pesticide prodcuts bearing tuberculocidal activity claims are required to provide supporting tuberculocidal activity claims are required to provide supporting tuberculocidal data by one of the three testing options and any required validation data prior to issuance of registration.

6. Registrants of antimicrobial pesticide products which do not currently bear tuberculocidal claims, but who wish to amend their product registration and label to add a tuberculocidal activity claim, are required to provide supporting tuberculocidal data by one of the three testing options and any required validation data prior to acceptance of the requested amendment.

7. Registrants of antimicrobial pesticide products with existing tuberculocidal activity claims which are not supported by one of the three testing options and any required validation data must provide data by one of the three options and any required validation data within 180 days of their response to a notification under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) by the Agency in order to avoid suspension of their product registration.

8. The Agency will support review and collaborative testing of the new quantitative procedure by the AOAC as a replacement for the existing AOAC Tuberculocidal Activity Method, or as an additional alternative procedure.

9. The Agency will notify affected registrants, under the authority of FIFRA section 3(c)(2)(B), of the specific requirements for compliance with this announced tuberculocidal testing policy and the action that will be taken in the event of non-compliance.

The Agency believes that the validity of tuberculocidal efficacy claims for antimicrobial pesticides is a critical concern due to the public health implications of environmental contamination with *Mycobacterium tuberculosis* microorganisms. Therefore, it is for this reason that the Agency

sought a scientific consensus on the validity of tuberculocidal test methodology, and announces the required testing approaches to documentation of tuberculocidal effectiveness of antimicrobial pesticides.

Dated: May 16, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-11708 Filed 5-27-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Licensing of Ocean Freight Forwarders; Extension of Time for Filing Comments

May 22, 1986.

On April 23, 1986 (published at 51 FR 15834, Apr. 28, 1986) the Commission noticed the filing of a petition by the National Customs Brokers & Forwarders Association of America, Inc. requesting the Commission to amend its rules pertaining to the licensing of ocean freight forwarders. Interested persons were given until May 30, 1986, to submit views, arguments or data on the petition.

The Transpacific Westbound Rate Agreement (TWRA) has now filed a request for a three week extension of time in which to file comments. TWRA indicates that the current deadline is too short for its members to properly evaluate the petition and formulate an appropriate response.

Accordingly, for good cause shown, the Commission will extend the date for all comments from May 30, 1986, to June 23, 1986.

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-11817 Filed 5-27-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applications

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Amex International, Inc., 1725 K Street, NW., Suite 402, Washington, DC 20006

Officers:

Mamadi Diane, President/Treasurer/Director

Hee Chang Park, Vice President/Director

Cynthia Diane, Secretary/Director

Mori Diane, Vice President.

Myra Sims, 3226 Talleyrand Avenue, Jacksonville, FL 32205

Airport Clearance Service, Inc., Cargo Building 80, JFK International Airport, Jamaica, NY 11430

Officer:

John J. Emanuele, Vice President

Trion Forwarding Company, Inc., 16038 Vickery, Suite 200, Houston, TX 77032

Officers:

Robert Wayne Allmeras, President

James Thomas Hanges, Vice President

By the Federal Maritime Commission

Dated: May 22, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-11916 Filed 5-27-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ozark Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 18, 1986.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ozark Bankshares, Inc.*, Ozark, Arkansas; to acquire at least 80 percent of the voting shares of Newco Corporation, Jasper, Arkansas, and thereby indirectly acquire Newton County Bank, Jasper, Arkansas, and Bankstock Two, Inc., Dardanelle, Arkansas, and thereby indirectly acquire Arkansas Valley Bank, Dardanelle, Arkansas.

Board of Governors of the Federal Reserve System, May 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11861 Filed 5-27-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86F-0173]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant for polymers intended to contact food.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3928) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant for polymers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental

impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11943 Filed 5-27-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0281]

Mobil Chemical Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 5B3724) proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol esters of fatty acids as surface lubricants in the manufacture of metallic articles in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 21, 1983 (48 FR 43096), FDA published a notice that it had filed a petition (FAP 3B3724) from Mobil Chemical Co., 150 East 42d St., New York, NY 10017, that proposed to amend the food additive regulations to provide for the safe use of pentaerythritol esters of fatty acids as surface lubricants in the manufacture of metallic articles in contact with food. Mobil Chemical Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-11944 Filed 5-27-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0156]

Sharplan Lasers, Inc.; Premarket Approval of Sharplan Model 702 Nd: YAG Laser

Correction

In FR Doc. 86-10284, beginning on page 17099 in the issue of Thursday, May 8, 1986, make the following corrections:

1. On page 17099, in the third column, the fifteenth from last line should read "Evaluation, CDRH."

2. On page 17100, in the first column, in the eleventh line of the first paragraph, "of a review" should read "or a review".

3. Also on page 17100 in the first column, in the sixth from last line of the first paragraph, between "petition," and "FDA" insert "FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If".

BILLING CODE 1505-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 51 FR 15699-70, April 25, 1986) is amended to reflect the following changes: (1) Recode the Standard Administrative Codes (SACs) for the NIH research institutes, divisions, and centers listed below; (2) delete the title Office of the Director and Deputy Directors (HNA1); and (3) change the Standard Administrative Code (SAC) for the Division of Equal Opportunity. These actions are internal administrative realignments and represent no change in mission or reporting relationships for the affected organizations.

Section HN-B, Organization and Functions is amended as follows:

(1) Change the Standard Administrative Codes (SACs) for the following research institutes, divisions, and centers:

National Eye Institute (HN-W) to *National Eye Institute (HNW); National Institute of Allergy and Infectious Diseases (HN-M)* to *National Institute of Allergy and Infectious Diseases (HNM); National Institute on Aging (HN-X)* to *National Institute on Aging (HNN); National Institute of Child Health and Human Development (HN-T)* to *National Institute of Child Health and Human Development (HNT); National Institute of Dental Research (HN-P)* to *National Institute of Dental Research (HNP); National Institute of Arthritis and Musculoskeletal and Skin Diseases (HN-Y)* to *National Institute of Arthritis and Musculoskeletal and Skin Diseases (HNB); National Institute of Environmental Health Sciences (HN-V)* to *National Institute of Environmental Health Sciences (HNV); National Institute of General Medical Sciences (HN-S)* to *National Institute of General Medical Sciences (HNS); National Institute of Neurological and Communicative Disorders and Stroke (HN-Q)* to *National Institute of Neurological and Communicative Disorders and Stroke (HNQ); Clinical Center (HN-2)* to *Clinical Center (HNI); John E. Fogarty International Center for Advanced Study in the Health Sciences (HN-5)* to *John E. Fogarty International Center for Advanced Study in the Health Sciences (HNF); Division of Research Grants (HN-1)* to *Division of Research Grants (HNG); Division of Research Services (HN-3)* to *Division of Research Services (HNE); Division of Computer Research and Technology (HN-6)* to *Division of Computer Research and Technology (HNU); Division of Research Resources (HN-4)* to *Division of Research Resources (HNR),* and *National Center for Nursing Research (HN-7)* to *National Center for Nursing Research (HN2).*

(2) Delete the title *Office of the Director and Deputy Directors (HNA1)* in its entirety.

(3) Under the heading *Office of the Director (HNA),* add "and assists the Assistant Secretary for Health in the formulation of national health policy" to the functional statement.

(4) Change the Standard Administrative Code for the *Division of Equal Opportunity (HNA12)* to the *Division of Equal Opportunity (HNA-2).*

Dated: May 8, 1986.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

[FR Doc. 86-11998 Filed 5-27-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Grazing Advisory Boards; Establishment

Correction

In FR Doc. 86-10803 beginning on page 17674 in this issue of Wednesday, May 14, 1986, make the following corrections:

1. On page 17674, in the third column, in the seventh line, "of" should read "or". Also under the state heading "Arizona" in the fifth line "Resources" should read "Resource".

2. On page 17675, in the first column, under the state heading "Wyoming", in the sixth and seventh lines, the text beginning with "Worland" should appear as a separate indented entry.

3. On page 17675, in the second column, in the twelfth line from the bottom of the column, "of" should read "or".

BILLING CODE 1505-01-M

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Monday, June 2, 1986, starting at 9:00 am, Alaska Standard Time, in the William A. Egan Civic & Convention Center, Room 2, Lower Level; 555 West 5th Avenue, Anchorage, Alaska 99501.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111—20th Street NW, Washington, DC 20036-8547, (202) 634-7310.

Dated: May 20, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86-11879 Filed 5-27-86; 8:45 am]

BILLING CODE 4310-70-M

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Thursday, June 5, 1986, starting at 9:00 a.m., in the Auditorium of the Seattle Aquarium, Pier 56, Waterfront Park, Seattle, Washington, 98101.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is open to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111—20th Street, NW., Washington, DC 20036-8547, (202) 634-7310.

Dated: May 20, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86-11880 Filed 5-27-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

New Mexico Off-Road Vehicle Designations; Las Cruces District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision.

SUMMARY: All public lands administered by Bureau of Land Management in the 600,500 acre Divide Planning Area, Socorro Resource Area, Las Cruces District, are hereby designated open, limited, or closed to off-road motorized vehicle use.

The 600,500 acre area affected by the designations is known as the Divide Planning Area (Socorro Resource Area), which includes lands in Catron and Socorro Counties in New Mexico. These designations are the result of land use decisions made in the Divide Management Framework Plan (MFP) approved February 1, 1983. Comments received from public meetings, hearings and numerous written responses on the Draft MFP were considered in the designation decisions.

These designations are final as published May 31, 1986. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals. The designations will remain in effect until rescinded or modified by the Las Cruces District Manager.

A. Open Designation

Areas which are designated open comprise 562,839 acres of public land in the Divide Planning Area of the Socorro Resource Area. An open designation was determined to be appropriate for these lands since off-road motorized vehicle use is an important recreational activity, is essential to the conduct of other authorized uses, and impacts to natural resources would not be significant.

B. Limited Designation

Eleven areas, comprising 137,661 acres are designated limited to existing roads and trails. These areas are as follows:

1. Use Limited to existing roads and trails.

a. Eagle Peak Wilderness Study Area (WSA)—43,960 acres. The Eagle Peak WSA is located in Catron County in west-central New Mexico approximately 6 air miles west of Quemado. Use is limited to maintain the scenic values and cultural resources within the area.

b. Mesita Blanca Wilderness Study Area (WSA)—19,414 acres. The Mesita Blanca WSA is located in Catron County in west-central New Mexico approximately 20 air miles west of Quemado. Use is limited to maintain the scenic and cultural resources within the area.

c. Continental Divide Wilderness Study Area (WSA)—68,761 acres. The Continental Divide WSA is located in Catron County in west-central New Mexico approximately 29 air miles south of Datil. Use is limited to maintain the scenic, cultural and wildlife resources within the area.

d. Horse Mountain Wilderness Study Area (WSA)—5,032 acres. The Horse Mountain WSA is located in Catron County in west-central New Mexico approximately 25 air miles southwest of Datil. Use is limited to maintain the scenic, recreational and wildlife resources within the area.

e. Cox Ranch Pueblo—40 acres. The Cox Ranch Pueblo is located in Catron County in west-central New Mexico approximately 8 air miles north of Quemado. Use is limited to protect cultural resources.

f. Kellog Canyon—10 acres. The Kellog Canyon is located in Catron Country in west-central New Mexico approximately 15 air miles southeast of

Datil. Use is limited to protect cultural resources.

g. Newton Communities—160 acres. The Newton Communities is located in Catron County in west-central New Mexico approximately 25 air miles north of Datil. Use is limited to protect cultural resources.

h. Zuni Salt Lake—160 acres. The Zuni Salt Lake is located in Catron County in west-central New Mexico approximately 10 air miles northwest foo Quemado. Use is limited to maintain scenic and cultural resources within the area.

i. Cerro Colorado—40 acres. The Cerro Colorado is located in Catron County in west-central New Mexico approximately 15 air miles southeat of Datil. Use is limited to maintain scenic and cultural resources within the area.

j. Twenty Two Springs—20 acres. The Twenty Two Springs is located in Catron County in west-central New Mexico approximately 25 air miles nothwest of Quemado. Use is limited to maintain senic and cultrual resources within the area.

k. Datil Well Campground—20 acres. The Datil Well Campground is located in Catron County in west-central New Mexico, approximatly 1 air mile west of Datil. Use is limited to enhance the use of developed recreational facilities and maintain the natural resources surrounding the campground.

C. Closed Designation

None, however emergency closures will be used should the need arise.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, Bureau of Land Management, Las Cruces District, Socorro Resource Area, 198 Neel Avenue, NW., Socorro, NM 87801.

Dated: May 16, 1986.

H. James Fox,

District Manager.

[FR Doc. 86-1139 Filed 5-27-86; 8:45 am]

BILLING CODE 4310-FB-M

Mineral Management Service

Oil and Gas and Sulphur Operation in the Outer Continental Shelf; Mobile Expoloration & Producing Southeast Inc.

AGENCY: Mineral Management Service..

ACTION: Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Mobil Expoloration & Producing Southeast Inc., Unit Operator of the Ship Shoal Block 72 Federal Unit Agreement No. 14-08-001-2945, submitted on March 28, 1986, and May 15, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 72 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Mineral Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Mineral Management Service, Record Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m. 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordiation document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 19, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11840 Filed 5-27-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention to Negotiate Concession Contract With Chisos Remuda

Pursuant to the provisions of section 5 of the Act of October 9, 1965, 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Chisos Remuda, authorizing it to continue to provide saddle horse rental and associated guide services and facilities for the public at Big Bend National Park, Texas, for a period of five (5) years from January 1, 1987 through December 31, 1991.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which will expire by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Big Bend National Park, Texas, 79834, telephone number (915) 477-2251, for information as to the requirements of the proposed contract.

Dated: April 24, 1986.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 86-71800-Filed 5-27-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 17, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 12, 1986.

Carol D. Shull,

Chief of Registration National Register.

Alabama

Mobile County

Mobile, *Magnolia Cemetery*, Ann and Virginia Sts.

Arkansas

Monroe County

Brinkley, *Rusher Hotel*, 127 W. Cedar.

Connecticut

Hartford County

West Hartford (also in Hartford), *Hartford Golf Club Historic District*, Simsbury Rd., Bloomfield and Albany Aves., Norwood Rd., Mohawk, and Mohegan Drs.

Litchfield County

New Milford, *New Milford Historic District*, Bennett & Elm, Center Cemetery, East St., E. Main, Mill, and Railroad.

New Haven County

Derby, *Osbornedale*, 500 Hawthorne Ave.
Wallingford, *Simpson, Samuel, House*, 216 N. Main St.

Windham County

Pomfret, *Brayton Grist Mill*, US 44.

Florida

Pinellas County

St. Petersburg, *Potter House*, 857 Second St. S.
St. Petersburg, *St. Petersburg Public Library*, 200 Fifth St. N.

Georgia

Fulton County

Atlanta, *St. Andrews Apartments*, 1041 W. Peachtree St.

Liberty County

Midway vicinity, *Dorchester Academy Boy's Dormitory*, GA 38 (US 82).

Idaho

Nez Perce County

Lewiston, *Broier Building*, 631—633 Main St.

Indiana

Blackford County

Hartford City, *First Presbyterian Church*, 220 N. High St.

Delaware County

Bethel vicinity, *Garner, Job—Miller, Jacob W., House*, Bethel Pike at CR 700 W.

Huntington County

Huntington, *Purviance, Samuel, House*, 326 S. Jefferson.

Marion County

Indianapolis, *Coburn, Henry P., Public School #66*, 604 E. 38th St.

Monroe County

Smithville vicinity, *Mitchell, Joseph, House*, 7000 Ketcham Rd.

Maine

Androscoggin County

Auburn, *Garcelon, A. A., House*, 223 Main St.

Aroostock County

Sherman, *Leavitt, A.B., House*, ME 158.

Kennebec County

Gardiner, *Christian Science Church*, 17 Lincoln Ave.

Lincoln County

Dresden, *Dresden Brick School House*, ME 128.

Oxford County

Fryeburg, *Church of New Jerusalem*, 4 Oxford St., Lovell, *Lovell Village Church*, Church St.
North Waterford, *North Waterford Congregational Church*, Off ME 35

Penobscot County

Bangor, *Bryant, Charles G., Double House*, 16—18 Division St.

York County

Parsonsfield, *Parsonsfield Seminary*, ME 160.

Massachusetts

Essex County

Lynn, *U.S. Post Office—Lynn Main*, 81 Willow St.
Newburyport, *U.S. Post Office—Newburyport Main*, 61 Pleasant St.

Middlesex County

Acton, *Exchange Hall*, Quimby Square on School St.
Acton, *Jones Tavern*, 128 S. Main St.
Cambridge, *Central Square Post Office*, 770 Massachusetts Ave.
Lexington, *U.S. Post Office—Lexington Main*, 1665 Massachusetts Ave.
Medford, *U.S Post Office—Medford Main*, 20 Forest St.

Suffolk County

South Boston, *U.S. Post Office Garage*, 135 A St.

Michigan

Wexford County

Cadillac, *Old Cadillac City Hall*, 201 Mitchell St.

Minnesota

Cottonwood County

Mountain Lake, *Bargen, Isaac, House*, 1215 Mountain Lake Rd.
Westbrook, *Chicago, St. Paul, Minneapolis, and Omaha Depot*, 4th St. at First Ave.

Douglas County

Alexandria, *Nelson, Knute, House (Proposed Move)*, 420 Twelfth Ave. SE.

Freeborn County

Albert Lea, *Wedge, Dr. Albert C., House*, 210 W. Fountain St.

Kandiyohi County

Atwater, *Hotel Atwater*, 322 Atlantic Ave.

Mower County

Grand Meadow, *Booth Post No. 130—Grand Army of the Republic Hall*, S. Main St. Between First and Second Sts.

Renville County

Olivia, *Renville County Courthouse and Jail*, Depue Ave. E. and Fifth St. S.

St Louis County

Hibbing, *Androy Hotel*, 502 E. Howard St.

Stearns County

St. Cloud, *Carter Block*, 501—511 First St. N.

Yellow Medicine County

Clarkfield vicinity, *Swede Prairie Progressive Farmers' Club*, CR 9.

Missouri

Saline County

Marshall, *Batty Hall*, Missouri Valley College, 500 E. College.

Utah

Wasatch County

Midway, *Bonner, George, Sr., House (Architecture of John Watkins TR)*, 103 E. Main
Midway, *Bonner, George, Jr., House (Architecture of John Watkins TR)*, 90 E. Main
Midway, *Bonner, William, House (Architecture of John Watkins TR)*, 110 E. Main.
Midway, *Coleman, William, House (Architecture of John Watkins TR)*, 180 N. Center
Midway, *Watkins, John and Margaret, House (Architecture of John Watkins TR)*, 22 W. Hundred E.

Virginia

Petersburg (Independent City)

Centre Hill Historic District, Henry, N. Adams, N. Jefferson, Franklin, and E. Washington Sts., Centre Hill Court and Centre Hill Ave.

Wisconsin

Dunn County

Menomonie, *Menomonie Downtown Historic District*, Roughly bounded by Main, Crescent, Fifth, Wilson, Second, and Broadway.

Grant County

Platteville, *Rountree, J.H., Mansion*, 180 Rountree Ave.

Jefferson County

Fort Atkinson, *Merchants Avenue Historic District*, Roughly bounded by S. Milwaukee Ave. E. Foster St., Whitewater Ave. and S. Third St. E.

Milwaukee County

Milwaukee, *Case—Wells Street Historic District*, 712, 716 and 724 E. Wells St., and 801, 809, 815, 819 and 823 N. Case St.
Milwaukee, *Plankinton—Wells—Water Street Historic District*, Roughly bounded by Wells St. Bridge, N. Water St., E. Mason, W. Wells and N. Second Sts.

Outagamie County

Appleton, *Zion Lutheran Church*, 912 N. Oneida St.

[FR Doc. 86-11834 Filed 5-27-86; 8:45 am]
BILLING CODE 4310-70-M

Aircraft Management Plan, Grand Canyon National Park, AZ; Public Meetings

Notice is hereby given that public meetings will be held at the following locations and times for the purpose of receiving comments on the management of aircraft overflights at Grand Canyon National Park.

June 9, 1986, at 7:30 p.m.
Imperial Palace, 3535 Las Vegas Boulevard South, Las Vegas, Nevada
June 10, 1986, at 7:30 p.m.

Golden Gate National Recreation Area Park Headquarters, Building 201, Fort Mason, San Francisco, California

June 11, 1986, at 7:30 p.m.
Board of Supervisors' Auditorium, 205 West Jefferson, Phoenix, Arizona

June 12, 1986, at 7:30 p.m.
City Council Chambers, 211 West Aspen, Flagstaff, Arizona

Copies of an environmental assessment describing potential alternatives to address this issue may be obtained from the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023, (602) 638–7701 or from the Regional Director, Western Region, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, California 94102, (415) 556–5560.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meetings. Those not wishing to appear in person may submit written statements to the Superintendent on the environmental assessment which will be accepted until August 1, 1986.

Time limitations may make it necessary to limit the length of verbal presentations, to restrict to one person the presentation made in behalf of an organization, and to allow an individual to make only one statement during the entire set of public meetings. A verbal statement may, however, be supplemented by a more complete written statement which may be submitted to the moderator at the time of presentation of the verbal statement or sent to the Superintendent at the above address. Written statements presented in person at the meetings will be considered for inclusion in the official record; however, all materials presented at the meeting shall be subject to a determination by the moderator that they are appropriate for inclusion in the official record.

After an explanation of the environmental assessment by a representative of the National Park Service, the moderator, insofar as possible, will adhere to the following order in calling for the presentation of verbal statements:

1. Governor of the State or his representative.
2. Members of Congress.
3. Members of the State Legislature.
4. Official representatives of the counties in which the National Park Service unit is located.
5. Officials of other Federal agencies or public bodies.
6. Organizations.
7. Individuals.

Each meeting will be recorded for documentation purposes only and will not be transcribed for dissemination.

Dated: April 29, 1986.

W. Russell White,

Acting Regional Director, Western Region.

[FR Doc. 86–11929 Filed 5–27–86; 8:45 am]

BILLING CODE 4310-70-M

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202/395–7340.

Title: Land and Water Conservation Fund Conversion of Use Provisions

Abstract: In order to convert sites and facilities assisted under this program to non-public recreation uses, the grant recipient must submit documentation for NPS consideration and approval. Documentation includes appraisal reports, statements regarding need for the conversion, and such additional information as may be necessary.

Bureau Form Number: N/A

Frequency: On occasion

Description of Respondents: State governments

Annual Responses: 55

Annual Burden Hours: 1,925

Bureau Clearance Officer: Russell K. Olsen, 202/523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 86–11883 Filed 5–27–86; 8:45 am]

BILLING CODE 4310-70-M

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number lised below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202/395–7340.

Title: Urban Park & Recreation Recovery Program Conversion of Use Provisions

Abstract: In order to convert sites and facilities assisted under this program to non-public recreation uses, the grant recipient must submit documentation for NPS consideration and approval. Documentation includes statements regarding need for the conversion, information regarding proposed replacement property and such additional information as may be necessary.

Bureau Form Number: N/A

Frequency: On occasion

Description of Respondents: Local governments

Annual Responses: 5

Annual Burden Hours: 125

Bureau Clearance Officer: Russell K. Olsen. 202/523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 86–11884 Filed 5–27–86; 8:45 am]

BILLING CODE 4310-70-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 22, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Audio-Video Affiliates, Inc.
Common Stock, $1.00 Par Value (File No. 7–8970)

Blair (John) & Co.
Common Stock, $1.00 Par Value (File No. 7–8971)

Burger King Investors Master, L.P.
Units of Partnership Interests (File No. 7–8972)

Mylan Laboratories, Inc.
Common Stock, $0.50 Par Value (File No. 7–8973)

Manpower, Inc.
Common Stock, $1.50 Par Value (File No. 7–8974)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11823 Filed 5-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23249; File No. 4-289]

Self-Regulatory Organizations, Filing of Proposed Plan by the Philadelphia Stock Exchange, Inc.; Quarterly Reporting of Minor Rule Violations

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder,[1] notice is hereby given that on May 2, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted copies of a proposed plan specifying those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) of the Act.[2] Rule 19d-1(c)(1) requires that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization. In accordance with paragraph (c)(2) of Rule 19(d)-1, the Phlx proposes to designate certain violations of its Option Floor Procedure Advices as minor rule violations, and that it be allowed to report these violations on a quarterly, instead of current, reporting basis. The Phlx proposes to include the following violations of its Option Floor Procedure Advices under its proposed plan: Section A of the Options Floor Procedure Advices, *Specialists*, Advices A-1 (responsibility for displaying best bid and offer); A-2 (orders to be accepted onto specialist's book); A-6 (acceptance of stop and stop limit orders). Section B *Registered Options Traders*, Advices B-1 (responsibility to make markets); B-2 (crowd courtesy); B-3 (trading requirements); B-4 (trading from off-floor); B-5 (agency-principal restrictions); B-6 (parity); B-7 (splitting orders); B-8 (use of floor brokers). Section C, *Floor Brokers*, Advices C-1 (presence of registered option traders in trading crowd); C-2 (clocked tickets); C-3 (handling registered option trade orders); C-4 (floor brokers handling orders for same firm); C-5 ("legging" combination orders). Section E, *Staffing*, E-1 (required staffing of options floor). Section F, *Miscellaneous*, Advices F-1 (use of identification letters and numbers); F-2 (time-stamping and matching); F-3 (requests for sold sale designations); F-4 (orders executed as spreads, straddales, or combinations); F-5 (changes or corrections to material terms of a cleared trade); F-6 (option quote parameters).[3] A party charged with a violation of one or more of the rules will receive written notice from the exchange.[4] The Phlx also notes that there exists sufficient discretion in each step of the process to permit a particular incident to be evaluated as meriting more formal disciplinary action that exists under the plan. The Business Conduct Committee of the Phlx has the ability, pursuant to Exchange Rule 960.2, to evaluate the severity of a violation and, in appropriate circumstances, authorize the issuance of a complaint.

The submission filed by the Phlx contemplates, subject to Commission approval, the addition of other violations within the minor rule violation plan.

According to the Phlx, the quarterly report of actions taken on minor rule violations, which under the Phlx procedure would be submitted to the Commission, would list for each violation the Commission file number, the name of the individual or member organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the date of disposition, and the internal file number.

In order to assist the Commission in determining whether to approve the proposed plan or institute proceeding to determine whether the proposed plan should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 4-289.

Copies of the submission, all subsequent amendments, all written statements with respect to the plan which are filed with the Commission, and all written communications relating to the plan between the Commission and any other person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the offices of the Phlx.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

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[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 22928. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by an SRO against any person for violation of an SRO rule that has been designated a minor rule subject to a plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine of less than $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[2] *See* Letter from Douglas Block, Vice President, Philadelphia Stock Exchange, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated May 1, 1986.

[3] Sanctions applicable to the minor rule violations are outlined in *Exhibit B* of the Phlx filing. The specific fine schedule for the various violations is as follows: For violations of Advice C-2, the fine schedule is $50 for the first offense, $250 for the second offense and $500 for the third offense; for violations of Advices A-2(i), B-4 and B-5, the fine schedule is $250 for the first offense, $500 for the second offense and $800 for the third offense; for violations of Advice E-1, the fine schedule is a warning for the first offense, $500 for the second offense and $800 for the third offense; for violations of Advice B-3(1), the fine schedule is a warning for the first offense, $500 for the second offense; for violation of Advices B-1, B-7 and B-8, the fine schedule is $100 for the first offense, $250 for the second offense and $500 for the third offense; for violations of Advices A-1, A-6, B-2, B-6, C-1, C-3, C-4, F-1, F-2, F-3, F-4, and F-6, the fine schedule is $50 for the first offense, $100 for the second offense and $250 for the third offense; for violations of Advice B-3(2), the fine schedule is a warning for the first offense, and $200 for the second offense; for violations of Advice A-2(ii), the fine schedule is $50 for the first offense, $100 for the second offense; for violations of Advice F-5, the fine schedule is $50 for the first offense, $50 for the second offense. For all Advices, sanction for an offense after the last listed offense is left to the discretion of the Business Conduct Committee of the Phlx.

[4] The notice, entitled "Notice of Fine For Minor Violation(s) of Options Floor Procedure Advices" is attached, as *Exhibit C*, to the Phlx filing.

Dated: May 18, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-11822 Filed 5-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23253; File No. SR-OCC-86-03]

Self-Regulatory Organizations; Options Clearing Corp.; Proposed Rule Change

Pursuant to Section 19(b)(1), of the Securities Exchange Act of 1934 (the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 28, 1986, Options Clearing Corporation ("OCC") filed with the Securities Exchange Commission the proposed rule change described below. The proposal would enable Canadian banks and trust companies to issue escrow receipts representing underlying securities which Clearing Members have deposited with the institution to cover short positions in stock options carried for customer accounts. The Commission is publishing this Notice to solicit comment.

I. Description of the Proposal

OCC is proposing to amend its rules to permit certain Canadian banks and trust companies to qualify as issuers of escrow receipts. Currently, Clearing Members can deposit with OCC escrow receipts, issued by a qualified financial institution and collateralized by the underlying security, in lieu of OCC margin on short equity option call positions.[1] The proposed rule change consists of a list of standards for Canadian financial institutions wishing to issue escrow receipts (the "Standards"), the form of Depository Agreement between OCC and Canadian escrow receipt issuers, the form of Escrow Receipt, and a recommended form of Escrow Receipt Agreement between Canadian escrow receipt issuers and their customers.

OCC's Standards are similar to existing OCC standards for a U.S. financial institution. Specifically, a Canadian financial institution must: (1) Be either a Schedule A (Canadian domestic) bank governed by the Canadian Bank Act or a trust company governed by Canadian federal or provincial legislation; (2) have shareholders' equity [2] of at least $27,500,000 Canadian. (This provision is comparable to the $20,000,000 shareholders' equity requirement for U.S. financial institutions.); and (3) file F.R. Form T-2 (or its equivalent conforming to Section 8(a) of the Act) with the Board of Governors of the Federal Reserve System in which the financial institution agrees to comply with U.S. law relating to the use of credit to finance securities transactions.[3]

Canadian financial institutions qualifying as escrow receipt issuers would be subject to certain requirements. First, each of those institutions could issue escrow receipts as long as either (i) the total amount of cash and securities (at current market value) held by it pursuant to all outstanding escrow receipts and guarantee letters collateralizing puts and calls,[4] or (ii) the intrinsic or "in-the-money" value of all such puts and calls, does not exceed a dollar amount equal to 25% of the shareholders equity of the institution. This limitation currently applies to U.S. escrow issuers.[5] Second, Canadian financial institutions would be subject to reporting requirements almost identical to those requirements for U.S. escrow issuers. Canadian financial institutions, upon application to OCC for escrow issuance approval, must supply OCC with their latest available audited financial statements. After approval, they would be required to submit quarterly unconsolidated statements. Thereafter, the institution would need to submit to OCC each year an audited report containing a consolidated or unconsolidated statement of financial condition and a special supplemental report signed by the chief officer of the internal credit department regarding the adequacy of the institution's internal accounting controls relating to escrow receipts and the underlying assets. Third, Canadian institutions will be required to submit a signature list of those employees authorized to sign escrow receipt form.[6]

The form of Depository Agreement, *i.e.*, the application for approval to issue escrow receipts, is almost identical to that used by U.S. institutions. Like U.S. applicants, Canadian institutions would represent that they meet the Standards and agree to perform the obligations set forth in the escrow receipt form. Except for necessary changes in terminology reflecting the Standards, the escrow receipt form also is almost identical to the form used by U.S. institutions.[7]

OCC also has filed a form of escrow receipt agreement for use by Canadian institutions and their customers. Canadian institutions, however, are free to use their own forms of agreement, provided they include the substantive terms of OCC's escrow receipt form.

II. OCC's Rationale for the Proposed Rule Change

OCC states in its filing that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it would promote greater Canadian participation in the U.S. options markets. Although options traded on U.S. securities exchanges have been marketed in Canada for a number of years, OCC expects that its recent adoption of rules permitting foreign brokers to become direct OCC Clearing Members [8] and the future establishment of an OCC branch office in Toronto will generate increased Canadian investor interest in U.S. options. OCC believes that enabling Canadian institutions to issue escrow receipts will increase further the trading of U.S. options in Canada by enabling Canadian institutional and public investors to cover their options positions at qualifying local financial institutions, consistent with the Commission's desire to facilitate efficient and safe handling of international securities transactions.[9]

OCC also believes that by increasing the number of financial institutions eligible to issue escrow receipts, it will promote competition among those institutions. At the same time, OCC states that investors will continue to be protected by the reasonable safeguards

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[1] *See* OCC Rule 610.

[2] Shareholders' equity would be computed on an unconsolidated basis and would consist of common stock, surplus and retained earnings; preferred stock and subordinated debt would not be considered.

[3] In its filing, OCC represents that the staff of the Board of Governors of the Federal Reserve System (the "Fed") has stated that escrow receipts issued by any foreign banking institution that has filed a Form T-2 qualify as "escrow agreements" for purposes of Regulation T. *See* letter dated May 18, 1984, from Laura Homer, Securities Credit Officer, Fed, to Marvin Pormery, Esq.

[4] OCC represents that it will accept escrow receipts relating to deposited stocks underlying short stock option call positions only. If it appears in the future that there is a significant demand in Canada for index option escrow receipts, OCC states that it will prepare a Canadian version of the index option escrow receipt and submit this as a separate rule change filing.

[5] *See* Securities Exchange Act Release No. 22344 (May 18, 1985), (published May 27, 1985) approving File No. SR-OCC-85-03 in which OCC proposed the alternative "in-the-money" formula for limiting the amount of escrow receipts that a custodian bank may have outstanding.

[6] Moreover, OCC proposes a $2.00 fee for each Escrow Receipt Form.

[7] As amended in File No. SR-OCC-86-03, *see infra* note 4.

[8] *See* Securities Exchange Act Release No. 22123 (June 6, 1985), 50 FR 24853 (June 13, 1985) approving File No. SR-OCC-85-02.

[9] *See* Securities Exchange Act Release No. 21958 (April 16, 1985), 50 FR 16302 (April 26, 1985), File No. S7-19-85.

provided in connection with the escrow receipt program.

III. Request for Comments

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submission should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by June 18, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 19, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11921 Filed 5-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15108; (812-6321)]

USAT Mortgage Securities, Inc.; Application for Exemptive Order from all Provisions of the Act

May 20, 1986.

Notice is hereby given that USAT Mortgage Securities, Inc. ("Applicant"), 10333 Harwin, Houston, Texas 77036, filed an application on March 20, 1986, and amendments thereto on April 18 and May 15, 1986, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act in connection with the issuance of mortgage related securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, Applicant is a wholy-owned limited purpose finance subsidiary of United Savings Association of Texas, incorporated under Texas law for the purpose of investing in certain certificates representing interests in mortgage pools ("Certificates") to be purchased principally with the proceeds of bonds ("Bonds") collateralized by such Certificates. Applicant states that it does not intend to engage in any business or investment activities other than issuing and selling Bonds collateralized primarily by Certificates under an indenture, acquiring, owning, holding and pledging Certificates, investing cash balances on an interim basis in certain short-term investments and engaging in activities incidental to and necessary for such purposes.

Applicant proposes to issue and sell the Bonds in series ("Series") issued pursuant to one or more indentures ("Indentures") between Applicant and a qualified unaffiliated trustee ("Trustee"). Applicant states that the Indenture for each Series of Bonds will be qualified under the Trust Indenture Act of 1939. Applicant further states that it will only issue Bonds rated in the highest investment grade rating by at least two unaffiliated nationally recognized statistical rating organizations.

According to the application, each Series of Bonds will be secured separately by assignments to the Trustee of any combination of "fully modified pass-through" certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), Guaranteed Mortgage Pass-Through Securities issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates"), or Mortgage Participation Certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation (the "FHLMC Certificates"). Applicant states that the Bonds will be secured by collateral ("Collateral"), which Collateral includes (i) the Certificates, (ii) distributions thereon, (iii) cash, a letter of credit or any combination thereof if required with respect to any Series, (iv) cash, if any, required to be initially deposited by the Applicant with respect to any Series and (v) the reinvestment income on such distributions. Applicant represents that the Collateral for each Series of Bonds will secure only that Series and that each Series of Bonds will be fully payable from the principal and interest payments on the Collateral pledged to secure such Series.

Applicant asserts that it is not the type of entity that was intended to be regulated under the Act, and that its limited activities do not require the protection of the Act. Applicant further asserts that there are strong policy reasons for granting the requested exemptive order because Applicant's activities will supply capital to builders and other institutions engaged in the real estate and mortgage markets, and thereby facilitate the financing of mortgages, a critical national need.

Applicant consents to the following conditions with respect to the issuance of the requested order:

(1) Each series of bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act.

(2) The bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. However, the mortgate collateral underlying the bonds will be limited to mortgage certificates guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(3) If new mortgage collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs (2), (4) and (6). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the mortgage certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

(4) All mortgage certificates, funds, accounts or other collateral securing a series of bonds ("bond collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all bond collateral.

(5) Each series of bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The bonds will not be considered redeemable securities within the meaning of Section 2(a)(32) of the Act.

(6) No less often than annually, an independent public accountant will audit the books and records of the

Applicant and in addition will report on whether the anticipated payments of principal and interest on the bonds in accordance with their terms. Upon the completion, copies of the auditor's report(s) will be provided to the Trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 12, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-11924 Filed 5-27-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting, CA

The Small Business Administration, Region IX, located in the geographical area of San Diego, California, will hold a public meeting at 9:00 a.m. on June 20, 1986, in the Federal Building, 880 Front Street, San Diego, California 92188, Room 2-S-14, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, Room 4-S-29, San Deigo, California 92188, (619) 293-7261.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 19, 1986.

[FR Doc. 86-11845 Filed 5-27-86; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting, NE

The U.S. Small Business Administration, Region VII, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 10:00 a.m. to 2:30 p.m., on Monday, June 9, 1986, at the Omaha Club, 20th & Douglas, Omaha, Nebraska 68102, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Rich Budd, District Director, U.S. Small Business Administration, 19th & Franam, Omaha, Nebraska 68102; phone (402) 221-3820.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 19, 1986.

[FR Doc. 86-11846 Filed 5-27-86; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; WA

The U.S. Small Business Administration, Region X, located in the geographical area of Seattle, Washington, will hold a public meeting at 9:00 a.m. on Friday, June 13, 1986, in the North Auditorium, Federal Building, 915 Second Avenue, Seattle, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John J. Talerico, District Director, U.S. Small Business Administration, 915 Second Avenue, Room 1792, Seattle, Washington 98174 (206) 442-2786.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 19, 1986.

[FR Doc. 86-11847 Filed 5-27-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 968]

Participation of Private-Sector Representatives on U.S. Delegations; August 1985—May 1986 List

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its August 1985—May 1986 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article III (c) 5 of the guidelines published in the Federal Register on March 23, 1979.

Dated: May 20, 1986.

Frank R. Provyn,

Director, Office of International Conferences.

United States Delegation to the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, Milan, August 26—September 6, 1985

Representative

The Honorable D. Lowell Jensen, Deputy Attorney General, Department of Justice

Alternate Representatives

The Honorable Norman A. Carlson, Director, Bureau of Prisons, Department of Justice

The Honorable Ronald Gainer, Associate Deputy Attorney General, Department of Justice

Congressional Adviser

The Honorable George W. Crockett, Jr., United States House of Representatives

Congressional Staff Advisers

Sheila A. Bair, Deputy Counsel, Office of the Majority Leader, United States Senate

Gail Higgins Fogarty, Counsel, Committee on the Judiciary, United States House of Representatives

Richard W. Velde, Consultant, Office of the Majority Leader, United States Senate

Judical Advisers

The Honorable Frederick B. Lacey, U.S. District Court for the District of New Jersey, Newark, New Jersey

The Honorable George E. MacKinnon, U.S. Court of Appeals for the District of Columbia Circuit, Washington, D.C.

The Honorable Frank J. McGarr, Chief Judge, U.S. District Court for the Northern District of Illinois, Chicago, Illinois

The Honorable Gerald B. Tjoflat, U.S. Court of Appeals for the Eleventh Circuit, Jacksonville, Florida

Advisers

Eugene C. Bailey, Regional Officer, Office of Counter Terrorism and Emergency Planning, Department of State

The Honorable Raymond Brown, Director, National Institute of Corrections, Department of Justice

The Honorable Lois Haight Herrington, Assistant Attorney General, Office of Justice Programs, Department of Justice

Warren E. Hewitt, Director, Office of Human Rights Affairs, Bureau of International Organization Affairs, Department of State

The Honorable John C. Lawn, Acting Administrator, Drug Enforcement Administration, Department of Justice

The Honorable Stanley E. Morris, Director, United States Marshals Service, Department of Justice

The Honorable Steven R. Schlesinger, Director, Bureau of Justice Statistics, Department of Justice

The Honorable James K. Stewart, Director, National Institute of Justice, Department of Justice

The Honorable Jon R. Thomas, Assistant Secretary for International Narcotics Matters, Department of State

The Honorable William H. Webster, Director, Federal Bureau of Investigation, Department of Justice

Private Sector Advisers

George J. Beto, Distinguished Professor of Corrections, Sam Houston University, Huntsville, Texas
Peter Greenwood, Criminal Justice Program, The Rand Corporation, Santa Monica, California
Charles F. Wellford, Chairman, Institute of Criminal Justice and Criminology, University of Maryland, College Park, Maryland
Hubert Williams, President, Police Foundation, Washington, D.C.

United States Delegation to the Study Group XI International Telephone And Telegraph Consultative Committee International Telecommunication Union (ITU/CCITT) Geneva, October 21—November 8, 1985

Representative

Thijs De Haas, Institute for Telecommunication Sciences, Department of Commerce, Boulder, Colorado

Adviser

Fred Nolka, Federal Communications Commission

Private Sector Advisers

Douglas C. Donohoe, AT&T Bell Laboratories, Holmdel, New Jersey
Stephen Engelman, Communications Satellite Corporation, Washington, D.C.

United States Delegation to the Meeting of Permanent Technical Committee (PTC) I Organization of American States/Inter-American Telecommunications Commission (OAS/CITEL) Sao Paulo, November 4–8, 1985

Representative

Douglas Davis, Federal Communications Commission

Alternate Representative

Dominick Iacovo, Bureau of International Communications and Information Policy, Department of State

Adviser

William Morsa, National Telecommunication and Information Administration, Department of Commerce

Private Sector Advisers

Cecil Crump, AT&T Communications, Morristown, New Jersey
Thomas Sorge, RCA Global Communications, Inc., New York, New York

United States Delegation to the 9th Regular Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), Palma de Mallorca, November 3–13, 1985

Commissioners

The Honorable Carmen J. Blondin, Deputy Assistant Administrator for Fisheries Resource Management, National Oceanic and Atmospheric Administration, Department of Commerce
The Honorable Frank B. Carlton, Savannah, Georgia
The Honorable John McGowan, Astoria, Oregon

Advisers

Barry Kefauver, Executive Director, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Barbara Rothschild, Office of International Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce
Gary T. Sakagawa, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Jacob Walles, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

Jack C. Bowland, United States Tuna Foundation, Washington, D.C.
Gordon C. Broadhead, Living Marine Resources, Inc., San Diego, California
Gilbert C. Radonski, Sport Fishing Institute, Washington, D.C.

United States Delgation to the Study Group 8 International Radio Consultative Committee International Telecommunication Union (ITU/CCIR), Geneva, November 4–20, 1985

Representative

Herbert T. Blaker, Manager, Standards and Certification, Rockwell International, Arlington, Virginia

Alternate Representative

Thomas M. Walsh, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce

Advisers

Fred S. Flatow, SARSAT Mission Manager, NASA/Goddard Space Flight Center, Greenbelt, Maryland
Robert A. Frazier, Electronic Engineer, Federal Aviation Administration, Department of Transportation
Wendell Harris, Chief, International Staff, Common Carrier Bureau, Federal Communications Commission
Gordon F. Hempton (International Chairman), Technical Standards Branch, Private Radio Bureau, Federal Communications Commission
Joseph Hersey, Frequency Staff, U.S. Coast Guard
Earl J. Holliman, Army Spectrum Manager, HQ Department of the Army
Henry W. Holsopple, Director, Navy Electromagnetic Spectrum Center, Department of the Navy
William A. Luther, International Adviser, Field Operations Bureau, Federal Communications Commission
Gerald J. Markey, Acting Manager, Spectrum Engineering Div., Federal Aviation Administration, Department of Transportation
Fred Matos, Spectrum Analysis Branch, National Telecommunications and Information Administration, Department of Commerce
Robert C. McIntyre, Aviation and Marine Division, Federal Communications Commission
Lawrence M. Palmer, International Staff, Common Carrier Bureau, Federal Communications Commission
Warren Richards, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State
Frank L. Rose, Chief, Technical Standards Branch, Office of Science and Technology, Federal Communications Commission
Michael S. Singer, Chief, Plans and Policies, Spectrum Management, Federal Aviation Administration, Department of Transportation
Richard Swanson, Frequency Staff, U.S. Coast Guard
James T. Vorheis, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

William M. Borman, Vice President and Director of Telecommunications, Government Reltions—International, Motorola, Inc., Washington, D.C.
Theodore Brenig, Mobile Communications Business, General Electric Company, Lynchburg, Virginia
Lewis L. Bradley, Telecommunications Consultant, Systematics General Corporation, Alexandria, Virginia
Charles Dorian, Consultant, American Radio Relay League, Washington, D.C.
Andrew W. Hutnik, High Seas Service, AT&T Communications, Morristown, New Jersey
Yaroslav Kaminsky, Head, Advanced Systems Group, The MITRE Corporation, McLean, Virginia
Philip T. Porter, Bell Communications Research, Red Bank, New Jersey
Alan G. Rinker, Communications and Electronics Division, Systematics General Corporation, Sterling, Virginia
Franklin L. Shilling, Deputy Director, External Affairs, Aeronautical Radio, Inc., Annapolis, Maryland
Gerald F. Wiggen, Sachs-Freeman and Associates, Inc., Bowie, Maryland

United States Delegation to the 4th Session of the Joint Intergovernmental Oceanographic Commission (IOC)/World Meteorological Organization (WMO), Working Committee for The Integrated Global Ocean Services System (IGOSS IV) UN Educational, Scientific and Cultural Organization (UNESCO), Geneva, November 11–20, 1985

Representative

Gregory W. Withee, U.S. National Representative for IGOSS, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Representative

Robert Landis, Chief, Marine Services Branch, National Oceanic and Atmospheric Administration, Department of Commerce

Adviser

Mitchell Shank, Director, Fleet Operations Department, United States Naval

Oceanographic Office, Bay St. Louis, Mississippi

Private Sector Adviser

Warren White, Research Oceanographer, Scripps Institution of Oceanography, La Jolla, California

United States Delegation to the Special Session of the Committee for Information, Computer and Communications Policy Organization For Economic Cooperation and Development (OECD), Paris, November 19–20, 1985

Representatives

The Honorable William Schneider, Under Secretary of State for Security Assistance, Science and Technology, Department of State

The Honorable Mark Fowler, Chairman, Federal Communications Commission

Senior Policy Adviser

The Honorable Diana Lady Dougan, Coordinator and Director, Bureau of International Communications and Information Policy, Department of State

Adviser

Donald Abelson, Director, Technical Trade Barriers, Office of the United States Trade Representative, Executive Office of the President

Private Sector Advisers

Seth Blumenfeld, President, MCI International Inc., Rye Brook, New York

R. Clark Grimes, Director, Telecommunications Practices, International Business Machines Corporation, Armonk, New York

Charles H. Miller, Director, Public Affairs, American Telephone and Telegraph, Washington, D.C.

Cecil Olmstead, Steptoe and Johnson, Washington, D.C.

United States Delegation to the Steel Committee, Working Party Organization for Economic Cooperation and Development (OECD), Paris, November 19–20, 1985

Representative

Ralph F. Thompson, Jr., Director, Office of Basic Industries, Department of Commerce

Advisers

Jorge Perez-Lopez, Deputy Director, Office of International Economic Affairs, Department of Labor

Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Frank Fenton, Vice President for International Affairs, American Iron and Steel Institute, Washington, D.C.

Peter Mallonee, Assistant to the Chairman, United States Steel Corporation, Pittsburgh, Pennsylvania

John J. Sheehan, Assistant to the President and Director for Legislative Affairs, United Steel Workers of America, Pittsburgh, Pennsylvania

United States Delegation to the 24th Session of the Assembly and 12th Extraordinary Session of the Council of the International Maritime Organization (IMO), London, November 8–22, 1985

Thirteenth Extraordinary Session (November 8, 1985)

Representative

David L. Schiele, Office of Technical Specialized Agencies, Bureau of International organization Affairs, Department of State

Alternate Representative

Paul E. Versaw, Captain, Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Advisers

Robert Bentley, International Relations Officer, Department of State

Nancy Fibish, Shipping Attache, United States Embassy, London

Gerard P. Yoest, International Affairs Staff, United States Coast Guard, Department of Transportation

Fourteenth Session of the Assembly (November 11–22, 1985

Representative

James S. Gracey, Admiral, Commandant, United States Coast Guard, Department of Transportation

Alternate Representative

David L. Schiele, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State

Advisers

Robert Bentley, International Relations Officer, Department of State

Nancy Fibish, Shipping Attache, United States Embassy, London

J.W. Kime, Commodore, Chief, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Daniel F. Sheehan, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Paul E. Versaw, Captian, Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Gerard P. Yoest, International Affairs Staff, United States Coast Guard, Department of Transportation

Private Sector Adviser

Donald C. Hintze, Captain (Ret.), National Ocean Industries Association, Washington, D.C.

United States Delegation to the 7th European Regional Air Navigation Meeting, International Civil Aviation Organization (ICAO), Malaga, Spain, November 12–24, 1985

Delegate

Benjamin Dempe, Jr. (Chairman of Delegation), Director, Europe, Africa, and Middle East Office, Federal Aviation Administration, Brussels, Belgium

Alternate Delegates

Bennett Flax, Air Traffic Services Staff, Europe, Africa, Middle East Office, Federal Aviation Administration, Brussels, Belgium

David Hodges, Air Traffic Control Systems, Federal Aviation Administration, Brussels, Belgium

Romney E. Pattison, International Officer, Office of International Aviation, Federal Aviation Administration, Department of Transportation

Robert G. Sims, Lieutenant Colonel, USAF, Ramstein Air Force Base,Ramstein, Federal Republic of Germany

Private Sector Adviser

Paul Leonard, Airline Operations, Air Transport Association of America, Washington, D.C.

United States Delegation to the Study Group III, International Telecommunication Union (ITU), International Telephone and Telegraph Consultative Committee (CCITT), Geneva, November 11–28, 1985

Working Party III/6 November 11–13, Working Party III/2 November 14–19, and Working Party III/1 November 25–26, 1985.

Representative

Earl S. Barbely, Acting Director, Office of Technical Standards and Development, Bureau of International Communications and Information Policy, Department of State

Advisers

Gray M. Fereno, Telecommunication Policy Specialist, National Telecommunications and Information Administration, Department of Commerce

Wendell Harris, Federal Communications Commission

Private Sector Advisers

Wendell E. Lind, Manager, Network Rates, AT&T Communications, Bedminster, New Jersey

John O'Boyle, Vice President, ITT World Communications Inc., Secaucus, New Jersey

Phillip Onstad, Control Data Corporation, Washington, D.C.

Denis W. O'Shea, Telecommunications Adviser, IBM, Armonk, New York

Beverly Ann Sincavage, Senior Product Manager, GTE Telenet Communications, Corporation, Reston, Virginia

Carmine Taglialatela, Director, Regulatory Affairs, RCA Communications, Inc., New York, New York

Deborah Tumey, Citibank, N.A., New York, New York

Working Party III/5, November 20–22, 1985.

Representative

Earl S. Barbely, Acting Director, Office of Technical Standards and Development, Bureau of International Communications and Information Policy, Department of State

Advisers

Gary M. Fereno, Telecommunication Policy Specialist, National Telecommunications

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and Information Administration, Department of Commerce
Wendell Harris, Federal Communications Commission

Private Sector Advisers

Clyde P. Dahlgren, Deputy Director, AT&T Communications, Morris Plains, New Jersey
Paul F. Kenart, Senior Regulatory Analyst, GTE Sprint Communication Corporation, Washington, D.C.
John O'Boyle, Vice President, ITT World Communications Inc., Secaucus, New Jersey
Phillip Onstad, Control Data Corporation, Washington, D.C.
Denis W. O'Shea, Telecommunications Advisor, IBM, Armonk, New York
Carmine Tagliaferro, Director, Regulatory Affairs, RCA Communications, Inc., New York, New York

United States Delegation to the Sixth Meeting of the Chemicals Group and Management Committee Organization for Economic Cooperation and Development (OECD), Paris, November 25–27, 1985

Representative

Don Clay, Director Office of Toxic Substances, Environmental Protection Agency

Advisers

Brock Milroy, Office of Toxic Substances, Environmental Protection Agency
Thomas Wilson, Office of Environment and Health, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Frances Irwin, The Conservation Foundation, Washington, D.C.
Donald McCollister, Dow Chemical Company, Midland, Michigan

United States Delegation to the 23rd Session of the Conference of the Food and Agriculture Organization (FAO), Rome, November 9–26, 1985

Delegate

The Honorable John R. Block, Secretary of Agriculture

Alternate Delegates

[1] The Honorable Millicent Fenwick, United States Representative to the United Nations Agencies for Food and Agriculture, Rome
The Honorable Daniel G. Amstutz, Under Secretary for International Affairs and Commodity Programs, Department of Agriculture
Antonio Gayoso, Director, Office of International Development, Bureau of International Organization Affairs, Department of State
James E. Ross, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Congressional Adviser

The Honorable Gene Chappie, House of Representatives

Advisers

R. Wayne Denney, International Relations Advisor, International Organization Affairs, Office of International Cooperation and Development, Department of Agriculture
Allan R. Perreaux, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
Michael Goldman, Office of Food Policy and Programs, Bureau of Economic and Business Affairs, Department of State
Hartford T. Jennings, Chief, Agriculture Development Division, Bureau of International Organization Affairs, Department of State
Edmund M. Parsons, Deputy United States Representative to the United Nations Agencies for Food and Agriculture, Rome
Mark Ward, Chief, United Nations Division, Office of Donor Coordination, Bureau for Program and Policy Coordination, Agency for International Development
Daniel Weygandt, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
Mack L. Witcher, Director, International Organization Affairs, Office of International Cooperation and Development, Department of Agriculture

Private Sector Adviser

William T. Schapaugh, Executive Vice President, American Seed Trade Association, Washington, D.C.

United States Delegation to the Study Group I, Consultative Committee on Telegraph and Telephone, International Telecommunication Union (ITU/CCITT) Geneva, November 21–29, 1985

Representative

Douglas Davis, Common Carrier Bureau, Federal Communications Commission

Private Sector Advisers

Donald P. Casey, ITT World Communications Inc., Secaucus, NJ
Stephen Engleman, COMSAT, Clarksburg, MD
Joseph Norton, Asst. Vice President, Product Line Management, Western Union Telegraph Co., Upper Saddle River, NJ
Herman R. Silbiger, AT&T Information Systems, Morristown, New Jersey

United States Delegation to the International Rubber Study Group (IRSG), Abidjan, November 21–30, 1985

Representative

Frederick W. Siesseger, Director, International Commodities Division, Department of Commerce

Alternate Representative

Cynthia Smith, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State

Private Sector Advisers

Thomas E. Cole, Vice President, Rubber Manufacturers Association, Washington, D.C.
Donald A. Ensminger, General Manager, Plantation Operations, Goodyear Tire and Rubber Company, Akron, Ohio
Frank Raniolo, President, Alcan Rubber and Chemical, Inc., New York, New York

United States Delegation to the Study Group VIII International Telephone and Telegraph Consultative Committee, International Telecommunication Union (ITU/CCITT), London, December 2–5, 1985

Representative

Douglas V. Davis, Common Carrier Bureau, Federal Communications Commission

Alternate Representative

Gary M. Ferenc, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

Richard Holleman, International Business Machines Corporation, Purchase, New York
Herman Silbiger, AT&T Bell Labs, Crawfords Corner Road, Holmdel, NJ

United States Delegation to the 22nd Session of the Marine Environment Protection Committee International Maritime Organization (IMO), London, December 2–6, 1985

Representative

Peter J. Rota, Admiral, Chief, Office of Marine Environment and Systems, U.S. Coast Guard, Department of Transportation

Alternate Representative

C.R. Corbett, Captain, Chief, Response Division, U.S. Coast Guard, Department of Transportation

Adviser

Joseph J. Angelo, Merchant Vessel Inspection, U.S. Coast Guard, Department of Transportation
Robert Blumberg, Deputy Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International, Environmental and Scientific Affairs, Department of State
Nancy Fibish, Shipping Attaché, United States Embassy, London
David B. Pascoe, Lieutenant Commander, Chief, Environmental Coordination Branch, U.S. Coast Guard, Department of Transportation
John E. Riley, Chief, Response Standards and Criteria Branch, Emergency Response Division, Environmental Protection Agency
Thomas H. Robinson, Commander, Assistant Chief, Port and Environmental Safety Division, U.S. Coast Guard, Department of Transportation
Frits Wybenga, Marine Technical and Hazardous Materials Division, U.S. Coast Guard, Department of Transportation

Private Sector Adviser

Sally Lentz, Staff Attorney, Oceanic Society, Washington, D.C.

[1] Ambassador Fenwick will act as delegate and head of delegation in the absence of Secretary Block.

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United States Delegation to the Plan Committee for Latin America International Telecommunication Union (ITU), Paramaribo, December 3–6, 1985

Representative

Domenick Iacovo, Office of Technical Standards and Development, Bureau of International Communications and Information Policy, Department of State

Advisers

Glen de Chabert, International Policy Division, Federal Communications Commission
Gordon Hempton, Private Radio Bureau, Federal Communications Commission

Private Sector Adviser

Cecil R. Crump, AT&T Communications, American Telephone and Telegraph Company, Morris Plains, New Jersey

United States Delegation to the 102nd Session International Wheat Council (IWC), London, December 9–11, 1985

Representative

Donald J. Novotny, Director, Grain and Feed Division, Foreign Agricultural Service, Department of Agriculture

Alternate Representative

Gerald Monroe, Director, Office of Food Policy and Programs Bureau of Economic and Business Affairs, Department of State

Advisers

Charles G. Billo, Chief, Food Program Division, Office of Food Policy and Programs, Bureau of Economic and Business Affairs, Department of State
Turner L. Oyloe, Agricultural Counselor, American Embassy, London
Ken Roberts, Agricultural Attache, American Embassy, London

Private Sector Advisor

Richard Fritz, Director for Market Analysis, U.S. Wheat Associates, Washington, D.C.

United States Delegation to the 9th Session of the Commission for Climatology World Meteorological Organization (WMO), Geneva, December 2–13, 1985

Principal Delegate

Frank T. Quinlan, National Climatic Data Center, National Environmental Satellite, Data and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Principal Delegate

David R. Rodenhuis, National Weather Service, Oceanic and Atmospheric Administration, Department of Commerce

Delegates

Kenneth D. Davidson, National Climatic Data Center, National Environmental Satellite, Data and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce
James L. Rasmussen, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

Helmut Landsberg, Department of Meteorology, University of Maryland, College Park, Maryland
Thomas B. McKee, Department of Atmospheric Sciences, Colorado State University, Fort Collins, Colorado

United States Delegation to the Study Group XVIII International Telegraph and Telephone Consultative Committee International Telecommunication Union (ITU/CCITT) Kyoto, December 2–13, 1985

Representative

Thijs de Haas, Institute for Telecommunication Sciences, Department of Commerce, Boulder, Colorado

Advisers

Mike Sicoli, Federal Communications Commission
Lawrence Caplan, National Security Agency

Private Sector Adviser

Gary Fishman, AT&T Communications, Bedminster, NJ

United States Delegation to the Committee of Experts on the International Registration of Marks World Intellectual Property Organization (WIPO), Geneva, December 11–13, 1985

Representative

Lee Schroeder, Patent and Trademark Office, Department of Commerce

Alternate Representative

Rosemarie G. Bowie, Attorney-Advisor, U.S. Patent and Trademark Office

Adviser

Patricia Woodring, Office of Business Practices, Department of State

Private Sector Adviser

William A. Finkelstein, Trademark Counsel, Pepsico, Inc.

United States Delegation to the 38th Session Food Aid Committee (FAC), London, December 12–13, 1985

Representative

Gerald Monroe, Director, Office of Food Policy and Programs, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Charles G. Billo, Chief, Food Program Division, Office of Food Policy and Porgram, Bureau of Economic and Business Affairs, Department of State

Advisers

Donald J. Novotny, Director, Grain and Feed Division, Foreign Agricultural Service, Department of Agriculture
Ken Roberts, Agricultural Attache, American Embassy, London

Private Sector Adviser

Richard Fritz, U.S. Wheat Associates, Washington, D.C.

United States Delegation to the 32nd Session of the Committee on Gas Economic Committee for Europe (ECE), Geneva, January 30–24, 1986

Representative

Lucio D'Andrea, Industrial Specialist, Petroleum and Natural Gas, Office of Oil and Gas, Department of Energy

Private Sector Adviser

Stewart B. Kean, President, Utility Propane, Elizabeth, New Jersey

United States Delegation to the 52nd Session of the Maritime Safety Committee Intergovernmental Maritime Organization (IMO), London, January 27—February 5, 1986

Representative

J.W. Kime, Rear Admiral, Chief, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Alternate Representative

Daniel F. Sheehan, Technical Adviser, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Advisers

Nancy Fibish, Shipping Attache, U.S. Embassy, London
Thomas A. Robinson, Commander, Office of Marine Environment and Systems, United States Coast Guard, Department of Transportation
David Schiele, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State
Gerard P. Yoest, International Affairs Staff, United States Coast Guard, Department of Transportation

Private Sector Advisers

William Hannan, Vice President, American Bureau of Shipping, New York, New York
Donald C. Hintze, Executive Consultant, National Ocean Industries Association, Washington, D.C.
Carmen J. Lunetta, Director, Port of Miami, Miami, Florida

United States Delegation to the Conference on Conditions for Registration of Ships United Nations Conference on Trade and Development (UNCTAD), Geneva, January 20—February 7, 1986

Representative

William H. Dameron, Deputy Director, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Thomas M.P. Christensen, Office of International Activities, Maritime Administration, Department of Transportation

Congressional Staff Advisers

Rudolph V. Cassani, Counsel to the Subcommittee on Merchant Marine, U.S. House of Representatives

Gerald Sallart, General Counsel for Maritime Policy, Committee on Merchant Marine and Fisheries, U.S. House of Representatives

Advisers

Haley D. Collums, Office of the Legal Adviser, Department of State
Richard Jacobsen, U.S. Mission, Geneva
Lieutenant Commander Lane McClelland, Division of Maritime and International Law, U.S. Coast Guard

Private Sector Advisers

Richard J. Daschbach, Assistant to the President for International Affairs, Seafarers International Union of North America, Washington, D.C.
Patrick J. King, Consultant, International Organization of Marine Pilots, Boston, Massachusetts
Philip J. Loree, Attorney and Chairman, Federation of American Controlled Shipping, New York, New York
James F. Paterson, Vice President, National Maritime Union of America, New York, New York
Talmadge E. Simpkins, Executive Director, Maritime Committee, AFL-CIO, Washington, D.C.
Thomas S. Wyman, Manager, Maritime Relations, Chevron Shipping Company, San Francisco, California

United States Delegation to the 13th Session North American Forestry Commission Food and Agriculture Organization (FAO), Chetumal, Mexico, February 3–7, 1986

Representative

R. Max Peterson, Chief, Forest Service, Department of Agriculture

Alternate Representative

Jacob L. Whitmore, Forest Service, Department of Agriculture
Henry Noldan, Chief, Division of Forestry, Bureau of Land Management, Department of the Interior

Adviser

Sotero Muniz, Forest Service, Department of Agriculture, Albuquerque, New Mexico

Private Sector Adviser

Howard Lee Jones, Jr., J.M. Jones Lumber Company, Inc., Natchez, Mississippi

United States Delegation to The Committee of Experts on Biotechnological Inventions and Industrial Property World Intellectual Property Organization (WIPO), Geneva, February 3–7, 1986

Representative

Lee Schroeder, Patent and Trademark Office, Department of Commerce

Alternate Representative

Patricia A. Woodring, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

Private Sector Adviser

William H. Duffey, Monsanto Company, St. Louis, Missouri

United States Delegation to the 3rd Annual Meeting of the Council North Atlantic Salmon Conservation Organization (NASCO), Quebec City, Canada, February 4–7, 1986

Commissioners

The Honorable Allen E. Peterson, Jr., Woods Hole, Massachusetts
The Honorable Richard Buck, Hancock, New Hampshire
The Honorable Frank Carlton, Savannah, Georgia

Advisers

Vaughn C. Anthony, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts
Ted L. Lillestolen, Lieutenant, Foreign Affairs Office, National Oceanic and Atmospheric Administration, Department of Commerce
Daniel Ratfsnyder, Office of Oceans and Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
James E. Weaver, Assistant Regional Director, Fishery Resources, U.S. Fish and Wildlife Science, Department of the Interior

Private Sector Advisers

Spencer Appollonio, Commissioner, Department of Natural Resources, Augusta, Maine
Robert A. Jones, Vice Chairman, Connecticut River, Salmon Commission, New Haven, Connecticut
Glenn H. Manuel, Commissioner, Department of Inland Fisheries and Wildlife, Augusta, Maine

United States Delegation to the Cocoa Conference United Nations Conference on Trade and Development (UNCTAD), Geneva, February 10–22, 1986

Representative

Dorothy Dwoskin, Office of the U.S. Trade Representative, Geneva

Private Sector Advisers

Harold Gettinger, Vice President, M&M Mars, Hackettstown, New Jersey
Johannes Kilian, Gill & Dufus, Inc., New York, New York
Robert Paulson Westway Merkuria Corporation, New York, New York
Johann Schen, Cocoa Merchants of America, New York, New York

United States Delegation to the Permanent Technical Committee II of the Inter-American Telecommunication Commission (CITEL) of the Organization of American States (OAS), Fortaleza, Brazil, February 20–28, 1986

Representative

William H. Jahn, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Anatole Shub, Bureau of International Communications and Information Policy, Department of State

Advisers

David Cohen, National Telecommunications and Information Administration, Department of Commerce
Jonathan David, Policy and Rules Division—Mass Media Bureau, Federal Communications Commission
Wilson A. La Follette, Policy and Rules Division—Mass Media Bureau, Federal Communications Commission
Frederick Matos, National Telecommunications and Information Administration, Department of Commerce
Larry Olson, Policy and Rules Division—Mass Media Bureau, Federal Communications Commission
Charles Rush, National Telecommunications and Information Administration, Department of Commerce
Norbert Schroeder, Frequency Management and Monitoring Division, Voice of America

Private Sector Adviser

Wallace Johnson, Moffet, Larson and Johnson, P.C., (representing the National Association of Broadcasters), Arlington, Virginia

United States Delegation to the 31st Session of the Subcommittee on Fire Protection Intergovernmental Maritime Organization (IMO), London, February 24–28, 1986

Representative

Donald J. Kerlin, Office of Merchant Martine Safety, United States Coast Guard, Department of Transportation

Alternate Representative

William J. Ecker, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Advisers

William G. Boyce, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation
Nancy Fibish, Shipping Attache, United States Embassy, London
Klaus Wahle, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Private Sector Advisers

John P. Goudreau, Fire Equipment Manufacturer's Association, Marinette, Wisconsin
Rudolph G. Terry, Marine Transportation, Sun Refining and Marketing Company, Aston, Pennsylvania

United States Delegation to the 19th Meeting of the Dangerous Goods Panel International Civil Aviation Organization (ICAO), Montreal, February 24—March 7, 1986

Member

Edward A. Altemose, International Standards Coordinator, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation

Adviser

Walter G. Greiner, Office of Civil Aviation Security, Federal Aviation Administration, Department of Transportation

Private Sector Adviser

Frank J. Black, Manager, Cargo Services, Air Transportation Association, Washington, D.C.

United States Delegation to the 23rd Session of the Working Party on Facilitation of International Trade Procedures Economic Commission for Europe (ECE), Geneva, March 17–21, 1986

Representative

Bruce R. Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Department of Transportation

Adviser

William H. Kenworthey, Jr., Data Systems Manager, Office of the Deputy Assistant Secretary of Defense for Management Systems, Department of Defense

Private Sector Advisers

Anthony J. D'Anna, AT&T Technologies, Inc., Greensboro, North Carolina
Eugene A. Hemley, Executive Director, National Council on International Trade Documentation, New York, New York
Benjamin W. Milbrandt, Jr., Manager, Material Systems, Navistar International, Chicago, Illinois

United States Delegation to the Extraordinary Meeting of the International North Pacific Fisheries Commission (INPFC), Vancouver, April 8–9, 1986

Commissioners

The Honorable (Head of Delegation) Clement Tillion, Fisherman, Homer, Alaska
The Honorable Dayton Lee Alverson, Managing Partner, Natural Resources Consultants, Inc., Seattle, Washington
The Honorable Richard B. Lauber, Vice President and Alaska Manager, Pacific Seafood Processors, Juneau, Alaska
The Honorable Robert McVey, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Advisers

Michael Dahlberg, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Auke Bay, Alaska
Peter Flournoy, Attorney Adviser, Office of Legal Adviser, Department of State
Robert Ford, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

Joan Bergy, Consumer Adviser, Mercer Island, Washington
Al Burch, Alaska Draggers Association, Kodiak, Alaska
Henry Mitchell, Bering Sea Fisherman's Association, Anchorage, Alaska

United States Delegation to the Meeting of Permanent Technical Committee (PTC) I Organization of American States/Inter-American Telecommunications Commission (OAS/CITEL) Montevideo, April 7–18, 1986

Representative

Domenick Iacovo, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Douglas Davis Federal Communications Commission

Adviser

William Moran, National Telecommunication and Information Administration Department of Commerce

Private Sector Adviser

Cecil Crump AT&T Communications, Morristown, New Jersey

United States Delegation to the 24th Meeting of the Directing Council Organization of American States/Pan American Institute of Geography and History (OAS/PAIGH), Rio De Janeiro, April 7–11, 1986

Representative

Clarence W. Minkel, Chairman of the U.S. National Section of PAIGH, University of Tennessee Knoxville, Tennessee

Alternate Representative

Mark M. Macomber, Deputy Director for Systems and Techniques, Defense Mapping Agency

Adviser

Peter F. Bermel, Assistant Director for Programs, U.S. Geological Survey, Reston, Virginia
Frederick O. Diercks, National Ocean Service National Oceanic and Atmospheric Administration of Commerce

Private Sector Adviser

David Bushnell, Department of History, University of Florida
David Bushnell Department of History, University of Florida
Lydia Pulsipher, Department of Geography University of Tennessee
Robert N. Thomas, Department of Geography Michigan State University East Lansing, Michigan

United States Delegation to the 86th Session of the Legal Committee Intergovernmental Maritime Organization (IMO), London, April 7–11, 1986

Representative

Frederick F. Burgess, Captain, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Alternate Representative

Robert Blumberg, Deputy Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs Department of State
Arthur Volkle, Jr., Lieutenant, Office of Chief Counsel, United States Coast Guard Department of Transportation

Adviser

Charles r. Corbett, Captain, Office of Marine Environment and Systems, United States Coat Guard Department of Transportation
Nancy Fibish, Shipping Attache, United States Embassy, London
Thomas H. Robinson, Commander, Office of Marine Environment and Systems, United States Coast Guard Department of Transportation

Private Sector Adviser

Ernest J. Corrado, Vice President, American Institute of Merchant Shipping, Washington, D.C.
Edward C. Kalaidjian, Maritime Law Association, New York, New York

United States Delegation to the 24th Meeting of the Directing Council Organization of American States/Pan American Institute of Geography and History (OAS/PAIGH) Rio De Janeiro, April 7–11, 1986

Representative

Clarence W. Minkel, Chairman of the U.S. National Section of PAIGH, University of Tennessee, Knoxville, Tennessee

Alternate Representative

Mark M. Macomber, Deputy Director for Systems and Techniques, Defense Mapping Agency

Advisers

Peter F. Bermel, Assistant Director for Programs, U.S. Geological Survey, Reston, Virginia
Frederick O. Diercks, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Robert N. Thomas, Department of Geography, Michigan State University, East Lansing, Michigan

United States Delegation to the Twelfth Session of the United Nations Commission on Transnational Corporations (TNCs) New York, April 9–18, 1986.

Representative

Seymour J. Rubin, Executive Vice President and Executive Director, The American Society of International Law, Washington, D.C.

Alternate Representative

Walter B. Lockwood, Jr., Deputy Director, Office of Investment Affairs, Bureau of Economic and Business Affairs, Department of State

Advisers

Stephen Altheim, Office of International Investments, Department of the Treasury
Christine E. Klepacz, Office of International Organizations, Department of Commerce
Jack P. Orlando, U.S. Mission to the United Nations, New York, New York

Private Sector Adviser

Ralph A. Weller, Vice President, Otis Elevator Company, New York, New York

United States Delegation to the Study Group I, Consultative Committee on Telegraph and Telephone, International Telecommunication Union (ITU/CCITT), Montevideo, April 11–18, 1986

Representative

Douglas Davis, Federal Communications Commission

Alternate Representative

Domenick Iecovo, Bureau of International Communications and Information Policy, Department of State

Private Sector Advisers

Donald P. Casey, ITT World Communications Inc., Secaucus, NJ
Frederick T. Kelley, COMSAT General Corporation Washington, D.C.

United States Delegation to the 33rd Session of the Consultative Committee, 17th Session of the Administrative and Legal Committee Information Meeting on Variety Denominations and Biotechnology subgroup Union for the Protection of New Plant Varieties, Geneva, April 14–18, 1986

Representative

Stanley Schlosser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce [7]Private Sector Advisers
William H. Elliott, Jr., Plant Variety Protection Committee, American Intellectual Property Law Association, Arlington, Virginia
William Schapaugh, Executive Director, American Seed Trade Association, Washington, D.C.

United States Delegation to the 31st Session of the International Maritime Organization (IMO), Subcommittee on Radiocommunications, London, April 14–18, 1986

Representative

Robert E. Fenton, Captain, Chief, Plans and Policy Division, United States Coast Guard, Department of Transportation

Alternate Representative

Richard L. Swanson, Marine Radio Policy Branch, United States Coast Guard, Department of Transportation

Advisers

Nancy Fibiah, Shipping Attache, United States Embassy, London
Gordon Hempton, Private Radio Bureau, Federal Communications Commission
William Luther, Field Operation Bureau, Federal Communications Commission
Robert C. McIntyre, Engineer, Federal Communications Commission

Private Sector Advisers

Don Derryberry, Exxon Company USA, Houston, Texas
John Paschael, National Ocean Industries Association, Washington, D.C.

United States Delegation to the XIII Quadrennial General Assembly, Organization of American States/Pan American Institute of Geography and History (OAS/PAIGH) Brasilia, April 14–18, 1986

Representative

Clarence W. Minkel, Chairman of the U.S. National Section of PAIGH University of Tennessee, Knoxville, Tennessee

Alternate Representative

Mark M. Macomber, Deputy Director for Systems and Techniques, Defense Mapping Agency

Advisers

Peter F. Bermel, Assistant Director for Programs, U.S. Geological Survey, Reston, Virginia
Frederick O. Diercks, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Robert N. Thomas, Department of Geography, Michigan State University, East Lansing, Michigan

Proposed United States Delegation to the Steel Committee Working Party Organization for Economic Cooperation and Development (OECD), Paris, April 22–23, 1986

Representative

Ralph F. Thompson, Jr., Director, Office of Basic Industries, Department of Commerce

Advisers

Jorge Perez-Lopez, Deputy Director, Office of International Economic Affairs, Department of Labor
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Frank Fenton, Vice President for International Affairs, American Iron and Steel Institute, Washington, D.C.
David Schryver, Assistant to the Chairman, LTV Steel Corporation, Cleveland, Ohio
John J. Sheehan, Assistant to the President and Director for Legislative Affairs, United Steel Workers of America, Pittsburgh, Pennsylvania

United States Delegation to Meeting on Mineral Resources, Antarctica, Hobart, April 14–25, 1986

Representative

R. Tucker Scully, Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

John Behrendt, United States Geological Survey, Denver, Colorado
Roger Freeman, Office of Marine and Polar Minerals, Bureau of Economic and Business Affairs, Department of State
Scott Hajost, Office of the Legal Adviser, Department of State
Robert Hofman, Scientific Program Director, Marine Mammal Commission
Thomas Laughlin, Office of Policy and Polanning, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

James. K. Jackson, Office of General Counsel, American Petroleum Institute, Washington, D.C.
Lee Kimball, International Institute for Environmental and Development, Washington, D.C.

United States Delegation to the Executive Board, United Nations Children's Fund (UNICEF), New York, April 14–25, 1986

Representative

Rita Di Martino, United States Representative to UNICEF

Alternate Representative

Claudine B. Cox, Alternate United States Representative to UNICEF

Advisers

Mary Louise Becker, Office of Donor Coordination, Bureau for Program and Policy Coordination, Agency for International Development
Harold Fleming, United States Mission to the United Nations, New York, New York
Peter F. Frost, Division of Humanitarian Development, Bureau of International Organization Affairs, Department of State
Susan Shearouse, United States Mission to the United Nations, New York, New York
Linda Vogel, Office of International Health, Public Health Service, Department of Health and Human Services

Private Sector Adviser

Lawrence E. Bruce, Jr., President, U.S. Committee for UNICEF, New York, New York

United States Delegation to the 26th Session of the Subcommittee on the Carriage of Dangerous Goods, Intergovernmental Maritime Organization (IMO), London, April 21–25, 1986

Representative

Thomas R. Dickey, Commander, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Alternate Representative

John P. Aherne, Lieutenant Commander, Marine Technical and Hazardous Material Division, United States Coast Guard, Department of Transportation

Advisers

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Larry H. Gibeon, Lt. Commander, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Private Sector Adviser

Donald W. Gates, Captain, National Cargo Bureau, Inc., New York, New York

United States Delegation to the Meeting of International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVII, International Telecommunication Union (ITU), Geneva, April 21–25, 1986

Representative

Thijs de Haas, Institute for Telecommunication Science, Department of Commerce, Boulder, Colorado

Adviser

Robert Fenichel, National Communications Systems, Washington, D.C.

Private Sector Adviser

Richard P. Brandt, AT&T Communications, Bedminister, New Jersey

United States Delegation to the 30th Session of the Subcommittee on the Carriage of Dangerous Goods, Intergovernmental Maritime Organization (IMO), London, April 21–25, 1986

Representative

Thomas R. Dickey, Commander, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Alternate Representative

John P. Aherne, Lieutenant Commander, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Advisers

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Nancy Fibish, Shipping Attache, United States Embassy, London
Larry H. Gibson, Lt. Commander, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Private Sector Adviser

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United States Delegation to the Medium Frequency Broadcasting Conference, International Telecommunication Union (ITU), Geneva, April 14–May 2, 1986

Representative

James C. McKinney, Mass Media Bureau, Federal Communications Commission

Alternate Representatives

William H. Jahn, Bureau of International Communications and Information Policy, Department of State
Wilson A. La Follette, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission
Harold G. Kimball, National Telecommunications and Information Administration, Department of Commerce
Wallace E. Johnson, Moffet, Larson and Johnson, P.C., Arlington, Virginia

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Frederick Matos, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
John P. Modderno, Bureau of Inter-American Affairs, Department of State
Harry Montgomery, Telecommunications Attache, United States Mission, Geneva, Switzerland
Larry Olson, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission
Norbert Schroeder, Frequency Management and Monitoring Division, Voice of America
Steven Selwyn, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission
Louis Stephens, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission
John C. Wang, Office of Science and Technology, Federal Communications Commission
Francis K. Williams, Office of Science and Technology, Federal Communications Commission

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Elizabeth L. Dahlberg, Lohnes and Culver, Washington, D.C.
Donald G. Everist, Cohen and Dippell, P.C., Washington, D.C.
Fernando Oaxaca, Coronado Communications Corporation, Los Angeles, California

United States Delegation to the 19th Session of the Subcommittee on Bulk Chemicals, Intergovernmental Maritime Organization (IMO), London, April 28–May 2, 1986

Representative

Thomas R. Dickey, Commander, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Alternate Representative

Frits Wybenga, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Advisers

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Charles A. Huber, Commander, Office of Marine Environment and Systems, United States Coast Guard, Department of Transportation
Michael D. Morrissette, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Private Sector Advisers

William M. Mayberry, Captain, Executive Director, Offshore Marine Services Association, New Orleans, Louisiana
Rudolph Terry, Manager of Engineering, Sun Transport, Inc., Aston, Pennsylvania

United States Delegation of the Meeting of the Council and Executive Board, International Coffee Organization (ICO), London, April 28–May 2, 1986

Representative

Jon Rosenbaum, Assistant U.S. Trade Representative, Office of the U.S. Trade Representative, Executive Office of the President

Alternate Representative

Ralph F. Ives, III, Primary Commodities Division, Department of Commerce

Advisers

James Burkart, U.S. Embassy, London
Linda Hochstein, Office of Food Policy and Programs, Bureau of Economic and Business Affairs, Department of State
Bruce McMullen, Commodity Officer, U.S. Embassy, London

Private Sector Adviser

George E. Boecklin, President, National Coffee Association, New York, New York

United States Delegation to the Intergovernmental Group on Bananas, 9th Session, Rome, May 5–6, 1986, Food and Agriculture Organization (FAO), Rome, May 5–6, 1986

Representative ex officio

The Honorable Millicent Fenwick, United States Representative to the United Nations Agencies for Food and Agriculture, Rome

Representative

Ralph Ives, Primary Commodities Division, Department of Commerce

Alternate Representative

James E. Ross, United State Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Advisers

Warren G. Breck, Consultant, Metairie, Louisiana
Robert M. Moore, President, International Banana Association, Washington, D.C.

United States Delegation to the Conference of National Experts on the Future of Migration Organization for Economic Cooperation and Development (OECD), Paris, May 12–15, 1986

Representative

Jeanne Roberts, Special Assistant to the Deputy Under Secretary for International Affairs, Department of Labor

Advisers

Michael Heilman, Associate General Counsel, Immigration and Naturalization Service, Department of Justice
Arlene Holen, Senior Staff Economist, Council of Economic Advisers
Marion F. Houstoun, Office of International Economic Affairs, Bureau of International Labor Affairs, Department of Labor
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Elizabeth J. Harper, Author, Dumphries, Virginia
Mark Miller, Associate Professor of Political Science, University of Delaware, Newark, Delaware

United States Delegation to the Thirty-Ninth World Health Assembly of the World Health Organization (WHO), Geneva, May 5–16, 1986

Delegates

The Honorable Otis R. Bowen, M.D. (Chief Delegate), Secretary of Health and Human Services
The Honorable C. Everett Koop, M.D. (Deputy Chief Delegate), Surgeon General of the United States and Director, Office of International Health, Public Health Service, Department of Health and Human Services
The Honorable, Gerald P. Carmen, Ambassador, United States Permanent Representative to the United Nations Office and Other International Organizations at Geneva

Alternate Delegates

The Honorable, Frank E. Young, M.D., Commissioner of Food and Drugs, Food and Drug Administration, Public Health Service, Department of Health and Human Services
The Honorable Neil A. Boyer, Director for Health and Transportation Programs, Bureau of International Organization Affairs, Department of State
The Honorable Kenneth J. Bart, M.D., Director for Health Agency for International Development
The Honorable Thomas E. Malone, Deputy Director, National Institutes of Health, Public Health Service, Department of Health and Human Services

Advisers

Faye Abdellah, M.D., Deputy Surgeon General and Chief Nurse Officer, Public Health Service, Department of Health and Human Services
William C. Bartley, International Health Attache, U.S. Mission, Geneva
Rose Belmont, Associate Director for Multilateral Programs, Office of International Health, Public Health Service, Department of Health and Human Services
Ronald D. Flack, Deputy Chief of Mission, U.S. Mission, Geneva
Donald Hopkins, M.D., Deputy Director, Centers for Disease Control, Public Health Service, Department of Health and Human Services
Justin Jackson, U.S. Mission, Geneva
Thomas A. Johnson, Legal Adviser, U.S. Mission, Geneva
Gilbert H. Sheinbaum, Political Counselor, U.S. Mission, Geneva

Private Sector Adviser

William B. Walsh, M.D., President, Project HOPE, Millwood, Virginia

United States Delegation to the Sixteenth Plenary Assembly of the International Radio Consultative Committee (CCIR) of the International Telecommunication Union (ITU), Dubrovnik, Yugoslavia, May 12–23, 1986

Chairman

Richard E. Shrum, Office of International Radio Communications, Bureau of International Communications, and Information Policy, Department of State

Vice Chairman

Richard D. Parlow, National Telecommunications and Information Administration, Department of Commerce
Thomas B. Stanley, Federal Communications Commission

Government Advisers

Roger E. Beehler, National Bureau of Standards, Boulder, Colorado
Dr. John F. Cavanagh, Naval Surface Weapons Center, Dahlgren, Virginia
Gordon F. Hampton, Staff Engineer, Technical Standards Branch, Federal Communications Commission
Harold G. Kimball, National Telecommunications and Information Administration, Department of Commerce
Alex C. Latker, Tariff Division, Common Carrier Bureau, Federal Communications Commission
Robert Mayher, National Telecommunications and Information Administration, Department of Commerce
Robert C. McIntyre, Private Radio Bureau, Federal Communications Commission
Neal K. McNaughten, Office of Science and Technology, Federal Communications Commission
Warren G. Richards, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State
Arthur D. Spaulding, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce
Dr. William F. Utlaut, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

Herbert T. Blaker, Rockwell International Corporation, Arlington, Virginia
Cecil R. Crump, AT&T Communications, Morristown, New Jersey
E. William Henry, Advanced Television Systems Committee, Washington, D.C. 20036
John J. Kelleher, Systematics General Corporation, Sterling, Virginia
Hans J. Weiss, Communications Satellite Corporation, Washington, D.C.
Roman Z. Zaputowycz, The Western Union Telegraph Company, Upper Saddle River, New Jersey

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 21, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OBM reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0755
Form Number: None
Type of Review: Extension
Title: LR-58-83, Final—Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations

OMB Number: 1545-0757
Form Number: None
Type of Review: Extension
Title: LR-209-76, Final—Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A; Procedure and Administration

Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building Washington, DC 20503.

Stephen Bachelin,
Departmental Reports Management Office.
[FR Doc. 86-11827 Filed 5-27-86; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 102
Wednesday, May 28, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 2, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 23, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-12032 Filed 5-23-86; 3:41 pm]
BILLING CODE 6210-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 26, June 2, 9, and 16, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 26

Wednesday, May 28

2:00 p.m.
Discussion of Management-Organization of Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, May 29

9:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Licensee Hearing Request in Civil Penalty Case (GPU Nuclear) (Tentative)

Week of June 2—Tentative

Thursday, June 5

2:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) on GESSAR II (Open/Portion may be Closed—Ex. 3 & 4)

3:30 p.m.
Affirmation Meeting (Public Meeting) (If needed)

Friday, June 6

10:00 a.m.
Briefing by Staff on Status of TVA (Open/Portion may be Closed—Ex. 5 & 7)

1:00 p.m.
Briefing by Davis-Besse Ad Hoc Review Group (Public Meeting)

Week of June 9—Tentative

Tuesday, June 10

2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Wednesday, June 11

11:00 a.m.
Periodic Meeting with Advisory Panel for the Decontamination of TMI-2 (Public Meeting)

2:00 p.m.
Briefing on Status of EEO Program (Public Meeting)

Thursday, June 12

2:00 p.m.
Briefing on Restart of San Onofre-1 (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (If needed)

Week of June 16—Tentative

Wednesday, June 18

10:00 a.m.
Discussion/Possible Vote on Safety Goals (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (If needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) scheduled for May 21 was *cancelled* Affirmation of "Reassertion of Certain Regulatory Authority in New Mexico" (Public Meeting) was held May 22.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,
Office of the Secretary.
May 22, 1986.

[FR Doc. 86-12031 Filed 5-23-86; 3:31 pm]
BILLING CODE 7590-01-M

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federal register

Wednesday
May 28, 1986

Part II

Department of Labor

Office of Assistant Secretary for Veterans' Employment and Training

41 CFR Part 61-250

Annual Report From Federal Contractors; Proposed Rule

DEPARTMENT OF LABOR

Office of Assistant Secretary for Veterans' Employment and Training

41 CFR Part 61-250

Annual Report From Federal Contractors

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Proposed rule.

SUMMARY: Enactment of the Veterans' Compensation, Education, and Employment Amendments of 1982 established the requirements for Federal contractors to submit a report at least annually to the Secretary of Labor. This proposal would implement those requirements.

DATES: Written comments must be received no later than June 27, 1986.

ADDRESS: Comments should be addressed to Donald E. Shasteen, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Mr. Joseph C. Juarez, Director, Office of Veterans' Employment and Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Juarez. Telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: Prior to January 20, 1982, the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor required, pursuant to regulations, contractors and subcontractors subject to 38 U.S.C. 2012(a) to submit a report, at least quarterly, to the appropriate office of the State employment service. The reports were intended to provide both the State employment services and the Department of Labor with information regarding hiring and provision of required affirmative action for "special disabled veterans" and "veterans of the Vietnam-era," as defind under 38 U.S.C. 2011. Such a reporting requirement was not specifically required in the legislation at 38 U.S.C. 2012.

By notice in the Federal Register, the regulatory requirement for the quarterly report at 41 CFR 60-250.4(d) was suspended until further notice by OFCCP at 47 FR 4256 (January 29, 1982). At that time the quarterly report had not been approved by the Office of Management and Budget under the Paperwork Reduction Act.

Subsequently, Congress enacted the Veterans' Compensation, Education, and Employment Amendments of 1982 (Pub. L. 97-306) which included a provision requiring Federal contractors to submit a report at least annually to the Secretary of Labor. Section 316(a) of the amendments added a new subsection (d) to 38 U.S.C. 2012, as follows:

(d)(1) Each contractor to whom subsection (a) of this section applies shall, in accordance with the regulations which the Secretary shall prescribe, report at least annually to the Secretary on—

(A) The number of employees in the work force of such contractor, by job category and hiring location, who are veterans of the Vietnam era or special disabled veterans; and

(B) The total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are veterans of the Vietnam era or special disabled veterans.

(2) The Secretary shall ensure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to any requirement for the contractor to make any other report to the Secretary.

Section 310(b) required the Secretary to issue regulations implementing the report. The Assistant Secretary for Veterans' Employment and Training has responsibility for administering the report requirements.

The reports required by this legislation are intended to assist the Department of Labor in carrying out its responsibilities for maintaining Federal contractor compliance with the statute. The implementing regulations also serve to strengthen the governmental network available to inform and assist Federal contractors in meeting their veterans' affirmative action obligations.

The Department is exploring several alternatives in seeking the simplest and most cost-effective way to handle the annual veterans' employment report. Among the options being considered is full use of the capability and experience that the Equal Employment Opportunity Commission (EEOC) has gained in collecting information from Federal contractors via the Standard Form 100, Equal Employment Opportunity Employer Information Report EEO-1. Under this option, contractual arrangements would be made with EEOC to distribute, receive and process a one-page veterans' report form using procedures and definitions virtually identical to those used for the EEO-1. However, there would be no direct association of the veterans' report requirements with those of the EEO-1.

Other options include "contracting out" of the processing of the veterans' employment report or, alternatively, development and implementation of a processing system by the Department of Labor. At this time, it appears that these latter options would be more costly and would take longer to implement. We welcome further comment on the options described above or any other alternatives.

An Advance Notice of Proposed Rulemaking was published at 50 FR 33360-33362 (August 19, 1985) for purposes of advising interested parties concerning the content and scope of a proposed rule and requesting comments regarding its adequacy, coverage and effectiveness. The Department received fourteen sets of comments from veterans' organizations, State employment service agencies, Federal agencies, Federal contractors, and other interested parties. The following summarizes significant comments and recommendations received and their resolution for publication of these proposed rules:

Location of Proposed Rules

Commenters and the Department agree that the location of the proposed rules at 41 CFR Part 61-250 would be convenient, since they would be in close proximity to current regulations issued by the Office of Federal Contract Compliance Programs (OFCCP) at 41 CFR Part 60-250. The OFCCP regulations also cover affirmative action for Vietnam-era and special disabled veterans pursuant to 38 U.S.C. 2012. One commenter expressed concern that the similarity in regulatory citations might result in confusion and inadvertent oversight by contractors familiar only with the OFCCP rules, notwithstanding the contractor's obligation to maintain a working knowledge of all current regulations which affect them. As an accommodation to this concern, the Department proposes to include the regulatory citation on the proposed VETS-100 form in the section which discusses the legal basis for the reporting requirement.

Impact of Rule Regarding Cost and Time Burdens

Potential recordkeeping and reporting burdens were described only by one commenter. While the pertinent comments generally stated that the reporting requirements would impose substantial cost and time burdens, no specific figures were given. The reasons suggested for extra burdens were that employers would have to survey their workforces for veterans' data not already maintained, computer programming would have to be revised and veteran data collected would have to be protected in order to maintain the privacy required for such records. We recognize that contractors will experience some additional burdens and

will take that into consideration when selecting from among the options for processing of the reports. Section 61–250.12 addresses the issue of privacy and voluntary disclosure.

Report Form or Format; Feasibility of Incorporating Required Data into the EEO–1 Report

Most of the commenters who addressed a report form or format generally favored incorporation of the veterans' data into the EEO–1 form. Only one suggested that contractors be allowed to develop individual reporting formats because of the variety of recordkeeping systems employed by the multitude of contractors involved. It appears, however, that the best way to minimize excessive processing and computer programming costs is through the use of a standard form, rather than individualized formats. However, incorporation of veterans' data entries into the EEO–1 itself is not feasible at this time. Therefore, a proposed format for a Federal Contractor Veterans' Employment Report (Form VETS–100) based upon the EEO–1, with which many Federal contractors are familiar, has been developed consistent with commenter suggestions. (See proposed § 61–250.11.)

This required veterans' report form could be distributed along with the mailing of the EEO–1 to covered employers as long as the EEO–1 is required on the same annual reporting basis. One major drawback to this process arises, however, because the universe of Federal contractors covered by the EEO–1 reporting requirements is only part of the total universe subject to 38 U.S.C. 2012(d) requirements. The EEO–1 must be submitted only by those Federal contractors holding a contract of $50,000 or more and who have 50 or more employees unless they serve as a depository of Government funds in any amount, or as a financial institution which issues Government savings bonds or savings notes, in which case no specific contract amount is required.

Large numbers of Federal contractors who have fewer employees and contracts of smaller dollar amounts are also subject to 38 U.S.C. 2012(d). Thus, to ensure uniform compliance by all nonexempt Federal contractors with requirements of 38 U.S.C. 2012(d), under these proposed rules the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) will identify contractors through the contract award reporting systems and distribute the form in time for filing by the annual March 31 deadline. However, since it is not possible to ensure that all nonexempt Federal contractors will be identified through available contract award reporting systems, § 61–250.11(c) would require contractors who have not received the supplemental veterans' data form to request the form from OASVET in time to meet the filing deadline.

Voluntary Disclosure of Veterans' Status

Some commenters were concerned that voluntary disclosure of a person's veterans' status, particularly special disabled veterans' status, could result in adverse effects on the individual. In addition, there was concern that reliance on such voluntary disclosure would make it difficult for Federal contractors to provide accurate data in their reports. In our view these comments raise legitimate concerns which we have attempted to address by the addition of a new § 61–250.12. This section would provide that the information is to be given by the veteran on a voluntary basis and will be kept confidential, and that use of the information is limited to matters related to the implementation of 38 U.S.C. 2012. Additionally, the section would provide that a veteran's disclosure of the requested information or refusal to provide the information would not provide the employer with a basis for taking adverse action. It is hoped that these additional safeguards will operate as an incentive for the veteran to come forth with the information. The content of this section has also been incorporated into Paragraph (e) of the required reporting clause set forth at § 61–250.10.

Definition of Hiring Location

One commenter pointed out that many hiring and employment locations do not maintain personnel records. The Department agrees and has accepted a recommendation to incorporate the EEO–1 definition for "establishment" at § 61–250.2(d) as the definition for "hiring location" in order to ensure consistency for Federal contractors subject to the reporting obligations of the EEO–1 and the veterans' employment reports.

Uses of Reports

The reports received pursuant to these proposed rules will be used to serve both long-term use and short-term purposes. Long-term use includes, for example, comparison of successive reports received from the same contractor to determine veterans' employment trends in terms of job categories by veteran status and comparisons with total hiring trends. Short-term applications include provision of report data to Veterans' Employment and Training Service field staff and State employment service agencies for their use in (1) determining whether or not contractors are fulfilling their obligations to list job openings and (2) comparisons with placement and referral records to determine contractor practices in hiring covered veterans who have been given priority referrals to subject contractors. In addition, information received will be considered by the OFCCP as one of several factors that are used in selecting contractors for compliance reviews.

Classification—Executive Order 12291

The proposed rule is not a major rule pursuant to Executive Order No. 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of limited States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required. In addition, this proposed rule does not affect any trade-sensitive activity or lessen any restraints because it does not apply in any way to any other rules or regulations of governing international trade.

Paperwork Reduction Act

Section 61–250.10 of this proposed rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget marked "Attention: Desk Officer for Veterans' Employment and Training."

Regulatory Flexibility Act

This proposed rule will not have "significant economic impact upon a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule implements an annual report from Federal contractors according to a new requirement at 38 U.S.C. 2012(d) with little cost of economic impact expected with respect to small entities. Therefore, no regulatory flexibility analysis is required.

List of Subjects in 41 CFR Part 61–250

Government contracts, Equal Employment Opportunity, Reporting and recordkeeping requirements, Veterans.

This proposed rule would implement the requirement at 38 U.S.C. 2012(d) by the regulation described below in a new Part 61–250 in Chapter 61 of Title 41, Code of Federal Regulations (CFR). Chapter 61 of Title 41, CFR, is a new chapter which has been assigned to the Office of the Assistant Secretary for Veterans' Employment and Training.

Accordingly, it is proposed that Title 41, Code of Federal Regulations be amended by adding a new Chapter 61 to read as follows:

CHAPTER 61—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

61–250.1 Purpose and scope.
61–250.2 Definitions.
61–250.10 Reporting requirements contract clause.
61–250.11 Reporting format.
61–250.12 Voluntary disclosure.
61–250.20 Monitoring of compliance.

Authority: 38 U.S.C. 2012(d).

§ 61–250.1 Purpose and scope.

(a) This Part 61–250 implements 38 U.S.C. 2012(d). Each contractor or subcontractor who enters into a contract in the amount of $10,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) to whom 38 U.S.C. 2012(a) and 41 CFR Part 60–250 applies, shall submit a report according to requirements of § 61–250.10 of this Part.

(b) Except as noted in § 61–250.10 of this Part, these regulations do not revise or replace the regulations in force at 41 CFR 60–250 which apply to veterans' affirmative action obligations of contractors and subcontractors administered by the Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, Department of Labor.

§ 61–250.2 Definitions.

(a) For the purposes of this Part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this Part shall have the same meaning as set forth in 41 CFR Part 60.250.

(b) For the purposes of this Part:

(1) "Hiring location" (Identical to "establishment" as defined by the instructions for completing Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity (definition adapted from the 1967 Standard Industrial Classification Manual). Units at different physical locations, even though engaged in the same kind of business operation should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities; however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity with a separate Employer Identification Number. For these types of activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either (i) directly responsible for supervising such dispersed activities, or (ii) the base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such "establishment" should be listed for each State involved.)

(2) "Job category" means any of the following: officials and managers, professional, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semi-skilled), laborers (unskilled), service workers, as required by Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, as defined below:

(i) "Officials and managers" means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: officials, executives, middle management, plant managers, department managers, and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

(ii) "Professional" means occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots, and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, teachers, and kindred workers.

(iii) "Technicians" means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

(iv) "Sales" means occupations engaging wholly or primarily in direct selling. Includes: advertising agents and salesworkers, insurance agents and brokers, real estate agents and brokers, stock and bond salesworkers, demonstrators, salesworkers and sales clerks, grocery clerks and cashier-checkers and kindred workers.

(v) "Office and clerical" includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

(vi) "Craft Workers (skilled)" means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Included are: the building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors and tailoresses, arts occupations, handpainters, coaters, decorative and kindred workers.

(vii) "Operatives (semiskilled)" means workers who operate machine or processing equipment or perform other factory-type duties or intermediate skill level which can be mastered in a few weeks and require only limited training. Include: apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painter (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meatcutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

(viii) "Laborers (unskilled)" means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Include: garage laborers, car washers and greasers, gardeners (except farm) and groundskeepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

(ix) "Service Workers" means workers in both protective and non-protective service occupations. Includes: attendants (hospital and other institutions, professional and personal service, including nurses aides, and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection, guard, doorkeepers, stewards, janitors, police officers and detectives, porters, waiters and waitresses, amusement and recreation facilities attendants, guides, ushers, public transportation attendants and kindred workers.

(3) "Special disabled veteran" means (i) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) for a disability rated at 30 percent or more, or (ii) a person who was discharged or released from active duty because of service-connected disability.

(4) "Veteran of the Vietnam era" means a person who served more than 180 days of active military, naval, or air service, any part of which was during the period August 5, 1964, through May 7, 1975, and who (i) was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service-connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

(5) "OFCCP" means the Office of Federal Contract Compliance Programs in the Employment Standards Administration of the U.S. Department of Labor.

(6) "OASVET" means the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

§ 61-250.10 Reporting requirements contract clause.

Each contractor or subcontractor described in § 61–250.1 of this Part shall submit reports according to the following reporting clause which shall be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the affirmative action clause required by 41 CFR Part 60–250, the provisions of which continue in force until otherwise revised or amended by the OFCCP. The reporting requirements clause is as follows:

Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

(a) The contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) the total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS–100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1987.

(d) Reports shall reflect the employment profile as required in paragraph (a)(1) above and the employment activity as required in paragraph (a)(2) above, for the most recent 12-month period ending (1) with any pay period during the period January through March, or (2) on December 31 if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) above shall be based on voluntary disclosure, as follows:

Each contractor subject to reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012. Nothing in this paragraph (e) shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) shall relieve a contractor from liability for discrimination under 38 U.S.C. 2012.

§ 61.250.11 Reporting format.

(a) Data items required in § 61–250.10(a) are to be reported for each hiring location in the format (VETS–100) as set forth below:

Federal Contractor Veteran's Employment Report

VETS–100

CO=XXXXXX–X
U=XXXXXX–X

Return Completed Report To:

SIC=XXX
XXXX
XXXX X
XXXX X
XXXX XXXX Phone:

Company Identification

(Omit if same as above.)

Name of Parent Company _____

Address (Number and Street):
City: _____ County: _____ State: _____ ZIP Code: _____

Name of Hiring Location
Address (Number and Street):

City: _____ County: _____ State: _____ Zip Code: _____

Information on Veterans

Report all permanent full-time or part-time employees and new hires who are veterans as defined on reverse. Also report total new hires. Blank spaces will be considered as zeros. Entries in columns N through P, lines 14 through 22, and columns L and M, lines 23 are optional.

Job categories		Number of employees		New hires (between April 1 and March 31)		
		Special disabled veterans	Vietnam era veterans	Special disabled veterans	Vietnam era veterans	Total, both veterans and nonveterans
		L	M	N	O	P
Officials and Managers	14					
Professionals	15					
Technicians	16					
Sales workers	17					
Office and clerical	18					
Craft workers (skilled)	19					
Operatives (Semi-skilled)	20					
Laborers (Unskilled)	21					
Service workers	22					
Total	23					

Federal Contractor Veterans' Employment Report VETS-100

This supplemental report is to be completed by all nonexempt contractors and subcontractors with contracts (or subcontracts) for the furnishing of supplies and services or the use of real or personal propety (including construction) for $10,000 or more. The report is to be completed for each "hiring location". Reports must be completed for establishments located in Hawaii."

How to Prepare Form

Company Identification

Parent Company. Please provide company name, receiving office, address and employer identification number of the headquarter's office of the multi-hiring location company which owns the hiring location for which this report is filed.

Hiring Location For Which This Report is Filed. Please provide the name, address and employer identification number of each company's hiring location if different from that provided.

Information on Veterans

Employment data must include ALL permanent full-time and part-time employees who were employed during the selected payroll period, except those employees specifically excluded as indicated in the Appendix. Appendix. Employees must be counted by veteran status for each of the nine occupational categories (columns L and M). Entries in columns L and M on line 23 are optional.

New Hires Data: Report on line 23, columns N thur P, the total number of permanent full-time and part-time employees by veteran status (columns N and O) and total employees (column P who were included in the payroll for the first time during the most recent 12-month period ending March 31 of the survey year (i.e., between April 1 and March 31). Entries in columns N thru P, lines 14 thru 22, are optional.)

Definitions

"Hiring location" means an establishment as defined at 41 CFR 61–250.2(b).

"Job Categories"—See 41 CFR 61–250.2(b).

"Special Disabled Veteran" means (i) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) for a disability rated at 30 percent or more, or (ii) a person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who served more than 180 days of active military, naveal, or air service, any part of which was during the period August 5, 1964, through May 7, 1975, and who (1) was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service-connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

Legal Basis for Reporting Requirement

Title 38, United States Code, Section 2012(d), requires that Federal contractors report at least annually the number of special disabled and Vietnam-era veterans in their workforce by job category and hiring location and the total number of employees and the numbers of special disabled and Vietnam-era veterans hired during the reporting period. Implementing regulations are found at 41 CFR 61–250.

(b) The Office of the Assistant Secretary for Veterans' Employment and Training, or its designee, will use all available information to distribute the required forms to contractors. identifiable as subject to the requirements of this Part.

(c) Contractors who do not receive forms should request them in time to meet the annual March 31 deadline. Requests should be addressed to:

OASVET
U.S. Department of Labor,
200 Constitution Avenue, NW.,
Washington, DC 20210

§ 61–250.12 Voluntary disclosure.

Each contractor subject to this Part shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations implementing 38 U.S.C. 2012. Nothing in this section shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this section shall relieve a contractor from liability for discrimination under 38 U.S.C. 2012.

§ 61–250.20 Monitoring of compliance.

During the course of its compliance reviews, OFCCP will determine if the contractor is submitting reports as required by this Part.

Signed at Washington, DC this 19th day of May, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–11607 Filed 5–27–86; 8:45 am]

BILLING CODE 4510-79-M

federal register

Wednesday
May 28, 1986

Part III

Environmental Protection Agency

40 CFR Part 268

Schedule for Land Disposal Restrictions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[SWH-FRL 2994-1]

Schedule for Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is establishing a schedule setting forth the order in which listed hazardous wastes will be prohibited from land disposal unless EPA can set appropriate standards or grant case-by-case exemptions. Development of a schedule for these determinations is mandated by section 3004(g) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Pursuant to the Act, if EPA fails to set treatment standards or grant exemptions in accordance with this schedule, hazardous wastes will be subject to partial land disposal restrictions or banned from land disposal.

DATE: This final rule is effective 30 days from May 28, 1986.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (800) 424-9346 (toll free) or 382-3000 locally.

For information on specific aspects of this rule contact: Susan Bromm, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background
  A. Hazardous and Solid Waste Amendments of 1984
  B. Failure by EPA to Meet Statutory Deadlines
  C. Summary of Comments Received on the Proposed Rule
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III. Schedule Interpretation
IV. Wastes Included in the Ranking
V. Regulatory Impact
  A. Executive Order 12291
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  C. Paperwork Reduction Act
VI. Impact on Authorized States
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I. Background

A. Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, establish a strong statutory presumption against land disposal by prohibiting the continued land disposal of hazardous wastes beyond specified dates, unless such disposal is determined to be protective of human health and the environment. In its enactment of HSWA, Congress stated explicitly that "reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes" (RCRA section 1002(b)(7), 42 U.S.C. 6901 (b)(7)).

The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m), 42 U.S.C. 6924(m)). Wastes that meet the treatment standards established by EPA are not subject to land disposal prohibitions.

The amendments specify that EPA may not find that a land disposal method is "protective" unless a petitioner demonstrates to the Administrator "to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA section 3004(d)(1), (e)(1), (g)(5), 42 U.S.C. 6924(d)(1), (e)(1), (g)(5)).

The legislation sets forth a series of deadlines for Agency action. At certain deadlines, further land disposal of a particular group of hazardous wastes is prohibited unless the waste meets treatment standards established by the Agency, or unless a petition successfully demonstrates that there will be no migration of hazardous constituents from the disposal units(s) in which such wastes are placed for as long as the wastes remain hazardous. Other deadlines cause conditional restrictions on land disposal to take effect if the wastes do not comply with treatment standards promulgated by EPA or are not the subject of a successful petition. In any case where EPA does not set a treatment standard for a waste by the statutory date, it is not precluded from later promulgating a treatment standard for that waste. Likewise, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date through rulemaking procedures. The relevant statutory deadlines are explained in detail below. This rulemaking concerns the schedule for those listed wastes discussed in items 3 and 4 below.

1. *Solvents and dioxins.* Effective November 8, 1986 (24 months from November 8, 1984, the date of enactment of the 1984 amendments), the statute prohibits further disposal (except with respect to underground injection into deep injection wells) for the following wastes:

Dioxin-containing hazardous wastes numbered F020, F021, F022, F023, F026, F027, and F028 and solvent-containing hazardous wastes numbered F001, F002, F004, and F005. (Sections 3004(e) (1) and (2), 42 U.S.C. 6924(e) (1) and (2).)

2. *"California List."* Effective July 8, 1987 (32 months from November 8, 1984), the statute prohibits disposal (except with respect to underground injection into deep injection wells) for the following wastes, listed or identified under section 3001:

a. Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

b. Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) of concentrations greater than or equal to those specified below:

i. Arsenic and/or compounds (as As) 500 mg/l;

ii. Cadmium and/or compounds (as Cd) 100 mg/l;

iii. Chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

iv. Lead and/or compounds (as Pb) 500 mg/l;

v. Mercury and/or compounds (as Hg) 20 mg/l;

vi. Nickel and/or compounds (as Ni) 134 mg/l;

vii. Selenium and/or compounds (as Se) 100 mg/l;

viii. Thallium and/or compounds (as Tl) 130 mg/l.

c. Liquid hazardous wastes having a pH less than or equal to two (2.0).

d. Liquid hazardous wastes containing polychlorinated biphenyls at

* This list is based on regulations developed by the California Department of Health Services for hazardous waste land disposal restrictions in the State of California. Thus, it has become known as the "California List."

concentrations greater than or equal to 50 ppm.

e. Hazardous wastes containing halogenated organic compounds in total concentrations greater than or equal to 1,000 mg/kg. (Sections 3004(d) (1) and (2), 42 U.S.C. 6924(d) (1), and (2)).

During the period ending November 8, 1988 (48 months from November 8, 1984), disposal of contaminated soil or debris resulting from a response action under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), or a corrective action required under RCRA, is not subject to any land disposal prohibition or treatment standard for solvent-and dioxin-containing wastes and wastes covered by the "California List." (Sections 3004(d)(3), (e)(3), 42 U.S.C 6924 (d)(3), (e)(3).)

Decisions on deep well injection of dioxin-containing hazardous wastes, solvent-containing hazardous wastes, and California List wastes must be made no later than August 8, 1988 (45 months from November 8, 1984). (Section 3004(f), 42 U.S.C. 6924(f)).

3. *Scheduled wastes.* Section 3004(g) of RCRA, 42 U.S.C. 6924(g), also requires the Agency to schedule, for land disposal determinations, all hazardous wastes listed, as of November 8, 1984, under section 3001 which are not referred to under the above headings, "Solvents and Dioxins" and "California List." EPA is required to develop and submit this schedule to Congress by November 8, 1986. EPA proposed this schedule in the Federal Register of May 31, 1985 (50 FR 23280).

Section 3004(g)(2), 42 U.S.C. 6924(g)(2) requires that the schedule be based on a ranking of the listed hazardous wastes which considers their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall be scheduled first and low volume wastes with lower intrinsic hazard shall be scheduled last.

Section 3004(g)(4), 42 U.S.C. 6924(g)(4) requires EPA to make determinations on land disposal within the following timeframes:

a. At least one-third of all ranked and listed hazardous wastes by August 8, 1988 (45 months from November 8, 1984).

b. At least two-thirds of all ranked and listed hazardous wastes by June 8, 1989 (55 months from November 8, 1984).

c. All remaining ranked and listed hazardous wastes and all hazardous wastes identified by characteristic under section 3001 by May 8, 1990 (66 months from November 8, 1984).

Although the statute establishes deadlines by which decisions on specific wastes must be made, EPA is not precluded from banning land disposal and requiring treatment for any scheduled wastes before the scheduled deadlines.

4. *Newly listed wastes.* The land disposal prohibitions apply to all hazardous wastes identified or listed under section 3001 as of the date of enactment of the HSWA. EPA is required to make land disposal determinations for any hazardous waste identified or listed under section 3001 after November 8, 1984, within 6 months of the date of identification or listing. (Section 3004(g)(4), 42 U.S.C. 6924(g)(4).)

The statute does not impose an automatic prohibition if EPA misses a deadline for any newly listed waste.

B. Failure by EPA to Meet Statutory Deadlines

If EPA fails to promulgate regulations establishing conditions under which solvents, dioxins, and "California List" constituents may be land disposal by their respective statutory deadlines of November 8, 1986, and July 8, 1987, the statute states that such wastes are prohibited from land disposal as of such date (other than in injection wells, where the applicable statutory deadline is August 8, 1988). Continued land disposal beyond the statutory deadline would be allowed only if the waste is the subject of a successful petition or a later deadline has been established pursuant to 3004(h), 42 U.S.C. 6924(h).

If, by the statutory deadline for any hazardous waste in the first one-third or second one-third of the schedule, EPA fails to promulgate regulations establishing conditions under which such hazardous wastes may be land disposed, such hazardous wastes may be disposed in a landfill or surface impoundment only if the facility is in compliance with the technology requirements set forth in section 3004(o) (42 U.S.C. 6924(o)) of RCRA. Moreover, prior to disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to him. These conditions apply until EPA promulgates regulations making determinations for the waste concerned. In the above described situation, wastes may be land disposed in other land disposal units (e.g., waste piles and underground injection wells) without such restriction.

If EPA fails to set treatment standards for any of the scheduled listed wastes by May 8, 1990, such wastes are prohibited from land disposal as of that date unless the waste is subject to a successful petition or EPA establishes a later deadline pursuant to 3004(h), 42 U.S.C. 6924(h).

EPA interprets the statute to provide that an automatic prohibition is not imposed for hazardous wastes "identified" under section 3001 if EPA misses the May 8, 1990, deadline for setting treatment standards. "Identified" wastes are wastes defined as hazardous because they meet one or more of the general hazardous characteristic tests in 40 CFR 261.21 through 261.24, rather than wastes "listed" as hazardous in 40 CFR 261.30 through 261.33 because they contain one or more specified hazardous constituents. Section 3004(g)(5)(C), 42 U.S.C. 6924(g)(5)(C), states "if the Administrator fails to promulgate regulations or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1), within 66 months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, such hazardous wastes shall be prohibited from land disposal." Because section 3004(g)(1), 42 U.S.C. 6924(g)(1), refers to listed wastes only, the Agency interprets the statute to impose an automatic prohibition for listed wastes but not for wastes identified under section 3001. The comments that were received on the proposed rule generally support this interpretation. One comment did note that there appeared to be no rational basis for treating listed and characteristic wastes differently in this context. However, this comment ignores the plain language of the statute.

EPA believes that this interpretation will have little impact on the timing of land disposal determinations for "identified" wastes, because many of these wastes will be addressed by other statutory prohibitions or treatment standards prior to the 66-month deadline. Prior to the enactment of the HSWA, EPA had already promulgated conditional restrictions on land disposal of hazardous wastes "identified" by the characteristic of ignitability and reactivity (see 40 CFR 264.17, 265.17 and 265.312). In addition, EPA expects that many "identified" wastes will be covered by the "California List" described in Unit I.A.2 above. These wastes will be automatically prohibited from land disposal if EPA fails to promulgate treatment regulations within 32 months of the date of enactment of the HSWA. Consequently, EPA believes that relatively few "identified" wastes will be governed by the 66 month deadline.

C. Summary of Comments Received on the Proposed Rule

Of the comments on the proposed rule, the majority focused on the development of the scores used in the ranking. The most prevalent comment was that the Agency should consider the concentration of constituents in the waste when developing toxicity scores. Other comments focused on the quality of data used to develop the toxicity (T) and volume (V) scores including consideration of exposure factors.

Additional comments expressed the following concerns:

1. EPA should reconsider the use of Appendix VII for determining which constituents are present in various waste streams because the Appendix VII listings are not representative of all companies' waste streams. Thus, the most toxic Appendix VII constituent for a listed waste may not be present in a specific generator's waste.

2. EPA should modify the requirements of sections 3004 (c), (d), (e), (f), (g), (o), and (u) and of section 3005 concerning mining wastes should these wastes be subject to RCRA regulation.

3. Although land disposed in high volume, EPA should not consider metal hydroxide sludges (Waste No. F006) to be highly toxic.

4. The toxicity score for steel industry wastes is based on hexavalent chromium. This score should be adjusted because hexavalent chromium is present in small amounts.

5. EPA should keep the record on the schedule rulemaking open because critical elements of the land disposal process have not yet been defined (e.g., the petition process, treatment standards, variances, extensions). These elements should be published and subjected to public review before the comment period on this rulemaking closes.

Finally, the Agency received several comments stating that land treatment should be considered a method of treatment and not land disposal.

The comments identified in the above section are addressed in the following sections. The original comments to the proposed rule are available for public review in the docket to this rulemaking.

II. Toxicity and Volume (T x V) Methodology for Development of Schedule

Section 3004(g)(2) (42 U.S.C. 6924(g)(2)) requires the schedule to be based on a ranking of wastes such that high volume wastes with a high intrinsic hazard are ranked first and low vlue wastes with a lower intrinsic hazard are ranked last. The Agency is ranking listed hazardous wastes by multiplying a toxicity score (T) for each waste (representing the inherent toxicological properties of hazardous constituents in the waste) and a volume score (V) for each waste (representing the volume of the hazardous waste disposed of in or on the land). The comments received on the proposed rule generally support the T x V methodology for establishing a schedule for land disposal restrictions.

1. *Toxicity scores (T).* EPA has selected toxicity as a measure of a hazardous waste's inherent hazard. Although the legislative history of the 1984 HSWA indicates that "the critical factors in determining which wastes present the greatest hazards in land disposal are the toxicity of the waste and the volume of the waste being land disposed," the legislative history states that EPA may consider other factors in the areas of exposure (i.e., mobility and persistence) and data availability in establishing the schedule (see Conference Report, H.R. Rep. No. 98-1133, 98th Congress, 2nd Sess., at 98, *reprinted in* [1984] U.S. Code & Ad. News 5649-6). A number of comments requested that the Agency consider exposure in the schedule ranking methodology. At this time, EPA does not have sufficient data to consider exposure factors in ranking the relative hazard of hazardous wastes. While the Agency is in the process of gathering exposure data for the listed hazardous wastes and constituents, the statutory timeframe for schedule development precludes the use of this data in the scheduling rule.

Several comments focused on the quality of data used to develop the toxicity scores. These comments included suggestions for adjusting toxicity scores on the basis of data quality including a request for EPA to develop a contingency plan for evaluating waste constituents without chronic toxicity data.

The Agency is in the process of improving the toxicity data base for listed hazardous wastes and constituents through data collection and development. However, as is the case with exposure factors, the statutory time frame for schedule development precludes the use of the refined toxicity data base in the scheduling rule.

Although toxicity data vary widely in quantity and quality for each listed hazardous waste, the Agency has developed a procedure for objectively and systematically translating a variety of measures of chronic and acute toxicity into a toxicity score. This procedure, briefly described below, assigns a toxicity score, indicative of intrinsic hazard, to hazardous waste constituents identified as "P" or "U" waste (i.e., commercial chemical products, off-specification species, container residues and spill residues thereof) and hazardous waste constituents listed in Appendix VII of 40 CFR Part 261. Although Appendix VII of 40 CFR Part 261 does not list constituents representative of *all* companies' waste streams, it is the best data EPA has and does list the hazardous constituents in the majority of waste streams.

Acute toxicity data (LD_{50}),[3] sub-chronic and chronic toxicity data (ADI's,[3] and UCR's [4]) are the measures of toxicity used for scoring. Each hazardous waste constituent is assigned a score from 1 to 10 based on its toxic potency with the most toxic constituents receiving a score of 10 and the least toxic constituents receiving a score of 1. For example, metal hydroxide sludges (Waste No. F006) received a toxicity score of 5 indicating moderate toxicity.

In this schedule, less weight is given in the scoring procedure to acute effects than chronic effects. Historically, chronic effects resulting from continued exposure over long time periods have been used in evaluating environmental risks, e.g., drinking water regulations. However, there are still concerns over acute effects. For this reason, scoring is based primarily on the measures of chronic toxicity, which take the values of 1 to 9. Acute effects take the values of 1 or zero.

ADI or UCR values provide the basis for assigning scores from 1 to 9 to constituents, which roughly corresponds to order of magnitude changes in their toxic potency. Using the ADI as a measure of chronic toxicity, a substance with a low value for an ADI (high potency) receives a high toxicity score. In contrast, a substance with a high UCR value (high potency) receives a high toxicity score. The chronic toxicity score does not consider the severity of effect. The chronic toxicity scores of hazardous waste constituents judged to possess high acute toxicity are then adjusted upward by one unit according to the following scale:

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[3] LD_{50} represents the dose that is lethal to fifty percent of the animal test population following a single exposure.

[3] ADI (acceptable daily intake) is the amount of toxic, noncarcinogenic, agent in mg/kg body weight/day (or in mg/day for a 70 kg person) which is not expected to result in any adverse effects after chronic exposure to the general population of humans, including sensitive subgroups.

[4] UCR (unit carcinogenic risk) is the upper limit on the lifetime probability that the carcinogen will cause cancer at a dose of 1 mg/kg body weight/day.

For hazardous waste constituents with an LD_{50} less than or equal to 50 mg/kg, add 1 to its chronic score.

For hazardous waste constituents with an LD_{50} greater than 50 mg/kg, add 0 to its chronic score.

The 50 mg/kg cutoff was used for addressing acute toxicity in the scoring procedure because EPA uses this level to differentiate between "acute hazardous wastes" which are listed in 40 CFR 261.33(e) and "toxic wastes" which are listed in 40 CFR 261.33(f).

Constituent scores are converted to waste scores by assigning each hazardous waste the score of its most toxic constituent listed in Appendix VII to 40 CFR Part 261. The Agency based the schedule ranking on Appendix VII constituents in the waste because of limits in available data indicating which Appendix VIII constituents are found in the listed wastes.

The majority of comments of the proposed rule suggested that the concentration of toxic constituents in the waste stream be considered when establishing a toxicity score. Since wastes are assigned a toxicity score based on the most toxic constituent, it is possible that a waste can be scored for a constituent which is present at a low concentration. Despite EPA's request in the proposed schedule rule for data on constituent concentrations in hazardous waste, virtually none was received.

The Agency agrees that it is desirable to categorize wastes by constituent concentration. However data submitted to the Agency via permit applications, manifests, biennial reports and the "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981," contain no information of constituent concentrations in hazardous wastes. EPA recognizes that the use of the most toxic constituent to determine the toxicity score for a waste may overestimate the relative hazard of a waste; however, lack of data characterizing wastes by constituent concentrations limits EPA to the most toxic constituent approach (Ref. 1). Therefore, although the steel industry commented that hexavalent chromium is present in their wastes in low concentrations, under the EPA approach, the toxicity score for these wastes is based on hexavalent chromium.

2. *Volume scores.* The volume scores for the proposed schedule were developed from data from the "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981" (Ref. 2). This survey provides the best readily available database on the volumes of specific waste generated and disposed. The reported volume land disposed [5] for each hazardous waste identified by this survey was converted to a 1 to 10 order of magnitude scale. Hazardous wastes for which no volume was reported were assigned a score of 1.[6] Basing the ranking on volume disposed rather than volume generated is consistent with the legislative history of the RCRA amendments (see H.R. Rep. No. 98–1133, 98th Cong., 2nd Sess., at 88 (1984)). In addition, since EPA is concerned with wastes that are being land disposed rather than wastes that are treated, recycled, or recovered, it is more appropriate to base the ranking on a volume disposed.

Several of the comments responding to the proposed rule expressed concern over the use of this data base as the only source for volume data. These comments identified the limitations of this database, i.e., only one-third of existing RCRA facilities were surveyed, and approximately one-half of the scheduled wastes report no volume disposed. Several commenters suggested using data from biennial reports instead of the survey data.

The Agency acknowledges the limitations in the database used to develop the volume scores. However, the Agency does not believe that the 1983 biennial reports, in addition to Part A permits or manifests provide better, more reliable data than the survey.

For example, the available summary data from the 1983 biennial reports represents the Agency's first attempt to gather summary biennial report data from the States (most of which are authorized to run their own hazardous waste program). The overall quality and representativeness of the information was low due to a combination of differing priorities given to this effort among the States and the lack of a uniform reporting format (i.e., forms and frequency of reporting required) among the States. Furthermore, because this is a census, and not a statistical survey, it is difficult to extrapolate from the submitted data to account for data gaps and incompatibilities. As a result, the Agency is working with the States to improve the quality and usefulness of biennial report data to be submitted in 1986 (on waste management activities in calendar year 1985). However, summary data from this effort will not be available in time to use it as a basis for volume scores in the schedule, given the November 8, 1986 statutory deadline.

An additional comment received on the volume scores stated that estimates of a volume disposed may include treatment residues as well as untreated wastes. As a result, EPA should determine which wastes are treated (by percent) and adjust volume scores accordingly. The Agency points out, however, that treated wastes are subject to land disposal restrictions unless the EPA approved treatment standard is met. Therefore, including treatment residues with untreated wastes for the purpose of developing a volume score is appropriate.

A more detailed explanation of the toxicity and volume scoring procedures is available upon request in a document titled "Documentation For The Development of Toxicity and Volume Scores, for the Purposes of Scheduling Hazardous Wastes." Requests for this document should be made by telephone to the RCRA Hotline, (800) 424–9346 (toll free) or (202) 382–3000 or in writing to Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

III. Schedule Interpretation

The Agency received comments on use of the T x V methodology in future EPA actions unrelated to the schedule. When assessing the schedule it is important to recognize that the method used to develop the schedule does not result in an absolute risk ranking. Rather, the schedule is the Agency's attempt to develop a relative hazard ranking for all wastes listed under section 3001. Therefore, the schedule should not be taken as an indication of Agency decisions on acceptable levels for these wastes and constituents.

In addition, the Agency received several comments suggesting that land treatment be considered as a method for treating hazardous wastes, rather than a method for land disposing hazardous wastes. HSWA defines land treatment as a method of land disposal thereby limiting the Agency's discretion to consider land treatment units as other than land disposal. The Agency refers these commenters to the discussion on land treatment contained in the

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[5] Consistent with the statutory definition of land disposal in Section 3004(k) volume disposed is that quantity of a hazardous waste managed in deep injection wells landfills, surface impoundments, land treatment facilities, and waste piles.

[6] The "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981" included only one-third of all facilities in the United States. In addition, land disposal facilities were required to report the 10 highest volume wastes disposed of in their facility. Thus, some listed hazardous wastes were not reported to be land disposed in the survey. Most of these wastes are P and U wastes listed in 40 CFR 261.33 whose total volume disposed is a small percentage of all hazardous wastes disposed.

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Hazardous Waste Management System: Land Disposal Restrictions proposed rule (see 51 FR at 1602, January 14, 1986).

Lastly, a comment suggested that EPA keep open the record on this rulemaking because critical elements of the land disposal process have not yet been defined (e.g., the petition process, treatment standards, variances, extensions). The standard for developing the schedule is laid out clearly in the statute and accompanying legislative history (3004(g); see Conference Report, H.R. Rep. No. 98–1133, 98th Congress, 2nd Sess., at 98 *reprinted in* [1984] U.S. Code & Ad. News 5858–9). EPA does not believe that information pertaining to the Agency's implementation of the other elements of the land disposal restriction program is necessary in order to provide informed comment on EPA's approach to meeting this standard. Public comment on these elements will be allowed for within the Hazardous Waste Management System; Land Disposal Restriction; proposed rulemaking.

IV. Wastes Included in the Ranking

Today's rulemaking includes all the wastes that were listed as hazardous in 40 CFR Part 261 as of November 8, 1984, except for the spent solvent wastes listed as EPA hazardous waste numbers F001, F002, F003, F004 and F005 and Dioxin-containing hazardous wastes numbered F020, F021, F022, F023, F026, F027 and F028. These two categories of waste are excluded from the schedule because the statute requires decisions on them to be made within 24 months of enactment.

The ranking does, however, contain wastes that may be covered by the "California List." There are several reasons for their inclusion. First, the "California List" is expressed in the RCRA amendments in terms of concentration of constituents, rather than as specific EPA hazardous waste codes. Translating the generic categories of the "California List" into EPA waste codes is very difficult. This is because a specific waste code may apply to a number of different wastes which vary significantly in concentration of hazardous constituents. At this time, the Agency anticipates that its rules on the "California List" will follow the same format as the provision in the RCRA amendments, that is, expressed as a concentration of constituents, rather than as EPA waste codes.

A second reason for including wastes potentially covered by the "California List" on the ranking is that the "California List" may address some, but not necessarily all, of the constituents of concern in a waste. Wastes which contain "California List" constituents in concentrations lower than the levels set by the statute (or set by the Agency when it reviews the California List) might contain other hazardous constituents that threaten human health and the environment. Consequently, the Agency is scheduling these wastes for bans or treatment standards related to these other constituents.

Also, wastes identified as hazardous based on a characteristic alone (i.e., corrosivity, reactivity, ignitability and EP Toxicity) are not included in the proposed ranking. The RCRA amendments specify that these wastes will be reviewed in the last third.

The American Mining Congress commented that land disposal restrictions were designed by Congress for wastes other than those from the extraction, beneficiation and processing of ores and minerals. Section 3004(x) of RCRA authorizes EPA to modify the requirements of subsections 3004(d), (e), (f), and (g) to take into account the special characteristics of certain mining wastes, the practical difficulties associated with implementating requirements for such wastes and site specific characteristics including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements protect human health and the environment. Accordingly, EPA intends to examine how land disposal restriction decisions should apply to mining wastes prior to subjecting them to regulation. The Agency points out however, that should mining wastes become listed or characteristic wastes under section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of listing.

Lastly, since all of the wastes listed as hazardous under 40 CFR Part 261 (including those specifically exempted from this rulemaking), are CERCLA hazardous substances, releases of any of these wastes (except federally permitted releases), that equal or exceed the applicable reportable quantity must be reported immediately to the National Response Center.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424–8802 or (202) 426–2675) of the release.

V. Regulatory Impact

A. Executive Order 12291

Executive Order 12291 requires that the regulatory impact of potential Agency actions be evaluated as part of the process of developing regulations. Such an assessment consists of a description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms (Section 3(d)(2)); and a description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms (section 3(d)(3)).

In addition, Executive Order 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis in connection with major rules (Section 3). Major rules are defined in section 1(b) as those which are likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

Today's rule establishes the timing for regulatory decisions on listed hazardous wastes not designated as solvents or dioxins by the statute. The schedule does not impose any mandatory requirements, unless the Agency fails to make decisions as Congress has mandated. It will be EPA's regulatory decisions that define the impacts on regulated parties. EPA will evaluate the risks, costs, and impacts of these decisions. Therefore, EPA does not consider this rule to be a major rule as defined by Executive Order 12291.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5, U.S.C. 601 et seq., whenever an agency is required to issue a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis which describes the impact of the rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. Since, as explained above, this schedule is only a preliminary step that has no direct regulatory impact, I hereby certify that this regulation will not have a significant economic impact on a

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substantial number of small entities, and therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

Section 3004(g)(3) of RCRA as amended by the HSWA exempts the schedule from the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Development of the schedule does not, in any event, contain any information collection requirements as described by provisions of the Paperwork Reduction Act.

VI. Impact on Authorized States

This proposal has no immediate impact on authorized States as it merely establishes EPA's schedule for land disposal prohibitions and treatment determinations. The impact on authorized States will be addressed when these determinations are made.

VII. References

(1) "Documentation For The Development of Toxicity and Volume Scores for the Purposes of Scheduling Hazardous Wastes." Report prepared for Office of Solid Waste, USEPA, by Environ Corporation, 1985.

(2) "USEPA. 1986. National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981." Office of Solid Waste and Emergency Response. April (EPA 530/SW-84-005).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous materials.

Dated: May 21, 1986.

Lee M. Thomas,

Administrator.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended by adding new Part 268 to read as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

Subpart A—[Reserved]

Subpart B—Schedule for Land Disposal Prohibition and Establishment of Treatment Standards

Sec.

268.10 Identification of wastes to be evaluated by August 8, 1988.
268.11 Identification of wastes to be evaluated by June 8, 1988.
268.12 Identification of wastes to be evaluated by May 8, 1990.
268.13 Schedule for wastes identified or listed after November 8, 1984.

Authority: Secs. 1105, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6924].

Subpart A—[Reserved]

Subpart B—Schedule for Land Disposal Prohibition and Establishment of Treatment Standards

§ 268.10 Identification of wastes to be evaluated by August 8, 1988.

EPA will take action under sections 3004(g)(5) and 3004(m), of the Resource Conservation and Recovery Act, by August 8, 1988, for the following wastes (for ease of understanding the wastes have been listed by the section of 40 CFR Part 261 under which they were listed):

§ 261.31 Wastes

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating bath solutions from electroplating operations.

F008—Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

§ 261.32 Wastes

K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

K004—Wastewater treatment sludge from the production of zinc yellow pigments.

K006—Over residue from the production of chrome oxide green pigments.

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

K015—Still bottoms from the distillation of benzyl chloride.

K016—Heavy ends or distillation residues from the production of carbon tetrachloride.

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K018—Heavy ends from the fractionation column in ethyl chloride production.

K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.

K021—Aqueous spent antimony catalyst waste from fluoromethanes production.

K022—Distillation bottom tars from the production of phenol/acetone from cumene.

K024—Distillation bottoms from the production of phthalic anhydride from naphthalene.

K030—Column bottom or heavy ends from the combined production of trichloroethylene and perchloroethylene.

K031—By-products salts generated in the production of MSMA and cacodylic acid.

K035—Wastewater treatment sludges generated in the production of creosote.

K036—Still bottoms from toluene reclamation distillation in the production of disulfoton.

K037—Wastewater treatment sludge from the production of disulfoton.

K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K046—Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.

K047—Pink/red water from TNT operations.

K048—Dissolved air flotation (DAF) float from the petroleum refining industry.

K049—Stop oil emulsion solids from the petroleum refining industry.

K050—Heat exchange bundle cleaning sludge from the petroleum refining industry.

K051—API separator sludge from the petroleum refining industry.

K052—Tank bottoms (leaded) from the petroleum refining industry.

K060—Ammonia still lime sludge from coking operations.

K061—Emission control dust/sludge from the primary production of steel in electric furnaces.

K062—Spent pickle liquor from steel finishing operations in chlorine production.

K069—Emission control dust/sludge from secondary lead smelting.

K071—Brine purification muds from the mercury cells process in chlorine production, where separately prepurified brine is not used.

K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes

K083—Distillation bottoms from aniline production.

K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K085—Distillation of fractionation column bottoms from the production of chlorobenzenes.

K086—Solvent washes and sludges; caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

K087—Decanter tank tar sludge from coking operations.

K090—Untreated wastewater from the production of 2,4-D.

K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary

pharmaceuticals from arsenic or organo-arsenic compounds.
K102—Residues from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
K103—Process residues from aniline extraction from the production of aniline.
K104—Combined wastewater streams generated from nitrobenzene/aniline production.
K106—Wastewater treatment sludge from the mercury cell process in chlorine production.

§ 261.33(e) Wastes

P001—Warfarin, when present at concentration greater than 0.3%
P004—Aldrin
P005—Allyl alcohol
P010—Arsenic acid
P011—Arsenic (V) oxide
P012—Arsenic (III) oxide
P015—Beryllium dust
P016—Bis-(chloromethyl) ether
P018—Brucine
P020—Dinoseb
P030—Soluble cyanide salts not elsewhere specified
P036—Dichlorophenylarsine
P037—Dieldrin
P039—Disulfoton
P041—Diethyl-p-nitrophenyl phosphate
P048—2,4-Dinitrophenol
P050—Endosulfan
P058—Fluoroacetic acid, sodium salt
P059—Heptachlor
P063—Hydrogen cyanide
P068—Methyl Hydrazine
P069—Methyllactonitrile
P070—Aldicarb
P071—Methyl parathion
P081—Nitroglycerine
P082—N-Nitrosodimethylamine
P084—N-Nitrosomethylvinylamine
P087—Osmium tetroxide
P089—Parathion
P092—Phenylmercuric acetate
P094—Phorate
P097—Famphur
P102—Propargyl alcohol
P105—Sodium azide
P108—Strychnine and salts
P110—Tetraethyl lead
P115—Thallium (I) sulfate
P120—Vanadium pentoxide
P122—Zinc phosphide, when present at concentrations greater than 10%
P123—Toxaphene

§ 261.33(f) Wastes

U007—Acrylamide
U009—Acrylonitrile
U010—Mitomycin C
U012—Aniline
U016—Benz(c)acridine
U018—Benz(a)anthracene
U019—Benzene
U022—Benzo(a)pyrene
U029—Methyl bromide
U031—n-Butanol
U036—Chlordane, technical
U037—Chlorobenzene
U041—n-Chloro-2,3-epoxypropane
U043—Vinyl chloride
U044—Chloroform
U046—Chloromethyl methyl ether
U050—Chrysene
U051—Creosote
U053—Crotonaldehyde
U061—DDT
U063—Dibenz o (a, h) anthracene
U064—1,2:7,8 Dibenzopyrene
U066—Dibromo-3-chloropropane 1,2-
U067—Ethylene dibromide
U074—1,4-Dichloro-2-butene
U077—Ethane, 1,2-dichloro-
U078—Dichloroethylene, 1,1-
U089—N,N Diethylhydrazine
U089—Diethylstilbestrol
U103—Dimethyl sulfate
U105—2,4-Dinitrotoluene
U108—Dioxane, 1,4-
U115—Ethylene oxide
U122—Formaldehyde
U124—Furan
U129—Lindane
U130—Hexachlorocyclopentadiene
U133—Hydrazine
U134—Hydrofluoric acid
U137—Indeno(1,2,3-cd)pyrene
U151—Mercury
U154—Methanol
U155—Methapyrilene
U157—3-Methylcholanthrene
U158—4,4-Methylene-bis-(2-chloroaniline)
U159—Methyl ethyl ketone
U171—Nitropropane, 2-
U177—N-Nitroso-N-methylurea
U180—N-Nitrosopyrrolidine
U185—Pentachloronitrobenzene
U188—Phenol
U192—Pronamide
U200—Reserpine
U209—Tetrachloroethane, 1,1,2,2-
U210—Tetrachloroethylene
U211—Carbon tetrachloride
U219—Thiourea
U220—Toluene
U221—Toluenediamine
U223—Toluene diisocyanate
U226—Methylchloroform
U227—Trichloroethane, 1,1,2-
U228—Trichloroethylene
U237—Uracil mustard
U238—Ethyl carbamate
U248—Warfarin, when present at concentrations of 0.3% or less
U249—Zinc phosphide, when present at concentrations of 10% or less

§ 268.11 Identification of wastes to be evaluated by June 8, 1988.

EPA will take action under sections 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act, by June 8, 1988, for the following wastes (for ease of understanding the wastes have been listed by the section of 40 CFR Part 261 under which they were listed):

§ 261.31 Wastes

F010—Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process.
F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012—Quenching wastewater treatment sludges from metal heat operations where cyanides are used in the process.
F024—Wastes including but not limited to, distillation residues, heavy ends, tars and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. [This listing does not include light ends, spent filters and filter aids, spend desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.32.].

§ 261.32 Wastes

K009—Distillation bottoms from the production of acetaldehyde from ethylene.
K010—Distillation side cuts from the productions of acetaldehyde from ethylene.
K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.
K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene.
K027—Centrifuge and distillation residues from toluene diisocyanate production.
K029—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.
K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane.
K038—Wastewater from the washing and stripping of phorate production.
K039—Filter cake from the filtration of diethylphosphoro-dithioic acid in the production of phorate.
K040—Wastewater treatment sludge from the production of phorate.
K041—Wastewater treatment sludge from the production of toxaphene.
K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.
K043—2,6-Dichlorophenol waste from the production of 2,4-D.
K095—Distillation bottoms from the production of 1,1,1-trichloroethane.
K096—Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.
K097—Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.
K098—Untreated process wastewater from the production of toxaphene.
K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.

§ 261.33(e) Wastes

P002—1-Acetyl-2-thiourea
P003—Acrolein
P007—5-(Aminoethyl)-3-isoxazolol
P008—4-Aminopyridine
P014—Thiophenol
P026—1-(o-Chlorophenyl)thiourea
P027—Propanenitrile, 3-chloro
P029—Copper cyanides
P040—O,O-Diethyl o-pyrazinyl phosphorothioate
P043—Diisopropyl fluorophosphate
P044—Dimethoate
P049—2,4-Dithiobiuret
P054—Aziridine
P057—Fluoroacetamide
P060—Isodrin
P062—Hexaethyltetraphosphate

P068—Methomyl
P067—2-Methylaziridine
P072—Alpha-naphthylthiourea (ANTU)
P074—Nickel cyanide
P085—Octamethylpyrophosphoramide
P098—Potassium cyanide
P104—Silver cyanide
P106—Sodium cyanide
P107—Strontium sulfide
P111—Tetraethylpyrophosphate
P112—Tetranitromethane
P113—Thallic oxide
P114—Thallium (I) selenite

§ 261.33(f) Wastes

U002—Acetone
U003—Acetonitrile
U005—o-Acetylaminofluorene
U006—Acrylic acid
U011—Amitrole
U014—Auramine
U015—Azaserine
U020—Benzenesulfonyl chloride
U021—Benzidine
U022—Benzotrichloride
U025—Dichloroethyl ether
U026—Chlornaphazine
U028—Bis-(2-ethylhexyl)phthalate
U032—Calcium chromate
U035—Chlorambucil
U047—Beta-chloronaphthalene
U049—4-Chloro-o-toluidine, hydrochloride
U057—Cyclohexanone
U058—Cyclophosphamide
U059—Daunomycin
U060—DDD
U062—Diallate
U070—o-Dichlorobenzene
U073—Dichlorobenzidene, 3,3-
U080—Methylene chloride
U083—Dichloropropane, 1,2-
U092—Dimethylamine
U093—Dimethylaminoazobenzene
U094—Dimethylbenz[a]anthracene,7,12-
U095—Dimethylbenzidine,3,3'-
U097—Dimethylcarbamoyl chloride
U098—Dimethylhydrazine, 1,1-
U099—Dimethylhydrazine, 1,2-
U101—Dimethylphenol, 2,4-
U105—Dinitrotoluene, 2,6-
U107—Di-n-octyl phthalate
U109—1,2,-Diphenylhydrazine
U110—Dipropylamine
U111—Di-N-Propylnitrosamine
U114—Ethylenebis-(dithiocarbamic acid)
U116—Ethylene thiourea
U119—Ethyl methanesulfonate
U127—Hexachlorobenzene
U128—Hexachlorobutadiene
U131—Hexachloroethane
U135—Hydrogen sulfide
U138—Methyl iodide
U140—Isobutyl alcohol
U142—Kepone
U143—Lasiocarpine
U144—Lead acetate
U146—Lead subacetate
U147—Maleic anhydride
U148—Maleonitrile
U150—Melphalan
U161—Methyl isobutyl ketone
U162—Methyl methacrylate
U163—N-Methyl-N-nitro-N-nitrosoguanidine
U164—Methylthiouracil
U165—Naphthalene
U168—Napthylamine, 2-
U169—Nitrobenzene
U170—p-Nitrophenol
U172—N-Nitroso-di-n-butylamine
U173—N-Nitroso-diethanolamine
U174—N-Nitroso-diethylamine
U176—N-Nitroso-N-ethylurea
U178—N-Nitroso-N-methylurethane
U179—N-Nitrosopiperidine
U189—Phosphorus sulfide
U193—1,3-Propane sultone
U196—Pyridine
U202—Safrole
U205—Selenium disulfide
U206—Streptozotocin
U208—Tetrachloroethane, 1,1,1,2-
U213—Tetrahydrofuran
U214—Thallium (I) acetate
U215—Thallium (I) carbonate
U216—Thallium (I) chloride
U217—Thallium (I) nitrate
U219—Thioacetamide
U235—Tris (2,3-Dibromopropyl) phosphate
U239—Xylene
U244—Thiram

§ 268.12 Identification of wastes to be evaluated by May 8, 1990.

EPA will take action under sections 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act, by May 8, 1990, for the following wastes (for ease of understanding, the wastes have been listed by the section of 40 CFR Part 261 under which they were listed):

§ 261.32 Wastes

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003—Wastewater treatment sludge from the production of molybdate orange pigments.
K005—Wastewater treatment sludge from the production of chrome green pigments.
K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007—Wastewater treatment sludge from the production of iron blue pigments.
K023—Distillation light ends from the production of phthalic anhydride from naphthalene.
K026—Stripping still tails from the production of methyl ethyl pyridines.
K032—Wastewater treatment sludge from the production of chlordane.
K033—Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.
K034—Filter solids from the hexachlorocyclopentadiene in the production of chlordane.
K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene.
K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene.
K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.

§ 261.33(e) Wastes

P009—Ammonium picrate
P013—Barium cyanide
P017—Bromoacetone
P021—Calcium cyanide
P022—Carbon disulfide
P023—Chloroacetaldehyde
P024—p-Chloroaniline
P028—Benzyl chloride
P031—Cyanogen
P033—Cyanogen chloride
P034—4,6-Dinitro-o-cyclohexylphenol
P036—Diethylarsine
P042—Epinephrine
P045—Thiofanox
P046—Alpha, alpha-Dimethylphenethylamine
P047—4,6-Dinitro-o-cresol and salts
P051—Endrin
P056—Fluorine
P064—Methyl isocyanate
P065—Mercury fulminate
P073—Nickel carbonyl
P075—Nicotine and salts
P076—Nitric oxide
P077—p-Nitroaniline
P078—Nitrogen dioxide
P088—Endothall
P093—N-Phenylthiourea
P095—Phosgene
P096—Phosphine
P099—Potassium silver cyanide
P101—Propanenitrile
P103—Selenourea
P109—Tetraethyldithiopyrophosphate
P116—Thiosemicarbazide
P118—Trichloromethanethiol
P119—Ammonium vanadate
P121—Zinc cyanide

§ 261.33(f) Wastes

U001—Acetaldehyde
U004—Acetophenone
U006—Acetyl chloride
U017—Benzal chloride
U024—Bis(2-chloroethoxy)methane
U027—Bis(2-chloroisopropyl)ether
U030—Benzene, 1-bromo-4-phenoxy
U033—Carbonyl fluoride
U034—Chloral
U038—Ethyl-4-4'-dichlorobenzilate
U039—4-Chloro-m-cresol
U042—Vinyl ether, 2-chloroethyl
U045—Methyl chloride
U048—o-Chlorophenol
U052—Cresols
U055—Cumene
U056—Cyclohexane
U068—Methane, dibromo
U069—Dibutyl phthalate
U071—m-Dichlorobenzene
U072—p-Dichlorobenzene
U075—Dichlorodifluoromethane
U076—Ethane, 1,1-dichloro-
U079—1,2-Dichlorethylene
U081—2,4-Dichlorophenol
U082—2,6-Dichlorophenol
U084—1,3-Dichloropropene
U085—2,2'-Bioxirane
U087—0,0,-Diethyl-S-methyl-dithiophosphate
U088—Diethyl phthalate
U090—Dihydrosafrole
U091—3,3'-Dimethoxybenzidine
U096—alpha,alpha-Dimethylbenzylhydroxyperoxide
U102—Dimethyl phthalate
U112—Ethyl acetate
U113—Ethyl acrylate
U117—Ethyl ether

U118—Ethylmethacrylate
U120—Fluoranthene
U121—Trichloromonofluoromethane
U123—Formic acid
U125—Furfural
U126—Glycidylaldehyde
U127—Hexachlorophene
U130—Cacodylic acid
U131—Iron dextran
U141—Isosafrole
U145—Lead phosphate
U148—Maleic hydrazide
U152—Methacrylonitrile
U159—Methanethiol
U160—Methyl chlorocarbonate
U161—Methyl ethyl ketone peroxide
U166—1,4-Naphthaquinone
U167—1-Naphthylamine
U168—2-Naphthylamine
U171—2-Nitro-o-toluidine
U173—Paraldehyde
U180—Pentachlorobenzene
U184—Pentachloroethane
U185—1,3-Pentadiene
U187—Phenacetin
U190—Phthalic anhydride
U191—2-Picoline
U194—1-Propanamine
U197—p-Benzoquinone
U201—Resorcinol
U202—Saccharin and salts
U204—Selenious acid
U207—1,2,4,5-tetrachlorobenzene
U222—o-Toluidine hydrochloride
U225—Bromoform
U234—Sym-Trinitrobenzene
U236—Trypan blue
U240—2,4-D, salts and esters
U243—Hexachloropropene
U248—Cyanogen bromide
U247—Methoxychlor

Wastes identified as hazardous based on a characteristic alone (i.e., corrosivity, reactivity, ignitability and EP toxicity).

§ 268.13 Schedule for wastes identified or listed after November 8, 1984.

In the case of any hazardous waste identified or listed under section 3001 after November 8, 1984, the Administrator shall make a land disposal prohibition determination within 6 months after the date of identification or listing.

[FR Doc. 86-11870 Filed 5-27-86; 8:45 am]

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Part IV

Department of Education

34 CFR Part 300

Special Education and Rehabilitation Services; Assistance to States for Education of Handicapped Children; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 300

Special Education and Rehabilitation Services; Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Final regulations; technical amendments.

SUMMARY: The Secretary amends the regulations for Part B of the Education of the Handicapped Act (EHA–B). These technical amendments are needed to implement the revisions made to section 611(c)(2)(A)(i)(II) of the EHA–B (20 U.S.C. 1411(c)(2)(A)(i)(II)) by section 901(a) of Pub. L. 99–159. The amount available for State administrative costs has been changed to implement the statutory amendment.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David B. Weber, Director, Division of Assistance to States, Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S2313) Washington, DC 20202; Telephone: (202) 732–1014.

SUPPLEMENTARY INFORMATION: Certain provisions of Section 611 of Part B of the Education of the Handicapped Act (20 U.S.C. 1401, 1411 et seq.) are revised by Pub. L. 99–159, enacted on November 22, 1985. Part B authorizes formula grants to State educational agencies and, through them, to local educational agencies and intermediate educational agencies to assist them in the education of handicapped children. The purposes of the EHA–B, according to section 601(c), are to ensure that a free appropriate public education is made available to all handicapped children; to ensure that the rights of handicapped children and their parents are protected; to assist States and localities to provide for the education of handicapped children; and to assess and ensure the effectiveness of efforts to educate those children.

Section 611 of the EHA–B includes a formula for calculating each State's grant for any fiscal year. Section 611 also provides the percentage of its grant that a State educational agency must distribute to local educational agencies (75 percent) and the percentage of its grant that may be used for administrative costs and for direct and support services (25 percent). Section 611(c)(2)(A)(i)(II) previously provided that a State educational agency may use an amount equal to up to five percent of the grant or $300,000, whichever is greater, for administrative costs. Section 901(a) of Pub. L. 99–159 amended that requirement by increasing the amount available for State administration to $350,000. This technical revision also applies to the Department of the Interior's grant since the Secretary of Education allows the Secretary of the Interior to use an amount comparable to the amount available to a State educational agency for program administrative costs.

An additional technical amendment is made to 34 CFR 300.620. A sentence is added to clarify that there is a twenty-five percent limitation on the amount that may be used for administrative costs in any fiscal year. This amendment also deletes an error in a cross-reference to other sections of the regulations previously published at 34 CFR 300.620.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and States agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations may affect those small local educational agencies receiving Federal financial assistance under this program. However, the regulations will not have a significant economic impact on the small local educational agencies affected because the amount of funds in question is a maximum of $50,000 per State, and this amount must not be deducted from the 75 percent portion of the EHA–B grant that must be distributed to local educational agencies. These final regulations do not impose any additional regulatory burden.

This amendment to the regulations imposes no additional requirements other than the specific change required by the statute.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since the change made in the regulations merely incorporates a statutory change into existing regulations and does not itself establish new substantive policy, public comment could have no effect on the content of this amendment. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on this amendment is unnecessary and contrary to the public interest.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal education opportunity, Grants program—education, Privacy, Private Schools, and Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.027; Assistance to States for Education of Handicapped Children)

Dated: May 22, 1986.

William J. Bennett,

Secretary of Education.

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

The Secretary amends Part 300 of Title 34 of The Code of Federal Regulations as follows:

1. The authority citation for Part 300 is revised to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

2. Section 300.262 is amended by revising paragraph (a) to read as follows:

§ 300.262 Use of Part B funds.

(a) The Department of the Interior may use five percent of its payment in any fiscal year, or $350,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

* * * * *

3. Section 300.620 is revised to read as follows:

§ 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $350,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than twenty-five percent of the State's total allotment for the fiscal year under Part B of the Act.

(20 U.S.C. 1411 (b), (c))

[FR Doc. 86-11861 Filed 5-27-86; 8:45 am]

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Part V

Department of Education

34 CFR Parts 700, 701, 702, 703, 708, 710, 716, 718, 720, and 795

Educational Research Grant Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts, 700, 701, 702, 703, 705, 710, 715, 719, 720, and 795

Educational Research Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (the Secretary) issues final regulations, that consolidate ten existing regulations affecting the Office of Education Research and Improvement's (OERI) direct grant programs into one regulation implementing section 405 of the General Education Provisions Act (GEPA), except for subsections 405(f) and 405(k). These final regulations streamline government administration, improve readability, and reduce the burdens on the affected public.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank Sobol, U.S. Department of Education, Office of Education Research and Improvement, Mail Stop 1612, 1200 19th Street, NW, Washington, DC 20208. Telephone Number (202) 254-5740.

SUPPLEMENTARY INFORMATION:

Background

The existing regulations which are affected by the final regulations were promulgated by the National Institute of Education (NIE). Since the publication of the notice of proposed rulemaking for NIE's Educational Research Grant Program, the functions of NIE have been reorganized within the Office of Educational Research and Improvement (OERI) pursuant to Section 413 of the Department of Education Organization Act (DEOA) (20 U.S.C 3473). While NIE has been abolished as a separate entity within OERI, its functions, which are governed by these final regulations, are continued within OERI. NIE's educational research grant programs and the rules which govern those programs are to be administered by the Assistant Secretary for OERI.

The Secretary has reviewed the existing regulations governing the programs authorized by section 405 of GEPA and amends Title 34 of the Code of Federal Regulations (CFR) by removing Parts 701, 702, 703, 709, 710, 715, 719, 720, and 795, and by revising Part 700. The final regulations consolidate portions of existing regulations while removing others that are obsolete. The final regulations establishing an Educational Research Grant Program define applicant eligibility; provide definitions of terms used in the regulations; specify types of grants; list authorized activities; list possible funding priorities; establish application procedures for field-initiated studies projects; establish procedures for the evaluation of applications; and provide selection criteria.

A notice or proposed rulemaking was published in the Federal Register on March 12, 1985 (50 FR 9970). No comments were received during the public comment period.

The Secretary has made several technical changes to improve the clarity of these final rules. The citation of authority for these rules has been changed to conform to the Federal Register format using only the United States Code (U.S.C.) reference.

"Planning" as an educational research project activity has been added to the list of types of projects the Secretary may assist under § 700.11(b). Like the other activities listed § 700.11(b), this activity is authorized by section 405(e)(1) of GEPA. It was inadvertently left out of the NPRM.

As a clarification, "school discipline" has been added to the funding priority "organization and management of schools, including effective school administration and leadership" at § 700.12(a)(6).

Section 700.32, concerning procedures for selecting field-initiated studies applications for funding, has been revised. The order of the paragraphs (a) and (b) of this section has been reversed. This change is made so that the most important information about field-initiated studies applications comes first in the section. The new § 700.32(a) sets out the rules governing competitions for field-initiated studies grants. It is followed by new § 700.32(b) which specifies the membership of the review board for field-initiated studies applications, and the procedure for reviewing those applications. In addition, § 700.32(b)(4) has been deleted as an unnecessary duplication of EDGAR. The rules governing the Secretary's authority to hold all applications submitted under a particular priority for a separate competition are established in 34 CFR 75.105.

The rules governing the Unsolicited Proposal Program in current 34 CFR Parts 700 and 701 are superseded by these final rules. Applications for grants under OERI's announced Unsolicited Proposal Program for Fiscal Year 1986, published in the Federal Register on January 6, 1986 (51 FR 425), should note that review of their applications will be governed by § 700.32 of these final regulations concerning the review of field-initiated studies applications. The term "field-initiated studies applications" in these final rules has the same meaning as "unsolicited proposals" at superseded 34 CFR 701.6.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require the transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the lack of comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 700

Education, Education research, Grant programs—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance number 84.117, Educational Research and Development)

Dated: May 22, 1986.

William J. Bennett,

Secretary of Education.

PARTS 701, 702, 703, 709, 710, 715, 719, 720, AND 795 [REMOVED]

The Secretary amends Title 34 of the Code of Federal Regulations by removing Parts 701, 702, 703, 709, 710, 715, 719, 720, and 795 and by revising Part 700 to read as follows:

PART 700—EDUCATIONAL RESEARCH GRANT PROGRAM

Subpart A—General

Sec.

700.1 What is the Educational Research Grant Program
700.2 What parties are eligible for an award under the Educational Research Grant Program?
700.3 What regulations apply to this program?
700.4 What definitions apply to this program?

Subpart B—What Types of Activities Does the Secretary Support Under This Program?

700.10 What types of awards does the Secretary make under this program?
700.11 What types of projects does the Secretary assist under this program?
700.12 What funding priorities does the Secretary establish for this program?

Subpart C—How Does One Apply for a Grant?

700.20 Are preapplications required?

Subpart D—How Does the Secretary Make a Grant?

700.30 How does the Secretary evaluate an application?
700.31 What selection criteria does the Secretary use to evaluate an application under this program?
700.32 What procedures may the Secretary use to select a field-initiated studies application for funding?
700.33 What special considerations may the Secretary use in selecting an application for funding?
700.34 What restrictions apply to the use of funds awarded under this program?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 700.1 What is the Educational Research Grant Program

The Educational Research Grant Program supports scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.

(20 U.S.C. 1221e(a))

§ 700.2 What parties are eligible for an award under the Educational Research Grant Program?

Parties eligible for an award under the Educational Research Grant Program are public or private organizations, institutions, agencies, or individuals.

(20 U.S.C. 1221e(c))

§ 700.3 What regulations apply to this program?

(a) The following regulations apply to awards under the Educational Research Grant Program:

(1) The Educational Department General Administration Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 700.

(b) The regulations in this Part 700 do not apply to contracts awarded under the Educational Research Grant Program or to projects carried out directly by the Secretary.

(20 U.S.C. 1221e)

§ 700.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant.
Application.
Award.
Budget.
Budget period.
Contract.
ED.
EDGAR.
Equipment.
Facilities.
Grant.
Grantee.
Local educational agency.
Nonprofit.
Private.
Project.
Project period.
Public.
Secretary.
State educational agency.

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Educational research" means all research and related activities including, but not limited to, basic and applied research, planning, surveys, evaluations, investigations, dissemination, experiments, development, and demonstrations in the field of education (including career education).

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a))

"Technical assistance" means assistance provided by a grantee to others for the purpose of applying the results of educational research to resolve educational problems at the State or local level.

(20 U.S.C. 1221e)

Subpart B—What Types of Activities Does the Secretary Support Under This Program?

§ 700.10 What types of awards does the Secretary make under this program?

(a) In a notice published in the Federal Register, the Secretary may choose an amount between $25,000 and $50,000 as the maximum amount of a small grant in any competition under this Part 700. An application for a small grant may not request funding for more than 12 months. An application that requests more than the maximum amount for a small grant or requests funding for more than 12 months is considered an application for a large grant.

(b) If the Secretary announces a maximum amount for a small grant under paragraph (a) of this section, the Secretary establishes separate competitions for large and small grants.

(20 U.S.C. 1221e)

§ 700.11 What types of projects does the Secretary assist under this program?

(a) For each competition announced in the Federal Register, the Secretary may fund applications that include, but are not limited to, those designed to accomplish one or more of the following:

(1) Educational research.

(2) Dissemination of educational research.

(3) Training of individuals in educational research.

(4) Technical assistance.

(b) For each competition announced in the Federal Register, the Secretary may restrict educational research projects to one or more of the following activities:

(1) Basic research.
(2) Applied research.
(3) Planning.
(4) Surveys.
(5) Evaluations.
(6) Investigations.
(7) Dissemination.
(8) Experiments.
(9) Development.
(10) Demonstrations in the field of education.

(20 U.S.C. 1221e)

§ 700.12 What funding priorities does the Secretary establish for this program?

(a) *Priorities.* For each competition, the Secretary may select one or more funding priorities by choosing from the following list of priorities or by combining one or more of the priorities:

(1) Learning.
(2) Teaching.

(3) Educational technology.
(4) Instructional processes and materials, including textbooks and computer software for instruction.
(5) Preparation and training of educational personnel.
(6) Organization and management of schools, including effective school administration and leadership, and school discipline.
(7) Evaluation and school indicators, including testing and measurement.
(8) Governance of education, including school board policies and practices.
(9) Educational finance.
(10) Dissemination and knowledge utilization in education.
(11) Change and improvement processes in education.
(12) Student achievement and educational standards, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.
(13) Home, family, parental choice, and community influences is education.
(14) Education, work and careers.
(15) Desegregation, busing, and their impact on educational equity and excellence.
(16) Guidance and counseling.
(17) International education.
(18) English literacy, including reading, writing, and language skills.
(19) Disciplines of the humanities, including history, philosophy, and literature.
(20) Mathematics.
(21) Science.
(22) Foreign languages.
(23) Preschool education.
(24) Elementary education.
(25) Secondary education.
(26) Private education.
(27) Adolescent education.
(28) Postsecondary education.
(29) Adult and continuing education.
(30) Education of special populations, including the educationally disadvantaged, the handicapped, and the academically gifted and talented.

(b) *Field-initiated studies.* The Secretary may fund any field-initiated studies application that—

(1) Does not meet a priority established in accordance with paragraph (a) of this section;
(2) Is limited to activities listed in § 700.11(a)(1)–(4); and
(3) Satisfies all other requirements for funding under this program.

Note: EDGAR establishes the method for applying priorities. See 34 CFR 75.105 (Annual priorities).

(20 U.S.C. 1221e)

Subpart C—How Does One Apply for a Grant?

§ 700.20 Are preapplications required?

As announced in the Federal Register, the Secretary may require or invite an applicant to submit a preapplication for a particular competition.

Note: EDGAR establishes the procedures under which the Secretary considers a preapplication. See 34 CFR 75.128–75.134.

(20 U.S.C. 1221e)

Subpart D—How Does the Secretary Make a Grant?

§ 700.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the selection criteria § 700.31.

(b) The Secretary awards up to 100 points, including a reserved 25 points to be distributed in accordance with paragraph (d) of this section, based on the selection criteria in § 700.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading of each criterion.

(d) For each competition announced in the Federal Register, the Secretary distributes the reserved 25 points among the criteria in § 700.31. In the case of a filed-initiated studies competition conducted in accordance with § 700.32(b)(1), the Secretary assigns the reserved 25 points to the selection criterion in § 700.31(f) (Significance).

(20 U.S.C. 1221e)

§ 700.31 What selection criteria does the Secretary use to evaluate an application under this program?

(a) *Plan of operation.* (10 Points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;
(2) The extent to which the plan of management is effective and insures proper and efficient administration of the project;
(3) How well the objectives of the project relate to the purpose of the program;
(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and
(5) The extent to which the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;
(ii) Women;
(iii) Handicapped persons; and
(iv) The elderly

(b) *Quality of key personnel.* (20 Points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project;
(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and
(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(2) To determine personnel qualifications under paragraphs (b)(1) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and
(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost effectiveness.* (5 Points)

The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and
(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and
(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Adequacy of resources.* (5 Points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Significance.* (15 Points)

(1) The Secretary reviews each application to determine the significance of the proposed project.

(2) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(i) Importance of the proposed project from the standpoint of basic knowledge or of American education;

(ii) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the generalizability of the results;

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(iv) The extent to which the project is designed to yield outcomes that can be disseminated and utilized in other settings, such an information, materials, processes, or techniques.

(g) *Technical soundness.* (15 Points)

(1) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(2) The Secretary determines—

(i) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, where applicable;

(ii) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(iii) Evidence that, where appropriate, the prespectives of a variety of disciplines are used.

(h) *Applicant's commitment and capacity.* (0 Points) (The Secretary may assign points to this criterion pursuant to § 700.30(d).) The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850-0672)

§ 700.32 What procedures may the Secretary use to select a field-initiated studies application for funding?

(a)(1) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund a field-initiated studies application, as described in § 700.12(b), in accordance with this section and without publishing a notice in the **Federal Register.**

(2) At any time during a fiscal year, the Secretary may review all field-initiated studies applications submitted and may select applications for funding in accordance with procedures in paragraph (b) of this section.

(3) The Secretary may reserve any applications which were reviewed in accordance with paragraph (a)(2) of this section, but which were not selected for funding, for further consideration during the remainder of that fiscal year.

(b)(1) Notwithstanding the provisions of 34 CFR 75.217(a), the Secretary may assemble a board to review field-initiated studies applications described at § 700.12(b).

(2) The board consists of—

(i) A Department grants officer; and

(ii) Two other Department employees who are qualified to evaluate the application.

(3) The board reviews applications in accordance with 34 CFR 75.217(b).

(20 U.S.C. 1221e)

§ 700.33 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 700.31, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition under this program. The Secretary may select other applications for funding it doing so would improve the geographical distribution of project funded under a particular competition or under this program.

(b) The Secretary may select an application for funding to improve the diversity of activities or projects funded under a particular competition.

(c) The Secretary may decline to fund a project that is eligible for funding under a different Department of Education competition or program.

(20 U.S.C. 1221e)

§ 700.34 What restrictions apply to the use of funds awarded under this program?

Of the funds made available through an award under the program, the Secretary may restrict this amount of funds used to purchase equipment.

(20 U.S.C. 1221e)

[FR Doc. 86-11802 Filed 5-27-86; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-2982-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act by clarifying that the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) applies only to wastes generated by iron and steel facilities. The Agency is taking this action in response to a rulemaking petition submitted by four porcelain enamel companies and in response to comments received on a notice of proposed rulemaking challenging the Agency's interpretation of the scope of the listing. The effect of this amendment is to grant the rulemaking petition by confirming that the listing applies only to those persons who produce iron and steel. Thus, spent acids from other steel finishing operations would be considered hazardous only if they exhibit one or more of the hazardous waste characteristics.

DATE: Final rule is effective May 28, 1986.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, RCRA docket (Sub-basement) 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m.; Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or (202) 382-3000. For technical information contact Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

I. Supplementary Information

A. Background

On February 6, 1986, several porcelain enamel companies—the Hobart Corporation, Maytag Corporation, Magic Chef, Inc., and State Industries—filed a rulemaking petition with EPA requesting that the listing description for "Spent pickle liquor from steel finishing operations" (40 CFR 261.32—EPA Hazardous Waste No. K062) be amended or clarified to indicate that the listing applies only to spent pickle liquor generated by the iron and steel industry. The listing appears in the rules under the heading of "Waste From Specific Sources," and from the "Iron and Steel" industry. In response to this rulemaking petition, the Agency published in the Federal Register a notice which made available to the public both the Agency and industry interpretations of the scope of the existing listing (see Notice of Proposed Rulemaking and Request for Comments and Data, 50 FR 36906, September 10, 1985, for background information and further details). The notice also indicated a variety of actions EPA might take in response to the petition, and requested comments and data relevant to these possible actions. The Agency also requested comments on how the listing is interpreted by the regulated community and data supporting industry claims that lime stabilized waste pickle liquor sludge (LSWPLS)[1] from non-iron and steel industries is non-hazardous.

The Agency received approximately eighty comments to the notice of proposed rulemaking. The majority of the comments were submitted by facilities involved in porcelain enameling and galvanizing. The comments are summarized below.

B. Summary Of Comments On Notice Of Proposed Rulemaking

The majority of the commenters strongly supported the petitioners' claim that the plain language of the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) indicates that the listing applies only to facilities within the iron and steel industry, and that the background document to the listing supports this interpretation, since it presents data only from the iron and steel industry. The petitioners argued that the background document repeatedly refers to "mills" and "integrated steel plants," while no discussion was included for any other industry.

In the notice, EPA requested commenters to explain why so many non-iron and steel facilities appeared to have acted as if the listing applied to them. The commenters stated that there was no significance that many facilities other than iron and steel initially notified as generating "spent pickle liquor" because these were protective filings. Some commenters indicated that Agency officials advised them to notify EPA if there were any questions regarding the regulatory status of their waste to ensure that they did not lose interim status.[2] (In addition, all of these persons were required to notify in any event since the waste is hazardous by virtue of its corrosivity.)

Several commenters from the hot dip galvanizing industry stated that pickle liquor generated from their process does not meet the listing description because chromium and lead are typically present in these wastes in concentrations well below the maximum permissible leachate concentrations as defined by the EP toxicity test.[3] They believe that spent pickle liquor generated from hot dip galvanizing should be classified as a hazardous waste only because of its corrosivity. In fact, EP toxicity data (for LSWPLS) was submitted by several commenters within the hot dip galvanizing industry (as well as several porcelain enameling companies). One commenter submitted EP toxicity data on sludge resulting from the hydroxide precipitation of spent pickle liquor. All data demonstrated that hexavalent chromium and lead, as well as the remaining EP toxic metals, were substantially below the maximum permissible leachate concentrations.

Two States likewise commented that they interpreted the listing as applying only to facilities within the iron and steel industry. One State, in particular, commented that if the Agency wished to cover additional wastes, it should specifically list non-iron and steel pickle liquor wastes as hazardous since, in the State's view, the existing listing did not apply. (These additional wastes also could exhibit a characteristic and so be subject to RCRA for that reason.) Another State, however, agreed with the Agency's interpretation that the scope of the K062 listing applies to all industries engaged in steel finishing operations. This State did not base its position on the regulatory language, but rather

[1] The sludge is generated by a well known technique involving lime neutralization, flocculation, clarification, and dewatering of the resultant sludge. These wastes are deemed hazardous waste by virtue of the provisions of the so-called "residue rule" (40 CFR 261.3(c)(2)(i)).

[2] To be eligible for interim status, persons who generated, transported, treated, stored, or disposed of hazardous waste had to notify EPA of that fact by August 8, 1980, and submit a Part A permit application by November 19, 1980 (see 45 FR 33066, May 19, 1980).

[3] Spent pickle liquor generated from the iron and steel industry contains chromium and lead, the constituents for which the waste was originally listed, in concentrations well above the maximum permissible leachate concentrations.

indicated that the toxic and corrosive characteristics of spent pickle liquor are inherent in the waste itself and are not dependent upon the industry category.

Many of the commenters also stated that the reason non-iron and steel facilities did not comment on the Notice of Availability of Data published on January 4, 1984, which reiterated EPA's view of the broader scope of the listing, was because these facilities did not read the notice. They believed the notice addressed spent pickle liquor generated by the iron and steel industry—based on the regulatory language—and so it did not apply to them.

Many of the commenters further stated that EPA itself has not been consistent in its interpretation of the listing. In particular, they state that in promulgating effluent limitation guidelines and standards for the porcelain enameling industry, the Agency concluded that sludges from treatment of wastewaters (from the pickling operation) are expected to be non-hazardous under RCRA. (See EPA Development Document for Effluent Guidelines and Standards for Porcelain Enameling Point Source Categories, EPA 440/1–82/072, November 1982.) The commenters believe the Agency would not have made this statement, if it believed the waste was derived from a listed waste, and so automatically hazardous until delisted (see § 261.3(c)(2)). Moreover, the commenters argued that several EPA Regional Offices also interpreted the listing as covering only the iron and steel industry.

In summary, the great majority of commenters requested that EPA adopt the third option presented in the September 10 notice—that is, grant the relief requested by the petitioners and agree that the listing applies, and has applied, only to spent pickle liquor wastes generated by the iron and steel industry.

II. Agency's Decision to Rulemaking Petition and Response to Comments

The Agency believes that the petitioners (as well as the commenters responding to the notice) have a valid argument that the listing should be read to apply only to those facilities within the iron and steel industry. Upon re-evaluation, we believe that the broad interpretation taken by the Agency (*i.e.*, the scope of the listing applies to spent pickle liquor from all "steel finishing operations") is not supported by the rulemaking record; rather, a more correct reading of the scope of the listing would apply only to spent acids generated by iron and steel facilities. Many of the arguments put forth by the petitioners (as well as the commenters to the notice) provide the basis for EPA's re-interpretation, including:

- the plain language of the listing as well as the fact that the listing was put in 40 CFR 261.32 (Wastes From Specific Sources under the sub-heading "Iron and Steel") suggests that it should apply only to the iron and steel industry;
- the background document to the listing supports the narrower interpretation, since it addresses spent acid and LSWFLS generated from the iron and steel industry;
- notification under section 3010 of RCRA from a diverse group of industry categories is not a valid basis for taking a broader interpretation since most of these were protective filings.

Although the Agency has been consistent in its interpretation with regard to the spent pickle liquor listing in processing delisting petitions, we must go back to the rulemaking record on which the listing is based. When this is done, the scope of the listing should be read to apply only to those facilities within the iron and steel industry.

Therefore, in light of the comments received and arguments made, the Agency has decided to modify its interpretation and narrow the scope of the spent pickle liquor listing to apply only to those facilities within the iron and steel industry. To clarify this point, the Agency has decided to clarify that the listing applies in the narrow manner urged by the petitioners. To eliminate any confusion, we are amending the regulatory language for EPA Hazardous Waste No. K062 to read as follows:

"Spent pickle liquor generated by steel finishing operations of plants that produce iron and steel."

Thus, we are granting the rulemaking petition submitted by the Hobart Corporation, the Maytag Corporation, Magic Chef, Inc., and State Industries.

As a practical matter, this means that any spent pickle liquor generated by non-iron and steel industries would be hazardous only if it exhibits one or more of the characteristics of hazardous waste (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity). In addition, this interpretation will be retroactive to the date that the listing was promulgated (*i.e.*, the Agency now believes that the listing's scope was always limited). Based on the comments received, this pickle liquor would probably still be hazardous because it exhibits the characteristics of corrosivity and/or EP toxicity. Thus, the waste spent acid itself remains subject to the applicable RCRA management standards. Likewise, any residue derived from the treatment of this spent pickle liquor (for example, lime stabilized waste pickle liquor sludge) would be hazardous if it exhibits one or more of the hazardous waste characteristics.[4] Consequently, any person who generates these residues would not need to go through the delisting procedures under 40 CFR §§ 260.20 and 260.22, unless these residues are mixed with other listed hazardous wastes or are derived from listed wastes. As a result, the following "generator-specific" delisting petitions submitted to the Agency to exclude this waste will become moot by today's rule.

Petition No.	Name	City	State
0588	Westinghouse Electric Corp.	Winston-Salem	NC
0480	Steel Warehouse Co. Inc.	South Bend	IN
0523	All-State Galvanizing Co	Kansas City	MO
0536	Wheeling-Pittsburgh Steel	Martins Ferry	OH
0585	Valley City Steel Co	Valley City	OH
0609	Talbot Industries, Inc	Nacoma	MD
0610	Galvan Industries, Inc	Harrisburg	NC

III. Effective Date

This rule will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months where the regulated community does not need the six-month period to come into compliance. That is the case here since we are now interpreting our rules in a manner that will reduce the scope of the existing interpretation (*i.e.*, clarifies that under the language of the rule, these people were never covered by the spent pickle liquor listing). Since an effective date of six months after promulgation is not necessary, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not a major rule because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's

[4] Limited data was presented by hot dip galvanizers, agricultural equipment manufacturers, and porcelain enamel industries. These data generally demonstrate that these sludges would leach very low levels of the toxic heavy metals, and so would not exhibit a hazardous waste characteristic.

hazardous waste management regulations. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets. Because this amendment is not a major rule, no Regulatory Impact Analysis is being conducted.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.*, whenever an Agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no adverse economic impact on small entities since the rule will reduce the hazardous waste requirements to those persons who generate spent acid in non-iron and steel industries. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 261

Hazardous materials, Recycling.

Dated: May 21, 1986.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. §§ 6905, 6912(a), 6921, and 6922].

2. Section 261.32 is amended by revising EPA Hazardous Waste No. K062 to read as follows:

§ 261.32 Hazardous Wastes From Specific Sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * *		
K062	Spent pickle liquor generated by steel finishing operations of plants that produce iron or steel.	(C,T)
* * * * *		

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Radio Broadcasting
Federal Communications Commission

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Surface Mining
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Veterans
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Vocational Rehabilitation
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Wine
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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Seattle 206-442-0570
Tacoma 206-383-5230
Portland 503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NE-53-AD; Amdt. 39-5333]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires functional tests, and repair or replacement, as necessary, of the cold air unit overheat protection circuits on British Aerospace Model BAC 1-11 200 and 400 series airplanes. At least three cold air units have failed, resulting in turbine components beging ejected from the units. Since these incidents happened on the ground, there exists the potential for injury to passengers and ground personnel.

EFFECTIVE DATE: July 3, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region 17900 Pacific Highway South, Seattle Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2009. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires functional tests of the cold air overheat protection on British Aerospace Model BAC-1-11 200 and 400 series airplanes was published in the Federal Register on June 28, 1985 (50 FR 26790).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the comments received.

One comment was received. The commenter, a member operator of the Air Transport Association (ATA) of America, supported the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the following rule as proposed.

It is estimated that 60 airplanes will be affected by this AD, that it will take approximately 3 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of this AD is estimated to be $7,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a subetantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft..

Adoption of the Amendment

PART 39--[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. To detect overspeeding of the cold air unit, accomplish the following within the next 120 days after the effective date of the AD, or prior to reaching the threshold indicated in each paragraph below, whichever is the later, unless already accomplished:

A. Prior to the accumulation of 10,000 flight hours or 8 years in service, whichever is the earlier, and thereafter at intervals not to exceed 3,000 flight hours or 14 months, whichever occurs first, perform a functional test of the cold air unit overheat protection circuits in accordance with paragraph 2.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 21-A-PM5863, Revision 2, dated June 12, 1984. If found faulty, the overheat protection circuits must be repaired before further flight.

B. For aircraft not incorporating Graviner 156D overheat detectors, prior to 300 flight hours after the effective date of this AD, perform a workshop calibration and functional test of the overheat detectors; thereafter, repeat this test at intervals not to exceed 3,000 flight hours or 14 months, whichever occurs first.

C. For aircraft incorporating Graviner 156D overheat detectors which have accumulated 7,000 flight hours or 4 years since new or from last calibration, perform a workshop calibration and functional test of the overheat detectors within the next 3,000 flight hours or fourteen (14) months, whichever is the earlier; thereafter, repeat this test at intervals not to exceed 10,000 flight hours or 6 years, whichever occurs first.

D. Overheat detectors that do not pass the tests of paragraphs B. or C., above, must be replaced before further flight.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle.

Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 3, 1986.

Issued in Seattle, Washington, on May 20, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11907 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-110-AD; Amdt. 39-5322]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to all Boeing Model 747 airplanes, which requires a repetitive inspection, and as necessary, replacement of all main and nose landing gear wheel bearing. This action is prompted by reports of wheel bearing premature wear and failure, which has caused tire, wheel, and axle damage, blown wheel fuse plugs, and an incident involving wing damage and spilled fuel.

EFFECTIVE DATE: June 13, 1986.

ADDRESSES: The service information specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gray D. Lium, Systems and Equipment Branch, ANM-130S; telephone (206) 431-2946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: In July, 1985, the Timken Company began producing a new bearing configuration as part of a replacement program for Boeing Model 747 wheels. Boeing began receiving a large number of reports from operators of overheating and other discrepancies being found on these bearing after one tire change interval (approximately 150 to 200 landings). Boeing also received a total of three reports of wheel bearing failures that resulted in wheel and axle damage occurring within one tire change interval. One of these occurred at 112 landings. All three of these resulted in the fuse plugs releasing tire air pressure. Some operators have reported as many as 20 percent of the bearings inspected as being damaged.

As a result of the reports of overheat damage to the bearing, Boeing sent a Service Letter to all operators on March 12, 1986, alerting them to the condition and requesting that they postpone the replacement program. After the three reports of wheel and axle damage, Boeing sent a second Service Letter to operators on March 27, 1986, strongly recommending that all the suspect wheel bearings be removed from service within 100 flight cycles.

Bearings that had been produced prior to the change in configuration are included in the AD as a replacement for the problem bearings. These bearings are also subject to a requirement for a periodic inspection and removal, as necessary, because of an incident where a bearing failure caused a wheel to fail on takeoff, with a portion of the wheel puncturing the wing fuel tank, and spilling fuel on the runway. The failure was determined to be due to the bearing having excessive case hardening. The Timken Company has recently developed new bearings, P/N's LM229147C and LM229140C, which do not have the associated problems addressed by the AD.

Since this condition is likely to exists or develop on other airplanes of this type design, the FAA has determined that an AD is necessary which requires repetitive inspections and replacment, as necessary, of all inner and other wheel bearings. Installation of bearings, P/N's LM229147C and LM229140C, constitute terminating action for the repetitive inspections required by the AD.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 airplanes, certificated in any category. To prevent wheel or tire failure as a result of failure of the wheel bearing, accomplish the following, unless already accomplished:

A. Within 100 flight cycles after the effective date of this AD, remove and inspect both the inner and outer wheel bearings, Timken P/N's LM229146 and LM229139, in accordance with the applicable portions of Sections 32-45-01 through 32-45-08 of the Boeing Model 747 maintenance manual. Any wheel bearing found damaged must be replaced with a new or serviceable bearing prior to further flight.

Note: Serviceable bearings are those Timken bearings, P/N's LM229146 and LM229139, which have been inspected with a close visual inspection and found to have no visible damage (i.e., galling, gouging, spauling, overheat, etc.).

B. After accomplishment of the inspection required by paragraph A., above, reinspect both the inner and outer wheel bearings in accordance with the schedule below. Any wheel bearing found damaged as a result of the required inspections must be replaced with a new or serviceable bearing before further flight.

1. Bearings P/N LM229146 and LM229139, date stamped LS and subsequent, except those identified in subparagraph B.2., below, must be reinspected at intervals not to exceed 100 flight cycles.

2. Bearings date stamped LS and subsequent, which are installed on Boeing Model 747SR airplanes which have not incorporated Boeing Service Bulletin 747-32-2272 (which relates to gross weight increase), must be reinspected at intervals not to exceed 200 flight cycles.

3. Bearings date stamped prior to LS must be reinspected at intervals not to exceed 250 flight cycles.

C. Installation of inner and outer Timken wheel bearings, P/N's LM228147C and LM229140C, constitutes terminating action for the repetitive inspections required by paragraph B., above.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate an airplane to a base for the accomplishment of inspections and/or modifications required by this AD.

The service information specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 13, 1986.

Issued in Seattle, Washington, on May 20, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11836 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AEA-1]

Alteration of Control Zone, Lancaster, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the current hours of the Lancaster, PA, Control Zone from 0630 Local to 0600 Local. This action is taken to provide all users of Lancaster Airport those services associated with the Control Zone and to more correctly align the effective hours of the Control Zone with the operating hours of the Air Traffic Control Tower.

EFFECTIVE DATE: May 29, 1986

Comments must be received on or before June 25, 1986.

ADDRESSES: Send comments on the rule in triplicate to: Howard R. McGlauflin, Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 86-AEA-1, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Howard R. McGlauflin, Manager, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves extension of the hours of the Lancaster, PA, Control Zone operation to be effective from 0600 to 2300, local time, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AEA-1" The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to increase the hours of the Lancaster, PA, Control Zone from 0630 to 2300, local time, to be effective from 0600 to 2300, local time. The FAA has identified a discrepancy in the operating hours of the Air Traffic Control Tower and the published effective hours of the Control Zone; therefore, in order to provide all users of the Lancaster Airport those services associated with a control zone and to be consistent with the agency's safety mandate, the Lancaster, PA, Control Zone hours of operation will be increased by one half hour. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7480.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to extend the hours of the Lancaster, PA, Control Zone to be effective from 0600 to 2300, local time. Therefore, I find that notice and public procedure under 5 U.S.C. 533(b) are impracticable and that good cause exists for making this amendment effective upon publication in the Federal Register.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

§ 71.171 [Amended]

2. 71.171 is amended as follows:

Lancaster, PA [Amended]

. . . . "This Control Zone is effective from 0600 to 2300 hours, local time, daily."

Issued in Jamaica, New York, on May 16, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-11936 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-AWA-23]

Alteration of R-5201 Fort Drum, NY, Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment changes the boundaries of Restricted Area R-5201 Fort Drum, NY, expanding the area by about 1 mile on the northwest, northeast, southeast and southwest sides, and moving the southwest corner about 2 miles to the east. This alteration is needed because the Department of the Army has determined that several existing artillery and tank firing ranges lie a few hundred feet outside the present restricted area boundaries. Further, a planned runway extension at Wheeler-Sack Army Airfield (AAF) requires that the southwest corner be modified to accommodate aircraft departures from Runway 03. This amendment will insure that the existing ranges are fully contained within the R-5201 boundaries, provide for proper safety buffer zones and enhance safety for nonparticipating aircraft.

DATES: Effective date—0901 UTC, August 28, 1986.

Comments must be received on or before July 14, 1986.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-23, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves modification of the boundaries of Restricted Area R-5201 Fort Drum, NY, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the rule that might suggest the need to modify the rule. Send comments on environmental and land use aspects to: Commander, Headquarters 10th Mountain Division, Fort Drum, NY 13602-5000.

The Rule

The purpose of this amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to enhance aviation safety by modifying the boundaries of Restricted Area R-5201 Fort Drum, NY, so as to include within the restricted area several existing artillery and tank firing ranges which the Department of the Army has determined to be several hundred feet outside the present boundaries of R-5201. Further, a planned extension of Runway 03-21 at Wheeler-Sack AAF necessitates moving the southwest corner of the restricted area to the east to provide airspace to accommodate aircraft departures from Runway 03. The Department of the Army has certified that these changes are in compliance with National Environmental Policy Act (NEPA). Section 73.52 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to modify the boundaries of R-5201 to include all existing firing ranges within the restricted area in the interest of aviation safety. Therefore, I find that notice of public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.52 is amended as follows:

R-5201 Fort Drum, NY [Amended]

Remove the present boundaries and substitute the following:

Boundaries. Beginning at lat. 44°01'05"N., long. 75°37'15"W; to lat. 44°03'20"N., long. 75°40'50"W.; to lat. 44°06'55"N., long. 75°42'10"W.; to lat. 44°10'50"N., long. 75°39'00"W.; to lat. 44°16'07"N., long. 75°32'42"W.; to lat. 44°11'24"N., long 75°23'00"W.; to lat. 44°07'10"N., long 75°26'50"W.; thence to point of beginning.

Issued in Washington, DC, on May 21, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11993 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 225 and 277

[Docket Nos. RM80-8-001 through RM80-8-005]

National Gas Policy Act; Bona Fide Offers; Right of First Refusal; Order Granting in Part and Denying in Part Applications for Rehearing, Reconsideration and Clarification of Order No. 95; Record Retention Approval

Issued: May 21, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB approval of change in record retention requirements.

SUMMARY: The Federal Energy Regulatory Commission granted in part and denied in part applications for rehearing, reconsideration, and clarification of its final rule implementing section 315(b) of the Natural Gas Policy Act of 1978. That section provides that upon expiration of contracts for the sale of certain categories of natural gas removed from the Commission's Natural Gas Act (NGA) jurisdiction, the seller must make a bona fide offer to the purchaser and give the purchaser an opportunity to match a third party offer before selling the gas to a third party. The Commission granted rehearing in order to: (1) Eliminate the Commission's interpretation that § 154.93 of its NGA regulations governs the price escalation clauses which may be included in a bona fide offer, (2) remove the original purchaser's right to alter the delivery terms of a third party offer, (3) eliminate the prohibition on waivers of section 315(b) rights more than one year before contract expiration, (4) provide that the requirement that bona fide offers not be made more than eighteen months before contract expiration does not apply to implied contracts, and (5) limit the record retention requirements to three years.

EFFECTIVE DATE: The final rulemaking published on March 7, 1986, in Order 95-A (51 FR 7923) is effective May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr. Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8505.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget (OMB) regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rule. On April 25, 1985, OMB approved the record retention requirements, as amended, in 18 CFR 225.3 and 277.210 and issued Control Number 1902-0098 for these sections. This control number already appears in the list of OMB control numbers in 18 CFR 389.101. Therefore the Order on Rehearing in Docket Nos. RM80-8-001 through RM80-8-005 will become effective May 21, 1986.

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11997 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM 79-14]

Natural Gas Policy Act; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: June 1, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond A. Beirne, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E. Washington, D.C. 20426, (202) 357-8500.

Order of Director, OPPR

Publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978

Issued May 23, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to §375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of June 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for June, 1986 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural Gas.

Raymond A. Beirne,

Acting Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar Year 1985]

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.398	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.982	4.022	4.045	4.068	4.091	4.116	4.141
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.519	2.525	2.532
130 percent of No. 2 fuel oil in New York City threshold	7.170	7.210	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

TABLE 1.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar Year 1986]

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$6,489	$6,497	$6,474	$6,481	$6,497	$6,483						
HCFA section 102 threshold	4,155	4,191	4,218	4,241	4,264	4,287						
HCFA section 103 threshold	2,599	2,545	2,590	2,490	2,590	2,570						
130 percent of No. 2 bid at the New York City threshold	7,370	7,930	8,040	8,250	4,990	5,990						

[FR Doc. 86-12009 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegation of Authority and Organization; Commissioner of Food and Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding new authority [relating to cardiac pacemaker device or lead registration and testing) delegated by the Acting Assistant Secretary for Health to the Commissioner of Food and Drugs.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Melissa M. Mencavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4978.

SUPPLEMENTARY INFORMATION: On February 10, 1986, the Acting Assistant Secretary for Health issued a memorandum delegating to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under section 1862(h)(1), (2)(A), and (3) of the Social Security Act (42 U.S.C. 1395y (h)(1), (2)(A), and (3)), as amended, relating to registration and testing of cardiac pacemaker devices or pacemaker leads. The authorities may be redelegated. FDA is amending § 5.10 (21 CFR 5.10) by adding new paragraph (a)(28) to incorporate this delegation.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart A—Delegations of Authority to the Commissioner of Food and Drugs

1. The authority citation for 21 CFR Part 5 is revised to read as follows and the authority citations following all the sections are removed:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq.; 21 U.S.C. 41 et seq., 61-63, 141 et seq., 301-392, 467f(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 216, 241, 242(a), 242a, 242l, 242n, 243, 262, 263, 263b through 263m, 264, 265, 300e et seq., 1395y and 1395y note, 3246b(b)(3), 4651(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1241); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. Subpart A is amended in § 5.10 by adding new paragraph (a)(28) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(28) Functions vested in the Secretary under section 1862(h) (1), (2)(A), and (3) of the Social Security Act [42 U.S.C. 1395y (h)(1), (2)(A), and (3)), as amended, which provides for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this title. The approval and issuance of regulations under that section are reserved to the Secretary, as provided in 21 CFR 5.11.

* * * * *

Dated May 21, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-11948 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification: Butamisole Hydrochloride

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp., Animal Health Division, providing for use of butamisole hydrochloride for treatment of whipworms and hookworms in dogs.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Marcia Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, is sponsor of NADA 132-533 for Styquin® (butamisole hydrochloride). The drug is an injectable anthelmintic for treating whipworms and hookworms in dogs. The application is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency had determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively

have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OF INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.234 [Amended]

2. Section 522.234 *Butamisole hydrochloride* is amended in paragraph (b) by removing "No." and inserting "Nos. 000859 and."

Dated: May 22, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-11917 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 242

[Docket No. R-86-1234; FR-1806]

Refinancing of HUD-Insured Hospital Mortgages

Correction

In FR. Doc. 85-27673 beginning on page 47726 in the issue of Wednesday, November 20, 1985, make the following correction:

§ 242.96 [Corrected]

On page 47727, in the first column, in § 242.96(a)(2), in the sixth line, "Commissioner, or " should read "Commissioner, of".

BILLING CODE 1505-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 85-091A]

Individual Participation in Marine Safety Reporting Program (MSRP); Enforcement Policy.

AGENCY: Coast Guard, DOT.

ACTION: Termination of program and final rule.

SUMMARY: On June 1, 1985, the Office of the Secretary, Department of Transportation initiated a one-year, voluntary Marine Safety Reporting Program (MSRP). As part of this program, the Coast Guard agreed not to impose a civil penalty for certain offenses if a report was filed with MSRP. Title 33, § 1.07 sets forth Coast Guard enforcement policy for participation in the Marine Safety Reporting Program (MSRP). This notice announces the termination of the one-year test and removes references to the Marine Safety Reporting Program from 33 CFR 1.07.

EFFECTIVE DATE: June 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Glass, Office of Merchant Marine Safety, (202) 426-6251, 7:30AM to 4:00PM Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Transportation initiated the one-year test which began on June 1, 1985. The Marine Safety Reporting Program was meant to supplement existing mandatory reporting requirements by providing the commercial marine industry with a means to report anonymously safety-related incidents and near mishaps involving difficulties encountered with the navigation and control of a commercial vessel. The Marine Safety Reporting Program expires on May 31, 1986. The effective date of this amendment is June 15, 1986 to allow a period of grace for processing of forms submitted late in the program. The Coast Guard will not honor the MSRP enforcement policy for forms received by the Transportation Systems Center subsequent to June 15, 1986. An evaluation of the program will be conducted and is expected to be available in a few months.

This amendment is published as a final rule because the provisions thereof concern matters relating to agency procedures and practices which are excepted under 5 U.S.C. 553 from the requirements for notice and comment. This amendment is being made effective on June 15, 1986. The document originally promulgating these sections stated that the test program would terminate on June 1, 1986. Since the test is concluded and the purpose of this final rule is only to remove those sections pertaining to the test, it has been determined that good cause exists for making this rule effective in less than 30 days.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Coast Guard, Freedom of Information, Penalties.

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 33 Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart 1.07 is revised to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 49 CFR 1.46.

§ 1.07-17 [Removed]

2. Part 1 is amended by removing § 1.07-17.

§ 1.07.25 [Amended]

3. Section 1.07.25 is amended by removing paragraph (e).

§ 1.07.65 [Amended]

4. Section 1.07.65 is amended by removing paragraph (c).

Dated: May 23, 1986.

John W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-12061 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Care for Veterans Receiving Vocational Training

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is adding two new regulatory provisions which are necessary to implement provisions of the Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543). The first regulation establishes that certain new pension recipients participating in a temporary program of vocational training authorized by 38 U.S.C. chapter 15 are eligible for hospital care, nursing home care, and medical services during the period in which they are participating in the vocational training program. The second

regulation provides that any veteran whose pension is terminated during the "program period" by reason of increased income from work or training performed or undertaken shall retain, for three years, eligibility for health care benefits as if the pension had not been terminated. The term "program period" means the period from February 1, 1985 through January 31, 1989.

EFFECTIVE DATE: These regulations are effective May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Karen O. Walters, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2143.

SUPPLEMENTARY INFORMATION: On pages 992 and 993 of the Federal Register of January 9, 1986, the proposed regulation was published for notice and comment. Interested persons were given 30 days to submit comments, suggestions or recommendations. No comments were received. The proposed regulations, without change, are hereby being set forth as final.

These regulations implement the provisions of section 201 of Pub. L. 98-543. That section first authorized creation of a temporary program of vocational training for certain new VA pension recipients. Veterans who participate in the temporary vocational training program would be eligible, during their training program, to receive health care benefits similar to those now provided to veterans receiving vocational training under chapter 31 of title 38. They could receive hospital care, nursing home care and outpatient medical services, including free basis medical or dental care if the VA is incapable of providing the required medical care economically because of geographical inaccessibility or because of the unavailability of the required services at VA facilities.

Section 201 also provides that, in certain cases, a veteran whose pension is terminated solely by reason of income from work or training shall retain, for 3 years, eligibility for hospital care, nursing home care and medical services for which the veteran would otherwise have been eligible if the pension had not been terminated. In the case of pension recipients who pursue vocational training under the chapter 15 program, the 3 year retention of health care eligibility may be granted at any time the veteran loses pension due to excessive income from work or training performed or undertaken by the veteran. If, however, the veteran did not pursue training under the temporary program, the 3 year retention of health care eligibility may be granted only if the pension was so terminated during the period February 1, 1985 through January 31, 1989. This 3 year extension may only be invoked one time. The term "terminated by reason of income from work or training" means terminated as a result of the veteran's receipt of earnings from activity performed by the veteran for remuneration or gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

These regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulations. They will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator hereby certifies that these final regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. These proposed regulations concern the provisions of medical care to veterans who are undergoing a program of vocational training, 38 U.S.C. chapter 15.

Any economic impact on small entities would be small because of the minimal part of their overall operation and income which this activity represents.

Catalog of Federal Domestic Assistance Number: 64.011

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: May 5, 1986.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 17, Medical, is amended by adding a new center heading and new §§ 17.56 and 17.56a to read as follows:

VOCATIONAL TRAINING AND HEALTH-CARE ELIGIBILITY PROTECTION FOR PENSION RECIPIENTS

§ 17.56 Medical care for veterans receiving vocational training under 38 U.S.C. chapter 15.

Hospital care, nursing home care and medical services may be provided to any veteran who is participating in a vocational training program under 38 U.S.C. chapter 15.

(a) For purposes of determining eligibility for this medical benefit, the term "participating in a vocational training program under 38 U.S.C. chapter 15" means the same as the term "participating in a rehabilitation program under 38 U.S.C. chapter 31" as defined in § 17.48(g). Eligibility for such medical care will continue only while the veteran is participating in the vocational training program.

(b) The term "hospital care and medical services" means class V dental care, priority III medical services, nursing home care and non-VA hospital care and/or fee medical/dental care if the VA is unable to provide the required medical care economically at VA or other government facilities because of geographic inaccessibility or because of the unavailability of the required services at VA facilities.

(38 U.S.C. 524, 525, 1818; Pub. L. 98-543)

§ 17.56a Protection of health-care eligibility.

Any veteran whose entitlement to VA pension is terminated by reason of income from work or training shall, subject to paragraphs (a) and (b) of this section, retain for 3 years after the termination, the eligibility for hospital care, nursing home care and medical services (not including dental) which the veteran otherwise would have had if the pension had not been terminated as a result of the veteran's receipt of earnings from activity performed for remuneration or gain by the veteran but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

(a) A veteran who participates in a vocational training program under 38 U.S.C. chapter 15 is eligible for the one-time 3 year retention of hospital care, nursing home care and medical services

benefits at any time that the veteran's pension is terminated by reason of income from the veteran's employment.

(b) A veteran who does not participate in a vocational training program under 38 U.S.C. chapter 15 is eligible for the one-time 3 year retention of hospital care and medical services benefits only if the veteran's pension is terminated by reason of income from the veteran's employment during the period February 1, 1965 through January 31, 1968.

(38 U.S.C. 524, 525, 1518; Pub. L. 98-543)

[FR Doc. 86-12077 Filed 5-28-86; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; Nonmatriculated Students

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law forbids payment of G.I Bill benefits to veterans who are not in a program of education. For several years the VA (Veterans Administration) has had rules for determining whether or not veterans are in a program of education if they are planning on taking courses at two colleges or universities sequentially, but have not matriculated at either one. The VA has found that these rules are too restrictive, and has adopted a new, more liberal rule.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 389-3082.

SUPPLEMENTARY INFORMATION: On pages 784 and 785 of the Federal Register of January 8, 1986, there was published a notice of intent to amend Part 21 to liberalize the VA's rules concerning nonmatriculated students. Interested people were given 30 days to submit comments, suggestions or objections.

The VA received two letters concerning the proposal. One was from an educational organization. One was from a service organization. Both writers approved of the proposal.

The service organization stated that it believed that one of the results of the amended regulation would be to permit students to take certain courses which, while not necessarily degree-oriented, enhance their career and employment. The VA wishes to make clear that this is not the intent of the amended regulation.

Veterans and eligible persons may receive educational assistance only when they are pursuing an approved program of education. A program of education is defined by law as any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill requirements for the attachment of a predetermined and identified educational, professional, or vocational objective. This amended regulation will not override this provision of law. In fact, the purpose of the regulation is to insure that someone who has not matriculated is pursuing a bona fide educational objective, and is not taking a random selection of courses. Accordingly, the VA has decided to make the proposal final.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that promulgation of this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to section 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this change will affect only payments made to individual benefit recipients. The regulation will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

In the proposal published on January 8, 1986, the VA stated that the information collection contained in the proposal had been referred to OMB (Office of Management and Budget) for review. After reviewing the proposal OMB has determined that the regulation is not subject to the Paperwork Reduction Act of 1980. Accordingly, OMB has not assigned a control number to this regulation.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-eduction, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 8, 1986.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR, Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.4252, paragraphs (l)(2) and (l)(3) to read as follows:

§ 21.4252 Courses precluded.

* * * * *

(l) * * *

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at the college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student. If the student is not required to matriculate during the portion of the program offered at the first college or university, the VA may approve an enrollment in a course or subject that is part of that portion of the program only when the certifications described in either paragraph (l)(2) (i) or (ii) of this section are made.

(i) The college or university granting the degree certifies concurrently with the student's enrollment in the first portion of the program, that

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;

(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;

(C) At least 80 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;

(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(ii) The college or university offering the first part of the program:

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an associate or higher degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to the VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, the VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (l)(3) (i) or (ii) of this section are made.

(i) The college or university granting the baccalaureate degree certifies that:

(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,

(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(ii) Either the 2-year college or the college or university granting the baccalaureate degree:

(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to the VA that the veteran or eligible person is enrolled in courses covered by the agreement.

(38 U.S.C. 1652)

* * * * *

[FR Doc. 86-12010 Filed 5-28-86; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Temporary Program for Trial Work Periods and Vocational Rehabilitation for Certain Veterans With Disability Ratings

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: Title I, section 111 of the Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543) establishes a 4-year pilot program under chapter 11, section 363 of title 38, United States Code to require vocational rehabilitation for certain veterans with total disability ratings due to individual unemployability and to allow these participants to have a trial work period without reduction of the individual unemployability rating. The pilot program is in effect from February 1, 1985, through January 31, 1989.

EFFECTIVE DATE: These regulations are retroactively effective on the same date as the operative date of the provision of law which they implement, February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies, (202) 389-2686.

SUPPLEMENTARY INFORMATION: This pilot program is intended to assist qualified service-disabled veterans with VA total disability ratings because of individual unemployability to become employed, either through a program of vocational rehabilitation authorized under 38 U.S.C. chapter 31 or, if the individual is ineligible for that program, through counseling, placement and post-placement services. Veterans for whom vocational rehabilitation is found feasible who already have individual unemployability ratings on February 1, 1985, may participate voluntarily, but those who acquire such ratings during the trial period are required to participate, subject to certain sanctions if they fail to do so. The major features of 38 U.S.C. 363 are:

(1) No total disability rating based on individual unemployability may be reduced during the four-year program period for the reason that the veteran has achieved employability, unless the veteran completes twelve consecutive months of substantially gainful employment; and

(2) All veterans entitled to total disability compensation based on individual unemployability ratings made *on and after February 1, 1985*, are required to undergo an evaluation if evaluation of rehabilitation potential or achievement of a vocational goal is reasonably feasible. If evaluation of rehabilitation potential is reasonably feasible and such a veteran fails to undergo the required evaluation, his or her individual unemployability rating will be reduced to the disability rating otherwise applicable. If vocational rehabilitation is reasonably feasible and other conditions of eligibility for and entitlement to vocational rehabilitation under 38 U.S.C. chapter 31 are met, a vocational rehabilitation program is developed. Failure to pursue that vocational rehabilitation program may result in a reevaluation of the veteran's continued entitlement to a total disability compensation rating by virtue of his or her individual unemployability. If employment is found to be feasible, but the individual is not eligible or entitled to vocational rehabilitation under chapter 31, he or she will nonetheless be provided employment assistance under 38 U.S.C. 1504(a)(5), counseling as provided in 38 U.S.C. 1504(a)(2), and assistance in securing rehabilitation services under other programs.

(3) Veterans determined to be totally disabled based on individual unemployability ratings made *prior to February 1, 1985*, may elect to receive both the evaluation and the counseling and employment assistance, but are not subject to rating reductions for failure to do so.

A report on the results of the program must be submitted to Congress by April 15, 1988.

The proposed regulations were published in the Federal Register of October 22, 1985 at pages 42727 through 42729. The Veterans Administration received two comments on the proposed regulations during the comment period. Our action on these comments is described in the following paragraphs.

One comment from an organization lauded the proposed regulations, stating that they "would go a long way in removing the disincentive to returning to work that has long existed in some individuals rated totally disabled by reason of individual unemployability." The commenter then suggested that the provisions barring a reduction in the veteran's disability rating unless he or she engaged in substantially gainful employment for at least 12 consecutive months, be extended to other severely disabled veterans seeking to return to

employment, including those with disability ratings of less than 100 percent.

The regulations implement provisions of Pub. L. 99-543 which provide eligible veterans with vocational rehabilitation and employment services. Such veterans' total disability ratings are protected during the trial work period. This protection also applies to any service disabled veteran receiving total disability compensation based on individual unemployability who engages in a substantially gainful occupation during the four year period beginning on February 1, 1985, whether or not the veteran is receiving vocational rehabilitation or employment services under this temporary program. On December 26, 1985 (50 FR 52774 & 52775) a final amendment to § 3.343(c) was published in the Federal Register to implement that provision.

For other severely disabled veterans, i.e., those whose disability ratings are not based on unemployability, the fact of employment is generally not a central issue in determining the proper schedular evaluation to be assigned. While social and industrial adaptability are key factors in the evaluation of mental disorders, other conditions are evaluated on the basis of examination findings and the average loss of earning capacity that may be expected to result from those findings without regard to actual employment.

When examination findings show improved symptomatology warranting a reduction in evaluation, the fact that a veteran has been gainfully employed for a reasonable period of time may be viewed as evidence that the noted improvement represents sustained improvement. However, in other than mental disorders, the fact of employment is not sufficient, in and of itself, to warrant reduction in a schedular evaluation.

This is clearly an area for the exercise of sound rating judgment and the provisions of 38 CFR 3.343 and 3.344 are more than adequate safeguards against inappropriate reductions. Such judgment should not be preempted by institution of specific trial work periods unless mandated by legislation.

The second comment was received from an individual concerned with the wording of the phrase "receives an IU rating" in § 21.6509(c). The writer believes that the wording of this paragraph should more clearly identify the date the VA determines that the veteran is entitled to a disability rating of 100 percent based upon individual unemployability as the date the veteran is considered to have received the rating. We agree and have modified the wording in this paragraph accordingly.

In addition to the specific change made in response to comments, a minor editorial change was made in § 21.6517. Neither of the changes made is of such a nature as to significantly amend the substance of the original proposals and republication of the final regulations for comment is not necessary. Therefore, the regulations are hereby adopted as final.

These regulations do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The VA has made these regulations retroactively effective February 1, 1985, because they either are interpretive rules, which construe the meaning of 38 U.S.C. 363, or are general statements of policy. Moreover, the VA finds that good cause exists for making these regulations, in conformance with the provisions of law they implement, retroactively effective on February 1, 1985. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Administrator certifies that these final rules will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulation changes concern the rights and responsibilities of individual VA beneficiaries and essentially restate 38 U.S.C. 363. Thus, no regulatory burdens are imposed on small entities by these regulations.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 6, 1986.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, *Vocational Rehabilitation and Education,* is amended by adding new Subparts H and I. Subpart H is reserved at this time. Sections 21.6501 to 21.6525 (Subpart I) are set forth below:

PART 21—[AMENDED]

Subpart I—Temporary Program of Vocational Training and Rehabilitation

Sec.

21.6501 Overview.
21.6503 Definitions.
21.6505 Participation in the temporary program.
21.6507 Special benefits for qualified veterans under test program.
21.6509 Notice to qualified veterans.
21.6511 Scheduling an evaluation for a qualified veteran.
21.6513 Qualified veteran fails to participate in an evaluation or reevaluation.
21.6515 Formulation of rehabilitation plan.
21.6517 Failure to pursue rehabilitation plan.
21.6519 Eligibility of qualified veterans for employment and counseling services.
21.6521 Employment of qualified veterans.
21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 1504(a) (2) and (5).
21.6525 Election of benefits by qualified veteran who receives an IU rating during the program period.

Authority: Pub. L. 99-543, sec. 111; 38 U.S.C. 363.

Subpart I—Temporary Program of Vocational Training and Rehabilitation

§ 21.6501 Overview.

(a) *Purpose.* The temporary program for trial work periods and vocational rehabilitation is intended to test the extent to which a veteran, who has been awarded a VA compensation rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of service-connected disability, may benefit from vocational rehabilitation services which may be authorized under 33 U.S.C. ch. 31, and 38 U.S.C. 363. See §§ 3.340 and 3.341 of this title. (38 U.S.C. 363)

(b) *Chapter 31 evaluations required.* All veterans participating in this temporary program are to be evaluated to determine whether:

(1) They are eligible for and entitled to receive assistance under ch. 31; and

(2) Achievement of a vocational goal is reasonably feasible.

(38 U.S.C. 363)

(c) *Applicability of ch. 31 provisions.* The provisions of §§ 21.1 through 21.420, generally applicable to veterans eligible for benefits under ch. 31, apply except

as added to or modified by the provisions of the following sections. Participants not found eligible for ch. 31 benefits may nevertheless receive counseling services under 38 U.S.C. 1504(a)(2) and placement and postplacement services under 38 U.S.C. 1504(a)(5). (38 U.S.C. 363)

§ 21.6503 Definitions.

(a) *Program period.* The term "program period" means the period beginning on February 1, 1985, and ending January 31, 1988. (38 U.S.C. 363(a)(2)(B))

(b) *Qualified veteran.* The term "qualified veteran" means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total, but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities. Such a rating is referred to as an IU (individual unemployability) rating. See §§ 3.340, 3.341, and 4.16 of this title. (38 U.S.C. 363(a)(2)(A))

(c) *Receives an IU rating.* The phrase "receives an IU rating" refers to the date of the rating decision authorizing total disability compensation based upon individual unemployability (38 U.S.C. 363(a)(2)(A))

§ 21.6505 Participation in the temporary program.

(a) *General.* Participation in this temporary program of trial work periods and vocational rehabilitation is limited to qualified veterans. (38 U.S.C. 363(a)(2)(A))

(b) *Qualified veterans for whom an evaluation and pursuit of a vocational rehabilitation program is required.*

(1) Each qualified veteran who receives an IU rating during the program period, shall be provided an evaluation of rehabilitation potential to determine whether achievement of a vocational goal under ch. 31 is reasonably feasible.

(i) The VR&C (Vocational Rehabilitation and Counseling) Division will schedule the veteran for an evaluation, unless it is determined that his or her participation in an evaluation is not reasonably feasible;

(ii) A veteran for whom an evaluation is scheduled must appear for and cooperate in the evaluation unless unable to do so for reasons beyond his or her control.

(2) If, following the evaluation, achievement of a vocational goal is found to be reasonably feasible and the veteran is eligible for ch. 31 benefits, the veteran is required to pursue a vocational rehabilitation program. If the veteran fails to pursue or continue to pursue a vocational rehabilitation program, he or she is subject to the provisions of § 21.6517. (38 U.S.C. 363(c))

(c) *Qualified veterans for whom evaluation and pursuit of a vocational rehabilitation program is optional.* A qualified veteran who had an IU rating as of January 31, 1985, may, whether or not already participating in the ch. 31 program, elect to participate in this test program, if otherwise eligible, but is not required to do so. (38 U.S.C. 363 note)

(d) *IU rating awarded while a ch. 31 participant.* A veteran already participating in a ch. 31 program who receives an IU rating during the program period shall be subject to all provisions for required participation in this program, as provided in paragraph (b) of this section. (38 U.S.C. 363 note)

§ 21.6507 Special benefits for qualified veterans under test program.

(a) *Protection of IU rating under 38 CFR 3.343(c)(2).* The total disability rating of any qualified veteran who begins to engage in a substantially gainful occupation during the program period is protected from reduction by the VA on the basis of the veteran's having secured and followed a substantially gainful occupation under the provisions of § 3.343(c)(2) of this title. (38 U.S.C. 363(a))

(b) *Counseling and employment services for qualified veterans.* During the program period, the VA will make the counseling services described in 38 U.S.C. 1504(a)(2), and the placement and postplacement services described in 38 U.S.C. 1504(a)(5), available to each qualified veteran for whom achievement of a vocational goal is reasonably feasible. These services will be made available regardless of the veteran's entitlement to or desire to participate in a vocational rehabilitation program under ch. 31. See § 21.6519. (38 U.S.C. 363(b))

§ 21.6509 Notice to qualified veterans.

(a) *Notice to qualified veterans awarded an IU rating during the program period.* At the time notice is provided to a qualified veteran of an award of an IU rating, the VA shall provide the veteran with an additional statement. A similarly worded statement shall also be sent to veterans awarded an IU rating during the program period who are already participating in a program under ch. 31. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 363;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing, a vocational rehabilitation program under ch. 31; and

(3) A summary description of the scope of services and assistance available under that chapter. (38 U.S.C. 363(c)(1)(A))

(b) *Notice sent to qualified veterans awarded an IU rating on or before January 31, 1985.* By April 1, 1985, the VA shall provide the information contained in 38 U.S.C. 363(b), and described in paragraphs (a) (2) and (3) of this section to veterans awarded an IU rating on or before January 31, 1985. However, such notice need not be provided to a veteran who has an IU rating which is protected under § 3.952 of this title. (38 U.S.C. 363 note)

§ 21.6511 Scheduling an evaluation for a qualified veteran.

(a) *Evaluation.* The term "evaluation" hereinafter shall be understood to mean the same evaluation accorded in an "initial evaluation" and an "extended evaluation" as those terms are described in § 21.50 and § 21.57. (38 U.S.C. 363(c))

(b) *Timely scheduling and notice of evaluation.* (1) An evaluation will be arranged as promptly as practicable for each qualified veteran required to participate and for any other qualified veteran who elects to participate; and

(2) The veteran shall be provided reasonable notice of the date and time for which the evaluation is initially scheduled. (38 U.S.C. 363(c))

(c) *Evaluations for ch. 31 participants.* A veteran who is a ch. 31 participant at the time he or she becomes a participant in the test program shall be provided a reevaluation limited to:

(1) Affirming the continuing suitability of his or her ch. 31 rehabilitation program; and

(2) Identifying the assistance which may be furnished under § 21.6507. (38 U.S.C. 363 (b), (c))

(d) *Responsible staff member.* The evaluation or reevaluation will be provided by a counseling psychologist in the VR&C (Vocational Rehabilitation and Counseling) Divison. (38 U.S.C. 363(c)(1)(B))

§ 21.6513 Qualified veteran fails to participate in an evaluation or reevaluation.

(a) *Qualified veterans affected by this section.* The provisions of this section are only applicable to qualified veterans who receive an IU rating during the program period. Each of these veterans is required to participate in an evaluation (or reevaluation, if already in a ch. 31 program) and must cooperate to the extent necessary for the counseling

psychologist to accomplish the evaluation, unless the veteran is unable to do so for reasons beyond his or her control. The veteran's responsibility for satisfactory conduct and cooperation in the evaluation shall be considered in the same manner as for ch. 31 applicants. See § 21.50(e) and § 21.382. (38 U.S.C. 363(c)(2))

(b) *Special considerations.* The counseling psychologist shall make every reasonable effort to avoid or minimize nonparticipation or noncooperation in the evaluation. (38 U.S.C. 363(c), (2) and (3))

(c) *Nonparticipation and noncooperation.* (1) If a qualified veteran who is required to participate in this test program fails to participate or cooperate in the evaluation, the VA shall initially take the actions specified for ch. 31 participants under § 21.184, § 21.188, and § 21.364, including discontinuance of the veteran's case, if necessary. (38 U.S.C. 363(a)(2))

(2) The VR&C Division shall inform the Adjudication Division of the discontinuance of the evaluation for a veteran required to participate, if the failure of the qualified veteran to participate or cooperate in carrying out the evaluation is for reasons within his or her control. Upon receipt of such information, the Adjudication Division will take the action required under § 3.341(c) of this title to reduce the IU award. (38 U.S.C. 363(c)(2))

(d) *Followup for veterans unable to participate in an initial evaluation or vocational rehabilitation program.* For each qualified veteran described in paragraph (a) of this section, who does not participate in an evaluation or pursue the vocational rehabilitation program for reasons beyond his or her control, the case shall be reviewed for followup action by the VR&C staff as provided in §§ 21.197(c)(4) and 21.198(d). (38 U.S.C. 363(c)(2))

§ 21.6515 Formulation of rehabilitation plan.

(a) *Formulation of plan.* Following an evaluation, the counseling psychologist will formulate an IWRP (individualized written rehabilitation plan) or an IEAP (individualized employment assistance plan) for each participating qualified veteran for whom achievement of a vocational goal is reasonably feasible. These plans shall be prepared in accordance with § 21.84 (IWRP) or § 21.88 (IEAP). (38 U.S.C. 363(c)).

(b) *Existing plan.* If the veteran already has undertaken a rehabilitation program under ch. 31, a new plan shall not be required unless circumstances indicate that the existing plan should be modified or replaced. (38 U.S.C. 363(c))

§ 21.6517 Failure to pursue rehabilitation plan.

(a) *Failure to pursue required program.* If the case manager determines that a qualified veteran required to participate has failed, for reasons other than those beyond the veteran's control, to pursue or continue to pursue the plan developed under § 21.6515, the VA shall provide the veteran with a notice of the consequences of his or her action. The notice shall inform the veteran, that if he or she fails to initiate or resume pursuit within 60 days (or a period of up to 120 days if circumstances warrant) after the VA provides the notice, the results of the evaluation will be considered by the VA in reviewing the veterans' continued eligibility for a rating of total disability based on inability to secure or follow a substantially gainful occupation. (38 U.S.C. 363(c)(3)(B))

(b) *Referral to Adjudication Division—pursuit required.* If the veteran fails to initiate or resume pursuit of the planned rehabilitation program within the time period specified by the notice described in paragraph (a) of this section, the VR&C Division will forward copies of the notice and the results of the evaluation of the Adjudication Division for appropriate rating consideration. (38 U.S.C. 363(c)(3)(B))

(c) *Pursuit not required.* If the qualified veteran is not required to participate in the test program, failure to pursue or continue to pursue the plan shall result only in action by the VA under ch. 31 procedures provided for such situations. See §§ 21.190, 21.194, 21.362, 21.364, (38 U.S.C. 363(b)(3))

§ 21.6519 Eligibility of qualified veterans for employment and counseling services.

(a) *General.* A qualified veteran for whom vocational rehabilitation and achievement of a vocational goal are reasonably feasible may be provided the employment and counseling services to which he or she may be entitled under ch. 31. If the qualified veteran is not eligible for such assistance under ch. 31, he or she may be provided, nevertheless, the counseling, placement and postplacement services provided under 38 U.S.C. 1504(a)(2) and (5). The specific services which may be authorized are discussed in §§ 21.100, 21.252 and 21.254(a). (38 U.S.C. 363(b))

(b) *Services under other VA and non-VA programs.* Veterans being provided counseling, placement and postplacement services under §§ 21.100, 21.252, and 21.254(a) will also be aided in identifying services of other VA and non-VA programs which may be of assistance in securing employment. All elements of a program of these services shall be incorporated in the IEAP. (38 U.S.C. 363(b))

(c) *Veteran elects counseling, placement and postplacement services.* If a qualified veteran elects not to undertake the IWRP, whether or not required to do so, and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 1504(a)(2) and (5), he or she may be provided those services as a part of the test program even though action has been taken under either paragraph (b) of (c) § 21.6517. (38 U.S.C. 363(b))

(d) *Duration of services under 38 U.S.C. 1504(a) (2) and (5).* The services provided under 38 U.S.C. 1504(a)(2) and (5), are limited to an 18-month period of employment assistance as described in § 21.73. (38 U.S.C. 363(b))

§ 21.6521 Employment of qualified veterans.

(a) *Provisions of the IEAP (Individualized Employment Assistance Plan).* Each IEAP of a qualified veteran shall require that the:

(1) Case manager maintain close contact with qualified veterans who become employed to help assure adjustment to employment;

(2) Veteran discuss any plan to leave employment during the trial work period with the case manager. (38 U.S.C. 363(c))

(b) *Coordination with the Adjudication Division.* The VR&C Division will inform the Adjudication Division in writing upon employment of the participating qualified veteran during a program of either vocational rehabilitation services or counseling and employment services and when such employment has continued for 12 consecutive months. See § 3.343(c)(2) of this title. (38 U.S.C. 363(a))

§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 1504(a) (2) and (5).

(a) *Dates of entry.* A qualified veteran, not eligible to receive ch. 31 benefits, may not enter or pursue a program of counseling and employment services under 38 U.S.C. 1504(a) (2) and (5), before February 1, 1985, or later than January 31, 1989. (38 U.S.C. 363)

(b) *Reentry.* The provisions of paragraph (a) of this section are also applicable to veterans being provided additional counseling and employment services following a redetermination of eligibility and entitlement to such services. (38 U.S.C. 363)

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§ 21.6525 Election of benefits by a qualified veteran who receives an RU rating during the program period.

(a) *General.* A qualified veteran required to participate in the test program must participate in a rehabilitation program under ch. 31, if eligible, regardless of eligibility and entitlement to education benefits under other VA programs, or risk adverse consequences under §§ 21.6513(c) and 21.6517 (a) and (b). (38 U.S.C. 363(c))

(b) *Chapter 34 eligibility.* A qualified veteran required to participate, who is also eligible for assistance under ch. 34, may elect, as part of his or her ch. 31 vocational rehabilitation program, to receive subsistence payments at the ch. 34 rate under § 21.264. The counseling psychologist and the veteran will review the assistance and services available under these options so the veteran can make an informed decision. (38 U.S.C. 363(c))

(c) *Other VA programs.* The counseling psychologist shall inform a qualified veteran required to participate in the test program of any adverse consequences which may result under §§ 21.6513(c) and 21.6517 (a) and (b), if he or she instead elects benefits under another VA program. (38 U.S.C. 363(c))

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6715]

National Flood Insurance Administration; Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the third column, as of that date, flood insurance is no longer available in the community. However , those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, floodpains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

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§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Boothbay, town of, Lincoln County	230212B	Sept. 8, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Feb. 7, 1975, Mar. 7, 1980, and June 3, 1986	June 3, 1986.
Massachusetts:				
Nantucket, town of, Nantucket County	250230C	Jan. 21, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Sept. 13, 1974, Dec. 3, 1976, Oct. 1, 1983, and June 3, 1986.	Do.
Medford, city of, Middlesex County	250208B	May 20, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 28, 1974, Sept. 24, 1976, and June 3, 1986	Do.
Everett, city of, Middlesex County	250182B	June 30, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 7, 1974, July 30, 1976, and June 3, 1986	Do.
Hingham, town of, Plymouth County	250288B	June 3, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Sept. 6, 1974, Oct. 15, 1976, and June 3, 1986	Do.
New Hampshire: North Hampton, town of, Rockingham County.	330238B	Nov. 17, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Feb. 27, 1979 and June 3, 1986	Do.
Region IV				
New Jersey: Fairfield, township of, Essex County	340196C	June 23, 1972, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 15, 1973, July 1, 1974, July 16, 1976, Mar. 1, 1984, and June 3, 1986.	Do.
Region III				
Pennsylvania: Washington, township of, Franklin County.	421850C	July 1, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Sept. 6, 1974, July 2, 1976, Mar. 11, 1977, and June 3, 1986.	Do.
Region V				
Illinois:				
Galatia, village of, Saline County	170587B	Aug. 25, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 1, 1974, Jan. 30, 1976, June 3, 1986	Do.
Randolph County, unincorporated areas	170875B	Apr. 1, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Dec. 20, 1974, July 15, 1977, and June 3, 1986	Do.
Ohio: Chillicothe, city of, Ross County	390492D	May 6, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 25, 1974, May 28, 1976, Aug. 31, 1978, Mar. 17, 1984, and June 3, 1986.	Do.
Region VI				
Texas:				
Corinth, Town of, Denton County	481145B	Mar. 5, 1975, Emerg.; May 15, 1979, Reg.; June 3, 1986, Susp.	July 30, 1976, May 15, 1979, and June 3, 1986	Do.
Westworth Village, village of, Tarrant County	480616B	Jan. 24, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 8, 1974, June 25, 1976, and June 3, 1986	Do.
Kansas: Sedgwick County, unincorporated areas	200321A	July 17, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Aug. 2, 1974, and June 3, 1986	Do.
Region VIII				
Montana: Red Lodge, city of, Carbon County	300007	June 30, 1975, Emerg.; May 19, 1981, Reg.; June 3, 1986, Susp.	May 19, 1981, and June 3, 1986	Do.
Region IX				
Arizona: Paradise Valley, town of, Maricopa County.	040049C	Sept. 15, 1972, Emerg.; May 1, 1980, Reg.; June 3, 1986, Susp.	Dec. 7, 1973, May 21, 1976, May 1, 1980, and June 3, 1986.	Do.
California:				
Point Arena, city of, Mendocino County	060188C	June 28, 1976, Emerg.; Aug. 3, 1984, Reg.; June 3, 1986, Susp.	Oct. 18, 1974, Dec. 26, 1975, Aug. 3, 1984, and June 3, 1986.	Do.
Mendocino County, unincorporated areas	060183C	Dec. 17, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Jan. 3, 1974, Apr. 25, 1978, June 1, 1983, and June 3, 1986.	Do.
Capitola, city of, Santa Cruz County	060354C	July 2, 1975, Emerg.; Aug. 15, 1984, Reg.; June 3, 1986, Susp.	May 17, 1974, Mar. 19, 1976, Aug. 15, 1984, and June 3, 1986.	Do.
Half Moon Bay, city of, San Mateo County	060119A	July 17, 1975, Emerg.; Aug. 8, 1979, Reg.; June 3, 1986, Susp.	June 3, 1986	June 3, 1987.
Region X				
Oregon: Oakridge, city of, Lane County	410126B	Aug. 28, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Nov. 12, 1976, May 10, 1974, and June 3, 1986	June 3, 1986.
Region VIII—Minimal Conversions				
Montana:				
Chester, town of, Liberty County	300041	May 30, 1975, Emerg.; June 1, 1986, Reg.; June 1, 1986, Susp.	May 10, 1974, Dec. 5, 1975, June 1, 1986	June 1, 1986.
Conrad, city of, Pondera County	300057	Feb. 10, 1975, Emerg.; June 1, 1986, Reg.; June 1, 1986, Susp.	June 7, 1974, Dec. 5, 1975, and June 1, 1986	Do.
Vermont:				
Fairfield, town of, Franklin County	5000538	Dec. 29, 1975, Emerg.; Sept. 27, 1985, Reg.; June 3, 1986, Susp.	Jan. 10, 1975, Oct. 1, 1976, and Sept. 27, 1985	June 3, 1986.
Orwell, town of, Addison County	5001688	July 2, 1975, Emerg.; Sept. 18, 1985, Reg.; June 3, 1986, Susp.	Nov. 15, 1974, Sept 3, 1975, and Sept. 18, 1985	Do.
Woodford, town of, Bennington County	500025A	Nov. 13, 1975, Emerg.; Sept. 18, 1985, Reg.; June 3, 1986, Susp.	Nov. 15, 1974 and Sept. 18, 1985	Do.
Connecticut: Colebrook, town of, Litchfield County	0901808	May 3, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 20, 1978 and June 3, 1986	Do.
Vermont: Guilford, town of, Windham County	5001308	Sept. 4, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 18, 1974, Dec. 10, 1976, and June 3, 1986	Do.
Region II				
New York:				
Otisco, town of, Onodaga County	3600698	June 1, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 31, 1974, July 23, 1976, and June 3, 1986	Do.
Wells, town of, Hamilton County	3601118A	Mar. 15, 1982, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Nov. 29, 1974 and June 3, 1986	Do.
Region III				
Maryland: Church Hill, town of, Queen Annes County	2400678	Aug. 20, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Aug. 18, 1974, Dec. 19, 1975, and June 3, 1986	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Alabama: Mobile, town of, Jefferson County	010084B	Mar. 11, 1980, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Oct. 8, 1976, Dec. 29, 1978, and June 3, 1986	Do.
Pagland, town of St. Clair County	010190D	June 26, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 24, 1974, Jan. 9, 1976, and June 3, 1986	Do.
Florida: Monticello, city of Jefferson County	185065A	Apr. 9, 1981, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 23, 1976, June 3, 1986	Do.
Worthington Springs, town of, Union County	120284B	May 29, 1980, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Oct. 13, 1986 and June 3, 1986	Do.
Georgia: Arlington, City of, Calhoun & Early Counties	130028A	Nov. 3, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Feb. 21; 1975, and June 3, 1986	Do.
Ivey, town of Wilkinson County	1804238	Aug. 6, 1979, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Dec. 16, 1977, and June 3, 1986	Do.
Kentucky: Jenkins, city of, Letcher County	2101388	July 7, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 7, 1974, July 23, 1976, and June 3, 1986	Do.
Spencer County, unincorporated areas	210211B	Aug. 8, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Oct. 21, 1977, and Juen 3, 1986	Do.
Mississippi: Goodman, town of, Holmes County	2800758	May 22, 1975, Emerj.; June 3, 1986, Reg., June 3, 1986, Susp.	June 7, 1974, Jan. 16, 1976, and June 3, 1986	Do.
North Carolina: Lake Waccamaw, town of, Columbus County	3780668	July 2, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Dec. 26, 1973, May 14, 1976, and June 3, 1986	Do.
Walnut Cove, town of, Stokes County	3702248	June 13, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Feb. 6, 1974, May 21, 1976, and June 3, 1986	Do.
South Carolina: Mullins, city of, Marion County	4501438	Aug. 4, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	June 28, 1974, Apr. 2, 1976, and June 3, 1986	Do.
Summerton, town of, Clarendon County	4500548	Jan. 13, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	May 24, 1974, July 25, 1975, and June 3, 1986	Do.
Ulmer, town of, Allendale County	4500128	Aug. 19, 1976, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Aug. 16, 1974, June 11, 1976, Apr. 25, 1980, and June 3, 1986.	
Tennessee: Decatur, town of, Meigs County	470134E	Mar. 27, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	June 14, 1974, Mar. 11, 1977, Jan. 13, 1978, June 30, 1978, Feb 22, 1980, and June 3, 1986.	Do.
Maynardville, city of, Union County	4702108	May 29, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986 Susp.	May 17, 1974, Sept. 3, 1976, and June 3, 1986	Do.
Philadelphia, city of, Loudon County	4702768	February 18, 1975; Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 8, 1974, Sept. 17, 1976, and June 3, 1986	Do.
Region V				
Michigan: Niles, township of, Berrien County	2600418	Sept. 8, 1974, Emerg; June 3, 1986, Reg.; June 3, 1986, Susp.	June 21, 1974, June 18, 1976, June 3, 1986	Do.
Minnesota: Chelsea, city of, Todd County	2704768	Apr. 30, 1974, Emerg; June 3, 1986, Reg.; June 3, 1986, Susp.	May 3, 1974, July 30, 1976, and June 3, 1986	Do.
Nobles County, unincorporated areas	2700868	Sept. 19, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 25, 1976, and June 3, 1986	Do.
Ohio: Jacksonville, village of, Athens County	3900198	Mar. 21, 1977, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 17, 1974, Apr. 16, 1976, and June 3, 1986	Do.
Sycamore, village of, Wyandot County	3602918	Apr. 2, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 17, 1974, Apr. 9, 1976, and June 3, 1986	Do.
Wisconsin: Chetek, city of, Barron County	5500128	Nov. 8, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Dec. 7, 1973, May 14, 1976, and June 3, 1986	Do.
Region VII				
Kansas: Lyndon, city of, Osage County	200251B	July 15, 1975, Emerg., June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 1, 1974, Nov. 14, 1975, and June 3, 1986	Do.
Nebraska: Bristow, village of, Boyd County	3100128	Jan. 13, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Jan. 9, 1975, Nov. 21, 1975, and June 3, 1986	Do.
Valparaiso, village of, Saunders County	3102038	Sept. 16, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Nov. 8, 1974, Mar. 10, 1976, and June 3, 1986	Do.
Region X				
Idaho: Bellie County, unincorporated areas	160033A	May 17, 1994, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 3, 1986	June 3, 1987.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Julius W. Becton, Jr.,
Director.
[FR Doc. 86-11949 Filed 5-28-86; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2 and 4

[CGD 85-015]

Vessel Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the shipping regulations by adding requirements to give the Coast Guard prior notification of vessel inspections and to give immediate notification to the Coast Guard if there is reason to believe a vessel is in distress. These regulations apply to individuals in charge of a vessel including vessel owners, charterers, operators, agents and

masters. These regulations implement the reporting requirements of the Maritime Safety Act of 1984. Their purpose is to enhance maritime safety by insuring vessels will be reinspected for certification and also by increasing the likelihood that timely assistance will be provided to vessels in distress.

EFFECTIVE DATE: These rules become effective on May 29, 1986.

ADDRESSES: The Final Evaluation and materials referenced in these final rules are available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council, Commandant (G—CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202–426–1477).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jeffrey G. Lantz, Project Officer, (202) 426–4434.

SUPPLEMENTARY INFORMATION: On October 19, 1984, Congress enacted the Maritime Safety Act of 1984 (Pub. L. 98–498, Title II, Subtitle A). The purpose of the Act is to promote maritime safety through various means, one of which is by establishing certain vessel reporting requirements. These requirements are embodied in sections 211(a) and 212 of the Act and entered into force on April 17, 1985. Section 211(a) requires prior notification of vessel inspections to be given to the Coast Guard and section 212 requires notification to be given to the Coast Guard if there is reason to believe a vessel in is distress. These two sections do not specify the official or office within the Coast Guard to receive the notification. These regulations specify how and where to provide notification.

Notice of Proposed Rulemaking

Since these regulations merely clarify new statutory reporting requirements by delineating the proper recipient of the required notifications, notice and opportunity for comment has been determined to be impracticable and unnecessary. Therefore, under the provisions of 5 U.S.C. 553 these amendments are being issued as a final rule without publication of a notice of proposed rulemaking. Since the statute was effective April 17, 1985, good cause exists for making these rules effective upon publication.

Drafting Information

The principal drafters of this document are LCDR Jeffrey G. Lantz, Office of Merchant Marine Safety and LCDR Ronald C. Zabel, Office of Chief Counsel.

Discussion of Changes

1. Section 211(a) of the Maritime Safety Act of 1984 amends 46 U.S.C. 3309 by adding a new paragraph, 3309(c). Under this paragraph, the owner, charterer, managing operator, agent, master, or individual in charge of a vessel, certificated by the Coast Guard, is required to submit a notice to the Coast Guard, stating if the vessel will be required to be reinspected for certification or if the vessel will be operated so as not to require a Certificate of Inspection (COI). This notice need not contain the specifics necessary to schedule the inspection. However, it must be in writing and submitted at least 30 days but not more than 60 days prior to the expiration of the vessel's current COI. The purpose for this requirement is to insure that the ship owner and the Coast Guard are both aware that a vessel is due for inspection and also increase communication between the vessel owner and the Coast Guard to aid both parties in working out the logistics for the inspection. Advance communication with the Coast Guard is especially useful for vessels which primarily operate overseas and as such, have to make arrangements to have their inspections done in a foreign port. This requirement will reduce the occurrences of COI's lapsing because arrangements were not made for the inspection to be done in time.

The purpose of this requirement is best served if the notice is sent to the Coast Guard Marine Safety or Marine Inspection Office that will be doing the inspection. This, however, may not always be possible. Certain types of vessels are operated such that a determination cannot be made where it will be inspected 30 to 60 days prior to the expiration of the COI. In these instances, the best office to receive the notice is the Marine Safety or Marine Inspection Office that last certificated the vessel. This office will have the records of the last inspection for certification and can communicate any information concerning the vessel's upcoming inspection through the Marine Safety Information System. The regulations offer this choice to Coast Guard inspection offices to the submitter of the report.

Regulations presently require an Application for Inspection to be submitted to the Coast Guard prior to a vessel being reinspected for certification. Under section 211(a) of the Act, the Application for Inspection meets the notification requirement for a vessel requiring reinspection for certification. Therefore, an owner who knows where the vessel will be inspected 30 days prior to the inspection will be able to utilize the Application for Inspection as this required notice.

Section 211(a), and consequently 46 U.S.C. 3309(c), is general and applies to all vessels certificated by the Coast Guard under the authority of 46 U.S.C. 3309. Accordingly, 46 CFR Part 2 is being amended to incorporate this reporting requirement rather than including it separately in the vessel specific subchapters of 46 CFR Chapter I.

2. Section 212 of the Maritime Safety Act of 1984 adds three complementary vessel reporting requirements to the law and places them in a new section, 46 U.S.C. 2306. First, under 2306(b), a master of a vessel, that is required to report to the United States Flag Merchant Vessel Location Filing System (USMER) under authority of 46 App. U.S.C. 1122a, is required to report to the vessel's owner, charterer, managing operator or agent at least once every 48 hours. Second, under 46 U.S.C. 2306(a)(2) the owner, charterer, managing operator or agent of a vessel required to report to USMER, is required to immediately notify the Coast Guard if 48 hours has passed since last receiving communication from the vessel. Third, under 2306(a)(1) the same notification requirements apply to the owner, charterer, managing operator, or agent of a vessel of the United States who has reason to believe the vessel may be lost or imperiled. Such reasons include, but are not limited to, lack of communication with or nonappearance of the vessel. 46 U.S.C. 2306 (a)(3) further requires that the notification required by 46 U.S.C. 2306(a)(1) and (a)(2) must include the name and identification number of the vessel, names of the individuals on board and other information the Coast Guard may request. Examples of information that may be requested by the Coast Guard include such items as the last known locationof the vessel, intended operations or destination of the vessel, information on the vessel's communication capability and any other information that may be helpful should a search have to be mounted. In addition, the statute requires written confirmation of the notification to be submitted to the Coast Guard within 24 hours.

These reporting requirements are intended to increase the likelihood of timely assistance being available to vessels in distress, especially those that cannot communicate their distress to the vessel's owner or others in a position to help. For vessels under 46 U.S.C. 2306(a)(2) this is best accomplished if the notification is received by the Coast

Guard rescue coordination center (RCC) having jurisdiction over the area the vessel is operating in. Because these vessels are engaged in foreign commerce, an RCC is best equipped to determine if the vessel is in need of assistance and, if so, to make arrangements for assistance to be provided. Additionally, these vessels are generally operated by large companies that have the wherewithal to know which district RCC is appropriate to send the report to.

The notification required by 46 U.S.C. 2306(a)(1) applies more broadly and encompasses all vessels that are documented or numbered under the laws of the United States. This includes all commercial vessels, small and large, as well as practically all pleasure vessels. To require that this notification be sent to an RCC may be burdensome to the owner and operators of small vessels because they may not know where the location of the RCC with jurisdiction. An example is where the vessel involved is a type that operates in one locale, such as a small passenger vessel. In this case it would be more appropriate to contact the local Coast Guard search and rescue authority instead of the RCC, which could be located hundreds of miles away. Therefore, for those vessels reporting under 46 U.S.C. 2306(a)(1), an option is provided. The notification may be given to either the cognizant Coast Guard RCC or the nearest Coast Guard search and rescue authority.

The reporting arrangement in 46 U.S.C. 2306 apply very broadly. The vessels required to report under 46 U.S.C. 2306(a)(2) would almost certainly be commercial vessels regulated under Title 46 Code of Federal Regulations. 46 U.S.C. 2306(a)(1), however, applies to all vessels regulated under Title 46 CFR and 33 CFR Subchapter S. The purpose of these regulations is to clarify the point within the Coast Guard where the notification required by 46 U.S.C. 2306 is to be submitted. Since these regulations apply to individuals not on board the vessel reported on, the Coast Guard has decided that they have much greater applicability to commercial operations than vessels being operated for pleasure where the owner is typically on board. Therefore, the Coast Guard has decided to place the clarifying regulations in 46 CFR Part 4. The heading of part 4 and the section describing the scope of the part is being modified to more accurately reflect the contents of the part.

Final Evaluation

These final rules are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures. A final regulatory evaluation has been prepared and placed in the rulemaking docket.

The evaluation includes an estimate of $152,250/year as the annual cost to the public of these regulations. Of this amount, the requirement to give the prior notification to the Coast Guard of the expiration of a vessel's Certificate of Inspection is estimated to cost $32,500/year. However, this burden can be decreased if more vessels are able to combine this report with the submission of the Application for Inspection. The remainder of the economic burden is attributable to the requirement to give the Coast Guard notification of vessel distress. This requirement is very specific in the law with no means available to mitigate its impact by combining it with a currently required report. The Coast Guard feels that reports of vessel distress have always been and will continue to be made, and while it has not been a regulatory requirement until now, it will not place an undue burden on the public.

The Final Evaluation may be inspected or copied at the location referred to in ADDRESSES. Copies may also be obtained by contacting LCDR Jeffrey G. Lantz at (202) 426–4431.

Environmental Assessment

An environmental assessment has not been prepared since these regulations are considered administrative and procedural. As specified by DOT Order 5610.1C and Commandant Instruction M16714.1A, regulations of this type are excluded from the requirement to prepare an environmental assessment.

Regulatory Flexibility Act Certification

The Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities. For the reports required under section 211(a) virtually all small entities will be able to utilize an existing required report for compliance. The reports required under section 212 are in effect requests for search and rescue service that would be made voluntarily anyway. For these reasons the impact is expected to be minimal.

Paperwork Reduction Act

This final rule contains information collection requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The requirement for prior notification of vessel inspections in § 2.01–3 is a modification to the information collection requirements incident to inspections approved by the Office of Management and Budget (OMB) under control number 2115–0007 and is included under that approval. The requirements for reporting lack of communication with a vessel or possible distress cases in §§ 4.04–1 to 4.04–5, required by section 212 of the Maritime Safety Act of 1984, have been submitted to OMB for review and have been assigned control number 2115–0551.

List of Subjects

46 CFR Part 2

Coast Guard, Law enforcement, Penalties, Fire protection, Marine safety.

46 CFR Part 4

Administrative practice and procedure, Coast Guard, Investigations, accidents, Marine safety, National Transportation Safety Board, Reporting requirements.

In consideration of the foregoing, 46 CFR Parts 2 and 4 are amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows and all other authority citations within the part are removed.

Authority: 14 U.S.C. 623; 33 U.S.C. 1903; 43 U.S.C. 1333(e); 46 U.S.C. 3306, 3703, 4104, 6105; 46 App. U.S.C. 86, 88a, 1295f and g; 50 U.S.C. E.O. 12234; 45 FR 58801, September 5, 1980; 49 CFR 1.46(b), (n), (z), (hh).

2. By adding a new § 2.01–3 to read as follows:

§ 2.01–3 Notification of inspection.

(a) At least 30 days, but less than 60 days, prior to the expiration of the Certification of Inspection, a vessel's owner, charterer, managing operator, agent, master or individual in charge shall notify the Coast Guard if the vessel will be required to be reinspected for certification or will be operated in such a manner as to not require a Certificate of Inspection.

(b) the notification required by paragraph (a) shall be in writing and shall be submitted to the Officer in Charge, Marine Inspection for the Marine Inspection or Marine Safety Office of the port that:

(1) Will be reinspecting and Certificating the Vessel;

(2) Issued the vessel's current Certificate of Inspection if the vessel's schedule is such that it is not known where the next reinspection will take place; or

(3) Issued the vessel's current Certificate of Inspection if the vessel will not be requiring reinspection for the issuance of a Certificate of Inspection.

PART 4—[AMENDED]

3. The heading of Part 4 is revised to read as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

4. The authority citation for Part 4 is revised to read as follows and all other authority citations in the part are removed.

Authority: 49 U.S.C. 1333, 46 U.S.C. 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46(b) and (z), except subpart 4.40 for which the authority is: 49 U.S.C. 1903 (a)(1)(E); 49 CFR 1.46(n)(10)(i).

5. By revising § 4.01–1 to read as follows:

§ 4.01–1 Scope of regulation.

The regulations in this part govern the reporting of marine casualties, the investigation of marine casualties and the submittal of reports designed to increase the likelihood of timely assistance to vessels in distress.

6. By adding a new subpart 4.04 to read as follows:

Subpart 4.04—Notice of Potential Vessel Casualty

§ 4.04–1 Reports of potential vessel casualty.

A vessel owner, charterer, managing operator or agent shall immediately notify either of the following Coast Guard officers if there is reason to believe a vessel is lost or imperiled.

(a) The Coast Guard district rescue coordination center (RCC) cognizant over the area the vessel was last operating in; or

(b) The Coast Guard search and rescue authority nearest to where the vessel was last operating.

Reasons for belief that a vessel is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel.

§ 4.04–2 Reports of lack of vessel communication.

The owner, charterer, managing operator or agent of a vessel that is required to report to the United States flag Merchant Vessel Location Filing System under the authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), shall immediately notify the Coast Guard if more than 48 hours have passed since receiving communication from the vessel. This notification shall be given to the Coast Guard district RCC cognizant over the area the vessel was last operating in.

(Information collection requirements approved by the Office of Management and Budget under control number 2115-0551)

§ 4.04–3 Substance of reports.

The owner, charterer, managing operator or agent, notifying the Coast Guard under § 4.04–1 or § 4.04–2, shall:

(a) Provided the name and identification number of the vessel, the names of the individuals on board, and other information that may be requested by the Coast Guard (when providing the names of the individuals on board for a passenger vessel, the list of passengers need only meet the requirements of 46 U.S.C. 3502); and

(b) Submit written confirmation of that notice to the Coast Guard facility that the notice was given to within 24 hours.

(Information collection requirements approved by the Office of Management and Budget under Control number 2115-0551)

Dated: May 23, 1988.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 88-12067 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Part 5

[CGD 85-031]

Individual Participation in Marine Safety Reporting Program (MSRP); Enforcement Policy on Suspension and Revocation Proceedings

AGENCY: Coast Guard, DOT.

ACTION: Termination of program and final rule.

SUMMARY: On June 1, 1985, the Office of the Secretary, Department of Transportation initiated a one-year, voluntary Marine Safety Reporting Program (MSRP). As part of this program, the Coast Guard agreed not to impose an order under suspension and revocation proceedings which adversely affects a merchant mariner's license, certificate or document for certain offenses if a report was filed with MSRP. Title 46, Code of Federal Regulations, Part 5, § 5.64 sets forth Coast Guard enforcement policy for participation in MSRP with regard to the suspension and revocation of licenses, certificates and documents. This notice announces the termination of the one-year test and removes references to the Marine Safety Reporting Program from 46 CFR, Part 5.

EFFECTIVE DATE: June 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Glass, Office of Merchant Marine Safety, (202) 426-4281, 7:30 AM to 4:00 PM Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Transportation initiated the one-year test which began on June 1, 1985. The Marine Safety Reporting Program was meant to supplement existing mandatory reporting requirements by providing the commercial marine industry with a means to report anonymously safety-related incidents and near mishaps involving difficulties encountered with the navigation and control of a commercial vessel. The Marine Safety Reporting Program expires on May 31, 1988. The effective date of this amendment is June 15, 1988 to allow a period of grace for processing of forms submitted late in the program. The Coast Guard will not honor the MSRP enforcement policy for forms received by the Transportation Systems Center subsequent to June 15, 1988. An evaluation of the program will be conducted and is expected to be available in a few months.

This amendment is published as a final rule because the provisions thereof concern matters relating to agency procedures and practices which are excepted under 5 U.S.C. 553 from the requirements for notice and comment. This amendment is being made effective on June 15, 1988. The document originally promulgating these sections stated that the test program would terminate on June 1, 1988. Since the test is concluded and the purpose of this final rule is only to remove those sections pertaining to the test, it has been determined that good cause exists for making this rule effective in less than 30 days.

List of Subjects in 46 CFR Part 5

Administrative practices and procedures, Investigations, Administrative law judge, Investigating officer, Seaman, License, Certificate, Document, Administrative hearings, Suspension, Revocation.

PART 5—[AMENDED]

In consideration of the foregoing, Part 5 of Title 46 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7301, 7701; 50 U.S.C. 198; 49 CFR 1.46(b).

§ 5.64 [Removed]

2. Part 5 is amended by removing § 5.64.

Dated: May 22, 1986.
John W. Kime,
Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.
[FR Doc. 86-12082 Filed 5-28-86; 8:45 am]
BILLING CODE 4910-14-M

46 CFR Part 160

[CGD 84-069b]

Lifesaving Equipment; Thermal Protective Aids

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting specifications for approving thermal protective aids. A thermal protective aid is a bag or suit made of waterproof material with low thermal conductivity. It is required by the Second Set of Amendments to the International Convention for Safety of Life at Sea (SOLAS 74/83) to be carried in a liferaft, lifeboat, or rescue boat to provide protection against hypothermia (body heat loss during prolonged periods of exposure). These specifications are necessary so that the Coast Guard may approve thermal protective aids to be carried aboard U.S. vessels on an international voyage. The effect of the regulations will be to provide guidance to potential manufacturers of the devices so that they can design a product to fulfill the requirements of SOLAS 74/83, and to provide a vehicle for approval of the devices as required by SOLAS 74/83.

EFFECTIVE DATE: June 30, 1986. The Director of the Office of the Federal Register has approved the material incorporated by reference as of June 30, 1986.

ADDRESSES: The comments, final evaluation, and materials referenced in this final rule will be available for examination and copying between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley (202) 426-1444.

Drafting Information: The principal author of this final rulemaking is LCDR William M. Riley, Office of Merchant Marine Safety, assisted by the Office of the Chief Counsel.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on October 1, 1985 (50 FR 40036), and invited comments for 90 days ending December 30, 1985. Numerous comments were received from four sources including one Great Lakes shipping company and three prospective manufacturers. The following summarizes the comments, suggestions, and actions taken.

Need for Thermal Protective Aids

One commenter suggested that, since exposure suits are far superior in protection, thermal protective aids should not be required on vessels carrying exposure suits. Another commenter stated that thermal protective aids, where carried, should be provided for 100% of the persons on board. Neither of these comments is pertinent to the subject of this rulemaking. Thermal protective aids will be required by the International Convention for Safety of Life at Sea (SOLAS 74/83) in certain survival craft after July 1, 1986. The requirements for vessels to carry thermal protective aids, including the substitution of exposure suits for thermal protective aids where practical, are included in a separate rulemaking.

Cost of Independent Laboratory Testing

Two prospective manufacturers expressed concern over the cost of testing by an independent laboratory. One of these commenters was extremely concerned that only Underwriters Laboratories will be adopted by the Coast Guard for such testing. The other commenter simply felt that the frequency of production inspection could be reduced.

The level of inspection proposed, i.e. prototype testing followed by visual examination of only one out of every 100 thermal protective aids produced, is considered the minimum worthwhile level of quality control and is quite reasonable. Independent laboratory inspection has been determined to be the most advantageous means of quality control for Coast Guard approved lifesaving equipment. The cost figures cited in the Draft Evaluation and Notice of Proposed Rulemaking were the Coast Guard's best estimate. No independent laboratory commented on the proposal and no commenter submitted any information on which to base a more accurate cost estimate. The Coast Guard has no preference for Underwriters Laboratories as an independent laboratory to test thermal protective aids, and will entertain applications from any organization interested in qualifying under 46 CFR Part 159. Underwriters Laboratories, Inc., if interested, will be required to apply for acceptance as an independent laboratory to test this particular product.

Watertightness

One of the prospective manufacturers questioned whether the thermal protective aids as a whole should be watertight. The other prospective manufacturer was adamant that the devices should have watertight zippers and be subjected to a water penetration test comparable to that used for exposure suits.

Thermal protective aids are intended to be used to reduce hypothermia in a survival craft, not in the water. The watertightness of the material is intended only to reduce evaporative heat loss and wind chill. Therefore no requirements for watertight closures have been incorporated.

Flame Resistance

One commenter suggested that the thermal protective aids should be flame resistant, in case the wearer was involved in firefighting or had to pass through a burning area before abandoning ship.

The thermal protective aids are intended to be stowed in a survival craft, to be donned after abandonment by persons who arrive at the embarkation station, or are recovered from the water, without an exposure suit. It is unlikely that the thermal protective aids will be exposed to flame under these conditions. SOLAS 74/83 specifically calls for flame resistance for lifejackets and immersion suits, but flame resistance is conspicuous by its absence in the requirements for thermal protective aids. Therefore no flame resistance test has been included in the final rule.

Material

One commenter suggested that the requirement for the thermal protective aids to be constructed of a "durable insulating or heat reflecting material" was too strict. This comment is without merit. We can envision no material which would be suitable for use in thermal protective aids which would not be encompassed by such broad language.

Feet

One commenter suggested that the thermal protective aids be required to have legs and feet with ankle straps and non-skid soles. SOLAS 74/83 describes a thermal protective aid as a "bag or suit," implying that something resembling a sleeping bag could be used. The Coast Guard feels that arms and hands of sufficient dexterity to enable the wearer to feed himself would be of value during extended periods in a survival craft, but we see no need to

require that the device have legs. It is sufficient that the device is required to cover the wearer's entire body with the exception of the face. It will generally be worn while in a seated position in a survival craft.

Sizes

One commenter suggested that thermal protective aids be made in as many as five sizes ranging from infant to oversize adult. Since only a few thermal protective aids will be required in each survival craft, to be used as a last resort by persons who abandon ship without benefit of exposure suits or other warm clothing, and since the mix of sizes of such victims cannot be predicted, a single size to fit all adults is the only practical approach.

Lifejacket

One commenter suggested that the option be allowed to design the thermal protective aids to be worn either over or under a lifejacket. SOLAS 74/83 requires that a thermal protective aid be capable of being worn over the lifejacket. It is not desirable for a survivor to remove his or her lifejacket even long enough to don the thermal protective aid. The potential need to remove the thermal protective aid in the water in order to swim also makes wearing the lifejacket outside the thermal protective aid impractical.

Buoyancy

One commenter suggested that, if thermal protective aids are buoyant, they be allowed to replace required lifejackets. The thermal protective aids must be compact devices for stowage in survival craft, including inflatable liferafts. Thermal protective aids as envisioned by these regulations would not be buoyant.

Storage Case

One commenter suggested that the description of the storage case is too restrictive, prohibiting the use of many "equally good or better" materials. This comment is without merit. The regulation establishes a minimum standard and any equally good or better material would be approved.

Date of Manufacture

One commenter suggested that the thermal protective aids be marked with the date of manufacture. This point is well taken and has been adopted.

Thermal Conductivity

One commenter pointed out that the units of measurement of thermal conductivity called for are not the same units used in the test methods incorporated by reference. The same commenter also suggested that another test method be used which is more appropriate for textiles.

The units of thermal conductivity used in the proposed rules are those called for by SOLAS 74/83. Reporting of the test results in these internationally accepted units is desirable and the conversion should be within the ability of any independent laboratory competent to perform the test.

Since the nature of the material which will ultimately be used to manufacture thermal protective aids is still unknown, and since American Society for Testing and Materials Method D 1518 is a convenient method for determining the thermal conductivity of textiles, this test method is incorporated in the final rule as an alternative.

Retroreflective Material

One commenter suggested that retroreflective material be required on thermal protective aids. This point is well taken and has been adopted.

Miscellaneous

One commenter submitted information concerning an existing product, in the nature of advertising. The information submitted, although it was addressed to the Commandant (G-CMC/21) and was in response to the notice of proposed rulemaking, did not contain any substantive comments on the proposed rules.

Discussions within the Office of Merchant Marine Safety have led to the conclusion that it will be easier to identify equipment approvals unique to SOLAS 74/83 if a subpart number in the series "160.100" is cited. Therefore, in the final rule, the new subpart has been redesignated 160.174 vice 160.074.

Economic Analysis and Certification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A final evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the address listed above under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule will improve safety and meet the treaty obligations of the United States. The Coast Guard cannot predict, with any reasonable degree of certainty, the number of lives which might be saved by this final rule. Nevertheless, if even a single life is saved, the benefits will far exceed the costs. The cost of this final rule to the government will be the cost of a government engineer to review the independent laboratory report of the prototype testing, and the clerical cost to issue a certificate of approval for each design. This cost is estimated at $150 per approval for a total of $1,500, assuming some 10 manufacturers enter the market. The manufacturer's cost for testing of each prototype is estimated at $2,250, for a total cost of $22,500 for 10 manufacturers to perform prototype testing. Production testing is expected to cost 50¢ per unit if total production is on the order of 10,000 units. Based upon the estimated cost involved, the Coast Guard certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule making contains information collection requirements in §§ 160.174-15 and 160.174-23. These requirements have been previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been approved by OMB under control number 2115-0141.

List of Subjects in 46 CFR Part 160

Marine safety, Incorporation by reference.

In consideration of the foregoing, Title 46 of the Code of Federal Regulations is amended as follows:

PART 160—LIFESAVING EQUIPMENT

1. By adding a new Subpart 160.174 to Part 160 to read as follows:

Subpart 160.174—Thermal Protective Aids

Sec.

160.174-1	Scope.
160.174-3	Incorporations by reference.
160.174-5	Independent laboratory.
160.174-7	Approval procedures.
160.174-9	Construction.
160.174-11	Performance.
160.174-13	Storage case.
160.174-15	Instructions.
160.174-17	Approval testing.
160.174-23	Marking.
160.174-25	Productive testing.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart 160.174—Thermal Protective Aids

§ 160.174-4 Scope.

This subpart contains construction and performance requirements, and approval tests for thermal protective aids that are designed to minimize the occurrence of or aid in the recovery from hypothermia (lowered body temperature) during long periods in a survival craft.

§ 160.173–3 Incorporations by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of the section, notice of change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Survival Systems Branch (G–MVI–3), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA 19103

ASTM C 177–76, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate.

ASTM C 518–76, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

ASTM D 1518–77, Thermal Transmittance of Textile Materials Between Guarded Hot-Plate and Cool Atmosphere.

ASTM D 1004–66, Tear Resistance of Plastic Film and Sheeting.

ASTM D 975–81, Standard Specification for Diesel Fuel Oils.

General Services Administration

Specification Unit (WFSIA), Regional Office Building, Room 6039, 7th and D Streets SW., Washington, DC 20407

Federal Standard No. 751a—Stitches, Seams, and Stitchings.

National Bureau of Standards Special Publication 440—Color, Universal Language and Dictionary of Names.

§ 160.174–5 Independent laboratory.

(a) The approval and production tests and inspections in this subpart must be conducted by an independent laboratory accepted by the Coast Guard under Subpart 159.010 of this chapter.

§ 160.174–7 Approval procedures.

(a) *General.* A thermal protective aid is approved by the Coast Guard under the procedures in Subpart 159.005 of this chapter.

(b) *Approval testing.* Each approval test must be conducted in accordance with 160.174–17.

§ 160.174–9 Construction.

(a) *General.* Each thermal protective aid must be constructed primarily of a durable insulating or heat reflecting material that meets the thermal insulation requirements in § 160.174–11(a). Each aid must be designed to cover the wearer's entire body, except for the area of the mouth, nose, and eyes.

(b) *Seams.* Stitching, if used in structural seams of a thermal protective aid, must be lock type stitching that meets the requirements in Federal Standard No. 751 for one of the following:

(1) Class 300 lockstitch.

(2) Class 700 single thread lock stitch.

(c) *Seam strength.* Each seam must have a strength of at least 225 Newtons (50 lb.).

(d) *Hardware.* All hardware of a thermal protective aid must be of a size and design that allows ease of operation by the wearer. The hardware must be attached to the aid in a manner that allows the wearer to operate it easily and that prevents it from attaining a position in which it can be operated improperly.

(e) *Metal parts.* Each metal part of a thermal protective aid must be—

(1) 410 stainless steel or have salt water and salt air corrosion characteristics equal to or superior to 410 stainless steel; and

(2) Galvanically compatible with each other metal part in contact with it.

(f) *Thermal protective aid exterior.* The primary color of the exterior surface of each thermal protective aid must be vivid reddish orange (color number 24 of National Bureau of Standards Publication 440). The exterior surface of the aid must resist tearing when tested as prescribed in § 160.174–17(i).

(g) *Hand and arm construction.* The hand of each thermal protective aid must be a glove that allows sufficient dexterity for the wearer to close and open the zipper or other hardware of the aid and to open and eat survival rations, unless the glove is removable. The glove may not be removable unless it is attached to the arm and unless it can be secured to the arm or stowed in a pocket on the arm when not in use.

(h) *Retroreflective material.* Each thermal protective aid must be fitted with at least 200 cm^2 (31 sq. in.) of Type I retroreflective material that meets Subpart 164.018 of this chapter.

(i) *Size.* Each thermal protective aid must fit persons ranging in weight from 50 kg. (110 lbs.) to 150 kg. (330 lbs.) and in height from 1.5 m. (59 in.) to 1.9 m. (75 in.).

(j) *Lifejacket.* Each thermal protective aid must be designed so that any Type I Personal Flotation Device meeting the requirements of this Chapter can be worn inside the aid and, when worn, will not damage the aid and will not adversely affect its performance.

§ 160.174–11 Performance.

(a) *Thermal protection.* The thermal protective aid must be designed to protect against loss of body heat as follows:

(1) The thermal conductivity of the material from which the thermal protective aid is constructed must be not more than 0.25 W/(m − °K).

(2) The thermal protective aid must prevent evaporative heat loss.

(3) The aid must function properly at an air temperature of −30° C (−22° F) to +20° C (68° F).

(b) *Donning Time.* Each thermal protective aid must be designed to enable a person to don the aid correctly within one minute after reading the donning and use instructions described in § 160.174–15(a).

(c) *Storage Temperature.* A thermal protective aid must not be damaged by storage in its storage case at any temperature between −30° C (−22° F) and +65 C (149° F).

(d) *In water performance.* The thermal protective aid must be designed to permit the wearer to remove it in the water within two minutes, if it impairs ability to swim.

(e) *Water penetration.* The fabric from which the thermal protective aid is constructed must maintain its watertight integrity when supporting a column of water 2 meters high.

(f) *Oil resistance.* Each thermal protective aid must be designed to be useable after 24 hours exposure to diesel oil.

§ 160.174–13 Storage case.

Each thermal protective aid must be provided with a ziplock bag or equivalent storage case.

§ 160.174–15 Instructions.

(a) Each thermal protective aid must have instructions for its donning and use in an emergency. The instructions must be in English and must not exceed 50 words. Illustrations must be used in addition to the words. The instructions must include advice as to whether to swim in the aid or discard it if the wearer is thrown into the water.

(b) The instructions required by paragraph (a) of this section must be on the exterior of the storage case, printed

on a waterproof card attached to the storage case, or printed on the thermal protective aid and visible through a transparent storage case. The instructions must also be available in 8½ x 11 inch loose-leaf format for inclusion in the vessel's training manual.

§ 160.174–17 Approval testing.

(a) *General.* A thermal protective aid must be tested as prescribed in this section.

(b) *Mobility and swimming tests.* The mobility and swimming capabilities of each thermal protective aid must be tested under the following conditions and procedures:

(1) *Test subjects.* Seven males and three females must be used in the tests described in this paragraph. The subjects must represent each of the three physical types (ectomorphic, endomorphic, and mesomorphic). Each subject must be in good health. The heaviest male subject must weigh at least 25 kg (55 lb) more than the lightest male subject. The heaviest female subject must weigh at least 25 kg (55 lb) more than the lightest female subject. The heaviest subject must weigh 150±5 Kg (330±11 lbs.) and the lightest subject must weigh 50±5 Kg (110±11 lbs.). Each subject must be unfamiliar with the specific thermal protective aid under test. Each subject must wear a standard range of clothing consisting of:

(i) Underwear (short sleeved, short legged);

(ii) shirt (long sleeved);

(iii) Trousers (not woolen);

(iv) Woolen socks;

(v) Rubber soled shoes; and

(vi) A life preserver.

(2) *Donning test.* Each subject is removed from the view of the other subjects and allowed one minute to examine the thermal protective aid and the manufacturer's instructions for donning and use of the aid in an emergency. At the end of this period, the subject attempts to don the thermal protective aid as rapidly as possible. If the subject does not don the thermal protective aid completely, including gloves and any other accessories, within 60 seconds, the subject removes the aid and is given a demonstration of correct donning, and again attempts to don the aid. At least nine out of ten subjects must be able to don the thermal protective aid completely in 60 seconds on at least one of the two attempts.

(3) *Discarding test.* If the thermal protective aid impairs the ability of the wearer to swim, it must be demonstrated that it can be discarded by the test subjects, when immersed in water in not more than two minutes.

Caution: During each of the in water tests prescribed in this section, a person ready to render assistance when needed should be near each subject in the water.

(i) Unless the manufacturer specifies in the instructions that the thermal protective aid does impair ability to swim and should always be discarded in the water, each subject, wearing a life preserver, enters the water and swims 25 meters. The subject, after sufficient rest to avoid fatigue, repeats this test wearing a thermal protective aid in addition to the life preserver. At least nine out of ten subjects must be able to swim this distance wearing the thermal protective aid in not more than 125% of the time taken to swim the distance wearing only a life preserver, or the aid will be determined to impair the ability to swim.

(ii) If the thermal protective aid is determined by the above test or specified by the manufacturer to impair the ability to swim, each subject, after entering the water from a height of one meter (three feet), attempts to remove the aid and discard it. At least nine out of ten subjects must be able to discard the device within two minutes.

(d) *Storage temperature.* Two samples of the thermal protective aids, in their storage cases, are alternately subjected to surrounding temperatures of −30° C to +65° C. These alternating cycles need not follow immediately after each other and the following procedure, repeated for a total of ten cycles, is acceptable:

(1) 8 hours conditioning at 65° C to be completed in one day;

(2) The specimens removed from the warm chamber that same day and left exposed under ordinary room conditions until the next day;

(3) 8 hours conditioning at −30° C to be completed the next day; and

(4) The specimens removed from the cold chamber that same day and left exposed under ordinary room conditions until the next day. At the conclusion of step (3) of the final cycle of cold storage, two test subjects who successfully completed the donning test previously enter the cold chamber, unpack and don the thermal protective aids. The aids must not show any damage, such as shrinking, cracking, swelling, dissolution or change of mechanical qualities.

(e) *Water penetration.* A sample of the fabric from which the thermal protective aid is constructed is installed as a membrane at one end of a tube of at least 2.5 cm (one inch) diameter and 2 meters long. The tube is fixed in a vertical position with the membrane at the bottom, and filled with water. After one hour the membrane must continue to support the column of water with no leakage.

(f) *Insulation.* The material from which the thermal protective aid is constructed is tested in accordance with the procedures in ASTM C 177, ASTM C 518, or ASTM D 1518. The material must have a thermal conductivity of not more than 0.25 W/(m−°K).

(g) *Test for oil resistance.* After all its apertures have been sealed, a thermal protective aid is immersed under a 100 mm head of diesel oil, grade no. 2–D as defined in ASTM D–975, for 24 hours. The surface oil is then wiped off and a sample of the material from the aid is again tested in accordance with the procedures in ASTM C 177 or ASTM C 518. The material must still have a thermal conductivity of not more than 0.25 W/(m−°K).

(h) *Seam strength.* The strength of each different type of seam used in a thermal protective aid must be tested under the following conditions and procedures.

(1) *Test equipment.* The following equipment must be used in this test:

(i) A chamber in which air temperature can be kept at 25° C (73.4° F) ±2° C (1.8° F) and in which relative humidity can be kept at 50% ±5%.

(ii) A device to apply tension to the seam by means of a pair of top jaws and a pair of bottom jaws. Each set of jaws must grip the material on both sides so that it does not slip when the load is applied. Each front jaw must be 25 mm (1 inch) wide by 25 mm (1 inch) long. The distance between the jaws before the load is applied must be 75mm (3 inches).

(2) *Test samples.* Each test sample consists of two pieces of the material from which the thermal protective aid is constructed, each of which is 100 mm (4 inches) square. The two pieces are joined by a seam as shown in figure 160.071–17(m)(3). For each type of seam, 5 samples are required. Each sample may be cut from a thermal protective aid or may be prepared specifically for this test. One type of seam is distinguished from another by the type and size of stitch or other joining method used (including orientation of warp and fill, if any) and by the type and thickness of the materials joined at the seam.

(3) *Test procedure.* Each sample is conditioned for at least 40 hours at 23° C±2° C and 50% ±5% relative humidity. Immediately after conditioning, each sample is mounted individually in the tension device as shown in figure 160.071–17(m)(3). The jaws are separated at a rate of 5 mm/second (12 in/minute). The maximum force to

achieve rupture is recorded. The average force at rupture must be at least 225 Newtons (50 lb).

(i) *Tear resistance.* The tear resistance of the material from which a thermal protective aid is constructed must be determined by the method described in ASTM D 1004. If more than one material is used, each material must be tested. If varying thicknesses of a material are used in the aid, samples representing the thinnest portion of the material must be tested. If multiple layers of a material are used in the aid, samples representing the layer on the exterior of the aid must be tested. Any material that is a composite formed of two or more materials bonded together is considered to be a single material. The average tearing strength of each material must be at least 45 Newtons (10 lb).

§ 160.174-23 Marking.

(a) Each thermal protective aid must be marked with the words "Thermal Protective Aid," the name of the manufacturer, the model, the date of manufacture or a lot number from which the date of manufacture may be determined, and the Coast Guard approval number.

(b) Each storage case must be marked with the words "Thermal Protective Aid" or the thermal protective aid must have a similar marking which is visible through a transparent storage case.

§ 160.174-25 Production testing.

(a) Thermal protective aid production testing is conducted under the procedures in this section and Subpart 159.007 of this chapter.

(b) One out of every 100 thermal protective aids produced must be given a complete visual examination. The sample must be selected at random from a production lot of 100 thermal protective aids and examined by or under the supervision of the independent laboratory. The sample fails if the visual examination shows that the aid does not conform to the approved design.

(c) If a defect in the thermal protective aid is detected upon visual examination, 10 additional samples from the same lot must be selected at random and examined for the defect.

(d) If one or more of the 10 samples fails the examination, each thermal protective aid in the lot must be examined for the defect for which the lot was rejected. Only thermal protective aids that are free of defects may be sold as Coast Guard approved.

Dated: May 23, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-12058 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

FCC 86-241

Practice and Procedure; Amendment of the Rules To Allow Publication of Summaries of Orders Designating Applications for Hearing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 1.221(b) of the Commission's Rules to authorize it to publish in the Federal Register summaries of hearing designation orders. The Commission is also amending the Rules with clarifying language specifically authorizing Federal Register publication of the full hearing designation orders or summaries thereof. This action is taken as part of the Commission's effort to minimize publishing costs.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Tricarico, Secretary, Federal Communications Commission, Washington, DC 20554, (202) 632-6410.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 7, 1986.
Released: May 20, 1986.

By the Commission:

1. By this *Order* the Commission decides that, commencing immediately, it will amend its rules to allow it to publish summaries of orders designating applications for hearing in the Federal Register. Current Commission rules generally contemplate Federal Register publication of the full text of hearing designation orders.[1] However, due to budgetary constraints and the rising cost of Federal Register publication, the Commission has concluded that the publication of summaries of hearing designation orders will be a reasonable and cost-efficient method of apprising potential intervenors of issues that might be of concern to them. The summaries will consist of a summary of the explanatory text of the hearing designation order and the full text of the issues designated for hearing on an application. For mass media services, the summaries will be an abstract of the hearing designation order, and include the names of the parties and list the hearing issues. The list of hearing issues will be keyed to the definitions set forth in the Appendix to this *Order*. The published summaries will additionally advise how copies of the complete hearing designation order may be obtained.[2]

2. Section 309(e) of the Communications Act provides:

> When the Commission has so designated an application for hearing, the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register.

47 U.S.C. 309(e). Specifically, the legislative history of section 309(e) indicates that Congress sought to balance the intervenor's right to protect his interests and participate in the hearing against the Commission's interest in expediting formal hearings. To effect this balance, Congress decided that the intervenor's filing period would run from the date of publication of the hearing issues, rather than the day set for commencement of the hearing. *See* H.R. Rep. No. 1351, 88th Cong., 2nd Sess. 5 (1964). Federal Register publication was designed to afford a potential intervenor sufficient notice "to protect his . . . interest." *Id.* 2; *see also id.* at 5 (FCC report on H.R. 5327).

3. In view of this, the Commission has determined that publication of summaries of hearing designation orders with either the full text of the hearing issues or, for the mass media services, a list of the hearing issues keyed to a definitional Appendix, will give notice of the issues designated on an application and satisfy the statutory purposes of section 309(e). Therefore, the Commission is amending § 1.221(b) of the rules, 47 CFR 1.221(b), which calls

[1] We note, however, that since 1983 the FM Branch, Audio Services Division, Mass Media Bureau, has published hearing designation order abstracts and not their full texts.

[2] The full text of hearing designation orders are available on the date of release from the Office of Congressional and Public Affairs. Thereafter, the full texts will be available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC, or as otherwise specified in the summary published in the Federal Register. The complete texts may also be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

for Federal Register publication of full hearing designation orders, to authorize it also to publish a summary of the hearing designation order. The Commission is also amending §§ 1.223(b), 1.223(c), and 1.229(b) of the rules, 47 CFR 1.223(b), 1.223(c), and 1.229(b), with clarifying language explicitly authorizing Federal Register publication of the complete hearing designation order or a summary thereof. For mass media services, a hearing designation order summary will include a list of hearing issues which will be keyed to the definitions set forth in the Appendix to this *Order*. Both this *Order* and the Appendix will be published together in the Federal Register.

4. Prior notice and public comment procedures are not required because this action is interpretive and procedural in nature. *See* 5 U.S.C. 553(b)(3)(B), 47 CFR 1.412(b)(3) and (5).

5. Accordingly, it is ordered, pursuant to authority provided by sections 4(i), 4(j), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 154(j), and 303(r), that the Commission's Rules ARE AMENDED as shown at the end of this document.

6. It is further ordered that this *Order* is effective upon publication in the Federal Register. *See* 5 U.S.C. 553(d)(2), 47 CFR 1.427(b).

* * * * *

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

PART 1—[AMENDED]

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read:

Authority: 47 U.S.C. 154, 303.

2. In § 1.221, paragraph (b) is revised to read as follows.

§ 1.221 Notice of hearing; appearances.

* * * * *

(b) The order designating an application for hearing is mailed to the applicant by the Secretary of the Commission and this order or a summary thereof is published in the Federal Register. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

* * * * *

3. In § 1.223, paragraphs (b) and (c) are revised to read as follows:

§ 1.223 Petitions to intervene.

* * * * *

(b) Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene not later than 30 days after the publication in the Federal Register of the full text or a summary of the order designating an application for hearing or any substantial amendment thereto. The petition must set forth the interest of petitioner in the proceedings, must show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition. The presiding officer, in his discretion, may grant or deny such petition or may permit intervention by such persons limited to a particular stage of the proceeding.

(c) Any person desiring to file a petition for leave to intervene later than 30 days after the publication in the Federal Register of the full text or a summary of the order designating an application for hearing or any substantial amendment thereto shall set forth the interest of petitioner in the proceeding, show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition within the time prescribed by paragraphs (a) and (b) of this section. Such petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth in the petition, and where petitioner claims that a grant of the application would cause objectionable interference under applicable provisions of this chapter, the petition to intervene must be accompanied by the affidavit of a qualified radio engineer showing the extent of such alleged interference according to the methods prescribed in paragraph (a) of this section. If, in the opinion of the presiding officer, good cause is shown for the delay in filing, he may in his discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.

* * * * *

4. In § 1.229, paragraph (b) is revised to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(b) Such motions must be filed within 15 days after the full text or a summary of the order designating an application for hearing has been published in the Federal Register. In comparative broadcast proceedings (including comparative renewal proceedings), however, such motions shall be filed within 30 days after the full text or a summary of the designation order has been published in the Federal Register. Any person desiring to file a motion to modify the issues after expiration of the above specified periods shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modification of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

5. In § 73.3522, paragraph (b)(2) is revised to read as follows:

§ 73.3522 Amendment of applications.

* * * * *

(b) *Postdesignation amendment.*

* * * * *

(2) In comparative broadcast cases (including comparative renewal proceedings), amendments relating to issues first raised in the designation order may be filed as a matter of right within 30 days after that Order or a summary thereof is published in the Federal Register, or by a date certain to be specified in the Order.

6. In § 73.3594, paragraphs (d)(4) and (f)(4) are revised to read as follows:

§ 73.3594 Local public notice of designation for hearing.

* * * * *

(d) * * *

(4) The issues in the hearing as listed in the FCC's order or summary of designation for hearing.

(e) * * *

(f) * * *

(4) The issues in the hearing as listed in the FCC's order or summary of designation for hearing.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Issues

City Coverage—AM—To determine whether the proposal of the applicant(s) would provide coverage of the city sought to be served, as required by §73.24(j) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

City Coverage—FM—To determine whether the proposal of the applicant(s) would provide coverage of the city sought to be served, as required by §73.315(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

City Coverage—TV—To determine whether the proposal of the applicant(s) would provide coverage of the city sought to be served, as required by §73.685(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

Rule 73.685—To determine, with respect to the applicant(s), whether circumstances exist to warrant a waiver of § 73.685( ) of the Commission's Rules.

Minimum Separations—To determine, with respect to the applicant(s), whether circumstances exist to warrant a waiver of § 73.610 of the Commission's Rules.

Air Hazard—To determine, with respect to the applicant(s), whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

Main Studio—To determine, pursuant to § 73.1125, whether good cause exists for the proposed location of the main studio outside the community of license by the applicant(s).

Site Availability—To determine whether the applicant(s) has reasonable assurance that the transmitter site specified will be available to it.

Environmental Impact—If a final environmental impact statement is issued with respect to the applicant(s), in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules.

Multiple Ownership—To determine, with respect to the applicant(s), whether the common ownership, operation and control of [station/newspaper] and the proposed station is consistent with § 73.3555 of the Commission's Rules and, if not, whether a grant of the application would be in the public interest.

Cross-interest—To determine, with respect to the applicant(s), whether the involvement of [named individual] with [station/newspaper] is consistent with the Commission's cross-interest policy and, if not, whether a grant of the application would be in the public interest.

Satellite—To determine, with respect to the applicant(s), whether circumstances exist which would make the proposed television operation as a "satellite" or "primarily a satellite" necessary for the community.

Alien Control—To determine whether the applicant/licensee is controlled by aliens or their representatives in violation of section 310(b) of the Communications Act of 1934, as amended.

Misrepresentation—To determine whether the applicant/licensee made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission.

Qualifications—To determine, in light of the evidence adduced pursuant to the issues specified, whether the applicant(s) is qualified to construct and operate the requested facilities as proposed.

Financial Qualifications—To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in this Order, the applicant(s) is financially qualified.

307(b)—To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations; and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

307(b)—Modification—To determine: (a) The areas and populations which would receive primary aural service from the proposal(s) of the applicant(s) for new facilities and the availability of other primary service to such areas and populations; (b) the areas and populations which would gain or lose primary aural service from the proposal(s) of the applicant(s) for modifications of existing facilities and the availability of other primary service to such areas and populations; and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

307(b)—Noncommercial Educational—To determine: (a) The number of other reserved channel noncommerical educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

Comparative—To determine which of the proposals would, on a comparative basis, [better/best] serve the public interest.

Comparative—Noncommercial Educational TV—To determine: (a) The extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants; (b) the manner in which each applicant's proposed operation meets the needs of the community to be served; and (c) whether the factors in the record demonstrate that one applicant will provide a superior noncommercial educational broadcast service.

Comparative—Noncommercial Educational FM—To determine: (a) Whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

Contingent Comparative—To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

Contingent Comparative—Noncommercial Educational FM—To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and the objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

Ultimate—To determine, in the light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

[FR Doc. 86-12015 Filed 5-28-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-339; RM-5062]

Radio Broadcasting Services; Belhaven, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C2 in lieu of Channel 221A at Belhaven, North Carolina, and modifies the license of Station WKJA to specify operation on the new channel, at the request of Winfas of Belhaven, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–339, adopted May 9, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors.

International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 is revised to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by revising the following entry for Belhaven, North Carolina.

§ 73.202 Table of allotments.

* * * * *

(b) * * *

	Channel No.
North Carolina	
Belhaven	269C2.

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12017 Filed 5-28-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-285; RM-5035]

Radio Broadcasting Services; Roosevelt, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253C2 to Roosevelt, Utah, as that community's second FM service, at the request of Brian Leifson. A site restriction of 0.8 kilometer (0.5 mile) east of Roosevelt is required. With this action, this proceeding is terminated.

DATES: Effective June 27, 1986; the window period for filing applications will open on June 30, 1986, and close on July 28, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-285, adopted April 23, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by revising the following entry for Roosevelt, Utah:

§ 73.202 Table of allotments.

* * * * *

(b) * * *

	Channel No.
Utah	
Roosevelt	230A, 253C2

Ralph A. Haller,
Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12018 Filed 5-28-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-77; RM-4866]

Television Broadcasting Services; Hammond, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns Television Channel 62 to Hammond, Louisiana, that community's first television assignment at the request of Stuart B. Mitchell and Associates. Supporting comments were filed by petitioner. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: D. David Weston (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-77, adopted April 23, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.606(b) is amended by adding the following entry for Hammond, Louisiana.

§ 73.606 Table of assignments.

* * * * *

(b) * * *

	Channel No.
Louisiana	
Hammond	62+

Ralph A. Haller,
Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12016 Filed 5-28-86; 8:45 am]
BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Part 808

Acquisition Regulations; Ordering From Federal Supply Schedules

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: This revision amends the Veterans Administration Acquisition Regulation (VAAR) to conform with the Federal Acquisition Regulation (FAR) which permits an ordering agency to purchase identical items at a lower price than on Federal Supply Schedule (FSS) Groups 65 and 89 without obtaining approval prior to the actual purchase of the item and to indicate where waivers from FSS Groups 65 and 89 may be sent.

EFFECTIVE DATE: This rule is effective June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas A. Hamilton, Policy and Interagency Service, Office of Procurement and Supply, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 389-2334.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Federal Procurement Policy, and the Administrator, Office of Information and

Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of the Executive Order 12291.

E. Regulatory Flexibility Act (RFA)

Because this rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

III. Paperwork Reduction Act

This rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Part 808

Government procurement.

Approved: May 16, 1986.

Thomas K. Turnage,

Administrator.

Part 808 of Title 48 of the Code of Federal Regulations is amended to read as follows:

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for Part 808 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Section 808.404–1 is amended by adding the paragraph designation "(a)" at the beginning of the first paragraph and by adding paragraph (b) to read as follows:

808.404–1 Mandatory use.

(a) * * *

(b) *Lower prices for identical items.*

(1) When an ordering agency finds an item which is identical to one listed on FSS Group 65 or 80, but available at a lower delivered price from a lower priority source, the ordering office may purchase the item subject to the requirements set forth in FAR 8.404–1(e). A copy of the purchase order shall be sent to the Director, VA Marketing Center at the time the order is issued.

(2) An identical item is defined as: (i) nondrug item—same manufacturer and model number, or (ii) drug item—have the same National Drug Code (NDC) number.

3. Section 808.404–3 is revised to read as follows:

808.404–3 Requests for waivers.

When an ordering office determines that an item available from FSS Group 65 or 80 will not meet its specific needs, it should submit a request for waiver to the Director, VA Marketing Center. The request shall contain the information set forth in FAR 8.404–3(a)(1) through (4).

[FR Doc. 86–11977 Filed 5–28–86; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60477–6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the rescission in the fishery conservation zone (FCZ) of the season closure of the non-Indian commercial salmon fishery in the fishery conservation zone (FCZ) for all species except coho from the U.S.-Canada border to Cape Falcon, Oregon. The fishery was closed at midnight, May 19, 1986, when it was projected that the harvest quota had been reached. Subsequent evaluation of landings indicate that approximately 6,900 fish remain to be harvested in the troll quota. This reopening is calculated to maximize ocean harvest of chinook salmon without exceeding the established quota.

DATES: Reopening of the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, to non-Indian commercial salmon fishing is effective at 0001 hours Pacific Daylight Time (PDT) May 24, 1986, until 2400 hours PDT May 27, 1986. Comments on this notice will be received until June 13, 1986.

ADDRESS: Comments may be mailed to the Northwest Regional Office, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on an overestimate of actual catch, the Secretary may reopen that fishery for all or part of the remaining original season by publishing a notice in the **Federal Register** under § 661.23, in order to allow the quota to be met so long as the additional period is no less than 24 hours."

The commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, was closed at midnight, May 19, 1986, (51 FR 18795, May 22, 1986) when it was projected that the harvest quota of 33,700 chinook salmon had been caught. A subsequent evaluation of landings indicated that the original projection was based on an overestimate of actual catch. Commercial landings of chinook salmon in the area totaled 26,800 fish.

Since fishermen landed an average of about 1,600 chinook per day during the last four days of fishing, the 6,900 fish remaining in the quota could be harvested in four days. The Secretary therefore issues this notice to reopen the non-Indian commercial fishery in the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, for four days, from 0001 hours PDT May 24, 1986 to 2400 hours PDT on May 27, 1986.

The Regional Director consulted with the Directors of the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) regarding this reopening. The Directors of WDF and ODFW confirmed that Washington and Oregon will reopen the commercial fishery in State waters adjacent to this area of the FCZ during the same time period.

Other Matters

This action is taken under §§ 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 23, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant, Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–12067 Filed 5–23–86; 4:41 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final 1986 fishery management measures and request for comments; corrections.

SUMMARY: This document adds an additional footnote and makes corrections to Table 1 in the final 1986

fishery management measures for the ocean salmon fisheries off the coasts of Washington, Oregon, and California, published May 5, 1986, 51 FR 16520.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; E. Charles Fullerton, 213–514–6195; or the Pacific Fishery Management Council, 503–221–6352.

In FR Doc. 86–10023, on page 16523 in the issue of May 5, 1986, the following corrections are made to Table 1:

1. The footnote symbol "o/" is added to the heading of column 4, to read, "Minimum size limit (inches)°/".

2. The phrase "All except coho" is inserted in column 2 in the line referring to United States-Canada Border to Cape Falcon, "May 14 through earlier of May 31 or chinook quota" in column 1.

3. An additional footnote symbol "d/" is added to the first entry in column 4 under the "Coho" subheading under the "Quotas" heading, which is corrected to read "3/4 30,000".

4. The phrase that begins "June 30" under Cape Blanco to Point Delgada in column 1 is corrected by changing "earlier" to "earliest" and inserting a comma after "Aug. 31", to read ". . . earliest of Aug. 31, coho quota, or chinook quota.".

5. The phrase "All except coho" is inserted in column 2 in the line referring to Cape Blanco to Port Delgada, "Coho quota through earlier of Aug. 31 or chinook quota" in column 1.

6. The word "Lastest" is corrected to "Latest" in column 1 immediately under "Sisters Rocks to Mack Arch:" and "28" is inserted in this line under column 5.

7. Footnote "f/" is corrected by deleting "(Lighthouse Buoy)" and inserting in its place "(Columbia River Buoy)".

8. Footnote "g/" is corrected by adding a period after "463,000 coho" and inserting the word "hooking" before "mortality" in the second sentence.

9. The following footnote is added at the end of the footnotes relating to Table 1 on page 16524:

• Applicable minimum lengths, in inches, for dressed, head-off salmon are as follows:

Chinook		Coho	
Total fish	Headoff (inches)	Total fish	Headoff (inches)
28 26	21.5 19.5	16 22	12.0 16.5

(16 U.S.C. 1801 *et seq.*)

Dated: May 23, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–12065 Filed 5–28–86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 61100–5160]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska will be achieved on May 26, 1986. A closure of the fishery for sablefish by hook-and-line gear is necessary to limit the harvest of sablefish by hook-and-line gear to the 55 percent of the OY that is permissible by Federal law in this district. This closure is a management measure intended to allocate the sablefish resource between hook-and-line, trawl, and pot gear in the Central Regulatory Area as required by the Fishery Management Plan for Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, Alaska Daylight Time (ADT), May 26, 1986, until midnight, AST, December 31, 1986. Public comments are invited on this closure until June 10, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 586–7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act) provides for inseason adjustments of fishing seasons and areas. Regulations at § 672.22(a) specify that these adjustments will be made by the Secretary of Commerce under procedures set out in that section.

Section 672.2 defines three regulatory areas in the Gulf of Alaska. One of these is the Central Regulatory Area. The OY for sablefish in this area is 6,150 metric tons (mt). Section 672.24(b)(2) of the regulations restricts the take of sablefish in this area by hook-and-line gear to 55 percent of the OY, or 3,383 mt.

As many as 100 hook-and-line vessels have conducted a directed fishery for sablefish during the fishing season, which began on April 1, 1986. Landings through May 20, 1986, total 2,864 mt, leaving a balance of the OY allocated to hook-and-line vessels of 519 mt. The fleet will harvest this remainder with hook-and-line gear by May 26, 1986, and further directed sablefish fishing with hook-and-line gear after ADT noon on that date is prohibited. Sablefish landings by hook-and-line vessels west of the Central Regulatory Area i.e., west of 159° West longitude, are expected to increase rapidly as part of the fleet moves west following notice of this closure.

Section 672.24(b) requires the NMFS Regional Director to close fishing for groundfish with a gear type in an area when the sablefish share allocated to that gear type in that area has been taken. At its January 15–17, 1986, meeting, however, the Council recommended that NOAA amend this regulation to allow the Regional Director to prohibit retention of sablefish by a gear type that had taken its share of the sablefish OY in that area but still allow directed fisheries for other groundfish species to continue. Sablefish must be treated as a prohibited species by that gear type, providing that overfishing of sablefish would not result. The Alaska Region has submitted an emergency rule that would amend this regulation to implement the Council's recommendation.

The requirement of § 672.20(b) that all groundfish fishing by a gear type in an area be closed when its sablefish allocation for that area has been taken conflicts with the FMP as interpreted by the Council and NMFS. The Regional Director is therefore, not obliged even before promulgation of the new rule to impose such a closure, provided that continued fishing by that gear type will not cause overfishing of sablefish. The Regional Director has reviewed the bycatches of sablefish that might be taken in other directed groundfish hook-and-line fisheries in the Central Regulatory Area and finds that continued fishing for other groundfish species will not cause overfishing of sablefish.

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This closure will be effective when this notice is filed for public inspection with the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address above for 15 days following its effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource between hook-and-line, trawl, and pot gear in the Central Regulatory Area as required by the FMP and the continued health of that resource will be jeopardized unless this closure takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and that its effective date should not delayed.

This action is taken under §§ 672.22 and 672.24 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 23, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc. 86-11666 Filed 5-23-86; 1:52 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 103
Thursday, May 29, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Notice of Proposed Temporary Revision of Diversion Limitation Percentages; Milk in the Nebraska-Western Iowa Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for the months of May through August 1986 the limits on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than June 5, 1986.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of May through August 1986.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include May 1986 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of May through August 1986. The specific revisions would increase the diversion limitation percentages for the months of May through August 1986 by 10 percentage points from the present 50 percent to 60 percent.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc. (AMPI), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of May through August 1986, the percentage of allowable diversions be increased 10 percentage points.

The cooperative states that Class I needs for January through April 1986 increased less than one percent over the same period in 1985, while producer milk has increased more than 13 percent. According to the association, the milk surplus to the fluid needs of the market must go to manufacturing facilities. For the purposes of preserving milk quality by requiring less pumping and allowing milk to be moved in the most efficient manner possible, the cooperative states that the most desirable way of handling the additional milk is to ship it directly to nonpool plants. AMPI believes that the proposed temporary increase in diversion limits will have no affect on the ability of distributing plants to obtain needed supplies of milk for Class I use, and will prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of May through August 1986 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk Marketing Orders, Milk, Dairy Products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on: May 22, 1986.

Edward T. Coughlin,
Director, Dairy Division.

[FR Doc. 86–11978 Filed 5–28–86; 8:45 am]
BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 740, 741, and 745

Federally-Insured Credit Unions; National Credit Union Administration

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of Comment Period.

SUMMARY: This document extends the comment period on proposed amendments to NCUA's rules on Advertising, Requirements for Insurance and Voluntary Termination on Conversion of Insurance, and Clarification and Definition of Account Insurance Coverage. On April 25, 1986, the NCUA Board proposed to amend these regulations relating to the insurance provided by the National Credit Union Share Insurance Fund (51 FR 15710). Comments were to be received on or before May 30, 1986. However, in light of the importance of the proposed changes and the complexity of the insurance regulations in general, the NCUA Board has extended the public comment period to July 8, 1986.

DATE: Comments due on or before July 8, 1986.

ADDRESS: Written comments should be mailed or hand delivered to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357-1085 (Mr. Riley) or (202) 357-1030 (Mr. Engel).

By the National Credit Union Administration Board on May 15, 1986.

Rosemary Brady,

Secretary of Board.

[FR Doc. 86-12014 Filed 5-28-86; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 913CE, Notice No. 23-ACE-12]

Special Conditions; Fairchild Models SA227-AT and SA227-TT Airplanes Incorporating Bendix EFS-10 Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes incorporating a Bendix EFS-10 Electronic Flight Instrument System (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of Part 3 of the Civil Air Regulations (CAR) and Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of an electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes.

DATE: Comments must be received on or before June 30, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 913CE, Room No. 1558, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 913CE. Comments may be inspected in the Rules Docket between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the promulgation of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 913CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227-AT airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3-1 through 3-6; § 23.511 as amended by Amendment 23-7, effective September 14, 1962; § 23.175(d) as amended by Amendment 23-14, effective December 20, 1973; Special Conditions outlined in FAA letters November 18, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; Amendment B of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36-1 through 36-6; and the special conditions that may result from this proposal.

The type certification basis for the Fairchild Aircraft Corporation Model SA227-TT airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendment 23-17 effective February 1, 1977; Special Conditions outlined in FAA letters November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; SFAR No. 23.27; Amendment B of SFAR 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F effective December 1, 1969, as amended by Amendments 36-1 through 36-6; and the special conditions that may result from this proposal.

Background

On March 24, 1986, King Radio Corporation, 400 N. Rogers Road, Olathe, Kansas 66062, made application to the FAA for approval of installation of a Bendix EFS-10 Electronic Flight Instrument System (EFIS) on the Fairchild Aircraft Corporation Model SA227-AT and SA227-TT airplanes. This installation incorporates an electronic attitude direction indicator (ADI) and an electronic horizontal situation indicator (HSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the

type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the EFS–10 EFIS installation in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes contains a number of novel or unusual design features not envisaged by the applicable airworthiness standards of Part 3 of the CAR. Special conditions are considered necessary because the airworthiness standards of Part 3 of the CAR and Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the EFS–10 EFIS installation in the Fairchild Aircraft Corporation Model SA227–AT and SA227–TT airplanes.

King Radio Corporation has proposed cathode ray tube (CRT) electronic display units for primary attitude, heading and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an EADI and EHSI on the left and right instrument panels and a multi-function display in the center panel. All other displays; i.e. airspeed, altitude, vertical speed, etc., will be conventional instruments. An optional configuration instruments on the copilot's side, and a multi-function display in the center panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also effect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single fault" or "fail safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case. Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight after the failure of any *one* of the required instruments; i.e., airspeed, altitude, attitude, and turn and slip (needle and ball). Backup instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplanes could be safely flown following a single instrument failure. The basic airman certification program for an IFR rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments, and has not required as a basic IFR rating requirement that all IFR airmen must demonstrate abilities using other backup instruments.

A special condition is proposed which would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display or system. The proposed special condition would also provide requirements to assure the reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the proposed special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The proposed special condition requires a detailed examination of each item of equipment/component of the electronic display system and the system installation to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The proposed special condition also requires that components of system(s) whose function is required and that requires a power supply, be considered an "essential load" on the power supply. The power source(s) and its distribution system must be able to supply power to the electronic display system(s) as stated in the proposed special condition since the operational reliability of the electronic display system(s) is dependent on the airplane electrical source.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into Part 23 by Amendment 23–14, effective December 20, 1973. The "single fault" or "fail safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment have been used to successfully evaluate most airplane systems and equipment. However the FAA is finding it difficult to apply the "single fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the EFS–10 EFIS installation Therefore, the FAA considers it necessary to include the proposed system analysis requirements in the certification basis in lieu of including present § 23.1309. this will allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probablity of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems do not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance, but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently better substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

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The availability of this "rational method" of safety analysis of systems, along with the difficulty in applying the existing "no single fault" or "fail safe" concept, has prompted the FAA to propose this special condition, because the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes incorporating the EFS–10 EFIS installation are proposed to have electronic displays where use of the single fault criterion is an unnecessary burden. The proposed special condition would require that a safety evaluation of the systems be made and specifies a level of safety in qualitative terms.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of systems failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The proposed condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes.

The Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes incorporating the EFS–10 EFIS installation may have both digital and analog instrumentation cues for the pilot. While a digital indication does show exact numbers, it may not provide adequate sensory cues to the pilot as to whether the numbers are increasing or decreasing, or a sense of how fast they are changing. A digital indication may not show the normal operating range or operational limits. Human factor authorities agree that such digital indications are not equivalent to an analog instrumentation which inherently provides usable sensory cues. Therefore, the proposed special condition includes requirements for sensory cues.

The FAA has considered the features proposed by King Radio Corporation for the EFS–10 installation in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such complex or critical systems, special conditions should be promulgated for the affected systems, in addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, a special condition is proposed.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT when equipped with the Bendix EFS–10 Electronic Flight Instrument System:

1. In addition to the applicable requirements of Part 3 of the Civil Air Regulations, and requirements to the contrary, for instruments, systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system; and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane. The following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following additional requirements:

(1) There must be no single failure or probable combination of failures under any anticipated condition which would prevent the continued safe flight and landing of the airplane or which would significantly reduce the capability of the airplane or the crew to cope with adverse operating conditions.

(2) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would ceate additional hazards.

(3) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(4) If numerical analysis is used to support the engineering examination:

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane must be shown to be extremely improbable; and

(ii) The occurrence of any other failure condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be shown to be improbable.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

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(i) Any one engine on the airplane, or

(ii) Any power converter, or energy storage device, or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight,

(ii) In any normal mode of operation do not inhibit the primary display of attitude,

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units, and

(iv) Incorporate visual displays of instrument markings, required by §§ 3.756 through 3.757 or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 3/SFAR 41 requirements,

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the pilot, without need for immediate action by any crew member for continued safe operation, after any single failure or probable combination of failures.

Issued in Kansas City, Missouri, on May 15, 1986.

Jerold M. Chavkin,

Acting Director.

[FR Doc. 86-11990 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-105-AD]

Airworthiness Directives; Boeing Model 737-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which requires replacement of air ducts installed in certain Model 737-300 airplanes air conditioning system. This action is necessary because it has been discovered that the ducts have unsatisfactory flammability characteristics and do not comply with the flammability requirements of FAR 25.853. The ducts presently installed could contribute to the propagation of a fire occurring on the airplane.

DATES: Comments must be received on or before July 18, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: This notice proposes a new airworthiness directive (AD) which would require replacement of air conditioning ducts on Boeing Model 737-300 airplanes with ducts meeting the flammability requirements of FAR 25.853.

The duct material was successfully tested for compliance with FAR 25.853 for original type certification. However, subsequent sampling tests yielded unsatisfactory test results and the material was changed in production. Because the duct material in service may have inadequate flammability characteristics, Boeing has issued Service Bulletin 737-21-1065, dated February 14, 1986, which provides instructions to replace the ducts. The FAA is proposing an AD to require replacement of ducts on all affected airplanes since, in the event of a fire, the ducts could pose a hazard by contributing to the fire propagation.

Approximately 120 airplanes of U.S. registry would be affected by the proposed amendment. It is estimated that 4 manhours would be required to modify each airplane, at an average labor cost of $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators would be $19,200.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737-300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737-300 airplanes specified in Boeing Service Bulletin 737-21-1085, dated February 14, 1986, certificated in any category. Compliance required within 180 days after the effective date of this amendment, unless already accomplished.

To ensure air ducts have adequate flammability characteristics, accomplish the following:

A. Replace air ducts in accordance with Boeing Service Bulletin 737-21-1085, dated February 14, 1986, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the applicable service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 20, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11839 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-9]

Revision of the Salinas, California, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice proposes to extend the Salinas, California, control zone to the southeast of the Salinas Municipal Airport. This amendment is necessary to provide controlled airspace for aircraft executing the Instrument Landing System (ILS) approach to the Salinas Airport.

DATE: Comments must be received on or before July 3, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 86-AWP-9, Air Traffic Division, P.O. Box 90027 WWPC, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend the Salinas, California, control zone to the southeast of the Salinas Municipal Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a); 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Salinas, CA—[Revised]

Within a 5-mile radius of the Salinas Municipal Airport (lat. 36°39'40" N., long. 121°36'20" W.); within 2 miles northeast and 3 miles southwest of the Salinas VORTAC 315° radial, extending from the 5-mile radius zone to 6 miles northwest of the VORTAC, excluding the portion within the Fort Ord, CA, control zone; within 2 miles each side of the Salinas localizer extending from the 5-mile radius zone to 11.5 miles southeast of the Salinas VORTAC, excluding the portion within the Monterey, CA, control zone.

Issued in Los Angeles, California, on May 19, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division.

[FR Doc. 86-11980 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-28]

Proposed Alteration of VOR Federal Airways—MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airways V-12 and V-504 in conjunction with the relocation of the Tiger, MO, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) to the Columbia Regional Airport, MO. Additionally, Tiger, MO, is proposed to be added as a domestic low altitude reporting point.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-28, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V-12 and V-504 in conjunction with the relocation of the Tiger MO, VOR/DME (CBI) to the Columbia Regional Airport, MO, (lat. 38°48'23"N., long. 92°13'06"W.), due to expiration and nonrenewal of lease. The description of V-12 will not change, but the charted depiction will. Additionally, the Tiger, MO, VOR/DME is proposed to be added as a low altitude reporting point, as a safety enhancement aid of air traffic control. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways, Domestic low altitude reporting points.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983; 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-39 [Revised]

From Napoleon, MO, via INT Napoleon 085°T(069°M) and Jefferson City, MO, 308°T(302°M) radials; Jefferson City; INT Jefferson City C24°T(036°M) and Foristell, MO, 277°T(272°M) radials; Foristell.

§ 71.203 [Amended]

3. § 71.203 is amended as follows:

Tigar, MO [New]

Issued in Washington, DC, on May 21, 1986.

Harold M. Bowman,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11694 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWA-17]

Proposed Alteration of Jet Routes and Establishment of VOR Federal Airways—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposals would alter the descriptions of seven Jet Routes and establish one new Federal Airway located in the States of Virginia, North Carolina, South Carolina and Georgia. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace between New England and Florida. This proposal is a portion of the Expanded East Coast Plan (EECP) to make optimum use of the limited airspace along the east coast corridor. This action would reduce enroute and terminal delays in the Boston, MA, New York, NY, Miami, FL, Chicago, IL, and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinate segments until completed.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-17, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of jet Routes J-24, J-48, J-51, J-52, J-55, J-61, J-191 and establish new VOR Federal Airway V-577 and alter V-39 located in the states of Virginia, North Carolina, South Carolina and Georgia. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate this congestion, the proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA, Chicago, IL, Atlanta, GA, and New York areas. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR federal airways and jet routes.

The proposed amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 nd 75) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-39 [Amended]

By removing the words "Linden, VA; Shawnee, VA;" and substituting the words "INT Gordonsville 331°T(337°M) and Shawnee, VA, 212°T(220°M) radials; Shawnee;"

V-577 [New]

From Cedar Lake, NJ; INT Cedar Lake 091°T(101°M) and Sea Isle, NJ, 050°T(060°M) radials.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J-24 [Amended]

By removing the words "Charleston, WV; to Richmond, VA." and substituting the words "Charleston, WV, INT Charleston 101°T(104°M) and Richmond, VA, 286°T(295°M) radials; to Richmond."

J-48 [Amended]

By removing the words "From Pulaski, VA, via Westminster, MD;" and substituting the words "From Toccoa, GA; via Montebello, VA; Casanova, VA; Westminster, MD;"

J-51 [Revised]

From Jacksonville, FL, via Savannah, GA; Columbia, SC; INT Columbia 040°T(042°M) and Flat Rock, VA, 213°T(219°M) radials; to Flat Rock.

J-52 [Amended]

By removing the words "Columbia, SC; Raleigh-Durham, NC;" and substituting the words "Columbia, SC; INT Columbia 040°T(042°M) and Raleigh-Durham, NC, 228°T(232°M) radials; Raleigh-Durham;

J-55 [Amended]

By removing the words "INT of the Florence 007° and the Raleigh, NC, and the Raleigh-Durham, 224° radials;" and substituting whe words "INT Florence 003°T(006°M) and Raleigh-Durham, NC, 228°T(232°M) radials;"

J-61 [Revised]

From INT Wilmington, NC, 028°T(035°M) and Nottingham, MD, 174°T(184°M) radials; Nottingham; Westminster, MD; Philipsburg, PA; to Buffalo, NY.

J-101 [Amended]

By removing the words "Tar River, NC;"

Issued in Washington, D.C., on May 21, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

FR Doc. 86-11992 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 594]

Winemaking Terminology

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend regulations defining various winemaking terms used on labels of wine. It arises from the decision in *Wawszkiewicz v. Department of the Treasury*, 480 F. Supp. 739 (D.D.C. 1979), *aff'd in part, rev'd in part*, 670 F. 2d 296 (D.C. Cir. 1981). The Court of Appeals remanded the case to the lower court with instructions that these regulations (among others) be remanded to ATF for reconsideration and review. ATF has reconsidered these regulations and concludes that they should be amended to specifically define terms used on wine labels to denote winemaking operations performed by the persons identified by name and address on the label. The uses of geographic terms on wine labels, another issue involved in the litigation, are the subjects of other rulemaking projects.

DATE: Written comments must be received by September 26, 1986.

ADDRESSES: Send written comments to:

Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of written comments received in response to this notice will be available during normal business hours at:

ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: On August 23, 1978, ATF issued a final rule, Treasury Decision ATF-53 (43 FR 37672, 54624), which extensively revised various regulations governing the labeling of wine. In T.D. ATF-53, ATF also decided not to amend regulations on winemaking terms which denote processes performed by the persons identified by name and address on the label. The plaintiffs in *Wawszkiewicz* challenged regulations governing the use of winemaking terms on wine labels, among other regulations. They argued that the lack of regulatory definitions of these terms sanctioned misleading labeling.

District Court

The District Court held that the challenged regulations were inconsistent with 27 U.S.C. 205(e). For example, in the court's view, the use of a grape variety name implied that 100 percent of the wine was derived from grapes known by that name. The court held that "[b]y assigning inaccurate and undisclosed meanings to words which are otherwise clear and unequivocal, the challenged regulation sanctions the transmittal of false and misleading information." 480 F. Supp. at 744. The district court decision dwelt primarily on the varietal labeling rule but held that similar shortcomings applied to the other contested rules. *Id.* at 745. The court concluded that wine labels should carry concise explanations of any terminology used where the identity of the producer or maker is represented to the consumer. *Id.* at 745. The District Court ordered that the regulations be remanded to ATF for revision consistent with the conclusion described above.

Court of Appeals

The Court of Appeals disagreed with the District Court's rationale in that a court reviewing agency action is not empowered to substitute its judgment for that of the agency. The Court of Appeals held that an agency's decision should be upheld where there is a rational basis for the decision in the facts of the record. 670 F. 2d at 301. Pursuant to this test, the court upheld

the regulations governing varietal labeling but found that the regulations concerning winemaking terminology had not been adequately explained, "either by reference to the records or by a reasoned statement." *Id.* at 304. The Court of Appeals remanded the case to the District Court with instructions that the regulations governing winemaking terminology be remanded to ATF for review and reconsideration in light of the appelate court's decision. The court thus afforded ATF an opportunity either to show that the regulations "meaningfully control misleading labeling and advertising," or to rewrite the regulations" in such fashion that the agency can demonstrate compliance with the statutory mandates." *Id.* at 304. No specific instructions were provided by either court nor were any dates set in connection with the review or reconsideration.

New Rulemaking Projects

Definitions of various winemaking terms which are indicative of specific processes used in the production of wine are proposed in this notice.

ATF has previously issued a general statement of policy, Notice No. 576 (50 FR 51849), explaining its decision on appellation of origin percentages and geographic corporate and trade names, by reference to the records and by reasoned statement.

In previously published notices of proposed rulemaking, ATF has proposed revisions of the geographic brand names regulation, Notice Nos. 522, 534, and 542 (49 FR 18380, 28417, and 34847, respectively).

Current Rules and Winemaking Terminology

Under 27 CFR 4.35, the name and address of the bottler of wine is required to be shown on the label. The word "produced" is defined, and the undefined words "blended," "rectified," "prepared," and "made" are given as examples of words which may appear in conjunction with the required name and address of the bottler. In addition, the undefined word "manufactured" may appear on the label of imitation wine only, in conjunction with the required name and address of the bottler.

In ATF Ruling 79–2, A.T.F.Q.B. 1979–1, 21, ATF defined these and other words contemplated for use in the same context. This ruling defined "made," "prepared," "blended," "rectified," and "cellared" for use in conjunction with the words "bottled by" preceding the required name and address of the bottler.

In *Wawszkiewicz*, the court focused on the definitions of "produced" and "made," finding that "[i]t is by no means intuitively clear why it is not misleading for a winery to represent that it produced a wine when another was heavily involved in its production, or that it made a wine that it in fact purchased." 670 F.2d at 304.

Therefore, ATF is issuing this notice proposing to eliminate the disparity between the definitions of "produced" and "made," and to define other words currently being used on wine labels to denote specific winemaking operations performed by the persons identified by name and address on the label. These definitions are derived, in part, from the ATF Ruling 79–2, and they reflect longstanding ATF policy and industry usage.

Proposed Rules On Winemaking Terminology

This notice proposes that the following words, when used in conjunction with the required name and address legend on a wine label, shall have the meanings described, denoting specific winemaking operations performed by the bottler.

(1) "Produced" or "Made" means that the named winery (a) fermented 75% of the wine at the stated address, or (b) changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, artificial carbonation at the stated address, or (c) produced sparkling wine by secondary fermentation at the stated address.

(2) "Vinified" means that the named winery (a) fermented 75% of the wine at the stated address, or (b) produced sparkling wine by secondary fermentation at the stated address.

(3) "Blended" means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(4) "Cellared", "Vinted", or "Prepared" means that the named winery, at the stated address, subjected the wine to cellar treatment which did not result in changing the class or type, in accordance with § 4.22(c).

This list includes the words "Vinted" and "Vinified" as defined in their ordinary usage on wine labels. These words have not been previously defined in any public document.

The word "rectified", as defined in ATF Ruling 79–2, refers to the production of a wine product at a distilled spirits plant, an activity which was subsequently prohibited by the passage of the Distilled Spirits Tax Revision Act of 1979, Pub. L. 96–39. Therefore, this word will not be included in the defined terms.

The word "manufactured", given as an example of a word which may appear on the label of imitation wine only, will be eliminated. ATF believes that this word has not been used in many years. In addition, the word "artificial" or "imitation" on labels of imitation wines adequately informs the consumer of the presence of synthetic ingredients, and the word "manufactured" serves no purpose in this context.

Conforming changes are proposed relating to words used on imported wines to denote winemaking operations. The words used, or their English-language equivalents, must meet the requirements of the country of origin for wines sold within the country of origin. In addition, the mandatory name and address statements on imported wine are rewritten for clarity.

The requirement to obtain a certificate of label approval will preclude the introduction of new, undefined words denoting winemaking operations. ATF has not determined if there is a need for a procedure to approve the use of new words coined in the future.

ATF Ruling 79–2, A.T.F.Q.B. 1979–1, 21, will be superseded when the final rule is issued.

Public Participants—Written Comments

ATF requests comments from all interested persons concerning the proposed definitions of winemaking terms used on wine labels in conjunction with the name and address legend. This notice proposes one definition for each term, and attempts to define all terms which are currently being used in conjunction with the name and address legend.

AFT requests comments on the following specific questions:

a. Are the proposed definitions correct? If not, which term is incorrectly defined, and what is the correct definition?

b. Are other terms (used in conjunction with the name and address legend) currently in use which are not defined in this notice? If so, what other term is currently in use, and what is that term's correct definition?

c. Should ATF establish a procedure to control the introduction of new terms in the future? What kinds of controls are necessary to regulate the coining of new words?

d. What is an appropriate time period for implementation of the regulation?

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 120-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information proposed in this notice have been submitted to the Office of Management and Budget for review under sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

PART 4—[AMENDED]

Based on the above discussion, the Director proposes to amend 27 CFR Part 4—Labeling and Advertising of Wine as follows:

1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205

2. Paragraphs (a) and (b) of § 4.35 are revised to read as follows:

§ 4.35 Name and address.

(a) *American wine.* (1) *Mandatory statement.* Each label of each container of American wine shall state either "bottled by" or "packed by" followed by the name of the bottler or packer and address (in accordance with paragraph (c)) of the place where the wine was bottled or packed. In accordance with paragraph (a)(2), other words may also be stated in addition to the required words "bottled by" or "packed by" and the required name and address.

(2) *Optional statements.* (i) In addition to the statement required by paragraph (a)(1), the label may also state the name and address of any other person for whom the wine was bottled or packed, immediately proceded by the words "bottled for" or "packed for" or "distributed by".

(ii) The words defined in paragraphs (a)(2)(iii)–(a)(2)(vi) may be used, in accordance with the definitions given, in addition to the name and address statement required by paragraph (a)(1). Use of these words may be conjoined, using the word "and", with the words "bottled by" or "packed by" only if the same person performed the defined operation at the same address. More than one name and address statement is necessary if a person other than the bottler or packer did not perform the defined operation at the same address.

(iii) "Produced" or "Made" means that the named winery (*A*) fermented 75% of the wine at the stated address, or (*B*) changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, artificial carbonation at the stated address, or (*C*) produced sparkling wine by secondary fermentation at the stated address.

(iv) "Vinified" means that the named winery (*A*) fermented 75% of the wine at the stated address, or (*B*) produced sparkling wine by secondary fermentation at the stated address.

(v) "Blended" means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(vi) "Cellared", "Vinted", or "Prepared" means that the named winery, at the stated address, subjected the wine to cellar treatment which did not result in changing the class or type, in accordance with § 4.22(c).

(b) *Imported wine.* (1) *Mandatory statements.* (i) Each label of each container of imported wine shall state "imported by" or a similar appropriate phrase, followed immediately by the name of the importer, agent, sole distributor, or other person responsible for the importation, followed immediately by the address of the principal place of business in the United States of the named person.

(ii) If the wine was bottled or packed in the United States, the label shall also contain the statement required by either paragraph (b)(1)(ii)(*A*), (b)(1)(ii)(*B*), or (b)(1)(ii)(*C*), as follows:

(*A*) The label shall state the words "bottled by" or "packed by" followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed;

(*B*) If the wine was bottled or packed for the person responsible for the importation, the label may state the words "imported by and bottled (packed) in the United States for" (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation; or

(*C*) If the wine was bottled or packed by the person responsible for the importation, the label may state the words "imported and bottled (packed) by" followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(iii) If the wine was blended, bottled or packed in a foreign country other than the country of origin, and the label identifies the country of origin, the label shall state "blended by," "bottled by," or "packed by," or other appropriate statement, followed by the name of the blender, bottler or packer and the place where the wine was blended, bottled or packed.

(2) *Optional statements.* In addition to the statements required by paragraph (b)(1), the label may also state the name and address of the principal place of business of the foreign producer. Other words, or their English-language equivalents, denoting winemaking operations may be used in accordance with the requirements of the country of origin, for wines sold within the country of origin.

* * * * *

Signed March 10, 1986.

W.T. Ireska,

Acting Director.

Approved: May 12, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-11862 Filed 5-28-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 181 and 183

[CGD 85-002]

Boating Safety; Certification and Safe Powering Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Certification regulations in Subpart B of Part 181 and the Safe Powering Standard in Subpart D of Part 183 of Title 33, Code of Federal Regulations. The intended effect of the proposal is to give those boats, which can clearly operate safety with more horsepower than they currently rate under the Coast Guard Safe Powering Standard, more reasonable maximum horsepower capacities. In order to allow greater flexibility in the manner in which the maximum horsepower capacity of these boats is determined, the proposal would establish an optional performance test method as an alternative to the existing calculation method. An additional editorial change to Subpart A of Part 181 would reflect changes in the applicability of the part.

DATE: Comments must be received on or before July 29, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 85-002), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1065, between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data or arguments. Comments should include the name and address of the person making them and identify this notice [CGD 85-002]. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Discussion of Comments: The Coast Guard published an advance notice of proposed rulemaking in the **Federal Register** on March 21, 1985 [50 FR 11383]. An extension of the comment period for the notice was published in the **Federal Register** on May 23, 1985 [50 FR 21311]. Comments were received from three people.

One comment was in favor of the proposal to base the maximum horsepower capacity upon the ability of small outboard runabouts to pass the American Boat and Yacht Council (ABYC) Quick Turn Test.

Another comment was in basic agreement with the proposal to establish a new test procedure for certain boats; however, the comment stated that consideration should be given to the 12-foot maximum length, since law enforcement authorities prohibit boats less than 12 feet from operating on some lakes. The comment does not pertain to the purpose of this proposal, which is to give certain small outboard powered runabouts more reasonable maximum horsepower capacities. This proposal does not affect the manner in which some States regulate the operation of small outboard powered runabouts.

Two comments questioned the need for a minimum 20 inch transom height, since, according to one of the comments, several boats which would otherwise be considered eligible for the optional method for determining a maximum horsepower capacity have a transom lower than 20 inches and continue to perform safely. These comments are accepted. Under the proposal, a 15 inch transom height would be permitted if a bulkhead or motorwell at least 19 inches in height is provided to keep water from entering the boat over the transom.

Another comment objected to the 12-foot length limit. The basis for this new class is the demonstrated ability of boats 12 feet in length to safely complete the Safe Maneuvering Speed and Quick Turn Tests. The comment states that boats more than 12 feet in length could demonstrate the same safe handling characteristics as boats less than 12 feet in length. This comment is partially adopted. The proposal has been changed to include boats 13 feet in length or less. A review of recent Coast Guard reports covering testing for compliance with the Safe Powering Standard indicates that boats larger than 13 feet in length currently rate reasonable maximum horsepower capacities. The intent of the proposal is to give more reasonable maximum horsepower capacities to boats to which the curent application of the standard is unreasonable.

The Coast Guard has removed the proposed "sport boat" classification because the term has been found to cover a wide range of various types of recreational vessels.

Discussion of the Proposed Amendment

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council concurred with the approach suggested by the Coast Guard. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593.

Since the Federal Boat Safety Act of 1971 has been recodified as Chapter 43

of Subtitle II of Title 46 of the United States Code (U.S.C.), sections 181.1 and 181.5 would be revised to show that Part 181 prescribes requirements for boats and associated equipment to which 46 U.S.C. Chapter 43 applies. The authority citation for Part 181 is being revised to reflect the recodification.

Section 181.15 would be amended to include additional wording on the certification label stating that a boat eligible for the optional method for determining a maximum horsepower capacity is intended for racing and other high performance activities. The label would also state that the level of skill required to operate such a boat might exceed the abilities of some operators. The additional wording on the label would make it clear that the boat is a special vessel intended for a special type of recreational use.

Section 183.3 would be revised to include new definitions for "transom height," "motorwell," and "motorwell height." These definitions are needed to identify boats which qualify for the optional method of determining a maximum horsepower capacity. Section 183.2 would also be amended to include a new figure that illustrates these definitions.

Section 183.53 would be amended to include an optional method for determining the maximum horsepower capacity calculation method in § 183. 53, the maximum horsepower capacity of certain small outboard runabouts could be determined based upon successful completion of a series of maneuvers through a test course and a 180° turn of the steering wheel at top speed. The 180° turn of the wheel simulates the maximum rotation of the wheel and the sharpest turn into which an operator might accidentally throw the boat. The test course and quick turn test are based upon American Boat and Yacht Council (ABYC) Standard H–28 which establishes a method for determining the safe maneuvering speed of a boat. Section 183.53 would also be amended to include a new figure that illustrates the test course to be used.

Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The proposal to establish a new method for determining the maximum horsepower capacity of certain small outboard runabouts is a relief from the application of the current standard. There is no increased cost per boat. Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Parts 181 and 183

Marine safety.

In consideration of the foregoing, the Coast Guard proposes to amend Parts 181 and 183 of Title 33, Code of Federal Regulations to read as follows:

PART 181—MANUFACTURER REQUIREMENTS

1. The authority citation for Part 181 is revised to read as follows and all other authority citations in Part 181 are removed:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. By revising § 181.1 to read as follows:

§ 181.1 Purpose and applicability.

This Part prescribes requirements for the certification of boats and associated equipment and identification of boats to which 46 U.S.C. Chapter 43 applies.

3. By revising § 181.5 to read as follows:

§ 181.5 Purpose and applicability.

This subpart prescribes requirements for the certification of boats and associated equipment to which 46 U.S.C. Chapter 43 applies and to which a safety standard prescribed in Part 183 of this chapter applies.

4. In § 181.15, by adding a new paragraph (f) to read as follows:

§ 181.15 Contents of labels.

* * * * *

(f) Each boat which displays a maximum horsepower capacity determined in accordance with § 183.53(c) must, in addition to the information required by paragraphs (a), (b) and (d) of this section, display on the certification label, the following statement in letters no less than one-quarter of an inch in height: "THIS BOAT IS INTENDED FOR RACING AND OTHER HIGH PERFORMANCE ACTIVITIES. THE SKILL REQUIRED MAY EXCEED THE ABILITIES OF SOME OPERATORS."

PART 183—BOATS AND ASSOCIATED EQUIPMENT

5. The authority citation for Part 183 is revised to read as follows and all other authority citations in Part 183 are removed:

Authority: 46 U.S.C. 4302; 49 CFR 1.46(n)(1).

6. By revising § 183.1 to read as follows:

§ 183.1 Purpose and applicability.

This subpart prescribes requirements for the certification of boats and associated equipment to which 46 U.S.C. Chapter 43 applies and to which certification requirements in Part 181 of this subchapter apply.

7. In § 183.3, by adding three new paragraphs (l), (m) and (n) to read as follows:

§ 183.3 Definitions.

* * * * *

(l) "Transom height" means the vertical distance from the lowest point of water ingress along the top of the transom to a line representing a longitudinal extension of the centerline of the boat's bottom surface, excluding keels. This distance is measured as a projection on the centerline plane of the boat. See Figure 183.3.

(m) "Motorwell" means any arrangement of bulkheads or structures that prevents water from entering the passenger carrying area of the boat through any cutout area in the transom for mounting an outboard motor.

(n) "Motorwell height" means the vertical distance from the lowest point of water ingress along the top of the motorwell to a line representing a longitudinal extension of the centerline of the boat's bottom surface, excluding keels. This distance is measured as a projection on the centerline plane of the boat. See Figure 183.3

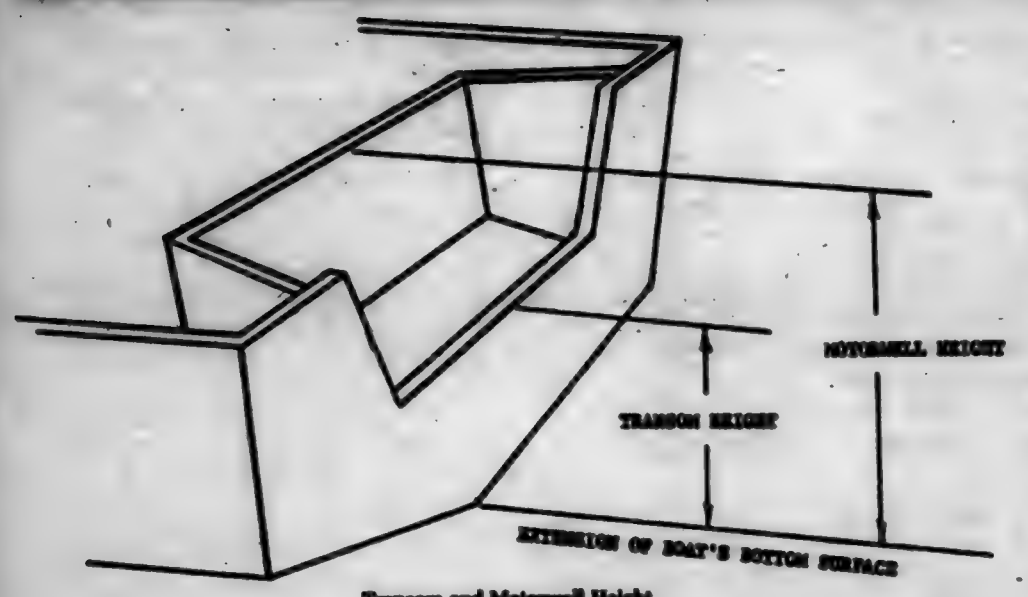

Transom and Motorwell Height

8. By revising § 183.53 to read as follows:

§ 183.53 Horsepower capacity.

The maximum horsepower capacity marked on a boat must not exceed the horsepower capacity determined by the computation method discussed in paragraph (a) of this section, or for certain qualifying boats, the performance test method discussed in paragraph (b) of this section.

(a) The maximum horsepower capacity must be computed as follows:

(1) Compute a factor by multiplying the boat length in feet by the maximum transom width in feet excluding handles and other similar fittings, attachments, and extensions. If the boat does not have a full transom, the transom width is the broadest beam in the aftermost quarter length of the boat.

(2) Locate horsepower capacity corresponding to the factor in Table 183.53.

(3) For a boat with a factor over 52.5, if the horsepower capacity calculated in Table 183.53 is not an exact multiple of 5, it may be raised to the next exact multiple of 5.

(4) For flat bottom hard chine boats with a factor of 52 or less, the horsepower capacity must be reduced by one horsepower capacity increment in Table 183.53.

TABLE 183.53—OUTBOARD BOAT HORSEPOWER CAPACITY

Compute: Factor—Boat Length X Transom Width

If factor (nearest integer) is	0-35	36-39	40-42	43-46	48-52
Horsepower Capacity is	3	5	7.5	10	15

Note: For flat bottom hard chine boats, with factor of 52 or less, reduce one capacity limit (e.g. 5 to 3)

If factor is over 52.5 and the boat has	Remote steering and at least 20" transom height	No remote steering, or less than 20" transom height	
		For flat bottom hard chine boats	For other boats
Horsepower capacity is (raise to nearest multiple of 5).	(2 X Factor) – 90	(0.5 X Factor) – 15	(0.8 X Factor) – 25

(b) For boats qualifying under this paragraph, the performance test method described in this paragraph may be used to determine the horsepower capacity.

(1) *Qualifying criteria.*

(i) Thirteen feet or less in length;

(ii) Remote wheel steering;

(iii) Transom Height.

(A) Minimum 19 inch transom height; or,

(B) For boats with at least a 19 inch motorwell height, a minimum 15 inch transom height;

(iv) Maximum Persons Capacity not over two persons;

(2) *Boat preparation.*

(i) The boat must be rigged with equipment recommended or provided by the boat and motor manufacturer and tested with the highest horsepower production powerplant for which the boat is to be rated, not to exceed 40 horsepower.

(ii) Standard equipment must be installed in accordance with manufacturers' instructions.

(iii) The lowest ratio (quickest) steering system offered on the boat model being tested must be installed.

(iv) The outboard motor must be fitted with the manufacturer's recommended propeller providing maximum speed.

(v) Standard permanently installed fuel tanks must be no more than one-half full. Boats without permanent tanks must be tested with one full portable tank.

(vi) Portable tanks must be in their designated location or placed as far aft as possible.

(vii) The outboard motor must be placed in the lowest vertical position on the transom or, if mounting instructions are provided with the boat, at the height recommeded.

(viii) Boat bottom, motor and propeller must be in new or almost new condition.

Note: The use of the following special equipment should be considered because of the potential for exceeding the capabilities of the boat while performing the test:

Racing Type Personal Flotation Device
Helmet.

(3) *Test conditions.* Testing must be conducted on smooth, calm water with the wind speed below 10 knots. The test must be conducted with no load other than driver who must weight no more than 200 pounds. The motor trim angle must be adjusted to provide maximum full throttle speed short of excessive porpoising or propeller ventilation of "cavitation", so that there is no loss of directional control.

(4) *Quick turn test procedure.* Set throttle at a low mansuvering speed and steer the boat straight ahead. Turn the steering wheel 180° in the direction of least resistance in 1/2 second or less and hold it at that position without changing the throttle or trim settings during or after the wheel change. The boat completes the maneuver successfully if it is capable of completing a 90° turn without the driver losing control of the boat or reducing the throttle setting. Gradually increase the boat's turn entry speed incrementally until the boat does not complete the Quick Turn Test successfully or successfully completes it at maximum speed.

Note: It is recognized that operator skill and familiarity with a particular boat and motor combination will affect the test results. It is permissible to make a number of practice runs through the quick turn test at any throttle setting.

(5) *Test course method.* Set throttle for 30 miles per hour boat speed and run the test course set up in accordance with Figure 183.53, passing outside the designated avoidance marker for 35 to 37.5 miles per hour without contacting any of the course markers. If the boat successfully completes this run of the test course, increase the throttle setting

to 35 to 37.5 miles per hour boat speed and run the course passing outside the designated avoidance marker for that speed without contacting any of the course markers. If the boat successfully completes this run of the test course and the motor was not at full throttle, increase the throttle setting to 37.5 to 42.5 miles per hour boat speed and run the course passing outside the designated avoidance marker for that speed without contracting any of the course markers. If the boat successfully completes this run of the test course and the motor was not at full throttle, increase the throttle setting to 42.5 miles per hour or more and run the course passing outside the designated avoidance marker for that speed without contracting any of the course markers. If the boat successfully completes this run of the test course and the motor was not at full throttle, continue to increase the throttle setting and run the test course passing outside the designated avoidance marker for 42.5 miles per hour or more until the boat fails to complete the test successfully or the boat completes the test course maneuvers successfully at full throttle. The boat successfully completes the test course if the driver is able to maneuver it between the designated avoidance markers without striking the markers and without losing control of the boat or reducing the throttle setting. There must be no change in position of any equipment on board and there must be no change of position of personnel in order to influence the test results. There must be no instability evidenced by oscillating motion in the roll and yaw axes exhibited while negotiating the course.

Note: It is recognized that operator skill and familiarity with a particular boat and motor combination will affect the test results. It is therefore considered permissible to make a number of practice runs through the test course at any throttle setting.

(6) *Maximum horsepower capacity.*

(i) For boats capable of less than 35 miles per hour, the maximum horsepower capacity must be the maximum horsepower with which the boat was able to successfully complete the Quick Turn Test Procedure in § 183.53(b)(4) at full throttle or the maximum horsepower determined under the calculations in § 183.53(a) of this section.

(ii) For boats capable of 35 miles per hour or more, the maximum horsepower capacity must be the maximum horsepower with which the boat was able to successfully complete with the Quick Turn Procedure in § 183.53(b)(4) and the Test Course Method in § 183.53(b)(5) at full throttle or the calculations in § 183.53(a) of this section.

(c) The maximum horsepower capacity determined in accordance with § 183.53(b) must not exceed 40 horsepower.

Figure 183.53

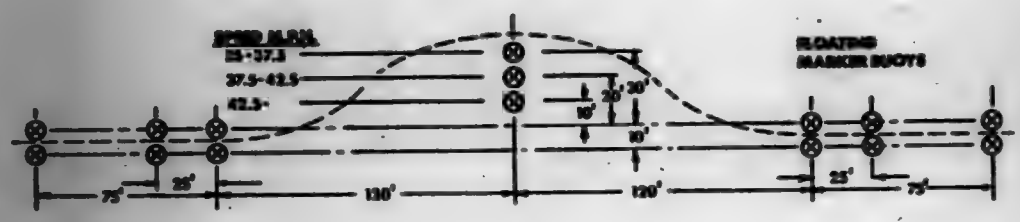

Boat Horsepower Capacity Test Course
35 mph or more

Dated: May 12, 1986.

T.T. Matteson,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 86-12060 Filed 5-28-86; 8:45 am]

BILLING CODE 7910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rulemaking would amend Subpart 1784 of this title to redefine the conditions under which members may be reappointed to district advisory councils; remove the section on the California Desert Conservation Area Advisory Committee, which terminated and whose functions were assumed by the California Desert District Advisory Council in 1981; delete the requirement for biennial calls for nominations for appointments to district advisory councils, which no longer applies; and remove 2 obsolete references to the grazing advisory boards that terminated on December 31, 1985.

DATES: Comments should be submitted by July 28, 1986. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular working hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David S. Johnson, (202) 343-2064.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would amend § 1784.3(b) of Title 43 of the Code of Federal Regulations to remove the 6-year limit on additional terms for members of the district advisory councils of the Bureau of Land Management (BLM) and substitute a provision for 2 consecutive 3-year terms with the opportunity for appointment to additional 3-year terms following a 3-year non-membership period. There would also be provision, however, for the Secretary to appoint council members to 1-year terms, without the lapse of 3 years following completion of 2 consecutive 3-year terms, if the Secretary determines that it would be in the public interest and critical to the effective functioning of the council, and provided that the district manager has certified that the need exists.

The final sentence of the existing § 1784.3(b), which concerns the appointment of members to district advisory councils, reads as follows: "At the discretion of the Secretary, members may be reappointed to additional terms, not to exceed a total of six years." The Department of the Interior has interpreted this provision to impose a lifetime limit on service, allowing additional terms, but not to exceed a total of six years beyond the initial term. Under the present regulation, therefore, members can serve a total of no more than 9 years (an initial 3-year

appointment plus six additional years). This presents two distinct problems: (1) A lifetime limit could rapidly deplete the number of local qualified, experienced candidates; and (2) nine years of continuous service might not provide adequate member turnover. BLM district managers need some control over continuity of membership so that they can plan ahead for long-range council activities and be assured that experienced members will not be arbitrarily terminated in the middle of critical reviews of BLM issues or problems. On the other hand, a uniform mechanism is needed for the regular turnover of membership, after a reasonable period of service, to ensure the introduction of new experience, ideas, and approaches and to discourage a handful of persons from monopolizing the membership.

In many BLM districts, it is often difficult to find qualified candidates who are willing to serve on the councils, and who possess the required skills, knowledge, and experience for a particular position on a council. The past experience of those who have served on a council increases their value to the district manager. They constitute a "bank of experience" from which he must draw when fresh sources of talent are depleted. Recurring service must therefore be an available option. Occasionally, a member may become essential to the effective functioning of a council due to unusual circumstances, such as a lack of qualified candidates for the position, or a need to conclude assigned studies or resolve issues. In these situations, it may be necessary to reappoint a member for a brief, additional period so that a replacement can be found or critical council business can be concluded.

The proposed rulemaking would continue the present practice for filling a vacancy, which is to make an appointment for the balance of the unexpired term. Section 1784.3(b)(4) of the rulemaking would provide, however, that such an appointee would be eligible to be reappointed to 2 successive 3-year terms if 3 years had passed since he or she last served a full 3-year term on the council before being appointed to that vacancy.

The proposed rulemaking would remove §§ 1784.0–3(b)(2) and 1784.6–3 which relate to the California Desert Conservation Area Advisory Committee. This committee terminated on December 31, 1981, and its functions were taken over by the California Desert District Advisory Council. The California Desert Conservation Area is wholly included in the California Desert District. The proposed rulemaking would also amend § 1784.6–4(b) to make it consistent with § 1784.3(b) by removing the provision for biennial concurrent appointments. Further, it would amend § 1784.3(b) to state clearly the length of the term of a person appointed to a district advisory council as an elected official of general purpose government as required under § 1784.6–4(b), and remove §§ 1784.0–3(b)(3) and 1784.6–5(f), which are obsolete because they relate to the grazing advisory boards that terminated on December 31, 1985, because the provisions of the Federal Land Policy and Management Act of 1976 that authorized them expired on that date.

The principal author of this proposed rulemaking is David S. Johnson of the Office of Congressional Affairs, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determinated that this document is not a major rulemaking under Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rulemaking would not affect the economy to the extent of $100,000,000 per year, and would impose no new restrictions on commercial operations of any size.

This proposed rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subject in 43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

Under the provisions of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and 5 U.S.C. Appendix I, it is proposed to amend Part 1780, Group 1700, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations by amending Subpart 1784 as set forth below:

GROUP 1700—Program Management

PART 1780—Cooperative Relations

Subpart 1784—Advisory Committees

1. The authority for Subpart 1784 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*)

§ 1784.0–3 [Amended]

2. Section 1784.0–3, paragraph (b) is revised to read as follows:

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), requires establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands.

§ 1784.3 [Amended]

* * * * *

(b) Appointment to district advisory councils shall be for 3-year terms, on the established staggered-term basis, with as near as possible to one-third of each council subject to appointment each year. Terms and appointment are governed by the following:

(1) The term of the member of a council who is an elected official of general purpose government shall end upon that person's departure from such elective office if such departure occurs before his or her term of appointment or reappointment to the council would otherwise expire. The position shall then be filled in accordance with paragraph (b)(2) of this section;

(2) A vacancy occurring by reason of removal, resignation, death, or loss of elected office shall be filled for the balance of the vacating member's term using the same method by which the original appointment was made;

(3) A person who has served a full 3-year term on a council may be reappointed to a second consecutive 3-year term;

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy, if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy, may be reappointed to 2 consecutive 3-year terms;

(5) A person who has served 2 consecutive 3-year terms on a council may be reappointed no earlier than 3

years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and reappoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

§ 1784.6–3 [Removed]

4. Section 1784.6–3 is removed and reserved.

§ 1784.6–4 [Amended]

5. In § 1784.6–4, the first sentence of paragraph (b) is revised to read as follows:

* * * * *

(b) The Secretary or his designee shall appoint not less than 10 nor more than 15 members to serve on each council in accordance with the provisions of § 1784.3(b) of this title. * * *

§ 1784.6–5 [Amended]

6. § 1784.6–5(f) is removed.

J. Steven Griles,

Assistant Secretary of the Interior.

May 12, 1986.

[FR Doc. 86–12011 Filed 5–28–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket 86–192, FCC 86–247]

Common Carrier Services; Elimination of Reporting Requirement for Maritime Radio Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend §43.21 of its Rules with respect to the filing of annual reports by maritime radio carriers. If adopted the carriers will no longer have to file an annual report Form M. This proposal is part of the Commission's overall effort to eliminate unnecessary and burdensome reporting requirements.

DATES: Comments must be submitted on or before June 13 and reply comments on or before June 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Katie Rangos at (202) 632–0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, CC Docket 86–192, adopted May 9, 1986 and released May 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M St., Northwest, Suite 140, Washington, DC 20037.

Summary Notice of Proposed Rulemaking

1. Section 43.21 of this Commission's Rules, 47 CFR 43.21, requires maritime radio carriers to submit annual reports. In this Notice of Proposed Rulemaking (Notice) we propose to eliminate from this section a reporting requirement that is unnecessary and burdensome. Specifically, we propose to eliminate the requirement that maritime radio carriers file annual reports.

2. Communication carriers in the maritime radio service having annual revenues in excess of $50,000 file three copies of the annual report Form M with this Commission. Since 1977, Central Radio Telegraph Company has been the only maritime carrier filing an annual report Form M. The Form M is a 93 page report that contains detailed information on stock and stockholders; officers and directors; and financial and operating data of the companies.

3. The maritime carrier Form M reports have only been used on an infrequent and limited basis. There is only one schedule in the Form M which applies to maritime carrier operations. The other Form M schedules pertain to telephone carrier operations. We do not publish any information from the maritime reports comparable to the statistical tabulations of the telephone carrier reports.

4. Eliminating the maritime carrier requirement does not preclude this Commission from directing those carriers to file detailed information should the need arise. We think that our needs for data can be adequately served in a more efficient manner. When necessary, special data requests can be tailored to special needs. Since there is no recurring use of this data, special studies will eliminate the need for maritime carriers to submit annually. This will not only reduce the costs to the carriers, it will also reduce this Commission's costs.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. However, modification of the information collection requirement will not generate a burden change.

6. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the reporting of maritime radio carriers on annual report Form M will not have a significant economic impact and will ease the recordkeeping and reporting requirement of these carriers. The rationale for the proposed elimination is outlined in the above discussions.

7. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible ex parte contacts.

8. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

9. Accordingly, it is ordered, That pursuant to the provisions of sections 219 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 219 and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

10. It is further ordered, That all interested persons may file comments on the specific proposals discussed in the Notice on or before June 13, 1986. Reply comments shall be filed on or before June 30, 1986. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulation, 47 CFR § 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room; 1919 M Street, NW, Washington, DC.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and record keeping requirements, Marine.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–12022 Filed 5–28–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85-283, RM-5975]

Radio Broadcasting Services; Lovelock, NV

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document dismisses the request of Radio 1200 to allocate Channel 236 to Lovelock, Nevada, as the community's first local FM service, due to the lack of continuing interest. The proposed rule in this proceeding was published October 3, 1985, at 50 FR 40414.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-283, adopted May 5, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12023 Filed 5-28-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 103
Thursday, May 29, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Environmental Statement; Middle Tennessee Electric Membership Corporation

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500–1508) and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to a proposed project by Middle Tennessee Electric Membership Corporation (MTEMC). The project consists of the construction of new office facilities on approximately 5 hectares (12.5 acres) of land near the City of Franklin in Williamson County, Tennessee.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and MTEMC's Borrower's Environmental Report (BER) may be reviewed in the office of the Chief, Distribution and Transmission Engineering Branch, Southeast Area—Electric, Room 0270, South Agriculture Building, REA, Washington, DC 20250, telephone (202) 382–8436, or at MTEMC's office (Mr. James O. Baker, Manager), P.O. Box 608, Murfreesboro, Tennessee 37130, telephone (615) 890–9762.

SUPPLEMENTARY INFORMATION: REA has reviewed MTEMC's BER and has determined that it represents an accurate description of the environmental impacts of the proposed project. The BER has been incorporated as an appendix to the EA. The proposed project will consist of a 1,255 square meter (sq. mtr.) (13,505 square foot [sq. ft.]) office building, a 304 square meter (3,271 sq. ft.) warehouse, a 203 square meter (2,184 sq. ft.) maintenance building, a pole storage area, a transformer storage area, two parking lots with spaces for 80 employee and visitor vehicles, parking spaces for 14 small trucks, gasoline storage and pumping facilities, and a microwave tower approximately 30 meters (100 feet) in height.

The proposed site is located in Williamson County, Tennessee, just outside the city limits of Franklin between Curd Lane and Interstate 65 approximately 805 meters (one-half mile) north of the interchange at Interstate 65 and Murfreesboro Road.

REA determined that the proposed project is not likely to affect flora or fauna on the Federal list of threatened or endangered species of critical habitat, property listed or eligible for listing in the National Register of Historic Places, wetlands, the 100-year floodplain, important farmland, or water quality. No other matters of potential environmental concern have been discovered.

REA considered the alternatives of taking no action, evaluating alternative sites, and approving the proposed project as submitted by MTEMC. REA has determined that the project as proposed by MTEMC is the best alternative to meet MTEMC's needs with negligible impact to the quality of the human environment.

Based upon METMC's BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, MTEMC advertised that a BER for the project was available for review concerning the environmental aspects of the proposed project. No request for the BER were received.

REA concluded that approval to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not necessary. This program is listed in the Catalog of Federal Domestic Assistance as 10.850–Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: May 21, 1986.

Harold V. Hunter,
Administrator.

[FR Doc. 86–11987 Filed 5–28–86; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–505]

Oil Country Tubular Goods from Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that oil country tubular goods (OCTG) from Taiwan are being, or are likely to be, sold in the United States at less than fair value and that critical circumstances do not exist, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of OCTG from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice of the preliminary determination, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that OCTG from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 731 of the

Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). The estimated margin was based on all the respondent's sales of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the U.S. purchase price and the constructed value, since there were no sales in the home market or to third countries. We also found that critical circumstances do not exist. The margin found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On July 22, 1985, we received a petition, filed in proper form from Lone Star Steel Company and CF&I Steel Corporation on behalf of the U.S. industry producing OCTG. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on August 9, 1985 (50 FR 33368), and notified the ITC of our action.

On August 21, 1985, a questionnaire was presented to counsel for the respondent.

On September 5, 1985, the ITC found that there is a reasonable indication that imports of OCTG from Taiwan are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1747, September 1985).

On October 10, 1985, the respondent filed a response to our questionnaire. We investigated Far East Machinery Company (FEMCO), the manufacturer who accounts for all Taiwanese exports of the merchandise to the United States. We examined 100 percent of the sales made by this company.

On December 23, 1985, we made our preliminary determination, which was based on the information contained in the response.

On February 24 through 27, 1986, we conducted a verification at FEMCO's offices.

On February 22, 1986, we postponed the final determination at the request of FEMCO pursuant to 19 U.S.C. 1673d(a)(2) until not later than May 21, 1986 (51 FR 7308).

We held a public hearing on April 28, 1986.

Scope of the Investigation

The products under investigation are "oil country tubular goods," which are hollow steel products of circular cross section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non API specifications (such as proprietary) as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) items, 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4948, 610.4954, 610.4956, 610.4958, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the C and F packed price. We made deductions for foreign inland freight, ocean freight, handling and brokerage charges.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we used "constructed value" to determine the foreign market value, because Far East Machinery Co., Ltd. has not sold a product "such or similar" to that sold in the United States in either its home market or in a third country. To determine constructed value we examined production costs, including materials, labor, research and development, other manufacturing costs, selling, other general expenses and profit.

Our final determination was based on verified cost information relating to production during 1985 rather than 1984 as submitted by respondent. We used unit costs based on the actual costs incurred for production. We revised the costs as presented by the respondent in its submission of October 16 and December 2, 1985, related to the following:

- Rebate credits claimed by the respondent for raw materials were only allocated to 4.5 inch pipe produced during the period of investigation.
- The theoretical weight adjustment was corrected for 2.375 inch pipe and excluded from 4.5 inch pipe cost calculations.
- The annual bonus was allocated throughout the year to labor costs per hour.
- Direct labor costs were corrected to reflect the weighted average monthly cost of regular and overtime hours.
- Factory overhead expenses were adjusted for supplies, indirect labor and other costs.
- Factory overhead was allocated on production volume.
- Fixed overhead was allocated on an average monthly basis.
- Labor and material costs for packing expenses were corrected.

We used the actual selling, general and administrative (SG&A) expenses which exceeded the statutory 10 percent of the material and conversion costs. We revised the SG&A costs as presented by the respondent related to the following:

- Selling, general and administrative expenses were adjusted to include direct and indirect selling, financial and interest expenses.

We calculated profit based on the eight percent minimum, as prescribed in section 773(e)(1)(B)(ii) of the Act.

Negative Determination of Critical Circumstances

The petitioners alleged that imports of OCTG from Taiwan present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we find that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following concerning massive imports: (1) The

volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for oil country tubular goods from Taiwan for equal periods immediately preceding and following the filing of the petition. Based on this analysis, we find that imports of the subject merchandise from Taiwan during the period subsequent to receipt of the petition have not been massive when compared to recent import levels and import penetration ratios.

We therefore, did not need to consider whether there is a history of dumping or whether importers knew or should have known that the exporters were dumping the merchandise.

For reasons described above, we determine that "critical circumstances" do not exist with respect to oil country tubular goods from Taiwan.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the company involved. We used standard verification procedures, including examination of relevant sales and financial records of the company.

Petitioners' Comments

Comment 1

Due to an absence of verified information, the petitioners contend that the Department should disallow all rebates claimed by the respondent for coil purchases and use, as best information, a weighted average of prices paid by respondent for shipments of coil during 1984 and 1985.

DOC Position

We disagree. Because we could not verify whether 1984 or 1985 coil purchases were used to produce the 2.375 inch pipe under investigation, we used the 1985 purchases, the most recent cost of coil purchased prior to the sales under investigation. The 1984 coil purchases appear to be used for pipe other than OCTG which was produced in 1984. Because we could not verify that the rebate claimed by the respondent was related to these 1985 coil purchases, the rebate was not allowed for 2.375 inch pipe. However, we verified that a rebate credit was received on coil used in the production of 4.5 inch pipes and, therefore, have allocated the rebate to the cost of coil used.

Comment 2

The petitioners assert that the Department should not allow any credits claimed by respondent for waste. The credits are based on theoretical yield rates, not verified data.

DOC Position

We disagree. We computed the credit for waste recovery based on the second quality pipe and the scrap sales values as verified and the yield rates supplied by the respondent. The Department reviewed all the facts pertaining to the yield rates and, based on these facts and because the yield rates were within industry experience, the Department used the company's yield rates for calculating the credit.

Comment 3

The petitioners believe that the variance adjustment for the tolerance standards should be disallowed by the Department. The adjustment in the submission was incorrectly applied to pipe which was not affected by the variance.

DOC Position

We partially agree. For the 4.5 inch pipe we disallowed the theoretical weight adjustment because the thickness of the coil used by the respondent was the same as the thickness of the coil upon which the theoretical weight was measured. Therefore, there would not be a tolerance weight-saving adjustment.

However, for the 2.375 inch pipe we adjusted the theoretical weight adjustment to reflect the verified actual weight savings.

Comment 4

The petitioners contend that annual bonuses paid by the respondent should be allocated throughout the year since they are a recurring annual labor expense.

DOC Position

We agree. Annual bonuses have been allocated throughout the year.

Comment 5

The petitioners assert that the Department should derive an overtime premium to be added to respondent's labor cost for the product under investigation, since the records of the overtime worked were not properly maintained.

DOC Position

We agree. Since the direct labor costs submitted did not adequately reflect overtime, they were adjusted to reflect the weighted average of the monthly cost of the regular and the overtime hours.

Comment 6

The petitioners believe that certain factory overhead charges such as supplies, repair costs, intermediate material costs, and employee welfare expenses should be included in the respondent's factory overhead costs.

DOC Position

We agree. These costs have been included in factory overhead since they were incurred as indirect production costs for the product under investigation.

Comment 7

The petitioners contend that the Department should treat as current expenses, capitalized organizational and the initial testing expenses which are being amortized over five years by the company.

DOC Position

We have accepted the respondent's normal accounting method for amortizing the cost over five years. However, we have included a portion of the amortization expenses which the respondent had excluded in the period of investigation, since these costs relate to the start-up expenses of the operations.

Comment 8

The petitioners assert that the Department should include the transit interest charge on the letters of credit, direct selling expenses such as the Joint Export Promotion Council levy, the expenses attributable to the financial division and the cost of the president's office in selling, general and administrative (SG&A) costs.

DOC Position

We agree. The Department included all of the direct selling expenses for the U.S. sales, including the transit interest charge on letters of credit, because there were no sales of OCTG in the home or third country market. The administrative cost of the financial division and the cost of all corporate administrative expenses, including the cost of the president's office, have been included in general and administrative expenses.

Comment 9

The petitioners contend that the Department should use their information as best information for packing costs since submitted packing costs could not be verified.

DOC Position

We disagree. During verification we obtained sufficient data for packing costs which we used in our calculations.

Comment 10

The petitioners contend that the Department should only allow the amount of those brokerage handling charges on U.S. sales which were verified.

DOC Position

We agree. We have only deducted the verified brokerage and port charges.

Respondent's Comments

Comment 1

The respondent states that the Department should use 1984 raw material costs for 2.375 inch OCTG cost of production and if that is not acceptable, a weighted average of 1984 and 1985 costs.

DOC Position

See response to petitioner's *Comment 1.*

Comment 2

The respondent contends that the Department should apply the entire amount of the discount rebate to the 2.375 inch raw materials purchased in 1984.

DOC Position

See response to petitioner's *Comment 1.*

Comment 3

The respondent asserts that the Department should use the prices of scrap and seconds sold which were verified and not amounts contained in the submission.

DOC Position

The actual verified sales prices of scrap and seconds which were sold were used for the final determination.

Comment 4

The respondent believes that the Department should include in the cost of production an offset for raw materials sold as scrap which was verified.

DOC Position

We agree. The Department included an offset to the cost for raw materials which were sold.

Comment 5

The respondent contends that annual bonuses paid by it should be allocated throughout this year.

DOC Position

See response to petitioners' *Comment 4.*

Comment 6

The respondent alleges that although production records did not provide a basis that any overtime was utilized in OCTG production, submitted unit labor costs accurately reflect overtime hours. No further adjustment should be made to labor costs.

DOC Position

We disagree. While submitted labor costs did purport to account for overtime, these labor costs could not be reconciled with the actual labor information. See response to petitioners' *Comment 1.*

Comment 7

The respondent asserts that factory overhead should be allocated to OCTG production based on labor hours rather than on production quantity.

DOC Position

We disagree. Under the facts in this case, we believe that production volume (measured by weight) is the most appropriate allocation basis for overhead costs. This was the method employed by the respondent in its original submission. The Department concludes that labor hours would not appropriately allocate the costs to the products being manufactured, since this basis did not reflect the actual production time of each product.

Comment 8

The respondent believes that fixed overhead costs should be averaged throughout the year to avoid fluctuations caused by the payments for such expenses not occurring evenly throughout the year.

DOC Position

We agree. We use a method of allocation which averaged fixed overhead costs throughout the year.

Comment 9

The respondent contends that the Department should allocate intermediate supply costs which are not included in the submission by using a basis of labor hours.

DOC Position

We disagree. We believe the cost of the intermediate supplies not included in the submission should be allocated to OCTG under investigation based on production volume since these were incurred as indirect production costs and were included in the factory overhead.

Comment 10

The respondent asserts that the organizational and the initial testing expenses treated as deferred expenses by it were related to OCTG products not under investigation.

DOC Position

Since such costs were related to the production of OCTG as a product line, a proportional amount was included for the product under investigation.

Comment 11

The respondent believes that the research and development and interest expenses it incurred were not related to OCTG products under investigation and, therefore, should not be included.

DOC Position

We disagree. Since we could not verify the nature of the R&D costs, such costs were allocated over all products sold. Interest costs, considered by the Department to be a general corporate expense, likewise were allocated over all products sold.

Comment 12

The respondent contends that the Department should not include any selling costs from the Chia Yi office in SG&A expenses because it handles only domestic sales of which there were none of OCTG.

DOC Position

We agree. Because the product under investigation was not sold in the home market or third country markets, we have used the direct and indirect selling costs for the U.S. market. The costs of the Chia Yi office were not included.

Comment 13

The respondent alleges that packing costs reported in the submission are the best estimate of those costs and should be used by the Department.

DOC Position

See response to petitioner's *Comment 8.*

Comment 14

The respondent requests that the Department extend the period of investigation by one day in order to include one additional sale to the United States so as to have a more representative universe.

DOC Position

We agree and have done so.

Comment 15

The respondent contends that certain charges relating to U.S. sales, such as bank commissions, transit interest charged by banks, contribution to a government reserve for the promotion of trade, etc., should not be deducted from the U.S. sales price because these charges are not additional costs incident to bringing the merchandise to the place of delivery in the United States.

DOC Position

We agree. However, we have added them to the foreign market value because they are part of the SG&A expenses.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of OCTG from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date which is on or after the date of publication of the final determination notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. However, we made a negative determination in the final countervailing duty determination on OCTG from Taiwan, because we found that the subsidies were *de minimis*. Therefore, the bonding rate will not be reduced since there were no export subsidies.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Far East Machinery Company, Ltd.	28.32%
All others	28.32%

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on OCTG from Taiwan entered, or withdrawn from warehouse, for consumption equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d))

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 21, 1986.

[FR Doc. 86-12045 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-004]

Toy Balloons (Including Punchballs) and Playballs From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On March 11, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico. The review covers the period April 1, 1983 through December 31, 1983 and seven programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Marsellan or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 45039) the final results of its last administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico (47 FR 57532, December 27, 1982). We began this review of the orders under our old regulations on March 2, 1984 and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, the Mexican government, on November 15, 1985, requested that we complete the administrative review, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results of administrative review on March 11, 1986 (51 FR 8347). We have now completed the administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican toy balloons (including punchballs) and playballs. Such merchandise is currently classifiable under items 735.0990 and 737.9536 of the Tariff Schedules of the United States Annotated.

The review covers the period April 1, 1983 through December 31, 1983 and seven programs: (1) FOMEX; (2) CEPROFI; (3) CEDI; (4) FONEI; (5) FOGAIN; (6) import duty reductions and exemptions; and (7) state tax incentives.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, we determine the total bounty or grant to be 4.54 percent *ad valorem* for toy balloons (including punchballs) and 3.45 percent *ad valorem* for playballs for the period of review.

The Department will instruct the Customs Service to assess countervailing duties of 4.54 percent of the f.o.b. invoice price on any shipments of toy balloons (including punchballs) and 3.45 percent of the f.o.b. invoice price on any shipments of playballs exported on or after April 1, 1983 and on or before December 31, 1983.

Further, because of the change noted in our preliminary results, the

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Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.92 percent of the f.o.b. invoice price of toy balloons (including punchballs) and 1.98 percent of the f.o.b. invoice price of playballs on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: May 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12046 Filed 5-28-86; 8:45 am]

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[C-479-506]

Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Orders

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia. The review covers the period from October 16, 1985. The petitioners have notified the Department that they are no longer interested in the countervailing duty orders. This affirmative statement of no interest from domestic interested parties provides a reasonable basis for the Department to revoke the orders. Therefore, we tentatively determine to revoke the orders. In accordance with the petitioners' notification, the revocation will apply to all welded carbon steel pipe and tube products from Yugoslavia entered, or withdrawn from warehouse, for consumption on or after October 16, 1985.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or John Miller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1985, the Department of Commerce ("the Department") published in the Federal Register, (50 FR 41548) countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia.

The petitioners, the Standard and the Line Pipe Subcommittees of the Committee on Pipe and Tube Imports and Individual producer members of these subcommittees, informed the Department that they are no longer interested in the orders and stated their support of revocation of the orders. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of Yugoslavian welded carbon steel pipe and tube products of the following description: (1) Welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA), commonly referred to in the industry as standard pipe or structural tubing, produced to various ASTM specifications, most notably A-120, A-53 or A-135; and (2) welded carbon steel line pipe with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thickness of not less than 0.065 inch, currently classifiable under items 610.4306 and 610.3209 of the TSUSA, produced to various API specifications for line pipe, most notably API-5L or API-5LX. The review covers the period from October 16, 1985.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in the continuation of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia provides a reasonable basis for revocation of the orders. In light of the October 16, 1985 effective date for revocation requested by the domestic parties, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the orders on certain welded carbon steel pipe and tube products from Yugoslavia effective October 16, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 16, 1985, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 55 days from the date of publication, or the last workday preceding. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12047 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DS-M

The Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973.

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and rechartered on January 10, 1986, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: June 16, 1986 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The meeting will continue to its conclusion on June 17, 1986, in Room 1092, the Herbert C. Hoover Building.

Agenda:

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Public comments invited on revisions to:

CCL-1529—Electronic Test Equipment
CCL-1531—Frequency Synthesizers
CCL-1522—Lasers and Laser Systems
CCL-1533—Radio Spectrum Analysers
CCL-1521—Solid State Broadband Amplifiers
CCL-1541—Cathode Ray Tubes
CCL-1572—Recording and Reproduce Equipment.

Comments should consider the need for revision (strengthening, relaxation, or decontrol) of the current regulations based on technological trends, foreign availability, and national security. The committee is interested in proposals for revision to PRC guidelines and G-COM regulations for the above commodities as well.

Executive Session:

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classifed under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4217. For further information or copies of the minutes telephone: 202/377-4217.

Dated: May 23, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-12048 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Sanctuaries; Scoping Meeting on the Proposed Flower Gardens National Marine Sanctuary, TX

AGENCY: Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering the East and West Flower Garden Banks in the Gulf of Mexico for designation as a national marine sanctuary. NOAA will hold a public meeting to gather information to determine the range and significance of issues related to sanctuary designation and management. This meeting will be held on June 24, 1986, from 7:00 to 10:00 PM in the auditorium of the Classroom/Laboratory Building, Texas A&M Mitchell Campus, Pelican Island, Galveston, Texas. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, (202) 673-5122.

ADDRESS: Division of Marine and Estuarine Management, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431 *et. seq.* (the Act), authorizes the Secretary of Commerce to designate ocean waters, over which the United States exercises jurisdiction consistent with international law, as national marine sanctuaries. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for their conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Division of Marine and Estuarine Management (DMEM).

Natural Resources

The East and West Flower Garden Banks are some 115 miles (185 km) southeast of Galveston, Texas, at the edge of the continental shelf. The Banks, approximately 16 miles (25 km) apart, are salt domes from which coral reefs rise from a depth of 148 feet (45 m) to a crest of about 50 feet (15 m) below the water surface. The living reefs, consisting of massive, closely-packed heads produced by at least 18 species of tropical corals, are the northernmost tropical Atlantic coral reefs on the continental shelf.

The Flower Garden Banks support the most ecologically complex and biologically productive reef communities of the Texas-Louisiana outer continental shelf. These Banks harbor at least 80 species of algae, 196 known macro-invertebrate species, and more than 175 fish species. One of the most scientifically interesting components of the Bank ecosystem lies well below the coral reefs. At a depth of 233 feet (71 m) on the margin of East Flower Garden Bank, a community of organisms exists in the area of a brine seep, where the high salinity, high sulfide, anoxic brine would be toxic to most marine biota.

Higher on the Banks, the reef-building corals and coralline algae are the most important organisms because they maintain the substratum for the benthic reef communities. These reefs are characterized by a diverse assemblage of epibenthos. The Banks are believed to be a significant nursery area for brown shrimp, a species of commercial importance. Several species of lobster have been observed on the reefs. The pelagic fish found at the Banks include several commercially important species of snappers and groupers. Loggerhead turtles and spotted dolphins are casual visitors to the Flower Gardens.

Human Uses

Oil and gas production operations occur outside of a no-activity zone, established by the Minerals Management Service, encompassing the 100 meter isobath surrounding each Bank. The Banks are close to a shipping safety fairway, and the area is transited by commercial cargo vessels. Commercial fishermen harvest red and vermilion snapper and groupers in Bank

waters. Recreational use consists of sport fishing and diving.

The Designation Process

The preliminary consultation on the Flower Garden Banks as a potential site for a national marine sanctuary was initiated with a notice published in the Federal Register on May 4, 1984, 49 FR 19094. A summary of comments received in the preliminary consultation was published August 2, 1984, in an announcement that the Flower Garden Banks had been selected as an active candidate for sanctuary designation and the NOAA intended to prepare a draft environmental impact statement and management plan for the proposed sanctuary, 49 FR 30988.

The announcement marked the second time that the Flower Garden Banks had become an active candidate. In 1979 the site was placed on the list of active candidates, but was removed in 1982 when it appeared that the Flower Gardens would be adequately protected by a Coral Fishery Management Plan (FMP). The FMP, however, does not regulate anchoring on the Banks by large cargo vessels. Such anchoring has been identified as the major cause of damage to the Flower Garden coral reefs. A more detailed discussion of the history of the Flower Gardens as an active candidate and the reasons for its reselection can be found in the selection announcement, 49 FR 30988.

The management plan to be prepared for the proposed sanctuary will specify the goals and objectives of sanctuary designation and describe programs for resource protection, research and interpretation. Implementation of the management plan is analyzed in the environmental impact statement.

Opportunites for public participation in NOAA's development of an environmental impact statement and management plan will be provided through the June scoping meeting, solicitation of comments on the draft environmental impact statement, and formal public hearings.

The June scoping meeting will attempt to identify issues in establishing a Flower Gardens national marine sanctuary and generate suggestions for resolving them. Topics for discussion will include the following: (1) Boundary alternatives, (2) Management alternatives, (3) Resource protection, (4) Research opportunities and (5) Interpretive opportunities.

Federal Domestic Assistance Catalog No. 11.429 Marine Sanctuary Program

Dated: May 22, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-11867 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Visa Requirement for Cotton, Wool and Man-Made Fiber Apparel Exported from the Republic of Maldives

May 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 28, 1986. For further information contact Claudia Wolfe, International Economist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212.

Background

A CITA directive dated August 18, 1982, (47 FR 36879, Aug. 24, 1982) established a new export visa requirement for cotton, wool, and man-made fiber apparel products in categories 330-359, and 630-659, produced or manufactured in the Maldives and exported to the United States.

The purpose of this notice is to inform the public of the new visa stamp.

The new stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

May 22, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 18, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements which established an export visa requirement for cotton, wool and man-made fiber apparel products from the Republic of Maldives.

Effective on May 28, 1986, the directive of August 18, 1982 if further amended to discontinue use of the current visa stamp. Such goods, exported on and after May 28, 1986, shall be visaed using a circular stamp in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice when such form is used) and will be signed by an authorized official of the Government of the Republic of Maldives. A facsimile of the visa stamp is enclosed.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Commissioner for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Enclosure

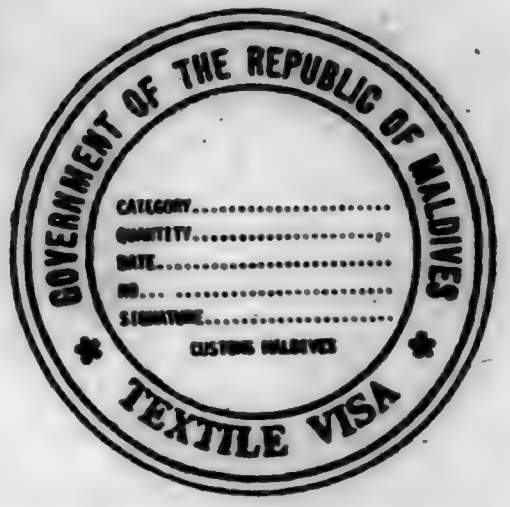

[FR Doc. 86-11993 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATON

Federal Acquisition Regulation (FAR), Agency Information Collection Activities Under OMB Review.

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office

of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 2215, NEOB, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781 or Mr. Owen Greene, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers the collection of information to implement the requirements of Title II, Section 201, Pub. L. 99–234, Federal Civilian Employee and Contractor Travel Expense Act of 1985. implementation of the statute required creation of a justification document to support higher actual cost reimbursements for lodging, meals, and incidental expenses than permitted by normally prescribed per diem rates. The creation of this document is required only in extraordinary and temporary situations when application of normal per diem rates is inappropriate. The justification is needed to (1) assure that use of the higher actual cost method is controlled and not abused, and (2) provide a basis for audit verfication of contractor actions.

b. Annual reporting burden

This is estimated as follows: Respondents, 16,000; reponses 160,000; and reporting and recordkeeping hours, 40,000.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405, telephone (202) 523–4755.

Dated: May 23, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–12029 Filed 5–28–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Proposed Information Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resource Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 30, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submisson of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, exisiting or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 23, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: EXTENSION
Title: Application for Assistance under the College Housing Program
Agency Form Number: ED 866
Frequency: Annually
Affected Public: Non-profit institution
Reporting Burden:
Responses: 400
Burden Hours: 9,600
Recordkeeping Burden:
Recordkeepers: 20
Burden Hours: 20

Abstract: The Application for Assistance under the College Housing Program is required of postsecondary institutions in order to apply and compete for low interest loans for the construction, rehabilitation, and purchase of housing and related facilities.

Office of Postsecondary Education

Type of Review: EXTENSION
Title: Application for Fulbright-Hays Training Grants—Seminar Abroad Program
Agency Form Number: ED 358–1, 358–2, 358–3
Frequency: Once only
Affected Public: Individuals or households
Reporting Burden:
Responses: 4,100
Burden Hours: 4,100
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is to be used by applicants under the Fulbright-Hays Training Grants—Seminars Abroad Program which provides opportunities for U.S. educators to participate in short-term training seminars in a variety of topics.

[FR Doc. 86–12007 Filed 5–28–86; 8:45 am]

BILLING CODE 4000–01–M

National Council on Educational Research; Meeting

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Council on Educational Research. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 13, 1986, 9 a.m.–5 p.m.

ADDRESS: U.S. Department of Education, FOB–6, Conference Room 3000, 400 Maryland Avenue, SW., Third Floor, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Acting Executive Director, National Council on Educational Research, 2000 L St., NW., Suite 617 B, Washington, DC 20036, (202) 254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Education Provisions Act (20 U.S.C. 1221e); Department of Education organization plan

implemented pursuant to section 413 of Pub. L. 96–88 and notice to Congress dated July 2, 1985. The Council is established to advise the Secretary of Education on policies and priorities for the Office of Educational Research and Improvement (OERI), and to review the conduct of OERI and to advise the Secretary of Education and the Assistant Secretary of OERI on development of programs to be carried out by OERI.

The meeting of the Council is open to the public. The agenda includes: reports from committee chairmen, from OERI officials, and from Dr. Patrick Groff, Professor of Education at San Diego State University, on reading instruction research.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Council on Educational Research, 2000 L St., NW., Suite 617 B, Washington, DC, 20036, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: May 23, 1986.

Mary Grace Lucier,

Acting Executive Director.

[FR Doc. 86–12012 Filed 5–28–86; 8:45am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement".

The subsequent arrangement involves the loan of 6,780 kilograms of depleted uranium for use as a calorimeter at the Centre European De Reches Nucleaires (CERN), Geneva, Switzerland. Contract Number WC–SD–24 has been assigned for this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 23, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–12040 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues identified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its second meeting on Monday, June 2, 1986, starting at 10:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review and rank factors affecting supply and demand.
3. Discuss Group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of public who wishes to file a written statment with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 21, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–11983 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Energy Stripper Well Exemption Litigation; Execution of Agreement

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Execution of Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation.*

SUMMARY: The Economic Regulatory Administration of the United States Department of Energy (DOE) hereby gives notice that on May 21, 1986, the Under Secretary of Energy, Joseph F. Salgado, signed a Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378 (D. Kan.). The Agreement will not become effective until approved by the United States District Court for the District of Kansas. If approved, the Agreement will resolve the distribution of funds held in escrow by the court as well as provide for the disposition of funds resulting from other pending crude oil overcharge cases where refunds cannot be made to identifiable injured parties. It will also resolve a number of cases concerning the Entitlements Program, 10 CFR 211.66, 211.67, including *Texaco, Inc. et al.* v. *Department of Energy, et al.,* Nos. 3–44 through 3–49, (Temp. Em. Ct. App.). The Agreement has been submitted to the district court for its approval and a June 13, 1986, hearing on the agreement that has been sought.

FOR FURTHER INFORMATION CONTACT: Carl A. Corallo, Solicitor, Economic Regulatory Administration, U.S. Department of Energy, RG–40, 1000 Independence Avenue SW., Washington, DC 20585, 202–253–4167.

A copy of the Agreement is available for inspection or copying at the DOE Freedom of Information Reading Room. The Reading Room is located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, and can be reached at 202–252–6020.

Issued in Washington, DC, on May 22, 1986.

Marshall A. Staunton,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 86–11982 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA-CAE-86-349; OFP Case No. 65036-9314-30-24]

Order Granting to O.L.S. Energy-Camarillo Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to O.L.S. Energy-Camarillo Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42, U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to O.L.S. Energy-Camarillo (OLS), Camarillo, California. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 27.5 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the Camarillo State Hospital (CSH), Camarillo, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on July 28, 1986. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 253–1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947

SUPPLEMENTARY INFORMATION: On February 24, 1986, OLS petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 27.5 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine generator, a waste heat recovery boiler, a steam extraction turbine generator and ancillary equipment. As all of the net annual generation of electric power from the unit will be sold to Southern California Edison Company, the unit is, by definition, an electric powerplant under 10 CFR 500.2. The facility will produce approximately 10,650 lbs. of low pressure steam per hour which will supply CSH's heating and process steam needs. OLS will operate the facility.

Basis for Permanent Exemption Order: The permanent exemption order is based upon evidence in the record including OLS's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements: In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on March 26, 1986 (51 FR 10423), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on May 12, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that OLS has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to OLS to permit the use of natural gas as the primary energy source for its cogeneration facility at CHS in Camarillo, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on May 20, 1986.

Berton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11984 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–18–NG]

Chieftain International, Inc.; Order Granting Blanket Authorization To Import Natural Gas from Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Chieftain International Inc. (Chieftain). The order issued in ERA Docket No. 86–18–NG authorizes Chieftain to import up to 10 Bcf annually over a two-year period for sale in the domestic short-term market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, Except holidays.

Issued in Washington, DC, May 19, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11952 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86-17-NG]

Community Gas Acquisition, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Community Gas Acquisition, Inc. (Community). The order issued in ERA Docket No. 86-17-NG authorizes Community to import up to 300 Bcf of natural gas over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 15, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11953 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA DOCKET NO. 86-14-NG]

Natural Gas Pipeline Co. of America; Order Approving Amendments to an Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of Order Approving Amendments To Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order approving amendments to import natural gas from Canada to Natural Gas Pipeline Company of America (Natural). The order issued in ERA No. 85-24-NG authorizes Natural to continue to import up to 75,000 Mcf per day through October 31, 1987, from ProGas Limited (ProGas) under a modified two-part demand-commodity pricing structure that eliminates take-or-pay requirements and provides for periodic price Adjustment based on changes in fixed facility costs and competing alternate fuels.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11955 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-15-NG]

Ocelot Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.
ACTION: Notice of Order Granting Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to the Ocelot Energy Corporation (Ocelot). The order issued in ERA Docket No. 86-15-NG authorizes Ocelot to import up to 300 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on May 15, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11954 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-19-NG]

Texas Eastern Gas Trading Co.; Order Approving a Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of Order Approving a Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Texas Eastern Gas Trading Company (GTC) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86-19-NG authorizes GTC to import 1 Bcf of Canadian natural gas per day for a two-year term beginning on the date of first delivery of the import.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11956 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-CAE-86-41; OFP Case No. 52039-6318-29, 21-24]

Double "C" CoGen, Inc.; Acceptance of Petition For Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Double "C" Co-Gen, Inc.

SUMMARY: On May 7, 1986, Double "C" CoGen, Inc. (Double "C" CoGen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for a cogeneration facility to be located in Kern County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Double "C" CoGen is petitioning for an exemption based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibition of Title II of FUA are found in 10 CFR 503.32.

The proposed facility for which the petition was filed will consist of two

natural gas-fired combustion turbine generators, and two unfired heat recovery steam generators which will produce approximately 48.8 megawatts (net) of electricity. The gas turbine exhaust gases will be ducted to the heat recovery steam generators. The steam generators will utilize the heat in the hot exhaust gases to produce approximately 106,400 pounds per hour of steam to be used for enhanced oil recovery by Carrec Oil Associates and by Cities Service Oil and Gas Corporation. The electricity produced will be sold to the Pacific Gas & Electric Company.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501–31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless REA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATE: Written comments are due on or before July 14, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA–C&E–86–41 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–093, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252–6769

Steven E. Ferguson, Esq., Office in General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW, Washington, DC 29585, Telepone (202) 252–2947

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exist, as required under § 503.9 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certification discussed above), Double "C" CoGen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 26, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Double "C" CoGen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the pulbic comment period provided for in this notice.

Issued in Washington, DC, on May 19, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11986 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–13–NG]

Koch Hydrocarbon Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization To Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Koch Hydrocarbon Company (Koch) blanket authorization to import natural gas from Canada. The order, issued in ERA Docket No. 86–13–NG, authorizes Koch to import up to 100,000 Mcf per day, or 73 Bcf over a two-year period, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 22, 1986.

Barton R. House,

Deputy Director Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11985 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Avant Petroleum, Inc.; Final Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Avant Petroleum, Inc. (Avant) shall be made final as proposed. The Consent Order resolves the issues of Avant's compliance for the period August 1978 through December 1980 with DOE's regulations regarding resales of crude oil. Avant will pay to the DOE $1,700,000 for distribution pursuant to 10 CFR Part 205, Subpart V. Persons claiming to have been harmed by Avant's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Avant Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Ben Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207, Tel: (214) 767–4646.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On April 1, 1986, ERA published a Notice announcing a proposed Consent Order between DOE and Avant which would resolve matters pertaining to Avant's compliance with the regulations regarding resales of crude oil (51 FR 11086). The proposed Consent Order required Avant to pay $1,700,000.

The April 1, Notice sets forth ERA's view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final.

II. Comments Received

ERA received two timely written comments. The comments addressed only the ultimate disposition or distribution of the Avant settlelement funds. The adequacy of the settlement amount or the terms and conditions of the proposed Consent Order was not addressed.

III. Analysis of Comments

The April 1 Notice solicited written comments to enable the ERA to receive information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected.

The comments received voiced no objection to the basis or adequacy of the settlement.

ERA has determined that the distribution of the settlement funds should be the subject of a separate Subpart V proceeding conducted by OHA, to be initiated shortly after publication of this Notice. This is consistent with ERA's general policy that the special refund procedures of Subpart V are best suited for cases, such as this, in which ERA cannot readily identify the injured parties or their relative amount of economic harm.

Comments on the actual disbursement of money, accordingly, will not be addressed here, but will be referred to OHA for consideration in the Avant Consent Order claims proceeding.

The review and analysis of the comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Avant. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Avant and DOE executed on February 6, 1986, is made a final Order of the Department of Energy, effective on the date of publication of this Notice in the Federal Register.

Issued in Dallas, Texas, on the 5th day of May, 1986.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 86–11981 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–11–NG]

Petro-Canada Hydrocarbons Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy; Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Canada for direct sale to an industrial end user.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 18, 1986, of an application filed by Petro-Canada Hydrocarbons Inc. (PCH) for authorization to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf over a 20-year period beginning on or about July 1, 1986. The gas would be imported form PCH's parent company, Petro-Canada Inc. (PCI), and sold directly to the United States Borax & Chemical Corporation (Borax) for use in Borax's manufacturing operations. The price of the gas to PCH would be determined by adjusting on initial base price of $4.10 per MMBtu each month based on changes in the price at which PCH resells the gas to Borax which, in turn, would reflect changes in the acquisition costs for natural gas in California and the world average crude oil price.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., e.d.t., on June 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9482

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: On February 18, 1986, PCH filed an application with the ERA to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf over a 20-year term beginning on or about July 1, 1986. PCH proposes to import the gas from its parent company, PCI, whose parent company, in turn, is Petro-Canada, a company wholly-owned by the Canadian government. PCH states that the gas would be imported via the import point near Sumas, Washington, and sold directly to Borax for use in Borax's manufacturing operations. Transportation of the gas from the Canadian border to the California border would be either through pipelines owned by Northwest Pipeline Corporation or Pacific Gas Transmission Company, or both, or by the El Paso Natural Gas Company. Transportation from the California border to Borax's facilities in Boron, California, would be via pipelines owned by the Pacific Gas and Electric Company. Only existing facilities would be used under PCH's import proposal.

The natural gas sale and purchase agreement dated January 1, 1986, between PCH and PCI provides that the selling price of the gas to PCH will be determined by adjusting an initial base price of $4.10 per MMBtu each month based on changes in the price at which PCH resells the gas to Borax, which, in turn, would be determined monthly in response to changes in the average acquisition costs for natural gas in California and the average world crude oil price. The seling price to PCH, however, may not be lower than the Canadian natural gas export floor price for exports from British Columbia. PCH is required by the gas sale and purchase agreement to take or pay for a quantity of natural gas equal to seventy percent of the annual contract quantity. The take-or-pay obligation in the PCH/PCI purchase agreement is automatically adjusted in accordance with adjustments in the take-or-pay obligations made under the PCH/Borax gas supply agreement. Take-or-pay gas may be made up in subsequent years of the contract. Although there is no market-out provision, take-or-pay obligations may be reduced under certain circumstances specified in a force majeure clause contained in the PCH/PCI contract.

I support of its import proposal, PCH asserts that the primary source of the gas to be imported will be from gas wells owned by PCI in British Columbia. PCH points out that Canadian gas has long been a secure and dependable source of natural gas supply. Since the gas is not for pipeline supply or local distribution resale, PCH also asserts that marketability and need for the gas is established by the fact that the arrangement was negotiated at arm's length with the ultimate industrial consumer of the gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. June 30, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, (202) 252-9478, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 20, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11957 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-08-NG]

Natural Gas Imports; Texas Gas Transmission Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of the receipt on March 27, 1986, of an amendment to the application of Texas Gas Transmission Corporation (Texas Gas) filed on July 16, 1982. The amendment reduces the quantity, price and term of the proposed arrangement.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than June 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Divisoin, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The Texas Gas application, filed on July 16, 1982, and noticed in the Federal Register on September 9, 1982 (47 FR 39716), has been held in abeyance since April 16, 1984, at the request of Texas Gas, to enable it to amend its application to conform with the new DOE policy guidelines as directed by the ERA's order of February 16, 1984.

The original gas sales arrangement between Texas Gas and ProGas, dated October 28, 1981, was amended by subsequent agreements dated March 26, 1982 and June 11, 1982, (47 FR 39716). An August 29, 1985, agreement, reducing the volume from 180,200 Mcf per day to 135,000 Mcf per day, was superseded by a January 23, 1986, agreement both of which were submitted to the ERA as a part of the present filing. The latter and most recent agreement contains quantity, price, renegotiation, and cancellation provisions which modify the 1981 amended agreement.

With respect to the daily contract quantity, the volumes imported prior to November 1, 1987, will be on a best-efforts basis. Commencing November 1, 1987, Texas Gas requests authorization to import a reduced volume of up to 80,000 Mcf per day; commencing November 1, 1988, a volume of up to 100,000 Mcf per day; and, commencing November 1, 1989, and thereafter, a volume of up to 135,000 Mcf per day.

The price of the gas would be determined by a two-part rate. The initial monthly demand charge would be $15.21 (U.S.) per Mcf of daily contract quantity in effect during the month and the initial commodity charge would be $2.00 (U.S.) per MMBtu, both to be adjusted semi-annually at the request of either party and subject to arbitration if either party cannot agree upon a new price. The monthly demand charge would be obtained by multiplying the daily contract quantity for a particular month by the demand charge per Mcf for that month, and the commodity charge would be determined by multiplying the MMBtu's of imported gas by the commodity charge for that month. Texas Gas and ProGas recognize that there may be situations where special term and price arrangements are necessary in order to assure a market for some portion of the available gas. Under these circumstances, ProGas may offer certain volumes of gas as special purchase gas at a price determined by multiplying the MMBtu's of such gas by a special commodity charge as agreed to by the parties.

If, as result of the uncertainty of the Federal Energy Regulatory Commission's Order No. 436, particularly if Part D (block billing) is adopted, it is not possible to determine that the initial demand and commodity prices are competitive, the parties propose to meet to determine demand and commodity price levels that are low enough to be competitive in the Texas Gas marketplace. However, if the parties cannot agree, either party may cancel the January 23, 1986, agreement by giving the other party 30-days written notice.

For the contract years commencing November 1, 1987, and thereafter, the monthly demand charge is proposed to be the product of the daily contract quantity and the sum of a TransCanada Toll, a NOVA Toll, a Producer Toll, and a ProGas Toll, all per Mcf. The TransCanada Toll is the transportation cost of firm gas on TransCanada PipeLines Limited's system to the point of delivery; the NOVA Toll is the average monthly demand toll billed by NOVA, an Alberta corporation, to ProGas in the preceding contract year; the Producer Toll is the average monthly fixed cost for gas purchased by ProGas from producers in the Province of Alberta in the preceding contract year; and the ProGas Toll is the average monthly toll billed by ProGas to Texas Gas for monthly services in the preceding contract year. The tolls would be determined in Canadian dollars and converted to U.S. dollars, and the monthly demand charge based upon the tolls would be adjusted up or down as appropriate. The commodity charge would be adjusted by an equivalent amount in the opposite direction so that the unit charge remains the same at 100 percent load factor.

Texas Gas under the purchase agreement, in order to avoid extreme variations between summer and winter deliveries, proposes to purchase volumes in the contract year commencing November 1, 1987, and each contract year thereafter, which are no less than ratable with its purchases from domestic producers during the seven month period from April 1 to October 31. Under the same agreement, ProGas proposes, on a best-efforts basis within authorized limitations, to provide volumes exceeding the daily contract quantity upon request by Texas Gas. Texas Gas has not requested the ERA to authorize any contract quantities exceeding the volumes previously stated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

Unless specifically requested to do so, the ERA has decided not to give further consideration to the comments or requests for further procedures from intervenors in response to the notice of application in this docket published in the Federal Register on September 9, 1982 (47 FR 39716). Those responses have been overtaken by events, including amendments to the 1981 sales agreement in 1985 and 1986 and subsequent changes in both U.S. and Canadian energy policy, regulation, and natural gas markets. However, those intervenors are parties to this application and their comments on this amendment are solicited herein.

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. e.d.t., June 30, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional witten comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is

material and relevent to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, May 20, 1986

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11958 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–86–39; OFP Case No. 61060–9315–20–24]

Capitol District Energy Center Cogeneration Associates; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification from Capitol District Energy Center Cogeneration Associates.

SUMMARY: On March 24, 1986, Capitol District Energy Center Cogeneration Associates ("Petitioner"), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration facility ("Facility") on Aetna Life & Casualty Company's (Aetna) Capitol Avenue property in Hartford, Connecticut, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). The facility will be located on Capitol Avenue, west of and adjacent to Aetna's Capitol Avenue office building.

Title II of FUA prohibits both the use of petroleum and natural gas as primary energy sources in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The petitioner proposes to construct a cogeneration facility on Aetna's Capitol Avenue property in Hartford, Connecticut. The project will be owned by a joint venture named Capitol District Energy Center Co-generation Associates. The facility will generate electricity to meet all of Aetna's needs, with approximately 45 MWe to be sold to Northeast Utilities (NU). The system has been designed to provide firm power to Aetna, as well as baseload steam supply to Aetna and the district heating system.

Oil and gas consumed by the facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility. It is expected that more than 50 percent of the new annual electrical power produced by the facility will be sold causing the proposed facility to be classified as a new electric powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit to written request that ERA convene a public hearing.

The public file containing a copy of the Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore would be published in the Federal Register.

DATES: Written comments are due on or before July 13, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–096, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–C&E–86–39 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Telephone: (202) 252–4523

Steven E. Ferguson, Esq. Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–111, 100 Independence Avenue, SW., Washington, DC 20585, Telephone: (202)252–6947.

SUPPLEMENTARY INFORMATION: The facility will consist of a General Electric Model PG6531 gas turbine (hereinafter "Frame 6"), a two pressure Waste Heat Recovery Boiler (WHRB), a condensing-extraction steam turbine, three 45,000 pph package boilers and four 900 ton two stage absorption chillers. The primary fuel to the plant will be natural gas with fuel oil serving as back-up. It will produce electricity, steam and chilled water from natural gas or fuel oil. Electricity will be provided to meet all of Aetna's needs and approximately 45 MWe sold to Connecticut Light & Power, subsidiary of Northeast Utilities. Steam and chilled water, which will be generated from the gas turbine exhaust, will be sold to Energy Network Inc.'s (ENI) Capitol District Heating and Cooling (CDHC) System. Steam will also be sold to Aetna for heating their Farmington Avenue complex. The CDHC System is being developed to serve heating and cooling requirements in the Capitol area, including Aetna's office buildings, the new State of Connecticut Legislative Office Building the twin office towers of the Underwood Park Development, and other existing commercial and institutional buildings located in the Capitol Area. Cooling and heating energy will be delivered by a circulating water systems through pre-insulated underground piping. In

addition, steam will be provided to heat Aetna's Farmington Avenue complex.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the subject cogeneration unit will be less than that which would otherwise be consumed in the absence of the unit, pursuant to the methodology for computing such savings set forth in 10 CFR 503.37; and

2. The use of a mixture of natural gas and coal or oil and coal is not economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above) the petitioner has included as part of the petition:

1. Exhibits containing the basis for the certification described above; and

2. An environmental impact analysis as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitoner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for this notice.

Issued in Washington, DC, May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11359 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-86-40; OFP Case No. 5224-8319-28-24]

Pacific Gas and Electric Co.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by the Pacific Gas and Electric Company.

SUMMARY: On April 21, 1986, the Pacific Gas and Electric Company (PGandE) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be known as the San Francisco Cogeneration facility and to be located in San Francisco, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" of "the Act"). Title II of the FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use the alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29208, July 6, 1982), and are found at 10 CFR 503.37.

PGandE is requesting a permanent cogeneration exemption to construct and operate the San Francisco Cogeneration facility. The proposed facility, to be built on land immediately adjacent to PGandE's presently operating installation, will contain a gas turbine generator and an exhaust Heat Recovery Steam Generator. The facility is to be located in San Francisco, California and all power produced will be sold to PGandE's customers. The entire 32–49.9 MW of new capacity to be provided by the proposed San Francisco Cogeneration Facility is projected to displace less efficient gas and/or oil fired units at PGandE's two older powerplants.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments is regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before July 13, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA C&E-86-40 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4807;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration

exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), PGandE has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR § 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), PGandE has included as part of its petition:

1. Exhibits containing the basis for the certification described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) and Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that PGandE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11660 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-31-NG]

Czar Resources Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 28, 1986, of an application filed by Czar Resources Inc. (Czar Inc.) for blanket authorization to import from Canada up to 100 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. Czar Inc. is a wholly-owned subsidiary of Czar Resources Ltd. (Czar Ltd.), a Canadian corporation. The gas would be supplied by Czar Ltd. and other Canadian producers and sold by Czar Inc. on a short-term or spot basis to U.S. customers that include, but are not limited to, pipelines, gas distributors, electric utilities, industrial users and agricultural end-users. Czar Inc. would act on its own behalf or as an agent on behalf of U.S. purchasers and/or Canadian suppliers. Czar Inc. asserts that no new pipeline facilities will be required to import the gas. The primary points of importation will be Eastpoint, Idaho, Sumas, Washington, and Detroit, Michigan, through the systems of Pacific Gas Transmission Company, Northwest Pipeline Corporation and Panhandle Eastern Pipeline Company, respectively.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than June 30, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-4819.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. June 30, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially

advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the Czar Inc. application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 8, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12061 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Physics Review Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Physics Review Panel of the Energy Research Advisory Board (ERAB).

Date & time: June 13, 1986—8:00 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW, Room 4A–110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5707.

Purpose of the parent board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the panel: The Physics Review Panel is a subgroup of ERAB and reports to the parent Board. The Physics Review Panel will review the National Research Council's report, "Physics through the 1990's" and, in particular, assess its specific suggestions for initiatives that are recommended for the Department of Energy.

Tentative Agenda

June 13, 1986

- Administrative items.
- Briefings from Federal agencies on support for physics research programs.
- Future meeting dates.
- Public Comment (10 minute rule).

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the meeting: Available for public review and copying at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 22, 1986.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 86-11982 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-478-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86-478-000]

May 20, 1986.

Take notice that on April 28, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-478-000 a request pursuant to Sections 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for the delivery of natural gas to 14 end-users under authorization issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to construct and operate 14 sales taps for irrigation, grain drying and small commercial end-users located along its jurisdictional pipeline in the States of Kansas and Nebraska. K N states that the approximate total quantity to be sold to the end-users would be 647 Mcf on a peak day and 14,320 Mcf on an annual basis. It is further stated that the estimated cost of constructing the individual sales taps would range from approximately $850 to $3,400 and that the customers would reimburse to K N a portion of these costs through the imposition of a connection charge which amounts to $250 in the State of Kansas and $400 in the State of Nebraska.

K N states that the proposed sales taps are not prohibited by any of K N's existing tariffs. K N further states that the proposed sales taps would have no significant impact on its peak day and annual deliveries. K N asserts that the natural gas delivered and sold by it to the various end-users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: July 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP86-485-000]

May 22, 1986.

Take notice that on April 30, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-485-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to transport, on an interruptible basis, up to 10,000 dekatherms (dt) equivalent of natural gas per day for Texas Eastern Transmission Corporation (Tetco), with pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement with Tetco dated March 18, 1986, Tetco would tender gas to ANR at a point of receipt on High Island Offshore System (HIOS) at the subsea valve in High Island Area Block A–530, offshore Texas. ANR states that it would then transport the volumes within its dedicated capacity in HIOS and its own facilities and deliver the volumes, adjusted for fuel, to Tetco, at an existing interconnection of the

facilities of ANR and Tetco in St. Landry Parish, Louisiana.

ANR states that it would charge Tetco 17.58 cents per dt delivered, with such charge comprised of 5.10 cents per dt for gas transported through ANR's facilities plus 12.48 cents per dt, the currently effective HIOS overrun rate. ANR further requests authority to collect the HIOS overrun rate from Tetco by including such rate in its charge to Tetco. ANR requests authorization to transport for a term of two years and for such additional term as ANR and Tetco may agree. ANR states that no facilities are required to be constructed by ANR to effect the proposed service.

Comment date: June 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. High Island Offshore System

[Docket No. CP86-484-000]

May 22, 1986.

Take notice that on April 30, 1986, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-484-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities in the offshore Texas area, all as more fully set forth in the application which is on file and open to public inspection.

HIOS proposes to construct and operate approximately 1.5 miles of 30-inch pipeline and appurtenant facilities which would constitute an extension of the existing West Leg of HIOS. It is stated that the proposed facilities would extend due south from the present terminus of the West Leg of HIOS in High Island Area A-582, offshore Texas. It is further stated that such facilities would not increase the capacity of the HIOS system but would permit HIOS to attach new reserves which are currently being developed in the East Breaks area, offshore Texas, and reserves in various other blocks in the vicinity which are expected to be developed.

It is explained that the facilities are proposed to be constructed and ready for service on or about November 1, 1986.

HIOS estimates that the cost of the proposed facilities would be approximately $3,500,000, of which approximately $1,000,000 would be contributed by producers. Such facilities it is asserted would be financed from cash on hand.

It is noted that ANR Pipeline Company has filed an application in Docket No. CP86-483-000 to transport gas for Standard Oil Production Company which would be produced in East Breaks area Block 185, offshore Texas. Such gas, it is indicated, would be transported, in part, through the facilities proposed in Docket No. CP86-484-000.

Comment date: June 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP86-481-000]

May 22, 1986.

Take notice that on April 29, 1986, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet, Houston, Texas 77251-1642, filed in Docket No. CP86-481-000 an application for permission and approval to abandon its Montezuma-South Alta storage field located in Vermillion County, Indiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle states that the underground reservoir is producing an unusually high level of hydrogen sulfide which has caused significant corrosion in withdrawal wells, gathering lines and other plant facilities and that immediate expenditures of $800,000 would be required for repairs caused by such corrosion. Panhandle indicates that even if repairs were made, working storage capacity would only be 800,000 Mcf, down 1.0 Bcf from the authorized level of 1.8 Bcf, and that the daily withdrawal rate would be 10,000 Mcf. Panhandle states that the corrosion problems are expected to continue due to the high hydrogen sulfide level and the limited working storage capacity of the field does not justify the continued high operating cost associated with the field. Therefore, Panhandle states that it is more economical to abandon, rather than operate, the Montezuma-South Alta storage field.

Panhandle estimates that approximately 740,000 Mcf of gas, valued at $280,000, would not be economically recoverable and that all recoverable gas would be withdrawn by the end of 1987. The estimated cost of plugging and abandoning storage wells and removal of equipment, net of salvage, is $515,000 it is stated.

Panhandle states that the abandonment of the Montezuma-South Alta storage field would reduce its system working storage capacity by only 1.0 percent and upon such abandonment, Panhandle would have on its system 193 Bcf and 74 Bcf of storage capacity and working storage capacity, respectively.

Comment date: June 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation, United Gas Pipe Line Company

[Docket No. CP86-229-001]

May 22, 1986.

Take notice that on May 7, 1986, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas, 77252, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-229-001 a joint petition to amend the order issued March 28, 1986, in Docket No. CP86-229-000 pursuant to Section 7 of the Nautral Gas Act so as to authorize the construction and operation of interconnecting facilities between their systems, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is explained that Texas Eastern and United have received authorization in Docket No. CP86-229-000 to exchange up to 275,000 dt equivalent of natural gas per day. In order to facilitate this exchange Texas Eastern and United propose to construct and operate interconnecting facilities near Loggy Bayou in Red River Parish, Louisiana, and near Raceland in LaFourche Parish, Louisiana.

Specifically, Texas Eastern proposes to construct and operate an interconnection between its facilities and those of United near Loggy Bayou at an estimated cost of $660,000. United proposes to construct and operate an interconnection between its facilities and those of Texas Eastern near Raceland at an estimated cost of $507,300.

Comment date: June 13, 1986, in accordance with the first subparagraph of Standard paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiciton conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12038 Filed 5-28-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: the Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $50,174 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with E. B. Lynn Oil Company of Allentown, Pennsylvania (Case No. HEF-0064). The fund will be available to customers who purchased motor gasoline from Lynn during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than 90 days after publication of this notice in the **Federal Register** and should be addressed to: Lynn Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case No. HEF-0064.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2800.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by E. B. Lynn Oil Company of Allentown, Pennsylvania. The Consent Order settled possible pricing violations with respect to the firm's sales of motor gasoline to customers during the May 1, 1979 through April 30, 1980 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on November 1, 1985. 50 FR 46344 (November 7, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**. Applications will be accepted from reseller customers who purchased motor gasoline from Lynn during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: May 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 13, 1986.

Name of Firm: E. B. Lynn Oil Company
Date of Filing: October 13, 1983
Case Number: HEF-0064

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and E. B. Lynn Oil Company (Lynn) of Allentown, Pennsylvania.

I. Background

Lynn sells motor gasoline to other motor gasoline marketers (resellers and retailers) and in bulk to certain end-users. Lynn was therefore a "reseller-retailer" subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. An ERA audit of Lynn's business transactions during the period May 1, 1979 through April 30, 1980 (the audit period) revealed possible overcharges totalling $121,279.32 in sales of motor gasoline to Lynn's five classes of purchaser. Subsequently, Lynn entered into a Consent Order with the DOE on September 20, 1981 in order to settle all disputes and claims between Lynn and the DOE regarding Lynn's compliance with the DOE price regulations in sales of motor gasoline during the audit period (hereinafter referred to as the consent order period). The Consent Order refers to the ERA's allegations of overcharges, but notes that no formal findings of violation were made. Additionally, the Consent Order states that Lynn does not admit it committed any such violations.

In the Consent Order, Lynn agreed to refund $11,182 directly to members of its two end-user classes of purchaser and remit $42,063 to the DOE for deposit in an interest-bearing escrow account.

This Decision and Order concerns the distribution of the funds that were deposited in the escrow account, plus accrued interest.[1]

On November 1, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 46344 (November 7, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Lynn's pricing practices during the consent order period. A copy of the PD&O was published in the Federal Register on November 7, 1985, and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process in order to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Lynn consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds will take place in two stages. In the first stage, refund monies will be refunded to customers who purchased Lynn motor gasoline during the consent order period and who demonstrate that they were injured by Lynn's pricing practices. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). However, we will not discuss second stage refund procedures in this Decision and Order.

A. Refund Claimants

As indicated earlier, Lynn's end-user customers received direct refunds from Lynn pursuant to the Consent Order. They will therefore not be eligible for refunds in this proceeding. Claimants in the Lynn refund proceeding will belong to one of the three classes of purchaser which did not receive refunds directly from Lynn, i.e., resellers (including retailers) of Lynn motor gasoline in Lynn's classes of purchaser 1, 3, or 4.

These three classes are described in the ERA audit file as follows:

Class 1: Large volume reseller which purchased trailer loads of Lynn motor gasoline.

Class 3: Retail gasoline station which received shipments of over 7,000 gallons per month from Lynn.

Class 4: Retail gasoline station which received shipments of less than 7,000 gallons per month from Lynn.

The ERA audit file identifies customers in each of the three classes, but does not list customer-specific overcharge amounts.[2] These customers are listed by class in Appendix B to this Decision and Order. We recognize, however, that there may be other resellers who purchased motor gasoline from Lynn and who may have been injured by Lynn's pricing practices during the consent order period. As proposed, we will accept applications for refund from reseller customers not listed in Appendix B, provided they can prove that they were injured by Lynn's alleged pricing violations.

B. Showing of Injury

To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the motor gasoline purchased from Lynn at the same level had the alleged overcharges not occurred. Accordingly, any reseller of Lynn motor gasoline should show that at the time it purchased motor gasoline from Lynn, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶ 85,050 (1983); *Office of Enforcement*, 10 DOE ¶ 85,020 (1982). In addition, a reseller must show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[3] As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

The presumptions proposed in the PD&O are being adopted here and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. *See* 10 CFR 205.282(e).

1. Applicants Claiming a Refund of $5,000 or Less

Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of motor gasoline from Lynn. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. The cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury should also not exceed the amount of the refund to be gained. We will therefore adopt a small claims presumption in this case. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corpe*, 12 DOE ¶ 85,014 (1984) (*Marion*). Any reseller applicant claiming a refund of $5,000 or less, based upon the volumetric refund amounts in this proceeding, need not make a detailed showing of injury in order to be eligible to receive a refund.[4]

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[1] Lynn remitted a total of $80,174 of the DOE. This amount includes interest on Lynn's installment payments of the consent order amount to the DOE.

[2] In two instances, the same firm appears as a customer in one of Lynn's end-user classes and in one of its reseller classes. These two customers, as well as any other customer who is a member of both an end-user class and a reseller class, will be eligible to apply for refunds only on the basis of those volumes which they purchased from Lynn and resold.

[3] Retailer applicants will not be required to submit bank information in connection with sales made after July 15, 1979, the date on which the amendment to the price rule eliminating the banking requirement for retailers became effective. 44 FR 42541 (July 19, 1979).

[4] As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

2. Spot Purchasers

We further adopt our proposal that resellers that made spot purchases from Lynn be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchase(s).

C. Calculation of Refund Amounts

We will use a volumetric method to divide the consent order fund among successful applicants. This method generally presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. *See e.g., Vickers*. Moreover, we will use the information contained in the ERA audit file to fashion a refund plan which corresponds more closely to the injuries experienced than would a plan based solely on a volumetric approach. *See e.g., Marion* (applicant could choose between volumetric refund and pro rata share of alleged overcharges). In the present case, we will presume that the effects of the alleged overcharges were dispersed equally within each individual reseller class of Lynn customers, and not equally over all sales to all customers. *See e.g., Blex Oil, Inc.*, 13 DOE ¶ 85,019 (1985) (*Blex*). The ERA audit file in the present case indicates that there is a marked difference in the amount of the per gallon overcharge allegedly experienced by each of the three classes. Therefore, in order to distribute the refund monies to firms in a manner which more closely approximates their actual injury, we will grant refunds to claimants in the three classes of customer based on three different volumetric refund amounts. *See e.g., Collins Oil Co.*, 13 DOE ¶ 85,077 at 88,213 n.7 (1985), and *Eugene Endicott*, 13 DOE ¶ 85,086 at 88,233 n.9 (1985) (combination of pro rata share of alleged overcharges and volumetric presumption for certain classes of purchaser). *See also Blex*. The volumetric refund amount is calculated by dividing the consent order settlement amount attributable to each class of purchaser by the gallonage of motor gasoline sold by Lynn to that class during the consent order period.[5] The per gallon volumetric refund amounts, exclusive of interest, are set forth in Appendix A.[6] An eligible claimant's refund will be calculated by multiplying the appropriate volumetric refund amount by the number of gallons of motor gasoline the claimant purchased from Lynn during the consent order period.[7] In addition, the interest which has accrued on the money in the Lynn escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the costs of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Lynn consent order fund. Acccordingly, we shall now accept applications for refund from eligible customers who purchased Lynn motor gasoline during the consent order period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm: E.B. Lynn Oil Company, the case number: HEF–0064, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the Lynn motor gasoline, i.e., whether it was a reseller or end-user.

4. The volume of Lynn motor gasoline that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges.

5. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations from the month in which purchases were first made until the termination of banking regulations (July 15, 1979 for retailers; April 30, 1980 for resellers and retailer-resellers).

(b) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may compare the prices it paid for Lynn motor gasoline with the prices paid for that product by its competitors to show that price increases to recover alleged overchanges were infeasible.

6. A statement of whether the applicant was in any way affiliated with Lynn. If so, the applicant should state the nature of the affiliation.

7. A statement of whether there has been any change in ownership of the entity that purchased the motor gasoline from Lynn since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

9. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the Federal Register. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW.,

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[5] The consent order settlement amount for each class of purchaser represents a share of the total consent order fund that is proportional to the share of the total alleged overcharges experienced by that class.

[6] We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we will allow any purchaser to file a refund application based on a claim that it suffered a disproportionate injury as a result of Lynn's pricing practices. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,184 (1984) and cases cited therein.

[7] One Lynn customer, Airport Garage, was listed as being in two reseller classes of customer. In determining the total refund for which it may be eligible, we will multiply the amount of motor gasoline it purchases as a member of each class by the appropriate volumetric refund amount for that class.

Washington, D.C. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by E.B. Lynn Oil Company pursuant to the Consent Order executed on September 20, 1981 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: May 13, 1986

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Name of Firm: E.B. Lynn Oil Company
Consent Order Period: May 1, 1979—April 30, 1980
Product Covered: Motor Gasoline
Consent Order Amount: $50,174.00

Class of purchaser	Portion of consent order fund	Per gallon volumetric amount
No. 1	[illegible]	[illegible]
No. 3	21,811.00	.016778
No. 4	[illegible]	.019760

Appendix B

The following is a list of Lynn's identified reseller customers according to class:

Class 1

Hill Oil Company

Class 3

Rudy's Amoco
*Dick's Amoco
Rolland Amsallan
Fluck & Sloyer
C.B. Schnick
Fuys Exxon
Walters
*K Amoco
John Kelson
Dries Supply
Airport Garage

Class 4

*F. Koerbler
*Rome Dilorenzo
*Randy Knessler
*Schlosser Bros.
*Frank Klotz
*Fred Debaradinis
*A. Dinardo
S & R Amoco
Art's Service Center
*Robert Hedrick
*John Kelbon
*Pat Boy's Amoco
Gutshall Chevco
Faulkner Olds
Truxler Oil
Hurnish Oil
Orkin
Ernest Altyeh Jr.
W. S. Reichenbach & Son Inc.
Art Houser
Lamar Wolfgang
Airport Garage
Union
Moch Truck
J & R Amoco
Call Chronicle News
George Lightwalner

*We have obtained addresses for customers whose names have been marked with an asterisk and have sent them copies of this Decision and Order. We do not have addresses for those customers whose names have not been marked, but they remain eligible for refunds and may contact the Office of Hearings and Appeals to request a copy of this Decision. We plan to make further efforts to locate these customers.

[FR Doc. 86-11950 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 31 through April 4, 1986

During the week of March 31 through April 4, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Beco Corporation, 04/02/86; KEA-0021

BECO Corporation filed an Appeal from a denial by the Manager, Idaho Operations Office of a request for information which the company had submitted pursuant to the Freedom of Information Act. The company had sought access to responses to a cancelled Request for Proposal (RFP), which was subsequently reissued. In considering the Appeal, the DOE found that the reissued RFP was substantially similar to the prior RFP. The DOE determined that the responses could be used by competitors to the detriment of the original submitters. The DOE therefore determined that the proposals were properly withheld prior to the time of selection of a winning proposal pursuant to 5 U.S.C. 552(b)(4). Accordingly, the Appeal was denied.

Requests for Exception

Otis Ainsworth, 04/04/86; HEE-0066

Otis Ainsworth filed an Application for Exception in which he sought to be relieved of his obligation to make restitution under the terms of a Remedial Order. In considering the request, the DOE found that (i) the doctrine of laches was applicable to exception proceedings, (ii) Ainsworth's delay in applying for relief was not excusable, and (iii) the delay resulted in prejudice to the DOE and third parties. Accordingly, exception relief was denied.

Bernard Schafer Petroleum, 03/31/86; HEE-0132

Bernard Schafer Petroleum filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the 12 hours per month that the firm needed to complete the form placed a disproportionate burden on Schafer. Accordingly, the DOE granted the Application for Exception, permitting Schafer to file the form using estimated data.

Implementation of Special Refund Procedures

Fine Petroleum Company, 04/04/86; HEF-0072

The Office of Hearings and Appeals issued a final Decision and Order establishing special refund procedures for the distribution of $25,000, plus interest, obtained as a result of a consent order entered into by the DOE and Fine Petroleum Company. Under these procedures, the funds will be distributed to customers who purchased refined petroleum products from Fine during the period November 1, 1973 through February 29, 1976 and who establish that they were injured as a result of Fine's pricing practices. The Decision stated, however, that end-users and resellers requesting refunds of $5,000 or less will not be required to make a detailed showing of injury. Successful applicants will generally receive refunds proportionate to the volumes of petroleum products that they purchased from Fine during the consent order period.

U.S.A. Petroleum, 04/04/86; HEF-0500

The DOE issued a Decision and Order implementing a plan for the distribution of $1,750,000 plus interest, received as a result of a consent order with U.S.A. Petroleum. The DOE first decided that a portion of the fund related to U.S.A.'s participation in the Crude Oil Entitlements Program should be set aside for distribution pursuant to DOE policy. The DOE determined that the remaining portion of the settlement fund, $962,500, should be distributed to customers who were injured as a result of purchases of petroleum products from U.S.A. Petroleum during the period August 1973 through January 1981. The Decision stated, however, that end-users and resellers requesting refunds of $5,000 or less would not be required to make a detailed showing of injury. The DOE provided that successful applicants would generally receive refunds proportionate to the volumes of U.S.A.'s refined products that they purchased.

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Wellen Oil, Inc., 04/03/86; HEF-0004

The Office of Hearings and Appeals issued a final Decision and Order establishing special refund procedures for the distribution of $69,219.58 plus interest, obtained as a result of a Consent Order entered into by the DOE and Wellen Oil, Inc. Under these procedures, the funds will be distributed to customers who purchased petroleum products from Wellen during the period September 1, 1973 through December 31, 1973, and who establish that they were injured as a result of Wellen's pricing practices. The Decision states, however, that end-users or resellers requesting refunds of $5,000 or less will not be required to make a detailed showing of injury. Successful applicants will receive refunds proportionate to the volumes of petroleum products they purchased from Wellen during the consent order period.

Refund Applications

Appalachian Flying Service/Pendley Constructors, Inc., et al., 04/01/86; RF224-1, ET AL.

The DOE issued a Decision and Order concerning Applications for Refund filed by six end-users of aviation fuel and aviation gasoline purchased from Appalachian Flying Service. In accordance with the Procedures established in the Appalachian Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on the volumes of aviation fuel and aviation gasoline it purchased from Appalachian during the consent order period. The total amount of refunds approved in this Decision is $2,700 ($2,402 principal plus $298 interest).

Earth Resources Company/Defense Logistics Agency, 03/31/86; RF239-3

The DOE issued a Decision and Order concerning an Application for Refund filed by the Defense Logistics Agency (DLA), an ultimate consumer of Earth Resources Company petroleum products. The DLA applied for a refund based on the procedures outlined in *Earth Resources Co.*, 13 DOE ¶85,304 (1986), governing the disbursement of settlement funds received from Earth Resources pursuant to a 1981 consent order. Those procedures specified that DLA was eligible to file for a refund equal to the amount of credit payments due DLA under the terms of the consent order, but never paid to the firm by Earth Resources. The DOE concluded that DLA should receive a total refund of $2,225,586, consisting of the consent order credit payments of $1,540,632 and $684,954 in accrued interest.

F.O. Fletcher, Inc./Franklin Oil Company, 04/01/86; RF172-52

The DOE issued a Decision and Order concerning an Application for Refund filed by Franklin Oil Company in connection with a consent order fund made available by F.O. Fletcher, Inc. Franklin, a reseller of diesel fuel, provided evidence that it purchased diesel fuel from Fletcher during the consent order period, but was unable to make an adequate showing of injury to merit a refund over the $5,000 small claims threshold established in the Fletcher Special Refund Proceeding. Accordingly, the DOE granted Franklin a refund of $5,000. The total refund amount approved in this Decision is $9,598 ($5,000 in principal plus $4,598 in interest).

F.O. Fletcher, Inc./McCall Oil and Chemical Corporation, 03/31/86; RF172-36

The DOE issued a Decision and Order concerning an Application for Refund filed by McCall Oil and Chemical Corporation, in connection with a consent order fund made available by F.O. Fletcher, Inc. McCall, a retailer of No. 2 heating oil and kerosene, provided evidence that it purchased these products from Fletcher during the consent order period, but was unable to make an adequate showing of injury to merit a refund over the $5,000 small claims threshold established in the Fletcher Special Refund Proceeding. Accordingly, the DOE granted McCall a refund of $5,000. The total refund amount approved in this Decision is $9,598 ($5,000 in principal plus $4,598 in interest).

Gulf Oil Corporation Finley's Gulf, et al., 03/31/86; RF40-00308, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by retailers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The DOE concluded that they should receive a total refund of $16,204, consisting of $13,634 in principal and $2,570 in interest.

Gulf Oil Corporation/Rollins Gulf Station, Inc., 04/01/86 RF40-1186

The DOE issued a Decision concerning an Application for Refund from the Gulf Oil Corporation escrow account filed by Rollins Gulf Station, Inc. The DOE cited the requirement that Gulf refund applicants demonstrate that they would not have been required to pass through to their customers a cost reduction equal to the refund claimed. The DOE then found that the firm had negative cost banks during the period November 1, 1973 through January 31, 1976, and higher profit margins in August through October 1973 than during the May 1973 base period. The DOE therefore concluded that the firm suffered no injury during the consent order period and would be required to pass through any refund to its customers. Accordingly, Rollins' refund application was denied.

Gulf Oil Corporation/State of Connecticut, 04/04/86; RF40-3119

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Connecticut in connection with a consent order fund made available by Gulf Oil Corporation. The State, and end-user of Gulf petroleum products, purchased the products directly from Gulf. Pursuant to procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the State submitted evidence showing that it purchased 188,200 gallons of Gulf product. The DOE concluded that the State should therefore receive a total of $226 ($190 in principal plus $36 in interest).

Gulf Oil Corporation/State of Tennessee, 04/01/86; RF40-3132

The DOE issued a Decision and Order granting an additional refund to the State of Tennessee in the Gulf Oil Corporation special refund proceeding, based on 1,285,072 gallons of Gulf product that were not included in the calculation of the State's original refund. The additional refund totaled $1,884, representing $1,588 in principal and $296 in interest.

Gulf Oil Corporation/The Cincinnati Vulcan Oil Co., et al., 04/01/86; RF40-534, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed on the basis of the procedures set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, the applicants, all direct purchasers of Gulf motor gasoline, demonstrated that they would not have been required to pass through to customers a cost reduction equal to the refund claimed. The DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision totaled $139,451.03 ($117,737.20 in principal and $21,713.83 in interest).

Inland U.S.A., Inc./Midwest Petroleum Company, 04-04-86; RF176-16

The DOE issued a Decision and Order concerning an Application for Refund filed by Midwest Petroleum Company, in connection with a consent order fund made available by Inland U.S.A., Inc. Midwest, a reseller of motor gasoline, provided evidence that it purchased motor galoline from Inland during the consent order period and was injured by the alleged Inland overcharges. Accordingly, the DOE granted Midwest a refund based on the full amount allocable to the firm under the procedures set forth in the Inland Special Refund Proceeding. The total refund amount approved in this Decision is $75,697 ($52,040 in principal plus $23,657 in interest).

Inland U.S.A., Inc./Sieveking Company, Inc., et al., 04-04-86; RF176-14, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed in connection with a consent order fund made available by Inland U.S.A., Inc. Each applicant was a reseller that provided evidence that it purchased motor gasoline from Inland during the consent order period, but none was able to make an adequate showing of injury to merit a refund over the $5,000 small claims threshold. Accordingly, the DOE granted each applicant a refund of $5,000. The total amount of refunds approved in this Decision is $21,819 ($15,000 in principal plus $6,819 in interest).

Leese Oil Company/Mitchell Construction Company, 04-04-86; RF211-10

The DOE issued a Decision and Order concerning an Application for Refund filed by Mitchell Construction Company, in connection with a consent order fund made available by Leese Oil Company. In accordance with the procedures established in the Leese Special Refund Proceeding, the DOE determined that Mitchell, an end-user of Leese motor gasoline, should receive a refund based on the full volume of motor gasoline it purchased from Leese during the consent order period. The total refund amount approved in this Decision is $433 ($268 in principal plus $65 in interest).

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Little America Refining Company/Service Oil Company, Mountain States Petroleum Corporation, 04-04-86; RF112-69, RF112-179

The DOE issued a Decision and Order granting refunds from the Little America Refining Company deposit escrow account to Service Oil Company and Mountain States Petroleum Corporation, two purchasers of Larco petroleum products. Both of the applicants submitted claims for less than the $5,000 small claims threshold, and were therefore not required to submit additional evidence of injury. The refunds to these firms totaled $5,455, representing $3,649 in principal and $1,806 in interest.

Placid Refining Company, et al., 03/31/86; RF171-32, et al.

The DOE issued an order directing immediate payment of claims filed by ten recipients of exception relief from the Crude Oil Entitlements Program. Funds sufficient to pay those claims had previously been segregated into interest-bearing escrow accounts, pending resolution of related litigation. The order directed the disbursement of a total of $28,393,974 plus interest to the ten firms.

Saber Energy, Inc./Land O' Lakes, Inc., et al., 04/03/86; RF192-2, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers and end-users of Saber refined petroleum and natural gas liquid products. All of the claimants applied for refunds based on the procedures outlined in *Saber Energy, Inc.*, 13 DOE ¶ 85,134 (1985). The applicants elected to limit their claims to the $5,000 presumption amount. After disallowing portions of those claims based on purchases of products that had been decontrolled prior to the date of purchase, the DOE granted refunds totaling $60,943, including $47,976 in principal and $12,967 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.
Don's Sinclair RF112-69
G. & L. Oil Company RF143-5

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published lose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 9, 1986.

[FR Doc. 86-11691 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Farstad Oil Co.

AGENCY: Office of Hearings and Appeals.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $67,623.34 obtained as a result of a consent order which the DOE entered into with Farstad Oil Company, a reseller-retailer of petroleum products located in Minot, North Dakota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 20 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0567.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In Accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $67,623.34 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Farstad Oil Company (Farstad). The funds were provided to the DOE by Farstad to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline and No. 1 and No. 2 diesel fuel during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased Farstad motor gasoline and No. 1 and No. 2 diesel fuel during the consent order period, provided that they have not already received a direct refund from the firm. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of Farstad motor gasoline and No. 1 and No 2 diesel fuel and to demonstrate that it was injured by Farstad's pricing practices. The specific requirements for providing injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-Stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 20, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of The Department of Energy—Implementation of Special Refund Procedures

May 20, 1986

Name of Firm: Farstad Oil Company
Date of Filing: March 6, 1986
Case Number: HEF 0567

Under the procedural regulations of the department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On March 6, 1986, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Farstad Oil Company (Farstad).

I. Background

Farstad is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Minot, North Dakota. A DOE audit of Farstad's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged

that between November 1, 1973, and April 30, 1974, Farstad committed possible pricing violations in its sales of motor gasoline and No 1 and No. 2 diesel fuel.

In order to settle all claims and disputes between Farstad and the DOE regarding the firm's sales of motor gasoline and No. 1 and No. 2 diesel fuel during the period covered by the audit, Farstad and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Farstad does not admit that it violated the regulations.

Under the terms of the consent order, Farstad agreed to refund $78,636.17, plus interest, as follows: First, Farstad was to directly issue checks totaling $27,472.56, plus interest, to its end-user customers; second, in order to make restitution to its wholesale customers, Farstad was required to deposit $51,163.61, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. On February 14, 1984, Farstad remitted $67,623.34 to the DOE. In addition to the $66,981.67 paid as settlement for the alleged wholesale overcharges, this sum included $641.67 assigned to the end-user customers which Farstad could not locate.[1] This Decision and Order proposes procedures to distribute the $67,623.34 received from Farstad plus the interest which has accrued on the escrow account.[2]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline and No. 1 and No. 2 diesel fuel that may have been injured by Farstad's pricing practices during the period November 1, 1973, through April 30, 1974, provided that they have not already received direct refunds from Farstad. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Farstad refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Farstad's alleged overcharges, provided that they have not already received direct refunds from the firm.[3] As we have done in many prior refund cases, we propose to adopt certain presumptions and findings which will be used to help determine the level of a purchaser's injury.

The presumptions and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of Farstad's sales of motor gasoline and No. 1 and No. 2 diesel fuel made during the consent order period. This presumption is called a volumetric method. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end users, certain types of regulated firms, and cooperatives were injured by Farstad's pricing practices.

The pro rata, or volumatric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product covered by the consent order. In the absence, of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.* 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumeric method we plan to adopt, a claimant will be eligible to receive a refund equal to the a number of gallons of Farstad motor gasoline and No. 1 and No. 2 diesel fuel that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.007551 per gallon.[4] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Farstad motor gasoline and No. 1 and No. 2 diesel fuel that are seeking small refunds were injured by the firm's pricing practices. Under this presumption, a claimant which is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of Farstad motor gasoline and No. 1 and No. 2 diesel fuel purchased if its refund claim is below $5,000. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069, at 88,210 (1984); *Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco)*, and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm might make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. Firms which made only spot purchases of Farstad products will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would thereofre be beyond the scope of a special refund proceding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) *(PVM)*;

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[1] The end users that received direct refunds, all of which are affiliated with the United States Government, are not eligible to apply for refunds in this proceeding. However, applications will be accepted from end users that did not receive direct refunds from Farstad. All of these latter customers are either individuals or non-U.S. Government entities.

[2] The total value of the Farstad account stood at $81,363.00 as of April 30, 1986.

[3] The Appendix to this Proposed Decision and Order contains the names of some customers that may have purchased petroleum products from Farstad during the consent order period. We will accept information regarding the present locations of these purchasers for a period of 30 days following publication of a final Decision and Order in this proceeding.

[4] This figure is computed by dividing the $67,623.34 received from Farstad by the 8,956,072 gallons of motor gasoline and No. 1 and No. 2 diesel fuel sold by Farstad during the consent order period to customers that did not receive direct refunds from the firm.

[5] Resellers or retailers that claim a refund in excess of $5,000 but which do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims of $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,020 at 88,122 (1982).

See also Texas Oil & Gas Corp., 12 DOE at 88,309, and cases cited therein.[5]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the petroleum product overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Farstad's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982 *(Tenneco), and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) *(Pennzoil)*. Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE at 85,226. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases of Farstad motor gasoline and No. 1 and No. 2 diesel fuel as well as all relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to be applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Farstad Oil Company pursuant to the Consent Order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

Appendix

Farstad Oil Company—First Purchasers

Ahmann's Service
William Albrecht
American Grain & Cattle
Thomas Anderson
Arneson Oil Co.
Lynn Arneson
Arrowhead Tesero
Art's Body Shop
Austads
B & B Friendly Service
Bair's Truck Stop
Bell Communications
Ken Benson
Big Steer Restaurant
Bigwood Oil Co.
Bill's Husky
John Blake
Bottineau Oil Co.
Brown's Service
Jerry Buettner
Burlington Texaco
Campus Texaco
Lloyd Charron
City Shop
T.W. Cockrell
Cole Petroleum
Columbus Oil Co.
Coop Oil Association
D & E Oil
Phil Dahle
Dale's Cash Supply
Dale's Truck Stop
Dave's Oil Co.
Andy Dejarlais
Denius Oil Co.
Dickinson Husky
John Dickman
Don Moe Dodge
Dunseith Public Schools
Economy Fuel
Emerald Moggard
Erco Service
Farmers Elevator
Farmers Grain and Oil
Farmers Union Oil Co.
Fish Garbarge Service
Floyd Frieze Exxon
Floyd's Interstate
Garden Valley Exxon
Norman Glenz
Goulding Mobil
Green Oil Co.
Gary Gross
Peter A. Gross
Gustafson Oil Co.
Gwinner Oil Co.
Haas Mobil
Marlin Hankinson
Heringer Oil Co.
Hershey-Patterson
Norris Heskin
Highway Corners Texaco
Husky Truck Stop
Hutton Oil Co.
I-94 Oasis Skelly
I-94 Truck Oasis
Ihringer Oil Co.
Independent Farmers Oil
Interstate Oil Co.
Industrial Builders
Bob Irwin
Jake's Auto Glass
Jamestown Truck Plaza
Johnson Chevrolet
Fred Johnson
Irver Johnson
Jones Oil Co.
Kal's Texaco
Leonard Kassner
Joan King
Elmer Knutson
Kraft's Grocery
Clarence Kringlee
Lake Region Coop Oil
Lane Sheet Metal
Laraway Bulk Station
Larry's Auto
Ernest Livingston
Lockrem Oil Co.
Stan Lozensky
Don Lund
Roger Lund
Ken Lystad
Maddock Oil Co.
Major Brands
Jules Mathis
Maxbass Oil Co.
Mayer Truck
Merv's Erco Service
Guy Metzdorf
Midland Coop
Midland Diesel
Midwest Service
City of Minot
Minot Salvage
Minot Sand and Gravel
Mohler Oil Co.
Morty Oil Co.
Mouse River Oil

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Mutchler Grain Co.
Muus Lumber
Myles Myhre
Lowell Ness
New Rockford Feusenden Co-op
Nifta Enterprises
Nolan Surge Service
Erwin Norenberg
North Dakota State Highway Department
North Hill Texaco
Northwest Grain and Salvage
Northwest Spraying
Nortonville Oil Co.
O'Day Equipment
Ohio Brass Co.
Oskey Brothers
Ostby Service
Ottoshine
Overby Oil Co.
Palroles Brothers
Parker and Parker
Payne Brothers
Peavy Co.
Perry's Grocery
Perry's Texaco
Pioneer Construction
Prime Petroleum
Rabbit Marketing
Ralph Harford Texaco
Refrigerator Equipment
Jim Reinharts
Rensch Garage
Rick's Skelly
Riverside Texaco
Robo Wash
Rolla Oil Co.
Roughrider Truck Stop
Ron Ruther
Ruthville Texaco
Schaan Oil Co.
Paul Schoty
Merle Schumacher
Shunk's Oil Co.
Jim Soltis
Soo Line Railroad
Sornsin Construction
Southdale Texaco
Speedway Service
Speedy's Tire Center
Roy Stenson
Jim Storud
Struckness Construction
Surry Grocery
Surry Skelly
Carl Swartout
Rube Swenson
Taste Rite Packing
Taylor Oil Co.
Ted's Garage
Tesoro Oil
Texaco Co., New Rockford
Thomas Enterprises
Thomas, Inc.
Tooley Texaco
Roy Tripp
Turtle Mountain Oil
Twin City Barge & Towing
United Parcel Service
Joe Volk
Larry Vannett
Ward County
Westlie Skelly Truck Stop
Jerry Wolfe
Wood River Oil and Refining
Conrad Ziegler

Alec Zorn

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BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Ramos Oil Co., Inc.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $21,818.84 obtained as a result of a Consent Order which the DOE entered into with Ramos Oil Company, Inc., a reseller-retailer of petroleum products located in West Sacramento, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0159.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $21,818.84 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with Ramos Oil Company, Inc. (Ramos). The funds were provided to the DOE by Ramos to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price and allocation regulations with respect to its sales of motor gasoline, No. 2 diesel fuel, and lubricants (covered products) during the period August 20, 1973, through January 27, 1981.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased Ramos covered products during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule, broken down by product, of its monthly purchases of Ramos motor gasoline, No. 2 diesel fuel, and lubricants and to demonstrate that it was injured by Ramos' pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 20, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of The Department of Energy—Implementation of Special Refund Procedures

May 20, 1986.

Name of Firm: Ramos Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0159.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administraton (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Ramos Oil Company, Inc. (Ramos).

I. Background

Ramos is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR § 212.31 and is located in West

Sacramento, California. A DOE audit of Ramos' records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to the firm's sales of motor gasoline, No. 2 diesel fuel, and lubricants (covered products).

In order to settle all claims and disputes between Ramos and the DOE regarding the firm's sales of covered products during the period August 20, 1973, through January 27, 1981, Ramos and the DOE entered into a consent order on May 19, 1983. The consent order refers to ERA's allegations of regulatory violations but notes that there was no finding that infractions occurred. Additionally, the consent order states that Ramos does not admit that it violated the regulations.

Under the terms of the consent order, Ramos was required, in three annual installments, to deposit a total of $19,000, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Ramos made its final payment on May 30, 1985.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of covered products which may have been injured by Ramos' pricing practices during the period August 20, 1973, through January 27, 1981. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Ramos refund proceeding, we propose to distribute the funds currently in escrow to claimants which demonstrate that they were injured by Ramos's alleged overcharges.[2] As we have done in many prior refund cases, we propose to adopt certain presumptions and findings which will be used to help determine the level of a purchaser's injury.

The presumptions and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund application in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of Ramos' sales of covered products made during the consent order period. This presumption is called a volumetric method. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end users, certain types of regulated firms, and cooperatives were injured by Ramos' pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product covered by the consent order. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Ramos covered products that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.000213 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Ramos covered products seeking small refunds were injured by the firm's pricing practices. Under this presumption, a claimant that is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of Ramos covered products purchased if its refund claim is below $5,000. *See Texas Oil & Gas Corp.*, 12 Doe ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm might make such a showing, a claimant is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[4]

A modification of the standard injury requirement is necessary in this proceeding because for a portion of the 7½-year Ramos consent order period, retailers and resellers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 Fed. Reg. 29,548 (1980). Instead, effective July 16, 1979, for retailers and May 1, 1980, for resellers, these firms were required to calculate their MLSPs by adding a fixed-margin to their cost of product. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Since as of those dates retailers and resellers of motor gasoline were not required to maintain or compute cost banks, any requirement that these claimants make demonstrations of injury based on unrecovered banks would effectively eliminate all non-threshold applicants for a portion of the consent order period. Therefore, in this proceeding, we will not require retailers and resellers to submit

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[1] Ramos paid $21,818.84, including installment interest, into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Ramos escrow account stood at $24,049.09 as of April 30, 1986.

[2] At present, the record does not contain any information which indicates that allocation violations were uncovered during the audit investigation. However, since the consent order resolves disputes between Ramos and the DOE concerning the firm's compliance with the Mandatory Petroleum Allocation Regulations, as well as the price regulations, the escrow funds may be used to provide restitution to individuals and firms which show that they were injured by Ramos's allocation practices. For these claimants, we apropose to implement the same procedures that have been used in prior Subpart V proceedings involving alleged allocation violations. *See* Power Pak Co., Inc., 14 DOE ¶ 85,001 (1986).

[3] This figure is computed by dividing the $21,818.84 received from Ramos by the 102,402,443 gallons of covered products estimated to have been sold by the firm during the consent order period.

[4] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 18, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 23548 (1980).

cost banks for the periods after July 10, 1979, and May 1, 1980, respectively.[5] However, retailers and resellers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes or competitive disadvantage.[6]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 88,396-97. Firms which made only spot purchases of Ramos covered products will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,200, and cases cited therein.[7]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the petroleum products overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Ramos' alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases of Ramos motor gasoline, No. 2 diesel fuel, and lubricants as well as all relevant information necessary to support its claim in accordance with the presumptions and findings outlined above.[8] A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Ramos Oil Company, Inc. pursuant to the Consent Order executed on May 19, 1983, will be distributed in accordance with the foregoing decision.

[FR Doc. 86-11980 Filed 5-28-86; 8:45 am]
BILLING CODE 6450-01-M

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[5] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,055 at 88,017 n.1 (1982).

[6] Resellers or retailers which claim a refund in excess of $5,000 but who do not attempt to establish that they did not pass through the price increase will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 88,398. *See also* Office of Enforcement, 10 DOE ¶ 85,028 at 88,122 (1982).

[7] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

[8] Although the price of motor gasoline was controlled until January 27, 1981, No. 2 diesel fuel and lubricants were deregulated on July 1, 1978, and September 1, 1979, respectively. In compiling its schedule of monthly purchases a claimant should not include purchases of deregulated products.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36122; FRL-3023-3]

Pesticide Programs; Guide Standard and Protocol for Microbiological Water Purifiers; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: This notice announces the development of a guide standard and protocol for testing microbiological water purifier units submitted to the EPA for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This standard includes specific requirements for three basic types of microbiological water purifiers. Only two types of units are subject to registration under FIFRA (ceramic candles and/or units with a chemical agent and halogenated resins and/or units). This notice is applicable only to these two types of units. The standard will also serve as the basic framework for developing appropriate modifications to evaluate and test other basic types of microbiological water purifier units that might be registered under FIFRA in the future. The Office of Pesticide Programs (OPP) is soliciting public comments on this guide standard in order to consider any pertinent concern before publishing the protocol as a final guideline available from the National Technical Information Service (NTIS). Copies of the guide standard, as proposed are available from Ms. Dorothy Portner whose address and telephone number are given under FOR FURTHER INFORMATION CONTACT.

DATE: Written comments must be received by July 14, 1986.

ADDRESS: Submit three copies of comments, identified by the control number "OPP-36122," by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm., 236, CM#2, 1921 Jefferson Davis Highway, Arlington, Va.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dorothy Portner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C 20460. Office location and telephone number: Rm. 711, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0484). Contact Ms. Portner for a copy of the proposed guide standard.

SUPPLEMENTARY INFORMATION: Several Federal offices, as well as industrial and consumer groups, have been involved in responding to questions and problems relating to microbiological water purifer equipment and have recognized the need for a guide standard and testing protocol to evaluate these units. In July 1984, the Office of Drinking Water (ODW) and OPP formed a work group to recommend a standard and to develop a testing protocol for microbiological water purifiers. A committee was selected, consisting of a broad multi-disciplinary group of experts from academia, industry, and government. The committee was chaired by Stephen A. Schaub, Ph.D., U.S. Army Medical Bioengineering Research and Development Laboratory. The committee's objective was to produce a comprehensive document that would be useful for government, industry, and consumers:

1. As a basic framework for testing and evaluating microbiological water purifiers for EPA registration.

2. As a guide to the acceptance of water treatment units where point-of-use units may be needed to treat a contaminated public water supply or for emergency situations.

3. As a test guide to manufacturers wishing to consider and evaluate their units as microbiological water purifiers, whether registered or not.

4. As a guide to consumers regarding the performance to be expected from microbiological water purifiers tested according to this standard and protocol.

5. To assist in the evaluation of microbiological treatment units for military applications.

This guide standard covers three basic types of units subject to registration and/or regulation under FIFRA. These units are identified by their principal means of action: (1) Ceramic candles and/or units (with or without an antimicrobial agent): filtration and adsorption, and antimicrobial activity if a chemical is included; (2) halogented resin and/or units: chemical disinfection and possibly filtration; and (3) ultraviolet (UV) units: UV irradiation with possible add-on treatment for adsorption and filtration. The performance requirements and a comprehensive protocol with detailed microbiological test procedures, developed under defined basic principles, are specified for these three basic types of devices. OPP intends to utilize applicable sections of this guide standard as the basis for deriving efficacy data to support the registration of ceramic candle units with an antimicrobial agent and halogented resin units (types 1 and 2). Other sections of this standard may be used by other Federal offices, device manufacturers, and consumer groups as a guide to evaluate the effectiveness of devices that are regulated under FIFRA only as microbiological water purifiers (ceramic candle units without an antimicrobial agent and UV units).

Dated: May 20, 1986.

Susan H. [redacted],

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-11998 Filed 5-28-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1691]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

May 20, 1986.

Petitions for reconsideration and applications for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to oppositions must be filed within 10 days after the time for filing oppositions has expired.

Subject: Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers (CC Docket No. 84-900, Phase I).

Number of petitions received: 3.

Applications for Review Filed

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Oak Beach and Bay Shore, New York.) (MM Docket No. 84-235, RM-4811.)

Number of applications received: 2.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-12024 Filed 5-28-86; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004059-003
Title: San Francisco Terminal Agreement
Parties: The San Francisco Port Commission California Stevedore & Ballast, Co.
Synopsis: The purpose of this amendment is to extend the term of the basic agreement until June 30, 1987, with all other terms and conditions remaining in force. The parties have requested a shortened review period.

Agreement No.: 224-004177-001
Title: Port of Seattle and Seattle International Terminal, Inc., Terminal and Crane Lease Agreement
Parties: Port of Seattle (Port) Seattle International Terminal, Inc. (Lessee)
Synopsis: The proposed amendment would convert 5.17 acres of backup storage yard to container yard use, and provide for a construction rental abatement. It would also give the Port's formal consent to a corporate reorganization by the Lessee. The parties have requested a shortened review period.

Agreement No.: 224-010944
Title: Jacksonville Terminal Agreement
Parties: Jacksonville Port Authority (Port), United States Line, Inc. (USL)
Synopsis: The proposed agreement specifies the incentives the Port will offer to USL as an inducement to utilize its facilities at the Port of Jacksonville, Florida. The incentives consist of: (1) A payment of $35.00 to USL for every loaded container transitting the Port by water up to a maximum of 250 containers per vessel for the first ten vessels and (2) a waiver of the Port's $75.00 gate charge specified in its tariff. The agreement provides that USL will make a minimum of ten calls in the year's duration of the agreement.

Dated: May 23, 1986.
By Order of the Federal Maritime Commission.
John Robert Ewers,
Secretary.
[FR Doc. 86-12062 Filed 5-28-86; 8:45 am]
BILLING CODE 6730-01-M

[Agreement No. 224-010825]

Port of Charleston Terminal Agreement; Erratum

The Federal Register Notice of May 9, 1986 (Vol. 51, No. 90, page (17245) stated that the term of Agreement No. 224-010825 was for three years, with the option to renew for an additional two-year term. The parties have since notified the Commission that it was their intention to specify that the renewal option would be for two (2) consecutive three-year terms.

By Order of the Federal Maritime Commission.
Dated: May 23, 1986.
John Robert Ewers,
Secretary.
[FR Doc. 86-12059 Filed 5-28-86; 8:45 am]
BILLING CODE 6730-01-M

[Agreement No. 224-010830]

Port of Los Angeles Terminal Agreement; Erratum

The Federal Register Notice of May 15, 1986 (Vol. 51, No. 94, page 17829) stated that the crane assignment would require SSA to pay the City $87,780 per year for each crane for up to 3000 hours of use. It should have read the crane assignment would require SSA to pay the City $1,053,360 per year in twelve (12) equal monthly installments of $87,780.

By Order of the Federal Maritime Commission.
Dated: May 23, 1986.
John Robert Ewers,
Secretary.
[FR Doc. 86-12054 Filed 5-28-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Continental Illinois Corp. et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 20, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of First National Bank of Deerfield, Deerfield, Illinois.

2. *St. Joseph Bankcorporation, Inc.*, South Bend, Indiana; to acquire 100 percent of the voting shares of Angola Bancorporation, Angola, Indiana, and thereby indirectly acquire First National Bank of Angola, Angola, Indiana.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to acquire 100 percent of the voting shares of The Rockville National Bank, Rockville, Indiana.

2. *Southside Bancshares Corp.*, St. Louis, Missouri; to acquire at least 92.3

percent of the voting shares of Weldon Spring Bank, Weldon Spring, Missouri.

Board of Governors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12093 Filed 5-28-86; 8:45 am]

BILLING CODE 6210-01-M

Fidelity Financial Corp. of Michigan et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fidelity Financial Corporation of Michigan*, Birmingham, Michigan; to engage *de novo* through its subsidiary, Fidelity Leasing Corporation, Birmingham, Michigan, in leasing personal and real property pursuant to §225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by June 10, 1986.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sanger First National Holding Co., Inc. of Texas*, Sanger, Texas; to engage directly in the activity of providing to others financially related data processing and data tranamission services, facilities and data bases; or access to them pursuant to §225.25(b)(7) of the Board's Regulation Y.

Board of Govenors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12094 Filed 5-28-86; 8:45 am]

BILLING CODE 6210-01-M

Marisub, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C 1842) to become a bank holding company to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marisub, Inc.*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Marine Bank National Association, Milwaukee, Wisconsin; Marine Bank West, Waukesha, Wisconsin; Marine Bank South, National Association, Racine, Wisconsin; Marine Bank Dane County, Madison, Wisconsin; West Bend Marine Bank, West Bend, Wisconsin; Marine Bank of Beaver Dam, Beaver Dam, Wisconsin; Fidelity Marine Bank Antigo, Wisconsin; and Marine First National Bank, Janesville, Wisconsin.

Marisub, Inc., Milwaukee, Wisconsin; has also applied to acquire the (1) Marine Bank Services Corporation, Milwaukee, Wisconsin, and thereby engage in data processing, data print and transmission services, facilities (including data processing and data transmission hardware, software, documentation or operation personnel), data bases or access to such services, facilities and data bases pursuant to § 225.25(b)(7) of the Board's Regulation Y; (2) Marinebanc Leasing Company, Inc., Milwaukee, Wisconsin, and thereby engage in leasing personal property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y; (3) Marine Mortgage Company, Inc., New Berlin, Wisconsin, and thereby engage in making, acquiring, or servicing mortgage loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y; and (4) The Marine Trust Company, N.A., Waukesha, Wisconsin, and thereby engage in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12065 Filed 5-28-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Community-Based Cardiovascular Disease Prevention Program; Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces that competitive Cooperative Agreement applications are being accepted for a Community-Based Cardiovascular Disease Prevention Program. The catalog of Federal Domestic Assistance Number is 13.283.

Program Objective

Cardiovascular disease (CVD) is the leading cause of death in the United States, accounting for almost half of all deaths. Epidemiologic studies have demonstrated strong and consistent associations between behavioral risk factors—such as cigarette smoking, poor nutrition, physical inactivity, and uncontrolled high blood pressure—and CVD morbidity and mortality. In addition, studies have suggested that the recent declines in CVD can be attributed in large part to reductions in these behavioral risk factors. Most recently, investigators have attempted to demonstrate that community-based health promotion programs could produce reductions in CVD risk behaviors and ultimately in disease morbidity and mortality. In North Karelia, Finland and in northern California, community-based research programs have been shown to be effective in decreasing levels of CVD risk factors. The North Karelia results suggested that a decline in CVD morbidity and mortality had occurred as well. With funding from the National Heart, Lung and Blood Institute, current research efforts in Minnesota, Rhode Island (Pawtucket), and California (Stanford) are attempting to corroborate and expand on these previous findings.

The overall objective of the CDC Community-based CVD Prevention Program is to make practical application of current research findings at the State and community level. The CVD program is intended to develop and then replicate cost-effective, pubic health-based programs in communities across the country which will result in sustained reductions in behavioral risk factors and, ultimately, reductions in CVD. Public health departments provide an obvious framework from which these programs could develop. It is intended that these programs build upon the existing State and local health department expertise and resources to organize, conduct, and evaluate community-based CVD risk reduction activities. The following principles and assumptions form the conceptual framework for the development of these intervention programs:

Setting: The program should specify a community approach. Intervention strategies should be applied to the entire community and programs should be integrated with the existing social, education, and health service structures of the community.

Intervention: It is expected that a successful intervention will include strategies directed both at the individual and the community in which he/she lives. These intervention strategies will target multiple settings such as schools and worksites, various communication channels such as mass media and patient eduction, multiple community characteristics such as prevailing tax policies (cigarette taxes) and clean indoor air ordinances, and multiple resource development efforts such as the mobilization of community organizations and networks and the identification of new community resources.

The CVD Prevention Program should attempt to modify the health policies and societal influences surrounding CVD and which affect the community as a whole. This derives from the observation that the majority of CVD occurs among low or moderate risk individuals and strategies to reach these individuals are most effective when applied in a broad, community-wide effort. Nevertheless, interventions targeted at high risk individuals and population subgroups with defined CVD risk as well as adequate treatment for those identified should also be an important objective of the program. These two strategies are viewed as complementary rather than conflicting.

As a simple model for community-based CVD reduction, it is assumed that the intervention will produce changes in the community which are supportive of health promoting behaviors. These "community influences" include physician attitudes regarding health risk behaviors, the proportion of worksites with smoking cessation programs or clean indoor ordinances, and grocery store or restaurant food labeling programs, etc. It is also expected that change will occur in a sequence from awareness of the risk factors and of the intervention, to participation, behavioral change, risk reduction and, eventually, disease reduction.

Evaluation: The intent of this program is to determine whether a community-based intervention can be implemented and demonstrated to be effective at the local level at an affordable cost. The evaluation should include two basic components:

1. Evaluation of the *process* of implementing a community-based CVD intervention program, with a detailed formative assessment. This evaluation will be coordinated through the recipient State health department. This evaluation will include the assessment of such elements as the expansion of worksite lifestyle programs, enhancement of school health curricula, changes in food store marketing practices, mobilization of community resources, availability of program materials, and the passage of laws or regulations affecting smoking behavior such as increased cigarette taxes or expanded designation of smoke-free areas in public buildings.

2. Evaluation of the *effectiveness* of the program by contrasting changes in the intervention community over time with those observed in a comparison community. This component of the evaluation will measure changes in self-reported knowledge, attitudes and behavior which affect CVD risks, such as smoking, sedentary lifestyle, therapeutic compliance, and dietary patterns. The ultimate goal of the program is to reduce CVD morbidity and mortality. The assessment of these outcomes in the short term will be difficult because of the long lag time between behavioral or physiologic changes and actual changes in disease outcomes. However a surveillance mechanism for monitoring behavioral as well as morbidity and mortality outcomes will be established to permit tracking of changes over time.

Because of the cost limitations of this evaluation, methods such as telephone surveys may be used to assess changes in awareness, attitudes, and health behaviors. Morbidity changes should be monitored through mechanisms such as sentinel physicians, HMO's, and hospital admissions and discharges with diagnoses relating to CVD such as strokes, hypertensive crises, and myocardial infarctions. Other morbidity data for monitoring changes may come from self-reported levels of blood pressure, cholesterol, and body weight. In addition, these kinds of physiological data may be obtained from intervention activities such as worksite lifestyle programs. Mortality data relating to CVD will also be monitored to establish

a system that can demonstrate changes over time.

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended.

Eligibility Requirements

Eligible applicants are the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Availability of Funds

It is expected that approximately $300,000 will be available in Fiscal Year 1986 to fund approximately one or two awards. The awards will range from approximately $150,000 to $300,000. The awards will be funded with 12-month annual budget periods with a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Type of Assistance

Awards resulting from this announcement will be Cooperative Agreements. One or two awards will be made.

I. Recipient Activities

a. Select one or more communities which are committed to and capable of implementing a community-wide CVD prevention program commensurate with the conceptual framework of the program. The intervention community should encompass at least 50,000 persons and will have demonstrated interest and activities in community-based health promotion. It is also desirable for the selected community to have a diverse ethnic and socioeconomic composition and diverse employment opportunities.

b. Select a comparison community of approximately the same size, demographic composition, and sociocultural profile as the intervention community. This comparison community should be as isolated and removed from the intervention community as practicable and in a different media market. It should be surveyed in a manner similar to that of the intervention community in order to demonstrate that the baseline level of behavioral risk factors and health promotion activities in regard to CVD is comparable to the intervention community, thus affording comparisons that will enable program effectiveness to be evaluated. The recipient may elect to incorporate a different evaluation approach; this will be acceptable, provided the evaluation method selected can demonstrate that any changes which occur in the intervention community are not part of a secular trend.

c. Assist the selected intervention community(s) to design a community program which should include:

(1) Obtaining community-level data which describe CVD mortality and morbidity and behavioral risk factors, community influences, health policies, knowledge, attitudes, options and community resources affecting CVD. The behavioral component of the community-level data should include health enhancing behaviors such as physical exercise and efforts to reduce elevated blood pressure and cholesterol levels and health damaging behaviors such as smoking.

(2) Convening a panel of community representatives to review the analysis of the above data and set community objectives for the prevention and reduction of CVD.

(3) Designing, organizing, implementing, and evaluating the effectiveness of health promotion/education strategies which incorporate the following components in meeting the community objectives:

(a) Identifying, improving, and integrating CVD preventive services including a broad range of primary prevention efforts into existing community efforts such as treatment for individuals with CVD risk factors, training of public health and medical personnel, laboratory quality control and evaluation, and related measures.

(b) Educating people about the relationship between behaviors and their health, motivating them to adopt desirable personal health practices, increasing their skills through self-help, and helping them to maintain the acquired personal health practices through social supports.

(c) Producing changes in the community to create opportunities for healthy actions.

(d) Mobilizing the community for broad changes to support the adoption of healthy behavior.

(4) Evaluating the critical program indicators such as those described in Part c. 1), above.

d. Prepare and disseminate information pertinent to the program through presentation and publication in appropriate State and national forums.

e. Implement or expand a State surveillance system of CVD to include mortality, morbidity, behavioral risk factors, and community influences which affect health behaviors.

2. CDC Activities

a. Provide technical assistance and training to assure that State health department staff have the appropriate skills and expertise to, in turn, train, advise, and prepare local health representatives to conduct the program functions.

b. Provide technical assistance in the design and development of methods for training, data collection, and data analysis that can be adapted to future programs.

c. Develop and recommend program intervention strategies.

d. Collaborate in the selection of the intervention and comparison communities.

e. Participate in selected aspects of training and technical assistance to the selected community(s).

f. Provide technical assistance in the collection and analysis of data gathered from program activities.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before July 28, 1986: Grants Management Branch, Procurement and Grants Office Centers For Disease Control Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305.

Application forms should be available in the institution's business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private matered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Application

Applications which do not meet the criteria in either paragraph 2.a. or b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

5. Content

Applications must incude a narrative which details the following:

a. Background and needs including items relevant to the evaluation of the application.

b. Program plan which includes goals and specific measurable objectives, methods and activities which will be undertaken to accomplish the objectives, and evaluation plan.

c. Supporting material which includes the organizational location of the project, supporting and complementary personnel and resources, details of the applicant's previous experience in community-based CVD prevention and other chronic disease efforts, curriculum vitae of critical staff, previous scientific publications related to CVD, State health promotion plans related to CVD, and any other related material which will aid in the evaluation of the appropriateness of the applicant's experience and commitment to the program.

d. Description of duties for a public health advisor assignee, if being requested.

e. Index of the above.

Review Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. State Commitment

a. Evidence of the applicant's commitment to CVD prevention as evidenced by prior and current activities to promote State and community policies conducive to the reduction of CVD and plans for new activities.

b. Evidence of applicant's ability and willingness to make a long-term commitment to CVD prevention, including the possibility of providing additional State/local funds and staff resources.

c. The documented intent of the applicant to extend the program in more than one community within the allowable Federal budget or in combination with State and community resources.

2. State Capability

a. Evidence of the applicant's experience in implementing and managing chronic disease programs and evidence of how these activities would be integrated with the community-level risk factor reduction efforts.

b. Degree of prior experience in data collection which is appropriate to this project, such as behavioral risk factor surveys or surveillance; analysis of morbidity or mortality data related to behavioral risks associated with CVD; and assessments of the surrounding influences in the community which affect health behaviors.

c. Evidence of applicant's ability to generate community leadership, organization, priority-setting, and financial support for community-based CVD prevention, such as experience with CHPE's Planned Approach to Community Health (PATCH) Program.

d. The quality of the applicant's plans for community technical and organizational assistance.

e. The qualifications and time allocation of proposed staff and availability of equipment and facilities to be used during the project.

3. Project Design

a. The applicant's understanding of community-based CVD prevention, including practical intervention strategies and their behavioral science foundations.

b. Appropriateness of stated goals and objectives in addressing the stipulated recipient activities.

c. The adequacy of the procedures and criteria to be used in selecting the community in which the project is to be implemented.

d. Assurances of and special steps to achieve rapid indentification of the intervention and comparison communities and the necessary project personnel.

e. The overall quality of the evaluation plan.

f. Innovative approaches to program design, particularly those which may help evaluate changes in physiologic factors and/or morbidity.

g. Availability of morbidity data from which long term guidance and general assessment could be based and innovative approaches to the acquisition and use of such data.

h. The extent to which the budget is reasonable and consistent with the intended uses of the requested funds.

4. Potential for Public Health Impact

a. The proportion of the State's population at increased risk of CVD, based on race and sociodemographic characteristics, in whom intervention could have the greatest potential impact on morbidity and mortality.

b. Evidence of the applicant's ability to implement effective improvements in chronic disease or risk reduction programs and to institute these changes throughout the State, especially in communities with an increased level of CVD risks.

Supplementary Information

1. Use of Funds

a. Funds may be used to support personnel and purchase supplies, services, and equipment directly related to planning, organizing, implementing, and evaluating the project.

b. Funds may not be used for office equipment and furniture, and renting or leasing office space unless specifically approved.

c. Funds may not be used for construction or renovation.

d. Funds may not be used for diagnosis and treatment.

2. Reporting Requirements

Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status reports are required 90 days after the end of a project period.

3. Other

The Centers for Disease Control may provide a public health advisor in addition to the awarded funds. States interested in such an assignee should indicate their interest with their application along with a description of the intended duties and responsibilities of the assignee. The assignment of a public health advisor and his/her responsibilities will be negotiated after the award of the cooperative agreement.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Luther E. DeWeese, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575.

Technical assistance may be obtained from Gary C. Hogelin, Field Services Branch, Division of Nutrition, Center for Health Promotion and Education, Centers For Disease Control, 1600 Clifton Rd, NE., Atlanta, Georgia 30333, telephone (404) 329-3075 or FTS 236-3075.

Dated: May 22, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-11975 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Refugee Resettlement Program; Formula for Allocations to States of FY 1986 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Final Notice.

SUMMARY: This notice establishes the formula for allocation to States of FY 1986 funds for social services under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1986 refugee and Cuban/Haitian entrant social service funds for each State participating in the RRP.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: David Howell, (202) 245–1923.

SUPPLEMENTARY INFORMATION: Notice of the proposed formula for the allocation of FY social service funds was published in the **Federal Register** on February 27, 1986 (51 FR 6943). No major changes have been made in the formula as a result of comments on the previously published proposal. However, the total funds to be allocated by formula have been increased from approximately $35,000,000 to $58,200,000.

I. Amounts Available for Allocation

The Office of Refugee Resettlement (ORR) will make available $66,617,000 in FY 1986 refugee/entrant social service funds. This determination is based upon the Continuing Resolution for FY year 1986 (Pub. L. 99–190) which provides that funding for social services be at the same level as in FY 1985. This figure, $71,700,000, was then reduced by 4.3% to $68,617,000 under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177), generally referred to as Gramm-Rudman-Hollings. A proposal made by the President on February 5, 1986, to rescind funds in excess of the $44,802,000 originally requested for FY 1986 was not approved by Congress within the required 45 legislative days and therefore did not take effect.

Of the total of $66,617,000 in social service funds, the Director of ORR will make available to States during FY 1986 approximately $58,200,000 (85 %) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees and entrants.

All allocation figures include both refugees and entrants since both populations may be served through funds addressed in this notice.

Of the $58,225,465 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $55,000,000 will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1985.
- $330,693 will be allocated to States which have particular needs associated with small refugee/entrant populations in order to provide a floor of $75,000 for States with fewer than 500 refugees/entrants.
- $2,894,772 will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a floor amount of $5,000 to States with small refugee populations) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). The amount being allocated to MAAs, exclusive of the floor, is $2,871,000; this reflects the 4.3% Gramm-Rudman reduction as compared with the FY 1985 formula amount of $3,000,000. A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The $10,391,535 remaining in social service funds will be used on a discretionary basis to carry out specifically directed initiatives intended to contribute to the effectiveness and efficiency of the refugee resettlement program in service delivery and self-support, as described in the previous notice.

While the formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's or entrant's length of residence. (A State must, however, have an approved State plan for the Cuban-Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice are subject (as were FY 1985 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objectives that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in FY 1985, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-eligible refugees/entrants in the State is below the national average for all time-eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15%.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473), in addition to providing funds for the refugee program, amended the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlment agencies and service providers.[1]

The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583; June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in

[1] This provision, generally known as the Wilson/Fish Amendment, was originally included in 1985 in the House-passed reauthorization of the Refugee Act, H.R. 3729, as modified and reported by the Senate Judiciary Committee.

planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. The belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official shall provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

(1) That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

(2) That the MAA incentive allocation is subject to and included under ORR's requirement that 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

(3) That the State agency will observe the following definition of a mutual assistance association:

(a) That the organization must be legally incorporated as a non-profit organization; *and*

(b) That not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

(4) That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW., Washington, DC 20201, with a duplicate copy to the appropriate ORR Regional Director. States must respond by June 30, 1986, in order to avail themselves of this special allocation.

II. Discussion of Comments Received

Fourteen comments were received during the public comment period in response to the notice of the proposed formula for the allocation to States of FY 1986 funds for social services for refugees and Cuban/Haitian entrants. Most of the commenters expressed concern primarily about the proposed amount of social service funds. Several also commented on other aspects of the proposal, and a few included recommendations for particular changes. The comments are summarized below and are followed in each case by the Department's response.

Comment: Nine commenters opposed the amount of funds announced as available under the proposed rescission. The reduction was felt to be both too great in absolute terms and also too great a change to be announced so late in the fiscal year.

Response: Since Congress did not approve the request there will be no rescission for FY 1986, as explained above. The Department continues to make every effort to provide public notice regarding potential and actual funding amounts as soon as figures are known.

Comment: Seven comments were received regarding the amount of funds set aside for discretionary use, as opposed to being allocated to States through the formula. The commenters felt that the $7,000,000 proposed for discretionary use was too high, given the proposed formula amount of $33,700,000. One commenter suggested that all social service funds should be allocated directly through the formula.

Response: The Department believes that, given the range and variation of need for social services among the State programs, there is strong justification to use a portion of the social service appropriation for specially directed service initiatives. This is further supported by the fact that with continuing high social service funding levels in the RRP, the possibility for States to preserve a variety of existing program initiatives has been maintained. While we continue to feel that most of the funds should be allocated by formula, we also believe that there is an increasing need to provide an opportunity for States to seek supplemental project funds to help meet identifiable special needs.

Of the $66,617,000 now available, the Department has decided to use approximately $10,409,000 (15%) for discretionary purposes. Most of these discretionary funds will be awarded to States, principally for competitive project awards for Comprehensive Discretionary Social Services (CDSS), of which States have previously been advised, and for continuation of ORR's mental health initiative under agreement with the Public Health Service. ORR estimates that, overall, 95% of the available $66,617,000 will be awarded to States; the remainder will be used, as noted in the proposal, to support special program initiatives and program development activities.

Comment: A few commenters suggested alternatives to the allocation formula itself: Two commenters suggested the use of time-expired refugees in the input data, and two suggested allocating funds on the basis of cash assistance rates. One commenter suggested an alternative method for calculating allocations for small States, while two stated that small States' awards should be reduced or eliminated.

Response: The Department has argued elsewhere (47 FR 22568; 47 FR 42834; 48 FR 24906; 49 FR 36702; 49 FR 45073; 50 FR 8194; as well as in the proposal under discussion at 51 FR 6943) that the 3-year population base is a sound approach to social service allocations because (1) it reflects population trends over a period of time in which refugees have the greatest need for services, (2) it is not subject to the instability of short-term biases, (3) it provides some incentive for States to use their program funds for priority services, and (4) it is consistent with program policies and priorities of ORR to provide services to refugees in order that they become self-sufficient as quickly as possible. The Department continues to believe that the 3-year population base is most appropriate for the allocation of social service funds. Further, the Department believes that the targeted assistance funds allocated over the previous 3 fiscal years, in addition to the targeted assistance funds to be made available in FY 1986, as well as funding for various special initiatives, have already provided the most appropriate means of addressing needs based on longer term populations and on extended use of cash assistance.

With regard to the floor for small States, we concur that a change may be appropriate in the way in which the floor is determined and believe the commenter's suggestion has merit. However, since that suggestion would yield some allocations less than the $45,000 proposed in the February 1986 notice, we believe that it would be preferable to propose an alternative floor for FY 1987 rather than adopt it now for FY 1986. In view of the greater total funding now available for social

services in FY 1986 we have decided to adopt a floor of $75,000, the same as last year's floor, rather than the $45,000 proposed in the February notice.

III. Allocation Formula

Of the funds available for FY 1986 for social services, $55,000,000 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capital amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1985, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States.

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1986 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1985, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1982. Slight changes have been made in the estimated State refugee population totals since the publication of the proposed formula on February 27, 1986, to reflect new data received. Six States submitted convincing evidence of larger time-eligible populations than had been estimated previously, and their population estimates were revised accordingly.

For fiscal year 1986, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1983, 1984, and 1985. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1982, and September 30, 1985, who are thought to be living in each State as of October 1, 1985. The population estimates for the FY 1986 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All States submitted data on their secondary in-migration on Form ORR-11 in time for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in February 1985. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 23 States were adjusted in this manner. Finally, each State's population was inflated by approximately 1.5 percent, to bring the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. In doing so, ORR excluded from the populaton totals nationwide 3,567 refugees who were resettled subject to a full Federal match of $1,000 under ORR's matching-grant program with national voluntary refugee resettlement agencies. The social service funds available to serve non-matching-grant refugees are limited and are, therefore, directed to the areas where those refugees live.

Table 1 below, shows the estimated 3-year populations, as of October 1, 1985, of all refugees and entrants (col. 1), excluding those matching-grant refugees discussed above; the formula amounts which the population estimates yield (col. 2); the total allocation amounts after allowing for the minimum amounts (col. 3), and the amounts available as an incentive to States to use MMAs as service providers (col. 4).

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1986

State	Total population (1)	Formula amount (2)	Allocation (3)	MAA incentive allocation (4)
Alabama	939	$280,535	$280,535	$13,800
Arizona	2,300	638,157	638,157	33,312
Arkansas	807	223,916	223,916	11,886
California	66,000	18,034,879	18,034,879	941,421
Colorado	2,316	642,597	642,597	33,544
Connecticut	2,485	689,487	689,487	35,991
Delaware	27	7,491	75,000	5,000
District of Columbia	498	138,175	138,175	7,213
Florida	4,557	1,264,384	1,264,384	66,001
Georgia	3,350	929,490	929,490	48,519
Guam	36	9,989	75,000	5,000
Hawaii	839	232,788	232,788	12,152
Idaho	865	240,009	240,009	12,528
Illinois	8,250	2,289,042	2,289,042	119,488
Indiana	643	178,407	178,407	9,313
Iowa	1,896	523,289	523,289	27,316
Kansas	2,620	726,944	726,944	37,948
Kentucky	671	186,175	186,175	9,716
Louisiana	2,809	804,078	804,078	41,973
Maine	936	259,702	259,702	13,556
Maryland	3,480	957,236	957,236	49,966
Massachusetts	8,566	2,377,275	2,377,275	124,094
Michigan	3,445	955,949	955,949	49,895
Minnesota	5,050	1,401,171	1,401,171	73,141
Mississippi	401	111,261	111,261	5,808
Missouri	2,319	643,429	643,429	33,587
Montana	77	21,364	75,000	5,000
Nebraska	464	128,741	128,741	6,720
Nevada	868	248,804	248,804	12,977
New Hampshire	367	101,828	101,828	5,315
New Jersey	2,852	791,315	791,315	41,307
New Mexico	450	124,857	124,857	6,518
New York	14,662	4,070,438	4,070,438	212,490
North Carolina	1,778	493,323	493,323	25,751
North Dakota	420	116,533	116,533	6,083
Ohio	2,780	771,338	771,338	40,264
Oklahoma	1,853	514,133	514,133	26,836
Oregon	2,670	740,817	740,817	38,671
Pennsylvania	6,469	1,801,546	1,801,546	94,041
Rhode Island	1,600	443,936	443,936	23,173
South Carolina	390	108,209	108,209	5,649
South Dakota	371	102,936	102,936	5,373
Tennessee	1,857	515,243	515,243	26,896
Texas	14,606	4,052,576	4,052,576	211,544
Utah	1,991	695,775	695,775	27,987
Vermont	196	54,382	75,000	5,000
Virginia	6,353	1,762,701	1,762,701	92,013
Washington	7,969	2,211,076	2,211,076	115,418
West Virginia	66	18,312	75,000	5,000
Wisconsin	1,912	530,503	530,503	27,692
Wyoming	28	7,769	75,000	5,000
Total	189,227	$55,000,000	$55,336,069	$2,884,772

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.614 Refugee Assistance State Administered Programs)

Dated: May 9, 1986.

Billie F. Gee,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 86-12008 Filed 5-28-86; 8:45 am]

BILLING CODE 4150-11-M

Food and Drug Administration

[FBA 225-72-2001]

Memorandum of Understanding With the Agricultural Marketing Service; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an error in Attachment A to a memorandum of understanding (MOU) with the Agricultural Marketing Service (AMS) that sets forth the working arrangements being followed or adopted to enable the AMS and FDA to discharge their responsibilities relating to the inspection, sampling, and examination of imported dates and date material (51 FR 11480; April 3, 1986). In footnote one of Attachment A—Sample Collection Criteria, "180 pounds" is being corrected to read "100 pounds."

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-44-1583.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-7378 appearing at page 11480 in the Federal Register of Thursday, April 3, 1986, on page 11481 at the bottom of the second column in footnote 1, "180 pounds" is changed to read "100 pounds."

Dated: May 21, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

FR Doc. 86-11940 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Organ Transplant Act; Grants for Organ Procurement Organizations

Correction

In FR Doc. 86-11418 beginning on page 18509 in the issue of Tuesday, May 20, 1986, make the following corrections:

1. On page 18509, in the third column:

a. In the SUMMARY, in the second line, "application" should read "applications".

b. In the DATE caption, in the second line, insert "by" after "received".

2. On page 18510, in the first column, in the FOR FURTHER INFORMATION CONTACT caption, in the first line, "Action Director" should read "Acting Director", and in the fourth line, the telephone number should read "301/443-7577".

3. On page 18511, in the first column:

a. Under the heading V. Evaluation Priorities, in the first line, "award" should read "awards", and in the 14th line, "exist" should read "exists".

b. In the footnote, in the first line, "operation" was misspelled.

4. On page 18511, in the second column:

a. Under the heading *1. Amount and Duration of Grants*, in the fifth line, "award" should read "awards".

b. In the 10th line from the bottom of the column, "fund" should read "funds".

BILLING CODE 1505-01-M

Public Health Service

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1986:

Name: Health Services Development Grants Review Subcommittee.

Date and Time: June 11-13, 1986, 8:30 AM.

Place: Linden Hill Hotel (Room to be announced), 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open June 11, 8:30 AM to 9:30 AM.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of June 11 from 8:30 AM to 9:30 AM will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Care Technology Study Section

Date and Time: June 9-11, 1986, 8:30 AM.

Place: Bethesda Ramada Hotel, Ambassador Two Room, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Open June 9, 8:30 AM to 10:00 AM.

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session from 8:30 AM to 10:00 AM on June 9 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Research Review Subcommittee.

Date and Time: June 24-26, 1986, 1:00 PM.

Place: Hyatt Regency Hotel, Congressional Room, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open June 25, 8:00 AM to 9:00 AM.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of June 25 from 8:00 AM to 9:30 AM will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This

information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: May 21, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

FR Doc. 86–12037 Filed 5–28–86; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Social Security Benefits for the Aged, Blind, and Disabled; List of New or Improved Diagnostic Techniques for Determining Impairment Severity

SUMMARY: This notice provides a cumulative list of medical diagnostic and evaluative techniques which have come into use since 1970 and which may be reported and considered by the Social Security Administration (SSA) in determining a person's continuing eligibility for Social Security disability benefits and/or Supplemental Security Income benfits based on disability. This notice also provides the date each of these new or imrpoved techniques became generally available. These new of improved techniques may permit a more accurate diagnostic determination in a particular case than the techniques previously used in that case. Moreover, they may disclose that a person on the benefit rolls because of disability has a less severe or a more severe impairmnt than was previoulsy thought. These listed techniques are not equal in diagnostic accuracy or accuracy in determining the physical or mental deficit caused by an impairment. Additionally, diagnostic accuracy or accuracy in the measurement of physical or mental deficit may depend upon numerous factors which vary with the clinical situations in which the techniques are applied. However, a cessation of disability and termination of benefits may be required if medical findings from the technique(s)—(1) More accurately reflect a person's true clinical status than the technique(s) previously used to evaluate severity; and (2) Show that the person's impairment or combination of impairments are not as disabling as they had been considered to be and that he or she has the ability to perform substantial gainful activity (SGA).

Authority: Publication of the notice is required by the provisions of 20 CFR 404.1579(d)(2)(ii)(B), 404.1594(d)(3)(ii)(B), 416.994(b)(3)(iii)(B)(*2*), and 416.994(c)(3)(ii)(B)(*2*) contained in final regulations published on December 6, 1985 in the **Federal Register** at 50 FR 50115.

Comments: We welcome any comments concerning the medical diagnostic and evaluative techniques on the attached list, the clinical findings derived from these techniques, and their application to the evaluation of a person's physical or mental impairment. We will revise an item on this attached list at the time we publish the next periodic cumulative list if a comment shows the need for a change or correction.

ADDRESS: Comments should be submitted to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lou Perkins, Disability Analyst, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6642.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 98–460 (The Social Security Disability Benefits Reform Act of 1984) amended sections 223(f), 216(i)(2)(D), and 1614(a) of the Social Security Act (the Act) by specifying a standard for determining whether a beneficiary's disability should cease. Subject to certain exceptions, this standard is that disability ceases only if there has been medical improvement in the beneficiary's impairment(s) that can be related to his or her ability to work and he or she can perform SGA. This notice concerns one of the exceptions to this standard; i.e., where new or improved diagnostic or evaluative techniques brought about by the changing methodologies and advances in medicine have improved the methods for measuring and documenting the effect of the various impairments on the ability to work. In accordance with sections 223(f)(3), 216(i)(2)(D), and 1614(a)(5)(C) of the Act (added to the Act by section 2 of Pub. L. 98–460), a beneficiary may be determined not entitled to benefits on the basis that his or her physical or mental impairment has ceased if substantial evidence demonstrates, *that on the basis of new or improved diagnostic techniques or evaluations,* the beneficiary's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that found the beneficiary to be disabled, and that—

(1) The beneficiary is able to enage in SGA; or

(2) The beneficiary receiving widow's or surviving divorced wife's benefits under section 202(e) of the Act or widower's or surviving divorced husband's benefits under section 202(f) of the Act, does not have an impairment or impairments of sufficient severity as to be considered under regulations prescribed by the Secretary, to be precluded from engaging in gainful work.

We published regulations for implementing the statutory provisions in section 2 of Pub. L. 98–460. (See 50 FR 50118 dated Decembe 6, 1985.) In §§ 404.1579(d)(2)(ii), 404.1594(d)(3)(ii), 416.994(b)(3)(iii)(B), and 416.994(c)(3)(ii)(B) of these regulations, we provide two methods for informing the public of the techniques we consider to be new or improved and how they are to be applied in determining a person's continuing eligibility for benefits.

The first method we will use to inform the public of new or improved techniques will involve the listing of impairments in 20 CFR Part 404, Appendix I of Subpart P of the regulations. When changes in these listings are published in the Federal Register, we will describe those changes made because new or improved medical techniques became generally available.

(The listing of impairments describes the medical impairments that we consider severe enough to prevent a person from performing gainful work.) These listing changes will be published in a Notice of Proposed Rulemaking (NPRM). After considering any public comments, a final rule including the listing changes will be published. This approach is consistent with our past practice. For example, the ECG exercise test included in the attached material, which is a primary basis for evaluating ischemic heart disease impairments, was included in the July 1979 revision of Appendix I. Also, we included the two following tests in a revised Appendix I published on December 6, 1985 in the Federal Register (see 50 FR 50068). First,

an exercise arterial blood gas study for documenting the severity of a gas exchange impairment in pulmonary conditions was included under listing 3.00 of Appendix I. Second, a serum drug level test for documenting the use of anti-convulsant medication when evaluating the severity of epilepsy was included under listing 11.00 of Appendix I.

The second method we will use to inform the public of new or improved techniques is to publish in the Federal Register at periodic intervals cumulative lists of the new or improved medical techniques that have become generally available and may affect our evaluation of the severity of impairments. We identify a new or improved medical technique to include in a published cumulative list in several ways. The technique results may have been presented as medical evidence by persons filing for Social Security benefits based on disability. The technique may have been discussed in medical literature by a medical professional group or studied by a government bureau. From these and other sources, we catalogue the new techniques and determine when they became generally available. By "generally available," we mean that a technique is no longer experimental or available only at centers of medical learning and research. Rather, the technique (with appropriate equipment) has become generally available to the appropriate practitioners throughout the country and the technique results are accepted by the medical community. We will omit from any published cumulative list the medical techniques generally available prior to 1970 since few, if any, claims should involve evaluation for continuing disability eligibility for periods before 1970.

The first of these periodic cumulative lists describing the new or improved techniques in effect since 1970, how they will apply in determining disability, and the date they became generally available, is attached.

Paperwork Reduction Act—This notice does not impose recordkeeping or reporting requirements on the public.

Dated: May 22, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Cumulative List of New or Improved Medical Techniques and Evaluations

I. Miscellaneous Tests Applicable to Several Body Systems

1. Radionuclide Imaging—(Generally available since September 1979.)

This technique uses radioactive tracers to visualize internal body structures which take up certain macromolecules which are radio labeled and thus are detectable by radionuclide scans. The commonly used scans include bone, cardiac, liver/spleen, and pancreatic. An abnormal nonhomogeneous scan is a nonspecific finding indicative of parenchymal liver disease. These scans are better techniques because they are essentially noninvasive ways of visualizing anatomical structures which, in conjunction with other techniques, may provide diagnostic evidence that would otherwise be unavailable.

2. Fiberoptic Endoscopy—(Generally available since September 1981.)

Fiberoptic endoscopy permits the visualization of internal linings of hollow organs accessible via the transoral or transanal route. It is a better diagnostic tool because it provides for the direct visualization of mucosal erosions, ulcers, mass lesions, fistulae, bleeding sources, and obstructive lesions in the gastrointestinal tract and bronchial tree. Biopsies may be obtained for histologic confirmation of lesions. Endoscopic retrograde cholangiopancreatography (ERCP) requires the injection of radiopaque dye into the pancreatic and biliary ducts through the endoscope and permits visualization of biliary or pancreatic ducts radiographically. The test is used for detection of lesions of the biliary and pancreatic ducts. Percutaneous transhepatic cholangiography is an alternative technique to visualize the biliary system. This procedure requires the injection of dye through a needle rather than through endoscopy. Which procedure is utilized depends on the available facilities.

3. Computerized Axial Tomography (CAT Scan)—(Generally available since January 1977 for CAT scan of the head; CAT scans for other parts of the body since September 1982.)

The CAT scan has made it possible to produce cross-sectional X-ray images of the internal structures of the body. The CAT scan not only provides the cross-sectional X-ray images but the sensitivity and resolution are so great that small differences in X-ray absorption can be detected so that it is possible to differentiate various types of soft tissues and detect small concentrations of contrast material within blood vessels. The CAT scan is most appropriate and sensitive for the detection of mass lesions, usually tumors. It is also possible to define anatomic defects such as cerebral infarcts, dilatation of ducts, and the presence of fluid in the pericardial, pleural, or peritoneal cavities. Its impact on the evaluation of impairments is to provide a noninvasive means for the detection of lesions in a multitude of organ systems.

4. Digital Subtraction Scanning or Angiography—(Generally available since January 1982.)

This is a special radiologic imaging technique which increases the radiodensity of blood over that of surrounding structures and, therefore, increases the resolution of the radiographic images of blood vessels. The scanning technique allows dye to be injected intravenously to visualize, by X-rays, the aorta, coronary, renal, and iliac vessels in order to estimate the blood flow in these vessels or the presence or absence of obstructive lesions. It is an improved technique because it can be performed on an outpatient basis with less risk and less discomfort to the patient than direct arteriography. In some cases, this technique will permit the exclusion of direct arteriography.

II. Cardiovascular

1. Coronary Arteriography—(Generally available since January 1970.)

Coronary arteriography demonstrates radiographically the anatomy of the coronary arteries. It provides direct documentation of the anatomic extent and distribution of obstruction of those arteries.

This is a better technique because it provides anatomical evidence for a diagnosis of coronary artery disease. During the test it is also possible to visualize the contracting heart to measure cardiac output and to evaluate, thereby, ventricular function.

2. ECG Exercise Test—(Generally available since January 1975).

The ECG exercise test produces a graphic tracing of the electric current produced by the polarization and depolarization of the heart muscle. It is a multi-stage, progressive, continuous test that measures cardiac current while the subject is at rest and is performing different levels of exercise. Variations from normal can be helpful in the diagnosis of ischemia, of exercise-induced arrhythmias and in the assessment of cardiac performace in certain clinical circumstances. It is improved technique over the Master Two-Step procedure which it replaced because the amount of exertion can be specifically quantified and the ECG monitoring during and after exercise provides greater specificity and sensitivity in the diagnosis of ischemia.

3. Multigated Radionuclide Ventriculography (MCUA Scan)—(Generally availble since September 1979).

The MUGA is a radionuclide imaging procedure otherwise known as multi-gated blood pool ventriculograph using, most commonly, technetium-99 sodium pertechnetate (99m/tc) as the tracer. The use of this technique at rest and after exercise provides for an evaluation of myocardial function and wall motion abnormalities indicative of ischemic heart disease. Left ventricular dysfunction and ejection fraction can be estimated from the test. When done at rest and after exercise, detection of exercise-induced wall motion abnormalities and/or a fall or failure of rise of ejection fraction is highly suggestive of severe heart disease. It is an improved technique because, without invasive cardiac catheterization, some gross estimate of cardiac dysfunction can be made by this test if there is a fall or failure to rise of ejection fraction, or exercise-induced dyskinesia, or akinesia of the left ventricular wall.

4. Thallium Perfusion Scan—(Generally availble since September 1979).

The thallium perfusion scan measures the perfusion of blood through the myocardium. The radionuclide thallium-201 is employed at the tracer. Resting and exercise radionuclide images are compared to detect fixed lesions present during rest and exercise and transient perfusion defects indicative of ischemia induced by exercise. As such, this is a better technque for disagnosis of ischemia and of old myocardial infarctions. Assessments of cardiac function can be made when this technque is performed in conjunction with an ECG exercise test.

5. M Mode Echocardiograph—(Generally available since August 1979).

This test records ultrasound waves reflected by heart structures. It is used to assess the motion and dimensions, of heart chambers, wall, and valves; but its reliability is far greter for left than right-sided heart structures (and only limited views of these structures are visualized at any one time). This technique is especially helpful in evaluating the mitral valve, the aortic valve, the thickness of the ventricular wall, and the presence or absence of fluid in the pericardial space. It is a better technique because it is noninvasive and may provide diagnostic evidence that would otherwise be unavailable.

6. Holter Reading—(Generally available since March 1980).

The Holter monitor produces continuous electrocardiographic tracings over extended periods of time so that ambulatory monitoring of patients is possible. The electrocardiograms can be correlated with the individual's activities and symptoms. Variations from normal are useful in the assessment of cardiac arrhythmias and of exertional or stress-induced ischemia. The fact that ECG tracings are produced over a long time period makes this an improved diagnostic technique for detection of arrhythmias and ischemia.

7. Venous Occlusive Plethysmography—(Generally available since October 1980).

Venous plethysmography records changes in volume of a limb after inflation and deflation of a cuff applied to the limb. The technique is useful in the noninvasive determination of the presence of deep vein thrombosis. In many situations this is a better technique because it can be diagnostic for deep vein thrombosis without resorting to a venogram, an uncomfortable procedure and one that is sometimes associated with noxious side effects (such as an allergic reaction or new thrombosis). In the absence of venographic results, this technique provides a better basis for diagnosis than clinical observations alone.

8. Doppler Vascular Ultrasonography—(Generally available since October 1980).

Doppler ultrasonography is based on the shift in ultrasound frequency that arises if an ultrasound beam is transmitted to and reflected from moving blood cells. The frequency of shift is proportional to the velocity of the blood flow. The Doppler ultrasound is used to determine systolic arterial pressues. This is applicable particularly in the distal lower extremities where the blood pressure cannot be measured accurately by the regular cuff method. Measurements of segmental pressures at various levels of the lower extremities help to distinguish between aorto-iliac, femoropopliteal, or combined disease. Doppler ultrasound can measure the ankle to brachial artery pressure index at rest and after exercise. This is an improved technique because it allows a quantitative, noninvasive determination of the severity of peripheral arterial disease. The estimate of severity is especially useful if this technique is repeated after the patient exercises.

9. Carotid Phonoangiography (CPA)—(Generally available since November 1980).

Carotid Phonoangiography (CPA) is used to record and evaluate alterations in the sound emanating from the carotid artery. It is a technical extension of auscultation and is used to assess the possibility of carotid obstruction. Although it can be used alone, its primary value is as an adjunct to hemodynamically based studies such as oculoplethysmography (OPG). It is an improved technique because it provides noninvasive evidence for the diagnosis of narrowing of the carotid artery.

10. 2 D Echocardiography—(Generally available since October 1984).

This test, like the M mode echocardiography (item 5 above), records ultrasound waves reflected by heart structures. It allows visualization over time of the cardiac structures and the great vessels (aorta and pulmonary artery). It displays the anatomic relationships of these structures as well as their movement during the cardiac cycle. It is better because it is noninvasive and, as such, may provide evidence which would otherwise be unavailable for detection of cardiac dysfunction.

11. Doppler Echocardiography—(Generally available since October 1984).

Doppler echocardiography records changing velocity of ultrasound waves generated by variations in blood flow in the heart and in the great vessels. It is used in the assessment of intracardiac and extracardiac shunts, valve flow, and cardiac output. It permits measurements of valvular gradients, quantitates valvular stenosis, and regurgitation and, in so doing, aids in estimating cardiac output. It is an improved technique because it provides data prevously obtainable only by catheterization of the heart or blood vessels, eliminating the need for catheterization in many patients.

12. Electrophysiologic Testing—(Generally available since October 1984).

Electrophysiologic testing requires cardiac catheterization and the placement of electrode catheters within selected portions of the heart. The application of an electrical current is used to assess the propensity of the patient to develop selected cardiac arrhythmias and of the value of various drugs in preventing these arrhythmias. It is a better technique because it may document severe, nonresponsive ventricular arrhythmias.

III. Gastrointestinal System Tests

Peritoneoscopy—(Generally available since September 1981).

This is an improved diagnostic technique because it permits the visualization of the peritoneal cavity and the peritoneal surfaces of intra-abdominal organs such as liver, ovaries, and uterus. It is useful in obtaining direct liver biopsies and in the detection

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of intra-abdominal malignancies or metastases.

IV. Musculoskeletal

1. Arthroscopy—(Generally available since January 1972).

Arthroscopy is a diagnostic procedure for the evaluation of the integrity and status of joint spaces, mainly the knee, shoulder, ankle, and elbow. It would confirm the nature and extent of abnormalities of the joint involvement that may not be seen on ordinary x-ray and, thus, aid in evaluating severity. It is a better diagnostic tool because it permits direct visualization of the joint spaces and surrounding anatomical structures without extensive surgical intervention.

2. Arthrogram Studies—(Generally available since January 1978).

These are X-ray studies performed by injecting radiopaque material within specific joints such as shoulder, knee, hip, elbow, wrist, and ankle to more accurately delineate various pathological conditions and, because of this, is an improved technique.

3. Metrizamide Myelography with CAT Scan—(Generally available since January 1978).

This is a contrast-enhanced computed tomographic study of the spinal cord to determine the presence and degree of various pathologic conditions such as spinal stenosis, lateral recess syndrome, arachnoiditis, herniated disc, etc. This test provides a more sensitive and better resolution of X-ray images of the spinal structures.

V. Ophthalomology

1. Electro-Oculography (EOG)—(Generally available since January 1970).

Electro-oculography (EOG) is a diagnostic method to determine whether a disorder of the retinal pigment epithelium exists. It would apply to Listing 2.02 of Appendix I.

2. Visual Evoked Responses (VER)—(Generally available since January 1980).

The results of this testing technique may apply to Listing 2.02 of Appendix I. Stimulation of the retina changes the electrical activity of the cerebral cortex. A normal VER is a significant finding in the assessment of alleged reduction of visual acuity without demonstrable cause. It is an improved technique because it can be used to evaluate individuals who are unwilling or unable to cooperate in other techniques.

VI. Otolaryngology

1. Electronystagmogram (ENG)—(Generally available since January 1972).

Electronystagmography is an accepted, reliable, and accurate method for determining the status of a patient's vestibular functions. The test is based on recording eye movements based on the cornea-retinal potentials. The printed record of the nystagmus makes it available for comparison with subsequent tracings. It is a better technique for diagnosing true vertigo or labyrinthine disease.

2. Brainstem Auditory Evoked Response (BAER)—(Generally available since January 1972).

BAER is a technique of evoking production of electrical responses when stimulated by controlled sound. It is an improved technique because it is a valuable tool for assessing hearing when the test subject is incapable or unwilling to respond to auditory testing. The test is particularly useful in testing infants or young children.

3. All-Night Sleep Recordings for Diagnosis of Sleep Apnea—(Generally available since January 1978).

The parameters of interest that are usually monitored during sleep are as follows:

a. REM: Electro-oculogram of rapid eye movement to determine depth or stage of sleep.

b. Respirations: rate, tidal volumes, chest excursion.

c. ECG monitoring mainly for rate and arrhythmia.

d. Blood pressure (BP).

In particular cases, more comprehensive evaluations include:

a. Electroencephalogram (EEG).

b. Esophageal pressure.

c. Audiovisual taping.

d. Electromyogram (EMG).

e. Arterial blood gas analysis.

f. Oral and nasal respiration.

g. Chest and abdominal excursion.

The finding of obstructive sleep apnea under this comprehensive monitoring provides an improved diagnostic technique for evaluation of impairments of the cardiopulmonary system.

VII. Psychological Tests

1. Boston Diagnostic Aphasia Examination—(Generally available since January 1972).

A comprehensive examination of all language and speech functions. It is an improved technique because it provides more comprehensive and better organized quantitative data.

2. McCarthy Scales of Childrens' Abilities—(Generally available since January 1972).

Assesses motor and intellectual development of children 2½–8½ years of age. Yields 6 separate subscales, including a *General Cognitive Index* (GCI) which can be used as an Intelligence Quotient (IQ) score. It is a better technique because it is more current in terms of normative data.

3. Standford-Binet Intelligence Scale (Third Revision)—(Generally available since January 1973).

A measure of general intelligence for those aged 2 years and above. It provides a single overall IQ and there are no organized subtests or summary Verbal and Performance IQs. The measure is primarily verbal, especially at adult age levels. Because this test is more current in terms of normative data, it is an improvement over earlier tests.

4. Wechsler Intelligence Scale for Children-Revised (WISC–R)—(Generally available since January 1974).

Assesses a wide range of intellectual abilities in children ages 5 through 16. It yields a Verbal, Performance, and Full Scale IQ. This is an improved technique because it is more current in terms of normative data.

5. Wechsler Adult Intelligence Scale-Revised (WAIS–R)—(Generally available since January 1981).

Copyrighted and available for general use in 1981, it is an updated and renormed edition of the WAIS and, as such, is a better test. It assesses a wide range of intellectual abilities in those aged 16 through 74 and yields a Verbal, Performance, and Full Scale IQ.

6. Peabody Picture Vocabulary Test-Revised (PPVT–R)—(Generally available since January 1981).

An individually administered measure of hearing vocabulary for those aged 2 1/2 thru adulthood. It provides a quick estimate of verbal ability and scholastic aptitude. Because this revised test is more current in terms of normative data, it is a better technique.

7. Luria-Nebraska Neuropsychological Battery—(Generally available since January 1981).

A comprehensive neuropsychological test battery designed to assess the functioning of all major lobes of the brain. It is a better technique because it provides a low cost, portable, relatively brief alternative to the Halstead-Reitan Neuropsychological Battery.

8.a. Millon Behavioral Health Inventory—(Generally available since January 1982).

Yields information regarding a patient's style of relating to health professionals, problematic psychosocial attitudes and stressors, and psychosomatic aspects to physical complaints. It is an improved technique because it is more current, presents a more systematic approach, and is better organized.

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8.b. Millon Adolescent Personality Survey—(Generally available since January 1982).

Developed to be compatible with the "Diagnostic and Statistical Manual of Mental Disorders; Third Edition" (DSM–III), this test assesses overall configuration of an adolescent's personality including coping style, expressed concerns, and behavioral patterns. It is an improved technique because of is compatability with the DSM–III.

8.c. Millon Clinical Multiaxial Inventory—(Generally available since January 1984).

Designed for the assessment of the DSM–III categories of personality disorders and clinical syndromes. Theory-derived constructs are quantitatively measured to suggest diagnoses and psychodynamics, as well as testable hypotheses about patient history and behavior. It is an improved technique because it assesses pathology in a format which can be readily used with the DSM–III.

9. Kaufman Test of Educational Achievement (K–TEA)—(Generally available since January 1983).

Assesses reading, spelling, and mathematical knowledge in children in grades 1 thru 12.

10. Kaufman Assessment Battery for Children (K–ABC)—(Generally available since January 1984).

This is a clinical instrument for the evaluation of preschool and elementary school children (2 1/2 thru 12 1/2 years of age). Developed from recent research and theory in neuropsychology and cognitive psychology, it assesses problem-solving ability using both simultaneous and sequential mental processes. It also includes an achievement scale which assesses acquired knowledge in reading and arithmetic. It is an improved technique because it generates data that coincides with recent research relating particular functions to parts of the brain.

11. The Scale of Independent Behavior—(Generally available since January 1984).

Assesses 14 critical areas of independent and adaptive behavior including self-care, motor, socialization and community independence skills.

The potential evaluation consequences of all the above psychological tests is a more accurate and objective adjudication based on standardized, validated instruments.

[FR Doc. 86–12013 Filed 5–28–86; 8:45 am]
BILLING CODE 4160–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. I–86–136]

Combined Notice: Intent To Issue a Finding of No Significant Impact and Compliance With Executive Order 11988

The Department of Housing and Urban Development gives notice concerning the purposed Fairfield Village Subdivision, located in Harris County, Texas, and within the extraterritorial jurisdiction of the City of Houston, that: (1) It intends to issue a Finding of No Significant Impact (FONSI) based upon an Environmental Assessment (EA) for the project; and (2) provides an explanation of why the action is proposed to be partially located in a floodplain as required by Executive Order 11988 on Floodplain Management. Comments are solicited before the HUD-Fort Worth Regional Administrator makes a final determination whether to proceed without preparing an Environmental Impact Statement (EIS).

Description

The Friendswood Development Company of Houston, Texas, has filed an application with the Houston Office of the Department of Housing and Urban Development to accept the proposed 1,500 acre subdivision for mortgage insurance under section 203(b) of Title I of the National Housing act of 1934, as amended. The proposed subdivision is located in the northwest corner of Harris County, but is within the extraterritorial jurisdiction of the City of Houston. The tract is bordered on the south by U.S. Highway 290, approximately midway between the towns of Waller and Jersey City. The proposed subdivision, to be known as Fairfield Village, is a portion of a tract which was known as Nine Bar Ranch. When fully developed, the subdivision will provide housing for approximately 16,000 persons.

Purpose of FONSI Notice

Pursuant to HUD's environmental regulations, 24 CFR Part 50, an EA has been prepared by the HUD Houston Office to determine whether or not an EIS is required. It is the finding of the EA that there would be no significant impact upon the human environment and that the project is in compliance with the National Environmental Policy Act and related environmental laws and authorities cited at 24 CFR 50.4. Therefore, in accordance with the applicable regulations, a proposed FONSI has been prepared and a notice to the effect is hereby published. Pursuant to 40 CFR 1501.4(e)(2) of Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, governmental agencies, and private organizations are invited to comment on the FONSI by the date and to the addresses set forth below.

Purpose of the Floodplain Notice

As required by Executive Order 11988, Floodplain Management, this notice shall serve as the second (final) notice explaining the Department's decision to approve the Fairfield Village Subdivision with the successful completion of the process described above. Public notice to this effect was published in the *Houston Chronicle* on March 16, 1986. The Harris County Water Control Improvement District No. 155 has approved a plan for reclaiming the area. A series of drainage channels has been designed to eliminate flooding from the subdivision. Application for a Final Letter of Map Amendment (FLOMA) will be made to the Federal Emergency Management Agency (FEMA) when all improvements have been completed. Until a FLOMA has been issued, flood insurance will be required on all residential properties shown to be within a designated 100-year floodplain by FEMA maps.

Additional Information and Comments

The EA which serves as the basis for the FONSI and supporting documentation are available for review until the close of the comment period at the HUD Houston Office and the Fort Worth Regional Office during regular business hours. Contacts concerning review should be made with Mr. James M. Wilson, Manager, HUD Houston Office, National Bank of Texas Building, 2211 Norfork, Suite 300, Houston, TX 77098–4096, Commercial Telephone No. (713) 229–3950 or FTS 526–7951, or L. J. Ramsbottom, Regional Environmental Officer, HUD Fort Worth Regional Office, 1600 Throckmorton Street, Fort Worth, TX 76113–2905, Commercial Telephone No. (817) 885–5482 or FTS 728–5428 (these are not toll-free commercial numbers).

Written comments on the FONSI should be submitted to the Forth Worth Regional Administrator, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, Texas 76113–2905 (Attention: Regional Environmental Officer) within thirty (30) days of the publication of this notice.

Dated: May 20, 1986.
Dorothy Williams,
Deputy Director, Office of Environment and Energy
[FR Doc. 86-11832 Filed 5-28-86; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-21983]

Arizona; Public Land Exchange, Maricopa County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action, exchange of public lands in Maricopa County, Arizona.

SUMMARY: The following described public lands have been determined to be potentially suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 3 W.,
Secs. 5, 7;
T. 1 N., R. 4 W.,
Secs. 1, 11–14;
T. 1 N., R. 5 W.,
Sec. 27;
T. 2 N., R. 3 W.,
Secs. 4, 5, 8, 9, 14, 15, 17–22, 28–29, 33–35;
T. 2 N., R. 4 W.,
Sec. 1;
T. 2 N., R. 5 W.,
Secs. 1–10, 18, 19, 30;
T. 3 N., R. 4 W.,
Secs. 1, 11–14, 24, 25, 36;
T. 4 N., R. 4 W.,
Sec. 36;
T. 3 N., R. 5 W.,
Secs. 13–14, 23–26;
T. 5 N., R. 5 W.,
Secs. 6, 18–21, 28–32;
T. 1 S., R. 2 W.,
Secs. 8, 9, 12, 13, 24, 25, 30–32, 36;
T. 2 S., R. 2 W.,
Secs. 5, 6;
T. 1 S., R. 3 W.,
Secs. 34, 35.
Comprising 43,553.86 acres of public land.

Public lands to be transferred from the United States will be subject to the following reservations, terms and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. A reservation of all existing oil and gas leases until lease termination dates.

3. All valid existing rights, privileges and reservations of record on the date of patent issuance which would include rights-of-way and grazing permits.

A complete listing of legal descriptions for the lands listed in this Notice is available at the Phoenix District Office.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands described in this Notice from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

This Notice will cancel and replace the segregative effects on all previously published Notices on the public lands described herein.

The segregation of the above-described lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the Federal Register of a notice of termination of the segregation or the passage of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, from date of publication, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 20, 1986.
Marlyn V. Jones,
District Manager.
[FR Doc. 86-11865 Filed 5-28-86; 8:45am]
BILLING CODE 4310-84-M

Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior; Susanville District Advisory Council, Susanville, California 96130.

ACTION: Postponement of District Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Susanville District Advisory Council Meeting, scheduled for May 13–14, 1986, as noted in the Federal Register April 24, 1986, Vol. 51, No. 79, page 15547 is postponed. The new dates for the meeting are June 18–19, 1986.

FOR FURTHER INFORMATION CONTACT: Louisa Beld, Public Affairs Officer, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130, 916/257-5381.

C. Rex Cleary,
District Manager.
[FR Doc. 86-11908 Filed 5-28-86; 8:45 am]
BILLING CODE 4310-84-M

[W-49234]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-49234 for lands in Carbon County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-49234 effective March 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.
[FR Doc. 86-11906 Filed 5-28-86; 8:45 am]
BILLING CODE 4310-22-M

Colorado; Filing of Plats of Survey

May 19, 1986.

The plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 19, 1986.

The supplemental plat showing amended lottings in section 30, T. 4 S., R. 96 W., Sixth Principal Meridian, Colorado, was accepted May 2, 1986.

This plat was prepared to meet certain administrative needs of this Bureau.

The plat, in three sheets, of the survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., July 10, 1986.

The plat, in three sheets, representing the dependent resurvey of portions of the east and south boundaries, and subdivisional lines, the segregation of certain mineral surveys, and the survey of the subdivision of section 36, T. 44 N. R. 6 W., New Mexico Principal Meridian, Colorado; the Dependent

resurvey of Capitol City Townsite and the segregation of certain mineral surveys in Unsurveyed Tps. 43 N., Rs. 5 and 6 W., New Mexico Principal Meridian, Colorado, Group No. 758, was accepted May 9, 1986.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-11964 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-84-M

Butte District, MT; District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Thursday and Friday, June 26 and 27, 1986.

The meeting will begin at 1 p.m., June 26 in the Butte District Office conference room, 106 North Parkmont (Industrial Park), Butte Montana. The agenda will include (1) recreation access to public lands, (2) the district's land adjustment program, (3) surface management (3809) regulation administration, (4) the Centennial Mountains wilderness study, (5) a discussion of the district's range program, including the Bureau's riparian initiative, weed control, Cooperative Management Agreements and grazing fees, (6) the District's reforestation program, (7) Peregrine Falcon reintroduction efforts, and (8) hazardous waste management.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: May 20, 1986.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 86-11974 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1084 and 1091, Blocks 74 and 92, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on May 18, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 19, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11969 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1187, Block 27, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 19, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 19, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11970 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-MR-M

Royalty Management Advisory Committee; Cancellation of Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of cancellation of meeting.

On May 8, 1986, a notice was published in the Federal Register (51 FR

17108), announcing a meeting of the Royalty Management Advisory Committee on June 3, and June 4, 1986, at the Clarion Hotel, 3203 Quebec, Denver, Colorado to receive reports from six technical working panels.

The purpose of this notice is to announce cancellation of that meeting, which will be rescheduled at a later date.

The date and location of the rescheduled meeting will be announced in a subsequent Federal Register notice.

Dated: May 23, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-12042 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

[INT-FES 86-10]

Grand Valley Unit, Stage Two Development, Colorado River Basin Salinity Control Project; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement on a proposed salinity control project that would reduce salt loading to the Colorado River system by lining canal laterals in Mesa County in western Colorado.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Department of the Interior, Bureau of Reclamation, Room 7423, Washington, DC 20240, Telephone: (202) 343-4091

Document Systems Management Branch, Library Section, Code D-823, Engineering and Research Center Library, Room 450, Denver, Colorado 80225, Telephone: (303) 236-6963, Hours: 7:30 a.m.-4:00 p.m.

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524-5592

Grand Junction Projects Office, Bureau of Reclamation, 2597B 3/4 Road, P.O. Box 1869, Grand Junction, Colorado 81502, Telephone: (303) 242-8621

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, the Regional Director, or the Grand Junction Projects Office at the above addresses. Copies also will be available for inspection in libraries in the project vicinity.

Dated: May 23, 1986.

James E. Cook,

Acting Commissioner.

[FR Doc. 86-12026 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-09-M

San Joaquin Valley Conveyance Project, California; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Bureau of Reclamation proposes to prepare an environmental impact statement for the San Joaquin Valley Conveyance Project, which would be located in portions of Merced, Madera, Fresno, Tulare, Kings and Kern Counties, California. The purpose of the project is to provide an additional water supply to the San Joaquin Valley to relieve the present groundwater overdraft, expected to increase to 2 million acre-feet per year by the year 2010. Other objectives of the project include drainage and fish and wildlife enactment.

Alternatives under consideration include various canal alignments, new construction and enlargements of existing canals. Five alternatives, including "No Action", will be evaluated:

(1) *Enlarged Westside/Mid-Valley Canal.* Under this alternative, the Bureau would proceed with the construction of two canals out of the Mendota Pool. The north branch would go from the Mendota Pool to a terminus at the Chowchilla River. The second and third stages of the project would enlarge the Delta-Mendota Canal (DMC) from O'Neill Forebay to Mendota Pool and either enlarge the California Aqueduct or the DMC from the Delta to O'Neill Forebay. The project would allow a total of 2,000 cfs of water to move through the facilities.

(2) *East Side Canal.* Under this alternative, and East Side Canal from the Delta to a terminus at the Kern River would be built. The maximum capacity of the canal would be 3,000 cfs.

(3) *East Side Canal to San Joaquin River/Mid-Valley Canal.* This alternative would combine features of Alternatives 1 and 2. An East Side Canal and the main branch of Mid-Valley Canal would be constructed. The capacity of the project would be 2,000 cfs.

(4) *Reduced East Side/Mid-Valley Canal.* Both an East Side Canal and a Mid-Valley Canal would be constructed. The capacity of the main branch would be less than in Alternative 3, but the difference would be made up by extending the East Side Canal to the White River. Capacity would be 2,000 cfs.

A workshop will be held to solicit information from interested public entities and persons to assist in determining the scope of the environmental impact statement and the significant issues related to the proposed alternatives. The workshop will be held on June 17, 1986, at 7:30 p.m., at the Convention Center, Apricot Room, 700 M Street, Fresno, California.

The contact person for the environmental impact statement is: Bill Payne, Environmental Specialist, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978-5130.

Dated: May 23, 1986.

James E. Cook,

Acting Commissioner.

[FR Doc. 86-12027 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Decision to Extend Period for Determining Whether to Review an Initial Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Extension of period for determining whether to review an initial advisory opinion.

SUMMARY: The Commission has extended from May 19, 1986, to June 5, 1986, its administrative deadline for determining whether to review the March 3, 1986, initial advisory opinion issued by the presiding administrative law judge in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background. Investigation No. 337-TA-143, entitled *Certain Amorphous Metal Alloys and Amorphous Metal Articles,* was conducted to determine whether there was a violation of section 337 of the Tariff Act of 1930 by the importation or sale of certain amorphous metal alloys and amorphous metal articles from Japan and West Germany. (*See* 48 FR 15963 (Apr. 13, 1983); 48 FR 43106 (Sept. 21, 1983); 49 FR 4047 (Feb. 1, 1984).) After finding a violation in the

importation of the accused articles, the Commission issued a general exclusion order, which prohibited the entry of amorphous metal articles manufactured abroad by casting processes disclosed in claims 1, 2, 3, 5, 6, or 12 of complainant Allied Corp.'s U.S. Letters Patent No. 4,221,257 (the '257 patent). (*See* 49 FR 42803 (Oct. 24, 1984); USITC Publication 1664 (October 1984).

In response to motions filed by certain respondents, the Commission currently is conducting advisory opinion proceedings to determine whether the modified casting processes of those respondents would infringe the '257 patent. (*See* Motion No. 143–86"C" filed by respondents Hitachi Metals, Ltd., and Hitachi Metals International, Ltd.; Commission Action and Order of July 28, 1985; Motion No. 143–89"C" filed by respondent Vacuumschmelze GmbH; Commission Action and Order of Sept. 11, 1985.) On March 3, 1986, the presiding administrative law judge issued an initial advisory opinion (IAO) stating that the respondents' modified processes are noninfringing.

The previously scheduled administrative deadline for the Commission to determine whether to review the IAO was the close of business on Monday, May 19, 1986. (*See* 50 FR 9534 (Mar. 19, 1986).) The Commission has determined that this administrative deadline will be extended to the close of business on Thursday, June 5, 1986.

Written submissions. Further submissions from the parties will not be accepted during the extended period for determining whether to review the IAO.

Public inspection. All nonconfidential documents filed in the current proceedings and the original investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information concerning the current proceedings and the original investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 19, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–12069 Filed 5–28–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–183]

Certain Indomethacin

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on June 13, 1986, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: May 20, 1986.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 86–12068 Filed 5–28–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–247]

Certain Sickle Guards; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on April 24, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of National-Standard Company, 1618 Terminal Road, Niles, Michigan 49120. Supplements to the complaint were filed on May 9 and May 13, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain sickle guards into the United States, and in their sale, by reason of alleged: (1) Direct, contributory, and induced infringement of claims 1, 4, 5, 7, and 8 of U.S. Letters Patent 3,978,645; (2) common law trademark infringement; (3) false designation of origin; and (4) passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation and sale of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Robert D. Litowitz, Esq., or Gary L. Kaplan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–0083 and 202–523–1088, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 201.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 20, 1986, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (1) of section 337 in the unlawful importation of certain sickle guards into the United States, or in their sale, by reason of alleged: (1) Direct, contributory, and induced infringement of claims 1, 4, 5, 7, and 8 of U.S. Letters Patent 3,978,645; (2) common law trademark infringement; (3) false representation of source; and (4) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on April 24, 1986, shall be forwarded to the presiding administrative law judge for an initial determination pursuant to § 210.53(b) of the rules;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

National-Standard Company, 1618 Terminal Road, Niles, Michigan 49120

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kimber Die and Tool Company Ltd., Woodhall Works, Foxoak Street, Cradley Health, Warley, West Midlands, B64 5DH England

P.D. Raespe Sohne GMBH & Company, 565 Solingen 1, Stocken 17, Federal Republic of Germany

Busatis-Werke GMBu & Company, KG, 5630 Remscheid-Lennep, Postfach 5609, Huckeswagen, Federal Republic of Germany

OMNI-USA, Inc., 16236 San Dieguito Road, P.O. Box 8788, Rancho Santa Fe, California 92067
Herschel Corporation, 1301 N. 14th Street, Indianola, Iowa 50125
MCM Industries, 16401 S. Frontage Road, Oak Forest, Illinois 60452
Stocker & Son, Inc., 34 Suydam Lane, Bayport, New York 11705
Veldmaster, Inc., Subsidiary, Union Steel Corp. of South Africa, 34 S. Broadway, White Plains, New York 10601
Southern Supply Company, Inc., 8351 Moberly Lane, P.O. Box 270669, Dallas, Texas 75227
Omni Supply Inc., 8351 Moberly Lane, P.O. Box 270669, Dallas, Texas 75227

(c) Robert D. Litowitz, Esq., and Gary L. Kaplan, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding administrative law judge shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: May 22, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12066 Filed 5-28-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-274 (Preliminary)]

Softwood Lumber From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-274 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of softwood lumber, rough, dressed, or worked (including softwood flooring classified as lumber), provided for in items 202.03 through 202.30, inclusive, softwood siding, not drilled or treated, provided for in items 202.47 through 202.50, inclusive; other softwood lumber and siding, provided for in item 202.52; item 202.54; and softwood flooring provided for in item 202.60 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by July 3, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-523-1793), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on May 19, 1986 by the Coalition for Fair Lumber Imports, a group of U.S. softwood lumber manufacturers and associations representing U.S. softwood lumber manufacturers and foresters.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and address of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operation has scheduled a conference in connection with this investigation for 9:30 a.m. on June 10, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-523-1793) not

later than June 5, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submission.—Any person may submit to the Commission on or before June 12, 1986 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submission except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: May 20, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12071 Filed 5-28-86; 8:45 am]

BILLING CODE 7020-02-M

[332-221]

The Effects of Eximbank Financing Programs on U.S. Industries and Employment

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: The Commission, following receipt on October 11, 1985, of a Congressionally mandated request from the Export-Import Bank of the United States (Eximbank), on December 31, 1985, instituted investigation No. 332-221 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The purpose of the investigation was to assess the impact of the Bank's activities on industries and employment in the United States.

On February 3, 1986, the Commission received a written request from Eximbank Chairman Draper to defer further work on the investigation due to new budgetary constraints at Eximbank, which do not permit funding of the study. In response to Chairman Draper's request, the Commission has terminated the subject investigation. The request for termination of work on the study also indicated that Eximbank hoped to provide funding for the study in a future budget and would notify the Commission when Eximbank could again request that the investigation move forward.

Notice of the institution of the investigation was published in the **Federal Register** of January 8, 1986 (51 FR 787).

Effective Date: May 15, 1986.

Issued: May 20, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12071 Filed 5-28-86 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-273 (Preliminary) and 731-TA-320-325 (Preliminary)]

Certain Unfinished Mirrors From Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, Turkey, and the United Kingdom

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930, that there is no reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of unfinished glass mirrors, 15 square feet and over in reflecting area, provided for in item 544.54 of the Tariff Schedules of the United States, which are allegedly being subsidized. The Commission also determines,[3] pursuant to section 733(a) of the Act, that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom, which are allegedly being sold at less than fair value (LTFV).

Background

The Commission instituted these investigations on April 1, 1986, following the receipt of a petition from the National Association of Mirror Manufacturers, Potomac, MD, which alleged that subsidized imports of the above articles from Turkey and LTFV imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom are being sold in the United States and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 1986 (51 FR 12221). The conference was held in Washington, DC, on April 23, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 16, 1986. The Views of the Commission are contained in USITC Publication 1850 (May 1986), entitled "Certain Unfinished Mirrors from Belgium, The Federal Republic of Germany, Italy, Japan, Portugal, Turkey, and The United Kingdom: Determinations of the Commission in Investigation No. 701-TA-273 (Preliminary) and Determinations of the Commission in Investigations Nos. 731-TA-320 through 325 (Preliminary), Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: May 19, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12070 Filed 5-28-86; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes and Lodwick dissenting.

[3] Vice Chairman Liebeler and Commissioners Rohr and Brunsdale dissenting.

DEPARTMENT OF LABOR

Employment and Training Administration

Final Planning Estimates for Program Year (PY) 1986 for Basic Labor Exchange Activities Under the Wagner-Peyser Act.

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning estimates for Program Year (PY) 1986 (July 1, 1986, through June 30, 1987) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service (Attention: TEES) 601 D Street, NW., Washington, DC 20213. Telephone: 202-376-6750.

SUPPLEMENTARY INFORMATION: In accord with section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final estimates for each State's projected allotment for Program Year (PY) 1986 (July 1, 1986, through June 30, 1987). Preliminary planning estimates were published in the Federal Register on March 11, 1986. 51 FR 8373. The total amount of funds currently available for distribution to States for public employment service activities is $792,310,000 less $34,065,000 sequestered from the Fiscal Year (FY) 1986 appropriation, as mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177). An additional. $14,000,000 is being witheld to finance postage costs associated with the conduct of employment service activities; and $3,911,000 is being withheld to reflect a proposed reduction in the Department of Labor's trust fund authority, pending before Congress. Funds will be distributed in accord with formula criteria established in section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1985 were used in making the formula calculations.

The Secretary of Labor reserved three percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment service activities. In accordance with this provision, $22,208,720 has been set aside for distribution through the same administrative formula used since the Wagner-Peyser Act was amended by Pub. L. 97-177. See 51 FR 8373 (March 11, 1986); and 51 FR 2589 (January 17, 1986). The three percent distribution is included in the total allotment.

Of this total, $9,347,049 is allotted to thirteen States whose relative share decreased and which have a CLF below one million and are below the median CLF density. These States are held harmless at 100 percent of their PY 1985 relative share of resources. The remaining $12,859,671 is distributed to States losing in relative share from PY 1985 but who do not meet the CLF size and density criteria.

Signed at Washington DC, on May 12, 1986.

Roberts T. Jones,

Deputy Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
FINAL PY 1986 WAGNER-PEYSER ALLOTMENTS TO STATES
04-25-1986

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	11,081,925	0	525,222	525,222	11,607,147
Alaska	7,024,142	1,022,448	0	1,022,448	8,046,590
Arizona	8,164,285	0	0	0	8,164,285
Arkansas	6,946,102	0	738,543	738,543	7,684,645
California	73,859,711	0	0	0	73,859,711
Colorado	9,226,204	0	0	0	9,226,204
Connecticut	8,722,628	0	0	0	8,722,628
Delaware	2,005,395	0	62,180	62,180	2,067,575
District of Columbia	5,168,128	0	549,500	549,500	5,717,628
Florida	28,777,986	0	0	0	28,777,986
Georgia	15,857,061	0	0	0	15,857,061
Hawaii	2,765,343	0	294,025	294,025	3,059,368
Idaho	5,852,358	851,881	0	851,881	6,704,239
Illinois	35,117,870	0	0	0	35,117,870
Indiana	16,088,330	0	0	0	16,088,330
Iowa	8,825,078	0	938,325	938,325	9,763,403
Kansas	6,384,978	0	0	0	6,384,978
Kentucky	10,693,930	0	0	0	10,693,930
Louisiana	13,585,458	0	0	0	13,585,458
Maine	3,480,342	506,606	0	506,606	3,986,948
Maryland	11,321,755	0	70,558	70,558	11,392,313
Massachusetts	14,888,563	0	123,176	123,176	15,011,739
Michigan	27,968,616	0	326,730	326,730	28,295,346
Minnesota	12,030,699	0	0	0	12,030,699
Mississippi	7,660,988	0	814,553	814,553	8,475,541
Missouri	13,620,699	0	0	0	13,620,699
Montana	4,782,578	696,162	0	696,162	5,478,740
Nebraska	5,747,718	836,649	0	836,649	6,584,367
Nevada	4,649,169	676,742	0	676,742	5,325,911
New Hampshire	2,606,018	0	0	0	2,606,018
New Jersey	20,452,733	0	0	0	20,452,733
New Mexico	5,366,892	781,216	0	781,216	6,148,108
New York	53,252,036	0	5,662,013	5,662,013	58,914,049
North Carolina	16,259,824	0	147,582	147,582	16,407,406
North Dakota	4,870,094	708,901	0	708,901	5,578,995
Ohio	31,524,647	0	0	0	31,524,647
Oklahoma	12,175,674	0	1,294,576	1,294,576	13,470,250
Oregon	8,522,464	0	906,150	906,150	9,428,614
Pennsylvania	32,677,233	0	138,695	138,695	32,815,928
Puerto Rico	9,213,546	0	0	0	9,213,546
Rhode Island	2,568,404	0	267,843	267,843	2,836,247
South Carolina	8,780,650	0	0	0	8,780,650
South Dakota	4,501,088	655,187	0	655,187	5,156,275
Tennessee	13,297,669	0	0	0	13,297,669
Texas	45,571,426	0	0	0	45,571,426
Utah	9,844,426	1,432,973	0	1,432,973	11,277,399
Vermont	2,108,568	306,927	0	306,927	2,415,495
Virginia	15,206,350	0	0	0	15,206,350
Washington	12,526,397	0	0	0	12,526,397
West Virginia	5,538,835	363,031	0	363,031	5,901,866
Wisconsin	13,557,697	0	0	0	13,557,697
Wyoming	3,492,162	508,326	0	508,326	4,000,488
FORMULA TOTAL	716,212,872	9,347,049	12,859,671	22,206,720	738,419,592
Guam	346,367	0	0	0	346,367
Virgin Islands	1,458,041	0	0	0	1,458,041
NATIONAL TOTAL	718,017,280	9,347,049	12,859,671	22,206,720	740,224,000

* – FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1985 RELATIVE SHARE.

** – THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 16 STATES LOSING IN RELATIVE SHARE FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT.

*** – HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 86-11934 Filed 5-28-86; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303(a).

DATE: Comments must be received in writing on or before July 28, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The contol number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records in the form or paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration (N1–AFU–86–40). Medical Quality Assurance (QA) Records

2. Department of the Army, Records Management Operations Office (N1–AU–86–50). Reproduction manuscript cancellation files.

3. Department of the Army, Centers (N1–338–86–6). Facilitative records of US Army Centers, ca. 1950–85 (schedule provides for permanent retention of historically valuable Center records).

4. Department of the Army, Boards (N1–338–86–7). Facilitative records of U.S. Army Boards, ca. 1950–85 (schedule provides for permanent retention of historically valuable Board records).

5. Department of the Army, Tank, QM, Transportation Center/Commands (N1–338–86–8). Facilitative records of U.S. Army Center/Commands, ca. 1950–85 (schedule provides for permanent retention of historically valuable Center/Commands records).

6. Departments of the Army and the Air Force, Army and Air Force Exchange Service, Administration Division (N1–334–86–1). Administrative and operational records.

7. Farm Credit Administration (N1–103–86–1). Individual association case files including administrative correspondence, charters, bylaws, organization papers, and stockholder disclosure information.

8. U.S. General Accounting Office, Office of Civil Rights (NC1–217–85–1). Records relating to personnel matters, including merit selection, noncompetitive promotions, equal employment opportunity, discrimination complaints, adverse action cases, and other matters.

9. Department of the Interior, National Park Service (NC1–79–85–1). Comprehensive schedule covering headquarters and field records of the U.S. Park Police.

10. Department of Justice, Community Relations Service, Cuban and Haitian Entrant Program NC1–379–85–2). Grant case and policy files, entrant and unaccompanied minor case files, and program case and procedural files.

11. Department of State, Assistant Secretary, Office of the Comptroller (N1–59–86–3). General subject files concerning budgetary and administrative activities, travel vouchers, internal control, financial plans, and related materials.

Dated: May 21, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–12025 Filed 5–28–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86–38]

Intent To Grant Limited Exclusive Patent Licenses; HealthMate, Inc., et al.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Limited Exclusive Patent Licenses.

SUMMARY: NASA hereby gives notice of intent to grant to HealthMate, Inc., of Northbrook, Illinois, and Power Controls International Pty., Ltd., of Sydney, Australia limited, exclusive, revocable licenses to practice the following patented inventions in Australia, Japan, Hong Kong and Singapore. The inventions are the foreign counterparts of the nonradioactive isotope version of U.S. Patent No. 4,142,101 for a "Low Intensity X-Ray and Gamma-Ray Imaging Device," which issued on February 27, 1979; U.S. Patent No. 4,510,476 for a "High Voltage Isolation Transformer," which issued on January 9, 1985; U.S. Patent No. 4,517,472 for a "High Voltage Power Supply," which issued on May 14, 1985; and U.S. Patent No. 4,521,688 for a "Three Dimensional and Tomographic Imaging Device for X-Ray and Gamma-Ray Emitting Objects," which issued on June 4, 1985. The proposed limited exclusive licenses will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the limited exclusive licenses unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the Grant, together with supporting documentation. The Director of Patent Licensing will review

all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the limited exclusive licenses.

DATE: Comments to this Notice must be received by July 28, 1986.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: May 19, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86–11944 Filed 5–28–86; 8:45 am]

BILLING CODE 7510-01-M

[86–36]

Intent To Grant Limited Exclusive Patent Licenses; Techniblast

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Limited Exclusive Patent Licenses.

SUMMARY: NASA hereby gives notice to grant to Techniblast of Seminole, Oklahoma, and Artech Corporation of Falls Church, Virginia, limited exclusive, royalty-bearing, revocable licenses to practice the inventions as described in U.S. Patent No. 3,754,976 for a "Peen Plating," which issued on August 28, 1973, and U.S. Patent No. 4,552,794 for a "Method of Coating a Substrate With a Rapidly Solidified Metal," which issued on November 12, 1985. The proposed limited exclusive licenses will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the limited exclusive licenses unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the limited exclusive licenses.

DATE: Comments to this Notice must be received by July 28, 1986.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: May 19, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86–11945 Filed 5–28–86; 8:45 am]

BILLING CODE 7510-01-M

[86–37]

Government-owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent.) Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, John G. Mannix, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 453–2430.

Patent Application 641,152: 1-[Diorganooxyphosphonyl] methy 1]-2,4- and 2,6-Dinitro and Diamino Benzenes and Their Derivatives; filed August 16, 1984.

Patent Application 692,740: Ferroresonant Regulated Power Supply; filed January 18, 1985.

Patent Application 727,838: Brushless DC Motor Control System Responsive to Control Signals Generated by a Computer of the Like; filed April 26, 1985.

Patent Application 734,360: Polyenamines from Aromatic Diacetylinic Diketones and Diamines; filed May 15, 1985.

Patent Application: 738,816: Rapid Adhesive Specimen Bonding; filed May 29, 1985

Patent Application: 737, 018: Self-locking Double Retention Redundant Pull Pin Release; filed May 23, 1985.

Patent Application: 738,931: Fluid Leak Indicator; filed May 29, 1985.

Patent Application: 746,901: Copolyimides With a Combination of Flexibilizing Groups; filed June 20, 1985.

Patent Application: 745,977: Method of Fabricating an Imaging X-Ray Spectrometer; filed June 18, 1985.

Patent Application: 746,160: Segmented Tubular Cushion Springs and Spring Assembly; Filed June 18, 1985.

Patent Application: 748,532: Cure-in-place Composite Fastener; filed June 25, 1985.

Patent Application: 745,973: Long Grain Length Solar Pumped Box Laser; filed June 18, 1985.

Patent Application: 746,800: A Water-Absorbing Capacitor System for Measuring Relative Humidity; filed June 20, 1985

Patent Application 746,162: Aerobraking Orbital Transfer Vehicle; filed June 18, 1985.

Patent Application 760,799: Mobile Remote Manipulator Vehicle System; filed July 31, 1985.

Patent Application 761,235: Oxidation Protection Coatings for Polymers; filed July 31, 1985.

Patent Application 751,691: Dual Motion Valve with Single Motion Input; filed July 3, 1985.

Patent Application 751,696: Acoustic Guide for Noise Transmission Testing of Aircraft; filed July 3, 1985.

Patent Application 754,708: Advanced Vapor Supply Manifold; filed July 15, 1985.

Patent Application 760,378: Deployable M-Braced Truss Structure; filed July 30, 1985.

Patent Application 751,643: Cathode for Primary Battery; filed July 3, 1985.

Patent Application 760,790: Method and Apparatus for Enhancing Laser Absorption Sensitivity; filed July 31, 1985.

Patent Application 761,233: Telescoping Space Station Modules; filed July 31, 1985.

Patent Application 754,362: Process for Preparing Phthalocyanine Polymers; field July 12, 1985.

Patent Application 754,707: Programmable Electronic Synthesized Capacitance; filed July 15, 1985.

Patent Application 760,771: Polyimides Containing ATBN Elastomers and the Process for Preparing Same; filed August 23, 1985.

Patent Application 771,537: Flexible Diaphram-Extreme Temperature Usage; filed August 30, 1985.

Patent Application 764,812: Method of Producing High TC Superconducting NbN Films; filed August 12, 1985.

Patent Application 765,978: Method for Forming Hermetic Seals; filed August 15, 1985.

Patent Application 765,981: A method and Apparatus for Making an Optical

Element Having a Dielectric Film; filed August 15, 1985.

Patent Application 770,920: Method of Repairing Hidden Leaks in Tubes; filed August 30, 1985.

Patent Application 764,805: Sun Shields; filed August 12, 1985.

Patent Application 781,812: Means for Phase Locking the Outputs of a Surface Emitting Laser Diode Array; filed September 30, 1985.

Patent Application 775,966: Ion Beam Sputter Etching; filed September 13, 1985.

Patent Application 779,742: Fluidic Momentum Controller; filed September 24, 1985.

Patent Application 775,980: Method and Apparatus for Telemetry Adaptive Bandwidth Compression; filed September 13, 1985.

Patent Application 779,744: Closed Loop Fiber Optic Rotation Sensor; filed September 24, 1985.

Patent Application 783,887: Method Means for Generation of Tunable Laser Sidebands in the Far-Infrared Region; filed October 3, 1985.

Patent Application 790,594: Multiplex Electric Discharge Gas Laser System; filed October 23, 1985.

Patent Application 789,266: Single Mode Levitation and Translation; filed October 18, 1985.

Patent Application 790,556: Airplane Automatic Control Force Trimming Device for Asymmetric Engine Failure; filed October 23, 1985.

Patent Application 783,890: Welding Torch With Arc Light Reflector; filed October 3, 1985.

Patent Application 790,596: Universal Clamp; filed October 23, 1985.

Patent Application 783,888: Preloadable Vector Sensitive Latch; filed October 3, 1985.

Patent Application 783,886: Self Contained, Single-Use Hose and Tubing Cleaning Module; filed October 3, 1985.

Dated: May 19, 1986.

John R. O'Brien,

General Counsel.

[FR Doc. 86-11943 Filed 5-28-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

President's Committee on the Arts and Humanities; Meeting

Thursday, June 19, 1986 at nine o'clock in the morning has been designated by the President's Committee on the Arts and Humanities for Plenary Meeting XII. This meeting has been scheduled at the Winterthur Museum in Wilmington, Delaware. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported. The meeting is expected to adjourn before lunch.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment the Committee's operational costs and support projects and programs which have been initiated by the President's Committee.

The primary presentations of the meeting will be that of—

Dr. Stanley N. Katz, president elect of the American Council of Learned Societies, who will speak on *Private Investment in the Public Sphere*

David Rockefeller, Jr., Chairman of Rockefeller Brothers Fund Executive Committee and Vice Chairman of Rockefeller Family and Associates, who will discuss the *Charitable Giving in America*

A special progress report will be made by Barry Gaither, project supervisor and Director of the Museum of the National Center of Afro-American Artists in Boston and Debra Spencer, who is project director of the President's Committee's model program, *Collections Survey of Black Universities.*

For further information individuals may call 202-682-5409.

May 21, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-11971 Filed 5-28-86; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Crafts Fellowships Section) to the National Council on the Arts will be held on June 16-19, 1986 from 9:00 a.m. to 6:00 p.m., and on June 20, 1986 from 9:00 a.m. to 6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

May 21, 1986.

[FR Doc. 86-11972 Filed 5-28-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Duke Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-9 and NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would expand subparagraph 2.K.e of Facility Operating License NPF-9 for Unit 1 and subparagraph 2.J.e of Facility Operating License NPF-17 for Unit 2 to authorize use of Transnuclear, Inc. multielement spent fuel shipping cask, Model Numbers TN-8 and TN-8L, for receipt of irradiated Oconee fuel. These subparagraphs of the licenses presently limit such receipt of Oconee spend fuel at McGuire to use of the NSF-4 (NAC-1) and NLI-1/2 casks, which are single-element casks. The new authorization would be in addition to existing authorized casks and would otherwise be subject to all existing requirements of license paragraphs 2.K (Unit 1) and 2.J (Unit 2). This change was requested in the licensee's application for amendment dated March 20, 1986.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment

request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

TN–8 and TN–8L are multielement truck casks which are physically capable of accommodating up to three PWR fuel assemblies. The two models have the same dimensions, but TN–8L is about one ton lighter than TN–8's forty tons because it has fewer external cooling fins and, hence, a lower maximum authorized heat load. These casks have received a Certificate of Compliance for radioactive materials packages, which was recently renewed by the Commission (Certificate No. 9015, Revision 12, expiration date January 31, 1991).

By letter dated March 20, 1986, the licensee notes that in order to maintain acceptable reserve spent fuel storage capacity (needed for potential full core off-loading, reload batch and upender access) in the shared Oconee Units 1 and 2 spend fuel pool, it is necessary to use a multielement spent fuel shipping cask. The licensee notes that in addition to maintaining the necessary shipment rate, miltielement casks have the advantage of fewer shipments (and hence lower probability of adverse offsite impact), lower station manpower requirements and reduced total radiation exposure to personnel.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration and of actions likely to involve significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not (1) involve a significant increase in the consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety for the following reasons.

The licensee's letter of March 20, 1986, includes cask drop evaluations for use of the TN–8 and TN–8L truck casks which demonstrate that results would be identical to those for the single-element cask drop. The new casks would not enter the spent fuel pool and would not cause significant structural damage or damage to any safety-related equipment. The requirements for obtaining a Certificate of Compliance, including those associated with offsite transportation accidents, impose more severe conditions on the cask and its contents than would be experienced during handling at the McGuire site. The fuel and cask would remain intact in the event of a dropped cask during handling at the McGuire site, and therefore the radiological consequences would be no more severe than those associated with use of the single-element casks. The licensee's evaluation also finds that use of the new casks is within the existing design capacities of the spend fuel cask handling and auxiliary cranes and lifting devices, including the guidelines of NUREG–0612, and does not require significant alteration of existing single-element cask handling procedures. Preliminary review by the Commission supports these findings by the licensee.

The Commission also finds that implementation of this request would not involve a significant increase in the probability of an accident previously evaluated. Previously evaluated cask accident casual mechanisms are not being changed by use of the new casks. Because the new casks require less manpower and handling and only one third as many shipments as the single-element casks for a given number of assemblies, the opportunity for and probability of an accident are significantly reduced.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and should cite the publication date and page number of this Federal Register notice. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By June 27, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriation order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of an amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B. J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 22nd day of May 1986.

For the Nuclear Regulatory Commission.

Paul O'Connor,

Acting Director, PWR Project Directorate #4, Division of PWR Licensing–A, NRR.

[FR Doc. 86-11931 Filed 5-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Issuance of Environmental Assessment and Finding of No Significant Impact; Pacific Gas and Electric Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-80 and DPR-82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 located in San Luis Obispo County, California.

Identification of Proposed Action. The amendments would consist of changes to the operating licenses and Technical Specifications (TSs) and would authorize an increase of the storage capacity of the spent fuel pool (SFP) for each unit from 290 fuel assemblies to 1324 fuel assemblies with enrichments no greater than 4.5 weight percent U-235.

The amendments to the TSs are responsive to the licensee's application dated October 30, 1985. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment By the Officer of Nuclear Reactor Regulation Relating to the Expansion of Spent Fuel Pools, Facility Operating License Nos. DPR-80 and DPR-82, Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant Unit Nos. 1 and 2, Docket Nos. 50-275 and 323," dated May 21, 1986.

Summary of Environmental Assessment. The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), Volumes 1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended evaluating SFP expansions on a case-by-case basis.

For the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, the expansion of the storage capacity of the SFPs will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 millirem per year; the estimated dose to the population within a 50-mile radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pools is estimated to be less than 2.5 person-rem per year. This is less than 1% of the average annual occupational dose.

The only non-radiological impact affected by the SFP expansion is the waste heat rejected to the Pacific Ocean. The increase in total plant waste heat is less than 0.1%. There is no significant environmental impact attributable to the waste heat from the plant due to this very small increase.

Finding of no Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facilities relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendments to the licenses will have no significant

impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action.

For further details with respect to this action, see (1) the application for amendments to the Technical Specifications dated October 30, 1986 and additional information provided by the licensee in letters dated September 19, December 20 and December 24, 1985 and January 28 (2 letters), March 11, and April 24 (2 letters), 1986, (2) the PGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for the Diablo Canyon Nuclear Power Plant, Units 1 and 2 issued May 1973, and (4) the Environmental Assessment dated May 21, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 21st day of May 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, PWR Project Directorate No. 3, Division of PWR Licensing-A, NRR.

[FR Doc. 86–11930 Filed 5–28–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Duke Power Company (the licensee) for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would authorize on an emergency basis a one-time release of the existing contents of the Conventional (non-radioactive) Wastewater Basin, containing trace amounts of tritium, into the Catawba River. Technical Specification (TS) 3.11.1.1. and its referenced Figure 5.1–4, "Site Boundary for Liquid Effluents" define the authorized discharge point for radioactive material released in liquid effluents to unrestricted areas as being only to Lake Norman. The proposed authorization would be accomplished by the addition of a footnote to TS Figure 5.1–4 at the discharge point for the Conventional Wastewater Basis into the Catawba River, stating that this discharge point is authorized for a one-time discharge of water which contains trace amounts of tritium in addition to the normally processed effluents of the Waste Water Collection Basin, effective the date of Commission approval. The change would not affect any existing limits or procedures regarding the processing of conventional (i.e., non-radioactive) contaminants.

The proposed amendment is in accordance with the licensee's request of May 20, 1986.

The Need for the Proposed Action

An unexpected release of tritium into the Conventional Wastewater Basin has created the need for prompt action as proposed above for two reasons, both stemming from the fact that the Basin is nearly full. First, excessive rainfall could result in an overflow of the Basin, resulting in an uncontrolled release. Second, lack of available volume in the Basin will impair the station's ability to process conventional (nonradiological) liquid waste as required by the NPDES permit issued by the State of North Carolina and, thereby, result in an extended plant outage.

Environmental Impacts of the Proposed Action

Non-radioactive chemical wastes from the McGuire Station (e.g., turbine building drains, water treatment system filter backwashes, demineralizer regeneration wastes) are routed through the Conventional Waste Water Treatment System (CWWTS) and subjected to physiocochemical treatment. The CWWTS includes a Basin of two parallel stream settling ponds with a capacity of about 2 million gallons each. Upon completion of treatment, the discharges from this system are released to the Catawba River downstream of Cowans Ford Dam. The discharge from the CWWTS may also be mixed with water from the Standby Nuclear Service Water Pond to dilute waste concentrations prior to discharge to the river. Waste containing radioactive material is not intented for the CWWTS; rather such waste is routed to separate Liquid Radwaste Systems (see FSAR section 11.2) for recycling, processing and disposal.

A. Radiological

By letter dated May 20, 1986, the licensee noted that tritium, but no other radionuclide, had entered the Basin and had subsequently been diluted to a concentration of 1.4×10^{-5} microcuries per milliliter. The licensee proposed to discharge the 4 million gallons of water in the Basin, along with its tritium, to the river at a rate of 500 gpm over a duration of 133 hours. The Basin discharge would also be mixed by equal flow from the Standby Nuclear Service Water Pond, such that the tritium concentration at the river release point would be 7×10^{-6} microcuries per milliliter. The concentration is well within the limit of 3×10^{-3} microcuries per milliliter specified by 10 CFR 20.106 and associated Appendix B, Table II, for tritium concentrations in water. The total activity which would be released by the proposed discharge would be about 0.25 curies of tritium, which is well within the annual tritium release from the plant estimated by the Commission in Table 3.3 of the Final Environmental Statement (NUREG–0063) to be about 940 curies per year.

The NRC has evaluated doses resulting from the proposed discharge using models and assumptions in Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Release of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I." For tritium the dominant exposure pathway is drinking water. The fish consumption pathway also makes a small contribution to the dose. Other potential pathways (such as due to irrigation or swimming) are negligible because of the properties of tritium, i.e., tritium does not accumulate either in the food chain or the body and it does not constitute a significant source of external radiation. The total body dose to a child or infant assumed to drink water from the river release point and to consume fish located at this release point was calculated by the Commission to be about 0.01 millirem. Corresponding doses to an adult or teenager were lower (i.e., about 0.008 and 0.006 millirem, respectively). Section II.A of Appendix I to 10 CFR Part 50 states that the calculated annual total quantity of all radioactive material above background to be released from each nuclear power reactor to unrestricted areas should not result in an estimated annual dose or dose commitment from liquid effluents for any individual in an unrestricted area from all pathways of exposure in excess of 3 millirems to the total body. Because the doses calculated for the proposed river discharge represent only a very small contribution to this annual dose criterion of Appendix I, we find the proposed action to be consistent with Appendix I criterion.

The licensee calculated similar but lower doses in its letter of May 20, 1985. Unlike the licensee's calculations, the NRC results conservatively assume no credit for dilution of the tritium concentration within the river. Nevertheless, we find that the discharge concentrations of tritium and resultant doses determined by the NRC are sufficiently low as to represent no significant adverse impact on the quality of the human environment.

B. Non Radiological

The licensee states that the waste within the Conventional Wastewater Basin has completed the treatment process, and (except for the presence of tritium) is otherwise within the specifications for discharge required by the NPDES permit. The change does not affect any existing limits or procedures regarding the processing of conventional (i.e., non-radioactive) contaminants. Therefore, no additional or unanalyzed impact on the environment would result from non-radioactive effluents as a result of this proposed change.

C. Conclusions

Except for the presence of tritium, no additional or unanalyzed impact on the environment would result from non-radioactive effluents as a result of the proposed change. The very low concentrations of tritium within the Conventional Wastewater Basin are well below limits permitted by 10 CFR Part 20, and if discharged to the Catawba River as proposed, would result in insignificant doses consistent with the guidance of Appendix I to 10 CFR Part 50. Accordingly, the Commission concludes that the proposed action would result in no significant adverse impact to the quality of the human environment.

Alternative to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives to the actions proposed would not result in substantial improvement in the quality of the environment and therefore need not be evaluated.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. Neither alternative would significantly reduce environmental impacts but would result in extended plant outage, and possibly result in uncontrolled discharges due to rain.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated April 1975 or its addendum dated January 1981 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of May 20, 1985, and except for the State of North Caroline, did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based on this environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated May 20, 1985, and the Commission's Final Environmental Statement dated April 1975 with its addendum dated January 1981, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Caroline, Charlotte (UNCC Station), North Carolina. 28242.

Dated at Bethesda, Maryland, this 23rd day of May 1985.

For the Nuclear Regulatory Commission.

Paul O'Connor,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86-12065 Filed 5-28-86; 8:45 am]

BILLING CODE 7590-01-M

Reassertion of Certain Regulatory Authority in the State of New Mexico

By letter dated March 18, 1986 Governor Toney Anaya of New Mexico, requested that the NRC reassert its authority over uranium milling and mill tailings in New Mexico. The Governor stated that because of severe budget constraints, as well as other compelling reasons, the State can no longer assume regulatory responsibility for uranium mill tailings. The other reasons found compelling by Governor Anaya related to legal problems in attempting to enforce Federal regulations directly, difficulties anticipated in upgrading the New Mexico regulations and mill surety arrangements and high staff turnover. A copy of the Governor's letter is on file in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Pursuant to the provisions of section 274j of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission granted the Governor's request. The Commission found that it is necessary to terminate that part of New Mexico's agreement relinquishing NRC authority over uranium and thorium milling activities and mill tailings and to reassert NRC licensing and regulatory authority over these activities and the mill tailings produced in order to protect the public health and safety. This finding ensures that there will be no lapse of licensing and regulatory authority over these activities and materials upon relinquishment of this authority by the State of New Mexico. This reassertion of authority will become effective on June 1, 1986. This action does not affect the remaining portion of the New Mexico Agreement State Program which covers regulation of byproduct material (as defined in section 11(e)(1) of the Atomic Energy Act), source material, and special nuclear material in quantities not sufficient to form a critical mass.

Persons seeking licenses for activities within New Mexico involving byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954, as amended, or activities resulting in the production of such byproduct material should file such applications with the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, Box 25325, Denver, Colorado 80225, Attention R. Dale Smith, Director.

Existing uranium milling licensees in New Mexico are being advised of this change in regulatory authority. Pursuant to a Commission order published with this notice, existing New Mexico licenses affected by this change will become effective NRC licenses under conditions set forth in the order.

For information regarding this reassertion action contact the NRC's Office of State Programs, Mr. Donald A. Nussbaumer (301-492-7767) or John F. Kendig (301-492-9880).

Dated at Washington, DC, this 22d day of May, 1986.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-2044 Filed 5-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362] Denial of

Southern California Edison Co. et al.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees

for an amendment to Facility Operating License Nos. NPF–10, and NPF–15 issued to the Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, respectively, in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the Federal Register on February 12, 1986 (51 FR 5278).

The amendment, as proposed by the licensees, would change the Unit 2 and 3 Technical Specifications. The licensees proposed to remove values associated with the secondary system (such as main steam isolation valves, and main feedwater isolation valves) from Table 3.6–1 of the Technical Specifications (TS). The justification provided by the licensees is: (1) General Design Criteria (GDC) 54 and 57 are not applicable to these secondary system isolation valves, as indicated in FSAR Table 6.2–35, and (2) some of these valves have requirements in other sections of the Technical Specifications. The Commission's staff finds that some of valves are not adequately covered the other Technical Specifications. Therefore, the staff finds that the proposed change to remove certain isolation valves associated with the secondary system is not acceptable. Therefore, this request is denied in part.

By June 16, 1986, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a writtten petition for leave to intervene.

A request for a hearing or petition for leave to intervene most be filed with the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rules and Procedures Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorney for the licensees.

For further details with respect to this action, see: (1) The applications for amendment dated January 25, April 27, and November 30, 1984, and the supplemental letter dated October 16, 1985, and (2) The Commission's Safety Evaluation issued with Amendments 48 and 35 to NPF–10 and NPF–15 dated May 16, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–B.

Dated at Bethesda, Maryland, this 16th day of May 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing–B.

[FR Doc. 86–12066 Filed 5–28–86: 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24104]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

May 22, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulged thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 16, 1986 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevent applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric Transmission (70–7215)

New England Electric Transmission ("NEET"), 4 Park Street, Concord, New Hampshire 03301, an electric utility subsidiary of New England Electric System, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7.

NEET seeks authority, during the period from July 1, 1986 to June 30, 1988, to enter into a line of credit with The First National Bank of Boston providing for borrowings, to be repaid in less than one year from the date thereof, up to aggregate amount outstanding (not including borrowing to be repaid with new borrowings) of $5 million.

Northeast Utilities (70–7240)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed an application-declaration pursuant to sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

By orders dated December 10, 1981, and February 20, 1985 (HCAR Nos. 22323 and 23607), Northeast was authorized to issue and sell, from time to time through December 31, 1988, its authorized but unissued common shares pursuant to its Dividend Reinvestment and Common Share Purchase Plan ("Plan"). Northeast now intendes to amend and restate the Plan so that Northeast will no longer issue and sell, new shares direclty to the participants. Rather, it is proposed that an agent for the participants will, from time to time through December 31, 1989, apply dividends and optional cash payments to acquire, in the open market, approximately 2.5 million common shares per year, up to a maximum of 10 million common shares in the aggregate. The purchase price per share to a participant for shares purchased will be equal to the weighted average price paid by the agent for all shares during the period in which the participant's shares were purchased.

Columbus and Southern Ohio Electric Company (70–7257)

Columbus and Southern Ohio Electric Company ("C&SOE") a subsidiary of American Electric Power Company, Inc., a registered holding company, and Conesville Coal Preparation Company ("CCPC"), a wholly owned subsidiary of C&SOE, both located at 215 North Front Street, Columbus, Ohio 43215, have filed a proposal pursuant to sections 6, 7, 9, 10, 12(b) and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

C&SOE proposes to continue the arrangements described in the initial

application and authorized by the Commission (HCAR No. 23463, October 26, 1984), with the following modifications: (i) That CaSOE's Conesville Coal Preparation Plant ("Plant") be transferred to CCPC; (ii) that the purchase of the Plant be financed by the issuance of CCPC of a 30 year promissory note and by the payment of cash by CCPC to CaSOE, which cash payment will be offset by an equivalent cash capital contribution by CaSOE to CCPC; (iii) that the interest rate on the note issued by CCPC to CaSOE will be equal to 11.15%, the effective interest cost of CaSOE's most recently issued series of First Mortgage Bonds (11% series due 1989, issued May 1985). The rate of return on the capital contribution by CaSOE is proposed to be 14.84% based on a weighted average rate of return of 15.40% on CaSOE's investment attributed to funds provided by the equity portion of CaSOE's capitalization consisting of common equity and preferred stock and (iv) that, in connection with the transfer, CaSOE and CCPC will also enter into an Amended Coal Washing Agreement pursuant to which CCPC will provide washing services to CaSOE at cost, including, but not limited to, costs attributable to CCPC's ownership of the Plant, interest costs attributable to the notes and an amount equal to CaSOE's return on equity.

Consolidated Natural Gas Company, et al. (70-7288)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, The Peoples Natural Gas Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44114, Hope Gas, Inc. and Union Natural Gas Center West, Clarksburg, West Virginia 26301, have filed an application-declaration subject to sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

A notice of the original application-declaration was issued on May 15, 1986, HCAR No. 24395. Consolidated also proposes to acquire an aggregate of $51,600,000 in capital stock, $100 par value, to be issued and sold from time to time through June 15, 1987 by four subsidiary companies, as set forth below:

Company	Amount
CNG Coal Company	$900,000
CNG Development Company	21,000,000
CNG Producing Company	30,000,000
CNG Research Company	100,000
Total	51,600,000

New Orleans Public Service Inc. (70-7282)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

NOPSI proposes to issue, pursuant to a negotiated private placement with one or more institutional investors, not to exceed $25 million aggregate principal amount of secured notes. The company requests authorization to negotiate the terms of the issuance of said notes. It may do so. Such terms are to be filed by amendment. The notes will be sold at the price of 100% of the principal amount, will have a maturity of not to exceed approximately 10 years, and will bear interest at a fixed rate per annum, estimated to be in the range of 9% to 12%. It is contemplated that the notes will be secured initially by a second lien on certain of NOPSI's assets (subordinate to the lien of its Mortgage). NOPSI proposes as soon as practicable after its earnings become sufficient to support the issuance of a sufficient amount first mortgage bonds or after the company is otherwise permitted by the terms of the Mortgage to issue first mortgage bonds (i.e., based upon retirements of bonds) to issue and deliver such bonds ("Collateral Bonds") as security for the notes. The subordinate lien therefore granted to secure the notes would then be released. In the event that by December 31, 1988, the notes are not secured by the Collateral Bonds, the fixed interest rate on the notes will thereafter be increased by up to 0.50%, and the notes will remain secured solely by the second lien until maturity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12051 Filed 5-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23257; File Nos. SR-CBOE-86-02 and 04]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Changes

On January 13 and 29, 1986, the Chicago Board Options Exchange, Inc. ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] proposed rule changes relating to expiration months. The proposals would allow CBOE to have (1) up to six expiration months in foreign currency options contracts, ranging from one to twelve months to expiration from the date of listing; [3] and (2) up to five expiration months in stock index options, also ranging from one to twelve months to expiration from the date of listing.[4]

At the present time CBOE employs the following patterns of expiration months: (1) S&P 100 stock options, four consecutive months;[5] (2) S&P 500 index options, two nearby consecutive months and the next three months from the March cycle;[6] and (3) foreign currency

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] File No. SR-CBOE-86-02, noticed in Securities Exchange Act Release No. 22936 (January 24, 1986), 51 FR 4069 (January 31, 1986).

[4] File No. SR-CBOE-86-04, noticed in Securities Exchange Act Release No. 22976 (February 7, 1986), 51 FR 5626 (February 14, 1986). On March 6, 1986, CBOE submitted Amendment No. 1 to this filing deleting a provision describing the precise expiration month pattern for Standard & Poor's ("S&P") 500 index options because adoption of the instant proposal, which would apply to all of CBOE's index options, renders this provision unnecessary. Because of its technical nature the Commission did not publish separate notice of Amendment No. 1.

[5] Letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Sharon Lawson, Attorney, Division of Market Regulation, SEC, dated April 28, 1986 ("CBOE Letter"). Currently, CBOE lists S&P 100 index option series that expire in June, July, August and September. *Id.*

[6] Currently, CBOE lists S&P 500 index option series that expire in June, July, September, and December and March. CBOE Letter, *supra note 5.*

options, three nearby consecutive months and the next two months from the March quarterly cycle.[7] The CBOE does not intend to use the authority it would possess under the proposals to change its current expiration months at this time, and had agreed to file any changes to these patterns as rule changes under section 19(b)(3)(A) of the Act.[8]

As described above, CBOE currently has authority to list series of index options in up to five different expiration months and series of foreign currency options in up to six different expiration months.[9] The instant rule filings would enlarge upon this existing authority by allowing CBOE to: (1) have discretion to select the precise arrangement of the same limited number of expiration months, subject to CBOE's agreement to file changes to existing patterns with the Commission under Section 19(b)(3)(A) of the Act;[10] and (2) list series of index options with 12 months to expiration.[11]

The Commission previously has indicated that the choice of expiration cycles may be left primarily to the business judgment of the exchanges, so long as each exercise of this judgement reflects an appropriate balance between ensuring that market participants are provided an array of expirations adequate to their investment demands and ensuring that this array does not cause an excessive dilution of liquidity in open options series.[12] The Commission believes that it is appropriate for an exchange in the first instance to exercise judgment as to what precise arrangement of a limited number of expiration months with a maximum time to expiration of twelve months best establishes this balance, with the Commission retaining the ability to review each particular exercise of this judgement under section 19(b)(2)(A) of the Act. The commission also believes the CBOE's proposal to allow twelve-month index options series represents an appropriate balance of the relevant considerations. The Commission has no reason to question CBOE's judgment that the twelve-month series allowed under CBOE's proposal will exhibit significantly less liquidity than the far-term eleven-month series currently available in S&P 500 index options.[13] Finally, the Commission finds that the CBOE's proposed new pattern for foreign currency options—three nearby months and the next two months from the March cycle—is appropriate.[14]

For these reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [15] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: May 20, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12040 Filed 5-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15111; File No. 812-6327]

Application and Opportunity for Hearing; Commercial Life Insurance Co., et al.

May 21, 1986.

Notice is hereby given that Commercial Life Insurance Company ("Commercial"), Commercial Separate Account A ("Separate Account A"), and Continental Equities Corporation of America ("Continental Equities") (collectively, "Applicants"), filed an application on March 28, 1986, and an amendment thereto on April 25, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 2(a)(32), 22(c), 26 (a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13), 6e-3(T)(c)(1) and 22c-1 promulgated thereunder, to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for the complete text of those provisions that are relevant to the application.

General Account Funding

Applicants state that Commercial, a subsidiary of The Continental Corporation, is a stock life insurance company organized under the laws of the State of Wisconsin, and Separate Account A is a segregated investment account of Commercial that is registered under the Act as a unit investment trust. Applicants further state that Continental Equities, a wholly-owned subsidiary of Commercial, is the principal underwriter and distributor of individual flexible premium variable life insurance contracts ("Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T), funded through Separate Account A.

Applicants state that under the Contracts, contractowners will be able to allocate premium payments and transfer (subject to certain restrictions) portions of the cash value among the general asset account of Commercial ("General Account") and the sub-accounts of Separate Account A. According to the application, each of the three sub-accounts of Separate Account A currently invests solely in the shares of the Continental Series Trust ("Fund") that are issued by one of its three portfolios, each having a specified investment objective. Applicants state that amounts allocated to the General Account earn interest at a rate not less than the guaranteed interest rate of 4% per annum. Applicants note that the allocation or transfer of funds to the General Account does not entitle a contractowner to share in the investment experience of the General Account.

Applicants state that the Contracts allow the contractowner, subject to

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[7] CBOE letter, *supra* note 5. CBOE currently lists series of foreign currency options that expire in June, July, August, September and December.

[8] 15 U.S.C. 78s(b)(1)(A)(1982). CBOE Letter, *supra* note 5.

[9] The Commission approved these CBOE rules in Securities Exchange Act Release Nos. 22671 and 22802 (September 26, 1985 and February 28, 1986), 50 FR 40830 and 51 FR 7211. The Commission has approved similar rules for other exchanges. *See, e.g.*, Securities Exchange Act Release No. 23678 (September 27, 1986), 50 FR 41277 (six expiration months for Philadelphia Stock Exchange, Inc. ("Phlx") foreign currency options) ("Phlx Release"); and Securities Exchange Act Release Nos. 20330 and 20614 (October 28 and November 25, 1983), 48 FR 50281 and 50283 (New York and American Stock Exchange proposals, index options).

[10] Rule changes filed under Section 19(b)(3)(A) become effective upon filing with the Commission, but the Commission may abrogate such rules within 60 days of the date of their effectiveness. *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C) (1982).

[11] CBOE's rules currently allow series of index options with a maximum of 11 months to expiration. CBOE's rules already allow series of foreign currency options with 12 months to expiration.

[12] Securities Exchange Act Release No. 22802 (February 28, 1986), 51 FR 7211 (approving up to five expiration months for S&P 500 index options) ("S&P 500 Release").

[13] Although the existing far-term eleven-month series of S&P 500 index options exhibit little volume relative to the near-term months, the Commission assumes that volume for the proposed twelve-month series would be similar and not significantly less than for the existing eleven-months series. Cf. S&P 500 Release, *supra* note 12, n.10.

[14] The Commission previously has approved three consecutive nearby months and three additional months from a quarterly cycle for the Phlx. *See* Phlx Release, *supra note 9.* The CBOE rules currently provide only for two nearby consecutive months and the next these from the March cycle. The CBOE instituted its current foreign currency procedures on an interim basis while the instant omnibus filing was pending with the Commission.

[15] 15 U.S.C. 78f (1982).

[16] 15 U.S.C. 78s(b) (2) (1982).

[17] 17 CFR 200.30-3(a)(12) (1986).

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certain limitations, to vary the frequency and amount of premium payments. Applicants state that the death benefits under the Contract will be the greater of: (i) The face amount on the date of death, or (ii) a specified percentage of the cash value. The death benefit will be reduced by any contract debt and, if death occurs during a grace period, any unpaid charges. Applicants generally note that a contractowner will have various rights under the Contract, including rights to a Contract loan, to request an increase or decrease in the face amount of the Contract, to a partial withdrawal of the Contract's cash value, and to a full surrender of the Contract.

Applicants request an exemption from Rule 6e–3(T)(c)(1) to resolve any uncertainty as to whether the term "flexible premium variable life insurance contract," as defined in that provision, includes flexible premium variable life insurance contracts under which contractowners may allocate amounts available for investment to the General Account.

Applicants assert that because paragraph (c)(1) does not explicitly require *exclusive* funding by a separate account, the Commission intended to permit allocation of premiums, and transfer of cash value, to general accounts as well as separate accounts. Applicants further assert that the requested relief is consistent with the Commission's administration of flexible premium variable life insurance under the Act prior to and after the adoption of Rule 6e–3(T), consistent with the Commission's administration of scheduled premium variable life insurance pursuant to Rule 6e–2 under the Act, and consistent with the Commission's administration of the Act in the context of variable annuities. Applicants believe that the General Account option will be beneficial to contractowners because it provides an additional funding option under the Contract. Applicants represent that the charges under the Contract that are equally applicable to the cash value allocated to the General Account and the cash value allocated to the sub-accounts of Separate Account A will be applied uniformly.

Applicants state that they recognize that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to the propriety or impropriety of registration or non-registration of either interests in the General Account as securities under the Securities Act of 1933 or the General Account as an investment company under the Act.

Contingent Deferred Charge for Premium Taxes and Issuance Expenses

Applicants state that the Contract provides for the calculation of the amount of a contingent deferred surrender charge ("Surrender Charge") upon the issuance of the Contract and upon an increase in the face amount of the Contract. Applicants represent that the Surrender Charge set upon the issuance of the contract has three elements: (1) A charge equal to 9% of the initial premium for sales load, (2) a charge equal to 2% of the initial premium for premium taxes (the average rate expected to be paid on all contracts), and (3) a charge equal to $5 per $1,000 of Face Amount (minimum—$100, maximum—$400) plus $50 for administrative costs Commercial incurs in issuing the Contract. An additional Surrender Charge, calculated in the same manner, is set in the event a Contract's face amount is increased.

Applicants state that the 2% permium tax component of the Surrender Charge is designed to assist Commercial in recovering state taxes imposed on premiums that it receives under the Contracts. Applicants also state that the administrative charge component of the Surrender Charge is designed to reimburse Commercial for the cost of processing applications for Contracts, or requests for increases in a Contracts face amount, conducting medical examinations, determining insurability and the insured's risk class, and establishing or revising records relating to the Contract.

According to the application, the Surrender Charge will be imposed upon lapse or surrender during the first nine years following the issuance of the Contract or following a requested increase in a Contract's face amount. The application states that the Surrender Charge remains level for the first five years in the relevant nine-year period, and then reduces in annual increments until it becomes zero at the end of nine years.

Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13)(iii) and 22c-1 to the extent necessary to permit the administrative charge for issuance expenses and the 2% premium tax charge to be deducted upon a full or partial surrender of the Contract's cash value. Applicants state that imposition of these charges in the form of a contingent deferred charge, as described above, has several advantages for contractowners over a charge deducted entirely from premiums in the first Contract year. First, the amount of the contractowner's investment in Separate Account A is not reduced as it would be if these charges were taken in full in the first Contract year. Second, the total amount charged to any contractowner is no greater than if these charges were taken in full in the first Contract year, and it is less for contractowners who do not lapse or surrender during the first five Contract years. Third, deductions for the cost of insurance charge may be lower because the net amount at risk may be less when these charges are deferred rather than deducted up front. Fourth, in the event the death benefit is paid under the Contract, these charges are not deducted from the amount payable, thereby resulting in contractowners receiving the primary benefit of their Contracts (insurance protection) withut incurring such charges. Finally, if the death benefit is determined by multiplying the cash value on the date of death times the applicable death benefit factor, the fact that the Surrender Charge has not been deducted will favorably affect the amount of the death benefit since the cash value will be greater.

Applicants represent that the level of these two components of the Surrender Charge (*i.e.*, state premium tax and administrative charge components) are the same as they would have been if these charges had been deducted from premium payments prior to allocation to Separate Account A or the General Account, and that in setting the levels of these two components, Applicants did not take into account the time value of money or increase these charges to reflect the fact that not all contractowners will incur a Surrender Charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 16, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12058 Filed 5-28-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.571-1A, Damage-Tolerance and Fatigue Evaluation of Structure.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.571-1A, Damage-Tolerance and Fatigue Evalution of Structure. The AC provides guidance for use in demonstrating compliance with the provisions of Part 25 of the Federal Aviation Regulations (FAR) dealing with the damage-tolerance and fatigue evaluation requirements of aircraft structure.

DATE: Advisory Circular 25.571-1A was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on March 5, 1986.

How to Obtain Copies: A copy of AC 25.571-1A may be obtained by writing to the U.S. Department of Transportation, M-494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on May 19, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 86-11941 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-789]

Farrell Lines Inc.; Application To Provide Trade Route 10 Service

Farrell Lines Incorporated (Farrell), by application dated February 18, 1986, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement, Contract MA/MSB-482 (OSDA) to provide Trade Route (TR) 10 (U.S. North Atlantic/Mediterranean) service with a C3-S-61b type vessel named AUSTRAL RAINBOW.

The service plan by Farrell would permit it to provide the service necessary to approximate its contractual requirements. Under ODSA MA/MSB-482, Farrell is authorized to make a minimum/maximum of 44/66 sailings per year on TR 10.

Farrell's application points out that it has been unable to make the minimum required sailings because of a shortage of necessary containerships. In Farrell's view, the operation of the AUSTRAL RAINBOW will allow for sufficient sailings necessary to approach the minimum number required. In addition, Farrell believes that the AUSTRAL RAINBOW will allow for expansion into a wider geographical area without jeopardizing its current biweekly service, the minimum necessary to remain competitive.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on June 12, 1986. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Dated: May 23, 1986.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 86-12006 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-86]

Treasury Notes, Series Z-1988

Washington, May 22, 1986.

The Secretary announced on May 21, 1986, that the interest rate on the notes designated Series Z-1988, described in Department Circular—Public Debt Series—No. 19-86 dated May 15, 1986, will be 7⅛ percent. Interest on the notes will be payable at the rate of 7⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-12009 Filed 5-28-86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; University Affiliations Program; Application Notice for Fiscal Year 1986, Special Competition: Teacher Exchange

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency will support the promotion of mutual understanding and development of academic expertise through affiliations between U.S. and foreign postsecondary institutions under a new program, "The Teacher Exchange Special Competition." The goals of the program are (a) to strengthen the academic, professional, and cross-cultural expertise of participating teachers and (b) to enhance the curriculum and instructional programs of selected countries in Latin America, the Caribbean, and the U.S. Particular emphasis is placed on enhancing the competence of teachers in their subject fields by demonstrating sound materials, resources and approaches to their subjects, sharing of information and expertise with the host country's educational system, and the compilation of materials for classroom use.

The Teacher Exchange Special Competition is designed to strengthen the ties between the United States and selected countries in Latin America and the Caribbean by expanding teacher exchanges to countries heretofore not participating in USIA's Teacher Exchange Program. The Program will support affiliations between postsecondary institutions to focus on the enhancement of subject matter competencies of experienced teachers in the U.S. and selected countries of Latin America and the Caribbean. Specific countries eligible for the competition include Antigua, Argentina, Barbados, Colombia, Costa Rica, the Dominican Republic, Ecuador, Grenada, Jamaica, Panama, St. Lucia, and Trinidad and Tobago.

Applications for grants are invited from U.S. institutions of postsecondary education. Grants of up to $50,000 each are available to support each project for two to three years. The affiliations will involve Latin American and Caribbean

elementary, secondary and postsecondary institutions and U.S. elementary, secondary schools, and postsecondary institutions. The universities' role is to liaison with local education authorities; to identify goals for the exchange of teachers programs; to plan, administer, and facilitate the exchanges; and to apply resources and expertise in subject fields as well as in-service training of professionals. Such institutions, in conjunction with local U.S. school authorities, would form affiliations with Latin American and Caribbean postsecondary institutions. These foreign colleges would work, in turn, with local education authorities in their respective countries. The purpose of such affiliations is to exchange elementary, secondary, and, under certain conditions, postsecondary teachers. As a result of the exchanges which should contribute to improvement in precollegiate eduction, it is expected that knowledge of teachers of the host country will increase, that mastery of their subjects will be enhanced, and that there will be a direct application of this new information upon their return to their own country. A maximum of five grants will be awarded in fiscal year 1986.

Applications on behalf of the collaborating school authorities and/or institutions are to be submitted by the U.S. postsecondary institution partner. Participating institutions and school districts should be prepared to: assign U.S. citizens or national teachers, faculty, or staff to the partner institutions, maintain said person(s) on full salary and benefits, provide for salary sharing and/or supplements as necessary, and receive visiting teachers from the partner school district(s). USIA funds are to be used for participant travel costs, materials, and modest supplements for maintenance expenses, if necessary.

Authority for this program is contained in the Mutual Eductional and Cultural Exchange Act of 1961, Pub. L. 87–256 (Fulbright-Hays Act). The purpose of the Fulbright program is ". . . to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries." Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 1/31/87.

Guidelines for Application

The U.S. and foreign postsecondary institutions will serve in a collaborative role with school districts in designing the affiliation program. Program emphasis should be placed on increasing the exchange teachers' knowledge in their respective subject fields and of the partner country, rather than on teaching methodology. Toward this end, the universities will offer assistance (i.e. orientation, language training, country briefings, inservice teacher training, or other activities) to enhance the participating school districts' exchanges. The U.S. postsecondary institution should be the fiscal agent for the grant.

The primary goal of the affiliation is to exchange precollegiate level teachers. To this end, at least 60% of the exchanges supported by the Agency should occur between classroom teachers primarily at the high school level. While the remainder of the exchanges may involve school administrators and administrators and/or faculty from the U.S. and foreign institutions of higher education, the thrust of the affiliation should involve exchanges of a substantive rather than an administrative nature. The duration of exchanges can vary from stays of four weeks to one semester or an academic year. The length of an individual exchange should support both the purpose of that specific exchange and the overall goals of the affiliation.

USIA funds are to be used for participant travel costs, modest compensation supplements to offset maintenance costs, and the collection, development and/or purchase of teaching materials. Institutional overhead is not allowed. Cost-sharing among institutions is a necessary condition of the affiliation and should reflect contributions from all institutions involved in the exchange. Projects supported by USIA must last a minimum of two years and a maximum of three years; the total request to USIA should not exceed $50,000, covering eligible expenses of all institutions for the two to three-year period.

In FY 1986, up to five grants will be available for affiliations with institutions in Latin America and the Caribbean. Eligible countries include Antigua, Argentina, Barbados, Colombia, Costa Rica, the Dominican Republic, Ecuador, Grenada, Jamaica, Panama, St. Lucia, and Trinidad and Tobago.

Proposals will be accepted either for the establishment of new affiliations or for the enhancement of existing affiliations in specific new directions. Proposals for funding ad hoc research projects and feasibility studies to plan affiliations will not be considered in this program.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal considerations. Funding of any proposal is subject to the regular procedures, regulations, and requirements for Bureau of Educational and Cultural Affairs grants, including review by the General Counsel's office.

Review Process

The review process is conducted in two stages—technical and substantive. Proposals that are technically ineligible (technical review criteria appear below) will not be forwarded to the substantive review committee for further consideration. Proposals must be received at USIA by *July 25, 1986.*

Project directors of ineligible proposals will be informed in writing by August 20, 1986. Technically eligible proposals will be forwarded for review to a committee of Agency officers representing appropriate area and academic expertise. Eligible proposals will be evaluated against specific criteria addressed to quality, feasibility, and area needs (see below).

Substantive Review Criteria

a. Focused academic goals, including the following elements:

Increasing the exchange participants' knowledge in their respective fields. Latin American and Caribbean teachers will have the opportunity to gain increased knowledge of subject matter, to improve their course content, and to gain first-hand knowlege of the U.S.;

U.S. teachers will also have the opportunity to expand their mastery of subject matter in their respective fields, such as applied linguistics for language teachers or area studies for social science teachers;

Institutions should plan to assist outgoing teachers in adapting their materials and expertise for most effective teaching in the receiving country;

b. A plan for demonstrating how the postsecondary institutions will implement the goals. Plans should include:

Evidence of close liaison with participating local school authorities and clearly stated mutual objectives for in-service training, exchange of teachers, and collection or creation of materials by exchange teachers for use in the classroom upon return to the host country;

Pre-departure programming with an area studies component covering political and social characteristics of the society, geographical influences, historical contexts, and cross-cultural relationships. Language proficiency is assumed, but specialized vocabulary or

reviews should be included in the pre-departure activities;

Field-study activities. The plan should include activities designed to expand the teachers' interactions to parts of the society other than the immediate school environment;

Involvement of exchange teachers in school activities beyond the traditional classroom role, serving for example as curriculum consultants or in other appropriate capacities;

Frequent and systematic review of the goals of the program, providing assistance to the participants in attaining their objectives, and modifications in exchange participants' assignments and activities as needed;

A plan for debriefing and academic activities for returning teachers. Debriefing activities should include an analysis of the impact of the exchange on the teachers. Academic activities should involve the teacher in presentations as well as activities to assess the utility of materials collected in the host country for classroom use;

c. Demonstration that the affiliation will enhance faculty and teacher development, curriculum revisions, and civic or community activities, including evidence of mutuality of benefits to the institutions and school systems involved in the exchanges;

d. Feasibility of program plan;

e. Academic experience of participants relevant to the goals of the proposed exchange plan (including linguistic proficiency, where required);

f. Evidence of strong mutual institutional commitment involving the schools and universities in the plans and governance of the affiliation through policy boards or committees on each side of the affiliation, including equal representation from all participating institutions within the country;

g. Description of a mechanism for bilateral communication and governance;

h. Demonstration that the partnership is likely to continue after the conclusion of the USIA grant;

i. Details of current teaching assignments of U.S. and foreign participants (may be included in bio-sketches);

j. Cost-effectiveness.

The USIA will also obtain overseas post assessments, in terms of need and feasibility;

Eligibility

Applications should be submitted by the U.S. postsecondary institutions on behalf of themselves, the cooperating U.S. school district(s), and the collaborating foreign school districts and institutions. Proposals will be accepted in all subject areas. (Institutions without departments of education may apply.) Institutions eligible to participate are:

1. Accredited, degree-granting public or private U.S. institutions of higher education;

2. Recognized institutions of higher education in the aforementioned countries of Latin America or the Caribbean, or consortia of such institutions;

3. U.S. elementary and secondary schools and/or school system;

4. Elementary and secondary schools and/or school system in the aforementioned countries of Latin America or the Caribbean.

Technical Review Criteria

Within the announced deadline, an original proposal and ten complete copies are to be submitted, including: abstract; narrative; budget; bio-sketches; required letters of agreement; and summary of international affiliations (see detailed requirements below under application procedures).

Application Procedures

Applicants must submit one original and ten (10) complete copies of their proposals to: Eugene C. Schaffer, Teacher Exchange Branch (E/ASX), United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

In order to be eligible for review, project planning must begin by September 15, 1986. The proposal *must* include:

1. *Abstract:* A typed, double-spaced abstract, summarizing the project, not to exceed two pages.

2. *Narrative:* total text not to exceed fifteen (15) typed, doubled-spaced pages, including:

a. A brief (two-page) description of the participating institutions and participating departments;

b. A detailed description of the proposed affiliation program, including but not limited to: the name and qualifications of the designated project director; the proposed roster of participants or representative sample of potential participants and their qualifications, including language skills; a statement of need; a detailed, specific description of proposed activities, including when and where they will occur; the number of trips, itinerary and duration of travel; the per diem costs daily rate and number of days; and the anticipated benefits of the program; first-year exchange participants should be identified, if possible;

c. A plan for institutional evaluation of the program.

3. A detailed, *five-column budget:* outline specific expenditures and source(s) from which funds are anticipated; the budget should include any in-kind and cash contributions to the program made by the U.S. and Latin American or Caribbean postsecondary institutions and the U.S. and foreign schools.

Required format for budget

All the proposed expenditures should be individually listed, using the following format:

	USIA	U.S. Institute of higher education	U.S. Schools	Foreign Institute of higher education	Foreign schools
Year 1 Travel	$X	$X	$X	$X	$X
Maintenance Costs	$X	$X	$X	$X	$X
Materials Cost	$X	$X	$X	$X	$X
Salary & Benefits	n/a	$X	$X	$X	$X
Overhead Costs	n/a	$X	$X	$X	$X
Year 2 Travel	$X	$X	$X	$X	$X
Maintenance Costs	$X	$X	$X	$X	$X
Materials Costs	$X	$X	$X	$X	$X
Salary & Benefits	n/a	$X	$X	$X	$X
Overhead Costs	n/a	$X	$X	$X	$X
Year 3 Travel	$X	$X	$X	$X	$X
Maintenance Costs	$X	$X	$X	$X	$X
Materials Costs	$X	$X	$X	$X	$X
Salary & Benefits	n/a	$X	$X	$X	$X
Overhead Costs	n/a	$X	$X	$X	$X
Totals	$X	$X	$X	$X	$X

4. *Appendices* should be kept to a minimum but must include:

a. Bio-sketches of professional accomplishments of the potential participants, *not to exceed two pages in length each,* clearly indicating the level of language skills, overseas experience, knowledge of the prospective partner country as demonstrated through courses taught, relevant scholarly and non-scholarly travel, publications, and research activities. (Bio-sketches of actual exchange participants must be provided to USIA for their approval prior to the exchange taking place.);

b. Documentation of institutional support for the proposed affiliation, *including a signed letter of endorsement from the U.S. institution's (or consortium members') president, vice-president, chancellor, provost, or other administrator with signing authority, as well as a signed letter of endorsement from the President (or equivalent) of the foreign institution or consortium.* Both letters must specifically refer to the Teacher Exchange Program. (A general letter of agreement between the two institutions without reference to this specific program will not fulfill this requirement.);

c. Documentation of institutional commitment for the proposed affiliation from the U.S. and foreign schools, including a signed letter from the superintendent of schools or school administrators with signing authority;

d. A brief summary of ongoing, active international affiliations at partner institutions.

(U.S. institutions are reminded that in certain countries, host government approval must be obtained before any exchange program of this type may be carried out.)

5. *Budget Items:*

The Only Eligible Budget Items Are

a. Round-trip airfare for participants to the exchange site;

b. Support (addition to salary and/or benefits) or per diem for such specific items as housing, food, and other maintenance items while on exchange. The maximum amount that may be requested for per diem support may not exceed the rates set by the U.S. Department of State for overseas locations and the General Services Administration (GSA) per diem allowances for U.S. localities. (USIA will supply these rates upon request. Call Eugene Schaffer at (202) 485–2555.);

c. Costs for materials and resources;

(U.S. institutions are reminded that in certain countries restrictions may be placed on the export of local currency by the national government.)

Ineligible Budget Items

a. Institutional overhead;

b. Administrative expenses incurred in connection with the affiliation including telephone or telex expenses;

c. Expenses for student exchanges;

d. Costs for dependents;

e. Conference or seminar costs;

f. Any costs for non-U.S. citizens or nationals from the U.S. institution or schools; or non-nationals of the overseas host country.

6. *Deadlines:*

Complete proposal packages must be received on or before *July 25, 1986.*

As a courtesy, proposals received by *July 3, 1986* will be reviewed for technical eligibility upon receipt. Should they be found to be ineligible, notification will be sent by *July 15, 1986* to the applicant specifying the reason for ineligibility, so that complete proposals may be submitted by the application deadline. All corrected or supplementary materials must be received by *July 25, 1986.*

Applicants are responsible for the submission of complete applications. *All* required items must be received at USIA by *July 25 1986;* corrected or supplementary materials received after this date cannot be considered by the Agency

7. *Notification:*

All applicants will be notified of the results of the review process on or about *September 15, 1986.* Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

For questions concerning programming and budget, please contact: Eugene C. Schaffer, Teacher Exchange Branch (E/ASX), United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–2555.

Dated: May 22, 1986.

Mark Ellis,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 86–12036 Filed 5–28–86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Career Development Committee; Charter Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the charter for the Career Development Committee has been renewed by the Administrator of Veterans Affairs for a two year period effective May 19, 1986 to May 19, 1988.

Dated: May 21, 1986.

By direction of the Administrator.

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–12076 Filed 5–28–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 103
Thursday, May 29, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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National Credit Union Administration	5
Postal Service	6

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Tuesday, June 3, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance and for consent to exercise full trust powers:

Advisory Bank and Trust Company, an operating noninsured trust company, located in the IDS Tower, 80 South Eighth Street, Minneapolis, Minnesota.

Application for consent to purchase assets and assume liabilities:

The Third National Bank of Sandusky, Sandusky, Ohio, for consent to purchase certain assets of and assume the liability to pay deposits made in the Port Clinton Office of United Home Federal, Toledo, Ohio, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,518-L
Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico
Case No. 46, 522-SR (Amendment)
The Dayton Bank & Trust Company, Dayton, Tennessee
Case No. 46,523-SR (Amendment)
Sparta-Sanders State Bank, Sparta, Kentucky
Case No. 46,524-L
South Coast Bank, Costa Mesa, California
Case No. 46,535
The Bowery Savings Bank, New York City (Manhattan), New York

Memorandum and resolution re: Final amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," which eliminate the requirement that the deposit account records of an insured bank disclose the names of the settlor and trustee of the trust and contain an account signature card executed by the trustee.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
State Bank of Farmersville, Farmersville, Illinois (2492) (Memo dated May 9, 1986)
Summary Audit Report re:
Mineola State Bank, Mineola, Iowa (2489) (Memo dated April 14, 1986)
Summary Audit Report re:
State Bank of Herndon, Kansas, Herndon, Kansas (6600) (Memo dated May 13, 1986)
Summary Audit Report re:
Farmers State Bank of Round Lake, Round Lake, Minnesota (2486) (Memo dated April 16, 1986)
Summary Audit Report re:
Cardwell State Bank, Cardwell, Missouri (2493) (Memo dated May 1, 1986)
Summary Audit Report re:
Missouri Delta Bank, Hayti, Missouri (2494) (Memo dated May 1, 1986)
Summary Audit Report re:
Security Bank & Trust Company, Midwest City, Oklahoma (2490) (Memo dated May 7, 1986)
Summary Audit Report re:
The First National Bank of Darrouzett, Darrouzett, Texas, NR-586 (Memo dated April 14, 1986)
Summary Audit Report re:
Park West Bank, N.A., Farmers Branch, Texas (5601) (Memo dated May 13, 1986)
Summary Audit Report re:
Riverside National Bank of Houston, Houston, Texas (2491) (Memo dated April 18, 1986)
Summary Audit Report re:
Trend Analysis of Liquidation, Site Audit Results (Memo dated May 14, 1986)
Summary Audit Report re:
Real Estate Owned Assets, Minneapolis Consolidated Office (memo dated May 8, 1986)
Summary Audit Report re:
Texas Instrument In-House Computer System Puerto Rico Consolidated Office (Memo dated April 30, 1986)

Discussion Agenda:

Memorandum and resolution re: Delegation of authority to amend purchase and assumption agreements.

Memorandum and resolution re: Withdrawal of proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," which would have implemented recordkeeping requirements for deposits placed by deposit brokers.

Memorandum and resolution regarding petitions to reconsider certain prohibitions governing securities subsidiaries and affiliates contained in Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Bank Practices."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 27, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 12133 Filed 5-29-86; 12:12 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. of Tuesday, June 3, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii),

(c)(9)(B), and (c)(10) of Title , United States, Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, determination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs, thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:
Newport Harbor National Bank Newport Beach, California
Memorandum and Resolution re:
National Bank and Trust Company of Traverse City Traverse City, Michigan

Memorandum regarding the Corporation's assistance agreement with an insured bank.

Discussed Agenda:

Personnel actions regarding appointments, promotions, administrative pay increase, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunsine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 27, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 86–12134 Filed 5–28–86; 12:12 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 22, 1986, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

* * * * *

DATE AND TIME: Tuesday, June 3, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, June 5, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Status of Regulation Revision Projects Report
Routine Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Director, 202–376–3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 86–12150 Filed 5–27–86; 3:18 pm]

BILLING CODE 6715-01-M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, June 4, 1986, at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Investigation TA–201–60 (Steel fork arms)—briefing and vote on injury.
6. Items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

May 21, 1986.

[FR Doc. 86–12084 Filed 5–27–86; 9:06 am]

BILLING CODE 7020-02-M

5

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting on May 21, 1986, include an additional item, which was closed to public observation: Mergers. Closed pursuant to exemptions (8) and (9)(A)(ii).

The Board unanimously voted to add this item to the closed agenda.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Communications System. Closed pursuant to exemption (2).
7. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 11:00 a.m., in the Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–12143 Filed 5–27–86; 1:49 pm]

BILLING CODE 7535-01-M

6

POSTAL SERVICE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 18992, May 23, 1986.

PREVIOUSLY ANNOUNCED DATE OF MEETING: June 3, 1986.

CHANGE: Add following agenda item: "Briefing on Five-Year Plan".

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–12093 Filed 5–27–86; 10:55 am]

BILLING CODE 7710-12-M

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–12093 Filed 5–27–86; 10:55 am]

BILLING CODE 7710-12-M

federal register

Thursday
May 29, 1986

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750 et al.

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands; Final Rule

VOL 51 ISS 103 MAY 29 1986 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 750, 816, 817, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, 947 and 955

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining REclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is amending its rules on the use of explosives, and adding a new rule on the certification of blasters in Federal program States and on Indian lands. OSM also is revising its rules on Federal programs for States and on the Indian lands program to reference the new rule on the certification of blasters.

This rule adds similar provisions to the existing OSM rules on the use of explosives in surface and underground coal mining operations. It requires any blaster responsible for conducting blasting operations at a blasting site to be familiar with certain information, and to give direction and on-the-job training to persons who are not certified and who are assigned to the basting crew or assist in the use of explosives. In addition, it deletes from the previous rule on underground mining the requirement that persons responsible for blasting operations at a blasting site be familiar with the blasting plan.

This rule also adds a new part governing the training, examination and certification of blasters in Federal program States and on Indian lands. It covers the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certification, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority. In addition, references to this new rule are added to the Indian lands program and to each Federal program for a State.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur Anderson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-1504 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule and Responses to Public Comments on Proposed Rule
III. Procedural Matters

I. Background

Requirement of 30 CFR Part 850

The OSM rules at 30 CFR Chapter VII, Subchapter M, govern the training, examination and certification of blasters. Part 850 of Subchapter M, 44 FR 9492 (March 4, 1983), establishes requirements and procedures applicable to the development of regulatory programs for these functions.

Section 850.12 of Part 850 provides that "[t]he regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations." Subsequent sections of Part 850 require that this blaster certification program include specified procedures.

As the regulatory authority in States with a Federal program for the regulation of surface coal mining operations, and on Indian lands, OSM is promulgating this final rule to comply with these requirements of Part 850 for Federal program States and Indian Lands.

History of Rule

The proposed rule was published on September 11, 1984. 49 FR 35714. A notice correcting the public comment period and hearing dates was published on September 25, 1984. 49 FR 37641. The public comment period was extended, a public meeting and a public hearing were announced, and several public hearings were cancelled by a notice published on November 19, 1984. 49 FR 45595.

The public comment period closed on November 29, 1984. OSM received comments on the proposed rule from 6 individuals and organizations. One request was received for a public meeting, and one for a public hearing, which were held on November 26 and 27, 1984, respectively, in Olympia, Washington. The public comments and a transcript of the public hearing are on file in the administrative record for this rule in the OSM Administrative Record Room, Room 5124, 1100 L Street, NW., Washington, DC.

II. Final Rule and Responses to Public Comments on Proposed Rule

The following text, which describes this final rule and responds to the public comments OSM received on the proposed rule, is organized by the part and section numbers of the affected provisions. Grammatical or stylistic changes that do not affect the substance of this final rule are not discussed.

In this final rule, proposed Part 855 has been moved from Subchapter M to Subchapter T and redesignated as Part 955. This was done to prevent misinterpretation of this part as establishing permanent program requirements that apply to State regulatory programs. Because proposed Part 855 was located in Subchapter M, which also includes existing Part 850, and because Part 850 Sets out permanent program requirements that apply to State regulatory programs, there existed the possibility that Part 855, through proximity with Part 850, might be misinterpreted as also establishing permanent program requirements applicable to State regulatory programs. OSM wishes to emphasize that Part 955 does not set standards for State regulatory programs, but applies only in Federal program States and on Indian lands.

This final rule includes a number of provisions that did not appear in the proposed rule. The new provisions affect Parts 750, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, which set out the programs governing surface coal mining and reclamation operation in Federal program States and Indian lands. The new provisions merely add to these Federal and Indian lands programs direct references to the blaster certification requirements of Part 955. These provisions are essentially technical, and within the purview of what was proposed.

Part 750—Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

Section 750.19 Certification of blasters.

Existing § 750.19, which previously required compliance with the forthcoming "Federally-administered blaster certification programs" is revised to reference specifically the corresponding provisions of this final rule at 30 CFR Part 955.

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Section 816.61 Use of Exlposives: General requirements.

Section 816.61(c)(4)

Section 816.61(c)(4) requires any blaster who is responsible for conducting blasting operations at a

blasting site to be familiar with the blasting plan and site-specific performance standards, and to give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use if explosives.

While proposed § 816.61(c)(4) was directed at any "person responsible for blasing operations at a blasting site," this final rule is directed at any "blaster who is responsible for conducting blasting operations." The revised wording reflects the fact, which was implicit in the proposed rule, that the person responsible for blasting operations at a blasting site is the blaster who is conducting blasting operations. The revised wording follows from the requirement of existing § 816.61(c)(1) that "all blasting operations . . . shall be conducted under the direction of a certified blaster," and of existing § 816.61(c)(3) that "[a] blaster . . . shall be present at the firing of a blast."

Proposed § 816.61(c)(ii) would have explicitly specified that the person responsible for blasting operations at a blasting site must have a current blaster certificate. This provision was deleleted from this final rule as redundant in view of the added reference to a blaster in the introductory language of the paragraph. Under § 850.5 of this chapter a blaster by definition must be "certified under this part," so the proposed language is unnecessary.

Preemption of State Law

Several commenters asked OSM to explain whether the Act or this rule preempts any State law or regulation that otherwise would apply to persons who store, transport or use explosives in surface coal mining operations. Under 30 730.11(a) this rule will preempt only that State law or regulation which is inconsistent with, or precludes implementation of, the requirements of the Act or 30 CFR Chapter VII, which includes this rule. In either case the Secretary must follow the procedures specified in § 730.11(a) and identify the specific law or regulation.

Given the variety of State laws and regulations that apply to the storage, transportation or use of explosives in surface coal mining operations, it is not possible to predict which of them the Act or this rule might preempt. In any event, no State law or regulation will be preempted until it formally is identified as such by the Secretary.

Section 816.61(c)(4)(ii)

Section 850.13(a)(2) of 30 CFR requires the regulatory authority to establish procedures to insure the persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster. The logical place to implement this requirement is in § 816.61, which contains general requirements governing the use of explosives.

Since the ultimate responsibility for providing on-the-job training necessarily lies with the blaster at the blasting site, this rule adds a new § 816.61(c)(4)(ii), which requires any blaster who is responsible for conducting blasting operations at a blasting site to give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

Part 817—Permanent Program Performance Standards—Underground Mining Activities

Section 817.61 Use of Explosives: General requirements.

Section 817.61(c)(4)

Section 817.61(c), which governs underground mining activities, contains provisions similar to those of § 816.61(c), which governs surface mining activities. This rule revises § 817.61(c)(4) in the same way and for the same reasons as discussed previously for § 816.61(c)(4).

In addition, this rule revises § 817.61(c)(4) by deleting the previous requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan." The reference to a blasting plan was included in § 817.61(c)(4) inadvertently when two similarly worded rules were promulgated concerning the use of explosives for surface and underground mining activities. 48 FR 9486 (March 4, 1983). However, as was explained in the preamble to the related final rule at 30 CFR 780.13(a), a blasting plan is not required for the underground mining activities governed by § 817.61. 48 FR 9789 (March 8, 1983). Therefore, this rule deletes from § 817.61(c)(4) the previous incorrect reference to a blasting plan.

Part 900—Introduction

Part 900 is an introduction to the State and Federal programs set out in subsequent parts of Subchapter T for the conduct of surface mining operations within each State. This final rule revises §§ 900.1, 900.11 and 900.13 of Part 900 to include references to new Part 955, which this final rule adds to Subchapter T. In addition, the previous wording of §§ 900.11 and 900.13 is revised somewhat to improve its clarity with no intended change in substance.

Part 910—Georgia

Part 910, which sets out the Federal program for the State of Georgia, is revised by adding a new § 910.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 912—Idaho

Part 912, which sets out the Federal program for the State of Idaho, is revised by adding a new § 912.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 921—Massachusetts

Part 921, which sets out the Federal program for the State of Massachusetts, is revised by adding a new § 921.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 921.850, which is superseded by § 921.955, is removed.

Part 922—Michigan

Part 922, which sets out the Federal program for the State of Michigan, is revised by adding a new § 922.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 933—North Carolina

Part 933, which sets out the Federal program for the State of North Carolina, is revised by adding a new § 933.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 933.850, which is superseded by § 933.955, is removed.

Part 937—Oregon

Part 937, which sets out the Federal program for the State of Oregon, is revised by adding a new § 937.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 939—Rhode Island

Part 939, which sets out the Federal program for the State of Rhode Island, is revised by adding a new § 939.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 939.850, which is superseded by § 939.955, is removed.

Part 941—South Dakota

Part 941, which sets out the Federal program for the State of South Dakota, is revised by adding a new § 941.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 942—Tennessee

Part 942, which sets out the Federal program for the State of Tennessee, is revised by adding a new § 942.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 942.855, which incorrectly references non-existent Part 855, is removed.

Part 947—Washington

Part 947, which sets out the Federal program for the State of Washington, is revised by adding a new § 947.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 947.850, which is superseded by § 947.955, is removed.

Part 955—Certification of Blasters in Federal Program States and on Indian Lands

As noted previously in the introduction to this portion of the preamble, proposed Part 955 was moved from Subchapter M to Subchapter T and redesignated as final Part 955. Thus, the comments OSM received on proposed Part 855 now apply to Part 955. To avoid the confusion that might result from repeated references to these two similar part numbers, the following discussion refers only to Part 955, with the understanding that it covers the correspondingly numbered sections of proposed Part 855.

Section 955.1 Scope.

Section 955.1 defines the scope of new Part 955, which establishes the program required by 30 CFR 850.12 for the training, examination and certification of blasters in Federal program States and on Indian lands. Part 955 governs the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

The purview of Part 955 is limited to Federal program States and Indian lands. Thus, for Federal lands in a State with a Federal program the training, examination and certification of blasters is governed by Part 955. However, for Federal lands in a State with a State regulatory program the training, examination and certification of blasters is governed by the State program, regardless of whether there is a Federal-State cooperative agreement. *See:* 30 CFR 740.11(a).

Relationship to State Law and Programs

Except as described under the heading *Preemption of State Law* in the preceding analysis of § 816.61(c)(4), this rule does not preempt any State law or regulation governing either the licensing or certification of blasters, or the storage, transportation or use of explosives in general. A State may require a blaster to comply with any State law or regulation that has not been identified by the Secretary as preempted by the Act or this rule.

Several commenters asked whether OSM plans to integrate the blaster certification program under Part 955 with similar State licensing or certification programs that already may exist in Federal program States. One suggested that OSM modify the rule to enable OSM and a State to issue jointly a single certificate. The commenter thought this would insure that a blaster becomes aware of any need to obtain authorization from both jurisdictions.

Another commenter suggested including in the rule a provision allowing OSM to enter into a cooperative agreement under which a qualified State agency would administer the OSM blaster certification program. This commenter thought that even though a State elected not to pursue primacy in the overall regulation of surface coal mining operations it might elect to administer the more limited blaster certification portion of the Federal program.

OSM currently has no plans to seek either joint Federal-State or independent State administration of the OSM blaster certification program established by this rule. Nor has OSM reached any conclusion on either the need for or the legality under the Act of a provision authorizing OSM to enter into a cooperative agreement for either joint or independent State administration of the program. Therefore, this final rule includes neither of the suggested provisions.

Another commenter was concerned about whether OSM would make the training and certification of blasters under Part 955 compatible with State procedures already in place. As discussed subsequent § 955.14(b), under the heading *Oral Examination*, this commenter thought the requirement for a written examination was incompatible with some existing State procedures.

OSM disagrees. While some requirements of Part 955 may be more stringent than those of some State procedures, they are not incompatible. OSM is aware of nothing in Part 955 that would prevent the holder of a State license or certificate from obtaining an OSM blaster certificate, or vice versa.

Section 955.2 Implementation.

In accordance with 30 CFR 750.19, 816.61(c) and 817.61(c), § 955.2 specifies that in Federal program States and on Indian lands the requirement that any person who is responsible for conducting blasting operations at a blasting site shall have a current blaster certificate is not effective until June 30, 1987. Before that date, §§ 750.19, 816.61(c) and 817.71(c) require that all blasting operations in Federal program States and on Indian lands be conducted by competent experienced persons who understand the hazards involved.

This is a new section added to the final rule to set out the specific date when the requirements of existing §§ 750.19, 816.61(c) and 817.61(c), as they relate to an OSM blaster certificate, will apply in Federal program States and on Indian lands. It does not change the date that otherwise would have applied under these existing sections. Nor does it affect the effective date of any other requirement of this part.

Under 30 CFR 816.61(c)(1) and 817.61(c)(1) the requirement that all blasting operations are to be conducted under the direction of a certified blaster does not become effective until 12 months after the implementation of a blaster certification program. The Indian Lands Program at 30 CFR 750.19 incorporates, §§ 816.61(c) and 817.71(c), and thus delays the effective date of the requirement for a blaster certificate on Indian lands for the same 12-month interval. This interval will give candidates for an OSM blaster certificate ample time to complete training, submit an application, pass the examination, and become certified before the requirement to have a certificate is implemented in Federal program States and on Indian lands.

Several commenters were concerned that delays in the availability of application forms, training materials, or the examination might minimize the value of this 12-month interval. OSM assures these commenters that the forms and other materials necessary to comply with Part 955 will be available on the effective date of this rule.

Notwithstanding the 12-month interval before the requirement for an OSM blaster certificate is implemented, OSM

advises everyone subject to this part to apply for a certificate as soon as is practicable after they meet the required qualifications. Anyone who submits an application at the last minute does so at his or her own risk. OSM neither will be responsible for nor will excuse any failure to meet the requirements of § 955.2, or of §§ 750.19, 816.61(c) or 817.61(c), due to the length of time involved in the certification process.

Section 955.5 Definitions.

Section 955.5, which did not appear in the proposed rule, defines a number of terms used in this part. It clarifies, but does not change, the substance of what was proposed.

Applicant is defined as a person who submits an application for an OSM blaster certificate. *Application* is defined as a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments. These definitions are added to this rule to supplant the inapt definitions of these same two terms in 30 CFR 701.5, which apply generally to Chapter 30 unless otherwise indicated.

Issue and *issuance* are defined as meaning to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity. To qualify for the issuance of a certificate an applicant must meet certain qualifications, a number of which differ from those for the subsequent certificate renewal or reissuance, and all of which differ from those for a certificate through reciprocity. An applicant who previously had obtained a certificate through reciprocity, but no longer qualifies for or wishes to rely on reciprocity, must qualify for certificate issuance in the same manner as any other applicant. Hence, the terms *issue* and *issuance* do not apply to a first certificate that is granted through reciprocity.

Reciprocity is defined to mean the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate. For more information on reciprocity, see particularly the discussion of § 955.16.

Reissue and *reissuance* are defined as synonymous with the term *recertification* in 30 CFR 850.15(c), and as meaning to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

As was noted in the proposed rule, Part 850, on which Part 955 is based, provides in § 850.15(c) for the "recertification" of blasters. In drafting Part 955 is was found that use of the term *recertification* would reduce the grammatical clarity of the rule. For this reason, the terms *reissue* and *reissuance* are substituted in its place. For more information on reissuance in relation to the renewal of a current or expired certificate, see the subsequent discussion of § 955.15(d), and for a revoked certificate see the subsequent discussion of § 955.17(e)(2).

Renew and *renewal* are defined as meaning to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* are defined as meaning to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

Section 955.10 Information collection.

The information collection requirements in Part 955 are contained in §§ 955.12 (a)(2) and (b)(2), 955.13(a) and 955.15(g). Section 955.12 (a)(2) and (b)(2) require an applicant to obtain satisfactory evidence of having completed training in the use of explosives. Section 955.13(a) requires an applicant to provide on an OSM application form information pertinent to determining his or her qualifications for a blaster certificate, and ultimately to identifying him or her as the certificate holder. Section 955.15(g) requires a person who holds an OSM blaster certificate to notify OSM within 30 days of any change in his or her address. This information is needed by OSM to determine whether an applicant is qualified to obtain an OSM blaster certificate, and to administer the program once the certificate is issued.

Section 955.11 General requirements.

Section 955.11 lists the general requirements an applicant must meet to qualify for an OSM blaster certificate. It derives primarily from proposed § 955.11(a), with some changes. Proposed § 995.11(b) was deleted as redundant.

To qualify for an OSM blaster certificate under § 955.11, a person must:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) Have worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for either 1 or 2 of the 3 years preceding the submission of an application, the length of time depending on the applicant's current certification status;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as specified in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as specified in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

The differences between these requirements and those in the proposed rule for each paragraph of this section are discussed under the following headings.

Section 955.11(a) Minimum age.

Under § 955.11(a), the minimum age at which a person may apply for an OSM blaster certificate is 20 years, and the minimum at which a person may be granted a certificate is 21 years. The proposed rule would have set the minimum age for the granting of a certificate at 18 years, but did not specify any minimum for submitting an application. The minimum age of 21 years is similar to current State requirements.

Several commenters thought that the proposed minimum age of 18 years was too young because, together with the 2-out-of-3 year minimum experience requirement of this rule for certificate issuance, it might prompt persons who were only 15 or 16 years old to work in a hazardous occupation. Several commenters also noted that other Federal and State laws which regulate the use of explosives specify a minimum age of 21 years. For example, the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms rules on commerce in explosives at 27 CFR 55.49

specify that an applicant for a license or permit must be 21 years of age or older.

OSM agrees with these commenters that the proposed minimum age of 18 was too low, and that 21 years is the minimum age at which a person reasonably might be expected to have sufficient training, knowledge, experience and competence to accept responsibility for conducting blasting operations, and has revised this final rule accordingly.

Because of unavoidable delays that will result from the requirement for an examination and from administrative processing, a significant amount of time may elapse between the filing of an application and the grant of a certificate. To compensate for these delays, and enable an otherwise qualified applicant to obtain a certificate as soon as he or she reaches the age of 21, this final rule allows anyone over the age of 20 to submit an application. Once OSM determines that an underage applicant has met all of the other qualifications required by this part, it may grant a post-dated certificate to take effect on the applicant's 21st birthday.

Section 955.11(b) Experience.

Section 955.11(b), which corresponds with proposed § 955.11(a)(2), specifies both the kind and amount of experience an applicant must have to qualify for an OSM blaster certificate. It requires that an applicant either have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for a specified period of time.

The amount of experience an applicant must have depends on his or her certification status. For certificate issuance it is 2 years out of the 3 years preceding the submission of an application; for certificate renewal or reissuance it is 1 year out of the preceding 3. In each case the amount of experience is cumulative during the 3 years preceding the submission of an application. An applicant may aggregate experience gained as a blaster or the equivalent with that gained under the direction of a blaster or the equivalent. Likewise, an applicant may aggregate shorter periods of interrupted experience to reach the 1 or 2 year totals.

In determining whether the years of experience claimed by an applicant meet the time periods specified in the rule, OSM will consider not only the duration of the experience, but also the type of activity involved. Only that experience which otherwise meets the requirements of this rule will be counted toward satisfying the minimum time requirement.

Section 955.11(b) differs from the proposed rule in a number of ways. One, to improve the organization of the rule the on-the-job training requirement in proposed § 955.11(a)(2) was relocated to § 955.12(a) of this final rule, which includes a related requirement for the completion of a training course, and a reference to the on-the-job training requirement in § 955.12 was added to § 955.11(c).

Rule Recognizes Blaster or the Equivalent

Two, this section now enables a person to qualify for an OSM blaster certificate by working as or under the direction of either a blaster *or the equivalent*. The proposed rule did not recognize equivalent experience.

Several commenters maintained that proposed § 955.11(a)(2) was too strict because many persons with adequate qualifications for an OSM blaster certificate would not meet, or have worked under the direction of someone else who meets, the narrow definition of the term "blaster."

As defined by 30 CFR 850.5, "*Blaster* means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part." Thus, the only experience recognized by proposed § 955.11(a)(2) was that obtained specifically in surface coal mining operations as, or under the direction of, the holder of an OSM or State blaster certificate issued under Part 850.

With respect to the proposal to recognize experience gained only in surface coal mining operations, these commenters suggested that OSM also recognize equivalent blasting experience gained in activities such as quarrying, construction, other mining, management, consulting, education and sales. OSM agrees, and the final rule now recognizes equivalent blasting experience gained in such activities. Later in this discussion, general criteria are given on what type of experience OSM may accept as equivalent.

With respect to the proposal to recognize experience gained only under an OSM or State blaster certificate, these commenters also suggested that OSM recognize equivalent experience gained under a State license not issued under Part 850.

OSM had proposed to do this in the transition period immediately following promulgation of this rule, when no one possibly could have sufficient experience under an OSM or State blaster certificate, by interpreting the word "blaster" in this provision to include any person licensed, certified or otherwise authorized by OSM or a State to conduct blasting operations. Thus, OSM agrees with these commenters and intends the words "or the equivalent" in this final rule to include experience gained under equivalent State licensing or certification procedures. This will obviate any special interpretation in the transition period, and will apply throughout the life of the rule.

Due to the many types of blasting experience which applicants for an OSM blaster certificate might proffer as equivalent, it is not possible for OMS to set precise criteria for assessing equivalance. Generally, however, OSM will accept as equivalent only that experience gained in activities which reasonably approximate the environment, procedures, shot size, and hazards of surface coal mining operations. This must include sufficient practical experience with blasting technique, equipment and personnel in an actual working environment. Mere abstract experience with the theory and practice of blasting will not suffice. Likewise, OSM will recognize as equivalent only a license, certificate or other authorization to conduct blasting operations which qualifies the holder to act in a capacity reasonably approximating that of a blaster.

Under this rule an applicant for an OSM blaster certificate will have the burden of demonstrating to the satisfaction of OSM that his or her experience is equivalent to that obtained as, or under the direction of, a blaster.

One commenter asked OSM to consider whether persons who are not responsible for blasting operations at a blasting site might need an OSM blaster certificate, and to modify the experience requirement of the rule accordingly. This commenter cited, for example, mine management personnel who are directly responsible for but are precluded by union rules from taking an active part in blasting operations, and consultants who develop blasting plans but do not participate in on-site blasting activities.

Under 30 CFR 816.61(c), the only person who must have an OSM blaster certificate is one conducting blasting operations at a blasting site. Management personnel and consultants away from the site are not required to have a certificate, regardless of any direct or indirect responsibility they may have for the operations. If such a person wanted to obtain an OSM blaster certificate, whether he or she could qualify would depend on whether the management or consulting experience was equivalent to that obtained as, or under the direction of, a blaster.

Minimum Amount of Experience

And three, this section now requires less experience for certificate renewal and reissuance than it does for certificate issuance. The proposed rule would have required 2 years of experience for all of these certificates.

Several commenters said that the requirement of this section for blasting experience in 2 out of the 3 years preceding submission of an application was excessive. One thought that considering the requirements for training and examination, 1 year of experience was sufficient. Another suggested that to prevent "severe hardships" OSM should reduce the requirement during the first year of the program to only 1 year, with at least 75% of that year worked directly as a blaster.

One commenter asked OSM to reconsider the minimum amount of experience required for reissuance of an OSM blaster certificate. This commenter suggested a requirement of 1 year of experience out of the preceding 3 to accommodate certificate holders who through uncontrollable circumstances did not actively engage in blasting for the entire 3-year certificate term.

To the extent these comments relate to certificate issuance, OSM disagrees. For certificate issuance this final rule retains the requirement for 2 years of experience out of the 3-year period preceding the submission of an application. Notwithstanding any inconvenience the requirement for 2 years of experience might impose on a candidate for certificate issuance, the safety and welfare of people and property at the blasting site are more important.

Blasting is a dangerous occupation, and among the numerous State and Federal government officials, consultants, manufacturers and other experts contacted by OSM in drafting the proposed rule there was a consensus that 2 years of experience was the minimum needed to qualify as a blaster. OSM agrees with this consensus, and concludes that a minimum of 2 years of recent experience is necessary to give most potential candidates for certification a sufficiently thorough understanding of explosives for them to assume responsibility for blasting operations.

This requirement for 2 years of experience should not put anyone out of work or otherwise impose a severe hardship for several reasons. First, it is unlikely that any significant number of persons who currently are working at a level of responsibility equivalent to that of a blaster would lack the required 2 years of experience. This is particularly true since the rule allows an applicant to aggregate experience gained as a blaster or the equivalent with that previously gained under the direction of a blaster or the equivalent.

Second, not everyone who handles explosives or works on a blasting crew must have a blaster certificate, only the blaster who is responsible for conducting blasting operations at a blasting site. Thus, a person who does not qualify for an OSM blaster certificate may continue to earn an income in the blasting profession while gaining the required experience.

Finally, as described previously for § 955.2, OSM will not implement the requirement for an OSM blaster certificate in Federal program States and on Indian lands until 12 months after the effective date of this rule. This interval will give potential applicants additional time to gain the required 2 years of experience.

To the extent these comments relate to certificate renewal and reissuance, however, OSM agrees that 1 year of experience out of the 3 years preceding the submission of an application is sufficient. The amount of expereince necessary to maintain proficiency as a blaster obviously is less than what is required to acquire such proficiency in the first place. Once an applicant has qualified for and obtained an OSM blaster certificate, 1 year of experience out of the preceding 3 is sufficient to maintain proficiency. Thus, the experience requirement for certificate renewal and reissuance has been reduced from 2 years to 1 year.

Section 955.11(c) Training.

Section 955.11(c) corresponds with proposed § 955.11(a)(4). In the proposed rule, this provision implied that every applicant was required to complete training in order to qualify for an OSM blaster certificate. However, training is required only for certificate issuance and reissuance. Applicants for other types of certificates need not complete additional training. To clarify this requirement, the phrase "For certificate issuance or reissuance" was added to § 955.11(c).

In addition, the term "blaster," which modified the term "training," was deleted as superfluous. And a reference to the requirements for on-the-job training and obtaining satisfactory evidence of training were added to correspond with changes in final § 955.12. For more information on these changes, and on the training requirement in general, see the discussion under subsequent heading *§ 955.12 Training.*

Section 955.11(d) Competence.

Section 955.11(d) is the same as proposed § 955.11(a)(3).

Section 955.11(e) Application.

Section 955.11(e) corresponds with proposed § 955.11(a)(5). The reference to a fee in this section was deleted as superfluous because this final rule now includes the fee in the definition of application.

Section 955.11(f) Examination.

Section 955.11(f) corresponds with proposed § 955.11(a)(6). The proposed rule did not explicitly state that the requirement for an examination applies only to certificate issuance and reissuance. Since applicants for other types of certificates need not pass an examination, the phrase "For certificate issuance or reissuance" was added to this section. For more information on the examination requirement, see the discussion under subsequent heading *§ 955.14 Examination.*

Section 955.11(g) Reciprocity.

This is a new paragraph which did not appear in the proposed rule. It merely cross-references § 955.16, which governs the grant of a certificate through reciprocity, to make the list of general requirements in this section more complete.

Section 955.11(h) Suspension and revocation.

Section 955.11(h) is the same as proposed § 955.11(a)(7).

Section 955.12 Training.

Section 955.12 requires an applicant for certificate issuance or reissuance to have completed a training course. An applicant for certificate issuance also must have completed on-the-job training. This section also requires OSM to ensure that courses are available to train potential applicants on the required topics.

Proposed § 955.12(b)(2) would have authorized OSM to modify the training required of an applicant for certificate reissuance to reflect previous training. This provision was deleted from this final rule as unnecessary because new § 955.12(b)(1) now contains a modified training requirement for certificate reissuance which inherently accounts for previous training. OSM does not intend to modify further the training required for certificate reissuance.

Section 955.12(a) On-the-job training.

Section 955.12(a) is a new provision derived from proposed § 955.11(a)(2). Paragraph (a)(1) requires each applicant

for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent to have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of 3 years preceding the submission of his or her application. The time period that applies to this requirement derives from proposed § 955.11(a)(2), and is adopted for the same reasons as discussed previously for the minimum experience requirement of § 955.11(b)(1).

Paragraph (a)(1) references a narrow exception to its requirements in § 955.14(c)(2), which for reexamination provides that any person who fails the examination and submits a new application within 2 years of completing training need not repeat training, or resubmit evidence of having completed training. For more information on this exception, see the subsequent discussion of the referenced § 955.14(c)(2).

Paragraph (a)(2) of this section requires the applicant to have obtained from either the blaster or the equivalent who provided the on-the-job training, the relevant employer at the time the training was received, or some other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph (a)(1). Satisfactory evidence must include sufficient information to demonstrate that the training was received, and enable OSM to contact either the blaster or the equivalent who provided the training, the employer, or the other knowledgable source, to verify this fact.

The applicant is given several options as to the source of the evidence because in some situations either the blaster who provided training or the employer may no longer be available to provide it. To avoid the problem of having to obtain satisfactory evidence from a blaster or employer with whom the applicant no longer is associated, or finding another sufficiently knowledgable source, OSM encourages blaster-trainees to obtain the required evidence on a routine basis as part of their training.

Section 955.12(b) Training course.

Section 955.12(b) corresponds with proposed § 955.12(a). Paragraph (b)(1) requires an applicant for the issuance or reissuance of an OSM blaster certificate to have completed a training course in specified topics. It references the same narrow exception to this requirement that was noted in the preceding discussion of § 955.12(a)(1).

Under this paragraph an applicant must complete training within 2 years of submitting an application. Depending on whether the application is for certificate issuance or reissuance, two different levels of training are required. For certificate issuance the training must cover the technical aspects of blasting operations, and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in 30 CFR 850.12(b). For certificate reissuance the training must cover any significant changes that have occurred in the topics specified in 30 CFR 850.15(b) since the applicant last completed a training course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no significant changes have occurred, then OSM may waive this latter requirement.

Section 955.12(b)(2) requires an applicant to have obtained from his or her training provider satisfactory evidence that he or she completed training in accordance with paragraph (b)(1). At a minimum, such evidence will include the names and addresses of the applicant and the training provider, and the type, content and date(s) of the training.

The evidence need not follow any specific format, as long as it adequately documents that the applicant has completed the required training. In specifying the type of training, it should indicate the nature of the training provider and the form of instruction. It should specify the content of the training in sufficient detail for OSM to judge whether the topics specified in 30 CFR 850.13(b) were covered adequately. And it should specify the date the training was begun, or how long it lasted, and the date it was completed.

The applicant need not include evidence of any grade that may have been received in a course, and a passing grade will not be considered by OSM as a criterion in determining whether an applicant has completed adequate training. No grade is required because OSM considers its examination to be an adequate measure of what the applicant has learned. The applicant will have the burden of demonstrating to the satisfaction of OSM that he or she has completed adequate training.

Section 955.12(b) differs from the proposed rule in several ways. One, as was implicit in the proposed rule, this final rule explicitly states that the training requirement applies only to applicants for certificate issuance or reissuance. Applicants for the other types of certificates need not complete any additional training or submit a training voucher.

Two, the maximum time that may elapse between the dates when an applicant completes training and submits an application is reduced from 3 years to 2 years. OSM has concluded that a 3-year interval is too long to ensure that a training course is sufficiently up-to-date with respect to significant changes in the law and technology. OSM considered shortening the interval to 1 year, but concluded that this would unreasonably restrict not only the training option available to an applicant, but also the time available for an applicant to complete the remainder of the certification process.

Three, this final rule substitutes for the term "OSM or equivalent training" in the proposed rule the term "a training course." As discussed subsequently for § 955.12(b), OSM will not itself provide any of the training required by this part, and therefore the term "OSM or equivalent training" is inapt. Since proposed § 955.12(b)(1) would have required OSM to provide or otherwise ensure the availability of training courses, the requirement that an applicant for certificate issuance or reissuance have completed a training course was implicit in the proposed rule.

To meet the requirements of this section, a training course must be adequate to prepare the applicant to assume responsibility for conducting blasting operations at a blasting site. This may include a correspondence course in which the trainee receives interactive instruction and feedback, but does not include unsupervised self-study of either prepared matter materials or random information on the required subjects.

A commenter asked OSM to provide specific criteria on what would constitute acceptable training, including the amount of time involved. OSM has concluded that specific criteria might limit unduly the training options available to potential applicants, with few offsetting benefits. Therefore, this rule provides only general criteria. For more information on the training requirement in general, see the notice of final rulemaking for 30 CFR 850.13. 48 FR 9438–9480 (March 4, 1983).

And four, final § 955.12(a)(1) now requires different levels of training for certificate issuance and reissuance. Proposed § 955.12(a) would have required applicants for both types of certificates to complete the same level of training. Proposed § 955.12(b)(2), however, would have authorized OSM to modify the training required for reissuance to reflect previous training an applicant had received. In response to public comments, OSM has included a modified training requirement for certificate reissuance directly in

paragraph (b)(1), and has deleted the corresponding provision of proposed § 955.12(b)(2).

OSM received a number of comments on the provision for modification of the training requirement. One commenter asked whether OSM had developed any criteria for determining the training required for certificate reissuance. This commenter suggested that OSM should require additional training only when a blaster must use new procedures, and thought that any training given to certificate holders would only duplicate training already offered by the Mine Safety and Health Administration (MSHA).

Revised § 955.12(b)(1) now bases the training required for certificate reissuance on any significant changes that have occurred in the topics specified in 30 CFR 850.13(b) since the applicant last completed a training course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. A potential applicant for certificate reissuance will be able to meet this requirement in most instances by taking a short refresher course. When no significant changes have occurred, OSM may waive this requirement entirely. OSM will not require anyone to duplicate training that already had been provided by MSHA, or any other adequate course, within the applicable 2-year period.

Section 955.12(c) Availability.

Section 955.12(c) corresponds with proposed section 955.12(b)(1). It requires OSM to ensure that courses are available as provided in 30 CFR 850.13(b) to train persons who are subject to Part 955 and responsible for the use of explosives in surface coal mining operations. This implements the requirement of § 850.13(b) that "[t]he regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations."

Section 955.12(b) differs from the proposed rule in a number of ways. One, as discussed previously in the introduction to this section, proposed paragraph (b)(2) was deleted in view of the two different levels of training included in final paragraph (b)(1).

Two, the phrase "subject to this part" was added to clarify that OSM must ensure the availability of courses only to the extent it is the regulatory authority. Under 30 CFR 850.13(b), the regulatory authority need only ensure that courses are available to persons under its jurisdiction. With respect to such courses, the jurisdiction of OSM as regulatory authority is limited to those persons who are subject to this part in Federal program States and on Indian lands.

And three, the requirement in proposed paragraph (b)(1) for OSM to provide courses has been deleted. Although one commenter agreed with this requirement, OSM has concluded that there is no need for it to duplicate the courses that already are available, or may be offered in the future, to provide the training required by section 955.12(b).

This same commenter also recommended that OSM develop a self-study training program. OSM does not intend to do so. As discussed previously for section 955.12(b), OSM has concluded that while a correspondence course in which a trainee receives interactive instruction and feedback may meet the training requirement of this section, unsupervised self-study of either prepared materials or random information on the required subjects will not. OSM is not prepared to engage in the interactive training a correspondence course would require. However, OSM will attempt to make available to potential applicants a list of courses, including any taught by correspondence, that meet the requirements of section 955.12(b).

This commenter also asked whether course instructors would need to have an OSM blaster certificate. The answer is no. Many fully competent instructors may not have sufficient, recent, practical experience to qualify for a certificate. Furthermore, the requirement for a blaster certificate applies only to persons responsible for conducting blasting operations at a blasting site.

Another commenter suggested that OSM should add to section 955.12 a new paragraph that would enable a surface mining permittee to train potential applicants for an OSM blaster certificate. OSM has not adopted this suggestion because the additional provision is unnecessary. Nothing in section 955.12 would preclude a permittee from providing the required training.

Section 955.13 Application.

Section 955.13 governs the application process for an OSM blaster certificate. It specifies the required application procedures, including the payment of an application fee and the submission of evidence of any applicable training, and requires OSM to make available a prescribed form on which an application must be submitted.

Section 955.13(a) Submission procedures.

Section 955.13(a) requires any person seeking an OSM blaster certificate to: (1) Complete and submit to OSM an application on the prescribed form; (2) include as part of the application a specified nonrefundable fee; (3) for certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in section 955.12; and (4) submit the application and fee a specified number of days in advance of a specified reference date, the number of days and the reference date in each case depending upon whether the application is for certificate issuance, renewal, reissuance, or a certificate through reciprocity.

Section 955.13(a)(1) Prescribed form.

For a discussion of the prescribed application form, see the subsequent heading *§955.13(b) Application form.*

Section 955.13(a)(2) Application fee.

Section 955.13(a)(2) requires an applicant to include as part of his or her application a fee that ranges in amount from $28 to $122, depending on the type of certificate sought. The proposed rule would have required the applicant to submit a fee "with the application," while this final rule requires the applicant to include the fee "as part of the application" since the term "application" now is defined by section 955.5 to include the fee.

The specified application fees are adopted under the authority of section 9701 of Pub. L. 97–258, 96 Stat. 1061 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 (31 U.S.C. 483(a)) of the Independent Offices Appropriation Act (IOAA). Section 9701 authorizes an agency to prescribe regulations establishing a charge for a service or thing of value provided by the agency. The charge must be fair and based on costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant facts.

The application fees in section 955.13(a)(2) were derived by calculating the direct and indirect costs OSM expects to incur in the certification process. For the issuance or reissuance of a certificate, the application fee includes the cost of clerical processing, technical review, and the cost of the examination. For reexamination, the fee includes only the cost of the examination.

For renewal or replacement of a certificate, or a certificate through reciprocity, the fee includes only the cost of processing the application and

certificate, since no examination is required. There is no fee for a temporary certificate, the cost of which is covered by the underlying application fee.

As shown by the following table, the application fee for the issuance or reissuance of an OSM blaster certificate is $122. This includes the costs OSM expects to incur in the clerical processing and technical review of the application; developing, administering, renting the facility for, and grading the examination; and processing the certificate. The application fee for reexamination of an applicant who has failed the examination on a previous attempt is $61, which covers the cost of the examination.

FEE CALCULATION FOR CERTIFICATE ISSUANCE AND REISSUANCE [1]

Activity	Time allotted (hours/appl.)	Hourly rate of pay: Clerical (GS–4)	Hourly rate of pay: Technical (GS–9)	Cost/applicant (dollars)
Application:				
Clerical processing	2	$7		$14
Technical review	3		$11	33
Examination:				
Develop	[2] 3		11	33
Administer	[3] 0.2		11	2
Facility	[4]			[4] 4
Grading	2		11	22
Certification: Process certificate	2	7		14
Total				$122

[1] Based on 1986 U.S. Government pay schedule.
[2] 300 hours/exam/year divided by 100 applicants/exam/year.
[3] 5 hours/exam divided by 25 applicants/exam.
[4] $100/exam divided by 25 applicants/exam.

The application fees for renewal and for a certificate through reciprocity are each $61. The fee calculation for these certificates is similar to that for issuance and reissuance, except that the cost of an examination is not included. For certificate replacement the application fee is $28, which includes only the cost of the clerical processing of the application and certificate.

One commenter said that a fee of $122 for certificate issuance and reissuance was "inflated and unjustifiable" because the number of hours OSM projected it would take to review and process an application, and to develop the examination, was excessive. The basis for this commenter's conclusions was his experience with administering a State blaster certification program.

OSM has reviewed the proposed fee schedule in light of this comment, but nevertheless has adopted the schedule as proposed. The hours projected for each activity in the fee calculation are reasonable estimates of the average amounts of time it will take OSM to issue or reissue a blaster certificate.

The amount of time allotted to each activity is an average for all certificates. While some certificates may take less time, others will take more. These allotted times cover both the development of the certification process, and its subsequent administration.

OSM does not intend merely to rubber-stamp an application, but to review thoroughly the applicant's training, experience, employment history, and other qualifications, and where there is any question, to verify the accuracy of the information provided.

The time allotted to developing, administering and grading the examination reflects the need to review and update the examination on a regular basis, and to insure that it fairly and accurately measures an applicant's qualifications. The time allotted to processing the certificate covers not only the actual issuance of the certificate itself, but also the maintenance of records, and any subsequent communications with certificate holders.

If experience shows that any application fee in this rule does not reasonably reflect OSM's costs, OSM will propose a new rule to adjust the fee accordingly.

Another commenter believed OSM should not charge a fee for a certificate through reciprocity. This commenter thought OSM was not justified in charging an applicant who already had paid a fee to a State for a similar service.

OSM disagrees. The fee for a certificate through reciprocity is an estimate of the actual costs OSM will incur in the certification process. As it is the applicant for a certificate through reciprocity who causes OSM to incur these costs, it is reasonable for the applicant to bear these costs through the payment of a fee.

Section 955.13(a)(3) Evidence of training.

This is a new paragraph that did not appear in the proposed rule. It requires an applicant for certificate issuance or reissuance to include as part of the application satisfactory evidence of having completed training as provided in section 955.12. As with the application fee described previously under section 955.13(a)(2), this evidence is defined by section 955.5 as part of the application. For more information on the requirement for evidence of training, see the preceding discussion of section 995.12.

Section 955.13(a)(4) Examination date.

This is a new paragraph that did not appear in the proposed rule. It was derived from proposed section 955.13(b), and requires an applicant for certificate issuance or reissuance to specify in the application the date when he or she desires to take a previously scheduled examination. While proposed section 955.13(b) explicitly required the application form to include provision for the applicant to specify the desired examination date, final section 955.13(b) now covers the application form only in general terms. To facilitate the interpretation of subsequent section 955.13(a)(5), which uses the date of examination as the benchmark for determining when an applicant for certificate issuance or reissuance must submit an application, the explicit requirement for the applicant to specify the examination date was retained in section 955.13(a)(4).

Section 955.13(a)(5) Submission deadlines.

Proposed section 955.13(a)(3) was renumbered as section 955.13(a)(5). It requires an applicant for certificate issuance, renewal or reissuance to submit his or her application not less than 60 days before certain specified dates. For certificate issuance the deadline is 60 days before the date on which the applicant desires to take a previously scheduled examination. For renewal it is 60 days before the expiration date of the applicant's current certificate. And for reissuance it is 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate.

The term "previously" was added to modify the term "scheduled examination" in this section to clarify the requirement that the applicant must conform with the current application

schedule published by OSM. OSM does not intend to adopt this schedule retroactively on the basis of requests it might receive from applicants for a particular examination date.

The deadline for submitting an application for certificate issuance or reissuance is keyed to the examination date in order to give OSM advance notice of how many people wish to attend, and thus enable OSM to schedule the necessary personnel and facilities. It is expected that OSM routinely will circulate an examination schedule for the information of prospective applicants.

These deadlines will give OSM the minimum amount of time it needs for processing the application, holding the examination, and the timely issuance, renewal or reissuance of any resulting certificate. Under this provision the applicant is responsible for submitting an application in time to obtain a certificate by a desired date, to gain admission to a particular examination, or to prevent the expiration of his or her certificate.

The direct consequence of a failure to meet any of these deadlines is limited to potential delay in the issuance, renewal or reissuance of a certificate beyond the date when one is needed or desired by the applicant. An indirect consequence may be the expiration of a certificate, and the resulting loss of authorization for the holder to work as a blaster.

Unless OSM issues a temporary certificate, a person whose certificate expires for any reason may not assume responsibility for blasting operations at a blasting site until the expired certificate is renewed or reissued.

Section 955.13(b) Application form.

Section 955.13(b) requires OSM to make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form must include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and require the signature of the applicant.

Proposed section 955.13(b) specified the contents of the application form in consideration detail. OSM has concluded that there is no need for so detailed a rule, and that the more general requirement of this final rule is sufficient. Notwithstanding this general requirement, the application form OSM will make available under this final rule will seek, and the applicant will be required to provide, essentially the same information as specified in the proposed rule.

OSM has adopted a prescribed form to simplify the application process from the standpoints of both the applicant and OSM. The form will assist the applicant in determining and providing the information required to qualify for each of the various types of certificates. It also will assist OSM by imposing on the application process a high degree of organization, uniformity and consistency.

One commenter suggested that OSM should require the applicant to have a notary attest to his or her signature on the application form. OSM did not adopt this suggestion because the required statement in accordance with law is sufficient to ensure the authenticity of the applicant's signature, as well as the accuracy of the information submitted in the application.

Section 955.14 Examination.

Section 955.14 governs the timing, completion, administration and content of the examination each applicant for the issuance or reissuance of an OSM blaster certificate is required to pass.

Section 955.14(a) Certificate issuance and reissuance.

Section 955.14(a) requires an applicant for the issuance or reissuance of an OSM blaster certificate to pass the written examination specified in paragraph (b) of this section, on the technical aspects of blasting and State and Federal laws governing the storage, transportation and use of explosives, as provided in 30 CFR 850.14. The applicant must pass the examination *after* submitting the application; passing a previous examination does not fulfill this requirement.

The requirement in proposed section 955.14(a) that an applicant pass a practical examination has been deleted; this final rule requires only a written examination. The reasons for this change are given in the following discussion of section 955.14(b).

OSM received numerous public comments concerning the examination requirement of section 955.14(a). Summaries of these comments, and OSM's responses, appear in the following discussion of sections 955.14 (b) through (e).

Section 955.14(b) Administration and content.

Section 955.14(b) requires OSM on a regular basis to schedule and hold a written examination on the technical aspects of blasting, and State and Federal laws governing the storage, transportation and use of explosives, as provided in 30 CFR 850.14. At a minimum the examination must cover the topics specified in 30 CFR 850.13(b), and include: (1) Objective questions; (2) blasting log problems; and (3) initiation system and delay sequence problems. The examination will be offered only in the English language.

Practical Examination Deleted

As discussed previously for paragraph (a), the requirement for a practical examination has been deleted from section 955.14(b)(1). OSM has concluded that a written examination is adequate to measure an applicant's grasp of blasting theory and practice, and that a hands-on practical examination would be difficult to administer and grade objectively. Together with the requirement of section 955.11(b) for practical field experience, the written problems contained in the examination will adequately measure an applicant's practical skills. For these reasons the proposed requirement for a practical examination was deleted from this rule.

Several commenters maintained that the examination should stress the practical aspects of blasting, as opposed to abstract theory. While OSM will not conduct a practical examination, it agrees with these commenters and will try to design the written examination in a way that measures as far as possible those aspects of blasting which are of practical significance to the conduct of safe and responsible blasting operations.

Oral Examination

Several commenters suggested that as an alternative to a written examination, the rule should provide for oral examination. They maintained that there are persons who otherwise may be qualified to hold an OSM blaster certificate, but lack the reading and writing skills necessary to pass a written examination. An oral examination, they concluded, would provide an alternative way to evaluate these persons.

These commenters identified two major categories of persons who may not be able to pass a written examination. One category includes persons with limited formal education who have learned blasting theory and technique primarily through practical experience. The other category includes persons who may be proficient in a language such as Spanish or Navajo, but could not pass a written examination in the English language.

One commenter described a miner-training program for a workforce consisting primarily of Navajo Indians, which is conducted in the Navajo language and includes oral examination.

This commenter noted that the regulations of the State of New Mexico authorize oral examination of Native Americans for blaster certification, and that the use of oral examination does not appear to have any negative effect on safety. This commenter suggested adding to this rule regulatory language similar to that of New Mexico, which would give OSM discretion to examine an applicant orally upon request in certain limited circumstances.

OSM appreciates the concerns of these commenters, but has not revised the rule to authorize oral examination. The existing rule at 30 CFR 850.14(a)(1) requires the regulatory authority to give candidates for blaster certification "a written examination." As here, a number of commenters on proposed section 850.14 requested that OSM also provide for oral examination. The reasons why OSM kept the requirement for a written examination are set out in the preamble to that final rule. 48 FR 9439–9440 (March 4, 1983). None of the comments on this current rule give OSM any reason to change that existing requirement.

The laws and regulations governing blasting are written in the English language. All of the information published by the Institute of Makers of Explosives on the safe storage, transportation and use of explosives is in the English language. In order to understand the technical specifications of explosives, prepare blast designs, submit the required records, interpret safety notices and other information, and give direction and on-the-job training to persons under his or her supervision, a blaster must be able to read and write the English language. The only effective way to measure adequately a candidate's ability to understand these materials and do these things is through a written examination in the English language.

Anyone who cannot pass the written examination required to qualify for certification nevertheless may work under the direction of a blaster on a blasting crew. Thus, the requirement to pass a written examination will not, by itself, prevent any miner from earning a living in the blasting profession.

Because this rule governs the certification of blasters on Indian lands, OSM is particularly sensitive to any affect the rule might have on Indians. OSM realizes that the requirement to pass a written examination in the English language may prevent some Indian miners from qualifying for an OSM blaster certificate, and that in some instances this may have an economic impact on some individuals. However, these impacts are offset by the need for OSM to consider the general need to assure the safety of fellow miners and other persons in the vicinity of the blasting site. To enhance protection of the health and safety of all who may be affected, this rule requires all applicants to pass a written examination in the English language.

Initiation System and Delay Sequence

Proposed section 955.14(b)(2)(iii) required the examination to include a "practical wiring simulation problem." Several commenters noted that this type of problem applies only to electrical initiation systems, but not to others, such as gas initiation, which a blaster might use. These commenters suggested that instead of a wiring simulation problem the examination should include a delay sequence simulation.

OSM agrees with these comments, and has revised section 955.14(b)(2)(iii) to eliminate the unintentional bias toward electrical systems. This section now requires the examination to include more general "[i]nitiation system and delay sequence problems," which will not be geared to any particular type of system.

Validation of Examination

Several commenters asked whether, and to what extent, OSM would validate the blaster certification examination, both from technical and equal employment opportunity standpoints.

From a technical standpoint, these commenters were concerned that a too hasty implementation of this rule might not give OSM sufficient time to design a technically valid examination. They noted that under section 955.14(c) an applicant who failed a poorly designed examination could repeat the examination only 1 time in the subsequent 12-month period. This, they believed, might prevent some applicants from meeting the requirement for an OSM blaster certificate within the required 12 months after the effective date of this rule.

OSM appreciates the concerns of these commenters, but it already has prepared what it considers to be a technically valid examination.

Nor should the limit of 2 examinations in a 12-month period under § 955.14(c) have a detrimental effect on any significant number of applicants. OSM is required by § 955.14(b)(1) to hold examinations on a regular basis. In view of the 12-month grace period provided by § 955.2, and even if much of this period is used to obtain the required training, most applicants will be able to take examination 2 times, if necessary, before they are required to have a certificate.

If OSM finds that any defect in the examination is causing a significant number of applicants to fail, it will consider steps to alleviate any resulting hardship. However, it seems most appropriate to make any revision to this regulation after actual experience has been obtained with the examination.

From an equal employment opportunity standpoint, OSM has determined that a validity study does not need to be conducted for the examination to be used as part of the process for determining whether individuals should be certified as blasters.

A validity study is required in certain circumstances by the Uniform Guidelines on Employee Selection Procedures of the Equal Employment Opportunity Commission (the EEOC guidelines, or the guidelines). 29 CFR Part 1607.

The EEOC guidelines apply to tests and other selection procedures used as a basis for employment decisions, including licensing and certification. Essentially, they require an agency to conduct a validity study of each examination for an applicable license or certificate.

In promulgating the existing rules at 30 CFR Subchapter M governing the certification of blasters, OSM interpreted the EEOC guidelines as applying to the examination for blaster certification. 44 FR 38321–38323 (1979), 45 FR 82086–82087 (1980), 47 FR 12781 (1982), and 48 FR 9488 (1983). Under this interpretation, OSM apparently would be required to conduct a validity study of the examination.

In light of the comments on the proposed rule, OSM has reexamined its previous interpretation of the EEOC guidelines to determine how they apply to the examination for blaster certification. OSM has concluded that its previous interpretation of the guidelines as applying to the blaster certification process was incorrect, and that a validity study of the examination is not required by law. Any decision by OSM to do a validity study is strictly a matter of agency policy.

By their own terms, the EEOC guidelines do not cover the blaster certification process. As the guidelines state, they "will be applied by . . . Federal agencies subject to section 717 of Title VII [of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972]." 29 CFR 1607.2A. However, the referenced section 717 of the Civil Rights Act applies only to "personnel actions affecting employees or applicants for

employment . . . in executive agencies." 42 U.S.C. 2000e–16(a).

Thus, the purview of the guidelines is limited to Federal personnel actions in executive agencies, and they apply to the blaster certification process only to the extent it affects such actions. But while blaster certification may be a prerequisite to employment as a blaster in the private sector, it is unrelated to any Federal personnel action. So neither section 717 nor the guidelines apply to the certification process.

Even if the EEOC guidelines could be construed as applying to the blaster certification process in general, the examination given to a candidate for certification is not a "selection procedure" as defined by the guidelines, and thus does not raise the need for a validity study.

The guidelines presume that any selection procedure which has an adverse impact on employment is discriminatory unless the procedure has been validated in accordance with the guidelines. 29 CFR 1607.3A. Selection procedures include tests which are used as a basis for any employment decision. "Employment decisions include . . . licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law." 29 CFR 1607.2B.

Under these provisions, an examination is not a selection procedure unless the underlying certification is covered by some Federal equal employment opportunity law. But the blaster certification process is not covered by section 717 of the Civil Rights Act, and OSM is aware of no other civil rights law which is applicable to the certification process. So the examination for blaster certification is not selection procedure covered by the guidelines.

Even where they are not mandatory, the EEOC guidelines may "be applied . . . by any . . . . Federal agency which adopts them." 29 CFR 1607.2A. However, OSM has decided as a matter of agency policy that applying the guidelines to the blaster certification process might raise irreconcilable conflicts with its overriding concern for protecting the public health and safety and the environment. OSM will make every effort to design an examination that is non-discriminatory, but considering the hazards inherent in blasting operations it will place primary emphasis on how well the examination will serve to minimize those hazards.

Modification of Examination

Proposed § 955.14(b)(3) would have authorized OSM to modify the examination given to an applicant for certificate reissuance to reflect a previous examination the applicant had passed. This provision was deleted from this final rule. OSM has concluded that an applicant for certificate reissuance should take and pass the same examination as an applicant for certificate issuance. Thus, there is no need for a provision authorizing OSM to modify the examination.

Additional Issues

One commenter noted that the proposed rule did not specify any locations where OSM would hold examinations, and recommended holding them near the mining operations affected by this rule.

OSM agrees that as far as practicable the examinations should be held in locations that are convenient to applicants. This rule does not specify any locations so that OSM will have maximum flexibility in selecting suitable examinations sites. The application submission deadlines in § 955.13(a)(5) will give OSM sufficient advance notice of the demand for an examination at a particular site, and enable it to relocate an examination to a more convenient site in appropriate circumstances.

One commenter asked whether OSM would make available to the public in advance of the examination a large number of questions from which it would select a smaller number for each version of the examination. While OSM does plan to prepare several different versions of the examination, to preserve the integrity of the examination OSM will not disclose any of the questions in advance. The list of topics in 30 CFR 850.13(b) and the general description of the examination in § 955.14(b)(2), in conjunction with the completion of adequate formal training, will give each candidate for an OSM blaster certificate adequate notice of what the examination questions will cover.

Several commenters suggested that OSM should divide the examination into sections, and require an applicant to retake only those sections which he or she fails to pass. The knowledge and skills required to conduct safe blasting operations are comprehensive in scope and not readily separable into discrete parts. A piecemeal approach to examination or reexamination would not accurately measure an applicant's overall qualifications. Furthermore, OSM believes that any benefits which a piecemeal approach to the examination might provide to applicants would not justify the resulting substantial increase in the administrative cost burdens which would be incurred by OSM. Therefore, this suggestion was not adopted in the final rule.

Several commenters recommended that OSM develop a different examination for each type of blast initiation system, and then restrict the resulting certificate to operations employing that system. They also suggested that a certificate might be restricted to operations in a particular State or region where that initiation system was in use. An applicant who wished to qualify for all types of systems or all jurisdictions would have to seek a comprehensive certificate.

This recommendation is evaluated in the subsequent discussion of § 955.15(b), under the heading *Restricted Certification*. OSM has determined that it will not be appropriate to issue restricted certificates, either on the basis of initiation system or of jurisdiction, hence, different examinations will not be required. The examination will cover blasting concepts of general application, will pertain equally to all systems, and will be the same for all Federal program States and Indian lands.

Section 955.14(c) Reexamination.

Section 955.14(c)(1)

Section 955.14(c)(1) allows an applicant who fails the examination to apply for reexamination by submitting a new application, including the prescribed fee. However, no person may take the examination more than 2 times in any 12-month period. Applicants are advised to keep a copy of each application for reference in preparing any subsequent applications.

Because a significant amount of time may elapse between failure and reexamination, with corresponding changes in the information provided by the applicant, a candidate for reexamination must submit an entire new application. Except where the applicant is not required to resubmit a training voucher, an application for reexamination does not differ from an initial application for the same type of certificate. Because the costs associated with processing the new application and conducting the reexamination are the same as for an original application, the applicant also is required to submit a new fee.

For determining how many times an applicant has taken the examination, the 12-month period is measured back in time from the date on which the applicant desires to repeat the examination. If more than 1 previous examination falls within that 12-month period OSM will not admit the applicant for reexamination on that date. OSM has adopted this limit to ensure that candidates for reexamination have

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sufficient time to study and gain the additional experience needed to prevent repeated examination failures.

One commenter maintained that the proposed limit of 2 examinations in a 12-month period was unnecessarily restrictive. This commenter suggested a frequency of no more than 1 examination in any 60 day period, and if the examination were divided into sections no more than 1 examination in any 30 day period. This commenter also recommended increasing the allowed frequency of reexamination during the first year-and-a-half of the program.

This commenter recommended more frequent reexamination for three reasons: One, the proposed limit might put miners who failed the examination out of work in the early part of the program. Two, the limit on reexamination, in conjunction with retesting requirements, could impede miners from moving from State-to-State. And three, this commenter disagreed with the statement in the proposed rule that a limit on reexamination was needed to give applicants who failed the examination time to gain more practical experience.

OSM disagrees, and has adopted none of the suggested alternatives. Nothing in the proposed rule will put a qualified applicant for an OSM blaster certificate out of work. An applicant who fails the examination the first time can take it a second time as soon as a new application and fee are processed and a subsequent examination is held. Anyone who is reasonably diligent in submitting applications should be able to take and retake the examination if necessary in the 12-month period between the effective date of this rule and the date when the requirement for a certificate is implemented. And anyone who fails to pass the examination before the requirement for a certificate is implemented can continue to work as a member of a blasting crew.

Nor will the limit on reexamination impede the movement of blasters from State to State. An OSM blaster certificate is valid in all Federal program States and on all Indian lands. The holder of a certificate may work in any of these jurisdictions without restriction. Although a blaster who wants to work in a State with a State regulatory program must have a State blaster certificate, the limit on reexamination under this rule will not prevent an applicant for a State certificate from taking the State examination.

OSM continues to believe that an applicant who fails the examination 2 times in a 12-month period will benefit from gaining additional practical experience before reexamination. Although the examination is in written form, it measures not only blasting technique, but also the practical knowledge an applicant gains through on-the-job training and experience. This rule will increase the likelihood that an applicant who fails the examination repeatedly will gain the added theoretical and practical knowledge needed to pass it on a subsequent attempt.

One commenter suggested that OSM should limit reexamination to those topics an applicant failed to pass on the previous attempt. As discussed previously for § 955.14(b), OSM will not divide the examination into separate sections, either for initial examination or for reexamination.

One commenter concluded that an applicant who failed the examination at the start of a 12-month period, and again at the end of the period could not take the examination again for 1 full year. This interpretation of the rule is incorrect. On the anniversary of the first attempt the applicant would be eligible to take the examination a third time without exceeding the limit of 2 examinations in a 12-month period.

Section 955.14(c)(2)

Under § 955.14(c)(2), any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat training or resubmit evidence of having completed training. This is a new provision that did not appear in the proposed rule. It was added to clarify that retraining is not necessarily required for reexamination, and to eliminate the unnecessary resubmission of evidence when OSM already has evidence of current training on file for the applicant. An applicant for reexamination who does not submit a new application within 2 years of completing training must repeat training and submit new evidence of having completed training. Any application for reexamination must otherwise meet the requirements for an original application.

Section 955.14(d) Failure to attend.

Except where the applicant shows and OSM finds good cause, § 955.14(d) authorizes OSM to reject the pending application of anyone who fails to take the examination after OSM has granted his or her request for admission. This section is essentially the same as proposed.

OSM will administer this section as follows:

Either before or after the examination is held, an applicant may show OSM that he or she has good cause for failing to take it. For example, medical, employment or other unforeseen circumstances may make it impracticable for an applicant to take the examination. By notifying OSM sufficiently in advance of the examination date, the applicant may learn whether OSM will reject his or her application, and adjust his or her plans accordingly.

To make the showing an applicant should send OSM a letter describing the cause of the failure, and indicating the new date, if any, when the applicant desires to take the examination. Within a reasonable time after receiving the letter, OSM will notify the applicant of its decision.

If OSM has not received such a letter from an applicant who fails to take the examination, OSM will notify the applicant that he or she has 30 days to show good cause and to request a subsequent examination date, after which OSM may reject his or her application.

OSM will have complete discretion in determining whether an applicant shows good cause for failing to take the examination, and its decision will be final and not subject to appeal. An applicant whose application is rejected under § 956.14(e) may reapply for an OSM blaster certificate by submitting a new application.

Section 955.15 Certification.

Section 955.15 governs: (a) The processing of an application for an OSM blaster certificate; (b) the grant of a certificate; (c) the term of a certificate; (d) the limits on certificate renewal; (e) the grant of a temporary certificate; (f) the conditions of certification; and (g) notice of a certificate holder's change of address.

Section 955.15(a) Processing of application.

Section 955.15(a) governs the processing of an application for an OSM blaster certificate. It establishes procedures for: (1) Notifying an applicant of the receipt of, and of any deficiency in, his or her application; (2) notifying an applicant that his or her request for admission to a scheduled examination either is granted or denied; and (3) rejecting an application.

This section differs from the proposed rule in two ways. One, unlike proposed paragraph (a), which required OSM to notify only an applicant for certificate issuance or reissuance of the status of his or her application, and of any deficiency, final paragraph (a)(1) requires OSM to provide this notice to every applicant. This change eliminates the inconsistent treatment the proposed

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rule gave to applicants for different types of certificates.

And two, paragraph (a)(2) is added to require explicitly that when OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly. The authority given to OSM by this section was implicit throughout the proposed rule, as was the requirement for notice to the affected applicant. This section merely defines that authority in concrete terms, as well as the criterion OSM is to apply in rejecting an application. In administering this section OSM will determine that an applicant has failed to qualify for an OSM blaster certificate only after the applicant has had a reasonable opportunity to comply with the procedures established by this part.

Section 955.15(b) Grant of certificate.

Section 955.15(b) requires OSM to:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked, OSM blaster certificate as provided in § 955.17(e).

The term "grant" did not appear in the proposed rule. To simplify the language of the rule, it is used to refer generally to certificate issuance, renewal, reissuance and replacement, and to certification through reciprocity. The term "qualified applicant" is included in this section to insure that all of the requirements of Part 955 are taken into consideration by OSM in deciding to grant or deny a certificate to a particular applicant.

Paragraph (b)(5) is a new provision that did not appear in the proposed rule. It does not impose any new requirement, but merely references subsequent § 955.17(e), which governs the reinstatement of a suspended certificate and the reissuance of a revoked certificate.

Restricted Certification

Several commenters suggested that OSM should issue several classes of certificates, based on the different blast initiation systems currently in use. To be certified for all systems, a blaster would have to obtain a comprehensive certificate. OSM did not adopt this suggestion. A candidate who qualifies for an OSM blaster certificate through training and experience with one initiation system will be able to use any other system safely. The principles that enable a blaster to control ground vibration, airblast, and flyrock are uniform from system to system. OSM will neither require training in, nor base either the examination or certification on, any particular type of blast initiation system.

One commenter suggested that OSM should restrict an OSM blaster certificate to a specific State or region. OSM did not adopt this suggestion. An OSM blaster certificate will entitle the holder to work as a blaster in all Federal program States and on all Indian lands. The requirements of Part 955 will ensure that a blaster is qualified to conduct safe blasting operations, regardless of the State or region involved.

Also, as discussed previously for § 955.1, under the heading *Relationship to State Law and Programs*, in addition to complying with any Federal requirements a blaster must comply with applicable State law and regulations. To the extent the requirements for certification under Part 955 do not meet the needs of a particular State, the State may impose additional non-conflicting requirements. Thus, there is no reason to tailor an OSM blaster certificate to the requirements of any State or region.

One commenter wanted OSM to grant a certificate only to those persons who truly need it to work as a blaster in a Federal program State or on Indian lands, but deny a certificate to those who want one only for the status it might convey. Another commenter thought that any qualified candidate should be able to obtain a certificate.

OSM disagrees with the former commenter, and agrees with the latter. This rule does not authorize OSM to consider an applicant's need in evaluating his or her qualifications for an OSM blaster certificate. There is no way by which OSM objectively could measure the need for a certificate. Therefore, OSM will issue an OSM blaster certificate to any applicant who has the required qualifications, and will not attempt to assess the applicant's need or motive.

Section 955.15(c) Term of certificate.

Section 955.15(c) specifies the terms of the different types of OSM blaster certificates. Under this section, OSM will issue a certificate for a term to expire 3 years from the date of issuance.

A renewed or reissued certificate will expire 3 years from the expiration date of the applicant's current or expired certificate. This will provide continuity of certification without penalizing an applicant who applies in a timely manner. And it will preclude the possibility of extending the certificate term by submitting a late application. The term "expired" was added to paragraphs (c)(2) and (c)(3) to clarify the intent of the proposed rule, in which the term "current" was ambiguously used to refer to both in-force and expired certificates. Neither the term "current" nor the term "expired" applies to a temporary certificate, and the granting of a temporary certificate has no effect on the term of any subsequent certificate.

A replacement certificate will expire on the same date as the applicant's lost or destroyed certificate.

A certificate granted through reciprocity will expire 60 days after the expiration date of the corresponding State certificate. This 60 day extension will prevent a potential lapse of OSM certification in the period when OSM is processing a reciprocity application. Since an applicant may qualify for reciprocity only after the corresponding State certificate is granted, the OSM certification process necessarily will lag that of the State. If the State and OSM certificates expired on the same date it would not be possible for an applicant to requalify for reciprocity before the OSM certificate expired.

Section 955.15(d) Limits on renewal.

Section 955.15(d) prohibits OSM from renewing an OSM blaster certificate more than 1 time. It also prohibits OSM from renewing an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. To extend a renewed certificate, or one that has been expired for more than 1 year, the certificate holder must apply to OSM for certificate reissuance.

The limitation to a single certificate renewal will ensure that each blaster is trained and examined at 6-year intervals, and thus ensure that he or she continues to have the competence, knowledge and experience necessary to accept responsibility for conducting blasting operations.

One commenter disagreed with the proposed limit on certificate renewal as unnecessary and counterproductive, while agreeing that a certificate holder should be required to demonstrate continuing proficiency. As an alternative

to renewal, this commenter suggested the concept of certificate continuance. To qualify for certificate continuance, an applicant merely would have to provide evidence of sufficient recent experience.

OSM did not adopt this suggestion. Certificate continuance would not give a blaster adequate incentive to maintain his or her initial proficiency, or to keep abreast of current developments. The lack of a requirement for periodic training and examination would deprive a blaster of the incentive to obtain necessary information and feedback on a regular basis in an organized training course. And it would severely reduce the ability of OSM to reevaluate a blaster's qualifications at regular intervals.

The prohibition in this rule against the renewal of a certificate that expired more than 1 year prior to the date of an application for renewal is a new provision that was suggested in the proposed rule. It fills a gap in the proposed rule regarding how OSM should treat an applicant who holds an expired certificate. OSM has concluded that since an applicant who holds such a certificate would not have worked as a blaster for at least 1 year, and possibly more, he or she would be likely to need the additional training, and should be required to pass the examination required for certificate reissuance.

The proposed rule solicited public comment on whether the final rule should set such a 1-year deadline. Only one comment was received on this issue. The commenter suggested that 90–120 days before the expiration date of an OSM blaster certificate, OSM should send to the holder a notice of expiration. The period of 90–120 days was suggested to give the holder time to meet the 60-day deadline for submitting an application, as required by § 955.13(a)(4). This commenter also suggested that OSM should notify any blaster whose certificate had expired, and then issue a temporary certificate if an application for renewal or reissuance was submitted within 30 days. If this notice were provided, the commenter thought the 1-year limit that was suggested in the proposed rule was neither necessary nor appropriate.

OSM disagrees with this comment regarding the 1-year limit on renewal of an expired certificate. As was explained previously, this limit is included in the final rule. There is, however, no time limit for submitting an application for the reissuance of an expired certificate.

OSM agrees with the comment, however, that a notice of certificate expiration would be useful to blasters, and although not required to do so by this rule OSM will provide such notice on a discretionary basis in administering the blaster certification program. Approximately 60 days before a certificate is due to expire, OSM will attempt to send the blaster written notice of the need for renewal or reissuance.

This advance notice will be entirely discretionary, and any failure of OSM to provide it will have no effect on any requirement of Part 955. Along with this notice OSM also may provide a copy of the application form, and updated information concerning training, the examination, or other requirements. As this advance notice should be sufficient to inform a blaster of the need to extend his or her certificate, OSM will not provide any additional notice once a certificate has expired.

Finally, OSM agrees with this commenter that the period during which an applicant may request a temporary certificate should not extend beyond 30 days after certificate expiration, and has revised this rule accordingly. For more information on the affected provision, see the following discussion of § 955.15(e).

Section 955.15(e) Temporary certificate.

Section 955.15(e) authorizes OSM, in its discretion, to issue a temporary OSM blaster certificate for a maximum term of 90 days to any applicant who demonstrates that his or her current certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control.

The proposed rule did not set a deadline by which an applicant must request a temporary certificate. However, as noted in the preceding discussion of § 955.15(d), a commenter suggested the 30-day limit adopted in this rule. OSM has concluded that this 30-day limit is necessary to ensure that a temporary certificate does not extend unreasonably beyond the date of the expired certificate, and that a temporary certificate is granted only to persons who are likely to meet the qualifications for the grant of a regular certificate.

Section 955.15(f) Conditions of certification.

Section 955.15(f) requires the holder of an OSM blaster certificate to comply with the conditions specified in 30 CFR 850.15 (d) and (e). These conditions concern protecting a certificate, exhibiting a certificate upon request, and prohibitions against the assignment or transfer of a certificate and the delegation of a blaster's responsibility.

Section § 955.15(g) Change of address.

Section 955.15(g) requires the holder of an OSM blaster certificate to notify OSM in writing within 30 days of any change in his or her address.

This new provision, which did not appear in the proposed rule, merely extends the proposed requirement for current address information in the application. It will enable OSM to maintain up-to-date records on where to send the notices required by § 955.15(a), as well as the discretionary notice of impending certificate expiration previously discussed under § 955.15(e).

Section § 955.16 Reciprocity.

Section 955.16 governs the grant of an initial or subsequent OSM blaster certificate through reciprocity. It applies only to persons who hold a current blaster certificate issued by a State regulatory authority, and only to the grant of a certificate by OSM. It does not apply when the holder of an OSM blaster certificate moves from one Federal program State to another, or to or from Indian lands. While a State may impose additional nonconflicting requirements, an OSM blaster certificate is valid in any Federal program State or on any Indian lands, and in these jurisdictions there is no need for a blaster to seek reciprocity from the State.

Proposed § 955.16(d) was deleted from this rule because replacement of a certificate granted through reciprocity is covered adequately by the general provision for certificate replacement in § 955.15(b)(3).

Section § 955.16(a) Grant of certificate.

Section 955.16(a) combines proposed paragraphs (a) and (b) to eliminate duplication. It requires OSM to grant an OSM blaster certificate through reciprocity to any qualified applicant who holds a current blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. The State must have an approved blaster certification program, and not merely an approved State program, since in some instances the latter might exist without the former.

This section now states that an applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training and examination requirements of Part 955. This new provision was added to clarify the implicit intent of the proposed rule.

The proposed rule would have required that the OSM-approved State blaster certification program have "rules

no less effective than this part." This phrase was deleted from the final rule as superfluous because an OSM-approved State program necessarily must meet this standard.

The application, certification, suspension and revocation, and other applicable procedures for a certificate through reciprocity are specified elsewhere in Part 955.

OSM received several public comments that misinterpreted the scope of this section. One commenter used the term "State regulatory authority" as applying to any State agency with jurisdiction over the licensing or certification of persons for the storage, transportation or use of explosives. Under this rule, however, the term "State regulatory authority" applies only to a State agency administering the Act under a State regulatory program. For the definition of the term "regulatory authority," see 30 CFR 700.5.

Another commenter misinterpreted this rule as affecting the right of a State to grant or deny reciprocity to the holder of an OSM or out-of-State blaster certificate. This rule governs only the grant of a certificate through reciprocity by OSM. It does not require any State either to grant or to deny reciprocity to a blaster licensed or certified by either OSM or another State.

Section § 955.16(b) Subsequent certificate.

Section 955.16(b) governs the grant of a subsequent certificate to a person who holds an OSM blaster certificate granted through reciprocity. Paragraph (b)(1) authorizes the holder to obtain a subsequent certificate either through reciprocity, or by meeting directly the applicable requirements of Part 955 for certificate issuance, renewal or reissuance. Paragraph (b)(2) prohibits OSM from recognizing a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

This section will prevent an applicant from using reciprocity as the initial step toward obtaining full OSM certification. An applicant granted an OSM certificate through reciprocity must continue to rely on reciprocity unless he or she otherwise qualifies under the procedures of this part for the issuance, renewal or reissuance of a certificate.

One commenter noted that if OSM withdrew approval of a State blaster certification program there could be blasters whose OSM blaster certificates were based on reciprocity with that State program. This commenter was concerned that a blaster in this situation would no longer be able to rely on reciprocity to obtain a renewed or reissued OSM blaster certificate, but would have to meet the training and examination requirements of Part 955. This commenter concluded that in this situation a blaster who previously had qualified for a certificate through reciprocity should be exempt from meeting any additional training and examination requirements.

OSM disagrees. This rule provides for reciprocity to avoid duplicating the requirements of approved State blaster certification programs with rules no less effective than Part 955. If OSM withdrew the approval of a State blaster certification program any basis for reciprocity would cease to exist. Moreover, a State program for which approval is withdrawn may have included inadequate provision for training and examination. It would be inconsistent for OSM on the one hand to withdraw approval of a deficient State program, but on the other hand to exempt an applicant for an OSM blaster certificate from additional training and testing on the basis of that deficient program.

Due to the variety of situations that might arise, it is not possible to specify the effect of State program withdrawal on each OSM blaster certificate that is based on reciprocity. If OSM finds it necessary to withdraw the approval of a State blaster certification program, upon promulgating a Federal program for that State it will inform any affected blasters of what they must do to comply with Part 955.

Section 955.17 Suspension and revocation.

Section 955.17 governs the suspension and revocation of an OSM blaster certificate. It specifies: (a) The cause, nature and duration of a suspension or revocation: and procedures for (b) notice and hearing; (c) decision and appeal; (d) surrender of a certificate; (e) certificate reinstatement and reissuance; and (f) conformance with State action.

Section 955.17(a) Cause, nature and duration.

Section 955.17(a)(1) authorizes, or upon a finding of willful conduct of the blaster requires, OSM to suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in 30 CFR 850.15(b). The term "OSM-certified" was added to modify the term "blaster" in this and other paragraphs of this section to clarify that this rule applies only to certificates issued under this part.

The reasons for suspension and revocation specified in 30 CFR 850.15(b) include noncompliance with any order of the regulatory authority; unlawful use in the workplace of, or current addiction to, alcohol, narcotics or other dangerous drugs; violation of any provision of State or Federal explosives laws or regulations; and providing false information or a misrepresentation to obtain certification.

Section 955.17(a)(2) requires OSM to suspend the certificate of the blaster as soon as is practicable where it has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment.

Section 955.17(a)(3) requires OSM to make the nature and duration of a suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it. The wording of this section is essentially the same as the last sentence of proposed paragraph (a)(1). It was relocated in a separate paragraph to clarify that this requirement applies not only to a suspension, revocation or other action under paragraph (a)(1), but also to a suspension under paragraph (a)(2).

Section 955.17(b) Notice and hearing.

Section 955.17(b) requires OSM, when practicable, to provide to the affected certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. It requires OSM to limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

This section differs from the proposed rule in several ways. The term "affected blaster" was changed to "certificate holder" because the former term would have been inapt in situations where OSM revoked a certificate before it provided the required notice, as the holder of a revoked certificate would not meet the definition of "blaster." This change does not affect the substance of the rule. Also, the period of a temporary suspension was limited to a maximum of 90 days. This will insure that a certificate holder subject to a termporary suspension is given a reasonably prompt opportunity for a hearing.

Section 955.17(c) Decision and appeal.

Section 955.17(c) requires OSM to notify the certificate holder of its final decision affecting his or her OSM blaster certificate, including the reason

for any suspension, revocation or other action, by certified mail within 30 days after written notice and an opportunity for an informal hearing. The term "certificate holder" was substituted for the term "affected blaster" for the same reason as previously discussed for § 955.17(b). If the certificate was issued through reciprocity, OSM also must notify the State regulatory authority of its action.

In addition, in any decision suspending, revoking or taking other action on an OSM blaster certificate, § 955.17(c) requires OSM to grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286. The specific reference to the applicable appeal procedures, which did not appear in the proposed rule, was added for the information of potential appellants. OSM is required to grant the right of appeal in the decision itself because such a grant is a prerequisite to appeal under the referenced provisions.

Section 955.17(d) Surrender of certificate.

Section 955.17(d) requires a certificate holder, upon receiving written notice of a suspension, revocation or other action, immediately to surrender to OSM his or her OSM blaster certificate to OSM in the manner specified in the notice. Again, the term "certificate holder" was substituted for the proposed term "the blaster" for the reasons previously discussed for § 955.17(b). A requirement that the notice be in writing was added to eliminate ambiguity. And finally, the phrase "in the manner specified in the notice" was added to clarify how the blaster is to accomplish the surrender. This latter change, which requires OSM to inform the blaster of the applicable procedures, will make it easier for a blaster to comply with this section.

Section 955.17(e) Reinstatement and reissuance.

Section 955.17(e) governs the reinstatement or reissuance of a suspended or revoked OSM blaster certificate. Paragraph (e)(1) requires OSM to reinstate a suspended certificate when (i) the term of a definite suspension expires, or (ii) when the former certificate holder demonstrates and OSM finds that the cause of an indefinite suspension has been corrected. The term "former certificate holder" was substituted for the proposed term "blaster" for the reasons previously discussed for a similar change in § 955.17(b). Upon reinstatement, OSM must return the certificate to the blaster with written notice.

Paragraph (e)(2) requires OSM to reissue a certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, (i) that the cause of the revocation has been corrected, and (ii) that the applicant meets all other applicable requirements of Part 955. This section combines the overlapping requirements of proposed §§ 955.17(e) and 955.17(f) to eliminate unnecessary duplication and simplify the rule. It does not change the substance of what was proposed.

Section 955.17(f) Conformance with State action.

Section 955.17(f) corresponds with proposed § 955.17(g). It requires OSM to suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in this rule were submitted to the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0063. The information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95-87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The proposed changes will not have an adverse effect on the investment or productivity of United States coal operators. Employment in the coal industry will not be significantly affected since the rule will not affect coal production procedures. There also will be no effect on the ability of United States coal operators to compete with foreign coal operators in the domestic or export markets. While some costs may increase, they will be offset by corresponding increases in safety, which will benefit both coal operators and the public in general.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the cost to an operator or blaster for a certificate is minimal.

National Environmental Policy Act

To the extent this rule governs the certification of blasters in Federal Program States it is part of a Federal program, the promulgation of which is exempt under section 702(d) of the Act, 30 U.S.C. 1292(d), from compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

To the extent this rule governs the certification of blasters on Indian lands, OSM has prepared an environmental assessment (EA) and has made a finding that it would not significantly affect the quality of the human environment. The EA and finding of no significant impact are on file in the administrative record for this rule in the OSM Administrative Record Room at 1100 L Street, NW., Washington, DC.

Author

The author of this final rule is Arthur Anderson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1504 (Commercial or FTS).

Certification

An application form for an OSM blaster certificate may be obtained from any OSM office. Contact your nearest OSM office to determine the dates, locations and times of any certification examinations that may be scheduled for your vicinity. Your application for a certificate must be submitted to and approved by OSM before you may take the examination.

List of Subjects

30 CFR Part 750

Indian lands, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 900

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 910

Administrative practice and procedure, Environmental protection,

Intergovernmental relations, Penalties, Surety bonds, Surface mining, Underground mining.

30 CFR Part 912

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 921

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 922

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 933

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 937

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 939

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 941

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 947

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 955

Coal mining, Explosives, Indian lands, Intergovernmental relations, Safety, Surface mining, Training program, Underground mining.

For the reasons set out in the preamble, 30 CFR Parts 750, 816, 817, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 are amended, and 30 CFR Part 955 is added, as follows:

Dated: April 14, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

1. The authority citation for Part 750 continues to read as follows:

Authority: 30 U.S.C. 1201–1328; 5 U.S.C. 301.

2. Section 750.19 is revised to read as follows:

§ 750.19 Certification of blasters.

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of §§ 816.61(c) and 817.61(c) and Part 955 of this chapter.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 reads as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

4. Paragraph (c)(4) of § 816.61 is revised to read as follows:

§ 816.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the blasting plan and site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

6. Paragraph (C)(4) of § 817.61 is revised to read as follows:

§ 817.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

* * * * *

PART 900—INTRODUCTION

7. The authority citation for Part 900 continues to read as follows:

Authority: Secs. 102, 201, 405, 503, 504, 505 and 523 of Pub. L. 95–87 (30 U.S.C. 1201, 1211, 1235, 1253, 1254, and 1273).

8. Section 900.1 is revised to read as follows:

§ 900.1 Scope.

This part sets forth the purpose and organization of Parts 901–955 of this subchapter.

9. Section 900.11 is revised to read as follows:

§ 900.11 Organization of this subchapter.

Parts 901 through 950 are reserved for each State alphabetically. The program applicable within each State is codified in the part for that State. In addition, Part 955 establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands.

10. Section 900.13 is revised to read as follows:

§ 900.13 Federal programs and Federal coal exploration programs.

The rules for each Federal program and Federal coal exploration program are codified below under the assigned part for the particular State. Rules governing the training, examination and certification of blasters for surface coal mining operations in States with Federal programs are codified in part 955, and referenced by each Federal program.

PART 910—GEORGIA

11. The authority citation for Part 910 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

12. Section 910.955 is added to read as follows:

§ 910.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 912—IDAHO

13. The authority citation for Part 912 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat 445.

14. Section 912.955 is added to read as follows:

§ 912.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 921—MASSACHUSETTS

15. The authority citation for Part 921 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

§ 921.850 [Removed]

16. Section 921.850 is removed.

17. Section 921.955 is added to read as follows:

§ 921.955 Certification of blasters.

Parts 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 922—MICHIGAN

18. The authority citation for Part 922 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

19. Section 922.955 is added to read as follows:

§ 922.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 933—NORTH CAROLINA

20. The authority citation for Part 933 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 933.850 [Removed]

21. Section 933.850 is removed.

22. Section 933.955 is added to read as follows:

§ 933.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 937—OREGON

23. The authority citation for Part 937 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

24. Section 937.955 is added to read as follows:

§ 937.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 939—RHODE ISLAND

25. The authority citation for Part 939 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445 *et seq.* (30 U.S.C. 1201 *et seq.*).

§ 939.850 [Removed]

26. Section 939.850 is removed.

27. Section 939.955 is added to read as follows:

§ 939.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 941—SOUTH DAKOTA

28. The authority citation for Part 941 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

29. Section 941.955 is added to read as follows:

§ 941.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 942—TENNESSEE

30. The authority citation for Part 942 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 942.855 [Removed]

31. Section 942.855 is removed.

32. Section 942.955 is added to read as follows:

§ 942.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 947—WASHINGTON

33. The authority citation for Part 947 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 947.850 [Removed]

34. Section 947.850 is removed.

35. Section 947.955 is added to read as follows:

§ 947.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

SUBCHAPTER T—PROGRAM FOR THE CONDUCT OF SURFACE MINING ACTIVITIES WITHIN EACH STATE

36. In Subchapter T, Part 955 is added to read as follows:

PART 955—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Sec.

955.1 Scope.
955.2 Implementation.
955.5 Definitions.
955.10 Information collection.
955.11 General requirements.
955.12 Training.
955.13 Application.
955.14 Examination.
955.15 Certification.
955.16 Reciprocity.
955.17 Suspension and revocation.

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*). Sec. 955.13 also issued under sec. 9701, Pub. L. 97–258 (31 U.S.C. 9701).

§ 955.1 Scope.

This part establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal,

reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

§ 955.2 Implementation.

In accordance with §§ 750.19, 816.61(c) and 817.61(c) of this chapter, after June 30, 1987, in Federal program States and on Indian lands any person who is responsible for conducting blasting operations at a blasting site shall have a current OSM blaster certificate.

§ 955.5 Definitions.

As used in this part:

Applicant means a person who submits an application for an OSM blaster certificate.

Application means a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments.

Issue and *issuance* mean to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity.

Reciprocity means the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate.

Reissue and *reissuance* are synonymous with the term *recertification* in § 850.15(c) of this chapter, and mean to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

Renew and *renewal* mean to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* mean to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

§ 955.10 Information collection.

The information collection requirements in this part were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0063. This information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

§ 955.11 General requirements.

To qualify for an OSM blaster certificate, a person shall:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) In the 3 years prior to submitting an application have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for the following cumulative length of time:

(1) Certificate issuance—2 years; or

(2) Certificate renewal or reissuance—1 year;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as provided in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as provided in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

§ 955.12 Training.

(a) *On-the-job training.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent shall:

(1) Have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of the 3 years preceding the submission of his or her application; and

(2) Have obtained from the blaster or the equivalent, the relevant employer, or other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph(a)(1) of this section.

(b) *Training course.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance or reissuance of an OSM blaster certificate shall:

(1) Within 2 years prior to submitting an application, have completed a training course as follows:

(i) For certificate issuance the course shall cover the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in § 850.13(b) of this chapter; or

(ii) For certificate reissuance the course shall cover any significant changes that have occurred in the topics specified in § 850.13(b) of this chapter since the applicant last completed a course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no siginficant changes have occurred, OSM may waive this requirement; and

(2) Have obtained from the training provider satisfactory evidence that he or she has completed training in accordance with paragraph(b)(1) of this section.

(c) *Availability.* OSM shall ensure that courses are available as provided in § 850.13(b) of this chapter to train persons subject to this part who are responsible for the use of explosives in surface coal mining operations.

§ 955.13 Application.

(a) *Submission procedures.* Any person seeking an OSM blaster certificate shall:

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Include as part of the application a nonrefundable fee as follows:

(i) Issuance or reissuance	$122
(ii) Reexamination	$61
(iii) Renewal	$61
(iv) Replacement	$28
(v) Reciprocity	$61;

(3) For certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in § 955.12;

(4) For certificate issuance or reissuance, specify in the application the date when the applicant desires to take a previously scheduled examination; and

(5) Submit the application in advance of the date of examination, or of certificate expiration, as follows:

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate;

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate; or

(iv) For a certificate through reciprocity, not less than 45 days before the expiration date of the applicant's current certificate.

(b) *Application form.* OSM shall make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form shall include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and shall require the signature of the applicant.

§ 955.14 Examination.

(a) *Certificate issuance or reissuance.* After submitting an application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written examination, as provided in paragraph (b) of this section.

(b) *Administration and content.* (1) On a regular basis OSM shall schedule and hold a written examination on the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, as provided in § 850.14 of this chapter.

(2) The examination at a minimum shall cover the topics specified in §850.13(b) of this chapter, and shall include:

(i) Objective questions;

(ii) Blasting log problems; and

(iii) Initiation system and delay sequence problems.

(c) *Reexamination.* (1) Any person who fails the examination may apply to OSM for reexamination by submitting a new application, including the prescribed fee, but no person may take the examination more than 2 times in any 12-month period.

(2) Any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat, or resubmit evidence of having completed, training.

(d) *Failure to attend.* Except where the applicant shows and OSM finds good cause, OSM may reject the pending application of any applicant who fails to take the examination after OSM has granted his or her request for admission.

§ 955.15 Certification.

(a) *Processing of application.* (1) Upon receiving an application for an OSM blaster certificate OSM shall:

(i) Notify the applicant of the receipt of, and of any deficiency in, the application.

(ii) Where applicable, notify the applicant that his or her request for admission to a scheduled examination either is granted or denied.

(2) When OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly.

(b) *Grant of certificate.* OSM shall:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked OSM blaster certificate as provided in § 955.17(e).

(c) *Term of certificate.* OSM shall grant an OSM blaster certificate for a term to expire as follows:

(1) Issuance—3 years after issue date;

(2) Renewal—3 years after expiration date of applicant's current or expired certificate;

(3) Reissuance—3 years after expiration date of applicant's current or expired certificate;

(4) Replacement—same expiration date as replaced certificate; or

(5) Reciprocity—30 days after expiration date of corresponding State certificate.

(d) *Limits on renewal.* (1) OSM shall not renew an OSM blaster certificate more than 1 time. A blaster who seeks to extend a renewed certificate may apply to OSM for certificate reissuance.

(2) OSM shall not renew an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. An applicant who desires to extend a certificate that expired more than 1 year prior to the date of his or her application may apply to OSM for certificate reissuance.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control, OSM may issue a non-renewable temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15 (d) and (e) of this chapter.

(g) *Change of Address.* Any person who holds an OSM blaster certificate shall notify OSM in writing within 30 days of any change in his or her address.

§ 955.16 Reciprocity.

(a) *Grant of certificate.* OSM shall grant an OSM blaster certificate through reciprocity to any qualified applicant who demonstrates that he or she, and whom OSM finds, holds a current State blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. An applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training or examination requirements of this part.

(b) *Subsequent certificate.* (1) Any person who holds an OSM blaster certificate granted through reciprocity may qualify for a subsequent certificate either through reciprocity or by meeting directly the applicable requirements of this part for certificate issuance, renewal or reissuance.

(2) OSM shall not recognize a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

§ 955.17 Suspension and revocation.

(a) *Cause, nature and duration.* (1) OSM may, and upon a finding of willful conduct of the blaster OSM shall, suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in § 850.15(b) of this chapter.

(2) Where OSM has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment, OSM shall suspend his or her certificate as soon as is practicable.

(3) OSM shall make the nature and duration of a suspension, revocation or other action under this section commensurate with the cause of the action and what the person whose

certificate is subjected to the action does to correct it.

(b) *Notice and hearing.* When practicable, OSM shall give a certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on his or her OSM blaster certificate. OSM shall limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on a final suspension, revocation or other action after such notice and opportunity have been provided.

(c) *Decision and appeal.* By certified mail within 30 days after giving written notice and an opportunity for an informal hearing, OSM shall notify the certificate holder in writing of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the certificate was granted through reciprocity, OSM shall notify the State regulatory authority of its action. In any decision suspending, revoking or taking other action on an OSM blaster certificate, OSM shall grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1285.

(d) *Surrender of certificate.* Upon receiving written notice that his or her OSM blaster certificate was suspended, revoked or subjected to other action, a certificate was suspended, holder immediately shall surrender the certificate to OSM in the manner specified in the notice.

(e) *Reinstatement and reissuance.* (1) OSM shall reinstate a suspended OSM blaster certificate by returning the certificate to the former certificate holder with notice of reinstatement when:

(i) The term of a definite suspension expires; or

(ii) The former certificate holder demonstrates, and OSM finds, that the cause of an indefinite suspension has been corrected.

(2) OSM shall reissue an OSM blaster certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, that:

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(f) *Conformance with State action.* OSM shall suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

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Part III

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration is revising the regulations in Subpart M of 20 CFR Part 404 to expand them and make them clearer and easier for the public to use and to reflect two legislative changes under the Social Security Amendments of 1983 (Pub. L. 98–21). These regulations contain the rules on providing Social Security coverage under title II of the Social Security Act for the services of employees of State and local governments and interstate instrumentalities. The existing regulations have been updated to state:

(1) How States and interstate instrumentalities may initiate an agreement with the Secretary of Health and Human Services, to provide Social Security coverage of services of their employees and employees of a State's political subdivisions;

(2) That these agreements, either in their entirety or for one or more coverage groups, may no longer be terminated;

(3) That groups whose coverage has been terminated in the past can again be included in their States' agreements;

(4) How States and interstate instrumentalities may appeal decisions affecting these agreements;

(5) The revised due dates for payment of contributions;

(6) Procedures for refunds or credits of contributions;

(7) Procedures for charging of interest; and

(8) Procedures for the Secretary's review of assessments and claims for credit or refund.

DATE: Comments must be received on or before September 26, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7519.

SUPPLEMENTARY INFORMATION:

Introduction

This proposal substantially revises the Social Security Administration's (SSA) rules on Social Security coverage of employees of State and local governments and interstate instrumentalities. These changes will improve the organization of, and clarify the current regulations. They also update the entire subpart to reflect policies and statutory amendments which are in effect but are not in current regulations.

Background

State and local government employees are exempt from mandatory coverage under Social Security. Section 218 of the Social Security Act (the Act) requires that the Secretary of Health and Human Services when requested by a State, shall enter into an agreement to provide retirement, survivor's, disability and hospital insurance coverage of the services of employees of a State or its political subdivisions. If an interstate instrumentality (which to the extent practicable is treated as a State) makes the request, the Secretary may enter into such an agreement. By this agreement Social Security protection is provided for the groups of employees the State brings under the agreement. State and local government employees covered under an agreement have the same benefit rights and responsibilities as other employees who have Social Security coverage. The amount of the payments made by the State for Social Security protection of State and local employees is the same as is paid by private sector employers and employees who are mandatorily covered by the Federal Insurance Contributions Act, 26 U.S.C. 3101 et seq. The State assumes full financial and reporting responsibility for the coverage provided under its agreement. The agreement may not be terminated in its entirety or with respect to any coverage group under that agreement.

All States, Puerto Rico, and the Virgin Islands have agreements with the Secretary. Currently these agreements provide coverage to approximately 13 million employees. About $22.4 billion in Social Security contributions was paid on the total of about $159 billion in covered wages for State and local employees reported for calendar year 1984.

Considerations in Preparing This Comprehensive Revision

Most of the current regulations governing the coverage of employees of State and local governments were written in the 1950's and early 1960's. Some of the current rules have not been changed since they were originally published in May 1955. In preparing this comprehensive revision, we not only looked at the structure of the subpart and the language used in the current sections, but also evaluated the policies and procedures not in the subpart. Most of the procedures describe how and when a State will make reports or pay contributions. We examined the reporting procedures with the purpose of simplifying the reports, reducing their number where possible, and establishing due dates to reduce bookkeeping requirements for the States. We looked at the periods when contributions are due following modification of an agreement or after an assessment for underpayment is made and brought those due dates in line with the time allowed for paying contributions (§ 404.1249). These latter changes will speed up the flow of contributions to the Social Security trust funds.

Delayed Effective Date

Section 7 of Pub. L. 94–202 (42 U.S.C. 405a) requires that any regulation or modification of a regulation which pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 218(e) of the Social Security Act not become effective until eighteen months after it is published as a final rule in the Federal Register. Section 404.1249 affects those due dates and is discussed under "Major Changes." However, only § 404.1249(b)(2)(ii) is subject to the 18 month delayed effective date. Most of the rules in the section are already in effect and the more frequent deposit of contributions is mandated by section 342 of Pub. L. 98–21 for calendar months beginning after December 1983.

Major Changes and New Material

Evidence

Section 404.1203 is a new section which describes in general terms our rules about requesting evidence from a State of wages paid to employees and contributions due on those wages. We discuss in this section what we do when we need evidence, the State's responsibility for supplying accurate wage information and any evidence

needed to verify the accuracy of reports related to those wages, and what happens if a State does not submit the requested evidence.

Initiating, modifying, and continuing agreements

Sections 404.1205 through 404.1219 are new. The agreement for coverage establishes the legal relationship between the Secretary and the State regarding Social Security coverage for the services of covered employees. These proposed new sections reflect longstanding policies on which groups of employees may be covered, what provisions must be in an agreement, and how an agreement may be modified.

In addition, §§ 404.1218 and 404.1219 reflect the provisions of section 103 of Pub. L. 98–21, enacted April 20, 1983. Section 103 provides that no agreement may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983. Section 103 applies without regard to whether a notice of intent to terminate was filed before Pub. L. 98–21 was enacted. Section 103 also repealed the prohibition formerly in section 218(g)(3) of the Act against resumption of coverage. Coverage previously terminated may be resumed by a modification to the State's agreement.

Onsite review

Sections 404.1230 through 404.1234 are new.

Under current § 404.1250(e) SSA, with the cooperation of the States, has been conducting onsite reviews of States' recordkeeping practices for employees whose services are covered under an agreement. These reviews are to determine whether a State is:

(1) Reporting the wages for services of employees covered by the agreement;

(2) Paying Social Security contributions on those wages; and

(3) Keeping proper records of the amounts paid to each covered employee and when they were paid.

After these reviews are completed, we furnish the State's Social Security Administrator a report of the results about the State's compliance with its section 218 agreement, including problems which need resolution and reporting errors which must be corrected. We may also recommend procedures the State may implement to improve its information gathering, recordkeeping, and reporting systems, and those of its political subdivisions. Our experience with various State Social Security systems has given us the opportunity to see how each State handles various problems. Thus, we are in a position to suggest procedures which have been beneficial to other States.

We now propose to issue under the Secretary's authority in sections 218(i) and 1102 of the Act, regulations which reflect many of the practices which have evolved between SSA and the States in this area. The primary points are:

(1) These proposed regulations provide for review, "on site," of all pertinent source records maintained by the State or its political subdivisions. This will enable us to evaluate the records from which wage reports and contribution returns were prepared and how those records were compiled, processed, and maintained. These reviews may include discussions with the employee(s) working with those records. They would be conducted in cooperation with the State Social Security Administrator.

(2) Section 205(d) gives the Secretary the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to a matter under review. Proposed § 404.1232(d) implements this statutory provision for onsite review.

Back pay to employees

We propose adding a section on "back pay" to employees. This section defines "back pay," describes two different types of "back pay," and tells how the State should allocate each when reporting. Section 404.1242.

Due date for contribution returns and wage reports

Section 404.1249(a)(2) reflects the provisions of section 342 of Pub. L. 98–21, enacted April 20, 1983. Effective for calendar months after Decembr 1983, section 342 provides that contribution payments for wages paid in the first 15 days of a calendar month are due on the last day of that month, and contribution payments for wages paid after the fifteenth day of a calendar month are due on the fifteenth day of the next month. (For convenience, we refer to the first 15 days of a calendar month as the first half of the month, and to the rest of that month as the second half.)

In § 404.1249(b)(2)(ii), we propose changing the due date for paying contributions and filing contribution returns to align it with the date of the notice that the agreement or modification has been signed. At present, a State or interstate instrumentality must, for the calendar quarter in which the Secretary signs the agreement or modification, or any of the following four calendar quarters, pay any contributions due and file the contribution returns for each of those calendar quarters on or before the last day of the second month of the next calendar quarter. We propose changing this due date so that within 90 days of the date of the notice that the Secretary has signed the agreement or modification, the State may submit a *single* contribution return and pay all contributions due for:

(1) The month in which the agreement or modification is signed;

(2) Any prior months in that year; and

(3) Any subsequent months before January 1984 (half-months after December 1983) whose contribution return and payment due date is within that 90-day period.

This proposal would eliminate the requirement that a State or interstate instrumentality file a contribution return for each calendar quarter in the year of execution.

We propose excepting from the "frequency of deposit" rules those periods whose normal contribution return and payment due date fall within the 90-day period. For example, if the Secretary signs a modification of an agreement on September 19, 1986, contributions for wages paid in September 1986 an any previous months would be due by December 18, 1986. However, the contributions and contribution returns for the first half of October which would be due by October 31, would, under the proposed rule, not be due until December 18 because October 31 would fall within the 90-day period. This would give the States a full 90 days to modify their internal procedures to take account of the modifications to their agreement before they must tally, report on, and pay the new amount of contributions due. This change would also simplify the State's reporting procedure by requiring a single contribution return for the affected months.

In accordance with section 7 of Pub. L 94–202 (42 U.S.C. 405a) proposed § 404.1249(b)(2)(ii), if adopted, would not be effective until 18 months after it is published as a final rule in the Federal Register.

Adding interest to contributions

Where a State does not pay its Social Security contributions by the due date, section 218(j) of the Act requires that we add interest to any unpaid contributions. However, section 218(h)(2) of the Act permits interest-free adjustments of underpayments of contributions in the manner and at the times prescribed by regulation. Section 404.1265 sets out when we add interest to the unpaid amount of a State's contributions. The

situations in which we propose to add interest are:

(1) When a State fails to pay its contributions when due under § 404.1249 (this is a continuation of the policy in current regulation § 404.1225); and

(2) When a State discovers, after it has filed the contribution returns or wage report under proposed § 404.1249(b)(2), that it omitted or incorrectly reported some wages and must file a corrective report for the additional wages resulting in an underpayment of contributions. (This is similar to the situation described in current regulation § 404.1261, except that the State would no longer be permitted to pay the underpaid amount interest-free.)

Where our audit shows that an underpayment of the State's contributions due on the wages it has reported for a calendar year is 5 percent or less of the total due, the State may request that the interest be waived provided the State deposited the underpaid amount within 30 days after our notification of the amount due. The request for waiver must also be made within 30 days after our notification of the amount due. (This rule would replace several different rules described in current regulation § 404.1261.)

On behalf of their political subdivisions, States enter into agreements to provide Social Security coverage of the services of the employees of those subdivisions. Thereafter the State relies on those subdivisions to submit timely reports of the wages paid those employees and to forward the correct amount of contributions. Frequently those subdivisions have manual accounting procedures or a minimal number of employees who do this work. Consequently they are not always able to compute and submit the correct amount of contribution payments to the State by the due date. Therefore, we propose a rule whereby if a State underpays the correct amount of contributions due by 5 percent or less and pays the underpaid amont within 30 days of our notification of the amount due it may request within that same 30-day period that it be permitted to pay the underpaid amount without interest. This provision would take into account the problems faced by the States in obtaining reports and contributions from small subdivisions having limited staff support. This proposal also recognizes that the States are in a unique and different situation from private employers who have the records of their employees' wages readily accessible. This process simplifies the bookkeeping procedures for verifying that the correct amount of contributions have been paid on the wages reported for a calendar year and generally allow us to finalize those figures at the end of each year. Each request will be evaluated on an individual basis. Due to the wide variance in the number of employees involved in each State we decided that automatically waiving interest based on a flat percentage rate would, in terms of dollars, penalize States which do not have large numbers of employees in covered positions while a flat dollar amount would, in terms of percent of total contributions, penalize States with large numbers of employees in covered positions. During the period July 1, 1980 through June 30, 1981, we found that of the 50 States, Puerto Rico and the Virgin Islands, 43 had underpaid their contributions by less than 5 percent. The amount of 5 percent, we feel, therefore reflects our experience with most States. This approach accommodates the States in limited circumstances while recognizing that virtually all contributions are deposited timely. We feel this is a reasonable approach to a situation encompassing the 50 States, Puerto Rico, the Virgin Islands and 63 interstate instrumentalities wherein the range of total contributions for the States for the same July 1980–June 1981 period was $29,000 to $2,000,000,000. We will not recalculate the 5 percent rule based upon correction reports submitted by the States after the year is closed out for audit purposes.

An exception to these situations is where the contributions are erroneously paid to the Internal Revenue Service (IRS). In that circumstance, under certain conditions, instead of our adding interest on the contributions erroneously paid to the IRS, a State must submit the IRS refund, including interest (if any) the IRS transmitted to the entity, in order to obtain credit for its payment. This exception is similar to that described in current regulation § 404.1261(b). The rationale for this is that these contributions paid to IRS had been allocated to the trust funds.

Manner of payment of contributions by State

Section 404.1262 discusses the manner in which a State shall pay its contributions.

We propose § 404.1262 to require that States pay their contributions through the use of electronic transfer of funds beginning 3 months after the effective date of these rules. About one-third of the States currently use the electronic transfer of funds method. In order to assure a smooth transition to the use of electronic transfer of funds, SSA may extend the time limitation by an additional 3 months. Any State using the electronic transfer of funds method will, under proposed § 404.1249(b)(4), have to release its funds in sufficient time to reach the Federal Reserve bank designated by SSA by the due date.

Current regulations, § 404.1223, require that a State pay its contributions in money to the Federal Reserve bank, or any of its branches, serving the district in which the State is located. Under this rule, a State can pay its contributions to a Federal Reserve bank or branch which is serving its district but which is geographically farthest from the State capital. By maintaining the collected contributions in an interest bearing checking account, a State can take advantage of the extra time it takes the distant bank to clear the check. At the same time it would have met the due date for paying its contributions to the Social Security trust funds, yet the amount may not be transferred to the trust funds for several additional days. This situation was not as apparent under the old quarterly reporting system but it became more apparent when State contribution payments were required monthly, and especially now that payments are required twice a month. Therefore, we propose requiring that States use the electronic transfer of funds method to pay their contributions to the Federal Reserve bank or branch which is designated by SSA rather than to any Federal Reserve bank or branch serving the district in which the State is located.

Reconsideration

We propose adding §§ 404.1291 through 404.1294. Section 218(s) of the Social Security Act provides that where the Secretary assesses a State for an amount due under its agreement, disallows a State's claim for a credit or refund of an overpayment, or allows a State a credit or refund of an overpayment, the Secretary shall review that decision if, within 90 days after the Secretary notifies the State of the assessment, disallowance, or allowance, the State requests that review. The Secretary has delegated this review function to the Commissioner of Social Security.

Currently, if a State disagrees with SSA's assessment, disallowance, or allowance, it must request a review by the Commissioner. Present procedures permit revision of a decision without a review by the Commissioner if a decision can be made which is favorable to the State. If a decision is revised, we send the State a reconsidered determination and give the State an additional 90-day period within which to request that the

Commissioner review the reconsidered determination. However, all affirmations of the initial decision must be reviewed by the Commissioner.

We propose to amend the regulations to allow an appropriate SSA official to issue a reconsidered determination in all section 218(s) review cases. The State would retain the right to request the Commissioner to review the reconsidered determination.

We also propose providing in § 404.1291 that in limited situations, the reconsideration process may be waived, e.g., where a major policy is at issue. This would expedite the presentation of significant issues to the Commissioner.

Proposed §§ 404.1290 through 404.1298 describe the procedures we will follow when a State requests review of an assessment of an amount due from a State under its agreement, an allowance to the State of a credit or refund of an overpayment, or a disallowance of a State's claim for a credit or refund of an overpayment.

Summary of Changes

Definitions

Section 404.1202

We have added a new section which contains definitions of terms which have special meanings as used throughout this subpart.

Evidence

Section 404.1203

This is a new section which is described under Major Changes.

Authorized State officials

Section 404.1204

This is a new section which requires that a State designate the official authorized to act on its behalf, and that it inform SSA of any change in officials or his or her authority.

What groups of employees may be covered

Sections 404.1205 through 404.1212

This is a new group of sections which discuss in general terms what groups of employees may be covered, other groupings of employees and the services which may or may not be covered. We have also included a description of the referendum procedures States must follow in providing coverage to certain groups of employees. These referendum procedures reflect the requirements in sections 218(d) (3) and (7) of the Act (42 U.S.C. 418(d) (3) and (7)).

There are a number of special provisions in the Act which relate to specific States. These provisions establish procedures for a State to provide coverage for employees in specified positions. For example, section 218(d)(6)(G) of the Act (42 U.S.C. 418(d)(6)(G)) gives several States the option of providing coverage for employees in positions under a retirement system where these States are paid from Federal grants for administering unemployment compensation. Since these various provisions have limited applicability and are rarely used, we have not included them in these regulations.

How coverage is obtained and continues

Sections 404.1214 through 404.1219

These are new sections which generally reflect the procedures for establishing and continuing coverage under an agreement.

In § 404.1214(d) we set out what provisions an agreement must include.

Section 404.1215(b) indicates that when an agreement is modified, the State may specify a controlling date for determining retroactive coverage for employees. That controlling date can be no earlier than the date the modification is mailed or otherwise delivered to the Secretary.

Section 404.1216 describes how an agreement may be modified to correct various errors.

Section 404.1217 explains that coverage under an agreement continues indefinitely.

Section 404.1218 explains how coverage which has been terminated may be resumed.

How to identify employees who are covered

Sections 404.1220 through 404.1223

These are similar to current §§ 404.1240 through 404.1243.

We have rewritten these sections in simpler language but have not changed the existing policies. We also deleted material which was procedural in nature and material which was in other sections.

Section 404.1220 describes how we assign identification numbers to the State and its political subdivisions, coverage groups, etc. covered by a State's agreement. Section 404.1221 requires that each employee have a Social Security number and tells when and how the employee can get that number. Section 404.1223 requires that the State show an employee's Social Security number on all reports, etc., concerning that employee.

What records of coverage must be kept

Sections 404.1225 and 404.1226

These are similar to current §§ 404.1256 and 404.1230, respectively.

Section 404.1225 describes what records of an employee's remuneration a State or its political subdivisions must keep, where they are to be maintained, and for how long. Section 404.1226 sets out when statements of earnings must be given to each employee.

Review of compliance by State with its agreement

Sections 404.1230 through 404.1234

These new sections involving onsite reviews are discussed under "Major Changes".

How to report wages and contributions

Section 404.1237 is a revision of current § 402.1250. The basic rule is that a State must report each year, by coverage group, the wages paid each covered employee during that year.

Section 404.1239 is a revision of current § 404.1250a. This section permits a State to combine the wages of an employee who performs covered services for more than one coverage group up to the annual wage limitation and pay Social Security contributions on that amount. Otherwise, the wages reported for an employee by all of the coverage groups might exceed the annual wage limitation. And the State, by paying Social Security contributions on the wages reported separately by each coverage group, would pay more than the maximum amount of Social Security contributions required each year.

Section 404.1242 is a proposed new section which describes "back pay" to an employee and how it must be reported. This section is discussed under "Major Changes".

Sections 404.1243 and 404.1247 are revisions of current §§ 404.1254 and 404.1251, respectively. Section 404.1243 describes what means a State may use to make reports, e.g., forms, magnetic tape, etc. Section 404.1247 requires that a State shall report wages for the calendar year in which they were paid.

Section 404.1249 is the current § 404.1255a. Paragraph (a)(2) of this section contains the twice a month "frequency of deposit" rule mandated by section 342 of Pub. L. 98–21, the Social Security Amendments of 1983. Paragraph (b)(2) contains the due dates for filing contribution returns and wage reports and also the "annual reporting" rules. Paragraph (b)(2)(i) and (b)(2)(iii) are virtually identical to current section 404.1255(c)(2)(i) and (iii). Paragraph

(b)(2)(ii) which is described in "Major Changes" as having been significantly changed is subject to the 18 month delay in its effective date to comply with section 7 of Pub. L. 94–202 (42 U.S.C. 405a). Paragraph (c) on payments by a third party on account of sickness or accident disability is virtually identical to current § 404.1255a(a)(2) which we published in the Federal Register as a final rule on September 30, 1983, at 48 FR 44771. We propose to delay the effective date of only paragraph (b)(2)(ii) for 18 months after it is published as a final rule in the Federal Register. This delay would in no way effect the current rules that are merely incorporated in the new section, since they are already in effect. The delay would also in no way delay the effect of the "frequency of deposit" requirement since it is mandated by statute.

What is a State's liability for contributions

Sections 404.1255 and 404.1256

These sections are a revision of current §§ 404.1222 and 404.1222a.

Section 404.1255 describes the amount of Social Security contributions a State is liable for and when that liability begins. Section 404.1256 describes the conditions under which a State's liability for contributions may be limited when an employee performs services in one or more coverage groups.

Figuring the amount of the State's contributions

Sections 404.1260 through 404.1263

These sections are a revision of current §§ 404.1221, 404.1223, and 404.1224.

These sections describe how a State's contributions are computed and when and how they must be paid. Section 404.1262 is discussed under "Major Changes".

If a State fails to make timely payments.

Sections 404.1265 through 404.1267

These sections are a revision of current §§ 404.1225 through 404.1227, and § 404.1261.

Section 404.1265 sets out that interest at the rate prescribed in section 218(j) of the Act is added if a State fails to pay timely its contributions when due under § 404.1249. This section is discussed under "Major Changes".

Section 404.1267, which accords with section 218(j) of the Act, authorizes the Secretary to offset the Social Security contributions a State has not paid against amounts due a State under another provision of the Social Security Act. To date, we have not used this provision.

How to adjust errors in reports and contributions.

Sections 404.1270 through 404.1276

These sections revise current §§ 404.1260 through 404.1263 and 404.1265 through 404.1268. Proposed § 404.1276 is new.

Sections 404.1271 and 404.1273 describe how we handle payments made by a State which exceed the amount of contributions for which it is liable.

If an employee performs covered services for a State and one or more political subdivisions, or for two or more political subdivisions, and more than the required amount of Social Security contributions is collected from the employee, § 404.1275 describes how the employee may claim a refund of those excess payments.

Proposed new § 404.1276 explains how we handle situations where employees' wages have been erroneously reported and Social Security contributions have been erroneously paid to the Internal Revenue Service.

How overpayments of contributions are credited or refunded

Sections 404.1280 through 404.1284

These sections revise §§ 404.1264, 404.1261(d), and 404.1265 through 404.1267.

When a State pays more than the required amount of Social Security contributions, the State may request that we credit or refund the overpaid amount.

Proposed § 404.1284 would highlight a provision which is in current § 404.1261(d). That provision allows the Secretary, in limited situations, to offset an underpayment of contributions against an overpayment. In proposed § 404.1284(b) we indicate the State will be given an opportunity to pay the contributions due before those amounts are offset against any credit which is due the State.

How assessments for underpayments of contributions are made

Sections 404.1285 through 404.1289

These sections revise current §§ 404.1280 through 404.1283.

Proposed § 404.1285 sets out that a State is liable for an amount due under an agreement until the Secretary is satisfied the State has paid that amount. If the Secretary is not satisfied that a State has paid the correct amount, the Secretary issues an assessment for the outstanding amount.

Section 404.1286 sets out the time limits within which the Secretary must issue an assessment for an amount due. Section 404.1287 sets out exceptions to the time limits within which the Secretary must issue an assessment.

Section 404.1289 points out when we may accept a wage report which a State submits after the time periods described in § 404.1286 expire.

Secretary's review of decisions on credits, refunds, or assessments

Sections 404.1290 through 404.1296

These sections revise current §§ 404.1270 through 404.1274 and also include proposed new sections to provide for reconsideration of appealed administrative decisions. The latter sections are discussed under "Major Changes". In rewriting these sections, we eliminated the requirement that a State must file its request for review in duplicate.

How a State may seek court review of Secretary's decision

Sections 404.1297 through 404.1299

These sections are a revision of current §§ 404.1275–404.1277.

Redesignation Table

To assist users of this document we are including a table which shows the section numbers as redesignated in the proposed regulations:

REDESIGNATION TABLE

Current Section	Proposed Section
404.1201	404.1205
404.1210	404.1201
404.1220	404.1255
404.1221	404.1260
404.1222	404.1256
404.1222a	404.1256
404.1223	404.1262
404.1224	404.1263
404.1225	404.1265
404.1226	None
404.1227	404.1267
404.1230	404.1220
404.1240	404.1220
404.1241	404.1221
404.1242	404.1221
404.1243	404.1223
404.1250	404.1237
404.1250a	404.1239
404.1250b	404.1239
404.1251	404.1247
404.1252	404.1251
404.1253	None
404.1254	404.1240
404.1255	404.1249
404.1256a	404.1248
404.1256	404.1255
404.1257	404.1257 and 404.1239
404.1260	404.1270
404.1261	404.1266
404.1262	404.1271
404.1263	404.1272
404.1264	404.1261
404.1265	404.1270
404.1266	404.1275
404.1270	404.1290
404.1271	404.1292

REDESIGNATION TABLE—Continued

Current Section	Proposed Section
404.1272	404.1293
404.1273	404.1291, 404.1291f, 404.1294, and 404.1295
404.1274	404.1296
404.1275	404.1297
404.1276	404.1298
404.1277	404.1299
404.1280	404.1295
404.1281	404.1297
404.1282	404.1299
404.1283	None
404.1284	404.1295
404.1285	404.1292
404.1286	404.1295
404.1287	404.1290
404.1290	404.1292

Regulatory Procedures

Executive Order 12291—The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—Sections 404.1204, 404.1205(c), 404.1214(d), 404.1215, 404.1216, 404.1219, 404.1220(b), (c), and (e), 404.1223, 404.1225, 404.1237, 404.1239, 404.1251, 404.1256(b), 404.1271, 404.1282, and 404.1292 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

Regulatory Flexibility Act—The Secretary of the Department of Health and Human Services certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Under the terms of the agreement under section 218 of the Act, a State is responsible for paying the contributions and filing the reports necessary to provide Social Security coverage for the services of its employees or those employees of one or more of its political subdivisions.

Some of the proposed amendments describe the economic consequences when these responsibilities are not met. However, we expect those measures will impact on a limited number of small entities and will not have a significant economic impact on those entities. Any economic impact involved in the regulations reflecting sections 103 and 342 of Pub. L. 98–21 result directly from the statutory amendments, not from the regulations.

Therefore, we believe that initial and final regulatory analyses under the Regulatory Flexibility Act are not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.814, Social Security Programs.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance, Social Security Administration.

Dated: January 10, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 6, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

20 CFR Part 404, Subpart M is revised to read as follows:

Subpart M—Coverage of Employees of State and Local Governments

General

Sec.
404.1200 General effect of section 218 of this Act.
404.1201 Scope of this subpart.
404.1202 Definitions.
404.1203 Evidence.
404.1204 Designating officials to act on behalf of the State.

What Groups of Employees May be Covered

404.1205 Absolute coverage groups.
404.1206 Retirement system coverage groups.
404.1207 Divided retirement system coverage groups.
404.1208 Ineligible employees.
404.1209 Mandatorily excluded services.
404.1210 Optionally excluded services.
404.1211 Interstate instrumentalities.
404.1212 Policemen and firemen.

How Coverage Under Agreements Is Obtained and Continues

404.1214 Agreement for coverage.
404.1215 Modification of agreement.
404.1216 Modification of agreement to correct an error.
404.1217 Continuation of coverage.
404.1218 Resumption of coverage.
404.1219 Dissolution of political subdivision.

How To Identify Covered Employees

404.1220 Identification numbers.
404.1221 Employee's Social Security number.
404.1223 Duties of State with respect to employee's Social Security number.

What Records of Coverage Must Be Kept

404.1225 Records.
404.1226 Statements to employees.

Review of Compliance by State With its Agreement

404.1230 Onsite review program.
404.1231 Scope of review.
404.1232 Conduct of review.
404.1234 Reports of review's findings.

How To Report Wages and Contributions

404.1237 Wage reports and contribution returns—general.
404.1239 Wage reports for employees performing services in more than one coverage group.
404.1242 Back pay.
404.1243 Use of reporting forms.
404.1247 When to report wages.
404.1249 When and where to make deposits of contributions and to file contribution returns and wage reports.
404.1251 Final reports.

What is a State's Liability for Contributions

404.1255 State's liability for contributions.
404.1256 Limitation on State's liability for contributions for multiple employment situations.

Figuring the Amount of the State's Contributions

404.1260 Amount of contributions.
404.1262 Manner of payment of contributions by State.
404.1263 When fractional part of a cent may be disregarded.

If a State Fails To Make Timely Payments

404.1265 Addition of interest to contributions.
404.1267 Failure to make timely payments.

How Errors in Reports and Contributions Are Adjusted

404.1270 Adjustments in general.
404.1271 Adjustment of overpayment of contributions.
404.1272 Refund or recomputation of overpayments which are not adjustable.
404.1275 Adjustment of employee contributions.
404.1276 Reports and payments erroneously made to Internal Revenue Service-transfer of funds.

How Overpayments of Contributions Are Credited or Refunded

404.1280 Allowances of credits or refunds.
404.1281 Credits or refunds for periods of time during which no liability exists.
404.1282 Time limitations on credits or refunds.
404.1283 Exceptions to the time limitations on credits or refunds.
404.1284 Offsetting underpayments against overpayments.

How Assessments for Underpayments of Contributions Are Made

404.1285 Assessments of amounts due.

Sec.
404.1288 Time limitations on assessments.
404.1287 Exceptions to the time limitations on assessments.
404.1289 Payment after expiration of time limitations for assessment.

Secretary's Review of Decisions on Credits, Refunds, or Assessments

404.1290 Review of decisions by the Secretary.
404.1291 Reconsideration.
404.1292 How to request reconsideration.
404.1293 Time for filing request for reconsideration.
404.1294 Notification to State after reconsideration.
404.1295 Commissioner's review.
404.1296 Commissioner's notification to the State.

How a State May Seek Court Review of Secretary's Decision

404.1297 Review by court.
404.1298 Time for filing civil action.
404.1299 Final judgments.

Subpart M—Coverage of Employees of State and Local Governments

Authority: (Secs. 205, 218, and 1102 of the Social Security Act, 53 Stat. 1368, 64 Stat. 514, 49 Stat. 647, section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405, 418 and 1302.

General

§ 404.1200 General effect of section 218 of the Act.

Under section 218 of the Social Security Act (the Act) a State may ask the Secretary of Health and Human Services to enter into an agreement to extend Federal old-age, survivors, disability and hospital insurance coverage under title II of the Act to groups of employees of the State and its political subdivisions. The Secretary shall enter into such agreement. State and local government employees, after being covered under an agreement, have the same benefit rights and responsibilities as other employees who are mandatorily covered under title II. The State assumes full financial and reporting responsibility for all groups covered under its agreement. The agreement may not be terminated in its entirety or with respect to any coverage group under that agreement.

§ 404.1201 Scope of this subpart.

This subpart contains the rules of the Social Security Administration (SSA) about:

(a) How a State enters into and modifies an agreement;

(b) What groups of employees a State can cover by agreement;

(c) How a State must identify covered employees and what records it must keep on those employees;

(d) Periodic reviews of the source records kept on covered employees;

(e) How and when a State must report wages and pay contributions;

(f) What the State's liability for contributions is and how SSA figures the amount of those contributions;

(g) What happens if a State fails to pay its contributions timely;

(h) How errors in reports and contribution payments are corrected;

(i) How overpayments of contributions are credited or refunded;

(j) How assessments are made if contributions are underpaid; and

(k) How a State can obtain administrative or judicial review of a decision on a credit, refund, or assessment.

§ 404.1202 Definitions.

Terms which have special meaning in this subpart are described in this section. Where necessary, further explanation is included in the section where the term is used.

Agreement—The agreement between the Secretary of Health and Human Services and the State containing the conditions under which retirement, survivors, disability and hospital insurance coverage is provided for State and local government employees.

Allowance of a credit or refund—The written notice to a State of the determination by SSA of the amount owed to the State by SSA and the basis for the determination.

Assessment—The written notice to a State of the determination by SSA of the amount (contributions or accrued interest) owed to SSA by the State and the basis for the determination.

Contributions—Payments made under an agreement which the State deposits in a Federal Reserve bank. The amounts are based on the wages paid to employees whose services are covered under an agreement. These amounts are equal to the taxes imposed under the Internal Revenue Code on employers and employees in private employment.

Contribution return—Form used to identify and account for all contributions actions.

Coverage—The extension of Social Security protection under title II of the Act (retirement, survivors, disability, and hospital insurance) by agreement between the Secretary of Health and Human Services and a State to employees of the State and its political subdivisions or by agreement between the Secretary of Health and Human Services and an interstate instrumentality to employees of the interstate instrumentality.

Coverage group—The grouping by which employees are covered under an agreement.

Disallowance of a State's claim for credit or refund—The written notice of a State of the determination by SSA that the State's claim for credit or refund is denied and the basis for the determination.

Employee—An employee as defined in section 210(j) of the Act. Usually, the common-law control test is used in determining whether an employer-employee relationship exists. The term also includes an officer of a State or political subdivision.

Governmental function—The traditional functions of government: legislative, executive, and judicial.

Interstate instrumentality—An independent legal entity organized by two or more States to carry out one or more functions. For Social Security coverage purposes under section 218 of the Act, an interstate instrumentality is treated, to the extent practicable, as a "State."

Modification—A change to the agreement between the Secretary of Health and Human Services and a State which provides coverage of the services of employees not previously covered or which alters the agreement in some other respect.

Overpayment—A payment of more than the correct amount of contributions or interest.

Political subdivision—A separate legal entity of a State which usually has specific governmental functions. The term ordinarily includes a county, city, town, village, or school district, and in many States, a sanitation, utility, reclamation, drainage, flood control, or similar district. A political subdivision includes an instrumentality of a State, one or more political subdivisions of a State, or a State and one or more of its political subdivisions.

Proprietary function—A business engaged in by a State or political subdivision such as a public amusement park or public parking lot.

Retirement system—A pension, annuity, retirement, or similar fund or system established by a State or political subdivision.

Secretary—The Secretary of Health and Human Services or authorized delegate.

SSA—The Social Security Administration.

State—Includes the fifty States, Puerto Rico, and the Virgin Islands. It does not include the District of Columbia, Guam or American Samoa. "State" also refers to an interstate instrumentality where applicable.

Underpayment—A payment of less than the correct amount of contributions or interest.

Wage Reports—Forms used to identify employees who were paid wages for covered employment and the amounts of those wages paid. This includes corrective reports.

We—The Social Security Administration.

§ 404.1203 Evidence.

(a) *State's responsibility for submitting evidence.* The State, under the provisions of the agreement, is responsible for accurately reporting the wages paid employees for services covered by the agreement and for paying the correct amount of contributions due on those wages. This responsibility includes submitting evidence to verify the accuracy of the reports and payments.

(b) *Failure to submit requested evidence.* The State is required to submit information timely to SSA. If we request additional evidence to verify the accuracy of reports and payments, we specify when that evidence must be submitted. If we do not receive the evidence timely, and the State provides no satisfactory explanation for its failure to submit the evidence timely, we may proceed, if appropriate, on the basis of the information we have. Proceeding on the basis of the information we have permits us to credit the wage records of employees properly, where possible, while continuing to work with the State to resolve remaining discrepancies.

§ 404.1204 Designating officials to act on behalf of the State.

Each State which enters into an agreement shall designate the official or officials authorized to act on the State's behalf in administering the agreement. Each State shall inform SSA of the name, title, and address of the designated official(s) and the extent of each official's authority. For example, a State may indicate that the State official is authorized:

(a) To enter into an agreement and execute modifications to the agreement;

(b) To enter into agreements to extend or re-extend the time limit for assessment or credit;

(c) To make arrangements in connection with onsite reviews;

(d) To request administrative review of an assessment, an allowance of a credit or refund, or a disallowance of a credit or refund; or

(e) To carry out the ministerial duties necessary to administer the agreement. Each State shall inform SSA timely of changes in designated officials or changed in their authority.

What Groups of Employees May Be Covered

§ 404.1205 Absolute coverage groups.

(a) *General.* An absolute coverage group is a permanent grouping of employees, e.g., all the employees of a city or town. It is a coverage group for coverage and reporting purposes. When used for coverage purposes, the term also refers to groups of employees whose positions are not under a retirement system. An absolute coverage group may include positions which were formerly under a retirement system and, at the State's option, employees who are in positions under a retirement system but who are ineligible (see § 404.1206) to become members of that system.

(b) *What an absolute coverage group consists of.* An absolute coverage group consists of one of the following employee groups:

(1) State employees performing services in connection with the State's governmental functions;

(2) State employees performing services in connection with a single proprietary function of the State;

(3) Employees of a State's political subdivision performing services in connection with that subdivision's governmental functions;

(4) Employees of a State's political subdivision performing services in connection with a single proprietary function of the subdivision;

(5) Civilian employees of a State's National Guard units; and

(6) Individuals employed under an agreement between a State and the U.S. Department of Agriculture as agricultural products inspectors.

(c) *Designated coverage groups.* A State may provide coverage for designated (i.e., selected) absolute coverage groups of the State or a political subdivision. When coverage is extended to these designated groups, the State must specifically identify each group as a designated absolute coverage group and furnish the effective date of coverage and any optional exclusion(s) for each group. Where a State has provided coverage to designated absolute coverage groups, the State may, by modifying its agreement, extend that coverage to any absolute coverage group in the state.

§ 404.1206 Retirement system coverage groups.

(a) *General.* Section 218(d) of the Act authorizes coverage of services of employees in positions under a retirement system. For purposes of obtaining coverage, a system may be considered a separate retirement system authorized by section 218(d)(6)(A) or (B) of the Act. Under this section of the Act a State may designate the positions of any one of the following groupings of employees as a separate retirement system:

(1) The entire system;

(2) The employees of the State under the system;

(3) The employees of each political subdivision in the State under the system;

(4) The employees of the State and the employees of any one or more of the State's political subdivisions;

(5) The employees of any combination of the State's political subdivisions;

(6) The employees of each institution of higher learning, including junior colleges and teachers colleges; or

(7) The employees of a hospital which is an integral part of a political subdivision.

If State law requires a State or political subdivision to have a retirement system, it is considered established even though no action has been taken to establish the system.

(b) *Retirement system coverage groups.* A retirement system coverage group is a grouping of employees in positions under a retirement system. Employees in positions under the system have voted for coverage for the system by referendum and a State has provided coverage by agreement or modification of its agreement. It is not a permanent grouping. It exists only for referendum and coverage purposes and is not a separate group for reporting purposes. Once coverage has been obtained, the retirement system coverage group becomes part of one of the absolute coverage groups described in § 404.1205(b).

(c) *What a retirement system coverage group consists of.* A retirement system coverage group consists of:

(1) Current employees—all employees whose services are not already covered by the agreement, who are in positions covered by the same retirement system on the date an agreement or modification of the agreement is made applicable to the system;

(2) Future employees—all employees in positions brought under the system after an agreement or modification of the agreement is signed; and

(3) Other employees—all employees in positions which had been under the retirement system but which were not under the retirement system when the group was covered (including ineligibles

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who had been optionally excluded from coverage).

(d) *Referendum procedures.* Prior to signing the agreement or modification, the governor or an official of the State named by the governor (for an interstate instrumentality, its chief executive officer) must certify to the Secretary that:

(1) All eligible employees were given at least 90 days' notice of the referendum;

(2) All eligible employees were given an opportunity to vote in the referendum;

(3) Only eligible employees were permitted to vote in the referendum;

(4) Voting was by secret written ballot on the question of whether service in positions covered by the retirement system should be included under an agreement;

(5) The referendum was conducted under the supervision of the governor or agency or individual named by him; and

(6) A majority of the retirement system's eligible employees voted for coverage under an agreement.

The State has two years from the date of a favorable referendum to enter into an agreement or modification extending coverage to the retirement system coverage group. If the referendum is unfavorable, another referendum cannot be held until at least one year after that unfavorable referendum.

(e) *Who is covered.* If a majority of the eligible employees in a retirement system vote for coverage, all employees in positions in that retirement system become covered.

(f) *Coverage of employees in positions under more than one retirement system.*

(1) If an employee occupies two or more positions each of which is under a different retirement system, the employee's coverage in each position depends upon the coverage extended to each position under each system.

(2) If an employee is in a single position which is under more than one retirement system (because the employee's occupancy of that position permits her or him to become a member of more than one retirement system), the employee is covered when the retirement system coverage group including her or his position is covered under an agreement unless (A) he or she is not a member of the retirement system being covered and (B) he or she is a member of a retirement system which has not been covered. This rule also applies to the coverage of services in policemen's and firemen's positions in interstate instrumentalities and in those States named in § 404.1212(c)(1).

§ 404.1207 Divided retirement system coverage groups.

(a) *General.* Under section 218(d)(6)(C) of the Act certain States and under section 218(k)(2) of the Act all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage. The States having this authority are Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

(b) *Divided retirement system coverage group.* A divided retirement system coverage group is a grouping under a retirement system of positions of members of the system who voted for coverage and positions of individuals who become members of the system (the "yes" group), and positions of members of the system who did not elect coverage and ineligible employees (see § 404.1208) (the "no" group). For purposes of this section, the term "member" also includes individuals who have an option to become members of the retirement system but have not done so. The position of a member in the "no" group can be covered if, within two years after the agreement or modification extending coverage to the "yes" group is executed, the State provides an opportunity to transfer the position to the covered "yes" group and the individual occupying the position makes a written request for the transfer. The members of the "no" group can also be covered if, by referendum, a majority of them vote for coverage. If the majority votes for coverage, all positions of the members of the "no" group become covered. There is no further subdivision of the "no" group into those who voted for and those who voted against coverage. If the State requests, the ineligibles in the "no" group may become part of the "yes" group and have their services covered.

(c) *Referendum procedures.* To divide a retirement system, the State must conduct a referendum among the system's employees. If the system is to be divided, the governor or an individual named by him must certify to the Secretary that:

(1) The referendum was held by written ballot on the question of whether members of a retirement system wish coverage under an agreement;

(2) All members of the retirement system at the time the vote was held had the opportunity to vote;

(3) All members of the system on the date of the notice of the referendum was issued were given at least 90 days' notice regarding the referendum;

(4) The referendum was conducted under the supervision of the governor or agency or person designated by him; and

(5) The retirement system was divided into two parts, one composed of positions of members of the system who voted for coverage and the other composed of the remaining positions under the retirement system.

After the referendum the State may include those members who chose coverage under its agreement as a retirement system coverage group. The State has two years from the date of the referendum to enter into an agreement or modification extending coverage to that group.

§ 404.1208 Ineligible employees.

(a) *Definition.* An ineligible is an employee who, on first occupying a position under a retirement system, is not eligible for membership in that system because of a personal disqualification like age, physical condition, or length of service.

(b) *Coverage of ineligible employees.* A State may, in its agreement or any modification to the agreement, provide coverage for the services of ineligible employees in one of three ways:

(1) As part of or as an addition to an absolute coverage group;

(2) As part of a retirement system coverage group covering all positions under the retirement system; or

(3) As part of or as an addition to a retirement system coverage group composed of those members in positions in a retirement system who chose coverage.

§ 404.1209 Mandatorily excluded services.

Some services are mandatorily excluded from coverage under a State's agreement. They are:

(a) Services of employees who are hired to relieve them from unemployment;

(b) Services performed in an institution by a patient or inmate of the institution;

(c) Transportation service subject to the Federal Insurance Contributions Act;

(d) Certain emergency services in case of fire, storm, snow, volcano, earthquake, flood or other similar emergency; and

(e) Services other than agricultural labor or student services which would be excluded from coverage if performed for a private employer.

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§ 404.1210 Optionally excluded services.

Certain services and positions may, if the State requests it, be excluded from coverage. These exclusions may be applied on a statewide basis or selectively by coverage groups. They are:

(a) Services in any class or classes of elective positions;

(b) Services in any class or classes of part-time positions;

(c) Services in any class or classes of positions where the pay is on a fee basis;

(d) Any agricultural labor or student services which would also be excluded if performed for a private employer; and

(e) Services performed by election officials or election workers if the payments for those services in a calendar year are less than $100.

§ 404.1211 Interstate instrumentalities.

For Social Security coverage purposes under section 218 of the Act, interstate instrumentalities are treated, to the extent practicable, as States, that is:

(a) They must be legally authorized to enter into an agreement with the Secretary;

(b) They are subject to the same rules that are applied to the States;

(c) They may divide retirement systems and cover only the positions of members who want coverage; and

(d) They may provide coverage for firemen and policemen in positions under a retirement system.

§ 404.1212 Policemen and firemen.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a policeman's or fireman's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a policeman is a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms "policeman" and "fireman" do not include services in positions which, although connected with police and firefighting functions, are not policeman or fireman positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Policemen's and firemen's positions not under a retirement system as part of an absolute coverage group;

(2) Policemen's or firemen's positions, or both, as part of a retirement system coverge group for the States specified in paragraph (c) (1) of this section; or

(3) Firemen's positions only as a separate retirement system as set forth in paragrph (c) (2) of this section.

(c) *Policmen and firement in positions under a retirement system.* (1) Some States and all interstate instrumentalities may provide coverage for employees in policemen's or fireman's positions, or both, which are under a retirement system by following the majority vote referendum procedures in § 404.1206(d). The States are Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virigina, and Washington. Some States and all interstate instrumentalities may use the desire for coverage procedures in § 404.1207. The States are California, Florida, Georgia, Hawaii, New York, North Dakota, Tennessee, Texas, Vermont, and Washington.

(2) All States not listed in paragraph (c) (1) of this section may provide coverage for employees in firemen's positions which are under a retirement system by:

(i) Following the referendum procedures in § 404.1206(d); and

(ii) Submitting a certification by the governor, or an individual named by her or him, to the Secretary that extending coverage to this group of employees will improve their overall benefit protection.

How Coverage Under Agreements Is Obtained and Continues

§ 404.1214 Agreement for coverage.

(a) *General.* A State may enter into a written agreement with the Secretary to provide for Social Security coverage for its employees or the employees of one or more of its political subdivisions. An interstate instrumentality may enter into a similar agreement for its employees. These agreements cover employees in groups of positions or by types of services rather than the individual employees.

(b) *Procedures.* A State or interstate instrumentality may request coverage by submitting to SSA a proposed written agreement for the desired coverage.

(c) *Authority to enter into an agreement for coverage.*

(1) *Federal law.* Section 218(a) of the Act requires the Secretary to enter into an agreement, at the request of the State, to extend Social Security coverage to the State's employees or those of its political subdivisions. Section 218(k) authorizes the Secretary to enter an agreement, at the request of an interstate instrumentality, to extend Social Security coverage to the employees of the interstate instrumentality.

(2) *State law.* State law must authorize a State or an interstate instrumentality to enter into an agreement with the Secretary for Social Security coverage.

(d) *Provisions of the agreement.* The agreement must include:

(1) A description of the specific services to be covered and excluded;

(2) The State's promise to pay, to the Secretary of the Treasury, contributions equal to the sum of the taxes which would be required under the Federal Insurance Contributions Act from employers and employees if the employment were in the private sector;

(3) The State's promise to comply with the regulations the Secretary prescribes for carrying out the provisions of section 218 of the Act; and

(4) Identification of the political subdivisions, coverage groups, or services being covered and the services that are excluded.

The agreement must be signed by the authorized State or interstate instrumentality official and the Secretary or his or her designee.

(e) *Effective date.* The agreement must specify an effective date of coverage. However, the effective date cannot be earlier than the last day of the sixth calendar year preceding the year in which the agreement is agreed to by the Secretary and the State. The agreement is effective after the effective date.

(f) *Applicability of agreement.* The agreement establishes the continuing relationship between the Secretary and the State or interstate instrumentality except as it is modified (see §§ 404.1215–404.1217).

§ 404.1215 Modification of agreement.

(a) *General.* A State or interstate instrumentality may modify in writing its agreement, for example, to:

(1) Exclude, in limited situations, employee services or positions previously covered;

(2) Include additional coverage groups; or

(3) Include as covered services:

(i) Services of covered employees for additional retroactive periods of time; and

(ii) Services previously excluded from coverage.

(b) *Controlling date for retroactive coverage.* A State may specify in the modification a date to make all individuals in the coverage group who were in an employment relationship on that date eligible for retroactive coverage. This date is known as the controlling date for retroactive coverage. It can be no earlier than the date the modification is mailed or otherwise

delivered to the Secretary nor can it be later than the date the modification is signed by the Secretary. If the State does not designate a controlling date, the date the modification is signed by the Secretary is the controlling date.

(c) *Conditions for modification.* The provisions of section 218 of the Act which apply to the original agreement also apply to a modification to the agreement.

(d) *Effective date.* Generally, a modification must specify an effective date of coverage. However, the effective date cannot be earlier than the last day of the sixth calendar year preceding the year in which the modification is agreed to by the Secretary and the State. The modification is effective after the effective date.

§ 404.1216 Modification of agreement to correct an error.

(a) *General.* If an agreement or modification contains an error, the State may correct the error by a subsequent modification to the agreement. For example, the agreement or modification incorrectly lists a covered service as an optionally excluded service or shows an improper effective date of coverage. In correcting this type of error, which affects the extent of coverage, the State must submit a modification along with evidence to establish that the error occurred. However, a modification is not needed to correct minor typographical or clerical errors. For example, an agreement or modification incorrectly lists School District No. 12 as School District No. 13. This type of error can be corrected based on a written request from the appropriate official of the State or interstate instrumentality.

(b) *Correction of errors involving erroneous reporting to the IRS.* Where a State or political subdivision makes reports and payments to the Internal Revenue Service under the provisions of the Federal Insurance Contributions Act which apply to employees in private employment in the mistaken belief that this action would provide coverage for its employees, the State may provide the desired coverage for those same periods of time by a subsequent modification to its agreement. If State law permits, the State may make that coverage effective with the first day of the first period for which the erroneous reports and payments were made. (In this instance, the limitation on retroactive coverage described in § 404.1215(d) is not applicable). Where the State does not want to provide such retroactive coverage or is not permitted to do so by State law, the State may provide the coverage for the affected coverage group as of a specified date (§ 404.1215(b)). The coverage would then apply to the services performed by individuals as members of the coverage group (1) who were employees on that date, and (2) whose wages were erroneously reported to IRS, and (3) for whom a refund of FICA taxes has not been obtained at the time the Secretary executes the modification.

§ 404.1217 Continuation of coverage.

The coverage of State and local government employees continues as follows:

(a) *Absolute coverage group.* Generally, the services of an employee covered as a part of an absolute coverage group (see § 404.1205) continue to be covered indefinitely. A position covered as a part of an absolute coverage group continues to be covered even if the position later comes under a retirement system. This includes policemen's and firemen's positions which are covered with an absolute coverage group.

(b) *Retirement system coverage group.* Generally, the services of employees in positions covered as a part of a retirement system coverage group continue to be covered indefinitely. For a retirement system coverage group made up of members who chose coverage, a position continues to be covered until it is removed from the retirement system and is no longer occupied by a member who chose coverage or by a new member of the system. Coverage is not terminated because the positions are later covered under additional retirement systems or removed from coverage under a retirement system, or because the retirement system is abolished with respect to the positions. However, if the retirement system has been abolished, newly created or reclassified positions or positions in a newly created political subdivision cannot be covered as a part of the retirement system coverage group. If the retirement system is not abolished, a newly created or reclassified position is a part of the coverage group if the position would have been a part of the group had it existed earlier. If the retirement system coverage group is made up of members who chose coverage, the newly created or reclassified position is a part of the coverage group if it is occupied by a member who chose coverage or by a new member.

§ 404.1218 Resumption of coverage.

Before 1983, an agreement could be terminated in its entirety or with respect to one or more coverage groups designated by the State. Coverage of any coverage group which has been previously terminated may be resumed by a modification to the agreement.

§ 404.1219 Dissolution of political subdivision.

If a political subdivision whose employees are covered under the agreement is legally dissolved or otherwise ceases to exist, the State shall give us satisfactory evidence of its dissolution or nonexistence. The evidence must establish that the entity is not merely inactive or dormant, but that it will never again have employees. We will notify the State whether the evidence is satisfactory.

How to Identify Covered Employees

§ 404.1220 Identification numbers.

(a) *State and local government.* (1) When a State enters into an agreement with the Secretary under section 218 of the Act, SSA assigns one identification number to the State (if State employees are covered under the agreement) and one identification number to each political subdivision included under the agreement. Similarly, in the case of an agreement with an interstate instrumentality, SSA assigns one identification number to the instrumentality. SSA notifies the appropriate official of the State or instrumentality of the number assigned.

(2) If a State or political subdivision is paying wages for covered transportation service (as determined under section 210(k) of the Act) which are subject to the Federal Insurance Contributions Act, the appropriate IRS Service Center assigns an identification number to the State or political subdivision. The IRS Service Center procedures for issuing identification numbers to States or political subdivisions may be found in 26 CFR 31.6011(b)–1.

(b) *Coverage group number for coverage groups.* If a State's agreement provides coverage for a State or a political subdivision based on designated proprietary or governmental functions, the State shall furnish a list of those groups. The list shall identify each designated function and the title and business address of the official responsible for filing each designated group's wage report with the State. SSA assigns a coverage group number to each designated group based on the information furnished in the list.

(c) *Unit numbers for payroll record units.* SSA assigns, at a State's request, unit numbers to payroll record units within a State or political subdivision. When a State requests separate payroll record unit numbers, it must furnish the following:

(1) The name of each payroll record unit for the coverage group; and

(2) The title and business address of the official responsible for each payroll unit.

(d) *Unit numbers where contribution amounts are limited.* An agreement, or modification of an agreement, may provide for the computation of contributions as prescribed in § 404.1256 for some employees of a political subdivision. In this situation, SSA assigns special unit numbers to the political subdivision to identify those employees. SSA does not assign a special unit number to a political subdivision in which the contributions for all employees are computed as prescribed in § 404.1256.

(e) *Use.* The State shall show the appropriate SSA issued identifying number, including any coverage group or payroll record unit number, on records, reports, returns, and claims to report wages, adjustments, and contributions.

§ 404.1221 Employee's Social Security number.

Each employee subject to this subpart must have a Social Security number. To get a Social Security number, the employee must go to the nearest Social Security district or branch office. The employee must apply for the number within seven days after starting work. Section 422.107 of this title describes the information the employee must give when applying for a Social Security number. Section 422.110 of this title describes how an employee may change his or her name or other identifying information submitted in connection with an application for a Social Security number.

§ 404.1223 Duties of State with respect to employee's Social Security number.

The State shall enter the employee's name and Social Security number exactly as shown on the employee's Social Security number card on all records, returns, reports, and claims. If the employee does not have a Social Security number card and has not filed an application for one with SSA, the State shall inform the employee of the provisions in § 404.1221. The State shall request the employee to present the number card as soon as it is received.

What Records of Coverage Must Be Kept

§ 404.1225 Records.

(a) *Who keeps the records.* Every State which enters into an agreement shall keep, or require the political subdivisions whose employees are included under its agreement to keep, accurate records of all remuneration (whether in cash or in a medium other than cash) paid to employees performing services covered by that agreement. These records shall show for each employee:

(1) The employee's name, address, and Social Security number;

(2) The total amount of remuneration (including any amount withheld as contributions or for any other reason) and the date the remuneration was paid and the period of services covered by the payment;

(3) The amount of remuneration which constitutes wages (see § 404.1041 for wages and §§ 404.1047–404.1059 for exclusions from wages); and

(4) The amount of the employee's contribution, if any, withheld or collected, and if collected at a time other than the time such payment was made, the date collected. If the total remuneration (paragraph (a)(2) of this section) and the amount which is subject to contribution (paragraph (a)(3) of this section) are not equal, the reason shall be stated.

The State shall keep copies of all returns, reports, schedules, and statements required by this subpart, copies of claims for refund or credit, and copies of documents about each adjustment made under § 404.1265 or § 404.1271 as part of its records. These records may be maintained by the State or, for employees of a political subdivision, by the political subdivision. Each State shall use forms and systems of accounting as will enable the Secretary to determine whether the contributions for which the State is liable are correctly figured and paid.

(b) *Place and period of time for keeping records.* All records required by this section shall:

(1) Be kept at one or more convenient and safe locations accessible to reviewing personnel (see § 404.1232(a));

(2) Be available for inspection by reviewing personnel at any time; and

(3) Be maintained for at least four years from the date of the event recorded. (This four-year requirement applies regardless of whether, in the meantime, the employing entity has been legally dissolved or otherwise ceases to exist or, before 1983, the agreement was terminated in its entirety or in part.

§ 404.1235 Statements to employees.

Each State shall ensure that an IRS Form W–2 or similar written statement is provided to each individual performing services covered under its agreement. The Form W–2 or statement shall be furnished to the employee not later than January 31 of the year following the calendar year covered by the statement. If the employee leaves the employ of the State or political subdivision before the end of a calendar year, the Form W–2 or statement shall be furnished to the employee on the day on which the last payment of wages is made to the employee

Review of Compliance By State With Its Agreement

§ 404.1230 Onsite review program.

To ensure that the services of employees covered by a State's agreement are reported and that those employees receive Social Security credit for their covered earnings, we periodically review the source records upon which a State's contribution returns and wage reports are based. These reviews are designed:

(a) To measure the effectiveness of the State's systems for ensuring that all wages for those employees covered by its agreement are reported and Social Security contributions on those wages are paid;

(b) To detect any misunderstanding of coverage or reporting errors and to advise the State of the corrective action it must take; and

(c) To find ways to improve a State's recordkeeping and reporting operations for the mutual benefit of the State and SSA.

§ 404.1231 Scope of review.

The onsite review focuses on four areas:

(a) State's controls and recordkeeping—to assess a State's systems for assuring timely receipt, correctness, and completeness of wage reports and contribution returns;

(b) Instruction, education, and guidance a State provides local reporting officials—to assess a State's systems for assuring on a continuing basis that all reporting officials and their staffs have the necessary instructions, guidelines, and training to meet the State's coverage, reporting and recordkeeping requirements;

(c) Compliance by reporting officials—to assess a State's systems for assuring that the reporting officials in the State have adequate recordkeeping procedures, are properly applying the appropriate provisions of the State's agreement, and are complying with reporting requirements; and

(d) Quality control with prompt corrective action—to assess a State's systems for assuring that its reports and those of its political subdivisions are correct, for identifying the causes and extent of any deficiencies, and for promptly correcting these deficiencies.

§ 404.1232 Conduct of review.

(a) Generally. SSA staff personnel conduct the onsite review. Occasionally, members of the Office of the Inspector General, Department of Health and Human Services (HHS), may conduct or participate in the review.

(b) The review is done when considered necessary by SSA or HHS or, if practicable, in response to a State's specific request for a review.

(c) All pertinent source records prepared by the State or its political subdivisions are reviewed, on site, to verify the wage reports and contribution returns. We may review with the appropriate employees in a subdivision those source records and how the information is gathered, processed, and maintained. We notify the State's Social Security Administrator when we plan to make the review and request her or him to make the necessary arrangements.

(d) The review is a cooperative effort between SSA and the States to improve the methods for reporting and maintaining wage data to carry out the provisions of the agreement. If SSA considers it necessary to obtain certain information, we may subpoena employees to testify and to produce books, payment and other records, correspondence, papers, or documents which are relevant to any matter in question.

§404.1234 Reports of review's findings.

We provide the State Social Security Administrator with reports of the review's findings. These reports may contain coverage questions which need development and resolution and reporting errors or omissions for the State to correct promptly. These reports may also recommend actions the State can take to improve its information gathering, recordkeeping, and wage reporting systems, and those of its political subdivisions.

How to Report Wages and Contributions

§404.1237 Wage reports of contribution returns—general.

(a) *Wage reports.* Each State shall report each year the wages paid each covered employee during that year. With the wage report the State shall also identify, as prescribed by SSA, each political subdivision by its assigned identification number and, where appropriate, any coverage group or payroll record unit number assigned.

(b) *Wage reports of remuneration for agricultural labor.* A State may exclude from its agreement any services of employees the remuneration for which is not wages under section 209(h)(2) of the Act. Section 209(h)(2) excludes as wages the cash remuneration an employer pays employees for agricultural labor which is less than $150 in a calendar year, or, if the employee performs the agricultural labor for the employer on less than 20 days during a calendar year, the cash remuneration is computed on a time basis. If a State does exclude the services and the individual meets the cash-pay or 20-day test described in §404.1056, the State shall identify on the wage report and on any adjustment report each individual performing agricultural labor and the amount paid to her or him.

(c) *Contribution returns.* The State shall forward the contribution return as set out in §404.1240(b). It shall make contribution payments under §404.1262.

§404.1238 Wage reports for employees performing services in more than one coverage group.

(a) *Employee of State in more than one coverage group.* If a State employee is in more than one coverage group, the State shall report the employee's total wages, up to the annual wage limitations in §404.1047, as though the wages were paid by only one of the coverage groups.

(b) *Employee of political subdivision in more than one coverage group.* If an employee of a political subdivision is in more than one coverage group, the State shall report the employee's total wages, up to the annual wage limitations in §404.1047, as though the wages were paid by only one of the coverage groups.

(c) *Employee of State and one or more political subdivisions.* If an individual performs covered services as an employee of the State and an employee of one or more political subdivisions and the State agreement does not provide for limiting contributions under section 218(e)(2) of the Act, the State and each political subdivision shall report the amount of covered wages it paid the employee up to the annual wage limitations in §404.1047.

(d) *Employee of more than one political subdivision.* If an individual performs covered services as an employee of more than one political subdivision and the State agreement does not provide for limiting contributions under section 218(e)(2) of the Act, each political subdivision shall report the covered wages it paid the employee up to the annual wage limitations in § 404.1047.

(e) *Employee performing covered services for more than one political entity where section 218(e)(2) of the Act is applicable.* If an agreement provides for limiting contributions under section 218(e)(2) of the Act, the reporting officials compute the total amount of wages paid the employee by two or more political subdivisions of a State, or a State and one or more of its political subdivisions, which were subject to section 218(e)(2) of the Act. The State reports the amount of wages paid up to the annual wage limitations in § 404.1047. The employee is treated as having only one employer. If the employee also had wages not subject to section 218(e)(2) of the Act, the State shall report those wages separately.

§ 404.1242 Back pay.

(a) *"Back pay" defined.* Back pay is pay received in one period of time which would have been paid in a prior period of time except for a wrongful or improper action taken by an employer. It includes pay made under Federal or State laws intended to create an employment relationship (including situations where there is unlawful refusal to hire) or to protect an employee's right to wages.

(b) *Back pay under a statute.* Back pay under a statute is a payment by an employer following an award, determination or agreement approved or sanctioned by a court or administrative agency responsible for enforcing a Federal or State statute protecting an employee's right to employment or wages. Examples of these statutes are:

(1) National Labor Relations Act or a State labor relations act;

(2) Federal or State laws providing reemployment rights to veterans;

(3) State minimum wage laws; and

(4) Civil Rights Act of 1964.

Payments based on legislation comparable to and having a similar effect as those listed in this paragraph may also qualify as having been made under a statute. Back pay under a statute, excluding penalties, is wages if paid for covered employment. It is allocated to the periods of time in which it should have been paid if the employer had not violated the statute. A State must file a wage report and pay the contributions due for all periods involved in the back pay award under the rules applicable to those periods.

(c) *Back pay not under a statute.* Where the employer and the employee agree on the amount payable without any award, determination or agreement approved or sanctioned by a court or administrative agency, the payment is not made under a statute. This back pay cannot be allocated to prior periods of time but must be reported by the State for the period in which it is paid.

§ 404.1243 Use of reporting forms.

(a) *Submitting wage reports.* In the form and manner required by SSA, a State shall submit an annual report of

the covered wages the State and its political subdivisions paid their employees. Any supplemental, adjustment, or correctional wage report filed is considered a part of the State's wage report.

(b) *Correction of errors.* If a State fails to report or incorrectly reports an employee's wages on its wage report, the State shall submit a corrective report as required by SSA.

(c) *Reporting on magnetic tape or other media.* After approval by SSA, a State may substitute magnetic tape or other media for any form required for submitting a report or reporting information.

§ 404.1247 When to report wages.

A State shall report wages for the calendar year in which they were actually paid. If the wages were constructively paid in a prior calendar year, the wages shall be reported for the prior year (see § 404.1042(b) regarding constructive payment of wages).

§ 404.1249 When and where to make deposits of contributions and to file contribution returns and wage reports.

(a) *Deposits of contributions.* The State shall pay contributions in the manner required in § 404.1262. (For failure to make deposits when due see § 404.1265). The contribution payment is considered made when received by the appropriate Federal Reserve bank or branch (see § 404.1262). Except as provided in paragraphs (b)(2) and (3) and paragraph (c) of this section, contributions are due and payable as follows:

(1) *For wages paid before July 1, 1980.* Contribution payments for wages paid in a calendar quarter are due on the 15th day of the second month following the end of the calendar quarter during which the wages were paid.

(2) *For wages paid beginning July 1, 1980 and before January 1984.* Contribution payments for wages paid in a calendar month are due within the thirty day period following the last day of that month.

(3) *For wages paid after December 1983.* Contribution payments for wages paid in the first half of a calendar month are due on the last day of that month. Contribution payments for wages paid in the second half of that calendar month are due on the fifteenth day of the next month. (For purposes of this section, the first half of a calendar month is the first 15 days of that month and the second half is the remainder of that month.)

(b) *Contribution returns and wage reports.* (1) *Where to be filed.* The State shall file the original copies of all contribution returns, wages reports, and adjustment reports with the SSA.

(2) *When to be filed.* (i) *For years prior to execution of agreement or modification.* If an agreement or modification provides for the coverage of employees prior to the year of execution of the agreement or modification, the State shall pay contributions due and shall file the contribution returns and wage reports within 90 days after the date of the notice that the Secretary has signed the agreement or modification.

(ii) *For year of execution of agreement or modification.* If the agreement or modification provides for the coverage of employees for the year of execution of the agreement or modification, the State may, within 90 days after the date of the notice that the Secretary has signed the agreement or modification, submit a single contribution return and pay all contributions due for the following periods:

(A) The month in which the agreement or modification was signed;

(B) Any prior months in that year; and

(C) Any subsequent months before January 1984 (half-months after December 1983) whose contribution return and payment due date is within this 90 day period. The State shall file wage reports for that year by February 28 of the year following the date of execution or within 90 days of the date of the notice, whichever is later.

(iii) *For years after execution of agreement or modification.* Except as described in paragraph (b)(2)(ii) of this section, when the State pays its contributions under paragraph (a) of this section, it shall also file a contribution return. The State shall file the wage report for any calendar year after the year of execution of agreement or modification by February 28 of the following calendar year.

(iv) For good cause shown, and upon written request by a State, the Secretary may allow additional time for filing the reports and paying the related contributions described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(3) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day for filing the wage report falls on a weekend, legal holiday or Federal nonworkday, the State may file the wage report on the next Federal workday. If the due date for paying contributions for the wages paid in a period (as specified in paragraph (a) of this section) falls on a weekend, legal holiday or Federal nonworkday, the State shall pay the contributions and shall file the contribution return no later than—

(i) The preceding Federal workday for wages paid in July 1980 through December 1983;

(ii) The next Federal workday for wages paid before July 1980 or after December 1983.

(4) *Submitting reports and payments.* When submitting the contribution returns or wage reports the State shall release them in time to reach SSA by the due date. When submitting contribution payments as described in § 404.1262, the State shall release the payments in time to reach the appropriate Federal Reserve bank or branch by the due date. In determining when to release any returns, reports, or payments the State shall provide sufficient time for them to timely reach their destination under the method of submission used, e.g., mail or electronic transfer of funds.

(c) *Payments by third party on accounts of sickness or accident disability.* Where a third party makes a payment to an employee on account of sickness or accident disability which constitutes wages for services covered under a State agreement, the wages will be considered, for purposes of the deposits required under this section, to have been paid to the employee on the date on which the employer receives notice from the third party of the amount of the payment. No interest will be assessed for failure to make a timely deposit of contributions due on such wages for which a deposit was made after December 1981 and before July 1982, to the extent that the failure to make the deposit timely is due to reasonable cause and not willful neglect.

§ 404.1251 Final reports.

If a political subdivision is legally dissolved or otherwise ceases to exist, the State shall file a final report on that entity. The report shall include each coverage group whose existence ceases with that of the entity. It shall:

(a) Be marked "final report";

(b) Cover the period during which final payment of wages subject to the agreement is made; and

(c) Indicate the last date wages were paid.

With the final report, the State shall submit a statement showing the title and business address of the State official responsible for keeping the State's records and of each State and local official responsible for keeping the records for each coverage group whose existence is ended. The State shall also identify, as prescribed by SSA, each political subdivision by its assigned number and, where applicable, any

coverage group or payroll record unit number assigned.

What is a State's Liability for Contributions

§ 404.1255 State's liability for contributions.

A State's liability for contributions equals the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954, if the services of the employees covered by the State's agreement were employment as defined in section 3121 of the Code. The State's liability begins when those covered services are performed, for which wages are actually or constructively paid to those individuals, including wages paid in a form other than cash (see § 404.1041(d)). If an agreement is effective retroactively, the State's liability for contributions on wages paid during the retroactive period begins with the date of execution of the agreement or applicable modification. Where coverage of a coverage group has been terminated, the State is liable for contributions on wages paid for covered services even if the wages are paid after the effective date of termination of coverage.

§ 404.1256 Limitation on State's liability for contributions for multiple employment situations.

(a) *Limitation due to multiple employment.*

Where:

(1) An individual in any calendar year performs covered services as an employee of a State and as an employee of one or more political subdivisions of the State, or as an employee of more than one political subdivision; and

(2) The State provides all the funds for payment of the amounts which are equivalent to the taxes imposed on the employer under FICA on that individual's remuneration for those services; and

(3) No political subdivision reimburses the State for paying these amounts, the State's agreement or modification of an agreement may provide that the State's liability for the contributions on that individual's remunerations shall be computed as though the individual had performed services in employment for only one political subdivision. The State then totals the individual's covered wages from all these governmental employers and computes the contributions based on that total subject to the wage limitations in § 404.1047.

(b) *Identification of employees in multiple employment.* An agreement or modification of an agreement providing for the computation of contributions as described in paragraph (a) of this section shall identify the class or classes of employees to whose wages this method of computing contributions applies. For example, the State may provide that such computation shall apply to the wages paid to all individuals for services performed in positions covered by a particular retirement system, or to the wages paid to all individuals who are members of any two or more coverage groups designated in an agreement or modification. The State shall promptly notify SSA if the conditions in paragraph (a) of this section are no longer met by any class or classes of employees identified in an agreement or modification. In its notification, the State shall identify each class of employees and the date on which the conditions ceased to be met.

(c) *Effective date.* In the agreement or modification, the State shall provide that the computation of contributions shall apply to wages paid after the effectifve date stated in the agreement or modification. That date may be the last day of any calendar year; however, it may be no earlier than January 1 of the year in which the agreement or modification is submitted to SSA.

Figuring the Amount of the State's Contributions

§ 404.1260 Amount of contributions.

The State's contributions are equal to the product of the applicable contribution rate (which is equivalent to both the tax rates imposed under sections 3101 and 3111 of the Internal Revenue Code) times the amount of wages actually or constructively paid for covered services each year (subject to the wage limitations in § 404.1047) to the employee by the employer.

§ 404.1262 Manner of payment of contributions by State.

Beginning 3 months after the effective date of these regulations, a State shall pay the contributions it is required under its agreement to pay to the Secretary of the Treasury using the electronic transfer of funds. (We may extend this time limitation by an additional three months.) When paying its contributions, the State shall deposit its payment at the specific Federal Reserve bank or branch designated by SSA.

§ 404.1263 When fractional part of a cent may be disregarded.

In paying contributions to a Federal Reserve bank or branch, a State may disregard a fractional part of a cent unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall be used in computing the total of contributions.

If a State Fails To Make Timely Payments

§ 404.1265 Addition of interest to contributions.

(a) *Contributions not paid timely.* (1) *General.* If a State fails to pay its contributions to the appropriate Federal Reserve bank or branch (see § 404.1262), when due under § 404.1249(a), we add interest on the unpaid amount of the contributions beginning with the date the payment was due, except as described in paragraphs (b) and (c) of this section. Interest, if charged, begins with the due date even if it is a weekend, legal holiday or Federal nonwork day. Interest is added at the rate prescribed in section 218(j) of the Act.

(2) *Corrective reports.* If, after submitting its wage report, a State files a corrective report of additional wages which results in an underpayment of contributions, we assess interest to the underpaid amount. We add the interest beginning with the date the contributions on those wages were initially due to the date the contributions are paid.

(b) *Verifying contributions paid against reported wages.* We check the computation of contributions to verify that a State has paid the correct amount of contributions on the wages it reports for a calendar year (see § 404.1249(b)(2)). If we determine that a State paid less than the amount of contributions due for that year, we add interest to the amount of the underpayment. We would add interest beginning with the date the unpaid contributions were initially due to the date those contributions are paid. However, if the total amount of the underpayment is 5 percent or less than the contributions due for a calendar year based upon the State's wage report and the State deposits the underpaid amount within 30 days after the date of our notification to the State of the amount due, the State may request that the interest on the underpaid amount be waived for good cause. This request must be made within 30 days of our notification of the State of the amount due. Such requests will be evaluated on an individual basis. The evaluation will include, but not be limited to, consideration of such factors as the circumstances causing the late payment, the State's past record of late payments and the amount involved.

Examples:

(1) The records of a political subdivision for the month of June are destroyed by fire. The State makes an estimated deposit of contributions for the month of June for that political subdivision and deposits contributions for the month of June for all other political subdivisions based on actual records. At the time SSA verifies contributions paid against reported wages, we discover that the State has paid only 97% of its total liability for the year. Within 30 days after we notify it of the amount due, the State asks that we waive the interest on the unpaid amount and the State deposits the unpaid amount. In this situation, we would waive the interest on the unpaid contributions.

(2) We would waive interest if:

(i) Some of the political subdivisions made small arithmetical errors in preparing their reports of wages,

(ii) After verification of the contributions paid against reported wages, SSA discovers that minimal additional contributions are due,

(iii) Within 30 days of our notice to the State regarding this underpayment the State, which usually makes its deposits timely, pays the amount due, and

(iv) Within that same 30 day period the State requests that we waive the interest due.

(3) We would not waive interest where a State frequently has problems depositing its contributions timely. Reasons given for the delays are, e.g., the computer was down, the 5 p.m. mail pickup was missed, one of the school district reports was misplaced. If requested we would not waive interest on this State's late payment of contributions based upon its past record of late payments and because of the circumstances cited.

(c) *Contributions erroneously paid to IRS.* If contributions are erroneously paid to the IRS: (1) On or before the due date for paying the contributions to SSA, and (2) a refund (including interest, if any) is issued by IRS, and (3) the State deposits an amount equal to the entire IRS refund at the appropriate Federal Reserve bank (see § 404.1262), and (4) the State makes the deposit within 30 days after IRS issued the refund, SSA will not add interest on the underpaid amount.

(d) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day of the 30 day periods specified in paragraphs (b) and (c) of this section is on a weekend, legal holiday or Federal nonworkday, the State shall make the required deposit or request for waiver by the next Federal workday.

§ 404.1267 Failure to make timely payments.

If a State does not pay its contributions when due, the Secretary has the authority under section 218(j) of the Act to deduct the amounts of the unpaid contributions plus interest at the rate prescribed in section 218(j) of the Act from any amounts certified by her or him to the Secretary of the Treasury for payments to the State under any other provision of the Social Security Act. The Secretary notifies the Secretary of the Treasury of the amounts deducted and requests that the amount be credited to the Trust Funds. Amounts deducted are considered paid to the State under the other provision of the Social Security Act.

How Errors in Reports and Contributions Are Adjusted

§ 404.127 Adjustments in general.

States have the opportunity to adjust errors in the payment of contributions. A State but not its political subdivisions is authorized to adjust errors in the underpayment of contributions. Similarly, the State shall file all claims for credits or refunds and SSA makes the credits and refunds only to the State. Generally, we do not refund contributions in cash to a State unless the State is not expected to have future liability for contributions under section 218 of the Act.

§ 404.1271 Adjustment of overpayment of contributions.

(a) *General.* If a State pays more than the correct amount of contributions, the State shall adjust the overpayment with the next contribution return filed on which the amount owed equals or exceeds the amount of the overpayment.

(b) *Overpayment due to overreporting of wages.*—(1) *Report to file.* If the overpayment is due to the State's reporting more than the correct amount of wages paid to one or more employees during a reporting period and the overpayment is not adjusted under paragraph (a) of this section, the State shall file a report on the appropriate form showing:

(i) The corrected wage data as prescribed by SSA; and

(ii) The reason why the original reporting was incorrect.

(2) *Refund or credit of overpayment where section 218(e)(2) of the Act not applicable.* If:

(i) The State collected contributions from employees in excess of the amount of taxes that would have been required under section 3101 of the Internal Revenue Code; and

(ii) The State paid to the Secretary of the Treasury those contributions plus a matching amount in excess of the taxes which would have been required from an employer under section 3111 of the Code; and

(iii) The service of the employees in question would have constituted employment under section 3121(b) of the Code; and

(iv) Section 218(e)(2) of the Act does not apply (see § 404.125(a)),

then the State shall adjust the overpaid contributions under paragraph (b)(1) of this section. With its adjustment the State, where appropriate, shall include on the prescribed form a statement that the employees from whom the excess contributions were collected have not received nor expect to receive a refund of excess contributions under section 6413(c) of the Internal Revenue Code of 1954 (see § 404.1275(b)). Generally, if the State does not include this statement with its adjustment request, we only refund or credit the State for up to one-half of the overpaid amount.

(c) *Refund or credit of overpayment where section 218(e)(2) of the Act applicable.*—(1) *General.* If—

(i) The overreporting of the amount of wages paid to one or more employees during a reporting period(s) is due to a computation of contributions under § 404.1256 for a year or years prior to the year in which the agreement or modification providing for the computation is entered into, or

(ii) The overreporting is due to a failure to compute contributions as required under § 404.1256,

the State shall adjust the overpayment under paragraph (b)(1) of this section. An overpayment due to overreported wages which does not result from the computation of contributions or a failure to compute contributions under § 404.1256 shall also be adjusted by the State under paragraph (b)(1) of this section. If the adjustment of the overpayment results in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a report adjusting each underreporting. If the adjustment of the overpayment does not result in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a statement that the adjustment of the overpayment does not result in any underreporting.

(2) *Amount of refund or credit.* If the State collects excess contributions from employees, the State's claim for refund or credit is limited to the overpaid amounts. (See § 404.1275 relating to

adjustment of employee contributions.) If—

(i) The State collected the correct amount of contributions from employees based on the amount of wages reported and the Forms W–2 issued to the employees show only the amount of contributions actually collected, but the amount of wages reported is being adjusted downward, or

(ii) The State collects excess contributions from employees but Forms W–2 have not been issued for an amount of wages which is being adjusted downward,

the State may claim a refund or credit for the overpaid amounts. Where the State's claim for refund or credit is for the total overpaid amount, the adjustment report shall include a statement that excess contributions have not been collected from employees, or, where excess contributions have been collected, that Forms W–2 have not been issued and that, when issued, they will show the correct amount of employee contributions.

§ 404.1272 Refund or recomputation of overpayments which are not adjustable.

(a) *General.* If a State pays more than the correct amount of contributions or interest to the appropriate Federal Reserve bank or branch (see § 404.1262), and no adjustment in the amount of reported wages is necessary, that State may file a claim for refund or recomputation of the overpayment.

(b) *Form of claim.* No special form is required to make a claim for a refund or recomputation. If a credit is taken under § 404.1271, a claim is not required.

(c) *Proof of representative capacity.* If a report or return is made by an authorized official of the State who ceases to act in an official capacity and a claim for a refund is made by a successor official, the successor official must submit with the claim written evidence showing that he or she has the authority to make a claim for and receive a refund of any contributions paid by the former official. The written evidence is not necessary if the successor official has previously filed one or more reports or returns which contain her or his signature and official title.

§ 404.1275 Adjustment of employee contributions.

(a) *General.* The amount of contributions a State deducts from an employee's remuneration for covered services, or any correction of that amount, is a matter between the employee and the State or political subdivision. The State shall show any correction of an employee's contribution on statements it furnishes the employee under § 404.1226. Where the State issues an employee a Form W–2 and then submits an overpayment adjustment but claims less than the total overpaid amount as a refund or credit, the State shall not correct the previously issued Form W–2 to reflect that adjustment.

(b) *Multiple employment involved.* If a State and one or more of its political subdivisions, or two or more political subdivisions, pay an employee wages during a calendar year but collect an amount of contributions which exceeds the amount of taxes which would have been imposed by section 3101 of the Internal Revenue Code, the employee may claim a credit or refund of the excess contributions by complying with sections 31(b) and 6413(c) of the Internal Revenue Code of 1954.

(c) *Credit or refund of self-employment tax.* An individual who properly reported self-employment income may, because of retroactive coverage under a State agreement of her or his services as an employee, pay more than the maximum amount of tax due for a year or years. If the individual wishes to claim a credit or refund of the overpayment of the tax on the self-employment income, the individual may file a claim under section 6511(d)(5) of the Internal Revenue Code.

§ 404.1276 Reports and payments erroneously made to Internal Revenue Service—transfer of funds.

(a) *General.* In some instances, State or local governmental entities not covered under an agreement make reports and pay contributions to IRS under the Federal Insurance Contributions Act (FICA) procedures applicable to private employers in the mistaken belief that this provides Social Security coverage under section 218 of the Act for their employees. In other instances, entities which are covered under an agreement erroneously report to IRS, or a State or local government employee reports other employees to IRS or reports to IRS as a self-employed individual. Where these reports and payments are erroneously made to IRS, the State may correct the error and obtain coverage under its agreement as described in paragraphs (b) through (f) of this section.

(b) *Political subdivision not included in the State agreement.* We notify the State that if it desires coverage, it may be provided by either a regular modification or an error modification, depending on the circumstances (§§ 404.1215 and 404.1216). In most cases, the State may obtain coverage by a regular modification. If a regular modification cannot be used (e.g., State law does not permit the retroactive effective date which would be desired), the State may use an error modification. The effective date of either modification depends on the facts of the situation being corrected.

(c) *Political subdivision included in the agreement.* If a political subdivision included in the agreement erroneously makes reports and payments under FICA procedures, the State must correct the reportings for periods not barred by the statute of limitations. If the covered entity reported both under the agreement and under FICA procedures, we notify IRS and make necessary corrections in the earnings records. We also advise the State that the entity which reported under FICA procedures should request a refund of payments erroneously made to IRS.

(d) *State and local government employees erroneously reported as employees of individual or as self-employed.*—(1) *Covered entity.* If employees of a covered entity are erroneously reported as employees of an individual or as self-employed, we advise the State that the individual who made the reports should request a refund from IRS for periods not barred by the statute of limitations. We require the State to file correctional reports and returns for any periods open under the State and local statute of limitations.

(2) *Noncovered entity.* We advise the State that the individual who made the reports should request a refund from IRS for the periods not barred by the statute of limitations. If the State wishes to provide coverage, it must submit a modification as discussed in paragraph (b) of this section. If the State does not wish to provide coverage, we void the reports. Amounts reported for periods barred by the statute of limitations remain on the earnings records.

(3) *Filing wage reports and paying contributions.* Generally, the entity or individual that makes the erroneous reports and payments requests the refund from IRS for periods not barred by the statute of limitations. The State files the necessary reports with SSA and pays any contributions due. The reports shall conform to the coverage provided by the agreement to the extent permitted by the statute of limitations. The due date for these reports depends on whether original reports or adjustment reports are involved. Reports and contribution returns for the entire retroactive period of coverage provided by a regular or error modification are due 90 days after the date of execution of the modification. The time limitations for issuing assessments and credits or refunds extend from this due date. Thus,

SSA may issue assessments or credits or refunds for periods barred to refund by IRS. The State may request that reports and payments for the IRS barred periods be considered made under the agreement as described in paragraph (f) of this section.

(f) *Use of transfer procedure.* In limited situations, the State may request that reports and payments the State or a political subdivision (but not an individual) erroneously made under FICA procedures and which have been posted to the employees' earnings record be considered made under the State's agreement. We use a tranfer procedure to do this. The transfer procedure may be used only where (1) the periods are open to assessment under the State and local statute of limitations; (2) the erroneous reports to be transferred are posted to SSA's records; (3) the periods are barred to refund under the IRS statute of limitations; and (4) a refund is not obtained from IRS by the reporting entity.

How Overpayments of Contributions Are Credited or Refunded

§ 404.1280 Allowance of credits or refunds.

If a State pays more than the amount of contributions due under an agreement, SSA may allow the State, subject to the time limitations in § 404.1282 and the exceptions to the time limitations in § 404.1283, a credit or refund of the overpayment.

§ 404.1281 Credits or refunds for periods of time during which no liability exists.

If a State pays contributions for any period of time for which contributions are not due, but the State is liable for contributions for another period, we credit the amount paid against the amount of contributions for which the State is liable. We refund any balance to the State.

§ 404.1282 Time limitations on credits or refunds.

(1) *General.* To get a credit or refund, a State must file a claim for a credit or refund of the overpaid amount with the Secretary before the applicable time limitation expires. The State's claim for credit or refund is considered filed with the Secretary when it is delivered or mailed to the Secretary. Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, we consider a claim timely filed if it is filed on the next Federal workday.

(b) *Time limitation.* Subject to the exceptions in § 404.1283, a State must file a claim for credit re refund of an overpayment before the end of the latest of the following time period:

(1) Three years, 3 months, and 15 days after the year in which the wages in question were paid or alleged to have been paid; or

(2) Three years after the due date of the payment which included the overpayment; or

(3) Two years after the overpayment was made to the Secretary of the Treasury.

§ 404.1283 Exceptions to the time limitations on credits or refunds.

(a) *Extension by agreement.* The Secretary may extend the applicable time period in § 404.1282 if the State and the Secretary agree in writing to the extension before that time period ends. The extension is effective when the Secretary signs the agreement. A claim for credit or refund filed by the State before the extended period ends is considered filed within the applicable time period in § 404.1282.

(b) *Revision of employee's earnings record.* If the Secretary, under section 205(c)(5)(A), (B), or (E) of the Act, revises a wage entry on an individual's earnings record, a claim for credit or refund of the overpayment resulting from the revision is considered filed within the applicable time limitations in § 404.1282 if (1) the state files the claim before the secretary's decision revising the earnings record becomes final or (2) the State files a claim regarding revision of the earnings record which is erroneous because of fraud.

§ 404.1284 Offsetting underpayments against overpayments.

(a) *State fails to make adjustment for allowance of credit.* If SSA notifies a State that a credit is due the State, and the State does not make the adjustment for the allowance of the credit, SSA offsets the credit against any contributions or interest due. Before making the offset, SSA will give the State an opportunity to make the adjustment.

(b) *State fails to make adjustment for underpayment of contributions or interest due.* If SSA notifies a State that contributions or interest are due, and the State does not pay the contributions or interest, SSA offsets the contributions or interest due against any credit due the State. Before making the offset, SSA will give the State an opportunity to pay the underpayment or interest due.

How Assessments for Underpayments of Contributions Are Made

§ 404.1285 Assessments of amounts due.

A State is liable for any amount due (which includes contributions or interest) under an agreement until the Secretary is satisfied that the amount has been paid to the Secretary of the Treasury. If the Secretary is not satisfied that a State has paid the amount due, the Secretary issues an assessment for the amount due subject to the time limitations in § 404.1286 and the exceptions to the time limitations in §§ 404.1287 and 404.1289. If detailed wage information is not available, the assessment is issued based on the following:

(1) The largest number of individuals whose services are known to be covered under the agreement is used for computation purposes;

(2) The individuals are assumed to have maximum creditable earnings each year;

(3) The earnings are considered wages for covered services; and

(4) The amount computed is increased by twenty percent to insure that all covered wages are included in the assessment.

If the State pays the amount assessed and the assessed amount is later determined to be more than the amount actually due, we issue a refund or credit to that State for the excess amount. When the assessment is issued within the applicable time limitation, there is no time limit on collecting the amount due. An assessment is issued on the date that it is mailed or otherwise delivered to the State.

§ 404.1286 Time limitations on assessments.

Subject to the exceptions to the time limitations in §§ 404.1287 and 404.1289, a State is not liable for an amount due under an agreement unless the Secretary makes an assessment for that amount before the later of the following periods ends:

(1) Three years, 3 months, and 15 days after the year in which the wages, upon which the amount is due, we paid; or

(2) Three years after the date the amount became due.

Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, an assessment is considered timely if the Secretary makes the assessment on the next Federal workday.

§ 404.1287 Exceptions to the time limitations on assessments.

(a) *Extension by agreement.* The Secretary may extend the applicable time limitation in § 404.1286 if the State and the Secretary agree in writing to the extension before that time limitation ends. The extension is effective when the Secretary signs the agreement. If the

Secretary makes an assessment before the extended time limitation ends it is considered to have been made within the applicable time limitation in § 404.1286.

(b) *The 365-day period.* If a State files a report before the applicable time limitation in § 404.1286 (or any extension under paragraph (a) of this section) ends and makes no payment or pays less than the correct amount due, the Secretary may assess the State for the amount due after the applicable time limitation has ended. However, the Secretary must make the assessment no later than the 365th day after the day the State makes payment to the Secretary of the Treasury. The Secretary can only make this assessment on the wages paid to the reported individuals for the reported periods. The Secretary, in making this assessment, credits the amount paid by the State on these individuals' wages for those reported periods.

(c) *Revision of employee's earnings record.* If, under section 205(c)(5) (A) or (B) of the Act, the Secretary credits wages to an individual's earnings record, he or she may make an assessment for any amount due on those wages before the Secretary's decision on revising the individual's earnings record becomes final. (Sections 404.822(c) (1) and (2) describe the time limits for revising an earnings record where an individual has applied for monthly benefits or a lump-sum death payment or requested that we correct his earnings record.)

(d) *Overpayment of contributions on wages of employee having other wages in a period barred to assessment.* If the Secretary allows a State a credit or refund of an overpayment for wages paid or alleged to have been paid an individual in a calendar year but the facts upon which the allowance is based establish that contributions are due on additional other wages paid that individual in that year which are barred to assessment, we may make an assessment notwithstanding the periods of limitation in § 404.1286. The assessment, however, must be made before or at the time we notify the State of the allowance of the credit or refund. In this situation, the Secretary reduces the amount of the State's credit or refund by the assessed amount and notifies the State accordingly. For purposes of this paragraph, the assessment shall only include contributions and not interest as provided for in section 218(j) of the Act.

Example: The State files an adjustment report timely to correct an error in the amount reported as wages for an employee. The correction reduces the employee's wages for the year to less than the maximum amount creditable. The employee has other earnings in the same year which were not reported because of the previously reported maximum amounts. The applicable time limitation for assessing contributions on wages for the year has expired before the credit was allowed. The Secretary may assess for the underpaid contributions but no later than the date of the notice to the State that its claim for a credit had been allowed.

(e) *Evasion of payment.* The Secretary may make an assessment of an amount due at any time where the State's failure to pay the amount due results from the fraudulent attempt of an officer or employee of the State or political subdivision to defeat or evade payment of that amount.

§ 404.1289 Payment after expiration of time limitation for assessment.

The Secretary accepts wage reports filed by a State even though the applicable time limitation described in § 404.1286 (or as the time limitation is extended under § 404.1287) has expired, provided:

(a) The State pays to the Secretary of the Treasury the amount due on the wages paid to employees performing services in the coverage group in the calendar years for which the wage reports are being made; and

(b) The State agrees in writing with the Secretary to extend the time limitation for all employees in the coverage group in the calendar years for which the wage reports are being made.

In this situation, the time period for assessment is extended until the Secretary notifies the State that the wage reports are accepted. Where the State pays the amount due within the time period as extended under this section, the amount shall not include interest as provided for in section 218(j) of the Act.

Secretary's Review of Decisions on Credits, Refunds, or Assessments

§ 404.1290 Review of decisions by the Secretary.

(a) *Delegation of authority.* The Secretary, who has the authority under section 218(s) of the Act to review decisions on credits, refunds or assessments, has delegated this authority to the Commissioner of Social Security.

(b) *What decisions will be reviewed.* A State, under section 218(s) of the Act, may request review of an assessment of an amount due from a State, an allowance to the State of a credit or refund of an overpayment, or a disallowance of the State's claim for credit or refund of an overpayment. The Commissioner may review regardless of whether the amount assessed has been paid or whether the credit or refund has been accepted by the State. Prior to the Commissioner's review, however, an assessment, allowance or disallowance may be reconsidered under §§ 404.1291–404.1293.

§ 404.1291 Reconsideration.

After the State requests review of the assessment or allowance or disallowance of a credit or refund, and prior to the Commissioner's review, that decision will be reconsidered, and affirmed, modified, or reversed. We notify the State of the reconsidered determination and the basis for it. The State may request the Commissioner to review this reconsidered determination under § 404.1294(b). In limited situations, SSA and the State may agree that the reconsideration process should be waived, e.g., where a major policy is at issue.

§ 404.1292 How to request reconsideration.

(a) *Form of request.* No particular form of request is required. However, a request for reconsideration must:

(1) Identify the assessment, allowance or disallowance being questioned;

(2) Describe the specific issue on which the reconsideration is requested;

(3) Contain any additional information or argument relevant to that issue; and

(4) Be signed by an official authorized to request the reconsideration on behalf of the State.

(b) *Submitting additional material.* A State has 90 days from the date it requests reconsideration to submit additional evidence it wishes considered during the reconsideration process. The time limit for submitting additional evidence may be extended upon written request of the State and for good cause shown.

§ 404.1293 Time for filing request for reconsideration.

(a) *Time for filing.* The State must file its request for reconsideration within 90 days after the date of the notice of assessment, allowance, or disallowance. Usually, the date of the request for reconsideration is considered the filing date. Where the 90-day period ends on a weekend, legal holiday or Federal nonworkday, a request filed on the next Federal workday is considered as timely filed.

(b) *Extension of time.* For good cause shown, and upon written application by a State filed prior to the expiration of the time for filing a request for reconsideration, additional time for filing the request may be allowed.

§ 404.1294 Notification to State after reconsideration.

(a) The State will be notified in writing of the reconsidered determination on the assessment, allowance, or disallowance, and the basis for the determination.

(b) If the State does not agree with the reconsidered determination, it has 90 days from the date of notice of the reconsidered determination to request the Commissioner to review that determination. The rules on what the request should contain and the time for filing the request are the same as in §§ 404.1292 and 404.1293.

§ 404.1295 Commissioner's review.

Upon request by the State, the Commissioner will review the reconsidered determination (or the assessment, allowance or disallowance as initially issued if reconsideration is waived under § 404.1291). If necessary, the Commissioner may request the State to furnish additional evidence. Based upon the evidence considered in connection with the assessment, allowance or disallowance and any additional evidence submitted by the State or otherwise obtained by the Commissioner, the Commissioner affirms, modifies, or reverses the assessment, allowance or disallowance.

§ 404.1296 Commissioner's notification to the State.

The Commissioner notifies the State in writing of the decision on the assessment, allowance, or disallowance, and the basis for the decision.

How a State May Seek Court Review of Secretary's Decision

§404.1297 Review by court.

(a) *Who can file civil action in court.* A State may file a civil action under section 218(t) of the Act requesting a district court of the United States to review any decision the Commissioner makes for the Secretary under section 218(s) of the Act concerning the assessment of an amount due, the allowance of a credit or refund, or the disallowance of a claim for credit or refund.

(b) *Where the civil action must be filed.* A State must file the civil action in the district court of the United States for the judicial district in which the State's capital is located. If the civil action is brought by an interstate instrumentality, it must file the civil action in the district court of the United States for the judicial district in which the instrumentality's principal office is located. The district court's judgment is final except that it is subject to review in the same manner as judgments of the court in other civil actions.

(c) *No interest on credit or refund of overpayment.* SSA has no authority to pay interest to a State after final judgment of a court involving a credit or refund of an overpayment made under section 218 of the Act.

§404.1298 Time for filing civil action.

(a) *Time for filing.* The State must file the civil action for a redetermination of the correctness of the assessment, allowance or disallowance within 2 years from the date the Commissioner mails to the State the notice of the decision under §404.1296. Where the 2-year period ends on a Saturday, Sunday, legal holiday or Federal nonwork day, an action filed on the next Federal workday is considered timely filed.

(b) *Extension of time for filing.* The Commissioner, for good cause shown, may upon written application by a State filed prior to the end of the two-year period, extend the time for filing the civil action.

§404.129 Final judgments.

(a) *Overpayments.* Payment of amounts due to a State required as the result of a final judgment of the court shall be adjusted under §§404.1271 and 404.1272.

(b) *Underpayments.* Wage reports and contribution returns required as the result of a final judgment of the court shall be filed under §§404.1237 through 404.1251. We will assess interest under §404.1285 where, based upon a final judgment of the court, contributions are due from a State because the amount of contributions assessed was not paid by the State or the State had used an allowance of a credit or refund of an overpayment.

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Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-7 and 85-AWA-10]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Dallas Love Field, Dallas, TX, and Dulles International Airport, Washington, DC. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATES: 0901 UTC, July 3, 1986, for Dallas Love Field, Dallas, TX, and 0901 UTC August 28, 1986, for Dulles International Airport, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47170, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103, and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103, and 105) to establish the general definition and operating rules for an ARSA (50 FR 9552), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 11 ARSA's as published in the Federal Register on November 1, 1985 (50 FR 45718), 11 ARSA's on December 9, 1985 (50 FR 50254), 12 ARSA's on February 7, 1986 (51 FR 4872), 11 ARSA's on March 10, 1986 (51 FR 8284), 6 ARSA's on April 7, 1986 (51 FR 11886), and 7 ARSA's on May 5, 1986 (51 FR 16610), in the implementation of this NAR recommendation.

On September 30, 1985, the FAA proposed to designate ARSA's at Dallas Love Field under Airspace Docket No. 85-AWA-7 (50 FR 39822) and at Dulles International Airport under Airspace Docket No. 85-AWA-10 (50 FR 39822). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

Related Rulemaking

In addition to the airports addressed here and those previously designated or delayed, the FAA published proposed ARSA designations for 2 additional airports on September 30, 1985 (50 FR 39822).

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others claimed that the notification for some of the informal airspace meetings held for some of the candidate airports was inadequate. The schedule of the meetings was published in the Notice of Proposed Rulemaking (NPRM) on September 30, 1985 (50 FR 39822). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 213-day comment period was provided for Airspace Docket No. 85-AWA-7, and a 137-day comment period was provided for Airspace Docket No. 85-AWA-10 in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to

100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

AOPA claimed the staffing at one facility more than doubled in the year prior to implementation of their ARSA. The facility's authorized staffing of 28 controllers did not change. In the facility in question, on January 1, 1985, there were 27 controllers on board but in January 1986, there were the authorized 28 on board. The FAA finds the AOPA claim to be without merit.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claims the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a level III, IV, or V Radar Approach Control Facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in VFR conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations where ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. FAA's preliminary delay estimates were based upon the ARSA proposed for the individual locations, whether standard or modified.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

AOPA claimed that at least half the number of nonradio equipped (NORDO) aircraft in the United States, or 20,900 aircraft, would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. This is well in excess of the number estimated by the FAA. The FAA does not agree with the AOPA conclusion because each airport receiving ARSA designation has an

airport traffic area requiring two-way radio communications at the primary airport at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

SSA claimed that some FAA field personnel had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression of all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested the VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

SSA claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

SSA, and other commenters, claimed that designation of these ARSA's may negatively impact cross-country glider flights operating out of airports 20 miles, or more, from these ARSA's. While some deviations may be required, the FAA does not agree that the minor deviations that may be required will result in negatively impacting cross-country glider operations.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an enviromental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and

TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, SSA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile description rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

AOPA and SSA objected to the ARSA's based upon a claim that an insufficient amount of pilot education had been accomplished by the agency. AOPA cited South Bend, IN, as an example where there were 19 days between the informal airspace meeting and the closing of the comment period, and SSA claimed that the comment period and a single informal airspace meeting were insufficient. The FAA does not agree. The example cited by AOPA and SSA referenced the comment period, not the total period to provide for pilot education. Pilot education will continue after the comment period has ended and beyond the effective data of the ARSA's. Further user meetings will be held for each designated location following implementation of the ARSA's.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the Federal Register NPRM (50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail

individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime cost will be incurred by regional or headquarters personnel.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA, and other commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Particular Locations

Dallas Love Field, Dallas, TX

AOPA claimed that numerous towers are located southeast of the Love Field inner core and nonparticipants will be unable to maintain obstacle clearance in this area. The vast majority of these towers are located in the inner core or surface area of the ARSA and within the existing airport traffic area. Participation in this surface area has been and will continue to be mandatory. For this reason, the FAA does not agree. Additionally, the general issue of obstacle clearance has been addressed above.

One commenter faulted the FAA notification for the informal airspace meeting. The notifications for the Dallas informal airspace meeting were mailed on February 3, 1986, which was 77 days in advance of the meeting. It is incumbent on all persons holding airmen certification to keep the FAA advised of current addresses in order for any mailings to be effective.

Other comments received criticized the ARSA program in general terms; these comments have been addressed earlier in this document under "ARSA Program Comments."

The local AOPA representative at the informal airspace meeting stated that he believed the Dallas ARSA proposal was sound and would be an improvement over the present TRSA.

The ATA representative expressed confidence that the ARSA for Dallas Love Field was a good idea and would enhance safety.

Dulles International Airport, Washington, DC

One commenter claimed that considerable additional costs would be incurred by NORDO aircraft being required to circumnavigate the ARSA. The FAA does not agree. Only minor altitude adjustments or horizontal deviations may be incurred from those presently required. Also, means exist to accommodate any deviations by NORDO aircraft through prior coordination with the facility.

AOPA and others claimed that NORDO aircraft based at Glascock Field would have to install two-way radios at considerable expense to operate in the ARSA. While it is true the aircraft owners may, of their own choosing, elect to install radios in their aircraft, the FAA does not find this to be necessary. As discussed above, means exist to coordinate NORDO operations with the controlling facility.

Several commenters claimed that traffic circumnavigating the ARSA to the east would be forced to navigate through a narrow corridor between the ARSA and the Washington, DC, TCA. The distance between the ARSA and TCA is approximately one mile narrower than that presently existing between the TCA and the Dulles TRSA. Additionally, the vertical dimension of the ARSA in this area is less than 1,500 feet, allowing pilots to avoid compression with minor altitude adjustments. For these reasons, the FAA does not agree that compression will occur. The issue of compression has also been addressed in general terms earlier in this document.

AOPA claimed the cutout in the vicinity of the Bull Run Mountains has an unidentifiable boundary and suggested this boundary be moved east and aligned parallel to a north-south road in this area. Although the FAA attempts to use existing landmarks as much as is practical, using this road as a boundary is not practical due to the excessive airspace that would be eliminated from the ARSA.

AOPA claimed the ARSA will either restrict or discourage instrument training at Dulles Airport. The FAA does not agree. Although some gains in traffic may be realized by Dulles Approach Control, the increase should not be so significant that it would adversely affect instrument traffic. All instrument training traffic is now required to contact approach control for an approach clearance and would continue to do so.

AOPA and others claimed that aircraft overflying the area would need to circumnavigate the Dulles ARSA incurring additional flying time and expense. The FAA does not agree. The figures used by AOPA are for both those aircraft participating in the present TRSA and those circumnavigating the terminal airspace. Although the TRSA was voluntary, the participation in TRSA by overflights was quite high. Additionally, the upper altitude limit of the ARSA will be significantly lower than that of the TRSA and aircraft could choose to overfly with little or no altitude adjustment. For these reasons, the FAA does not agree that additional flying time and expense will be incurred.

SSA claimed that although normal towing, training and practice areas for sailplanes would not be impacted, their cross-country routes may be negatively impacted by the ARSA. As stated above, the FAA will continue to monitor these operations and, if necessary, take action to lessen these impacts.

Other commenters spoke against the ARSA in general. These comments have been addressed above under general comments.

ALPA and ATA voiced support of the Dulles ARSA stating they believe it will enhance safety.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which addersed information presented in the Regulatory Evaluations of the notices for the dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of this final rule has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentialy transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Dallas Love Field, TX, and Dulles International Airport, Washington, DC. Each location designated is a public airport at which a

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nonregulatory Terminal Radar Service Area is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.301 is amended as follows:

Dallas Love Field, TX [New]

The airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Dallas Love Field (lat. 32°50'49"N., long. 96°51'05"W.) excluding that airspace within the Dallas-Forth Worth, TX, (DFW) Terminal Control Area (TCA), and excluding that airspace extending clockwise from a line bearing 340° from lat. 32°54'25"N., long. 96°51'20"W., to a line bearing 136° from lat. 32°54'25"N., long. 96°51'20"W., and that airspace extending upward from 2,000 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport extending clockwise from the point where the 10-mile radius intersects the DFW TCA northwest of the Dallas Love Field to the 340° bearing from lat. 32°54'25"N., long. 96°51'20"W., and that airspace extending upward from 3,000 feet MSL to and including 4,500 feet MSL within a 25-mile radius of the airport extending clockwise from a line bearing 340° from lat. 32°54'25"N., long. 96°51'20"W., to a line bearing 136° from lat. 32°54'25"N., long. 96°51'20"W., and that airspace extending upward from 2,000 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport clockwise from a line bearing 136° from lat. 32°54'25"N., long. 96°51'20"W. to a line bearing 136° from lat. 32°51'45"N., long. 96°54'30"W., excluding that airspace within the DFW TCA.

Dulles International Airport, Washington, DC [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Dulles International Airport (lat. 38°56'36"N., long 77°27'29"W.) and lying west of a line extending from the 008° bearing from the airport on the 5-mile arc to the 190° bearing from the airport on the 5-mile arc, and upward from the surface to 3,000 feet MSL east of that line, and that airspace extending upward from 1,700 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport from the 146° bearing from the airport clockwise to the 036° bearing from the airport, excluding the airspace beyond 8 miles between the 234° bearing from the airport clockwise to the 271° bearing from the airport, and that airspace extending upward from 1,700 feet MSL upward to and including 3,000 feet MSL within a 10-mile radius of the airport from the 036° bearing from the airport clockwise to the 146° bearing from the airport, excluding that airspace east of the west boundary of the Washington, DC, Terminal Control Area.

Issued in Washington, DC, on May 22, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-11991 Filed 5-28-86; 8:45 am]

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federal register

Thursday
May 29, 1986

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 779, 780, 783, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Fish and Wildlife Resources Information and Plan; Protection of Fish, Wildlife, and Related Environmental Values; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 779, 780, 783, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Fish and Wildlife Resource Information; Fish and Wildlife Plan; Protection of Fish, Wildlife, and Related Environmental Values

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to amend its rules with respect to fish and wildlife resource information and planning requirements, and standards applied to the protection of fish and wildlife values. The purpose of this proposal is to comply with recent court decisions and to revise and clarify the rules. The revised rules would amend reinstated fish and wildlife permitting requirements and would provide added protection to endangered or threatened species.

DATES:

Written comments

OSM will accept written comments on the proposed rule until 5 p.m. eastern daylight time on August 7, 1986.

Public hearings

Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee, at 9:30 a.m. local time on July 31, 1986. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern daylight time on July 7, 1986.

ADDRESSES:

Written comments

Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, Room 5315–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings

Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings

Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Charles H. Wolf, Office of Surface Mining, U.S. Department of the Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220; telephone: 412–937–2829.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, commenters should submit five copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates, and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES"). The times, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Charles Wolf (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. eastern daylight time on July 10, 1986. If no one has contacted Mr. Wolf to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions for clarification of issues, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth general regulatory requirements governing surface coal mining operations and surface impacts of underground coal mining. Sections 515(b)(24) and 516(b)(11) of the Act, 30 U.S.C. 1265(b)(24) and 1266(b)(11), require that surface coal mining and reclamation operations shall:

> to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

In addition, Section 515(b)(2) of the Act, 30 U.S.C. 1265(b)(2), requires that the operator restore mined land to a condition capable of supporting the uses which it was capable of supporting prior to any mining or higher or better uses. Section 516(b)(10) imposes that same requirement on underground mines with such modifications as is necessary to accommodate distinct differences.

To implement the requirements of these provisions and the provisions of other statutes and regulations protecting fish and wildlife resources, OSM promulgated 30 CFR 779.20, 780.16, 783.20, 784.21, 816.97, and 817.97 on March 13, 1979 as a part of the permanent regulatory program (44 FR 15356, 15359, 15364, 15369, 15410, 15437).

Representatives of the coal industry, the States of Virginia and Illinois, and certain environmental groups challenged OSM's previous permitting rules as legally inconsistent with the Act, *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C., 1980). There, the plaintiffs argued that there was no statutory authorization in

Sections 507, 508, or 515(b)(24) of the Act to require fish and wildlife information in the permit application or the reclamation plan. Since sections 507 and 508 of the Act gave the regulatory authority power to decide on other necessary requirements, plaintiffs contended that the challenged rules usurped the role Congress had delegated to the States by creating a uniform system of permit-data requirements, which left no flexibility for consideration of State-specified conditions.

The district court, while sustaining the Secretary's general authority to promulgate additional requirements in response to the separate industry challenge, remanded 30 CFR 779.20 and 780.16, which provided permit requirements for fish and wildlife resources information on the basis that there was no statutory authority in this specific case. See *In re: Permanent Surface Mining Regulation Litigation* No. 79–1144, slip op. at 39 (D.D.C. February 26, 1980). OSM subsequently suspended the remanded rules (45 FR 51547, August 4, 1980).

The coal industry appealed the District Court decision sustaining the Secretary's authority to require additional information. The United States Court of Appeals for the District of Columbia Circuit, sitting *en banc*, sustained Judge Flannery's decision that such a specific statutory reference is not necessary. *In re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514, 527 (1981).

Because the Appeals Court opinion specifically noted that it did not address the district Court's decision remanding the fish and wildlife rules (653 F.2d at 517), OSM did not revise the fish and wildlife information requirements during regulatory reform efforts in 1983. Therefore, the suspension of the 1979 regulations remained in effect.

In his March 5, 1984 District Court brief, the Secretary asked the court to vacate its earlier judgement in light of the Appeals Court opinion so that fish and wildlife permit requirements could be promulgated. *In Re: Permanent Surface Mining Regulation II, Government Brief, p. 130, N. 78.*

The District Court on October 1, 1984, held that the effect of the Court of Appeals decision was to reinstate the suspended regulations and ordered that 30 CFR 779.20 and 780.16 be reinstated until a new rulemaking considered the permitting requirement for fish and wildlife. See *In re: Permanent Surface Mining Regulation Litigation* II, No. 79–1144 (D.D.C., 1984) slip op. at p. 58. On February 21, 1985, OSM reinstated 30 CFR 779.20, 780.16, 783.20, and 784.21 (50 FR 7274). This proposal would amend these reinstated rules.

On June 30, 1983, OSM revised §§ 816.97 and 817.97 (48 FR 3012) to minimize duplication between regulations and to ensure that they were well-reasoned. On October 1, 1984, portions of these rules were remanded to modify requirements pertaining to endangered or threatened species and the protection of wildlife from toxic ponds. *Id.* This proposal would amend these rules in response to the court's decision.

Existing §§ 779.20 and 783.20 require fish and wildlife resources information to be included in permit applications. They are essentially the same except § 779.20 refers to surface mining and § 783.20 to underground mining. Existing §§ 780.16 and 784.21 require a plan for the protection and enhancement of fish and wildlife values to be included in permit applications. They are essentially the same except that § 780.16 refers to surface mining and § 784.21 refers to undergound mining. Furthermore, existing §§ 816.97 and 817.97 provide performance standards for the protection of fish, wildlife, and related environmental values. They are essentially the same except that § 816.97 refers to surface mines and § 817.97 refers to underground mines. To simplify this preamble, OSM will discuss proposed changes to §§ 779.20, 780.16, and 816.97 with the understanding that the discussion will also apply to the corresponding proposed §§ 783.20, 784.21 and 817.97. Where proposed changes are not the same, differences will be noted. OSM solicits comments on whether or not there are distinct differences between surface and underground mining that would justify differences in these regulations.

III. Discussion of Proposed Rules

A. Fish and Wildlife Permitting Requirements

Existing § 779.20 requires pre-mining fish and wildlife resources information based on published data, written guidance from agencies, and a site-specific study. Existing § 780.16 requires that each permit application contain a fish and wildlife plan that details how fish and wildlife resources will be protected and enhanced. OSM suspended §§ 779.20 and 780.16 on August 4, 1980 [45 FR 51547] and reinstated these same requirements on February 21, 1985 [50 FR 7274]. During the period when the Federal rules were suspended State regulatory authorities could omit or, if desired, adopt special permitting rules pertaining to fish and wildlife. OSM specifically requests comments on whether the experiences and events of the past four and one-half years when the Federal rules were suspended justify Federal regulation in this subject area and, if so, whether it is necessary to require both premining resource information and protection and enhancement plans.

In this rulemaking OSM is proposing to amend the fish and wildlife permitting requirements that were reinstated on February 21, 1985. Proposed § 780.16 would revise and incorporate the requirements of the existing §§ 779.20 and 780.16. Proposed § 780.16(a) would replace the resource information requirements of existing § 779.20 and proposed § 780.16(b) would replace the planning requirements of existing § 780.16. Proposed § 780.16(a) would use the paragraph heading "Resource information" and proposed § 780.16(b) would use the paragraph heading "Protection and enhancement plan." Existing § 779.20 is proposed to be deleted.

OSM requests comments on whether fish and wildlife information and planning requirements can be effectively addressed under one section as proposed or should remain as separate and distinct sections as found in the existing rules under Parts 779 and 780.

Resource Information

Existing § 779.20(a) provides that each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area and portions of the adjacent areas where effects on such resources may reasonably be expected to occur. Similarly, proposed § 780.16(a) would require fish and wildlife information to be included in each application for the permit area and adjacent areas. OSM has substituted the term permit area for mine plan area because mine plan area is no longer defined in § 701.5 (Definitions) and has been, with limited exceptions, deleted from the rules. Both permit area and adjacent area are defined in § 701.5.

Existing § 779.20(a) requires each application to include a study of fish and wildlife and their habitats whereas proposed § 780.16(a) would require each application to include fish and wildlife resource information. This change is proposed because the word "study" generally implies a need for site-specific information. However, even under the previous rule, the level of site-specific information required could vary considerably. In the preamble to the previous rule, the following comment response appeared:

The Office agrees that a minimum amount of site-specific information almost invariably is required to determine the applicability of secondary information to specific sites . . . However, the Office has concluded that the regulations as written provide adequate discretion for the regulatory authority to determine levels of detail for studies based on the adequacy of existing information. (44 FR 15029, March 13, 1979).

Upon further analysis, OSM now does not believe that site-specific information will always be needed. In many instances existing information is available to accurately and adequately describe fish and wildlife and an area in order to protect important species and design a fish and wildlife enhancement plan. This information is most often available from State or Federal fish and wildlife agencies. Many States have completed or are in the process of completing computer-based fish and wildlife baseline data systems with detailed inventory information on plant and animal species, habitat requirements, site locations, and life cycles. In many instances this information will be sufficient to provide species protection and to develop habitat restoration and enhancement plans. Many State fish and game agencies already have developed guidance on vegetation species, use of waters, optimal terrain, use of wooded and open areas, etc. for wildlife enhancement in general and for certain species. Site-specific information such as the number of white-footed mice per hectare or number of deer per hectare would not, under most circumstances, result in more definitive wildlife protection and enhancement measures than one based on existing data that includes habitat types and species occurrence in the area.

OSM recognizes that fish and wildlife agencies may not always have sufficient fish and wildlife resource information available to develop a protection and enhancement plan. Proposed § 780.16(a) provides the regulatory authority with the authority to require site-specific studies if sufficient information is not available on which to base protection and enhancement measures. The word "information" is used in the proposed rule to more accurately account for those situations where data for secondary sources is sufficient to satisfy the requirements of the regulatory authority and State and Federal agencies with statutory responsibilities for fish and wildlife. The authority for regulatory agencies to require site-specific studies has been retained in the proposed rule but the restriction that a study be the only means to achieve compliance would be removed.

Existing § 779.20(b) requires the applicant to contact the regulatory authority prior to initiating fish and wildlife studies to determine what fish and wildlife information will be required. The proposed rule would delete this provision because prior contact with the regulatory authority may not be necessary or desirable in every State. Such a procedure of case-by-case determinations may be workable in States where there is a small number of large mines, as in the Western United States. However, Eastern States with large numbers of small mines may find it more appropriate to set forth in either rules or guidance documents their requirements for fish and wildlife information. For example, the Kentucky Department of Fish and Wildlife Resources, in conjunction with the Kentucky Department of Surface Mining Reclamation and Enforcement has published guidelines to assist coal mine operators to prepare the fish and wildflife sections of permit applications (1982, Technical Reclamation Memorandum #3). These guidelines establish minimum information requirements and identify situations when contact with the regulatory authority and Department of Fish and Wildlife is recommended. Such flexibility is needed in the Federal rules to enable State to continue to develop regulatory programs that are administratively efficient and within budget and personnel constraints while still protecting important fish and wildlife values.

Existing § 779.20(c) requires the regulatory authority, in consultation with appropriate State and Federal fish and wildlife agencies and other agencies with similar responsibilities to determine the level of detail and the areas of such studies according to published data, written guidance from agencies, and site-specific information. Proposed § 780.16(a) continues to provide for the regulatory authority to make this determination; however, the decision would only have to be in accordance with any written guidance provided by State and Federal fish and wildlife agencies and would not necessarily be based upon site-specific studies. Written guidance may be provided by class of application (i.e., geographic location and land use) or by individual application. The rule recognizes the regulatory authorities' central role in making the decision and the expertise and statutory responsibilities of fish and wildlife agencies regarding the scope and level of information submitted in applications.

Upon receipt of an administratively complete application, written notification of the permit applicant's intention to mine would be provided by the regulatory authority to State and Federal fish and wildlife agencies in accordance with § 773.13(a)(3). Fish and Wildlife agencies could provide written comments to the State regulatory authority based on their knowledge of fish and wildlife resources in the area of the proposed operation. The Department of the Interior, Fish and Wildlife Service, has expressed concern that in a few States it is unable to provide meaningful comments because the permit application is on file in locations remote to the Service's Regional or Field Office and the notice required by § 773.13(a)(3) may not contain sufficient information. In response to this concern, OSM is proposing that paragraph (c) be included in § 780.16 which would require that, upon request, the regulatory authority shall provide the resource information and the protection and enhancement plan to the U.S. Department of the Interior, Fish and Wildlife Service's Regional or Field Office and that the information be provided within 10 days of receipt of the request. In most States, the location of the permit application is easily accessible to the Service's review and it would be unnecessary to provide this material. Mine operators would be expected to comply with the resource information requirements in State program rules and technical guidance documents, and all other requests for resource information from regulatory authority.

Proposed § 780.16(a) would go beyond the requirements of existing § 779.20 by setting specific minimum requirements for resource information that must be included in each application. It would establish a minimum standard in the event that no guidance has been established by fish and wildlife agencies. Proposed paragaph (a)(1) would require the reporting of any listed and proposed threatened, or endangered species of plants or animals and their critical habitats listed under Federal or State statutes. Proposed paragraph (a)(2) would require the reporting of species such as eagles, migatory birds, or other animals identified as requiring special protection under State and Federal law. Proposed paragraph (a)(3) would provide the same requirement for habitats of unusually high value for fish and wildlife. These habitats include such areas as important streams, wetlands, riparian areas, cliffs, migration routes, and areas offering special shelter or protection, and reproduction and wintering areas.

Information on other habitats and species would be required if the regulatory authority after consultation with appropriate State and Federal agencies with fish and wildlife responsibilities deemed it necessary. OSM's revision of the rule is intended to ensure the minimum reporting of resource information on species and habitats with special significance. Resource information on species and habitats of lesser importance could be required at the discretion of the regulatory authority or upon guidance from the State and Federal agencies with statutory responsibilities for fish and wildlife.

Protection and Enhancement Plan

Existing § 780.16 is titled "Fish and Wildlife Plan." To describe the same subject content in the proposed rule, OSM would adopt the paragraph heading "Protection and enhancement plan" because it more accurately conveys the purpose of the plan and logically fits under the proposed section heading "Fish and wildlife information."

Existing § 780.16(a)(1) requires a plan in each permit application that states how the applicant will minimize disturbances and adverse impacts on fish and wildlife and related environmental values and enhance those resources where practicable. Proposed § 780.16(b) would retain this requirement with the exception that there would be no specific provision in the rules similar to existing § 780.16(a)(2) that would provide the applicant an opportunity to state that enhancement of fish and wildlife resources can not be practicably achieved. OSM would delete this provision because it believes that enhancement of fish and wildlife values is practicable for almost all postmining land uses and that a regulatory authority can judge an applicant's response without a statement of reasons why enhancement is not practicable.

Existing § 780.16(a) and proposed § 780.16(b) both require the protection and enhancement measures to be consistent with performance standards for the protection of fish, wildlife, and related environmental values found in existing § 816.97. These performance standards address endangered and threatened species; bald and golden eagles; protection measures involving powerlines, roads, physical barriers, and wetlands; and the selection of plant species for wildlife enhancement.

Proposed § 780.16(b) does not include the language of the existing rule whereby the plan is required to include the mine plan area and portions of the adjacent area as determined by the regulatory authority. Such language was thought unnecessary since proposed § 780.16(a) requires resource information for the permit area and adjacent areas and that this same geographic area would also apply to protection and enhancement plans.

Existing § 780.16(b) requires a statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect and enhance threatened and endangered species and their critical habitats, species protected by State or Federal law and their habitats, species identified through consultation with fish and wildlife agencies, and habitats of unusually high value. Proposed § 780.16(b) has a similar requirement. Rather than repeat the species and habitats to be protected, paragraph (b) would include a cross-reference to paragraph (a). Proposed paragraph (b)(3)(i) would require a description of measures that will be used to protect species and habitats during the active mining phase of operation. Such measures may include the establishment of buffer zones; the selective location and special design of haul roads and powerlines; and the monitoring of surface water quality and quantity. Proposed paragraph (b)(3)(ii) would require a description of measures that will be used during the reclamation and postmining phase of operation to restore and enhance aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands; retention of ponds and impoundments; establishment of vegetation for wildlife food and cover; and the placement of perches and nest boxes. This proposed language is intended to provide more explicit guidance in interpreting the statutory requirement that is present in existing § 780.16.

The statutory authority for proposed § 780.16(b) is derived from § 515(b)(24) of the Act which does not limit the consideration of protection and enhancement plans to any category of fish and wildlife. Accordingly, in the proposed rule, plans are required even though there may not be any endangered or threatened species or habitat of unusually high value within the popoosed permit area and adjacent areas. Plans must provide for minimizing disturbance and adverse impacts to the extent possible on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable. State and Federal fish and wildlife agencies will have an opportunity to comment on the adequacy of protection and enhancement plans under § 733.13(a)(3)(ii) which provides for the notification and request for comment when regulatory authorities determine that a permit application is administratively complete.

As noted above, in some States it is difficult for the U.S. Department of the Interior, Fish and Wildlife Service, to review the permit application because of its location. Therefore, proposed § 780.16(c) would provide that, upon request, the regulatory authority shall provide the resource information required under paragraph (a) and the protection and enhancement plan required under paragraph (b) to the Service's Regional or Field Office for review. Most Federal Fish and Wildife regional or field offices will have access to the permit application without having to be provided with the material.

The proposed rule also includes several minor word changes to improve the clarity of the existing rule. None of these changes are believed to be substantive in nature.

B. Performance Standards

OSM would amend § 816.97 to include three substantive changes that are in response to the District Court's decision of October 1, 1984. *In re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, slip op. at pp. 58–63 (D.D.C.). Two of these amendments pertain to endangered or threatened species while the third concerns the exclusion of wildlife from toxic ponds.

Proposed § 816.97(b) would prohibit surface mining activity that "is likely to" jeopardize the continued existence of endangered or threatened species listed by the Secretary or which "is likely to" result in the destruction or adverse modification of designated critical habitats of such species. It differs from existing § 816.97(b) because the existing rule only prohibits mining operations that would jeopardize endangered species and their critical habitat. This threshold of protection was found by the court to violate section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(a)(2)) which states that Federal agencies and the Secretary shall:

> insure that any action authorized, funded, or carried out by such agency . . . *is not likely to* jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of habitat of such species . . .

The second change relates to existing § 816.97 which requires operators to promptly report to the regulatory authority any endangered or threatened species within the permit area of which the operator becomes aware. This

provision is limited to Federally-listed endangered or threatened species. The limitation was challenged. OSM argued that endangered or threatened species listed by the State are not necessarily entitled to protection under Federal law. The court ruled that although this was correct, section 515(b)(24) of the Act is not so limited and requires that disturbances to fish, wildlife, and related environmental values be minimized. The deletion of any express reference to State-listed species from the previous rule was found by the Court to be contrary to section 515(b)(24). Accordingly, proposed § 816.97(b) would require operators to report State- or Federally-listed endangered or threatened species.

The final amendment to existing § 816.97 would reinstate a previous provision that required each operator to fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming material. Proposed § 816.97(e)(4) is the same as previous 30 CFR 816.97(d)(3) (1982). In deleting the provision from the previous rule, OSM maintained that there was little evidence of harm to wildlife as a result of unprotected toxic ponds on the site of any mining operation and that if such circumstances should arise the requirements of existing § 816.97(a) to minimize disturbances and adverse impacts on wildlife by utilizing the best technology currently available would be sufficient to require fencing and other protective measures. The court rejected these arguments because the absence of evidence of harm to wildlife also supported the retention of the fencing requirement and the court believed existing § 816.97(a) did not provide the regulatory authority with sufficient guidance. The proposed addition of § 816.97(e)(4) would correct this omission.

Paragraphs (e)(2) and (e)(3) would be repromulgated solely to change punctuation to reflect the addition of paragraph (e)(4) and not to adopt substantive changes.

Effect In Federal Program States

The rules proposed today, if adopted, would be applicable through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

Reference Materials

Kentucky Department of Fish and Wildlife Resources, Kentucky Department for Surface Mining Reclamation and Enforcement. October 1982. Guide For Protection and Enhancement of Fish and Wildlife Values For Surface Coal Mine and Reclamation Operations. Technical Reclamation Memorandum #3. 21 pp.; appendixes.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget under 44 U.S.C. 3507. The information is needed to meet the requirements of Section 515 (b)(24) of Pub. L. 95-87, and will be used by OSM to assess the impact of proposed mining operations on fish and wildlife resources and the adequacy of proposed protection and enhancement plans.

The obligation to respond is mandatory.

Burden estimates and potential duplication are important clearance issues. Therefore, we are requesting that respondents inform OSM during the public comment period on the proposed rule as to how long it takes to comply with the reporting requirements of the rule and the costs associated with the reporting. This will give OSM an opportunity to re-evaluate its burden estimates and revised estimates where necessary.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule will allow small coal operators increased flexibility in meeting permitting standards.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on the impacts on the human environment of this proposed rulemaking. This EA is on the final in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. An EA on file rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 779, 780, 783, 784, 816 and 817 as follows:

Dated: September 24, 1985.

James E. Cason,

Deputy Assistant Secretary for Land and Minerals Management.

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

1. The authority citation for Part 779 is revised to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 779.20 [Removed]

2. Section 779.20 is removed.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 780 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

4. Section 780.16 is revised to read as follows:

§ 780.16 Fish and wildlife information.

(a) *Resource information.* Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the regulatory authority in accordance with any written guidance provided by State and Federal agencies with responsibilities for fish and wildlife and shall, at a minimum include the existence of any:

(1) Listed and proposed endangered or threatened species of plants or animals and their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and those species and habitats protected by similar State statutes;

(2) Eagles, migratory birds, and other species identified as requiring special protection under State or Federal law; and

(3) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas.

(b) *Protection and enhancement plan.* Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

(1) Be consistent with the requirements of § 816.97 of this chapter;

(2) Apply, at a minimum, to species and habitats identified under paragraph (a) of this section; and

(3) Include—

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes.

(c) Upon request, the regulatory authority shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

5. The authority citation for Part 783 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 783.20 [Removed]

6. Section 783.20 is removed.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

7. The authority citation for Part 784 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

8. Section 784.21 is revised to read as follows:

§ 784.21 Fish and wildlife information.

(a) *Resource information.* Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the regulatory authority in accordance with any written guidance provided by State and Federal agencies with responsibilities for fish and wildlife and shall, at a minimum, include the existence of any:

(1) Listed and proposed endangered or threatened species of plants or animals and their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and those species and habitats protected by similar State statutes;

(2) Eagles, migratory birds, or other species identified as requiring special protection under State or Federal law; and

(3) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas; cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas.

(b) *Protection and enhancement plan.* Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the endangered species act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable. This description shall—

(1) Be consistent with the requirements of § 817.97 of this chapter;

(2) Apply, at a minimum, to species and habitats identified under paragraph (a) of this section; and

(3) Include:

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes.

(c) Upon request, the regulatory authority shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

9. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

10. In § 816.97 paragraphs (b), (e)(2), and (e)(3) are revised and paragraph (e)(4) is added to read as follows:

§ 816.97 Protection of fish, wildlife, and related environmental values.

* * * * *

(b) *Endangered or threatened species.* No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction of adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regualtory authority any State- or Federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

* * * * *

(e) * * *

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

11. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

In § 817.97 paragraphs (b), (e)(2), and (e)(3) are revised and paragraph (e)(4) is added to read as follows:

§ 817.97 Protection of fish, wildlife, and related environmental values.

* * * * *

(b) *Endangered or threatened species.* No surface coal mining operations shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction of adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any State- or Federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

* * * * *

(e) * * *

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

* * * * *

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Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Legislative Lobbying Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Legislative Lobbying Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–22(f), Legislative lobbying costs, to clarify its intent.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 28, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 86–27 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have received complaints that contractors have denied Government auditors access to records regularly maintained, on the basis of the "25 percent" rule in FAR 31.205–22(f). Accordingly, the Councils are proposing to restructure and rewrite the paragraph to clarify its meaning. The proposed coverage does not constitute a change in policy.

B. Regulatory Flexibility Act

The proposed revision of FAR 31.205–22 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it only clarifies the intent of the present coverage and does not constitute a significant revision.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed revision to FAR 31.205–22 does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 23, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–22 is amended by revising paragraph (f) to read as follows:

31.205–22 Legislative lobbying costs.

* * * * *

(f) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this subsection during any particular calendar month when: (1) the employee engages in lobbying (as defined in paragraphs (a) and (b) of this subsection) less than 25 percent of the employee's compensated hours of employment during that calendar month, and (2) the organization has not materially misstated any allowable or unallowable costs within the preceding five-year period. When conditions (1) and (2) of this paragraph are met, contractors are not required to establish records in addition to those already required and maintained to support the allowability of claimed costs. Also, when conditions (1) and (2) of this paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

* * * * *

[FR Doc. 86–12030 Filed 5–28–86; 8:45 am]

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May 29, 1986

Part VII

Environmental Protection Agency

Dicofol; Intent To Cancel Registrations of Pesticide Products Containing Dicofol; Denial of Applications for Registration of Pesticide Products Containing Dicofol; Conclusion of Special Review; Notice of Final Determination

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/37C; FRL-3023-5]

Dicofol; Intent To Cancel Registrations of Pesticide Products Containing Dicofol; Denial of Applications For Registration of Pesticide Products Containing Dicofol; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination.

SUMMARY: EPA initiated a Special Review to consider whether the pesticide registrations for all registered uses of dicofol should be modified or cancelled. This was published in the Federal Register of March 21, 1984 (49 FR 10569). The Special Review was initiated because EPA believed that there were substantial risks to the environment associated with the presence of DDT and related impurities (DDTr) as contaminants of technical dicofol. EPA also expressed concern about the possible oncogenicity of dicofol. In the Federal Register of October 10, 1984 (49 FR 39820), EPA announced the availability of Position Document 2/3 (PD 2/3) and its proposed decision to cancel registrations of pesticide products containing dicofol. EPA issued in the Federal Register of August 15, 1985 (50 FR 33008), an amended notice proposing to allow the continuation of the registrations of pesticide products containing dicofol if a number of modifications to the registrations were implemented. This proposal was based upon new information received by EPA concerning the registrants' proposal to lower the DDTr contamination levels in their technical products and EPA's conclusion that there is limited evidence that dicofol poses an oncogenic risk to humans through dietary and worker exposure. This notice concludes the Special Review and announces EPA's final decision to cancel registrations and deny applications of all pesticide products containing dicofol unless certain modifications are made to the pesticide product registrations.

DATE: Requests for a hearing by a registrant, applicant, or other adversely affected person must be received by June 30, 1986 or, for a registrant or applicant, within 30 days from their receipt by mail of this notice, whichever date is the later applicable deadline.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Bruce Kapner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-3262).

SUPPLEMENTARY INFORMATION: This notice is organized into six units. Unit I is the Introduction. Unit II describes the legal framework within which this notice is issued. Unit III sets forth EPA's assessment of the risks and benefits associated with the continued use of dicofol products. Unit IV sets forth the regulatory actions required by this notice. Unit V contains the comments of the Secretary of Agriculture, the Scientific Advisory Panel, and other public comments and EPA's response to those comments. Unit VI provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which EPA is announcing in this notice.

I. Introduction

A. Notice of Special Review

Notice of the initiation of the Special Review (formerly called the Rebuttable Presumption Against Registration (RPAR) process) was published in the Federal Register of March 21, 1984 (49 FR 10569). That notice was based on the concern that dicofol is contaminated with DDT, DDE, and/or closely related compounds (collectively referred to as DDTr) that can cause significant adverse effects on nontarget wildlife. EPA had concluded that pesticide products containing dicofol met one of the risk criteria for intensive review of the risks and benefits to determine whether continued registration would cause unreasonable adverse effects on the environment. Accordingly, a Special Review was initiated for all registered pesticide products containing dicofol. The notice also noted that dicofol had induced liver tumors in a National Cancer Institute (NCI) bioassay in mice, but that EPA had not been able to validate the study at that time.

B. Preliminary Notices of Intent to Cancel

After reviewing comments received on the March 21, 1984 notice, EPA issued a preliminary notice of intent to cancel registrations of pesticide products containing dicofol which was published in the Federal Register of October 10, 1984 (49 FR 39820). In that notice, EPA proposed cancellation of all uses of dicofol based on the ecological risks posed by the DDTr contaminants in dicofol. EPA stated that cancellation was consistent with the recommendation contained in a Biological Opinion issued by the Office of Endangered Species which concluded that continued use of dicofol was likely to jeopardize the continued existence of the endangered peregrine falcon. EPA also expressed its concern that a study from the National Cancer Institute (NCI) suggested that dicofol produces tumors in test animals. However, EPA did not evaluate the oncogenic risk to humans because the NCI bioassay on dicofol still had not been validated.

In response to this notice, registrants of dicofol products informed EPA that they would be able to manufacture products containing substantially lower levels of DDTr. They indicated that approximately 2 years after EPA's final decision in the Special Review they could produce commercial quantities of technical dicofol that contained 0.1 percent or less DDTr contamination. They further indicated that they were currently producing, or would shortly be able to produce, technical dicofol with DDTr contamination levels substantially below those reported in their Confidential Statements of Formula on file with EPA.

EPA reviewed the registrants' proposal to lower the DDTr contamination of technical dicofol and, while it did not conclude that the lower levels of DDTr were free from risk, it concluded that such reductions would qualitatively reduce risks of adverse effects to nontarget organisms to a level where the benefits would exceed the risks.

The Scientific Advisory Panel (Panel) reviewed EPA's earlier notice of preliminary determination, the supporting Position Document 2/3, and the registrants' proposal to reduce the level of DDTr contaminants. The Panel concurred with EPA's conclusion that the risks would be less from the 0.1 percent DDTr contamination level than from the current DDTr levels in dicofol products.

In addition, after the October 10, 1984 notice, EPA received information regarding the validity of the NCI oncogenicity study. EPA originally considered the NCI study to be invalid due to reported decomposition of the test material during the test period. However, NCI informed EPA that subsequent chemical analysis of the archived test material showed that it was representative of technical dicofol, and that there was no evidence of decomposition. Based on this information, EPA concluded that the NCI bioassay was valid.

On August 15, 1985, EPA issued a notice that revised and expanded the October 10, 1984 notice and presented EPA's revised assessment of the risks, including for the first time a discussion of the possible oncogenic risk to humans, and benefits of using dicofol (50 FR 33008). Additionally, this notice set forth a new set of proposed regulatory actions. EPA concluded that implementation of the registrants' proposal to lower the DDTr contamination of technical dicofol would reduce the risks of adverse effects to nontarget organisms to a level where the benefits would exceed the risks.

The Panel reviewed that notice and concluded that the evidence that dicofol is a potential human carcinogen was weak and that a quantitative risk assessment could not be justified. The full text of the Panel's comments and EPA's response to those comments are found in Unit V.

C. Consultation with the Office of Endangered Species

As required by regulation, EPA initiated consultation with the Office of Endangered Species (OES) in March 1984, concerning the effects of dicofol on endangered species. OES responded in August 1984, that the use of dicofol is likely to jeopardize the continued existence of the two subspecies of peregrine falcon.

When EPA proposed to allow registrations of dicofol products to continue, provided that the level of DDTr contamination was significantly reduced, it reinitiated consultation with OES concerning the effects of this proposal on the endangered peregrine falcon. OES responded in November 1985, stating that use of dicofol contaminated with 0.1 percent or less DDTr would not be likely to jeopardize the endangered peregrine falcon, but that, based on available information, use of dicofol products with higher levels of DDTr still appeared likely to jeopardize the continued existence of the peregrine. Accordingly, OES recommended that EPA immediately prohibit further use of dicofol products, confiscate all existing stocks of dicofol products, and prohibit manufacture of dicofol containing more than 0.1 percent DDTr.

In December 1985, EPA requested OES to reconsider the November 1985 Biological Opinion in light of information concerning the amount of DDTr added to the environment from the use of dicofol during the period before the registrants were able to commence production of dicofol containing 0.1 percent or less DDTr.

In March 1986, OES issued a revised Biological Opinion which, consistent with earlier opinions, found that dicofol contaminated with DDTr at levels greater than 0.1 percent jeopardized the continued existence of the peregrine falcon, but that use of technical dicofol with levels of DDTr at 0.1 percent or less would not jeopardize the peregrine. OES further stated that reasonable and prudent alternatives existed to permit the use of dicofol products that would not jeopardize the peregrine. In all parts of the United States except California, OES indicated that jeopardy to the peregrine could be avoided by reducing the level of DDTr contamination in technical dicofol to 0.1 percent or less no later than December 31, 1986, after which only dicofol products containing 0.1 percent or less DDTr could be sold.

OES concluded that the situation in California warranted a different course of action. OES listed two reasonable and prudent alternatives: (1) the use and sale of all dicofol products containing greater than 0.1 percent DDTr should be banned immediately, or (2) to compensate for the negative effects of the use of dicofol during the period before all products containing more than 0.1 percent DDTr are prohibited in channels of trade, dicofol manufacturers should be required to fund a portion of the nest manipulation work of the Santa Cruz Predatory Bird Research Group (SCPBRG). The next manipulation work is a high priority of the U.S. Fish and Wildlife Service Recovery Plan for the Pacific States Population of the Peregrine Falcon, and scientific authorities agree that this work is vital to the continued existence of this population. Peregrine falcons in central coastal California experience complete reproductive failure because their eggs break before hatching due to thinned eggshells caused by DDE. To aid the recovery of the Pacific States Population, SCPBRG removes eggs laid in the wild, artificially incubates and hatches them, and releases the hatchlings back into nests of wild peregrines. The nest manipulation work of SCPBRG has been highly successful in supplementing population size but has not been operating at full capacity due to limited funding. Funds paid by dicofol manufacturers will be used to hatch artificially eggs from nests located in areas of California subjected to DDE residues from dicofol. Program personnel indicate that $25,000 for 1986 and $75,000 for each of the following 4 years would enable SCPBRG to manipulate enough nests to largely offset the reproductive failure in peregrines that is due to DDE. The need for funding for 5 years is not based on time to absolutely remove DDE residues in California, but upon estimates of time required to build up breeding numbers such that enough wild peregrines are reproducing at a level sufficient to sustain the Pacific population naturally. OES also indicated that the sale of dicofol products containing more than 0.1 percent DDTr contamination should be prohibited in California after December 31, 1986.

In addition to the threat to the population of peregrines in California, OES expressed concern for the peregrine falcon populations in New Mexico and Texas, the brown pelican, bald eagle, Everglade kite, wood stork, and Arctic peregrine falcon. While OES did not conclude that the survival of these other endangered species and populations is threatened by use of dicofol with greater than 0.1 percent DDTr contamination, OES did request an expedited phase-out because the rate of recovery for these species may be affected. The finding of no jeopardy but that use of dicofol with greater than 0.1 percent DDTr contamination may affect the recovery rate is partially based upon the generally improved reproductive success exhibited by these species and by the consideration of the amounts of DDTr that would be added to these species' environments during an expedited phase-out. Accordingly, OES recommended that EPA schedule the phase-out as expeditiously as possible to minimize the hazards to these other endangered species.

Following issuance of the March 1986 Biological Opinion, on March 28, 1986, EPA met with representatives of Rohm and Haas Company and Makhteshim-Agan, Inc., the two registrants currently producing technical or manufacturing-use dicofol products. Representatives from the National Audubon Society, National Wildlife Federation, and Natural Resources Defense Council also attended the meeting. The representatives of the producing companies agreed to provide funds for the nest manipulation program as described in the OES opinion.

Subsequent to the March 28, 1986 meeting, EPA received letters from the three environmental organizations present at the meeting. The letters all expressed opposition to, in essence, EPA's allowing a "penalty" to be paid by dicofol manufacturers in return for a "permit" to continue environmental contamination. The letters noted that endangered species other than the peregrine falcon will suffer from the use of dicofol and gain no benefit from funds paid to aid a population of a single endangered species. The environmental

groups opposed the continued use of dicofol containing any amount of DDTr, and noted that dicofol itself may pose environmental risk.

Neither EPA nor OES views the mitigation of jeopardy by payment to SCPBRG as a "permit" to contaminate the environment, but rather as an efficacious and responsible course to aid the peregrine falcon in California and hasten the removal from the environment of residues of DDTr from dicofol containing greater than 0.1 percent DDTr. With regard to other endangered species, EPA accepts OES's opinion that the expedited phase-out will not threaten the survival of the other species.

EPA makes no conclusion that dicofol containing 0.1 percent DDTr contamination is free from risk, but only that the environmental risk from the reduction to 0.1 percent DDTr or less by December 31, 1988, is offset by the benefits to the general population. Further, EPA shares the concerns that dicofol itself may pose an environmental hazard and is requiring that additional data on this concern be submitted on an expedited basis. However, EPA believes that the data available at this time on dicofol itself are inconclusive.

D. Special Review Docket and Public Comments

In addition to the comments from OES, USDA, and the Panel, public comments were also submitted on the August 1986 preliminary notice of intent to cancel and were carefully considered by EPA in the development of this final determination, and certain changes were made in this decision based on the comments. The comments received in response to the Position Document 2/3 and changes in the final decision are discussed in detail in Unit V.

Further, on several occasions EPA met with or corresponded with various interested parties. Summaries of these meetings and copies of this correspondence are contained in a docket maintained for this Special Review, as provided in EPA's Special Review regulations published in the Federal Register of November 27, 1985 (50 FR 49003).

The docket is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

It must be noted that portions of the docket are considered Confidential Business Information and are not available for public inspection.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," under FIFRA sec. 3(c)(5). The term "unreasonable adverse effects on the environment" is defined under FIFRA sec. 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the risks of a registered pesticide outweigh its benefits, EPA considers both possible changes to the terms and conditions of registration which can reduce risks as well as the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that they be made.

Alternatively, EPA may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose unreasonable adverse effects. In that event, the Administrator may issue a notice of intent to cancel the registration or to hold a hearing to determine whether it should be cancelled under FIFRA sec. 6(b). In determining whether to issue such a notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days before formally issuing such a notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA sec. 25(d), the Administrator is required to submit the proposal to the Panel for comment as to the impact on health and the environment of the action proposed in the cancellation notice. EPA is also required by law, where appropriate, to consult with the U.S. Department of the Interior's Office of Endangered Species to see if the proposed action may affect an endangered species.

EPA also follows a practice of informing the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before any final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risk, comments may include evidence as to whether any economic, social and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel dicofol products, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present data, witness testimony, and other evidence to show that the registrations of the pesticide should be permitted to continue. Other interested parties could intervene to present evidence in favor of cancellation. At the end of the hearing EPA would decide on the basis of the evidence presented whether or not to cancel or restrict the registration of pesticide products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the Federal Register of the final notice, which ever occurs later.

III. Summary of Risk and Benefit Determinations

A. Risks of Adverse Effects on Wildlife

EPA's principal concern with the continued use of dicofol as currently manufactured is that nontarget wildlife, particularly endangered species, may be adversely affected by the DDTr in dicofol products, and that dicofol itself may affect avian reproduction.

1. *Composition of dicofol products.* All dicofol products contain as impurities a

group of chemically similar compounds including the o,p' and p,p' isomers of DDT, DDE, DDD, and of a chemcial referred to as extra-chlorine DDT (C1–DDT). In C1–DDT, a chlorine atom substitutes for the hydrogen atom on the ethane moiety of DDT or the hydroxy group on the ethane moiety of dicofol. These DDT-related substances are collectively referred to as DDTr. The total amount of DDTr in different producers' dicofol products varies and the proportions of the different impurities comprising the DDTr portion also vary. Because the specific amounts and proportions of the DDTr compounds in the producers' products are considered trade secret or confidential business information, they are not being presented here. In the analyses used as the basis of the October 1984 proposed cancellation notice, EPA assumed that DDTr impurities constituted 10 percent of technical grade dicofol, which was a reasonable approximation of the amount of DDTr found in their registered technical dicofol products at that time. Subsequently, some dicofol registrations have been amended to indicate that DDTr constitutes no more than 2.5 percent of the technical dicofol in the product.

2. *Avian toxicity of DDTr.* The conclusion that dietary exposures to DDTr at levels below 1 part per million (ppm) would have significant adverse effects on avian reproduction is supported by a substantial body of laboratory and field data. Although DDE interferes with many aspects of avian reproduction, the best characterized effect is eggshell thinning which causes the eggs to break prematurely, interferes with gaseous exchange, and in other ways reduces the number of chicks being hatched. While field monitoring studies lack controlled or precisely known exposure information, they provide important indications of the dietary concentrations of DDE that are toxic to birds. Bald eagles, for instance, in Maine during the 1960s and 1970s experienced eggshell thinning and significantly impaired reproduction. During this same time period, DDE residues in eels and fish, which comprise 90 percent of the bald eagle diet in Maine, were below 0.3 ppm. Other data suggest that eastern brown pelicans may be producing thinner eggshells from feeding on food possibly containing as little as 0.1 ppm DDE. In Australia, monitoring of peregrine falcons found an average of 0.11 ppm DDE in the prey species, and eggshells were 20.4 percent thinner than those from the years prior to use of DDT. Other information on California brown pelicans supports similar inferences.

Laboratory studies have demonstrated that dietary exposure of birds to DDE at low levels, often in the 0.6 ppm to 3.0 ppm range, will cause significant thinning of eggshells. Effects have been experimentally demonstrated in a wide variety of species: Mallard, black duck, ring dove, American kestrel, barn owl, and screech owl.

Taken collectively, EPA finds that this body of information supports a conclusion that dietary exposure to DDE at levels lower than 1.0 ppm will cause significant adverse effects on reproduction in some avian species. Moreover, there is considerable scientific uncertainty concerning "no-effect" levels and the continuing reproductive problems in some wild populations as a result of exposure to DDTr. A "no-effect" level for eggshell thinning has not yet been established.

3. *Fish toxicity of DDTr.* Exposure of fish to DDT or DDE-contaminated food or water can interfere with fish reproduction. Studies have shown a correlation between the reproductive failure of sea trout and DDT residues in menhaden, a fish species that is a major source of food for sea trout. Flounder eggs in seawater containing 2 parts per billion (ppb) DDT showed abnormal development, and 39 percent of the exposed larvae had vertebral deformities at hatching.

4. *Environmental levels of DDTr.* Nationwide, levels of DDT and related compounds have generally declined since the 1972 cancellation of pesticide registrations of DDT products. The most recent monitoring data suggest, however, that DDE residues in freshwater fish, currently about 0.4 ppm, may have stabilized or are declining more slowly. A similar trend may be emerging for DDE residues in starlings, which presently average about 0.15 ppm. Likewise, although DDE residues in the wings of mallards and black ducks have declined since 1969, none of those decreases after 1976 has been statistically significant. Furthermore, the residues of DDE in ducks from the Pacific Flyway States (California, Colorado, Oregon, Arizona, and New Mexico) actually increased.

In addition to examining national trends, EPA analyzed monitoring data from four States in which large amounts of dicofol are used: California, Arizona, Texas, and Florida. More than 70 percent of all dicofol used is applied in these States. The use of dicofol is further concentrated in certain regions of these States. In these regions, levels of DDE are generally higher than in the rest of the country and these residues may exceed levels known to cause adverse effects on avian and fish reproduction.

5. *Dicofol's contribution to ambient DDTr residues.* Using a variety of approaches, EPA has determined that use of dicofol products contaminated with DDTr at levels approximately equal to a tenth of the active ingredient content would contribute significantly to the overall burden of DDT and related compounds in the environment.

One approach calculated the amount of DDTr added to the environment based on the total amount of dicofol applied. Approximately 1 million pounds of dicofol active ingredient are applied annually in California, and assuming 10 percent contamination with DDTr, this is equivalent to 100,000 pounds or 50 tons of DDTr yearly. Making the same assumption, the estimated annual contributions of DDTr for Arizona, Texas, and Florida are 12,600 pounds, 15,400 pounds, and 85,700 pounds, respectively.

EPA recognizes that much of the DDE detected in the environment in recent years is the result of the gradual dissipation of DDT pesticides applied prior to their cancellation in 1972. To evaluate the relative contributions of pre-1972 use of DDT and past and current use of dicofol, EPA prepared a mass-balance analysis for Kings County in the San Joaquin Valley of California. Assuming that dicofol use will not increase and other assumptions detailed in PD 2/3, the analysis demonstrated that, by 1984, a reasonable estimate of the environmental loading of DDTr from pre-1972 use of DDT was about 850,000 pounds in comparison to 200,000 pounds attributed to the use of dicofol. By the year 2000, EPA's analysis predicts that total environmental loading of DDTr would be about 450,000 pounds with continued use of dicofol with contamination of 10 percent DDTr, versus only 220,000 pounds if the use of dicofol ceased in 1984. In short, if EPA were to permit the continued use of dicofol at 1984 contamination levels, the residues of DDTr in the environment in the year 2000 could be almost twice as high as if dicofol use were prohibited.

EPA has also used other models to estimate the ambient environmental concentrations of DDTr that would result solely from use of dicofol assuming an average of 10 percent DDTr in the technical dicofol. EPA used a mathematical model to estimate the concentration of DDTr from dicofol use in the water of the Arroyo Colorado River in southern Texas. This model predicts that residues in the river system could stabilize eventually (reach

equilibrium) at approximately 9 parts per trillion (ppt). This concentration in water would result in DDTr residues of about 9 ppm in fish, a level harmful both to the fish and to fish-eating birds.

In addition, based on physical and chemical principles, EPA estimated that use of dicofol on cotton and other crops in Kings County, California, might result in food chain contamination at levels that would be likely to affect avian species adversely. Specifically, EPA predicted that migrating waterfowl could feed on chironomid midge larvae contaminated with as much as 1.4 ppm DDTr. Neither model assumed any other source of DDTr; adding in background levels of DDTr from pre-1972 DDT use would increase the amount of DDTr expected in the food chain.

6. *Risks of dicofol and its metabolites.* In addition to the considerable information on the risks to the environment posed by the DDTr contaminants in dicofol, a small body of data suggests that dicofol, itself, may adversely affect avian reproduction. Although the mechanism is not clear, it appears either that dicofol may be metabolized by some avian species to DDE or that dicofol, itself, may cause eggshell thinning. If either mechanism exists, then environmental residues of dicofol may pose a risk to nontarget wildlife, in addition to the risk attributable to the DDTr contamination of dicofol products.

The available data on the metabolism of dicofol do not definitively resolve the issue of whether dicofol residues are converted to DDE in animals. Each of the studies supporting such a conclusion is also susceptible to other interpretations. For example, in studies performed by different laboratories, dicofol with a known level of DDT contamination was fed to bobwhite quail and mallard ducks. For both species, test animals had levels of DDE residues higher than could be explained by the levels of DDE contaminants present in the dicofol. The researchers speculated that some of the dicofol was converted to DDE by the test birds. One dicofol registrant has suggested, however, that the elevated levels of DDE resulted not from the metabolism of dicofol by the test animals, but rather from the conversion, during the chemical analysis of the test animals' tissues, of residues of C1–DDT to DDE. No experimental data are available to prove or disprove the registrant's hypothesis. In another study, rats were intubated with a corn oil solution reportedly containing "pure" dicofol. DDE was subsequently found in all tissues except the blood and brain. Because the purity of the dicofol was not reported and no samples of the test material are now available for analysis, it is now impossible to determine whether the DDE residues came from DDTr contamination or the "pure" dicofol.

On the other hand, a preliminary report on dicofol metabolism in chickens shows no increase in levels of DDE above what would be expected from the presence of DDTr in the test material. Based on the preliminary report, EPA has many questions about the methodology and results of this study. EPA also questions whether a metabolism study in chickens is useful in assessing the likely metabolic fate of dicofol in other avian species, since gallinaceous birds (e.g., chickens) are known to be relatively insensitive to the effects of DDT and DDE compared to nongallinaceous birds (e.g., peregrine falcons).

The concern that dicofol itself thins eggshells is based upon the structural similarity of the dicofol molecule to DDE and upon information from two studies currently underway. Because the studies have not been completed and their methodology and conclusions have not been subjected to external peer review, EPA believes that it would be premature to rely heavily on these studies as the basis for regulatory action.

The difficulty of assessing the environmental risks of dicofol, apart from its DDTr contaminants, is made even more difficult because of the relatively small amount of information available on the residue levels of dicofol in the environment. EPA will require avian reproduction and metabolism studies, conducted with sensitive species, to address the issue of the effects of dicofol and its metabolites on avian reproduction. Additionally, EPA will require widespread environmental residue monitoring to determine the exposure levels of dicofol and its metabolites. While EPA is seeking more information on the extent of this risk, the possibility that dicofol may be metabolized to DDE in animal species or that dicofol thins eggshells remain serious concerns.

7. *Distribution of sensitive species in areas with high levels of use of dicofol.* As the last element of its analysis of the environmental risks of using dicofol, EPA investigated whether species sensitive to the adverse effects of dicofol were found in areas where use of dicofol has been concentrated. This investigation revealed that one or more highly sensitive species is present in each of the major use areas for dicofol, and that several are officially designated as endangered species by the Federal Government. In particular, the March 1986 OES Biological Opinion discussed several populations of endangered species that may be affected adversely by continued use of dicofol.

Of paramount concern was the endangered peregrine falcon in California (see Unit I above), but OES also stated that use of dicofol with levels of DDTr in excess of 0.1 percent raised concerns about peregrines in the Guadalupe Mountains of southeastern New Mexico because this population was experiencing reproductive failure and could be exposed to DDTr by feeding on prey species that migrate though areas of heavy dicofol use. OES also mised concern about the impact of heavy dicofol use in south Texas on brown pelicans in the Laguna Madre. OES noted that the brown pelicans, bald eagles, Everglade kites, and wood storks could be adversely affected by dicofol use in Florida. Finally, Arctic peregrine falcons could be exposed to contaminated prey while migrating through California, Florida, and the Texas Gulf Coast.

8. *Risk conclusions.* DOT and DDE are highly persistent, bioaccumulative compounds which are toxic to birds and fish. Avian species have been adversely affected by dietary exposure to DDE at levels below 1.0 ppm. Fish have also been adversely affected at exposure levels as low as 2 ppb DDT. Because of the chemical similarities between DDT and DDE and the other constituents of DDTr, EPA believes that there is a reasonable basis for assuming that these other DDTr substances have similar properties.

Further, EPA has determined that dicofol use is concentrated in areas where levels of DDE (from all sources) are presently high enough to impair both avian and fish reproduction and that these areas are inhabited by a number of sensitive, endangered species whose continued existence could be adversely affected by exposure to current levels of DDE. EPA also believes that DDTr contamination of current dicofol products is sufficiently high to make significant contributions to the overall levels of DDE and DDT in the above major use areas. This contribution would likely result in a slowing of the decline of DDTr residues in areas of dicofol use and would likely result in a stabilization of DDTr residues at levels which would continue to cause adverse effects in wildlife. Although some data suggest dicofol itself may thin eggshells and/or may be converted to DDE in animals and thus add to the risks associated with DDTr contaminants,

EPA lacks sufficient information to evaluate this possible risk.

Consequently, EPA concludes that the continued use of dicofol as currently formulated would adversely affect nontarget wildlife. This conclusion is consistent with Biological Opinion recently issued by OES that continued use of dicofol products at current levels of DDTr contamination is likely to jeopardize the continued existence of the endangered peregrine falcon and may adversely affect other endangered species (see Unit I above).

9. *Additional data requirements.* As discussed previously, the structural similarity of dicofol to DDT, the results of several wildlife studies, and monitoring data from areas of high dicofol use suggest the possibility of metabolic conversion of dicofol to DDTr or DDE. EPA is further concerned that dicofol may directly impair wildlife reproduction. These possibilities cannot be evaluated until data are available on the metabolism and effects of dicofol *in vivo.*

Although the dicofol registration standard required reproduction studies with bobwhite quail and mallard ducks, life-cycle studies of warm and cold water fish, and aquatic organism accumulation tests, additional data are needed. The studies required by the Registration Standard provide much useful data concerning the effects of dicofol, but the tests are not sufficient to address potential metabolic conversion of dicofol to DDTr or DDE or direct effects of dicofol itself. Expansion of the fish and aquatic accumulation studies to include residue analysis will partially resolve the data gaps. In the case of avian testing, however, EPA has concerns for the special sensitivity and vulnerability of raptors and other predatory birds. Therefore, EPA is requiring a reproduction and *in vivo* metabolism/residue test employing a minimum of two representative carnivorous and/or insectivorous bird species. The two test species must include one Passeriformes species (i.e., shrike or blue jay), and one species from either the Falconiformes or Strigiformes orders (i.e., hawks, falcons (e.g., kestrels), vultures, and owls).

These new tests replace the reproduction studies on the bob white quail and mallard duck required in the Registration Standard. The new tests are required on an expedited schedule and, when received by EPA, will be used to determine if dicofol itself, or dicofol with 0.1 percent DDTr contamination, poses an environmental risk. EPA will conduct a new hazard assessment employing these data, and will determine if further regulatory action is needed to protect endangered species and other fish and wildlife species.

B. Risk of Oncogenic Effects in Humans

1. *Introduction.* An oncogenic risk assessment generally consists of a qualitative hazard assessment, a dose-response assessment, an exposure assessment, and an overall characterization of the risk. Specific guidance for conducting risk assessments for cancer is found in EPA's "Proposed Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of November 23, 1984 (49 FR 46294).

For oncogenicity, the hazard assessment includes an examination of the available scientific data (e.g., long-term animal bioassays, short-term mutagenicity studies and any human data) to evaluate the weight of the evidence regarding the chemical's human oncogenic potential. The dose-response assessment includes mathematical modeling of experimental data to estimate the chemical's potency for inducing an oncogenic response, assuming that the chemical is, in fact, a human oncogen. The exposure assessment estimates the extent to which human populations are exposed to the chemical. In the case of dicofol, this exposure is to the general public through dietary intake, to applicators during mixing and application of the pesticide, and to fieldworkers working in treated areas. Finally, in the risk characterization step, the exposure and dose-response assessments are generally combined to provide some quantitative estimate of the potential oncogenic risk to humans. This quantitative estimate is tempered, however, by the overall weight-of-the-evidence judgment on whether the chemical is likely to be a human oncogen. In cases where the qualitative evidence is not sufficient to support a quantitative oncogenic risk to humans, EPA must rely on its qualitative risk determination, including consideration of the uncertainties involved.

2. *Qualitative hazard assessment.* In this section, the results of long-term animal studies on dicofol are discussed, followed by a presentation and evaluation of the supporting data relating to the carcinogenicity of the compound. The section closes with an integrated discussion, leading to a weight-of-the-evidence conclusion on whether dicofol may be a human carcinogen.

a. *Long-term animal studies of dicofol.* In its January 1985 evaluation of the carcinogenicity of dicofol, DDT, DDE, and DDD, EPA reviewed the results of a 1978 NCI bioassay in which male B6C3F1 mice exposed to dicofol at two dose levels (284 ppm and 528 ppm in the diet) were reported to have non-metastasizing hepatocellular carcinomas at elevated levels in both dose levels when compared to controls. There were no other statistically significant increases in tumors reported in either sex of mice. A concurrent study did not show any statistically significant increase in tumors in either sex of Osborne-Mendel rats. EPA has concluded that the NCI mouse study is valid.

b. *Supporting data sources.* Other types of information which may be helpful in evaluating the carcinogenicity of dicofol are somewhat limited. There are no epidemiological studies which can be used to assess the direct response of humans to the chemical.

EPA's "Guidance Document for the Reregistration of Pesticide Products Containing Dicofol" indicated that EPA had no information on the mutagenicity of dicofol and directed that the full battery of tests be submitted by December 1986. EPA's review, therefore, did not include mutagenicity studies on dicofol, per se.

Dicofol is structurally similar to other DDT-related chemicals, for example, DDE, a carcinogenic metabolite of DDT. It is possible that dicofol may be metabolized or interconverted in animals to DDT metabolites, such as DDE (see Unit III.A.6). In order to assess fully the potential of dicofol to be metabolized or interconverted to oncogenic DDT metabolites, further study is required. Results from metabolism studies in rats, which were required as part of the reregistration process and are due in December 1986, and in avian species, which will be required through a Data Call-In notice, may shed additional light on this issue. Until additional studies are submitted and validated, the possible metabolic link between dicofol and DDT-related compounds remains tentative.

It is also possible that the mechanism of toxicity could be related to the physical structure of the compounds and not to a particular, common metabolite. EPA's report noted the structural similarity between dicofol, DDT, DDE and DDD. Based on this structural relationship, a determination that DDT is a "probable human carcinogen" (EPA's category B2), and the NCI test results for dicofol, EPA concluded that the weight-of-evidence also argued for a B2 classification for dicofol.

Subsequently, EPA received comments and supplementary information from a registrant, the Rohm and Haas Company, concerning the

carcinogenicity of dicofol, DDT, and DDE. These comments asserted that short-term and chronic data on dicofol do not indicate that the compound is carcinogenic. Specifically, Rohm and Haas argued that the observed mouse liver tumors are not adequate evidence for carcinogenicity and that the DDT carcinogenicity data should not be used to characterize the oncogenic potential of dicofol.

In order to resolve some of the issues raised about the dicofol long-term study, EPA requested a reevaluation of the pathology slides by scientific personnel at the National Toxicology Program. These results, together with the original readings, are shown in the following Table 1:

TABLE 1—DICOFOL MALE MOUSE LIVER TISSUE RESULTS

Tumor type	Control	Low	High
Hepatocellular carcinomas:			
1985 NTP Reviews	2/18 (11%)	12/48 (25%)	9/47 (19%)
1978 NCI Review	3/18 (17%)	22/80 (44%)	35/47 (74%)
Hepatocellular adenomas:			
1985 NTP Reviews	0/18 (0%)	13/48 (27%)	23/47 (49%)
1978 NCI Review	0/18 (0%)	1/80 (2%)	1/47 (2%)
Hepatocellular carcinomas or hepatocellular adenomas:			
1985 NTP Reviews	2/18 (11%)	25/48 (52%)	32/47 (68%)
1978 NCI Review	3/18 (17%)	23/80 (46%)	36/47 (77%)

While the vast majority of tumors in the original study were classified as carcinomas, the more recent slide evaluation reports a more significant proportion of benign tumors (adenomas). This difference may reflect changes which have evolved during the intervening years in conventions in the pathology community for classifying tumors. The combined incidence of benign and malignant tumors shows little change.

The EPA Proposed Guidelines for Carcinogenic Risk Assessment (49 FR 46294) state that "there are widely diverging scientific views" about the significance of certain mouse liver tumors for assessing risk to humans, and give specific guidance for the assessment of such tumors. The Guidelines take the position that the mouse-liver-only tumor response, when other conditions for a classification of "sufficient" evidence in animal studies are not met, should be considered as "sufficient" evidence of carcinogenicity with the understanding that this classification could be changed to "limited" if warranted when a number of factors such as the following are observed:

(1) The occurrence of tumors only in the highest dose group and/or only at the end of the study.

(2) No substantial dose-related increase in the proportion of tumors that are malignant.

(3) The occurrence of tumors that are predominately benign, showing no evidence of metastasis or invasion.

(4) No dose-related shortening of the time to the appearance of tumors.

(5) Negative or inconclusive results from a spectrum of short-term tests for mutagenic activity.

(6) The occurrence of excess tumors only in a single sex.

(7) Other data.

In the following paragraphs, each of these factors is discussed as it relates to the available information on dicofol.

(1) *The occurrence of tumors only in the highest dose group and/or only at the end of the study.* The data in Table 1 indicate that tumors were observed in both dicofol dose groups. Statistical analysis of the data in Table 1 shows that, for the combined tumors (adenomas and carcinomas), statistically significant increases were observed at both the low ($p=0.0035$) and the high dose ($p<0.001$). Therefore, on this basis, there is no reason to change the classification from "sufficient."

This criterion also speaks of the time in the study at which the tumors occurred. In the case of dicofol, the design of the experiment did not call for interim sacrifice; therefore, definitive evaluation of time-to-tumor-occurrence cannot be made. However, it can be noted that the mortality of the animals during the study was not remarkable. This at least suggests that the liver tumors were generally not life-shortening and possibly did not occur until the end of the study.

(2) *No substantial dose-related increase in the proportion of tumors that are malignant.* Examination of the 1985 NTP slide diagnoses (Table 1), reveals that there is no statistically significant dose-response relationship for the malignant tumors (carcinomas). Therefore, this would argue for reclassifying the dicofol data as "limited."

(3) *Then occurrence of tumors that are predominately benign, showing no evidence of metastasis or invasion.* The data in Table 1 for the 1985 NTP review indicate that the ratio of percentage adenomas to percentage carcinomas is 0, 1.0, and 2.6 for the control, low dose and high dose, respectively. This observation, which is consistent with the lack of a dose-related increase in malignant tumors noted in (2) above, supports a conclusion that benign tumors are the ones which are predominately related to the administered chemical. Further, the carcinomas in this case show no evidence of metastasis. Therefore, this information is supportive of a classification of "limited" for dicofol.

(4) *No dose-related shortening of the time to the appearance of tumors.* As indicated in (1) above, the design of the experiment was such that this information could not be obtained.

(5) *Negative or inconclusive results from a spectrum of short-term tests for mutagenic activity.* As noted above, EPA was unaware of data on the mutagenicity of dicofol and required the registrants to submit such data. However, in its response to the Special Review, Rohm and Haas indicated the existence of numerous studies. Reviews by their pathology panel led to the conclusion that dicofol is "clearly not a mutagen and appears to have little, if any, clastogenic potential." While EPA has not reviewed these data, on the basis of this information and a 1982 International Agency for Research on Cancer (IARC) evaluation of the mutagenicity of dicofol, there may be some support for reclassifying the dicofol data as "limited."

(6) *The occurrence of excess tumors only in a single sex.* This is the case for the dicofol mouse study. Therefore, this supports a "limited" classification for dicofol.

(7) *Other data.* The male mouse liver tumor incidence is not corroborated by a positive response in either sex of a comparably conducted Osborne-Mendel rat study. Therefore, this does not support the higher classification.

In addition, in the mouse study there was no other apparent response beyond that seen in the male mouse liver, a response whose relevance to humans has been questioned. This low response, without corroboration in other target organs, would tend toward reclassifying to "limited."

c. *Weight of the evidence classification.* Taken as a whole, this analysis supports the conclusion that

the evidence for the oncogenicity of dicofol should be reclassified as "limited" (as opposed to "sufficient") from studies in experimental animals. The only factor weighing in favor in maintaining the "sufficient" classification, the presence of tumors at two dose levels, is outweighed by the other factors.

In reaching a final hazard assessment position, consideration was also given to: (1) The plausible, but unverified, structure-activity relationship with the DDT series; (2) the possible connection between dicofol and the DDT related compounds via metabolism; and (3) the lack of human studies. Based on all of these considerations, EPA concludes that, at this time, there is limited qualitative evidence to support a conclusion that dicofol may be a human carcinogen. According to EPA's proposed Guidelines, dicofol would be classified in Group C: "This category is used for agents with limted evidence of carcinogenicity in animals in the absence of human data." EPA does recognize that there is some evidence which might suggest a different classification and has requested additional information through the Registration Standard and a subsequent Data Call-In notice to resolve the remaining issues.

3. *Dose-response assessment.* The second step in the risk assessment process calls for generation of a dose-response estimate. The EPA Proposed Guidelines discuss approaches to the mathematical extrapolation procedures used in this process. The Proposed Guidelines were followed by EPA in the generation of its January 1985 report.

However, as a result of the reassessment of dicofol discussed above which has transpired since the January report, EPA has concluded that the current dicofol data base provides limited evidence in support of the conclusion that dicofol is a potential human carcinogen. The confidence in the quantitative aspect of the risk estimate is limited by the nature of the qualitative hazard assessment on which it is based. Therefore, EPA has concluded that, in this instance, no quantitative risk assessment should be used for regulatory purposes for dicofol.

4. *Risk characterization.* The data base for dicofol consists primarily of two long-term animal studies (rat and mouse) in which the only statistically significant increase in tumors was observed in the male mouse liver. While the incidence of combined adenomas and carcinomas of this response was statistically significant at both the low and high dose, the malignant tumors did not appear in a dose-related manner, nor did they appear to be metastatic. The benign, rather than the malignant, tumors responded proportionately as the dose increased. Coupling these observations with a lack of corroborating evidence within the study (i.e., responses in other tissues and sex), from studies in another species, and from mutagenicity, metabolism and human studies, EPA finds that, at this time, no reliance can be placed on any quantitative risk estimates for dicofol.

Notwithstanding that there is only limited evidence at this time to support a conclusion that dicofol is a potential human carcinogen, it should not be overlooked that dicofol does cause tumors in the livers of male mice. While the significance of this response, particularly in light of the mitigating factors discussed above, is difficult to assess, it is of concern to EPA. The data clearly indicate that dicofol can interact in vivo to generate an oncogenic response, albeit one whose relevance to humans is also difficult to assess. Additional data are being collected through the Registration Standard and a subsequent Data Call-In notice which are expected to shed more light on the matter.

EPA's position on the potential oncogenic risks from dicofol is consistent with the conclusions of the Panel that the evidence that dicofol is a potential human carcinogen is weak and that a quantitative risk assessment is not justified.

C. Benefit Determinations

Available data indicate that approximately 60 percent of dicofol usage is on cotton and citrus, 10 percent on apples, and 10 percent on a combination of ornamentals and turf (commercial) plus home garden sites. The remaining 20 percent is used on a wide variety of sites including fruits, vegetables, and field crops. Dicofol, unlike most of the viable alternatives, is a selective miticide, not a broad spectrum pesticide (insecticide/miticide). Consequently, because it does not affect beneficial insects such as pollinators and most parasites and predators, its use is recommended in many integrated pest management (IPM) programs. In addition, dicofol is effective against more types of mite species than most other miticides and has both contact and residual activity. Further, dicofol has fewer phytotoxicity problems than other miticides.

EPA has evaluated the pesticidal properties of dicofol and, where data permitted, has compared its effectiveness to that of other pesticides registered for the control of mites on the same sites. In evaluating the suitability of using alternatives to dicofol, EPA considered a number of factors such as: The pre-harvest interval; the pre- or post-harvest restrictions; the number, timing, and frequency of permitted applications; reentry interval; required safety equipment or restricted applicator use; and the pests controlled on particular sites. Other important factors that were considered (compared) in determining whether a pesticide is an acceptable alternative to dicofol included: Production cost; comparative efficacy (degree of control and yield); compatability in mixtures with other pesticides; phytotoxicity; effect on nontarget organisms; impact on IPM programs; local resistance limitations; and variations of efficacy at different temperatures.

To assess alternatives to dicofol, each use site was evaluated separately because there may be an alternative to the use of dicofol on one crop in a group of related crops (e.g., citrus) but there may be no alternative to dicofol for other crops in the group (e.g., oranges versus kumquats). In other situations, alternatives are available but their use will involve an unknown economic cost because of localized resistance, lower efficacy, or the need to modify the applications. For a number of these sites, the available alternatives are currently being rotated with dicofol as needed or on a yearly or within season basis to slow the development of resistance among them.

EPA has estimated the economic impact of cancelling dicofol registrations on cotton, citrus, apples and other minor uses. These impacts are summarized below.

1. *Cotton.* The greatest portion of the economic impact resulting from the cancellation of all dicofol registrations would be felt by cotton producers in the San Joaquin Valley of California and to a lesser degree in Arizona. Unlike most other cotton-producing areas of the United States, the San Joaquin Valley frequently encounters severe, early-season spider mite infestations. Available information indicates that, unless dicofol is used, these infestations cannot be controlled effectively without either imposing significant financial loss on growers and/or increasing the development of pest resistance to propargite, the only selective miticide alternative to dicofol. This would occur because all of the selective pressure for resistance would be from the continuous use of propargite. Propargite is phytotoxic to young cotton plants; therefore, it is estimated that growers would lose 3 to 5 percent in yield because it cannot be used early enough

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in the season. Another registered material, sulfur, is ineffective under climatic conditions existing early in the growing season for cotton in the San Joaquin Valley. The unavailability of dicofol for early-season infestations would result in yield losses and increased control costs, which taken together, would increase the average variable cost of production (per pound of seed cotton) by 5 to 7 percent. For all San Joaquin Valley cotton producers who are current users of dicofol, the total impact would range from $11.2 to $17.7 million annually.

Cancellation of the use of dicofol on cotton would have considerably smaller impacts in areas outside the San Joaquin Valley. In Arizona, cotton producers now using dicofol could switch to propargite at an additional cost estimated to be approximately $3.62 per acre-treatment, or approximately $200,000 in the aggregate (a 1 percent increase in variable production costs). Use of other broad spectrum pesticides at no incremental costs is also possible where IPM systems are not currently established. In the Southeast United States and the Mississippi Delta, dicofol users could switch to monocrotophos or other possible alternatives at no incremental costs, unless they have a pest management program that would require propargite or sulfur as an alternative.

2. *Citrus (grapefruit, lemons, oranges).* The economic impacts of cancelling the use of dicofol on citrus (primarily grapefruit, lemons, and oranges) are estimated to be between $3.1 and $10.4 million annually due to the higher cost of using alternatives. This is a 1 to 2 percent increase in the variable costs of production. Based on current information, EPA does not expect significant impacts on yield or quality when alternatives are used. The available alternatives vary by region due to labeling limitations, differences in mite species, mite resistance, and climatic conditions. The alternatives include chlorobenzilate plus oil, oxythioquinox, propargite, cyhexatin, fenbutatin-oxide, and ethion plus oil.

3. *Apples.* EPA estimates that apple growers, primarily in the Northeast and Northcentral regions, would incur annual, incremental treatment costs ranging from $4.1 to $8.4 million. This is a 2 to 3 percent increase in the variable costs of production (e.g., more costly alternatives). This estimate reflects a substantial increase in EPA's estimate of dicofol usage in comparison with that made in the PD 2/3 and is based on more complete data submitted in public comments and collated by EPA since the PD 2/3. Dicofol fits into established IPM programs on apples, which are aimed primarily at spider mite control. Moreover, the dicofol usage on apples is increasing concurrently with reports of mite resistance to alternatives.

As in the case for citrus, the alternatives identified are currently used in rotation with dicofol; therefore, it is anticipated that their increased usage would further hasten development of mite resistance to them.

4. *Other minor uses.* EPA has concluded that there are no suitable alternative pesticides or nonchemical controls to replace dicofol registered on the following sites and site groupings: Some ornamentals and turf (commerical), home gardens (some ornamentals, a number of food crops), cucurbits (cucumbers, melons, pumpkin and squash), peppers, Bermudagrass (seed crop), cyclamen mite on strawberries, areas east of the Rockies for dry beans, and spider mites on tomatoes.

The use sites for which alternatives have been identified and costs estimated include: Stone fruits (apricots, cherries, peaches/nectarines, plums/prunes); caneberries (blackberries, dewberries and raspberries); figs; alfalfa (seed crop); sugarbeets (seed crop); red clover (seed crop); pears; peanuts; grapes; pecans; mints (peppermint and spearmint); hops; eggplant; strawberries; tomatoes; dry beans west of the Rockies; and field corn (California only). In general, pest scouting and monitoring are an important IPM component utilized in pest control on these and the principal sites discussed earlier.

Although the additional costs involved are low, on dry beans (California), field corn (California), melons, cherries, alfalfa (seed crop), Bermudagrass (seed crop), and mints and hops, the percentage of acreage treated with dicofol represents a significant portion of the acrage grown. The same appears to be true of ornamentals and turf (commerical) and the homegarden sites, but precise, reliable data are lacking.

The total cost of cancelling dicofol for all minor sites is estimated as approximately $2.2 to $4.3 million.

5. *Mite resistance to pesticides.* EPA recognizes that for some uses of dicofol there are benefits which are not readily demonstrable or quantifiable in monetary terms but which, nonetheless, may be important. One of these benefits relates to the impact of dicofol's cancellation on mite resistance. It is well established that intensive use of a pesticide creates selective pressures that may lead to pest populations resistant to that pesticide. This is more likely to be true of mite and insect species that produce many generations annually. Data show that mite species in some areas and crops are resistant to various registered miticides, including dicofol. The number of selective miticides is limited, and if that number is reduced, pest resistance may intensify or appear more rapidly than it would otherwise. This is the case with dicofol, which is the last chlorinated hydrocarbon miticide. EPA expects this phenomenon to be more significant in crops where mite infestations recur annually (e.g., some cotton, citrus, and apple acreage) than in crops where the level of mite infestations (i.e., economic vs. noneconomic) fluctuate widely from year to year. Where alternatives are available, the most common method of reducing the development of resistance appears to be rotating mite pesticides. This frequently is combined with monitoring mite populations and timing pesticide applications to reduce the number of treatments per season.

6. *Summary.* The immediate quantifiable impacts from cancellation of dicofol products would range from about $21 to $30 million per year, with the bulk of such impacts (approximately 90 percent of the total) accruing to producers of cotton in the San Joaquin Valley, citrus (mainly in Florida), and apples (mainly in the Northeast and Northcentral States) who are among the major current users of dicofol. Established IPM programs are a part of the overall determinations for pest management particularly for apples and San Joaquin Valley cotton. Given the competitive nature of agriculture and that in most cases only a small percentage of the crops would be affected, it is unlikely that the affected growers would be in a position to pass these incremental costs on to consumers since their commodities would be unable to compete with lower priced commodities sold by unaffected producers.

It must be recognized, however, that the range of $21 to $30 million represents a partial estimate of the total impact from cancellation. EPA was unable to quantify monetary benefits from dicofol use on a number of sites. In view of the usage on these sites, and given the lack of selective miticide alternatives for some crops, the impact from cancellation is likely to be significant for the affected producers of those crops. Therefore, should all of the potential developments actually come to pass (e.g., resistance, phytotoxicity from alternatives, etc.), the total impact from

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cancellation would exceed the $21 to $39 million range.

IV. Initiation of Regulatory Actions

A. Introduction

This unit has several sections. The first, this Introduction, discusses EPA's reasons for concluding that dicofol products, as currently registered, should be cancelled unless certain modifications are made in the terms and conditions of registration. This Introduction also contains definitions of a number of terms used in the rest of this unit. The second section of this unit specifies the modifications in the terms and conditions of registration for federally registered pesticide products that are required for the products to remain registered. Section C explains how these requirements apply to intrastate pesticide products. Section D completes this unit and establishes provisions concerning the sale, distribution, and use of existing stocks.

1. *Statutory determinations.* Based upon the determinations summarized in Unit III, EPA has concluded that the use of currently registered pesticide products containing dicofol causes unreasonable adverse effects on the environment. A number of factors lead EPA to conclude that the risks of using dicofol outweigh its benefits, and, therefore, that cancellation is appropriate unless modifications are made to the product registrations. Most important is the evidence that dicofol contaminated with an average of 10 percent DDTr causes significant adverse effects on the environment by harming both fish and avian species, including endangered species. EPA realizes that some dicofol products now have no more than 2.5 percent DDTr in the active ingredient. EPA believes that these products also make a significant contribution of DDTr to the environment, and that the environmental risks, while somewhat lower, are qualitatively comparable to the risk from using more highly contaminated dicofol. Both the OES and the Panel agreed with EPA that it should cancel the registration of dicofol products because of the magnitude of these environmental risks. In addition to the risks to the environment, dicofol may pose a carcinogenic risk to humans. Although the evidence of carcinogenicity is weak, this risk cannot be ignored.

The fact that the estimated benefits of using dicofol, while approaching $40 million a year, are confined to certain geographical areas and crops, was also an important factor in EPA's decision. EPA recognizes that cancellation would have sizeable impacts on cotton growers in California and citrus growers in Florida, and to a lesser extent on apple growers in some Northern States, but these impacts should not significantly affect consumer prices or the national supply of these commodities. Dicofol applied to cotton and citrus accounts for the largest proportion of its use; the other sites to which dicofol is applied are generally considered minor uses. Thus, the impact of cancellation of uses, other than possibly cotton, would not be significant for the national agricultural economy, although some local impacts could be severe.

EPA has also concluded that dicofol products can meet the statutory standard for continued registration under FIFRA if certain modifications of the terms and conditions of registration are made by the registrants. (EPA's conclusion that the benefits of using dicofol would outweigh risks if certain changes are made, takes into account that the adverse effects on the peregrine falcons resulting from continued use of dicofol in California will be significantly mitigated by the nest manipulation project partly funded by the major producers of dicofol.) EPA has concluded that two kinds of modifications are necessary. First, registrants must reduce the level of DDTr contamination in dicofol products. EPA believes the registrants' proposed reductions, initially to less than 2.5 percent DDTr and within 2 years to 0.1 percent DDTr or less, should substantially reduce the environmental risks of using dicofol. EPA desires that the production, sale, and use of dicofol with these lower levels of DDTr contamination begin as quickly as feasible. Accordingly, EPA has established a schedule by which registrants must produce dicofol products with specified limits for DDTr contamination.

The second condition under which EPA will permit continued registration of dicofol products is the addition to the product label of a requirement that mixers, loaders, and applicators are to wear gloves while handling dicofol. The reasons for these two conditions are discussed below.

The registrants' proposed reduction in the level of DDTr contaminants in their technical products would significantly lower the amount of DDTr released into the environment as the result of using dicofol. Assuming that use of dicofol products does not increase significantly in the future, use of products contaminated with DDTr at 0.1 percent or less, the level which registrants indicate they can begin producing by late 1987, would result in the introduction into the environment of approximately 20 to 50 times less DDTr than results from use of currently registered dicofol products. At this proposed level of DDTr contamination, using the mass balance analytical techniques described by EPA in PD 2/3, by the year 2000, the new contribution of DDTr to the environment from the new product would be 1 percent of that attributable to use of DDT prior to its cancellation in 1972 and the old, more highly contaminated dicofol products. While this incremental contribution would not be free from risks, it would represent a substantial reduction in the level of risk to the environment. EPA agrees with OES that the expeditious phase-out of dicofol products containing more than 0.1 percent DDTr would be adequate to prevent jeopardy to the endangered peregrine falcon in California in view of other efforts being made to support recovery of this species. The reduction in DDTr contamination level should not noticeably alter either the price or effectiveness of dicofol products. Thus, the required reduction in DDTr will not affect the benefits of dicofol.

This notice establishes a schedule for reducing the level of DDTr contamination in dicofol products. Because the major producers of technical dicofol have informed EPA that they are already capable of or are making the active ingredient with less than 2.5 percent DDTr contaminants, EPA is requiring an immediate amendment to dicofol registrations to certify an upper limit on DDTr contaminants equivalent to 2.5 percent (or less) of the technical grade material. Registrants have indicated that production of dicofol with 0.1 percent or less DDTr requires construction of new manufacturing facilities, and that the facilities would not be operational until late fall of 1987. Moreover, the initial production from the new facilities may be inadequate to meet demand for dicofol products during the 1986 growing season. Accordingly, EPA is allowing registrants to sell and distribute stocks of dicofol containing between 2.5 percent and 0.1 percent DDTr until December 31, 1986. These additional quantities of dicofol products should help meet the demand for use of dicofol products. At the same time, these unavoidable additions to the existing environmental residues of DDTr will be relatively limited.

This schedule is consistent with the timeframes recommended by OES in its March 1986 Biological Opinion on dicofol. After concluding that the

continued use of dicofol would jeopardize the continued existence of the endangered peregrine falcon, OES listed, as part of one reasonable and prudent alternative, the phase-out of dicofol products contaminated with more than 0.1 percent DDTr. OES indicated that in California the sale of dicofol products containing more than 0.1 percent DDTr should stop by December 31, 1988.

In addition, although EPA has concluded that the evidence that dicofol is a potential human carcinogen is weak, EPA finds it prudent to require the use of chemical resistant gloves while handling products containing dicofol. The chances for human contact with the pesticide are greatest during the mixing, loading and application processes, and use of chemical resistant gloves should diminish skin contact with dicofol and reduce whatever risks to humans may result from such exposure. Such a requirement would have virtually no impact on the benefits of using dicofol.

In summation, based on available information, EPA finds that the risks posed by the use of dicofol would be outweighed by the benefits if certain modifications are made to the registration of dicofol products. Accordingly, EPA is issuing a "conditional" cancellation notice. In other words, registrations will be allowed to continue provided that the registrants amend their registrations to make the required modifications as described in Unit IV.B below.

EPA notes that its evaluation of the risks and benefits of using dicofol is based on available data and that if EPA receives additional information which changes its conclusions concerning risks or benefits, it might initiate different regulatory actions. EPA is particularly concerned that dicofol, independent of the effect of its DDTr contaminants, may pose a risk to the environment. If this concern is confirmed or if new data strengthen the evidence of the carcinogenicity of dicofol, EPA will consider further regulatory action.

2. *Definitions.* The following terms are defined for the purposes of this unit.

a. The term "existing stocks" refers to any quantity of dicofol products which is in the United States on the date of the publication of this notice and which is formulated as either an end-use product or manufacturing-use product.

b. The term "basic manufacturer" refers to any registrant who sells or distributes a manufacturing-use product containing technical dicofol or an end-use product containing technical dicofol produced from an unpurchased and/or unregistered source (integrated formulation system).

c. The term "formulator" refers to any registrant (or supplemental distributor registrant) who is not a basic manufacturer and who sells or distributes an end-use product containing dicofol.

d. The term "sale or distribution" and grammatical variants such as "sell or distribute" refer to the distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver a pesticide product.

e. The term "released for sale or distribution" refers to any quantity of a pesticide product that has left the physical custody of the registrant.

f. The term "products containing more than 2.5 percent DDTr" refers to manufacturing-use products and/or end-use products that contain DDTr contaminants at a level greater than 2.5 percent of the amount of technical grade dicofol in the product.

g. The term "products containing between 2.5 percent and 0.1 percent DDTr" refers to the manufacturing-use products and/or end-use products that contain DDTr contaminants at any level equal to or less than 2.5 percent and more than 0.1 percent of the amount of technical grade dicofol in the product.

h. The term "products containing less than 0.1 percent DDTr" refers to manufacturing-use and/or end-use products that contain DDTr contaminants at any level equal to or less than 0.1 percent of the amount of technical grade dicofol in the product.

B. Requirements for Complying with This Notice—Federally Registered Products

The registrant of a product containing dicofol must submit an application for amended registration, as specified below, within 30 days of publication in the **Federal Register** or receipt by the registrant of this notice, whichever is later, in order to be allowed to continue to sell and distribute the product. Refer to Unit VI.A of this notice for directions on how to submit an application for amended registration. This unit sets out substantive requirements for the application for amended registration.

1. *New Confidential Statement of Formula.* Registrants of dicofol products must apply to amend their registrations to reflect the composition of their products on a new Confidential Statement of Formula. For each manufacturing-use product and each end-use product, the registrant must also establish an upper certified limit for DDTr equal to or less than 2.5 percent of the amount of technical grade dicofol in the product. The Confidential Statement of Formula must be accompanied by information showing that the registrant can produce his product with no more DDTr than the amount certified as the upper limit.

If the application is otherwise acceptable, the amendment will be approved conditionally. The amended registration will be conditioned on submission and approval before March 30, 1988, of an application for amended registration which revises the composition of the product to establish a new upper certified limit for DDTr equal to or less than 0.1 percent of the amount of technical grade dicofol in the product. As before, the application must be accompanied by information showing that the registrant can produce his product with no more DDTr than the amount certified as the upper limit.

The registrants have indicated their intention to reduce the level of DDTr contamination to 0.1 percent according to the schedule specified in this notice. EPA intends to monitor the registrants' progress closely to assure that this schedule is met and, if circumstances warrant, to take appropriate regulatory action under FIFRA.

2. *Revised labeling.* Registrants of dicofol products who apply for amended registration to certify an upper limit for DDTr between 2.5 percent and 0.1 percent of the technical dicofol must also apply to revise their labeling to including the following statements.

a. On the top of the front panel add the statement: Not to be sold, offered for sale, held for sale, shipped, delivered for shipment, offered for delivery, or received after December 31, 1988. Not to be used after March 31, 1989. Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, of the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

b. In the beginning of the directions for use add: Skin contact with this pesticide may be hazardous; wear chemical resistant gloves when mixing, loading, or applying this product.

Registrants of dicofol products who apply for amended registration of their products to certify an upper limit for DDTr equal to or less than 0.1 percent of the technical dicofol in the product must delete the statement in item a above.

The registrations of all dicofol products containing greater than 0.1 percent DDTr are cancelled on December 31, 1988. Selling, offering for sale, holding for sale, shipping, delivering for shipment, offering for delivery, or receiving of these products

after December 31, 1988 is a violation of this cancellation order.

C. Requirements for Complying with this Notice—Intrastate Products

The producer of an intrastate product is required to submit an acceptable application for Federal registration, or acceptably amend a pending application, within 30 days of receipt by the producer of this notice. (An intrastate product is a pesticide product that was initially registered by a State prior to 1972, that is distributed and sold solely within a single State, and that is in compliance with the requirements of 40 CFR 162.17.) To be acceptable, the application must comply with all of the requirements imposed on Federal registrations by Unit IV.B of this notice. Other requirements for an acceptable application are described in the Registration Standard for dicofol and pertinent EPA regulations in 40 CFR Part 162. Refer to Unit VI.B for directions on how to apply for Federal registration of an intrastate product.

D. Existing Stocks

The following paragraphs describe the conditions under which registrants and others may sell, distribute, and use existing stocks of dicofol products. The conditions depend on the level of DDTr contamination, the kind of product, and whether the registrant has released the products for sale or distribution. Existing stocks may not be sold, distributed, or used except as provided below.

1. *Existing stocks of dicofol already released by the registrant.* Any person, other than a basic manufacturer or formulator, may sell or distribute, or use in accordance with label instructions, any quantity of existing stocks of end-use products containing more than 0.1 percent DDTr until depletion, provided that such products were released for sale or distribution by the registrant before the date of publication of this notice.

2. *Existing stocks of products containing more than 2.5 percent DDTr not released for sale or distribution by the date of publication of this notice.* Any registrant may sell or distribute any quantity of existing stocks of dicofol products containing more than 2.5 percent DDTr provided that such stocks were released for sale or distribution by the registrant before June 30, 1986. Stocks released for sale or distribution after June 30, 1986 may be sold or distributed provided that the labeling includes the following statements:

On top of the front panel:

Not to be sold, offered for sale, held for sale, shipped, offered for delivery, delivered for shipment, or received and (having so received) delivered or offered for delivery after October 31, 1986.

Not to be used after June 30, 1987.

Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, of the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

In the direction for use section:

Skin contact with this pesticide may be hazardous; wear chemical resistant gloves when mixing, loading or applying this product.

The statement required on the front panel may be added by applying a sticker to the product container. The statements required in the use directions may be added in the form of supplemental labeling accompanying the product.

3. *Existing stocks of manufacturing-use and end-use products containing between 2.5 percent and 0.1 percent DDTr not released for sale or distribution by the date of publication of this notice.* Any registrant may sell or distribute any quantity of existing stocks of manufacturing-use or end-use products containing dicofol with between 2.5 percent and 0.1 percent DDTr provided that such stocks were released for sale or distribution by the registrant before August 27, 1986. Stocks released for sale or distribution after August 27, 1986 may be sold or distributed provided that two conditions are met: (1) Within 30 days of publication or receipt by the registrant of this notice, the registrant must submit a completed application for amended registration and submit five copies of draft labeling, amended to include the following statements:

On the top of the front panel add:

Not to be sold, offered for sale, held for sale, shipped, delivered for shipment, offered for delivery, or received after December 31, 1988. Not for use after March 31, 1989.

Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, of the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

In the beginning of the directions for use add:

Skin contact with this pesticide may be hazardous; wear chemical resistant gloves when mixing, loading or applying this product.

and (2) such existing stocks of dicofol products must bear the amended labeling when released for sale or distribution.

V. Comments of the Secretary of the United States Department of Agriculture, the Scientific Advisory Panel, and Other Public Comments

A. USDA's Response to the October 10, 1984 Federal Register Notice

The United States Department of Agriculture (USDA) responded to the October 10, 1984 **Federal Register** notice as well as the Position Document 2/3. Their comments are printed in full below:

Honorable Steven Schatzow,
Administrator [sic], U.S. Environmental Protection Agency,
Washington, D.C. 20460

Dear Mr. Schatzow: This is the United States Department of Agriculture's (USDA) response to the U.S. Environmental Protection Agency's (EPA) Preliminary Notice of Determination Concluding the Special Review of Pesticide Products Containing Dicofol.

State extension and research personnel responsible for pest control technology and recommendations were contacted by USDA concerning the agricultural needs for dicofol. These experts expressed the view that dicofol is an effective miticide, is economical, has been extensively used for many years and has not been a serious object of mite resistance. The USDA concurs with their assessment and believes that the following comments should be considered by the ageny in developing the final regulatory decisions.

1. EPA proposes a standard for cancellation with differs from that in FIFRA. FIFRA sec. 6 provides for notice of intent to cancel a registration "[i]f it appears to the Administrator that a pesticide . . . generally causes unreasonable adverse effects on the environment. . . ." PD 2/3 changes the meaning require only that "the pesticide appears to cause unreasonable adverse effects on the environment."

2. EPA fails to explain exactly how the risks of using dicofol were weighed against its benefits, which are acknowleged. In several places the document concludes arbitrarily that "these risks outweigh the benefits," or similar language. However, nowhere is any objective methodology for weighing risks against benefits explained. In the absence of such methodology, which could be used by any neutral observer to reach an independent conclusion when supplied with the facts, we can only judge that EPA's conclusion is predetermined. That is, EPA appears to conclude that any risk is unacceptable, no matter what the benefits of continued use might be. Also, the concept of weighing risks of reduced levels of DDTr in dicofol does not have a chance of objective evaluation because there is no definition of what those levels might be.

3. USDA believes that EPA, when studying the idealized model representing

environmental loads resulting from applications with dicofol, has not given sufficient consideration to undefined or unidentified sources of DDTr. Nor has EPA adequately considered variable and transitory loads contributed by background environmental residues. EPA points out in the document that background levels are transitory. USDA believes however, that evaluation of residues in wildlife specimens as representative of dicofol use loads may well be in error. This would be especially true for the analysis of migratory wildlife that could easily range into other geographic areas, perhaps including those where DDTr occurrence is acceptable, for example, Mexico.

4. Much of the evidence cited in the text of EPA's PD 2/3 is the result of earlier wildlife studies dealing directly with DDT as well as DDTr. Some of the evidence is the result of direct feeding studies which although relevant in the broader sense may not accurately describe the present situation. Additionally, the narrative of the PD 2/3 often refers to both DDT and the DDT homologs in a manner that suggests that all are implicated in this special review. However, EPA identifies the eight DDT homologs as the subject of regulatory concern. A valid question might be whether DDT-induced biological responses would accurately typify the same metabolic reactions with the same magnitude as those induced by DDT homologs. It would be interesting as well to determine whether U.S. Fish and Wildlife scientists who have monitored wildlife residues concur with EPA's assessment of dicofol as an indisputable source of the DDTr residues that have been identified in wildlife.

5. In the draft PD 2/3, EPA discusses possible oncogenicity resulting from exposure to dicofol formulations and states that evidence in support of that allegation may be presented in the forthcoming PD 4 final decision, if corroborating information can be obtained. USDA views this action as an unusual means of attaining a rational and judgmental conclusion insofar as the PD 4 is expected to present a regulatory decision, and would not allow adequate opportunity for comment.

6. The Department and State scientists question that there are satisfactory alternatives for nearly all uses of dicofol. The USDA report of "Dicofol Uses and Efficacy in Agriculture" shows that of 47 individual commodities or groups of commodities, only six were inconclusive about adverse effects that result from the loss of dicofol through regulatory action. These commodities were hops, mint, peas, onions, sugarbeets, and red clover seed. A seventh commodity group, ornamentals, reflected some lack of concern about the possible loss of dicofol, but that concern varied widely and inconsistently across geographical areas and plant varieties. The more important and major agricultural crops were presented as having significant dependence on dicofol.

7. Although EPA has assumed that regulatory removal of dicofol will have no adverse effect upon minor crops, USDA data indicated that the control of mites on certain crops would be difficult or impossible without dicofol. These were stated to be artichokes in California, Easter lily bulbs in Montana, figs in South Carolina, grapes in Michigan and California, ornamentals in Maine and New Jersey, beans in several states, homeowner uses in several states (house plants), lawns in Alabama, pecans in South Carolina, peppers in California, home grown plums in Illinois, and vegetables in several states. These examples do not include many instances where state specialists indicated that while registered alternatives might exist, they are not suitable due to various biological and/or economic reasons.

8. EPA expressed the view that overall, the removal of dicofol from the market and substitution with alternative miticides would result in no yield loss. USDA understands that the comments are intended to convey the idea that the same weight or volume of crop production would be achieved. Assuming this to be true in certain instances, USDA feels that yield is a single parameter in agricultural production that is meaningful only in the instance that time, energy, and costs of materials and equipment remain constant. USDA has shown in its report, that without dicofol one or more of those factors will necessarily increase. Thus, obtaining identical or similar yields with alternative miticides could have undesirable pest control and production consequences. In addition, State specialists have reported that some crops would be impossible to grow in certain production regions without the continued availability of dicofol.

9. EPA has described a potential initial economic impact of between 9.6 to 31.9 million dollars to cotton growers with the removal of dicofol, and projected a greater long term impact of 11.0 to 37.1 million dollars. The draft PD 2/3 indicates that this will primarily result in economic hardship to cotton growers in the San Joaquin Valley of California, many of whom would elect to grow less profitable crops. It was stated that the current national base acreage (in excess of 15 million acres) would enable U.S. cotton growers to fill the supply gap. USDA does not agree with this economic appraisal because of the following reasons.

(a) Even a 20 percent production loss as stated by EPA would be difficult to rationalize on grounds of production efficiency when it is considered that few geographic areas can compete on a per acreage production cost basis with the San Joaquin Valley. In the Valley, per acre yields of cotton are substantially higher than in any other State, except Arizona.

(b) EPA's Benefit Summary of PD 2/3 projected a reduction in budgetary outlay by the Federal Government to the San Joaquin Valley growers based on a 4.4 to 7.3 million dollar projected cotton production loss. However, this loss value is certainly too low. If cotton production were to be sharply reduced, USDA believes that an attempt also should be made to add in the costs to the growers and to the local agricultural community that would be incurred through the necessary disposal of machinery, equipment, and facilities now used for cotton, and the acquisition of other equipment needed for the production of replacement crops.

(c) The unique agricultural environment of arid California is such that growers of less profitable crops than cotton will themselves be subject to additional economic stress. Obviously additional acreages of the San Joaquin Valley competing in their specific crop market could result in severe economic consequences due to price competition and the availability of adequate markets. Secondly, as the USDA assessment report has shown, there will be serious economic impacts on other crops due to increased production costs in the event that dicofol uses are cancelled.

10. EPA indicates that economic impacts to citrus growers are expected to initially range from 3.5 to 4.0 million dollars. Additionally, it is stated that 73 percent of dicofol use on citrus is applied in Florida. EPA concluded that the resultant increases in production costs in Florida would not be excessive and that it would be expected that those costs would be passed on to the public. USDA is concerned that the Florida citrus industry has been affected very badly in recent years, first by successive killing frosts that have destroyed major portions of the producing groves as far north as the St. John River citrus region and southward to the middle of the state. There is also a current crisis among some of the larger citrus nurseries in Florida resulting from the citrus canker. Taken together, the present prospect for the Florida citrus industry is one of risk and hardship. Alternative miticides might introduce biological problems as well as economic hardship as described in the USDA assessment report. It is extremely important for Florida citrus growers to be able to avail themselves of all available tools during the lengthy rebuilding, nonproductive years required for new orchard establishment.

USDA believes that the information and the data provided by State and Federal scientists has established the critical need to retain dicofol uses for the agricultural community. We further believe that sufficiently low levels of DDTr in the product can be achieved and EPA is encouraged to work closely with the basic producers toward this end.

We are forwarding with this letter an updated copy of our report and copies of the information we received from the field. We are also providing copies of this material to the Rohm and Haas Company at their request.

USDA believes that the need and use of dicofol is important in pest control technology and recommends its continued registration. The Department appreciates the opportunity to have cooperated in this important agricultural decision.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides and Pesticide Assessment.

Dated: December 11, 1985.

B. USDA's Response to the August 15, 1985 Federal Register Notice

The USDA responded to the August 15, 1985 amended Federal Register

notice. Their comments are printed in full below.

Mr. Steven Schatzow,
Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Schatzow: This is in response to your letter of August 12 forwarding a revised PD 2/3 for the pesticide chemical dicofol. EPA is to be commended for its rational approach in this document.

We also appreciate your acceptance of many of the comments we gave you in December 1984. We anticipate that those comments will be published in the next Federal Register notice.

Sincerely,

Charles L. Smith,
Coordinator, Pesticide and Pesticide Assessment.

Dated: September 13, 1985.

C. EPA's Response to the Comments of the Secretary of the United States Department of Agriculture

EPA appreciates the cooperation of the USDA in providing comments on the proposed regulatory decision concerning dicofol. Following is a point-by-point response to USDA's December 11, 1984 comments. No response to the September 13, 1985 comments is considered necessary.

1. EPA believes that the standard applied in deciding whether to propose cancellation of the registrations of dicofol products, both in the PD 2/3 and in this final Notice of Intent to Cancel, is the standard prescribed by FIFRA sec. 6. FIFRA sec. 6(b) provides that, "If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act or when used in accordance with widespread and generally recognized practice, generally causes unreasonable adverse effects on the environment, . . ." the Administrator may issue a Notice of Intent to Cancel the registrations of the pesticide. Because of the definition of the term "unreasonable adverse effects," this standard directs EPA to balance the risks against the benefits of using a pesticide and, if risks generally outweigh the benefits, EPA may propose cancellation. As explained in Units II and IV, this is the analysis used by EPA.

2. EPA is unaware of any objective methodology for weighing risks against benefits that adequately takes into account all relevant factors. Therefore, EPA necessarily makes a policy judgment. Such decisions, however, are hardly arbitrary and predetermined, as evidenced by the regulatory changes that often take place from the PD 2/3 to the PD 4 stage of a Special Review. EPA disagrees with USDA's assertion that the weighing of risks of reduced levels of DDTr in dicofol does not have a chance of objective evaluation because there is no definition of what those levels might be. The levels of DDTr were estimated, the corresponding effect on exposure was evaluated, and a determination was made on whether the risks to the environment posed by such effects outweighed the benefits of use. Unit IV of this notice contains a more extensive discussion of EPA's analysis than appeared in PD 2/3.

3. The model used to predict residues of DDTr in the environment resulting from use of dicofol incorporated realistic assumptions into its calculations. The model assumed a zero background level of DDTr. To the extent that there would be background levels, they would only increase the exposure and hence the risk to wildlife. While it is true that migratory wildlife could be exposed to DDTr in other geographic areas where the use of DDT may be legal, EPA's models and calculations do not include such routes of exposure. Thus, the models did not intentionally overestimate exposure to DDTr from dicofol use as USDA implies.

4. Although USDA states that the use of laboratory studies to evaluate the effects of DDT on avian reproduction "may not accurately describe the present situation," USDA gives no reasons for this conclusion. EPA believes that laboratory studies of the toxicity of DDT to wild birds represent the best way of evaluating what levels of DDT will cause adverse effects on avian species. In evaluating the risks of DDTr, EPA examined the results of studies using both DDT and DDE, including the p,p' and o,p' isomers of each chemical. The data base on these four substances was extrapolated to the other components of DDTr, because the homologs have not been studied extensively and because these homologs may convert to DDE. Finally, EPA has never asserted that dicofol is an indisputable or sole source of DDTr residues found in wildlife.

5. USDA's concern that it may not have adequate opportunity to comment on the possible oncogenicity of dicofol before EPA issues its PD 4 final decision is now moot. EPA asked for comment from USDA on the revised PD 2/3 which extensively discussed the oncogenicity of dicofol. USDA had no comment.

6. The issue of availability of economically feasible alternatives has been addressed at length in the revised benefit analysis in Unit III.C of this notice. Specifically, the analysis points out that with the cancellation of dicofol there would be no selective alternative miticide available for use on cucurbits, Bermudagrass (as a seed crop), peppers, dry beans east of the Rockies, spider mite control on tomatoes, a number of ornamentals, and many homeowner crop and ornamental sites. A number of other sites have only a single selective miticide alternative. In general, there is no question that benefits are derived from the use of dicofol in the production of a number of crops. Indeed, the objective of the benefits analysis was to measure the magnitude of such benefits. In the revised benefits analysis, the aggregate impact of cancellation of the uses of dicofol was estimated, at a minimum, to range from roughly $20 to $40 million per year (measured as increased production costs to agricultural producers).

7. As stated above, the revised benefits analysis addresses the impacts of cancelling dicofol use on minor crops. While it is true that for minor sites there would not be a large economic impact when compared to agricultural income as a whole, EPA nevertheless recognizes that there will be significant impacts on some individuals and growers. It should be noted, however, that dicofol is not registered for artichokes as stated by USDA.

8. For those crops which EPA evaluated for alternative miticides, none appeared to have significant yield losses, with the exception of cotton in the San Joaquin Valley. In the latter case, in most years, alternatives would have to be applied too late in the season to prevent a percentage of the early-season spider mite damage. EPA did not evaluate other crop and ornamental sites in enough detail to quantify the impact of cancelling the use of dicofol. EPA recognizes, however, that the lack of dicofol would cause significant losses on certain crops and ornamentals, nationally or in areas where resistance or other local factors limit or restrict alternatives. On a number of sites where integrated pest management practices are used, few if any selective alternative miticides are available.

9. USDA disagrees with EPA's evaluation of the impacts of dicofol on cotton growers in California. This disagreement is based in part on a misunderstanding of EPA's benefits analysis. Contrary to USDA's comment, at no time did EPA project a 20 percent loss in production in the San Joaquin Valley as a result of cancelling dicofol. It must be kept in mind that the objective of a benefits analysis is to measure the economic impact resulting from the cancellation of a pesticide not only on production, but also on the agricultural economy in general,

consumers, and the overall society. The estimation of such impacts does not suggest that the end result will be optimal from the cotton producer's perspective. Given accurate information on both the risks and benefits of dicofol, one can hopefully make a risk/benefit decision which is optimal from society's viewpoint.

The revised cotton analysis concluded that few if any producers would be forced out of cotton production in the San Joaquin Valley. This revised estimate reflects the use of more detailed estimates of cotton production costs which show that, given expected cotton yields and prices (based on long term averages), San Joaquin Valley growers would sustain reduced profits, but would not be forced out of the cotton business.

10. USDA's concerns over the impact of dicofol's cancellation on citrus are valid and the benefits analysis has been revised accordingly.

D. Comments of the Scientific Advisory Panel

EPA transmitted the PD 2/3 to the Scientific Advisory Panel (Panel) for review. At that time, the Panel was asked to comment on the environmental concerns. On April 17, 1985 the Panel responded to EPA. EPA then sent to the Panel an amended notice in draft form concerning EPA's concerns with the oncogenicity of dicofol. On July 8, 1985, they responded to EPA. Because FIFRA requires that the Panel's comments be printed, comments from both meetings are reproduced in their entirety.

1. *Comments following the April 1985 meeting:* Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Scientific Advisory Panel.

Review of a Set of Scientific Issues Being Considered by EPA in Connection with the Special Review on Dicofol.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of a number of scientific issues associated with the Special Review of the pesticide dicofol. The review was conducted in an open meeting held in Arlington, Virginia, on April 17, 1985. All Panel members except Dr. Richard Griesemer and Dr. Rosmarie von Rumker were present for the review.

Public notice of the meeting was published in the Federal Register on Friday, March 29, 1985.

In consideration of all matters brought out during the meeting and careful review of the scientific issues in connection with the review of dicofol, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the dicofol Position Document 2/3 and other materials prepared by EPA, as well as materials provided by the principal registrant, Rohm and Haas Company. On the basis of this review, and the testimony presented at the April 17 meeting, the SAP would like to make the following statements:

Clearly, there are many unresolved differences between the Agency position and that of the principal registrant, differences which, in many cases, cannot be easily resolved. Given the current high DDTr levels in the compound, the recommendation in the PD 2/3 document that dicofol registrations be cancelled might well be justified on environmental grounds, despite the fact that all factors going into the proposed decision are not necessarily well founded. However, if the proposed reduction of DDTr contamination levels to 0.1 percent is implemented, then dicofol use does not appear to the Panel to represent a threat to the environment, including endangered species.

The proposed contamination reduction program, from the present level of 5.75 percent down to 2.5 percent shortly, with 0.1 percent to be reached by the Spring of 1987, is adequate and appropriate, and the Panel recommends that the Agency use this as guidance in its regulatory activities relating to dicofol.

The Panel also urges that metabolism and field studies currently underway be carried to completion at an early date.

Finally, the SAP urges that all affected parties, including EPA, the registrants, and appropriate State officials, work together to ensure that an adequate monitoring system is put in place in order that future levels and trends of DDTr in the environment may be accurately known.

For the Chairman:

Certified as an accurate report of the findings:

Philip H. Gray, Jr.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Dated: April 17, 1985.

2. *COMMENTS FROM THE JULY 1985 MEETING,* Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel.

Review of the Oncogenicity Issue Being Considered by EPA in Connection with the Special Review on Dicofol.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the issue of oncogenicity being considered by the Agency in connection with the Special Review of the pesticide dicofol. The review was conducted in an open meeting held in Alexandria, Virginia, on July 7, 1985. All Panel members were present for the review except for Dr. Rosmarie von Rumker. Public notice of the meeting was published in the Federal Register on June 21, 1985. In consideration of all matters brought out during the meeting and careful review of the scientific issues in connection with the review of dicofol, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the dicofol Position Document 2/3 and other materials prepared by EPA, as well as materials provided by the principal registrant, Rohm and Haas Company. In response to the four scientific questions posed to the SAP by the Agency, each question is listed below, together with the Panel's response:

Question

1. Examining the carcinogenicity data base of dicofol alone (i.e., the NCI study, the Maronpot re-reading of the slides, the short term results, etc.) and independent of consideration of structurally related compounds, how strong is the weight-of-evidence case that dicofol is a potential human carcinogen?

Response

The SAP believes that the evidence that dicofol is a potential human carcinogen is weak.

Question

2. Given what we know about the metabolism of dicofol and related compounds (e.g., DDT and DDE), to what degree should the Agency incorporate consideration of DDT and DDE data in reaching a weight of the evidence on the potential human carcinogenicity of dicofol?

Response

Consideration of structural relationships between different compounds can be a powerful tool for determining priorities for testing, but should not be used as a basis for regulatory action. Based on existing data, there is no evidence that dicofol is metabolized to DDT, DDE, or their metabolites. Therefore, EPA should not incorporate considerations of DDT and DDE data in reaching a weight-of-evidence judgment on the potential human carcinogenicity of dicofol.

Question

3. The Science Advisory Board has noted that on the spectrum of weight of the evidence for potential human carcinogenicity a point is reached at which use of the data for a quantitative risk assessment can no longer be justified. From this perspective, is a quantitative risk assessment for dicofol justified?

Response

The Panel believes that a quantitative risk assessment for dicofol as a carcinogen cannot be justified. The SAP further suggests that such a risk assessment be omitted from dicofol documents until there are sufficient data to justify such an assessment.

Question

4. Are the methods used for estimating human exposure to dicofol appropriate for the problems at hand? How should the results of those procedures be characterized: e.g. gross overstatements, gross understatements, or reasonable estimates?

Response

In the absence of sufficient information, the Panel is unable to characterize the dietary and applicator exposure estimates. The SAP

does believe however, that more realistic dietary exposure could be derived utilizing the new Tolerance Assessment System.

For the Chairman:

Certified as an accurate report of Findings:

Philip H. Gray, Jr.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Date: July 29, 1986.

E. EPA Response to Comments of the Panel

The Panel commented concerning the registrants' proposal to lower the DDTr contamination level to 0.1 percent and the resulting enivronmental impacts. EPA generally agrees with this comment that this lower DDTr contamination level will not cause unreasonable adverse effects on most non-target species. EPA, however, agrees with the OES Biological Opinion concerning the impact of the continued use of dicofol on endangered species.

EPA agrees with the Panel concerning the need for metabolism and field studies to be completed at an early date. Poultry and rat metabolism studies are nearing completion and will be finalized by December 1986. Additionally, EPA will require reproduction and metabolism tests in sensitive avian species.

In regard to the Panel's comments urging that EPA, the registrants, and State officials work together to establish systems for the monitoring of DDTr levels in the environment, EPA is receiving and examining data that are collected through monitoring programs established by Federal and State agencies. For example, California, where use of dicofol accounts for as much as one-half of the dicofol applied in the U.S., monitors annually for DDTr compounds in their inland waterways, and the U.S. Fish and Wildlife Service conducts a national monitoring program every 2 to 3 years for DDT and other organochlorine compounds in birds and fish. Also, EPA has a compliance monitoring scheme to ensure that registrants comply with the requirements for particular levels of DDTr in their dicofol products. Finally, EPA will require the registrants to conduct long-term environmental residue monitoring for dicofol.

EPA agrees with the Panel's conclusion that the evidence for the carcinogenicity of dicofol is weak. Although EPA believes that the structural similarity between dicofol and DDT, DDE, and related chemicals is a pertinent consideration, it does not change this overall conclusion concerning the weight of the evidence.

EPA also agrees with the Panel regarding the inappropriateness of conducting a quantitative risk assessment in this case and therefore the quantitative risk assessment has been omitted in favor of the qualitative one previously discussed.

F. Public Comments Received in Response to the Amended Notice

Comments were received from four respondents concerning the substance of EPA's proposed decision to continue the registration of dicofol registrations. Of these four comments, two were from the National Audubon Society and one from the National Resources Defense Council (NRDC) objecting to the proposed decision, and one from the USDA and Ohio Department of Natural Resources supporting the proposed decision. The substantive comments address four main issues: DDT and DDE contamination of the environment; monitoring of both registrants producing dicofol and the users of the end-use formulations; the classification of dicofol as a category C carcinogen; and the role of dicofol in integrated pest management in cotton.

1. *DDT and DDE contamination of the environment.* Both Audubon and NRDC argued that EPA had given inadequate weight to the facts that dicofol is contaminated with DDTr leading to further unacceptable DDTr contamination of the environment, that dicofol may possibly be metabolized or interconverted to DDE in the physical environment, that dicofol might metabolize to DDE in organisms, and that dicofol, itself, may possibly cause adverse environmental effects due to its close structural similarity to DDT.

EPA responds that in its modeling it used an average contamination level of 10 percent DDTr to determine whether there would be adverse effects to the environment. If the newly required dicofol products containing only 0.1 percent DDTr were used, this hundredfold reduction would not be expected to add appreciable amounts of DDTr to the environment and would not be likely to cause adverse effects to the environment.

EPA shares Audubon's and NRDC's concern about the possibility that dicofol might metabolize or interconvert to DDE in the environment. The available data on the metabolism of dicofol do not definitively resolve the issue of whether dicofol residues are converted to DDE in animals. EPA has a number of studies which support the conclusion that dicofol does convert to DDE, although such studies are also susceptible to other interpretations. On the other hand, there are metabolism studies which fail to indicate that dicofol is metabolized to DDE but none of these studies proves unequivocally that such conversion does not occur (see Unit III.A.6 above).

EPA has required the registrants to develop data on the environmental fate of dicofol as well as on metabolism of dicofol in other avian species. If, after such data are submitted and evaluated by EPA, dicofol is shown to convert as speculated, EPA will then reconsider its current position that dicofol with reduced levels of DDTr does not cause unreasonable adverse effects on the environment.

NRDC also commented on a report recently released by the California Department of Food and Agriculture (CDFA), entitled "Agricultural Sources of DDT Residues in California's Environment," which concluded that the source of DDTr residues in California is the previous legal use of DDT products. NRDC argues that the contribution of dicofol is not adequately assessed in this report. Additionally, the possibility of chlorinated DDT conversion to DDE in the environment should be included in a thorough assessment.

EPA has also received this report from CDFA. The report provides evidence that DDTr residues are still occurring throughout California's environment, but states that, "Contamination of other pesticides (dicofol) by DDT cannot account for the residues. . . . [O]n analysis of historical and empirical evidence, CDFA concluded that residues from legal applications of DDT, before its use was banned, appear to be the source of this contamination." In EPA's own analysis, assuming that the rate of dicofol usage remains approximately the same, it is projected that by the year 2000 the DDTr concentration within Kings County California (a county receiving some of the highest current annual loadings of dicofol) will be only about 1 percent higher than it would be if all dicofol (with 0.1 percent DDTr contamination) use had ceased in 1985. This projection assumed no environmental loading of DDTr due to environmental conversion of dicofol to DDE. If EPA's reviews of the required environmental fate studies shows that dicofol metabolizes or converts to DDE or any other DDE precursor, a new exposure assessment will be made.

Concerning the NRDC comment that CDFA does not estimate whether or not DDTr residues are higher where dicofol has been used, there have been attempts by California and Florida to measure the increase in environmental DDTr residues resulting from normal application of dicofol products. Neither

study identified a significant increase in DDTr residues. A residue increase is certainly possible, but an environmental monitoring study would have to be unusually sensitive in order to detect it. EPA will require the registrants to conduct studies to monitor the contribution of dicofol to environmental loads of DDTr.

2. *Monitoring.* EPA agrees with Audubon that dicofol monitoring is necessary. EPA will monitor the production of dicofol as Audubon proposes. The U.S. Department of the Interior is already extensively monitoring for DDT in wildlife and has been providing that information to EPA. EPA agrees with Audubon that monitoring of organisms in the place of application of dicofol is also needed to help determine if residues of DDTr are persisting or decreasing. As noted above, EPA will require such monitoring.

3. *Oncogenicity of dicofol.* NRDC objects to EPA's reliance on its "Proposed Guidelines for Carcinogenic Risk Assessment" published in the Federal Register of November 23, 1984 (49 FR 46294) for the reclassification of dicofol as a category C carcinogen. NRDC notes that the Science Advisory Board (SAB) recommended the deletion of certain criteria used for reclassifying the oncogenic response of a substance from sufficient to limited and NRDC argues that if those criteria were not considered in evaluating the data on dicofol, the evidence might be considered sufficient to support a quantitative risk assessment. The SAB recommended deleting the criteria of the occurrence of excess tumors in a single sex and the occurrence of metastases or invasion. EPA has considered this recommendation and the final draft of the guidelines will reflect the deletion of the evidence of metastases criterion. The criterion concerning the occurrence of excess tumors in a single sex was retained. Even with this revision, EPA's classification of dicofol would remain the same.

EPA. has also requested additional data to help augment the basis for its reclassification. EPA required the registrants to submit mutagenicity data on dicofol.

4. *Role of dicofol in integrated pest management.* NRDC makes a number of comments concerning the use of dicofol in integrated pest management (IPM) programs. Relying on the arguments of Dr. Ted Wilson of the Entomology Department of the University of California at Davis, an expert in IPM on cotton, NRDC contends that it is an overstatement to claim that dicofol has no effect on natural predators. NRDC also quotes comments submitted to EPA by Dr. Wilson stating that, "there should be stringent restrictions on the continued use of dicofol—even with the lowered DDTr concentrations." NRDC also notes that in these comments Dr. Wilson recommended a reduced spraying schedule for dicofol.

EPA contacted Dr. Wilson about his recommendations and in general, Dr. Wilson feels that his comments were taken out of context by NRDC. Dr. Wilson indicated that dicofol will affect some predatory species, but both sulfur and propargite (possible alternatives to dicofol on cotton) would negatively impact predator populations more severely than dicofol. Specifically, Dr. Wilson indicated that one application of dicofol will reduce predatory thrips nymphs about 18 percent and have little or no effect on predatory bug populations. Predatory mites, which are generally only of significance in early spring, would also be reduced in numbers by dicofol used during that period.

Dr. Wilson also states that he did not mean to suggest that "stringent restrictions . . . on the continued use of dicofol—even with lowered DDTr concentations" were necessary or appropriate. Finally, Dr. Wilson indicated that no more than one application of dicofol is necessary on cotton in most instances, but this view is in agreement with current use practices and recommendations.

When Dr. Wilson's comments are put into context, they do not conflict with IPM decisions and goals analyzed and used in EPA's Special Review documents.

VI. Procedural Matters

This notice announces EPA's intent to cancel the registrations of products containing dicofol unless the terms and conditions of registration are modified. This unit of the notice explains how current registrants may apply to amend their registrations to comply with the terms and conditions set forth in Unit IV.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This unit of the notice explains how such persons may request a hearing on EPA's final cancellation and denial notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Procedure for Amending the Terms and Conditions of Registration to Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this notice may avoid cancellation by filing an application for an amended registration which contains the label modifications detailed in Unit IV of this notice. This applicaion must be filed within 30 days of receipt of this notice, or within 30 days from the publication of this notice, whichever occurs later. Applicants for a registration subject to this notice must file an amended application for registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to: By mail: Lawrence J. Schnaubelt, Product Manager 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (703–557–2386).

B. Intrastate Pesticide Products

This unit of the notice explains the procedures that must be followed to file an application, or amend a pending application, for Federal registration of an intrastate product. (On December 30, 1985, EPA sent all intrastate producers a letter requiring them to submit an application for Federal registraton by June 30, 1986.) It also explains the consequences of a failure to file a proper application in a timely manner.

1. *Procedure for filing for Federal registration of an intrastate product.* EPA will allow producers of intrastate products containing dicofol to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver their products if they file a timely, proper application for Federal registration or amended application for registration. In either case, the application must conform to the requirements in Unit IV.B. of this notice. This application must be filed within 30 days of receipt of this notice, or within 30 days of publication of this notice, whichever occurs later.

Applicaitons must be submitted to: Stuart C. MacArthur, Registration Support and Emergency Response, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (703–557–2227).

Intrastate products released for shipment by the producer after June 30, 1986, must comply with the requirements

in Unit IV. This date is consistent with the deadlines established by the December 30, 1985, letter to intrastate producers requiring submission of applications for Federal registration. Compliance with these requirements does not eliminate the requirement to maintain any other restrictions on the purchase, possession, supervision, use, or disposal on the current label of the product.

2. *Consequence of filing or failing to file a proper, timely application.* Producers of intrastate products are required to submit applications for Federal registration when so instructed by EPA (40 CFR 162.17). As long as a producer submits a timely application, he may continue to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver his products in intrastate commerce. If a producer fails to submit a timely application or amended application, EPA may take appropriate enforcement action against the producer for selling and distributing an unregistered pesticide under FIFRA sec. 12(a)(1)(A).

If the application submitted for Federal registration of an intrastate product containing dicofol does not comply with the provisions of this notice, EPA may deny the application. If EPA finally denies an application for Federal registration of an intrastate product, an distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver that product would be a violation of FIFRA and subject to possible enforcement actions.

C. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this notice, Federal registrants may request a hearing within 30 days of receipt of this notice, or within 30 days from publication of this notice, whichever occurs later. Any other person adversely affected by the action described in this notice, may request a hearing within 30 days of publication of this notice in the Federal Register.

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) and the specific use(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–101), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on the action initiated by this notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA sec. 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

If the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended registrations within the statutory period provided herein (see Unit VI.A).

If the registration of a product covered by this notice is cancelled by operation of law, the sale, distribution, use, and disposal of existing stocks is governed by the provisions of Unit IV.D of this notice.

D. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation of presentation of the proceeding as an advocate or in any investigative or expert, capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing on this Notice of Intent to Cancel: the office of the Administrative Law Judge, the office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Dated: May 22, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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H.J. Res. 234/Pub. L. 99-317

Designating the week of May 18, 1986, through May 24, 1986, as "National Food Bank Week." (May 23, 1986; 100 Stat. 472; 2 pages) Price: $1.00

S. 8/Pub. L. 99-318

To grant a Federal charter to the Vietnam Veterans of America, Inc. (May 23, 1986; 100 Stat. 474; 4 pages) Price: $1.00

S. 874/Pub. L. 99-319

Protection and Advocacy for Mentally Ill Individuals Act of 1986. (May 23, 1986; 100 Stat. 478; 13 pages) Price: $1.00

S. 2229/Pub. L. 99-320

To make technical corrections in the higher education title of the Consolidated Omnibus Budget Reconciliation Act of 1985. (May 23, 1986; 100 Stat. 491; 1 page) Price: $1.00

S.J. Res. 246/Pub. L. 99-321

To designate May 25, 1986 as "Hands Across America Day", for the purpose of helping people to help themselves, and commending United Support of Artists for Africa and all participants for their efforts toward combating domestic hunger with a four thousand mile human chain from coast to coast. (May 23, 1986; 100 Stat. 492; 2 pages)

S. 2416/Pub. L. 99-322

To revise further the limitation applicable to chapter 37 of title 38, United States Code, for fiscal year 1986, for the purpose of implementing any order issued by the President for such fiscal year under any law providing for the sequestration of new loan guarantee commitments, and for other purposes. (May 23, 1986; 100 Stat. 494; 1 page) Price: $1.00

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Briefings on How To Use the Federal Register—
For information on briefings in Seattle, WA, and San Francisco, CA, see announcement on the inside cover of this issue.

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Administrative Practice and Procedure
Immigration and Naturalization Service
Nuclear Regulatory Commission

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Cemeteries
Army Department

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Defense Department

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Selected Subjects

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National Aeronautics and Space Administration

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Hunting
Fish and Wildlife Service

Marketing Agreements
Agricultural Marketing Service

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Radio
Federal Communications Commission

Surface Mining
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Vessels
Coast Guard

Water Pollution Control
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Title 3—

The President

Proclamation 5494 of May 25, 1986

Critical Care Week, 1986

By the President of the United States of America

A Proclamation

Critical care medicine is a newly defined term that describes a category of medical treatments for patients who are in life-threatening situations and require immediate care. Coronary, respiratory, neonatal, trauma, and intensive care units are elements of critical care medicine. Patients may need such critical care after auto or boat accidents, heart attack, stroke, industrial injuries, or as a result of premature birth.

Critical care units, where they are available, often serve as many as 15 percent of a hospital's in-patients. Approximately 4,300 critical care units have already been established in the United States.

Public awareness of the special medical needs of the critically ill is important if America is to maintain its preeminence in the development and spread of medical advances in the area of critical care. Patients such as trauma and burn victims, AIDS victims, and postoperative patients with complications need critical care units within hospitals, and America needs the progress in treatment strategies these units and the professionals who staff them accomplish. The Society of Critical Care Medicine and its members throughout the United States are dedicated to improving the care of critically ill patients through research and education.

In order to increase public awareness of the importance of critical care medicine, the Congress, by House Joint Resolution 526, has designated the week beginning May 25 through May 31, 1986, as "Critical Care Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 25 through May 31, 1986, as Critical Care Week. I call upon the people of the United States to observe this event with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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Presidential Documents

Proclamation 5495 of May 28, 1986

National Child Safety Month, 1986

By the President of the United States of America

A Proclamation

The future of our Nation is in the hands of our children. The effects of the loving support, the nurturing, and the instruction we give them now will be felt and magnified a thousandfold in the generations to come.

Sadly, not all of our children live in a warm, loving family environment. In every part of America there are children who are abused, exploited, or abandoned, or who run away from an intolerable home situation to endure worse depravity on the streets of our cities. Unfortunately, this mistreatment may also be a legacy passed on to future generations.

I believe that the American people can accomplish miracles when they are aware of the gravity of a situation. Fortunately, evidence that this awareness is growing is available in community after community across the country, as well as in the increasing involvement of voluntary associations and the private sector in developing programs to protect our children. We are recognizing anew our responsibility as neighbors and friends to extend a helping hand to families and children in trouble. We are examining once again the root causes of the various stresses that families face today, and we are acquiring a stronger sense of society's task to shield families, and especially children, from influences that undermine their sense of harmony, security, and well-being. We have begun to see more clearly than ever the importance of values to happiness and stability in the home. These are the best preventives at our disposal.

Where problems in the family have exhausted its resources to cope, much can be done now in the way of treatment and counseling. Communities can contribute by working together to provide safe shelters for runaways and to find adoptive parents for children in need of a loving home.

The Congress, by Senate Joint Resolution 293, has designated the month of May 1986 as "Child Safety Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1986 as Child Safety Month. I urge all Americans and governmental and private entities to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12350
Filed 5-29-86; 10:35 am]
Billing code 3195-01-M

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Presidential Documents

Letter of May 28, 1986

Letter to the Honorable John S. Herrington, Secretary of Energy

Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10132(c)(1).

This document shall be published in the **Federal Register.**

Sincerely,

Ronald Reagan

THE WHITE HOUSE,
Washington, May 28, 1986.

[FR Doc. 86-12351
Filed 5-29-86; 10:36 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 104
Friday, May 30, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Grade and Size Requirements for Certain Grapefruit and Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the minimum external grade requirements for shipments of domestic, export, and imported seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet and the minimum size requirements for interstate shipments of Temple oranges from size 125 (2⁹⁄₁₆ inches) to size 163 (2⁵⁄₁₆ inches). The relaxations for seedless grapefruit and Temple oranges are effective from May 19, 1986, through August 17, 1986. This rule also relaxes the minimum external grade requirements for interstate shipments of Valencia oranges from U.S. No. 1 to U.S. No. 2 Russet. The relaxation for Valencia oranges is effective from June 16, 1986, through September 28, 1986. These relaxations in the grade and size requirements for Florida Citrus recognize the grade and size composition of the remaining available citrus crop and the current and prospective demand conditions for this fruit.

EFFECTIVE DATE: Seedless grapefruit and Temple oranges for the period May 19, 1986 to August 17, 1986; Valencia oranges for the period June 16, 1986 to September 28, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1521-1 and Executive Order 12291 and has been designated as a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that about 95 handlers of Florida citrus are currently subject to regulation under the marketing order for Florida oranges, grapefruit, tangerines, and tangelos and that approximately 26 importers of grapefruit will be subject to this action under the grapefruit import regulation during the course of the current season and that the great majority of these groups may be classified as small entities. While regulations issued under this order and corresponding import requirements impose some costs on affected handlers and importers and the number of such persons may be substantial, the added burden on small entities because of this relaxation, if present at all, is not significant.

This rule is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). These actions were recommended unanimously by the Citrus Administrative Committee at its May 13, 1986, meeting. The committee works with USDA in administering the marketing agreement and order program.

Florida Citrus Regulation 6 was issued on a continuing basis subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. The committee meets prior to and during each season to consider recommendations for modifications, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Prior to making any such recommendations, the committee submits to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modifications, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The minimum grade and size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the grade requirements applicable to domestic, export, and import shipments of seedless grapefruit and domestic and export shipments of Valencia oranges and the minimum size requirements for domestic shipments of Temple oranges. This rule recognizes current and prospective supply and demand for such fruit and is necessary to permit handlers to ship the remaining supply of marketable fruit to meet market needs. The Florida citrus shipping season is coming to a close and no problems with fruit quality, maturity, and size are expected in the marketplace because of the relaxations.

This rule temporarily lowers the minimum external grade requirement for domestic, export, and import shipments of seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet while the minimum internal requirement remains U.S. No. 1 and the minimum size requirements for domestic shipments of Temple oranges from size 125 (2⁹⁄₁₆) to size 163 (2⁵⁄₁₆) during the period from May 19, 1986, through August 17, 1986. This amendment also lowers the minimum external grade requirements for domestic and export shipments of

Valencia oranges from U.S. No. 1 to U.S. No. 2 Russet while the minimum internal grade requirement will remain U.S. No. 1 during the period from June 16, 1986, through September 28, 1986. These relaxations in minimum grade and size requirements for such citrus recognize the grade and size composition of the available citrus supply, and current and prospective demand conditions for this citrus.

Under section 8e of the act (7 U.S.C. 608e–1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, the grade requirement for imported seedless grapefruit (7 CFR 944.106) also must be relaxed to conform to the grade requirement for domestic shipments of Florida seedless grapefruit during the period specified. Under the terms of the import regulation prescribed in § 944.106(a) the grade requirement for imported seedless grapefruit automatically changes to conform to the relaxed grade requirement for domestic shipments of seedless grapefruit.

Based upon the recommendation and information submitted by the committee, and upon other available information, it is hereby found that regulation of domestic, export, and imported seedless grapefruit, domestic and export Valencia oranges, and domestic Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the Act.

It is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which these relaxations are based and the effective date necessary to effectuate the declared purposes of the Act. This rule relieves restrictions on shipments of Florida citrus and must be taken promptly to enable handlers to take advantage of the relaxed requirements. Also, handlers are aware of the relaxations and the effective dates and require no additional time to comply therewith.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 are amended by revising the following entry in Table I, paragraph (a), applicable to domestic shipments, and Table II, paragraph (b), applicable to export shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6, Amendment 36.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inch)
(1)	(2)	(3)	(4)
*	*	*	*
Grapefruit: Seedless, white.	5/18/86–6/17/86.	U.S. No. 2, Russet (External), U.S. No. 1 (Internal).	3⅛
	On or after 6/18/86.	Improved No. 2 (External U.S. No. 1 (Internal).	3⅛
Grapefruit: Seedless, pink.	5/18/86–6/17/86.	U.S. No. 2, Russet (External), U.S. No. 1 (Internal).	3⅛
	On or after 6/18/86.	Improved No. 2, Russet (External), U.S. No. 1 (Internal).	3⅛
Oranges: Valencia and other late types.	5/18/86–9/28/86.	U.S. No. 2, Russet (External), U.S. No. 1 (Internal).	2⅛
	On or after 9/29/86.	U.S. No. 1	2⅛
Oranges: Temple	5/18/86–6/17/86.	U.S. No. 1,	2⅛
	On or after 6/18/86.	U.S. No. 1	2⅛
*	*	*	*

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inch)
(1)	(2)	(3)	(4)
*	*	*	*
Grapefruit: Seedless, white.	5/19/86–6/17/86.	U.S. No. 2, Russet (External), U.S. No. 1 (Internal).	3⅛
	On or after 6/18/86.	Improved No. 2 (External U.S. No. 1 (Internal).	3⅛
Grapefruit: Seedless, pink.	5/19/86–6/17/86.	U.S. No. 2, Russet (External), U.S. No. 1 (Internal).	3⅛
	On or after 6/18/86.	Improved No. 2, (External), U.S. No. 1 (Internal).	3⅛
Oranges: Valencia and other late types.	6/16/86–6/28/86.	U.S. No. 2, Russet (External), U.S. No. 1 (Internal).	2⅛

TABLE II—Continued

Variety	Regulation period	Minimum grade	Minimum diameter (inch)
(1)	(2)	(3)	(4)
	On or after 9/29/86.	U.S. No. 1	2⅛
*	*	*	*

* * * * *

Dated: May 22, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–12160 Filed 5–29–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 908

[Valencia Orange Regulation 364, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This Amendment of Regulation 364 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 23–29, 1986. The amendment is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 364, Amendment 1 (§ 908.664) is effective for the period May 23–29, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act

and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This amendment is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This amendment is consistent with the marketing policy for 1985–86. The committee members were contacted by telephone on May 23, 1986, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the demand for Valencia oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges, Valencias.

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.884 is revised to read as follows:

§ 908.884 Valencia Orange Regulation 364.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 23, 1986, through May 29, 1986, are established as follows:

(a) District 1: 480,000 cartons;
(b) District 2: 520,000 cartons;
(c) District 3: Unlimited cartons.

Dated: May 23, 1986.

Thomas R. Clark,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-12122 Filed 5-29-86; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Criteria for Reopening Records in Formal Licensing Proceedings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to codify and refine NRC case law criteria for reopening a closed evidentiary record in a formal licensing proceeding. Codification of these criteria will ensure that no uncertainty exists about what Commission regulations require for a motion to reopen a record. This amendment will facilitate proper and timely consideration of motions to reopen by the adjudicatory boards while maintaining fairness to all parties to a proceeding.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (202) 634–1493.

SUPPLEMENTARY INFORMATION:

I. Background

On December 27, 1984, the Commission published in the Federal Register (49 FR 50189) a notice of proposed rulemaking which would codify and refine established NRC case law decision criteria under which the evidentiary record in a close formal license proceeding conducted in conformance with Subpart G of 10 CFR Part 2 may be reopened to admit new evidence. As detailed in the notice of proposed rulemaking, the Commission believes that, while the existing decision criteria have proved to be generally adequate, there is a need for further specification of the manner and degree of documentation required to support a motion to reopen a record. Some motions filed before an Atomic Safety and Licensing Board or Appeal Board were accompanied by voluminous, unorganized or poorly organized materials, with little evidence of any systematic effort by the movant to delete irrelevant or immaterial information. The task of sorting out the relevant evidence fell to the Boards. Not only does this situation result in delay in considering the merits of the motion, but it also carries the risk that some piece of evidence that the proponents consider especially crucial to their allegations might be overlooked.

To ensure timely and proper consideration of motions to reopen, the Commission is requiring that motions to reopen be accompanied by affidavits setting forth with particularity the bases for the movant's claim. It is required that each issue be identified separately. Allegations stemming from information provided by anonymous informants will be acceptable only if the informant is identified to the presiding officer and a request for an appropriate protective order is filed.

Thirteen comments were received on the proposed rulemaking. Nine of those comments came from electric utilities, their representatives, contractors and suppliers. Of these, four generally supported the rule and five did not because, in their view, it failed to impose a sufficient burden on proponents of motions to reopen. Two comments were received from environmental public interest groups which opposed portions of the rule as imposing too great a burden on proponents. The remaining two comments came from private citizens. One supported the proposed rule; the other was found to relate to a different proceeding and was rerouted to the proper docket.

II. Analysis of Public Comment

Comment: One commenter felt that the new rule should be labeled under 10 CFR 2.757, (Authority of a Presiding Officer to Regulate Procedures in a Hearing) rather than § 2.743a (Evidence).

Response: The Commission has decided that the rule should more accurately be renumbered as § 2.734. The sections numbered under § 2.730 set forth rules regarding motions. The standards for a motion to reopen a

record should therefore be set forth under this part. All further reference to this rule will be to § 2.734.

Comment: The Commission should further define the requirement in § 2.734(a)(1) which requires that a motion be "timely."

One commenter suggested that the timeliness standard should be changed to conform to that used in federal practice and stated in 6A J. Moore, *Moore's Federal Practice*, ¶¶ 59.04[13], 59.08[3] (2d ed. 1976). The commenter suggests that § 2.734(a)(1) read as follows:

> The motion must be based upon evidence discovered since the record was closed that could not, with reasonable diligence, have been discovered by the moving party before the record was closed.

Another commenter recommended a 30-day cutoff for timeliness "like those found in 10 CFR 2.700, 02 and 71" for appeals.

Response: The Commission believes that there is no need to further define what is meant by "timely." There appears to be no confusion as to what the term means. It has been amply defined both in federal practice (as in the definition suggested by the commenter) and in NRC case law. *See, e.g., Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Generating Station), ALAB–138, 6 AEC 520, 523 (1973) (whether the issues sought to be presented could have been raised at an earlier stage). The Commission also sees no reason to impose an arbitrary cutoff point.

Comment: Several comments were received which questioned the advisability of including the portion of § 2.734(a)(1) which provides an exception to the timeliness requirement for "exceptionally grave issues." One commenter stated that this exception was not in accord with NRC case law; another said that it was in accord with NRC case law, but should be eliminated.

Response: The exception to the timeliness requirement for "exceptionally grave issues" is founded in NRC case law. *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB–124, 6 AEC 358, 365 n.10 (1973) (". . . a newly discovered but insignificant matter might not justify a reopening. The converse is not necessarily true, however, for if the problem raised presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion.")

No pressing reason, other than the avoidance of delay, has been advanced for eliminating that exception. The Commission believes that the public interest is better served if this narrow exception is retained. It must be understood that the Commission anticipates that this exception will be granted rarely and only in truly extraordinary circumstances.

Comment: One commenter has suggested that § 2.734(a)(1) be amended to add language to the effect that the "exceptionally grave issue" exception to the timeliness requirement should only be allowed "provided all other requirements of this section have been met."

Response: The Commission believes that this wording is unnecessary, because that requirement is already contained in the rule. The requirement of timeliness in only one of the requirements of § 2.734, and the exception for "exceptionally grave issues" goes only to fulfilling that requirement. It does not exempt the movant from any other requirement of that section.

Comment: One commenter suggested that the standard contained in proposed § 2.734(a)(3), which requires that a different result might be or might have been reached had the newly proffered evidence been considered initially, should further require that the new result be *materially* different.

Response; The Commission, while believing it to be implicitly understood that a closed record should not be reopened to consider peripheral issues, is adopting this suggestion. This change does not alter current requirements, but merely states explicitly a requirement that has always been understood to exist.

Comment: There were several comments on the criterion set forth in proposed § 2.734(a)(3), which requires that a motion to reopen demonstrates that a different result "*might be* or might have been reached had the newly proffered evidence been considered initially" (emphasis added). The commenters questioned whether the inclusion of this wording meant that the "different result" criterion would apply to the time period between the closing of the record and issuance of the Initial Decision.

Response: The words "might be" were added to address the situation where a motion to reopen is filed after the record is closed but before an Initial Decision is issued. As one commenter has intimated, this change was added to clarify a situation in which some licensing boards have assumed that the "different result" criterion is only applicable after the issuance of the Initial Decision. *See, e.g., Consumers Power Company* (Midland Plant, Units 1 and 2), LBP–83–50; 18 NRC 242, 248 (1983). However, as that commenter pointed out, a licensing board should be able to determine whether the information supplied by a movant could affect its decision even before that decision is reached. The final rule has been modified slightly to clarify this point.

Comment: Some commenters noted a discrepancy between the standard of proposed § 2.734(a)(3), which required that the motion demonstrate that a different result "might be or might have been reached had the newly proffered evidence been considered initially," (incorporating the "might have been reached" standard of *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB–598, 11 NRC 876, 879 (1980)) and the "would have been reached" standard found in other NRC case law and cited by the D.C. Circuit in *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F.2d 1287, 1316 (D.C. Cir. 1984). The commenters argued that the "might have been reached" standards is vague and that the D.C. Circuit has endorsed the more stringent standard.

Response: Some conclusion may have been created by the NRC case law in this area. The Commission has, at various times, endorsed both standards without differentiating between them. In *Metropolitan Edison Company* (Three Mile Island Nuclear Station, Unit 1), CLI–84–18, 20 NRC 808, 809 (1984), the Commission stated that, in making its determination whether new information requires reopening of the record, it would use "the traditional standards for reopening," citing as an example ALAB–598, which was cited in the proposed rule as using the "might have been reached" standard. In using this standard, however, ALAB–598 cites to *Kansas Gas and Electric Company* (Wolf Creek Station, Unit 1), ALAB–462, 7 NRC 320, 338 (1978). This case, which was the case cited by the D.C. Circuit in *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F.2d at 1318, uses the "would have been reached" standard. To further complicate matters, the Commission used the "would have been reached" standard in *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–81–5, 13 NRC 361, 365 (1981).

The "different result" criterion was first imposed in *Northern Indiana Public Service Company* (Bailly Generating Station, Unit 1), ALAB–227, 8 AEC 416, 418 (1974). This decision used the "would have been reached" standard. It is this case which was cited by both the

D.C. Circuit and the Appeal Board in ALAB–500 (which cited it as using the "might have been reached" standard).

The actual inquiry to be performed falls between the two standards. The "would" standard may be read to imply that an ultimate conclusion must be reached before all evidence is considered. The "might" standard implies that reopening could be ordered even where a board is uncertain whether or not the new evidence is important. The inquiry should be, and has been, the *likelihood* that a different result will be reached if the information is considered. *See, e.g., Union Electric Company* (Callaway Plant, Unit 1), ALAB–750, 18 NRC 1205, 1209 (1983). Accordingly, the Commission is modifying the standard of § 2.734(a)(3) to require that a materially different result would be or would have been *likely* had the newly proffered evidence been considered initially.

Comment: Several commenters addressed the proposed standard of § 2.734(b), which required that motions to reopen be accompanied by affidavits setting forth the factual and/or technical bases for the claim that the reopening criteria have been satisfied. The comments reflect confusion about the standard to be applied to judge the competence of affiants. As one commenter noted, NRC case law sets forth a standard for the competence of affiants in motions to reopen. Affidavits "must be given by competent individuals with knowledge of the facts or experts in the disciplines appropriate to the issues raised." *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB–775, 19 NRC 1361, 1367 n.18 (1984). However, the commenter believed that affidavits based on "information and belief," rather than personal knowledge, should be unacceptable under this standard. Another commenter took a similar tack, saying that affidavits of lawyers repeating allegations of undisclosed principals should not be sufficient. A third commenter suggested that evidence contained in affidavits should be required to meet the Commission's evidentiary standards as set forth in 10 CFR 2.743(c).

Response: The present rule is not, except where noted, intended to wipe out NRC case law concerning motions to reopen. Thus, the criteria for affidavits in motions to reopen set forth in *Diablo Canyon* continue in effect whether specifically adopted in this rule or not. Nevertheless, to avoid confusion, the Commission is specifically adopting the NRC case law requirement that affidavits be given by competent individuals with knowledge of the facts or experts in the disciplines appropriate to the issues raised. The Commission is also modifying the proposed rule to reflect that evidence contained in affidavits must meet the requirements of 10 CFR 2.743(c).

Comment: One commenter believed that a movant should be required under § 2.734(b) to specify each issue it wishes to litigate, not each allegation.

Response: This requirement was already incorporated into proposed § 2.734(b), which provided in pertinent part that "where multiple allegations are involved, the movant must identify with particularity each *issue* it seeks to litigate. . . ." (emphasis added). The real point of this comment seems to be the commenter's assertion that use of the term "allegations" in the remainder of this section could be read to imply that allegations without factual or technical bases could be put forth to satisfy this criterion. It is the Commission's intention that the requirement of a showing of the factual and/or technical bases for each issue be addressed separately. So that there will be no confusion on this matter, the Commission has changed the final rule to reflect that not only allegations, but the factual and/or technical bases for them must be separately stated for each issue.

Comment: Several commenters took issue with proposed § 2.734(c), which required that the identity of a confidential informant be revealed to the presiding officer and that a protective order be requested. The commenters argued that the requirement to identify informants to the presiding officer would have a chilling effect on individuals who might wish to come forward with information and that effective discovery would be precluded if the identities of informants were not known.

Response: These competing interests are precisely the considerations the Commission balanced in formulating the proposed rule. The Commission agrees that forced public disclosure of confidential informants could prevent persons from coming forward with information that would have an impact on the public health and safety. It is also aware that the credentials of allegers should be subject to some scrutiny to allow the presiding officer to assess the proper weight to be given to the alleger's testimony. The D.C. Circuit has upheld a Licensing Board's refusal to consider anonymous affidavits because "the competence of unidentified individuals is impossible to determine." *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F.2d 1321, n.203. The Court emphasized availability of protective orders for such situations. *Id.* For these reasons, the Commission has decided to retain this portion of the rule as originally proposed. Anonymous allegations are not favored, but will be allowed if the alleger is identified to the presiding officer. The presiding officer may then handle requests for disclosure.

Comment: One commenter questioned the need for a "formal" protective order, believing that the presiding officer could simply grant confidentiality.

Response: A protective order is the means by which confidentiality is assured by law, and the Commission believes that this "formality" is necessary to grant the full measure of legal assurance to those whose identities it agrees to protect.

Comment: One commenter thought that proposed § 2.734(d), which required that the criteria set forth in § 2.714(a)(1) for non-timely filings be applied to motions to reopen, should apply with respect to proposed new contentions.

Response: This has always been a Commission requirement. *See, e.g., Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–82–39, 16 NRC 1712, 1714–15 (1982). To clarify this existing Commission requirement, in the final version of § 2.734(d) the word "amended" has been changed to the word "nontimely."

Comment: One commenter suggested that the imposition of the requirement to fulfill the criteria of 10 CFR 2.714(a)(1) (i-v) when movants seek to reopen a record to introduce new issues is of little practical use. The commenter claimed that the criteria were redundant of the criteria used for any motion to reopen.

Response: The criteria of 10 CFR 2.714(a)(1) (i-v) are:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The Commission disagrees with the commenter's analysis. These criteria, which apply where new issues are sought to be admitted, are not so redundant of the criteria for reopening

that they are of no additional use. Licensing boards have applied these criteria along with the reopening criteria in the context of motions to reopen records to admit new contentions. *See, e.g., Arizona Public Service Company* (Palo Verde Nuclear Generating Station, Units 1 and 2), LBP–82–117B, 16 NRC 2024 (1982). This requirement has also been imposed by the Commission. *See, e.g., Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–81–5, 13 NRC 361, 364 (1981).

While the first of the five criteria, a showing of good cause for failure to file on time, overlaps the timeliness requirement already present, the overall criteria have greater relevance in the reopening context than is ascribed to them by the commenter. The second criterion is not necessarily satisfied, as the commenter suggests, by the availability of a petition under 10 CFR 2.206, because the availability of the § 2.206 procedure is not to be equated with the ability to litigate issues in an adjudicatory setting and a right to appeal. *Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), 18 NRC 1167, 1175–76 (1983). The § 2.206 procedure relates more properly to the initiation of new proceedings than to reopening one which is pending. The commenter does not dispute the relevance of the third and fifth criteria. The fourth criterion, which the commenter suggests has no meaning in a closed proceeding, would be relevant at least where the petitioner's interests were represented by existing parties who had raised or are raising similar issues.

For the above reasons, the Commission is retaining the requirement that a contention filed in the context of a motion to reopen meet the standards of 10 CFR 2.714 (a)(1) (i–v).

Comment: Two commenters alluded to the possibility of using the remedy of requesting a proceeding pursuant to 10 CFR 2.206, which allows any person to request the NRC staff to modify, suspend or revoke a license or take other proper action, rather than allowing motions to reopen. One commenter argued that "the NRC does not require a hearing to effectively address significant safety or environmental issues." Thus, according to the commenters, staff resolution of issues is an adequate remedy for contentions filed after a record has been closed but before a license is issued.

Response: A petition filed under 10 CFR 2.206 stems from a different concept that does a motion to reopen. The former is addressed in an informal proceeding and generally goes to the need for the institution of a separate formal matter. A motion to reopen goes to the need for further hearings in a formal matter which is pending before the Commission. Therefore, a motion to reopen is necessarily analogous to a petition under 10 CFR 2.206. Moreover, a rule whereby the Commission could refuse to entertain *any* motions to reopen is not considered by the Commission to be fairly within the scope of this rulemaking, which presumed that motions to reopen would be granted in at least some circumstances, and sought to refine and codify law on when such motions should be granted.

For this reason, the commenter's suggestion will not be considered further in this rulemaking. In any event, the commenter cited no law to support the proposition that an agency may refuse to entertain *any* motions to reopen, and the Commission would need more support for the suggestion before it could be pursued further.

Comment: The same commenter suggested that the proponent of a motion to reopen should be required to make a showing like that required under 10 CFR 2.788 for a motion to stay the effectiveness of a licensing board decision.

Response: The criteria for a stay motion were developed to address an entirely different situation from those for a motion to reopen. The former involve withholding a license where a facility has been found ready to be licensed, while the latter go to the need for further hearings whether or not the license should be withheld.

Comment: Several commenters suggested that the Commission emphasize that a motion to reopen is an "extraordinary action," and that a heavy burden is put on proponents.

Response: In light of the requirements imposed, the Commission believes this fact to be self-evident. The Commission has often emphasized the heavy burden involved. *See, e.g., Kansas Gas and Electric Company* (Wolf Creek Generating Station, Unit No. 1), ALAB–462, 7 NRC 320, 338 (1978), and the D.C. Circuit has characterized those requirements as "high" and "stringent" in *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F.2d at 1316. Reopening will only be allowed where the proponent presents material, probative evidence which either could not have been discovered before or could have been discovered but is so grave that, in the judgment of the presiding officer, it must be considered anyway. No change in the requirements is necessary to emphasize this fact.

Comment: One commenter questioned whether the newly-codified criteria would apply in situations where a record is closed as to certain contentions, but open as to others, and a movant seeks to reopen the record with respect to a contention for which all the evidence has been heard.

Response: The criteria are intended to apply when a record is closed with respect to a particular contention. The motion should be filed with the body having jurisdiction under NRC case law.

Comment: One commenter suggested that a motion to reopen be styled as a "petition," rather than a motion, in order to emphasize the heavy burden imposed and to denote a closed proceeding.

Response: In NRC practice, as in federal practice, a motion to reopen has always been characterized as a motion. The Commission believes this to be the proper terminology until the initial decision is issued. This in no way changes or lessens the burden placed on proponents.

Comments: One commenter has suggested that a distinction be made between an intervenor's motion to reopen and an applicant's attempt to supplement the record.

Response: At least one licensing board has intimated that such a distinction should be made. *Texas Utilities Electric Company, et al.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP–84–10, 19 NRC 509, 530 (1984) (". . . it does not seem . . . logical or proper to close down a multi-billion dollar nuclear plant because of a deficiency of proof."). The Commission, however, is unpersuaded. Principles of finality should attach equally to applicants and to intervenors. There is no reason not to subject all movants to the requirements of timeliness, materiality and effect on the decision. If a deficiency of proof is serious enough to threaten the operation of a facility, and the applicant possesses sufficient information to overcome that deficiency, surely these requirements will be satisfied.

Comment: One commenter felt that the standards of § 2.734 should only apply to a motion to offer additional evidence on an issue already considered. A motion to offer additional contentions should not be construed as a motion to reopen, in the commenter's view, but should only have to fulfill the criteria of 10 CFR 2.714(a)(1) for late-filed contentions.

Response: The Commission disagrees. A motion to reopen must be filed whenever a proponent seeks to add new information to a closed record, whether the information concerns a new

contention or one which has already been heard.

Comment: Another commenter argued that it is improper for the NRC to close a record to avoid licensing delays caused by last minute allegations, and that delay in licensing is actually proper whenever there are unresolved safety questions.

Response: It goes without saying that the Commission agrees with the commenter that a nuclear facility must meet all safety standards before a license can be granted. The purpose of this rule is not to foreclose the raising of important safety issues, but to ensure that, once a record has been closed and all timely-raised issues have been resolved, finality will attach to the hearing process. Otherwise, it is doubtful whether a proceeding could ever be completed. As the Third Circuit said in upholding a Commission decision not to reopen the record on certain issues involving restart of the Three Mile Island, Unit 1 reactor, "at some point . . . proceedings must terminate in outcomes." *In re Three Mile Island Alert, Inc.* v. *NRC*, 771 F. 2d 720, 740 (D.C. Cir. 1985).

It is for this reason as well as others that the Commission has felt it necessary to establish by rule the standards to be applied to motions to reopen. The Supreme Court has repeatedly said that reopening should not be automatic and is necessarily within the discretion of the agency:

> Administrative consideration of evidence always creates a gap between the time the record is closed and the time the administrative decision is promulgated. This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed; or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening. It has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion.

ICC v. *Jersey City*, 322 U.S. 503, 514–515 (1944); *accord, Bowman Transportation* v. *Arkansas-Best Freight*, 419 U.S. 281, 294–295 (1974).

Paperwork Reduction Act Statement

The collection of information this proposed rule contains is exempt from the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3518(c)(1)(B).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), and NRC size standards published on December 9, 1985 (50 FR 50241), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule imposes the additional requirement that a movant, to reopen a closed evidentiary record, file affidavits setting forth the movant's claim before the record will be reopened. Significant additional resources are not required by the rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the NRC is adopting the following amendments to 10 CFR Parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29 Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1437 (42 U.S.C. 2135).

2. A new § 2.734 is added to read as follows:

§ 2.734 Motions to Reopen.

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

(1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.

(2) The motion must address a significant safety or environmental issue.

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards set forth in § 2.743(c). Each of the criteria must be separately addressed, with a specific explanation of why it has been met. Where multiple allegations are involved, the movant must identify with particularly each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

(c) A motion predicated in whole or in part on the allegations of a confidential informant must identify to the presiding officer the source of the allegations and must request the issuance of an appropriate protective order.

(d) A motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in § 2.714(a)(1)(i–v).

Dated at Washington, DC this 27th day of May 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–12152 Filed 5–29–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-19; Special Conditions No. 25-ANM-6]

Special Conditions; British Aerospace Model 748 ATP Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.17 of the Federal Aviation Regulations (FAR) to British Aerospace, Cheshire England, for a type certificate for the 748 ATP series airplane. The 748 ATP airplane will have novel or unusual design features associated with an automatic takeoff power control system (ATPCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The ATPCS will allow the airplane to takeoff with less than maximum takeoff thrust approved for the airplane; and, if an engine fails, the system will automatically provide maximum takeoff thrust on the operating engine. These special conditions contain safety standards which the Administrator finds necessary to establish a level of safety equivalent to the provided by the regulations applicable to the 748 ATP series airplane because of the novel or unusual features.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: James Walker, Policy and Procedures Branch, Transport Standards Staff, ANM-110 FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; Telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1982, British Aerospace, Chester Road, Woodford, Bramhall, Stockport, Cheshire SK7 1QR, England, applied for a United States Import Type Certificate for its BAe 748 ATP airplane.

The BAe 748 ATP is a low wing, twin-engine, pressurized transport category airplane having a maximum takeoff weight of 49,500 pounds. The airplane is equipped with two Pratt and Whitney PW-124 turbopropeller engines, each producing 2,400 shaft horsepower. The airplane has a maximum seating capacity for 72 persons, plus the crew, and a maximum permissible altitude of 25,000 feet.

The type design of the 748 ATP series airplane with the automatic system installed contains a number of novel or unusual design features for which the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that generally intended by the established certification basis and to support a finding by the Administrator that no feature or characteristic of the airplane with the automatic system installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum power increments which may be applied to the operating engines by the ATPCS, prescribe system reliability and states monitoring requirements, require provisions for manual selection of the maximum takeoff power approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of approved maximum takeoff power would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide clear warning to the crew.

The design covered under the type certificate is the installation of an ATPCS. Automatic takeoff power control system special conditions issued to date for other airplanes require the ATPCS be designed to permit manual decrease or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of power levers. The ATPCS system installed on the engines of the 748 ATP airplane contains an electronic fuel controller (EFC), which provides an automatic fixed speed increment increase in the event of an engine failure during takeoff. In the even of an engine failure, a signal from the ATPCS is transmitted to the EFC which up-trims the operating engine to the approved takeoff power. In the event of an ATPCS failure concurrent with engine failure, the crew would be required to advance the power lever to obtain the maximum power.

Discussion of Comments

Notice of proposed special conditions No. SC-85-3-NM for the 748 ATP series airplane was published in the Federal Register on December 19, 1985 (50 FR 51704).

Two parties submitted comments. One was the applicant who noted that the airplane passenger capacity was incorrectly stated, that the maximum approval altitude was incorrectly stated, and that the ATPCS operating characteristics were in error. The correct passenger capacity, the altitude and the ATPCS operation have been incorporated in the final special conditions.

There were also misspelled words in paragraphs D2 and E2 (b) of the notice, as well as an omission of the word "power" in paragraph D2 after the word "or." The word "lever" should replace "level" in paragraphs D2 and E2(b), and in paragraph E2(b) the word "decrease" was spelled "decerese." These editorial corrections have been made in the final special conditions.

There was an omission in the illustration on page 51706 of the notice. The engine and ATPCS failure point was omitted, the flight path of the ATPCS and engine failure configuration from the failure point to the 400 feet intersection point with the actual flight path, was missing. The labeling of the altitude at the intersection of the two paths, (i.e., 400 feet) the actual flight path and the ATPCS and engine failed flight path was missing. These omissions were corrected in the final special conditions.

The second commenter was Aerospace Industries Association of America (AIA) and the following is a discussion of their comments:

Aerospace Industries Association of America does not agree that the BAe 748 ATP should not have the option to provide an ATPCS with reduced reliability if a specific level of minimum performance is available. They state there is no justification provided by the FAA for this statement. Also in AIA's opinion, the FAA is formulating arbitrary rules, more stringent than in the past, in the form of a special condition. They state that previous airplanes with ATPCS installed have been certified with a system that does not require performance limits to comply with the current requirements of § 25.1309(b)(2) without compromising safety. They present a position and justification for the above comments in their response to NPRM 84-4, Standards for Approval of an Automatic Takeoff Thrust Control System.

The FAA does not agree that these special conditions are arbitrary as applied to the BAe 748 ATP airplane. The BAe 748, on the basis of its certification rules, is required to comply with § 25.1309, as amended by Amendment 25-23. Therefore, the option to use the alternate lowered ATPCS system reliability and performance criteria was not presented. The applicants, whose airplane certification basis did not require compliance with § 25.1309, Amendment 25-23, were allowed the choice of either of the

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performance and ATPCS reliability criteria options. However, no applicants selected the lower system reliability and performance option for their airplanes, which include the Boeing 727, 737 and Douglas DC–9 models. All have demonstrated to the improbable level for their automatic systems reliabilities. The current § 25.1309 requires a higher level of airplane system reliability than that in the older version of § 25.1309; therefore, the option to provide an ATPCS with a lower level of reliability than that required by the applicable rules is not acceptable. The first airplane to be assessed on this basis was the CASA C212 (46 FR 16270; March 12, 1981).

Aerospace Industries Association of America further suggested a change in the BAe 748 ATP proposed special conditions to permit use of the ATPCS for other operations besides takeoff and suggested corresponding changes in the proposed requirements to reflect this expansion of its utility and recommended additional revisions to the proposed requirements which AIA classified as arbitrary, inappropriate, and overlapping requirements.

The FAA does not concur with the recommendation to expand the scope of the BAe 748 ATP proposed special conditions beyond takeoff operations for several reasons. Since the use of an ATPCS increases the reliability of the engines thereby enhancing airworthiness, the FAA developed these special rules to maintain the same level of safety currently inherent in the applicable regulations. To do this, several factors and requirements were imposed to assure the same takeoff safety. The major factors are the specification of an acceptable probability of failure for the system, as well as a combined engine and system failure probability during a critical (takeoff) time interval, system availability information for the pilot, and a pilot override control feature. The FAA considers the takeoff the most cost beneficial and does not agree that the commenter's proposed change to allow use of the ATPCS in combination with a "reduced thrust" operation or for go-around maneuvers provides an equivalent level of safety in light of the added workload complexity that would be required. The use of the system for go-around is a less well defined operation than takeoff because of the varied circumstances associated with the approach and landing power levels and the pilot would be required to use different procedures for a number of different situations.

Type Certification Basis

The type certification basis for the British Aerospace 748 ATP series airplane with the ATPCS installed, to be incorporated in the type certificate, is Part 25 of the FAR, including Amendements 25–1 through 25–54; Part 36 of the FAR, including Amendments 36–1 through current amendment; § 21.29 of the FAR; SFAR 27, dated December 12, 1973, including Amendments 27–1 through current amendment; and the special conditions for an ATPCS contained herein.

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are now issued after public notice in accordance with §§ 11.28 and 11.29(b), efffective October 14, 1980, and become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only unusual or novel design features on one model series of airplanes. It not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to British Aerospace for the 748 ATP series airplane equipped with an automatic takeoff power control system (ATPCS):

PART 21—[AMENDED]

A. *General.* With the ATPCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase power.

B. *Definitions.* 1. *Automatic Takeoff Power Control System (ATPCS).* An ATPCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled power increase, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATPCS takeoff, the critical time interval is between V_1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATPCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at not less than 400 feet from the takeoff surface.

This definition is shown in the following graph.

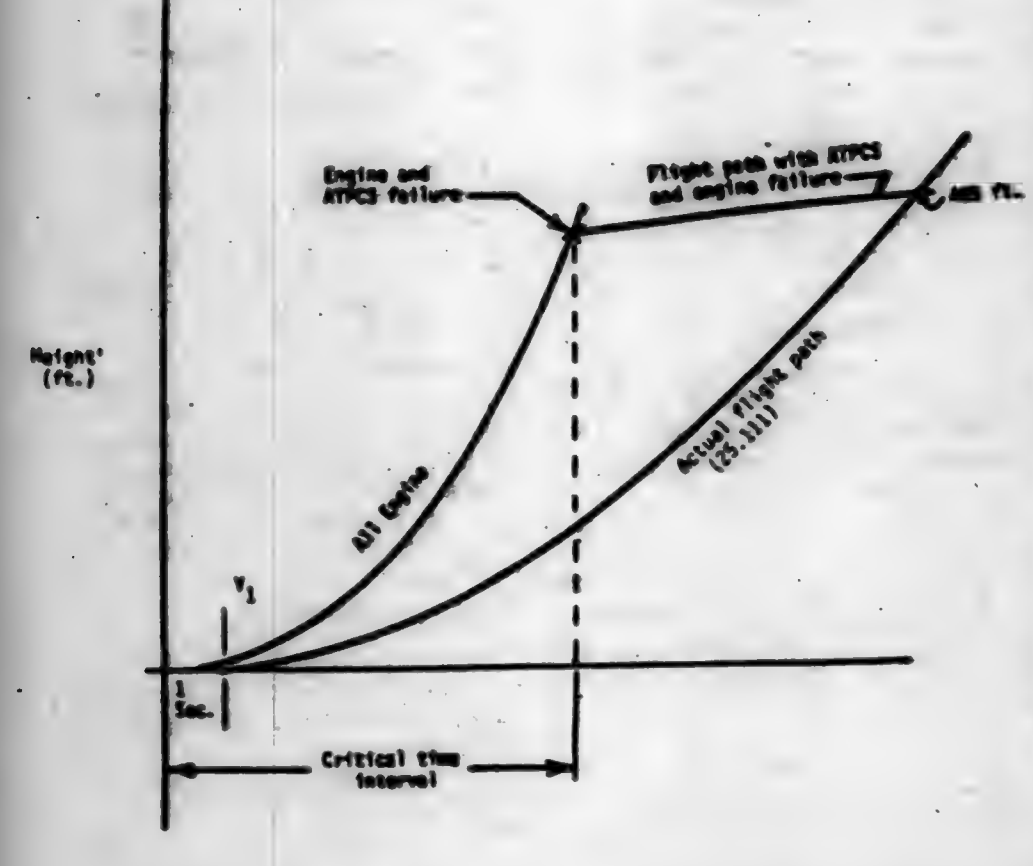

3. *Takeoff Power.* Notwithstanding the definition of "takeoff power" in Part 1 of the FAR, "takeoff power" means the horsepower obtained from each initial power setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the following performance and reliability requirements.

1. An ATPCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATPCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATPCS system functioning.

D. *Power Setting.* The initial takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety percent (90%) of the power level set by the ATPCS (the maximum takeoff power approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety related systems and equipment dependent upon engine power or power lever position; or

3. That shown to be free of hazardous engine response characteristics when power is advanced from the initial takeoff power level to the maximum approved takeoff power.

E. *Powerplant Controls.* 1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATPCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATPCS must be designed to:

a. Apply power on the operating engine, following an engine failure during takeoff, to achieve the selected takeoff power without exceeding engine operating limits;

b. Permit manual decrease or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of the power lever. For aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of power controlled by the power levers in the event of an ATPCS failure, provided the means:

(1) Is located on or forward of the power levers;

(2) Is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers; and

(3) Meets the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew prior to takeoff that the ATPCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATPCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATPCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

Issued in Seattle, Washington, on May 19, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-11635 Filed 5-28-86; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 385

[Docket No. 60463-6063]

Soviet Oil and Gas; Technical Data License Applications

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Departments of Commerce and State have agreed to an adjustment in the existing licensing policies for exports of oil and gas exploration and production data to the Union of Soviet Socialist Republics. Current policy to deny export license applications for oil and gas exploration and production-related technical data is being changed to reflect consideration of such applications on a case-by-case basis. This implements a revision in foreign policy export controls that was contained in the Secretary's Annual Report to Congress on Foreign Policy

Controls of January 17, 1986. Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are being amended to reflect the new policy.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Spruell, Country Policy, Strategic Planning and Policy Division, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone (202) 377–3285).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Betty Ferrell, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Applicants for the validated export license required by this rule must complete and submit Form ITA–622P. This collection of information has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 385

Communist countries, Exports, Union of Soviet Socialist Republics.

PART 385—[AMENDED]

Accordingly, Part 385 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

1. The authority citation for 15 CFR Part 385 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757), July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. Section 385.2 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 385.2 Country Group Q, W, and Y: U.S.S.R., other Warsaw Pact Countries, Albania, Mongolian People's Republic, and Laos.

* * * * *

(c) * * * License applications for technical data for oil and gas exploration and production will be reviewed on a case-by-case basis.

* * * * *

Dated: May 27, 1986.

Walter J. Olsen,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86–12199 Filed 5–29–86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C–0051]

Listing of Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1986, for the final rule that amended the color additive regulations to provide for the safe use of an orange dye, 6-ethoxy-2-(6-ethoxy-3-oxobenzo[*b*]thien-2-(3*H*)-ylidene)benzo[*b*]thiophen-3(2*H*)-one, for coloring contact lenses. This action responds to a petition filed by Custom Tint Laboratories, Inc.

DATE: Effective date confirmed: May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of April 3, 1986 (51 FR 11435), FDA amended the color additive regulations to provide for the safe use of an orange dye for coloring contact lenses.

In the final rule, FDA gave interested parties until May 5, 1986, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the Federal Register of April 3, 1986, for the safe use of an orange dye, 6-ethoxy-2-(6-ethoxy-3-oxobenzo[*b*]thien-2(3*H*)-ylidene]benzo[*b*]thiophen-3(2*H*)-one for coloring contact lenses should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 3, 1986, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1986.

Dated: May 23, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–12089 Filed 5–29–86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 172 and 178

[Docket No. 85F–0430]

Food Additives; Petroleum Wax

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

food additive regulations to provide for the safe use of polyalkyl (C_{16}–C_{22}) acrylate polymer as a processing aid in the manufacture of petroleum wax used in food and in nonfood articles in contact with food. This action responds to a petition filed by Shell Oil Co.

DATES: Effective May 30, 1986; objections by June 30, 1986. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 172.886 effective May 30, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lester Borodinsky, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 8, 1985 (50 FR 41028), FDA announced that a petition (FAP 5A3885) has been filed by Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036, proposing that the food additive regulations be amended to provide for the safe use of polyalkyl (C_{16}–C_{22}) acrylate polymer as a processing aid in the manufacture of petroleum wax used in food and in nonfood articles in contact with food. This processing aid is currently regulated under § 172.886(c)(2) for use in the manufacture of petroleum wax used in chewing gum base only.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed uses of the food additive are safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before June 30, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives, Incorporation by reference.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Parts 172 and 178 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 172.886 by revising paragraph (c)(2) to read as follows:

§ 172.886 Petroleum wax.

* * * * *

(c) * * *

(2) Poly(alkylacrylate) (CAS Reg. No. 27029–67–8), made from long chain (C_{16}–C_{22}) alcohols and acrylic acid, having: (i) A number average molecular weight between 40,000 and 100,000; (ii) a weight average molecular weight (MW_w) to number average molecular weight (MW_n) ratio (MW_w/MW_n) of not less than 3; and (iii) unreacted alkylacrylate monomer content not in excess of 14 percent, as determined by a method entitled, "Method for Determining Weight-Average and Number-Average Molecular Weight and for Determining Alkylacrylate Monomer Content of Poly(alkylacrylate) used as Processing Aid in Manufacture of Petroleum Wax," which is incorporated by reference (copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408). Petroleum wax shall contain not more than 1,050 parts per million of poly(alkylacrylate) residues as determined by a method entitled, "Method for Determining Residual Level of Poly(alkylacrylate) in Petroleum Wax," which is incorporated by reference. Copies are available from the address cited in this paragraph (c)(2).

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR Part 178 is revised to read as follows and the authority citations following the sections in Part 178 are removed:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

4. In § 178.3710 by adding new paragraph (f) to read as follows:

§ 178.3710 Petroleum wax.

* * * * *

(f) Petroleum wax may contain poly(alkylacrylate) (CAS Reg. No. 27029-57-6), as described in § 172.886(c)(2) of this chapter, as a processing aid in the manufacture of petroleum wax.

Dated: May 22, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-12091 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 175

[Docket No. 85F-0785]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as a preservative in adhesives for food-packaging applications. This action responds to a petition filed by the Boots Co. PLC.

DATES: Effective May 30, 1986; objections by June 30, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 22, 1985 (50 FR 21141), FDA announced that a petition (FAP 5B3836) had been filed by the Boots Co. PLC, 1 Thane Rd., Bldg. D6 Beeston, Nottingham NG2 3AA, England, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 2-bromo-2-nitropropane-1,3-diol as a preservative in adhesives for food-packaging applications.

Following publication of the filing notice in the Federal Register, FDA determined that the more precise chemical name for the additive is 2-bromo-2-nitro-1,3-propanediol. This name identifies the additive in the regulation set forth below.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before June 30, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesive, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 is revised to read as follows and the authority citations following the sections in Part 175 are removed:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 175.105(c)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* *
2-Bromo-2-nitro-1, 3-propanediol (CAS Reg. No. 52-51-7).	For use only as an antibacterial preservative.
* * *	* *

Dated: May 22, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-12090 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Gentamicin Sulfate Injection

Correction

In FR Doc. 86-8257, appearing on page 15806, in the issue of Friday, April 25, 1986, make the following corrections:

1. In the first column, in the second line of the subject heading of this document, "From" should read "Form" as corrected above.

2. In the second column, in the second line of the Part 522 heading, "From" should read "Form".

BILLING CODE 1505-01-M

21 CFR Part 548

Certifiable Peptide Antibiotic Drugs for Animal Use; Bacitracin, Neomycin, Polymyxin B Ophthalmic Ointment (With or Without Hydrocortisone)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of several supplemental new animal drug applications (NADA's) providing for use of ophthalmic ointments containing bacitracin, neomycin, and polymyxin B (with or without hydrocortisone) for treating dogs and cats. The supplements provide for a change in polymyxin B concentration from 5,000 units to 10,000 units.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Several NADA's providing for use of a bacitracin, neomycin, and polymyxin B ophthalmic ointment (with or without hydrocortisone) for treating dogs and cats have been amended to provide for use of 10,000 units of polymyxin B in lieu of the previously approved 5,000 units. The NADA's are:

NADA 65-015: Bacitracin, polymyxin B, neomycin, and hydrocortisone ophthalmic ointment, Pharmaderm Division of Atlanta Inc., 60 Baylis Rd., Melville, NY 11747.

NADA 65-016: Bacitracin, polymyxin B, and neomycin opthalmic ointment, Pharmaderm Division of Atlanta Inc.

NADA 65-114: Bacitracin, neomycin, and polymyxin B (Mycitracin), The Upjohn Co., Kalamazoo, MI 49001.

NADA 65-478: Polymyxin B, bacitracin, neomycin, and hydrocortisone (Cortisporin), Coopers Animal Health, Inc., Kansas City, MO 64108.

NADA 65-485: Neomycin, polymyxin B, and bacitracin (Neosporin), Coopers Animal Health, Inc.

The supplements are approved and the corresponding regulations are amended accordingly. Approval is based on the decision of the Center for Drugs and Biologics that a minimum of 10,000 units per milliliter or units per gram of polymyxin B is required to provide reliable adequate activity against gram-negative organisms, especially *Pseudomonas* (see 47 FR 23440, May 28 1982).

Approvals of this type do not require a freedom of information summary as provided by Part 20 (21 CFR Part 20) and § 514.11(e) (21 CFR 514.11(e)). However, a summary of the basis for this approval, and for those NADA's approved after July 1, 1975, a summary of safety and effectiveness data, and information supporting approval of the original applications may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 548

Animal drugs; Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 548 is amended as follows:

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 548 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 548.314a [Amended]

2. Section 548.314a *Bacitracin, bacitracin zinc-neomycin sulfate-polymyxin B sulfate ophthalmic ointment* is amended in paragraphs (a)(1) (i) and (ii) and (c)(2) (i) and (ii) by revising the phrase "5,000 units of polymyxin B" to read "10,000 units of polymyxin B".

§ 548.314b [Amended]

3. Section 548.314b *Bacitracin zinc-polymyxin B sulfate-neomycin sulfate-hydrocortisone, hydrocortisone acetate ophthalmic ointment* is amended in paragraph (a) (1) and (2) by revising the phrase "5,000 units of polymyxin B" to read "10,000 units of polymyxin B".

Dated: May 22, 1986.

Marvin A. Norcross,

Associate Director for New Drug Evaluation.

[FR Doc. 86-12007 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR PART 558

New Animal Drugs For Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Arkansas Micro Specialties, Inc., providing for making 0.6- and 1.8-grams-per-pound hygromycin B Type A medicated articles from 2.4- and 8-grams-per-pound hygromycin B Type A medicated articles. The hygromycin B Type A medicated articles subject to this approval are for making hygromycin B Type C medicated feeds for use in swine for control of infestations of large roundworms, nodular worms, and whipworms, and for use in chickens for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Arkansas Micro Specialties, Inc., P.O. Box 308, Hwy. 71 North, Lowell, AR 72745, is the sponsor of NADA 140-443 submitted on its behalf by Elanco Products Co. The NADA provides for the use of 2.4- and 8-grams-per-pound hygromycin B Type A medicated articles to make 0.6- and 1.8-grams-per-pound hygromycin B Type A medicated articles. The hygromycin B Type A medicated articles subject to this approval are for making Type C medicated feeds for use in swine for control of infestations of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*), and for use in chickens for the control of infestations of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*). The NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Part 558 is amended in § 558.274 by adding, in numerical sequence, drug labeler code "047663" to the "Sponsor" column in paragraph (c)(1)(i) and (ii), and by adding new paragraph (a)(8), to read as follows:

§ 558.274 Hygromycin B

(a) * * *

(8) 0.6 and 1.6 grams per pound granted to 047663 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) and in swine as in paragraph (c)(1)(ii) of this section.

* * * * *

Dated: May 23, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–12068 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Approval of Amendment to the Colorado Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 906 by approving an amendment to the Colorado permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the State's procedures for suspending or revoking permits. This rule is being made effective immediately in order to expedite the State program amendment process and to encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program Submission

On February 29, 1980, OSMRE received a proposed regulatory program from the State of Colorado. On December 15, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor-deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1980, **Federal Register** (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.15 and 906.16.

II. Submission of Program Amendment and Public Comments

On January 23, 1986, Colorado submitted an amendment to the Colorado program for OSMRE's review and approval. The amendment revises section 2CCR 407–2, 5.03.3(2)(b) of the Colorado regulations pertaining to the suspension or revocation of permits. On February 27, 1986, OSMRE announced receipt of the amendment in the **Federal Register** and invited comment on the adequacy of the proposed revised rule in satisfying the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 (51 FR 6920). The comment period closed March 31, 1986. No comments were received by OSMRE.

III. Secretary's Findings and Decision

After thoroughly reviewing the revised regulation submitted by the State, OSMRE has determined that it is consistent with the Federal regulation at 30 CFR 843.13(a)(3). Colorado has deleted the existing language at Rule 5.03.0(2)(b) which provides that "The Division shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements of the Act, these Rules, or the permit during three or more inspections of the permit area within any 12-month period." In place of this language Colorado has inserted the following text: "The Administrator shall promptly review the history of violations of any permittee who has been cited for violations of the act, these rules, or the permit during three or more inspections of the permit area within any 12-month period to determine if a pattern of violations exists or has existed." The State's revised regulatory language is virtually identical to the language contained in the Federal regulation of 30 CFR 843.13(a)(3). Accordingly, the Director has determined that Colorado's amendment provision incorporates sanctions no less stringent than those set forth under SMCRA and OSMRE's regulations and contains the same or similar procedural requirements relating there to. Therefore, the Director is approving the State's amendment.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. Compliance With the Regulatory Flexibility Act

The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Compliance With Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted the OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this program amendment.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require

approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 1986.

Arthur W. Abbs,

Acting Deputy Director, Operations and Technical Services.

PART 906—COLORADO

Part 906 of Title 30 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 906.15 is amended by adding a new paragraph (f) to read as follows:

§ 906.15 Approval of amendments to State regulatory programs.

* * * * *

(f) The following amendment is approved effective May 30, 1986. Revised regulation 2CCR 407–2, 5.03.3(2)(b) submitted to OSMRE by the Colorado Mined Land Reclamation Board on January 23, 1986.

[FR Doc. 86-12149 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Plant-Load Operations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule establishes final regulations amending the Domestic Mail Manual (DMM) to implement uniform and comprehensive regulations governing plant-load operations, whereby the Postal Service transports mail from a mailer's plant to a postal processing facility in order to bypass postal handlings that otherwise would be required. These final regulations, which replace previous interim regulations, reflect the restructuring of the Postal Service's field organizations.

EFFECTIVE DATE: June 7, 1986.

FOR FURTHER INFORMATION CONTACT: James E. Orlando, Director, Office of Transportation & International Services, Mail Processing Department, 475 L'Enfant Plaza W., SW., Washington, DC 20260–7130, 202–268–4360.

SUPPLEMENTARY INFORMATION: A detailed explanation of the nature and background of the proposed rule, including the reasons for its proposed adoption and a detailed discussion of the provisions of the proposed rule, accompanied its publication in the Federal Register on December 24, 1985 (50 FR 52534).

A detailed explanation of the nature and background of the interim rules, including the comments of interested persons, the Postal Service's responses, and minor and editorial revisions to the proposed rule, accompanied its publication in the Federal Register on May 8, 1986 (51 FR 17019).

The Postal Service has now finalized the restructuring of its field organizations above the post office level, which will be effective June 7, 1986. Responsibility for plant load operations is assigned to the newly created Field Division General Manager/Postmaster. An application for plant load operations will be approved by the Management Sectional Center (MSC) Manager/Postmaster if the minimum volume and the maximum mileage criteria set forth in section 154.313a or 154.323a are met and, in coordination with the transportation management office (TMO) manager, it is determined that transportation equipment is available. If these criteria are not met, the application will be reviewed and acted on by the Field Division General Manager/Postmaster. The application will be granted if it meets the criteria set forth in sections 154.313b, or 154.323b, or 154.323c for determining whether the plant load will result in a cost savings to the Postal Service by (1) the Field Division Manager, if the application is for an intra-Division service area plant load or (2), if the application is for an inter-Division service area plant load, by the origin and destination Field Division Managers and the serving TMO Managers, because coordination is required between the origin and destination Field Divisions and TMOs.

The following summarizes the revisions to sections 154.2 and 154.3 of the interim regulations which are being made in light of the restructuring of the Postal Service's field organizations:

1. Revise section 154.21 to provide that the local postmaster will review an application for plant load operations for completeness and forward it to the appropriate MSC manager.

2. Replace section 154.22 to set forth the review made by the MSC Manager of an application for plant-load operations.

3. Replace section 154.23 to set forth the review made by the Field Division Managers and TMO Managers of an application for plant-load operations.

4. Replace the first sentence of 154.26 with section 154.27 to provide that a mailer may appeal the denial of an application for plant-load operations to the National Plant-Load Committee. In the appeal, the mailer must specify the reasons why the application should be approved. Revise the second sentence of section 154.24 to provide that the MSC Manager will notify the mailer of any action taken on its application for plant-load operations.

5. Revise section 154.25 to provide that plant-load operations may commence as soon as an application for plant-load operations is approved and the mailer enters into a plant-load agreement with the Postal Service.

6. Add a new 154.26 to provide that the Field Division Manager will be notified if, at any time, a mailer fails to meet the requirements of this part for two consecutive postal accounting periods. In such event, the Field Division Manager will reevaluate the plant-load authorization.

7. Revise 154.323c to provide that the Field Division Manager will determine whether the local origin postal facility is operating at or near its mail processing capacity for the type of mail plant loaded.

For the reasons given and after careful consideration, the Postal Service hereby (1) adopts as final the amendments to the Domestic Mail Manual (incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1) that were published in the Federal Register on May 8, 1986 on an interim basis and (2) revises 154.2 and 154.3 of these regulations to read as follows:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 3001; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise 154.2 and 154.3 to read as follows:

PART 154—PLANT-LOAD OPERATIONS

* * * * *

154.2 *Procedures for Authorization of Plant Loads*

.21 Filing Application. A mailer desiring to have mail plant loaded must complete Form 3615, *Application for*

Plant-Load Authorization, and submit it to the postmaster of the post office serving the mailer's plant. The local postmaster will review an application for completeness and forward it to his Management Sectional Center (MSC).

.22 Action by MSC Manager. An application will be approved by the MSC Manager/Postmaster if (a) it meets the requirements set forth in 154.313a or 154.323a (Alternative 1, Minimum Volume and Maximum Mileage) and (b) after coordination with the transportation management office (TMO) manager, it is determined that transportation equipment is available in accordance with 154.312. If the application is approved, the MSC manager will send a copy to the Field Division General Manager/Postmaster. If the requirements set forth in 154.313a or 154.323a are not met, the MSC manager must send the application to the Field Division Manager for review in accordance with 154.23.

.23 Action by Field Division General Manager/Postmaster.

.231 Intra Division Service Area. An application for an intra-Division service area plant-load will be approved by the Field Division Manager, if (a) it meets the requirements set forth in 154.313b (Alternative 2, Cost Savings Analysis) or 154.323b (Alternative 2, Cost Savings Analysis) or 154.323c (Alternative 3, Mail Processing Capacity) and (b) after coordination with the TMO manager, it is determined that transportation equipment is available in accordance with 154.312. The application will be denied if the requirements of 154.313b or 154.323b or 154.323c are not met.

.232 Inter-Division Service Area. An application for an inter-Division service area plant load will be approved by the origin and destination Field Division Managers and the serving TMO Managers, if it meets the requirements set forth in 154.313b (Alternative 2, Cost Savings Analysis) or 154.323c (Alternative 3, Mail Processing Capacity). The application will be denied if the requirements of 154.313b or 154.323b or 154.323c are not met.

.24 Notification of Action to Mailer. Each official acting upon an application must act upon it within five business days of receipt. The MSC Manager must promptly notify the mailer in writing of the action taken. If the application is denied, the MSC Manager must notify the mailer specifying the reasons for the denial and informing the mailer of his right to appeal the denial.

.25 Commencement of Operations. The application will be approved if it meets all the requirements set forth in 154.3 for either intra- or inter-service-area plant loads, as appropriate. If the application is approved and the mailer desires plant-load operations, the mailer must enter into a plant-load agreement with the Postal Service. Plant-load operations may commence once the application is approved and the mailer enters into the agreement.

.26 Failure to Meet Requirements. The local postmaster of the post office which serves the mailer's plant is responsible for monitoring plant-load operations and must notify his Field Division manager if, at any time, a mailer fails to meet the requirements set forth in these regulations for two consecutive postal accounting periods, or instead a period set forth in the mailer's plant-load agreement. The plant-load authorization must then be reevaluated by the Field Division Manager.

.27 Appeal

.271 Responsibility. If an application is denied by the Field Division Manager, the mailer may appeal to the National Plant Load Policy Committee at Postal Service Headquarters, which will issue a final ruling on the application. Such an appeal must be filed with the Chairman of the National Committee, the Director, Office of Transportation and International Services, Mail Processing Department, Washington, DC 20260–7130, within 10 calendar days of the date of the mailer's receipt of the Divisional manager's notice of denial. The National Committee consists of the following officials or their designees: Director, Office of Transportation and International Services, Mail Processing Department, (chairman); Director, In-Plant Systems Office, Mail Processing Department; Director, Office of Classification and Rates Administration, Rates and Classification Department; Director, Office of Fleet Management, Delivery Services Department; Director, Office of Marketing, Marketing Department; and Associate General Counsel, Office of Postal Rates and Mailing Rules, Law Department.

.272 Procedures. The mailer must specify in its appeal the reasons why the application should be approved.

154.3 Requirements for Approval of Plant Load Applications

.31 Intra-Service Area

.311 General. An application for an intra-service-area plant load will be approved if transportation equipment is available (154.312) and cost savings to the Postal Service are demonstrated under *either* Alternative 1 (154.313a) *or* Alternative 2 (154.313b).

.312 Equipment Availability. Transportation equipment must be available to transport the mail to the BMC, ASF, MSC, or SCF, in the service area of the mailer's plant. If equipment is not available, sufficient additional transportation equipment must be obtained, if possible. The application will not be granted until additional transportation equipment is obtained.

.313 Cost Savings. The plant load must result in cost savings to the Postal Service. A cost savings can be demonstrated *either* under Alternative 1 (154.313a) *or* Alternative 2 (154.313b) below.

a. Alternative 1: Minimum Volume and Maximum Mileage. The current and future volume of mail to be plant loaded must be at least 50 percent of a vehicle by weight or cube, and the mileage from the mailer's plant to the destination postal facility must be 150 miles or less. For mail verified and accepted at a mailer's plant, the Postal Service may allow mailings verified at the plants of two or more mailers located in the same service area to be combined to meet the minimum volume requirement. For mail verified and accepted at the bulk mail acceptance unit of the origin BMC, ASF, MSC, or SCF, the mimimum volume requirement must be met by the mailings of only one mailer. (See 154.423 for requirements for verification at postal facility.)

b. Alternative 2: Cost Savings Analysis. If the mailer does not meet the criteria in Alternative 1 (154.313a), cost savings to the Postal Service must be demonstrated using the analysis on Form 3615.

.32 Inter-Service-Area.

.321 General. An application for an inter-service-area plant load will be approved if transportation equipment is available (154.322) and cost savings to the Postal Service are demonstrated under *either* Alternative 1 (154.3423a) *or* Alternative 2 (154.323b) *or* Alternative 3 (154.323c).

.322 Equipment Availability. Transportation equipment must be available to transport the mail to the BMC, ASF, MSC, or SCF outside the postal facility's service area in which the mailer's plant is located. If equipment is not available, sufficient additional transportation equipment must be obtained, if possible. The application will not be granted until additional transportation equipment is obtained.

.323 Cost Savings. The plant load must result in cost savings to the Postal Service. A cost savings can be demonstrated under *either* Alternative 1 (154.323a) *or* Alternative 2 (154.323b) *or* Alternative 3 (154.323c) below.

a. Alternative 1: Minimum Volume and Maximum Mileage

(1) Minimum Volume. The current and future volume of mail to be plant loaded must be at least 60 percent of a vehicle by weight or cube. Mailings of two or more mailers located in the same service area may be combined to make up the minimum volume.

(2) Maximum Mileage for Highway

(a) If the plant-load transportation is via highway and bypasses the origin SCF and at least one BMC, ASF, or ADC, the mileage from the mailer's plant to the destination postal facility must be 275 miles or less.

(b) If the plant-load transportation is by highway and bypasses only the origin SCF, the mileage from the mailer's plant to the destination postal facility must be 150 miles or less.

(c) There is no mileage criterion for plant-load transportation by railroad or water.

b. Alternative 2: Cost Savings Analysis. If the mailer does not meet the applicable criteria in Alternative 1 (154.323a), cost savings to the Postal Service must be demonstrated by using the analysis on Form 3815.

c. Alternative 3: Mail Processing Capacity. Even if the mailer does not satisfy either Alternative 1 (154.323a) or Alternative 2 (154.323b), the cost savings criteria may be deemed to be satisfied if the local origin postal facility is operating at or near its mail processing capacity for the type of mail plant-loaded. The Field Division Manager shall determine whether a facility is at or near its mail processing capacity and whether to authorize plant load in such cases. If the Field Division Manager subsequently determines that the local origin postal facility is operating below its mail processing capacity for the class or type of mail plant-loaded, the Field Division Manager must reevaluate the plant-load authorization.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-12300 Filed 5-29-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-3022-8]

Approval and Promulgation of State Implementation Plans; Utah; Visibility

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving the New Source Review (NSR) and monitoring plan for visibility as a revision to the Utah State Implementation Plan (SIP). This action results from rulemaking on October 23, 1984, [49 FR 42670] at which EPA proposed to disapprove SIPs of states which failed to comply with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR).

The Governor of Utah submitted a SIP Revision for Visibility Protection and the Visibility Regulation on April 26, 1985. EPA proposed to approve the Utah Visibility SIP for NSR and monitoring on November 13, 1985, 50 FR 46782. Comments were received for and against approval. Review of the comments with respect to the Utah visibility plan and regulations indicates that Utah meets the criteria of 40 CFR 51.305 and 51.307.

DATE: This action will be effective on June 30, 1986.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202, (303) 293-1757.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400–81.437.) Section 169A specifically directs EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.* These regulations required the states to submit revised SIPs to satisfy such provisions no later than September 2, 1981. [See 45 FR 80091, codified at 40 CFR 51.302(a)(1).] That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, a judicial stay of the litigation was granted pending EPA action on related administrative petitions for reconsideration of the visibility regulations.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under Section 110 of the Act to promulgate visibility SIPs. A settlement agreement between EPA and EDF outlined a schedule for the promulgation of visibility SIPs. It required EPA to incorporate Federal regulations in states where SIPs were found deficient with respect to the 1980 visibility new source review and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement did allow a state an opportunity to avoid Federal promulgation if it submitted a SIP no later than May 6, 1985. Utah is one of the states listed at 49 FR 42670 as having an inadequate NSR and monitoring plan for visibility protection.

On April 26, 1985, the Governor of Utah submitted a SIP Revision for Visibility Protection together with the Visibility Regulations for monitoring and new source review. On November 13, 1985, FR 46782, EPA proposed to approve the Utah Visibility SIP and regulations. Comments were received in support as well as against approval. The comments are discussed below.

Discussion of comments:

1. Comment: The Utah SIP lacks an adequate and explicit state commitment to a comprehensive and continuous visibility monitoring program adequate to provide the information required to comply with the Act.

Response: As stated in the November 13, 1985 notice, at 50 FR 46783, the monitoring section of the Utah Visibility Protection Plans consist of three components:

(1) Monitoring by the Federal Land Manager (FLM),

(2) Monitoring by sources proposing to locate or modify in an area where emissions may impact Class I areas, and

(3) Implementation of state monitoring network.

"Monitoring by the FLM" is the assessment of visibility background and trends by obtaining existing data available from the FLM. The National Parks in Utah have been or are still being monitored by the National Park Service (NPS). For those areas where monitoring no longer occurs, the NPS believes there exists sufficient

background data (i.e., five to six years of monitoring data). For these areas where monitoring is still being conducted, the State is seeking a cooperative agreement with the NPS to facilitate visibility monitoring and data exchange. Currently, the NPS performs visibility monitoring at the following sites:

(1) Bryce Canyon National Park,
(2) Zion National Park,
(3) Capitol Reef National Park, and
(4) Canyonlands National Park.

Monitoring by sources proposing to locate or modify in a locale where emissions may impact Class I areas will add to the background and trend data bank of that Class I area.

The SIP states a goal to establish a monitoring network by September 1987 to complement the monitoring required by the SIP and to provide additional background data. It will perform visual and photographic monitoring until additional funding can be obtained to begin installation of continuous visibility monitoring equipment.

The Utah monitoring section of the Visibility SIP consists of a statement of goals, a list of monitoring methods, and a provision for future plan revisions.

The commentor cited extensive language relating to the October 23, 1984 proposed rulemaking, 49 FR 42671. The commentor is referred to the language of § 51.305, which requires a strategy by visual observation or other appropriate monitoring techniques taking into account current and anticipated research and techniques. That section also requires consideration of available data and a mechanism for those data's use in decisions. In its general final rulemaking, at 50 FR 28545, EPA discussed the monitoring network requirements. It stated that EPA interprets § 51.305, "in light of structure and purposes of the regulations as a whole, to call for a strategy which will generate visibility data that will reasonably, if roughly, serve the needs of the overall State program."

EPA sees the Utah Visibility SIP as meeting the requirements of § 51.305.

2. Comment: (a) Industry monitoring provisions will not remedy the deficiencies of the state program. (b) Failure to require that the visibility effects of a new source must be analyzed in terms of its cumulative effects taken together with existing sources.

Response: The Utah Visibility regulations and SIP require a visibility impact analysis by a proposed new or modified source with the submittal of a permit application. The SIP requires source specific review as defined in 40 CFR 52.27 and 52.28 to determine the potential visibility impact of the proposed source to existing sources. The regulation provides the mechanism for the permitting authority to require pre-construction as well as post-construction visibility monitoring in any mandatory Class I area to assess the source's impact on visibility.

Monitoring by proposed sources will assist in determining background conditions as well as considering the effects of existing sources. This, coupled with the evaluation of potential impact by the proposed source, can only benefit the visibility program in preventing degradation of the area.

3. Comment: Inadequate provision for attribution to identified sources.

Response: Again, the commentor refers to the proposed rulemaking in 49 FR 42675. The commentor is referred to the July 12, 1985 final rulemaking, 50 FR 28548, which states that "EPA did not mean to imply that the data collection techniques for the background network were to be used in the source-specific studies. The proposed background instrumentation will be used only as appropriate for these studies. The attribution program will be implemented on a case-by-case basis with regard to both siting and equipment.

The EPA has requested that the FLMs identify impairment in each of their areas. From this identification, appropriate studies will be designed which will be unique to each identified problem. Priorities for implementation will be based on availability of existing data, the severity of the suspected impairment, and the probability of an effective control strategy." The FLM had an opportunity to review the Utah Visibility SIP for this phase (monitoring and NSR). No impairment areas were identified by the FLM during the development of this program. Should impairment in mandatory Class I areas be established by the FLM prior to future revisions of the SIP, the State of Utah must consider and comment on the issue at that time.

4. Comment: (a) Excessive discretion in provisions for monitoring by proposed sources. (b) The regulatory portion of the SIP is not clearly distinguished from the explanatory preamble. As a result, the regulations fail to establish clear commitments and obligations, and do not contain some essential requirements.

Response: The State incorporated its permitting regulations into its Visibility SIP as well as requiring the application of Best Available Control Technology and emission limitation requirements of any new or modified source locating anywhere in the State. The regulations state the consideration requirements of the analyses performed by the State and the FLM as well as the denial of a permit if visibility impact is determined by the permitting authority. The regulations provide the mechanisms for permit conditions on control equipment, technology, methods and work practices which would provide the insurance that source emissions will be consistent with making reasonable progress toward the national goal.

5. Comment: (a) The list of factors to be considered in determining control requirements for new source review does not conform to EPA requirements or to the Clean Air Act. (b) Determination of adverse impact should give deference to the adversity determinations of the Federal Land Manager.

Response: The State does allow for consideration of various control requirements (i.e., economic, non-air quality environmental impact, etc.). However, the SIP states it will ensure that source emissions will be consistent with making reasonable progress toward the national goal referred to in § 51.300(a), to consider the FLM's comments and to deny a permit if the permitting authority determines that there will be adverse impact on a mandatory Class I area. Further, the regulation requires the permitting authority to provide an explanation of its decision should it disagree with the FLM's assessment on a proposed source's impact on visibility and to give notice as to where that explanation can be obtained.

40 CFR 51.307(a)(3) and 52.27(d)(2) provide the appropriate mechanism for the permit issuing authority to share with the FLM the review for adverse impact of a proposed source. The final decision rests with the permitting authority.

The State recognizes the expertise of the FLM in monitoring and new source applicability analyses for visibility. It has accorded the FLM (through the NPS) opportunities to participate and comment on its visibility SIP and regulations. Comments by the NPS were considered and incorporated where applicable. It has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. It has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

Summary of Action

The April 26, 1985 submittal by the Governor of Utah includes an adequate visibility plan and regulation to meet the requirements of § 51.305 and § 51.307.

(One should reference the Federal Register notices on October 23, 1984, 49 FR 42670, July 12, 1985, 50 FR 28544, and November 15, 1985, 50 FR 46762, for additional information.) The Visibility SIP and regulations apply to attainment and nonattainment areas. It requires denial of a permit if adverse impact will occur in these areas. The SIP is deficient for all the other requirements of Subpart P (other than § 51.305 and § 51.307). See 51 FR 3098, January 23, 1986.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 1986. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons, Incorporation by reference.

Note. Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 5, 1986.

Lee M. Thomas,

Administrator

PART 52—[AMENDED]

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart TT-Utah

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.2320 is amended by adding paragraph (c)(19) as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(19) A revision to the SIP was submitted by the Governor on April 26, 1985, for visibility monitoring and new source review.

(i) Incorporation by reference.

(A) Letter dated April 26, 1985, from Governor Norman Bangerter submitting the Utah Visibility SIP and Regulations.

(B) The Visibility SIP and the Utah Air Conservaton Regulations 3.1.7 and 3.11.1 were adopted on April 15, 1985 referred to in the Governor's letter as April 12, 1985.

[FR Doc. 86-11868 Filed 5-29-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 217, and 252

Department of Defense Federal Acquisition Regulation Supplement; Identification of Sources of Supply

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved changes to the coverage in the DoD FAR Supplement regarding Identification of Sources of Supply. The purpose of this change is to implement section 1231 of Pub. L. 99-525.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Coverage provides for identification of the actual manufacturer or producer of items and all sources of supplies; identification of sources of technical data to be delivered under contract is also required. Coverage allows for identification of sources at the deliverable item level or at the purchased part/subcontract level.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Public Comments.

Notice of an interim rule was published in the Federal Register on October 9, 1985 (50 FR 41157, October 9, 1985), requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the final rule. As a result of the review of public comments, the following changes were made:

(1) 217.7204(a) was amended to add "of additional costs" after "avoiding payment".

(2) 217.7204(b)(3) was amended to add "e.g., nonrepetitive local purchases" to the end of that sentence.

C. Regulatory Flexibility Act

This final rule will have a beneficial impact on small entities. The change to 217.7103(b)(3) exempts nonrepetitive local purchases from the rule and will benefit small businesses that sell low-dollar value items to local activities on a one-time basis.

A final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the analysis may be obtained from the Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street NW. (Room 1012), Washington, DC 20416.

D. Paperwork Reduction Act

Office of Management and Budget (OMB) Approval Number 0704-0214 was approved on February 18, 1986, for 1,506,250 hours.

List of Subjects in 48 CFR Parts 213, 217, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 213, 217, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 301.301.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. The interim rule published in 50 FR 41157, October 9, 1985, is adopted as final without change.

PART 217—SPECIAL CONTRACTING METHODS

217.7204 [Amended]

3. The interim rule published in 50 FR 41157, October 9, 1985, is adopted as final with the following changes:

Section 217.7204 is amended by adding in the undesignated paragraph following subparagraph (a)(3), between the word "payment" and the word "where" the words "of additional costs"; and by deleting the period at the end of

paragraph (b)(3) and adding at the end of paragraph (b)(3) a comma and the words "e.g., nonrepetitive local purchases."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The interim rule published in 50 FR 41157, October 9, 1985, is adopted as final without change.

[FR Doc. 86-12205 Filed 5-29-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 60585-6085]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of effective date.

SUMMARY: NOAA issues this notice making effective the information collection requirement to the emergency interim rule for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This rule implements the reporting requirements for vessels which incidentally take any endangered or threatened sea turtle. The intended effect is to implement the intent of the emergency rule.

EFFECTIVE DATE: Section 658.6(c) is effective from May 19, 1986, through July 9, 1986.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: NOAA published an emergency interim rule on May 13, 1986 (51 FR 17487) to modify the geographic boundary and dates of the seasonal closure to shrimp trawling off Texas to reduce the area closed to trawl fishing to that portion of the fishery conservation zone (FCZ) within 15 nautical miles of the baseline for the territorial sea (shore).

The submission of reports of incidental take of endangered or threatened sea turtles at § 658.5 was not made effective with the emergency interim rule, pending approval of the information collection requirement by OMB. Section 658.5 was approved by OMB under Control No. 0648-0178, effective May 19, 1986, through August 31, 1986.

Other Matters

This action is taken under the authority of 50 CFR Part 658 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 658

Reporting and recordkeeping requirements, Fisheries.

PART 658—[AMENDED]

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-12165 Filed 5-28-86; 9:21 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 104
Friday, May 30, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 752

Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: These regulations cover Senior Executive Service suspension and removal actions. The Office of Personnel Management (OPM) issued interim regulations previously on such actions in July 1979. The proposed regulations incorporate statutory revisions since July 1979 of the reasons for taking adverse actions. These regulations also exclude reemployed annuitants from coverage and extend coverage to certain limited appointees in addition to career employees currently covered. The regulations would apply to suspensions for more than 14 days or removals from the civil service for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

DATE: Comments will be considered if received no later than July 29, 1986.

ADDRESS: Send or deliver written comments to the Chief, Office of Executive Personnel, Office of Executive Administration, Room 6R48, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632–4825.

SUPPLEMENTARY INFORMATION: On July 31, 1979, OPM published an interim rule (44 FR 44818) on taking adverse actions in the Senior Executive Service (SES) that implemented subchapter V of chapter 75 of title 5, United States Code, by adding Subpart E and Subpart F to Part 752 of Title 5 of the Code of Federal Regulations.

The comment period, which was 60 days from the date of publication, ended on October 1, 1979. No written comments were received. However, there were a number of phone inquiries.

The most frequently asked question was why the interim regulations did not address short term suspensions of SES appointees. The reason is that subchapter V of chapter 75 does not cover suspensions of 14 days or less. Furthermore, subchapter I of chapter 75, which covers such actions, pertains only to employees in the competitive service. Thus, there is no express statutory authority for taking a suspension of 14 days or less against an appointee in the SES.

It appears that the Congress may have viewed suspensions of 14 days or less (normally imposed for less serious offenses) as inappropriate disciplinary measures for SES members. Because of their greater responsibilities, SES members have a significant impact on agency programs and on the public image of the Government. Consequently, offenses by them would be considered more serious and normally would warrant the imposition of a more severe penalty.

After publication of the interim regulations, section 1704(d) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 13, 1981) revised the cause of action standard in 5 U.S.C. 7543 to read "misconduct, neglect of duty or malfeasance," in place of "such cause as will promote the efficiency of the service." The Conference Report on the Act stated that the change was to assure that adverse actions were taken only for disciplinary reasons. In addition, the Report stated, "Consistent with existing policy, the conferees intend that failure to accept a directed reassignment or failure to accompany a position in a transfer of function would constitute grounds for disciplinary action under the subchapter."

Regulations were drafted to set forth the foregoing changes. Before their issuance, however, further legislation was enacted that revised title 5 to expressly include under adverse actions "failure to accept a directed reassignment or to accompany a position in a transfer of function." Thus, the previously recognized policy in the earlier Conference Report is codified by Pub. L. 98–615 of November 8, 1984, the Civil Service Retirement Spouse Equity Act. The congressional section analysis for the Act points out that a basic premise of the SES is to foster position and geographic movement when in the best interest of the agency. This is further borne out by the fact that the same Act also amends title 5 to specifically provide for transfer of function in the SES. (See 5 U.S.C. 3595(e).) Accordingly, § 752.603 of 5 CFR is amended to incorporate these latest provisions.

In accordance with 5 U.S.C. 3323(b), a reemployed annuitant serves at the will of the appointing authority. Thus, a reemployed annuitant who is serving under an SES career appointment is not entitled to the protections afforded under these regulations. Section 752.601(d) of 5 CFR is amended to reflect this fact.

Under § 317.605 of this chapter, individuals who receive an SES limited appointment without a break in service in the same agency as the one in which they held a career or career conditional appointment (or an appointment of equivalent tenure) in a permanent position outside the SES are entitled to be placed in their former position, or an equivalent one, following termination of their SES appointment, if the termination was not for misconduct, neglect of duty, or malfeasance. Under current regulations, however, individuals who had adverse action coverage before their SES limited appointment lose such coverage while in the SES because the title 5 provision on SES adverse actions and the implementing interim regulations cover only SES career appointees. The proposed regulations cover such limited appointees so that they do not lose adverse action protection for actions involving removal from the civil service or suspension for more than 14 days during the temporary period they are in the SES. Of course, if their conduct removal is upheld, the affected employees would have no reinstatement right under § 317.605 of this chapter. This provision does not affect an agency's authority to terminate an SES limited appointment at any time for reasons other than misconduct, neglect of duty, or malfeasance without the use of adverse action procedures.

Since the interim regulations were first issued in 1979, the Merit Systems Protection Board has held that a suspension during the notice period of an adverse action is illegal. Therefore, paragraph (3) of § 752.604(b) provides

other means for keeping employees away from the work site during the notice period under certain circumstances, such as when an employee's continued presence would post a threat to the employee of others.

Subpart E of 5 CFR Part 752 would be reserved for future use. It currently lists the principal statutory requirements for taking adverse actions in the SES. These requirements appear in 5 U.S.C. and do not need to be repeated in 5 CFR.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 752

Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is proposing to amend 5 CFR Part 752 as follows:

PART 752—ADVERSE ACTIONS

1. The authority citation for Part 752 is revised as set forth below, and all other authority citations throughout Part 752 are removed:

Authority: 5 U.S.C. 7504, 7514; 5 U.S.C. 1302, Publ. L. 95-494; § 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Subpart F also issued under 5 U.S.C. 7543.

2. Subpart E is removed and reserved.

3. Subpart F is revised to read as follows:

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

Sec.
752.601. Coverage.
752.602. Definitions.
752.603. Standard for action.
752.604. Procedures.
752.605. Appeal rights.
752.606. Agency records.

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 day and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Actions excluded.* (1) An agency may not take a suspension action of 14 days or less.

(2) This subpart does not apply to actions taken under 5 U.S.C. 1206(g), 3592, 3595, or 7532.

(c) *Employees covered.* This subpart covers—

(1) A career appointee—

(i) Who has completed the probationary period in the Senior Executive Service;

(ii) Who is not required to serve a probationary period in the Senior Executive Service; or

(iii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(2) A limited term or limited emergency appointee—

(i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career conditional appointment (or an appointment of equivalent tenure as determined by the Office) in a permanent civil service position outside the Senior Executive Service; and

(ii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(d) *Employees excluded.* This subpart does not cover an appointee who is serving as a reemployed annuitant.

§ 752.602 Definitions.

In this subpart—

"Career appointee," "limited term appointee," and "limited emergency appointee" have the meaning given in 5 U.S.C. 3132(a).

"Day" means calendar day.

"Suspension" has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures.

(a) *Statutory entitlements.* A career appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b). The same procedures will be followed when an action is proposed against a limited term or limited emergency appointee under this subpart.

(b) *Notice of proposed action.* (1) The notice of proposed action must inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.

(2) The agency may not use material that cannot be disclosed to the appointee or to the appointee's representative or designated physician under § 297.204(c) of this chapter to support the reasons in the notice.

(3) Under ordinary circumstances, an appointee whose removal has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances when the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency will consider whether any of the following alternatives is feasible:

(i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;

(ii) Placing the appointee on leave with his or her consent;

(iii) Placing the appointee on involuntary sick or other leave when the agency has medical documentation stating physical or mental incapaciation;

(iv) Placing the appointee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is absent for reasons not originating with the agency; or

(v) Curtailing the notice period when the agency can invoke the provisions of paragraph (d) of this section (the "crime provision").

If none of these alternatives is available, the agency may place the appointee in a paid nonduty status during all or part of the advance notice period.

(c) *Appointee's answer.* (1) The agency will give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is otherwise in an active duty status.

(2) The agency will designate an official to hear the appointee's oral answer. The individual designated should be an official who has authority either to make or to recommend a final decision on the proposed adverse action.

(3) The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with paragraph (g) of this section.

(d) *Exception.* Section 7543(b)(1) of title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence to support the answer, within such time as under the circumstances would be reasonable, but not less than 7 days. When the circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time, not to exceed 10 days, as is necessary to effect the action.

(e) *Representation.* (1) Under 5 U.S.C. 7543(b)(3), an appointee covered by this part is entitled to be represented by an attorney or other representative.

(2) An agency may disallow as an appointee's representative—

(i) An individual whose activities as a representative would cause a conflict of interest or position;

((ii) An employee of the agency whose release from his or her official position would give rise to unreasonable costs; or

(iii) An employee of the agency whose priority work assignments preclude the employee's release.

(f) *Agency decision.* In arriving at its written decision, the agency will consider only the reasons specified in the notice of proposed action and any reply of the appointee or the appointee's representative made to a designated official. The agency will deliver the notice of decision to the appointee at or before the time the action will be effective. The notice of decision will inform the appointee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.805 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.801(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.806 Agency records.

The agency will maintain copies of the adverse action record items specified in 5 U.S.C. 7543(e) and furnish them upon request as required by that subsection.

[FR Doc. 86-12203 Filed 5-29-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the U.S. Standards for Wheat to certificate dockage to the nearest 0.1 percent. The current method of dockage certification rounds the actual dockage percentage down to the nearest half or whole percent. This method may result in understating the level of dockage up to 0.49 percent on the certificate. Certification of dockage to the nearest 0.1 percent is more precise than the current method and should enhance the marketability of U.S. wheat traded in the domestic and export markets. In addition, FGIS solicits comments on a change to its Grain Inspection Handbook that would provide that the protein content of wheat be certified on a constant 12.0 percent moisture basis. Certification on the basis of a constant 12.0 percent moisture instead of the current "as is" moisture will add uniformity to the protein reporting procedure.

DATE: Comments must be submitted on or before July 14, 1986.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of wheat inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Certification of Dockage in Wheat

Dockage consists primarily of dust, chaff, small weed seeds, very small pieces of broken wheat, and coarse grains larger than wheat. Domestic millers usually remove dockage during grain cleaning and may use it as animal feed. Foreign buyers use dockage in a variety of ways. Some use the dockage in animal feeds, others mill the dockage with the wheat, and some remove and discard the dockage.

In the current U.S. Standards for Wheat (7 CFR 810.301–810.309), dockage is certificated by rounding down to the nearest 0.5 percent (7 CFR 810.305). For example, for 0.0 to 0.49 percent no dockage is shown, 0.5 to 0.99 is shown as 0.5 percent dockage, 1.0 to 1.49 percent is shown as 1.0 percent dockage and so forth. Many foreign buyers question the adequacy of the current dockage certification method asserting that the actual dockage is almost always understated. FGIS proposes recording the dockage to the nearest 0.1 percent on official inspection certificates to more precisely state wheat dockage content.

In current practice a wheat shipment may contain up to 0.49 percent more dockage than the percentage shown on the official inspection certificate. Export shipments certificated with no dockage generally contain 0.35 to 0.45 percent dockage. Export shipments certificated at 0.5 percent dockage generally contain 0.6 to 0.9 percent dockage. An understated amount of dockage may impact on foreign buyers due to wheat prices being paid for understated dockage, freight, and, when applicable, levy charges paid on each ton of wheat imported.

The last review of the wheat standards included an evaluation of the dockage rounding procedure. In the March 22, 1968, Federal Register (43 FR 11953), FGIS stated that a review of the wheat standards would include an

evaluation of dockage certification procedures. Two potential alternatives were suggested:

1. Certification to the nearest 0.1 percent, and

2. Certification to the nearest 0.5 percent by rounding up or down on the basis of 0.25 percent.

In the January 13, 1984, Federal Register (49 FR 1790), FGIS proposed revising the dockage rounding procedue to certificate dockage to the nearest 0.5 percent. After reviewing available information and the comments submitted on the proposal, FGIS determined that additional study was needed prior to taking any action on the dockage issue, and at least one public meeting would be held to discuss the dockage rounding procedure with interested parties. This position was stated in the final rule published in the May 16, 1984, Federal Register (49 FR 20636).

FGIS continued gathering information and data on the level of wheat dockage in the marketplace. Export inspection results for 1984 were collected and analyzed along with domestic inspection results representing the 1984 wheat harvest. The USDA, Economic Research Service (ERS) used these data and other available information to compile a report entitled: "Economic Implications of Alternative Methods of Certificating Dockage in U.S. Wheat." The objectives of the report were to:

1. Review available literature on the relationship between dockage and wheat quality,

2. Estimate economic impact of alternative dockage certification methods, and

3. Estimate the costs and benefits of removing dockage from U.S. wheat through cleaning operations.

The report concludes that dockage certificated to the nearest 0.1 percent could affect price per bushel depending on how market participants view the price quotations for wheat in relation to the certificated dockage content. The price effect on all classes of wheat in the interior market could vary from a decrease of 0.971 cents per bushel to an increase of 0.674 cents per bushel. In the export market, the report concluded that the price effect for all classes of wheat could vary from a decrease of 0.961 cents per bushel to an increase of 0.789 cents per bushel. The report also concluded that elimination of the problem of understated dockage would strengthen the credibility of the official inspection certificate, enhance buyer confidence in the U.S. Standards for Wheat, and strengthen the competitive position of U.S. wheat in the world market.

Other potential benefits of revising the dockage certification procedure to round to the nearest 0.5 percent or the nearest 0.1 percent as noted in the report include:

1. More accurate description of the raw grain. Certification to the nearest 0.1 percent would be more precise and remove incentives to blend grain so as to reach the maximum dockage level allowed by the current rounding down procedure.

2. A reduction in the potential for changing inspection results by 0.5 percent on the same lot or sample. Certification to the nearest 0.1 percent would eliminate the problem.

3. Improvement of pricing efficiency.

4. Removal of the incentive to add dockage to clean grain.

5. Possible reward to producers who deliver wheat with less than the average dockage content.

6. Improvement of grain quality, including: (a) reducing destructive insects, (b) the risk of dust explosions, (c) health problems associated with inhalation of grain dust, and (d) problems associated with segregation of dockage during handling and loading.

Dockage certificated to the nearest 0.1 percent was not proposed previously because of FGIS concerns about grain inspection equipment limitations. To evaluate dockage tester performance, a study was conducted by FGIS on the effect of equipment limitations on the reproducibility of dockage results. Samples of Hard Red Winter wheat, Soft Red Winter wheat, Hard Red Spring wheat, White wheat, and Durum wheat containing four dockage levels (1.0, 2.0, 4.0, and 8.0 percent) were run on three dockage testers. The study revealed that at the 1.0, 2.0, and 4.0 percent dockage levels the equipment provided results within ±0.10 percent. At the 8.0 percent dockage level two significant deviations occurred out of 15 tests results. Since a large majority (about 90 percent) of wheat inspected in the domestic and export markets contains less than 2.0 percent dockage, FGIS expects that results certificated to the nearest 0.1 percent will be reproducible.

Dockage certificated to the nearest 0.5 percent would be more accurate than the current procedure since the actual dockage level could differ from the amount certificated by no more than 0.25 percent. However, this method would still allow up to 0.25 percent understated dockage and foreign buyer complaints about excess dockage could continue.

FGIS held a Wheat Dockage Meeting in Denver, Colorado, on January 7, 1986. This meeting was announced in the Federal Register on December 4, 1985 (50 FR 49737).

Representatives of nearly all segments of the wheat industry attended the meeting, including producers, handlers, merchandisers, millers, exporters, and foreign buyers. Approximately eighty-five individuals were in attendance. The Economic Research Service report cited earlier was made available to the public prior to the meeting and was available to attendees at the meeting.

The wheat dockage certification options presented for discussion at the meeting were:

1. Continue to use the current method whereby the actual percentage of dockage is rounded down to the nearest half or whole percent for certification purposes.

2. Certificate dockage to the nearest 0.5 percent.

3. Certificate dockage in tenths of a percent.

4. Combine dockage and foreign material and count the total percentage against the current foreign material grade standard limits.

FGIS requested that any alternative option(s) be presented by the attendees. However, while variations to the options presented were discussed, no new options were submitted.

More than twenty wheat industry representatives presented formal comments on wheat dockage certification.

Only two speakers supported retaining the current dockage certification procedure. These two speakers believed additional studies on grain handling practices and/or grain quality are necessary before a change could be proposed. A third speaker supported changes in dockage certification but also believed further studies were necessary.

Certificating dockage to the nearest 0.5 percent was not mentioned as the preferred option by any of the speakers.

A large majority of the industry personnel who spoke favored certification of dockage to the nearest 0.1 percent and urged FGIS to implement this method of certification as rapidly as possible. According to their comments, they stated this method of certification would more accurately indicate dockage content and would enhance the quality of U.S. wheat as perceived by foreign buyers.

Combining the percentages of dockage and foreign material and applying the results as a grade-determining factor in the standards was advanced as an option by a number of individuals but was not the option of choice by the majority of speakers. This method could

allow extra dockage to be introduced up to the maximum amount for each grade. In addition, the marketplace could easily calculate the exact amount of dockage and foreign material if desired, provided that dockage is reported to the nearest 0.1 percent. Foreign material is currently certificated to the nearest 0.1 percent.

A few speakers suggested combining dockage, foreign material, and shrunken and broken kernels to form a new factor of non-millable material. Another speaker suggested including the current factors contrasting classes and wheat of other classes in the new factor non-millable material. No consensus was reached regarding these suggestions. Additional research and study would be necessary to establish official grade limits for the non-millable material factor.

In addition to the Wheat Dockage Meeting in Denver, Colorado, comments have been received from growers' and processors' organizations. In addition, a series of Grain Quality Workshops were initiated by the trade. The objective of the workshops is to study problems related to the quality of grain exported from the United States. Workshop members include representatives of producer associations, trade associations and commissions, grain marketing firms, universities, and the Federal Government. Certification of the percentage of dockage in wheat was one of the primary topics considered during the first few workshops. After discussing the current dockage certification procedure and potential alternatives, the majority of the Grain Quality Workshop members recommended that dockage be certificated to the nearest 0.1 percent. Certification to the nearest 0.1 percent was considered to be the most acceptable method to specify the actual dockage content of wheat.

In view of FGIS studies on dockage tester performance, the ERS study on the economics of alternative dockage methods, the comments submitted at the public meeting, and the recommendation received from the Grain Quality Workshops, FGIS proposes that § 810.306(b), be revised to state the percentage of dockage in wheat to the nearest 0.1 percent.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 75(b)), upon request, such information may be presented orally in an informal manner. Also, pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. If finalized, FGIS intends that the change should become effective on May 1, 1987 to coincide with the beginning of the crop year.

Moisture Basis on Protein

In addition to the above rulemaking, FGIS is soliciting views and comments on another topic addressed by the growers' and processors' organizations and the Grain Quality Workshops on the use of a constant moisture basis to certificate the protein content of wheat. Following a discussion of this subject, members recommended that protein content be certificated on a constant 12.0 percent moisture basis to provide uniformity to the certification procedure. A 12.0 percent basis was recommended because this percentage is representative of the average moisture content of wheat exported from the United States.

Protein is an official criteria under the U.S. Grain Standards Act. The procedure for reporting protein content appears in Aux. 21 of the Grain Inspection Handbook. Unless otherwise requested, protein content is currently reported on "as is" moisture basis; that is, the percentage of protein is calculated on the actual moisture content of the wheat. Current procedures also allow protein content to be recorded on a specified moisture basis if requested by the applicant for inspection.

When reported on an "as is" moisture basis, the protein quantity of wheat which has different moisture levels cannot be compared easily. Protein content is inversely related to moisture content. Protein quantity, certificated on a constant moisture basis of 12.0 percent, would provide buyers, sellers, and users of U.S. wheat with results which could be easily evaluated and compared. Also, use of a constant moisture basis would conform with protein reporting procedures used by other major wheat exporting countries.

FGIS is soliciting views and comments as to whether protein content should be certificated on a constant moisture basis of 12.0 percent rather than the "as is" moisture basis which is the current procedure. The procedure for moisture basis appears in the Grain Inspection Handbook and not in the U.S. Standards for Wheat. Accordingly, no change to the grain standards would result nor does this change require rulemaking. However, FGIS believes that it would be beneficial to have industry input prior to changing the moisture basis procedure for protein in wheat. FGIS will notify interested parties, as appropriate, once a final decision is made with respect to this matter.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

2. It is proposed that § 810.305 *Percentages* be amended by revising § 810.305(b) to read as follows:

§ 810.305 Percentages.

* * * * *

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of wheat, the class, the subclass, and the percentage of ergot. The percentage when determining the identity of wheat, the class, and the subclass shall be stated to the nearest whole percent. The percentage of ergot shall be stated to the nearest hundredth percent.

Dated: May 15, 1986.

Kenneth A. Gilles,
Administrator.

[FR Doc. 86-11989 Filed 5-29-86; 8:45 am]
BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, CA; Proposed Amendment of Date Expenses and Rate of Assessment for 1985–86 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenses for the California Date Administrative Committee and an increase in the rate of assessment for the 1985–86 crop year. The expenses would be increased from $20,000 to $170,000, and the assessment rate would be increased from 6 cents to $1.00 per hundredweight of assessable dates. The changes are necessary for the date industry to conduct a market research promotion, and paid advertising program. The Committee

locally administers the Federal marketing order covering dates of domestic production.

DATE: Comments due June 9, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, Room 2085, South Building, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written materials should be submitted and they shall be available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250; (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 25 handlers of dates will be subject to regulation under the marketing order for dates produced or packed in Riverside County, California, during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers the added burden on small entities, if present at all, is not significant.

A comment period of less than 30 days is provided because the proposed promotion program must start by the middle of June for the program to have any positive effect on 1986 fall date sales. Normally, the bulk of the domestic industry's sales are made during the fall holiday months.

A final rule establishing expenses in the amount of $26,050 for the 1985–86 crop year and fixing the assessment rate at 8 cents per hundredweight on all assessable dates was published in the Federal Register on February 26, 1986 (51 FR 7054). At a meeting held on March 20, 1986, a date promotion program was proposed. The total expense for the program was estimated at $500,000. Such program would include market research, nutrition research, agency fees, merchandisers, public relations, point of sale material and advertising. The date industry is faced with a serious oversupply problem. The Committee believes that a promotion program can help correct this problem by stimulating demand.

Approximately $150,000 is needed before October 1, 1986, to have date promotion available for sales this fall. At a meeting held on April 3, 1986, the Committee voted to increase this season's expenses and rate of assessment to accomplish that goal.

This proposal sets forth a budget increase in the amount of $150,000 for marketing promotion and advertising for the 1985–86 crop year and a rate of assessment increase to $1.00 per hundredweight of assessable dates.

In a letter dated May 1, 1986, a handler explained that his firm had inspected or sold all of his 1985-crop dates and could not factor any increase in the 1985–86 assessment rate into his 1985 crop pricing like other handlers in the industry who still have large volumes of dates to sell. He further stated that he did not object to the concept of the advertising and promotion program, but he felt it could only be done fairly by starting on October 1, 1986, the beginning of the new season. His contention is that such a starting date would give all participants an equal chance to benefit from the monies being paid. In his opinion, the retroactive assessment is grossly unfair and would create serious financial hardships to firms in his position. Finally, he indicated that a new date committee will be selected in June 1986 and that the new committee may feel differently about a promotion and advertising program of this magnitude.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

1. The authority citation for Part 987 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.330 [Amended]

2. Section 987.330 is amended by changing $26,050 to $176,050 and changing 8 cents to $1.00.

Dated: May 27, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–12207 Filed 5–29–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise 8 CFR 103.2(b) to authorize a district director to withhold adjudication of a visa petition or application where determined necessary to pursue a criminal investigation. The provisions relating to disclosure of classified material would also be revised to require authorization for disclosure by the classifying agency.

DATE: Comments must be received on or before July 29, 1986.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536. Telephone (202) 633–3048.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536, Telephone: (202) 633–3048.

For Specific Information: Michael J. Heilman, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 7048, Washington, DC 20536, Telephone: (202) 633–2620.

SUPPLEMENTARY INFORMATION: The proposed rule would revise § 103.2(b) to allow a district director of the Immigration and Naturalization Service to hold adjudication of a visa petition or application in abeyance pending a

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criminal investigation. This proposed rule is offered in lieu of the proposed rule published at 50 FR 27289 on July 2, 1985, which would have allowed a district director to deny a visa petiton or application and then not disclose the grounds for the denial if a civil or criminal investigation had been undertaken.

By this proposed rule, the disclosure of information will be avoided and the petitioner or applicant will not be prejudiced by a denial based on information not disclosed to the petitioner or applicant. The proposed rule would also, as in the previous proposed rule, revise the procedures for disclosure of classified material. Disclosure would only be made if the classifying agency has agreed in writing that the information may be disclosed.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities.

This rule is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Archives and records.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows and all other authority citations are removed from Part 103:

Authority: Section 501, 65 Stat. 290, section 103, 66 Stat. 173; 31 U.S.C. 483(a), 8 U.S.C. 1103. Interpret or apply sections 281, 382, 343, 344, 405, 66 Stat. 230, 252, 263, 264, 280; 8 U.S.C. 1361, 1443, 1454, 1455, 1101 and note; 7 U.S.C. 2243. § 103.2 is also issued under sections 103, 221, 281 and 285 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1201, and 1301–1306).

2. In § 103.2, paragraph (b)(2) would be redesignated as (b)(3) and revised and a new paragraph (b)(3) would be added to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(2) *Adjudication of application or petition.* A district director may withhold adjudication of a visa petition or other application if the district director personally determines that a criminal investigation has been undertaken or should be undertaken involving any person or organization involved with, or matter related to, the application or visa petition.

(3) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service, of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall only be based on information contained in the record of proceeding which is disclosed to the applicant or petitioner.

(iii) *Discretionary determination.* Where an application or petition may be granted or denied in the exercise of discretion, the decision may be based in whole or in part on classified information not contained in the record and not made available to the applicant or petitioner.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure.

Dated: May 13, 1986.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 86-12144 Filed 5-29-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-039]

Federal Animal Quarantine Stations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for comments.

SUMMARY: This document requests comments concerning whether the Department should take action to contract with private firms to conduct certain activities at federal animal quarantine stations.

DATE: Written comments must be received on or before June 30, 1986.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-039. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.D. Whiting, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 92, among other things, regulate the importation into the United States of specified animals in order to help prevent the introduction into the United States of various diseases.

Certain animals are required to be quarantined as a condition of entry into the United States. Animals are quarantined at fedral animal quarantine stations or at privately operated animal quarantine stations. The Department operates federal animal quarantine stations in Newburgh, New York; Los Angeles, California; Honolulu, Hawaii; and Miami, Florida. The Department also operates the Harry S. Truman Animal Import Center (a maximum security federal animal quarantine station) in Fleming Key, Florida.

Currently, the operations at the federal animal quarantine stations are conducted by technical and professional personnel who are employed by the Department. The duties at these federal animal quarantine stations include care, feed and handling of the animals; maintenance of the station; administrative functions; and conducting and supervising inspections and disease diagnostic procedures. It is necessary to continue to have Veterinary Services personnel supervise the operations at the federal animal quarantine stations insofar as necessary to ensure that the regulatory requirements would be met. However, the Department is considering whether it would be more cost effective and efficient to contract with private firms to

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conduct all or a portion of the other duties that need to be performed at a federal animal quarantine station.

This document requests comments concerning whether the Department should take action to contract with private firms to conduct such activities.

Done at Washington, DC, this 27th day of May 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-12119 Filed 5-29-86; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 55

Degree Requirement for Senior Operators at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering an amendment to its regulations to require, after January 1, 1991, that applicants for licenses as a Senior Operator of a nuclear power plant hold a baccalaureate degree in engineering or the physical sciences from an accredited institution. Other baccalaureate degrees from an accredited institution may be accepted on a case-by-case basis. This contemplated rulemaking action is due to a Commission decision to enhance the levels of engineering and accident management expertise on shift. The current requirement, for candidates with a baccalaureate degree, of two years of responsible nuclear power plant operating experience, would be amended to require at least one of the two years of operating experience be with a similar commercial nuclear reactor operating at greater than twenty percent power.

DATE: Comment period expires July 29, 1986.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments or suggestions on the proposed rulemaking to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of the comments received may be examined at the NRC Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: F. H. Rowsome, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-4613.

SUPPLEMENTARY INFORMATION:

Background

The issue of academic requirements for reactor operators has long been a concern of the Nuclear Regulatory Commission (NRC). In July 1979, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," (NUREG-0578)[1] made specific recommendations for a Shift Technical Advisor (STA) to provide engineering and accident assessment expertise during other than normal operating conditions. On October 30, 1979, the NRC notified all operating nuclear power licensees of the short-term STA requirements, i.e., that STAs should be on shift by January 1980, and that they should be fully trained by January 1981. In November 1980, "Clarification of TMI Action Plan Requirements," (NUREG-0737), provided further details to licensees regarding implementation of the STA position.

The qualifications of operators were also addressed by the 1979, "Lessons Learned Task Force," (NUREG-0585), the 1980 Rogovin report, "Three Mile Island: A Report to the Commissioners and to the Public," (NUREG/CR-1240), and the 1982, "Report of the Peer Advisory Panel and the Nuclear Regulatory Commission on Operator Qualifications," (SECY 82-162).[2] The consensus among these was that greater technical and academic knowledge among shift operating personnel would be beneficial to the safety of nuclear power plants.

On October 28, 1985, the NRC published in the Federal Register (50 FR 43621) a final policy statement on engineering expertise on shift. Option 1 of the Policy Statement allows an individual to serve in the combined Senior Operator/Shift Technical Advisor (SO/STA) role holding either a baccalaureate degree in engineering, engineering technology, physical science, or a professional engineer's license. Option 2 permits continuation of the separate STA who rotates with the shift and holds a baccalaureate degree or equivalent and meets the criteria as stated in, "Clarification of TMI Action Plan Requirements," (NUREG-0737). The Commission also encourages the shift supervisor to serve in the dual-role position, and the STA to take an active role in shift activities.

The current advanced notice of proposed rulemaking is intended to extend the current level of engineering expertise on shift, as described in the Commission's Policy Statement on Engineering Expertise on Shift (50 FR 43621) and to ensure senior operators have operating experience on a commercial nuclear reactor operating at greater than twenty percent power, e.g., "hot" operating experience (Generic Letter 84-16). This Advance Notice of Proposed Rulemaking is the result of a Commission decision to consider an amendment to its regulations (Parts 50 and 55) and to obtain comments on the contemplated action to upgrade the levels of operating, engineering, and accident management expertise on shift.

Concurrent Policy Statement

The Commission also intends to prepare a concurrent policy statement which will encourage nuclear power plant licensees, i.e., owner-operators, to:

1. Implement personnel policies that emphasize the opportunities for licensed operators to assume positions of increased management responsibility;
2. Develop programs that would enable currently licensed senior operators and reactor operators to obtain college degrees; and
3. Obtain college credit for appropriate nuclear power plant training and work experience through arrangements with the academic sector.

Discussion

The purpose of the contemplated rulemaking is to upgrade the operating, engineering, and accident management expertise provided on shift by combining both engineering expertise and operating experience in the senior operator function. This is being done to further ensure the protection of the health and safety of the public by having personnel on shift with enhanced qualifications.

The NRC is concerned that operator qualifications to deal with accidents beyond design basis conditions warrant improvement. Operator training programs and related emergency

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[1] Copies of all NUREGS referenced may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

[2] SECY-82-162 and Generic Letter 84-16 are available at the NRC Public Document Room at 1717 H Street, NW., Washington, DC.

operating procedures, generally do not consider accident conditions beyond inadequate core cooling. There is general consensus that well qualified operators can substantially mitigate the effects of severe accidents. The industry Degraded Core Rulemaking Program (IDCOR) industry group for example, has developed arguments that operators could substantially reduce the risk proposed by these conditions. The NRC is considering the need for more extensive severe accident training and emergency operating procedures as well as engineering qualifications for senior operators.

The policy statement on engineering expertise on shift (October 28, 1985; 50 FR 43621) provided an interim way of achieving more engineering capability on shift. Essentially the NRC is moving from interim requirements which provide engineering capability for accident conditions (the STA), to requiring engineering capability, and nuclear power plant operating experience in the same individual (the SO).

The contemplated rulemaking action would require that all applicants for a Senior Operator (SO) license after January 1, 1991, must have a baccalaureate degree in engineering, engineering technology or the physical sciences from an accredited university or college. Other baccalaureate degrees from an accredited institution may be accepted on a case-by-case basis. Degree equivalency will no longer be accepted. A baccalaureate degree in another subject area would be acceptable if the utility (licensee) certifies that the applicant has demonstrated high potential for the SO position.

The contemplated rule would apply only to the SO. Licensed SOs or otherwise fully qualified applicants prior to January 1, 1991, would be exempt from the degree requirement. Licensed reactor operators (ROs) would not be required to have a degree.

Current senior operators and senior operator applications accepted by the NRC prior to January 1, 1991, would be "grandfathered" with regard to the contemplated rule. It is recognized that "grandfathering" current SOs could result in undegreed SOs for an extended period of time.

The proposed concurrent policy statement will encourage previously licensed SOs to obtain degrees. It is the intent of the present advance notice of proposed rulemaking to specify that senior operator license applications received after January 1, 1991, would not be accepted by the Commission unless the license application holds a baccalaureate degree from an accredited college or university.

In the past the NRC has accepted "equivalents" to the baccalaureate degree. The equivalents were based upon specialized utility training or other work experience. For the contemplated rule, equivalency would not be acceptable to the NRC in lieu of a degree. Because the Commission is not in a position to evaluate the academic equivalency of utility training, it encourages academic institutions to allow course credit for such equivalency based upon work experience or specialized training. Thus the proposed concurrent policy statement would encourage efforts to have the training accepted by the colleges for partial credit toward fulfilling the requirement of an accredited degree.

The degree requirement would not apply to licensed reactor operators (ROs). However, the proposed concurrent policy statement would encourage degrees for ROs. The Commission believes a degree requirement on shift, along with the concurrent proposed policy statement will not only enhance public health and safety, but will also provide a route for promotion by SOs.

The cut off date of January 1, 1991, for application for an SO license by individuals who are not degreed is chosen for three reasons. First, it will allow operators now in training sufficient time and notice to complete a degree before application. Second, it should not cause undue hardship on operators who are now in the process of preparing and training for the senior operator license. Third, licensees are encouraged by the Policy Statement on Engineering Expertise on Shift (Option 1) to move toward a dual-role SO/STA position. Furthermore, operators who are licensed as SOs prior to January 1, 1991, would be "grandfathered." The proposed rule would only allow one re-examination for SO applicants who apply for a license just prior to January 1, 1991. This would prevent essentially unqualified individuals (without degrees) from applying just to "beat" the deadline.

The contemplated rule also requires one year of "hot" operating experience for a degreed SO after January 1, 1991. This is simply a continuation of current NRC established policy to provide engineering and accident expertise on shift. It is essential that the SO know and understand plant operations as well as the theoretical, academic, and accident management aspects of the position.

The concurrent policy statement is planned as a way of encouraging licensees (utilities) and the nuclear industry to provide incentives and management opportunities for SOs as well as improving the engineering capabilities of the on-shift crew. The SO with a degree and shift operating experience can become a valuable personnel resource for the utility, one who combines shift operational management experience with the potential for greater management responsibility. The policy statement will encourage licensees to provide that career path.

A regulatory analysis and a backfit assessment will be developed after the comments are received and evaluated, prior to notice of the proposed rulemaking and concurrent policy statement.

Invitation to Comment

Comments regarding the proposed rule are encouraged. Comments on the contemplated rule are solicited in regard to:

1. Is January 1, 1991, a feasible deadline for requiring senior operators to be degreed and licensed, and if not, what should the deadline be?
2. What the implementation and operation costs of the contemplated rule to utilities would be?
3. Assuming regular shift rotation, could the typical SO obtain an engineering or technical degree prior to January 1, 1991?
4. What type of engineering degree would be appropriate, e.g., nuclear, electrical, mechanical, industrial, etc?
5. What has been the industry's experience in securing college-equivalent credit for nuclear power plant training and/or work experience?
6. Should there be similar experience requirements for one-of-a-kind advanced reactors?
7. What are the combined impacts of requiring two years of responsible nuclear power plant experience, the degree requirements, and one year "hot" operating requirement for the position of SO?
8. Should the contemplated degree requirement for senior operators be supplemented with or replaced by intensive focused training requirements in severe accidents for nuclear power plant operators?
9. What are the appropriate criteria for assessing a utility's certification that an individual with a baccalaureate degree in other than engineering or the physical sciences has "demonstrated high potential" for the SO position?
10. What are the implications of this contemplated rulemaking on decisions concerning future reactor designs?

11. Should the NRC require specialized training in severe reactor accidents beyond inadequate core cooling and/or require extension of emergency operating procedures into the realm of more severe accidents instead of or in addition to baccalaureate degrees? What are the implications of the work by IDCOR for the qualifications, training, and emergency operating procedures for licensed reactor operators and senior operators?

12. What is an appropriate cut-off date for allowing only one re-examination for those SO applicants without a degree who apply for a license just prior to January 1, 1991?

13. The proposed rule would require an SO applicant to have a baccalaureate degree in engineering or the physical sciences from an accredited university or college. What should be the appropriate definition (e.g., Department of Education, ABET, etc.) for "an accredited university or college?"

14. What immediate impact will the contemplated rule have on operator morale?

15. [Chairman Palladino believes] that the attached Table [1] correctly identifies the present control room staff as well as that envisioned by the ANPRM by 1991 and after 1991. Should other alternative control room staffing requirements be considered?

16. TMI improvements in control room capabilities and staffing have been undertaken by the industry, i.e., STA's have been added, detailed control design reviews have been undertaken, safety parameter display systems have been installed, emergency operating procedures have been improved, and the combined SO/STA position has been approved by policy. To what extent have these improvements been effective?

17. Requiring SO's in the control room to have a technical college degree will have an impact on RO's and AO's, especially with regard to a career path for these personnel. To what extent will the SO requirement drive out capable operators, and result in high personnel turnover and instability in the workforce?

18. Presently one degreed engineer is required to be within 10 minutes of the control room or a member of the control room staff, the STA or the combined SRO/STA, respectively. While requiring a second control room operator to have a technical degree may enhance operator organizational status, professionalism and esprit de corps, will a second degreed engineer significantly improve operator performance beyond the STA or combined SRO/STA improvements? Will these improvements become apparent in the short term or the long term?

19. What is the industry view about availability of new college graduates who can be trained in nuclear power plant operation or about the feasibility of having present plant operators pursue and obtain a technical college degree?

20. Should there be a numerical limit on the total number of "grandfathered" SO's at any particular plant?

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TABLE 1

SECY-86-70

ONE UNIT(1)

ONE CONTROL ROOM

I	II	III	IV	V
PRE-TMI	NUREG-0737	SECY 84-355	ANPRM	
			NOW TO 1991	1991 AND AFTER(2)
1 SO	2 SO's	2 SO's	2 SO's	2 SO's(4)
2 RO's	2 RO's	2 RO's	2 RO's	2 RO's
	1 STA(E)(5)	1 STA(E)(5)	1 STA(E)(5)	1 STA(E)(5)
		--OR--	--OR--	--OR--
		1 SO/STA(D)(3)	1 SO/STA(D)(3)	1 SO(D)(3)
		1 SO	1 SO	1 SO(4)
		2 RO's	2 RO's	2 RO's
				--OR--
				2 SO's(D)(3)
				2 RO's
TIME				
1979	1979	1985	NOW	1991

(1) 10 CFR 50.54(m)(2).

(2) AS NON-DEGREED GRANDFATHERED SO'S RETIRE, OR OTHERWISE LEAVE THE INDUSTRY, CONTROL ROOM STAFFING WILL EVOLVE TO 2 SO'S(D) AND 2 RO'S.

(3) D = BACCALAUREATE DEGREE IN ENGINEERING OR RELATED SCIENCE (NO EQUIVALENCY).

(4) GRANDFATHERED.

(5) E = B.S. OR EQUIVALENCY.

Additional Comments of Commissioner Roberts

The additional comments of Commissioner Thomas M. Roberts on this ANPRM follow:

"Although I continue to believe that well-trained and qualified operators are important in assuring safe and reliable operation of nuclear plants, I am concerned that this rulemaking will negatively affect the level of experience and expertise of senior operators (the potential for negative implications was raised in the 1982 report of the Commission's Peer Advisory Panel on Operator Qualifications). I will be specifically interested in public comments on: (1) The extent that a formal degree requirement for senior operators is related to job performance, (2) whether requiring a baccalaureate degree for senior operators will enhance public health and safety, and (3) what negative safety implications may result from this proposal."

Additional Views of Commissioner Asselstine

The additional views of Commissioner James K. Asselstine on this ANPRM also follow:

"I have approved this advance notice of proposed rulemaking for the purpose of obtaining public and industry comment on the various options for upgrading the level of operating, engineering and accident management expertise on shift at operating nuclear powerplants. I agree entirely with the conclusion expressed in this advance notice that operator qualifications to deal with accidents beyond the design basis for the plants warrant improvement. Qualified operators can play a potentially significant role in mitigating the consequences of severe accidents. However, in order to carry out this role, operators must have sufficient knowledge of engineering and reactor theory to understand plant behavior under severe accident conditions.

"Although considerable progress has been made in recent years in improving operator training programs and plant emergency operating procedures, these training programs and procedures generally do not consider accident conditions beyond inadequate core cooling. Moreover, despite the improvements in reactor operator training, recent experience with NRC-administered reactor operator requalifications examinations indicates that some operators are having difficulty in retaining the level of knowledge of engineering and reactor theory needed to deal effectively with design basis events. These indications of weakness in operator knowledge of engineering and reactor theory, the absence of emergency procedures to deal with beyond design basis events, and the reliance on operator actions as one means of mitigating the effects of severe accidents all point to the need for more extensive knowledge of engineering and reactor theory on the part of plant operators, and particularly those operators holding senior reactor operator (SRO) licenses and serving in the position of shift supervisor.

"Although I believe that additional engineering knowledge is needed by licensed senior reactor operators, I am not satisfied either with the approach recommended by the NRC staff or with the position adopted by the Commission in this advance notice of proposed rulemaking. The NRC staff proposed that after January 1, 1991, all applicants for a senior reactor operator license hold a baccalaureate degree in engineering or a related science from an accredited institution. In addition, the staff proposed a requirement that after January 1, 1991, at least one SRO per shift at a nuclear powerplant (the SRO serving as the shift manager) meet the degree requirement. For purposes of this advance notice, the Commission accepted the staff's first recommendation but not the second. The practical effect of the Commission's position is to exempt forever from the degree requirement any person holding an SRO license on January 1, 1991.

"While the staff and the Commission proposals would bring about some improvement in the engineering knowledge of some licensed reactor operators, both of the proposals suffer from a number of disadvantages. First, it is not clear that requiring a baccalaureate degree in engineering provides the best means for assuring that senior reactor operators have the knowledge needed to carry out their responsibilities. Some courses required for an engineering degree may well be irrelevant to an understanding of reactor behavior during accident conditions. At the same time, some engineering knowledge and reactor theory needed to understand and cope with beyond design basis accident situations will not be covered by the courses needed to obtain a baccalaureate engineering degree. Second, imposing a degree requirement for SRO's is likely to result in the loss of some experienced and skilled reactor operators. After 1991, experienced reactor operators (RO's) will not be permitted to become SRO's without obtaining a degree, and the SRO's without a degree will not be able to advance to the position of shift manager or supervisor. Third, by focusing on degree requirements for SRO's, these proposals will require literally years before engineering knowledge on shift is substantially upgraded. In the case of the staff proposal, some SRO's wil have upgraded engineering expertise (applicants for SRO licenses after January 1, 1991, and pre-1991 SRO's serving as shift managers) while others need not upgrade their engineering knowledge at all (pre-1991 SRO's not serving as the shift manager). In the case of the Commission proposal, large numbers of licensed SRO's could be exempt from any upgrading of their engineering knowledge because the degree requirement would only apply to new SRO applicants after January 1, 1991. To avoid the requirement, a utility could simply obtain SRO licenses for all its reactor operators prior to 1991.

"In view of the disadvantages of the NRC staff and Commission proposals, I would appreciate comments on an alternative method for upgrading the engineering knowledge and understanding of reactor theory needed by licensed senior reactor operators. This method would include the following steps:

"1. Establish a working group, with NRC, academic and industry participants, with the responsibility to define the engineering knowledge and understanding of reactor theory needed for reactor operators to deal effectively with design basis events and severe accidents.

"2. Establish a training curriculum for each nuclear utility operator training program that will provide all senior reactor operators with the knowledge and understanding defined by step 1. This curriculum would establish milestones in individual subject areas to be achieved by new SRO candidates and previously licensed SRO's and would lead to satisfactory completion of the curriculum not later than January 1, 1991. These curriculums would be reviewed and accredited by NRC or by an appropriate industry or third party organization.

"3. Develop and administer new NRC senior reactor operator licensing examinations and NRC and licensee SRO requalification examinations that will test achievement by operators at each of the milestones defined under Step 2, leading to a comprehensive examination not later than 1991 for all new and previously-licensed senior reactor operators. A passing grade on this examination would be required to obtain or retain an SRO license after January 1, 1991."

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

Authority Citation

The authority for this advanced notice of proposed rulemaking is:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201).

Dated at Washington, DC, this 27th day of May 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-12153 Filed 5-29-86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 86N-0175]

Canned Dry Peas; Advance Notice of Proposed Rulemaking on the Possible Amendment of U.S. Standards of Identity, Quality, and Fill of Container

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Canned Mature Processed Peas (Codex Standard 81–1981) (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability of and need for amending the U.S. standards for this food to achieve consistency with the Codex standard. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need to amend the U.S. standards for canned dry peas, FDA will not propose their amendment.

DATE: Comments by July 29, 1986.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0118.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a number of Codex standards, among which is the Codex standard for Canned Mature Processed Peas (Codex Standard 81–1981).

As a member of the Codex Alimentarius Commission, the United States is obligated to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country which concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to appropriately revise an existing standard to incorporate the provisions within the U.S. standard. At present, the United States has standards of identity, quality, and fill of container for canned dry peas which differ in some respects from the Codex standard.

Under the procedure prescribed in 21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment on: (1) The desirability of and need for amending the U.S. standards for canned dry peas, (2) the specific provisions of the Codex standard, (3) additional or different requirements that should be in the U.S. standards, and (4) any other pertinent points.

FDA advises that if the comments received do not support the need to amend the U.S. standards of identity, quality, and fill of container, no amendment will be proposed. If this decision is reached, FDA will inform the Codex Alimentarious Commission of the differences between the Codex and U.S. requirements and that imported foods may move freely in interstate commerce in this country, providing they comply with the applicable U.S. laws and regulations which include the U.S. standards of identity, quality, and fill of container for canned dry peas.

Because of the large number of countries, often with diverse food regulations, that are associated with the development of Codex standards, certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements such as declaration of the net quantity of contents, name of manufacturer and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 401 of the act, rather, they are dealt with under the authority of other sections of the act.

For the benefit of interested persons who may wish to submit comments relative to this notice, FDA points out that the following major differences exist between the Codex standard and the U.S. standards for canned dry peas:

1. Viscosity of packing medium. The Codex standard in section 2.2.2 requires that the packing medium shall separate from the peas at 20° C. The U.S. standards contain no requirement regarding the viscosity of the packing medium.

2. Defects and allowances. (a) The Codex standard in section 2.2.5 and the U.S. standard by cross reference in § 155.172(b)(1) to the U.S. standard for canned peas in § 155.170(b)(1) (i) through (v) contain the following defect action levels:

	Based on the weight of drained peas	
	Codex standard (percent)	U.S. standard (percent)
Blond and yellow peas (i.e., white or yellow but edible peas)	(1)	2
Blemished peas (i.e., slightly stained or spotted peas)	10	5
Seriously blemished peas (i.e., peas that are hard, shriveled, spotted, discolored, or otherwise blemished to the extent that the appearance or eating quality is seriously affected)	2	1
Pea fragments	10	10
Extraneous vegetable material	0.6	0.5

(1) No requirement.

In addition to the requirements above, the Codex standard in section 2.2.5 states that the sum of the individual defect action levels shall not exceed 15 percent and the U.S. standard by cross reference in § 155.172(b)(1) to§ 155.170(b)(1)(vii) states that the sum shall not exceed 12 percent.

(b) The Codex standard does not provide a limitation on ruptured skins. The U.S. standard in § 155.172(b)(1)(ii) states that skins of not more than 25 percent by count of the peas in a container may be ruptured to a width of 1.6 millimeters (0.06 inch) or more.

3. Softening agents. The Codex standard in section 3.2 provides for a maximum level of 150 milligrams/kilogram (0.005 ounce/2.2 pounds), expressed as sodium, singly or in combination, of sodium bicarbonate and sodium citrate as softening agents. The U.S. standard of identity does not provide for softening agents.

4. Flavorings. The Codex standard in section 3.4 has temporarily endorsed the use of natural flavors and their identical synthetic equivalents at levels limited by good manufacturing practice. The U.S. standard by cross reference in § 155.172(a) to the U.S. standard for canned peas in § 155.170(a)(2)(ix) provides for safe and suitable flavoring ingredients (except artificial).

5. Vacuum pack. The Codex standard is silent on vacuum pack. The U.S. standard by cross reference in § 155.172(a) to the U.S. standard for canned peas in § 155.170(a)(3)(ii)(*c*) states that the words "vacuum pack" or "vacuum packed" shall be included as part of the name or in close proximity to the name of the food when the weight of the liquid in the container is not more than 20 percent of the net weight and the container is closed under conditions creating a high vacuum in the container.

6. Minimum total soluble solids or drained weight. The Codex standard in section 6.1.2.1 states that the total solids of the product is not less than 19.5 percent of the weight of distilled water at 20 °C which the sealed container will hold when completely filled. As an alternative to this requirement, the Codex standard in section 6.1.2.3 states that the drained weight is not less than 60 percent by weight of distilled water at 20 °C which the sealed container will hold. The U.S. standard by cross reference in § 155.172(c)(1) to the U.S. standard for canned peas in § 155.170(c)(2) states that when the peas and liquid are removed from the container, and returned thereto, the peas (irrespective of the quantity of liquid) 15 seconds after they are returned fill the container to a vertical distance of 5 millimeters (0.20 inch) below the top of the double seam of the containers and to a vertical distance of 13 millimeters (0.5 inch) below the top of glass containers.

7. Compliance. The Codex standard in section 8 specifies analytical methods by which compliance with certain provisions would be determined. In making such determinations, FDA prefers to rely on methods of analysis recognized by the Association of Official Analytical Chemists.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 155

Food standards; Vegetables.

The Codex standard under consideration is as follows:

Codex Stan. 81–1981—Codex Standard for Canned Mature Processed Peas [1] (World-wide Standard)

1. *DESCRIPTION.*

1.1 *Product Definition.*

Canned processed peas or canned mature peas are the product:

—*prepared* from clean, substantially sound, whole, threshed, dried mature seeds of green pea varieties (cultivars) conforming with the characteristics of the species *Pisum sativum L.* which have been soaked, but excludes the sub-species *macrocarpum;*

—*packed* with water to which may be added nutritive sweeteners, seasoning and other ingredients appropriate to the product; and

—*processed* by heat in an appropriate manner before or after being sealed in a container so as to prevent spoilage.

1.2 *Varietal types.*

Any suitable variety (cultivar) of pea may be used.

2. *ESSENTIAL COMPOSITION AND QUALITY FACTORS.*

2.1 *Basic ingredients.*

—Peas

—Water

2.1.1 Optional ingredients.

—Salt

—One or more of the carbohydrate sweeteners as defined by the Codex Alimentarius Commission and fructose

—Aromatic herbs and spices; stock or juice of vegetables and aromatic herbs (lettuce, onions, etc.); garnishes composed of one or more vegetables (lettuce, onions, pieces of green or red peppers, or mixtures of both, etc.) up to a maximum of 15% of the total drained vegetable ingredient

—Essences (see 3.3)

2.2 *Quality Criteria.*

2.2.1 Colour.

The drained peas shall have normal colour characteristic of canned processed peas, taking into consideration any added artifical colour.

2.2.2 Packing Medium.

The packing medium shall not be so viscous that the liquid will not separate from the peas at 20 °C. It shall not have a colour nor an appearance which is foreign to the product.

2.2.3 Odour and flavour.

Processed peas shall have a normal odour and flavour and be free from odours or flavors foreign to the product.

Processed peas with other permitted ingredients shall have the flavour characteristic of that imparted by the peas and the other substances used.

2.2.4 Texture.

The peas shall be reasonably tender and reasonably uniform in texture.

2.2.5 Defects and allowances.

Processed peas shall be reasonably free from defects and within the limits set forth herein for common defects as defined.

	Maximum limits (based on weight of drained peas)
(a) *Blemished peas* (peas which are slightly stained or spotted).	10% m/m.
(b) *Seriously blemished peas* (peas which are spotted, discoloured, or otherwise blemished to an extent that the appearance or eating quality is seriously affected; these shall include worm eaten peas).	2% m/m.
(c) *Pea fragments* (portions of peas: separated or individual cotyledons; crushed, partial or broken cotyledons; and loose skins).	10% m/m.
(d) *Extraneous plant material* (any vine or leaf or pod material from the pea plant, or other plant material).	0.5% m/m.
Total of the foregoing defects (a), (b), (c), (d).	15% m/m.

2.2.6 Classification of "defectives".

A container that fails to meet one or more of the applicable quality requirements, as set out in subsections 2.2.1 through 2.2.5, shall be considered a "defective".

2.2.7 Lot Acceptance.

A lot will be considered as meeting the applicable quality requirements referred to in subsection 2.2.6 when the number of "defectives", as defined in subsection 2.2.6, does not exceed the acceptance number (c) of the appropriate sampling plan (AQL–6.5) in the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42–1969).

		Maximum level
3. Food additives		
3.1 Firming Agents	Firming agents and softening agents may not be used in the same product.	
3.1.1 Calcium chloride.		350 mg/kg expressed as Ca, singly or in combination.
3.1.2 Calcium lactate.		
3.1.3 Calcium gluconate.		
3.2 Softening agents.		150 mg/kg expressed as Na, singly or in combination.
3.2.1 Sodium bicarbonate.		
3.2.2 Sodium citrate.		
3.3 Colours		
3.3.1 Fast Green FCF.		200 mg/kg singly or in combination.
3.3.2 Tartrazine		
3.3.3 Brilliant Blue FCF.		
3.4 Flavours		
Natural flavours and their identical synthetic equivalents.		Limited by good manufacturing practice. [1]
4. Contaminants		
Tin		250 mg/kg, [1] calculated as Sn.

[1] Temporarily endorsed.

5. *HYGIENE.*

5.1 It is recommended that the product covered by the provisions of this standard be prepared in accordanace with the Recommended International code of Hygienic Practice for Canned Fruit and Vegetable Products (Ref. No. CAC/RCP 2–1969).

5.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter.

5.3 When tested by appropriate methods of sampling and examination, the product:

[1] Formerly CAC/RS 81–1978.

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substances originating from microorganisms in amounts which may represent a hazard to health.

5.4 Products with an equilibrium pH above 4.6 shall have received a processing treatment sufficient to destroy all spores of *Clostridium botulinum* unless growth of surviving spores is permanently prevented by product characteristics other than pH.

6. *WEIGHTS AND MEASURES*

6.1 *Fill of container*

6.1.1 Minimum Fill

The container shall be well filled with peas and the product (including packing medium) shall occupy not less than 90% of the water capacity of the container. The water capacity of the container is the volume of distilled water at 20 °C which the sealed container will hold when completely filled (see also 8.2.3).

6.1.1.1 Classification of "defectives"

A container that fails to meet the requirement for minimum fill (90 percent container capacity) of 6.1.1 shall be considered a "defective".

6.1.1.2 *Lot Acceptance*

A lot will be considered as meeting the requirement of 6.1.1 when the number of "defectives" does not exceed the acceptance number (c) of the appropriate sampling plan (AQL-6.5) in the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969).

6.1.2 Minimum total solids content

6.1.2.1 The Total solids content (see 8.2.1) of the product shall be not less than 19.5% of the weight of distilled water at 20 ° C which the sealed container will hold when completely filled.

6.1.2.2 The requirements for minimum total solids content shall be deemed to be complied with when the average total solids content of all containers examined is not less than the minimum required, provided that there is no unreasonable shortage in individual containers.

6.1.2.3 As an alternate to the requirement in 6.1.2.1, a minimum drained weight (see 8.2.2) of 80% m/m of distilled water at 20 ° C, which the sealed container will hold when completely filled, may be utilised. However, in cases of dispute the requirement in 6.1.2.1 will be the referee method and requirement.

7. *LABELLING*

In addition to Sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. CODEX STAN. 1-1981) the following specific provisions apply:

7.1 *The name of the food*

7.1.1 The name of the product shall be "Processed Peas" or "Mature Peas" or "Reconstituted Dried Peas" or "Cooked Dried Peas" or "Soaked Dried Peas" or the equivalent description used in the country in which the product is intended to be sold.

7.1.2 A declaration, as part of the name or in close proximity to the name, shall be made of characteristic flavorings or seasonings, e.g., "with X", when appropriate. ("X" shall be the name of the characteristic flavouring or seasoning).

7.1.3 The name of the product shall include the varietal type and/or colour of the pea if the colour of the pea is not green (e.g. "Dun peas", "Yellow peas").

7.1.4 No reference shall be made to the pea being "fresh", "garden", or "green" nor shall any other word or picture be used indicating either directly or by ambiguity, omission or inference that the peas are other than peas which have been dried and soaked.

7.2 *List of ingredients*

A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with subsections 3.2(b) and (c) General Standard for the Labelling of Prepackaged Foods except that water need not be declared.

7.3 *Net Contents*

The net contents shall be declared by weights in either metric system ("Systeme international" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

7.4 *Name and address*

The name and address of the manufacturer, packer, distributor, importer, exporter, or vendor of the product shall be declared.

7.5 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

7.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

8. *METHODS OF SAMPLING, ANALYSIS AND EXAMINAITON*

8.1 *Sampling*

In accordance with the FAO/WHO Codex Alimentarious Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969).

8.2 *Test Procedures*

8.2.1 Total solids content

In accordance with AOAC Method "Determination of total solids content", XII (1975) 32.004. The results are expressed as % total solids in the product.

This percentage of total solids arrived at by the above method is then converted to total solids as a percentage of water capacity as follows:

$$\frac{\text{\% total solids (AOAC)} \times \text{net contents}}{\text{water capacity}} = \text{Total solids as a percentage of water capacity}$$

8.2.2 Determination of drained weight

In accordance with the FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables (Ref. No. CAC/RM 35-1970), Determination of Drained Weight—Method I. Results are expressed as % m/m calculated on the basis of the mass of distilled water at 20 °C which the sealed container will hold when completely filled.

8.2.3 Determination of Water Capacity of Container

In accordance with the FAO/WHO Codex Alimentarius Recommended Method (Ref. No. CAC/RM 40-1972).

For the convenience of the reader, FDA is including the text of the existing U.S. standards of identity, quality, and fill of container for canned dry peas. FDA is also including the standards of identity, quality, and fill of container for canned peas, for reference purposes only.

§ 155.170 Canned peas.

(a) *Identity*—(1) *Definition.* Canned peas is the food prepared from fresh or frozen succulent seeds of the pea plant of the species *Pisum sativum* L. but excluding the subspecies *macrocarpum*. Only sweet wrinkled varieties, smooth-skin varieties, or hybrids thereof may be used. The product is packed with water or other suitable aqueous liquid medium to which may be added one or more of the other optional ingredients set forth in paragraph (a)(2) of this section. Such food is sealed in a container and, before or after sealing, is so processed by heat as to prevent spoilage.

(2) *Optional ingredients.* In addition to the optional packing media provided for in paragraph (a)(1) of this section, the following safe and suitable optional ingredients may be used:

(i) Salt.

(ii) Monosodium glutamate.

(iii) Disodium inosinate.

(iv) Disodium guanylate.

(v) Hydrolyzed vegetable protein.

(vi) Autolyzed yeast extract.

(vii) One or any combination of two or more of the dry or liquid forms of sugar, invert sugar sirup, dextrose, glucose sirup, and fructose.

(viii) Spice.

(ix) Flavoring (except artificial).

(x) Color additives.

(xi) Calcium salts, the total amount of which added to firm the peas shall not result in more than 350 milligrams/kilogram (0.01 ounce/2.2 pounds) of calcium in the finished food.

(xii) Magnesium hydroxide, magnesium oxide, magnesium carbonate, or any mixture or combination of these in such quantity that the pH of the finished canned peas is not more than 8, as determined by the glass electrode method for the hydrogen ion concentration.

(xiii) Seasonings and garnishes:

(*a*) Pieces of green or red peppers or mixtures of both, either of which may be dried, or other vegetables not exceeding in total 15 percent of the drained weight of the finished food.

(*b*) Lemon juice or concentrated lemon juice.

(*c*) Mint leaves.

(*d*) Butter or margarine in a quantity not less that 3 percent by eight of the finished food, or other vegetable or animal fats or oils in a quanity not less than 2.4 percent by weight of the finished foods. When butter, margarine, or other vegetable or animal fats or oils are added, emulsifiers or stablizers or both may be added, but no color, spice, or flavoring simulating the color or flavor imparted by butter or margarine may be used.

(3) *Labeling.* The name of the food is "peas" and may include the designation "green." The term "early," "June," or "early June" shall precede or follow the name in the case of smooth-skin peas or substantially smooth-skin peas, such as Alaska-type peas

or hybrids having similar characteristics. Where the peas are of sweet green wrinkled varieties or hybrids having similar characteristics, the name may include the designation "sweet," "wrinkled," or any combination thereof. The term "petit pois" may be used in conjunction with the name of the food when an average of 80 percent or more of the peas will pass through a circular opening of a diameter of 7.1 millimeters (0.28 inch). If any color additive has been added, the name of the food shall include the term "artificially colored."

(ii) The following shall be included as part of the name or in close proximity to the name of the food:

(*a*) A declaration of any flavoring that characterizes the food, as specified in § 101.22 of this chapter.

(*b*) A declaration of any spice, seasoning, or garnishing that characterizes the product, e.g., "seasoned with green peppers", "seasoned with butter", "seasoned with ——— oil", the blank to be filled in with the common or usual name of the oil, "with added spice", or, in lieu of the word spice, the common or usual name of the spice.

(*c*) The words "vacuum pack" or "vacuum packed" when the weight of the liquid in the container, as determined by the method prescribed in § 155.3(a) is not more than 20 percent of the net weight, and the container is closed under conditions creating a high vacuum in the container.

(4) *Ingredient statement.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(b) *Quality.* (1) The standard of quality for canned peas is as follows:

(i) *Blond and yellow peas.* Not more than 2 percent of the drained weight is blond and/or yellow peas, i.e., white or yellow but edible peas.

(ii) *Blemished peas.* Not more than 5 percent of the drained weight is blemished peas, i.e., slightly stained or spotted peas.

(iii) *Seriously blemished peas.* Not more than 1 percent of the drained weight is seriously blemished peas, i.e., peas that are hard, shrivelled, spotted, discolored, or otherwise blemished to an extent that the appearance or eating quality is seriously affected.

(iv) *Pea fragments.* Not more than 10 percent of the drained weight is pea fragmented, i.e., portions of peas, separated or individual cotyledons, crushed, partial or broken cotyledons, and loose skins, but excluding entire intact peas with skins detached.

(v) *Extraneous vegetable material.* Not more than 0.5 percent of the drained weight is extraneous vegetable material, i.e., vine or leaf or pod material from the pea plant or other such material.

(vi) *Alcohol-insoluble solids.* The alcohol-insoluble solids of smooth-skin or substantially smooth-skin peas, such as Alaska-type peas or hybrids having similar characteristics, may not be more than 23.5 percent and, of sweet green wrinkled varieties or hybrids having similar characteristics, not more than 21 percent based on the procedure set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 30.012, which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(vii) *Limitation.* The sum of the pea material described in paragraphs (b)(1), (i), (ii), (iii), (iv), and (v) of this section shall not exceed 12 percent.

(2) Determine compliance as specified in § 155.3(b).

(3) If the quality of canned peas falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality when the quality of canned peas falls below the standard in only one respect, the label may bear the alternative statement, "Below standard in quality ", the blank to be filled in with the words specified after the corresponding paragraph under paragraph (b)(1) of this section which such canned peas fail to meet, as follows: (i) "Excessive blond and/or yellow peas"; (ii) "Excessive blemished peas"; (iii) "Excessive seriously blemished peas"; (iv) "Excessive pea fragments"; (v) "Excessive vegetable material"; (vi) "Excessive mealy". Such alternative statement shall immediately and conspicuously precede or follow without intervening written, printed, or graphic matter, the name "peas" and any words and statements required or authorized to appear with such name by paragraph (a)(3) of this section.

(c) *Fill of container.* (1) Except in the case of vacuum pack peas, the fill of pea ingredient and packing medium, as determined by the general method for fill of container prescribed in § 130.12(b of this chapter, is not less than 90 percent of the total capacity of the container.

(2) When the peas and liquid are removed from the container and returned thereto, the leveled peas (irrespective of the quantity of the liquid), 15 seconds after they are so returned, completely fill the container. A container with lid attached by double seam shall be considered to be completely filled when it is filled to 5 millimeters (0.2 inch) vertical distance below the top of the double seam; and a glass containr shall be considered to be completely filled when it is filled to 13 millimeters (0.5 inch) vertical distance below the top of the container.

(3) Determine compliance for fill of container as specified in § 155.3(b).

(4) If canned peas fall below the standard of fill of container prescribed in paragraph (c)(1) and/or (2) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein specified.

§ 155.172 Canned dry peas.

(a) *Identity.* Canned dry peas conforms to the definition and standard of identity, and is subject to requirements for label statement of optional ingredients prescribed for canned peas by § 155.170(a), except that:

(1) The optional pea ingredient is the dry seeds of the pea plant of the species *Pisum sativum* L. but excluding the subspecies *macrocarpum*.

(2) The optional ingredients specified in § 155.170(a)(2)(xii) shall not be used.

(3) The name of the food is "cooked dry peas" or "soaked dry peas". The optional terms specified by § 155.170(a)(3), "early", "June", "sweet", "green", "wrinkled", or any combination thereof, shall not be used on the labels.

(b) *Quality.* (1) The standard of quality for canned dry peas is that specified for canned peas by § 155.170(b) except that:

(i) The alcohol-insoluble solids maximums specified in § 155.170(b)(1)(vi) do not apply.

(ii) The skins of not more than 25 percent by count of the peas in the container are ruptured to a width of 1.6 millimeters (0.06 inch) or more.

(2) If the quality of canned dry peas falls below the standard of quality prescribed by paragraph (b)(1) of this section, the label shall bear the statement of substandard quality in the manner and form specified in § 155.170(b)(3) for canned peas, except that the words "Excessively mealy" shall not be used.

(c) *Fill of container.* (1) The standard of fill of container for canned dry peas is that prescribed for canned peas by § 155.170(c).

(2) If canned dry peas fall below the standard of fill of container prescribed by paragraph (c)(1) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein specified.

Interested persons may, on or before July 29, 1986, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Any comments submitted in support of amendment to the U.S. standards of identity, quality, and fill of container for canned dry peas should be supported by appropriate information and data regarding impact on small business consistent with requirements of the Regulatory Flexibility Act (Pub. L. 96-354).

Dated: May 9, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-12092 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-235-82]

Procedure and Administration; Miscellaneous Provisions Related to the Tax Treatment of Partnership Items

Correction

In FR Doc. 86-8763 beginning on page 13231 in the issue of Friday, April 18, 1986, make the following corrections:

1. On page 13235, in the first column, in the Authority citation, tenth line, "Section 301.6223(a)-2" should read "Section 301.6223(a)-1". In the eleventh line, "Section 301.6223(a)-1" should read "Section 301.6223(a)-2".

2. In the same column, in the fourth line from the bottom, "Section 301.623(c)-6" should read "Section 301.6231(c)-6".

3. On the same page, in the second column, in Par. 2, eighth line, "301(g)-1" should read "301.6223(g)-1".

4. On page 13236, in the first column, paragraph (2), third line, "(b)(3)" should read "(c)(3)".

5. On page 13240, in the first column, fourth line, "or" should read "of".

6. On the same page, in the second column, paragraph (vii), second line, the second "or" should read "of".

7. On page 13242, in the third column, sixth line, insert "only" after "deposit".

8. On page 13244, in the first column, paragraph (4), third line from the bottom, "6231(a)(B)" should read "6231(a)(1)(B)".

9. On page 13245, in the first column, in *Example (2)*, eighth line, insert "under" after "tax".

10. On the same page and column, in paragraph (a), sixth line, insert ". A computational adjustment" before "may".

11. On the same page, in the third column, paragraph (4), second line, insert "tax" before "matters".

12. On page 13246, in the first column, delete the first paragraph (3).

13. On page 13249, third column, paragraph (b), in the twelfth line, "the" should read "that".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 94

[PR Docket No. 86-174, RM 5072; FCC 86-219]

Radio Local Area Network Stations in the 1700-1710 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes to amend Parts 2 and 94 of the Commission's rules to permit the operation of radio local area network and similar systems in the 1700-1710 MHz band. The use of radio to interconnect local area networks could result in significant economic savings during installation of relocation of terminal equipment.

DATES: Comments must be submitted on or before July 23, 1986, reply comments on or before August 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 86-174, adopted May 1, 1986, and released May 19, 1986. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20037. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037. Telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. On May 1, 1986, the Commission adopted a Notice of Proposed Rule Making which proposed to allow the operation of radio local area network (LAN) systems in the 1700-1710 MHz band.

2. Personal computers and desktop terminals are commonplace in today's office environment and are interconnected by cable to form local area networks. However, when a LAN is interconnected by cable, relocating the LAN because of office or employee relocations can be very expensive and time consuming. A radio LAN would allow users to move computing machines without the expense or disruption of disconnecting and rerouting wires and cables.

3. In response to a petition submitted by Motorola, Inc., the Commission has proposed to permit radio LANs to operate, on a secondary basis, in the 1700-1710 MHz band. This band is allocated on a primary basis for the Meteorological Satellite Service and for government fixed use. Rules are proposed to minimize potential interference to existing stations, to allow maximum reuse of frequencies, and to establish equipment technical standards.

4. The Commission is considering requiring frequency coordination in this band and has asked that potential coordinator candidates submit their qualifications along with their comments.

5. The Commission also proposed that the use of the 1700-1710 MHz band should not be limited to radio LANs, but should be open to other office of non-office related systems that may utilize similar interconnection techniques.

6. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contracts.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, create a significant economic burden on a substantial number of small entities.

8. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

9. Interested persons may file comments on or before July 23, 1986, and reply comments on or before August 22, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided

that the fact of the Commission may take into consideration information and ideas not contained in the comments, provided the fact of the Commission's reliance on such information is noted in the report and order.

10. In accordance with the provision of § 1.419 of the Commission's Rules, 47 CFR § 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, NW., Washington, DC.

11. For further information concerning this rule making contact Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 634–2443.

List of Subjects in 47 CFR Parts 2 and 94

Radio; Private operational-fixed microwave service.

William J. Tricarico,
Secretary.

Appendix

It is proposed to amend Parts 2 and 94 of the Commission's Rules and Regulations as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

The authority citations for Parts 2 and 94 continue to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

1. The Table of Frequency Allocations in § 2.106 is amended by adding the Private Operational-Fixed Microwave Service to column (6), Rule part(s), for the 1700–1710 MHz frequency band.

§ 2.106 Table of Frequency Allocations.

UNITED STATES TABLE

Government	Non-Government	FCC use designators	
Allocation MHz	Allocation MHz	Rules part (s)	Special-use frequencies
(4)	(5)	(6)	(7)
• • • •	• • • •	• • •	•
1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 671 722 G118	1700-1710 METEOROLOGICAL-SATELLITE (space-to-Earth) FIXED 671 722	Private Operational-Fixed Microwave (94)	
• • • •	• • • •	• • •	•

2. § 94.15 is amended by adding paragraph (k) as follows:

§ 94.15 Policy governing the assignment of frequencies.

• • • • • •

(k) Applications filed for frequencies in the 1700–1710 MHz band will not be subject to the provisions of paragraphs (a) through (j) of this section.

3. § 94.61(b) is amended by adding the band 1700–1710 MHz between 960 and 1850 MHz to the table as follows:

§ 94.61 Applicability.

• • • • • •

(b) • • •

Frequency Band (MHz)	
• • • • •	
1700 to 1710	(13)
• • • • •	

4. § 94.63(b) introductory text is revised to read as follows:

§ 94.63 Interference protection criteria for operational-fixed stations.

• • • • • •

(b) The intereference protection criteria for operational-fixed stations other than those licensed on frequencies set out in §§ 94.65(a)(1), 94.90, and 94.65(m) are as follows:

• • • • • •

5. A new § 94.65(m) is added to read:

§ 94.65 Frequencies.

• • • • • •

(m) 1700–1710 MHz. (1) 2 megahertz authorized channels:

Transmit (receive) MHz

1701
1703
1705
1707
1709

(2) Upon adequate justification, up to 5 contiguous channels may be authorized at a single location.

6. § 94.71(b) is amended by adding the band 1700–1710 MHz between 960 and 1850 MHz to the table.

§ 94.71 Emission and bandwidth limitations.

• • • • • •

(b) • • •

Frequency band (MHz)	Maximum authorized bandwidth
• • • • •	
1700–1710	10 megahertz.
• • • • •	

7. § 94.73(a)(2) is amended by adding the band 1700–1710 MHz between 960 and 1850 MHz and footnote 7 to the table.

§ 94.73 Power limitations.

(a) (2)

Frequency band (MHz)	Maximum allowable EIRP (dBw)
• • • • •	
1700–1710	−10 [1]
• • • • •	

[1] Either omnidirectional or directional antennas may be authorized.

8. A new § 94.97 is added to Subpart C to read:

§ 94.97 Special provisions for the use of the 1700–1710 MHz band.

Notwithstanding any contrary provision in this part, frequencies in the 1700–1710 MHz band may be authorized subject to the following:

(a) All systems authorized in this band shall be licensed at the prescribed set of coordinates. To provide co-channel interference protection, the minimum separation between co-channel assignments shall be 2000 feet. Lesser separations will be authorized if the applicant obtains consent from affected co-channel licensees.

(b) Communications between components of a system shall be restricted to within a single building. These frequencies may not be utilized for communications between different buildings.

(c) All systems in this band shall be authorized on a secondary basis. Applicants for stations within 100 km of the following government earth station installations will submit a technical analysis stating the expected radio station signal level at the earth station coordinates.

Name and location	Coordinates (degrees-minutes)	
Eielson AFB, AK	64-15 N	148-47 W
Gilmore Creek, AK	64-59 N	147-30 W
El Toro, CA	33-38 N	117-43 W
La Jolla, CA	32-52 N	117-15 W
McClellan AFB, CA	38-40 N	121-23 W
Monterey, CA	36-35 N	121-55 W
Point Mugu, CA	34-06 N	119-05 W
Redwood City, CA	37-30 N	122-14 W
San Diego, CA	32-45 N	117-10 W
Tustin, CA	33-43 N	117-48 W
Lowry AFB, CO	39-42 N	104-53 W
Mcdill AFB, FL	27-51 N	82-29 W
Nimitz Hill GU	13-27 N	144-47 W
Hickam AFB, HI	21-33 N	157-58 W
Kaneohe Bay, HI	21-39 N	157-46 W
Pearl Harbor, HI	21-38 N	158-00 W
Chanute AFB, IL	40-19 N	88-09 W
Indianapolis, IN	39-46 N	86-10 W
Greenbelt, MD	39-00 N	76-51 W
Bay St. Louis, MS	30-19 N	89-21 W
Cherry Point, NC	34-55 N	76-52 W
Offutt AFB, NE	41-09 N	95-55 W
Beaufort, SC	32-26 N	80-40 W
New River, SC	34-43 N	77-26 W
Norfolk, VA	36-54 N	76-16 W
Wallops Island, VA	37-57 N	75-29 W
Sioux Falls, SD	43-44 N	96-38 W
Vancouver, BC	49-15 N	123-15 W
Toronto, ONT	43-45 N	79-29 W

[FR Doc. 86–12021 Filed 5–29–86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Seven National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, and Big Game Hunting, and Eleven Refuges for Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to add seven national wildlife refuges (NWRs) to the lists of open areas for migratory game bird hunting, upland game hunting, and/or big game hunting, and 11 NWRs to sport fishing. The Service has determined that such uses would be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action would be in accordance with the provisions of all applicable laws, would be consistent with the principles of sound wildlife management, and would otherwise be in the public interest by providing additional recreational opportunities. It is also the intent of this action to revise the entry for Alaska, under §§ 32.11, 32.21, 32.31, and 33.4. Under the Alaska National Interest Lands Conservation Act of 1980, refuges in Alaska were renamed and new ones added to the National Wildlife Refuge System (NWRS). 50 CFR Part 36 (Alaska NWRs) supplements the general NWRS regulations found in 50 CFR Subchapter C and includes a table listing all the refuges in Alaska.

DATE: Comments must be received on or before June 30, 1986.

ADDRESS: Comments may be addressed to: Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Room 3252, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets NW., Room 2343, Washington, DC 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: National wildlife refuges, other than those in Alaska, are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which each refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open seven refuges to hunting and eleven to sport fishing. Some of the hunting and fishing programs that are proposed require refuge-specific hunting or fishing regulations. These regulations will be included in a separate rulemaking document or refuge-specific hunting and fishing regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purposes of this proposed rulemaking to seek public input regarding the opening of the refuges cited below to migratory game bird, upland game or big game hunting, and/or sport fishing. Accordingly, interested persons may submit written comments, suggestions, or objections concerning this proposal to the Associate Director—Wildlife Resources (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary of the Interior (Secretary).

The Refuge Recreation Act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this act, the Secretary is

required to determine that funds are available for the development, operation, and maintenance of these permitted forms of recreation.

In accordance with the NWRSAA and the Refuge Recreation Act, the Secretary has determined that the proposed openings for hunting and fishing would be compatible and consistent with the primary purposes for which each of the refuges listed below was established. The hunting and fishing programs will be within State and Federal (migratory game bird) regulatory frameworks. A discussion of the compatibility of the hunting and fishing programs with the purpose(s) for which each refuge was established and the availability of funding for each program follows:

Ash Meadows NWR was purchased in 1984 to protect the endemic, endangered, and rare plants and animals (primarily fish) from alteration of their terrestrial and aquatic environments [Supplemental Appropriations Act of 1983]. The refuge is currently administered by the Desert NWR Complex, is located in a sparsely populated area and does not attract a large number of visitors. The Service proposes to open the refuge to migratory game bird (waterfowl, mourning dove) and upland game (quail, pheasant, rabbit) hunting. Because of the very limited participation expected in the hunting program and the remote chance of adverse interaction by the hunters with any endangered plant or fish species, hunting would be compatible with refuge purposes. Further, a section 7 consultation concludes that hunting "is not likely to jeopardize" the continued existence of any species listed as threatened or endangered. Opening Ash Meadows NWR to migratory game bird and upland game hunting would thus be in compliance with the NWRSAA. The annual cost of the hunting program will be approximately $9,500. Within the annual Refuge Complex budget of approximately $387,000, the necessary funds are available for the administration of the hunting program. Therefore, opening Ash Meadows NWR to migratory game bird and upland game hunting would be in compliance with the Refuge Recreation Act.

Bandon Marsh NWR was established in 1983 by authority of the Fish and Wildlife Act of 1956 to protect migratory bird habitat. It is administered by the Western Oregon Refuge Complex. The Service proposes to open the refuge to migratory game bird (waterfowl, snipe, dove, pigeon) hunting and sport fishing. Hunting and fishing pressures will be light because the area, and access to it, are somewhat remote, and most participants would come from the surrounding lowly populated area. Consequently, it is anticipated that these activities would result in only minor trampling of the vegetation which will recover the next growing season. A section 7 consultation concludes that hunting or sport fishing are "not likely to jeopardize" the continued existence of any species listed as threatened or endangered that are using the refuge. These recreational opportunities will not interfere with or distract from the purpose for which the refuge was established, therefore, they would be in compliance with the NWRSAA. The annual cost of the hunting and fishing program is estimated at $2,000. Within the annual Refuge Complex budget of approximately $430,000, the necessary funds are available for the administration of these hunting and fishing programs. Therefore, opening Bandon Marsh NWR to migratory game bird hunting and sport fishing would be in compliance with the Refuge Recreation Act.

Bear Valley NWR was established in 1978 by authority of the Fish and Wildlife Act of 1956 to protect a major winter roost for bald eagles. The refuge is administered by the Klamath Basin NWR Complex. The Service proposes to open the refuge to deer hunting. The refuge is closed to *all* public entry from November 1 through March 31, the only period of time eagles use the refuge. The hunt would occur from late August through October and will be regulated (such as vehicle access restrictions and no open fires) to insure that eagle roosting habitat is not jeopardized. A section 7 evaluation concludes that deer hunting "would not effect" the continued existence of the bald eagle. Therefore, opening Bear Valley NWR to deer hunting would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. Refuge administration, operation and maintenance costs are derived from the general tax fund by congressional appropriation. The estimated annual cost of $2,500 to manage the hunt program would be available from the annual Klamath Basin NWR Complex budget of approximately $800,000. Therefore, opening Bear Valley NWR to deer hunting would be in compliance with the Refuge Recreation Act.

Cedar Island NWR was established in 1964 by authority of the Migratory Bird Conservation Act to preserve migratory waterfowl habitat. It is administered by the Mattamuskeet NWR. The Service proposes to open the refuge to sport fishing which would be limited to fishing from refuge ditch banks, islands and bridges during daylight hours. Because of the restricted locations where fishing would occur, there will be very little or no disturbance to the waterfowl habitat, which is salt marsh dominated by *Spartina sp.* A section 7 evaluation states that "no threatened or endangered species exist on the refuge". Opening Cedar Island NWR to sport fishing would therefore be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The estimated annual cost of the fishing progam would be approximately $200. Within the annual Mattamuskeet NWR budget of approximately $406,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, opening Cedar Island NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Cedar Point NWR was established in 1964 by authority of the Migratory Bird Conservation Act to protect migratory bird habitat. Sport fishing is proposed for one 15-acre borrow pond and the Cedar Point Bay. It is proposed to open the pond to fishing only during the months of June, July and August when waterfowl use is very low. Access for fishing in the Bay will be limited to boat only thereby minimizing disturbance to shorebirds. A section 7 evaluation concludes that this sport fishing program "will not affect" bald eagles around the area. By selecting only those areas where fishing would cause little disturbance to the migratory birds and their habitat and limiting fishing activities to periods of low waterfowl use, opening Cedar Point NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The estimated annual cost of administering the program is $2,800. Within the annual refuge budget of approximately $230,000, the necessary funds are available for the administration of the fishing program. Therefore, opening Cedar Point NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Chickasaw NWR was established in 1985 by authority of the Migratory Bird Conservation Act to manage and conserve habitat for migratory birds, but not as an inviolate sanctuary for such (as allowed by the 1978 Improvements Act). The Service proposes to open the refuge to migratory game bird (waterfowl, dove, snipe, woodcock), big game (deer, wild boar and turkey) and upland game (squirrel, rabbit, quail, raccoon, opossum) hunting. Hunting will

have a beneficial effect in controlling the abundant game populations that can damage migratory bird habitat due to overpopulation. This is especially true of the deer population which could increase beyond the carrying capacity of the refuge and cause damage to the habitat through over-browsing. Further, in an Intra-Service Section 7 consultation the Region 4 Director concludes that the proposed hunting programs "are not likely to jeopardize the existence of the bald eagle or result in the destruction or adverse modification of its habitat". Opening Chickasaw NWR to migratory game bird, upland game, and big game hunting would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. With an estimated annual cost of $2,500 to administer the hunting program and an annual budget of $227,800, to operate the refuge, the necessary funds are available to administer the hunting program. Therefore, opening Chickasaw NWR to migratory game bird, upland and big game hunting would be in compliance with the Refuge Recreation Act.

Eufaula NWR was established in 1964 by authority of the Fish and Wildlife Act of 1956 to provide resting and feeding habitat for waterfowl, in a cooperative agreement with the U.S. Army Corps of Engineers. The Service proposes to open the refuge to deer hunting. Hunting will occur prior to the major arrival of migratory waterfowl in early November. The resultant deer harvest will help control the size of the herd which, if allowed to expand, could destroy the forest habitat and consume crops planted for waterfowl. A section 7 evaluation concludes that the proposed hunting program "will not affect" the bald eagle or American alligator. For these reasons, opening Eufaula NWR to big game hunting would further the purpose for which the refuge was established, and would be in compliance with the NWRSAA. The estimated annual cost to administer the hunting program is $1,000. Within the annual refuge budget of approximately $193,000, the necessary funds are available to administer this program. Therefore, opening the Georgia portion of Eufaula NWR to big game hunting would be in compliance with the Refuge Recreation Act.

Hanalei NWR was established in 1972 by authority of the Fish and Wildlife Act of 1956 to preserve and manage critical habitat for the endangered Hawaiian stilt, coot, duck and gallinule. It is administered by the Hawaiian/Pacific Islands Refuge Complex. The Service proposes to open the refuge to sport fishing. This recreational opportunity would involve fishing from a refuge dike into non-refuge waters. The location where this activity would occur is used very little by endangered waterbirds as the deep water and dense California grass on the river banks provide poor waterbird habitat. Further, a section 7 evaluation concludes that the proposed fishing program "is not likely to jeopardize" any of the species listed as endangered. Therefore, opening Hanalei NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The annual cost of the sport fishing program would be negligible, since no special services or facilities are required to administer it and public access would be via a county road available to all visitors. Within the annual Hawaiian/Pacific Islands Refuge Complex budget of approximately $800,000, the necessary funds are available for the administration of this sport fishing program. Therefore, opening Hanalei NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Johnston Atoll NWR was established in 1928 by Executive Order 4467 for "the protection of native birds". In 1934, President Roosevelt placed administrative control and jurisdiction of the refuges under the Secretary of the Navy but maintained the island as a refuge. Currently, the U.S. Department of Defense has overall administrative authority for the refuge. The Service provides the Base Commander with technical assistance on habitat maintenance, species management and environmental interpretation. The State of Hawaii has no jurisdiction over the refuge as it is outside State boundaries. Throughout the period of military occupation, residents and visitors of Johnston Atoll have been given recreational fishing opportunities which include shore fishing from the four islands in the lagoon and boat fishing in the lagoon and outside the reef. Recreational fishing at current levels has had minimal adverse impact on the resources. Present refuge and base regulations prohibit entry to the breeding seabird colonies during the breeding season and limit fishing to pier and unvegetated beach areas on the islands. Further, a section 7 evaluation concludes that the proposed fishing program "is not likely to affect" any threatened green and hawksbill turtles or humpback whales. Therefore, opening Johnston Atoll NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The Department of Defense currently provides approximately $50,000 annually to the Service to operate the refuge. Few special services or facilities are required by the Service to administer the fishing program and public access is not allowed on the refuge without prior approval by the Base Commander, so program administration costs are not great. Miscellaneous costs incurred by the program are met by the Hawaiian/Pacific Islands Refuge Complex budget of approximately $800,000. Therefore, opening Johnston Atoll NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Kakahaia NWR was established in 1977 by authority of the Fish and Wildlife Act of 1956 to preserve and manage critical habitat for the endangered Hawaiian stilt, coot, duck and gallinule. It is administered by the Hawaiian/Pacific Islands Refuge Complex. The Service proposes to open the refuge to sport fishing which would involve fishing from a refuge beach to take fish from ocean waters. A highway and fence separate the beach from wetlands used by the endangered waterbirds. Further, a section 7 evaluation concludes that the proposed fishing program "will not affect" the endangered waterbirds or adversely modify their habitat. Opening Kakahaia NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The annual cost of the program would be negligible, since no special services or facilities are required to administer it and public access would be via a county road available to all visitors. Within the annual Hawaiian/Pacific Islands Refuge Complex budget of approximately $800,000, the necessary funds are available for the administration of this program. Therefore, opening Kakahaia NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Nantucket NWR was established in 1973 by authority of the Fish and Wildlife Act of 1956 to preserve coastal habitat for shorebirds and migratory passerine birds and to provide wildlife-oriented recreation. It is currently administered by the Parker River NWR. The Service proposes to open the refuge to sport fishing. This activity would involve fishing from refuge lands into the waters of Nantucket Sound and the Atlantic Ocean. Access to the fishing areas will be allowed only over designated routes, away from the prime

migratory bird habitat and driving within 20 feet of the bases of the dunes facing the beaches will be prohibited. A section 7 evaluation concludes that threatened and endangered wildlife would "not be affected" by the proposed fishing program. For these reasons, opening Nantucket NWR to sport fishing would not disturb coastal habitat, would enhance wildlife-oriented recreation and would be in compliance with the NWRSAA. The estimated annual cost to administer the fishing program is approximately $500. Within the annual Parker River NWR budget of approximately $430,000, the necessary funds would be available to administer the fishing program. Therefore, opening Nantucket NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Ottawa NWR was established in 1961 by authority of the Migratory Bird Conservation Act for the conservation and management of migratory bird habitat. Sport fishing is proposed for the open water section of Metzger Marsh Bay, a part of the refuge. Fishing would be a management tool to remove carp whose feeding and spawning activities make the water turbid, thereby reducing the growth of submergent and emergent vegetation necessary for migratory bird feeding and nesting. Waterfowl use of the bay is moderate in the fall and spring with marsh and shorebird use low. A borrow pond, established as a result of dike construction, is also proposed to be opened for sport fishing during the months of June, July and August only. A section 7 evaluation indicates that "there are no threatened or endangered species on the refuge to be impacted by the proposed fishing program." By selecting only those areas where fishing would cause little disturbance, selecting the least disruptive time of year for public access, and encouraging an activity that would enhance the habitat for migratory birds, opening Ottawa NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The established annual cost to administer the program is approximately $2,500. Within an annual refuge budget of approximately $230,000, the necessary funds are available to administer the program. Therefore, opening Ottawa NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Pond Island NWR was established in 1973 by authority of the Fish and Wildlife Act of 1956 to preserve habitat for waterfowl, shorebirds, and passerine birds and to provide wildlife-oriented recreation. It is currently administered by the Parker River NWR. The Service proposes to open the refuge to sport fishing. This activity would consist of access by boat to a small beach and fishing from refuge lands into the waters of Casco Bay. Fishing would not be permitted during the waterfowl and shorebird nesting season, March 1 through July 31. A section 7 evaluation indicates that "there are no threatened or endangered species on the refuge to be affected by the proposed fishing program". Because of limited access to the island restricting the volume/disturbance by the public and closing it to fishing during the nesting season, opening Pond Island NWR to sport fishing would be compatible with the purpose of habitat protection. Further, it would enhance wildlife-oriented recreation and would be in compliance with the NWRSAA. The estimated annual cost to administer the program is approximately $100. Within the annual Parker River NWR budget of approximately $430,000, the necessary funds would be available to administer the program. Therefore, opening Pond Island NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Prime Hook NWR was established in 1963 by authority of the Migratory Bird Conservation Act to preserve coastal wetlands as waterfowl habitat. Opening the refuge to sport fishing would be limited to two small freshwater ponds, and to certain tidal water areas for bank and boat fishing. Fishing in the ponds would be restricted seasonally so as not to interfere with wood duck and black duck nesting. Bank fishing along tidal waterways will be restricted to areas not over 250 feet off the roadways to prevent disturbance to nesting waterfowl.

A section 7 evaluation indicates that the bald eagle and peregrine falcon "will not be affected" by the proposed fishing program. For these reasons, opening Prime Hook NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The estimated annual cost to administer the fishing program would be approximately $2,300. Within the annual refuge budget of approximately $160,000, the necessary funds would be available to administer the program. Therefore, opening Prime Hook NWR to sport fishing would be in compliance with the Refuge Recreation Act.

San Bernardino NWR was established in 1982 by authority of the Endangered Species Act to preserve habitat for the endangered Rio Yaqui fish. The Service proposes to open the refuge (lands east of Black Draw) to migratory game bird (white-winged and mourning dove) and upland game (rabbit, quail) hunting. Sensitive springs and water developments east of Black Draw will be closed so that accidental pollution will be prevented. Also, vehicular traffic will be prohibited. Further, a section 7 evaluation concludes that the proposed hunting program "will not affect" the continued existence of the endangered fish. Therefore, opening San Bernardino NWR to upland game hunting would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. Annual costs to administer the program are expected to be approximately $3,600, primarily for enforcement. Within an annual refuge budget of approximately $75,000, the necessary funds are available to administer the program. Therefore, opening San Bernardino NWR to migratory game bird and upland game hunting would be in compliance with the Refuge Recreation Act.

San Pablo Bay NWR was established in 1974 by authority of the Migratory Bird Conservation Act to preserve migratory bird habitat. It is administered by the San Francisco Bay NWR Complex. Most of the refuge consists of tidelands leased from the State of California in 1982. They were leased to protect almost 12,000 acres of shoreline and open water and under the terms of the lease must be open to waterfowl hunting. The Service proposes to open the leased lands of the refuge to migratory game bird and upland game hunting. Pheasant hunting will be permitted on certain leased lands where the population consists of pen reared birds which escape from a neighboring hunting club. Waterfowl hunting will be permitted on leased portions of San Pablo Bay and its tributaries in accordance with provisions of the lease. A section 7 evaluation and consultation concludes that the proposed hunting programs "are not likely to jeopardize" the threatened or endangered species on the refuge. Since the area being opened to waterfowl and pheasant hunting is required by the lease, opening San Pablo Bay NWR to migratory game bird and upland game is in compliance with the NWRSAA. The estimated annual cost to administer the hunting program would be approximately $5,000. Within the Refuge Complex operating budget of approximately $1,126,000, the necessary funds would be available to administer the hunting program. Therefore, opening San Pablo Bay NWR to migratory game bird and upland game hunting would be

in compliance with the Refuge Recreation Act.

Swanquarter NWR was established in 1935 by authority of the Migratory Bird Conservation Act to provide winter sanctuary for migratory waterfowl. It is administered by the Mattamuskeet NWR. The Service proposes to open the refuge to sport fishing and only permit fishing from refuge islands and the Bell Island pier into State controlled waters. Waterfowl use of these areas in the winter is low as is angler use due to the colder weather at this time of year. Therefore, no disturbance to migratory waterfowl is expected to occur from this program. Sport fishing, permitted in the State controlled waters surrounding the refuge, also has had no adverse impacts on migratory bird habitat. Further, a section 7 evaluation concludes that the proposed fishing program "will not affect" the continued existence of the bald eagle or American alligator. Opening Swanquarter NWR to sport fishing would be compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The estimated annual cost of the fishing program would be approximately $500. Within the annual Mattamuskeet NWR budget of approximately $406,000, the necessary funds would be available to administer the program. Therefore, opening Swanquarter NWR to sport fishing would be in compliance with the Refuge Recreation Act.

In summary, the Service believes that these hunting and fishing programs would be appropriate incidental or secondary uses of the refuges; would be compatible with, and in some cases enhance, the primary purposes for which they were established; would be biologically sound and compatible with the principles of sound wildlife management; and would be consistent with other previously authorized Federal programs or the primary objectives of these refuges. The Service further believes that funds would be available to administer the programs, and that they would be in the public interest by providing recreational opportunities that would not impair the resource.

Hunting and fishing plans have been developed for each respective program on the listed refuges prior to the proposed opening of them to hunting and/or fishing. Refuge-specific hunting or fishing regulations are generally included as part of the hunting or fishing plan to ensure the compatibility of the programs with refuge purposes. Necessary refuge-specific regulations proposed for the programs will be included in a separate rulemaking document on refuge-specific hunting and fishing regulations.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the proposed opening of these refuges to hunting and fishing will generate approximately 42,666 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $975,700, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 12 states, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule would have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The proposed openings would provide recreational opportunities and generate economic benefits that would not otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, etc., needed to implement activities under this rule would be less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality of November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), environmental assessments have been prepared for these proposed openings. Section 7 evaluations have been prepared pursuant to the Endangered Species Act. These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, or by mail, addressing the Director at the above address.

Nancy A. Marx, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, it is proposed to amend Parts 32 and 33 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 is revised as follows and the authority citation following § 32.41 is removed.

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 49 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927, sec. 2, 80 Stat. 928; 5 U.S.C. 301, 16 U.S.C. 460k, 664, 668bb, 668dd, 685, 690d, 715i, 715d, 725, 43 U.S.C. 315a; Proclamation 2416, 5 FR 2677, 3 CFR, 1938–1943 Comp., p. 107; 44 U.S.C. 3501 et seq.; E.O. 1014 (January 26, 1909).

PART 33—[AMENDED]

2. The authority citation for Part 33 is revised as follows and the authority citation following § 33.4 is removed.

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 451, 1270, sec. 4, 75 Stat. 884, sec. 4, 80 Stat. 927, sec. 2, 80 Stat. 928; 5 U.S.C. 301, 16 U.S.C. 460k, 664, 668dd, 668dd, 685, 690d, 715i, 715d, 725, 43 U.S.C. 315a; Proclamation 2416, 5 FR 2677, 3 CFR, 1938–1943 Comp., p. 187; E.O. 4667, 6935, and 10214 (January 26, 1909).

3. Section 32.11 would be amended by revising the entry for Alaska and by adding San Bernardino NWR, AZ, San Pablo Bay NWR, CA, Ash Meadows NWR, NV, Bandon Marsh NWR, OR, and Chickasaw NWR, TN, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Alaska

See 50 CFR 36.

* * * * *

Arizona

San Bernardino National Wildlife Refuge.

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California

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San Pablo Bay National Wildlife Refuge.

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Nevada

Ash Meadows National Wildlife Refuge.

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Oregon

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Bandon Marsh National Wildlife Refuge.

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Tennessee

Chickasaw National Wildlife Refuge.

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4. Section 32.21 would be amended by revising the entry for Alaska and by adding San Bernardino NWR, AZ, San Pablo Bay NWR, CA, Ash Meadows NWR, NV, and Chickasaw NWR, TN, alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

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Alaska

See 50 CFR 36.

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Arizona

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San Bernardino National Wildlife Refuge.

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California

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San Pablo Bay National Wildlife Refuge.

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Nevada

Ash Meadows National Wildlife Refuge.

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Tennessee

Chickasaw National Wildlife Refuge.

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5. Section 32.31 would be amended by revising the entry for Alaska and by adding Eufaula NWR, GA, Bear Valley NWR, OR, and Chickasaw NWR, TN, alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Alaska

See 50 CFR 36.

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Georgia

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Eufaula National Wildlife Refuge.

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Oregon

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Bear Valley National Wildlife Refuge.

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Tennessee

Chickasaw National Wildlife Refuge.

* * * * *

6. Section 33.4 would be amended by revising the entry for Alaska and by adding Prime Hook NWR, DE, Hanalei and Kakahaia NWRs, HI, Pond Island NWR, ME, Nantucket NWR, MA, Cedar Island and Swanquarter NWRs, NC, Cedar Point and Ottawa NWRs, OH Bandon Marsh NWR, OR, and Johnston Atoll NWR, Pacific Islands Territory, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Alaska

See 50 CFR 36.

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Delaware

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Prime Hood National Wildlife Refuge.

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Hawaii

Hanalei National Wildlife Refuge.
Kakahaia National Wildlife Refuge.

* * * * *

Maine

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Pond Island National Wildlife Refuge.

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Massachusetts

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Nantucket National Wildlife Refuge.

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North Carolina

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Cedar Island National Wildlife Refuge.
Swanquarter National Wildlife Refuge.

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Ohio

Cedar Point National Wildlife Refuge.
Ottawa National Wildlife Refuge.

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Oregon

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Bandon Marsh National Wildlife Refuge.

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Pacific Islands Territory

Johnson Atoll National Wildlife Refuge.

* * * * *

Dated: May 14, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-12118 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 104
Friday, May 30, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-404]

Productivity Improvement Review List and Estimated Dates for Beginning Studies (OMB A-76 Implementation)

AGENCY: Animal and Plant Health Inspection Service (APHIS), USDA.

ACTION: Notice of intent of conduct efficiency reviews or cost comparison studies under guidelines set forth in OMB Circular No. A-76 and OMB Bulletin No. 86-8.

SUMMARY: This notice provides locations and projected dates for starting productivity improvement studies within APHIS during fiscal year 87.

Location and type of activity	Projected review start
1. Los Angeles CA, AIC	Oct. 1986.
2. Newburgh, NY, AIC	Oct. 1986.
3. Fleming Key, FL, AIC	Nov. 1986.
4. Miami FL, AIC	Nov. 1986.
5. Honolulu, HI, AIC	Dec. 1986.

FOR FURTHER INFORMATION CONTACT: Burt C. Hawkins, Assistant Deputy Administrator for Management and Budget, Animal and Plant Health Inspection Service, Department of Agriculture, Room 1133-S, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Reviews will be conducted under the guidelines of OMB Circular No. A-76, Performance of Commercial Activities and OMB Bulletin 86-8, Productivity Improvement Program. Some of the listed activities may be evaluated in subunits or combined with other units for review. Activities may also be reviewed on the basis of all, some, or none. This is a notice of intent only and not a request for proposals.

Done at Washington, DC, this 22nd day of May 1986.

Larry B. Siegle,

Deputy Administrator for Management and Budget, Animal and Plant Health Inspection Service.

[FR Doc. 86-12118 Filed 5-29-86; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Environmental Statement for the Pacific Southwest Region

AGENCY: Forest Service, USDA.

ACTION: Availability of documents and notice of public meetings for review of the Pacific Southwest Region Supplement to the Vegetation Management for Reforestation; draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, has prepared a Supplement to the 1983 Draft Environmental Impact Statement for Vegetation Management for Reforestation for the Pacific Southwest Region. The proposal involves implementing a vegetation management program on public lands administered by the Forest Service. The Supplement presents a risk assessment and worst-case analysis of effects on human health for use herbicide. It also evaluates the effects of the various vegetation management methods on soil and water quality, and on fisheries and wildlife habitat.

Copies of the Supplement and the original Draft EIS are available at the following Office: Office of Information, USDA Forest Service, 630 Sansome Street, San Francisco, California 94111.

Reading copies will be placed in all National Forest and Ranger Distric Offices in the Pacific Southwest Region. In addition reading copies will be placed in the following libraries:

I. County Libraries

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa County, Crescent City Public Library, El Dorado, Fresno, Glenn, Eureka Main Library Dee Sockbeson, Imperial, Inyo, Kern, Documents Librarian, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plummas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Public Library Siskiyou County Reference Librarian, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Ventura, Yolo, Yuba

II. Other

California Academy of Sciences-Library; California State Polytechnic University Library Serials Unit; California State University, Chico Library, Government Publications, California State University, Henry Madden Library Government Publications Department, California State University, Sacremento University Library, Colorado State University Morgan Library, Documents Department Fred Schmidt, Fremont Library Bill Goldstein, Humboldt State University Documents Department The Library, Kerniville Library, Ministry of Forests-Library, Mojave Library, Oakhurst Branch Library, Oakland Public Library, Peninsula Conservation Foundation Libraria, Pomona Public Library Government Documents Department Sheri Silverton, Ridgecrest Library, San Diego Public Library Science and Industry Dept., Santa Maria City Library, State Library Government Documents Section, San Francisco Public Library, San Francisco State University Government Publications J. Paul Leonard Library, San Jose State University Library Government Publications Department, Stanford University Law Library Acquisitions Department, Evergreen St. College The Environmental Resource Center, University of California-LA Public Affairs Service/Local Research Library, University of California Forestry Library, University of California General Library Government Documents Department, University of California Shields Library Government Documents Department, University of California Library Government Documents Department, University of California, San Diego Central University Library Documents Department C-075p, University of California, Santa Barbara Government Publications Department Library, Willows Public Library.

Public meetings to review the content and organization of the Supplement will

be held at 1 PM and again at 7:30 PM at the following locations:

Redding, June 23
Eureka, June 24
Sacramento, June 26
Fresno, June 27
Riverside, June 30

Four public hearings at which formal comment on the Supplement may be presented will be held at 1 PM and again at 7 PM at the following locations:

Sacramento, July 21
Eureka, July 22
Redding, July 23
Riverside, July 24

Special information about these meetings will be made available through media releases and direct mailing to the project mailing list in the near future.

Written comments on the Supplemental DEIS should be *postmarked by August 11, 1986* in order to be included in the public comment analysis. They should be sent to: USDA Forest Service, Office of Information—VM, 630 Sansome Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Michael D. Srago at the above address or by calling (415) 556–2563.

Raymond G. Weissenborn,
Assistant Regional Forester for Timber Management.

[FR Doc. 86–12113 Filed 5–29–86; 8:45 am]
BILLING CODE 3410–11–M

Pacific Crest National Scenic Trail, Willamette National Forest, Lane County, Eugene, OR; Trail Relocation

A segment of the Pacific Crest National Scenic Trail will be relocated to better meet the criteria and purpose for which it was established. The change in location is compliance with the provisions of section 7(b) of the National Trails System Act (82 Stat. 919; U.S.C. 1241–1249). The official location of the Pacific Crest National Scenic Trail was published in the **Federal Register**, Vol. 38, No. 19, part II, Tuesday, January 30, 1973.

A Final Environmental Impact Statement examining alternatives for the proposed expansion of the Willamette Pass Ski Area was published on April 29, 1985. The selected alternative called for relocation of the Pacific Crest Trail as described below. That document is on file in the Supervisor's Office, Willamette National Forest, 211 East 7th Avenue, Eugene, OR 97401.

The segment as described in the **Federal Register** is within the Gold Lake Bog Research Natural Area to the east shores of the Rosary Lakes segment. The change in location more fully meets the established criteria than the published route. The change in location is denoted by a dotted line marked on the map entitled Pacific Crest Trail, Oregon #2886. A map showing the relocation is on file in the office of the Forest Superviser, Willamette National Forest, Eugene, Oregon.

The official location is amended as follows: Page 2833, Column 3, Paragraph 2, Lines 3, 4, and 9.

Delete: ". . . intersects Forest Road No. 204 . . . west edge . . ."

The sentences will now read:

"It traverses the west shore of Charlton Lake, then traverses the west side of the crest, east of Waldo Lake, for the next 8 miles. It passes just east of the Gold Lake Bog Research Natural Area, along the east side of Douglas Horse pasture, skirts the east shores of the Rosary Lakes, then abruptly turning to the west, descends into the Odell Lake Basin."

Questions concerning the trail relocation may be addressed to Richard Grace, Recreation Staff Officer, Willamette National Forest, 211 East 7th Avenue, Eugene, OR 97401, telephone (503) 687–6521.

Dated: May 19, 1986.

Gerald W. Gause,
Acting Regional Forester.

[FR Doc. 86–11973 Filed 5–29–86; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Pioneer School RC&D Measure, California; Environmental Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pioneer School RC&D Measure, El Dorado County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2121–C 2nd Street, Davis, California 95616–5475, telephone (916) 449–2848.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for the project.

This measure concerns a plant for critical area treatment. The planned works of improvement include erosion control practices such as drop inlet pipe structures, diversion trenches, minor grading and shaping, and revegetation of exposed and critically eroding areas.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contracting Mr. Eugene E. Andreuccetti.

No administrative action or implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10,901, Resource Conservation and Development Program-Pub. L. 87–703, 16 U.S.C. 590 a-f, q.)

Dated: May 19, 1986.

Paul H. Calverley,
Deputy State Conservationist.

[FR Doc. 86–12190 Filed 5–29–86; 8:45 am]
BILLING CODE 3410–16–M

Middle River Watershed, Georgia; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Middle River Watershed project, Franklin and Stephens Counties, Georgia, effective on April 14, 1986.

FOR FURTHER INFORMATION CONTACT: B. C. Graham, State Conservationist, Soil Conservation Service, Federal Building Box 13, 355 East Hancock Avenue, Athens, Georgia 30601, telephone: 404–546–2273.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions

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of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

April 21, 1986.

B. C. Graham,

State Conservationist.

[FR Doc. 86-12180 Filed 5-29-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely request, in accordance with §§ 353.53a(a)(5) and 355.10(a)(2) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. As a result of the orders of the United States Court of International Trade, issued on March 12, April 2, and April 30, 1986, we are also initiating administrative reviews of certain firms in the antidumping finding on elemental sulphur from Canada. We intend to issue the final results of all these reviews no later than May 31, 1987.

Antidumping proceedings and firms	Periods to be reviewed
Elemental Sulphur from Canada:	
Burza Resources	12/82-11/84
Canadian Occidental	12/82-11/84
Canadian Superior Oil	04/84-03/86
Chevron Standard	04/84-03/86
Gulf Oil Canada	04/84-03/86
Home Oil	12/82-11/84
Hudson's Bay Oil & Gas	04/84-03/86
InterRedec	12/82-11/84
Petro-Canada	12/82-11/84
Petro-Canada Exploration	12/82-11/84
Shell Canada Resources	04/84-03/86
Timahel Ltd.	12/82-11/84
Steel Jacks from Canada: J.C. Hallman	09/85-08/86
Sodium Nitrate from Chile: SQM	05/84-08/86
Bicycle Speedometers from Japan:	
Aoshi Keiki/All exporters	04/76-10/84
Tsuyama/All exporters	11/82-10/84
Bicycle Tires and Tubes from S. Korea: KIK	04/82-08/82
Birch 3-Ply Doorskins from Japan:	
Matsumoto/C.Itoh	02/82-07/83
Nitta Veneer/C.Itoh	02/82-11/82
Sanmoku/C.Itoh	12/82-01/85
Seitsuru Veneer/C.Itoh	12/82-07/83
Tuners (of the Type Used in Consumer Electronic Products) from Japan:	
Alps Electric	12/82-08/22/84
Maruberi	09/84-11/84
Mitsumi	12/82-08/22/84
Murata	09/84-11/84
Shin-Shirasuna	12/81-11/84
Tos Electric	12/82-11/84
PVC Sheet and Film from Taiwan: Edet	01/84-11/84
Elsevital	02/85-08/86
Everlush	02/85-05/85
Fashion Plastics	09/84-05/85
Hop Kee Hong	08/89-08/20/84
K.E. Kingstone	08/83-05/85
Lumay	01/85-08/86
Taiwan Eva	01/85-05/86
Union	01/85-05/85
Titanium Sponge from the U.S.S.R.: Technoexport	08/83-07/86

Countervailing duty proceedings	Periods to be reviewed
Leather Wearing Apparel from Argentina	07/85-12/84
Non-rubber Footwear from Argentina	01/84-12/84
Bars and Shapes from Mexico	08/84-09/84
Cotton Sheeting and Sateen from Peru	01/84-12/84
Cotton yarn from Peru	01/84-12/84
Ferrochrom from South Africa	01/85-12/84
Carbon Steel Wire Rod from Trinidad/Tobago	01/85-12/84

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: May 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR. Doc. 86-12182 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-25-M

[A-122-047]

Elemental Sulphur From Canada; Reinstatement in Part of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of reinstatement in part of antidumping finding.

SUMMARY: On November 7, 1985, the United States Court of Appeals for the Federal Circuit reversed the Department of Commerce decision to revoke the antidumping finding on Canadian elemental sulphur with respect to Shell Canada Resources, Ltd. and Canadian Superior Oil, Ltd. On March 12, 1986, the United States Court of International Trade reversed the Department's revocation and remanded the proceeding for reconsideration consistent with the opinion of the Court of Appeals. On April 2, 1986, the Court of International Trade, in accordance with the Court of Appeals decision, also reversed the Department's decision to revoke the antidumping finding with respect to Chevron Standard, Ltd. On April 30, 1986, the Court of International Trade similarly reversed the Department's revocation with respect to Gulf Oil Canada, Ltd. and Hudson's Bay Oil & Gas, Ltd.

As a result, the Department is reinstating the antidumping finding on elemental sulphur from Canada with regard to merchandise produced and exported by Shell Canada Resources, Ltd., Canadian Superior Oil, Ltd., Chevron Standard, Ltd., Gulf Oil Canada, Ltd., and Hudson's Bay Oil & Gas, Ltd.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Sean P. Kelley or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, the Treasury Department published in the **Federal Register** (38 FR 34655) a dumping finding with respect to elemental sulphur from Canada. On April 9, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 21214) the preliminary results of its first administrative review of that finding and tentative determination to revoke the finding with respect to Shell Canada Resources, Ltd., Canadian Superior Oil, Ltd., and

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Hudson's Bay Oil & Gas, Ltd. On January 27, 1982, the Department published in the Federal Register (46 FR 31911) the final results of its administrative review and revoked the finding with regard to Shell Canada Resources, Ltd. and Canadian Superior Oil, Ltd. On September 9, 1983, the Department revoked the finding with regard to Chevron Standard, Ltd. (48 FR 40760). On January 16, 1984, the Department revoked the finding with regard to Gulf Oil Canada, Ltd. and Hudson's Bay Oil & Gas, Ltd. (49 FR 1920). The revocations applied to unliquidated entries entered, or withdrawn from warehouse, for consumption on or after February 8, 1979.

The petitioner, Freeport Minerals Company (now Freeport-McMoran Inc.), sued the Department in the United States Court of International Trade regarding the revocations. On March 24, 1982, the Court of International Trade granted the Government's motion for summary judgment with regard to Shell Canada Resources, Ltd. and Canadian Superior Oil, Ltd. and thereby affirmed the Department's revocation for those two firms. On November 7, 1985, the Court of Appeals for the Federal Circuit ("CAFC") reversed the lower court's decision and remanded the matter.

On March 12, 1986, the Court of International Trade reversed the Department's revocation and remanded the proceeding for reconsideration consistent with the opinion of the CAFC. On April 2, 1986, the Court of International Trade, under the authority of the CAFC decision, also reversed and remanded the Department's revocation with respect to Chevron Standard, Ltd. On April 30, 1986, the Court of International Trade, under the authority of the same CAFC decision, reversed and remanded the Department's revocation with respect to Gulf Oil Canada, Ltd. and Hudson's Bay Oil & Gas, Ltd.

The Department, in accordance with the orders of the Court of International Trade, reinstates the antidumping finding with regard to merchandise produced and exported by Shell Canada Resources, Ltd., Canadian Superior Oil, Ltd., Chevron Standard, Ltd., Gulf Oil Canada, Ltd., and Hudson's Bay Oil & Gas, Ltd. Further, the Department is ordering the suspension of liquidation of all entries of the merchandise produced and exported by those firms and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register.

This reinstatement in part of the antidumping finding is in accordance with the orders of the United States Court of International Trade, issued on March 12, 1986, April 2, 1986, and April 30, 1986, and § 353.54 of the Commerce Regulations (19 CFR 353.54).

Dated: May 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12158 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-D-M

[A-427-010]

Certain Stainless Steel Sheet and Strip Products From France; Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order..

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on certain stainless steel sheet and strip products from France. The review covers the period from March 1, 1986. The remaining petitioners to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to certain stainless steel sheet and strip products exported on or after March 1, 1986. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Linda C. Odom or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 28520) an antidumping duty order on certain stainless steel sheet and strip products from France.

In a letter dated April 11, 1986, Allegheny Ludlum Steel Corporation, Armco, Inc., Carpenter Technology Corporation, Jessop Steel Company, LTV Specialty Steel, Inc., Cyclops Corporation, Washington Steel Corporation, and the United Steelworkers of America, the remaining petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of certain stainless steel sheet and strip products currently classifiable under item 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the Tariff Schedules of the United States Annotated. The review covers the period from March 1, 1986.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on certain stainless steel sheet and strip products from France provides a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on certain stainless steel sheet and strip product from France effective March 1, 1986. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after March 1, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review. This notice does not cover unliquidated entries of certain stainless steel sheet and strip products from France which were exported prior to March 1, 1986. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-12159 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-013]

Certain Stainless Steel Sheet and Strip Products From the Federal Republic of Germany; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on certain stainless steel sheet and strip products from the Federal Republic of Germany. The review covers the period from March 1, 1986. The remaining petitioners to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to certain stainless steel sheet and strip products exported on or after March 1, 1986. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Linda C. Odom or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 28660) an antidumping duty order on certain stainless steel sheet and strip products from the Federal Republic of Germany.

In a letter dated April 14, 1986, Allegheny Ludlum Steel Corporation, Armco, Inc., Carpenter Technology Corporation, Jessop Steel Company, LTV Specialty Steel Inc., Cyclops Corporation, Washington Steel Corporation, and the United Steelworkers of America, the remaining petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of stainless steel sheet and strip products either hot- or cold-rolled, excluding hot- or cold-rolled stainless sheet and strip not over 0.01 inch in thickness, currently classifiable under item 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the Tariff Schedules of the United States Annotated. The review covers the period from March 1, 1986.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on certain stainless steel sheet and strip products from the Federal Republic of Germany provides a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on certain stainless steel sheet and strip products from the Federal Republic of Germany effective March 1, 1986. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after March 1, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review. This notice does not cover unliquidated entries of certain stainless steel sheet and strip products from the Federal Republic of Germany which were exported prior to March 1, 1986. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12160 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-005]

Tool Steel From the Federal Republic of Germany; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on tool steel from the Federal Republic of Germany. The review covers the period from March 1, 1986. The remaining petitioners to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to all tool steel exported on or after March 1, 1986. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Linda C. Odom or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 33730) an antidumping duty order on tool steel from the Federal Republic of Germany.

In a letter dated April 22, 1986, Al Tech Specialty Steel Corporation, Columbia Tool Steel Company, Carpenter Technology Corporation, Crucible Specialty Metals Division of Colt Industries, Inc., and Latrobe Steel Company, the remaining petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of tool steel currently classifiable under item 606.9100, 606.9105, 606.9110, 606.9500, 606.9505, 606.9512, 606.9514, 606.9520, 606.9525, 606.9535, 606.9542, 606.9544, 606.9548, 606.9549, 607.2800, 607.3200, 607.3405, 607.3420, 607.4600, 607.4800, 607.5405, and 607.5420 of the Tariff Schedules of the United States Annotated. The review covers the period from March 1, 1986.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on tool steel from the Federal Republic of Germany provides a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on tool steel from the Federal Republic of Germany effective March 1, 1986. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after March 1, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review. This notice does not cover unliquidated entries of tool steel from the Federal Republic of Germany which were exported prior to March 1, 1986. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated May 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-12161 Filed 5-28-86 8:45 am]

BILLING CODE 3510-DS-M

[C-583-804]

Final Negative Countervailing Duty Determination; Oil Country Tubular Goods From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: NOTICE.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of oil country tubular goods (OCTG) in Taiwan. The net subsidy is 0.11 percent *ad valorem*. This rate is *de minimis*, and therefore this determination is negative. We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Laurel LaCivita or Loc Nguyen Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0189 (LaCivita) or 377-0167 (Nguyen).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that the following programs are countervailable:

- Preferential Export Financing.
- Export Loss Reserves.

We determine the net countervailable benefits for OCTG to be 0.11 percent *ad valorem*. Although we have determined these programs to be countervailable, the respondent received *de minimis* benefits during the review period. Therefore, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters of OCTG in Taiwan.

Case History

On July 22, 1985, we received a petition in proper form filed by the Lone Star Steel Company and CF & I Steel Corporation, producers of OCTG. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers or exporters of OCTG in Taiwan directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten

material injury to, a U.S. industry. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 12, 1985, we initiated such and investigation (50 FR 33384).

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, U.S. industry. Therefore, we notified the ITC of our initiation. On September 5, 1985, the ITC preliminarily determined that there is a reasonable indication that these imports materially injure a U.S. industry (50 FR 37056).

On August 20, 1985, we presented a questionnaire concerning the petitioners' allegations to the American Institute on Taiwan in Washington, DC. Responses to the questionnaire were received on September 20 and 23, 1985.

There is only one known producer of OCTG in Taiwan, the Far East Machinery Company, Ltd. (FEMCO). China Steel Corporation (China Steel), a state-owned supplier of pipe-and-tube inputs, responded to the Department's questionnaire concerning preferentially-priced inputs.

On September 23, 1985, we received a timely request by petitioners for an extension of the deadline date for the preliminary determination. An extension was granted on September 26, 1985 (50 FR 40560). We stated that we expected to issue our preliminary determination by November 29, 1985.

Verification was conducted in Taiwan from October 15, 1985, to November 5, 1985.

On November 29, 1985, we issued our preliminary negative determination.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. A hearing was not held because no interested party requested one in this case. Written views were received from petitioners on February 3 and 14, 1986, from respondents on February 4 and 14, 1986, and from China Steel on February 3, 1986.

On December 4, 1985, petitioners filed a request to extend the deadline date for a final determination in the countervailing duty investigation to correspond to the date of the final determination in the antidumping investigation, pursuant to section 606 of the Trade and Tariff Act of 1984. This request was granted on January 27, 1986 (51 FR 3377).

On January 16, 1986, respondents requested a delay on the deadline for the antidumping duty determination. Therefore, pursuant to section 735(a)(2) of the Act, we granted a postponement of the final antidumping and countervailing duty determinations on February 22, 1986 (51 FR 7308). We stated that we expected to issue a final determination by May 21, 1986. On April 16, 1986, the United States Steel Corporation (U.S. Steel) filed comments on our preliminary determination.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casings, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243 and 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

For purposes of this determination, the period for which we are measuring subsidies, the review period, is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaires submitted by the Taiwan authorities, FEMCO and China Steel, the verification, the amended response submitted after verification, and the briefs submitted by interested parties, we determine the following:

I. Programs Determined to be Countervailable

We determine that the following programs provide countervailable benefits to manufacturers, producers or exporters of OCTG in Taiwan:

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters in possession of a letter of credit to apply for low-cost export loans covering up to 85 percent of the value of the export transaction. Export loans are arranged through authorized foreign-currency banks, which may apply for an interest-rate reduction from the Central Bank. Exporters settle the loan with foreign exchange within 180 days or pay an interest-rate penalty on the full amount of the loan.

The Central Bank sets the maximum and minimum interest rates for commercial lending in Taiwan. Export loans were set at rates equal to or below the minimum rates established for commercial lending during the review period. Because the rates given by commercial banks are near the maximum interest rate set by the Central Bank and because no further information is available regarding average commercial lending rates in Taiwan, we used the maximum lending rates set by the Central Bank as our short-term commercial benchmark.

FEMCO obtained export loans to finance exports of the products under investigation to the United States. Because these loans are contingent upon export performance and provide funds to borrowers at interest rates lower than those available for other purposes, we determine that this program confers a benefit which constitutes an export subsidy.

To calculate the benefit, we compared the Central Bank's export-loan rate with its maximum short-term loan rate. We then multiplied the difference by the principal amount and allocated the benefit over the value of FEMCO's 1984 exports to the United States of the product under investigation. The net subsidy is 0.10 percent *ad valorem*.

B. Export Loss Reserves

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively to compensate export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then settle

the account and carry the reserve funds forward as taxable income for the next year. FEMCO received benefits from export loss reserves during the review period.

Because this program is contingent upon export sales, we determine that it confers a benefit which constitutes an export subsidy. To calculate the benefit received in 1984, we treated tax savings from the export loss reserve as a one-year interest-free loan received in mid-1983 at the time the income tax forms were filed. We compared the interest-free rate with the maximum lending rate set by the Central Bank and divided the benefit by the value of FEMCO's total 1984 exports and found the net subsidy to be 0.01 percent *ad valorem*.

II. Programs Determined Not to Confer Subsidies

We determine that the following programs do not confer subsidies on the manufacturers, producers or exporters of OCTG in Taiwan:

A. Business Tax Exemptions for Export Sales

The authorities on Taiwan levy a business tax on selling goods, rendering services or other profit seeking activities within the territory of Taiwan. Article 20 of the SEI exempts export sales, which include sales to trading companies and to manufacturers for further processing before export, from the business tax. The amount of the exemption equals the amount of business tax due on each sale destined for export. Companies pay the business tax monthly and receive exemptions for export at that time. However, if the export remains unconfirmed at the time the taxes are due, or, if the goods are sold to trading companies or to other manufacturers for further processing before export, companies initially report the sale as a domestic sale, then apply for the business tax exemptions at the time of export. Such exemptions take the form of a rebate of taxes paid. Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. We verified that the amount of the exemption or rebate is not greater than the amount of business tax due; therefore, we determine that this program does not confer countervailable benefits on manufacturers, producers or exporters of OCTG within the meaning of the countervailing duty law.

B. Stamp Tax Reductions

The authorities on Taiwan levy a stamp tax on sales invoices. Article 28 of the SEI permits the reduction of the stamp tax from 0.4 percent to 0.1 percent for all invoices issued by a profit-seeking enterprise for transactions exempt from the business tax. The stamp tax reduction is less than the amount of stamp tax due on each sale destined for export. Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. Because we verified that the amount of the reduction is not greater than the amount of the stamp tax due, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

C. Preferential Prices for Raw Materials

Petitioners alleged that the Taiwan authorities direct China Steel to provide coil at preferential prices to exporters. China Steel, a state-owned corporation and a supplier of pipe-and-tube inputs, maintains a two-tiered pricing policy. The higher first-tier price is applicable to domestic producers who manufacture goods for the Taiwan market. It is based on the landed, duty-paid price of imported hot-rolled coil. The lower second-tier price is offered to manufacturers who purchase coil to produce export products and is based on the landed, duty-free price of hot-rolled coil.

Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (*See, Final Negative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea*, 47 FR 39549). Based on an examination of China Steel's second-tier prices for hot-rolled coil used in the production of OCTG, and of the World Market prices for such coil, we found that China Steel's prices were at world-market levels; therefore, we determine that China Steel's two-tiered pricing policy does not confer a counteravailable benefit within the meaning of the countervailing duty law.

D. Preferential Income Tax Ceiling—25 Percent

Petitioners alleged that manufacturers, producers or exporters of OCTG in Taiwan benefit from a preferential income tax ceiling. Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent in corporate income taxes on income exceeding NT$500,000 rather than the 35 percent required by Taiwan's graduated corporate income tax law.

Article 15 benefits are available to all productive enterprises, defined in the SEI as stock companies engaged in manufacturing, handicrafts, mining, agriculture, forestry, fishery, animal husbandry, transportation, warehousing public utilities, public facility construction and development, public housing construction, technical services, hotels and heavy machinery construction.

In prior cases, we found this program to be countervailable because respondents were unable to demonstrate that these benefits were not limited to a specific enterprise or industry, or group of enterprises or industries. However, in the *Final Negative Countervailing Duty Determination: Welded Carbon Steel Line Pipe from Taiwan* (50 FR 53363) (*Line Pipe*), we determined that these benefits were not limited to a specific industry or enterprise or group of industries or enterprises; therefore, we determine that this program does not confer a subsidy within the meaning of the countervailing duty law.

E. Tax Credit for Investment in Production Equipment

Under Article 10 of the SEI, productive enterprises may deduct from income tax payable an amount of up to 15 percent of the value of capital equipment purchased during the year. In the event that the amount of the tax credit exceeds the value of income tax payable, the balance may be carried forward for up to four subsequent years.

Article 10 benefits are available to all productive enterprises defined above. In prior cases, we found this program to be countervailable because respondents were unable to demonstrate that these benefits were not limited to a specific enterprise or industry, or group of enterprises or industries. However, in *Line Pipe*, we determined that these benefits are not limited to a specific enterprise or industry, or group of enterprises or industries; therefore, we determine that this program does not confer a subsidy within the meaning of the countervailing duty law.

III. Programs Determined Not to be Used

We determine that the following programs are not used by the manufacturers, producers, or exporters of OCTG in Taiwan:

A. Preferential Income Tax Ceiling—22 Percent

Article 15 of the SEI also permits enterprises engaged in the basic metal production industry, heavy machinery industry, petrochemical industry or other important productive enterprises which conforms with the needs for development of economic and national defense industries and are capital-intensive and/or technology-intensive in nature to use a marginal tax rate of no more than 22 percent. We verified that FEMCO did not use the 22-perent tax ceiling.

B. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI permits newly-established productive enterprises to select one of the following benefits: (1) A tax holiday of up to five years provided that the company depreciates its assets according to Taiwan's Service Life of Fixed Assets; or (2) accelerated depreciation on the service life of machinery, equipment and buildings, construction facilities, and communication and transportation facilities. In addition, Article 6 permits expanding enterprises to select (1) a tax-holiday of up to four years on the income derived from increased capacity, if it depreciates its assets according to Taiwan's Service Life of Fixed Assets, or (2) a rapid depreciation of the newly purchased equipment beginning in the year in which the machines begin operation.

We verified that FEMCO neither claimed accelerated depreciation nor took a tax holiday during the period of review.

C. Duty Exemptions and Deferrals on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties in a series of installments beginning one year from the date of importation on selected machinery and equipment that is not manufactured domestically. In addition, qualified enterprises may be exempt from paying import duties on selected machinery and equipment which is used for the establishment or expansion of an approved project or for research and development.

We verified that FEMCO did not receive duty exemptions or deferrals.

D. Preferential Long-Term Loans

Article 84 of the SEI permits the Executive Yuan to establish and administer a special development fund to promote investments of interest to national economic development. We verified that FEMCO did not use Article 84 financing with respect to U.S. sales of the products under investigation.

Petitioners' Comments

Comment 1: Petitioners allege that the Department did not conduct a complete verification of FEMCO's short-term loan history due to the Central Bank's refusal to allow the Department to examine its discount loan records. They maintain that because the Department was unable to examine the Central Bank's records, it was unable to confirm whether FEMCO reported all of its subsidized short-term loans. Petitioners further argue that since all of FEMCO's exports of OCTG to the U.S. meet the criteria for low-cost export financing, it is reasonable to believe that FEMCO received export financing for all of its OCTG export sales. Petitioners request that the Department use best information available to determine that FEMCO received preferential export financing for all of its OCTG exports to the United States.

DOC Position: We disagree. The Department conducted a complete verification of FEMCO's loan transactions (see FEMCO Verification Report). Furthermore, the Department examined that loan ledgers regarding commercial and export financing at the branch of the International Commercial Bank of China (ICBC) which FEMCO uses.

The ICBC's records matched those reported by FEMCO with respect to the dates of disbursement and repayment of principal and interest and with respect to the terms and conditions of all such loans; therefore, the Department maintains that FEMCO's loan reporting was accurate and complete and, as such, should be sole basis for determining whether a subsidy was received.

Comment 2: Petitioners allege that the Department did not verify the lending rates charged by independent commercial banks in Taiwan, nor whether these banks require compensating balances in return for granting commercial loans. U.S. Steel, an interested party to the proceeding, further contends that the benchmark used to quantify benefits on short-term export loans should recognize that compensating balances requirements increase effective interest rates, citing the preliminary affirmative countervailing duty determination *Certain Steel Products from Brazil* (49 FR 17988, 17991). Petitioners and U.S. Steel request that the Department use best information available to construct a benchmark assuming the existence of compensating balances to raise the benchmark to the effective commercial lending rate.

DOC Position: We disagree. The Department did verify the minimum and maximum lending rates set by the Central Bank to which all commerical banks must adhere (See Government Verification Report). Because there was no allegation of, and we found no evidence of, a uniform requirement for compensating balances and no government publication gives a definitive measure of the extent to which compensating balances are actually used, we have determined not to use compensating balances in calculating our benchmark interest rate.

Comment 3: Petitioners allege that FEMCO may have qualified for a preferential income tax ceiling of 22 percent under the Statute for Encouragement of Investment (SEI). They further allege that because the authorities on Taiwan refused to provide a list of all companies receiving such financing, the Department should infer that FEMCO was among the companies on that list. Petitioners note that FEMCO's original tax return held by the City Tax Administration listed the company's tax rate whereas the copy held by FEMCO did not provide this information; therefore, petitioners argue that the Department should use the best information available to assume that FEMCO received the ceiling rate of 22 percent.

DOC Position: We disagree. FEMCO does not qualify for the 22-percent rate under Article 2.1 of the Categories and Criteria for Special Encouragement of Important Productive Enterprises. Furthermore, the Department examined FEMCO's tax forms kept on file at the City Tax Administration which reported tha FEMCO paid taxes at the 25-percent rate. Since this is the tax form filed with the tax authorities, this adequately establishes that the firm paid taxes at the 25-percent rate. Therefore, we maintain that FEMCO did not receive the more favorable 22-percent tax rate.

Comment 4: Petitioners argue that the Department should countervail the SEI's provision of a 25-percent tax rate to all productive enterprises as defined in Article 3 of the SEI. Petitioners maintain that the 25-percent rate is not generally available because various industries, and "non-productive" activities, such as interest income, are excluded from using this rate.

DOC Position: We disagree. Eligibility for the programs covers a wide variety of industries including those in the manufacturing, service, and agricultural sectors. Therefore, we have determined that benefits under this program are not

limited to a specific enterprise or industry, or group of enterprises or industries within the meaning of the Act. (See *Analysis of Programs* section of this notice.)

Comment 5: Petitioners allege that during verification, the Department determined that carbon and alloy steel seamless pipes, including OCTG, were among the metallurgical products qualifying for accelerated depreciation under Artilce 6 of the SEI. They further allege that the Department failed to properly verify this program because the Ministry of Finance, which authorizes the benefits and "would naturally be presumed to maintain a list," informed the Department that a list of Article 6 beneficiaries does not exist.

DOC Position: We disagree. Petitioners incorrectly quote the verification report with respect to the findings on OCTG. The OCTG that FEMCO produces is neither a carbon steel seamless pipe nor an alloy steel seamless pipe, and therefore, expansion or establishment of its OCTG facilities does not qualify for such benefits.

Furthermore, the Department cannot consider a verification deficient based on the presumption that a government agency should maintain a list of its beneficiaries. The Department examined FEMCO's depreciation schedules to determine utilization of the accelerated depreciation provision of Article 6 of the SEI. Upon examination of these records, and those at the City Tax Administration, we found no evidence that this provision had been used.

Comment 6: Petitioners allege that the Department's verification of FEMCO's use of the tax holiday provision of Article 6 of the SEI was inadequate. The Department learned at verification that FEMCO had approval of a four-year tax holiday stemming from the 1982 purchase of specific machinery. Petitioners allege that since FEMCO did not volunteer this information in its questionnaire response, and that, since it is difficult to believe that FEMCO would not have taken advantage of other benefits of Article 6 of the SEI, the Department should assume that FEMCO received a tax holiday upon introduction of its OCTG capacity.

DOC Position: We disagree. The Department verified at the local tax authorities, and at FEMCO, that FEMCO did not take a tax holiday in conjunction with its purchase of the approved capital equipment.

Comment 7: Petitioners fully support the arguments made by the Committee of Pipe and Tube Imports ("CPTI"), petitioners in the countervailing duty investigation of welded carbon steel line pipe from Taiwan, with respect to China Steel's provision of inputs at three price levels. (*See Final Negative Countervailing Duty Determination* 50 FR 53363). FEMCO was a respondent company in this investigation. The first-tier price is based on the CIF landed duty-paid price of imported coil for producers selling domestically. The second-tier price is based on the CIF landed duty-free price of imported coil for producers selling for export. The third-tier price is a variance price lowering the second-tier price to compensate for declining world prices. In particular, petitioners believe that the prices of China Steel's inputs should have been compared to the actual price that domestic users such as FEMCO paid for their imported inputs in order to determine if the China Steel sales provided a subsidy as argued by CPTI.

DOC Position: Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below "those commercially available on the world market to their exporters", *i.e.*, below world-market levels. Accordingly, in determining whether China Steel's prices were preferential, we compared not only the actual prices FEMCO paid China Steel to the actual prices FEMCO paid for imported coil, but also compared the prices FEMCO paid China Steel to generally available world-market prices for coil. In so doing, we found that the prices were at or above the benchmark prices. Therefore, there was no subsidy.

Comment 8: Petitioners maintain that the Department was unable to verify the price FEMCO paid for its hot-rolled coil from China Steel, and hence, must use best information to determine that FEMCO purchased hot-rolled coil for OCTG at the variance, or lowest, price.

DOC Position: The Department examined FEMCO's contract with China Steel for API hot-rolled coil used to make OCTG; we traced this purchase through its invoice, transfer voucher and ledger entry. We determined that the price paid was above the world-market price.

Comment 9: U.S. Steel argues that the proper benchmark interest rate to quantify the subsidy rate for short-term export loans should include nonbank financing. They cite the final affirmative countervailing duty determinations on *Cold Rolled Sheet from Korea* (49 FR 47284, 47287), *Cold Rolled Sheet from Argentina* (49 FR 18006, 1807), and *Wire Rod from Saudi Arabia* (51 FR 4206, 4208) as cases where the Department determined the benchmark by weight averaging the interest rates on short-term domestic credit, both bank and nonbank, as the best approximation of what firms pay for financing, absent preferential export loans.

DOC Position: In the cases cited by U.S. Steel, we did not use average of bank and non-bank credits as our benchmark. In the Korean case, we used the weighted-average cost of all short-term credit to measure the preference built into the government's rediscount mechanism for short-term export loans. In that investigation, we still used the government-mandated ten-percent interest rate as our short-term interest-rate benchmark for other programs. In the Saudi Arabian case, we looked only to long-term loan programs and used an average of commerical bank lending rates and generally-available government lending rates. Our normal practice is to look to the lending rates available in the country from either commercial banks or generally-available government sources. If the government mandates an interest-rate ceiling, as it does in Taiwan, we would still use those rates provided they were generally available.

Comment 10: U.S. Steel argues that the state-owned China Steel Corporation (China Steel) provides hot-rolled coil at preferential prices to OCTG exporters. They allege that the authorities on Taiwan restrict coil imports, thus requiring producers of OCTG in Taiwan to buy the domestic coil. They contend that, because of this import restriction, it is irrelevant as a matter of law and policy whether China Steel's preferentially-priced coil (for export use) is sold at, above, or below world prices.

DOC Position: There is no evidence that the authorities on Taiwan restrict imports. We verified that FEMCO did import hot-rolled coil; therefore, we need not address whether a prohibition on the importation of a product makes comparison to world market-prices irrelevant. Finally, comparison to world-market prices is consistent with the law and with paragraph (d) of the Annex to the Subsidies Code.

Comment 11: U.S. Steel argues that a subsidy is being provided to FEMCO in the form of reduced electricity rates by the state-run Taiwan Power Co. and that this should be included in the final determination because the Department's practice is to consider program-wide changes that occur prior to the preliminary determination.

DOC Position: U.S. Steel did not submit this allegation until 30 days

before the final determination. There was ample opportunity to submit this allegation in time for the Department to investigate. Since this allegation was submitted far too late to be investigated, we have not done so. In addition, as a general rule, we may take into account program-wide changes which occur after the period of investigation and before the preliminary determination if we have verified information on the change and the magnitude of the resulting subsidy. We do not have verified information that FEMCO has received benefits that constitute a subsidy in the form of reduced electricity rate by the state run Taiwan Power Co.; therefore, we cannot include this in our final determination.

Comment 12: U.S. Steel alleges that subsidies are also being provided to the steel industry in Taiwan by the Ministry of Economic Affairs (MOEA) in a plan that allows the industry to extend the period of bank checks and to pay tariffs at a date subsequent to importation of machinery and other plant facilities. They content that the MOEA will also ask local banks to be lenient in approving loans to the steel industry. U.S. Steel argues that since this program, and the one discussed in Comment 4, were adopted in mid-1985, before the Department's preliminary determination, they should be included in the subsidy rate for this final determination.

DOC Position: See our response to Petitioner's eleventh comment.

Respondent's Comments

Comment 1: Respondent argues that in regard to the Preferential Export Financing Program, the Department should use the number of days outstanding, and not assume a full 180-day term, when calculating the benefits for short-term loans.

DOC Position: We agree. Our short-term loan methodology includes the number of days outstanding as one of the variables in the formula for calculating a subsidy rate. We verified the number of days each loan was outstanding and used this in the calculation.

China Steel's Comments

Comment 1: China Steel asserts that the world-market price for coil is the price available to customers in the position of the respondents, which in this investigation is the price available to Southeast Asian coil users on the open world market.

DOC Position: We disagree. See our response to Petitioner's seventh and eighth comment.

Comment 2: China Steel argues that the appropriate price comparison for world-market-price analysis is between China Steel's base price for hot-rolled coil and the base price for hot-rolled coil offered by foreign suppliers.

DOC Position: We disagree. In this case, the appropriate price comparison is between the final F.O.B. price offered by foreign suppliers for each grade, quality, and size of hot-rolled coil and between China Steel's second-tier ex-works price of the comparable grade, quality and size of hot-rolled coil.

Comment 3: China Steel argues that a restriction on imports, as alleged by U.S. Steel, does not constitute a countervailable subsidy *per se*, rather, U.S. countervailing duty law determines whether inputs are preferentially priced by reference to world market price.

DOC Position: See our response to Petitioners' tenth comment.

Final Negative Determination of Critical Circumstances

Petitioners alleged that imports of OCTG from Taiwan present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, ad XXIII of the General Agreement of of Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period. We generally consider the following concerning massive imports: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

Based upon our analysis, the export subsidies bestowed upon OCTG in Taiwan are *de minimis*. Accordingly, we preliminarily determined that these subsidies are not inconsistent with the Subsidies Code.

Since we have determined that the subsidies are not inconsistent with Code commitments, we need not determine whether there have been massive imports. Accordingly, we determine that "critical circumstances" do not exist with respect to OCTG from Taiwan.

Verification

In accordance with 776(a) of the Act, we conducted a verification of the information provided in the questionnaire response. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the companies producing and exporting the merchandise under investigation to the U.S.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the Federal Register. Hence, the ITC is not required to make a final injury determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assitant Secretary for Trade Administration.

May 21, 1986.

[FR Doc. 86-12163 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-DS-M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held June 18, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda:

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Numerical Control Equipment
4. Precision Inspection Equipment
5. Sensory Control Systems
6. Electric Arc Devices/Isostatic Presses
7. Local Area Networking

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria realted thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986,

pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4217. For further information or copies of the minutes, call 202/377-4959.

Dated: May 27, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-12146 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the List of Exempt Textile Products Imported from Colombia

May 27, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 30, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Effective on May 30, 1986, under the terms of the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of July 1, and August 1, 1982, as amended, between the Government of the United States and Colombia, the exempt certification mechanism established for certain textile products produced in Colombia is being amended to include "Molas" and "Santa Rosa tapestries" on the agreed list of exempt items. A complete list of currently exempt items is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of July 20, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit, under certain specified conditions, entry into the United States for consumption and withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products, produced or manufactured in Colombia, for which the Government of Colombia had not issued an appropriate export visa or certification for exemption.

Effective on May 30, 1986, the directive of July 20, 1976 is hereby further amended to add "Molas" and "Santa Rosa Tapestries" to the agreed list of exempt items. To qualify for exemption as folklore items both must contain a folklore subject and be imported in a condition for use as a household furnishing. They may not be imported as folklore items if they must be cut to make an article of household furnishing. Neither article may be imported as fabric or as shirt or jacket material. A complete and current list of "Colombian Traditional Folklore Handicraft Textile Products" is enclosed.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Colombian Traditional Folklore Handicraft Textile Products

"Colombia Items" are traditional Colombian products, cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items:

(1) *Bedspread.*

Bedspread made on manual loom.

(2) *Blouse with crochet knitted neck.*

A blouse made of greige cloth heavily decorated around the neck, extending down the front and around the sleeves with *hand crocket* work. This blouse also has embroidered panels extending down the front on either side of the crochet work.

(3) *Embroidered Blouse.*

Hand cut and hand sewn blouse with extensive hand embroidery on the upper front and lower portions.

(4) *Embroidered Skirt.*

Hand cut and hand sewn skirt with extensive hand embroidery.

(5) *Blankets, Hand Woven.*

These colorful blankets are hand woven from wool, cotton or wool and cotton, heavy yarns to form striped or block patterns. The ends may be finished with spangles formed by the ends of the yarn and knotted, or may be hemmed.

(6) *Indian Embroidered Cloth.*

Cloth panels hand embroidered with various crude and colorful Indian scenes. Generally these cloths are used as wall hangings.

(7) *Typical Colombia Dress.*

An ankle length dress with a very wide skirt trimmed with wide handmade lace. The entire dress is hand cut and hand sewn and is a typical dress for gaiety affairs.

(8) *Typical Guajira Dress.*

A traditional loose fitting women's garment formed by a folded rectangular piece of fabric with a hole or slot in the center for the head, with intricate embroidery around the neck. This dress is made similar to a ruana, but has the outer edges sewn together except for slots for the hands and arms, and has closures on the front.

(9) *Typical Mapale Dress.*

A knee length dress consisting of very wide skirt having a row of heavy ruffles around the blouse portion and two bands of wide ruffles forming the skirt. A very gay colored festival dress.

(10) *Typical Mestiza Dress.*

A native handmade dress with wide neckline, ruffled collar and wide skirt and with ruffles on the lower part of the skirt.

(11) *Hammock.*

Multicolored stripped hammocks made by hand from coarse fabrics. Ends are formed and reinforced with strong rope.

(12) *Jacket, hand knitted.*

Wholly hand knitted jacket. These jackets are usually knitted from wool yarns. Patched pockets, also hand knitted, are hand sewn to the garment.

(13) *Jacket of hand loomed fabric.*

These jackets are wholly hand made from hand loomed fabrics. Patched pockets, also of hand loomed fabric, are hand sewn to the garment.

(14) *Ruana.*

A cloak made from a heavy rectangular piece of fabric or a blanket with hole in the center for the head to pass through. This is a typical garment worn by men, women and children throughout the higher and cooler altitudes of Colombia. The men's ruana will generally have no fringes. Women's ruanas may have fringes and are sometimes slit from the neck opening to the edge to permit the wearer to put it on as a cape.

Children's ruanas sometimes have a collar around the opening with draw strings for a close fit. These garments are sometimes known as ponchos.

(15) *Rugs, hand woven or hand knotted.*

These rugs are usually made from wool yarns and are either wholly hand woven or hand knotted. They are generally square or rectangular in shape and are in colorful designs.

(16) *Macrame Shawl.*

Hand made shawls wholly of macrame lace or with macrame lace edge. The shawls are in various colors with the typical long fringe around the lower edges.

(17) *Sweaters and Cardigans, hand knitted.*

Wholly hand knitted sweaters and cardigans, generally a bulky knit with decorative vertical patterns.

(18) *Table Cloths and Napkins, embroidered.*

Table cloths and napkins cut and hemmed by hand and extensively embroidered by hand.

(19) *Colorful waist band.*

Hand plaited waist bands in multicolors. These are sometimes sewn together to form wide bands.

(20) *Wall hangings, rectangular.*

A colorful wall hanging made from coarse yarns connected to decorative crudely woven bands. These are hand made and come in various sizes.

(21) *Wall hanging, tree.*

Tree shaped wall hangings formed by connecting together crudely woven bands in graduated sizes with coarse yarns to form the outline of a tree. The wall hanging is decorated with small balls of cotton fiber.

(22) *Indian Color Knapsack.*

Knapsack made with belt like woven or plaited strap and multicolored bag, to be worn on the shoulder.

(23) *Pillow Covers, Embroidered by hand.*

Covers for throw pillow containing extensive hand embroidery covering 50 percent or more of the outer surface of the cover.

(24) *Hand made macrame handbags.*

(25) *Molas.*

Hand appliqued layers of different colors, forming geometric and abstract designs, made of cotton material.

(26) *Santo Rosa Tapestries, Bedspreads and Pillowcases.*

Tapestries, bedspreads and pillowcases, of vivid colors, with hand appliqued figures forming landscapes and folk scenes, made of cotton material.

[FR Doc. 86-12146 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

May 27, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 27, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

A CITA directive dated February 4, 1986 (51 FR 4781) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 330 pt. 633, 641 and 647/648, produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous agreement year in certain categories (carryover). Under the foregoing provision of the bilateral agreement and at the request of the Government of Mexico, the limits established for the aforementioned categories are being increased for carryover, as available, for goods exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of February 4, 1986 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986.[1]

[1] The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, provides, in part, that: (1) Specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Effective on May 27, 1986, paragraph 1 of the directive of February 4, 1986 is hereby amended to include the following adjusted restraint limits:

Category	Adjusted 6-month restraint limit [1]
330pt.[2]	920,119 pounds.
633	28,182 dozen.
641	235,875 dozen.
647/648	692,000 dozen of which not more than 444,000 dozen shall be in Category 647 and not more than 444,000 dozen shall be in Category 648.

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1985.

[2] In Category 330, only T.S.U.S.A. numbers 381.0002, 381.0010, 384.0028, and 384.5227.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12147 Filed 5-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

May 27, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 30, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On September 6, 1985, a notice was published in the Federal Register (50 FR 36462), which established import restraint limits for women's, girls' and infants' cotton coats in Category 335 and men's and boys' cotton shirts in Category 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extends through May 29, 1986. These limits filled on November 6, 1985 (Cat. 340) and December 16, 1985 (Cat. 335).

On December 24, 1984 a notice was published in the Federal Register (49 FR 49679) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements, in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit

established for that period at a prescribed rate during the following period. CITA has decided, in the case of imports in Categories 335 and 340, exported from Turkey on and after May 30, 1985 and extending through May 29, 1986, to direct Customs to permit entry in amounts not to exceed 8,415 dozen (Cat. 335) and 50,075 dozen (Cat. 340) during each of the thirty-day periods stipulated in the letter to the Commissioner of Customs which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on May 30, 1986, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 335 and 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extends through May 29, 1986, which were in excess of the limits established for that period, in the following amounts per category in each thirty-day period:

Category	Amount to be entered
335	8,415 dozen.
340	50,075 dozen.

The thirty-day periods shall be as follows:

May 30–June 29, 1986
June 29–July 28, 1986
July 29–August 27, 1986
August 28–September 26, 1986
September 27–October 26, 1986

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston, III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12213 Filed 5-28-86; 9:30 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval for Information Collection Requirements—Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) has submitted to the Office of Management and Budget a request for extension of approval, through June 30, 1989, of information collection requirements applicable to exporters.

Three statutes administered by CPSC—the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act—contain requirements on the exportation of noncomplying products, those that fail to comply with a safety regulation issued under one of the acts. The requirements are implemented by regulations at 16 CFR Part 1019. Exporters must notify the CPSC of their intention to export noncomplying products and the CPSC must, in turn, notify the countries of destination.

The notification information consists of the name, address, and telephone number of the exporter, the name and address of each consignee, the quantity and a description of the products to be exported, an identification of the applicable safety requirements, and the anticipated date of shipment and port of destination. The requirements are designed to assure that foreign countries are able to make informed choices about whether to allow into their territories products that are prohibited from commerce in the United States. Foreign countries use the collected information to make that determination, and the CPSC uses the information to fulfill its reporting obligations to the foreign countries.

The information must be submitted by exporters only when they intend to export noncomplying products. At that time, the information would be readily available to them.

Additional Details About the Request for Extension of Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, DC 20207.

Title of information collection: Procedures for Export of Noncomplying Products. 16 CFR Part 1019.

Type of request: Extension of approval of information collection requirements contained in regulations.

Frequency of collection: Occasional reporting of information.

General description of respondents: Exporters of consumer products.

Estimated number of respondents: 20.

Estimated number of hours for all respondents: 100.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Andy Velez-Rivera, Desk Officer, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone: (202) 395-7340. Copies of the request for extension of approval of information collection requirements are available from Francine Shacter, Office of Budget, Program Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 22, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-12117 Filed 5-29-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Engineers Corps, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement for a Flood Control Project for Fort Wayne and Vicinity, IN

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

Proposed Action

A flood control project for Fort Wayne, Indiana, and vicinity is being studied to resolve flooding problems. Recognizing the economic, social and cultural problems caused by recurring floods in Fort Wayne and its vicinity, Congress provided the authority for this study by Resolution of the Committee on Public Works, House of Representatives, Congress of the United States, dated 20 October 1972.

Alternatives

A number of alternatives for flood control at Fort Wayne and vicinity have been formulated; both structural and nonstructural alternatives were included. Twelve alternative plans were identified to meet the identified problems and opportunities of the study area. Following evaluation at the Reconnaissance study stage, six alternatives are considered viable. Six alternatives, including the No Action alternative would be addressed in detail in the proposed Draft Environmental Impact Statement:

(1) No Action. Without project condition, no Federal action would be taken.

(2) 40 Percent Trier Ditch Diversion with Channel Modification. This alternative calls for construction of a Trier Ditch Cut-off that would carry 40 percent of the design flood peak discharge of the St. Marys River; channel modification of the Maumee River from Bruick Road to the confluence with the St. Marys River, of the St. Joseph River from Constance Avenue to its mouth, and of the St. Marys River from the confluence to Fairfield Ditch, and construction of levees where economically beneficial.

(3) 40 Percent Trier Ditch Diversion with Levee and Floodwall Protection. This alternative calls for construction of a Trier Ditch Cut-off which would carry 40 percent of the design flood peak discharge of the St. Marys River; channel modification of the Maumee River channel downstream of Trier Ditch and of the St. Joseph River from the mouth to Constance Avenue; construction of levees as necessary from U.S. (on the Maumee River) to Bear Field Thruway (on the St. Marys River); and floodplain evacuation and recreational development of selected areas.

(4) 80 Percent Trier Ditch Diversion. This alternative calls for construction of a Trier Ditch Cut-off that would carry 80 percent of the design flood peak discharge of the St. Marys River and channel modification of the Maumee River downstream from Trier Ditch and of the St. Joseph River from Constance Avenue to its mouth.

(5) Total Levee and Floodwall Protection. This alternative proposes to protect flood prone areas by constructing levees and/or increasing the heights of existing levees to a sufficient elevation to alleviate floodling.

(6) Flood Plain Evacuation with Wetland Retention. This alternative would include evacuation and restoration of the floodway fringe and improvement of existing levees to certifiable standards. In addition, sites on Trier Ditch would be evaluated to determine their potential for wetland development for flood storage purposes.

Scoping Process

a. Public Involement. A public workshop was held on December 7, 1983 at Fort Wayne. The purpose of this workshop was to afford an opportunity to all parties to express their views concerning the need for flood protection in the Fort Wayne area. A reconnaissance report for Flood Control at Fort Wayne and vicinity, Indiana, was completed in June 1984 and distributed for public review and comment. Meetings have been held with Federal, state and local interests to discuss various aspects of the study, most recently a planning meeting in November 1985. This meeting included representatives of all interested agencies and allowed them to express any concerns with the above alternatives. Other public workshops, public meetings and informal planning meetings will be held throughout the study process to insure complete consideration of public interests. Coordination with Federal, State and local officials has been, and will continue to be, maintained.

b. Significant issues to be addressed in the EIS are:

(1) Water quality impacts to the St. Joseph River, St. Marys River, Maumee River and their tributaries, as a consequence of the proposed flood control alternatives.

(2) Nature of bottom sediment material to be disturbed or removed and the location of potential disposal sites.

(3) Impacts of alternatives on fish and wildlife resources, and historical/archaeological resources.

(4) Social and economic impacts of the proposed alternatives.

c. Other Environmental Review and Consultation Requirements—This project will be reviewed for compliance with the following: The Fish and Wildlife Act of 1956; Fish and Wildlife Coordination Act of 1958; National Historic Preservation Act of 1966; National Environmental Policy Act of 1969; Endangered Species Act of 1973; Water Resources Development Act of 1976; Executive Order 11990, Wetlands Protection, May 1977; Executive Order 11988, Floodplain Management, May 1977; Clean Air Act of 1977; Clean Water Act of 1977; Corps of Engineers, Department of Army, 33 CFR Part 230, Environmental Quality; Corps of Engineers, Department of Army, Policy and Procedures for Implementing NEPA [ER 200-2-2].

Estimated Date of Environmental Impact Statement Release

It is anticipated that the Draft Environmental Impact Statement will be available to the public in October 1986.

Address

Questions about the proposal action and Environmental Impact Statement can be answered by Ms. Florence Bissell, Environmental Analysis Branch, U.S. Army Corps of Engineers, Box 1027, Detroit, Michigan 48231.

Dated: May 22, 1986.

Robert F. Harris,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-12189 Filed 5-29-86; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

College Housing Program; Application Notice for New Awards for Fiscal Year 1986

Applications are invited for new projects under the College Housing Program for fiscal year 1986.

This program is authorized under Title IV of the Housing Act of 1950, 12 U.S.C. 1749–1749d, and administered by the Secretary of Education under section 306

of the Department of Education Organization Act, 20 U.S.C. 3446.

Under this program, the Secretary is authorized to award low-interest loans to assist eligible institutions (1) in providing housing and other educational facilities for students and faculty members, and (2) in conserving energy and reducing related operating costs.

Closing Date for Transmittal of Applications

Applications for awards must be mailed or hand-delivered on or before June 30, 1986.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Attention: 84.142, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., (ROB–3, Room 3022), Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Division of Higher Education Incentive Programs, Room 3022, Regional Office Building 3, 7th and D Streets, SW., Washington, DC between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily except Saturdays, Sundays, or Federal holidays. Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The College Housing Program provides three percent interest loans to postsecondary educational institutions for the construction, rehabilitation or acquisition of student and faculty housing and related facilities, and for conserving energy and reducing related operating costs in existing facilities. The maximum amount that may be borrowed by an institution is $3,500,000, and the minimum amount is $100,000.

The program regulations specify selection criteria for the two types of loans available under this program. All applications are ranked according to the criteria contained in 34 CFR 614.31 and 614.32.

Available Funds: The Secretary is authorized to make available for new college housing loan commitments in fiscal year 1986, the amount of income from repayments, less expenses, up to a ceiling of $57,420,000. This amount reflects the 4.3 percent reduction in budget authority effected by the Balanced Budget and Deficit Control Act of 1985 (Gramm-Rudman-Hollings). Twenty-five percent of the available funds will be apportioned for energy conservation loans and seventy-five percent of the available funds will be apportioned for housing loans. These estimates do not bind the U.S. Department of Education to a specific number of loans or to the amount of any loan, unless that amount is otherwise specified by statute or regulations. However, the Administration has proposed to withdraw authority to make new loans in fiscal year 1986. Applicants should prepare and submit applications pending further notice.

In accordance with the program regulations (34 CFR 614.34), the Secretary may deviate from the rank order of applications, as necessary, to ensure that not less than 10 percent of total funds available and not less than 10 percent of the number of loans made are reserved for applications from Historically Black Colleges.

Application Forms: Application packages will not be mailed routinely to all institutions of higher education. Copies may be obtained by writing to the Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB–3, Room 3022), Washington, DC 20202. Telephone: (202) 245–3253.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirement beyond those imposed under the statute and regulations. The application form is approved by the Office of Management and Budget under control number 1840–0096.

Applicable Regulations: The regulations applicable to this program are as follows:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74, Subpart P; Part 75, §§ 75.600–75.615 (Construction); and Part 77, § 77.1 (Definitions).

(b) The regulations governing intergovernmental review of programs and activities in 34 CFR Part 79.

(c) The regulations governing the College Housing Programs in 34 CFR Part 614.

Intergovernmental Review: On June 24, 1983, the Secretary published in the Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 et seq.) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Implements section 401 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506) and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334);
- Allows States after consultation with local officials to establish their own process for review and comment on proposed Federal financial assitance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

For programs subject to section 204 of the Demonstration Cities and Metropolitan Development Act, State review and comment is obtained in accordance with the procedures set forth in that Act.

This program is listed in the Department's regulations as subject to section 204. Accordingly any applicant whose project comes within the crtieria of section 204 should immediately contact the State Single Point of Contact established under the Executive Order and follow the procedures established in that state to meet requirements of section 204.

Section 204 requires that—

1. Each application be accompanied by comments and recommendations from the areawide agency;

2. Each application contain a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application; and

3. In the absence of comments and recommendations, the applicant certifies that the areawide agency was provided at least 60 days to comment on the application and did not do so.

Any applicant subject to section 204 must submit its application by the June 30 closing date and shall supplement its application with the comments or assurances required by section 204 by July 31, 1986.

Special Procedures: On or before the closing date for submitting its application to the Secretary, the applicant shall submit a copy of its application to the appropriate State agency for postsecondary education for review. Comments, if any, are to be addressed to the Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, SW., [ROB-3, 3022], Washington, DC 20202. Comments must be received within 20 days after the closing date if they are to be considered.

Technical Assistance Workshops: Applicants are invited to participate in technical assistance workshops to be held in five regional locations to assist applicants in application preparation. The workshops will take place in San Francisco on June 10, Dallas on June 13, Atlanta on June 17, Washington, DC on June 17, and Cincinnati on June 19. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 245-3253.

Further Information: For further information, contact the Division of Higher Education Incentive Programs (College Housing Program), Department of Education, 400 Maryland Avenue, SW (ROB-3, 3022), Washington, DC 20202. Telephone: (202) 245-3253.

(12 U.S.C. 1749d)

(Catalog of Federal Domestic Assistance Number 84.142, College Housing Program)

Dated: May 27, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-12204 Filed 5-29-86; 8:45 am]

BILLING CODE 4000-01-M

Assessment Policy Committee, National Assessment of Educational Progress; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Education has scheduled a meeting of the Assessment Policy Committee of the National Assessment of Educational Progress (NAEP). The purpose of the meeting is to provide guidance and direction to the Office of Educational Research and Improvement supported NAEP project. The entire meeting will be open to the public.

DATE: May 31, 1986, 8:30 a.m. to 3:00 p.m.

Location: Henry Chauncey Conference Center, Educational Testing Service, Princeton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Barton, Liaison-APC, National Assessment of Educational Progress, CN 6710, Princeton, NJ 08541-6710, telephone: (800) 223-0267.

SUPPLEMENTARY INFORMATION: One of the primary purposes of NAEP is to assess the performance of children and young adults in the basic skills of reading, mathematics, and communications. The Assessment Policy Committee (APC) is established by section 406(k)(2)(A) of the General Education Provisions Act, 20 U.S.C 1221e(k)(2)(A). The committee is responsible for the design of NAEP including the selection of learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, and the form and content of the reporting and dissemination of the assessment results. The committee is also responsible for the implementation of studies to evaluate and improve the form and utilization of the National Assessment.

The Agenda for the meeting includes—

- Content of the 1987-88 assessment;
- Policy on the release of assessment exercises;
- Prior review by OERI of NAEP publications;
- Report of the Technical Advisory Committee;
- Expiring terms of members;
- Planning for NAEP's future;
- Status of upcoming NAEP reports.

To assure adequate seating arrangements and to obtain an advance copy of the final agenda, individuals wishing to attend may contact Mr. Paul Barton at the address above.

Dated: May 22, 1986.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Improvement)

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 86-12291 Filed 5-29-86; 8:45 am]

BILLING CODE 4001-01-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing 64 irradiated fuel assemblies, containing 11,289 kilograms of uranium enriched to 0.91% in U-235 and 94 kilograms of plutonium from the Muhleberg power station. This subsequent arrangement is designated as RTD/EU(SD)-59. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: May 23, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12129 Filed 5-29-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-023; OFP Case No. 61050-8254-22-22]

Powerplant and Industrial Fuel Use; Order Granting Alaska Electric Generation and Transmission

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Alaska Electric Generation and Transmission, Cooperative, Exemption from Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent reliability of service exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" of "the Act"), to Alaska Electric Generation and Transmission, Cooperative (AEG&T or "the petitioner"), of Palmer, Alaska. The permanent reliability of service exemption for a proposed new electric powerplant permits the use of a natural gas-fired combustion turbine with a nameplate rating of 39 MW, that will operate as a simple-cycle combustion turbine unit to produce electrical power at AEG&T's plant at Soldotna, Alaska. The new unit, identified as Soldotna powerplant unit No. 2, is expected to commence operation to meet load forecast electrical demands commencing in the winter of 1988. The final exemption order and detailed information on the proceeding are provided in the SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on July 29, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585 Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749

SUPPLEMENTARY INFORMATION: AEG&T proposes to install a new combustion turbine powerplant unit at Soldotna, Alaska. The new unit will operate as a baseload intergrated system producing electricity to meet forecast demands commencing with the winter of 1987-88.

The major equipment component will be a packaged combustion turbine powerplant, similar to a simple-cycle type, having an ISO base rating of approximately 39,000 kW when firing natural gas. Heat rate is anticipated to be 11,000 Btu/kWh, and planned capacity factor is 90 percent.

Natural gas will be the primary fuel; distillate oil may be used as backup fuel for emergency purposes only. Natural gas consumption, at base rated load, will be approximately *7200* standard cubic feet per minute. Fuel oil consumption, when firing oil, will be at a rate of approximately 55 gpm at base rated load.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including AEG&T's certification to ERA, in accordance with 10 CFR 503.40(a)(c), that:

1. AEG&T is not able to construct an alternate fuel fired powerplant in time to prevent an impairment of reliability of service;

2. Despite diligent good faith efforts, AEG&T is not able to make the demonstraiton necessary to obtain a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inadequate capital, or State and local requirements in the time required to prevent an impairment of reliability of service;

3. No alternate power supply exists; and

4. Use of mixtures is not feasible.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on September 20, 1985, commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on November 4, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Order Granting Permanent Reliability of Service Exemption

Based upon the entire record of this proceeding, ERA has determined that AEG&T has satisfied the eligibility requirements for the requested permanent reliability of service exemption, as set forth in 10 CFR 503.40. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent reliability of service exemption to AEG&T to permit the use of natural gas as the primary energy source for its proposed facility in Soldotna, Alaska.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washinton, DC on May 14, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12130 Filed 5-29-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Thetis Energy Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Thetis Energy Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Thetis Energy Corporation, John C. Rudolph, President, 1726 Cole Boulevard, Suite 325, Golden, Colorado 80401. This Proposed Remedial Order alleges pricing violations in the amount of $145,240.19 plus interest, in connection with the sale of crude oil at prices in excess of those permitted

under 10 CFR Part 212 during the time period June 1, 1979 through December 31, 1980. The effect of the alleged violations is nationwide..

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F-078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Carl A. Corvallo, Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-15, 1000 Independence Avenue, SW., Washington, DC 20585

Issued in Houston, Texas on the 25th day of April, 1986.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 86-12129 Filed 5-29-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $4,852,548.54 (plus accrued interest) obtained from three crude oil producers: Windsor Gas Corporation, Union Oil Company of California, and Timco Oil Company. Case Nos. KEF-0002, KEF-0004, KEF-0006. The funds will be distributed in accordance with the DOE Policy of Restitution for Crude Oil Overcharges.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director, or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies obtained from three crude oil producers: Windsor Gas Corporation (Windsor), Union Oil Company of California (Union), and Timco Oil Company (Timco). Each firm remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. Additional information on each firm is contained in the Appendix to the Decision and Order. The firms' payments are being held in three separate interest-bearing escrow accounts pending distribution by the DOE.

The DOE had decided that the distribution of the monies received from Windsor, Union, and Timco will be governed by the DOE Policy of Restitution for Crude Oil Overcharges, 50 FR 27400 (1985). That policy states that all overcharge funds associated with crude oil miscertifications should be held in escrow pending Congressional action.

Dated: May 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 22, 1986.

Names of Cases: Windsor Gas Corporation, Union Oil Company of California, Timco Oil Company

Dates of Filings: October 16, 1985, October 16, 1985, October 18, 1985

Case Numbers: KEF-0002, KEF-0004, KEF-0006

Pursuant to the Department of Energy (DOE) procedural regulations, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. See 10 CFR Part 205, Subpart V. Such procedures enable the DOE to distribute funds received as the result of enforcement proceedings involving alleged violations of DOE regulations. This Decision and Order addresses the ERA's request that the OHA formulate procedures to distribute $4,852,548.54 plus interest received from the following three companies: Windsor Gas Corporation (Windsor); Union Oil Company of California (Union); the Timco Oil Company (Timco) (hereinafter referred to collectively as "the three firms").

As crude oil producers, each of the three firms was subject to the DOE's Mandatory Petroleum Price Regulations. The ERA's audit of each firm revealed that it may have violated those regulations in its crude oil sales. The DOE's disputes with Timco and Union were settled when these firms signed separate Consent Orders, agreeing to pay specified sums of money to the DOE. Neither Timco nor Union has admitted to any violations of the regulations. [1] Windsor, however, was found to have violated the regulations in a Decision and Order issued by the OHA. *Windsor Gas Corp.*, 8 DOE ¶ 83,038 (1981), *aff'd*, 25 FERC ¶ 61,254 (1983). Pursuant to the OHA's Decision, Windsor was required to refund its overcharges. The three firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. Additional information about the three firms' payments is set forth in the Appendix to this Decision and Order.

On March 20, 1986, the OHA issued a Proposed Decision and Order setting forth its tentative conclusions concerning distribution of the Windsor, Union, and Timco monies. 51 FR 11100 (April 1, 1986). The OHA concluded that since the monies were received in settlement of alleged crude oil overcharges and the DOE has set a policy for the distribution of all crude oil refunds, the monies received from Windsor, Union, and Timco should be distributed in accordance with DOE Policy. *Cf.* 50 FR 27400 (1985)

The OHA solicited comments to the Proposed Decision and 14 interested parties submitted such comments. Each of the commenters argue that OHA should not follow the DOE Policy in this case. Since all of the comments are directed at the DOE Policy, we will discuss the Policy in greater detail before addressing the comments received.

[1] In 1983, the OHA issued a Decision and Order ruling that Timco violated the regulations. *Timco Oil Co.*, 10 DOE ¶ 83,025 (1983). Timco appealed this Decision but entered into a Consent Order before the appeal was ruled upon.

The DOE Crude Oil Policy

Under the DOE Policy no claims for direct restitution will be accepted if those claims are based on crude oil overcharges. Instead, such overcharge funds will be held in escrow to afford Congress the opportunity to select the means of making indirect restitution.

The DOE Crude Oil Policy arose out of a report which the OHA issued in the Stripper Well Exemption Litigation. *Report of the Office of Hearings and Appeals, In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985). That Report concluded that the Entitlements Program spread the effects of crude oil miscertifications throughout the crude oil industry.[2] From the OHA's findings, the Deputy Secretary of Energy concluded that an indirect means of effectuating restitution was appropriate in crude oil refund proceedings. Therefore, on June 21, 1985, the Deputy Secretary established the DOE Policy of restitution for Crude Oil Overcharges. 50 FR 27400 (July 2, 1985). The policy statement announced that the DOE would maintain overcharge monies in escrow to afford Congress the opportunity to select the means of making indirect restitution. Should Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts accounts of the United States Treasury in order to benefit all Americans.

In June 1985, the OHA issued an order announcing that it intended to follow the DOE Policy. 50 FR 27402 (July 2, 1985). The OHA solicited and considered comments to that announcement and determined that it would apply to DOE Policy in all special refund cases involving crude oil. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985) (*Amber*).

With this background in mind, we turn to the comments submitted to our proposal to distribute the Windsor, Union, and Timco monies in accordance with the DOE Policy.

[2] The Crude Oil Entitlements Program, part of the DOE's system of mandatory petroleum price and allocation controls, was in effect from November 1974 through January 1981. The program was intended to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this end, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements. Because of the manner in which the program worked, it had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985).

Comments to the Proposed Decision

In response to the Proposed Decision and Order in this case, the OHA received comments from 14 parties. While all of the comments argue that the Windsor, Union, and Timco monies should not be distributed in accordance with the DOE Policy, none of the comments presents any reason why the Policy is inapplicable to these funds. Rather, the comments suggest that alternative methods of restitution are preferable. For example, the States of Arkansas, California, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia and the Commonwealth of Pennsylvania argue that state governments are the most appropriate recipients of refund monies not designated for readily identifiable injured parties. Four end-users argue that end-users should be allowed to present and prove claims for refunds.[3]

We have reviewed each of the comments submitted in this proceeding. However, we cannot agree with the views which these comments present. In light of our Decision in *Amber*, we have determined that the funds obtained from Windsor, Union, and Timco should be pooled with other crude oil funds for distribution in accordance with departmental policies. Each of the parties who commented in this proceeding also submitted comments to the OHA in *Amber* or in *In Re: Stripper Well Litigation*. Therefore, their views were known to the OHA prior to its decision to apply the DOE Policy in crude oil refund proceedings. As we stated in *Amber*, there is no merit to comments which disagree with the OHA implementation of DOE policies. *Amber*, 13 DOE at 88,569. The DOE Policy is based upon our fact-finding in the OHA Stripper Well Report and is within the DOE's restitutionary authority. OHA's delegation expressly subjects it to Departmental policies and determinations such as this one are governed by Departmental policy. *Id.*

It Is Therefore Ordered That:

The refund amount obtained from Windsor Gas Corporation pursuant to the Remedial Order issued on October 23, 1981 and the refund amounts obtained from Union Oil Company of California and Timco Oil Company pursuant to Consent Orders entered into with the Economic Regulatory Administration on June 13, 1985 and October 22, 1984, shall be distributed in the manner set forth in the foregoing Decision and Order.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: May 22, 1986.

[3] Each of these commenters (Philadelphia Electric Company, National Freight, Inc., RJG Cab, Inc. and Geraldine H. Sweeney) purports to represent a class of petroleum end-users (public utilities, trucking companies, taxicab companies, and non-commercial automobile owners).

Appendix

Firm: Windsor Gas Corporation
Case Number: KEF-0002
Refund Amount (Principal): $77,558.54
Covered Time Period: September 1, 1974 through December 31, 1977
Violations: Miscertification of crude oil
Producing Area: Sutton and Duval Counties, Texas

Firm: Union Oil Company of California
Case Number: KEF-0004
Consent Order Amount: $4,500,000.00
Consent Order Period: June 1979 through January 1981
Alleged Violations: Regulations concerning marginal and newly discovered crude oil
Producing Area: Louisiana

Firm: Timco Oil Company
Case Number: KEF-0006
Consent Order Amount: $75,000.00
Consent Order Period: January 1, 1974 through December 31, 1977
Alleged Violations: Miscertification of curde oil
Producing Area: Signal Hill Area of Long Beach, California

[FR Doc. 86-12127 Filed 5-29-86; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 7 Through April 11, 1986

During the week of April 7 through April 11, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Daniel Hirsch, 04/11/86, HFA-0243

Daniel Hirsch filed an Appeal from a denial by the Acting Director of the Department of Energy, Office of Classification of a request for information which Mr. Hirsch had submitted under the Freedom of Information Act (FOIA). Portions of the document, entitled "Memorandum on the History of the Thermonuclear Program," were initially withheld under Exemption 3 of the FOIA. In considering the Appeal, DOE found that most of the material originally deleted from the document still contained classified information which was exempt from mandatory disclosure under the FOIA. However, the DOE found that some material could be released because of revisions in the classification code. Accordingly, a copy of the document in releasable form was transmitted to Mr. Hirsch.

Ivan Van Zuckerstein, 04/11/86, KFA-0023

Ivan Van Zuckerstein (Apellant) filed a Motion for Reconsideration of a Decision issued to him by the DOE in connection with a Freedom of Information Act Appeal. In the appeal decision, the DOE upheld the determination of the Manager of the Chicago Operations Office that information requested by the Appellant concerning his employment by a DOE contractor was exempt from mandatory disclosure under Exemption 5 of the FOIA. In considering the Motion for Reconsideration, the DOE found that the Appellant had failed to demonstrate error or omission in the appeal decision and had simply reiterated arguments raised in the underlying appeal proceeding. Accordingly, the DOE denied the Motion.

Natural Resources Defense Council, 04/08/86, KFA-0028

Natural Resources Defense Council (NRDC) filed an Appeal from a denial by the Director, Office of the Executive Secretariat (OES) a request for a document analyzing a Russian above-ground nuclear test, which NRDC had submitted pursuant to the Freedom of Information Act (FOIA). In his determination, the Director stated that he was unable to locate the document in OES files and therefore denied the request on the basis that no documents responsive to NRDC's request existed. In considering the Appeal, the DOE contacted the Albuquerque Operations Office, which discovered that a copy of the document existed in the files of the Los Alamos National Laboratory. The DOE determined that NRDC's FOIA request should be transferred to the Albuquerque Operations Office for processing. Accordingly, the Appeal was granted.

Remedial Orders

C&H REFINERY, INC., 04/07/86, KRO-0100

C&H Refinery, Inc. (C&H) objected to a Proposed Remedial Order alleging that it claimed small refiner bias (SRB) entitlements benefits for crude oil processed by other refiners pursuant to three processing agreements and violated 10 CFR 211.67(e). That section prohibited a small refiner from claiming SRB entitlements based on runs to stills, where the crude oil was purchased from, and the resulting products were sold directly or indirectly to, the processing refiner. DOE found that with respect to two processing agreements, C&H both indirectly purchased the crude oil from, and sold the resulting refined products to, the processing refiner. With respect to a third processing agreement, the DOE found that the crude oil obtained by C&H from the processing refiner in an exchange agreement was no different from any other purchase of crude oil for purposes of § 211.67(e)(2). Thus, the DOE found that C&H's claim for SRB entitlements benefits for its runs to stills in connection with these three processing agreements violated § 211.67(e)(2). Accordingly, the Proposed Remedial Order was issued as a final Remedial Order and C&H was directed to remit $2,004,679 plus interest to the DOE to compensate for its excess SRB entitlements benefits.

Osborne Energy Corporation, E.O. WHITE, 04/08/86, HRO-0116

Osborne Energy Corporation and its president, E.O. White, (Respondents) objected to Proposed Remedial Order alleging that they violated the provisions of the DOE layering regulation, by reselling crude oil at a price in excess of its purchase price, without providing any service or other function associated with the resale of crude oil. The DOE first found that because neither party convincingly traced the exact source of the crude oil involved in the layered sales, the appropriate measure of the overcharge in the case was the amount of the respondents' gross crude oil profits during the audit period. The DOE then determined that, with the exception of two specific sales, the Respondents had provided no financing services, market function services, or transportation services. Finally, the DOE determined that White should be held personally responsible for Osborne's prohibited trading activities, and had benefited from those transactions. Accordingly, the PRO was issued as a final Remedial Order directing the Respondents to remit $925,101.27 plus interest to the DOE.

R.W. Tyson Producing Company, Inc., 04/08/86, HRO-0165

R.W. Tyson Producing Company, Inc. objected to a Proposed Remedial Order alleging that it charged prices in first sales of domestic crude oil which exceeded the applicable ceiling prices permitted under 10 CFR Part 212, Subpart D. The DOE found that Tyson's production qualified as "crude oil," despite its extraordinarily heavy density. In addition, the DOE found that the overcharges resulted from charging prices for crude oil that were based on the wrong posted prices. The DOE determined that in the absence of a specific posted price for Tyson's oil fields on May 15, 1973, Tyson should have referred to the nearest field for which there was a posted price for a similar grade of heavy crude oil. However, the DOE also found that the PRO may not have taken into account previously granted exception relief at one of Tyson's wells, and that the alleged overcharge in connection with that well should therefore be dismissed without prejudice. Accordingly, the PRO was modified and issued as a final Remedial Order, directing Tyson to remit $90,731.05 plus interest to the DOE.

Shell Oil Company, 04/10/86, HRO-0018, HRZ-0019

Shell Oil Company objected to a Proposed Remedial Order alleging that it had (i) improperly calculated its increased domestic crude oil costs by using the volume of crude oil taken into the firm's refineries during the month of measurement, rather than the volume of crude oil purchased during that month, and (ii) improperly included in its landed cost of crude oil the value which the firm attributed to its fee-free import licenses. The DOE determined that the refiner price regulations required the calculation of crude oil costs increases using the volume of crude oil purchased during the month, not the volume of crude oil refined, and further that since Shell had incurred no costs in receiving its fee-free import licenses, it could not properly include any "costs" of such licenses units landed cost of crude oil. The Proposed Remedial Order was therefore issued as a final Remedial Order, directing Shell to recalculate its crude oil costs and make approriate adjustments to its banked costs.

Texaco, Inc., 04/11/86, HRO-0012

Texaco, Inc. objected to a Proposed Remedial Order alleging that it violated the refiner cost recovery rules in its pricing of gasoline and No. 2 oils. The DOE rejected Texaco's claim that the doctrines of estoppel and laches applied to the PRO's allegations that the equal application/deemed recovery rule applied when the firm used different increased cost increments for its consumer and reseller classes in sales of motor gasoline and No. 2 oils. The DOE also rejected Texaco's contention that for purposes of the equal application rule, each grade of gasoline constituted a separate product, and found that a refiner could not apply increased costs attributable to gasoline in unequal increments to different grades of gasoline without invoking the rule. The DOE therefore issued the PRO as a final Order, and directed that Texaco either refund a total of $142,783,783 to the DOE, or make appropriate adjustments to its bank of unrecouped product costs.

Implementation of Special Refund Procedures

Howell Corporation and Quintana Refinery Company, 04/08/86, HEF-0212

The DOE issued a Decision and Order implementing procedures for the distribution of $2,205,115 remitted by Howell Corporation and Quintana Refinery Company pursuant to a consent order entered into with the DOE. The Decision stated that customers of refined petroleum products from Howell or the Quintana Howell Joint Venture during the period August 19, 1973 through December 31, 1978 who were injured by their purchases may apply for refunds from the consent order fund. The Decision further provided that reseller claimants who limit their claims to $5,000 and end-users would not be required to prove that they absorbed the alledged overcharges.

Refund Applications

Armour Oil Company/E-Z Serve, Inc. 04/08/86, RF167-2

The DOE issued a Decision and Order concerning an Application for Refund filed by E-Z Serve, Inc., in connection with a consent order fund made available by the Armour Oil Company. E-Z Serve, a reseller of motor gasoline, provided documentation showing it was injured with respect to some of its Armour purchases, but did not submit sufficient data to establish that it was injured in each month of the period for which a refund was claimed. Accordingly, the DOE granted the firm a refund based on the $5,000 threshold amount. The total refund amount approved in this Decision is $6,616 ($5,000 principal plus $1,616 interest).

F.O. Fletcher, Inc./Alfred Norm Drew, Paddy's Fuel, 04/08/86, RF173-27, RF173-28

The DOE issued a Decision and Order concerning Applications for Refund filed by Alfred Norm Drew and Paddy's Fuel, in connection with a consent order fund made available by F.O. Fletcher, Inc. The applicants, resellers of motor gasoline,

provided evidence that they purchased motor gasoline from Fletcher during the consent order period and requested a refund below the $5,000 small claims threshold. The DOE granted each applicant a refund based on a prorated portion of its Fletcher overcharges, as set forth in DOE audit files. The total amount of refunds approved in this Decision is $1,179 ($614 in principal plus $565 in interest).

Gulf Oil Corporation/Day and Night Gas Company, Inc., 04/07/86, RF40-3009

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of Gulf petroleum products, Day and Night Gas Company, Inc., in connection with the Gulf Oil Corporation refund proceeding. In considering the application, the DOE pointed out that the firm had no records of its Gulf purchases for the pertinent period and could not explain how it developed its purchase volume figures. Accordingly, the DOE found that it was impossible to calculate a refund amount for the firm. However, the DOE recognized that at some future date the purchase volume data and pricing information necessary to support a claim might become available to the firm. Therefore, Day and Night's Application for Refund was dismissed without prejudice to a future refiling.

Gulf Oil Corporation/Ernie's Guld Service, et al., 04/10/86, RF40-217, et al.

The DOE issued a Decision and Order granting refunds to four retailers of Gulf refined products from the Gulf Oil Corporation consent order fund. The DOE found that each of the applicants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. The firms were granted refunds totalling $4,443 ($3,739 principal plus $704 interest).

Kingston Oil Supply Corporation/David Rubin, 04/10/86, RF197-1

David Rubin filed an Application for Refund in connection with a consent order fund made available by Kingston Oil Supply Corporation. Mr. Rubin was an end-user of No. 4 residual fuel oil who was identified by the DOE's audit of Kingston as an allegedly overcharged customer. Accordingly, the DOE approved a total refund to Mr. Rubin of $864, representing $546 in principal and $318 in interest.

Little America Refining Company/Silco Oil Company, 04/08/86, RF112-7

The DOE issued a Decision and Order concerning an Application for Refund filed by Silco Oil Company, a purchaser of products covered by a consent order between the DOE and Little America Refining Company (Larco). Silco requested a refund of $45,884, its volumetric share of the Larco consent order funds. In considering the application, the DOE determined that Silco was unable to demonstrate whether it had banks of unrecovered costs throughout the consent order period. Therefore, the DOE found it appropriate to limit Silco's refund to the $5,000 small claims threshold. Accordingly, Silco was granted a refund of $5,000 in principal and $2,475 in interest.

Lowe Oil Company/Central Cooperatives, Inc., Stan's Hardware, 04/10/86, RF206-1, FR206-5

The DOE issued a Decision and Order concerning Applications for Refund filed by Central Cooperatives, Inc. and Stan's Hardware, in connection with a consent order fund made available by Lowe Oil Company. Each of the two firms was identified in the DOE's audit files as having purchased motor oil from Lowe during the audit period. Further, each firm submitted evidence of the quantity of Lowe product it purchased. Since the refunds requested were below the $5,000 small claims threshold, they were not required to submit a detailed showing of injury. The total refunds granted were $3,630, including $2,423 in principal and $821 in interest.

MAPCO, Inc./Jim Thomas Enterprises, Inc., 04/10/86, RF108-10

Jim Thomas Enteprises, Inc. (JTE) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with MAPCO, Inc. The DOE found that JTE demonstrated that it purchased MAPCO propane and butane during the consent order period and that JTE experienced a competitive disadvantage as a result of those purchases. Accordingly, JTE was granted a refund of $84,986.57, including $48,076.42 in principal and $36,910.15 in interest.

Moyle Petroleum Company/Poctola Pines, et al., 04/07/86; RF201-1, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in connection with a consent order fund made available by Moyle Petroleum Company. Each of the four applicants was identified in the DOE's Moyle audit file as having sustained overcharges. The DOE concluded that each of the firms was eligible for a refund of less than $5,000. The total amount of refunds granted was $3,251, representing $1,861 in principal and $1,390 in interest.

National Helium Corp./Indiana, Pennzoil Co./Indiana, Standard Oil Co. (Indiana)/Indiana, 04/07/86, RQ3-273, RQ10-284, HM21-17

The Office of Hearings and Appeals issued a Decision and Order considering the State of Indiana's second stage refund plan for use of National Helium Corporation and Pennzoil Company consent order funds, and the State's motion to modify the use of $25,000 of Standard Oil Company (Indiana) (Amoco) funds which had been previously approved. The OHA approved Indiana's restitutionary plan to use $273,167 in National Helium funds, $35,386 in Pennzoil funds and $25,000 in Amoco funds to supplement funding of a loan subsidy and matching grant weatherization program. Immediate disbursement of the Pennzoil funds was not authorized because of pending litigation.

Palo Pinto Oil and Gas/State of New Mexico, 04/10/86, RM5-20

The DOE issued a Decision and Order denying the State of New Mexico's Motion to Modify its second-stage refund plan for use of money allotted to it that the Palo Pinto Oil and Gas consent order fund. The DOE found that New Mexico's proposal to purchase energy education materials for its public school students would not provide restitutionary benefit to those citizens that were likely to have been injured by the relevant Palo Pinto transactions. The State was invited to submit an alternate plan for use of those funds.

Plateau, Inc./Graves Oil & Butane Company/Dial Oil Company, 04/09/86, RF204-6, RF204-8

The DOE issued a Decision and Order granting refunds from the Plateau, Inc. desposit escrow account to two wholesale resellers of Plateau covered products. Since neither firm's refund request exceeded the small claims threshold level, the DOE granted the refunds without requiring the applicants to submit additional evidence of injury. The refunds to these firms total $8,269, representing $5,367 in principal and $2,902 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Adamo's Gulf Service Garage, RF40-2163
Bublitz Oil Company, KEE-0023
Butler's Gulf Service, RF40-323
C.G. Sweigart Oil Co., RF40-2566
Don & Stan's Gulf, RF40-1216
Fallwood Service Center, RF40-1166
Furniture City Gulf Service, RF193-1280
Gray's International of Oregon, RF193-21
Henke Fair Gulf Service, Inc., RF40-1358
Irondale Gulf, RF40-1349
Lower State Gas Co., RF40-2627
M.C. Newsome & Son Gulf Station, RF40-340
Rishel's Gulf Service, RF40-265
Royer Auto Service, RF40-250
Russell Creek Gulf, RF40-1161
Schiavone Service Station, RF40-1159
Swain & Whiteman, RF40-2607
Tom's Gulf Service, RF40-1090
Valley Distributing Co., RF40-2506
Walsh's Service, RF40-1383
Wiles Oil Company, RR112-1

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Buiding, 1000 Independence Avenue SW., Washington, D.C. 29585, Mondays through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
May 22, 1986.
[FR Doc. 86-12125 Filed 5-29-86; 8:45 am]
BILLING CODE 6450-01-M

BEST COPY AVAILABLE

Western Area Power Administration

Rio Grande Project; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rate Adjustment—Rio Grande Project, New Mexico.

SUMMARY: The Western Area Power Administration (Western) is proposing a rate increase for power and energy from the Rio Grande Project (RGP). The rate increase is required to cover increased annual operating expenses and to repay the Federal investment in the project. The proposed rate is composed of a $7.93 per kilowatt-month capacity charge and an 18.66 mills per kWh energy charge. This proposed rate is equal to a composite rate of 37.32 mills per kWh at 58.2 percent load factor (LF). The present rate is composed of a $6.545 per kilowatt-month capacity charge and a 15.45 mills per kWh energy charge which equals a composite rate of 30.85 mills per kWh at 58.2 percent LF.

A brochure explaining the need for a rate increase and outlining the methodology used in developing the current proposed rate will be distributed to the RGP power customers and other interested parties. According to the "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions," 10 CFR Part 903, the proposed RGP rate adjustment is a minor rate adjustment since annual sales are normally less than 100 million kilowatthours, and a public information and comment forum is not required. After review of public comments, Western will recommend a final proposed rate.

DATES: The consultation and comment period will begin with publication of this notice in the Federal Register and will end 30 days thereafter or 15 days after any written response to questions submitted during the comment period, whichever is later. It is anticipated that the proposed rate will go into effect with the April 1987 billing period.

Written comments should be received by the end of the consultation and comment period to be assured of consideration. Written comments may be submitted to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524-5493.

SUPPLEMENTARY INFORMATION: Power rates for the RGP are established pursuant to the Department of Energy Organization Act of August 4, 1977, 42 U.S.C. 7101 *et seq.*, the Reclamation Act of 1902, ch. 1093, 32 Stat. 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the acts specifically applicable to the project.

The Secretary of Energy, by Delegation Order No. 0204-108 (48 FR 55664, December 14, 1983), delegated to the Administrator of Western the authority to develop power and transmission rates; to the Deputy Secretary of Energy, the authority to confirm, approve, and place in effect such rates on an interim basis; and to the Federal Energy Regulatory Commission the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove those rates.

Procedures for public participation in rate adjustments for power marketed by Western (10 CFR Part 903) were published in the Federal Register at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Salt Lake City Area Office, 438 East 200 South, Salt Lake City, Utah 84111.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Under 5 U.S.C. 601(2), rules relating to rates or services of particular applicability are not considered rules within the meaning of the act. In this instance, the rate adjustment for the RGP relates to rates for services provided by Western from a particular project; therefore, no flexibility analysis is required.

Determination under Executive Order 12291

The Department of Energy (DOE) has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 17, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291 and, therefore, will not prepare a regulatory impact statement.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council of Environmental Quality regulations, and section D of the DOE guidelines published in the Federal Register on February 23, 1982 (47 FR 7976), Western conducts environmental evaluations of certain rate and allocation actions. Section D of the DOE guidelines states that the level of documentation required under NEPA for rate increases by power marketing administrations depends upon the size of the rate increase as it relates to the rate of inflation since the last rate increase. Western has compared the proposed power rate increase to the rate of inflation in the period since the existing power rate was placed in effect and determined that it exceeds the rate of inflation. Therefore, an environmental assessment will be prepared and copies will be sent to interested persons upon request.

Issued at Golden, Colorado, May 22, 1986.

William H. Clagett,
Administrator.

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BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3023-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed May 19, 1986 Through May 23, 1986, Pursuant to 40 CFR 1506.9.

EIS No. 860194, Final, FHW, FL, FL-44 Upgrading, CR-581 to FL-44/FL-45 Intersection, Citrus County, Due: June 30, 1986, Contact: P.E. Carpenter (904) 681-7223.

EIS No. 860195, Final, IBR, CO, Grand Valley Unit, Stage II Development, Construction and Operation, Colorado River Basin Salinity Control Project, Mesa County, Due: June 30, 1986, Contact: Gordy Lind (801) 524-5493.

EIS No. 860196, Report, COE, SC, South Carolina Cooperative Aquatic Plant Control Program, Additional Aquatic Plants and Herbicides, Contact: Richard Makinen (202) 272-0121.

EIS No. 860197, Final, AFS, MT, Beaverhead National Forest, Noxious Weeds and Poisonous Plant Control Program, Due: July 15, 1986, Contact: Dan Pence (406) 683-3967.

BEST COPY AVAILABLE

Dated: May 27, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-12201 Filed 5-29-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3023-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 12, 1986 through May 16, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. LD-AFS-A60115-00, Rating LO, Bureau of Land Mgmt. and Forest Service, Transfer of Jurisdiction Over Certain Federal Lands and Minerals, US. SUMMARY: EPA's review identified no issues of concern.

ERP No. D-CDB-F89028-MI, Rating EC2, Oakland Technology Park Development, CDB Grant, MI. SUMMARY: EPA's review resulted in concerns related to loss of wetlands and a lack of information regarding ancillary highway development. EPA requested a thorough implementation of wetland mitigation and specific information regarding the proposed highway projects, be included in the FEIS. Only then can EPA make a complete evaluation of impacts.

ERP No. D-COE-G36035-OK, Rating LO, Kingfisher and Uncle Johns Creeks Local Flood Protecton Project, OK. SUMMARY: EPA expressed no objection to the proposed action as described.

ERP No. D-OSM-EO 1007-TN, Rating EC2, Rock Creek Watershed, Designation of Lands Unsuitable for Surface Coal Mining Operations, TN. SUMMARY: EPA's main concern is the natural susceptibility of the petition area to acid mine drainage and the present apparent lack of need for coal production. EPA recommends selection of Alternate 1 (Grant the Petition: declare the petition area unsuitable for surface coal mining). EPA requested that additional information relative to surface water quality, groundwater interconnections, total suspended particulates (TSP) modeling, noise impacts, and other areas be provided in the final EIS.

ERP No. D-SCS-G36134-LA, Rating LO, Upper Vermilion Bayou Watershed Protection Flood Prevention and Drainage Plan, LA. SUMMARY: EPA expressed no objection to the proposed action as described.

Final EISs

ERP No. F-AFS-E65032-00, Cherokee Nat'l Forest, Land and Resource Mgmt. Plan, TN and NC. SUMMARY: The preferred alternative responded to many of the concerns EPA had with the preferred plan of the draft EIS. EPA noted the increased emphasis on water quality and habitat values in the currently proposed plan, but suggested further improvements in the management of sensitive/vulnerable forest zones, eg., riparian areas. Restrictions on land disturbing activities should be strengthened to include the prohibition of clear cutting and construction in buffer strips along all perennial streams.

ERP No. FA-APH-A82105-00, 1986 Rangeland Grasshopper Cooperative Mgmt. Program, Updated Information, US. SUMMARY: EPA noted APHIS' responsiveness to the comments on the draft EIS and recommendations made at the follow-up meeting. However, EPA continues to express concerns about the way the final EIS interprets integrated pest management, addresses non-target exposures, and discusses mitigation measures. EPA recommended that these be fully discussed in the new EIS planned for 1987.

ERP No. BLM-L70003-AK, Central Yukon Planning Area Resource Mgmt. Plan, Northwest Resource Area, AK. SUMMARY: EPA remains concerned that the final EIS does not make a strong commitment to monitoring for compliance with permit conditions and water quality standards for mines. EPA specificially requested that clarifying language be included in the Record of Decision for this plan.

ERP No. F-CDB-F89025-MN, Duluth Paper Mill Project, Construction and Operation, CDB Grant, 404 Permit, MN. SUMMARY: EPA's review resulted in an objection to the project as currently proposed. EPA recommended that Federal Funds and the 404 permit be withheld from this project until after the Agency reviews the remedial action plan for the contaminated soil and groundwater at the site, the wetland mitigation plan, and the prevention of significant deterioration air quality permit application. EPA also requests information on the future expansion potential of the paper mill.

ERP No. F-COE-L320007-WA, Quillayute River Navigation Project, Long-Range Operations and Maintenance, WA. SUMMARY: EPA remains concerned abut the potential for juvenile salmon entrainment by the hydraulic dredging used for the maintenance dredging in the Quillayute River after March 31. No criteria have been established for acceptable levels of entrainment or to judge what is an acceptable loss of fish. EPA recommended two approaches that would establish acceptable entrainment levels or loss of fish, and stated that one of the approaches should be undertaken prior to any dredging occurring after March 31, as a condition for EPA's approval of the Section 404 permit.

ERP No. F-IBR-K39026-CA, Freeman Diversion Improvement Project, Construction and Operation, Santa Clara River, Combat of Seawater Intrusion, CA. SUMMARY: The final EIS adequately addressed the concerns EPA raised on the draft EIS.

ERP No. F-JUS-C1010-NJ, Fairfield Federal Correctional Institution, Construction and Operation, NJ. SUMMARY: EPA does not anticipate any significant environmental impacts as a result of the construction of the proposed federal correctional institution.

Amended Notice

The following EPA EIS review summary noticed in the May 23, 1986 FR was in error typographically, and therefore substantively. A sentence read, "Due to these concerns EPA found the project to be environmentally satisfactory." It should have read, "Due to these concerns EPA found the project to be environmentally unsatisfactory."

ERP No. DC-IBR-J61127-ND, Rating EU2, Garrison Diversion Unit, New Irrigation Areas and New Project Features, Operation and Maintenance, Pick-Sloan Missouri Basin Program, James R., ND.

Dated: May 27, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-12202 Filed 5-29-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[86-539]

Fair Housing and Nondiscrimination in Lending

Dated: May 23, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Fair Housing and Nondiscrimination in Lending" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted on or before June 16, 1986. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Office of Community Investment, (202) 377-6211, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-12141 Filed 5-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. 86-527]

Self Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and Opportunity for Hearing

Dated: May 22, 1986.

The Philadelphia Stock Exchange has filed on April 10, 1986, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following security: Columbia Savings & Loan Association (FHLBB No. 6325) Common Stock, $1.00 Par Value.

The security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Any interested person may inspect the application at the Board and, on or before June 9, 1986, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will issue an order granting the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-12140 Filed 5-29-86; 8:45am]

BILLING CODE 6720-01-M

[No. AC-491]

South Carolina Federal Savings Bank, Columbia, SC; Final Action Approval of Conversion Application

Dated: May 22, 1986.

Notice is hereby given that on May 8, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of South Carolina Federal Savings Bank, Columbia, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, 260 Peachtree Street, NW., 10th Floor, Atlanta, Georgia 30303.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-12138 Filed 5-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-490]

Newport News Savings and Loan Association, Newport News, VA; Final Action Approval of Conversion Application

Dated: May 22, 1986.

Notice is hereby given that on May 9, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Newport News Savings and Loan Association, Newport News, Virginia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-12139 Filed 5-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-492]

Home Federal Savings and Loan Association of San Francisco, San Francisco, CA; Final Action Approval of Conversion Application

Dated: May 22, 1986.

Notice is hereby given that on May 14, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of San Francisco, San Francisco, California for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of San Francisco, 600 California Street, Post Office Box 7948, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-12137 Filed 5-29-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder Licenses; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 1568
Name: Nationwide International Forwarders & Brokers, Inc.
Address: 4795 NW. 72nd Avenue, Miami, FL 33166
Date Revoked: May 7, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2885
Name: Metro Freight Services, Inc.
Address: 22 Lawrence Lane, Lawrence, NY 11559
Date Revoked: May 7, 1986
Reason: Failed to maintain a valid surety bond

Robert G. Drew,
Director, Bureau of Tariffs.

[FR Doc. 86-12145 Filed 5-29-86; 8:45 am]
BILLING CODE 6730-01-M

[Fact Finding Investigation No. 14]

Possible Unlawful Activity of Eller & Co, Inc., et al.; Order

On October 9, 1985, Eller & Company, Inc., and Harrington & Co., Inc., filed an agreement with the Federal Maritime Commission under the provisions of the Shipping Act of 1984, 46 U.S.C. app. 1701, *et seq.*, to operate a joint venture called Continental Stevedoring & Terminal, Inc. The Agreement, which was designated No. 224-010843, became effective on November 23, 1985, and authorized the parties to provide marine terminal services through Continental.

The Federal Maritime Commission has reason to believe that Eller & Company, Inc., and Harrington & Company, Inc., and/or Continental Stevedoring & Terminal, Inc., may have operated under Agreement No. 224-010843 prior to its November 23, 1985, effective date in violation of section 10(a)(2) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(2). The Commission also has reason to believe that Eller & Company, Inc., and Harrington & Company, Inc., and/or Continental Stevedoring & Terminal, Inc., may be operating under agreements with one or more ocean common carriers in violation of section 10(a)(2) of the Shipping Act of 1984.

Despite repeated efforts to obtain information bearing on these matters, the parties have failed to comply with our informal requests. Accordingly, the Commission is initiating this nonadjudicatory investigation to determine whether sufficient evidence exists to warrant a formal investigation and assessment proceeding for violations of the Shipping Act of 1984.

Therefore, it is ordered, That pursuant to sections 11 and 12 of the Shipping Act of 1984, 46 U.S.C. app. 1710 and 1711, and Subpart R of Title 46 of the Code of Federal Regulations, a nonadjudicatory investigation is hereby instituted into the practices of Eller & Company, Inc., Harrington & Company, Inc., and Continental Stevedoring & Terminal, Inc., regarding the furnishing of terminal facilities and services at Miami, Florida, and other ports.

It is further ordered, That the Investigative Officer shall be Alan J. Jacobson of the Commission. Mr. Jacobson shall direct the investigation and shall be assisted by such staff members as he may designate.

The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law (including the issuance of subpoenas), to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, That the Investigative Officer shall issue a final report of findings and recommendations no later than 120 days after publication of this Order in the Federal Register, such report to remain confidential unless and until the Commission rules otherwise; and

It is further ordered, That Notice of this Order be published in the Federal Register.

By the Commission.
John Robert Ewers,
Secretary.

[FR Doc. 86-12164 Filed 5-29-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, June 19, and Friday, June 20. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The June 19 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The June 20 session is expected to begin at 9:00 a.m. and to continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Growth of Consumer Credit.* Discussion led by the Council's planning group on this topic, with a brief presentation by Board staff on (1) the growth in consumer credit, (2) whether the level of consumer debt is reasonable, and (3) the outlook for consumer debt for the future.

2. *Pricing and Disclosure of Service Charges.* Status report by the Council's Ad Hoc Committee on Service Charges about recent developments related to the setting of service charges paid by consumers, focusing on the *Perdue* v. *Crocker National Bank* case, which raised the issue of unconscionability regarding charges for checks returned.

3. *Emerging Technologies.* Report by the Council's Ad Hoc Committee on Emerging Technologies on a proposed amendment to Regulation E (Electronic Fund Transfers) that would eliminate periodic statement disclosure requirements for the issuer of a debit care (or other access device) when the issuer does not hold the consumer's account.

4. *Reduced-Rate Financing.* Report from the Council's planning group on reduced-rate financing, which was directed to explore further the issues of whether the programs being offered by various automobile companies lessen the value of the annual percentage rate as a tool for consumer's use in credit shopping, what the Truth in Lending implications are for such programs, and what (if any) actions the Council might recommend that the Board take in this area.

5. *Delayed Funds Availability.* Members of the Council's Ad Hoc Committee on Service Charges will make a presentation on check processing operations and how they affect funds availability and on various other delayed availability issues.

6. *Financial Counseling.* Discussion of issues surrounding a bank holding company being able to provide financial counseling to consumers.

7. *Credit Card Interest Rates.* Briefing by Board staff on a recent study on the effects of proposed credit card interest rate ceilings on consumers and creditors.

8. *CRA Protest Activity.* Briefing by Board staff on the increase in Community Reinvestment Act protest activity by community groups and on the role of the Federal Reserve in bringing bank and community representatives together.

9. *Regulatory Update.* Status of recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, June 16, and must be a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452-3306; for Telecommunications Device for the Deaf (TDD) users, Earnestine Hill or Dorothea Thompson (202) 452-3544; Board of Governors of the Federal Reserve System, Washington DC 20551.

Board of Governors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 86-12085 Filed 5-29-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise a system of records being maintained by GSA. The system of records, Incident Reporting, Investigation, and Security Case Files, GSA/PBS-3, will be revised to change the system name, increase the categories of individuals and records covered by the system, add two routine use statements required by the Office of Management and Budget, and exempt contingency planning and analysis files in the system from certain subsections of the act. As the records being added to this system are new, a new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

DATES: Any interest party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Alexandra Mallus, GSA Privacy Act Officer, telephone (202) 535-7983.

Background

The system of records, Incident Reporting, Investigation, and Security Case Files, GSA/PBS-3, is being revised to reflect the establishment of contingency planning and analysis files. These files will be a compilation of information received from other law enforcement and intelligence agencies through written communications, conferences and briefings involved with terrorists groups and individuals. This information is required by 41 CFR 101-20.5 to make contingency action plans and provide patterns and trends of potential or actual terrorists groups or other activities that could disrupt the orderly operation of GSA-owned or -controlled facilities. The name of the system and the categories of individuals and records in the system are revised to cover the establishment and maintenance of these new files. The system of records notice GSA/PBS-3 was last published in the Federal Register on August 29, 1980, 45 FR 57892.

The revised system of records is as follows:

GSA/PBS-3

SYSTEM NAME:

Incident Reporting, Investigation, Contingency Planning/Analysis, and Security Case Files.

SECURITY CLASSIFICATION:

Unclassified to Top Secret.

SYSTEM LOCATION:

This system of records is located in the Central Office Law Enforcement Division and the regional offices of the Office of Public Buildings and Real Property at the listed addresses following this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are:

a. Persons who were the source of (1) the initial complaint and (2) an allegation that a crime took place;

b. Witnesses having information or evidence about any side of an investigation;

c. Possible and actual suspects in the criminal situation that are subjects of investigations;

d. Subjects of investigations on noncriminal matters;

e. Employees of GSA contractors performing custodial or guard services in buildings and areas under GSA jurisdiction;

f. Current and former applicants for the position of Federal Protective Officer;

g. Sources of information and evidence. The identity for these individuals may be confidential as well as the subject matter they contribute. These files contain information vital to the outcome of administrative procedures and civil and criminal cases; and

h. Individuals associated with terrorists or terrorist groups and activities and names of regional and nationwide terrorist organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include:

a. Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil or administrative remedies require their partial or total disclosure.

b. Security files. These records contain information such as name, date and place of birth, address, Social Security Number, education, occupation, experience, and investigatory material.

c. Contingency Planning/Analysis files. These records contain information such as name and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities. They also contain information about regional and nationwide terrorists organizations and their effects on security of GSA-owned or -controlled facilities.

d. Intelligence briefs; tactical, operational and strategic informational reports; regional and nationwide contingency analysis; contingency action plans; and patterns and trends of potential or actual terrorists or terrorist groups, or other activities that could

disrupt the orderly operation of GSA-owned or -controlled facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 318 through 318d; GSA Organization Manual (OHR P 5540.1).

PURPOSE:

To assemble in one system information on (1) preliminary and other criminal investigation reports that are used to enforce criminal law and rules and regulations for punitive action; prevent, control, or reduce crime and apprehend criminals; and for correction, probation, pardon, and parole activities; (2) security files that are used as a basis for suitability decisions for GSA contract guards and cleaners; and (3) contingency action plans that provide patterns and trends of potential or actual terrorists or terrorist groups or other activities that could disrupt orderly operations of GSA-owned or-controlled facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to a Federal, State, or local agency keeping civil, criminal, enforcement, or other information to get information relevant in making a decision on hiring or retaining an employee; issuing a security clearance; letting a contract; or issuing a license, grant, or other benefit.

d. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to the Office of Personnel Management under the agency's responsibility for evaluating Federal personnel management.

g. To disclose information to various bureaus and divisions of the Department of Justice that have primary jurisdiction over subject matters and locations which the Law Enforcement Division shares.

h. To disclose information to subdivisions of the Department of Justice that have responsibility for prosecuting criminal cases and pursuing civil cases arising from authorized activities of the Law Enforcement Division.

i. To disclose information to law enforcement agencies which have lawfully participated in an investigation jointly conducted with the Law Enforcement Division.

j. To disclose information to the Department of Justice when the agency, and agency employee, or the United States is party to or has interest in litigation, and using the records is relevant and necessary and compatible with the purpose of collecting the information.

k. To disclose information to a court or adjudicative body when the agency, any agency employee, or the United States is party to or has interest in litigation, and using the records is relevant and necessary and compatible with the purpose of collecting the information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape and index cards in file cabinets.

RETRIEVABILITY:

Filed by name, file number, case number, incident and location, and type of incident.

SAFEGUARDS:

Paper records stored in lockable filing cabinets with built-in 3 position dial type combination safe locks and in secured rooms. Magnetic tapes which store unclassified records protected by password system.

RETENTION AND DISPOSAL:

Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Law Enforcement Division, Public Buildings Service, General Services Administration (PML), 18th and F Streets NW, Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. For identification requirements refer to the agency regulations outlined in 41 CFR Part 105–64.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR Part 105–64.

RECORD SOURCE CATEGORIES:

Investigations, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to the Law Enforcement Division.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j), the criminal investigation case files and contingency planning/analysis files in this system of records are exempt from all provisions of the Privacy Act of 1974 with the exception of subsections (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), (11); and (i) of the act. Under 5 U.S.C. 552a(k), the general investigation and security files in this system of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974.

Dated: May 20, 1986.

Johnny T. Young,

Director, Information Management Division.

[FR Doc. 86–12112 Filed 5–29–86; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 23, 1986

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of packages).

National Institutes of Health

Subject: Atherosclerosis Risk in Communities Study—NEW.

Respondents: Individuals or households.

Health Resources and Services Administration

Subject: Application to Participate in the Health Professions Capitation Program—Reinstatement—(0915–0068).

Respondents: Non-profit institutions.

Office of the Assistant Secretary

Subject: Application for Correction of Public Health Service Commissioned Corp Records—Extensions—(0937–0095).

Respondents: Individuals or households.

OMB Desk Officer: Bruce Artim.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of packages).

Subject: Questions on Other Insurance Available to Medicare Beneficiary—Revision—(0938–0214)—HCFA–L–0009, HCFA—365.

Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Subject: Information Collection Requirement Contained in the Sterilization Regulations and the Consent Form—HCFA–R–94—Existing Collection.

Respondents: States, Individuals, Physicians.

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, attn: (name of OMB Desk Officer).

Dated: May 27, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–12111 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–04–M

Centers for Disease Control

Acquired Immunodeficiency Syndrome (AIDS) Surveillance and Associated Epidemiologic Investigations; Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

Correction

In FR Doc. 86–10569, beginning on page 17412, in the issue of Monday, May 12, 1986, make the following corrections:

1. On page 17414, in the first column, the sentence beginning in the third line from the top of the page should read: "Funds may not be used to supplant funds supporting existing AIDS activities provided by the health department or to support construction costs."

2. In the same column, in section 1(f), in the first line, insert "current" after "applicant's".

BILLING CODE 1505–01–M

Fluoride Chemical Shortage Seminar; Open Meeting

On June 17, 1986, the Centers for Disease Control will sponsor a Fluoride Chemical Shortage Seminar. The seminar is scheduled to begin at 8:30 a.m. and will conclude at 4:30 p.m. at the Viscount Hotel in Atlanta, Georgia. The seminar is open to the public, limited only by the space available.

The purpose of the seminar is to evaluate the recent fluoride chemical shortage and to propose recommendations to keep this problem from recurring in the future. Group discussions will be held, with a general topic covered in each group.

For further information, please contact: Thomas G. Reeves, P.E., Fluoridation Engineer, Dental Disease Prevention Activity, Freeway Park, Room 345, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: FTS: 236–1833, Commercial: (404) 329–1833.

Dated: May 23, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–12114 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86F–0209]

Argus Chemical, Division of Witco Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Argus Chemical, Division of Witco Chemical Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium di(*p-tert*-butylphenyl)-phosphate as a clarifying agent for propylene homopolymer and high-propylene copolymer articles intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3932) has been filed on behalf of Argus Chemical, Division of Witco Chemical Corp., c/o 1150 17th Street NW., Washington, DC 20036, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of sodium di(*p-tert*-butylphenyl)phosphate as a clarifying agent for propylene homopolymer and high-propylene copolymer articles intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: May 22, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–12095 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0203]

Davis & Geck, American Cyanamid Co.; Premarket Approval of Maxon® Monofilament Polyglyconate Absorbable Surgical Suture, Clear or Green

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its

approval of the application by Davis & Geck, American Cyanamid Co., Wayne, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the MAXON® Monofilament Polyglyconate Absorbable Surgical Suture, Clear or Green. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 30, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7238.

SUPPLEMENTARY INFORMATION: On October 15, 1984, Davis & Geck, American Cyanamid Co., Wayne, NJ 07470, submitted to CDRH an application for premarket approval of the MAXON® Monofilament Polyglyconate Absorbable Surgical Suture, Clear or Green. The device is indicated for use in all types of soft tissue approximation and use as a ligature. The device is not indicated for use in cardiovascular, ophthalmic, or microsurgery, and not indicated for use in neural tissue. The device is available in diameter sizes 02 through 7/0 millimeters.

On May 9, 1985, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 20, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer, (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 30, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 22, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–12101 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0107]

Gish Biomedical, Inc.; Premarket Approval of MicroYAG Nd:YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Gish Biomedical, Inc., Santa Ana, CA, for premarket approval, under the Medical Device Amendments of 1976, of the MicroYAG Nd:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 30, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On September 3, 1985, Gish Biomedical, Inc., Santa Ana, CA 92705, submitted to CDRH an application for premarket approval of the MicroYAG Nd:YAG Ophthalmic Laser. The MicroYAG Nd:YAG Ophthalmic Laser is a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy).

On October 17, 1985, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On January 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21

U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 30, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 22, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-12102 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83P-0274]

Health Industry Manufacturers Association; Cardiopulmonary Bypass Oxygenator; Denial of Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying a petition submitted by the Health Industry Manufacturers Association (HIMA) to reclassify the cardiopulmonary bypass oxygenator from class III (premarket approval) into class II (performance standards). This action is being taken under the Medical Device Amendments of 1976.

DATE: Comments by July 29, 1986.

ADDRESS: Written comments are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lynne A. Reamer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 5, 1980 (45 FR 7958), under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA published a regulation, 21 CFR 870.4350, classifying the cardiopulmonary bypass oxygenator, a generic type of device, into class III. (See 21 CFR 860.3(i) of FDA's regulations governing medical device classification procedures for a definition of the term "generic type of device.") Section 870.4350(a) identifies the cardiopulmonary bypass oxygenator as a device used to exchange gases between blood and a gaseous environment to satisfy the gas exchange needs of a patient during open-heart surgery.

On June 30, 1983, HIMA of Washington, DC 20005, a trade association here representing seven manufacturers of cardiopulmonary bypass device products, submitted to FDA, under section 513(e) of the act and § 860.130 of the regulations, a petition to reclassify the cardiopulmonary bypass oxygenator from class III into class II. The petitioner requested FDA to reclassify all models of the device now in commercial distribution, including, as described in the petition, "bubble-type oxygenators and membrane oxygenators—both flat sheet and hollow fiber types," and used during open heart surgery for a period of up to 6 hours.

FDA referred the petition to the Circulatory System Devices Panel (the Panel), an FDA advisory committee, to obtain a recommendation on whether to approve or deny the petition. The Panel reviewed the petition during an open public meeting on October 14, 1983. A copy of the transcript of the meeting is on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 83P-0274 and is available for review by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

The Legal Standard Governing Reclassification

Section 513(a)(1) of the act establishes three classes of devices. Classification of a device is determined by the level of regulatory control needed to provide reasonable assurance of the safety and effectiveness of the device. A class I device is a device for which the general controls authorized by or under various sections of the act are sufficient to provide reasonable assurance of the safety and effectiveness of the device. A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which "it is therefore necessary to establish * * * a performance standard under section 514 [21 U.S.C. 360d] to provide reasonable assurance of its safety and effectiveness." A class III device is a device that cannot be classified into class I or class II and that is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or that presents a potential unreasonable risk of illness or injury. Premarket approval obtained in accordance with section 515 of the act (21 U.S.C. 360e) is required to provide reasonable assurance of the safety and effectiveness of a class III device.

Section 513(e) of the act authorizes FDA to reclassify a device based on "new information" respecting the device. The term "new information" comprehends information developed as a result of a reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Holland-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). The "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and § 860.7 of the regulations governing medical device classification procedures. As specified in § 860.7(c),

FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective.

For the purpose of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available, i.e., may not be based on (1) trade secrets or commercial or financial information which is privileged or confidential and which is obtained by FDA under various sections of the act (see section 520(c) of the act (21 U.S.C. 360j)) and § 860.5(e) of the regulations or (2) the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved premarket approval applications (see section 520(b)(3) of the act). All data and information in a petition for reclassification filed under section 513(e) of the act, however, may be disclosed by the agency and used as the basis for reclassification of a device [§ 860.5(e)].

To reclassify a device under section 513(e) of the act, the statute and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. In the case of a device classified into class III and proposed for reclassification into class II, the statute and the regulations require such evidence to show (1) why the device should not remain in class III and (2) that a performance standard will provide reasonable assurance of the safety and effectiveness of the device.

FDA notes that under section 513(c)(2)(C) of the act, the classification panel is required to recommend that a device that is purported or represented to be life-supporting or life-sustaining (e.g., the cardiopulmonary bypass oxygenator) be classified into class III, unless the panel concludes that class III is not necessary to provide reasonable assurance of the safety and effectiveness of the device and provides reasons for this conclusion (see also § 860.93(a)). Section 513(d)(2)(B) of the act, moreover, requires FDA to classify a life-supporting or life-sustaining device into class III unless such classification is not necessary to provide reasonable assurance of its safety and effectiveness (see also § 860.93(b)).

The Panel's Recommendation

The Panel considered the information contained in the petition as well as presentations made during the October 14, 1983, open Panel meeting. Michael B. Hurdle, Secretary of the American Society of Extracorporeal Technology, and Aaron Hill, a member of the Executive Committee of the American Academy of Cardiovascular Perfusionists, made presentations at the Panel meeting. Both speakers stated that insufficient clinical data are currently available to reclassify the hollow fiber type of membrane oxygenator device products into class II. Mr. Hurdle stated that he believes that sufficient information is available to enable a performance standard to be written for the bubble-type oxygenator and for the flat sheet membrane oxygenator device products. He suggested, however, that reclassification should not become effective except upon the effective date of a performance standard for the device. Mr. Hill stated that be believes that a standard cannot be written for any of the three types of device products because there currently are insufficient clinical data on all complications associated with use of the device.

The Panel believed that the petition does not contain any valid scientific evidence to show why the cardiopulmonary bypass oxygenator should not remain in class III, or to show that a performance standard for the device under section 514 of the act would provide reasonable assurance of the safety and effectiveness of the device. The Panel found that the petition does not show the existence of sufficient scientific and medical data to establish such a standard. Accordingly, the Panel concluded that class III is still necessary to provide reasonable assurance of the safety and effectiveness of the device, and recommended that FDA deny the petition.

Summary of the Data Upon Which the Recommendation is Based

At the time that the Panel recommended to FDA that the agency classify the cardiopulmonary bypass oxygenator into class III, the Panel identified four main risks to health from use of the device: (a) Blood damage: If the materials, surface finish, or cleanliness of the device are inadequate, damage to the blood may result. (b) Inadequate or excessive gas transfer: Improper design of the gas transfer mechanism can lead to the risk of inadequate gas transfer or to excessive gas transfer. (c) Thromboembolism: Inadequate blood compatibility of the materials used in the device and inadequate surface finish and cleanliness may lead to potentially debilitating or fatal thromboemboli. (d) Gas embolism: Ineffective debubbling, filtering, or separation of the gas and blood phases can lead to potentially debilitating or fatal gas embolism. (See the Federal Register of March 9, 1979; 44 FR 13406.) During review of the petition submitted by HIMA, the Panel reaffirmed its belief that the device continues to present each of these hazards.

The Panel identified a number of deficiencies in the petition.

Models of devices. The petitioner requested FDA to reclassify all models of the generic type of device now in commercial distribution. The petitioner stated that the models now in commercial distribution include (a) bubble-type oxygenators and (b) membrane oxygenators of two types, flat sheet membrane oxygenators and hollow fiber membrane oxygenators. Although the bubble-type oxygenators and the flat sheet membrane oxygenators were in commercial distribution before May 28, 1976, the enactment date of the amendments, the hollow fiber membrane oxygenators were placed in commercial distribution after that enactment date. The Panel noted that most clinical experience with the cardiopulmonary bypass oxygenator has been with the bubble-type oxygenators and the flat sheet membrane oxygenators, and that little clincial evidence is available with respect to the hollow fiber membrane oxygenators.

Data on results of tests performed by industry. The petition identified three test methods which are used by manufacturers of the cardiopulmonary bypass oxygenators to address three of the four main risks to health that the Panel identified as presented by use of the device: blood damage, inadequate or excessive gas transfer, and thromboembolism. The petition does not, however, contain any in vitro data or other data obtained using these test methods identified by the petitioner, nor does the petition correlate any results from the test methods with any clinical data obtained for each of the three models of the device for which reclassification was requested. Further, although the petition discussed complaints with respect to the device received by manufacturers through June 1980, the petition does not contain an analysis of these data or any more recent data.

Data regarding nonformed elements of blood. The Panel found that the petition does not contain any data regarding the device's effect on the nonformed elements of blood. Changes in device materials, e.g., the flat sheet membrane material, may cause changes

in the membrane's ability to transfer gases due to protein deposition. Such changes also may cause changes in blood proteins, which, in turn, may affect the nonformed elements of blood, such as the coagulation cascade, fibrinolysis, the kallikrein/bradykinin system, and the complement system. These changes may adversely affect the patient.

FDA's Analysis and Conclusion

FDA agrees with the recommendation of the Panel and finds that the petitioner failed to include in the petition the valid scientific evidence required by §§ 860.7(c) and 860.123(a)(6) of the regulations to reclassify the device from class III into class II, or to demonstrate that a performance standard could be written. The burden of presenting such valid scientific evidence is placed on the person requesting that a device be reclassified. FDA continues to believe that premarket approval is necessary to control the risks to health presented by the cardiopulmonary bypass oxygenator and to assure the safety and effectiveness of the device.

Accordingly, FDA is issuing an order under section 513 of the act and § 860.130(d) of the regulations denying HIMA's petition to reclassify the cardiopulmonary bypass oxygenator from class III into class II.

The agency is providing a 60-day comment period during which it will accept comments on the order. Interested persons may, on or before July 29, 1986, submit to the Dockets Management Branch (address above) written comments concerning this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If FDA decides on the basis of the comments received that it should reconsider this action, it will publish a notice in the Federal Register.

FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

Dated: May 22, 1986.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 86-12089 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0222]

Ranka, Hovis, McDougall Research, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of Ranka, Hovis, McDougall Research, Ltd., proposing that the food additive regulations be amended to provide for the safe use of myco-protein, derived from *Fusarium graminearum*, as a direct source of protein in certain foods.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-426-9950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6A3930) has been filed on behalf of Ranka, Hovis, McDougall Research, Ltd., c/o 2550 M St. NW., Washington, DC 20037, proposing that the food additive regulations be amended to provide for the safe use of myco-protein, derived from *Fusarium graminearum*, as a direct source of protein in certain foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: May 23, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-12088 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0346]

Surgical Simplex™ P Antibiotic Bone Cement; Review Before Advisory Committee of Howmedica, Inc.'s Petition for Reconsideration of FDA's Denial of Premarket Approval; Request for Nominations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it intends to refer for review before an advisory committee Howmedica, Inc.'s petition for reconsideration of the agency's denial of premarket approval for its Surgical Simplex™ P Antibiotic Bone Cement. The advisory committee of experts to be formed for the review will consist of five persons, qualified by training and experience to evaluate the petition, and will be appointed by the Commissioner of Food and Drugs (the Commissioner). The advisory committee will independently study the petitioner's application as it relates to the issues announced in this notice and will provide the Commissioner with its report and recommendations regarding those issues.

DATE: Nominations should be submitted by July 29, 1986.

ADDRESS: Written nominations should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7188.

SUPPLEMENTARY INFORMATION: On June 29, 1984, the Director of the Office of Device Evaluation of FDA's Center for Devices and Radiological Health (CDRH) denied approval of a premarket approval application (PMA) (P830011) for the Surgical Simplex™ P Antibiotic Bone Cement filed by Howmedica, Inc., 235 East 42d St., New York, NY 10017. This device, including two antibiotics, is intended for fixation of prostheses to living bone in orthopedic surgical procedures and in pathological fractures. The addition of antibiotics to the bone cement is proposed to help reduce the risk of localized infection during the intraoperative and postoperative period.

The petitioner's antibiotic bone cement has been under consideration by FDA since February 19, 1980, when the petitioner filed a notice of claimed investigational exemption with the agency's then Bureau of Drugs. In June 1980, FDA transferred its regulation of antibiotic bone cement products from its Bureau of Drugs to its Bureau of Medical Devices, now CDRH, pursuant to section 520(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(1)), a provision of the Medical Device Amendments of 1976 (the amendments). Under this provision, antibiotic bone cement and certain other

products that FDA had regulated as new drugs before the amendments broadened and clarified the definition of "device" are regulated by FDA as class III medical devices. Class III devices are subject to the agency's approval under section 515 of the act (21 U.S.C. 360e) prior to commercial distribution.

The petitioner filed a PMA for its antibiotic bone cement on March 9, 1983. The PMA was evaluated and the agency issued deficiency letters on June 3, 1983, and November 23, 1983. The petitioner amended its PMA on January 23, 1984. After full consideration of all information before it, CDRH denied approval of the petitioner's PMA on June 29, 1984. This denial was based on the petitioner's failure to satisfy the safety and effectiveness requirements of section 515(d)(2) (A) and (B) of the act (21 U.S.C. 360e(d)(2) (A) and (B)). In response to CDRH's action, the petitioner filed a petition for reconsideration on October 4, 1984, requesting that the Commissioner refer CDRH's denial of approval of the petitioner's application to an advisory committee of experts established pursuant to section 515(g)(2)(B) of the act for a report and recommendation with respect to the denial. The petitioner limited its request for an advisory committee review to a determination of whether an adequate and well-controlled clinical trial in humans is needed to satisfy the act's requirements for demonstrating the device's safety and effectiveness. See Petition for Reconsideration, p. 8. The review provided by the advisory committee, therefore, will be limited to the issues set forth below which respond to the petitioner's request. The advisory committee's recommendation will not be one of approval or denial of the PMA, but instead will evaluate the correctness of CDRH's denial as it relates to the demand that the applicant perform an adequate and well-controlled clinical investigation in humans as part of the applicant's demonstration of safety and effectiveness of the antibiotic bone cement. CDRH's other grounds for denial of the application will be considered by FDA to be correct insofar as they have not been challenged. The Commission's action on the recommendation of the advisory committee, therefore, will be limited to either affirming CDRH's denial order or affirming it with alterations. This result is apparently understood by the petitioner. See id.

CDRH believes that for this device an adequate and well-controlled study in humans is necessary to resolve various questions regarding the clinical effect of the antibiotic as a prophylactic agent during the perioperative period, and the cement's safety and effectiveness over time. CDRH believes that the petitioner's present submission fails to demonstrate that the antibiotic bone cement is effective against localized microorganisms that may be present during the implant situation, and it fails to demonstrate that the presence of antibiotics in the cement does not weaken the cement in the clinical situation.

In the petition for reconsideration, the petitioner argues that the information presented in the PMA is sufficient to meet the statutory requirements of section 515(d)(2) (A) and (B) of the act and that an adequate and well-controlled study in humans is unnecessary for demonstrating a reasonable assurance that the device is safe and effective under the conditions of use prescribed, recommended, or suggested in the proposed labeling.

Accordingly, pursuant to section 515(g)(2)(A) of the act, the Commissioner is granting the request for administrative review by establishing an advisory committee under section 515(g)(2)(B) of the act to submit to the agency a report and recommendation with respect to the issues raised by the petitioner's request for review.

Upon completion of the review, the Commissioner will make public the advisory committee's report and recommendations, and will issue an order affirming past agency action, with or without alteration, as is appropriate.

The following questions will define the scope of the advisory committee's review of CDRH's denial of the premarket approval application for the antibiotic bone cement:

1. Is a well-controlled clinical investigation in humans necessary to demonstrate a reasonable assurance that the device is safe and effective as labeled?

2. Assuming that a well-controlled investigation in humans is necessary, what parameters should be investigated in such a study to demonstrate a reasonable assurance that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the device's labeling?

3. Can clinical studies in humans (reported in the literature or in an individual surgeon's case reports) of bone cement with concentrations of antibiotic different from the concentrations of antibiotic in the device subject to the PMA demonstrate a reasonable assurance of safety and effectiveness to support a PMA approval?

4. Does the PMA contain studies that adequately demonstrate that the device will fix prostheses to living bone in orthopedic surgical procedures in humans?

5. Does the PMA contain studies that adequately demonstrate that the leaching out of antibiotic from the bone cement will not adversely affect the cement's long-term function in humans?

6. Does the PMA contain studies or evidence that adequately demonstrate that when the product is used as recommended in the labeling, adequate amounts of antibiotic will be delivered to the operative site in humans to eliminate those bacteria commonly found to cause infections associated with implant surgery?

7. Does the PMA adequately demonstrate that a reasonable assurance of safety and effectiveness is present for those persons most likely to be exposed to the device (e.g., the elderly) when the device is used as labeled?

The advisory committee meeting, public participation, and other activities will be governed by the Federal Advisory Committee Act (Pub. L. 92-463) and FDA's regulations in 21 CFR Part 14 governing its public advisory committees. After the Commissioner issues the order based on the recommendation of the advisory committee, a summary of the safety and effectiveness information submitted to the advisory committee will be made available to the public pursuant to section 520(h)(2) of the act (21 U.S.C. 360j(h)(2)).

The advisory committee will consist of five experts, qualified by training and experience to evaluate the petition, and be appointed by the Commissioner. Advisory committee members will be selected from among authorities knowledgeable in some or all of the following fields: clinical and administrative medicine, pathology, engineering, microbiology, infectious disease, epidemiology, and the biological and physical sciences.

Any public hearing associated with the advisory committee's review will be subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. These procedures are primarily intended to expedite media access to FDA public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of

the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentations of participants in this proceeding. Accordingly, all interested persons are directed to the guideline, as well as the Federal Register notice announcing issuance of the guideline (49 FR 14723; April 13, 1984), for a more complete explanation of the guideline's effect on this hearing. Individuals who are interested in being appointed by the Commissioner to serve on the advisory committee should contact Carl A. Larson (address above) or may be nominated by any interested person. Nominations are required to be in writing and submitted to the Dockets Management Branch (address above) by July 29, 1986.

Any interested person may nominate one or more qualified persons for membership. A complete curriculum vitae of the nominee shall be included with the nomination. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the committee, and appears to have no conflict of interest. FDA will ask potential candidates to provide detailed information concerning financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

All documents filed in this matter are filed under Docket No. 84P-0348 and are available for public review in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Additional information about this proceeding will be published in a future Federal Register notice, including announcement of the date, time, and place of the advisory committee meeting.

Dated: May 22, 1986.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 86-12100 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86G-0202]

The Herald Organization; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 6G0305) has been filed on behalf of the Herald Organization proposing that *alpha*-cyclodextrin is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by July 29, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 6G0305) has been filed on behalf of the Herald Organization, 401 Christopher Ave., Suite 11, Gaithersburg, MD 20877. This petition proposes to affirm that *alpha*-cyclodextrin used as an encapsulating agent is GRAS as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Interested persons may, on or before July 29, 1986, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 22, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-12097 Filed 5-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0019]

Minor Use of Animal Drugs; Availability of Guidelines

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised guidelines concerning the submission of data for approval of new animal drug applications for minor uses of new animal drugs. The revised guidelines describe the types of data required to establish safety and effectiveness, and to address environmental considerations for "minor use" new animal drugs under section 512 of the Federal Food, Drug, and Cosmetic Act, and 21 CFR 514.1(d) of the animal drug regulations.

ADDRESS: The revised guidelines are available for public examination at, further written comments may be submitted to, and requests for single copies may be sent to the Dockets Management Branch (HF-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas V. Raines, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: "Minor use" new animal drugs and drugs used in minor animal species or used in any animal species for a disease that occur infrequently or in limited geographical areas. FDA published a proposed rule and a notice of availability of guidelines concerning minor use new animal drugs in the Federal Register of July 20, 1979 (44 FR 42714). In the Federal Register of January 14, 1983 (48 FR 1922), FDA published a final rule amending the animal drug regulations to provide for minor use applications (21 CFR 514.1(d)) and the availability of revised guidelines concerning their submission. FDA is now providing six specific guidelines, namely: (I) Game birds, (II) minor ruminants, (III) rabbits, (IV) food fish, (V) human food safety, and (VI) environmental considerations. These guidelines have been updated to reflect more recent experience, including comments from three workshops on the

minor use of new animal drugs (March 14–16, 1983, August 21–22, 1984, and September 25–26, 1985). The most significant revisions reflect clarification of the requirements for minor ruminants, rabbits, and human food safety, and for environmental considerations to reflect the National Environmental Policy Act and FDA's implementing regulations in 21 CFR Part 25 (50 FR 16636; April 26, 1985).

This notice of availability is issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Sponsors may rely upon a guideline with the assurance that it represents procedures acceptable to the agency (see 21 CFR 10.90). If a sponsor believes that alternative procedures are applicable, a guideline does not preclude a sponsor from pursuing the alternative procedures. Under such circumstances, however, the agency encourages sponsors to discuss the alternative procedures in advance with FDA to prevent the expenditure of money and effort for work that may later be found to be unacceptable.

Interested persons may, at any time, submit additional written comments on the guidelines to the Dockets Management Branch (HFA–305). Such comments will be considered in determining if further revisions of the guidelines are required. Respondents should submit two copies, except that individuals may submit single copies, identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: May 22, 1986.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 86–12094 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1986:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 23–25, 1986, 8:30 a.m.

Place: Fresno Hilton, 1055 Van Ness, Fresno, California 93721.

Visits will be made to National Health Service Corps funded sites, including a migrant, a freestanding and an Indian Health site on Tuesday, June 24. No transportation will be provided for visitors and observers.

The entire meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda

The agenda will include a discussion of Region IX activities, overall National Health Service Corps policies, budget and other topics at the pleasure of the Council.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Anna Mae Voigt, National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 8–40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443–4814.

Agenda items are subject to change as priorities dictate.

Dated: May 22, 1986.

Jackie E. Brown,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86–12095 Filed 5–29–86; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Santa Ana, NM; Proclaiming Certain Lands as Part of the Reservation

April 30, 1986.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

On April 30, 1986, pursuant to authority contained in Section 7 of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the following described lands, located in Sandoval County, New Mexico, were added to and made a part of the Reservation of the Pueblo of Santa Ana.

A tract of land situate in Section 18, T. 13 N., R. 4 E., NMPM, located in the County of Sandoval and State of New Mexico, being more particularly described by metes and bounds as follows:

Beginning at a point, the SW Corner of Section 19, said point being a USGLOS Brass Cap on pipe, section corner common to Sections 19, 30, T. 13 N., R. 4 E., NMPM; thence,

North 0°33'44" East, 2455.51 feet distant to a point, said point being a USGLOS Brass Cap on pipe, East ¼ Corner, Section 24, T. 13 N., R. 3 E., NMPM; thence,

North 0°36'16" East, 179.67 feet distant to a point, said point being a USGLOS Brass Cap on pipe, West ¼ Corner, Section 19, T. 13 N., R. 4 E., NMPM; thence,

North 0°38'45" East, 2495.45 feet distant to a point, said point being a USGLOS Brass Cap on pipe, Section Corner common to Sections 13, 24, T. 13 N., R. 3 E., NMPM; thence,

North 0°38'49" East, 138.61 feet distant to a point, said point being a USGLOS Brass Cap on pipe, Section Corner common to Sections 18, 19, T. 13 N., R. 4 E., NMPM; thence,

North 89°59'13" East, 2640.61 feet distant to a point, said point being a USGLOS Brass Cap on pipe, North ¼ Corner, Section 19, T. 13 N., R. 4 E., NMPM; thence,

North 89°45'31" East, 130.44 feet distant to a point, said point being a USGLOS Brass Cap on pipe, South ¼ Corner, Section 18, T. 13 N., R. 4 E., NMPM; thence,

North 89°46'10" East, 2368.06 feet distant to a point, said point being a concrete filled 1" pipe, C.C., Sections 18, 19, T. 13 N., R. 4 E., NMPM; El Ranchito Grant; thence,

South 23°06'17" West, 3882.85 feet distant to a point, said point being a USGLOS Brass Cap on pipe, M.C. 3, El Ranchito Grant; thence,

South 22°44'38" West, 523.33 feet distant to a point, said point being a USGLOS Brass Cap on pipe, 1 M, El Ranchito Grant; thence,

South 23°49'07" West, 315.74 feet distant to a point, said point being a USGLOS Brass Cap on pipe, M.C. 2, El Ranchito Grant; thence,

South 8°48'19" West, 962.88 feet distant to a point, said point being a USGLOS Brass Cap, C.C. Sections 19, 30, T. 13 N., R. 4 E., NMPM; El Ranchito Grant, thence,

North 89°57'32" West, 582.20 feet distant to a point, said point being a USGLOS Brass Cap, ¼ Corner common to Sections 19, 30, T. 13 N., R. 4 E., NMPM; thence,

North 89°57'42" West, 2640.06' distant to the point of beginning, said point being a USGLOS Brass Cap on pipe.

Section Corner common to Sections 19, 30, T. 13 N., R. 4 E., NMPM, containing 494.36S acres more or less.

Excepting Therefrom the Following Described Tract of Land

Beginning at the southwest corner of this excepted tract from which point the southwest corner of Section 19, Township 13 North, Range 4 East, NMPM, bears S 0°33'44" W., 660.08 feet and from said beginning point running:

Thence N 0°33'44" E., along the Range line between Range 3 East and 4 East, a distance of 798.00 feet;

Thence N 79°32'31" E., 2111.41 feet;

Thence S 85°53'39" E., 1613.61 feet to a USGLOS Brass Cap marked ERMC 3 1914;

Thence S 22°44'36" W., 526.33 feet;

Thence S 23°49'07" W., 315.74 feet;

Thence S 8°46'19" W., 962.86 feet to a point to a USGLOS brass cap marking the closing corner of Sections 19 and 30 with the El Ranchito Grant;

Thence North 89°57'32" West, 582.20 feet distant to a point, said point being a USGLOS Brass Cap, ¼ Corner common to Sections 19, 30, T. 13 N., R. 4 E, NMPM;

Thence North 89°57'42" West, 1320.06' distant to a point;

Thence North 0°2'18" E., 660.00 feet;

Thence N 89°57'42" W., 1313.97 feet to the point of beginning and containing *113.00* acres, more or less, all in said Section 19, Township 13 North, Range 4 East, NMPM.

Excepting Further Therefrom the Following Described Tract of Land

Beginning at the Southwest Corner of the Tract herein described which point is the Northwest corner of SUN COUNTY SUBDIVISION, Phase 1, filed and recorded in the office of the County Clerk of Sandoval County, New Mexico, on October 23, 1973, and from said beginning point running:

Thence N 00°39'44" E., along the Range Line between Range 3 East and Range 4 East, a distance of 909.48 feet to a U.S.GLO Brass Cap, this being the Quarter corner of Section 24, Township 13 North, Range 3 East;

Thence N 00°36'16" E., a distance of 179.67 feet to a U.S.GLO Brass Cap, this being the Quarter corner of Section 19, Township 13 North, Range 4 East;

Thence N 00°39'45" E., a distance of 630.00 feet;

Thence S 89°21'15" E., a distance of 472.05 feet;

Thence S 00°38'45" W., a distance of 1716.80 feet;

Thence S 79°32'31" W., a distance of 479.52 feet along the Northerly boundary of SUN COUNTY SUBDIVISION, Phase 1 to the TRUE POINT OF BEGINNING, and containing *19.089* acres, more or less, all in Section 19, Township 13, North, Range 4 East, NMPM, Sandoval County, New Mexico.

Excepting Further Therefrom the Following Described Tract of Land

From a point, S.W. Corner of Section 19, said point being a USGLOS Brass Cap on pipe, Section Corner common to Sections 19, 30, T. 13 N., R. 4 E., NMPM; South 89°57'57"42" East, 660.00 feet distant to a point, said point being a #3 deformed reinforcing bar and the true point of beginning, thence.

North 0°02'18" East, 660.00 feet distant to a point, said point being a #3 deformed reinforcing bar; thence,

South 89°57'42" East, 660.00 feet distant to a point, said point being a #3 deformed reinforcing bar; thence;

South 0°02'18" West, 660.00 feet distant to a point, said point being a #3 deformed reinforcing bar; thence,

North 89°57'42" West, 660.00 feet distant to the true point of beginning, said point being a #3 deformed reinforcing bar, and containing 10.000 acres more or less.

Excepting Further Therefrom the Following Described Track of Land

Beginning at a point, said point being a USGLOS Brass Cap on pipe, M.C. 3, El Ranchito Grant; thence,

North 85°53'39" West 1613.61 feet distant to a point, said point being a 1" pipe; thence;

North 0°08'26" West, 1557.72 feet distant to a point, said point being a #5 deformed reinforcing bar; thence,

South 68°09'33" East, 2140.72 feet distant to a point, said point being a #5 deformed reinforcing bar; thence,

South 23°05'17" West, 952.56 feet distant to the point of beginning, said point being a USGLOS Brass Cap on pipe, M.C. 3, El Ranchito Grant and containing 52.173 acres more or less.

Excepting Further Therefrom the Following Described Tract of Land

That certain non-exclusive easement as referred to in Warranty Deed recorded in Book 11 DR, page 332, and in Quitclaim Deeds recorded in Book DR 28, page 619, and in Book DR 28, page 820, records Sandoval County, New Mexico.

The above-described parcels contain a total of 300.105 acres, more or less which are subject to all valid rights, reservations, rights-of-way, and easements of record.

Rose O. Swimmer,

Assistant Secretary—Indian Affairs.

May 21, 1986.

[FR Doc. 86-12183 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6679-A2]

Alaska Native Claims Selection; Manokotak Natives, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Manokotak Natives Limited for approximately 3,200 acres. The lands involved are in the vicinity of Manokotak, Alaska.

Seward Meridian, Alaska

T. 14 S., R. 58 W. (Unsurveyed)
T. 12 S., R. 60 W. (Unsurveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until June 30, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-12176 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-JA-M

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The citizen advisory council for the Bureau of Land Management's Dickinson District will meet June 18, 1986, in Dickinson, North Dakota. This is a rescheduling from the previously announced date of June 11, 1986, (51 FR 17838, May 15, 1986). The change was necessitated when unforeseen conflicts

would not allow at least six council members to be present on that date. The agenda and all other information is the same as announced for the June 11 meeting.

LOCATION, DATE, AND TIME: June 18, 1986, from 8:30 a.m. to approximately 4:00 p.m. Mountain Daylight Time, Community Room (basement) of the Gate City Building, 204 Sims Street, Dickinson, North Dakota.

FOR MORE INFORMATION CONTACT: William F. Krech, District Manager, P.O. Box 1229, Dickinson, North Dakota 58602; telephone (701) 225-9148.

Dated: May 23, 1986.

William F. Krech,

District Manager.

[FR Doc. 86-12186 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-DN-M

Sale of Public Lands in Yavapai County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Public Land in Yavapai County, A-21945 through A-21951.

SUMMARY: The Bureau of Land Management will offer 7 tracts of land for public sale. These tracts are located near Wickenburg, Arizona. It has been determined that the sale of these tracts is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976. These tracts will be sold at no less than the appraised fair market value.

The subject lands are located at:

Gila and Salt River Meridian, Arizona

Serial No.	Legal description	Acres
A-21945	T. 8 N., R. 5 W., Sec. 15, NE¼NE¼NW¼.	10.00
A-21946	T. 8 N., R. 5 W., Sec. 15, SE¼NE¼NW¼.	10.00
A-21947	T. 8 N., R. 5 W., Sec. 15, W½NE¼NW¼.	20.00
A-21948	T. 8 N., R. 5 W., Sec. 15, NW¼NW¼SW¼.	40.00
A-21949	T. 8 N., R. 5 W., Sec. 15, N½SW¼NW¼.	20.00
A-21950	T. 8 N., R. 5 W., Sec. 15, W½SE¼NW¼.	20.00
A-21951	T. 8 N., R. 5 W., Sec. 15, E½SE¼NW¼.	20.00

NOTE.—The average aggregates 140.00 acres of land in Yavapai County.

Current Department of Interior policy for competitive land sales provides for a sealed bid process only.

Federal law limits sale of this land to United States citizens, corporations subject to the law of any State or of the United States, States, State instrumentalities or political subdivisions authorized to hold property, and any entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the government; the citizenship limitation does not apply to agents who bid on behalf of an associate, client or employer.

All of the parcels listed will be subject to the following reservation when patented:

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 USC 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts will be sold subject to the following reservations:

1. Parcels A-21945—A-21951 will be sold subject to BLM road right-of-way A-18888.

2. A-21949 will be subject to BLM road right-of-way A-18889.

Additionally, all parcels will be sold subject to the Wickenburg Inn grazing lease No. AZ-020-2530. The purchaser of the land will honor the terms and conditions of this grazing lease until February 28, 1989. The purchaser will not charge more than the BLM grazing free schedule for a given year. Modification of these terms and conditions will occur only thorugh mutual agreement between the purchaser and the lessee.

The successful bidder will also be required to purchase the mineral estate at the time of final payment.

Upon publicaton of this notice in the Federal Register, the land described above will be segregated from all forms of non-discretionary appropriation under the public land laws, including the mining laws, except the mineral laws, for a period of 270 days or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the Federal Register prior to the expiration of the 270 day period.

Additional information regarding these tracts of land will be contained in the sale brochure made available at least 30 days prior to the sale. This additional information includes: 1. Sealed bid instructions. 2. Times of first sealed bid opening. 3. Appraised fair market value of the tracts. 4. Any reservations or terms and conditions that apply to the tracts of land. 5. Maps showing the location of the tracts of land. 6. Requirements of parties wishing to bid. 7. Payment procedures for the successful bidder.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior. Comments regarding this action or requests for additional information should be sent to the Phoenix District, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 22, 1986.

Marilyn V. Jones,

District Manager.

[FR Doc. 86-12187 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-32-M

Nevada, Filing of Plats of Survey and Order Providing for Opening of Lands

May 22, 1986.

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on July 14, 1986.

Mount Diablo Meridian, Nevada

T. 2 N., R. 56 E.

2. The elevation of the land within the confines of the survey in Township 2 North, Range 56 East, is approximately 6,000 ft. above sea level and the terrain is rolling to mountainous. The vegetation consists of scattered juniper, pinion pine, sagebrush, Brigham tea, rabbitbrush and sparse cacti. The soil is sandy clay loam and rocky. Cottonwood Creek flows southeasterly across the southern part of section 13.

Improvements consist of an improved gravel road bearing generally east and west in section 13 and a building under construction is located in the northwest quarter of the northwest quarter of section 13.

Principal users of the area are landowners in the vicinity.

T. 18 N., R. 63 E.

The land within the confines of this survey in Township 18 North, Range 63 East, is located approximately 8 miles north of Ely, Nevada, and more specifically, in Smith Valley, 2 miles northwest of Hercules Gap. The elevation is about 6,600 ft. above sea level. The soil is sandy clay loam and the vegetation consists of medium to scattered densities of juniper and pinion pine in the northeast part and scattered

sagebrush, native grass and sparse cacti. Drainage is primarily southwesterly along the alluvial fan of the Egan Range.

Access is gained via Bothwick Road which, commencing in Ely, enters the area at the south boundary of section 31, heading in a straight northwesterly direction through the section. There are numerous trail roads in the area. In addition, there is a power line which basically parallels Bothwick Road.

Principal users of the area are landowners, hunters, and wood cutters.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on July 14, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands decribed above have been open and continue to be open to the mining and mineral leasing laws.

4. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated:

Mount Diablo Meridian, Nevada

T. 2 N., R. 42 E.	May 14, 1986	Tract survey.
T. 12 N., R. 21 E.	May 14, 1986	Corrective resurvey and corrective survey.
T. 31 N., R. 49 E.	May 14, 1986	Supplemental plat.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-12188 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-HC-M

Shoshone District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Thursday, June 26, 1986 at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Ideo, District Manager, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-0575.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Current Issues Update
Field Tour of Fire Rehabilitation Projects

The Shoshone District Advisory Council is established under Section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.) as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 9:00 and 10:00 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by June 25, 1986. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Dennis D. Schulze,

Acting District Manager.

[FR Doc. 86-12107 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-GG-M

[W-81777]

Wyoming: Termination of a Public Meeting and Associated Withdrawal Action For Spanish Point Caves

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of a previously announced public meeting.

SUMMARY: The Notice of a Public Meeting, to accept public comment on the proposed Spanish Point Cave Withdrawal published in the Federal Register, Volume 51, Number 85 on Friday, May 2, 1986, is hereby cancelled.

A revised segregation application effort will be proposed for the subject area that will reflect updated information obtained as a result of the land use planning process. The public meeting previously scheduled to occur on June 10, 1986, at the Worland District Office, 101 South 23rd Street, Worland, Wyoming, is therefore cancelled.

FOR FURTHER INFORMATION CONTACT: Roger D. Inman, Area Manager, Washakie Resource Area, Worland District Office (307-347-9871).

Dated: May 23, 1986.

Chester E. Conard,

District Manager.

[FR Doc. 86-12177 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-22-M

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 65771, Blaine County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, July 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ respectively. Payment of $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 20, 1986.

Karen L. Skauge,

Chief, Leasing Unit.

[FR Doc. 86-12110 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-DN-M

[CA 18779]

Realty Action; Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, CA 18779.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3S., R. 4E.,
Sec. 32: NE¼NE¼.
Containing 40 acres of public land.

In exchange for these lands the United States will acquire a like value of land from The Nature Conservancy, located within the following described area:

San Bernardino Meridian, California

T. 4S., R. 6E.,
Sec. 11, all;
Sec. 12: W½.
Containing 960 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-Federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be conducted on a value for value basis. Following an appraisal, full equalization of values will be achieved by acreage adjustments or by a payment to the United States by The Nature of Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Land to be transferred from the United States will be subject to the following reservations, terms, and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil, gas, and geothermal steam and associated geothermal resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM Office.

3. A right-of-way for a Federal Aid Highway, Serial No. LA 0152960, under the Act of November 9, 1921. (42 Stat. 216; 23 U.S.C. 18).

4. The patent will be subject to those rights granted by oil and gas lease CA 10758, issued under the Act of February 25, 1920, as amended (41 Stat. 437, 30 U.S.C. 181).

FOR FURTHER INFORMATION CONTACT: John Sullivan, Indio Resource Area (714) 351–6663. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: May 22, 1986.

Hugh W. Riecken,

Acting District Manager.

[FR Doc. 86–12184 Filed 5–29–86; 8:45 am]

BILLING CODE 4310–40–M

[I–22270, I–22803 and I–22804]

Coeur d'Alene District, Idaho; Sale of Public Lands

AGENCY: Bureau of Land Management, Idaho; Interior.

ACTION: Notice of Realty Action, Sale of Public Land in Shoshone and Bonner Counties, Idaho (I–22270, I–22803, and I–22804).

DATE AND ADDRESS: The sale offering for parcels I–22270 and I–22803 will be held on Wednesday, August 20, 1986, at 10:00 a.m. at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, ID 83814. The sale offering for parcel I–22804 will be held on Wednesday, October 15, 1986, at 10:00 a.m. at the same location. Unsold parcels will be offered every Wednesday through January 20, 1987, on which date this sale offering will be suspended.

SUMMARY: The following-described lands will have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal:

Parcel	Legal description	Fair market value	Sale type
I–22270	T. 48N., R. 3E., B.M., sec. 11, lot 6 (0.02 acres).	$50.00	Competitive.
I–22803	T. 55N., R. 3E., B.M., sec. 18, SE¼NW¼ (40.00 acres).	13,000.00	Competitive.
I–22804	T. 55N., R. 3E., B.M., sec. 18, NW¼NW¼ (40.00 acres.	1,000.00	Competitive.

When patented, each parcel will be subject to the following reservations:

1. Ditches and canals, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. To all valid existing rights of record.

The previously-described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

Sale Procedures

All three parcels will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Coeur d'Alene District Office located at 1808 North Third Street, Coeur d'Alene, Id 83814. The bid must be sealed in an envelope with the envelope specifying the serial number and the sale date in the lower left hand corner (i.e. "Sealed bid—public land sale I–00000—August 20, 1986"). If two or more valid sealed bids are received for the same amount and are high bid, a supplemental bidding of the high bidders will be held.

Bids must be submitted for at least fair market value and will constitute an application to purchase the mineral estate for parcels I–22270, I–22803 and I–22804. A thirty percent (30%) deposit must accompany each bid. An additional $50 non-returnable mineral conveyance processing fee is required and is an addition to the 30% deposit. Bids will be rejected if the correct amount of deposit and mineral processing fee is not received. The filing fee and deposit must be paid by certified check, money order, bank draft or cashier's check. Bids will be rejected if accompanied by a personal check.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Robert Olson, Realty Specialist, at (208) 765–7358.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management,

1808 North Third Street, Coeur d'Alene, ID 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: May 21, 1986.

John B. O'Brien, III,

Acting District Manager.

[FR Doc. 86-12185 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-GG-M

[CA 3589]

Partial Termination of Proposed Withdrawal and Termination of Land; California

May 22, 1986.

Notice of the Forest Services, U.S. Department of Agriculture, application CA 3589 for withdrawal and reservation from appropriation under the mining laws (30 U.S.C. Ch. 2) for use as an administrative site in the Eldorado National Forest, Placer County, California, was published in the Federal Register on July 2, 1976, page 27404, FR Doc. 76-19172 and republished on July 28, 1977, page 38434, FR Doc. 77-21685. The applicant agency has cancelled its application as to the following described lands:

Mount Diablo Meridian

T. 14, R. 14 E.,
Sec. 16, E½NE¼NW¼NW¼, W½NW¼ NW¼NW¼ S½NW¼NW¼.

The area described aggregates 30.00 acres.

Therefore, pursuant to the regulations in 43 CFR 2310.2-1(c), such land at 10:00 a.m. July 7, 1986, will be relieved of the segregative effect on the above mentioned application.

Nancy J. Alex,

Chief, Lands & Locatable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 86-12177 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-40-M

[N-42796]

Realty Action; Leasing of Public Lands for Private Airstrip; Nevada

This Notice of Realty Action involves the leasing of public lands for a private airstrip. The airstrip is for the exclusive use of Empire Farms for commuting to and from the farm. It would also be used by crop dusters which would be used for spraying the farm fields.

The site proposed for leasing under provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920 is described as follows:

Mount Diablo Meridian, Nevada

T. 30 N., R. 22 E.,
Sec. 25, E½E½E½SW¼;
Sec. 36, E½E½NE¼NW¼, NE¼NE¼S E¼NW¼.

The proposal would include 32.5 acres.

The proposed parcel is located in the San Emidio Desert immediately adjacent to the Fox Range.

The proposed area would be cleared of vegetation and levelled. A fence would be constructed to prevent large animals from wandering onto the airstrip.

No other proposals will be accepted. The proposed airstrip lies immediately adjacent to Empire Farms private land and housing. Therefore, no other proposals would be acceptable considering adjacent land uses.

The proposal would be authorized by a lease for a term of 20 years. The lease could be renewed at the discretion of the authorized officer.

The proposal would be a working part of Empire Farms. Empire Farms is an operating farm and therefore has the legal, financial, and managerial qualifications necessary to complete the proposed airstrip construction.

The proposed parcel has not been appraised at this time, so no estimate of rent is available. However, rent will not be less than the appraised fair market value.

Operation of the airstrip would require special Federal Aviation Administration stipulations to be followed. Since the proposal includes using the airstrip by crop dusters special requirements for the handling and use of pesticides would be imposed.

For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445. In the absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

Dated: May 20, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-12179 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service Alaska OCS Region; Public Hearings; Alaska Offshore

This Notice establishes the location and alternative dates of a public hearing to be held pursuant to section 810 of the Alaska National Interest Lands and Conservation Act (ANILCA).

The Minerals Management Service recently prepared Environmental Assessment (EA) No. AK 86-02, regarding Amoco's request for a waiver of Stipulation No. 4 (Seasonal Drilling Restriction for Protection of Bowhead Whales), Outer Continental Shelf Sale 87, Diapir Field, as applied to the approved exploration plan at the Erik and Belcher Prospects. The Erik Prospect is located approximately 20 kilometers northwest of Kaktovik in the Beaufort Sea.

The EA found, among other things, that the one-time waiver of Stipulation No. 4 for the Erik Prospect "may significantly restrict subsistence uses." Section 810(a)(2) of ANILCA requires that when such a finding is made a public hearing will be held in the vicinity of the area involved. Thus, a hearing will be held on June 26, 1986, from 7:00 p.m. to 9:00 p.m. in the Community Hall in Kaktovik, Alaska. If it is necessary to cancel the June 26 hearing, it will be held June 30, 1986, at the same time and location.

The determinations required by section 810(a)(3) of ANILCA will be made after the hearing is held. Copies of EA No. AK 86-02 can be obtained from the Alaska OCS Region, Leasing and Environment Office, Minerals Management Service, P.O. Box 101159, Anchorage, Alaska 99510, Telephone (907) 261-4080.

Interested individuals, representatives of organizations, and public officials are invited to testify at the hearing. Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. Oral statements may be supplemented by a more complete written statement which may be submitted to a hearing official or by mail. Those unable to testify at the public hearing may make their views known by submitting written comments by mail. Written comments should be addressed to the Regional Director, Alaska OCS Region, Minerals Management Service, P.O. Box 101150, Anchorage, Alaska 99510 and should be received by July 7, 1986.

Alan D. Powers,

Regional Director.

[FR Doc. 86-12116 Filed 5-29-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1619, Block 93, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on May 21, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 23, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–12108 Filed 5–29–86; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30812]

Railroad Operation; Illinois Central Gulf Co.; Exemption for Track Acquisition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval, under 49 U.S.C. 11343, *et seq.*, the acquisition and operation of 5.54 miles of track from Consolidated Rail Corporation in Madison and St. Clair Counties, IL, subject to standard employee protective conditions.

DATES: This exemption will be effective on June 30, 1986. Petitions to stay must be filed by June 9, 1986. Petitions for reconsideration must be June 19, 1986.

ADDRESSES: Send petitions referring to Finance Docket No. 30812 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Howard D. Koontz, 233 North Michigan Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr. (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decided: May 22, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–12157 Filed 5–29–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30827]

Little Rock & Western Railway Corporation; Exemption To Operate; Continental Grain Co.

Little Rock & Western Railway Corporation has filed a notice of exemption to operate over a rail line between Perry and Danville, AR, a distance of approximately 35 miles, in Yell and Perry Counties, AR, pursuant to rights granted by Continental Grain Company. Comments must be filed with the Commission and served on:

Kelvin J. Dowd, 1224 Seventeenth Street, NW., Washington, DC 20036, Phone: (202) 347–7170.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505 (d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: May 22, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–12124 Filed 5–29–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–1 (Sub-187X)]

Chicago and North Western Transportation Company—Abandonment Exemption—In Jackson County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company of 2.4 miles of railroad in Jackson County, WI, subject to standard employee protective conditions.

DATES: This exemption will be effective on June 30, 1986. Petitions to stay must be filed by June 16, 1986, and petitions for reconsideration must be filed by June 24, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–1 (Sub-No. 187X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

(2) Petitioner's representative: Robert T. Opal, Chicago and North Western Transportation Co., One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decided: May 22, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–12123 Filed 5–29–86; 8:45 am]

BILLING CODE 7035–01–M

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DEPARTMENT OF JUSTICE

Joint Newspaper Operating Agreement

Notice is hereby given that the Attorney General has received an application for approval of a joint newspaper operating arrangement involving the two daily newspapers in Detroit, Michigan. The application was filed on May 9, 1986 by the Detroit News, Inc., publisher of the Detroit News, and the Detroit Free Press, Inc., publisher of the Detroit Free Press. The proposed arrangement provides that the printing and commercial operations of both newspapers would be handled by the Detroit Newspaper Agency, a joint venture partnership created by the newspapers. According to the application all the editorial functions and policies of each newspaper would remain separate.

The Newspaper Preservation Act, 15 U.S.C. 1801 et seq., requires that joint newspaper operating arrangements such as that proposed by the Detroit newspapers have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting his consent, the Attorney General must find one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act.

In accordance with the Newspaper Preservation Act Regulations, published in the Federal Register on January 2, 1974, 28 CFR Part 48, copies of the proposed agreement and other materials filed by the newspapers in support of the application are available for public inspection in the main offices of the newspapers involved and at the Department of Justice. Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for a hearing must set forth the issues of fact to be determined and the reason that a hearing is believed to be required to determine them. Comments should be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by June 30, 1986.

Replies to any comments filed on or before that date may be filed on or before July 29, 1986.

Dated: May 23, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

[FR Doc. 86-12182 Filed 5-29-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. Badger Paper Mills, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 12, 1986, a proposed consent decree in *United States v. Badger Paper Mills, Inc.*, Civ. No. 84-C-1236, was lodged with the United States District Court for the Eastern District of Wisconsin. This agreement resolves a judicial enforcement action brought by the United States against Badger Paper Mills, Inc., which alleged violations of the Clean Air Act at Badger's pulp mill in Peshtigo, Wisconsin.

The proposed consent decree provides that Badger will install a scrubber at its pulp mill and implement certain other modifications to its facility system by April 1, 1988. Badger is also subject to an interim control program until it achieves compliance with the final emission limitations established under the Decree. Many of the measures in the Decree have already been completed by Badger. Badger has agreed to pay a civil penalty of $50,000 for past violations. Finally, the decree establishes monitoring and reporting requirements and provides for stipulated penalties for failure to comply with the provisions of the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Badger Paper Mills, Inc.*, D.J. Ref. 90-5-2-1-709.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, Eastern District of Wisconsin, Suite 500, 330 Federal Building, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202

EPA

Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please attach a check in the amount of $2.10, payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-12109 Filed 5-29-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Modification of Consent Decree Under the Clean Water Act; United States v. City of Fort Smith and the State of Arkansas

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 23, 1986, a proposed modification to Consent Decree in *United States v. City of Fort Smith and the State of Arkansas*, Civil Action No. 83-2121 was lodged with the Western District of Arkansas, Fort Smith Division. The complaint alleges violations of the Clean Water Act and the City's National Pollution Discharge Elimination System permit.

A Consent Decree was entered in this case on June 17, 1983. That decree provided for a comprehensive study of the City's two wastewater treatment facilities, from which a corrective action plan was proposed; provided for a civil penalty for past violations; and established interim effluent limitations for discharges from the plants.

The modification to the Consent Decree requires the City to pay a civil penalty for past violations of the decree and submit a Pretreatment Implementation Status Report of the City's industrial users. The modification additionally revises the interim effluent limits, facility construction schedule, and stipulated penalty provisions of the original decree.

The Department of Justice will receive comments on the proposed modification to Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistance Attorney General of the Land and Natural Resources Division, Department of

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Justice, Washington, DC 20530, and should refer to *City of Fort Smith, Arkansas and the State of Arkansas*, Civil Action No. 83–2121 (W.D. Ark.) DOJ Ref. 90–5–1–1–1782.

The proposed modification to the Consent Decree may be examined at the office of the United States Attorney, U.S. Post Office and Courthouse Building, 6th and Rogers Streets, Fort Smith, Arkansas 72901. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed modification to the decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $.70 (ten cents per page reproduction cost), payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–12106 Filed 5–29–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the redcordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration

Alien Labor Certification State Agency Transmittal of Application and Processing Record

1205–0182; ETA 4748

One per application

State or local governments

50,000 respondents; 15,000 burden hours; 1 form

The ETA 4748 is used by State and local employment service offices, and DOL regional offices, to facilitate case control and processing, assist in certification determinations and provide date for program MIS.

Reinstatement

Bureau of Labor Statistics

CES State Operations Review

1220–0078 BLS 790 V

Annually

State or local governments

53 responses; 424 hours; 1 form

The CES State Operations Review is the principal source of information concerning the quality and the states' adherence to BLS prescribed performance in all aspects of the CES survey. It is a dynamic vehicle to measure program performance in a state.

Reinstatement

Employment and Training Administration

Procedures for Classifying Labor Surplus Areas

1205–0207

On Occasion

State or local governments

52 respondents; 104 burden hours; no forms

DOL issues an annual list of labor surplus areas (LSAs) so that the Federal agencies can direct procurement contracts to employers in high unemployment areas. The annual LSA list is updated during the year based upon petitions submitted to DOL by SESAs requesting additional areas for LSA classification.

Signed at Washington, DC, this 22nd day of May 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–11933 Filed 5–29–86; 8:45 am]

BILLING CODE 4510–30–M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report to keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration
Claims and Payment Activities
1205-0010; ETA 5159
Monthly
State or local governments
1,847 hours; 53 respondents; 1 form

Measures workload and provides quantitative measurement for budget estimates, administrative planning and program evaluation; main vehicle for accounting to public.

Extension

Employment and Training Administration
Job Corps Health Questionnaire
1205-0033; ETA 8-53
On occasion
Individuals or households
5,940 hours; 18,000 respondents; 1 form

The Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility. The applicant must not have a health condition which presents a potential serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive, or prolonged treatment.

Extension

Employment and Training Administration
Guidelines for the State Employment Security Agency Program
Budget Plan for the Unemployment Insurance Program
1205-0132, ET Hbk. 336, ETA Forms 8832; 8822A; 2208; 2208A, B,; 2215; 2209, 8833
Annually
State or local governments
53 respondents; 2246 hours; 6 forms

The Program Budget Plan provides the basis for an application for funds for State Unemployment Insurance operations for the coming year. In the PBP, States certify intent to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Signed at Washington, DC, this 27th day of May, 1986

John J. Nestor,
Acting Departmental Clearance Officer.

[FR Doc. 86-12197 Filed 5-29-86; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-16, 439]

Albany Industrial Maintenance Co., Albany, GA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Albany Industrial Maintenance Company, Albany, Georgia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-16, 439: Albany Industrial Maintenance Company, Albany, Georgia (May 19, 1986)

Signed at Washington, DC, this 20th day of May 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-12104 Filed 5-29-86; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; All American Trucking et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 9, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 9, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 19th day of May 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
All American Trucking (workers)	[illegible], WY	5/5/86	4/23/86	TA-W-17,424	Warehouse—drilling products, chemicals for oil drilling.
Alpine Knitting Mill (company)	Boulder, CO	5/13/86	5/5/86	TA-W-17,425	Ski and athletic sweaters.
Ashland Crafts, Inc. (UJWU)	Ashland, KY	5/5/86	4/30/86	TA-W-17,426	Contract sewing—girls dresses.
BJM Drilling & Exploration (workers)	Midland, TX	5/1/86	4/22/86	TA-W-17,427	Oil drilling.
Connor's Sales Co., Inc. (workers)	Williston, ND	5/1/86	4/28/86	TA-W-17,428	Supply oil field tanks and emulsion treaters to oil wells.
Florsheim Shoe Co. (workers)	Kirksville, MO	5/15/86	5/2/86	TA-W-17,429	Mens dress shoes.
Forwest Drilling, Inc., (workers)	Richland County, MT	5/6/86	5/1/86	TA-W-17,430	Oil drilling—subcontract.
Harris/Lanier (company)	Thomasville, GA	5/5/86	5/2/86	TA-W-17,431	Workstations, workgroup, processors and dictation' products.
Nicor Drilling (workers)	Williston, ND	5/1/86	4/28/86	TA-W-17,432	Oil drilling.
Ohio Ferro-Alloys Corp. (USWA)	Mt. Meigs, AL	5/5/86	5/1/86	TA-W-17,433	Silicon metal.
Seminole Production Service (workers)	Seminole, TX	5/1/86	4/21/86	TA-W-17,434	Oil well services.
Sperry Corporation (IEEM)	Roseville, MN	5/13/86	5/5/86	TA-W-17,435	Design and manufacturing semi-conductors.
Soundolier (workers)	Dewitt, MO	5/13/86	5/6/86	TA-W-17,436	Wind transformers, speakers, etc., commercial sound systems.

[FR Doc. 86-12195 Filed 5-29-86; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Penick Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 12, 1986–May 16, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–16,591; Penick Corporation, Newark, NJ

TA–W–16,573; SL Electronics, Westville, NJ

TA–W–16,636; Pelican Fashion, Hialeah, FL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–16,586; Texaco, Inc., Exploration Dept., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determination

TA–W–16,589; Hurletron, Inc., Danville, IL

A certification was issued covering all workers of the firm separated on or after October 18, 1984.

TA–W–16,632; Aeolian Pianos, Foundry Division, Randolph, NY

A certification was issued covering all workers of the firm separated on or after November 7, 1984 and before July 31, 1985.

TA–W–16,543; House Glass Corp., Point Marion, PA

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA–W–16,662; Anderson Shake and Shingle, Inc., Cathlamet, WA

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA–W–16,579; Fashion Apparel, Jesup, GA

A certification was issued covering all workers of the firm separated on or after October, 4, 1984 and before October 5, 1985.

TA–W–16,601; FMC Corporation, Specialty Chemicals Div., South Charleston, WV

A certification was issued covering all workers of the firm separated on or after August 1, 1985 and before September 30, 1986.

I hereby certify that the aforementioned determinations were issued during the period May 12, 1986–May 16, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213, during normal business hours or will be mailed to persons who write to the above address.

Dated: May 20, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-12196 Filed 5-29-86; 8:45 am]
BILLING CODE 4510-30-M

[TA–W–16,742]

AT&T Information Systems, Pittsburgh, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 29, 1985, in response to a worker petition which was filed by the Communications Workers of America on behalf of workers at the Pittsburgh, Pennsylvania service center of AT&T Information Systems. (Up to July 1, 1985, the entire network of service centers was directly under the jurisdiction of AT&T Technologies). In the course of the investigation, it was ascertained that the Pittsburgh, Pennsylvania service center, which included a repair and refurbishing shop and a warehouse, was closed more than one year before the date of the petition, which is September 30, 1985. The repair shop closed in 1983, and the warehouse closed in June 1984.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-12198 Filed 5-29-86; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statues referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made in part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPS) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Alabama:	
AL86-2 (Jan. 3, 1986)	p. 4.
AL86-5 (Jan. 3, 1986)	pp. 9-11.
AL86-8 (Jan. 3, 1986)	p. 17.
Connecticut: CT86-1 (Jan. 3, 1986).	p. 64.
Kentucky:	
KY86-1 (Jan. 3, 1986)	p. 260.
KY86-2 (Jan. 3, 1986)	pp. 264-265.
KY86-3 (Jan. 3, 1986)	pp. 269-270.
KY86-4 (Jan. 3, 1986)	pp. 273-274.
KY86-5 (Jan. 3, 1986)	pp. 279-280.
KY86-6 (Jan. 3, 1986)	pp. 284-285.
KY86-7 (Jan. 3, 1986)	pp. 289-290.
KY86-28 (Jan. 3, 1986)	p. 345.
Massachusetts:	
MA86-1 (Jan. 3, 1986)	p. 348.
MA86-2 (Jan. 3, 1986)	p. 362.
MA86-3 (Jan. 3, 1986)	p. 375.
New York:	
NY86-2 (Jan. 3, 1986)	pp. 645-650 p. 652.
NY86-4 (Jan. 3, 1986)	pp. 669-672.
NY86-7 (Jan. 3, 1986)	p. 695.
NY86-9 (Jan. 3, 1986)	p. 723.
NY86-10 (Jan. 3, 1986)	p. 725.
NY86-13 (Jan. 3, 1986)	pp. 752, 755
NY86-14 (Jan. 3, 1986)	p. 760.
NY86-15 (Jan. 3, 1986)	p. 763.
Pennsylvania:	
PA86-6 (Jan. 3, 1986)	pp. 843-844, p. 846.
PA86-8 (Jan. 3, 1986)	pp. 843-844, p. 846.
PA86-14 (Jan. 3, 1986)	pp. 893-896, pp. 898-899, pp. 899a-899b.
Virginia:	
VA86-5 (Jan. 3, 1986)	p. 1065.
VA86-15 (Jan. 3, 1986)	p. 1069.
West Virginia: WA86-2 (Jan. 3, 1986).	pp. 1119, 1128.
Listing by location (index)	p. xvi.

Volume II

Iowa:	
IA86-5 (Jan. 3, 1986)	p. 43, pp. 45-46.
IA86-6 (Jan. 3, 1986)	p. 52.
Kansas:	
KS86-8 (Jan. 3, 1986)	p. 335.
KS86-9 (Jan. 3, 1986)	p. 343.
Michigan:	
MI86-5 (Jan. 3, 1986)	pp. 429-433, pp. 435-437, pp. 439-441.
MI86-12 (Jan. 3, 1986)	pp. 471-473.
MI86-17 (Jan. 3, 1986)	p. 486.
New Mexico:	
NM86-2 (Jan. 3, 1986)	pp. 856-858.
NM86-3 (Jan. 3, 1986)	pp. 860b-860d.
Texas: TX86-8 (Jan. 3, 1986)	p. 898.

Volume III

California:	
CA86-1 (Jan. 3, 1986)	pp. 35-42.
CA86-2 (Jan. 3, 1986)	pp. 44-54.
CA86-4 (Jan. 3, 1986)	pp. 65-67.
Utah: UT86-1 (Jan. 3, 1986)	p. 284.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for

any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 23rd day of May 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-12063 Filed 5-29-86; 8:45 am]

BILLING CODE 4510-27-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 86-3]

Privacy Act of 1974; Current Systems of Records; Establishment of New Systems Privacy Act Extract Program

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of current systems of records and of establishment of new systems of records.

SUMMARY: The Copyright Office last published the full text of its systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) at 47 FR 36996, August 24, 1982; and a notice of establishment of a new system of records at 49 FR 46628, November 28, 1984. This publication of the Copyright Office systems of records reflects changes in the records maintained by the Office in light of its new functions and duties under the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620. New systems CO-21 and CO-22 have been established to cover the registration and recordation files relating to claims of protection in mask works under the 1984 Act.

There has also been a change in an existing system of records. The name of system CO-3 has been changed from "Deposit Accounts System" to "Copyright In-Process System (COINS)." The records in this revised system cover all fee service requests to the Office, and not just information pertaining to deposit accounts. Before September 14, 1985, records pertaining to individuals who requested fee services, and did not maintain deposit accounts with the Office, were kept in index cards in the Master Index Card Files (CO-1). No cards were produced and added to system CO-1 after September 14, 1985. This information is now maintained in automated form in system CO-2.

The titles and addresses of several system managers have been changed and the respective systems revised accordingly. Additional technical changes have been made throughout the text.

DATE: Comments should be received on or before June 30, 1986.

ADDRESSES: Interested persons should submit five copies of their written comments:

If by mail to: Office of General Counsel, Department D.S., Library of Congress, Washington, DC 20540; or

By hand to: Office of General Counsel, Copyright Office, Library of Congress, Room 403, James Madison Memorial Building, 1st and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559; (202) 287-8380.

These systems of records will become effective June 30, 1986, unless the Copyright Office publishes notice to the contrary.

Dated: May 15, 1986.

Ralph Oman,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

Prefatory Statement

The Copyright Office serves primarily as an office of public record. Section 705 of title 17 of the United States Code requires the Register of Copyrights to provide and keep in the Copyright Office records of all deposits, registrations, recordations, and other actions taken under title 17, and to prepare indexes of all such records. It also provides that such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office, shall be open to public inspection. Therefore, information from these records and indexes is routinely disclosed to the public. Further, in accordance with 17 U.S.C. 706(a), copies may be made of the public records and indexes of the Copyright Office. In accordance with section 906(b) of title 17, the provisions of chapter 7 relating to the records and publications of the Copyright Office apply to records pertaining to mask works under chapter 9 of title 17 U.S.C.

The source for Copyright Office systems of records are, wherever possible, the individuals to whom the records pertain or their authorized agents. Copyright Office personnel frequently make additions or notations on Office records in the performance of their official duties. To the extent they add information on individuals to Office files, they should be considered sources of records. However, because of the volume of such additions and notations, Copyright Office personnel have not been cited specifically under the heading "source categories" in this Systems' Notice.

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CO-1—Master Index Card Files
CO-2—Copyright In-Process System (COINS)
CO-3—Copyright Claims Registration Files
CO-4—Miscellaneous Correspondence Files
CO-5—Recorded Document Files
CO-6—Motion Picture Agreement Files
CO-7—Deposit Recordation File
CO-8—Compliance Activity File
CO-9—Office Mailing Lists
CO-10—Freedom of Information Act and Privacy Act Requests and Disclosures File
CO-11—Address File
CO-12—Bibliographic File
CO-13—Secondary Transmissions by Cable Systems: Initial Notice of Identity and Changes File
CO-14—Secondary Transmissions by Cable Systems: Statements of Account
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CO-16—Notice of Intention to Obtain Compulsory License for Making and Distributing Phonorecords Embodying Nondramatic Musical Works File
CO-17—Jukebox License Applications
CO-18—Voluntary Licensing Agreements File
CO-19—Licensing Division Correspondence File
CO-20—Secondary Transmissions by Cable Systems: Correspondence Files
CO-21—Mask Work Registration Files
CO-22—Mask Work Recorded Documents Files

CO-1

SYSTEM NAME:

Master Index Card Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, D.C. 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Remitters of all cash received by the Office, and individuals who submit documents for recordation, whether or not accompanied by a remittance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of material and remittances received; records of final disposition of cases (in the form of registration numbers or identity of other fee services), the amount charged and/or the amount refunded, if any. Last cards produced 9/14/85.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses this system: (1) To keep a record of the receipt and disbursement of all incoming cash; (2) to locate cases in-process before the permanent catalog record is available; and (3) to prepare refund vouchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 index cards in file cabinets.

RETRIEVABILITY:

Alphabetically by remitter's name.

SAFEGUARDS:

These records are maintained in a room which is generally restricted to authorized personnel and locked during non-working hours. Limited, provisional public access to these records is allowed from 10 a.m. to 11 a.m., Monday through Friday, except legal holidays.

RETENTION AND DISPOSAL:

Five Years from 9/14/85.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure".

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Remitters or their authorized agents.

CO-2

SYSTEM NAME:

Copyright In-Process System (COINS).

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make fee service requests to the Office, including individuals who maintain deposit accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

If remittance received: Name of remitter, appropriate cross-references, title of work, amount received, amount used, class of application or fee service code, number of copies, nature of deposit code.

If deposit account: Name of deposit account holder, title of work, debit, credit notation, old balance, new balance, class of application or fee service code, number of copies, nature of deposit code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To record copyright fee charges, reconcile deposits of fees and generate accounting reports; (2) to create a record of receipt of all fee service requests; (3) to determine the status of recently submitted requests, including the registration number assigned; (4) to send periodic statements to deposit account holders of their transactions with the Office; (3) to notify deposit account holders that their accounts have become depleted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records kept from November 1, 1977. All such records are on computer discs and tapes.

RETRIEVABILITY:

By name of remitter, title, deposit account holder, deposit account number, and transaction identification number.

SAFEGUARDS:

Records are stored on tapes and discs in a room which is restricted to authorized personnel and locked during nonworking hours. Computer access is by functional passwords which are restricted to personnel who require access to these records in the performance of their official duties.

RETENTION AND DISPOSAL:

The computerized system is used to store transactions for at least six months, at which time the record is transferred to microfilm for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Fiscal Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designed under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individuals who request fee services, including deposit account holders and Office charge sheets.

CO-3

SYSTEM NAME:

Copyright Claims Registration Files

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559; Landover Center Annex, 1701 Brightseat Road, Landover, Md. 20785; Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authors and other copyright owners, copyright claimants, applicants for registration or copyright renewal, or the authorized agents of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of copyright claimants; certified statements pertaining to authorship, creation, publication, and other registration-related information; general correspondence pertaining to registration of claims to copyright.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports at the request of a member of the public; (2) to respond to requests by the public for information; (3) to correspond with

applicants or otherwise process applications and related materials; (4) to monitor and control the flow of work in the Office; and (5) to establish and maintain a public record. It is the general policy of the Copyright Office to deny direct public inspection of in-process application forms and correspondence, and any related material forming part of a pending application, except upon the request of the copyright claimant or his/her authorized representative. However, information about the material facts alleged in the application will be given to the public upon request. Once registration of a copyright claim has been completed or refused at the final agency level, the registration and correspondence records pertaining to that claim are open for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves; index cards in file cabinets; bound volumes and microform computer tapes and discs.

RETRIEVABILITY:

Registration number, cross-referenced by name of author, name of claimant, and title of work in the Copyright Card Catalog and post-1977 automated catalog files; alphabetically by author's pseudonym (prior to 1938) in Pseudonym Card File; on computer terminals by correspondence control number, remitter's name and any entered cross-references; in the case of physical files, by correspondence control number on a bar code label attached to each file.

SAFEGUARDS:

With the exception of the Copyright Card Catalog and post-1977 automated catalog files, these records are maintained in areas that are restricted to authorized personnel. All records in this system are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Renewals Section, Examining Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Records Storage Section, and Section Head, Card Catalog Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559, Section Head, Technical Support, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Remitters or their authorized agents.

CO-4

SYSTEM NAME:

Miscellaneous Correspondence Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have: (1) Written to the Copyright Office for general information about copyright; or (2) request fee services such as search reports, copies of records or additional certificates of copyright registration.

CATEGORIES OF RECORDS IN THE SYSTEM:

General correspondence, including, where appropriate, the requester's name and action taken by the Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407–410, 705, 706, 708

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To maintain a record of correspondence with individuals who address inquiries to the Office and with individuals who request fee services; (2) to record the removal and return of documents in a file by Office personnel; and (3) to control and monitor the processing of requests.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves, and, on occasion, 3 x 5 paper slips in a file cabinet.

RETRIEVABILITY:

Alphabetically by correspondent's name.

SAFEGUARDS:

These records are maintained in areas that are restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Some files are retained indefinitely, while others are only retained for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Certification and Documents Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559; Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, or their authorized agent.

CO-5

SYSTEM NAME:

Recorded Documents Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to, or have submitted for recordation,

assignments, licenses, notices of termination of transfer, and other documents pertaining to a copyright; notices of error in the name in a copyright notice; authors of anonymous and pseudonymous works in instances where any person having an interest in the copyright in such a work submits a statement identifying one or more authors of the work; authors of works in instances where any person having an interest in the copyright in a particular work submits a statement of the death of the author or a statement that the author is still living on a particular date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, licenses, notices of termination of transfer, wills, statements of abandonment of copyright, affidavits (such as a statement with respect to the authorship of a work), agreements or contracts, and other documents pertaining to copyright ownership, statements of identity of an anonymous or pseudonymous author, statements of the date of death of an author or that the author is still living on a particular date, and notices of error in the name in a copyright notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 203(a)(4), 205, 302, 304(c), 408(a)(2), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of recorded documents are open to public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays. In addition, the Office uses these records to compile an index to documents received for recordation. The index to documents received and recorded through 1977 is located in the Copyright Card Catalog. Since January 1, 1978, access to assignment documents recorded after 1977 is available in the automated document catalog file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prior to recordation, records are maintained in manila envelopes in file cabinets. Once recorded, original documents are microfilmed and returned to the remitter. Copies of copyright assignments and related documents received prior to 1964 are in bound volumes as well as on microfilm.

RETRIEVABILITY:

By the date the Office received the document and cross-referenced it in the Copyright Card Catalog or automated document catalog file by individual names and titles of works.

SAFEGUARDS:

Prior to recordation, documents and related materials are maintained in a room which is restricted to authorized personnel. All records are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Documents Unit, Technical Support Section, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559; and Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquires about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, such individual's authorized agent, and other parties to the document recorded, or such parties' authorized agents, as well as individuals having an interest in the copyright in a work which is the subject of the document submitted for recordation.

CO-6

SYSTEM NAME:

Motion Picture Agreement Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Copyright depositors who have agreed to return to the Library one archival quality copy of any motion picture returned to the depositor if the Library of Congress requests such return within two years of the date of deposit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain the name and address of the depositor and the date on which the Motion Picture Agreement was executed by the Librarian of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to determine if the Library of Congress has a Motion Picture Agreement with the depositor of a motion picture. If the Library has such an agreement, the copy of the motion picture submitted will be returned to the remitter if a written request has been made. In the absence of such an agreement, the Office will retain the copy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Upon receipt of these Agreements, the Deposits and Acquisitions Division transcribes some of the information in the agreements onto 3 x 5 cards, copies of which are then sent to the Performing Arts Section of the Copyright Office Examining Division.

RETRIEVABILITY:

Alphabetically by depositor's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Acquisitions Section, Deposits and Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Depositors' or their authorized agents.

CO-7

SYSTEM NAME:

Deposit Recordation File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, without simultaneously applying for copyright registration, have submitted deposit copies in accordance with the provisions of 17 U.S.C. 407.

CATEGORIES OF RECORDS IN THE SYSTEM:

Title of work, edition statement, imprint, collation, in notice statement, depositor, depositor's address, number of copies received, and date received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To keep a record of compliance with 17 U.S.C. 407; (2) to locate and correspond with those who have published works with notice of copyright, but who have not deposited the required copies; (3) to prepare weekly statistics on the number and nature of deposits received; and (4) to prepare search reports at the request of a member of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 cards in the cabinet and visible file.

RETRIEVABILITY:

Alphabetically by depositor's name, author's name, and title of work.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Deposits and Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquires about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Deposit copies submitted.

CO-8

SYSTEM NAME:

Compliance Activity File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from whom the Office has demanded, in accordance with 17 U.S.C. 407, copies of works published with a notice of copyright in the United States. It also includes individuals whose works were found to be deposited in accordance with 17 U.S.C. 407 prior to a demand.

CATEGORIES OF RECORDS IN THE SYSTEM:

Author's name, title of work, publisher, copyright claimant, dates of initial and follow-up action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to avoid sending out duplicate correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 × 6 index cards in a file cabinet.

RETRIEVING:

Alphabetically by title and claimant's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Deposits and Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Printed bibliographies, publishers' catalogs, citations provided by the Library of Congress, published citations of the work, and Office personnel who have personally observed the item cited.

CO-9

SYSTEM NAME:

Office Mailing Lists.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have frequent contact with the Copyright Office, or have asked to receive all Office information circulars, announcements, and other printed material prepared by the Office. Attorneys who are listed in the annual edition of the "American Bar Association Section of Patent, Trademark, and Copyright Law Committees" as members of the copyright-related committees are also included.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Names and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 707.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to address and mail Office information

circulars, announcements and other printed material. The regulations of the Office now provide that these mailing lists will not be disclosed to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and computer print out sheets in a binder, stored in a desk drawer.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Individuals may request that their names be dropped from the list. The list is verified and updated periodically.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Publications Section, Information and Reference Division, Copyright Office, Library of Congress Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individuals record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the offical designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, Copyright Office records, trade reference sources, and annual edition of "American Bar Association Section of Patent Trademark and Copyright Law Committee."

CO-10

SYSTEM NAME:

Freedom of Information Act and Privacy Act Requests and Disclosures File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted Freedom of Information Act and/or Privacy Act requests in accordance with 37 CFR Parts 203 and 204.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests submitted under the Freedom of Information Act and/or Privacy Act; requests submitted under the Privacy Act for correction or amendment of Office records; and copies of the Office response to these requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 701.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To maintain an accounting of Freedom of Information Act and/or Privacy Act requests and Office responses to these requests; (2) to maintain an accounting of requests submitted under the Privacy Act to correct or amend a record pertaining to an individual and the Office responses to these requests; (3) to compile the annual report required by the Freedom of Information Act; and (4) to review and compile the annual report required by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by requester's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, and Copyright Office records.

CO-11

SYSTEM NAME:

Address File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Copyright claimants of record whose address has been requested by a member of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of claimant of record, year date of address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to facilitate searching for address of copyright claimants when such addresses are requested by a member of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 index cards in file box.

RETRIEVABILITY:

Alphabetically by claimant of record's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and is locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely; however, obsolete addresses are disposed of as more current addresses are obtained.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office,

Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Copyright claimants, their authorized agents, phone books, and city directories.

CO-12

SYSTEM NAME:

Bibliographic File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Well-known or prolific authors or authors of well-known works, in those instances where the Office determines that it would be in the public interest to preserve published copyright-related information about such authors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Newspaper clippings, magazine articles, obituaries, book jackets and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the compilation of an index to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets.

RETRIEVABILITY:

Alphabetically by author's name, law firm's name, or title of work.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204

RECORD SOURCE CATEGORIES:

Magazines, newspapers, book jackets, trade reference sources, Copyright Card Catalog, applications and other materials.

CO-13

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Initial Notice of Identity and Changes File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable system owners who submit notices of identity for recordation in the Copyright Office, notices of ownership or control change, or notices of change in the signal carriage complement of cable systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of identity and address of the person who owns the secondary transmission service, name and location of the primary transmitter or transmitters whose signals are regularly carried, changes in any of the preceding categories, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 11(d)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the preparation of internal statistical reports; and (3) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in locked file cabinet and microfilm (microjackets).

RETRIEVABILITY:

Alphabetically by legal name of the owner of the cable system.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC. 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addresses to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20557.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-14

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Statements of Account.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of cable systems who file this semi-annual statement of accounts required by 17 U.S.C. 111(d)(2).

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal names and addresses of owners of cable systems, communities served by cable systems, call signs and locations of primary transmitters and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(d)(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; (2) to establish and maintain a public record; and (3) in the preparation of semi-annual compilations of statements of account which the Copyright Office must submit to the Copyright Royalty Tribunal as required by 17 U.S.C. 111(d)(2).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the cable system, grouped according to accounting period and year.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 32 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-15

SYSTEM NAME:

Cable System Videotape Transfer Contracts File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom a cable system has transferred a videotape of a program nonsimultaneously transmitted by it pursuant to a written, nonprofit contract providing for the equitable sharing of costs of such videotape and its transfer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transferor, transferee, title, date contract effective, date of recordation, location of cable system, notation of acknowledgement of receipt by the Copyright Office, related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(a)(2)(A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet and on microfilm.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20557.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Parties to the transfer contracts or such parties' authorized agents.

CO-16

SYSTEM NAME:

Notice of Intention to Obtain Compulsory License for Making and Distributing Phonorecords Embodying Nondramatic Musical Works File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file a notice of their intention to obtain a compulsory license for making and distributing phonorecords embodying nondramatic musical works.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, name of copyright owner, titles, date of recordation of notice, internal notation of date upon which the Office informally acknowledged receipt of the notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 115(b)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public (2) to establish and maintain a public records; and (3) in the preparation of internal statistical reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet.

RETRIEVABILITY:

Alphabetically by name of remitter and name of copyright owner.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-17

SYSTEM NAME:

Jukebox License Applications.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Jukebox operators who have applied for, and been issued, a jukebox license.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of operator, manufacturer, serial number or model number, model name, model year, charge per play, capacity, type of sound, person to be contracted for futher information, number of jukeboxes, amount of remittance, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C 110(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) in the preparation of search reports compiled at the request of a member of the public (2) to establish and maintain a public record; and (3) in the preparation of internal statistical and accounting reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by name of owner, grouped by year.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing, addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 27 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-18

SYSTEM NAME:

Voluntary Licensing Agreements File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit for recordation voluntary licensing agreements between: (1) Copyright owners of published nondramatic musical works and published pictorial, graphic, and sculptural works and public broadcasting entities; and (2) copyright owners of nondramatic literary works and public broadcasting entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actual agreements submitted for recordation, copies of registration certificates of record, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 118(b)(2) and (e)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; (2) in the preparation of internal statistical reports; and (3) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and on microfilm.

RETRIEVABILITY:

Alphabetically by names of copyright owners and public broadcasting entities.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Parties to voluntary licensing agreements or such parties' authorized agents.

CO-18

SYSTEM NAME:

Licensing Division Correspondence File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who send letters of transmittal and other incidental Licensing Division correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

General correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 115, 116, 118, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to maintain a record of incidental correspondence with the Licensing Division.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet.

RETRIEVABILITY:

Alphabetically by correspondent's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are kept in the Open file until a reply is received or until the case is closed. Records in the Closed file are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20557

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-20

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Correspondence Files.

SYSTEM LOCATION:

Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable systems owners and other individuals who correspond with the Licensing Division, the Copyright Office General Counsel or the Register of Copyrights concerning the administration of the cable compulsory licensing system in section 111 of title 17 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office maintains these records to facilitate public access to correspondence of the Licensing Division, Copyright Office General Counsel and the Register of Copyrights on the administration of the section 111 compulsory licensing system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and binders.

RETRIEVABILITY:

Correspondence usually accessible by date letter sent to member of public.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under 'Notification Procedure.'

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Licensing Division personnel, the Copyright Office General Counsel and the Register of Copyrights.

CO-21

SYSTEM NAME:

Mask Work Registration Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mask work owners, applicants for mask work registration, or the authorized agents of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of mask work owners; certified statements pertaining to creation, commercial exploitation, ownership, and other registration-related information; general correspondence pertaining to registration of mask work claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 908(b), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports at the request of a member of the public; (2) to respond to requests by the public for information; (3) to correspond with applicants or otherwise process

applications and related materials; (4) to monitor and control the flow of work in the Office; and (5) to establish and maintain a public record. It is the general policy of the Copyright Office to deny direct public inspection of in-process application forms and correspondence, and any related material forming part of a pending application, except upon the request of the mask work owner or his/her authorized representative. However, information about the material facts alleged in the application will be given to the public upon request. Once registration of a claim to mask work protection has been completed or refused at the final agency level, the registration and correspondence records pertaining to that claim are open for public inspection from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves; computer tapes and discs; and microform.

RETRIEVABILITY:

Registration number, cross-referenced by name of owner and title of work in the automated or microform catalog files; by correspondence control number, applicant's name, title of work, and any entered cross-references in the automated correspondence management system; by fee service number, applicant's name, title of work, and any entered cross-references in the automated receipts in-process system; in the case of physical files, by correspondence control number on a bar code label attached to each file, for in-process files, and by applicant's name for closed correspondence files.

SAFEGUARDS:

Automated records are available at computer terminals located throughout the Library of Congress. Physical records are maintained in areas that are restricted to authorized personnel. All records in this system are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Mask Work Unit, Examining Division, Department MW, Library of Congress, Washington, DC 20540.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure".

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Applicants or their authorized agents.

CO-22

SYSTEM NAME:

Mask Work Recorded Documents Files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to, or have submitted for recordation, assignments, licenses, and other documents pertaining to a mask work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, licenses, wills, agreements or contracts, and other documents pertaining to mask works.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 908(b), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Records of recorded documents are open to public inspection from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. In addition, the Office uses these records to compile an index to recorded documents, which is interfiled in the automated catalog files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prior to recordation, records are maintained in manila envelopes in file cabinets. Once recorded, original documents are microfilmed and returned to the applicant. Mask work documents appear on separate reel(s) of microfilm; they are not interspersed with copyright-related documents.

RETRIEVABILITY:

Before recordation, by date the Office received the document; after recordation, cross-referenced in the automated catalog files by names of parties and titles of works.

SAFEGUARDS:

Prior to recordation, documents and related materials are maintained in a room which is restricted to authorized personnel. Automated records are available at computer terminals located throughout the Library of Congress. All records are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Documents Unit, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing and addressed to the Supervisory Copyright Information Specialist, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure".

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, such individual's authorized agent, and other parties named in the document recorded, or such parties' authorized agents, as well as individuals having an interest in the mask work which is the subject of the document submitted for recordation.

[FR Doc. 86-11849 Filed 5-29-86; 8:45 am]

BILLING CODE 1410-09-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Ad Hoc Meeting on Long-Term Enhancement to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Ad Hoc Meeting on Long-Term Enhancement to the National Council on the Arts will be held on June 16-17, 1986, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center,

1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include guidelines and policy.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 23, 1986.

[FR Doc. 86–12106 Filed 5–29–86; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Meeting) to the National Council on the Arts will be held on June 16–17, 1986, from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include guidelines, policy and the Five-Year Plan.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 23, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–12161 Filed 5–29–86; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio Programming in the Arts Section) to the National Council on the Arts that was to be held on May 29, 1986, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC has been changed. This meeting will not be held on June 12, 1986, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pensylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: May 23, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–12162 Filed 5–29–86; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 5–7, 1986, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on May 19, 1986.

Thursday, June 5, 1986

8:30 A.M.–8:45 P.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–12:30 P.M.: South Texas Project, Units 1 and 2 (Open/Closed)—The members will hear and discuss the reports of its subcommittee, the NRC Staff, and the Applicant regarding the request for an operating license for this facility.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this facility and detailed security arrangements for this project.

1:15 P.M.–1:45 P.M.: Topics for Meeting with NRC Commissioners (Open/Closed)—The members will discuss the contents of its report of January 14, 1986 to the NRC regarding the Final Design Approval of the GESSAR II BWR/6 Nuclear Island Design Applicable to Future Plants.

Portions of this session will be closed as necessary to discuss Proprietary Information and detailed arrangements for plant security for this class of nuclear plants.

2:00 P.M.–3:30 P.M.: Meeting with NRC Commissioners (Open/Closed)—The members of the committee will meet with the NRC Commissioners to discuss the Committee's report of January 14, 1986 regarding the GESSAR II Final Design Approval as noted above.

Portions of this session will be closed as necessary to discuss Proprietary Information and detailed arrangements for plant security for this class of nuclear plants.

3:45 P.M.–5:45 P.M.: NRC Safety Research Program (Open)—The members will discuss portions of the proposed ACRS report to the NRC regarding the proposed safety research budget for FY 1988–89.

5:45 P.M.–6:45 P.M.: Future ACRS Activities (Open/Closed)—The members will discuss anticipated ACRS subcommittee activity, and proposed items for consideration by the full Committee.

Portions of this session will be closed as required to discuss National Security Information.

Friday, June 6, 1986

8:30 A.M.–10:30 A.M.: Recent Operating Experiences at Nuclear Facilities (Open/Closed)—the members will hear and discuss the reports of its subcommittee, and representatives of the NRC staff. Representatives of the nuclear industry will participate as appropriate.

Portions of this session will be closed to discuss Proprietary Information and detailed security arrangements for the facilities being discussed.

10:45 A.M.–12:00 Noon: Reactivation of Deferred and Cancelled Nuclear Plants (Open)—The members will hear a briefing regarding major issues in reactivation of nuclear power plant construction projects.

1:00 P.M.–1:30 P.M.: ACRS Subcomittee Activities (Open)—The members will hear and discuss a report by its subcommittee on thermal Hydraulic Phenomena regarding proposed NRC activities in this area.

1:30 P.M.–3:00 P.M.: NRC Safety Research Program (Open)—The members will continue discussion of the Committee's proposed report to NRC regarding the proposed NRC safety research program for FY 1988–89.

3:15 P.M.–5:15 P.M.: Source Term for Nuclear Power Plant Accidents (Open)—The members will hear and discuss proposed revisions to the accident source term used in evaluation of nuclear power plants.

5:15 P.M.–5:45 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of its Management Subcommittee regarding procedural topics considered during its subcommittee meeting on June 4, 1986.

5:45 P.M.–6:30 P.M.: Appointment and Activities of ACRS Members (Open/Closed)—The members will discuss the report of its Nominating Panel regarding candidates nominated for appointment to the ACRS. The members will also discuss the proposed reappointment of a member of the Committee and the non-ACRS activities of ACRS members.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, June 7, 1986

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed reports regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information, detailed security arrangements, National Security Information, and information concerning initiation, conduct, or disposition of a formal agency adjudication applicable to the matters being discussed.

1:30 P.M.–2:00 P.M.: ACRS Procedures (Open)—The members will discuss proposed changes to ACRS Bylaws and procedures for the conduct of ACRS activities.

2:00 P.M.–3:00 P.M.: Miscellaneous (Open/Closed)—The members will hear a report by a member of the Committee regarding participation on an ANS Panel to discuss ACRS recommendations on severe accidents. The Committee will also complete discussion of matters considered during this meeting.

Portions of this session will be closed as necessary to discuss controlled and classified information as noted above.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with section 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)) applicable to the facilities being discussed, detailed information related to the security arrangements at a nuclear power plant (5 U.S.C. 552b(c)(3)), information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), classified restructed data (5 U.S.C. 552b(c)(3)), and information concerning initiation, conduct, or disposition of a formal agency adjudication (5 U.S.C. 552b(c)(10)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: May 27, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–12154 Filed 5–29–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration and Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Power Company for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would authorize on an emergency basis a one-time release of the existing contents of the Conventional (non-radioactive) Wastewater Basin, containing trace amounts of tritium, into the Catawba River. Technical Specifications (TS) 3.11.1.1 and its referenced Figure 5.1–4, "Site Boundary for Liquid Effluents" define the authorized discharge point for radioactive material released in liquid effluents to unrestricted areas as being only to Lake Norman. The proposed authorization would be accomplished by the addition of a footnote to TS Figure 5.1–4 at the discharge point for the Conventional Wastewater Basin into the Catawba River, stating that this discharge point is authorized for a one-time discharge of water which contains trace amounts of tritium in addition to the normally processed effluents of the Waste Water Collection Basin, effective the date of Commission approval. The change would not affect any existing limits or procedures regarding the processing of conventional (i.e., non-radioactive) contaminants.

These revisions to the technical specifications would be made in response to the licensee's application for amendments dated May 20, 1986.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

An unexpected release of tritium into the Conventional Wastewater Basin has created the need for prompt action as proposed above for two reasons, both stemming from the fact that the Basin is

nearly full. First, excessive rainfall could result in an overflow of the Basin, resulting in an uncontrolled release. Second, lack of available volume in the Basin will impair the station's ability to process conventional (non-radiological) liquid waste as required by the NPDES permit issued by the State of North Carolina and, thereby, result in an extended plant outage.

Non-radioactive chemical wastes from the McGuire Station (e.g., turbine building drains, water treatment system filter backwashes, demineralizer regeneration wastes) are routed through the Conventional Waste Water Treatment System (CWWTS) and subjected to physicochemical treatment. The CWWTS includes a Basin of two parallel stream settling ponds with a capacity of about 2 million gallon each. Upon completion of treatment, the discharges from this system are released to the Catawba River downstream of Cowans Ford Dam. The discharge from the CWWTS may also be mixed with water from the Standby Nuclear Service Water Pond to dilute waste concentrations prior to discharge to the river. Waste containing radioactive material is not intended for the CWWTS; rather such waste is routed to separate Liquid Radwaste Systems (see FSAR Section 11.2) for recycling, processing and disposal.

By letter dated May 20, 1986, the licensee noted that tritium, but no other radionuclide, had entered the Basin and had subsequently been diluted to a concentration of 1.4×10^{-6} microcuries per milliliter. The licensee proposed to discharge the 4 million gallons of water in the Basin, along with its tritium, to the river at a rate of 500 gpm over a duration of 133 hours. The Basin discharge would also be mixed by equal flow from the Standby Nuclear Service Water Pond, such that the tritium concentration at the river release point would be 7×10^{-8} microcuries per milliliter. This concentration is well within the limit of 3×10^{-3} microcuries per milliliter specified by 10 CFR 20.106 and associated Appendix B, table II, for tritium concentrations in water.

The NRC has evaluated doses resulting from the proposed discharge using models and assumptions in Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Release of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I." For tritium the dominant exposure pathway is drinking water. The fish consumption pathway also makes a small contribution to the dose. Other potential pathways (such as due to irrigation or swimming) are negligible because of the properties of tritium, i.e. tritium does not accumulate either in the food chain or the body and it does not constitute a significant source of external radiation. The total body dose to a child or infant assumed to drink water from the river release point and to consume fish located at this release point was calculated by the Commission to be about 0.01 millirem. Corresponding doses to an adult or teenager were lower (i.e., about 0.008 and 0.006 millirem, respectively). Section II.A of Appendix I to 10 CFR Part 50 states that the calculated annual total quantity of all radioactive material above background to be released from each nuclear power reactor to unrestricted areas should not result in an estimated annual dose or dose commitment from liquid effluents from any individual in an unrestricted area from all pathways of exposure in excess of 3 millirems to the total body. Because the doses calculated for the proposed river discharge represent only a small contribution to this annual dose criterion of Appendix I, we find the proposed action to be consistent with Appendix I criterion.

The licensee calculated similar but lower doses in its letter of May 20, 1986. Unlike the licensee's calculations, the NRC results conservatively assume no credit for dilution of the tritium concentration within the river. Nevertheless, we find that the discharge concentrations of tritium and resultant does determined by the NRC are sufficiently low as to represent no significant safety concern.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of these criteria by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). The proposed changes do not match any of the examples. However, based upon our review of the amendment requests and our independent dose calculations discussed above, we find that the proposed action is limited to the one-time release of very low concentrations of tritium within the Conventional Wastewater Basin which are well below limits permitted by 10 CFR Part 20, and if discharged to the Catawba River as proposed, would result in insignificant doses consistent with the guidance of Appendix I to 10 CFR Part 50. No changes in plant design, limiting safety system setpoints or allowable values, limiting conditions for operations or plant operating procedures would result from the proposed action. Therefore, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in extending shutdown because those activities which result in the generation of or need to process conventional (non-radiological) waste must be curtailed or deferred due to the inability to process conventional waste in compliance with the NPDES permit. The potential for uncontrolled release of the Basin with its tritium due to overflow as a result of rain also exists. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

Normally, the Commission will not issue the amendment until the expiration of the notice period. However, should circumstances change during the notice period, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal

Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to B.J. Youngblood, Director of PWR Project Directorate No. 4, by collect call to 301–492–8060 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and should cite the publication date and page number of this Federal Register notice. All comments received by June 16, 1986, will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 27th day of May, 1986.

For the Nuclear Regulatory Commission.

Kahtan Jabbour,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86–12155 Filed 5–29–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-289 RA, 50-289 EW; ASLBP No. 86-532-03-SP]

GPU Nuclear, Three-Mile Island Nuclear Station, Unit No. 1; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

GPU Nuclear, Three-Mile Island Nuclear Station, Unit No. 1.

The presiding officer is being designated pursuant to the provisions of an Advisory Opinion and Notice of Hearing (CLI–86–09) issued by the Commission on May 15, 1986 concerning the requests of Robert Arnold and Edward Wallace for a hearing pursuant to the Commission's decision in CLI–85–2, NRC 282, 317 (1985) and CLI–85–19, 22 NRC 398 (1985).

The presiding officer in this proceeding is The Honorable Ivan W. Smith, Administrative Law Judge.

All correspondence, documents and other materials shall be filed with Judge Smith in accordance with 10 CFR 2.701. His address is: Administrative Law Judge Ivan W. Smith, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 22nd of May 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86–12156 Filed 5–29–86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance Notice of Records System Changes.

SUMMARY: The purpose of this document is to publish advance notice of changes in the system of records that contains postal customers' change of address information. The Postal Service proposes to consolidate all change of address information furnished to it by its customers into a computerized National Change of Address File, to be maintained by a Postal Service contractor, for the purpose of establishing a National Change of Address Service.

DATE: Comments on the proposed change and the proposed routine use must be received on or before June 30, 1986.

ADDRESS: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5010 or delivered to room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in room 8121.

FOR FURTHER INFORMATION CONTACT: John Gunnels, (202) 268–4873.

SUPPLEMENTARY INFORMATION: In accordance with provisions of the Privacy Act Implementation Guidelines issued by the Office of Management and Budget (40 FR 28961), the Postal Service has determined that it is necessary to publish advance notice of (1) changes in the description of records system USPS 010.010, Collection and Delivery Records—Address Change and Mail Forwarding Records and (2) a proposed new routine use No. 5 for that system. System 010.010 was last published at 50 FR 47311.

This change involves the collection or maintenance of information already collected and maintained by the Postal Service; it involves the disclosure of information already made available to the public.

The change relates solely to the proposed consolidation of change of address information, heretofore maintained on a decentralized basis, into an automated database to be known as the National Change of Address File. A file under contract with the Postal Service will perform periodic updates of the file. Through the National Change of Address Service, firms under license agreement with the Postal Service will make updated address information available for a fee to mailers who maintain mailing lists on magnetic media. An excerpt of a notice published in the *Commerce Business Daily* on April 8, 1986, is reproduced at the end of this SUPPLEMENTARY INFORMATION, because it more fully describes the proposed address-matching requirements for licensees.

Each subscriber to the National Change of Address Service will obtain access to updated change of address information contained in the National Change of Address File through the use of tape-to-tape matching techniques. A mailer requesting the service will provide its mailing list on magnetic tape or disk to the address-matching licensee, who will "match" the mailer's tape against the National Change of Address tape. When a specific name and address on the mailer's tape also appears on the updated National Change of Address tape, the corrected address information on the National Change of Address tape will be provided to the mailer. The mailer's tape will be returned to the mailer with the following information: (1) The address as it originally appeared on the mailer's list; (2) the address rearranged into a standardized format and appended with the correct ZIP+4 code; and (3) if a match has been made, the corrected address in standardized format.

Through this tape-matching method, the new information provided to the mailer will consist only of changed addresses for specific postal customers whose names and former addresses were already in the mailer's possession. Only corrected addresses, not new or corrected names, will be provided. A subscriber, in order to avail itself of this list correction service, must necessarily already have in its possession the name

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and former address of any postal customer about whom corrected information is provided.

Postal customers may, but are not required to, provide change-of-address information to the Postal Service by submitting Form 3575, Change of Address Order, which contains the customer's name, old address, new mailing address, mail forwarding instructions, effective date, and information as to whether the move is permanent or temporary.

The Postal Service currently maintains this change of address information for a period of 18 months in hardcopy form at the post office serving the old address as well as in electromagnetic form at one of 197 Computer Forwarding System sites. Pursuant to existing regulations, the Postal Service makes the customer's new permanent mailing address available to the public upon specific request. The Postal Service also uses the information for the purposes of (1) forwarding the customer's mail to the new address and (2) providing an Address Correction Service to mailers.

Under the Postal Service's present mail forwarding and address correction system, large numbers of mail pieces are entered into the mailstream that are undeliverable as addressed. The Postal Service forwards a misaddressed piece to the new address, and, if the Address Correction Service has been requested, provides the corrected information to the mailer. This results in delayed delivery to the recipient and in substantial handling and forwarding expense to the Postal Service.

The National Change of Address Service will enable the Postal Service to provide updated address information to mailers as soon as that information becomes available to the Postal Service. It is expected that this service will result in a significant reduction in the numbers of misaddressed pieces entered into the mailstream. This will enable the Postal Service to provide a more efficient and cost-effective delivery service to its customers, both mailers and recipients.

The Postal Service will cause each firm under contract or license agreement to maintain the National Change of Address File in accordance with the relevant provisions of the Privacy Act. While the information is in the possession of the firm, the firm will safeguard its security and will refrain from using or disclosing the information for any purpose other than providing the authorized address correction service to others. No information concerning postal customers who are not already on a mailer's list is to be provided to that mailer, and no new names and addresses will be added to any mailer's list.

The Postal Service will also take the following measures to minimize the risk of unauthorized use or disclosure of the information:

1. Physical access to the address tapes will be restricted to those persons whose duties require such access.

2. Unauthorized use of the tapes by a firm or its employees will be expressly prohibited.

3. The Postal Service will monitor security through periodic on-site inspections.

4. The Postal Service's address tapes will be "salted" with fake addresses so as to alert the Postal Service to breaches of security that may have taken place.

The proposed National Change of Address Service will not involve the disclosure of any information about postal customers that is not already available to the public through existing address correction and mail forwarding services. The principal change now being proposed is the consolidation of the information into a national file to be maintained by a Postal Service contractor and the disclosure of updated information to eligible mailers soon after the information becomes available to the Postal Service. This service will also make it possible to provide a larger volume of corrected address information to a particular mailer at any given time than is presently possible under existing address correction services.

Under existing regulations, a postal customer may obtain an accounting of disclosures of the customer's new address to members of the public who have requested it by applying to the post office where the change-of-address order is on file. Because of the degree of automation associated with the proposed National Change of Address Service, it will not be practicable to provide a detailed accounting that sets forth the specific date on which an address was provided to a particular subscriber to the service by means of the tape matching technique. A postal customer will, however, be able to ascertain the identities of all of the subscribers who have used the National Change of Address Service over a specific period of time. Thus, a customer will be able to learn to whom the new address may have been provided during the 18-month period that the customer's new address is maintained in the file by requesting such information from Manager, NCOA, Address Information Systems Division, 6060 Primacy Parkway, Memphis, TN 38188-0001. Information from which an accounting can be made will be retained for the five-year period required by the Privacy Act.

Excerpt of Notice Published in Commerce Business Daily, April 8, 1986

National Change of Address System

The U.S. Postal Service is seeking non-exclusive licensees to provide standardized name and address matching services to Postal Service customers against the Postal Service National Change of Address File. Licensees will be provided a master ZIP+4 file and monthly updates of that file by the Postal Service. The Postal Service will also furnish licensees the master National Change of Address File and Semi-Monthly NCOA File updates. Licensees will be required to provide customer output consisting of the original address as presented, the standardized address appended with correct ZIP+4 Codes, and the new address where a match has been found with correct ZIP+4 Codes. The quality of address match shall be 99% with a match rate of no less than 5% as measured against the results of the USPS address matching software using a test address file. The quality of applied ZIP+4 codes shall be 95% as measured againt the ZIP+4 matching software. Quality of match equates to accuracy. The United States Postal Service will take a test file of names and addresses and match it against its own address matching software to determine the matches. The same test file will be provided to the applicants for license and will be run using the applicant's matching software. The results will then be compared for accuracy.

Licensees will be required to process and return customer lists within 7 business days, maintain a service log available for USPS review, provide service capability 5 days per week (Monday through Friday), and provide monthly performances reports to the Postal Service.

Licensees are required to possess or have the ability to obtain all necessary hardware, software, facilities, technical support, and management required to provide service to customers in accordance with the performance requirements set forth above. The Postal Service will not control the pricing at which the licensees offer services to customers. The Postal Service will, however, have the right to review and approve all advertising to ensure that the licensee's relationship with the Postal Service is accurately portrayed and that all other information is accurate.

Due to limits on the Postal Service's capabilities to service licensees, no more than 20 licensees will be granted. All applicants will be required to submit a proposal defining their capability to provide the required services. Applicants may also be required to provide a demonstration of their capability. If more than 20 applications are received, applicants will be evaluated and licenses will be granted to the 20 applicants found to possess all necessary capabilities and who are considered to have the ability to provide service to the maximum number of postal customers.

Licenses will be for a term of 3 years. The Postal Service shall have the right to

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terminate for breach or at any time upon 60 days notice.

A yearly license fee shall be payable to the Postal Service with initial payment required within 10 days of license execution. During year one of the license term, the fee will be $100,000.00. The fee during years two and three shall be $38,000.00 each year.

Prospective licensees should be aware that the NCOA file is a system of records as defined in subsection (a)(5) of the Privacy Act of 1974, 5 U.S.C. 522a, and is subject to the provisions of the Act. Licensees must comply with all requirements of the Act.

Accordingly, it is proposed that the description for system 010.010 be changed and that routine use No. 5 be added to read as follows:

USPS 010.010

SYSTEM NAME:

Collection and Delivery Records—Address Change and Mail Forwarding Records, 010.010.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—(1) To provide mail forwarding services to postal customers who have changed address; (2) to provide address correction services to postal customers; and (3) to provide address information to the Red Cross about a postal customer who has been relocated because of a disaster.

Use—

* * * * *

5. Disclosure of a customer's new permanent address may be made from the National Change of Address File to customers seeking corrected addresses for their mailing lists.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The source documents are stored in filing cabinets at the delivery unit. They are filed alphabetically by name within month or quarter. Records generated from the source document are stored on cards or list forms or recorded on magnetic tape where central markup is computerized. These records are filed alphabetically by name and route number or zone. Records are also consolidated in a National Change of Address File on magnetic tape maintained by firms under contract or license agreement with the Postal Service.

* * * * *

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to their local postmaster. Inquiries should contain full name and address, effective date of change order, route number (if known) and ZIP Code. Customers wishing to know whether information about them is also maintained in the National Change of Address File should address such inquiries to Manager, NCOA, Address Information Systems Division, U.S. Postal Service, 6060 Primacy Parkway, Memphis, TN 38188–0001.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–12043 Filed 5–29–86; 8:45 am]

BILLING CODE 7710–12–M

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of modification to existing systems of records.

SUMMARY: The purpose of this document is to publish final notice updating the "Retention and Disposal" section of existing systems of records.

EFFECTIVE DATE: May 30, 1986.

ADDRESS: Records Office, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, (202) 268–4872.

SUPPLEMENTARY INFORMATION: The Postal Service has determined that the "Retention and Disposal" section of each of the systems listed below, by USPS identification number, needs to be updated to more accurately reflect the disposition of the records maintained in these systems:

[illegible]	120.036	120.190
[illegible]	120.040	120.210
[illegible]	120.050	120.220
[illegible]	120.060	120.230
[illegible]	120.070	120.240
[illegible]	120.080	150.010
080.020	120.086	150.015
[illegible]	120.100	150.025
870.040	120.110	150.030
[illegible]	120.120	200.020
080.020	120.121	200.030
[illegible]	120.140	210.010
100.010	120.150	210.030
110.010	120.170	

A complete statement of the existence and character of each of these systems last appeared in 48 FR 10963 dated March 15, 1983, and 47 FR 1199 dated January 11, 1982.

The following constitutes final notice of the necessary changes.

USPS 010.030, Collection and Delivery Records—Carrier Drive-Out Agreements, 010.030

Retention and Disposal:

Change to read "a. Agreements—Destroy when 2 years old.

b. Postmaster's copy of the PS 1839—Destroy when 4 years old.

c. Machine-readable records at the PDC (PS 1839 information)—Destroy when 7 years old."

USPS 030.010, Equal Employment Opportunity—EEO Discrimination Complaint Investigation, 030.010

Retention and Disposal:

Change to read "a. Precomplaint records—Counselor notes are destroyed 1 year after a formal report is submitted to the EEO officer or 1 year following the final adjustment when made at that level.

b. Formal Complaint records—All closed cases are removed from the system quarterly. Each closed case is retained as follows: Official file for 4 years, any copies for 1 year, and background documents not in case file for 2 years.

c. ADP records—Closed case information is removed quarterly and stripped of personal identifiers. It is then moved to an inactive file (not a system of records) for future comparative analyses."

USPS 030.020, Equal Employment Opportunity—EEO Staff Selection records, 030.020

Retention and Disposal:

Change to read "Destroy 3 years from date the position becomes vacant."

USPS 030.030, Equal Employment Opportunity—EEO Administrative Litigation Case Files, 030.030

Retention and Disposal:

Change to read "a. Selected Appeals Case Files—Destroy 4 years from date of final decision or when they have no further use for reference, training, or similar purpose, whichever is longer.

b. Appeal Case Files—Destroy 4 years from date of final decision.

c. Paper records are shredded and computer tape/disk records are erased at the end of the retention period."

USPS 050.010, Finance Records—Employee Travel Records (Accounts Payable), 050.010

Retention and Disposal: .

Change to read "a. Officer's Expense Report—Destroy when 12 years old.

b. Travel Advance and Travel Voucher: (1) PDC Copy—Destroy when 6 years and 3 months old. (2) Office Copy—Destroy 2 years from date of submission to PDC.

c. Relocation Travel Orders—Destroy 4 years from date final relocation voucher is submitted.

d. Relocation Travel Orders (Issuing Office)—Destroy when no longer needed for reference."

USPS 050.040, Finance Records—Uniform Allowance Program, 050.040

Retention and Disposal:

Change to read "a. Post Office Case File—Destroy 3 years from date the employee leaves Postal Service or is no longer in a bargaining unit.

b. PDC Card File—Destroy 6 months after each Accounting Period.

c. PDC Pay Listing and Machine Readable Records—Destroy 6 years and 3 months from date of listing."

USPS 060.020, Fraud and False Representation Records—Prohibitory Order, 060.020

Retention and Disposal:

Change to read "a. Case Files—Dispose of 5 years from date of origin or 5 years from end of year of last application or enforcement, whichever is sooner.

b. Log Books—Dispose of 5 years from date of last entry."

USPS 070.010, Inquiries and Complaints—Correspondence Files of the Postmaster General, 070.010

Retention and Disposal:

Change to read "a. Permanent Subject Files—Transfer to a Federal Records Center when 4 years old. Offer to NARA in 5-year blocks when the latest records are 20 years old.

b. Temporary Subject Files—Destroy when 4 years old."

USPS 070.020, Inquiries and Complaints—Customer Complaint Records, 070.020

Retention and Disposal:

Change to read "Destroy 1 year after resolution of problem."

USPS 080.010, Inspection Requirements—Investigative File System, 080.010

Retention and Disposal:

Change to read "a. Records are maintained 1 to 15 years depending upon type. Exceptions may be granted for longer retention in specific instances. Paper records are destroyed by burning, pulping, or shredding. Computer tape/disk records are erased or destroyed.

b. Duplicate copies of investigative memorandums maintained by postal officials other than the Inspection Service are retained in accordance with official rather than Inspection Service disposition schedules."

USPS 080.020, Inspection Requirements—Mail Cover Program, 080.020

Retention and Disposal:

Change to read "a. Correspondence Files—Destroy 8 years after case is closed.

b. Investigations (C)—Transfer to FRC when 2 years old; destroy when 8 years old.

c. Index and Record Slips—Destroy 15 years after close of case."

USPS 090.020, Nonmail Services—Passport Application Records, 090.020

Retention and Disposal:

Change to read "Passport applications are retained for 2 days at the post office where application was made and then forwarded to the Department of State. Destroy original and carbon copy of DPS 5659 when 3 months old."

USPS 180.010, Office Administration—Carpool Coordination/Parking, 180.010

Retention and Disposal:

Change to read "a. Application Case Files—Screen file annually, and dispose of records that are 6 years old.

b. Machine-readable files—Immediately remove all information when employee surrenders space.

c. Accounting Reports—Destroy after audit or when 3 years old, whichever is sooner.

d. Other miscellaneous reports—Destroy when no longer needed for reference or when 1 year old, whichever is sooner.

e. Violations maintained in application case files—Destroy violation notice when 1 year old.

f. Medical files maintained by medical officer to support handicapped parking space—Destroy 1 year from date of termination of assignment. At the end of retention period, paper records are destroyed by shredding or burning and tape/disk records are erased."

USPS 110.010, Property Management—Accountable Property Records, 110.010

Retention and Disposal:

Change to read "Return to individual when accountability is terminated."

USPS 120.035, Personnel Records—Discipline, Grievance, and Appeals Records for Non-Bargaining Unit Employees, 120.035

Retention and Disposal:

Change to read "Appeal records are kept for 7 years after close of file. All other records are kept 1 year after close of file. Records are destroyed by shredding."

USPS 120.040, Personnel Records—Employee Job Bidding Records, 120.040

Retention and Disposal:

Change to read "Computer records are kept 2 years, then automatically deleted. Paper records are kept 6 months after a vacancy is filled, then destroyed. Some records are retained until employee separates. (Where records become part of a grievance case file, dispose of with the case file.)"

USPS 120.050, Personnel Records—Employee Suggestion Program, 120.050

Retention and Disposal:

Change to read "a. Adopted Suggestions (1) Record copies—Destroy when 4 years old. (2) All other copies—Destroy 2 years from date of adoption or approval.

b. Disapproved suggestions—Destroy 2 years from date of disapproval.

Records are destroyed by shredding and automatic deletions from computer tapes."

USPS 120.060, Personnel Records—Employment and Financial Interest Records, 120.060

Retention and Disposal:

Change to read: "Destroy 2 years from date of separation of employee or removal from the position requiring this statement."

USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and Records Related Thereto), 120.070

Retention and Disposal:

Change to read "a. Official Personnel Folder (OPF) Records—These records are considered to be permanent and are maintained until employee is separated, and then are sent to the National Personnel Records Center, St. Louis, for storage, or to another Federal agency to which the individual transfers employment.

b. Personnel Work Sheets—Destroy 30 days after a new PS 50 is issued.

c. Temporary Records of Individual Employees—Destroy when 2 years old,

upon separation, or upon transfer of employee, whichever is sooner.

d. Service Record Cards—Destroy 3 years after separation or transfer of employee."

USPS 120.090, Personnel Records—Medical Records, 120.090

Retention and Disposal:

Change to read "a. Employee Medical Folder—Medical records considered to be permanent are maintained until employee is separated and then are sent to the National Personnel Records Center for storage, or to another Federal agency to which the individual transfers employment. The records are maintained for 30 years from the date the employee separates from Federal service.

b. Failed Eligibles—Retained in Personnel office along with employment application and destroyed by shredding when 2 years old.

c. Authorization for Medical Attention (PS 3956)—Destroy when 2 years old."

USPS 120.095, Personnel Records—Office of Workers' Compensation Program (OWCP) Record Copies, 120.095

Retention and Disposal:

Change to read "Transfer to a Federal Records Center when 5 years old; dispose of 30 years from date the employee leaves the Postal Service."

USPS 120.100, Personnel Records—Performance Awards System Records, 120.100

Retention and Disposal:

Change to read "a. Incentive Award Files—Destroy 4 years from date of approval or disapproval.

b. Length of Service Award Files—Destroy when 1 year old.

c. Non-USPS Awards—Destroy 2 years after date of award.

d. Letter of Commendation and Appreciation (excluding copies filed in the OPF)—Destroy 2 years from date of letter."

USPS 120.110, Personnel Records—Preemployment Investigation Records, 120.110

Retention and Disposal:

Change to read "a. Destroy 2 years from the date the employee is initially found suitable for employment or 2 years from the date action was taken to deny or terminate employment.

b. NACI reports are retained in the same fashion as local investigative records."

USPS 120.120, Personnel Records—Personnel Research and Test Validation Records, 120.120

Retention and Disposal:

Change to read "a. Hard Copy—Destroy 6 months after processing.

b. Magnetic Tape—Maintain for 30 years—DO NOT TRANSFER TO A FEDERAL RECORDS CENTER."

USPS 120.121, Personnel Records—Applicant Race, Sex, National Origin and Disability Status Records, 120.121

Retention and Disposal:

Change to read "a. Hard Copy—Destroy 6 months after processing.

b. Magnetic Tape—Maintain for 30 years—DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

c. Statistical Records (without individual identifiers)—Maintained for as long as needed for the purpose of conducting longitudinal studies."

USPS 120.140, Personnel Records—Employee Assistance Program (EAP), 120.140.

Retention and Disposal:

Change to read "a. Coordinator/Specialist Applications and Interviews—Destroy 1 year from date of application.

b. Participant's Case Cards—Destroy 6 years from date case is closed. DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

c. Historical Case Records Cards—Dispose of along with Case File (see d.).

d. Case Files—(1) Deceased Persons—Destroy immediately. (2) Persons Successfully completing EAP Program—Destroy 3 years from date of completion. (3) Persons Dropped from EAP Program—Destroy when 1 year old."

USPS 120.153, Personnel Records—Individual Performance Evalnation/Measurement, 120.153.

Retention and Disposal:

Change to read: "a. Merit Performance Evaluation Files—Destroy when 5 years old.

b. Individual Performance Evaluation/Measurement Records—Destroy when 10 years old or when no longer useful, whichever is sooner. DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

USPS 120.170, Personnel Records—Safe Driver Awards Records, 120.170

Retention and Disposal:

Change to read "Destroy 4 years from date of separation, expiration of license, recision of authorization, or transfer of driver into a nondriving status, or other transfer (unless requested by new installation or agency)."

USPS 120.190, Personnel Records—Supervisor's Personnel Records, 120.190

Retention and Disposal:

Change to read "a. Counseling Records—Destroy when 1 year old if there has been no disciplinary action initiated against the employee during that period.

b. Letters of Warning—Destroy when 2 years old if there has been no disciplinary action initiated against the employee during that period.

c. All Other Records—Dispose of immediately upon termination of supervisor/employee relationship."

USPS 120.210, Personnel Records—Vehicle Maintenance Personnel and Operators Records, 120.210

Retention and Disposal:

Change to read "Destroy 4 years from date of separation, transfer (unless requested by new installation or agency), expiration of license, recision of authorization, or transfer of driver into a nondriving status."

USPS 120.220, Personnel Records—Arbitration Case Files, 120.220

Retention and Disposal:

Change to read "a. Disciplinary Cases (to include removal) and contract application cases—(1) National Level—Destroy 15 years from date of final decision. (2) Field Level—Destroy 5 years from fate of final decision.

b. Contract Interpretation Cases (National Level)—Transfer to a Federal Records Center when 5 years old; destroy 15 years from date of expiration of the agreement.

c. Court Actions—Transfer to a Federal Records Center when 5 years old, destroy 15 years from date of final agreement."

USPS 120.230, Personnel Records—Adverse Action Appeals (Administrative Litigation Case Files), 120.230

Retention and Disposal:

Change to read "Destroy 7 years from date of final decision."

USPS 120.240, Personnel Records—Garnishment Case Files, 120.240

Retention and Disposal:

Change to read "Postal Data Center records are maintained on an active basis until subject matter has no informational value, and on an inactive basis for an additional 2 years. All other records are maintained for 5 years. Paper records are shredded and

computer tape/disk records are erased at the end of retention period."

USPS 150.010, Records and Information Management Records—Information Disclosure Accounting Records (Freedom of Information Act), 150.020

Retention and Disposal:

Change to read "Records maintained by custodians and the Records Office are disposed of 2 years from date of final response to requester. (Files may be transferred to FOIA Appeals Officer upon request. When this is done, files may become a part of the Appeals Case Files—see USPS 150.015.)"

USPS 150.012, Records and Information Management Records—Freedom of Information Act Appeals System, 150.015

Retention and Disposal:

Change to read "Destroy 10 years from date of final determination by Appeals Officer or upon final adjudication in case of civil suit."

USPS 150.025, Records and Information Management Records—Privacy Act Appeals System, 150.025

Retention and Disposal:

Change to read "Destroy 10 years from date of final determination by Appeals Officer or upon final adjudication in case of a civil suit."

USPS 150.030, Special Mail Services—Insured and Registered International Mail Inquiry and Application for Indemnity Records, 150.030

Retention and Disposal:

Change to read "Destroy when 3 years old."

USPS 260.020, Nonmail Monetary Claims—Monetary Claims Involving Present or Former Employees (Case Files), 260.020

Retention and Disposal:

Change to read "Records are destroyed 3 years from date claim is adjudicated."

USPS 260.025, Nonmail Monetary Claims—Tort Claims records, 260.030

Retention and Disposal:

Change to read "a. Closed Case Files (cases where claims were neither allowed nor disallowed)—Transfer to a Federal Records Center when 2 years old; destroy when 5 years old.

b. Appeal Case Files—Transfer to a Federal Records Center when 2 years old; destroy when 7 years old.

c. PDC Payment Records—Transfer to a Federal Records Center when 1 year old; destroy when 4 years old.

d. Locator Card—Destroy when 7 years old."

USPS 210.010, Contractor Records—Architect-Engineers Selection Records, 210.010

Retention and Disposal:

Change to read "a. Architect-Engineer and Related Services Questionnaire, SF 254—Destroy when 1 year old.

b. Architect-Engineer and Related Services for Specific Projects, SF 255—When a contract is awarded, attach form to contract; otherwise, destroy when 1 year old."

USPS 210.020, Contractor Records—Contractor Employee Fingerprint Records, 210.020

Retention and Disposal:

Change to read "Records are kept until employee leaves employment of USPS and then are destroyed 2 years later by shredding."

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 86-12151 Filed 5-29-86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23261; File No. SR-MSE-86-4]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Bids and Offers on "Issued" Basis

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1986, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On November 9, 1985, the Securities and Exchange Commission appoved a proposed rule change to MSE Article XX, Rule 10 (SR-MSE-85-8, submitted August 7, 1985, amended October 19, 1985) on a six-month pilot basis. Such approval expires on May 7, 1986. By this filing, the Midwest Stock Exchange, Inc. hereby requests permanent approval of the rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The rule change codifies MSE's policy of allowing trades to be effected on the MSE floor for settlement periods other than "cash", "regular way", or "seller's option".

The current rule 10 provides that contracts resulting from transactions effected on the MSE floor may be settled in one of three ways. First, the transaction may be settled for "cash", which indicates that delivery occurs on the day of the contract. Second, the transaction may be settled "regular way", which indicates that delivery will occur on the fifth full business day following the day of the contract. Third, the transaction may be settled "seller's option", which indicates that delivery will occur within the time period specified in the option, which time shall be no less than six full business days nor more than 30 days following the day of the contract.

Rule 10 also contains an exception providing for "next day" settlement (for delivery on the day following the day of the contract) for contracts in rights on the second, third, fourth and fifth full business days preceding the final day for subscription, and for "cash" settlement on the day immediately preceding the final day for subscription.

These changes are the result of requests made to the MSE by several members and member organizations to provide greater flexibility for trades with settlement periods other than the traditional periods cited in existing Rule 10.

Particular interest has been expressed in "next day" settlement and settlement occurring on the second, third, and fourth business days following the day of the contract in respect to "issued" securities and not merely subscription

rights. These same members and member organizations believe that additional settlement periods are becoming more useful in furthering the investment objectives of certain of their customers. In the past, MSE's policy was to allow three types of trades on an exception basis only.

With increased emphasis on sophisticated trading programs conducted by certain institutional investors, and the fact that other exchanges currently allow or are proposing to allow additional settlement periods, the MSE believes that it is appropriate at this time to provide in its rules additional time periods during which trades effected on the MSE may settle as a matter of course.

In addition, the rule change would expand the permissable "seller's option" period from 30 days to 60 days. This expanded period will also provide greater flexibility in developing investment strategies and is consistent with other exchanges' "seller's option" rules.

These changes have been in effect on a pilot basis for six months. In reviewing the operation of the pilot, it has been determined by the MSE that no unusual trading activity nor abuses have occurred during the initial six-month period. Permanent approval of the pilot program is, therefore, requested.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 in that it helps remove an impediment to a free and open market and will also foster cooperation and coordination with persons engaged in settling and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 20, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12173 Filed 5-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23363; File No. SR-PHILADEP 86-2]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Depository Trust Company Relating to Fee Schedule Amendments

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1986, the Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadelphia Depository Trust Company (PHILADEP) proposed as a rule change the adoption of amendments to its fee schedule to be effective as of May 1, 1986. The changes include certain increases, as well as a decrease for the automated customer name mailing service, in order to relate charges to costs more accurately. The rule change also unbundles certain services so that fees associated with those services more accurately reflect costs.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHILADEP fee revisions reflect changes in costs attributable to usage or expansion of the particular service affected. The purpose of the fee schedule revisions is the formulation of a fair and equitable fee schedule in view of current conditions, increased costs, the applicability of automation and advanced technology, the need for reliable as well as cost effective services, and the desire to be competitive in the industry.

The proposed fee changes are consistent with section 17A(b)(3)(D) of the Exchange Act in providing for equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burdens on Competition

PHILADEP does not perceive any burden on competition as a result of the proposed rule change, which is intended to align more closely the charge for a particular service with the cost of producing it.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been received because the new schedule is being printed. A forthcoming SCCP/PHILADEP Member Bulletin will advise members of officials to whom they may direct questions upon receipt of the new schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Exchange Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of this rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Those making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at PHILADEP. All submissions should refer to File No. SR–PHILADEP–86–2 and should be submitted by June 20, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1986.

Shirley E. Hollis,

Assistant Secretary.

PHILADEP SCHEDULE OF CHARGES—PHILADEP 06–2

[New material is italic; deleted material in bold brackets]

Service	Charge
1. Account Charges:	
a. Maintenance Fee	[$150.00 per month] *$300.00 per month with account activity. $150.00 per month for accounts with less than $10 of deposit activity.*
b. Pledgee Bank Fee	$100 per month.
2. Custody Fee	• • •
3. Deposit Fee	[$0.75] *$0.80 per deposit* [1].
4. Legal Deposits	• • •
5. Withdrawals:	
a. By transfer	[$1.00 per transfer [1]]. $1.25 per manual transfer [1]. $1.35 per automated tape transfer.
b. By certificate	$5.00 per withdrawal same day or next day.
6. Accommodation Transfers, branches.	• • •
7. MDO Movements	• • •
8. CNS/PHILADEP Movements.	• • •
9. Pledge Fees	• • •
10. Divided And Interest Payments.	[$0.80] *$1.00 per credit.*
11. Reject Fees	[$6.00] *$7.50 per reject if total rejected deposits are [2%] 1% or more of total.*
Deposits	For the month.
12. Research Fees	• • •
15. Customer Name Mailing	[$1.50 per envelope; for participants with less than 10,000 items per month, plus normal transfer withdrawal charge $1.35]. *$0.65 per envelope [for participants with 10,000 or more items per month,] plus [normal] appropriate transfer withdrawal.*
	Charge fees; fees include [postage,] stationary and insurance *but not postage.*
16. Stock Loan Program	• • •
17. Reorganization Fees	• • •
a. Mandatory Exchanges, Cash and Stock Mergers, and Reverse Splits.	[$6.00] *$15.00 per position.*
b. Voluntary Tender Offers	[$10.00] *$15.00 per instruction received before cutoff.* $25.00 per instruction received after cut off, with authorization.
c. Voluntary Conversions	[$10.00] *$15.00 per instruction.*
d. Redemptions: Stocks, Corporate Bonds, Registered Municipal Bonds, etc.	[$5.00] *$15.00 per position.*
18. National Institutional Delivery System (NIDS).	• • •
19. PHILADEP Discount	• • •

[1] Plus applicable transfer agent insurance fee; $5.00 per deposit or withdrawal.

[FR Doc. 86–12174 Filed 5–29–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15106; File No. 812–5786]

IDS Mutual, Inc. et al.; Application

May 20, 1986.

Notice is hereby given that IDS Mutual, Inc., IDS Stock Fund, Inc., IDS Selective Fund, Inc., IDS Equity Plus Fund, Inc., IDS new Dimensions Fund, Inc., IDS Progressive Fund, Inc., IDS Growth Fund, Inc., IDS Bond Fund, Inc., IDS Cash Management Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS High Yield Tax-Exempt Fund, Inc., IDS Tax-Free Money Fund, Inc., IDS Discovery Fund, Inc., IDS Extra Income Fund, Inc., IDS International Fund, Inc., IDS Strategy Fund, Inc., IDS Precious Metals Fund, Inc., IDS Managed Retirement Fund, Inc., IDS Life Capital Resource Fund, Inc., IDS Life Income Fund, Inc., IDS Life Moneyshare Fund, Inc. (individually a "Fund" and collectively the "Funds" or the "IDS Mutual Fund Group" and where appropriate the last three Funds referred to as the "Life Funds"); and Shearson Lehman Brothers Inc. ("Shearson") (collectively with the IDS Mutual Fund Group, "Applicants") filed an application on February 10, 1984, and amendments thereto on April 20, 1984, June 19, 1984, December 18, 1984, August 20, 1985, and December 19, 1985, requesting an order of the Commission, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of section 17(a)(3) and, pursuant to section 17(d) of the Act and Rule 17d–1 thereunder, permitting the IDS Mutual Fund Group to lend portfolio securities to Shearson, certain broker-dealer affiliates of Shearson, and future broker-dealer affiliates of Shearson that may enter into portfolio securities lending programs with the IDS Mutual Fund Group. Applicants also seek an exemption on behalf of registered investment companies that may, in the future, join the IDS Mutual Fund Group and adopt portfolio securities lending programs substantially identical to those described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions thereof.

Applicants represent that the Funds and the Life Funds are open-end diversified management investment companies registered under the Act. According to the application, the investment manager for the Funds is IDS Financial Services Inc. ("New IDS") and the investment manager for each Life Fund is IDS Life Insurance Company, Inc. ("IDS Life"), a wholly-owned subsidiary of IDS. Applicants state that Shearson is a wholly-owned subsidiary of American Express Company and a broker-dealer registered under the Securities Exchange Act of 1934.

Applicants represent that prior to January 12, 1984, Investors Diversified Services, Inc. ("Old IDS"), a wholly-owned subsidiary of Alleghany Corporation, served as investment manager of each Fund and that IDS Life, then a wholly-owned subsidiary of Old IDS, served as investment manager of each Life Fund. Applicants state that on September 28, 1983, Alleghany

Corporation and American Express Company entered into a Plan of Reorganization and Merger Related Agreement (which was subsequently amended on December 22, 1983) providing for the merger of Old IDS into New IDS, a wholly-owned subsidiary of American Express Company (the "Merger"). Applicants state that the Merger was completed on January 12, 1984.

According to the application, the Funds began lending their portfolio securities to brokers in 1974, and, in connection with the decision to lend portfolio securities, the Board of Directors of each Fund ("Boards") adopted certain procedures. Applicants state that, in October 1977, Shearson became an approved broker under the procedures adopted by the Funds and from that time until the day preceding the date of the Merger, the Funds had on occasion loaned portfolio securities to Shearson pursuant to those procedures. Applicants represent that prior to the Merger, Shearson had become one of the Funds' largest borrowers of portfolio securities. It is further represented that the Life Funds have also authorized and implemented a portfolio securities lending program. Applicants state that upon completion of the Merger, Shearson became, for purposes of section 17(a)(3), an affiliated person of an affiliated person of each Fund and of each Life Fund.

Applicants propose to continue the lending relationship with Shearson pursuant to the same procedures as those in place prior to the Merger and submit that these procedures assure that shareholders will be adequately protected from the potential abuses which section 17(a)(3) was designed to prevent. Applicants assert that Shearson's participation in the proposed loan transactions will be on a basis which is no more favorable than the participation of unaffiliated borrowers of securities from the IDS Mutual Fund Group and thus the conditions of Rule 17d–1 will be met. According to the application, the Boards of the IDS Mutual Fund Group have determined that the IDS Mutual Fund Group should be permitted to lend portfolio securities to Shearson subject to the adopted procedures, at rates determined on a case-by-case basis in the manner presently followed for all loans of portfolio securities. Applicants represent that, pursuant to the resolutions adopted by the Boards, a schedule of fees (and in the case of cash collateral, rates of interest to be remitted) is established by New IDS and is applied uniformly with respect to loans made to affiliated and non-affiliated brokers. Applicants state that substantially all loans are made at predetermined charges which are applied uniformly to all borrowers. Applicants represent that no loan will be made to an affiliated broker at less than the minimum charge set forth in paragraph 9 of the Boards' resolutions, and further that no loan will be made to an affiliated broker at a charge less than that specified in the schedule. Further, although the member funds of the IDS Mutual Fund Group may from time to time lend portfolio securities at higher charges than those reflected on the schedule, it is represented that such occurrences have been infrequent. Applicants represent that, in the unusual case where a security is loaned at a higher charge, all comparable loans of the security will be made at the same rate as required by paragraph 9(c) of the Boards' resolution, regardless of whether the loan is made to an affiliated or a non-affiliated broker.

In addition, to assure that there is no overreaching on the part of an affiliated borrower, Applicants also consent to the imposition of the following conditions to the requested order:

1. The IDS Mutual Fund Group will continue to make at least 50% of their portfolio securities loans to unaffiliated borrowers.

2. A Fund may not lend portfolio securities to Shearson if, at the time such loan is made, more than 10% of such Fund's assets computed at market, would be loaned to Shearson.

3. A Fund will not make any loan to Shearson unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. If the Funds receive cash as collateral, they may not remit to Shearson a portion of the interest earned on such collateral at a rate in excess of 85% of the weekly average of the 30-day commercial paper rate; if U.S. Government securities are received as collateral, the loan premium paid by Shearson shall not be less than ½% of the par value of debt instruments or the market value assigned to equities at the time of borrowing.

5. The Funds' Boards of Directors, including a majority of the directors who are not interested persons, (a) will determine no less frequently than quarterly that all transactions with Shearson effected during the preceding quarter were effected in compliance with the requirements of the resolution adopted by the Boards and the conditions of any order permitting such transactions and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The IDS Mutual Fund group will maintain and preserve permanently a written copy of the procedures (and any modifications thereto) which are followed in lending securities. The Funds shall maintain and preserve a written record of each loan setting forth the number of shares loaned or the face amount of the securities loaned, the fee received (or the rate of interest remitted), the identity of the borrower, the terms of the loan, the information or materials upon which the findings that each loan made to Shearson was fair and reasonable and that the procedures followed in making the loan were in accordance with the other undertakings set forth above.

7. The IDS Mutual Fund Group will only accept cash or U.S. Government securities as collateral for securities loaned to an affiliated broker.

Applicants state that since the Funds began their lending program in 1974, no Fund has experienced any difficulties and the program has resulted in additional income to shareholders which, it is claimed, they would not otherwise have enjoyed. The IDS Mutual Fund Group represents that if the member funds of the IDS Mutual Fund Group are not able to lend securities to affiliated brokers, the premium income and benefits to shareholders attributable to such loans will be lost and cannot be replaced. Applicants submit that the loans of portfolio securities to Shearson in accordance with the procedures and guidelines which have been adopted would benefit the IDS Mutual Fund Group, that the participation of the IDS Mutual Fund Group in portfolio securities loans with Shearson subject to such procedures is fair and reasonable and will not involve overreaching on the part of any person, and that the proposed transactions are consistent with the policies of the IDS Mutual Fund Group and with the general purposes of the Act. Applicants also submit that the granting of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 16, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities

and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

By the Commission.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 86-12131 Filed 5-29-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VII, located in the geographical area of Cedar Rapids, Iowa, will hold a public meeting at 9:30 a.m. on Tuesday, June 17, 1986, at the Dubuque Area Chamber of Commerce, 770 Town Clock Plaza, Dubuque, Iowa, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Ralph W. Potter, District Director, U.S. Small Business Administration, 373 Collins Road NE., Cedar Rapids, Iowa 54202, telephone number (319) 399-2571.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 22, 1986.

[FR Doc. 86-12103 Filed 5-29-86; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky, will hold a public meeting from 10:00 a.m. to 2:00 p.m., Wednesday, June 25, 1986, at the Louisville District Office, 600 Federal Place, Room 188, Louisville, Kentucky, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, P.O. Box 3517, Louisville, KY 40201—(502) 582-5971, and others attending.

Jean M. Nowak,

Director Office of Advisory Councils.

May 22, 1986.

[FR Doc. 86-12104 Filed 5-29-86; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-55]

Unfair Trade Practices; Icicle Seafoods; Initiation of an Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to initiate an investigation under section 301.

SUMMARY: Pursuant to 19 U.S.C. 2412(a), the United States Trade Representative has decided to initiate an investigation of the petition submitted by Icicle Seafoods, et al., and described below.

DATE: Written comments will be accepted through June 16, 1986.

ADDRESS: Written comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506. Copies of the petition are available at this address.

FOR FURTHER INFORMATION CONTACT: Richard Parker, Assistant General Counsel, Office of the United States Trade Representative, (202) 395-6800.

SUPPLEMENTARY INFORMATION: On April 1, 1986, Icicle Seafoods and nine other companies with fish processing facilities in Washington or southeastern Alaska filed a petition under section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411, et seq.) alleging that Canada prohibits exports of unprocessed herring and salmon, and that this policy deprives petitioners of access to supplies of raw fish needed to maintain capacity utilization in petitioner's processing facilities. Petitioners allege that the Canadian prohibition is unreasonable and a burden on U.S. commerce, and a violation of Article XI of the General Agreement on Tariffs and Trade ("GATT"), which prohibits most types of export restrictions.

On May 16, 1986, pursuant to 19 U.S.C. 2412(a), the United States Trade Representative decided to initiate an investigation on the basis of this petition.

USTR has requested bilateral consultations with representatives of the Government of Canada. To assist USTR in preparing for these discussions, interested parties are invited to submit written comments regarding the issues raised by the petition. USTR is particularly interested in information on the following points:

(1) To what extent does the Canadian prohibition on unprocessed herring and salmon exports depress the price of unprocessed herring and salmon in Canada?

(2) To what extent does denial of access to unprocessed Canadian herring and salmon impair access of U.S. processors to adequate supplies of herring and salmon and/or increase unit costs in U.S. processing facilities?

(3) What would be the economic effects on U.S. and Canadian fishermen and processors of eliminating the Canadian prohibition on unprocessed herring and salmon exports?

Comments should be filed in accordance with the regulations in 15 CFR 2006.8 and are due no later than June 20, 1986.

Judith H. Bello,

Chairman, Section 301 Committee.

[FR Doc. 86-12120 Filed 5-27-86; 12:17 pm]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular, Cabin Pressurization Systems in Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This AC provides information and guidance concerning compliance with the requirement of §§ 23.841(b)(3) and 23.841(b)(6) of the Federal Aviation Regulations (FAR) pertaining to pressurized cabins in small airplanes.

DATE: Commenters must identify File AC 23.841-XX; Subject: Cabin Pressurization Systems in Small Airplanes, and comments must be received on or before June 29, 1986.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments invited: Interested parties are invited to submit comments on the

proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

For pressurized cabins in small airplanes, questions have been raised for showing an acceptable means of compliance pertaining to the following requirements in §§ 23.841(b)(3) and 23.841(b)(6): (1) Provision of means by which the pressure differential can be rapidly equalized; and (2) provision of a warning indication at the pilot station to indicate when a cabin pressure altitude of 10,000 feet is exceeded. The AC discusses these requirements by first presenting a brief history on the development of the applicable airworthiness regulations and then the intent of the airworthiness requirements for small airplanes is explained.

Issued in Kansas City, Missouri, May 14, 1986.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 86-12080 Filed 5-29-86; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular; Flight Test Guide for Certification of Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This AC provides information and guidance concerning acceptable means of showing compliance with Part 23 of the Federal Aviation Regulations (FAR) concerning flight tests and pilot judgments.

DATE: Commenters must identify File AC 23-XX-13; Subject: Flight Test Guide for Certification of Small Airplanes, and comments must be received on or before August 28, 1986.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Frank Stogsdill, Aerospace Engineer and Pilot, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-5941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

FAA Order 8110.7, "Engineering Flight Test Guide for Small Airplanes," dated June 20, 1972, was published for internal FAA use to describe acceptable methods of compliance with the flight test portions of Part 23 of the FAR. Conversion of FAA Order 8110.7 to an AC is part of FAA's effort to convert internal FAA orders which contain certification guidance to ACs. This AC consolidates Order 8110.7, policy contained in correspondence between FAA Headquarters and certificating regions and subsequently developed policy. The methods and procedures contained in this AC are being promulgated for use during small airplane type certification and supplemental type certification flight testing.

Issued in Kansas City, Missouri, May 19, 1986.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 86-12081 Filed 5-29-86; 8:45 am]

BILLING CODE 4910-13-M

Tri-Cities Airport, Pasco, WA; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Tri-Cities Airport (PSC) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for PSC under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before November 12, 1986.

DATES: The effective date of the FAA's determination on the PSC noise exposure maps and of the start of its review of the associated noise compatibility program is May 16, 1986. The public comment period ends December 12, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for PSC are in compliance with applicable requirements of Part 150, effective May 16, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 12, 1986. This notice also announces the availability of this program for public review and comment.

Under section 103 on Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which met applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

PSC submitted to the FAA on February 27, 1986, noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was

requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by PSC. The specific maps under consideration are Exhibits 4–1 and 8–2 in the submission. The FAA has determined that these maps for PSC are in compliance with applicable requirements. This determination is effective on May 16, 1986. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for PSC, also effective on May 16, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 12, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW. Room 615 Washington, DC

Federal Aviation Administration, Airports Division, ANM-600, 17900 Pacific Hwy S. C-68966 Seattle, Washington 98168

Tri-Cities Airport, Pasco, Washington

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Seattle, Washington, May 16, 1986.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 86-12062 Filed 5-29-86; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Hazardous Materials; Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in April 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6084-X	DOT-E 6084	Sandoz Chemicals Corporation, Sodyeco Plant, Charlotte, NC.	49 CFR 173.65(e), 175.24–4(a)	To authorize transport of a high explosive in DOT Specification 21P fiber drum having an inside polyethylene container similar to DOT Specification 6U with certain exceptions. (Mode 1.)
7052-X	DOT-E 7052	General Motors Corp., Warren, MI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Ocean Technology, Inc., Burbank, CA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Beckman Instruments, Inc., Fullerton, CA	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Sippican Ocean Systems, Inc., Marion, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	DME Corp., Ft. Lauderdale, FL	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	University of Washington, Seattle, WA	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Panasonic Industrial Co., Secaucus, NJ	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	TNR Technical, Inc., Deer Park, NY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-X	DOT-E 7052	Rayovac Corp., Madison, WI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7218-X	DOT-E 7218	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
7277-X	DOT-E 7277	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinder, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
7959-X	DOT-E 7959	Woods Hole, Marthas Vineyard & Nantucket Steamship, Woods Hole, MA.	49 CFR 172.101, 176.780(k)	To authorize stowage of recreational vehicles carrying liquefied petroleum gas for heating and cooking on the vehicle deck of passenger-carrying ferries and other passenger-carrying vessels. (Mode 3.)
8091-X	DOT-E 8091	AT&T Technologies, Inc., Greensboro, NC.	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8091-X	DOT-E 8091	Northwestern Bell, Omaha, NE	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8091-X	DOT-E 8091	Pacific Northwest Bell, Portland, OR	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8091-X	DOT-E 8091	Mountain Bell, Denver, CO	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8362-X	DOT-E 8362	Altus Corp., San Jose, CA	49 CFR 172.101, 173.206, 173.247	To authorize shipment of batteries containing lithium metal and thionyl chloride in a rigid metal structure of aluminum steel and components which secure the location of each of the 30 cell units, packed in a sturdy wooden box bolted to the base support plate of the internal metal structure. (Mode 1.)
8390-P	DOT-E 8390	Jones-Hamilton Co., Newark, CA	49 CFR 173.272, 178.210, 178.24a	To become a party to Exemption 8390. (Mode 1.)
8401-X	DOT-E 8401	ERA Helicopters, Inc., Anchorage, AK	49 CFR 175.3, 175.310(c)(3), 175.310(d)	To authorize carriage of fuel in Canadian 5B drums loaded in cargo compartments of passenger-carrying helicopters. (Mode 5.)
8451-P	DOT-E 8451	The Ensign-Bickford Co., Simsbury, CT	49 CFR 173.65, 173.66(e), 175.3	To become a party to Exemption 8451. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Monongahela Power Co., Fairmont, WV	49 CFR 173.65, 173.66(e), 175.3	To become a party to Exemption 8451. (Modes 1, 2, and 4.)
8582-X	DOT-E 8582	Chicago and Northwestern Transportation Co., Chicago, IL.	49 CFR Parts 100–177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8582-X	DOT-E 8582	The Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	49 CFR Parts 100–177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8582-P	DOT-E 8582	Southern Pacific Transportation Co., San Francisco, CA.	49 CFR Parts 100–177	To become a party to Exemption 8582. (Mode 1.)
8692-X	DOT-E 8692	Mitsubishi International Corp., New York, NY.	49 CFR 173.154	To authorize ammonium persulfate, classed as an oxidizer, as an additional commodity and to authorize a smaller 1,100 pound capacity bag. (Modes 1, 2, and 3.)
8717-X	DOT-E 8717	Goodbar E. Moore, Inc., Danville, IL	49 CFR 173.28(m)	To authorize reuse of DOT Specification 17H steel drums of 55-gallon capacity, with an inside polyethylene liner of 0.010 inch minimum thickness, for shipment of certain adhesives, classed as a flammable liquid. (Mode 1.)
8751-X	DOT-E 8751	The Heil Co., Milwaukee, WI	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.340(a), 178.340–7, 178.342–4, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC–307/312 except for bottom outlet valve variations for transportation of liquid and semi-solid waste materials. (Mode 1.)
8791-X	DOT-E 8791	Stauffer Chemical Co., Westport, CT	49 CFR 173.245a, 173.3a, 178.245–1	To authorize use of a non-DOT specification portable tank equivalent to a DOT Specification 51 portable tank, for transportation of ethyl chloroformate. (Modes 1, 2, and 3.)
9077-X	DOT-E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR Parts 100–177	To increase number of railway track torpedoes contained in flagging kits from 7 to 18. (Mode 1).
9077-X	DOT-E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR Parts 100–177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 gauge galvanized steel. (Mode 1.)
9105-X	DOT-E 9105	Sea-Land Service, Inc., Elizabeth, NJ	49 CFR 176.76(g)(3)	To authorize below deck stowage of DOT Specification IM 101 and IM 102 portable tanks containing a flammable liquid. (Mode 3.)
9106-X	DOT-E 9106	Kitty Hawk Airways, Inc., Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9130-X	DOT-E 9130	Bio-Lab, Inc., Conyers, GA	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of net over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, and 2.)
9211-X	DOT-E 9211	Waterman Steamship Corp., New Orleans, LA.	49 CFR 148.25–35(f)	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKO). (Mode 3.)
9211-X	DOT-E 9211	Maersk Line, Limited, New York, NY	49 CFR 148.25–35(f)	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKO). (Mode 3.)
9280-P	DOT-E 9280	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m)	To become a party to Exemption 9280. (Mode 1.)

New Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9559-N	DOT-E 9559	Sandco, Inc., Jacksonville, FL	49 CFR 173.154, 173.156, 173.160, 173.163, 173.164, 173.166, 173.169, 173.175, 173.182, 173.184, 173.187, 173.188, 173.194, 173.195, 173.198, 173.204, 173.207, 173.217, 173.219, 173.220, 173.229, 173.234, 173.235, 173.259a, 173.245(b), 173.366, 173.377, Part 173, Part 178.	To authorize manufacture, marking and sale of non-DOT specification polyethylene/fiberglass removable head salvage drum, net exceeding 80 gallon capacity, or 750 pounds gross weight, for shipment of certain solid and semisolid hazardous materials authorized in removable head drums. (Modes 1, and 2.)
9419-N	DOT-E 9419	PBA Compressed Gas Equipment, Westboro, MA	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To authorize use of DOT Specification 3AAX or 3T cylinders that (i) are owned or leased by any of its subsidiaries and (ii) are retested by means other than the hydrostatic retest required in 173.34(e), for transportation of certain flammable and nonflammable gases. (Modes 1, and 3.)
9468-N	DOT-E 9468	ABCO Industries, Inc., Roebuck, SC	49 CFR 173.154	To authorize shipment of benzoyl peroxide dispersions and mixtures, classed as organic peroxide, packaged in DOT Specification 21F-600 fiber drums, with inside DOT Specification 2SL polyethylene container. (Mode 1.)
9469-N	DOT-E 9469	Mueller Ltd., Packaging Munchenstein, Switzerland	49 CFR 171.12(c), 178.3, 178.118-8(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness (19 gauge), to be used in place of 20/18 gauge, 55-gallon capacity, DOT-17E drums, for transportation of various hazardous materials. (Modes 1, 2, 3, and 4.)
9488-N	DOT-E 9488	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 172.570	To authorize shipment of potassium cyanide, solid, and sodium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bag, each having a capacity not exceeding 2,205 pounds each. (Modes 1, and 2.)
9519-N	DOT-E 9519	Transchem, Inc., South Bend, IN	49 CFR 173.119, 173.256, 173.266, 178.19, 178.255, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene or linear medium density polyethylene portable tank, enclosed within a protective steel frame for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, and 2.)
9543-N	DOT-E 9543	Reynolds Manufacturing Co., McAllen, TX	49 CFR 173.119(a), (m), 173.245(a), 173.340-7, 173.346(a), 178.342-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks, patterned after DOT Specification MC-307 with certain exceptions, for transportation of certain flammable, corrosive or poison waste liquids or semi-solids. (Mode 1.)
9550-N	DOT-E 9550	U.S. Department of Defense, Falls Church, VA	49 CFR 172.101, 172.400, 173.306, 173.202, 175.3.	To authorize carriage of a cesium clock containing 5 grams of cesium and wet storage batteries in the passenger compartment of an aircraft. (Modes 1, and 5.)
9560-N	DOT-E 9560	Polaroid Corp., Cambridge, MA	49 CFR 173.119, 173.345	To authorize one-time reuse of refurbished DOT Specification 37M/2SL composite packaging for shipment of certain waste corrosive liquids, n.o.s., and waste flammable liquids, n.o.s. (Mode 1.)
9571-N	DOT-E 9571	U.S. Department of Justice, Washington, DC	49 CFR Parts 100–177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (Modes 1, 2, 3, 4, and 5.)
9576-N	DOT-E 9576	Daniel F. Young, Inc., Miami, FL	49 CFR 172.101 column 8(b), 175.30	To authorize shipment of three rocket motors, having a gross weight in excess of that presently authorized for cargo aircraft. (Mode 4.)

Emergency Exemptions

Application	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7092-P	DOT-E 7092	Aluminum Co. of America, Pittsburgh, PA	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7092. (Modes 1, 2, 3, and 4.)
EE 9502-N	DOT-E 9502	Olin Corp. East Alton, IL	49 CFR 172.101, 175.30	To authorize transport of ammunition for cannon and other explosives and certain non-hazardous materials aboard cargo aircraft. (Mode 4.)
EE 9508-N	DOT-E 9508	Tennessee Eastman Co., Kingsport, TN	49 CFR 171.2, 173.119,. 173.125, 179.201-1.	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 111A100W1 except for a thinner shell thickness in certain areas and for deviations in length of welds used in attaching bar pads. (Mode 2.)
EE 9504-N	DOT-E 9504	Great Lakes Chemical Corp., El Dorado, AK	49 CFR 173.252(a)(4)	To authorize a DOT Specification MC-312 cargo tank containing bromine to be loaded at less than 92% full capacity. (Mode 1.)
EE 9505-N	DOT-E 9505	Morton Thiokol, Inc., Brigham, UT	49 CFR 172.101, 173.61, 173.65	To authorize shipment of Cyclotetramethylene tetranitramine, dry, (HMX), in conductive velostat plastic bags, overpacked in DOT Specification 21C fiber drums not to exceed 200 pounds per drum. (Mode 1.)
EE 9506-N	DOT-E 9506	The Ensign-Bickford Co., Simsbury, CT	49 CFR 173.56(b)	To authorize two shipments of more than 110 detonators in one inside specially designed package. (Mode 1, 3.)

Withdrawals

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
6626-P	National Welders, Charlotte, NC	49 FR 173.34(e) (15) (i), 173.34(e) (15) (v), 175.3.	To become a party to Exemption 6626. (Modes 1, 2, 3, 4, and 5.)
9554-X	Atlas Powder Co. Dallas, TX	49 FR 173.114a, 173.154, 173.60	To authorize transport of (propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tank. (Mode 1).

Denials

9057–X Request by Olympic Chemical Company, Orange, CA to renew and authorize an alternate angle valve similer to the one presently authorized except for shape of side port to be used on chlorine cargo tanks denied April 21, 1986.

9516–N Request by Union Carbide Corporation, Danbury, CT to authorize shipment of certain gases and their mixtures in fiberglass insulated (fiberlume) specification 3AL cylinders denied April 18, 1986.

9573–N Request by Chevron Resources Company, Grants, NM to authorize uranium ore to be transported in open rather than closed rail cars denied April 4, 1986.

Issued at Washington, DC, May 19, 1986.

J. Suzanne Hedgepeth,

Acting Chief, Exemptions and Approvals Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86–12135 Filed 5–29–86; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

[Docket No. 86–G]

Buy American Requirements, Waiver Extension

AGENCY: Urban mass Transportation Administration, DOT.

ACTION: Notice of Temporary Extension of Buy America Waiver and Request for Comments.

SUMMARY: In the Federal Register of May 2, 1985 (50 F.R. 18760), the Urban Mass Transportation Administration (UMTA) published a notice of waiver from the Buy America requirements of the Surface Transportation Assistance Act (STAA) of 1982 for microcomputers. The purpose of this Notice is to temporarily extend the waiver until UMTA can determine whether the waiver should be granted permanently, and to seek comments from interested parties on that question, as to whether or not the waiver should be granted permanently.

DATE: The waiver granted on May 2, 1985, is extended until further notice. Comment period expires June 30, 1986.

ADDRESS: Comments should be submitted to UMTA Docket 86–G, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m. Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–4063.

SUPPLEMENTARY INFORMATION: On May 2, 1985, UMTA granted a temporary waiver for microcomputers from the Buy America requirements in response to a request from the America Association of State Highway and Transportation Officials (AASHTO) which indicated that several UMTA grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs.

Section 165(b)(2) of the STAA provides that a waiver may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Under UMTA regulations, the item being procured is presumed to be unavailable if no responsive bid is received which will provide a domestically produced product. Given the rapid technological changes in an expanding market for microcomputers, UMTA, at this time, is soliciting comments as to whether or not this waiver should be permanently granted. UMTA will take further action based on the comments received.

Issued on: May 27, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86–12196 Filed 5–29–86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 20–86]

Treasury Notes of August 15, 1991, Series K–1991

Washington, May 21, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of August 15, 1991, Series K–1991 (CUSIP No. 912827 TS 1), hereafter referred to a Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated June 3, 1986, and will accrue interest from that date, payable on a semiannual basis on February 15, 1987, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tender will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 28, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 27, 1986, and received no later than Tuesday, June 3, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A

noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, June 3, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, May 30, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, June 3, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public

announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-12222 Filed 5-29-86; 10:52 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 104
Friday, May 30, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:30 a.m., June 10, 1986.

PLACE: RFE/RL, Inc., 1201 Connecticut Ave., NW., Suite 1100, Washington, DC 20036.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4(c) and (h) of the Board's rules (42 FR 9366, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concering the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Ave., NW., Washington, DC 20036.

Bruce D. Porter,
Executive Director.
[FR Doc. 86-12258 Filed 5-28-86; 12:54 pm]
BILLING CODE 8190-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 6, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12226 Filed 5-28-86; 10:26 a.m.]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 13, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12228 Filed 5-28-86; 10:27 a.m.]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 20, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 245-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12227 Filed 5-28-86; 10:28 a.m.]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 27, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 245-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12229 Filed 5-28-86; 10:29 am]
BILLING CODE 6351-01-M

6

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, June 4, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Mid-Year Review

The Commission and staff will review and discuss the status of CPSC's Fiscal Year 1986 Operating Plan.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 28, 1986.
[FR Doc. 86-12255 Filed 5-28-86; 12:37 pm]
BILLING CODE 6355-01-M

7

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, June 5, 1986.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS # 3789

The Commission will consider Enforcement Matter OS # 3789.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 28, 1986.

[FR Doc. 86-12256 Filed 5-28-86; 12:38 pm]
BILLING CODE 6355-01-M

8

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, June 9, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NE., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Revisions of proposed EEOC Regulations Implementing Section 504 of the Rehabilitation Act in its Federally-Conducted Programs: Response to Department of Justice Comments

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: May 28, 1986.

Johnnie L. Johnson,

Attorney-Advisor Executive Secretariat.

[FR Doc. 86–12277 Filed 5–28–86; 2:58 pm]

BILLING CODE 6750–06–M

9

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 10, 1986, 10:00 a.m. (eastern time).

PLACE: Suite 900, Skyline II Building, 5203 Leesburg Pike, Falls Church, Virginia 22041.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: May 28, 1986.

Johnnie L. Johnson,

Attorney-Advisor Executive Secretariat.

[FR Doc. 86–12278 Filed 5–28–86; 2:58 pm]

BILLING CODE 6750–06–M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:06 p.m. on Friday, May 23, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Centennial State Bank of Colorado, Englewood, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, May 23, 1986; (2) accept the bid for the transaction submitted by First Interstate Bank of Centennial, National Association, Englewood, Colorado, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) adopt a resolution making funds available for the payment of insured deposits made in Sunshine State Bank, South Miami, Florida, which was closed by the State Comptroller for the State of Florida on Friday, May 23, 1986.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552 (b)(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 6:19 p.m. and at 3:03 p.m. on Saturday, May 24, 1986, the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution making funds available: (1) For the payment of insured deposits made in First State Bank & Trust Company, Edinburg, Texas, which was closed by the Banking Commissioner for the State of Texas on Friday, May 23, 1986, and (2) for an advance payment to uninsured depositors and other general creditors of the closed bank equal to 15 percent of their uninsured claims.

In reconvening the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(B)).

Dated: May 27, 1986.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–12244 Filed 5–28–86; 11:16 a.m.]

BILLING CODE 6714–01–M

11

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 19102, May 27, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 29, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The following docket number has been added:

Item No., Docket Nos., and Companies

CAG–8

RP86–41–000, Algonquin Gas Transmission Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12229 Filed 5–28–86; 10:37 am]

BILLING CODE 6717–01–M

12

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 4, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 27, 1986.

James McAfee
Associate Secretary of the Board.

[FR Doc. 86-12282 Filed 5-28-86; 9:12 am]
BILLING CODE 6210-01-M

13

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 2, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Emergency meeting—less than ten days' prior notice. Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigations 701-TA-255 [Final] and 731-TA-275/277 [Final] (Oil country tubular goods from Argentina, Canada, and Taiwan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Issued: May 27, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-12279 Filed 5-28-86 2:28 pm]
BILLING CODE 7020-02-M

14

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, June 9, 1986, at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain imported plastic fasteners and the manufacturing processes therefor (Docket Number 1314).
5. Items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.
May 27, 1986.

[FR Doc. 86-12274 Filed 5-28-86; 2:28 pm]
BILLING CODE 7020-02-M

15

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 18992, May 23, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, May 28, 1986.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda to be discussed in closed session.

3. *Opinion and Order:* Administrator v. Conner Air Lines, Docket SE-7342; disposition of respondent's appeal.
5. *Opinion and Order:* Administrator v. Schwontkowski, Docket SE-6616; disposition of the Administrator's appeal.

CONTRACT PERSON FOR MORE INFORMATION: H. Ray Smith, (202) 382-6525.

Catherine T. Kaputa,
Federal Register Liaison Officer.
May 28, 1986.
[FR Doc. 86-12252 Filed 5-28-86; 12:36 pm]
BILLING CODE 7020-01-M

16

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 5, 1986.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED:

Possible Revisions to the Commission's Rules of Procedure, Subpart F.
Post-Hearing Procedures.
29 CFR 2200.90 through 2200.95.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015.

Dated: May 28, 1986.

Earl R. Ohman, Jr.,
General Counsel.
[FR Doc. 86-12284 Filed 5-28-86; 1:39 pm]
BILLING CODE 7020-01-M

16

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 12, 1986.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED:

Possible Revisions to the Commission's Rules of Procedure, Subparts A and G.
General Provisions amd Miscellaneous Provisions.
29 CFR 2200.1 through 2200.11 and 29 CFR 2200.100 through 2200.110.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015.

Dated: May 28, 1986.

Earl R. Ohman, Jr.,
General Counsel.
[FR Doc. 86-12285 Filed 5-28-86; 1:40 pm]
BILLING CODE 7020-01-M

federal register

Friday
May 30, 1986

Part II

General Services Administration

Federal Travel Regulations

BEST COPY AVAILABLE

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A–40, Supp. 20]

Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A–40, Supplement 20, transmitting changed pages amending the Federal Travel Regulations (FTR), FPMR 101–7, to implement the new statutory provisions contained in Title I—Travel Expenses of Federal Civilian Employees, Pub. L. 99–234 (99 Stat. 1756), January 2, 1986.

The provisions of Title I, Pub. L. 99–234, remove the statutory ceilings on per diem allowances and actual subsistence expense reimbursements for Federal civilian employees on official travel within the conterminous United States and authorize the Administrator of General Services to establish appropriate maximum rates administratively. Title I of Pub. L. 99–234 also allows GSA's Administrator to establish the type of reimbursement system to be used by Federal agencies. GSA Bulletin FPMR A–40, Supplement 20, establishes maximum per diem rates and a lodgings-plus per diem system as the predominant method of reimbursement for travel within CONUS. While authority for reimbursement of the actual and necessary subsistence expenses of travel has been retained, use of this authority is limited and it is expected that such use will be held to a minimum.

Supplement 20 implements other provisions of Title I of Pub. L. 99–234 noted in the Supplementary Information paragraph.

EFFECTIVE DATES: (1) Except as provided in (2), below, the changed provisions of the FTR transmitted by Supplement 20 are effective for travel (including travel incident to change of official station) performed on or after July 1, 1986.

(2) The provisions of Chapter 2, Relocation Allowances, are extended to include officers and employees of the U.S. Postal Service who are transferred in the interest of the Government to an executive agency (see 2–1.2a(1–a)) and whose effective date of transfer (date employee reports for duty at the new official station) is on or after May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Staff members, Regulation and Policy Division FTS 557–1253 or 557–1256 (for non-FTS use AC 703).

SUPPLEMENTARY INFORMATION: GSA, in consultation with the Office of Management and Budget, has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in a major increase in costs to consumers or others, nor otherwise have a significant adverse effect on the national economy. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

Background Information

In addition to the new authority for reimbursement of subsistence expenses discussed in the Summary, above, title I of Pub. L. 99–234:

(1) Requires GSA, at least every 2 years from now until 1991, to collect data on travel, transportation, and relocation payments from agencies spending over $5 million a year on these payments and to submit an analysis thereof to the Office of Management and Budget;

(2) Expands eligibility for certain travel expense reimbursements to employees who experience personal emergencies while on official travel;

(3) Authorizes temporary payments of subsistence and transportation expenses for threatened law enforcement/investigative employees; and

(4) Expands eligibility for relocation allowances to U.S. Postal Service employees transferring to other Federal agencies.

Title II—Travel Expenses of Government Contractors, also contained in Pub. L. 99–234, amends section 201 of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) by limiting Government-contractors' travel expenses to the rates and amounts established under Title I of Pub. L. 99–234 for Federal civilian employee travel. These provisions affecting Government contractors will be implemented in a change to the Federal Acquisition Regulation.

Notice to Agencies

The provisions of Supplement 20 establish a new lodgings-plus per diem system (without quarter day computations) for subsistence expense reimbursement for travel *within* CONUS. However, the current flat rate per diem system (with quarter day computations) for travel to, from, and between, or while at, locations *outside* CONUS is being retained at this time. As a result, allowable per diem reimbursement under the new regulations is computed differently based on whether travel is within or outside CONUS. A thorough review of the current reimbursement system for travel outside CONUS will be conducted following the issuance of this change to the FTR for CONUS travel.

A review also will be made of the existing structure of reimbursement levels for subsistence expenses incurred by employees incident to changes of official station. The requirement in the new law that GSA collect data from certain agencies on their travel, transportation and relocation payments will be implemented separately through issuance of a temporary regulation, or other publication.

Explanation of Changes

This supplement amends the FTR as follows:

a. Paragraph 1–2.4 is revised to refer the user to new Part 1–12 for provisions covering reimbursement of certain transportation expenses when, due to illness or injury or other personal emergency situation, an employee performs emergency travel (see paragraph f, below).

b. Part 1–7 is revised to make the following changes: (1) Prescribe a standard maximum per diem rate applicable under specified conditions for all locations within the conterminous United States (CONUS) and maximum per diem rates for specific localities (see 1–7.2a, 1–7.5a, and Appendix 1–A);

(2) Provide procedures by which agencies may request GSA to review a particular area to determine if it qualifies for a higher per diem rate (see 1–7.3);

(3) Implement a new lodgings-plus per diem system for travel within CONUS under which reimbursement for subsistence expenses is computed for each travel day based on the amount the traveler pays for lodging plus a fixed allowance for meals and incidental expenses, the total not to exceed a maximum daily rate set by locality (the average cost of lodging computation has been rescinded) (see 1–7.5);

(4) Add guidelines for determining the types of expenses that are allowable for lodgings (see 1–7.5c(2));

(5) Restate and revise, as necessary for clarification, the rules which generally apply on a worldwide basis (see 1–7.1, 1–7.2, 1–7.4, 1–7.7 thru 1–7.11);

(6) Restate and revise, as necessary for clarification, the rules for determining per diem allowances for an

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route travel to, from, or between locations outside CONUS, including guidelines for authorization or approval of a rest stop (see 1–7.6);

(7) Provide guidelines for per diem reductions in certain situations, including provisions which reference regulations issued by the Office of Personnel Management (OPM) governing payment of subsistence expenses for extended training assignments (see 1–7.7);

(8) Provide specific guidelines for per diem computations when lodging accommodations are obtained on a weekly or monthly basis or when mobile homes or recreational vehicles are used during temporary duty assignments (see 1–7.9); and

(9) Restate, clarify and revise to some extent the rules for payment of per diem and actual subsistence expenses when the temporary duty assignment involves leave and nonworkdays (see 1–7.11).

c. Part 1–8 is revised to make the following changes:

(1) Delete the actual expense reimbursement authority for designated high rate geographical areas and the $75 statutory ceiling for reimbursement of actual subsistence expenses;

(2) Establish new maximum daily rates that may be authorized or approved for reimbursement of actual and necessary subsistence expenses for travel within CONUS (see 1–8.3a);

(3) Reserve paragraph 1–8.3b pending approval of an executive order delegating the President's authority to establish actual expense rates for localities outside CONUS;

(4) Restate and revise current provisions and add new provisions under which actual subsistence expense reimbursement may be authorized or approved;

(5) Revise and transfer to Part 1–7 the former reference to regulations issued by OPM concerning payment of subsistence expense for extended training assignments (see 1–7.7e);

(6) Revise the former mixed travel rule to reflect the new lodgings-plus per diem reimbursement system (see 1–8.6); and

(7) Make other minor editorial changes for clarity and to conform and standardize the terminology with Part 1–7.

d. Part 1–10 is amended to make the following changes:

(1) Paragraphs 1–10.1 and 1–10.2 are revised to (a) incorporate the authority contained in 41 CFR 101–41.203–2 for agencies to authorize cash purchases of transportation services exceeding $100 in emergency situations; (b) reflect certain provisions of FPMR Temporary Regulation A–25 as it pertains to use of Government contractor-issued charge cards for cash payment of passenger transportation services; and (c) reformat for clarification; and

(2) Paragraph 1–10.3 is revised to limit the advance of funds that an employee may be provided.

e. The following paragraphs in Part 1–11 (annotated with change lines) are amended to conform with other changes made in the regulations resulting from implementation of Public Law 99–234: 1–11.3c, 1–11.6a, and 1–11.6b.

f. Part 1–12 is added to Chapter 1, Travel Allowances, to implement new statutory authority (5 U.S.C. 5702(b)) for reimbursement of certain transportation expenses and allowable per diem when, due to illness or injury, or other personal emergency situation, an employee returns to his/her official station or performs travel from the temporary duty location to the official station or an alternate location to attend to the emergency situation.

g. Part 1–13 is added to Chapter 1, Travel Allowances, and reserved.

h. Part 1–14 is added to Chapter 1, Travel Allowances, to implement new statutory authority (5 U.S.C. 5706a) for payment of subsistence and transportation expenses under certain circumstances when the life of an employee who is employed in a law enforcement or investigative position, or similar capacity, or members of the employee's immediate family, is threatened as a result of the employee's assigned duties.

i. Paragraph 2–1.1 is amended and paragraph 2–1.2a(1–a) is added to implement new statutory authority (5 U.S.C. 5734), expanding the coverage of Chapter 2, Relocation Allowances, to include employees of the U.S. Postal Service who are transferred in the interest of the Government to an Executive Agency (as defined in 5 U.S.C. 5721) to the same extent as employees transferring between such Executive agencies.

j. Paragraphs 2–2.1, 2–2.2, and 2–2.3d are revised to reflect use of the new lodgings-plus per diem system rules under Chapter 1 for computing per diem for en route travel incident to changes of official station wholly within CONUS and to clarify that the applicable maximum per diem rate for such travel is still $50 (standard CONUS rate).

k. Part 2–5 is amended as indicated below:

(1) Paragraph 2–5.2g is revised to incorporate a new rule for determining the beginning of the eligibility period for reimbursement of temporary quarters subsistence expenses when the en route travel incident to a change of official station within CONUS and occupancy of temporary quarters occur in the same calendar day. Although reformatted, the rule has not changed for this determination when en route travel incident to changes of official station is computed under the quarter day system.

(2) Paragraph 2–5.4c(1) is revised to clarify that the maximum per diem rate of $50 (now referred to as the standard CONUS rate) is still applicable for computation of the maximum daily subsistence allowance when temporary quarters are located within CONUS.

l. Other minor and/or editorial changes have been made where indicated by change lines.

Accordingly, the Federal Travel Regulations, are amended as follows:

CHAPTER 1. TRAVEL ALLOWANCES

1. **Authority.** (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order No. 11609, July 22, 1971; 5 U.S.C. 5707)

Part 2. Transportation Allowable

2. Paragraph 1–2.4 is revised to read as follows:

1–2.4. *Emergency travel due to illness or injury or a personal emergency situation.* Provisions governing reimbursement for allowable transportation in connection with emergency travel due to illness or injury or a personal emergency situation are in Part 1–12.

Part 7. Per Diem Instead of Actual Subsistence

3. Part 7 is revised to read as follows:

Part 7. Per Diem Allowances

1–7.1. *General.* The provisions of this Part 1–7 apply worldwide (both within and outside CONUS) except as specifically provided herein.

a. *Authority.* Per diem allowances shall be paid as prescribed in Part 1–7 for official travel away from the official station (including travel incidental to a change of official station), except when actual subsistence expense reimbursement is authorized or approved as provided in Part 1–8.

b. *Definitions.* For purposes of this Part 1–7, the following definitions apply:

(1) *Calendar day.* Calendar day means the 24-hour period from one midnight to the next midnight. For purposes of these regulations, the calendar day technically begins one second after midnight (reflected herein as 12:01 a.m.) and ends at 12:00 midnight.

(2) *CONUS.* CONUS refers to both the "Continental United States", defined in 5 U.S.C. 5701(6), and the "conterminous United States", defined in 1–1.3c(2) as the 48 contiguous States and the District of Columbia.

(3) *Locality rates.* Locality rates are maximum per diem rates prescribed for specific localities within CONUS. Locality rates are listed by State and city in appendix 1–A.

(4) *Standard CONUS rate.* Generally, the standard CONUS rate is prescribed for any location within CONUS that is not included in one of the defined localities or areas for which a specific rate is prescribed in appendix 1–A. The standard CONUS rate is also prescribed in certain specified circumstances as provided herein for *all* locations within CONUS, including the separately defined localities.

(5) *Per diem allowance.* The per diem allowance is a daily payment instead of actual expenses for lodging, meals and related incidental expenses (see 1–7.1c). The per diem allowance is distinguished from transportation expenses and other miscellaneous travel expenses as described below.

(a) *Transportation expenses.* Transportation expenses include commercial bus, air, rail, or vessel/steamship fares and are reimbursable in addition to the per diem allowance. Transportation expenses also include local transit system and taxi fares, cost of commercial rental cars and other special conveyances, and mileage and other allowances for use of privately owned conveyances, including fees for parking, ferries, etc. (See Parts 1–2, 1–3, and 1–4 for governing provisions.)

(b) *Other miscellaneous travel expenses.* Other miscellaneous travel expenses are those described in Part 1–8 that are directly attributable and necessary to the travel and temporary duty as authorized and performed. When authorized or approved by the agency concerned, these expenses are reimbursable in addition to the per diem allowance and transportation expenses.

c. *Types of expenses covered by per diem.* The per diem allowance covers all charges, including taxes and service charges where applicable, for the following types of subsistence expenses.

(1) *Lodging.*

(a) The term "lodging" includes expenses for overnight sleeping facilities; baths; personal use of the room during daytime; and service charges for fans, air conditioners, heaters, and fires furnished in rooms when such charges are not included in the room rate.

(b) The term "lodging" does not include accommodations on airplanes, trains, buses, or vessels. The cost of accommodations furnished aboard common carriers is included in the transportation cost and is not considered a subsistence expense. However, in determining the overall cost to the Government when authorizing the mode of transportation to be used (see 1–2.2), the availability of these accommodations shall be considered.

(2) *Meals.* Expenses for breakfast, lunch, and dinner (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).

(3) *Incidental expenses related to subsistence.*

(a) Fees and tips to waiters and waitresses, porters, baggage carriers, bellhops, hotel maids, dining room stewards or stewardesses and others on vessels, and hotel servants in foreign countries.

(b) Laundry and cleaning and pressing of clothing.

(c) Transportation between places of lodging or business and places where meals are taken except as provided in 1–2.3b.

(d) Telegrams and telephone calls necessary to reserve lodging accommodations. (See Part 1–6 for allowable telegram and telephone expenses incurred for other purposes.)

d. *Employee responsibility.* An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business and expending personal funds (see 1–1.3a). Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for excess costs and any additional expenses incurred for personal preference or convenience.

e. *Agency responsibilities for authorizing/approving rates.* It is the responsibility of the head of each agency, or his/her designee, to authorize or approve only those per diem allowances that are justified by the circumstances affecting the travel and are allowable under the specific rules in Part 1–7. However, the per diem rates provided for under these rules represent the maximum allowable. To prevent authorization or approval of per diem allowances in excess of amounts required to meet the necessary subsistence expenses of official travel, consideration shall be given to factors such as those listed below that reduce the necessary expenses of employees. (See specific guidelines in 1–7.7 for reducing rates.)

(1) Known arrangements or established cost experience at temporary duty locations showing that lodging and/or meals can be obtained without cost or at reduced cost to the employee;

(2) Situations in which special rates for accommodations have been made available for a particular meeting, conference, training or other temporary duty assignment;

(3) Traveler's familiarity with establishments providing lodging and meals at a lower cost in certain localities, particularly where repetitive travel or extended stays are involved;

(4) Modes of transportation where accommodations are provided as part of the transportation cost; and

(5) Situations in which the Government furnishes lodging, such as Government quarters or other lodging procured for the employee by means of an agency purchase order (see 1–7.7a).

1–7.2. *Maximum per diem rates.* Per diem allowances for official travel authorized or approved under this Part 1–7 shall be at daily rates not in excess of the maximum per diem rates established as follows:

a. *Conterminous United States (CONUS).* The per diem allowances payable for official travel within CONUS shall not exceed the maximum per diem rates established by the Administrator of General Services and listed in appendix 1–A of this regulation. (See instructions in 1–7.3 for requesting rate adjustments and 1–7.5 for application of per diem rules within CONUS.)

b. *Nonforeign areas outside CONUS.* The per diem allowances payable for official travel in nonforeign areas shall not exceed the maximum per diem rates established by the Secretary of Defense and listed in Civilian Personnel Per Diem Bulletins published periodically in the Federal Register. The term "nonforeign areas" includes the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States.

c. *Foreign areas.* Per diem allowances payable for official travel in foreign areas shall not exceed the maximum per diem rates established by the Secretary of State and published in the Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas). The term "foreign areas" includes any area (including the Trust Territory of the Pacific Islands) situated both outside CONUS and the nonforeign areas as described in a and b, above.

1–7.3. *Rate adjustment requests for travel within CONUS.*

a. Federal agencies may submit a request to GSA for review of the subsistence costs in a particular city or area when travel to that location is repetitive or on a continuing basis and

travelers' experiences indicate that the prescribed standard CONUS per diem rate is inadequate. Other per diem rates listed in appendix 1–A will be surveyed on an annual basis by GSA to determine whether rates are adequate. Agencies' requests shall be submitted to the General Services Administration, Federal Supply Service, Attn: Regulations and Policy Division (FFY), Washington, DC 20406.

b. Requests for rate adjustments shall include a description of the location involved (city, county, or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also should contain an estimate of the annual number of trips to the location and the average duration of such trips.

1–7.4. *General rules affecting entitlement to per diem.*

a. *No allowance at official station.* A per diem allowance shall not be allowed within the limits of the official station (see definition in 1–1.3c(1)) at, or within the vicinity of, the place of abode (home) from which the employee commutes daily to the official station except as provided in Part 1–14. Agencies may define a radius or commuting area that is broader than the limits of the official station within which per diem will not be allowed for travel within one calendar day.

b. *Travel of 10 hours or less (10-hour rule).* A per diem allowance shall not be allowed when the period of official travel is 10 hours or less during the same calendar day except as provided in 1–7.6b(1). (Also see 1–7.5b(1).)

c. *Beginning and ending of entitlement.* For computing per diem allowances, official travel begins at the time an employee leaves his/her home, office, or other authorized point of departure and ends when the traveler returns to his/her home, office, or other authorized point at the conclusion of the trip.

d. *Deductions for meals and/or lodgings furnished.* Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate. (See 1–7.5a(2), 1–7.6c and 1–7.7b.)

1–7.5. *Lodgings-plus per diem computation rules for travel within CONUS.* Except as otherwise provided in Part 1–7, the per diem allowances authorized or approved for all official travel within CONUS, including travel incident to a change of official station, shall be computed under the lodgings-plus per diem system as prescribed herein. Under this system, the per diem allowance for each travel day is established on the basis of the actual amount the traveler pays for lodgings plus a prescribed allowance for meals and incidental expenses (M&IE)—the total not to exceed the applicable maximum per diem rate. The rules provided in a through d, below, shall be applied in the specific situations covered.

a. *Maximum CONUS per diem rates (appendix 1–A).* Maximum per diem rates prescribed under 1–7.2a for travel within CONUS are listed in appendix 1–A for certain specific localities. For all CONUS locations not specifically listed, a standard maximum per diem rate of $50 is prescribed. For all CONUS locations, whether or not they are specifically listed in appendix 1–A, the standard CONUS rate applies in certain specified travel circumstances (see b(2), below) and for subsistence allowances incident to a change of official station (see Parts 2–2, 2–4 and 2–5). The following elements comprise the per diem allowance:

(1) *Maximum lodging expense allowance.* The maximum per diem rates include a maximum amount for lodging expenses. The employee will be reimbursed for actual lodging costs incurred up to the applicable maximum amounts listed in appendix 1–A. Receipts for lodging are required as provided in c(1), below.

(2) *Meals and incidental expenses (M&IE) allowance.* The maximum per diem rates include a fixed allowance for meals and incidental expenses related to subsistence. This allowance is reflected in appendix 1–A as the M&IE rate. When the M&IE rate, or fraction thereof, is authorized or approved as provided herein, it is payable to the traveler without itemization of expenses or receipts. The M&IE rate shall be allocated as shown below when making necessary deductions from the per diem for meals furnished to the employee without charge by the Federal Government.

M&IE rates	$55	$50
Breakfast	6	7
Lunch	8	7
Dinner	19	17
Incidentals	2	2

b. *Per diem allowance computations.* The per diem allowance is to be calculated using the rules stated in (1) through (4), below.

(1) *Travel of less than 24 hours.*

(a) *10 hours or less.* Per diem shall not be allowed for travel of 10 hours or less within the same calendar day (see 1–7.4b). This prohibition is also applicable to travel incident to a change of official station within CONUS.

(b) *Exception to 10-hour rule.* Per diem shall not be allowed for employees who qualify for per diem solely on the basis of working a non-standard workday (e.g., four 10-hour days or other compressed schedule). In such instances, per diem shall not be allowed for travel periods less than or equal to the employee's scheduled workday hours plus 2 hours.

(c) *More than 10 hours.* When the travel period is more than 10 hours but less than 24 hours, the following rules apply:

(i) *Lodging not required.* If lodging is not required, the per diem allowable shall be one-half of the M&IE rate applicable to the location of the temporary duty assignment. If more than one temporary duty point is involved, the allowance will be one-half of the M&IE rate prescribed for the location where the majority of the time is spent performing official business.

(ii) *Lodging required.* If lodging is required, the rules for travel of 24 hours or more apply.

(2) *Travel of 24 hours or more.* The applicable maximum per diem rate (standard CONUS or locality rate from appendix 1–A) for each calendar day of travel shall be determined by the travel status and location of the employee at 12:00 midnight and whether lodging is required at such location. When lodging is required, the applicable maximum per diem rate shall be the maximum rate prescribed in appendix 1–A for the temporary duty location or en route stopover point where the lodging is obtained (see (3) and (4), below, for rules on lodging location and travel incident to a change of official station). Only one maximum rate will be applicable to a calendar day (12:01 a.m.–12:00 midnight). The following rules shall be applied in calculating the allowable per diem:

(a) *Day of departure.*

(i) *With lodging.* When lodging is required on the day travel begins (day of departure from the official station or other authorized point), the per diem allowable shall be the actual cost of lodging incurred by the employee, limited to the maximum applicable lodging allowance, plus one-half of the applicable M&IE rate.

(ii) *Without lodging.* When lodging is not required on the day travel begins, the per diem allowable shall be one-half the standard CONUS M&IE rate.

(b) *Full calendar days of travel.*

(i) *Lodging required.* For each full calendar day (12:01 a.m.–12:00 midnight) that the employee is in a travel status

and lodging is required (whether en route or at a temporary duty location), the actual cost of lodging incurred by the traveler shall be added to the applicable M&IE rate. The resulting amount, limited to the maximum per diem rate prescribed for the location in appendix 1–A, shall be the allowable per diem for the full calendar day.

(ii) *Lodging not required.* For any full calendar day of travel when lodging is not required (such as when employee is en route overnight returning to the official station), the maximum per diem rate shall be the M&IE rate applicable to the preceding travel day.

(c) *Day of return.* For the day travel ends (when employee returns to the official station or other authorized point), the per diem allowance shall be one-half the M&IE rate applicable to the preceding calendar day. The M&IE rate for the preceding day will be the M&IE rate for the last temporary duty point, except when lodging is required at an intervening en route stopover point. When this occurs, the M&IE rate for the en route stopover point will be applicable.

(d) *Lodging obtained after midnight.* Although per diem generally is based on the employee's location at midnight, there will be instances in which he/she is en route and does not arrive at the lodging location until after midnight. In such cases, the lodging shall be claimed for the preceding calendar day and the applicable maximum per diem will be determined as if the employee had been at the lodging location at 12:00 midnight of the preceding day.

(3) *Lodging location rules.*

(a) *Lodging at temporary duty location.* It is presumed that the employee will obtain lodging at the temporary duty location. However, if the employee obtains lodging away from or outside the temporary duty location because of personal preference or convenience, the allowable per diem shall be limited to the maximum per diem rate prescribed for the temporary duty location.

(b) *Lodging not available at temporary duty location.* In certain circumstances, lodging accommodations may not be available at the temporary duty location and the employee must obtain lodging in an adjacent locality where the prescribed maximum per diem rate is higher than the maximum per diem rate for the location of the temporary duty point. In such instances, if the lodging costs are excessive, the agency may make an administrative determination on an individual case basis to either authorize or approve the higher maximum per diem rate or reimburse the employee on an actual expense basis (see 1–8.2a). If the higher maximum rate is not justified and authorized in advance, the employee must furnish a statement with the travel voucher satisfactorily explaining the circumstances that caused him/her to obtain lodging in an area other than at the temporary duty point designated in the travel authorization.

(4) *Maximum rate applicable to change of official station travel.* The standard CONUS rate shall be the applicable maximum per diem rate for en route travel performed incident to a change of official station.

c. *Receipt requirements and allowable lodging expenses.*

(1) *Lodging receipt requirements.* Receipts shall be required to support all lodging costs for which an allowance is claimed under the lodgings-plus per diem system except that a statement instead of a receipt may be accepted for the fee or service charge incurred for the use of Government quarters.

(a) *Double occupancy.* If the lodging receipt shows a charge for double occupancy, such fact shall be shown on the travel voucher with the name and employing agency or office of the person sharing the room if such person is a Government employee on official travel. One-half of the double occupancy charge shall be allowable for each employee. If the person sharing the room is not another Government employee on official travel, identification of the person sharing the room is not required and the employee may be allowed the single room rate.

(b) *Receipts lost or impractical to obtain.* If receipts have been lost or destroyed or are impractical to obtain, a statement acceptable to the agency explaining the circumstances shall be furnished with the travel voucher, including the name and address of the lodging facility, the dates the lodging was obtained, and the cost incurred. Agencies may require employees to obtain copies of lost or destroyed receipts from the lodging establishment. (See also 1–11.3d.)

(2) *Allowable lodging expenses.* As provided in 1–7.5a(1), the traveler will be reimbursed only for his/her actual cost of lodging up to the maximum amount. No minimum amount is authorized for lodging under the lodgings-plus per diem system since reimbursement is based on the actual cost of lodging incurred by the employee. Expenses incurred in the situations described below will be allowed as lodging expenses.

(a) *Conventional lodging.* When an employee uses conventional lodging facilities (e.g., hotels, motels, and boarding houses), the allowable lodging expense will be based on the single room rate for the lodging used (for double occupancy, see c(1)(a), above). (See 1–7.9a for computing daily lodging expense when lodging is rented on a weekly or monthly basis.)

(b) *Government quarters.* A fee or service charge paid for the use of Government quarters is an allowable lodging expense.

(c) *Lodging with friends or relatives.* When the employee obtains lodging from friends or relatives (including members of the immediate family) with or without charge, no part of the per diem allowance will be allowed for lodging unless the host actually incurs additional costs in accommodating the traveler. In such instances, the additional costs substantiated by the employee and determined to be reasonable by the agency will be allowed as a lodging expense. Neither costs based on room rates for comparable commercial lodging in the area nor flat "token" amounts will be considered as reasonable.

(d) *Lodging in nonconventional facilities.* When no conventional lodging facilities are present (e.g., in remote areas) or when there is a shortage of rooms because of an influx of attendees at special events (e.g., world's fairs or Olympics), costs of lodging obtained in nonconventional facilities may be allowed. Such facilities may include college dormitories or similar facilities as well as rooms made available to the public by area residents in their homes. In such cases, the traveler must provide an explanation of the circumstances which is acceptable to the agency.

(e) *Use of travel trailer or camping vehicle for lodgings.* A per diem allowance for lodging may be allowed when the traveler uses a travel trailer or camping vehicle while on temporary duty assignments away from his/her official station. (See 1–7.9b for per diem computations in such situations.)

d. *Deviation from lodgings-plus per diem system.* An agency may determine that the lodgings-plus method as prescribed in 1–7.5 is not appropriate for certain travel assignment situations, such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established within the maximum per diem otherwise applicable to the travel situation and appropriate reductions made in accordance with 1–7.7, provided the exception from the lodgings-plus per diem system and the specific per diem

rate are authorized in advance on the travel authorization by an appropriate official of the agency concerned.

1–7.5. *Per diem computation rules for travel to, from, between, or within locations outside CONUS.* Except as otherwise provided in Part 1–7, per diem allowances authorized or approved for official travel to, from, between, or within locations outside CONUS (including travel incident to a change of official station) shall be computed as provided in a through f, below.

a. *Maximum per diem allowable.* Per diem allowances for official travel within localities outside CONUS will be at rates not to exceed the maximum per diem rate established under 1–7.2b and c for the locality in which the travel is performed. Per diem allowances for en route travel to, from, or between localities outside CONUS will be determined as provided in c, below. Whenever lodging is not required during a calendar day of official travel under 1–7.6, the applicable maximum rate shall be reduced to reflect such fact as provided in 1–7.7a.

b. *Computation of basic per diem entitlements.*

(1) *Travel of 10 hours or less.*

(a) *10-hour rule.* Per diem shall not be allowed when the travel period is 10 hours or less during the same calendar day, except when the travel period exceeds 8 hours and either begins before 6 a.m. or ends after 8 p.m. (This rule does not apply for en route travel incident to a change of official station.)

(b) *Exception to 10-hour rule.* Per diem shall not be allowed for employees who qualify for per diem solely on the basis of working a non-standard workday (e.g., four 10-hour days or other compressed schedule). In such instances per diem shall not be allowed for travel periods less than or equal to the employee's scheduled workday hours plus two hours.

(2) *Methods of prorating travel days.* Basic per diem entitlements will be calculated on a calendar day basis. When a change in travel status requires a change in the applicable rate during a calendar day or a per diem allowance must be calculated for partial days of travel, the travel day will be prorated as follows:

(a) *Travel of 24 hours or less.* For continuous travel of 24 hours or less, the travel period will be divided into 6-hour periods starting from the actual time travel begins and ending with its completion at home, office, or other authorized point. For each 6-hour period, or fraction thereof, one-fourth of the applicable per diem rate for a calendar day will be allowed.

(b) *Travel of more than 24 hours.* In computing per diem allowances for travel periods covering more than 24 hours, the calendar day (midnight to midnight) shall be the unit. The calendar day shall be divided into four 6-hour periods (quarter days). The per diem rate in effect at the beginning of a quarter day shall continue to the end of that quarter. When the per diem rate is changed during a calendar day, such rate will take effect at the beginning of the next quarter day immediately following the quarter day in which the rate change occurred. For a partial day at the beginning or ending of a travel period, one-fourth of the applicable per diem rate for the calendar day shall be allowed for each quarter day, or fraction thereof, that the employee is in a travel status during the partial day.

(c) *30-minute rule.* When the time of departure from home, office, or other authorized point at the beginning of the trip or the time of return thereto at the end of the trip involves only a 30-minute fraction of a quarter day, per diem shall not be allowed for either such quarter day unless the traveler provides a statement with the travel voucher explaining the necessity for the specific time of departure or return that is acceptable to the agency. The 30-minute rule applicable to the payment of per diem as provided herein does not apply to the beginning of continuous travel of 24 hours or less as provided in (a), above; however, it is applicable to the end of such travel.

(3) *International dateline.* In computing per diem in cases where the traveler crosses the international dateline (180th meridian), the actual elapsed time shall be used to compute per diem rather than calendar days.

c. *Computation of per diem rates for en route travel to, from, or between locations outside CONUS.* The maximum per diem rate for en route travel to, from, or between locations outside CONUS is based on the traveler's actual travel time (including time spent at rest stop locations or stopovers at intermediate points) between duty points as prescribed below.

(1) *Duty point.* As used herein, the term "duty point" means the official station outside CONUS, any other place outside CONUS at which official travel begins or ends, or the point of exit or entry within CONUS.

(2) *Rates and conditions.* For en route travel beyond the limits of CONUS by airplane, train, or boat (regardless of whether commercially or Government-owned), whether en route between a duty point within CONUS and a locality beyond or between localities outside CONUS, including stopovers of less than 6 hours, the maximum per diem that may be authorized or approved is as follows:

(a) *Same day return.* When the traveler departs from a duty point within CONUS or a locality outside CONUS and returns during the same calendar day to a duty point within CONUS or the locality outside CONUS, respectively, the maximum per diem rate allowable for the trip shall be that of the duty point at which the trip began. Since lodging is not required in this instance, the per diem rate applicable to any duty point within CONUS shall be the standard CONUS M&IE rate prescribed in appendix 1–A. For the same reason, the maximum per diem rate for the origin locality outside CONUS shall be reduced to an appropriate amount to reflect no lodging costs.

(b) *En route less than 6 hours.* For travel other than that described in (a), above, when the en route travel time is less than 6 hours between a duty point within CONUS and a duty point in a locality outside CONUS or between two duty points outside CONUS, the maximum per diem rate allowable between duty points shall be that of the destination duty point. When the destination duty point is within CONUS, the maximum per diem rate shall be the standard CONUS rate prescribed in appendix 1–A.

(c) *En route 6 hours or more.* When the en route travel time is 6 hours or more between the duty points described in (b), above, the per diem rate applicable for travel between the duty points is $6, except:

(i) For vessel travel of more than 9 successive calendar days, in addition to the fractional days of embarkation and debarkation, the per diem rate for the succeeding calendar days and for the fractional day of debarkation is $2; and

(ii) When either the $6 or $2 rate prescribed herein is not commensurate with a traveler's subsistence expenses, a different per diem rate may be authorized or approved not in excess of the maximum per diem rate applicable to the destination duty point or, with respect to vessel travel, not in excess of $9, except that the rate for travel by the Alaska Ferry System shall not exceed the standard M&IE rate for CONUS.

(3) *Stopovers of 6 hours or more.* When the en route travel period between duty points involves a stopover at an intermediate point outside CONUS and the time spent at the stopover point is 6 hours or more, the per diem rate for the travel period at the stopover point shall be the rate applicable to the locality in which the stopover takes place. The applicable per diem rate shall

take effect at the beginning of the quarter day following the actual time of arrival at the intermediate stopover point. For purposes of determining per diem rates for en route travel, the length of time at an intermediate stopover point is controlling regardless of whether the stopover is necessary because of official duty, common carrier scheduling, or an authorized rest stop (see (6), below). Stopovers of less than 6 hours are considered part of the en route travel as provided in (2), above.

(4) *Travel beginning or ending within CONUS.* When the en route travel period begins or ends at a place (other than duty point) within CONUS, the maximum per diem applicable to the travel between such place and the duty point (place of entry or exit) within CONUS shall be the standard CONUS per diem rate prescribed in appendix 1–A, except that such maximum rate shall be limited to the M&IE rate portion of the standard CONUS rate in the following travel circumstances (calculation shall be under the quarter day system as prescribed in this 1–7.6):

(a) For the day travel begins when the traveler is in an en route travel status at 12:00 midnight and no lodging is required that day because of the en route travel status; or

(b) For the day(s) of return travel when lodging is not required because of en route status at 12:00 midnight or arrival at home or official station.

(5) *Travel beginning or ending outside CONUS.* When en route travel is required between a home, official station or some other location and the common carrier or other terminal, per diem for the quarter days involved will be based on the origin rate.

(6) *Rest stops.*

(a) When travel is direct between duty points which are separated by several time zones and at least one duty point is outside CONUS, a rest period not in excess of 24 hours may be authorized or approved when air travel between the duty points is by less-than-first-class accommodations and the scheduled flight time (including stopovers of less than 8 hours) exceeds 14 hours by a direct or usually traveled route.

(b) The rest stop may be at any intermediate point, including points within CONUS, provided the point is midway in the journey or as near to midway as requirements for use of U.S. flag air carriers and carrier scheduling permit.

(c) A rest stop shall not be authorized when an employee, for personal convenience, elects to travel by an indirect route resulting in travel time in excess of 14 hours.

(d) The per diem rate for the rest stop shall be the rate applicable for the rest stop location (see (3), above).

(e) When carrier schedules or the requirements for use of U.S. flag air carriers preclude an intermediate rest stop, or a rest stop is not authorized, it is recommended that the employee be scheduled to arrive at the temporary duty point with sufficient time to allow a reasonable rest period before reporting for duty. (See 1–3.6 for guidelines on the use of U.S. flag carriers.)

d. *When lodging is not located at duty point outside CONUS.* When suitable lodging is not available at place of temporary duty in a locality outside CONUS and the employee is required to obtain lodging in a different locality, the maximum applicable per diem rate shall be that of the locality in which the lodging is obtained.

e. *Deductions for meals and/or lodgings furnished.* Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate. (See 1–7.7b.)

f. *Travel involving temporary duty within CONUS.*

(1) When travel is from a duty point outside CONUS to a temporary duty location within CONUS, the lodgings-plus per diem system prescribed in 1–7.5. shall be followed to compute per diem for travel days at the CONUS temporary duty locations beginning from 12:01 a.m. on the day of arrival at the first temporary duty location through 12:00 midnight of the last full calendar day at a last temporary duty location within CONUS. (If actual subsistence expense reimbursement has been authorized or approved for the CONUS temporary duty location(s), the provisions of 1–8 are applicable for the same time period.)

(2) The quarter day system for en route travel as prescribed in b and c, above, is applicable only for the en route travel to CONUS beginning with the time of departure from the duty point outside CONUS through 12:00 midnight of the calendar day prior to the day of arrival at the CONUS temporary duty location and for the return travel day(s) beginning at 12:01 a.m. on the day of departure from the last CONUS temporary duty location through the time of arrival at the duty point outside CONUS.

1–7.7. Reductions in maximum per diem rates when appropriate (worldwide). An agency may, in individual cases or situations, authorize a reduced per diem rate under certain circumstances, such as when lodgings and/or meals are obtained by the employee at a reduced cost or furnished to the employee at no cost or a nominal cost by the Government; or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In exercising its responsibilities outlined in 1–7.1a, the agency should consider any known factors that will cause the traveler's subsistence expenses in a specific situation to be less than the applicable maximum rates prescribed in 1–7.2. If it can be determined in advance of the travel that such factors are present, the agency should authorize a reduced rate that is commensurate with the known expense levels. Such reduced rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee. Specific guidelines for reducing rates and situations where reduced rates may be appropriate are provided below.

a. *When no lodgings expenses incurred.* For travel within or outside CONUS which is less than 24 hours or in any other travel situation where lodging expenses will not be incurred, including instances where lodging is furnished by the Government without charge, the maximum per diem rate shall be reduced accordingly. For CONUS travel, the lodgings-plus per diem system automatically reduces the maximum per diem rate to the M&IE rate (or fraction thereof). When lodging is furnished at no cost to the employee through use of an agency purchase order, the agency shall not authorize or approve a per diem allowance for other subsistence expenses that will, when combined with the cost of lodging furnished, exceed the applicable maximum per diem rate prescribed under 1–7.2.

b. *When meals/lodgings are furnished by the Government.* When all or part of the meals and/or lodging are furnished at no cost or at a nominal cost to the employee by the Federal Government, the applicable maximum per diem rate or the M&IE rate, as appropriate, shall be reduced to a daily amount commensurate with the remaining expenses expected to be incurred by the employee. If a reduced per diem rate was not authorized in advance of the travel, an appropriate deduction shall be made from the total per diem payable on the travel voucher. (See 1–7.4d, 1–7.5a(2) and 1–7.8e.)

c. *Extended stays.* When travel assignments involve extended periods of more than 30 days at temporary duty locations and travelers are able to secure lodging and/or meals at lower costs, the per diem rate should be

reduced accordingly. If the extended temporary duty is for purposes of training, see e, below. (See also 1–7.9 for allowable expenses in special situations.)

d. *Meetings and conventions.* In the interest of uniform treatment of employees, whenever a meeting or conference is arranged which will involve the travel of attendees from other agencies or components of the same agency, and reduced cost lodging accommodations have been prearranged at the meeting or conference site, the agency or agencies sponsoring the meeting or conference shall recommend to the other participating agencies or components a per diem allowance that would be reasonable.

e. *Subsistence payments for extended training assignments.*

(1) The Government Employees Training Act (5 U.S.C. 4101–4118) authorizes agencies to pay all or a part of the subsistence expenses of an employee assigned to training at a temporary duty station. Implementing regulations prescribed by the Office of Personnel Management (OPM) in § 410.603 of Title 5, Code of Federal Regulations (5 CFR 410.603), provide specific guidelines for payment of subsistence expenses for employees on extended training assignments of more than 30 calendar days at temporary duty locations.

(2) Generally the OPM guidelines require a reduced subsistence payment of not more than 55 percent of the applicable maximum per diem rate prescribed in these regulations (see 1–7.2). Subsistence payments above these levels (not to exceed the maximum per diem rates) must be justified. Agencies shall refer to the OPM guidelines in 5 CFR 410.603 for specific criteria to determine the appropriate subsistence payments. Guidelines are also published by OPM in the Federal Personnel Manual, Chapter 410, Section 6–3.

1–7.8. *"Mixed travel" reimbursements.* "Mixed travel" occurs when travel days within a single trip are subject to reimbursement of the daily subsistence expenses under different computation methods or different maximum rates.

a. *General rule.* Reimbursement for subsistence expenses will be computed under only one method of reimbursement for each calendar day except when the provisions of 1–8.2b apply. Reimbursement for each day will be subject to only one maximum rate, except for travel under 1–7.8 which may require different rates within a calendar day due to the quarter day per diem calculation method.

b. *Same reimbursement method with different daily maximum rates.* The applicable rules for transition between different maximum rates are provided in 1–7.5, 1–7.8, and 1–8 for each reimbursement method.

c. *Transition between reimbursement methods.*

(1) *Travel wholly within CONUS.* Subsistence expenses for the majority of travel within CONUS will be reimbursed on a per diem basis for each calendar day. However, when actual expense reimbursement for certain travel days is intermittent with the per diem method for others, the traveler's status and location at 12:00 midnight on any given day control the method of reimbursement for that day (except as provided in 1–8.2b). (See 1–7.5 and 1–8.6 for specific rules.)

(2) *Travel to, from, between, or while at locations outside CONUS.*

(a) All travel to, from, between, and while at locations outside CONUS will be reimbursed under the quarter-day system as provided in 1–7.6 including travel time within CONUS incident to such travel except as provided in (b), below.

(b) When travel is from outside CONUS for temporary duty within CONUS, the transition from the quarter-day system to the CONUS lodgings-plus per diem system or actual expense method is governed by the rules in 1–7.5.

1–7.9. *Per diem allowance computations for special situations (worldwide).*

a. *Per diem for weekly or monthly rentals.*

(1) *Types of expenses included in lodging costs.* When an employee rents a room, apartment, house, or other lodging incident to a temporary duty assignment, the following expenses may be considered part of the lodging cost: the rental cost; if unfurnished, the rental cost of appropriate and necessary furniture and appliances, such as a stove, refrigerator, chairs, tables, bed, sofa, television, and vacuum cleaner; cost of connection, use, and disconnection of utilities; cost of reasonable maid fee and cleaning charges; monthly telephone use fee (does not include installation and long-distance calls); and, if ordinarily included in the price of a hotel or motel room in the area concerned, the cost of special user fees, such as cable TV charges and plug-in charges for automobile head bolt heaters.

(2) *Computation of daily lodging costs.* When the employee obtains lodging on a weekly or monthly rental basis, the daily lodging cost shall be computed by dividing the total lodging cost for the expenses listed in (1), above, by the number of days in the rental period (e.g., 7 or 30 days, as appropriate).

(3) *Per diem allowable.*

(a) Under the lodgings-plus system for CONUS travel, the allowable per diem consists of the daily lodging cost calculated under (2), above, plus the applicable M&IE rate not to exceed the maximum per diem rate prescribed for the location involved.

(b) When a reduced per diem rate is being established (see 1–7.7) in advance of the travel, the daily lodging cost calculated in (2), above, shall be added to the amount determined by the agency to be necessary for meals and incidental expenses.

b. *Per diem allowances for use of a recreational vehicle for lodging.* The term "recreational vehicle" includes mobile homes, campers, camping trailers, or self-propelled mobile recreational vehicles.

(1) *Privately owned.*

(a) *Lodging costs.* When an employee uses a privately owned camping or recreational vehicle while on official travel, allowable expenses which may be considered as a lodging cost include parking fees; fees for connection, use, and disconnection of utilities (electricity, gas, water, and sewage); bath or shower fees; and dumping fees. Depreciation shall not be considered as a lodging cost.

(b) *Meals and incidental expenses.* The agency shall determine an appropriate amount for meals and incidental expenses based on whether the type of recreational vehicle used by the employee has meal preparation facilities. When use of the recreational vehicle is for a temporary duty assignment within CONUS, such amount shall not exceed the applicable M&IE rate.

(c) *Per diem computation.* The daily lodging costs plus an appropriate rate for meals and incidental expenses determined under (b), above, shall be the per diem rate, limited to the applicable maximum rate prescribed under 1–7.2 for the locality involved. An agency may authorize a reduced per diem rate within the applicable maximum per diem rates if the actual costs expected to be incurred can be determined in advance of the travel.

(2) *Rented recreational vehicle.* When the use of a rented recreational vehicle is authorized or approved as advantageous to the Government, the rental fee and the allowable expenses shown in (1)(a), above, may be considered as lodging costs. Advantageous use might occur when the employee is on an extended temporary duty assignment in a remote area or

where conventional lodging facilities are limited or not available. If use of a rented recreational vehicle is not authorized or approved as advantageous, only those expenses listed in (1)(a), above, may be considered as lodging costs.

c. *Per diem computations when temporary duty is curtailed, canceled, or interrupted for official purposes (see 59 Comp. Gen. 609 (1980), 59 Comp. Gen. 612 (1980), 60 Comp. Gen. 630 (1981), and cases cited therein).* When an employee has made advance arrangements for lodging (such as those described in a or b, above), with reasonable expectation of the travel assignment being completed as ordered or directed, and subsequently the temporary duty assignment is curtailed, canceled, or interrupted for official purposes, or for other reasons beyond the employee's control that are acceptable to the agency, lodging costs may be calculated and paid as follows:

(1) *Travel assignment curtailed or interrupted.* When the temporary duty assignment is curtailed or interrupted for the benefit of the Government or for other reasons beyond the employee's control and the employee is unable to obtain a refund of prepaid rent, expenses incurred for unused lodging may be reimbursed under the following conditions:

(a) *Determination of reasonableness.* The agency must determine that the employee acted reasonably and prudently in incurring allowable lodging expenses pursuant to temporary duty travel orders. Included in this determination should be a consideration of whether the employee sought to obtain a refund of the prepaid lodging cost or otherwise took steps to minimize the costs once the temporary duty was officially curtailed or interrupted.

(b) *Adjusted calculation and reimbursement of lodging costs.* If the agency determines that the employee acted reasonably, the unused portion of the prepaid lodging cost may be reimbursed as follows:

(i) The daily lodging costs for the period covered by the voucher shall be calculated by dividing the total cost for the rental period by the number of days of actual occupancy. The total of the lodging costs thus calculated plus the appropriate daily amount authorized for meals and incidental expenses may be reimbursed not to exceed the per diem rate authorized in the employee's travel orders for the days that the lodging was occupied.

(ii) If the authorized per diem rate is insufficient for the days of occupancy, the daily lodging cost calculated in (i) plus the amount authorized for meals and incidental expenses may be reimbursed on an actual expense basis not to exceed appropriate maximum daily rates determined as provided in 1–8.3.

(iii) The excess amount (if any) of the unrefunded lodging cost not reimbursed under (ii), above, may be paid as a miscellaneous travel expense incident to the travel assignment, if otherwise proper.

(iv) In instances where the travel assignment was interrupted for official purposes (e.g., when the employee is directed to perform temporary duty at another location), allowable subsistence expenses (if any) incurred during the interruption may be reimbursed separately from those reimbursements outlined in (i) and (ii), above, if otherwise proper, and in conformance with the provisions of this Part 1–7.

(2) *Travel assignment canceled.* When the employee incurs lodging expenses in reasonable expectation of a travel assignment being completed as ordered or directed, and due to a change in travel orders the travel assignment is canceled prior to its commencement, the prepaid lodging expenses may be reimbursed as a miscellaneous travel expense provided the amounts are reasonable and the conditions in (1)(a) are met.

(3) *Forfeited rental deposits.* If, in situations described in (1) and (2), above, the employee was required by the terms of a lease or rental agreement to pay a rental deposit and all or part of the deposit is forfeited to cover unpaid lodging costs, the amount of the forfeited deposit may be reimbursed as a miscellaneous travel expense provided the conditions in (1)(a), above, are met. Reimbursement for deposits forfeited for damages to lodging accommodations shall not be allowed.

d. *Per diem while aboard Government vessel.* For temporary duty aboard Government vessels where meals and lodgings are furnished at no cost or at a reduced cost, agencies shall prescribe an appropriate per diem rate within the provisions of this Part 1–7. The term "Government vessel" includes vessels owned and operated, leased and operated, or chartered by the Government.

1–7.10. *Time determinations.*

a. *Duty to record pertinent times.* The date and hour of departure from and arrival at the official station or any other place at which official travel begins or ends must be shown on the travel voucher. The same information also must be shown for points at which temporary duty is performed when such arrival or departure affects the per diem allowance or other travel expenses. Other points visited should also be shown but the time of arrival and departure need not be entered.

b. *Use of standard time.* The hours of departure and arrival recorded on the voucher shall be those of the standard time in effect at the place involved. (See 15 U.S.C. 262.)

1–7.11. *Interruptions of per diem entitlement.* For purposes of this paragraph, the term "place of abode" means the place from which the employee commutes daily to the official station.

a. *Leave and nonworkdays.*

(1) *General.* Leave of absence (other than as provided in 1–7.11d) for one-half, or less, of the prescribed daily working hours shall be disregarded for per diem purposes. Where the leave is more than one-half of the prescribed daily working hours, no per diem shall be allowed for that day.

(2) *Nonworkdays.* Legal Federal Government holidays and weekends or other scheduled nonworkdays are considered nonworkdays. Employees are considered to be in a per diem status on nonworkdays except when they return to their official station or place of abode (see b, below), or except under conditions stated in (a) or (b), below.

(a) *Leave before and after nonworkdays.* Per diem shall not be paid for nonworkdays when:

(i) Employees are in a leave status at the end of the workday before the nonworkdays and at the beginning of the workday following the nonworkdays, and

(ii) The period of leave on either of those days is more than one-half of the prescribed working hours for that day.

(b) *Leave between nonworkdays.* Per diem shall not be paid for more than two nonworkdays in cases where leave of absence is taken for all of the prescribed working hours between the nonworkdays.

b. *Return to official station for nonworkdays.*

(1) *Required return—official business.* An employee who is required by appropriate agency officials to return to his or her official station for the nonworkdays to perform official business or because it is otherwise advantageous to the Government shall be allowed the round-trip transportation expenses and per diem for the en route travel.

(2) *Authorized return—substantial cost savings.* An agency may authorize per diem and transportation expenses to an employee to return home for nonworkdays where a significant cost savings will be achieved. Travel time shall be scheduled within the

employee's duty hours to the extent practicable. The cost of lost productivity attributable to the duty hours involved in traveling to and from the employee's residence for nonworkdays shall be considered in determining the cost savings (Comp. Gen. B–202544, August 31, 1981).

(3) *Authorized return incident to extended temporary duty.* Employees who are required to routinely perform extended periods of temporary duty may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem en route for periodic return travel to their official stations or places of abode for nonworkdays. Agencies are cautioned that this authority is to be used with the utmost discretion and consideration of the length and purpose of the temporary duty assignments and the distance of the return travel. (See 55 Comp. Gen. 1291 (1976).) The periodic return travel may be authorized as provided in (a) and (b), below.

(a) The head of the agency has determined, based on an appropriate cost analysis, that the costs of periodic weekend return travel (including the costs of potential overtime, if applicable) are outweighed by savings in terms of increased employee efficiency and productivity, as well as reduced costs of recruitment and retention of employees. This cost analysis shall be conducted no less frequently than every other year.

(b) Return travel for nonworkdays authorized under these provisions constitutes an exception to the directive on scheduling of travel contained in 5 U.S.C. 6101(b)(2) and therefore should be performed outside the employee's regularly scheduled duty hours or during periods of authorized leave. However, in the case of employees not exempt from the Fair Labor Standards Act overtime provisions, consideration should be given to scheduling the authorized travel to minimize payment of overtime, including scheduling of travel during regularly scheduled duty hours when necessary. (See Office of Personnel Management regulations for further guidelines covering overtime during travel.)

(4) *Voluntary return.* When an employee voluntarily returns to his/her official station or place of abode for nonworkdays, the maximum reimbursement for the round-trip transportation and per diem en route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary duty station. The employee shall perform any such voluntary return travel during non-duty hours or periods of authorized leave.

c. *Indirect route or interrupted travel.* If there is an interruption of travel or deviation from the direct route resulting in excess travel time because of an employee's personal preference or convenience or through the taking of leave, the per diem allowed shall not exceed that which would have been allowed on uninterrupted travel by a direct or usually traveled route except as provided in Part 1–12 for certain emergency travel situations. (See 1–2.5, 1–7.10a, and 1–11.5a(3).)

d. *Illness or injury or a personal emergency situation.* Provisions governing per diem allowable for emergency travel performed due to an employee's incapacitating illness or injury or because of a personal emergency situation, as well as the continuation of per diem due to incapacitating illness or injury of the employee, are found in Part 1–12.

4. Part 8 is revised to read as follows:

Part 8. Reimbursement of Actual Subsistence Expenses

1–8.1. *General.* The provisions contained herein apply to travel within and outside the conterminous United States (CONUS).

a. *Authority.* Agencies may authorize or approve reimbursement for the actual and necessary subsistence expenses of official travel when such expenses are unusually high due to special or unusual circumstances or for occasional meals and/or lodging as provided herein. This authority shall be used for individual travel assignments or specific travel situations only after appropriate consideration of the actual facts existing at the time the travel is directed and performed.

b. *Delegation of authority.* Heads of agencies may delegate, with provisions for limited redelegation, the authority to authorize or approve travel on an actual subsistence expense basis. Such delegation or redelegation shall be held to as high an administrative level as practicable to ensure that authorization or approval of travel on an actual subsistence expense basis or reimbursement therefor is based on adequate consideration and review of the travel circumstances warranting such reimbursement.

c. *Agency responsibility.* Heads of agencies, as defined in 1–1.3c(8), shall, in accordance with provisions of this part, prescribe administrative policies and procedures under which reimbursement for actual and necessary expenses of official travel may be authorized or approved to ensure that the authority contained herein is administered in accordance with the intent of these regulations.

d. *Relationship to per diem.* Generally, authorization or approval of actual subsistence expenses is contingent on the entitlement to per diem. Except as otherwise provided herein, the definitions and rules stated in Part 1–7 applicable to the employee's entitlement to a per diem allowance shall apply to travel on an actual expense basis.

e. *Allowable expenses.* Actual subsistence expense reimbursement may be allowed for the same types of expenses that are covered by the per diem allowance in 1–7.1c provided such expenses are determined to be actual and necessary expenses incident to the particular travel assignment.

f. *Prudent traveler.* An employee traveling on the actual subsistence expense basis is expected to exercise the same care in incurring expenses as set forth in 1–7 for travel on a per diem basis.

1–8.2. *Conditions warranting authorization or approval of actual expenses.*

a. *Travel assignments involving special or unusual circumstances.* Travel on an actual subsistence expense basis may be authorized or approved for travel assignments within and outside CONUS when the applicable maximum per diem rate (see 1–7.2) is inadequate due to special or unusual circumstances. The maximum per diem rate, although generally adequate, may be insufficient for a particular travel assignment because the actual and necessary subsistence expenses are unusually high due to special duties or because subsistence costs have escalated temporarily during special events. Actual subsistence expense reimbursement shall not be authorized or approved when the actual and necessary subsistence expenses exceed or are expected to exceed the applicable maximum per diem allowance by only a small amount. Since lodging costs constitute a major portion of the subsistence expenses, travel on an actual expense basis may be authorized or approved for travel when, due to special or unusual circumstances, the lodging costs absorb all or nearly all of the applicable maximum per diem allowance (see 1–7.2). Examples of travel assignments or situations that may warrant authorization or approval of actual and necessary expenses include but are not limited to the following:

(1) The employee attends a meeting, conference, or training session away from the official duty station where lodging and meals must be procured at a prearranged place (such as the hotel where the meeting, conference, or training session is being held) and the lodging costs incurred, because of these prearranged accommodations, absorb all or practically all of the applicable maximum per diem allowance;

(2) The travel is to an area where the applicable maximum per diem allowance is generally adequate but subsistence costs have escalated for short periods of time during special functions or events such as missile launching periods, international or national sports events, world's fairs, conventions or natural disasters;

(3) Based on a situation described in (2), above, affordable lodging accommodations are not available or cannot be obtained within a reasonable commuting distance of the employee's temporary duty point and transportation costs to commute to and from the less expensive lodging facility consume most or all of the savings achieved from occupying less expensive lodging;

(4) The employee, because of special duties of the assignment, necessarily incurs unusually high expenses in the conduct of official business, such as to procure superior or extraordinary accommodations including a suite or other quarters for which the charge is well above that which he/she would normally have to pay for accommodations; or

(5) The employee necessarily incurs unusually high expenses incident to his/her assignment to accompany another employee in a situation as described in (4), above.

b. *Situations requiring reimbursement for occasional meals and/or lodging.* Although lodging and/or meals are furnished without cost (or at a nominal cost) for a particular assignment, the employee may necessarily incur expenses for occasional lodgings and/or meals. The agency may approve reimbursement of appropriate expenses incurred for occasional meals or lodging that are determined to be necessary and justified by the circumstances involved. For travel assignments within CONUS the actual expense allowable for lodging or each meal may not exceed the lodging or individual meal allowance set out in 1–7.5a, or 150 percent of those amounts if special or unusual circumstances are involved; for travel assignments outside CONUS, similar limitations on the amount of reimbursement for such expenses shall be determined by the authorizing agency. Each agency shall establish necessary administrative procedures for travel under these provisions.

1–8.3. *Maximum daily rates and reimbursement limitations.* The maximum amount of reimbursement for actual subsistence expenses that may be authorized or approved for each calendar day or fraction thereof is as provided in a and b, below. Agencies shall determine appropriate and necessary daily maximum rates not to exceed these amounts when authorizing or approving travel under this Part 1–8. Maximum daily rates need not be prorated for fractions of a day.

a. *Travel within CONUS.*

(1) *Maximum daily rates.* For travel within CONUS, the maximum daily rate for subsistence expenses shall not exceed 150 percent of the applicable maximum per diem rate (rounded to the next highest dollar) prescribed in appendix 1–A for the travel assignment location.

(2) *Reimbursement limitation.* When the actual subsistence expenses incurred during any 1 day are less than the maximum daily rate authorized, the employee shall be reimbursed only for the lesser amount. Expenses incurred and claimed (including those for fractional days) shall be reviewed and allowed only to the extent determined to be necessary and reasonable by the agency (see 1–8.5b). Reimbursement for meals and incidental expenses shall not, under any circumstances, exceed 150 percent of the M&IE rate applicable to the temporary duty location.

b. *Travel outside CONUS.* Reserved.

c. *When lodging is procured through use of an agency purchase order.* When actual subsistence expense reimbursement is authorized or approved under this Part 1–8 and lodging is furnished to the employee at no cost through use of an agency purchase order, the agency shall not authorize or approve reimbursement for other subsistence expenses that will, when combined with the cost of lodging furnished, exceed the maximum daily rate authorized under a or b, above.

1–8.4. *Authorization or approval.*

a. *Requests for authorization or approval of actual expense reimbursement.* It is the employee's responsibility to request authorization or approval for actual subsistence expense reimbursement when conditions appear to warrant such reimbursement and to furnish appropriate justification to support the request.

b. *Prior authorization of actual expense travel.* Normally, travel on an actual expense basis should be authorized in advance and the daily maximum rate authorized by the agency shall be stated in the travel authorization. Maximum daily rates need not be prorated for fractions of a day on the travel authorization.

c. *Approval after travel is completed.* If travel is performed without prior written authorization or is authorized on a per diem basis and otherwise conforms to the provisions of Part 1–8, reimbursement for actual and necessary subsistence expenses may be approved after completion of the travel.

1–8.5. *Requirements for documentation, review and administrative controls.*

a. *Documentation of actual expenses on the voucher.*

(1) *Itemization.* When travel is authorized or approved on an actual subsistence expense basis, the employee shall itemize on the travel voucher each expense for which reimbursement is claimed on a daily basis. Meals must be itemized separately; i.e., breakfast, lunch, and dinner. Those expenses that do not usually accrue on a daily basis, such as laundry and cleaning and pressing of clothing, may be averaged over the number of days that actual expense reimbursement is authorized or approved.

(2) *Receipts.* Receipts shall be required for lodging, regardless of amount, and any individual meal when the cost is over $25. Agencies may, at their discretion, require receipts for other allowable subsistence expenses; however, the employee must be informed of this requirement in advance of the travel. The provisions of 1–7.5c(1) (a) and (b) covering double occupancy and missing receipts apply to this Part 1–8.

b. *Agency review and administrative controls.* Procedures shall be established by each agency to ensure that actual subsistence expense reimbursement under the provisions of this Part 8 is properly administered and controlled to prevent abuse of the authority contained herein (see 1–8.1c). An appropriate review of the justification for travel on an actual subsistence expense basis shall be made. Expenses claimed by an employee shall be reviewed by the agency to determine whether the expenses are reasonable and allowable subsistence expenses and necessarily incurred in connection with the travel assignment.

1–8.6. *Mixed travel (per diem and actual subsistence expense) reimbursement.* Mixed travel involves more than one maximum reimbursement rate during a single trip and/or reimbursement on both a per diem and an actual subsistence basis. Generally,

the applicable rate and/or reimbursement method for each calendar day (beginning at 12:01 a.m.) will be determined by the employee's status and location at 12:00 midnight of that calendar day. Only one rate and reimbursement method will be authorized for each day except when reimbursement is authorized for occasional meals or lodging as provided in 1–8.2b. The reimbursement method and maximum rate for the day of departure from the official station will be the same as that authorized for the first location where lodging is required. On the day of return to the official station, the same method and maximum rate of reimbursement applicable to the previous calendar day shall apply.

1–8.7. *Interruption of subsistance entitlements.* The provisions of 1–7.11 applicable to interruptions of per diem entitlements (leave and nonworkdays, return to official station for nonworkdays, indirect route or interrupted travel, and illness or injury or a personal emergency situation) shall also apply to travel on an actual subsistence basis.

Part 10. Sources of Funds

5. Paragraph 1–10.1 is revised to read as follows:

1–10.1. *Employee to provide funds.* Employees traveling on official business shall provide themselves with funds for all current expenses. However, Government contractor-issued charge cards, transportation request forms, and travel advances as authorized by 1–10.2 and 1–10.3, respectively, should be used to reduce the need for travelers to use their own money. Employees issued a Government charge card in accordance with FPMR Temporary Regulation A–25 are encouraged to use the charge card to pay for official travel expenses to the maximum extent possible.

6. Paragraph 1–10.2b is revised to read as follows:

1–10.2. *Procurement of common carrier transportation.*

* * * * *

b. *Cash payments for procurement of common carrier transportation services.* The use of cash to procure passenger transportation services may not be authorized except under the conditions specified in (1) through (3), below. For the purpose of this paragraph b, the use of checks (personal or travelers), personal credit cards, or individual Government contractor-issued charg cards is considered the equivalent of cash. Cash payments may be made with a travel advance (see 1–10.3) or through the use of personal funds.

(1) *Procedures for the use of cash.* The procedures for the use of cash to procure passenger transportation services are prescribed by the Administrator of General Services in 41 CFR 101–41.203–2, as follows:

(a) *When cost of transportation is $10 or less.* Travelers shall use cash to procure all passenger transportation services costing $10 or less, excluding Federal transportation tax, and to pay excess baggage charges costing $15 or less for each leg of a trip, unless special circumstances justify the use of a GTR.

(b) *When cost of transportation is over $10 but does not exceed $100.* Agencies may, by appropriate regulations, require a traveler to use cash to procure passenger transportation services from, to, or between points in the United States and its possessions or the trust territories when the cost is over $10 but does not exceed $100, excluding Federal transportation tax, for each trip as authorized on the travel authorization (see note below).

Note.—The National Railroad Passenger Corporation (AMTRAK) will not accept a GTR for travel under $100. AMTRAK will accept personal checks or major credit cards provided proper identification is shown when purchasing a ticket.

(c) *When cost of transportation exceeds $100.* Except as noted in (2), below, a GTR must be used to procure passenger transportation services costing in excess of $100, excluding Federal transportation tax, unless otherwise exempted in writing by GSA as provided in 41 CFR 101–41.203–2.

(2) *Exception to cash payment limitation.* As an exception to the rule stated in (1)(c), above, cash payment of official transportation expenses, without regard to the $100 limitation, is authorized under the following conditions:

(a) *Reduced group or excursion fares available from travel agencies.* Cash payments in excess of $100 may be authorized by the agency for individual employees or a group of employees to secure reduced group or excursion fares available only through travel agents under certain conditions as provided in 1–3.4b(2). A copy of the administrative determination required under paragraph 1–3.4b(2) shall accompany the travel voucher.

(b) *Use of individual Government contractor-issued charge card for procurement of transportation exceeding $100.* Cash payment of passenger transportation services in excess of $100 is authorized when a participating agency or its employees use a charge card issued by a contractor under contract with the General Services Administration, for official travel. Use of charge or credit cards held by the employee for personal use and issued by any other credit card company is not authorized under this exception. (See FPMR Temporary Regulation A–25 governing the Government's charge card program.)

(c) *Emergency circumstances.* Under emergency circumstances when the use of GTR's is not possible, heads of agencies, or their designated representatives, may authorize or approve travelers' use of cash exceeding the $100 limitation when procuring passenger transportation services as provided in 41 CFR 101–41.203–2(b). Under this cited provision, the delegation of authority to authorize or approve the use of cash in excess of $100 for the procurement of emergency transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances.

(3) *Reimbursement.*

(a) *Claim.* The travel voucher claiming reimbursement for cash payments for transportation services shall show the ticket number, carrier name, accommodations used, origin and destination of travel performed, and the agent's valuation of the transportation ticket. A traveler who has procured passenger transportation services with cash (whether using personal funds, a travel advance, or a Government charge card) shall assign to the Government his/her right to recover any excess payment involving a carrier's use of improper rates. (See statement/voucher requirements in 1–11.5c(3). Also see 1–1.6b for provisions on promotional materials received from carriers and 1–1.6c and 1–3.5 for provisions on denied boarding compensation.)

(b) *Documentation required.* Receipts, passenger coupons, or other appropriate evidence shall be required to support reimbursement claims for cash payments for passenger transportation services in all cases except for use of local transit systems (see 1–11.3c(18) and 1–11.5c(3)).

7. Paragraph 1–10.3a is revised to read as follows:

1–10.3. *Advance of funds.*

a. *Authority.* The head of each agency or his/her designated representative may advance through proper disbursing officers to any person entitled to per diem, mileage allowance, or subsistence expenses, or for the procurement of transportation by group or charter under 1–3.4b(2), any sums as may be deemed advisable considering the character and probable duration of the travel to be performed or the cost of the

transportation to be paid for by the employee. However, the amount of the advance shall not exceed 80 percent of the minimum estimated expenses that the employee is expected to incur prior to reimbursement. As a general rule, especially when the traveler is a Government contractor-issued charge card holder, advances shall be held to a minimum and allowed only when circumstances indicate that an advance is warranted and only in conjunction with a travel authorization. These provisions apply to advances issued for trip-by-trip authorizations as well as to permanent advances issued in conjunction with open travel authorizations. The need for a permanent advance and the amount of the advance shall be reviewed and justified when the corresponding open travel authorization is reviewed and justified. (See 1–1.5a and d.)

* * * * *

Part 11. Claims for Reimbursement

8. Paragraph 1–11.3c(18) is amended to read as follows:

1–11.3. *Travel vouchers and attachments.*

* * * * *

c. * * *

* * * * *

(18) *Cash payments for passenger transportation services.* (See 1–10.2b(3)(b).

* * * * *

9. Paragraphs 1–11.8a (1), (4) and (5) and 1–11.8b (15), (16), (17), (18), (26) and (27) are amended to read as follows:

1–11.8. *Administrative approvals.*

a. * * *

(1) *Return to official station due to illness or injury (1–2.4, 1–7.11d, 1–8.7, and Part 1–12).*

* * * * *

(4) *Continuation of per diem during leave of absence due to illness or injury (1–7.11d and 1–12.5a).*

(5) *Continuation of actual subsistence during leave of absence due to illness or injury (1–8.7 and 1–12.5a).*

* * * * *

b. * * *

* * * * *

(15) *Reductions in maximum per diem rates when appropriate (1–7.7).*

(16) *Additional per diem when travel en route is 6 hours or more (1–7.6c(2)(c)).*

(17) *Reimbursement of actual subsistence expense (1–8.4).*

(18) *Maximum daily reimbursement (1–8.3).*

* * * * *

(26) *Return to official station due to a personal emergency situation (1–2.4, 1–7.11d, 1–8.7, and Part 1–12).*

(27) *Travel to an alternate location due to illness or injury or a personal emergency situation (1–2.4, 1–7.11d, 1–8.7, and Part 1–12).*

* * * * *

10. Chapter 1 of the FTR is amended by adding Part 12 to read as follows:

Part 12. Emergency Travel of Employee Due to Illness or Injury or a Personal Emergency Situation, Within or Outside CONUS

1–12.1. *General.* Transportation and subsistence expenses may be allowed to the extent provided herein when an employee discontinues or interrupts a temporary duty travel assignment prior to its completion because of incapacitating illness or injury or a personal emergency situation.

1–12.2. *Agency responsibility/delegation of authority.* Agencies may authorize or approve reimbursement for transportation and per diem expenses under Part 1–12 based on the exigencies of the employee's personal situation and the agency mission. Each agency shall prescribe written administrative policies and procedures to govern its authorizations and approvals under these provisions. Agency heads may delegate their authority under this Part 1–12. Such delegation shall be held to as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the need for emergency travel.

1–12.3. *Employee responsibility and documentation.* As soon as an employee is incapacitated by illness or injury or informed of an emergency situation which necessitates discontinuance or interruption of the temporary duty travel assignment, he/she should attempt to contact the designated travel-approving official for instructions. In the event that such contact cannot be made on a timely basis, agencies may approve payments after the travel has been performed.

1–12.4. *Definitions.* As used in this part, the following definitions apply:

a. *Official station.* The term "official station" also refers to the home or regular place of business as it pertains to experts and consultants described in 5 U.S.C. 5703 (see 1–1.3c(6)).

b. *Alternate location.* An alternate location is a destination, other than the employee's official station or the point of interruption, where necessary medical services or a personal emergency situation exists. In the case of illness or injury of the employee, the nearest hospital or medical facility capable of treating the illness or injury is not considered to be an alternate location.

c. *Incapacitating illness or injury of employee.* For purposes of Part 1–12, an incapacitating illness or injury is one that occurs suddenly for reasons other than the employee's own misconduct and renders the employee incapable of continuing, either temporarily or permanently, the travel assignment. A sudden illness or injury may include a recurrence of a previous medical condition thought to have been cured or under control. The illness or injury may occur while the employee is at, or en route to or from, a temporary duty location.

d. *Family.* Family means those individuals defined in 2–1.4d who are members of the employee's household at the time the emergency situation arises. For compassionate reasons, when warranted by the circumstances of a particular emergency situation, an agency may on an individual case basis expand this definition to encompass other members of the extended family of an employee and employee's spouse, such as the individuals named in 2–1.4d who are not dependents of the employee or members of the employee's immediate household. In using this authority and deciding each case, agencies shall evaluate the extent of the emergency and the employee's relationship to, and degree of responsibility for, the individual(s) involved in the emergency situation.

e. *Personal emergency situation.* Personal emergency situation means the death or serious illness or injury of a member of the employee's family or a catastrophic occurrence or impending disaster such as a fire, flood, or act of God which directly affects the employee's home at the official station or the family and occurs while the employee is at, or en route to or from, a temporary duty location.

f. *Serious illness or injury of family member.* Serious illness or injury of a family member means a grave, critical, or potentially life-threatening illness or injury; a sudden injury such as an automobile or other accident where the exact extent of injury may be undetermined but is thought to be critical or potentially life threatening based on the best assessment available; or other situations involving less serious illness or injury of a family member in which the absence of the employee would result in great personal hardship for the immediate family.

g. *Fire, flood, or Act of God.* Fires or floods may be due to natural causes or human actions (e.g., arson) or other identifiable causes. Act of God means an extraordinary happening by a natural cause (as fire, flood, tornado, hurricane,

earthquake, or other natural catastrophe) for which no one is liable because experience, foresight, or care could not prevent it.

1–12.5. *Incapacitating illness or injury of employee.* When an employee interrupts or discontinues a travel assignment because of an incapacitating illness or injury (as defined in 1–12.4c), transportation expenses and per diem may be allowed to the extent provided below.

a. *Continuation of per diem at point of interruption.* An employee who interrupts the temporary duty assignment because of an incapacitating illness or injury and takes leave of any kind shall be allowed a per diem allowance under the provisions of 1–7.5 or 1–7.6, as appropriate, not to exceed the maximum rates prescribed under 1–7.2 for the location where the interruption occurs. Such per diem may be continued for a reasonable period, normally not to exceed 14 calendar days (including fractional days) for any one period of absence. However, a longer period may be approved by the employee's agency if justified by the circumstances of a particular case. The point of interruption may include the nearest hospital or medical facility capable of treating the employee's illness or injury. Per diem shall not be allowed while an employee is confined to a hospital or medical facility that is within proximity of the official station or that is the same one the employee would have been admitted to if the illness or injury had occurred while at the official station.

(1) *Receipt of payments from other Federal sources.* If, while in travel status under circumstances described in 1–12.5a, the employee receives hospitalization (or is reimbursed for hospital expenses) under any Federal statute (including hospitalization in a Veterans Administration or military hospital) other than 5 U.S.C. 8901–8913 (Federal Employees Health Benefits Program), the per diem allowance for the period involved shall not be paid or, if paid, shall be collected from the employee.

(2) *Documentation and evidence of illness.* The type of leave and its duration must be stated on the travel voucher. No additional evidence of the illness or injury need be submitted with the travel voucher. The evidence filed with the agency concerned, as required by that agency under the annual and sick leave regulations of the Office of Personnel Management, shall suffice.

b. *Return to official station or home.* When an employee discontinues a temporary duty assignment before its completion because of an incapacitating illness or injury, expenses of appropriate transportation and per diem while en route shall be allowed for return travel to the official station. Such return travel may be from the point of interruption or other point where the per diem allowance was continued as provided in a, above. If, when the employee's health has been restored, the agency decides that it is in the Government's interest to return the employee to the temporary duty location, such return is considered to be a new travel assignment at Government expense.

c. *Travel to an alternate location and return to the temporary duty assignment.*

(1) *Conditions and allowable expenses.* When an employee, with the approval of an appropriate agency official, interrupts a temporary duty assignment because of an incapacitating illness or injury and takes leave of absence for travel to an alternate location to obtain medical services and returns to the temporary duty assignment, reimbursement for certain excess travel costs may be allowed as provided in (2), below. The nearest hospital or medical facility capable of treating the employee's illness or injury will not be considered an alternate location (see 1–12.4b).

(2) *Calculation of excess costs.* The reimbursement that may be authorized or approved under (1), above, shall be the excess (if any) of actual costs of travel from the point of interruption to the alternate location and return to the temporary duty assignment, over the constructive costs of round-trip travel between the official station and the alternate location. The actual cost of travel will be the transportation expenses incurred and en route per diem for the travel as actually performed from the point of interruption to the alternate location and from the alternate location to the temporary duty assignment. (No per diem is allowed for the time spent at the alternate location.) The constructive cost of travel is the sum of transportation expenses the employee would reasonably have incurred for round-trip travel between the official station and the alternate location (had the travel begun at the official station) plus per diem calculated under Part 1–7 for the appropriate en route travel time. The excess cost that may be reimbursed is the difference between the two calculations.

1–12.6. *Personal emergency situation.*

a. *Return to official station or home.* When an employee discontinues a temporary duty assignment before its completion because of a personal emergency situation as defined in 1–12.4e, expenses of appropriate transportation and per diem while en route may be allowed, with the approval of an appropriate agency official, for return travel from the point of interruption to the official station. If, when the personal emergency situation has been resolved, the agency decides that it is in the Government's interest to return the employee to the temporary duty location, such return is considered to be a new travel assignment at Government expense.

b. *Travel to an alternate location and return to the temporary duty assignment.* When an employee, with the approval of an appropriate agency official, interrupts a temporary duty assignment because of a personal emergency situation as defined in 1–12.4e, and takes leave of absence for travel to an alternate location where the personal emergency exists, and returns to the temporary duty assignment, reimbursement may be allowed for certain excess travel costs (transportation and en route per diem) to the same extent as provided in 1–12.5c for incapacitating illness or injury of the employee.

1–12.7. *Procurement of transportation.*

a. *Use of discount fares.* The discount fares offered by contract air carriers in certain city pairs, as well as other reduced fares available to Federal travelers on official business, should be used to the extent possible for travel authorized or approved under this Part 1–12.

b. *Return to official station.* When the employee is authorized emergency return travel, from the point of interruption or discontinuance of the travel assignment to the official station, appropriate transportation services may be purchased by the agency or the employee. The unused return portion of round-trip transportation tickets procured by the agency for the travel assignment shall be used if appropriate for the mode of transportation required for the emergency travel. If not used, the agency and the employee shall ensure that all unused tickets are properly accounted for (see 1–3.5).

c. *Travel to alternate location.* An agency may require employees to use personal funds for emergency travel to an alternate location and return to the temporary duty assignment. A Government contractor-issued charge card also may be used for this purpose. However, if the employee does not have sufficient personal funds available and is not a Government charge card holder, the agency may procure (or provide an advance of funds for the employee to procure) appropriate transportation. The employee, upon completion of the

emergency travel, shall reimburse the Government for any cost of such transportation or travel advance that is above the amount of allowable reimbursement that may be authorized or approved under this Part 1–12.

11. Chapter 1 of the FTR is amended by adding and reserving Part 13 and by adding Part 14 to read as follows:

Part 13. [Reserved]

Part 14. Payment of Subsistence and Transportation Expenses for Threatened Law Enforcement/Investigative Employees

1–14.1. *Authority.* The head of an employing agency, as described in 1–14.2 (hereafter referred to as "agency"), may authorize or approve payment of subsistence and certain transportation expenses for threatened individuals (see 1–14.4) whose lives are placed in jeopardy as a result of the employee's assigned duties and who, as a protective measure, are moved to temporary living accommodations at or away from the official station within or outside CONUS.

1–14.2. *Agency responsibility/delegation of authority.* Heads of agencies are responsible for issuing regulations or guidelines to implement the provisions of this part and for ensuring that the agency's policy is adhered to. The agency head may delegate the authority to authorize or approve payment of allowable subsistence and transportation expenses for the use of temporary living accommodations by eligible individuals as provided herein. The delegation of authority shall be held to as high an administrative level as practical to ensure proper review of the circumstances surrounding the need to take protective action by moving eligible individuals from their homes.

1–14.3. *Policy.* The authority under 1–14.1 is to be given priority consideration when the life-threatening situation is expected to be of temporary duration (normally no more than 60 days) and the only feasible alternative is to transfer the employee to a new duty station. The head of an agency or his/her designee must make the final decision as to how long such payments should continue based on the specific nature and potential duration of the life-threatening situation and the alternative costs of a change of official station for protective purposes.

1–14.4. *Eligible individuals.* Employees (as defined in 1–1.3c(6)) who specifically serve in a law enforcement, investigative, or similar capacity, or other Federal employees detailed into these capacities for specific law enforcement/investigational purposes, are eligible for the allowances covered by this part. The employing agency shall be deemed to be the one to whom the employee was assigned at the time of the threat. Members of such employees' immediate families (as defined in 2–1.4d) also are eligible.

1–14.5. *Procedures for evaluating risk to threatened individuals.* When a situation occurs that appears to be life-threatening, the agency's first responsibility is to take any appropriate action necessary to protect the eligible individual(s), including removal from the home. The agency may ask the Criminal Division of the Department of Justice (DOJ) for assistance in determining the degree and seriousness of the threat. The agency, however, ultimately is responsible for deciding in each individual case, based on its own assessment of the situation (and the advice of the DOJ, if requested and furnished), whether protective action should be initiated, or continued if already undertaken, and the amount of subsistence and transportation expenses that will be approved. At 30-day intervals the agency will reevaluate the situation and decide whether any further extension of the time period is appropriate.

1–14.6. *Eligibility conditions and limitations.*

a. *Limits on duration of temporary living accommodations.* Subsistence payments may begin as soon as the agency determines that the provisions of this part should be invoked in a particular situation. Normally subsistence payments may be allowed for a period of no more than 60 days; the agency may, however, approve extensions of the time period as provided in 1–14.5. If the threatened individuals are directed to move immediately into temporary accommodations while the agency assesses the degree and seriousness of the threat, subsistence payments for this period may be allowed, even when the agency ultimately determines that the threat is not serious or no longer exists and decides to return the individuals to their home. When necessary occupancy of temporary living accommodations is expected to exceed 120 days, the agency should consider whether permanently relocating the employee would be advantageous given the specific nature of the threat, the continued disruption of the family, and the alternative costs of a change of official station.

b. *Location of temporary living accommodations.* The temporary living accommodations may be located in the vicinity of the employee's official station or at an alternate location away from the official station as circumstances warrant. When justified, the employee and immediate family members may occupy temporary living accommodations at different locations. The agency will designate the appropriate locations.

1–14.7. *Allowable subsistence payments.*

a. *Expenses covered.* Payments under this authority are intended to cover only reasonable and necessary subsistence expenses actually incurred incident to the occupancy of temporary living accommodations. Subsistence payments under this part generally will be limited to the cost of lodgings. However, certain expenses for meals, laundry, and cleaning of clothing may be allowed as provided in c, below.

b. *Determining allowable lodging costs.*

(1) *Allowable costs for daily rentals.* The same costs allowed in 1–7.5c(2) for lodging facilities obtained in connection with temporary duty travel may be allowed for temporary living accommodations under this part.

(2) *Allowable types of costs for other-than-daily rentals.* When an eligible individual rents lodgings on an other-than-daily basis for temporary occupancy under this part, the allowable costs shall be converted to a daily basis using the general guidelines under 1–7.9 which apply to lodgings obtained in connection with temporary duty travel.

c. *Determining other allowable expenses.* Costs of food, laundry, and cleaning of clothing are expenses incurred in day-to-day living. Such expenses should be considered the responsibility of the employee and normally will not be reimbursed. However, if temporary living accommodations do not contain cooking and/or laundry facilities, or other extenuating circumstances are present, certain of these expenses may be allowed to the extent determined appropriate by the agency.

d. *Maximum allowable amount.*

(1) *Method of computation.* An agency may approve the actual amount of allowable expenses incurred in each 30-day period (or fraction thereof) up to a maximum amount based on the daily limitations calculated under (2), below, multiplied by 30 (or the actual number of days used if fewer than 30). The daily actual subsistence expenses required to be itemized under e, below, will be totaled for each 30-day period (or fraction thereof) and compared with the maximum allowable for the particular period as prescribed under (2), below.

(2) *Daily limitations.* The maximum amount of subsistence payments for

each 30-day period (or fraction thereof) will be based on daily limitations calculated as provided in (a) through (e), below. If subsistence payments are authorized only for lodging costs, the daily limitations shall be reduced appropriately.

(a) For the employee, or for the unaccompanied spouse (one who necessarily occupies temporary accommodations without the employee or in a location separate from the employee), the daily limitation shall be an amount prescribed by the agency that shall not exceed the applicable maximum per diem rate prescribed under 1–7.2 for the location of the temporary living accommodations.

(b) For the spouse accompanied by the employee, the daily limitation shall not exceed three-fourths of the employee's daily limitation established in (a), above.

(c) For each other member of the employee's immediate family who is 12 years of age or older, the daily limitation shall not exceed three-fourths of the daily limitation established in (a), above, for the employee or the unaccompanied spouse, as appropriate.

(d) For each member of the employee's immediate family who is under 12 years of age, the daily limitation shall not exceed one-half of the daily limitation established in (a), above, for the employee or the unaccompanied spouse, as appropriate.

(e) For each member of the immediate family who necessarily occupies temporary living accommodations without, or at a location separate from, either the employee or the spouse, the agency may, when the limitations stated in (c) and (d), above, are inadequate, establish an appropriate higher daily limitation, that is within the limitation prescribed in (a), above.

e. *Itemization and receipts.* The actual expenses shall be itemized in a manner prescribed by the agency which will permit at a minimum a review of the amounts spent daily for (1) lodging, (2) meals, and (3) other allowable items of subsistence expenses (see a, above). Receipts shall be required at least for lodging and for any other allowable expenses as required by the agency.

1–14.8. *Transportation to and from a location away from the employee's designated post of duty.* The agency may approve the payment of transportation expenses when a situation described in 1–14.1 requires the employee and/or members of the immediate family to be temporarily relocated to a place away from the employee's designated post of duty. Transportation to and from such location shall be in accordance with the governing provisions of Parts 2 through 4 of this Chapter 1 unless the agency specifically approves a deviation from the rules for security reasons (see 1–10.2 regarding use of cash to procure transportation services in emergency circumstances). The documentation provisions of 1–14.9 govern in such instances.

1–14.9. *Authorizations and payment of claims.* Due to the unique nature of the situations covered under this part, agency heads shall establish specific administrative procedures for issuing authorizations and for payment of claims. In instances when documentation might compromise the security of the individuals involved, the head of the agency may waive all but absolutely essential documentation requirements.

1–14.10. *Advance of funds.* Funds may be advanced for subsistence and transportation expenses covered under this part in accordance with 1–10.3. The advance of funds will be at intervals prescribed by the agency but for no more than a 30-day period at a time. The amount of the advance shall not exceed an amount based on the daily limitations established by the agency under 1–14.7d(2).

12. Appendix 1–B, entitled "Travel Purpose Categories," is amended by redesignating category number 9 as number 10 and inserting new category 9 to read as follows:

* * * * *

9. *Emergency travel*—Travel to return an employee from a temporary assignment location at Government expense to his/her designated post of duty or home, or other alternate location, where he/she would normally be present to take care of the emergency situation if the Government had not directed or assigned the employee to another location to perform official business.

* * * * *

CHAPTER 2. RELOCATION ALLOWANCES

Part 1. Applicability and General Rules

13. Paragraph 2–1.1 is revised to read as follows:

2–1.1. *Authority.* These regulations are issued pursuant to 5 U.S.C. 5721–5734 and 20 U.S.C. 905(a).

14. Paragraph 2–1.2a is amended by revising subparagraph a(1) and adding paragraph a(1–a) to read as follows:

2–1.2. *Applicability.*

a. * * *

(1) Civilian officers and employees upon transfer from one official station or agency to another for permanent duty.

(1–a) Civilian officers and employees of the United States Postal Service transferred under 39 U.S.C. 1006 from the Postal Service to an agency as defined in 5 U.S.C. 5721 for permanent duty.

* * * * *

15. Paragraph 2–1.6a(3)(a) is revised to read as follows:

2–1.6. *Use of funds.*

* * * * *

(a) Per diem, mileage, and common carrier costs incident to his/her change of official station as set forth in 2–2.4;

* * * * *

Part 2. Allowances for Subsistence and Transportation

16. Paragraph 2–2.1 is revised to read as follows:

2–2.1. *For the employee.* Except as specifically provided in these regulations, per diem instead of subsistence expenses, transportation costs, and other travel expenses of the employee shall be allowed in accordance with the provisions of 5 U.S.C. 5701–5709 and Chapter 1; the maximum per diem rate allowable for travel within CONUS shall be the standard CONUS rate prescribed under 1–7.2 (see also 1–7.5a). Within CONUS, the prohibition on paying per diem for travel of less than 10 hours will apply to change of official station travel; outside CONUS, the 10-hour exclusion does not apply (see 1–7.4b). This part applies to travel of transferred employees, new appointees (including those covered in 2–1.5f), and employees assigned to posts of duty outside the conterminous United States in connection with either overseas tour renewal agreement travel or return travel to places of residence for the purpose of separation.

17. Paragraph 2–2.2b is revised to read as follows:

2–2.2. *For members of an employee's immediate family.*.

* * * * *

b. *Per diem allowance when en route between employee's old and new official stations.* When an employee is transferred, an allowance shall be paid for per diem instead of subsistence expenses incurred by the employee's immediate family while traveling between the old and new official stations regardless of where the old and new stations are located. If the actual travel involves departure and/or destination points other than the old or new official station, the per diem allowance shall not exceed the amount to which members of the immediate family would have been entitled if they had traveled by usually traveled route between the old and new official stations. In computing the per diem

allowance under provisions of Chapter 1, within CONUS, the prohibition on paying per diem for travel of less than 10 hours will apply to permanent change of station travel; outside CONUS, the 10-hour exclusion does not apply (see 1–7.4b). The maximum allowable per diem rates are as follows:

* * * * *

18. Paragraph 2–2.3d(1) is revised to read as follows:

d. *Maximum per diem allowances when privately owned automobile is used.*

* * * * *

(1) *Rates as prescribed by agency.* The per diem allowance for the employee while en route between the old and new duty stations shall be at appropriate rates, as prescribed by the agency concerned, within the applicable maximums and in accordance with provisions of 2–2.1 and Chapter 1. The per diem allowances prescribed in 2–2.2b apply for members of an employee's immediate family, except as excluded in 2–2.2c.

* * * * *

Part 5. Subsistence While Occupying Temporary Quarters

19. Paragraph 2–5.2g is revised to read as follows:

2–5.2. *Conditions and limitations for eligibility.*

* * * * *

g. *Effect of partial days on eligibility period.* Occupancy of temporary quarters for less than a whole day constitutes one full calendar day of the eligibility period.

(1) *Claim for temporary quarters when occupancy begins the same day on route travel ends.* The guidelines in (a) and (b), below, shall be used for determining the eligibility period for temporary quarters subsistence expense reimbursement and in computing maximum reimbursement when occupancy of temporary quarters for reimbursement purposes occurs the same day that en route travel per diem ends.

(a) *Old and new official station within the conterminous United States.* When en route travel (between official stations within the conterminous United States) ends and occupancy of temporary quarters for reimbursement purposes occurs in the same calendar day, the eligibility period for reimbursement for temporary quarters subsistence expenses shall start when en route travel terminates upon arrival at the temporary quarters location.

(b) *Old and/or new official station outside the conterminous United States.*

(i) *En route travel of more than 24 hours.* When en route travel is more than 24 hours, the eligibility period for reimbursement for temporary quarters subsistence expenses shall start at the beginning of the calendar day quarter immediately following the calendar day quarter in which en route travel per diem ends.

(ii) *En route travel of 24 hours or less.* When en route travel is 24 hours or less, the eligibility period for reimbursement for temporary quarters subsistence expense shall start at the beginning of the same calendar day quarter in which en route travel per diem ends.

(2) *Claims for temporary quarters occupancy in all other cases.* In all cases other than those covered in (1), above (e.g., when occupancy of temporary quarters occurs at the old official station or when reimbursement for occupancy of temporary quarters is not claimed on the same day that en route travel per diem begins or ends), the temporary quarters period shall start as provided in (a) or (b), below.

(a) *Old and new official stations within the conterminous United States.* When both the old and new official stations are within the conterminous United States, the temporary quarters period shall start at 12:01 a.m. of the calendar day (see 1–7.1b(1)) in which temporary quarters subsistence expense reimbursements is claimed, provided that temporary quarters are occupied during that calendar day.

(b) *Old and/or new official station outside the conterminous United States.* When the old and/or new official station is outside the conterminous United States, the temporary quarters shall start with the first quarter of the calendar day in which temporary quarters subsistence expense reimbursement is claimed, provided that temporary quarters are occupied during that calendar day.

(3) *Termination of eligibility period.* The temporary quarters period shall terminate at midnight of the last day of eligibility.

* * * * *

20. Paragraph 2–5.4c(1) is revised to read as follows:

2–5.4. *Allowable amount.*

* * * * *

(1) *Applicable maximum per diem rates.* The maximum per diem rates to be used for computations under (2) through (4), below, shall be as follows:

(a) For temporary quarters located in the conterminous United States, the applicable maximum per diem rate is the standard CONUS rate ($50) prescribed under 1–7.5a.

(b) For temporary quarters in applicable locations outside the conterminous United States, the maximum per diem rate is the rate prescribed by the Secretary of Defense or by the Secretary of State under 1–7.2b or c for the locality of the temporary quarters.

* * * * *

Appendix 1–A, Prescribed Maximum Per Diem Rates for CONUS

21. Appendix 1–A of the FTR is amended by removing Appendix 1–A entitled "Designated High Rate Geographical Areas (HRGA's)" and adding new Appendix 1–A entitled "Prescribed Maximum Per Diem Rates for CONUS" to read as follows:

[illegible] CODE [illegible]

APPENDIX 1-A, PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under paragraph 1-7.2 of these regulations (Federal Travel Regulations (FTR)) for reimbursement of subsistence expenses incurred during official travel within CONUS (the conterminous United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses. The MI&E rate shown in column (b) is a fixed amount allowed for meals and incidental expenses related to subsistence. The per diem payment calculated in accordance with Part 1-7 of the FTR for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

Per Diem Locality		Maximum Lodging Amount (a)	+ M&IE Rate (b)	= Maximum Per Diem Rate (c) 4/
CONUS, Standard rate (applies to all locations within CONUS not specifically defined below. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, under certain specified travel circumstances and for certain relocation subsistence allowances. See Parts 1-7, 2-2, 2-4 and 2-5 of the FTR)		$25	$25	$50
Key City 1/	County and/or other defined location 2/ 3/			
ALABAMA				
Anniston	Calhoun	38	25	63
Auburn	Lee	31	25	56
Birmingham	Jefferson	50	25	75
Dothan	Houston	36	25	61
Florence	Lauderdale	35	25	60
Huntsville	Madison	48	25	73
Mobile	Mobile	38	25	63
Montgomery	Montgomery	37	25	62
Sheffield	Colbert	57	25	82
ARIZONA				
Kayenta	Navajo	49	25	74
Page/Flagstaff	Coconino	45	25	70
Phoenix/Scottsdale	Maricopa	50	25	75
Tucson	Pima County; Davis-Monthan AFB	48	25	73
Yuma	Yuma	38	25	63
ARKANSAS				
Fayetteville	Washington	38	25	63
Fort Smith	Sebastian	37	25	62
Hot Springs	Garland	35	25	60
Little Rock	Pulaski	48	25	73
CALIFORNIA				
Barstow	San Bernardino	46	25	71
Bridgeport	Mono	34	25	59
El Centro	Imperial	37	25	62
Fresno	Fresno	50	25	75
Los Angeles	Los Angeles, Kern, Orange & Ventura Counties; Edwards AFB; Naval Weapons Center & Ordnance Test Station, China Lake	77	33	110
Monterey	Monterey	66	25	91
Palm Springs	Riverside	67	33	100
Sacramento	Sacramento	54	33	87
San Diego	San Diego	67	33	100

Per Diem Locality Key City 1/	County and/or other defined location 2/ 3/	Maximum Lodging Amount (a)	+ M&IE Rate (b)	= Maximum Per Diem Rate (c) 4/
San Francisco	San Francisco, Alameda, Contra Costa & Marin	62	33	95
San Jose	Santa Clara	57	33	90
San Luis Obispo	San Luis Obispo	52	25	77
San Mateo	San Mateo	54	33	87
Santa Barbara	Santa Barbara	71	25	96
Santa Cruz	Santa Cruz	50	25	75
Stockton	San Joaquin	44	25	69
Tahoe City	Placer	46	25	71
Vallejo	Solano	40	25	65
West Sacramento	Yolo	43	25	68
COLORADO				
Aspen	Pitkin	65	33	98
Boulder	Boulder	55	33	88
Colorado Springs	El Paso	43	25	68
Denver	Denver, Adams, Arapahoe & Jefferson	57	33	90
Durango	La Plata	46	25	71
Ft. Collins	Larimer	34	25	59
Glenwood Springs	Garfield	45	25	70
Grand Junction	Mesa	37	25	62
Steamboat Springs	Routt	46	25	71
Pagosa Springs	Archuleta	36	25	61
Pueblo	Pueblo	37	25	62
Silverthorne/Keystone	Summit	50	25	75
Vail	Eagle	69	33	102
CONNECTICUT				
Bridgeport/Danbury	Fairfield	62	25	87
Hartford	Hartford & Middlesex	50	33	83
New Haven	New Haven	61	25	86
New London/Groton	New London	50	25	75
Putnam/Danielson	Windham	52	25	77
DELAWARE				
Dover	Kent	38	25	63
Lewes	Sussex	40	25	65
Wilmington	New Castle	55	25	80
DISTRICT OF COLUMBIA				
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia)		79	33	112
FLORIDA				
Bradenton Beach/ Bradenton	Manatee	79	25	104
Cocoa Beach	Brevard	50	25	75
Daytona Beach/Ormond Beach/New Smyrna	Volusia	41	25	66
Fort Lauderdale	Broward	55	25	80
Fort Myers	Lee	42	25	67
Fort Pierce	Saint Lucie	45	25	70
Fort Walton Beach	Okaloosa	50	25	75
Gainesville	Alachua	40	25	65
Jacksonville	Duval County; Naval Station Mayport; (also see St. Marys, GA)	46	25	71

Per Diem Locality		Maximum Lodging Amount		M&IE Rate	=	Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)		(c) 4/
Miami	Dade & Monroe	50		33		83
Naples	Collier	34		25		59
Orlando	Orange	54		25		79
Panama City	Bay	50		25		75
Pensacola	Escambia	44		25		69
Sarasota	Sarasota	37		25		62
Saint Augustine	Saint Johns	48		25		73
Stuart	Martin	45		25		70
Tallahassee	Leon	42		25		67
Tampa/St. Petersburg	Hillsborough & Pinellas	52		25		77
West Palm Beach	Palm Beach	54		25		79
GEORGIA						
Albany	Dougherty	41		25		66
Athens	Clarke	35		25		60
Atlanta	Clayton, De Kalb, Fulton & Cobb	62		33		95
Augusta	Richmond	41		25		66
Brunswick	Glynn	39		25		64
Columbus	Muscogee	36		25		61
Macon	Bibb (including Robbins AFB)	36		25		61
Savannah	Chatham	41		25		66
St. Marys	The Naval Submarine Base, Kings Bay (See also Jacksonville, FL)	46		25		71
IDAHO						
Boise	Ada	44		25		69
Coeur d'Alene	Kootenai	37		25		62
Ketchum	Blaine	49		25		74
McCall	Valley	32		25		57
Pocatello	Bannock	41		25		66
ILLINOIS						
Alton	Madison	45		25		70
Champaign/Urbana	Champaign	38		25		63
Chicago	Du Page, Cook & Lake	72		33		105
Danville	Vermilion	40		25		65
Dixon	Lee	33		25		58
East St. Louis	St. Clair	35		25		60
Macomb	McDonough	40		25		65
Moline/Rock Island	Rock Island	45		25		70
Peoria	Peoria	48		25		73
Rockford	Winnebago	37		25		62
Springfield	Sangamon	44		25		69
INDIANA						
Bloomington	Monroe	45		25		70
Charlestown/ Jeffersonville	Clark County; Indiana Army Ammunition Plant	46		25		71
Columbus	Bartholomew	35		25		60
Elkhart	Elkhart	45		25		70
Fort Wayne	Allen	50		25		75
Gary	Lake	37		25		62
Indianapolis	Marion County; Fort Benjamin Harrison	50		25		75
Lafayette	Tippecanoe	39		25		64
Logansport	Cass	35		25		60
Marion	Grant	31		25		56
Michigan City	La Porte	34		25		59
Muncie	Delaware	44		25		69
New Albany	Floyd	32		25		57
South Bend	St. Joseph	44		25		69

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Per Diem Locality					
Key City 1/	County and/or other defined location 2/ 3/	Maximum Lodging Amount (a)	+ M&IE Rate (b)	= Maximum Per Diem Rate (c)	4/
IOWA					
Bettendorf/Davenport	Scott	43	25	68	
Cedar Rapids	Linn	38	25	63	
Des Moines	Polk	48	25	73	
Dubuque	Dubuque	34	25	59	
Iowa City	Johnson	37	25	62	
Sioux City	Woodbury	36	25	61	
Waterloo	Black Hawk	39	25	64	
KANSAS					
Hays	Ellis	33	25	58	
Kansas City	Johnson & Wyandotte (See also Kansas City, MO)	60	25	85	
Lawrence	Douglas	30	25	55	
Topeka	Shawnee	40	25	65	
Wichita	Sedgwick	50	25	75	
KENTUCKY					
Covington	Kenton	46	25	71	
Frankfort	Franklin	40	25	65	
Lexington	Fayette	52	25	77	
Louisville	Jefferson	46	25	71	
Prestonburg	Floyd	34	25	59	
LOUISIANA					
Alexandria	Rapides Parish	43	25	68	
Baton Rouge	East Baton Rouge Parish	50	25	75	
Bossier City	Bossier Parish	57	25	82	
Lafayette	Lafayette Parish	41	25	66	
Lake Charles	Calcasieu Parish	42	25	67	
Monroe	Ouachita Parish	41	25	66	
New Orleans	Parishes of Jefferson, Orleans, Plaquemines & St. Bernard	52	33	85	
Shreveport	Caddo Parish	50	25	75	
Slidell	St. Tammany Parish	39	25	64	
MAINE					
Augusta	Kennebec	40	25	65	
Bangor	Penobscot	48	25	73	
Bath	Sagadahoc	32	25	57	
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH)	40	25	65	
Portland	Cumberland	55	25	80	
Presque Isle	Aroostook	38	25	63	
MARYLAND					
(For the counties of Montgomery and Prince Georges, see District of Columbia)					
Annapolis	Anne Arundel	63	25	88	
Baltimore	Baltimore & Harford	50	25	75	
Columbia	Howard	81	25	106	
Cumberland	Allegany	41	25	66	
Easton	Talbot	39	25	64	
Frederick	Frederick	50	25	75	
Lexington Park/St. Inigoes/Leonardtown	St. Marys	44	25	69	
Ocean City	Worcester	74	25	99	
Salisbury	Wicomico	44	25	69	
Waldorf	Charles	41	25	66	

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Per Diem Locality		Maximum Lodging Amount	M&IE Rate	Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+ (b)	= (c) 4/
MASSACHUSETTS				
Andover	Essex	72	33	105
Boston	Middlesex, Norfolk & Suffolk	75	33	108
Hyannis	Barnstable	50	25	75
Martha's Vineyard/ Nantucket	Dukes & Nantucket	85	33	118
New Bedford	Bristol	46	25	71
Northampton	Hampshire	46	25	71
Pittsfield	Berkshire	48	25	73
Springfield	Hampden	50	25	75
Worcester	Worcester	50	25	75
MICHIGAN				
Adrian	Lenawee	36	25	61
Ann Arbor	Washtenaw	50	25	75
Battle Creek	Calhoun	37	25	62
Bay City	Bay	37	25	62
Detroit	Wayne	57	25	82
Flint	Genesee	37	25	62
Grand Rapids	Kent	48	25	73
Holland	Ottawa	31	25	56
Jackson	Jackson	38	25	63
Kalamazoo	Kalamazoo	48	25	73
Lansing/East Lansing	Ingham	45	25	70
Marquette	Marquette	32	25	57
Midland	Midland	45	25	70
Monroe	Monroe	30	25	55
Muskegon	Muskegon	32	25	57
Pontiac	Oakland	48	25	73
Port Huron	St. Clair	42	25	67
Saginaw	Saginaw	40	25	65
St. Joseph/Benton Harbor/Niles	Berrien	39	25	64
Traverse City	Grand Traverse	40	25	65
Warren	Macomb	43	25	68
MINNESOTA				
Bemidji	Beltrami	36	25	61
Duluth	St. Louis	42	25	67
Minneapolis/St. Paul	Anoka, Hennepin & Ramsey Counties; Fort Snelling Military Reservation & Navy Astronautics Group (Detachment BRAVO), Rosemount	50	25	75
St. Cloud	Stearns	33	25	58
MISSISSIPPI				
Gulfport	Harrison	39	25	64
Jackson	Hinds	50	25	75
Natchez	Adams	44	25	69
Oxford	Lafayette	36	25	61
Pascagoula	Jackson	31	25	56
Vicksburg	Warren	37	25	62
MISSOURI				
Cape Girardeau	Cape Girardeau	40	25	65
Columbia	Boone	46	25	71
Jefferson City	Cole	39	25	64
Joplin	Jasper	30	25	55
Kansas City	Clay, Jackson & Platte (See also Kansas City, KS)	60	25	85

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Springfield	Greene	43		25		68
St. Louis	St. Charles & St. Louis	53		25		78
MONTANA						
Billings	Yellowstone	34		25		59
Great Falls	Cascade	37		25		62
Helena	Lewis & Clark	33		25		58
NEBRASKA						
Grand Island	Hall	35		25		60
Lincoln	Lancaster	39		25		64
Norfolk	Madison	36		25		61
Omaha	Douglas	50		25		75
Scottsbluff	Scottsbluff	33		25		58
NEVADA						
Beatty/Tonopah	Nye	30		25		55
Carson City	Carson City	32		25		57
Las Vegas	Clark County; Nellis AFB	69		33		102
Reno	Washoe	44		25		69
NEW HAMPSHIRE						
Concord	Merrimack	44		25		69
Laconia	Belknap	50		25		75
Manchester	Hillsborough	55		25		80
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME)	40		25		65
NEW JERSEY						
Atlantic City	Atlantic	93		33		126
Belle Mead	Somerset	59		25		84
Camden	Camden	50		25		75
Cape May	Cape May	50		25		75
Dover	Morris County; Picatinny Arsenal	55		25		80
Eatontown	Monmouth County; Fort Monmouth	50		25		75
Edison	Middlesex	50		25		75
Newark	Bergen, Essex, Hudson, Passaic & Union	75		25		100
Princeton/Trenton	Mercer	61		25		86
Tom's River	Ocean	45		25		70
NEW MEXICO						
Albuquerque	Bernalillo	59		25		84
Las Cruces/White Sands	Dona Ana	39		25		64
Los Alamos	Los Alamos	42		25		67
Santa Fe	Santa Fe	55		25		80
Taos	Taos	49		25		74
NEW YORK						
Albany	Albany	54		25		79
Binghampton	Broome	52		25		77
Buffalo	Erie	50		25		75
Catskill	Greene	32		25		57
Corning	Steuben	48		25		73
Glens Falls	Warren	40		25		65
Ithaca	Tompkins	51		25		76
Lake Placid	Essex	50		25		75

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
New York City	The boroughs of the Bronx, Brooklyn, Manhattan, Queens & Staten Island; Nassau & Suffolk Counties	93		33		126
Niagara Falls	Niagara	53		25		78
Owego	Tioga	39		25		64
Poughkeepsie	Dutchess	50		25		75
Rochester	Monroe	63		25		88
Schenectady	Schenectady	49		25		74
Syracuse	Onondaga	57		25		82
Troy	Rensselaer	48		25		73
West Point	Orange	38		25		63
White Plains	Westchester	76		33		109
NORTH CAROLINA						
Asheville	Buncombe	43		25		68
Boone	Watauga	36		25		61
Charlotte	Mecklenburg	52		25		77
Duck	Dare	50		25		75
Durham	Durham	33		25		58
Fayetteville	Cumberland	38		25		63
Greensboro	Guilford	49		25		74
Morehead City	Carteret	53		25		78
Raleigh	Wake	54		25		79
Wilmington	New Hanover	45		25		70
Winston-Salem	Forsyth	44		25		69
NORTH DAKOTA						
Bismarck	Burleigh	44		25		69
Fargo	Cass	46		25		71
Minot	Ward	42		25		67
OHIO						
Akron	Summit	46		25		71
Bridgeport/Martins Ferry/Belaire	Belmont	37		25		62
Chillicothe	Ross	40		25		65
Cincinnati/Evendale	Hamilton & Warren	50		25		75
Cleveland	Cuyahoga	51		33		84
Columbus	Franklin	51		25		76
Dayton	Montgomery County; Wright-Patterson AFB	53		25		78
Defiance	Defiance	40		25		65
Freemont	Sandusky	33		25		58
Geneva	Ashtabula	43		25		68
Hamilton/Fairfield	Butler	41		25		66
Ironton	Lawrence	35		25		60
Lima	Allen	35		25		60
Portsmouth	Scioto	38		25		63
Sandusky	Erie	44		25		69
Springfield	Clark	43		25		68
Toledo	Lucas	50		25		75
OKLAHOMA						
Clinton	Custer	32		25		57
Eufaula	McIntosh	34		25		59
Lawton	Comanche	35		25		60
Muskogee	Muskogee	35		25		60
Norman	Cleveland	44		25		69
Oklahoma City	Oklahoma	47		25		72
Stillwater	Payne	43		25		68
Tulsa	Osage, Tulsa & Washington	39		25		64

Per Diem Locality		Maximum Lodging Amount	M&IE Rate	Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a) +	(b) =	(c) 4/
OREGON				
Beaverton	Washington	40	25	65
Bend	Deschutes	36	25	61
Portland	Multnomah	50	25	75
Salem	Marion	37	25	62
PENNSYLVANIA				
Allentown	Lehigh	45	25	70
Chester	Delaware	46	25	71
Erie	Erie	41	25	66
Harrisburg	Dauphin	58	25	83
King of Prussia/ Ft. Washington	Montgomery County, except Bala Cynwyd (see also Philadelphia, PA)	59	25	84
Lancaster	Lancaster	41	25	66
Mechanicsburg	Cumberland	36	25	61
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County	72	33	105
Pittsburgh/Monroeville	Allegheny	59	25	84
Reading	Berks	47	25	72
State College	Centre	38	25	63
Valley Forge	Chester	73	25	98
Warminster	Bucks County; Naval Air Development Center	48	25	73
York	York	50	25	75
RHODE ISLAND				
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	49	25	74
Newport	Newport	72	33	105
Providence	Providence	64	25	89
SOUTH CAROLINA				
Cayce	Lexington	32	25	57
Charleston	Charleston & Berkeley	44	25	69
Columbia	Richland	48	25	73
Greenville	Greenville	40	25	65
Hilton Head	Beaufort	76	33	109
Myrtle Beach	Horry County; Myrtle Beach AFB	63	25	88
Spartanburg	Spartanburg	41	25	66
SOUTH DAKOTA				
Pierre	Hughes	31	25	56
Rapid City	Pennington	46	25	71
Sioux Falls	Minnehaha	42	25	67
TENNESSEE				
Chattanooga	Hamilton	38	25	63
Clarksville	Montgomery	37	25	62
Elizabethton	Carter	37	25	62
Greenville	Greene	37	25	62
Johnson City	Washington	45	25	70
Kingsport/Bristol	Sullivan	42	25	67
Knoxville	Knox County; city of Oak Ridge	41	25	66
Memphis	Shelby	50	25	75
Morristown	Hamblen	30	25	55
Nashville	Davidson	52	25	77

Per Diem Locality		Maximum Lodging Amount (a)	+	M&IE Rate (b)	=	Maximum Per Diem Rate (c) 4/
Key City 1/	County and/or other defined location 2/ 3/					
TEXAS						
Amarillo	Potter	46		25		71
Austin	Travis	55		25		80
Bastrop	Bastrop	37		25		62
Beaumont	Jefferson	36		25		61
Brownsville	Cameron	39		25		64
College Station/Bryan	Brazos	43		25		68
Corpus Christi	Nueces	53		25		78
Dallas/Fort Worth	Dallas & Tarrant	74		33		107
El Paso	El Paso	49		25		74
Galveston	Galveston	51		25		76
Houston	Harris County; L. B. Johnson Space Center & Ellington AFB	60		33		93
Kingsville	Kleburg	35		25		60
Lajitas	Brewster	48		25		73
Laredo	Webb	47		25		72
Longview	Gregg	41		25		66
Lubbock	Lubbock	37		25		62
Lufkin	Angelina	36		25		61
McAllen	Hidalgo	43		25		68
Midland/Odessa	Ector & Midland	43		25		68
Nacogdoches	Nacogdoches	41		25		66
San Antonio	Bexar	50		25		75
Temple	Bell	37		25		62
Wichita Falls	Wichita	41		25		66
UTAH						
Cedar City	Iron	32		25		57
Ogden	Weber	36		25		61
Provo	Utah	33		25		58
Salt Lake City	Salt Lake County; Dugway Proving Ground & Toole Army Depot	53		25		78
Vernal	Uintah	39		25		64
VERMONT						
Burlington	Chittenden	43		25		68
Montpelier	Washington	32		25		57
Rutland	Rutland	50		25		75
VIRGINIA						
(For the cities of Alexandria, Fairfax, Fairfax, and Loudoun, see and Falls Church, and the counties of Arlington, District of Columbia)						
Blacksburg	Montgomery	50		25		75
Bristol*		42		25		67
Charlottesville*		51		25		76
Covington*		33		25		58
Fredericksburg*		34		25		59
Lexington*		35		25		60
Lynchburg*		33		25		58
Manassas/Manassas Park*	Prince William County	45		25		70
Norfolk* (also Virginia Beach, Portsmouth, Hampton, Newport News & Chesapeake*)	York County; Naval Weapons Stations, Yorktown	55		25		80
Petersburg*	Fort Lee	38		25		63
Richmond*	Chesterfield & Henrico Counties; also Defense Supply Center	52		25		77

Per Diem Locality				
Key City 1/	County and/or other defined location 2/ 3/	Maximum Lodging Amount (a) +	M&IE Rate (b) =	Maximum Per Diem Rate (c) 4/
Roanoke*	Roanoke County	42	25	67
Staunton*		37	25	62
Wallops Island	Accomack	46	25	71
Warrenton	Fauquier	37	25	62
Waynesboro*		33	25	58
Williamsburg*		58	25	83
* Denotes independent cities.				
WASHINGTON				
Longview	Cowlitz	36	25	61
Olympia	Thurston	43	25	68
Richland	Benton	34	25	59
Seattle	King	53	33	86
Spokane	Spokane	47	25	72
Takoma	Pierce	39	25	64
Yakima	Yakima	34	25	59
WEST VIRGINIA				
Charleston	Kanawha	45	25	70
Harpers Ferry	Jefferson	45	25	70
Huntington	Cabell	41	25	66
Morgantown	Monongalia	40	25	65
Wheeling	Ohio	40	25	65
WISCONSIN				
Brookfield	Waukesha	50	25	75
Green Bay	Brown	40	25	65
La Crosse	La Crosse	48	25	73
Madison	Dane	51	25	76
Milwaukee	Milwaukee	51	25	76
Rhinelander	Oneida	37	25	62
Tomah	Monroe	32	25	57
Wausau	Marathon	42	25	67
WYOMING				
Casper	Natrona	37	25	62
Cheyenne	Laramie	43	25	60
Evanston	Uinta	32	25	57
Gillette	Campbell	42	25	67
Jackson	Teton	51	25	76
Rock Springs	Sweetwater	35	25	60

1/ Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

2/ Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

3/ Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

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4/ Federal agencies may submit a request to GSA for review of the subsistence cost in a particular city or area when travel to that location is repetitive or on a continuing basis and travelers' experience indicates that the prescribed standard CONUS per diem rate is inadequate. Other per diem locality rates listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Agencies' requests shall be submitted to the General Services Administration, Federal Supply Service, Attn: Regulations and Policy Division (FFY), Washington, DC 20406. Requests for rate adjustments shall include a description of the location involved (city, county or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also should contain an estimate of the annual number of trips to the location and the average duration of such trips.

Dated: May 9, 1986.

T.C. Golden,

Administrator of General Services.

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Travel Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205-46, Travel costs, in order to implement the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 99-234).

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 30, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 86-29 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202)523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The provision contained in title II, section 201 of the Federal Civilian Employee and Contractor Travel Expense Act of 1985, specifies ". . . costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." To implement this provision of the Act, the Defense Acquisition Regulatory and Civilian Agency Acquisition Councils are proposing a revision to FAR 31.205-46, Travel costs. The proposed revision states that costs for lodging, meals, and incidental expenses incurred by contractor personnel shall be considered to be reasonable and allowable to the extent that they do not exceed on a daily basis the per diem rates set forth in the: (1) Federal Travel Regulations, (2) Joint Travel Regulations, or (3) Standardized Regulations (Government Civilians, Foreign Areas). In addition, the proposed revision provides for situations where contractors may reimburse their employees for the actual costs in excess of the per diem limits, as authorized for Federal civilian employees.

B. Regulatory Flexibility Act

The proposed change to FAR 31.205-46 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of the supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives. Moreover, the proposed coverage merely implements Pub. L. 99-234, which requires comparable treatment of the costs of lodging, meals, and incidental expenses for contractors and Government employees. Notwithstanding the foregoing, specific comments on the proposed rule are solicited from small businesses.

C. Paperwork Reduction Act

Through contact with some trade associations and contractors, the Councils believe there may be additional recordkeeping burdens caused by the proposed rule. A request for approval of the additional paperwork burden is being submitted to the Office of Management and Budget.

D. Federal Travel Regulations

Revised per diem rates for travel within the continental United States, as set forth in amendments to the Federal Travel Regulations, appear elsewhere in today's issue of the Federal Register. Copies of the Federal Travel Regulations amendment are available for purchase from the Government Printing Office, Superintendent of Documents, for $1.50. The revised per diem rates will be effective for Government employees on July 1, 1986. The rates are expected to be made applicable to Government contractors in accordance with the provisions of this proposed FAR rule on or about August 1, 1986. However, the revisions to FAR 31.205-46 will be applicable to contracts awarded on or after the date the final rule is effective.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 23, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205-46 is amended by revising paragraph (a) to read as follows:

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to this paragraph and paragraphs (b) through (f) of this subsection. Transportation costs may be based on actual costs incurred, on a mileage basis, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the:

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 022-001-81003-7;

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the Superintendent of Documents,

U.S. Government Printing Office, Washington, DC 20402, Stock No. 906-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subsection, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 744-006-00000-0.

(3) In extraordinary and temporary situations, contractors may reimburse their employees for actual costs in excess of the above-referenced daily per diem rates in amounts not exceeding the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For the cost of such higher reimbursements to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) The authority to use the higher actual expense reimbursement method may be used only on an individual-case basis after appropriate consideration of the facts existing at the time travel is directed and performed. A written justification for use of the higher amounts authorized by this method must be approved on a case-by-case basis by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) Receipts are required to support the expenses incurred and the approved justification must be included in the supporting documentation.

(iv) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

* * * * *

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Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Parts 209, 335, 336, 337, and 338

Operations and Maintenance Regulations for Activities Involving the Discharge of Dredged or Fill Material in Waters of the United States and Ocean Waters; Proposed Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 335, 336, 336, 337, and 338

Proposed Amendment to Corps of Engineers Operations and Maintenance Regulations for Activities Involving the Discharge of Dredged or Fill Material in Waters of the United States and Ocean Waters

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers is proposing to revise and relocate its 33 CFR 209.145 regulations to new Parts 335 through 338 for Corps operations and maintenance activities involving the discharge of dredged or fill material in waters of the United States and ocean waters. The relocation of this regulation will provide sufficient numbering and will allow easy reference to the permit regulations of 33 CFR Parts 320 through 330. These revisions are needed to reflect a number of new laws (primarily the 1977 Amendments to the Clean Water Act), Executive Orders (EOs), court decisions, and policy changes which have occurred since the current regulations were published on July 22, 1974. This regulation will provide updated procedures for compliance with state water quality and coastal zone certification requirements of Corps maintenance dredging and disposal activities in waters of the United States and ocean waters. A practices and procedures part has been added to explain and provide for consistent implementation of Corps operations and maintenance activities. These proposed regulation revisions will better enable the Corps of Engineers to implement the provisions of the Clean Water Act and Ocean Dumping Act when undertaking operations and maintenance activities involving dredged material disposal in waters of the United States and ocean waters.

DATE: Comments to this regulation must be received on or before July 29, 1986.

ADDRESS: Comments should be submitted in writing to: The Water Resources Support Center, Dredging Division, Casey Building, Ft. Belvoir, VA 22060-5586. Comments will be available for examination at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Mathis or Mr. Joe Wilson, Water Resources Support Center, phone (202) 335-2235.

Background

The legislative histories of the Federal Water Pollution Control Act of 1972 (amended in 1977 and commonly referred to as the Clean Water Act (CWA)) and of the Marine Protection, Research, and Sanctuaries Act of 1972 (commonly referred to as the Ocean Dumping Act (ODA)) reveal that one purpose of sections 404 and 103 of the CWA and ODA, respectively, was to address the dredged material disposal requirements for construction and maintenance of navigation projects. To ensure that essential navigation continues to be maintained in an environmentally responsible manner, Congress enacted special legislation under Pub. L. 91-611, directing that a comprehensive national program of environmental research on dredged material disposal be conducted to identify environmentally acceptable alternatives for the disposal of this material and to develop scientifically acceptable evaluations. This program was initiated in 1973 and included, at the outset, a five-year research effort that involved an expenditure of over $33 million. Current Federal expenditures on dredged material research and development have now cumulatively exceeded $100 million. This research has investigated all facets of disposal alternatives for dredged material, including beneficial uses and state-of-the-art evaluative procedures for contaminated sediments. These investigations have included thorough consideration of the environmental protection mandates of the Resource Conservation and Recovery Act and Toxic Substances Control Act, as well as other Federal environmental protection statutes.

Results of this extensive research on dredged material, which now represents well over a decade of intensive effort, have been widely published and have received close domestic as well as international scientific scrutiny through prominent scientific groups such as the National Research Council and the Scientific Group of the London Dumping Convention. With specific regard to dredged material disposal, we are capable of evaluating the feasibility and environmental acceptability of the full range of disposal alternatives. Based on this extensive scientific research base and experience, we believe that the most appropriate alternative can be selected only on a case-by-case basis by minimizing costs consistent with sound engineering practices and complying with appropriate environmental standards. Thus, all practicable alternatives, including the no dredging alternative, should receive full and equal consideration in the evaluation process. These alternatives include, but are not limited to, land-based diked containment areas, beneficial uses such as beach nourishment and marsh establishment, and aquatic (including ocean) disposal of dredged sediments.

Significant Changes in the 1974 Regulations

Following is a summary of the substantive changes in the 1974 regulation. Those changes that are editorial or self-explanatory in nature are not discussed.

Applicability to Other Corps Programs and Regulations

Through the budget process, the Congress decides which operations and maintenance projects are accomplished. However, before maintenance can be accomplished, the Corps is required to establish compliance with the environmental protection statutes, EOs and regulations. Other Corps regulations deal with similar requirements for Corps pre-authorization and continuing authorities (i.e., planning) projects and for the Corps regulatory program. This regulation prescribes the policies and procedures that should be followed to establish environmental compliance for Corps operations and maintenance activities. Various decisions are made in the budget process regarding need and justification for the operations and maintenance work. Once those decisions are made and the Congress allocates funds, it is the responsibility of the Corps to carry out the operations and maintenance work by selecting the alternative which is the least costly and consistent with sound engineering practices and appropriate environmental quality standards. This regulation focuses on procedures and documentation necessary to establish compliance with certain environmental statutes. Cost and engineering feasibility considerations, however, play a critical role in selecting the ultimate course of action.

Organization

The regulation has been reorganized into four parts to allow for sufficient numbering and easy reference. Part 335 describes the purpose of the regulation and identifies the applicable and related statutes and EOs. Part 336 contains the operating procedures for Corps field offices when undertaking operations and maintenance activities involving the discharge of dredged or fill material into waters of the U.S. or the transportation for disposal of dredged material into

ocean waters. Part 337 describes the Corps documentation process for dredged materials disposal activities related to Federal operations and maintenance projects. Part 338 has been added to address those operations and maintenance activities involving the discharge of fill material.

Recently, the Corps has been faced with a unique and important challenge: removing and disposing in an environmentally responsible manner contaminated sediments from a few contaminated reaches of Federal navigation channels. The Corps has been conducting an extensive research effort to develop a logical and scientifically valid testing, evaluation, and disposal management framework for handling these contaminated sediments. This management framework is now in the demonstration/refinement phase and will be used as the basis for determining the best management approaches for contaminated sediments. The Corps policy at §335.4 is reflective of experience, past and current research, and the necessity of considering all practicable alternatives on an equal basis.

Part 335 Policy.

A policy statement has been added to the regulation to reflect that the Corps undertakes operations and maintenance activities in a manner which recognizes cost, engineering constraints, and other factors that can limit consideration of some alternatives while at the same time ensuring environmentally responsible choices. The construction and maintenance of Congressionally authorized Federal navigation channels is primarily a Corps responsibility. When evaluating operations and maintenance projects, the Corps fully considers all practicable alternatives on an equal basis. Factors considered in determining whether to proceed with a proposed dredging and disposal activity include navigation, economics, engineering practicability, national defense, fish and wildlife, water quality, aesthetics, cultural resources, endangered species, wetlands, floodplains, recreation, etc. As part of the Corps overall effort to assure that needed dredging is accomplished in an economic, timely and environmentally responsible manner, an extensive research and development program was authorized in 1978 and continues as an integral and major support component of the Corps national dredging program. This research effort has resulted in the investigation of nearly every facet of dredging and dredged material disposal. When accomplishing dredging and disposal activities, these extensive research results and the experience gained by the Corps play a vital role in the ultimate selection of dredged material disposal sites.

Section 335.5 Applicable and Related Laws.

The 1974 regulation provides a summary of the Federal laws and EOs that are known to apply to maintenance dredging and disposal activities. To avoid the risk of misinterpretation, the Corps has decided in this proposed revision simply to list the applicable Federal statutes and EOs and not provide interpretive summaries. Interpretations are ultimately resolved by the courts and are often misleading when taken out of context.

Section 335.7 Definitions.

Certain definitions of the regulatory program applicable to Corps dredging and disposal activities have been incorporated by reference. Definitions exclusive to the dredging program have been defined in §335.7.

Section 335.7 Federal Standard.

This new concept has been added to allow the concerned public and the states to understand more fully how the Corps establishes its preferred alternative or alternatives. The ocean dumping criteria and 404(b)(1) guidelines are at 40 CFR Parts 220 through 228 and Part 230, respectively. The regulations for environmental impact statements and environmental assessments are at 40 CFR Parts 1500 through 1508 and 33 CFR Part 230. The procedures of these regulations require the Corps to consider all facets of the dredging and disposal operation to include cost, engineering feasibility, environmental concerns, and other practicable alternatives. The alternative selected should represent the least costly alternative consistent with sound engineering practices and meeting required environmental standards. The Corps' preferred alternative is defined as the Federal standard. When seeking state certification or evaluating Federal agency and public comments, the district engineer will be using the alternative(s) selected on this basis as a point of reference.

Part 336

This part has been divided into two sections to distinguish between Federal activities regulated by the ODA and CWA. The procedural requirements for compliance with these two laws are different and are more appropriately evaluated separately.

Section 336.0 Overlapping Jurisdiction of ODA and CWA in Territorial Sea.

The ODA and CWA have overlapping jurisdiction for dredged material disposal in the territorial sea. Pursuant to 40 CFR 230.2(b), dredged material disposal activities in the territorial sea will be evaluated under the ODA. Rules for dredged material disposal activities in the territorial sea are established in Part 336 and are based on the type of discharge and most appropriate methodology available for evaluating environmental impacts.

Section 336.0 Corps Authority to Select Dredged Material Disposal Sites in Territorial Sea and Ocean Waters.

Presently, the EPA has authority under section 102 of the ODA for designating ocean dump sites in territorial sea and ocean waters. The Corps has authority under section 103 of the ODA to authorize the transportation for disposal of dredged material in the territorial sea and ocean waters and also to select ocean dumping sites should an EPA designated site not be feasible for use. The Corps will continue to exercise this authority as necessary. In exercising its authorities, the Corps is required to apply the criteria established by the EPA pursuant to section 102(a), relating to the effects of the disposal. Presently, the EPA has designated 125 ocean disposal sites serving 115 Federally authorized navigation projects. To the extent feasible, the Corps uses and will continue to use the EPA designated sites; however, the Corps may select an ocean dredged material disposal site or sites under the authority of Section 103 of the ODA in consultation with EPA for situations where no EPA designated site exists or can be used feasibly.

Section 336.0 Dredged Material Disposal Activities Involving Fill Material in the Territorial Sea.

In those cases where the disposal of dredged material is also considered as the discharge of fill material, the activity will be evaluated under the CWA. Such activities include beach nourishment or the construction of underwater berms where the material is intended to return to the littoral transport process for the primary purpose of downdrift beach replenishment.

Section 336.1(a) State Requirements.

Since implementation of the 1977 amendments to the CWA, the Corps has sought state water quality certification for dredged material disposal activities that occur in waters of the United States. In general terms, the Coastal

Zone Management Act (CZMA) requires the Corps to provide a determination that its activities directly affecting the coastal zone are consistent with an approved state coastal zone management plan to the maximum degree practicable.

Some confusion has existed between the Corps and the states over respective authorities and responsibilities under the CWA and CZMA. Appropriate sections have been added to the regulation to recognize the role of the states in evaluating water quality and coastal zone impacts of Corps maintenance dredging disposal projects while ensuring that the states provide timely responses as required by Congress in the relevant Federal statutes.

The CWA and regulations implementing the CZMA provide for waiver if the state fails or refuses to act on requests for water quality certification or coastal zone consistency determinations within a reasonable period of time. The maximum period of time provided by section 401 of the CWA for the state to act on requests for water quality certification is one year from the date of the request. Based on experience since enactment of the CWA and CZMA, the Corps has determined that six months is reasonable as a maximum period of time within which the state must act on maintenance dredging disposal projects of significant scope and complexity. More routine maintenance dredging disposal projects are expected to take much less time. Therefore, we are requesting that the states act within two months after receipt of a request for water quality certification and within 45 days of a coastal zone consistency certification. The District Engineer may extend such time (up to six months from the request) for final state action upon a showing by the state that an additional period of time is warranted. The Corps and the state may mutually agree on alternative requirements to shorten the state water quality certification or coastal zone consistency process.

Section 336.1(b) Certification Requests.

Since implementation of the CWA and CZMA, the Corps has been providing information to affected states in support of requests for water quality certification and coastal zone consistency determinations. Generally, thorough project description information is adequate to determine compliance with state water quality standards and impacts to approved coastal zone programs. The absence of a Federal regulation to specify what information would be provided to the state in support of the water quality certification request and coastal zone consistency certification has invited lengthy delays by some states. Delays by some states of three years or more have been common for routine maintenance dredging and disposal activities. We believe that such long delays are unnecessary, and the proposed regulation seeks to avoid such delays in the future.

Section 336.1(b) National Environmental Policy Act (NEPA).

Since promulgation of NEPA in 1969, the Corps has prepared Environmental Impact Statements (EIS) or Environmental Assessments (EA) for all actively maintained navigation projects. Normally, an EIS or EA is issued for the life of an operations and maintenance activity. Changes in a disposal plan, however, will require re-evaluation under NEPA and may require re-evaluation under the CWA or ODA. The decision to prepare a new EA, EIS, or EIS supplement is made for each project on a case-by-case basis based on the significance of the potential impacts of the changes to the operations and maintenance activity. A preliminary determination on the NEPA requirements should be included in the public notice for the project and comments on the public notice should be used by the district engineer in making the final determination whether a new EIS, or EIS supplement, will be required. The procedures of 33 CFR Part 230 will be used to prepare NEPA documents.

Section 336.1(b) Related Activities.

In order to assure that beneficiaries of Corps navigation projects receive timely authorization of activities related to maintenance of the navigation project, district engineers are encouraged to include such related activities in the enviromental compliance process for the Corps project. This provision was in the 1974 rule. The lack of a procedure in the 1974 rule for authorizing the related activity prevented field offices from fully incorporating related activities in the environmental compliance documentation for the Corps activity. The evaluation of the related activity will include compliance with the substantive requirements of 33 CFR Parts 320 through 330. We are encouraging local users to coordinate with district engineers concerning inclusion of their activities in the Corps compliance process. For consistency with the permit program and to assure that the environmental compliance documentation for the Corps activity is not delayed by the local project, a separate permit and statement of findings, if appropriate, are to be used to authorize the related activity. Local users will be responsible for funding all work necessary in support of their related activity.

Section 336.1(b) Cultural Resource Considerations.

The cultural resources section has been revised to state that cultural resources warranting evaluation against the criteria of the National Register of Historic Places are not normally found in constructed navigation channels or previously used disposal areas. Therefore, cultural resources considerations will normally be limited to areas of new work or to constructed navigation channels and previously used disposal areas where cultural resources are known to exist.

Section 336.1(b) Fish and Wildlife Considerations.

All Corps projects in an active operations and maintenance status have either an EA or EIS. Since fish and wildlife resources are considered in the EA or EIS for the project, subsequent fish and wildlife considerations should address the scope of the action requiring re-evaluation under the CWA, ODA, or NEPA. The importance of fish and wildlife resources cannot be minimized. However, the scope of such considerations should not extend to an entire navigation project when only a minor disposal site modification, addition, or deletion is involved.

Section 336.1(b) Effects on Wetlands.

To avoid unnecessary duplication, the proposed regulation references the Corps regulatory program, the EPA's 404(b)(1) guidelines, and E.O. 11990, when dredging and disposal activities affect wetlands.

Section 336.1(b) Authority to Undertake Federal Projects.

The § 209.145 regulation at (h)(2)(i) was revised and moved to Parts 336 and 337 of the proposed regulation to specify procedures that should be followed when state agency comments significantly exceed the Federal standard established for the project. Specific procedures are required due to the diverse circumstances that can delay Corps maintenance dredging and disposal activities.

Section 336.2 Water Quality Certification of Ocean Disposal Activities.

The terms and legislative history of the ODA leave some doubt regarding whether a state has legal authority to

exert control over ocean dumping activities of the Corps covered under the Act (see section 106(d)). Thus, it is unclear whether the Corps must obtain a state water quality certification pursuant to section 401 of the CWA or certify consistency to the maximum extent practicable with an approved state coastal zone management plan pursuant to the CZMA for the ocean disposal of dredged material in the territorial sea.

Notwithstanding this legal question, the Corps will voluntarily, as a matter of comity, apply for state section 401 water quality certification and determine CZMA consistency for ocean disposal of dredged material within the three-mile extent of the territorial sea. Moreover, the Corps will attempt to comply with any reasonable requirement or condition imposed by a state in the course of the 401 certification process or the CZMA consistency certification process within the limits of the territorial sea. Nevertheless, the Corps reserves its legal rights regarding any case where a state unreasonably denies or conditions a 401 water quality certification for proposed ocean disposal of dredged material within the territorial sea or alleges that such disposal would not be consistent to the maximum extent practicable with an approved state CZMA plan.

If such a circumstance arises, the district engineer must so notify WRSC-D, DAEN-CWZ, and DAEN-CCE for purposes of consultation regarding the Corps' appropriate response and course of action.

Part 337 Practices and Procedures.

A practices and procedures part has been added to explain the Corps documentation process and to establish procedures to be applied consistently throughout the Corps' dredged material disposal maintenance program.

Section 337.1 Public Notices.

The public notice procedures section has been expanded to provide for consideration of the notification requirements of the ODA. Additionally we are emphasizing that normally public notices are issued for the life of a disposal activity unless required changes in a disposal plan warrant re-evaluation under the CWA or ODA.

Section 337.2 State Requirements.

Where state disposal requirements exceed those necessary in establishment of the Federal standard, the district engineer is expected to try to resolve the state's concern. In those cases where a resolution of the state's concern is not forthcoming, district engineers are expected to defer maintenance dredging and consult with higher Corps authority.

Section 337.4 Memoranda of Agreement (MOA).

Presently, public notices of maintenance dredging and disposal are required by sections 401 and 404 of the CWA, 103 of ODA, and 307 of the CZMA. We are encouraging district engineers to develop MOAs in order to avoid duplication with similar state and local procedures. Existing MOAs with the states should be examined and, as appropriate, revised to assure that the policies and procedures of this regulation are fully implemented.

Section 337.5 General Authorizations.

As provided by section 404(e) of the CWA and 104(c) of the ODA, certain categories of activities may be authorized on a regional or nationwide basis. The procedures of Part 330 are to be used for the development of new general authorizations. General authorizations which include local interests will comply with the procedures of 33 CFR Parts 320–329.

To better enable the public to utilize fully the benefits of Corps navigation projects, district engineers should propose for adoption regional general authorizations based on the intended use of the Corps' navigation channels. Conceptually, the district engineer would geographically specify the project boundaries. These areas would generally include port facilities, industrial canals, etc. adjacent to navigation channels. Categories of activities that would fulfill the intended project purposes would be authorized, such as maintenance dredging of boat slips and disposal of dredged material in designated disposal areas, mooring dolphins, wharves, etc. Special conditions based on regional environmental emphasis would also be included. This process would notify prospective applicants of parameters for development in specific geographic regions. Similarly, other areas such as those described in coastal zone management plans where development would be discouraged can also be identified.

Section 337.7 Emergency Actions.

In certain circumstances, the Corps may be required to conduct dredging activities to protect or restore navigation in a time period less than that required under normal circumstances.

Section 337.8 Reports to Higher Echelons.

The reports section has been revised to provide currency with existing requirements for reporting of certain activities to headquarters.

Section 337.9 Identification and Use of Disposal Areas.

This section encourages district engineers to identify long-term disposal sites for dredged material.

District engineers are expected to coordinate with local interests in identifying long-term disposal requirements with a view towards developing long-term dredged material disposal management strategies for Corps navigation channels.

Part 338 Other Operations and Maintenance Activities.

With the publication of a regulation for discharges of dredged material, other operations and maintenance (O&M) activities undertaken by the Corps involving the discharge of dredged or fill material also need a regulatory framework for establishment of compliance with applicable environmental laws and regulations. The Corps' planning regulations apply primarily to construction or new work projects, and the regulatory procedures of the permit regulations do not adequately guide Corps managers when undertaking O&M activities involving the placement of dredged or fill material in waters of the United States. Therefore, Part 338 was established to guide Corps managers when undertaking O&M activities involving fill material or dredged material used as fill discharged into waters of the U.S.

SUPPLEMENTARY INFORMATION:

Classification

Since these revisions primarily clarify the rules published at § 209.145 in 1974, based on amendments to the Clean Water Act, the Corps of Engineers has determined that these regulation revisions are not a major rule requiring a Regulatory Impact Analysis under Executive Order 12291.

Environmental Impact Statement

This regulation primarily pertains to the Corps of Engineers with respect to implementation of the environmental protection statutes and EOs. Although this regulation will change the current § 209.145 regulations in certain respects. We have determined that these changes do not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, we have determined that an EIS under the National Environmental Policy Act of 1969 is not required. An Environmental Assessment has been prepared discussing the proposed changes to the

current regulation, subsequent expected environmental impacts, and overall need for the revisions.

List of Subjects

33 CFR Part 335

Environmental protection, Intergovernmental relations, Navigation, Definitions.

33 CFR Part 336

Environmental protection procedures, Water pollution control, Navigation, Clean Water Act procedures, Marine protection, Research, and Sanctuaries Act procedures.

33 CFR Part 337

Administrative practice and procedure, Intergovernmental relations.

33 CFR Part 338

Administrative practice and procedure.

33 CFR Part 209.145 is proposed to be removed and 33 CFR Parts 335, 336, 337 and 338 are proposed to be added to read as follows:

Dated: April 18, 1986.

Approved:

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

PART 335—OPERATION AND MAINTENANCE OF CORPS OF ENGINEERS CIVIL WORKS PROJECTS INVOLVING THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE U.S. OR OCEAN WATERS

Sec.

335.1 Purpose.
335.2 Authority.
335.3 Applicability.
335.4 Policy.
335.5 Applicable laws.
335.6 Related laws and Executive Orders.
335.7 Definitions.

Authority: 33 U.S.C 1344; 33 U.S.C. 1413.

§ 335.1 Purpose.

This regulation prescribes the practices and procedures to be followed by the Corps of Engineers to ensure compliance with the specific statutes governing Civil Works operations and maintenance projects involving the discharge of dredged or fill material into waters of the U.S. or the transportation of dredged material for the purpose of disposal into ocean waters. These practices and procedures should be employed throughout the decision/management process concerning methodologies and alternatives to be used to ensure prudent operation and maintenance activities.

§ 335.2 Authority.

In accordance with section 404 of the Clean Water Act of 1977 (CWA) and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, hereinafter referred to as the Ocean Dumping Act (ODA), the Corps of Engineers regulates the discharge of dredged or fill material into waters of the U.S. and the transportation of dredged material for the purpose of disposal into ocean waters. Section 404 of the CWA requires public notice with opportunity for public hearing for discharges of dredged or fill material into waters of the U.S. and that discharge sites be specified through the application of guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. Section 103 of the ODA requires public notice with opportunity for public hearing for the transportation for disposal of dredged material into ocean waters. Ocean disposal of dredged material must be evaluated using the criteria developed by the Administrator of EPA in consultation with the Secretary of the Army. Section 103(e) of the ODA provides that the Corps of Engineers may, in lieu of permit procedures, issue regulations for Federal projects involving the transportation of dredged material for ocean disposal which require the application of the same criteria, procedures, and requirements which apply to the issuance of permits.

§ 335.3 Applicability.

This regulation (33 CFR Parts 335 through 338) is applicable to the Corps of Engineers when undertaking operation and maintenance activities at Corps Civil Works projects.

§ 335.4 Policy.

The Corps of Engineers undertakes operations and maintenance activities where appropriate and environmentally acceptable. All practicable alternatives are fully considered on an equal basis. This includes the discharge of dredged or fill material into waters of the U.S. or ocean waters in the least costly manner, at the least costly and most practicable location, and consistent with engineering and environmental constraints.

§ 335.5 Applicable laws.

(a) The Clean Water Act (33 U.S.C. 1251 et seq.) (also known as the Federal Water Pollution Control Act Amendments of 1972 and 1977).

(b) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) (commonly referred to as the Ocean Dumping Act).

§ 335.6 Related laws and Executive Orders.

(a) The National Historic Preservation Act of 1966 (16 U.S.C. 470a et seq.), as amended.

(b) The Reservoir Salvage Act of 1960 (16 U.S.C. 469), as amended.

(c) The Endangered Species Act (16 U.S.C. 1531 et seq.) as amended.

(d) The Estuary Protection Act (16 U.S.C. 1221).

(e) The Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), as amended.

(f) The National Environmental Policy Act (42 U.S.C. 4341 et seq.), as amended.

(g) The Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.), as amended.

(h) Section 307(c) of the Coastal Zone Management Act of 1976 (16 U.S.C. 1456(c)), as amended.

(i) The Water Resources Development Act of 1976 (Pub. L. 94–587).

(j) Executive Order 11593, *Protection and Enhancement of the Cultural Environment*, May 13, 1971 (36 FR 8921, May 15, 1971).

(k) Executive Order 11988, *Floodplain Management*, May 24, 1977 (42 FR 26951, May 25, 1977).

(l) Executive Order 11990, *Protection of Wetlands*, May 24, 1977 (42 FR 26961, May 25, 1977).

(m) Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982 (47 FR 3959, July 16, 1982).

(n) Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979.

§ 335.7 Definitions.

The definitions of 33 CFR Parts 323, 324, 327, and 329 are hereby incorporated into 33 CFR Parts 335, 336, 337, and 338. The following terms are defined or interpreted from the Parts 320 through 330 regulations for purposes of 33 CFR Parts 335 through 338.

"Beach nourishment" means the discharge of dredged or fill material for the purpose or replenishing an eroded beach or placing sediments in the littoral transport process.

"Emergency" means a situation which would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate and unforeseen significant economic hardship if corrective action is not taken within a time period less than the normal time needed under standard procedures.

"Federal standard" means the dredged material disposal alternative or alternatives identified by the Corps which represent the least costly alternatives consistent with sound

engineering practices and environmental requirements. The alternative or alternatives are selected through the 404(b)(1) evaluation process or ocean dumping criteria, environmental assessment or environmental impact statement, and public notice coordination process.

"Navigable waters of the U.S." means those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use with or without reasonable improvement to transport interstate or foreign commerce. A more complete definition is provided in 33 CFR Part 329. For the purpose of this regulation, the term also includes the confines of Federal navigation approach channels extending into ocean waters beyond the territorial sea which are used for interstate or foreign commerce.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Statement of Findings" (SOF) means a comprehensive summary compliance document.

"Territorial sea" means the belt of the seas measured from the line of ordinary low water a long that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, extending seaward a distance of three miles.

PART 336—FACTORS TO BE CONSIDERED IN THE EVALUATION OF CORPS NAVIGATION DREDGING PROJECTS INVOLVING THE DISCHARGE OF DREDGED MATERIAL INTO WATERS OF THE U.S. AND OCEAN WATERS

Sec.

336.0 General.
336.1 Discharges of dredged material into waters of the U.S.
336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 336.0 General.

Since the jurisdiction of the CWA extends to all waters of the U.S., including the territorial sea, and the jurisdiction of the ODA extends over ocean waters including the territorial sea, the following rules are established to assure appropriate regulation of discharges of dredged material into waters of the U.S. and ocean waters.

(a) The disposal into ocean waters, including the territorial sea, of dredged material excavated or dredged from navigable waters of the U.S. will be evaluated by the Corps of Engineers in accordance with the ODA.

(b) In those cases where the District Engineer determines that the discharge of dredged material into the territorial sea would be for the primary purpose of fill, such as the use of dredged material for beach nourishment, island creation, or construction of underwater berms, the discharge will be evaluated under section 404 of the CWA.

(c) For those cases where the District Engineer determines that the materials proposed for discharge would not be adequately evaluated under the section 404(b)(1) guidelines of the CWA, he may evaluate that material under the ODA.

§ 336.1 Discharges of dredged or fill material into waters of the U.S.

(a) *Applicable laws.* Section 404 of the CWA requires that a public notice, giving opportunity for public hearing, be issued and that discharge sites be specified through application of the section 404(b)(1) guidelines.

(1) The CWA requires the Corps to seek state 401 water quality certification for discharges of dredged material into waters of the U.S.

(2) Section 401 requires that the state establish procedures for public notice of all requests for water quality certification and that water quality certification requests must be processed to a conclusion by the state within a reasonable period of time, not to exceed one year, otherwise the certification requirements of section 401 are deemed waived.

(3) Section 307 of the Coastal Zone Management Act (CZMA) requires that any activity that a Federal agency conducts or supports within a state's coastal zone or in a Federal enclave within the geographic area of a state's coastal zone be consistent with the Federally approved state management program to the maximum extent practicable. The state is provided a reasonable period of time to take final action on Corps consistency determinations; otherwise state concurrence can be presumed.

(b) *Procedures.* If changes in the disposal plan for an existing Corps navigation project warrant re-evaluation under the CWA, the following procedures will be followed by district engineers prior to discharging dredged material into waters of the U.S. except where emergency action as described in 33 CFR Part 337 is required.

(1) A public notice providing opportunity for public hearing should be issued at the earliest practicable time. The public notification procedures of 33 CFR 337.1 should be followed.

(2) The public hearing procedures of 33 CFR Part 327 should be followed.

(3) As soon as practicable, the district engineer will request from the state a 401 water quality certification and, if applicable, provide a coastal zone consistency determination for the Corps activity. Submission of the public notice to the state will constitute a request for water quality certification for purposes of section 401 of the CWA and shall constitute a consistency determination for purposes of section 307 of the CZMA. The Corps and the state may mutually agree on alternative requirements, if appropriate, regarding the state water quality certification or coastal zone consistency process.

(4) Discharges of dredged material will be evaluated using EPA's guidelines authorized under section 404(b)(1) of the CWA, or using the ODA regulations, where appropriate. If the EPA guidelines alone would prohibit the designation of a proposed discharge site, the economic impact on navigation and anchorage of the failure to use the proposed discharge site will also be considered in evaluating whether the proposed discharge is to be authorized under CWA 404(b)(2).

(5) The EPA Administrator can prohibit or restrict the use of any defined area as a discharge site under 404(c) whenever he determines, after notice and opportunity for public hearing and after consultation with the District Engineer, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. Upon notification of the prohibition of a discharge site by the Administrator and in the absence of a resolution of the Administrator's concerns as expressed in the prohibition, the District Engineer should complete the administrative processing of the proposed project up to the point of authenticating the Statement of Findings (SOF) or Record of Decision (ROD). The unsigned SOF or ROD along with a report described in 33 CFR 337.8 will be forwarded through WRSC–D, Fort Belvoir, VA 22060–5586 to the Chief of Engineers.

(6) In accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) or Environmental Assessment (EA) should be prepared for all Corps of Engineers projects involving the discharge of dredged or fill material, unless such projects are included within a categorical exclusion found at 33 CFR

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Part 230. If a proposed maintenance activity will result in a minor deviation in the operation and maintenance plan described in the EA or EIS, the District Engineer should determine the need to prepare a new EA, EIS, or supplement. If a new EA, EIS, or supplement is required, the procedures of 33 CFR Part 220 will be followed.

(7) If it can be anticipated that related activities by other Federal or non-Federal interests will occur in the same area as Corps projects, the District Engineer should include, to the extent practicable, related work in the planning, processing, and review of Corps projects. Related work normally includes, but is not necessarily limited to, maintenance dredging of approach channels and berthing areas connected to Federal navigation channels. To the maximum extent practicable, the district engineer should coordinate the related projects with interested Federal, state, regional, and local agencies and the general public at the same time he does so for the Corps project. The District Engineer should ensure that related projects meet all substantive requirements of 33 CFR Parts 320 through 330 or are authorized by nationwide or other general permit. Documents covering maintenance activities normally should include sufficient discussion of ancillary activities in need of maintenance. To the extent practicable, district engineers should assist local interests to obtain any necessary section 401 water quality certification and, if required, the section 307 coastal zone consistency concurrence from the state in the same action as the Federal maintenance work. The absence of such certification or concurrence by the state for the related project shall not be cause for delay of the Federal project. Local sponsors will be responsible for funding all work necessary in support of the related activity. If permitting of the related project is found to comply with all legal requirements and to be not contrary to the public interest, sections 10, 404, and 103 permits normally should be issued by the district engineer in separate SOF or ROD.

(c) *Evaluation factors.* The following factors should be used, as appropriate, to evaluate the discharge of dredged material into waters of the U.S. Other relevant factors may also be evaluated, as needed

(1) *Navigation and Federal standard.* The maintenance of a reliable Federal navigation system is essential to the economic well-being and national defense of the country. The district engineer should give full consideration to the impact of the failure to maintain navigation channels on the local, regional, and national economy. It is the Corps' policy to regulate the discharge of dredged material from its projects to assure that dredged material disposal occurs in the least costly, environmentally acceptable manner, consistent with engineering constraints established for the project. The environmental assessment or environmental impact statement in conjunction with the section 404(b)(1) guidelines and public notice coordination process should be used as a guide in formulating environmentally acceptable alternatives. The least costly alternative, consistent with sound engineering practices and environmental requirements and selected through this formulation process, will be designated the Federal standard for the proposed project.

(2) *Water quality.* Through the Section 404(b)(1) evaluation process, the district engineer should evaluate the water quality impacts of the proposed project. The evaluation should include consideration of state water quality standards. The district engineer should request state water quality certification using the procedures of 33 CFR 336.1(b) and § 337.2 of this Part. If the state does not take final action on a request for water quality certification within two months from the date of the initial request, the district engineer should notify the state of his intention to presume a waiver as provided by Section 401 of the CWA. If the state agency, within the two-month period, requests an extension of time, the district engineer should approve one 30-day extension unless, in his opinion, the magnitude and complexity of the information contained in the request warrants a longer or additional extension period. The total period of time in which the state must act shall not exceed six months from the date of the initial request. Waiver of water quality certification can be conclusively presumed after six months from the date of the initial request.

(3) *Coastal zone consistency.* As appropriate, the district engineer should determine whether the proposed project is consistent with the state coastal zone management program to the maximum extent practicable. The district engineer should, in accordance with the procedures of paragraph (b) of this section and § 337.2 provide a certification determination to the coastal zone management agency. If the state fails to provide a response within 45 days from receipt of the initial certification statement, the district engineer will presume state agency concurrence. If the state agency, within the 45-day period, requests an extension of time, the district engineer should approve one 15-day extension unless, in his opinion, the magnitude and complexity of the information contained in the consistency determination warrants a longer or additional extension period. The longer or additional extension period shall not exceed 6 months from the date of the initial consistency determination.

(4) *Wetlands.* Some wetland areas constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. The district engineer should, therefore, follow the guidance in 33 CFR 320.4(b) and Executive Order 11990, dated May 24, 1977, when evaluating Corps operations and maintenance activities in wetlands; also see paragraph (b)(4) of this section.

(5) *Endangered species.* All Corps operations and maintenance activities should be reviewed for the potential impact on threatened or endangered species, pursuant to the Endangered Species Act of 1973. If the district engineer determines that the proposed activity will not affect listed species or their critical habitat, a statement to this effect should be included in the public notice. If the proposed activity may affect listed species or their critical habitat, formal consultation procedures should be initiated with the U.S. Fish and Wildlife Service or National Marine Fisheries Service and a statement to this effect should be included in the public notice. See 50 CFR Part 402.

(6) *Cultural resources.* Archeological, historical, or architectural resource surveys may be required to locate and identify previously unrecorded cultural resources in navigation channels and at dredged or fill material disposal sites. If resources are known to exist within the navigation channel or proposed disposal area, further intensive testing may be necessary in order to evaluate the resources against the criteria of the National Register of Historic Places. Cultural resources are not normally found in previously constructed navigation channels or previously used disposal areas. Therefore, cultural resource investigations should not be conducted for maintenance dredging and disposal activities proposed within the boundaries of a previously constructed navigation channel or previously used disposal area unless it is established that a cultural resource exists.

(i) The district engineer should request a determination of eligibility for the National Register of Historic Places for all resources located within the disposal area which, after evaluation under the National Register criteria, the district engineer considers to be eligible for the Register.

(ii) In accordance with section 106 of the National Historic Preservation Act of 1966, as amended, the district engineer will request the comments of the Advisory Council on Historic Preservation for any proposed actions which will have an effect upon a resource listed on, or determined eligible for, the National Register of Historic Places.

(7) *Scenic and recreational values.* Maintenance dredging and disposal activities may involve areas which possess recognized scenic, recreational, or similar values. Full evaluation requires that due consideration be given to the effect which dredging and disposal of the dredged or fill material may have on the enhancement, preservation, or development of such values. Recognition of these values is often reflected by state, regional, or local land use classification or by similar Federal controls or policies. Operations and maintenance activities should, insofar as possible, be consistent with and avoid adverse effects on the values or purposes for which such resources have been recognized or set aside, and for which those classifications, controls, or policies were established. Special consideration must be given to rivers named in section 3 of the Wild and Scenic Rivers Act and those proposed for inclusion as provided by section 4 and 5 of the Act, or by later legislation. Any other areas named in Acts of Congress or Presidential Proclamations such as National Rivers, National Wilderness Areas, National Seashores, National Parks, National Monuments, and other such areas as may be established under Federal law for similar and related purposes must be given full consideration when evaluating Civil Works operations and maintenance activities.

(8) *Fish and Wildlife.* (i) In accordance with the Fish and Wildlife Coordination Act FWCA, district engineers will consult, through the public notification process, with the Regional Directors of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of fish and wildlife resources by considering ways to prevent their direct and indirect loss and damage due to the proposed operation and maintenance activity. The district engineer will give full consideration to these views on fish and wildlife conservation in evaluating the activity. The proposed operations may be modified in order to lessen the damage to such resources. The district engineer should include such justifiable means and measures for fish and wildlife resources that are found to be appropriate. Corps funding of Fish and Wildlife Service activities is not applicable for Corps operation and maintenance projects.

(ii) District engineers should consider ways of reducing unavoidable adverse environmental impacts of dredging and disposal activities. The determination as to the extent of implementation of such measures will be done after weighing the benefits and detriments of the maintenance work and considering applicable environmental laws, regulations, and other relevant factors. The final decision on fish and wildlife conservation measures rests with the district engineer.

(9) *Marine Sanctuaries.* Operations and maintenance activities involving the discharge of dredged or fill material in a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the ODA should be evaluated for impact on the marine sanctuary. In such a case, certification should be obtained from the Secretary of Commerce that the proposed project is consistent with the purposes of Title III of the ODA and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(10) *Other state requirements.* District engineers should make every reasonable attempt to comply with state water quality standards and Federally approved coastal zone programs. As a matter of policy, district engineers normally should not seek state permits or licenses not reasonably related to the control or abatement of pollution.

(11) *Additional factors.* In addition to the factors described in paragraphs (c)(1) through (9) of this section, the following factors should also be considered.

(i) The evaluation of Corps operations and maintenance activities involving the discharge of dredged or fill material into waters of the U.S. is a continuing process and, as practicable, should proceed concurrently with the processing of state water quality certification and, if required, the provision of a coastal zone consistency determination to the state. If a local agency having jurisdiction over or concern with the particular activity comments on the project through the public notice coordination, due consideration should be given to those official views as a reflection of local factors.

(ii) Where officially adopted state, regional, or local land use classifications, determinations, or policies are applicable, they normally should be presumed to reflect local factors and will be considered in addition to other national factors.

§ 336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

(a) *Applicable law.* Section 103(a) of the ODA provides that the Corps of Engineers may issue permits, after notice and opportunity for public hearing, for the transportation of dredged material for the purpose of disposal into ocean waters. Proposed ocean disposal activities will be evaluated by the Corps using the appropriate EPA regulations promulgated pursuant to the ODA.

(b) *Procedure.* The following procedures will be followed by district engineers for dredged material disposal into ocean waters except where emergency action as described in 33 CFR 337.7 is required.

(1) In accordance with the provisions of section 103 of the ODA, the district engineer should issue a public notice giving opportunity for public hearing, following the procedures described in 33 CFR 337.1 for Corps operation and maintenance activities involving material dredged from navigable waters and disposed of in ocean waters, as well as dredged material transported through the territorial sea for the purpose of ocean disposal.

(2) The public hearing procedures of 33 CFR 327 should be followed.

(c) *State permits and licenses.* The terms and legislative history of the ODA leave some doubt regarding whether a state has legal authority to exert control over ocean dumping activities of the Department of the Army in the territorial sea covered under the Act (see section 106(d)). Thus, it is unclear whether the Department of the Army must obtain a state water quality certification pursuant to section 401 of the CWA or certify consistency with an approved state coastal zone management plan pursuant to the CZMA, for the ocean disposal of dredged material in the territorial sea. Notwithstanding this legal question, the Department of the Army will voluntarily, as a matter of

county, apply for state section 401 water quality certification and determine consistency with a Federally approved coastal zone management plan for the Department of the Army's ocean disposal of dredged material within the three-mile extent of the territorial sea. Moreover, the Army will attempt to comply with any reasonable requirement or condition imposed by a state in the course of the 401 certification process or the CZMA consistency certification process. Nevertheless, the Department of the Army reserves its legal rights regarding any case where within the limits of the territorial sea a state unreasonably denies or conditions a 401 water quality certification for proposed Army ocean disposal of dredged material, or asserts that such disposal would not be consistent with an approved state CZMA plan. If such a circumstance arises, the district engineer shall so notify WRSC–D, DAEN–CWZ, and DAEN–CCE for purposes of consultation regarding the Corps of Engineers' appropriate response and course of action.

(d) *Evaluation factors.* (1) In addition to the evaluation factors of § 336.1(c) of this part, activities involving the transportation of dredged material for the purpose of disposal in ocean waters will be evaluated by the Corps of Engineers to determine whether the proposed disposal will unreasonably degrade or endanger human health, welfare, or amenities, the marine environment, or ecological systems. In making this evaluation, the District Engineer, in addition to considering the criteria developed by EPA on the effects of the dumping, will also consider navigation, economic and industrial development, and foreign and domestic commerce, as well as the availability of alternatives in determining the need for ocean disposal of dredged material. Where ocean disposal is determined to be appropriate, the District Engineer should, to the extent feasible, select disposal sites which have been recommended by the Administrator pursuant to section 102(c) of the ODA.

(2) As provided by the EPA regulations for implementing the procedures of section 102 of the ODA, the Regional Administrator of EPA may make an independent evaluation of dredged material disposal activities regulated under section 103 of the ODA related to the effects of dumping. The EPA regulations provide that the Regional Administrator make said evaluation within 15 days after receipt of all requested information. The Regional Administrator may request from the district engineer an extension of this 15-day period to 30 days. The EPA regulations provide that the Regional Administrator notify the District Engineer of non-compliance with the environmental impact criteria or with any restriction relating to critical areas on the use of an EPA recommended disposal site established pursuant to section 102(c) of the ODA. In cases where the Regional Administrator has notified the district engineer in writing that the proposed disposal will not comply with the criteria related to the effects of dumping or as critical area restrictions, no dredged material disposal may occur unless and until the provisions of 40 CFR 225.3 are followed and the Administrator grants a waiver of the criteria pursuant to section 103(d) of the ODA.

(3) If the Regional Administrator advises the district engineer that the proposed disposal will comply with the criteria, the district engineer will complete the administrative record and sign the SOF.

(4) In situations where an EPA designated site is not feasible for use or where no site has been designated by the EPA, the district engineer, in accordance with the ODA and in consultation with EPA, may select a site pursuant to section 103. Appropriate NEPA documentation, to include appropriate environmental factors of section 102(a) of the ODA, should be used to support site selections.

(5) If the Regional Administrator advises the district engineer that a proposed ocean disposal site or activity will not comply with the criteria, the district engineer should proceed as follows.

(i) The district engineer should determine whether there is an economically feasible alternative method or site available other than the purposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate the engineering and economic feasibility of the alternative sites.

(ii) If the district engineer makes a determination that there is no economically feasible alternative method or site available, he will so advise the Regional Administrator of his intent to proceed with the proposed action setting forth his reasons for such determination.

(iii) If the Regional Administrator advises, within 15 days of the notice of the intent to issue, that he will commence procedures specified by section 103(c) of the ODA to prohibit use of a proposed disposal site, the case will be forwarded through WRSC–D, Fort Belvoir, VA 22060–5586 to the Secretary of the Army or his designee for further coordination with the Administrator of EPA and final resolution. The report forwarding the case will be in the format described in 33 CFR 337.9.

(iv) The Secretary of the Army or his designee will evaluate the proposed project and make a final determination on the proposed disposal. If the decision of the Secretary of the Army or his designee is that ocean disposal at the proposed site is required because of the unavailability of economically feasible alternatives, he will seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with section 103(d) of the ODA.

PART 337—PRACTICES AND PROCEDURES

Sec.
337.0 Purpose.
337.1 Public notice.
337.2 State requirements.
337.3 Transfer of Section 404 program to the state.
337.4 Memoranda of Agreement (MOA)
337.5 General authorizations.
337.6 Statement of findings (SOF).
337.7 Emergency actions.
337.8 Reports to higher echelons.
337.9 Identification and use of disposal areas.
337.10 Supervision of Federal projects.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413

§ 337.0 Purpose.

The practices and procedures part of this regulation apply to all Corps operations and maintenance activities involving the discharge of dredged or fill material in waters of the U.S. and ocean waters and related activities of local interests accomplished to ensure continued functions of constructed Corps projects.

§ 337.1 Public notice.

Presently, public notification of proposed discharges of dredged or fill material is required by the provisions of section 103 of the ODA, sections 401 and 404 of the CWA, and section 307 of the CZMA. District engineers are encouraged to develop procedures to avoid unnecessary duplication of state agency procedures. Joint public notification procedures should be a primary factor in the development of Memoranda of Agreement with the states as described in § 337.4 of this Part.

(a) With the possible exception of emergency actions as discussed in § 337.7 of this Part, the district engineer should issue a public notice for projects involving the discharge of dredged or fill

material into waters of the U.S. or ocean waters unless the project is authorized by a general permit. Public notices for Corps operation and maintenance activities are normally issued for an indefinite period of time and are not reissued unless changes in the disposal plan warrant re-evaluation under section 404 of the CWA or section 103 of the ODA. The public notice is the primary method of advising all interested parties of Federal projects and of soliciting comments and information necessary to evaluate the probable impact of the discharge of dredged or fill material into waters of the U.S. or ocean waters. The notice should, therefore, include sufficient information to provide a clear understanding of the nature of the activity and related activities of local interests in order to generate meaningful comments. The notice normally should include the following items:

(1) The name and location of the project and proposed disposal site.

(2) A general description of the project and a description of the estimated type, composition, and quantity of materials to be discharged, the proposed time schedule for the dredging activity, and the types of equipment and methods of dredging and conveyance proposed to be used.

(3) A sketch showing the location of the project, including depth of water in the area and all proposed discharge sites.

(4) The nature, estimated amount, and frequency of known and anticipated related dredging and discharge to be conducted by others.

(5) A list of Federal, state, and local environmental agencies with whom the activity is being coordinated.

(6) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(7) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any.

(8) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing except in emergency situations where the procedures of § 37.7 of this Part will be followed, within which interested parties may express their views concerning the proposed project.

(9) If the proposed Federal project would occur in the territorial seas or ocean waters, a description of the project's relationship to the baseline from which the territorial sea is measured.

(10) A statement on the status of state water quality certification under section 401 of the CWA.

(11) As necessary, a statement on the status of coastal zone consistency determinations under section 307 of the CZMA.

(12) A statement on cultural resources, state of present knowledge, likelihood of damage or other adverse effect on such resources, etc.

(13) A statement on endangered species.

(14) A statement on evaluation factors to be considered, adapted from that presented at 33 CFR 325.3(b).

(15) The name, address, and telephone number of the Corps employee from whom additional information concerning the project may be obtained.

(16) The signature of the district engineer or his designee on all maintenance dredged material disposal public notices.

(17) For activities regulated under section 103 of the ODA, the following additional information should be integrated into the public notice:

(i) A statement on the designation status of the disposal site.

(ii) If the proposed disposal site is not a designated site, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible.

(iii) A brief description of known dredged material discharges at the proposed disposal site.

(iv) Existence and documented effects of other authorized disposals that have been made at the disposal area.

(v) An estimated length of time during which disposal would continue at the proposed site.

(vi) Information on the characteristics and composition of the dredged material, and the following paragraph:

"The proposed transportation of this dredged material for the purpose of disposing of it in ocean waters is being evaluated to determine that the proposed disposal will not unreasonably degrade or endanger human health, welfare, or amenities or the marine environment, ecological systems, or economic potentialities. In making this determination, the criteria established by the Administrator, EPA pursuant to section 102(a) of the ODA will be applied. In addition, based upon an evaluation of the potential effect which the failure to utilize this ocean disposal site will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, an independent determination will be made of the need to dispose of the dredged material in ocean waters, other possible methods of disposal, and other appropriate locations."

(b) The following statement should be included in the public notice:

"Any person who has an interest which may be affected by the disposal of this dredged material may request a public hearing. The request must be submitted in writing to the district engineer within the comment period of this notice and must clearly set forth the interest which may be affected and the manner in which the interest may be affected by this activity."

(c) Public notices should be distributed as described in 33 CFR 325.3(c). In addition, public notices should be sent to CDR USACE (DAEN–CWO–M), Washington, DC 20314, and the Water Resources Support Center, Dredging Division, Ft. Belvoir, VA 22060–5586, if the project involves the discharge of dredged material in waters of the U.S. or ocean waters. District engineers should also develop, as appropriate, regional mailing lists for Corps maintenance dredging and disposal activities to the extent practicable that property owners adjacent to the navigation channel and disposal area are notified of the proposed activity. In order to effect compliance with Executive Order 12372, district engineers should provide copies of public notices to concerned state and local elected officials.

(d) The district engineer should consider all comments received in response to the public notice in his subsequent actions. All comments expressing objections to or raising questions about the project should be acknowledged. Comments received as form letters or petitions, however, may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments are received which relate to matters within the special expertise of another agency, the district engineer may seek the advice of that agency. The receipt of comments as a result of the public notice should normally not extend beyond the stated comment period; however, at his discretion, the district engineer may provide an extension.

(e) Notices sent to several agencies within the same state may result in conflicting comments from those agencies. Many states have designated a state agency or individual to provide a single and coordinated state position regarding Federal activities. Where a state has not so designated a single source, the district engineer, as appropriate, may elicit from the Governor an expression of his views and desires concerning the proposed and subsequent similar projects.

(f) All appropriate comments received from the public notice coordination should be considered in the public interest review process. Comments received from Federal or state agencies which are within the area of expertise of another agency should be communicated with that other agency if the district engineer needs the information to make a final determination on the proposed project. Such comments should be treated as comments from interested parties.

§ 337.2 State requirements.

The procedures of this section should be followed in implementing state requirements.

(a) District engineers will cooperate to the maximum extent practicable with state agencies to prevent violation of state water quality standards and to achieve consistency to the maximum degree practicable with a Federally approved coastal zone management program. The district engineer should request water quality certification and certify consistency to the maximum extent practicable with an approved coastal zone program. Furthermore, the district engineer should request such certification and consistency to coincide with the maintenance dredging schedule for the project (normally ten years or longer). Requests should be as specific as possible while allowing enough flexibility to accommodate future minor deviations in the dredging or disposal plan due to changes in disposal technology, unexpected events such as shoaling from storms or highwaters, or changes in dredging schedules, etc., without necessitating additional formal coordination with the state agencies.

(b) If a state agency imposes beneficial dredged material uses as special conditions (e.g., to water quality certification), any additional expense associated with such provisions should not be a Corps responsibility unless specifically authorized by Congress. If the state agency imposes conditions or requirements which exceed those needed to meet the Federal standard, the district engineer should determine the state's rationale and provide to the state information addressing why the alternative which represents the Federal standard is environmentally acceptable. The district engineer should accommodate the state's concerns to the extent practicable. However, if a state agency attempts to impose conditions or controls which, in the district engineers opinion cannot reasonably be accommodated, the following procedures should be followed.

(1) In situations where an agency requires monitoring or testing, the district engineer should strive to reach an agreement with the agency on a data acquisition program. If the agency insists on requirements which, in the opinion of the district engineer, exceed those required in establishment of the Federal standard, the agency should be asked to fund the difference in cost. If the agency agrees to fund the difference in cost, the district engineer should comply with the request. If the agency does not fund the additional cost, the district engineer should follow the guidance in paragraph (b)(3) of this section.

(2) When an agency requires special conditions or alternatives and the Federal standard does not, district engineers should proceed as follows: In those cases where the project authorization requires a local sponsor to provide suitable disposal areas, the local sponsor should be advised of the need for disposal areas. Disposal areas should be made available by a sponsor before dredging proceeds. In other cases where there are no local sponsor requirements to provide disposal areas, the state or the prospective local sponsor will be advised that, unless the state or the sponsor provides suitable disposal areas, the added Federal cost of providing these disposal areas will affect the priority of performing dredging on that project. In either case, states will be made aware that additional costs to meet state standards or the requirements of the coastal zone management program may cause the project to become economically unjustified.

(3) If the state denies or notifies the district engineer of its intent to deny water quality certification or does not concur regarding coastal zone consistency the project dredging may be deferred. A report pursuant to § 337.8 of this Part should be forwarded through WRSC–D, Ft. Belvoir, VA 22060–5586 to the Director of Civil Works for resolution. The report should include justification showing the economic need for dredging, the impact on states outside the project areas if the project is not dredged, a description, an estimated cost of agency requirements which exceed those necessary in establishment of the Federal standard, and the relative urgency of dredging based on threat to national security, life or property. The report should also contain any other facts which will aid in determining whether to further defer the dredging or the need to exercise the authority of the Secretary of the Army to maintain navigation as provided by section 511(a) of the CWA if the disagreement concerns water quality certification. If the disagreement concerns coastal zone consistency, the district engineer should follow the reporting requirement of this section and 33 CFR 336.1.

§ 337.3 Transfer of the Section 404 program to the states.

Section 404(g–1) of the CWA allows the Administrator of the EPA to transfer to qualified states administration of the section 404 permit program for discharges into certain waters of the U.S. Once a state's 404 program is approved, the district engineer should follow state procedures developed in accordance with section 404(g–1) of the CWA for all ongoing Corps projects involving the discharge of fill material in transferred waters to the state agency responsible for administering the program. Corps projects involving the discharge of dredged or fill material in waters not transferred to the state should be processed in accordance with this regulation.

§ 337.4 Memoranda of agreement (MOA).

The establishment of joint notification procedures for Corps projects involving disposal of dredged or fill materal should be actively pursued through the development of MOAs with the state. The MOAs may be used to define responsibilities between the state and the Corps district involved. The primary purpose of MOAs should be to avoid or eliminate administrative duplication, when such duplication does not contribute to the overall decision-making process. MOAs for purposes of this regulation should not be used to implement provisions not related to the maintenance or enforcement of water quality standards (state or Federal) coastal zone management. District engineers are authorized and encouraged to develop MOAs with states and other Federal agencies for Corps projects involving the discharge of dredged or fill material. Copies of all MOAs should be forwarded to WRSC–D, Ft. Belvoir, VA 22060–5586.

§ 337.5 General authorizations.

Under the provisions of sections 404(e) of the CWA and 104(c) of the ODA, certain categories of activities may be authorized on a regional, statewide, or nationwide basis. General authorizations can be a useful mechanism for implementation of the procedural provisions of the CWA and ODA while avoiding unnecessary duplication and paperwork. Through the general authorization process, compliance with all environmental laws and regulations including coastal zone consistency, if applicable, and water quality certification can be

accomplished in a single process for a category of activities. Since the emphasis of particular environmental issues for most Corps projects is more regional than nationwide, district engineers are encouraged to develop general authorizations for routine Civil Works activities involving the discharge of dredged or fill material to address the specific requirements of a particular geographic region. When evaluating general categories of activities, the district engineer should follow the same procedure as outlined for individual Federal activities including the water quality certification and/or coastal zone consistency requirements of 33 CFR Part 336. General authorizations should include, as practicable, related activities of local interests. Additionally, district engineers should, to the maximum extent practicable, utilize existing general permits authorized on a statewide or regional basis and the nationwide permits at 33 CFR Part 330 for Federal projects involving the disposal of dredged material. The development of new statewide or regional general authorizations for Federal activities will be in accordance with the requirements of 33 CFR 336.1 and 336.2. General permits for related activities of local interests will be developed using the procedures of 33 CFR Parts 320 through 330.

§ 337.6 Statement of findings (SOF).

Upon completion of required coordination, receipt or waiver of required state certifications, and completion of the appropriate environmental documents, an SOF should be prepared. In cases involving an EIS, an ROD should be prepared in accordance with 33 CFR Part 230 and should be used in lieu of the SOF, providing the substantive parts of this section are included in the ROD. The SOF need not duplicate information contained in supporting environmental documents but rather may incorporate it by reference. The SOF should include a comprehensive summary and record of compliance and should be prepared in the following format except that the procedures of 33 CFR 325.2 should be followed for related activities of local interests.

(a) The SOF should identify the name of the preparer, date (which may not necessarily correspond to the date signed), and name of waterway.

(b) The proposed action for which the findings are made should be described.

(c) A coordination section should be provided. The coordination section will reference the public notice number and date. The letters of comment and appropriate responses will be summarized. Any coordination undertaken by local or state agencies should also be discussed.

(d) An environmental effects and impacts section should be used to document compliance with the applicable environmental laws. This section will include the views and/or conditions of the state concerning water quality certification and, if required, coastal zone consistency.

(e) A determinations section should reference the results of the EA and/or EIS and any necessary conditions or modifications as well as any special conditions necessary to meet the state's water quality standards or coastal zone management program. Appropriate conditions or modifications should be included in the project specifications. This section should also contain a section on consideration of alternatives and cumulative impacts.

(f) A section on the district engineer's findings and conclusions concerning the proposed project should be included.

(g) The SOF should be dated and signed by the district engineer, except in those cases requiring referral to higher authority.

(h) In accordance with the provisions of the ODA, the district engineer will forward a copy of the SOF to the District Commander, U.S. Coast Guard, if the activity involves the ocean disposal of dredged material. A copy of the SOF should also be placed in a conspicuous place on the vessel used for transportation or dumping of dredged material.

(i) The Findings of No Significant Impact required by 33 CFR Part 230 may be incorporated into the SOF, as appropriate.

§ 337.7 Emergency actions.

(a) After obtaining approval from the division engineer, the district engineer should respond to emergency situations on an expedited basis, complying with the procedures of this regulation to the maximum extent practicable. The district engineer should issue a public notice describing the emergency in accordance with § 337.1 of this Part, if such a notice is practicable in view of the emergency situation. To the extent practicable, the public notice should be forwarded to all appropriate Federal and state agencies. To the maximum extent practicable, the district engineer should coordinate with the EPA for consistency with the provisions of the CWA and ODA. To the extent practicable, the district engineer should prepare a section 404(b)(1) evaluation report and, as necessary, an environmental assessment. If comments are received from the public notice which, in the judgment of the district engineer, reveal the necessity of modifying the emergency operation, the district engineer should take appropriate measures to modify the emergency operation to reduce, avoid, or minimize adverse environmental impacts. If the district engineer, after receiving comments from the public notice, determines that the emergency action would constitute a major Federal action significantly affecting the quality of the human environment, he should, after consultation with the division engineer, to the maximum degree practicable, coordinate with the Council on Environmental Quality about alternative arrangements for compliance with the NEPA in accordance with 40 CFR 1506.11. To the maximum extent practicable, district engineers should consult with the appropriate state official to obtain water quality certification or waiver of certification and should certify that the Federal action is consistent to the maximum extent practicable with an approved coastal zone management plan for emergency activities.

§ 337.8 Reports to higher echelons.

(a) Certain activities involving the discharge of dredged or fill material require action by the division engineer or Chief of Engineers. Such reports will be prepared in the format described in paragraph (b) of this section. Reports may be necessary in the following situations:

(1) When there is substantial doubt as to authority, law, regulations, or policies applicable to the Federal project;

(2) When higher authority requests the case be forwarded for decision;

(3) When the state does not concur in a coastal zone consistency determination or concurs with conditions or controls not related to the coastal zone management program or significantly exceeding the Federal standard;

(4) When the state denies a water quality certification or issues the certification with conditions or controls not related to maintenance or enforcement of state water quality standards or significantly exceeding the Federal standard;

(5) When the Regional Administrator has advised the district engineer, pursuant to section 404(c) of the CWA, of his intent to prohibit or restrict the use of a specified discharge site or that the discharge of dredged material in ocean waters or territorial seas will not comply with the criteria and restrictions on the use of the site established under the ODA;

(6) When the state fails to grant water quality certification or a waiver of certification or concurrence or waiver of coastal zone consistency for emergency actions.

(b) *Reports.* The report of the district engineer on a project requiring action by the division engineer or by the Chief of Engineers should be in a letter form as prescribed by the Office of the Chief of Engineers.

§ 337.9 Identification and use of disposal areas.

(a) As practicable, district engineers should identify and develop dredged material disposal management strategies that satisfy the long-term (greater than 10 years) needs for Corps projects. Full consideration should be given to all practicable alternatives including upland, open water, beach nourishment, within banks disposal, ocean disposal, etc. Within existing policy, district engineers should also explore beneficial uses of dredged material, such as marsh establishment and dewatering techniques, in order to extend the useful life of existing disposal areas. Requests for water quality certification and/or coastal zone consistency concurrence for projects with identified long-term disposal sites should include the length of time for which the certification and/or consistency concurrence is sought. The section 404(b)(1) evaluation and environmental assessment or environmental impact statement should also address long-term maintenance dredging and disposal. The Corps of Engineers will be responsible for accomplishing the environmental compliance requirements for all Corps disposal areas.

(b) The identification of disposal sites should include, as practicable, consideration of dredged material disposal needs by local interests, with first priority being given to the Federal project. District engineers are encouraged to require local interests, where the project has a local sponsor, to designate long-term disposal areas.

§ 337.10 Supervision of Federal projects.

District engineers should assure that dredged or fill material disposal activities are conducted in conformance with current plans and description of the project as expressed in the SOF or ROD. Conditions and/or limitations required by a state (e.g., water quality certification), as identified through the coordination process, should be included in the project specifications. To the maximum extent practicable, contracting officers should assure that contractors are aware of their responsibilities for compliance with the terms and conditions of state certifications and other conditions expressed in the SOF or ROD.

PART 338—OTHER CORPS ACTIVITIES INVOLVING THE DISCHARGE OF DREDGED OR FILL INTO WATERS OF THE UNITED STATES

Sec.
338.1 Purpose.
338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

Authority: 33 U.S.C. 1344.

§ 338.1 Purpose.

(a) The procedures of this part, in addition to the provisions of 33 CFR Parts 335 through 337, will be followed when undertaking Corps operations and maintenance activities involving the discharge of fill material into waters of the United States, except that the procedures of 33 CFR Part 336 will be used in those cases where the discharge of fill material is also the discharge of dredged material, i.e., beach nourishment, within banks disposal for erosion control, etc.

(b) After construction of Corps Civil Works water resource projects, certain operations and maintenance activities involving the discharge of fill material require evaluation under the CWA. These activities generally include lakeshore management, installation of boat ramps, erosion protection along the banks of navigation channels, jetty maintenance, remedial erosion control, etc. While these activities are normally addressed in the existing environmental impact statement for the project, new technology or unexpected events such as storms or high waters may require maintenance or remedial work not fully addressed in existing environmental documents or state permits. The CWA exemptions at 404(f) and NEPA categorical exclusions should be used to the maximum extent practicable. If the district engineer decides that the changes have not been adequately addressed in existing environmental documentation, the procedures of this part will be followed.

§ 338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

(a) Generally, fill activities conducted by the Corps for operations and maintenance of existing Civil Works water resource and navigation projects are routine and have little, if any, potential for significant degradation of the environment. District engineers are encouraged to develop general authorizations in accordance with the procedures of 33 CFR 337.5 for categories of such routine activities. The general authorization should satisfy all compliance requirements including water quality certifications and, if applicable, coastal zone consistency determinations. For activities which are not conducive to the development of general authorizations or are more appropriately evaluated on an individual basis, the following procedures should be followed.

(b) A public notice should be issued using the procedures of 33 CFR 337.1.

(c) Water quality certifications should be requested and, if applicable, coastal zone consistency determinations should be provided using the procedures of 33 CFR Part 336.

(d) The discharge site should be specified through the application of the section 404(b)(1) guidelines.

(e) The procedures of 40 CFR Part 230 should be used to determine the NEPA compliance requirements.

(f) The factors of 33 CFR 336.1(c) should be followed when evaluating fill activities.

(g) Upon completion of all required coordination and after receipt of the necessary state certifications, the district engineer should prepare an SOF in accordance with 33 CFR 337.6.

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Friday
May 30, 1986

Part V

Department of Defense

Department of the Army

32 CFR Part 553

Military Reservations and National Cemeteries; Arlington National Cemetery; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

Military Reservations and National Cemeteries; Arlington National Cemetery

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The change clarifies the current rule the only certain individuals and organizations are allowed to donate items to be placed in Arlington National Cemetery. The Department of the Army is revising the rules concerning tributes in Arlington National Cemetery to commemorate events, units, groups and/or organizations.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Harriet Antiporowich, Arlington National Cemetery, Arlington, VA 22211-5003 (202) 695-3191.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 50315-50316 of the Federal Register of December 10, 1985. Interested parties were given the opportunity to comment. No comments have been received.

Responsibility for the administration of Arlington National Cemetery was recently transferred from the Director of Casualty and Memorial Affairs Operations Center, United States Army Military Personnel Center to the Commander, United States Army Military District of Washington. Accordingly tributes to be placed in Arlington National Cemetery will be approved by the Superintendent, Arlington National Cemetery rather than the Director of Casualty and Memorial Affairs Operations.

Regulatory Flexibility Act

This rule does not have "significant" economic impact on a substantial number of small "entities" as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

Paperwork Reduction Act

There are no collection of information requirements contained in this rule that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects in 32 CFR Part 553

Army Department, Cemeteries, District of Columbia, Government property, Veterans.

Accordingly, 32 CFR Part 553 is amended as follows:

PART 553—[AMENDED]

1. The authority citation for Part 553 continues to read as follows:

Authority: 24 U.S.C. Chapter 7.

2. Section 553.22 is amended by adding new paragraphs (j), (k), (l) and Appendix A to read as follows.

§ 553.22 Visitor's Rules for the Arlington National Cemetery.

* * * * *

(j) *Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups and/or organizations.*

(1) *General.* Tributes, which include plaques, medals, and statues, will be accepted only from those veterans organizations listed in the Directory of Veterans Organizations and State Department of Veterans Organizations published annually by the Veterans Administration or those substantially similar in nature.

(2) *Plaques at trees and other donated items.* Plaques may be accepted and placed at trees or other donated items to honor the memory of a person or persons interred in Arlington National Cemetery or those dying in the military service of the United States or its allies.

Plaques placed at trees or other donated items must conform to the specifications described in Appendix A, Specifications for Tributes in Arlington National Cemetery. A rendering of the proposed plaque shall be sent to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for approval.

(k) *Tributes to the Unknowns (Unknown Soldier).*

(1) *General.* Tributes, normally plaques, to the Unknowns by those organizations described in 553.22(j) above must conform to specifications and guidelines contained in Appendix A, Specifications for Tributes in Arlington National Cemetery. Descriptions of the character, dimensions, inscription, material and workmanship of the tribute must be submitted in writing to Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for approval.

(2) *Tributes to the Unknowns (Unknown Soldier) Presented by Foreign Dignitaries.* Presentation of tributes by Foreign Dignitaries is allowed as part of an official ceremony as defined herein.

(l) *Monuments.* Monuments (other than private monuments or markers) to commemorate an individual, group or event may be erected following joint or concurrent resolution of the Congress.

Appendix A.—Specifications for Tributes in Arlington National Cemetery

1. *Purpose.* The Appendix provides specifications and guidelines for obtaining approval for the donation of tributes at Arlington National Cemetery.

2. *Approval.* The Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 exercises general supervision over Arlington National Cemetery; and his approval of proposed tributes to be placed in Arlington National Cemetery is required.

3. *Who May Offer Tributes.* a. Tributes will be accepted only from those veterans' organizations listed in the Directory of Veterans Organizations and State Department of Veterans Organizations published annually by the Veterans Administration or those substantially similar in nature. Tributes will not be accepted from individuals or from subdivisions of parent organizations.

b. Only one tribute will be accepted from an organization. However, with prior approval, the inscription of a tribute already presented in Memory of the Unknown Soldier (World War I) may be reworded by the donating organization to commemorate one additional or all the Unknowns, or a new tribute may be substituted for the old one.

4. *Design.*—a. *Character.* The design of the tribute shall be artistically proportioned and shall be consistent with the sacred purpose of the shrine, which is to honor heroic military service as distinguished from civilian service however notable or patriotic.

b. *Dimensions.* The surface area of the tribute, including the mounting, shall not exceed 36 square inches; and the thickness or height shall not exceed two (2) inches when mounted.

c. *Inscriptions.*—(1). *Tributes to the Unknowns.* Tributes are accepted only for the purpose of commemorating and paying homage and respect to one or more of the Unknowns. Thus all tributes must include, either in the basic design or on a small plate affixed thereto, a clear indication of such commemoration.

Suggestions follow:

—In Memory Of The American Heroes Known But to God
—The American Unknowns
—The Unknown American Heroes
—The Unknown Soldier
—The Unknown of World War II
—The Unknown of the Korean War
—The Unknown American of World War II
—The Unknown American of the Korean War

The identity of the donor/Date of Presentation.

2. *Other Tributes including plaques at trees and other donated items.* Inscriptions on

tributes will be in keeping with the dignity of Arlington National Cemetery.

d. *Material and Workmanship.* The material and workmanship of the tribute, including the mounting, shall be of the highest quality, free of flaws and imperfections.

5. *Applications.* Requests for authority to present tributes shall be submitted in writing to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003.

a. A scale drawing or model, showing the exact inscription and other details of the proposed tribute.

b. A copy of the constitution and bylaws of the organization desiring to make the presentation.

6. *Final Approval.* Upon fabrication, the completed tribute will be forwarded to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for visual inspection prior to its presentation.

7. *Presentation of Tributes.* After authorized acceptance of the tribute the sponsoring organization may arrange appropriate presentation ceremonies with the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003. If presentation ceremonies are not desired, the Superintendent will acknowledge receipt of the tribute and inform the sponsoring organization of the number of the case in which it reposes in the Memorial Display Room at the Amphitheater at Arlington National Cemetery.

Dated: May 19, 1986.

Robert K. Dawson,

Assistant Secretary of Army (Civil Works).

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8 et al.
Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 13, 15, 19, 32, 36, 38, 45, and 52

[Federal Acquisition Circular 84-16]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-16 amends the Federal Acquisition Regulation (FAR) with respect to the following: International Federal Supply Schedule; Reporting Purchases of Identical Items at Less than Multiple-Award Schedule Prices; Subpart 8.7—Miscellaneous changes; Leasing of Motor Vehicles; Priorities and Allocations; Imprest Fund (Increase in Dollar Limitation); Evaluation of Bids for Multiple Awards; Written Confirmation of Oral Request for Best and Final Offers; Small Business Administration Procurement Center Representatives; Regulatory Guidance on sec. 211 of Pub. L. 98-507; Withholding of Funds from Construction Contracts Progress Payments; Presolicitation Notice for Construction; Definition of Government Property; Contractor Use and Rental of Government Property; Clarification of Small Business Concern Representation; and FAR 52.249-6, Termination (Cost-Reimbursement).

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755, Room 4041, GS Bldg., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Public Comments

FAC 84-16, Items I through XVI (except Item XI). Public comments have not been solicited since these revisions either: (a) Do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

FAC 84-16, Item XI, Withholding of Funds from Construction Contracts Progress Payments. On February 21, 1985, a notice of proposed rule was published in the Federal Register (50 FR 7200), requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the final rule. As a result of the notice, comments were received and considered.

B. Regulatory Flexibility Act

FAC 84-16, Items I through XVI (except Item XI). Since solicitation of public comments is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

FAC 84-16, Item XI, Withholding of Funds from Construction Contracts Progress Payments. The addition of FAR 32.103 and the revision at 52.232-5 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the revision does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

C. Paperwork Reduction Act

FAC 84-16, Items I through XVI. The Paperwork Reduction Act does not apply because this final rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 8, 12, 13, 15, 19, 32, 36, 38, 45, and 52.

Government procurement.

Dated: May 23, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-16]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-16 is effective May 30, 1986.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator, GSA.

May 15, 1986.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-16 amends the Federal Acquisition Regulation (FAR) as summarized below:

Item I—International Federal Supply Schedule

FAR 8.403 and 38.102 are revised to include coverage concerning the International Federal Supply Schedule program which was developed by the General Services Administration to provide sources of supply to U.S. Government activities located overseas.

Item II—Reporting Purchases of Identical Items at Less Than Multiple-Award Schedule Prices

FAR 8.404-1, Mandatory use, is revised to provide current instructions concerning the purchase of identical items from commercial sources at prices lower than their Multiple-Award Schedule counterparts.

Item III—Subpart 8.7—Miscellaneous Changes

FAR 8.703, 8.704, 8.708, 8.712, are revised and FAR 8.715 is added to incorporate changes made to the Committee for Purchase from the Blind and Other Severely Handicapped regulation at 41 CFR 51-5.11 and 51-5.12 regarding specifications for commodities and services on the Procurement List and the time for their delivery.

Item IV—Leasing of Motor Vehicles

FAR Subpart 8.11 is revised to prescribe a new contract clause entitled "Tagging of Leased Vehicles," and FAR Subpart 52.2 is revised to include the new clause.

Item V—Priorities and Allocations

FAR Subpart 12.3, Priorities, Allocations and Allotments, is retitled Priorities and Allocations, and is revised to change coverage in the FAR which was superseded by a Department of Commerce regulation effective August 29, 1984 (49 FR 147). The provision at 52.212-7 and the clause at 52.212-8 are retitled, and the prescriptions at FAR 12.304 are changed to reflect the new titles.

Item VI—Imprest Fund (Increase in Dollar Limitation)

FAR 13.404 is revised to incorporate the Treasury Department's increase in the spending limitation for imprest fund transactions from $150 to $500.

Item VII—Evaluation of Bids for Multiple Awards

FAR Part 15, Contracting By Negotiation, is revised to prescribe a new solicitation provision, Evaluation of Offers for Multiple Awards, and FAR Part 52, Solicitation Provisions and Contract Clauses, is revised accordingly.

Item VIII—Written Confirmation of Oral Request for Best and Final Offers

FAR 15.611(a) is revised to add a requirement that oral requests for best and final offers be confirmed in writing. This revision is based on the advice of the Comptroller General.

Item IX—Small Business Administration Procurement Center Representatives

FAR Subpart 19.4 is revised to specify the activities of procurement center representatives and the requirement for contracting personnel to interface with the representatives and their advisors. Pub. L. 98–577 provides for the appointment of breakout procurement center representatives and specifies their duties and responsibilities.

Item X—Regulatory Guidance on Sec. 211 of Pub. L. 95–507

FAR 19.705–2 is revised to delete, as a factor in determining whether subcontracting possibilities exist, a potential contractor's longstanding contractual relationship with its suppliers. This factor is relocated to 19.705–4(d)(3) as a consideration in evaluating subcontracting potential for a particular acquisition.

Item XI—Withholding of Funds From Construction Contracts Progress Payments

FAR 32.103 is added and FAR 52.232–5 is revised to reflect policy set forth in OFPP Policy Letter 83–1.

Item XII—Preolicitation Notice for Construction

FAR 36.302(b) is revised to add a reference to FAR 36.204 which sets forth estimated price ranges for work to be performed.

Item XIII—Definition of Government Property

FAR 45.101(a) is revised to include the term "Contractor-acquired property" in the FAR definition of "Government property."

Item XIV—Contractor Use and Rental of Government Property

FAR 45.401 is revised to add additional coverage on the use and rental of Government property.

Item XV—Clarification of Small Business Concern Representation

FAR 52.219–1 is revised to clarify that the portion of the representation regarding the source of manufactured supplies refers to the end items being acquired rather than the materials and supplies that went into the end item.

Item XVI—FAR 52.249–6, Termination (Cost-Reimbursement)

FAR 52.249–6(g)(1) has been revised to allow a contractor whose contract has been terminated to recover those costs that may continue for a reasonable time with the approval of or as directed by the contracting officer.

Therefore, 48 CFR Parts 8, 12, 13, 15, 19, 32, 36, 38, 45, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 8, 12, 13, 15, 19, 32, 36, 38, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.403–4 is added to read as follows:

8.403–4 International Federal Supply Schedule.

(a) The International Federal Supply Schedule (IFSS) provides sources of supply (supplies and services) at reasonable prices to U.S. Government activities located overseas. The use of the schedule is mandatory only on GSA.

(b) The schedule is divided into two sections. Section A includes those items which were awarded under sealed bid procedures, while Section B covers items that were awarded under negotiated procedures.

(c) Ordering offices need to review the information in the schedule and any applicable contractor's catalogs/price lists to ensure the proper placement of orders. Orders are placed directly with the contractors.

(d) Ordering offices shall forward copies of any orders (at the time the orders are issued) to the contracting office designated in the IFSS.

3. Section 8.404–1 is amended by revising paragraph (e)(3), by redesignating paragraph (f) as paragraph (g), by adding new paragraph (f), and by revising new paragraph (g) to read as follows:

8.404–1 Mandatory use.

* * * * *

(e) * * *

(3) When products are purchased from commercial sources on the open market (i.e., not under an existing Government contract) at delivered prices that are lower than the prices provided by multiple-award schedule contracts, ordering offices shall forward the following information, at the time the orders are issued, to the contracting office designated in the multiple-award schedule that was not used:

(i) Copy of the order.

(ii) Identification of the Federal Supply Schedule.

(iii) Name of the schedule contractor.

(iv) Applicable schedule contract number.

(v) Schedule contract price.

(vi) Schedule special item number (SIN).

(vii) Manufacturer's model and /or part number.

(f) *Report documentation.* Documentation of subdivisions (e)(3)(ii) through (e)(3)(vii) of this section may be provided as attachment(s) to the order, annotated directly on the order, or a combination of both. Interagency Report Control Number 0262–GSA–AR has been assigned to this report.

(g) *Absence of follow-on award.* Ordering offices, after any consultation required by the schedule, are not required to forgo or postpone their legitimate needs pending the award or renewal of any schedule contract.

4. Section 8.703 is amended by revising paragraph (b) to read as follows:

8.703 Procurement List.

* * * * *

(b) The Procurement List identifies—

(1) Workshop supplies available from the General Services Administration (GSA) stocks at supply distribution facilities and the Defense Logistics Agency (DLA) system; and

(2) Supplies that are also available from Federal Prison Industries, Inc.

5. Section 8.704 is amended by revising in paragraph (a) the first sentence to read as follows:

8.704 Purchase priorities.

(a) The Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from qualified workshops if they are available within the period required. * * *

* * * * *

8.708 [Amended]

6. Section 8.708 is amended by removing in the second sentence of paragraph (c) the words "(see Subpart 49.4, Termination for Default)." and inserting a period following the word "delivery".

* * * * *

7. Section 8.712 is amended by revising paragraphs (a), (b), and (b)(1), and by adding paragraphs (c) and (d) to read as follows:

8.712 Specification changes.

(a) The contracting activity shall notify the workshop and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the workshop shall produce the supplies or provide the services under the specification or description cited in the order.

(b) The contracting activity shall provide 90-days advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procurement List and shall permit them to comment before action is taken, particularly when it involves—

(1) Changes that require new national stock numbers or item designations;

* * * * *

(c) For services, the contracting activity shall notify the workshop and central nonprofit agency concerned at least 90 days prior to the date that any changes in the scope of work or other conditions will be required.

(d) When, in order to meet its emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the workshop and the central nonprofit agency in writing of the reasons that it cannot meet the 90-day notification requirement.

8. Section 8.715 is added to read as follows:

8.715 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified workshop can produce the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the workshop designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

9. Section 8.1104 is amended by redesignating paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

8.1104 Contract clauses.

* * * * *

(d) A clause substantially the same as the clause at 52.208–7, Tagging of Leased Vehicles, for vehicles leased over 60 days (see 41 CFR 101–38.6).

* * * * *

PART 12—CONTRACT DELIVERY OR PERFORMANCE

10. Subpart 12.3, consisting of §§ 12.300, 12.301, 12.302, 12.303, and 12.304, is revised to read as follows:

Subpart 12.3—Priorities and Allocations

Sec.

12.300 Scope of subpart.
12.301 Definitions.
12.302 General.
12.303 Procedures.
12.304 Solicitation provision and contract clause.

Subpart 12.3—Priorities and Allocations

12.300 Scope of subpart.

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation in support of authorized national defense programs (see 15 CFR Part 350).

12.301 Definitions.

"Authorized program," as used in this subpart, means a program approved by the Federal Emergency Management Agency (FEMA) for priorities and allocations support under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.), to promote the national defense. Schedule I of the DPAS lists currently authorized programs.

"Controlled materials," as used in this subpart, means the various shapes and forms of steel, copper, aluminum, and nickel alloys specified in Schedule II, and defined in Schedule III, of the DPAS.

"Delegate Agency," as used in this subpart, means an agency of the U.S. Government authorized by delegation from DOC to place priority ratings on contracts that support authorized programs. Schedule I of the DPAS lists the Delegate Agencies.

"Rated order" means a prime contract for any product, service, or material (including controlled materials) placed by a Delegate Agency under the provisions of the DPAS in support of an authorized program and which requires preferential treatment, and includes subcontracts and purchase orders resulting under such contracts.

12.302 General.

(a) Under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.), the President is authorized (1) to require that contracts in support of the national defense be accepted and performed on a preferential or priority basis over all other contracts, and (2) to allocate materials and facilities in such a manner as to promote the national defense.

(b) The Office of Industrial Resource Administration (OIRA), DOC, is responsible for administering and enforcing a system of priorities and allocations to carry out Title I of the Defense Production Act for industrial items. The DPAS has been established to promote the timely availability of the necessary industrial resources to meet current national defense requirements and to provide a framework to facilitate rapid industrial mobilization in case of national emergency.

(c) The Delegate Agencies (see Schedule I of the DPAS have been given authority by DOC to place rated orders in support of authorized programs. Other government agencies, Canada, and other friendly foreign nations may apply for special rating authority in support of authorized programs (see 15 CFR 350.55).

(d) Rated orders shall be placed in accordance with the procedures in the DPAS. Contracting officers responsible for acquisitions in support of authorized programs shall be familiar with the DPAS and should provide guidance on the DPAS to contractors and suppliers receiving rated orders. Agency heads shall ensure compliance with the DPAS by contracting activities within their agencies.

(e) Under the Defense Production Act, any willful violation of the Act, the DPAS, or any official action taken by DOC under the DPAS, is a crime punishable by a maximum fine of $10,000, one year in prison, or both (see 15 CFR 350.70 and 15 CFR 350.74).

12.303 Procedures.

(a) There are two levels of priority for rated orders established by the DPAS, identified by the rating symbols "DO" and "DX." All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated and unrated orders. DX ratings are used for special defense programs designated by the President to be of the highest national priority.

(b) DOC may issue a Directive to compel a contractor or supplier to accept a rated order, to rearrange production or delivery schedules, or to improve shipments against particular rated orders. Directives issued by DOC take precedence over all rated and unrated orders as stated in the Directive.

(c) In addition to any other contractual requirements, a valid rated

order must contain (see 15 CFR 350.12) the following:

(1) A priority rating consisting of the appropriate DO or DX rating symbol and a program of identification symbol to indicate the authorized program (see Schedule I of the DPAS).

(2) A required delivery date or delivery dates.

(3) The signature of an individual authorized by the agency to sign rated orders.

(d) The DPAS has the following three basic elements which are essential to the operation of the system:

(1) *Mandatory acceptance of rated orders.* A rated order shall be accepted by a contractor or supplier unless rejected for the reasons provided for mandatory rejection in 15 CFR 350.13(b), or for optional rejection in 15 CFR 350.13(c).

(2) *Mandatory extension of priority ratings throughout the acquisition chain.* Contractors and suppliers receiving rated orders shall extend priority ratings to subcontractors or vendors when acquiring items to fill the rated orders (see 15 CFR 350.15).

(3) *Priority scheduling of production and delivery.* Contractors and suppliers receiving rated orders shall give the rated orders priority over other contracts as needed to meet delivery requirements (see 15 CFR 350.14).

(e) Agencies shall provide contracting activities with specific guidance on the issuance of rated orders in support of agency programs.

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 350.50–350.55).

(h) Contracting officers shall report promptly any violations of the DPAS to DOC in accordance with agency procedures.

12.304 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at 52.212–7, Notice of Priority Rating for National Defense Use, in solicitations when the contract to be awarded will be a rated order.

(b) Contracting officers shall insert the clause at 52.212–8, Defense Priority and Allocation Requirements, in contracts that are rated orders.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

11. Section 13.404 is amended by revising paragraph (a) to read as follows:

13.404 Conditions for use.

* * * * *

(a) The transaction does not exceed $500 or such other limits as have been approved by the agency head;

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

12. Section 15.406–5 is amended by revising paragraph (c) to read as follows:

15.406–5 Part IV—Representations and instructions.

* * * * *

(c) *Section M, Evaluation factors for award.* Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract (see 15.605(e) and (f) and the multiple award provision at 52.215–34) and state the relative importance the Government places on those evaluation factors and subfactors.

13. Section 15.407 is amended by adding paragraph (h) to read as follows:

15.407 Solicitation provisions.

* * * * *

(h) The contracting officer shall insert the provision at 52.215–34, Evaluation of Offers for Multiple Awards, in requests for proposals if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

14. Section 15.605 is amended by adding paragraph (f) to read as follows:

15.605 Evaluation factors.

* * * * *

(f) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of making multiple awards that $250 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

15. Section 15.611 is amended by adding in paragraph (a) a second sentence to read as follows:

15.611 Best and final offers.

(a) * * * Oral requests for best and final offers shall be confirmed in writing.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

16. Section 19.402 is amended by revising paragraph (a) to read as follows:

19.402 Small Business Administration procurement center representatives.

(a) The SBA may assign one or more procurement center representatives to any contracting activity or contract administration office to carry out SBA policies and programs. Assigned SBA procurement center representatives are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its procurement center representatives security clearances required by the contracting agency.

* * * * *

17. Section 19.403 is added to read as follows:

19.403 Small Business Administration breakout procurement center representatives.

(a) The SBA is required by sec. 403 of Pub. L. 98–577 to assign a breakout procurement center representative to each major procurement center. A major procurement center means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least $150,000,000 in the preceding fiscal year, and other procurement centers as designated by the Administrator, SBA. The SBA breakout procurement center representative is an advocate for (1) the appropriate use of full and open competition, and (2) the breakout of items, when appropriate and while maintaining the integrity of the system in which such items are used. The SBA breakout procurement center representative is in addition to the SBA procurement center representative (see 19.402). When an SBA breakout procurement center representative is assigned, the SBA is required to assign at least two collocated small business technical advisors. Assigned SBA breakout procurement center

representatives and technical advisors are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its breakout procurement center representatives and technical advisors security clearances required by the contracting agency.

(b) Contracting officers shall comply with 19.402(b) in their relationships with SBA breakout procurement center representatives and SBA small business technical advisors.

(c) The SBA breakout procurement center representative is authorized to—

(1) Attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be acquired using other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(2) Review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(3) Review restrictions on competition arising out of restrictions on the rights of the United States in technical data and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(4) Obtain from any governmental source, and make available to personnel of the appropriate center, unlimited-rights technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously acquired noncompetitively due to the unavailability of such technical data;

(5) Have access to the unclassified procurement records and other data of the procurement center;

(6) Receive unsolicited engineering proposals and, when appropriate—

(i) Conduct a value analysis of such proposal to determine whether it, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate center recommendations with respect to such proposal; or

(ii) Forward such proposals without analysis to personnel of the center responsible for reviewing them who shall furnish the breakout procurement center representative with information regarding the proposal's disposition;

(7) Review the systems that account for the acquisition and management of technical data within the procurement center to ensure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive; and

(8) Appeal a failure by the procurement center to act favorably on any recommendation made pursuant to subparagraphs (c) (1) through (7) of this section. Such appeal must be in writing and specifically recite both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the procurement center who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt by the procurement center. All such decisions shall be final.

(d) The duties of the SBA small business technical advisors are to assist the SBA breakout procurement center representative in carrying out the activities described in (c) (1) through (7) above to assist the SBA procurement center representatives (see FAR 19.402).

19.706-2 [Amended]

18. Section 19.706-2 is amended by removing paragraph (b)(3).

19. Section 19.705-4 is amended by revising paragraph (d)(3) to read as follows:

19.705-4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(3) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small and small disadvantaged business concerns in the geographical area where the work will be performed, and the potential contractor's longstanding contractual relationship with its suppliers.

* * * * *

PART 32—CONTRACT FINANCING

20. Section 32.103 is added to read as follows:

32.103 Progress Payment Construction Contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officer on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.302 [Amended]

21. Section 36.302 is amended by adding in paragraph (b)(1), following the word "range)" the reference "(see 36.204);".

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

22. Section 38.102-4 is added to read as follows:

38.102-4 International Federal Supply Schedule.

(a) The International Federal Supply Schedule (IFSS) has been established to provide sources of supply (supplies and services) at reasonable prices to U.S. Government activities located overseas. The use of the schedule is mandatory only on GSA.

(b) The IFSS is divided into two sections. The items included in Section A are awarded under a solicitation using sealed bid procedures, as covered in Part 14, while the items listed in Section B are awarded under a solicitation using negotiated procedures, as described in Part 15.

PART 45—GOVERNMENT PROPERTY

45.101 [Amended]

23. Section 45.101 is amended by revising in paragraph (a) the definition of "Government property" to read as follows:

* * * * *

"Government property" means all property owned by or leased to the Government under the terms of the contract. It includes both Government-furnished property and contractor-

acquired property as defined in this section.

* * * * *

24. Section 45.401 is revised to read as follows:

45.401 Policy.

In performing Government contracts or subcontracts, Government production and research property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors (see Subpart 45.2). Prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to ensure that the Government receives adequate consideration. Government use is defined as use in support of U.S. Government contacts and non-Government use is all other use (including direct commercial sales to domestic and foreign customers). As a general rule, Government use is on a rent-free basis. Non-Government use is on a rental basis. When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor for non-Government use.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 52.208–7 is added to read as follows:

52.208–7 Tagging of Leased Vehicles.

As prescribed in 8.1104(d), insert a clause substantially as follows:

Tagging of Leased Vehicles (May 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

26. Section 52.212–7 is revised to read as follows:

52.212–7 Notice of Priority Rating for National Defense Use.

As prescribed in 12.304(a), insert the following provision:

Notice of Priority Rating for National Defense Use (May 1986)

Any contract awarded as a result of this solicitation will be a [ ] DX rated order; [ ] DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR Part 350), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

27. Section 52.212–8 is revised to read as follows:

52.212–8 Defense Priority and Allocation Requirements.

As prescribed in 12.304(b), insert the following clause:

Defense Priority and Allocation Requirements (May 1986)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR Part 350).

(End of clause)

28. Section 52.215–34 is added to read as follows:

52.215–34 Evaluation of Offers for Multiple Awards.

As prescribed in 15.407(h), insert the following provision:

Evaluation of Offers for Multiple Awards (May 1986)

In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that $250 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

29. Section 52.219–1 is revised to read as follows:

52.219–1 Small Business Concern Representation.

As prescribed in 19.304(a), insert the following provision:

Small Business Concern Representation (May 1986)

The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern and that ☐ all, ☐ not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(End of provision)

30. Section 52.232–5 is amended by removing in the title of the clause the date "JAN" and inserting in its place the date "MAY" and by revising paragraphs (c) and (e) of the clause to read as follows:

52.232–5 Payments under Fixed Price Construction Contracts.

* * * * *

(c) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

* * * * *

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

* * * * *

31. Section 52.249–6 is amended by inserting a colon following the word "clause" in the introductory text and deleting the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising paragraph (g)(1) of the clause; and by removing both derivation lines following "(End of clause)" to read as follows:

52.249-6 Termination (Cost-Reimbursement).

* * * * *

(g) * * *

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these costs as rapidly as practicable.

* * * * *

[FR Doc. 86-12008 Filed 5-29-86; 8:45 am]

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May 30, 1986

Part VII

Department of Transportation

Coast Guard

46 CFR Parts 31, 61, 71, 91, 167, 169, and 189

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 61, 71, 91, 167, 169, and 189

[CGD 84-024]

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the intervals between drydock and tailshaft examinations, by generally extending them, for certain classes of inspected vessels. These changes are being proposed to decrease the cost incurred by the marine industry in meeting these examination requirements and to harmonize with the intervals specified by the various classification societies and the invervals currently under consideration internationally. If the intervals for these examinations can be changed without decreasing overall vessel safety, vessel owners and operators will realize a significant economic savings.

DATES: Comments must be received on or before June 30, 1986.

ADDRESSES: Comments on this proposal or the draft regulatory evaluation should be mailed to Commandant (G-CMC/21), [CGD 84-024], U.S. Coast Guard Headquarters, Washington, DC 20593. The comments may be delivered to and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, Coast Guard Headquarters Building, 2100 2nd Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: LCDR Jeffrey G. Lantz, Project Manager, at (202-426-4431).

SUPPLEMENTARY INFORMATION: On May 4, 1984, the Coast Guard published in the Federal Register (49 FR 19061) a notice of its intent to consider extending the intervals between drydock and tailshaft examinations. To ensure a thorough scrutinizing of all issues concerning these examinations, the Coast Guard solicited answers to nineteen specific questions. These questions concerned the safety aspects of extending these intervals along with the economic impacts of these examinations. A total of seventy-six responses were received. A discussion of the comments received is presented below.

Interested persons are invited to comment on the proposed rulemaking or draft regulatory evaluation by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD 84-024], the specific section of the proposed regulations or supporting documents to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed post card is enclosed. To the extent permitted by law, the proposal may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the Federal Register if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in the drafting of this rule are LCDR Jeffrey G. Lantz, Project Manager, Office of Merchant Marine Safety and Mr. Michael N. Mervin, Project Attorney, Office of Chief Counsel.

Discussion of Comments

A total of seventy-six comments were received in response to the Advance Notice of Proposed Rulemaking published in the Federal Register on May 4, 1984 (49 FR 19061). The ANPRM solicited responses to fourteen specific questions concerning drydock examinations and five specific questions concerning tailshaft examinations. Three of the questions concerned the economic impact of these examinations, two for drydock and one for tailshaft. The summary outlined below does not include responses to these questions. Instead, they were used to determine the overall economic impact of this proposed rulemaking as shown in the draft regulatory evaluation.

The comments were generally favorable towards some extension of the present drydock and tailshaft examination intervals. In the absence of Coast Guard regulations, most vessel owners/operators would follow the classification society requirements for the intervals between these examinations. Ships operators generally desire a thirty month interval extendable to thirty-six months. Barge operators desire an interval ranging from three to five years. The responses indicated that hull coatings have performed well in service and that unscheduled drydockings are performed only to repair damage and constitute only about ten percent of all drydockings. Most commenters were against regulatory requirements for measuring hull thickness and were also against shortening drydock intervals as a vessel ages or because of vessel carries corrosive or environmentally hazardous cargoes.

The following is a breakdown of the comments to the ANPRM. Not all commenters replied to each question posed in the ANPRM.

31	steamship owners/operators
15	tug/tow and barge operators
6	offshore supply and/or crew boat operators
2	classifications societies
2	marine engineering suppliers
3	independent surveyors
2	dredge/drydock companies
3	small passenger vessel operators
3	MODU operators
1	shipyard
8	various associations

The following is a summary of the comments received to each question posed in the ANPRM.

Concerning Drydock Examinations

Question 1a: In the absence of Coast Guard regulations what would vessel owners or operators adopt as appropriate drydocking or hauling-out intervals for various types and sizes of vessels?

Seventy-three commenters responded to this question of which seventy-two were in favor of extending the interval. Forty-two commenters stated that, in the absence of Coast Guard regulations, they would follow the schedule set forth by classification societies, presently thirty months. In general, these commenters suggested that an unnecessary economic burden could be alleviated by making the intervals coincide with those used by the American Bureau of Shipping (ABS), thus avoiding a duplication on inspections. They also desired some flexibility in scheduling the drydock examinations. One operator of ocean passenger vessels recommended that the thirty month interval apply to vessels regulated under Subchapter H. Nine commenters stated that a three year interval would be appropriate, one arguing that this would allow an owner to schedule the drydocking so that the time of year would be advantageous to applying those bottom coatings which are temperature sensitive at application. One commenter stated that the interval should be five years with no more than three years between a drydock or an underwater examination. Eight commenters stated that barges should have a four year interval. Four commenters stated that a 5 year interval should be set for vessels in fresh water

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service. Three commenters stated that the decision to drydock a vessel should be based on the vessel condition, taking into account the condition of the anodes placed on the vessel to inhibit corrosion, the condition of the coatings, or electric current readings on vessels having an impressed current cathodic protection system. Two commenters recommended two year intervals for small passenger vessels while two other commenters recommended one year for small passenger vessels. One shipyard owner recommended that the interval between drydock examinations not to be extended for safety reasons and because an extension would have an adverse economic effect on the shipyards.

Question 1b: How often are vessels hauled or drydocked earlier than scheduled because of hull damage or other problems?

Twenty-eight commenters responded to this question. The commenters related their experience with unscheduled drydockings, which, in general, were all different. On the average, the comments indicated that ten percent of drydockings are unscheduled. (Our inspection records indicate that this number is probably low.) Most commenters did not specify the causes of the unscheduled drydockings.

Question 2a: Would vessel schedules, particularly for large seagoing steam vessels, permit major inspections of the boiler and steam piping to be conducted at intervals the frequency of which did not correspond with the vessels drydocking interval?

Twenty-eight steam vessel operators addressed this question. Thirteen stated that their schedules do not permit boiler inspections unless their vessels are undergoing a drydocking examination. The primary concern was the need for a five to six day down period to perform the boiler and steam piping examinations which their vessel schedules afforded only during drydock examinations.

Fifteen operators stated that boiler inspections could be performed at times other than drydock examinations. Six of these commenters stated that it would require additional planning and coordination and was only feasible if the boiler inspections were conducted in a piecemeal fashion over a period of time. One operated a vessel with four boilers which allowed for the boilers to be taken out of service on staggered intervals for examination without disrupting the vessel's schedule. Two operated vessels on the Great Lakes which allowed them to conduct boiler examinations during winter lay up. Two commenters stated that it was more expensive to conduct boiler inspections independent of drydock examinations while one stated that the high cost of shipyard labor made it unattractive to conduct the boiler examination concurrently with the drydock examination. One commenter suggested that the boilers be on an independent schedule (as unfired pressure vessels are) and not necessarily tied to either the inspections for certification or the drydock examination. One commenter recommended giving consideration to extending the interval between DC heater and other unfired pressure vessel examinations to keep them in harmony with the drydock examination interval if it is extended.

Question 2b: Would similar problems exist with diesel powered ships, and if so, to what extent?

Fourteen operators of diesel vessels responded to this question. Ten commenters stated that main propulsion diesels, auxiliary boilers and unfired pressure vessels could be examined at times other than in drydock, however, others maintained that it was more convenient to conduct these inspections during drydock availabilities. Two operators of diesel electric powered MODUs stated that the only restriction was that these examinations had to be performed when the vessel was shut down, which meant that drilling could not be ongoing. Four commenters stated that these inspections should coincide with the drydock examination. The primary reason given was that vessel schedules do not permit the time necessary to conduct these inspections other than during drydock examination and that this equipment is already shut down and available for inspection then. One steamship operator stated that it would be unfair to provide different intervals for diesel machinery inspections.

Question 3: Would a system that, following an examination after an initial period of service, required drydockings to be conducted more frequently as a vessel ages be feasible or desirable, i.e. one that required a large seagoing ship to be examined within 2 years of being placed in service (or at the guarantee drydocking provided for in many shipbuilding contracts), then again after completing 7, 12, 16, 19, 21, 23, 25 etc. years of service?

Forty-seven commenters responded to this question. Thirty-one commenters stated that such a system was neither feasible nor desirable. Several of these commenters stated that there was little evidence to support the contention that vessels required more frequent drydock examinations as they aged. They also pointed out that a system that required more frequent drydockings as a vessel ages would penalize the owners and operators that properly maintained their vessels.

Nine commenters stated that a system requiring more frequent drydock examinations with vessel age is desirable. One of these recommended that, for seagoing barges, the interval between drydock examinations should be five years when the barges are new and should appropriately decrease as the barges age.

Seven commenters stated that this system would only be desirable if the drydock examinations were required to coincide with classification societies' special surveys.

Question 4: Should specific requirements for hull gauging (measurement of hull thickness) be included in the regulations? If so, how long after the vessel is placed in service should the first gauging be conducted and at what intervals should the gauging be repeated?

Fifty commenters responded to this question. Thirty-three commenters stated that a regulatory requirement to include gauging is not needed because Coast Guard inspectors have the authority to require gaugings when necessary and classification society rules for gauging are adequate. Sixteen commenters stated that gauging requirements should be included in the regulations. Nine of these sixteen commenters stated that if gauging requirements were included in the regulations, they should reflect the American Bureau of Shipping rules and provide for gauging when the vessel is ten years of age and every five years thereafter. One commenter stated that gauging should be allowed in lieu of alternate drydock examinations.

Question 5a: Should past experience with a specific vessel be considered in determining when it should next be drydocked?

Forty commenters responded to this question. Fifteen commenters stated that past experience should be considered. One of these commenters stated that this would be difficult to administer as a regulatory requirement. The commenter suggested that the Marine Safety Information System (MSIS) might aid in administering this requirement. Some commenters stated that extensions should be granted to properly maintained vessels that met or exceeded the minimum standards. Two MODU operators indicated that credit should be given for unscheduled drydockings.

Five commenters stated that present vessel condition and not past experience should be the criteria for determining

drydock intervals. They also stated that if conditions indicate the need for a shorter interval, then repairs/renewals should be immediately required and the normal interval restored.

Twenty commenters stated that past experience should not be considered to determine when a vessel should be drydocked. Most indicated that it would be too complex and arbitrary and that a fixed extension to the interval was the only fair approach. Many commenters stated that the Coast Guard already has the authority to grant drydock extensions or require an early drydock examination if vessel conditions warrant.

Question 5b: If so, how could it be considered without being unduly arbitrary.

Seven commenters responded to this question. Three commenters stated that by clearly publishing the policy concerning shortened drydock intervals based on past history and by carefully documenting a vessel's past history, the Coast Guard could negate any claim that a particular judgment was arbitrary. Four commenters stated that shorter intervals may be warranted for a vessel or a class of vessels when a trend of deterioration exists.

Question 6a: Should greater or lesser consideration be given to the hull material (wood, fiberglass, aluminum, steel)?

Twenty-one commenters responded to this question. Fourteen commenters favored considering the differences between hull materials in determining drydock examination intervals. Seven commenters stated that hull material was not as important as other considerations such as coatings, corrosion protection systems, fastenings in wooden hulls, etc.

Question 6b: Should greater or lesser consideration be given to the percentage of service in fresh vs. salt water.

Twenty-seven commenters responded to this question. Twenty-three commenters stated fresh water service justifies longer intervals between drydock examinations because there is less corrosion and fouling. One of these commenters pointed out that while fresh water service benefits steel hull vessels it has the opposite effect on wooden hulls since wood generally rots quicker in fresh water than in salt water. Three commenters noted that keeping track of the percentages of time a vessel operates in fresh water and salt water is difficult and time consuming. They therefore recommended that, since vessels operating inland are primarily in fresh water, the intervals between drydock examinations should be based on the certificated route with an inland route having a longer interval than an oceans route. One commenter stated no consideration should be given for fresh water service.

Question 7a: How well have tank coatings, special hull paints and hull protection systems performed in service?

Forty-four commenters responded to this question. Forty-two commenters stated that coatings have performed well, either superior to or in accordance with manufacturers' claims. Two commenters stated that coatings were not worth the cost, however, both of these commenters operated vessels in ice, which resulted in the coatings being abraded.

Question 7b: Has their performance been consistent between similar vessels?

Forty-one commenters responded stating that performance was consistent provided the coatings were properly applied. Surface preparation and proper curing were two of the critical variables mentioned.

Question 8: Should consideration be given to the vessel's operating area because of the likelihood of ice damage, undetected damage from grounding, scouring, etc?

Forty commenters responded to this question. Thirty-four commenters stated that no consideration should be given to a vessel's operating area. They pointed out that damage reports are currently made to the Coast Guard and the ABS, either of which can call for a drydock examination if it is necessary. They also stated that a system to keep track of operating area would be too complex to administer and that a prudent operator would survey for damage following a suspected grounding or similar incident in order to determine if a drydocking is required. Six commenters stated that operating area should be considered.

Question 9: Because of the different type of hull structural loading involved, should differing intervals be specified for displacement hulls than for nondisplacement hulls?

Fourteen commenters responded to this question. Eight commenters stated that consideration should be given to the type of hull. One small passenger vessel operator pointed out that when a planing hull rises partially out of the water at high speeds, it is subject to more pounding than a displacement hull, which degrades coatings and subjects the hull to more severe stress. Five commenters stated that no consideration should be given. They maintained that hull structure loading was a design problem and that the highly stressed areas would be built stronger.

Question 10: Should more consideration be given to the type of cargoes that the vessel carries because of the corrosive effects of those cargoes?

Thirty-two commenters responded to this question. Twenty-five commenters stated that this consideration is already in place under 46 CFR Subchapter O and that no further consideration is required. Six commenters stated that consideration should be given to the nature of the cargo carried. One commenter felt that the corrosiveness of the cargo was only critical on single skin barges.

Question 11: Should more frequent examinations of the hull be required when a vessel carries bulk cargoes that may be particularly harmful to the marine environment if accidentally released?

Thirty-two commenters responded to this question. Twenty-eight commenters stated that no consideration is warranted because most spills resulted from transfer operations, groundings and collisions and that more frequent drydock examinations will not prevent these type of spills. Four commenters favored more frequent drydock examinations for vessel carrying these cargoes.

Questions 12 and 13: These questions requested information concerning the economic impacts of drydocking examinations. Responses to these questions are addressed in the draft regulatory impact analysis.

Question 14: To what extent would shipyards and repair facilities be adversely affected if the Coast Guard were to increase intervals specified for tailshaft examinations or drydocking?

A shipyard owner stated that increasing the interval between drydock examinations would have an adverse economic impact on shipyards as well as decreasing overall vessel safety. All other commenters stated that the impact on shipyards would be minimal but would be an economic boon to vessel owners and operators. Several commenters stated that the impact on shipyards should not be a consideration, but, rather, the impact on the shipping industry and vessel safety should be the criteria used in deciding suitable drydock intervals. Several vessel owners/operators stated that the economic impact to shipyards would be minimal since shipyard income stems from repair work and not "up and down." One commenter stated that it was difficult to find a shipyard to do a bottom survey if there was no projected repair work.

Concerning Tailshaft Examinations

Question 1: In the absence of Coast Guard regulations, what would vessel owners or operators adopt as appropriate intervals and methods for tailshaft examinations? What is the experience with, and what intervals have been adopted on vessels not subject to inspection?

Forty-five commenters responded to this question. Eighteen commenters stated they would follow the ABS requirements for tailshaft examinations. Two commenters went further and suggested that tailshaft examinations should be delegated to the ABS. Three commenters stated a six year interval was appropriate while thirteen commenters suggested five years, one commenter four years, three commenters two and one-half years. Four commenters recommended a ten year interval for oil lubricated bearings provided certain conditions such as oil analysis and bearing weardown readings were regularly performed. Three commenters recommended that for oil lubricated bearings, the tailshaft should be examined at the first drydock examination after delivery and then not be subject to any scheduled examination unless problems develop. The reasoning expressed is that tailshafts with oil lubricated bearings have an excellent safety record and that drawing the tailshaft for examination does not harm than good because the bearing may only be damaged when the shaft is drawn.

Question 2: The present marine engineering regulations require tailshaft examinations only on vessels in ocean and coastwise service, presumably because loss of propulsion is a greater concern when offshore. The potential loss of a vessel's capability to maneuver in near-shore or inland waters is of equal or greater concern; if tailshaft examination requirements are to be retained, should they be extended to inspected vessels operating in these waters also?

Fourteen commenters responded to this question. Ten commenters stated the regulations should not be extended to vessels operating on inland waters. Operators of vessels on the Great Lakes stated that they have a proven record of conducting these examinations as conditions warrant and there is no regulatory requirement for drawing the tailshafts of these vessels. Four commenters recommended extending tailshaft examination requirements to vessels operating in inland waters.

Question 3: Since loss of motive power quickly and directly affects the earning capacity of a vessel, is it possible that economic considerations would drive vessel owners and operators to conduct tailshaft examinations, particularly on newer vessels where there is a substantial equity to protect, as frequently as is presently required?

Twenty-seven commenters responded to this question. Thirteen commenters stated that owners/operators continuously monitor the tailshafts of their vessels and consequently perform an examination if problems arise in order to preclude the loss of earnings. Eleven commenters stated that they would simply follow classification society guidelines for performing tailshaft examinations. Three commenters stated there was no economic incentive to perform the examination while one commenter pointed out that bearing weardown measurements are conducted annually on vessels operating on the Great Lakes.

Question 4: Should regulatory consideration be given to alternative means of monitoring bearing wear down?

Twenty-nine commenters responded to this question. Twenty-three commenters stated that consideration should be be given to keeping abreast of proven technological advances such as oil analysis and plug guaging arrangements. Six commenters stated that that no consideration should be given.

Question 5: This question requested information concerning the economic impact of tailshaft examinations. Responses to this question are addressed in the draft regulatory analysis.

In addition to the specific questions posed in the ANPRM the following comments were also received.

Nine commenters recommended that the Coast Guard allow underwater examinations to be substituted, on an alternating basis, for scheduled drydock examinations. Two of these commenters were classification societies, both of which allow alternating underwater surveys and drydocking. Two commenters pointed to the acceptance of underwater surveys by the classification societies as the basis for their recommendation. Three commenters pointed to the current Coast Guard regulations which allow for semi-submersible and jack-up MODU's to be surveyed while afloat as the basis for their recommendation. One commenter noted that underwater surveys have provided cost savings and asserted that, when properly performed, the survey provided the information necessary to determine if hull repairs were required. This comment was submitted by an owner and operator of construction barges which normally have long transit times to a drydock facility. Since the underwater surveys could be performed at more accessible locations, a cost savings was realized due to the decreased time the vessels were out of service.

Ten commenters recommended that the Coast Guard utilize the American Bureau of Shipping for drydock examinations in the same manner as the Coast Guard accepts ABS work products for plan review and vessel inspection on new construction. The agreements the Coast Guard has reached with the ABS concerning new construction have been established through Memoranda of Understanding and consequently, if the Coast Guard were to extend the agreements to cover drydock examinations, it would not be a regulatory change. At this time, the Coast Guard is not considering the use of the ABS for drydock examinations and reinspections of existing vessels.

Discussion of Changes

The scope of the rulemaking has changed. The ANPRM stated that the Coast Guard is considering revising the regulations governing drydock and tailshaft examination intervals for all vessels regulated under Title 46, Code of Federal Regulations. This is still true; however, the intervals for these examinations for Mobile Offshore Drilling Units (MODUs), regulated under 46 CFR Subchapter I–A, and for small passenger vessels, regulated under 46 CFR Subchapter T, will be addressed in separate rulemakings. Both of these subchapters are in the process of undergoing a regulatory rewrite and are docketed as follows: CGD 83–071a for Subchapter I–A, and CGD 85–080 for Subchapter T. Comments that are applicable to these vessels have been copied and placed in the respective dockets.

The Coast Guard is proposing to amend the regulations governing drydock and tailshaft examinations for those vessels regulated under Subchapter D—tank vessels, Subchapter H—passenger vessels, Subchapter I—cargo and miscellaneous vessels, Subchapter R—nautical school ships, and Subchapter U—oceanographic research vessels. In general, these proposals would extend the intervals between these examinations beyond those currently allowed, and accept alternate underwater examinations for certain vessels under specific conditions. These proposals are based on safety considerations, the comments received on the ANPRM, classification

society rules and current Coast Guard policy. While the Coast Guard believes that consistency between the proposed rules and classification society rules is important and responsive to the concerns of shipowners, comments on whether different inspection intervals should be implemented are specifically invited.

The following paragraphs detail the proposed changes.

1. Vessels in saltwater service will be required to undergo a drydock examination two times within a five year cycle with the interval between any two drydock examinations not to exceed three years. The cycle restarts after the second drydocking. Current regulations require these vessels to be drydocked once every two years. In specifying the drydock requirements in this manner, vessels owners will have more flexibility than they currently do in scheduling drydockings. These intervals are consistent with all major classification society rules, which was the overriding concern expressed in the comments received. These intervals will not apply to passenger vessels in international service which, in order to conform to the requirements of the Safety of Life at Sea Convention, as amended, will still be required to undergo annual drydock examinations.

2. Vessels in exclusive or partial fresh water service will be permitted to operate longer between drydockings. Hull deterioration for metal hulled vessels is reduced when operating in fresh water and there is no need to be drydocked as often. This is supported by the comments received; however, there was no consensus on what these extended intervals should be. The regulations allow for extended intervals based on the percentage of time a vessel operates in fresh water and this concept will be continued. The proposed regulations will require vessels operating exclusively in fresh water to be drydocked once every five years. Vessels that operate in fresh water more than six months out of any twelve month period will be required to be drydocked once every four years. Vessels that operate in salt water more than six months in any twelve month period will be required to be drydocked under the same schedule as a vessel that operates in salt water. These intervals are basically the same as currently allowed in the regulations except for tank vessels, which are currently limited to a maximum of three years between drydockings when in exclusive fresh water service, and sailing school vessels, which have no allowance for mixed fresh and salt water service but do have an interval of six years for exclusive fresh water service.

3. Wooden hull vessels will be required to be drydocked twice within a five year cycle with no more than three years between any two drydockings. This drydock schedule would lengthen the interval for most wooden hull vessels operating in salt water since the current drydock interval is two years. It would be a reduction for wooden vessels exclusively operating in fresh water since the current interval for most of these vessels is five years. The reduction for fresh water service is necessary because fresh water accelerates deterioration due to rot on wooden hull vessels. Exceptions to the above current drydock intervals are: (1) Wooden hull tank vessels which have a drydock interval of four years regardless of area of operation; and (2) sailing school vessels operating in fresh water, which have a drydock interval of six years.

4. Under these proposed regulations the Coast Guard would accept underwater surveys alternating with scheduled drydockings for all vessels except wooden hull vessels and double hull tank barges in inland service. Alternating underwater surveys will only be accepted for vessels that are less than fifteen years of age and that are equipped with effective hull protection. Effective hull protection includes impressed current systems, certain coatings, and sacrificial anodes. The Commandant (G–MVI) will make all decisions regarding the acceptability of underwater surveys for each vessel. Decisions of acceptability will be based on the condition of the vessel, the hull protection system, and the procedures that will be followed for performing the underwater survey. These decisions will, in many cases, require an on-site evaluation and may, in some instances, depend on quality of the survey results. For these reasons, no survey procedures or standards are included in the proposed regulations. The Coast Guard has published guidelines for underwater examinations, which, among other things, include requirements that rudder and bearing clearances must be obtained, suitable arrangements must be made to allow for the inspection of the sea valves from inside the vessel, the underwater body must be suitably marked, the vessel must be at light draft, and a minimum of seventy-five percent of the internals in way of the underwater body must be cleaned and made available for inspection. These guidelines are in Chapter 8, Volume II of the Marine Safety Manual.

Water conditions are of primary importance when considering the acceptability of an underwater survey. The Coast Guard has an experimental program whereby certain vessels have been allowed to substitute an underwater survey for a drydocking; fifteen vessels are participating. Experience from this program has indicated that it is unlikely that there are many ports within the U.S. that are suitable for underwater surveys, because of poor water quality (turbidity and current); however, there are locations outside the U.S. that are suitable. Once a vessel is accepted for alternate underwater examinations, the water conditions at the time of the survey must be suitable, with final judgment being made by the Officer in Charge, Marine Inspection (OCMI).

The proposed change is expected to provide the most benefit to vessels which must travel long distances to be drydocked, especially vessels with high operating costs, where lost time for transit is a significant portion of the drydock examination cost. It is not expected to aid vessels which can be readily drydocked. Experience from the experimental program has indicated that, when the survey is properly performed and water conditions are adequate, an underwater survey provides the necessary information to judge the condition of the vessel's underwater body. A properly performed underwater survey is at least as time consuming as a drydock examination, and with the costs associated for divers and the necessary video equipment, the Coast Guard does not believe an underwater survey would consistently be less costly than a drydock examination. In fact, if the underwater survey is not performed properly or if it shows the vessel requires repairs to the underwater hull, the vessel would then be required to be drydocked. This would result in the owner/operator having to spend more money than if the vessel had been initially drydocked for the examination.

5. The proposed regulations will retain the current provision that allows double hulled tank barges in inland service to undergo an internal examination of the spaces between the outer hull and the tank boundaries in lieu of alternate drydockings. Because of the proposed drydock schedule discussed above in paragraphs 1 and 2, the intervals between mandatory drydocking will be increased from four years (salt water) and six years (fresh water) to five years and ten years, respectively. Because of this extended time between mandatory drydocking, and to verify the integrity of

the cargo tank boundary, these proposed regulations require that all internal tanks be examined whenever the vessel is scheduled for a drydock examination. This includes alternate internal examinations for double hull tank barges and alternate underwater surveys for tank ships and single skin tank barges. This proposed requirement will apply to all tank vessels except those certificated to carry products regulated under 46 CFR Subchapter O, in which case internal tank examinations must be performed as specified in 46 CFR Part 151. Including this proposed requirement is not expected to impose a burden on the owners and operators of tank vessels. The internals of cargo tanks are required to be periodically examined and for economic reasons, they have usually been examined concurrently with the scheduled drydocking.

6. These proposed regulations will also provide that all extensions to the drydocking intervals must be approved by the Commandant (G–MVI). Under the current regulations, the Commandant has delegated the authority to grant six month extensions to the OCMIs. This delegation will be removed. The drydock examination intervals being proposed go a long way toward harmonizing the Coast Guard requirements with those specified by the classification societies. In addition, they provide vessel owners and operators the necessary flexibility to schedule drydock examinations without disrupting the vessel's schedule. These are the two biggest factors vessel onwers/operators currently cite when requesting drydock extensions. For these reasons the need for extensions should decrease significantly and the Coast Guard is of the opinion that extensions should only be granted in unusual circumstances. The Coast Guard considers that, for the sake of consistency in granting extensions, control should be maintained by the Commandant (G–MVI).

7. These regulations propose that each vessel that holds a Load Line Certificate must have on board a plan that shows the dimensions and location of the hull plating and framing. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or, in lieu of a drydock examination, an underwater survey or internal examination. The purpose of this requirement is to insure that the information necessary for the Coast Guard marine inspector to determine the extent of the vessel's hull deterioration is readily available. This proposed requirement incorporates Recommendation No. 7 from the Coast Guard Marine Casualty Report on the capsizing and sinking of the SS MARINE ELECTRIC, O.N. 245675, Report No. 16732/0001 HQS 83.

8. With one exception, discussed below, these proposed regulations generally extend the interval between tailshaft examinations. In addition to the comments received, the basis for the proposed intervals is to harmonize the tailshaft examination intervals with the proposed drydocking intervals and the intervals specified by the classification societies. For water lubricated bearings the intervals proposed are as follows:

a. Tailshafts with no special provisions, i.e. continuous liner, corrosion resistant shafts, or stress reducing design, must be examined twice within a five year cycle with no more than three years elapsing between any two examinations. The cycle restarts after the second examination. This is an extension beyond the current requirement of an examination once every two years.

b. Tailshafts constructed of corrosion resistant materials or fitted with a continuous liner will be required to be examined once every three years for single shafted vessels and once every five years for multiple shafted vessels. These are the same intervals currently required except for multiple shafted vessels, which is four years.

c. Tailshafts made of corrosion resistant materials or fitted with a continuous liner and which have been designed to reduce stress or are equipped with a flanged propeller will be required to be examined once every five years. This is a change from the current requirement of once every four years.

The exception to lengthened tailshaft examination intervals concerns nautical school ships. Presently, nautical school ships are not subject to the same intervals as other vessels and have an interval of four years regardless of the construction features of the tailshaft. Under these proposed regulations, they will be subject to the same intervals as other vessels and consequently the interval will depend on the construction features of the tailshaft. The practical effect of these proposed regulations on existing nautical school ships is that the tailshaft examination interval will be lengthened to five years.

9. These regulations propose that tailshafts with oil lubricated bearings will not be required to be drawn at specified intervals for examination. At each drydocking or alternate underwater survey, bearing weardown readings must be taken. In addition, the propeller must be removed to permit the non-destructive testing of the forward ⅓ of the tapered section of the tailshaft every five years. Quarterly oil analysis must be done and made available to the OCMI. These tailshafts would be required to be drawn only if a problem was indicated by these methods. As indicated by the comments received, drawing a tailshaft with oil lubricated bearings often does more harm than good. These bearings have an excellent service record and drawing the shaft may only result in bearing damage. Monitoring the tailshaft through periodic bearing clearance-readings, non-destructive testing of the taper and key way, and oil analysis is just as effective. The American Bureau of Shipping has recently changed its rules to no longer require tailshafts with oil lubricated bearings to be drawn at specified intervals. Currently, the Coast Guard requires tailshafts with oil lubricated bearings to be drawn once every ten years.

10. These regulations propose that all extensions to the tailshaft examination intervals must be approved by the Commandant (G–MVI). Under the current regulations, OCMIs have the authority to grant six-month extensions for water lubricated bearings and up to two-year extensions for oil lubricated bearings. This authority will be removed. The tailshaft examination intervals being proposed go a long way towards being harmonized with the drydock intervals and with the intervals specified by the classification societies. In addition, they provide vessel owners and operators the necessary flexibility to schedule the tailshaft examination without disrupting the vessel's schedule. These are the biggest factors vessel owners/operators currently cite when requesting tailshaft extensions. For these reasons the need for extensions should decrease significantly and, in order to be consistent in granting extensions, control should be maintained by the Commandant (G–MVI).

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291. They are considered significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) because of the possible safety implication of extending the drydock and tailshaft examination intervals. The Coast Guard has determined that these extended intervals will provide an adequate level of safety. This determination is based on

the improved hull coatings and corrosion prevention methods used on present day vessels. In addition, the Coast Guard has, under the present regulations, granted six month drydock extensions to give vessels flexibility in scheduling the examinations. There is no indication that these longer intervals have degraded safety. Accordingly, a draft regulatory evaluation has been prepared and placed in the rulemaking docket.

The basis for estimating the economic impact was the information received in response to the questions posed in the ANPRM concerning the costs for vessels to undergo a drydock and tailshaft examination. Most of the information received pertained to tankers above 30,000 DWT and tankbarges. While there was information received concerning drydocking and tailshaft examination costs for the other vessel types, there was not enough to establish general class costs. Consequently, the information received on tankers and tankbarges was adapted and used to determine the costs for all vessels. This has undoubtedly introduced some errors in the cost calculations. Persons interested in submitting information concerning the costs for other vessel types are invited to do so. This information will be used in preparing the final evaluation.

Based on this information, it is estimated that these proposed regulations would provide cost reductions to vessel owners through fewer examinations resulting in a savings of $295.4 million (present value in 1986 dollars). The annual savings is estimated to be $29.57 million, also in 1986 dollars. Savings will be realized by all vessels except wooden hull vessels in fresh water service, wooden hull tank vessels and sailing school vessels since the proposed regulations shorten the drydock intervals for these vessels. The Coast Guard has identified three small vessels from these categories. The increase in cost to these vessels is significantly less than $1000 per year and based on this, the Coast Guard has determined no further evaluation is necessary.

The draft regulatory evaluation may be inspected or copied at the location referred to in ADDRESSES. Copies may also be obtained by contacting LCDR Jeffrey G. Lantz at (202) 426-4431.

Environmental Assessment

The Coast Guard has assessed the environmental impacts of these regulations and has determined they will have no significant impact.

Paperwork Reduction Act

These proposed regulations contain information collection requirements in the following sections of 46 CFR:

§ 31.10-21	§ 31.10-34
§ 71.50-3	§ 71.50-6
§ 91.40-3	§ 91.40-6
§ 157.15-30	§ 157.15-35
§ 189.229	§ 189.233
§ 189.60-3	§ 189.60-5

They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under ADDRESSES.

Regulatory Flexibility Act

These proposed regulations would affect all companies that own or operate vessels within the scope of this rulemaking, some of which may be small entities. The proposed rules apply to all inspected vessels except small passenger vessels and mobile offshore drilling units. The proposed rules will provide an economic benefit to these vessels as the intervals between drydock and tailshaft examinations are being extended beyond the current requirements. The Coast Guard estimates the proposal could save those vessels which could be considered a small entity as much as $2,500 annually.

The Coast Guard does not consider this economic impact to be significant. Consequently the Coast Guard certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 31

Coast Guard, Marine safety, Tank vessels, Tank barges, Law enforcement, Flammable materials

46 CFR Part 61

Coast Guard, Marine safety, Vessels, Tests and inspections

46 CFR Part 71

Coast Guard, Marine safety, Passenger vessels, Reporting requirements, Foreign trade, Law enforcement

46 CFR Part 91

Coast Guard, Marine safety, Cargo vessels, Law enforcement, Reporting requirements

46 CFR Part 167

Coast Guard, Marine safety, School vessels, Reporting requirements, Fire protection

46 CFR Part 189

Coast Guard, Marine safety, Oceanographic vessels.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 46 Code of Federal Regulations as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

2. By revising § 31.10-20 to read as follows:

§ 31.10-20 Drydock examinations, underwater surveys and internal examinations—TB/ALL.

(a) A drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, and sea strainers. A drydock examination also includes a complete internal examination of all cargo and ballast tanks except if the vessel is certificated to carry cargoes regulated under 46 CFR Part 38 or 46 CFR Subchapter O, in which case cargo tank internal examinations must be accomplished as specified in 46 CFR Part 38 and 151, respectively.

(b) An underwater survey means the examination of a vessel, while afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, and sea strainers and bilge injection valves. An underwater survey also includes a complete internal examination of all cargo and ballast tanks except if the vessel is certificated to carry cargoes regulated under 46 CFR Part 38 or 46 CFR Subchapter O, in which case cargo tank internal examinations must be accomplished as specified in 46 CFR Part 38 and 151, respectively.

(c) An internal examination of a double hulled tank barge (double sides, ends, and bottom) means an

examination of the barge while afloat with no cargo or ballast on board and consists of a complete examination of—

(1) The internal side of the barge's outer hull;

(2) The exterior side of the barge's cargo tank boundary;

(3) All interior spaces; and

(4) The internals of all ballast and cargo tanks except if the vessel is certificated to carry cargoes regulated under 46 CFR Part 38 or 46 CFR Subchapter O, in which case cargo tank internal examinations must be accomplished as specified in 46 CFR Part 38 and 151, respectively.

3. By adding a new § 31.10–23 to read as follows:

§ 31.10–23 Drydock examinations, underwater surveys and internal examination intervals—TB/ALL.

(a) Except as provided for in paragraphs (b) through (e) of this section, each tank vessel must undergo a drydock examination as follows:

(1) Vessels in salt water service must undergo two drydock examinations within a five year cycle. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(2) Vessels that operate in fresh water an aggregate of at least 6 months in every 12 month period since the last drydock examination must undergo a drydock examination at intervals not to exceed four years.

(3) Vessels that operate exclusively in fresh water must undergo a drydock examination at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock examinations within a five year cycle regardless of the type of water they operate in. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(c) An underwater survey may be done in lieu of alternate drydock examinations for all vessels, except wooden hull vessels and double hull tank barges in inland service, provided the vessel is less than 15 years of age and is fitted with an effective hull protection system. Vessel owners or operators must apply to the Commandant (G–MVI) for approval of underwater surveys in lieu of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedures to be followed in carrying out the underwater surveys;

(2) The location or locations where the underwater surveys will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining sea chests, sea valves and other through-hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The internal spaces in way of the vessel's underwater body that will be available for inspection; and

(7) The condition of the vessel, including the hull protection system used on the vessel and the anticipated draft of the vessel at the time of the survey.

(d) An internal examination may be done in lieu of drydock examinations on double hull tank barges in inland service.

(e) Each vessel, irrespective of service, which has not complied with the requirements of paragraphs (a) through (d) of this section, either because it was on a voyage or was laid up, must undergo a drydock examination upon completion of the voyage or before being placed in service.

(f) The Commandant (G–MVI) may authorize extensions to the drydock intervals specified in paragraphs (a) and (b) of this section.

4. By adding a new § 31.10–24 to read as follows:

§ 31.10–24 Notice and plans required.

(a) The master, owner, operator, or agent shall notify the Officer in Charge, Marine Inspection, whenever any vessel is to be drydocked regardless of the purpose.

(b) Each vessel that holds a Load Line Certificate must have on board a shell expansion plan showing the vessel's hull scantlings. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, underwater survey, internal examination, or whenever repairs are made to the vessel's hull.

PART 61—[AMENDED]

5. The authority citation for Part 61 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

6. By revising § 61.20–17 to read as follows:

§ 61.20–17 Examination intervals.

(a) Except as provided in paragraphs (b) through (e) of this section, each tailshaft on a vessel must be examined twice within a five year cycle. A new five year cycle begins upon completion of the second tailshaft examination in the previous five year cycle. No more than three years may elapse between any two tailshaft examinations.

(b) Tailshafts fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined at the following intervals:

(1) Once every three years for vessels with a single shaft; or

(2) Once every five years for vessels with multiple shafts.

(c) Tailshafts constructed or fitted as described in paragraph (b) of this section that are fitted with a taper, keyway, and propeller designed in accordance with American Bureau of Shipping standards to reduce stress concentration, or that are fitted with a flanged propeller, must be examined once every five years.

(d) Tailshafts with oil lubricated bearings are not required to be examined provided—

(1) Tailshaft bearing clearance readings are taken whenever the vessel undergoes a drydock examination or underwater survey;

(2) The propeller is removed and non-destructive testing of the taper and keyway is done at intervals not to exceed five years; and

(3) Analysis of the tailshaft bearing lubricating oil is performed quarterly.

(e) A tailshaft on a mobile offshore drilling unit is not subject to the examination intervals prescribed in paragraphs (a) through (c) of this section if it is:

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant (G–MVI).

7. By revising § 61.20–18 to read as follows:

§ 61.20–18 Examination details.

(a) Each tailshaft must be drawn and visually inspected at each examination.

(b) On tailshafts with a taper, keyway, and propeller designed in accordance with American Bureau of Shipping standards to reduce stress concentration, in addition to a visual inspection of the entire shaft, the forward ⅓ of the shaft's taper section must be nondestructively tested.

(c) On tailshafts with a propeller fitted to the shaft by means of a coupling flange, in addition to a visual inspection of the entire shaft, the flange, the fillet at the propeller end, and each coupling bolt must be nondestructively tested.

8. By revising § 61.25–21 to read as follows:

§ 61.25–21 Extension of examination interval.

The Commandant (G–MVI) may authorize extensions to the interval between tailshaft examinations.

PART 71—[AMENDED]

9. The authority citation for Part 71 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46(b)

10. By revising § 71.50–1 to read as follows:

§ 71.50–1 Drydock examinations and underwater surveys.

(a) A drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves and sea strainers.

(b) An underwater survey means the examination of a vessel, while afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers and bilge injection valves.

11. By adding a new § 71.50–3 to read as follows:

§ 71.50–3 Drydock examination intervals.

(a) Each vessel making international voyages must undergo a drydock examination once every 12 months.

(b) Except as provided for in paragraphs (c) through (e) of this section, each vessel not making international voyages must undergo a drydock examination as follows:

(1) Vessels in salt water service must undergo two drydock examinations within a five year cycle. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(2) Vessels that operate in fresh water an aggregate of at least 6 months in every 12 month period since the last drydock examination must undergo a drydock examination at intervals not to exceed four years.

(3) Vessels that operate exclusively in fresh water must undergo a drydock examination at intervals not to exceed five years.

(c) Vessels with wooden hulls must undergo two drydock examinations within a five year cycle regardless of the type of water they operate in. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(d) An underwater survey may be done in lieu of alternate drydock examinations for all vessels, except wooden hulls and vessels making international voyages, provided the vessel is less than 15 years of age and is fitted with an effective hull protection system. Vessel owners or operators must apply to the Commandant (G–MVI) for approval of underwater surveys in lieu of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedures to be followed in carrying out the underwater surveys;

(2) The location or locations where the underwater surveys will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining sea chests, sea valves and other through-hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The internal spaces in way of the vessel's underwater body that will be made available for inspection; and

(7) The condition of the vessel, including the hull protection system used on the vessel and the anticipated draft of the vessel at the time of the survey.

(e) Each vessel, irrespective of service, which has not complied with the requirements of paragraphs (a) through (d) of this section, either because it was on a voyage or was laid up, must undergo a drydock examination upon completion of the voyage or before being placed in service.

(f) The Commandant (G–MVI) may authorize extensions to the drydock intervals specified in paragraphs (a) and (b) of this section.

12. By revising § 71.50–5 to read as follows:

§ 71.50–5 Notice and plans required.

(a) The master, owner, operator, or agent shall notify the Officer in Charge, Marine Inspection, whenever any vessel is to be drydocked regardless of the purpose.

(b) Each vessel that holds a Load Line Certificate must have onboard a shell expansion plan showing the vessel's hull scantlings. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, underwater survey, or whenever repairs are made to the vessel's hull.

PART 91—[AMENDED]

13. The authority citation for Part 91 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b)

14. By revising § 91.40–1 to read as follows:

§ 91.40–1 Drydock examinations, underwater surveys and internal examinations.

(a) A drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through hull-fittings, including sea chests, sea valves and sea strainers. For vessels certificated to carry cargoes regulated under 46 CFR Subchapter O, a drydock examination also includes a complete internal examination of all ballast tanks.

(b) An underwater survey means the examination of a vessel, while afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers and bilge injection valves. An underwater survey also includes a complete internal examination of all cargo and ballast tanks except if the vessel is certificated to carry cargoes regulated under 46 CFR Subchapter O, in which case cargo tank internal examinations must be accomplished as specified in 46 CFR Part 151.

(c) An internal examination of a double hulled tank barge (double sides, ends, and bottom) means an examination of the barge while afloat with no cargo or ballast on board and consists of a complete examination of—

(1) The internal side of the barge's outer hull;

(2) The exterior side of the barge's cargo tank boundary;

(3) All interior spaces; and

(4) The internals of all ballast and cargo tanks except if the vessel is certificated to carry cargoes regulated under 46 CFR Subchapter O, in which case cargo tank internal examinations must be accomplished as specified in 46 CFR Part 151.

15. By adding a new § 91.40–3 to read as follows:

§ 91.40–3 Drydock examination, underwater survey and internal examination intervals.

(a) Except as provided for in paragraphs (b) through (e) of this section, each vessel must undergo a drydock examination as follows:

(1) Vessels in salt water service must undergo two drydock examinations within a five year cycle. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(2) Vessels that operate in fresh water an aggregate of at least 6 months in every 12 month period since the last drydock examination must undergo a drydock examination at intervals not to exceed four years.

(3) Vessels that operate exclusively in fresh water must undergo a drydock examination at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock examinations within a five year cycle regardless of the type of water they operate in. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(c) An underwater survey may be done in lieu of alternative drydock examinations for all vessels, except wooden hull vessels and double hull tank barges in inland service, provided the vessel is less than 15 years of age and is fitted with an effective hull protection system. Vessel owners or operators must apply to the Commandant (G–MVI) for approval of underwater surveys in lieu of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedures to be followed in carrying out the underwater surveys;

(2) The location or locations where the underwater surveys will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining sea chests, sea valves and other through-hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The internal spaces in way of the vessel's underwater body that will be made available for inspection; and

(7) The condition of the vessel, including the hull protection system used on the vessel and the draft of the vessel at the time of the survey.

(d) An internal examination may be done in lieu of alternate drydock examinations on double hull tank barges in inland service.

(e) Each vessel, irrespective of service, which has not complied with the requirements of paragraphs (a) through (d), either because it was on a voyage or was laid up, must undergo a drydock examination upon completion of the voyage or before being placed in service.

(f) The Commandant (G–MVI) may authorize extensions of the drydock interval specified in paragraphs (a) and (b) of this section.

16. By revising § 91.40–5 to read as follows:

§ 91.40–5 Notice and plans required.

(a) The master, owner, operator, or agent shall notify the Officer in Charge, Marine Inspection, whenever any vessel is to be drydocked regardless of the purpose.

(b) Each vessel that holds a Load Line Certificate must have onboard a shell expansion plan showing the vessel's hull scantlings. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, underwater survey, internal examination, or whenever repairs are made to the vessel's hull.

PART 167—[AMENDED]

17. The authority citation for Part 167 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 3306, § 167.65–65 also issued under 46 U.S.C. 6101 and § 167.00–15 also issued under 46 U.S.C. 6105; 49 CFR 1.46.

18. By adding a new § 167.15–27 to read as follows:

§ 167.15–27 Drydock examinations and underwater surveys.

(a) A drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through hull fittings including sea chests, sea valves and sea strainers.

(b) An underwater survey means the examination of a vessel, while afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers and bilge injection valves.

19. By revising § 167.15–30 to read as follows:

§ 167.15–30 Drydock examination intervals.

(a) Except as provided for in paragraphs (b) through (d) of this section, each vessel must undergo a drydock examination as follows:

(1) Vessels in salt water service must undergo two drydock examinations within a five year cycle. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(2) Vessels that operate in fresh water an aggregate of at least 6 months in every 12 month period since the last drydock examination must undergo a drydock examination at intervals not to exceed four years.

(3) Vessels that operate exclusively in fresh water must undergo a drydock examination at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock examinations within a five year cycle regardless of the type of water they operate in. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(c) An underwater survey may be done in lieu of alternate drydock examinations for all vessels, except vessels with wooden hulls, provided the vessel is less than 15 years of age and is fitted with an effective hull protection system. Vessel owners or operators must apply to the Commandant (G–MVI) for approval of underwater surveys in lieu of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedures to be followed in carrying out the underwater surveys;

(2) The location or locations where the underwater surveys will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining sea chests, sea valves and other through hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The internal spaces in way of the vessel's underwater body that will be made available for inspection; and

(7) The condition of the vessel, including the hull protection system used on the vessel and the anticipated draft of the vessel at the time of the survey.

(d) Each vessel, irrespective of service, which has not complied with

the requirements of paragraphs (a) through (c) of this section, either because it was on a voyage or was laid up, must undergo a drydock examination upon completion of the voyage or before being placed in service.

(e) The Commandant (G–MVI) may authorize extensions to the drydock intervals specified in paragraphs (a) and (b) of this section.

20. By adding a new § 167.15–35 to read as follows:

§ 167.15–35 Notice and plans required.

(a) The master, owner, operator, or agent shall notify the Officer in Charge, Marine Inspection, whenever any vessel is to be drydocked regardless of the purpose.

(b) Each vessel that holds a Load Line Certificate must have onboard a shell expansion plan showing the vessel's hull scantlings. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, underwater survey, or whenever repairs are made to the vessel's hull.

21. By revising § 167.15–50 to read as follows:

§ 167.15–50 Tailshaft examinations.

Tailshaft examinations on nautical school ships shall conform to the standards in Part 61 of Subchapter F (Marine Engineering) of this chapter.

PART 169—[AMENDED]

22. The authority citation for Part 169 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

23. By revising § 169.229 to read as follows:

§ 169.229 Drydock examination intervals.

(a) Except as provided for in paragraphs (b) through (d) of this section, each vessel must undergo a drydock examination as follows:

(1) Vessels in salt water service must undergo two drydock examinations within a five year cycle. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(2) Vessels that operate in fresh water an aggregate of at least 9 months in every 12 month period since the last drydock examination must undergo a drydock examination at intervals not to exceed four years.

(3) Vessels that operate exclusively in fresh water must undergo a drydock examination at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo drydock examinations within a five year cycle regardless of the type of water they operate in. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(c) An underwater survey may be done in lieu of alternate drydock examinations for all vessels, except vessels with wooden hulls, provided the vessel is less than 15 years of age and is fitted with an effective hull protection system. Vessel owners or operators must apply to the Commandant (G–MVI) for approval of underwater surveys in lieu of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedures to be followed in carrying out the underwater surveys;

(2) The location or locations where the underwater surveys will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining sea chests, sea valves and other through hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The internal spaces in way of the vessel's underwater body that will be made available for inspection; and

(7) The condition of the vessel, including the hull protection system used on the vessel and the anticipated draft of the vessel at the time of the survey.

(d) Each vessel, irrespective of service, which has not complied with the requirements of paragraphs (a) through (c) of this section, either because it was on a voyage or was laid up, must undergo a drydock examination upon completion of the voyage or before being placed in service.

(e) The Commandant (G–MVI) may authorize extensions to the drydock intervals specified in paragraphs (a) and (b) of this section.

24. By revising § 169.231 to read as follows:

§ 169.231 Drydock examinations and underwater surveys.

(a) A drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through hull fittings including sea chests, sea valves and sea strainers.

(b) An underwater survey means the examination of a vessel, while afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers and bilge injection valves.

25. By revising § 169.233 to read as follows:

§ 169.233 Notice and plans required.

(a) The master, owner, operator, or agent shall notify the Officer in Charge, Marine Inspection, whenever any vessel is to be drydocked regardless of the purpose.

(b) Each vessel that holds a Load Line Certificate must have onboard a shell expansion plan showing the vessel's hull scantlings. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, underwater survey, or whenever repairs are made to the vessel's hull.

PART 189—[AMENDED]

26. The authority citation for Part 189 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

27. By revising § 189.40–1 to read as follows:

§ 189.40–1 Drydock examinations and underwater surveys.

(a) A drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings including sea chests, sea valves, sea strainers and bilge injection valves.

(b) An underwater survey means the examination of a vessel, while afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves and sea strainers.

28. By adding a new §189.40–3 to read as follows:

§189.40–3 Drydock examination intervals.

(a) Except as provided for in paragraphs (b) through (d) of this section, each vessel must undergo a drydock examination as follows:

(1) Vessels in salt water service must undergo two drydock examinations within a five year cycle. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more than three years may elapse between any two drydock examinations.

(2) Vessels that operate in fresh water an aggregate of at least 6 months in every 12 month period since the last drydock examination must undergo a drydock examination at intervals not to exceed four years.

(3) Vessels that operate exclusively in fresh water must undergo a drydock examination at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock examinations within a five year cycle regardless of the type of water they operate in. A new five year cycle begins upon completion of the second drydock examination in the previous five year cycle. No more then three years may elapse between any two drydock examinations.

(c) An underwater survey may be done in lieu of alternate drydock examinations for all vessels, except vessels with wooden hulls, provided the vessel is less than 15 years of age and is fitted with an effective hull protection system. Vessel owners/operators must apply to the Commandant (G–MVI) for approval of underwater surveys in lieu of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedures to be followed in carrying out the underwater surveys;

(2) The location or locations where the underwater surveys will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining sea chests, sea valves and other through–hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The internal spaces in way of the vessel's underwater body that will be made available for inspection; and

(7) The condition of the vessel, including the hull protection system used on the vessel and the anticipated draft of the vessel at the time of the survey.

(d) Each vessel, irrespective of service, which has not complied with the requirements of paragraphs (a) through (c) of this section, either because it was on a voyage or was laid up, must undergo a drydock examination upon completion of the voyage or before being placed in service.

(e) The Commandant (G–MVI) may authorize extensions to the drydock intervals specified in paragraphs (a) and (b) of this section.

29. By revising §189.40–5 to read as follows:

§189.40–5 Notice and plans required.

(a) The master, owner, operator, or agent shall notify the Officer in Charge, Marine Inspection, whenever any vessel is to be drydocked regardless of the purpose.

(b) Each vessel that holds a Load Line Certificate must have onboard a shell expansion plan showing the vessel's hull scantlings. This plan is to be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, alternate underwater survey, or whenever repairs are made to the vessel's hull.

Signed: May 22, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

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Part VIII

Department of Health and Human Services

Health Care Financing Administration

Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1986, But Before July 1, 1987; Notice

VOL 51 ISS 104 MAY 30 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-355-FN]

Medicare Program; Schedule of Limits on Home Health Agency Costs per Visit for Cost Reporting Periods Beginning on or After July 1, 1986 But Before July 1, 1987

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice sets forth a schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. The schedule is an update of the limits to take into account the effects of inflation on HHA operating costs, and was developed using the HCFA wage index. This notice applies to HHA costs for entire cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987.

EFFECTIVE DATE: The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Steven R. Kirsh (301) 594-9465.

SUPPLEMENTARY INFORMATION:

I. General Information

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to set limits on allowable costs incurred by a provider of services that may be reimbursed under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. The schedule set forth below replaces the schedule that we published in the Federal Register on July 5, 1985 (50 FR 27734), which was applicable to cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986. The July 5, 1985 notice established a three-year methodology to be used in calculating the limits. This three-year methodology provided for the limits to be set at 115 percent of the mean cost for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987, and at 112 percent of the mean cost for cost reporting periods beginning on or after July 1, 1987 but before July 1, 1988. The July 5, 1985 notice further provided that the updated schedules of limits, that would apply to cost reporting periods beginning July 1, 1986 and July 1, 1987 were to be based on the latest available cost data adjusted by the latest estimates in the market basket index (50 FR 27740).

On March 25, 1986 we published in the Federal Register (51 FR 10267) a proposed notice soliciting public comments on the use of the HCFA survey-based wage index in calculating the schedule of limits on home health agency per visit costs for cost reporting periods beginning on or after July 1, 1986. As we stated in the proposed notice, all other elements of the methodology used to determine HHA cost limits for cost reporting periods beginning on or after July 1, 1986 will remain as they were announced in the July 5, 1985 final notice.

II. Responses to Comments

We received comments on the proposed notice from 16 commenters. These commenters included HHAs, national and State HHAs associations, associations representing other providers and other interested parties. These comments and our responses to them are discussed below.

Comment: Several commenters suggested that the development of an HHA-specific wage index from the HHA cost report data would be preferable to either the BLS or HCFA hospital wage index.

Response: We would agree that, in theory, the use of an HHA industry-specific wage index could result in some increase in the accuracy of the limits. We included additional required schedules in the revised HHA cost report that was effective October 1, 1980 to capture the wage and employment data necessary to calculate such a wage index. Unfortunately, a large proportion of HHAs failed to report either the wage or the employment data, or both, making it impossible for us to do a meaningful analysis of the data. In addition, we wish to note that, of those HHAs that do report the data, a significant proportion are reporting data that is obviously erroneous. Using these data, we have calculated *annual* salary levels for skilled medical professionals and obtained a salary range between $3,000 to $500,000. Until all HHAs begin to report the required wage and employment data, and report it accurately, no further progress toward the development of an industry-specific wage index is possible.

Comment: Some commenters stated that we should have published two sets of limits in the March 25, 1986 proposed notice, one set using the BLS Wage Index and one set using the HCFA Wage Index. These commenters stated that they could not assess the actual effect of the change in wage indexes without knowing what effect the change had on the limit that would be applied to their agency.

Response: In the proposed notice, we stated that, with the exception of the change in wage indexes, "All other elements of the HHA limits methodology to be applied for cost reporting periods beginning on July 1, 1986 would remain as they were announced in the July 5, 1985 final notice." We also stated that the net effect of the change in wage indexes would be negligible because increased and decreased payments would offset each other. Therefore, it should have been clear that the change in wage indexes would have no significant effect on the base limit values (Tables I and II). This follows logically from the function of the wage index in the cost limits methodology, which is to eliminate the effect of geographic variations in prevailing wage levels on per visit cost. While the HCFA wage index, by accounting for part-time employment, results in a more accurate limit as applied to a given HHA, both the HCFA and BLS wage indexes normalized all per visit costs to the national average. Therefore, the use of either index in adjusting the labor-related portion of per visit cost will result in base limit values with no significant difference. Providers wishing to gauge the effect of the proposed change in wage indexes needed only to apply the HCFA wage index to the limits effective July 1, 1985. For example, substituting the HCFA wage index value for Dallas, TX, into the illustration shown in the July 5, 1985 publication (50 FR 27741, Column 2) would reflect the difference caused by the change in the wage index.

Comment: Some commenters were of the opinion that the BLS wage index, by virtue of being based on 1983 data, would be more accurate than the HCFA wage index, which is based on 1982 data.

Response: Since our first use of wage indexes to adjust cost limits, in 1979, our experience has been that year-to-year changes in the wage indexes based on BLS data have been minimal. Therefore, while the BLS index does reflect changes over time in the prevailing wage level for each area, relative to the national average, it continues to fail to account for the significant effect part-

time employment has on the index value for a particular area.

The HCFA wage index, while based on data one year older than the BLS data, does account for part-time employment. In doing this, the HCFA index presents a much more accurate measure of the true prevailing wage level in each area. We find that the increased accuracy resulting from accounting for the effect of part-time employment far outweighs the minimal increase in accuracy of using BLS data that is one year later.

Future schedules of HHA cost limits will utilize wage indexes based on the latest available data.

Comment: One commenter stated that the primary motivation in the change to the HCFA wage index was that it resulted in lower limit values.

Response: As we discussed above, the change from BLS to HCFA wage indexes had no effect on expenditures for home health services. Our sole concern in making this change was to assure that the limits applied to any HHA's per visit cost represented the most accurate possible estimate of the costs necessary in the efficient delivery of needed health services.

In comparing the base limits in Table I of this notice with those in Table I of the July 5, 1985 final notice, it should be noted that the actual and projected annual rates of inflation used in developing the limits in this notice are below those used to develop the previous schedule of limits. Therefore, HHAs with costs at or above the level of the limits effective July 1, 1985 have benefited from our overestimate of the rate of inflation in the cost of goods and services consumed by HHAs. For example, if the estimated rates of inflation for the years covered by the July 1, 1985 limits are determined to be greater than the actual rates of inflation by not more than 3/10 of one percentage point, no retroactive adjustment will be made. Retroactive adjustments will be made only if the projected rate of inflation exceeds the actual rate by more than 3/10 of one percentage point. In this case, HHAs with costs in excess of the limits will have benefited because they had the use of federal funds. The limits in this notice reflect later, and more accurate, actual and estimted rates of inflation in HHA costs.

Comment: We received a number of other comments concerning various elements of the methodology used in both this and previous schedules of limits.

Response: As has been true of all schedules of limits, the limits in this schedule represent our best estimate of the cost necessary in the efficient delivery of needed health services. The methodology used in this notice incorporates all feasible refinements to improve the accuracy of the limits. We intend to continue studying various aspects of the home health industry. As information that allows further refinements to the limits methodology becomes available, we will include these refinements as proposed changes to future schedules of limits.

III. Provisions of the Limits Effective July 1, 1986

With the exception of the use of the HCFA survey-based wage index, the methodology used to calculate the schedule of limits set forth in this final notice is the same as that explained in the July 5, 1985 notice (50 FR 27734–27751). The schedule of limits set forth below was calculated using 115 percent of mean cost and is based on the latest available cost data adjusted by the latest estimates in the market basket index.

The provisions of the new schedule of limits effective July 1, 1986 are summarized below.

A. A classification system based on whether an HHA is located within a metropolitan statistical area (MSA) or a New England County metropolitan area (NECMA) or a non-MSA area. (See Table III.A., below, for the listing of MSA/NECMA areas.)

B. The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies. We have provided for an "add-on" adjustment of the freestanding HHA limit (which is equal to 10.7204 percent of the mean for the MSA group and 11.5237 percent for the non-MSA group) for each hospital-based discipline to account for the higher administrative and general (A & G) costs resulting from Medicare cost allocation requirements. That is, the labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category.

The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1985 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and vice versa.

In developing the market basket index, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1986 through 1988 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

Cost Categories	Relative [1] importance 1987	Forecaster of [2] percent changes (1986–88)	Price variables used
Wages and salaries	86.46	DRI-CFS	Average hourly earnings of nonsupervisory private hospital workers (SIC 809) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (Monthly).
Employee benefits	8.39	DRI-TL	Supplements to wages and salaries per worker in non-agriculture establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (monthly). For total employment—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings (monthly).*
Transportation	4.23	DRI-TL	Transportation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Office costs	2.90	DRI-TL	Services Component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Medical nursing supplies and rental equipment.	2.47	HCFA-HHS	Medical equipment and supplies component of the Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED—Continued

Cost Categories	Relative [1] Importance 1987	Forecaster of [2] percent changes (1988–89)	Price variables used
Rent	1.19	DRI-CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Nonrental space occupancy	1.10	DRI-TL	Composite Fuel and Other Utilities Index. Source: HHS-HCFA, Community Hospital Price Index.
Miscellaneous	6.39	DRI-TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Contract services	6.87	HHS	Weighted mean of price variables for the preceding eight items.
Total	100.00		

[1] Relative cost weights for 1977 were derived from special studies by HCFA using primarily data from HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. The relative importance values change over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI-TL refers to Data Resources, Inc., Transtlevy (TL 0466) 29 Hartwell Avenue, Lexington, Massachusetts 02173; DRI-CFS refers to Data Resources, Inc., Cost Forecasting Services (CFS-882), 1750 K Street NW., Washington, DC 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than ⅒ of one percentage point (that is, higher or lower).

E. The use of the HCFA survey-based gross wage index that was developed based on data obtained from a survey conducted by HCFA. The survey provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report for hospital fiscal years ending in calendar year 1982, and for the extraction from hospital records of data on paid hours worked. A complete description of the survey, as well as the survey results, can be found in the following Federal Register publication:

- Proposed rule published on July 3, 1984 (49 FR 27439);
- Final rule published on August 31, 1984 (49 FR 34764);
- Proposed rule published on June 10, 1985 (50 FR 24375); and
- Final rule published on September 3, 1985 (50 FR 35846).

A description of the methodology used to compute the gross wage index (see tables III.A. and III.B.) was described in the March 25, 1986 proposed notice. Corrections of data for several areas were made subsequent to the publication of the proposed notice and have been incorporated in the wage indexes included in this final notice. The wage index is used to adjust the labor-related portion of the limits and the A & G add-on to reflect differing wage levels among the areas (MSA/NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (86.48 percent) and the employee benefits portion (8.39 percent), plus a factor representing a proportionate share of contract services (5.52 percent), is used to determine the labor component (80.37 percent) of all HHA per visit costs used to set the limits.

If the Executive Office of Management and Budget (EOMB) announces changes in the MSA designations effective before July 1, 1986, we will recalculate the wage indexes for the affected areas and direct our intermediaries to use these revised indexes in determining the limits for HHAs they service.

F. Separate treatment of the labor-related and nonlabor components of per visit costs. The separate components of cost are calculated by obtaining actual HHA cost data for each agency and increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of wage geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison group, the resulting amounts are shown in Table I.

G. The use of a cost of living adjustment to the nonlabor portion of the limits for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

H. Limits that are applied to the per visit cost of each type of service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.

IV. Methodology for Determining Cost per Visit Limits

A. Data

The limit values were determined by extracting actual cost per visit data from Medicare cost reports for periods ending on or before September 30, 1983. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1986 (the midpoint of the first cost reporting period to which the limits will apply). The annual percentage increases used to compute the per visit costs are:

	Percent increase
Calendar Year:	
1982	[1] 10.0
1983	[1] 6.7
1984	[1] 5.3
1985	[1] 4.6
1986	[2] 3.4
1987	[2] 4.2

[1] Final rate.

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 3/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Deflation by Wage Index

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (80.37 percent) was determined by using the 74.85 percent employee wage and benefit factor from the market basket, plus 5.52 percent, which represents a proportionate share of the market basket relative importance for contract services. We then divided the labor portion of per visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA and non-MSA locations, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service Limit

A basic service limit equal to 115 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table I.)

V. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate

wage index. (See Tables I, III.A. and III.B.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table I)	$41.57
Wage index (Table III.A.)	x 1.0723
Adjusted labor component	$44.60
Nonlabor component (Table I)	+11.36
Adjusted occupational therapy limit	$55.76

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1986, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, an HHA's cost reporting period begins January 1, 1987. As calculated in the example in section V.A. of this notice, the labor adjusted per visit limit for occupational therapy for this HHA's group is $55.76.

Computation of Revised Limit for Occupational Therapy

Adjusted per visit limit	$55.76
Adjustment factor from Table IV	x1.0210
Revised per visit limit	$56.93

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1987, is $56.93 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of a cost reporting period. For cost reporting periods of other than 12 months in duration, the calculation must be done specifically for the midpoint of the cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA–2552 cost report (see Provider Reimbursement Manual, HCFA Pub. 15–2, Chapters 12, 15 and 19), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA will be considered a hospital-based agency and will be entitled to an adjustment of the per visit limit to account for higher administrative and general costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II.

VI. Schedule of Limits Effective July 1, 1986

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987. The intermediaries will compute the adjusted limits using the wage indexes published in Tables III.A. and III.B. and notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Medical supplies that are not routinely furnished in conjunction with patient care visits and are directly identifiable as services to an individual patient (that is, medical supplies for which a separate charge is made, in addition to the per visit charge) are excluded from the per visit cost if they meet all of the following criteria—

- The common and established practice of comparable HHAs in the area is to charge separately for the items.
- The HHA follows a consistent charging practice for Medicare and non-Medicare patients receiving the item.
- Generally, the item is not frequently furnished to patients.
- The item is directly identifiable to an individual patient and its costs can be identified and accumulated in a separate cost center.
- The item is furnished at the direction of the patient's physician and is specifically identified in the plan of treatment.

This explanation of nonroutine medical supplies is consistent with instructions for reporting the cost of these supplies on the revised HHA cost report, forms HCFA–1728 and HCFA–2552K. The reasonable cost of durable medical equipment and supplies that are not routinely furnished in conjunction with patient care visits will be reimbursed without regard to the schedule of limits.

Before the limits are applied at cost settlement, the provider's actual costs will be reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries will review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see § 405.432) and against the limitation on costs that are substantially out of line with those of comparable agencies (see § 405.451).

TABLE I—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]

Type of visit	Limit	Labor portion	Nonlabor portion
MSA (NECMA) location			
Skilled nursing care	$52.27	$41.31	$10.96
Physical therapy	50.14	39.61	10.53
Speech pathology	56.79	44.82	11.97
Occupational therapy	52.73	41.37	11.36
Medical social services	78.57	61.56	17.01
Home health aid	33.76	26.60	7.16
NON-MSA location			
Skilled nursing care	57.43	47.49	9.94
Physical therapy	59.52	49.34	10.18
Speech pathology	68.71	56.69	12.02
Occupational therapy	64.48	53.16	11.33
Medical social services	81.42	67.44	13.98
Home health aide	33.77	27.89	5.88

[1] Nonlabor component of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

	ABQ Add-On	Labor portion	Nonlabor portion
MSA (NECMA) location			
Skilled nursing care	$5.11	$4.78	$1.33
Physical therapy	5.16	4.00	1.16
Speech pathology	5.20	4.82	1.38
Occupational therapy	5.37	4.13	1.24
Medical social services	8.51	6.57	1.94
Home health aide	3.91	3.06	.85
NON-MSA location			
Skilled nursing care	6.36	5.25	1.11
Physical therapy	6.39	5.28	1.11
Speech pathology	8.31	6.83	1.48
Occupational therapy	6.20	5.15	1.05
Medical social services	11.85	9.80	2.05
Home health aide	4.09	3.38	.71

Example

A hospital-based agency in Orlando, FL has a wage index of 1.0188. It provides the following services:

Skilled Nursing
Physical Therapy
Home Health Aides

The published limits for that agency are:

	Limit		Add-On	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
SN	$41.31	$10.96	$4.76	$1.33
PT	39.61	10.53	4.00	1.16
HHA	28.69	7.16	3.06	.85

Calculation of Hospital-Based Limit With Add-On

	SN	PT	HHA
Limit labor portion	$41.31	$39.61	$28.69
Add-on labor portion	+4.76	+4.00	+3.06
Total labor portion	$46.09	$43.61	$29.06
Wage index	×1.0188	×1.0188	×1.0188
Adjusted labor portion	$46.96	$44.43	$30.22
Limit nonlabor portion	10.96	10.53	7.16
Add-on nonlabor portion	+1.33	+1.16	+.85
Adjusted limits	$58.25	$56.12	$38.23

TABLE III.A.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
Abilene, TX (Taylor, TX)	.9009
Aguadilla, PR (Aguada, PR; Aguadilla, PR; Isabella, PR; Moca, PR)	1.5581
Akron, OH (Portage, OH; Summit, OH)	1.1080
Albany, GA (Dougherty, GA; Lee, GA)	.8183
Albany-Schenectady-Troy, NY (Albany, NY; Greene, NY; Montgomery, NY; Rensselaer, NY; Saratoga, NY; Schenectady, NY)	.9048
Albuquerque, NM (Bernalillo, NM)	1.1079
Alexandria, LA (Rapides, LA)	.9166
Allentown-Bethlehem, PA-NJ (Warren, NJ; Carbon, PA; Lehigh, PA; Northampton, PA)	1.0454
Altoona, PA (Blair, PA)	1.0022
Amarillo, TX (Potter, TX; Randall, TX)	.9585
Anaheim-Santa Ana, CA (Orange, CA)	1.2815
Anchorage, AK (Anchorage, AK)	1.5849
Anderson, IN (Madison, IN)	.9662
Anderson, SC (Anderson, SC)	.8369
Ann Arbor, MI (Washtenaw, MI)	1.2007
Anniston, AL (Calhoun, AL)	.8519
Appleton-Oshkosh-Neenah, WI (Calumet, WI; Outagamie, WI; Winnebago, WI)	1.0098
Arecibo, PR (Arecibo, PR; Camuy, PR; Hatillo, PR; Quebradillas, PR)	1.0081
Asheville, NC (Buncombe, NC)	.9844
Athens, GA (Clarke, GA; Jackson, GA; Madison, GA; Oconee, GA)	.8179
Atlanta, GA (Barrow, GA; Bulte, GA; Cherokee, GA; Clayton, GA; Cobb, GA; Coweta, GA; De Kalb, GA; Douglas, GA; Fayette, GA; Forsyth, GA; Fulton, GA; Gwinnett, GA; Henry, GA; Newton, GA; Paulding, GA; Rockdale, GA; Spalding, GA; Walton, GA)	.9983
Atlantic City, NJ (Atlantic, NJ; Cape May, NJ)	1.0686
Augusta, GA-SC (Columbia, GA; McDuffie, GA; Richmond, GA; Aiken, SC)	.9602
Aurora-Elgin, IL (Kane, IL; Kendall, IL)	1.1015
Austin, TX (Hays, TX; Travis, TX; Williamson, TX)	1.1177
Bakersfield, CA (Kern, CA)	1.2059
Baltimore, MD (Anne Arundel, MD; Baltimore, MD; Baltimore City, MD; Carroll, MD; Harford, MD; Howard, MD; Queen Anne's, MD)	1.1150
Bangor, ME (Penobscot, ME)	.9295
Baton Rouge, LA (Ascension, LA; East Baton Rouge, LA; Livingston, LA; West Baton Rouge, LA)	.9585
Battle Creek, MI (Calhoun, MI)	1.0998
Beaumont-Port Arthur, TX (Hardin, TX; Jefferson, TX; Orange, TX)	1.0092
Beaver County, PA (Beaver, PA)	1.0019
Bellingham, WA (Whatcom, WA)	1.1471
Benton Harbor, MI (Berrien, MI)	.9011
Bergen-Passaic, NJ (Bergen, NJ; Passaic, NJ)	1.0749
Billings, MT (Yellowstone, MT)	1.0228
Biloxi-Gulfport, MS (Hancock, MS; Harrison, MS)	.8499
Binghamton, NY (Broome, NY; Tioga, NY)	.9698
Birmingham, AL (Blount, AL; Jefferson, AL; Saint Clair, AL; Shelby, AL; Walker, AL)	.9698
Bismarck, ND (Burleigh, ND; Morton, ND)	.9043
Bloomington, IN (Monroe, IN)	.9099
Bloomington-Normal, IL (McLean, IL)	.9844
Boise City, ID (Ada, ID)	1.0884
Boston-Lawrence-Salem-Lowell-Brockton, MA (Essex, MA; Middlesex, MA; Norfolk, MA; Plymouth, MA; Suffolk, MA)	1.1990
Boulder-Longmont, CO (Boulder, CO)	1.1328
Bradenton, FL (Manatee, FL)	.9198
Brazoria, TX (Brazoria, TX)	.8742
Bremerton, WA (Kitsap, WA)	.9813
Bridgeport-Stamford-Norwalk-Danbury, CT (Fairfield, CT)	1.1946
Brownsville-Harlingen, TX (Cameron, TX)	.8877
Bryan-College Station, TX (Brazos, TX)	.9099
Buffalo, NY (Erie, NY)	1.0997
Burlington, NC (Alamance, NC)	.7998
Burlington, VT (Chittenden, VT; Grand Isle, VT)	1.0131
Caguas, PR (Caguas, PR; Gurabo, PR; San Lorenz, PR; Aguas Buenas, PR; Cayey, PR; Cidra, PR)	.8270
Canton, OH (Carroll, OH; Stark, OH)	1.0080
Casper, WY (Natrona, WY)	1.1083
Cedar Rapids, IA (Linn, IA)	1.0174
Champaign-Urbana-Rantoul, IL (Champaign, IL)	.9995
Charleston, SC (Berkeley, SC; Charleston, SC; Dorchester, SC)	.9812
Charleston, WV (Kanawha, WV; Putnam, WV)	1.0492
Charlotte-Gastonia-Rock Hill, NC-SC (Cabarrus, NC; Gaston, NC; Lincoln, NC; Mecklenburg, NC; Rowan, NC; Union, NC; York, SC)	.9991
Charlottesville, VA (Albemarle, VA; Charlottesville City, VA; Fluvanna, VA; Greene, VA)	.9345
Chattanooga, TN-GA (Catoosa, GA; Dade, GA; Walker, GA; Hamilton, TN; Marion, TN; Sequatchie, TN)	1.0041
Cheyenne, WY (Laramie, WY)	.9702
Chicago, IL (Cook, IL; Du Page, IL; McHenry, IL)	1.2361
Chico, CA (Butte, CA)	1.2493
Cincinnati, OH-KY-IN (Dearborn, IN; Boone, KY; Campbell, KY; Kenton, KY; Clermont, OH; Hamilton, OH; Warren, OH)	1.1050
Clarksville-Hopkinsville, TN-KY (Christian, KY; Montgomery, TN)	.8182
Cleveland, OH (Cuyahoga, OH; Geauga, OH; Lake, OH; Medina, OH)	1.1995
Colorado Springs, CO (El Paso, CO)	1.0439
Columbia, MO (Boone, MO)	1.1022
Columbia, SC (Lexington, SC; Richland, SC)	.9166
Columbus, GA-AL (Russell, AL; Chattanoochee, GA; Muscogee, GA)	.7889
Columbus, OH (Delaware, OH; Fairfield, OH; Franklin, OH; Licking, OH; Madison, OH; Pickaway, OH; Union, OH)	.9994
Corpus Christi, TX (Nueces, TX; San Patricio, TX)	.9099
Cumberland, MD-WV (Allegany, MD; Mineral, WV)	.8896
Dallas, TX (Collin, TX; Dallas, TX; Denton, TX; Ellis, TX; Kaufman, TX; Rockwall, TX)	1.0733
Danville, VA (Danville City, VA; Pittsylvania, VA)	.8067
Davenport-Rock Island-Moline, IA-IL (Scott, IA; Henry, IL; Rock Island, IL)	1.0660
Dayton-Springfield, OH (Clark, OH; Greene, OH; Miami, OH; Montgomery, OH)	1.0839
Daytona Beach, FL (Volusia, FL)	.9135
Decatur, IL (Macon, IL)	.9582
Denver, CO (Adams, CO; Arapahoe, CO; Denver, CO; Douglas, CO; Jefferson, CO)	1.1665
Des Moines, IA (Dallas, IA; Polk, IA; Warren, IA)	1.0559
Detroit, MI (Lapeer, MI; Livingston, MI; Macomb, MI; Monroe, MI; Oakland, MI; Saint Clair, MI; Wayne, MI)	1.1725
Dothan, AL (Dale, AL; Houston, AL)	.8457
Dubuque, IA (Dubuque, IA)	1.0590
Duluth, MN-WI (St. Louis, MN; Douglas, WI)	.9030
Eau Claire, WI (Chippewa, WI; Eau Claire, WI)	.9498
El Paso, TX (El Paso, TX)	.9437
Elkhart-Goshen, IN (Elkhart, IN)	.9660
Elmira, NY (Chemung, NY)	.9741
Enid, OK (Garfield, OK)	.9658
Erie, PA (Erie, PA)	.9991
Eugene-Springfield, OR (Lane, OR)	1.1166
Evansville, IN-KY (Posey, IN; Vanderburgh, IN; Warrick, IN; Henderson, KY)	1.0217
Fargo-Moorhead, ND-MN (Clay, MN; Cass, ND)	1.0844
Fayetteville, NC (Cumberland, NC)	.8930
Fayetteville-Springdale, AR (Washington, AR)	.8076
Flint, MI (Genesee, MI)	1.2104
Florence, AL (Colbert, AL; Lauderdale, AL)	.7869
Florence, SC (Florence, SC)	.7998
Fort Collins-Loveland, CO (Larimer, CO)	1.0946
Fort Lauderdale-Hollywood-Pompano Beach, FL (Broward, FL)	1.1249
Fort Myers-Cape Coral, FL (Lee, FL)	.9633
Fort Pierce, FL (Martin, FL; St. Lucie, FL)	1.0215
Fort Smith, AR-OK (Crawford, AR; Sebastian, AR; Sequoyah, OK)	.8243
Fort Walton Beach, FL (Okaloosa, FL)	.8781
Fort Wayne, IN (Allen, IN; De Kalb, IN; Whitley, IN)	.9699
Fort Worth-Arlington, TX (Johnson, TX; Parker, TX; Tarrant, TX)	.9998
Fresno, CA (Fresno, CA)	1.1490
Gadsden, AL (Etowah, AL)	.8777
Gainesville, FL (Alachua, FL; Bradford, FL)	.9842
Galveston-Texas City, TX (Galveston, TX)	1.1412
Gary-Hammond, IN (Lake, IN; Porter, IN)	1.0978
Glens Falls, NY (Warren, NY; Washington, NY)	.9807
Grand Forks, ND (Grand Forks, ND)	.9871
Grand Rapids, MI (Kent, MI; Ottawa, MI)	1.0869
Great Falls, MT (Cascade, MT)	1.0722
Greeley, CO (Weld, CO)	1.0763
Green Bay, WI (Brown, WI)	1.0328
Greensboro-Winston-Salem-High Point, NC (Davidson, NC; Davie, NC; Forsyth, NC; Guilford, NC; Randolph, NC; Stokes, NC; Yadkin, NC)	.9368
Greenville-Spartanburg, SC (Greenville, SC; Pickens, SC; Spartanburg, SC)	.8130
Hagerstown, MD (Washington, MD)	.9585
Hamilton-Middletown, OH (Butler, OH)	1.0214
Harrisburg-Lebanon-Carlisle, PA (Cumberland, PA; Dauphin, PA; Lebanon, PA; Perry, PA)	.9998
Hartford-New Britain-Bristol, CT (Hartford, CT; Litchfield, CT; Middlesex, CT; Tolland, CT)	1.1486
Hickory, NC (Alexander, NC; Burke, NC; Catawba, NC)	.8962
Honolulu, HI (Honolulu, HI)	1.2082
Houma-Thibodaux, LA (Lafourche, LA; Terrebonne, LA)	.8229
Houston, TX (Fort Bend, TX; Harris, TX; Liberty, TX; Montgomery, TX; Waller, TX)	1.0998
Huntington-Ashland, WV-KY-OH (Boyd, KY; Carter, KY; Greenup, KY; Lawrence, OH; Cabell, WV; Wayne, WV)	.9039
Huntsville, AL (Madison, AL)	.8661
Indianapolis, IN (Boone, IN; Hamilton, IN; Hancock, IN; Hendricks, IN; Johnson, IN; Marion, IN; Morgan, IN; Shelby, IN)	1.0394
Iowa City, IA (Johnson, IA)	1.3094
Jackson, MI (Jackson, MI)	1.0208
Jackson, MS (Hinds, MS; Madison, MS; Rankin, MS)	.9654
Jackson, TN (Madison, TN)	.7816
Jacksonville, FL (Clay, FL; Duval, FL; Nassau, FL; St. Johns, FL)	.9481
Jacksonville, NC (Onslow, NC)	.7998
Janesville-Beloit, WI (Rock, WI)	.9422
Jersey City, NJ (Hudson, NJ)	1.1108
Johnson City-Kingsport-Bristol, TN-VA (Carter, TN; Hawkins, TN; Sullivan, TN; Unicoi, TN; Washington, TN; Bristol City, VA; Scott, VA; Washington, VA)	.8817
Johnstown, PA (Cambria, PA; Somerset, PA)	.8539
Joliet, IL (Grundy, IL; Will, IL)	1.1253
Joplin, MO (Jasper, MO; Newton, MO)	.8202
Kalamazoo, MI (Kalamazoo, MI)	1.2341
Kankakee, IL (Kankakee, IL)	.9510
Kansas City, MO-KS (Johnson, KS; Leavenworth, KS; Miami, KS; Wyandotte, KS; Cass, MO; Clay, MO; Jackson, MO; Lafayette, MO; Platte, MO; Ray, MO)	1.0680
Kenosha, WI (Kenosha, WI)	1.0875
Killeen-Temple, TX (Bell, TX; Coryell, TX)	.8949

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TABLE III.A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Knoxville, TN (Anderson, TN; Blount, TN; Grainger, TN; Jefferson, TN; Knox, TN; Sevier, TN; Union, TN)	.9986
Kokomo, IN (Howard, IN; Tipton, IN)	.9570
LaCrosse, WI (LaCrosse, WI)	1.0167
Lafayette, LA (Lafayette, LA; St. Martin, LA)	1.0114
Lafayette, IN (Tippecanoe, IN)	.9128
Lake Charles, LA (Calcasieu, LA)	1.0036
Lake County, IL (Lake, IL)	1.1527
Lakeland-Winter Haven, FL (Polk, FL)	.9811
Lancaster, PA (Lancaster, PA)	1.0396
Lansing-East Lansing, MI (Clinton, MI; Eaton, MI; Ingham, MI)	1.0788
Laredo, TX (Webb, TX)	.8163
Las Cruces, NM (Dona Ana, NM)	.8767
Las Vegas, NV (Clark, NV)	1.1234
Lawrence, KS (Douglas, KS)	1.0188
Lawton, OK (Comanche, OK)	.9409
Lewiston-Auburn, ME (Androscoggin, ME)	.9436
Lexington-Fayette, KY (Bourbon, KY; Clark, KY; Fayette, KY; Jessamine, KY; Scott, KY; Woodford, KY)	.9878
Lima, OH (Allen, OH; Auglaize, OH)	.9666
Lincoln, NE (Lancaster, NE)	.9710
Little Rock-North Little Rock, AR (Faulkner, AR; Lonoke, AR; Pulaski, AR; Saline, AR)	1.1128
Longview-Marshall, TX (Gregg, TX; Harrison, TX)	.9418
Lorain-Elyria, OH (Lorain, OH)	1.0280
Los Angeles-Long Beach, CA (Los Angeles, CA)	1.2290
Louisville, KY-IN (Clark, IN; Floyd, IN; Harrison, IN; Bullitt, KY; Jefferson, KY; Oldham, KY; Shelby, KY)	1.0081
Lubbock, TX (Lubbock, TX)	1.0199
Lynchburg, VA (Amherst, VA; Campbell, VA; Lynchburg City, VA)	.9815
Macon-Warner Robins, GA (Bibb, GA; Houston, GA; Jones, GA; Peach, GA)	.9325
Madison, WI (Dane, WI)	1.0802
Manchester-Nashua, NH (Hillsboro, NH; Merrimack, NH)	.9724
Mansfield, OH (Richland, OH)	.9019
Mayaguez, PR (Anasco, PR; Cabo Rojo, PR; Hormigueros, PR; Mayaguez, PR; San German, PR)	1.3792
McAllen-Edinburg-Mission, TX (Hidalgo, TX)	.8105
Medford, OR (Jackson, OR)	1.0356
Melbourne-Titusville, FL (Brevard, FL)	.9378
Memphis, TN-AR-MS (Crittenden, AR; De Soto, MS; Shelby, TN; Tipton, TN)	1.0494
Miami-Hialeah, FL (Dade, FL)	1.0709
Middlesex-Somerset-Hunterdon, NJ (Hunterdon, NJ; Middlesex, NJ; Somerset, NJ)	1.0349
Midland, TX (Midland, TX)	1.1305
Milwaukee, WI (Milwaukee, WI; Ozaukee, WI; Washington, WI; Waukesha, WI)	1.1411
Minneapolis-St. Paul, MN-WI (Anoka, MN; Carver, MN; Chicago, MN; Dakota, MN; Hennepin, MN; Isanti, MN; Ramsey, MN; Scott, MN; Washington, MN; Wright, MN; St. Croix, WI)	1.1772
Mobile, AL (Baldwin, AL; Mobile, AL)	.8927
Modesto, CA (Stanislaus, CA)	1.2103
Monmouth-Ocean, NJ (Monmouth, NJ; Ocean, NJ)	.9984
Monroe, LA (Ouachita, LA)	.9843
Montgomery, AL (Autauga, AL; Elmore, AL; Montgomery, AL)	.9576
Muncie, IN (Delaware, IN)	1.0085
Muskegon, MI (Muskegon, MI)	.9912
Naples, FL (Collier, FL)	1.0448
Nashville, TN (Cheatham, TN; Davidson, TN; Dickson, TN; Robertson, TN; Rutherford, TN; Sumner, TN; Williamson, TN; Wilson, TN)	.9414
Nassau-Suffolk, NY (Nassau, NY; Suffolk, NY)	1.3389
New Bedford-Fall River-Attleboro, MA (Bristol, MA)	.9795
New Haven-West Haven-Waterbury-Meriden, CT (New Haven, CT)	1.1276
New London-Norwich, CT (New London, CT)	1.1103
New Orleans, LA (Jefferson, LA; Orleans, LA; St. Bernard, LA; St. Charles, LA; St. John The Baptist, LA; St. Tammany, LA)	.9344
New York, NY (Bronx, NY; Kings, NY; New York City, NY; Putnam, NY; Queens, NY; Richmond, NY; Rockland, NY; Westchester, NY)	1.3809
Newark, NJ (Essex, NJ; Morris, NJ; Sussex, NJ; Union, NJ)	1.1404
Niagara Falls, NY (Niagara, NY)	.8869

TABLE III.A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Norfolk-Virginia Beach-Newport News, VA (Chesapeake City, VA; Gloucester, VA; Hampton City, VA; James City Co., VA; Newport News City, VA; Norfolk City, VA; Poquoson, VA; Portsmouth City, VA; Suffolk City, VA; Virginia Beach City, VA; Williamsburg City, VA; York, VA)	.9692
Oakland, CA (Alameda, CA; Contra Costa, CA)	1.4895
Ocala, FL (Marion, FL)	.8735
Odessa, TX (Ector, TX)	.9619
Oklahoma City, OK (Canadian, OK; Cleveland, OK; Logan, OK; McClain, OK; Oklahoma, OK; Pottawatomie, OK)	1.0930
Olympia, WA (Thurston, WA)	1.0787
Omaha, NE-IA (Pottawattamie, IA; Douglas, NE; Sarpy, NE; Washington, NE)	1.0509
Orange County, NY (Orange, NY)	.9299
Orlando, FL (Orange, FL; Osceola, FL; Seminole, FL)	1.0188
Owensboro, KY (Daviess, KY)	.8243
Oxnard-Ventura, CA (Ventura, CA)	1.2851
Panama City, FL (Bay, FL)	.8354
Parkersburg-Marietta, WV-OH (Washington, OH; Wood, WV)	.9121
Pascagoula, MS (Jackson, MS)	.9578
Pensacola, FL (Escambia, FL; Santa Rosa, FL)	.8742
Peoria, IL (Peoria, IL; Tazewell, IL; Woodford, IL)	1.0584
Philadelphia, PA-NJ (Burlington, NJ; Camden, NJ; Gloucester, NJ; Bucks, PA; Chester, PA; Delaware, PA; Montgomery, PA; Philadelphia, PA)	1.1793
Phoenix, AZ (Maricopa, AZ)	1.0801
Pine Bluff, AR (Jefferson, AR)	.8009
Pittsburgh, PA (Allegheny, PA; Fayette, PA; Washington, PA; Westmoreland, PA)	1.1011
Pittsfield, MA (Berkshire, MA)	1.0246
Ponce, PR (Juana Diaz, PR; Ponce, PR)	1.8835
Portland, ME (Cumberland, ME; Sagadahoc, ME; York, ME)	1.0114
Portland, OR (Clackamas, OR; Multnomah, OR; Washington, OR; Yamhill, OR)	1.2074
Portsmouth-Dover-Rochester, NH (Rockingham, NH; Strafford, NH)	.9373
Poughkeepsie, NY (Dutchess, NY)	1.0052
Providence-Pawtucket-Woonsocket, RI (Bristol, RI; Kent, RI; Newport, RI; Providence, RI; Statewide, RI; Washington, RI)	1.0553
Provo-Orem, UT (Utah, UT)	.9656
Pueblo, CO (Pueblo, CO)	1.1210
Racine, WI (Racine, WI)	1.0002
Raleigh-Durham, NC (Durham, NC; Franklin, NC; Orange, NC; Wake, NC)	.9720
Rapid City, SD (Pennington, SD)	.9523
Reading, PA (Berks, PA)	1.0248
Redding, CA (Shasta, CA)	1.2396
Reno, NV (WASHOE, NV)	1.1639
Richland-Kennewick, WA (Benton, WA; Franklin, WA)	1.0258
Richmond-Petersburg, VA (Charles City Co., VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA)	.9584
Riverside-San Bernardino, CA (Riverside, CA; San Bernardino, CA)	1.2517
Roanoke, VA (Botetourt, VA; Roanoke, VA; Roanoke City, VA; Salem City, VA)	.8987
Rochester, MN (Olmsted, MN)	1.0284
Rochester, NY (Livingston, NY; Monroe, NY; Ontario, NY; Orleans, NY; Wayne, NY)	1.0228
Rockford, IL (Boone, IL; Winnebago, IL)	1.1354
Sacramento, CA (Eldorado, CA; Placer, CA; Sacramento, CA; Yolo, CA)	1.2369
Saginaw-Bay City-Midland, MI (Bay, MI; Midland, MI; Saginaw, MI)	1.1070
St. Cloud, MN (Benton, MN; Sherburne, MN; Stearns, MN)	1.0018
St. Joseph, MO (Buchanan, MO)	.9487
St. Louis, MO-IL (Clinton, IL; Jersey, IL; Madison, IL; Monroe, IL; St. Clair, IL; Franklin, MO; Jefferson, MO; St. Charles, MO; St. Louis, MO; St. Louis City, MO)	1.0827
Salem, OR (Marion, OR; Polk, OR)	1.0971
Salinas-Seaside-Monterey, CA (Monterey, CA)	1.2571
Salt Lake City-Ogden, UT (Davis, UT; Salt Lake, UT; Weber, UT)	1.0354
San Angelo, TX (Tom Green, TX)	.8719
San Antonio, TX (Bexar, TX; Comal, TX; Guadalupe, TX)	.8943
San Diego, CA (San Diego, CA)	1.3104

TABLE III.A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
San Francisco, CA (Marin, CA; San Francisco, CA; San Mateo, CA)	1.6517
San Jose, CA (Santa Clara, CA)	1.4805
San Juan, PR (Barceloneta PR; Bayoman, PR; Canovenas, PR; Caroline, PR; Catano, PR; Corozal, PR; Dorado, PR; Fajardo, PR; Florida, PR; Guaynabo, PR; Humacao, PR; Juncos, PR; Los Piedras, PR; Loiza, PR; Luguillo, PR; Manati, PR; Naranjito, PR; Rio Grande, PR; San Juan, PR; Toa Alta, PR; Toa Baja, PR; Trujillo Alto, PR; Vega Alta, PR; Vega Baja, PR)	1.5197
Santa Barbara-Santa Maria-Lompoc, CA (Santa Barbara, CA)	1.1822
Santa Cruz, CA (Santa Cruz, CA)	1.2432
Santa Fe, NM (Los Alamos, NM; Santa Fe, NM)	.9809
Santa Rosa-Petaluma, CA (Sonoma, CA)	1.3112
Sarasota, FL (Sarasota, FL)	.9639
Savannah, GA (Chatham, GA; Effingham, GA)	.8917
Scranton-Wilkes Barre, PA (Columbia, PA; Lackawanna, PA; Luzerne, PA; Monroe, PA; Wyoming, PA)	.9962
Seattle, WA (King, WA; Snohomish, WA)	1.1579
Sharon, PA (Mercer, PA)	.9757
Sheboygan, WI (Sheboygan, WI)	.9085
Sherman-Denison, TX (Grayson, TX)	.8819
Shreveport, LA (Bossier, LA; Caddo, LA)	.9613
Sioux City, IA-NE (Woodbury, IA; Dakota, NE)	1.0052
Sioux Falls, SD (Minnehaha, SD)	1.0211
South Bend-Mishawaka, IN (St. Joseph, IN)	1.0067
Spokane, WA (Spokane, WA)	1.1558
Springfield, IL (Menard, IL; Sangamon, IL)	1.0664
Springfield, MO (Christian, MO; Greene, MO)	.9663
Springfield, MA (Hampden, MA; Hampshire, MA)	1.0080
State College, PA (Centre, PA)	1.0772
Steubenville-Weirton, OH-WV (Jefferson, OH; Brooke, WV; Hancock, WV)	.9655
Stockton, CA (San Joaquin, CA)	1.2871
Syracuse, NY (Madison, NY; Onondaga, NY; Oswego, NY)	1.0301
Tacoma, WA (Pierce, WA)	1.1052
Tallahassee, FL (Gadsden, FL; Leon, FL)	.9509
Tampa-St. Petersburg-Clearwater, FL (Hernando, FL; Hillsborough, FL; Pasco, FL; Pinellas, FL)	.9830
Terre Haute, IN (Clay, IN; Vigo, IN)	.9456
Texarkana-TX-Texarkana, AR (Miller, AR; Bowie, TX)	.9650
Toledo, OH (Fulton, OH; Lucas, OH; Wood, OH)	1.0287
Topeka, KS (Shawnee, KS)	1.0622
Trenton, NJ (Mercer, NJ)	1.0317
Tucson, AZ (Pima, AZ)	1.0090
Tulsa, OK (Creeks, OK; Osage, OK; Rogers, OK; Tulsa, OK; Wagoner, OK)	1.0131
Tuscaloosa, AL (Tuscaloosa, AL)	1.0172
Tyler, TX (Smith, TX)	1.0035
Utica-Rome, NY (Herkimer, NY; Oneida, NY)	.9640
Vallejo-Fairfield-Napa, CA (Napa, CA; Solano, CA)	1.2387
Vancouver, WA (Clark, WA)	1.1859
Victoria, TX (Victoria, TX)	.9205
Vineland-Millville-Bridgeton, NJ (Cumberland, NJ)	.9929
Visalia-Tulare-Portervillle, CA (Tulare, CA)	1.0643
Waco, TX (McLennan, TX)	.9117
Washington, DC-MD-VA (District of Columbia, DC; Calvert, MD; Charles, MD; Frederick, MD; Montgomery, MD; Prince Georges, MD; Alexandria City, VA; Arlington, VA; Fairfax, VA; Fairfax City, VA; Falls Church City, VA; Loudoun, VA; Manassas City, VA; Manassas Park City, VA; Prince William, VA; Stafford, VA	1.1985
Waterloo-Cedar Falls, IA (Black Hawk, IA; Bremer, IA)	.9983
Wausau, WI (Marathon, WI)	.9871
West Palm Beach-Boca Raton-Delray Beach, FL (Palm Beach, FL)	.9972
Wheeling, WV-OH (Belmont, OH; Marshall, WV; Ohio, WV)	.9771
Wichita, KS (Butler, KS; Sedgwick, KS)	1.1589
Wichita Falls, TX (Wichita, TX)	.8776
Williamsport, PA (Lycoming, PA)	.9048
Wilmington, DE-NJ-MD (New Castle, DE; Cecil, MD; Salem, NJ)	1.0599
Wilmington, NC (New Hanover, NC)	.9591
Worcester-Fitchburg-Leominster, MA (Worcester, MA)	1.0094
Yakima, WA (Yakima, WA)	1.0389
York, PA (Adams, PA; York, PA)	.9653
Youngstown-Warren, OH (Mahoning, OH; Trumbull, OH)	1.0490
Yuba City, CA (Sutter, CA; Yuba, CA)	1.0490

[1] Approximate value for area.

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TABLE III.B—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7468
Alaska	1.4990
Arizona	.9353
Arkansas	.7703
California	1.1457
Colorado	.9338
Connecticut	1.0980
Delaware	.9846
Florida	.8815
Georgia	.7779
Hawaii	1.0157
Idaho	.9139
Illinois	.8817
Indiana	.8885
Iowa	.8719
Kansas	.8481
Kentucky	.8036
Louisiana	.8905
Maine	.8701
Maryland	.8773
Massachusetts	1.0548
Michigan	.9369
Minnesota	.8788
Mississippi	.7705
Missouri	.8325
Montana	.9154
Nebraska	.8310
Nevada	1.0799
New Hampshire	.9234
New Jersey	NA
New Mexico	.9213
New York	.8730
North Carolina	.8139
North Dakota	.9061
Ohio	.9100
Oklahoma	.8462
Oregon	1.0792
Pennsylvania	.9427
Puerto Rico	[1] .5726
Rhode Island	.9553
South Carolina	.7827
South Dakota	.8263
Tennessee	.7733
Texas	.8180
Utah	.9506
Vermont	.8998
Virginia	.8194
Virgin Island	[1] 1.0000
Washington	1.0873
West Virginia	.8616
Wisconsin	.9096
Wyoming	.9745

[1] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

	The adjustment factor is—
If the HHA cost reporting period begins:	
Aug. 1, 1986	1.0085
Sept. 1, 1986	1.0070
Oct. 1, 1986	1.0104
Nov. 1, 1986	1.0140
Dec. 1, 1986	1.0174
Jan. 1, 1987	1.0210
Feb. 1, 1987	1.0256
Mar. 1, 1987	1.0280
Apr. 1, 1987	1.0345
May 1, 1987	1.0391
June 1, 1987	1.0436

[1] Based on compounded projected market basket inflation rates of 4.2 percent for 1987 and 5.5 percent for 1986. These adjustment factors are subject to change based on later estimates of cost increases.

VII. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Introduction

Executive Order 12291 (E. O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule".

A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since adopting the HCFA survey-based wage index, which is the only change in methodology being implemented by this notice, will not meet any of these criteria, this final notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

However, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis for a notice unless the Secretary certifies that the notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HHAs to be small entities. The changes contained in this final notice will result in a significant economic impact on a substantial number of HHAs, and we discussed this impact in an initial regulatory flexibility analysis included in the proposed notice published March 25, 1986. The following discussion, in combination with the rest of this notice, constitutes a final regulatory flexibility analysis.

B. Public Response to Initial Regulatory Flexibility Analysis

Several commenters criticized the initial regulatory flexibility analysis published March 25, 1986 as being inadequate.

Comment: One commenter stated that we had not performed a legally sufficient impact analysis.

Response: As noted above, E.O. 12291 specifies several criteria for identifying major rules for which a regulatory impact analysis must be prepared. In the proposed notice published March 25, 1986, we listed these criteria and explained that adopting the HCFA survey-based wage index would not meet any of these criteria. The commenter did not say which, if any, of these criteria he believed was not met. In preparing this final notice, we have reconsidered whether this should be considered a major rule and we again have concluded that it is not.

Comment: Another commenter stated that we had not met the requirements of the Regulatory Flexibility Act.

Response: Section 603(b) of the Regulatory Flexibility Act specifies that an initial regulatory flexibility analysis shall contain—

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report of record;

(5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

In addition, section 603(c) provides that:

"Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities."

The regulatory impact statement of the proposed notice, in combination with the rest of the notice, met these requirements.

Comment: Two commenters were critical of our statement that, although we estimated 36 percent of all agencies (2148 of 5964 total HHAs) would be disadvantaged and 48 percent (2865) advantaged, the net effect of the new wage index on total payments would be negligible. One commenter alleged that we were using this statement to dismiss the adverse impact on some agencies in view of the advantage to others. Another was critical that we had not

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presented a more detailed analysis of individual and regional "winners" and "losers".

Response: The point we were making in the proposed notice, by pointing out the negligible budget impact, was that our objective was not budget savings, but accuracy. It is clear that the magnitude of disadvantages must be somewhat larger, in the aggregate, than the magnitude of advantages, in order for the offset to result in a negligible budget impact. However, we do not have data sufficiently precise and detailed to enable us either to model behavior changes or estimate effects on individual agencies. We stated that a large number of agencies could be adversely affected and published the index values that would enable individual agencies to assess the impact on their own behalf. It is clear from the comments received from individual HHAs that they were quite capable of assessing on their own whether they were advantaged or disadvantaged by the change.

C. Estimated Budget Effect

This is a technical notice setting forth the actual value of the cost limits applicable to HHA cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987. The primary effects resulting from this notice were taken into account in last year's final notice published July 5, 1985 (50 FR 27734), which established a three-year cycle of HHA cost limits. The economic impact analysis prepared for that notice included a discussion of the effects of the methodology and limits being implemeted by this notice, except for the effects of the adoption of the HCFA gross wage index. The adoption of the new wage index will have a negligible effect on the savings estimated to result from these costs limits.

D. Effects of New Wage Index

There are about 5934 HHAs participating in Medicare throughout the country. Of these, 3603 are urban (that is, located in MSAs). Of the urban HHAs, 2924 are freestanding and 679 are hospital-based. Of the 2361 rural HHAs, 1780 are freestanding and 581 are hospital-based. Many HHAs have high Medicare utilization compared to other types of providers; a number exceed 75 percent Medicare utilization.

Adopting the HCFA survey-based gross wage index will affect the level of payment for a given HHA only if there is a significant change in the index value for the area in which it is located and if the change in wage index results in a change in the amount of an agency's costs in excess of the limits. Thus, whether or not an HHA in fact is advantaged by the change in wage index depends on whether:

- The agency would have had one or more disciplines over a limit using the BLS index;
- The applicable wage index value increased or decreased; and
- The revised limit, using the new index value, result in allowance of higher or lower costs for one or more disciplines.

Some agencies would be under all the limits, regardless of which wage index is used, and thus will be unaffected. Some HHAs that would be under all the per discipline limits using the BLS index could, as a result of a reduced wage index value, experience disallowances of the cost in excess of the limits for one or more disciplines. Conversely, some HHAs that would have costs in excess of these limits disallowed under the BLS index could, if their index values increased, experience smaller disallowances, possibly none.

Compared to the BLS wage index used in the July 5, 1985 final notice, the adoption of the HCFA survey-based gross wage index will result in increased wage index values for 163 MSAs and 27 State-wide rural areas, and decreased values for 159 MSAs and 23 rural areas. As we noted in the initial regulatory flexibility analysis, about 36 percent of all HHAs will be disadvantaged and 48 percent advantaged. Nonetheless, we estimate that the net effect of the new wage index on total annual payments to all HHAs will be negligible because in the aggregate, increased and decreased payments will offset each other.

E. Alternatives Considered

As we made clear in the notice published March 25, 1986, we considered few alternatives in developing these limits. However, as discussed in the July 5, 1985 notice, we had earlier considered particular changes to the methodology such as using a different percentage of the mean at which to set the limits. Some commenters recommended using the HCFA adjusted survey-based wage index, rather than the HCFA gross wage index. However, as we explained in the proposed notice, due to the problems of the reporting of data underlying that index, it was not as accurate as the gross wage index and was rejected.

We believe that much of the existing cost variation among HHAs is not attributable to factors related to costs necessary for the efficient delivery of needed health services. However, there are significant geographic variations in costs that we must recognize as accurately as possible. Thus, we have decided to use the HCFA survey-based gross wage index. Now that an alternative more accurate wage index is available to us, we believe that continued use of the BLS index would unnecessarily and unfairly disadvantage those HHAs that may have had their personnel costs underrepresented by that index.

F. Conclusion

We believe that the benefits of this notice will outweigh the costs because the HCFA survey-based gross wage index is a more accurate measure of the relative costs of the types of personnel utilized by HHAs than the BLS wage index. Although some HHAs will be advantaged and some disadvantaged by changes to the wage index, we believe the results generally will be equitable.

Some economizing measures adopted by HHAs in response to these limits, such as measures that could affect access to or quality of care, could be viewed as adverse consequences, or costs. However, we believe the limit levels are reasonable and we expect the majority of HHAs to be able to furnish services within them. Also, our regulation at 42 CFR 405.460(f) provided an exceptions process that allows for adjustment of a provider's limits under specific conditions.

VIII. Paperwork Burden

This notice does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: May 15, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 28, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-12279 Filed 5-29-86; 8:45 am]

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Part IX

Department of Energy

Office of the Secretary

Amendment to Delegation Order for Approval of Power Marketing Administration Power and Transmission Rates; Notice

DEPARTMENT OF ENERGY

Office of the Secretary

Amendment to Delegation Order for Approval of Power Marketing Administration Power and Transmission Rates

AGENCY: Department of Energy.

ACTION: Notice of amendment to delegation order.

SUMMARY: Notice is hereby given of Amendment No. 1 to Delegation Order No. 0204-108 which amendment revises the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations by delegating such authority to the Under Secretary of the Department of Energy rather than to the Deputy Secretary of the Department of Energy. The amendment also makes minor conforming changes to reflect the fact of that revision in delegation of authority and adds a provision that such revision is to have no effect upon rates which have been previously placed into effect by the Deputy Secretary. This Order is effective upon publication in the Federal Register.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Gollomp, 252-0958.

SUPPLEMENTARY INFORMATION: Delegation Order No. 0204-108, 48 FR 55064, which became effective December 14, 1983, delegated to the Deputy Secretary of the Department of Energy on a non exclusive basis, among other things, the authority to confirm, approve, and place into effect on an interim basis, power and transmission rates for the Alaska, Southeastern, Southwestern and Western Area Power Administrations. The Secretary of the Department of Energy has determined that revisions in that Delegation Order are desirable at this time, which will delegate to the Under Secretary the authority which had been previously delegated to the Deputy Secretary. The principal reason for these revisions is to reflect revised organizational relationships within the Department.

Issued in Washington, DC, on May 28, 1986.

Harry L. Peebles,

Director of Administration.

Department of Energy, Amendment No. 1 to Delegation Order No. 0204-108, Delegation Order for Approval of Power Marketing Administration Power and Transmission Rates

Pursuant to the authority vested in me as Secretary of Energy and by sections 203(a), 301(b), 302(a), 402(e), 641, 642, 643 and 644, of the Department of Energy Organization Act (Pub. L. 95-91) there is hereby delegated to the Under Secretary of the Department of Energy all authority which was previously delegated to the Deputy Secretary of the Department of Energy in Department of Energy Delegation Order No. 0204-108, as published in the Federal Register, December 14, 1983 (48 FR 55064), and Department of Energy Delegation Order No. 0204-108 is hereby amended to reflect such revision to that delegation of authority and to reflect related changes so as to read and provide in its amended from or as follows:

1. There is hereby delegated to the respective Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations on a non-exclusive basis the authority to develop power and transmission rates for their respective Power Administrations. Rates developed by an Administrator shall not become effective on a final basis unless and until such rate is confirmed and approved by the Federal Energy Regulatory Commission (Commission) acting under section 3 below. In submitting a rate the Administrator shall certify that the rate is consistent with applicable law and that it is the lowest possible rate to customers consistent with sound business principles.

2. There is hereby delegated to the Under Secretary of the Department of Energy on a non-exclusive basis the authority to confirm, approve, and place in effect on an interim basis power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations for such periods as he or she may provide.

3. There is hereby delegated to the Commission on an exclusive basis the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove, rates developed by each Administrator under section 1. The Commission review will be limited to: (a) Whether the rates are the lowest possible to customers consistent with sound business principles; (b) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment, and (c) the assumptions and projections used in developing the rate components that are subject to Commission review. The Commission may require the Administrator to provide any information relevant to the Commission's confirmation and review function.

The Commission shall not review policy judgments and interpretations of laws and regulations made by the power generating agencies (i.e., the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission). The Commission shall reject decisions of the Power Marketing Administrators only if the Commission finds them to be arbitrary, capricious, or in violation of the law. *Provided*, that the Commission may reject decisions that are not in accord with (a) the standards set forth in DOE Order No. RA 6120.2, or any revisions or modifications to such standards, adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and the Department of Energy Organization Act (42 U.S.C. 7191), and (b) the standards set forth in any interagency agreement between the Administrator and the power generating agency that is applicable. Should the Commission reject such decisions, the Power Marketing Administrator will have 30 days in which to seek rehearing.

4. In the event a rate developed by an Administrator is disapproved by the Commission, the Administrator shall, within 120 days or such additional time periods as the Commission may provide, submit to the Commission a substitute rate for action by the Commission under section 3 hereof.

A rate confirmed, approved and placed in effect by the Under Secretary on an interim basis that is disapproved by the Commission shall remain in effect, as provided by the Under Secretary until a substitute rate is confirmed and approved on a final basis; by the Commission, unless theoriginal interim rate has been superseded by a subsequent rate placed in effect on an interim basis *Provided*, that if the Administrator does not file a substitute rate within 120 days or such greater time as the Commission may provide, and if the rate has been disapproved because the Commission determined that it would result in total revenues in excess of those required by

law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the Commission, and revenues collected in excess of those generated by such rate during the interim period will be refunded with interest to the extent determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the Commission. If a subetitute rate confirmed and approved on a final basis by the Commission is higher than the rate in effect on an interim basis, such rate, if no subsequent and higher rate has been put into effect by the Under Secretary shall become effective on a subsequent date set by the Commission. If at any time it is determined by the Commission that the administrative cost of a refund would exceed the amount to be refunded, no refund will be required.

5. Notwithstanding any other provisions of this delegation order, there is hereby delegated to each Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy or transmission service. Short-term sales are those sales that last no longer than one year.

6. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration:

A. All rates placed into effect on a final basis pursuant to any authority delegated prior to this order shall remain in full force and effect.

B. Rates filed on or before the effective date of this order, and for which the Commission has issued any substantive orders, will be governed by the terms of Delegation Order No. 0204–33 until placed in effect by the Commission on a final basis.

C. Rates filed under previous delegation orders for which the Commission has not issued any substantive orders on or before the effective date of this order will be governed by the terms of this delegation order.

7. In exercising the authority delegated by this order, the delegates shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by The Secretary or his delegates.

8. Nothing in this order shall preclude The Secretary from exercising any of the authority delegated to the Under Secretary, and the Administrators whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

9. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration and the Western Area Power Administration:

A. All rates placed into effect on a final basis pursuant to any authority delegated pursuant to Delegation Order No. 0204–108 as such order existed prior to the effective date of Amendment No. 1 thereto shall remain in full force and effect.

B. All rates filed before the effective date of Amendment No. 1 to Delegation Order No. 0204–108 which rates, as of the effective date of said Amendment No. 1, are in effect but which have not been placed in effect on a final basis, shall continue in effect subject to the provisions of this Amended Delegation Order. In no event shall any rates which have been filed on or before the effective date of Amendment No. 1 to Delegation Order No. 0204–108 be invalidated solely by virtue of the change in the delegation of authority from the Deputy Secretary to the Under Secretary provided for in said Amendment and all actions heretofore taken by the Deputy Secretary pursuant to Delegation Order No. 0204–108 with respect to such rates are hereby confirmed and such rates shall not be subject to challenge on the ground that any such actions were taken by the Deputy Secretary rather than by the Under Secretary.

C. All rates filed on and after the effective date of Amendment No. 1 to Delegation Order No. 0204–108 shall be governed by that order as thus amended.

10. This amended order becomes effective upon publication in the Federal Register.

John S. Herrington.

[FR Doc. 86–12315 Filed 5–29–86; 9:28 am]
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H.R. 1349/Pub. L. 99–323
Presidential Libraries Act of 1986. (May 27, 1986; 100 Stat. 495; 5 pages) Price: $1.00

S.J. Res. 268/Pub. L. 99–324
To authorize and request the President to designate the month of June 1986 as "Youth Suicide Prevention Month." (May 27, 1986; 100 Stat. 586; 1 page) Price: $1.00

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 365]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 365 establishes the quantity of such fruit that may be shipped to market during the period May 30–June 5, 1986. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 365 (Section 908.665) is effective for the period May 30–June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC, 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on May 27, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.665 is added to read as follows:

§ 908.665 Valencia Orange Regulation 365.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 30, 1986, through June 5, 1986, are established as follows:

(a) District 1: 408,000 cartons;
(b) District 2: 442,000 cartons;
(c) District 3: Unlimited cartons.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.
May 29, 1986.

[FR Doc. 86–12368 Filed 5–29–86; 12:13 pm]
BILLING CODE 3410–02–M

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 6; Peach Reg. 14, Amdt. 6]

Nectarines, Pears, Plums, and Peaches Grown in California; Amendment of Size Requirements; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule issued April 1, 1986, amending both size requirements and weight count standards for certain varieties of fresh nectarines and peaches grown in California. The final rule failed to change the 16-pound sample count requirements in § 917.459(c)(3) for varieties of size "80" peaches to 73 peaches instead of 71 peaches. The rule only relaxed the sample count requirements in § 917.459(a)(4)(iii) for the commercially significant varieties of peaches. The peach commodity committee recommended the relaxation

for all varieties of peaches to assure more uniformly sized peaches, regardless of the type of pack. The relaxation for the varieties of peaches not produced in commercially significant quantities was inadvertently omitted. Also, the final rule should have changed the name of the "20 G 836" variety of nectarines in § 916.356(a)(4) to "Rio Red" but failed to do so. Rio Red is the name commonly used by the industry when referring to that variety of nectarines. The final rule was published in the Federal Register (51 FR 11900) on April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250 Telephone (202)-447-5697.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, plums, and peaches, California.

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The correction of the final rule is as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

2. The text of paragraph (a)(4) of § 916.356 (51 FR 11900) is correctly revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(4) Any package or container of Autumn Delight, Autumn Grand, Bob Grand, Clinton-strawberrys, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P–R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red, Super Star or Rio Red variety nectarines unless:

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. The text of paragraph (c)(3) of § 917.459 (51 FR 11900) is correctly revised to read as follows:

§ 917.459 Peach Regulation 14.

* * * * *

(c) * * *

(3) Such peaches in any container when packed other than as specified in paragraph (c)(1) or (2) of this section are of a size that a 10-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

* * * * *

Dated: May 27, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-12202 Filed 5-30-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-37-AD; Amdt. 39-5324]

Airworthiness Directives; Cessna Models U206G and TU206G Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models U206G and TU206G airplanes that have been modified with the installation of the Soloy Conversions, Ltd. Turbine Pac engine in accordance with Supplemental Type Certificate (STC) No. SA2353NM. This AD requires that the engine start system electrical circuit be isolated from other circuits by providing a separate circuit breaker for this function; and that the electrical system voltage regulator, which was a part of the Soloy installation, be replaced with an airworthy unit. Aircraft were initially modified by Soloy to use only one circuit breaker for both the engine start and auto-feather systems. Consequently, any fault in the auto-feather system that resulted in opening of the circuit breaker would also inadvertently result in the inability to restart the engine in flight. In addition, the voltage regulator supplied with the Soloy installation interferes with Automatic Direction Finder (ADF) radio operation by causing an audible interference, a degradation in reception sensitivity, and erroneous navigation indications to be displayed to the pilot. The actions prescribed in this AD will preclude both the loss of the in-flight engine restart capability and the display of erroneous navigation indications to the pilot.

EFFECTIVE DATE: July 4, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Soloy Service Bulletins (S/B) No. 04-763 dated March 29, 1985, and S/B No. 02-763 dated January 7, 1985, applicable to this AD may be obtained from Soloy Conversions, Ltd., 450 Pat Kennedy Way, SW., Olympia, Washington 98502. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Rees, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; Telephone (206) 431-2941.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to add an AD requiring modification of the engine control and auto-feather circuit breaker systems and replacement of the voltage regulator on certain Soloy-modified Cessna 206 airplanes was published in the Federal Register on January 14, 1986 (51 FR 1515).

The Soloy Conversions Ltd. modification of Cessna Models U206G and TU206G airplanes, accomplished in accordance with Supplemental Type Certificate (STC) SA2353NM, installs the Soloy Turbine Pac engine in place of the original reciprocating engine. As a part of that conversion, in which pertinent parts of the airplane electrical system were revised to support the turbine engine installation, the "Engine Control" circuit breaker was configured to protect the circuit required for starting the engine as well as the circuit for the auto-feather system.

The proposal resulted from the FAA determining that the effect of this configuration, should the circuit breaker trip due to an auto-feather system malfunction, is to lose in-flight engine restart capability. Similarly, engine restart capability would also be lost as a consequence of the pilot following the Airplane Flight Manual (AFM), in which pulling this circuit breaker is specified as the remedial action.

In addition, a new voltage regulator was selected which subsequently was found to emit unacceptably high levels

of radio frequency interference (RFI). This RFI was not observed during project development or initial service history because ADF radio equipment, a type that is particularly susceptible to this type of RFI, did not happen to be installed in the airplane involved. The effect of the RFI on the ADF receivers is: audible interference in the lower portion of the receiver's tunable bandwidth, a reduced sensitivity to the reception of desired navigation signals and the display of erroneous navigation indications to the pilot. Navigation indications that were 10–15 degrees in error have been observed. This is a potentially hazardous condition that could lead a pilot many miles off course.

Since the condition described is likely to exist or develop in other Soloy modified Cessna Models U206G and TU206G airplanes of the same design, an AD was proposed which would require modification of the "Engine Control" and auto-feather circuit breaker systems and replacement of the voltage regulator.

The comment period for the proposal closed on March 18, 1986. Interested persons have been given an opportunity to participate in the making of this AD, however, no comments were received. Subsequent to the issuance of the proposal, the FAA determined that Soloy STC SA2353NM Kit with data plate number 763–008 was installed on a Cessna airplane with serial number U20605745. Accordingly, the airplane with serial number U20605745 and Soloy data plate number 763–008 was added to the applicability statement of the AD. Also, paragraphs (a) and (b) were modified to reflect this information. Therefore, except as mentioned above, the proposal is adopted without change.

The FAA has determined that there are approximately 15 airplanes affected by various portions of this AD. The cost of modifying the airplanes in accordance with the AD is estimated to be a maximum of $90 per airplane. The total cost is estimated to be $1,140 to the private sector. The cost is so small that compliance with the AD will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) wil not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FARs as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

CESSNA: Applies to the following Model U206G and TU206G airplanes modified with Soloy Turbine Pac installations in accordance with Supplemental Type Certificate (STC) number SA2353NM:

Cessna Serial No.	Soloy data plate No.
U20603689	763-013
U20604286	763-001
U20604287	763-003
U20604681	763-014
U20605232	763-005
U20605567	763-002
U20605584	763-015
U20605745	763-008
U20605836	763-006
U20606065	763-007
U20606227	763-004
U20606361	763-011
U20606629	763-010
U20606769	763-012
U20606810	763-009

Compliance: Required as indicated in the body of the AD unless previously accomplished.

To preclude loss of the in-flight engine restart capability and to correct a condition that could cause erroneous navigation displays to the pilot, accomplish the following:

(a) For the above listed airplanes modified by Soloy STC SA2353NM, within the next 100 hours time-in-service (TIS) after the effective date of this AD, remove and replace the voltage regulator in accordance with the instructions contained in Soloy Service Bulletin (S/B) 04–763 dated March 29, 1985.

(b) For serial numbered airplanes U20604286, U20604287, U20605232, U20605567, U20605745, U20605836, U20606065, and U20606227 modified with Soloy STC SA2353NM, within the next 200 hours TIS after the effective date of this AD, modify the electrical system circuit breaker installation in accordance with the instructions contained in Soloy S/B No. 02–763 dated January 7, 1985.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by Manager, Seattle Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Soloy Conversions, LTD., 450 Pat Kennedy Way, S.W., Olympia, Washington 98502 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 4, 1986.

Issued in Kansas City, Missouri, on May 20, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–12200 Filed 5–30–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–49]

Alteration of the Dallas-Fort Worth, TX, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Dallas-Fort Worth Terminal Control Area (TCA) to fully contain large turbine-powered aircraft executing approaches to new Runway 13R and departures from new Runway 31L.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On April 3, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Areas A, B, C and D of the Dallas-Fort Worth TCA by extending these areas to the northwest to fully contain all aircraft executing instrument landing system (ILS) and/or visual approaches to new Runway 13R and departures from new Runway 31L (51 FR 11454).

The new runway is scheduled to open in November 1986. However, construction is ahead of schedule and it is probable that the runway may be commissioned as early as September 1986. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal

were received. However, comments supporting the proposal were received from the Air Line Pilots Association (ALPA) and the Air Transport Association (ATA). The ATA also pointed out an error in the description and graphic of the proposed TCA. Those errors were typographical and are corrected in this rule. Except for the probability of advancing the new runway opening from November to September and editorial changes, this amendment is the same as that proposed in the notice. Section 71.401(a) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations modifies Areas A, B, C and D of the Dallas-Fort Worth TCA to the northwest to ensure that all large trubine-powered aircraft remain within the confines of the TCA while executing approach and departure procedures to new Runway 13R/31L, opening in September 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401 [Amended]

2. § 71.401(a) is amended as follows:

Dallas-Fort Worth, TX [Amended]

In Area A, by removing the words "lat. 32°58'30"N., long. 97°06'45"W.; to lat. 32°55'30"N., long. 97°06'30"W." and by substituting the words "lat. 32°56'40"N., long. 97°10'12"W.; to lat. 32°52'00"N., long. 97°06'30"W."

In Area B, by removing the words "lat. 33°00'00"N., long. 97°10'15"W.; to lat. 32°58'30"N., long. 97°06'45"W." and by substituting the words "lat. 33°01'00"N., long. 97°09'10"W.; to lat. 33°01'45"N., long. 97°10'00"W.; thence counterclockwise along a 10-mile arc of the Dallas-Fort Worth Airport to lat. 32°58'12"N., long. 97°13'29"W.; to lat. 32°56'40"N., long. 97°10'12"W."

In Area C, after the words "lat. 33°11'30"N., long. 97°11'30"W.;" by inserting the words "lat. 33°06'25"N., long. 97°11'30"W.;" thence counterclockwise along a 15-mile arc of the Dallas-Fort Worth Airport to lat. 33°00'25"N., long. 97°18'15"W.; to lat. 32°57'15"N., long. 97°11'30"W.;"

In Area D, by removing the words "to the point of beginning." and by substituting the words "to the point of beginning; and that airspace beginning at lat. 33°06'25"N., long. 97°11'30"W.; to lat. 33°11'30"N., long. 97°11'30"W.; to lat. 33°11'20"N., long. 97°14'15"W.; thence counterclockwise along a 20-mile arc of the Dallas-Fort Worth Airport to lat. 33°02'45"N., long. 97°23'45"W.; to lat. 33°00'25"N., long. 97°18'15"W.; thence clockwise along a 15-mile arc of the Dallas-Fort Worth Airport to the point of beginning."

Issued in Washington, DC., on May 22, 1986.

Harold H. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-12210 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

Correction

In FR Doc. 86-9119, beginning on page 15606, in the issue of Friday, April 25, 1986, make the following corrections:

§ 610.53 [Corrected]

1. On page 15607, in § 610.53(c), in the first column of the table, eighth line, "Preeze-dried" should read "Freeze-dried".

2. On the same page, in the same column, eighteenth line, "(129)" should read "(125I)".

3. On page 15608, the third column of the table, thirty-fifth line, "2 year" should read "do".

4. On the same page, in the second column, fortieth line, "years" should read "year".

5. On the same page, in the second column, forty-fifth line, "12" should read "2".

6. On page 15610, first column, third line, "3." should read "2.".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 361

Claims Pursuant to the Government Losses in Shipment Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This amendment permits the delivery by means other than registered mail of registered securities issued by the Department of the Treasury on original issue transactions. Currently, these securities are sent by registered mail as provided by § 361.6 of the regulations pertaining to Advice of Shipment. In the case of registered securities certified mail would serve the same purpose as registered mail in establishing whether the addressee received the package and would permit significant savings in postage costs to the Bureau with little or no increased risk of loss in shipment. The current regulation does not permit shipment of registered securities by other than registered mail without a separate notice also being sent, if the shipment equals or exceeds $10,000 in value. The requirement of a separate notice would increase Bureau processing costs without a corresponding decrease in risk of loss. Even if lost, registered securities cannot be negotiated without a properly certified assignment. Because similar services providing essentially equivalent protection, which would be more advantageous to the Bureau, may be offered by the Postal Service in the future, the regulations should anticipate such a contingency by providing for the use of any means of delivery that provide such equivalent protection.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (202) 376-4320.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

Because this document relates to agency management it is not subject to Executive Order 12291. Accordingly, a

regulatory impact analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. Chapter 35) does not apply to this rule because it does not contain information collection requirements which necessitate approval by the Office of Management and Budget.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this document it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601).

Administrative Procedure Act

This regulation relates to agency management and is therefore not subject to the notice and public comment procedures and the delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

The Department has determined that to maximize the savings which will be realized by using certified rather than registered mail for shipping securities the new rule should be instituted at the earliest possible date.

List of Subjects in 31 CFR Part 361

Claims pursuant to the Government Losses in Shipment Act.

PART 361—[AMENDED]

Accordingly, Part 361 is amended as follows:

1. The authority citation for amended Part 361 continues to read:

Authority: Sec. 6, 50 Stat. 480; 40 U.S.C. 728.

2. Part 361.6(a) is amended by revising the first sentence in paragraph (a) to read as follows:

§ 361.6 Advice of shipment.

(a) If the value of any one shipment to one consignee at one time by one consignor, except in the case of any intracity shipment or the shipment of registered securities by certified mail, or by another means providing the same protection as certified mail, equals or exceeds $10,000, immediate notice thereof shall be forwarded by the consignor to the consignee by separate mail. * * *

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86–12223 Filed 5–30–86; 8:45 am]

BILLING CODE 4810-16-M

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In Executive Order 12543 of January 7, 1986 (51 FR 875, January 9, 1986), the President declared a national emergency with respect to Libya, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that Order, as supplemented by Executive Order 12544 of January 8, 1986 (51 FR 1235, January 10, 1986), the President ordered specified sanctions against Libya, and authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of those Orders. In implementation of those Orders, the Treasury Department issued the Libyan Sanctions Regulations (51 FR 1354, January 10, 1986, and 51 FR 2462, January 16, 1986). Executive Orders 12543 and 12544 and these Regulations prohibit, *inter alia*, (a) transactions by a U.S. person relating to transportation to or from Libya; (b) transactions by U.S. persons relating to travel by U.S. citizens and permanent resident aliens to Libya or their activities within Libya; (c) purchases by any U.S. person of goods for export from Libya to any country; (d) importation into the United States of Libyan goods; and (e) payments and transfers of any type to the Government of Libya, its agencies, instrumentalities, and controlled entities. As an exception to the foregoing prohibitions, the Treasury Department is amending the Regulations to authorize certain transactions related to travel to and from Libya and residence within Libya for United States citizens and permanent resident aliens who are immediate family members of Libyan nationals. The general license created by this amendment is subject to the requirement that eligible persons register their eligibility either with the Belgian Embassy in Tripoli, Libya, or with the Treasury Department, Office of Foreign Assets Control, in Washington, DC.

EFFECTIVE DATE: 8:06 p.m. Eastern Standard Time, January 7, 1986.

FOR FURTHER INFORMATION: Contact Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel. (202) 376-0408.

SUPPLEMENTARY INFORMATION: The general license contained in this amendment to the Regulations formally implements a humanitarian policy announced on February 7, 1986, which is intended to avoid disruption or dislocation to family units that include United States citizens or permanent resident aliens and Libyan nationals. This policy has been implemented to date through the issuance of specific licenses by the Office of Foreign Assets Control. It is recognized that circumstances may hinder certain U.S. citizen or resident alien dependents of Libyan nationals from registering their eligibility under the general license as required. Reasonable explanations for failure to register by such dependents will be given full consideration under the enforcement policies adopted to assure compliance with the Regulations.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. The information collection requests contained in this document are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the Federal Register.

The general license set forth in § 550.560 is effective as of 8:06 p.m. Eastern Standard Time, January 7, 1986.

List of Subjects in 31 CFR Part 550

Libya, Imports, Reporting and recordkeeping requirements.

PART 550—LIBYAN SANCTIONS REGULATIONS

31 CFR Chapter V, Part 550, is amended as set forth below:

1. The "Authority" citation for Part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12543, 51 FR 875, January 9, 1986; E.O. 12544, 51 FR 1235, January 10, 1986.

2. The table of contents of Part 560 is amended by adding an entry for § 560.560 to Subpart E as follows:

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

* * * * *

Sec.

560.560 Transactions related to travel to, and residence within, Libya by immediate family members of Libyan nationals.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. New § 560.560 is added to read as follows:

§ 560.560 Transactions related to travel to, and residence within, Libya by immediate family members of Libyan nationals.

(a) *General License.* Subject to compliance with the registration requirements set forth in paragraph (d) of this section, the following transactions are authorized in connection with travel to, from and within Libya and residence within Libya by U.S. citizens and permanent resident aliens who are immediate family members of Libyan nationals:

(1) All transportation-related transactions ordinarily incident to travel to, from and within Libya.

(2) All transactions ordinarily incident to residence within Libya, including payment of living expenses and the acquisition in Libya of goods for personal use or consumption there.

(3) All transactions incident to the processing and payment of checks, drafts, traveler's checks, and similar instruments negotiated in Libya by any person licensed under this section.

(4) The purchase within Libya and importation as accompanied baggage of items for noncommercial use, provided that the aggregate value of such purchases imported into the United States conforms to limitations established by the United States Customs Service.

(b) *Definition.* For purposes of this section, the term "immediate family member" means a spouse, child, parent, mother-in-law, father-in-law, son-in-law or daughter-in-law.

(c) *Specific Licenses.* Specific licenses authorizing the transactions set forth in paragraph (a) of this section may be issued in appropriate cases to persons similarly situated to the persons described in paragraph (b) of this section where such specific licenses are necessary to preserve the integrity of established family units.

(d) *Registration.* (1) The general license set forth in this section is available only to those U.S. citizens and permanent resident aliens who register their eligibility in writing with either of the following:

Embassy of Belgium, Ali Obeydah St., Ibn El jarah No. 1, Immeuble Chirlando, Tripoli, Libya, Telephone: 37797

or

Licensing Section, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Telephone: (202) 376-0236.

Registration under this paragraph is deemed complete upon receipt at one of the above addresses of a letter, signed by or on behalf of each eligible U.S. citizen or permanent resident alien being registered, containing the following information:

(i) The name and the date and place of birth of the U.S. citizen(s) or permanent resident alien(s) registering (the "registrant"), including the name on which the registrant's most recent U.S. passport or Alien Registration Receipt Card was issued, if different;

(ii) If applicable, the place and date of the registrant's naturalization as a U.S. citizen, and the number of the registrant's naturalization certificate, *or*, for permanent resident aliens, the Alien Registration Number of the registrant's Alien Registration Receipt Card;

(iii) The name, relationship, and address of the Libyan national with whom the registrant resides as an immediate family member and whose relationship forms the basis for the registrants's eligibility under this general license; and

(iv) The number and issue date of the registrant's current U.S. passport, and the most recent date on which the passport was validated by the U.S. Department of State for travel to Libya; *or*, if the registrant does not hold a current U.S. passport, the country, issue date, and number of the registrant's current passport or other travel document, if any.

(2) The lack of validation of a registrant's U.S. passport for travel to Libya does not affect eligibility for the benefits of the general license set forth in this section for persons who otherwise qualify. Current information on travel document status as requested in paragraph (d)(1) of this section must, however, be furnished to register a registrant's eligibility for this license.

(e) *Other Requirements.* The general license set forth in this section shall not operate to relieve any person licensed hereunder from compliance with any other U.S. legal requirements applicable to the transactions authorized pursuant to paragraph (a) of this section.

Dated: May 27, 1986.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: May 28, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-12369 Filed 5-29-86; 4:49 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD11-85-09]

Anchorage Regulations; San Diego Harbor, CA

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: The San Diego Unified Port District (SDUPD) requested the Coast Guard amend the federal anchorage regulations for San Diego Bay to conform to the anchorage scheme proposed in their Comprehensive Baywide Small Craft Mooring and Anchorage Plan. This rule incorporates those aspects of the Plan which improve navigation safety in San Diego Bay and deletes existing regulations which are no longer needed. This rule designates the Laurel Street Roadstead, a small craft anchoring area developed by SDUPD, as a special anchorage area. 33 CFR 110.210(a) is revised by disestablishing all of San Diego Bay as an anchorage ground; however, those anchorage areas described elsewhere in § 110.210(a) remain unchanged. References to Commandant, Eleventh Naval District, which no longer exists, are changed to Commander, Naval Base San Diego. The intended effect of this rule is to provide safe mooring areas for a large number of recreational vessels, ensure unobstructed navigation lanes throughout San Diego Bay, and establish federal regulations consistent with port development plans.

EFFECTIVE DATE: These regulations become effective on July 2, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant F.L. McClain USCG, Commander (mps), Eleventh Coast Guard District, 400 Oceangate, Suite 709, Long Beach, CA 90822-5399, (213) 590-2301.

SUPPLEMENTARY INFORMATION: On 13 March 1986, the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (49 FR 8967). A public hearing was held on 3 April 1986 at San Diego, CA, at which 19

persons presented oral testimony. Other interested persons were given until 8 May 1986 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are Commander K.B. Allen, Lieutenant F.L. McClain and Ensign J.D. Czamanske, project officers, Eleventh Coast Guard District Marine Safety Division and Lieutenant Commander J.R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

The majority of the comments received expressed opposition to or support of the San Diego Unified Port District's Comprehensive Baywide Small Craft Mooring and Anchorage Plan. The Coast Guard does not have the authority to approve or disapprove the SDUPD Plan. In this rule, the Coast Guard is simply designating an existing SDUPD maintained anchorage area as a Special Anchorage Area so the recreational boaters using the anchorage will be exempted from displaying anchor lights and dayshapes. This action does not constitute approval of the Plan. We will discuss only those comments received that are relevant to this regulatory package.

Two petitions were received which directly opposed the change to 33 CFR 110.210(a). In opposing the rule, they operated under a misperception that federal regulations totally control the regulated subject matter and that state and local regulations cannot "legally" be enacted. A proper state or local authority may enact concurrent laws which are not in conflict with federal statutes.

The petitions also were concerned that this rule would relinquish Coast Guard control "of anchoring regulations in San Diego Bay". In the existing regulations, all of San Diego Bay is an anchorage ground. This has proven to be impractical given the increased recreational vessel traffic transiting San Diego Bay. By enacting this rule, the Coast Guard has, in fact, reaffirmed its control over San Diego Bay anchorage areas.

Proponents of the rule stated that since the existing regulations designate all of San Diego Bay as an anchorage area, vessels anchor anywhere which creates navigational hazards to vessels transitting the area. They believe this rule would improve navigation safety in San Diego Bay by encouraging recreation vessels to use designated anchorage areas since vessels would not be required to show anchor lights and dayshapes while in the anchorage areas.

Two comments specifically addressed the deletion of the current nonanchorage area, 33 CFR 110.210(a)(3), as not being in the best interest of mariners because numerable electric power and telephone cables cross the bay in this area. Since this is a valid navigational concern, the Coast Guard will make this a regulated navigation area in a subsequent rulemaking procedure.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 and non-significant under DOT Regulatory Policies and Procedure (44 FR 11304; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The implementation of this final rule will have a minimal impact on maritime commerce and navigation as it will not impose any additional restrictions on mariners. It is outside of the Coast Guard's statutory authority to comment on any plan implementing or proposing the charging of fees for the use of conveniences or improvements that are the result of local fund expenditure. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

In consideration of the preceding Part 110 of Chapter I, Subchapter I, Title 33 of the Code of Federal Regulations, are amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(c) and 33 CFR 1.05–1(g).

2. Section 110.90 is revised to read as follows:

§ 110.90 San Diego Harbor, California.

(a) *The special anchorage areas*—(1) *Area A–1.* In the Municipal Yacht Harbor, the water area enclosed by a line beginning at latitude 32°42'56.5" N., longitude 117°13'44" W.; thence southwest to latitude 32°42'54.4" N., longitude 117°13'48.2" W.; thence northwest to latitude 32°43'01.1" N., longitude 117°13'56" W.; thence northeast to latitude 32°43'02.4" N., longitude 117°13'52.4" W.; thence southeast to latitude 32°42'58.6" N., longitude 117°13'47.3" W.; thence to the point of beginning.

(2) *Area A–2.* In the Commercial Basin, the water area enclosed by a line beginning at latitude 32°43'13.9" N., longitude 117°13'21.0" W.; thence northeast to latitude 32°43'16.2" N., longitude 117°13'13.2" W.; thence northwest to latitude 32°43'22.1" N., longitude 117°13'23.7" W., thence west to latitude 32°43'22.0" N., longitude 117°13'26.8" W.; thence southwest to latitude 32°43'19.0" N., longitude 117°13'29.2" W.; thence southeast to the point of beginning.

(3) *Area A–3.* In North San Diego Bay, north of the "B" Street Merchant Vessel Anchorage, the water area enclosed by a line beginning at latitude 32°43'30.4" N., longitude 117°10'24.4" W., thence southwest to latitude 32°43'29.7" N., longitude 117°10'29.7" W., thence southwest to latitude 32°43'25.6" N., longitude 117°10'33.0" W., thence northwest to latitude 32°43'29.8" N., longitude 117°10'44.9" W., thence northeast to latitude 32°43'36.0" N., longitude 117°10'41.6" W., thence southeast along a line parallel to, and 200 feet bayward of, the shoreline of San Diego Bay adjoining Harbor Drive to the point of beginning.

(4) *Area A–5.* In Glorietta Bay, the water area enclosed by a line beginning at latitude 32°40'42.0" N., longitude 117°10'00.0" W.; thence southwest to latitude 32°40'40.0" N., longitude 117°10'03.5" W.; thence northwest to latitude 32°40'46.0" N., longitude 117°10'12.5" W.; thence northeast to latitude 32°40'46.5" N., longitude 117°10'11.0" W.; thence southeast to the point of beginning.

Note.—Mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District.

3. Section 110.210 is revised to read as follows:

§ 110.210 San Diego Harbor, California.

(a) *The anchorage grounds*—(1) *Special anchorage for U.S. Government vessels.* Shoreward of a line extending from Ballast Point Light approximately 351°30' to the shore end of the Quarantine Dock.

(2) *"B" Street Merchant Vessel Anchorage.* Due west from the southwest corner of the "B" Street pierhead to latitude 32°43'00", longitude 117°11'00"; thence northeasterly to latitude 32°43'20", longitude 117°10'51"; thence due east to the shoreline; thence following the shoreline and pier to the point of beginning.

(b) *The regulations.* (1) The special anchorage described in paragraph (a)(1)

of this section is reserved exclusively for the anchorage of vessels of the United States Government and of authorized harbor pilot boats. No other vessels shall anchor in this area except by special permission obtained in advance from the Commander, Naval Base, San Diego, California.

(2) The area described in paragraph (a)(2) of this section is reserved for the use of merchant vessels calling at the Port of San Diego while awaiting a berth.

(3) Vessels anchoring in San Diego Harbor shall leave a free passage for other craft and shall not unreasonably obstruct the approaches to the wharves in the harbor.

Note.—Mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District.

Dated: May 19, 1986.

A. B. Berne,

Rear Admiral (lower half), U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 86-12268 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7 86-16]

Temporary Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the Ben Sawyer Bridge across Sullivans Island Narrows by permitting the number of openings to be further limited during certain periods. This change is being made to ease severe weekend traffic congestion and to further evaluate proposed permanent regulations.

DATES: These temporary regulations become effective on May 24, 1986 and terminate on July 20, 1986. Comments must be received on or before June 19, 1986.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On May 5, 1986 the Coast Guard published (51 FR 16568) a proposal to permanently revise these regulations. This temporary rule is identical to the proposed permanent rule and is being made effective in less than 30 days after Federal Register publication because following normal rulemaking procedures would be impractical. Prompt implementation is necessary to alleviate a severe vehicular traffic problem and to evaluate the proposed permanent rule.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Commander Ken Gray, project attorney.

Discussion of Temporary Regulations

The bridge presently opens on signal on Saturdays, Sundays, and federal holidays except from 2 p.m. to 6 p.m. when it need open only on the hour and half-hour. The temporary rule and the proposed final rule would extend this time period by six hours (9 a.m. to 7 p.m.) and limit routine openings to one per hour during this period. This change was temporarily implemented in the summer of 1985 for evaluation purposes (50 FR 31367) and generated no complaints from mariners. This change is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods. Prompt implementation of this temporary rule has been requested by the mayors of Charleston and Mount Pleasant, SC.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Paragraph (c) of section 117.911 is revised to read as follows for the period May 24, 1986 through July 20, 1986. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(c) *Ben Sawyer (SR 703) bridge across Sullivans Island Narrows, mile 462.2 between Sullivans Island and Mount Pleasant.* The draw shall open on signal; except that, the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays from 9 a.m. to 7 p.m. the draw need open only on the hour.

* * * * *

Dated: May 19, 1986.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 86-12267 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 51, No. 105
Monday, June 2, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 86-001E]

Addition of Great Britain to the List of Countries Eligible for Importation of Poultry Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 9, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the poultry products inspection regulations to add Great Britain to the list of countries from which poultry products of chickens, turkeys, ducks, geese and guineas are eligible to be imported into the United States. FSIS has received requests from the Georgia Poultry Federation, Inc., the National Broiler Council and the National Turkey Federation to extend the comment period to allow more time for reviewing and gathering information. In response, FSIS is extending the comment period for 30 days.

DATE: Comments must be received on or before July 9, 1986.

ADDRESSES: Written comments to: Policy Office, Attn: FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. William Havlik Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2644.

SUPPLEMENTARY INFORMATION: On April 9, 1986, FSIS published in the Federal Register (51 FR 12161) a proposed rule to amend the Federal poultry products inspection regulations to add Great Britain to the list of countries from which poultry products of chickens, turkeys, ducks, geese, and guineas are eligible to be imported into the United States. Reviews of Great Britain's laws, regulations and other materials, and onsite reviews of its inspection system indicate that poultry products from certified establishments in Great Britain should be made eligible for import into the United States. Interested persons were given until June 9, 1986, to comment on this proposed rule.

FSIS has received requests from the Georgia Poultry Federation, Inc., the National Broiler Council and the National Turkey Federation to extend the comment period on the proposed rule to allow more time to review and gather information on the proposal. FSIS is interested in receiving additional data, and therefore is extending the comment period for an additional 30 days, to July 9, 1986.

Done at Washington, DC, on May 27, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-12283 Filed 5-30-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 71-CE-7-AD]

Airworthiness Directives; Cessna Turbocharged Models TU206 Series, TP206 Series, T207 Series and Models T210 Through T210N Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to revise Airworthiness Directive (AD), 71-09-07 to make it applicable to Cessna Turbocharged Models TU206 Series, TP206 Series and T207 Series and Models T210 thru T210N airplanes. AD 71-09-07, presently applicable to Cessna Turbocharged Models TU206, TP206, T207 and T210 Series airplanes was issued to require pressure testing of the complete exhaust manifold in the cabin heat exchanger area to detect cracks or leakage. The manufacturer has subsequently introduced a design change in the engine installation beginning with the Cessna Model T210R airplanes which makes the requirements of AD 71-09-07 inapplicable to those airplanes. Accordingly, the proposed revision will incorporate an ending serial number for the T210 series airplanes.

DATES: Comments must be received on or before June 19, 1986.

ADDRESSES: Cessna Service Letter SE71-11, dated April 16, 1971, applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 71-CE-7-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the

substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 71-CE-7-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive 71-09-07, Amendment No. 39-1202, (36 FR 8209) effective May 4, 1971, requires pressure testing of the complete exhaust manifold in the cabin heat exchanger area of all turbocharged Cessna Models TU206, TP206, T207 and T210 series airplanes to detect cracks or leakage. Beginning with the 1985 Cessna Model T210R airplanes (S/N 21064866 and on) an engine installation design change was incorporated wherein the cabin heat source is supplied by bleed air from the compressor section of the turbocharger instead of the exhaust manifold heat exchanger. This design change makes compliance with AD 71-09-07 unnecessary for airplanes so modified. Therefore, the FAA proposes to revise AD 71-09-07 to eliminate the requirement for repetitive inspection on T210 series airplanes beginning with T210R Serial Number 21064866.

The cost of compliance with the proposed revised AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes. Therefore, I certify that (1) this action is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A draft regulatory/evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising and reissuing AD 71-09-07 (Amendment 39-1202) in its entirety as follows:

Cessna: Applies to turbocharged Models TU206 series, TP206 series, T207 series (all Serial Numbers), and Models T210 thru T210N (Serial Number T210-0001 through T210-0454 and 21059200 through 21064867) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD.

To prevent exhaust gases from entering the cabin, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 25 hours TIS, and thereafter at intervals not to exceed 50 hours TIS since the last inspection per this AD prior to its revision, inspect the exhaust manifold heat exchanger in accordance with the following:

(1) Test the complete exhaust manifold in the cabin heat exchanger area for cracks in accordance with the following procedures, or the more detailed procedures, outlined in the Cessna Service Manuals for the specified airplanes.

(i) Remove the heater shroud so that all surfaces of the exhaust manifold heat exchanger are exposed.

(ii) Attach the pressure side of an industrial vaccum cleaner to the tailpipe opening, using a rubber plug to effect a seal as required.

(iii) With vaccum cleaner operating, check the complete exhaust manifold in the heat exchanger area manually by feel or by using a soap solution and watching for bubbles. The exhaust manifold in the heat exchanger area must be free of air leaks.

(2) If cracks, breaks, or any leakage along the exhaust manifold cabin heat exchanger are found during the pressure test required by paragraph (a)(1) of this AD, prior to further flight replace the defective part with an airworthy part.

Note.—Cessna Service Letter SE71-11, dated April 16, 1971, covers this same subject.

(b) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201 or the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 20, 1986.

Jerold M. Chavkin,
Acting Director, Central Region.

[FR Doc. 86-12206 Filed 5-30-86; 8:45 am]
BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD 1-86-9R]

Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Maine Department of Transportation (MDOT), the Coast Guard is considering a change to the drawbridge regulations governing the drawbridge across the Kennebec River between the Towns of Richmond and Dresden, Maine, by requiring that advance notice of opening be given during the times of decreased water traffic. This proposal is being made because of a steady decrease in requests for opening the draw. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before July 17, 1986.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, 408, Atlantic Avenue, Boston, MA, 02210-2209. The comments and other materials referenced in this notice will be available for inspection and copying at the Coast Guard Bridge Branch, Room 628, at the address given above. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William J. Naulty, Chief, Bridge Branch, First Coast Guard District, Boston, MA 02210—2209, Telepone (617) 223-8347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, First Guard District, will evaluate all communications received and determine a course of fina action on this proposal. The proposed

regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: William J. Naulty, Chief, Bridge Branch, First Coast Guard District, and Lieutenant Dana J. St. James, United States Coast Guard, Assistant Legal Officer, First Coast Guard District, Project Attorney.

Discussion of Proposed Regulations

Existing regulations were promulgated at a time when traffic volumes on the Kennebec River consisted of commercial and recreational vessels. Today there is no commercial traffic passing through the Richmond/Dresden Bridge, and recreational vessels operate mostly during the daylight hours. Nighttime openings of the drawspan are infrequent. Consequently, the proposed amendment should provide for the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so mininal that a full regulatory evaluation is unnecessary. Traffic on the river consists almost exclusively of recreational vessels during daylight hours. There is little, if any, nighttime vessel movement. Recreational vessels operate only during the boating season. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.525(b) is revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.525 Kennebec River.

* * * * *

(b) (1) The draw of the Maine Department of Transportation highway bridge, mile 27.1, between Richmond and Dresden, shall be opened promptly, on signal, for the passage of vessels between the hours of 9 a.m. and 5 p.m. from June 1 through September 30. At other hours during this period the draw need not be opened for the passage of vessels except on advance notice given to the draw tender or duty between the hours of 9 a.m. and 5 p.m.

(2) At times other than those specified above, the draw need not be opened for passage of vessels except when 24 hours notice is given in person, in writing, or by telephone to the Maine Department of Transportation Division Office, at Rockland.

Dated: May 19, 1986.

R.I. Rybacki,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 86–12270 Filed 5–30–86; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Revocation of Permits To Mail Without Affixing Postage

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Domestic Mail Manual (DMM) to clarify that failure to pay an assessed postage deficiency is grounds for revoking permits to mail without affixing postage.

DATES: Comments must be received on or before July 2, 1986.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Rates and Classification Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young (202) 268–5321.

SUPPLEMENTARY INFORMATION: Postal regulations generally require that postage be fully prepaid at the time matter is mailed. DMM 146.11. Proof of payment can be shown by affixing stamps, by affixing postage meter strips, by imprinting the appropriate postage meter indicia directly on the pieces, or by permit imprints. For matter bearing permit imprints, postage is required to be prepaid in full from an advance deposit account. For permit imprint mailings, the Postal Service calculates the amount of postage due from figures provided by the mailer on the appropriate mailing statement, PS Form 3602, *Statements of Mailing with Permit Imprints*, or PS Form 3605, *Statements of Mailing-Bulk Zone Rates*, and deducts that amount from the advance deposit account.

Mailing statements submitted by mailers using permit imprints are subject to audit by the Postal Service. On the basis of an audit or other evidence which later comes to the Postal Service's attention, it may be determined that the amount of postage paid at the time of mailing was incorrect. If the mailer paid too much postage, the Postal Service refunds the excess amount. If the mailer paid too little postage, the Postage Service notifies the mailer of the deficiency and pursues collection of the amount due. A mailer is entitled to appeal any decision assessing a revenue deficiency to a higher administrative level. See DMM 140.

Unfortunately, in a sufficient number of cases to cause concern, a mailer refuses to pay a postage deficiency after the deficiency assessment has been appealed to a higher administrative level and determined to be proper. In such cases, collection of funds owed to the Postal Service is unreasonably delayed, and the Postal Service incurs additional administrative expense. In some instances, the Postal Service must resort to litigation to collect amounts due.

DMM 145.221 provides, among other things, that permits to mail without affixing postage can be revoked "for any noncompliance with the regulations governing the use of permit imprints." The Postal Service has found that many mailers are not aware that failure to pay the full amount of postage due is an act of noncompliance that falls within the intent of DMM 145.221. Indeed, the Postal Service has only infrequently used the revocation of permits as a means of protecting its revenues.

Accordingly, the Postal Service proposes to amend its regulations to make clear that it is authorized to withdraw from non-paying mailers the privilege of mailing matter without affixing postage, i.e., the privilege of using a permit imprint for bulk or presorted mailings. Such a revocation would not preclude such mailers from using any class or subclass of mail for which they are eligible, but would

require them to affix postage in the proper amount to each mailing piece.

Nothing in this proposed change would affect the right of a mailer to appeal the assessment of a revenue deficiency, DMM 148.2. A final agency decision concerning a revenue deficiency under DMM 148.2, however, will not be subject to reconsideration during a mailer's appeal of a permit revocation under DMM 145.220.

Although exempt by 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553 (b), (c), the Postal Service invites public comments on the following proposed revisions of Part 145 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 145—PERMIT IMPRINTS

2. In Part 145, revise .221 and .220, renumber .66 as .67, and add new .66 to read as follows:

145.2 Permit.

* * * * *

.22 Revocation

.221 The permit will be revoked if used in operating any unlawful scheme or enterprise, for nonuse during any 12-month period, or for any noncompliance with the regulations governing the use of permit imprints, including, but not limited to, any failure to pay the Postal Service any postage or fees that are due.

* * * * *

.220 The permit holder may appeal the Postmaster's decision to the General Manager, Domestic Mail Classification Division, Office of Mail Classification, USPS Headquarters, Washington, D.C. 20260. The appeal must be submitted in writing to the Postmaster, who will forward the appeal to the General Manager, Domestic Mail Classification Division, who will make the final agency decision. The General Manager will not review or reconsider any final agency decision regarding a postage deficiency previously made under DMM 148.2.

* * * * *

145.6 Mailings With Permit Imprints

* * * * *

.66 Payments In Advance of Dispatch. Postage must be fully prepaid before mailings are dispatched. Payments must be made through an advance deposit account established at the post office of mailing. The post office will issue receipts for advance deposit account payments. In circumstances where the Postal Service has made a final agency decision on a revenue deficiency, and the mailer has failed to pay additional postage or fees that are due, postage will not be considered fully prepaid and mailings by or on behalf of the mailer will not be accepted under the permit imprint system until the deficiency has been paid.

PART 148—REVENUE DEFICIENCY

3. In part 148, revise .2 to read as follows:

.2 Appeal of Ruling. A mailer may appeal any ruling assessing a revenue deficiency, by filing within 15 days of receipt of the revenue deficiency ruling an appeal to the Director, Office of Mail Classification, Rates and Classification Department, or to the Assistant Postmaster General, Rates and Classification Department, USPS Headquarters, Washington, DC 20260–5300, if the deficiency was assessed initially by the Director, Office of Mail Classification. The mailer may be required to furnish additional information or documents to support its appeal. Failure to furnish requested information or documents within thirty (30) days of notification will be grounds for denying an appeal. A final agency decision will be rendered as soon as practicable after receipt of the appeal and necessary supporting documents.

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–12275 Filed 5–30–86; 8:45 am]

BILLING CODE 7715-13-M

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39 CFR Part 111

Revocation of Second-Class Mailing Privileges

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Domestic Mail Manual (DMM) to clarify that failure to pay an assessed postage deficiency is grounds for revocation of second-class mailing privileges.

DATE: Comments must be received on or before July 2, 1986.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Rates and Classification Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young (202) 268–5321.

SUPPLEMENTARY INFORMATION: Postal regulations require that postage be fully prepaid before second-class mailings are dispatched. Domestic Mail Manual (DMM) 481. Payment must be made through an advance deposit account established at the post office of mailing. Second-class postage is computed on PS Form 3541, *Statement of Mailing Second-Class Publications*, or PS Form 3541–A, *Statement of Mailing Second-Class (Requester) Publications.* Typically, the postal employee who accepts the mailing examines the mailing statement, and allows the mail to be dispatched if the mailing statement appears to be correct and the publisher has sufficient funds in its advance deposit account to pay the cost of postage on the mailing.

Mailing statements submitted with second-class mailings are subject to later audit by the Postal Service. *See, generally,* DMM 447. On the basis of an audit, or other information which later comes to the attention of the Postal Service, it may determined that the postage paid on a particular mailing or mailings was incorrect. If the postage paid on a mailing exceeded the amount due, the Postal Service will refund the excess amount, or credit it to the publisher's advance deposit account. If the postage paid on a mailing was insufficient, the Postal Service will assess a revenue deficiency against the publisher and pursue collection of the amount due.

Under the applicable regulations, DMM 148, the publisher is given the opportunity to appeal an assessed revenue deficiency to higher levels of Postal Service management. In reviewing such an appeal, postal authorities examine the pertinent records to determine whether the postage paid on a disputed mailing was actually insufficient, and whether the correct amount of additional postage has been assessed. The publisher is considered to be liable for the correct

amount of postage due on every mailing; and the publisher is not excused from paying a deficiency which appears to have resulted from a postal employee's acceptance of a mailer's check supported by insufficient funds, failure to discover an incorrect entry on a mailing statement, miscalculation of the postage on a mailing, or erroneous advice to a publisher. *See*, DMM 111.3. In all cases, the burden rests with the publisher to demonstrate that the proper amount of postage has been paid.

From time to time, disputes have arisen regarding the obligation of a publisher to maintain sufficient funds in its advance deposit account to cover not only the postage on current mailings, but any revenue deficiencies which have been determined to be due and payable after the exhaustion of the mailer's appeal rights under DMM 148. The Postal Service proposes to amend its regulations to make clear that a publisher's failure to pay an assessed revenue deficiency, after the exhaustion of appeal rights under DMM 148, is considered grounds for the revocation or suspension of a publication's second-class mailing privileges under DMM 441.5. In such a case, the publisher's advance deposit account is in arrears, postage on current mailings of a publication cannot reasonably be considered to be fully prepaid under DMM 481, and the publisher has accordingly failed to comply with the requirements of chapter 4 of the Domestic Mail Manual, concerning second-class mailing requirements.

Accordingly, although exempted by 39 U.S.C. 410(a) from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), (c), regarding proposed rulemaking, the Postal Service invites public comment on the following proposed amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See, 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

441.5—Revocation or Suspension of Second-Class Privileges

* * * * *

2. In § 441.5, change 441.51 to read as follows:

.51 General. The Postal Service will revoke or suspend the entry of a publication as second-class mail whenever it finds, after a hearing, that the publication is no longer entitled to be entered as second-class mail. A second-class permit may be revoked or suspended for failure to pay the Postal Service any postage or fees that are determined to be due as a revenue deficiency under DMM 148, after the publisher has exhausted his right of appeal under that section, or the time for appeal has expired.

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–12276 Filed 5–30–86; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 65, 70, 73, and 75

[Docket No. FEMA–FIA]

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), FEMA.

ACTION: Extension of comment period for proposed rule.

SUMMARY: Copies of the proposed rule, published in the **Federal Register** on March 28, 1986, 51 FR 10742, reached some critical commentors late in the comment period. Consequently, FEMA decided that all interested parties will receive additional time in which to review and comment on the proposed rule.

DATE: The date is changed to read, "Comments must be received on or before June 16, 1986."

ADDRESS: Send comments to—Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Piaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number 646–3422.

Dated: May 27, 1986.

Julius W. Becton, Jr.,

Director

[FR Doc. 86–12251 Filed 5–30–86; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 86–020]

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: On May 22, 1986, the Coast Guard published a Notice of Proposed Rulemaking regarding Great Lakes Pilotage Rates (51 FR 18806). At that time the Coast Guard stated that no public hearings were planned, but that they may be held if written requests for a hearing were received and it was determined that the opportunity to make oral presentations would aid the rulemaking process. The Coast Guard has received a request for a public hearing from one of the pilot organizations. Since they are directly affected by the proposed rules, the Coast Guard has determined that a hearing is desirable. Attendance is open to the public. Persons wishing to present oral statements at the hearing should notify the Executive Secretary, Marine Safety Council, no later than two days prior to the hearing. To permit a reasonable two week period for written comment on the oral presentations received by the Coast Guard at this public hearing, the comment period on this proposal is being extended extended to July 2, 1986.

DATES: The Coast Guard will hold the public hearing on June 18, 1986. It will begin at 10 a.m. and end at 4 p.m. or sooner if all speakers have been heard. Comments on this proposed rulemaking must be received by July 2, 1986.

ADDRESSES: The public hearing will be held at: The Hollenden House, East Ballroom, 610 Superior Avenue, Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: The Executive Secretary, Marine Safety Council (G–CMC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 426–1477.

Dated: May 28, 1986.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 86–12271 Filed 5–30–86; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Reclassify the Legal Status of the American Alligator Throughout the Remainder of Its Range to Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to reclassify the American alligator (*Alligator mississippiensis*) throughout the remainder of its range, where the species is presently classified as endangered or threatened, to threatened due to similarity of appearance under provisions of the Endangered Species Act of 1973, as amended. The Service is also proposing to amend the special rule on American alligators to reflect species-wide reclassification to threatened due to similarity of appearance. This proposed rule is based on evidence that the species is no longer biologically endangered or threatened. Alligator populations in Texas, Louisiana, and Florida have already been reclassified. This proposal deals with alligator populations in Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, and South Carolina. Alligator populations in these seven states are relatively stable and the alligator's distribution throughout these seven states is limited largely by habitat suitability. Reclassification would reduce restrictions on States for future management and research. Any proposed harvests would have to comply with the Service's special rule on American alligators and existing State statutes and regulations. The Service is requesting comments and information pertaining to this proposed reclassification of the alligator throughout its range, and proposed amendments to the special rule.

DATES: Comments from all interested parties must be received by August 1, 1986. Public hearing requests must be received by July 17, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan (See ADDRESSES section) (601/960-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The American alligator (*Alligator mississippiensis*) is a large reptile that inhabits wetland areas in all or parts of the following States: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas. The alligator is a member of the Crocodilia, a group of reptiles that has remained relatively unchanged since it evolved some 180–200 million years ago (Murphy 1982). It is one of only two extant species (Chinese alligator and American alligator) of the genus *Alligator*, and it has significant scientific and commercial value. The American alligator's historic and present range are similar (Murphy 1982), although current populations are probably more disjunct due to habitat modification.

Management of alligators has improved markedly in recent years through the activities of Federal agencies, States, and private groups. Major contributions to the species recovery were made by the Florida Game and Fresh Water Fish Commission, the Louisiana Department of Wildlife and Fisheries, the North Carolina Wildlife Resource Commission, the South Carolina Department of Wildlife and Marine Resources, and the Texas Department of Parks and Wildlife. Many State and private institutions and organizations have also made significant contributions. Because of these activities, the American alligator is no longer biologically endangered or threatened.

The alligator was first classified as endangered throughout its range in 1967 due to concern over poorly regulated or unregulated harvests. Subsequently, the alligator recovered rapidly in many parts of its range due to response to Federal and State protection, enabling the Service to undertake the following reclassification actions: (1) Reclassification to threatened due to similarity of appearance in three coastal parishes of Louisiana, reflecting complete recovery (September 26, 1975—40 FR 44412); (2) reclassification to threatened, reflecting partial recovery in all of Florida and certain coastal areas of South Carolina, Georgia, Louisiana, and Texas (January 10, 1977–42 FR 2071); (3) reclassification to threatened due to similarity of appearance, reflecting complete recovery in nine additional parishes of Louisiana (June 25, 1979–44 FR 37130); (4) reclassification to threatened due to similarity of appearance in 52 parishes in Louisiana, reflecting complete recovery (August 10, 1981–46 FR 40664); (5) reclassification to threatened due to similarty of appearance in Texas, reflecting complete recovery (October 12, 1983–48 FR 46332); (6) reclassification to threatened due to similarity of appearance in Florida, reflecting complete recovery (June 20, 1985–50 FR 25672).

Presently, the species is classified as threatened due to similarity of appearance in Florida, Louisiana, and Texas. These three States contain the majority of American alligator habitat; approximately 12,000,000 acres (4,858,299 hectares) or 83 percent of the total for the species. Alligators are classified as threatened or endangered in Georgia and South Carolina, and endangered in Alabama, Arkansas, Mississippi, North Caolina, and Oklahoma.

The Service was petitioned by the State of South Carolina on July 27, 1984, to reclassify the American alligator in South Carolina, to a category of threatened due to similarity of appearance. Data submitted in support of the petition indicate that alligator populations in South Carolina are disjunct, but stable. Studies in Georgia (Ruckel 1984a, 1984b, and 1984c), North Carolina (Doerr 1983), Mississippi (Lewis 1984), and Alabama (Chabreck 1980, 1984) indicate similar population characteristics to those in South Carolina; populations are stable, disjunct, and limited to areas with suitable habitat. Comprehensive data are not available for Arkansas and Oklahoma, although population characteristics should be similar to peripheral populations in other States. These data, in addition to findings in Florida (46 FR 40664), Texas (42 FR 2071), and parts of Louisiana (44 FR 37130), indicate that the alligator is neither endangered nor likely to become endangered within the foreseeable future. Therefore, the Service proposes to reclassify populations currently listed as endangered or threatened, into the category of threatened due to similarity of appearance. This action would result in a rangewide designation of the American alligator as threatened due to similarity of appearance. Specifically, the change will affect the alligator's status in Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, and South Carolina, States which contain approximately 17 percent of the species' total habitat. This action

formally recognizes that the American alligator is no longer biologically threatened or endangered, but supports a need for continued Federal controls on taking and commerce to insure against excessive taking and to continue necessary protections to the American crocodile (*Crocodylus acutus*) in the U.S. and foreign countries, and other endangered crocodilians in foreign countries.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five factors to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their application to the American alligator (*Alligator mississippiensis*) in Arkansas, Alabama, Georgia, Mississippi, North Carolina, South Carolina, and Oklahoma are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitant or range. Albemarle Sound in North Carolina is the approximate northern limit for alligators (Doerr 1983). From this point and south through the State of South Carolina, the principal habitat for the species is coastal marsh, with greatest densities in fresh marsh, brackish marsh, and natural and artificial impoundments. Of occupied habitats in Georgia, about 60 percent are coastal and inland marshes, with the remaining 40 percent in perennial swamps and reservoirs. Alligator habitat in Alabama and Mississippi is similar to that in Georgia, with large populations in marsh and swampland areas along the coast and disjunct populations located inland. Arkansas has a few peripheral populations in the south central part of the State associated with lakes and streams. Oklahoma has a few peripheral individuals located on the periphery of the Little River drainage in the southeastern part of the State.

Wetlands throughout the alligator's range have been reduced. Productive marsh habitats have been and continue to be lost due to a variety of causes, and residential development on and near wetlands increases the probability of conflict between humans and alligators. However, the Service believes that habitat losses are insignificant when compared to the total amount of alligator habitat. Overall, the alligator occupies some 14 million acres (5,668,016 hectares) of various wetland types. Previously cited references involving reclassification of the alligator indicate that habitat in Louisiana, Texas, and Florida will remain abundant in the foreseeable future. Furthermore, Federal and State agencies manage and protect large amounts of alligator habitat.

State agencies have applied different combinations of planning strategies which have improved the biological status of the alligator throughout a majority of suitable habitat in the Southeast. Some of these strategies have included (1) greater penalties for illegal harvest, (2) assigning personnel to handle nuisance complaints and to relocate problem alligators, (3) prohibiting harvest on state lands, (4) restricting and controlling harvest on state lands based on survey and population data, (5) purchasing and/or protecting wetland habitats, (6) educating private land owners on the economic and social benefits of maintaining and enhancing alligators and their habitats, and (7) continual monitoring and research of alligator populations.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Overharvest due to commercial demand for alligator products was responsible for population declines in accessible habitats during the 1950's and 1960's. This problem was reserved primarily through a more effective protective mechanism brought about by the Lacey Act Amendment of 1969 which prohibited interstate commerce in illegally taken reptiles and their parts and products. This law provided Federal authority for dealing effectively with illegal activities in the market system. The endangered Species Act of 1973 added heavy penalties which further enhanced the control of illegal taking. Additionally, vigorous enforcement by State and Federal authorities has been effective in controlling the illegal taking of alligators. Because of these actions, the number of alligators generally increased during the late 1970's and 1980's (Table 1).

TABLE 1.—RESULTS OF SOUTHEASTERN COOPERATIVE ALLIGATOR SURVEY FOR ALABAMA, ARKANSAS, GEORGIA, MISSISSIPPI, AND SOUTH CAROLINA. DATA FROM CHABRECK (1984)

Year	Total alligators observed	Average number alligators seen/mile
1972	2,584	3.95
1973	1,492	3.59
1974	875	2.25
1975	1,308	3.48
1976	1,164	2.37

TABLE 1.—RESULTS OF SOUTHEASTERN COOPERATIVE ALLIGATOR SURVEY FOR ALABAMA, ARKANSAS, GEORGIA, MISSISSIPPI, AND SOUTH CAROLINA. DATA FROM, CHABRECK (1984)—Continued

Year	Total alligators observed	Average number alligators seen/mile
1977	1,130	4.29
1978	1,275	4.64
1979	2,356	8.75
1980	2,582	4.30
1981	3,361	8.63
1982	3,797	9.54

A comparison between 1972–1976 and 1977–82 of the average number of alligators observed per mile indicates a 210 percent increase (3.18 vs. 6.69, respectively).

Variation in results presented in Table 1 (e.g., drop in the average number of alligators seen/mile during one year after a steady increase) probably reflects behavioral responses of alligators (e.g., reduced activity) to environmental conditions rather than decreases in the number of alligators at a given site (see Woodward and Marion 1978, for factors affecting night counts).

The number of large (in excess of six feet) alligators also increased dramatically after 1977 (Table 2).

TABLE 2.—A COMPARISON OF LARGE ALLIGATORS/MILE BEFORE 1977 AND 1977–82. DATA FROM CHABRECK (1984)

State	1972–77	1977–82	Percent change
AL	.21	2.25	+1,000
AR	.36	.39	+.02
GA	.84	1.58	+88
MS	.29	.24	−24
SC	.12	1.98	+1,633

In addition to night surveys associated with the Southeastern Cooperative Alligator Survey, many additional night surveys have been conducted in North Carolina, South Carolina, and Georgia. Some nest surveys have also been done in South Carolina and Georgia. All of this work indicates stable or increasing alligator populations in these States. For example, Murphy and Coker (1983a and b) showed an overall increasing trend in South Carolina alligator populations from 1978 through 1983. Furthermore, data show healthy rates of nesting, hatching survival, and recruitment in South Carolina (Murphy and Wilkinson 1982), North Carolina (Doerr 1983), Georgia (Ruckel 1981a and 1984a), and Alabama (Chabreck 1980).

Since alligators will continue to be classified as threatened due to similarity of appearance, future taking for

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whatever purpose will continue to be regulated by controls established in the Endangered Species Act. Further, the commercial harvest and taking of alligators is regulated by the Service's special rule on American alligators (50 CFR 17.42(a)).

Based on the combined experiences in sustained yield and nuisance control harvests in Louisiana, Florida, and Texas, methods are now available to design harvests so that alligator populations are not negatively affected (Taylor and Neal 1984).

C. Disease or predation. Like most wildlife, alligators are susceptible to various types of disease and predation, but these factors do not appear to threaten the species.

D. The inadequacy of existing regulatory mechanisms. Existing regulations governing take and commerce have successfully dealt with the original basis for listing the American alligator as endangered. The same framework of controls which now governs take and commerce in Florida, Louisiana, and Texas would operate in the remainder of the species' range, if this proposal is made final. The following laws and regulations deal specifically with taking, commerce, and export: (1) The 1969 Amendment to the Lacey Act, which extended enforcement authority to interstate movement of reptiles and their parts; (2) the Endangered Species Act of 1973 which authorizes the special rules for alligators classified as threatened due to similarity of appearance governs taking and commerce in alligators; (3) the annual findings of the Scientific and Management Authorities of the Service, which govern export of species, including the American alligator, which is listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

States may not authorize take of alligators or the commercial use of alligator parts except in accordance with conditions set forth in the special rule on American alligators (50 CFR 17.42(a)). Further, the annual findings of the Scientific and Management Authorities under CITES for export of Appendix II species are conditioned by a determination on a State's management and regulatory framework with regard to management and conservation of such species.

Although this reclassification would remove the American alligator from an endangered or threatened status, federally enforced laws and regulations would remain in place. These would require that any harvest options by States meet certain minimum conditions to insure against a recurrence of the original problem which prompted listing, i.e., excessive take.

E. Other natural or manmade factor affecting its continued existence. Although factors such as nest flooding or drought may affect alligators, none of these natural factors are known to limit populations on a large scale and they are not expected to pose a threat to the species in the future.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify the American alligator in the remainder of its range to threatened due to similarity of appearance. Criteria for reclassification of a threatened or endangered species are found at 50 CFR 424.11(d). They include extinction, recovery of the species, and original data for classification in error. This proposal is based upon evidence that the species is not biologically threatened.

Similarity of Appearance

Section 4(e) of the Endangered Species Act authorizes the treatment of a species as an endangered or threatened species even though it is not otherwise listed as endangered or threatened, if it is found: (a) that the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

Although biologists can readily distinguish live alligators from other crocodilians that are listed under the Act, enforcement personnel could have considerable difficulty in make correct species identification, which could hamper enforcement efforts. In addition, small parts and products of processed crocodilian leather are nearly impossible to distinguish when made into goods, thus hampering the identification of legal alligator products from those of endangered or threatened crocodilians. Problems with identification could increase illegal trade in endangered crocodilian products, further jeopardizing these species.

By listing the American alligator under the similarity of appearance provisions of the Act, coupled with the special rules for American alligators as specified in § 17.42, the Service believes that enforcement problems can be minimized while at the same time the conservation of listed populations of crocodilians can be ensured. The similarity of appearance provisions of the Act have proven effective in Florida, Louisiana, and Texas.

Critical Habitat

Critical habitat for the American alligator was not designated at the time of listing and has not been since designated. Therefore, this proposed rule, if finalized, will have no effect on critical habitat for this species.

Effects of Rule

This proposal, if made final, would change the alligator throughout the remainder of its range from its current status of endangered or threatened to a status of threatened due to similarity of appearance. It would be a formal recognition by the Service that the American alligator is biologically secure throughout its range. A final rule would result in removal of Federal agency responsibilities under Section 7 of the Endangered Species Act.

No significant adverse effects on the status of the species are expected to occur from this removal.

A final rule from this proposal would make available to States the option of expanding harvests of alligators to additional areas. If a State elects to expand its harvests, these harvests could be expected to increase at a level commensurate with development and implementation of the State research and management program. All taking and commerce in alligators and their parts and products would be regulated by the Service's special rule on American alligators (50 CFR 17.42(a)), as well as other applicable controls such as the Lacey Act (18 U.S.C. 42), which prohibits interstate commerce in illegally taken wildlife or their products.

Increased harvest of alligators would be expected to result in an increased volume of alligator exports, although the magnitude of this increase cannot be predicted at this time. The Service has previously expressed its concern about the effects of increased exports on other endangered crocodilians found in international trade. International trade in alligator products is presently subject to the restrictions of CITES, the Service's implementing regulations (50 CFR Part 23) and general wildlife exportation requirements (50 CFR Part 14). Previous determinations by the Service's Scientific and Management

Authorities have concluded that export of alligators taken in Louisiana and Florida would not be detrimental to the survival of the alligator or other endangered crocodilians. The Service would continue to review any possible impact and would take appropriate action if evidence indicates that restrictions are warranted. This proposed action, if completed, would not be an irreversible commitment on the part of the Service. The action is reversible and relisting is possible if the status of the species changes or if States materially change their plans or actions in a way that may threaten the species. The Service would continue to monitor and review the States' management programs.

Public Comments Solicited

The Service intends that any final rule adopted be as accurate and effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule and proposed ammendments to the special rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the American alligator; and

(2) Additional information concerning the range and distribution of this species.

Final promulgation of regulations on the American alligator throughout the remainder of its range will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

The following documents were used in the preparation of this rule. These and other documents supplying background information, including all unpublished data, are on file at the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

Chabreck, R.H. 1980. Status of the American alligator in Baldwin and Mobile Counties, Alabama. Unpublished manuscript, Louisiana State University, Baton Rouge, 72 pp.

Chabreck, R.H. 1984. Cooperative Surveys of the American Alligator in the Southeastern United States, 1974–1982. Unpublished data, Louisiana State University, Baton Rouge.

Doerr, P. 1983. Status of the American Alligator in North Carolina. North Carolina State University, Raleigh, Project E–1, Study I. May 1978–Oct. 1983. 494 pp.

Lewis, D. 1984. Night count summaries and alligator habitat for Mississippi. Unpublished Data, Mississippi Dept. of Wildlife Conservation, Jackson.

Murphy, T.M. 1982. Size at Sexual Maturity of Male Alligators in South Carolina. South Carolina Wildlife and Marine Resources Department, Unpublished manuscript, 21 pp.

Murphy, T.M., and J.W. Coker. 1983a. Night Spotlight Counts of Alligators in South Carolina. South Carolina Wildlife and Marine Resources Department, Unpublished manuscript, 35 pp.

Murphy, T.M., and J.W. Coker. 1983b. American Alligator Population Studies In South Carolina. South Carolina Wildlife and Marine Resources Department Study Completion Reports, Unpublished manuscript, 115 pp.

Murphy, T.M., and P.M. Wilkinson. 1982. American Alligator Investigation Management Recommendations and Current Research. South Carolina Wildlife and Marine Resources Dept., Unpublished manuscript, 90 pp.

Ruckel, S. 1981a. Productivity of Alligators in Georgia. Final Report. Georgia Game and Fish Division, Project E–1, Study 17, 18 pp.

Ruckel, S. 1981b. Distribution of Alligators in Georgia. Final Report. Georgia Game and Fish Division, Project E–1, Study 17, 6 pp.

Ruckel, S. 1984a. Georgia alligator spotlight survey results, 1973–1984. Unpublished data, Georgia Game and Fish Division, Atlanta.

Ruckel, S. 1984b. Estimated wetland acreage occupied by alligators in Georgia. Unpublished data, Georgia Game and Fish Division, Atlanta.

Ruckel, S. 1984c. Characteristics of nuisance alligator complaints and nuisance alligators captured and relocated in Georgia, 1980–83. Unpublished manuscript, Georgia Game and Fish Division, Atlanta.

Taylor, D., and W. Neal. 1984. Management implications of size-class frequency distributions in Louisiana alligators. Wildl. Soc. Bull. 12:312–319.

Woodward, A.R., and W.B. Marion. 1978. An evaluation of factors affecting nightlight counts of alligators. Proc. Ann. Conf. S.E. Assoc. Fish and Wildlife Agencies 32:291–302.

Author

The primary author of this proposed rule is Mr. Wendell Neal of the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by revising listing of the American alligator under "Reptiles" in the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species: Common name	Species: Scientific name	Historic range	Vertebrate population: population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Reptiles							
Alligator, American	*Alligator mississippiensis*	Southeastern U.S.A.	Wherever found (in wild or captivity)	T(S/A)	1,11,20 47,51,80 113,134	NA	17.42(a)

3. Revise § 17.42(a)(1) definitions to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *

(1) *Definitions. For purposes of this paragraph (a):*

"American alligator" shall mean any member of the species *Alligator mississippiensis*, whether alive or dead, and any part, product, egg, or offspring thereof wherever found in captivity or the wild.

"Buyer" shall mean a person engaged in buying a raw, green, salted, crusted or otherwise untanned hide of an American alligator, its meat, meat products, and skeleton (including teeth, claws and skulls).

"Tanner" shall mean a person engaged in processing a raw, green, salted, or crusted hide of an American alligator into leather.

* * * * *

4. Revise § 1742(a)(2)(i)(A)(4) to read as follows:

§ 17.42 Special rules-reptiles.

(a) * * *

(2) * * *

(i) * * *

(A) * * *

(4) Remove a specimen which constitutes a demonstrable but non-immediate threat to human safety. The taking must be done in a humane manner, and may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed in a remote area.

* * * * *

5. Revise § 17.42(a)(1)(iv)(A) to read as follows:

§ 17.42 Special rules-reptiles.

(a) * * *

(2) * * *

(iv) * * *

(A) A fully tanned hide which bears the noncorrodible, service-approved serially numbered tag attached by the State where the taking occurs and a manufactured product of a lawfully taken American alligator may be delivered, received, carried, transported, or shipped in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, and may be sold or offered for sale in interstate or foreign commerce.

* * * * *

6. Remove § 17.42(a)(3)(ii).

7. Redesignate § 17.42(a)(3)(iii) as § 17.42(a)(3)(ii).

8. In new § 17.42(a)(3)(ii), revise § 17.42(a)(3)(ii)(A)(*2*)(*vi*) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*2*) * * *

(*vi*) The location where inventories of American alligator hides, meat, meat products, skeletal parts (including claws, teeth, and skulls), and hides, meat, or skeletal parts of any other species of the Order Crocodilia will be stored, and

* * * * *

9. In new § 17.42(a)(3)(ii), revise § 17.42(a)(3)(ii)(A)(*3*) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*3*) A description, including samples, of the applicant's present or proposed system of inventory control and bookeeping capable of insuring accurate accounting for the following items:

(*i*) All American alligator hides, meat, meat products, skeletal parts (including claws, teeth, and skulls), and

(*ii*) All hides, meat, meat products, skeletal parts (including claws, teeth, and skulls) of any other species of the Order Crocodilia;

* * * * *

10. In new § 17.42(a)(3)(ii), revise § 17.42(a)(3)(ii)(C)(*1*) and (a)(3)(ii)(C)(*2*) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *

(3) * * *

(ii) * * *

(C) * * *

(*1*) A permittee may not buy American alligator hides, meat, meat products, skeletal parts (including claws, teeth, and skulls), process meat or skeletal parts, or tan any American alligator hide except one which was imported, exported, taken, sold, offered for sale, delivered, carried, transported, or shipped in accordance with paragraph (a)(2) of this section;

(*2*) A permittee may sell, offer for sale, deliver, carry, transport, or ship a raw, green, salted, or otherwise untanned American alligator hide or bulk American alligator meat, or unfinished skeletal parts (including claws, teeth, and skulls) only to a holder of a valid Federal permit issued under paragraph (a)(3)(ii) of this section;

* * * * *

11. In new § 17.42(a)(3)(ii), revise § 17.42(a)(3)(ii)(C)(*5*) and (a)(3)(ii)(C)(*6*) to read as follows:

§ 17.42 Special rules-reptiles.

(a) * * *

(3) * * *

(ii) * * *

(C) * * *

(*5*) A permittee must file a written report in English with the Director by March 31 of each year concerning all transactions during the preceding calendar year ending December 31 involving American alligators and other species of the Order Crocodilia listed as "Appendix I" in § 23.23 of this chapter. This report shall include the pounds of meat, the number of hides, parts (including skeletal parts of claws, teeth, and skulls), and products by species, the supplier's name and address, and the

country where taken from the wild, if known.

(6) A permittee may not transport or ship any American alligator hide unless legally tagged in accordance with § 17.42(a)(2)(i)(C), or transport or ship any American alligator meat, meat product, skeletal parts (including claws, teeth, and skulls) unless in compliance with the conditions of § 17.42(a)(2)(i)(C)(2) and (4).

Dated: May 6, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-12219 Filed 5-30-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 105
Monday, June 2, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Cotton Storage Agreement Contract Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of 1986–87 Contract Year Fees.

SUMMARY: The purpose of this notice is to publish the 1986–87 contract fees to be paid to Commodity Credit Corporation by certain warehousemen requesting renewal of an existing Cotton Storage Agreement (CSA) or requesting initial approval of a CSA in accordance with the regulations governing the Standards for Approval of Warehouses for Cotton or Cotton Linters (7 CFR 1427.1081 *et seq.*). The fees will partially defray the costs of examinations of cotton warehouses operated by such warehousemen who do not have a Federal warehouse license or State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination services.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5768—South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5847.

SUPPLEMENTARY INFORMATION: This final notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) authorizes CCC to conduct various activities to stabilize, support, and protect farm income prices. CCC is authorized to carry out such activities as making price supports available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exporation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the CCC's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce. Pursuant to these provisions, CCC enters into CSAs with private warehousemen which provide for the storage of commodities owned by CCC or pledged as security to CCC for a price support loan.

CCC examines all warehouses which are the subject of a CSA, or for which a warehouseman has requested approval for a new CSA, to determine whether the warehouseman is complying with the terms and conditions of the CSA and the standards for approval or has the ability to do so.

The regulations at 7 CFR 1427.1088 provide that each warehouseman who does not have a Federal warehouse license or State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination service must pay a contract fee to CCC for each such warehouse for which the warehouseman requests renewal of an existing CSA or approval of a new CSA. The regulation also provides that the amount of the contract fee shall be determined and announced annually in the Federal Register. The contract fee is designed to reimburse CCC for approximately 50 percent of the cost of the warehouse examinations.

Contract fees were not charged for the 1985–86 contract year since appropriated funds were made available for that purpose.

The purpose of this notice is to announce the schedule of contract fees for the 1986–87 contract year.

In determining the fees, CCC considered the following factors:

(1) The fixed cost associated with conducting examinations;

(2) The cost of counting bales that are actually in the warehouse at the time of examination;

(3) Whether the volume of cotton handled at the warehouse shoud be taken into consideration in the establishment of the fee;

(4) Whether the fee should be based on the time spent by the inspector at each warehouse; and

(5) Whether the fee would adversely affect the domestic and export price for marketing cotton.

After a review of these factors, it was determined that the fee should be based only upon fixed costs associated with examinations and upon an estimate as to the costs incurred by CCC in counting bales during an examination. It is determined that the volume of cotton handled at the warehouse does not have a major effect on the amount of time an examiner spends completing an examination. CCC also determined that

the fee should not be based upon the time spent by an examiner in a particular warehouse, because such a calculation might discourage examiners from taking whatever time is necessary to conduct a complete examination. Finally, it was determined that the fee is not large enough to have any adverse effects on the domestic and export prices for marketing cotton.

The fees for the 1986–87 contract year shall be determined as follows:

(1) A fee of $100 for each warehouse examined to help offset certain fixed costs associated with examinations which do not tend to vary according to storage activity, such as travel and staff hours devoted to discussions with warehouse personnel concerning general warehouse procedures; and

(2) A charge of ¾ cent times the average number of bales in storage in the warehouse at the end of each month during the 12 months of the calendar year preceding assessment of the fee to partially offset the cost of the counting of bales that actually are in the warehouse at the time of the examination.

A fee of 10 cents per bale will also be charged a warehouseman whenever CCC conducts a tag check of the warehouse. The tag check is not a part of the standard warehouse examination. Tag checks are conducted by CCC whenever the examiner's bale count is not within ½ of 1% of the total number of bales which should be in the warehouse as determined by outstanding warehouse receipts and all other storage and non-storage obligations or whenever CCC determines that other conditions at the warehouse indicate that a tag check may be necessary. If the tag check reveals that the examiner's original bale count was in error, the inventory and storage obligations are in balance, and the erroneous count was not due to stacking or housekeeping problems which prevented an accurate count, CCC will not access the 10 cents per bale tag check fee.

Accordingly, the following fees will be applicable for the 1986–87 contract year.

Determination

A. There shall be charged and collected from warehousemen who do not have a Federal warehouse license or a State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination services for each cotton warehouse for which the warehouseman requests the renewal of an existing CSA or approval of a new CSA, a contract fee, equal to the total of:

1. A charge of $100 plus

2. A charge of ¾ cent times the average number of bales in storage in the warehouse during the preceding calendar year (computed from month-end inventories).

This fee shall be assessed in advance of the annual contract renewal date or, in the case of a warehouseman who is seeking approval of a new CSA, prior to the time that the CSA is approved by CCC. Failure of a warehouseman to pay such fee at that time shall be grounds for termination of a CSA or for rejection of approval of a new CSA.

B. If CCC determines that a tag check of the bales stored in an approved warehouse is warranted, CCC will charge the warehouseman an additional tag check fee of 10 cents per bale checked. A tag check shall be deemed to be warranted whenever the examiner's bale count is not within ½ of 1 percent of the total number of bales which should be in the warehouse, as indicated by outstanding warehouse receipts and all other storage and non-storage obligations or whenever CCC determines that other conditions at the warehouse indicate that a tab check may be necessary. If the tag check reveals that the examiner's original bale count was in error (which error was not caused by stacking or housekeeping deficiencies which prevented an accurate count) and the warehouseman does have sufficient cotton in storage to cover all storage and nonstorage obligations, the 10 cents per bale charge will not be assessed.

Signed at Washington, DC on May 27, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–12249 Filed 5–30–86; 8:45 am]

BILLING CODE 3410–05–M

Uniform Grain and Rice Storage Agreement Contract Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of 1986–87 Contract Year Fees.

SUMMARY: The purpose of this notice is to publish a schedule of 1986–87 contract fees to be paid to Commodity Credit Corporation (CCC) by certain grain and rice warehousemen requesting renewal of an existing storage agreement or requesting initial approval of a storage agreement in accordance with the regulations governing the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed (7 CFR 1421.5551 *et seq.*). The fees are charged by CCC to defray the costs of examination of warehouses operated by such warehousemen who do not have a Federal warehouse license or State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination services.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5768—South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring

agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that in carrying out CCC's purchasing and selling operations, and in the warehousing, transporting, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangement of trade and commerce.

Pursuant to these provisions, CCC enters into storage agreements with private grain and rice warehousemen which provide for the storage of commodities owned by CCC or pledged as security to CCC for price support loans. CCC examines all grain and rice warehouses which are the subject of a storage agreement, or for which a warehouseman has requested approval of a new storage agreement, to determine whether the warehouseman is complying with the terms and conditions of the storage agreement and the standards of approval or has the ability to do so.

The regulations found at 7 CFR 1421.5558 provide that each warehouseman who has a non-federally licensed grain or rice warehouse in States that do not have a cooperative agreement with CCC for warehouse examinations must pay an annual contract fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought. A grain or rice warehouseman who has entered into a storage agreement with CCC must pay the annual contract fee in advance of the renewal date of the agreement. A grain or rice warehouseman who is seeking to enter into a storage agreement with CCC must pay the annual contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC. Section 1421.5558 also provides that the amount of the contract fee shall be determined and announced annually in the Federal Register. The contract fee is designed to reimburse CCC for approximately 50 percent of the cost of the warehouse examinations.

A review of the 1985–86 contract fees indicates that they generated sufficient revenues to cover approximately 50 percent of the cost of the warehouse examinations for the 1985–86 contract year. Projections of program costs for the 1986–87 contract year indicate that CCC's expenditures for the examination of grain and rice warehouses should remain relatively stable. Accordingly, the fees for the 1986–87 contract year are unchanged from those fees which were applicable to the 1985–86 contract year.

Accordingly, the following schedule of fees and method of determining such fees will be applicable for the 1986–87 contract year.

Determination

The fees set forth in the following schedule will be collected for the 1986–87 contract year by the Commodity Credit Corporation (CCC) from warehousemen who have entered into a Uniform Rice Storage Agreement (URSA) or a Uniform Grain Storage Agreement (UGSA) with CCC or who are seeking to enter into a URSA or UGSA with CCC but who do not have a Federal warehouse license or a State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination services.

TWELVE MONTH CONTRACT FEE SCHEDULE

Location capacity (bushels)	Contract fees (dollars)
1 to 150,000	$100
150,001 to 250,000	200
250,001 to 500,000	300
500,001 to 750,000	400
750,001 to 1,000,000	500
1,000,001 to 1,200,000	600
1,200,001 to 1,500,000	700
1,500,001 to 2,000,000	800
2,000,001 to 2,500,000	900
2,500,001 to 5,000,000	1,000
5,000,001 to 7,500,000	1,100
7,500,001 to 10,000,000	1,200
10,000,001 +	$1,200 plus $30 per million bushels of capacity above 10 million or fraction thereof.

The location capacity of the warehouse shall be determined by the Secretary of Agriculture and shall be the capacity of a fully functional facility operated as a public warehouse or functional unit of a group of warehouses usually within the same town or freight tariff point. A functional facility is one which could operate independently if it was separated from other facilities that may be included in a merged warehouse code. Any outlying unit which is not a fully functional facility would have its capacity included as part of the combined capacity of the nearest fully functional operating location.

The contract fee shall be the sum total of the fees for all functional units within the warehouse code and shall be assessed and must be paid in advance of the annual contract renewal date or, in the case of a warehouseman who is seeking approval of a new URSA or UGSA, prior to the time that the agreement is approved by CCC. The failure of a warehouseman to pay such fee at that time shall be grounds for termination of an existing URSA or UGSA or for rejection of approval of a new URSA and UGSA.

Signed at Washington, DC on May 27, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-12250 Filed 5-30-86; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Designation Renewal of Erie Grain Inspection Service (OH)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Erie Grain Inspection Service (Erie) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not be to a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Erie's designation terminates on June 30, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the December 27, 1985, Federal Register (50 FR 52975), and as corrected, January 6, 1986 (51 FR 421). Applications were to be postmarked by January 27, 1986. Erie was the only applicant for its designation and applied for designation renewal in the area currently assigned to that agency.

FGIS announced the applicant name and requested comments on the same in the March 3, 1986, Federal Register (51 FR 7301). Comments were to be postmarked by April 17, 1986. No

comments were received regarding Erie's designation renewal.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), determined that Erie is able to provide official services in the geographic area for which FGIS is renewing its designation. Effective July 1, 1986, and terminating June 30, 1989, Erie will provide official inspection services in its specified geographic areas, which is the entire area previously described in the December 27 Federal Register.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide offical services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notices, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Erie Grain Inspection Service, 301 North Street, P.O. Box 98, Bellevue, OH 44811.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: May 19, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-12187 Filed 5-30-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to Fostoria Grain Inspection (OH), Louisiana Department of Agriculture (LA), and North Carolina Department of Agriculture (NC)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Fostoria Grain Inspection (Fostoria), Louisiana Department of Agriculture (Louisiana), and North Carolina Department of Agriculture (North Carolina).

DATE: Comments to be postmarked on or before July 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1986, Federal Register (51 FR 11084), and as corrected, April 9, 1986 (51 FR 12188). Applications were to be postmarked by May 1, 1986. Fostoria, Louisiana, and North Carolina were the only applicants for their respective designations and applied for designation renewal in the area currently assigned to those agencies.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 19, 1986.

J.T Abshier,

Director, Compliance Division.

[FR Doc. 86-12188 Filed 5-30-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to Amarillo Grain Exchange, Inc. (TX), and Wisconsin Department of Agriculture, Trade and Consumer Protection (WI)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Amarillo Grain Exchange, Inc., and Wisconsin Department of Agriculture, Trade and Consumer Protection.

DATE: Applications to be postmarked on or before July 2, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Amarillo Grain Exchange, Inc. (Amarillo), 1300 South Johnson Street,

Amarillo, TX 79101, was designated under the Act as an official agency to provide inspection functions on December 1, 1983. Wisconsin Department of Agriculture, Trade and Consumer Protection [Wisconsin], 801 West Badger Road, Madison, WI 53713, was designated on that date to provide inspection and weighing functions.

Each official agency's designation terminates on November 30, 1986. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Amarillo, in the States of Oklahoma and Texas, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The area in Texas is the following:

Bounded on the North by the Texas-Oklahoma State line;

Bounded on the East by the eastern Red River County line; the southern Red River and Lamar County lines; the eastern, southern, and western Hunt County lines; the southern Collin County line; the eastern Dallas, Ellis, Hill, Limestone, Falls, and Milam County lines;

Bounded on the South by the southern Williamson County line; the western Bell and McLennan County lines; the southern Bosque; Hamilton, Comanche, and Brown County lines; the southern and western Coleman County line; the southern Taylor, Nolan, Mitchell, Howard, Martin, and Andrews County lines;

Bounded on the West by the western Andrews; Gaines, Yoakum, and Cochran County lines; the northern Cochran County line; the northern Hockley County line east to FM 303; FM 303 north to U.S Route 84; U.S. Route 84 (including Sudan), southeast to FM 37; FM 37 east to FM 179; FM 179 north to FM 1914; FM 1914 east (not including Hale Center), to FM 400; FM 400 south to FM 37; FM east to the Hale County line; the eastern Hale County line; the northern Crosby and Dickens County lines; the western Cottle and Childress County lines north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. Route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line; the western Oldham, Hartley, and Dallam County lines.

In addition, the area icludes El Paso County.

The area in Oklahoma is the following: Beaver, Cimarron, and Texas Counties.

The geographic area presently assigned to Wisconsin, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Wisconsin, except those export port locations within the State.

Interested parties, including Amarillo and Wisconsin, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specific above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning December 1, 1986, and ending November 30, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance, Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 19, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-12169 Filed 5-30-86; 8:45 am]

BILLING CODE 3410-EN-M

Designation of Enid Grain Inspection Company, Inc. (OK)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of Enid Grain Inspection Company, Inc., as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Enid Grain Inspection Company, Inc., requested cancellation of its designation on January 1, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the December 27, 1985, Federal Register (50 FR 52975), and as corrected, January 6, 1986 (51 FR 421). Applications were to be postmarked by January 27, 1986. Barry L. Hibbets, Enid, Oklahoma, who proposed to continue the business as Enid Grain Inspection Company, Inc. (Hibbets), was the only applicant for designation; he applied for the entire area available for assignment. Hibets has been providing official inspection service in the area on an interim basis since January 1, 1986.

FGIS announced the applicant name and requested comments on the same in the March 3, 1986, Federal Register (51 FR 7302). Comments were to be postmarked by April 17, 1986. Two favorable comments were received regarding the designation of Hibbets in the available geographic area.

FGI evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), determined that Hibbets is able to provide official services in the geographic area for which FGIS is designating it. Effective July 1, 1986, and terminating June 30, 1989, Hibbets will provide official inspection services in the specific geographic area, which is the entire area previously described in the December 27 Federal Register.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services ands where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by

contacting the agency at the following address:

Enid Grain Inspection Company, Inc., 2205 N. 10th Street, P.O. Box 229, Enid, OK 73701.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. *et seq.*))

Dated: May 19, 1986

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–12170 Filed 5–30–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Battle Creek, Michigan, Geographic Area (MI)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the Battle Creek, Michigan, geographic area.

DATE: Comments to be postmarked on or before July 12, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that the designation of Grain Inspection Services, Inc., Battle Creek, Michigan, would not be renewed on May 1, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the April 1, 1986, Federal Register (51 FR 11083). Applications were to be postmarked by May 1, 1986. There were five applicants for the available geographic area, as follows:

1. East Indiana Grain Inspection, Inc., Muncie, Indiana, which applied only for the following County in Ohio: Williams.

2. Erie Grain Inspection Service, Bellevue, Ohio, which applied for the entire geographic area available for assignment.

3. Lima Grain Inspection Service, Inc., Lima, Ohio, which applied only for the following County in Ohio: Williams.

4. Michigan Grain Inspection Services, Reese, Michigan, which applied for the entire geographic area available for assignment.

5. Schneider Inspection Service, Inc., Lowell, Indiana, which applied only for the following Counties in Michigan: Berrien, Cass, St. Joseph, Branch, and Hillsdale.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

Persons or firms located in this geographic area requiring official inspection service should contact the FGIS Saginaw Field Office at (517) 753–2482 to obtain such service until such time as an applicant is designated to perform official services.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 19, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–12171 Filed 5–30–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Ft. Smith-Van Buren, AR, Geographic Area (AR)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the Ft. Smith-Van Buren, Arkansas, Geographic area.

DATE: Comments to be postmarked on or before June 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced the cancellation of designation of Ft. Smith-Van Buren Grain Inspection Service, effective April 17, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the April 1, 1986, Federal Register (51 FR 11086). Applications were to be postmarked by May 1, 1986. There were two applicants for the available geographic area, as follows: 1. Enid Grain Inspection Company, Inc., Enid, Oklahoma; and 2. Little Rock Grain Exchange Trust, Little Rock, Arkansas. Both applicants applied for the entire geographic area available for assignment.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

Persons or firms located in this geographic area requiring official inspection service should contact the FGIS Stuttgart Field Office at (501) 673–2508 to obtain such service until such time as an applicant is designated to perform official services.

Pub L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 19, 1986.

J.T Abshier,

Director, Compliance Division.

[FR Doc. 86–12172 Filed 5–30–86; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Forest Land and Resource Management Planning and Public Land and Resources; Planning, Programming, and Budgeting

AGENCIES: Forest Service, USDA and Bureau of Land Management, Interior.

ACTION: Joint notification of land and resource management planning schedules.

SUMMARY: Land and resource management plans of the Forest Service and the Bureau of Land Management frequently cover adjoining areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDA Forest Service and the USDI Bureau of Land Management have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships between the agencies' current and projected planning activities.

The Forest Service and the Bureau of Land Management's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Forest Service and Part B—Bureau of Land Management).

Comments on the schedules should be directed to the appropriate agency (see **ADDRESS**, Part A and Part B).

Part B—Bureau of Land Management

Regulations governing resource management planning for the Bureau of Land Management administered lands (43 CFR Parts 1601 and 1610) were published in the Federal Register on May 5, 1983. They became effective on July 5, 1983. Those regulations (43 CFR 1610.2(b)) require that the Bureau publish a planning schedule for the current and three succeeding fiscal years. The schedule below fulfills that requirement.

The formal start of the planning process begins with the publication of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule for Fiscal Years 1986 and 1987. Where an environmental assessment (EA) is indicated on the schedule, the EA will be made available to the public and will be revised to respond to public comments, as appropriate.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule will be accepted July 2, 1986.

ADDRESS: Comments should be sent to Director (760), Bureau of Land Management, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ann Loose, (202) 653–8824.

SUPPLEMENTARY INFORMATION:

BUREAU OF LAND MANAGEMENT—PLANNING SCHEDULE

District, State and resource area	Plan name (major resource issues)	Fiscal year 1986	Fiscal year 1987	Fiscal year 1988	Fiscal year 1989
Anchorage, AK: Anchorage.	South Central RMP (National defense, recreation, minerals, lands, wild and scenic rivers, cultural).		Start	DEIS	FEIS
Fairbanks AK: Arctic Yukon	Corridor RMP (lands, oil and gas, recreation, wildlife, minerals, subsistence, wilderness).	Start	DEIS	FEIS	
Northwest	Central Yukon RMP (lands, oil and gas, wildlife, minerals, subsistence)	FEIS		DEIS, FEIS	
Phoenix, AZ: Phoenix	Phoenix RMP (range, wildlife, minerals, lands)				
Safford, AZ: San Simon	San Simon RMP (range, wildlife, lands)		Start	DEIS	FEIS
Safford/Phoenix	Eastern Arizona EIS (grazing)	FEIS			
California Desert, CA: El Centro, Indio Barstow, Needles, Ridgecrest.	Desert 85-87 MFP-A (various)		EA		
Susanville, CA: Eagle Lake/Cedarville.	Eagle Lake/Cedarville MFP-A (wilderness)	PFEIS			
Ukiah, CA: Arcata	Arcata RMP (lands, forestry, wildlife)	Start	DEIS, FEIS		
Arcata	Eden/Thatcher Ridge MFP-A (wilderness)	PFEIS			
Canon City, CO: San Luis	San Luis RMP (lands, minerals, range, wildlife, forestry)	Start		DEIS, FEIS	
Craig, CO: Little Snake	Little Snake RMP (range, wilderness, coal, oil and gas, wildlife)	DEIS, FEIS			
Little Snake	Little Snake Technical Supplement (wilderness)	DEIS	PFEIS		
Craig, CO: White River	James Creek FRLA EIS MFP-A (coal)	FEIS			
White River	White River MFP-A (wilderness)	DEIS	FEIS, PFEIS		
Grand Junction, CO: Grand Junction	Grand Junction RMP (wilderness)	PFEIS			
Montrose, CO: San Juan	San Juan/San Miguel RMP (wilderness)	PFEIS			
Uncompahgre	Uncompahgre RMP (coal, wilderness)		DEIS, FEIS, PFEIS		
Boise, ID: Jarbidge	Jarbidge RMP (wilderness)		PFEIS		
Owyhee	Owyhee MFP-A (wilderness)	PFEIS			
Cascade	Cascade RMP (grazing, timber, wildlife, land tenure)	DEIS	FEIS		
Bruneau/Owyhee	Jacks Creek MFP-A (wilderness)	PFEIS			
Owyhee/Bruneau S. Malheur, OR; Elko, NV.	Owyhee Canyon Lands MFP-A (wilderness)	PFEIS			
Coeur D'Alene, ID: Cottonwood	Chief Joseph RMP (forestry)		Start	DEIS, FEIS	
Cottonwood/Emerald Empire.	North Idaho MFP-A (wilderness)	PFEIS			
Emerald Empire, Elko, NV.	Emerald Empire RMP (forestry)		Start	DEIS, FEIS	
Idaho Falls, ID: Big Butte/Pocatello	Eastern Malta MFP-A (wilderness)	PFEIS			
Medicine Lodge	Medicine Lodge RMP (wilderness)	PFEIS			
Pocatello, ID: Pocatello	Pocatello RMP (lands, minerals, wildlife, grazing)		DEIS, FEIS		
Salmon, ID: Challis	Challis MFP-A (wilderness)	PFEIS			
Challis	Big Lost/Pahsimeroi MFP-A (wilderness)	PFEIS			

BUREAU OF LAND MANAGEMENT—PLANNING SCHEDULE—Continued

District, State and resource area	Plan name (major resource issues)	Fiscal year 1986	Fiscal year 1987	Fiscal year 1988	Fiscal year 1989
Lewiston, MT:					
Lewiston	Lewiston RMP (grazing, wildlife, lands)	FEIS	PFEIS		
Shoshone, ID:					
Bennett Hills	Bennett Hills RMP (grazing, lands, fire, wildlife)		Start, DEIS	FEIS	
Monument/Bennett	Monument RMP (wilderness)	PFEIS			
Jackson, MS:					
Jackson	Louisiana RMP (wildlife, lands minerals, wetland/floodplain/riparian)		FEIS		
Jackson	Florida RMP (wildlife, lands, minerals, wetland/floodplain/riparian)	Start	DEIS, FEIS		
Jackson	Georgia Plan Analysis (minerals, wildlife, wetland/floodplain/riparian)		Start	EA	
Jackson	South Carolina Plan Analysis (minerals, wildlife, wetlands/riparian/floodplain		Start	EA	
Moreno: Statewide	Statewide Wilderness EIS	PFEIS			
Butte, MT:					
Dillon	Centennial MFP–A (wilderness)		PFEIS		
Dillon	Dillon MFP–A (wilderness)	PFEIS			
Garnet	Garnet RMP (wilderness)	PFEIS			
Headwaters	Headwaters RMP–A (wilderness)	PFEIS			
Lewiston/Miles City, MT	Missouri Breaks MFP–A (wilderness)	PFEIS			
Lewiston, MT:					
Great Falls	West Hilline RMP (lands, ORV, ROW, special management areas, water quality)		DEIS	FEIS	
Valley	Bitterroot MFP–A (wilderness)	PFEIS			
Miles City, MT:					
Billings	Billings RMP–A (wilderness)	PFEIS			
Powder River	Powder River RMP–A (wilderness)	PFEIS			
Nevada: Statewide	Statewide wilderness EIS			PFEIS	
Battle Mountain, NV: Shoshone/Eureka	Shoshone/Eureka RMP–A (range, wildlife)	Start	DEIS, FEIS		
Elko, NV: Elko	Elko RMP (lands, wilderness, livestock)	FEIS, PFEIS			
New Mexico: Statewide	NM Statewide MFP–A (wilderness)	DEIS	PFEIS		
Albuquerque, NM:					
Farmington	Farmington RMP (grazing, lands, fuel sources, coal, ORV, ROW corridors, special management areas).	Start	DEIS, FEIS		
Taos	Taos RMP (Grazing, lands, special management areas)		DEIS, FEIS		
Las Cruces, NM:					
Las Cruces/Lordsburg	Dona Ana County MFP–A (lands)	DEIS	FEIS		
Socorro	Socorro RMP (grazing, lands, access/ORV, coal, special management areas, wild horses).	Start		DEIS, FEIS	
Roswell, NM: Carlsbad	Carlsbad RMP (grazing, minerals, lands, access, special management areas	DEIS, FEIS			
Dickinson, ND: North Dakota	North DAkota RMP (coal, lands)		DEIS, FEIS		
Oregon: Statewide	Oregon Statewide MFP–A (wilderness)	DEIS	PFEIS		
Prineville, OR: Central Oregon/Deschutes	Brothers-La Pine RMP (timber, lands, watershed, ORV)	Start		DEIS, FEIS	
Vale, OR: Baker	Baker RMP (grazing, lands, timber, fisheries)	DEIS, FEIS			
Cedar City, UT:					
Dixie	Dixie RMP (lands, recreation, wildlife, corridors, community expension)	Start		DEIS, FEIS	
Escalante	Escalante RMP (coal, recreation)		Start		
Moab, UT:					
San Juan	San Juan RMP (livestock, oil and gas, recreation, lands)	DEIS, FEIS			
San Rafael	San Rafael RMP (livestock, oil and gas, coal, recreation)			DEIS, FEIS	
Richfield, UT:					
House Range	House Range RMP (livestock, lands, geothermal)	DEIS, FEIS			
Sevier River	Sevier River MFP–A (livestock grazing)			DEIS, FEIS	
Warm Springs	Warm Springs RMP (livestock, lands, geothermal)	DEIS, FEIS			
Milwaukee, WI:					
Milwaukee	Illinois Plan Analysis (lands, minerals)	EA			
Milwaukee	Missouri Plan Analysis (lands, minerals)	EA			
Casper, WY: Buffalo	Buffalo RMP (wilderness)	PFEIS			
Cody, WY:					
Cody	Cody RMP (range, oil and gas)	Start	DEIS	FEIS	
Washakie	Washakie RMP (range, wilderness)	DEIS	FEIS		
Rawlins, WY:					
Lander	Lander RMP (range, wilderness)	FEIS			
Medicine Bow/Divide	Medicine Bow/Divide RMP (range, wilderness, coal)	DEIS	FEIS		
Rock Springs, WY:					
Kemmerer	Kemmerer RMP (rangeland, oil and gas)	FEIS			
Pinedale	Pinedale RMP (rangeland, oil and gas, lands, forestry, recreation, wildlife, watershed).	DEIS	FEIS		

Key to Abbreviations:
DEIS—Draft environmental impact statement
EA—Environmental assessment
FEIS—Final environmental impact statement
MFP–A—Management framework plan amendment
ORV—Off road vehicles
PA—planning analysis
PFEIS—Preliminary final environmental impact statement (wilderness only)
RMP—Resource management plan
ROW—Rights-of-way

Dated: March 27, 1986.

James M. Parker,

Acting Director, Bureau of Land Management.

Part A—Forest Service

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985. Regulations to guide this effort were initially developed in 1979, and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, No. 190 of the Federal Register, September 30, 1982).

Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of

the National Forest System—recreation, fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the The National Forest Management Act of 1976 (NFMA). These rules require development of Regional Guides and Forest Plans. Each will include all management planning for resources and be supported by an environmental impact statement.

Draft and final Regional Guides and Forest Plans and associated environmental impact statements will be filed with the Environmental Protection Agency and made available to the public for comment. All Forest plans are scheduled to be published in draft by the end of September 1986.

A planning schedule is included below showing the fiscal year which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's Regional Offices and National Forest headquarters in each Region for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest Plan should contact the appropriate Regional Forest of Forest Supervisor.

DATE: Comments on the schedule will be accepted July 2, 1986.

ADDRESS: Comments should be sent to: Chief, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Joyce P. Parker, Land Management Planning, P.O. Box 2417, Washington, DC 20013, (202) 447-6697.

Dated: May 23, 1986.

F. Dale Robertson,

Associate Chief.

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST-PLANS WITH ENVIRONMENTAL PROTECTION AGENCY

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Region 1—Northern Region, Federal Building, Missoula, Montana 59807			
Regional Guide.		1981	1981
Idaho:			
Clearwater	Orofino 83544	1985	1987
Idaho Panhandle National Forests [3]. Coeur d'Alene Kaniksu St. Joe	Coeur d'Alene 83814	1985	1987
Nezperce	Grangeville 83530	1985	1987
Montana:			
Beaverhead	Dillon 59725	1986	*1986
Bitterroot	Hamilton 59840	*1985	1986
Custer	Billings 59103	1985	1986
Deerlodge	Butte 59701	1985	1986
Flathead	Kalispell 59901	*1985	*1985
Gallatin	Bozeman 59715	1985	1986
Helena	Helena 59601	*1985	1986
Kootenai	Libby 59923	1985	1987
Lewis and Clark.	Great Falls 59403	*1984	1986
Lolo	Missoula 59801	*1985	*1986
Region 2—Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225			
Regional Guide.		1981	1983
Colorado:			
Arapaho-Roosevelt [3].	Ft. Collins 80521	1982	1984
Grand Mesa, Uncompahgre, and Gunnison [3].	Delta 81416	1983	1983
Pike and San Isabel [3].	Pueblo 81008	1982	1986
Rio Grande	Monte Vista 81144	1983	1985
Routt	Steamboat Springs 80477	1983	1984
San Juan	Durango 81301	1982	1983
White River	Glenwood Springs 81601	1983	1984
Nebraska: Nebraska-Samuel R. McKelvie [3].	Chadron 69337	1982	1985
South Dakota: Black Hills.	Custer 57730	1982	1983
Wyoming:			
Bighorn	Sheridan 82801	1984	1985
Medicine Bow.	Laramie 82070	1984	1985
Shoshone	Cody 82414	1984	*1986
Region 3—Southwestern Region, 517 Gold Ave., SW., Albuquerque, New Mexico 87102			
Regional Guide.		1981	*1983
Arizona:			
Apache-Sitgreaves [3].	Springerville 85938	1986	1987
Coconino	Flagstaff 86001	1986	1987
Coronado	Tucson 85702	*1985	1986

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Kaibab	Williams 86046	1986	1987
Prescott	Prescott 86301	1986	1987
Tonto	Phoenix 85004	*1986	1986
New Mexico:			
Carson	Taos 87571	1985	1986
Cibola	Albuquerque 87112	1984	1985
Gila	Silver City 88061	1985	1986
Lincoln	Alamogordo 88310	1985	1986
Santa Fe	Santa Fe 87501	1986	1987
Region 4—Intermountain Region, 324 25th Street, Ogden, Utah 84401			
Regional Guide.		1981	*1984
Idaho:			
Boise	Boise 83706	1987	1987
Caribou	Pocatello 83201	1985	*1986
Challis	Challis 83226	1985	1986
Payette	McCall 83638	*1986	1986
Salmon	Salmon 83467	*1986	1986
Sawtooth	Twin Falls 83301	1985	1986
Targhee	St. Anthony 83445	*1985	*1986
Nevada:			
Humboldt	Elko 89801	1985	1986
Toiyabe	Reno 89501	1985	1986
Utah:			
Ashley	Vernal 84078	1985	1986
Dixie	Cedar City 84720	*1986	1986
Fishlake	Richfield 84701	1985	1986
Manti-LaSal	Price 84501	1985	1986
Uinta	Provo 84601	*1985	1985
Wasatch-Cache [3].	Salt Lake City 84139	1985	*1986
Wyoming: Bridger-Teton [3].	Jackson 83001	1986	1987
Region 5—Pacific Southwest, 630 Sansome Street, San Francisco, California 94111			
Regional Guide.		1981	1984
California:			
Angeles	Pasadena 91101	1985	1986
Cleveland	San Diego 92188	1985	1986
Eldorado	Placerville 95667	1986	1987
Inyo	Bishop 93514	1986	1987
Klamath	Yreka 96097	*1986	1987
Lassen	Susanville 96130	*1986	1987
Los Padres	Goleta 93107	1986	1987
Mendocino	Willows 95988	1986	1987
Modoc	Alturas 96101	1986	1987
Plumas	Quincy 95971	*1986	1987
San Bernardino	San Bernagdino 92408	*1986	1987
Sequoia	Porterville 93257	*1986	1987
Shasta-Trinity [3].	Redding 96001	1986	1987
Sierra	Fresno 93721	*1986	1987
Six Rivers	Eureka 95501	1986	1987
Stanislaus-Calaveras, Big Tree [3].	Sonora 95370	1985	1987
Tahoe	Nevada City 95959	*1986	1987
Lake Tahoe Basin Management Unit.	So. Lake Tahoe	*1986	1987

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NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Region 6—Pacific Northwest Region, 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208			
Regional Guide.		1982	1984
Supplemental EIS.		1986	1987
Oregon:			
Deschutes	Bend 97701	[4] 1986	1987
Fremont	Lakeview 97630	1986	1987
Malheur	John Day 97845	1986	1987
Mt. Hood	Portland 97233	1986	1987
Ochoco	Prineville 97754	1986	1987
Rogue River	Medford 97501	1986	1987
Siskiyou	Grants Pass 97526	1986	1987
Siuslaw	Corvallis 97330	1986	1987
Umatilla	Pendleton 97801	1986	1987
Umpqua	Roseburg 97470	1986	1987
Wallowa-Whitman [3]	Baker 97814	[4] 1986	1987
Willamette	Eugene 97440	1986	1987
Winema	Klamath Falls 97601	1986	1987
Washington:			
Colville	Colville 99114	1986	1987
Gifford Pinchot	Vancouver 98660	1986	1987
Mt. Baker-Snoqualmie [3]	Seattle 98101	1986	1987
Okanogan	Okanogan 98840	[4] 1986	1987
Olympic	Olympia 98501	1986	1987
Wenatchee	Wenatchee 98801	1986	1987
Region 8—Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30309			
Regional Guide.		1982	1984
Alabama:			
National Forests in Alabama [3].	Montgomery 36101	1985	[4] 1986
William B. Bankhead			
Conecuh			
Talladega			
Tuskegee			
Arkansas:			
Ouachita	Hot Springs 79101	1985	[4] 1986
Ozark-St. Francis [3]	Russellville 72801	1985	1986
Florida:			
National Forests in Florida [3].	Tallahassee 32301	1985	[4] 1986
Apalachicola			
Ocala			
Osceola			
Georgia:			
Chattahoochee-Oconee [3]	Gainesville 30501	1985	[4] 1986
Kentucky:			
Daniel Boone	Winchester 40391	1985	1986
Louisiana:			
Kisatchie	Pineville 71360	1984	1985

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Mississippi:			
National Forests in Mississippi [3].	Jackson 39205	1985	1986
Bienville			
Delta			
DeSoto			
Holly Springs			
Homochitto			
Tombigbee			
North Carolina:			
National Forests in North Carolina [3].	Asheville 28802		
Nantahala and Pisgah.		1985	1986
Uwharrie and Croatan.		1985	1986
Puerto Rico:			
Caribbean	Rio Piedras 00928	1985	[4] 1986
South Carolina:			
Francis Marion.		1984	1985
Sumter [3]	Columbia 29202	1986	1986
Tennessee:			
Cherokee	Cleveland 37311	1985	[4] 1986
Texas:			
National Forests in Texas [3]	Lufkin 75901	1985	1987
Angelina			
Davy Crockett			
Sabine			
Sam Houston			
Virginia:			
George Washington.	Harrisonburg 22801	1985	1986
Jefferson	Roanoke 24011	1985	1986
Region 9, Eastern Region, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.			
Regional Guide.		1982	1984
Illinois:			
Shawnee	Harrisburg 62946	1985	1986
Indiana and Ohio:			
Wayne-Hoosier. [3]	Bedford 47421		
Wayne		1986	1987
Hoosier		1984	1985
Michigan:			
Hiawatha	Escanaba 49829	1985	1986
Huron-Manistee [3]	Cadillac 49601	1985	1986
Ottawa	Ironwood 49938	1986	1988
Minnesota:			
Chippewa	Cass Lake 56633	1985	1986
Superior	Duluth 55801	1985	1986
Missouri:			
Mark Twain	Rolla 65401	1985	1986

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
New Hampshire and Maine:			
White Mountain	Laconia 03246	1985	[4] 1986
Pennsylvania:			
Allegheny	Warren 16365	1985	1986
Vermont:			
Green Mountain	Rutland 05701	[4] 1986	1986
West Virginia:			
Monongahela	Elkins 26241	1985	1986
Wisconsin:			
Chequamegon	Park Falls 54552	1985	1986
Nicolet	Rhinelander 54501	1985	1986
Alaska Region—Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802			
Regional Guide.		1981	1984
Alaska:			
Chugach	Anchorage 99502	1982	1984
Tongass	Ketchikan 99901	1989	1989

[1] Mailing address for each National Forest.
[2] Two or more separately proclaimed National Forests.
[3] DEIS and FEIS mean Draft and Final Environmental Impact Statements.
[4] Filed with EPA.
* An earlier published draft EIS will be supplemented or revised.

[FR Doc. 86-12284 Filed 5-30-86; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on June 26, 1986, at the Arkansas Bar Center, Board Room, 400 W. Markham, Little Rock, Arkansas. The purpose of the meeting is to discuss the Committee's planned project on discrimination in juvenile justice and monitoring of higher education desegregation in response to the *Adams* case.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Alan Patteson or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570, (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the services of a

sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-12308 Filed 5-30-86; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on June 23, 1986, at the Summit Hotel, 51st Street and Lexington Avenue, New York, New York. The purpose of the meeting is to hold a briefing session in preparation for the community forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Archer Puddington or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400, (TDD 212/264-0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-12309 Filed 5-30-86; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on June 24, 1986, at 26 Federal Plaza, Room 305, New York, New York. The purpose of the meeting is to hold a community forum on public awareness of civil rights recourse and remedies in New York City as it relates to police misconduct.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Archer Puddington or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400, (TDD 212/264-0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-12310 Filed 5-30-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1986 Post-Enumeration Survey Follow-up of Los Angeles, California.

Form Number: Agency—DC-1301U; OMB—N/A.

Type of Request: New collection.

Burden: 400 respondents; 400 reporting hours.

Needs and Uses: This follow-up survey will be used to determine whether people were counted in the 1986 Census of Los Angeles.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe 395-4814.

Agency: Bureau of the Census.

Title: Housing Vacancy Survey.

Form Number: Agency—HVS—1 (Attachment F); OMB—0607-0179.

Type of Request: Extension of a currently approved collection.

Burden: 5,200 respondents; 3,200 reporting hours.

Needs and Uses: This survey provides quarterly estimates of national, regional, and state vacancy rates by various characteristics. The data are used by researchers to gauge the housing inventory overtime.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Timothy Sprehe 395-4814.

Agency: Bureau of the Census.

Title: 1987 Test Census—Advance Post Office Check.

Form Number: Agency—DF-700A; OMB—N/A.

Type of Request: New collection.

Burden: 500 respondents; 17 reporting hours.

Needs and Uses: This test census will be used to evaluate various methods of address list compilation and improvements to be used in the 1990 Decennial Census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory

OMB Desk Officer: Timothy Sprehe 395-4814.

Agency: Bureau of the Census.

Title: October 1986 School Enrollment Supplements.

Form Number: Agency—CPS-1; Omb—0607-0464.

Type of Request: Reinstatement of a previously approved collection.

Burden: 57,000 respondents; 3,200 reporting hours.

Needs and Uses: These supplements provide basic school enrollment data for persons 3 years old or older who are enrolled in elementary school, high school, college, and special schools, as well as for children enrolled in nursery schools or kindergarten.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Timothy Sprehe 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 22, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-12297 Filed 5-30-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Export Control Policy Forum on Reexport Controls

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of forum on reexport controls.

SUMMARY: Consistent with the U.S. Department of Commerce's commitment to solicit and use industry support in carrying out export control programs, there will be an Export Control Policy Forum on Reexport controls sponsored by Commerce in co-operation with the Militarily Critical Technology List (MCTL) Implementation Technical Advisory Committee (TAC) and the U.S. Chamber of Commerce, to be held at 9:00 a.m. on June 23, 1986 at the U.S. Chamber of Commerce, Herman Lay Room, 1615 H Street, NW., Washington, DC. The Forum is open to the public with registration starting at 8:00 a.m.

Commerce is conducting a study of the reexport control policies (Ref. Part 374 of the Export Administration Regulations) with an emphasis on the purpose, basis, impact and effectiveness of those policies. The scope of the study is outlined in the Supplementary Information included in this notice. Commerce is soliciting from industry suggestions that may lead toward an acceptable relaxation of these controls while continuing to address overriding national security and foreign policy concerns.

Interested industry members are encouraged to orally present views in a consolidated manner at this joint industry/government Forum to an 8-member panel representing Commerce, State, Defense, the Subcommittee on Export Administration of the President's Export Council, and the MCTL TAC. Each speaker will be allowed no more than 20 minutes and comments must be directly related to reexport controls. Speakers must submit their position papers prior to June 16 with 10 copies to the listed contact. Presenters will be contacted by June 16 to arrange presentation times. Speakers and attendees will be on a first come first serve basis. If you desire to distribute copies of your paper to the public, please bring sufficient copies to the Forum on June 23.

FOR FURTHER INFORMATION CONTACT: Connie White, Office of Technology and Policy Analysis, Room 1631, U.S. Department of Commerce, P.O. Box 273, Washington, DC (Telephone (202) 377-4275).

SUPPLEMENTARY INFORMATION:

A. Statement of Purpose

Export Administration is examining the reexport control provisions of the EAR (Part 374) to determine the following:

1. Effectiveness of U.S. reexport controls in preventing U.S. goods and technology from being diverted;
2. Consistency with their original objectives;
3. Specific extraterritorial implications;
4. The degree of consistency in USG's application of reexport controls across the board; and
5. Consistency of current regulations with international agreements and existing business practices; and,
6. Options for amending the regulations, if any.

B. Purpose of Controls

The USG maintains the policy of requiring authorization for any reexport of a U.S. commodity that would require a license for export from the U.S. to the new destination. This regulation applies to COCOM and non-COCOM members alike, with limited exceptions that are stated in § 374.2 and 374.3(e). Applications for reexport authorization are considered on a case-by-case basis. The rationale for such a reexport policy is to prevent diversion of U.S. origin goods to proscribed (controlled) destinations. In addition, the USG considers the control of reexports a fundamental element of the overall COCOM security efforts.

Today, U.S. reexport controls raise international concerns of extraterritoriality and allegations that they act to undermine U.S. competitiveness in the international market.

C. Basis for Controls

U.S. Export Administration Regulations (specifically § 374.1) state that commodities exported from the United States to a foreign destination cannot be reexported to another country without prior authorization from Export Administration. Section 374.2 relieves the reexporter of that responsibility in most instances in which the same product could be shipped from the U.S. to the new destination under a general license, and certain other situations. The statutory bases most often quoted for imposing U.S. reexport controls are subsections 3(2) and 5(a)(3) of the Export Administration Act of 1979, as amended.

There are three ways that reexport authorization may be obtained. They are as follows:

1. *License Application Form ITA–622P.* If at the time the U.S. export license application is submitted to Export Administration, the U.S. exporter or foreign consignee expects that the commodities will be reexported (section 374.3(a)(1)).

2. *Amendments to License.* If prior to export from the United States, the exporter learns of an end use for the commodities other than that authorized by the license (section 374.3(a)(2)) a Form ITA–685P may be submitted to amend the license.

3. *Specific Reexport Authorization.* In those cases of shipment to specified destinations where the reexport was not foreseen nor included in the license or amendments, the U.S. exporter or the foreign consignee is required to obtain reexport authorization by filing form ITA–699P, or a letter if the form is not readily available overseas (section 374.3(b)).

D. Notes on Current Implementation

Generally, applications for export or reexport to most free world destinations are considered favorably on a case-by-case basis unless there is a significant risk that commodities will be used or diverted contrary to the objectives of specific U.S. export controls.

Under the new G–COM regulations, reexport authorization is not necessary for transfers of "Country Groups Q, W and Y Advisory Note" level commodities into COCOM countries.

In the case of reexports of U.S. origin goods from COCOM countries to proscribed destinations, U.S. reexport authorization is necessary for all licensable exports *except* COCOM general exceptions items, pursuant to COCOM clearance by the reexporting country (§374.3(e)).

Reexport controls apply as well to commodities controlled for foreign policy purposes. Foreign policy controls have been a sensitive issue, because U.S. reexport authorization is required even though the country of reexport does not have comparable controls in place.

E. Industry Suggestions

Industry comments on current reexport regulations are solicited to assist the U.S. Government in identifying and assessing the available range of options.

Walter J. Olsen,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-12311 Filed 5-29-86; 9:40 am]

BILLING CODE 3510-DT-M

Consolidated Decision on Applications For Duty-Free Entry of Mass Spectrometers; Research Triangle Institute

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC.

Docket number: 85–283. Applicant: Research Triangle Institute, Research Triangle Park, NC 27709. Intended Use: See notice at 50 FR 41350.

Docket number: 86–023. Applicant: University of California, Los Angeles, Los Angeles, CA 90024. Intended use: See notice at 50 FR 46805.

Article: Mass Spectrometer.

Manufacturer: VG Analytical Instruments Ltd., United Kingdom.

Advice submitted by: National Institutes of Health: April 3, 1986.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: Each foreign instrument to which the foregoing applications relate provides a mass range of 1 to 8,000 atomic mass units at an accelerating potential of 10,000 volts in the FAB mode. The National Institutes of Health advises in its respectively cited memoranda that (1) this capability is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–12305 Filed 5–30–86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Berkeley; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86–014. Applicant: University of California, Berkeley, Berkeley, CA 94720. Instrument: Cryotrans System for ISI–DS130 S.E.M., Model Polaron E7300. Manufacturer: Hexland Limited, United Kingdom. Intended use: See notice at 50 FR 46807.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The National Institutes of Health advises in its memorandum dated April 3, 1986 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–12296 Filed 5–30–86; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Geological Survey; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number 85–275. Applicant: U.S. Geological Survey, Hartford, CT 06103. Instrument: VLF Resistivity Meter. Manufacturer: Geonics Limited, Canada. Intended Use: See notice at 50 FR 38563.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument is capable of measuring the quad-phase as well as the in-phase secondary field. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–12299 Filed 5–30–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Illinois Urbana-Champaign; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–126. Applicant: University of Illinois Urbana-Champaign, Urbana, IL 61801. Instrument: Combined Sputtered Neutral Mass Spectrometry and Secondary Ion Mass Spectrometry Analysis System, Model INA–3. Manfacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 51 FR 8691.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides quantitative determination of thin film composition and a depth resolution to 5 nanometers. The National Bureau of Standards advises in its memorandum dated April 18, 1986 that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR. Doc. 86-12300 Filed 5-30-86; 8:45 am]

BILLING CODE 3510-DS-M

University of New Mexico; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-002. Applicant: University of New Mexico, Albuquerque, NM 87131. Instrument: Scanning Electron Microscope, Model S-800 and Accessories. Manufacturer: Hitachi Instruments, Japan. Intended use: See notice at 50 FR 45847.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides ion emission scanning with a guaranteed resolution of 2 nanometers. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12301 Filed 5-30-86; 8:45 am]

BILLING CODE 3510-DS-M

Oregon State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No.: 86-010. Applicant: Oregon State University, Corvallis, OR 97331. Instrument: System for Alternating Detection of Positive/Negative Ion Conservation Kit for MAT CH-7 Mass Spectrometer. Manufacturer: AMD Intectra GmbH, West Germany. Intended use: See notice at 50 FR 46149.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated April 3, 1986 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12302 Filed 5-30-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 14 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 85-306. Applicant: University of Southern California, Los Angeles, CA 90089. Instrument: Electron Paramagnetic Resonance Spectrometer, Model ER 1200 with ER/251 ENDOR Accessory. Manufacturer: Bruker-Physik AG, West Germany. Intended use: See notice at 50 FR 45846.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides capability for electron paramagnetic resonance and electron nuclear double resonance. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12303 Filed 5-30-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Virginia Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-006. Applicant: University of Virginia Medical Center, Charlottesville, VA 22908. Instrument: Mass Spectrometer, Model 823OB with Accessories. Manufacturer: Finnigan MAT GmbH, West Germany. Intended use: See notice at 50 FR 46149.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a resolution of 50 000 (10% valley), a scan speed of 0.1 seconds per decade, and FAB. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12304 Filed 5-30-86; 8:45 am]

BILLING CODE 3510-DS-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements; Children's Sleepwear Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through June 30, 1989, of information collection requirements in the flammability standards for children's sleepwear and enforcement rules, codified at 16 CFR Parts 1615 and 1616. These standards and enforcement rules are applicable to children's sleepwear garments in sizes 0 through 14, and fabrics used in the production of such garments. The standards and enforcement rules require manufacturers and importers of children's sleepwear garments and fabrics to perform periodic testing from representative samples to assure that children's sleepwear items meet the performance requirements of the standards. The enforcement rules also require manufacturers and importers to compile and maintain records of such testing, and to make those records available to Commission investigators upon request.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address

Consumer Product Safety Commission, 1111 18th Street, NW., Washington, DC 20207.

Title of information collection

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR Part 1615); and Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (16 CFR Part 1616).

Type of request

Extension of approval.

Frequency of collection

Varies by number of styles of items produced or imported and by number of items of each style manufactured or imported each year.

General description of respondents

Manufacturers and importers of children's sleepwear garments and fabrics used for production of children's sleepwear.

Estimated number of respondents

300.

Estimated average number of hours per respondent

437.5 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for extension of approval of information collection requirements are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6429.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 28, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-12257 Filed 5-30-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries, DoD.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 95, title 10, United States Code. The Board shall review DoD actuarial methods and assumptions to be used in the implementation and valuation of the military retirement system. Persons desiring to (1) attend the DoD Retirement Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696-6336 by August 23, 1986. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 16, 1986, 8:30 am to 4:30 pm.

ADDRESS: Room 3E752, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209-2593, (202) 696-5660.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 23, 1986.

[FR Doc. 86-12253 Filed 5-30-86; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense Education Benefits Board of Actuaries, DoD.

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696-6336 by July 23, 1986. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: July 30, 1986, 8:00 am to 1:30 pm.

ADDRESS: Room 3E752, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209-2593, (202) 696-5660.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 23, 1986.

[FR Doc. 86-12254 Filed 5-30-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 12, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Technologies for Use in Monitoring Underground Testing in the Late 1990s will meet at the Pentagon, Washington, DC, on June 20, 1986, from 8:30 am. to 5:00 pm.

The purpose of the meeting will be for the Committee to hold classified

discussions and begin preliminary report writing.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-12228 Filed 5-30-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent to Repay to the Arizona State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Arizona State Department of Education an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of final audit determinations. This notice describes the State educational agency's (SEA's) plan for the use of the grantback funds and the terms and conditions under which the Secretary intends to make these funds available.

DATES: All written comments must be received on or before July 2, 1986.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5004, ROB-3-Mail Stop 3580), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 245-9845.

SUPPLEMENTAL INFORMATION:

A. Background

Based on audits issued in fiscal years 1971 and 1978 by the former Department of Health, Education, and Welfare Audit Agency (HEWAA), the Office of Education (now Department of Education) issued final audit determinations finding that the Arizona SEA had misspent migrant program funds and local educational agency (LEA) basic grant funds that were awarded under Title I of the Elementary and Secondary Education Act (Title I).

Migrant Program Funds

Title I funds were awarded annually to the SEA to support projects that were designed to meet the special educational needs of migratory children of migratory agricultural workers. In fiscal year 1976, the HEWAA issued an audit of the SEA's use of migrant program funds for the period July 1, 1970, through June 30, 1974. The final audit report questioned two major areas of expenditures. These were (1) the SEA's use of migrant funds to pay its own migrant-related administrative expenses, and (2) the use of funds by LEAs to provide educational services to ineligible children.

In response to the audit report, the Deputy Commissioner (now Assistant Secretary) for Elementary and Secondary Education issued final audit determination letters on October 31, 1977, and June 22, 1978, alleging that the SEA had misspent $230,723 in its operation of the migrant education program during fiscal years 1974 and 1975. The SEA challenged these determinations in applications for review filed with the Title I Audit Hearing Board (now the Education Appeal Board (EAB)) on November 5, 1977, and July 28, 1978.

LEA Basic Grant Program Funds

The LEAs received Title I basic grant funds to support compensatory education projects that were designed to meet the special educational needs of educationally deprived children who resided in areas with high concentrations of low-income families. In fiscal year 1971, the HEWAA issued an audit report on the operation and administration of the Title I basic grant program in the Tucson, Phoenix, and Roosevelt Elementary School Districts, and in six Arizona county administrative units for the period September 1, 1965, through August 31, 1969, the first years of the Title I program.

In his September 3, 1971 letter, the Acting Associate Commissioner (now Assistant Secretary) of Elementary and Secondary Education issued a final determination that $1,417,374 of Title I funds had allegedly been misspent by the SEA. In response to the SEA's request for reconsideration of that determination, another final determination letter was issued on January 28, 1972, reducing the claim of misspent funds to $762,023. Those claims included $480,849 spent improperly for general aid, $127,540 for Title I funds that LEAs purportedly used to supplant State and local resources, $82,661 for unallowable administrative costs, and $71,173 for other miscellaneous expenditures allegedly made in violation of Title I requirements.

The SEA challenged the final determinations in an application for review filed with the Title I Audit Hearing Board (now EAB) in April, 1973.

Settlement of Outstanding Claims

While the SEA's application for review of the final audit determinations for the migrant program and the LEA basic grant program were pending, the parties in these cases negotiated a successful settlement of the outstanding claims. Under this agreement executed by the SEA and the Department on December 9, 1982, and January 4, 1983, respectively, the SEA agreed to pay the Department an amount of $102,420. Upon receipt of the SEA's payment, the Assistant Secretary agreed to relinquish any further claims relating to the final audit determinations for the migrant program funds and the LEA basic grant funds.

On December 15, 1982, the SEA remitted payment of $102,420 to the Department along with the executed settlement agreement. Based on the request of both parties, the EAB dismissed the SEA's appeals on January 12, 1983, pursuant to the approved settlement.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determinations have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exceptions; and

BEST COPY AVAILABLE

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On December 15, 1982, the SEA submitted a formal written request for repayment of $76,815 (75 percent of the $102,420 returned to the Department as a result of final audit determinations) under a grantback arrangement. The Department was notified in early 1983 of the SEA's wish to amend its plan for the use of the grantback funds and thus no further action on the December 15, 1982 request was taken. On March 25, 1986, a revised plan was received from the SEA. With its request for grantback funds, the SEA provided assurances that the practices and procedures of the SEA and the LEAs that had resulted in the final audit determinations have been corrected and that the SEA and LEAs are in all other respects in compliance with the requirements of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1). Also included with the SEA's request were detailed budgets relating to two LEA's expenditures of basic grant funds and the SEA's expenditure of migrant education program funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA submitted a plan for use of basic grant funds, made available under the grantback, to serve educationally deprived children enrolled in the Roosevelt Elementary School District and the Tucson Unified School District. The LEAs, which were subjects of the underlying audit of Arizona's use of Title I basic grant funds, would separately administer the projects to be funded. The SEA plan also proposed the use of migrant education funds made available under the grantback for services for migratory children that the SEA would provide directly, since the Chapter 1 program for migratory children is a State-operated program.

The SEA's plan proposes to use the funds to be repaid under the grantback arrangement to meet the special educational needs of educationally deprived children, and children of migratory workers in programs administered under Chapter 1. While the final audit determinations against the SEA resulted from improper expenditures of Title I funds, Chapter 1 supersedes Title I. The SEA's proposal reflects adherence to the requirements in Chapter 1, which, like Title I, is designed to serve (1) educationally deprived children in low-income areas, and (2) children of migratory agricultural workers. Following are descriptions of how the grantback funds will be used.

Migrant Program Funds

In the summer of 1986, the *Arizona Migrant Education Summer Term Program* will provide educational services to approximately 2,510 migratory students attending school in Arizona school districts. With the availability of these grantback funds, approximately 245 migratory students in the Somerton School District, a highly migrant-impacted school district, will participate in the summer project. Grantback funds in the amount of $21,892 will be used to hire additional instructional personnel and to purchase supplementary instructional materials for use with the migratory students. Private school students eligible for project services will be included in this program ensuring that such children will be equitably served. This program was developed through a comprehensive needs assessment and evaluation process.

Basic Grant Funds

The *Roosevelt Elementary School District* will expand grantback funds in the amount of $14,923 to augment instructional activities of a planned summer term project limited to selected Chapter 1 eligible students in grades 1–8. This project will continue for five weeks in the summer of 1986 for 975 students under the instruction of 65 teachers. The grantback funds will be used to hire 8.1 teachers and provide summer project instructional service to approximately 121 students who would not be served without these funds. Private school students eligible for project services will be included in this program ensuring that such children will be equitably served.

The *Tucson Unified School District* will expend grantback funds in the amount of $40,000 to augment instructional activities of a planned 1986 summer term project for five-year-olds. This project will be implemented at two eligible elementary schools. This Pre-Kindergarten and Parent and Child Education (PACE) program will provide three-and-a-half weeks of instructional activities for children and parents; teachers will follow a daily schedule of home visits. The grantback funds will be used to hire five teachers, five instructional aides, two site coordinators, and to purchase materials, supplies, and space of the program. This project is planned at two inner city centers for 75 children and will have at least one parent or parent surrogate for each child. These children will benefit directly from these funds. Participating children will be attending neighborhood public or private schools in the fall. Private school children eligible for project services will be included in this program ensuring that such children will be equitably served.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under section 456 of the GEPA, including the SEA's discharge of its payment obligations to the Department in December 1982, the SEA's assurances described in Part C of this notice, and the SEA's plan and the budgets describing the use of funds, the Secretary makes the following determinations:

(1) The SEA and the LEAs have corrected the practices and procedures that resulted in the final audit determinations, and they are in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEAs and its own migrant education program for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the Chapter 1 children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an

amount equal to 75 percent of the funds the Department has recovered as a result of the final audit determinations. The Secretary bases his intention to enter into a grantback arrangement under Section 456 of GEPA on the following factors: His determinations outlined in Part E of this notice, the payment by the SEA of all funds owed to the Department in accordance with the settlement agreement, and the cooperative efforts of the SEA and the LEAs to resolve this matter.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) Funds awarded under the grantback will be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budgets that were submitted with the plan and any amendments to those budgets that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be obligated by September 30, 1986.

(3) The SEA must, not later than January 1, 1987, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and budgets.

(4) Separate accounting records will be maintained documenting the expenditures of different program funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Arizona State Department of Education. Interested persons may send written comments to Dr. James Spillane at the address at the beginning of this notice. All comments must be received on or before July 2, 1986.

(Catalog of Federal Domestic Assistance No.: 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: May 28, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-12296 Filed 5-30-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Nuclear Waste Policy Act of 1982; Nomination of Five Sites for the First High-Level Nuclear Waste Repository, and Availability of Accompanying Environmental Assessments

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Nomination of Five Sites for the First High-Level Nuclear Waste Repository and Availability of Accompanying Environmental Assessments (EAs).

SUMMARY: The Secretary of Energy (Secretary) herein nominates the following five (5) sites for the first repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste:

Mississippi

Richton Dome, Perry County

Nevada

Yucca Mountain, Nye County

Texas

Deaf Smith County

Utah

Davis Canyon, San Juan County

Washington

Hanford, Benton County and Franklin County

In accordance with the requirements of the Nuclear Waste Policy Act, DOE is announcing, by this notice, availability of the EA's which accompany the Secretary's nominations.

FOR FURTHER INFORMATION CONTACT:

1. (a) For the Richton Dome, Deaf Smith County, and Davis Canyon EAs—Jefferson O. Neff, Program Manager, Salt Repository Project Office, Chicago Operations Office, 505 King Avenue, Columbus, Ohio 43201. Phone: (614) 424-8918.

(b) For the Yucca Mountain EA—Donald Vieth, Director, Waste Management Project Office, Nevada Nuclear Waste Storage Investigations, Nevada Operations Office, U.S. Department of Energy, P.O. Box 14100, Las Vegas, Nevada 89109. Phone: (702) 295-3601.

(c) For the Hanford EA—O. Lee Olson, Project Manager, Basalt Waste Isolation Project, Richland Operations Office, U.S. Department of Energy, P.O. Box 550, Richland, Washington 99352. Phone: (509) 376-7334.

2. Ellison S. Burton, Director, Siting Division, Office of Geologic Repositories, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, DC 20585. Phone: (202) 252-1116.

3. Robert Mussler, Esq., Deputy Assistant General Counsel for Environment, Office of General Counsel, U.S. Department of Energy, Washington, DC 20585. Phone: (202) 252-6947.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Availability

DOE published a Notice of Availability (49 FR 49540) on December 20, 1984, regarding the availability of the draft EAs for public review and comment, and announcement of public information meetings and hearings, and solicitation of comments.

II. Background

By the end of this century, the United States plans to begin operation of a geologic repository for the permanent disposal of commercial spent nuclear fuel and high-level radioactive waste. Pub. L. 97-425, the Nuclear Waste Policy Act of 1982 (the Act), specifies the process for selecting repository sites and assigns to DOE the responsibility for locating, constructing, operating, closing, and decommissioning the repositories.

Before the Act was passed, the site screening conducted by DOE evaluated and compared progressively smaller land units according to various criteria (e.g. geologic, engineering, environmental, socioeconomic). This process led to the identification of potentially acceptable sites considered for the first repository. Draft EA's were prepared for the nine sites, found in three different host rocks (basalt, salt, and tuff). Preferred sites were designated in each of the geohydrologic settings.

III. Siting Guidelines

In accordance with the Act, DOE issued general guidelines for the recommendation of sites for nuclear waste repositories on December 6, 1984 (49 FR 47714). The guidelines establish performance objectives for a geologic repository system, define the basic technical requirements that candidate sites must meet, and specify how the DOE will implement its site selection process.

IV. Nomination and Recommendation

The Act requires the Secretary of Energy to nominate at least five sites which he determines suitable for site characterization for the first repository based. Each nomination of a site is required to be accompanied by an Environmental Assessment, prepared in accordance with the requirements of the Act. As further specified by the Act, the Secretary will then recommend three of the nominated sites to the President as candidate sites for site characterization.

V. Site Characterization

Once the President approves the three recommended sites for site characterization, several years of intensive field studies will begin at each site. As part of the site characterization program, DOE intends to construct one or more exploratory shafts at each of the approved sites to the depth of the proposed repository. Tests will be conducted at that depth to determine whether subsurface conditions will allow construction of a repository that will safely isolate radioactive wastes.

After characterization is completed, DOE will again apply the siting guidelines to evaluate each site and prepare an environmental impact statement (EIS). The Secretary will recommend one site to the President for the location of the first repository. The President may then recommend the site to Congress.

At this point, the host State may issue a notice of disapproval that can be overridden only by a resolution of both Houses of Congress. If the notice of disapproval is not overridden, the President must submit another repository site recommendation within 12 months. If no notice of disapproval is submitted, or if the notice of disapproval is overridden, then, as prescribed by the Act, the site designation is effective, and DOE will proceed to file an application with the Nuclear Regulatory Commission (NRC) to obtain a construction authorization for a repository at that site.

VI. Preparation of EAs

A. Review Process

The Department of Energy held a ninety day public comment period for nine draft EAs. Fifty-two public information meetings on the draft EAs were conducted in cities throughout the affected States: Louisiana; Mississippi; Nevada; Texas; Utah; Washington; and Washington, DC. These briefings were held to answer questions and to facilitate public review and comment on the draft EAs.

In addition, DOE held a series of nineteen public hearings in February and March, 1985. The hearings took place in: Louisiana; Mississippi; Nevada; Texas; Utah; Washington; and Oregon. The purpose of the hearings was to receive oral and written testimony on the draft EA's.

Copies of the draft EA's were distributed to Federal, State, and local agencies as well as to organizations and individuals who requested information about the nuclear waste repository siting process. More than 20,000 comments were received. DOE reviewed and considered all comments in preparation of the five documents issued today. Included with the EAs are appendices which respond to the reviewers' comments.

B. Availability of EAs

Copies of the EAs are available upon request. Requests should include identification of the EA of interest from the above list of locations, and the requestor's name, address, and zip code. Send written requests to: U.S. Department of Energy, ATTN: EA, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of all five EAs are available for public inspection at the following DOE Public Reading Rooms at the indicated times Monday through Friday, except Federal holidays where noted below:

- DOE Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, 9:00 a.m. to 4:00 p.m.
- Albuquerque Operations Office, Kirtland Air Force Base, National Atomic Museum Library, Public Reading Room, Albuquerque, New Mexico 87115, (505) 844–8443, 9:00 a.m. to 5:00 p.m.
- Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, 8:00 a.m. to 5:00 p.m.
- Idaho Operations Office, 550 2nd Street, Headquarters 198, Idaho Falls, Idaho 83401, (208) 526–0271, 8:00 a.m. to 5:00 p.m.
- Nevada Operations Office, Public Docket Room 2753 S. Highland, Las Vegas, Nevada 89114, (702) 734–3521, 8:00 a.m. to 4:30 p.m.
- Oak Ridge Operations Office, 200 Administration Road, Room G208, Federal Building, Oak Ridge, Tennessee 37830, (615) 576–1216, 8:00 a.m. to 4:30 p.m.
- Richland Operations Office, Hanford Science Center-Rockwell Hanford Operations, 825 Jadwin Avenue, Federal Building, Richland, Washington 99352, (509) 376–8273, Sunday 1:00 p.m. to 8:00 p.m., Monday through Saturday 9:00 to 5:00 p.m.
- San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Reading Room, Room 240, Oakland, California 94612, (415) 273–4358, 8:30 a.m. to 4:00 p.m.
- Savannah River Operations Office, 211 York Street, N.E., Federal Building, Aiken, South Carolina 29801, (803) 725–3267, 8:30 a.m. to 4:00 p.m.

Issued in Washington, DC, May 27, 1986.

John S. Herrington,
Secretary of Energy.

[FR Doc. 86–12436 Filed 5–30–86; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP86–483–000]

ANR Pipeline Co.; Application

May 23, 1986.

Take notice that on April 29, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–483–000 an application pursuant to Section 7(c) of the Natural Gas Act for a Certificate of public convenience and necessity authorizing an interruptible gas transportation service for Standard Oil Production Company (Standard Oil), all as more fully set fourth in the application on file with the Commission and open to public inspection.

ANR proposes to transport, pursuant to a February 3, 1986, transportation agreement, up to 140,000 dt equivalent per day of natural gas Standard Oil is developing from lands and lease-holds underlying East Breaks Area Block 165, offshore Texas (Block 165), and other nearby leaseholds in the East Breaks Area and High Island Area Blocks A–587, A–588 and A–589 (Near Leases). ANR indicates that Standard Oil would construct facilities from its production platform in Block 165 to proposed facilities of High Island Offshore System (HIOS) in High Island Block A–582. Of the proposed volumes, it is stated that up to 50,000 dt equivalent per day would be transported by ANR on an exclusive basis with the balance subject to alternative, multiple transportation. ANR requests authority to transport the volumes within its dedicated capacity in HIOS and its own facilities and to deliver the volumes for Standard Oil's account to various recipients, set forth in Schedule "A" (see below) attached to the transportation agreement, at the interconnection of the facilities of ANR and the various recipients in the states

of Louisiana, Texas, Kansas, Oklahoma, Arkansas, Mississippi and Ohio. As consideration for the service ANR proposes to charge Standard Oil 17.6 cents per dt delivered in the States of Louisiana, Kansas, Oklahoma and Texas; 23.1 cents per dt delivered in the State of Arkansas; 24.6 cents per dt delivered in the State of Mississippi; and 41.7 cents per dt delivered in the State of Ohio.

Any person desiring to be head or to make any protest with reference to said application should on or before June 16, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Schedule A

Recipient(s) and Delivery Point

Acadian Gas Pipeline System, Bridgeline Gas Distribution Company, Columbia Gulf Transmission Company, Consolidated Gas Supply Corporation, Louisiana Intrastate Gas Corporation, Riverway Gas Pipeline Company, Southern Natural Gas Company, Texas Gas Transmission Corporation, Trunkline Gas Company, United Gas Pipe Line Company—St. Mary Parish, LA.

Florida Gas Transmission Company, Monterey Pipeline Company, National Fuel Gas Supply Corporation, Texas Eastern Gas Pipeline Company—St. Landry Parish, LA.

Consolidated Gas Transmission Corporation, National Fuel Gas Supply Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation—Acadia Parish, LA.

Consolidated Gas Transmission Corporation, Louisiana Resources Company, National Fuel Gas Supply Corporation, Natural Gas Pipeline Company of America, Tennessee Gas Transmission Company, Tenngasco Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company-Cameron Parish, LA.

Transwestern Pipeline Company—Roberts, County, TX.

Northern Natural Gas Company—Kiowa County, KS.

El Paso Natural Gas Company—Roger Mills County, OK

Standard Gas Marketing Company—Chicot County, AR

Standard Gas Marketing Company—Bolivar Country, MS.

Sohio Chemical Company—Paulding County, OH.

[FR Doc. 86-12238 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE81-35-002]

Boston Edison Co.; Application for Exemption

May 27, 1986.

Take notice that Boston Edison Company (BEC) filed an application on April 30, 1986, for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58667, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption BEC states, in part, that it should not be required to file the specified data for the following reasons:

Most of the data filed is available to any interested party in other filings. The PURPA materials required by Subparts B, C, D, and E are listed on Attachment A of the application with the document or proceeding where such data is already available.

The Massachusetts Department of Public Utilities (MDPU) rulings require rates to be based upon marginal costs. Rates were so designed for a test year ending June 1985 and an extensive marginal cost study was recently filed with BEC's rate filing in December 1985 (Docket DPU-85-271). To provide data based upon a calendar year ending December 31, 1985 is valueless and not needed for marginal cost rate design. Exhibit BE-305 of the MDPU 85-271 proceeding is a detailed marginal cost study.

"Extensive load research data has been utilized to allocate costs hourly in the MDPU 85-271 proceeding mentioned above to each of the 8760 hours of the year using a probability of dispatch allocator. Again, no purpose would be served by providing data in somewhat different format for an overlapping period."

"The state regulatory authorities and the public do not need to rely on the section 133 information for rate design. BEC maintains extensive load research, marginal cost and accounting data tailored to state ratemaking purposes."

"The cost of gathering and publishing the information requested is considerable with no value to the final result. Costs of ratepayers would be lower if the report were discontinued."

"Continuing to file would not be in the spirit of the PURPA regulations at this point in time."

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newpapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Wayne Frigard, Senior Counsel, Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12232 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-60-004]

Central Maine Power Co.; Application for Exemption

May 27, 1986.

Take notice that Central Maine Power Company (CMPC) filed an application on April 28, 1986, for exemption from

certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58887, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of part 290.

In its application for exemption CMPC states, in part, that it should not be required to file the specified data for the following reasons:

"The purposes of section 133 of PURPA have been and will continue to be served by the review and consideration of voluminous cost and load data filed with the Maine Public Utilities Commission (MPUC) by CMPC in its pending rate design case."

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Arthur W. Adelberg, Senior Counsel, Central Maine Power Company, Edison Drive, Augusta, Maine 04336.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12233 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-12-000 and GP86-13-000]

Conoco Inc.; Petitions of Conoco Inc. for an Order of Exemption

May 23, 1986.

Take notice that on December 6, 1985, Conoco Inc. (Conoco) of P.O. Box 2197, Houston, Texas 77252, filed petitions pursuant to section 5(f)(2) of the Outer Continental Shelf Lands Act, as amended (the Act), 43 U.S.C. 1334(f)(2), for an Order exempting certain facilities jointly owned by Conoco and others from the requirements of section 5(f)(1) of the Act.

Section 5(f)(2) of the Act provides as follows:

The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or separated, dehydrated, or otherwise processed.

In Docket No. GP86-12-000, Conoco states that it, jointly with ARCO Oil and Gas Company, Cities Service Oil and Gas Corporation and Texaco Producing Company, (CATC) owns a crude oil gathering system, operated by Conoco, which serves the Grand Isle Block 47 Field, Gulf of Mexico. The system consists of a 12-inch Nominal gathering line from Grand Isle Block 47A platform to the CATC Grand Isle Separation Station at Grand Isle, Louisiana. The system transports a mixed stream of oil, water and low pressure gas to the Grand Isle Separation Station. At the Grand Isle Separation Station, the mixed products from the 12-inch gathering line are first separated and treated.

In Docket No. GP86-13-000, Conoco states that it, jointly with ARCO Oil and Gas Company, Texaco Producing Company and Cities Service Oil and Gas Corporation (CATC) owns a crude oil gathering system, operated by Conoco, which serves the Grand Isle Blocks 40 and 43 Fields, Gulf of Mexico. The gathering line system consists of a 12-inch Nominal gathering line that extends from the Block 40B platform to Grand Isle Block 43AA platform and a 16-inch Nominal gathering line from Grand Isle Block 43AA platform to Grand Isle Separation Station, Grand Isle, Louisiana. The system transports a mixed stream of oil, water and low pressure gas from Grand Isle Block 40B platform to Grand Isle Block 43AA complex and transports a similar mixed stream including production from both Grand Isle Blocks 40 and 43 fields from that point to the CATC Separation Station at Grand Isle, Louisiana. At Grand Isle Separation Station the products of the 16-inch gathering line are first separated and treated.

These Petitions are being submitted because a number of the producing wells served by the gathering systems are nearing depletion. The capacities of the gathering lines are required for transporting the produced water to shore for disposal. Any change in the gathering systems that would necessitate offshore disposal of this water could result in a significant reduction in the economically recoverable reserves of the Grand Isle Block 47, Block 40 and Block 43 fields.

Any person desiring to be heard or to make any protests with reference to said applications should on or before June 4, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12241 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI63-1202-000 and CI85-1246-000]

Diamond Shamrock Exploration Co.; Application

May 23, 1986.

Take notice that on March 5, 1986, Diamond Shamrock Exploration Company (DSEC) of LTV Center Suite 1500, 2001 Ross Avenue, Dallas, Texas 75201, filed an application pursuant to §§ 157.23, *et seq.*, of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 157.23, *et seq.* (1985), requesting the Commission to amend its certificate authorizations in Docket Nos. CI63-1202 and CI85-1246 to consolidate them, add a delivery point and delete production from one well, which is on file with the Commission and open to public inspection.

On June 27, 1963, a rollover contract was executed between DSEC's predecessors and Western Gas Interstate Company (Western) incorporating both sales contracts under DSEC's Rate Schedule Nos. 19 and 22. This rollover contract was filed with the Commission under both rate schedules. Since sales of gas from acreage previously covered by both the certificate in Docket No. CI63-1202 and in Docket No. CI85-1246 are now covered by one contract, DSEC requests that the two certificates be consolidated with Docket No. CI63-1202 and Rate Schedule No. 19 being the surviving

certificate and Rate Schedule. In order to facilitate this consolidation, DSEC requests that the Commission delete all the acreage, certificated in Docket No. CI65–1246 (Rate Schedule No. 22) and amend the certificate in Docket No. CI63–1202 (Rate Schedule No. 19) to add to the acreage deleted from Docket No. CI65–1246.

On May 23, 1984, DSEC and Western entered into an amendment to the June 1963 gas contract to add a delivery point. DSEC filed the Agreement with the Commission as an amendment to both Rate Schedule Nos. 19 and 22 on July 2, 1984. The filings are still pending before the Commission. DSEC has discovered that it should have filed an application to amend the certificates to reflect the addition of a delivery point to the 1963 contract. Accordingly, DSEC requests that the Commission amend Docket No. CI63–1202 (as the surviving certificate after consolidation) to add the delivery point described in the May 1984 Amendatory Agreement.

Before the June 1963 rollover contract was executed, production from the well on Lease No. ML–3650 (Cleveland Formation, Perforation 6759' to 6797', section 58, Block 23) terminated and the well was plugged and abandoned on February 17, 1983. This lease was originally covered by the March 1963 contract under DSEC Rate Schedule No. 19. However, since the well was no longer productive when the rollover contract was executed, the well was not reflected in the leases subject to the June 1963 rollover contract. Accordingly, DSEC requests that the Commission amend the consolidated certificate in Docket No. CI63–1202 to delete production from this well.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 4, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12239 Filed 5–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–403–000]

Sonat Exploration Co.; Application

May 23, 1986.

Take notice that on May 2, 1986, Sonat Exploration Company (Sonat) of P.O. Box 1513, Houston, Texas 77251–1513, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA),[1] Parts 154 and 157 of the Commission's Regulations [2] and Sections 2.77 [3] and 375.307 [4] of the Commission's Regulations.

Sonat requests partial, limited-term, blanket authorization to abandon certain certificated sales of natural gas not presently being taken by interstate pipeline companies (Pipelines) to the extent Sonat obtains a contract release of such gas and a limited-term, blanket certificate of public convenience and necessity authorizing sales of natural gas in interstate commerce for resale with blanket, pre-granted abandonment authorization. The subject sales are listed in Appendix A hereto. Sonat seeks this authorization with respect to all categories of gas under the Natural Gas Policy Act of 1978 (NGPA) for the term of the Pipelines' releases. Sonat requests such abandonment and certification authorization for gas owned exclusively by Sonat and for gas owned jointly by Sonat and others produced from the same well and reservoir.[5] Sonat states that the gas for which it seeks abandonment is substantially shut-in resulting in harm to Sonat and the general public. Sonat has advised that it is not receiving payment for gas not taken. Sonat indicates that much of the shut-in gas is NGPA Section 104 gas and the remainder is NGPA Sections 102(d), 103(c) and 109 gas. Sonat states that in return for Pipelines' release of gas Sonat agrees to provide take-or-pay relief to the extent gas released is sold to another purchaser.

Any person desiring to be heard or to make any protest with reference to said application should, on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

Rate schedule	Field location	Purchaser
1	West Delta Block 29	Southern Natural Gas Co.
3	Joaquin Field	Do.
14	Ship Shoal Block 222	Sea Robin Pipeline Co.
15	Ship Shoal Block 225	Do.
18	Bear Creek Field	Southern Natural Gas Co.
19	Franklin Field	Do.
20	Montegut Field	Do.
21	Patterson Field	Do.
22	Loggansport Field	Do.
23	Lapeyrouse Field	United Gas Pipeline Co.
24	Hamon Field	Transwestern Pipeline Co.
25	Ship Shoal Block 28 Field.	Transcontinental Gas Pipe Line Corp.
26	Garden City Field	United Gas Pipeline Co.
27	West Bryceland	Do.
28	Maxie Pistol Ridge	Do.
33	Big Escambia Creek	Southern Natural Gas Co.
34	North Carlton Area	Arkansas Louisiana Gas Co.
35	Chalmers Brake	Do.
36	North Ruston	Mississippi River Transmission Corp.
37	Lacassine	Natural Gas Pipeline Co. of America.
38	Hico-Knowles, Unionville and North Ruston.	Texas Eastern Transmission Corp.
39	Calhoun	Texas Gas Transmission Corp.
40	Cheniere Area	Do.
41	Jeanerette	Do.
42	Terryville	Do.
43	Ramos	Do.
44	Terryville-Ruston	Do.
45	Bull Creek & East Lisbon.	Do.
46	Bernice & Hico-Knowles.	Do.
47	Crowley	Transcontinental Gas Pipe Line Corp.
48	Leleux	Do.
49	Forest Grove School	United Gas Pipeline Co.
50	South Manchester	Do.
51	Vixen	Arkansas Louisiana Gas Co.
52	Oldenburg	Southern Natural Gas Co.

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[1] 15 U.S.C. 717c and 717f (1982).

[2] 18 CFR Parts 154 and 157 (1985).

[3] 18 CFR 2.77 (1985).

[4] 18 CFR 375.307 (1985).

[5] In the event an interest owner is a signatory to a gas contract and is not marketing gas pursuant to an agreement with Sonat, such interest owner will obtain its own release from its interstate pipeline purchasers.

EXHIBIT "A"—Continued

Rate schedule	Field location	Purchaser
53	Vermilion Block 22	Florida Gas Transmission Co.
54	Vermilion Area Block 22.	Transcontinental Gas Pipe Line Corp.
55	Arkoma Area	Arkansas Louisiana Gas Co.
56	North Cooper	Do.
57	Southeast Custer City	Do.
58	West Enid	Do.
59	Siter	Do.
60	North Drummond	Do.
61	Knox and Southeast Knox.	Natural Gas Pipeline Co. of America.
62	Laverne	Michigan Wisconsin Pipe Line Co.
63	Laverne	Do.
64	Laverne	Do.
65	Copeland	Do.
66	Beaver County, OK, Lila Unit 1-T.	Northern Natural Gas Co.
67	Woodward City, OK, 15-2 Bald, 2 Bald 2 Bell Watson, 2 Bell, 3 Bell.	Do.
68	Beaver City, OK, 1-45 Bailey Ranch.	Do.
69	Beaver City, OK	Do.
70	Watonga-Chickasha (Fort Reno) Field Area.	Natural Gas Pipeline Co. of America.
71	Cogar	Do.
72	Woodward City, OK	Do.
73	Thomas Area	Do.
74	Laverne	Michigan Wisconsin Pipe Line Co.
75	Beaver City, OK	Panhandle Eastern Pipe Line Co.
76	Red Oak	Arkansas Louisiana Gas Co.
77	Roberts City, OK, Morrison Well.	Northern Natural Gas Co.
78	Jackson City, WV	Columbia Gas Transmission Corp.
79	Jefferson District, WV	Do.
80	Malden District, WV	Do.
81	Pike City, KY	Do.
82	Lincoln City, WV	Do.
83	Kanawha, WV	Do.
84	Kanawha City, WV	Do.
85	Kanawha City, WV	Do.
86	Kanawha City, WV	Do.
87	Kanawha City, WV	Do.
88	Kanawha City, WV	Do.
89	Kanawha City, WV	Do.
90	Barbers Ridge	Consolidated Gas Transmission Corp.
91	Wyoming & Raleigh Counties, WV, Slab Fork District.	Columbia Gas Transmission Corp.
92 [1]	West Cameron Block 66, Offshore Louisiana.	Transcontinental Gas Pipe Line Corp.
93 [1]	West Cameron Block 66, Offshore Louisiana.	Florida Gas Transmission Co.
94 [1]	Britt Ranch Field, Wheeler County, Texas.	Arkansas Louisiana Gas Co.
203 (Gulf)	Calhoun	Texas Gas Transmission Corp.
347 (Exxon)	Bayou Carlin	Trunkline Gas Co.
364 (Conoco)	Grand Isle Block 43 Field.	Tennessee Gas Pipeline Co.

[1] Sonat has made application for such rate schedules by document dated April 30, 1986.

[FR Doc. 86-12240 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-467-000]

Southern Natural Gas Co.; Request Under Blanket Authorization

May 23, 1986.

Take notice that on May 6, 1986, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-467-000, a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas for Act authorization to abandon a certain metering facility designated as Tommy Littlepage Oil Properties (TLOP) Metering Station and related piping under authorization issued in Docket No. CP82-401-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it sold and delivered natural gas to TLOP for use in pumping crude oil at TLOP's facilities in Jasper County, Mississippi. Southern asserts the TLOP requested Southern to cancel the underlying gas sales agreement due to the sale of TLOP's properties to Crosscreek Properties Inc. (Crosscreek). Southern further states that the engines on the oil property were converted to utilize No. 2 fuel oil and that Crosscreek informed Southern that it does not intend to resume the use of natural gas on its newly acquired properties.

Southern states that the facilities it proposes to abandon and remove include a measuring station, approximately 60 feet of 1-inch tap line and related appurtenant facilities located on Southern's South 18-inch Main Line and 24-inch Main Loop Line in Jasper County, Mississippi. Southern further states that these facilities were constructed by Southern as "budget-type" facilities pursuant to the Commission's order issued on January 6, 1970, in Docket No. CP70-04. Southern states that such construction of facilities was reported to the Commission on February 1, 1971.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12237 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-172-000 et al.]

Sun Exploration and Production Co.; Applications For Abandonment of Service

May 22, 1986.

Take notice that each of the applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should be on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per mcf	Pressure base
CI86-172-000	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Texas Gas Transmission Co., Maurice Field, Lafayette and Vermilion Parishes, LA.	[2]	
CI86-381-000 B Apr. 24, 1986 [3]	Vernon E. Faulconer, P.O. Box 7905, Tyler, TX 75711	United Gas Pipe Line Co., Chacahoula Field, Lafourche Parish, LA.	[4]	

Docket No. and date filed	Applicant	Purchaser and location	Price per mcf	Pressure base
C86-410-000 B May 5, 1986	Goodrich Oil Co., 800 First Federal Plaza, Shreveport, LA 71101	United Gas Pipe Line Co., Chauvin Field, Terrebonne Parish, LA.	[5]	

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] Additional information received May 8, 1986.

[2] Applicant requests authorization to abandon the sale of surplus gas for a two-year period to Texas Gas from the W. Hebert Well No. 1 and the Bendel Heirs Well No. 2 authorized in Docket No. C86-172 and covered under Applicant's FERC Gas Rate Schedule No. 434. Applicant states that it projects that Texas Gas' takes in the first year will represent less than 10% of deliverability and takes during the second year will represent less than 15% of deliverability, however the gas will remain subject to recall by Texas Gas. Applicant states that the latest deliverability test rate for the wells was 7,650 Mcf per day and that both wells qualify for the NGPA section 104 replacement or recompletion rate. Applicant states that it is subject to substantially reduced takes without payment. Applicant states that it will sell the gas to TXG Gas Marketing Company or other purchasers.

[3] Additional material filed May 8, 1986.

[4] Applicant, a small producer certificate holder in Docket No. CS74-147, requests authorization to abandon its sales to United under an expired contract dated March 1, 1981, from the C.J. Coulon No. 6-D well and the C.J. Coulon No. 8 well. Applicant states both wells qualify under the NGPA section 108. Applicant estimates production for the next five years would amount to 456 MMcf and states that it is subject to substantially reduced takes without payment. Applicant desires to conduct production enhancement which would result in estimated production of approximately 1,032 MMcf. Applicant states it proposes to sell the gas to Entrade Corporation, which has indicated to Applicant that it is willing to commence meaningful takes of gas and to pay a production enhancement price for the gas so qualifying.

[5] Applicant, a small producer certificate holder in Docket No. CS78-27, requests authorization to abandon the sale of gas to United for a two and one-half year period from the LaTerre Co., Inc. No. 2 well, which Applicant states produces NGPA section 104-post 1974 gas. Applicant states that the contract expired on July 16, 1985, and that Applicant is subject to substantially reduced takes without payment. Applicant states that total deliveries from the well averaged 350 Mcf per day for the last six months. However, only 14.24% (50 Mcf per day) is dedicated to United. Applicant states that it desires to seek other markets for this gas.

[FR Doc. 86-12085 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-49-002]

Williston Basin Interstate Pipeline Co.; Tariff Change

May 22, 1986.

Take notice that on May 15, 1986, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted the following tariff sheets for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, and Original Volume No. 2:

First Revised Volume No. 1

Fourth Substitute Original Sheet No. 10
Second Substitute Original Sheet No. 91
Second Substitute Original Sheet No. 96
Second Substitute Original Sheet No. 97
Original Sheet No. 98A

Original Volume No. 1-A

Original Sheet No. 275A
Original Sheet No. 275B
Substitute First Revised Sheet No. 276
Substitute First Revised Sheet No. 277

Original Volume No. 2

Fifth Substitute Third Revised Sheet No. 10
Fifth Substitute Third Revised Sheet No. 11
Third Revised Sheet No. 12

These tariff sheets were submitted in compliance with the Commission's Order in *Williston Basin Interstate Pipeline Company*, 35 FERC ¶ 61,133 (1986).

In addition, the Third Revised Sheet No. 12 of Original Volume No. 2, had previously inadvertently been omitted from the original filing in this docket. This sheet shows that the projected incremental pricing surcharges are zero for all purchasers for the period May, 1986 through October, 1986.

The effect for this compliance filing is to reduce the cumulative gas cost adjustment by 1.365 cents per Dkt and increase the surcharge adjustment by 0.06 cents per Dkt from the PGA as filed on March 31, 1986. The net change is a decrease of 1.305 cents per Dkt from the original filing.

Williston Basin requests that the proposed effective date for these tariff sheets be May 2, 1986, to coincide with the effective date provided for in the Commission's Order in this docket.

Pursuant to § 375.307(j) of the Commission's Regulations, Williston Basin respectfully requests waiver of section 4(d) of the Natural Gas Act and Commission's Regulations thereunder, so that the attached tariff sheets may become effective on May 2, 1986, as proposed herein.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before May 29, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12243 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9044-000 9160-000]

Fredrick Earl Pickering and Glenwood Springs Power Co.; Availability of Environmental Assessment and Finding of no Significant Impact

May 27, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
9044-000	Bigg's Creek	WA	Bigg's Creek	Yacolt	Fredrick Earl, Pickering.
9160-000	Twin Tunnels	CO	No Name Creek	City of Glenwood Springs	Glenwood Springs Power Company.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of

Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12230 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8344-001, et al.]

Pacific Malibu Development Corp. et al.; Availability of Environmental Assessment and Finding of no Significant Impact

May 27, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
Exemptions					
8344-001	Las Vegas Wash Hydro	NV	Las Vegas Wash	Henderson	Pacific Malibu Dev. Corp
8347-000	Pratt Creek	ID	Pratt Creek	Salmon	Willard R. Moulton, et al.
Licenses					
3647-000	Terminus Power	CA	Kaweah River	Visalia	Kaweah River Power Authority.
4997-002	Ruth Creek	WA	Ruth Creek	Glacier	Dennis V. McGrew, Thomas M. McMaster, & Kenneth R. Koch.
6798-001	Aurelius Avenue Dam	NY	Owasco Lake Outlet	Auburn	Yankee Hydro Corporation.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12231 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8725-000 et al.]

Hydroelectric Applications (Elektra Power Corp. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License.

b. Project No.: 8725-001.

c. Date Filed: May 28, 1985.

d. Applicant: Elektra Power Corporation.

e. Name of Project: North Fork Battle Creek Water Power Project.

f. Location: On North Fork Battle Creek, near town of Manton, in Shasta County, California (In sections 19, 20, 21, 29, and 30 of T30N, R1E, MDB&M; in section 25 of T30N, R1W, MDB&M).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. D. Dixon Collins, Elektra Power Corporation, 744 San Antonio Road, Palo Alto, CA 94303.

i. Comment Date: June 26, 1986.

j. Competing Application: Project No. 8724-001, Date Filed: June 7, 1985, Due Date: May 30, 1986.

k. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 48-foot-long diversion dam at elevation 1,860 feet: (2) a 66-inch-diameter, 13,100-foot-long diversion pipeline; (3) a 66-inch-diameter, 900-foot-long steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 4.96 MW operating under a head of 401 feet; and (5) a 1.5-mile-long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company's (PG&E) line. The estimated annual generation of 20 million kWh will be sold to PG&E. The project cost is estimated at $8.0 million. The Applicant does not propose any recreational facilities within the project area.

l. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

2a. Type of Application: Conduit Exemption.

b. Project No: 9902-000.

c. Date Filed: October 15, 1985.

d. Applicant: Costa Real Municipal Water District.

e. Name of Project: Squires Dam.

f. Location: On the Applicant's domestic water supply conduit which delivers water from the San Diego County Water Authority connection No. 3 on the Tri-Agencies Pipeline to the Squires Dam Reservoir, near Carlsbad, in San Diego County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. William Meadows, General Manager, Costa Real Municipal Water District, 5950 El Camino Real, Carlsbad, CA 92008, (619) 436-2722.

i. Comment Date: June 30, 1986.

j. Description of Project: The proposed project would utilize the Applicant's existing conduit which feeds the Squires Dam Reservoir and would consist of a powerhouse containing a single turbine-generator unit with a rated capacity of 40 kW operating under a head of 325 feet. A 0.2-kV, 75-foot-long transmission line would connect the project to an existing radio transmitter. The project's estimated average annual generation of 182,000 kWh would be used by a local commerical radio station and the Applicant's Squires Dam caretaker residence.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

Standard Paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any

competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State,and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 27, 1986.

[redacted] F. Plumb,

Secretary.

[FR Doc. 86–12242 Filed 5–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86–721–000]

J.A. Jones Construction Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 23, 1986.

On May 8, 1986, J.A. Jones Construction Co. (Applicant), of One South Executive Park, 6060 St. Albans Street, Charlotte, North Carolina 28287, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Fort Drum Army Base in Fort Drum, New York. The facility will consist of three coal and wood chip fired circulating fluidized bed steam generators, and an extraction/condensing turbine generator. A portion of the extracted steam will be utilized for high temperature water production, for sale to the Fort Drum Army Base for its domestic uses. The net electric power production capacity of the facility will be approximately 44.9 MW. The installatin of this facility will begin approximately in November 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12234 Filed 5–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CF86-726-000]

Prime Energy Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 20, 1986.

On May 2, 1986, Prime Energy Limited Partnership (Applicant), of 95 Madison Avenue, Morristown, New Jersey 07960, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Marcal Paper Mills, Inc. in Elmwood Park, New Jersey. The facility will consist of a combustion turbine generator, a waste heat recovery steam generator (HRSG) and an automatic extraction/condensing steam turbine generator. The steam from HRSG will be utilized by Marcal Paper Mills, Inc. in the manufacturing of paper products. The primary energy source will be natural gas. The maximum electric power production capacity of the facility will be 70 MW. Construction of the facility is expected to begin in December 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12235 Filed 5-30-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CF86-725-000]

Stone & Webster Development Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 27, 1986.

On May 8, 1986, Stone & Webster Development Corporation (Applicant), of P.O. Box 2325, Boston, Massachusetts 02107, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Groton, Connecticut and will consist of two combustion turbine generating units and one or more waste heat recovery steam generators. Thermal energy recovered in the form of steam will be used within a chemical plant for process and heating purposes. The electric power production of the facility will be approximately 78 MW. The installation of the facility is scheduled to begin February 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12236 Filed 5-30-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER86-497-000 et al.]

Arizona Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-497-000]

May 23, 1986.

Take notice that Arizona Public Service Company (APS) on May 19, 1986, tendered for filing a Wholesale Power Agreement and a Wheeling and Administrative Service Agreement between Arizona Public Service Company (APS) and Electrical District No. 7 (ED-7).

It is intended that these new Agreements supersede the terms and conditions for service presently being rendered under a Letter Agreement (FERC Rate Schedule No. 124) scheduled to terminate on June 21, 1986. The rates for services to be rendered remain unchanged from those presently in effect.

APS requests an effective date of June 21, 1986.

Copies of this filing have been served upon and the Arizona Corporation Commission, ED-7 and legal counsel for ED-7.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company

[Docket No. ER86-495-000]

Take notice that on May 19, 1986, Central Power and Light Company ("CPL") tendered for filing a letter agreement dated May 15, 1986, between the Public Utilities Board of the City of Brownsville, Texas ("PUB") and CPL. The Letter Agreement provides for the sale by CPL to PUB of capacity and energy, or energy, when Oklaunion Unit No. 1 (to be jointly owned by CPL, PUB and others) is not in service for other than economic reasons. The Letter Agreement will constitute an integral part of the coordination and interchange agreement currently in effect between CPL and PUB. CPL asks that the Letter Agreement be made effective as of the commercial operation date of Oklaunion Unit No. 1, now anticipated to occur in December 1986, and, accordingly, CPL requests waiver of the notice requirements under the Federal Power Act. Copies of the filing have been served on PUB and the Public Utility Commission of Texas.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this document.

3. Cliffs Electric Service Company

[Docket No. ER86-491-000]

Take notice that on May 19, 1986,

Cliffs Electric Service Company ("Service Company") submitted for filing an Interconnection and Energy Agreement with the Board of Light and Power City of Marquette, Michigan. The agreement supersedes an earlier agreement and adds several new coordination services.

Service Company requests that the filing be permitted to become effective on April 1, 1986.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER86-493-000]

Take notice that Consumers Power Company ("Consumers") on May 19, 1986 tendered for filing annual redetermination of two revisions to annual charges due Consumers Power Company under interconnection facilities agreements. One of the revised charges is provided for in subsection 2.4 of the Blendon Interconnection Facilities Agreement (designated as Supplement 3 to Consumers Power Company Electric Rate Schedule FERC No. 53) between Consumers and Wolverine Power Supply Cooperative, Inc. ("Wolverine"). The other revised charge is provided for in subsection 1.043 of the Barton Lake—Batavia Interconnection Facilities Agreement (designated as Consumers Power Company Electric Rate Schedule FERC No. 44) between Consumers and Northern Indiana Public Service Company ("Northern").

Both redeterminations were performed using year-end 1985 data with the new annual charges effective May 1, 1986. As a result of the redeterminations, the monthly charges to be paid by Wolverine were reduced from $7,857 to $7,278, and the monthly charges to be paid by Northern were reduced from $22,007 to $20,388.

Consumers requests an effective date of May 1, 1986, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Company

[Docket No. ER86-494-000]

Take notice that Consumers Power Company ("Consumers") on May 19, 1986 tendered for filing Amendment No. 30, dated April 1, 1986, to the Operating Agreement, dated March 1, 1966, among Consumers Power Company, The Detroit Edison Company sometimes collectively referred to as the "Michigan Companies", and Indiana & Michigan Electric Company. The Commission has previously designated the 1966 Agreement as Consumers' Rate Schedule FPC No. 23, Detroit's Rate Schedule FPC No. 12 and Indiana Company's Rate Schedule FPC No. 68.

Amendment No. 30 provides for an extension of the term of Service Schedule J—Experimental Off-Peak Transmission Service. The extension is for a period of nine months (until December 31, 1986).

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. CP National Corporation and Nevada Power Company

[Docket No. ER86-30-000]

Take notice that on May 19, 1986, CP National Corporation ("CP National") and Nevada Power Company ("Nevada Power") filed a joint application pursuant to Section 203 of the Federal Power Act for authorization for CP National to sell, and Nevada Power to buy, CP National's electric distribution system located in Clark County, Nevada.

CP National, incorporated in the State of California, provides electric, telephone, and natural gas distribution services in Arizona, California, Nevada, New Mexico, Oregon, Texas and Utah. Nevada Power, incorporated in the State of Nevada, is an operating public utility engaged in the electric utility business in the City of Las Vegas and vicinity in Southern Nevada.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of third notice.

7. Florida Power Corporation

[Docket No ER86-396-000]

Take notice that on May 19, 1986, Florida Power Corporation (Florida Power) tendered for filing information intended to supplement its April 9, 1986, filing at the above docket. The information consists of supplemental testimony explaining the derivation of the excess demand rate.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER 86-489-000]

Take notice that on May 15, 1986, Flordia Power Corporation (Florida Power) tendered for filing a Letter of Commitment dated April 28, 1986 providing for a commitment of 18MW of firm interchange service from Florida Power to the City of St. Cloud, Florida. Florida Power states that the Letter of Commitment is executed pursuant to Service Schedule D of the Contract for Interchange Service dated December 1, 1981 between Florida Power and the City of St. Cloud. The contract is designated as Florida Power's Rate Schedule FERC No. 95. The Letter for Commitment, which supersedes and replaces a letter of commitment dated January 18, 1985, is submitted for inclusion as a supplement to Service Schedule D.

Florida Power requests that the Letter of Commitment be permitted to become effective May 1, 1986, and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the City of St. Cloud and the Florida Public Service Commission.

Comment date: June 5, 1986, in acordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER86-487-000]

Take notice that on May 15, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, volume No. 1 (Supersedes Original Volume No 1) during March 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement No 52
Montana Power Company—Supplement No 40
Pacific Power & Light Company—Supplement No 17
Sierra Pacific Power Company—Supplement No 49
Portland General Electric Company—Supplement No 45
Puget Sound Power & Light Company—Supplement No 21

Comment date: June 5, 1986, in accordance with Standard Paragraph H at the end of this notice.

10. Iowa-Illinois Gas and Electric Company

[Docket No. ER86-492-000]

Take notice that Iowa-Illinois Gas and Electric Company, Davenport, Iowa (Iowa-Illinois) on May 19, 1986, tendered for filing Transmission Service Schedule No. 3 (Hills Substation-345-161 kV transformer), a superseding Service Schedule D addendum, dated April 15, 1986, under the Interconnection Agreement dated June 13, 1983 with Central Iowa Power Cooperative, Cedar Rapids, Iowa (Cooperative).

Transmission Service Schedule No. 3 is stated to be occasioned by, and proposed to be effective as of, the December 13, 1985 completion and relocation of certain facilities of Iowa

Electric Light and Power Company, under separate arrangements with Iowa-Illinois, and waiver of the notice requirements is sought accordingly. (It is explained that Cooperative no longer requires transformation services through the same transformer heretofore provided by Iowa-Illinois for other purposes, so that Transmission Service Schedule No. 2, dated June 13, 1983 would be superseded.) Iowa-Illinois states Transmission Service Schedule No. 3 provides for 345–161 kV transformation only to maintain, through other of Iowa-Illinois facilities, a transmission path for continued viability of arrangements in place under the Interconnection Agreement in respect of a 69 kV terminating bay provided by Iowa-Illinois for Cooperative's use.

Iowa-Illinois states a complete copy of the filing has been mailed to Cooperative, the Iowa State Commerce Commission, and the Illinois Commerce Commission.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Monongahela Power Company

[Docket No. ER86-379-000]

Take notice that Monongahela Power Company, on April 24 and May 20, 1986, tendered amendments to its filing of proposed changes in its FERC Electric Tariff, Original Volume No. 1, originally tendered for filing on March 28, 1986.

The amendments are for the purpose of responding to concerns raised in the Commission's letter of April 24, 1986.

Copies of the filing were served upon the jurisdictional customers and the West Virginia Public Service Commission.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Power Company

[Docket No. ER86-489-000]

Take notice that American Electric Power Service Corporation (AEP) on May 20, 1986, tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) Supplement No. 10 dated May 1, 1986 to the Agreement dated April 1, 1974 between American Municipal Power-Ohio, Inc. (AMPO) and OPCO. OPCO and AMPO are sometimes collectively referred to as the Parties. The Commission has previously designated this Agreement as OPCO Rate Schedule FERC No. 74 and AMPO Rate Schedule FERC No. 1.

Supplement No. 10 adds a new Service Schedule E—Interchange Power to the 1974 Agreement, which contains provision for the sale of Economy Energy and Non-displacement Energy. Furthermore, this Supplement increases OPCO's transmission demand rate for Emergency Energy to 2.75 mills/kWH. In addition, this Supplement revises the Parties' Short Term Power Service Schedule by adding provisions for a rate of "up to" the Parties' respective generation demand and energy rates and establish a lower limit of total revenue realization for any transaction as 110% of OPC, which represents OPCO's currently approved rate for Non-Displacement Energy transactions. OPCO's proposed Emergency, Interchange Power, and Short Term Power rates contained in Supplement No. 10 have previously been accepted for filing by the Federal Energy Regulatory Commission in various other OPCO filings.

AEP has requested the Commission to waive any requirements not already complied with under § 35.13 of the Commission's Regulations and permit this Supplement to become effective immediately.

Copies of this filing were served upon the Public Utilities Commission of Ohio and AMPO.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER86-488-000]

Take notice that on May 15, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing an initial rate schedule for metering services provided under Article 28 of Contract 14–06–200–2948A (Contract 2948A) between Pacific Gas and Electric Company and the Western Area Power Administration (Western).

Contract 2948A is on file with the Commission. Article 28(b) of Contract 2948A includes a mechanism whereby PGandE performs metering service for Western at various Western customer sites. This filing establishes an initial rate for metering charges at customer sites not included in previously filed letter agreements, and establishes the sites to be metered during the five-year period beginning April 1, 1986.

The parties have recently concluded the negotiations for the rates and meter sites contained herein. Therefore, pursuant to § 35.11 of the Commission's Regulations, PGandE respectfully requests waiver of the Commission's notice requirements so as to permit an effective date of March 1, 1982. No customer under any other rate schedules will be affected if such waiver is granted.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER86-490-000]

Take notice that on May 20, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing changes to rate schedules covering services rendered by PGandE under two agreements, the "Interconnection Agreement Between Pacific Gas and Electric Company and the City of Santa Clara" (Santa Clara Interconnection Agreement) and the "Interconnection Agreement Between Pacific Gas and Electric Company and the Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (NCPA Interconnection Agreement) (together referred to as Interconnection Agreements). The Santa Clara Interconnection Agreement was filed initially under Docket No. ER81-6-000 and was assigned FERC Rate Schedule No. 85. The NCPA Interconnection Agreement was filed initially under Docket No. ER83-683-000 and was assigned FERC Rate Schedule No. 84.

The Interconnection Agreements provide for firm transmission service between Points of Receipt and Points of Delivery. The City of Santa Clara (Santa Clara) wishes to include new Points of Receipt and Delivery at PGandE's—Tesla Substation (Tesla), and to increase the Contract Coincident Rate of Delivery and the Maximum Rate of Delivery at Santa Clara. The Northern California Power Agency (NCPA) wishes to include new Points of Receipt and Delivery at Tesla. The new Points of Receipt and Delivery at Tesla will allow Santa Clara and NCPA to import power over the existing Pacific Northwest-Southwest Intertie pursuant to an assignment between the Sacramento Municipal Utility District (SMUD) and Santa Clara, acting for itself and agent for NCPA, for transmission service on the Intertie (SMUD-Santa Clara Assignment). In order for Santa Clara and NCPA to fully utilize this service PGandE requests an effective date of May 9, 1986.

In accordance with the SMUD-Santa Clara Assignment, PGandE requests that the Points of Receipt and Delivery at Tesla for both Santa Clara and NCPA be effective only until the earliest of the following:

(1) January 1, 1998;

(2) The date when the California-Oregon Transmission Project (Project) becomes operational;

(3) The date when the participation of PGandE, Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDGandE) in the Project is terminated because the approvals under Section 11.4 of the Project's Memorandum of Understanding dated December 18, 1984 cannot be obtained or because those approvals are unsatisfactory to PGandE, SCE, and SDGandE; or

(4) The date when the Project is terminated prior to its operation, such termination to be deemed to have occurred on January 1, 1993 if no work has been done on the Project for three years prior to that date.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER86-490-000]

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on May 19, 1986, tendered for filing a Revised Exhibit B, dated October 1, 1985, to Pacific's Rate Schedule FERC No. 213. Rate Schedule FERC No. 213 provides for the transfer of Deseret Generation & Transmission Co-operative (Deseret) power and energy to Bridger Valley Electric Association, Inc. (Bridger Valley) Blacksfork Substation by Pacific.

Each year a Revised Exhibit B is submitted by Deseret and Bridger Valley to Pacific in accordance with Article 12(ii) of the May 29, 1961 Transmission Agreement.

Copies of the filing were supplied to Deseret, Bridger Valley, and the Wyoming Public Service Commission.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER86-490-000]

Take notice that, on May 15, 1986, Southern California Edison Company ("Edison") tendered for filing an agreement entitled "Edison-Citizens Short-Term Service Agreement", which has been executed by Edison and the Citizens Utilities Company ("Citizens").

Under the terms and conditions of the Agreement, Edison will make available to Citizens Firm System Capacity and Associated Energy for the period May 15, 1986, through September 30, 1986.

The Agreement is proposed to become effective when executed by the Parties and on the later of May 15, 1986 or the date of acceptance for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Citizens Utilities Company.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12280 Filed 5-30-86; 8:45 am]

BILLING CODE 7617-01-M

[Docket Nos. P-7218-001 et al.]

Bluestone Energy Design, Inc. et al.; Environmental Assessment Notices

May 20, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Waterbody	Nearest town	Applicant
Exemptions					
7218-001	Berry Shoals Station	SC	South Tyger River	Reidville	Bluestone Engery Design, Inc.
7477-000	Burt Dam	NY	Eighteenmile Creek	Village of Burt and City of Newfane	Burt Dam Associates
9411-000	Sloops Falls	ME	Little Androscoggin River	West Paris	Mr. John Crouch and Sons
9180-000	Franklin Street Dam	MI	Flat River	Greenville	City of Greenville
9408-000	Phoenix Lake Bypass	CA	Phoenix Lake Bypass Ditch	Sonora	County of Tuolumne
9456-000	Black Brook	NY	Black Brook	Black Brook	Adirondack Hydro, Inc.
9509-000	Cheshire Dam	NH	Contoocook River	Jaffrey	D.D. Bean & Sons Co., Inc.
9699-000	Albany Hydro Development	NY	Alcove Reservoir/Hannacrois Creek	Bethlehem	Albany Hydro Associates
Licenses					
3469-001 and 7732-000.	Mason Dam Hydroelectric/Mason Dam Hydroelectric Power Dev.	OR	Powder River	Baker	Cascade Water Power Development Corp./Baker County Court.
4586-001	Swamp Creek	WA	Swamp Creek	Glacier	Dennis V. McGrew, Thomas M. McMaster, & Kenneth R. Koch
7353-000	Prosser	CA	Prosser Creek	Truckee	Truckee-Donner Public Utility
8798-001	Lower Walden Dam	NY	Wallkill River	Walden	Rivers Electric Co., Inc.
9103-000	Cherry Creek	OR	Cherry Creek	Monroe	Emil G. Sibul
3824-002	Malad High Drop	ID	Malad River	Gooding	Consulting Associates, Inc.
7828-000	Emigrant Dam	OR	Emigrant Creek	Ashland	The Talent, Rogue River & Medford Irrig. Districts
8988-001	Woodstock Dam	NY	Catskill Creek	Cario	Rivers Electric Co., Inc.
8972-001	Hollow Dam	NY	West Branch Oswegatchie River	Fowler	Power Resources Dev. Corp.
7327-002	Turnbull Drops	MT	Spring Valley Canal	Great Falls	Turnbull Partners, Ltd. & Greenfields Irrig. Dist.
7291-001	Upper Israel River	NH	Upper Israel River	Lancaster	Power House Systems
7728-003	Robley Point	CA	West Branch Feather River	Stirling City	Robley Point Hydro Partners

Project No.	Project name	State	Waterbody	Nearest town	Applicant
9713-000	Happy Corner	MN	Perry Stream	Pittsburg	Phillip Leavitt Young
9804-000	Erie Canal Lock 35	NY	New York State Barge Canal	Henrietta	Fulton Hydro, Inc.
9849-000	Augusta	CO	Lake Fork of the Gunnison River	Lake City	John C. Stevens

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 86-12281 Filed 5-30-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010945.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation (Lessor).

Lavino Shipping Company (Lavino).

Delaware Operating Company (DOC).

Synopsis: The proposed agreement will assign to DOC all of Lavino's rights, titles and interest in, to and under the leases between the Lessor and Lavino. Lavino will remain fully liable to the Lessor in respect to all covenants and obligations to be kept and performed by Lavino under the leases. The parties have requested a shortened review period.

Agreement No.: 224-010946.

Title: Brazos River Harbor Navigation District of Brazoria County, Texas and American Rice, Inc. Ground Lease and Definitive Agreement.

Parties:

Brazos River Harbor Navigation District of Brazoria County, Texas (Lessor).

American Rice, Inc. (Lessee).

Synopsis: The proposed agreement would permit the Lessor to purchase, construct, enlarge, extend, repair, maintain, operate, and develop wharves, docks, appurtenant facilities, and all other facilities or aids incidental to or useful in the operation and development of Lessor's ports and waterways and to prescribe and collect fees and charges for the use of Lessor's land, improvements, and facilities. The initial term of this lease shall be for a period of thirty-five years. At the option of Lessee, the lease may be extended for seven (7) additional terms of five (5) years each. The parties have requested a shortened review period.

Agreement No.: 224-010946-001.

Title: Brazos River Harbor Navigation District of Brazoria County, Texas and American Rice, Inc. Ground Lease and Definitive Agreement.

Parties:

Brazos River Harbor Navigation District of Brazoria County, Texas.

American Rice, Inc.

Synopsis: The proposed amendment would modify the Mortgage and Estoppel Affidavit provisions of the lease, with all other terms and conditions remaining in force. The parties have requested a shortened review period.

Agreement No.: 224-010947.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles.

Korea Shipping Corporation (KSC).

Synopsis: The proposed agreement would permit the relocation of KSC From Berths 87-90 in the Port of Los Angeles to Berths 127-131. KSC would have preferential use of Berths 127 and 128, the secondary right to use Berths 129-131 and non-exclusive use of 29.2 acres of backland. The proposed agreement would supersede Agreement No. 224-010845.

Agreement No.: 224-010948.

Title: The City of Los Angeles Crane Assignment Agreement.

Parties:

City of Los Angeles (City).

Korea Shipping Line Corp. (Assignee).

Synopsis: The proposed agreement would establish a nonexclusive preferential assignment whereby the City would allow the Assignee the preferential right to use Crane Nos. 2 and 11 and the secondary right to use Crane No. 1. The Assignee agrees to pay Tariff No. 3 charges for Crane No. 1, a fixed monthly payment of $23,067 for Crane No. 2 and a fixed monthly payment of $27,390 for Crane No. 11. Assignee would pay the City for all maintenance and electrical costs associated with Crane Nos. 2 and 11.

By Order of the Federal Maritime Commission.

Dated: May 27, 1986.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-12206 Filed 5-30-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Rainsville Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such

as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Rainsville Bancshares, Inc.*, Rainsville, Alabama; to engage directly in the sale of credit life, accident and health, and unemployment insurance directly related to the extensions of credit, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12214 Filed 5-30-86; 8:45 am]

BILLING CODE 6210-01-M

Hartford National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 20, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Hartford National Corporation*, Hartford, Connecticut; to acquire 100 percent of the voting shares of First/Martha's Vineyard Bancorporation, Vineyard Haven, Massachusetts, and thereby indirectly acquire First Bank, Chelmsford, Massachusetts.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Vernon Bancshares, Inc.*, Vernon, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The Bank of Vernon, Vernon, Alabama.

2. *Hibernia Corporation*, New Orleans, Louisiana; to merge with South Louisiana Financial Corporation, Houma, Louisiana; and thereby indirectly acquire South Louisiana Bank, Houma, Louisiana.

Hibernia Corporation, New Orleans, Louisiana has also applied to acquire 25 percent of the voting shares of South Louisiana Financial Corporation, Houma, Louisiana. Comments on these applications must be received not later than June 23, 1986.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of Chandler State Bank, Chandler, Indiana.

Board of Governors of the Federal Reserve System, May 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12215 Filed 5-30-86; 8:45 am]

BILLING CODE 6210-01-M

Lloyds Bank PLC; Formation of, Acquisition by, or Merger of Bank Holding Companies; Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14 for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assest of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the qustion whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration, of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than June 23, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 49105:

1. *Lloydes Bank PLC*, London, England; to acquire 100 percent of the voting shares of Standard Chartered PLC, London, England, Standard Chartered Overseas Holdings Limited, London, England, and Union Bancorp, Los Angeles, California, and thereby indirectly acquire Union Bank, Los Angeles

Applicant has also applied to acquire the following companies: Stanchart Business Credit, Los Angeles, California, and thereby engage in orginating, purchasing and servicing extensions of credit and provide consulting activities with regard to these activities; Market

Investment Services Corporation, Los Angeles, California, and thereby engage in discount securities brokerage; Institutional Credit Services Corporation, Los Angeles, California, and thereby engage in providing real estate investment and leasing advisory services; Mocatta Metals, New York, New York, and thereby engage in the purchase and sale of gold and silver for immediate and forward delivery, the purchase and sale of gold and silver coins and the purchase and granting of options to buy or sell gold or silver bullion. Applicant also proposes to engage, through Mocatta Metals' subsidiaries, in the following activities: (1) Through Iron Mountain Depository Corporation, the storage of bullion and precious coins and weighing, coin counting and transportation services: (2) through Mocatta Trust Corporation, to act as a futures commission merchant; and (3) through Mocatta Assets Management Corporation, to buy and sell for its own account in gold, silver, Comex traded gold and silver futures and options, and to a limited extent, in stocks and stock options and Treasury options.

Lloyds Bank PLC has also applied pursuant to section 4(c)(14) of the Act to acquire Stanchart Export Services Company, Los Angeles, California, and thereby act as an export trading company.

Lloyds Bank PLC will also acquire an Edge Act corporation, Standard Chartered International, Houston, Texas, pursuant to Section 25 (a) of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, May 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12216 Filed 5-30-86; 8:45 am]

BILLING CODE 6210-01-M

Standard Chartered PLC; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written persentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Sandard Chartered PLC*, London, England; to acquire Mocatta Metals, New York, New York, and thereby engage in the purchase and sale of gold and silver for immediate and forward delivery, the purchase and sale of gold and silver coins and the purchase and granting of options to buy or sell gold or silver bullion.

Applicant also proposes to engage, through Mocatta Metals' subsidiaries, in the following activities: (1) through Iron Mountain Depository Corporation, the storage of bullion and precious coins and weighing, coin counting and transportation services; (2) through Mocatta Trust Corporation, to act as a futures commission merchant; and (3) through Mocatta Assets Management Corporation, to buy and sell for its own account in gold, silver, Comex traded gold and silver futures and options, and to a limited extent in stocks and stock options and Treasury options.

Board of Governors of the Federal Reserve System, May 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12217 Filed 5-30-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau Form Submitted for Extension of Approval to the Office of Management and Budget

The request for extension of approval for the collection of information listed below has been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone listed below. Comments and suggestions on the requirement may be made directly to the Bureau's clearance officer or the Office of Management and Budget whose number is 202-395-7340.

Title: Application for Transportation and Utility Systems and Facilities and Federal Lands, Pub. L. 96-487 (Also applicable for 43 CFR 2800 and 2880)

Abstract: Respondents supply information as to their identity and address and the nature, location and potential impacts of the proposed facility. The information enables the using agency to identify and communicate with the applicant and to locate and evaluate the effect of the proposed facility on the environment and other land uses.

Bureau Form Number: SF-299.

Frequency: On Occasion.

Description of Respondents: Applicants for rights-of-way on Federal lands.

Annual Responses: 4,300.

Annual Burden Hours: 8,600.

Bureau Clearance Officer: Rebecca Daugherty 202-343-8468.

May 27, 1986.

Theodore G. Bingham,

Acting Assistant Director, Land Resources.

[FR Doc. 86-12220 Filed 5-30-86; 8:45 am]

BILLING CODE 4310-84-M

Vermilion Cliffs Plan Amendment; ACEC and RNA Proposed; Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan amendment notice; proposed Area of Critical Environmental Concern and Research Natural Area.

SUMMARY: The Cedar City District of the Bureau of Land Management proposes to amend the Vermilion Cliffs Management Framework Plan (1979). The original plan did not call for

environmental protection for the Water Canyon/South Fork Indian Canyon as an ACEC or for protection for No Man's Mesa as a Research Natural Area. A nomination for ACEC and RNA was received from The Nature Conservancy. The Bureau reviewed the proposals and applied the evaluation criteria and concluded that the proposals have merit. Because these proposals do not conform to the existing plan, it is proposed that the plan be amended by environmental assessment. This constitutes notice that a draft plan amendment and environmental assessment is available for review at the offices listed below. The public may comment on the amendment and designations for 30 days following publication of this notice.

The proposed ACEC will be called the Water Canyon/South Fork Indian Canyon ACEC. The proposed ACEC is located in portions of sections 17, 20, 21, 29, 30, and 32 of Township 43 South, Range 7 West, Salt Lake Base and Meridian (SLB&M). The proposed ACEC would cover 285 acres of Bureau administered public lands and has unique vegetative values. Within its boundaries, the proposed ACEC has a municipal water source for the town of Fredonia, Arizona. Proposed management calls for withdrawal of public lands within the area from mineral location under the 1872 Mining Law, and continuation of the present off-road vehicle limitation to existing roads and trails. Future oil and gas leases in the area will be in a no surface occupancy leasing category. Additionally, no actions would be allowed that would alter the existing vegetation and water resources.

The proposed No Man's Mesa RNA would encompass 1,335 acres of public land administered by the Bureau of Land Management. The RNA is located in sections 9, 10, 14, 15, 22, 23, 26 and 27 of Township 40 South and Range 3 West, Salt Lake Base and Meridian (SLB&M). The proposed RNA is an isolated mesa three miles in length. The area is valuable as a scientific reference point for its "relict" plant communities. Future management calls for restrictions on 180 acres under no surface occupany oil and gas leasing category. This restriction would bring the entire area under the no surface occupancy oil and gas leasing category. Ten acres of off road vehicle restrictions, limited to existing roads and trails, would be added to place the entire RNA under this restriction. The area will also be withdrawn from mineral location under the 1872 Mining Law.

The environmental assessment and plan amendment are available at the Kanab Resource Area at 320 North 100 East, Kanab, Utah and at the Cedar City District Office at 1579 North Main Street, Cedar City, Utah. The environmental assessment and plan amendment was prepared and reviewed by an interdisciplinary team of minerals, vegetation, wildlife, recreation, soils, and watershed specialists.

DATE: The comment period will be open for 60 days following the publication of this notice. At the end of the comment period, a decision notice will be issued subject to a 30 day protest period.

FOR FURTHER INFORMATION CONTACT: Ken Knowles, Assistant Area Manager at the Kanab Resource Area Office.

Dated: May 23, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-12259 Filed 5-30-86; 8:45 am]

BILLING CODE 4310-DQ-M

California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease CA 10613 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1986, the date of termination.

No valid lease has been issued affecting the lands. The Lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔%, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reinbursement for cost of publication of this notice.

Dated: May 22, 1986.

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 86-12261 Filed 5-30-86; 8:45 am]

BILLING CODE 4310-40-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on July 1, 1986, at 9:00 a.m. Pacific Standard Time in Room 227 of the Federal Building at 211 E. 7th, Eugene, Oregon.

The agenda for the meeting will include (1) election of new chairperson; (2) herbicide analysis review; and (3) update on fisheries improvement project in the Lake Creek Basin. Other topics may be added prior to the meeting.

The meeting is open to the public. Interested persons may make oral statements to the council between 11:00 and 11:15 a.m., or file written statements for the Council's consideration. Anyone wanting to make a statement must notify the District Manager, Bureaur of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by June 22. Depending on the number of persons wanting to make statements, a time limit may be established per person.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: Masy 20, 1986.

Melvin D. Clausen,

District Manager.

[FR Doc. 86-12218 Filed 5-30-86; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Red Hill Patrick Henry National Memorial

By Joint Resolution of the Ninety-Ninth Congress (S.J. Res. 187), approved by the President on May 12, 1986, the last home and burial place of Patrick Henry in Charlotte County, Commonwealth of Virginia, known as Red Hill, has been designated as a National Memorial to Patrick Henry, to be known as: the Red Hill Patrick Henry National Memorial. The Resolution includes a proviso that ownership of Red Hill remains non-Federal and that the costs of operations and maintenance for the estate shall be borne from non-Federal funds, services, or materials.

Jerry L. Rogers,

Associate Director, Cultural Resources.

[FR Doc. 86-12307 Filed 5-30-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Amdt. No. 6]

Pacific Inland Tariff Bureau-Agreement; Section 5a Application No. 22 [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Pacific Inland Tariff Bureau (PITB) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of PITB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from PITB's representatives:

Bryce Rea, Jr., Patrick McEligot, Rea, Cross & Auchincloss, 700 World Center Building, 918—16th Street, NW., Washington, DC 20006;

John R. Campbell, Executive Director, Pacific Inland Tariff Bureau, 1732 NW Quimby Street, Portland, OR 97209.

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll free (800) 424–5403, or (202) 289–4357 in the Washington, DC metropolitan area.

DATES: Comments from interested persons are due on July 2, 1986. Replies are due on July 17, 1986.

ADDRESS: An original and 10 copies, if possible, of comments should be sent to: Section 5a Application No. 55, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Paul Markoff (202) 275–7925;

or

Louis E. Gitomer (202) 275–7691.

SUPPLEMENTARY INFORMATION: Pacific Inland Tariff Bureau (PITB) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96–296 (1980) (MCA). Since filing its application, PITB has been obligated to observe the requirements of the MCA and the standards set forth in our decision implementing section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980), and 634 I.C.C. 921 (1981).

We have provisionally approved PITB's agreement as consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 5), *supra*, subject to certain modifications including the following subject areas: Identification and description of member carriers; right of independent action; employee docketing; open meeting; proxy voting; final disposition of cases; single-line rates; general increases and decreases; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. PITB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision provisionally approving the agreement.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and Ex Parte No. 297 (Sub-No. 5), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory administrative criteria generally, and their application to PITB's agreement in particular.

A copy of any comments filed with the Commission shall also be served on PITB, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that PITB must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: May 23, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioner Sterrett, Andre, and Lamboley.

James H. Bayne,
Secretary.

[FR Doc. 86–12248 Filed 5–30–86; 8:45 am]
BILLING CODE 7035–01–M

[1] Section 5 was recodified as section 10706.

[Docket No. AB–1 (Sub-172X)]

Chicago and North Western Transportation Co.; Abandonment Exemption in La Crosse County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company of 2.99 miles of track in La Crosse County, WI, subject to standard labor protection.

DATES: This exemption is effective July 2, 1986. Petitions to stay must be filed by June 17, 1986, and petitions for reconsideration must be filed by June 27, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–1 (Sub-No. 172X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

(2) Petitioner's representative: Robert T. Opal, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decided: May 23, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,
Secretary.

[FR Doc. 86–12247 Filed 5–30–86; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Lehigh Portland Cement Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby

given that on May 19, 1986, a proposed Consent Decree in *United States* v. *Lehigh Portland Cement Co.*, Civil Action No. 2C 84-3030, was lodged with the United States District Court for the Northern District of Iowa. The proposed Consent Decree concerns emissions of dust from nonpoint sources, and the opacity of emissions from a cement kiln, at the defendant's Mason City, Iowa cement plant. The proposed Consent Decree requires the defendant to take certain measures to ensure compliance with Iowa Admin. Code Rule 23(2)(c)(2), which prohibits emissions of dust from nonpoint sources unless reasonable precautions to prevent such emissions are taken, and 40 CFR 60.62(a)(2), which prohibits emissions of greater than 20% opacity from cement kilns.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lehigh Portland Cement Co.*, D.J. Ref. 90-5-2-1-664.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Iowa, 101 First Street SE., Federal Building and Old Post Office, Cedar Rapids, Iowa 52401 and at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-12262 Filed 5-30-86; 8:45 am]
BILLING CODE 4410-01-M

Bureau of Justice Statistics

Cooperative Agreement; National Conference on Punishment for Criminal Offenses

ACTION: Extension of deadline for receipt of proposals.

SUMMARY: In the **Federal Register** Vol. 51, No. 63 dated Wednesday, April 2, 1986 on pages 11363 to 11364 the Bureau of Justice Statistics (BJS) solicited proposals from non-profit organizations to enter into a cooperative agreement with BJS for the purpose of organizing and running a national conference on punishment for criminal offenses in the United States. The conference would provide a forum for policymakers, practitioners, and scholars to present original papers on punishment in America using BJS data as a starting point.

A number of educational institutions who are interested in applying have indicated that they would like more time to prepare their proposals.

DATES: Due date for receipt of these proposals has been extended to 5:00 pm EDST on June 30, 1986.

ADDRESSES: Seven (7) copies of a full proposal should be sent to: Director, Bureau of Justice Statistics, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: To obtain further information contact Joseph Bessette, Deputy Director for Data Analysis, at the address given above (telephone 202-724-7765).

Dated: May 23, 1986.

Joseph M. Bessette,
Deputy Director for Data Analysis, Bureau of Justice Statistics.

[FR Doc. 86-12361 Filed 5-30-86; 8:45 am]
BILLING CODE 4410-18-M

Office of Justice Programs

President's Child Safety Partnership; Hearings

AGENCY: Office for victims of crime, Justice.

ACTION: Notice of Hearings.

SUMMARY: The Office for Victims of Crime announces the fourth in a series of public hearings to be held by the President's Child Safety Partnership.

SUPPLEMENTARY INFORMATION: The President's Child Safety Partnership (hereafter referred to as the Partnership) will hold a series of six public hearings on the issue of child safety. The Partnership, which was announced by the President on April 29, 1985, and which held its initial meeting on January 16, 1986, consists of 26 members from the public, private (both corporate and nonprofit), state and local, and Federal sectors, and includes a wide range of expertise in fields related to child safety. It's first, second and third public hearings were held on April 15-16, in New York City; May 1, in Chicago, Illinois; and May 20, in Austin, Texas, respectively. The Partnership functions solely as an advisory committee in full compliance with the provisions of the Federal Advisory Committee Act.

The Partnership members recognize the magnitude and complexity of the child safety problem, and realize that the only way to effectively address it is through the help and support of a wide group of organizations, agencies, and individuals, with the focus being on the private sector. Consequently, the Partnership will seek the input of these groups on a broad range of issues. The input received through both written and oral testimony will be used by the Partnership to make recommendations to the President on ways in which we can both prevent the victimization of our country's children and more fully involve the private sector in responding to the problem.

The scope of the Partnership inquiry and the recommendations the Partnership will make will cover a broad range of offenses against children, specifically: Child physical abuse and neglect; child sexual abuse and molestation; theft, assault, robbery, and murder of children; parental and stranger abduction of children; exploitation of children (prostitution, pornography), runaway children (recognizing the extreme vulnerability of runaways to victimization); and drug abuse.

The hearing will seek to examine child safety initiatives involving or supported by the private sector and to identify specific issues of child safety requiring priority attention. The hearing will also examine model program approaches to prevent and respond to child victimization as well as legislative and Federal coordination issues.

Oral and written testimony will be solicited from the public. The testimony will be used as a basis for making recommendations to the President.

Location/Dates

The fourth public hearing of the Partnership will be held:
Date: Tuesday, June 17, 1986
Place: Denver Children's Museum, 2121 Crescent Drive, Denver, Colorado 80211
Time: 9:00 a.m.-6:00 p.m.

BEST COPY AVAILABLE

Seats available to the public: 100

The hearing will be held from 9:00 a.m. to approximately 6:00 p.m.

The fifth Partnership hearing will be held in Seattle, Washington (July 14, 1986). The specific location for this hearing will be announced in a subsequent Federal Register Notice. The sixth hearing will be held in Florida on a date yet to be determined.

Procedure

The Partnership invites all interested parties to submit written testimony or program information regarding any of the aforementioned aspects of child safety. Persons interested in providing written testimony should submit it to: Lois Haight Herrington, Assistant Attorney General, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531. If possible, all written testimony should be typed and submitted in duplicate. All written testimony is due not later than September 30, 1986, but should be submitted as soon as possible for maximum consideration.

Persons interested in providing oral testimony at the hearing in Denver should notify Assistant Attorney General Herrington in writing (same address as above), as soon as possible, and in no event later than June 10, 1986. The Partnership will make the final determinations as to what persons/organizations will be invited to provide oral testimony.

Conduct of Hearings

The hearings, which will be open to the public, will begin at 9:00 a.m. The Chairman of the Partnership, or his designee, will preside at the hearings. Other members of the Partnership will join the Chairman. These will not be judicial or evidentiary-type hearings and there will not be any cross-examination. However, clarifying questions and discussion by Partnership members may follow each presentation. There will be time set aside at the conclusion of the hearing for brief comments by members of the public.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding official.

A transcript of the hearing will be made. The entire record of the hearings, including transcript, will be retained by the Partnership, and will be available to the public. Any person may purchase a copy of the transcript from the transcribing organization.

For further general information on the Partnership hearings contact: Mr. William Modzeleski, President's Child Safety Partnership, 633 Indiana Avenue, NW., Washington, DC 20531. Phone: (202) 272-8500.

Dated: May 28, 1986.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 86-12368 Filed 5-30-86; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-329-OM and 50-330-OM; (ASLBP No. 86-536-02 SP)]

Consumers Power Co.; Midland Plant, Units 1 and 2; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Consumer Power Company* (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OM and 50-330-OM, is hereby reconstituted by appointing Administrative Judge Gustave A. Linenberger, Jr., in place of Administrative Judge Frederick P. Cowan, who is not available to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman

Jerry Harbour

Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1986). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 27th day of May, 1986.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-12292 Filed 5-30-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329-OL and 50-330-OL; (ASLBP No. 79-389-03 OL)]

Consumers Power Co.; Midland Plant, Units 1 and 2;

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Consumers Power Company* (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OL and 50-330-OL, is hereby reconstituted by appointing Administrative Judge Gustave A. Linenberger, Jr. in place of Administrative Judge Frederick P. Cowan, who is not available to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman

Jerry Harbour

Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1986). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 27th day of May, 1986.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-12292 Filed 5-30-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Operations; Meeting Revised

The Federal Register published on May 16, 1986 (51 FR 18053) contained notice of a meeting of the ACRS Subcommittee to be held on Tuesday, June 3, 1986, 8:30 A.M.—12:00 Noon, Room 1046, 1717 H Street NW., Washington, DC. To the extent practical, the meeting will be open to public attendance. However, a portion of the meeting may be closed to discuss elements of the Palo Verde Security Plan. All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone: 202/634-1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 28, 1986.

Morton W. Liberkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-12294 Filed 5-30-86; 8:45 am]

BILLING CODE 7590-01-M

BEST COPY AVAILABLE

[Docket No. 50-352]

Philadelphia Electric Co., Limerick Generating Station, Unit 1, Receipt of Petition for Director's Decision

Notice is hereby given that the Director of Nuclear Reactor Regulation is considering as a request for action under 10 CFR 2.206 a letter dated March 5, 1986, from Robert L. Anthony. Mr. Anthony contends, on the basis of the licensee's applications to the Delaware River Basin Commission (DRBC) concerning the withdrawal of cooling water from the Schuylkill River, that the plant has been operated in violation of the plant's Environmental Protection Plan. Mr. Anthony further contends that on this basis the operating license for Unit 1 should be suspended. A decision will be made on Mr. Anthony's request within a reasonable time. A copy of the letter is available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555, and in the local public document room at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland this 27th day of May.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-12295 Filed 5-30-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of a Form Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces the proposed extension of a form which collects information from the public. Optional Form 300, Qualifications Analysis and Appraisal of Candidates for Supervisory Positions, is completed by employers and/or co-workers of applicants for supervisory positions throughout the Federal Government. The qualification standard for supervisory positions in General Schedule occupations (GS-15 and below) contained in OPM Handbook X-118, Qualification Standards for Positions Under the General Schedule, recommends the use of this form to facilitate the collection of information used in evaluating candidates. For copies of the proposal, call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

DATES: Comments on this extension should be received within 10 working days from date of publication.

ADDRESSES: Send or deliver comments to—

James M. Farron, Agency Clearance Officer, Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415, and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Helene Rosenheim, (202) 632-0790.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR. Doc. 86-12312 Filed 5-30-86; 8:45 am]

BILLING CODE 6325-01-M

Notice of Proposed Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed information collection, CG Form 25-7, "Survivor Annuity Certification."

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), we are providing notice of a proposed extension of an information collection from the public. CG Form 25-7 will be used by widows, widowers, and former spouses who have not yet reached age 55 and are receiving a survivor annuity. If an employee or retiree dies, a survivor annuity is payable provided the survivor is otherwise eligible and does not remarry before reaching age 55. This form will be used to verify whether the survivors have remarried and thereby lost their eligibility to receive a survivor benefit (section 8341, Title 5, U.S. Code). For copies of this proposal call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

ADDRESSES: Send or deliver comments within 10 working days from the date of publication to—

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415, and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-12313 Filed 5-30-86; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Hydro assessment: rivers study, anadromous fish;
- Protected areas designation consultation;
- FERC update;
- Protected areas designation consultation;
- Other; and
- Public comment.

DATE: June 5, 1986. 10:00 a.m.

ADDRESS: The meeting will be held in the State Room, Governor House, 621 S. Capitol Way, Olympia, Washington.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-12220 Filed 5-30-86; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE

COMMISSION

[Release No. 34-23268; File No. SR-OCC-86-9]

Self-Regulatory Organizations; Options Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

On May 1, 1986, the Options Clearing Corporation ("OCC") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC's proposed rule change would add to OCC Rule 604 Interpretation and Policy .08 (the "Interpretation"). That Interpretation would provide that a letter of credit could be issued by a foreign branch of a U.S. bank or trust company (the "Institution") provided that: (1) The Institution conforms with OCC Rule 604 and the Interpretations and Policies thereunder (i.e., OCC has approved the Institution as a letter of credit issuer),[1] and (2) the letter of credit is payable at a United States office of such institution. The proposal clarifies that OCC Rule 604 and its Interpretations and Policies permit foreign branches of U.S. Institutions to issue letters of credit for OCC margin purposes. Previously, only certain U.S. Institutions or foreign banks and trust companies with a U.S. branch or agency could be OCC-approved letters of credit issuers.

OCC believes that the proposal is needed to accommodate increased business activity anticipated from OCC's planned London-Philadelphia Stock Exchange foreign currency options link [2] and the prospect of greater direct OCC membership of foreign broker-dealers.[3]

OCC believes that the proposed rule change is consistent with Section 17A of the Act in that it will promote the prompt and accurate clearance and settlement of transactions by enabling clearing members to finance their positions more efficiently.

This rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

To submit written comments on the proposal, please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552 are available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-86-9 and should be submitted by June 23, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 23, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12290 Filed 5-30-86; 8:45 am]

BILLING CODE 8010-01-M

[1] OCC Rule 604(c) governs clearing member use of letters of credit for OCC margin purposes and its Interpretations and Policies spell out OCC's standards for letter of credit issuers. Among other things, those provisions require an "approved" U.S. institution to be a bank or trust company that: (a) Is organized under the laws of the United States or a state thereof and is regulated or examined by federal or state authorities having regulatory authority over banks and trust companies, and (b) has shareholders' equity of $100,000,000 or more. *See* OCC Rule 604, Policy and Interpretation .01(a).

[2] *See* File No. SR-OCC-85-13, published for comment in Securities Exchange Act Release No. 22847 (January 30, 1986), 51 FR 4551 (February 5, 1986).

[3] *See* Securities Exchange Act Release No. 22123 (June 6, 1985), 50 FR 24853 (June 13, 1985), approving File No. SR-OCC-85-02, which enables foreign broker-dealers to become direct OCC Clearing Members.

DEPARTMENT OF STATE

[Public Notice 987]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection—Application for Department of State Building Pass.

Type of request—New.

Frequency—On occasion.

Respondents—Press corps, maintenance personnel, visitors.

Estimated number of responses—8,000.

Estimated number of hours needed to respond—667.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: May 20, 1986.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 86-12221 Filed 5-30-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86-039]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App I) notice is hereby given of the ninth meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, June 24, 1986, in the Ambassadeur Room of the Plimsoll Club, on the 30th floor of the World Trade Center, 2 Canal Street, New Orleans, LA, at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Introduction of Rear Admiral Peter J. Rots, Commander, Eighth Coast Guard District, Committee Sponsor.
3. Minutes of the 11 March 1986 Meeting.
4. Report of the ad hoc communications improvement study group.
5. Discussion of the report of the communications improvement study group.
6. Discussion of bridge lighting rule changes.
7. Call for items of interest for discussion at next meeting.
8. Presentation of information concerning the "tracking box" technology.
9. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D. F. Withee, USCG, Executive Secretary, Lower

Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: May 19, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 86-12269 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-14-M

[CGD3 86-08]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 16, 1986, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introduction of Committee Sponsor, Committee members, and Coast Guard officers.
2. Election by popular vote of Committee Vice Chairperson.
3. Presentation by Captain Heym on operation and scope of Vessel Traffic Service.
4. Presentation by Captain Henn on role of Vessel Traffic Service regarding port security and harbor defense in other than peace-time.
5. Other topics which might arise and the committee agrees should be addressed at the time.
6. Discussion of agenda items for next meeting.
7. Selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, Third Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Captain R.J. Heym, USCG, Executive Secretary, N.Y. Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

Dated: May 20, 1986.

P.A. Yost,

Vice Admiral, United States Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 86-12272 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Circular 20-88A, Guidelines on the Marking of Aircraft Powerplant Instruments (Displays)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This Notice announces the issuance of Advisory Circular (AC) 20-88A, Guidelines on the Marking of Aircraft Powerplant Instruments (Displays). Advisory Circular 20-88A provides revised guidelines on the marking of aircraft powerplant instruments and electronic displays (cathode ray tubes, etc.). These guidelines offer acceptable, but not exclusive, methods of compliance with the powerplant instrument color marking requirements.

DATE: Advisory Circular 20-88A was issued by the Office of Airworthiness in Washington, DC, on September 30, 1985.

How to Obtain Copies

A copy of AC 20-88A may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Office bookstores located in major cities through the United States. Identify the publication as AC 20-88A, Guidelines on the Marking of Aircraft Powerplant Instruments (Displays), Stock Number 050-007-00683-7. The cost of AC 20-88A is $1.50. Send check or money order with your request, made payable to the Superintendent of Documents. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No c.o.d. orders are accepted.

Issued in Seattle, Washington, on May 21, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 86-12211 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review, St. Louis Regional Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for St. Louis Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the St. Louis Regional Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for St. Louis Regional Airport were in compliance with applicable requirements effective October 7, 1985. The proposed noise compatibility program will be approved or disapproved on or before November 13, 1986.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is May 16, 1986. The public comment period ends July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Henry A. Lamberts, AGL-610, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for St. Louis Regional Airport which will be approved or disapproved on or before November 13, 1986. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or

proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for St. Louis Regional Airport, effective on May 16, 1986. It was requested that the FAA review this material, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 13, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, subparagraph 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Regional Office, AGL-600, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018

St. Louis Regional Airport, 8 Terminal Drive, Suite 1, East Alton, Illinois 62024

Bethalto Village Library, 321 S. Prairie, Bethalto, Illinois 62010

East Alton Public Library, Third and Washington, East Alton, Illinois 62024

Hayner Public Library, 326 Belle Street, Alton, Illinois 62002

Wood River Public Library, 326 E. Ferguson, Wood River, Illinois 62095

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Des Plaines, Illinois, May 16, 1986.

Monte R. Belger,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 86-12212 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Commercial Motor Vehicle Safety Regulatory Review Panel; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Commercial Motor Vehicle Safety Regulatory Review Panel will hold a meeting on July 1 and 2, 1986, beginning at 8:30 a.m., in Washington, DC, at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC, Room 2230. The meeting is open to the public.

The agenda includes the following topics: Status briefing on contractor efforts to organize and abstract State motor carrier safety laws and Regulations, discussion of schedule of future activities and milestones for the panel's accomplishments, briefing on the status of repromulgation of the Federal Motor Carrier Safety Regulations, and briefing on the status of the future plans for the Motor Carrier Safety Assistance Program.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Lukens, Executive Director, Commercial Motor Vehicle Safety Regulatory Review Panel, Federal Highway Administration, HOA-1, Room 4218, 400 Seventh Street, SW., Washington, DC 20590 (202) 426-0390. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: May 23, 1986.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-12203 Filed 5-30-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 23, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: PUB. 1075.

Type of Review: New.

Title: Safeguard Procedures and Safeguard Activity Reports.

OMB Number: 1545-0314.

Form Number: IRS Forms 6466 and 6467.

Type of Review: Revision.

Title: Transmittal of Magnetic Tape of Forms W-4, Employee's Withholding Allowance Certificate (Form 6466); and Multiple Employer Transmittal for Magnetic Tape Reporting of Form W-4 (Form 6467).

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0475.

Form Number: ATF F 4473, Parts I and II, ATF REC 5300/1 and 7570/2.

Type of Review: Extension.

Title: Record Retention Period and Certain Firearms Records.

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Stephen Bachelo,

Departmental Reports Management Office.

[FR Doc. 86-12200 Filed 5-30-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary and Internal Revenue Service

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Advance notice of proposed new routine uses to be added to two existing systems of records, and a correction to the category of individuals covered in one of the systems.

SUMMARY: The Department of the Treasury, proposes to add several routine uses to the Privacy Act system of records, Treasury/OS .002—Treasury Payroll Information System, last published at 49 FR 46233 (November 23, 1984). This notice also corrects item (1) of the Categories of Individuals covered by the system to include all Treasury employees as previously shown in "Treasury Payroll/Personnel Information System, Treasury/OS .002" at 46 FR 16404 (March 12, 1981)

General Personnel and Payroll Records System, last published at 50 FR 49493 (December 2, 1985).

SUPPLEMENTARY INFORMATION:

Part I: Proposed Routine Uses—General.

The Treasury Payroll Information system notice (Treasury/OS .002) is being revised to add several compatible disclosures to the routine uses. These include disclosures to:

(1) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal Personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and applicable regulations.

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(3) Another agency, such as the Department of Labor or Social Security Administration, for Wage and Separation information as required by law for payroll purposes.

(4) A Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state unemployment compensation board, housing administration agency and Social Security Administration.

(5) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing a statute, rule, regulation, order or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

Disclosures under these proposed routine uses are compatible with the Department's personnel management responsibility of employee integrity.

Part II: Routine Use to Permit Computer Matching

The Department of the Treasury in connection with direction set by the President's Council on Integrity and Efficiency (PCIE) Long Range Computer Matching Group, has determined that it is prudent to identify current or former Treasury Department employees who have improperly received compensation under Federal agency, non-Federal entity, or Treasury benefit programs, and to prevent illegal payment of these benefits. The Department of the Treasury, therefore, proposes to undertake or to participate in efforts to eliminate this problem by disclosing certain Treasury employee information or information of other users of TPIS in connection with computer matching operations conducted by the Department, or the requesting Federal agencies or non-Federal entities, as determined through written agreements. The matches will be conducted in accordance with the Office of Management and Budget's Revised Supplemental Guidelines for Conducting Matching Programs (47 FR 21656, May 19, 1982). The Department of the Treasury or a constituent unit or other user of TPIS will obtain a signed agreement from the Federal agency or non-Federal entity specifying that the information disclosed by the Department will be used for purposes of the computer match and for no other purposes, specifying that the information will be safeguarded against unauthorized disclosure.

The Department of the Treasury is proposing a new routine use in connection with plans to participate with Federal agencies and non-Federal entities in efforts to enhance the integrity of benefit programs whether sponsored by those agencies and non-Federal entities or by the Department of the Treasury or a constituent unit of the Department. The Department plans to provide to Federal agencies and non-Federal entities certain Treasury employee information required in connection with efforts to prevent illegal payments under the benefit programs. Disclosures may be made either upon the request of the Federal agency or non-Federal entity, or by the Department of the Treasury on its own initiative under a cooperative agreement. This routine use, once in effect, will permit the discretionary disclosure of data from the Department of the Treasury's Payroll Information system files and Internal Revenue Service's General Personnel and Payroll Records system when disclosure is necessary for the Department of the Treasury or any constituent unit of the Department, the Federal agency or non-Federal entity to take appropriate action to improve the integrity of the benefit programs.

These benefit programs include, but are not limited to, the Food Stamp Program, Aid to Families with Dependent Children, Medicaid, Supplemental Security Income, unemployment compensation, state supplementary income assistance, workers compensation, sick leave, education and home loan programs, etc.

Department of the Treasury payroll files (Treasury Payroll Information System Treasury/OS .002 and General Personnel & Payroll Records Treasury/IRS 36.003) contain general payroll information including name, social security number, salary, benefit deductions, leave data, addresses, records of attendance and other relevant payroll information. Under a computer matching arrangement, the Department of the Treasury will disclose only information on "matched" employees which is necessary to make a thorough analysis for determining the recipient's status as to eligibility for compensation under the benefit program in question. The Department of the Treasury retains the authority under the proposed routine use to withhold specific data elements if it is believed that the particular elements are not germane to the purpose of the analysis. This analysis, to be conducted by the involved Federal agency or non-Federal entity, or by the Department of the Treasury or other user of TPIS, is an essential element of the project. The mere existence of an individual's match between a benefit program file and the Treasury Department Payroll System file will not of itself, or without the individual's prior opportunity to respond, be the cause of any benefit reduction or legal collection action.

Disclosure under the proposed routine use is compatible with the Department of Treasury's personnel management responsibility for oversight of its employees' conduct, particularly with regard to the requirement that these individuals comport themselves in a

proper manner and not obtain financial benefits in a fraudulent manner.

The Department of the Treasury shall observe the following limitations with respect to disclosing the categories of records previously described:

(1) All Treasury employees and other users of TPIS shall be governed by OMB's "Guidelines for Conducting Computerized Matching Programs".

(2) Information will not be used for purposes other than those specifically agreed upon.

(3) Information which has been derived wholly or in part by relying on information of the type described above shall not be used by any person without the Department of the Treasury's specific permission.

(4) The file will not be used to extract information concerning "non-matching" individuals for any purpose.

A match either between the Department of the Treasury's Payroll Information System File or the Internal Revenue Service General Personnel and Payroll Records and the Federal agency or non-Federal entity benefit program file is not an indication that any illegality has occurred; the match will alert the participating parties, however, that further study is warranted to see if there is any impropriety.

The TPIS system is being published in its entirety. The IRS General Personnel & Payroll records system reflects only the data elements changed. The last publication of the entire system was December 2, 1985 (50 FR 49623).

DATE: The proposed new routine uses will become effective, without further notice, 30 days from the date of this publication unless comments dictate otherwise.

ADDRESS: Comments may be sent to: Chief, Disclosure Branch, Room 5423, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Phyllis De Piazza, 1500 Pennsylvania Avenue NW., Room 5423, Washington, D.C. 20220, (202) 566-2782.

Dated: May 13, 1986.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

Treasury/OS .002

SYSTEM NAME:

Treasury Payroll Information System.

SYSTEM LOCATION:

ICC Building, 1201 Constitution Avenue NW., Room 7329, Washington, DC 20220 and a contractor data processing facility, Johnstown Computing Resources Inc., located at 99 Lulay Street, Johnstown, PA 15904

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former personnel data on all employees of the Treasury, payroll data on all Treasury employees except IRS; (2) Executive Offices of the President; (3) Federal Emergency Management Agency; (4) Federal Trade Commission; (5) National Gallery of Art; (6) National Labor Relations Board; (7) Farm Credit Administration; (8) Commodities Futures Trading Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are two basic components to the system, a personnel component (PERMITS Application) and a payroll component (Treasury Payroll Information System), which provide current, year-to-date and historical data on the individuals covered by the system. The separate files in the system consist of payroll records, personnel records and time and attendance records. Information contained in these records, includes such data as:

(1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service.

(2) Employee data data such as service computation date for leave, date probationary period began, date of performance rating, and date of within-grade increases.

(3) Position and pay data such as position identification number, pay plan, grade, step, salary and pay basis, occupational series, position skill codes, organization location and accounting classification codes.

(4) Payroll data such as earnings, e.g., overtime and night differential; deductions, e.g., Federal, State and local taxes, bonds and allotments; and time and attendance data.

(5) Tables of data for editing, reporting and processing any or all personnel pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature table, position title table, financial organization table and salary table.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Personnel Management Manual, 50 U.S.C. App. 1705–1707; 31 U.S.C. and Departmental Circulars 145 and 930. The Department of the Treasury, Fiscal Requirement Manual; 5 U.S.C. 301; FPM Letter 298–16, Office of Personnel Management; Federal Personnel Manual (Chapter 713 Subchapter 3A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

These records and information in these records may be used:

(1) To furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation with wage and tax information in accordance with a withholding agreement with the Department of Treasury pursuant to U.S.C. 5516, 5217, and 5520.

(2) To provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal Personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and applicable regulations.

(3) To furnish another federal agency information to effect interagency salary offset; to furnish another federal agency information to effect interagency administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services.

(4) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureaus' hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings.

(6) To disclose information to foreign governments in accordance with formal or informal international agreements.

(7) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(8) To provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to civil and criminal proceedings.

(9) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

(10) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(11) To provide wage and separation information to another agency such as the Department of Labor or Social Security Administration as required by law for payroll purposes.

(12) To provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state unemployment compensation board, housing administration agency and Social Security Administration.

(13) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(14) Disclosure of information about particular Treasury employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs (i.e., matching for delinquent loans or other indebtedness to the government).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b)(12) and section 3 of the Debt Collection Act of 1982; Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, microfiche and hard copy print out. Disbursement records are stored at Federal Records Center.

RETRIEVABILITY:

Records are retrieved generally by social security number or position identification number within a bureau and region. Secondary identities are used to assure accuracy of data accessed, such as name and date of birth.

SAFEGUARDS:

Entrance to data center is restricted to only those employees whose work requires them to be there for the system to operate. ID cards are verified to insure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel officers and are subject to the same privacy controls as other personnel documents of like sensitivity.

RETENTION AND DISPOSAL:

The Treasury Payroll Information System master file is kept on magnetic tape. Hard copies of reports are kept for a period of up to 3 years. Additional payroll data is maintained on microfiche. Employee records are retained in automated form as long as the employee is active on the system (separated employee records are maintained in an "inactive" status within PERMITS for five years). The master file is purged of inactive payroll records on a yearly basis. Files are purged in accordance with Treasury Directives Manual TD 80–05.5 "Records Disposition Schedule".

SYSTEM MANAGER AND ADDRESS:

Director of Personnel, Department of the Treasury, Room 7115, 1201 Constitution Avenue N.W., Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identify the record system; (2) Identify the category and types of records sought; (3) Provide at least two items of secondary identification (date of birth), employee identification number and date of employment or similar information. Address inquiries to Chief, Disclosure Branch (see access below).

RECORD ACCESS PROCEDURE:

Chief, Disclosure Branch, Department of the Treasury, Room 5423 Main Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

CONTESTING RECORD PROCEDURE:

(See access above).

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non-Federal sources such as private employers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/IRS 36.003

SYSTEM NAME:

General Personnel and Payroll Records—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES.

(1) * * *

(18) * * *

(19) Disclosure of information about particular Treasury employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those date elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs.

* * * * *

[FR Doc. 86–12285 Filed 5–30–86; 8:45 am]

BILLING CODE 4810-35-M

Customs Service

Application for Recordation of Trade Name: "The Baltimore Luggage Company"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE BALTIMORE LUGGAGE COMPANY" used by The Baltimore Luggage Company, a corporation organized under the laws of the State of Rhode Island, located at 1919 Annapolis Road, Baltimore, Maryland 21230.

The application states that the trade name is used in connection with the following merchandise manufactured in Taiwan: vinyl luggage; nylon luggage; vinyl attaches; leather attaches; jute luggage; attaches; and luggage carts.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action take on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or August 1, 1986.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: May 27, 1986.

Marilyn G. Morrison,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 86-12142 Filed 5-30-86; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Inspection and Copying of Public Comments on Proposed Tax Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of change of procedure.

SUMMARY: Written comments from the public in response to proposed tax regulations may be inspected and copied in the Freedom of Information Reading Room, Internal Revenue Service National Office. The comment files were moved to the Reading Room from room 4429, Internal Revenue Service National Office, on May 12, 1986, for easier accessibility by the public.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley, Carroll Yue or Sheila Page of the Legislation and Regulations Division; Office of the Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: When published in the Federal Register, every proposed tax regulation is accompanied by an invitation to the public to submit written comments to the Internal Revenue Service with respect to the proposed provisions. These comment letters are available to the public for inspection and copying in their entirety. Until May 12, 1986, the comment files were maintained in room 4429 of the Internal Revenue Service National Office. They have now been relocated to the Freedom of Information Reading Room where they are available to the public for inspection and copying. No part of any comment file may be removed from the Reading Room except by Service personnel.

Depending on the availability of shelf space, the comment file for each published proposed tax regulation will remain in the Reading Room until the proposal is adopted as a final regulation or is officially withdrawn. Requests for copies of written comments on regulations projects that are closed, either because final regulations were issued or the proposal was withdrawn, should be submitted to the Internal Revenue Service, Attention: CC:LR:T, Room 4429, Washington, DC 20224, or may be left with Reading Room personnel for forwarding to CC:LR:T.

The Statement of Procedural Rules (26 CFR Part 601) is in the process of being revised to reflect the new procedure.

Peter K. Scott,

Associate Chief Counsel (Technical).

[FR Doc. 86-12206 Filed 5-30-86; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 105
Monday, June 2, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to the Federal Register on May 23, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 2, 1986.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed statement to be presented to the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs on the Depository Institution Examination Improvement Act of 1986 and the Truth in Savings Act.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12314 Filed 5-29-86; 8:50 a.m.]

BILLING CODE 6210-01-M

2

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 2, 1986:

A closed meeting will be held on Tuesday, June 3, 1986, at 10:00 a.m. An open meeting will be held on Tuesday, June 3, 1986, at 2:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 3, 1986, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Tuesday, June 3, 1986, at 2:00 p.m., will be:

Discussion with invited representatives of the accounting profession, reporting companies, and other interested parties. Issues to be addressed include, but will not be limited to, differences in expectations of financial reporting and the independent auditor's role, and recent private sector and legislative initiatives concerning financial disclosures and independent auditors. The discussion of these initiatives is expected to focus on the merits of these proposals and any cost benefit considerations. For further information, please contact Robert Kueppers at (202) 272-2130.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Gerald Laport at (202) 272-3065.

Shirley E. Hollis,

Acting Secretary.

May 27, 1986.

[FR. Doc. 86-12269 Filed 5-28-86; 4:39 pm]

BILLING CODE 8010-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 2, 1986:

A closed meeting will be held on Tuesday, June 3, 1986, at 10:00 a.m. Open meetings will be held on Tuesday, June 3, 1986, at 1:00 p.m. and on Thursday, June 5, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 3, 1986, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Tuesday, June 3, 1986, at 1:00 p.m., will be:

Discussion with invited representatives of the accounting profession, reporting companies, and other interested parties. Issues to be addressed include, but will not be limited to, differences in expectations of financial reporting and the independent auditor's role, and recent private sector and legislative initiatives concerning financial disclosures and independent auditors. The discussion of these initiatives is expected to focus on the merits of these proposals and any cost benefit considerations. For further information, please contact Robert Kueppers at (202) 272-2130.

The subject matter of the open meeting scheduled for Thursday, June 5, 1986, at 10:00 a.m., will be:

1. Consideration of whether to publish a release proposing revisions to Form D, the notice of sales requirement under Regulation D of the Securities Act of 1933, to eliminate some of the current informational requirements required by the Form, revise other parts of the Form and, further, to structure the Form so that it can be used as a uniform notification form to be filed with the Commission and, to the extent provided by individual state laws, with the states, when certain exempt offerings are made. The Commission will also consider whether to publish for comment a proposal to amend Regulation D to remove the requirement to

file periodic updates of Form D every six months. For further information, please contact Karen M. O'Brien at (202) 272–2644.

2. Consideration of issues relating to program or arbitrage trading strategies involving index options that have been associated with stock market volatility, particularly on Expiration Fridays. For further information, please contact Sharon Lawson at (202) 272–3115.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Gerald Laporte at (202) 272–3065.

Shirley E. Hollis,

Acting Secretary.

May 23, 1986.

[FR Doc. 86–12422 Filed 5–29–86; 8:45 am]

BILLING CODE 8010–01–M

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federal register

Monday
June 2, 1986

Part II

Veterans Administration

38 CFR Part 17

Charges for Care or Medical Services; Proposed Regulations

VETERANS ADMINISTRATION

38 CFR 17

Charges for Care of Medical Services

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: In order to conform VA regulations to the requirements of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Veterans Administration is proposing to amend its medical regulations (38 CFR 17) to recover the cost of medical care funished to nonservice-connected veterans from third party health insurance policies carried by those veterans. No attempt will be made by the VA to collect deductibles or coinsurance payments from the veteran.

DATES: Written comments must be received on or before July 16, 1986. It is proposed to make these changes effective on April 7, 1986, the effective date of the law which they implement.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposed regulations to: Administrator of Veterans Affairs (217A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 23, 1986.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service, (202) 389-2337.

SUPPLEMENTARY INFORMATION: The VA now routinely bills for medical care provided veterans in tort feasor, worker's compensation, automobile accident reparations insurance, and crimes of personal violence cases. It is authorized to do so by the Federal Medical Care Recovery Act and the Veterans' Health Care, Training and Small Business Loan Act of 1981.

Although many nonservice-connected veterans are covered by private medical care insurance, most health insurance policies contain exclusionary clauses that prohibit payment for medical care provided in Federal hospitals. In 1981, legislation was enacted that provided statutory authority to recover medical care costs under worker's compensation, automobile accident reparations insurance, and crimes of personal violence statutes. However, the provision to eliminate exclusionary clauses in private medical care insurance plans and programs was deleted during that legislative process.

In May 1985, the VA submitted legislation to the 99th Congress that would amend Title 38, U.S.C., to allow the VA to recover the costs of medical care furnished to nonservice-connected veterans from third party health insurance policies carried by those veterans.

This similar measure has been enacted as Section 19013 of Pub. L. 99-272 amending 38 U.S.C. 629. These proposed regulatory changes implement this amendment. Under section 629 as amended, the VA will seek recovery for the cost of medical care and services rendered by the VA to otherwise eligible veterans who have no service-connected disabilities and who also are covered by a third party health insurance policy or plan. The VA will prepare bills to the third party insurance carriers for VA medical care and services rendered to such nonservice-connected veterans using the Uniform Bill, UB-82. In all circumstances, the VA will complete those data elements and codes identified by the National Uniform Billing Committee as required entries for submission of bills to commercial third party carriers. As required by 38 U.S.C. 629(h), as amended, VA health care facilities will, when requested, make the VA health care record of individual nonservice-connected veterans, for whose care the VA is seeking recovery of costs, available for inspection and review by representatives of the third party carrier covering the veteran's medical care; those will be done solely for the purposes of permitting the carrier to verify (1) that the care for which recovery of costs is sought by the VA was furnished, and (2) that the provision of such care to the veteran meets criteria generally applicable under the health-plan contract involved.

No deductible and/or coinsurance charge prescribed by any such policy, contract, membership or agreement shall be required by the VA.

The VA proposes to make these changes retroactively effective to April 7, 1986, the effective date of section 19013 of Pub. L. 99-272, the law which they implement. These changes repeat and implement requirements of that law. The VA finds that there is good cause to make these changes retroactively effective since a delayed effective date would be contrary to statutory design, could be inequitable, and would complicate administration of this provision of law.

The VA has met with representatives of the General Accounting Office (GAO) to discuss provisions of this new legislation and implementing regulations.

Although cost recoveries from all third party carriers are expected to be in excess of $100 million per year in future years, since these are cost recoveries, the impact on the economy as a whole will not be in excess of the E.O. 12291 criterion for a major rule. These proposed regulations, as distinguished from the law which requires them, will result in no significant increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. They will have no adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. They also will impose no regulatory, paperwork, or administrative burdens on small entities.

For the above reasons, the Administrator certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

The Catalog of Federal Domestic Assistance numbers are 64.009, 64.010, 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental Health, Drug abuse, Foreign relations, Government Contracts, Grants programs, health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: May 30, 1986.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

1. In § 17.48, paragraph (d) is revised to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(d)(1) Persons hospitalized who have no service-connected disabilities pursuant to § 17.47, and/or persons receiving outpatient medical services pursuant to paragraphs (e), (f), (i), (j), and/or (k) of § 17.80 who have no service-connected disabilities who it is believed may be entitled to hospital care and/or medical services, or

reimbursement for the expenses of care or services for all or part of the cost thereof by reason of the following:

(i) Membership in a union, fraternal or other organization; or

(ii) Coverage under an insurance policy, or contract, medical, or hospital service agreement, membership, or subscription contract or similar arrangement under which health services for individuals are provided or the expenses of such services are paid;

will not be furnished hospital care or medical services without charge therefor to the extent of the amount for which such parties referred to in paragraphs (g)(1)(i) or (g)(1)(ii) of this section, are, or will become liable. Persons seeking hospital or medical care under (g)(1) shall provide such information relating to membership or affiliation referred to in paragraphs (g)(1)(i) or (g)(1)(ii), as the Administrator may require. Provisions of this subparagraph are effective as of April 7, 1986, except that in the case of a health care policy or contract that was entered into before that date, the effective date shall be the day after the plan was modified or renewed or on which there was any change in premium or coverage and will apply only to care and services provided by the VA after the date the plan was modified, renewed, or on which there was any change in premium or coverage. (38 U.S.C. 629; sec. 19013, Pub. L. 99–272).

(2) Persons hospitalized for the treatment of nonservice-connected disabilities pursuant to § 17.47, or persons receiving outpatient medical services pursuant to paragraph (e), (f), (h), (i), (j), or (k) of § 17.60, and who it is believed may be entitled to hospital care and/or medical services or to reimbursement for all or part of the cost thereof from any one or more of the following parties:

(i) "Workers' Compensation" or employer's liability statutes, State or Federal;

(ii) By reason of statutory or other relationships with third parties, including those liable for damages because of negligence or other legal wrong;

(iii) By reason of a statute in a State, or political subdivision of a State, (A) which requires automobile accident reparations, (B) which provides compensation or payment for medical care to victims suffering personal injuries as the result of a crime of personal violence;

(iv) Right to maintenance and cure in admiralty;

will not be furnished hospital care or medical services without charge therefor to the extent of the amount for which such parties are, or will become, liable. Persons believed entitled to care under circumstances described in paragraph (g)(2)(ii) of this section will be required to provide such information as the Administrator may require. Notice of this assignment will be mailed promptly to the party or parties believed to be liable. When the amount of charges is ascertained, a bill therefor will be mailed to such party or parties. Persons believed entitled to care under circumstances described in paragraph (g)(2)(i) or (g)(2)(iii) of this section will be required to provide such information as the Administrator may require. (38 U.S.C. 629; sec. 19013, Pub. L. 99–272.)

* * * * *

2. In § 17.62, paragraph (h) is revised to read as follows:

§ 17.62 Charges for care or services.

* * * * *

(h) *Furnished for nonservice-connected disabilities.*

(1) Charges at rates prescribed by the Administrator shall be made for inpatient or outpatient care and services rendered a veteran for nonservice-connected disabilities.

(i) Incident to the veteran's employment and the disability is covered under a workers' compensation law or plan that provides reimbursement or indemnification for the cost of such care and services,

(ii) As the result of a motor vehicle accident in a State which required automobile accident reparations insurance, or

(iii) As the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person so injured is entitled to receive health care and services for that injury at the expense of the State or subdivision.

Authority: 38 U.S.C. 629; sec. 19013, Pub. L. 99–272.

(2) Charges at rates prescribed by the Administrator shall be made for inpatient or outpatient care and services rendered to a veteran who has no service-connected disabilities and who is entitled to care, or reimbursement for the expenses of care, under an insurance policy, or contract, medical, or hospital service agreement, membership, or subscription contract, or similar agreement for the purpose of providing, paying for, or reimbursing expenses for health services.

(i) No deductible and/or coinsurance charge prescribed by any such policy, contract, membership or agreement shall be required by the VA.

(ii) VA medical records shall be made available for inspection and review by the parties to any kind of agreement referred to in paragraph (h) (1) and (2) of this section with respect to which recovery or collection is sought by the VA for the purpose of verifying that services for which recovery or collection is sought were furnished and that the provision of such services meets criteria generally applicable under the health-plan contract involved.

Authority: 38 U.S.C. 629 (h)(1); Pub. L. 99–272.

(3) The method for computing the charges for medical care and services is based on the Cost Distribution Report, which sets forth the actual basic costs and per diem rates by type of inpatient care and outpatient visit. Factors for depreciation of buildings and equipment and Central Office overhead are added, based on accounting manual instructions. Additional factors are added for interest on capital investment and for standard fringe benefit costs covering government employee retirement and disability costs. The current year billing rates are projected on prior year actual rates by applying the budgeted percentage increase. (38 U.S.C. 629; sec. 19013, Pub. L. 99–272.)

(4) The reasonable cost of care or services sought to be recovered or collected from a third party liable under a health-plan contract may not exceed the amount that such third party demonstrates to the satisfaction of the Administrator it would pay for the care or services in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with facilities (other than facilities of departments or agencies of the United States) in the same geographic area. (38 U.S.C. 629; sec. 19013, Pub. L. 99–272.)

(5) Any contract or agreement into which the Administrator enters with a person under 31 U.S.C. 3718 for collection services to recover indebtedness owed the United States under this section shall provide, with respect to such services, that such person is subject to 38 U.S.C. 3301 and 4132. (38 U.S.C. 629; sec. 19013, Pub. L. 99–272.)

(6) Amounts collected or recovered on behalf of the United States under this section shall be deposited into the Treasury as miscellaneous receipts. (38 U.S.C. 629; sec. 19013, Pub. L. 99–272.)

* * * * *

[FR Doc. 86–12487 Filed 5–30–86; 11:13 am]
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Federal Register

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Monday, June 2, 1986

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LIST OF PUBLIC LAWS

Last List May 30, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4382/Pub. L. 99-325

To require the Architect of the Capitol to place a plaque at the original site of Providence Hospital. (May 28, 1986; 100 Stat. 501; 2 pages) Price: $1.00

H.J. Res. 492/Pub. L. 99-326

To designate the week beginning on June 1, 1986, as "National Neighborhood Housing Services Week." (May 28, 1986; 100 Stat. 503; 1 page) Price: $1.00

H.J. Res. 526/Pub. L. 99-327

To designate the week of May 25, 1986, through May 31, 1986, as "Critical Care Week." (May 28, 1986; 100 Stat. 504; 1 page) Price: $1.00

H.J. Res. 613/Pub. L. 99-328

Allowing qualified persons representing all the States to be naturalized on Ellis Island on July 3 or 4, 1986. (May 28, 1986; 100 Stat. 505; 2 page) Price: $1.00

S.J. Res. 271/Pub. L. 99-329

Designating "Baltic Freedom Day." (May 28, 1986; 100 Stat. 507; 2 pages) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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federal register

Tuesday
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Briefings on How To Use the Federal Register—
For information on briefings in Seattle, WA, and
San Francisco, CA, see announcement on the inside cover
of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5406 of May 30, 1986

National Neighborhood Housing Services Week, 1986

By the President of the United States of America

A Proclamation

America's neighborhoods are made up of families representing a great variety of ethnic, social, and economic backgrounds. From this rich mix of cultures and experiences, a strong sense of cooperation and commitment has emerged that enhances our sense of the Nation as a larger family of people caring for one another. As we complete our preparations for the national celebration of the centennial of the Statue of Liberty this July 4, we are made even more aware of the special blessings, the strengths, and the virtues that flow from our long heritage of welcoming and drawing on the experiences of people from diverse backgrounds to make our free society ever more dynamic, cohesive, and productive.

When any neighborhood suffers from decline due to loss of business or other factors, all of its residents feel the pinch, but the elderly and the poor suffer most. Homes decline in value, economic growth stops, businesses relocate, and residents face real hardships. The Nation as a whole suffers, since thriving neighborhoods are the living cells of our national life. That is why it is so important to arrest the deterioration and revive the strength and vigor of America's neighborhoods.

Traditionally, Americans have recognized such problems and have worked together to develop practical solutions at the grass-roots level. Neighborhood Housing Services programs, which are partnerships made up of local residents, business leaders, and government officials, reflect this spirit and give scope to the ingenuity of the American people. Throughout the United States, Neighborhood Housing Services programs are working to revitalize more than 200 neighborhoods. Already, they have generated more than three billion dollars in reinvestment funds. Rather than looking to the Federal government for assistance, these programs have relied primarily on local and private resources and the help of hundreds of volunteers. These volunteers have contributed countless hours of work to help rebuild and revitalize neighborhoods.

The efforts and accomplishments of Neighborhood Housing Services programs have earned the respect and gratitude of all who recognize that local initiatives and self-reliance will always be the major factor in solving local problems. It is fitting and appropriate that their efforts be recognized by all Americans.

The Congress, by House Joint Resolution 492, has designated the week beginning June 1, 1986, as "National Neighborhood Housing Services Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 1, 1986, as National Neighborhood Housing Services Week. I call upon local and State jurisdictions, appropriate Federal agencies, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12060
Filed 6-2-86; 11:59 am]
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Presidential Documents

Proclamation 5497 of May 30, 1986

National Theatre Week, 1986

By the President of the United States of America

A Proclamation

Theatre is an ancient and honored art form with a recorded history spanning 2,500 years. Some have speculated that its roots go so deep in human nature and human experience that it may well be the wellspring of all the arts. We do know that poetry, story-telling, dance, music, masks, costumes, and sets all have a place in what we have come to call "theatre." These elements can be found in the performances of primitive tribes and the most sophisticated modern productions. In fact we see the impulse to theatre in every child who has ever played "let's pretend" or "make believe."

Theatre lets us stand apart from the flow of life: to feel pity and understanding and empathy; to smile at human foibles and to weep at human tragedies. Theatre is an art form for all seasons and all moods. It can refresh our spirits with comic hijinks, dazzle us with the splendor of pageantry, and impart rich insights into human relationships. It can convulse us into gales of laughter, wring our hearts with pathos, and dramatize eternal moral truths. In the works of such giants as Shakespeare, Goethe, Moliere, and O'Neill it can do all these things.

In one respect theatre is an art of the present moment—once performed it is gone, save in the memory of the audience. Yet new productions and performances give it a kind of ever-renewed immortality. It can put us in touch with the culture, conditions, and viewpoints of many civilizations. Indeed, theatre is at once a reminder and an affirmation of the continuity of civilization and the fundamental unity of all mankind.

That continuity is manifested not only in performances of plays of the past, but also in the attempts of modern artists to give voice to the conditions and experiences of our own time. These efforts, in turn, will enrich the legacy we will leave to future generations.

Today, theatre exists not only in the traditional cultural centers of our country but all across the land. Theatre at all levels—professional, community, and school—has sprung up in every region of our country. There is no greater testimony to mankind's need for theatre than this. Today we are experiencing a renaissance of the living theatre, with great gains in artistic excellence, in aesthetic variety and diversity of cultural voices—and in growing and loyal audiences throughout America.

In recognition of the importance of theatre in the lives of all Americans, the Congress, by Senate Joint Resolution 247, has authorized the President to proclaim the week of June 1 through June 7, 1986, as "National Theatre Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 1, 1986, as National Theatre Week. I encourage the people of the United States to observe this month with appropriate ceremonies, performances, programs, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-12661
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues a prior suspension of the provisions of the Great Basin milk order that limit the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also continued is a suspension of the requirement that 6 days' production of each producer whose milk is diverted to nonpool plants be received at pool plants in order for the diverted milk to be priced and pooled under the order. The continuing action was requested by Western General Dairies, Inc., a cooperative association representing most of the producers supplying the market.

The suspension is based on information received at a public hearing held on March 18–20, 1986, in Salt Lake City, Utah. The hearing was held to consider a proposal to merge the Great Basin and Lake Mead milk orders. Provisions of the proposed merged order would alleviate the pooling problems experienced by the cooperative for approximately the past year. A further suspension of the order's diversion limits and "touch-base" requirement is warranted until the hearing proceeding has been completed.

Such interim action is needed to provide a continuation of the orderly and efficient handling of the supplies of milk surplus to the fluid needs of the market while the proceeding is under consideration.

EFFECTIVE DATE: June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:.

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Great Basin marketing area.

It is hereby found and determined that the suspension, which applied to milk marketed through the end of April, should be extended and continued until the hearing proceeding on a proposed merger of the Great Basin and Lake Mead orders has been completed and that the following provisions of the current order do not tend to effectuate the declared policy of the Act:

(1) Section 1136.13(c)(2).

(2) In § 1136.13(c)(3), the language "*Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;", and

(3) In § 1136.13(c)(4), the language "*Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;".

Statement of Consideration

This action is based on the record of a public hearing held on March 18–20, 1986, at Salt Lake City, Utah, to consider a proposed merger of the Great Basin and Lake Mead orders. The Great Basin order now provides that a cooperative association may divert up to 25 percent of its producer milk physically received at pool plants in any month of March through August, and up to 20 percent of its member milk physically received at pool plants in any month of September through February. Similarly, the operator of a pool plant may divert up to 25 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of March through August, and 20 percent during the months of September through February. The order also requires that at least 6 days' production of each producer whose milk is diverted to nonpool plants be received at pool plants in order for the diverted milk to be priced and pooled under the order. The limit on the percentage of allowable diversions has been suspended since January 1985, and the 6-day "touch-base" requirement has been suspended since July 1985.

Continuation of the suspension was requested by Western General Dairies, Inc., at the March 18–20 hearing. Western General operates pool distributing plants and manufacturing plants in the Great Basin marketing area. The cooperative also supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies.

At the March hearing, witnesses for Western General testified that the order's present diversion limits and "touch-base" requirements are too restrictive to allow the cooperative to maintain the pool status of its members without the use of unnecessary and inefficient hauling practices. In order to operate within the order's diversion limits, some of the milk of the cooperative's member producers who regularly have supplied the fluid market would have to be moved, uneconomically, first to pool plants and then to nonpool manufacturing plants in order to achieve pool status for such milk. In addition, milk would have to be

moved uneconomically from distant production areas in order to meet the 6-day delivery requirement, only to displace milk produced at locations nearer the pool plants. The close-in milk must then be moved, uneconomically, to distant nonpool plants for manufacturing.

Data introduced at the hearing show that producer milk pooled under the Great Basin order in 1985 increased by 33 percent over 1984. At the same time, Class I sales by Great Basin handlers increased by only 8 percent over the same period. As a result, the volume of producer milk used in manufactured Class I and Class III products in 1985 was 61 percent greater than in 1984. The percentage of producer milk used in Class I in 1985 was 48.39 percent, as compared with 59.34 percent in 1984. Testimony received at the hearing indicated that there are many manufacturing grade dairy farmers in the area who are likely to convert their operations to Grade A status in the near future, and that many of the present Grade A producers are likely to increase production. These factors are expected to result in increasing volumes of milk production eligible for pooling under the Great Basin order in spite of the effects of the whole-herd buyout program. Given these conditions, it is very likely that some producer milk will fail to qualify for pooling or that handlers will be forced to resort to unnecessary and uneconomic hauling practices in order to maintain the producer status of their milk supply if only 20 percent of a handler's milk supply is allowed to be delivered directly to nonpool manufacturing plants.

Two pooled proprietary handlers with nonmember milk supplies testified that the current order provisions would cause them to undertake unnecessary and uneconomic hauling and handling of their producer milk supplies in order to maintain pool status for their producers. The handlers also stated that the order's present restrictive diversion limits and producer delivery requirements would make it impossible for them to maintain a large enough milk supply to be able to bid for and acquire new accounts, and thereby increase their business.

Although the diversion limits contained in Western General's proposed merged order would not be any more generous than those contained in the current Great Basin order, Western General's proposal does include in the pool plant definition a cooperative-owned manufacturing plant located in the marketing area. Adoption of this provision would allow all of Western General's milk supplies delivered to its own manufacturing plant to be considered deliveries to pool plants, and therefore not be counted as diversions. Because most of Western General's member milk that is surplus to the fluid needs of the market is delivered to Western General's manufacturing facilities, adoption of this proposed provision would allow the cooperative to maintain pool status for the milk of all of its member producers. Western General's proposed order would reduce the number of days of a producer's production that would be required to be received at pool plants from 6 to 1. Proposals supported at the hearing by the proprietary handlers would relax the present limits on the amount of a handler's milk that may be diverted to nonpool plants.

An extension of the current suspension is warranted on the basis of the foregoing information. The extension will enable Western General and other handlers to handle their reserve milk supplies efficiently and assure that the milk of dairy farmers who supply the fluid needs of the market will continue to be pooled until such time as the hearing proceeding is completed.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for this action were fully explored at a public hearing held on March 18–20, 1986, where all interested parties had an opportunity to testify concerning the proposals.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the following language in § 1136.13(c) of the Great Basin milk order is hereby suspended for the month of May 1986 and continuing until the rulemaking proceeding relating to the merger of the Great Basin and Lake Mead Federal milk orders has been completed:

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR Part 1136 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

§ 1136.13 (Amended)

2. Section 1136.13(c)(2) is suspended.

3. Section 1136.13(c)(3), the language "*Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;" is suspended, and

4. In § 1136.13(c)(4), the language "*Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;" is suspended.

Effective date: Upon publication in the Federal Register.

Signed at Washington, D.C. on May 28, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 86-12269 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

[REA Bulletin 345-80]

REA Specification for Totally Filled Fiber Optic Cable, PE-80

AGENCY: Rural Electrification Administration, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a new Bulletin 345-80, REA Specification for Totally Filled Fiber Optic Cable, PE-80. This action permits REA borrowers to routinely employ fiber optic cable, one of the most recent advances in communications technology, as an alternative to conventional cables utilizing copper conductors. With this alternative available, REA borrowers may utilize the latest technology in bringing the best, most cost-effective telecommunications to rural America. All manufacturers of

telecommunications cables as well as all REA borrowers may be impacted to some degree.

EFFECTIVE DATE: The incorporation by reference of the publication listed in this regulation is approved by the Director of the Federal Register as of May 28, 1986.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382-8663. The Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference a new Bulletin 345-90, REA Specification for Totally Filled Fiber Optic Cable, PE-90. Copies of the bulletin are available upon request from the address stated above. It is also available for inspection at the Office of the Federal Register, Room 8401, 1101 L Street, NW., Washington, DC 20408. These materials are incorporated as they existed on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 54317, December 1, 1983), this program is excluded form the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of the document are available upon request from the address indicated above.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA presently has no specification for fiber optic cables, so their use on the systems of REA borrowers is severely restricted. This new specification PE-90, establishes the minimum requirements for fiber optic cables that are used for direct burial, underground and aerial applications on REA-financed systems. The conductors are solid glass waveguides consisting of a cylindrical core surrounded by protective coverings. The cables are used as the transport media for transmission of voice, data, pictures and signals between telephone subscribers. Fiber optic cables have lower attenuation loss and increased bandwidth when compared to copper pairs in conventional telephone cable. This allows for high capacity transmission systems at lower cost to meet initial requirements and at the same time provide for future growth in an economical manner. The specification also requires properties which will assure that the fiber optic cables are capable of withstanding the rigors of conventional installation methods and providing reliable long-term service. Neither manufacturing techniques nor purchase price will be adversely affected by this action.

A Notice of Proposed Rulemaking was published in the Federal Register on October 7, 1985, Volume 50, No. 194, page 40865. The following four comments were received concerning the proposal:

1. The core ellipticity should be increased from 2 percent to 6 percent which would still be within the core diameter specification of 50±3 micrometers.

2. The numerical aperture (NA) of .20±.02 should be expanded to .24±.02 or to .22±.02 because computerized lathes allow improved bandwidths with a larger NA.

3. The compound flow test parameters should be rewritten to remove any ambiguity.

4. The limit of 0.1 dB/km following temperature and humidity exposure should be expanded to allow a change of 0.2 dB/km because of measurement uncertainty.

REA's response to these comments is summarized as follows:

1. From a strictly dimensional consideration of individual fibers a 6 percent ellipticity requirement would be reasonable but REA must look beyond the single fiber to consider the ramifications of joining two dimensionally unmatched fibers at a splice point. To effect maximum light transfer through a splice in either direction the cores should be perfectly matched. Since a zero variance would be near impossible with present fiber manufacturing technology, REA has chosen to allow the core area mismatched by ellipticity (2 percent) to be no greater than the possible core area mismatch allowed by the diameter extremes (±3 microns).

2. The goal of REA in writing PE-90 with the NA requirement of .20±.02 is to standardize realistic properties of optical fibers that are available and will yield a quality product sufficient to meet the transmission needs of rural telecommunication companies. The .20±.02 NA meets this goal of standardization of optical properties, is available from most optical fibers manufacturers and yields an acceptable bandwidth. A compromise to another NA value would contribute nothing additional to the standardization goal of REA.

3. The compound flow test of Paragraph 18 is being rewritten to prevent any misinterpretation. Paragraph 18.1 is not altered but Paragraph 18.2 is revised to allow cable specimens to be prepared extraordinarily long or to be capped to simulate the vacuum and capillary effects of inservice cable. Also a dish now must be placed immediately below the vertically suspended cable specimen. A paragraph defining failure was added: "18.3 Evidence that either the filling or flooding compound flowed or dripped from any of the suspended cable specimens shall constitute failure."

4. The limit of 0.1 dB/km following temperature and humidity exposure is necessary to reveal any flaws that may

be inherent in a fiber optic cable design submitted to REA for acceptance and listing in the REA Bulletin 344-2. The uncertainty of the measurements introduced by equipment limitation and operator repeatability is outweighed by the net benefit to the manufacturer and to REA by the 0.1 dB/km requirement compared to the 0.2 dB/km request. REA elects to keep the 0.1 dB/km requirement in the specification for qualification of totally filled fiber optic cable.

List of Subjects in 7 CFR Part 1772

Loan programs-communications, Telecommunications, Telephone, Incorporation by reference.

PART 1772—[AMENDED]

In view of the above, REA hereby amends 7 CFR Part 1772 by issuing a new Bulletin 345-50.

1. The authority cited for 7 CFR Part 1772 is revised to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1772.97 is amended by adding the entry 345-50 to read as follows:

§ 1772.97 Incorporation by reference of telephone standards and specifications.

* * * * *

345-50	PE-50	REA specification for totally filled fiber optic cable.

* * * * *

Dated: May 28, 1986.

Harold V. Hunter,

Administrator.

[FR Doc. 86-12429 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Organization Changes; Powers and Duties of Service Officers and Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service regulations to reflect a recent organization change approved by the Attorney General. The change combines the Offices of Field Inspections and Audit with Evaluation to form the new Office of Program Inspection. This change is made to improve the management, direction and control of Service programs and enhance overall efficiency of the Service.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: Robert A. Anderson, Director, Office of Program Inspection, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4097.

SUPPLEMENTARY INFORMATION: On October 4, 1985, the proposed reorganization of the Office of the Commissioner of the Immigration and Naturalization Service was approved by the Attorney General. Notification of the Service's reorganization was then sent to the Office of Management and Budget, and finally, to the Congress for their approval. This reorganization allows the Office of Evaluation to combine functions with the Office of Field Inspections and Audit to form a new unit titled the Office of Program Inspection. The combination of these offices will aid the Service in achieving the goal of improving performance and effectiveness of INS programs.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates solely to agency organization and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This rule is not a rule as defined in section 1(a) of E.O. 12291 as it relates to agency organization and management.

List of Subjects in 8 CFR Parts 100 and 103

Administrative practice and procedure, Authority delegation, Organization and functions.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103).

2. In § 100.2, paragraphs (a)(4) and (b)(2) are revised to read as follows:

§ 100.2 Organization and functions.

(a) * * *

(4) *Office of Program Inspection.* Headed by the Director for Program Inspection who is subject to the general supervision and direction of the Comissioner and who supervises, directs, and coordinates the Field Inspections and Program Audit and the Evaluation and Productivity Improvement Programs.

(b) * * *

(2) *Office of Management.* Headed by the associate Commissioner for Management who is responsible for planning, developing, directing, coordinating, and reporting on Service management programs and activities and participating in formulating Service management policies. The Associate Commissioner for Management directly supervises:

(i) Office of the Comptroller,

(ii) Personnel and Training Division,

(iii) Administration Division, and

(iv) Office of Equal Employment Opportunity.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICER; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103).

4. In § 103.1, paragraphs (d) and (j) are revised to read as follows:

§ 103.1 Delegations of Authority.

* * * * *

(d) *Associate Commissioner for Management.* Under the direction of the Deputy Commissioner, the Associate Commissioner for Management is delegated authority and responsibility for program planning, development, coordination, counseling, and staff direction of the Comptroller, Personnel and Training, Administration, Equal Employment Opportunity programs and general direction to and supervision of:

(1) Comptroller,

(2) Assistant Commissioner for Personnel and Training,

(3) Assistant Commissioner for Administration, and

(4) Director for Equal Employment Opportunity.

* * * * *

(j) *Director for Program Inspection.* Under the direction of the Commissioner, the Director for Program Inspection is delegated the responsibility for program planning, development, coordination, and execution of field inspections and program audits; program evaluation and productivity improvements; the decision memo process; and executive video reports. The Director reports to the Commissioner, in a timely manner, the results and recommendation of all completed studies and reports.

* * * * *

Dated: May 29, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 12362-88 Filed 6-1-88; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0574]

Rules for Delegations of Authority; Change in Bank Control Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment of final rule.

SUMMARY: On October 21, 1982, the Board published in the Federal Register (47 FR 46838 (1982)) an amendment to a final rule which expanded the delegated authority of the General Counsel to include authority to revoke acceptance of and return a notice filed pursuant to the Change in Bank Control Act, or to extend the time during which action must be taken on such a notice where the General Counsel has determined, with the concurrence of the Board's Director of Banking Supervision and Regulation, that the notice is materially incomplete or contains material information that is substantially inaccurate. The effective date was October 21, 1982. This amendment was designated as paragraph (b)(10). Paragraph (b)(10) was then inadvertently removed from the Code of Federal Regulations when the Board published on February 14, 1984, a new paragraph (b)(10), relating to public meetings concerning any application or notice filed with the Board (49 FR 5805 (1984)). This, the current paragraph (b)(10), should have been published as a new paragraph (b)(11). The Board is now publishing an amendment to reinsert the original paragraph (b)(10), and to redesignate the current paragraph (b)(10) as paragraph (b)(11).

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), or Scott G. Alvarez, Senior Attorney (202/452-3583), Legal Division, or for users of the Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 265

Authority, delegations (Government agencies), Banks, banking, Federal Reserve System.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

For the reasons set forth in the preamble, Title 12, Part 265 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for 12 CFR Part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by redesignating the current paragraph (b)(10) as paragraph (b)(11) and by adding a new paragraph (b)(10) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(b) * * *

(10) To revoke acceptance of and return as incomplete a notice filed pursuant to the Change in Bank Control Act (12 U.S.C. 1817(j)) or to extend the time during which action must be taken on a notice where the General Counsel determines, with the concurrence of the Board's Director of Banking Supervision and Regulation, that the notice is materially incomplete under the Change in Bank Control Act or the Board's regulation promulgated thereunder or contains material information that is substantially inaccurate.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-12457 Filed 6-1-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWP-10]

Amendment of Tustin MCAS H, California, And Santa Ana Orange County, CA, Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Tustin MCAS H, California, and Santa Ana Orange, County, California, control zones. These amendments are editorial only and will provide a complete and accurate description of the control zones.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649

The Rule

These amendments to Part 71 of the Federal Aviation Regulations are editorial in nature only and will correct the descriptions of the Tustin MCAS H, California, and Santa Ana Orange County, California, control zones. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor amendment in which the public would not be particularly interested.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety/control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1302(a); 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Santa Ana Orange County Airport, CA—[AMENDED].

Remove "MCAS Santa Ana (lat. 33 °42 '22 " N., 117 °49 '35 " W.)" and substitute "Tustin MCAS (lat. 33 °42 '22 " N., long. 117 °49 '35 " W.)."

Tustin MCAS H, CA—[AMENDED.

Add the following sentence to the end of the present control zone description: "However, at other times, the control zone is under control jurisdiction of Santa Ana Orange County."

Issued in Los Angeles, California, on May 21, 1986.

Wayne C. Nesemb,

Manager, Air Traffic Division.

[FR Doc. 86-12321 Filed 6-2-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. 79F-0197]

New Animal Drug Requirements for Medicated Free-Choice Feeds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations covering requirements for approval of applications for medicated free-choice feed products. The regulations will allow for an optional method of submitting data to FDA within the framework of existing requirements. This action is being taken based on a citizen petition filed jointly by the American Feed Manufacturers Association (AFMA) and the Animal Health Institute (AHI) and the agency's evaluation of current regulatory requirements. In a document published elsewhere in this issue of the Federal Register, the agency is announcing the availability of two draft guidelines, one covering the evaluation of effectiveness of new animal drugs for use in free-choice feeds and the other covering current good manufacturing practice concerning such products. These guidelines are intended to replace the existing "Cattle Medicated Block Guidelines."

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Richard P. Lehmann, Center for Veterinary Medicine (HFV-120), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-3134.

SUPPLEMENTARY INFORMATION:

Background

In the Federal Register of November 19, 1984 (49 FR 45593), FDA published a proposal to amend § 510.455 *New animal drug requirements for medicated blocks* (21 CFR 510.455) of the new animal drug regulations.

The proposal was based on FDA's evaluation of current regulatory requirements in light of a citizen petition that was filed jointly by AFMA and AHI on June 6, 1979. They requested in the petition that FDA regulate medicated blocks and similar articles as medicated feeds rather than as new animal drugs. They asked FDA to recognize that medicated blocks, liquid feed supplements, and similar "free-choice" articles are, under the provisions of the Federal Food, Drug, and Cosmetic Act (the act), "animal feeds bearing or containing new animal drugs" rather than "new animal drugs" and thus should be regulated as medicated feeds.

The petition recognized that use of medicated free-choice feeds posed questions not posed by other medicated feeds with regard to composition of the feed, stability, and consumption of the drug product. The petition contended that the information necessary to respond to these questions could be submitted in medicated feed applications and that drug sponsors and feed manufacturers are willing to provide those data. The petition stated that the drug manufacturer and the medicated feed applicant would each supply part of the data demonstrating that a safe and effective dose of the drug would be provided by a particular free-choice product. The petition suggested submission of data in master files to permit each manufacturer to retain the confidentiality of its data.

FDA evaluated the petition and concluded that the revisions suggested would simplify the approval process in a manner consistent with the act and regulations. FDA proposed to grant in substance the relief sought.

Comments

The proposal provided for a comment period of 60 days. The agency received four comments on the proposal. These comments were from an animal drug manufacturer, a manufacturer of feed blocks, an agricultural consultant, and one joint comment from two trade associations.

The agency has carefully evaluated the comments received and, in response to these comments, has modified certain aspects of the proposed regulations.

1. Comments contended that the definition of medicated blocks in proposed § 510.455(a) should indicate that medicated blocks can be produced from agglomerated feed rendered into a solid mass. This provides for production of blocks by means other than compression as stated in the proposal.

The agency concurs with the addition of "or rendered" in the definition of medicated blocks because blocks may be produced by procedures other than compression.

2. Comments contended that the term "mineral mixes" is inadequate and suggested use of the term "loose self-limiting mixtures." The comments suggested this change because free-choice supplements may contain considerably less than 50 percent mineral content by weight.

The agency does not concur with the substitution of terms because the term "mineral mixes" is used in the feed industry and has a recognized meaning as a free-choice source of minerals. Such products may also contain vitamins but do not contain significant amounts of energy, protein, or fat. The term "mineral mixes" is preferred because the suggested term "loose self-limiting mixtures" is new and has no generally recognized definition or history of use.

3. One comment suggested that terms be defined in the final regulation.

The agency does not concur because the terminology used is familiar to users of free-choice products and the regulated industry and adequately conveys the intent of the agency. The "Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Products," which is the subject of a notice published elsewhere in this issue of the Federal Register, as discussed above, has "Definition," "Research Model," and "Administrative Procedures" sections.

which expand on the practical interpretation of the regulation.

4. One comment stated that the proposed regulation failed to stress the need for validation of effectiveness by formulation and by the specific final feed manufacturing form.

The agency does not believe it is necessary for this regulation to have the emphasis suggested by the comment. Section 512 of the act (21 U.S.C. 360b) and 21 CFR Part 514 require the submission of data demonstrating effectiveness for products containing new animal drugs. The submission of data in master files does not reduce the amount of data needed to establish safety and effectiveness for products.

5. Comments stated that the proposed regulation made several references to "specific free-choice feeds" and similar wording. The comments stated that the references appeared to rule out any flexibility by the manufacturer of free-choice medicated feeds.

The agency believes that formula flexibility is necessary and that a formula type or formula matrix should be established in the master file. Firms submitting medicated feed applications would then certify that each free-choice feed was manufactured in accordance with the formula matrix established in the master file for such products. This would provide needed flexibility yet assure that such medicated feeds are within the consumption and stability patterns demonstrated.

6. The comments included proposed wording for § 510.455(e) to introduce a new term "formula matrix" and to use this term to assure flexibility for products to be approved under a medicated feed application.

The agency agrees that formula flexibility is necessary for free-choice feeds. The final regulation does not prohibit the testing of a variable product. If data submitted in the appropriate new animal drug application or master file provide for ranges of ingredients, the medicated feed applications may request approval of products formulated within the ranges of ingredients approved. Existing free-choice feed approvals are permitted to vary ingredients based on a batch formula, which may have ranges for each ingredient. The agency believes that there is no need to introduce new terms because the relief sought is already provided for.

7. Comments stated that data necessary to establish the effectiveness and safety of medicated free-choice feeds should be described by the agency. The comments requested the agency to recognize that, once the effectiveness of a new animal drug in one form and type of free-choice feed has been established for an animal class, the animal drug would then be deemed effective when provided to that animal class in another feed form if the drug is stable in the feed and consumed at efficacious levels.

The agency concurs and the guidelines referred to above address such data collection processes for medicated free-choice feeds.

8. Comments suggested that the agency allow free-choice feed manufacturers to interchange some feed ingredients without submission of a supplemental application containing additional consumption and stability data. This would permit the manufacturer to adjust the formulation according to ingredient cost. The formulation adjustments would be within ranges that would maintain product nutrient levels and would be limited to changes that would not alter the palatability of the free-choice feeds or drug stability.

The agency agrees that there is a need for flexibility in the manufacture of free-choice feeds to reflect market changes in ingredient availability and cost. The agency will allow flexibility in the level of ingredients as provided for in approved batch formulations. A medicated free-choice product may also be manufactured using interchangeable nutrients as provided for in approved batch formulations. The agency also agrees that a free-choice product may interchange nutrients where such interchange has been demonstrated to be acceptable and still be considered a "specific free-choice feed."

Conclusion

The agency has reviewed and evaluated the comments received and has revised proposed § 510.455(e) to include medicated blocks that are produced by being rendered into a solid mass. The agency has also considered the matter of free-choice products regulated as dosage form products under 21 CFR Part 520 and has concluded that products currently covered by regulations in Part 520 will for the present time remain in that part.

This final rule has further been revised to be consistent and in accord with revisions to the medicated feed regulations published in the Federal Register of March 3, 1986 (51 FR 7382). The nomenclature included in revised § 558.3 *Definitions and general considerations applicable to this part* has been adopted. Because medicated free-choice feeds pose questions not posed by other medicated feeds, the exemption from the requirement of an approved medicated feed application provided in § 558.4 does not apply to any medicated free-choice feed.

Environmental Impact

The November 19, 1984, proposal discussed the environmental impact of the proposal and concluded that neither an environmental assessment nor an environmental impact statement was required. The proposal also considered the proposed action in accordance with Executive Order 12291 and determined that the proposal rule was not a major rule as defined by that Order.

Regulatory Flexibility Act

The proposal also considered the action in accordance with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354) and concluded that the effect of the proposal would be to reduce regulatory burdens currently affecting both large and small business. FDA certified in accordance with section 605(b) of the Regulatory Flexibility Act that no significant impact on a substantial number of small entities will derive from this action.

Paperwork Reduction Act of 1980

Section 510.455(e) of this final rule contains collection of information requirements that was submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0205.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. By revising § 510.455 to read as follows:

§ 510.455 New animal drug requirements regarding free-choice administration in feeds.

(a) For the purpose of this section, free-choice administration of animal drugs in feeds involves feeds that are

placed in feeding or grazing areas and are not intended to be consumed fully at a single feeding or to constitute the entire diet of the animal. Such methods of administering drugs include, but are not limited to, medicated blocks (agglomerated feed compressed or rendered into a solid mass and cohesive enough to hold its form), mineral mixes, and liquid feed tank supplements ("lick tank" supplements) containing one or more animal drugs. The manufacture of medicated free-choice feeds is subject to the current good manufacturing practice regulations for medicated feeds.

(b) The Food and Drug Administration has concluded that there are questions about the safety and effectiveness of drugs when administered in free-choice feeds. Therefore, such methods of administration cause the drugs so administered to be new animal drugs, for which approved new animal drug applications (NADA's) are required. (See § 510.3(i)). In addition, the exemption from the requirement of an approved medicated feed application provided in § 558.4 of this chapter does not apply to any free-choice medicated feed.

(c) An NADA or supplemental NADA for products for free-choice feeding submitted for approval under section 512(b) of the act shall provide for:

(1) The manufacture of a finished product for the free-choice administration of a new animal drug. Such an approval will not provide a basis upon which an application can be approved under section 512(m) of the act; or

(2) The manufacture of a Type A medicated article for use in the subsequent manufacture of a free-choice medicated feed. The approved NADA will provide a basis upon which an application can be approved under section 512(m) of the act. Data for a specific free-choice product may, if desired, be generated and submitted to the Food and Drug Administration by the manufacturer of the free-choice feed in the form of a master file which can be referenced in the NADA or supplemental NADA submitted by the new animal drug sponsor.

(d) Approval of the NADA or supplemental NADA submitted under paragraph (c) of this section will be reflected in a regulation in Part 558 of this chapter published under section 512(i) of the act. The regulation will either state the formulation of the approved free-choice product or specify the specific free-choice administration products in which the drug is approved for use. If the approval is for a Type A medicated article, the regulation in Part 558 of this chapter will indicate that each use of the Type A medicated article in a free-choice product must be the subject of an approved supplemental NADA.

(e) An application submitted under section 512(m) of the act to provide for manufacture of a specific free-choice feed from an approved Type A medicated article will be approved if, in addition to the information required by the medicated feed application, it includes a reference to the exact formula of the product to be manufactured as follows:

(1) The formula is the same as the one published in the new animal drug regulations; or

(2) The data in a master file have been referenced in an NADA or supplemental NADA; and

(3) Use of the Type A medicated article in the specific formulation has been approved on the basis that:

(i) The formula is the same as the one for which acceptable data have been submitted in a master file by the medicated feed applicant; or

(ii) The medicated feed applicant has written authority to reference a master file that has acceptable data for the formula in question.

(Collection of information requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0305.)

Dated: May 13, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-12346 Filed 6-2-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Agri-Basics, ConAgra-Westfeeds, providing for the making of Type A medicated articles containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The Type A medicated articles are for making Type C medicated feeds for use in swine. Additionally, the list of sponsors of approved applications in the regulations is amended by adding the applicant.

EFFECTIVE DATE: June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Agri-Basics, ConAgra-Westfeeds, 1420 Minnesota Ave., Billings, MT 59101, is the sponsor of NADA 140-530 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of Type A medicated articles containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The Type A medicated articles are to make Type C medicated feeds for use in swine for maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevention of swine dysentery (vibrionic), and control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. Additionally, the regulations are amended to add Agri-Basics, ConAgra-Westfeeds to the list of sponsors of approved applications. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 82 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by adding a new sponsor entry alphabetically and in paragraph (c)(2) by adding a new entry numerically to read as follows:

§ 510.600 Names, address, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Agri-Basics, ConAgra-Westfeeds, 1420 Minnesota Ave., Billings, MT 59101	023398
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
023398	Agri-Basics, ConAgra-Westfeeds, 1420 Minnesota Ave, Billings, MT 59101.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

4. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by inserting numerically the number "023398."

Dated: May 27, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-12344 Filed 6-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 13

[Docket No. R-86-1289; FR-2229]

Procedures for Use of Penalty Mail in the Location and Recovery of Missing Children

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes the procedures under which the Department may use penalty mail to aid in the location and recovery of missing children.

EFFECTIVE DATE: July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra L. Timbrook, Chief, Mail and Transportation Branch, Office of Administrative and Management Services, Room 5176, Department of Housing and Urban Development, 451 Seventh Street, NW., Washington, DC 20410. Telephone: (202) 755-5703. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1(a) of S. 1195, Pub. L. 99-87, 99 Stat. 290, August 9, 1985, adds to Chapter 32 of title 39, United States Code, new provisions to authorize each executive department and independent establishment of the Government of the United States, to use official mail to aid in the location and recovery of missing children. The passage of S. 1195 reflects an increasing public concern with the problem of missing and exploited children.

Newly added 39 U.S.C. 3220(a)(1) directs the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Department of Justice, after consultation with appropriate public and private agencies, to prescribe general guidelines under which penalty mail may be used to assist in the location and recovery of missing children. These guidelines were published on November 8, 1985 (50 FR 46622). In addition, 39 U.S.C. 3220(a)(2) requires each executive department and independent establishment of the Government of the United States to promulgate regulations under which penalty mail sent by such departments and establishments may be used in conformance with the OJJDP guidelines.

This rule is being promulgated in compliance with 39 U.S.C. 3220(a)(2) and in conformance with the OJJDP guidelines. The rule sets forth information on U.S. Postal Service restrictions on the placement of information on envelopes, "shelf-life" restrictions on the use of missing children information, and other administrative factors which are applicable.

HUD will receive camera-ready photographic and biographical information on missing children through the National Center for Missing and Exploited Children. HUD will then give priority to the use of missing children information in mail addressed to members of the public.

The Secretary has determined that notice and prior public procedure are impracticable and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible because of the overwhelming national concern that this rule addresses. Any delay in effectiveness would clearly be counter to the national effort to locate and recover missing children.

Findings and Other Matters

Environment Impact

A Finding of No Significant Impact with respect to the environment is not necessary for this rule in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Under 24 CFR 50.20, this rule is categorically exempt because it pertains only to an administrative procedure concerning the dissemination of public information.

Regulatory Impact Analysis

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981 (E.O. 12291). Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Certification

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it pertains only to an administrative

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procedures concerning the dissemination of public information.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 15038) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, Title 28 of the Code of Federal Regulations is amended by adding a new Part 13 to read as follows:

PART 13—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

Sec.
13.1 Purpose.
13.2 Procedure for obtaining and disseminating data.
13.3 Withdrawal of data.
13.4 Reports.

Authority: The Missing Children's Assistance Act of 1984, Pub. L. 98-473, October 12, 1984; S. 1195 "Official Mail Use in the Location and Recovery of Missing Children", Pub. L. 99-87, 39 U.S.C. 3220.

§ 13.1 Purpose.

To support the national effort to locate and recover missing children, the Department of Housing and Urban Development (HUD) joins other executive departments and independent establishments of the Government of the United States in using official mail to disseminate photographs and biographical information on hundreds of missing children.

§ 13.2 Procedures for obtaining and disseminating data.

(a) HUD shall insert, manually and via automated inserts, pictures and biographical data related to missing children in domestic penalty mail directed to members of the public in the United States, its territories and possessions. These include:

(1) Standard letter-size envelopes (4⅛" X 9½");

(2) Document-size envelopes (9½" X 12", 9½" X 11½", 10" X 13"); and

(3) Other envelopes (miscellaneous size).

(b) Missing children information shall not be placed on the "Penalty Indicia", "OCR Read Area", "Bar Code Read Area", and "Return Address" areas of letter-size envelopes.

(c) Posters containing pictures and biographical data shall be placed on bulletin boards in Headquarters and Field offices.

(d) HUD shall accept camera-ready and other photographic and biographical materials solely from the National Center for Missing and Exploited Children (National Center). Photographs that were reasonably current as of the time of the child's disappearance shall be the only acceptable form of visual media or pictorial likeness used in penalty mail or posters.

§ 13.3 Withdrawal of data.

HUD shall remove all printed penalty mail envelopes and other materials from circulation or other use within a three month period from the date the National Center receives information or notice that a child, whose picture and biographical information have been made available to HUD, has been recovered or that the parent or guardian's permission to use the child's photograph and biographical information has been withdrawn. The HUD contact person shall be notified immediately and in writing by the National Center of the need to withdraw from circulation penalty mail envelopes and other materials related to a particular child.

§ 13.4 Reports.

HUD shall compile and submit to Office of Juvenile Justice and Delinquency Prevention (OJJDP), by June 30, 1987, a consolidated report on its experience in implementing S. 1195 "Official Mail Use in the Location and Recovery of Missing Children" along with recommendations for future Departmental action.

Dated: May 29, 1986.
Samuel R. Pierce, Jr.,
Secretary.
[FR Doc. 86-12449 Filed 6-2-86; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 754

Navy Affirmative Salvage Claims

AGENCY: Department of the Navy, DOD.

ACTION: Removal of part from CFR.

SUMMARY: This document removes Part 754 from title 32 of the *Code of Federal Regulations*. This action is being taken because the underlying regulation, NAVSEA Instruction 4740.4, Ship salvage operations; U.S. Navy affirmative salvage claims arising from, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Dale Uhler, (202) 697-7395.

PART 754—[REMOVED]

Accordingly, Part 754 is removed from title 32, CFR.

Dated: May 27, 1986.
Harold L. Stalling, Jr.,
CDR, JAGC, USN, Federal Register Liaison Officer.
[FR Doc. 86-12388 Filed 6-2-86; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule makes a technical change in the present Forest Service administrative appeal procedures to make explicit that legible United States Postal Service (USPS) postmarks take precedence in determining time of filing. The change is necessary to achieve consistent interpretation. The final rule is issued after consideration of public comment received on the interim rule published in the Federal Register of March 17, 1986 (51 FR 9010).

EFFECTIVE DATE: This rule is effective June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Acting Staff Assistant, National Forest System Staff, Forest Service, USDA, P.O. Box 2417, DC 20013, (202) 382-9349.

SUPPLEMENTARY INFORMATION:

Background

This amendment to Forest Service appeal procedures makes clear that when officials determine timeliness under 36 CFR 211.18(c)(4), legible USPS postmarks shall take precedence over "other evidence of mailing." Only where the USPS postmark is illegible or missing will "other evidence of mailing" be used to determine timeliness.

This action is basically a technical clarification of the rule and does not represent a change in Agency policy or intended procedures.

Analysis of Public Comment

The interim rule generated only one response concerning clarification of the definition of "filing". It was considered in the final rule language.

The response is available for review at the Office of the Deputy Chief, National Forest System, Forest Service, USDA, Room 4211, South Agriculture Building, 12th and Independence Avenues SW., Washington, DC 20250, telephone (202) 382-9349.

Regulatory Impact

Because of its technical nature, it has been determined that this rule is exempt from review procedures required by E.O. 12291. The rule will have no effect on the Nation's economy, or substantial numbers of individuals or businesses, or on the quality of the human environment. The rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, National forests.

PART 211—ADMINISTRATION [AMENDED]

Therefore, for the reasons set forth above, Subpart B—Appeal of Decisions Concerning the National Forest System, of Part 211—Administration of Title 36 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 211 is added to read as follows, and all other authority citations which appear throughout Part 211 are removed:

Authority: 30 Stat. 35, as amended, sec.1, 38 Stat. 623 (16 U.S.C. 551,472).

Subpart B—Appeal of Decisions Concerning the National Forest System

2. Revise paragraph (c)(4) of § 211.18 to read as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(c) * * *

(4) When determining time of filing, Reviewing Officers shall give precedence to United States Postal Service (USPS) postmarks over other evidence of timely filing. Filing is defined as either mailing or delivery of the appropriate documents. If documents are delivered by means other than the USPS, date of receipt determines time of filing. If the date of mailing cannot be determined from a legible USPS postmark, the Reviewing Officer may accept other evidence of timely filing. Weekends or Federal holidays are included in computing the time allowed for filing, but when the filing time would expire on a weekend or holiday, the filing time is extended to the end of the next business day.

* * * * *

Dated: May 23, 1986.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86-12367 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-11-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Eligibility To Mail Issues of a Publication at Second-Class Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule change adds a new section to the Domestic Mail Manual to incorporate changes in the Domestic Mail Classification Schedule (DMCS) concerning the eligibility requirements for entry into second-class mail of multiple "issues" of a single publication that are regularly published on the same day. Amendments to other sections of the Domestic Mail Manual are also being implemented to carry forth the intent of the Postal Rate Commission's (Commission) recommended decision in Docket No. C85-1, approved by the Governors of the Postal Service (Governors) on March 3, 1986, that publications identified in the administrative record as "Plus" publications be considered separate publications, whether called "issues" or "editions".

EFFECTIVE DATE: June 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 268-5166.

SUPPLEMENTARY INFORMATION: On April 2, 1986, the Postal Service published in the Federal Register, for comment, proposed changes in sections of the Domestic Mail Manual pertaining to issues and editions of second-class publications. 51 FR 11324-27. The changes were proposed to implement new section 200.0123 DMCS which provides that, for purposes of second-class eligibility and postage, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if it is published at a regular frequency on the same day as another regular "issue" of the same publication, and it is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, whichever is greater. As explained in the supplementary information, the proposed rule was phrased as "more than (i) . . . *and* (ii)", for greater ease of understanding. 51 FR 11325. Interested persons were invited to submit comments on the proposed changes by May 2, 1986.

Written comments were received from one third-class mailer. The commenter supported the proposed changes and also suggested that certain portions of the affected regulations be further refined and clarified to more closely reflect the intent of the DMCS change. Specifically, the commenter suggested simplifying proposed PS Form 3541-CX by including on it instructions to mailers to report the circulation figures for the issue with the lesser nonsubscriber distribution in the portion of Part A pertaining to "Issue #1" and the figures for the issue with the greater nonsubscriber distribution in the portion pertaining to "Issue #2". This would automatically establish Issue #1 as a regular issue and focus attention on the question of whether Issue #2 must be treated as a separate publication. In addition, the commenter suggested that the term "nonsubscriber copies" be defined on the form to conform to the text of DMM section 425.225b.

We have modified the commenter's suggestion and will require designation of Issue #1 as the one with the lesser nonsubscriber distribution. This will automatically identify Issue #2 as the one with the greater nonsubscriber distribution and will simplify the task of identifying the "parent periodical" and determining whether the issue with the greater nonsubscriber circulation should be treated as a separate publication.

We have not gone as far as the commenter has suggested in clarifying the term "nonsubscriber" on PS Form 3541-CX because of our desire to keep the form as uncomplicated as possible. Postal Service personnel are being instructed to interpret the term consistently with DMM section 422.221.

The commenter also suggested that the Postal Service further clarify the regulations pertaining to the records that are necessary to substantiate eligibility for second-class mail privileges of those publications which are determined to be separate publications under the new regulations. We believe that the regulations themselves, and current related DMM regulations pertaining to maintenance and verification of appropriate publisher records, are sufficient to ensure compliance with the intent and purpose of the Commission and the Governors relative to establishing independent second-class eligibility.

Finally, section 425.2 has been revised to make it clear that the restrictions on issues and editions therein apply only to eligibility for second-class rate status.

Accordingly, the Postal Service hereby adopts the following final regulations on this subject as amendments to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973aa–1, 1973aa–2, 1973aa–6.

PART 4—SECOND-CLASS MAIL

422.2 General Publications

2. Revise 422.221 to read as follows:

.22 Circulation Requirements

.221 List of Subscribers. General publications must have a legitimate list of subscribers who have paid or promised to pay, at a rate above a nominal rate, for copies to be received during a stated time. Records for subscriptions to a publication which are obtained in conjunction with subscriptions to another publication or other publications must be maintained in such a manner that individual subscriptions to each publication, by title, can be substantiated and verified. Persons whose subscriptions are obtained at a nominal rate (see 422.222) shall not be included as a part of the legitimate list of subscribers. Commingled copies sent in fulfillment of subscriptions obtained at a nominal rate must be charged with postage at regular rates (see 411.21 and 411.4).

422.6 Requester Publications

3. Revise 422.6d to read as follows:

d. Effective October 1, 1952, the publication must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies of the publication which are paid for or promised to be paid for, including those at or below a nominal rate, may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration. Records of requests for a publication which are obtained in conjunction with subscriptions or requests for another publication or other publications must be maintained in such a manner that individual requests for the publication, by title, can be substantiated and verified. Requests which are more than three years old will not be considered to meet this requirement.

4. Revise 425.2 to read as follows:

425.2 Issues and Editions

.21 General. Issues and editions of a second-class publication may be mailed at the applicable second-class rates in 410, provided they exhibit the continuity required in 421.1 and satisfy the additional requirements in 425.22 and 425.23.

.22 Issues.

.221 Issues must be published in accordance with the publication's stated frequency (see 421.22).

.222 The publication of regular issues of general and requester publications must be reflected in the identification statement (455.2) and subscription proce. In the case of requester publications, copies must be distributed to requesters in accordance with 422.6d.

.223 Extra issues, not reflected in the publication's stated frequency, publishd for the purpose of communicating news and information received too late for insertion in the regular issue, but not for advertising purposes, may occasionally be mailed at second-class rates. The original entry post office must be notified in writing of such issues before they are mailed.

.224 For second-class purposes, issues may contain annual reports, directories, lists, and similar texts as a part of the contents. Copies of such issues shall not bear designations indicating they are separate publications such as annuals, directories, catalogs, yearbooks, or other types of separate publications. Such issues must bear the publication name as required by 455.1 and be included in the regular annual subscription price.

.225 An "issue" of a newspaper or other periodical shall be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, when the following conditions are met:

a. It is published at a regular frequency, such as once each week, on the same day as another regular "issue" of the same publication, and

b. More than 10% of the total number of its copies are distributed to nonsubscribers to the other regular issue published on that day, AND the number of copies distributed to people who do not subscribe to the other issue is more than twice the number of copies of the other regular "issue" published on the same day which are distributed to nonsubscribers.

.23 Editions

.231 Individual issues may be mailed at second-class rates in editions such as demographic, morning or evening editions. Subscribers and requesters will routinely receive no more than one edition of any issue.

.232 Extra editions may be mailed at second-class rates for the purpose of communicating additional news and information received too late for insertion in the regular edition. Such editions may not be intended for advertising purposes.

.233 Editions may differ in content, but not to the extent that they constitute separate and independent publications. Separate publications will not be accepted for mailing as editions of another publication.

5. Revise 444.1 to read as follows:

444.1 Change in Title, Frequency, or Office of Publication

An application for reentry must be filed on Form 3510, Application for Additional Entry or Reentry of Second-Class Publication, whenever the name, frequency of issuance, location of the known office of publication, or qualification category (see 422) is changed. When the name or frequency of issuance of a publication is changed, a Form 3510 must be filed at the post office of original entry with two copies of the publication showing the new name or frequency. When the frequency is being changed to include more than one regular "issue" on any day, PS Form 3541–CX must be completed by the publisher and submitted with Form 3510.

BILLING CODE 7710-12-M

U.S. POSTAL SERVICE

SECOND-CLASS CERTIFICATION FOR MULTIPLE ISSUES ON THE SAME DAY

INSTRUCTIONS

1. Complete this form and attach it to Form 3510, Application for Additional Entry, Reentry or Special Rate Request for Second-Class Publication, when the frequency of a second-class publication is being changed to include more than one "issue" on any day *(see 444.1, DMM)*.
2. This form must also be submitted to each office of mailing with all Forms 3541 and 3541-A for each "issue" of a second-class publication that is regularly published on the same day as another "issue" of the same publication.
3. The figures reported must be for the "issues" published on the same day and must include all copies of all editions of the "issues" identified as issues No. 1 and No. 2 which are circulated through the mails and by all other methods of distribution.

PART A – TO BE COMPLETED BY PUBLISHER/AGENT

Title of Publication	USPS Number	Date of Issue

ISSUE No. 1 (The issue distributed to the smaller number of nonsubscribers.)		Vol. Issue Number
1a. Total number of copies of issue distributed by all means.		1a.
1b. Total number of copies of issue distributed to NONSUBSCRIBERS. (See DMM 422.221)		1b.
1c. Percent of copies distributed to nonsubscribers (decimal format) 1b. divided by 1a. =		1c.
1d. Convert 1c. to percent format: (i.e., 17 X 100 = 17%)	1c. X 100 =	1d. %

ISSUE No. 2		Vol. Issue Number
2a. Total number of copies of issue distributed by all means.		2a.
2b. Total number of copies of issue distributed to NONSUBSCRIBERS to the other issue.		2b.
2c. Percent of copies distributed to nonsubscribers (decimal format) 2b. divided by 2a. =		2c.
2d. Convert 2c. to percent format: (i.e., 17 X 100 = 17%)	2c. X 100 =	2d. %

I certify that the information furnished on this form is correct.	Signature of Publisher/Agent required

PART B – TO BE COMPLETED BY ENTRY POST OFFICE

Post Office and State of Mailing

INSTRUCTIONS

1. Check Part A to be sure the publisher has included circulation figures for the issue with the smaller nonsubscriber distribution in the section for Issue No. 1.
2. If the date on this form indicates that "issue" No. 2 is a separate publication, that "issue" may not be mailed at the second-class rates under the authorization granted to the publication named in PART A.
3. It must instead independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, DMM, or be mailed at third- or fourth-class rates.

Copy the figures for 1b, 2b and 2d furnished by the publisher in PART A in the corresponding spaces below. You must calculate 1a below using the publisher's figures.

1b. _____ X 2 = _____ 1a.

For purposes of determining eligibility to mail at second-class rates.

ISSUE No. 2 will be treated as a SEPARATE PUBLICATION if 2b. is greater than 1a. and 2d. is greater than 10%.

2b. _____ 1a. _____ 2d. _____

Based on the data on this form, ISSUE No. 2 is a separate publication: ☐ YES ☐ NO

PS Form 3541-CK, Apr. 1986

Exhibit 484a

BILLING CODE 7710-12-C

9. Add new section 424 as follows:

424 Statement of Publication of More Than One Issue on the Same Day

The publisher must submit PS Form 3541–CX whenever the publisher desires to mail an "issue" that is regularly published on the same day as another "issue" of the same publication under a single second-class permit granted to the parent publication. This form is necessary to determine whether either "issue" will be treated as a separate publication for purposes of determining eligibility to mail at the second-class rates (see 425.225). The publisher must attach the completed form(s) to the mailing statement(s) submitted to each office where mailings are made. A sample of PS Form 3541–CX is shown in Exhibit 424a.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided in 39 CFR 111.3.

Fred Eggleston,
Assistant General Counsel, Legislative Division.

[FR Doc. 86–12285 Filed 6–2–86; 8:45 am]
BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3024–9]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The State of Indiana submitted to USEPA Rule 325 IAC 13–2, Motor Vehicle Tampering and Fuel Switching. USEPA is approving this addition to the Indiana State Implementation Plan (SIP) as contributing to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) in Indiana.

EFFECTIVE DATE: This final rulemaking becomes effective on July 3, 1986.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois, 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner (312) 886–6036.

SUPPLEMENTARY INFORMATION: On July 31, 1985 (50 FR 30960), USEPA proposed approval of Rule 325 IAC 13–2, Motor Vehicle Tampering and Fuel Switching. A detailed discussion of USEPA's action can be found in the notice of proposed rulemaking and the technical support document which is available at USEPA's Region V office.

During the 60 day public comment period, USEPA received no comments on this proposed action.

USEPA reviewed the requirements of 325 IAC 13–2 in relation to the applicable portions of the Clean Air Act and has found that the Indiana anti-tampering provisions are consistent with Section 211 of the Act, and 40 CFR Part 80 Subpart B. As a result, USEPA approves 325 IAC 13–2 as an addition to the Indiana SIP.

USEPA notes that Indiana submitted the regulation without requesting specific emission reduction credits in its air quality attainment and maintenance plans due to implementation of this rule. Although it is not Agency policy to assign specific credits for this activity, USEPA believes that enforcement of this rule is an important part of the efforts to reduce the incidence of vehicle tampering and fuel switching and the related emissions of Carbon monoxide, hydrocarbons and oxides of nitrogen.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air pollution control, Incorporation by reference, Ozone, Nitrogen dioxide, Lead, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 27, 1986.

Lee M. Thomas,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(58) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(58) On November 13, 1984, Indiana submitted 325 IAC 13–2, Motor Vehicle Tampering and Fuel Switching.

(i) Incorporation by reference.

(A) Indiana Rule 325 IAC 13–2, Promulgated by the State on September 24, 1984.

[FR Doc. 86–12436 Filed 6–2–86; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3025–2; NC–017]

Approval and Promulgation of Implementation Plans, North Carolina; 1978 SIP Update

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 31, 1978, the North Carolina Department of Natural and Economic Resources submitted for EPA's approval an updated version of its State implementation plan (SIP). (North Carolina's original SIP was approved by EPA on May 31, 1972). EPA did not act on the submittal at the time because of the editorial nature of the revisions made for this update. Since the regulations were recodified in the updated version, EPA feels that formal action is now needed to avoid confusion, and today approves the 1978

version of the North Carolina regulations. EPA is also removing 40 CFR 52.1774, which states EPA approval of specific North Carolina compliance schedules, since the schedules are now irrelevant—none has a final compliance date after 1975.

EFFECTIVE DATE: These actions will be effective on August 4, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch, EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Janet Hayward, Air Programs Branch, EPA Region IV, at the above address, telephone 404-347-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: In awarding air program support grants to its states for fiscal year 1978, EPA Region IV set as a condition that the grantees should update their SIP to take into account changes that had taken place since the original SIP approval of May 31, 1972 (37 FR 10858). North Carolina complied with an updated SIP submitted on March 31, 1978.

In updating its SIP, the State complied with a directive from the North Carolina legislature that all State agency regulations be put into the same format as part of the North Carolina Administrative Code. The regulation numbering system used for the 1972 SIP, the basis for the regulatory citations found in 40 CFR 52.1774, was replaced with a new one. Also, a number of other editorial changes were made. Most of these changes were made to update titles or dates and require no comment. Three changes merit mention, however.

In the 1972 regulations, Section IV, Emission Control Standards, contained graphs to show allowable emission rates between rates shown in the applicable tables. The 1978 version gave instead an equation to calculate the rates not given in the process weight tables; the actual limits did not change from 1972 to 1978.

Also, ¶ 1.10(1) of the same Section, recodified in the 1978 SIP as 15 NCAC 2D.0503(b), lacked wording found in the 1978 version; this wording is italicized in the following quotation: "When any products or by-products of a manufacturing process are burned for *the same purpose, or in conjunction with any fuel*, the same maximum emissions limitations shall apply." This was apparently to correct an omission in the 1972 version of the regulations. Finally, a new regulation, 15 NCAC 2D.0523, was added for conical burners; this had not been previously submitted for EPA approval and EPA has no record of its having been given public hearing. Accordingly, today's approval action does not apply to regulation 2D.0523.

The following table summarizes the changes which were made in regulation numbering and organization from the 1972 version to the 1978 version of the North Carolina SIP.

1972 No.	Title	1978 No.	Title
I	Definitions	2D.0100	Same.
		.0101	Words.
		.0102	Phrases.
II-1	Control and prohibition of open burning	2D.0520	Same.
II-1.0	Purpose	2D.0520(a)	Same.
II-1.1, II-1.2	Scope	2D.0520(b)	Same.
II-1.3	Permissible open burning	2D.0520(c)	Same.
II-2	Control and prohibition of visible emissions	2D.0521	Control of visible emissions.
II-2.0	Purpose	2D.0521(a)	Same.
II-2.1	Scope	2D.0521(b)	Same.
II-2.2	Restrictions applicable to existing installations	2D.0521(c)	Installations existing as of July 1, 1971.
II-2.3	Restrictions applicable to new installations	2D.0521(d)	Installations established after July 1, 1971.
II-3	Classification for air contaminant sources	2D.0201	Classification of air contaminant sources.
II-3.0	Purpose	2D.0201(a)	Same.
II-3.1	Scope	2D.0201(b)	Same.
II-4	Registration of air contaminant sources	2D.0202	Same.
II-4.0	Purpose	2D.0202(a)	Same.
II-4.1	Scope	2D.0202(b)	Same.
II-5	Control and prohibition of odorous emissions	2D.0522	Same.
II-5.0	Purpose	2D.0522(a)	Same.
II-5.1	Scope	2D.0522(b)	Same.
II-6	Compliance with emission control standards	2D.0501	Same.
II-6.0	Purpose	2D.0501(a)	Purpose and scope.
II-6.1	Scope		
II-7	Air pollution emergencies	2D.0300	Same.
II-7.0	Purpose	2D.0301	Same.
II-7.1	Episode effects	2D.0302	Same.
II-7.2	Emission reduction plans	2D.0303	Same.
II-7.3	Preplanned abatement program	2D.0304	Same.
II-7.4	[Title lacking]		
	Table I Emission reduction plan—Alert level	2D.0305	Same.
	T. II Emission reduction plan—Warning level	2D.0306	Same.
	T. III Emission reduction plan—Emergency level	2D.0307	Same.
III	Ambient air quality standards	2D.0400	Same.
III-1.0	Purpose	2D.0401	Same.
III-1.10	Sulfur dioxide	2D.0402	Same.
III-1.11	Sampling and analysis	2D.0402(a)	[Title lacking].
III-1.20	Suspended particulates	2D.0403	Same.
III-1.21	Sampling and analysis	2D.0403(a)	[Title lacking].
III-1.30	Carbon monoxide	2D.0404	Same.
III-1.31	Sampling and analysis	2D.0404(a)	[Title lacking].
III-1.40	Photochemical oxidants	2D.0405	Same.
III-1.41	Sampling and analysis	2D.0405(a)	[Title lacking].
III-1.50	Hydrocarbons	2D.0406	Same.
III-1.51	Sampling and analysis	2D.0406(a)	[Title lacking].
III-1.60	Nitrogen dioxide	2D.0407	Same.
III-1.61	Sampling and analysis	2D.0407(a)	[Title lacking].
IV	Emission control standards	2D.0500	Same.

1972 No.	Title	1979 No.	Title
N-1.00	Purpose	2D.0502	Same.
N-1.10	Control and prohibition of particulate matter emissions from fuel burning sources.	2D.0503	Control of particulates from fuel burning sources.
N-1.20	Control and prohibition of particulate matter emissions from wood burning indirect heat exchangers.	2D.0504	Particulates from wood burning indirect heat exchangers.
N-1.30	Control and prohibition of particulate matter emissions from refuse burning equipment.	2D.0505	Control of particulates from refuse burning equipment.
N-1.40	Control and prohibition of particulate matter from hot mix asphalt plants	2D.0506	Control of particulates from hot mix asphalt plants.
N-1.50	Control and prohibition of particulate matter emissions from chemical fertilizer manufacturing plants.	2D.0507	Particulates from chemical fertilizer manufacturing plants.
N-1.60	Control and prohibition of particulate matter from pulp and paper mills	2D.0508	Control of particulates from pulp and paper mills.
N-1.70	Control and prohibition of the emission of particulate matter from plants engaged in the processing of rice or feldspar.	2D.0509	Particulates from rice or feldspar processing plants.
N-1.80	Control and prohibition of particulate matter from materials handling in sand, gravel and crushed stone operations.	2D.0510	Particulates: Sand, gravel, crushed stone operations.
N-1.90	Control and prohibition of particulate matter and sulfur dioxide from lightweight aggregate processes.	2D.0511	Particulates, SO_2 from lightweight aggregate processes.
N-8.00	Control and prohibition of particulate matter emissions from plants engaged in the finishing of wood products.	2D.0512	Particulates from wood products finishing plants.
N-8.10	Control and prohibition of particulate matter emissions from Portland cement plants.	2D.0513	Control of particulates from Portland cement plants.
N-8.20	Control and prohibition of particulate matter emissions from existing ferrous jobbing foundries.	2D.0514	Control of particulates from ferrous jobbing foundries.
N-8.30	Control and prohibition of particulate matter emissions from miscellaneous industrial processes.	2D.0515	Particulates from miscellaneous industrial processes.
N-8.40	Control and prohibition of the emission of sulfur dioxide from fuel burning installations.	2D.0516	Sulfur dioxide emissions from fuel burning installations.
N-8.50	Control and prohibition of sulfur dioxide emissions from plants producing sulfuric acid.	2D.0517	SO_2 emissions from plants producing sulfuric acid.
N-8.60	Control of hydrocarbon emissions from stationary sources	2D.0518	Same.
N-8.70	Control of nitrogen dioxide emissions	2D.0519	Same.

The original (1972) regulation numbers given above are cited in the compliance schedules of 40 CFR 52.1774. None of these schedules is still relevant to existing air pollution control activity in North Carolina. Accordingly, EPA is removing them from the Code of Federal Regulations.

Final Action

Since the changes in the 1979 North Carolina regulations are editorial in nature, EPA find it appropriate to approve them without prior proposal. The same holds for the deletion of the obsolete compliance schedules. These are noncontroversial amendments and no adverse comments are anticipated. These actions will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effect date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 4, 1986.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the Unites States Court of Appeals for the appropriate circuit by August 4, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b) I certify that SIP revisions do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the North Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: May 27, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

2. In § 52.1770 is amended by adding paragraph (c)(41) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(41) Updated air pollution control regulations submitted on March 31, 1978, by the North Carolina Department of Natural and Economic Resources. (No action is taken to approve regulation 2D.0523.)

(i) Incorporation by reference

(A) NCAC Title 15, Dept. of Natural and Economic Resources, Chapter 2, Environmental Management, Recodification and other editorial revisions in regulations, effective February 1, 1978.

(ii) Other material—None

§ 52.1774 [Removed and Reserved]

3. Section 52.1774, Compliance schedules, is removed and reserved.

[FR Doc. 86-12440 Filed 6-2-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3025-1; TN-007]

Approval and Promulgation of Implementation Plans, Tennessee; 1982 Carbon Monoxide Nonattainment Plan, for Nashville-Davidson County

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of the 1982 State Implementation Plan revisions which the State of Tennessee submitted on June 14, 1985, for the Nashville-Davidson County carbon monoxide nonattainment area. These revisions meet the requirements of the Clean Air Act (CAA) and EPA policy. The intended purpose of this action is to provide for

attainment of the National Ambient Air Quality Standards for carbon monoxide (CO), as required under Part D of Title I of the Clean Air Act. EPA is also removing the construction ban imposed earlier under the provisions of Section 110(a)(2)(I) of the Act.

DATES: This action will be effective August 4, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Send any comments to Waymond Blackmon, EPA Region IV, Air Programs Branch, 404/881–2864 or FTS 257–2864. You may inspect copies of the submittal and EPA's evaluation during normal business hours at the following locations:

EPA Regional IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 710 Broadway, Nashville, Tennessee 37219–5403

Copies of the submittal can be inspected during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Waymond Blackmon, EPA, Region IV, Air Programs Branch, 404/881–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: As detailed in the proposal notice of February 3, 1983 (48 FR 5068), the State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County CO nonattainment area on February 13, 1979. The State requested that EPA extend the attainment date of the CO standard in this area to December 31, 1987. EPA granted this request and conditionally approved the initial plan revison on August 13, 1980 (45 FR 53809).

Tennessee submitted its 1982 CO SIP revision for Nashville-Davidson county on June 30, 1982, and EPA proposed to disapprove it on February 3, 1983. Those revisions submitted by the State/local agency failed to provide fully approvable plans for Transportation Control Measures (TCMs), Basic Transportation Needs (BTNs), Resource Commitments, Reasonable Further Progress (RFP) and an acceptable Inspection and Maintenance (I/M) program. For a full discussion of these SIP revisions and EPA's evaluation of them, the reader may consult the February 3, 1983 (48 FR 5068), notice proposing disapproval of the CO plan and the final disapproval notice of April 5, 1984 (49 FR 13522), which stated the Agency's intent to impose funding restrictions under Section 176(b) of the Act and imposed a ban on construction of major new or modified stationary sources of carbon monoxide in the Nashville-Davidson County nonattainment area Sections 173(4) and 110(a)(2)(I) of the Act. On July 31, 1984 (49 FR 30486), EPA removed the funding restrictions of Section 176(b) and the construction ban imposed under Section 173(4); that action was based upon EPA's receipt of an approved, signed contract for the operation of the I/M program. Stationary source construction sanctions under Section 110(a)(2)(I) remained in place.

On September 13, 1985 (50 FR 37363), EPA announced final approval of the transportation control measures portion of the submittal upon receiving adopted contingency measures as required for full approval by EPA. Implementation of the I/M program started January 2, 1985, enabling EPA to give full approval to the 1982 CO SIP for Nashville-Davidson County area.

Carbon Monoxide (CO) SIP

CO violations are caused primarily by automobile emissions. They generally occur in the areas around major intersections, or in central business districts, where vehicles tend to idle for relatively long periods. EPA calls these problem areas "hot spots." The State's submittal combines a mix of mobile source strategies necessary to project attainment of the carbon monoxide standard. It is divided into seven sections:

1. Emission Inventories.
2. Modeling and Monitoring.
3. Stationary Source Controls.
4. Inspection and Maintenance (I/M).
5. Reasonable Further Progress (RFP).
6. Basic Transportation Needs (BTNs).
7. Resource Commitments.

Emission Inventory

The emission inventory for carbon monoxide (CO) was done using a typical winter workday and a three-month average temperature of 38.8° F. The inventory was done for a base year of 1982 with projection through 1987. The mobile source inventory was developed by the Metropolitan Planning Council (MPC) and the stationary source inventory was developed by the Metropolitan Health Department (MHD). The emission inventory was compiled pursuant to appropriate EPA policies and procedures. Furthermore, there were no point sources of CO greater than 1000 TPY.

Modeling and Monitoring

The State's submittal contains a detailed modeling analysis to demonstrate attainment of the CO standard by 1987 at local hot spot intersections. Fifty-one intersections were screened, and twenty-two were found to need further investigation. Upon further screening, eleven were found to need a detailed modeling analysis to determine what type of strategies would be needed to reduce the ambient CO emissions to an acceptable level. These eleven were analyzed with the Intersection Midblock Model (IMM) program. The IMM uses meteorological inputs as well as traffic parameters and emission factors for mobile sources to predict one and eight-hour concentrations of CO. These concentrations are then compared to the one and eight-hour standards for CO. Using IMM, the State demonstrated that attainment would be achieved at four of the intersections in 1990. Of the remaining seven, three were demonstrated to attain the standards by 1993 before any reduction strategies could be put into place. This left only four intersections where TCMs were needed to attain the CO standard. These four intersections were modeled using strategies of (a) road alignment, (b) throat widening, and (c) the optimization of signalization for the downtown area. From the SIP submittal it became apparent that two of these intersections would not come into compliance unless the projected improvements were made. These two intersections are Harding Road with Woodmont/White bridge, and Broadway with Eighth Avenue. These two intersections required straightening the alignment and signal optimization project to attain the CO standard. EPA proposed disapproval on February 3, 1983 (48 FR 5068) of the signal optimization program, because it was not being implemented. Subsequently, the signal optimization program has been reevaluated and its implementation is under way. EPA has concurred with these revisions. The TCMs portion of the submittal was approved on September 13, 1985 (50 FR 37363).

Stationary Source Controls

EPA policy requires that regulations for the RACT control of 1000 TPY stationary sources of CO be submitted with the 1982 SIP revision. The State of Tennessee's CO emission inventory for the Nashville-Davidson county area did not identify any source greater than 1000

TPY. Since EPA policy only requires controlling of sources greater than 1000 TPY, no stationary source RACT regulations were required to be submitted from the Metropolitan Health Department.

Inspection and Maintenance (I/M)

On April 5, 1984 (49 FR 13622), EPA disapproved Tennessee's 1982 revision to its Carbon Monoxide State Implementation Plan for the Metropolitan Nashville-Davidson county area, because of the failure to enter into a contract for operation of an I/M program. The plan submitted by the state/local agency failed to provide an acceptable I/M program. Disapproval of the CO portion of the SIP invoked a ban on the construction of major new or modified stationary sources of carbon monoxide in the Nashville-Davidson county nonattainment area as required by Section 110(a)(2)(I) of the Act (42 U.S.C. 7410(a)(2)(I)).

EPA also found that Tennessee's 1979 CO SIP for Nashville was not being implemented because the enforcement mechanism for the I/M program had not been adopted. This finding also imposed a moratorium on construction of major new or modified sources of CO in the nonattainment area under Section 173(4) of the Act. The 173(4) moratorium prohibited the issuance of any new permits to affected sources, including those which had already made a complete application before April 5, 1984, the date on which this restriction was imposed. The Agency's intent to place restrictions on grant funds under Section 176(b) of the Act was also proposed in the August 3, 1983, notice (48 FR 35314), and finalized in the April 5, 1984, notice (49 FR 13622).

However, because the issue of the appropriate formula for applying these restrictions had not been resolved, no actual funding sanctions were imposed. On May 3, 1984, EPA received the approved, signed contract for the operation of an I/M program for Nashville-Davidson County, Tennessee (start-up of I/M program in Nashville was January 2, 1986). Since this submittal demonstrated a good faith effort toward implementing an I/M program in an expeditious manner, EPA removed the construction moratorium and funding restriction imposed under 173(4) and 176(b) of the Act, respectively. (49 FR 30566, July 31, 1984)

Sanctions imposed under Section 110(a)(2)(I) of the Act remained in place until EPA could take final action on the entire CO SIP; this prohibited the issuance of permits for which a complete application had not been submitted as of April 5, 1984. Today's action to approve the entire CO SIP will revoke the sanctions imposed under Section 110(a)(2)(I) of the Act.

Reasonable Further Progress (RFP)

The SIP contained RFP graphs for the intersections that needed TCMs to attain the CO standard. These appeared to be reasonable, except that the TCMs that were adopted were not implemented because of the failure of the one-cent tax referendum and personnel shortages. Subsequently, the measure requiring return to the 1980 level of service for transit has been replaced with a "two-cent gas tax" equivalent and the ridesharing program measure from the contingency package.

Also, the signal optimization program has been reevaluated and its implementation is under way. EPA has concurred with these revisions. The TCMs portion of the submittal was approved on September 13, 1985 (50 FR 37363).

Basic Transportation Needs (BTN)

The BTN for Nashville was developed by the Metropolitan Planning Council in conjunction with the Citizen Advisory Committee (CAC) and the Technical Coordinating Committee (TCC). Working together these groups determined and selected a transportation system that would meet and enhance the transportation system's goals of increasing efficiency, quality, and mobility. An integral part of the BTN involved adopting and selecting the TCM strategies for the area. In particular, the low-cost transit emphasis package of the TCM analysis was being used to enhance the BTN for Nashville. Failure of the one-cent tax referendum placed the BTN in limbo because the low-cost transit improvements could not be implemented. EPA proposed in the February 3, 1983, Federal Register, to disapprove the BTN portion of the CO SIP. In order for the BTN to be approved, EPA asked the MPC to demonstrate that they could meet these requirements without implementing the low-cost transit improvements. The MPC could also substitute measures for those that were lost because of the failure of the one-cent gas tax.

The low-cost Transit Emphasis Package consisted of the improved bus speeds, subsidized employee transit costs, variable work hours, study of the transit fare structure, two-cent gas tax equivalent and traffic flow improvements (signal optimization project and intersection improvements). Since that time, Nashville has submitted the revised Transportation Control Plan portion and has satisfied EPA's TCP requirements by substituting measures from the contingency plan for those measures not implemented. (See 50 FR 37369 for approval of TCM portion of CO SIP.)

Resource Commitments

On September 22, 1982, EPA received a copy of a letter sent from the MPC to the MHD indicating that the one-cent gasoline sales tax referendum did not pass. It was EPA's understanding that this would prevent the implementation of the transit strategies adopted for the SIP. Furthermore, the letter stated that the Metropolitan Traffic and Parking Commission was not implementing the signal optimization program because of personnel shortages. With regard to the one-cent gas tax referendum, the MPC would have to substitute measures to replace those that would not be carried out because of the loss of revenue. EPA suggested that the MPC consider substituting measures from its contingency plan. Since that time, Nashville has submitted the revised TCP portion and has satisfied EPA's transportation control plan requirements by substituting measures from the contingency plan.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 4, 1986.

Final Action. Based upon the above discussions, EPA today is fully approving the 1982 Carbon Monoxide (CO) SIP revisions for Nashville-Davidson County, Tennessee, and revoking the moratorium imposed under the provisions of Section 110(a)(2)(I) of the Clean Air Act on the construction of major new or modified sources of carbon monoxide in the nonattainment area.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the

requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Carbon monoxide, Incorporation by reference.

Dated: May 27, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c) (56) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(56) 1982 revisions in the Part D CO SIP for the Nashville-Davidson County nonattainment area (except TCM portion approved on September 13, 1985), submitted on June 30, 1982, and June 14, 1985.

(i) Incorporation by reference.

(A) Metropolitan Health Department Pollution Control Division Regulation No. 8 for Inspection and Maintenance (I/M) adopted on May 13, 1981; and revised on June 12, 1985, and February 15, 1984.

(B) Metropolitan Nashville and Davidson County's Carbon Monoxide Reasonable Further Progress (RFP) curve adopted on May 8, 1985.

(ii) Other Material.

(A) Narrative adopted June 16, 1982.

(B) Public awareness program mechanics training program adopted May 8, 1985.

§ 52.2225 [Removed]

3. Section 52.2225, Control Strategy: Carbon monoxide and ozone, is removed.

[FR Doc. 86-12442 Filed 6-2-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 704

[OPTS-62022; FRL-3024-2]

Reporting and Recordkeeping Requirements; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: EPA has learned that a list of substances, which are the subject of a chemical-specific rule, is incorrectly set out in the Code of Federal Regulations. Some of the substances on the list have been assigned the Chemical Abstract Service (CAS) Registry numbers of other substances on the list and vice versa. This notice will revise the list of substances by correctly setting out the list and by placing the list of substances in CAS number order. This is a non-substantive change that does not require public comment.

DATE: This final rule is effective on June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

List of Subjects in 40 CFR Part 704

Hazardous materials, Imports, Environmental protection, Reporting and recordkeeping requirements.

Dated: May 22, 1986.

Don Clay,

Director, Office of Toxic Substances.

PART 704—[AMENDED]

Therefore, 40 CFR Part 704 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 704.83 is amended by revising paragraph (b) to read as follows:

§ 704.83 Chlorinated naphthalenes.

* * * * *

(b) *Substances for which reports must be submitted.*

CAS registry number	Chemical substance
90-13-1	Naphthalene, 1-chloro-
91-58-7	Naphthalene, 2-chloro-
1321-64-8	Naphthalene, pentachloro-
1321-65-9	Naphthalene, trichloro-
1335-87-1	Naphthalene, hexachloro-
1335-88-2	Naphthalene, tetrachloro-
1335-30-4	Naphthalene, 1,5-dichloro-
1825-31-6	Naphthalene, 1,4-dichloro-
2050-69-3	Naphthalene, 1,3-dichloro-
2050-72-6	Naphthalene, 1,6-dichloro-
2050-73-7	Naphthalene, 1,7-dichloro-
2050-74-8	Naphthalene, 1,8-dichloro-
2050-75-1	Naphthalene, 2,3-dichloro-
2065-70-5	Naphthalene, 2,6-dichloro-
2198-75-6	Naphthalene, 1,2-dichloro-
2198-77-8	Naphthalene, 2,7-dichloro-
2234-13-1	Naphthalene, octachloro-
25586-43-0	Naphthalene, chloro-
32241-08-0	Naphthalene, heptachloro-
70776-03-3	Naphthalene, chloro derivatives.

* * * * *

[FR Doc. 86-12360 Filed 6-2-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, 78, and 94

[Gen Docket No. 82-334; FCC 86-203]

Establishment of a Spectrum Utilization Policy for the Fixed and Mobile Services' Use of Certain Bands Between 947 MHz and 40 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action disposes of a Petition for Limited Reconsideration requesting review of decisions made in the *Second Report and Order (2nd R&O)* in General Docket 82-334, FCC 85-49 (50 FR 7336; February 22, 1985) which provided expanded access to the 31.0-31.3 GHz (31 GHz) band. The petition requested that certain changes be made in the technical standards which govern mobile use of the band; and this action partially grants the request by relaxing restrictions on antenna standards in order to permit more convenient mobile operations.

EFFECTIVE DATE: June 4, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Engineering and Technology, Spectrum Engineering Division, Frequency Allocations Branch, tele: 202-653-8113.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in General Docket 82-334, FCC 86-203, Adopted April 21, 1986, and Released April 28, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230),

1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order (MOaO)*, we are considering a Petition for Limited Reconsideration filed by M/A-COM, Inc. (M/A-COM) with regard to the *2nd R&O*. The *2nd R&O* dealt exclusively with operations in the 31.0 to 31.3 GHz (31 GHz) band. M/A-COM requests modification of the antenna standard and power limit to accommodate portable/mobile operations. Examples of such applications include mobile video cameras for use in filmmaking and control of industrial robots.

2. The Commission finds merit in M/A-COM's petition and accordingly is exempting most mobile operations from any antenna requirements; however, we are retaining the transmitter output power limit of 50 mW in lieu of an alternative limit based on EIRP. This action will allow manufacturers flexibility in design of systems for mobile use while minimizing the risk of harmful interference.

Ordering Clauses

3. Accordingly, it is ordered that, under the authority contained in 47 U.S.C. 4(i), 301 and 308(r), the *Petition for Limited Reconsideration* file by M/A-COM, Inc. is granted in part and denied in part for the reasons stated above.

4. It is further ordered, that under the authority contained in 47 U.S.C. 154(j), 154(j) and 220, Parts 21, 74, 78 and 94 of the Commission's Rules are amended effective June 4, 1986, as shown below.

List of Subjects

47 CFR Part 2

Allocations.

47 CFR Part 21

Communication common carriers, Point-to-point microwave, Transmission.

47 CFR Parts 74, 78, 94 and 95

Point-to-point microwave.

Rule Changes

5. Parts 21, 74, 78 and 94 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES (OTHER THAN MARITIME MOBILE)

6. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

7. Section 21.106 is amended by revising the entry for the frequency band 31,000 to 31,300 MHz in the table and adding a new footnote 3 to the table in paragraph (c) as follows:

§ 21.106 Directional antennas.

* * * * *

(c) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels: 5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
31,000 to 31,300 [3]	NA		[1] 44	25.0						

[1] Digital Termination User Station antennas shall meet performance Standard B and have a minimum antenna gain of 34 dBi.

[3] Mobile, except aeronautical mobile, stations need not comply with these standards.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

8. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307, unless otherwise noted.

9. Section 74.536 is amended by revising the entry for the frequency band 31,000 to 31,300 MHz in the table and adding a new footnote 2 to the table in paragraph (b) as follows:

§ 74.536 Directional antenna required.

* * * * *

(b) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels: 5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
31,000 to 31,300 [2]	NA		[1] 4.0	25.0						

[1] The minimum front-to-back ratio shall be 25 dB.

[2] Mobile, except aeronautical mobile, stations need not comply with these standards.

* * * * *

10. Section 74.641 is amended by revising the entry for the frequency band 31,000 to 31,300 MHz in the table and adding a new footnote 2 to the table in paragraph (a)(1) as follows:

§ 74.641 Antenna systems.

(a) * * *

(1) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels: 5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
31,000 to 31,300 [2]	NA		[1] 4.0	25.0						

[1] The minimum front-to-back ratio shall be 25 dBi.

[2] Mobile, except aeronautical mobile, stations need not comply with these standards.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE CHANGES

11. The authority citation for Part 78 continues to read as follows:

Authority: Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, unless otherwise noted.

12. Section 78.106 is amended by revising the entry for the frequency band 31,000 to 31,300 MHz in the table and adding a new footnote 2 to the table in paragraph (a)(1) as follows:

§ 78.106 Antenna systems.

(a) * * *

(1) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels: 5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
31,000 to 31,300 [2]	8A	[1] 4.0	36.0							

[1] The minimum front-to-back ratio shall be 36 dB.
[2] Mobile, except aeronautical mobile, stations need not comply with these standards.

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

13. The authority citation for Part 94 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

14. Section 94.75 is amended by revising the entry for the frequency band 31,000 to 31,300 MHz in the table and adding a new footnote 8 to the table in paragraph (b) as follows:

§ 94.75 Antenna limitations

* * * * *

(b) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels: 5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
31,00 to 31,300 [8]	8A		14.0	36.0						

[7] The minimum front-to-back ratio shall be 36 dB.
[8] Mobile, except aeronautical mobile, stations need not comply with these standards.

* * * * *

William J. Tricarico,
Secretary.

[FR Doc. 86-10289 Filed 6-2-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-332; RM-4986, 5284]

Radio Broadcasting Services; Bedford, NH, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 243A to Bedford, New Hampshire, at the request of Richard Taylor, and Channel 299A to Hillsborough, New Hampshire, at the request of John Perry. The allotments could provide each community with its first local FM service. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 3, 1986; The window period for filing applications will open on July 7, 1986, and close on August 4, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-333, adopted May 13, 1986, and released May 27, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 is revised to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by adding the following:

§ 73.202(b) Table of Allotments.

* * * * *

(b) * * *

City	Channel No.
Bedford, NH	243A
Hillsborough, NH	299A

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12328 Filed 6-2-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-311; RM-5032, 5229]

Radio Broadcasting Services: Karns and Maryville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 226A to Karns, Tennessee, and FM Channel 299A to Maryville, Tennessee, at the request of Piedmont Partnership and Dove, Inc., respectively. The allotments could provide each community with its first FM local service. Channel 299A requires a site restriction of 10.5 kilometers (6.5 miles) northwest of Maryville. With this action, this proceeding is terminated.

DATES: Effective June 30, 1986; The window period for filing applications will open on July 1, 1986, and close on July 30, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-311, adopted May 7, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and

copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by adding the following:

§ 73.202 Table of Allotments

* * * * *

(b) * * *

City	Channel No.
Kenn, TN	228A
Maryville, TN	238A

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12329 Filed 6-2-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-318; RM-5096]

Television Broadcasting Services; Richland Center, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 45 to Richland Center, Wisconsin, as that community's first local television broadcasting service at the request of Kaul-Tronics, Inc. The assignment requires a site restriction of 2.7 miles northeast of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-318, adopted May 7, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.606(b) is amended by adding the following:

§ 73.606 Table of assignments.

* * * * *

(b) * * *

City: Richland Center, Wisconsin; *Channel No.* 45+.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12331 Filed 6-2-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5242 and 5252

Department of the Navy Federal Acquisition Regulations; Policy Concerning Navy Requests for Refunds

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: The Department of the Navy is establishing Chapter 52 and adding Subpart 5242.90, *Refunds Requirements (Spares and Support Equipment)*, Section 5242.9000, Requests for Refunds, and Subpart 5252.2, *Texts of Provisions and Clauses*, Section 5252.242-9000, Refunds, to set forth Navy policy on refunds to the Government. Existing policy included in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regualtion Supplement (DFARS) only pertains to the solicitation of voluntary refunds for overpriced items. This new rule sets forth a Navy policy with regard to requesting and obtaining contractually prescribed refunds from contractors for spare parts or items of support equipment when it is determined that the negotiated price of such parts or items significantly exceeds the intrinsic value of the parts or items.

EFFECTIVE DATE: 28 April 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney Tronic, Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Contracts and Business Management (CBM-BPC), Washington, DC 20360-5000, Telephone: (202) 692-3553/3/9.

SUPPLEMENTARY INFORMATION:

1. Background

The Navy guidance and clause at Subpart 5242.90, Section 5242.9000 and Subpart 5252.2, Section 5252.242-9000 allows the Navy to obtain a refund or a negotiated price adjustment whenever the Navy determines a price paid for a spare part or item of support equipment significantly exceeds the intrinsic value of the part or item.

Proposed rulemaking was published on December 4, 1985, at 50 FR 49619 and invited comments for 30 days ending January 3, 1986. Comments were received from seven sources, including individuals, companies, and industrial associations. The following summarizes significant comments, suggestions, and actions taken.

Inconsistent with Existing Policy

It was suggested that the Navy's refund policy is inconsistent with the intentions of the Secretary of Defense to establish a uniform refund policy for all of DOD. It was also suggested that the Navy's refund policy is prohibited by the FAR and the DFARS. The Navy does not agree. The FAR and the DFARS do not prohibit a mandatory refund policy. Rather, they are silent on this matter. The deviation which the Navy obtained from the DAR Council authorizes use of a Navy unique clause.

No Time Limit

Concern was expressed that the Navy's proposed clause did not specify a time limit for the Navy to obtain a refund. The clause has been clarified to indicate that the Navy can request a refund at any time either before or after final payment under the contract.

Inconsistent With General Contracting Principles

Concern was expressed that the Navy's proposed clause was inconsistent with general contracting principles which would not permit one party to a contract to unilaterally reopen the agreement and then either annul the agreement or renegotiate the price on the basis of information which might not have been available at the time of the original negotiations. The Navy does not agree that its clause is inconsistent with general contracting principles. The parties to a binding contract may agree to include a clause which provides for a contract price adjustment in certain circumstances, including, for example, the obtaining by one party of additional

information concerning the reasonableness of the contract price. There are many contracts which include price adjustment provisions.

Use for More Than Spare Parts

Concern was expressed that the Navy's proposed policy and clause were worded such that they could be interpreted as applying to more than spare and similar parts. The policy and the clause have been reworded to clarify that they apply only to refunds for spare parts and items of support equipment.

Applicability to Competitively Obtained Prices

It was suggested that the Navy's proposed clause should not be required in contracts awarded as a result of competition. The policy and the clause have been changed so that the clause is not required with respect to spare parts and items of support equipment whose prices are established through sealed bidding or competitive small purchase procedures.

2. Statutory and Regulatory Requirements

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and is not a "major" rule pursuant to E.O. 12291. The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply to this rule because it does not impose any additional reporting requirements on the public.

List of Subjects in 48 CFR Parts 5242 and 5252

Government procurement.

For the reasons set out in the preamble, Chapter 52 of Title 48 of the Code of Federal Regulations is established and Parts 5242 and 5252 are added to read as follows.

CHAPTER 52—DEPARTMENT OF THE NAVY ACQUISITION REGULATIONS

PART 5242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Request for refunds.

(a) *Policy.* This subpart establishes uniform policy and procedures on requesting refunds and ensuring fair and reasonable prices for spare parts or items of support equipment. Contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value after considering the impact of specified delivery terms and quantity. The intrinsic value of an item is the price an individual would expect to pay based upon the cost to manufacture, using standard labor costs, material costs, shop cost and reasonable markup for overhead and profit. The following circumstances are examples which may establish a basis for a refund or pricing adjustment:

(1) A technical or engineering analysis, such as that done by PRICE FIGHTER, results in a determination that the intrinsic value is significantly lower than the historical pricing structure.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the actual manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the value added by the prime contractor in providing the item.

(4) Postaward price reviews which indicate an increase in recent contract price which causes the price to exceed significantly the intrinsic value of the part.

(5) Postaward audit reports which identify over-charges.

(b) *Solicitation Provisions.* The contracting officer shall insert the clause at 5252.242-9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures. Heads of contracting activities are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

Subpart 5252.2—Texts of Provisions and Clauses

5252.242-9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

Refunds (Spares and Support Equipment) (April 86)

(a) In the event that the negotiated price of a spare part or item of support equipment under this contract exceeds its intrinsic value, the contractor agrees to refund the difference. The intrinsic value of an item is defined as the price an individual would expect to pay based upon the cost to manufacture, using standard labor costs, material costs, shop cost and reasonable markup for overhead and profit.

(b) At any time before or after final payment under this contract, the contracting officer may notify the contractor of any negotiated price of an item described above that, based on all information available to the contracting officer at the time of the notice, exceeds the intrinsic value of the item.

(c) The contractor shall enter into good faith negotiations for the downward repricing of the item. All information available to the Navy, whether or not available at the time the original contract price was negotiated and any additional information, including cost data, supplied by the Contractor, shall be considered in determining the amount of any refund.

(d) Refunds under an open contract shall be made by a contract modification. Refunds under closed contracts shall be made by means of a check payable to the office designated for contract administration.

(e) If agreement on a downward repricing of the item cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement concerning downward repricing is reached, and return of the item by the Navy is impractical the Contracting Officer may, with approval of the Head of the Contracting Activity, determine a reasonable refund, subject to contractor appeal as provided in the Disputes clause.

(End of Clause)

Dated: May 28, 1986.

William F. Roos, Jr.,

Lt, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-12395 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-AE-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1241

[Ex Parte No. 460]

Certification of Railroad Annual Report R-1 by Independent Accountant

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of Final Rules.

SUMMARY: On October 10, 1985 (50 FR 41008) the Commission published final rules which require Class I railroads to submit a report from an independent public accountant stating that specified data in the R-1 annual report have been examined, using agreed-upon procedures, and found to be in compliance with the Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

Subsequent to the issuance of the Final Rules, Association of American Railroads (AAR) requested that the Commission clarify the audit requirements of Schedules 209 and 210; affirm that the data audited by the independent accountants will be accorded the same procedural treatment and presumption of credibility presently accorded to the R-1 data; publish the proposed auditing procedures for comment prior to their adoption; and strike that portion of the Final Rules which imposes additional audit requirements without prior notice.

The Commission has clarified the audit requirements and reaffirms the procedural treatment and credibility of the R-1 data as requested in the AAR petition. It also has aligned the audit requirements with those originally proposed.

DATE: Effective for the R-1 annual reports for the year 1986, which are due to be filed by March 31, 1987.

FOR FURTHER INFORMATION CONTACT: William F. Moss III (202) 275-7510.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1241

Railroads; Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 11145 and 5 U.S.C. 553.

Decided: May 22, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley commented with a separate expression.

James H. Bayne,
Secretary.

[FR Doc. 86-12362 Filed 6-2-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening of fishery.

SUMMARY: The Secretary of Commerce (Secretary) announces the reopening for two days of the non-Indian commercial salmon fishery for all species except coho from the U.S.-Canadian border to Cape Falcon, Oregon. The fishery was closed on May 19, 1986, when it was projected that the harvest quota had been reached. Subsequent evaluation of landings indicated that the actual catch had been overestimated, and the fishery was reopened from May 24 through May 27, 1986. Further evaluation of landings indicates nearly 6,000 fish remain to be harvested in the troll quota. This reopening is calculated to maximize ocean harvest of chinook salmon without exceeding the established quota.

DATES: Reopening of the fishery conservation zone (FCZ) from the U.S.-Canada border to Cape Falcon, Oregon, to non-Indian commercial salmon fishing is effective at 0001 hours Pacific Daylight Time (PDT) May 30, 1986, until 2400 hours PDT May 31, 1986. Comments on this notice will be received until June 18, 1986.

ADDRESS: Comments may be mailed to the Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on an overestimate of actual catch, the Secretary may reopen that fishery for all or part of the remaining original season by publication of a notice in the Federal Register under § 661.23 in order to allow the quota to be met so long as the additional period is no less than 24 hours."

The commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, was closed at midnight, May 19, 1986 (51 FR 18796; May 22, 1986) when it was projected that the harvest quota of 33,700 chinook salmon had been caught. A subsequent evaluation of landings indicated that the original projection was based on an overestimate of actual catch, with approximately 6,900 fish remaining in the quota. Thus, the fishery was reopened for four days, from May 24 through May 27, 1986 (51 FR 19350, May 29, 1986). However, hazardous fishing conditions due to inclement weather prevented full harvest of the quota. Current evaluation of landings indicates nearly 6,000 fish remain in the quota. The Secretary therefore issues this notice to reopen the non-Indian commercial fishery in the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, for two days, from 0001 hours PDT May 30, 1986, until 2400 hours PDT May 31, 1986.

The Regional Director consulted with the Directors of the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) regarding this reopening. The Directors of WDF and ODFW confirmed that Washington and Oregon will reopen the commercial fishery in State waters adjacent to this area of the FCZ during the same time period.

Other Matters

This action is taken under § 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 29, 1986.

Carmen J. Blondin,
Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-12435 Filed 6-2-86; 4:45 pm]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 50653-5153]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the *Chionoecetes opilio* Tanner crab fishery in the Pribilof Subdistrict of the Bering Sea District of Registration Area J (Westward) must be closed in order to protect all Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for all Tanner crabs by vessels of the United States in the Pribilof subdistrict effective June 1, 1986. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective at noon, Alaska Daylight Time (ADT), June 1, 1986. Public comments on this notice of closure are invited until June 18, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J to independently manage individual Tanner crab stocks. One of these districts is the Bering Sea District, which is further divided into three subdistricts enabling management of localized Tanner crab stocks. The regularly scheduled 1986 fishing season for *C. opilio* in the Pribilof Subdistrict began on January 15, 1986 (50 FR 47549, November 19, 1985).

Reasons for this closure follow:

The optimum yield range for the entire Bering Sea District fishery for *C. opilio* Tanner crabs is 20–130 million pounds. The 1985 NMFS trawl survey indicated that 57 million pounds of male *C. opilio*, 4 inches and larger in carapace width, would be available at a desired exploitation rate of 0.58. The survey predicated that about 28 million pounds of this total would be available from the Pribilof Subdistrict.

Fishery performance, however, has indicated that a larger population of crab than was anticipated before the season was available and the catch has exceeded the survey prediction while exhibiting relatively stable catch per unit of effort (CPUE). As of May 18, 1986, approximately 70 vessels have delivered about 44 million pounds of *C. opilio* Tanner crab. Analysis of CPUE data indicates that a harvest of 50 million pounds of *C. opilio* will be achieved by noon June 1, 1986. Fishery performance has been closely monitored throughout the entire fishery. The CPUE averaged about 220 crabs per pot during January. The overall CPUE remained steady during February, March, and April with an average of about 150 crabs per pot. During May a rapid downward trend in CPUE occurred with the catch declining from about 169 to 92 crabs per pot. This indicates that the fishery has begun to deplete the remaining *C. opilio* stock and a fishery closure is necessary to conserve the reproductive capacity of the remaining stock. Due to low CPUE, the fishing fleet has already started to move out of the Pribilof Subdistrict and into the Northern Subdistrict.

In light of this information, the Regional Director has determined that the condition of the *C. opilio* Tanner crab stocks in the Pribilof Subdistrict is substantially different from the condition anticipated at the beginning of the fishing year, and that this difference reasonably supports the need to protect the Tanner crab stocks. The Pribilof Subdistrict, as defined in § 671.26(f) (1) (vi) (B), is closed by this notice until noon, ADT, August 1, 1986, at which time the closure of the entire Bering Sea District prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the the Pribilof Subdistrict of Registration Area J (Westward) will be subject to damage by overfishing unless this closure takes effect promply. NOAA therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C 1801 et seq.

Dated: May 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–12434 Filed 5–29–86; 4:47 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 108
Tuesday, June 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites public comments on a proposal to suspend for the months of June through August 1986 the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association that represents producers who supply milk for the market. The association claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

DATE: Comments are due on or before 7 days after publication in the Federal Register.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agriculture Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agriculture Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk pooled and priced under the order and thereby receive the benefits that accue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agriculture Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of June through August 1986:

In § 1065.7(c), the words "51 percent or more of the".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer would not provide the time needed to complete the required procedures and include June 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Diary Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of June through August 1986 the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a large number of the market's producers.

The cooperative states that the proposed suspension is needed because of increased production by the cooperative's members, as well as for the market as a whole, that greatly exceeds increased Class I sales. For the months of January through April 1986, Mid-Am production pooled on the Nebraska-Western Iowa order was 10.1 percent higher than for the same period of 1985, while Class I sales increased only 0.2 percent.

With the decrease in Class I sales that will accompany the closing of schools for the summer, Mid-Am states that the percentage of the cooperative's producer milk shipped to Nebraska-Western Iowa pool distributing plants is likely to fall below 51 percent. As alternatives to depooling some milk of its member producers, the cooperative would have to attempt to pool Nebraska-Western Iowa producer milk on another Federal order or ship milk to distributing plants where the milk would be received, loaded back into the truck and shipped to a manufacturing plant. Either alternative would require the cooperative to move milk in an uneconomic and inefficient manner solely to maintain the pool status of producers who historically have supplied the fluid needs of the Nebraska-Western Iowa marketing area.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC on: May 28, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 86-12266 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 151

[Docket No. 86-001]

Recognized Breeds and Books of Record

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the "Recognition of Breeds and Books of Record of Purebred Animals" regulations by adding the Irish Angus Herd Book, maintained by the Irish Angus Cattle Society Ltd., to the list of "recognized breeds and books of record" for Aberdeen-Angus cattle. It has been determined that the Irish Angus Herd Book qualifies for such listing, thereby providing for duty-free

entry into the United States of cattle which are registered in the book.

DATE: Written comments must be received on or before August 4, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 86-001. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Wagner, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8365.

SUPPLEMENTARY INFORMATION:

Background

Item 100.01 in Part 1, Schedule 1, of 19 U.S.C. 1202 (the Tariff Act of 1930, as amended) provides, in part, that animals (except for certain foxes) certified to the collector of customs by the Department of Agriculture as being pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, may enter the United States free of duty if imported for breeding purposes. Implementing regulations, captioned "Recognition of Breeds and Books of Record of Purebred Animals" (referred to below as the regulations), are set forth in 9 CFR Part 151.

In accordance with § 151.2 of the regulations, Veterinary Services issues certificates of pure breeding for certain animals. To be eligible for a certificate, an animal must be "purebred of a recognized breed and have been registered in good faith in a book of record listed in § 151.9(a) [of the regulations] and must not have been registered on inspection without regard to purity of breeding." The regulations contain lists of "recognized breeds and books of record" for cattle, horses, asses, sheep, goats, swine, dogs, and cats.

Under the regulations, purebred cattle are those which are the progeny of known and registered ancestors of the same recognized breed and for which at least three generations of ancestry can be traced. A "book of record" is defined in the regulations as: "[a] printed book or an approved microfilm record sponsored by a registry association and containing breeding data relative to a large number of registered purebred animals used as a basis for the issuance of pedigree certificates." The regulations also provide that a book of record for a breed of animal must be examined and approved by Veterinary Services before the breed and book of record are eligible to be added to the list contained in the regulations.

The custodian of the Irish Angus Herd Book, a book of record for Aberdeen-Angus cattle issued by the Irish Angus Cattle Societ Ltd., has submitted to Veterinary Services a complete copy of the book of record with a copy of all rules and forms affecting the registration of the animals in the book of record. A representative of Veterinary Services has reviewed the material submitted and has determined that this book of record meets the requirements of the regulations for addition to the list of "recognized breeds and books of record."

Therefore, this document proposes to amend the list of "recognized breeds and books of record" in § 151.9(a) of the regulations by adding as an additinal book of record for the Aberdeen-Angus breed, the "Irish Angus Herd Book," issued by the Irish Angus Cattle Society Ltd., John L. Murphy, Secretary, Agriculture House, Kildare Street, Dublin 2, Ireland.

Executive Order 12291 and Regulatory Flexibility act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

If the proposal is adopted as a final rule, Aberdeen-Angus cattle listed in the Irish Angus Herd Book will be eligible for duty-free importation into the United States. It is anticipated that the number of these Aberdeen-Angus cattle imported into the United States annually would be less than one percent of the total number of cattle imported into the United States annually.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 151

Animals, Animal pedigree, Imports, Purebred animals.

PART 151—RECOGNITION OF BREEDS AND BOOKS OF RECORD OF PUREBRED ANIMALS

Accordingly, 9 CFR Part 151 would be amended as follows:

1. The authority citation for Part 151 would be revised to read as set forth below and the authority citations following all the sections in Part 151 would be removed:

Authority: 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 151.9, the chart in paragraph (a) would be amended by adding the following after Code 1112 under the heading "Cattle":

§ 151.9 Recognized breeds and books of record.

* * * * *

(a) * * *

CATTLE

Code	Name of breed	Book of record	By whom published
1116	Aberdeen-Angus	Irish Angus Herd Book	Irish Angus Cattle Society Ltd., John L. Murphy, Secretary, Agriculture House, Kildare Street, Dublin 2, Ireland.

Done at Washington, DC, this 20th day of May 1986.

Billy G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-12424 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Division of Assets, Liabilities and Capital; Proposed Deletion

AGENCY: National Credit Union Administration.

ACTION: Proposed deletion of existing regulation.

SUMMARY: The deletion of Part 709—Division of Assets, Liabilities and Capital—is proposed because the regulation has been rarely used and is no longer needed. Special situations can be handled on a case-by-case basis without the regulation.

DATE: Comments must be received on or before August 6, 1986.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, at the above address, or telephone: (202) 357-1095.

SUPPLEMENTARY INFORMATION: NCUA requests comment on its proposal to delete Part 709 of the NCUA Rules and Regulations. Part 709—Division of Assets, Liabilities and Capital—contains provisions and procedures that enable members of a Federal credit union, who are a separately identifiable group, to undertake an equitable division of their assets, liabilities and capital, and charter a new Federal credit union. The most recent update of Part 709 was in 1973. Significant economic and policy changes have occurred since the regulation was modified. Over the past few years, there have been few, if any, "spin offs" using Part 709 of the Rules and Regulations. Accordingly, there does not appear to be a need to retain this regulation. In addition, a number of requirements contained in Part 709 are duplicated in other sections of the Regulations, Bylaws, and chartering and insurance policies. These other provisions provide adequate flexibility for special cases to be resolved when, and if, they arise.

Regulatory Procedures

The NCUA Board hereby certifies that the proposed deletion, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The elimination of the regulation will reduce regulatory burden and will not create any negative impact on credit unions.

Paperwork Reduction Act

The proposed deletion will not increase collection requirements under the Paperwork Reduction Act. Therefore, the approval of the Office of Management and Budget is not required.

List of Subjects in 12 CFR Part 709

Division of assets, Liabilities and capital, Credit unions.

By the National Credit Union Administration Board on the 21st day of May 1986.

Rosemary Brady,

Secretary of the Board.

PART 709—[REMOVED]

Accordingly, NCUA proposes to remove Part 709 from the Regulations.

Authority: 12 U.S.C. 1766, 1788.)

[FR Doc. 86-12417 Filed 6-2-86; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-124-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for proper clearance between the number two engine fuel feed tube and adjacent strut fairing fasteners on certain Boeing Model 737-300 airplanes, and adjustment or replacement, if necessary. This action is prompted by a report of a fuel leak on one airplane, resulting from chafing between the fuel tube and fasteners. This condition, if not corrected, could result in a strut fire.

DATES: Comments must be received on or before July 25, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be sumitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the subetance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

An operator of a Boeing Model 737-300 reported that, during a walk around inspection, fuel was noted to be dripping from the number two engine strut aft drain. Subsequent investigation revealed the fuel feed tube assembly had chafed through due to contact with adjacent strut fasteners.

An examination, by the manufacturer, of production line airplanes revealed several which did not meet the minumum clearance requirements of appropriate drawings.

Boeing issued Alert Service Bulletin 737-28A1062 on February 21, 1986, which describes an inspection for fuel feed tube assembly clearance and, if necessary, maintenance action to correct the clearance. This was followed by Revision 1 on April 11, 1986, which makes no substantive change from the original. Parts kits (one kit per airplane) became available in February and are now available in sufficient quantity for expected need.

Since a situation exists where chafing of the fuel feed tube assembly could contribute to a fire hazard resulting from a fuel leak in the strut, an AD is proposed that would require inspection of the number two engine fuel feed tube for proper clearance and correction of any unsafe condition found in accordance with Boeing Alert Service Bulletin 737-28A1062, Revision 1, dated April 11, 1986, or later FAA-approved revision.

It is estimated that 80 airplanes of U.S. registry would require inspection, which would require one manhour per airplane to accomplish. It is estimated that 30 airplanes of U.S. registry would require modification, which would require 5 manhours per airplane to accomplish. At an estimated labor cost of $40 per manhour, the impact of this AD on U.S. operators is estimated to be $6,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737-300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to the Model 737-300 series airplanes specified in Boeing Alert Service Bulletin, 737-28A1062, Revision 1, dated April 11, 1986, certificated in any category. To minimize the fire hazard associated with a fuel leak due to the fuel feed tube assembly chafing against strut fasteners, accomplish the following within 3 months after the effective date of this AD, unless previously accomplished:

A. Inspect and, if necessary, adjust fuel feed tube assembly clearance and replace chafed tubes in accordance with Boeing Service Bulletin 737-28A1062, Revision 1, dated April 11, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received copies of the manufacturer's Service Bulletin may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 27, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12322 Filed 6-2-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-125-AD]

Airworthiness Directives; Boeing Model 747-100SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require structural inspections and repairs or replacements, as necessary, on certain high time Boeing Model 747-100SR series airplane fuselage and nacelle struts are approaching the manufacturer's original objective fatigue design life. This AD would add the Boeing Model 747-100SR series airplanes to the "Supplemental Structural Inspection Program for Large Transport Category Airplanes" and would define structural maintenance requirements for certain identified structural components.

DATES: Comments must be received on or before July 25, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-125-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

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proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-125-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The FAA issued AD 84-21-02 on October 9, 1984, which requires the incorporation of a Supplemental Structural Inspection Document (SSID) into Boeing Model 747-100SR operators' maintenance program. This existing AD identified by serial number the candidate airplanes for the SSID program. They consisted of Boeing Model 747-100 and Model 747-200 series airplanes that had accumulated more than one-half of their design life goal. This proposed AD will add the Boeing Model 747-100SR series airplanes to the SSID program.

Because of operational procedures, the pressure-critical fuselage structure and the nacelle strut structure of a significant number of Boeing Model 747-100SR series airplanes are now approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking of the fuselage and nacelle strut on these airplanes is expected to increase as airplanes reach and exceed their goals.

Boeing has developed Document D6-35655, approved on March 22, 1986, that identifies those airplanes exceeding 12,000 landings after January 1, 1985. A list of candidate airplane serial and line numbers is listed in Boeing Document D6-35655 for the Boeing Model 747-100SR series airplanes. The candidate list will re reviewed periodically and updated if there are significant changes in fleet distribution, composition, or utilization.

To maintain adequate fleet surveillance, each operator with candidate airplanes must provide a directed inspection program for those airplanes which meet the requirements established by this document. This AD would require directed inspection programs for those airplanes (i.e. the candidate fleet), coupled with reporting of discrepancies found and, where necessary, follow-up action, to maintain structural airworthiness in the total fleet when fatigue cracking occurs.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

No airplanes of U.S. registry would be affected by this AD, therefore there is no cost impact on this AD to U.S. operators.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747-100SR airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747-100SR series airplanes listed in section 3.0 of Boeing Document No. D6-35655 "Supplemental Structural Inspection Document" (SSID), approved March 22, 1986, certified in any category. Compliance is required as indicated in the body of the AD.

To ensure the continuing structural intergrity of these airplanes, accomplish the following, unless already accomplished:

A. Within one year after the effective date of the AD, incorporate a revision into the FAA approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35655, approved March 22, 1986, or later FAA-approved revisions. The required DTR value for each SSI is listed in the document. The revision to the maintenance program must include and be implemented in accordance with the procedures in sections 5.0 and 6.0 of the SSID.

B. Cracked structure must be repaired before further flight in accordance with an FAA approved-method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modification required by this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Operators who have acceptably incorporated Boeing Document No. D6-35655, approved March 22, 1986, or later FAA-approved revisions, into their approved maintenance program are exempt from the requirements of this AD.

The FAA has requested Federal Register approval to incorporate by reference the manufacturer's Supplemental Inspection Document identified and described in this proposal.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 27, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12323 Filed 6-2-86; 8:45 am]

BILLING CODE 4910-13-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 86N-0130]

Public Information; Proposed Amendment To Exempt Certain Memoranda of Understanding From Publication

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its requirements concerning publication in the Federal Register of written agreements and understandings between FDA and other departments, agencies, and organizations. The proposed rule would exempt memoranda of understanding between FDA and State agencies from the requirement of publication and would require only periodic publication in the Federal Register of a listing of all such written agreements or understandings.

DATE: Comments by August 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Tucker, Division of Federal-State Relations (HFC-152), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3380.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 3, 1974 (39 FR 35697), FDA announced that all memoranda of understanding entered into by the agency would be published in the Federal Register for public review. Subsequently, FDA codified the policy at 21 CFR 4.108 (39 FR 44602, 44603; December 24, 1974), which was recodified at 21 CFR 20.108 (42 FR 15553, 15625; March 22, 1977). FDA took this action because, between 1948 and 1974, the agency had entered into many international agreements with foreign countries and numerous memoranda of understanding with other Federal Government agencies. At the time, there was widespread interest on the part of consumers, industry, professional groups, associations, educators, and other government agencies in the text of these memoranda and agreements.

Since 1974, FDA has published in the Federal Register all memoranda of understanding into which the agency has entered, including those with State agencies. Memoranda between FDA and State agencies are work-sharing agreements that are intended to avoid duplication of inspectional activities and to coordinate responses to emergencies (e.g., recalls). Rarely is there a significant difference between the memorandum of understanding FDA enters into with one State and the memorandum of understanding the agency enters into with another State. Consequently, FDA believes that little useful purpose is served by continuing to publish in the Federal Register the complete text of memorandum of understanding between FDA and State agencies. Accordingly, FDA is proposing to amend § 20.108 to provide that instead of publishing each memorandum of understanding that FDA enters into with a State agency, FDA will periodically publish in the Federal Register a notice that will list all such memoranda of understanding currently in effect. These memoranda would remain part of the public file (see 21 CFR 10.90(d)) and, such, would remain available for public review and dissemination upon request.

Comments

Interested persons may, on or before August 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Freedom of information.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR Part 20 is revised to read as follows:

Authority: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 et seq., as amended (42 U.S.C. 201 et seq.); Pub. L. 89-23, 81 Stat. 54-56 as amended by 86 Stat. 1297-1305; 5 U.S.C. 552; 21 CFR 5.10.

2. In § 20.108 by revising paragraph (c) to read as follows:

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

* * * * *

(c) All such agreements and understandings, except memoranda of understanding between FDA and State agencies, shall be published in the Federal Register. Periodically, but not less than once every 2 years, FDA shall publish a notice in the Federal Register listing all memoranda of understanding and agreements that are in effect between FDA and State agencies.

Dated: May 27, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-12348 Filed 6-2-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 182 and 186

[Docket No. 78N-0265]

Sodium Oleate and Sodium Palmitate; Tentative Affirmation of GRAS Status as Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Admnistration (FDA) is tentatively affirming that sodium oleate and sodium palmitate are generally recognized as safe (GRAS) as indirect human food ingredients for use in paper and paperboard products used in food packaging. FDA is also tentatively affirming that sodium oleate is GRAS for use as a component of lubricants with incidental food contact. The agency has evaluated the safety of these ingredients under the comprehensive safety review conducted by the agency. FDA is publishing this document as a tentative final rule, however, because the agency has modified proposed 21 CFR 186.1770 and 186.1771 to omit specifications for sodium oleate and sodium palmitate.

DATE: Comments by August 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 30, 1979 (44 FR 5905), FDA published a proposal to affirm that sodium oleate and sodium

palmitate are GRAS for use in paper and paperboard products used in food packaging, and that sodium oleate is GRAS for use as a component of lubricants, with incidental food contact. FDA published the proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on sodium oleate and sodium palmitate and the report of the Select Committee on GRAS Substances (the Select Committee) on sodium oleate and sodium palmitate are available for public review in the Dockets Management Branch (address above). Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of sodium oleate and sodium palmitate, FDA gave public notice that it was unaware of any prior-sanctioned uses for these substances other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of sodium oleate or sodium palmitate approved by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 186 (21 CFR Part 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert the sanction at any future time.

No reports of prior-sanctioned uses for sodium oleate or sodium palmitate were received in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for uses of these ingredients under conditions different from those set forth in the regulations has been waived.

No comments were received in response to the proposal on sodium oleate and sodium palmitate. However, in a regulation published in the Federal Register of October 19, 1983 (48 FR 48456), FDA announced that it would only include purity specifications for substances affirmed as GRAS in Part 186 for indirect use if such purity specifications were necessary based on safety considerations. In the case of sodium oleate and sodium palmitate, the agency has concluded that purity specifications are not required to ensure safety because of the extremely small exposure to sodium oleate and sodium palmitate from their use in food-packaging materials. Therefore, the agency has modified proposed §§ 186.1770 and 186.1771 by removing the specifications that were listed in those regulations. Nonetheless, under § 186.1(a) (21 CFR 186.1(a)), the ingredients must be of a purity suitable for their intended use in accordance with the provisions of 21 CFR 186.1 and 170.30(h)(1).

In addition, FDA has combined the paragraphs that described the conditions of use of these ingredients (proposed paragraphs (c) and (d)) into a single paragraph (b). This modification conforms to the amendment of § 186.1(b)(1) that FDA adopted in 1983 (48 FR 48457; October 19, 1983).

The agency has concluded that its actions not to include specifications in the regulations affirming the GRAS status of sodium oleate and sodium palmitate and to modify the paragraph on the conditions of use of these ingredients do not represent a major change from the proposed regulations. However, to afford interested persons the opportunity to comment on these actions, FDA is issuing this tentative final rule under 21 CFR 10.40(f)(6).

The agency has determined under 21 CFR 25.24(b)(7) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this tentative final rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this tentative final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact on a substantial number of small entities, and the evidence supporting these findings are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

Interested persons may, on or before August 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Recieved comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 182

Food ingredients, Spices and flavorings.

21 CFR Part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food and Safety and Applied Nutrition, Parts 182 and 186 would be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

§ 182.90 [Amended]

2. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entry for "Soap (sodium oleate, sodium palmitate)" from the list of substances.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR Part 186 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

4. By adding new § 186.1770 to read as follows:

§ 186.1770 Sodium oleate.

(a) Sodium oleate ($C_{18}H_{33}O_2Na$, CAS Reg. No. 143–19–1) is the sodium salt of oleic acidic (cis-9-octadecenoic-acid). It

exists as a white to yellowish powder with a slight tallow-like odor. Commercially, sodium oleate is made by mixing and heating flaked sodium hydroxide and oleic acid.

(b) In accordance with § 186.1(b)(1), the ingredient is used as a constituent of paper and paperboard used for food packaging, and a component of lubricants with incidential food contact in accordance with § 178.3570 of this chapter, with no limitation other than current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

5. By adding new § 186.1771 to read as follows:

§ 186.1771 Sodium palmitate.

(a) Sodium palmitate ($C_{16}H_{31}O_2Na$, CAS Reg. No. 408-35-5) is the sodium salt of palmitic acid (hexadecanoic acid). It exists as a white to yellow powder. Commercially, sodium palmitate is made by mixing and heating flaked sodium hydroxide and palmitic acid.

(b) In accordance with § 186.1(b)(1), the ingredient is used as a constituent of paper and paperboard for food packaging with no limitation other than current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-12345 Filed 6-2-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 201

[Docket No. 85N-0554]

Labeling Requirements for Over-the Counter Drugs; Proposed Amendment of Statement of Identity Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of Proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 16, 1986, the comment period for the notice of proposed rulemaking to amend the labeling requirements for over-the-counter (OTC) drugs in § 201.61(b) (21 CFR 201.61(b)). This action responds to a request to extend the comment period for an additional 30 days to allow more time for interested persons to review the proposal and to prepare meaningful comments.

DATE: Written comments by July 16, 1986.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 17, 1986 (51 FR 13023), FDA issued a notice of proposed rulemaking to amend the labeling requirements for OTC drugs in § 201.61(b) (21 CFR 201.61(b)), as follows: (1) To clarify that the statement of identity requirements apply to both single active ingredients and combinations of active ingredients, and (2) to state that OTC drug monographs established under Part 330 (21 CFR Part 330) are the source of the statement of identity of an OTC drug, unless otherwise stated in an approved new drug application, or unless there is no applicable monograph. Interested persons were given until June 16, 1986, to comment on the notice of proposed rulemaking.

In response to the proposal, The Proprietary Association requested a 30-day extension of the comment period in order to allow adequate time for the association to review the proposal. The Proprietary Association stated that the rulemaking is of significant interest to the OTC drug industry and that extending the comment period will allow greater participation by all those who will be affected by the proposal.

FDA has carefully considered the request. The agency believes that greater participation by those affected by the proposal is in the public interest, and may be of assistance in amending the statement of identity labeling requirements for OTC drug products. Thus, the agency considers a general extension of the comment period for 30 days to be appropriate.

Interested persons may, on or before July 16, 1986, submit to the Dockets Management Branch (address above) written comments concerning the notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated May 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-12343 Filed 5-29-86; 10:32 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 582]

Revision of the Boundary of the El Dorado Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to amend the approved boundary of the El Dorado viticultural area to include vineyard which was unintentionally omitted from the original petition which ATF adopted in T.D. ATF-152 (48 FR 46518). This proposal is based on a petition submitted by Mr. A.G. Boissevain, President, El Dorado Wine Grape Growers Association, Camino, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of viticultural area appellations of origin will also help wineries distinguish their products from wines made in other areas.

DATE: Written comments must be received by July 3, 1986.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of the petition and the written comments received in response to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Coordinator, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: The El Dorado Wine Grape Growers Association in Camino, California, petitioned ATF for the establishment of an American viticultural area to be

named "El Dorado." The El Dorado viticultural area is located within El Dorado County, east of Sacramento, California. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 420 (47 FR 55064), in the Federal Register on December 14, 1982, proposing the establishment of El Dorado as a viticultural area. On October 13, 1983, ATF published T.D. ATF-152 (48 FR 46518) establishing the El Dorado viticultural area. On December 13, 1984, a petition was received from Mr. A.G. Boissevain, President, El Dorado Wine Grape Growers Association, to include a vineyard just outside of the western boundary of the El Dorado viticultural area. The vineyard was unintentionally omitted when the boundaries were established along Range and Township lines rather than along a more complicated contour line of 1200 foot elevation. Mr. Boissevain stated that the petitioned for area has the same name identification, topography, soil types, amount of rainfall, elevation and temperatures as found in the El Dorado viticultural area and would be distinguished from the surrounding area.

Public Participation—Written Comments

Based on the above discussion, ATF is issuing this notice of proposed rulemaking to request comments concerning this proposed revision of the El Dorado viticultural area boundary.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas—is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 9.61(c) is amended by revising paragraph (12), designating existing paragraphs (13) through (15) as (17) through (19) respectively, and adding new paragraphs (13) through (16), to read as follows:

§9.61 El Dorado.

* * * * *

(c) * * *

(12) Thence north along the range line to its intersection with U.S. Route 50;

(13) Thence west along U.S. Route 50 to its intersection with Cameron Park Drive;

(14) Thence north along Cameron Park Drive to its intersection with Green Valley Road;

(15) Thence east along Green Valley Road to its intersection with range line R. 10 E./ R. 9 E.;

(16) Thence north along the range line to its intersection with the township line T. 10. N./ T. 11 N.;

* * * * *

Signed: May 16, 1986.

W.T. Drake,

Acting Director.

[FR Doc. 86-12245 Filed 6-2-86; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 593]

Bell Mountain Viticultural Area, Texas; Consideration of Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Texas to be known as "Bell Mountain." This proposal is the result of a petition submitted by Mr. Robert P. Oberhelman, a grape grower in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

Comment date: Written comments must be received by July 18, 1986.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 593).

Copies of the petition, the proposed regulations, the appropriate map, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4408, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. Robert P. Oberhelman, president of Oberhellmann Vineyards, proposing an area in Gillespie County, Texas, as a viticultural area to be known as "Bell Mountain." The proposed area contains about 5 square miles and is located along the southern and southwestern slopes of Bell Mountain, about 15 miles north of Fredericksburg, Texas. The petitioner states that the area's winegrape acreage consists of about 45 acres on two vineyards. There is one bonded winery operating within the area.

Name of the Area

The petitioner claims that the proposed viticultural area is known by the name of "Bell Mountain." To support this, he submitted the following evidence:

(a) Bell Mountain, which at 1,956 feet is the highest elevation in the local area, was first given this name by early settlers of the area in the mid nineteenth century.

(b) The mountain has been labeled with this name on maps of the U.S. Geological Service since the first such map published for the area in 1885.

Geography of the Area

The proposed viticultural area is distinguished geographically from the surrounding areas as follows:

(a) To the north and northeast, the area is distinguished by the steepness of the mountain slopes outside the boundaries of the area. Further, soil conditions outside the area preclude viticulture on those other slopes of Bell Mountain. The petition states: "The granite protrudes through the ground surface profusely on the Peak's northern slope, therefore making tillage impossible. For this reason, only the slopes to the south and southwest are included in the boundary of the proposed Viticultural Area."

(b) In other directions, the viticultural area is distinguished by soil types and by the topographical limits of the slopes of Bell Mountain. With respect to soil, the petition states as follows:

The soils within the boundaries of the proposed Viticultural Area are identified on the map as "pp-Pedernales-Ponototoc Association". The description reads "Non-Calcareous, sandy, loam soils, with light sandy clay subsoil. Udic Palenstalfs; Typic Rhodustalfs". These soils are unique in the general area referred to as the "Hill Country" or the Edwards Plateau in that they are slightly acid, whereas most of the soils are calcareous, or lime-bearing.

In support of his contention, the petitioner submitted a copy of a soil map from the book, *Eastern Hill Country Resource Conservation & Development Project*, published by the U.S. Department of Agriculture in 1968. This map shows that the proposed viticultural area boundaries correspond approximately to the limits of the area with soils of the pedernales-pontotoc association. This is the only occurrence of these soils shown anywhere on that map.

(c) In addition, the petition states that "The area is drier than the Pedernales valley to its south and the Llano valley to its north. It is also cooler due to its elevation, and constant breezes."

Boundaries of the Area

The boundaries of the proposed viticultural area may be found on one U.S.G.S. map of the 7.5 minute series, titled Willow City Quadrangle. The boundaries would be as described in the proposed § 9.55.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domesic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Bell Mountain viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for possible future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Mr. Steve Simon of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

PART 9—AMERICAN VITICULTURAL AREAS

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of of § 9.55, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.55 Bell Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.55, which reads as follows:

§ 9.55 Bell Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Bell Mountain."

(b) *Approved maps.* The appropriate map for determining the boundaries of the Bell Mountain viticultural area is one U.S.G.S. map, titled: Willow City Quadrangle, 7.5 minute series, 1987.

(c) *Boundary*—(1) *General.* The Bell Mountain viticultural area is located in Gillespie County, Texas. The starting point of the following boundary description is the summit of Bell Mountain (1,958 feet).

(2) *Boundary Description*—(i) From the starting point, the boundary proceeds due southward for exactly one half mile;

(ii) Then southeastward in a straight line to the intersection of Willow City Loop Road with an unnamed unimproved road, where marked with an elevation of 1,773 feet;

(iii) Then generally southward along Willow City Loop Road (a light-duty road) to Willow City.

(iv) Then continuing southward and westward along the same light-duty road to the intersection having an elevation of 1,864 feet;

(v) Then continuing westward along the light-duty road to the intersection having an elevation of 1,702 feet;

(vi) Then turning southward along the light-duty road to the intersection having an elevation of 1,736 feet;

(vii) Then turning westward along the light-duty road to the intersection having an elevation of 1,784 feet;

(viii) Then turning southward and then westward, following the light-duty road to its intersection with Texas Highway 16, where marked with an elevation of 1,792 feet;

(ix) Then due westward to the longitude line 98° 45';

(x) Then northward along that longitude line to a point due west of an unnamed peak with an elevation of 1,784 feet;

(xi) Then due eastward to the summit of that unnamed peak;

(xii) Then in a straight line eastward to the intersection of an unnamed unimproved road with Texas Highway 16, where marked with an elevation of 1,522 feet;

(xiii) Then following that unnamed road, taking the right-hand fork at an intersection, to a point due west of the summit of Bell Mountain;

(xiv) Then due eastward to the summit of Bell Mountain.

Approved: May 19, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-12240 Filed 6-2-86; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 556]

Revision of the Boundary of the Monticello Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to amend the approved boundary of the Monticello viticultural area to include vineyards which were omitted from the original petition which ATF adopted in T.D. ATF-184 (49 FR 2737). This proposal is based on a petition submitted by Edward W. Schwab, Autumn Hill Vineyards, located in Stanardsville, Virginia. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of viticultural area appellations of origin will also help wineries distinguish their products from wines made in other areas.

DATE: Written comments must be received by July 3, 1986.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of the petition and the written comments received in response to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Room 4408, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Coordinator, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: Six wine grape growers in the Charlottesville area of Virginia first petitioned ATF to establish a viticultural area to be known as "Monticello." In response to the petition, AFT published a notice of proposed rulemaking, Notice No. 309 (46 FR 59274), on December 4, 1981, to establish a viticultural area in the Charlottesville, Virginia, area to be known as "Monticello." During the comment period The Jefferson Wine Grape Growers Society petitioned for an enlargement of the Monticello viticultural area boundary. ATF published an amended notice of proposed rulemaking, Notice No. 434 (47 FR 52200), on November 19, 1982. All the comments received favored the enlarged

boundary for the Monticello viticultural area.

On January 22, 1984, ATF published T.D. ATF-164 (49 FR 2757) establishing the Monticello viticultural area. On November 8, 1984, a petition was received from Mr. Edward W. Schwab, Managing Partner, Autumn Hill Vineyards, to include Greene County in the Monticello viticultural area. Mr. Schwab said he became aware of the Monticello viticultural area after it was established and he was not aware of the rulemaking process that had taken place.

Greene County is a small county which borders the northern boundary of the Monticello viticultural area. Mr. Schwab submitted a statement and evidence from the Virginia Cooperative Extension Service Agriculture Extension Agent that the petitioned for area has essentially the same topography, soil types, amount of rainfall, elevation and temperatures as found in the bordering Monticello viticultural area. Mr. Schwab amended his petition to exclude a mountainous area in the western part of Greene County so that the revised area would be even more similar to the existing Monticello viticultural area.

The existing Monticello viticultural area is approximately 1260 square miles and therefore extends many miles from its name sake and home of Thomas Jefferson in Charlottesville, Virginia. The evidence during the rulemaking process established that the Monticello name extends throughout Central Virginia, to include Albemarle, Orange, Nelson and Greene Counties, because of Thomas Jefferson's dominant influence in the region. Historical publications have numerous references to Jefferson leasing farm land throughout Central Virginia to expand his Monticello acreage. Other references list Monticello as the primary source of crop experimentation data and planting material (including grapevines) used to start new farms in Central Virginia.

One current example which shows that the name identification extended several miles to the north of Monticello to Orange and Greene Counties is a mansion similar in appearance to Monticello which Jefferson designed for his friend, James Barbour. The mansion burned in 1884, but all the brick structure and columns remain making the structure easily identified with Monticello. This mansion, the Barboursville Ruins, is now a historical landmark and tourist attraction. The eastern boundary of the proposed amended viticultural area revision is near the Barboursville Ruins.

Public Participation—Written Comments

Based on the above discussion, ATF is issuing this notice of proposed rulemaking to request comments concerning this proposed revision of the Monticello viticultural area boundary.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this notice because no requirement to collect information is proposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.46(c) is revised to add the amended boundaries and by adding numbers to the descriptions to read as follows:

§ 9.46 Monticello.

* * * * *

(c) Boundaries. (1) From Norwood, Virginia, following the Tye River west and northwest until it intersects with the eastern boundary of the George Washington National Forest; (2) following this boundary northeast to Virginia Rt. 664; (3) then west following Rt. 664 to its intersection with the Nelson County line; (4) then northeast along the Nelson County line to its intersection with the Albemarle County line at Jarman Gap; (5) from this point continuing northeast along the eastern boundary of the Shenandoah National Park to its intersection with the northern Albemarle County line; (6) continuing northeast along the Greene County line to its intersection with Virginia Rt. 33; (7) follow Virginia Rt. 33 east to the intersection of Virginia Rt. 230 at Stanardsville; (8) follow Virginia Rt. 230 north to the Greene County line (the Conway River); (9) following the county line southeast to its intersection with the Orange County line, (10) continuing north on the county line to its intersection with the Rapidan River, whic continues as the Orange County line; (11) following the river east and northeast to its confluence with the Mountain Run River; (12) then following the Mountain Run River southwest to its intersection with Virginia Rt. 20; (13) continuing southwest along Rt. 20 to the corporate limits of the town of Orange; (14) following southwest the corporate limit line to its intersection with U.S. Rt. 15; (15) continuing southwest on Rt. 15 to its intersection with Virginia Rt. 231 in

the town of Cordonsville; (16) then southwest along Rt. 231 to its intersection with the Albemarle County line; (17) continuing southwest along the the county line to its intersection with the James River; (18) then following the James River to its confluence with the Tye River at Norwood, Virginia, the beginning point.

Signed: May 27, 1986.

Stephen E. Higgins,

Director;

[FR Doc. 86-12410 Filed 6-2-86; 8:45 am]

BILLING CODE 4310-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Withdrawal of a Proposed Rulemaking To Amend the Alabama Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Withdrawn of a Proposed rule.

SUMMARY: OSMRE is announcing the withdrawal of a proposed rulemaking for an amendment submitted by the State of Alabama to amend its permanent regulatory program (hereinafter referred to as the Alabama program). The proposed amendment concerned requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E of the Alabama Surface Mining Commission regulations). The proposed amendment was withdrawal by the State in a letter to OSMRE dated May 7, 1986.

DATE: This withdrawal is effective June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION: On December 30, 1985, Alabama submitted a proposed amendment to its approved regulatory program to modify requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E of the Alabama Surface Mining Commission rules). The proposed rules outlined the information requirements necessary for such extraction, and criteria to be used by the Alabama Surface Mining Commission (ASMC) to determine the eligibility of the proposed operation for exemption from regulatory requirements for surface coal mining operations under the Alabama program. The proposed rules replaced rules previously approved by OSMRE (July 19, 1985, 50 FR 29379).

On January 30, 1986, OSMRE published a notice in the Federal Register announcing receipt of the amendment and soliciting public comment on its adequacy. The comment period ended on March 3, 1986.

On May 7, 1986, Alabama submitted a copy of Alabama Senate Bill 445, Act 86-108, which had been passed by the Alabama Legislature and which in part repealed rule 880-X-2E. In a letter which accompanied the Senate Bill, Alabama therefore withdrew the proposed amendment at ASMC 880-X-2E.

Dated: May 28, 1986.

H. Leonard Richcreek,

Acting Assistant Director, Program Operations.

[FR Doc. 86-12371 Filed 6-2-86; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Parts 1 and 3

Permit Requirements; Penalty Provisions

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking clarifies the penalty provisions of the three general regulations used by the National Park Service as basic authorities to issue and require permits for members of the public to engage in certain activities. These provisions were inadvertently omitted when the regulations were originally promulgated in 1983. Experience since that time has shown that these clarifications are necessary in order to outline the mandatory aspects of permit systems established and used by park managers to manage visitor use activities in park areas. This rulemaking is a clarification only and does not impose new restrictions or requirements.

DATE: Written comments will be accepted until July 3, 1986.

ADDRESS: Comments should be addressed to: Associate Director, Park Operations, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013-7127, Telephone: 202-343-1360.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1983, the National Park Service (NPS) published a major revision of its general regulations in Title 36 of the Code of Federal Regulations that pertain to resource protection, public use and recreation (48 FR 30252). One of these regulations, § 1.6, provides the general procedures and criteria under which NPS permits are issued. Another, § 1.5, sets forth the basic authority for park managers to establish permit systems in order to implement public use limits. A third general regulation, § 3.3, authorizes the superintendent to issue permits to manage boating activities within a park area.

These three regulations all contain provisions that address a superintendent's authority to issue permits and/or to establish permit conditions; other provisions prohibit violating the terms and conditions of a permit. Both §§ 1.5 and 3.3 make reference to the permit criteria and procedures of § 1.6. However, none of these sections contains text that clearly indicates that, if a permit is required by a superintendent in order for a person to engage in a certain activity, failure to obtain a permit prior to engaging in that activity constitutes a violation of the regulation by that individual.

The original intent of the NPS was that such a provision was understood as being inherent in the fact that the superintendent was authorized to require a permit. However, in the period since the effective date of these regulations, questions raised by members of the public, NPS employees and some U.S. Magistrates have indicated that this intention was not clear and that clarifying text is necessary.

This rulemaking proposes to clarify NPS permit requirements by consolidating all the general procedural and regulatory provisions pertaining to NPS permit systms and authorities found in these three sections in section 1.6 and deleting duplicative provisions from §§ 1.5 and 3.3. A provision emphasizing the mandatory nature of permit requirements has been added to section 1.6. Clarifying text has also been added to § 1.6(c) that indicates that terms and conditions of a permit may derive not only from the criteria presently specified in that paragraph but also from criteria and restrictions that exist in other regulations.

These proposed changes do not add new obligations or impose new restrictions. The intent of this

rulemaking is solely one of clarification. A minor technical change is also included in this rulemaking to revise the authority citation in 36 CFR Part 3 to reflect the statutory authority found in 16 U.S.C. 1a–2(h) that authorizes the NPS to regulate boating activities in park areas.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The author of this rulemaking is Andy Ringgold of the NPS Branch of Ranger Activities, Washington, DC.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on the fact that this rulemaking is a clarification only and has no economic effect.

The National Park Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase pubic use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties.

36 CFR Part 3

Marine safety, National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460*l*–6a(e), 462(k).

2. By revising paragraph (f) § 1.5 to read as follows:

§ 1.5 Closures and public use limits.

* * * * *

(f) Violating a closure, designation, use or activity restriction or condition, schedule of visiting hours, or public use limit is prohibited.

3. By revising § 1.6(e), (g) and (h) to read as follows:

§ 1.6 Permits.

* * * * *

(e) The superintendent shall include in a permit the terms and conditions that the superintendent deems necessary to protect park resources or public safety and may also include terms or conditions established pursuant to the authority of any other section of this chapter.

* * * * *

(g) The following are prohibited:

(1) Engaging in an activity subject to a permit requirement imposed pursuant to this section without obtaining a permit; or

(2) Violating a term or condition of a permit issued pursuant to this section.

(h) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the superintendent.

PART 3—BOATING AND WATER USE ACTIVITIES

4. The authority citation for Part 3 is revised to read as follows:

Authority: 16 U.S.C. 1, 1a-2(h), 3.

5. By revising § 3.3 to read as follows:

§ 3.3 Permits.

The superintendent may require a permit for use of a vessel within a park area in accordance with the criteria and procedures of § 1.6 of this chapter.

Dated: May 3, 1986.

Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–12427 Filed 6–2–86; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 261

[SW-FRL-3024-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by designating as hazardous waste (rather than acute hazardous waste) the scrubber water generated by EPA's Combustion Research Facility (CRF) located in Jefferson, Arkansas as a result of burning certain dioxin-containing wastes. The Agency further proposes to re-designate all scrubber water that will be generated from burning listed dioxin-containing wastes at this facility from acute hazardous waste (H) to hazardous waste (T) based upon the testing conditions specified elsewhere in this notice. This action is in response to a petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator on a "generator-specific basis". The effect of this action, if promulgated, would be to allow CFR to manage their waste in accordance with the waste management standards contained in 40 CFR Parts 264 and 265 allowed for all other hazardous wastes.

DATES: EPA will accept public comments on this proposed exclusion until July 3, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed exclusion by filing a request with Eileen B. Claussen, whose address appears below, by June 18, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number: "F-86-CRFP-FFFFF".

The public docket for this proposed rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 of Kate Blow (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Dr. Doreen Sterling, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1985, EPA published a final rule ("the dioxin rule") designating as acute hazardous waste, certain wastes containing tetra-, penta-, and hexachlorinated dibenzo-p-dioxins (CDDs), -dibenzofurans (CDFs), and certain chlorinated phenols (See 50 *FR*, 1978-2006). These regulations also specified certain management standards for these wastes. For incineration, the regulations specify that these wastes must be managed at fully permitted incinerators that have been certified by the Assistant Administrator for Solid Waste and Emergency Response to achieve 99.9999% (six 9s) destruction and removal efficiency (DRE) for the CDDs and CDFs or for principal organic hazardous constituent(s) (POHCs) which are as difficult or more difficult or more difficult to incinerate than the CDDs and CDFs.

Under 40 CFR 261.3(c)(2)(i), any residue derived from the treatment of a hazardous waste is a hazardous waste unless otherwise designated, or delisted under the provisions of 40 CFR 260.20 and 260.22. EPA has interpreted this to mean that the residues resulting from the incineration of listed acute hazardous waste (*i.e.*, dioxin wastes) are still acute hazardous wastes, unless otherwise designated or delisted. (In the dioxin regulation, the Agency designated the residues resulting from six 9's incineration or thermal treatment of dioxin-contaminated soils as toxid wastes (EPA Hazardous Waste No. F028). This waste therfore can be managed at interim status facilities and at fully permitted facilities not required to meet the special standards for other listed dioxin-containing wastes.)

Therefore, the wastes covered by the "dioxin rule" (except as otherwise indicated) are considered to be acute hazardous wastes because of the presence of the CDDs/CDFs. The Agency recognizes that an individual facility may demonstrate through representative sampling and analysis that the waste does not contain CDDs/CDFs at concentrations that would cause the waste to be designated as an acute hazardouse waste. The consequence of this reclassification would be that such wastes would not be subject to the more stringent management requirement for fully permitted facilities mandated by the "dioxin rule", and also can be managed at interim status facilities. This is because the Agency would be determining that the CDDs and CDFs in such wastes can be managed so as to protect human health and the environment without extraordinary precautions required for acute hazardous waste containing much higher concentrations of CDDs and CDFs.

Petitioner

The proposed re-designation published today involves EPA's Combustion Research Facility (CFR) located in Jefferson, Arkansas.

I. Combustion Research Facility

A. Petition for Exclusion

The Environmental Protection Agency, Combustion Research Facility (CRF), located in Jefferson, Arkansas, is a research facility involved in studying the feasibility of incineration of hazardous waste. Most of the waste that CRF is currently evaluating is from clean up operations at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sites. One of the wastes incinerated by CRF was toluene still bottoms from 2,4,5-trichlorophenol (2,4,5-TCP) production previously generated at the Vertac Chemical Company site in Jacksonville, Arkansas (referred to as the "Vertac Waste"). The CRF has petitioned the Agency to re-designate the scrubber water that has resulted from the incineration of the "Vertac" Waste from acute hazardous waste (H) to toxic waste (T). This waste is listed as EPA Hazardous Waste No. F020—Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. The scrubber water is currently designated as an acute hazardous waste because of the presence of CDDs and CDFs and, as such, the waste is subject to more stringent management standards. CRF claims, however, that the scrubber water does not contain the CDDS/CDFs at levels of regulatory concern (although the waste may still be hazardous because it may still exhibit the characteristics of a hazardous waste or contain other toxicants at levels of regulatory concern). CFR has further petitioned the Agency to re-designate from acute hazardous waste (H) to toxic waste (T) all scrubber water generated by this incinerator when burning the listed dioxin-containing wastes based on a testing requirement for CDDs/CDFS. (It should be noted that this petition does not cover any ash, filters, or any other solid residues generated by this incinerator.)

In support of their petition, CFR has submitted: a detailed description of their incinerator, including schematic diagrams, an engineering description, and the incinerator operating conditions; a general characterization of the "Vertac" waste that was incinerated; and analytical test results on CDD/CDF concentrations in the scrubber water generated from burning the "Vertac waste" after carbon filtration.

Description of the Incinerator. The rotary kiln incineration system at CRF consists of a rotary kiln primary combustion chamber, a fired afterburner, and a primary air pollution control system consisting of a quench elbow and venturi scrubber followed by a packed tower scrubber. In addition, a back up air pollution control system consisting of a carbon-bed absorber and a High Efficiency Particulate Air Pollution Control Device (HEPA) filter is in place. Scrubber blowdown also

passes through a carbon filter before storage in the blowdown tanks.

During this test burn, the operating temperature was maintained at 1800°F for the kiln and 2030°F for the afterburner. The calculated residence time in the kiln main chamber ranged between 4.9 to 6.0 seconds, while the residence time in the afterburner ranged from 1.8 to 2.3 seconds.

For these tests, waste was introduced at the feed face through the front face line with a Moyno pump at a mean feed rate of 22 lb. per hour for burn 1 and 30 lb. per hour for burn 2. Auxiliary fuel (propane) was fired through a burner located at the transfer duct end of the kiln. The afterburner was also fired with auxiliary fuel.

7000 gallons of filtered blowdown water, generated from the incineration of the "Vertac" waste, is currently contained in the blowdown tanks. It is this water which is the subject of this notice. In addition, CRF is also requesting a re-designation of all scrubber water generated by this incinerator during subsequent research burns of the listed dioxin-containing wastes provided the scrubber water meets certain testing requirements.

Description of the Waste. The approximate composition of the 2,4,5-TCP/toluene still bottoms (the "Vertac" waste) contaminated with CDDs/CDFs that was incinerated by CRF is presented in Table 1. This waste was reported to contain approximately 40 ppm of 2,3,7,8-TCDD.

TABLE 1.—*Estimated Composition of Stillbottoms*

Compound	Composition (percent)
Methanol	1
Toluene	5
Dichlorobenzenes	1.5
Trichlorobenzenes	1.5
2,4,5-Trichlorophenate	38
Na-Trichlorophenol	7
Dichlorodimethoxy-benzene	18
2,4,5-T, Na salt	7

Sampling and Analysis. The total volume of water generated during the incineration of the "Vertac Waste" is stored in two holding tanks. (4,000 gallons in one tank and 3,000 gallons in the other tank.) The tanks were sampled after completion of the entire burn series. Eight composite samples were taken. For each composite, 60% was obtained from the larger tank while 40% of the sample was obtained from the smaller tank, thus representing a weighted average (*i.e.*, 4,000/7,000=60% 3,000/7,000=40%). Both tanks were sampled by Dipper Method (See SW-846, Test Methods for Evaluating Hazardous Wastes, July, 1982) from the top of the tank while the water was recirculated (duration about 20 hrs.) at 53 gal/min. Four of the samples were analyzed for CDDS/CDFs by High Resolution Gas Chromatography/High Resolution Mass Spectrometry (HRGC/HRMS). The other four samples remained on site as archives. The results of their analyses are presented in Table 2.

TABLE 2.—*Maximum Concentrations of CDDs/CDFs*

Isomer/homolog	Concentration pg/ml (ppt) [1] [2]
2,3,7,8-TCDD	0.12
TetraCDD (TCDD)	0.12
PentaCDD (PCDD)	(0.012)
HexaCDD (HxCDD)	(0.020)
2,3,7,8-TCDF	(0.011)
TetraCDF (TCDF)	0.23
PentaCDF (PCDF)	0.015
HexaCDF (HxCDF)	(0.009)

[1] Numbers in parentheses are detection limits.
[2] Data was also reported on the hepta- and octa- isomers; these data were not included in this table since these homologs are not covered by the original listing. In addition, since these isomers are not on Appendix VIII of Part 261 (i.e. the list of hazardous constituents identified by the Agency), we have not included them in our evaluation.

B. Agency Analysis and Action

The CRF has demonstrated through analysis of representative samples that the 7000 gallons of scrubber water, generated during the incineration of the "VERTAC waste", is not an acute hazardous waste. The Agency believes that the grab samples collected from the two blowdown tanks are biased and adequately represent any variations which may occur in the waste. The Agency is satisfied that the grab samples do not mask any possible variability in the waste because: (1) the tanks contained the entire volume of water generated during the Vertac burns, (2) the tanks were sampled after completion of the burns, and (3) the tanks were well mixed prior to and during sampling.

The Agency has evaluated the analytical data provided by CRF on the CDD/CDF homologs. The Agency has used the hazard evaluation procedure developed by the Agency's Chlorinated Dioxins Workgroup (CDWG) to assess the risks associated with exposure to the CDDs and CDFs in these residues.[1] The procedure, which involves the evaluation of the toxicity of a mixture of CDDs and CDFs by estimation of 2,3,7,8-TCDD equivalents, is based on structure-activity relationships using their carcinogenic, reproductive, and biochemical effects. 2,3,7,8-TCDD equivalents are calculated by summing the products of the concentration of each homolog and its toxic equivalents (TEF). The product is the 2,3,7,8-TCDD equivalent for each homolog; the sum of the products is the 2,3,7,8-TCDD equivalent concentration of the mixture. The 2,3,7,8-TCDD equivalents estimate for the wastewater is given in Table 3. (As is the Office of Solid Waste's (OSW) practice, the detection limit is used as the possible upper limit of exposure for purposes of hazard evaluation when a constituent is not detected.)

TABLE 3.—CALCULATION OF TOXIC EQUIVALENCE FACTOR (TEF)

Homolog	Maximum reported concentration, ppt [1]	TEF	TCDD equivalents
TCDD	0.12	1	0.1
PCDD	(0.012)	0.5	0.006
HxCDD	(0.02)	0.04	0.008
TCDF	0.23	0.1	0.02
PCDF	0.01	0.1	0.001
HxCDF	(0.01)	0.01	0001
Total			0.1 ppt

[1] Numbers in parentheses indicate detection limits.

The Agency believes that this waste can safely be managed as a hazardous (T) waste without the special management controls required for an acute hazardous waste due to the low level of 0.1 ppt TCDD equivalents in the scrubber water. EPA determined that special controls were needed for certain of the listed dioxin-containing wastes in light of the high concentrations of CDDs and CDFs found in the wastes before treatment (50 FR 1965). When these concentrations are greatly reduced by treatment, as in CFR's waste, the residual waste presents much less risk and can be safely managed in the same manner as other hazardous wastes (Id. at 1995). The Agency already has acknowledged that less stringent standards are appropriate for less contaminated, dioxin-containing wastes. In particular, the "dioxin rule", promulgated on January 14, 1985 (see 50 *FR* 1978–2006), designated as hazardous (T) (as opposed to acute hazardous (H)), residues resulting from the incineration or thermal treatment of dioxin-contaminated soils. These residues are allowed to be managed at interim status land disposal facilities and at treatment, storage, or disposal facilities pursuant to the usual Part 264 standards (*i.e.*, not meeting the special standards for other dioxin-containing wastes, such as

[1] Chlorinated Dioxins Workgroup Position Document, "Interim Procedures for Estimating Risk Associated with Exposures to Mixtures of Chlorinated Dioxins and -Dibenzofurans (CDDs and CDFs), November 21, 1985.

secondary containment or a waste management plan). EPA's rationale for this decision was that the concentration of TCDD in the residue from incineration of soils will be less than 1 ppb. This concentration in soil was determined to be a reasonable level at which to consider limiting human exposure in a residential setting.[5] EPA, therefore, concluded that the residues from incineration or thermal treatment of CDD/CDF contaminated soils, present much less risk than the untreated soils, and thus, could be managed safely at normal hazardous waste management facilities.

In a later notice (September 12, 1985, 50 *FR* 37338–37342), the Agency proposed to extend this idea by proposing to re-designate the residues resulting from the incineration of certain dioxin-containing wastes as hazardous (T) when the waste that is incinerated contains less [6] than 10 ppm TCDD equivalents (the "residue rule"). The basis for this proposed decision was that the residues would contain less than 0.1 ppb of TCDD equivalents, a concentration well below the 1 ppb level cited above. There was substantial consensus in the comments to this proposed rule that dioxin-containing wastes did not require extraordinary management controls when concentrations were below 1 ppb.

EPA is tentatively of the view that the level for designating scrubber effluent as toxic should be lower than the level for solid matrices. This is because CDDs/CDFs in liquid are already mobile. Consequently, EPA views 10 ppt as an appropriate level for scrubber effluent. This level is two orders of magnitude less than the 1 ppb level cited above.

The Agency's proposed decision here to re-designate the 7000 gallons of scrubber water is therefore based on the belief that wastes containing less than 10 ppt TCDD equivalents can be managed safely at interim status facilities, and at fully permitted facilities without waste management plans. In particular, the potential risk resulting from exposure to a contaminant depends on the route of exposure and the matrix of which the contaminant is a part. This is particularly true for dioxins since bioavailability, which is matrix-dependent, is a significant factor in determining these levels. The exposure pathways of most concern for the CDDs/CDFs are postulated to result from the contamination of husbandry and stream sediment by CDD/CDF-contaminated soil dispersed from the disposal site by rain, flood water, or wind. Leaching of CDDs/CDFs to ground water is also of concern, however. The Agency believes that adequate controls currently exist at interim status facilities to control surface run-off/run and wind dispersal (see, e.g., 40 CFR § 265.302), in light of the low concentrations of CDDs/CDFs found in this scrubber water. We also believe that because of the low concentrations of the CDDs/CDFs, interim status facilities should control the leaching of CDDs/CDFs to ground water until final permits are issued. We note further that non-dioxin containing wastes which are more hazardous than this scrubber water (due to high concentrations of other toxicants) are not required to be managed pursuant to special standards. EPA believes that this redesignated scrubber water thus is more appropriately managed pursuant to the same standards to which these other toxic hazardous wastes are subject.

The level reported in CRF's waste was 0.1 ppt of TCDD equivalents; this is two orders of magnitude lower than the 10 ppt level that the Agency believes can be safely handled without the special management standards required for the listed dioxin wastes. EPA, therefore, does not believe that CRF's scrubber water is an acute hazardous waste requirng the heightened regulatory controls and can thus be redesignated as hazardous (T).[4]

Note, however, that it is still EPA's conclusion that these wastes are still hazardous due to their CDD/CDF content and thus still require the same level of management as other hazardous waste. In particular, on January 14, 1986, the Agency proposed its framework for a regulatory program to implement the congressionally mandated land disposal prohibitions (see 51 *FR* 1602–1705). The ban rule sets a screening level of 4 ppg for the 2,3,7,8-TCDD isomer using the TEFs. This level was based upon an estimate for the allowable concentration of TCDD in potable ground water of 0.2 ppg.

This concentration is the 10^{-6} risk level dose in water based upon a 70 kg man consuming 2L of water per day over a 70 year lifetime. This concentration is two orders of magnitude less than the action level for acute hazardous versus toxic we are positing here. Although one can assume some attenuation in the event of release, not enough information is currently available on attenuation mechanisms (e.g., dilution when discharged to surface water, etc.) to conclude that the concentrations of CDDs/CDFs would be reduced two orders of magnitude to levels of non-regulatory concern. Based on the above considerations, the Agency believes that the scrubber water still requires control as a hazardous waste by virtue of its CDD and CDF content.

The Agency is also proposing today to re-designate (as toxic (T)) all carbon filtered scrubber water that will be generated by CRF's incinerator contingent upon the testing of each tank of water for the CDD/CDF homologs and that the TCDD equivalents of each tank does not exceed 10 ppt. A detection limit of about 5 ppt for each homolog in a carbon treated aqueous matrix is achievable by EPA's test mentod 8280 (this method involves sample clean-up followed by HRGC/LRMS analysis).[5] The Agency believes as previously described that this level will be protective of human health and the environment when the waste is managed in accordance with the general waste management standards. It should be noted that in both the September 12, 1985 notice and in this preamble, we indicate that below 0.1 ppt of TCDD-equivalents, a dioxin-containing waste can be managed without the special management standards (*i.e.*, secondary containment or a waste management plan). As noted above, since the CDDs/CDFs in the scrubber water are more likely to escape from the waste and get into the environment than CDDs/CDFs in a solid matrix, we believe a lower level would be more protective. We therefore selected a level of 10 ppt since this level (in our opinion) would provide a greater margin of safety in managing this waste at interim status facilities. Considering the toxicity of these compounds, such a distinction is appropriate. In addition, we believe that any incinerator that is operating properly and achieving six 9's DRE should easily achieve this level. The Agency, however, solicits comment on this level.[6] Thus, if the level in CRF's

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[5] USEDHS. 1984. Health Risk Estimate for 2,3,7,8-TCDD in soil. Morbidity and mortality weekly report 33:289.

[6] CRF's waste contains approximately 40 ppm of 2,3,7,8-TCDD and is thus not covered by the proposed "residue rule".

[4] The Agency is proposing to add a new waste to the hazardous waste list (EPA Hazardous Waste No. F031) to make it clear that these wastes will be considered as toxic (T).

[5] A limit of 1 ppb for each homolog in the leachate was proposed in the land disposal restrictions rule (51 *FR* 1724). Even though lower detection levels are achievable, test method 8280 is expected to perform more reliably on a routine basis at a limit of 1 ppb.

[6] The Agency plans to solicit comments in a future notice to extend the r esposed September 12,

Continued

scrubber water exceed 10 ppt of TCDD equivalents, the waste must either be retreated or be managed as an acute hazardous waste.

II. Effective Date

This rule, if promulgated, will become effective immediately. Although subtitle C regulations normally take effect six months from promulgation (RCRA section 3010 (b)), the Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. That is the case here since this rule reduces, rather than increases the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. Sec. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. this proposal is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by re-designating the scrubber water from acute hazardous waste (H) to hazardous waste (T) at CRF's facility in Jefferson, Arkansas and thereby enabling the facility to manage its waste in accordance with the general waste management standards. Since this rulemaking is not a major rule, a regulatory impact analysis was not conducted.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: May 23, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

§ 261.31 [Amended]

2. In § 261.31, add the following waste stream in numerical order:

EPA hazardous waste No.	Hazardous waste	Hazard code
•	•	•
F091	Residues resulting from the incineration or thermal treatment of EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, as identified in Appendix IX, Table 4.	(T)
•	•	•

Appendix VII [Amended]

3. Add the following entry in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous waste constituents for which listed
•	•
F091	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivatives.
•	•

4. In Appendix IX, add Table 4 and the following wastestream:

Appendix XI—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 4.—WASTE REDESIGNATED FROM ACUTE HAZARDOUS WASTE TO HAZARDOUS WASTE

Facility	Address	Waste description
U.S. EPA Combustion Research Facility (CRF).	Jefferson, AR.	(1) Scrubber water generated by CRF's incineration of the "Vertac waste". (2) All future scrubber water generated by CRF's incinerator burning listed dioxin-containing waste contingent upon analyzing each tank of wastewater for the CDD/CDF homologs and that the TCDD equivalent is below 10 ppt.

[FR Doc. 86-12363 Filed 6-2-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-199, RM-5258]

Radio Broadcasting Services; Broken Bow, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Channel 291C2 for Channel 292A at Broken Bow, Oklahoma, and the modification of Station KKBI–FM's license to specify operation on the higher powered channel, at the request of Harold E. Cochran.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Vicent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, D.C. 20036 (Counsel to petitioner).

DATES: Comments must be filed on or before July 21, 1986, and reply comments on or before August 5, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–199, adopted May 15, 1986, and released May 28, 1986. The full text of

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1986 "residue rule" to designate all residues resulting from six F's incineration of waste containing CDDs and CDFs as hazardous (T), rather than acute hazardous (H), based on a testing requirement for the residue.

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court reviews, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

Federal Communications Commission.

Ralph Haller,

Acting Chief, Policy & Rules Division Mass Media Bureau.

[FR Doc. 86–12336 Filed 6–2–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–200, RM–5239]

Radio Broadcasting Services; Lone Grove, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 294A to Lone Grove, Oklahoma, as the community's first local FM service, at the request of SSS Communications, Inc.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: SSS Communications, Inc., Attn: Steve L. Sowers, 908 A Street, NW., Ardmore, Oklahoma 73401 (Petitioner).

DATES: Comments must be filed on or before July 21, 1986, and reply comments on or before August 5, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–200, adopted May 15, 1986, and released May 28, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph Haller,

Acting Chief, Policy & Rules Division Mass Media Bureau.

[FR Doc. 86–12337 Filed 6–2–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–194, RM 5266]

Radio Broadcasting Services; Lampasas, TX

AGENCY: Federal Communications Commmission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition by Ronald K. Witcher, licensee of FM Station KLTD (Channel 257A), Lampasas, Texas, proposing the substitution of Channel 258C1 for Channel 257A and modification of its license accordingly. The proposal could provide a first wide area coverage station at Lampasas.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Ronald K. Witcher, c/o Bromo Communications, P.O. Box M, St. Simons Island, Georgia 31522.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–194, adopted May 12, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037. .

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rule governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86–12339 Filed 6–2–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 230 and 253

Department of Defense Federal Acquisition Regulation Supplement; Cost Accounting Standards

AGENCY: Department of Defense (DoD)

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to the coverage in the DoD FAR

Supplement to add the Cost Accounting Standards Disclosure Statement (253.303–70–DD–xxx) and to prescribe at 230.501–7 the form used to compute the Facilities Capital Cost of Money Factors (253.303–70–DD–x).

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before August 4, 1986, to be considered in the formulation of a final rule. Please cite DAR Case 85–139 in all correspondence related to this issue.

ADDRESS: Interested parties should written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202)697–7266.

SUPPLEMENTARY INFORMATION:

A. Background.

Public Law 91–379 (50 U.S.C. APP. 2168) requires certain defense contractors and subcontractors to disclose in writing and follow consistently their cost accounting practices. In a document published elsewhere in this issue of the Federal Register the FAR Secretariat proposed changes to Federal Acquisition Regulation Part 30 to incorporate Cost Accounting Standards into the FAR. Although the Standards themselves are being considered for incorporation into the FAR, it is proposed that the Form CASB–DS–1, CASB Disclosure Statement, and the Form CASB–CMF, Facilities Capital Cost of Money Factors Computation, be changed to DoD forms with no planned change in format and be incorporated into the DoD FAR Supplement. Copies of the proposed forms may be obtained from the address cited above.

B. Regulatory Flexibility Act.

The proposed change to DoD FAR Supplement Part 230 will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the changes cover Cost Accounting Standards and associated rules and regulations from which small business concerns are exempt.

C. Paperwork Reduction Act.

The collection of information is required by FAR 30.202 and 30.5. The forms being proposed by this coverage is nothing more than the vehicle used to collect the information and does not require an OMB clearance.

List of Subjects in 48 CFR Parts 230 and 253

Government procurement.

Owen L. Green

Acting Executive Secretary Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 230 and 253 be amended as follows:

1. The authority citation for 48 CFR Part 230 and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 230—COST ACCOUNTING STANDARDS

2. A new subpart 230.5, consiting of section 230.501–7, is added to read as follows:

Subpart 230.5—Cost of Money for Capital Employed for Facilities in Use or Under Construction

230.501–7 Contract Facilities Capital Estimates.

(a) After the appropriate DD Forms (x) have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861, "Contract Facilities Capital and Cost of Money", have been provided for this purpose and, when properly completed, becomes a connecting link between the DD Forms (x) and DD Form 1547, "Weighted Guidelines Profit/Fee Objective". An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation based to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and DD Forms (x). The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate DD From (x). Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or prenegotiation cost objective, and are listed against each separate DD Form (x). Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of DD Form (x), the Contract Facilities Capital Employed can be determined by *dividing* the contract Cost of Money by that same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

PART 253—FORMS

3. Section 253.230–70 is added to read as follows:

253.230–70 Cost Accounting Standards (DD Form X and XXX).

(a) *DD Form X, Facilities Capital Cost of Money Factor Computation (Rev. 1986).* DD Form X is used by contractors as the basis for measurement and allocation of facilities cost of money to indirect cost pools at the business unit level.

(b) *DD Form XXX, Cost Accounting Standards Disclosure Statement (Rev. 1986).* DD Form XXX is used by contractors to disclose cost accounting practices by providing a written description of their cost accounting practices and procedures.

[FR Doc. 86–12420 Filed 6–2–86; 8:45 am]
BILLING CODE 3810–01–M

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48 CFR Part 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to the coverage in the DoD FAR Supplement at 232.501–1 to make the progress payment rates for Foreign Military Sales (FMS) Contracts the same level as provided by DoD on domestic defense contracts. This means that the progress payment rate would be 80% for other than small businesses and 90% for small businesses.

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before July 3, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 86-52 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202)697-7266.

SUPPLEMENTARY INFORMATION:

A. Background.

These changes are being considered in a response to a recommendation contained in DoD Defense Financial and Investment Review (DFAIR). DFAIR had concluded that the working capital requirements on FMS contracts were higher than experienced on domestic defense contracts. Thus the progress payment rates should not be different.

B. Regulatory Flexibility Act.

It is expected that the proposed change to DFARS 232.501-1(a) will have little if any impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). A Regulatory Flexibility Analysis has been prepared and submitted to the Chief Council for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act.

The proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 232

Government procurement.

Owen L. Green,

Assistant to the Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 232 be amended as follows:

PART 232—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 232 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

§ 232.501-1 [Amended]

2. Section 232.501-1 is amended by revising paragraph (a) to read as follows:

232.501-1 Customary Progress Payment Rates.

(a) The customary progress payment rate applicable to Foreign Military Sales requirements is the same as that applicable to DoD requirements. The customary progress payment rate for flexible progress payments is the rate determined by use of either the CASH II or CASH III computer program as applicable in accordance with the requirements of 232.502-1(S-71).

* * * * *

[FR Doc. 86-12419 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 177, 178, and 179

[Docket No. HM-186U; Notice No. 86-3]

Transportation of Hazardous Materials; Proposed Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration is proposing to make several miscellaneous amendments to the regulations pertaining to the transportation of hazardous materials. The action is necessary to update the regulations and to reduce RSPA's backlog of rulemaking petitions.

DATES: Comments must be received by July 31, 1986.

ADDRESS: Address comments to the Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th Street SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Transportation, Washington, DC 20590 (202) 426-2075.

SUPPLEMENTARY INFORMATION: This document is primarily designed to reduce regulatory burdens by incorporating changes in the Hazardous Materials Regulations based on either petitions for rulemaking submitted in accordance with 49 CFR 106.31 or on RSPA's own initiative. These proposed amendments are in keeping with Executive Order 12291 and are designed to simplify existing regulations.

In Part 171, these proposed amendments would (1) update five Compressed Gas Association Pamphlets to the latest editions; (2) update the Association of American Railroads "Specifications for Tank Cars" to the 1985 edition; (3) incorporate by reference ASTM D 4359-84 "Standard Test Method for Determining Whether a Material is a Liquid or a Solid"; and (4) add a definition for "Liquid" and "Solid".

In Part 172, the Table would be revised by (1) removing the entries "1-Bromo-3-nitrobenzene (unstable at 56 °C)" and "Compound, water treatment, liquid. *See* Water treatment, liquid."; (2) reinstating the entry "Ethyl phosphonothioicdichloride, anhydrous"; (3) changing the ID number for the entry "Ink", combustible liquid; (4) changing the hazard class for the entry "Ethylene glycol diethyl ether (diethyl cellosolve)"; (5) revising the entry "Gasohol (*gasoline mixed with ethyl alcohol*). *See* Gasoline"; (6) adding a new entry "Air, refrigerated liquid (*cryogenic liquid*)"; (7) changing the hazard class, label, and packaging authorization sections for ethylene dibromide. This change results from RSPA's review of published data that indicates the proper hazard class for this material should be "Poison B" instead of "ORM-A". The toxicity of this material is such that it poses a significant hazard to health during transportation. This change in classification and packaging authorization would result in this material being subject to the requirements of §173.3a; and (8) adding "Aluminum alkyl" and "Aluminum alkyl halide" to the § 172.102 Table. In § 172.202, paragraph (a)(4) would be revised to require the unit of measure to be identified on the shipping papers. In § 172.336, paragraphs (c)(4) and (c)(5) would be revised by adding the word "petroleum" before the word "distillate". In § 172.504, footnote 8 of Table 2 would be amended to include an OXYGEN placard. In § 172.519, paragraphs (b)(2) and (b)(4) would be revised to upgrade the placard construction standards.

In Part 173, these proposed amendments would (1) amend § 173.11(b)(4) to require the registration statement to include the type of packaging being used; (2) amend Retest Table 2 in § 173.31 to include DOT Specification 110A600–W multi-unit tank cars; (3) revise § 173.32 to authorize a portable tank to be used as a cargo tank; (4) revise § 173.51(g) to provide an exception for persons who are authorized to board an airplane with a loaded firearm; (5) remove paragraph (b) in § 173.57; (6) make an editorial correction in § 173.61(b) and § 173.104(c) regarding the marking for detonating cord; (7) add a paragraph (h) and (i) in § 173.86 regarding small arms ammunition and devices which contain small quantities of explosives; (8) amend the introductory text of § 173.87 to reference § 173.7(a); (9) add paragraph (a)(2) in § 173.93 to authorize smokeless powder for small arms to be shipped as Class B explosives in packagings approved in accordance with § 173.197a; (10) make an editorial correction in § 173.104; (11) remove paragraph (a)(4) in § 173.122; (12) amend § 173.164(a)(2) to add DOT Specification 17C metal drums for packaging chromic acid or chromic acid mixture, dry; (13) revise § 173.197a by adding the Bureau of Mines and to authorize co-mingling of inside boxes of smokeless powder for small arms; (14) amend the introductory text of § 173.220(a) to authorize the use of fiberboard boxes with inside polyethylene bags for packaging magnesium or zirconium scrap consisting to borings, shavings, or turnings; (15) add a Note 2 in § 173.245(a) to amend the requirements for nickel tank car tanks and cargo tanks for consistency with fabricating capabilities and construction materials available in the market place today. Similiar changes are being proposed in § 173.253(a)(7) and (8), § 173.271(a)(7), (8) and (9), § 173.294(a)(2), (3), and (b), § 179.202–8, § 179.202–11, and § 179.202–16; (16) to provide for marking of stainless steel cargo tanks; (17) remove paragraph (d)(1) in § 173.277; (18) amend the first sentence of § 173.300(a) to clarify that a cryogenic liquid is subject to regulation without regard to the pressure in the package; (19) revise § 173.301(k) to remove the requirement that the outside packaging must provide valve protection if the cylinder has features providing valve protection; (20) revise § 173.302(a)(5)(iv) by restricting the charged service pressure for oxygen to 3000 psig at 70°; (21) reinstate DOT 4DW225 for sulfur dioxide in § 173.304(a)(2); (22) revise Note 6 in § 173.314 to make the safety relief devices to be the same as required in § 178.102–1(a)(3); (23) make an editorial correction in § 173.315(c); (24) amend § 173.316(c)(2) to provide filling limits for "air refrigerated liquid (*cryogenic liquid*)" in cylinders; (25) revise § 173.318(b)(2)(i)(B), (iii), and (iv) to require the use of a primary and a secondary system of pressure relief devices on cargo tanks used in cryogenic liquid service; (26) amend § 173.318(f) (2) and (3) to provide filling limits for "air, refrigerated liquid" and "hydrogen, refrigerated, liquid" in cargo tanks"; (27) add a new paragraph (a)(3) in § 173.320 to include a reference to Subparts A and B of Part 173, § 174.1 and § 177.804; and (28) reinstate § 173.965 "Cotton and other fibers".

In Part 174, these proposed amendments would amend § 174.9(b) by changing the word "must" to "may" regarding the drainage of heater coil inlet and outlet pipes.

In Part 176, § 176.76(g)(2) would allow hazardous materials in portable tanks to be transported on small passenger vessels.

In Part 177, these proposed amendments would remove paragraph (k) of § 177.834 which specifies how certain hazardous materials must be loaded to provide ready access, (2) revise § 177.841(e) to prohibit a motor carrier from carrying poisons in the passenger compartment of a motor vehicle and (3) revise § 177.848(b) to authorize cyanides or cyanide mixtures to be loaded or stored with corrosive liquids that are alkaline.

In Part 178, these proposed amendments would (1) authorize DOT–3E cylinders to be stamped in the sidewall; (2) correct and update the DOT–3AL Specification in § 178.46; (3) revise § 178.51–10(d) and § 178.61–10(b) regarding wall thickness of DOT Specifications 4BA and 4BW steel cylinders (4) make an editorial correction in § 178.53–6(a) regarding DOT–4D cylinders; (5) remove DOT–4B240–FLW from Part 178 and (6) revise § 178.245–1(a) by removing the requirement that DOT Specification 51 portable tanks must be postweld heat treated.

In Part 179, several of these proposed miscellaneous changes are based on recommendations from the Association of American Railroads and are designed to update and clarify the present wording. The Chlorine Institute requested that § 179.102–2(a)(3) be revised to allow the use of a new insulation package of future tank cars for chlorine.

I certify that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Also, the RSPA has determined that this Notice (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be so minimal; (4) will not affect not-for-profit enterprises, or small governmental jurisdictions and (5) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

The following list of Federal Register Thesaurus of Indexing Terms apply to this notice of proposed rulemaking:

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime, carriers, Radioactive materials.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 179

Hazardous materials transportation, Railroad safety.

Regulation affected	Reason(s) for proposed change.	Proposed amendment
§ 171.7(d)(2)	To reference the latest edition of the AAR's "Specification for Tank Cars."	In § 171.7, paragraph (d)(2) would be revised to read as follows: (2) AAR Specifications for Tank Cars means the 1985 edition of the "Association of American Railroads Specifications for Tank Cars, Specification M-1002."
§ 171.7(d)(3)(i)	To update CGA Pamphlet C-6 to the 1984 edition.	In § 171.7 paragraph (d)(3)(i) would be revised to read: (i) CGA Pamphlet C-6 is titled "Standards for Visual Inspection of Steel Compressed Gas Cylinders", 1984 edition.
§ 171.7(d)(3)(ii)	To update CGA Pamphlet C-7 to the 1986 edition.	In § 171.7, paragraph (d)(3)(ii) would be revised to read: (ii) CGA Pamphlet C-7, Appendix A, is titled "Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers",1983 edition.
§ 171.7(d)(3)(iv)	To update CGA Pamphlet C-8 to the 1985 edition.	In § 171.7, paragraph (d)(3)(iv) would be revised to read: (iv) CGA Pamphlet C-8 is titled, "Standard for Requalification of DOT-3HT Cylinders", 1985 edition.
§ 171.7(d)(3)(v)	To update CGA Pamphlet G-4.1 to the 1985 edition.	In § 171.7, paragraph (d)(3)(v) would be amended by changing "1977" edition to read "1985" edition.
§ 171.7(d)(3)(x)	To incorporate CGA Pamphlet G-2.2, 1985 edition, referenced in § 173.315(1)(ii).	In § 171.7, paragraph (d)(3)(x) would be added to read: (x) CGA Pamphlet G-2.2 is titled, "Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia", 1985 edition.
§ 171.7(d)(5)	To incorporate by reference ASTM D 4359-84 "Standard Test Method for Determining Whether a Material is a Liquid or a Solid". Also, in § 171.8 definitions for "Liquid" and "Solid" would be added.	In § 171.7, paragraph (d)(5) (xxiv) would be added to read as follows: (xxiv) ASTM D 4359-84 is titled "Standard Test Method for Determining Whether a Material is a Liquid or a Solid", 1984 edition.
§ 171.8	To add a definition for "Liquid" and "Solid" as tested in accordance with ASTM D 4359-84.	In § 171.8, definitions for "Liquid" and Solid" would be added to read as follows: "Liquid" means a material that has a vertical flow over 2 inches (50 mm) within a three minute period, or a material having one gram (g) or more liquid separation when determined in accordance with the procedures specified in ASTM D 4359-84, "Standard Test Method for Determining Whether a Material is a Liquid or Solid", 1984 edition. • • • • • • "Solid" means a material which has a vertical flow of two inches (50 mm), or less, within a three-minute period, or; a separation of one gram (g), or less, of liquid when determined in accordance with the procedures specified in ASTM D 4359-84 "Standard Test Method for Determining whether a material is a Liquid or Solid", 1984 edition.
§ 172.101(Table)	The American Hoechst Corporation has requested that the entry "1-Bromo-3-nitrobenzene (unstable at 55 °C)" be removed as a "Forbidden" material. Based upon the information received and upon further research, the RSPA agrees that this material is not chemically unstable and should not be listed as a forbidden material.	In the § 172.101 Table the entry "*1-Bromo-3-nitrobenzene (unstable at 55°C)*" would be removed.
§ 172.101 (Table)	The Ethyle Corporation has brought to our attention that the entire Table entry for "Ethyl Phosphonothioldichloride, anhydrous" does not appear in the latest edition of 49 CFR. It appears that this entry was inadvertently removed when a change was made to the entry "Ethyl phosphorus dichloride, anhydrous".	In the § 172.101 Table the entire entry for "ethyl phosphonothioldichloride, anhydrous" would be reinstated the same as it appeared in the October 1, 1985 edition of 49 CFR.
§ 172.101 (Table)	The entry "Compound, water treatment, liquid. *See* Water treatment, liquid" should be removed. The entry "Water treatment liquid" was removed under Docket HM-169-0 on November 17, 1983, [48 FR 52083]. However, the entry "Compound, water treatment, liquid. *See* Water treatment, liquid" was omitted.	In § 172.101, the Table would be amended by removing the entry "Compound, water treatment, liquid. *See* Water treatment, liquid."
§ 172.101 (Table)	To change the ID number for "Ink", combustible liquid, from UN 2667 to UN 1210 to be consistent with the entry in the United Nations Recommendations for the Transport of Dangerous Goods.	In § 172.101, the Table would be amended by changing the ID number for "Ink", combustible liquid, from UN 2667 to read UN 1210.
§ 172.101 (Table)	The entry "Ethlene dibromide" is presently classed as an "ORM-A". RSPA has found published data that indicates that the proper hazard class for this material should be Poison B instead of ORM-A.The toxicity of this material is such that it may pose a significant hazard to health during transportation.	In § 172.101, the Table would be amended by changing the hazard class of "ethylene dibromide" from "ORM-A" to Poison B; the label would be changed from "None" to "Poison"; the packaging columns would be changed from "173.505 and 173.620" to "173.345 and 173.346" respectively.
§ 172.101 (Table)	The entry "Ethylene glycol diethyl etho (diethyl cellosolve)" is presently classed as a "Combustible liquid". The Grent Chemical Division has furnished us data that indicates that the proper hazard class for this material should be flammable liquid instead of combustible liquid.	In § 172.101, the Table would be amended by changing the hazard class for "Ethylene glycol diethyl ether (diethyl cellosolve)" from "Combustible liquid" to "Flammable liquid".
§ 172.101(Table)	This change is considered necessary to correctly identify the proper Emergency Reponse Guide number for Gasohol which has a maximum alcohol content of 20 percent. Paragraphs (c)(4) and (c)(5) in § 172.336 would be revised accordingly.	In the § 172.101 Table, the entry "Gasohol (*gasoline mixed with ethyl alcohol*, *See* Gasoline" would be revised to read "Gasohol (*gasoline mixed with ethyl alcohol containing 20% maximum alcohol*)." *See* Gasoline. In § 172.336, paragraphs(c)(4) and (c)(5) would be revised to read as follows: (4) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point. (5) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point.
§ 172.102(Table)	The entries "Aluminum alkyl, UN3051"and "Aluminum alkyl halide, UN3052" would be added in order to comply with Amendment 22-84 of the IMDG Code which becomes effective July 1, 1986. These changes are necessary to avoid the need for dual shipping names and placarding for certain pyroforic liquids.	In § 172.101, the table would be amended by adding "Aluminum alkyl" and "Aluminum alkyl halide".

§ 172.101 Hazardous Materials Table.

+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3)(a)	(4)	(5)(a)	(5)(c)	(6)(a)	(6)(b)	(7)(a)	(7)(b)	(7)(c)
	ADD										
	Air, refrigerated liquid (cryogenic liquid).	Nonflammable Gas.	UN 1003	Nonflammable Gas.	173.320	173.318, 173.319	Forbidden	300 pounds	1,3	1,3	Stow separate from flammables. Do not overstow with other cargo.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.202(a)(4)	To require the unit of measure to be identified on the shipping papers.	In § 172.202, paragraph (a)(4) would be revised to read as follows: (4) Except for empty packagings, cylinders for compressed gases, and packagings of greater than 110 gallons capacity, the total quantity by weight (net or gross as appropriate) or volume, including the unit of measure, of the hazardous material covered by the description. For example: "800 lbs."; "95 gal.".
§ 172.504 Table 2.	To eliminate the need for dual placarding.	In § 172.504, footnote 6 of Table 2 would be amended by adding" or an OXYGEN placard" at the end.
§ 172.519(b)(2) and (4).	Proposed change responds to a petition of National Tank Truck Carriers, Inc., (P-863) concerning the need to upgrade the placard construction standards. Some of the present placards being employed do not have sufficient durability to withstand weathering for 30 days consistent with the intent of the present § 172.519(a)(4).	In § 172.519, paragraphs (b)(2) and (b)(4) would be revised to read as follows: (2) A weight of 200 pounds per ream of 24 by 36-inch sheets; (4) Been treated with plastic or other waterproofing material that will give it the ability to withstand open weather exposure (including rain) for 30 days without a substantial reduction in effectiveness.
§ 173.11(b)(4)	To require that a shipper identify the type of packaging being used to ship a flammable cryogenic liquid on the registration statement.	In § 173.11, the beginning of the first sentence of paragraph (b)(4) would be amended as follows: (4) The type of packaging and the serial number or vehicle identification number • • •
§ 173.31 Retest Table 2.	To amend Retest Table 2 to include a new DOT Specification 110A600-W multi-unit tank car tank that is being added to § 1780.301.	In § 173.31, Retest Table 2 would be amended by adding the following:

RETEST TABLE 2

Specification	Retest interval—years		Retest pressure p.s.i.		Safety relief valve pressure—p.s.i.	
	Tank	Safety relief devices	Tank hydrostatic expansion	Tank air test	Start-to-discharge	Vapor tight
110A600-W	5	2	600	100	450	360

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.32(a)	To provide for the use under certain conditions of a portable tank as a cargo tank.	In § 173.32, paragraph (a)(1) would be revised and a new paragraph (a)(2) would be added to read as follows: (a) • • • (1) A portable tank containing a hazardous material may not be transported on a motor vehicle unless it is secured to the motor vehicle by a system which conforms to the requirements contained in 49 CFR 393.100 through 393.106, and is located at least six inches forward of the motor vehicle's rear bumper. A portable tank may not be filled or discharged while the tank remains on the vehicle, except as provided by paragraph (a)(2) of this section. (2) A DOT Specification 51, 60 or Marine Portable Tank (46 CFR Part 64) or an equivalent non-DOT specification portable tank authorized under a DOT exemption may not be filled or discharged while the tank remains on the motor vehicle, unless— (i) each discharge and filling outlet is equipped with an internal valve. Additionally, tanks used for the transportation of liquefied compressed gases, except carbon dioxide, must be equipped with excess-flow valves as specified in paragraph (n) of this section; (ii) bottom outlets, if provived, are fitted with three serially-mounted closures consisting of an internal valve, an external valve and a bolted flange or other suitable, liquid-tight closure on the outlet side of the external valve, and (iii) the internal valve is fitted with a remote means of closure located more than 10 feet from the loading/unloading-hose connection or as far as possible from the loading/unloading-hose connection. The remote closure system must be corrosion resistant and effective in all environments. The remote means of closure must be actuated manually. For other that corrosive material service, the remote means of closure must also be activated thermally. Thermally activated closures must operate at a temperature not over 250°F. and not less than 230°F.
§ 173.33c	See § 173.32(a).	In § 173.33c new paragraphs (m)(1) and (2) would be added to read as follows: (m)(1) An IM portable tank containing a hazardous material may not be transported on a motor vehicle unless it is secured to the motor vehicle by a system which conforms to the requirements of 49 CFR 393.100 through 393.106 and is located at least six inches forward of the motor vehicle's rear bumper. (2) A Specification IM 101 and IM 102 portable tank may not be filled or discharged while the tank remains on the motor vehicle, unless the portable tank—

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Regulation affected	Reason(s) for proposed change	Proposed amendment
		(f) is in conformance with the requirements of paragraph (g) of this section; and (g) when required, the internal valve is fitted with a remote means of closure located more than 10 feet from the loading/unloading-hose connection or as far as possible from the loading/unloading-hose connection. The remote closure system must be corrosion resistant and effective in all environments. The remote means of closure must be actuated manually. For other than corrosive material service, the remote means of closure must also be actuated thermally. Thermally actuated closures must operate at a temperature not over 250°F. and not less than 220°F.
§ 173.51	In 14 CFR 108.11 certain persons are authorized to board an airplane with a loaded weapon. In § 173.51, paragraph (g) prohibits the transportation of loaded firearms. The RSPA is proposing to amend paragraph (g) of § 173.51 to provide for an exception as authorized in 14 CFR 108.11.	In § 173.51, paragraph (g) would be revised to read as follows: (g) Loaded firearms (except as provided in 14 CFR 108.11).
§ 173.57(b)	Column (8) of the § 172.101 Table specifies the hazardous materials descriptions and proper shipping names. Repeating this same information on Part 173 serves no useful purpose.	In § 173.57, paragraph (b) would be removed.
§ 173.61(a)	Editorial correction	In § 173.61, paragraph (c)(a) would be corrected to read (c)(3) and paragraph (h) would be revised to read as follows: § 173.61 *Detonating cord.* (a) • • • (h) Each outside packaging shall be plainly marked "CORD, DETONATING—HANDLE CAREFULLY".
§ 173.86(h) and (i).	This proposed change is considered necessary because this type of small arms ammunition has a low level of risk and the actual explosive components have been approved previously and separately from the ammunition itself. Paragraph (i) is considered necessary to provide a means for recognizing that certain devices which contain explosives in small quantities or in certain configurations may be included in a different classification, or excepted from the requirements of the regulations.	In § 173.86, paragraphs (h) and (i) would be added to read as follows: § 173.86 *New explosives definitions; approval and notification.* • • • • • • (h) The requirements of this section do not apply to small arms ammunition which is: (1) Not a forbidden explosive under § 173.51; (2) Ammunition for rifle, pistol, or shotgun; (3) Ammunition with inert projectiles or blank ammunition; and (4) Ammunition not exceeding 50 caliber for rifle or pistol cartridges or 8 gauge for shotshells. (i) If experience or other data indicate that the hazard of a material (device) containing an explosive composition is greater or less than indicated according to the definition and criteria specified in §§ 173.53, 173.86 and 173.100 of this Part, the Director, OHMT may, following examination in accordance with paragraph (b) of this section, revise its classification or except the material (device) from the requirements of this Subchapter.
§ 173.87	To authorize shipment of explosives and other articles when packaged by the Department of Defense (DOD) in accordance with § 173.7(a).	In § 173.87, the first sentence is amended to read as follows: § 173.87 *Explosives in mixed packaging.* Unless specifically authorized in this subchapter, explosives may not be packed in the same outside packaging with other articles unless packaged by the DOD in accordance with § 173.7(a). • • •
§ 173.93(a)(2)	To authorize smokeless powder for small arms to be shipped as Class B explosives in packagings which have been approved under § 173.87a.	In § 173.93, paragraph (a)(2) would be added to read as follows: § 173.93 *Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).* (a) • • • (1) • • • (2) Smokeless powder for small arms may be shipped as Class B explosives in packagings approved in accordance with § 173.197a.
§ 173.104(c)	Editorial correction	In § 173.104, the heading and paragraph (c) would be revised to read as follows: § 173.104 *Cord, detonating flexible; fuse, mild detonating, metal clad; or flexible linear shaped charge, metal clad.* • • • • • • (c) Cord, detonating flexible; fuse, mild detonating, metal clad and flexible linear shaped charges, metal clad shall be packed in wooden or fiberboard boxes. Each package shall be marked "CORD, DETONATING—HANDLE CAREFULLY", "FUSE, MILD DETONATING, METAL CLAD—HANDLE CAREFULLY" or "FLEXIBLE LINEAR SHAPED CHARGES, METAL CLAD—HANDLE CAREFULLY", as appropriate.
§ 173.122(b)(4)	To prohibit the use of DOT Specification 17C metal drums for packaging acrolein, inhibited. In view of HM-186, the use of the 17C drum should not be authorized for acrolein, inhibited.	In § 173.122, paragraph (a)(4) would be removed and reserved.
§ 173.164(a)(3)	This paragraph presently authorizes chromic acid or chromic acid mixture, dry, to be packaged in DOT Specification 17H or 37A metal drums. The U.S. Army Chemical Research and Development Center has requested that DOT Specification 17C steel drums be added to this paragraph. RSPA's findings indicates that DOT Specification 17C drums would be acceptable for this material.	In § 173.164, paragraph (a)(3) would be amended to include Specification 17C metal drums.
§ 173.197a	To authorize co-shipping of inside boxes of smokeless powder without further approval by the Director, OHMT. Also, the Bureau of Mines would be added as an authorized testing facility.	§ 173.197a *Smokeless powder for small arms.* Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. Maximum quantity in any inside packaging must not exceed 8 pounds and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. In addition, inside packages which have been examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT, may be overpacked in DOT-12A66, 12B66, or 12H66 fiberboard boxes provided all inside containers are firmly packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 16 pounds. Each outside package must bear a flammable solid label.
§ 173.220(a)	To authorize the use of fiberboard boxes with inside polyethylene bags for packaging magnesium or zirconium scrap consisting of borings, shavings, or turnings. This proposed packaging is considered to be equal to or better than the four-ply paper bags that are presently authorized. Also, a paragraph (d) would be added to be consistent with the IMDG Code.	In § 173.220, the introductory text of paragraph (a) would be revised and paragraph (d) would be added to read as follows: (a) Magnesium or zirconium scrap consisting of borings, shavings, or turnings, must be packed in closed metal barrels or drums, wooden barrels, metal pails, fiber drums, fiberboard boxes with inside polyethylene bags or liner, or four-ply paper bags.

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Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.245(a), Note 2.	These proposed changes and additions would amend the requirements for nickel tank car tanks and cargo tanks for consistency with fabricating capabilities and construction materials available in the market place today.	Fiberboard boxes with inside polyethylene bags or liner or paper bags are not authorized for less-than-carload or less-than-truckload shipments. • • • • • (3) When transported by vessel, magnesium scrap may not be carried in paper bags and zirconium scrap may only be packaged in an hermetically sealed metal drum not exceeding 60 pounds net weight. In § 173.245(a), Note 2 would be added to read as follows: § 173.245 *Corrosive liquids not specifically provided for.* (a) • • • (33) • • • Note 1: • • • NOTE 2. Specification 103AHW tank car tanks must be fabricated of solid nickel at least 98 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. Specification 103A tank car tanks must be lead-lined steel or must be made of steel with at least 10 percent nickel cladding. Specification 103AW, 111A100F2, or 111A60W2 tanks must be lead-lined steel or made of steel with a minimum nickel cladding of ¼ inch thickness; nickel cladding in tanks must have a minimum nickel content of at least 99 percent. • • • • •
§ 173.253(a)(7) and (8).	See § 173.245(a), Note 2.	In § 173.253, paragraph (a)(7) and (a)(8) would be revised to read as follows: § 173.253 *Chlorosulfuryl chloride.* (a) • • • (7) Specification 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Tanks must have a nickel cladding of 1/16 inch minimum thickness. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent. (8) Specification 103AHW (§§ 179.200 and 179.201 of this subchapter). Tank cars. Tanks must be fabricated of solid nickel at least 98 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. • • • • •
§ 173.266(f)(2)	To provide for the metal identification plate on stainless steel cargo tanks to be marked "DOT MC 312–SS–H_2O_2".	In § 173.266, the eighth sentence in paragraph (f)(2) would be revised to read as follows: § 173.266 *Hydrogen peroxide solution in water.* • • • • • (f) • • • (2) • • • The tank metal identification plate required shall be marked "DOT MC 310–H_2O_2" or "DOT MC 312–AL–H_2O_2", or "DOT MC 312–SS–H_2O_2", as appropriate, and, in addition, the cargo tank shall be clearly marked in letters not less than one inch high "FOR HYDROGEN PEROXIDE ONLY". • • •
§ 173.271(a)(7), (a)(9)(iv), and (a)(9).	See § 173.245(a) Note 2.	In § 173.271, paragraphs (a)(7), (a)(9)(iv), and (a)(9) would be revised to read as follows: § 173.271 *Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.* (a) • • • (7) Specification 103AHW (§§ 179.200 and 179.201 of this chapter). Tank cars. Tanks must be fabricated of solid nickel at least 98 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. (9) • • • • • • • • (iv) Specification MC 311 or MC 312 cargo tanks. Tanks must be fabricated of solid nickel at least 98 percent pure and not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. Authorized only for phosphorus oxychloride and phosphorus trichloride. (9) Specification 103A[1], 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Specification 103A[1], tanks must be lead-lined steel or made of steel with nickel cladding of at least 10% of the shell thickness. Specification 1103AW, 111A60W2, or 111A100F2 tanks must be lead-lined steel or made of steel with nickel cladding with a minimum thickness of 1/16-inch. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent. • • • • •
§ 173.277(b)(1)	the RSPA proposed to delete paragraph (d)(1) of § 173.277. This paragraph should have been deleted when paragraph (d) was revised under Docket No. HM–103; HM–112 (41 FR 15972) on April 15, 1976.	In § 173.277, paragraph (d)(1) would be removed.
§ 173.294(a)(2), (a)(3) and (b).	See § 173.245(a) Note 2.	In § 173.294, the heading, paragraphs (a)(2), (a)(3) and and (b) would be revised to read as follows: § 173.294 *Chloroacetic acid, liquid or solution.* (a) • • • (2) Specification 103AHW,. 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Specification 103AW, 111A60W2, or 111A100F2 tank cars must be nickel clad with a nickel thickness of at least 20 percent. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent. (3) Specifications MC 310, MC 311, or MC 312 (§§ 178.348 of this chapter). Cargo tanks. Tanks must be fabricated of solid nickel at least 98 percent pure and containing not more than 1 percent iron, type 304 or 316 stainless steel or be suitably lined. Nickel metal test coupons for welding procedure qualification must contain not more than 1 percent iron. • • • • •

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(ii) *Chlorosulfic acid, anhydrous*, when shipped as a liquid must be shipped in Specification 103 A60W tank car tanks fabricated of nickel containing not more than 1 percent iron or in Specification 103 AW or 111A60W6 tank car tanks nickel clad. Cladding must be at least 20 percent of the shell thickness. In place of cladding, the tank may be provided with a suitable corrosive resistant coating or lining. Nickel cladding in tanks must have a minimum nickel content of a least 99 percent.
§ 173.300(a)	To clarify that a cryogenic liquid is subject to regulation without regard to the pressure in the container.	In § 173.300, a sentence would be added at the end of paragraph (a) to read as follows: (a) • • •, or a cryogenic liquid. For a definition of a cryogenic liquid, see paragraph (f) of this section.
§ 173.301(i)	If the cylinder has features providing valve protection, it is unnecessary for the outside packaging to provide this protection.	In § 173.301, paragraph (k) would be revised to read as follows: § 173.301 *General requirements for shipment of compressed gases in cylinders.* • • • • • (k) *Outside packagings.* • • • (1) Outside packagings must provide protection for the cylinder. Unless the cylinder has a protective collar or neckring, the outside packaging must provide protection to the valve against accidental functioning and damage. • • • • •
§ 173.302(a)(1)(ii)-(v)	Present wording limits the service pressure on the cylinder to 3,000 psig, whereas the reason for the present wording is to prevent the charging pressure for oxygen from exceeding 3,000 psig. There is no reason why a higher design pressure cylinder should be excluded as long as the oxygen pressure limit is not exceeded.	In § 173.302, paragraph (a)(ii) (iv) would be revised to read as follows: (iv) The pressure in the cylinder may not exceed 3,000 psig at 70 °F.
§ 173.304(a)(2)	To reinstate the 4BW225 to the list of cylinders authorized for the transportation of sulfur dioxide. This cylinder was inadvertently omitted in Docket HM–176 (48 FR 52402, December 24, 1991).	In § 173.314(a)(2) the Table would be amended by adding "DOT–4BW225" in the third column for the entry "Sulfur dioxide".
§ 173.314(c) Note 6 of Table.	The present wording of Note 6 states in part that the discharge capacity of each of these safety relief devices must be sufficient to prevent building up of pressure in the tank in excess of ⅓ of the test pressure of the tank. In § 178.168–1, paragraph (a)(3) uses a 66.6 percent figure. The AAR has requested that this discrepancy be corrected.	In § 173.314, the third sentence of Note 6 following the Table would be revised to read as follows: Note 6: • • • The discharge capacity of each of these safety relief devices must be sufficient to prevent building up of pressure in the tank in excess of 82⅓ percent of the tank test pressure. • • •
§ 173.315(c)	Docket HM–115 (48 FR 27674, June 16, 1983) revised paragraph (c)(1); however, that portion which read "The vapor pressure (psig) at 115 °F. must not exceed the design pressure of the cargo tank or portable tank container" was inadvertently omitted.	In § 173.315, paragraph (c) would be revised to read as follows: (c) Except as otherwise provided, the loading of a liquefied gas into a cargo tank or portable tank shall be determined by weight or by a suitable liquid level gauging device. The vapor pressure (psig) at 115 °F. must not exceed the design pressure of the cargo tank or portable tank container. The liquid portion of the gas shall not fill the tank at 105 °F. if the tank is insulated, or at 115 °F. if the tank is uninsulated, except that this requirement shall not apply to: • • • • •
§ 173.316	To provide filling limits for "air, refrigerated liquid" in cylinders	In § 173.316, paragraph (a)(2) would be amended by inserting the word "air" immediate before the work "argon", and the table would be amended by adding a column for "air" immediately preceding the column for "argon" to read as follows: (2) • • •

Pressure control valve setting (maximum start-to-discharge pressure, psig)	Maximum permitted filling density (percent by weight) Air
45	82.5
75	80.3
100	78.4
170	76.2

Pressure control valve setting (maximum start-to-discharge pressure, psig)	Maximum permitted filling density (percent by weight) Air
230	75.1
295	73.3
360	70.7
450	68.9

Pressure control valve setting (maximum start-to-discharge pressure, psig)	Maximum permitted filling density (percent by weight) Air
540	62.9
625	60.1
Design Service Temperature (°F.)	–320

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.316(b)(2)	To require the use of a primary and a secondary system of pressure relief devices on a cargo tank used in atmospheric gas (except oxygen) and helium, cryogenic liquid service. Proposed change is in response to a petition from the Compressed Gas Association.	In § 173.316, paragraphs (b)(2)(ii)(B), (b)(2) (iii) and (iv) would be revised to read as follows: (ii) *Tanks in atmospheric gas (except oxygen) and helium, cryogenic liquid service.* (B) The primary system of pressure relief valve or valves must have a flow capacity equal to or greater than that specified in 4.1.10.1.1 of CGA Pamphlet S1.2. The inlet connection shall not be less than ¾" nominal pipe size. The combined pressure relief system must have a flow capacity equal to or greater than that calculated by the applicable formula in paragraph 5.3.2 or paragraph 5.3.3 of CGA Pamphlet S–1.2. • • • • • (iii) The secondary system of frangible discs of additional pressure relief valves must have the minimum capacity specified in paragraph (b)(2)(ii) of this section, at a pressure not exceeding 150 percent of the tank design pressure (iv) The primary system of pressure relief valves must have a liquid flow capacity (rated at a pressure not exceeding 120 percent of the tank design pressure), that equals or exceeds the maximum rate at which the tank is to be filled. However, a rating pressure, for purpose of flow capacity not exceeding 150 percent of the tank design pressure is authorized on a tank used in atmospheric gas (except oxygen) and helium, cryogenic liquid service.
§ 173.316(b)(2) & (3).	To provide filling limits for "air, refrigerated liquid" and to increase the filling limit authorized for "hydrogen" when shipped in cargo tanks. Proposed changes respond to petitions from Air Products and Union Carbide Corp.	In § 173.316, paragraph (b)(2) would be amended by removing the word "argon" and inserting in its place the words "Air, argon", and the Table would be amended by adding a column for "air" immediately preceding the column for "argon," and paragraph (b)(3) would be amended by adding an entry in the Table for "hydrogen".

* * * * *

(f) * * *

(2) * * *

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight) air
30	80.5
40	79.2
50	78.0
55	77.5
60	76.9
80	76.5
85	75.1
100	73.0
105	73.7
120	72.2
140	71.4
145	70.8

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING—Continued

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight) air
190	66.3
200	67.2
250	63.3
275	62.3

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING—Continued

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight) air
325	59.4
Design Service Temperature	Minus 320 °F.

(3) * * *

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)			
	Carbon Monoxide	Ethylene	Hydrogen	Methane or natural gas
* * * * *				
190			4.5	

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.320	At present, shipments of atmospheric gas and helium, cryogenic liquid, in packagings authorized under this section do not have to conform with Subparts A and B of Part 173, and §§ 174.1 and 177.804. It was never the intent to except these cryogenic liquids from the above referenced sections. A change is needed to prevent the shipment of leaking packagings	In §§ 173.320 the last sentence in paragraph (a) would be revised to include a reference to paragraph (a)(3); paragraph (a)(3) would be redesignated as (a)(4), and a new paragraph (a)(3) would be added to read as follows: (3) Subparts A and B of Part 173, and §§ 174.1 and 177.804 of this subchapter.
§ 173.985	On November 17, 1983, Docket No. HM-168-D (48 FR 52308) inadvertently removed § 173.985. However, cotton is listed in the § 172.101 Table and reference § 172.985	§ 173.985 would be added to read as follows: § 173.985 *Cotton and other fibers.* Cotton and fibers jute, hemp, flax, sisal, coir, kapok, or similar vegetable fibers, when offered for transportation by water, must be packaged in bales, securely and tightly bound with rope, wire, or other similar means.
§ 174.9(b)	Reference paragraph states that heater coil inlet and outlet pipes must be left open for drainage. The Pennzoil Products Company reports that steam is applied only during the coldest portion of the winter season. When steam is applied, the heater caps must be left off to allow proper drainage. However, 95% of the time steam is not applied and removing and reapplying heater caps at the loading site, except during the cold season is time consuming and serves no useful purpose. The RSPA proposes to change the present word "must" to read "may"	In § 174.9 paragraph (b) would be revised to read as follows: (b) An empty tank car which previously contained a hazardous material and which is tendered for movement or received in interchange must have all manhole covers, outlet valve reducers, outlet valve caps, outlet valve cap plugs, end plugs, and plugs or caps or other openings securely in their proper places, except that heater coil inlet and outlet pipes may be left open for drainage.
§ 176.76(g)(2)	Construction standards for small passenger vessels certificated by the U.S. Coast Guard under 46 CFR Subchapter T are much less stringent than the standards for large passenger vessels. The Coast Guard believes that these small vessels are not suitable for the carriage of hazardous materials in portable tanks when carrying a full complement of passengers. These small vessels (commonly referred to as T-Boats) are used on a regular basis to carry passengers and supplies to offshore platforms and drill rigs. The Coast Guard has corrected this potential problem in the past by placing an endorsement on the vessel's Certificate of Inspection which permits them to carry hazardous materials in portable tanks only when no passengers are on board.	In § 176.76, paragraph (g)(2) would be revised to read as follows: (2) Small passenger vessels of 100 gross tons, or less, may carry a hazardous material in a portable tank only when 16 or less passengers are on board and only when specifically authorized by the Officer-in-Charge, Marine Inspection, by endorsement on the vessel's Certificate of Inspection.
§ 177.834(k)	The American Trucking Association, Inc., (ATA) has petitioned for the removal of paragraph (k) which reads as follows: "(k) *Access to mixed ladings.* Flammable solids, oxidizing materials, or corrosive liquids, when transported on a motor vehicle with other lading not otherwise forbidden, shall be so loaded as to provide ready access thereto for shifting or removal." The ATA believes that carrier operating practices should dictate how the weight of the load should be distributed throughout the trailer to insure an optimum level of vehicle stability and compliance with weight laws. The motor carrier also should be given the flexibility to load the trailer to minimize the possibility of lighter packages being crushed by heavier freight	In § 177.834, paragraph (k) would be removed and reserved. Also reference to paragraph (k) in the beginning of Sections §§ 177.835, 177.837, 177.838, 177.839, 177.840, and 177.841 would be amended to read (j).
§ 177.841(e)	To prohibit a motor carrier from carrying poisons or an irritating material in the passenger compartment of a motor vehicle. Incidents have occurred where a driver has placed a hazardous material (poison) in the passenger compartment and the packaging leaked which endangered the driver	In § 177.841, paragraph (e) would be revised by adding a sentence at the end to read as follows: (e) * * * No motor carrier may transport a packaging containing a material labeled "Poison", or "Poison gas", or "Irritant" in the drivers compartment of a motor vehicle.
§ 177.848(b)	This paragraph reads "cyanides or cyanide, mixtures must not be loaded or stored with acids or corrosive liquids." Cyanides and cyanide mixtures do not present an undue hazard by being stored next to or even by being mixed with corrosive liquids that are alkaline Several commenters have requested that this unnecessary restriction be removed	In § 177.848, paragraph (b) would be revised to read as follows: (b) Cyanides or cyanide mixtures must not be loaded or stored with acids or any other acidic materials which could release hydrocyanic acid from cyanides.
§ 178.42–14	For most specifications cylinders, any identification in the sidewall is prohibited. This proposed change clarifies that the markings on a DOT 3E cylinder may be stamped in the sidewall	In § 178.42–14, paragraph (a) would be revised to read: (a) Marking on each cylinder by stamping plainly and permanently on shoulder, top head, neck, or sidewall as follows: * * * * *
§ 178.46–4(a)	To correct and update the DOT-3AL Specification and to prohibit use of aluminum alloys with harmful quantities of lead and bismuth. The proposed threading requirements are expected to be included in all high pressure cylinder specifications in a future rulemaking. The proposal to authorize the 4D size tensile specimen for a second test to qualify a cylinder lot was indicated as acceptable in the preamble to Docket No. HM-176 but was not included in the final rule. Authorization to use the 4D bar in a second test does not apply to cylinders with sidewall thickness of 9/64 inch and less. RSPA believes that a valid test using the 4D size specimen cannot be obtained in this thickness range	In § 178.46–4, paragraph (a) would be revised to read as follows: § 178.46–4 *Duties of the Inspector.* (a) The inspector shall determine that all materials are in compliance with the requirements of this specification.
§ 178.45–5(g)(1) and (2).		
§ 178.46–5(c).		
§ 178.46–5(e).		
		* * * * *
		In § 178.46–5, Table 1 and footnote 2 of Table 2 in paragraph (d) would be revised to read as follows: § 178.46–5 *Authorized material and identification of material.* * * * * *
		(d) * * *

(1) CHEMICAL COMPOSITION LIMITS [1]

(Chemical Composition (in weight percent))

Aluminum Assoc. alloy designation No.	Si	Fe	Cu	Mn	Mg	Cr	Zn	Ti	Pb	Bi	Other [2] Each	Other [2] Total	Al
6351	0.7–1.3	0.50	0.10	0.40–0.80	0.40–0.80		0.20	0.20	0.01	0.01	0.05	0.15	Remainder.
6061	0.40–0.80	0.70	0.15–0.40	0.15	0.80–1.20	0.04–0.35	0.25	0.15	0.01	0.01	0.05	0.15	Remainder.

[1] ASTM B 221–76 Standard Specification for Aluminum-Alloy Extruded Bars, Rods Shapes, and Tubes, Table 1 Chemical Composition Limits, except for Pb and Bi. Limits are in percent maximum unless otherwise indicated.

[2] Analyses is regularly made only for the elements for which specific limits are shown, except for unalloyed aluminum. If, however, the presence of other elements is suspected to be, or in the course of routine analyses is indicated to be in excess of specified limits, further analyses is made to determine that these other elements are not in excess of the amount specified. (Aluminum Association Standards and Data–Sixth Edition 1979).

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(2) *Mechanical Property Limits.* . . . . .
		1 "D" represents specimen diameters. When the cylinder wall is greater than ¾ inch thick, a retest without retreat treatment using the 4D size specimen is authorized if the test using the 2 inch size specimen fails to meet elongation requirements.
		. . . . .
		In § 178.46–6, paragraph (c) would be revised to read as follows:
		§ 178.46–6 *Manufacture.*
		. . . . .
		(c) Thickness of the cylinder base may not be less than the prescribed minimum wall thickness of the cylindrical shell. The cylinder base must have a basic torispherical, hemispherical, or ellipsoidal interior base configuration where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration provided,
		(1) any areas of deviation are accompanied by an increase in base thickness;
		(2) all radii of merging surfaces are equal to or greater than the knuckle radius;
		(3) each design has been qualified by successfully passing the cycling tests in § 178.46–6(f); and
		(4) that detailed specifications of the base design are available to the inspector.
		. . . . .
		In § 178.46–8, paragraph (e) would be revised to read as follows:
		§ 178.46–8 *Openings.*
		. . . . .
		(e) All openings must be threaded. Threads must comply with the following:
		(1) Each thread must be clean cut, even, without checks, and to gauge.
		(2) Taper threads, when used, must comply with one of the following:
		(i) American Standard Pipe Thread (NPT) type must comply with the requirements of Federal Standard H–28 (1978), Section 7.
		(ii) National Gas Taper Thread (NGT) type must comply with the requirements of Federal Standard H–28 (1978), Sections 7 and 9.
		(iii) Other taper threads in compliance with other standards may be used provided the length is not less than that specified for NPT threads.
		(3) Straight threads when used must comply with one of the following:
		(i) National Gas Straight Thread (NGS) type must comply with the requirements of Federal Standard H–28, (1978), Sections 7 and 9.
		(ii) Unified Thread (UN) type must comply with the requirements of Federal Standard H–28 (1978), Section 8.
		(iii) Controlled Radius Root Thread (UNJ) type must comply with the requirements of Federal Standard H–28 (1978), Section 4.
		(iv) Other straight threads in compliance with other recognized standards may be used provided that the requirements in (4) below are met.
		(4) All straight threads must have at least 8 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28 (1978), Appendix A6, Section 3.
§ 178.51–10(d) § 178.61–10(b)	At the present time, these two sections state that for cylinders with wall thicknesses less than 0.100 inch, the ratio of tangential length to outside diameter shall not exceed 4.0. The 4.0 does not apply consistently. It is not in Specification 4B and is not in any of the seamless cylinder specifications. Based on a request from a cylinder manufacturer the RSPA is proposing to change the "4.0" to "4.1".	In § 178.51–10, paragraph (d) would be revised to read as follows: § 178.51–10 *Wall thickness.* . . . . . . (d) For cylinders with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1. In § 178.61–10, paragraph (b) would be revised as follows: In § 178.61–10 *Wall thickness.* . . . . . . (b) For cylinders with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.
§ 178.53–8(a)	Editorial correction. The wall thickness for DOT Specification 4D cylinders states that the minimum wall for any container having a capacity of 1,100 cubic inches or less is 0.40 inch. The RSPA proposes to correct the "0.40" to read "0.04".	In § 178.53–8, paragraph (a) would be amended by changing 0.40 to read 0.04.
§ 178.54	To our knowledge, DOT Specification 4B240–FLW, welded or welded and brazed cylinders with fusion-welded longitudinal seam are not being made. At the time this specification was added to Part 178, Specification 4BW was not available. Therefore, since the 4B240–FLW cylinder is no longer being made and the 4BW cylinder is available, we are proposing to remove DOT Specification 4B240–FLW from Part 178. Part 173 would not be effected.	In Part 178, § 178.54 would be removed in its entirety.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 178.245–1(a)	To remove the requirement that DOT Specification 51 portable tanks be postweld heat treated. Manufacturers of DOT–51 portable tanks, made for certain austenitic stainless steels, maintain that postweld heat treatment does not enhance the integrity of the tank. The ASME Code does not require postweld heat treatment on this particular type of steel because such treatment is not beneficial. RSPA agrees with the manufacturer's position.	In § 178.245–1, the introductory text of paragraph (a) would be revised to read as follows: § 178.245–1 *Requirements for design and construction.* (a) Tanks must be seamless or welded steel construction or combination of both and must have a water capacity in excess of 1,000 pounds. Fusion welded tanks must be postweld heat treated and radiographed to provide the highest joint efficiency provided by the ASME Code, except that postweld heat treatment of tanks made from austenitic stainless steel grades 304L, 316L, 321 and 347 shall be as required by the ASME Code. Tanks must be designed and constructed in accordance with and fulfill the requirements of the ASME Code. Tanks constructed in accordance with the requirements of Part UHT of the ASME Code must comply with the following additional requirements:
§ 179.100–13(a)	The referenced paragraph discusses the bolting of venting, loading and unloading valves to seatings on manway covers. The AAR has requested that the word "directly" be removed because the present wording can be interpreted as prohibiting the use of intervening eductor pipe flange between a valve and a manway cover.	In § 179.100–13, the second sentance in paragraph (a) would be revised to read as follows: § 179.100–13 *Venting, loading and unloading valves, measuring and sampling devices.* (a) * * * The valves shall be bolted to seatings on the manway cover, except as provided in § 179.103. * * *
§ 179.100–14(a)(1). § 179.100–14(a)(3).	To improve railroad safety by (1) increasing the minimum allowable vertical clearance requirements for bottom outlets; (2) regulating the use of supplementary bottom outlet fittings; and (3) clarifying the requirement for bottom outlet and shear breakage groove requirements.	In § 179.100–14, paragraph (a)(1) and (a)(3) would be revised to read as follows: (a) * * * (1) The extreme projection of the bottom washout equipment may be no more than that allowed by Appendix E of the AAR Specifications for Tank Cars. (2) * * * (3) If the bottom washout nozzle extends 8 inches or more from shell of tank, a V-shaped breakage groove must be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case shall the nozzle wall thickness at the root of the "V" be more than ¼-inch. Where the nozzle is not a single piece, provision must be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent must not be more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.
§ 179.102–2(a)(3)	The Chlorine Institute has requested that this subparagraph be updated to allow the use of a new insulation package on future tank cars for chlorine. A fire test was conducted and the fire protection capability of the ceramic fiberglass fiber system is excellent and well below the targeted limit of 483 degrees. F. Without sacrificing any other properties.	In § 179.102–2, paragraph (a)(3) would be revised to read as follows: § 179.102–2 *Chlorine.* (a) * * * (3) Insulation must be 4 inches minimum thickness of corkboard or of self-extinguishing polyurethane foam or must be 2 inches minimum thickness of 4 pounds per cubic foot minimum density ceramic fiber covered by 2 inches minimum thickness of glass fiber.
§ 179.102–13	To improve railroad safety by requiring that hydrogen fluoride tank cars be constructed of corrosion resistant materials.	§ 179.102–13 would be revised to read as follows: § 179.102–13 *Hydrofluoric acid, anhydrous.* (a) Tank cars used to transport hydrofluoric acid, anhydrous, must comply with the following special requirements: (1) Bottom openings in tank are prohibited. (2) Plates for the tank shell, heads and manway must comply with Specification ASTM A516, Grade 70 normalized, or ASTM A537, Class 1. (3) Tanks must be postweld heat treated at 1,100 °F minimum; postweld heat treatment at the alternate lower temperatures listed in AAR Specifications for Tank Cars, Appendix W, is prohibited. (4) If welding or welded repairs are required on the tank shell, heads or manway nozzle after the tank is postweld heat treated, the tank or area repaired must be postweld heat treated again after the welding is completed. In such instances, the temperature must be controlled to provide protection for the adjacent metal to prevent a harmful temperature gradient. (5) The maximum hardness of the weld in the heat-affected zone may be no more than Brinell 237 (Rockwell C 22), measured on the production test plate on the cross section, after welding and final post-weld heat treatment. (6) Valves, valve parts, and other appurtenances normally in contact with the lading must comply with the National Association of Corrosion Engineers' Publication MR–01–75 and must be approved for hydrogen fluoride service. Ferritic stainless steels may not be used. (7) Safety relief valves must be in combination with either a breaking pin device or a frangible disc. See § 179.100–15(b) and (c). (8) Fasteners used in valve assemblies must conform to the National Association of Corrosion Engineers' Publication MR–01–75 and must be approved for hydrofluoric acid, anhydrous. Ferritic stainless steels may not be used. Studs, bolts, and nuts used to fasten any valves or fittings to the cover plate or the cover plate to the manway ring must meet the following specifications: (a) Studs and bolts: ASTM A–193–B7M; or ASTM A–193–B7-maximum hardness may be no more than Brinell 237 (Rockwell C–22); or ASTM A–320–L7-maximum hardness may be no more than Brinell 237 (Rockwell C–22). (2) Nuts ASTM A–194–2M; or ASTM A–194–2-maximum hardness may be no more than Brinell 237 (Rockwell C–22). (9) Each tank must be marked "HYDROGEN FLOURIDE" in accordance with § 172.330.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 179.100–8(b)(1), § 179.100–8(b)(4)	To improve railroad safety	In § 179.100–8, paragraphs (b)(1) and (b)(4) would be revised to read as follows: (b) • • • (1) The extreme projection of the bottom outlet equipment may be no more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments must be secured to car by at least 3/8-inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve must be closed by a plug, cap, or approved quick coupling device. the bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings must be approved by the Director, Office to Hazardous Materials Transportation. • • • • • (4) If the outlet nozzle extends 6 inches or more from shell of tank, a V-shaped breakage groove must be cut (not cast) in the upper part to the outlet nozzle at a point immediately below the lowest part of valve closest to the tank. In no case shall the nozzle wall thickness at the root of the "V" be more than ⅛ inch. On cars without continuous center sills, the breakage groove or its equivalent must not be more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction. • • • • •
§ 179.200–7 Tables.	The Association of American Railroads has requested that referenced section be amended to resolve the confusion that exists between the AAR Specification for Tank cars, Appendix M and the ASTM Specifications covering the variation of minimum elongation between the welded condition and the as rolled base metal.	In § 179.200–7, the third column of the Tables in paragraphs (b), (c), (d), (e), and (f) would be revised to read as follows: Minimum elongation in 2 inches (percent) weld metal (longitudinal)
§ 179.200–13	The specifications for pressure tank car tanks recognize that many nozzle-to-tank joints are neither the butt nor lap-joint types (§ 179.100–12(a)). The specifications for non-pressure tank car tanks require that such joints be of the butt or lap-joint type (§ 179.200–13 (c). The AAR has requested that the two sets of specifications be consistent.	In § 179.200, § 179.200–13 would be revised to read as follows: § 179.200–13 *Manway ring or flange, safety relief device flange, bottom outlet nozzle flange, bottom washout nozzle flange and other attachments and openings.* (a) These attachments shall be fusion welded to the tank and reinforced in an approved manner in compliance with the requirements of Appendix E, Figure 10, of the AAR Specifications for Tank cars. (b) The opening in the manway ring shall be at least 16 inches in diameter except that acid resistant lined manways shall be at least 16 inches in diameter before lining. (c) The manway ring or flange, if riveted to the dome or tank, shall be of cast, forged or fabricated steel, malleable iron or other malleable metals. (d) The manway ring or flange, if welded to the dome, tank or nozzle, shall be made of cast, forged or fabricated metal. The metal of the dome, tank, or nozzle shall be compatible with the manway ring or flange, so that they may be welded together. (e) The openings for the manway or other fittings shall be reinforced in an approved manner.
§ 179.200–17 (a)(1), (a)(6), (a)(7), (b)(1), and (b)(3).	The AAR contends that the present wording is unclear and recommends these proposed changes.	In § 179.200–17, paragraphs (a)(1), (a)(6), (a)(7), (b)(1), and (b)(3) would be revised to read as follows: (a) • • • (1) The extreme projection of the bottom outlet equipment may be no more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments must be secured to the car by at least ⅜-inch chain, or its equivalent, except that the bottom outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve must be closed by a plug, cap, or approved quick coupling device. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings must be approved by the Director, Office of Hazardous Materials Transportation. • • • • • (6) To provide for the attachment of unloading connections, the discharge end of the bottom outlet nozzle or reducer, the valve body of the exterior valve, or some fixed attachment thereto, must be provided with one of the following arrangements or an approved modification thereof. (See Appendix E, Fig. E17 of the AAR Specifications for Tank Cars for illustrations of some of the possible arrangements.) (i) A bolted flange closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.1) or including an auxiliary valve with a threaded closure. (ii) A threaded cap closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.2) or including an auxiliary valve with a threaded closure. (iii) A quick-coupling device using a threaded plug closure of at least 1-inch NPT or having a threaded cap closure with a minimum 1-inch NPT pipe plug (see Fig. E17.3 through E17.5). A minimum 1-inch auxiliary test valve with a threaded closure may be substituted for the 1-inch pipe plug (see Fig. E17.6). If the threaded cap closure does not have a pipe plug, or integral auxiliary test valve, a minimum 1-inch NPT pipe plug must be installed in the outlet nozzle above the closure (see Fig. E17.7).

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(iv) A two-piece quick-coupling device using a clamped dust cap which must include an in-line auxiliary valve, either integral with the quick-coupling device or located between the primary bottom outlet valve and the quick-coupling device. The quick-coupling device closure dust cap or outlet nozzle must be fitted with a minimum 1-inch NPT closure (see Fig. E17.8 and E17.9). (7) If the outlet nozzle extends 6 inches or more from the shell of the tank, a V-shaped breakage groove must be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of valve closest to the tank. In no case shall the nozzle wall thickness at the root of the "V" be more than ¼ inch. The outlet nozzle on interior valves or the valve body on exterior valves may be steam jacketed, in which case the breakage groove or its equivalent must be below the steam chamber but above the bottom of center sill construction. If the outlet nozzle is not a single piece, or if exterior valves are applied, provisions must be made for the equivalent of the breakage groove. On cars without continuous center sills, the breakage groove or its equivalent must be no more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction. • • • • • • (b) • • • 1. The extreme projection of the bottom washout equipment may be no more than that allowed by Appendix E of the AAR Specifications for Tank Cars. • • • • • • (3) If the washout nozzle extends 6 inches or more from the shell of the tank, a V-shaped breakage groove must be cut (not cast) in the upper part of the nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case shall the nozzle wall thickness at the root of the "V" be more than ¼ inch. Where the nozzle is not a single piece, provisions must be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent must not be more than 15 inches below the outer shell. On cars with continuous centersills, the breakage groove or its equivalent must be above the bottom of the center sill construction.
§ 179.202-8	See § 179.245(a) Note 2.	In § 179.202, § 179.202-8, § 179.202-11, and § 179.202-16 would be revised to read as follows: § 179.202-8 *Chloroacetyl chloride.* Tank cars used to transport chloroacetyl chloride must have a nickel cladding with a minimum thickness of 1/16. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent. Specification DOT–103ANW tank car tanks used to transport chloroacetyl chloride must be fabricated of nickel containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of 96.7 percent. • • • • • •
§ 179.202-11	Present wording requires phosphorus trichloride to be transported in certain lined tank cars. § 173.271(a)(11) does not require a lining for DOT 103A, 103AW, and 111A100F2 tank cars.	In § 179.202-11 the second and third sentences would be revised to read as follows: § 179.202-11 *Phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thio-phosphoryl chloride.* • • • Specification 103ANW tank cars used to transport transport phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphonyl chloride, tanks must be fabricated of solid nickel containing not more than 1 percent iron. Metal test coupon for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. Specification 103A tank cars used to transport phosphorus trichloride must be lead-lined steel, or made of steel with a nicked cladding of a least 10 percent of the shell thickness. Specifications 103AW, 111A100F2, or 111A60W2 tank cars used to transport phosphorus trichloride must be lead-lined steel or made of steel with a minimum thickness of nickel cladding of 1/16-inch. Nickel cladding must have a minimum nickel content of at least 99 percent. Specification 103EW tank cars used to transport phosphorus trichloride and thiophosphonyl chloride must have tanks fabricated from Type 316 stainless steel. Unlined Specification 103A, 103AW, 111A100F2, or 111A100W2 tank cars are authorized for phosphorus trichloride only.
§ 179.202-16	See § 173.245(a) Note 2.	§ 179.202-16 *Chloroacetic acid, liquid.* (a) Tank cars used to transport Chloro-acetic acid, liquid, must have tanks with nickel cladding of at least 20 percent of the shell thickness. Nickel cladding in tanks must have a minimum nickel content of a least 99 percent. • • • • • • (b) Chloroacetic acid, anhydrous, when shipped as a liquid must be shipped in Specification 103ANW tank car tanks fabricated of nickel containing not more than 1 percent iron, or in Specification 103AW or 111A60W2 tank car tanks with nickel cladding of at least 20 percent of the shell thickness, or be provided with a suitable corrosion resistant coating or lining. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent.
id		In § 179.202-16, paragraphs (a)(1), (a)(6), (b)(1), and (b)(3) would be revised to read as follows: (a) • • • (1) The extreme projection of the bottom outlet equipment may be no more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments must be secured to care by at at least ¾-inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by ½-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve must be closed by a plug, or cap. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings must be approved by the Director, Office of Hazardous Materials Transportation. • • • • • •

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(ii) If outlet nozzle and its closure extends below the bottom of the outer shell, a V-shaped breakage groove must be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of the valve closest to the tank. In no case shall the nozzle wall thickness at the root of the "V" be more than ¼ inch. The outlet nozzle or the valve body may be steam jacketed, in which case the breakage groove or its equivalent must be below the steam chamber but above the bottom of the center sill construction. If the outlet nozzle is not a single piece or if exterior valves are applied, provision must be made for the equivalent of the breakage groove. On cars without continuous center sills, the breakage groove or its equivalent must not be more than 15 inches below the outer shell.
		• • • • •
		(h)* * *
		1. The extreme projection of the bottom washout equipment may be no more than that allowed by Appendix E of the AAR Specifications for Tank Cars.
		• • • • •
		(3) If washout nozzle extends below the bottom of the outer shell, a V-shaped breakage groove must be cut (not cast) in the upper part of the nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case shall the nozzle wall thickness at the root of the "V" be more than ¼ inch. Where the nozzle is not a single piece, provisions must be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent must not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.
§179.220–19(c)	To make an exception for the use of safety vents on DOT 115A tank cars for the transportation of chloroprene. See §179.222 for more information.	In §179.220–19, paragraph (c) would be amended by changing the last sentence to read as follows: (c) * * * Except for tanks for chloroprene (see §179.222–1), tanks equipped with vents must be stenciled "Not for flammable liquids".
§179.221–1	To add a "Special reference" to the Table in §179.221–1 for the 115A60W1 and 115A60W6 tank cars to coincide with the proposed change to §179.222 for the transportation of chloroprene.	In §179.221, the Table would be amended by adding an entry to read as follows:
		• • • • •
Special reference	§179.222–1	179.222–1
§197.222	To authorize DOT 115A tank cars for the transportation of chloroprene to be equipped with safety vents instead of safety relief valves. Chloroprene is classed as a flammable liquid. Also, it is polymerizable and its vapor discharging through a relief valve orifice may condense, build up, and plug the orifice. A minimum safety vent diameter of 12 inches is being proposed.	In Part 179, a new section §179.222 would be added to read as follows: §179.222 *Special commodity requirements for DOT 115A tank car tanks.* In addition to §179.220 and §179.221 the following requirements are applicable: §179.222–1 *Chloroprene.* DOT 115A tank car tanks used to transport chloroprene must be equipped with a safety vent with a diameter not less than 12 inches complying with §179.221–1 instead of a safety relief valve. The outer shell shall be stenciled "CHLOROPRENE ONLY" on both sides in letters not less than 1½ inches high.
§179.222–1		
§179.301	To add a new DOT Specification 110A600–W to the list of authorized multi-unit tank car tanks.	In §179.301, the Table would be amended by adding the following: §179.301 *Individual specification requirements for multi-unit tank car tanks.* (a) * * *

DOT specifications	100A600–W
Bursting pressure, psi (see 179.300–8)	1500
Minimum thickness shell, inches	⅜
Test pressure psi (see §179.300–16)	600
Safety relief devices psi (see §179.300–15)	
Start-to-discharge, or burst maximum psi	450
Vapor-tight, minimum psi	360

[1] None specified.

Issued in Washington, DC on May 23, 1986 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

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Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–80, Notice 1]

Transportation of Natural and Other Gas by Pipeline; Period for Confirmation or Revision of Maximum Allowable Operating Pressure

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to clarify the rule that a pipeline's maximum allowable operating pressure (MAOP) must be confirmed or revised within 18 months after an increase in class location. Some operators have misinterpreted this rule to bar later pressure testing to qualify a current MAOP if that pressure is reduced during the 18-month period. The proposed rule would clarify that the previously established MAOP of pipelines that have had their MAOP reduced to meet the 18-month deadline may be reinstated by pressure testing at any time after the 18-month period.

DATE: Interested persons are invited to submit written comments on this proposal by July 18, 1986. Late filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and identify the docket and notice numbers. All

comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 am and 5:00 pm each working day.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 426–2392.

Address: Copies of the proposal and documents related thereto may be obtained from the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–3148.

SUPPLEMENTARY INFORMATION: By letter of January 22, 1985, (P–30), The Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned RSPA to clarify the period allowed for confirmation or revision of a pipeline's MAOP following a change in class location.

Whenever an increase in population density causes an increase in a pipeline's designated class location, and the hoop stress corresponding to the pipeline's MAOP is not commensurate with the new class location, the MAOP must be confirmed or revised according to the rules in § 192.611. Paragraph (e) of § 192.611 requires that the confirmation or revision be completed within 18 months of the change in class location.

Section 192.611 permits alternative actions for pipelines that have not previously been pressure tested for at least 8 hours to at least 90 percent of specified minimum yield strength. These alternatives are (1) reduce the pipeline's MAOP (to the level where the corresponding hoop stress does not exceed the stress permitted for new pipelines in that class location (section 192.611(b)), or (2) pressure test the pipeline and either reestablish the original MAOP or establish a lower MAOP based on that test (section 192.611(c)).

Because of operating constraints, reductions in market demand or gas supplies, or other economic factors, operators sometimes find it more practical to reduce a pipeline's MAOP rather than conduct a pressure test, even though the existing MAOP may be needed to handle anticipated future operating conditions. However, ASME argues that the 18-month rule of § 192.611(e) thwarts this option because it makes the two alternatives mutually exclusive. In other words, ASME says operators who choose pressure reduction as a temporary measure are precluded from pressure testing at a later date to confirm the existing MAOP. As a result, operators are compelled to test within 18 months to preserve an existing MAOP, even though that pressure level is not necessary for current operations.

In contrast, RSPA does not believe that the 18-month rule blocks operators who choose one compliance option from later selecting the other. In an August 29, 1984, response to a waiver request from Tennessee Gas Pipeline (Petition 84–5W), RSPA said:

> [T]here is nothing in § 192.611(b), (c), or (e) that bars application of paragraph (c) once paragraph (b) has been applied. Under § 192.611, paragraphs (b) and (c) provide independent alternative ways to comply with the confirmation or revision rule. Choosing pressure reduction under paragraph (b) initially is not inconsistent in any way with testing later under paragraph (c) to confirm the preexisting MAOP. Paragraph (e) requires that confirmation or revision be done within 18 months after a class change occurs. It does not preclude taking alternative compliance action at a later date.

Still, RSPA is concerned, because of the ASME petition and the earlier waiver request, that § 192.611(e) may, in practice, be adversely affecting economical pipeline operations of some operators. Therefore, RSPA is proposing to amend § 192.611 by revising paragraph (e)(2) as set forth below to make it clear that operators who reduce a pipeline's MAOP under § 192.611(b) within the 18-month period may at a later date reinstate the preexisting MAOP by pressure testing under § 192.611(c).

Classification

Since this proposed rule will have a positive effect on the economy of less than $100 million a year, it will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated the proposed rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the proposed rule will reduce the costs of confirmation or revision programs by reducing the number of pressure tests unnecessarily done to satisfy the current rule. However, this savings is not expected to be large enough to warrant preparation of a Draft Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to Section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Maximum allowable operating pressure.

PART 192—[AMENDED]

In view of the above, RSPA, proposes to amend Part 192 to Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

> **Authority:** 49 U.S.C. 1672; U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.611(e)(2) would be revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(e) * * *

(2) Confirmation or revisicn due to changes in class location that occur on or after July 1, 1973, must be completed within 18 months of the change in class location. Pressure reduction under paragraph (b) of the section within the 18-month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) at a later date.

Issued in Washington, DC on May 29, 1986, under authority delegated by 49 CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 86–12353 Filed 6–2–86; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 51, No. 106
Tuesday, June 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Citizen's Advisory Committee on Equal Opportunity; Meeting

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), an announcment is made of the following committee meeting:

Name: Citizen's Advisory Committee on Equal Opportunity.

Date: July 28-30, 1986.

Place: Park East Hotel, 916 East State Street, Milwaukee, Wisconsin 53202.

Time: 9:00 a.m.—5:00 p.m.

Purpose:

—Advise the Secretary on the effectiveness of compliance program directives;

—Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;

—Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination;

—Additionally, the Committee will focus on:

—Review of the status of Equal Employment Opportunity in the Department of Agriculture;

—Employment programs and constituent services in the Forest Service;

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Bembry, Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 201 14th Street, SW., Room 2305 Auditors Building, Washington, DC 20024 (202) 447-5681.

Written statements may be submitted until July 11, 1986.

Lawrence Bembry,

Associate Director, Equal Opportunity, Office of Advocacy and Enterprise.

[FR Doc. 86-12423 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-54-M

Food and Nutrition Service

Level of Donated-Food Assistant or Cash in Lieu Thereof for Nutrition Program for the Elderly Fiscal Year 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the level of assistance for the Nutrition Program for the Elderly for Fiscal Year 1985. Based on final meal participation data reported for Fiscal Year 1985, 225,293,379 meals were served. Given the total funding of $120,800,000 for Fiscal Year 1985, the per-meal level of assistance is set at $.53618 per meal in accordance with section 311(c)(2) of the Older Americans Act of 1965 (the Act).

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302 (703) 756-3660.

SUPPLEMENTARY INFORMATION: This action, which implements a mandatory provision of section 311 of the Act, has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as "nonmajor" because it does not meet any of the three criteria in the definition of "major rule" in the Executive Order. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete. The purpose of this action is to notify States of the level of donated-food assistance to be povided for nutrition services under the Act during Fiscal Year 1985.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

The Nutrition Program for the Elderly was funded at $120,800,000 for Fiscal Year 1985 to carryout the provisions of section 311(a)(4). On August 19, 1985, (50 FR 33363) a Federal Register Notice was published stating that the total number of meals served in Fiscal Year 1985 might exceed the previous estimate of 212,800,000. It was estimated that the total number of meals might range between 220 million and slightly above 230 million, based on estimates of meals to be served and that the per-meal reimbursement rate would depend on the final meal count. Final meal participation data has now been reported to the Department which indicates that 225,293,379 meals were served. Therefore, the per-meal reimbursement rate is set at $.53618 for Fiscal Year 1985. The final meal rate is calculated by dividing the $120,800,000 funding level by 225,293,379 meals served. This rate applies to all eligible meals served in fiscal year 1985.

(42 U.S.C. 3030a)

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: May 22, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-12354 Filed 6-2-86; 8:45 am]

BILLING CODE 3410-30-M

Food Stamp Program: Adjustment of Income Eligibility Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is adjusting the limits on gross and net income which certain households may have and still be eligible for food stamps. The Food Stamp Act of 1977, as amended, requires the Department to make this adjustment each year. By adjusting the income elibility limits, the Program takes into account changes in the cost of living.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3385.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. This action will affect the economy by less than $100 million a year. It will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Publication

State agencies must implement the new standards on July 1, 1986, and these offices need adequate advance notice of the new standards to carry out all steps necessary for them to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the gross and net monthly income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking procedures.

Regulatory Flexibility Act

The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will primarily affect State and local welfare agencies and future food stamp applicants. The effect upon the welfare agencies is not significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

All households, except those in which all members are receiving public assistance or supplemental security income benefits, must meet the Food Stamp Program's income eligibility standards. Households which contain an elderly or disabled member must meet the net income eligibility standards—equal to the poverty level. Households which do not contain an elderly or disabled member must meet both the net income eligibility standards and the gross income eligiblity standards—equal to 130 percent of the poverty level. In addition, elderly individuals (and their spouses) unable to prepare meals because of certain disabilities may be considered separate households even if they are living and eating with another household. The Act limits this exception to those persons who meet both of the following requirements: (1) Their own income may not exceed the net income eligibility standards, and (2) the income of those with whom they reside may not exceed 165 percent of the poverty level. The Food Stamp Act requires that the gross and net income eligibility standards take into account the annual adjustments of the poverty guidelines issued by the Department of Health and Human Services. The elderly/disabled standards must also be adjusted. These adjustments are set forth in the following tables.

NEW MONTHLY INCOME ELIGIBILITY STANDARDS

[100% of poverty level]

Household size	48 States[1]	Alaska	Hawaii
1	447	559	515
2	604	755	695
3	760	950	875
4	917	1,146	1,055
5	1,074	1,342	1,235
6	1,230	1,538	1,415
7	1,387	1,734	1,595
8	1,544	1,930	1,775
Each additional member	+157	+196	+180

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130% of poverty level]

Household size	48 States[1]	Alaska	Hawaii
1	581	726	669
2	785	981	903
3	988	1,235	1,137
4	1,192	1,490	1,371
5	1,396	1,745	1,605
6	1,599	1,999	1,839
7	1,803	2,254	2,073
8	2,007	2,508	2,307
Each additional member	+204	+255	+234

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED A SEPARATE HOUSEHOLD

[165% of poverty level]

Household size	48 States[1]	Alaska	Hawaii
1	737	922	849
2	996	1,245	1,146
3	1,254	1,568	1,443
4	1,513	1,891	1,740
5	1,771	2,214	2,037
6	2,030	2,537	2,334
7	2,288	2,860	2,631
8	2,547	3,184	2,928
Each additional member	+259	+324	+297

[1] Includes District of Columbia, Guam and Virgin Islands.

(91 Stat. 958 (7 U.S.C. 2011–2029)

Dated: May 27, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–12425 Filed 6–2–86; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Applications Under Minority Business Development Center Program

May 23, 1986.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost performance for the first 12 months is estimated at $694,118 for the project performance period of September 1, 1986 to August 31, 1987. The first year cost for the MBDC will consist of $590,000 in Federal funds and a minimum of $104,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–86015–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC support MBDC

programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105

June 11, 1986 at 10:00 A.M.

Proposals Are To Be Mailed to the Following Address

Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

DATES: Closing date: The closing date for application is June 20, 1986. Applications must be postmarked by midnight, June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

May 22, 1986.

11.800 Minority Business Development. (Catalog of Federal Domestic Assistance)

Victor Cassus,

Regional Director, San Francisco Regional Office.

[FR Doc. 86-12191 Filed 6-2-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals Permit Application; NMFS, Northwest and Alaska Fisheries Center (P77#19)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name—Northwest and Alaska Fisheries Center, National Marine Fisheries Service.

b. Address—7600 Sand Point Way, N.E., Seattle, Washington 98115.

2. Type of Permit: Scientific research

3. Species: Northern fur seal *(Callorhinus ursinus)*.

4. Number and Type of Take:

To take annually for five (5) years up to 1,500 females, 2,500 males and 32,500 pups of either sex may be captured by the use of physical and/or chemical restraint for marking (which may include the use of tags, paint, bleach, shearing, branding, tattooing, and injection of tetracycline); handling (which may include weighing, examining, measuring, obtaining blood, milk, and swab samples, identifying sex, and administering lavage and enema procedures); and release near the capture site. All of the above takes may occur an unspecified number of times per individual each year.

Of the above: Up to 250 may have instruments affixed which may include sensors, recorders, radio transmitters, and satellite-linked electronics. Take by instrumenting will involve a maximum of 10 recaptures per individual each year for instrument monitoring; up to 40 will be injected with labeled water which may include holding individuals captive, injecting radioisotopic water, and obtaining blood and milk samples. This type of take will involve a maximum of 5 recaptures and processing per individual per year; up to 50 will be taken by experimental entangling which may include placing net webbing and/or other debris onto the necks of individuals. A maximum of 10 recaptures per individual per year will be taken for the evaluation of the effects of the debris; and up to 50 will be held captive, which may consist of restraining individuals near their site of capture for periods of up to one month. Take by holding captive may occur up to a maximum of 5 times per individual each year.

In addition, throughout the duration of the permit 300 animals will be taken by incidental entanglement and/or death associated with research on interactions between large fragments of marine debris and 1,800 will be taken by intentional sacrifice or incidental killing. An unspecified number may be taken by incidental harassment by ground surveys, aerial surveys, boat or ship surveys, and activities supporting northern fur seal research. An unspecified amount of specimen material will be collected from animals killed during harvest activities and found dead during the course of the research. The applicant is also requesting authorization to import specimen material collected by official representatives of the governments of Canada, Japan, or the USSR for scientific research.

5. Location of Activity: Alaska: Pribilof Islands, Bering Sea, Boqoslof Island, Aleutian Islands; and the Channel Islands of California.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publications of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115;

Director, Alaska Region, National Marine Fisheries Service, 700 West 9th Street, Federal Building, Juneau, Alaska 99902; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 29, 1986

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86-12372 Filed 6-2-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; United Merchants and Manufacturers, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to United Merchants and Manufacturers, Inc. having a place of business in New York, NY an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Process for Reinforced Yarn with Glass Fiber Core," U.S. Patent 4,541,231. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-12364 Filed 6-2-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Marine Mammals; Permit; Dr. Lanny H. Cornell and Mr. Edward D. Asper (P373)

On January 27, 1986, notice was published in the **Federal Register** (51 FR 3382) that an application had been filed by Dr. Lanny H. Cornell, 1720 South Shores Road, San Diego, California 92109 and Mr. Edward D. Asper, 7007 Sea World Drive, Orlando, Florida 32821 to import unspecified number of all species of marine mammals for scientific research.

Notice is hereby given that on May 22, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service and the Fish and Wildlife Service jointly issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits and Part 17 of Title 50 CFR, the Fish and Wildlife Service regulations governing endangered species.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Dated: May 22, 1986.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-12373 Filed 6-2-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provision of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been rescheduled from 17 June 1986 as follows:

DATE: 25 June 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301, (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-12446 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee; Closed Meeting

SUMMARY: The DOD Advisory Group on Electron Devices (AGED) announces a closed session ad-hoc meeting.

DATE: The meeting will be held at 1700, Thursday 19 June 1986.

ADDRESS: Palisades Institute for

Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Va 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Summer, AGED Secretariat, 201 Varick street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense of Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED Consultants Ad-Hoc meeting will be limited to the real-time review of the Science and Technology Review presented by the three Services to the Director, VHSIC/Electron Devices. The review will include details of classified defense programs thoughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II. 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 29, 1986.

[FR Doc. 86-12447 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published May 22, 1986, at 51 FR 11542, that the Naval Research Advisory Committee Panel on Automated Submarine Detection will meet on June 10–13, 1986. The meeting location on June 12 from 3:30 P.M. through 5:30 P.M. has been changed to ENSCO, Inc., 5400 Port Royal Road, Springfield, Virginia. The meeting location on June 13 from 1:00 P.M. through 3:30 P.M. has been changed to BB&N Laboratories, 1300 North 17th Street, Suite 400, Arlington, Virginia. All other information in the previous notice remains effective.

Dated: May 28, 1986.

William F. Roos, Jr.,

Lieutenant, JACC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-12391 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Navy Anti-Submarine Warfare Technology 1986–1996 will meet on June 18–20, 1986, at the Naval Research Laboratory, Building 43, Washington, DC. The meeting will commence at 8:30 A.M. and terminate at 5:30 P.M. on June 18; and commence at 8:30 A.M. and terminate at 5:00 P.M. on June 19 and 20, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to evaluate the security of the present and future U.S. Navy surface fleet and undersea surveillance systems. The agenda will include technical briefings on the threat, surface ASW response, strategic and tactical performance requirements, undersea surveillance, and emerging technology. These briefings will contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone (202) 696–4870.

Dated: May 28, 1986.

William F. Roos, Jr.,

Lieutenant, JACC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-12393 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Under Ice Warfare Requirements will meet on June 24 and 25, 1986 at the Naval Research Laboratory, Washington, D.C. The meeting will commence at 8:00 A.M. and terminate at 5:00 P.M. on June 24 and 25, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to understand, deal with, and exploit environmental surveillance issues in polar waters, identify what study has been done on the subject thus far, identify promising technologies, and drive operational requirements to deal with under ice anti-submarine warfare. The agenda will include technical briefings on the threat, maritime strategy and environmental considerations. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this matter contact: Commander T. C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code 00NR), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone (202) 696–4870.

Dated: May 28, 1986.

William F. Roos, Jr.,

Lieutenant, JACC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-12394 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-AE-M

Privacy Act of 1974; New and Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of a new and three amended systems of records.

SUMMARY: The Department of the Navy proposes to add a new and amend three existing systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: This proposed action will be effective without further notice July 3, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350–

2000, telephone: 202–697–1459, autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc. 86–10763 (51 FR 16096) May 16, 1986

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on the new system on April 4, 1986, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. The proposed amendments are not within the purview of 5 U.S.C. 552a(o) of the Privacy Act which requires the submission of an altered systems report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 29, 1986.

New System

N01571–1

SYSTEM NAME:

Reserve Financial Management/ Training System (RESFMS).

SYSTEM LOCATION:

Primary-Commander, Naval Reserve Force, 4400 Dauphine Street, New Orleans, LA 70146–500.

Decentralized segments—Naval Reserve Surface Force, Naval Reserve Air Force and their claimancies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who are members of the Naval Reserve and those that are recruited into the Naval Reserve Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

System comprises records reflecting information pertaining to reservist's Active Duty for Training (ACDUTRA) and associated personal information such as name/rank/grade, SSN, current address, academic, medical qualifications, schools and training information. The system also contains a Standard Document Number (SD) which is used to track cost of training, clothing and subsistence that is provided to the reservist.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To write, modify and cancel orders for Naval Reservists performing ACDUTRA; to issue seabags, death benefits paid, per diem, travel, subsistence, drill pay, ACDUTRA and Temporary Active Duty (TEMAC) pay, disability payments, bonuses, school costs and special pay such as flight and sea pay, and to monitor training needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routing Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disks and drums. Paper record, microfiche, printed reports and other related documents supporting the system are filed in cabinets and stored in authorized areas only.

RETRIEVABILITY:

Automated records are retrieved by SSN, name and standard document numbers.

SAFEGUARDS:

Within the computer center, controls have been established to distribute computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category will be shredded. Computer files are kept in a secure, continuously manned area and are accessible only to authorized computer operators, programmers, enlisted management, placement, and distributing personnel who are directed to respond to valid, official requests for data. These accesses are controlled and monitored by the Security System.

RETENTION AND DISPOSAL:

History of ACDUTRA orders are maintained in the system for three years, then destroyed, Accounting documents are maintained in the system for three years (current year and two prior years). Paper documents for each year are destroyed one year after the lapse for the earliest appropriation year.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Reserve Force, 4400 Dauphine Street, New Orleans, LA 70146–5000.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by a commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURE:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Individuals concerned, disbursing officers, Navy schools, and military command to which the individual is attached.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AMENDMENTS

N01070–3

System name:

Navy Personnel Records System (51 FR 16094) May 16, 1986.

Changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

After the third paragraph, insert a new entry: "To officials and employees of the Veterans Administration in the performance of their duties relating to approved research projects."

N03760–1

System name:

Individual Flight Activity Report (51 FR 16129) May 16, 1986.

Changes:

System name:

Delete the entire entry and substitute with the following: "Naval Flight Record Subsystem (NAVFLIRS)".

System location:

Delete the entire entry and substitute with the following: "The primary data base is maintained at the Navy Maintenance Support Office, Mechanicsburg, PA 17055. Secondary data bases are maintained at the Naval Safety Center, Naval Air Station, Norfolk, VA 23511 and at Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380. Local data bases are maintained at all Navy and Marine Corps aviation ships. (See Directory of the Department of the

Navy mailing addresses). Additional Marine Corps sites are FMFPAC ASC 08, Camp Smith, HA; RASC, Camp Pendleton, CA; RJE, Marine Corps Air Station, Cherry Point, NC; 6th FASC, Marine Corps Air Station, Iwakuni, Japan and ASC, Marine Corps Base, Quantico, VA."

Categories of individuals covered by the system:

Delete the entire entry and substitute with the following:

"All aeronautically designated commissioned Navy and Marine Corps officers and enlisted members assigned as aircrew members in the operation of an aircraft in accordance with the direction of competent authority."

Categories of records in the system:

In line two, delete the sentence beginning with: "Total flight * * *" and substitute with the following: "Records contain personal identification (name, rank, SSN), and specific technical data related to the flight of Naval aircraft."

Authority for maintenance of the System:

Delete the entry in its entirety and substitute with the following: "10 U.S.C. 5031."

Purpose(s):

Delete lines 1–19 and substitute with the following: "NAVFLIRS consolidates the collection of Naval flight data into a single, locally controlled collection and correction system, and implements a standard data collection source document (the Naval Flight Record OPNAV 3710/4) throughout the Navy and Marine Corps. It further establishes a single central data base containing all Naval flight data."

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Retrievability:

Delete the entry in its entirety and substitute with: "Individual records are primarily retrieved by a unique document number assigned to each naval flight record. Additionally, each of the data elements such as pilot's social security number, model aircraft and squardon may be used to retrieve individual records."

Safeguards:

Delete the entry in its entirety and substitute with: "Magnetic tapes are stored in limited access areas and handled by personnel that are properly trained in working with automated systems of records."

Retention and Disposal:

Delete the entry in its entirety and substitute with the following: "The primary data base and the secondary data base at the Naval Safety Center are permanent. Records in the secondary data base at Headquarters, U.S. Marine Corps are erased from tape when the individual is removed from active flight status. Local data bases purge all magnetic tape records after 6 months."

System Manager(s) and Address:

Delete the entry in its entirety and substitute with the following: "Commander, Naval Air Systems Command, Washington, DC 20301."

N06320-2

System name:

Family Advocacy Program System (51 FR 18191) May 16, 1986.

Changes:

Categories of individuals covered by the system:

In line 5, after the phrase: "* * * all persons * * *" delete the phrase: "* * * suspected of * * *" and replace with: "* * * reported for * * *".

Categories of records in the system:

At the end of the entry, add a new sentence as follows: "Sponsor's SSN is maintained for appropriate central registry accountability."

Amended Systems

N01070-3

SYSTEM NAME:

Navy Personnel Records System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of military personnel and the operation of personnel affairs and functions.

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemology. Each study in which the records of members and former members of the naval service are used must be approved by the Commander, Naval Military Personnel Command.

To officials and employees of the Department of Health and Human Services, Veterans Administration, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Veterans Administration in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to assistance of the members and their dependents and relatives.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergent at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of

the Navy's compilation also apply to this system.

* * * * *

NO3760-1

SYSTEM NAME:

Naval Flight Record Subsystem (NAVFLIRS).

SYSTEM LOCATION:

The primary data base is maintained at the Navy Maintenance Support Office, Mechanicsburg, PA 17055. Secondary data bases are maintained at the Naval Safety Center, Naval Air Station, Norfolk, VA 23511 and at Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380. Local data bases are maintained at all Navy and Marine Corps aviation ships. (See Directory of the Department of the Navy mailing addresses). Additional Marine Corps sites are FMFPAC ASC 08, Camp Smith, HA: RASC, Camp Pendleton, CA; RJE, Marine Corps Air Station, Cherry Point, NC; 6th FASC, Marine Corps Air Station, Iwakuni, Japan and ASC, Marine Corps Base, Quantico, VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All aeronautically designated commissioned Navy and Marine Corps officers and enlisted members assigned as aircrew members in the operation of an aircraft in accordance with the direction of competent authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of each flight are submitted by the reporting custodian of the aircraft. Records contain personal identification (name, rank social security number), and specific technical data related to the flight of Naval aircraft.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031

PURPOSE(S):

NAVFLIRS consolidates the collection of Naval flight data into a single, locally controlled collection and correction system, and implements a standard data collection source document (the Naval Flight Record OPNAV 3710/4) throughout the Navy and Marine Corps. It further establishes a single central data base containing all Naval flight data. Records are also provided to the Commander, Naval Military Personnel Command for promotional screening, detailing and compliance with minimum standards. Summaries of flight activity for Marine Corps personnel are provided to the Commandant of the Marine Corps. Records of specific pilots or categories of pilots are provided to contractors, if required, for projects either funded by or deemed potentially valuable to the Department of the Navy.

To the Naval Audit Service to investigate certain phrases of the Naval Aviation Program.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Individual records are primarily retrieved by a unique document number assigned to each naval flight record. Additionally, each of the data elements such as pilot's social security number, model aircraft and squadron may be used to retrieve individual records.

SAFEGUARDS:

Magnetic tapes are stored in limited access areas and handled by personnel that are properly trained in working with automated systems of records.

RETENTION AND DISPOSAL:

The primary data base and the secondary data base at the Naval Safety Center are permanent. Records in the secondary data base at Headquarters, U.S. Marine Corps are erased from tape when the individual is removed from active flight status. Local data bases purge all magnetic tape records after 6 months.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Air Systems Command, Washington, DC 20361

* * * * *

NO6320-2

SYSTEM NAME:

Family Advocacy Program System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities who abuse or neglect is brought to the attention of appropriate authorities, and all persons reported for abusing or neglecting such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of suspected and confirmed cases of family member abuse or neglect, also, investigative reports, correspondence, family advocacy committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to individual family advocacy program files. Sponsor's SSN is maintained for appropriate central registry accountability.

* * * * *

[FR Doc. 86-12448 Filed 6-2-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before July 3, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the

collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 29, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Certification for Participation in Programs under Title IV of the Higher Education Act of 1965, as amended.

Agency Form Number: ED 633.

Frequency: Annually.

Affected Public: Businesses or other for profit.

Reporting Burden:

Responses: 1,500; Burden Hours: 3,000.

Recordkeeping Burden:

Recordkeepers: 0; Burden Hours: 0.

Abstract: This form is used by colleges, universities and vocational schools to apply to the Department of Education for certification to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Grants and Contracts Under the Minority Institutions Science Improvement Program (MISIP).

Agency Form Number: ED 0007.

Frequency: Annually.

Affected Public: Businesses and other for profit; and non-profit institutions.

Reporting Burden:

Responses: 150; Burden Hours: 6,450.

Recordkeeping Burden:

Recordkeepers: 0; Burden Hours: 0.

Abstract: This form is used by applicants to provide the Department of Education with necessary information to competitively award grants and contracts under the Minority Institutions Science Improvement Program.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Application Form for Grants under Indian Education Programs.

Agency Form Number: ED 736 & 736-1.

Frequency: Annually.

Affected Public: State or local governments; non-profit institutions; small businesses or organizations.

Reporting Burden:

Responses: 1,500; Burden Hours: 45,000.

Recordkeeping Burden:

Recordkeeping: 0; Burden Hours: 0.

Abstract: This form is used to apply for grants under the programs authorized by the Indian Education Act, P.L. 92-318, as amended.

[FR Doc. 86-12452 Filed 6-2-86; 8:45 am]

BILLING CODE 4000-01-M

Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of New Applications for Fiscal Year 1986 Awards.

Applications are invited for new projects under the Educational Media Research, Production, Distribution and Training program.

Authority for this program is contained in Sections 651 and 652 of Part F of the Education of the Handicapped Act. (20 U.S.C. 1451, 1452)

Applications may be submitted by profit and nonprofit public and private agencies, organizations, and institutions.

The Educational Media Research, Production, Distribution, and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

Closing Date for Transmittal of Applications

An application for a new project must be mailed or hand-delivered on or before July 18, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.026, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Intergovernmental Review

On June 24, 1983, the Secretary published in the Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and

• Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary education institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama
Arizona
Arkansas
California
Connecticut
Delaware
Florida
Guam
Hawaii
Indiana
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Michigan
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
Northern Mariana Islands
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Texas
Trust Territory
Utah
Vermont
Virgin Islands
Virginia
Washington
Wyoming

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand-delivered by September 18, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.028), 400 Maryland Avenue, SW., Washington, DC 20202. (Proof of mailing will be determined on the same basis as applications).

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available Funds

It is estimated that approximately $1,000,000 will be available for support of one cooperative agreement manufacturer at least 33,000 additional Line 21 decoders during fiscal year 1986. These estimates of funding level do not bind the U.S. Department of Education to a specific number of awards or to the amount of any award unless that amount is otherwise specified by statute or regulations.

Priority for Funding

A notice of proposed annual funding priority for this program is published in this issue of the Federal Register.

Application Forms

Application forms and program information packages are expected to be available for mailing on June 6, 1986. These materials may be obtained by writing to the Captioning and Adaptation Branch, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1820-0028)

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Educational Media Research, Production, Distribution and Training program (34 CFR Part 332). A Notice of Proposed Annual Funding Priority for this program is published in this issue of the Federal Register. Prospective applicants are advised that the proposed annual funding priority is subject to modification in response to public comments submitted within 30 days of publication. In the event any substantive changes are made in the priority or other requirements for a new project, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

For Further Information Contact

Dr. Malcolm J. Norwood, Chief, Captioning and Adaptation Branch, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1177.

(20 U.S.C. 1451, 1452)

Dated: May 29, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance No. 84.028, Educational Media Research, Production, Distribution, and Training)

[FR Doc. 86-12455 Filed 6-2-86; 8:45 am]

BILLING CODE 4000-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Secretary publishes this notice of a new system of records known as the Records of Educationally Disadvantaged Students Attending Private Schools Served Through Bypass Contracts. The new system will be used to provide contractors with information on test scores to identify private school students who are eligible for participation and to measure progress made by students in programs under Chaper 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). The Secretary seeks comments on the proposed routine uses contained in this notice.

DATES: Comments on proposed routine uses must be submitted by July 3, 1986. The Department filed a report of the new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Management and Budget (OMB)on May 29, 1986. This system of records will become effective

BEST COPY AVAILABLE

60 days after the report for the system of records was sent to these parties.

ADDRESSES: Comments on the proposed routine uses should be addressed to the Privacy Act Officer, Office of Planning, Budget, and Evaluation, Public Affairs Service, Department of Education, 400 Maryland Avenue, SW (Room 2069), Washington, D.C. 20202. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 2065 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5102, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-3081.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Secretary to publish in the Federal Register this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR Part 5b.

Chapter 1 of the ECIA provides special educational services to selected public and private school children who are educationally disadvantaged and who reside in areas in which there is a high concentration of children from low-income families. Funds are allocated on a formula basis through State educational agencies (SEAs) to local educational agencies (LEAs) that have approved applications on file with their respecitve SEAs.

Under Section 557(a) of Chapter 1, an LEA must provide services to eligible private school students that are equitable to the services provided to eligible public school students. According to Section 557(b) of Chapter 1, if an LEA is prohibited by State law or has failed to provide the required services for eligible private school students, the Secretary of Education must provide equitable services for private school students under a bypass arrangement. Normally, the Secretary selects a contractor to provide the required services under a bypass.

The Secretary has implemented Chapter 1 bypasses in certain LEAs in Missouri and Virginia, and has awarded contracts through which the services are performed. The services consist primarily of supplementary instruction in reading and mathematics to students who, based on a needs assessment, are found to be below their grade median. These services are provided and records are kept for about 2,800 students under the Missouri bypass contract and 700 students under the Virginia contract.

In order to determine the eligibility of these students, a contractor must keep a record of the scores of students on the needs assessment test. After students have been selected, records are kept of scores of tests taken upon entering the Chapter 1 program and post-test scores at the end of the program year. In addition, records are kept of grades received in the subject areas, as well as copies of progress reports from Chapter 1 teachers to regular classroom teachers and to parents of participating students. These records are essential in order to determine whether the Chapter 1 program objectives are being met and whether the private school students are receiving services comparable to those received by public school students. Individual students or their parents consent to have this information collected as a condition for their participation in the program.

Dated: May 29, 1986.

William J. Bennett,

Secretary of Education.

The Secretary publishes notice of a new system of records to read as follows:

18-40-0077

SYSTEM NAME:

Records of Educationally Disadvantaged Students Attending Private Schools Served Through Bypass Contracts. ED/OESE/CEP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See the Appendix to this system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected elementary and secondary school students who—

(1) Attend private schools;

(2) Reside in target areas of bypassed local educational agencies; and

(3) Participate in the program for educationally disadvantaged students under Chapter 1 of the Education Consolidation and Improvement Act of 1981.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains documents, identified by name and number, of students participating in programs under Chapter 1 of the Education Consolidation and Improvement Act, such as pre- and post-achievement test scores, report cards, and reports from Chapter 1 teachers to regular classroom teachers and to parents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 557(b), Chapter 1, Education Consolidation and Improvement Act of 1981 (Pub. L. 97-35) (20 U.S.C. 3806(b)).

PURPOSES:

The purpose of the standardized test scores obtained at the beginning of a year is to determine the eligibility of students for participation in the Chapter 1 program. The purpose of report cards and reports of Chapter 1 teachers to regular classroom teachers and to parents is to report the progress students are making during the school year. The purpose of the scores made on achievement tests given at the end of a school year is to measure the progress students have made during the year and to measure to degree to which the objectives of the Chapter 1 program have been met.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Chapter 1 teachers make information contained in this system or records available to regular classroom teachers and to the record subjects' parents to explain to those persons the eligibility of students and their progress in the Chapter 1 program. Supervisors of the Chapter 1 teachers use information contained in this system of records as a part of the monitoring process to measure progress being made toward achieving program objectives.

The Department may disclose a record for the purposes described in the Department's Privacy Act regulations (34 CFR Part 5b, Appendix B, items (1), (3), (4), (5), (6), (8), (9), (10), and (11)).

Disclosure of information in this system of records may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

In the event of litigation involving one of the parties listed below or in which one of these parties has an interest, the Department may disclose those records that it deems relevant and necessary to the Department of Justice to enable that Department to effectively represent that party, if the disclosure is compatible with the purpose for which the records were collected. The parties to which this routine use applies are—

(a) The Department, any component of the Department, or any employee of the

Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of it components; and

(c) Any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each student's records are kept in a separate file folder. All folders are filed in locked filing cabinet in the Chapter 1 classroom. After a student no longer participates in the program, his or her records are transferred to the contractor's office where they are stored in locked filing cabinets.

RETRIEVABILITY:

The records are indexed by the name and identification number of students participating in the Chapter 1 program.

SAFEGUARDS:

The records are secured in a locked filing cabinet. The key is kept by the Chapter 1 teacher. After a student no longer participates in the program, the records are transferred to the contractor's office where they are stored in a locked filing cabinet. Direct access is restricted to the Chapter 1 teacher and aide during the day-to-day program operation. The instructional supervisor, representatives of the contractor, and Department of Education staff have access during monitoring visits.

RETENTION AND DISPOSAL:

Records are maintained in the contractor's office for at least three years after final payment on the contract. Disposal of records follows the requirements of the Federal Records Disposal Act.

SYSTEM MANAGER AND ADDRESS:

Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW (Room 5102, ROB–3), Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

For information about a student in a program in a bypassed local educational agency in a State listed in the Appendix to this notice, the student or his or her parent or guardian (authorized individual) must notify the appropriate contractor for the State served by the bypass contract. The Appendix to this notice provides the name and address of the appropriate contractor.

For identification, the authorized individual seeking information should provide the name, home address, and school of the student for whom information is being requested. The request must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

An authorized individual must contact the appropriate contractor to obtain bypass information about a student who is or has been in a bypass program.

The authorized individual should provide the appropriate contractor with information listed in the notification procedure of this notice and reasonably specify the record contents being sought. If the authorized individual is unable to obtain satisfaction from the contractor, he or she may seek access through the system manager. The request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

An authorized individual who wishes to contest the content of the record of a participating Chapter 1 student should contact the appropriate contractor for the State served by the bypass contract. See the Appendix to this notice for the name and address of the appropriate contractor. The authorized individual should identify himself or herself and state, in writing, which portion of the record the individual desires changed and provide a justification and authorization for the change. The appropriate contractor will forward the request to the system manager. The request must meet the requirements of 34 CFR 5b.7.

RECORD SOURCE CATAGORIES:

The contractor obtains test score information from public and private schools where achievement tests for program eligibility are administered, and obtains class performance information from Chapter 1 teachers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to System 18–40–0077

State served under the Bypass Contract:

Missouri

Contractor serving the State:

Blue Hills Homes Corporation, 1020 East 63rd Street, Kansas City, MO 64110

Sites served by the contractor:

801 Locust Street, Apt. 20, Boonville, MO 65233
Clinton Civic Center, Third and Green Streets, Clinton, MO 64501
The Body Shop, 906 Bernadette Drive, Columbia, MO 65202
1122 Cost McCarty, Jefferson City, MO 65101
Linwood YMCA, 3600 East Linwood Street, Kansas City, MO 64128
Della C. Lamb Center, 500 Woodland Street, Kansas City, MO 64124
W.E.B. Dubois Learning Center, 5501 Cleveland Street, Kansas City, MO 64130
Mid American Bank of Linn, Linn, MO 65051
Arrow Street Office Building, 308 West Arrow Street, Marshall, MO 65340
Greenco Credit Union, 802 Breckinridge Street, Mexico, MO 65265
Sedalia Community Center, 314 South Washington Avenue, Sedalia, MO 65301
Springfield Community Center, 618 North Benton Street, Springfield, MO 65802
Tipton Rentals Center, P.O. Box 458, Tipton, MO 65081
University of Missouri Meeting Room, P.O. Box 187, Vienna, MO 65582
Rich Fountain Senior Citizens Housing Project Meeting Room, Rt. #1, Freeburg, MO 65035
Westphalia Tour Council Building, P.O. Box 85, Westphalia, MO 65085
Freeburg Fire House Building, Rt. #1, P.O. Box 27, Freeburg, MO 65035
The Florist Shop, 28 North Pacific Street, Cape Girardeau, MO 63701
The Public Library, 225 South High Street, Jackson, MO 63755
Box 85, Monroe, MO 63456
The Bine Apartment, 719 Bine Street, Poplar Bluff, MO 63901
300 A. Market Street St. Genevieve, MO 63670
Baden Center, 6230 North Broadway Street, St. Louis, MO 63147
Carr Lane Center, 1004 North Jefferson Avenue, St. Louis, 63106
Castleman Center, 2004 South 30th Street, St. Louis, 63110
Cherokee Center, 3200 South Jefferson Avenue, St. Louis, MO 63118
Dunn-Marquette Center, 4025 Minnesota Avenue, St. Louis, MO 63118
Fanning Center, 3417 Grace Avenue, St. Louis, MO 63115
Gardenville Center, 6651 Gravois Avenue, St. Louis, MO 63116
Kennard Center, 5031 Potomac Street, St. Louis, MO 63139
Lafayette Center, 2353 Park Avenue, St. Louis, MO 63104
Lowell Center, 1409 Linton Avenue, St. Louis, MO 63107
Natural Bridge Center, 6814 Natural Bridge Road, St. Louis, MO 63121
Wilmington Center, 5914 Leona Avenue, St. Louis, MO 63130
Candy Center, 4206 Kennerly Avenue, St. Louis, MO 53113
12th and Park Center, 1410 South 12th Street, St. Louis, MO 63104
Windsor Center, 4092 Robert Avenue, St. Louis, MO 63116
Wahl Center, 1515 North Kingshighway Boulevard, St. Louis, MO 63113

Records are also located in mobile units at various public sites in local school districts. Access to these records can be obtained by writing to the contractor:

Blue Hills Homes Corporation, 3230 East 63rd Street, Kansas City, MO 64110

Appendix to System 13-69-0577

State served under the Bypass Contract:

Virginia

Contractor serving the State:

NonPublic Educational Services, Inc., 4733 Bethesda Avenue, Suite 725, Bethesda, MD 20814

Sites served by the contractor:

Buckingham Village, Apt. 4, 221 N. Thomas Street, Arlington, VA 22203
St. Gabriel's Day Care Center, 4219 Sano Street, Alexandria, VA 22312
Education Center, 3301 Glen Carolyn Road, Falls Church, VA 22041
Little House, Spring & Broad Street, Falls Church, VA 22041
Hartwood House, 2903 Popkins Lane, Alexandria, VA 22306
McGurk House, 3425 Tate Spring Road, Lynchburg, VA 23505
Grace Street Apartment, 2506 East Grace Street, Richmond, VA 23223
Brick Learning Center, 3100 A Grove Avenue, Richmond, VA 23221
Carmel Center Nursery, 52 Harpersville Road, Newport News, VA 23601
Southside Day Nursery, 1420 McDough Street, Richmond, VA 23224
Lewis Ginter Recreation Association, 3421 Hawthorn Avenue, Richmond, VA 23222
Bartleby's, 412 Libbie Avenue, Richmond, VA 23226
Knights of Columbia, 211 West Government Avenue, Norfolk, VA 23503
St. Gregory's Credit Union, 5347 Virginia Beach Boulevard, Virginia Beach, VA 23461
Salvation Army, 2308 Airline Boulevard, Portsmouth, VA 23701
Boy Scout Building, 3341 Tidewater Drive, Norfolk, VA 23509
Artic Crescent, Apt. 3A, 317 15th Street, Virginia Beach, VA 23451
St. Mary's Infant Home, 317 Chapel Street, Norfolk, VA 23504
Thunderbird Bowling Lanes, 1577 Laskin Road, Virginia Beach, VA 23454
3407 Colly Avenue, Norfolk, VA 23508
Scout Building, 7813 Holprin Drive, Norfolk, VA 23518

[FR Doc. 86-12453 Filed 6-2-86; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP81-244-004]

Consolidated Gas Transmission Corp. and National Fuel Gas Supply Corp.; Notice of Petition To Amend

May 21, 1986.

Take notice that on April 30, 1986, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, and Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81-244-004 a joint petition to amend a certificate of public convenience and necessity authorizing the exchange of natural gas between National and Consolidated so as to expand the area of interest designated by the outstanding certificate issued October 26, 1981, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that an existing certificate authorizes them to exchange gas at various points of interconnection within a designated area of interest which includes Elk, Cameron and Clearfield Counties in Pennsylvania, and Erie and Steuben Counties in New York. Petitioners are now requesting authorization to expand the designated area of interest to include Allegany County, New York. Petitioners state that such authorization would provide an additional outlet for gas produced by National from its wells in Allegany County, and would thereby improve recovery of National's reserves.

Petitioners state that they would notify the Commission of additional exchange points in Allegany County in their annual filing showing additions and deletions from the exchange agreement and that any jurisdictional facilities necessary to effect the exchange of gas from new exchange points would be constructed under § 157.208 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 11, 1986, file with the Federal Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with with Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12397 Filed 6-2-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-488-000]

The Inland Gas Co., Inc.; Proposed Change in FERC Gas Tariff

May 29, 1986.

Take notice that The Inland Gas Company, Inc. (Inland) on May 15, 1986 tendered for filing proposed First Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1. Said tariff sheet bears an issue date of May 15, 1986 and an effective date of July 1, 1986. The sheet was amended on 5-21-86.

Inland states that the foregoing tariff sheet is being filed pursuant to the Commission's Order issued August 21, 1984 approving a Stipulation and Agreement in the above-captioned dockets. Inland further states that the subject tariff sets forth a proposed transportation rate, plus retainage, to be effective July 1, 1986.

A copy of Inland's tariff filing was served upon each of its affected customers. Also, a copy of Inland's tariff filing is available for public inspection during regular business hours in its offices at 336-338 Fourteenth Street, Ashland, Kentucky 41101.

Any person desiring to be heard or to protest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before June 5, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Inland's tariff and the proposed revision are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12403 Filed 6-2-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-775-001]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application Amendment

May 21, 1986.

Take notice that on May 8, 1986, Northern Natural Gas Company,

Division of InterNorth, Inc., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-775-001, an amendment to its application filed in Docket No. CP85-775-000 pursuant to section 7(c) of the Natural Gas Act, for authority to implement, on October 27, 1985, proposed adjustments to the firm entitlements of certain of Northern's market area utility customers, as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northern indicates that in its original application, it proposed to effectuate on November 27, 1985, certain adjustments to the firm entitlements of its market area utility customers pursuant to a stipulation and agreement of settlement filed in resolution of issues in Docket Nos RP82-71, TA83-1-59, TA84-1-59, and TA85-1-59 (RP82-71 stipulation and agreement). Northern states that, subsequently, the Commission remanded the RP82-71 stipulation and agreement to the administrative law judge as to all participants for the purpose of developing a record upon which a decision on the contested issues regarding the offer of settlement may reasonably be based.

Northern indicates it has agreed in its stipulation and agreement of settlement filed in resolution of issues in Docket No. RP85-206 (RP85-206 stipulation and agreement) to implement on October 27, 1985, the changes in firm entitlements requested herein. Consequently, in view of the remand of the RP82-71 stipulation and agreement and the agreement reached in the RP85-206 stipulation and agreement, Northern is amending the effective date of the proposed adjustments in firm entitlements from November 27, 1985, to October 27, 1985.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 11, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

[illegible] P. Plumb,

Secretary.

[FR Doc. 86-12401 Filed 6-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-41-003]

Southwest Gas Corp.; Compliance Filing

May 23, 1986.

Take notice that on May 12, 1986, Southwest Gas Corporation (Southwest) tendered for filing Substitute Sixth Revised Sheet No. 31 to its FERC Gas Tariff, Original Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 19, 1986.

Southwest states that the revised language on the tariff sheet clarifies the methodology for calculating the surcharge adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 5, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12399 Filed 6-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-17-000, 001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 28, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 22, 1986, tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Seventy-ninth Revised Sheet No. 14
Seventy-ninth Revised Sheet No. 14A
Seventy-ninth Revised Sheet No. 14B
Seventy-ninth Revised Sheet No. 14C
Seventy-ninth Revised Sheet No. 14D

The above tariff sheets are being issued to reflect in Texas Eastern's rates the impact of Texas Eastern's latest exercise of "market-out" provisions in certain of its gas purchase contracts. Texas Eastern has exercised such market-out provisions to reduce the price under those certain gas purchase contracts to $1.65 mmbtu plus taxes effective June 1, 1986.

On March 13, 1986, Texas Eastern filed an out-of-cycle PGA decrease to be effective April 1, 1986. That filing reflected the impact of Texas Eastern's exercising market-out provisions in certain supplier contracts to a level of $2.25 per mmbtu plus taxes effective April 1, 1986. The March 13, 1986 filing was based upon the current cost of gas adjustment and surcharge adjustment effective as a result of Texas Eastern's regular semiannual PGA tracking filing of February 1, 1986, adjusted only to reflect the impact on the cost of gas adjustment of the cost reduction resulting from Texas Eastern's exercise of market-out provisions effective April 1, 1986. The above-listed tariff sheets are based upon the March 13, 1986 filing, adjusted only to reflect the impact on the cost of gas adjustment of the cost reduction resulting from Texas Eastern's exercise of market-out provisions effective June 1, 1986. The impact of Texas Eastern's rates of the instant proposal is a reduction of $.2092/dth in the commodity component of Texas Eastern's sales rates.

The above tariff sheets also reflect the Contract Adjustment Demand rates being filed almost concurrently herewith in Docket No. RP86-61-000 in compliance with the Commission's directive in its Order Accepting Tariff Sheets Subject To Conditions, issued May 7, 1986 in Docket RP86-61-000.

The proposed effective date of the above tariff sheets in June 1, 1986.

Texas Eastern respectfully requests waiver of the provisions of its tariff and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective on June 1, 1986, coincidently with the effectiveness of Texas Eastern's exercise of market-out provisions, consistent with prior waiver orders by the Commission for such out-of-time market-out PGA rate reductions.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before June 5, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12604 Filed 6-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-6-001]

Transwestern Pipeline Co.; Filing

May 28, 1986.

Take notice that on May 1, 1986, Transwestern Pipeline Company (Transwestern) tendered for filing the following schedules pursuant to the Commission's order issued December 12, 1985, approving Transwestern's October 31, 1985 request that it be permitted to direct bill its jurisdictional customers over two successive six-month periods for retroactive production-related costs (Order 94 costs) paid to its suppliers. These schedules set forth the calculations by customer of the amounts to be direct billed for the second six-month period.

Schedule A

By production month the Order 94 amount paid to producers subsequent to September 30, 1985.

Schedule B

The actual sales by month to each customer.

Schedule C

Each customer's applicable percentage of sales by month.

Schedule D

The allocated Order 94 costs by customer for each month.

Transwestern states that in the event it makes additional payments for retroactive Order 94 costs, it will file within 15 days of each monthly billing the information required under § 271.104(f) of the Commission's regulations and the relevant contract provisions supporting the billed costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 5, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb

Secretary.

[FR Doc. 86-12599 Filed 6-2-86; 8:45 am]

BILLING CODE 6717-01

[Docket No. TA86-2-35-000]

West Texas Gas, Inc.; Tariff Filing and Petition for Waiver or, in the Alternative, for Clarification of Commission Regulations

May 28, 1986.

Take notice that on May 22, 1986, West Texas Gas, Inc. (WTG) filed a Petition for Waiver or, in the Alternative, for Clarification Of Commission Regulations. Specifically, WTG seeks a determination that § 381.205 of the Commission's regulations, 18 CFR 381.205 (1986), does not require a filing fee to be paid for the submission of a revised tariff sheet complying with and conforming to provisions of a Commission order in which a proposed tariff change has been reviewed and conditionally accepted.

This petition is in regard to WTG's filing of May 8, 1986 of Sixth Revised Sheet No. 3a, to its FERC Gas Tariff, Original Volume 1. The revised tariff sheet was submitted in accordance with the Commission's order issued May 7, 1986, in Docket No. TA86-2-35-000. The Commission notified WTG that its May 8, 1986, filing was deficient because it was not accompanied by the filing fee. By letter dated May 19, 1986, the Commission's Secretary notified WTG that the applicable fee or a petition for waiver must be submitted by May 28, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 5, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12600 Filed 6-2-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3023-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Chemical Imports and Exports; Section 12(b) Notification of Exports (EPA ICR #0795). (This is an extension of a previously approved ICR; the estimated number of respondents has gone up from fifty in the last ICR to eighty-five in the present one because of a projected increase in the number of chemicals subject to testing; otherwise, there is no change.)

Abstract: This information collection implements section 12(b) of the Toxic Substances Control Act (TSCA), and applies to exporters of chemical substances that are the subject of regulatory actions under certain other sections of TSCA. For each foreign country to which an exporter sends such a chemical, the exporter must report to EPA the first export each year of the

chemical to that country. The information is used to notify foreign governments of EPA actions with respect to the substances.

Respondents: Certain exporters of chemical substances.

Office of Solid Waste and Emergency Response

Title: Final Authorization for Hazardous Waste Management Programs (EPA ICR #0969). (This is a renewal of a previously approved ICR; there are no changes.)

Abstract: States seeking to receive interim or final authorization under RCRA to administer and enforce their hazardous waste management programs in lieu of the Federal program may submit an application to EPA. The information submitted should demonstrate that the State program is equivalent to the Federal program for a final authorization, or substantially equivalent for an interim authorization.

Respondents: States.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0097, Unleaded Gasoline Inspection and State I Vapor Recovery, was approved 5/12/86 (OMB #2060-0009; expires 5/31/89).

EPA ICR #0267, Report of Pollution-Caused Fish Kill, was approved 5/2/86 (OMB #2040-0067; expires 5/31/89).

EPA ICR #0064, New Source Performance Standards (NSPS) for Bulk Gasoline Terminals, was approved 5/2/86 (OMB #2060-0006; expires 5/31/89).

EPA ICR #1056, New Source Performance Standards (NSPS) for Emission Monitoring for Nitric Acid Plants, was approved 5/9/86, (OMB #2060-0019; expires 5/31/88).

EPA ICR #1067, Recordkeeping and Reporting for Primary Aluminum Reduction Plants (NSPS Subpart S), was approved 5/9/86 (OMB #2060-0031; expires 5/31/89).

EPA ICR #1071, New Source Performance Standards (NSPS) for Gas Turbines (Subpart GG)—Information Requirements, was approved 5/9/86 (OMB #2060-0028; expires 5/31/88).

EPA ICR #1282, Proposed Rule Regarding the Sale and Use of Aftermarket Converters, was approved 5/12/86 (OMB #2060-0135; expires 5/31/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: May 28, 1986.

Daniel J. Florino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-12382 Filed 6-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51621; FRL-3012-5]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-10015 beginning on page 16587 in the issue of Monday, May 5, 1986, make the following corrections:

On page 16588, in the second column, under P 86-837, the second and third lines should read:

Chemical. (G) Alkyl formamide.

Use/Production. (G) Industrial lubricant additive. Prod. range: Confidential.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office of Management and Budget for Review.

May 27, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of this submission are available from Doris Benz, FCC, (202) 632-7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 395-7231.

OMB NO.: 3060-0010

Form No.: FCC 323

Title: Ownership Report

Action: Revision

Estimated Annual Burden: 3,085 Responses; 21,595 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-12340 Filed 6-2-86; 8:45 am]

BILLING CODE 6712-01-M

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

May 22, 1986.

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 11, 1986 at 10:00 a.m. in Room 856, Federal Communications Commission, 1919 M Street, NW., Washington, DC. This Study Group deals with prepartions for the 1988 World Administrative Telegraph and Telephone Conference (PC/WATTC).

The purpose of the meeting is to prepare for the upcoming preparatory Study Group meeting for PC/WATTC, tentatively scheduled for December 1986, in Geneva.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Co-Chairman. Admittance of public members will be limited to the seating available.

For further information, please contact Mr. Wendell Harris, Federal Communications Commission; telephone (202) 632-3214 or Mr. Phil Onstad, Control Data Corporation; telephone (202) 789-6784.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-12341 Filed 6-2-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573 within 10 days after the date of the Federal Register in which this notice appears. The requirements for

comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-006103-066.

Title: Japan-Atlantic and Gulf Freight Conference.

Parties:

Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the parties to disassociate from Conference actions taken to reduce rates on intermodal cargo or to publish new intermodal points until a conference intermodal tariff is filed. The parties have requested a shortened review period.

Agreement No.: 224-010644-002.

Title: Lost Angeles Terminal Agreement.

Parties:

City of Lost Angeles
Indies Terminal Company (Indies)

Synopsis: The proposed amendment would increase the size of the Indies permises by approximately 11.66 acres to permit Indies to serve Yang Ming Marine Transport, Ltd. (Yang Ming). The amendment would also provide for changes in the computation of revenue sharing breakpoints and tonnage handling guarantees to reflect Yang Ming's presence.

Agreement No.: 202-010850.

Title: Aruba Bonaire Curacao Liner Association.

Parties:

Genesis Container Line Ltd.
See-Land, Service, Inc.
King Ocean Service de Venezuela S.A.

Synopsis: The proposed agreement would establish a rate-making arrangement between the parties in the trade between U.S. Atlantic and Gulf Ports and ports in Aruba, Bonaire and Curacao and inland points via such ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 29, 1986.

Tony P. Kominoth,
Assistant Secretary.

[FR Doc. 86-12418 Filed 6-2-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee: Domestic Policy Directive of April 1, 1986

In accordance with section 271.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on April 1, 1986.[1] The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting indicates a mixed pattern of development with evidence of a pickup in economic activity from the reduced fourthquarter pace but with spending sluggish in some key sectors. Total nonfarm payroll employment increased appreciably further in February following a large rise in January, but employment in manufacturing fell after four months of gains and industrial production declined. The civilian unemployment rate rose sharply to 7.3 percent. Retail sales were little changed in January and February after rising over the previous two months, while housing starts were well above their pace in late 1985. Business capital spending apparently weakened somewhat in early 1986. The merchandise trade deficit for January appears to have been only slightly smaller than in December; preliminary data for February suggest that exports increased and that the price and quantity of oil imports declined. Largely reflecting declines in energy prices, consumer prices edged down on balance over the first two mothe of 1986 and producer prices fell substantially.

Growth in M1 picked up considerably over the course of the first quarter, leaving this aggregate by March somewhat above the upper end of its range for the year. On the other hand, growth of M2 was generally sluggish over the past 3 months and was running below its long-run range. Expansion of M3 was moderate during the winter months, with growth around the midpoint of its range for 1986. Interest rates have declined considerably since the Febraury meeting of the Committee. On March 6, the Federal Reserve Board approved a reduction in the discount rate from 7-1/2 to 7 percent. The trade-weighted value of the dollar against major foreign currencies continued to decline through mid-March but has risen somewhat more recently; on balance the dollar has declined slightly since the February meeting.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objective the Committee agreed at its February meeting to establish the following ranges for monetary growth, measured from the fourth quarter of 1985 to the fourth quarter of 1986. With respect to M1, the Committee recognized that, based on the experience of recent years, the behavior of that aggregate was subject to substantial uncertainties in relationship to economic activity and prices, depending among other things on its responsiveness to changes in interest rates. It agreed that an appropriate target range under existing circumstances would be 3 to 8 percent, but it intends to evaluate movements in M1 in the light of its consistency with the other monetary aggregates, developments in the economy and financial markets, and potential inflationary pressures. It adopted a range of 6 to 9 percent for M2 and 6 to 9 percent for M3. The associated range for growth inf total domestic nonfinancial debt was set at 8 to 11 percent for the year 1986.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M2 and M3 over the period from March to June at annual rates of about 7 percent; while the behavior of M1 continues to be subject to unusual uncertainty, growth at an annual rate of about 7 to 8 percent over the period is anticipated. Somewhat lesser reserve restraint or somewhat greater reserve restraint might be acceptable depending on behavior of the aggregate, the strength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

Votes for this action: Messrs. Volcker, Corrigan, Angell, Guffey, Horn, Johnson, Melzer, Morris, Rice, Ms. Seger, and Mr. Wallich. Votes against this action: None. Absent and not voting: Mr. Martin.

By order of the Federal Open Market Committee, May 29, 1986.

Stephen H. Axilrod,
Secretary.

[FR Doc. 86-12458 Filed 6-2-86; 8:45 am]
BILLING CODE 6210-01-M

[1] The Record of policy actions of the Committee for the meeting of April 1, 1986, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

Citizens Financial Group, Inc.; Formation of; Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 26, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Financial Group, Inc.*, Toluca, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Toluca, Toluca, Illinois.

Board of Governors of the Federal Reserve System, May 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12317 Filed 6-2-86; 8:45 am]

BILLING CODE 6210-01-M

U.S. Trust Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8)) of the bank holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased on unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 16, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *U.S. Trust Corporation*, New York, New York; to acquire Advanced Information Management, Inc., Boston, Massachusetts, and New York, New York, and thereby engage in licensing software and providing services to others relating to individual retirement account record keeping, mutual fund shareholder accounting and other data processing and data transmission services and facilities (including data processing and data transmission hardware, software, documention and operation personnel) or access to such services or facilities by any technologically feasible means for financial, banking, and economic data.

B. **Federal Reserve Bank of Cleve land** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation*, Cleveland, Ohio; to acquire certain assets of Associates Corporation of North America and its wholly-owned subsidiary, Associates Commercial Corporation, and thereby engage in the business of making and servicing loans in accordance with § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted from offices in Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; North Charleston, South Carolina; and Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, May 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12318 Filed 6-2-86; 8:45 am]

BILLING CODE 6210-01-M

Viejo Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commerce or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Viejo Bancorp*, Mission Viejo, California; to engage de novo through its subsidiary, Viejo Escrow Corporation, Mission Viejo, California, in the functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted only in the state of California.

Board of Governors of the Federal Reserve System, May 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12319 Filed 6-2-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85D-0541]

Effectiveness Requirements and Good Manufacturing Requirements of New Animal Drugs Used in Free-Choice Feeds; Availability of Draft Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft guidelines; one entitled "Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds," and the other entitled "Medicated Free-Choice Feeds" covering good manufacturing practice concerning such products. These draft guidelines are intended to replace the current "Cattle Medicated Block Guidelines." In a separate document published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations covering the requirements for approval of applications for medicated free-choice feed products.

ADDRESSES: The draft guidelines are available for public examination at, and written comments may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for copies of the draft guidelines may be submitted to the Division of Biometrics and Production Drugs (HFV-120), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard P. Lehmann, Center for Veterinary Medicine (HFV-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5134.

SUPPLEMENTARY INFORMATION: These draft guidelines are intended to furnish guidance to sponsors of applications for and manufacturers of free-choice products covered by the final rule published elsewhere in this issue of the **Federal Register**. The final rule contains background information concerning FDA's regulation of such products.

This notice of availability is issued under 21 CFR 10.90(b), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Sponsors and manufacturers may rely upon a guideline with the assurance that it represents procedures acceptable to the agency (see 21 CFR 10.90). If such persons believe that alternative procedures are also applicable, a guideline does not preclude them from pursuing the alternative procedures. Under such circumstances, however, the agency encourages sponsors and manufacturers to discuss the alternative procedures in advance with FDA to prevent the expenditure of money and effort for work that may later be found to be unacceptable.

Interested persons may, at any time, submit written comments on the guidelines to the Dockets Management Branch. Such comments will be considered in determining if revisions of the guidelines are required. Respondents should submit two copies (except that individuals may submit single copies) identified with the docket number found in brackets in the heading of this document. Received coments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-12347 Filed 6-2-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees of the National Institute of Allergy and Infectious Diseases for June, 1986.

These meetings will be open to the public to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. Portions of these meetings will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committees members upon request.

Substantive program information may be obtained from the Executive Secretary whose name, room number, and telephone number are listed below each committee.

Name of committee: Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, Transplantation Research Committee.

Executive secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496-7966.

Date of meeting: June 20, 1986.

Place of meeting: Linden Hill Hotel, Conference Room 22, 5400 Pooks Hill Road, Bethesda, MD 20814.

Open: June 20, 8:30 a.m.—9:10 a.m. and 2:30 p.m.—adjournment.

Agenda

Reports from Director and Deputy Director, Immunology, Allergic, and Immunologic Diseases Program (IAIDP); and Director and Deputy Director, Extramural Activities Program on Committee concerns and IAIDP program presentation.

Closed: June 20, 9:10 a.m.—2:30 p.m.

Closure reason: To review grant applications and contract proposals.

Name of committee: Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplanation Research Committee.

Executive secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496-7966.

Date of meeting: June 27, 1986.

Place of meeting: Building 31A, Conference Room 4, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: June 27, 8:30 a.m.—9:10 a.m. and 1:40 p.m.—adjournment.

Agenda

Reports from Director and Deputy Director, Immunology, Allergic, and Immunologic Diseases Program (IAIDP); and Director and Deputy Director, Extramural Activities Program on Committee concerns followed by Program concept clearances and IAIDP.

Closed: June 27, 9:10 a.m.—1:40 p.m.

Closure reason: To review grant applications and contract proposals.

(Catalog of Federal Domestic Assistance Programs Nos. 13.855, Pharmacological Sciences; 13.859, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 22, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-12411 Filed 6-2-86; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Privacy Act of 1974; Notification of New System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled "Kentucky Birth Records System, HHS/SSA/DO(KY), 09-60-0220." Information in the proposed system of records will be used by Social Security offices in the State of Kentucky to establish proof or age and other facts, as necessary, in processing applications for various Social Security benefits, Supplemental Security Income payments and Social Security numbers (SSN's). We are proposing routine use disclosures of information which will be maintained in the proposed system of records as discussed below. We invite public comments on this proposal.

DATES: We filed a report of a new system of records with the President of the Senate, the Speaker of the House of Representatives and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on May 23, 1986. The proposed system will become effective as proposed without further notice on July 22, 1986, unless we receive comments on or before that date which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Bert Sisk, District Manager, Social Security Administration, 330 Broadway, P.O. Box 579, Frankfort, Kentucky 40601, telephone (Area Code 502) 875-2231.

SUPPLEMENTARY INFORMATION:

I. Purpose, Background, and Contents of the Proposed System of Records

Individuals applying for entitlement under various Social Security programs must furnish SSA with evidentiary proof of age when age is a factor of entitlement. Additionally, evidence of age must be furnished when an individual applies for an SSN. Preferred proof of age is a public birth record or religious record of birth which was recorded before the age of 5. However, other documentation such as a school record also may be acceptable as evidentiary proof of age for entitlement purposes or for issuance of an SSN.

Generally, claimants have the responsibility for furnishing the proofs that are necessary to support their claims. However, we will assist claimants who are unable to obtain necessary documentation through their own efforts. In this regard, the State of Kentucky has prepared an index of birth records registered in that State and has offered to furnish the index to SSA. Kentucky will certify the accuracy of information on the index prior to furnishing it to SSA. We plan to obtain the index for use by Social Security offices in Kentucky whenever SSA must establish the age of individuals to determine entitlement under its programs or to issue an SSN. Further, other information contained in the index of birth records could be useful in determining other facts which could bear on entitlement; e.g., a parent's name could be used to establish relationship. Use of the index of birth records would obviate SSA or the individual otherwise obtaining a copy of a birth record from the State. This would help reduce the processing time of applications for entitlement under SSA programs or for obtaining SSN's.

The Kentucky Office of Vital Statistics will compile information on the index of birth records directly from birth records registered in that State. Specific information on the index will consist of the individual's name, date and place of birth, mother's maiden name, birth certificate number and the volume number of the index. We will retrieve information by use of the individual's name and other identifying information. Our use of the index, thus, would constitute a system of records as defined by the Privacy Act (5 U.S.C. 552a(a)(5)).

II. Proposed Routine Use Disclosures of Information Maintained in the Proposed System of Records

We are proposing to establish routine use disclosures of information which will be maintained in the proposed system of records as discussed below.

A. Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

This proposed routine use would enable SSA to disclose information to a congressional representative in those instances in which the subject of a record may ask the representative to intercede in a matter on his/her behalf involving this system of records and SSA. Information would be disclosed only when the representative makes an inquiry and presents evidence that he/she is acting on behalf of the individual whose record is requested.

b. Disclosure to the Department of Justice (DOJ), to a court or other tribunal, or another party before such tribunal, when:

(1) *HHS/SSA, or any component thereof; or*

(2) *Any HHS/SSA employee in his/her official capacity; or*

(3) *Any HHS/SSA employee in his/her individual capacity where DOJ (or HHS/SSA where it is authorized to do so) has agreed to represent the employee; or*

(4) *The United States or any agency thereof where HHS/SSA determines that the litigation is likely to affect the operations of HHS/SSA or any of its components,*

is a party to litigation or has an interest in such litigation, and HHS/SSA determines that the use of such records by DOJ, the tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, HHS/SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure would be made under this proposal, as necessary, to defend HHS/SSA components or employees in litigation matters involving this system or when HHS/SSA has an interest in litigation which might affect HHS/SSA operations.

III. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation permit us to disclose information as a routine use for purposes which are compatible with the purpose for which we collect information. The regulation (20 CFR 401.310) permits us to disclose information as a routine use to administer our programs or similar income-maintenance or health-maintenance programs of other agencies. Disclosure would be made

under the proposed routine uses to provide a service to Social Security constituents and, as necessary, in litigation matters involving HHS/SSA operations and the proposed system. We consider disclosure in both instances as extensions of our program administration. Thus, the routine uses are appropriate and meet the criteria in the regulation.

IV. Safeguards Applicable to the Proposed System of Records

We will restrict access to records maintained in the proposed system to SSA employees who need the records in the performance of their official duties. The record will be maintained in secured facilities and, when not in use, will be kept from access by unauthorized individuals (e.g., stored in locked filing cabinets).

V. Effect of the Proposed System of Records on Individual Rights

Information in the proposed system of records will be used only to establish required proof of age and other facts about individuals applying for various benefits or payments administered by SSA or for SSN's. However, any individual who disputes the accuracy of information or objects to SSA's use of the records will be given an opportunity to present alternative supporting evidence on his/her behalf such as a certified copy of his/her birth certificate. Further, once the system is implemented, any individual who believed that he/she had been adversely affected by a decision which was based on information in the system would have the right to appeal the decision. Thus, we do not believe that use of the proposed system would result in any unwarranted adverse effects on individual rights.

Dated: May 23, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

09-60-0220

System name:

Kentucky Birth Records System, HHS/SSA/DO(KY).

Security classification:

None.

System location:

Social Security district and branch offices located in the State of Kentucky. Individuals should consult Kentucky telephone directories for address and telephone information.

Categories of individuals covered by the system:

Members of the general public whose birth records have been registered in the State of Kentucky.

Categories of records in the system:

The system consists of an index of Kentucky birth records. Included on the index are the individual's name, mother's maiden name, date and place of birth, birth certificate number and volume number of the index.

Purpose:

Information in the system will be used by Social Security Administration (SSA) offices in the State of Kentucky to provide evidentiary proof of age and other facts about individuals applying for various Social Security benefits, Supplemental Security Income payments and Social Security numbers.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosure may be made as routine uses as indicated below:

1. To a Congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. To the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when:

(a) The Department of Health and Human Services (HHS)/SSA, or any component thereof; or

(b) Any HHS/SSA employee in his/her official capacity; or

(c) Any HHS/SSA employee in his/her individual capacity where DOJ (or HHS/SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS/SSA determines that the litigation is likely to affect the operations of HHS/SSA or any of its components,

Is a party to litigation or has an interest in such litigation, and HHS/SSA determines that the use of such records by DOJ, the tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, HHS/SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Records will be stored on microfilm.

Retrievability:

Records will be retrieved by the individuals's name and other identifying information (e.g., mother's name and date of birth).

Safeguards:

Access to records in the system will be restricted to personnel who need them in the performance of their official duties. Also, the information will be maintained in secured facilities and kept from access by unauthorized individuals (e.g., stored in locked filing cabinets) when not in use.

Retention and disposal:

Records in the system will be updated biennially. Out-of-date microfilm records will be disposed of by the application of heat.

System manager(s) and address:

Managers of Social Security district/branch offices in the State of Kentucky. Individuals seeking office addresses and telephone numbers should consult Kentucky telephone directories.

Notification procedures:

An individual wishing to find out if this system of records contains information about him/her may do so by contacting any Social Security office and furnishing his/her name, date and place of birth and mother's maiden name. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

Record access procedures:

Same as notification procedures above. Also, individuals requesting access to their records should reasonable describe the records they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

Contesting record procedures:

Same as notification procedures above. Also, individuals contesting the contents of records in the systems should reasonably describe the records, specify the information they are contesting and state the corrective action sought with supporting justification showing how the records are untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

Record source categories:

Records in the system will be obtained from the Kentucky Office of Vital Statistics.

System exempted from certain provisions of the act:

None.

[FR Doc. 86-12396 Filed 6-2-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Senior Executive Service; Performance Review Board Appointments.

May 12, 1986.

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 5 U.S.C. 4314(c)(4)).

DATE: These appointments are effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street, NW., Washington, DC 20240, Telephone Number: 343-6761.

Departmental PRB

Ann D. McLaughlin, Chairperson
James Biesecker (Career)
Robert Lawton (Career)
Michael O'Bannon (Career)
J. Lisle Reed (Career)
Hazel Elbert (Career)

Office of the Secretary PRB

Joseph Gorrell (Career), Chairperson
Charlotte Spann (Career)
Martin Smith (Noncareer)
Oscar Mueller (Career)
William Kendig (Career)

Assistant Secretary—Indian Affairs PRB

Earl Barlow (Career, Field), Chairperson
William Babby (Career, Field)
Richard Whitesell (Career, Field)
Frank Ryan (Career)

Office of the Solicitor PRB

Gale A. Norton (Noncareer), Chairman
Christopher Cannon (Noncareer)
W. Pierce Elliott (Career)
David Watts (Career, Field)
Ruth VanCleve (Career)

Assistant Secretary for Fish and Wildlife and Parks PRB

P. Daniel Smith (Noncareer), Chairperson
Jerry Rogers (Career)
Robert Gilmore (Career, Field)
John Cook (Career, Field)
Edward Davis (Career)

Assistant Secretary—Water and Science PRB

William Klostermeyer (Career), Chairperson
Clifford Barrett (Career)
James E. Cook (Career)
Richard Witmer (Career)
Robert Hamilton (Career)
Lewis Wade (Career, Field)

Assistant Secretary—Land and Minerals Management PRB

James Cason (Noncareer), Chairperson
Thomas Gernhofer (Career)
Robert Boldt (Career)
George Brown (Career)
Neil Morck (Career, Field)

Dated: May 12, 1986.

Gerald R. Hise,

Assistant Secretary for Policy, Budget, and Administration.

[FR Doc. 86-12363 Filed 6-2-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Establishment of Reservation; Jamestown Klallam Tribe

May 7, 1986.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. Notice is hereby given that under the authority of section 7 of the Act of June 18, 1934 (25 U.S.C. 467; 48 Stat. 986), the hereinafter described land located in Clallam County, Washington, was proclaimed to be an Indian reservation effective May 7, 1986, for exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

Willamette Meridian

Clallam County, Washington

Tract 5 of Lot 1 of Assessor's Map of section 12, Township 29 North, Range 3 West, as recorded in Volume 4 of Plats, Page 5, records of Clallam County, Washington, and

Except a right-of-way conveyed to Seattle, Port Angeles and Lake Crescent Railway by deed recorded in Volume 94 of Deeds, page 107, records of Clallam County, Washington, and

Except Primary State Highway No. 9, and

Except any portion lying southerly of the following described line: Beginning at the meander corner between sections 1 and 12, Township 29 North, Range 3 West; thence north 89°20'11" east 628.46 feet to the northeast corner of said section 12; thence south 17°58'30" west 1367.00 feet to a point on the west margin of the Old Olympic Highway, said point being one-half inch steel rod in concrete, and the true point of beginning; thence south 88°23'15" west to the mean high tide line, and the end of the described line; containing 2.12 acres, more or less, after the above exceptions, together with tidelands of the second class situate in front of, adjacent to or abutting upon the south 295 feet of Lot 1 of section 12, as set forth in deed on file here in the Bureau of Indian Affairs, Portland Area Title Plant number 130-1891.

Said land being subject to all valid rights, reservations, rights-of-way and easements of record.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-12385 Filed 6-2-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[M 40844, et al.]

Proposed Continuation of Withdrawals; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Department of the Interior, proposes to continue all or part of 6 existing land withdrawals for the Milk River Project for 50 years. The 24,581.16 acres of withdrawn unpatented lands proposed for continuation would remain closed to surface entry and mining. The extraction of locatable minerals from these lands would be permitted by the Bureau of Reclamation, provided this extraction can be performed in a manner that would not jeopardize or otherwise interfere with the purposes of the Milk River Project. All of the lands have been and would continue to be open to the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: James Binando, Chief, Branch of Land Resources, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6090.

The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Orders of October 8, 1904, May 12, 1945, October 15, 1904, October 23, 1944, June 15, 1937, and September 8, 1903, be continued in their entirety or in part for 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The purpose for continuance of the withdrawals is to protect the Milk River Reclamation Project. The withdrawals would continue to segregate 24,581.16 acres of unpatented lands located in

Blaine, Hill, and Phillips Counties in the State of Montana from operation of the public land laws and location under the United States mining laws; however, the extraction of locatable minerals would be permitted by the Bureau of Reclamation, provided that this extraction could be performed in a manner that would not jeopardize or otherwise interfere with the purposes of the Milk River Project. All of the lands would continue to be open to mineral leasing.

No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of the notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned office at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: May 27, 1986.

James Ricondo,

Chief, Branch of Land Resources.

[FR Doc. 86-12359 Filed 6-2-86; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6032, Block 519, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on May 27, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 27, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OSC Region.

[FR Doc. 86-12360 Filed 6-2-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 24, 1986. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 18, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Tucson, *Iron Horse Expansion Historic District*, Roughly bounded by Eighth St., Euclid Ave., Hughes & 10th Sts., and N. Fourth & Hoff Aves.

COLORADO

Denver County

Denver, *San Rafael Historic District*, Roughly bounded by Washington, E. 20th Ave., Downing, and E. 20th Ave.

El Paso County

Colorado Springs, *Cutler Hall (Colorado College TR)*, 912 N. Cascade Ave.
Colorado Springs, *Palmer Hall (Colorado College TR)*, 116 E. San Rafael St.

Garfield County

Glenwood Springs, *Starr Manor*, 901 Palmer Ave.

Phillips County

Haxtun, *First National Bank of Haxtun*, 145 S. Colorado Ave.

GEORGIA

Walker County

Rossville, *Rossville Post Office*, 301 Chickamauga Ave.

ILLINOIS

Franklin County

Mulkeytown vicinity, *Silkwood Inn (Shawneetown—Kaskaskia—St. Louis Trail TR)*, N of Mulkeytown off IL 14.
Mulkeytown vicinity, *Trace at Hall—Treadwell—Miller Site (Shawneetown—Kaskaskia—St. Louis Trail, TR)* NW of Mulkeytown.
Mulkeytown vicinity, *Trail Segment North of Silkwood Inn (Shawneetown—Kaskaskia—St. Louis Trail TR)* N of Mulkeytown off IL 14.
Mulkeytown, *Reid—Kirkpatrick Cemetery (Shawneetown—Kaskaskia—St. Louis TR)*, E side of Little Muddy River.
Plumfield, *Plumfield Bridge (Shawneetown—Kaskaskia—St. Louis Trail TR)*, IL 149.
Plumfield, *Plumfield Ford (Shawneetown—Kaskaskia—St. Louis Trail TR)*, Big Muddy River off IL 149, near Gauging Station.
Plumfield, *Trace at Plumfield (Shawneetown—Kaskaskia—St. Louis Trail TR)*, E bank of Big Muddy off IL 149.

INDIANA

Hamilton County

Carmel vicinity, *Newby, Micah, House*, 1149 W. 116th St.

Marion County

Indianapolis, *Julian—Clarke Residence*, 115 S. Audubon Rd.

MINNESOTA

Chippewa County

Granite Falls, *Weaver, Julian A., House*, 837 Minnesota Ave.

Fillmore County

Rushford, *Southern Minnesota Depot*, Elm St. and Pickle Alley.

Hennepin County

Minneapolis, *First Church of Christ Scientist*, 614-620 E. Fifteenth St.

Lac qui Parle County

Louisburg, *District School No. 82*, First St. at Third Ave.

Norman County

Canning Site.

Yellow Medicine

Canby, *Lundring Service Station*, 201 First St. E.

New York

Columbia County

Hudson, *Front Street-Parade Hill-Lower Warren Street Historic District (Boundary Decrease)*, Warren St. roughly bounded by N & S Second, Cherry Alley, N side of Front St., and Penn Central RR.

Monroe County

Rochester, *Central Downtown YMCA Building (Inner Loop MRA)*, 100 Gibbs St.

[FR Doc. 86-12300 Filed 6-2-86; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-6263 et al.]

Proposed Exemptions; Memphis Construction, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Employees' Profit Sharing and Retirement Plan of Memphis Construction, Inc. (the Plan) Located in Memphis, New York

[Application No. D-6263]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of certain real property by the Plan to Memphis Construction, Inc. (the Plan Sponsor) provided all of the terms of the proposed transaction are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date of the consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with approximately 95 participants. The Plan had total assets of $694,441 as of November 30, 1984. The trustee of the Plan is Mr. Duane C. Olin (the Trustee). The Trustee is an officer and shareholder of the Plan Sponsor. The Plan Sponsor is a real estate development corporation.

2. The Plan is the owner of a parcel of vacant land including approximately 46 acres in the Town of Clay, Onondaga County, New York (the Property) [1] which was purchased from unrelated parties. At the time of its purchase, the Trustee decided that the purchase of this real property would diversify the Plan's investment portfolio and could be held for appreciation. The Trustee determined that the purchase price of the real property was reasonable in view of its growth potential, and that its purchase would be a suitable investment for the Plan.

3. The applicant represents that the purchase of the real property was not motivated by any intention to benefit a particular Plan participant, group of participants, nor the Plan Sponsor. In a sworn affidavit, the Trustee represented that on June 4, 1982, he authorized the purchase of the real property and that prior to its purchase, the fair market value was established by an independent real estate appraiser at $285,000 as of April 22, 1982. (According to the above-mentioned appraisal, the total purchase price of $184,978 represented approximately 65% of its fair market value.)

4. The applicant proposes that the Plan Sponsor purchase the Property from the Plan. The Plan Sponsor submitted an offer to purchase the Property dated May 23, 1985. The total purchase price will be $210,208. The Plan Sponsor will pay all charges in connection with the sale. An independent appraisal of the Property was performed by G. Richard Kelley, M.A.I., C.R.E., of Pomeroy Appraisal

[1] Originally the Plan purchased 49 acres of real property at a cost of $173,000 plus closing expenses of $11,000 for a total of $184,078. The Plan subsequently sold a parcel to an unrelated party for $50,000. The applicant represents that this sales price reflected a 230% gain above the amount the Plan invested in this 3-acre parcel.

Associates, Inc., located in Syracuse, New York (the Appraisal). The Appraisal established the fair market value of the Property at $210,000 as of April 22, 1985. Total costs to the Plan of the Property, including carrying expenses, amounted to $114,000.

5. Mr. Thomas J. Bader, CEBS, of Retirement Income Services, Inc. located in Syracuse, New York, has made an independent review of the proposed transaction. Mr. Bader is unrelated to the Plan or the Plan Sponsor. Mr. Bader noted that it is customary for most pension funds to limit the exposure real estate investments to between 10 to 20 of total plan assets. However, the Plan has over 57 percent of the total portfolio invested in real estate as of November 30, 1984. Mr. Bader believes that the extremely large percentage of the Plan's assets invested in non-income producing properties is justification for the sale of the Property and such sale would be in the best interests of the Plan and its participants and beneficiaries. In summary, Mr. Bader represents that the Plan would be much more diversified in income producing securities which could easily be sold if need be, rather than in an illiquid, non-income producing asset such as the Property; the rate of appreciation that the Property has achieved is good and the future returns that may be achieved are questionable. He therefore recommends the sale of the Property and respresents that such sale would be in the best interests of the Plan and its participants and beneficiaries.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The sale of the Property will yield a significant gain over the investment.

(b) The Plan will not incur any expenses with respect to the sale of the Property. Therefore, the proceeds received by the Plan would be greater than those obtainable from an independent third party purchaser due to the absence of sales brokerage commissions and other costs which the Plan would pay in a standard commercial sales transaction.

(c) The sale of the Property will make possible greater diversification in the investments of the Plan.

(d) The Plan will receive fair market value for the Property as determined by an independent appraiser.

(e) An independent party has reviewed the proposed transaction and determined that the sale of the Property is in the best interests of and protective of the Plan; and

(f) The Trustee has determined that the proposed transaction is in the interests of and protective of the Plan.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Circleville Publishing Company Profit Sharing Plan (the Plan) Located in Circleville, Ohio

[Application No. D-6517]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale to Circleville Publishing Company (the Employer), a party in interest with respect to the Plan, of the shares of Press Properties, Inc. (Press) owned by the Plan, provided the sales price is not less than the fair market value of such shares on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan covering 24 participants as of December 31, 1984. The fair market value of the Plan's total assets was $946,936.00 as of March 7, 1986. The current trustee of the Plan is The Huntington National Bank, of Columbus Ohio (the Trustee), which requested the application for exemption as a condition of continuing to act as trustee of the Plan. The Trustee represents that it has no relationship with the Employer, its principals, or affiliates.

2. Press is a closely held corporation owned by 16 shareholders, including the Plan, five profit-sharing plans maintained by other employers, five companies, and five individuals. The largest shareholder of Press owns 16.0% of its 6,300 outstanding shares. As of June 30, 1985, six parcels of improved real property, all located in small farm communities in Ohio (Circleville, Van Wert, Logan, Wilmington, Hillsboro, and Washington Court House), comprised over 70% of Press' assets, the remainder of which consisted of cash and other liquid assets. Each of these six parcels is used for newspaper production, under a leasing or subleasing arrangement, by a different newspaper publishing company, namely: The Employer, Washington News Publishing Company, Van Wert Publishing Company, Wayne Newspaper Company, News-Journal Company, and Hillsboro Publishing Company (collectively, the Tenants). All of the Tenants maintain profit-sharing plans which own shares of Press. All such shares were purchased by such plans at various dates from 1969 through 1972 (before enactment of the Act). After obtaining appraisals by Mr. Tom Wilhelm, M.A.I., of each parcel of real property owned by Press, the Trustee determined that the fair market value of the outstanding shares of Press was $146.87 per share as of June 30, 1985. Mr. Wilhelm represents that he has no relationship with Press, any of the Tenants, or their affiliates or principals.

3. The applicant represents that Press is not an affiliate, for purposes of section 407(d)(7) of the Act, of any of the Tenants. All Tenants except Hillsboro Publishing Company may comprise various controlled groups, but, according to the applicant, until the current audit is completed the extent of the controlled groups cannot be determined.

4. The Plan owns a total of 918 shares of Press, representing approximately 14.5% of the Plan's total assets. The Plan paid $91,800 for these shares ($100 per share). The Trustee wishes to sell these shares to the Employer at a price equal to the fair market value of the shares on the date of the sale. The entire price will be paid in cash on the date of the sale. The Plan will pay no commissions or other expenses relating to the proposed sale.

5. The Trustee states that when the Plan purchased the 918 shares, companies with substantial real-estate holdings were thought to be prudent investments and that, in general, real estate was an excellent investment from 1970 through 1985. Therefore, the Trustee speculates that the previous trustee of the Plan acquired and held these shares for the Plan in the belief that companies with real-estate holdings were prudent investments.[2]

6. When the Trustee became trustee of the Plan, it was concerned about the concentration of Press shares owned by the Plan, particularly in light of the poor economic forecast for smaller towns dependent upon the depressed agricultural sector of the economy. In addition, the Trustee did not want the administrative burden and expense of appraising closely held companies and would prefer to diversify the

[2] The Department is expressing no opinion herein as to whether or not the continued holding by the Plan (or any of the other plans mentioned in 2, above) of shares of Press constituted either a prohibited transaction under section 406 of the Act or a violation of any of the other fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act.

investments of the Plan. The Trustee states that there is virtually no market for the Press shares and that other Press shareholders have been notified and have no interest in purchasing additional shares of Press. The Trustee asserts that unless the Employer purchases the Press shares owned by the Plan, the Plan's assets could depreciate in value as no upturn in the real-estate market is anticipated. The proposed sales price will equal the fair market value of the Press shares on the date of the proposed sale, according to the Trustee. For these reasons, the Trustee believes it to be in the best interests of the Plan and its participants and beneficiaries to sell its holdings of Press shares and to reinvest the proceeds in other types of more liquid investments.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed transaction is a one-time cash transaction; (b) the proposed sales price will equal the fair market value of the shares on the date of the sale as determined by the Trustee; (c) the Plan will pay no commissions or other expenses relating to the proposed sale; and (d) the Trustee, who is not related to the Employer, its principals or affiliates, believes the proposed sale will spare the Plan from risk of loss and will permit the Plan to diversify further by investing in more liquid assets.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Washington News Publishing Company Profit Sharing Plan (the Plan) Located in Washington Court House, Ohio

[Application No. D–6520]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale to The Washington News Publishing Company (the Employer), a party in interest with respect to the Plan, of the shares of Press Properties, Inc. (Press) owned by the Plan, provided the sales price is not less than the fair market value of such shares on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan covering 23 participants as of December 31, 1984. The fair market value of the Plan's total assets was $636,821 as of December 30, 1985. The current trustee of the Plan is The Huntington National Bank, of Columbus Ohio (the Trustee), which requested the application for exemption as a condition of continuing to act as trustee of the Plan. The Trustee represents that it has no relationship with the Employer, its principals, or affiliates.

2. Press is a closely held corporation owned by 16 shareholders, including the Plan, five profit-sharing plans maintained by other employers, five companies, and five individuals. The largest shareholder of Press owns 16.0% of its 6,309 outstanding shares. As of June 30, 1985, six parcels of improved real property, all located in small farm communities in Ohio (Circleville, Van Wert, Logan, Wilmington, Hillsobor, and Washington Court House), comprised over 70% of Press' assets, the remainder of which consisted of cash and other liquid assets. Each of these six parcels is used for newspaper production, under a leasing or subleasing arrangement, by a different newspaper publishing company, namely: the Employer, Circleville Publishing Company, Van Wert Publishing Company, Wayne Newspaper Company, News-Journal Company, and Hillsboro Publishing Company (collectively, the Tenants). All of the Tenants maintain profit-sharing plans which own shares of Press. All such shares were purchased by such plans at various dates from 1969 through 1972 (before enactment of the Act). After obtaining appraisals by Mr. Tom Wilhelm, M.A.I., of each parcel of real property owned by Press, the Trustee determined that the fair market value of the outstanding shares of Press was $146.87 per share as of June 30, 1985. Mr. Wilhelm represents that he has no relationship with Press, any of the Tenants, or their affiliates or principals.

3. The applicant represents that Press is not an affiliate, for purposes of section 407(d)(7) of the Act, of any of the Tenants. All Tenants except Hillsboro Publishing Company may comprise various controlled groups, but, according to the applicant, until the current audit is completed the extent of the controlled groups cannot be determined.

4. The Plan owns a total of 1,009 shares of Press, representing approximately 23.4% of the Plan's total assets. The Plan paid $100,900 for these shares ($100 per share). The Trustee wishes to sell these shares to the Employer at a price equal to the fair market value of the shares on the date of the sale. The entire price will be paid in cash on the date of the sale. The Plan will pay no commissions or other expenses relating to the proposed sale.

5. The Trustee states that when the Plan purchased the 1,009 shares, companies with substantial real-estate holdings were thought to be prudent investments and that, in general, real estate was an excellent investment from 1970 through 1985. Therefore, the Trustee speculates that the previous trustee of the Plan acquired and held these shares for the Plan in the belief that companies with real-estate holdings were prudent investments.[3]

6. When the Trustee became trustee of the Plan, it was concerned about the concentration of Press shares owned by the Plan, particularly in light of the poor economic forecast for smaller towns dependent upon the depressed agricultural sector of the economy. In addition, the Trustee did not want the administrative burden and expense of appraising closely held companies and would prefer to diversify the investments of the Plan. The Trustee states that there is virtually no market for the Press shares and that other Press shareholders have been notified and have no interest in purchasing additional shares of Press. The Trustee asserts that unless the Employer purchases the Press shares owned by the Plan, the Plan's assets could depreciate in value as no upturn in the real-estate market is anticipated. The proposed sales price will equal the fair market value of the Press shares on the date of the proposed sale, according to the Trustee. For these reasons, the Trustee believes it to be in the best interests of the Plan and its participants and beneficiaries to sell its holdings of Press shares and to reinvest the proceeds in other types of more liquid investments.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the act because: (a) The proposed transaction is a one-time cash transaction; (b) the proposed sales price will equal the fair market value of the shares on the date of the sale as determined by the Trustee; (c) the Plan

[3] The Department is expressing no opinion herein as to whether or not the continued holding by the Plan (or any of the other plans mentioned in 2, above) of shares of Press constituted either a prohibited transaction under section 406 of the Act or a violation of any of the other fiduciary responsibility provisions of Part 4, Subtitle B, or Title I of the Act.

will pay no commissions or other expenses relating to the proposed sale; and (d) the Trustee, who is not related to the Employer, its principals or affiliates, believes the proposed sale will spare the Plan from risk of loss and will permit the Plan to diversify further by investing in more liquid assets.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Van Wert Publishing Company Profit Sharing Plan (the Plan) Located in Van Wert, Ohio

[Application No. D–6521]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale to The Van Wert Publishing Company (the Employer), a party in interest with respect to the Plan, of the shares of Press Properties, Inc. (Press) owned by the Plan, provided the sales price is not less than the fair market value of such shares on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan covering 22 participants as of December 31, 1984. The fair market value of the Plan's total assets was $581,826 as of December 30, 1985. The current trustee of the Plan is The Huntington National Bank of Columbus Ohio (the Trustee), which requested the application for exemption as a condition of continuing to act as trustee of the Plan. The Trustee represents that it has no relationship with the Employer, its principals, or affiliates.

2. Press is a closely held corporation owned by 16 shareholders, including the Plan, five profit-sharing plans maintained by other employers, five companies, and five individuals. The largest shareholder of Press owns 16.0% of its of 6,309 outstanding shares. As of June 30, 1985, six parcels of improved real property, all located in small farm communities in Ohio (Circleville, Van Wert, Logan, Wilmington, Hillsboro, and Washington Court House), comprised over 70% of Press' assets, the remainder of which consisted of cash and other liquid assets. Each of these six parcels is used for newspaper production, under a leasing or subleasing arrangement, by a different newspaper publishing company, namely: the Employer, Washington News Publishing Company, Circleville Publishing Company, Wayne Newspaper Company, News-Journal Company, and Hillsboro Publishing Company (collectively, the Tenants). All of the Tenants maintain profit-sharing plans which own shares of Press. All such shares were purchased by such plans at various dates from 1969 through 1972 (before enactment of the Act). After obtaining appraisals by Mr. Tom Wilhelm, M.A.I., of each parcel of real property owned by Press, the Trustee determined that the fair market value of the outstanding shares of Press was $146.87 per share as of June 30, 1985. Mr. Wilhelm represents that he has no relationship with Press, any of the Tenants, or their affiliates or principals.

3. The applicant represents that Press is not an affiliate, for purposes of section 407(d)(7) of the Act, of any of the Tenants. All Tenants except Hillsboro Publishing Company may comprise various controlled groups, but, according to the applicant, until the current audit is completed the extent of the controlled groups cannot be determined.

4. The Plan owns a total of 940 shares of Press, representing approximately 24% of the Plan's total assets. The Plan paid $94,600 for these shares ($100 per share). The Trustee wishes to sell these shares to the Employer at a price equal to the fair market value of the shares on the date of the sale. The entire price will be paid in cash on the date of the sale. The Plan will pay no commissions or other expenses relating to the proposed sale.

5. The Trustee states that when the Plan purchased the 940 shares, companies with substantial real-estate holdings were thought to be prudent investments and that, in general, real estate was an excellent investment from 1970 through 1985. Therefore, the Trustee speculates that the previous trustee of the Plan acquired and held these shares for the Plan in the belief that companies with real-estate holdings were prudent investments.[*]

6. When the Trustee became trustee of the Plan, it was concerned about the concentration of Press shares owned by the Plan, particularly in light of the poor economic forecast for smaller towns dependent upon the depressed agricultural sector of the economy. In addition, the Trustee did not want the administrative burden and expense of appraising closely held companies and would prefer to diversify the investments of the Plan. The Trustee states that there is virtually no market for the Press shares and that other Press shareholders have been notified and have no interest in purchasing additional shares of Press. The Trustee asserts that unless the Employer purchases the Press shares owned by the Plan, the Plan's assets could depreciate in value as no upturn in the real-estate market is anticipated. The proposed sales price will equal the fair market value of the Press shares on the date of the proposed sale, according to the Trustee. For these reasons, the Trustee believes it to be in the best interests of the Plan and its participants and beneficiaries to sell its holdings of Press shares and to reinvest the proceeds in other types of more liquid investments.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed transaction is a one-time cash transaction; (b) the proposed sales price will equal the fair market value of the shares on the date of the sale as determined by the Trustee; (c) the Plan will pay no commissions or other expenses relating to the proposed sale; and (d) the Trustee, who is not related to the Employer, its principals or affiliates, believes the proposed sale will spare the Plan from risk of loss and will permit the Plan to diversify further by investing in more liquid assets.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Wayne Newspaper Company Profit Sharing Plan (the Plan) Located in Logan, Ohio

[Application No. D–6522]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a)

[*] The Department is expressing no opinion herein as to whether or not the continued holding by the Plan (or any of the other plans mentioned in 2, above) of shares of Press constituted either a prohibited transaction under section 406 of the Act or a violation of any of the other fiduciary responsibility provisions of Part 4, Subtitle B, or Title I of the Act.

and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale to The Wayne Newspaper Company (the Employer), a party in interest with respect to the Plan, of the shares of Press Properties, Inc. (Press) owned by the Plan, provided the sales price is not less than the fair market value of such shares of the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan covering 22 participants as of December 31, 1984. The fair market value of the Plan's total assets was $412,428 as of December 30, 1985. The current trustee of the Plan is The Huntington National Bank, of Columbus Ohio (the Trustee), which requested the application for exemption as a condition of continuing to act as trustee of the Plan. The Trustee represents that it has no relationship with the Employer, its principals, or affiliates.

2. Press is a closely held corporation owned by 16 shareholders, including the Plan, five profit-sharing plans maintained by other employes, five companies, and five individuals. The largest shareholder of Press owns 16.0% of its 6,300 outstanding shares. As of June 30, 1985, six parcels of improved real property, all located in small farm communities in Ohio (Circleville, Van Wert, Logan, Wilmington, Hillsboro, and Washington Court House), comprised over 70% of Press' assets, the remainder of which consisted of cash and other liquid assets. Each of these six parcels is used for newspaper production, under a leasing or subleasing arrangement, by a different newspaper publishing company, namely: the Employer, Washington News Publishing Company Van Wert Publishing Company, Circleville Publishing Company, News-Journal Company, and Hillsboro Publishing Company (collectively, the Tenants). All of the Tenants maintain profit-sharing plans which own shares of Press. All such shares were purchased by such plans at various dates from 1969 through 1972 (before enactment of the Act). After obtaining appraisals by Mr. Tom Wilhelm, M.A.I., of each parcel of real property owned by Press, the Trustee determined that the fair market value of the outstanding shares of Press was $146.67 per share as of June 30, 1985. Mr. Wilhelm represents that he has no relationship with Press, any of the Tenants, or their affiliates or principals.

3. The applicant represents that Press is not an affiliate, for purposes of section 407(d)(7) of the Act, of any of the Tenants. All Tenants except Hillsboro Publishing Company may comprise various controlled groups, but, according to the applicant, until the current audit is completed the extent of the controlled groups cannot be determined.

4. The Plan owns a total of 501 shares of Press, representing approximately 16% of the Plan's total assets.The Plan paid $50,100 for these shares ($100 per share). The Trustee wishes to sell these shares to the Employer at a price equal to the fair market value of the shares on the date of the sale. The entire price will be paid in cash on the date of the sale. The Plan will pay no commissions or other expenses relating to the proposed sale.

5. The Trustee states that when the Plan purchased the 501 shares, companies with substantial real-estate holdings were thought to be prudent investments and that, in general, real estate was an excellent investment from 1970 through 1985. Therefore, the Trustee speculates that the previous trustee of the Plan acquired and held these shares for the Plan in the belief that companies with real-estate holdings were prudent investments.[5]

6. When the Trustee became trustee of the Plan, it was concerned about the concentration of Press shares owned by the Plan, particularly in light of the poor economic forecast for smaller towns dependent upon the depressed agricultural sector of the economy. In addition, the Trustee did not want the administrative burden and expense of appraising closely held companies and would prefer to diversify the investments of the Plan. The Trustee states that there is virtually no market for the Press shares and that other Press shareholders have been notified and have no interest in purchasing additional shares of Press. The Trustee asserts that unless the Employer purchases the Press shares owned by the Plan, the Plan's assets could depreciate in value as no upturn in the real-estate market is anticipated. The proposed sales price will equal the fair market value of the Press shares on the date of the proposed sale, according to the Trustee. For these reasons, the Trustee believes it to be in the best interests of the Plan and its participants and beneficiaries to sell its holdings of Press shares and to reinvest the proceeds in other types of more liquid investments.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed transaction is a one-time cash transaction; (b) the proposed sales price will equal the fair market value of the shares on the date of the sale as determined by the Trustee; (c) the Plan will pay no commissions or other expenses relating to the proposed sale; and (d) the Trustee, who is not related to the Employer, its principals or affiliates, believes the proposed sale will spare the Plan from risk of loss and will permit the Plan to diversify further by investing in more liquid assets.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

The News-Journal Company Profit Sharing Plan (the Plan) Located in Wilmington, Ohio

[Application No. D-6523]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale to The News-Journal Company (the Employer), a party in interest with respect to the Plan, of the shares of Press Properties, Inc. (Press) owned by the Plan, provided the sales price is not less than the fair market value of such shares on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan covering 24 participants as of December 31, 1984. The fair market value of the Plan's total assets was $474,441 as of December 30, 1985. The current trustee of the Plan is The Huntington National Bank, of Columbus Ohio (the Trustee), which requested the application for exemption as a condition of continuing to act as trustee of the Plan. The Trustee represents that it has no relationship with the Employer, its principals, or affiliates.

2. Press is a closely held corporation owned by 16 shareholders, including the

[5] The Department is expressing no opinion herein as to whether or not the continued holding by the Plan (or any of the other plans mentioned in 2, above) of shares of Press constituted either a prohibited transaction under section 406 of the Act or a violation of any of the other fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act.

Plan, five profit-sharing plans maintained by other employers, five companies, and five individuals. The largest shareholder of Press own 18.0% of its 6,309 outstanding shares. As of June 30, 1985, six parcels of improved real property, all located in small farm communities in Ohio (Circleville, Van Wert, Logan, Wilmington, Hillsboro, and Washington Court House), comprised over 70% of Press' assets, the remainder of which consisted of cash and other liquid assets. Each of these six parcels is used for newspaper production, under a leasing or subleasing arrangement, by a different newspaper publishing company, namely: the Employer Washington News Publishing Company, Van Wert Publishing Company, Wayne Newspaper Company, Circleville Publishing Company, and Hillsboro Publishing Company (collectively, the Tenants). All of the Tenants maintain profit-sharing plans which own shares of Press. All such shares were purchased by such plans at various dates from 1969 through 1972 (before enactment of the Act). After obtaining appraisals by Mr. Tom Wilhelm, M.A.I., of each parcel of real property owned by Press, the Trustee determined that the fair market value of the outstanding shares of Press was $146.87 per share as of June 30, 1985. Mr. Wilhelm represents that he has no relationship with Press, any of the Tenants, or their affiliates or principals.

3. The applicant represents the Press is not an affiliate, for purposes of section 407(d)(7) of the Act, of any of the Tenants. All Tenants except Hillsboro Publishing Company may comprise various controlled groups, but according to the applicant, until the current audit is completed the extent of the Controlled groups cannot be determined.

4. The Plan owns a total of 896 shares of Press, representing approximately 27.8% of the Plan's total assets. The Plan paid $89,600 for these shares ($100 per share). The Trustee wishes to sell these shares to the Employer at a price equal to the fair market value of the shares on the date of the sale. The entire price will be paid in cash on the date of the sale. The Plan will pay no commissions or other expenses relating to the proposed sale.

5. The Trustee states that when the Plan purchased the 896 shares, companies with substantial real-estate holdings were thought to be prudent investments and that, in general, real estate was an excellent investment from 1970 through 1985. Therefore, the Trustee speculates that the previous trustee of the Plan acquired and held these shares for the Plan in the belief that companies with real-estate holdings were prudent investments.[6]

6. When the Trustee became trustee of the Plan, it was concerned about the concentration of Press shares owned by the Plan, particularly in light of the poor economic forecast for smaller towns dependent upon the depressed agricultural sector of the economy. In addition, the Trustee did not want the administrative burden and expensed of appraising closely held companies and would prefer to diversify the investments of the Plan. The Trustee states that there is virtually no market for the Press shares and that other Press shareholders have been notified and have no interest in purchasing additional shares of Press. The Trustee asserts that unless the Employer purchases the Press shares owned by the Plan, the Plan's assets could depreciate in value as no upturn in the real-estate market is anticipated. The proposed sales price will equal the fair market value of the Press shares on the date of the proposed sale, according to the Trustee. For these reasons, the Trustee believes it to be in the best interests of the Plan and its participants and beneficiaries to sell its holdings of Press shares and to reinvest the proceeds in other types of more liquid investments.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed transaction is a one-time cash transaction; (b) the proposed sales price will equal the fair market value of the shares on the date of the sale as determined by the Trustee; (c) the Plan will pay no commission or other expenses relating to the proposed sale; and (d) the Trustee, who is not related to the Employer, its principals or affiliates, believes the proposed sale will spare the Plan from risk of loss and will permit the Plan to diversify further by investing in more liquid assets.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

[6] The Department is expressing no opinion herein as to whether or not the continued holding by the Plan (or any of the other plans mentioned in 2, above) of shares of Press constituted either a prohibited transaction under section 406 of the Act or a violation of any of the other fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act.

John A. Colglazier Self Employed Retirement Plan (the Plan) Located in San Antonio, Texas

[Application No. D-5626]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26 (1975 C.B. 772). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of a parcel of unimproved real property (the Property) located in San Antonio, Texas to John A. Colglazier (Mr. Colglazier), a disqualified person with respect the Plan;[7] provided that the cash received from the proposed sale is no less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan adopted on February 6, 1986, under a standardized master plan and trust agreement sponsored by RepublicBank Dallas, N.A., as a successor plan to a plan originally established March 13, 1963. RepublicBank San Antonio, N.A. serves as the trustee for the Plan. Mr. Colglazier, a self employed sole proprietor and the sole participant in the Plan, is engaged in the commercial and investment real estate business in San Antonio, Texas. The total Plan assets as of December 31, 1985, were approximately $294,636.

2. The Property consists of 1.0307 acres of unimproved land located in the northeast corner of the intersection of Mesquite and Duval Streets in San Antonio, Bexar County, Texas. The Plan acquired the Property on October 1, 1985, from Mr. William Cole Butler, an unrelated third party, for a purchase price of $2.80 per square foot plus $101 in charges for a total of $126,093.94. Also, the Plan has incurred engineering fees with respect to the Property in the amount of $628.41. The Property as of December 31, 1985, constituted approximately 42% of the assets of the Plan.

3. On February 6, 1986, Mr. Richard L. Dugger, MAI (Mr. Dugger) assisted by Mr. Bobby G. Mealer (Mr. Mealer), real

[7] Since Mr. Colglazier is a sole proprietor and the only participant in the Plan there is no jurisdiction under Title I of the Employee Retirement Income Security Act (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

estate consultants and appraisers associated with Love & Dugger located in San Antonio, Texas, valued the property at approximately $146,000. Both Mr. Dugger and Mr. Mealer verify their independence in that they have no present or prospective interest in the Property nor any personal interest or bias with respect to the parties involved. It is represented that neither their employment nor the fee for the appraisal was contingent upon the valuation placed on the Property. Mr. Dugger is qualified in that he has been engaged since 1969 in appraising commercial, industrial, and residential real property, and farm and ranch lands in San Antonio, Texas. Mr. Dugger is certified under the voluntary continuing education program of the American Institute of Real Estate Appraisers and has attended various advanced residential appraisal courses in addition to teaching a course on the principles of real estate appraisal at San Antonio College. Mr. Dugger's professional affiliations include membership in the National Association of Realtors, the Society of Real Estate Appraisers, and the Texas Association of Realtors.

4. Mr. Colglazier is seeking an exemption from the prohibited transaction provisions of section 4975 of the Code to permit him to purchase the Property from the Plan for cash in the amount of the higher of the fair market value of the Property or $146,000. It is represented that the Plan will incur no fees, commissions, or other costs as a result of the sale. Mr. Colglazier states that the Plan originally acquired the Property to hold for long term appreciation, but that due to the depressed economic conditions in the real estate market in the San Antonio area, it would be in the Plan's best interest to sell the Property.

Mr. Colglazier represents that the Property is not near any other land which he owns, and at the time the Plan purchased the Property, he had the financial ability to purchase the Property himself. Mr. Colglazier states that the sale of the Property to him would result in a profit to the Plan which would be in the best interest of the Plan. It is represented that the proceeds, from the sale would be invested in other assets.

5. In summary, Mr. Colglazier represents that the proposed transaction satisfies the criteria for exemption under section 4975(c)(2) of the Code because:

(a) The sale of the Property will be a one-time transaction for cash;

(b) No fees, commissions, or other costs will be incurred by the Plan as a result of the sale;

(c) The Plan will sell the Property at its fair market value as determined by a qualified, independent appraiser; and

(d) The Plan will realize profit from the sale of the Property which the Plan will be able to invest in other assets.

Notice to Interested Persons

Because Mr. Colglazier is the applicant as well as the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan an in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-12450 Filed 6-2-86; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., on Thursday, June 12, 1986, in Conference Room N-3437D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to allow the Council additional time to deliberate the Termination Task Report on Pension Plan Terminations with Asset Reversions.

Signed at Washington, DC, this 28th day of May, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86-12358 Filed 6-2-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for the Critical Engineering Systems Section; Meeting

The National Science Foundation announces the following advisory committee meeting:

Name: Advisory Committee for the Critical Engineering Systems Section.

Date and time: June 19, 1986 (8:30—5:00 p.m.) June 20, 1986 (9:00 a.m.—3:00 p.m.)

Place: State Plaza Hotel (Diplomat Room) 2117 E Street NW., Washington, DC.

BEST COPY AVAILABLE

Type of meeting: June 19—Open, June 20—Closed.

Contact person: Dr. Michael P. Gaus, Section Head, Critical Engineering Systems, Division of Fundamental Research for Emerging and Critical Engineering Systems, National Science Foundation, 1800 G Street NW., Room 1130, Washington, DC 20550 (Telephone: 202-357-9809).

Summary of minutes: May be obtained from Contact Person listed above.

Purpose of meeting: To provide advice and recommendations concerning fundamental research for critical engineering systems.

Agenda June 19—

- Review of Program Awards in the following Programs: Earthquake Hazard Mitigation, Environmental Engineering, Systems Engineering for Large Structures, Natural and Man-Made Hazard Mitigation.
- Current Plans and Program Goals.
- Future Thrust Areas and Activities.
- External Peer Oversight of the Earthquake Hazard Mitigation Program and the Environmental Engineering Program.

Reason for closing: External Peer Oversight. The Committee will review grant and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicant. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

May 29, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-12304 Filed 6-2-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Science and Engineering Education (ACSEE); Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Science and Education (ACSEE).

Date and time: Monday, June 23, 1986, 9:00 A.M.—5:00 P.M. Tuesday, June 24, 1986, 9:00 A.M.—3:00 P.M.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Open.

Contact person: Dr. Bassam Z. Shakhashiri, Assistant Director for Science and Engineering Education, National Science Foundation, Washington, DC 20550 Telephone: (202) 357-9522.

Summary minutes: May be obtained from Dr. W. Frederick Oettle, Executive Secretary, ACSEE, National Science Foundation, Room 414, Washington, DC 20550.

Purpose of committee: To provide advice and recommendations concerning NSF support for science and engineering education.

Agenda: June 23-24, 1986

Review of FY 86 Programs and Initiatives.
Review External Peer Oversight Committee Reports (External Peer Oversight Committee—Informal Science Education Program, External Peer Oversight Committee—Research in Teaching and Learning Program, External Peer Oversight Committee—Graduate/Minority Fellowships Program)
Discussion of NSB Report on Undergraduate Science, Mathematics, and Engineering Education.
Discussion of FY 87 Budget Request and proposed Plans and initiatives.
Strategic planning for FY 88-92.
Review Contractor's Report on Middle School Science.

May 29, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-12365 Filed 6-2-86; 8:45 am]

BILLING CODE 7555-01-M

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency clearance officer: Herman G. Fleming, (202) 357-7340.

OMB desk officer: Cargos Tellez, (202) 395-7340.

Title: Survey to Assess the Current Level of Tribology Research and Development Activities in the United States.

Affected public: Business, Federal agencies, Non-profit institutions, and Small businesses.

Number of responses: 4,000 responses; total of 1,000 burden hours.

Abstract: The Tribology Program was initiated a year ago at NSF. In order to determine the program direction, we are conducting this survey to asses the current level of activities in tribology at universities, industry, and Federal Labs. This information is essential in formulating future plans for growth of this important research field.

Dated: May 29, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-12374 Filed 6-2-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Consumers Power Co.; Withdrawal of Applications for Amendments to Facility Operating License

[Docket No. 50-255]

The U.S. Nuclear Regulatory Commission (the Commission has granted the request of Consumers Power Company (the licensee)) for withdrawal of six applications for amendments to Provisional Operating License No. DPR-20 for the Palisades Plant located in Van Buren County, Michigan. The Commission issued Notices of Consideration of Issuance of Amendments which were published in the Federal Register. The dates of application, subject matter of the proposed changes, and Federal Register citations are as follows:

1. Application dated November 12, 1981, "NUREG-0737 Action Item III.D.1.1," published December 21, 1983 (48 FR 56501);

2. Application dated November 17, 1981, "Equipment and Sampling Tests," published October 26, 1983 (48 FR 49582);

3. Application dated June 25, 1982, "Primary Coolant Boron Concentration," published September 21, 1983 (48 FR 43136);

4. Application dated June 25, 1982, "Fire Protection System," published October 26, 1983 (48 FR 49582);

5. Application dated June 29, 1982, "Surveillance Containment Air Coolers," published September 2, 1983 (48 FR 43136); and

6. Application dated February 5, 1985, "Minimum Conditions for Criticality," published May 21, 1984 (50 FR 20975).

By letter dated March 5, 1986, the licensee withdrew its applications for the proposed amendments.

For further details with respect to this action, see (1) the applications for amendments dated November 12, 1981; November 17, 1981; June 25, 1982 (2); June 29, 1982; and February 5, 1985; (2) the licensee's letter dated March 5, 1986 withdrawing the applications for amendments; and (3) the Commission's letter granting the withdrawal dated May 28, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 28th day of May, 1986.

For The Nuclear Regulatory Commission.
Ashok C. Thadani,
Director, PWR Project Directorate No. 8, Division of PWR Licensing-B.
[FR Doc. 86-12413 Filed 6-2-86; 8:45 am]
BILLING CODE 7590-01-M

Northern State Power Co. Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-263]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemption from certain requirements of Section III.G of Appendix R to 10 CFR Part 50 to Northern States Power Company (the licensee) for Monticello Nuclear Generating Plant, located at the licensee's site in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemption from certain requirements of Section III.G of Appendix R to 10 CFR Part 50 which relates to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. The exemption is technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of Section III.G or that alternate fire protection configurations can be justified by an acceptable fire hazard analysis.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of this exemption request.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at Monticello. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are not significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 5, 1983 and February 21, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, 55401.

Dated at Bethesda, Maryland, this 28th day of May 1986.

For The Nuclear Regulatory Commission.
John A. Zwolinski,
Director, BWR Project Directorate No. 1, Division of BWR Licensing.
[FR Doc. 86-12414 Filed 6-2-86; 8:45 am]
BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstream Passage Advisory Committee; meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstream Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Transportation study findings
- Bypass system development and schedules at mainstem Corps dams
- Report on FISHPASS model sensitivity analysis
- Other
- Public comment

DATE: June 6, 1986. 9:00 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,
Executive Director.
[FR Doc. 86-12320 Filed 6-2-86; 8:45 am]
BILLING CODE 000-00-M

PEACE CORPS

Submission of Public Use Forms Review Request to the Office of Management and Budget

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), The Peace Corps has submitted to the Office of Management and Budget a request to approve the use of the Peace Corps Partnership Donor Forms through June 1, 1989. The forms are completed voluntarily by those seeking additional information about the Partnership Program. The forms provide the name, organization, current address and current phone number of those people interested. This information is necessary for Peace Corps to continue to provide new project information on a regular basis to current or potential donors.

Information about the forms:

Agency address: Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.

Title: Peace Corps Partnership Donor Forms.

Type of Request: Renewal of approval of use.

Frequency of collection: On occassion.

General description of respondents: Random sampling of schools, businesses, civic organizations, corporations and individuals who have requested more information about the Partnership Program.

Estimated number of respondents: 4,000 annually.

Estimated hours for respondents to furnish information: Five minutes.

Comments: Comments on these forms should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of these forms may be obtained from Nicole Vanasse, Peace Corps Partnership Program, Room M-1107, 806 Connecticut Avenue, NW., Washington, DC 20526. Ms. Vanasse

may be called on area code 202–254–8406. This is not a toll-free number.

This is not a request to which 44 U.S.C. 3504(h) applies.

This notice is issued in Washington, DC, on May 29, 1986.

Linda Rae Gregory,

Associate Director for Management.

[FR Doc. 86-12360 Filed 6-2-86; 8:45 am]

BILLING CODE 8951-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23278; File No. SR-MCC-86-4]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp. Relating to the Reorganization of the Board of Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 24, 1986, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the text of proposed amendments to the Midwest Clearing Corporation's By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments will facilitate the election of a separate Board of Directors for MCC. In the past, the membership of the MCC Board of Directors has in practice been the same as that of the Midwest Stock Exchange (MSE) Board of Governors. This common directorship reflected MCC's origin as an MSE subsidiary.

MCC will continue to be a wholly-owned MSE subsidiary. However, in order to address more efficiently MCC's business operations and goals, a separate Board of Directors is desired.

The proposed rule change will establish an seventeen member MCC Board. The MCC Chairman and Vice-Chairman will be chosen from among the directors; the President will be an *ex officio* director. The remaining sixteen directors will be divided into three classes and elected in staggered terms.

The proposed amendments are consistent with Section 17A of the Securities Exchange Act of 1934, in that it provides for the fair representation of MCC's Participants in the selection of its directors and the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competion as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12431 Filed 6-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23277; File No. SR-MSRB-86-8]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street, NW., Washington, DC 20036–2491, submitted on April 3, 1986, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to modify MSRB rule G–11(g) on syndicate practices to require syndicate managers to provide to syndicate members a written summary of allocations receiving priority over members' "take-down" orders within two business days after the date of the sale, rather than the ten business days as currently required by the rule. The proposed rule change also would require that information identifying persons placing group or related portfolio orders to which securities are allocated be provided to syndicate members at or before final settlement of the syndicate, rather than within 10 business days of the sale date as the rule currently requires.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23134 (51 FR 15565, April 24, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 28, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12432 Filed 6-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23278; File No. SR-OCC-86-11]

Self-Regulatory Organization; Proposed Rule Change by the Options Clearing Corp. Relating to Adjustments to the Terms of Outstanding Stock Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(i) (the "Act"), notice is hereby given that on May 13, 1986, The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as descried in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Options Clearing Corporation ("OCC") proposes to amend Article VI, Section 11 of its By-Laws to read in its entirety as set forth below. Italics indicate material proposed to be added and bracketing indicates material proposed to be deleted.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

Article VI

Adjustments

Section 11. (*a*) Whenever there is [declared] a *dividend*, stock dividend, stock distribution, stock split, [or] reverse *stock* split, rights offering distribution, reorganization, recapitalization, [or] reclassification or similar event in respect of any underlying security, *or a merger, consolidation, dissolution or liquidation of the issuer of any underlying security*, the number of [outstanding] option contracts, the unit of trading, [and/or] the exercise price, *and the underlying security, or any of them*, with respect to all *outstanding* option contracts open for trading in that underlying security *may* [shall] be adjusted [,effective on the "ex-date" of the underlying security in the primary market,] in accordance with this section 11. [The adjusted exercise price shall be rounded to the nearest ⅛ of a dollar and the adjusted trading unit shall be rounded down to eliminate any fractional share. No adjustment shall be made for cash distributions made out of "earnings and profits" as that term is used in the Federal Internal Revenue Code.]

(b) All adjustments hereunder shall be made by the Securities Committee. The Securities Committee shall determine to make adjustments to reflect particular events in respect of an underlying security, and the nature and extent of any such adjustment, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of option contracts on the underlying security, the maintenance of a fair and orderly market it options on the underlying security, consistency of interpretation and practice, efficiency of exercise settlement procedures, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying security. The Securities Committee may, in addition to determining adjustments on a case-by-case basis, adopt statements of policy or interpretations having general application to specified types of events. Every determination by the Securities Committee pursuant to this Section 11 shall be within the sole discretion of the Securities Committee and shall be conclusive and binding on all investors and not subject to review subject only to the oversight of the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934, as amended, with respect to statements of policy or interpretations adopted by the Securities Committee.

(c) It shall be the general rule that there will be no adjustments to reflect ordinary cash dividends or distributions paid by the issuer of the underlying security.

[(a)] *(d) It shall be the general rule that* [I] *in* the case of a stock dividend, stock distribution or stock split whereby one or more whole numbers of shares of the underlying security are issued *with* [in] respect to each outstanding share, each option contract covering that underlying security [outstanding prior to such event] shall be increased by the same number of additional option contracts as the number of shares issued with respect to each share of the underlying security, [and] the exercise price per share in effect immediately prior to such event shall be proportionately reduced[.] , *and* [T] the unit of trading [with respect to each option contract] shall remain the same.

[(b)] *(e) It shall be the general rule that* [I] *in* the case of a stock dividend, stock distribution or stock split whereby other than a whole number of shares of the underlying security is issued in respect of each outstanding share, the exercise price in effect immediately prior to such event shall be proportionately reduced, and conversely, in the case of a reverse stock split or combination of shares, the exercise price in effect immediately prior to such event shall be proportionately increased. Whenever the exercise price with respect to an option contract has been reduced or increased in accordance with this paragraph *(e)* [(b)], the unit of trading [with respect to the option contact] shall be proportionately increased or reduced, as the case may be. [If an adjusted unit of trading is rounded down to eliminate a fractional share, the adjusted exercise price shall be further adjusted, to the nearest ⅛ of a dollar, to reflect any diminution in the value of the option contract resulting from the elimination of the fractional share. No adjustment in the number of option contracts outstanding shall be made on account of the happening of any of the events for which adjustments are provided in this paragraph.]

[(c)] *(f) It shall be the general rule that* [I] *in* the case of any distribution made with respect to shares of *an* underlying *security* [securities], other than cash distributions *subject to paragraph (c)* [of the character referred to in the third sentence] of this section 11 and other than distributions for which adjustments are provided in paragraphs (*d*) [(a)] or (*e*) [(b)] of this section 11, *if an adjustment is determined by* the Securities Committee *to be* [of the Corporation (as hereinafter defined) shall determine whether an adjustment is] appropriate, [by reason of such event in the interest of fairness to holders and writers of option contracts. Whenever an adjustment is so determined to be appropriate, either] (i) the exercise price in effect immediately prior to such event shall be reduced by the value per share of the distributed property, in which event the [trading] unit *of trading* shall not be adjusted, or (ii) the *unit of* trading [unit] in effect immediately prior to such event shall be adjusted so as to include the amount of property distributed with respect to the number of shares of the underlying security represented by the *unit of* trading [unit] in effect prior to such adjustment, in which event the exercise price shall not be adjusted. The Securities Committee shall, *with respect to adjustments under this paragraph or any other paragraph of this section 11, have the authority to determine the value of distributed property.* [determine whether a given event for which adjustment is provided under this paragraph shall result in an adjustment under clause (i) or clause (ii) of the preceding sentence, and, with respect to adjustments under clause (i), it shall determine the value of the distributed property.]

[(d)] *(g)* In the case of any [reorganization, recapitalization, reclassification or similar] event [with respect to shares of underlying securities] for which adjustment is not provided in any of the foregoing paragraphs of this section 11, [or in the case of any event for which adjustment is provided in one of the foregoing paragraphs but is not considered by the Securities Committee to be appropriate under the circumstances,] the Securities Committee *may* [shall] make such adjustments, *if any*, [in the exercise price, trading unit or number of contracts] with respect to the option contracts affected by such event as *the Securities* [that] Committee

[in its sole discretion] determines [to be fair to the holders and writers of such option contracts].

(h) Adjustments pursuant to this section 11 shall as a general rule become effective in respect of option contracts outstanding on the "ex-date" established by the primary market for the underlying security.

(i) It shall be the general rule that (1) all adjustments of the exercise price of an outstanding option contract shall be rounded to the nearest ⅛ of a dollar, and all adjustments of the unit of trading shall be rounded down to eliminate any fraction, and (2) if the unit of trading is rounded down to eliminate a fraction, the adjusted exercise price shall be further adjusted, to the nearest ⅛ of a dollar, to reflect any diminution in the vaule of the option contract resulting from the elimination of the fraction.

(j) Notwithstanding the general rules set forth in paragraphs (c) through (i) of this section 11 or which may be set forth as interpretations and policies under this section 11, the Securities Committee shall have the power to make exceptions in those cases or groups of cases in which, in applying the standards set forth in paragraph (b) hereof, the Securities Committee shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the Securities Committee affirmatively determines to make an exception in a particular case or group of cases.

[(e)] *(k)* The Securities Committee[, in exercising its functions pursuant to paragraphs (c) or (d) of this section 11 regarding adjustment of option contracts in an underlying security,] shall consist of *one* [two] designated representative[s] of each Exchange [on which option contracts in that underlying security are open for trading] and the Chairman of the Corporation. *In making a determination regarding the adjustment of outstanding option contracts on a particular underlying security, the action of an adjustment panel consisting of two designated representatives of each Exchange on which option contracts on that underlying security are open for trading (one of whom shall be such Exchange's representative on the Securities Committee) and the Chairman of the Corporation shall constitute the action of the Securities Committee.* The vote of a majority of the voting members of the Securities Committee, *or of any adjustment panel,* shall constitute the *determination* [action] of the *Securities* Committee *or such panel.* The Chairman of the Corporation shall not be a voting member of the Committee *or of any adjustment panel* except in the case of a tie vote, in which case the Chairman shall have the right to cast a vote to break the tie and shall, for such purpose, be deemed to be a voting member. [The members of the Securities Committee need not be Clearing Members or officers or directors of the Corporation.] The Securities Committee *or any adjustment panel* may transact its business by telephone. *Notwithstanding the foregoing provisions of this paragraph, the Chairman of the Corporation may designate any other officer of the Corporation, and any representative of an Exchange may designate any other representative of such Exchange, to serve in his place at any meeting of the Securities Committee or of any adjustment panel. In the event of such designation, the designee shall, for the purposes of such meeting, have all of the powers and duties under this Section 11 of the person designating him. Neither the Corporation nor any Exchange shall designate to serve on any adjustment panel (i) any Exchange member or Clearing Member, or any director, officer, partner, or employee of any Exchange member or Clearing Member, or (ii) any person who, to the knowledge of the self-regulatory organization designating such person, is the beneficial holder of a long or short position in option contracts as to which adjustment panel is to make a determination.*

. . . Interpretations and Policies:

.01 Cash dividends or distributions in an aggregate amount which does not exceed 10% of the market value (as of the close of trading on the declaration date) of the underlying security outstanding will as a general rule, be deemed to be "ordinary cash dividends or distributions" within the meaning of paragraph (c) of Section 11. The Securities Committee will determine on a case-by-case basis whether other cash dividens or distributions are "ordinary cash dividiens or distributions" or whether they are dividends or distributions for which an adjustment should be made. [The Chairman of the Corporation may designate any other officer of the Corporation to serve in his place at any meeting of the Securities Committee. In the event of such designation, the Chairman's designee shall, for the purposes of such meeting, have all of the powers and duties of the Chairman under Article VI, section 11(e) of thue By-Laws.]

.02 Adjustments will not ordinarily be made to reflect the issuance of so-called "poison pill" right that are not immediately exercisable, trade as a unit or automatically with the underlying security, and may be redeemed by the issuer. In the event such rights become exercisable, begin to trade separately from the underlying security, or are redeemed, the Securities Committee will determine whether an adjustment is appropriate.

.03 Adjustments will not be made to reflect a tender offer or exchange offer to the holders of the underlying security, whether such offer is made by the issuer of the underlying security or by a third person or whether the offer is for cash, securities or other property. This policy will apply without regard to whether the price of the underlying security may be favorably or adversely affected by the offer or whether the offer may be deedmed to be "coercive." Outstanding options ordinarily will be adjusted to reflect a merger, consolidation or similar event that becomes effective following the completion of a tender offer or exchange offer.

.04 Adjustments will not be made to reflect changes in the capital structure of an issuer where all of the underlying securities outstanding in the hands of the public (other than dissenters' shares) are not changed into another security, cash or other property. For example, adjustments will not be made merely to reflect the issuance (except as a distribution on an underlying security) of new or additional debt, stock, or options, warrants or other securities convertible into or exercisable for the underlying security, the refinancing of the issuer's outstanding debt, the repurchase by the issuer of less than all of the underlying securities outstanding, or the sale by the issuer of significant capital assets.

.05 When an underlying security is converted into a right toreceive a fixed amount of cash, such as in a merger, outstanding options will be adjusted to require the delivery upon exercise of cash in an amount per share equal to the conversion price. As a result of such adjustment, the value of all outstanding in-the-money opitons will become fixed, and all at-the-money and out-of-the-money options will become worthless.

.06 In the case of a corporate reorganization, reincorporation or similar occurrence by the issuer of an underlying security which results in an automatic share-for-share exchange of shares in the issuer for shares in the resulting company, the options on the underlying security will ordinarily be adjusted to require delivery upon exercise of a like number of units of the shares of the resulting company. Because the securities are generally exchanged only on the books of the issuer and the resulting company, and are not generally exchanged physically, deliverable shares will ordinarily include certificates that are denominated on their face as shares in the original issuer, but which, as a result of the corporate transaction, represent shares in the resulting company.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would amend and restate Article VI, section 11 of OCC's By-Laws, which governs adjustments to the terms of outstanding option contracts.

A major purpose of the proposed rule change is to give the OCC Securities Committee more discretion to deal with novel securities and new types of corporate transactions not contemplated at the time when Article VI, Section 11

was drafted. The provisions of the amended By-Law are therefore framed as general rules, which the Securities Committee is empowered to override when it deems such action to be appropriate for the protection of investors and the public interest.

The present prohibition against adjusting for cash distributions made out of "earnings and profits," as defined in the Internal Revenue Code, would be eliminated. In some cases, the "earnings and profits" test has proven difficult or impossible to apply. More importantly, the inflexibility of the present rule could lead to inequities by preventing OCC from adjusting outstanding options in response to cash distributions that were extraordinary in source and amount, but were nonetheless chargeable against "earnings and profits" for tax purposes.

The proposed rule change would replace the outright prohibition in the present By-law with a general rule that there will be no adjustments for "ordinary" cash dividends or distributions. A stated policy thereunder would provide that cash dividends and distributions of up to 10% of the market value of the underlying security would generally be deemed to be "ordinary," so as not to call for an adjustment. The Securities Committee would evaluate larger distributions on a case-by-case basis.

Another purpose of the proposed rule change is to articulate the standard to be followed by the Securities Committee in making adjustment determinations. That standard is the Committee's judgment as to what is appropriate for the protection of investors and the public interest, taking into consideration such factors as the maintenance of fair and orderly markets, consistency of interpretation and practice, efficiency of exercise settlement procedures, and coordination with stock clearing agencies.

In addition, the rule change would make explicit a point that OCC believes to be implicit in the present By-Law—namely, that decisions of the Securities Committee are intended to be final, conclusive, and not subject to review. The purpose of that provision is to make it clear that the market may trade in reliance on announced adjustment determinations without the risk that such determinations may later be overturned, and that such determinations are conclusive and binding on investors.

Finally, the rule change would establish a standing Securities Committee (as distinct from the *ad hoc* panels convened to deal with specific transactions) consisting of the Chairman of OCC and one representative of each self-regulatory organization that maintains an options market. The standing Committee would have the power to adopt stated policies and interpretations having general application to recurrent types of transactions not specifically covered in the By-Law itself.

The proposed rule change also includes a number of stated policies relating to the interpretation and administration of the amended By-Law. In addition to the policy defining "ordinary" cash distributions, discussed above, there are policies reflecting OCC's historical practice of not adjusting for issuances of "poison pill" rights, for tender offers or exchange offers, or for changes in an issuer's capital structure not involving the alternation of the legal rights represented by outstanding securities. Other policies cover adjustments for cash mergers and for reincorporation mergers not involving the replacement of outstanding stock certificates.

The proposed rule change is consistent with the purposes and requirements of sections 6 and 17A of the Exchange Act because it would further the maintenance of fair and orderly markets and the protection of investors and the public interest by eliminating unduly restrictive language in OCC's By-Law governing adjustments that might impede equitable adjustments in certain extraordinary situations, by clarifying the provisions of that By-Law and the effect of determinations thereunder, and by publishing stated policies dealing with adjustments for certain recurrent types of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the filing will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited by OCC with respect to the filing, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning for foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 28, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12433 Filed 6-2-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

The First Australia Prime Income Fund, Inc. Common Stock, $.01 Par Value (File No. 7-8908).

United States Tobacco Company (Del.) Common Stock, $.50 Par Value (File No. 7-8909).

These securities are listed and registered on one or more other national

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 11, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12428 Filed 6-2-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 30, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

York International Corporation
Common Stock, $0.001 Par Value (File No. 7-8305)

Pilgrim Regional Bank Shares, Inc.
Common Stock, $.001 Par Value (File No. 7-8306)

Alfin Fragrances, Inc.
Common Stock, $.01 Par Value (File No. 7-8307)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 11, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintanence of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12429 Filed 6-2-86; 8:45 am]

BILLING CODE 8010-01-M

[500-1]

Western State Production Co., Inc.; Order of Suspension of Trading

May 29, 1986.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the affairs of Western State Production Co., Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Western State Production Co., Inc., over-the-counter or otherwise, is suspended for the period from 10:00 a.m. (EST) on Thursday, May 29, 1986 through midnight (EST) on Saturday, June 7, 1986.

By the Commission.

Shirley Hollis,

Acting Secretary.

[FR Doc. 86-12430 Filed 6-2-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/974]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Wednesday, June 18, 1986 in the A and B Conference Rooms, 10th Floor, AT&T Building, 1120 20th Street, NW., Washington, DC. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Report on Meeting of CCITT Study Group XI;

2. Report on Rapporteurs Meeting of Study Group XVIII;

3. Consideration of contributions to meeting of CCITT Study Group XVIII (Geneva, June 30-July 18); and

4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All persons planning to attend the meeting should contact Mr. Ted DeHaas at (303) 497-3728.

Dated: April 29, 1986.

Earl Barbely,

Acting Director, Office of the Technical Standards and Development.

[FR Doc. 86-12406 Filed 6-2-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/971]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Wednesday, June 18, 1986, in Conference Room 1107, Department of State Building, Washington, DC.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Participants.

II. Greetings from the Department of State.

III. Results of Surveys Concerning School Fund Raising Efforts and Reports Regarding Activities of Overseas Schools Regional Associations.

IV. Council's Program of Educational Assistance:

(a) Final Report of 1984 Program and Progress Report on 1985 Program.

(b) Council's Efforts in Organizing an Appreciation-Stewardship Conference and Securing Contribtions for 1986 Program.

(c) Report of Meeting with Exchange Directors of the Overseas Schools Regional Associations in San Francisco on February 18, 1986.

V. Council Communication with U.S. Corporations and Foundations.

VI. Other Business.

Access to the State Department is controlled, therefore members of the public desiring to attend the meeting should call Ms. Joyce Bruce, Office of Overseas Schools, Department of State, Washington, DC., Area Code 703-235-9600, prior to June 18. The public may participate in discussions at the Chairman's instructions.

Dated: May 14, 1986.

Ernest N. Mazzeo,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 86-12405 Filed 6-2-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/972]

Shipping Coordinating Committee; Meeting

The National Committee for Prevention of Marine Pollution (NCPMP) (a subcommittee of the Shipping Coordinating Committee) will conduct an open meeting on July 2, 1986 at 9:30 AM in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be a general review of the agenda items to be considered at the Twenty-third session of the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) to be held July 7-11, 1986. Proposed U.S. positions of MEPC agenda item issues will be discussed.

The major items of discussion will be the following:

1. Proposed revisions, with a view toward ratification of optional Annexes III, IV, and V of the International Conventioon of the Prevention of Pollution from Ships, 1973, as modified by the Protocal of 1978 relating thereto (MARPOL 73/78). The MEPC at is 22nd session agreed in principle to a revised text of Annex III (Regulations of the Prevention of Pollution by Harmful Substances Carried by Sea in Package Form) wich provides for implmentation of Annex III provisions through the International Maritime Dangerous Goods (IMDG) Code.

Discussions will focus on the impact of Annex III requirements on existing packaging, marking/labeling and stowage requirements under SOLAS and the IMDG Code for packaged dangerous goods which have been dtermined to be marine pollutants. The criteria for determining marine pollutants under Annex III will also be addressed.

2. Uniform interpretations of Annex I (Regulations for the Prevention of Pollution by Oil) and Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk) of MARPOL 73/78.

4. Enforcement of pollution conventions.

5. Inter-related work of other Committees and Subcommittees.

Following this meeting, at 1:30 PM the NCPMP will conduct a special meeting to ascertain the desirability of U.S ratification of Annex V (Regulations for the Prevention of Pollution by Garbage from ships) to MARPOL 73/78. Notice of this special NCPMP meeting was published in the Federal Register on April 18, 1986 (51 FR 13310).

Members of the public may attend both meetings up to the seating capacity of the rooms.

For further information of for documentation pertaining to the NCPMP meeting, contact either Lieutenant Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G-WER-3), 2100 Second Street, SW., Washington, DC 20593; Tel: (202) 426-9573.

Dated: May 28, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-12406 Filed 6-2-86; 8:45 am]

BILLING CODE 4710-07-M

Shipping Coordinating Committee, Subcommittee on Safety of Life of Sea, Working Group on Standards of Training and Watchkeeping; Meeting

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on July 23, 1986 at 10:00 AM in Room 6317 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be a general review of the agenda items for the 19th Session of the International Maritime Organization (IMO) Subcommittee on Standards of Training and Watchkeeping, scheduled for September 29—October 3, 1986.

Members of the public may attend up to the seating capacity of the room.

For further information contact John J. Hartke, U.S. Coast Guard Headquarters (G-MVP/12), 2100 Second Street, SW., Washington, DC 20593. Telephone: (202 426-2985.

Dated: May 28, 1986.

Richard C. Scissors,

Director, Shipping Coordinating Committee.

[FR Doc. 86-12407 Filed 6-2-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended May 23, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application, following the answer period DOT may process the application by expedited procedures, such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings, (see 14 CFR 302.1701 et. seq.).

Date filed	Docket No.	Description
May 23, 1986	44954	American Airlines, Inc., Wesley G. Kaldahl, P.O. Box 619616, Maryland 3955, DFW Airport, Texas 75261. Renewal Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 316 (Dallas/Ft. Worth-Rio de Janeiro/Sao Paulo, Brazil). Conforming Applications, Motions to Modify Scope and Answers may be filed by June 20, 1986.
May 23, 1986	44955	Japan Air Lines Company, Ltd., c/o Laurence A. Short, Short, Klein & Karas, P.C., Suite 303, 1101 Thirtieth Street, NW., Washington, DC 20007. Application of Japan Air Lines Company, Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for an amendment of its Foreign Air Carrier Permit so as to authorized it to additionally engage in foreign air transportation of persons, property and mail between Tokyo, Japan and Atlanta, Georgia. Answers may be filed by June 20, 1986.
May 23, 1986	43771	All Nippon Airways Co., Ltd., c/o James L. Dowd, Zuckert, Scoutt, Rasenberger & Johnson, 888 17th Street, NW., Suite 600, Washington, DC 20006. Amendment No. 1 to the Application of All Nippon Airways Co., Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations, amends its application for foreign air carrier permit, in order that the application include a request for authority to engage in foreign air transportation over the following routes: Tokyo—Los Angeles Tokyo—Washington Answers may be filed by June 16, 1986.
May 23, 1986	42980	American Airlines, Inc., c/o Alfred V.J. Prather, Prather Seeger Doolittle & Farmer, 1600 M Street, NW., 7th Floor, Washington, DC 20036. Amendment No. 1 to the Application of American Airlines, Inc., amends its application for certificate of convenience and necessity for Route 137 (Segment 1: U.S.—Caribbean Points) to add authority between points in the United States and points in the British Virgin Islands.

Date filed	Docket No.	Description
		Answers may be filed by June 17, 1986.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-12402 Filed 6-2-86; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Nashua, NH

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in the City of Nashua in New Hampshire.

FOR FURTHER INFORMATION CONTACT: (1) For the Federal Highway Administration (FHWA), William F. O'Donnell, Area Engineer, Telephone: (603) 224-3365, Federal Highway Administration, 55 Pleasant Street, Room 219, Concord, NH 03301, or Frederic C. Murphy, Chief, Environmental Services Section, Telephone: (603) 271-3791, The State of New Hampshire Department of Transportation, John O. Morton Building, Concord, NH 03301.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the New Hampshire Department of Transportation and the City of Nashua, will prepare an environmental impact statement (EIS) on a proposal to provide traffic and air quality relief to the Nashua CBD in the vicinity of the current Main Street crossing of the Nashua River.

The proposed action is anticipated to include a new Nashua River bridge westerly of Main Street with approach roadways connecting downtown Nashua in the vicinity of West Hollis Street with Broad Street in the vicinity of Exit 6 on the F. E. Everett Turnpike. The proposed roadway would likely be a 4-lane controlled access facility of about 1.5 miles in length.

This improvement is considered necessary to accommodate projected traffic demand and to assist in the alleviation of carbon monoxide air quality violations documented along Main Street. Alternatives under consideration include:

1. Various locations of a new roadway and bridge.
2. Variations in the cross-section including number of lanes and degree of access control.
3. Improvements to the existing highway system, and
4. Taking no action.

The Scoping Process will consist of individual meetings with those agencies believed to have an interest in the study area and potential social, economic and environmental factors affected by the proposed action. These meetings will be initiated in July of 1986. A single formal scoping meeting of all agencies is not planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning these proposed actions and the EIS should be directed to the FHWA or the New Hampshire Department of Transportation personnel noted above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and clearinghouse review of Federal and federally-assisted programs and projects apply to this program.)

Issued on: May 23, 1986.

Vincent F. Schimmoller,
Division Administrator, Concord, New Hampshire.
[FR Doc. 86-12357 Filed 6-2-86; 8:45 am]
BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in New York City on June 11, 1986. The Commission will meet at the U.S. Mission to the United Nations, 799 U.N. Plaza, at 9:00 AM–2:00 PM to discuss public diplomacy programs with members of the U.S. delegation to the UN.

Please call Gloria Kalamets, (202) 485-2468, for further information.

Dated: May 29, 1986.

Charles N. Canestro,
Management Analyst, Federal Register Liaison.
[FR Doc. 86-12412 Filed 6-2-86; 8:45 am]
BILLING CODE 8230-01-M

UNITED STATES SENTENCING COMMISSION

Notice of Hearing

AGENCY: United States Sentencing Commission.

ACTION: Notice of Hearing.

SUMMARY: This notice announces that a hearing of the topic of Organizational Sanctions appropriate under sentencing guidelines in scheduled by the U.S. Sentencing Commission for Tuesday, June 10, 1986.

Date: June 10, 1986.

Time: 10 a.m.

Location: U.S. Sentencing Commission Hearing Room, 14th Floor of the North Office Tower at National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. Further Information: Contact Paul Martin, Communications Director, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, (202) 662-8800.

SUPPLEMENTARY INFORMATION: The U.S. Sentencing Commission was established under the Comprehensive Crime Control Act of 1984 and is an independent Commission in the Judicial Branch. The Commission is charged with developing a national sentencing policy for the federal courts, and pursuant to that, mandatory sentencing guidelines. The June 10 hearing, the Commission's third, will focus on the sanctions available and appropriate for the corporation, business, union or other organization convicted of a federal crime.

Written statements on this topic may be submitted to the U.S. Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004. The hearing record will remain open for thirty days after the hearing for additional written submissions. All are invited to attend the hearing.

William W. Wilkins, Jr.,
Chairman.
[FR Doc. 86-12382 Filed 6-2-86; 8:45 am]
BILLING CODE 2210-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the

following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the forms, (1) the title of the form, (3) the agency number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed of fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 28, 1986.

By direction of the Administrator:

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits.
2. Monthly Record of Training and Wages.
3. VA Form 20–1905c.
4. Monthly.
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations.
6. 4,800 responses.
7. 1,200 hours.
8. Not applicable.

[FR Doc. 86–12390 Filed 6–2–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 106
Tuesday, June 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 10, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12507 Filed 5-30-86; 11:35 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 17, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Applications of the Chicago Mercantile Exchange for designation as a contract market in 5 year, 10 year and 20 year United States Treasury Stripe

Applications of the Chicago Board of Trade for designation as a contract market in Zero Coupon Treasury Bond futures and Zero Coupon Long Term-Note futures

Application of the Chicago Mercantile Exchange for designation in Canadian Dollar Options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb. 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12508 Filed 5-30-86; 11:35 am]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 24, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12509 Filed 5-30-86; 11:36 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 27, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Sales Practice Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-12510 Filed 5-30-86; 11:36 am]
BILLING CODE 6351-01-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 19656, dated May 30, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, June 9, 1986.

CHANGE IN THE MEETING: The following matter has been added to the open portion of the meeting.

"Proposed Revisions to the Federal Sector Complaint Processing Regulations at 29 CFR Part. 1613"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: May 30, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 86-12584 Filed 5-30-86; 3:23 pm]
BILLING CODE 6750-06-M

6

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming first meeting of the Farm Credit Administration Board.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 5, 1986, from 11:00 a.m. until 1:00 p.m., or such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: The meeting of the Farm Credit Administration Board will be open to the public (limited space available), except as the Board may determine to conduct one or more portions of the meeting in closed session. The matters scheduled to be considered at the meeting are:

1. Adoption of Rules for the Transaction of Business of the Farm Credit Administration Board.
2. Regulations.

Final

Section 611.1142(h)—Farm Credit System Capital Corporation; General Corporate Powers

Part 611—Farm Credit System Capital Corporation; Organization—Extension of Comment Period for Additional 30 days

Part 620—Disclosure to Stockholder Requirements (Amendments)

Part 622—Rules of Practice and Procedure

Part 623—Practice Before the Farm Credit Administration

Proposed

Part 615—Subpart H and Subpart I—Capital Adequacy of Banks and Associations

Dated: May 30, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86-12552 Filed 5-30-86; 3:19 pm]

BILLING CODE 6705-01-M

7

FEDERAL COMMUNICATIONS COMMISSION

May 29, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 5, 1986, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations Relating to Ex Parte Communications and Presentations in Commission Proceedings. Summary: FCC proposes changes to Subpart H, Part 1 of the Commission's rules relating to ex parte communications and presentations governing Commission proceedings.

Mass Media—1—Title: Petitions to deny applications for transfer of control of RCA Corporation and its subsidiaries, including National Broadcasting Company, from its stockholders to the General Electric Company, filed by Wilbert A. Tatum, Western Slope Communications, Ltd., Aspen Channel 3 Television, Inc., and Anthony R. Martin-Trigona. An informal objection was filed by John S. Shipp, III. Summary: The Commission will consider the petitions to deny filed by Tatum, Western Slope, Aspen and Martin-Trigona, in which they allege that the proposed merger violates Sections 222 and 314 of the Communications Act, that RCA may be in violation of Sections 217 and 508 of the Act, that NBC has violated § 73.658(b) of the Commission's Rules by refusing a new work affiliation, and that GE does not have the requisite character qualifications to be a licensee. The Commission will also consider the informal objection filed by Shipp, which alleges that NBC has engaged in racial discrimination.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, Telephone number (202) 254-7674.

Issued: May 29, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-12484 Filed 5-30-86; 9:53 am]

BILLING CODE 6712-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 9:00 a.m. on Tuesday, June 3, 1986, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.:

Memorandum and resolution regarding petitions to reconsider certain prohibitions governing securities subsidiaries and affiliates contained in Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Banking Practices."

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 29, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-12506 Filed 5-30-86; 11:35 am]

BILLING CODE 6714-01-M

9

FEDERAL MARITIME COMMISSION

TIME AND DATE: 11:00 a.m., June 3, 1986.

PLACE: Hearing Room One, 1100 L Street NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: American Association of Cruise Passengers v. Cunard Line, Ltd., et al., Civil Action No. 86-0571, United States District Court for the District of Columbia.

CONTACT PERSON FOR MORE INFORMATION: Tony Kominoth, Assistant Secretary, (202) 523-5725.

Tony Kominoth,

Assistant Secretary.

[FR Doc. 86-12511 Filed 5-30-86; 11:35 am]

BILLING CODE 6730-01-M

10

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 2:15 p.m., Thursday, June 5, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (applintments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSONS FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12463 Filed 5-30-86; 9:19 am]

BILLING CODE 6210-01-M

11

MERIT SYSTEMS PROTECTION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 51, 18864, May 22, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE: Tuesday, June 3, 1986, 10:30 a.m.

PLACE: Eighth Floor, 1120 Vermont Averue, NW., Washington, DC.

CHANGES IN THE MEETING: The hearing scheduled for June 3, 1986, *Woods* v. *U.S. Customs Service,* MSPB Docket No. PH07528310145 is rescheduled to Thursday, June 26, 1986 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Robert E. Taylor, Clerk of the Board (202) 653-7200.

Dated: May 30, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-12540 Filed 5-30-86; 2:36 pm]

BILLING CODE 7400-01-M

12

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, June 10, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Collision between U.S. Passenger Vessel MISSISSIPPI

QUEEN and U.S. Towboat CRIMSON GLORY in the Mississippi River near Donaldsonville, Louisiana, December 12, 1985.

2. *Highway Accident Report:* Tractor Semitrailer Station Wagon Runaway Collision and Fire in Van Buren, Arkansas, June 21, 1985.

3. *Marine Accident Report:* Grounding of the U.S. Passenger Vessel PILGRIM BELLE, at Sow and Pigs Reef, Vineyard Sound, Massachusetts, July 28, 1985.

CONTACT PERSON FOR MORE INFORMATION: H. Ray Smith, (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

May 30, 1986.

[FR Doc. 86–12526 Filed 6–2–86; 1:30 pm]

BILLING CODE 7533-01-M

13

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 3:00 p.m., Wednesday, June 25, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing by the Federal Aviation Administration regarding Project SAFE; a comprehensive review of the FAA's safety inspection system (public report published on September 20, 1985, entitled "Project SAFE: A Blueprint for Flight Standards")

CONTACT PERSON FOR MORE INFORMATION: H. Ray Smith, (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

May 30, 1986.

[FR Doc. 86–12529 Filed 6–2–86; 1:30 pm]

BILLING CODE 7533-01-M

14

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 2, 9, 16, and 23, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 2

Thursday, June 5

2:00

Meeting with Advisory Committee on Reactor Safeguards (ACRS) on GESSAR II (Open/Portion may be closed—Ex. 3 & 4)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Uranium Millers' "Motion to Amend Order Establishing Briefing Schedule"

b. Litigation of Shoreham Emergency Planning Issues (Tentative)

Friday, June 6

10:00 a.m.

Briefing by Staff on Status of TVA (Open/Portion may be Closed—Ex. 5 & 7)

2:00 p.m.

Briefing by Davis-Besse Ad Hoc Review Group (Public Meeting)

Week of June 9—Tentative

Tuesday, June 10

2:00 p.m.

Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Wednesday, June 11

11:00 a.m.

Periodic Meeting with Advisory Panel for the Decontamination of TMI–2 (Public Meeting)

2:00 p.m.

Briefing on Status of EEO Program (Public Meeting)

Thursday, June 12

2:00 p.m.

Briefing on Restart of San Onofre-1 (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of June 16—Tentative

Wednesday, June 18

10:00 a.m.

Discussion/Possible Vote on Safety Goals (Public Meeting)

2:00 p.m.

Briefing on La Crosse Request for an Exemption to Reduce Primary Property Value Insurance (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of June 23—Tentative

Wednesday, June 25

2:00 p.m.

Discussion/Possible Vote on Full Power Operating License for Hope Creek (Public Meeting)

Thursday, June 26

2:00 p.m.

Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing on IAEA General Meeting on the Chernobyl Incident (Public Meeting) was held on May 28.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

May 29, 1986.

[FR Doc. 86–12555 Filed 5–30–86; 3:45 PM

BILLING CODE 7590-01-M

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council also will hold an executive session to discuss pending litigation.

TIME AND DATE: June 10–12, 1986, 9:00 a.m.

PLACE: Elkhorn Lodge at Sun Valley, Ketchum, Idaho.

MATTERS TO BE CONSIDERED:

- Staff Presentation on Salmon and Steelhead Planning Paper
- Staff Presentation on Research Issue Paper
- Preliminary Council Action on Hydropower Responsiblity for Salmon and Steelhead Losses in the Columbia River Basin
- Briefing and Public Comment on Applications to Amend Columbia River Fish and Wildlife Program: [1]
  - —Water budget accounting (Application 304(a)(2)(CBFWC)
  - —Spill levels (Applications 403/404(b)/CBFWC and 1504/CBFWC)
  - —Transportation (Applications 404(b)(17)/COE and 1504(32.2)/COE)
  - —Intertie access (Application 1504 (42.3)/CBFWC–5)
  - —Institutional processes (Institutional portions of applications 304(a)–(d)/CBFWC, 304(b)–(c)/CBFWC, 403/404(b)/CBFWC, 1504/CBFWC)
- Public Comment and Council Decision on Draft Process for Evaluating Petitions to Enter Rulemaking [2]
- Public Comment on Impact of Oil and Gas Price Changes on the Energy Plan
- Staff Presentation and Public Comment on Council FY 87–88 Budget
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222–5161, or toll-

[1] Applicants will be asked to explain their applications and respond to questions from the Council members. Opportunities for public comment will follow. For copies of the applications listed, call Judy Allender in the Council offices (1–800–222–3355 in Idaho, Montana and Washington, and 1–800–452–2324 in Oregon only).

[2] It is difficult to predict how long the fish and wildlife agenda items will take, especially the presentations and public comments on amendment applications. The Council will not take up the power planning or budget agenda items (#5, 6 and 7) before 1:30 p.m. on June 11.

free 1-800-222-3355 (Montana, Idaho or Washington) or 1-800-452-2324 (Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 86-12493 Filed 5-30-86; 11:35 am]

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Tuesday
June 3, 1986

Part II

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 402

Interagency Cooperation—Endangered Species Act of 1973, as Amended; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

Interagency Cooperation—Endangered Species Act of 1973, as Amended; Final Rule

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rulemaking establishes the procedural regulations governing interagency cooperation under section 7 of the Endangered Species Act of 1973, as amended (the "Act"). The Act requires Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. The Endangered Species Act Amendments of 1978, 1979, and 1982 (the "Amendments") changed the consultation requirements of section 7. This final rulemaking amends the existing rules governing section 7 consultation by implementing the changes required by the Amendments and by incorporating other procedural changes designed to improve interagency cooperation.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Marvin E. Moriarty, Acting Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (703–235–2771); or Charles Karnella, Protected Species Division, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235 (202–634–7461).

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1978, the Department of the Interior, through the United States Fish and Wildlife Service (FWS), and the Department of Commerce, through the National Marine Fisheries Service (NMFS), established procedures for the Act's consultation process by implementing the interagency cooperation requirements of section 7 (50 CFR Part 402, "1978 rule"). The consultation process is designed to assist Federal agencies in complying with the requirements of section 7 and provides such agencies with advice and guidance from the Secretary on whether an action complies with the substantive requirements of section 7.

The Secretaries of the Interior and Commerce (the "Secretary") share responsibilities for conducting consultations pursuant to section 7 of the Act. Generally, marine species are under the jurisdiction of the Secretary of Commerce and all other species are under the jurisdiction of the Secretary of the Interior. Authority to conduct consultations has been delegated by the Secretary of the Interior to the Director of the FWS and by the Secretary of Commerce to the Assistant Administrator for Fisheries, NMFS, National Oceanic and Atmospheric Administration.

Section 7(a)(1) of the Act authorizes Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or Commerce, depending on the species involved, to utilize their resources in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species ("listed species") listed pursuant to section 4 of the Act.

Section 7(a)(2) of the Act requires Federal agencies, in consultation with and with the assistance of the Secretary, to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which has been designated as critical ("critical habitat"). Although Federal agency authority and responsibility under section 7 have remained virtually intact from the 1973 Act, the Amendments made significant procedural changes in the section 7 consultation procedures.

The 1978 Amendments formalized the process for the issuance of the Secretary's opinion ("biological opinions"), and required that the opinion include "reasonable and prudent alternatives" in cases where the proposed Federal action, in the opinion of the Secretary, would jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. The 1978 Amendments also added section 7(c), requiring the preparation of biological assessments in appropriate instances. section 7(d) of the Act, also added by the 1978 Amendments, prohibits a Federal agency or any involved permit or license applicant, after initiation of consultation, from making an irreversible or irretrievable commitment of resources which would foreclose the adoption of any reasonable and prudent alternatives.

Perhaps the most significant part of the 1978 Amendments was the creation of the Endangered Species Committee, which is authorized to grant exemptions from the requirements of section 7(a)(2) in appropriate cases. Regulations governing the submission of exemption applications and consideration of such applications by the Endangered Species Committee are presently codified at 50 CFR Parts 450–453. Although this final rule on consultation procedures does not deal directly with exemptions, good faith adherence to the consultation requirements of section 7 is a statutory prerequisite for entry into the exemption process.

The 1979 Amendments slightly altered the Federal agency's substantive obligation under section 7(a)(2) from insuring that its action "does not jeopardize" listed species or adversely modify the critical habitat of such species to insuring that its action "is not likely to jeopardize" such species or critical habitat. Congress expressly provided that the consultation and resultant biological opinion be based upon the "best scientific and commercial data available." These changes made the consultation process more flexible and established a reasonable information standard to be followed by the NMFS and FWS (the "Service") and other Federal agencies. The 1979 Amendments added a requirement that all Federal agencies confer with the Secretary on all actions that are likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat.

The 1982 Amendments also established several new processes under section 7. First, a new subsection 7(b)(4) allows for the issuance of an "incidental take statement" along with a biological opinion. This "incidental take statement" operates to exempt the Federal agency and any permit or license applicant involved from the section 9 "taking" prohibitions under the Act *if* the subsequent implementation of the action is consistent with the terms and conditions of the incidental take statement.

Second, the 1982 Amendments provide an opportunity for permit or license applicant involvement in all

phases of the consultation procedures. A prospective permit or license applicant may request Federal agencies to initiate consultation in advance of filing for any needed license or permit, *if* they have reason to believe that their proposed actions may affect listed species or critical habitat. This new provision, under section 7(a)(3), for "early consultation" allows a prospective applicant the opportunity to discover, and attempt to resolve, potential endangered or threatened species conflicts early in the planning stage of the proposed action—a time at which alterations in project plans could involve much less expense and delay.

Further involvement of the applicant in the consultation procedures is provided by the requirement that the applicant be involved in time extensions. Congress amended section 7(c) to require the Federal agency to give written notice to the applicant explaining why any extension of the biological assessment deadline is needed. If formal consultation under section 7(a)(2) is extended by the Service and the Federal agency for up to 60 days, the Service must provide the applicant with a written explanation of the reasons for extension. Any extension past 60 days must be approved by the applicant. Clearly, the permit or license applicant plays an active role in the consultation process. The final rule recognizes this increased role of the applicant while retaining the requirement that formal communications flow between the Federal agency and the Service during the consultation process.

In order to implement these Amendments to section 7 and to otherwise improve the interagency cooperation process, the Service published a proposed rule on June 29, 1983 (48 FR 29990–30004). Although the Service originally specified a 60-day comment period for these revised section 7 regulations, the comment period was extended until September 30, 1983. The Service received approximately 70 comments from other Federal agencies, State governmental agencies, private organizations, and other individuals and entities on the proposed rule.

After careful consideration of these comments, the Service has modified the regulations to clarify the consultation process and to improve the overall organization of the regulations. These technical changes are more fully explained in the section-by-section analysis below and were made to accommodate concerns raised in the public comments.

General Comments

The majority of the comments received on the proposed rule focused on particular regulatory provisions or concepts. These specific comments are discussed in the section-by-section analysis. However, several commenters expressed general concerns with the proposed rule or addressed matters that went beyond the scope of the proposal.

These general comments ranged from praise for the comprehensiveness of the proposal to criticism for the proposal's alleged failure to require the level of analysis and protection mandated by the Act. The Service believes that this final rule properly and accurately implements the Amendments to the Act and affords the protection mandated by section 7.

The House of Representatives Committee on Merchant Marine and Fisheries ("House Committee"), which oversees the implementation of the Act, submitted comments on the proposed rule. The Committee commended the Service in its efforts to translate complex legislation into agency policy and noted specific areas that it believed did not conform to the legislative intent. These matters have been clarified in the final rule.

One commenter was concerned that the proposed rule confused the informal (nonmandatory) consultation components with the formal (required) components of the consultation process. To clarify this matter, the Service has distinguished optional procedures from required procedures in the final rule. For example, the conference procedures (§402.10) are required for Federal actions that are likely to jeopardize proposed species or proposed critical habitat and the formal consultation procedures (§402.14) are required for actions that may affect listed species or critical habitat. Additionally, biological assessments (§402.12) are required for "major construction activities." Early consultation (§ 402.11) and informal consultation (§402.13) are optional procedures and are clearly designated as such in the final rule.

Concerned about increased paperwork burdens and potential time commitments resulting from the proposal, one commenter complained that the proposed rule is burdensome, unnecessary, and unacceptable. The commenter noted that additional protection for listed species or their habitat would not result from these alleged increases in administrative burdens, and it urged that currently used processes be maintained. The Service emphasizes that the proposal was not intended to increase in any way the paperwork burden of Federal agencies or any other participant in the consultation process. Moreover, the purpose of the proposal was to implement the Amendments to the Act in such a way as to streamline the consultation process while maintaining the protections afforded species under section 7. The concern of the commenter has been addressed to the extent possible by the Service's effort to clarify the consultation process in this final rule. Because section 7 imposes certain requirements on Federal agencies, any burdens recognized in this final rule are a creature of statutory law as implemented by these regulations.

Two commenters asserted that the Act protects habitat only when it is designated as the critical habitat of a listed species and, therefore, the Service must identify areas of critical habitat for all listed species to assure adequate protection. It is true that the Service has not designated critical habitat for all listed species. The Service has consistently taken the position that it is not prudent to designate critical habitat for a species if to do so would increase the risk that the species might be taken or would otherwise not benefit the species. *See* 50 CFR 424.12(a). However, the commenters ignore the fact that section 7 protections attach to both designated critical habitat and to each individual of a listed species within the jurisdiction of the United States or on the high seas. An action could jeopardize the continued existence of a listed species through the destruction or adverse modification of its habitat, regardless of whether that habitat has been designated as "critical habitat." Thus, the failure of the Service to designate critical habitat for a given species does not automatically mean that its habitat is without protection.

Two States commented that Federal agencies charged with implementing the Act should recognize and cooperate with the States in resolving water resource issues within the context of section 7. Consistent with the Department's "good neighbor" policy, one commenter encouraged the Service to actively include affected States in any consultation process. The Service intends to cooperate with all State and local agencies to resolve water resource issues consistent with the requirements of the Act. The Service stands ready to receive any and all comments, data, or other input from any affected States that are interested in a particular section 7 consultation. However, consultation takes place between the Service, the Federal agency and, where applicable, a Federal permit or license applicant.

Several commenters stated that the proposal goes beyond the scope of the Act, thereby placing unjustifiable burdens on applicants and Federal agencies. They claimed that the rules would usurp Federal agency authority. One commenter questioned the ultimate authority of the Service to issue binding procedural regulations under section 7. In no way does the Service intend to use the consultation procedures of section 7 to establish substantive policy for Federal agencies. The Service performs strictly an advisory function under section 7 by consulting with other Federal agencies to identify and help resolve conflicts between listed species and their critical habitat and proposed actions. As part of its role, the Service issues biological opinions to assist the Federal agencies in conforming their proposed actions to the requirements of section 7. However, the Federal agency makes the ultimate decision as to whether its proposed action will satisfy the requirements of section 7(a)(2). The Service recognizes that the Federal agency has the primary responsibility for implementing section 7's substantive command, and the final rule does not usurp that function. The Service is satisfied that the final rule is within the scope of the authority provided in the Act.

Moreover, the Service is responsible for interpreting section 7 and for establishing a consultation process that is both uniform and consistent with statutory requirements. This issue was addressed in the preamble to the 1978 rule:

> The FWS and NMFS are authorized under the Act to issue such regulations as they deem appropriate for the conservation of listed species. The two Services believe that these procedural regulations promote the conservation of listed species by implementing a uniform general framework as the starting point for consultation. Once the mandatory consultation has taken place, however, the ultimate responsibility for determining agency action in light of section 7 still rests with the particular Federal agency that was engaged in consultation. In this fashion, a standardized consultation process is established which preserves ultimate agency administrative control over its activities or programs.

43 FR 870, 871 (Jan. 4, 1978). These procedural regulations do not dictate results but prescribe a process by which the Service will consult in keeping with the Act.

Several commenters stated that Congress did not intend that the Service interpret or implement section 7, and believed that the Service should recast the regulations as "nonbinding guidelines" that would govern only the Service's role in consultation. The Service notes that Congress reviewed with approval the section 7 regulations issued on January 4, 1978, when deliberating over the 1978 Amendments to the Act. *See* H.R. Conf. Rep. No. 1804, 95th Cong., 2d Sess. 18 (1978). Also, the Service was urged by the House Committee, through its comments on the proposed rule, to press forward with the issuance of this final rule. The Service is satisfied that it has ample authority and legislative mandate to issue this rule, and believes that uniform consultation standards and procedures are necessary to meet its obligations under section 7. However, the Service is aware that some Federal programs may require a modified consultation process, and therefore the Service has provided for the issuance of counterpart regulations under § 402.04.

Several general comments were received regarding programmatic adjustments and coordination. One commenter suggested that the Service maintain cumulative summaries of consultation activities in the Washington Office. The Service maintains copies of all biological opinions and monitors the issuance of biological opinions in an effort to ensure consistency and accuracy of findings. The Service submits that current review mechanisms are adequate and that, although the maintenance of cumulative consultation summaries might be useful, the increased costs are not justified.

Another commenter urged increased public participation in the consultation process, including: (1) Public notice of each request for consultation; (2) public notice of the agenda for each consultation; (3) public notice of consultation results; (4) public comment periods; and, (5) prescribed rights to appeal by the public. Nothing in section 7 authorizes or requires the Service to provide for public involvement (other than that of the applicant) in the "interagency" consultation process. Moreover, due to the statutory time constraints imposed on the consultation procedures, it would not be practicable to implement such detailed public participation measures. Public participation may be provided within the Federal agency's decisionmaking process. However, that is a function of the agency's regulations or substantive legislation and not an issue to be raised in the context of consultation.

Finally, several questions were raised as to what rules will apply to pending consultations once the final rule becomes effective. The Service does not anticipate any dramatic change in procedure or additional burdens on Federal agencies because the statutory changes to section 7 have been in effect throughout the development of the final rule. When this rule becomes effective, all pending and future consultations must comply with the requirements of these regulations. The Service will cooperate with the Federal agencies and any applicants to ensure that there are no undue delays in ongoing consultations.

Section-by-Section Analysis

The following portion of the preamble explains the final rule, covering the substantive issues of each section, noteworthy modifications from the proposed rule, significant changes from the 1978 rule, and responses to public comments. To assist the reader, Table 1 presents a citation to each subsection of the proposed rule with appropriate cross-references to the location of that provision in the final rule and in the 1978 rule.

TABLE 1.—CROSS-REFERENCE OF SECTION 7 REGULATORY PROVISIONS: PROPOSAL—FINAL—1978 RULE

Proposal	Final	1978 Rule
§ 402.01(a)–(e)	§ 402.01(a)–(b)	§ 402.01
§ 402.02 Definitions	§ 402.02 Definitions	§ 402.02 Definitions.
(none)	—"Act"	(none)
—"Action"	—"Action"	—"Activities or programs"
—"Action area"	—"Action area"	(none)
—"Adversely affect"	(none)	(none)
—"Applicant"	—"Applicant"	(none)
—"Biological assessment"	—"Biological assessment" and "Major construction activity"	(none)
—"Biological opinion"	—"Biological opinion"	(none)
—"Conference"	—"Conference"	(none)
—"Conservation"	(none)	(none)
—"Conservation recommendations"	—"Conservation recommendations"	(none)
—"Consultation process"	(none)	(none)
—"Critical habitat"	—"Critical habitat"	—"Critical habitat"; § 402.05

TABLE 1.—CROSS-REFERENCE OF SECTION 7 REGULATORY PROVISIONS: PROPOSAL—FINAL—1978 RULE—Continued

Proposal	Final	1978 Rule
—"Cumulative effects"	—"Cumulative effects"	(none)
—"Designated non-Federal representative"	—"Designated non-Federal representative"; § 402.08	(none)
—"Destruction or adverse modification"	—"Destruction or adverse modification"	—"Destruction or adverse modification"
—"Director"	—"Director"	—"Director or Regional Director"
—"Early consultation"	—"Early consultation"	(none)
—"Effects of the action"	—"Effects of the action"	(none)
—"Federal agency"	(none)	—"Federal agency"
—"Formal consultation"	—"Formal consultation"	(none)
—"Further discussion"	(none)	(none)
—"Incidental take"	—"Incidental take"	(none)
—"Informal consultation"	—"Informal consultation"	(none)
—"Jeopardize the continued existence of"	—"Jeopardize the continued existence of"	—"Jeopardize the continued existence of"
—"Listed species"	—"Listed species"	—"Listed species"
—"Preliminary biological opinion"	—"Preliminary biological opinion"	(none)
—"Proposed critical habitat"	—"Proposed critical habitat"	(none)
—"Proposed species"	—"Proposed species"	(none)
—"Reasonable and prudent alternatives"	—"Reasonable and prudent alternatives"	(none)
(none)	—"Reasonable and prudent measures"	(none)
—"Recovery"	—"Recovery"	—"Recovery"
—"Service"	—"Service"	(none)
§ 402.03	§ 402.03	§ 402.03
§ 402.04	§ 402.04	§ 402.04(f)
§ 402.05	§ 402.05(a)–(b)	(none)
§ 402.10(a)	§ 402.06(a)	§ 402.04(b)(1)
—(b)	§ 402.06(c)	(none)
—(c)	(none)	(none)
—(d)	§ 402.07	§ 402.04(b)(2)
§ 402.11	§ 402.08	§ 402.04(c)(2)
§ 402.12(a)	§ 402.12(a)–(b)	§ 402.04(a)
—(b)	§ 402.12(e)–(k)	§ 402.04(c), (d)
§ 402.13(a)–(c)	§ 402.10(a)–(e)	(none)
§ 402.14	§ 402.11	(none)
§ 402.15(a)	§ 402.14(a)	§ 402.04(a)
—(b)	§ 402.11(f), 402.14(b)(2)	(none)
—(c)	§§ 402.13(a), 402.14(b)	§ 402.04(a)
—(d)	§ 402.14(c)–(d)	—(a), (c), (d)
—(e)	—(e)	—(e), (f)
—(f)	—(g)	—(a)
—(g)	—(h)	—(a)
—(h)	—(i)–(l)	—(a)
—(h)(1)	§ 402.13(a)	(none)
—(h)(2)–(4)	§§ 402.14(f), 402.15(b)	(none)
—(i)(1)	—(f)	§ 402.04(f)
—(i)(2)	—(h)	(none)
—(k)	—(a)	§ 402.04(a)
§ 402.16	(none)	(none)
§ 402.17(a)	§ 402.15(a)	§ 402.04(g)
—(b)	§ 402.15(c)	(none)
—(c)	§ 402.06(b)	§ 402.04(g)
§ 402.18	§ 402.16	§ 402.04(h)
§ 402.19	§ 402.14(l)	(none)

Subpart A—General

Section 402.01 Scope.

This section describes the purpose and scope of these regulations. Section 402.01 of the proposed rule contained an introductory paragraph and five subsections that were largely repetitive of other sections of the rule. These repetitive passages have been deleted from the final rule, and minor editorial corrections have been made.

Several commenters noted that, although § 402.01 acknowledges the language of section 7(a)(1) of the Act, no guidance is provided to enable Federal agencies to meet their conservation responsibilities under the Act. Claiming that the rules are silent as to Federal agency management programs required for the recovery of listed species, one commenter advised the Service to add a statement in the rule that would insure that Federal agencies address recovery as well as detrimental effects through consultation. According to another commenter, this statement may include a request that Federal agencies issue policies and procedures to implement their authority under section 7(a)(1).

The Service notes that it is beyond the scope of these regulations to address how other Federal agencies should implement and exercise their authority to carry out conservation programs for listed species under section 7(a)(1). However, the Service stands ready to assist any Federal agency in developing and carrying out conservation programs. The Service cautions that all Federal actions including "conservation programs" are subject to the consultation requirements of section 7(a)(2) if they "may affect" listed species or their critical habitats. If the Service agrees, through informal consultation, that the action is not likely to adversely affect the species, then formal consultation is not required [see § 402.13(a)–(b)]. Each Federal agency has the responsibility to implement its authority under section 7(a)(1). Further, any conservation program must comply with applicable permit requirements to the extent that such actions involve the taking of listed species. "Take," as defined in the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The 1978 rule extended the scope of section 7 beyond the territorial limits of the United States to the high seas and foreign countries. The proposed rule cut back the scope of section 7 to the United States, its territorial sea, and the outer continental shelf, because of the apparent domestic orientation of the consultation and exemption processes resulting from the Amendments, and because of the potential for interference with the sovereignty of foreign nations.

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Several commenters asserted that the rules should continue to have extraterritorial effect. The scope of these regulations has been enlarged to cover Federal actions on the high seas but has not been expanded to include foreign countries. The Service finds that, because it already has jurisdiction under section 9(a)(1)(C) of the Act to regulate the taking of a listed fish or wildlife species on the high seas by all persons subject to the jurisdiction of the United States, concomitant jurisdiction under section 7 is implicit from Congressional concern that compliance with a section 7 incidental take statement not result in a taking violation under section 9(a)(1)(C), as provided in section 7(o)(2).

Although consultations on Federal actions in foreign countries will not be conducted under this rule, the Service maintains its strong commitment to the preservation of species and habitat worldwide. The Service will continue to list species which are found outside of United States jurisdiction when they are determined to be endangered or threatened.

Furthermore, Congress, in the International Environment Protection Act of 1983, 22 U.S.C. 2151q, made a finding that "the extinction of animal and plant species is an irreparable loss with potentially serious environmental and economic consequences for developing and developed countries alike." Accordingly, it places the preservation of species "through limitations on the pollution of natural ecosystems, and through the protection of wildlife habitats" as an "important objective of the United States development assistance." In furtherance of this policy, an Interagency Task Force was established to develop a national strategy for the protection and conservation of biological diversity in developing countries. The task force did not specifically recommend that international assistance activities be subject to consultation requirements, but did cite section 7(a)(2) in recommending that Federal agencies "should continue to adopt policies withholding support for certain types of projects that degrade or destroy fragile or protected lands." Until enacted by Congress, however, the recommendations of the task force will not be implemented in these regulations for the reasons stated above.

One commenter urged the Service to change the standard for initiating a section 7(a)(4) conference from "likely to jeopardize" to "would adversely affect." The regulation tracks the statute, and the Service lacks the authority to make the requested change. The same commenter noted that the section 7(d) sentence referred to a "*would* avoid jeopardizing" standard. (Emphasis theirs.) Again, the Service adopts the regulation as in keeping with the statutory standard.

Another commenter stated that biological opinions need only be required after formal consultation under section 7(a)(2) of the Act and that this should be clarified in the rule. The Service disagrees because the statute requires that a "written statement" containing the Secretary's opinion be issued after the conclusion of both early and formal consultation. The rule has been amended slightly to clarify this requirement.

The commenter also requested that the sentence in proposed § 402.01(d) dealing with section 7(d) be amended by adding "measures" after the phrase "reasonable and prudent alternative[s]" to bring the regulation in line with the statute. The Service declines to make this change because it would tend to confuse "reasonable and prudent alternatives" that are included in jeopardy biological opinions with "reasonable and prudent measures" that are included in an incidental take statement under section 7(b)(4) of the Act. The proposed language describing the section 7(d) prohibition accurately implements the Act and is adopted in this final rule.

Section 402.02 Definitions.

This section sets out definitions of terms that are used throughout these regulations. As noted in Table 1, many definitions have been added to those included in the 1978 rule. Only comments which specifically addressed the definitions used in these regulations are discussed in this section. These terms are further discussed as they pertain to the consultation procedures in the appropriate, subsequent sections.

A definition of "Act" has been added to the final rule. It refers to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The definition of "action" parallels the former definition of "activities or programs," a term that predated the Amendments. Several changes have been made in the definition of "action" to accommodate public comments: First, the definition is expanded to cover activities occurring on the high seas. (*See* § 402.01 segment of the Preamble.) Second, the phrase "actions that are intended to conserve listed species or their habitat" was restored from the 1978 rule because of the decision to require Service review of all Federal actions that may affect listed species or their critical habitat. (*See* § 402.14 segment of the Preamble.) The Service declines to define further or to delete the reference to actions that "indirectly cause modifications to the land, water, or air" in this definition. The concept of indirect effects is adequately addressed in the discussion of "cumulative effects" and "effects of the action."

The definition of "action area" is adopted from the proposed rule. Several commenters criticized the vagueness or apparent expansiveness caused by the reference to indirect effects in this definition. The definitions of "cumulative effects" and "effects of the action" further clarify the scope of "indirect effects."

The Service is not able to define specific spatial and temporal limits for the concept of indirect effects that would satisfy every conceivable situation, and believes that sufficient understanding of the term exists so that confusion will not occur. "Action area" is not limited to the immediate area involved in a Federal action.

"Applicant," an abbreviated term including all permit or license applicants, was defined in the proposed rule because of the increased role of permit or license applicants in the consultation process. Although the Act defines "permit or license applicant" in section 3(12), the Act's definition is of limited use in the consultation context because it focuses on the exemption process under section 7. The definition in the proposed rule broadly defines "applicant" as "any person who requires formal approval or authorization from a Federal agency as a prerequisite to conduct the action." Thus, applicants would include those seeking permits, licenses, leases, letters of authorization, and any other form of authorization or approval issued by a Federal agency as a prerequisite for carrying out the action.

One commenter suggested that the definition of applicant be amended to allow prospective permit applicants to participate in section 7 consultations involving the promulgation of regulations governing permit issuance. The applicant (or prospective applicant) is involved in the consultation process as a result of a specific permit or license application. The applicant may provide input regarding its concerns in the Federal agency's rulemaking process through the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Further, a prospective applicant could request early consultation through the Federal agency under § 402.11 of this rule on its prospective application during the course of agency rulemaking, if it desires early notice of potential conflicts and if it meets the requirements of these

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regulations. This would involve interaction with the Service, but it would be limited in scope to the prospective application for the permit at issue, not a general consultation on the pending rulemaking. In response to another comment, the Service takes the position that it will not expand "applicant" to include those seeking funding from Federal agencies, unless the request for funding is coupled with a requirement that the person obtain Federal approval or authorization as a prerequisite for carrying out the action for which funding is sought. Finally, one commenter asked that the scope of the definition be expanded to include corporations, Federal agencies, and all other legal entities. The Service believes that the use of the word "person" in the definition satisfies the commenter's concern because of the broad definition of that term in section 3(13) of the Act. To clarify this point, the Service added a reference to the Act's definition of "person" in the definition of "applicant" in the final rule.

The definition of "biological assessment" in the final rule, derived from §§402.02 and 402.12(b)(4)(ii) of the proposed rule, clarifies that the assessment must include an evaluation of potential impacts. One commenter criticized the "vagueness" of the definition of "biological assessment" in the proposed rule, stating that it was unclear as to how a Federal agency would determine which species or critical habitat may be in the action area and how the agency would evaluate potential effects. The Service believes that this definition is adequate and that the process-oriented format in §402.12 of the regulations adequately explains the scope and procedure of the biological assessment requirement.

The proposed definition of "biological opinion" has been adopted in these final rules. A biological opinion is the document that states the Service's opinion as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. One commenter suggested a third possible conclusion for biological opinions: "insufficient information to issue an opinion." The commenter argued that such a conclusion would eliminate the risk that the Service takes when issuing an opinion based on arguably inadequate data. The Service declines to add this third option. The legislative history of the Act is clear in requiring the Service to make a decision on the issue of likely jeopardy at the conclusion of formal consultation. The Service will not sidestep this obligation, but instead will conclude either "jeopardy" or "no jeopardy" based on the best available data.

The definition of "conference" has been adopted as proposed. One commenter suggested that the conference not include recommendations to minimize or avoid adverse effects since they are not required by section 7(a)(4) of the Act. The commenter believed that such recommendations might result in legal action if not adopted. The Service, however, believes it has the responsibility not only to identify impacts but also to identify measures that would reduce those impacts.

The definition of "conservation" contained in the proposed rule was derived from the Act's definition in section 3(3). One commenter, characterizing the Service's interpretation of "conservation" as opposing the purposes of the Act and potentially encouraging the "further decline" of listed species, urged the Service to adopt the strict language of the statutory definition. The Service's definition in the proposed rule in no way discouraged recovery. In fact, the proposed definition tracked the statute except for its interpretation of "the point at which the measures provided pursuant to this Act are no longer necessary" as being equivalent to "the point at which [the species] may be removed from the Lists . . . ." The basic goal of the Act is to recover listed species through conservation measures. Bringing a species to the point at which the Act's protective measures are no longer necessary is the same as bringing the species to the point at which delisting is appropriate. However, to avoid any misunderstanding, the Service has deleted the definition from the final rule and will rely solely on the definition contained in section 3(3) of the Act. The Service declines specifically to include habitat modification (improvement or restoration), "off-site mitigation," captive propagation, and species reintroduction in the list of conservation methods and procedures, as suggested by certain commenters. Such activities are already adequately provided for in the Act's definition.

The term "conservation recommendations" was introduced in the proposed rule and explains the Service's role in helping agencies meet their section 7(a)(1) responsibilities. Several commenters feared that the Service would employ conservation recommendations to require Federal agencies to reformulate their actions that had received "no jeopardy" biological opinions. This is not the purpose of conservation recommendations. They are nonbinding suggestions that a Federal agency may elect to implement in its proposed action. These recommendations should be consistent with the general scope, magnitude, and duration of a Federal action that is not likely to jeopardize a listed species or destroy or adversely modify its critical habitat. The Service, in answering the concerns noted above, is satisfied that it has clarified its position and that the regulatory definition should not be deleted. The Service has chosen to retain this definition with limited, technical changes because it believes that the opportunity to provide conservation recommendations, including minor design modifications, may minimize possible adverse effects and may avoid future section 7 conflicts for subsequent Federal actions in the same action area.

One commenter confused "conservation recommendations" with "reasonable and prudent alternatives" and believed that recommendations to *reduce* adverse impacts would violate section 7(a)(2), absent the granting of an exemption. The obligation of Federal agencies under section 7(a)(2) is to insure that the actions they authorize, fund, or carry out are not likely to *jeopardize* listed species or destroy or adversely modify their critical habitat. A showing of "adverse effect" does not necessarily violate section 7(a)(2), because the jeopardy standard is the ultimate barrier through which Federal agencies may not pass in conducting their actions. "Reasonable and prudent alternatives" represent avenues of fulfilling the action without violating the jeopardy standard. "Conservation recommendations" involve voluntary measures that the Federal agency has the discretion to undertake to avoid or reduce adverse effects of a proposed action that otherwise complies with the provisions of section 7(a)(2).

The definition of "consultation process" has been deleted from the final rule because it tended to confuse the statutory requirements and optional processes and because it added little to the public's understanding of the process. The definition in the proposed rule could have led persons to believe that early consultation and informal consultation are required, sequential steps of the overall consultation process. As discussed above, the only required components of the consultation process are a "conference" for proposed species, a "formal consultation" for listed species, and a biological assessment for "major construction activities."

The "critical habitat" definition contained in the proposed rule only referred to those sections of 50 CFR Parts 17 and 226 that contain the lists of those areas so designated. The mechanics of the designation process are more properly considered under the section 4 regulations (50 CFR Part 424). For purposes of determining whether any of their actions is likely to destroy or adversely modify critical habitat, Federal agencies involved in section 7 consultations need only be aware of those areas that have been designated by the Service as critical habitat. Two commenters requested that a definition of critical habitat be included in the final rule. The Service notes that the requested definition is contained in the Act and need not be repeated here.

"Cumulative effects" and "effects of the action" are defined in § 402.02 of the final regulations. Under § 402.14(g) (3) and (4) of the final rule, the Service will consider both the "effects of the action" subject to consultation and "cumulative effects" of other activities in determining whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat.

In determining the "effects of the action," the Director first will evaluate the status of the species or critical habitat at issue. This will involve consideration of the present environment in which the species or critical habitat exists, as well as the environment that will exist when the action is completed, in terms of the totality of factors affecting the species or critical habitat. The evaluation will serve as the baseline for determining the effects of the action on the species or critical habitat. The specific factors that form the environmental baseline are given in the definition of "effects of the action," as requested by some commenters.

"Effects of the action" include the direct and indirect effects of the action that is subject to consultation.

"Indirect effects" are those that are caused by the action and are later in time but are still reasonably certain to occur. They include the effects on listed species or critical habitat of future activities that are induced by the action subject to consultation and that occur after that action is completed. In *National Wildlife Federation* v. *Coleman*, 529 F.2d 359 (5th Cir. 1976), the Court of Appeals for the Fifth Circuit found that "indirect effects" which can be expected to result must be considered under section 7 of the Act. In that case, the court enjoined completion of a highway because the Department of Transportation failed to consider the effects to the endangered sandhill crane from future private development that would result from construction of the highway. The Service will consider the effects to listed species from such future activities that are reasonably certain to occur under the analysis of "indirect effects." The Service's approach will be consistent with *National Wildlife Federation* v. *Coleman*, and the Service declines to narrow the scope of its review (as requested by one commenter) in light of existing case law.

Effects of the action also include direct and indirect effects of actions that are interrelated or interdependent with the proposal under consideration. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification; interdependent actions are those that have no significant independent utility apart from the action that is under consideration. As noted by one commenter, the "but for" test should be used to assess whether an activity is interrelated with or interdependent to the proposed action.

One commenter urged the Service to exclude Federal actions that have completed consultation from the environmental baseline unless it can be shown that the actions are reasonably certain to occur. The Service declines to adopt this suggestion. In issuing its biological opinion on an action, the Service's finding under section 7(a)(2) entails an assessment of the degree of impact that action will have on a listed species. Once evaluated, that degree of impact is factored into all future section 7 consultations conducted in the area. These impacts will continue to be considered as part of the environmental baseline unless the Service receives notice from the Federal agency that the proposed action will not be implemented or unless the biological opinion on the proposed action is no longer valid because reinitiation of consultation is required.

In response to one comment, the Service notes that Federal actions that have proceeded through early consultation and that have received "no jeopardy" preliminary biological opinions should be factored into the environmental baseline. These actions, to be eligible for early consultation, had to be nonspeculative, feasible actions, and, because the preliminary biological opinion can later be confirmed as a final biological opinion, this initial review and conclusion by the Service must be considered in other section 7 consultations.

The term "cumulative effects" means those effects on the species caused by other projects and activities unrelated to the action under consultation that the Service will consider in formulating its biological opinion on the subject action. One commenter opposed the proposed definition of cumulative effects by arguing that the Act does not require an analysis of cumulative effects in a section 7 consultation. Citing section 7(c), the commenter noted that biological assessments may be limited to an examination of effects of "such action" on listed species. The commenter urged the Service to strike cumulative effects analysis from this rule because few Federal agencies have the capability to recognize or assess cumulative effects of State or private actions contemporaneously with conducting section 7 consultation. According to the commenter, the Service, as the expert on current status of listed species, should keep watch on these State and private activities that come on line in a particular action area. The Service responds that a Federal agency, when evaluating the environmental impacts of a proposed action, must comply with NEPA. Since this compliance includes an analysis of cumulative effects, the Service believes that it is the Federal agency's responsibility to develop this information. The cumulative effects analysis conducted in compliance with the broad definition under NEPA may be submitted to the Service by the Federal agency when initiating formal consultation. The Service can use this analysis and apply its narrower definition of cumulative effects when analyzing whether a proposed action, along with cumulative effects, violates section 7(a)(2) of the Act.

Other commenters, while not opposing the applicability of cumulative effects analysis to section 7 consultations, believed that the proposed scope of "cumulative effects" and "effects of the action" were too narrow. These commenters generally suggested that cumulative effects should include the effects of all reasonably foreseeable future Federal, State, and private actions. They stated that this scope would be more in line with that mandated under NEPA and argued that any lesser review could detrimentally affect endangered species. The commenters adamantly opposed any limitation on the foresight employed by the Service or Federal agencies that they believed would result from the proposal's construction of cumulative effects.

Section 7 consultation will analyze whether the "effects of the action" on listed species, plus any additional,

cumulative effects of State and private actions which are reasonably certain to occur in the action area, are likely to jeopardize the continued existence of that species. Based on this analysis, the Federal agency determines whether it can proceed without exceeding the jeopardy standard. If the jeopardy standard is exceeded, the proposed Federal action cannot proceed without an exemption. This is a substantive prohibition that applies to the Federal action involved in the consultation. In contrast, NEPA is procedural in nature, rather than substantive, which would warrant a more expanded review of cumulative effects. Otherwise, in a particular situation, the jeopardy prohibition could operate to block "nonjeopardy" actions because future, speculative effects occurring after the Federal action is over might, on a cumulative basis, jeopardize a listed species. Congress did not intend that Federal actions be precluded by such speculative actions.

Future Federal actions proposed for the same area would have to be separately evaluated under section 7 and could not occur unless they were able, in their own right, to avoid jeopardizing the continued existence of the affected species or destroying or adversely modifying critical habitat. Since all future Federal actions will at some point be subject to the section 7 consultation process pursuant to these regulations, their effects on a particular species will be considered at that time and will not be included in the cumulative effects analysis. However, those future State or private actions (*i.e.*, no Federal agency involvement) that are "reasonably certain to occur" must be factored into section 7(a)(2) evaluations. The Service agrees that cumulative effects that are reasonably certain to occur will be considered in determining the likelihood of jeopardy. The final rule is amended accordingly, to clarify the duty to consider cumulative effects.

One commenter thought that the "reasonably certain to occur" standard was far too narrow and that it should be amended to cover actions where proposals have been made, and implementation schedules have been established. This suggestion would open the door for speculative actions to be factored into the "cumulative effects" analysis, adding needless complexity into the consultation process and threatening potential Federal actions which pose minimal adverse impacts of their own with possible "jeopardy" opinions due to speculative, State or private projects that may never be implemented. For State and private actions to be considered in the cumulative effects analysis, there must exist more than a mere possibility that the action may proceed. On the other hand, "reasonably certain to occur" does not mean that there is a guarantee that an action will occur. The Federal agency and the Service will consider the cumulative effects of those actions that are likely to occur, bearing in mind the economic, administrative, or legal hurdles which remain to be cleared. The Service declines to alter its "cumulative effects" definition to include State or private actions that are not likely to occur.

One issue was raised concerning the application of cumulative effects analysis to water projects. A commenter contended that State and private projects that possess senior water rights under State water law and that can "reasonably be expected to occur" concurrently with the Federal action should be considered as cumulative effects. The Service notes that any State or private project (*i.e.*, no Federal agency involvement) that is reasonably certain to occur must be considered during the analysis of cumulative effects. Further, the Service believes that Federal actions, whether authorized, funded, or carried out by Federal agencies, that possess senior water rights should be considered while analyzing the effects of the action. In order to determine the effects of the action when a water project is the subject of consultation in a State which follows the prior appropriation doctrine, the project's operation plan should indicate the priority of the project's water rights under State law and account for the future effects of senior conditional water rights.

On a related matter, the Associate Solicitor's opinion on the scope of cumulative effects cited in the proposed rule provided, in part, that only those effects of other projects that are reasonably certain to occur *prior* to the completion of the Federal action subject to consultation under section 7(a)(2) should be considered during formal consultation. This statement has been interpreted by some to exclude from cumulative effects analysis those future State and private actions that, while "reasonably certain to occur," would not be completed *before* the completion of the Federal action subject to consultation. Such an interpretation places undue emphasis on the use of the word "prior" while ignoring the central concept that the Associate Solicitor's opinion intended to project: that a proposed State or private activity be "reasonably certain to occur" in order to be taken into account during cumulative impact analyses. If such a State or private project satisfies the "reasonable certainty" test, then it should be considered in the cumulative impact analysis, even if it would go on line sometime after completion of the federally authorized, funded, or carried out project which was the subject of consultation. To the extent that the Associate Solicitor's opinion created the opposite impression, the Service takes this opportunity to clarify this point.

Moreover, as suggested by some commenters, and for the reasons outlined above, the Service has deleted its reference to the Interior Department position on "cumulative effects" in 88 I.D. 903 (1981) in the definition section. The Service disagrees with the commenter who stated that the citation to the legal opinion in the proposed definition denied the public meaningful comment on these regulations. The policy was widely known, and it was explained in the preamble to the proposed rule. The Associate Solicitor's opinion on "cumulative effects" is published in Interior Decisions, a publication available to the general public. Finally, the opinion does not represent a policy change subject to Administrative Procedure Act (APA) informal rulemaking proceedings. It represented Interior's legal interpretation of the scope of "cumulative effects" under section 7, adopted and published in 1981 in keeping with APA requirements. 5 U.S.C. 552(a). Therefore, no reproposal is needed on this issue.

The definition of "designated non-Federal representative" is adopted from the proposal in part. First, in response to a comment, the Service explains that the non-Federal representative may conduct informal consultations (§ 402.13) and/or prepare biological assessments (§ 402.12). However, Federal agencies cannot delegate their role in initiating formal consultation, a conference, or early consultation. The second sentence of the proposed definition has been deleted, but a new § 402.08 has been added to further explain the role of the designated non-Federal representative.

The proposed definitions of "destruction or adverse modification" and "jeopardize the continued existence of" received a lot of attention from commenters. Both definitions contained, as did the 1978 rule, the phrase "survival and recovery." The final rule retains the language of the proposed definitions, except for the changes noted below. Also connected with these terms is the definition of "recovery." The "recovery" of a listed species means that the status

of the species has improved to the point at which it may be removed from the Lists of Endangered and Threatened Wildlife and Plants.

The principal controversy involving the "jeopardy" and "destruction or adverse modification" definitions was that, under the proposed rule, to find that an action is likely to jeopardize a listed species or result in the destruction or adverse modification of critical habitat, the Service must identify detrimental impacts to "both the survival and recovery" of the listed species. The conjunction "and" was used in the 1978 rule's definitions of these phrases, but the word "both" was added by the proposed rule to emphasize that, except in exceptional circumstances, injury to recovery alone would not warrant the issuance of a "jeopardy" biological opinion. The Service adopts these definitions substantially without change from the proposed rule; this does not represent a change in policy, as one commenter charged, because the Service has internally interpreted the "jeopardy" standard as requiring detrimental impacts to the continued existence of a species under a joint survival and recovery concept. Other Federal agencies are assured that the same "jeopardy" standard under which their actions have been evaluated in the past will be continued under this final rule.

Several commenters urged the Service to strike the "and" and insert "or" in the definitions of "jeopardy" and "destruction or adverse modification." They argued that injury to recovery for an already depleted species would require the issuance of a jeopardy opinion. They also remarked that the Service's position disregarded the conservation requirements of the Act, failed to adequately protect critical habitat, operated to weaken or nullify recovery efforts, and otherwise violated the purposes and policies of the Act.

These commenters misconstrued the Service's role in conducting consultations under section 7(a)(2) of the Act. The purpose of consultation is to identify conflicts between proposed Federal actions and the "jeopardy" standard of section 7(a)(2). The "continued existence" of the species is the key to the jeopardy standard, placing an emphasis on injury to a species' "survival." However, significant impairment of recovery efforts or other adverse effects which rise to the level of "jeopardizing" the "continued existence" of a listed species can also be the basis for issuing a "jeopardy" opinion. The Service acknowledges that, in many cases, the extreme threats faced by some listed species will make the difference between injury to "survival" and to "recovery" virtually zero.

One commenter disagreed that actions adversely affecting survival of a species will also always adversely affect its recovery. The commenter did not cite examples where an action that jeopardized "survival" of a species would not jeopardize its "recovery." The Service is not aware of any examples and believes that it would be very difficult to recover a species whose survival had been placed in jeopardy. The very concept of "jeopardy" is that a Federal agency should not authorize, fund, or carry out an action that would injure a listed species' chances for survival to the point that recovery is not attainable. If survival is jeopardized, recovery is also jeopardized. As noted above, though, these concepts are generally considered together in analyzing effects, and it is difficult to draw clear-cut distinctions.

The concept of "survival" is discussed above, but is not defined in the Act or in these regulations. Two commenters felt that "survival" should be defined in the regulations, and one urged the Service to adopt the following specific definition:

> "Survival" for a species means retention of a sufficient number of individuals and/or populations with necessary habitat to insure that the species will keep its integrity in the face of genetic recombination and known environmental fluctuations.

The Service agrees with the criteria set out in the above definition, but declines to adopt a regulatory definition for "survival" because this concept varies widely among listed species. The Service will apply the statutory standard of jeopardy to the continued existence of a species on a case-by-case basis, taking into account the particular needs of and the severity and immediacy of threats posed to a listed species. The Service is not attempting to predetermine the results of any future consultations by announcing these interpretations of the "jeopardy" standard, but instead is emphasizing what "jeopardy" is and how it should be applied in the section 7(a)(2) process.

One commenter urged the Service to go further and forbid any Federal action to proceed, regardless of a "no jeopardy" finding, if the proposed action would adversely affect the recovery of a listed species. Numerous commenters cited sections 2(c)(1), 3(3), and 7(a)(1) of the Act as authority for the Service to ban Federal agency actions that "violate the requirement to conserve endangered species."

The commenters misinterpret the statutory changes which the Amendments have made to section 7, and they misconstrue court decisions which have noted the apparent "heightened" responsibility of the Secretary. The Service will undertake programs for the conservation of listed species and will consult with other Federal agencies attempting to do the same. The Service will not, nor does it have the authority to, mandate how or when other Federal agencies are to implement their responsibilities under section 7(a)(1), nor is the Service authorized to issue a biological opinion under section 7(a)(1) of the Act. Section 7(a)(1) has a limited purpose under the Act: to authorize Federal agencies to factor endangered species conservation into their planning processes, regardless of other statutory directives.

In contrast, section 7(a)(2) contains the mandatory "jeopardy" standard. The prohibitory features of section 7, and the exemption process added by the 1978 Amendments, focus on the provisions of section 7(a)(2). Although there is no express legislative history directly weighing and comparing the relative strengths of section 7(a)(1) with 7(a)(2), there can be no doubt that Congress considered the jeopardy standard of section 7(a)(2) as being the substantive cornerstone of section 7:

> The term "is likely to jeopardize" is used because the *fundamental* obligation of section 7(a) of the act is that Federal agencies insure their actions do not jeopardize the continued existence of an endangered or threatened species.

S. Rep. No. 151, 96th Cong., 1st Sess. 4 (1979) (emphasis added). Congress intended that the "jeopardy" standard be the ultimate barrier past which Federal actions may not proceed, absent the issuance of an exemption. The commenters' argument would require Federal actions to halt if they failed to conserve listed species, a result clearly not intended by Congress. Congress intended that actions that do not violate section 7(a)(2), or actions receiving an exemption from the requirements of that subsection, be allowed to proceed.

Commenters argued that it would be a violation of section 7(a)(1) for the Service to issue a "no jeopardy" biological opinion for a proposed Federal action that would have an adverse effect on the recovery of a listed species. As previously stated, the Service lacks authority to issue biological opinions under that subsection, and the Act does not mandate particular actions to be taken by Federal agencies to implement 7(a)(1). Furthermore, adverse effects not

rising to the level of "jeopardizing the continued existence" of a listed species cannot be the basis for issuing a jeopardy opinion.

The Service disputes two commenters' assertions that "the Service now proposes to allow the 'continued existence' of a listed species to reach a state of likely jeopardy." The Service has followed and will continue to follow the policy of strictly applying the jeopardy standard of section 7(a)(2) in the consultation process. The Service has not and will not relax the statutory standard.

One commenter stated that limiting the definition of "destruction or adverse modification" to critical habitat is illogical. This limitation is mandated by the strict language of section 7(a)(2) and cannot be altered by the Service, although habitat destruction can be the basis for a jeopardy opinion in appropriate cases.

Another commenter requested that examples be given of actions that might indirectly alter critical habitat. The Service responds with the following examples of indirect alteration of critical habitat (which is not intended as an exclusive list): ground water pumping that occurs on land adjacent to the critical habitat area, but nevertheless diminishes essential ground water levels within the critical habitat; air pollution created by an action not occurring directly on the critical habitat area that causes a deterioration of essential air quality levels in the critical habitat; contamination of water supply within the critical habitat caused by release of toxic substances outside of the critical habitat area; etc.

In the definition of "jeopardize the continued existence of," one commenter suggested the word "could" be substituted for "would" in the phrase "would be expected, directly or indirectly, to reduce appreciably the likelihood of . . . the survival and recovery of listed species . . . ." Such a change would be an unwarranted deviation from the language of the 1978 rule in light of subsequent Amendments to the Act. The Service retains the substance of the proposed language, but does delete the phrase "or otherwise adversely affecting the species" because, as several commenters suggested, the phrase is confusing and adds nothing to the definition.

In response to several comments, the Service has modified the definition of "recovery" to make it clear that recovery is not attained until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed. The protective measures provided for listed species under the Act are no longer needed if endangered or threatened status is no longer applicable to a species under section 4(a)(1).

The definition of "Director" has been modified by the addition of the phrase "or his authorized representative" after "the FWS regional director" and "Assistant Administrator for Fisheries" to accommodate present and future delegations of authority to carry out certain consultation responsibilities. Although the Minerals Management Service requested that all Outer Continental Shelf (OCS) section 7 biological opinions issued by the FWS be signed by the Washington Office, the authority to sign such opinions will remain with the regional offices because they have been staffed specifically to conduct all interagency consultations and to sign the resulting biological opinions.

The term "early consultation" was included in the proposed rule pursuant to the provisions of section 7(a)(3). This section authorizes the Service to consult with Federal agencies at the request of prospective applicants, prior to the submission of the permit or license application to that Federal agency. The definition has been modified to reference the appropriate section of the Act.

One commenter requested that, instead of using the term "early consultation," the Service refer to this process as "consultation on behalf of prospective applicants." The commenter was concerned that, by calling this pre-application process "early consultation," the Service would fail to alert Federal agencies and applicants of the need to determine impacts to endangered or threatened species early in the planning stages of all of their actions, regardless of whether the consultation is early, informal, or formal. The Service retains the label "early consultation" due to its convenience, its frequent use in the committee reports on the 1982 Amendments, and its common acceptance within and outside the Service. The Service believes that the language provided in § 402.14(a), advising Federal agencies to review their actions at the earliest possible time, provides adequate safeguards to address the commenters' concerns.

The definition of "Federal agency" has been deleted since it is defined in section 3(7) of the Act. The Service declines to expand the statutory definition to accommodate one commenter's concern. The statutory definition adequately provides notice that all departments, agencies, and instrumentalities of the United States come within the scope of section 7. The Service will not interpret this term further in the final rule.

The definition of "formal consultation" has been modified to specify that it is the consultation required under section 7(a)(2) of the Act. Other minor, technical changes have also been made. The phrase "after it has been determined, through informal consultation with the Service, that its action may adversely affect listed species or critical habitat" has been deleted from the proposed definition because, as recommended by some commenters, informal consultation is strictly an optional process. Although the Federal agency may elect to enter into informal consultation to determine if formal consultation is required, the Federal agency can initiate formal consultation any time that it determines its action may affect listed species or critical habitat.

"Further discussion" was an optional process included in the proposed rule. It provided the Federal agency and any applicant the opportunity to continue consultation after the issuance of a biological opinion in order to discuss with the Service any reasonable and prudent alternatives and any conservation recommendations. Recommendations and alternatives could be refined or developed during these discussions, and consultation would terminate with the Federal agency's written notice of its final decision on the action. Because of concerns expressed by commenters, this provision contained in proposed § 402.16 has been deleted from the final rule.

Although several commenters supported this provision, many opposed further discussion contending that it is unnecessary, that all reviews and discussions should occur prior to the issuance of the biological opinion, that it extends consultation beyond the statutory time limits, and that it lacks statutory authority. Although the process was optional, some commenters believed that there was an implication that the Federal agency or applicant would have a duty to engage in further discussion.

Although further discussion has been deleted, the Service is available to discuss the biological opinion, any reasonable and prudent alternatives, and any conservation recommendations with the Federal agency and any applicant on an informal basis. If revisions to the opinion are necessary, consultation can be reinitiated and a revised opinion issued.

"Incidental take" has been clarified in the final rule as those takes that result from, but are not the purpose of,

carrying out an otherwise lawful activity conducted by the Federal agency or the applicant. As requested by one commenter, the Service explains that otherwise lawful activities are those actions that meet all State and Federal legal requirements except for the prohibition against taking in section 9 of the Act. The Service believes that the definition, as clarified in the final rule, is adequate.

The definition of "informal consultation" has been clarified in the final rule to indicate that it is an optional process that includes all discussions, correspondence, etc., between the Service, Federal agency, and designated non-Federal representative prior to formal consultation. To address one commenter's concerns, "if required" has been included after "formal consultation" to clarify that formal consultation is not always required after informal consultation. Through informal consultation, a Federal agency may determine that formal consultation is not required.

The definition of "listed species" is adopted as proposed. Contrary to the concern of one commenter, aquatic invertebrates are not excluded from this definition, because all listed species in 50 CFR 17.11–17.12 are specifically included.

The definition of "major construction activity" was included in the definition of biological assessment in the proposed rule and is adopted substantially as proposed. As suggested by many commenters, it has been made a separate definition. Whether a Federal action is a major construction activity, as defined in these regulations, is the standard used for determining whether a Federal agency must prepare a biological assessment. A "major construction activity" is defined as a construction project (or other undertaking having similar physical impacts) that is a major Federal action significantly affecting the quality of the human environment for purposes of NEPA. The term encompasses dams, buildings, pipelines, roads, water resource developments, channel improvements, and other such undertakings which significantly modify the physical environment.

A vast array of comments were received concerning the scope of a major construction activity that requires the preparation of a biological assessment. Several commenters noted that only major Federal actions requiring the preparation of an environmental impact statement (EIS) pursuant to NEPA should require the preparation of a biological assessment under section 7(c) of the Act. Other commenters argued that assessments can only be required for major Federal actions involving construction activities, and suggested that the phrase "or other undertakings having similar physical impacts" be eliminated from the definition. Four commenters thought that the standard in the proposed rule was too narrow, because the limitation to major Federal actions, and/or the limitation to construction projects and other undertakings having similar physical impacts, were arbitrary and without legal basis. The Service has adopted the definition of major construction activity as proposed for the reasons set out below.

The legislative history of section 7(c) of the Act plainly focused the mandatory duty to prepare biological assessments on "major Federal actions . . . designed primarily to result in the building or erection of dams, buildings, pipelines and the like." H.R. Conf. Rep. No. 697, *supra*. The two-pronged regulatory test adopted in this rule—major Federal action *and* construction project (or other undertaking having *similar* physical impacts)—clearly tracks the quoted language from the Conference Report to the 1979 Amendments. The Service will not require biological assessments for projects that are not major Federal actions for purposes of NEPA. Further, the Service will not require biological assessments for actions that do not involve construction or activities having physical impacts similar to construction, such as dredging, blasting, etc. This limitation derives support from the 1979 Conference Report reference to actions designed *primarily to result* in the building or erection of various projects. These other "potentially destructive activities," H.R. Rep. No. 1625, *supra*, having physical impacts similar to construction projects, will require the preparation of an assessment, but only if they are major Federal actions for purposes of NEPA.

The Service declines to limit the scope of the definition of a major construction activity to major Federal actions involving construction projects, because other potentially destructive activities that are major Federal actions may have similar physical impacts and should be included. The Service is confident that the courts will be able to apply this standard consistent with the Act and the legislative history.

Contrary to the belief of one commenter, the Service has not abrogated its authority under section 7(c). That commenter urged the Service to change this rule by requiring biological assessments "for actions that, taking into consideration cumulative effects, may be 'potentially destructive.' " Citing a February 1980 legal opinion issued by the Assistant Solicitor for Fish and Wildlife, Department of the Interior, the commenter noted that cumulative effects may trigger the requirement that an assessment be prepared, although the Service must defer to the Federal agency's decision on whether a major Federal action exists. Contending that Congress would have used the word "shall" instead of "may" in the last sentence of section 7(c)(1) if it had intended that assessments be required only for major Federal actions for purposes of NEPA, the commenter argued that the definition of "major construction activity" should be expanded:

> "Major Construction activity" means any planned, temporary, or permanent physical modification to the environment. Examples of such projects include but are not limited to, dredging, drilling, filling, mining, site preparation, road construction, the erection of structures such as dams and buildings, or any other potentially destructive activities.

The commenter's suggested language goes well beyond the above-cited legislative history of the Act which clearly limited the biological assessment requirement to major Federal actions within the meaning of NEPA that are construction projects or that involve similar physical impacts. Further, the legal opinion of the Assistant Solicitor cited by the commenter does not support the commenter's argument because that opinion dealt with cumulative effects of a proposed *construction* project and a basic rule of NEPA case law that cumulative impacts of an action can trigger the requirement that an EIS be prepared. Thus, the basic elements of this rule's requirements—major Federal action (*e.g.*, EIS, or the functional equivalent, required) *and* construction project (or activity involving similar physical impacts)—were assumed to be appropriate standards by the Assistant Solicitor. The use of the word "may" instead of "shall" in section 7(c) means nothing more than Congressional intent that the duty to coordinate these review processes is discretionary with the Federal agency.

As requested by one commenter, the final definition clearly states that an action must be both a major Federal action for purposes of NEPA *and* a construction project (or other activity involving similar impacts). Therefore, it plainly follows that, although dams, pipelines, etc. are construction activities, a biological assessment is not

required unless the action is also a major Federal action.

Two commenters argued that OCS leasing, exploration, and development/production activities should be exempt from the section 7(c) requirement because such an analysis is presently covered by NEPA compliance as addressed in the Outer Continental Shelf Lands Act. Other commenters agreed with the Service that biological assessments would be required for development/production activities on the OCS, and, generally, would not be required for leasing and exploration activities that do not involve a significant modification of the physical environment. The Service adopts its position as proposed, because no exemption exists under section 7(c) if a biological assessment is required for an action. In some instances, OCS exploration activities may require the preparation of a biological assessment; *e.g.*, major Federal action involving exploration through construction of artificial gravel islands. However, in most cases major Federal exploration activities on the OCS will involve the drilling of test wells, actions that will not require the preparation of assessments.

The definition of "preliminary biological opinion" is adopted as proposed.

The definition of "proposed critical habitat" is adopted as proposed with the addition of the phrase "or revised" after "designated." The commenter that suggested this correction accurately noted that proposals may be made to designate or revise critical habitat under section 4 of the Act.

The definition of "proposed species" is adopted as proposed.

"Reasonable and prudent alternatives" is defined in the final rule. Section 7(b) of the Act requires the Service to include reasonable and prudent alternatives, if any, in a "jeopardy" biological opinion. An alternative is considered reasonable and prudent only if it can be implemented by the Federal agency and any applicant in a manner consistent with the intended purpose of the action, and if the Director believes it would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat of such species. Further, the Service should be mindful of the limits of a Federal agency's jurisdiction and authority when prescribing a reasonable and prudent alternative. An alternative, to be reasonable and prudent, should be formulated in such a way that it can be implemented by a Federal agency consistent with the scope of its legal authority and jurisdiction. However, the Service notes that a Federal agency's responsibility under section 7(a)(2) permeates the full range of discretionary authority held by that agency; *i.e.*, the Service can specify a reasonable and prudent alternative that involves the maximum exercise of Federal agency authority when to do so is necessary, in the opinion of the Service, to avoid jeopardy. The Service recognizes that economic and technological feasibility are factors to be used in developing reasonable and prudent alternatives, as requested by one commentar. The definition of "reasonable and prudent alternatives" has been amended to reflect these considerations. If there are no alternatives that meet the definition of "reasonable and prudent alternatives," the Service will issue a "jeopardy" biological opinion without alternatives.

Two commenters stated that reasonable and prudent alternatives should include mitigation measures designed to reduce adverse effects, *i.e.*, conservation recommendations. One of those commenters urged the Service to limit the scope of recommended alternatives to those "consistent with the scope, magnitude, and duration of the project as well as the extent of its adverse effects." First, because there is a distinction between "reasonable and prudent alternatives" (that satisfy section 7(a)(2)) and "conservation recommendations" (that are authorized by section 7(a)(1)), the Service declines to include conservation measures within the scope of the definition. Second, the Service agrees that reasonable and prudent alternatives should be consistent with the intended purpose of the action and should therefore be economically and technologically feasible, but the Service cannot limit its range of choices to the criteria suggested by the commenter. Reasonable and prudent alternatives must cover the full gamut of design changes that are economically and technologically feasible for an action, independent of who is sponsoring the action.

Two commenters asked that "reasonable and prudent measures" be defined, and the Service has inserted a definition in the final rule. This addition clarifies the distinction between "reasonable and prudent alternatives" included in a "jeopardy" biological opinion and "reasonable and prudent measures" provided in an incidental take statement. The Service agrees with several commenters that reasonable and prudent measures are not the same as reasonable and prudent alternatives. Substantial design and routing changes—appropriate only for alternatives to avoid jeopardy—are inappropriate in the context of incidental take statements because the action already complies with section 7(a)(2). The commenter that advocated an "alternatives" approach for reasonable and prudent measures misapplied the legislative history of the 1982 Amendments. Reasonable and prudent measures were intended to minimize the level of incidental taking, but Congress also intended that the action go forward essentially as planned. Therefore, the Service believes that they should be minor changes that do not alter the basic design, location, duration, or timing of the action. The section 7 obligations of Federal agencies are not expanded by the application of reasonable and prudent measures, which strictly govern the scope of the section 9 exemption for incidental takings.

The definition of "Service" is adopted as proposed.

Section 402.03 Applicability.

This section, which explains the applicability of section 7, implicitly covers Federal activities within the territorial jurisdiction of the United States and upon the high seas as a result of the definition of "action" in §402.02. The explanation for the scope of the term "action" is provided in the discussion under §402.01 above.

Section 402.04 Counterpart Regulations.

The Service has retained the counterpart regulations section of the 1978 rule as the new §402.04 that authorizes the drafting of joint counterpart regulations by Federal agencies and the Service. "These counterpart regulations would allow individual Federal agencies to 'fine tune' the general consultation framework to reflect their particular program responsibilities and obligations." 43 FR 870, 871 (Jan. 4, 1978).

Counterpart regulations must be published first as proposed rules with a minimum 60-day public comment period. Such counterpart regulations must retain the overall degree of protection afforded listed species required by the Act and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without eliminating ultimate Federal agency responsibility for compliance with section 7. As long as the general consultation process is used as a starting point, Federal agencies can anticipate little difficulty in securing approval of the Service for counterpart regulations.

One Federal agency commented that the counterpart regulation process is a time-consuming alternative. The Service admits that informal rulemaking takes time and effort, but believes that the "fine tuning" that could occur through the development of counterpart regulations might, in the long run, provide a solid return in time and resources saved through the use of a more compatible consultation procedure.

Section 402.05 Emergencies.

Section 402.05 provides a modified consultation procedure for the Service to respond to emergency situations. This provision applies to situations involving acts of God, casualties, disasters, national defense or security emergencies (added to the rule in response to public comments), etc.

Upon request by the Federal agency, the Service may carry out consultation through procedures other than those provided under these regulations, as long as such emergency procedures are consistent with sections 7(a)–(d) of the Act. This allows, for example, consultation through informal means (*e.g.*, a telephone call) and, therefore, rapid responses to emergency situations.

Several commenters suggested that specific procedures should be set out to provide guidance to Federal agencies facing emergency situations. One commenter suggested that consultation could be initiated informally, such as through a telephone call, and the Service could then communicate its information and recommendations over the telephone. Because of the severe time constraints inherent in an emergency, this informal approach is the method the Service anticipates will be used by a Federal agency to conduct a consultation for a *bona fide* emergency. One commenter felt that minimum requirements should include "documentation of the nature of the emergency and justification for an expedited consultation." The Service agrees and has required, in a new paragraph (b) to this section, that the nature of the emergency and the justification for using an expedited process be documented and forwarded to the Service. However, the Service has not required that this be done during the emergency or expedited consultation, as this may not always be possible. The new paragraph (b) requires that the Federal agency conduct an "after the fact" consultation. The Service will evaluate the information submitted by the Federal agency, *i.e.*, the nature of the emergency actions, justification for the expedited consultation, and an evaluation of the impacts to listed species and critical habitat, and issue a biological opinion including the information and recommendations given during the emergency consultation. This will serve not only to document fully the consultation, but may assist the Federal agency in responding to similar emergencies.

One commenter argued that, when dealing with a fire, flood, earthquake, or storm, there is not enough time or opportunity for a Federal agency to undertake consultation through an alternate process determined by the Director to be consistent with section 7. The Service notes that the utmost flexibility is needed to handle the most extreme emergencies and believes that the informal process outlined in this section would satisfy the commenter's concern for the availability of prompt consultation and decisionmaking in emergency situations.

The Service further recognizes that it is sometimes necessary to take immediate steps to contain, limit, or alleviate an emergency in order to protect health, safety, and welfare prior to initiating any form of consultation. However, the Service would like to stress the fact that its early involvement is important in order to take advantage of its expertise in minimizing the effects of emergency response activities on endangered and threatened species. Federal agencies must exercise discretion when responding to an emergency as to when to consult with the Service. This will depend on the nature of the emergency and the actions that are immediately required. The Federal agency should contact the Service as soon as practicable, keeping in mind the informal nature of emergency consultation and Service expertise in minimizing the impacts of emergency response activities on endangered and threatened species.

Section 402.06 Coordination with Other Environmental Reviews.

This section on coordination with other environmental reviews contains paragraphs (a) and (b) of §402.10 and paragraph (c) of §402.17 of the proposed rule. The substance of these paragraphs has been adopted, but the format has been altered.

These regulations, following the 1978 rule, allow Federal agencies to coordinate their consultation, conference, and biological assessment responsibilities under the Act with the agency's responsibilities under other statutes such as NEPA (42 U.S.C. 4321 *et seq.*) or the Fish and Wildlife Coordination Act (FWCA, 16 U.S.C. 661 *et seq.*). The Service encourages Federal agencies to coordinate these responsibilities, but believes it is preferable to allow Federal agencies to do so in a manner that best conforms to their particular actions and which they believe is most efficient. Therefore, the sentences in the proposed §402.10(b) stating that biological assessments *should* be incorporated into the documents required by other statutes (such as NEPA) have been dropped from the final rule.

Several commenters applauded these paragraphs because the coordination of environmental reviews would reduce duplication of paperwork and save time. One commenter requested guidance on how a NEPA review of endangered species issues should be conducted. The Service is not in a position to provide criteria that will ensure adequate NEPA compliance on endangered species issues. The Service suggests that the commenter contact the Council on Environmental Quality, the agency in charge of NEPA compliance, to obtain such information.

Another commenter expressed concern that, in simplifying the consultation process, safeguards should be used to avoid potential abuse and substantive problems. The commenter feared that, without safeguards, NEPA compliance might be construed as being less necessary on endangered species matters. The Service is also concerned that it retain sufficient review capability to identify potential conflicts between proposed Federal actions and listed species. Therefore, it has slightly altered its consultation procedures in this final rule to ensure that all Federal actions that "may affect" listed species receive some degree of review under informal or formal consultation.

The concluding sentences of paragraph (a) emphasize that although, for example, a biological assessment can be incorporated into an EIS, the procedures of these regulations also must be satisfied to ensure adequate and timely analyses during the section 7 consultation process. These sentences also express the intent of the Service to avoid a fragmented analysis of environmental concerns through the Service's direct efforts to provide a coordinated review. The Service declines to delete these sentences as requested by several commenters.

Under paragraph (b), the Service agrees with a comment that the biological opinion should be stated in the final environmental impact statement or environmental assessment. A statement of the opinion may be a summary of its findings and conclusions, contrary to the fear of one commenter that the entire opinion must be repeated

in the text of the NEPA document. The Service does feel that the entire opinion should be attached as an exhibit to the NEPA document if completion time permits.

Section 402.07 Designation of Lead Agency.

This section, which governs the designation of a lead agency, is adopted from § 402.10(d) of the proposed rule. One commenter requested that the section be amended so that only the lead agency is required to notify the Director that it will be conducting consultation on behalf of itself and all other cooperating agencies. The Service has adopted this suggestion.

Section 402.08 Designation of Non-Federal Representative.

A new § 402.08 has been added to the final rule to clarify the role of the designated non-Federal representative and was derived from §§ 402.02 and 402.12 (a) and (b)(5) of the proposed rule. Because the designated non-Federal representative may or may not be the applicant, there is a difference in the role the representative can play in the consultation. If the representative is not the applicant, the information-gathering functions, through informal consultation (§ 402.13) and/or through the preparation of a biological assessment (§ 402.12), is the full extent of its participation. However, if the representative is an applicant, its role in consultation is two-fold. As the representative, it may conduct the information-gathering functions identified above; as the applicant, it may continue its participation into formal consultation.

If an applicant is involved and does not desire to be the designated non-Federal representative, the Federal agency and the applicant must agree on the party to be designated. The Director shall be notified, in writing, if a non-Federal entity has been designated to represent the Federal agency for the informal consultation or biological assessment procedures.

One commenter stated that prior notice to the Director of the designation of a non-Federal representative is unnecessary. The Service disagrees because there is a legitimate need for it to be certain of the Federal agency's concurrence in the representation. However, the Service notes that there is a degree of flexibility here; *i.e.*, designation in advance for a continuous action or for a group of related actions is acceptable. In response to one comment, the Service agrees that the designated non-Federal representative may only submit a species list under the biological assessment procedures (§ 402.12) if the Federal agency has, previously to or simultaneously with this notice, provided its written designation to the Director.

Another commenter questioned the Service's authority to conduct informal consultations with non-Federal representatives in place of the Federal agencies. The Service acknowledges that the Federal agency must retain the responsibility to initiate formal consultation along with its ultimate responsibility to ensure that its actions are not likely to jeopardize listed species, but the designation of a representative by the Federal agency to conduct informal consultation does not lessen these responsibilities or eliminate the Federal agency's duty to review its actions. Instead, the designation of a representative allows the Federal agency to coordinate all of its environmental reviews, thereby saving time and resources to obtain a single, comprehensive analysis of the action and its potential impacts. The agency must still review the work product and independently reach its own conclusions and decisions. The representative does the ground work (data compilation and synthesis); the Federal agency cannot delegate its duty to review, analyze, and formally consult.

Concerned that a conflict of interest could exist if applicants were allowed to be designated as non-Federal representatives, one commenter cited 40 CFR 1506.5(c) (NEPA regulation) as authority for eliminating applicants from the field of potential representatives. The Service declines to make the suggested change for the following reason. Section 7(c)(2) itself recognizes that exemption applicants (including permit or license applicants) may prepare biological assessments in cooperation with the Service and under the supervision of the Federal agency. This express statutory opportunity for "interested parties" (as applicants would always be) to prepare biological assessments runs counter to the NEPA rule and shows the clear Congressional intent in favor of full applicant involvement in the section 7 process. Although applicants may fill the role of non-Federal representatives, the ultimate responsibility for compliance with section 7 remains with the Federal agency. In response to one commenter, the regulations have been changed to eliminate the requirement that the Federal agency "participate in the preparation" of the biological assessment. The Service believes that the Federal agency may fulfill its responsibilities by providing guidance and supervision, and by independently reviewing and evaluating the work product of the applicant. Responsibility for carrying out negotiations with the Service may not be delegated to the applicant/representative, as suggested by this commenter. In addition, Federal agencies cannot delegate their role in initiating formal consultation, conference, or early consultation.

Section 402.09 Irreversible and Irretrievable Commitment of Resources.

Section 7(d) of the Act provides that, after initiation of consultation required under section 7(a)(2), the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the Federal action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives that would avoid violation of section 7(a)(2). This prohibition does not apply to actions affecting proposed species or proposed critical habitat. This mandatory restriction on commitment of resources is set out in § 402.09 of the final rule (formerly § 402.11 of the proposal). In response to comments, the language of the proposed rule was corrected to conform more closely to section 7(d). Another commenter requested that the sentence dealing with section 7(d) be amended by adding "measures" after the phrase "reasonable and prudent alternative[s]" to bring the regulation in line with the statute. The Service declines to make this change because it would tend to confuse "reasonable and prudent alternatives" that are included in jeopardy biological opinions with "reasonable and prudent measures" that are included in an incidental take statement under section 7(b)(4) of the Act. The proposed language describing the section 7(d) prohibition accurately implements the Act and is adopted in this final rule.

The proposed rule addressed the duration of the section 7(d) prohibition as follows:

> This requirement exists until: a "no jeopardy" biological opinion is issued by the Service . . .; the Federal agency adopts reasonable and prudent alternatives; or an exemption is granted under section 7(h).

Proposed rule, 48 FR 29990, 30000 (June 29, 1983), *proposed to be codified at* 50 CFR 402.11. Several commenters asked for a clarification or expansion of these criteria that terminate section 7(d) restrictions. Noting that the Act is silent as to when the section 7(d) prohibition ceases, one commenter contended that the prohibition should end when consultation is terminated. Another commenter, concerned that the proposed language would deprive Federal

agencies of the responsibility and authority to determine compliance with section 7(a)(2), urged the addition of a fourth criterion that would terminate the section 7(d) prohibition if "the Federal agency determines that its proposed action will not jeopardize the continued existence of endangered and threatened species or adversely affect critical habitat." Another commenter went further and urged the Service to adopt other criteria where Federal agency compliance with section 7(a)(2) would remove the section 7(d) restriction. Two other commenters felt that the second criterion—adoption of reasonable and prudent alternatives—must be restricted to those recommended by the Service. They opposed allowing the Federal agency to formulate its own "reasonable and prudent alternatives" without Service approval in order to avoid the prohibition of section 7(d).

The commenters raise valid concerns that illustrate the need to reexamine the duration of the prohibition against the irreversible and irretrievable commitment of resources. First, the Service recognizes that, although its biological opinions issued by authority of section 7(b) are entitled to great deference, the ultimate decision of whether to proceed with an action in light of section 7 responsibilities rests with the Federal agency. The proposed language did preempt Federal agency discretion by placing an agency that disagreed with the conclusion of the Service's biological opinion in the awkward position of facing section 7(d) restrictions on its action, even though it had determined through its own analysis that the section 7(a)(2) standards were satisfied. Second, case law indicates that section 7(d)'s proscriptive force continues while Federal agency efforts to conform its action to the requirements of section 7(a)(2) are "ongoing." *See North Slope Borough* v. *Andrus*, 642 F.2d 589, 611 n.143 (D.C. Cir. 1980); *Conservation Law Foundation of New England, Inc.* v. *Andrus*, 623 F.2d 712, 714 n.1 (1st Cir. 1979). The final rule has been amended to provide that the section 7(d) prohibition is in force during consultation and continues until the requirements of section 7(a)(2) are satisfied.

Therefore, if a Federal agency receives a "no jeopardy" biological opinion from the Service or chooses any reasonable and prudent alternative recommended by the Service, the requirements of section 7(a)(2) are met and the section 7(d) prohibition expires. If the Federal agency disagrees with a "jeopardy" biological opinion or chooses an alternative not provided by the Service based on its own analysis, then the validity of the Federal agency's "no jeopardy" finding will decide whether section 7(a)(2) has been satisfied and whether section 7(d) no longer applies. If it is later determined that the finding is not valid, the Federal agency would be taking the risk of noncompliance with the Act.

Finally, one commenter asked that this section be amended to require Federal agencies to give written notice to the Service verifying that neither it nor any applicant involved has made any irreversible or irretrievable commitment of resources during consultation. The Act does not provide such authority, except arguably in the exemption process. A mandatory section 7(d) notice has not been adopted in this final rule regarding consultation procedures because section 7(d) is strictly prohibitory in nature and not consultative.

Subpart B—Consultation Procedures

There are five primary components within the section 7 consultation procedures—conference, early consultation, biological assessment, informal consultation, and formal consultation. Of these, only conference, formal consultation, and biological assessments may be required. Although a Federal agency may elect to use several of these procedures, they do not represent a mandatory, sequential process. As requested by one commenter, the following is a brief abstract of each component of the consultation process.

If a Federal agency determines that its action is likely to jeopardize the continued existence of any *proposed* species or result in the destruction or adverse modification of *proposed* critical habitat, the Federal agency is required to "confer" with the Service under §402.10. The purpose of a conference is to identify and resolve potential conflicts between an action and proposed species or critical habitat. The Service will make advisory recommendations on ways to minimize or avoid adverse effects. If the proposed species or proposed critical habitat is subsequently listed or designated, respectively, then the Federal agency must consider whether formal consultation under §402.14 is required.

"Early consultation" is an optional process that may be requested through the Federal agency by a prospective applicant to determine whether its proposed action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Early consultation occurs prior to a formal application for a Federal permit or license. Such early consultation is conducted between the Service and the Federal agency in cooperation with the prospective applicant. At the request of the prospective applicant, early consultation is initiated by the Federal agency responsible for issuing the permit or license and is generally conducted and concluded in the manner prescribed for "formal consultation." If the action is a "major construction activity," the biological assessment requirement of §402.12 must be satisfied before early consultation is initiated. After concluding early consultation, the Service will deliver its preliminary biological opinion to the Federal agency and the prospective applicant.

After formal application is made for the permit or license but before its issuance, the Federal agency should submit to the Service a written request that the preliminary biological opinion be confirmed as a final biological opinion under section 7(a)(2). If the Service determines that no significant changes have occurred in either the proposed action or the information available since early consultation, no new impacts are anticipated, and no new species have been listed or critical habitat designated since early consultation, it will confirm that the preliminary biological opinion remains accurate and shall be treated as a final biological opinion issued under section 7(b) of the Act. Consultation will terminate in accordance with §402.14(*l*). However, if the Service is unable to confirm the preliminary biological opinion due to any of the reasons outlined in §402.11, formal consultation on that action must be initiated under §402.14.

"Biological assessment" requirements apply to all major construction activities as defined in these regulations. Even if not required, Federal agencies may voluntarily prepare a biological assessment to assist them in fulfilling their section 7 responsibilities. Also, any person who wishes to apply for an exemption may voluntarily prepare such an assessment in cooperation with the Service and under the supervision of the appropriate Federal agency.

A biological assessment contains information concerning listed or proposed species or designated or proposed critical habitat that may be present in the action area and an evaluation of any potential effects of the action on such species and habitat. A biological assessment should be used in determining whether formal consultation or a conference is required.

"Informal consultation" includes all the contacts (discussions, correspondence, etc.) between the Federal agency or its designated non-Federal representative and the Service that take place prior to the initiation of any necessary formal consultation. Informal consultation may be used by the Federal agency in determining whether formal consultation under §402.14 or a conference under §402.10 is required.

"Formal consultation" is required under section 7(a)(2) of the Act. A Federal agency must initiate formal consultation if it determines that its action "may affect" any listed species or its critical habitat unless it determines through informal consultation or biological assessment procedures, with the written concurrence of the Service, that its action "is not likely to adversely affect" such species or habitat. If the action is a "major construction activity," the biological assessment requirement must be satisfied before formal consultation may begin. Formal consultation is concluded within 90 days or extended in accordance with the provisions of §402.14. Within 45 days after concluding formal consultation, the Service will deliver its biological opinion stating whether or not the action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. If formal consultation results in a "jeopardy" biological opinion, reasonable and prudent alternatives, if any, will be included in the opinion.

These procedures are discussed more fully below, together with the sections governing post-consultation responsibilities of Federal agencies and the factors that require reinitiation of formal consultation. Specific public comments are treated on a section-by-section basis.

Section 402.10 Conference on Proposed Species or Proposed Critical Habitat.

The 1979 Amendments added the requirement in section 7(a)(4) that Federal agencies confer with the Service on any Federal action that is likely to jeopardize the continued existence of any *proposed* species or result in the destruction or adverse modification of *proposed* critical habitat. The purpose of this requirement is to identify and resolve potential conflicts between an action and proposed species or proposed critical habitat at an early point in the decisionmaking process. Conferences will be conducted on an informal basis between the Federal agency and the Service. The Service will make recommendations, if any, to minimize or avoid adverse effects of the action on proposed species or proposed critical habitat. These recommendations are advisory in nature, because the "jeopardy" prohibition of section 7(a)(2) does not apply until the species is listed or the critical habitat is designated. However, the Federal agency and any applicant should give serious consideration to implementing the recommendations since, if the species is later listed or critical habitat designated, the Federal agency must review its action, regardless of its stage of completion, to determine whether consultation is required. In certain instances the Federal agency and the Service may conduct the conference in such a thorough manner that it would satisfy the consultation requirements of section 7(a)(2) if the proposed listing or designation is subsequently completed.

The conference procedures are not repetitive of work performed in the preparation of a biological assessment, as suggested by three commenters. First, the conference requirement applies to all Federal actions, while the biological assessment requirement only applies to actions that are "major construction activities." Second, the conference requirement applies to proposed species and proposed critical habitat, whereas biological assessments are required only when listed species or critical habitat may be present in the action area (although proposed species or proposed critical habitat should be covered in the assessment if they also may be present in the action area). Thus, the conference process fills the need to alert Federal agencies of possible steps that the agency might take at an early stage to adjust their actions to avoid jeopardizing a proposed species. The Service strongly encourages the implementation of the recommendations so the action would not violate section 7(a)(2) if the species is listed or the critical habitat designated.

After reviewing a biological assessment or other available information, the Service may determine that a conference is required for the proposed species or proposed critical habitat. A sentence has been added to the new paragraph (b) of §402.10 [proposed §402.13(a)] to point out the Service's responsibility to request a Federal agency to confer after a review of available information. The last sentence of the proposed paragraph (a) has been deleted since the new §402.08 clearly defines the role of the designated non-Federal representative. The Service declines to take the position that it can "require" the initiation of a conference, because the Federal agency bears the ultimate responsibility to assess the likelihood of jeopardy to proposed species by its actions. However, the Service will vigilantly review biological assessments and other available information and fulfill its duty to make Federal agencies aware of their responsibilities under the Act.

The Service emphasizes the need for Federal agencies to confer because such efforts may not only minimize or avoid injury to proposed species but might also prevent the halting of an action if the species is subsequently listed:

> Obviously, Federal agencies irreversibly committing resources and foreclosing alternatives to an action that is likely to jeopardize a proposed species do so with the risk that the species will eventually be formally listed and the prohibitions of section 7 will become applicable. The conferees do not believe that any Federal agency or permittee should make any irreversible or irretrievable commitments of resources for the purpose or with the intent of foreclosing otherwise reasonable alternatives or in order to secure an exemption pursuant to section 7(h).
>
> H.R. Conf. Rep. No. 697, 96th Cong., 1st Sess. 13 (1979).

There is no requirement that Federal agencies confer with the Service on species that are candidates for listing proposals. However, for the reasons identified by Congress in the Conference Report to the 1979 Amendments on proposed species, the Service encourages Federal agencies to confer informally on candidate species when deemed appropriate to avoid jeopardy and to avoid potential economic loss through project modification if the species is later listed.

Several specific changes were recommended for proposed paragraph (a) [paragraphs (a) and (b) in the final rule]. One commenter felt that the reference to "potential endangered species conflicts" was too restrictive. The Service agrees that the proposed rule might have been construed so as to exclude threatened species. Therefore, the sentence has been adjusted to refer to all potential conflicts.

One commenter urged the Service to change the standard for initiating a section 7(a)(4) conference from "likely to jeopardize" to "would adversely affect." The regulation tracks the statute. The Service lacks the authority to make the requested change.

Several commenters urged the Service to make provisions for applicant involvement in the conference process. The Service agrees, and has added language in paragraphs (a), (c), and (e) of §402.10 to ensure that applicants have an opportunity to participate in the

conference, and that they receive a copy of the conclusions documented by the Service.

Another commenter asked that time limits be established for the conference process. The Service declines to establish time limits for the conference requirement. The timing of the section 7(a)(4) process is, in part, dictated by the progress of the proposed rulemaking to list a species or to designate critical habitat. Regardless of any time limits that the Service could establish, the conference requirement expires and consultation is required if the listing or critical habitat designation becomes final. The Service finds no reason to impose rigid time frames for conferences.

Paragraph (c) defines the nature and content of the conference. Basically, a "conference" involves informal discussions on the identification and possible avoidance or minimization of potential adverse effects to proposed species or proposed critical habitat from a Federal action. The reference to "informal discussions" should not be confused with "informal consultation," which is a distinct, but optional, component of consultation.

The Service declines to modify paragraph (c) by changing "advisory" recommendations to "conservation" recommendations, as suggested. Such a change may confuse conference with formal consultation, the required procedure in which discretionary "conservation recommendations" may be given. The Service also declines to adopt suggested provisions that would (1) require advisory recommendations to be made in every conference, (2) force the Service to notify the Federal agency of the date on which a final decision will be made on a listing proposal, or (3) require the Service to initiate emergency rulemaking proceedings to list a species or designate critical habitat if the Federal action is likely to jeopardize the species. Although required, conference is an informal process that has no substantive force. To force every conference into a regimented structure would be counterproductive and contrary to the intent of the Act. When appropriate, the Service will make advisory recommendations on ways to avoid or minimize adverse effects to proposed species or proposed critical habitat. During the conference, the Service will apprise the Federal agency of the progress of the listing or critical habitat proposal and will attempt to notify the Federal agency when the listing or critical habitat proposal becomes final. Emergency rulemaking is provided for under section 4(b)(7) of the Act and will be used if appropriate under the circumstances.

One commenter suggested that the conference involve all of the steps of formal consultation, but on an informal basis so that if the listing becomes final, the conclusions and recommendations derived from the conference could be adopted as a final biological opinion. In some cases, a thorough, well-prepared conference might elucidate sufficient conclusions and recommendations to serve as the biological opinion, upon the final listing of a species. While section 7(a)(4) does not require Federal agencies to follow the section 7(a)(2) process for proposed species or proposed critical habitat, or specifically provide for the conversion of conference "conclusions and recommendations" into a final biological opinion [in contrast to explicit authority under section 7(b)(3)(B) for the conversion of preliminary biological opinions into final biological opinions], such a procedure is available to the Federal agency and the Service in appropriate instances.

If the information necessary to conduct a formal consultation is available at the conference stage, and if a formal procedure is deemed appropriate by both the Federal agency *and* the Service, the conference may be conducted through a procedure equivalent to formal consultation; the results, or opinion, derived from a "formal" conference may be adopted as the biological opinion when the proposed listing or designation is completed. It should be noted that the conference conclusions and recommendations would only be adopted as the biological opinion in those instances where no new data are developed, including that developed during the rulemaking process on the proposed listing or designation of critical habitat, and no changes to the Federal action are made which would alter the content of that opinion. By providing procedures which allow for a more extensive conference that may later be adopted as the biological opinion, the Service does not intend to expand upon the requirements of section 7(a)(4). Rather, this procedure is an option available to the Federal agency and the Service to help avoid conflicts and expedite consultation if the proposed species or critical habitat is listed or designated. Therefore, a new paragraph (d) is added to this final rule to acknowledge the availability of a "formal" conference procedure.

Paragraph (e) of §402.10 discusses the documentation of the results of the conference. If the action involves only proposed species or proposed critical habitat, a copy of the recommendations will be forwarded by the Service to the Federal agency and any applicant. If an action also involves formal consultation on listed species or critical habitat, the Service will provide the recommendations on proposed species or proposed critical habitat with the biological opinion. As requested by some commenters, the final rule has been clarified to state that the conclusions of a conference will be provided with the biological opinion rather than made an integral part of ("consolidated in") the opinion. The Service does not intend that the informal nature of the conference be changed or that any of the requirements of formal consultation under section 7 be imposed on Federal agencies with respect to proposed species or proposed critical habitats unless the Federal agency specifically requests a more formal procedure. Early initiation of these discussions increases the chances of resolution of potential conflicts.

Section 402.11 Early Consultation.

The 1982 Amendments added a provision to the consultation process [section 7(a)(3)] designed to identify and to minimize, early in the planning stage of an action, potential conflicts between the action and listed species. These early consultation provisions authorize the Service to consult with Federal agencies at the request of and in cooperation with prospective applicants regarding the impact of proposed actions on listed species or critical habitat. These provisions are incorporated into the final regulations in §402.11 (§402.14 of the proposed rule). The intent of this provision is to involve the Service and State and local planning and conservation entities in the planning stages of actions. The Service believes that early consultation will be helpful in establishing a mechanism for early resolution of potential conflicts. Congress did not intend that this provision be used to authorize consultation for speculative or remote actions but rather only on actions which are likely to occur. The regulations require prospective applicants to provide sufficient information describing the project, its location, the scope of activities associated with it, and the anticipated impacts to listed species to enable the Federal agency and the Service to conduct meaningful early consultations.

The opportunity for an early consultation should expedite the permitting and other regulatory processes associated with actions requiring Federal authorizations.

Contrary to the interpretation of one commenter, early consultation is not a required process, but rather is an optional step that a prospective applicant can take to factor in section 7 considerations during the initial planning stage. Although early consultation contains most of the features of formal consultation, the Service declines to adopt the suggestion to place the early consultation provisions within the formal consultation section as a "special case." Early consultation, unlike formal, is not required and occurs before any application for a permit or license is filed, whereas formal consultation is a post-application process when applicants are involved. These differences are significant and merit the separation of these distinct processes into separate sections. However, because of the extensive similarities in the procedures for early and formal consultation, the final rule has been substantially modified in format to reference appropriate paragraphs in §402.14 (formal consultation) to avoid repetition of these common features. Although this has greatly shortened the early consultation section, the requirements and procedures have not been altered substantively.

One commenter was confused over the parameters of early consultation and informal consultation (§402.13). Informal consultation is a post-application process, as is formal consultation; early consultation is a pre-application process. There is no overlap. Designated non-Federal representatives can carry out informal consultation, and they can also carry out the biological assessment process if an assessment is required during the early consultation. Although only Federal agencies conduct early consultation directly with the Service, non-Federal representatives may continue to play a role in the data-gathering function of consultation.

Several commenters believed that proposed §402.14 took away the prospective applicant's right to request early consultation and to make the initial determination of possible impacts to listed species or critical habitat. The proposed rule preserved the prospective applicant's right to request early consultation but provided the Federal agency with the responsibility for determining impacts to listed species or critical habitat. In response to comments, the final rule has been rearranged to clarify the primary role of the applicant in making the initial determination and request to the Federal agency. However, the applicant's rights under section 7(a)(3) of the Act are not unqualified, and the ultimate burden is on the applicant to meet certain threshold criteria.

Paragraph (a) of §402.11 outlines the purpose of early consultation and is adopted substantially as proposed in §402.14(b) and the first sentence of §402.14(c). The legislative history is clear that the prospective applicant must be involved to the greatest extent practicable in every aspect of the early consultation process. H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 26 (1982). One commenter expressed concern that it may not be possible to have the applicant involved in every meeting and telephone call between the Federal agency and the Service. Therefore, acknowledging the practical limitations on involving the applicant in all consultation contacts (but still recognizing the need for continuous communication with the applicant), the second sentence of paragraph (a) now reads that the prospective applicant should be involved "throughout" (instead of "in every aspect of") the consultation process.

Paragraph (b) of §402.11 sets out the threshold conditions that must be satisfied before early consultation can be initiated and is derived from proposed §402.14(c). As suggested by one commenter, the prospective applicant's request for early consultation should be made in writing to the Federal agency.

The "may adversely affect" threshold for initiating early consultation has been expanded to "may affect." This action was taken because the more restrictive standard unnecessarily limited access to this early review procedure, especially since at the early planning stage of an action the exact nature of a possible effect could be difficult to define.

Section 402.14(c) of the proposal established that the Federal agency ensure that the following conditions be met prior to initiation of early consultation:

(1) there must be a definitive proposal outlining the action and its effect;

(2) it must be shown that the action is technologically, administratively, and legally feasible;

(3) it must be shown that the applicant possesses adequate economic resources to conduct the action; and

(4) it must be shown that the applicant possesses some property interest in the proposed site on which the action will occur.

Numerous comments were received on these criteria. Three commenters urged the Service to strike all four conditions because of their unreasonableness and the Service's lack of authority to impose them on applicants. Other commenters criticized conditions (2) and (3) due to their ambiguity. Contending that enforcement of these conditions would preclude early consultation in many cases, the commenters noted that the information needed to meet these conditions is not available at the time that early consultation is most useful. The commenters also attacked condition (4), regarding the need to show an ownership interest in land, because early consultation would normally occur prior to the selection of an exact location for the project. Two commenters stated that conditions (1) and (2) are adequate for screening serious actions. One commenter suggested that only two criteria be addressed in determining eligibility for early consultation: scope of the project, and possible effects on listed species.

The Service was given explicit authority in section 7(a)(3) of the Act to issue guidelines that would prevent speculative or undefined actions from triggering early consultation.

> The Committee expects that the Secretary will exclude from such early consultation those actions which are remote or speculative in nature and to include only those actions which the applicant can demonstrate are likely to occur . . . . The Committee further expects that the guidelines will require the prospective applicant to provide sufficient information describing the project, its location, and the scope of activities associated with it to enable the Secretary to carry out a meaningful consultation.
>
> H.R. Rep. No. 567, 97th Cong., 2d Sess. 25 (1982).

The final rule retains proposed condition (1) that requires the nature and effect of a prospective action to be defined. Without adequate information, early consultation would be meaningless. Proposed condition (2) has been modified in the final rule to require that the prospective applicant certify that it intends to implement its proposal, if authorized. This will prevent highly speculative actions from entering early consultation. The Service believes that these two conditions are reasonable and will allow Federal agencies and the Service to focus their attention on concrete, feasible actions through meaningful, early consultations.

Proposed conditions (3) and (4) described above have been deleted. The Service agrees that these conditions went beyond the normal pre-application information-gathering practices of Federal agencies and that they might have discouraged early consultations unnecessarily.

Paragraph (c) of §402.11 is adopted from proposed §402.14(a) and the introductory paragraph of proposed §402.14(d). This paragraph governs initiation of early consultation by the Federal agency if the prospective applicant complies with paragraph (b).

Paragraph (d) of §402.11 governs the procedures for conducting early consultation. To eliminate unnecessary regulatory language, this paragraph cross-references the items in §402.14(c)–(j), since the general consultation requirements are the same as for formal consultation. The proposed rule repeated these requirements in §402.14 (d) through (i).

One commenter argued that the Service exceeded its authority in proposed paragraph (d)(3) by telling Federal agencies how to meet their responsibilities by requiring Federal agencies to involve the applicant in the data-gathering function. Although this is not included in the final rule, the Federal agency has an underlying responsibility to involve the applicant in every aspect of the early consultation to the extent possible. Moreover, the applicant may be the primary source of data used in the consultation.

If the action is a major construction activity, then a biological assessment must be prepared in accordance with §402.12 before the request for early consultation is submitted, as is required for formal consultation. This is a change from proposed §402.12(b)(10), which made the biological assessment optional during early consultation. The Service agrees with the comment that, for major construction activities, a meaningful early consultation must include the preparation of a biological assessment because the preliminary biological opinion issued after early consultation may be confirmed as the final biological opinion. Therefore, if early consultation is requested for a major construction activity, the Federal agency must complete a biological assessment under §402.12 prior to submitting its request for early consultation.

The time limits and extension provisions for formal consultation are incorporated by reference as the requirements for early consultation. Several commenters felt that the "mutually agreed upon" language of the proposal [§402.14(e)] was too loose and that definitive time limits were needed. The Service agrees and has adopted the time limits for formal consultation to apply to early consultation as well. The Service notes that, for major construction activities, the time period will not begin to run until the biological assessment under §402.12 is completed. Because time deadlines have been adopted, there is no need to require a written notice that consultation has been concluded, as requested by one commenter.

Proposed §402.14(i) concerned requests by the Service for additional data, and did not require the addition of a written notice procedure for obtaining an extension. This is now required, as requested by one commenter, by incorporating the formal consultation requirements.

Proposed §402.14(f) recognized that the Service's responsibilities during early consultation are the same as those that exist during formal consultation. The final rule retains this provision by reference. The Service is opposed to limiting the scope of its analysis of impacts during early consultation, and it is also opposed to limiting the free flow of communication among it, the Federal agency, and the applicant. Therefore, the comment suggesting that draft preliminary biological opinions not be released to the Federal agency or the prospective applicant is rejected. This is not an issue that can be dealt with on an ad hoc basis, depending on the program experience with particular agencies or regions. The policy behind early consultation is clear: full involvement of all parties, including the prospective applicant, to identify and eliminate conflicts at the earliest possible stage of a project.

Paragraph (e) of §402.11 provides that the contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation in §402.14(i). One commenter stated that biological opinions need only be issued after formal consultation under section 7(a)(2) of the Act and that this should be clarified in the rule. The Service disagrees because a "written statement" containing the Secretary's opinion is required to be given after the conclusion of both early and formal consultation. However, there is an important difference in these two types of opinions: the former has no independent, operative significance, while the latter states the Service's "final" judgment on the impacts of an action. The preliminary biological opinion, issued after the conclusion of early consultation, has no operative force until it is later confirmed by the Service under section 7(b)(3)(B) of the Act, just before the action is to be taken.

One commenter said that it is inappropriate to include an incidental take statement with a preliminary biological opinion. The Service believes that input on incidental take is essential to adequately assist the applicant in planning its action. It would be unfair to force the applicant to wait until the time for confirmation of the preliminary biological opinion to receive its first notice on the terms and conditions that must be complied with and the amount and extent of permissible incidental take. No harm results to the species by providing this statement in the preliminary biological opinion because, as stated in the rule, it does not constitute a permit to take. The "taking" exemption under section 7(o)(2) does not occur until the preliminary biological opinion is later confirmed as a final opinion under §402.11(f).

Paragraph (f) of §402.11 is adopted from proposed §§ 402.15(b) and 402.18(a). This paragraph acknowledges that, if certain findings are made by the Service, a preliminary biological opinion may be confirmed as a final biological opinion after formal application for a Federal license or permit is made. The rule requires the Service to make its decision on confirmation within 45 days after receipt of the Federal agency's request. As requested by one commenter, both the request and the Service's response must be in writing.

Section 402.12 Biological Assessment.

This section explains the biological assessment requirements under section 7(c) of the Act and the process that must be followed in its preparation. The requirement that biological assessments be prepared in advance of certain consultations under section 7(a)(2) was added by the 1978 Amendments. Although the Service has, as a matter of agency practice, been requiring the preparation of biological assessments in appropriate cases under the authority of section 7(c), this final rule consolidates all regulatory requirements pertaining to biological assessments.

The proposed rule addressed the biological assessment provisions in §§402.01(c) and 402.12(b). In response to public comments, the Service has merged these sections in the final rule into § 402.12. The new format clarifies the requirements and procedures for preparing biological assessments. Although the organization of these provisions has been changed substantially, the substance of the regulation is, except for minor amendments, the same as that presented in the proposed rule.

The informal consultation and biological assessment processes were both presented in §402.12 of the proposed rule. This confused several commenters who believed that biological assessments could only be performed in conjunction with informal consultations. To eliminate this

confusion, the biological assessment provisions are placed in a separate section, immediately before informal consultation. Although a Federal agency may prepare a biological assessment while involved in informal consultation with the Service, there is no requirement that it do so.

References to conference, early consultation, and formal consultation in proposed §402.12 (b)(7) (third through fifth sentences) and (b)(10) have been deleted because cross-references to the biological assessment requirement have been inserted in §§402.10, 402.11, and 402.14 to explain the interrelationship of these processes.

The purpose of a "biological assessment," as stated in §402.12(a), is to evaluate the potential effects of the action on listed or proposed species or designated or proposed critical habitat and determine whether any such species and habitat are likely to be adversely affected by the action. Biological assessments are designed to assist Federal agencies in "determining whether section 7(a)(2) consultation should be initiated by identifying endangered or threatened species that may be present in the area affected by their proposed project and by identifying the impacts of those projects on such species." H.R. Rep. No. 697, 96th Cong., 1st Sess. 14 (1979). Such assessments are designed to promote the "early discovery of and elucidation" of potential endangered and threatened species conflicts with proposed agency actions. These reviews should take place well before the agency exercises its discretion to authorize, fund, or carry out an action. H.R. Rep. No. 1625, 95th Cong., 2d Sess. 20 (1978).

One commenter asked that a reference be inserted for preparation of "preliminary biological assessments." The Service does not require advance review of draft biological assessments; the requested procedure would add to statutory requirements. Therefore, the addition has not been made.

Section 402.12(b)(1) of the final rule acknowledges that the Act exempts from the biological assessment requirement those actions for which contracts were let or construction was started on or before the effective date of the 1978 Amendments. One commenter argued that the assessment requirement must not be retroactive, but should apply only to current actions as of the issuance of the final rule. The Service must follow the Act on this point and adopt the rule as proposed. This will not operate to the disadvantage of any Federal agency involved in a section 7 consultation, because the Service has been requiring the preparation of biological assessments since the effective date of the 1978 Amendments.

Section 402.12(b)(1) also recognizes that virtually any Federal agency, State or local agency, private organization, or individual (potential exemption applicants) may voluntarily prepare a biological assessment consistent with the procedures set forth in this section to assist it in fulfilling its section 7 responsibilities. One commenter urged the Service to delete the sentence referring to voluntary preparation of assessments in proposed §402.12(b)(1) because consultation is terminated if a biological assessment is not *required*. The commenter's statement is only true for an action if no listed species or critical habitat are present in the proposed action area. The placement of that sentence in the proposed rule was confusing, and thus the final rule has been clarified. The Service would like to make it clear, however, that whether a biological assessment is required or voluntary bears no relation to whether a conference or formal consultation is required under §§402.10 or 402.14, respectively. The assessment is a tool used to identify impacts to species or habitat so that a decision can be made as to whether a proposed action is likely to adversely affect listed species or critical habitat. The biological assessment can be used to determine whether a conference or formal consultation is required.

The Act provides that any person who may wish to apply for an exemption from the requirements of section 7(a)(2) may voluntarily conduct such an assessment, in cooperation with the Service and under the supervision of the appropriate Federal agency. These potential exemption applicants must follow the procedures described in §402.12. Under section 7(h)(2), an exemption is not permanent unless a biological assessment has been prepared. A permanent exemption remains in force for a particular Federal action regardless of the listing of additional species in the action area, whereas an ordinary exemption is limited to the species involved in the section 7 consultation. Paragraph (b)(1) acknowledges these statutory provisions.

Therefore, the Service retains the flexibility inherent in paragraph (b)(1) that allows for the preparation of biological assessments in those instances where they are not specifically required by this rule. Although requested by another commenter, the Service declines to set guidelines for the exercise of discretion by other Federal agencies or applicants on the decision to voluntarily prepare assessments.

Paragraph (b)(2) has been added in response to public comments. The limitation in section 7(c)(1) of the Act on entering contracts or starting construction on an action while the preparation of a biological assessment is pending has been included in these regulations. This construction restriction applies to all actions involving the preparation of a biological assessment.

The fact that a biological assessment is not required for all actions does not mean that listed or proposed species or designated or proposed critical habitat receive less protection. Federal agencies still have an obligation to review all of their actions to determine whether formal consultation under §402.14 is required. In addition, Federal agencies must confer on actions that are likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat.

One commenter asked that Federal agencies be required to document any finding of "no effect" on listed species or critical habitat for actions not involving the preparation of a biological assessment. The Service has no authority to impose such a requirement, but does encourage Federal agencies to use their NEPA documentation to illustrate their analysis of Endangered Species Act issues.

The Service reserves the right to request that an agency prepare a biological assessment. One commenter questioned the right of the Service to request assessments when such are not otherwise required by the Act. Another commenter feared that the Service would routinely request field studies with many of the characteristics of biological assessments, regardless of the action's potential effects, the acceptability of a general field reconnaissance, or the obligation of the Service to provide guidance and data. The Service's request for a biological assessment or for field studies is not of mandatory effect; a Federal agency may reject any such request. The Service recognizes that consultation involves a two-way flow of information. It will always strive to provide data that are available and to assist in designing or in conducting studies (within budgetary constraints and available staffing) or in gathering data through consultation.

Paragraph (c) of §402.12 covers the request by a Federal agency for a species list from the Service. This paragraph was adopted from §402.12(b)(1) (first sentence) of the proposed rule. Paragraph (d) of §402.12

involves the Director's issuance of a species list. This paragraph was adopted from § 402.12(b)(2) of the proposed rule.

The biological assessment process begins when a Federal agency decides that its action is a major construction activity, as discussed in these regulations, or it decides that it will voluntarily prepare a biological assessment. The Federal agency or the designated non-Federal representative requests information on whether listed or proposed species or designated or proposed critical habitat may be present in the action area. Within 30 days of receipt of that inquiry, the Director will respond with a list of any such species and critical habitat that may be present, as well as the available data (or references thereto). This may include recommendations for studies or surveys that may assist in the preparation of the biological assessment.

Contrary to the contentions of several commenters, the request for a species list is mandatory under section 7(c) for any major construction activity, unless the Federal agency forwards its own list for the Director's concurrence as explained below. This is not a burdensome requirement, even for apparent "no effect" actions, since the entire process, including the Director's response that no listed species or critical habitat occurs in the action area, may be carried out without delay through the NEPA process.

In response to comments, the final regulations explicitly allow the Federal agency or the designated non-Federal representative to proceed with the preparation of the biological assessment prior to receiving a species list from the Service. In this situation, the Federal agency or the designated non-Federal representative is required to notify the Director in writing as to the species and critical habitat that are being included in the assessment. As recommended by three commenters, the Service will respond to this notification in writing within 30 days as to whether it concurs with the species and critical habitat to be covered in the biological assessment.

One commenter suggested that an applicant should have an opportunity to informally request a species list to assist it during the planning stage of a project. Then, if the applicant begins preparation of a biological assessment within 90 days of receipt of this "informal" list, the commenter thought that the Service should not amend the list at a later time. The commenter appears to be advocating an opportunity for early consultation, which is provided for under § 402.11 of this final rule.

Nevertheless, the request that a species list not be modified once issued might backfire on the applicant, because § 402.14 requires consultation on all listed species and critical habitat that may be affected by a Federal action. Even if a species is inadvertently omitted from the species list and biological assessment, the Act nevertheless requires that it must be considered in satisfying the requirements of section 7(a)(2). Thus, the sooner the Service notifies the applicant of additional species to be included in a required biological assessment, the sooner the consultation will be completed.

In addition to listed or proposed species or designated or proposed critical habitat, the Service will include candidate species in the species list. Candidate species are those species being considered for listing but not yet the subject of a proposed rule. This will inform the Federal agency and any applicant of potential proposals for listing. Candidate species have no legal status and are accorded no legal protection under the Act, and thus the Federal agency need not include them in a biological assessment. However, should a candidate species become proposed or listed prior to completion of the action, a conference or formal consultation may be required.

Several commenters asked that species lists be "site-specific" and not regional in scope. One of these commenters urged the Service to include only species actually known or believed to occur in the action area. The Service agrees that the species list should be tailored to the action area and that field personnel should take care that the list is not overinclusive. However, the Act requires the Service to provide a list of all listed or proposed species that "may be present" in the action area. Thus, migratory species that "may be present" at some point within the action area must be included in the species list.

Another commenter said that the Service should include only species in the list that it believes may be affected by the action. This approach is not consistent with section 7(c), which requires a disclosure of all species that "may be present" in the action area. The comment would also eliminate the Federal agency's right to make an initial evaluation of possible effects to each species.

One commenter's conclusion that a determination of no adverse effect after receipt of the species list, but before preparation of the assessment, eliminates the need to prepare the assessment and concludes consultation is erroneous. The biological assessment is used to determine whether an activity "is likely to adversely affect" listed species or critical habitat. Consultation does not conclude unless the Service concurs in writing with the finding of the biological assessment indicating that the action is not likely to adversely affect listed species or critical habitat.

The Service has clarified paragraph (d)(1) to accommodate the concern of the House Committee that biological assessments not be required on major construction activities affecting proposed species or proposed critical habitat only. However, if a species list includes both listed and proposed species, each must be considered in the biological assessment as required by section 7(c) of the Act.

Concerned that the Federal agency should receive all information during the assessment process, one commenter asked that the species list be delivered to both the Federal agency and its designated non-Federal representative due to the agency's responsibility to supervise the preparation of the assessment. The Service declines to include this requirement in the rule, but will forward a copy to the Federal agency, if requested. It is the Federal agency's responsibility to decide whether it wants to designate a non-Federal representative, and if one is designated, the species list will be sent to the representative as requested by the Federal agency.

Several commenters suggested that the Service's ability to recommend "necessary" studies or surveys would contravene the "best available scientific and commercial data" standard of section 7(a)(2). The Service agrees that the proposed language may have implied that additional studies or surveys were required or necessary to complete the assessment. Therefore, the sentence is changed to state that the Service may recommend studies or surveys that it believes would assist in the preparation of the assessment. A new sentence is also added to clarify that such a recommendation is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. This change preserves the Service's prerogative to request further studies if deemed appropriate, while recognizing the ultimate responsibility of the Federal agency to secure the best available data. Two commenters suggested that the request for studies be limited to studies necessary to locate and assemble already existing data. The Service declines to so limit the scope of studies it may request.

Paragraph (e) of § 402.12 is carried over from § 402.12(b)(3) of the proposal.

It requires a party preparing a biological assessment to verify its species list with the Service if, after 90 days from the receipt of or concurrence with the species list, it has yet to commence the preparation of the assessment. A written verification, as suggested by one commenter, is not required since that would be tantamount to issuing a second species list, contrary to the informal nature of this verification step. The Federal agency may, on its own, document the verification received under this paragraph in its administrative record. As requested by one commenter, the Service has distinguished the initiation of the biological assessment time period (time of receipt of or concurrence with a species list) from the point at which actual preparation of the assessment is begun.

Based on comments received, a new paragraph (f) entitled "contents" has been added. Some commenters argued that Federal agencies should be required to include certain minimum research methods or activities in the preparation of a biological assessment. One commenter suggested that preparers of biological assessments should:

(a) conduct a scientifically sound on-site inspection of the area affected by the action, which must, unless otherwise directed by the Service, include a detailed survey of the area to determine if listed or proposed species are present or occur seasonally and whether suitable habitat exists within the area for either expanding the existing population or potential reintroduction of populations;

(b) interview recognized experts on the species at issue, including those within the Fish and Wildlife Service, the National Marine Fisheries Service, State conservation agencies, universities and others who may have data not yet found in scientific literature;

(c) review literature and other scientific data including recovery plans if available to determine the species' distribution, habitat needs, and other biological requirements;

(d) review and analyze the effects of the action on the species, in terms of individuals and populations, including consideration of the indirect and cumulative effects of the action on the species and habitat;

(e) analyze alternate actions that may provide conservation measures; and

(f) conduct any studies necessary to fulfill the requirements of (a) through (e) above.

The Service agrees that assessments should be as complete and thorough as possible, but declines to impose strict minimum standards that all biological assessments must satisfy. The above-listed activities, which may be performed in preparing an assessment, are endorsed by the Service as items that a model assessment would include. However, the nature of the Federal action may not warrant carrying out all of these research activities or studies, and some of the steps may not be technologically feasible in certain cases. Therefore, the new paragraph (f) only contains suggestions of what a Federal agency may include in a biological assessment.

One commenter asked the Service to explain the difference between the degree of information needed in a biological assessment and the degree of information needed to initiate formal consultation when the action does not require the preparation of an assessment. In both cases the overall information standard is the same: "best scientific and commercial data available." The difference arises in the process. If a biological assessment is prepared, it must include not only the data but also a synthesis of the data involving an analysis of the effects of the action. Basically, the assessment serves as an analytical instrument and can be used by the Federal agency "to build its case" as to whether a particular action is likely to adversely affect a listed species or its critical habitat. If the Service concurs with a determination of "not likely to adversely affect," then formal consultation is not required. If an assessment is not required, the Federal agency need only submit data to the Service to initiate formal consultation pursuant to § 402.14(c).

Paragraph (g) of §402.12, which deals with the authority to incorporate earlier biological assessments by reference as the assessment for a current proposal, is adopted from the last two sentences of proposed §402.12(b)(1). In those instances where a proposed Federal action is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may not need to prepare a new biological assessment.

One commenter requested that language be added to clarify that a previous biological assessment being incorporated by reference could have been part of a prior EIS or area-wide assessment. The Service declines to make the change noting that the form of the previous biological assessment (whether in an EIS or other document) has no bearing on whether it meets the conditions for incorporation by reference.

In response to comments, the conditions that must be met for incorporation by reference are clarified. The biological assessment requirement may be fulfilled by incorporating by reference the earlier biological assessment and supporting data into a written certification that: (1) the proposed action involves similar impacts to the same species in the same geographic area; (2) no new species have been listed or proposed or critical habitat designated or proposed for the action area; and (3) the biological assessment has been supplemented with any relevant changes in information.

Condition (1) has been expanded to allow incorporation by reference if the proposed action involves similar impacts (rather than no new impacts). The term "or administrative unit" has been deleted as it is substantially the same as "geographic area." The Service adds "for the action area" at the end of condition (2) to clarify the scope of the certification. Finally, condition (3) is changed to allow Federal agencies to incorporate a former biological assessment by reference while supplementing it with any relevant changes in information. This change clarifies the intent behind this paragraph.

Paragraph (h) of §402.12, which cross-references permit requirements under the Act that may apply to the preparation of a biological assessment, is adopted as proposed in §402.12(b)(4)(i). The Service believes that the references in the rule are adequate to alert Federal agencies and/or designated non-Federal representatives of the need to consider applicable permit requirements, rather than include the appropriate section 10 permit requirements in these regulations, as suggested by one commenter. Certain field work might involve the take (*i.e.*, harassment, harm, etc.) of listed species which, absent a permit, would violate sections 9 or 4(d) of the Act. To avoid possible violations, the Federal agency or non-Federal representative should apply for and obtain a section 10 permit for such field work. Those individuals carrying out field studies or other research without a permit during the section 7 consultation process are subject to the prohibitions of the Act and other applicable wildlife laws. The Service emphasizes that permits should be obtained if takings of any listed species are anticipated.

Paragraph (i) of §402.12 specifies the time period for completing a biological assessment and sets out the requirements for any needed extension. This paragraph is taken substantially from §402.12(b)(6) of the proposed rule.

Two commenters asked that the rule require written notices of all extensions, regardless of whether an applicant is involved. A written notice from the Federal agency to the applicant is required if an extension is agreed upon between the Service and the Federal agency, and such written notice must be provided by the Federal agency prior to

the expiration of the 180-day time period. However, the Service declines to require a written notice if an applicant is not involved in the consultation, because responsibility for the preparation and completion of the biological assessment rests with the Federal agency. The Service will defer to the needs and judgment of the Federal agency which can document the extension in its administrative record.

Another commenter asked that the Service explain that the 180-day time period begins on the date of receipt of the species list (or the date of receipt of the Director's concurrence with the Federal agency species list). This change has been made since it clarifies when the time period begins and is consistent with the intent of this paragraph.

As noted above, if an applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why an extension is necessary. The applicant has no remedy to expedite the preparation of the biological assessment under section 7(c) of the Act. Thus, the 180-day time period is subject to an indefinite extension at the Federal agency's prerogative. The Service lacks statutory authority to impose an appeal process to review extensions, as requested by two commenters.

Paragraph (j) of §402.12, which requires the submission of completed biological assessments to the Director for review, is adopted from proposed §402.12(b)(4)(iii). In response to two comments, the Director will make a written response within 30 days after receiving the complete assessment as to whether or not the Service concurs with the findings in the assessment. This change provides Federal agencies with a written record acknowledging the Service's receipt of the biological assessment and indicating the results of the Service's review.

A new sentence is added to this paragraph to clarify that the Federal agency may initiate formal consultation concurrently with the submission of the assessment to the Director.

In response to one comment, the Service declines to substitute "Service" for "Director" in this paragraph. It is important that the Director or his authorized representative directly receive the biological assessment for review so that a timely review can be facilitated.

Paragraph (k) of §402.12, governing the use of a completed biological assessment, is derived from §402.12(b)(7) of the proposed rule. Once the biological assessment has been completed, the Federal agency must consider whether formal consultation should be initiated or if a conference is necessary. Three commenters noted that a written notice of concurrence should be issued by the Director if the Service agrees with the Federal agency's finding that its action is not likely to adversely affect listed species or critical habitat (*i.e.*, the Service concurs in writing that formal consultation is not needed). This comment has been accommodated by appropriate changes to paragraphs (j) and (k).

The proposed §402.12(b)(5), "Assistance from other sources," has not been included in the biological assessment section of the final rules. The substance of this paragraph has been included in the final §402.08 dealing with designated non-Federal representatives. The first two sentences have been deleted since a Federal agency may obtain assistance from any source to aid in the preparation of a biological assessment (or other aspect of consultation), and it does not need to be authorized in these regulations. One commenter suggested that the Service be included as a source of information; however, assistance from the Service is already included in appropriate sections of the regulations.

Section 402.13 Informal Consultation.

Informal consultation is an optional procedure that includes all contacts between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required. It is designed primarily to except from the formal consultation process those proposed actions which, upon further informal review, are found not likely to adversely affect a listed species or critical habitat. If the Service concurs with such a determination, formal consultation is not required. The final rule is adopted largely by combining proposed §§ 402.12(a), 402.15(c), and 402.15(i)(1), into one composite statement of the purpose and scope of informal consultation.

Several commenters disagreed on the scope of informal consultation. One commenter felt that informal consultation should include all dialogue between the Service, the Federal agency, and any designated non-Federal representative in determining whether formal consultation is required. Another commenter recommended that informal consultation be available if listed species are found in the action area. The Service believes that informal consultation encompasses all of these communications between the Service, the Federal agency, and the designated non-Federal representative, as well as others. The Service is available for informal consultation at any time; the decision on whether to seek informal consultation is that of the Federal agency. The Service agrees that, if requested as a part of informal consultation, it should participate in NEPA scoping meetings.

The Service declines to specify uniform levels of contact that must be followed in conducting informal consultations. Existing relationships between the Service's field or regional offices and particular Federal agencies mandate maximum flexibility. The present system is working well and efficiently addresses the needs of other Federal agencies, and it is therefore retained.

Because informal consultation is an optional process that is under the control of the Federal agency as to its initiation and duration, the Service declines to require notices of initiation and/or termination. Such a step would merely place paperwork burdens on the Federal agency in an otherwise voluntary process.

As noted in §402.12, biological assessments are required for major construction activities. To clarify a procedural point, the Service notes that the biological assessment process may be conducted simultaneously with informal consultation if desired by the Federal agency, or the Federal agency may choose to undertake the biological assessment without any informal consultation. Whether or not a biological assessment is required, the Federal agency may choose to enter into informal consultation.

In response to many comments, the Service has made numerous adjustments throughout these regulations to eliminate references to informal consultation as a prerequisite to formal consultation. The Service agrees that such a process would not be workable, both as a result of limited consultation resources and the need to respect Federal agency program discretion. As previously noted, the proposed rule required formal consultation if the action "may adversely affect" listed species or critical habitat. "Beneficial" actions were excused from formal consultation if the Service concurred during the mandatory informal consultation. Since informal consultation has been made strictly an optional process in this final rule, the Service retains, from the 1978 rule, the "may affect" trigger for formal consultation in §402.14 of the final rule.

Under this final rule, if a Federal agency determines that its action "may affect" listed species or critical habitat, then formal consultation is required unless an exception applies. One exception is that a Federal agency may, through informal consultation, utilize the expertise of the Service to evaluate the agency's assessment of potential effects or to suggest modifications to the action to avoid potential adverse effects. If, as a result of informal consultation, the Federal agency determines, and the Service concurs, that the action (or modified action) is "not likely to adversely affect" listed species or critical habitat, then formal consultation is not required. The consultation process would terminate with the written concurrence of the Service. Therefore, through this informal consultation process, those activities which are found to have beneficial, discountable, or insignificant effects upon listed species or their critical habitats could be deemed to be in compliance with section 7(a)(2) without formal consultation. If a "not likely to adversely affect" determination cannot be made during informal consultation, then formal consultation is required for those Federal actions that "may affect" listed species or their critical habitat.

In short, the final rule retains the general requirement for formal consultation if the Federal agency determines that its action "may affect" listed species or critical habitat. The Federal agency may, however, through voluntary informal consultation with the Service, forego formal consultation and promptly implement actions that the agency and the Service agree are not likely to adversely affect listed species or critical habitat. The Service finds that this reformulation of the consultation process is not significantly different from the current practice, except that, as a result of informal consultation, biological opinions will no longer be required for actions that "are not likely to adversely affect" listed species or critical habitat.

The Service could not accommodate all concerns expressed on this issue. Two commenters contended that the "may adversely affect" standard for initiating formal consultation yielded too much discretion to action agencies. They stated that such a threshold would shift the benefit of the doubt from one in favor of the listed species to one in favor of the Federal agency's action. Noting the Service's expertise on wildlife issues, the commenter urged the Service to reverse this shift. As noted above, the Service did not intend to reverse the burden of proof with the focus on "adverse effects." The goal is to reduce procedural barriers for actions which the Service believes are not likely to have an adverse effect, while retaining full protection for listed species or critical habitat. The changes noted above address these commenters' concern. However, other commenters who suggested a shift in the burden of proof cannot be accommodated. The commenters that urged a "would adversely affect" standard for triggering formal consultation, a standard that might be interpreted as requiring a showing of effects that destroy or adversely modify critical habitat or are likely to jeopardize the continued existence of listed species, are requesting a trigger for formal consultation that the Service believes is too close to the "jeopardy" standard of section 7(a)(2). The threshold for formal consultation must be set sufficiently low to allow Federal agencies to satisfy their duty to "insure" under section 7(a)(2). Therefore, the burden is on the Federal agency to show the absence of likely, adverse effects to listed species or critical habitat as a result of its proposed action in order to be excepted from the formal consultation obligation.

The Service believes that informal consultation is extremely important and may resolve potential conflicts (adverse effects) and eliminate the need for formal consultation. Through informal consultation, the Service can work with the Federal agency and any applicant and suggest modifications to the action to reduce or eliminate adverse effects. If a Federal agency modifies its action so that the action is not likely to adversely affect listed species or critical habitat, then formal consultation is not required.

Section 402.14 Formal Consultation.

These regulations require Federal agencies to review their actions to determine whether they "may affect" listed species or critical habitat. Formal consultation procedures must be initiated if such a situation exists, unless, with the written concurrence of the Service, the Federal agency determines through informal consultation and/or through the biological assessment process that its action is not likely to adversely affect listed species or critical habitat. As noted above in regard to § 402.13, the final rule adopts the "may affect" standard of the 1978 rule, with a special provision allowing actions "not likely to adversely affect" to by-pass the formal consultation process as a result of informal consultation with the Service.

Paragraph (a) of § 402.14 sets out the requirements for formal consultation. This paragraph is a composite of paragraphs (a) and (k) of proposed § 402.15. Paragraph (b), which sets out the exceptions to the initiation requirement of (a), was taken primarily from proposed §§ 402.12(b)(7) and 402.15 (b) and (c).

The Service declines to substitute "may" for "shall" in describing the Federal agency's responsibilities in paragraph (a), as requested by one commenter. Federal agencies have an obligation under section 7(a)(2) of the Act to determine whether their actions may affect listed species and whether formal consultation is required under these regulations. However, the Service does not intend to mandate the timing of this review, which is solely at the discretion of the Federal agency. Early review of its actions is to the advantage of the Federal agency so that compliance with section 7 can be attained without undue delays to its action.

Paragraph (a) also includes a provision for the Director to request a Federal agency to enter into consultation. Two commenters asked that the final rule empower the Director to require a Federal agency to consult. Although the Service will, when appropriate, request consultation on particular Federal actions, it lacks the authority to require the initiation of consultation. The determination of possible effects is the Federal agency's responsibility. The Federal agency has the ultimate duty to ensure that its actions are not likely to jeopardize listed species or adversely modify critical habitat. The Federal agency makes the final decision on whether consultation is required, and it likewise bears the risk of an erroneous decision.

The last sentence of proposed § 402.15(a), dealing with Service assistance to Federal agencies, has been deleted as it is more appropriately addressed in the preamble. The Federal agency may obtain information and advice from the Service, but this is a supplement to, and not a substitute for, formal consultation. The Service believes that there should be a continuous dialogue between the Service and the Federal agency involving the exchange of information and assistance as part of the formal consultation.

Unless a Federal agency chooses to avail itself of the exceptions in paragraph (b), it must initiate formal consultation if its proposed action "may affect" listed species or critical habitat. Any possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement, as suggested

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by one commenter. However, although informal consultation is not required, a Federal agency may use that process and/or the biological assessment process to remove an action that "is not likely to adversely affect" listed species or critical habitat from the formal consultation requirement.

Proposed paragraph (c), a "no adverse effect" exception, was attacked as weakening the Act. One commenter remarked that this procedure unrealistically allows Federal agencies to determine the presence of a "detrimental effect," through informal consultation, when the precise objective of formal consultation is to reach that same goal. The Service does not agree, because formal consultation is conducted to determine if an action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Adverse effects may exist without constituting jeopardy. However, the Service has changed the trigger for formal consultation to "may affect" with certain exceptions contained in paragraph (b).

The exceptions in paragraph (b) are derived from the "will not adversely affect" exception in proposed §402.15(c) and from the confirmation of the preliminary biological opinion in proposed §402.15(b). The first exception is modified to "not likely to adversely affect" to make the biological assessment provisions compatible with the formal consultation provisions. Under section 7(c) of the Act, a biological assessment is completed to facilitate compliance with the consultation provisions of section 7(a)(2) by identifying whether any species or critical habitat is "likely to be affected." If the Federal agency determines, with Service concurrence, that its action is not likely to adversely affect any listed species or critical habitat, there is no need for formal consultation.

Imposing the time delays and information responsibilities of formal consultation on such actions would not provide any additional protection to listed species or critical habitat and may discourage interagency cooperation. Regulatory flexibility is appropriate here to eliminate undue burdens. By requiring the Service's "written concurrence" with a "not likely to adversely affect" finding as a prerequisite to invoking the exception to formal consultation, the Service believes it has retained adequate review authority through informal consultation. If the information made available during informal consultation is not sufficient to make this determination, formal consultation is required. The case of *Romero-Barcelo* v. *Brown*, 643 F.2d 835 (1st Cir. 1981), *rev'd on other grounds sub nom. Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1982), does not preclude this change. That decision interpreted the 1978 rule but did not set a minimum threshold for initiation of formal consultation under the Act. Paragraphs (a) and (b), as adopted, are totally within the statutory authority of the Service.

The other exception to the general formal consultation requirement is the confirmation of a preliminary biological opinion as the final biological opinion. If early consultation takes place, the Service will issue a preliminary biological opinion. When the prospective applicant applies for a Federal permit or license, the Federal agency may request that the Service confirm the preliminary biological opinion as the final biological opinion that would have been issued after formal consultation. If the Service reviews the proposed action and finds no significant changes in the action as planned and no significant changes in the information used during early consultation, such a confirmation will be issued. Consultation is required if the preliminary biological opinion is not confirmed.

Paragraph (c) of §402.14 specifies the required contents of a request for formal consultation. This paragraph is adopted substantially from proposed §§402.12(b)(7) and 402.15(d).

According to one commenter, the information requirements of paragraph (c), which apply to all actions involved in formal consultation, lack statutory authority. The Service cites the obligation to use the "best scientific and commercial data available" and the overall responsibility to consult in good faith under section 7(a)(2) as ample authority for the information requirements. Proposed item (vi), requiring a list of Federal agencies that have jurisdiction in the action area and how they may be affected, is too broad since much of this information would be unrelated to the consultation. Other Federal actions that are interrelated or interdependent would be discussed along with the effects of the action. Therefore, this item is not included in the final rule. The remaining items are essential in determining the parameters of the action, the extent, duration, and severity of its impacts, and the effects of other actions in the action area. The Service retains these essential information requirements, although it has noted under subparagraph (5) that only "relevant" reports, including environmental impact statements, etc., need be supplied, because consultations will in most cases be completed prior to the production of final NEPA documentation for the subject action.

The concluding sentences of paragraph (c) permit Federal agencies, subject to the Director's approval, to tailor their requests for consultation to a particular segment of a comprehensive plan, so long as the effects of the action as a whole are considered. To clarify this passage, as requested by one commenter, the Service uses the example of the management, pursuant to a comprehensive plan, of a National Wildlife Refuge that is inhabited by a listed species. Section 7 consultation may be undertaken on a segment of that management program, such as big-game hunting, and a biological opinion will be issued on that phase of the program only. However, in formulating its biological opinion, the Service must consider the effects, including indirect effects, of the action as a whole, and cumulative effects of unrelated management programs in reaching the conclusion of "jeopardy" or "no jeopardy." The concluding passage of paragraph (c) illustrates the flexibility inherent in the formal consultation process and the care with which the protections of section 7 are preserved.

Paragraph (d) of §402.14 repeats the required information standard of section 7(a)(2): "best scientific and commercial data available." This paragraph is adopted essentially without change from proposed §402.15(d)(2), except that, pursuant to public comment, the Service changed "biological information" to "scientific and commercial data" to bring the language of the regulation in line with the Act. One commenter suggested that the phrase "or which can be developed during the consultation process" be removed from this paragraph. The Service has modified the wording to state that the information referred to in this paragraph is information that can be obtained during the consultation. We believe that information could become available at any time during the consultation, and such information should be submitted to the Service for its consideration. The legislative history of the 1979 Amendments supports this provision. H.R. Conf. Rep. No. 697, 96th Cong., 1st Sess. 12 (1979). The Service is satisfied that this paragraph adequately mandates the use of the best available scientific and commercial data, requires Federal agencies to supply this data at any time during formal consultation, and recognizes that this information requirement is a Federal agency

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responsibility—not an obligation of the Service.

Paragraph (d) of § 402.14 also adopts a portion of § 402.15(d)(3) of the proposed rule that requires the Federal agency to provide any applicant with the opportunity to participate in formal consultations, including submitting information for consideration during the consultation. The remainder of proposed § 402.15(d)(3) was deleted because it duplicated other parts of the final rule.

Paragraph (e) of § 402.14 establishes the time period for conducting formal consultations and explains the process for extending the consultation period. The paragraph is adopted substantially as proposed in § 402.15(e), with certain technical, clarifying amendments.

The Amendments changed the timing requirement on the conclusion of formal consultation from the 60 days originally established by the 1978 rule to a maximum of 90 days or to such time periods as discussed below. If an applicant is involved, the Service and the Federal agency may mutually agree to extend consultation for up to 60 additional days without the consent of the applicant, provided that the Service submits to the applicant, before the close of the initial 90-day period a written statement setting forth (1) the reasons why a longer period is required, (2) the information that is required to complete the consultation, and (3) the estimated date on which the consultation will be completed. A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. The biological opinion must be delivered to the Federal agency and any applicant promptly after the conclusion of formal consultation (within 45 days).

One commenter suggested that a provision be added that would require the Service to issue a notice concluding formal consultation with a finding that it has sufficient information to prepare a biological opinion. The Service declines to adopt this comment. At the end of the 90-day period (unless extended), the parties to the consultation realize that the Service has but 45 days to deliver its biological opinion to the Federal agency and any applicant. A mandatory notice of "sufficient information" might be, in some cases, misleading by creating the impression that additional information or studies may not be advisable. The Service must develop its biological opinion based upon the best scientific and commercial data available regardless of the "sufficiency" of that data. Therefore, the suggested change does not accurately reflect the legal framework within which the Service must operate.

The Service has defined the statutory directive to issue biological opinions "promptly after" the conclusion of formal consultation as requiring the delivery of a biological opinion to the Federal agency and any applicant within 45 days. Several commenters agreed with this stipulated deadline as long as the applicant retains some control over extensions. Other commenters felt that the 45-day period was excessive, and they argued that the opinion drafting period should either be worked out with mutually-agreeable extensions or the opinion should be issued by the end of the consultation period. The Service retains the 45-day drafting period as consistent with the statutory requirement and as a necessary time period to further refine biological opinions after the conclusion of formal consultation.

One sentence has been added to paragraph (e) to acknowledge the ability of the Service and the Federal agency, where no applicant is involved, to extend consultation for a mutually-agreeable time period. This clarification satisfies the request of one commenter.

Paragraph (f) of § 402.14, which governs Service requests for additional information, is adopted from § 402.15(j)(1) of the proposed rule. The Service declines to rename this paragraph "extension of consultation" because that topic is generally covered in paragraph (e).

In some cases, the Service may determine that additional information would enhance the formulation of its biological opinion. To cover this situation, the final rule adopts the procedures discussed by Congress in the legislative history of the 1979 Amendments. S. Conf. Rep. No. 607, 96th Cong., 1st Sess. 12 (1979). When additional data is believed to be advantageous, the Service will request an extension of formal consultation. When the Service requests such an extension, it will identify the types of additional data sought for assisting consultation. The Service will, to the extent practicable, and within existing budgetary and personnel restrictions, provide assistance in planning studies, furnishing relevant data, and providing recommendations that may be necessary to obtain the additional data. The responsibility for conducting and funding any studies, however, belongs to the Federal agencies or the applicant and not to the Service.

The comments received on this paragraph covered a wide spectrum of opinion as to the breadth of the Service's authority to request additional data. Some commenters questioned the statutory authority of the Service under this provision, and they erroneously interpreted the Service's ability to *request* additional data as the authority to *require* an extension of formal consultation to obtain such data. Their position was that additional data was not a valid reason for seeking an extension of formal consultation and that additional data should only be sought when obtaining it would not delay the consultation and when the Service is willing to fund the studies. Another commenter went further, suggesting that the request for additional data be treated as an extraordinary measure that should be invoked "reluctantly and only on rare occasions." The commenter said that the Service should affirmatively state that existing data is presumed to be adequate and that the Service bears the burden of demonstrating inadequacy before seeking additional data.

On the other end of the spectrum, several commenters faulted the Service for not requiring an extension so that additional data could be obtained under this paragraph. Citing the Federal agency's statutory duty to use the "best scientific and commercial data available" and the decision in *Roosevelt Campobello International Park Commission* v. *EPA*, 684 F.2d 1041 (1st Cir. 1982) ("*Pittston* case"), these commenters noted that Federal agencies are required by section 7(a)(2) to do "all that [is] practicable" to develop information for the consultation. *Pittston* case, *supra*. According to the commenters, the proposed rule gave too much discretion to Federal agencies in controlling the information used in the consultation process.

The Service adopts the proposed rule because it recognizes the need for an opportunity to request additional data while deferring to the Congressional intent that consultation have a definite end point. Additional data may be requested by the Service, but the Service is not relieved of its duty to issue a biological opinion unless appropriate time extensions are obtained under paragraph (e).

However, Federal agencies and applicants are cautioned that they bear the burden under section 7(a)(2) to show that they have obtained the best available scientific and commercial data. This is not the Service's burden or obligation, but the Service does have the responsibility to alert the Federal agency and any applicant of areas where additional data would provide a better information base from which to

formulate a biological opinion. This advice from the Service is intended to help the Federal agency to better satisfy its duty to *insure* that its action is not likely to jeopardize listed species or adversely modify critical habitat.

A Service request for additional data will not be used as a vehicle for burdening applicants with unnecessary studies and inordinate delays, as feared by one commenter. As in the *Pittston* case, these requests will be limited to readily obtainable data that would assist the Service in formulating its biological opinion. In paragraph (f), as in *Pittston*, a distinction must be made between requests for special research projects and requests for routine, customary data collection activities. Moreover, paragraph (f) does not take the final decision regarding the acquisition of additional data away from the Federal agency. The agency still has the discretion to reject the Service's request for additional data provided it is not arbitrary or capricious in doing so. The paragraph has been clarified to state that the Federal agency, when collecting additional data, shall do so to the extent practicable and within the timeframe of the agreed upon extension.

The Service, in requesting additional data, will not comment as to the overall adequacy of the Federal agency's data. It is the agency's burden to obtain credible data. The Service's request for additional data, just as the Federal agency's inability to complete any agreed upon collection of data, should not be interpreted as evidence that the Federal agency has failed to meet the information standard of section 7(a)(2); it would merely represent the Service's belief that the additional data would improve the consultation data base so that it could issue the best biological opinion possible. The Service, therefore, has added language to the final rule to clarify this provision.

As discussed above, if an extension is not agreed to in accordance with paragraph (e), the Service shall issue a biological opinion based on the best scientific and commercial data made available during the consultation. The Conference Report to the 1979 Amendments states that in this situation, the Federal agency has a continuing responsibility to make a reasonable effort to develop additional data. H.R. Conf. Rep. No. 697, 96th Cong., 2d Sess. 12 (1979). By initiating informal consultation with the Service at an early stage of the development of a proposed action, the Federal agency would, in most cases, minimize the need to request an extension of formal consultation because of a lack of data.

In formulating its biological opinion, the Service must provide the "benefit of the doubt" to the species concerned, H.R. Conf. Rep. No. 697, *supra*, at 12. In addition, a biological opinion must be developed within the consultation timeframe based upon the best scientific and commercial data available. Though requested by several commenters, the Service is not authorized to condition its "no jeopardy" opinions with "safeguards" or to issue "may jeopardize" opinions in retaliation for an agency refusal to extend consultation or to develop additional data.

The Service was requested to publish availability notices for biological opinions to facilitate public participation in the conservation of listed species. For the reasons noted previously in response to a general comment, the Service declines to impose such a requirement on itself as an amendment to paragraph (f).

Paragraph (g) of §402.14, which sets out the Service's responsibilities during formal consultation, is adopted from proposed §402.15(f) with only minor changes to clarify the Service's responsibilities. The public comments concerning paragraph (g) focused on the fifth item: the responsibility to discuss the availability of reasonable and prudent alternatives. The Service is committed to working closely with Federal agencies and any applicants in the development of reasonable and prudent alternatives. However, the Service is unable to agree that a draft reasonable and prudent alternative should be excluded from the biological opinion if the Federal agency disagrees as to its reasonableness, as suggested by one commenter. The Service will, in most cases, defer to the Federal agency's expertise and judgment as to the feasibility of an alternative. Nevertheless, in those instances where the Service disagrees with a Federal agency's assessment of the reasonableness of its alternatives, the Service must reserve the right to include those alternatives in the biological opinion if it determines that they are "reasonable and prudent" according to the standards set out in the definition in §402.02; the Service cannot abdicate its ultimate duty to formulate these alternatives by giving Federal agencies control over the content of a biological opinion.

Paragraph (g) provides for Federal agency and applicant review of the basis for any finding contained in draft biological opinions, including the availability of reasonable and prudent alternatives. Four commenters requested that the final rule clarify whether an applicant was entitled to receive a copy of the draft biological opinion. The Service believes that the applicant should participate in the review and should receive a copy of the draft opinion from the Federal agency. The final rule includes this provision.

The release of draft opinions to Federal agencies and any applicants (through the Federal agency) facilitates a more meaningful exchange of information. Review of draft opinions may result in the development and submission of additional data, and the preparation of more thorough biological opinions. Two commenters opposed the release of draft biological opinions. Although they were supportive of open communication and mediation between the Service and the Federal agency during the consultation time period, the commenters opposed Federal agency review of draft opinions because agencies could bring pressure on the Service to modify a particular reasonable and prudent alternative or to convert the opinion's conclusion from "jeopardy" to "no jeopardy." If there were any discussions needed regarding the reasonable and prudent alternatives, noted the commenters, this could be done in "further discussion" after the issuance of the biological opinion. The Service disagrees that Federal agency review of draft biological opinions will result in "rewritten" biological opinions, unless valid biological reasons mandate a change. Federal agency review of draft opinions helps ensure the technical accuracy of the opinion, and may save time and resources by resolving these issues early. The Service believes that the availability of draft biological opinions is a meaningful process and has retained it in the final rule. As noted previously in the "Definitions" section, "further discussion" has been deleted from this rule. Thus, through the discussions between the Service and the Federal agency and any applicant during formal consultation and the provision to review draft biological opinions, the exchange of information for the development of reasonable and prudent alternatives is sufficient.

The proposed rule stated that the 45-day deadline for delivery of the final biological opinion would be suspended while the Federal agency retained the draft opinion. Several commenters complained that such a suspension would violate the statutory deadlines for concluding formal consultation and that the applicant would be powerless to force an end to the consultation. Although the proposed rule provided

that, "[i]f the draft biological opinion is not returned to the Service within a reasonable period of time, the Service will issue a final biological opinion," the Service agrees that the meaning of "a reasonable period of time" requires clarification. Therefore, to accommodate these comments, the Service now requires the Federal agency to secure the applicant's written consent to an extension for a specified time period if the 45-day deadline is to be suspended while the draft opinion is under review. If no extension is agreed to, the biological opinion will be issued within 45 days of the conclusion of formal consultation.

Another commenter suggested that the Service be required to deliver its biological opinion within the Federal agency's NEPA timeframe so that the biological opinion can be included without delaying the release of the agency's NEPA document. The Service will attempt to coordinate all environmental reviews with the consultation. However, special timing problems under other Federal statutes, or failure to enter into the consultation process early in the planning stage of an action, is not a justification for altering the required timeframe established under the Act. If a particular Federal agency needs special procedures to handle its consultation responsibilities, the Service urges the development of counterpart regulations under § 402.04.

Paragraph (g) has also been modified to reflect that the Service, in formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant including any actions taken prior to the initiation of consultation.

Paragraph (h) of § 402.14, which deals with the contents of a biological opinion, is adopted with minor, technical corrections from proposed § 402.15 (g)-(h). The final rule distinguishes that information or material which will be included in a biological opinion from that which will be provided with a biological opinion.

The biological opinion will include: (1) a summary of the information on which the opinion is based; (2) a detailed discussion of the effects of the action on listed species or critical habitat; and (3) the Service's opinion as to whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. The biological opinion will conclude that either: (1) the action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat (a "no jeopardy" biological opinion), or (2) the action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat (a "jeopardy" biological opinion).

If a "jeopardy" biological opinion is issued, the Service must identify and include reasonable and prudent alternatives, if any, that will avoid jeopardy and that the Federal agency or applicant can implement. If the Service is unable to develop reasonable and prudent alternatives, it will indicate that, to the best of its knowledge, there are no such alternatives that would satisfy the standard of section 7(a)(2).

Paragraph (i) of § 402.14, which governs incidental taking under section 7(b)(4) of the Act, is adopted essentially as proposed in § 402.19. This paragraph is included in the formal consultation section of the final rule because of the direct relationship between final biological opinions and incidental take statements.

The 1982 Amendments changed section 7(b) to include provisions concerning incidental taking of species. The new provisions included in sections 7(b)(4) and 7(o)(2) of the Act are designed to resolve the situation where a Federal agency or an applicant has been advised, through a biological opinion, that the proposed action or the adoption of the reasonable and prudent alternative(s), will not violate section 7(a)(2) of the Act, but the proposed action (or adopted alternative) will result in taking individuals of a listed species incidental to the action. The new provision states that, if the action complies with specified terms and conditions, the resulting incidental take will not be a violation of any "taking" prohibitions established by section 4(d) or 9(a)(1) of the Act.

As noted in the public comments, the availability of an "incidental" taking exemption through the section 7 consultation process is a welcome clarification made by the 1982 Amendments. However, many commenters requested additional guidance on this subject, and several felt that the proposed rule was cumbersome and burdensome. The Service believes that the following discussion will clarify the incidental take provision and explain the incentives for compliance with sections 7(a)(2) and 7(b)(4) of the Act.

If an agency action receives a "no jeopardy" biological opinion, or if the Federal agency adopts any reasonable and prudent alternative provided in a "jeopardy" biological opinion, then the action may proceed in compliance with section 7. An incidental take statement will be provided with the biological opinion when the activity may incidentally take individuals of a listed species but not so many as to jeopardize their continued existence. If the action proceeds in compliance with the terms and conditions of the incidental take statement, then any resulting incidental takings are exempt from the prohibitions of section 4(d) or 9 of the Act. No permit is required of the Federal agency or any applicant in carrying out the action, as one commenter contended. The biological opinion, plus the incidental take statement, operate as an exemption under section 7(o)(2) of the Act. However, this exemption is limited to actions taken by the Federal agency or applicant that comply with the terms and conditions specified in the incidental take statement. Compliance with these terms and conditions is mandatory to qualify for the exemption from section 4(d) or 9 of the Act. "Actions that are not in compliance with the specified measures . . . remain subject to the prohibition against takings that is contained in section 9." S. Rep. No. 418, 97th Cong., 2d Sess. 21 (1982). Therefore, the Service cannot make these terms discretionary, as urged by one commenter.

Paragraph (i)(1) states that, where incidental takings may occur, the Service will provide with the biological opinion to the Federal agency and applicant a written statement that: (i) specifies the impact, *i.e.*, amount or extent, of such anticipated incidental take of the species that does not violate section 7(a)(2), (ii) specifies those reasonable and prudent measures necessary or appropriate to minimize such impact, (iii) sets forth the terms and conditions, including, but not limited to, reporting requirements, that must be complied with by the Federal agency or any applicant in order to implement the reasonable and prudent measures specified under (ii) above, and (iv) specifies the procedures to be used to handle or dispose of any individuals of a species actually taken. Several comments were received on these elements of the incidental take statement.

Because, in some cases, exact numerical limits on the amount of permissible incidental taking will be difficult to determine, the Service may, in accordance with (i)(1)(i), specify the extent of anticipated take that will not violate section 7(a)(2) of the Act. The impact of a particular action may only

be predictable in terms of the extent of land or marine area that may be affected. Precise numbers of individuals that may be taken are preferable to descriptions of the extent of disruption and will be provided when they can be computed. However, the Service reserves the flexibility in the rule so that the most appropriate standard for an individual consultation can be used. The Service declines to endorse the use of numerical amounts in all cases over the use of descriptions of extent, because for some species loss of habitat resulting in death or injury to individuals may be more deleterious than the direct loss of a certain number of individuals. Likewise, the Service declines to incorporate into the final rule the comment that would focus take levels on population numbers and recovery plan guidelines, if available. One commenter suggested that two figures or levels be specified: "the expected and the acceptable amount or extent" of take. This approach offers the benefit of giving a "caution" signal to Federal agencies or applicants as they approach a possible problem with the incidental takings resulting from the action. Steps could be taken to correct the course of the action before the threshold of reinitiation (level of maximum anticipated take) is exceeded. The Service recognizes the merit of this approach but does not require that it be followed under the final rule because it may not be appropriate for all Federal actions.

Paragraph (i)(1)(ii) states that the incidental take statement shall specify those reasonable and prudent measures necessary to minimize the level of incidental take. For the reasons discussed under the definition of reasonable and prudent measures, the Service has added a new paragraph (i)(2) to the final rule to clarify that reasonable and prudent measures may only involve minor changes that do not alter the basic design, location, duration, or timing of the action. Should the Service believe that the way to minimize the incidental takings is through research, an explanation of how such research will accomplish this will be included. Any research-related reasonable and prudent measure shall be subject to the limitations in paragraph (i)(2).

Paragraph (i)(1)(iii) provides that reporting requirements must be included in the terms and conditions of an incidental take statement. As explained in paragraph (i)(3), these reporting requirements will be tailored to the nature of the particular Federal action and will, to the extent possible, be limited to existing reporting requirements.

Under 50 CFR 13.45 (FWS) and 222.23(d) (NMFS), there are provisions concerning reporting requirements for any taking of threatened or endangered species. These reporting requirements are not limited to annual reports, and may vary in accordance with the particular needs of the species as set forth in the incidental take statement. Congress did not prohibit the imposition of new reporting requirements, contrary to the assertion of one commenter.

Another commenter said that the disposal procedures in item (i)(1)(iv) should refer to "specimens" taken, not to species taken. The Service has accommodated the commenter's concern by inserting "individuals of a species" in item (iv).

Paragraph (i)(4) requires the Federal agency or the applicant to immediately request reinitiation of formal consultation if the specified amount or extent of incidental take is exceeded. One commenter argued that the Service is allowing the "jeopardy" ceiling to be exceeded in (i)(4). The Service disagrees; however, the Service agrees that the amount or extent of take should not be set at the threshold of likely jeopardy. If the establishment of such a high taking level were necessary to cover all impacts of a proposed action, it is questionable whether the issuance of a "no jeopardy" opinion is appropriate. It is not expected that the level of incidental take anticipated for most "no jeopardy" actions would come close to the section 7(a)(2) barrier.

Congress recognized this in the House Report to the 1982 Amendments:

> If the specified impact on the species is exceeded, the Committee expects that the Federal agency or permittee or licensee will immediately reinitiate consultation since the level of taking exceeds the impact specified in the initial section 7(b)(4) statement. In the interim period between the initiation and completion of the new consultation, the Committee would not expect the Federal agency or permittee or licensee to cease all operations unless it was clear that the impact of the additional taking would cause an irreversible and adverse impact on the species.

H.R. Rep. No. 567, 97th Cong., 2d Sess. 27 (1982). Exceeding the level of anticipated taking does not, by itself, require the stopping of an ongoing action during reinitiation of consultation. The Federal agency must make this ultimate decision, taking into consideration the prohibitions of sections 7(a)(2) and 7(d). Further, the Service will enforce the taking prohibitions of section 4(d) or 9 if the continuation of an action, after the anticipated level of incidental take has been reached, results in additional takings of listed species.

This provision for incidental take in no way affects a Federal agency's responsibility under section 7(a)(2) to ensure that its action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. The Service agrees with one commenter that the basis for the conclusion that incidental take will not violate section 7(a)(2) should be included with the biological opinion.

Paragraph (j) specifies that the Service may provide any conservation recommendations with the biological opinion. Several commenters objected to the inclusion of conservation recommendations in the biological opinion, and questioned whether these recommendations were to have binding force. The comment submitted by the House Committee summarized these concerns:

> While the proposed regulations conform to the statute regarding the recommending of "reasonable and prudent alternatives" only where jeopardy is found, they also inject a totally new concept referred to as "conservation recommendations." Although we do not argue with the appropriateness of wildlife agencies recommending measures that could be taken to lessen a project's impact on endangered or threatened species, it should be made clear in the regulations that failure to abide by these recommendations does not result in a violation of section 7(a)(2) of the Act. In addition, while the language of section 7(a)(1) does direct all Federal agencies to "utilize their authorities in furtherance of the purposes of [the Act] by carrying out programs for the conservation of endangered species and threatened species", we do not believe that it was intended that section 7(a)(1) require developmental agency actions to be treated as conservation programs for endangered or threatened species. We also do not believe that all of the conservation recommendations of the Secretary have to be followed for this requirement to be met. Such an interpretation would render the much debated provisions of section 7(a)(2) redundant and essentially meaningless and bring about endless litigation.
>
> Accordingly, we suggest that any conservation recommendations be transmitted to action agencies separate from biological opinions and that the regulations state plainly that failure to accept or implement the recommendations does not constitute a violation of section 7 of the Act.

The Service agrees with the Committee's comments and has amended the proposed rule accordingly. Discretionary conservation recommendations will be provided with the biological opinion as a separate statement rather than as an integral part

of the opinion. In this rule, conservation recommendations [402.14(j)] are discussed separately from biological opinions [402.14(h)]. A sentence has been added at the conclusion of paragraph (j) to emphasize the advisory, non-binding nature of conservation recommendations.

Paragraph (k) of § 402.14, which deals with incremental steps, is adopted with minor, technical changes from proposed § 402.15(j)(2). Paragraph (k) applies, at the option of the Federal agency, in situations where a statute authorizes the Federal action to be taken in incremental steps. Such circumstances existed in *North Slope Borough* v. *Andrus*, 642 F.2d 589 (D.C. Cir. 1980), involving development of oil and gas resources on the OCS and possible impacts to the bowhead whale. In view of this decision, these regulations provide that a Federal agency may proceed with incremental steps toward completion of the entire action if: (1) the biological opinion does not conclude that the incremental step would violate section 7(a)(2); (2) the Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step; (3) the Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action; (4) the incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and (5) there is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

In response to one comment, the Service acknowledges that the incremental step process can only be invoked at the option of the Federal agency, regardless of the Service's preference. If the Federal agency chooses not to use the incremental step process, the Service must render its biological opinion for the entire action.

Several commenters thought that this provision should be deleted. Some thought the subject should be handled through counterpart regulations or limited strictly to Outer Continental Shelf Lands Act cases. Another commenter stated that the incremental step approach is ill-advised because it is difficult to halt a project at its final stage after substantial resources have been invested. Finally, two commenters criticized the approach as a vehicle granting the Service veto power at any stage of the Federal action.

Paragraph (k) is retained in the final rule for several reasons. First, the Service adopts paragraph (k) because it provides a viable consultation approach sanctioned by the court in *North Slope Borough* v. *Andrus, supra*. The Service has clarified the final rule to show that it will not deprive a Federal agency of the opportunity to consult on incremental steps if requested. Second, the risk of section 7(a)(2) and 7(d) noncompliance should not be diminished because the incremental step approach is used. Monetary investments or other actions that do not foreclose the adoption of reasonable and prudent alternatives do not violate section 7(d). If a "jeopardy" opinion is issued at any step of the overall action, a prompt remedy can be sought through the exemption procedure. Third, consulting in incremental steps can be a valuable tool for developing information as an action progresses.

Oil and gas development on the OCS is a multistaged, long term action that provides a good example of the utility of an incremental step consultation. The Federal action occurs in discrete stages: the lease sale, exploration activities, and development/production activities. Any analysis of the impacts of development/production would be mere speculation without knowing what tracts will be leased and without the information on the extent of the petroleum reserves discovered during the exploration phase. As the scope and location of the ultimate action is further refined, the Federal agency will have the opportunity to conduct studies designed to determine the effects of that particular action in that particular area.

The Service is sympathetic to the commenter's concern that applicants might face an arduous series of consultations under paragraph (k), whereas a prompt consultation on the entire action would avoid a series of reviews by the Service. The Service reminds applicants that they may, in appropriate instances, avail themselves of the early consultation procedure to obtain a preapplication review of the remaining steps of the Federal action.

Under paragraph (k), biological opinions concluding "no jeopardy," or Service concurrence letters finding that a step "is not likely to adversely affect," must eventually cover each step of the incremental process. This does not mean that separate opinions must be issued for each step—several steps may be covered in one opinion (*e.g.*, OCS leasing and exploration activities)—but instead that each step must eventually satisfy section 7(a)(2) of the Act. A "jeopardy" opinion issued at any stage not only applies to that step but to the entire project as well. Once a "jeopardy" opinion is issued (unless the Federal agency adopts a reasonable and prudent alternative provided by the Service), paragraph (k) is inapplicable and the ordinary consultation process applies, allowing access to the exemption process. The commenter that contended that this approach is tantamount to a usurpation of Federal agency statutory authority ignores the fact that this process is at the option of the Federal agency and that the net effect of the Service's action is to cause the consultation to revert to a treatment of the action as a whole. The Federal agency may disagree with the Service's "jeopardy" finding, but it cannot continue to consult on an incremental basis on remaining steps in the action.

One commenter insisted that an action can be halted only if new information that was not previously known becomes available during a later stage of the incremental step consultation. However, the Service's responsibility to determine "jeopardy" or "no jeopardy" places no weight on when, where, or how data that is of compelling force in its analysis were developed. The Service cannot ignore data and permit a listed species to become jeopardized because someone "missed" a piece of information during an earlier step of the consultation. One of the criteria for reinitiation of formal consultation is whether new information reveals effects of the action that may affect a listed species or critical habitat in a manner or to an extent not previously considered. Therefore, incremental step consultations are not the only consultations subjected to this requirement.

Finally, one commenter objected to the requirement for obtaining sufficient data, noting an alleged absence of statutory authority. Again, paragraph (k) is not a creature of statute, but instead was developed so that consultations could be initiated and focused on a step-by-step review of segmented Federal actions—especially those where, in the absence of additional information, the final determination of "likely jeopardy" for the entire action would be highly speculative if consultation were not limited to the initial step or steps. The development of sufficient information is crucial to the ultimate success of the incremental step process, and, therefore, cannot be eliminated from the rule. The Federal agency must have sufficient information to show that its action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Section 402.14(l) covers the termination of formal consultation. Adopted from proposed § 402.15(l)(2)–(4), paragraph (l) was retained in the section

on formal consultation because §402.14 is the primary mandatory procedure of Part 402.

The proposed rule provided that consultation terminated with the issuance of a "no jeopardy" opinion unless further discussion took place, and, if a "jeopardy" opinion was issued, consultation terminated with the Service's receipt of the Federal agency's decision on the action. This notice requirement was criticized by several commenters as unnecessary and as extending consultation beyond the legal timeframe. As discussed under the "Definitions" section above, further discussion has been deleted as a formal step in the consultation process. Further, to accommodate the concerns, consultation terminates with the issuance of the biological opinion, whether "jeopardy" or "no jeopardy." However, the Service believes that the Federal agency notice of final action with respect to "jeopardy" opinions represents a minimal burden and has retained it under §402.15—"Responsibilities of Federal agency following issuance of a biological opinion." The Service agrees that a copy of the NEPA record of decision would meet the notice provisions of §402.15(b); the Service disagrees that this approach causes problems with NEPA compliance.

Finally, one commenter suggested that written notice be required to terminate consultation if a Federal agency or applicant decides to cancel plans for the action that is the subject of the consultation. The Service agrees that a written notice of termination is preferred, and has adopted the commenter's suggestion in paragraph (l)(2).

Section 402.15 Responsibilities of Federal Agency Following Issuance of a Biological Opinion.

Following the receipt of the Service's biological opinion, the Federal agency will make its final decision on the action. Section 402.15 describes the steps that the Federal agency should take after consultation is concluded. Paragraphs (a) and (c) of this section are adopted substantially without change from proposed §402.17. Paragraph (b) is adopted from proposed §402.15(i)(3) (last sentence).

Several commenters asked that the Federal agency be required to provide a statement of its reasons if it has chosen to disregard the Service's biological opinion. The Service declines to implement this request, because it remains the responsibility of each Federal agency to insure that it is in compliance with section 7(a)(2) and that it has established an administrative record for a given activity which demonstrates such compliance.

Federal courts have accorded Service biological opinions great deference. It, therefore, is incumbent upon a Federal agency to articulate in its administrative record its reasons for disagreeing with the conclusions of a biological opinion. But this is a matter which is primarily controlled under the provisions and judicial interpretations of the Administrative Procedure Act, not these regulations. Thus, the requested modification would add nothing that is not already required as a matter of administrative law.

Paragraph (c) points out the availability of an exemption process if the Federal agency determines that its proposed action cannot comply with section 7(a)(2). Although not covered in §402.15, the applicant may also pursue an exemption if it receives a final denial of its application as a result of a "jeopardy" biological opinion. The Service disagrees with one commenter that the applicant may seek an exemption if the Federal agency issues the permit or license with conditions related to section 7 considerations. The Act requires a final agency denial, and the issuance of a "jeopardy" biological opinion on the action, as predicates for an applicant's entry into the exemption process. See sections 3(12) and 7(g)(1) of the Act.

Section 402.16 Reinitiation of Formal Consultation.

Reinitiation of formal consultation is required in certain instances as specified in §402.16. The reinitiation requirement applies only to actions that remain subject to some Federal involvement or control. In the case where a permit or license had been granted, reinitiation would not be appropriate unless the permitting or licensing agency retained jurisdiction over the matter under the terms of the permit or license or as otherwise authorized by law.

In response to one comment, the Service notes its lack of authority to require Federal agencies to reinitiate consultation if they choose not to do so. Nevertheless, the Service shall request reinitiation when it believes that any condition described in this section applies.

Pursuant to several public comments, several minor changes have been made to §402.16 (proposed §402.18). Proposed paragraph (a), dealing with nonconfirmation of preliminary biological opinions, was deleted since it is more properly covered in the discussion of early consultation. The standard for reinitiation on incidental take statements is clarified in new paragraph (a). Paragraph (c) is clarified to show that changes to the action that do not cause effects different from or additional to those considered in the biological opinion will not require reinitiation of formal consultation.

Summary

The Amendments made significant changes in the consultation requirements of section 7, and the Service believes that a consistent response by the Federal agencies to those Amendments, as implemented by this final rule, will facilitate successful compliance with section 7 of the Act. The Service believes that these regulations will serve as an effective tool for the early resolution of potential conflicts involving listed species.

The primary authors of this final rule are Michael Young and Nancy Sweeney, Department of the Interior; Patricia Carter, Patricia Montanio, and Michael Gosliner, Department of Commerce.

The Department of the Interior, as lead agency in the development of these regulations, has prepared an environmental assessment in conjunction with this rulemaking. On the basis of the environmental assessment, it has been determined that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508). Therefore, an environmental impact statement need not be prepared. These procedural regulations simply provide a uniform approach for consultation required by section 7 of the Act. Compliance with the procedures in these regulations will not have any significant, direct, or indirect adverse environmental impact. It also has been determined that these regulations do not constitute major rules as defined in Executive Order 12291. The Department of the Interior has certified, under the terms of the Regulatory Flexibility Act (5 U.S.C. 601), that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations are directed at Federal actions. The costs to small entities are those involved with timing and data gathering, if requested by the Federal agency. Even if the costs were passed on, the analysis under the Regulatory Flexibility Act has concluded that they are not substantial. The Department has determined that these rules do not contain "collection of information" or recordkeeping

requirements as defined by the Paperwork Reduction Act. The analyses under Executive Order 12291; the Regulatory Flexibility Act, and NEPA are available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above.

List of Subjects in 50 CFR Part 402

Endangered and threatened wildlife, Fish, Intergovernmental relations, Plants (agriculture).

Regulation Promulgation

Accordingly, the Service revises 50 CFR Part 402 to read as follows:

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

Subpart A—General

Sec.

402.01 Scope.
402.02 Definitions.
402.03 Applicability.
402.04 Counterpart regulations.
402.05 Emergencies.
402.06 Coordination with other environmental reviews.
402.07 Designation of lead agency.
402.08 Designation of non-Federal representative.
402.09 Irreversible or irretrievable commitment of resources.

Subpart B—Consultation Procedures

402.10 Conference on proposed species or proposed critical habitat.
402.11 Early consultation.
402.12 Biological assessment.
402.13 Informal consultation.
402.14 Formal consultation.
402.15 Responsibilities of Federal agency following issuance of a biological opinion.
402.16 Reinitiation of formal consultation.

Authority: 16 U.S.C. 1531 *et seq.*

Subpart A—General

§ 402.01 Scope.

(a) This Part interprets and implements sections 7(a)–(d) [16 U.S.C. 1536(a)–(d)] of the Endangered Species Act of 1973, as amended ("Act"). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical ("critical habitat"). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR Parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)–(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR Part 451, and regulations governing the exemption process are found at 50 CFR Parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR Part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

§ 402.02 Definitions.

"Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

"Action" means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

"Applicant" refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

"Biological assessment" refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

"Biological opinion" is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

"Conference" is a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

"Conservation recommendations" are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

"Critical habitat" refers to an area designated as critical habitat listed in 50 CFR Parts 17 or 226.

"Cumulative effects" are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

"Designated non-Federal representative" refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

"Destruction or adverse modification" means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

"Director" refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

"Early consultation" is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

"Effects of the action" refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

"Formal consultation" is a process between the Service and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

"Incidental take" refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

"Informal consultation" is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

"Jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

"Listed species" means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

"Major construction activity" is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].

"Preliminary biological opinion" refers to an opinion issued as a result of early consultation.

"Proposed critical habitat" means habitat proposed in the Federal Register to be designated or revised as critical habitat under section 4 of the Act for any listed or proposed species.

"Proposed species" means any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed under section 4 of the Act.

"Reasonable and prudent alternatives" refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

"Reasonable and prudent measures" refer to those actions the Director believes necessary or appropriate to minimize the impacts, *i.e.*, amount or extent, of incidental take.

"Recovery" means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

"Service" means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

§402.03 Applicability.

Section 7 and the requirements of this Part apply to all actions in which there is discretionary Federal involvement or control.

§402.04 Counterpart regulations.

The consultation procedures set forth in this Part may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service. Such counterpart regulations shall be published in the Federal Register in proposed form and shall be subject to public comment for at least 60 days before final rules are published.

§402.05 Emergencies.

(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

§402.06 Coordination with other environmental reviews.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*, implemented at 40 CFR Parts 1500–1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its

obligations to comply with the procedures set forth in this Part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

§ 402.08 Designation of non-Federal representative.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

§ 402.09 Irreversible or irretrievable commitment of resources.

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

Subpart B—Consultation Procedures

§ 402.10 Conference on proposed species or proposed critical habitat.

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in § 402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

§ 402.11 Early consultation.

(a) *Purpose.* Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) *Request by prospective applicant.* If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) *Initiation of early consultation.* If the Federal agency receives the prospective applicant's certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in § 402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in § 402.12.

(d) *Procedures and responsibilities.* The procedures and responsibilities for early consultation are the same as outlined in § 402.14(c)–(j) for formal consultation, except that all references to the "applicant" shall be treated as the "prospective applicant" and all references to the "biological opinion" or the "opinion" shall be treated as the "preliminary biological opinion" for the purpose of this section.

(e) *Preliminary biological opinion.* The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) *Confirmation of preliminary biological opinion as final biological opinion.* A preliminary biological opinion may be confirmed as a

biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency's request, the Service shall either: (1) confirm that the preliminary biological opinion stands as a final biological opinion; or (2) if the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

§ 402.12 Biological assessments.

(a) *Purpose.* A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) *Preparation requirement.* (1) The procedures of this section are required for Federal actions that are "major construction activities"; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

(c) *Request for information.* The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

(d) *Director's response.* Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under § 402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

(e) *Verification of current accuracy of species list.* If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

(f) *Contents.* The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.

(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) *Incorporation by reference.* If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) *Permit requirements.* If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and Part 17 of this Title (with respect to species under the jurisdiction of the FWS) or Parts 220, 222, and 227 of this Title (with respect to species under the jurisdiction of the NMFS) is required.

(i) *Completion time.* The Federal agency or the designated non- Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(j) *Submission of biological assessment.* The Federal agency shall

submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment. At the option of the Federal agency, formal consultation may be initiated under §402.14(c) concurrently with the submission of the assessment.

(k) *Use of the biological assessment.* (1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under §402.14 or §402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.

(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

§ 402.14 Formal consultation.

(a) *Requirement for formal consultation.* Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under §402.12 or as a result of informal consultation with the Service under §402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under §402.11, is confirmed as the final biological opinion.

(c) *Initiation of formal consultation.* A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with §402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) *Responsibility to provide best scientific and commercial data available.* The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) *Duration and extension of formal consultation.* Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

(f) *Additional data.* When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to §402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service's request for additional data is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion

using the best scientific and commercial data available.

(g) *Service responsibilities.* Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.

(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service's review and evaluation conducted under paragraphs (g)(1)–(3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2). The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) *Biological opinions.* The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "jeopardy biological opinion"); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "no jeopardy" biological opinion). A "jeopardy" biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) *Incidental take.* (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under (ii) above; and

(iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45(FWS) and 222.23(d)(NMFS).

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinitiate consultation immediately.

(j) *Conservation recommendations.* The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) *Incremental steps.* When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and

(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(l) *Termination of consultation.* (1) Formal consultation is terminated with the issuance of the biological opinion.

(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.

(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated.

§402.15 Responsibilities of Federal agency following issuance of a biological opinion.

(a) Following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its section 7 obligations and the Service's biological opinion.

(b) If a jeopardy biological opinion is issued, the Federal agency shall notify the Service of its final decision on the action.

(c) If the Federal agency determines that it cannot comply with the requirements of section 7(a)(2) after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR Part 451.

§402.16 Reinitiation of formal consultation.

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

(a) If the amount or extent of taking specified in the incidental take statement is exceeded;

(b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;

(c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

(d) If a new species is listed or critical habitat designated that may be affected by the identified action.

Dated: December 12, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: January 30, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

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Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf Sulphur and Salt Leasing in the Gulf of Mexico; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Gulf of Mexico
Outer Continental Shelf (OCS) Sulphur and Salt Leasing
Request for Comments

Purpose of Notice

This Notice advises all interested parties of a possible sulphur and salt lease sale in the Gulf of Mexico and requests expressions of interest, information, and any general comments.

If it is decided to proceed with planning for a sale, the next step in the process is a Call for Information and Nominations which will be published in the Federal Register. Final delineation of the area for possible leasing would be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1331 et seq.).

Summary

The Secretary of the Interior is authorized under the OCSLA, as amended, to issue leases for oil, gas, sulphur, and other minerals on the OCS. The Department now seeks expressions of interest and information from industry, Federal Agencies, State and local governments, and other interested parties concerning a preliminary proposal to hold a sulphur offshore lease sale in the Gulf of Mexico. Comments are also requested on a preliminary proposal to lease salt to be used in the extraction of sulphur.

Sulphur leasing and mining are not new to the Gulf of Mexico Region. Sulphur was mined onshore from salt domes in the late 1800's, and the first underwater sulphur was mined from beneath Lake Peigneur, Louisiana; in 1932. The first Federal offshore sulphur leases were offered offshore Louisiana in 1954. A sulphur lease offering offshore Texas was held in 1965, and one other offering was conducted for offshore Louisiana in 1969. A total of 59 leases were awarded, only 4 of which are currently active. The first offshore sulphur mining operation began production in 1960 at Freeport Sulphur Company's Grand Isle Block 16 Mine in waters offshore Louisiana which are now under State jurisdiction. Freeport's second mine, the Caminada Mine, opened in 1968, but operations were suspended in 1969 because of decreased demand. This mine is located in Federal waters in Blocks 16, 17, 22, and 23, Grand Isle Area. Freeport Sulphur Company submitted a Unit Development Operations Coordination Document and Environmental Report in May 1985 for reactivation of the facility. The final Environmental Assessment (No. U-402) was completed in July 1985, and the plan was approved in August 1985. Work is currently underway to reactivate the Caminada Mine. Note that two salt leases, no longer active, were awarded in sales in 1960 and 1967.

The possibility of a Deep Stratigraphic Test Program is currently under consideration.

Description of Area

The general area covered by this Notice includes the central and western portions of the Gulf of Mexico between approximately 86° W. longitude on the east and approximately 97° W. longitude on the west and extends from the Federal-State boundary seaward to approximately 26° N. latitude. The entire area is offshore Texas, Louisiana, Mississippi, and Alabama and is divided into two general areas--the Central Gulf of Mexico and the Western Gulf of Mexico. However, only one sulphur and/or salt lease sale, which may involve parts of both areas, is being considered at this time.

The following list comprises the Leasing Maps and the OCS Official Protraction Diagrams used in identifying the two areas. (It is recognized that the areas appropriate for a sulphur lease sale will comprise a relatively small portion of the Central and Western Gulf.)

1. Central Gulf of Mexico

Leasing Maps

Outer Continental Shelf Leasing Maps - Louisiana Nos. 1 through 12.
This set of 27 maps sells for $17.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

NH 15-12	Ewing Bank	(approved December 2, 1976)
NH 16-4	Mobile	(approved April 19, 1983)
NH 16-7	Viosca Knoll	(approved December 2, 1976)
NH 16-10	Mississippi Canyon	(approved December 2, 1976)
NH 15-3	Green Canyon	(approved December 2, 1976)
NG 15-6	Walker Ridge	(approved December 2, 1976)
NG 16-1	Atwater Valley	(approved November 10, 1983)
NG 16-4	(No Name)	(approved December 2, 1976)

2. Western Gulf of Mexico

Leasing Maps

Outer Continental Shelf Leasing Maps - South Texas Nos. 1 through 4.
This set of seven maps sells for $5.00.

Outer Continental Shelf Leasing Maps - East Texas Nos. 5 through 8.
This set of nine maps sells for $7.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

NG 14-3	Corpus Christi	(approved January 27, 1976)
NG 14-6	Port Isabel	(approved January 27, 1976)
NG 15-1	East Breaks	(approved January 27, 1976)
NG 15-2	Garden Banks	(approved December 2, 1976)
NG 15-4	Alaminos Canyon	(approved March 26, 1976)
NG 15-5	Keathley Canyon	(approved December 2, 1976)

Official Protraction Diagrams and Leasing Maps, referred to above, may be purchased from the Public Information Unit, Gulf of Mexico Region (telephone (504) 838-0519). Address: P.O. Box 7944, Metairie, Louisiana 70010

Instructions to Commenters

Information is requested on the following specific items in relation to sulphur and/or salt leasing. Respondents are advised that the names of commenters become a matter of public record as do comments offered in response to this Notice. It is suggested that responses to the first item below which are considered proprietary by the respondent be clearly identified so that they may be safeguarded accordingly.

Comments are requested on the following specific items:

1. Areas which might be included in a Call for Information and Nominations if it is deemed appropriate to proceed.
2. Technology proposed for exploration and production.
3. Technology proposed for transporting production to shore.
4. Suggested lease conditions.
5. Suggested size of lease.
6. Suggested lease terms.
7. The limits of water depth and mine depth beyond which the Frasch process is technologically infeasible. The extent to which these depth limits are a function of economics. Specify appropriate water depth and mine depth limits as well as limitations as to distance from shore for sulphur leases.
8. The need for a prelease Deep Stratigraphic Test Program and the preferred timing for it to be accomplished, e.g., prior to the identification of the Federal proposal or the Notice of Sale.
9. Conflicts anticipated in the event a tract is leased with sulphur/salt rights and oil and gas rights; i.e., can two lessees coexist on the same tract without operational conflicts?
10. Data and information available concerning the current and projected sulphur market and the importance of potential OCS sulphur resources.

Schedule for Responses

Expressions of interest and other information must be received within 45 days after the publication of this Notice. This information should be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico Region, P.O. Box 7944, Metairie, Louisiana 70010. Envelopes should be marked "Comments on Sulphur/Salt Leasing."

As stated earlier in this Notice, if it is decided to proceed with planning for a sale, the next step in the process is a Call for Information and Nominations which will be published in the Federal Register. Final delineation of the area for possible leasing would be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the OCSLA, as amended. Subject to a decision to proceed with a sulphur/salt lease sale, a final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing and announcing the location, date, and time bids will be received and opened.

For further information, contact Harold Sieverding, Regional Supervisor, Leasing and Environment, at (504) 838-0755, or Chris Oynes, Chief, Offshore Leasing Management Division, at (202) 343-6906.

Because the adjacent States of Texas, Mississippi, and Louisiana have expressed an interest in leasing of sulphur in their submerged lands the Minerals Management Service has agreed to facilitate their initial information-gathering as to industry interest in such lands. Commenters who are interested in areas for sulphur and/or salt leasing or who wish to comment on the questions listed above for State lands offshore any of the above States are urged to reply directly to those States at the addresses shown below. Note that the protection for data considered proprietary may differ between the Federal Government and the States, and the Federal Government will not afford protection of information provided directly to any State.

Texas Addressee:

Dr. E. G. Wermund
Associate Director
Bureau of Economic Geology
P.O. Box X, University Station
Austin, Texas 78713

Mississippi Addressees:
(Send comments to both)

Dr. Richard L. Leard
Bureau of Marine Resources
P.O. Box 959
Long Beach, Mississippi 39560

Col. Charles Blalock
Executive Director
Department of Material Resources
P.O. Box 10385
Jackson, Mississippi 39205

Louisiana Addressee: Dr. Charles G. Groat
Louisiana Geological Survey
P.O. Box G, University Station
Louisiana State University
Baton Rouge, Louisiana 70893

If commenters wish, a copy of information provided to the States may be sent to the Regional Supervisor at the address stated above.

Director, [illegible]arals Management Service

Wm. D. Bettenberg

5/28/86
Date

[FR Doc. 86-12316 Filed 6-2-86; 8:45 am]
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federal register

Tuesday
June 3, 1986

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1987 Rates; Proposed Rule

Medicare Program; Changes to the DRG Classification System; Final Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-353-P]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1987 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Medicare regulations governing the inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system and also from certain recommendations of the Prospective Payment Assessment Commission. Included in these proposed changes is our plan for incorporating capital payments into the prospective payment rates.

In addition, we are proposing changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. These changes would be applicable to discharges occurring on or after October 1, 1986. We are also setting forth our proposal for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on July 3, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services. Attention: BERC-353-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.;

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-353-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Implementation of the Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs).

We published an interim final rule in the Federal Register (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections for that rule were issued on October 19, 1983 (48 FR 48467).

In particular, we identified the prospective payment rates to be used for the first year of the transition period. We issued a final rule (49 FR 234) on January 3, 1984 to make changes resulting from our consideration of public comments that were received in response to the interim final rule. Technical corrections for that rule were issued on June 1, 1984 (49 FR 23010).

As a result of our first year of experience with the prospective payment system and to accommodate changes resulting from the enactment of the Deficit Reduction Act of 1984 (Pub. L. 98-369) on July 18, 1984, we published a final rule on August 31, 1984 (49 FR 34728) that further revised the prospective payment regulations. In addition, we made changes in the methods, amounts, and factors necessary to implement the second year of the transition period. Technical corrections on that final rule were issued on October 15, 1984 (49 FR 40167).

On March 29, 1985, we published a final rule (50 FR 12740) that redesignated the prospective payment regulations under a new 42 CFR Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

Taking into consideration the recommendations made by the Prospective Payment Assessment Commission (ProPAC) under the authority of section 1886(d)(4)(D) of the Act, we published a final rule on September 3, 1985 (50 FR 35646) to implement the third year of the transition period. Technical corrections on that final rule were issued on October 28, 1985 (50 FR 43570). However, beginning on September 30, 1985, Congress enacted a series of statutory extensions of the hospital payment rates that were in effect on September 30, 1985. The effect was to delay implementation of the September 3, 1985 final rule with the result that the revised payment rates for hospitals covered by the prospective payment system, the rate-of-increase limits for hospitals excluded from that system, and the amendments to the limits on the count of interns and residents in § 412.118 (f)(2) and (f)(3), all of which were originally scheduled to be effective on October 1, 1985, were postponed through April 30, 1986. We notified the public about these extensions (50 FR 40651 and 49930, and 51 FR 4166) and, after the President signed the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) into law on April 7, 1986, we issued an interim final rule with comment period on May 6, 1986 (51 FR 16772), to effectuate new Federal fiscal year (FY) 1986 hospital payment rates effective for discharges occurring on or after May 1, 1986 for prospective payment hospitals and for cost reporting periods beginning on or after October 1, 1985 for hospitals excluded from the prospective payment system.

To implement sections 9101 through 9105, and 9112 of Pub. L. 99-272, we announced the following in the May 6, 1986 interim final rule:

- A one-half of one percent increase in Federal and hospital-specific payment rates and the rate-of-increase limits for inpatient hospital services.
- A one-year extension of prospective payment system transition period except for hospitals located in the State of Oregon.
- Prospective application of the revised hospital wage index.
- Payments to hospitals for indirect costs of medical education.
- Payments for hospitals that serve a disproportionate share of low-income patients.
- Indirect teaching adjustment for certain clinics.

The comment period for the interim final rule ends on June 5, 1986. We plan to address timely comments on both the interim final rule and this proposed rule in the final rule that will follow this proposed rule.

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B. Major Contents of This Proposed Rule

This proposed rule would be effective for the fourth year of operation of the prospective payment system. Following is a summary of the major changes that we are proposing to make to the system:

1. Incorporation of Capital Payments into the Prospective Payment System

Under section 1886(a)(4) of the Act, capital-related costs are excluded from the definition of "operating costs of inpatient hospital services" for cost reporting periods beginning before October 1, 1986. Because this requirement of the statute to distinguish between capital-related costs and other operating costs expires with cost reporting periods beginning on or after October 1, 1986 and in the absence of further legislation on this matter, we are proposing to incorporate capital-related costs into the prospective payment system effective with cost reporting periods beginning in FY 1987. Our proposed changes and the rationale for them are set forth in section II of this preamble.

2. Rebasing and Reweighting of the Hospital Market Basket

We are proposing to recompute the hospital market basket using data from a more recent base year (that is, "rebasing" the market basket). We are also proposing to recalculate the weights of each of the components of the hospital market basket (that is, "reweighting" the market basket cost categories) to reflect the—

- Inclusion of capital payments into the prospective payment system;
- Expansion in the number of market basket cost categories; and
- Revision of certain price proxies used to monitor the rate of inflation in the market basket.

The proposed changes are discussed in section III of this preamble. The market basket category weights would change not only because of the inclusion of capital but also due to rebasing, which reflects hospital changes in the purchase of goods and services used to furnish care.

3. Other Decisions and Regulations Changes

In section IV of this preamble, we discuss several decisions and current provisions of the regulations in 42 CFR Parts 405 and 412, not discussed elsewhere in this rule, as follows:

- Elimination of periodic interim payments;
- Establishment of a base period for hospitals newly subject to the rate-of-increase ceiling;
- Extension of the exclusion of alcohol/drug hospitals and units;
- Hospitals in redesignated rural counties which are surrounded on all sides by urban counties;
- Changes to referral center criteria;
- Retention of transfer policy; and
- Changes to the DRG classification system.

4. Determining Prospective Payment Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the methods, amounts, and factors for determining the FY 1987 prospective payment rates. We are also proposing new target rate percentages for determining the rate-of-increase limits for FY 1987 for hospitals excluded from the prospective payment system.

5. Market Basket Discussion

In Appendix A, we provide a technical discussion of the data sources used to estimate the market basket relative weights and the choice of price proxies.

6. Impact Analysis

In Appendix B, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

7. Discussion of ProPAC Recommendations

ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of section 1886(e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with Federal FY 1988 and thereafter. These recommendations are due to the Secretary no later than the first day of April before the beginning of each fiscal year. The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Under section 1886(e)(5) of the Act, we are required to publish the report of the ProPAC recommendations for FY 1987 as a part of this proposed rule. The report may be found in Appendix C of this proposed rule. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble and in the addendum to this proposed rule. Those recommendations that are not specifically relevant to matters presented below are discussed in section V of this preamble. For the benefit of the reader and in order to provide some perspective on the overall nature of the ProPAC recommendations, we briefly summarize them here and indicate generally where they are discussed.

- *Update Factor:*

—Recommendation 1: Amount of the Update Factor.

For FY 1987 the standardized amounts should be updated by the projected increase in the hospital market basket; minus a combined policy target adjustment factor (referred to by ProPAC as a discretionary adjustment factor) for scientific and technological advancement, productivity, and site substitution; plus an allowance for the estimated increase in real case-mix complexity during FY 1986; and minus adjustments for the correction of market basket forecast errors in FY 1986 and the observed change in the case-mix index in FY 1986. (Addendum, section II.A.)

- *Policy Target Adjustment Factors:*

—Recommendation 2: Allowance for Scientific and Technological Advancement and Productivity Goals, and Site of Care Substitution.

For the FY 1987 prospective payment rates, the combined allowance in the policy target adjustment factor for scientific and technological advancement, productivity improvement, and substitution in the site of service from inpatient to out-of-hospital settings should be set at minus 1.4 percent. (Addendum, section II.A.)

—Recommendation 3: Allowance for Real Case-Mix Change.

Real changes in case mix associated with changes in the characteristics of patients, rather than better coding of medical records, should be reflected in the prospective payments. The adjustment for real case-mix change should reflect both shifts in patients among the DRG categories and changes in the mix of patients within DRG categories. For the FY 1987 prospective

payment rates, the adjustment for real case mix should be set at a plus 0.9 percent. (Addendum, section II.A.)

• *Excluded Hospitals:*

—Recommendation 4: Update Factor for Excluded Hospitals.

In addition to the projected increase in the market basket (corrected for forecast errors), hospitals and hospital distinct part units excluded from the prospective payment system should receive an adjustment of minus 0.8 percent for productivity, and scientific and technological advancement goals. (Addendum, section III.C.)

• *Capital Payments:*

—Recommendation 5: Including Capital in the Prospective Payment System.

Beginning in FY 1987, the Secretary should initiate a transition to all-inclusive prospective prices that combine operating and capital cost components in a single prospective payment per case for hospitals. (Preamble, section II.E.)

—Recommendation 6: Capital Payment Method.

ProPAC recommends that we should make an adjustment to the standardized amounts for capital payments consisting of a Federal portion and a hospital-specific portion. The Federal portion of capital payments should be included as a fixed percentage add-on to the standardized amounts beginning in FY 1987. The Secretary should revise the hospital market basket as soon as possible to include capital components, as appropriate data become available, but no later than FY 1988. (Preamble, section II.E.)

—Recommendation 7: Level of Capital Payment.

For FY 1987, the level of capital payments, to be added to the standardized amounts, should be calculated based on average actual construction costs for FY 1985 projected forward, and average actual equipment costs for FY 1983 projected forward using current capital rules for distinguishing fixed plant and fixtures from moveable equipment. (Preamble, section II.E.)

—Recommendation 8: Capital Payment Transition.

There should be no transition period for the capital-related costs of moveable equipment. For the capital-related costs of fixed plant and fixtures, the transition period should be seven to ten years. The hospital-specific portion of capital payments should be based on the hospital's actual capital cost during each year of the transition. Capital payments for return on equity should be included in the hospital-specific portion of capital payments during the transition period only. (Preamble, section II.E.)

• *Adjustments to the Payment Formula:*

—Recommendation 9: Disproportionate Share Hospital Adjustment.

An adjustment to the prospective payment rates for hospitals serving a disproportionate share of low-income patients should be implemented as soon as possible. The adjustment, which should be similar to the adjustments under congressional consideration, should not change the total aggregate dollar amount paid to all hospitals. (Preamble, section V)

—Recommendation 10: Improving the Definition of Hospital Labor Market Areas.

The Secretary should improve the definition of hospital labor-market areas for FY 1987, if possible, but no later than FY 1988. For urban areas, the improved definitions should account for a greater amount of the wage variation between inner-city and suburban hospitals. For rural areas, the improved definitions should account for a greater amount of the wage variation between different rural areas within each State and between States. The implementation of improved definitions should not result in any change in aggregate hospital payments. (Preamble, section V)

—Recommendation 11: Rural Hospitals.

The Secretary should complete and publish congressionally mandated studies as soon as possible to determine whether changes in payment policies affecting rural hospitals, or other prospective payment modifications, are necessary. (Preamble, section V)

• *Medicare Cost Data:*

—Recommendation 12: Earlier Availability of Medicare Cost Data.

The Secretary should continue making cost data available as soon as possible as part of an ongoing effort, and should consider alternative strategies for sampling hospital cost data. (Preamble, section V)

• *Recalculating the Standardized Amount:*

—Recommendation 13: Recalculating the Standardized Amounts.

The Secretary should recalculate the standardized amounts using cost data that reflect hospital behavior under the prospective payment system to determine the update factor or to rebase the standardized amounts. (Addendum, section II.A.)

• *Recalibrating the DRG Weights:*

—Recommendation 14: Recalibrating the DRG Weights.

The DRG weights should be recalibrated annually in order to reflect the use of new technologies and other practice pattern changes affecting the relative use of hospital resources among DRGs. (Addendum, section II.C.)

• *Beneficiary Concerns:*

—Recommendation 15: Beneficiary and Provider Information.

The Secretary should provide more and better written information about the prospective payment system to beneficiaries and providers of services. (Preamble, section V)

—Recommendation 16: Notice to Beneficiaries of Rights.

Beneficiaries should be made aware of the process of reconsideration and appeal of a hospital denial of further inpatient services. They should be informed not to accept any oral communication to the effect that they must leave the hospital because their "coverage" has "run out" or because there is a limit on the number of days "allowed" by Medicare for a DRG. (Preamble, section V)

—Recommendation 17: PRO Episode of Care Review.

The focus of Peer Review Organization (PRO) quality of care review should be, to the extent possible, on the entire episode of care. The PRO's review should include, in addition to the period of hospitalization, the quality of care (and outcome) related to the overall episode of illness, including, if appropriate, skilled nursing or home health care. (Preamble, section V)

—Recommendation 18: PRO Review of Outpatient Surgery and Procedures.

PROs should be required to monitor outpatient surgery and procedures that used to be performed on an inpatient basis, particularly those which have been denied payment on preadmission review. (Preamble, section V)

—Recommendation 19: Recalculating the Inpatient Hospital Deductible.

The Secretary should seek a legislative change to the formula for computing the inpatient hospital deductible so that the annual increase in the deductible is more consistent with the annual per-case increase in Medicare payments to hospitals. Because the proportion of costs of inpatient hospital care borne by Medicare beneficiaries has inappropriately increased as a result of significant declines in length of stay experienced since the beginning of the prospective payment system, this proportion should be lowered to its calendar year 1983 level. (Preamble, section V)

• *Patient Classification and Case Mix:*

—Recommendation 20: Improving the Measurement of Hospital Case Mix.

While ProPAC believes that the DRG system is currently the most appropriate of the available measures of hospital case mix and should be retained in principle, resource use varies considerably within some DRGs. Therefore, ProPAC intends to continue its analysis of individual DRGs and to undertake a systematic evaluation of the entire system. (Preamble, section V)

—Recommendation 21: Process for Maintaining and Updating ICD–9–CM Codes.

The Secretary should establish a mechanism for maintaining and updating the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) diagnosis and procedure codes in a timely and effective manner. This process should include adequate educational support for all users. (Preamble, section V)

—Recommendation 22: Modification of ICD–9–CM Codes for Payment Purposes.

The Secretary should ensure that modifications of the ICD–9–CM diagnosis and procedure codes for payment purposes strictly adhere to coding rules and guidelines. In order to maintain the integrity and uniformity of the coding system, while allowing flexibility for payment purposes, the process for interpretation and assignment of existing ICD–9–CM codes should be assigned to one authorized group. (Preamble, section V)

—Recommendation 23: Interim Solution for Coding Problems.

The Secretary should establish an interim mechanism to allow identification of cases and appropriate DRG assignment when ICD–9–CM codes cannot be updated in a timely manner. (Preamble, section V)

• *DRG Classifications and Weighting Factors*

—Recommendation 24: Adjustment of the Labor Portion of the Standardized Amounts for Some DRGs Involving Expensive Devices.

The labor-related and nonlabor-related portions of the standardized amounts should be adjusted for DRGs with a high percentage of cases involving expensive devices. The new portions should more closely reflect the labor-related and nonlabor-related shares of costs for cases in DRGs No. 39 (lens procedures with or without vitrectomy), 104 (cardiac valve procedure with pump and with cardiac catheterization), 105 (cardiac valve procedure with pump and without cardiac catheterization), 209 (major joint and limb reattachment procedures), 471 (bilateral or multiple major joint procedures of the lower extremity), and the newly defined DRGs (see recommendations 25 through 28) for pacemaker implantation and replacement, implantable defibrillators, and penile prostheses. These adjustments should be made so that total hospital payments remain unchanged. The current labor-related and nonlabor-related portions of the standardized amounts should be calculated from data derived from HCFA's study of the labor portion of costs by DRG. If those data are incomplete, the portions should be calculated from available data on the charges and costs of medical supplies. The Secretary should study the need for similar adjustments in all DRGs. (Preamble, section V)

—Recommendation 25: Reclassification of Pacemaker Cases Based on Type of Device.

The DRGs involving implantation of cardiac pacemakers (currently DRGs 115 through 118) should each be restructured into two DRGs, one for cases involving dual-chamber or functionally similar pacemakers, and one for cases involving other single-chamber pacemakers. New ICD–9–CM procedure codes should be created to distinguish between these types of cases. A mechanism should be established to evaluate the appropriateness of all implants involving dual-chamber or functionally similar pacemakers. (Preamble, section V)

—Recommendation 26: Reclassification of Pacemaker Replacement Cases.

The cases involving replacement of a permanent cardiac pacemaker, except those with myocardial infarction, congestive heart failure, or shock, should be reassigned to DRGs that include only pacemaker replacements. (Preamble, section V)

—Recommendation 27: Implantable Defibrillator.

Implantable defibrillator cases should be assigned to a unique DRG. The labor portion and nonlabor portion of the standardized amounts should be adjusted for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases. (Preamble, section V)

—Recommendation 28: Penile Prostheses.

Prior to recalibration, cases involving the implantation of a penile prosthesis should be removed from DRG 341 and reassigned to a unique DRG. The labor portion and nonlabor portion of the standardized amounts should be adjusted for this new DRG to reflect the labor-related and nonlabor-related shares respectively of costs for these cases. (Preamble, section V)

—Recommendation 29: Additional Payment for Magnetic Resonance Imaging.

For a period of three years, Medicare should pay hospitals an additional amount for each covered magnetic resonance imaging (MRI) scan performed on an inpatient Medicare beneficiary in a hospital under the prospective payment system. Under existing capital payment policy, the add-on for FY 1987 should be $124 for each scan performed in institutions in which Medicare pays for the capital costs of an MRI scanner and $282 for each scan performed in a hospital on a beneficiary who is a patient of another hospital. (The reason for the increased payment in this situation is that the hospital without an MRI scanner would receive a bill from the hospital that actually performs the scan. The charge would include both an operating component and a capital component.) In FY 1988 and FY 1989 the add-on amounts for all hospitals should be recalculated to reflect any change in the average cost of an efficiently produced scan. (Preamble, section V)

—Recommendation 30: Extracorporeal Shock Wave Lithotripsy.

Cases in which extracorporeal shock wave lithotripsy is the principal procedure should temporarily be removed from DRG 324 and reassigned to DRG 323. The payments and costs for all cases in this DRG should be monitored to determine the appropriateness of prospective payments for operating costs. A unique DRG should be identified for this procedure. (Preamble, section V)

—Recommendation 31: Lymphomas and Leukemias.

Cases currently assigned to DRGs involving lymphoma, leukemia, and other related diagnoses (DRGs 400 through 404) should be reclassified into one of five newly defined DRGs. The new DRGs should allow a unique DRG for acute leukemia cases not involving a major operative procedure, eliminate age as a criterion for DRG assignment, and modify present classification based on operative procedure, complications, and comorbidity. Other ways of further improving these DRGs should continue to be explored. (Preamble, section V)

—Recommendation 32: Upper Extremity Procedures.

Cases involving procedures of the upper extremity that are currently classified in DRGs 223, 224, 228, and 229 should be reassigned based on anatomical location and the presence of complications and/or comorbidities, or systemic collagen vascular disease or implantation of joint prostheses. Nonsurgical hip fracture cases currently being assigned to DRGs 223, 224, 228, and 229 should be reassigned to the appropriate medical DRG. (Preamble, section V)

• *Data Development and Research:*

—Recommendation 33: Maintaining a Commitment to Data Development and Research on the Prospective Payment System.

The Secretary should continue to devote substantial resources to data development and research for monitoring and improving the prospective payment system and understanding its effects on the health care system. Studies mandated by Congress should be completed and made public, and new studies that analyze more recent data should be designed and initiated as soon as possible. (Preamble, section V)

II. Basis of Payment for Capital Under the Prospective Payment System

A. Introduction

We are proposing to change the regulations that apply specifically to the way in which certain hospital inpatient pass-through costs, collectively designated as capital-related costs (excluding payments to proprietary hospitals to provide them with a reasonable rate of return on equity capital), will be treated for Medicare program payment purposes effective with hospital cost reporting periods beginning on or after October 1, 1986. Pursuant to section 9107 of Pub. L. 99–272, payment for the return on equity capital also will be modified. These changes will be addressed in a separate rule-making document.

Capital-related costs under Medicare principles include depreciation, interest, taxes, insurance and similar expenses (defined further in § 405.414) for plant, fixed and moveable equipment. Under current Medicare reimbursement rules, payment for capital-related costs is on a reasonable cost basis (§ 405.402), both for hospitals subject to and excluded from the prospective payment system.

For prospective payment system hospitals, capital-related costs are not included in the prospective payment amount per discharge established for inpatient hospital services. These costs are excluded or "passed-through" (§ 412.113). For hospitals not subject to the prospective payment system, capital-related costs are excluded from the Pub. L. 97–248 ceiling on the rate of hospital cost increases because these costs are also excluded from the definition of inpatient operating costs subject to the limitation. This rule would eliminate the previous distinction maintained between capital-related and operating costs only for Medicare inpatient hospital services provided by hospitals subject to the prospective payment system for cost reporting periods beginning on or after October 1, 1986. We refer the reader to the discussion in section II.C.8. of the preamble regarding our proposed treatment of capital-related costs for Medicare inpatient hospital services for hospitals and hospital units excluded from the prospective payment system.

B. Background

Section 1886(a)(4) of the Act, as amended by section 601(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98–21) and section 9107 of Pub. L. 99–272, states:

> For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, costs of anesthesia services provided by a certified registered nurse anesthetist, a return of equity capital, or, *with respect to costs incurred in cost reporting periods beginning prior to October 1, 1986, other capital-related costs, as defined by the Secretary.* (Emphasis added.)

The first statutory distinction between capital-related costs and total Part A hospital inpatient operating costs was made with the enactment of Pub. L. 98–21. Prior to that time capital-related costs were identified and treated separately for Medicare payment purposes only by regulatory exclusion from the inpatient routine operating cost limits (that is, section 223 limits under Pub. L. 92–603, for cost reporting periods beginning on or after July 1, 1979) and the Pub. L. 97–248 inpatient total operating cost limits and rate-of-increase limits. Section 601(a)(2) of Pub. L. 98–21, however, amended subsection 1886(a)(4) of the Act, specifying that the term "operating costs of inpatient hospital services" did not include costs that are defined by the Secretary as capital-related costs, but this exclusion of capital-related costs applies only to cost reporting periods beginning prior to October 1, 1986. Capital-related costs were, therefore, excluded from costs that are incorporated into the prospective payment system, State hospital reimbursement control systems or the Pub. L. 97–248 limits under section 1886 of the Act; they are instead subject to cost reimbursement provisions under section 1861(v).

Section 1886(d)(1)(A) of the Act establishes the prospective payment system as the sole basis for paying for "operating costs of inpatient hospital services (as defined in subsection (a)(4))" for hospital subject to that system. Since the definition of operating costs includes capital-related costs for cost reporting periods beginning October 1, 1986, or later, the Department lacks authority to continue reimbursement for capital-related costs on a cost reimbursement basis after that date. Because the current prospective payment rates were not set at levels designed to cover capital-related costs as well as operating costs as previously defined, we are proposing in this rule to establish prospectively-determined capital-related payment rates.

There are three provisions related to capital-related costs contained in Pub. L. 98–21 in addition to the revised definition of operating costs. The first is subsection 601(a)(3), which expresses congressional intent to incorporate capital-related costs into the prospective payment system and suggests the possibility that costs for newly obligated capital expenditures might be treated differently from previously obligated capital costs. Next, section 601(e) added subsection 1886(g)(1) to the Act, which applies if Congress fails to enact legislation relating to capital-related costs prior to October 1, 1986, and which prohibits payment of capital-related costs for hospital inpatient services resulting from capital expenditures obligated after September 30, 1986 unless the State has an agreement with the Secretary under section 1122 of the Act, and the State recommends approval for the capital expenditure. Another provision, section 603(a)(1), required the Secretary to study, develop and report to the Congress on the methods and proposals for legislation by which capital-related costs could be included within the prospective payment system.

This interim decision by Congress to continue cost-based reimbursement of capital-related expenses was based on the recognition that further study was desirable before these costs could be incorporated into the prospective payment system. Thus, under the provisions contained in Pub. L. 98–21, Congress included the requirement that the Secretary study capital-related costs and report to Congress on options for

including capital into the prospective payment system. The study was to be comprehensive and explore all options "including broadening the DRG payment to include a capital component, establishment of limits modeled on section 223 of Pub. L. 92–603 applicable to capital costs only, and the setting of limits on a statewide basis." This legislative history reflects congressional intent that the Secretary's report include specific recommendations "on the method and proposals for legislation by which capital-related costs, such as return on net equity . . . can be included within the prospective payment amounts" (quotation from House Report No. 98–25, Part 1, March 4, 1983).

A comprehensive report ("Hospital Capital Expenses: A Medicare Payment Strategy for the Future") containing the analyses and recommendations for incorporating hospital inpatient capital-related costs along with all other operating costs into the prospective payment system was submitted to Congress on March 14, 1986. That report forms the basis for this revision to the previous regulations that governed the treatment of capital-related costs. In the interim, however, capital-related costs are being reimbursed in accordance with the Medicare principles of reasonable cost reimbursement. As we noted in the March 14th report, we believe that amounts for capital can be appropriately included in the DRG payments. We believe that such a change in Medicare policy for capital would be a major step toward a more rational, less interventionist role for government in its capacity as a major third party payor. A primary purpose would be to assure that Medicare payments for capital are distributed to hospitals on an equitable basis directly related to their care of Medicare patients, while simultaneously correcting for the major shortcomings of cost reimbursement.

C. Proposed Changes to Capital Payment

1. Hospitals Subject to the Prospective Payment System

Although the statute (section 1886(a)(4) of the Act) simply incorporates capital-related costs into the definition of operating costs, we are proposing to use our exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act to create transition provisions and other refinements that will improve the equity of the system. The objective of this proposal is to set a Federal per-case payment for capital-related costs, initially as a separate component of the standardized amounts which would, after completion of the transition, be incorporated into the prospective payment standardized amounts as an integral part of the nonlabor portion for urban and rural areas. We propose to accomplish this by providing a four-year transition period, effective with cost reporting periods beginning on or after October 1, 1986, leading to fully national capital payment rates. During each year of the phase-in period, payments to hospitals would be based on a combination of a Federal capital rate and a hospital-specific capital rate. The proposed schedule for the phase-in period to national capital payment rates is indicated for each component in the following table:

For cost reporting periods beginning in Federal fiscal year—	Hospital-specific rate (percent)	Federal portion (percent)
1987	80	20
1988	60	40
1989	40	60
1990	20	80
1991 on	0	100

We are proposing to add new §§ 412.65 through 412.67 to describe the new payment policy.

A four-year phase-in to fully national rates should ease the transition from the virtually unlimited cost pass-through approach. We recognize that this new payment approach could require hospitals to rethink their investment strategies in light of market conditions. Indeed, the intent of incorporating capital into operating costs as a single payment amount is to eliminate the disparate incentives created by paying a fixed amount for noncapital operating costs and a variable, largely unlimited, amount for capital costs. We believe that four years is a reasonable time period for a transition to full national payment rates. The incentives to substitute capital-related items and services for other operating costs in the inpatient hospital setting must be neutralized at the earliest reasonable time. The phase-in period for capital-related costs follows the same pattern established for the prospective payment system transition, which we believe provides adequate time to adjust inpatient operations.

2. Determination of Federal Capital Payment Rates

We propose to compute the Federal capital-related rate using audited hospital inpatient capital-related cost data from Medicare cost reports for reporting periods beginning on or after October 1, 1982 and before October 1, 1983 (that is, Federal FY 1983). These are the latest audited cost reports available for this purpose. Capital-related costs are defined in accordance with § 405.414 and include depreciation, interest, taxes, insurance, and similar expenses for plant, fixed and moveable equipment. The FY 1983 base-year capital cost data used to develop the Federal capital-related rates include all allowable inpatient capital-related costs incurred in providing services to Medicare beneficiaries in prospective payment hospitals.

a. *Adjustment to Capital-Related Base-Year Cost Data.* Medicare reimbursement principles require that interest expense on indebtedness be reduced by interest income earned from any source, except for interest income earned on funded depreciation. However, we believe that it is appropriate to offset interest income earned on funded depreciation from the calculation of the average capital-related cost per discharge. Currently, the exclusion of the offset for interest income on funded depreciation encourages equity versus debt financing of capital investments. We believe that this incentive is no longer appropriate because the prospective payment system provides sufficient incentives to encourage prudent acquisition of capital assets without the need for additional equity. Therefore, the capital-related costs used to develop the Federal rates will be reduced by an estimated amount which reflects interest income earned on funded depreciation. Because the necessary data to compute the amount of this offset are not available from the FY 1983 Medicare cost reports used to calculate the Federal capital-related rates, we are proposing to use an estimate derived from a special data element collected and audited for a sample of FY 1984 cost reports for this purpose.

b. *Calculation of Standardized Federal Capital Related Amounts.* Section 1886(d)(2) of the Act specifies the manner in which the Secretary must determine the national and regional prospective payment rates for the operating costs of inpatient hospital services. Because section 1886(a)(4) of the Act will no longer provide sufficient authority to exclude capital-related costs from the definition of inpatient operating costs effective with cost reporting periods beginning on or after October 1, 1986, we would follow the same rules for deriving Federal Capital-related rates, essentially as prescribed in section 1886(d)(2) of the Act, for purposes of consistency and facilitating the eventual merger of all operating cost components into the Federal rates. This section requires that base-period cost

data be developed and modified in several ways (that is, inflated, standardized, grouped into payment cells, and averaged) to generate an average standardized amount per discharge for each payment area, that is, urban and rural, for each census division and the nation. In order to remain consistent with the prospective payment rules governing the transition from regional to national Federal rates, the Federal capital-related rate for discharges in Federal FY 1987 would be a blend of Federal regional (50 percent) and national (50 percent) rates. For discharges occurring in Federal FY 1988 and onward, the full national rate would be applicable. It should be noted, however, that we are not proposing special treatment for hospitals in Oregon with respect to the transition, as contained in section 9102(d)(4) of Pub. L. 99-272. Table 1 of section IV of the addendum contains the regional and national Federal capital-related standardized amounts.

Step 1—Average Capital-Related Cost Per Discharge. Audited Medicare inpatient capital-related costs for each of the approximately 4,000 hospitals for cost reporting periods beginning in Federal FY 1983 were obtained. The resulting Medicare cost was then converted to yield an average capital-related cost per discharge.

The average capital-related cost per discharge was then reduced by a factor of 10 percent, which represents the estimated amount of capital-related cost attributable to interest income earned on funded depreciation by prospective payment hospitals in Federal FY 1983. The percentage figure used was derived by dividing the Medicare share of interest income by the total Medicare capital-related cost for each of a selected sample of prospective payment hospitals for their FY 1984 cost report year. These hospital ratios were then averaged within each cell used to stratify the sample, and the resultant means were multiplied by the appropriate sample weights to obtain a nationally representative ratio for all prospective payment system hospitals. That figure, then, represents the average ratio of interest income off set to total capital-related costs for all prospective payment hospitals in the aggregate. There is no basis to expect that this ratio would vary substantially from year to year. As a result, the ratio based on FY 1984 cost report data represents the best information available to us to make this adjustment.

Step 2—Updating. The capital-related costs per discharge computed in step 1 were updated through FY 1988 to bring them to a common time period since the Federal standardized amounts would apply to discharges occurring during Federal FY 1987.

(a) The base-year capital-related cost per discharge was inflated through the end of Federal FY 1988 using the historical and projected calendar year annual rates of increase in the capital component of the hospital market basket in order to be consistent with the prospective payment methodology for all other operating costs. The rates of inflation used were as follows:

Calendar year	Inflation rate
1983	6.8
1984	6.7
1985	5.8
1986 (forecasted)	3.8

Step 3—Standardization. After the capital-related costs were inflated through September 30, 1986; they were further standardized to remove the effects of known sources of variation in hospital costs that are subsequently recognized in the computation of each hospital's prospective payment rate. Because capital-related costs would be considered as other *nonlabor* standardized amounts, each hospital's capital-related costs would be standardized for the effects of case mix, indirect medial education costs, and the higher costs of treating a disproportionate share of low-income patients. The costs would not be standardized for an area wage adjustment because such an adjustment is necessary only for the labor portions of standardized amounts. In addition, because Alaska and Hawaii have a higher cost-of-living compared to other States, the capital-related costs for hospitals in these two States were also standardized by an appropriate cost-of-living factor. Each of these adjustments is discussed below.

(i) *Case Mix.* The standardization necessary to neutralize capital-related costs for the effects of hospital differences in case-mix was accomplished by dividing each hospital's inflated capital-related cost per discharge by that hospital's case-mix index. Tables 3a and 3b of section IV of the addendum contain the case-mix index values used for this purpose. The case-mix indexes were calculated using the DRG weighting factors contained in Table 5 of the September 3, 1985 final rule (50 FR 35722 through 35735). We computed each hospital's case-mix index by multiplying the weighting factor for each DRG by the number of its Medicare discharges classified in that DRG for Federal FY 1985, summing the products for each DRG and dividing that result by the hospital's total number of Medicare discharges for that period. (We note that FY 1985 case-mix indexes are based on the best data available for the most recent year in which billing information is reasonably complete.)

(ii) *Indirect Medical Education Costs.* After adjusting each hospital's capital-related cost per discharge for inflation and case-mix, we divided each hospital's cost by 1.0 plus the indirect medical education adjustment factor set forth in section 9104(a) of Pub. L. 99-272, and the percentage add-on for hospitals that serve a disproportionate share of low-income patients as described below. (For a detailed explanation of the basis for the revisions in the computation of the adjustment for indirect medical education costs, see the interim final rule of May 6, 1986 (51 FR 16775)). The formula for deriving the indirect medical education adjustment factor is as follows:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

Example: Based on a hospital's prospective payment data for its cost reporting period in FY 1984, a hospital has an intern and resident-to-bed ratio of .2. Its adjustment factor equals:

$$2 \times [(1+.2)^{.405} - 1] = 2 \times (.07663) = .15327$$

This hospital's indirect medical education adjustment factor is .1533. Therefore, the factor used to standardize its capital-related costs for indirect medical education activities is 1+.1533 or 1.1533.

(iii) *Disproportionate Share.* After determining each hospital's capital-related cost per discharge for indirect medical education, we add to that figure an adjustment factor representing the percentage add-on for hospitals that serve a disproportionate share of low-income patients. In order to standardize each hospital's capital-related cost per discharge, we divide each cost by 1.0

plus the total of the indirect medical education and disproportionate share adjustment factors. This additive procedure would be used in order to be consistent with the way in which we calculate the payment amounts.

Section 9105 of Pub. L. 99-272 added a new section 1886(d)(5)(F) to the Act to require additional payments for these hospitals. Therefore, we believe it is essential to exclude from capital costs per discharge the higher payments that will be made to disproportionate share hospitals. Thus, we have adjusted the standardized capital-related rates in the same manner that the Federal rates for other operating costs are adjusted for disproportionate share payments (see section II.A. of the addendum). For an explanation of the criteria that a hospital must meet in order to qualify for an additional payment as a disproportionate share hospital and the amount of the disproportionate share add-on, see the May 6, 1986 interim final rule (51 FR 16776). In determining the disproportionate share adjustment factors for purposes of standardizing the capital-related costs, we used available data on the percentage of Medicaid days from Medicare cost reports with cost reporting periods beginning in Federal FY 1984 and the percentage of SSI/Medicare days for FY 1984 derived from matching FY 1984 SSI eligibility files to Medicare FY 1984 PATBILL records. These factors would be updated in the final rule using the percentages derived by matching FY 1985 SSI/Medicare days to FY 1985 Medicare PATBILL records.

(iv) *Cost-of-Living Factor for Alaska and Hawaii.* Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments as deemed necessary to take into account the unique circumstances of hospitals located in Alaska and Hawaii. Under the prospective payment system, hospitals in these two States are entitled to increased payments for the nonlabor component of the regional and national rates. Because we view capital-related costs as nonlabor expenses, we believe it is appropriate to standardize the capital-related cost per discharge for hospitals in Alaska and Hawaii by a factor that reflects the higher cost of living in these States. Accordingly, we divided the capital-related cost per discharge values for hospitals in Alaska and Hawaii by adjustment factors contained in the table below. These values are based on data obtained from the U.S. Office of Personnel Management.

Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—all areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

Step 4—Computation of urban and rural averages. We computed separate averages of the capital-related standardized amounts from Step 3 for urban and rural hospitals (as defined in § 412.62(f)), nationally and for each census division. (We note that rural referral centers, as defined in § 412.96, would be paid the urban capital payment rate in the same manner as they are currently paid the urban Federal rate under the prospective payment system (§ 412.96 (d) and (e).) We believe that rural referral centers have capital expenditures similar to urban hospitals. Therefore, we are proposing to revise § 412.96 (d) and (e) to pay rural referral centers the urban capital payment rate.)

Step 5—Reduction for outliers. We reduced each of the average capital-related standardized amounts in Step 4 by the estimated proportion of total prospective payments that are for outlier cases.

Step 6—Indirect Medical Education Payment Equality Factor. We adjusted each of the average capital-related standardized amounts in Step 5 by the appropriate indirect medical education payment equality factor. This adjustment, which is required under section 9104(b) of P.L. 99-272, is further explained, and the factors stated, in section II.A.4.d of the Addendum.

Table I of Part IV of the addendum contains the rates thus determined. There may be changes in these rates to the extent additional cost report data are available at the time we prepare the final rule.

We are also considering an alternative method for developing the Federal capital-related payment amounts. Under this alternative, the updated capital-related cost per discharge, reduced for interest income on funded depreciation, would not be standardized for each hospital's indirect medical education adjustment factor, for disproportionate share payments, or possibly for case mix. We would, however, continue to apply the cost-of-living adjustment for hospitals located in Alaska and Hawaii. Thus, after the capital-related costs were updated and divided by the cost-of-living adjustment factors and possibly by the case-mix for each hospital, we would compute national and regional urban and rural average capital-related amounts. The effect of making payments under this alternative approach would be that the average Federal capital-related amount would, in essence, not be adjusted by a hospital's indirect medical education factor, its disproportionate share factor, or possibly the DRG weighting factor. Unlike the proposed method, which would provide increased capital payments for teaching hospitals and disproportionate share hospitals, this alternative would provide that all hospitals in a particular payment cell (urban or rural by region) would receive the same Federal capital payment per discharge, or, if the capital costs per case are standardized by each hospital's case-mix index, a payment that varied only with the DRG weighting factor for each discharge. We specifically invite comments on the appropriateness of using this alternative to construct the Federal national and regional capital-related payment amounts and of paying such amounts without adjusting them by the indirect medical education and disproportionate share adjustment factors of the DRG weighting factor.

3. Determination of Hospital Specific Capital-Related Payment Rates

The hospital-specific portion of the capital-related payment during the transition period would be made by comparing the amount of a hospital's capital-related costs in a base year (its hospital-specific capital-related rate), updated through each year of the transition with the total amount of its actual capital-related expenditures in each transition year. The lesser of the two amounts would determine the hospital-specific capital-related payment for inpatient services in each phase-in year. Computing the hospital-specific capital-related rate would be the first step in this process.

The hospital-specific capital-related rate would consist of the allowable capital-related cost per discharge during a base year, Federal FY 1986. Thus, the hospital-specific capital-related rate would be calculated on the basis of each hospital's audited inpatient capital-related costs from hospital cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986. These inpatient capital-related costs are defined in accordance with § 405.414, and exclude costs representing the allowable return on equity capital for prospective payment proprietary hospitals. Payment for the

return on equity capital will be treated as provided under section 9107 of Pub. L. 99-272. Section 9107 of Pub. L. 99-272 amended section 1886(g)(2) of the Act to provide for a three-year phase-out of the allowance for a return on equity capital for inpatient hospital services, effective with cost reporting periods beginning on or after October 1, 1986. This provision does not incorporate return on equity capital into inpatient operating costs. Therefore, we are not proposing to include a return on equity capital in the prospective payment system. The return on equity capital provisions in section 9107 of P.L. 99-272 will be addressed in another rulemaking document.

a. *Calculation of Capital-Related Hospital-Specific Rate.* The computation of the capital-related hospital-specific rate conforms to the calculation of the hospital-specific portion of the prospective payment rates for other inpatient operating costs first described in the interim final rule establishing the prospective payment system published on September 1, 1983 (see 48 FR 39773). A base-year cost per discharge is calculated and standardized to eliminate variation attributable to the hospital's Medicare case mix to derive the applicable amount per discharge to be used in computing the capital-related hospital-specific rate.

The base-year capital-related cost per discharge will be computed using fully audited capital cost data from the Medicare cost report for the 12-month (or 52-53 weeks) reporting periods beginning on or after October 1, 1985 and before October 1, 1986. The base-year capital costs include all allowable inpatient capital-related costs incurred in providing services to Medicare beneficiaries, as defined in accordance with § 405.414.

If a hospital has a base-year cost reporting period of other than 12 months, the capital-related cost from the latest and longest cost reporting period in the base period will be used to establish the necessary capital-related cost per case. The resulting cost per discharge would be adjusted by the applicable update factor to trend forward the cost per case to the same point as the other, standard 12-month base periods for further, appropriate updating (see step 4 below).

Step 1. For each hospital, determine the total audited Medicare inpatient capital-related costs for the base year pursuant to §§ 405.414 and 412.113(a), and divide the Medicare inpatient capital-related base-year costs by that hospital's number of reported Medicare discharges in that period to obtain an average capital-related cost per discharge.

Step 2. Divide the capital-related cost per discharge computed in step 1 by that hospital's case-mix index obtained from Table 3a or 3b of section IV of the addendum.

b. *Capital-Related Hospital Specific Payment Determination.* The capital-related hospital-specific payment amount would be computed from the following formula:

$$\text{Capital-Related Hospital-Specific Rate} \times \text{Prospective Payment Update Factor} \times \text{Transition \% for Capital Hospital-specific rate} \times \text{DRG Weight}$$

We are proposing that for each of the transition years, each hospital's total hospital-specific capital-related payments would be equal tothe lesser of—

- The sum of its capital-related hospital-specific amounts for the applicable cost reporting period, as determined by the above steps; or
- The total of its actual allowable Medicare inpatient capital-related costs for the applicable transition year times the applicable capital-related hospital-specific transition percentage.

Hospitals that increase their capital expenses per discharge during the transition would be paid their capital-related prospective payment. Those that decrease their capital expenses per discharge will be paid their actual costs.

4. New Hospitals

For purposes of incorporating capital payments into the prospective payment system, new hospitals would be paid on the basis of the full Federal capital-related rate (that is, there would be no capital-related phase-in period for these facilities). To qualify, a new hospital would have to meet one of the following requirements:

- The hospital—

—Is newly participating in the Medicare program (under present and previous ownership); and

—Does not have a complete 12-month cost reporting period ending on or before September 30, 1986; or

- The hospital meets the new ownership and bed occupancy requirements described in § 412.74(a)(2).

We are proposing to add a new § 412.66(g) to reflect this change.

5. Capital Expenditure Agreements

Section 1886(g)(1) of the Act provides that, if legislation concerning payment for capital-related costs for inpatient hospital services is not enacted before October 1, 1986, no payment may be made for capital-related costs of capital expenditures (as defined in section 1122(g) and except as provided in section 1122(j) of the Act) for inpatient hospital services in a State, if such expenditures are obligated after September 30, 1986, unless the State has an agreement with the Secretary under 1122(b) of the Act and under such agreement the State recommended approval of the capital expenditure. The conference report accompanying Pub. L. 98-21 (H.R. Rep. No. 98-47 at p. 189) expressing Congress's expectation with respect to this provision states, "However, if the Secretary has implemented a system of prospective payment for capital without legislative action and the mandatory section 1122 capital planning approval provision has gone into effect, the conferees intend that the Secretary will adjust the prospective payment for capital to reflect a disapproval project under section 1122."

We are opposed to the concept of imposing health planning requirements on the hospital industry such as those required under section 1122 of the Act since inclusion of capital payments into the prospective payment system will remove the incentive to substitute capital expenditures for operating components and provide a payment amount neutralized with respect to such incentives.

Because our capital payment proposal provides that the hospital-specific portion of the capital payment would be determined on a retrospective basis, we do not propose to adjust hospital-specific capital payments under this provision. However, capital-related costs for such disapproved expenditures would be considered nonallowable costs for Medicare cost reporting purposes.

In adjusting the Federal portion of the capital-related prospective payment amount, we are proposing that the adjustment be determined as a percentage of the total disapproved capital expenditures to total capital assets. For example, if a hospital has a disapproved capital expenditure of $1,000,000 and total capital assets of $10,000,000, the Federal portion of the capital-related prospective payments would be reduced by 10 percent. If the expenditure is demonstrated to be

completely unrelated to inpatient hospital services, no adjustment would be applied.

We are proposing to add a new § 412.65(b) to describe these requirements.

6. Sole Community Hospitals

Section 1886(d)(5)(C)(ii) of the Act requires the Secretary to take into account the special needs of sole community hospitals (SCHs) by using a special payment formula for hospitals so classified. In our effort to make capital-related payments consistent with the other provisions of the prospective payment system, we would apply the same prospective payment rate blends to SCHs provided in § 412.92(d) in making capital-related payments to SCHs for their cost reporting periods beginning on or after October 1, 1986. Thus, we would pay SCHs the capital-related payment rates for all discharges occurring in cost reporting periods beginning on or after October 1, 1986 at:

- 25 percent of the Federal capital-related standardized regional rate as determined in the foregoing discussion; plus
- 75 percent of its capital-related hospital-specific rate as determined in the above manner;
- Disregard the blending of Federal and hospital-specific capital-related rates applicable to all other hospitals; and
- Apply the additional payment provisions appropriate to SCHs under the prospective payment system pursuant to § 412.92(e) to include capital-related payment adjustments.

We are proposing to include this treatment of SCHs in a new § 412.67(h) and revise § 412.92 to reflect this change.

7. Hospitals and Units Not Subject to the Prospective Payment System

Under section 1886(b)(4)(A) of the Act, the Secretary may provide for exceptions to the method for determining the amount of payment to hospitals as he deems appropriate.

We believe that payments for capital-related costs of hospitals and units excluded from the prospective payment system should continue to be reimbursed on a reasonable cost basis. That is, for a limited time, we would not incorporate capital-related costs into the definition of "inpatient operating costs" for those facilities, using the Secretary's exception authority under section 1886(b)(4)(A) of the Act.

All other things being equal, we believe that capital costs ought to be included in the target rates of hospitals excluded from the prospective payment system. In fact, as discussed elsewhere in this document, section 1886(a)(4) of the Act requires that capital-related costs be included in the definition of inpatient operating costs for cost reporting periods beginning on or after October 1, 1986. However, the difference in reimbursement methods between the prospective payment system and excluded hospitals results in major differences in the way we believe hospitals will operate once capital is included in the definition of operating costs.

Prospective payment system hospitals are paid on the basis of a price per discharge. Under this system, we have no concern over how the hospital uses the payment it receives from the Medicare program (provided, of course, that the quality of care furnished to Medicare beneficiaries does not suffer). In fact, we encourage hospitals to be efficient by allowing them to keep the difference between their costs and the Medicare payment. Adding a capital component to the price per discharge provides each hospital a sum that represents payment for its capital expenditures. However, based on its needs, a hospital can use this payment in any way it chooses, consistent with the continuing provision of quality medical care.

Hospitals excluded from the prospective payment system, on the other hand, continue to be paid based on the actual reasonable costs they incur in furnishing services to Medicare beneficiaries subject to a rate of increase limitation. Adding a capital component to their target rates could produce conditions and incentives that are not in keeping with the Medicare program's emphasis on the efficient provision of quality care. For example, a hospital with a fully depreciated asset base in its base year would have little or nothing added to its target rate for capital costs. In the near future, when it must purchase new expensive assets to replace the fully depreciated assets, its target rate would most likely not be sufficient to account for the costs of the new assets. The hospital then would be faced with the necessity of reducing other expenditures in order to stay within its target rate (at the possible expense of a reduction in the quality of care), or it would be faced with seeking an exception, a time-consuming and administratively burdensome process.

On the other hand is the situation of a hospital that purchases major assets in its base year. The capital component of its target rate would be comparatively large. However, as the assets are depreciated year-by-year, its target rate would continue to be adjusted by an update factor, leading to an unnecessarily high target rate vis-a-vis the costs actually required to maintain an efficient facility. This situation could lead the hospital to engage in inefficient practices, since it would be reimbursed its actual costs up to its target rate. Or, the provider could qualify for an even larger incentive payment year-by-year, without making any increasing gains in efficiency.

Due to the above potential scenarios, we are proposing, for a limited time, to grant an exception to hospitals and units excluded from the prospective payment system. Their capital costs would continue to be paid on a reasonable cost basis. However, we note that it is our intention to establish an alternative to reasonable cost reimbursement for the cpaital-related costs of these excluded facilities.

D. Additional Provisions Under Consideration

Any prospective payment policy incorporating capital into the standardized amounts should, at the end of the transition, provide for a flow of total payments sufficient to cover current patient care operations of efficiently operated hospitals and to provide adequate funds to permit modernization, replacement, and expansion as needed to replenish the current stock of capital. Not every hospital needs to modernize or wholly replace itself every year, or even every five years. But the prospective payment system should be sufficient over the longer term (for example, 15–30 years) to permit necessary recapitalization in addition to the provision of current patient care services.

While the post-transition standardized prospective payment rates can be set to adequately compensate for the total capital and non-capital inpatient expenditures of efficiently operated facilities, the capital payment transition period will be a critical time for hospitals to adjust their operations and plans in preparation for a single comprehensive payment mechanism. As a result, even at the time of this publication, we are also considering several options to the preceding mechanisms for incorporating capital-related expenditures into the prospective payment system. The intent in considering these options is to ease the transition from cost-based reimbursement for all inpatient hospital capital-related expenditures and to assist any hospitals disadvantaged to a degree substantially in excess of the majority of hospitals during the phase-in period. The options under review fall into five main categories; however, two

or more combinations of alternatives may have to be considered or revised together since all of the options interact with each other. These alternatives, about which we are requesting comments regarding possible adoption in the final rule, are as follows:

- Transition rates that differentiate between plant and fixed equipment versus moveable equipment.
- Hospital-specific portion determined by using a rolling base year.
- Exception procedures for severely disadvantaged hospitals that would provide an adjustment to payments to certain hospitals which can document that their capital-related inpatient operating costs are in excess of their total capital-related payments to a degree that exceeds a prescribed threshold (for example, two times the capital-related Federal standardized rate).
- Lengthening the phase-in period.
- Variation in blending other than straight-line declining percentages.
- Occupancy rate adjustment to Medicare inpatient capital-related costs in the base year or years for purposes of determining capital payments.

Alternatives to Avoid Sudden and Severe Disruptions. We are seriously considering a capital proposal which would deal separately with long-term capital (plant and fixed equipment) and shorter term capital (moveable equipment), with a longer transition period to national rates for long-term capital and an immediate move to national rates for moveable equipment. This structure would be combined with a rolling base, possibly including taking into account low occupancy rates, for the hospital specific portion of long-term capital and an exceptions pool to provide relief to hospitals meeting specified exception criteria. Adoption of a proposal such as this would be designed to reduce the estimated savings of the basic proposal by about 25–30 percent. Additional funds for hospital capital may be needed in the short run to avoid sudden and severe disruption of hospital expectations.

1. Transition Rates Distinguishing Plant and Fixed Equipment From Moveable Equipment

Under this alternative, two categories of capital items would be treated differently in incorporating capital-related costs into the prospective payment system. Rather than bringing all capital item expenditures under the prospective payment system in the same fashion, the differences in cost, longevity and relative ease of substitution of items by services generally applicable to movable equipment from those factors for plant and fixed equipment would be addressed. Whereas plant and fixed items usually have much higher costs associated with them, require longer term commitments of money, and reduce hospital management flexibility to adjust or substitute for them, moveable equipment costs generally offer much shorter time-frames and lower cost factors which management can act on in a shorter period. As a result we are considering the possibility of including immediately all moveable equipment costs in the Federal prospective payment rates from the beginning of the transition period and providing a blend of Federal and hospital-specific amounts only for plant and fixed equipment during a lengthened transition. The amount included in the Federal rates would be based on the relative national percentage breakdown these two categories as estimated from cost reports and applied to all hospitals regardless of an individual hospital's actual ratio of plant and fixed equipment costs to their moveable equipment costs. Our objective in taking this approach would be to provide a transition period only for that portion of the costs for which hospitals require long time periods to adjust their operations and plans.

A variation on this approach would be to pay hospitals based on the costs reported in their 1988 cost reports for plant and fixed equipment related to debt service (principal and interest) and lease costs. Depreciation, as it is currently defined would not be paid on a hospital-specific basis. The actual allowable principal, interest and lease costs would have to be determined on a hospital by hospital basis, and payment could be continued either for the life of the asset or for a defined period of time. Thus, we would include all moveable equipment costs and the remainder of costs from fixed equipment and plant (after excluding the actual principal, interest and lease costs) in the standardized Federal rate. The basis for the hospital-specific payment would be limited to the hospital's actual debt service expenses for fixed equipment and plant. This approach would recognize the costs of debt and long term leases related to long-term obligations. However, funded depreciation as it is currently paid would not continue since it represents payment for replacement of plant and fixed equipment. This approach has the advantage that it provides for payment of existing hospital obligations related to plant and fixed equipment, allowing for a smoother transition to the per case payment system, and resolves a definitional issue of defining "old" capital. However, disadvantages include the need to significantly revise hospital cost reports, alter established accounting principles concerning depreciation, and perhaps adding administrative complexity to the existing system.

We have identified several problems that must be addressed before we could proceed with such approaches. Primarily, the data available from the Medicare cost reports are insufficient for purposes of making an exact distinction between plant and fixed equipment, and moveable equipment. The information in Medicare cost reports, for example, provides no identification of capital which is directly assigned to cost centers, whether interest is related to fixed or moveable equipment, and so forth. Those estimates that are available from other sources vary greatly, and generally use definitions of capital items that differ somewhat from Medicare.

A national proportion, of course, could be set based on adjusting cost report data for undesignated capital-related costs that are directly assigned. We might also give consideration to using American Hospital Association (AHA) data and AHA's classification of useful lives of assets, and data from other sources. Likewise, in order to pay a hospital-specific amount based on this distinction from current cost report data, the rules currently applied to define these two capital categories in program instructions (the Provider Reimbursement Manual, HCFA Pub. 15–1, sections 104.2 and 104.3 as distinct from sections 104.4 and 104.5) would have to be applied on a consistent basis from the hospital-specific base-year categories to all existing and new items and services during the transition period. This would be necessary to maintain the original proportions established to set the capital-related rate for plant and fixed equipment.

We believe that this phase-in approach could represent, administratively, a more complex system but would be beneficial in recognizing the difference between planning for and incurring the two types of capital expenditures and the different effects of the prospective payment system on hospital decisions regarding these cost components. Moveable equipment is purchased and turned over more frequently than plant or fixed equipment. Thus, hospitals which have invested highly in moveable equipment would not be as adversely affected by incorporating that component into the standardized capital-payment rates

immediately as they would be in the case of plant and fixed equipment. We believe that the majority of costs for moveable equipment acquired prior to implementation of the prospective payment system have been recovered already, reducing the need for a transition period for this component, as prospective payments would support future purchases. In fact, immediate inclusion of moveable item costs into the prospective payment system would provide funds for hospitals that have not been able to afford such purchases in the past.

While the two major components of capital items suggest a logical distinction be made in treatment for purposes of incorporating capital-related costs into the prospective payment system, the feasibility of doing so must be considered preminently in any decision on this option. On the other hand, hospital managers could simplify their budgeting process since they would know exactly how much payment would be received for moveable equipment and address more clearly the longer term planning and debt aspects of plant and fixed equipment. Similarly, we could address more readily concerns that may arise in a transition to fully standardized capital-related payments with a more homogeneous capital-related component limited to plant and fixed equipment. Unlike moveable equipment, for example, fixed equipment and plant costs continue for extended periods. Thus, hospitals would be more clearly in need of a longer transition period to enable them to meet the costs of such capital projects that they are currently engaged in or recently completed. Other remedies for hospitals significantly disadvantaged by phasing in a standardized rate for long-term capital items would be more readily targeted by other adjustments we could devise to assist them as well, such as an exceptions process. Comments on these interactive aspects of this proposal are specifically solicited.

2. Alternative Payment Bases—Rolling Base Year

Rather than paying the base year capital-related cost per discharge trended forward by inflation, the actual cost for each year could be used in making the hospital-specific portion of the blended amount in each transition year. The goal of this approach is to provide recognition for capital-related costs in the same manner as the hospital must do in meeting actual current expenses during the transition. Since hospitals may have made commitments for capital items and services in the immediate past which will bring added expenses during the transition, this approach would address the actual changes from year-to-year during the phase-in period.

We are concerned that use of a rolling base year, while addressing actual market place activity in a cost reimbursement mode, may have additional disadvantages. It may act as an incentive to hospitals to continue to substitute capital purchases for other operating cost components as appears to have been the case during the period while capital-related costs were a pass-through and paid under cost reimbursement principles. This would reduce incentives for hospitals to review and revise their past practices.

We would assume that hospital managers will not make extensive capital commitments when eventually faced with fully standardized payments if a rolling base-year calculation method were used. Also, the rolling base-year approach would better recognize the increased capital costs that a hospital may have committed itself to prior to implementation of the proposed changes on capital policy. Using a rolling base, however, continues to insulate providers, at least partially, from the risk inherent in assuming new financial obligations. During transition, a hospital continues to get a proportion of its costs, regardless of how prudent the acquisition is in light of changing Medicare program rules.

Of course, use of actual costs during transition would ease problems associated with long-term debt commitments that hospitals incur for capital-related items and services. This option would also be simpler to administer and ease the transition for more hospitals than it would disadvantage.

3. Transitional Exception Process for Hospitals Disadvantaged by Phasing Capital-Related Payments Into the Prospective Payment System

Under this option, we would consider a procedure to provide additional capital payments, or an increased level of payment, to hospitals that are financially disadvantaged by the change-over from cost reimbursement to average standardized payments for capital-related items and services. It has been suggested that within certain parameters such hospitals could be assisted from the pool of funds available for capital payments in order to meet their obligated capital-related expenditures when the capital-related payments fall substantially below the capital-related costs.

We believe that a reasonable approach to address this problem could be to provide an exception procedure for qualifying hospitals.

Under this approach an exception process would be established pursuant to the general authority granted to the Secretary under section 1886(d)(5)(C)(iii) of the Act to provide for exceptions and adjustments to prospective payment amounts as is deemed appropriate. The amounts to be paid under the capital payment exception process would be funded by a reserve of funds obtained by reducing the average standardized capital-related payment rates by a percentage sufficient to generate a pool equal to the amount estimated to be paid to hospitals meeting the exception criteria. This manner of assuring funds for eligible hospitals would be based on the comparable provisions in the law under section 1886(d)(2)(E) of the Act for similar payments made for routine operating cost outliers, and the general interest of the Congress and the Administration to maintain payment equity in new prospective payment system program initiatives. The amount of the reserve would be determined by an estimate of the expected amount of exceptions that would be granted based on the criteria for eligibility that is promulgated. We would anticipate a reduction of 5–10 percent in the capital-related standardized amounts for this process.

The criteria that we anticipate would be pertinent to easing a disadvantaged hospital's financial situation during the transition period would be specified within the following parameters:

(a) The first criterion that we would apply would be a test of the overall financial condition of the hospital. This would be done by setting a debt/equity ratio threshold that the hospital must meet before it could be eligible for any additional payment or rate adjustment. We believe that a ratio of current assets to current liabilities which exceeds 200 percent for the applicable hospital fiscal year would be an appropriate level for this threshold but we seek suggestions for a different level that can be strongly supported.

(b) Another criterion that a hospital would be required to meet in order to be eligible for an additional capital-related payment, or adjustment to its rates, would be a capital-related expense versus capital payment difference which exceeds a specified threshold. In a given transition year, based on its audited cost report, only those hospitals with inpatient per discharge capital-related costs in excess of 200 percent of the Medicare adjusted standardized capital payment for their payment area (region and urban and rural location) in that

fiscal year would be considered further. In determining the actual allowable capital-related expenses to be used in comparing the capital-related cost per discharge to the applicable capital payment rate, only costs associated with capital-related items and services that were obligated before a specified cut-off date, for example, before January 1, 1986, would be considered. We invite comments on the elements of this criterion that we have specified, that is the level (200 percent) of inpatient per discharge capital-related costs and the date (January 1, 1986) by which obligations must have been made.

(c) The final criterion we establish would be to consider the hospital's actual allowable total Medicare inpatient operating costs (including capital-related costs) for the applicable fiscal year, based on its audited cost report for that period, in comparison with its total payments under the prospective payment system provisions applicable to that period. We would condition approval of any additional payment or rate adjustment for capital-related items and services on whether the combined Medicare inpatient operating cost to payment ratio of each facility was negative before approving any adjustment for the capital-related component.

A hospital would have to meet all of the above criteria before an exception could be granted to its capital payments. Thus, for example, if the criteria suggested above were employed as stated, a hospital would have to have a ratio of current assets to liabilities of 200 percent or more, per discharge capital-related costs at least twice their capital-related standardized amount and total inpatient cost per discharge in excess of their total prospective and pass-through payment per discharge (capital and non-capital payments per case) in order to be considered for an adjustment under this option.

We believe that these criteria are essential as a minimum set of standards to measure the appropriateness of the need for a hospital which requests an exception to its capital-related transition payments and provide equitable treatment to all classes of hospitals regardless of location, size or other situational factors. The type of criteria selected should not undermine the overall program goals established for the prospective payment system with respect to inpatient operating costs subject to this program. Thus, these rules have been considered because they would not require reverting back to reasonable cost reimbursement rules and procedures, add significant reporting requirements, nor interfere with the intent to make Medicare inpatient payments neutral with respect to inherent incentives for management to substitute capital items and services for other operational approaches to providing service. We also believe it is extremely important to assure that hospitals that are benefiting from prospective payments for non-capital operating costs under the prospective payment system do not receive an additional advantage because only one component of the facility's inpatient operation far exceeds the average cost of other facilities in its payment areas.

We recognize that under this exception process and the criteria we would use, not all hospitals for which the standardized capital payment level is initially less than required to meet their total capital-related expense obligations will be assisted. In particular, there will be hospitals that will marginally miss meeting the criteria. However, without recourse to a methodology which, de facto, would return the program to a surrogate cost reimbursement basis, it would be administratively infeasible and excessively costly to address each hospital's situation uniquely in an incremental fashion. Such an approach clearly would subvert the expressly stated congressional intent in establishing the prospective payment system, that is, to move toward a fully prospective payment for inpatient hospital operating costs.

While we are aware that making provisions for such an adjustment for capital payments will reduce the average Federal payment rate that the majority of hospitals will be paid, we believe this method is reasonable and supportable within the context of the prospective payment system. We expect that reduction of the average capital payment rate would not exceed ten percent of the rates under this provision. The rate reduction would not affect the hospital-specific payment to each hospital and that component of the blend will be higher in the early years of the transition. Furthermore, at the time the exception process reduction ceases, the reserve would be returned to the pool of prospective payment system funds.

We believe that along with the broad authority of the Secretary to provide for such adjustments and exceptions, the pattern established by law in providing for special outlier payments for the non-capital operating costs associated with long-stay or high-cost cases (which called for a special mechanism so that some hospitals are not significantly disadvantaged by such cases) clearly applies to such a major additional component of operating costs as capital-related expenses represent. Thus, providing for an exception process and the pool of funds necessary to administer it appears to be the most equitable and reasonable approach to this problem.

In order to assure the actuarial soundness of the adjustments provided under this approach, we would limit the amount that could be paid to a hospital eligible for the exception. We anticipate that the additional payments or adjustments would be limited to a percentage of the excess of determined costs above the payment cut-off level, with an additional test to assure that the adjustment under this exception would not increase the total of Medicare inpatient hospital payments above total Medicare inpatient hospital costs in the pertinent cost reporting period.

4. Lengthening the Capital Payment Transition Period

Our proposal currently would result in a four-year declining straight-line blend for the hospital-specific portion and Federal rate components, although we are considering a longer phase-in period than the four years stated in our proposal which conforms with the prospective payment phase-in for other operating components of inpatient costs. Our objective is to assure that facilities have adequate time to adjust and plan for standardized capital payments that are fully integrated into total operating Federal-level rates of payment. While the non-capital operating expenses are being phased into the prospective payment system within four years, there are persuasive arguments supporting consideration for a longer transition for capital-related items and services. Those include the generally accepted fact that planning and commitments for capital-related expenditures are made well in advance of purchase or construction and represent a longer term and obligatory payout period. These factors limit the flexibility that organizations have to adjust to changes in revenues as quickly as can be expected in the case of most other operating cost components.

Nevertheless, such an approach could disadvantage many hospitals which have capital costs per case that would fall below the average standardized capital rates. In such cases, it is important to move ahead rapidly to replace their cost reimbursement payments, particularly where they need to begin replacement or expansion. A speedier transition, we believe, could

benefit many of those under-capitalized urban nonprofit and rural facilities. However, the apparent benefits must be weighed carefully in light of the inappropriate incentives of the current hospital-specific cost reimbursement policy which, as the basis of this entire program initiative, should be changed as quickly as possible. Of course, the anticipation of full incorporation of capital-related costs into the Federal standardized rates over a longer transition period should provide adequate incentive for hospitals to make adjustments to their planning and operations. Furthermore, we do not believe that any hospitals would be severely disadvantaged if this option is adopted.

This option appears to be less dependent on the remaining alternatives discussed here than those are on each other. Since lengthening the transition can be considered more directly related to the intractability of reducing or substituting other items and services for capital-related factors rather than the adequacy of the level of payment in this conversion process, it can be viewed as having less impact on the other options presented here.

5. Variations in Blending Federal and Hospital-Specific Rates During Transition

We are also reviewing the impact of using other than a straight-line declining blend for the hospital-specific rate in order to ease transition for hospitals whose capital-related expenses are substantially above the average due to recent construction, refinancing and other reasons. The objectives in this approach are to ease transition for such hospitals, recognizing the binding commitments made to their funds and recognize the distinction between other operating costs and the capital-related component.

Should a method of blending transition rates weighted toward increased hospital-specific portion percentages in the first years be warranted, we would increase the hospital-specific portion in the earlier years of transition so that those would roughly be double the respective later years of transition. Examples of this, varying according to length of transition period, are:

- 4-Year transition:

Year	Hospital-specific rate (percent)	Federal rate (percent)
1	80	20
2	70	30
3	50	50
4	30	70

- 7-Year transition:

Year	Hospital-specific rate (percent)	Federal rate (percent)
1	95	5
2	90	10
3	80	20
4	70	30
5	50	50
6	30	70
7	10	90

While we recognize that a blending weighted toward higher hospital-specific rates in the earlier years will help ameliorate the impact on hospitals with high capital-related costs per case and delay the advantage to a nearly equal proportion of hospitals below the average, we are most concerned that the former group will not have as much incentive to act quickly to adjust their capital-related component. This applies equally to the preceding option and, in concert, both may tend to delay appropriate action on the part of some facilities.

Further, if this option is selected, it may reduce or eliminate the need for other options (rolling base year, exception process) to be selected. We believe that use of several or all of the options presented here could be detrimental to the program's intent, that is, to increase hospital efficiency through more appropriate payment incentives and to establish a single payment per case as rapidly as is supportable.

6. Adjustment to Hospital-Specific Rates for Low Occupancy

The present proposal does not address situations in which some hospitals with low occupancy would be paid for their capital-related costs on the same basis as all other hospitals. Since some hospitals fall far below the average national levels for patient days per bed available and one of the major objectives of the prospective payment system is to provide incentives to reduce unused hospital beds available in this country, we believe this factor could be dealt with in developing the hospital-specific rate for such facilities. Whereas the Federal rates will provide incentives for overbedded hospitals to reduce unused resources, the hospital-specific portion of the capital payment blend during transition does not necessarily reinforce this incentive. This could be particularly onerous if the transition period were to be extended and a rolling base year used in computing the hospital-specific capital payment amount. As a result, we believe that a hospital-specific calculation based on a rolling base year could be changed to provide an adjustment when the occupancy rates are significantly below the national average. If, for example, the Secretary established the appropriate threshold at a total occupancy rate of 60 percent, when a hospital meets or falls below that threshold, the computation of the hospital-specific rate for that period would be modified as follows:

In determining the Medicare portion of the hospital's inpatient capital-related cost per diem in the cost report for the applicable period, we would inflate the number of total inpatient days in the cost reporting year by the percentage difference between the hospital's actual occupancy rate in that period and the 60 percent threshold to arrive at the cost per diem to be used in deriving its total inpatient capital-related cost for the period. Since that amount is used to establish the facility's total Medicare capital-related cost per case, an appropriate and proportional reduction in its rate per case would result in making the hospital capital payment for any such period. Thus, for example, a hospital with a 40 percent occupancy rate in a transition year would have its total inpatient days increased as though the hospital was operating at a 60% occupancy level, thereby reducing its cost per diem in the same proportion.

We believe this is a reasonable approach to build in an incentive for hospitals to reduce excess capacity. It is comparable to that which would exist on the Federal rate side of the capital payment rate and is necessary to such a balanced approach to immediately address this problem on a national level. We are, of course, particularly interested in the public's and industry's views on this method of dealing with this issue. Comments on this option should also focus on the appropriate threshold occupancy rate, which could be significantly different from the 60 percent level used in the example above.

E. ProPAC Recommendations on Capital Payment

The inclusion of capital into the prospective payment system represents one of the most significant changes to the system to date. The considerations regarded by ProPAC as most important in this process are that the capital payment system should—

—Provide for neutrality between capital and other operating expenditures;
—Reflect capital intensity variations across the DRGs and

—Contributes to controlling aggregate expenditures and the level of capital growth.

ProPAC devoted considerable attention to this area and made four specific recommendations.

1. Including Capital in the Prospective Payment System (Recommendation 5)

Beginning in FY 1987, the Secretary should initiate a transition to all-inclusive prospective prices that combine operating and capital-related cost components in a single prospective payment per case for hospitals.

ProPAC contends that retrospective cost-based reimbursement for capital-related costs lacks incentives for hospitals to minimize overall investment costs. Instead, it promotes insensitivity to interest rates and alternative financing methods. In addition, some hospitals may have invested in capital to produce services that exceed the demands of the inpatient hospital services market.

The combination of the Medicare prospective payment system and the capital pass-through has introduced additional distorted incentives to substitute capital for labor or other operating costs. As a result, a hospital that substitutes capital-related costs for operating costs (and assumes the risk of additional capital acquisition) receives more in total Medicare payments (that is, hospitals receive fixed DRG payments plus increased cost reimbursement for capital-related expenditures) than a hospital that does not substitute capital-related costs for operating costs due to the fact that the former is paid on a total allowable cost basis, while the latter is a standardized (that is, limited) amount of payment in all cases.

ProPAC strongly believes that the capital payment policy adopted should provide neutrality in capital-related cost and operating cost trade-offs. The payment method should not favor either capital-related or operating costs. Instead, it should encourage hospital managers to choose the optimal combination of those cost components. An all-inclusive payment rate would allow individual providers the flexibility to make what they consider to be the most cost-effective decisions based on the unique characteristics of their institutions.

We agree with the ProPAC views set forth describing the—

- Problems associated with paying for capital-related costs under cost-based reimbursement;
- Benefits of incorporating capital-related costs into an all-inclusive prospective payment rate; and
- Necessity of making this change at the earliest feasible time.

We also agree with the ProPAC observation that use and payment for capital-related cost items and services in inpatient and outpatient settings could overlap, and thereby result in unintended hospital practices and payment strategies. However, we believe that the ProPAC recommendations would not alleviate these concerns in a manner that is measurably more effective than the proposals we are presenting in this document for incorporating capital-related costs into the prospective payment system.

2. Capital Payment Method (Recommendation 6)

ProPAC recommends that the Federal portion of capital payments should be calculated as a fixed percentage add-on to the standardized amounts beginning in FY 1987 and that the Secretary should immediately develop capital components to be added to the hospital market basket. When appropriate data become available, the components of prospective payments should be recalculated to reflect the addition of capital costs. The results of this recomputation should be implemented as soon as possible, but no later than FY 1988.

Rather than using a percent add-on, we are proposing to use a fixed amount add-on to the prospective payment standardized rate for capital-related services. We would use this method since we have actual capital-related expenses from audited cost reports for the applicable base year. Furthermore, this approach conforms to the method used to develop the Federal rates for other operating costs when we implemented the prospective payment system. It should also be noted, that based on ProPAC's recommendations for setting the level of capital-related payments, separate trending and index factors also would be required. Differing factors for plant and fixed equipment, and movable equipment would be necessary because proxies for those items from manufacturing to interest rates would vary. Thus, we do not believe that full integration of the payment components could be accomplished during the phase-in period under any mechanism which deals with the components of capital-related items and services independently and involves a transition period to merge capital-related costs with all other operating costs. Only after the transition period would all operating cost components be merged into one, indistinguishable payment rate.

3. Level of Capital Payment (Recommendation 7)

ProPAC recommends that capital payment should be added to the Federal portion of the prospective payment rates for hospital accounting years beginning in FY 1987 in the following steps:

- For building and fixed equipment, average actual Medicare capital-related costs per discharge for FY 1985, projected forward to FY 1987 by an index of construction capital costs.
- For movable equipment, average actual Medicare capital costs per discharge for hospital cost reporting year FY 1983, projected forward to FY 1987 by an index of equipment capital costs.
- The proportion attributed to moveable equipment should be the lesser of the FY 1983 proportion or 40 percent.

ProPAC's basis for a capital-related payment mechanism distinguishes between plant and fixed equipment and moveable equipment. We believe ProPAC's approach represents a reasonable position, one which we have explored as well based on suggestions from the hospital industry and others during the past three years. However, we have not incorporated this approach in our proposal but will continue to consider it as a possible option pending further review of the data available, the potential complexity of this approach, and the comments received on this option before we make a final decision.

A national proportion could be set based on consideration of American Hospital Association (AHA).

ProPAC estimates that its proposal for the level of capital payment combined with the transition period will result in savings of approximately $8 billion over current pass-through payments during the next five years. For a more detailed discussion of the cost savings and impact of our proposed changes for capital payment, we refer the reader to the Regulatory Impact Analysis in Appendix B of this document.

4. Capital Payment Transition (Recommendation No. 8)

ProPAC recommends that the transition to Federal capital payments under the prospective payment system should begin in FY 1987 in accordance with the following provisions:

- There should be no transition for moveable equipment. All payments for moveable equipment should be included as a fixed percentage add-on to the Federal standardized amounts beginning in FY 1987.

• Payment for plant and fixed equipment should be phased in as a fixed percentage add-on to the Federal standardized amounts over a seven- to ten-year period on a straight line basis.

• For plant and fixed equipment, the hospital-specific capital payment portions should be based on the actual costs incurred during each year of the transition.

• During the transition, the Federal portion for plant and fixed equipment should be updated each year by an index of construction costs.

• The addition of capital to the Federal standardized amounts should reflect base-year treatment of return on equity and interest offsets. Return on equity payments should be added to the hospital-specific portion of operating costs. Once the transition to fully national rates for operating payments ends, there should be no hospital-specific payment for return on equity.

As noted in the explanation and discussion to the preceding recommendation, this approach is being assessed further by us in our consideration of alternative methods for incorporating capital-related costs into the prospective payment system.

ProPAC recommends that the addition of capital to the Federal standardized amounts should reflect base-year treatment of return on equity and interest offsets. Section 9107 of Pub. L. 99–272 precludes addressing return on equity payments as part of the capital-related payment being incorporated into the prospective payment system. As we indicated earlier, the changes to return on equity capital provision in section 9107 will be addressed in another rulemaking document.

III. Proposed Rebasing and Reweighting of the Hospital Market Basket

A. Background

For cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") in establishing the limits on hospitals' routine operating costs (44 FR 31802). The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. Traditionally, we have used the market basket to adjust hospitals' cost limits by an amount that reflects the average increase in the prices of the goods and services used to furnish routine care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the prospective payment system on October 1, 1983, we have continued to use the market basket to update each hospital's 1981 inpatient operating cost per discharge used in establishing the FY 1984 standardized payment amounts. In addition, the projected change in the market basket is one of the integral components of the update factor by which the FY 1984 prospective payment rates were updated for FY 1985 and FY 1986. An explanation of the market basket used to develop the prospective payment rates was published in the **Federal Register** on September 1, 1983 (48 FR 39764). For additional background information on the market basket index, we refer the reader to the article by Freeland, Anderson, and Schendler, "National Hospital Input Price Index," *Health Care Financing Review*, Summer 1979, pp. 37–51.

The market basket is a Laspeyres or fixed-weight price index constructed in two steps. First, a base period is selected and the proportion of total expenditures accounted for by designated spending categories is calculated. These proportions are called cost or expenditure weights. In the second step, a rate of increase for each spending category is multiplied by the expenditure weight for that category. The sum of these products for all cost categories yields the percentage change in the market basket, an estimate of price change for a fixed quantity of purchased goods and services.

The market basket is described as a fixed-weight index because it answers the question of how much more it would cost at a later time to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not considered. For example, shifts in the furnishing of a certain type of inpatient care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital but would not be factored into the market basket.

The market basket that is currently in effect reflects base-year data from 1977 in the construction of the cost weights. In its April 1, 1985 report to the Secretary (described in Appendix C of our June 10, 1985 proposed FY 1986 prospective payment update (50 FR 24446)), ProPAC suggested that the market basket cost weights should be recalculated or "rebased" at least every five years or more frequently if significant changes in the weights occur.

We agree that it is desirable to rebase the market basket cost weights periodically in order to reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. The five-year interval that ProPAC recommended coincides with the frequency of a survey conducted by the Department of Commerce, Bureau of Economic Analysis, on industry input consumption. This survey, most recently described in the report, "The Detailed Input-Output Structure of the U.S. Economy, 1977", contains a detailed source of information on hospital input expenditures. In the September 3, 1985 final rule (50 FR 35684), we stated that we were in the process of developing rebased market basket cost weights that would reflect later data. We also stated that we would consider revising the market basket cost weights if additional costs, such as capital-related costs, were incorporated into the prospective payment system.

B. Rebasing and Reweighting the Market Basket Index

In this rule we are proposing to use a revised market basket in developing the FY 1987 update factor of the prospective payment rates. The new market basket would be revised as follows:

• We would rebase to reflect 1982, rather than 1977, cost data.

• We would expand the number of market basket cost categories from 14 to 32.

• We would add four categories for capital-related costs.

• We would modify certain variables used as the price proxies for some of the cost categories.

In developing the revised market basket, we reviewed hospital expenditures for the market basket cost categories. Preliminary data on hospital expenditures for the seven major operating expense categories (wages and salaries, employee benefits, professional fees and contracted nurses, depreciation, interest, utilities, and a residual "all other" category) were collected using 1982 data on Medicare participating hospitals from the 1983 AHA's Annual Survey. The AHA data include capital-related expenditures. No adjustments were made for hospitals with missing or AHA-imputed values. We then determined, for each category, the proportion it represents of total inpatient cost. These proportions represent the revised market basket weights. This approach is consistent with the way those values were calculated in 1979 using 1977 data. AHA's Hospital Administrative Survey provided the weight for malpractice insurance premiums that, although a median value, approximates the average

derived from an analysis of malpractice premium cost data using preliminary Medicare cost report data. Weights for the sub-categories within the residual category less malpractice, and other capital-related items, and for sub-categories within utilities were derived by projecting forward the U.S. Department of Commerce, Bureau of Economic Analysis' 1977 Hospital input and output data to 1982 using appropriate price proxies.

This work resulted in the identification of 32 separate cost categories in the rebased market basket. The differences between these categories and the ones used for the current 1977 based categories are summarized in the table below, and are as follows:

- Capital-related items (that is, depreciation split into fixed and movable equipment, interest, and other capital-related) were determined.
- Motor gasoline was disaggregated under utilities.
- Photographic supplies, paper products, minor machinery and equipment, miscellaneous equipment, computer data processing services, telephone, blood services, postage, and all other labor-intensive services and nonlabor-intensive services were made explicit under "all other products and services." A more detailed description of each category and respective price proxy is provided in Appendix A of this document.

TABLE A.—COMPARISON OF 1977 AND 1982 REBASED WEIGHTS AND COST CATEGORIES, INCLUDING CAPITAL

Expense categories	1977 market basket weights	Rebased 1982 market basket weights excluding capital	Rebased 1982 market basket weights including capital
1. Wages and salaries[1]	57.24	56.83	51.75
2. Employee benefits	8.22	8.90	9.08
3. Other professional fees	0.59	0.76	.70
4. Capital			7.22
a. Depreciation			4.16
(1) Fixed equipment			3.07
(2) Movable equipment			1.09
b. Interest			2.42
c. Other			.74
5. Energy and utilities	2.76	3.16	2.94
a. Fuel oil, coal, and other fuel	1.07	1.16	1.07
b. Electricity	0.77	1.09	1.01
c. Natural Gas	0.57	0.47	0.44
d. Motor gasoline		[2] 0.42	0.39
e. Water and sewage	0.36	0.03	0.03
6. Malpractice insurance	1.96	0.66	0.61
7. All other	29.23	29.79	27.66
All other products		21.05	19.50
a. Pharmaceuticals	2.82	4.10	3.80
b. Food	3.56	3.56	3.30
(1) Contract service	1.76	2.27	2.10
(2) Direct purchase	1.78	1.28	1.20
c. Chemicals and cleaning products	2.16	2.19	2.50
d. Surgical and medical instruments	2.03	2.36	2.20

TABLE A.—COMPARISON OF 1977 AND 1982 REBASED WEIGHTS AND COST CATEGORIES, INCLUDING CAPITAL—Continued

Expense categories	1977 market basket weights	Rebased 1982 market basket weights excluding capital	Rebased 1982 market basket weights including capital
e. Photographic supplies		[3] 2.28	2.10
f. Rubber and plastics	1.84	2.16	2.00
g. Paper products		[3] 1.19	1.10
h. Apparel	1.85	1.08	1.00
i. Minor machinery equipment		[3] 0.43	0.40
j. Miscellaneous products		[3] 0.76	0.70
All other services		8.74	8.10
a. Business services	4.70	3.02	2.80
b. Computer and data processing		[4] 1.40	1.30
c. Transportation and shipping	1.72	1.08	1.00
d. Telephone		[3] 0.76	0.70
e. Blood services		[3] 0.54	0.50
f. Postage		[3] 0.32	0.30
g. All other services: Labor intensive		[4] 0.97	0.90
h. All other services: Non-labor intensive		[4] 0.65	0.60
All other miscellaneous	8.75		

[1] In the rebased market basket, wages and salaries are composed of nine subcategories that correspond with the Employment Cost Index categories (Professionals and technicians, Managers, Sales, Clerical workers, Craft and kindred, Operatives except transport, Transport equipment operatives, Nonfarm laborers, and Service workers).

[2] This category was formerly incorporated into the original category—Fuel Oil, Coal, and Other Fuel.

[3] These categories were formerly incorporated into the original residual category, "All Other Miscellaneous."

[4] These categories were formerly incorporated into the original Business Services Category.

As shown in the table, the weights for a number of cost categories (current categories) declined from their 1977 level; namely, those weights for wages and salaries, malpractice insurance premiums, food at later stages of distribution, natural gas, water and sewerage, business services, transportation and shipping, and apparel. Weights for all the other categories increased.

The market basket weights published on September 1, 1983 (48 FR 39645) incorporate 1977 base-year cost-weights that were combined with differences in the rate of price proxy movements through 1981 to reflect their "relative importance" as a result of price changes in each variable. We have similarly adjusted the 1982 market basket cost weights shown above to reflect forecasted inflation through calendar year 1986. The 1986 relative importance weights for the rebased market basket cost categories are shown in Table 2 of section IV of the addendum.

In the September 1, 1983 interim final rule, for purposes of determining the labor-related portion of the standardized amounts, we summed the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, and miscellaneous items) in the market basket (48 FR 39765). This summation resulted in a labor-related portion of the market basket of 79.15 percent and a nonlabor-related portion of 20.85 percent.

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion (as estimated by the Secretary from time to time) of payments that are wage-related. Since the inception of the prospective payment system, we have considered 79.15 percent of costs to be labor-related. This percentage was derived by adding the 1981 relative importance weights of those categories from the hospital market basket that were considered labor-related (see 48 FR 39765 for a further explanation).

In connection with the rebasing and reweighting of the hospital market basket we have, under the authority of the applicable section of the statute cited above, re-estimated the labor-related share of the standardized amounts. Based on the relative weights (excluding capital) described in Table 2 of section IV of the addendum, the labor-related portion (based on wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) would be 75.04 percent (and therefore subject to the hospital wage index adjustment) and the nonlabor-related portion would be 24.96 percent. To implement this change, effective with discharges occurring on or after October 1, 1986, we recomputed the labor-related and nonlabor-related shares of each hospital's base year costs used to establish the prospective payment rates, and then followed the procedures discussed in the September 1, 1983 interim final rule in order to obtain revised labor-related and nonlabor-related standardized amounts (see 48 *FR* 39765–39766).

The restandardized amounts in Table 1 of section IV of the addendum reflect the revised labor-related and nonlabor-related portions. It should be noted that, because of the revision of the labor and nonlabor proportions, the labor portions of the rates published in Table 1 of this proposed rule have decreased from those published in the May 6, 1986 interim final rule (51 FR 16778), even though they reflect the increase of 0.5 percent. Similarly, the nonlabor portions in Table 1 have increased more than 0.5 percent because they now are based on a nonlabor proportion which is greater than the nonlabor proportion reflected in the rates published on May 6, 1986.

C. Selection of Price Proxies

After the 1982 cost weights for the rebased market basket were computed, it was necessary to select appropriate wage and price proxies to monitor the rate of increase for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following four BLS categories:

- *Producer price indexes*—Producer price indexes are used to measure price changes for goods sold in other than retail markets. They are the preferable proxies for goods that hospitals purchase as inputs as part of the process in producing their outputs. These indexes, which are fixed-weight, measure "price" change at the producer or intermediate stage of production.
- *Consumer price indexes*—Consumer price indexes measure change in the prices of final goods and services bought by the typical consumer. Similar to the producer price indexes, they are fixed-weighted. Because they do not represent the price faced by the producers, the consumer price indexes were used if no appropriate producer price index was available, or if the expenditure was more similar to that of retail consumers in general, rather than a purchase at the wholesale level.
- *Employment cost indexes*—Employment cost indexes measure the rate of change in employee wage rates per hour worked. These indexes are fixed-weight indexes and thus measure strictly the change in wage rate and are not affected by shifts in employment mix.
- *Average hourly earnings indexes*—Average hourly earnings indexes are used to weight the hourly earnings for various occupations within a given industry and, therefore, reflect a weighted employment mix for a particular industry. The average hourly earnings index series is calculated by dividing gross payrolls by total hours, and measures actual earnings rather than wage rates. It is a current-weight rather than a fixed-weight index, and thus reflects shifts in employment mix.

Our proposed price proxies for the rebased prospective payment system market basket are summarized in Table II of the addendum. For a more detailed explanation of each of the price proxies, we refer the reader to Appendix A of this document. However, because we are proposing to revise the price proxy substantially for the wages and salaries category (the highest-weighted category) of the market basket based on a model developed by HCFA, we are providing a separate discussion of the new price proxy for the wages and salaries portion of the rebased market basket. For purposes of this discussion, we refer to the revised wages and salaries price proxy as the HCFA hospital occupational index.

D. The HCFA Hospital Occupational Index

Wages and salaries represent the largest single component of the hospital market basket, accounting for 52 percent of overall inpatient costs. Currently, the market basket increases in hospital wages and salaries are measured by using the average hourly earnings index for the hospital industry (Standard Industrial Classification 806), a data series collected by BLS.

In its April 1, 1985 report to the Secretary, ProPAC observed (in Recommendation Nos. 4 through 6) that the average hourly earnings series do not separate changes in inflation from changes in the mix of hospital workers over time. That is, rapid increases in average hourly wages could reflect changes in skill mix instead of in wage rates. ProPAC also expressed concern that HCFA's use of a price change measure specific to the hospital industry for the wages and salaries category allows hospital behavior to unduly influence increases in the market basket. For example, if the average hourly earnings series rises at a relatively high rate (as it did under the cost-based reimbursement system prior to the prospective payment system), exclusive use of a hospital industry series would permit hospitals to increase wages at a faster rate than other industries, even when unwarranted. Conversely, if growth in hospital wages and salaries is slower compared to other industries (such as in response to the prospective payment system or other incentives for cost containment), the market basket would reflect this behavior, and could provide an incentive for restricting wage increases for hospital employees.

To address these concerns, ProPAC recommended that separate wage and salary categories for occupational groups should be created to take into account the broad changes in skill mix among managers, professionals, and other hospital workers. ProPAC suggested that changes in wages for these categories should be measured using a combination of internal and external proxies as follows:

- Managers and Administrators—Employment cost index.
- Professionals and Technicians—A 50–50 blend of the average hourly earnings for the hospital industry and the employment cost index for professionals and technicians.
- Other Hospital Workers—A 50–50 blend of the average hourly earnings for the hospital industry and the employment cost index for all private industries.

The issue of whether to use only an internal wage proxy (that is, one based exclusively on hospital wage and salary data), or a combination of internal and external (hospital and nonhospital) wage proxies, has been debated for some time. It is generally accepted that prices for most nonlabor hospital inputs are nondiscretionary or beyond the control of the hospital industry. To monitor price changes in these expenditure categories, external prices are used. Hospital wages and salaries, however, should not be considered totally beyond industry control since there are employee categories for which hospitals are the principal employer (for example, registered nurses).

By classifying hospital wages and salaries into specific broad-based occupational categories, it is possible to group wages and salaries into two groups, those for which an internal proxy is more appropriate, and those for which an external proxy is more appropriate. We believe we are refining ProPAC's recommendation by further disaggregating the mix of hospital workers into specific categories, and applying a combination of internal and external price proxies in the HCFA hospital occupational index.

HCFA's hospital occupational index groups hospital occupations into nine broad categories. For eight of these occupational groupings, we believe that hospitals compete for labor generally with employers outside the health sector. Accordingly, use of an employment cost index as an external price proxy for each occupation seems most appropriate. In the case of nurses' wages, especially those of registered nurses, as well as certain other health care technicians and professionals, the hospital market predominates, and this should be reflected in the use of an internal wage proxy. However, hospitals also compete with other industries to obtain certain other skilled professional and technical staff (for example, computer programmers). Therefore, for professional and technical workers, we believe a price proxy that reflects a 50–50 blend of internal and external wage increases is appropriate. The proxy for the wages and salaries component of the prospective payment system market basket reflects internal and external measures of price changes as follows:

HCFA HOSPITAL OCCUPATIONAL INDEX

Wages/salaries component 1982 market basket index	Wages/salaries percentage	Wage proxy
1. Professionals and technicians.	57.34	80-85 blend of: Average Hourly Earnings (Standard Industrial Classification (SIC) code 806) for nonsupervisory hospital workers; and employment cost index, wages and salaries, for professionals and technicians.
2. Managers	7.85	Employment cost index, wages and salaries, for managers and administrators.
3. Sales	.94	Employment cost index, wages and salaries, for sales workers.
4. Clerical workers	12.54	Employment cost index, wages and salaries, for clerical workers.
5. Craft and kindred	2.48	Employment cost index, wages and salaries, for craft and kindred workers.
6. Operatives except transport.	.89	Employment cost index, wages and salaries, for operatives except transport.
7. Transport equipment operatives.	.38	Employment cost index, wages and salaries, for transport equipment operatives.
8. Nonfarm laborers	.20	Employment cost index, wages and salaries, for nonfarm laborers.
9. Service workers	16.72	Employment cost index, wages and salaries, for service workers.
10. Total wages	100.00	Total weight for wages is 81.75.

We believe that the HCFA hospital occupational index would provide a more accurate and equitable basis for monitoring increases in the wages and salaries portion of the market basket, and that it responds to ProPAC's concern that the market basket should reflect labor market forces that are both internal and external to the hospital industry.

IV. Other Decisions and Proposed Changes to the Regulations

A. Elimination of Periodic Interim Payments (§ 405.454)

1. Background

Prior to implementation of the prospective payment system, all providers were reimbursed based on the lesser of the reasonable cost of services furnished to Medicare beneficiaries or the provider's customary charges for those services. Prospective payment hospitals currently continue to be reimbursed based on reasonable cost for certain expenses such as training nurses and allied health personnel. In addition, hospitals and hospital units excluded from the prospective payment system and most other providers are still reimbursed on the basis of reasonable cost.

Since actual reasonable cost cannot be determined until the end of a provider's cost reporting period, an interim rate, approximating actual cost as closely as possible, is determined by the intermediaries for each provider and interim payments are made during the year. These interim payments are required by section 1815(a) of the Act, which states that we must pay providers at least monthly during the cost reporting period, pending a final determination of cost on the basis of a submitted cost report and any necessary adjustments. The regulations that implement these policies are located at § 405.454. After receipt of the provider's cost report, the intermediary determines what the actual reimbursement for the period should have been and a retroactive adjustment is made.

There are two methods of interim reimbursement for inpatient hospital services for hospitals excluded from the prospective payment system. One method is based on actual bills submitted by the hospital. Under this method interim payments are calculated by applying a predetermined per diem amount to the number of days reflected on actual bills or by applying a predetermined percentage to the charges reflected on the actual bills submitted. The predetermined per diem amount or percentage factor applied to billed patient days or charges represents an estimate of the hospital's costs that will be incurred.

Under the second method, referred to as the periodic interim payment (PIP) method, interim payments are not based on individual bills. Instead, payment is based on the estimated annual costs attributable to estimated Medicare utilization of a hospital, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. PIP has been available for inpatient hospital services since 1966. It was offered to qualified hospitals as an alternative to regular interim reimbursement, which requires submission of a bill to receive payment.

With either of these interim payment methods, any overestimation or underestimation of the hospital's actual costs, to the extent not adjusted during the year, is adjusted at the time of cost report settlement.

For those items or services reimbursed on a reasonable cost basis, we make interim payments to providers throughout the year based on the reasonable cost of the item or services furnished to beneficiaries during the year. Although the PIP method of interim payment is not based on actual bills submitted, a PIP provider must continue to submit bills for subsequent intermediary verification of the accuracy of the rate, as well as recording an individual's benefit utilization. The rate is reviewed twice per year for hospitals paid under the prospective payment system and at least quarterly for hospitals reimbursed on a reasonable cost basis. If necessary, as determined by the reviews, the rate is adjusted. Interim payments may be further adjusted at year end based on submitted cost reports.

Under the prospective payment system, hospitals are paid, for most of the Part A inpatient services they furnish, a prospectively determined amount for each discharge based on actual bills submitted. This amount constitutes final payment for each discharge claimed. Although no form of interim payment is necessary for hospitals operating under the prospective payment system, we extended the option to these hospitals to elect to receive PIP when the prospective payment system was implemented in order to avoid cash flow problems. Thus, § 405.454(m) provides that hospitals that meet the qualifications for receiving PIP set forth in § 405.454(j) may elect to receive this type of interim payment, which would be based on their estimated annual prospective payment amounts. In these circumstances, year-end reconciliation is required.

Payment for capital-related items [1] and those direct medical education costs that are payable on a reasonable cost basis continue to require interim payments pending a year-end reconciliation based on a cost report. These interim payments are determined by estimating the reimbursable amount for the year based on the previous year's experience and on information for the current year and dividing that amount into 26 equal payments made biweekly. In addition, the indirect teaching adjustment, if appropriate, is paid on a biweekly interim basis subject to final settlement. Biweekly payment for these items is the method of interim reimbursement required by current regulations (§ 405.454). Since a hospital

[1] As discussed above in section II, we are proposing to incorporate payments for capital-related costs into the prospective payment system via a four-year phase-in period, effective with cost reporting periods beginning on or after October 1, 1986. Those portions of the hospital's capital payments that continue to be reimbursed on a hospital-specific basis would also continue to be paid on an interim payment basis.

has no option as to the payment method for these items, the payments are not considered as part of the PIP method of payment.

As indicated above, our primary reason for offering PIP to hospitals paid under the prospective payment system was to ensure that hospitals would not experience cash-flow problems as they made the transition from cost-based reimbursement to prospective payment. We believed that implementation of a payment system that was new to both hospitals and intermediaries might have, in some cases, cause fluctuation or temporary interruption in payments to hospitals. Therefore, PIP was made available to qualified hospitals to ease the problems inherent in this start-up period.

2. Problems With PIP

Evidence indicates that the PIP method has become an increasingly needless and time-consuming burden for the intermediaries and that it results in the expenditures of considerable resources in attempting to identify and correct overpayments and underpayments. For example, because this payment method does not rely initially on submitted bills, changes in a provider's utilization are not identified as quickly as under the regular interim reimbursement method.

Eliminating PIP for all hospitals, that is, those reimbursed on the basis of reasonable costs and those subject to prospective payment, would allow intermediaries to utilize their resources more effectively to better control payments to hospitals, and all other providers. Furthermore, the proposed elimination would encourage hospitals to submit their bills on a more timely basis. Hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP. The latter hospitals are required to submit a bill before receiving any payment. Therefore, we are proposing to revise § 405.454 (j) and (m) to eliminate PIP for all hospitals effective with discharges occurring on or after July 1, 1987.

We recognize that some hospitals may be adversely affected by such a major change as the elimination of PIP. In order to minimize any cash flow problems that may arise, and to allow hospitals sufficient lead time to adjust their billing practices, we are proposing to eliminate PIP effective with discharges occurring on or after July 1, 1987. In addition, the impact on hospital cash flows can be alleviated through the availability of accelerated payments for those delays resulting from an intermediary's operation or, in unusual circumstances, a hospital's operation.

PIP represents a general departure from customary business practice because it is a payment system unrelated to submitted bills. Its elimination would allow us to control Medicare payments in a more efficient and business-like manner. We do not expect that hospitals would have much difficulty adjusting their payment operations, and as previously indicated in the case of unexpected delays, accelerated payments are available to hospitals.

While we believe that the elimination of PIP is a reasonable and practical measure to take for all hospitals, it is particularly so for those hospitals subject to the prospective payment system. Our main purpose for extending PIP to prospective payment hospitals, that is, to ensure that the new system would not cause cash flow problems while hospitals became acclimated to the new system, has been served. By July 1, 1987, almost all hospitals under the prospective payment system will have operated under that system for at least three full years. Furthermore, we believe that interim payments made to hospitals in an attempt to approximate final payments are not appropriate, as a continuing practice, under a system that provides for final payment upon discharge based on submission of a bill. The entire legislative history of the public laws on which the prospective payment system is based underlines congressional intent concerning the *prospectivity* of the new system. With respect to hospitals that are excluded from the prospective payment system and reimbursed on a cost basis, we do not believe that PIP continues to be appropriate. Not only has it become very difficult and time consuming for intermediaries to ensure that accurate interim payments are made to these hospitals using the PIP method, but also, over the years, we believe that hospitals have become very capable of submitting timely and accurate claims. Similarly, intermediaries are able to process claims without undue delays.

Under our proposal, we would make payment to hospitals, based on submitted bills for payment not less often than monthly.

3. Exceptions to the Elimination of PIP

In eliminating PIP, there is one problem that we believe we need to address. Some prospective payment hospitals, particularly small rural hospitals, have experienced serious cash-flow shortages because of the unusually long lengths of stay of some Medicare patients. Without PIP, these hospitals would experience difficulties in recouping their expenses on a timely basis, because bills cannot be submitted until after the patients are discharged. In order to alleviate the cash flow problems that these hospitals encounter, we are proposing a form of interim payment to accommodate these situations. We are proposing to allow hospitals subject to the prospective payment system to request this payment if a patient has been in the hospital more than 45 covered days.

For these cases, payment would be made at the rate for the DRG that results from applying the GROUPER classification to the diagnosis, procedures, and other pertinent information, that are reported on the interim bill. (GROUPER is the computerized screening process used to determine the appropriate DRG for each discharge under the prospective payment system. Only one interim payment would be made per discharge. Any interim payment made would be applied against the final payment made for the discharge. This change would also be effective for discharges occurring on or after July 1, 1987. We believe that the proposed amount of the interim payment represents a fair compromise between the interests of the Medicare program in adhering to the principle of prospectivity in the new payment system and the interests of those hospitals that could be adversely affected, in terms of cash flow, by the elimination of PIP.

In addition to eliminating PIP for hospitals reimbursed on the basis of reasonable costs and for prospective payment hospitals, we are also proposing to eliminate this method of interim payment for hospitals receiving payment under a demonstration project authorized by section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90-248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92-603). Also, we would extend this policy to those hospitals paid under State cost control systems authorized by sections 1814(b) or 1886(c) of the Act and approved by HCFA. However, these hospitals would be permitted to use a form of interim payment similar to PIP if that type of payment is specifically approved by HCFA. This might occur, for example, if that type of payment is considered to be an integral part of the demonstration or cost control system.

By definition, alternative payment systems authorized under the authorities described above provide for payments to be made on bases and methods that vary from those on which usual Medicare payment is made. For these systems, certain Medicare regulations and procedures may be waived

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provided that, among other factors, payments made under the alternative payment systems will not exceed the amount of payments that would otherwise have been made by Medicare.

However, hospital demonstrations in general are designed to test new prospective-type payment methodologies. In addition, prospectivity is required for systems approved under the authority of section 1886(c)(3) of the Act. A main purpose of these prospective payment methodologies is to move away from traditional cost-based reimbursement that requires final settlement of costs at year end, a type of payment that by its very nature makes interim payment unnecessary. Instead, payment would be made based on submitted bills for payment not less often than monthly.

It is our opinion that interim payments for services payable on the basis of a prospectively determined rate are inconsistent with the purpose of a prospective payment system. Therefore, a prohibition against PIP for hospitals paid under the Medicare prospective system should not be waived for hospitals similarly receiving prospective payments under an alternative prospective system. However, we believe that an exception would be warranted if HCFA were satisfied with an alternative system in its entirety, including the integration of PIP-type payments as part of the total system. States that are interested in incorporating or retaining PIP as part of their alternative or demonstration methodology should address the necessity for this mechanism in light of the prospectivity requirements discussed above at the time of their application for approval or renewal of the system under the demonstration authority or section 1886(c) of the Act.

Payment for capital-related costs to the extent they are not included in operating costs, direct medical education and other inpatient hospital costs excluded from the prospective payment system would continue to be made biweekly on an interim payment basis under the provisions of §§ 405.454 (m)(3) and (m)(4).

6. Summary

In summary, we are proposing to revise § 405.454 to—

- Eliminate PIP for all hospitals effective with discharges occurring on or after July 1, 1987;
- Eliminate PIP for hospitals participating in demonstration projects or State cost control systems unless that type of payment is approved by HCFA as a part of the project or system; and
- Allow an interim payment to prospective payment hospitals for beneficiaries who remain in an inpatient status for more than 45 covered days.

B. Establishing a Base Period for Purposes of Determining the Rate-of-Increase Ceiling for Hospitals Excluded From the Prospective Payment System (§ 405.463)

Hospitals that are excluded from the prospective payment system and, at their option, cancer hospitals, are paid on a reasonable cost basis subject to the rate-of-increase ceilings under section 1886(b) of the Act and implementing regulations at § 405.463.

Section 405.463(b)(1) provides that each hospital's initial rate-of-increase ceiling will be based on allowable inpatient operating costs per case incurred—

- In the 12-month cost reporting period immediately preceding the first cost reporting period subject to the ceiling; or
- For short reporting periods (fewer than 12 months), the first 12-month period ending after October 1, 1982.

Concern was expressed as to the determination of the base period for hospitals excluded from the prospective payment system in States in which a demonstration project (sections 1814(b)(3) or 1886(c) of the Act) was terminating. We believe § 405.463(b)(1) should provide that each hospital's initial base period subject to the rate of increase ceiling is—

- The 12-month cost reporting period immediately preceding the first cost reporting period subject to the ceiling (for example, the base period would be January 1, 1985 through December 31, 1985 for a hospital paid under a demonstration project which terminates December 31, 1985); or
- Where the immediately preceding reporting period is a short cost reporting period (that is, less than 12 months), the base period will be the 12-month cost reporting period beginning on or after the date the hospital's exemption from the ceiling ends (for example, the base period would be the 12-month period beginning on or after January 1, 1986 for a hospital paid under a demonstration project which terminates December 31, 1985).

We are proposing to clarify § 405.463(b)(1) to correctly state the applicable base period initially subject to the rate-of-increase ceiling for hospitals with short cost reporting periods. We note that this revision would apply to both hospitals in a State with a demonstration project that is terminating (and for which the hospitals would continue to be excluded from the prospective payment system), and to hospitals which are no longer exempt from the ceiling as new providers (§ 405.463(f)(1)).

C. Extension of the Exclusion of Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

In the January 3, 1984 final rule, we developed a set of criteria for the exclusion of hospitals and distinct part units that specialize in alcohol/drug dependency treatment (49 FR 241). As provided in that rule under §§ 412.23(c) and 412.32, exclusion was to have terminated on October 1, 1985.

In the June 10, 1985 proposed rule, we proposed to revise §§ 412.23(c) and 412.32 to provide that the exclusion of hospitals and distinct part units that specialize in alcohol/drug dependency treatment would expire at the end of the hospital's cost reporting period that began before October 1, 1985 (50 FR 24387). We were also proposing simultaneously to reclassify and reweigh the alcohol and drug abuse DRGs (433 through 436) within the major diagnostic category (MDC) 20 (Substance Use and Substance Induced Organic Mental Disorders) to make an appropriate adjustment for alcohol/drug treatment services (50 FR 24370). However, in order to provide additional time to validate the newly constituted and weighted alcohol and drug abuse DRGs (433 through 437), we decided in the September 3, 1985 final rule to continue the exclusion for another year (that is, through cost reporting periods that began before October 1, 1986) pending further study and analysis (50 FR 35869).

The Department undertook a study to reabstract alcohol and drug abuse cases in order to validate the classification and weights of the DRGs. To date, the collection and analysis of survey data for the MDC 20 DRGs are not complete. Because we are unable definitively to assure the appropriateness of the alcohol and drug abuse DRGs, we have decided to further delay the end of the exclusion. We are continuing to gather and analyze the data to evaluate the new groupings we have developed. Until we have completed this study, we are proposing to review §§ 412.23(c) and 412.32 to extend the exclusion of alcohol/drug hospitals and units (that are currently excluded) for another year.

D. Hospitals in Redesignated Rural Counties Which Are Surrounded on All Sides by Urban Counties (§ 412.63)

Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined

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for hospitals located in urban areas and rural areas of the nine census divisions and the nation. Under the prospective payment system, a hospital's payment rate is dependent, to some degree, on whether the county in which a hospital is located is designated as an urban area or as a rural area. The term "urban area" is defined as provided in section 1886(d)(2)(D) of the Act, in accordance with the Executive Office of Management and Budget's (EOMB's) designations, as a Metropolitan Statistical Area (MSA), a New England County Metropolitan Area (NECMA), or certain New England counties deemed to be urban areas under section 601(g) of Pub. L. 98–21 (42 U.S.C. 1395ww (note)). The term "rural area" means any area outside an urban area.

Section 1886(d)(8) of the Act, as added by section 2311(c) of Pub. L. 98–369, provides for an adjustment to the payment amounts for hospitals reclassified from urban to rural after April 20, 1983. Effective with hospital cost reporting periods beginning on or after October 1, 1983, a hospital that loses its urban status, as a result of an EOMB redesignation occurring after April 20, 1983, may qualify for special consideration by having its rural Federal rate phased in over a two-year period (§ 412.102).

Using our authority under section 1886(d)(5)(C)(iii) of the Act, to "provide by regulation for such other exceptions and adjustments" as are deemed appropriate, we are proposing to expand on the above provisions by recognizing the circumstances of a hospital located in a redesignated rural county that is surrounded on all sides by urban counties. Given the unique situation of such a hospital, we believe special consideration is warranted in order to ensure equitable treatment under the prospective payment system.

Therefore, effective with discharges occurring on or after October 1, 1986 we are proposing to consider a hospital as urban, for prospective payment purposes, if it meets all of the following criteria:

- The rural county in which the hospital is located must be surrounded on all sides by urban counties.
- The county in which the hospital is located was reclassified from an urban area to a rural area after April 20, 1983 (the date of enactment of Pub. L. 98–21).
- Based on the latest census data, at least 15 percent of employed workers in the county in which the hospital is located commute to the central county or counties of one of the adjacent areas. The term "central county," as defined by EOMB, is based on commuting patterns of employed workers. The 15 percent minimum commuting criterion is intended to establish the county's economic interaction with at least one of the adjacent MSAs. Given the fact that a county which is surrounded by a number of MSAs would likely interact economically, to some extent, with more than one urban area, we believe the minimum required commuting rate to one urban area should be low enough to account for this situation.

Hospitals that meet these criteria would be deemed urban for purposes of computing prospective payments, and would be reclassified into the MSA or NECMA in which it had been previously designated prior to the EOMB redesignation. We would revise § 412.63(b) to implement this provision.

We have identified one hospital located in Shiawassee County, Michigan that would qualify for special treatment under these provisions. Accordingly, that hospital located in Shiawassee County, Michigan would be reclassified into the Flint, Michigan MSA where it had been previously designated. (We note that Shiawassee County also had the highest commuting rate to the Flint MSA.) For wage index purposes, we would also consider Shiawassee County to be part of the Flint, Michigan MSA (see Table 4a of the addendum), and have recomputed the wage index to reflect this change.

As a matter of policy, we believe it is appropriate to adjust the standardized amounts in such a case. However, we are assessing the administrative implications of making such adjustments for purposes of this limited exception. Because we have not completed our assessment of administrative implications, we have not adjusted the standardized amounts in this proposed rule.

E. Referral Centers (§ 412.96)

In the August 31, 1984 final rule, we added an alternative set of criteria to § 412.96 (then § 405.476(g)) that expanded the definition of referral centers to encompass more rural hospitals. We also added a new paragraph to that section that provides for a triennial review of referral centers to determine if they continue to meet the criteria for a referral center. (See 49 FR 34740 for a detailed discussion of those revisions.) Under those alternative criteria, in order to qualify as a referral center, a hospital must meet two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals), in addition to being located in a rural area.

1. Number of Discharges

The number of discharges criterion measures whether the hospital has a comparatively high number of cases. We established this criterion because virtually all discussions of rural referral centers in the legislative history contain references to "large hospitals," "very large acute care hospitals," and "large referral hospitals located in rural States." (129 Cong. Rec. S3224–26 (daily ed. Mar. 17, 1983)) Thus, in establishing the criteria to define rural referral centers, we included a standard to differentiate these larger facilities from rural hospitals of average size.

In the August 31, 1984 final rule (49 FR 34761), we set forth in § 412.96 (then § 405.476(g)) four different discharge criteria, one of which a hospital must meet, along with other criteria, in order to qualify as a referral center for cost reporting periods beginning on or after October 1, 1984. A hospital's number of discharges (excluding discharges from subprovider units) had to be at least equal to—

- 6,000 for the hospital's cost reporting period that ended in 1981;
- 6,000 for the hospital's most recently completed cost reporting period;
- The median number of discharges of urban hospitals for cost reporting periods ending in 1981 for the region in which the hospital is located for the hospital's cost reporting period that ended in 1981; or
- The median number of discharges of urban hospitals for cost reporting periods ending in 1981 for the region in which the hospital is located for the hospital's most recently completed cost reporting period.

In the September 3, 1985 final rule (50 FR 35689), we eliminated the two options that related to a hospital's number of discharges for its cost reporting period that ended in 1981. We did not believe that 1981 discharge data were relevant to a hospital's qualification for rural referral center status five or more years later. The two remaining options relate directly to the number of discharges in a hospital's most recently completed cost reporting period.

In addition, we did not update the 6,000 figure for number of discharges (the national value) in the September 3, 1985 final rule (50 FR 35675) because our discharge data for 1984 were incomplete and because it was not clear that hospitals serving as referral centers would have experienced the same decline in discharges as the nation as a whole. However, we believe that the number of discharges criterion should be

updated in this year's prospective payment notice because we believe that hospitals serving as referral centers have experienced a reduction in discharges similar to all other hospitals. These data reflect changes that have occurred since 1981, the year from which the initial discharge criteria were derived.

We are proposing to update the number of discharges criteria effective with cost reporting periods beginning on or after October 1, 1986. These proposed values are updated using the most current data available on discharges. We believe that it is necessary to update these values not only to enable new hospitals to qualify as referral centers, but also to provide current criteria against which existing referral centers can be measured during their triennial review to determine if they continue to qualify for special treatment on the basis of their number of discharges. We are also proposing to revise § 412.96 to describe the process we would use to calculate the number of discharges. The actual national and regional values would set forth in each year's annual notice of prospective payment rates as is currently required under § 412.96(c)(2).

To determine the change in the national and regional number of discharge values, we would use American Hospital Association (AHA) panel survey data available for the most recently completed fiscal year. We would compare the discharges from non-Federal short-term acute care general hospitals in that period to discharges in 1981. The percentage change (increase or decrease) would be used to update the 6000-discharge standard. The updated national and regional values would be effective for a hospital's most recently completed cost reporting period prior to the period for which it is applying for referral center status or for the period for which an existing referral center is being reviewed.

For both the national and regional discharge values, we reduced the 1981 standards as noted in the September 3, 1985 final rule (50 FR 35675–76) by 8.05 percent to reflect the national percentage change in the number of discharges from the year ending in September 1981 through the year ending in September 1985. The percentage is calculated from AHA panel survey data, which show that there were 37,840,257 admissions [1] to community hospitals [2] in FY 1981 and 34,783,931 admissions to community hospitals in FY 1985, an 8.05 percent decrease. Thus, the proposed national number of discharges criterion is computed by multiplying the 1981 discharge standard by .9195 (100.00 − 8.05 = 91.95), as follows:

6,000 times .9195 = 5,517

The same method (and percentage value of 8.05) is used to reduce each 1981 regional median urban discharge value.

Therefore, in addition to meeting other criteria, we are proposing that to qualify as a referral center or for purposes of the triennial review to retain rural referral center status, for cost reporting periods beginning on or after October 1, 1986, a hospital's number of discharges for its most recently completed cost reporting period would have to be at least—

- 5,517; or
- Equal to the median number of discharges for urban areas calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region:	Median urban discharges
1	6,669
2	7,900
3	7,155
4	6,560
5	7,659
6	7,830
7	5,414
8	6,129
9	5,116

In addition, section 9105 of Pub. L. 99–272 amended section 1886(d)(5)(C)(i) of the Act to permit rural osteopathic hospitals to qualify for the rural referral center adjustment if they meet the case-mix index standard, one of the optional criteria, and if they have at least 3,000 discharges annually. This provision would apply to cost reporting periods beginning on or after January 1, 1986. Because of the small number of osteopathic hospitals, we are proposing not to establish regional standards under this provision. The 3,000 discharges figure would apply to all rural osteopathic hospitals nationwide and, for purposes of rural referral center recognition only, would apply to rural osteopathic hospitals recognized by the American Osteopathic Hospital Association.

We are proposing to revise § 412.96 to implement the provision for rural osteopathic hospitals in section 9105 of Pub. L. 99–272.

2. Case Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining referral center status. In the September 3, 1985 final rule (50 FR 35676), we calculated the national case-mix criterion as follows:

$$\frac{1.03 \times 1.108}{1.0105} = 1.1294$$

in which:

- 1.03 represented the 1981 case-mix index benchmark for complexity of cases treated in a facility;
- 1.108 represented the increase (10.8 percent) in the national average case-mix index since 1981, for discharges through the midpoint of the Federal fiscal year; and
- 1.0105 represented the reduction in the DRG relative weights for discharges occurring on or after October 1, 1984. (See the August 31, 1984 final rule (49 FR 34770).)

We used the same formula applied to each region's 1981 urban median case-mix value in determining the updated urban median case-mix values for FY 1986.

On the basis of hospital bills received in HCFA through March 1986, we have determined that the national average case-mix index has increased by 15.4 percent since 1981.

Using the same formula and currently available program data indicating a 15.4 percent increase in the national average case-mix index since 1981, we are proposing to update the national case-mix criterion as follows:

$$\frac{1.03 \times 1.154}{1.0105} = 1.1763$$

[1] Although the AHA data are based on the number of admissions, we believe that, in the aggregate, there is little, if any, difference between the number of admissions and the number of discharges over the course of a year.

[2] The term "community hospitals" encompasses, for the most part, hospitals subject to the prospective payment system. For purposes of the panel survey data, AHA defines community hospitals to be all non-Federal, short-term general and other special hospitals, excluding hospital units of other institutions, whose facilities and services are available to the public. Noncommunity hospitals are defined as Federal hospitals, long-term hospitals, hospital units of other institutions, psychiatric hospitals, hospitals for tuberculosis and other respiratory diseases, chronic disease hospitals, institutions for the mentally retarded, and alcoholism and chemical-dependency hospitals.

The same method (and percentage value of 15.4) is used to increase each 1981 regional median urban case-mix value.

Therefore, in addition to meeting other criteria, we are proposing that to qualify as a referral center, or for purposes of the triennial review for retention of referral center status, for cost reporting periods beginning on or after October 1, 1986, a hospital's case-mix index for the Federal fiscal year ending September 30, 1986 would have to be at least—

- 1.1763; or
- Equal to the median case-mix index for urban areas calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Adjusted urban median case-mix
1	[illegible]
2	[illegible]
3	1.1839
4	1.1945
5	1.1904
6	1.1671
7	1.1169
8	[illegible]
9	[illegible]

The above numbers will be revised in the final rule to this proposed rule to the extent that additional bills are received for discharges through March 1986.

F. Changes to DRG Classifications and Weighting Factors

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case (comprised of a hospital-specific portion and an urban or rural Federal portion adjusted for area wages) and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resources consumption. In addition, Congress provided the Secretary with authority to reclassify services and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology. The proposed DRG reclassifications for discharges occurring on or after October 1, 1986 are set forth below.

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. The intermediary enters medical and other information contained in each patient's bill into its claims systems and subjects it to a series of automated screens called the Medicare Code Editor. These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by GROUPER into the appropriate DRG. The GROUPER software program was developed as a means of classifying each case into the appropriate DRG on the basis of the diagnosis and procedure codes and demographic information, that is, sex, age, and discharge status. It is used both to classify past cases in order to establish the DRG weights and to classify current cases for payment.

During the initial operating period of the prospective payment system, we learned that the use of the DRG method of classification posed some operational challenges that we needed to address further. We issued a notice on March 13, 1986 (51 FR 8762) to propose a number of improvements to the DRG classification system and finalized the proposal elsewhere in this edition of the Federal Register. We will reflect those changes in a revised GROUPER program to be effective with discharges occurring on or after October 1, 1986.

Although we originally intended to limit modifications of the DRG classification system to a single annual notice, we have found that, at least for this year, such a practice is not appropriate. In response to the public's request, we proposed DRG changes early in the calendar year (March 13, 1986). However, ProPAC has made several recommendations concerning additional DRG classification changes. These recommendations were not presented until after publication of our proposed changes. Some of ProPAC's recommendations have merit and represent analysis of data that was not available to us or problems that were not raised to us. We do not believe it is appropriate to delay recognition of ProPAC's suggested changes on DRG classification issues until our next annual publication of classification changes simply because its report was made subsequent to our proposed changes. To do so would unnecessarily delay implementation of improvements to the system. Consequently, we are proposing to revise the reference to an annual notice in § 412.10(a), and to go forward with a second notice of proposed DRG classification changes that are included in this document.

We continue to believe it would be most beneficial to the industry to strive toward a single annual notice of DRG changes. We also believe it is appropriate to propose such changes prior to the proposed rule on prospective payment system changes required each June. We will attempt to work with ProPAC more closely in the future with a goal of better coordinating our efforts in this area so that we may eventually achieve a single annual notice of DRG classification changes.

1. DRG Logic Issues—DRG 385

We have been advised that it is common practice in hospitals to report the discharge status of a newborn discharged to foster care as "transfer-other". The GROUPER program assigns all newborns to a distinct DRG (DRG 385) if the discharge status is reported as "died or transferred", regardless of the type of transfer cited.

The intent of DRG 385 is to establish a unique classification for acutely ill newborns. We do not believe it is appropriate to use this classification for normal newborns simply because they were discharged to foster care. Consequently, we are proposing to revise the GROUPER logic for DRG 385 so that only cases with reported discharge status of died or transferred to an acute care hospital will be classified to this DRG. All other discharges for newborns would be classified into the appropriate DRGs (DRGs 386–391) within major diagnostic category (MDC) 15 based on their diagnosis and procedure codes. Since this is a low volume procedure for Medicare purposes, this classification change will not result in a change in the DRG

weighting factor, but would only affect future classification of cases to this DRG.

2. Burns

Throughout the past year we have received numerous letters advising us of difficulty with the classification of burn cases. ProPAC also has studied this issue, although it did not make a formal recommendation on this matter. (See Technical Appendixes to ProPAC's April 1, 1986 Report to the Secretary, pages 124–133.)

There appear to be numerous factors contributing to the high heterogeneity of the burn DRGs, and we agree with ProPAC that additional evaluation of MDC 22 (Burns) is necessary. However, we have found that significant improvement in the homogeneity of DRG 457, Extensive burns, can be achieved by further classifying extensive burn cases based on operating room procedures. Consequently, we are proposing to establish a new DRG for MDC 22. We are proposing to create DRG 472, Extensive burns with operating room procedure, that would include cases with a principal or secondary diagnosis of extensive burns (those currently classified in DRG 457) and any of the operating room procedures currently classified in DRGs 458, Non-extensive burns with skin grafts, and 459, Non-extensive burns with wound debridement and other operating room procedure. DRG 457 would be modified to specify this classification includes extensive burns without operating room procedure.

We will continue to study classification of cases in MDC 22. If we find further changes in this MDC are necessary, they will be proposed in a future DRG classification notice.

3. Surgical Hierarchy

Review of claims data and DRG relative weighting factors for DRGs has led us to conclude that revision of the surgical hierarchy of several MDCs is necessary. For the most part, the present hierarchy is based on clinical judgment and aged resource data. We have found that in some cases, the present hierarchy results in classification of cases with multiple surgical procedures to lower weighted DRGs because a less resource-intensive procedure is higher up in the hierarchy than another more resource-intensive procedure. Changes in practice patterns and technology have occurred since the surgical hierarchy was developed. The recalibration of the DRGs using FY 1984 claims data indicates current resource utilization for certain classes of surgical procedures is somewhat different than was common when the surgical hierarchy was developed.

We believe that cases showing multiple surgical procedures should be classified into the DRG that coincides with the most resource intensive procedure performed. Therefore, we are proposing to reorder the surgical hierarchy for MDCs 2, 3, 5, 6, 7, and 21 as set forth below:

MDC 2—Extraocular Procedures Except Orbit would be placed above Primary Iris Procedures.

MDC 3—Cleft Lip and Palate Repair and, Sinus and Mastoid Procedures (in that order) would be placed above Salivary Gland Procedures Except Sialoadenectomy.

MDC 5—Permanent Cardiac Pacemaker Implantation would be placed above Vascular Procedures.

MDC 6—Mouth procedures would be placed above Anal and Stomal Procedures.

MDC 7—Diagnostic Procedures would be placed above Biliary Tract.

MDC 21—Wound Debridements would be placed above Skin Grafts.

All of the changes discussed above, if adopted in the final rule to follow this proposed notice, would also be incorporated in the revised GROUPER program for FY 1987. In addition, the reclassifications would affect the weights of the DRGs from which and to which cases are being moved. We have estimated the revised weights wherever possible and reflected those estimated weights in the addendum to this proposed rule (Table 5).

However, because changes in the surgical hierarchy alter the order in which the GROUPER searches for surgical procedures upon which to base DRG assignments, the effects of the proposed surgical hierarchy changes could not be estimated, as the GROUPER must be entirely reprogrammed to incorporate the hierarchy changes. Since the proposed hierarchy changes are based on the fact that the current relative weights for DRGs in certain sections of the hierarchy are greater than the relative weights for DRGs higher up in the surgical hierarchy, adoption of the proposed surgical hierarchy changes should yield more homogeneous DRGs where multiple procedures are involved and currently result in assignment to a lower-weighted DRG than would occur if only the more resource-intensive procedure was performed. The following table lists the DRGs whose weights may be affected by the proposed surgical hierarchy change in each MDC:

MDC 2—DRGs 38, 40 and 41
MDC 3—DRGs 51, 52, 53 and 54
MDC 5—DRGs 106, 110, 111, 112, 115 and 116
MDC 6—DRGs 157, 158, 168 and 169
MDC 7—DRGs 193, 194, 195, 196, 197, 199, 199 and 200
MDC 21—DRGs 439 and 440

The revised GROUPER will permit us to re-group Medicare cases from the FY 1984 Part A Tape Bill (PATBILL) file in accordance with the manner in which they would be grouped for payment purposes beginning October 1, 1986. Accordingly, we propose to reweight the DRGs in the final rule so as to ensure that the reclassifications adopted result in neither increases nor decreases in aggregate Medicare payments. Reweighting is distinguished from recalibration in that it involves use of the same data base as was used for the weights currently in place, whereas recalibration entails the use of a different, more recent data base. Because reweighting is otherwise identical to recalibration, we note that the weights for DRGs in which no reclassification is made may be affected slightly.

Additional information pertaining to these changes may be obtained by writing to the following address:

HCFA, GROUPER CHANGES, P.O. Box 26661, Baltimore, Maryland 21207

G. Aortic Aneurysm Repair

Over the past several months, we have been investigating the issue of appropriate classification of complex aortic aneurysm repairs. Specifically, we have been attempting to evaluate the classification of aortic aneurysm repairs that involve both the thoracic and abdominal portions of the aorta. Heretofore, there has not been a mechanism within the ICD–9–CM classification system to clearly differentiate these procedures. Consequently, our ability to secure usable data for this evaluation has been significantly hampered.

We have just recently identified a number of cases involving this complex procedure and are beginning to evaluate the data. In addition, new ICD–9–CM codes have been approved that will allow more precise identification of the procedure in the future. We will continue to study the available data throughout the public comment period and may make an additional DRG classification change in the final rule. We specifically invite the public's suggestions and supporting documentation on appropriate classification of thoraco-abdominal aortic aneurysm repairs.

H. Transfer policy (§ 412.4)

Under cost reimbursement, there was no reason to distinguish between discharges and transfers of beneficiaries from one facility to another because all providers involved in the course of a patient's acute-care stay were reimbursed on a cost basis for the medically necessary care provided. However, the prospective payment system is intended to provide full payment, less applicable deductibles and coinsurance, for all inpatient services associated with the treatment of a particular diagnosis in an acute-care hospital. Since the discharge is the basis of payment, it became necessary to distinguish between discharges in which a patient has received complete treatment and discharges in which the patient is transferred to another acute-care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation, we would pay at least twice as much under the prospective payment system for the transfer episode as would have been paid to a single hospital for identical care. We concluded that this would have provided a strong incentive to increase transfers and thereby unnecessarily endanger patients by needlessly increasing their exposure to risks of infection in different hospital settings or by the need to travel to a distant hospital. Therefore, the September 1, 1983 interim final rule contained a policy for payment in transfer situations in § 412.4(d) (then § 405.470(c)(4)). Under this policy, full payment is made to the final discharging hospital in a transfer situation. The transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged. This policy was based upon the assumption that a transferring hospital generally provides only limited services to stabilize a patient before the patient is transferred to a second hospital where the bulk of treatment is provided. The prospective payment rate paid is the rate specific to each hospital on the basis of the DRG under which the patient was treated in each hospital.

In response to the September 1, 1983 interim final rule, several commenters noted that the first few days of any hospitalization were the most resource intensive and that there were situations in which a patient is transferred after considerable resources are expended in the transferring hospital. However, in the absence of clear data to support this claim, we continued the per diem payment approch until we could gather data to evaluate transfers under the prospective payment system and develop an alternative payment under the DRG system. In addition, hospital experience in the first year of the prospective payment system clearly indicated that transferring hospitals occasionally incur costs sufficient to meet cost outlier thresholds. We therefore changed the policy in the August 31, 1984 final rule (§ 412.80(a)(2)) to allow cost outlier payments to qualifying transferring hospitals.

We anticipated that the per diem payment method combined with the required medical review of all transfers would discourage medically unecessary transfers between prospective payment system hospitals while still providing sufficient payment to all hospitals incurring costs for the care of appropriately transferred patients. On several occasions we stated that our goal was to find a way to make one payment for all the hospitals involved in caring for transfer cases.

In response to a comment received on the June 10, 1985 proposed rule, in which we reiterated our intention to go to a single payment system, we stated in the September 3, 1985 final rule (51 FR 35683) that "The single payment methodology will be developed only after we conduct a thorough review of the Part A Tape Bill (PATBILL) file to evaluate the distribution of costs in a transfer situation. The review will enable us to develop a transfer policy that would be designed to result in equitable payments among hospitals and to limit administrative difficulties."

We now have been able to use the 1984 PATBILL file to list the transfers included in the nearly 11 million 1984 bills received through April 28, 1985. About 60 percent of these bills were paid under the Pub. L. 97–248 limitations, and not the prospective payment system. Rather than eliminate pre-prospective payment system discharges from consideration, we decided to assume, for purposes of this analysis, that a transfer occurred in all cases in which the date of discharge from one hospital was the same as the date of admission to another hospital, where both hospitals were or would be subject to the prospective payment system. The contiguous hospital stays were considered as episodes of treatment, involving one or more transfers. We were able to identify over 188,000 of these episodes. The majority of these episodes (174,857 episodes, or 92.90 percent) represented treatment in only two hospitals. These two-hospital, or single-transfer, episodes formed the basic file for our analysis.

After a thorough review of the PATBILL data we have determined that at this time, it is not possible to develop a single payment policy that would be equitable or administratively feasible. These bill data indicate that transfer patterns do not follow our initial assumptions of transfer activity. Transfers represent a relatively small percentage of the total prospective payment episodes (less than 1.6 percent). The average length of stay for the transferring hospitals was fewer than 3 days in only 20 of the 424 DRG categories represented in the listing. These DRGs included only 601 episodes (0.34 percent of total single transfer episodes). The average length of stay in the transferring hospital exceeded the geometric mean length of stay for the DRG assigned to the transferring hospital stay in 328 categories, including 96,698 episodes (55.36 percent).

We are concerned, in light of these average lengths of stay for transfer cases, that transferring hospitals may keep patients longer than necessary in order to receive per diem payments up to the full DRG amount. We recognize, however, that what appeared to be long average lengths of stay in the transferring hospital may merely be the consequence of an artifact of our data base, which includes a substantial number of cases paid under the Pub. L. 97–248 limits. We would expect to find shorter average lengths of stay if our data base included only those cases in which the transferring hospital was already subject to the prospective payment system at the time of the transfer.

Thus, for the present time we have determined that a single payment based only on the DRG of one hospital would probably not be sufficiently high to be split equitably between the two hospitals based on the actual resources that each expended in the episode. Changing to a single DRG payment would result in a reduction in payments to those hospitals that most often transfer patients (frequently rural non-teaching hospitals), and those that most often receive patients (urban teaching hospitals). We do not think that an arbitrary reduction in payment to either group of hospitals would be justifiable merely to achieve a single payment solution.

An alternative to splitting one of the DRG amounts involved between two hospitals would be to develop a transfer DRG based upon a combination of the treatment provided in both hospitals. Presumably, day and cost outlier payments could be based on the combined number of medically

necessary days and allowable charges in the episode. Once again, we do not think that the goal of achieving one payment under the prospective payment system would justify the increased level of administrative complexity that would be involved in assigning a single DRG and payment rate for the combined stays in the transfer episode. The combination of experience in the two hospitals would not appropriately represent the resources involved because the same DRG is assigned in each hospital in only 18.7 percent of the transfer episodes identified in the data base. Of those episodes with different DRG assignments in the sending and the receiving hospital, 42.8 percent of the cases are assigned to DRGs in different major diagnostic categories and 37.1 percent of the cases change from a medical to a surgical DRG. We do not believe that the DRG coding system is set up to assign an appropriate DRG to a given set of diagnoses and procedures unless they have been reviewed and carried out by a single hospital. The treatment provided in each part of a transfer episode results in independent DRG assignments with relative weights representing the diagnoses and procedures identified by the hospital furnishing treatment during that portion of the episode. Similarly, outlier thresholds were based upon the lengths of stays and charges represented in single hospital stays. Unless we were to establish a completely independent computation of the payment amount for a combined DRG, the payment would have to be determined based upon the wage indexes and standardized amounts specific to each hospital. Such hospitals are often located in different urban/rural areas, and even in different census regions. Finally, it is likely that any specific "transfer" DRG would demonstrate a wide variation of charges in the cases assigned to the DRG. We do not believe it would be consistent with our efforts in refining the DRGs to reduce the variation in certain DRGs in order to establish a new DRG that contained a large amount of variation, and that would undoubtedly lead to payment inequities.

Furthermore, the fiscal intermediary would often be responsible for computing such a combined payment weeks after admission to the first hospital. The development of a combined single payment would seem to be a needless complication of the current system with no accompanying gain realized from the elimination of the per diem payment system in favor of one payment.

We do believe, furthermore, that the per diem system acts as a disincentive to inappropriate transfers between acute-care hospitals. The elimination of the per diem payment in transfer situations in favor of full DRG payments to transferring hospitals could result in the proliferation of multiple transfer situations, which now represent a very low percentage of the total transfer episodes reviewed (less than 7.3 percent).

In conclusion, since we are not persuaded at this time that the current transfer policy is inappropriate, and because we are concerned that a single transfer payment policy would not represent an improvement, we are not proposing to modify the current transfer policy as described in § 412.4. We will, however, continue to study and evaluate the transfer policy based on more recent data from prospective payment system hospitals to determine whether modifications may be necessary in the future.

V. Other ProPAC Recommendations

As required by law, we have reviewed the April 1, 1986 report submitted by ProPAC and have given its recommendations careful consideration in conjunction with the formulation of the proposals set forth in this document. The recommendations are discussed throughout this preamble and in the addendum to this proposed rule along with our proposals concerning the same issues. The remainder of the recommendations are discussed below.

A. Adjustments to the Payment Formula

ProPAC believes that the ways in which the prospective payment system formula distributes payments to hospitals are extremely important both to Medicare beneficiaries and to inter-hospital equity. Payments that are adequate on average may be inadequate for certain types of hospitals and the beneficiaries who depend on these hospitals.

1. Disproportionate Share Hospitals (Recommendation) No. 9

Recommendation—ProPAC recommends that an adjustment to the prospective payment rates for hospitals serving a disproportionate share of low-income patients should be implemented as soon as possible. This adjustment should specifically incorporate a definition and methodology in keeping with the character of the adjustments already being considered in Congress. This adjustment should not change the total aggregate dollar amount paid to all hospitals.

Response—Section 9105(a) of Pub. L. 99-272 added a new section 1886(d)(5)(F) to the Act to require that we make an additional payment for hospitals that serve a disproportionate share of low-income patients effective with discharges occurring on or after May 1, 1986. We implemented the payment provisions for disproportionate share hospitals in the May 6, 1986 interim final rule (51 FR 16768).

Section 9105(b) of Pub. L. 99-272 amended section 1886(d)(2)(C) of the Act to require that the standardized amounts be restandardized to reflect the disproportionate share adjustment provided in section 1886(d)(5)(F) of the Act. We are setting forth our proposed methodology for this restandardization in section II./A. of the addendum.

2. Improving the Definition of Hospital Labor-Market Areas (Recommendation No. 10)

Recommendation—The Secretary should improve the definition of hospital labor-market areas for FY 1987, if possible, and no later than FY 1988. For urban areas, the improved definitions should account for a greater amount of the wage variation between inner-city and suburban hospitals. For rural areas, the improved definitions should account for a greater amount of the wage variation between different rural areas within each State and between States. The implementation of improved definitions should not result in any change in aggregate hospital payments.

Response—We addressed a similar recommendation from ProPAC in the September 3, 1985 final rule (50 FR 35663–35664 and 35684–35685). In that final rule, we acknowledged that the current Metropolitan Statistical Areas (MSAs)/non-MSAs may not adequately recognize widely varying hospital labor market conditions, especially among counties classified as rural. We have been looking into possible alternative classification systems that would better define hospital labor markets. However, we believe that further research and study are required before alternative labor market definitions are specified.

Also, as we have noted before, section 1886(d)(2) of the Act defines an urban area as an area within an MSA as designated by OMB or within a similar area, as recognized under the regulations (§ 405.480) establishing limits on total inpatient operating costs under section 1886(a) of the Act. The designation of a county as urban or rural is based on whether or not a particular location qualifies as an MSA or New England County Metropolitan Area (NECMA). MSAs and NECMAs were the

only urban designations recognized under § 405.480 with respect to hospital cost limits. The criteria for MSA or NECMA status are not within our control. EOMB determines which areas qualify as MSAs or NECMAs and the effective date of their qualification is based on standards prepared by the Federal Committee on MSAs, which advises EOMB on metropolitan area definitions. (As discussed elsewhere in this document, the law provides the Secretary with a general exceptions and adjustments authority. We have not in the past used this authority to grant exceptions to the urban/rural criteria because we have no national, objective system of urban/rural designations other than the EOMB MSA designations. However, we are using this authority to grant urban status to a particular rural county effective October 1, 1986. The narrow criteria for this exception should be noted, as well as the fact that this county had previously been urban in the MSA system. We believe that even with this exception we are preserving the urban/rural distinctions based on MSA definitions.)

Section 9103(b) of Pub. L. 99–272 requires that we work with ProPAC to improve the definition of urban hospital labor-market areas. We are required to submit a report to Congress on this matter by May 1, 1987.

3. Rural Hospitals (Recommendation No. 11)

Recommendation—In the original prospective payment legislation of 1983 (Pub. L. 98–21), and the Deficit Reduction Act of 1984 (Pub. L. 98–369), Congress required the Secretary to study and report on a number of rural hospital issues. To date, none of these studies has been submitted to Congress. Preliminary studies by ProPAC suggest that there are potential problems in the way rural hospitals are treated under the prospective payment system. ProPAC urges the Secretary to complete and publish the congressionally mandated studies as soon as possible. If the results of the Secretary's studies indicate that changes in payment policies affecting rural hospitals are warranted, appropriate modifications to current policy, including legislative change, if necessary, should be implemented as soon as possible.

Response—We share ProPAC's concern about the relative vulnerability of rural hospitals under the prospective payment system, and have developed substantial information to describe the short run impact of the prospective payment system on rural hospitals. Our information, which is preliminary, would respond to the congressionally mandated studies in section 603 of Pub. L. 98–21 and section 2311 of Pub. L. 98–369. We will include this information in the 1985 annual report to Congress (due out this year) on the impact of the prospective payment system on classes of hospitals, beneficiaries, other payors for inpatient hospital services, and other providers.

Our preliminary information is based on the 1981 hospital cost data base that was used to implement the prospective payment system. We note, however, that the requisite hospital cost information needed to complete the studies is only now becoming available. Recently, we established two data bases for this purpose. We created a hospital cost report analytic file for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983. We also created a hospital cost report analytic file for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984 (the first year of the prospective payment system). It is our intention that the results of our analyses, which are to be completed by the end of this year, be made available to ProPAC and Congress upon completion.

B. Data Availability and Research

1. Earlier Availability of Medicare Cost Data (Recommendation No. 12)

Recommendation—ProPAC is pleased that the Secretary has taken steps to speed up the availability of Medicare cost report data from the first year of the prospective payment system. ProPAC recommends that making cost data available as soon as possible be an ongoing effort, since these data are vital both to assess the relationship between prospective payments and hospital costs and to analyze the costs of individual DRGs. As part of this ongoing effort, alternative strategies for sampling hospital cost data should be considered. The necessary additional resources should be allocated for timely processing of these data.

Response—We agree with ProPAC's recommendation that Medicare cost report data should be made available as soon as possible for prospective payment system evaluation purposes. We wish to note that it has been a longstanding policy of HCFA to respond promptly to all requests for information and data (including costs reports), subject to the requirements of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), and to assist interested parties in conducting research or special analyses. Public access to disclosable information maintained by the Federal government is guaranteed under the Freedom of Information Act.

Ideally, audited cost reports provide an important basis for an assessment of the relationship between prospective payments and hospital costs. However, ProPAC correctly recognized that there is a considerable lag time between the end of a hospital's cost reporting period and the availability of audited cost report information.

We expect the implementation of HCFA's Hospital Cost Report Information System (HCRIS) will do much to speed up the availability of cost report data in various stages of audit for assessing the prospective payment system.

Although HCRIS cost report data were not available in time for ProPAC to use in its deliberations for preparing their April 1, 1986 report, we are willing to provide both audited and unaudited cost report information from this system for ProPAC 's use.

We note that while cost report data may be used to monitor the impact on hospitals of the prospective payment system, one of the goals of the prospective payment system was to break the link between an individual hospital's own costs and its Medicare reimbursement. Furthermore, the cost data are not necessarily of as high quality as in the past because they affect a far smaller proportion of total hospital reimbursement. We question the value of spending our limited administrative resources on full-scale audits considering the anticipated minimal pay-back.

2. Maintaining a Commitment to Data Development and Research on the Prospective Payment System (Recommendation No. 33)

Recommendation—The Secretary should continue to devote substantial resources to data development and research for monitoring and improving the prospective payment system and understanding its effects on the health care system. Studies mandated by Congress already due should be completed and made public as soon as possible, and new studies that analyze more recent data should be designed and implemented as soon as possible. While ProPAC and other organizations will participate in this process, the major commitment to prospective payment system data development and research must reside with DHHS.

Response—We agree with ProPAC that data development and continuing research are vital to the maintenance of an equitable prospective payment system. As available resources permit,

we will devote our efforts to refining the prospective payment system through the identification and resolution of problems, and improving data bases for analysis.

C. Beneficiary Concerns

Quality of care under the prospective payment system has been a paramount concern of ProPAC since its inception. ProPAC believes that there are a number of ways in which the quality of care can be maintained or improved under the prospective payment system.

1. Beneficiary and Provider Information (Recommendation No. 15)

Recommendation—The Secretary should take immediate action to provide more and better written information about the Medicare prospective payment system to beneficiaries and providers of care. The Department should work with providers, beneficiaries, and associations of these groups to produce and disseminate this information. Associations of providers and beneficiaries should also increase their own efforts to educate and inform their members better about the Medicare prospective payment system.

Response—We agree with ProPAC that Medicare beneficiaries should be provided with clear and precise information about the prospective payment system. To that effect, we are preparing a new pamphlet on the prospective payment system due for release by late spring. The pamphlet, responding to comments from ProPAC and other interested parties, will provide Medicare beneficiaries a better understanding of the prospective payment system. Copies of the pamphlet will be made available to Medicare beneficiaries not only through the local Social Security district offices, but also through other distribution channels, such as the Administration on Aging Network and other beneficiary representative organizations.

2. Notice to Beneficiaries of Rights (Recommendation No. 16)

Recommendation—Beneficiaries should be made aware of the process of reconsideration and appeal of a denial of coverage for continued inpatient hospital care. Notification should be through a written notice or information bulletin. It should explain beneficiary rights in a clear, helpful, and understandable manner. In addition to a clear statement of rights, the bulletin should inform beneficiaries that they should not accept any oral communication to the effect that they must leave the hospital because their "coverage" has "run out" or because there is a limit on the number of days "allowed" by Medicare for a DRG. The bulletin should be distributed at the time of admission or as soon thereafter as is appropriate based on the patient's clinical condition. However, additional avenues of distribution should also be developed.

Response—On February 24, 1986 we released a notice for Medicare beneficiaries to be distributed to them upon admission to a hospital. The notice explains to beneficiaries their rights under the prospective payment system and informs them of how to appeal a decision if they believe they are being discharged prematurely. In addition, we are developing a new pamphlet to discuss in greater detail Medicare beneficiary appeal rights. The new pamphlet will combine the current physician appeals and hospital appeals pamphlets, and add new information for beneficiaries on appeal rights under the prospective payment system. We intend to release this pamphlet within the next few months.

We understand that the geometric mean lengths of stay used in determining the outlier thresholds may have been misperceived as "maximum" lengths of stay, thereby fostering the misunderstanding, among hospitals, doctors, and the public generally, that Medicare does not cover inpatient services for days beyond the average lengths of stay. In the September 3, 1985 final rule (50 FR 35710), we reiterated our policy that there are *no* requirements under the prospective payment system that Medicare patients classified within a given DRG be discharged after a specific number of days as indicated by the geometric mean length of stay for that DRG, *nor* will hospitals be paid for only a certain number of days of care for each discharge within a given DRG. To assist the reader in understanding the difference between the arithmetic and geometric mean lengths of stay, we published the arithmetic mean lengths of stay in Table 5 of the September 3, 1985 final rule (50 FR 35722).

To further dispel any misunderstanding about lengths of stay by DRG, we are publishing in this document, in Table 7 of the Addendum, the range of lengths of stay for each DRG in terms of selected percentiles. Each percentile threshold represents the proportion of Medicare discharges in each DRG with lengths of stay less than or equal to the indicated value.

These data provide the reader an idea of the variability in Medicare length of stay for each of the DRGs. For example, from the presentation in Table 7 of the addendum, one can see that in FY 1984, 90 percent of the patients in DRG 127 (heart failure and shock) experienced hospital stays of less than 17 days (that is, the 90th percentile length of stay value is 17), even though the mean length of stay for this DRG was only 8.8 days. However, ten percent of the patients were in the hospital less than 3 days (that is, the 10th percentile length of stay value is 3).

3. PRO Episode of Care Review (Recommendation No. 17)

Recommendation—ProPAC recommends that the focus of PRO quality of care review should be, to the extent possible, on the entire episode of care. The PRO's review should include, in addition to the period of hospitalization, the quality of care (and outcome) related to the overall episode of illness, including, if appropriate, skilled nursing or home health care.

Response—During the 1986–1988 contract period, PROs will substantially intensify the quality of care aspects of inpatient hospital medical review, including discharge planning. We recognize the importance of PRO review of a patient's condition at the time of discharge. Therefore, every case under PRO review will be subject to—

- Discharge review criteria to detect premature discharges; and
- Review of discharge planning, to determine that the availability of needed post-discharge care was considered.

In addition, six PROs are currently involved in a pilot study to determine a patient's health status at the time of hospital discharge. We believe that the results from this study will provide insight into the extent of premature discharges from hospitals under the prospective payment system. In addition, we intend to identify the most effective method of review for dealing with this problem. It should also be noted that HCFA is exploring the possibility of developing a survey-type study on post-hospital care received by Medicare beneficiaries. This study will focus on both covered and non-covered services in an attempt to assess the post-hospital needs of beneficiaries and how the Medicare program addresses those needs.

4. PRO Review of Outpatient Surgery (Recommendation No. 18)

Recommendation—ProPAC is concerned that efforts to shift surgical services from the inpatient to the outpatient setting could have an adverse impact on quality of care for certain Medicare beneficiaries. The PROs should be required to review and monitor the quality of care (and

outcome) of outpatient surgery for selected patients and procedures. As a starting point, the PROs should be required to review outpatient surgery cases for those procedures that have been identified for preadmission review, including in particular a sample of those cases for which the PRO has denied admission on preadmission review.

Response—Section 9401 of Pub. L. 99–272 requires 100 percent PRO review for certain surgical procedures including mandatory second opinion for those cases. We are in the process of developing a list of surgical procedures for which PRO review would be required. We are also considering changes in medical review for outpatient surgery for certain procedures.

Also, under section 9307 of Pub. L. 99–272, PRO review is required on a preprocedural basis for assistants at surgery for certain cataract operations whether the services are performed on an inpatient or outpatient basis. The Secretary, after consultation with the Physician Payment Review Commission, is responsible for developing recommendations and guidelines with respect to other surgical procedures for which an assistant at surgery is generally not medically necessary, and the circumstances under which the use of an assistant at surgery is generally appropriate but should be subject to prior approval of an appropriate entity.

We believe that this level of activity is sufficient to deal with potential quality problems in the outpatient setting. If further experience reveals additional problems or issues, we would, of course, re-examine this position.

5. *Recalculating the Inpatient Hospital Deductible (Recommendation No. 19)*

Recommendation—The Secretary should seek a legislative change in the formula for computing the inpatient hospital deductible so that the annual increase in the deductible is more consistent with the annual per-case increase in Medicare payments to hospitals. The proportion of the costs of inpatient hospital care borne by Medicare beneficiaries has inappropriately increased as a result of significant declines in length of stay experienced since the inception of the prospective payment system. This proportion should be lowered to its calendar year 1983 level.

Savings from shorter lengths of stay have benefited both hospitals and the Federal government, and ProPAC believes that Medicare beneficiaries should share in these gains as well. Hospitals have gained from the decline in length of stay because they keep the difference between the prospective payment and their costs for treating Medicare beneficiaries. The Federal government has gained as well, since the decline in the length of stay has been one of the factors considered in limiting increases in prospective payment rates.

Response—Section 1813(b)(2) of the Act specifies the manner in which the hospital inpatient deductible is computed. (The deductible represents the amount of beneficiary cost-sharing before the Medicare program assumes any liability for the additional costs of covered inpatient services.) The Secretary is required to determine the deductible amount each year according to the formula contained in the law.

For calendar year 1985, the amount of the deductible was $400. For calendar year 1986, the deductible increased 23 percent to $492. (For detailed explanations of how these figures were determined, see the notices of September 28, 1984 (49 FR 38510) and September 30, 1985 (50 FR 39940) or the 1985 (March 28, 1985) and 1986 (April 1, 1986) Annual Reports of the Board of Trustees of the Medicare Part A Trust Fund to Congress). The dramatic increase in the inpatient deductible was largely caused by the significant decrease in inpatient hospital utilization evident since the inception of the prospective payment system. As hospitals have responded to the financial incentives of the system, Medicare length of stay and admission rates have decreased substantially. Because payments for inpatient services are now being spread over fewer days, the per-diem formula for calculating the inpatient deductible described in section 1813(b)(2) of the Act has resulted in a substantial increase in the amount of the inpatient deductible, an increase that far exceeds the amount of inflation in the cost of furnishing hospital care.

To avoid future increases of this magnitude, ProPAC has recommended that the deductible reflects a per discharge rather than per-diem payment formula, an approach consistent with the prospective payment system. The basis for ProPAC's recommendation is an anticipation of further significant declines in the days of care per admission furnished to Medicare inpatients.

We are currently examining this issue and possible alternatives for calculating the inpatient hospital deductible. Under section 9128 of Pub. L. 99–272, the Senate Finance Committee is expected to report legislation to reform the calculation of the annual increase in the deductible so that it is more consistent with annual increases in Medicare payments to hospitals.

D. Patient Classification and Case Mix

1. Improving the Measurement of Hospital Case Mix (Recommendation No. 20)

Recommendation—ProPAC believes that the DRG system is currently the most appropriate of the available measures of hospital case mix for the Medicare prospective payment system and should be retained in principle as the system upon which to base Medicare payments to hospitals. Resource use varies considerably, however, within some DRGs. Therefore, ProPAC intends to continue its analysis of individual DRGs and to undertake a systematic evaluation of the entire system. The goal is to identify potential problems in DRG construction and classification and recommend changes that will improve the homogeneity within DRGs and the equity of payment across hospitals.

Response—We agree with ProPAC's assessment of the DRG system and support its evaluation efforts. We anticipate the evaluation of the DRG system to be an ongoing process. To improve DRG assignment criteria and refine the grouping methodology in order to obtain more clinically homogeneous categories reflective of actual inpatient resource consumption, we modified the DRG classifications in the September 3, 1985 final rule (50 FR 35647) and made further modifications in the final notice located elsewhere in this edition of the Federal Register, as discussed above.

2. Process for Maintaining and Updating the ICD–9–CM (Recommendation No. 21)

Recommendation—ProPAC recommends that the Secretary should establish a mechanism for maintaining and updating ICD–9–CM diagnosis and procedure codes in a timely and effective manner. This process should include adequate educational support for all users.

Response—The ICD–9–CM Coordination and Maintenance Committee has already been established for the purpose of maintaining and updating the ICD–9–CM codes. The Committee is comprised entirely of representatives of Federal agencies with an interest in ICD–9–CM coding and its modification, updating, and use for Federal programs. The Committee is co-chaired by staff from HCFA and the National Center for Health Statistics.

Public meetings of the Committee are held quarterly. Meeting dates and locations are announced in the Federal Register. The public is encouraged to submit items for the agenda, attend the

public meetings and actively participate in the decisions. Although only the members of the committee may vote on the issues presented, their decisions are not made without consideration of the opinions expressed by non-Federal users of ICD–9–CM codes. Past meetings of the committee have been attended by representatives of the AHA, ProPAC, American Medical Records Association and the Commission on Professional and Hospital Activities, as well as noted physicians and hospital medical records administrators.

As was previously stated in the March 13, 1986 proposed notice (51 FR 8776) concerning DRG classification changes, new ICD–9–CM codes adopted by July 1 of each year by this Committee, would accommodated by the GROUPER program, without DRG classification changes, at the beginning of the next Federal fiscal year. The ICD–9–CM Coordination and Maintenance Committee has thus far approved new procedure codes in 9 areas. The Committee held its spring meeting on May 21 and 22, 1986. New ICD–9–CM codes are currently being considered to identify the following:

Parenteral and Enteral Nutrition
HTLV–3/LAV Infections
Pacemaker Technology
Gastric Endoscopic Balloon Procedures
Percutaneous Balloon Valvoplasty
Lasers
Ureterscopy and Pyeloscopy
Percutaneous Angioscopy
Endoscopic and Percutaneous Procedures on the Biliary Tract
Percutaneous Embolization
Rectosigmoid Resection

We also note that the Committee mission includes establishment of educational activities related to the appropriate use of ICD–9–CM coding. An educational subcommittee was formed to review available ICD–9–CM educational material. Suggestions for action items for the subcommittee have been requested from attendees at the public meetings.

As part of its educational activities, the Committee spends a considerable portion of its time on revision of instructions included in the coding manuals. Addendum, errata and revisions of the "includes notes, excludes notes and alphabetical indexes" are considered. The Committee intends that publication of all new codes and coding actions be accompanied by appropriate indexing changes and instructions.

Finally, we wish to point out that current plans do not envision the revision of volume 3 of ICD–9–CM to accompany publication of ICD–10. (ICD–10 will only include diagnosis codes.) We are presently exploring, with interested parties, how to best handle long-term coding issues. Intuitively, we believe for Medicare purposes that a single coding system for all procedures, regardless of whether performed in hospitals or physician offices, would be more appropriate than the present method of using two unique procedure coding systems for each aspect of the program. We welcome comments and suggestions on this issue as we continue to evaluate our long-term coding policies.

3. Process for Interpretation and Assignment of Existing Codes (Recommendation No. 22)

Recommendation—The Secretary should ensure that interpretation and assignment of existing ICD–9–CM diagnosis and procedure codes for payment purposes strictly adhere to coding rules and guidelines. In order to maintain the integrity and uniformity of the coding system while allowing flexibility for payment purposes, the process for interpretation and assignment of existing ICD–9–CM codes should be assigned to one authorized group.

Response—As ProPAC notes in its discussion of this recommendation, there are a number of organizations currently disseminating conflicting coding advice. We consider the ICD–9–CM Coordination and Maintenance Committee as the single group officially authorized to interpret and clarify coding guidelines and assign new codes to the ICD–9–CM system. We believe the educational role and responsibilities of this Committee encompass appropriate interpretation and assignment of existing ICD–9–CM codes. By having a single entity dually responsible for interpretation and assignment of existing codes as well as revision and updating of the coding manuals, we believe we can assure consistent and expeditious dissemination of coding advice. Of course, as ProPAC pointed out in its discussion of this recommendation, the Department reviews and approves material published in the AHA's *Coding Clinic*. Thus users of the AHA's service may assume that the *written* material is consistent with our position on coding.

Like ProPAC, we recognize the necessity of curtailing the dissemination of inaccurate and conflicting coding advice. Under contract to HCFA, the PROs are responsible for verifying the accuracy of ICD–9–CM codes reported on Medicare bills. The PROs continue to review a sample of claims, correct coding errors, and make educational contacts with appropriate hospital staff when problems are identified. We have established a procedure whereby PROs can direct coding questions to HCFA staff members intimately involved with the ICD–9–CM Coordination and Maintenance Committee. In addition, we now require PROs to have a trained coding person on staff and we intend to increase coding instructional material disseminated to the PROs from HCFA. We believe we are taking the action necessary to encourage consistent application of ICD–9–CM; however, there is little we can do to abate the dissemination of inaccurate or inconsistent instructions from private sources.

4. Interim Mechanism for Coding Problems (Recommendation No. 23)

Recommendation—The Secretary should establish an interim mechanism to allow early identification of new technologies, procedures and diagnoses and more appropriate DRG assignment when ICD–9–CM codes cannot be updated in a timely manner.

Response—We support ProPAC's recommendation for a refinement to the ICD–9–CM codes to permit more rapid identification of new technologies and are currently considering alternatives for implementing such a mechanism. We are particularly soliciting comments and suggestions on how best to adopt the Medicare claims processing system to assure more rapid availability of data on new and changing technologies.

E. DRG Classifications and Weighting Factors

1. Adjustment of the Labor Portion of the Standardized Amounts for Some DRGs Involving Expensive Devices (Recommendation No. 24)

Recommendation—The labor portion and nonlabor portion of the standardized amounts should be redefined for DRGs 39 (lens procedures with or without vitrectomy), 104 and 105 (cardiac valve procedures with pump, with and without cardiac catherization, respectively), 209 (major joint and limb reattachment procedures), 471 (bilateral or multiple major joint procedures of the lower extremity), and the newly defined DRGs for pacemaker implantation and replacement (Recommendations 25 and 26), implantable defibrillators (Recommendation 27), and penile prostheses (Recommendation 28). The new portions should more closely reflect the labor-related and nonlabor-related shares of costs for cases in each of these DRGs. These recalculations should be made so that total hospital payments

remain unchanged. The correct labor and nonlabor portions of the standardized amounts should be calculated from data currently being generated in HCFA's study of the labor portion of costs by DRG. If this information proves to be incomplete, the portions should be calculated from available cost and charge data for these DRGs. The Secretary should study the need for adjustments to the labor and nonlabor portions of the standardized amounts in all DRGs.

Response—We are continuing our studies to identify DRGs with high nonlabor-related cost shares. Our analyses of FY 1984 PATBILL charge patterns confirm ProPAC's finding that the following DRGs have charges for supplies that average approximately 20 percent or more of total inpatient charges:

- DRG 39 (lens procedures).
- DRG 115 through 118 (cardiac pacemakers).
- DRG 209 (joint and limb procedures).
- DRG 341 (penis procedures).

However, the ratio of average charges for supplies to total inpatient charges for DRGs 104 and 105 (cardiac valve procedures), which represent the highest average charges of the nine DRGs under study, are lower than 20 percent.

Our review confirms ProPAC's conclusion that rural and urban hospital charges for cases in the selected DRGs are more similar than those for other DRGs because both types of hospitals must buy devices from the same national markets. But the fact that some DRGs have supply charges that account for a much higher share of a bill than the average supply charge of 8.0 percent does not justify an automatic adjustment to the labor and nonlabor portions of the standardized amounts.

We believe that increasing the nonlabor share for these DRGs would minimally redistribute funds from urban to rural hospitals. Our reimbursement simulations, which assume no changes in the classes of hospitals performing the identified DRGs, indicate that for each ten percent reduction in the labor-related portion of the standardized amounts for *all* DRGs, rural hospitals would gain up to four-tenths of one percent, while urban hospitals would lost about one-tenth of one percent. Thus, lowering the labor-related portion for only the identified DRGs would result in a much smaller effect. In 1985, these DRGs represent nearly seven percent of urban hospital cases and over eight percent of urban hospital revenues, but only less than four percent of rural hospital cases and about six percent of rural hospital revenues.

Moreover, lowering the labor-related portion of the standardized amounts for some DRGs logically implies increasing that portion for other DRGs. This could imply that ultimately the standardized amounts would be differentiated for each DRG. We believe to do so would unduly complicate the administration of the prospective payment system and may distort hospital incentives. While the ProPAC analysis and our preliminary analyses suggest that rural hospitals are relatively disadvantaged on certain types of cases, namely, those in which the nonlabor portion is higher than the national average, they are, by the same token, advantaged on those types of cases in which the nonlabor-related share is less than the national average. Accordingly, we believe that it is preferable to use national averages for all cases since there is no evidence to suggest that a class of hospitals is systematically disadvantaged in their entire Medicare business by our use of national average labor-related and nonlabor-related shares. Therefore, we are not accepting ProPAC's recommendation to adjust the labor and nonlabor portions of the standardized amounts for certain DRGs.

2. Reclassification of Pacemaker Cases Based on Type of Device (Recommendation No. 25)

Recommendation—Prior to recalibration, the DRGs involving implantation of cardiac pacemakers (currently DRGs 115 through 118) should each be restructured into two DRGs, one for cases involving dual-chamber or functionally similar pacemakers, and one for cases receiving other single-chamber pacemakers. New ICD-9-CM procedure codes should be created to distinguish between these types of cases. A mechanism should be established to evaluate the appropriateness of all implants involving dual-chamber of functionally similar pacemakers. In the initial year of this new classification, the weights for all pacemaker DRGs should be calculated using charge data from the Part A tape bills (PATBILL) file and data on cost differences between pacemaker types.

Response—We do not agree with this recommendation for several reasons. First, DRGs 115 through 118 cover a wide spectrum of pacemaker procedures ranging from the initial implantation of a pacemaker system where there is acute myocardial infarction, heart failure or shock, through the replacement of an electrode. We do not believe that restructuring all of these DRGs into two classifications based on the type of pacemaker implanted would be appropriate in view of the numerous pacemaker procedures included in each DRG. Such cases involving implantation of a pacemaker (the initial implantation or replacement) should be grouped into either DRG 115 or 116. These are the only DRGs that should reflect any differences due to the distinction in the cost of the two devices. If we propose changes on this basis in pacemaker case at a future date, our changes would be limited to DRGs 115 and 116. At this time, however, there is no method available on our records for distinguishing between the two types of devices, and therefore, we do not have a method of establishing different DRGs for single and dual-chamber pacemakers.

As the guidelines indicate, if the use of the dual chamber is not appropriate, we do not cover it. With respect to ProPAC's concerns on the appropriate use of dual-chamber pacemakers, we note that we issued revised guidelines, effective on May 9, 1985, which clarify our coverage policies on dual-chamber pacemakers (Section 65-6 of the Coverage Issues Manual (HCFA-Pub. 6), formerly the Coverage Issues Appendix of the Part A Intermediary Manual). We believe these policies respond to ProPAC's concerns in this matter.

In the interim, we agree that a change in ICD-9-CM coding would be the first step in any evaluation. This would allow for the collection of data for evaluation purposes, and to propose changes, as appropriate. As noted above, new ICD-9-CM codes to distinguish single-chamber from dual-chamber pacemakers have been proposed.

3. Reclassification of Pacemaker Replacement Cases (Recommendation No. 28)

Recommendation—Prior to recalibration, the cases involving replacement of a permanent cardiac pacemaker, except those with myocardial infarction, congestive heart failure or shock, should be reassigned to DRGs that include only pacemaker replacements.

Response—We do not agree with ProPAC's recommendation because we believe the inconsistencies of assigning a DRG weight for the cases involving pacemaker replacement, as identified by ProPAC, are a result of inappropriate use of the ICD-9-CM codes rather than the DRG classification system. The ICD-9-CM coding system, if properly used, provides for the grouping of cases that involve replacement or removal of electrodes (and other changes to the

system) to DRG 117. Likewise, because replacement of a pulse generator is more resource intensive than the replacement or removal of electrodes, it would properly be assigned to DRG 118.

The replacement of a permanent pacemaker in its entirety is even more resource intensive than the pacemaker procedures in DRGs 117 and 118. If properly coded, that is, using operating room procedure codes 3770 (Insertion of cardiac pacemaker, not otherwise specified), 3773 (Insertion of permanent pacemaker into atrium, transvenous route), 3774 (Insertion of permanent pacemaker into ventricle, transvenous route), 3775 (insertion of permanent cardiac pacemaker into unspecified site, transvenous route), 3776 (Insertion of permanent pacemaker into epicardium), and 3777 (Insertion of permanent cardiac pacemaker, unspecified approach), the replacement of a permanent pacemaker would be assigned to either DRG 115 or 116 depending upon the presence or absence of acute myocardial infarction, heart failure, or shock.

We believe that careful and consistent use of the surgical codes for pacemaker-related procedures would alleviate the difficulties identified by ProPAC. We are not, therefore, reassigning cases involving replacement of a permanent cardiac pacemaker.

4. Implantable Defibrillator (Recommendation No. 27)

Recommendation—Implantable defibrillator cases should be assigned to a unique DRG. The labor portion and nonlabor portion of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases.

Response—We believe there are not sufficient data available currently to accept or reject this recommendation. At the time coverage was extended to the Automatic Implantable Cardioverter Defibrillators, we recognized that a separate DRG was a consideration but that additional cost and charge data were needed before this decision could be made. We believe that the best approach when insufficient data are available is the one we have taken in the final notice of DRG classification changes located elsewhere in this edition of the Federal Register, which was to—

- Establish a unique ICD-9-CM code as soon as possible;
- Make payment based on an existing DRG; and
- Collect data.

When cost and charge data are available, a decision can be made as to the appropriate placement of the new procedure within the system.

5. Penile Prostheses (Recommendation No. 28)

Recommendation—Prior to recalibration, ProPAC recommends that cases involving the implantation of a penile prosthesis should be removed from DRG 341 and reassigned to a unique DRG. The labor portion and nonlabor portion of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases. ProPAC contends that the difference in charges for DRG 341 (between penile prosthesis cases and other cases within this DRG), estimated from the 1984 PATBILL data at about 35 percent, is due largely to the cost of the prosthesis.

Response—In analyzing the FY 1984 PATBILL data for DRG 341, we find little reason to believe that reclassification of cases involving penile prosthesis procedures is appropriate at this time. Our analysis indicates that—

- DRG 341 shows very little variation in charges in comparison to the other DRGs. (The coefficient of variation equals .55.);
- Forty-three percent of the penile prosthesis cases showed standardized charges at or below the average standardized charge for the DRG;
- The most frequently reported standardized charge range (mode) for these cases was approximately 28 percent lower than the average standardized charge for DRG 341;
- The median standardized charge and the mean standardized charge for penile prosthesis cases were only slightly higher (nine percent and 17 percent respectively) than the average standardized charge for DRG 341; and
- Distributional analysis indicates that the same hospitals performing penile prosthesis procedures are also performing lower cost penis procedures. Nationally, only one hospital furnished more than 30 penile prostheses to Medicare beneficiaries during FY 1984. Thus, it seems that hospitals do not have more difficulty with DRG 341 than any other DRG.

We note that there are some differences between ProPAC's analysis and our own. This is primarily due to the fact that ProPAC used unadjusted charges while we analyzed standardized charges. We believe it is more appropriate to evaluate standardized charges as such charges eliminate much of the individual variation in hospital charge structures attributable to wages and teaching status. Moreover, standardized charges serve as the basis for the DRG weighting factors. We note that ProPAC used standardized charges in much of its analysis related to other DRG classification changes. In reviewing ProPAC's analysis, we also noted that removal of penile prosthesis procedures from DRG 341 results in an increased coefficient of variation for the remaining penis procedures. Despite ProPAC's conclusion that removal of penile prosthesis is appropriate, the data indicate that penis procedures are more homogeneous in resource intensity when grouped with penile prosthesis than when prosthesis procedures are removed. That is, although penile prosthesis cases may be more resource intensive than many minor penis procedures, they are similar in resource or less resource-intensive than several other penis procedures cases, such as reconstruction of penis. Thus, ProPAC's own data demonstrate that the homogeneity of DRG 341 is superior without reclassification.

In addition, we do not believe it is appropriate to establish single procedure DRGs under most circumstances. The basic concept of the DRG system is to group a number of clinically similar diagnoses and procedures that are similar in resource use. The establishment of single-procedure DRGs runs counter to the grouping concept and would establish a precedent to classify and develop weighting factors separately for all individual procedures and diagnoses. Under such a precedent, the number of DRGs could grow dramatically, rapidly resulting in an unmanageable system. In addition, establishing DRGs along these lines would represent a major step away from the prospective payment system as currently established, and a major step back toward a cost-based reimbursement system, in which payment to a hospital is closely tied to the actual costs incurred in furnishing individual services.

We believe that procedure-specific DRGs should be utilized only in those situations in which the data indicate that the procedure is neither clinically coherent nor homogeneous with respect to resource use with any other procedures in the major diagnostic category. As we indicated above, our analysis of the data on penile prostheses does not indicate that this is the situation.

6. Additional Payment for Magnetic Resonance Imaging (Recommendation No. 29)

Recommendation—ProPAC recommends that, for a period of three years, Medicare should pay hospitals an

additional amount for each covered inpatient magnetic resonance imaging (MRI) scan performed on a Medicare beneficiary in a prospective payment system hospital. Under existing capital payment policy (that is, payment of capital on a reasonable cost basis), the add-on for FY 1987 should be $124 for each scan performed on beneficiaries in institutions in which Medicare pays for the capital costs of an MRI scanner and $282 for each scan performed on a beneficiary in a hospital other than the hospital in which the beneficiary is currently an inpatient. In FY 1988 and FY 1989 the add-on amounts for all hospitals should be recalculated to reflect any change in the average cost of an efficiently produced scan and changes in capital payment policy.

Response—Because of the costliness of MRI, ProPAC has recommended an explicit add-on to the prospective payment rate for Medicare discharges in which the procedure was performed. MRI was not reflected in the 1981 cost data base used to develop the initial prospective payment rates. Therefore, ProPAC maintains that, absent historical data, an additional payment for MRI would provide an incentive for the adoption of a clinically beneficial although costly technology.

MRI is a relatively new medical technology involving the production of images when a patient is placed in a controlled magnetic field. While similar to computerized tomography (CT) scanning, MRI can provide images along more than one plane, without use of radiation and, often does not require the use of contrast agents for image enhancement. Many clinicians maintain that MRI provides images of greater clarity compared to other alternative technologies, particularly in sites surrounded by bone.

While this technology is covered by the Medicare program, MRI typically involves large capital outlays. The potential impact of MRI is substantial because of the large number of DRGs that may reflect this procedure.

We believe that providing an explicit additional payment for the use of a particular technology would establish a precedent that runs counter to one of the principal objectives of the prospective payment system; that is, the establishment of a single payment rate for all cases classified within a DRG regardless of the specific resources used in any particular case. Moreover, to the extent MRI replaces other imaging technologies that are reflected under the prospective payment rates, we believe that an additional payment would be unwarranted. In fact, a separate payment could be counterproductive because it potentially creates an incentive to use the technology in cases in which it may not be appropriate. Furthermore, such a payment would insulate hospitals from the consequences of their choices with respect to resource use. While there would be no "cost" to hospitals that use MRI in addition to other techniques, we would be providing a real bonus to hospitals that use MRI instead of other imaging techniques. In addition, we point out that a portion of capital payments would continue to be based on actual costs during the capital payment transition period. Therefore, the Medicare program already reimburses hospitals for its share of the capital costs of new technology.

In addition, we note that under section 1886(e)(2) of the Act, ProPAC is required to consider changes in technological (such as the MRI technology) and scientific advances in determining its recommended percentage change in the prospective payment rates. Since the Secretary is required under section 1886(e)(4) of the Act to take account of ProPAC's recommendations, we also consider technological changes and scientific advancements in determining the applicable percentage change in the prospective payment rates. We believe the allowance that we are proposing for science and technology in this document, and that we will consider each year, represents the appropriate means of taking into account such special technologies. Rather than proposing a special add-on for MRI technology, which would only benefit those hospitals that make use of that technology, the general allowance for technological and scientific advances permits hospitals to choose which technological advances are appropriate for the care and services they furnish to Medicare beneficiaries.

If the widespread adoption of MRI technology materially affects the relative resource use of specific DRGs, the DRG relative weights would automatically reflect the resources associated with MRI as cases involving MRI are used to recalibrate the DRGs. Therefore, because the prospective payment system already provides sufficient means to incorporate both the capital and operating costs of new technology, we have not adopted ProPAC's recommendation.

7. Extracorporeal Shock Wave Lithotripsy (Recommendation No. 30)

Recommendation—Prior to recalibration, cases in which extracorporeal shock wave lithotripsy (ESWL) is the principal procedure should temporarily be removed from DRG 324 and reassigned to DRG 323. The payments and costs for all cases in this DRG should be monitored to determine the appropriateness of prospective payments for operating costs. A unique procedure code should be identified for this procedure.

Response—ProPAC's analysis found that payment under DRG 324 substantially understated the cost of ESWL. We have received similar correspondence on this matter ever since Medicare coverage was extended to this new technology. Heretofore, we had no means of identifying this procedure in our data base. Consequently, our past analyses have been based on limited data derived largely from institutions involved in clinical testing of ESWL and our ability to resolve the problem has been severely limited.

As stated in the final notice of changes to the DRG classification system, published elsewhere in this issue of Federal Register, a unique procedure code has been approved for ESWL (59.95). Given that we will now be able to identify this procedure, we are accepting ProPAC's recommendation. That is, we are proposing to classify all cases involving a principal diagnosis of urinary stones treated by ESWL to DRG 323, regardless of age or absence of complications or comorbidities. We will continue to monitor the resource intensity of ESWL and will consider further classification changes if necessary.

8. Lymphomas and Leukemias (Recommendation No. 31)

Recommendation—Prior to recalibration, cases currently assigned to DRGs involving lymphoma, leukemia, and other related diagnoses (DRGs 400–404) should be reclassified into one of five newly defined DRGs:

DRG 400—Lymphoma/leukemia with major operating room procedure;

DRG 401—Acute leukemia without major operating room procedure;

DRG 402—Lymphoma/non-acute leukemia with other operating room procedure and complication/comorbidity;

DRG 403—Lymphoma/non-acute leukemia with other operating room procedure or complication/comorbidity; and

DRG 404—Lymphoma/non-acute leukemia without operating room procedure or complication/comorbidity.

ProPAC recommends that the new classification provide a unique DRG for

acute leukemia cases not involving a major operative procedure (as distinct from non-acute leukemia and lymphomas), eliminate age as a criterion for DRG assignment, and modify present classification based on operative procedure, complications and comorbidity. Other ways of further improving these DRGs should continue to be explored.

Response—We agree with ProPAC that DRGs 401 through 404 are more heterogeneous than most DRGs and, consequently, may indicate that reclassification of cases within these DRGs is appropriate. We are particularly concerned, however, with ProPAC's proposed reconfiguration of DRG 403, which combines about 7,000 surgical cases of lymphoma and non-acute leukemia with some 28,000 non-surgicial cases of lymphoma and non-acute leukemia with complications or comorbidities. Our analyses indicate that the latter group of cases are about 25 percent more resource intensive than the surgical cases without complications or comorbidities. Moreover, the basic logic of the GROUPER program is structured so as to establish DRGs that are either medical or surgical. Each medical DRG is assigned based on a specific set of principal diagnoses, whereas a surgical DRG generally does not entail looking at a diagnosis but only at procedures. The predominant exception to this logic occurs in cases where a principal diagnosis alone explains resource use, without regard to whether or not a surgical procedure is performed. This generally occurs when cases with a specific principal diagnosis virtually always entail surgical treatment or virtually never entail surgical treatment. We have found the latter to be the case with acute leukemias in that fewer than four percent of the cases in our data base involved surgical treatment.

In light of our analysis and the foregoing discussion, we believe similar improvements in the homogeneity of these DRGs may be achieved without disrupting the logic inherent in the current classification structure. Therefore, we are proposing to accept the basic premises of ProPAC's recommendation. That is, we are accepting ProPAC's suggestion that acute leukemia cases without major operating room procedure be classified into a single DRG. We have added acute leukemia not otherwise specified (code 2080) to the other acute leukemia codes included in ProPAC's recommendation. In addition, we are accepting ProPAC's suggestion that age consideration be eliminated from the decision tables for classification of lymphoma/leukemia cases.

We are proposing to establish the following classifications for lymphoma/leukemia patients:

DRG 401—Lymphoma/non-acute leukemia with other operating room procedure with complications and/or comorbidities.

DRG 402—Lymphoma/non-acute leukemia with other operating room procedure without complications and/or comorbidities.

DRG 403—Lymphoma/non-acute leukemia without operating room procedure with complications and/or comorbidities.

DRG 404—Lymphoma/non-acute leukemia without operating room procedure without complications and/or comorbidities.

DRG 405—Acute leukemia without major operating room procedure, age less than 18.

DRG 473—Acute leukemia without major operating room procedure, age greater than 17.

Acute leukemia is defined as patients with a principal diagnosis of—

- Acute lymphoid leukemia (code 2040);
- Acute myeloid leukemia (code 2050);
- Acute monocytic leukemia (code 2060);
- Acute erythremia (code 2070); and
- Acute leukemia, not otherwise specified (code 2080).

Although the reclassification we are proposing is somewhat different from that proposed by ProPAC, we have found similar improvements in homogeneity. We believe it is appropriate to create an additional DRG for acute leukemia cases without major operating room procedure and to maintain the distinction between surgical and medical lymphoma and non-acute leukemia cases.

9. Upper Extremity Procedures (Recommendation No. 32)

Recommendation—Prior to recalibration, cases involving procedures of the upper extremity that are currently classified in DRGs 223, 224, 228, and 229 should be reassigned based on anatomical location and the presence of systemic collagen vascular disease or implantation of joint prostheses or complications and/or comorbidities. Nonsurgical hip fracture cases currently being assigned to DRGs 223, 224, 225, 228, and 229 should be reassigned to the appropriate medical DRG.

Response—ProPAC's analysis in this regard includes 2 pairs of DRGs. DRGs 223 and 224 include upper extremity procedures except humerus and hand; DRGs 228 and 229 include humerus and hand procedures. With regard to DRGs 223 and 224, ProPAC found that age groups explained very little of the variation in charges between the DRGs. Rather, they found complications and comorbidities and joint replacement procedures showed a significant difference in resources from all other cases in these DRGs.

Similarly, in DRGs 228 and 229, which are currently distinguished based on ganglion and cyst diagnoses, ProPAC found rheumatoid diagnoses, complications and comorbidities and joint replacement procedures more appropriate indicators of resource utilization.

We also have been studying these four DRGs throughout the year and have reached similar conclusions with regard to complications or comorbidities and joint procedures. We do not, however, agree with ProPAC's recommendation with regard to collagen vascular diseases in the hand. We note that in ProPAC's analysis of DRGs 228 and 229, the addition of collagen vascular diseases decreased the amount of explained variation by 16 percent. Further, the addition of this diagnosis (1328 cases) reduced the mean standardized charge for the DRG by five percent. We believe the commingling of uncomplicated rheumatoid cases with complicated cases and expensive joint replacement procedures would detract from the homogeneity of the revised DRGs. We should point out that ProPAC did not recommend classification of rheumatoid cases into the more resource-intensive DRG in upper extremity procedures except humerus and hand where inclusion of these diagnoses similarly reduced the amount of explained variation by almost ten percent. Moreover, as part of our analysis we have found that other major joint procedures, such as arthrodesis and arthrotomy are similar, both clinically and in resource utilization, to joint procedures involving a prosthesis. Consequently, we are proposing to expand upon ProPAC's recommendation to include major joint procedures with the joint prosthesis procedures included in the more resource-intensive classification. We are proposing to establish the following classifications in MDC 8:

DRG 223: Major shoulder or elbow procedures, or other shoulder, elbow or forearm procedures with complications or comorbidities.

DRG 224: Shoulder, elbow or forearm procedures, except major joint

procedures, without complications or comorbidities.

DRG 228: Major thumb or joint procedures, or other hand or wrist procedures with complications or comorbidities.

DRG 229: Hand or wrist procedures, except major joint procedures, without complications or comorbidities.

Major elbow and shoulder procedures include the following procedure codes:

8011 Other arthrotomy of shoulder
8012 Other arthrotomy of elbow
8123 Arthrodesis of shoulder
8124 Arthrodesis of elbow
8181 Shoulder arthroplasty with prosthesis
8183 Shoulder arthroplasty, not elsewhere classified
8184 Elbow arthroplasty with prosthesis
8185 Elbow arthroplasty, not elsewhere classified

These procedures would be eliminated from DRG 224. All other procedures currently in DRGs 223 and 224 would result in assignment to proposed DRG 223 only if a complication or comorbidity is also present.

Major wrist, thumb and hand procedures include the following procedure codes:

8013 Other arthrotomy of wrist
8014 Other arthrotomy of hand/finger
8171 Hand arthroplasty with prosthesis
8179 Hand arthroplasty, not elsewhere classified
8186 Carpal arthroplasty with synthetic prosthesis
8187 Wrist arthroplasty, not elsewhere classified
8261 Pollicization operation
8269 Other reconstruction of thumb

These procedures would be eliminated form DRG 229. All other procedures currently in DRGs 228 and 229 would result in assignment to the proposed DRG 228 only if a complication or comorbidity is also present.

In addition we noted that procedure code 8421, thumb reattachment, had inadvertently been omitted from the procedures classified in MDC 8. Therefore, we are proposing to add this procedure to DRGs 228 and 229.

Finally, ProPAC has included in this recommendation a suggestion that cases involving both a surgical foot or upper extremity procedure and a nonsurgical hip diagnosis be classified on the basis of the more resource-intensive hip diagnosis.

We believe this situation is one example of the generic problem that could occur in any of the MDCs which contain a medical DRG with a higher weight than the least resource-intensive surgical DRG. Although we recognize that this issue may appear problematic, the situation occurs very infrequently. For example, ProPAC found only 125 cases related to this hip fracture issue. We believe this problem needs to be studied in a broad spectrum with detailed analysis of the frequency of occurrence, cost impact and impact on the DRG logic system before any piecemeal changes are implemented. Therefore, we have deferred proposing any action on this recommendation at the present time.

VI. Other Required Information

A. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble.

B. Paperwork Reduction Act

Section 412.65(b) contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the Federal Register when approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C., 20503, ATTN: Desk Officer for HCFA.

C. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Chapter IV would be amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, SUBCHAPTER B—MEDICARE PROGRAMS

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart D is amended as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D is revised to read as follows:

Authority: Secs. 1102, 1122(d), 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1(d), 1395Al(b), 1395g, 1395i(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.401 is amended by revising paragraph (d)(2) to read as follows:

§ 405.401 Introduction.

* * * * *

(d) *Payment for inpatient hospital services.*

* * * * *

(2) For cost reporting periods beginning on or after October 1, 1983, payment to short-term general hospitals located in the 50 States and the District of Columbia for the operating costs of inpatient hospital services is determined prospectively on a per discharge basis under Part 412 of this chapter except as follows:

(i) Payment for capital-related, medical education, and kidney acquisition costs, and the costs of certain anesthesia services, is provided in § 412.113 of this chapter.

(ii) Payment to children's, psychiatric, rehabilitation and long-term hospitals (as well as separate psychiatric and rehabilitation units (distinct parts) of short-term general hospitals), which are excluded from the prospective payment system under Subpart B of Part 412 of this chapter, and to hospitals outside the 50 States and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 405.463.

(iii) Payment to hospitals subject to a State reimbursement control system is described in paragraph (e) of this section.

* * * * *

3. Section 405.435 is amended by revising paragraph (b) to read as follows:

§ 405.435 Nonallowable costs related to certain capital expenditures.

* * * * *

(b) *Applicability.* Under the principle specified in paragraph (a) of this section, any costs related to capital expenditures including the expenditures described in

§ 412.65 of this chapter) the obligation for which was incurred by or on behalf of a provider subsequent to 1972 (except as described in paragraph (c) of this section), are not allowable if the Secretary has determined that the capital expenditures have not been submitted to the designated planning agency as required or that they have been determined to be inconsistent with the standards, plans, or criteria developed by the designated planning agency or other health planning agency in the State to meet the need for adequate health care facilities in the area covered by the plan or plans so developed (see §§ 100.101 through 100.109 of this title). Costs claimed by a provider in connection with capital assets that are donated or transferred to a provider are also subject to the application of such principle. Such principle also applies to the reasonable equivalent of that portion of any rental expense incurred pursuant to a lease or a comparable arrangement (and to any amounts deposited under the terms of such a lease or comparable arrangement in computing the return on equity capital) that would have been excluded had the provider acquired such a facility or equipment by purchase. The amounts excluded are not subject to reimbursement under any other provisions of Medicare.

* * * * *

4. In § 405.454, the introductory text of paragraph (j) is redesignated as paragraph (j)(1) and revised; current paragraphs (j)(1) through (j)(5) are redesignated as paragraphs (j)(2) through (j)(6) respectively; in newly redesignated paragraph (j)(2), the introductory text and paragraphs (j)(2)(i) through (j)(2)(iii) are revised; and paragraph (m) is revised to read as follows:

§ 405.454 Payments to providers.

* * * * *

(j) *Periodic interim payment method of reimbursement.* (1) *Applicability.*—(i) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and skilled nursing facility inpatient services and for both Part A and Part B home health agency services.

(ii) *Covered services furnished on or after July 1, 1987.* Effective with covered services furnished to beneficiaries on or after July 1, 1987, the PIP method, in addition to the other methods of interim payment on individual provider billings for covered services, is available only for the following:

(A) SNF services.

(B) Part A and Part B HHA services.

(C) Hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90-248 (42 U.S.C. 1395b-1) or section 222(a) of Pub. L. 92-603 (42 U.S.C. 1395b-1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.

(2) Any participating provider furnishing the services described in paragraph (j)(1) of this section that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of an HHA, either its estimated—

(A) Total Medicare reimbursement for Part A and Part B services is at least $25,000 a year computed under the PIP formula; or

(B) Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable cost.

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the Medicare program).

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis.

* * * * *

(m) *Prospective payments.* (1) *General rule.*—

(i) *Final payment.* For cost reporting periods beginning on or after October 1, 1983, hospitals subject to the prospective payment system are paid for Part A inpatient operating costs on a per discharge basis using prospectively determined rates. The amounts represent final payment based on the submission of a discharge bill. Unless the provisions of paragraphs (m)(2) through (m)(5) of this section apply, year-end retroactive adjustments are not made for prospective payment hospitals.

(ii) *Outlier payments.* Payments for outlier cases (described in Subpart F of Part 412 of this chapter) are not made on an interim basis. The outlier payments are made based on submitted bills and represent final payment.

(iii) *Other payments.* Medical education costs are reimbursed as described in § 405.421, and capital-related costs are reimbursed as described in § 405.414 or, effective with cost reporting periods beginning on or after October 1, 1986, are paid for as described in §§ 412.65 through 412.67 of this chapter.

(2) *Interim prospective payments per discharge.* (i) Prospective payment hospitals meeting the criteria in paragraph (j) of this section may elect to receive periodic interim payments for discharges occurring before July 1, 1987. Therefore, at the discretion of the intermediary, the hospital's prospective payments are estimated and made on a periodic interim basis (26 biweekly payments). These payments are subject to final settlement. Each payment is made two weeks after the end of a biweekly period of services, as described in paragraph (j)(5) of this section. Hospitals electing periodic interim payments may convert to payments on a per discharge basis at any time.

(ii) For the hospitals receiving periodic interim payments for inpatient operating costs, the biweekly interim payment amount is based on the total estimated Medicare discharges for the reporting period multiplied by the hospital's estimated average prospective payment amount. These interim payments are reviewed at least twice during the reporting period and adjusted if necessary.

(iii) For purposes of determining periodic interim payments under this paragraph, the intermediary computes a hospital's estimated average propective payment amount by multiplying its transition payment rates as determined under § 412.70(c) of this chapter, but without adjustment by a DRG weighting factor, by the hospital's case-mix index, and subtracting from this amount estimated deductibles and coinsurance.

(3) *Special interim payments for certain costs.* For the direct costs of medical education, which are not included in prospective payments but are reimbursed as specified in § 405.421, interim payments are made subject to final cost settlement. Interim payments for the estimated cost of approved medical education programs (applicable to inpatient costs payable under Part A

and for kidney acquisition costs in hospitals approved as renal transplantation centers) are determined by estimating the reimbursable amount for the year based on the previous year's experience and on substantiated information for the current year and divided into 26 equal biweekly payments. Each payment is made two weeks after the end of a biweekly period of services, as described in paragraph (j)(5) of this section. The interim payments are reviewed by the intermediary at least twice during the reporting period and adjusted if necessary.

(4) *Special interim payments for the indirect costs of medical education.* Payments for the indirect costs of medical education [described in § 412.118 of this chapter] are paid based on an estimate of the total for the Federal portion of the diagnosis-related group revenue to be received in the current period. The total estimated annual amount of the adjustment is divided into 26 equal biweekly payments and included with other inpatient costs reimbursed on a reasonable cost basis. This estimate is subject to year-end adjustment. Each payment is made two weeks after the end of a biweekly period of services. The interim payments are reviewed by the intermediary at least twice during the reporting period and adjusted if necessary.

(5) *Special interim payments for unusually long lengths of stay.* For discharges occurring on or after July 1, 1987, a hospital may request an interim payment if a Medicare beneficiary's length of stay exceeds 45 days. The amount of the interim payment is equal to the hospital's Federal rate multiplied by the appropriate diagnosis-related group weighting factor. Only one interim payment per discharge is permitted.

5. Section 405.463 is amended by revising paragraph (b)(1) to read as follows:

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(b) *Cost-reporting periods subject to the rate of increase ceiling.* (1) Base period. Each hospital's initial ceiling will be based on allowable inpatient operating costs per case incurred in the 12-month cost reporting period immediately preceding the first cost reporting period subject to ceilings established under this section, except that, when the immediately preceding cost reporting period is a short reporting period (fewer than 12 months) the first 12-month period beginning on or after the date the hospital's exemption from the ceiling ends will be the base period.

* * * * *

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 is revised to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1(d), 1395hh, and 1395ww).

B. The Table of Contents of Part 412 is amended by adding the titles of new §§ 412.65 through 412.67 to Subpart D to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

Sec.

* * * * *

412.65 Addition of capital payments into the Federal rates.
412.66 Federal capital-related rates beginning on or after fiscal year 1987.
412.67 Phase-in period and methodology for capital payments.

* * * * *

C. Subpart A is amended as follows:

Subpart A—General Provisions

1. Section 412.1 is amended by revising paragraph (a) to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1986, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

2. In § 412.2, the introductory text of paragraphs (c) and (d) is reprinted without change for the convenience of the reader; a new paragraph (c)(5) is added; and paragraph (d)(1) is revised to read as follows:

§412.2 Basis of payment.

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(5) For cost reporting periods beginning on or after October 1, 1986, capital-related costs as described in Subpart D of this part.

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986, capital-related costs, and an allowance for return on equity, as described in §§ 405.414 and 405.429 of this chapter.

* * * * *

3. Section 412.10 is amended by revising paragraph (a) to read as follows:

§412.10 Changes in the DRG classification system.

(a) *General rule.* HCFA issues changes in the DRG classification system in a Federal Register notice at least annually. Except as specified in paragraphs (c) and (d) of this section, the DRG changes will be effective prospectively with discharges occurring on or after the same date the payment rates are effective.

* * * * *

D. Subpart B is amended as follows:

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment System

1. In §412.23, the introductory language in paragraph (c) is revised to read as follows:

§412.23 Excluded hospitals: Classifications.

* * * * *

(c) *Alcohol/drug hospitals.* If an alcohol/drug hospital meets the

following requirements, it is excluded from the prospective payment system for its cost reporting periods beginning before October 1, 1987, but no hospital is excluded for its cost reporting periods beginning during Federal fiscal years 1986 and 1987 unless it was excluded for its cost reporting period beginning during Federal fiscal year 1985:

* * * * *

2. In § 412.32, the introductory language is revised to read as follows:

§ 412.32 Distinct part alcohol/drug units: Additional requirements.

If a distinct part alcohol/drug unit meets the following requirements, it is excluded from the prospective payment system for its cost reporting periods beginning before October 1, 1987, but no unit is excluded for its cost reporting periods beginning during Federal fiscal years 1986 and 1987 unless it was excluded for its cost reporting period beginning in Federal fiscal year 1985:

* * * * *

E. Subpart D is amended as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

1. Section 412.63 is amended by revising paragraph (a)(1) and adding paragraphs (b)(3), (c)(4), and (c)(5) to read as follows:

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

(a) *General rule.* (1) HCFA will determine a national adjusted prospective payment rate for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 (including an additional payment, effective with cost reporting periods beginning on or after October 1, 1986, for the incorporation of capital payments as described in § 412.65) involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and will determine a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A.

(b) *Geographic classifications.* * * *

(3) Effective with discharges occurring on or after October 1, 1986, a hospital classified as rural, as described in § 412.62(f), is deemed to be urban and receives the urban Federal payment amount if the county in which it is located meets the following criteria:

(i) The rural county is surrounded on all sides by urban counties.

(ii) The county was reclassified from an urban area to a rural area after April 20, 1983, as described in § 412.62(f)(1)(iv).

(iii) At least 15 percent of employed workers in the county commute to the central county of one of the adjacent urban areas.

(c) *Updating previous standardized amounts.*

* * * * *

(4) For fiscal years 1987 and 1988, HCFA standardizes the average standardized amounts by excluding an estimate of the payments for hospitals that serve a disproportionate share of low-income patients.

(5) For fiscal year 1987 onward, HCFA restandardizes the average standardized amounts by excluding an estimate of indirect medical education payments.

* * * * *

2. New §§ 412.65 through 412.67 are added to read as follows:

§ 412.65 Addition of capital payments into the Federal rates.

(a) *General rule.* Effective with cost reporting periods beginning on or after October 1, 1986, HCFA provides an amount for capital-related costs, in addition to the Federal rates, as determined in § 412.63, for each inpatient hospital discharge.

(b) *Requirements.* In order to receive full payment for the Federal portion of the capital-related prospective payment amount, a hospital with capital expenditures, as defined under section 1122(g) of the Act, obligated after September 30, 1986, must be located in a State that has an agreement with the Secretary pursuant to section 1122 of the Act as described in § 405.435 of this chapter, under the terms of which a planning agency—

(1) Submits findings and recommendations to the Secretary concerning health facility capital expenditures; and

(2) Recommends approval of capital expenditures initiated by the hospital in its cost reporting periods beginning on or after October 1, 1986.

(c) *Capital expenditures that are not approved.* Except as discussed in paragraph (d) below, if capital expenditures are not approved as required under paragraph (b) of this section, the Federal portion of the capital-related prospective payment amount is reduced by the percentage of the total disapproved capital expenditures divided by total hospital capital assets.

(d) *Exception.* If a hospital can demonstrate to the satisfaction of HCFA that no part of the asset for which a capital expenditure is not approved, as required under paragraph (b) of this section, is used in the provision of inpatient hospital services for which payment may be made under this part, the Federal portion of the capital-related prospective payment amount will not be reduced under paragraph (c) of this section.

(e) *Cost reporting periods beginning on or after October 1, 1986 through September 30, 1990.* For cost reporting periods beginning during the period October 1, 1986 through September 30, 1990, the capital payment amount is based on a combination of a hospital-specific capital-related rate and a Federal capital-related rate as determined in §§ 412.66 and 412.67.

(f) *Cost reporting periods beginning on or after October 1, 1990.* For cost reporting periods beginning on or after October 1, 1990, the capital payment amount is based on a Federal capital-related rate as determined in §§ 412.66(g).

§ 412.66 Federal capital-related rates beginning on or after fiscal year 1987.

(a) *Determining allowable base-year capital-related costs.* The Federal capital-related rate is determined by identifying the average capital-related costs, as described in § 405.414 of this chapter, using audited hospital cost reports from fiscal year 1983 for hospitals subject to the prospective payment system and reducing the costs, using fiscal year 1984 hospital cost reports, by an estimated amount for investment income derived from funded depreciation.

(b) *Updating the capital-related costs.* HCFA updates each amount determined under paragraph (a) of this section by—

(1) Updating from fiscal year 1983 through fiscal year 1986 using the calendar year annual rate of increase in the capital component of the market basket; and

(2) Projecting for fiscal year 1987 onward the applicable percentage change under § 412.63(e).

(c) *Standardizing the amounts.* HCFA standardizes each amount updated under paragraph (b) of this section for each hospital by—

(1) Adjusting for resource intensity in case mix among hospitals;

(2) Excluding an estimate of indirect medical education payments;

(3) Excluding an estimate of the payments for hospitals that serve a disproportionate share of low-income patients; and

(4) Adjusting for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

(d) *Computing urban and rural averages.* HCFA computes an average of the standardized amounts determined under paragraph (c) of this section for urban and rural hospitals, as defined in § 412.62(f), in the United States and for urban and rural hospitals in each region.

(e) *Reducing for value of outlier payments.* HCFA reduces each of the average standardized amounts determined under paragraph (d) of this section by a proportion equal to the proportion (estimated by HCFA) of the total amount of payments based on DRG prospective payment rates that are additional payments for outlier cases under Subpart F of this part.

(f) *Application of blended percentages during the transition period.* For cost reporting periods beginning during the period October 1, 1986 through September 30, 1990, the amounts determined in paragraph (e) of this section are multiplied by the appropriate phase-in period percentages as described in § 412.67(b).

(g) *Federal capital-related payment.* The Federal capital-related payment equals the product of—

(1) The national and regional capital-related rate as determined under paragraphs (a) through (f) of this section and § 412.67(b); and

(2) The DRG weighting factor determined under § 412.60(b) for each discharge.

§ 412.67 Phase-in period and methodology for capital payments.

(a) *Phase-in period.* Except for new hospitals and sole community hospitals as described in paragraphs (f) and (g) of this section respectively, inclusion of payments for capital in the prospective payment rates is to be phased-in over a four-year period as described in paragraph (b) of this section. During this period, the capital payment amount is based on a combination of a hospital-specific capital-related rate, and a Federal capital-related rate as determined in § 412.66. At the end of the transition period (that is, for discharges occurring in a cost reporting period beginning on or after October 1, 1990), payment amounts are based on a Federal capital-related rate.

(b) *Blended percentages for capital-related rates.* The blends of the hospital-specific capital-related rates and the Federal capital-related rates are as follows:

(1) For discharges in cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, the blend is—

(i) 80 percent of the hospital-specific capital-related rate; and

(ii) 20 percent of the Federal capital-related rate.

(2) For discharges in cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988, the blend is—

(i) 60 percent of the hospital-specific capital-related rate; and

(ii) 40 percent of the Federal capital-related rate.

(3) For discharges in cost reporting periods beginning on or after October 1, 1988 and before October 1, 1989, the blend is—

(i) 40 percent of the hospital-specific capital-related rate; and

(ii) 60 percent of the Federal capital-related rate.

(4) For discharges in cost reporting periods beginning on or after October 1, 1989 and before October 1, 1990, the blend is—

(i) 20 percent of the hospital-specific capital-related rate; and

(ii) 80 percent of the Federal capital-related rate.

(5) The appropriate Federal capital-related rate is a combined regional and national rate and changes with the Federal fiscal year. For Federal fiscal year 1987, which begins October 1, 1986, the Federal capital-related rate is 50 percent regional and 50 percent national. For Federal fiscal year 1988, which begins October 1, 1987, the Federal capital-related rate is 100 percent national.

TABLES.—SUMMARY OF HOSPITAL-SPECIFIC AND FEDERAL PORTION PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL-RELATED RATES

Cost reporting period beginning on or after—	Hospital-specific capital-related percentage	Federal capital-related percentage
October 1, 1986	80	20
October 1, 1987	60	40
October 1, 1988	40	60
October 1, 1989	20	80
October 1, 1990		100

(c) *Methodology—Hospital-specific capital-related rate.* The hospital-specific capital-related rate is the total allowable capital-related costs, as determined by HCFA, for the hospital's cost reporting period occurring in Federal fiscal year 1986 as calculated by—

(1) Calculating the allowable capital-related costs in the base year and dividing the remaining costs by the hospital's number of Medicare discharges in that period; and

(2) Adjusting the costs per discharge for resource intensity in case mix.

(d) *Hospital-specific capital-related payment.* The hospital-specific capital-related payment equals the appropriate phase-in period percentage described in paragraph (b) of this section multiplied by the lower of—

(1) The hospital-specific capital-related rate as determined under paragraph (c) of this section, updated for fiscal year 1987 onward using the applicable percentage change under § 412.63(e), multiplied by the DRG weighting factor determined under § 412.60(b) for each discharge, and totalled for the number of Medicare discharges in the applicable period: or

(2) The total actual allowable Medicare inpatient hospital costs for the applicable transition year.

(e) *Cost reporting periods less than 12 months:* If a hospital has less than a 12-month cost reporting period, the amount of costs determined for the hospital-specific capital-related rate, for purposes of paragraph (c)(2) of this section, is the capital-related cost from the latest and longest cost reporting period in the base-year period, calculated on a per discharge basis and adjusted appropriately to make the costs consistent with standard 12-month cost reports for the base year.

(f) *Payment rate for new hospitals.*

(1) A new hospital is paid solely on the basis of the Federal capital-related rate, as determined in § 412.66, during the phase-in period, and thereafter, if it meets either of the criteria in paragraphs (f)(2) and (f)(3) of this section.

(2) The hospital—

(i) Is newly participating in the Medical program (under previous and present ownership); and

(ii) Does not have a 12-month cost reporting period ending on or before September 30, 1986.

(3) The hospital is under new ownership and documents to the satisfaction of its intermediary that the ownership and occupancy rate requirements described in § 412.74(a)(2) are met.

(g) *Payment rate for sole community hospitals.* A hospital that meets the criteria in § 412.92(a) for classification as a sole community hospital receives capital-related payments on the basis of—

(1) 25 percent of the regional capital-related payment as determined under § 412.66; and

(2) 75 percent of the hospital-specific capital-related payment as determined under paragraph (c)(1) of this section.

E. In Subpart E, § 412.70, the footnote to paragraph (c) is revised to read as follows:

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Subpart E—Determination of Transition Period Payment Rates

§ 412.70 General description.

* * * * *

(c) *Amount of blended portions.*[1]

* * * * *

F. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.80, the introductory language of paragraph (a)(1)(ii) is reprinted without change for the convenience of the reader; and paragraphs (a)(1) introductory language, (a)(1)(ii)(B), and (c) are revised to read as follows:

§ 412.80 General provisions.

(a) *Basic rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA provides for additional payment,

Federal fiscal year	Federal rate		Federal capital-related rate	
	Regional rate percentage	National rate percentage	Regional rate percentage	National rate percentage
October 1, 1983	100	0		
October 1, 1984	75	25		
October 1, 1985	75	25		
October 1, 1986	50	50	50	50
October 1, 1987	0	100	0	100

* * * * * * *

(c) *Relation to indirect medical education costs and hospitals that serve a disproportionate share of low-income patients.* The outlier payment amounts will be included in total DRG revenue for purposes of determining payments for indirect medical education costs under § 412.118(b) and hospitals that serve a disproportionate share of low-income patients under § 412.108.

3. In § 412.82, paragraph (c) is revised to read as follows:

§ 412.82 Payment for extended length-of-stay cases (day outliers).

* * * * *

(c) The per diem payment made under paragraph (a) of this section is derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rates (capital-related and noncapital-related) determined under Subpart D of this part by the geometric mean length-of-stay for that DRG. The resulting amounts are then multiplied by the applicable Federal portions (capital-related and noncapital-related) of the blend as follows:

FEDERAL NONCAPITAL-RELATED PORTIONS

Cost reporting periods beginning on or after	Federal portion (percent)
October 1, 1983	25
October 1, 1984	50
October 1, 1985:	
The first seven months of the cost reporting period	50
The remaining five months of the cost reporting period	55
October 1, 1986	75
October 1, 1987	100

FEDERAL CAPITAL-RELATED PORTIONS

Cost reporting periods beginning on or after	Federal capital-related portion (percent)
October 1, 1986	20
October 1, 1987	40
October 1, 1988	60
October 1, 1989	80
October 1, 1990	100

* * * * *

4. In § 412.84, paragraphs (g) and (i) are revised as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(g) The intermediary bases the cost of the discharge on 71 percent of the billed charges for covered inpatient services. The cost is adjusted further to exclude an estimate of indirect medical education costs, and payments for hospitals that serve a disproportionate share of low-income patients, and to include the reasonable charges for nonphysician services billed by an outside supplier in accordance with § 409.23(c)(3) of this chapter.

* * * * *

(i) The additional payment amount is derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amounts are then multiplied by the applicable Federal portions (capital-related and noncapital-related) of the blend as indicated in § 412.82(c).

G. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92, the introductory language of paragraphs (a) and (a)(2) are reprinted without change for the convenience of the reader and paragraphs (a)(2)(ii) and (d) are revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

(a) *Criteria for classification as a sole community hospital.* HCFA classifies a hospital as a sole community hospital if it is located in a rural area (as defined in § 412.62(f)), and meets one of the following conditions:

* * * * *

(2) The hospital is located between 25 and 50 miles from other like hospitals and meets one of the following criteria:

* * * * *

(ii) The hospital has less than 50 beds and the intermediary certifies that the hospital would have met the criteria in paragraph (a)(2)(i) of this section were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital; or

* * * * *

(d) *Determining prospective payment rates for sole community hospitals.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community

[1] For purposes of this paragraph and §§ 412.80(a)(1)(ii)(B) and 412.82(c), but not for purposes of determining blended portions for capital-related payments under § 412.87(b), see section 9108(d)(4) of Pub. L. 99-272 for special provisions concerning the transition period applicable to hospitals in the State of Oregon.

hospitals equal the sum total of the following payment rates:

(1) 75 percent of the hospital-specific base payment rate as determined under § 412.73;

(2) 25 percent of the appropriate regional prospective payment rate as determined under Subpart D of this part; and

(3) The capital-related payment rate as determined under § 412.67(g).

* * * * *

2. In § 412.96, the introductory language of paragraph (c) is reprinted without change for the convenience of the reader: paragraphs (c)(2) (d) and (e) are revised, and a new paragraph (h) is added to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(c) *Alternative criteria for cost reporting periods beginning on or after October 1, 1985.* For cost reporting periods beginning on or after October 1, 1985, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located in a rural area (as defined in § 412.62(f)) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

* * * * *

(2) *Number of discharges.*

(i) Except as provided in paragraph (c)(2)(ii) of this section for an osteopathic hospital, for the hospital's most recently completed cost reporting period, its number of discharges (excluding discharges from subprovider and newborn units) is at least equal to the number of discharges under either the national or regional criterion set forth in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (h) of this section.

(ii) Effective with cost reporting periods beginning on or after January 1, 1986, an osteopathic hospital, recognized by the American Osteopathic Hospital Association, that is located in a rural area must have at least 3,000 discharges during its most recently completed cost reporting period to meet the number of discharges criterion. The 3,000 discharges benchmark is also used in evaluating an osteopathic hospital for purposes of the triennial review.

* * * * *

(d) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of § 412.96(b)(1) will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), and § 412.66(g), as adjusted by the hospital's area wage index.

(e) *Payment to all other rural referral centers.* For cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area and meets the criteria of § 412.96(b)(2) or (c) will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), and § 412.66(g), as adjusted by the hospital's area wage index.

* * * * *

(h) *Methodology for calculating number of discharges criteria.* For purposes of determining compliance with the national or regional number of discharges criterion under paragraph (c)(2) of this section, HCFA calculates the criteria as follows:

(1) *National criterion.* Except as described in paragraph (h)(6) of this section, HCFA determines the annual number of admissions to non-Federal, acute-care general and other special hospitals and compares it to the 1981 annual number of admissions. The percentage of change between those two figures is used to update the 1981 national number of discharges criterion of 6,000.

(2) *Regional criterion.* HCFA calculates the median urban number of discharges for each census region by updating the 1981 regional criterion using the percentage of change that is calculated under paragraph (h)(1) of this section.

(3) *Source of data.* In making the calculations described in paragraphs (h)(1) and (h)(2) of this section, HCFA uses the most recent hospital admissions data available for the Federal fiscal year ending prior to the publication of the annual notice of prospective payment rates under § 412.8(b).

(4) *Effective date.* HCFA sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are compared to a hospital's number of discharges for its most recently completed cost reporting period in determining if the hospital qualifies for referral center status for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(5) *Applicability of criteria to HCFA review of referral center status.* For purposes of the triennial review of a referral center's status as described in paragraph (f) of this section, the referral center's number of discharges for its most recently completed cost reporting period is evaluated using the updated discharge criteria published in the subsequent Federal fiscal year's notice of prospective payment rates.

H. Subpart H is amended as follows:

Subpart H—Payments to Hospitals under the Prospective Payment System

1. Section 412.113 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capital-related costs.* Payment for capital-related costs (as described in § 405.414 of this chapter) is determined on a reasonable cost basis for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986. During that period, the capital-related costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73. For cost reporting periods beginning on or after October 1, 1986, capital-related costs are paid on a prospective basis as described in §§ 412.65 through 412.67.

* * * * *

(d) *Kidney acquisition costs incurred by hospitals with approved renal transplantation centers.* Payment for kidney acquisition costs incurred by hospitals with approved renal transplantation centers, as described in § 412.100, is made on a reasonable cost basis.

2. Section 412.125 is amended by revising paragraph (b) to read as follows (the introductory language of § 412.125 is reprinted without change for the convenience of the reader):

§ 412.125 Effect of change of ownership on payments under the prospective payment system.

When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

* * * * *

(b) Payment for capital-related costs (for reporting periods beginning before October 1, 1986) and bad debts, as described in §§ 412.113(a) and 412.115(a), respectively, will be made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: May 27, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 29, 1986.

Otis R. Bowen,

Secretary.

Addendum—Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1986, and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 1986

I. Summary and Background

In this proposed rule, we are proposing changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services. In addition, we are proposing new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

For hospital cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, except for sole community hospitals and hospitals located in the State of Oregon that are subject to the prospective payment system, each hospital's payment per discharge under the prospective payment system will be the sum of a Federal portion that is 75 percent of the Federal rate and a hospital-specific portion that is 25 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act as amended by section 9102 of Pub. L. 99-272). Sole community hospitals will continue to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate. For hospitals located in the State of Oregon that are subject to the prospective payment system, each hospital's payment per discharge will be based on the Federal national rate (section 9102(d)(4) of Pub. L. 99-272).

We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During FY 1987, except for the policy on hospitals located in the State of Oregon as described above and for sole community hospitals, the Federal rates will be comprised of a blend of 50 percent of the national rate and 50 percent of the appropriate regional rate as required by section 1886(d)(1)(D) of the Act (as amended by section 9102 of Pub. L. 99-272). (Sole community hospitals also receive special treatment for the Federal rates, that is, their Federal portion is based on 100 percent of the regional rate.) During the first year of the transition period (that is, FY 1984), the Federal rates were comprised solely of the regional rate. During the second and third years, FYs 1985 and 1986, the Federal rates are comprised of a blend of 25 percent of the national rate and 75 percent of the regional rate.

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates. The method for determining these rates was described in the final rules listed at the beginning of the preamble of this proposed rule. The changes, to be applied prospectively, would affect the calculation of the Federal rates. As part of these changes, we would incorporate adjustments for the updated hospital market basket and additional adjustments as authorized under section 1886(e)(4) of the Act.

Section III, below, sets forth our proposed changes in determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in this preamble are presented at the end of this addendum.

II. Proposed Changes to Prospective Payment Rates and DRG Weighting Factors for FY 1987

The basic methodology for determining Federal national prospective payment rates is set forth at § 412.63. Below we discuss the manner in which we are proposing to change some of the factors or methodology used for determining the prospective payment rates. The federal rate changes, including the updated market basket, the establishment of capital-related standardized amounts into the prospective payment system, the updated wage index and DRG weights, once issued as final, would be effective with discharges occurring on or after October 1, 1986.

In summary, we are proposing to establish the FY 1987 national and regional rates (that is, the standardized amounts set forth in Table 1 of the addendum) by—

- Restandardizing the hospital costs used to establish the rates to reflect the indirect costs of medical education as measured by the revised indirect medical education adjustment factor and to reflect payment adjustments to disproportionate share hospitals, per sections 9104(b) and 9105(b) of Pub. L. 99-272, and to reflect technical corrections to the wage index;
- Computing average capital-related costs per case per hospital and adjusting the costs per case to exclude the effects of case mix, indirect medical education costs, payment adjustments to disproportionate share hospitals, and cost-of-living differences for Alaska and Hawaii;
- Grouping the adjusted operating costs per case (labor-related, nonlabor related, and capital-related) to compute urban and rural, national and regional average standardized amounts;
- Reducing for the value of outlier payments;
- Updating the standardized amounts by 0.5 percent; and
- Making a further adjustment to the standardized amounts to reflect the savings from the change in the indirect medical education adjustment as required under section 9104(b) of Pub. L. 99-272.

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base-Year Costs

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital in order to set the payment rates for FY 1984. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contained a detailed explanation of how base-year cost data were established and how they were used in computing the Federal rates.

Section 1886(d)(2)(C) of the Act required that the updated base-year per discharge costs be standardized for the FY 1984 rates in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments, and indirect medical education costs. Under other statutory authority, we are proposing to restandardize the base-year costs to reflect changes resulting from Pub. L. 99-272, as discussed below.

In the following sections we discuss how we are proposing to restandardize (or not restandardize) the base-year costs for the following variables:

- Hospital wage levels.
- Case mix.
- Indirect medical education costs.
- Cost of living for Alaska and Hawaii.
- Costs for hospitals that serve a disproportionate share of low-income patients.

For the benefit of the reader, we are also discussing in the following sections whether or not capital-related costs

would be standardized for each of the above variables. A more detailed discussion of the proposed standardization of capital-related costs is provided in section II of the preamble.

a. Adjustments for Variation in Hospital Wage Levels. Section 1886(d)(2)(C)(ii) of the Act requires that for each inpatient hospital discharge in FY 1984 we standardize the average cost per case of each hospital used to develop the separate urban and rural standardized amounts for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the FY 1984 standardized urban and rural amounts be adjusted for hospital area wage levels by a factor (established by the Secretary) as part of the methodology for determining prospective payments to hospitals. To fulfill both requirements, we constructed a wage index to eliminate variations in the average cost per case.

In accordance with Part III of the preamble, we are proposing to use the rebased market basket as a basis for revising the labor and nonlabor portions. Thus, for each hospital, instead of 79.15 percent, we would use 75.04 percent as the labor portion when standardizing for area wage variations.

In response to the June 10, 1985 proposed rule, we adopted a HCFA gross wage index in developing the FY 1986 prospective payment rates as published in the September 3, 1985 final rule. However, as a result of congressional action, we postponed application of several provisions of the September 3, 1985 final rule until May 1, 1986, as we discussed in the preamble of this proposed rule.

As a result of section 9103 of Pub. L. 99–272, the HCFA wage index, which was published in the September 3, 1985 final rule and modified subsequently for corrections to the data, became effective with discharges occurring on or after May 1, 1986. We published the wage indexes in the May 6, 1986 interim final rule (51 FR 16778) that implements section 9103 of Pub. L. 99–272.

Section 9103(a) of Pub. L. 99–272 also eliminated retroactive implementation of the revised wage index.

As indicated above, the HCFA wage index values published in the September 3, 1985 final rule were developed from hospital wage and employment records for cost reporting periods that ended in calendar year 1982. In the June 10, 1985 proposed rule, we specifically solicited comments on how the HCFA wage index should be updated, once adopted. However, we received only a few comments in response to our solicitation. In the September 3, 1985 final rule we stated that, because further consultation with the hospital industry was necessary to determine the proper vehicle for updating the HCFA wage index on a regular basis, we were deferring a final decision on the updating method (50 FR 35666).

We are now in the process of collecting audited data, based on hospital cost reports for cost reporting periods beginning in FY 1984, in order to update the HCFA wage index. However, these data will not be available for analysis or use until after October 1, 1986, when the FY 1987 prospective payment changes are scheduled to take effect. In addition, as part of the revised form HCFA–339, we are also collecting wage and salary data from hospitals filing cost reports during calendar year 1985.

The HCFA wage index is the latest available measure of hospital wage levels that addresses the part-time employment deficiency inherent in the BLS data. Therefore, we propose to use this measure of hospital wage levels to calculate the FY 1987 prospective payment rates. Except for changes resulting from (1) changes in MSA designations that may occur, as described elsewhere in this document, and (2) the proposed change in the designation of the Flint, Michigan MSA for Medicare prospective payment system purposes, also described elsewhere in this document, the HCFA wage index values that appear in this proposed rule are based on the same data used to develop the wage indexes published in the May 6, 1986 interim final rule (51 FR 16778).

We are not proposing to standardize capital-related costs for area wage variations because capital-related costs represent a *nonlabor* component and are, therefore, not affected by area wage variations.

b. Variations in Case Mix Among Hospitals. Section 1886(d)(2)(C)(iii) of the Act requires that the updated FY 1984 amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case-mix index) is explained in the September 1, 1983 interim final rule (48 FR 39768–39771). A case-mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case-mix index. Table 3a in the addendum to the September 1, 1983 interim final rule (48 FR 39847–39870) contains the case-mix index values used for this purpose.

Although we are not proposing to make any changes to the case-mix index for inpatient operating costs and, therefore, are not restandardizing the updated amounts for variations in case mix, we are proposing to standardize each hospital's allowable Medicare capital costs per case by a later case-mix index (that is, hospital case-mix indexes for Federal FY 1985) as one of the adjustments appropriate under the authority of section 1886(d)(5)(C) of the Act to incorporate capital into the prospective payment rates. This is the latest and most complete case-mix data available. It would be improper to use the same case-mix index that was used to standardize the 1981 operating costs since we now have this more recent data available. This case-mix index is designated as Table 3c in the addendum, and is applied for purposes of standardizing capital costs. (We are also providing a Table 3d in the Addendum (Average Case-Mix Index by Hospital Classification Group) for those hospitals without a specific case-mix index in FY 1985.) The case-mix indexes in Tables 3a and 3b of the September 1, 1983 interim final rule (48 FR 39847) continue to apply for purposes of standardizing the non-capital operating costs per case.

C. Indirect Medical Education Costs. Section 1886(d)(2)(C)(i) of the Act requires that the updated FY 1984 amounts be standardized for indirect medical education costs. Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals receive an additional payment for the indirect costs of medical education. Section 9104(a) of Pub. L. 99–272 revised section 1886(d)(5)(B) of the Act to reduce the education adjustment factor used to determine the indirect medical education payment from 11.59 percent to approximately 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1986. For discharges occurring on or after October 1, 1986, the adjustment factor is equal to approximately 8.7 percent. These factors are approximations because in addition to being reduced, the adjustment factor is no longer applied on a linear basis, but rather on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship, that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs. Therefore, the adjustment factors are only approximately 8.1 percent and 8.7 percent.

In the interim final rule of May 6, 1986 (51 FR 16778), we revised §412.118 to provide that for discharges occurring on or after May 1, 1986 and before October 1, 1986, the indirect medical education factor equals the following:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.406} - 1\right]$$

(Note that the exponent (.406) was printed incorrectly as .045 in the preamble to the May 6, 1986 interim final rule (51 FR 16778)).

For discharges occurring on or after October 1, 1986, the indirect medical education factor equals the following:

$$1.5 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5765} - 1\right]$$

Section 9104(b) of Pub. L. 99-272 amended section 1886(d)(2)(C)(i) of the Act and provides that the standardized amounts be restandardized to reflect the changes made to the payment adjustment for indirect medical education under section 9104(a) of Pub. L. 99-272. Although section 1886(d)(2)(C) specifically refers to standardizing the FY 1984 amounts, we believe that the amended section 1886(d)(2)(C)(i) was intended to require that the FY 1984 amounts, which were standardized for indirect medical education costs, be restandardized in FY 1987 based on the section 9104(a) of Pub. L. 99-272 changes. Therefore, in establishing the standardized amounts used to determine the FY 1987 prospective payment rates, after adjusting each hospital's inpatient operating cost per discharge for inflation, differences in area wage levels, and case mix, we are proposing that we divide each teaching hospital's cost per discharge by 1.0 plus the individual hospital's indirect medical education adjustment factor as computed using the formula above which the law requires be used for discharges on or after May 1, 1986 and before October 1, 1986.

The following is an example of how we would calculate a hospital's indirect medical education factor for purposes of restandardizing the standardized inpatient operating amounts:

Step 1.—Calculate the ratio (r) of the number of interns and residents to beds based on data for cost reporting periods ending in calendar year 1981.

Assume r=.2, where $r = \frac{\text{Number of Interns and residents}}{\text{beds}}$

Step 2.—Calculate the percentage adjustment (in decimal format) according to the following formula: $2[(1+r)^{.406}-1]$.

Therefore, the indirect medical education adjustment equals: $2[(1+.2)^{.406}-1] = .15327$ or rounded to .1533.

Step 3.—Add the result from step 2 (.1533) to 1.0. .1533+1.0=1.1533.

Step 4.—Divide the result from step 3 into that hospital's cost per discharge.

We are proposing to standardize capital-related costs for indirect medical education costs using the same adjustment formula, as described in the example above, but based on intern and resident to bed ratios developed from FY 1984 data.

d. Cost-of-Living Factor for Alaska and Hawaii. Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

Generally, these two States have higher levels of cost in comparison to other States in the nation. The high cost of labor is accounted for in the wage index adjustments discussed above. However, the high cost of living in these States also affects the cost of nonlabor items (for example, supplies and equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (that is, for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor. Because the nonlabor portion has already been standardized for this adjustment, we are not proposing a further restandardization.

We are proposing to standardize the capital-related costs for the cost of living in Alaska and Hawaii using the most recent cost-of-living adjustment factor as described in Part II of the preamble.

e. Costs for Hospitals that Serve a Disproportionate Share of Low-Income Patients. Section 9105(b) of Pub. L. 99-272 amended section 1886(d)(2)(C) of the Act (which relates to FY 1984 rates) by adding a new section 1886(d)(2)(C)(iv) to provide that effective with discharges occurring on or after October 1, 1986 and before October 1, 1988, the updated amounts be standardized for the estimated additional payments made to hospitals that serve disproportionate shares of low-income patients. That is, although erroneously drafted as an amendment to the methodology for determining FY 1984 rates, we believe that the law was intended to require us to remove the effects of the payments made to disproportionate share hospitals from the costs used to establish the standardized amounts. For discharges occurring on or after October 1, 1988, we would no longer restandardize the standardized amounts for the estimated payments made to disproportionate share hospitals, since section 1886(d)(5)(F) of the Act does not authorize such payments for discharges after September 30, 1988.

Section 9105(a) of Pub. L. 99-272 added a new section 1886(d)(5)(F) to the Act to require that we make an additional payment for hospitals that serve a disproportionate share of low-income patients. In the interim final rule of May 6, 1986 (51 FR 16786), we added a new § 412.106 to implement this provision.

Section 1886(d)(5)(F)(i) of the Act provides that for discharges occurring on or after May 1, 1986 and before October 1, 1988, an additional payment must be made for each prospective payment hospital that meets one of the following criteria:

- During the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—

—15 percent, if the hospital is located in an urban area and has 100 or more beds;

—40 percent, if the hospital is located in an urban area and has less than 100 beds; or
—45 percent, if the hospital is located in a rural area.

(Section 1886(d)(5)(F)(i)(I) of the Act.)

• The hospital is located in an urban area, has 100 or more beds, and can demonstrate that during its cost reporting period, more than 30 percent of its total inpatient care revenue is derived from State and local government payments for indigent care furnished to patients not covered by Medicare or Medicaid.

(Section 1886(d)(5)(F)(i)(II) of the Act.)

Under section 1886(d)(5)(F) of the Act, the additional payment adjustments for hospitals that meet the criteria of a hospital that serves a disproportionate share of low-income patients are determined as follows:

• For urban hospitals with 100 or more beds, the hospital's total DRG revenue is increased by 2.5 percent plus one-half the difference between the hospital's percentage of low-income patients and 15 percent, up to a maximum of 15 percent; that is, the disproportionate share adjustment factor is the lesser of 15 percent or (P−15)(.5) + 2.5, where P equals the hospital's disproportionate patient percentage expressed as a decimal.
• For urban hospitals with fewer than 100 beds, the hospital's total DRG revenue is increased by five percent.
• For rural hospitals, the hospital's total DRG revenue is increased by four percent.
• For hospitals that qualify for disproportionate share adjustments based on a certain proportion of their revenue coming from State and local sources for indigent care, the hospital's total DRG revenue is increased by 15 percent.

Therefore, in establishing the standardized amounts for FY 1987, we are proposing to adjust each disproportionate share hospital's inpatient operating cost per discharge by adding 1.0 to the applicable disproportionate share payment factor, and dividing the hospital's cost per discharge by that number. In this way we would remove the effect of payment adjustments for disproportionate share hospitals from the standardized amounts as required under section 1886(d)(2)(C)(iv) of the Act.

In determining the disproportionate share adjustment factors for purposes of standardizing the standardized amounts, we would use available data on the percentage of Medicaid days from Medicare costs reports with cost reporting periods beginning in Federal FY 1984 and the percentage of SSI/Medicare days for FY 1984 derived from matching FY 1984 SSI eligibility files to Medicare FY 1984 PATBILL records.

In accomplishing such standardization for this proposed notice, we have not taken into account any payments to hospitals that qualify for disproportionate share payments based on the percentage of their revenue from State and local government sources for indigent care. This is because these hospitals must demonstrate on a hospital-by-hospital basis that they meet the criteria for a payment adjustment. Since the disproportionate share hospital provision has been in effect only since May 1, 1986, we do not know at this time how many or which hospitals will ultimately qualify under this provision. While the number of such hospitals may be small, and therefore may not have a significant effect on the standardized rates, we will monitor this situation closely, and, to the extent possible, will present our data and analysis in the final rule. We plan to restandardize the rates to take account of payments to these hospitals in the final rule.

We are proposing to standardize capital-related costs for the costs of hospitals that serve a disproportionate share of low-income patients in the same manner that we are standardized the standardizing inpatient operating amounts.

It should be noted that, to standardize both the capital-related and operating costs for the effects of indirect medical education costs and disproportionate share payments, we added the adjustments together and divided the cost per discharge by the resulting sum. We did this in order to remain consistent with the manner in which the additional payments for indirect medical education and disproportionate share are made.

2. Grouping of Urban/Rural Averages Within Geographic Areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. For FY 1987, except for sole community hospitals and hospitals in Oregon, the Federal rates will be comprised at 50 percent of the national rate and 50 percent of the regional rate (section 1886(d)(1)(D) of the Act). Therefore, Table 1 contains 20 standardized amounts (ten urban amounts and ten rural amounts further divided into labor-related, nonlabor-related, and capital-related portions). The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural groups include hospitals from all urban and all rural geographic areas, respectively.

The Executive Office of Management and Budget (EOMB) may announce revised listings of the MSA and New England County Metropolitan Area (NECMA) designations that are used in calculating the standardized amounts. If EOMB makes the announcement before we issue the final rule, we will list the revised MSA/NECMA designations in the addendum to the final rule. The changes in designation will apply beginning in FY 1987.

3. Updating the Average Standardized Amounts

a Statutory Requirements. The basic requirements governing the method by which the average standardized amounts are updated are set forth at section 1886(d)(3)(A) of the Act, as follows:

(A) Updating Previous Standardized Amounts.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for each of fiscal years 1985 and 1986 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to adjust the urban and rural average standardized amounts using the applicable percentage as determined by the Secretary in accordance with section 1886(e)(4) of the Act. That section reads as follows:

(4) Taking into consideration the recommendations of the Commission [that is, the Prospective Payment Assessment Commission, or ProPAC], the Secretary shall determine for each fiscal year (beginning with fiscal year 1987) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary:

Shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain

quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Section 1886(b) of the Act sets forth the requirements under which a rate of increase limit (target amount) is established for the inpatient operating costs of hospitals excluded from the prospective payment system. Under this section, a target amount is determined annually for each hospital cost reporting period, based on each hospital's base year cost per case, updated by an "applicable percentage increase."

For FYs 1987 and 1988, as required under 1886(b)(3)(B)(i)(II) of the Act, the "applicable percentage increase" is determined by the Secretary pursuant to section 1886(e)(4) of the Act and may not exceed the "market basket percentage increase" defined in section 1886(b)(3)(B)(ii) as:

> With respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

We have used the hospital market basket as the means to measure the change in the cost of goods and services for both prospective payment rates and the target amounts applicable to hospitals and units excluded from the prospective payment system. Under section 1886(b)(3)(B) of the Act as amended by section 9101(b) of Pub. L. 99-272, for FY 1987 the percentage determined by the Secretary under section 1886(e)(4) would be applied to both the prospective payment rates and the target amounts (rate of increase limits) applicable to hospitals and units excluded from the prospective payment system.

b. Factors Considered in Determining the Proposed FY 1987 Update. As is clear from the discussion of the legal requirements for establishing the FY 1987 update, we must consider at least the following factors in addition to the hospital market basket index:

- Hospital productivity.
- Cost-effective technologies.
- Improvements in practice patterns.

In addition, since the standardized amounts for FY 1986 are used as the basis for the determination of rates for later years, we believe the level of the FY 1986 standardized amounts must be corrected for any experience that has developed since they were published. In short, we believe that it is necessary, each year, to review the appropriateness of the level of the previous year's prospective payment rates for providing reasonable payment for inpatient hospital services furnished to beneficiaries. Further, this review must include an assessment of whether the previous year's prospective payment rates have established adequate incentives for the efficient and effective delivery of needed care. In this way we would avoid carrying forward inaccuracies in the previous year's rates into the future and, thus, avoid overpaying or underpaying hospitals as a result of those inaccuracies.

Therefore, we believe that the FY 1987 standardized amounts should be established by a methodology that takes into account the prior year's experience (whether understated or overstated). To this end, we have measured the observed change in case mix to be 2.7 percent. We estimate that 0.6 percent of the observed change is for real increases in case-mix, and thus 2.1 percent is for improved coding practices for FY 1986 as discussed in section II.A.3.c., below. The market basket forecast error (−0.4 percent) for FY 1986 is discussed in section II.A.3.d., below, that contributed to an overstatement of the FY 1986 standardized amounts. We are proposing to reduce the FY 1987 prospective payment rates accordingly.

In addition, we have developed factors representing allowances or offsets for productivity, technological advances, and improvements in practice patterns that are necessary to ensure the cost-effective delivery of care. Each of these factors interacts with the others, to some extent, and has an impact on the quality of care. Taking into consideration ProPAC's recommendations on the policy target adjustment factor, we have determined an appropriate percent value for each of these factors, making conservative assumptions with regard to their potential effect on quality, and have combined these values into a proposed composite policy target adjustment factor, as discussed in section II.A.3.f., below. For FY 1987, the factor would equal −2.0 percent.

The forecast hospital market basket increase for FY 1987 is +3.6 percent. With the offsets for net case-mix change from FY 1986 (−2.1 percent), forecast market basket error in FY 1986 (−0.4 percent), and the composite policy target adjustment factor (−2.0 percent), we believe there is justification for a 0.9 percent decrease in the FY 1987 standardized amounts, as compared to those FY 1986.

c. Nominal Case-mix Change for FY 1986. We believe it is necessary to update the standardized amounts to take into consideration the overstatement in case mix as a result of improved coding practices. Through such an adjustment we would ensure that we are providing the amounts necessary for the efficient and effective delivery of medically needed health care. Not taking such overstatement into account would result in overpayments to hospitals, since the increased case mix would not be related to actual increases in resource use. As part of our prospective payment monitoring system, we have been generating monthly case-mix index values for each hospital under the prospective payment system. Based on hospital bills received through April 1986, which include about 2.7 million discharges in FY 1986 for prospective payment system hospitals in States which did not have waivers in FY 1985, we have observed that hospital case-mix index values have increased an average of 2.7 percent over the comparable period in FY 1985. We intend to use the latest discharge data available to us in the final rule in determining the change in case mix over the FY 1985 period.

To determine the degree of difference, we computed a separate case-mix index for each hospital for each month in which we received bills by multiplying the number of discharges for each DRG by the relative weight for that DRG, summing the products, and then dividing that sum by the number of total discharges for that month and hospital. The discharge weighted average prospective payment case-mix index for all hospitals and months in the file for FY 1986 was 1.1983.

We then computed a comparable average case mix for FY 1985. This was done by computing a case-mix index for each hospital, for each month in FY 1985 and determining a weighted average of the monthly case-mix averages using the FY 1986 discharges already reported to us through March 1986 as weights.

This automatically excludes data for FY 1986 months for which we have no bills. This also compensates for any biases that could have been due to seasonal variations, and the timeliness of submitting bills. Hospitals in States with Medicare waivers (New York and Massachusetts) in 1985 were excluded from this analysis so that the case-mix increase was measured only for hospitals under the prospective payment system for both FY 1985 and FY 1986.

The comparable case-mix level for FY 1985 was 1.1670.

We then computed the ratio of the average FY 1986 case-mix index to the FY 1985 case-mix index. This ratio is 1.027 (1.1983 divided by 1.1670 equals 1.027). ProPAC recommended a 1.0 percent reduction in the prospective payment rates for observed case mix based on the latest data available to them. Our data, which indicate a 2.7 percent decrease is justified, are more recent, and we believe our proposed adjustment coincides with ProPAC's recommendation for observed nominal case-mix changes due to improved coding.

d. Correction for Forecast Market Basket Error for FY 1986. The forecast hospital market basket increase factors used to calculate the FY 1986 standardized amounts were 4.8 percent for 1985 and 4.1 percent for 1986. Based on these calendar year factors, we projected a hospital market basket increase factor for FY 1986 of 4.27 percent. Our latest hospital market basket factors, as of April 1986 (which do not include a value for capital-related costs, as described in section II of the preamble, nor are the factors rebased or reweighted, as described in section III of the preamble) reflect more actual experience than those available at the time the FY 1986 rates were published. The most recent factors are 4.6 percent for 1985, 3.6 percent for 1986, and 4.1 percent for 1987. Based on these calendar year factors, we project the hospital market basket increase for FY 1986 should have been 3.85.

FORECAST MARKET BASKET (MB) PERCENT INCREASE FY 1986 RATES AND OUR MORE RECENT FY 1986 DATA

Calendar year	Forecast MB percentage	Updated MB percentage
1985	4.8	4.6
1986	4.1	3.6
1987	4.8	4.1

Using the latest market basket factors for correction of the standardized amounts, we would reduce them by 0.4 percent (4.27 percent minus 3.85 percent equals 0.42 percent). We expect to have even more recent and accurate factors available at the time we publish final FY 1987 standardized amounts, and will use those factors in making corrections to the standardized amounts.

e. Forecast Market Basket Increase. We must consider forecasted market basket increases in determining the percentage increase for both prospective payment rates and rate-of-increase limits (target amounts) for FY 1987. However, the percentage change determined under section 1886(e)(4) of the Act does not have to equal the market basket. Rather, the percentage change, or update factor, may not exceed the increase in the market basket. We note that this market basket would include a capital component in addition to being updated using a more recent base year (rebased), and additional cost categories (reweighted and revised price proxies).

FORECAST MARKET BASKET (MB) PERCENTAGE INCREASE

	MB percentage
Calendar year:	
1986	3.2
1987	3.7
1988	4.9

Based on these calendar year factors, we project a hospital market basket increase factor for FY 1987 (that is, October 1, 1986 to September 30, 1987) of 3.6 percent.

Data Resources, Inc. (DRI) provides HCFA the historical and forecasted rates of increase in the market basket cost categories. Anyone interested in obtaining additional information on these forecasts may contact Data Resources, Inc., 1750 K Street, NW., 9th Floor, Washington, DC 20006. Upon request DRI will provide in writing a description of the general methodology as well as all of the variables used in the market basket forecast model.

f. Composite Policy Target Adjustment Factor—(1) General considerations. In analyzing the prospective payment system, we must consider the effects of the rates we set on outcome measures such as quality and access to care, and the financial viability of the hospital industry insofar as it relates to beneficiary access to high quality care.

(a) Quality of and Access to Care. We have not found any evidence of compromise or deterioration in the quality of, or access to, inpatient hospital care for Medicare beneficiaries since the inception of the prospective payment system. In conjunction with our own studies on quality and access, we have monitored ProPAC's activity on quality and access assessments. Available data and study findings on subjects such as mortality trends and readmission rates do not indicate any negative findings regarding a deterioration in quality or access under the prospective payment system. Furthermore, we believe our commitment to high quality care and access are evident in the monitoring functions of the peer review organizations and the implementation of procedures to ensure that beneficiary rights are maintained so that beneficiaries are protected against premature discharges as discussed in section V of the preamble.

(b) Financial Viability of the Hospital Industry: Profitability measures of the hospital industry have received much attention recently. We believe that it is *not* our responsibility to determine specific levels of appropriate hospital profit margins. However, since Medicare inpatient hospital benefit payments represent over 40 percent of total community hospital inpatient revenues, Medicare should be a prudent purchaser of services furnished under the prospective payment system. A review of financial information is appropriate in order to determine how well the hospital industry has done before and after the inception of the prospective payment system. Our concern with the financial viability of the hospital industry does not extend beyond ensuring that high quality hospital care is accessible to Medicare beneficiaries.

ProPAC has conducted a number of studies on the financial condition of hospitals in 1984 (see "Medicare Prospective Payment and the American Health Care System," Chapter 4, page 47, Report to Congress, February 1986). According to hospital industry financial data, operating margins increased significantly. Although rural hospitals had the lowest profit margins, they experienced large profitability gains in the first year of the prospective payment system. These findings also showed that both teaching and nonteaching hospitals experienced large gains in operating margin ratios.

In addition, the Department's Office of the Inspector General has released a priority audit memorandum titled, "Large Profits Earned by Hospitals under the Medicare Prospective Payment System" (ACN: 09-62021), which confirms ProPAC's findings.

Table 1 below contains AHA panel survey data on operting margins, for both total revenue and patient care revenue, of community hospitals for FY 1983, 1984, and 1985. The operating margins are shown for each AHA geographic region (which correspond to the census regions used in establishing the prospective payment rates). Table 2 below contains comparable national data for calendar years 1974–1984. It should be noted that these substitutes for profit margins should be used cautiously. For example, net operating revenues in the 1970s indicate large losses in the industry, but this is

because patient revenues only is compared with *total* hospital expenses. This is not a valid comparison but is, nevertheless, the one which the hospital industry frequently makes. More relevant in this analysis is how well hospitals did prior to and after the inception of the prospective payment system, using these measures as a guide.

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Table 1: Total Margin of Community Hospitals by Region, FYs 1983-85

Net Revenue as a Percentage of Total Revenue

Region	Fiscal Year 1983	1984	1985
U.S. Total	5.3	5.7	6.3
New England	3.0	4.1	5.5
Middle Atlantic	1.0	1.2	2.6
South Atlantic	6.4	7.3	7.5
East North Central	5.2	5.5	6.3
East South Central	6.7	7.0	8.2
West North Central	5.2	5.6	6.0
West South Central	8.3	8.1	7.5
Mountain	7.0	5.0	6.2
Pacific	7.0	8.3	8.2

Net Patient Revenue as a Percentage of Total Patient Revenue

Region	Fiscal Year 1983	1984	1985
U.S. Total	1.1	1.4	1.9
New England	-1.2	0.0	1.4
Middle Atlantic	-3.9	-3.4	-2.1
South Atlantic	1.7	2.6	2.2
East North Central	1.3	1.5	2.3
East South Central	1.6	1.9	3.3
West North Central	1.1	0.8	1.2
West South Central	4.7	4.0	3.2
Mountain	3.6	1.3	2.1
Pacific	3.6	4.9	4.7

SOURCE: American Hospital Association National Panel Survey Report

Table 2

Total Margin of Community Hospitals
Calendar Years 1974-1984

Year	Total Revenue (dollars)	Total Expenses (dollars)	Net Total Revenue		
			Amount (dollars)	Percent of Expenses	Percent of Revenue
1985	142,520,977	134,042,796	8,478,181	6.3	5.9
1984	134,331,178	126,027,583	8,303,595	6.6	6.2
1983	126,728,291	120,219,622	6,508,669	5.4	5.1
1982	114,954,728	109,091,340	5,863,388	5.4	5.1
1981	98,812,788	94,187,000	4,625,788	4.9	4.7
1980	83,122,087	79,339,633	3,782,454	4.8	4.6
1979	70,599,829	67,832,712	2,767,117	4.1	3.9
1978	62,011,648	59,802,346	2,209,302	3.7	3.6
1977	54,992,929	53,006,115	1,986,814	3.7	3.6
1976	47,324,028	45,842,045	1,481,983	3.2	3.1
1975	39,400,855	38,492,033	908,822	2.4	2.3
1974	33,460,394	32,759,261	701,133	2.1	2.1

Operating Margin of Community Hospitals
Calendar Years 1974-1984

Year	Patient Revenue (dollars)	Total Expenses (dollars)	Net Operating Revenue		
			Amount (dollars)	Percent of Expenses	Percent of Revenue
1985	136,022,058	134,042,796	1,979,262	1.4	1.4
1984	128,547,733	126,027,583	2,520,150	2.0	2.0
1983	121,383,083	120,219,622	1,163,461	1.0	1.0
1982	109,889,658	109,091,340	798,318	0.7	0.7
1981	94,338,041	94,187,000	151,041	0.2	0.2
1980	79,543,945	79,339,633	204,312	0.3	0.3
1979	67,433,807	67,832,712	(398,905)	-0.6	-0.6
1978	59,311,319	59,802,346	(491,027)	-0.8	-0.8
1977	52,689,901	53,006,115	(316,214)	-0.6	-0.6
1976	45,166,323	45,842,045	(675,722)	-1.5	-1.5
1975	37,358,705	38,492,033	(1,133,328)	-2.9	-3.0
1974	31,586,183	32,759,261	(1,173,078)	-3.6	-3.7

SOURCE: Actuarial Note 85-01, July 29, 1985, American Hospital Association, National Panel Survey

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Without attempting to determine an appropriate level of profitability, it is clear that hospital operating margin for both total revenue and patient revenue recorded historic highs during the first two years of the prospective payment system. Analyses of geographic distributions of hospital profit margin yield some interesting observations. The Middle Atlantic region showed the lowest level of operating margins. This region consists of Pennsylvania, New York, and New Jersey, the latter two being States that were paid under alternative reimbursement programs during the periods shown. The New England region had the second lowest level of operating margins, and the largest State in that region, Massachusetts, also was paid under an alternative reimbursement program during the periods shown. In comparing changes in operating margin between FYs 1983 and 1985, it is interesting to note that the range of operating margin across the regions has narrowed.

Some have argued that overall hospital profitability gains are in spite of, rather than a result of, the prospective payment system. They assert that inadequate Medicare payments have resulted in cost shifting to the private insurance industry. Our actuarial studies effectively rebutted that assertion in Actuarial Note 85-01, "Exploding the Cost Shifting Myth," released on July 29, 1985. Table 3 below contains data on AHA and Medicare inpatient hospital experience for days of care, revenues, and benefit payments. The data indicate no evidence of cost shifting and suggest further that hospitals have fared quite well under the prospective payment system. Data are shown for each calendar year 1978–1985, on the ratio of Medicare inpatient days of care to total hospital days used, and the ratio of Medicare benefit payments and beneficiary liabilities to total community hospital inpatient revenue. During 1984 and 1985, the ratio of Medicare days to total hospital days *decreased* by 7.8 percent. At the same time, the ratio of Medicare benefit payments and beneficiary liabilities to total hospital inpatient revenue *increased* by 10.4 percent. If cost shifting to the private sector was occurring, the Medicare share of revenues would decrease faster than the the Medicare share of days.

TABLE 3.—MEDICARE SHARES OF TOTAL COMMUNITY HOSPITAL INPATIENT DAYS AND EXPENDITURES, CALENDAR YEARS 1978–85

Calendar Year	Days of Care				Expenditures (in millions)				Ratio of Medicare Payments to Total Inpatient Revenue	Percent Change
	Medicare Inpatient Days	Total AHA Inpatient Days	Ratio of Medicare to Total Days	Percent Change	Medicare Inpatient Benefit Payments	Beneficiary Deductible and Coinsurance	Total Medicare and Beneficiary Payments	Total AHA Inpatient Revenue		
1978	100,300	[illegible]	[illegible]		$16,943	$1,229	$18,172	$31,700	[illegible]	
1979	105,861	[illegible]	[illegible]	1.9	19,775	1,425	21,200	36,712	[illegible]	2.7
1980	112,865	[illegible]	[illegible]	2.9	24,092	1,707	25,799	46,140	[illegible]	3.3
1981	115,339	[illegible]	[illegible]	2.0	29,071	1,970	31,041	61,784	[illegible]	1.8
1982	116,304	[illegible]	[illegible]	0.5	32,809	2,057	34,466	85,037	[illegible]	1.1
1983	115,120	[illegible]	[illegible]	1.6	37,306	3,057	40,295	104,581	[illegible]	0.6
1984	101,073	[illegible]	[illegible]	—4.0	40,713	3,509	44,222	109,145	[illegible]	5.0
1985	93,895	[illegible]	[illegible]	—3.8	44,475	3,813	48,288	113,081	[illegible]	5.4

Sources: Medicare—Office of the Actuary, Health Care Financing Administration. AHA Panel Survey for Community Hospitals through December 1985.

Note.—Medicare data represent total inpatient hospital experience. Short-stay hospitals represent about 95 percent of total Medicare inpatient days and about 96 percent of total inpatient Medicare benefit payments.

Presented in Table 4 below are further data indicating that the prospective payment system is not adversely affecting the financial viability of the hospital industry. Although charge data themselves are not a true reflection of hospital costs, the ratio of medicare expenditures to charges over time shows some interesting trends. Both the ratios of total program payments and program payments plus Medicare beneficiary liabilities to hospital charges reversed decreasing trends and showed significant increases in the first two years of the prospective payment system.

TABLE 4. ESTIMATED RATIOS OF MEDICARE EXPENDITURES TO TOTAL CHARGES: SHORT-STAY HOSPITAL INPATIENT CARE, FY 1980–85

Fiscal Year	Billed Payments	Retroactive Adjustments [1]	Pass throughs [2]	Total Program Payments	Beneficiary Liabilities [1]	Total Program and Beneficiary Expenditures
1980	.688	.031		.719	.052	.771
1981	.679	.029		.708	.050	.758
1982	.662	.023		.685	.055	.740
1983	.656	.028		.682	.036	.718
1984	.649	.012	.026	.686	.051	.757
1985 (total)	.672	.010	.087	.709	.060	.829
(PPS only)	.667	[3] N.A.	102	[3] N.A.	[3] N.A.	[3] N.A.

[1] Includes total inpatient expenditures. Short-stay hospitals represent 95 percent of total inpatient benefit payments.
[2] Includes capital and medical education payments.
[3] N.A.-not available.
Source: Bureau of Data Management and Strategy and Office of the Actuary, HCFA.

(c) *Summary.* In determining the update level for the FY 1987 prospective payment rates, the above evaluation of outcome measures attempts to measure current and prospective effects on taxpayers, beneficiaries, and the industry.

- *Beneficiary Perspective*—There is not evidence of a deterioration in quality of, or access to, inpatient hospital care.
- *Industry Perspective*—Experience under the prospective payment system shows evidence that current Medicare payments for inpatient hospital care are more than adequate to cover hospital costs.
- *Prior Year's Experience*—Despite our calculation showing that the prospective payment rates should have been decreased by 4.42 percent in FY

1986 (as described in the September 3, 1985 final rule (50 FR 35680)) we provided a zero percent increase, and subsequently Congress provided a 0.5 percent increase in the rates.

The annual prospective payment percentage update factor should be set so that it provides incentives for desired outcomes under the prospective payment system. To achieve incentives for the desired outcome targets, we must ensure that the annual prospective payment update factor takes proper account of variables affecting the cost, efficiency, effectiveness and quality of hospital inpatient care. Our objective is to translate the intent of the statutory requirements for updating the prospective payment rates into a methodology for making adjustments to the current update factory that would enable us to express our consideration of these variables as policy targets.

To this end, we have identified three factors that correspond to matters that must be considered under section 1886(e)(2) and (e)(4) of the Act. For FY 1987, we are proposing to incorporate into the prospective payment update factor a composite policy target adjustment factor that takes account of productivity, cost-effective technologies, and improvements in practice patterns. Although, as we discuss below, we have changed the descriptive title of the third factor (from "elimination of cost-ineffective practice patterns" to "improvements in practice patterns"), the three factors are the same as those we identified in the September 3, 1985 final rule (50 FR 35705). While, for the purposes of analysis and discussion, we have developed separate values for each of these three factors, we are proposing to combine them into a composite policy target adjustment factor, which would be considered in determining the FY 1987 prospective payment update factor.

(2) Productivity. As was the case last year, there does not exist and aggregate hospital industry productivity measure that can be used to interpret the intent of sections 1886(e)(2) and (e)(4) of the Act. The Bureau of Labor Statistics (BLS) is currently constructing a hospital productivity measure based on discharges adjusted for case-mix. The BLS index measures adjusted admission per employee in non-Federal, short-stay hospital. However, the BLS measure is an index of discharges per employee and not an overall operating input productivity index.

In setting the FY 1986 policy target adjustment factor, we considered productivity in terms of the ratio of real input to hospital outputs, where outputs are defined as the various tests, procedures, and services provided by the hospital. (In contrast, ProPAC defines output in a more inclusive fashion, so as to include changes in practice patterns.) We pointed out that national productivity increases over the economy as whole had averaged three percent per year in 1983 and 1984, and that after years of cost-based reimbursement, hospitals should be able to achieve a reduction imputs of at least that amount. The argument was that hospitals ought to be able to equal the national average for productivity increses in the future because, with fixed and known payment rates, they could adjust their inputs to eliminate unnecessary costs. The FY 1986 productivity factor was set at one percent. This target was set conservatively because of uncertainty with regard to achievable productivity gains.

A primary objective of the prospective payment system is to encourage the efficient provision of hospital care by changing economic incentives under the payment system. It is reasonable to assume that hospitals have (or should have) made substantial productivity grains during the first thre years of the prospective payment system. The only adjustment that we have made to DRG prices for any such productivity gains was the one percent offset used in updating the FY 1986 rates. We believe that productivity gains can and should continue. Although ProPAC recommends a 1.5 percent productivity offset, we are proposing a 1.0 percent productivity offset in the FY 1987 policy target adjustment factor. We expect that a two percent or more annual increase in productivity would not be unreasonable; however, consistent with our approach in the September 3, 1985 final rule (50 FR 35707), we believe that a conservative offset (1.0 percent) would not impact hospitals to the same extent as a greater adjustment would.

Average annual growth for productivity in the non-farm business sector during the period 1980 through 1985 was 1.07 percent according to the Bureau of Labor Statistics, Department of Labor. Average annual growth over a longer span of time, 1965 through 1985, was 1.12 percent per annum. Though these two growth rates imply a degree of stability, such is not the case. Year to year changes in productivity are quite volatile (see following table). Data Resources Incorporated (DRI), in their May 1986 forecast model, is predicting a productivity gain of 1.8 percent for 1987. Because these numbers are at variance, and in order to be conservative, we are proposing to set the FY 1987 productivity adjustment offset at one percent.

Output Per Hour of All Persons, Non-Farm Business Section (DRI)

Percentage Growth:	
1975	1.8
1976	2.5
1977	1.6
1978	0.8
1979	−1.6
1980	−0.5
1981	−1.0
1982	−0.6
1983	3.4
1984	1.6
1985	−0.1
1986*	0.0
1987*	1.8

*Forecast.

(3) Cost Effective Technologies. This add-on is a policy target rate of increase to allow for growth in cost-increasing, health-enhancing new technologies and scientific advances.

As with productivity, there is limited historical data to set a prospective target empirically, and there are substantial definitional problems in determining what measures would accurately reflect the intent of the law. Further, acquisition costs for some technologies or scientific advances eventually have cost-decreasing effects.

ProPAC is conducting a number of studies to analyze this factor. Our assessment appears to be consistent with ProPAC evaluations. A major difference is that ProPAC is conducting analyses of the use of individual technologies for potentially making changes to the prospective payment rates. Of particular interest is the ProPAC finding that new medical devices and diagnostic procedure costs may have only a small impact on overall increases in Medicare payments and that major increases in costs during the 1970s were the result of changes in practice patterns (see p. 11 of the Technical Appendixes of ProPAC's April 1, 1986 Report). ProPAC has recommended a much lower target value (0.7 percent) for cost-effective technologies in FY 1987 than the 1.5 to 2.0 percent they recommended last year, although they are also recommending (Recommendation 29) a specific add-on amount for magnetic resonance imaging technology.

Our proposal is to set the policy target adjustment factor for cost-effective technologies and associated labor and nonlabor inputs at 1.0 percent. We have deliberately set this factor at a more generous level than that recommended by ProPAC because we are proposing to incorporate capital-related costs into the prospective payment system. We note that in its report to the Secretary,

ProPAC recommended that the adjustment for scientific and technological advances be increased if capital were added to the prospective payment system, although they did not include a specific increment. Our intention is to encourage hospitals to use health-enhancing new technologies and scientific advances through setting this factor at a level that would promote such usage.

(4) Improvements in Practice Patterns. We are changing the descriptive title of this output measure used in the analytical framework for updating the FY 1988 rates from the "elimination of ineffective practice patterns" to "improvements in practice patterns." However, the essence of this measure remains unchanged. It reflects the relationship between efficacious and cost-effective outputs (services) and discharges. We refer the reader to Appendix B of the June 10, 1985 proposed rule (50 FR 24440) for a more indepth discussion of the framework for analyzing the policy target adjustment factors. Substantial savings result from improving practice patterns through cost effective use of resources. Improvements in practice patterns include shifts in the use of certain inpatient services for hospitalized patients to more appropriate lower cost settings and the elimination of services that do not give value for money expended; that is, reduced outputs associated with improvements in practice patterns.

In the first two years of the prospective payment system, the average length of stay of Medicare beneficiaries in prospective payment system hospitals decreased by 18 percent, despite an increase in case mix.

TABLE: MEDICARE AVERAGE LENGTH OF STAY

FY 1983 Nonexcluded State Short-Stay Hospitals	FY 1985 Prospective Payment Hospitals (days)	Percent Change
8.5 days	7.0	−18

Source: HCFA Medicare Statistical System, Bureau of Data Management and Strategy.

Part of this reduction in length of stay resulted from providing certain care and services, either prior to hospital admission or after discharge, in a lower cost setting or from reductions in ancillary services provided. Prior to implementation of the prospective payment system, similar services had been furnished to beneficiaries as inpatient hospital care. Lower cost settings include outpatient, skilled nursing facilities (SNFs), home health agencies (HHAs), and intermediate care facilities (ICFs).

Both ProPAC data and Medicare data on site substitution for prospective payment system and non-prospective payment system bills show that the percentage of discharges to SNFs, HHAs, and ICFs are higher for prospective payment system patients than non-prospective payment system patients. In light of the differences between the types of hospitals subject to and excluded from the prospective payment system, however, one cannot infer a direct causal link between the type of payment system and the utilization of lower cost settings.

It is difficult to determine the precise level of cost reduction associated with an 18 percent drop in average length of stay. The percentage of cost reduction can vary considerably in individual cases. For example, if prior to hospital admission a beneficiary receives required tests on an outpatient basis and the same laboratory or diagnostic tests were previously provided and billed in the inpatient setting, inpatient costs could be reduced for both ancillary and routine services. If physicians determine that skilled nursing care could be provided in an SNF setting, the level of inpatient cost reduction associated with the reduced hospital stay would differ from the first example. Further, if a hospital improved practice patterns by performing diagnostic or lab tests in the hospital, whereas these services were previously contracted out, there may not be any change in the number of these services furnished and related costs could increase, but improved processing times could lower length of stay and total hospital costs. In this situation, inpatient cost reductions could be relatively lower, comprised mainly of changes in the cost of routine services.

For purposes of determining day outlier cases, we assume the marginal cost of an additional day of care to be equal to 60 percent of the average per diem for the applicable DRG, excluding payment for pass-through costs. ProPAC references studies that indicate that marginal costs associated with a patient day range between 20–60 percent. Assuming an average marginal cost rate of 50 percent, the 18 percent reduction in length of stay in the first two years of the prospective payment system translates into a nine percent reduction in costs. Since two percent were already offset for improved practice patterns in determining the FY 1986 prospective payment system update, a seven percent reduction in costs remains. Considering incentives inherent under prospective payment, together with the intent to be gradual and conservative, we are recommending a two percent offset for improved practice patterns in the FY 1987 policy target adjustment factor.

ProPAC's recommendation for this factor is a 0.6 percent offset. With respect to the 1.4 percent difference (between ProPAC's recommendation and our proposal) in the amount of the offset for this particular portion of the policy target adjustment factor, we point out that ProPAC's accounting for the effects of changes in site of substitution is less inclusive than a measure reflecting overall improvements in hospital practice patterns. Just as there are definitional differences between ProPAC and us regarding what is included in the factor "hospital productivity targets", improvements in hospital practice patterns reflect not only shifts in the furnishing of inpatient services to alternative settings, but also the elimination of unnecessary or cost ineffective services. When the combined effects of our productivity and ineffective practices patterns offsets (−3.0 percent, exclusive of cost-effective technologies) are compared to ProPAC's discretionary adjustment factors for productivity and site-of-care substitution (−2.1 percent), we believe that we are not so dissimilar from ProPAC.

(5) Proposed Composite Policy Target Adjustment Factor. For FY 1987, we propose to adjust the average standardized amounts by a percentage composite policy target adjustment factor, as authorized under section 1886(e)(4) of the Act. For FY 1987, this composite policy target adjustment factor is a composite of the offsets and add-ons for productivity, cost-effective technologies, and improvements in practice patterns, as follows:

	Percent
Productivity	−1.0
Cost-effective technologies	+1.0
Improved practice patterns	−2.0
Total	−2.0

(6) Other ProPAC Recommendations on the Policy Target Adjustment Factors. ProPAC recommends (Recommendation 3) that an allowance should be made in the overall update factor to reflect real changes in case mix that are due to changes associated with the characteristics of patients. The allowance should reflect both shifts in patients among the DRG categories, as measured by changes in the average case-mix index (DRG case-mix change), and changes in the mix of patients within DRG categories (patient complexity change). ProPAC

recommends an allowance in the FY 1987 Federal rates of 0.9 percent, representing a 0.2 percent adjustment for DRG case-mix change and a 0.7 percent adjustment for patient complexity change.

This recommendation was previously reflected in ProPAC's recommendations No. 1 and No. 11 issued April 1, 1985. (See the June 10, 1985 proposed rule (50 FR 24448).) We agree, in principle, that the prospective payment rules should reflect real increases in case-mix.

ProPAC also recommends that the DRG weights should be adjusted to remove any increase in reported case mix during FY 1988. This would include nominal increases *net* of real increases.

Of the 0.9 percent add-on for real case mix that ProPAC recommends, 0.7 percent is for "patient complexity," which ProPAC defines as changes in the mix of patients within DRGs. We do not recognize changes in the mix of patients *within* DRGs (that is, severity of illness), because we do not believe there is currently any satisfactory method for measuring such severity.

ProPAC based its recommendation on a study being conducted by the Commission on Professional and Hospital Activities (CPHA). This study uses medical record discharge abstract data on Medicare and non-Medicare discharges from 1980–1984. Based on a complexity score for each discharge, the study results indicate significant increases in length of stay associated with greater complexity for both Medicare and non-Medicare patient populations during the period 1982–1983. However, the increase was substantially greater for the Medicare patients. (See *Technical Appendices* to the April 1, 1986 ProPAC Report, p. 22.)

We do not believe, based on the information provided by ProPAC, that we should accept at this time the results of the CPHA study. We note, for example, that the data are based on a self-selected sample of hospitals. We believe that any study dealing with as sensitive an issue as patient severity should be based on a more objectively established data base than a self-selected sample. Also, as stated in the report, "The Commission has assumed that the increase (in length of stay) during the period 1982–1984 was highly subject to the influence of improved hospital coding practices and may not represent actual changes in complexity. Thus, the Commission has chosen to base its estimate of real complexity change on the experience of hospitals prior to 1982." We do not believe it is proper to increase the prospective payment rates for FY 1987 based on conclusions about patient complexity prior to the implementation of the prospective payment system. It is widely acknowledged that the prospective payment system created new incentives for hospitals and we believe it would be appropriate for any severity adjustment or other adjustment purporting to represent increases in patient severity within DRGs to be based on prospective payment system data.

ProPAC also states that "The Commission has also assumed that a 0.7 percent increase in length of stay associated with increased complexity would translate into a 0.7 percent increase in costs." We question the basis for this statement in that it presumes that increases in cost per case are perfectly proportional to increases in length of stay due to increased complexity. There is no reason to assume *a priori* that there is a one-to-one relationship between cost increases and increases in length of stay. To the contrary there is considerable evidence that the marginal cost of care on a per diem basis is generally well below 1.0. We believe these kinds of DRG patient complexity adjustments should await the development of specific methodologies especially designed to measure them.

Preliminary HCFA estimates indicate that case mix has increased by 2.7 percent in FY 1986. Using ProPAC's estimate of a 0.9 percent add-on for real case mix, the net case-mix change adjustment would be −1.8 percent. However, as discussed above, only 0.2 percent of ProPAC's add-on is for real case mix. Our preliminary estimate is that real case mix has increased 0.0 percent. This estimate is based on long term trend estimates of real case mix increases of 0.4 percent and an additional adjustment of 0.2 percent for further shifts of DRG 39 (lens procedures with or without vitrectomy) cases to outpatient settings. Thus, our proposed adjustment for net case-mix change is −2.1 percent, that is, −2.7 percent for total case-mix change plus 0.6 percent for real case-mix increases. These estimates for both total case-mix and real case-mix changes are to be updated in the final rule based on additional FY 1986 data that is expected to be available subsequent to the publication of this proposed rule.

ProPAC recommends (Recommendation 13) that the standardized amounts be recalculated using cost data that reflect hospital behavior under the prospective payment system. The results of such a recalculation, with appropriate modifications, could be used in determining the update factor or in rebasing the standardized amounts.

The initial standardized amounts were established by using data from 1981 cost reports for each geographic class of hospitals and updating that data to FY 1984 by an inflation adjustment. Section 1886(d)(3)(A) of the Act specifically provides that the average standardized amounts for any given year beginning with FY 1985 are to equal the respective standardized amounts for the previous year, adjusted by an update factor. We believe, therefore, that it would be inappropriate to recalculate (or rebase) the standardized amounts by repeating the original process with later data, such as cost data accumulated under the prospective payment system.

We also believe that it would be inappropriate to calculate the update factor using cost data under the prospective payment system. Under the law, the increased costs of the market basket of hospital inputs, plus a factor for increased costs of items not otherwise specifically identified, rather than actual hospital costs, are the baseline for annual adjustments. In other words, this provision implies that Congress envisioned the annual update being related to the change in the market basket even if, as in the period prior to implementation of the prospective payment system, actual hospital costs rose more rapidly. This limitation is also reflected in the methodology specified in the statute for deriving the FY 1984 rates based on 1981 cost data. That is, section 1886(d)(2)(B) of the Act allowed updating to FY 1983 by the full amount of estimated hospital cost inflation, but allowed updating from FY 1983 to FY 1984 only by the market basket plus one percentage point.

In short, the statute clearly did not intend that actual costs be routinely considered in setting future prospective payment rates to the extent that those costs increased faster than the market basket index plus adjustments to reflect costs not otherwise specifically identified. Efforts to mechanically adjust the payments rates to reflect current costs could frustrate the statutory intent of restricting inflation in the payments to approximately the market basket inflation rate. (In this regard, we note that section 9101 of Pub. L. 99–272 amended section 1886(b)(3)(B) of the Act to require that the update factor not exceed the market basket.)

The foregoing discussion does not imply a prohibition on considering actual hospital cost experience as one factor in the determination of the yearly prospective payment update factor. To the contrary, the various statutory criteria to be considered by ProPAC in recommending the update factor clearly

center on certain aspects of the costs being incurred by hospitals. Section 1886(e)(2) of the Act requires ProPAC to consider "hospital productivity, technological and scientific advances, the quality of health care provided in hospitals . . . , and long-term cost-effectiveness in the provision of inpatient hospital services." These considerations are intended to identify valid reasons why payments should rise more or less than the market basket increase and necessarily involve assessments about the costs actually being incurred by hospitals. Similarly, the Secretary, in determining the update factor, is required by section 1886(e)(4) of the Act to "take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality," a formulation that authorizes the consideration of costs incurred under the prospective payment system.

In summary, we believe that the 1981 cost data met the statutory requirement that we use the best data available to establish the initial prospective payment rates. Subsequently, the FY 1984 rates are to be adjusted each year by taking into account those factors (such as productivity and technology) stated in section 1886(e)(2) of the Act. We do not believe it is appropriate to engage in a wholesale recalculation of the rates based on later data, update factors, or adjustments that are tied exclusively to later cost data.

g. Summary. The combined effect of the forecasted increase in the hospital market basket, the proposed correction for the forecast market basket error for FY 1986, the proposed correction of case-mix change for FY 1986, and the proposed composite policy target adjustment factor would be as follows:

	Percent
Forecasted market basket increase	+3.6
Forecasted market basket error for FY 1986	−0.4
Correction for case-mix change for FY 1986	−2.1
Composite policy target adjustment factor	−3.0
Total	−0.9

Such a negative update factor would result in a modest decrease in the standardized amounts for FY 1987, compared to those for FY 1986, and a corresponding reduction of anticipated revenue for hospitals subject to the prospective payment system. However, although we have substantial technical and legal justification for issuing FY 1987 standardized amounts that would be lower, on average, than FY 1986 standardized amounts (similar to the justification for a 4.42 percent decrease in the FY 1986 standardized amounts), we do not propose to do so. In addition, because we believe it is important to protect the prospectivity of this payment system, we do not plan to recoup any excessive payments resulting from the overstated FY 1986 standardized amounts.

The prospective payment system was intended, from its inception, to produce significant changes in the hospital industry. However, we do not want to cause these changes to take place too rapidly, because that may result in disruptions and unintended consequences that would adversely affect the industry, its patients, and us. Neither do we want to encourage changes that would comprise the access to quality inpatient hospital care historically enjoyed by Medicare beneficiaries. Our objective is to set the FY 1987 update factor at a percentage level that takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, in accordance with section 1886(e)(4) of the Act, and we believe that the payment rates should be set no lower than we have proposed in order to assure that this statutory standard is met.

We believe that in an ideal course of events, the FY 1986 amounts would have been set at a lower level, and the FY 1987 amounts would be increased appropriately. However, the implementation of a new system seldom follows an ideal course. Moreover, we recognize that actually decreasing the standardized amounts would have adverse effects, not only relative to the expectations of affected hospitals, but on the development and acceptance of the prospective payment system. We also recognize that a large portion of the overstatement of the FY 1986 standardized amounts is not attributable to the actions or behavior of the hospital industry. The overstatement is to some extent the result of our desire, shared by Congress, to proceed cautiously with the implementation of the new system. Therefore, it would be inappropriate to set the FY 1987 Federal rates at a level that would appear to be punitive of the hospital industry.

We believe the situation at this point is similar to the situation we faced last year at this time, when our analysis also indicated a decrease in the rates would be appropriate. In view of that analysis, we proposed that the FY 1986 prospective payment rates not be increased above the level of the FY 1985 rates. After consideration of all public comments, we determined that no increase was warranted, and promulgated this decision in the September 3, 1985 final rule. Subsequently, Congress precluded implementation of our FY 1986 changes to the prospective payment system through a series of legislative postponements, and required that all hospitals would continue to receive prospective payments through April 30, 1986 that were computed on the same basis as the payments on September 30, 1985. Effective May 1, 1986, section 9101 of Pub. L. 99-272 provided that hospitals would receive 0.5 percent increase in the Federal prospective payment rates for the remainder of Federal FY 1986, and would receive a 0.5 percent increase in the hospital-specific rates after the first seven months of each hospital's cost reporting period. Hospitals that are excluded from the prospective payment system received an increase of 5/24 percent in their target rates of increase for their cost reporting periods which began on or after October 1, 1985 (which is equivalent to an increase of 0.5 percent for the last 5 months of their 12-month cost reporting periods). The 0.5 percent increase selected by Congress under circumstances in which a decrease was technically warranted is the same increase that we are now proposing under similar circumstances.

While we have a responsibility to protect the integrity of the Medicare trust funds, we realize that to decrease the prospective payment rates while at the same time proposing major reforms in the prospective payment system (for example, our proposal to bring capital costs under a prospective payment system), could lead to concern that we would be economically disadvantaging hospitals. Therefore, we believe that it is in the best interest of all parties, that is, the public, the hospital industry, and the government, to propose an increase in the rates for FY 1987.

Accordingly, we are proposing that the Federal rates be increased by 0.5 percent for discharges occurring on or after October 1, 1986, and that the hospital-specific rates be increased by 0.5 percent for cost reporting periods beginning on or after October 1, 1986. In addition, the target rates of increase for hospitals excluded from the prospective payment system would also be increased 0.5 percent for cost reporting periods beginning on or after October 1, 1986.

For the reasons given above, we believe that the resulting payments would take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. However, we wish to emphasize that our proposal of this increase does not lessen our confidence in the analysis which shows

that a decrease in the rates would be appropriate.

Because we are proposing to restandardize the base-year costs for changes to the wage index, indirect medical education costs, and disproportionate share hospital adjustments, in addition to using the revised market basket weights for determining the labor-related and nonlabor-related shares of the standardized amounts, the FY 1987 standardized amounts would be different from a 0.5 percent increase over the FY 1986 standardized amounts as published in the May 8, 1986 interim final rule (51 FR 16772). In addition, we note that further adjustments would be made to the standardized amounts for Pub. L. 98-272 provisions regarding the payment equality adjustment for indirect medical education costs, and the special adjustment for teaching hospitals under section 9202(j) of Pub. L. 99-272.

The table below compares our position with that of ProPAC with respect to the update factor. Please note that this table, unlike the table included in the September 3, 1985 final rule (50 FR 36666), contains a third column, "Adjusted ProPAC." In this column, our technical staff have revised, where appropriate, ProPAC's components of the update factor using more recent data then were available to ProPAC at the time it developed its recommended update factor. We want to emphasize that we are providing the adjusted ProPAC figures merely for purposes of comparison, and that these figures represent our technical staff analysis rather than ProPAC's views as to how those figures will be adjusted.

For the benefit of the reader, we are providing, below, a comparison table of HCFA's proposed update factor and ProPAC's recommendation.

COMPARISON OF THE HCFA AND PROPAC UPDATE FACTORS

	HCFA	ProPAC	Adjusted ProPAC
Market Basket [1]	3.6	4.6	3.6
Correction for Forecast Error for FY 1986	−0.4	[2] −0.3	[2] −0.6
Policy Target Adjustment Factor:			
Productivity	−1.0	[3] −1.5	[3] −1.5
Science and Technology	1.0	[4] 0.7	[4] 0.7
Practice Pattern	−2.0	[5] −0.6	[5] −0.6
Total	−2.0	−1.4	−1.4
Case-Mix Change for FY 1986:			
Total [6]	−2.7	−1.0	−2.7
Real [7]	0.6	0.9	0.9

COMPARISON OF THE HCFA AND PROPAC UPDATE FACTORS—Continued

	HCFA	ProPAC	Adjusted ProPAC
Net Case Mix Change	−2.1	−0.1	−1.8
Update Total	−0.9	+2.8	−0.2

[1] This is an estimate of change in the relevant market basket and includes capital.

[2] The forecast error correction is based on changes in the current market basket due to the underestimate of wage and salary increases by Data Resources Inc. (DRI), and the downward effect on the DRI forecast estimates due to the introduction of the Gross National Product (GNP) revisions. ProPAC recommends adjusting only for external price proxies that is, the total labor wages. The recommended HCFA adjustment is for all forecast errors.

[3] Discretionary Adjustment Factor. ProPAC's variation of the Policy Target Adjustment Factor.

[4] If capital is added to the standardized amounts in FY 1987 at a level lower than projected under current law, ProPAC recommends that this component be increased in addition to providing for a separate add-on for magnetic resonance imaging scans.

[5] ProPAC measures site substitution here and includes observed productivity changes in their Productivity offset.

[6] This is preliminary estimate by HCFA based on billing data, and is subject to revision. A preliminary ProPAC estimate, based on historical trends, indicates a 1.0 percent increase which they note is subject to change with newer data, and which we believe to be too low. Included in ProPAC's total is an estimate of real case-mix of 0.2 percent.

[7] This estimate includes long term trend estimates of real case mix of 0.4 percent and an adjustment of 0.2 percent for further shifts of DRG 39 to outpatient settings.

For the benefit of the reader, we are displaying actual and projected increases in payment per admission under the prospective payment system.

RATE OF INCREASE IN PER CASE PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM

Fiscal year	National average total payment (per case) [1]	Annual rate of increase (percent) [2]	Cumulative rate of increase (percent) [2]
1983 [3]	$3,166		
1984	3,486	10.0	10.0
1985	3,870	11.1	22.2
1986	4,134	6.8	30.5
1987	4,298	4.0	35.7

[1] These numbers represent total payment per admission, inclusive of payments for capital-related costs and other pass-throughs, assuming the adoption of this proposed rule.

[2] The prospective payment system was implemented at the beginning of FY 1984.

[3] These percentages are rounded to the nearest one-tenth of one percent.

4. Other Adjustments to the Average Standardized Amounts

a. Part B Costs. Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital, or by an entity under arrangements made by the hospital under which Medicare's payment to the hospital discharges the beneficiary's liability to pay for the services furnished.

In the September 3, 1985 final rule, we increased the average standardized amounts by 0.13 percent so that they represent costs previously billed under Part B (50 FR 35708). We are proposing to make no further adjustments for this factor in FY 1987, or in the future, because the appropriate adjustment has been built into the FY 1986 base.

b. FICA Taxes. Section 1886(b)(6) of the Act requires that adjustments be made in the base period costs in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. In the September 3, 1985 final rule, we increased the average standardized amounts by 0.18 percent to account for additional costs of payroll taxes for hospitals entering the Social Security system (50 FR 35708). We are proposing to make no further adjustments for this factor in FY 1986, or in the future, because the appropriate adjustment has also been built into FY 1986 base.

c. Nonphysician Anesthetist Costs. Section 1886(d)(5)(D) of the Act provides that hospital costs for the services of nonphysician anesthetists are paid in full as a reasonable cost pass-through. Under section 2312(c) of Pub. L. 98-369, this pass-through is effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987. In the September 3, 1985 final rule, we noted that the FY 1986 average standardized amounts automatically included the appropriate adjustment (0.5 percent) (50 FR 35708). Therefore, because this adjustment has already been built into the FY 1986 base, we are not proposing to make further adjustments to the average standardized amounts for FY 1987.

d. Indirect Medical Education. Section 9104 (b) of Pub. L. 99-272 added section 1886(d)(3)(C)(ii) to the Act to provide that, effective for discharges occurring on or after October 1, 1986, the average standardized amounts be further reduced, taking into consideration the effects of the standardization for indirect medical education costs as described in section II.A.1.c. of this addendum. Specifically, for each geographic area (regional and national, urban and rural), total payments including indirect medical education and disproportionate share hospital adjustments, based on payment rates standardized for an 8.1 percent curvilinear indirect medical education factor and disproportionate share, shall be neither more nor less than the estimated total of payments, including indirect medical education adjustment payments that would have been made based on rates standardized for an 11.59 percent linear indirect medical education factor and paid out at 8.7 percent on a curvilinear basis. The adjustment is accomplished on a regional basis in order to reflect Congressional intent that the necessary

calculations will not redistribute payments among the regions.

Through this adjustment, Congress is ensuring that total prospective payments, on a regional basis, taking into consideration the nonstandardization of rates for disproportionate share payments and for a revised indirect medical education payment factor of approximately 8.1 percent on a curvilinear basis, will equal payments that would have resulted with rates standardized for an 11.59 percent indirect medical education adjustment factor, and payments computed using an indirect medical education factor of 8.7 percent applied on a curvilinear basis. For discharges on or after October 1, 1986 (that is, after that part of the law requiring disproportionate share payments sunsets), the adjustment must be such as to ensure that the system savings resulting from the changes to the indirect medical education factor are preserved.

We recognize that the statute discusses that adjustment in terms of a "reduction" in the average standardized amounts. However, we note that, as stated in sections 1886(d)(2)(C)(ii)(I) and (II), the purpose of this "reduction" is to attain equality of payments. As can be seen from the table below, attaining such equality in certain regions requires a slight increase in the rates. This result, along with the discussion in the Conference Committee Report that stresses the equality of payments, supports our interpretation that the standardized amounts are not to be reduced except where necessary to attain payment equality.

Therefore, under section 1886(d)(3)(C)(ii) of the Act, for FY 1987 we are proposing to adjust the urban and rural regional and national standardized amounts (including the capital amounts) to account for indirect medical education payments. It should be noted that these factors have been applied to both the Federal operating standardized amounts (excluding capital) and the Federal capital-related standardized amounts. The reason for this is that section 1886(d)(2)(C)(ii) requires an adjustment to "each of the average standardized amounts. . . so as to provide for a reduction in the total of the payments. . . ." Since as described elsewhere in this document, eligible hospitals will be able to receive additional payments for the indirect costs of medical education and as disproportionate share hospitals, adjustments must be made to the capital rates in order to maintain the payment equality required in the law.

The indirect medical education payment equality factors are as follows:

Region	Urban		Rural	
	Operating Costs Excluding Capital	Capital-Related Costs	Operating Costs Excluding Capital	Capital-Related Costs
1. New England (CT, ME, MA, NH, RI, VT)	.99095	.99498	.99892	.99987
2. Middle Atlantic (PA, NJ, NY)	1.00728	.99154	1.00574	.99861
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	.99090	.99090	.97596	1.00106
4. East North Central (IL, IN, MI, OH, WI)	.99259	.99045	.99027	.99995
5. East South Central (AL, KY, MS, TN)	.99448	.99162	1.00343	1.00349
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.01842	.99505	.99909	.99918
7. West South Central (AR, LA, OK, TX)	1.00104	.99774	.99596	.99998
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.04998	1.00995	1.02291	.99997
9. Pacific (AK, CA, HI, OR, WA)	1.01121	.99785	1.01257	1.00079
10. National	.99994	.99707	.99999	.99998

a. Special Treatment of States Formerly Under a Waiver From Medicare's Hospital Reimbursement System. Section 9202(j) of Pub. L. 99-272 provides for special treatment of States formerly under a waiver. The provision provides for special treatment of hospitals in a State whose waiver under section 1886(c) of the Act has been terminated effective with cost reporting periods beginning on or after January 1, 1986, in which—

- The hospital shall be permitted to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the Medicare cost report;
- The hospital's hospital-specific portion of the prospective payment rate shall be adjusted for any hospital that actually chooses to use the Medicare cost report; and
- The regional adjusted DRG prospective payment rate in the region the State is located may be appropriately adjusted based on the assumption that all teaching hospitals in the State use the Medicare cost report. All such adjustments are to be based on the best data available.

Of the States for which hospitals were reimbursed under a waiver, Massachusetts and New York have terminated their waivers. However, hospitals in those States had been reimbursed for services pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972. Under current existing waivers, Maryland hospitals are paid for services pursuant to a reimbursement system under section 1814(b) of the Act and New Jersey hospitals are paid for services pursuant to a reimbursement system under section 1886(c) of the Act.

Even though section 9202(j) of Pub. L. 99-272 cites waivers under section 1886(c) of the Act, the conference committee report does not express any such restriction. The conference committee report (H.R. Rep. No. 453, 99th Cong., 1st sess. 486 (1985)) expressing the committee's expectation states,

"Certain hospital reimbursement systems that received waivers from Medicare have used methods of allocating administrative and general costs that are different from those required by the Medicare hospital cost reporting forms. The conferees are concerned that, where these alternative allocation methods are in use, the base year direct GME costs used to determine the approved FTE resident amounts established by other provisions of this legislation, may be understated.

The conferees direct the Secretary to permit changes in these alternative allocation methods. The conferees further direct the Secretary to adjust the regional standardized payment amounts and the hospital-specific amounts to account for the overstatement of these amounts due to the method of allocation of overhead used by teaching hospitals in the base period."

In order to meet the expectations of the committee, we believe we should treat hospitals in States under a previous waiver that were not paid pursuant to section 1886(c) of the Act in accordance with such expectations. However, since there is no authority to treat hospitals in States formerly under waivers other than section 1886(c) waivers under the provisions of section 9202(j) of Pub. L. 99-272, we believe the expectations of the conference committee may be carried out under the general exception and adjustment authority under section 1886(d)(5)(C)(iii) of the Act.

Of the two States which terminated their waiver, New York is the only State affected by this provision. Most hospitals in New York, including hospitals with direct medical education cost centers, allocate administrative and general costs in a manner which differs from the recommended order prescribed in the Medicare cost report. Many of these hospitals use an order of allocation in which the administrative and general cost center *follows*, rather

then precedes the direct medical education cost centers. As a result of this methodology, none of the hospital's administrative and general costs were allocated to the direct medical education cost centers. This had the effect of increasing the Medicare inpatient operating costs for teaching hospitals in New York and reducing the amount of medical education costs. The results are the same as the expressed concerns of the conference committee as stated above.

Under the authority of section 1886(d)(5)(C)(ii), we propose to implement the expectations of the conference committee for teaching hospitals in New York. Effective for cost reporting periods beginning on or after January 1, 1986, hospitals in New York with direct medical education cost centers will be permitted to change the method by which they allocate administrative and general costs to the method specified in the Medicare cost report. Also, the hospital-specific portion of the prospective payment rate will be adjusted for any such hospital that chooses to use the Medicare cost report effective with cost reporting periods beginning on or after January 1, 1986.

With respect to adjusting the regional standardized payment amounts, the Middle Atlantic census division will be affected by such an adjustment. The Middle Atlantic census division consists of the States of New York, New Jersey, and Pennsylvania, and these States would be affected by any change. We believe that it is important for the effectiveness of the prospective payment system to ensure that payment rates are actually prospective in their effect and based on the best data available. For purposes of this proposed rule, we are estimating the impact on the regional standardized payment amounts using cost reports from a sample of New York hospitals with direct medical education cost centers. The adjusted regional standardized payment amounts would be effective for discharges occurring on or after October 1, 1986.

In adjusting the regional standardized payment amounts for the Middle Atlantic census division, a sample of FY 1982 (base year for determining hospital-specific rate) cost reports from New York hospitals with direct medical education cost centers were recalculated to change the method by which administrative and general costs were allocated to the method specified in the Medicare cost report. The allowable Medicare inpatient operating costs from the revised Medicare cost reports for each sample hospital were used in estimating a revised hospital-specific rate. The revised hospital-specific rate was compared to the hospital-specific rate derived from the original method by which administrative and general costs were allocated. A percentage change in the hospital-specific rates was developed for each sample hospital. The percentage change was then applied to the base year cost data, representing allowable costs per Medicare discharge, for each sample hospital included in the data base used to construct the standardized amounts. The average percentage change for the sample hospitals was applied for each of the remaining New York hospitals with direct medical education cost centers that were not included in the sample. After the costs per case of the New York teaching hospitals were thus adjusted, the regional standardized payment amounts were recomputed in accordance with the past methodologies used to calculate such rates. For the final rule, the regional standardized payment amounts will be recalculated showing the full effect of the actual change for all hospitals in New York with direct medical education cost centers.

f. Outliers. Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act further directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year. In FY 1984 we estimated outlier payments as six percent of total payments (including both standard prospective payment system payments and outlier payments). We made the maximum estimate permitted under the law in order to ensure that we would provide an adequate margin for outlier payments.

For both FY 1985 and FY 1986, we reduced the size of the reserve for outliers from six percent of total payments to five percent of total payments in order to provide proportionately greater payment for typical cases and avoiding any great risk of general disadvantage to hospitals. We believe that it was in the greater interest of hospitals and the Medicare program to eliminate some of the reserve for outliers and correspondingly increase the amount in the standardized amounts, thereby providing hospitals with somewhat larger Federal rates for typical cases. We note that this has had the effect of increasing the predictability of total payments for hospitals in that less of the total is attributable to those cases that meet particular qualifications. Therefore, we propose to continue to set the size of the outlier reserve at approximately the five percent level for FY 1987. As indicated in the previous rules on prospective payment, we will pay for any outlier that meets the criteria in § 412.80, even if actual aggregate outlier payments result in more than five percent (as proposed) of total payments.

We are not proposing to revise the day outlier and cost outlier thresholds. For FY 1986, we set the day outlier threshold at the lesser of 17 days or 1.94 standard deviations. We refer the reader to Table 5 in this addendum for the FY 1986 and proposed FY 1987 DRG day outlier thresholds. For FY 1986, we set the cost outlier thresholds at the greater of two times the Federal rate for the DRG, or $13,500. We are proposing to retain these thresholds for FY 1987.

Because of the extent of the changes proposed in this rule, we are providing four examples below (two for day outliers and two for cost outliers). The first day outlier example and the first cost outlier example are applicable to hospitals with cost reporting periods that occur on the same basis as the Federal fiscal year (that is, October 1, 1986). The other examples would apply to hospitals with cost reporting periods that occur on a different basis than October 1, 1986. The prior outlier examples in the September 1, 1983 interim final rule (48 FR 39777) did not show the full computation of the indirect medical education factor (or, of course, the recent changes to that factor) and did not include disproportionate share hospital adjustments and the capital-related standardized amounts.

The following is an example of how the additional payment would be determined for a day outlier in FY 1987:

Hospital X is a small central city teaching hospital located in the San Francisco MSA. Hospital X has a ratio of interns and residents to beds of .1 and is eligible for a disproportionate share adjustment factor of 5 percent. Mrs. Smith is admitted to hospital X on October 3, 1986 and is discharged October 31, 1986. Mrs. Smith's stay is classified in DRG 31. Because Mrs. Smith's 28 day stay exceeds the 20 day length-of-stay outlier threshold for DRG 31, hospital X is eligible for payment for 8 outlier days in addition to the

otherwise applicable prospective payment. The amount of hospital X's outlier payment (excluding the usual Federal payment that applies for both outlier and non-outlier cases) is calculated as follows:

Step 1.—Computation of Federal rate (excludes payments for capital, indirect medical education costs and disproportionate share hospital adjustment)

Pacific Census Division Urban Standardized Amounts:	
Labor-related	$2063.58
Non labor-related	$ 894.05
National Urban Standardized Amounts:	
Labor-related	$2194.80
Non labor-related	$ 769.86
San Francisco MSA Wage Index	1.6306
DRG 31 Relative Weight	.5363

Federal rate
= .5363 [.50 ($2063.58 × 1.6306 + $894.05) + .50 ($2194.80 × 1.6306 + $769.86)]
= .5363 ($2150.04 + $2195.67]
= $2338.22
Federal portion of prospective payment rate = 75 percent
Federal payment (excluding capital) = .75 ($2338.22) = $1753.67

Step 2.—Computation of Federal Capital Payment

Pacific Census Division Urban Standardized Capital Rate	$274.86
National Urban Standardized Capital Rate	$240.71
Federal Portion of Capital Prospective Payment Rate (percent)	20
DRG 31 Relative Weight	.5363

DRG 31 Federal Capital Payment Rate (reflects regional/national blends)
[.50($274.86 + .50($240.71)](.5363) = $138.77
DRG 31 Federal Capital Payment
= $138.77 × .20 = $27.75
Federal Prospective Payment, including capital = $1753.67 + $27.75 = $1781.42

Step 3.—Computation of Day Outlier Payments

Outlier days 26 − 20 = 6
DRG 31 geometric mean length of stay 3.9 days
Marginal cost factor .60
Outlier payment (excludes disproportionate share hospital and indirect medical education costs) = Number of outlier days × (Total Federal prospective payment ÷ Geometric mean length of stay for DRG) × Marginal cost factor
= 6($1781.42 ÷ 3.9).60 = $2192.52

Step 4.—Computation of Indirect Medical Education Adjustment for Day Outliers

Intern and Resident/Bed Ratio
Indirect medical education adjustment factor 2[1 + .1).405 − 1] = .7871 or 7.871%
Indirect medical education outlier payment = Indirect medical education adjustment factor × Outlier payment = .07871($2192.52) = $172.57

Step 5.—Computation of Disproportionate Share Payment for Day Outliers

Disproportionate share adjustment factor 5% or .05
Disproportionate share hospital outlier payment = Disporortionate share hospital adjustment factor × Outlier payment = .05($2192.52) = $109.63

Step 6.—Total Day Outlier Payments

Regular	$2,192.52
Indirect medical education	172.57
Disproportionate share hospital	109.63
Total	2,474.72

The following is an example of how the additional payment would be determined for a high cost outlier in FY 1987:

Same facts as in the day outlier example with the exception that Mrs. Smith's length of stay was 16 days and she incurred total billed charges of $100,000.

Step 1.—Computation of Hospital X's Standardized Cost

[Includes captial]

Billed Charges—$100,000.00
National ratio of cost to charges[1]—.71
Indirect medical education adjustment factor—.07871
Disproportionate share hospital adjustment factor: Hospital X's Standardized Cost = $100,000.00 ÷ 1 + (.07871 + .05) × .71 = $83,809.07

Step 2.—Determination of Cost Outlier Threshold

Computation 1 (Based on Federal Rate)

DRG 31 Federal rate, excluding capital—$2338.22
DRG 31 Federal Capital Payment Rate—[.50($274.86) + .50($240.71)](.5363) = $138.77
Federal rate, including capital, for threshold computation—$2338.22 + $138.77 = $2476.99
Federal rate, doubled—2 × $2476.99 = $4953.98

Computation 2 (Based on Wage Index Adjusted Standard Cost Outlier threshold)

Standard Cost Outlier Threshold—$13,500
Labor-related share [1] 69.24%
Nonlabor-related share, excluding capital [1]—23.03%
Nonlabor-related share, capital only [1]—7.73%
Wage index adjusted cost outlier threshold, including capital ($13,500 × .6924 × 1.6306) + ($13,500 × .2303) + ($13,500 × .0773) = $19,477.66
Computation 1 result—$4,953.98
Computation 2 result—$19,477.66
Higher or computation 1 or computation 2—$19,477.66
Applicable cost outlier threshold—$19,477.66

Step 3.—Calculation of Cost Outlier Payment

Outlier cost—$62,903.67 − $19,477.66 = $43,426.01
Capital portion [1] of hospital cost from market basket—7.73% = .0773
Capital portion of outlier cost—$43,426.01 × .0773 = $3,356.83
Federal portion of capital rate—20%
Federal capital portion of outlier cost—.20 × $3,356.83 = $671.37
Outlier cost, excluding capital]—$43,426.01 − $3,356.83 = $40,069.18
Federal portion of prospective payment rate, excluding capital—75%
Federal portion of outlier cost, excluding capital—.75 × $40,069.18 = $30,051.89
Marginal cost factor—.60
Outlier payment, capital and non-capital portions—($671.37 − $30,051.89).60 = $18,433.96

Step 4.—Cost outlier payment for indirect medical education costs

Interns and resident/Bed ratio—.1
Percentage add-on for indirect medical education—7.871%
Indirect medical education cost outlier payment—$18,433.96 × .07871 = $1,450.94

Step 5.—Cost outlier payment adjusted for Disproportionate Share Hospital

Disproportionate share hospital percentage add-on—5%
Disproportionate share hospital outlier payment—$18,433.96 × .05 = $921.70

Step 6.—Total cost outlier payements

Regular	$18,433.96
Indirect Medical Education	1,450.94
Disproportionate Share Hospital	921.70
Total	20,806.60

The following is an example of how the additional payment would be determined for a day outlier in FY 1987 for hospitals whose cost reporting period begins *after* October 1, 1986:

The same facts are applicable as in the period day outlier example but with the exception that Hospital X's cost reporting period begins January 1, 1987 and ends December 31, 1987. For discharges occurring between October 1, 1986 and December 31, 1986, Hospital X's prospective payments do not include capital (capital costs for Hospital X would continue to be paid on a pass-

[1] Previously this factor was .72 (see the September 1, 1983 interim final rule (48 FR 39777)) and was derived from 1981 data. The proposed revised factor of .71 reflects the inclusion captial costs, and the exclusion of interest income on funded depreciation and was developed from FY 1984 cost and charge data.

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through basis until January 1, 1987). Therefore, for the period October 1, 1986 through December 31, 1986, the amount of Hospital X's day outlier payment is calculated as follows:

Step 1.—Computation of Federal rate (excludes payments for indirect medical education costs and disproportionate share hospital adjustment)

Pacific Census Division Urban Standardized Amounts:
Labor-related $2063.58
Nonlabor-related $694.05
National Urban Standardized Amounts:
Labor-related $2194.80
Nonlabor-related $738.96
San Francisco MSA Wage Index 1.6395
DRG 31 Relative Weight ..... .5363

Federal rate
= .5363 [.80 ($2063.58 × 1.6395 + $694.05) + .20 ($2194.80 × 1.6395 + $738.96)]
= .5363 ($2150.04 + $2193.87)
= $2338.22

Federal portion of prospective payment rate = 75 percent
Federal payment = .75 ($2338.22) = $1753.67

Step 2.—Computation of Day Outlier Payments

Outlier days = 28 − 20 = 8
DRG 31 geometric mean length of stay = 3.9 days
Marginal cost factor = .60
Outlier payment (excludes disproportionate share hospital and indirect medical education costs) = Number of outlier days × (Total Federal prospective payment ÷ Geometric mean length of stay for DRG) × Marginal cost factor = 8 ($1753.67 ÷ 3.9) .60 = $2156.36

Step 3.—Computation of Indirect Medical Education Adjustment for Day Outliers

Intern and Resident/Bed Ratio = .1
Indirect medical education adjustment factor = $2[(1 + .1)^{.405} - 1] = .07871$ or 7.871%
Indirect medical education outlier payment = Indirect medical education adjustment factor × Outlier payment = .07871 ($2156.36) = $169.66

Step 4.—Computation of Disproportionate Share Payment for Day Outliers

Disproportionate share adjustment factor 5% or .05

Disproportionate share hospital outlier payment = Disproportionate share hospital adjustment factor × Outlier Payment = .05 ($2156.36) = $107.82

Step 5.—Total Day Outlier Payments

Regular	$2,156.36
Indirect medical education	169.66
Disproportionate share hospital	107.82
Total	2,436.16

The following is an example of how the additional payment would be determined for a cost outlier in FY 1987 for a hospital whose cost reporting period begins *after* October 1, 1986:

The same facts are applicable as in the previous cost outlier example but with the exception that Hospital X's cost reporting period begins January 1, 1987 and ends December 31, 1987. For discharges occurring between October 1, 1986 and December 31, 1986, Hospital X's prospective payments would not include capital (Hospital X's capital costs would continue to be paid on a pass-through basis until January 1, 1987). Therefore, for the period October 1, 1986 through December 31, 1986, the amount of Hospital X's outlier payment is calculated as follows:

Step 1.—Computation of Hospital X's Standardized Cost

Billed Charges—$100,000.00
National ratio of cost to charges—.71
Indirect medical education adjustment factor—7.871%
Disproportionate share hospital adjustment factor—5%
Hospital X's Standardized cost equals $100,000 divided by 1 plus (.07871 plus .05) times .71 equals $62,903.67

Step 2.—Determination of Cost Outlier Thresholds

Computation 1 (Based on Federal Rate)

DRG 31 Federal rate—$2338.22
Federal rate for threshold computation equals $2338.22
Federal rate, doubled—2 × $2338.22 = $4676.44

Computation 2 (Based on Wage Index Adjusted Standard Cost Outlier Threshold)

Standard Cost Outlier Threshold—$13,500
Labor-related share [1]—69.24%
Nonlabor-related share, excluding capital[1]—23.03%
Nonlabor-related share, capital only [1]—7.73%
Wage index adjusted cost outlier threshold, including capital—
($13,500 × .6924 × 1.6395) + ($13,500 × .2303) + ($13,500 × .0773) = $19,477.66
Computation 1 result—$4,676.44
Computation 2 result—$19,477.66
Higher of computation 1 or computation 2—$19,477.66
Applicable cost outlier threshold—$19, 477.66

Step 3.—Calculation of Cost Outlier Payment

Outlier cost—$62,903.67 − $19,477.66 = $43,426.01
Capital portion[1] of hospital cost from market basket—7.73% or .0773
Capital portion of outlier cost—$43,426.01 × .0773 = $3,356.83
Outlier cost, excluding capital[2]—$43,426.01 − $3,356.83 = $40,069.18
Federal portion of prospective payment rate—75%
Federal portion of outlier cost—.75 × $40,069.18 = $30,051.89
Marginal cost factor—.60
Outlier payment—.60 × $30,051.89 = $18,031.13

Step 4.—Cost outlier payment for indirect medical education costs

Intern and resident/Bed ratio—.1
Percentage add-on for indirect medical education—7.871%
Indirect medical education cost outlier payment—$18,031.13 × .07871 = $1,419.23

Step 5.—Cost outlier payment adjusted for disproportionate share hospital

Disproportionate share hospital percentage add-on—5%
Disproportionate share hospital outlier payment—$18,031.13 × .05 = $901.56

Step 6.—*Total cost outlier payments:*

Regular	$18,031.31
Indirect medical education	1,419.23
Disproportionate share hospital	901.56
Total	20,351.92

The above total amounts represent only the outlier payment amounts for the discharges and exclude the usual prospective payments that apply for both outlier and non-outlier cases.

For purposes of this rule, we are not proposing to revise the 60 percent marginal cost factor used to compute outlier payments. To date, the 60 percent factor represents our best estimate of the ratio of marginal cost (that is, the incremental change in the actual cost of care per unit of output) to average cost. Most of the available estimates of the ratio of marginal cost to average cost vary quite substantially from one study to another depending on the measure of hospital output (such as days, admissions, or services) and the time interval examined. Although the 60 percent marginal cost factor that we have adopted is in the upper range of the available estimates, and may be appropriate as an overall average, we are concerned that it may yield payments that tend to discourage hospitals from treating outlier cases that are unusually costly or require very long lengths of stay. Since we do not wish to discourage the treatment of severely ill Medicare patients who require particularly resource-intensive care, we are specifically soliciting comments on the propriety of the 60 percent marginal

[1] These market basket portions reflect the labor-related and nonlabor-related components as described in Table 2, column 2 in section IV of the addendum.

[2] The capital portion of the outlier cost is excluded because it is paid on a pass-through basis for the hospital in this example until January 1, 1987.

cost factor used to compute outlier payments, particularly with respect to its ability to compensate hospitals reasonably for unusually expensive outlier cases. Commenters should understand that any recommended increase in the marginal cost ratio that might be incorporated in the final rule on the FY 1987 prospective payment rates would also require a corresponding increase in the length of stay and cost outlier thresholds to ensure that total estimated outlier payments comprise five percent of anticipated prospective payments.

g. Costs of Malpractice Insurance. On April 1, 1986, we published an interim final rule in the Federal Register on payment for the cost of malpractice insurance (51 FR 11142). In that rule we adopted an apportionment methodology for determining reasonable cost reimbursement for hospital malpractice insurance costs. The new apportionment policy for hospitals (§ 405.457), which generally will recognize as allowable costs a larger proportion of malpractice costs than previous policy, divides total malpractice insurance premium cost into two components. The "administrative component" is included in the Administrative and General (A&G) cost center and is apportioned on the basis of the individual hospital's Medicare utilization rate. The "risk component" is apportioned on the basis of a formula that takes into account the individual hospital's utilization as well as the national Medicare patient utilization rate and the national Medicare malpractice loss ratio.

For purposes of updating the standardized amounts, the Federal rates already include sufficient costs to account for any changes made as a result of the April 1, 1986 interim final rule. The Federal rates are based on unaudited hospital cost reports from cost reporting periods that ended in 1981. Based on our review of the cost reports, it appears that a large number of hospitals, in order to preserve their rights to appeal the prior regulations (§ 405.452) that provided for separate apportionment of malpractice costs, included such costs in the A&G cost center (that is, in accordance with the Medicare reimbursement principles in effect prior to the June 1, 1979 final rule (effective for cost reporting periods beginning on or after July 1, 1979) which established the policy on separate apportionment of malpractice costs in § 405.452(a)(1)(ii)). The effect of this action on the part of hospitals is that the Federal rates reflect an amount for malpractice costs that is in excess of the amount that would have been recognized had hospitals, in completing their Medicare cost reports, generally adhered to the existing regulations providing for separate apportionment of Medicare malpractice costs.

We have included no adjustment in the update factor for malpractice insurance costs. Those hospitals that request adjustments to their base year costs will have their hospital specific rates adjusted under our malpractice regulation. We are not making any adjustment to the federal rates for malpractice, and we note that if such an adjustment were made, it would reduce the rates. This is because the federal rates are based upon 1981 unaudited cost reports, and about half the hospitals submitted those cost reports under the regulations in effect prior to 1979, which provided for greater malpractice payments than provided for by the current regulations. We expect the hospitals that submitted cost reports under the 1979 regulations would be those whose malpractice payments were either increased under the 1979 regulations or were minimally reduced by the 1979 regulations.

In addition, as we stated in the September 3, 1985 final rule (50 FR 35703), our analyses indicate that the Federal rates are overstated for a number of reasons. Furthermore, both the General Accounting Office and the Department's Office of the Inspector General have conducted studies showing that the Federal rates are overstated. In light of these findings, we believe that it would be inappropriate to increase the rates further to reflect a modification in policy concerning reimbursement of malpractice insurance costs.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section D below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as we propose to revise it in this addendum, contains the actual labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. The proposed revised wage index, which makes minor corrections (for the provision in section IV.D. of the preamble regarding hospitals in redesignated rural counties which are surrounded on all sides by urban counties) to the wage index published in the May 6, 1986 interim final rule, is set forth in Tables 4a and 4b of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1987, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. (We note that the adjustment factors are different from those in effect in FY 1986.)

Table of Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

Note.—The above factors are based on data obtained from the U.S. Office of Personnel Management.

C. DRG Weighting Factors

All inpatient hospital discharges are categorized according to a DRG as discussed in the September 1, 1983 interim final rule (48 FR 39760) and the September 3, 1985 final rule (50 FR 35647).

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in medical technology and treatment patterns that may affect the cost of providing inpatient care. Accordingly, section 1886(d)(4)(C) of the Act provides that, effective for discharges occurring in FY 1986, and no less often than once every four years thereafter, the Secretary "shall adjust

the classifications and weighting factors . . . to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources."

In compliance with the law, we published in the September 3, 1985 final rule (50 FR 35722) revised DRG weights that were recalibrated to reflect changes in resource consumption that had occurred subsequent to 1981 (the base-year data used to derive the initial DRG weights). Unlike the FY 1984 (48 FR 39878) and FY 1985 (49 FR 34760) series of DRG weights, which were largely developed from 1981 Medicare cost report data and billing records from a 20 percent sample of Medicare beneficiaries, the DRG weights in the September 3, 1985 final rule were constructed from the FY 1984 Part A Tape Bill (PATBILL) file, which is the universe of available inpatient bills for Medicare patients discharged in FY 1984. The most recent DRG weights were based exclusively on hospital charges for nearly 11 million patient stays. For a detailed explanation of the development of these charge-based DRG relative weights, we refer the reader to the discussion in the June 10, 1985 proposed rule (50 FR 24372) and the September 3, 1985 final rule (50 FR 35652).

However, as a result of a series of Congressional postponements as described earlier, the prospective payment changes published in the September 3, 1985 final rule, including the revised DRG relative weights, which were to be effective for discharges occurring on or after October 1, 1985, were postponed through April 30, 1986. We implemented the revised DRG relative weights published in the September 3, 1985 final rule effective with discharges occurring on or after May 1, 1986 (51 FR 16772).

We considered proposing to recalibrate the DRG weights using a later PATBILL data set (subsequent to FY 1984) in this proposed rule as recommended by ProPAC. However, we decided against this course of action.

The Conference Committee report to Pub. L. 98-21 (H.R. Rep. No. 47, 98th Cong., 1st Sess. 187 (1983)) clearly anticipated the use of discretion as to the frequency of DRG weight recalibration by stipulating that the DRG classifications and weighting factors be adjusted for FY 1986, and subsequently as necessary, but not less often than once every four years. We believe it is appropriate not to recalibrate annually because—

—Shifts in the consumption of hospital resources among DRGs, the very basis for recalibration, generally occur as a result of changes in medical technology and the adoption of new treatment methods. Typically, these changes occur gradually over time as the clinical efficacy or cost saving benefits of the new technology and procedures become apparent and are adopted by hospitals and physicians on a widespread basis. Therefore, frequent or annual recalibration of DRGs is unnecessary in light of the general pace of technological diffusion and its effect on inpatient hospital resource consumption; and

—To the extent that new procedures or treatment methods may be rapidly adopted because the benefits are immediately evident, and the effect is to alter significantly the resource intensity or scope of procedures included in a specific DRG, we believe that these changes are adequately accommodated under the current system by which DRG classification system changes are made as specified in § 412.10. Under that regulation HCFA issues classification changes in an annual notice published in the Federal Register. In addition to the classification changes, we are proposing to reweight the DRGs that are affected as a result of the reclassification changes.

We welcome any suggestions that commenters may have regarding the frequency of recalibration of DRG weights.

D. Calculation of Prospective Payment Rates for FY 1987 General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1983 and Before October 1, 1987

Prospective Payment Rate = (Hospital-Specific Portion + Federal Portion) + (Hospital-Specific Capital Portion + Federal Capital Portion)

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

Base year costs per discharge divided by 1981 case-mix index multiplied by updating factor equals Hospital-specific rate

For the first prospective payment cost reporting period, the hospital-specific portion equaled 75 percent of the hospital-specific rate.

For each subsequent transition period cost reporting period, the hospital-specific portion is derived as follows:

Previous period's Hospital-Specific Rate × Updating Factor × Blending Percentage × DRG Weight.

The blending percentage for cost reporting periods beginning in FY 1987 is 25 percent. For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. Updating the Hospital-Specific Rates for FY 1987 Cost Reporting Periods. We are proposing to increase the hospital-specific rates by 0.5 percent for cost reporting periods beginning on or after October 1, 1986. As required by section 1886(e)(4) of the Act in conjunction with section 1886(b)(3)(B) of the Act, this is the same percentage increase (0.5 percent) that we are proposing to change the Federal rates for in FY 1987.

As we pointed out, we believe the FY 1986 rates were set too high. If we were to propose to correct the rates prospectively for the full amount of the overstatement, it would result in a reduction of the hospital-specific rates. For the same reasons that we have proposed not to reduce the FY 1987 Federal rates, we have decided that it is preferable to increase the rates by 0.5 percent.

b. Calculation of Hospital-Specific Portion. For hospital cost reporting periods beginning on or after October 1, 1986, the hospital-specific portion of a hospital's payment for a given discharge would be calculated by:

Step 1.—Multiplying the previous cost reporting period's hospital-specific rate, as described in the May 6, 1986 interim final rule, by the applicable update factor (1.005);

Step 2.—Multiplying the previous cost reporting period's hospital-specific rate by 25 percent; and

Step 3.—Multiplying the amount resulting from Step 2 by the specific DRG weighting factor applicable to the discharge. The result is the hospital-specific portion of the FY 1987 prospective payment for a given discharge.

c. New Providers. Hospitals that have not completed a 12-month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983 and meet the criteria in § 412.74 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed solely on the basis of the Federal rates. Thus, new providers are paid a blend of 50 percent of the appropriate Federal regional rate and 50 percent of the Federal national rate for

discharges occurring on or after October 1, 1986 and before October 1, 1987.

2. Federal Portion

For cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, the Federal portion of the hospital's rate will be 75 percent of the hospital's Federal rate. Beginning with discharges occurring on or after October 1, 1986, the Federal rate is comprised of a blend of the appropriate Federal regional rate (50 percent) and the Federal national rate (50 percent). The Federal rates are determined as follows:

Step 1.—Selecting the appropriate regional and national adjusted standardized amount considering the location and urban and rural designation of the hospital (see Table 1, section IV of the addendum);

Step 2.—Multiplying the labor-related portion of the standardized amount by the appropriate wage index;

Step 3.—For hospitals in Alaska and Hawaii, multiplying the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4.—Summing the amounts from step 2 and the nonlabor portion of the standardized amount (adjusted if appropriate under step 3); and

Step 5.—Multiplying the final amount from step 4 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

3. Hospital-Specific Capital Portion

For hospital cost reporting periods beginning on or after October 1, 1986, the hospital-specific portion of a hospital's payment would be calculated by multiplying by 80 percent the lower of—

- Actual allowable capital-related costs for the hospital's cost reporting period beginning on or after October 1, 1986; or
- The sum of total payments as calculated by multiplying the hospital-specific capital-related rate by the applicable percentage for updating the prospective payment amounts (0.5 percent), and multiplying the product by the DRG weighting factor (see Table 5 in section IV of the addendum).

4. Federal Capital Portion

For hospital cost reporting periods beginning on or after October 1, 1986, the Federal capital portion of a hospital's payment for a given discharge would be calculated by:

Step 1.—Selecting the appropriate regional and national standardized capital amount considering the location and urban and rural designation of the hospital (See Table 1, section IV of the addendum.

Step 2.—For hospitals in Alaska and Hawaii, multiplying the appropriate regional and national capital amounts in Step 1 by the appropriate cost-of-living adjustment factor;

Step 3.—Multiplying the final amount from step 2 by the DRG weighting factor (see Table 5, section IV of the addendum).

III. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 405.463 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital' own cost experience. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more that that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the differences between the inpatient operating cost per discharge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. For cost reporting periods beginning in FY 1983 and FY 1984, the applicable target rate percentage was the estimated hospital market basket increase factor plus one percentage point. For cost reporting periods beginning in FY 1985, the applicable target rate percentage was the estimated hospital market basket increase factor plus one-quarter of one percentage point, as prescribed by section 1886(b)(3)(B) of the Act. Under section 9101 of Pub. L. 99–272, the applicable target rate percentage increase for cost reporting periods beginning on or after October 1, 1985 through September 30, 1986 is ¾ of one percent. Section 9101 of Pub. L. 99–272 provides that for purposes of updating the target rate for FY 1987, the FY 1986 increase will be deemed to have been one-half of one percent. However, for cost reporting periods beginning in FY 1987, and thereafter, the target rate percentage is adjusted by an update factor determined by the Secretary under section 1886(e)(4) of the Act considering the recommendations of ProPAC under section 1886(e)(2) of the Act and may not exceed the market basket percentage as determined under section 1886(b)(3)(B) of the Act.

B. Proposed Target Amounts for Cost Reporting Periods Beginning in FY 1987

For cost reporting periods beginning in FY 1987, we are proposing to increase each hospital's previous year's target amount by 0.5 percent. Under section 1886(b)(3)(B) of the Act, as amended by section 9101(b) of Pub. L. 99–272, the applicable percentage increase, for FYs 1987 and 1988, is determined pursuant to section 1886(e)(4) of the Act, and may not exceed the market basket increase. The same percentage increase, therefore, applies to the target rate amounts for hospitals and units excluded from the propective payment system as applies to the prospective payment rates for hospitals subject to that system.

C. ProPAC Recommendations

ProPAC recommends that for FY 1987, the target rate of increase limits for hospitals and units excluded from the prospective payment system be—

- Updated to reflect the projected increase in the hospital market basket (4.6–4.8 percent);
- Corrected for forecast errors in FY 1986 (−0.3 percent); and
- Adjusted for the policy target adjustment factor (−0.8 percent).

Our proposed target rate increase (0.5 percent) is very similar to ProPAC's recommendation. Our projected increase in the market basket of 3.6 percent is based on more recent data than ProPAC's estimate. Likewise, our forecast error projection of −0.4 percent and our net case mix change of −2.1 percent are based on more recent data.

We are also proposing to consider the policy target adjustment factor in updating the target rates. We would use the same policy target adjustment factor (−2.0 percent) for the excluded facilities as we are proposing to use for prospective payment hospitals as required under section 1886(e)(4) of the Act.

IV. Tables

This section contains the tables referred to throughout the premable to

this proposed rule and in this addendum. For purposes of this proposed rule and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1, 2, 3c, 3d, 4a, 4b, 5, 6 and 7 are presented below. The tables are as follows:

Table 1—Adjusted Standardized Amounts, Labor/Nonlabor/Capital
Table 2—Hospital Market Basket
Table 3a—Hospital Case Mix (September 1, 1983 final rule—48 FR 39847)
3b—Average Case-Mix Indexes by Hospitals Classification Group (September 1, 1983 final rule—48 FR 39871)
3c—Hospital Case-Mix Indexes for Cost Reporting Periods Beginning in Federal FY 1985
3d—Average Case-Mix Indexes by Hospital Classification Group FY 1985
Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 5—Diagnosis-Related Groups
Table 6—Grouper Changes
Table 7—Length-of-stay Percentiles

TABLE 1.—ADJUSTED STANDARIZED AMOUNT, LABOR/NONLABOR/CAPITAL

	Urban			Rural		
	Labor related	Nonlabor related	Capital	Labor related	Nonlabor related	Capital
1. New England (CT, ME, MA, NH, RI, VT)	2,267.05	911.45	160.35	2,040.11	817.84	157.10
2. Mdle Atlantic (PA, RJ, NY)	2,143.08	795.35	223.16	2,068.89	821.81	174.48
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,330.72	755.18	226.29	1,885.47	815.17	161.28
4. East North Central (IL, IN, MI, OH, WI)	2,318.78	855.84	248.96	1,895.09	578.88	166.20
5. East South Central (AL, KY, MS, TN)	2,084.37	846.52	234.42	1,895.62	481.09	147.84
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,147.35	781.73	229.40	1,757.45	496.92	135.94
7. West South Central (AR, LA, OK, TX)	2,171.96	712.84	247.68	1,766.13	490.79	140.47
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,097.88	772.10	303.09	1,749.84	526.65	157.90
9. Pacific (AK, CA, HI, OR, WA)	2,088.58	884.06	274.88	1,752.38	625.80	164.33
10. National	2,194.80	798.86	240.71	1,836.33	527.88	149.08

TABLE 2.—HOSPITAL MARKET BASKET
[1986 Relative Importance Weights]

Expense Categories	Excluding Capital[1]	Including Capital
1. Wages and Salaries[2]	57.66	53.20
2. Employee Benefits[2]	10.21	9.42
3. Professional Fees[2]	.79	.73
4. Capital		7.73
a. Depreciation		4.50
(1) Fixed Equipment		3.35
(2) Moveable Equipment		1.15
b. Interest		2.46
c. Other		.77
5. Energy and Utilities	2.28	2.07
a. Fuel, Oil, Coal, and Other Petroleum	.61	.56
b. Electricity	1.03	.93
c. Natural Gas	.36	.33
d. Motor Gasoline	.22	.20
e. Water and Sewage	.04	.03
6. Malpractice Insurance	1.00	.92
7. All Other	28.09	25.50
All Other Products	19.28	17.51
a. Pharmaceuticals	4.55	4.11

TABLE 2.—HOSPITAL MARKET BASKET—Continued
[1986 Relative Importance Weights]

Expense Categories	Excluding Capital[1]	Including Capital
b. Food	3.30	3.05
(1) Contract Service	1.28	1.18
(2) Direct Purchase	2.02	1.86
c. Chemicals and Cleaning Products	2.40	2.22
d. Surgical and Medical Instruments	2.12	1.96
e. Photographic Supplies	2.07	1.91
f. Rubber and Plastics	1.85	1.71
g. Paper Products	1.06	.98
h. Apparel	.97	.90
i. Minor Machinery Equipment	.40	.37
j. Miscellaneous Products	.66	.61
All Other Services	8.81	8.12
a. Business Services[2]	3.08	2.82
b. Computer and Data Processing Services[2]	1.56	1.46

TABLE 2.—HOSPITAL MARKET BASKET—Continued
[1986 Relative Importance Weights]

Expense Categories	Excluding Capital[1]	Including Capital
c. Transportation and Shipping	.99	.91
d. Telephone	.81	.74
e. Blood Services[2]	.47	.43
f. Postage[2]	.30	.28
g. All Other Services Labor Intensive[2]	.98	.91
h. All Other Services: Nonlabor Intensive	.62	.58
Total	100.00	100.00

[1] These weights are used to develop the revised labor-related/nonlabor-related components of the standardized rates in Table 1, excluding capital.
[2] Considered labor-related.

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PROVIDER	CASE MIX
010001	1.0743
010004	1.0098
010005	1.1379
010006	1.0846
010007	0.9251
010008	1.0240
010009	0.9915
010010	0.9898
010011	1.1317
010012	1.1200
010015	1.0377
010016	1.1132
010017	1.0351
010018	0.7696
010019	1.0201
010020	0.9967
010021	1.0325
010022	1.0211
010023	1.0987
010024	1.1007
010025	1.0735
010026	0.9271
010027	0.9303
010028	0.9772
010029	1.1347
010030	0.9613
010031	1.0701
010032	0.9358
010033	1.7287
010034	0.9961
010035	1.0409
010036	1.0091
010038	0.9899
010039	1.3660
010040	1.1342
010041	0.8466
010043	0.9257
010044	0.8849
010045	0.9549
010046	1.0983
010047	0.9976
010049	1.0007
010050	0.9437
010051	0.8446
010052	0.9711
010053	1.0603
010054	1.0975
010055	1.0549
010056	1.1739
010057	0.9732
010058	1.1208
010059	0.9007
010060	0.9489
010061	0.9662
010062	0.9089
010064	1.3557
010065	1.0607
010066	0.8659
010067	0.8591
010068	1.0946
010069	1.1088
010070	1.2208
010072	1.0926
010073	0.9628
010074	0.8902
010075	1.0098
010078	1.1592
010079	1.0276
010080	0.9607
010081	1.3585
010083	0.9785
010084	1.1269
010085	1.1170
010086	0.9625
010087	1.2241
010089	1.0095
010090	1.1846
010091	1.0312
010092	1.2756
010094	0.9738
010095	0.9687
010096	0.9623
010097	0.9489
010098	1.0288
010099	1.0195
010100	1.1642
010101	0.9951
010102	0.8986
010103	1.3032
010104	1.3518
010108	1.0095
010109	1.0956
010110	0.8728
010111	0.8831
010112	1.0535
010113	1.3095
010114	1.0884
010115	0.9905
010117	0.9316
010118	1.1116
010119	1.0969
010120	0.9443
010121	1.0204
010122	0.9506
010123	1.1086
010124	1.0196
010125	0.9099
010126	0.9753
010127	1.0764
010128	1.0322
010129	1.0431
010130	1.0510
010131	1.0579
010133	0.9962
010134	0.9421
010136	1.0288
010137	1.1640
010138	0.9527
010139	1.3971
010142	0.8421
010143	1.0643
010144	1.0873
010145	1.0784
010146	1.0540
010148	0.9596
010149	1.1721
010150	0.9629
010152	1.1240
020001	1.2840
020002	0.9768
020004	1.0799
020005	1.0379
020006	1.0561
020007	0.8447
020008	0.9981
020009	0.8400
020010	0.9279
020011	0.9114
020012	1.0862
020013	0.9042
020014	0.9517
020016	0.9690
020017	1.0855
020018	0.9699
020020	0.9379
020021	1.0588
020024	0.9423
020025	0.9404
020026	1.1922
020027	0.9390
030001	1.1899
030002	1.4196
030003	1.1593
030004	0.9102
030006	1.3896
030007	1.1154
030008	1.2323
030009	1.1894
030010	1.2988
030011	1.1696
030012	1.0781
030013	1.3052
030014	1.2324
030016	1.1061
030017	1.2045
030018	1.2686
030019	1.0948
030020	1.2615
030022	1.2224
030023	1.2391
030024	1.4053
030025	1.0562
030026	0.8279
030027	0.9946
030030	1.2519
030033	1.0571
030034	1.0476
030035	1.1386
030036	1.1489
030037	1.6949
030038	1.2795
030040	1.0212
030041	0.9522
030043	1.0917
030044	1.0269
030046	1.0729
030047	0.9285
030048	0.9768
030049	0.9886
030051	1.0791
030054	0.9081
030055	1.0170
030057	1.1580
030059	1.2066
030060	1.2801
030061	1.2364
030062	1.0241
030063	0.9952
030064	1.4274
030065	1.3155
030067	1.0227
030068	0.9811
030069	1.1591
030071	0.9216
030072	0.9581
030073	1.0941
030074	0.8521
030076	0.9856
030077	0.9070
030078	1.1102
030079	0.9545
030080	1.2245
030081	0.9224
030082	0.7854
030083	1.1830
030084	0.9970
030085	1.0407
030086	1.0350
030087	1.1348
030088	1.1253
040001	1.0468
040002	0.9674
040003	1.0185
040004	1.1370
040005	0.9734
040006	0.9899
040007	1.2436
040008	1.0393
040009	0.9983
040010	1.1099
040011	0.9510
040013	1.0228
040014	1.0824
040015	0.9938
040016	1.2057
040017	1.1073
040018	1.0686
040019	0.9940
040020	1.1388
040021	1.0472
040022	1.1056
040024	0.9420
040025	0.9259
040026	1.1634
040027	1.1040
040028	1.0109
040029	1.0874
040030	0.9352
040031	1.0100
040032	0.9872

PROVIDER	CASE MIX
040033	0.8880
040035	0.9696
040036	1.0858
040037	1.0348
040039	0.9488
040040	0.9578
040041	1.0912
040042	1.1777
040043	0.9627
040044	0.9290
040045	0.9046
040047	1.0710
040048	1.0755
040050	0.9999
040051	0.9317
040053	0.9760
040054	0.9863
040055	1.2120
040058	0.9553
040060	0.9936
040062	1.1858
040063	1.1885
040064	0.9685
040066	0.9369
040067	0.9685
040068	1.0410
040069	1.0381
040070	0.9026
040071	1.1605
040072	1.0170
040074	1.0298
040075	1.0136
040076	0.9610
040077	0.9078
040078	1.1764
040080	0.9811
040081	0.8617
040082	1.0843
040084	1.0005
040085	0.9416
040087	0.9805
040088	1.1825
040090	0.9480
040091	0.9761
040093	0.9564
040095	0.9797
040098	1.1149
040100	1.1125
040105	1.0190
040106	0.9980
040107	0.9773
040108	0.8764
040109	1.0455
040113	0.9350
040114	1.4279
040115	0.9851
040116	1.1020
040118	1.0156
040119	1.0535
040122	0.9505
040123	0.9825
040124	1.0062
040126	0.9203
040127	0.8681
050002	1.1501
050004	1.1251
050006	1.2380
050007	1.3447
050008	1.2336
050009	1.2799
050010	0.9929
050011	1.0468
050013	1.6136
050014	1.1623
050015	1.2622
050016	1.0862
050017	1.5423
050018	1.1127
050019	0.8912
050021	1.1858
050022	1.2183
050024	1.1146
050025	1.4391
050026	1.2595
050028	1.1877
050029	1.1717
050030	1.1395
050032	1.0535
050033	1.3030
050034	1.1983
050036	1.1930
050038	1.2376
050039	1.3813
050040	1.0710
050041	1.0748
050042	1.1490
050043	1.4899
050045	1.0976
050046	1.1293
050047	1.4418
050049	1.1217
050051	1.0274
050052	1.0731
050053	1.2187
050054	1.1505
050055	1.1793
050056	1.1446
050057	1.1958
050058	1.2144
050060	1.2524
050061	1.1745
050063	1.2108
050065	1.3010
050066	1.2103
050067	1.1683
050068	1.1045
050069	1.3812
050070	1.1919
050071	1.1886
050072	1.2407
050073	1.1659
050074	0.9241
050075	1.2435
050076	1.4367
050077	1.3684
050078	1.1669
050079	1.2039
050080	1.1982
050081	1.3850
050082	1.2093
050084	1.3423
050086	1.0898
050087	1.2311
050088	1.1096
050089	1.1632
050090	1.1265
050091	1.1951
050092	1.0699
050093	1.3666
050095	1.0112
050096	1.1339
050097	1.1824
050098	1.1179
050099	1.2297
050100	1.7818
050101	1.2306
050102	1.2568
050103	1.3388
050104	1.2742
050107	1.1511
050108	1.2507
050109	1.7693
050110	1.0823
050111	1.2545
050112	1.3160
050113	1.1066
050114	1.2658
050115	1.2559
050116	1.3345
050117	1.1968
050118	1.1665
050119	1.0076
050121	1.0769
050122	1.1911
050124	1.2401
050125	1.2244
050126	1.2520
050127	1.1862
050128	1.2560
050129	1.4256
050131	1.2164
050132	1.1654
050133	1.1283
050134	1.1048
050135	1.1836
050136	1.1637
050137	1.1403
050138	1.4374
050139	1.1625
050140	1.1480
050141	1.1237
050143	1.1123
050144	1.3245
050145	1.2203
050147	0.9291
050148	1.0037
050149	1.1632
050150	1.2450
050151	1.2119
050152	1.1912
050153	1.4137
050154	1.1670
050155	1.0824
050156	1.1430
050158	1.4561
050159	1.1914
050161	1.1072
050164	1.2414
050166	1.2632
050167	1.2236
050168	1.3832
050169	1.2740
050170	1.1884
050172	1.1406
050173	1.2230
050174	1.4697
050175	1.1358
050177	1.2746
050179	1.1206
050180	1.2397
050181	1.1371
050183	1.1085
050186	1.2002
050187	1.0682
050188	1.2197
050189	0.9729
050190	1.1677
050191	1.2654
050192	1.0475
050193	1.1897
050194	1.1465
050195	1.1271
050196	1.2094
050197	1.5342
050199	1.1397
050200	1.1887
050201	1.0966
050202	1.1934
050204	1.2494
050205	1.1875
050207	1.1813
050208	1.1809
050210	0.7098
050211	1.2364
050212	1.1041
050213	1.1959
050214	1.1975
050215	1.3456
050217	1.1619
050219	1.2463
050220	1.0825
050221	1.1993
050222	1.1791
050224	1.2120
050225	1.1585
050226	1.4567
050228	1.2249
050229	1.1865
050230	1.2159
050231	1.1960

PROVIDER	CASE MIX
050232	1.4834
050233	1.1272
050234	1.1828
050235	1.3123
050236	1.1582
050238	1.1936
050239	1.2380
050240	1.1691
050241	1.1835
050242	1.2939
050243	1.1680
050245	1.3785
050248	1.0582
050251	1.0291
050253	1.1048
050254	1.1591
050256	1.4071
050257	1.1624
050258	1.2748
050260	1.0473
050261	1.1593
050262	1.4196
050263	1.1399
050264	1.2064
050267	1.3965
050268	1.2500
050269	1.1325
050270	1.2090
050272	1.2357
050273	0.9680
050274	0.8757
050276	1.0631
050277	1.1752
050278	1.1739
050279	1.1574
050280	1.1925
050281	1.2667
050282	1.1709
050283	1.1978
050286	1.0846
050289	1.5546
050290	1.2317
050291	1.1453
050292	1.1767
050293	0.8837
050295	1.1588
050296	1.1028
050298	1.0771
050299	1.2615
050300	1.1401
050301	1.1823
050302	1.2335
050303	1.1029
050305	1.1968
050307	1.2221
050308	1.3671
050309	1.1703
050310	1.1628
050312	1.2867
050313	1.0619
050315	1.1841
050317	1.1151
050318	0.8908
050319	1.2317
050320	1.1492
050324	1.4360
050325	1.1516
050326	1.1648
050327	1.4436
050328	1.0675
050329	1.1724
050331	1.1410
050333	0.9560
050334	1.1892
050335	1.0567
050336	1.1675
050337	1.1671
050342	1.2037
050343	1.1154
050345	1.2514
050348	1.2758
050349	1.0283
050350	1.2466
050351	1.3635
050352	1.1186
050353	1.4743
050355	0.9794
050357	1.3985
050359	1.0873
050360	1.2017
050361	0.9988
050362	1.1786
050363	1.1086
050366	1.0823
050367	1.1637
050369	1.1675
050371	1.1072
050372	1.1190
050373	1.0485
050376	1.2019
050377	1.0862
050378	1.1030
050379	1.0230
050380	1.5858
050381	0.8823
050382	1.1114
050383	1.1264
050385	1.2033
050387	1.0168
050388	0.9550
050390	1.2225
050391	1.1550
050392	0.9581
050393	1.2569
050394	1.3073
050395	1.0456
050396	1.3893
050397	0.9738
050401	1.2295
050403	1.1331
050404	1.0242
050405	1.1187
050406	0.9475
050407	1.1249
050410	1.0363
050411	1.1680
050413	1.1982
050414	1.1157
050415	1.0166
050417	1.0972
050418	1.1021
050419	1.1608
050420	1.1442
050421	1.1874
050423	1.0200
050424	1.2667
050425	1.1852
050426	1.1638
050427	0.8887
050428	0.8055
050430	0.9349
050431	1.0882
050432	1.3601
050433	0.9957
050434	1.1308
050435	1.1916
050436	1.0412
050438	1.3652
050440	1.2062
050441	1.5573
050442	1.1501
050443	0.9696
050444	1.1370
050446	0.9264
050447	1.2813
050448	0.9786
050449	1.1145
050450	0.8235
050451	0.9093
050454	1.6571
050455	1.3328
050456	1.2997
050457	1.3887
050458	0.8742
050459	1.2367
050464	1.5212
050467	1.1484
050468	1.2085
050469	1.0011
050470	1.0687
050471	1.2500
050473	1.2023
050476	1.0757
050477	1.0752
050478	1.2390
050481	1.1294
050482	1.0261
050483	1.1762
050485	1.3215
050486	1.2448
050487	1.1650
050488	1.2134
050489	1.1816
050491	1.1980
050492	1.0920
050494	1.0530
050496	1.5090
050497	1.0193
050498	1.1426
050502	1.7226
050503	1.2256
050506	1.2077
050510	1.1766
050512	1.1752
050515	1.2092
050516	1.2440
050517	1.1427
050522	1.1425
050523	1.1360
050526	1.1523
050527	1.0845
050528	1.0785
050530	1.2053
050531	1.2125
050534	1.2123
050535	1.1266
050537	1.1813
050539	1.1624
050541	1.3472
050542	1.0183
050543	1.0998
050544	1.1280
050545	0.7795
050546	0.8242
050547	0.9529
050549	1.4384
050550	1.2679
050551	1.2672
050552	1.1537
050557	1.1980
050559	1.2040
050560	1.1896
050561	1.0948
050562	1.1077
050564	1.1872
050565	1.0883
050566	0.9872
050567	1.1983
050568	1.2055
050569	1.1786
050570	1.4774
050571	1.1952
050573	1.3473
050575	1.0749
050576	1.2298
050577	1.1995
050578	1.1303
050579	1.0777
050580	1.1821
050581	1.2252
050583	1.6770
050584	1.1824
050585	1.2374
050586	1.1550
050587	1.1374
050588	1.1664
050589	1.2209
050590	1.2168
050591	1.1869
050592	1.1654

PROVIDER	CASE MIX
050593	1.1488
050594	1.9701
050597	1.1446
050598	1.1515
050599	1.2614
050601	1.1619
050603	1.2652
050604	1.1983
050605	0.8944
050607	1.1786
050608	1.1347
050609	1.1906
050613	1.0008
050615	1.1793
050616	1.0954
050618	0.9963
050619	1.2046
050622	1.1292
050623	1.0917
050624	1.1872
050625	1.3262
050630	1.0807
050633	1.1758
050635	1.1911
050636	1.2086
050637	1.0780
050638	1.1429
050641	1.1406
050643	0.8116
050644	1.1091
050649	1.0617
050650	1.0873
050651	1.1383
050657	1.0502
050661	1.1979
050662	1.4403
050663	1.0948
050667	1.0834
050669	0.8598
060001	1.2656
060003	1.1492
060004	1.0738
060005	1.2231
060006	1.2583
060007	1.1245
060008	1.0736
060009	1.2276
060010	1.3145
060011	1.1010
060012	1.2618
060013	1.1714
060014	1.2250
060015	1.2282
060016	1.1774
060017	1.1892
060018	1.1007
060019	1.1855
060020	1.2382
060022	1.4473
060023	1.2470
060024	1.3997
060025	0.9614
060026	1.2330
060027	1.1783
060028	1.2846
060029	1.0085
060030	1.1342
060031	1.2215
060032	1.2690
060033	1.1830
060034	1.1766
060035	1.1084
060036	1.1682
060037	0.9608
060038	1.0215
060039	1.0443
060041	0.9540
060042	1.0922
060043	1.0897
060044	1.0964
060045	1.1059
060046	1.1131
060047	0.9080
060049	1.1855
060050	1.1916
060051	1.1698
060052	0.9014
060053	0.8630
060054	1.1448
060055	0.8924
060056	0.9443
060057	0.9516
060058	0.9516
060060	1.0301
060062	0.9776
060063	1.1557
060064	1.2516
060065	1.0814
060066	0.9747
060067	1.0251
060068	1.0650
060070	1.0318
060071	1.2062
060072	1.0527
060073	0.9734
060074	0.8905
060075	1.2336
060076	1.1233
060077	1.0132
060085	0.9440
060087	1.0784
060088	1.0466
060090	0.9780
060092	1.0031
060093	0.7246
060096	1.0556
060097	0.8400
060098	1.1747
070001	1.3757
070002	1.4285
070003	1.0874
070004	1.0524
070005	1.1517
070006	1.1390
070007	1.1269
070008	1.0492
070009	1.0443
070010	1.2996
070011	1.0238
070012	1.1453
070013	1.1657
070014	1.0504
070015	1.0309
070016	1.1059
070017	1.1636
070018	1.0973
070019	1.0455
070020	1.1332
070021	1.0723
070022	1.3258
070023	1.0596
070024	1.0553
070025	1.3902
070026	1.0791
070027	1.1950
070028	1.1710
070029	1.1028
070030	1.0422
070031	1.1759
070033	1.1133
070034	1.1438
070035	1.2161
070036	1.2185
080001	1.2071
080002	1.1000
080003	1.1887
080004	1.2136
080005	1.1007
080006	1.0838
080007	1.1085
090001	1.2854
090002	1.0935
090003	1.2911
090004	1.4815
090005	1.1835
090006	1.2086
090007	1.0923
090008	1.1760
090009	1.1607
090010	1.0734
090011	1.4470
100001	1.1760
100002	1.1879
100004	0.8991
100005	1.0659
100006	1.2545
100007	1.4232
100008	1.2258
100009	1.2342
100010	1.1755
100011	1.0051
100012	1.2007
100013	0.8798
100014	1.1264
100015	1.1251
100016	0.9935
100017	1.1757
100018	1.1507
100019	1.1396
100020	1.1405
100021	1.1211
100022	1.3406
100023	1.0668
100024	1.1510
100025	1.3412
100026	1.2344
100027	0.9070
100028	1.1146
100029	1.1279
100030	1.0320
100031	1.0240
100032	1.2190
100033	1.1378
100034	1.2640
100035	1.1661
100036	1.1230
100038	1.2600
100039	1.1929
100040	1.3007
100042	0.9969
100043	1.2260
100044	1.1577
100045	1.1733
100046	1.1312
100047	1.1129
100048	0.9025
100049	1.1331
100050	1.0501
100051	1.0242
100052	1.1938
100053	1.1395
100054	1.0784
100055	1.0908
100056	1.1196
100057	1.0746
100059	1.2179
100060	1.3753
100061	1.1657
100062	1.1833
100063	1.1301
100065	1.0794
100067	1.1626
100068	1.1604
100069	1.1199
100070	1.2033
100071	1.1008
100072	1.0902
100073	1.3275
100074	1.1266
100075	1.3559
100076	1.1198
100077	1.1268
100078	0.9822
100079	1.0710
100080	1.1643
100081	0.9146
100082	1.1806
100083	1.1170
100084	1.0449
100085	1.0331

PROVIDER	CASE MIX
100086	1.1313
100087	1.3614
100088	1.3026
100089	1.1351
100090	1.1427
100092	1.1044
100093	1.1453
100098	0.9367
100099	1.1044
100100	1.0603
100102	1.0587
100103	0.9027
100105	1.1084
100106	1.0144
100107	1.0908
100108	0.9360
100109	1.0563
100110	1.0952
100112	0.9985
100113	1.4789
100114	1.1235
100115	1.0842
100117	1.0962
100118	1.0749
100120	0.9812
100121	1.0521
100122	0.9957
100124	1.0513
100125	1.1205
100126	1.2126
100127	1.1994
100128	1.9125
100129	1.1224
100130	1.1134
100131	1.0818
100132	1.1556
100134	0.8713
100135	1.2718
100137	1.0519
100138	0.9479
100139	1.0365
100140	1.0344
100142	0.9877
100143	1.0149
100144	0.9820
100145	1.1363
100146	0.9623
100147	1.0076
100149	1.1373
100150	1.0364
100151	1.3676
100152	1.0980
100153	0.8199
100154	1.3469
100156	1.0391
100157	1.2535
100159	0.9138
100160	1.0597
100161	1.1670
100162	1.1428
100164	0.9755
100165	1.0500
100166	1.1394
100167	1.1274
100168	1.1360
100169	1.4279
100170	1.1319
100172	1.0187
100173	1.1153
100174	1.2506
100175	0.9632
100176	1.3453
100177	1.1505
100179	1.3408
100180	1.2290
100181	1.0619
100183	1.0507
100185	1.0944
100186	1.1960
100187	1.1155
100189	1.1401
100191	1.1639
100193	0.8166
100194	1.0955
100195	1.1033
100196	1.1948
100199	1.1186
100200	1.1346
100203	1.1568
100204	1.2753
100206	1.1400
100207	1.1342
100208	1.1838
100209	1.1942
100210	1.2876
100211	1.1326
100212	1.1037
100213	1.1985
100214	1.0903
100217	1.0288
100218	1.0368
100219	1.1729
100220	1.2383
100221	1.3934
100222	1.0278
100223	1.0841
100224	1.1151
100225	1.1005
100226	1.0650
100227	0.9413
100228	1.0875
100229	1.1026
100230	1.0922
100231	1.3665
100232	1.0630
100234	1.1808
100235	1.2007
100236	1.1648
100237	1.4891
100238	1.1349
100239	1.2641
100240	0.7229
100241	0.8906
100242	1.1278
100243	1.1093
100244	1.0944
100246	1.1983
100248	1.3353
100249	1.0609
100252	1.0566
100253	1.1689
100254	1.1165
100255	1.1398
100256	1.1242
100258	1.0915
100259	1.1048
100260	1.1352
100262	1.1369
110001	1.0755
110002	1.0595
110003	1.0574
110004	1.0662
110005	1.0178
110006	1.1535
110007	1.2241
110008	1.0601
110009	0.9573
110010	1.7102
110011	1.0389
110013	0.9679
110014	0.8844
110015	0.9864
110016	1.1179
110017	0.9745
110018	1.0584
110020	1.0485
110023	1.0747
110024	1.1518
110025	1.1237
110026	0.9682
110027	0.9674
110028	1.3746
110029	1.0887
110030	1.0161
110031	1.1147
110032	1.0462
110033	0.9957
110034	1.1772
110035	1.0934
110036	1.4035
110037	0.8016
110038	1.1268
110039	1.1085
110040	0.9475
110041	1.0379
110042	0.9582
110043	1.1918
110044	1.1112
110045	1.0146
110046	0.9807
110047	0.8696
110048	1.0183
110049	0.8933
110050	0.9717
110051	0.9200
110052	0.8094
110054	1.1466
110055	0.8738
110056	0.9618
110059	1.0220
110061	0.8800
110062	0.9372
110063	1.0060
110064	1.1502
110065	0.8880
110066	1.2186
110069	1.0634
110070	0.8988
110071	0.9352
110072	0.9185
110073	0.9106
110074	1.1481
110075	1.0718
110076	1.2161
110077	0.9094
110078	1.3430
110079	1.0703
110080	1.1145
110081	0.9801
110082	1.6979
110083	1.1283
110085	1.0998
110086	1.1035
110087	1.0430
110088	0.8902
110089	1.0348
110091	1.1990
110092	0.9966
110093	1.0070
110094	0.8786
110095	1.1113
110096	1.0039
110097	0.8739
110098	0.9459
110099	0.8738
110100	1.0017
110101	0.9134
110103	0.9477
110104	1.0457
110105	1.0885
110107	1.3130
110108	0.8918
110109	0.9503
110111	0.9077
110112	0.9811
110113	0.9446
110114	1.0037
110115	1.2924
110117	0.8988
110118	1.0096
110120	0.9652
110121	0.9323
110122	1.1595
110123	1.0368
110124	0.9837
110125	1.0621
110127	0.9448
110128	1.0856
110129	1.2744
110130	0.8822

PROVIDER	CASE MIX
110131	0.9043
110132	0.9486
110133	0.9125
110134	0.8839
110135	0.9145
110136	0.9577
110140	0.9214
110141	0.9118
110142	0.8507
110143	1.0753
110144	1.0947
110146	0.8845
110149	0.9511
110150	1.0760
110151	1.0103
110152	0.9771
110153	0.9171
110154	0.8979
110155	0.9857
110156	0.9015
110157	1.0311
110158	0.9728
110161	1.2205
110162	0.8905
110163	1.1791
110164	1.1720
110165	1.1379
110166	1.0943
110168	1.1133
110169	0.6555
110170	0.8022
110171	1.1228
110172	1.0817
110174	0.9020
110175	1.0335
110176	1.0581
110177	1.0983
110178	0.7106
110179	1.0767
110181	0.9596
110183	1.0614
110184	1.0907
110185	0.9049
110186	1.0086
110187	0.9851
110188	1.0961
110189	0.9098
110190	1.0208
110191	1.0955
110192	1.0785

PROVIDER	CASE MIX
110193	1.0394
110194	0.9447
110195	1.0543
110198	1.1949
120001	1.3675
120002	1.1113
120003	0.9758
120004	1.1460
120005	1.1135
120006	1.1010
120007	1.2960
120008	1.0114
120009	0.9424
120010	1.3810
120011	1.2845
120012	0.9562
120014	1.0951
120015	0.8611
120016	1.0286
120018	0.8185
120019	1.0327
120021	0.8933
120022	1.3714
130001	1.0615
130002	1.2132
130003	1.1357
130005	1.1594
130006	1.5119
130007	1.2675
130008	0.9023
130009	0.9525
130010	0.8440
130011	1.0935
130012	0.8737
130013	1.0084
130014	1.1656
130015	0.9963
130016	0.9409
130017	0.9126
130018	1.1574
130019	1.0746
130021	0.9287
130022	1.0297
130024	1.0820
130025	1.0363
130026	1.0471
130027	0.9205
130028	1.1241
130029	1.0613
130030	0.8550

PROVIDER	CASE MIX
130031	1.0056
130032	0.9550
130034	0.9064
130035	1.0227
130036	1.1691
130037	1.0002
130038	0.9194
130039	1.1069
130040	0.9425
130041	0.9126
130043	0.9732
130044	0.8390
130045	0.9488
130048	1.0078
130049	1.0913
130051	0.9151
130053	0.8827
130054	0.8347
140001	0.9992
140002	1.1749
140003	0.9082
140004	1.0448
140005	0.8884
140007	1.1132
140008	1.1328
140009	0.9866
140010	1.2106
140011	1.0419
140012	1.1716
140013	1.1135
140014	0.9771
140015	1.1099
140016	1.0448
140017	1.0958
140018	1.2211
140019	0.9286
140023	1.0132
140024	0.9621
140025	1.0972
140026	1.0860
140027	1.0253
140029	1.1708
140030	1.2033
140031	1.0838
140032	1.0411
140033	1.0805
140034	1.0078
140035	1.0791
140036	0.9856
140037	0.9906

PROVIDER	CASE MIX
140038	1.0370
140039	1.0246
140040	1.0615
140041	0.9911
140042	0.9467
140043	1.0873
140045	0.9609
140046	1.0829
140047	1.0232
140048	1.1114
140049	1.1391
140051	1.1244
140052	1.1093
140053	1.4019
140054	1.1451
140055	0.9300
140058	1.0245
140059	0.9813
140061	1.0072
140062	1.0945
140063	1.1105
140064	1.1106
140065	1.1595
140066	1.0082
140067	1.2897
140068	1.0294
140069	1.1027
140070	1.1066
140072	1.1330
140074	1.0491
140075	1.2111
140077	0.9754
140079	1.1067
140080	1.5310
140081	1.0481
140082	1.1290
140083	1.0519
140084	1.1474
140085	1.0958
140086	1.0011
140087	1.0977
140088	1.3425
140089	1.0530
140090	1.2068
140091	1.2136
140093	1.0252
140094	1.0533
140095	1.1472
140097	1.0784
140098	1.1190

PROVIDER	CASE MIX
140099	1.0635
140100	1.0099
140101	1.0348
140102	0.9320
140103	1.1206
140104	1.0097
140105	1.1934
140107	0.9324
140108	1.0655
140109	1.0034
140110	1.1048
140111	1.0285
140112	0.9975
140113	1.3206
140114	1.0793
140115	0.9817
140116	1.1865
140117	1.1168
140118	1.3200
140119	1.3875
140120	1.0523
140121	0.9213
140122	1.1385
140123	1.0933
140124	1.0094
140125	1.0855
140126	1.3178
140127	1.1247
140128	1.0618
140129	1.0588
140130	1.0806
140131	1.0822
140132	1.2120
140133	1.1565
140134	1.2423
140135	1.0747
140136	0.9586
140137	0.9821
140138	0.9656
140139	1.0345
140140	1.0467
140141	0.9861
140142	1.0453
140143	1.0453
140144	1.0062
140145	1.0986
140146	0.8953
140147	0.9978
140148	1.2844
140150	1.1870

PROVIDER	CASE MIX
140151	0.9909
140152	0.9820
140153	1.1651
140154	1.1266
140155	1.0313
140156	1.1611
140157	0.9400
140158	1.1664
140159	1.0485
140160	1.1208
140161	1.0307
140162	1.0223
140163	0.9468
140164	1.1367
140165	0.8919
140166	1.0421
140167	1.0152
140168	1.0814
140170	1.0063
140171	0.9397
140172	1.1962
140173	0.9902
140174	1.1603
140176	1.0796
140177	1.0271
140178	0.9643
140179	1.1420
140180	1.1959
140181	1.0987
140182	1.1245
140184	0.9909
140185	1.1319
140186	1.0349
140187	1.1648
140188	0.9766
140189	1.0645
140190	0.9814
140191	1.1106
140192	1.0704
140193	0.9896
140197	1.1074
140199	0.9565
140200	1.2077
140202	1.1888
140203	1.0107
140204	1.2276
140205	1.0920
140206	0.9717
140207	1.1156
140208	1.2638

PROVIDER	CASE MIX
140209	1.2569
140210	1.0120
140211	1.0302
140212	0.9739
140213	1.0784
140215	1.0300
140216	0.8892
140217	1.1130
140218	1.0965
140219	1.0287
140220	1.0553
140223	1.2717
140224	1.1161
140226	0.9628
140228	1.3216
140229	0.7937
140230	0.9760
140231	1.1715
140232	0.9803
140233	1.2945
140234	1.0101
140235	0.9597
140236	1.0566
140239	1.2728
140240	1.1520
140241	0.9429
140242	1.2214
140243	1.1275
140245	1.0517
140246	1.0120
140247	1.0561
140248	1.1550
140249	0.7344
140250	1.1021
140251	1.0575
140252	1.1389
140253	1.1181
140258	1.2241
140261	1.0144
140271	0.9319
140273	0.9908
140275	1.0637
140276	1.8218
140280	1.1436
140281	1.2866
140285	1.0515
140286	1.1666
140288	1.1679
140289	1.2001
140290	1.1551

PROVIDER	CASE MIX
140291	1.1151
140292	1.1292
140293	1.0761
140294	0.9318
140295	1.0685
140298	1.1291
150001	1.0805
150002	1.0990
150003	1.2878
150004	1.1880
150005	1.1134
150006	1.1376
150007	1.0170
150008	1.2911
150009	1.0896
150010	1.0500
150011	1.1313
150012	1.2556
150013	1.0118
150014	1.1768
150015	1.1058
150017	1.4030
150018	1.1698
150019	1.0368
150020	1.0672
150021	1.3755
150022	1.0491
150023	1.1692
150024	1.1725
150025	1.1577
150026	1.1468
150027	1.0174
150029	1.1593
150030	1.0962
150031	0.9405
150032	1.6001
150033	1.1515
150034	1.0563
150035	1.1032
150036	0.9571
150037	1.1184
150038	1.1314
150039	1.0068
150042	1.1334
150043	1.0725
150044	1.0931
150045	1.0742
150046	1.1010
150047	1.2890
150048	1.1552

PROVIDER	CASE MIX
150049	1.0450
150050	1.0730
150051	1.1330
150052	0.9203
150053	0.9084
150054	1.0080
150056	1.3881
150057	0.8865
150058	1.2646
150059	1.0626
150060	1.0812
150061	1.1163
150062	0.9596
150063	1.0717
150064	1.0394
150065	1.1086
150066	1.0067
150067	1.0204
150069	1.1035
150070	1.0434
150071	1.1016
150072	1.1344
150073	1.0566
150074	1.2745
150075	1.1544
150076	1.0554
150077	1.1086
150078	1.0365
150079	1.0273
150081	1.0396
150082	1.3253
150083	1.1470
150084	1.0938
150085	0.8866
150086	1.0995
150088	1.0838
150089	1.1784
150090	1.1493
150091	1.0880
150092	1.0057
150094	0.9976
150095	1.0395
150096	1.0084
150097	1.0083
150098	0.9316
150099	1.1536
150100	1.1968
150101	1.0975
150102	1.1092
150103	0.9318

PROVIDER	CASE MIX
150104	1.1168
150105	1.0449
150106	0.9838
150109	1.1967
150110	0.9437
150111	1.0588
150112	1.1310
150113	1.0748
150114	0.9631
150115	1.1930
150122	1.0232
150123	0.9616
150124	1.0634
150125	1.1196
150126	1.5284
150127	1.3856
150128	1.1873
150129	1.1097
150130	1.0718
150132	1.2482
150133	1.0755
150134	1.0452
150135	0.8486
160001	1.1999
160002	1.2230
160003	1.0531
160004	1.1128
160005	1.1980
160007	1.0088
160008	1.1166
160009	1.0970
160012	1.1211
160013	1.2045
160014	0.9816
160016	1.2245
160018	1.0085
160020	0.9891
160021	1.1200
160023	1.0586
160024	1.2131
160025	1.5683
160026	1.0958
160027	1.1723
160028	1.1205
160029	1.2129
160030	1.2495
160031	1.0532
160032	1.0450
160033	1.2211
160034	0.9843

PROVIDER	CASE MIX
160035	0.8998
160036	1.1895
160037	1.1968
160038	1.1451
160039	1.0100
160040	1.1426
160041	1.0192
160043	1.1186
160044	1.1326
160045	1.3493
160046	1.1588
160047	1.2648
160048	1.0651
160049	1.0002
160050	1.0538
160051	1.1273
160052	1.1060
160053	1.1539
160054	1.0778
160055	1.0437
160056	1.0055
160057	1.1678
160058	1.4334
160059	1.2288
160060	1.0583
160061	1.0430
160062	1.0222
160063	1.0760
160064	1.1955
160065	1.0879
160066	1.0790
160067	1.1326
160068	1.1012
160069	1.2636
160070	1.0657
160071	1.1249
160072	1.1052
160073	0.9755
160074	0.9598
160075	1.0035
160076	1.0150
160077	1.0978
160079	1.2448
160080	1.1211
160081	1.1560
160082	1.4559
160083	1.3980
160085	1.1989
160086	0.9911
160088	1.0706
160089	1.1506
160090	1.0456
160091	1.0841
160092	1.0208
160093	0.9217
160094	1.0745
160095	0.9725
160097	1.1397
160098	1.0838
160099	0.9891
160101	1.0838
160102	1.2302
160103	0.9111
160104	1.1178
160106	1.1300
160107	1.1361
160108	1.1334
160109	1.0517
160110	1.3559
160111	1.1524
160112	1.2017
160113	1.0571
160114	0.9627
160115	1.0965
160116	1.0453
160117	1.2443
160118	1.8993
160119	0.9764
160120	0.9485
160122	1.1051
160123	1.0925
160124	1.0937
160126	1.0887
160129	1.1116
160130	1.1435
160131	1.0939
160132	1.0670
160133	1.0544
160134	0.9817
160135	1.0186
160136	1.0173
160138	1.1129
160139	0.8631
160140	1.0154
160141	1.0242
160142	1.1471
160143	1.0936
160145	1.0985
160146	1.2394
160147	1.1286
160151	1.1064
160152	0.9686
160153	1.4185
170001	1.1278
170002	1.1425
170003	1.1171
170004	0.9626
170005	0.9047
170006	1.0856
170007	1.0749
170008	0.9489
170009	1.0783
170010	1.0424
170011	1.1457
170012	1.2780
170013	1.1149
170014	1.0265
170015	1.0430
170016	1.3039
170017	1.0622
170018	1.0778
170019	1.1520
170020	1.1499
170021	0.9328
170022	1.0976
170023	1.2223
170024	1.0853
170025	1.1884
170026	1.0908
170027	1.8271
170030	0.9509
170031	1.0103
170032	0.9835
170033	1.0554
170034	0.9512
170035	0.9480
170036	0.9737
170037	1.1205
170038	0.9981
170039	1.0059
170040	1.2871
170041	0.9857
170043	0.9901
170044	1.0148
170045	0.9403
170046	0.9725
170049	1.1835
170050	0.9924
170051	0.9521
170052	0.9547
170053	0.9532
170054	0.9610
170055	1.0310
170056	0.9385
170057	0.9606
170058	1.0329
170060	1.0141
170061	1.0512
170062	0.9875
170063	1.0158
170064	0.9806
170066	0.9886
170067	0.9698
170068	1.1162
170069	1.0352
170070	0.9669
170072	0.9538
170073	1.1038
170074	1.0578
170075	0.9801
170076	1.0998
170077	0.9050
170079	0.8594
170080	0.9479
170081	1.0850
170082	0.9813
170084	0.9515
170085	0.9326
170086	1.2732
170087	1.1750
170088	0.9780
170089	0.8864
170090	0.9881
170091	0.9336
170092	1.0448
170093	0.9791
170094	1.0130
170095	1.0315
170097	1.0227
170098	1.0889
170099	1.0587
170100	0.8927
170101	0.9436
170102	1.0250
170103	1.1034
170104	1.2391
170105	1.1254
170106	0.9439
170108	0.9347
170109	0.9835
170110	0.9527
170112	1.0599
170113	0.9861
170114	1.0350
170115	0.9921
170116	1.0656
170117	1.0201
170119	0.8756
170120	1.0787
170121	0.8497
170122	1.5583
170123	1.2306
170124	0.9956
170125	0.9186
170126	0.8811
170128	0.9555
170130	1.0767
170131	1.0716
170133	1.0929
170134	0.9763
170137	1.1547
170138	1.0829
170139	0.9680
170140	1.0072
170142	1.0917
170143	1.0662
170144	1.2199
170145	1.0519
170146	1.2130
170147	1.1355
170148	1.1487
170150	1.0425
170151	1.0307
170152	0.9082
170159	1.0262
170160	0.9257
170164	1.0672
170166	0.9955
170168	0.9088
170170	1.0664
170171	1.0496
170172	1.0320
170173	0.9223
170174	0.9091
170175	1.0553
170176	1.2076
170177	0.9630
180001	1.0727
180002	0.9601
180004	1.0127

PROVIDER	CASE MIX
180005	1.0352
180006	0.8766
180007	1.0882
180009	1.0932
180010	1.3673
180011	0.9610
180012	1.1007
180013	1.1434
180014	1.3673
180015	0.9929
180016	1.0803
180017	1.0919
180018	1.0900
180019	1.0148
180020	0.9506
180021	0.9106
180023	0.8768
180024	0.9961
180025	1.0717
180026	1.0464
180027	0.9870
180028	0.8755
180029	1.0093
180030	0.9319
180031	0.9756
180032	0.9331
180033	1.0198
180034	1.0186
180035	1.1086
180036	1.0506
180037	1.1459
180038	1.0762
180040	1.3163
180041	0.9811
180042	1.0065
180043	0.9887
180044	0.9734
180045	1.1066
180046	1.0208
180047	1.0300
180048	1.0899
180049	1.0953
180050	0.9960
180051	1.1413
180053	0.9085
180054	1.1277
180055	1.0322
180056	1.0140
180058	0.8701
180059	0.9566

PROVIDER	CASE MIX
180060	0.8437
180062	0.9210
180063	0.9184
180064	1.0260
180065	0.9189
180066	1.0315
180067	1.4119
180069	0.9606
180070	0.9526
180072	1.0156
180075	0.9104
180078	0.9311
180079	0.9692
180080	0.9907
180081	1.0867
180085	1.1274
180087	1.0388
180088	1.3140
180092	1.0503
180093	1.1334
180094	0.9490
180095	1.0260
180099	0.9111
180100	1.1047
180101	1.0571
180102	1.1415
180103	1.3338
180104	1.1563
180105	0.8840
180106	0.8619
180108	0.8630
180114	0.8523
180115	1.0133
180116	1.0585
180117	0.9067
180118	1.0057
180120	0.9235
180121	0.9673
180122	0.9003
180123	1.1454
180124	1.0640
180125	0.9207
180126	0.8966
180127	1.0486
180128	1.0135
180129	0.9764
180130	1.1519
180132	1.1166
180133	1.0480
180134	1.0631

PROVIDER	CASE MIX
180136	1.0586
180137	1.2360
190001	0.9767
190002	1.2713
190003	1.0905
190004	1.0524
190005	1.1025
190006	1.0719
190007	0.9549
190008	1.1421
190009	1.0719
190010	1.0255
190011	1.0158
190012	0.9000
190013	1.0639
190014	0.9121
190015	1.0413
190016	1.0291
190017	1.1251
190018	1.0692
190019	1.2969
190020	1.0320
190023	0.9136
190025	1.0659
190026	1.1676
190027	1.1986
190029	1.1145
190033	0.9404
190034	1.0407
190035	1.1908
190036	1.4140
190037	0.9010
190039	1.2149
190040	1.0906
190041	1.2596
190043	1.0446
190044	1.0339
190045	1.0466
190046	1.2424
190047	0.9908
190048	1.0227
190049	1.0043
190050	0.9740
190053	1.0092
190054	1.0888
190058	0.9896
190059	1.0664
190060	1.0908
190064	1.1729
190065	1.2554

PROVIDER	CASE MIX
190067	1.0123
190071	0.9016
190073	0.9091
190075	1.1044
190077	0.9485
190078	1.0450
190079	1.1554
190081	0.8641
190083	0.9594
190086	1.0922
190088	0.9560
190089	0.9702
190090	0.9644
190092	1.1631
190095	0.9158
190098	1.2710
190099	0.9903
190101	0.9093
190102	1.2141
190103	0.8594
190106	1.0017
190109	1.0880
190110	0.9871
190111	1.2323
190112	1.1447
190113	1.0551
190114	0.8844
190115	1.1181
190116	1.0234
190117	1.0100
190118	0.9875
190119	0.8929
190120	0.9422
190122	1.1588
190124	1.1950
190125	1.1632
190127	1.0469
190128	0.8806
190130	0.9320
190131	0.9993
190132	1.0680
190133	0.9801
190134	0.8454
190135	1.2772
190136	0.9352
190137	0.9265
190138	0.6053
190139	1.0066
190140	1.0409
190141	0.8998

PROVIDER	CASE MIX
190142	0.9176
190144	1.0261
190145	1.0353
190146	1.2950
190147	0.9746
190148	0.9327
190149	0.9721
190151	1.0293
190152	1.0670
190155	1.0028
190156	0.9238
190157	0.9513
190158	1.0472
190160	0.9816
190161	1.0242
190162	1.1367
190163	0.9179
190164	1.0327
190165	0.9895
190166	0.9814
190167	0.9539
190169	0.9023
190170	0.9331
190173	1.1382
190175	1.0784
190176	1.3343
190177	0.9813
190178	0.9337
190179	0.9776
190180	1.0741
190182	0.9073
190183	1.0274
190184	0.9100
190185	1.0784
190186	0.8880
190187	1.2312
190188	0.9377
190190	0.8902
190191	1.1040
190193	1.0963
190194	0.9752
190195	0.9489
190197	1.2599
190198	1.0544
200001	1.2464
200002	0.9587
200003	1.0377
200005	0.8689
200006	0.9724
200007	1.0053

PROVIDER	CASE MIX
200008	1.1654
200009	1.4730
200012	1.0968
200013	1.1363
200015	1.2227
200016	1.0646
200017	1.1068
200018	1.0992
200019	1.1933
200020	1.0376
200021	1.1471
200023	0.9980
200024	1.1539
200025	1.1206
200026	1.0098
200027	1.0769
200028	0.9572
200031	1.1659
200032	1.1876
200033	1.3107
200034	1.1108
200037	1.1281
200038	0.9886
200039	1.1942
200040	1.0738
200041	1.0060
200043	0.9642
200044	1.1333
200047	1.1118
200049	0.9467
200050	1.0389
200051	0.9949
200052	1.0404
200055	1.0083
200058	0.8939
200062	1.0325
200063	1.1974
200066	1.1629
210001	1.2074
210002	1.3525
210003	1.1621
210004	1.1578
210005	1.1849
210006	1.0725
210007	1.2888
210008	1.1261
210009	1.2618
210010	1.0644
210011	1.2000
210012	1.1174
210013	1.1604
210015	1.1477
210016	1.3442
210017	1.0817
210018	1.1857
210019	1.2122
210021	1.0614
210022	1.1374
210023	1.1711
210024	1.1871
210025	1.0696
210026	1.1708
210027	1.1197
210028	1.0280
210029	1.1902
210030	1.0317
210031	1.4205
210032	1.0440
210033	1.1082
210034	1.1055
210035	1.0964
210037	1.1247
210038	1.0447
210039	1.1196
210040	1.1929
210041	1.0791
210042	1.1419
210043	1.0823
210044	1.0878
210045	1.0359
210046	1.0060
210047	0.9359
210048	1.0605
210049	1.1136
210050	1.0451
210051	1.1878
210054	1.1216
210055	1.1325
210056	1.2602
210057	1.1920
210058	1.3966
220001	1.1172
220002	1.2555
220003	0.9894
220004	1.1354
220005	1.0448
220006	1.0959
220008	1.0820
220009	1.0715
220010	1.0829
220011	1.1044
220012	1.1907
220015	1.1067
220016	1.1007
220017	1.0979
220019	1.0905
220020	1.0929
220021	1.1477
220022	1.0841
220023	1.1061
220024	1.1523
220025	1.0841
220026	1.1509
220028	1.0873
220029	1.0609
220030	1.0774
220031	1.2929
220033	1.0941
220034	1.0354
220035	1.0943
220036	1.1966
220038	1.0497
220040	1.0810
220041	1.1249
220042	1.0626
220045	1.1170
220046	1.2069
220048	1.1090
220049	1.0912
220050	1.0031
220051	1.0955
220052	1.0977
220053	1.1133
220055	1.1136
220057	1.0910
220058	1.0671
220060	1.0858
220061	1.0535
220062	0.4326
220063	1.1202
220064	1.0925
220065	1.0830
220066	1.1589
220067	1.1723
220068	0.9057
220069	0.9462
220070	1.1583
220071	1.3765
220072	0.9808
220073	1.1468
220074	1.0319
220075	0.6927
220076	1.0737
220077	1.2346
220079	1.0691
220080	1.0830
220081	0.9834
220082	1.1147
220083	1.0981
220084	1.0877
220086	1.3543
220087	0.8797
220088	1.2734
220089	1.1164
220090	1.0418
220092	1.0846
220094	1.0537
220095	1.0280
220097	1.0522
220098	1.0874
220099	1.0485
220100	1.2032
220101	1.1365
220102	0.8878
220104	1.0168
220105	1.0540
220106	1.0769
220107	0.9954
220108	1.0583
220110	1.5701
220111	1.1063
220114	1.0203
220115	1.0982
220116	1.3953
220117	0.9660
220118	1.3789
220119	1.1609
220120	0.9807
220121	1.0771
220123	1.0409
220126	1.1331
220128	1.0427
220129	1.0596
220131	1.0117
220133	0.8283
220135	1.1373
220153	1.0156
220154	1.0268
220156	1.0819
220163	1.3609
220171	1.2997
230001	1.0227
230002	1.1073
230003	1.0869
230004	1.3238
230005	1.0749
230006	1.0389
230007	1.0336
230008	0.9458
230011	1.0616
230012	1.0397
230013	1.1543
230014	1.0721
230015	1.0842
230017	1.2403
230019	1.1794
230020	1.1721
230021	1.1993
230022	1.1277
230024	1.3246
230027	1.0087
230029	1.1513
230030	1.0770
230031	1.1955
230032	1.4376
230034	1.0514
230035	0.9774
230036	1.1353
230037	1.0488
230038	1.5022
230039	1.1422
230040	1.1024
230041	1.0751
230042	1.0413
230043	0.8978
230046	1.4574
230047	1.0894
230051	1.0091
230053	1.2540
230054	1.3267
230055	1.0335
230056	0.9570
230057	1.0115
230058	1.0461
230059	1.2339
230060	1.0518
230062	1.0326
230063	1.1334
230065	1.0957
230066	1.1044

PROVIDER	CASE MIX
230067	0.9845
230068	1.2024
230069	1.1052
230070	1.2034
230071	0.7198
230072	1.0858
230075	1.1036
230076	1.1660
230077	1.4433
230078	1.0194
230080	1.0590
230081	1.0200
230082	0.9378
230084	1.0356
230085	1.0774
230086	1.0285
230087	1.0326
230089	1.1090
230090	1.1218
230092	1.1241
230093	1.0584
230095	1.0210
230096	1.0023
230097	1.1513
230098	1.1332
230099	1.0587
230100	1.0163
230101	1.0711
230102	1.2573
230103	1.0443
230104	1.1793
230105	1.3155
230106	1.0198
230107	1.0072
230108	1.1257
230110	1.1213
230111	0.9143
230113	0.8472
230114	0.8619
230115	1.0609
230116	0.9057
230117	1.5946
230118	1.1049
230119	1.0316
230120	0.9747
230121	1.0085
230122	1.1688
230123	0.8555
230124	1.0573
230125	1.2206

PROVIDER	CASE MIX
230128	1.1074
230129	1.3957
230130	1.2653
230132	1.1500
230133	1.1218
230134	0.9452
230135	1.0681
230137	1.0559
230138	0.8748
230139	1.0084
230140	1.0186
230141	1.2853
230142	1.0372
230143	1.2154
230144	1.0334
230145	1.0704
230146	1.1345
230147	1.0554
230149	0.9898
230150	1.3530
230151	1.2308
230153	1.0630
230154	0.9522
230155	0.9534
230156	1.3099
230157	1.0993
230158	0.9762
230159	1.1071
230161	0.8665
230162	0.8742
230163	1.0220
230165	1.2481
230167	1.1199
230169	1.0866
230171	1.0010
230172	1.0880
230173	1.0997
230174	1.1179
230175	0.9634
230176	1.0988
230177	0.8848
230178	1.0110
230179	0.9130
230180	0.9926
230181	1.0077
230183	1.0895
230184	1.0214
230186	0.9862
230188	0.9949
230189	0.9011

PROVIDER	CASE MIX
230190	1.0857
230191	0.8943
230193	1.0791
230194	1.0306
230195	1.1582
230197	1.0847
230199	1.0574
230201	0.9459
230203	0.9856
230204	1.2062
230205	1.0760
230207	1.0408
230208	1.0117
230211	0.9079
230212	1.0438
230213	0.9326
230216	1.1669
230217	1.0396
230219	0.8888
230221	1.0850
230222	1.1198
230223	1.1441
230224	0.9547
230225	0.9526
230227	1.0851
230228	1.1435
230230	1.1432
230231	0.9972
230232	0.9099
230235	0.9231
230236	1.1832
230237	1.1550
230238	0.9464
230239	1.0025
230241	0.9920
230244	1.1076
230253	1.0094
230254	1.0904
230256	1.0046
230257	0.9527
230258	1.0231
230259	0.9772
230264	0.8595
230265	1.0711
230266	1.0465
230269	1.1034
230270	1.1051
230272	0.9466
230273	1.1323
230276	1.3689

PROVIDER	CASE MIX
240001	1.2583
240002	1.3839
240003	1.1686
240004	1.2979
240005	1.0825
240006	1.1123
240007	1.1057
240008	1.0409
240009	1.0693
240010	1.7230
240011	1.0227
240013	1.1221
240014	1.1274
240016	1.0830
240017	1.1200
240018	1.1475
240019	1.3786
240020	1.0506
240021	1.0932
240022	1.0720
240023	1.0418
240024	1.1896
240025	1.8965
240026	1.2566
240027	1.0205
240028	1.0669
240029	1.0504
240030	1.2834
240031	1.0033
240032	0.9592
240036	1.2286
240037	1.0737
240038	1.2988
240040	1.1383
240041	1.0540
240043	1.1754
240044	1.1084
240045	1.0511
240046	1.2762
240047	1.2429
240048	1.1554
240049	1.3577
240050	1.1462
240051	1.0553
240052	1.1946
240053	1.2586
240054	1.1155
240055	1.1774
240056	1.2389
240057	1.5244

PROVIDER	CASE MIX
240058	1.0560
240059	1.0763
240061	1.3818
240062	1.0761
240063	1.2414
240064	1.1593
240065	0.9139
240066	1.1698
240069	1.0152
240071	1.0872
240072	0.9834
240073	0.9856
240074	1.1062
240075	1.1606
240076	1.0858
240077	0.9747
240078	1.2189
240079	0.9938
240080	1.2310
240081	1.2322
240082	1.1548
240083	1.1606
240084	1.2193
240085	0.9627
240086	1.0800
240087	1.1061
240088	1.3329
240089	0.9601
240090	1.1406
240091	1.0974
240093	1.2336
240094	1.0031
240096	1.0144
240097	1.1944
240098	1.0388
240099	1.1063
240100	1.1392
240101	1.0253
240102	1.0057
240103	1.0698
240104	1.1842
240105	0.9566
240106	1.2248
240107	1.0008
240108	1.1200
240109	1.0347
240110	1.0894
240111	1.0572
240112	0.9721
240114	1.0281

PROVIDER	CASE MIX
240115	1.1934
240116	1.0018
240117	1.0732
240118	0.9460
240119	0.9641
240121	0.9605
240122	0.9612
240123	1.0279
240124	1.0166
240125	1.0026
240127	1.1144
240128	1.1510
240129	1.0217
240130	1.0209
240131	1.2004
240132	1.1706
240133	1.1217
240134	1.1784
240135	0.9721
240136	1.0471
240137	1.0354
240138	1.0691
240139	1.0832
240140	0.9510
240141	1.0083
240142	1.0926
240143	1.0227
240144	1.1253
240145	1.0539
240146	1.0426
240148	1.0163
240150	0.8978
240152	0.9517
240153	1.0218
240154	0.9781
240155	1.0447
240156	1.0555
240157	0.9596
240158	1.0537
240160	1.0263
240161	0.9637
240162	1.1787
240163	1.0935
240165	1.1410
240166	1.0533
240167	0.9642
240169	0.9669
240170	1.0247
240171	1.0785
240172	1.0590

PROVIDER	CASE MIX
240173	0.9875
240175	1.0324
240176	1.1171
240177	0.9266
240179	1.0020
240180	1.1370
240183	1.0230
240184	1.1424
240187	1.1877
240192	0.8591
240193	1.0881
240194	0.9938
240195	1.0402
240196	1.3616
240200	0.9880
240201	0.9742
240205	0.8795
240206	0.9092
240207	1.1641
250001	1.3109
250002	0.8722
250003	0.8704
250004	1.1912
250005	0.9535
250006	0.9164
250007	1.0033
250008	0.9101
250009	1.0953
250010	0.9016
250012	0.9531
250014	1.0155
250015	0.9894
250016	0.8436
250017	0.9044
250018	0.9810
250019	1.1037
250020	0.9202
250021	0.9796
250023	0.8600
250024	0.9190
250025	0.9780
250026	0.8215
250027	0.9459
250029	0.9335
250030	0.8904
250031	1.0195
250032	1.0855
250033	0.9090
250034	1.0439
250035	0.8570

PROVIDER	CASE MIX
250036	0.9544
250037	0.9092
250038	0.8677
250039	1.0063
250040	1.0800
250041	0.9223
250042	1.0046
250043	0.8729
250044	0.9735
250045	0.9933
250046	0.9596
250047	0.9058
250048	1.2455
250049	0.9126
250050	1.1179
250051	0.8155
250057	1.0193
250058	1.0496
250059	1.0069
250060	0.8656
250061	0.9717
250062	0.9289
250063	0.8617
250065	0.9135
250066	0.9045
250067	1.0535
250068	0.8875
250069	1.0763
250071	0.9500
250072	1.0907
250073	0.9422
250075	0.9686
250076	0.8891
250077	0.9150
250078	1.1869
250079	0.8405
250080	0.9290
250081	1.0809
250082	1.1666
250083	0.8604
250084	1.0352
250085	0.9838
250086	0.9982
250088	1.0069
250089	0.9825
250091	0.9167
250093	1.0354
250094	1.0968
250095	0.9140
250096	1.0112

PROVIDER	CASE MIX
250097	1.0163
250098	0.8478
250099	1.0417
250100	1.1286
250101	0.9116
250102	1.3066
250104	0.9882
250105	0.9280
250106	0.8386
250107	0.9417
250109	0.9069
250110	0.9585
250111	0.9156
250112	0.8454
250113	0.9166
250114	0.8932
250116	0.6537
250117	0.9426
250118	1.0027
250119	0.4474
250120	1.0902
250121	0.9379
250122	1.0174
250123	1.1043
250124	0.8824
250125	1.0784
250126	0.9778
250127	0.8737
250128	0.9801
250129	0.9689
250130	0.8708
250131	0.9966
250132	1.0345
250133	0.8498
250134	1.0697
250137	0.8457
260001	1.3164
260002	1.1388
260003	0.9685
260004	0.9695
260005	1.1289
260006	1.1218
260007	1.0435
260008	1.1416
260009	1.0976
260010	1.0986
260011	1.1132
260012	0.9265
260013	1.0305
260014	1.3548

PROVIDER	CASE MIX
260015	1.0228
260016	1.1201
260017	1.1365
260018	0.9210
260019	1.0610
260020	1.2641
260021	1.2241
260022	1.1471
260023	1.0347
260024	1.0613
260025	1.0836
260026	1.0464
260027	1.2696
260029	1.0711
260030	1.0421
260031	1.2782
260032	1.3977
260033	1.1840
260034	1.0123
260035	0.9623
260036	1.0112
260037	1.0828
260039	1.0551
260040	1.2261
260041	1.0508
260042	0.9432
260044	1.0262
260045	1.0804
260047	1.0713
260048	1.1480
260049	0.9307
260050	0.9779
260051	1.1496
260052	1.0858
260053	1.0835
260054	1.2043
260055	0.9586
260056	1.0567
260057	1.0791
260058	1.2059
260059	1.0407
260061	1.0424
260062	1.0999
260063	1.0366
260064	1.1079
260065	1.2953
260066	1.0086
260067	0.9755
260068	1.5062
260070	0.9888

PROVIDER	CASE MIX
260073	0.9719
260074	1.0759
260077	1.1543
260078	1.0149
260079	0.9827
260080	0.9753
260081	1.1890
260082	1.0917
260083	0.9655
260084	0.8855
260085	1.1821
260086	1.0002
260088	0.9856
260089	1.1296
260090	1.2308
260091	1.2347
260092	1.0167
260093	1.1825
260094	1.0410
260095	1.1118
260096	1.2155
260097	1.0847
260100	1.1414
260102	0.9175
260103	1.1739
260104	1.2537
260105	1.6428
260107	1.1259
260108	1.3769
260109	0.8979
260110	1.1351
260111	0.9433
260112	1.1934
260113	1.0582
260115	0.9903
260116	1.1167
260118	1.1862
260119	1.0357
260120	1.0649
260121	0.9354
260122	1.0365
260123	0.9329
260127	0.9965
260128	0.8987
260129	1.1094
260131	1.1655
260133	1.0648
260134	1.0692
260137	1.0663
260138	1.6385

PROVIDER	CASE MIX
260141	1.5111
260142	1.1077
260143	1.1266
260146	0.9470
260147	1.0623
260148	0.9615
260150	1.0752
260158	1.0337
260159	0.9455
260160	1.0342
260162	1.1158
260163	1.1359
260164	1.0437
260165	1.0751
260166	1.1282
260168	0.8643
260172	0.9588
260173	1.1534
260175	1.0299
260176	1.1488
260177	1.1871
260178	1.1245
260179	1.2392
260180	1.2351
260182	0.9945
260183	1.1041
260184	0.7608
260186	1.0680
260187	0.7503
260188	1.0944
260189	0.9883
260190	1.1140
260191	1.1434
260192	0.7579
260193	1.0904
260195	0.9789
260197	1.0624
270001	0.9366
270002	0.9968
270003	1.1069
270004	1.5502
270006	1.0011
270007	0.8993
270008	0.8798
270009	0.9492
270011	1.0293
270012	1.2492
270013	1.1774
270014	1.4849
270016	0.9526

PROVIDER	CASE MIX
270017	1.2006
270018	1.0372
270019	0.9066
270021	1.0106
270023	1.1915
270024	0.9667
270026	0.8872
270027	1.0353
270028	1.0369
270029	0.9418
270030	0.8730
270031	0.8643
270032	1.0757
270033	0.8986
270035	0.9848
270036	1.0864
270039	0.8956
270040	1.0763
270041	0.9507
270042	0.7693
270043	0.7715
270044	0.9848
270046	0.9169
270047	0.8734
270048	0.9841
270049	1.3145
270050	0.9779
270051	1.1231
270052	0.9289
270053	0.9051
270055	0.7565
270057	1.1081
270058	0.9692
270059	0.8708
270060	0.8784
270063	0.9716
270067	0.9901
270068	0.9428
270070	0.9498
270071	0.9145
270072	0.8684
270073	0.9147
270074	0.8263
270075	0.8906
270076	0.9803
270079	0.8989
270080	1.0730
270081	0.9836
270082	0.9328
280001	1.0144

PROVIDER	CASE MIX
280003	1.4838
280004	1.0625
280005	1.2148
280009	1.2069
280010	1.1158
280011	0.9278
280012	1.0897
280013	1.3700
280014	0.9886
280015	0.8784
280017	1.0019
280018	0.9866
280020	1.1491
280021	1.1839
280022	1.0410
280023	1.1477
280024	0.8610
280025	0.9141
280026	0.9458
280028	0.9150
280029	0.9463
280030	1.3458
280031	0.9848
280032	1.1558
280033	0.9490
280034	1.1351
280035	0.9255
280037	1.0923
280038	1.0908
280039	0.9917
280040	1.3864
280041	0.9178
280042	1.0283
280043	0.9770
280045	1.0449
280046	0.9779
280047	1.0847
280048	1.0480
280049	0.9381
280050	0.9907
280051	1.0047
280052	1.0335
280054	1.0873
280055	0.9555
280056	1.0636
280057	0.9401
280058	1.0662
280060	1.1127
280061	1.2057
280062	1.0533

PROVIDER	CASE MIX
280063	0.8961
280064	0.9770
280065	1.0984
280066	1.0589
280068	0.9507
280070	0.9864
280071	0.9482
280073	1.0057
280074	1.0597
280075	1.1309
280076	1.0025
280077	1.1183
280078	0.9398
280079	0.9561
280080	0.9451
280081	1.1748
280082	0.9385
280083	1.0552
280084	0.9677
280085	1.1627
280087	1.1650
280088	1.2670
280089	0.9640
280090	0.8989
280091	1.1221
280092	0.8891
280093	0.8808
280094	0.9505
280097	0.9486
280098	0.8964
280101	0.9794
280102	0.9937
280103	0.9100
280104	0.9528
280105	1.0846
280106	0.9512
280107	1.0590
280108	1.0712
280109	1.0006
280110	1.0033
280111	1.0522
280114	0.9655
280115	0.9880
280116	1.1172
280117	1.0148
280118	1.0169
280123	0.6829
290001	1.3645
290002	0.9421
290003	1.3114

PROVIDER	CASE MIX
290005	1.0790
290006	0.9930
290007	1.3151
290008	1.1513
290009	1.2395
290010	1.0029
290011	0.9567
290012	1.2213
290013	1.2795
290014	0.9605
290015	0.9219
290016	1.0785
290018	0.8642
290019	1.1699
290020	1.0174
290021	1.3343
290022	1.3141
290027	1.0769
290031	1.0525
290032	1.1823
300001	1.1713
300002	1.1117
300003	1.4699
300005	1.1461
300006	1.0534
300007	1.0623
300008	1.1046
300009	1.0853
300010	1.0971
300011	1.0901
300012	1.1438
300013	1.0849
300014	1.1171
300015	1.0165
300016	1.0968
300017	1.1167
300018	1.1426
300019	1.0886
300020	1.1150
300021	1.0932
300022	1.0804
300023	1.1844
300024	1.1262
300028	1.0631
300029	1.1787
300033	0.9570
300034	1.1369
310001	1.1430
310002	1.4603
310003	1.0878
310005	1.1670
310006	1.1581
310008	1.1437
310009	1.0739
310010	1.1398
310011	1.1288
310012	1.1569
310013	1.1366
310014	1.2219
310015	1.1892
310016	1.1696
310017	1.0914
310018	1.0000
310019	1.3325
310020	1.1056
310021	1.1180
310022	1.1160
310024	1.1286
310025	1.0610
310026	1.1062
310027	1.1365
310028	1.0370
310029	1.4282
310031	2.1826
310032	1.0868
310033	1.0139
310034	1.1232
310036	1.0752
310037	1.1447
310038	1.2836
310039	1.1486
310040	1.0604
310041	1.1598
310042	1.0589
310043	1.0782
310044	1.1132
310045	1.1038
310047	1.2207
310048	1.1730
310049	1.0726
310050	0.9497
310051	1.1809
310052	1.1370
310053	1.1572
310054	1.2116
310056	1.1124
310057	1.2082
310058	0.9877
310059	0.9311
310060	1.1236
310061	1.1368
310062	0.9875
310063	1.1919
310064	1.0771
310067	1.1334
310068	1.1445
310069	1.1069
310070	1.1285
310071	1.0169
310072	1.1083
310073	1.1321
310074	1.1478
310075	1.1535
310076	1.1141
310077	1.2172
310078	1.1323
310081	1.1910
310083	1.0438
310084	1.1481
310085	1.0410
310086	1.0663
310087	1.1086
310088	1.0522
310090	1.0919
310091	1.1480
310092	1.1689
310093	0.9921
310094	0.9738
310096	1.2723
310105	1.0190
310108	1.1349
310110	1.1346
310111	1.0362
310112	1.1135
310113	1.0858
310115	1.0567
310116	1.1538
310118	1.0514
310119	1.1696
310120	1.0308
320001	1.2699
320002	1.1887
320003	1.0887
320004	1.1162
320005	1.2321
320006	1.1500
320009	1.1996
320010	1.1100
320011	1.0375
320012	0.9141
320013	0.9849
320014	0.9063
320016	1.0212
320017	1.1293
320018	1.1573
320019	1.2683
320021	1.5032
320022	1.1092
320023	1.0070
320030	1.0533
320031	0.9196
320032	0.9330
320033	1.1209
320035	0.9992
320037	1.1973
320038	1.1108
320046	1.0284
320048	1.0021
320049	1.0736
320051	0.9398
320053	0.9903
320054	0.8668
320057	1.0181
320058	0.8654
320059	1.1423
320060	0.9177
320061	1.1340
320062	0.9063
320063	1.1191
320065	1.0819
320066	0.9269
320067	0.8971
320068	1.0026
320069	1.0392
320070	0.9549
320071	0.9432
320073	0.9191
320074	1.1887
330001	1.1023
330002	1.0898
330003	1.1376
330004	1.0625
330005	1.2898
330006	1.1862
330007	1.1309
330008	1.0435
330009	0.9077
330010	1.0343
330011	1.0903
330012	1.1928
330013	1.3792
330014	1.1268
330015	0.9929
330016	0.9999
330019	1.2048
330020	0.9973
330022	0.9944
330023	1.0957
330024	1.3078
330025	0.9798
330027	1.0683
330028	1.1068
330029	1.1278
330030	0.9583
330033	1.0977
330034	1.0685
330036	1.0250
330037	1.0818
330038	1.0622
330039	0.9827
330041	1.0663
330043	1.0497
330044	1.0975
330045	1.1194
330047	1.1108
330048	1.0327
330049	1.0919
330050	1.0013
330052	1.0434
330053	0.9985
330055	1.1854
330056	1.1211
330057	1.1974
330058	1.0993
330059	1.2166
330061	1.0576
330062	0.9795
330064	1.1407
330065	1.0195
330066	1.0512
330067	1.1155
330072	1.1073
330073	1.0299
330074	1.0937
330075	0.9633
330076	1.0316
330077	0.9378
330078	1.1709
330079	1.1413
330080	1.0056

PROVIDER	CASE MIX
330082	1.0384
330084	1.0104
330085	1.2206
330086	1.0397
330088	1.0995
330090	1.2808
330091	1.1191
330092	0.9912
330094	1.1829
330095	1.0676
330096	0.9634
330097	1.0057
330100	0.6152
330101	1.2670
330102	1.1591
330103	1.0935
330104	1.0989
330106	1.3214
330107	1.0929
330108	1.0657
330109	0.9739
330111	1.0606
330114	0.9111
330115	1.0372
330116	0.9706
330117	1.0792
330118	1.1712
330119	1.1162
330120	1.2980
330121	1.0078
330122	1.0692
330125	1.3985
330126	1.0456
330127	1.0522
330128	1.1053
330132	0.9992
330133	1.0492
330135	1.0290
330136	1.2150
330140	1.2303
330141	1.1854
330142	1.0691
330144	0.9954
330148	0.9741
330150	0.9339
330151	1.0175
330152	1.0725
330153	1.1293
330154	1.2593
330155	1.0185
330157	1.0345
330158	1.0963
330159	1.2658
330160	1.0486
330161	1.0430
330162	1.1307
330163	1.0077
330164	1.2684
330165	1.0362
330166	0.9842
330167	1.1917
330168	1.0565
330169	1.0679
330171	1.1088
330172	1.0031
330174	0.9521
330175	1.0345
330176	0.8667
330177	0.9881
330179	0.9306
330180	1.0532
330181	1.1301
330182	1.0728
330183	1.2758
330184	1.1168
330185	1.0487
330186	1.0174
330188	1.0773
330189	0.6567
330191	1.0776
330193	1.1435
330194	1.2452
330195	1.2200
330196	1.1286
330197	1.0031
330198	1.0838
330199	1.0327
330201	1.0494
330202	1.0384
330203	1.1593
330204	1.0616
330205	1.0656
330208	1.0462
330209	1.0260
330210	0.9763
330211	0.9804
330212	0.9861
330213	0.9572
330214	1.3554
330215	1.0738
330217	1.0194
330218	1.0326
330219	1.1593
330221	1.0820
330222	1.0129
330223	0.9225
330224	1.0650
330225	1.0299
330226	1.0878
330229	1.0706
330230	1.0524
330231	1.0177
330232	1.0942
330233	1.0374
330234	1.4320
330235	1.1029
330236	1.1607
330238	1.0305
330239	1.0512
330240	0.9827
330241	1.4642
330242	1.0862
330244	1.0561
330245	1.1106
330246	1.0768
330247	0.6034
330249	1.0606
330250	1.0289
330252	0.9253
330254	1.0080
330256	0.9260
330257	0.8967
330258	1.0985
330259	1.0845
330260	1.1125
330261	1.1233
330263	0.9756
330264	1.0493
330265	1.1398
330267	1.0869
330268	1.0276
330270	1.5489
330272	0.9012
330273	1.0646
330275	1.1382
330276	1.1298
330277	1.0073
330279	1.0886
330281	0.9526
330285	1.3557
330286	1.1169
330288	0.9595
330290	1.1813
330291	1.0137
330293	0.9598
330297	1.0327
330300	0.8785
330304	1.1147
330306	1.1809
330307	1.0384
330308	1.0820
330309	1.0927
330314	1.0902
330315	1.0637
330316	1.1382
330318	1.0306
330320	1.0422
330323	1.0888
330327	0.9158
330331	1.0531
330332	1.0440
330333	0.9756
330335	1.0479
330336	1.0394
330338	1.0116
330339	0.9272
330340	0.9389
330345	0.8731
330350	1.4834
330351	0.9458
330353	1.0586
330354	0.8875
330357	1.0763
330359	0.9848
330372	1.0743
330381	0.9661
330385	1.0184
330386	1.0486
330387	0.8496
330389	1.4815
330390	1.0186
330393	1.2231
330394	1.0582
330395	1.0841
330397	1.1826
340001	1.1169
340002	1.4251
340003	1.1086
340004	1.2599
340005	1.1281
340006	1.0162
340007	1.0393
340008	1.0381
340009	0.7467
340010	1.0941
340011	1.0040
340012	1.0533
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340019	1.0806
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340022	1.0314
340023	1.1403
340024	1.0288
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340028	1.1566
340030	1.5298
340031	1.0626
340032	1.2081
340034	1.2568
340035	1.1706
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340037	1.0503
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340039	1.0989
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340041	1.1690
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340045	1.0512
340047	1.4635
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340052	0.9694
340053	1.1612
340054	0.9705
340055	1.1044
340060	1.0487
340061	1.3961
340063	1.0657
340064	1.0535
340065	1.0507

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PROVIDER	CASE MIX
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340070	1.2512
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340076	1.0046
340079	0.9465
340080	1.0200
340084	1.0420
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340087	0.9819
340088	1.0900
340089	1.0236
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340091	1.4021
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340094	1.1339
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340098	1.3576
340099	1.0713
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340115	1.2305
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340122	0.9860
340123	1.0816
340124	0.9186
340125	1.2621
340126	1.1685
340127	1.1511
340129	1.8833
340130	1.1246
340131	1.2484
340132	1.0965
340133	0.9435
340135	0.9963
340136	1.0031
340137	0.9700
340138	1.1110
340141	1.2117
340142	1.1645
340143	1.1785
340144	1.0300
340145	1.0409
340146	1.0126
340147	1.2187
340148	1.0923
340151	1.0446
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340155	1.2507
340156	0.8375
340157	1.0966
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350047	0.9862
350048	0.9935
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350051	0.9394
350053	0.9354
350055	0.8563
350056	0.9178
350058	0.9458
350060	0.9419
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350063	0.9165
350064	0.9102
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360012	1.1586
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360014	1.0352
360015	1.2668
360016	1.1809
360017	1.2418
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360029	1.0176
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360031	1.1679
360032	1.0825
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360047	0.9791
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360050	1.1257
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360052	1.1439
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360054	1.1359
360055	1.1482
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360057	1.0153
360058	1.0779
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360060	0.9953
360061	0.6691
360062	1.2534
360063	1.0062
360064	1.2256
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360066	1.1214
360067	1.0523
360068	1.2810
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360070	1.1179
360071	1.1065
360072	1.1303
360074	1.1452
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360076	1.0822
360077	1.1896
360078	1.0588
360079	1.1716
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360084	1.1761
360085	1.3897
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360087	1.2022
360088	1.0518
360089	1.1177
360090	1.0885
360091	1.1901
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360093	1.0368
360094	1.0593
360095	1.1411
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360099	1.0469
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360113	1.1253
360114	1.0098
360115	1.0613
360116	1.0587
360118	1.1432
360119	1.0601
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360127	1.0012
360128	1.0402
360129	0.9792

PROVIDER	CASE MIX
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360140	1.0346
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360145	1.2213
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360148	1.1310
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360152	1.1861
360153	1.0554
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360156	1.0506
360159	1.0842
360161	1.0345
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360163	1.3513
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360168	0.9749
360169	0.9510
360170	1.0395
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360172	1.0763
360174	1.0413
360175	1.0429
360176	1.0976
360177	1.0625
360178	1.0090
360179	1.1239
360180	1.0529
360184	1.1017
360185	1.0834
360186	0.9475
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360188	1.0007

PROVIDER	CASE MIX
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360192	1.1737
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360194	1.0798
360195	1.0413
360197	1.0362
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360210	1.0623
360211	1.0174
360212	1.1898
360213	1.1340
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360230	1.1444
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360232	1.1580
360234	1.1144
360236	1.1309
360238	1.3399
360239	1.0836
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370004	1.0244
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370008	1.1715
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370016	1.1716
370017	0.9844
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370019	0.9638
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370022	1.1182
370023	1.1344
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370033	1.0282

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370050	0.9257
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370057	1.1435
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370065	1.0427
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370071	0.8829
370072	0.9860
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370077	1.0847
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370085	0.9438
370086	1.0538
370089	1.0398
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370091	1.4202
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370097	1.0830
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370100	0.9184

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370112	0.9075
370113	0.9939
370114	1.4056
370116	0.9977
370117	1.0877
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370122	0.9271
370123	1.1551
370125	0.9602
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370138	1.0124
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370138	1.0167
370139	1.0475
370140	0.9783
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370144	1.1847
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370168	0.9134
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370176	1.0552
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PROVIDER	CASE MIX
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380009	1.3816
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380011	1.0638
380013	1.0335
380014	1.1773
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380020	1.1868
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380022	1.1162
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380024	1.1191
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380035	1.1154
380036	1.0417
380037	1.1047
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380043	1.0832
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PROVIDER	CASE MIX
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380072	1.0104
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380075	1.1657
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380081	0.9487
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390029	1.2954
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390032	1.1095
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390055	1.5852
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390058	1.1593
390059	1.1303
390060	1.1136
390061	1.1788
390062	1.0744
390063	1.3523
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390065	1.1573
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390087	0.9698
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390113	1.1272
390114	0.9317
390115	1.1269
390116	1.1427
390117	1.0328
390118	0.9857
390119	1.1252
390121	1.1183
390122	1.0432
390123	1.1523
390125	1.1215
390126	1.1359
390127	1.0670
390128	1.1072
390130	1.0257
390131	1.1385
390132	1.0348
390133	1.2689
390135	1.1620
390136	1.1043
390137	1.0748
390138	1.2615
390139	1.2675
390142	1.3266
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390146	1.0677
390147	1.0954
390148	1.0394
390149	1.0727
390150	1.0762
390151	1.1652
390152	1.0694
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390154	1.0957
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390156	1.1348
390157	1.1049
390158	1.2011
390159	1.1734
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390161	0.9624
390162	1.1464
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390164	1.4431
390165	1.0213
390166	1.1162
390167	1.1116
390168	1.0180
390169	1.1161
390170	1.5867
390171	1.0354
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390173	1.0517
390174	1.4798
390176	1.0844
390177	1.0072
390178	1.2484
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390181	1.0246
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390184	0.9643
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390186	1.0116
390187	1.0592
390188	1.0882
390189	0.9740
390191	1.0737
390192	0.9760
390193	1.0685
390194	1.0138
390195	1.3566
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390198	1.0654
390199	1.1323
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390206	1.1451
390209	0.9544
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390213	0.9542
390215	1.0809
390217	1.0472
390219	1.1253
390220	1.0664
390222	1.1661
390223	1.4651
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390225	1.0777
390226	1.3157
390228	1.1709
390229	1.2164
390231	1.2164
390232	1.0565
390233	1.2048
390234	1.0673
390235	1.3850
390236	1.0343
390237	1.3061
390238	0.7199
390240	1.0584
390242	1.1367
390244	0.8699
390245	1.1019
390246	1.0038
390247	0.9778
390249	0.9565
390252	0.7149
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390258	1.1396
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390262	1.1467

PROVIDER	CASE MIX
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390268	1.1354
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410005	1.2141
410006	1.2138
410007	1.3033
410008	1.0631
410009	1.1752
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410012	1.3321
410013	1.1150
410014	1.1670
410016	1.0176
420002	1.1198
420003	1.0249
420004	1.3520
420005	1.0305
420006	1.1966
420007	1.2991
420009	1.0957
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420011	1.0059
420014	1.0199
420015	1.0781
420016	1.1020
420017	0.9588
420018	1.2730
420019	1.0476
420020	1.0190
420022	1.0195
420023	1.1535
420024	0.9038
420026	1.3591
420027	1.1017
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420031	0.9605
420032	0.9248
420033	1.1441
420035	0.6874
420036	1.1521
420037	1.1069

PROVIDER	CASE MIX
420038	1.0283
420039	1.0129
420040	1.1660
420042	1.0781
420043	1.0327
420044	1.0983
420048	0.9994
420049	1.0275
420050	0.9605
420051	1.2508
420053	0.9353
420054	1.0964
420055	0.9961
420056	1.0928
420057	1.0870
420059	1.0764
420061	1.0451
420062	1.1260
420064	1.0048
420065	1.1076
420066	0.8934
420067	0.9900
420068	1.1424
420069	1.0262
420070	1.1698
420071	1.1569
420072	0.8724
420073	1.1417
420074	0.9458
420075	0.9857
420076	0.8456
420078	1.2446
420079	1.2992
420080	1.0661
420081	0.7665
420082	1.1265
420083	1.0768
420084	0.6776
420085	1.1348
420086	1.1332
420087	1.2876
420088	1.0717
430001	1.0590
430004	1.0521
430005	1.0225
430007	1.0671
430008	1.1018
430009	0.9999
430010	1.0040
430011	1.1216

PROVIDER	CASE MIX
430012	1.1973
430013	1.0596
430014	1.1520
430015	1.0158
430016	1.2389
430017	0.9600
430018	0.9813
430020	0.9533
430022	0.8494
430023	0.9824
430024	1.0090
430025	0.9217
430026	0.9089
430027	1.4194
430028	0.9520
430029	0.8892
430030	1.0653
430031	0.9360
430033	0.9825
430034	0.9759
430036	0.9835
430037	0.8997
430038	1.0754
430039	0.9114
430040	1.0103
430041	1.0228
430042	1.0367
430043	1.0540
430044	0.9032
430047	1.0164
430048	0.9469
430049	0.9085
430051	0.9619
430054	0.9862
430056	0.9214
430057	0.9563
430060	1.0600
430062	0.8942
430064	0.9486
430065	0.9522
430066	0.9124
430072	1.0284
430073	1.0142
430076	0.9541
430077	1.1327
430079	1.0645
430080	0.8869
430081	0.9676
430082	0.8698
430083	0.8737

PROVIDER	CASE MIX
430084	0.9022
430085	0.9269
430086	0.8485
430087	0.8147
430088	1.1226
440001	1.0115
440002	1.2231
440003	1.0296
440005	1.0014
440006	1.1500
440007	1.0133
440008	0.9852
440009	1.0107
440010	0.9713
440011	1.1444
440012	1.1187
440014	0.9648
440015	1.3883
440016	0.9955
440017	1.2306
440018	1.1055
440019	1.2327
440020	0.9862
440022	1.0109
440023	0.9901
440024	1.1091
440025	1.0593
440026	1.1040
440028	0.9544
440029	1.1181
440030	1.0422
440031	0.9858
440032	1.0065
440033	1.0339
440034	1.1913
440035	1.1491
440038	1.0199
440039	1.3721
440040	0.8852
440041	0.9203
440046	1.0579
440047	0.9575
440048	1.3551
440049	1.3056
440050	1.0276
440051	0.9916
440052	0.9386
440053	1.0975
440054	0.9412
440055	1.0718

PROVIDER	CASE MIX
440056	0.9258
440057	0.9778
440058	1.0445
440059	1.0795
440060	0.9364
440061	1.0726
440063	1.0664
440064	0.9725
440065	0.9634
440067	1.0257
440068	1.0559
440069	1.1619
440070	0.9791
440071	1.1214
440072	1.1009
440073	1.0586
440074	0.8639
440078	0.9750
440079	0.8384
440081	1.0281
440082	1.5586
440083	0.9430
440084	1.0050
440086	0.9686
440087	0.9462
440090	0.9422
440091	1.2459
440095	0.9563
440100	0.9276
440101	0.9502
440102	1.0490
440103	1.0353
440104	1.1984
440105	0.6214
440109	1.0644
440110	0.9993
440111	1.1867
440113	1.0337
440114	1.0105
440115	0.9800
440117	0.8803
440120	1.1612
440121	1.0339
440125	1.1456
440128	0.9464
440130	1.1435
440131	1.0142
440132	0.9988
440133	1.2536
440134	1.0534

PROVIDER	CASE MIX
440135	1.1296
440136	1.0875
440137	1.0149
440141	0.9939
440142	0.8530
440143	0.9740
440144	0.9862
440145	0.9126
440146	0.9124
440147	0.7530
440148	1.0781
440149	1.0402
440150	1.0949
440151	1.0626
440152	1.2497
440153	0.8919
440154	0.8525
440156	1.1901
440157	0.9688
440159	1.0140
440160	1.0293
440161	1.3690
440162	0.9801
440166	1.3172
440167	1.1447
440168	1.0644
440170	0.6927
440171	1.0176
440173	1.0858
440174	0.9419
440175	0.9757
440176	1.0755
440177	0.9380
440178	1.1428
440180	0.9761
440181	1.0301
440182	0.9650
440183	1.1217
440184	1.0755
440185	1.0781
440186	0.9378
440187	0.9770
440189	1.1734
440191	1.1167
440192	1.0121
440193	1.0287
440194	1.0791
440196	1.0421
440197	1.1591
440200	0.9970

PROVIDER	CASE MIX
440202	0.8882
440203	1.0921
450002	1.1526
450004	0.9916
450005	0.9840
450007	1.2071
450008	1.1330
450010	1.1429
450011	1.1747
450013	1.2372
450014	0.9371
450015	1.2919
450016	1.2809
450018	1.3097
450019	1.1051
450020	1.0256
450021	1.3810
450022	0.9965
450023	1.1882
450024	1.1527
450025	1.2339
450027	1.0272
450028	1.1463
450029	1.1213
450031	1.1015
450032	1.0692
450033	1.3732
450034	1.3650
450035	1.1926
450037	1.1653
450039	1.1934
450040	1.3575
450041	1.0376
450042	1.4308
450043	1.1205
450044	1.3870
450045	1.2006
450046	1.1795
450047	1.0207
450048	1.0327
450050	1.0603
450051	1.4374
450052	1.0408
450053	0.9916
450054	1.3801
450055	1.0482
450056	1.2717
450057	1.1104
450058	1.2120
450059	1.1343

PROVIDER	CASE MIX
450060	1.0365
450063	0.9081
450064	1.2499
450065	0.9551
450066	1.1959
450068	1.2482
450069	0.9241
450070	1.0843
450072	1.0519
450073	1.0002
450074	1.0147
450077	0.9670
450078	1.0009
450079	1.0822
450080	1.0998
450081	1.0550
450082	0.9743
450083	1.2169
450084	1.0402
450085	1.0243
450087	1.1473
450090	1.0583
450092	1.0441
450093	0.9800
450094	1.0984
450095	1.0105
450096	1.1796
450097	1.1185
450098	0.9443
450099	1.0516
450101	1.1763
450102	1.2624
450104	1.0835
450107	1.2299
450108	1.0333
450109	0.9865
450110	1.0785
450111	1.0748
450112	1.1204
450113	1.0515
450115	1.0298
450116	1.1812
450118	1.1809
450119	1.1929
450121	1.2113
450122	0.9240
450123	1.1244
450124	1.3671
450126	1.1707
450127	0.9759

PROVIDER	CASE MIX
450128	1.1230
450129	0.7972
450130	1.2058
450131	1.0907
450132	1.3070
450133	1.1871
450134	1.0987
450135	1.2817
450136	0.8815
450137	1.1484
450140	0.8335
450141	0.8448
450142	1.0600
450143	0.9458
450144	0.9846
450145	0.8574
450146	0.8478
450147	1.1472
450148	1.1837
450149	1.1436
450150	1.0174
450151	0.9766
450152	1.1640
450153	1.2627
450154	1.1140
450155	1.0034
450157	1.0141
450160	0.8549
450162	1.2827
450163	1.0535
450164	0.9489
450165	0.9629
450166	0.9254
450169	0.9013
450170	1.0216
450174	1.0685
450175	0.9784
450176	1.1305
450177	1.0053
450178	0.9771
450179	1.1683
450181	0.8853
450182	0.8982
450183	1.1468
450184	1.2521
450185	0.8743
450187	1.2655
450188	0.9299
450190	1.0946
450191	1.1443

PROVIDER	CASE MIX
450192	1.0132
450193	1.9734
450194	1.0408
450195	1.1664
450196	1.1216
450197	1.0158
450200	1.2497
450201	1.0676
450203	1.0363
450206	1.0145
450207	1.1072
450208	1.1367
450209	1.1696
450210	0.9757
450211	1.1189
450213	1.2038
450214	1.0677
450217	0.8976
450218	0.9727
450219	1.0062
450221	0.9777
450222	1.1300
450224	0.9839
450229	1.1369
450230	1.0154
450231	1.3622
450233	0.9511
450234	0.9517
450235	0.9787
450236	0.9308
450237	1.2333
450239	1.1185
450241	0.9478
450242	0.8984
450243	1.0033
450246	0.9820
450247	0.9318
450248	1.0626
450249	0.9250
450250	0.8628
450253	0.9683
450256	0.9339
450258	0.8494
450259	1.0644
450261	0.9644
450263	1.0456
450264	0.8637
450267	0.8734
450268	1.0918
450269	0.9172

PROVIDER	CASE MIX
450270	0.9701
450271	1.0155
450272	1.1052
450275	0.9867
450276	1.0418
450278	0.9044
450280	1.1815
450281	1.1818
450282	0.8612
450283	0.9890
450284	1.0473
450286	1.0199
450288	1.0651
450289	1.1470
450292	1.0514
450293	0.9403
450296	0.9923
450297	0.9666
450299	1.0279
450300	0.9098
450303	0.9228
450304	0.8952
450305	1.0641
450306	0.9755
450307	0.8569
450309	1.0510
450311	0.9338
450312	0.9777
450315	1.0847
450317	0.9096
450319	0.9181
450320	1.1313
450321	0.8340
450322	0.9189
450324	1.2040
450325	0.9603
450327	0.9393
450328	0.9770
450330	1.0716
450331	1.0432
450332	0.9388
450333	1.1249
450334	1.0872
450337	1.0311
450338	1.0456
450340	1.0349
450341	0.8497
450342	0.9538
450343	0.9912
450346	1.0975
450347	1.0551
450348	1.0126
450349	1.0505
450351	0.9817
450352	1.1356
450353	1.0478
450355	0.9381
450357	1.0427
450358	1.5416
450359	0.9506
450362	0.9881
450365	0.9820
450366	1.1820
450369	1.0437
450370	0.9778
450371	0.9834
450372	1.1708
450373	1.1156
450374	0.8662
450376	1.2419
450378	1.1981
450379	1.1714
450381	0.9400
450382	0.9095
450388	1.2905
450389	1.0526
450391	1.0505
450393	1.1529
450394	1.1133
450395	0.9625
450399	0.9487
450400	0.9666
450402	1.1062
450403	1.1802
450410	0.9877
450411	0.9471
450415	1.0905
450416	1.1273
450417	0.9279
450418	1.2182
450419	0.9495
450421	1.0580
450422	0.7136
450423	1.0898
450424	1.1080
450425	0.9681
450429	0.9637
450431	1.2183
450438	1.0863
450440	0.9194
450446	0.9906
450447	1.1598
450450	0.8726
450451	0.9303
450454	0.9238
450455	0.9847
450457	1.3519
450458	0.8705
450459	0.8596
450460	0.9158
450462	1.2276
450464	0.9245
450465	1.0140
450467	0.9820
450469	1.1575
450472	1.0228
450473	1.0174
450475	0.9768
450476	0.9638
450481	0.9604
450484	1.1474
450486	0.9576
450488	0.9628
450489	0.9514
450492	0.9597
450493	0.8957
450497	0.9932
450498	0.9048
450508	1.1802
450513	0.9258
450514	1.0705
450517	0.9312
450518	1.0928
450523	1.1666
450527	0.9989
450530	1.1342
450534	0.8737
450535	1.0667
450537	1.1133
450538	1.0647
450539	1.1455
450544	1.0344
450545	1.0820
450546	1.0856
450547	0.9131
450550	1.0182
450551	0.9814
450557	0.9506
450558	1.2216
450559	0.9287
450561	1.1829
450563	0.9892
450565	1.1522
450568	1.0098
450569	0.9906
450570	0.9246
450571	1.1922
450573	1.0177
450574	0.9278
450575	0.9575
450577	0.8517
450578	0.8585
450579	0.9929
450580	1.0240
450581	0.9789
450582	0.8549
450583	1.0129
450584	1.0336
450586	0.9739
450587	1.0624
450588	0.9207
450590	1.0829
450591	1.1046
450595	0.9999
450596	1.0487
450597	0.9935
450600	0.9916
450603	0.8185
450604	1.0442
450605	1.1315
450607	0.8205
450609	0.0963
450610	1.1742
450614	0.9126
450615	0.9303
450617	1.1019
450620	1.0334
450621	0.8931
450623	1.0460
450624	0.9525
450626	0.9867
450627	0.9848
450628	0.8758
450629	0.9724
450630	1.3294
450631	1.3784
450632	0.9483
450633	1.2478
450634	1.1798
450635	1.2128
450637	1.0497
450638	1.1954
450639	1.0891
450641	0.9571
450643	1.0801
450644	1.1488
450646	1.1874
450647	1.4006
450648	1.0295
450649	1.0129
450651	1.1573
450652	0.9386
450653	1.1286
450654	0.8899
450655	0.8886
450656	1.0972
450657	0.8129
450658	0.9528
450659	1.1958
450660	1.3214
450661	1.0327
450662	1.1445
450665	0.9567
450666	1.0430
450667	0.9171
450668	1.3445
450669	1.0796
450670	1.0240
450671	0.9185
450672	1.2533
450673	1.0969
450674	0.9203
450675	1.1164
450676	0.9598
450677	1.2056
450678	1.1764
450679	0.9281
450681	1.1805
450682	1.0947
450683	1.1463
450684	1.0741
450685	1.1023
450686	1.1809
450687	1.1686
450688	1.0122
450690	1.1341
450691	1.0470
450694	1.1071
450696	0.9629
450697	1.1207

PROVIDER	CASE MIX
450696	0.8735
450700	0.9528
450702	1.1178
450703	1.0608
450704	1.0696
450705	0.8230
450706	1.1078
450709	1.0172
450711	1.1251
450712	0.9369
450713	1.1142
450715	1.1541
450716	1.0771
450718	1.0779
450721	0.8756
450724	1.2360
460001	1.3918
460003	1.3564
460004	1.4526
460005	1.1715
460006	1.1929
460007	1.1686
460008	1.1020
460009	1.3831
460010	1.6642
460011	1.0509
460012	1.5095
460013	1.2254
460014	0.9313
460015	1.1154
460016	0.8411
460017	1.1918
460018	0.9526
460019	0.9931
460020	1.0461
460021	1.1571
460022	0.9819
460023	1.0820
460024	1.0147
460025	0.9058
460026	0.9306
460027	0.8452
460029	0.9513
460030	1.0562
460032	0.9353
460033	1.0147
460035	0.8949
460036	1.0175
460037	0.9650
460039	0.8916

PROVIDER	CASE MIX
460041	1.1437
460042	1.2124
460044	1.0933
470001	1.0726
470003	1.5173
470004	1.0926
470005	1.1639
470006	1.0933
470008	1.1600
470010	1.0475
470011	1.1523
470012	1.1273
470013	1.0330
470015	1.1098
470016	0.9930
470018	1.1048
470020	0.9503
470023	1.1436
470024	1.0973
490001	0.9275
490002	0.9263
490003	0.6864
490004	1.1236
490005	1.2678
490006	1.0498
490007	1.5301
490008	0.9921
490009	1.3544
490010	0.9774
490011	1.1614
490012	0.9785
490013	1.0606
490014	1.3172
490015	1.1758
490017	1.1803
490018	1.0128
490019	1.1417
490020	1.0102
490021	1.0265
490022	1.1094
490023	1.1533
490024	1.2798
490027	0.9171
490028	1.0974
490029	1.0538
490030	1.0538
490031	1.0376
490032	1.6497
490033	1.1269
490035	1.0611

PROVIDER	CASE MIX
490037	1.0288
490038	0.9937
490040	1.1527
490041	1.0308
490042	1.0156
490043	1.0984
490044	1.0691
490045	1.1393
490046	1.1660
490047	1.0988
490048	1.1056
490050	1.1569
490052	1.1942
490053	1.0585
490054	0.9735
490055	0.8310
490056	0.8919
490057	1.1094
490059	1.2293
490060	0.9291
490063	1.2624
490066	1.0186
490067	1.0671
490069	1.1750
490071	1.1860
490073	1.1656
490074	1.1744
490075	1.0658
490077	1.1273
490078	0.9087
490079	1.0842
490083	0.8988
490084	0.9955
490085	1.0166
490088	1.0319
490089	0.9967
490090	1.0727
490091	1.1618
490092	1.0842
490093	1.1391
490094	1.1299
490095	1.1104
490097	1.0127
490098	1.0651
490099	0.9843
490100	1.1155
490101	1.0706
490104	0.8602
490105	0.9394
490106	0.9189

PROVIDER	CASE MIX
490107	1.0589
490108	0.9030
490109	0.9194
490110	1.0195
490111	1.0404
490112	1.3271
490113	1.1082
490114	0.9967
490115	1.0427
490116	0.9515
490117	0.9296
490118	1.2490
490119	1.1409
490120	1.1971
490122	1.0763
490123	1.1105
490124	1.0940
490125	1.0900
490126	1.0503
490127	0.8940
490130	1.1178
500001	1.2065
500002	1.2569
500003	1.1698
500005	1.3461
500006	1.1054
500007	1.1579
500008	1.7143
500009	1.1065
500010	1.1380
500011	1.1652
500012	1.2978
500014	1.4789
500018	1.2170
500016	1.3179
500017	1.1888
500019	1.0834
500020	1.1918
500021	1.1817
500023	1.0766
500024	1.2078
500025	1.6704
500026	1.2074
500027	1.3188
500028	1.0417
500029	0.9535
500030	1.3098
500031	1.1196
500033	1.1068
500034	1.0836

PROVIDER	CASE MIX
500035	1.1993
500036	1.1493
500037	1.0533
500039	1.1312
500040	1.0144
500041	1.2325
500042	1.1495
500043	1.0690
500044	1.5034
500045	1.1503
500046	1.2177
500048	0.8977
500049	1.1603
500050	1.0981
500051	1.3429
500052	1.0938
500053	1.0865
500054	1.5022
500055	1.0314
500057	1.1998
500058	1.1777
500059	1.0974
500060	1.0754
500061	1.0183
500062	0.9478
500064	1.3349
500065	1.0911
500066	1.0169
500067	0.9874
500069	0.9753
500070	1.0408
500071	1.1211
500072	1.1864
500073	1.1189
500074	1.0495
500075	1.1338
500076	1.0828
500077	1.2681
500078	1.1902
500079	1.1461
500080	0.9057
500081	0.8534
500084	0.9687
500085	0.9966
500086	1.1091
500087	1.1531
500088	1.1782
500089	1.1288
500090	0.9338
500092	1.0589

PROVIDER	CASE MIX
500093	1.0993
500094	0.9215
500096	1.0793
500097	0.9823
500098	0.9237
500100	0.9775
500101	0.9159
500102	0.9549
500104	1.1234
500106	0.9813
500107	1.0576
500108	1.4360
500109	1.1430
500110	1.1707
500114	1.2727
500118	1.1138
500119	1.1656
500122	1.2211
500123	0.8549
500124	1.1770
500125	1.0461
500129	1.3367
500132	0.8808
500133	1.1877
500135	1.1394
510001	1.1495
510002	1.1831
510003	1.0342
510004	0.9769
510005	0.9993
510006	1.1201
510007	1.1824
510008	1.0582
510009	1.0598
510011	1.0344
510012	1.0344
510013	1.0111
510014	1.0141
510015	1.0052
510016	0.9589
510018	1.0663
510019	0.9810
510020	1.1888
510022	1.3145
510023	1.0109
510024	1.1400
510025	0.9731
510026	1.0111
510027	1.0285
510028	1.0392
510029	1.0567
510030	1.0895
510031	1.0375
510033	1.1559
510035	0.9646
510036	1.0209
510038	1.0211
510039	1.1261
510040	0.8914
510043	0.9966
510045	0.9426
510046	1.0730
510047	1.0665
510048	1.0696
510050	1.0765
510052	1.0852
510053	0.9549
510054	0.9191
510055	1.1560
510058	1.1421
510059	0.6257
510060	1.0499
510061	1.0155
510062	1.1174
510063	1.0792
510064	1.0391
510065	0.9722
510066	1.0363
510067	1.0496
510068	1.0368
510070	1.0003
510071	1.0935
510072	1.0475
510074	0.8794
510076	0.9301
510077	0.9509
510080	0.9419
510081	1.0007
510082	1.0076
510084	1.0141
510085	1.1123
520001	1.1916
520002	1.2211
520003	1.0795
520004	1.1326
520006	1.1037
520007	1.0178
520008	1.1722
520009	1.2329
520010	1.1008
520011	1.1236
520012	0.9523
520013	1.1837
520014	1.2013
520015	1.1717
520016	0.9780
520017	1.0779
520018	0.9849
520019	1.1469
520020	1.2481
520021	1.1399
520022	1.0851
520024	0.9728
520025	1.0837
520026	1.0694
520027	1.1807
520028	1.2341
520029	0.9923
520030	1.3093
520031	1.1661
520032	1.0264
520033	1.1736
520034	1.1454
520035	1.1710
520037	1.4242
520038	1.1418
520039	1.0353
520040	1.2274
520041	1.0898
520042	1.0538
520043	1.3423
520044	1.1930
520045	1.3516
520047	0.9977
520048	1.2373
520049	1.5461
520051	1.5291
520053	1.0586
520054	1.0421
520056	1.1256
520057	1.0569
520058	1.0959
520059	1.1120
520060	1.0144
520062	1.1414
520063	1.1362
520064	1.3774
520066	1.1551
520067	1.3275
520068	1.0150
520069	1.1169
520070	1.2244
520071	1.1486
520074	1.0669
520075	1.2385
520076	1.1469
520077	0.9934
520078	1.2028
520081	1.2721
520082	1.0751
520083	1.3682
520084	1.0751
520087	1.3872
520088	1.1914
520089	1.2086
520090	1.0236
520091	1.2892
520092	1.0991
520094	1.2578
520095	1.1866
520096	1.2223
520097	1.1513
520098	1.4938
520100	1.1097
520101	1.0595
520102	1.1073
520103	1.2261
520104	0.9830
520105	1.0072
520107	1.1190
520109	1.0732
520110	1.0433
520111	1.1104
520112	1.0651
520113	1.1436
520114	1.0774
520115	1.2229
520116	1.0899
520117	1.0288
520118	0.9749
520120	1.1513
520121	1.0530
520122	1.0528
520123	1.1068
520124	1.1012
520126	0.9487
520127	0.9845
520130	0.9731
520131	1.0106
520132	1.2364
520134	1.0343
520135	1.0224
520136	1.3182
520138	1.6387
520139	1.1991
520140	1.2400
520141	1.0662
520142	0.9562
520143	0.9640
520144	1.0106
520145	1.0647
520146	1.3475
520148	1.3869
520149	1.1288
520151	1.0792
520152	1.1377
520153	1.0265
520154	1.0706
520156	1.0342
520157	1.0843
520159	1.0905
520160	1.5501
520161	1.0163
520167	1.1563
520170	1.1891
520171	1.0903
520173	1.1114
520174	1.4172
520175	0.9622
520177	1.3292
520178	1.0878
520180	0.9772
530001	1.1115
530002	1.0931
530003	0.9411
530004	0.9805
530005	0.9858
530006	1.0557
530007	1.0396
530008	1.1220
530009	1.0039
530010	1.1030
530011	1.1439
530012	1.2388
530014	1.0943
530015	1.1022
530016	1.3439
530017	0.8574
530018	0.9179
530019	0.9515

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
530021	1.0449								
530022	0.9678								
530023	0.9318								
530024	0.9214								
530025	1.0708								
530026	1.0892								
530027	0.8769								
530029	0.9697								
530031	1.0224								

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Table 3d.—Average Case-Mix Indexes by Hospital Classification Group for FY 1985

Urban hospitals:	
Less than 100	1.0982
100 to 404	1.1288
405 to 684	1.2987
685 and above	1.2943
Rural hospitals:	
Less than 100	.9976
100 to 169	1.0716
170 and above	1.1158

Table 4a.—Wage Index for Urban Areas

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX (Taylor, TX)	.8996
Akron, OH (Portage, OH; Summit, OH)	1.0994
Albany, GA (Dougherty, GA; Lee, GA)	.8128
Albany-Schenectady-Troy, NY (Albany, NY; Greene, NY; Montgomery, NY; Rensselaer, NY; Saratoga, NY; Schenectady, NY)	.9180
Albuquerque, NM (Bernalillo, NM)	1.0897
Alexandria, LA (Rapides, LA)	.9701
Allentown-Bethlehem, PA-NJ (Warren, NJ; Carbon, PA; Lehigh, PA; Northampton, PA)	1.0978
Altoona, PA (Blair, PA)	.9049
Amarillo, TX (Potter, TX; Randall, TX)	.9825
Anaheim-Santa Ana, CA (Orange, CA)	1.1115
Anchorage, AK (Anchorage, AK)	1.2729
Anderson, IN (Madison, IN)	.9701
Anderson, SC (Anderson, SC)	.8906
Ann Arbor, MI (Washtenaw, MI)	1.1514
Anniston, AL (Calhoun, AL)	.8486
Appleton-Oshkosh-Neenah, WI (Calumet, WI; Outagamie, WI; Winnebago, WI)	1.0387
Asheville, NC (Buncombe, NC)	.8779
Athens, GA (Clarke, GA; Jackson, GA; Madison, GA; Oconee, GA)	.9118
Atlanta, GA (Barrow, GA; Bartow, GA; Cherokee, GA; Clayton, GA; Cobb, GA; Coweta, GA; De Kalb, GA; Douglas, GA; Fayette, GA; Forsyth, GA; Fulton, GA; Gwinnett, GA; Henry, GA; Newton, GA; Paulding, GA; Rockdale, GA; Spalding, GA; Walton, GA)	.9992
Atlantic City, NJ (Atlantic, NJ; Cape May, NJ)	1.0469
Augusta, GA–SC (Columbia, GA; McDuffie, GA; Richmond, GA; Aiken, SC)	.9321
Aurora-Elgin, IL (Kane, IL; Kendall, IL)	1.0986
Austin, TX (Hays, TX; Travis, TX; Williamson, TX)	1.1058
Bakersfield, CA (Kern, CA)	1.1379
Baltimore, MD (Anne Arundel, MD; Baltimore, MD; Baltimore City, MD; Carroll, MD; Harford, MD; Howard, MD; Queen Annes, MD)	1.1066
Bangor, ME (Penobscot, ME)	.9216
Baton Rouge, LA (Ascension, LA; East Baton Rouge, LA; Livingston, LA; West Baton Rouge, LA)	.9783
Battle Creek, MI (Calhoun, MI)	1.0236
Beaumont-Port Arthur, TX (Hardin, TX; Jefferson, TX; Orange, TX)	1.0006
Beaver County, PA (Beaver, PA)	1.0099
Bellingham, WA (Whatcom, WA)	1.1287
Benton Harbor, MI (Berrien, MI)	.8845
Bergen-Passaic, NJ (Bergen, NJ; Passaic, NJ)	1.0869
Billings, MT (Yellowstone, MT)	1.0151
Biloxi-Gulfport, MS (Hancock, MS; Harrison, MS)	.8437
Binghamton, NY (Broome, NY; Tioga, NY)	.9488
Birmingham, AL (Blount, AL; Jefferson, AL; Saint Clair, AL; Shelby, AL; Walker, AL)	.9892
Bismarck, ND (Burleigh, ND; Morton, ND)	.9870
Bloomington, IN (Monroe, IN)	.9828
Bloomington-Normal, IL (McLean, IL)	.9772
Boise City, ID (Ada, ID)	1.0506
Boston-Lawrence-Salem-Lowell-Brockton, MA (Essex, MA; Middlesex, MA; Norfolk, MA; Plymouth, MA; Suffolk, MA)	1.1475
Boulder-Longmont, CO (Boulder, CO)	1.1242
Bradenton, FL (Manatee, FL)	.9128
Brazoria, TX (Brazoria, TX)	.8876
Bremerton, WA (Kitsap, WA)	.9741
Bridgeport-Stamford-Norwalk-Danbury, CT (Fairfield, CT)	1.1759
Brownsville-Harlingen, TX (Cameron, TX)	.8911
Bryan-College Station, TX (Brazos, TX)	.9469
Buffalo, NY (Erie, NY)	1.0806
Burlington, NC (Alamance, NC)	.7867
Burlington, VT (Chittenden, VT; Grand Isle, VT)	1.0056
Canton, OH (Carroll, OH; Stark, OH)	1.0006
Casper, WY (Natrona, WY)	1.0962
Cedar Rapids, IA (Linn, IA)	1.0099
Champaign-Urbana-Rantoul, IL (Champaign, IL)	.9282
Charleston, SC (Berkeley, SC; Charleston, SC; Dorchester, SC)	.8946
Charleston, WV (Kanawha, WV; Putnam, WV)	1.0406
Charlotte-Gastonia-Rock Hill, NC-SC (Cabarrus, NC; Gaston, NC; Lincoln, NC; Mecklenburg, NC; Rowan, NC; Union, NC; York, SC)	.9825
Charlottesville, VA (Albemarle, VA; Charlottesville City, VA; Fluvanna, VA; Greene, VA)	.9276
Chattanooga, TN-GA (Catoosa, GA; Dade, GA; Walker, GA; Hamilton, TN; Marion, TN; Sequatchie, TN)	.9987
Cheyenne, WY (Laramie, WY)	.9930
Chicago, IL (Cook, IL; Du Page, IL; McHenry, IL)	1.2350
Chico, CA (Butte, CA)	1.2372
Cincinnati, OH-KY-IN (Dearborn, IN; Boone, KY; Campbell, KY; Kenton, KY; Clermont, OH; Hamilton, OH; Warren, OH)	1.0969
Clarksville-Hopkinsville, TN-KY (Christian, KY; Montgomery, TN)	.8123
Cleveland, OH (Cuyahoga, OH; Geauga, OH; Lake, OH; Medina, OH)	1.1479
Colorado Springs, CO (El Paso, CO)	1.0262
Columbia, MO (Boone, MO)	1.0941
Columbia, SC (Lexington, SC; Richland, SC)	.9100
Columbus, GA–AL (Russell, AL; Chattahoochee, GA; Muscogee, GA)	.7871
Columbus, OH (Delaware, OH; Fairfield, OH; Franklin, OH; Licking, OH; Madison, OH; Pickaway, OH; Union, OH)	.9613
Corpus Christi, TX (Nueces, TX; San Patricio, TX)	.9826
Cumberland, MD–WV (Allegany, MD; Mineral, WV)	.8930
Dallas, TX (Collin, TX; Dallas, TX; Denton, TX; Ellis, TX; Kaufman, TX; Rockwall, TX)	1.0654
Danville, VA (Danville City, VA; Pittsylvania, VA)	.8027
Davenport-Rock Island-Moline, IA-IL (Scott, IA; Henry, IL; Rock Island, IL)	1.0562
Dayton-Springfield, OH (Clark, OH; Greene, OH; Miami, OH; Montgomery, OH)	1.0059
Daytona Beach, FL (Volusia, FL)	.9071
Decatur, IL (Macon, IL)	.8522
Denver, CO (Adams, CO; Arapahoe, CO; Denver, CO; Douglas, CO; Jefferson, CO)	1.2770
Des Moines, IA (Dallas, IA; Polk, IA; Warren, IA)	1.0479
Detroit, MI (Lapeer, MI; Livingston, MI; Macomb, MI; Monroe, MI; Oakland, MI; Saint Clair, MI; Wayne, MI)	1.1639
Dothan, AL (Dale, AL; Houston, AL)	.8395
Dubuque, IA (Dubuque, IA)	1.0512
Duluth, MN–WI (St. Louis, MN; Douglas, WI)	.9857
Eau Claire, WI (Chippewa, WI; Eau Claire, WI)	.9428
El Paso, TX (El Paso, TX)	.9967
Elkhart-Goshen, IN (Elkhart, IN)	.9579
Elmira, NY (Chemung, NY)	.8660
Enid, OK (Garfield, OK)	.9555
Erie, PA (Erie, PA)	.9017
Eugene-Springfield, OR (Lane, OR)	1.1091

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
Evansville, IN-KY (Posey, IN; Vanderburgh, IN; Warrick, IN; Henderson, KY)	1.0142
Fargo-Moorhead, ND-MN (Clay, MN; Cass, ND)	1.0999
Fayetteville, NC (Cumberland, NC)	.8269
Fayetteville-Springdale, AR (Washington, AR)	.8019
Flint, MI (Genesee, MI; Shiawassee, MI)	1.1999
Florence, AL (Colbert, AL; Lauderdale, AL)	.7831
Florence, SC (Florence, SC)	.7589
Fort Collins-Loveland, CO (Larimer, CO)	1.0797
Fort Lauderdale-Hollywood-Pompano Beach, FL (Broward, FL)	1.1188
Fort Myers-Cape Coral, FL (Lee, FL)	.9468
Fort Pierce, FL (Martin, FL; St. Lucie, FL)	1.0149
Fort Smith, AR-OK (Crawford, AR; Sebastian, AR; Sequoyah, OK)	.9175
Fort Walton Beach, FL (Okaloosa, FL)	.8998
Fort Wayne, IN (Allen, IN; De Kalb, IN; Whitley, IN)	.9487
Fort Worth-Arlington, TX (Johnson, TX; Parker, TX; Tarrant, TX)	.9825
Fresno, CA (Fresno, CA)	1.1405
Gadsden, AL (Etowah, AL)	.8712
Gainesville, FL (Alachua, FL; Bradford, FL)	.9571
Galveston-Texas City, TX (Galveston, TX)	1.1328
Gary-Hammond, IN (Lake, IN; Porter, IN)	1.0997
Glens Falls, NY (Warren, NY; Washington, NY)	.9536
Grand Forks, ND (Grand Forks, ND)	.9799
Grand Rapids, MI (Kent, MI; Ottawa, MI)	1.0598
Great Falls, MT (Cascade, MT)	1.0943
Greeley, CO (Weld, CO)	1.0968
Green Bay, WI (Brown, WI)	1.0250
Greensboro-Winston-Salem-High Point, NC (Davidson, NC; Davie, NC; Forsyth, NC; Guilford, NC; Randolph, NC; Stokes, NC; Yadkin, NC)	.9319
Greenville-Spartanburg, SC (Greenville, SC; Pickens, SC; Spartanburg, SC)	.9062
Hagerstown, MD (Washington, MD)	.9515
Hamilton-Middletown, OH (Butler, OH)	1.0139
Harrisburg-Lebanon-Carlisle, PA (Cumberland, PA; Dauphin, PA; Lebanon, PA; Perry, PA)	.9795
Hartford-Middletown-New Britain-Bristol, CT (Hartford, CT; Litchfield, CT; Middlesex, CT; Tolland, CT)	1.1377
Hickory, NC (Alexander, NC; Burke, NC; Catawba, NC)	.9915
Honolulu, HI (Honolulu, HI)	1.1933

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
Houma-Thibodaux, LA (Lafourche, LA; Terrebonne, LA)	.9161
Houston, TX (Fort Bend, TX; Harris, TX; Liberty, TX; Montgomery, TX; Waller, TX)	1.0569
Huntington-Ashland, WV-KY-OH (Boyd, KY; Carter, KY; Greenup, KY; Lawrence, OH; Cabell, WV; Wayne, WV	.9439
Huntsville, AL (Madison, AL)	.9598
Indianapolis, IN (Boone, IN; Hamilton, IN; Hancock, IN; Hendricks, IN; Johnson, IN; Marion, IN; Morgan, IN; Shelby, IN)	1.0518
Iowa City, IA (Johnson, IA)	1.2998
Jackson, MI (Jackson, MI)	1.0171
Jackson, MS; (Hinds, MS; Madison, MS; Rankin, MS)	.8285
Jackson, TN (Madison, TN)	.7658
Jacksonville, FL (Clay, FL; Duval, FL; Nassau, FL; St. Johns, FL)	.9411
Jacksonville, NC (Onslow, NC)	.7937
Janesville-Beloit, WI (Rock, WI)	.9352
Jersey City, NJ (Hudson, NJ)	1.1026
Johnson City-Kingsport-Bristol, TN-VA (Carter, TN; Hawkins, TN; Sullivan, TN; Unicoi, TN; Washington, TN; Bristol City, VA; Scott, VA; Washington, VA)	.8553
Johnstown, PA (Cambria, PA; Somerset, PA)	.9456
Joliet, IL (Grundy, IL; Will, IL)	1.1170
Joplin, MO (Jasper, MO; Newton, MO)	.9135
Kalamazoo, MI (Kalamazoo, MI)	1.2250
Kankakee, IL (Kankakee, IL)	.9440
Kansas City, KS-MO (Johnson, KS; Leavenworth, KS; Miami, KS; Wyandotte, KS; Cass, MO; Clay, MO; Jackson, MO; Lafayette, MO; Platte, MO; Ray, MO)	1.0561
Kenosha, WI (Kenosha, WI)	1.0795
Killeen-Temple, TX (Bell, TX; Coryell, TX)	.8784
Knoxville, TN (Anderson, TN; Blount, TN; Grainger, TN; Jefferson, TN; Knox, TN; Sevier, TN; Union, TN)	.8630
Kokomo, IN (Howard, IN; Tipton, IN)	.9797
LaCrosse, WI (LaCrosse, WI)	1.0092
Lafayette, LA (Lafayette, LA; St. Martin, LA)	1.0040
Lafayette, IN (Tippecanoe, IN)	.9096
Lake Charles, LA (Calcasieu, LA)	.9962
Lake County, IL (Lake, IL)	1.1551
Lakeland-Winter Haven, FL (Polk, FL)	.8788
Lancaster, PA (Lancaster, PA)	1.0319
Lansing-East Lansing, MI (Clinton, MI; Eaton, MI; Ingham, MI)	1.0690
Laredo, TX (Webb, TX)	.8103
Las Cruces, NM (Dona Ana, NM)	.8702
Las Vegas, NV (Clark, NV)	1.1171
Lawrence, KS (Douglas, KS)	1.0105
Lawton, OK (Comanche, OK)	.9399
Lewiston-Auburn, ME (Androscoggin, ME)	.9356

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lexington-Fayette, KY (Bourbon, KY; Clark, KY; Fayette, KY; Jessamine, KY; Scott, KY; Woodford, KY)	.9800
Lima, OH (Allen, OH; Auglaize, OH)	.9793
Lincoln, NE (Lancaster, NE)	.9639
Little Rock-North Little Rock, AR (Faulkner, AR; Lonoke, AR; Pulaski, AR; Saline, AR)	1.1053
Longview-Marshall, TX (Gregg, TX; Harrison, TX)	.8546
Lorain-Elyria, OH (Lorain, OH)	1.0204
Los Angeles-Long Beach, CA (Los Angeles, CA)	1.3192
Louisville, KY-IN (Clark, IN; Floyd, IN; Harrison, IN; Bullitt, KY; Jefferson, KY; Oldham, KY; Shelby, KY)	1.0007
Lubbock, TX (Lubbock, TX)	1.0054
Lynchburg, VA (Amherst, VA; Campbell, VA; Lynchburg City, VA)	.9147
Macon-Warner Robins, GA (Bibb, GA; Houston, GA; Jones, GA; Peach, GA)	.9255
Madison, WI (Dane, WI)	1.0621
Manchester-Nashua, NH (Hillsboro, NH; Merrimack, NH)	.9507
Mansfield, OH (Richland, OH)	.9846
McAllen-Edinburg-Mission, TX (Hidalgo, TX)	.8045
Medford, OR (Jackson, OR)	1.0279
Melbourne-Titusville, FL (Brevard, FL)	.9309
Memphis, TN-AR-MS (Crittenden, AR; De Soto, MS; Shelby, TN; Tipton, TN)	1.0417
Miami-Hialeah, FL (Dade, FL)	1.0824
Middlesex-Somerset-Hunterdon, NJ (Hunterdon, NJ; Middlesex, NJ; Somerset, NJ)	1.0273
Midland, TX (Midland, TX)	1.1221
Milwaukee, WI (Milwaukee, WI; Ozaukee, WI; Washington, WI; Waukesha, WI)	1.1327
Minneapolis-St. Paul, MN-WI (Anoka, MN; Carver, MN; Chisago, MN; Dakota, MN; Hennepin, MN; Isanti, MN; Ramsey, MN; Scott, MN; Washington, MN; Wright, MN; St. Croix, WI)	1.1685
Mobile, AL (Baldwin, AL; Mobile, AL)	.8662
Modesto, CA (Stanislaus, CA)	1.2014
Monmouth-Ocean, NJ (Monmouth, NJ; Ocean, NJ)	.9651
Monroe, LA (Ouachita, LA)	.9274
Montgomery, AL (Autauga, AL; Elmore, AL; Montgomery, AL)	.8811
Muncie, IN (Delaware, IN)	.9991
Muskegon, MI (Muskegon, MI)	.9639
Naples, FL (Collier, FL)	1.0372
Nashville, TN (Cheatham, TN; Davidson, TN; Dickson, TN; Robertson, TN; Rutherford, TN; Sumner, TN; Williamson, TN; Wilson, TN)	.9345

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
Nassau-Suffolk, NY (Nassau, NY; Suffolk, NY)	1.3580
New Bedford-Fall River-Attleboro, MA (Bristol, MA)	.9728
New Haven-West Haven-Waterbury-Meriden, CT (New Haven, CT)	1.1180
New London-Norwich, CT (New London, CT)	1.1021
New Orleans, LA (Jefferson, LA; Orleans, LA; St. Bernard, LA; St. Charles, LA; St. John The Baptist, LA; St. Tammany, LA)	.8276
New York, NY (Bronx, NY; Kings, NY; New York City, NY; Putnam, NY; Queens, NY; Richmond, NY; Rockland, NY; Westchester, NY	1.3707
Newark, NJ (Essex, NJ; Morris, NJ; Sussex, NJ; Union, NJ)	1.1320
Niagara Falls, NY (Niagara, NY)	.9307
Norfolk-Virginia Beach-Newport News, VA (Chesapeake City, VA; Gloucester, VA; Hampton City, VA; James City Co., VA; Newport News City, VA; Norfolk City, VA; Poquoson, VA; Portsmouth City, VA; Suffolk City, VA; Virginia Beach City, VA; Williamsburg City, VA; York, VA)	.9521
Oakland, CA (Alameda, CA; Contra Costa, CA)	1.0769
Ocala, FL (Marion, FL)	.8870
Odessa, TX (Ector, TX)	.9548
Oklahoma City, OK (Canadian, OK; Cleveland, OK; Logan, OK; McClain, OK; Oklahoma, OK; Pottawatomie, OK)	1.0080
Olympia, WA (Thurston, WA)	1.0707
Omaha, NE–IA (Pottawattamie, IA; Douglas, NE; Sarpy, NE; Washington, NE)	1.0482
Orange County, NY (Orange, NY)	.9230
Orlando, FL (Orange, FL; Osceola, FL; Seminole, FL)	1.0113
Owensboro, KY (Daviess, KY)	.8180
Oxnard-Ventura, CA (Ventura, CA)	1.2766
Panama City, FL (Bay, FL)	.8292
Parkersburg-Marietta, WV–OH (Washington, OH; Wood, WV)	.9053
Pascagoula, MS (Jackson, MS)	.9009
Pensacola, FL (Escambia, FL; Santa Rosa, FL)	.8877
Peoria, IL (Peoria, IL; Tazewell, IL; Woodford, IL)	1.0680
Philadelphia, PA-NJ (Burlington, NJ; Camden, NJ; Gloucester, NJ; Bucks, PA; Chester, PA; Delaware, PA; Montgomery, PA; Philadelphia, PA)	1.1808
Phoenix, AZ (Maricopa, AZ)	1.0725
Pine Bluff, AR (Jefferson, AR)	.7981
Pittsburgh, PA (Allegheny, PA; Fayette, PA; Washington, PA; Westmoreland, PA)	1.0980
Pittsfield, MA (Berkshire, MA)	1.0170
Portland, ME (Cumberland, ME; Sagadahoc, ME; York, ME)	.9807

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
Portland, OR (Clackamas, OR; Multonomah, OR; Washington, OR; Yamhill, OR)	1.1995
Portsmouth-Dover-Rochester, NH (Rockingham, NH; Strafford, NH)	.9304
Poughkeepsie, NY (Dutchess, NY)	.9978
Providence-Fawtucket-Woonsocket, RI (Bristol, RI; Kent, RI; Newport, RI; Providence, RI; Statewide, RI; Washington, RI)	1.0425
Provo-Orem, UT (Utah, UT)	.9785
Pueblo, CO (Pueblo, CO)	1.1128
Racine, WI (Racine, WI)	.9028
Raleigh-Durhan, NC (Durham, NC; Franklin, NC; Orange, NC; Wake, NC)	.9649
Rapid City, SD (Pennington, SD)	.9585
Reading, PA (Berks, PA)	1.0173
Redding, CA (Shasta, CA)	1.2304
Reno, NV (Washoe, NV)	1.1762
Richland-Kennewick, WA (Benton, WA; Franklin, WA)	1.0180
Richmond-Petersburg, VA (Charles City Co., VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA)	.9494
Riverside-San Bernardino, CA (Riverside, CA; San Bernardino, CA)	1.2425
Roanoke, VA (Botetourt, VA; Roanoke, VA; Roanoke City, VA; Salem City, VA)	.9930
Rochester, MN (Olmsted, MN)	1.0208
Rochester, NY (Livingston, NY; Monroe, NY; Ontario, NY; Orleans, NY; Wayne, NY)	1.0151
Rockford, IL (Boone, IL; Winnebago, IL)	1.1270
Sacramento, CA (Eldorado, CA; Placer, CA; Sacramento, CA; Yolo, CA)	1.2873
Saginaw-Bay City-Midland, MI (Bay, MI; Midland, MI; Saginaw, MI)	1.0969
St. Cloud, MN (Benton, MN; Sherburne, MN; Stearns, MN)	.9944
St. Joseph, MO (Buchanan, MO)	.9417
St. Louis, MO-IL (Clinton, IL; Jersey, IL; Madison, IL; Monroe, IL; St. Clair, IL; Franklin, MO; Jefferson, MO; St. Charles, MO; St. Louis, MO; St. Louis City, MO)	1.0747
Salem, OR (Marion, OR; Polk, OR)	1.0890
Salinas-Seaside-Monterey, CA (Monterey, CA)	1.2478
Salt Lake City-Ogden, UT (Davis, UT; Salt Lake, UT; Weber, UT)	1.0277
San Angelo, TX (Tom Green, TX)	.8884
San Antonio, TX (Bexar, TX; Comal, TX; Guadalupe, TX)	.9877
San Diego, CA (San Diego, CA)	1.3007
San Francisco, CA (Marin, CA; San Francisco, CA; San Mateo, CA)	1.6595

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
San Jose, CA (Santa Clara, CA)	1.4599
Santa Barbara-Santa Maria-Lompoc, CA (Santa Barbara, CA)	1.1735
Santa Cruz, CA (Santa Cruz, CA)	1.2341
Santa Fe, NM (Los Alamos, NM; Santa Fe, NM)	.9737
Santa Rosa-Petaluma, CA (Sonoma, CA)	1.3016
Sarasota, FL (Sarasota, FL)	.9566
Savannah, GA (Chatham, GA; Effingham, GA)	.8851
Scranton-Wilkes Barre, PA (Columbia, PA; Lackawanna, PA; Luzerne, PA; Monroe, PA; Wyoming, PA)	.9906
Seattle, WA (King, WA; Snohomish, WA)	1.1483
Sharon, PA (Mercer, PA)	.9565
Sheboygan, WI (Sheboygan, WI)	.9812
Sherman-Denison, TX (Grayson, TX)	.8556
Shreveport, LA (Bossier, LA; Caddo, LA)	.9542
Sioux City, IA–NE (Woodbury, IA; Dakota, NE)	.9906
Sioux Falls, SD (Minnehaha, SD)	1.0135
South Bend-Mishawaka, IN (St. Joseph, IN)	1.0013
Spokane, WA (Spokane, WA)	1.1474
Springfield, IL (Menard, IL; Sangamon, IL)	1.0585
Springfield, MO (Christian, MO; Greene, MO)	.9790
Springfield, MA (Hampden, MA; Hampshire, MA)	.9988
State College, PA (Centre, PA)	1.0992
Steubenville-Weirton, OH–WV (Jefferson, OH; Brooke, WV; Hancock, WV)	.8584
Stockton, CA (San Joaquin, CA)	1.2778
Syracuse, NY (Madison, NY; Onondaga, NY; Oswego, NY)	1.0225
Tacoma, WA (Pierce, WA)	1.0971
Tallahassee, FL (Gadsden, FL; Leon, FL)	.9439
Tampa-St. Petersburg-Clearwater, FL (Hernando, FL; Hillsborough, FL; Pasco, FL; Pinellas, FL)	.9758
Terre Haute, IN (Clay, IN; Vigo, IN)	.8304
Texarkana, TX—Texarkana, AR (Miller, AR; Bowie, TX)	.8587
Toledo, OH (Fulton, OH; Lucas, OH; Wood, OH)	1.2177
Topeka, KS (Shawnee, KS)	1.0554
Trenton, NJ (Mercer, NJ)	1.0341
Tucson, AZ (Pima, AZ)	1.0016
Tulsa, OK (Creeks, OK; Osage, OK; Rogers, OK; Tulsa, OK; Wagoner, OK)	1.0066
Tuscaloosa, AL (Tuscaloosa, AL)	1.0099
Tyler, TX (Smith, TX)	.9962
Utica-Rome, NY (Herkimer, NY; Oneida, NY)	.8775
Vallejo-Fairfield-Napa, CA (Napa, CA; Solano, CA)	1.3296
Vancouver, WA (Clark, WA)	1.1573
Victoria, TX (Victoria, TX)	.8144
Vineland-Millville-Bridgeton, NJ (Cumberland, NJ)	.9658

Table 4a.—Wage Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Wage index
Visalia-Tulare-Portersville, CA (Tulare, CA)	1.0885
Waco, TX (McLennan, TX)	.9049
Washington, D.C.-MD-VA (District of Columbia, DC; Calvert, MD; Charles, MD; Frederick, MD; Montgomery, MD; Prince Georges, MD; Alexandria City, VA; Arlington, VA; Fairfax, VA; Fairfax City, VA; Falls Church City, VA; Loudoun, VA; Manassas City, VA; Manassas Park City, VA; Prince William, VA; Stafford, VA)	1.1876
Waterloo-Cedar Falls, IA (Black Hawk, IA; Bremer, IA)	.9519
Wausau, WI (Marathon, WI)	.9709
West Palm Beach-Boca Raton-Delray Beach, FL (Palm Beach, FL)	.9889
Wheeling, WV-OH (Belmont, OH; Marshall, WV; Ohio, WV)	.8989
Wichita, KS (Butler, KS; Sedgwick, KS)	1.1304
Wichita Falls, TX (Wichita, TX)	.8711
Williamsport, PA (Lycoming, PA)	.9261
Wilmington, DE-NJ-MD (New Castle, DE; Cecil MD; Salem, NJ)	1.0510
Wilmington, NC (New Hanover, NC)	.9521
Worcester-Fitchburg-Leominster, MA (Worcester, MA)	1.0020
Yakima, WA (Yakima, WA)	1.0512
York, PA (Adams, PA; York, PA)	.9761
Youngstown-Warren, OH (Mahoning, OH; Trumbull, OH)	1.0403
Yuba City, CA (Sutter, CA; Yuba, CA)	1.0383

Table 4b.—Wage Index for Rural Areas

Non-urban area	Wage index
Alabama	.7411
Alaska	1.4828
Arizona	.9254
Arkansas	.7048
California	1.1372
Colorado	.9257
Connecticut	1.0363
Delaware	.8681
Florida	.8760
Georgia	.7722
Hawaii	1.0062
Idaho	.9062
Illinois	.8951
Indiana	.9021
Iowa	.8554
Kansas	.8416
Kentucky	.7977
Louisiana	.8542
Maine	.8591
Maryland	.8700
Massachusetts	1.0470
Michigan	.9470
Minnesota	.8724
Mississippi	.7048
Missouri	.8264
Montana	.9066
Nebraska	.8249
Nevada	1.0719
New Hampshire	.9193
New Jersey [1]	
New Mexico	.9145
New York	.9606
North Carolina	.8070
North Dakota	.8994
Ohio	.9033
Oklahoma	.8400
Oregon	1.0703
Pennsylvania	.9357
Rhode Island [1]	
South Carolina	.7769
South Dakota	.8302
Tennessee	.7676
Texas	.8120
Utah	.9435
Vermont	.8823
Virginia	.8134
Washington	1.0197
West Virginia	.8751
Wisconsin	.9028
Wyoming	.9673

[1] All counties within the State are classified urban.

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	1	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	5.5632	21.4	16.2	33
2	1	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.8117	19.7	13.4	30
3	1	SURG	* CRANIOTOMY AGE <18	2.9183		12.7	30
4	1	SURG	SPINAL PROCEDURES	2.7300	20.2	15.8	32
5	1	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.6513	9.7	8.0	25
6	1	SURG	CARPAL TUNNEL RELEASE	.4072	2.8	2.3	7
7	1	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC AGE >69 &/OR CC	1.3867	11.5	6.1	23
8	1	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC AGE <70 W/O CC	.7466	5.6	3.7	19
9	1	MED	SPINAL DISORDERS & INJURIES	1.4237	14.4	8.4	25
10	1	MED	NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR CC	1.1324	11.6	7.8	25
11	1	MED	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O CC	.9338	10.2	6.1	23
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.0016	11.4	7.8	25
13	1	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.9789	10.3	7.7	25
14	1	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3144	12.6	8.5	24
15	1	MED	TRANSIENT ISCHEMIC ATTACK AND PRECEREBRAL OCCLUSIONS	.6241	6.1	4.7	19
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH CC	.9044	8.9	6.8	24
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6803	7.8	5.6	23
18	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS AGE >69 AND/OR CC	.7567	8.2	6.1	23
19	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS AGE <70 W/O CC	.6548	7.2	5.3	22
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.4090	11.5	7.6	25
21	1	MED	VIRAL MENINGITIS	1.8144	10.6	7.9	25
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	.7087	6.5	5.0	20
23	1	MED	NONTRAUMATIC STUPOR & COMA	1.1242	8.5	5.2	22
24	1	MED	SEIZURE & HEADACHE AGE >69 AND/OR CC	.7644	6.6	5.0	22
25	1	MED	SEIZURE & HEADACHE AGE 18-69 W/O CC	.5522	5.5	4.0	18
26	1	MED	SEIZURE & HEADACHE AGE 0-17	.6255	3.9	2.7	14
27	1	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5648	9.8	4.7	22
28	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >69 AND/OR CC	.9422	8.5	5.8	22
29	1	MED	TRAUMATIC STUPOR & COMA <1 HR AGE 18-69 W/O CC	.6462	6.0	3.6	21
30	1	MED	* TRAUMATIC STUPOR & COMA <1 HR AGE 0-17	.3539		2.8	8
31	1	MED	CONCUSSION AGE >69 AND/OR CC	.5383	5.7	3.9	20
32	1	MED	CONCUSSION AGE 18-69 W/O CC	.4064	4.1	2.9	14
33	1	MED	* CONCUSSION AGE 0-17	.2457		1.6	5
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR CC	.9777	8.9	6.1	23
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O CC	.7384	7.6	4.9	22

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
*** WEIGHT, LENGTH OF STAY, AND OUTLIER THRESHOLD ARE ESTIMATED; THEY WILL BE RECOMPUTED FOR FINAL.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	2	SURG	RETINAL PROCEDURES	.7103	4.7	4.1	12
37	2	SURG	ORBITAL PROCEDURES	.6688	4.2	3.2	12
38	2	SURG	PRIMARY IRIS PROCEDURES	.3990	3.1	2.4	8
39	2	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5721	2.3	2.1	4
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4129	2.5	2.1	6
41	2	SURG *	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657		1.6	4
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6543	3.7	3.0	10
43	2	MED	HYPHEMA	.3462	4.6	3.7	13
44	2	MED	ACUTE MAJOR EYE INFECTIONS	.6397	7.3	5.9	21
45	2	MED	NEUROLOGICAL EYE DISORDERS	.5409	4.7	3.4	14
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 WITH CC	.6018	5.6	3.7	21
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4192	3.6	2.5	11
48	2	MED *	OTHER DISORDERS OF THE EYE AGE 0-17	.4018		2.7	13
49	3	SURG	MAJOR HEAD & NECK PROCEDURES	2.6745	17.1	13.1	30
50	3	SURG	SIALOADENECTOMY	.7034	4.4	3.7	11
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5887	4.0	3.3	10
52	3	SURG	CLEFT LIP & PALATE REPAIR	.6956	4.4	3.5	13
53	3	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6176	5.8	3.8	10
54	3	SURG *	SINUS & MASTOID PROCEDURES AGE 0-17	.6889		3.2	11
55	3	SURG	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	.4342	2.6	2.1	6
56	3	SURG	RHINOPLASTY	.4358	1.8	2.3	7
57	3	SURG	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.7718	5.7	3.7	20
58	3	SURG *	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097		1.5	3
59	3	SURG	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17	.4132	2.9	2.3	7
60	3	SURG *	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	.2616		1.5	3
61	3	SURG	MYRINGOTOMY WITH TUBE INSERTION AGE >17	.4274	2.9	2.0	8
62	3	SURG *	MYRINGOTOMY WITH TUBE INSERTION AGE 0-17	.3069		1.3	3
63	3	SURG	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1619	8.1	5.1	22
64	3	MED	EAR, NOSE & THROAT MALIGNANCY	.9769	8.5	4.8	22
65	3	MED	DYSEQUILIBRIUM	.4499	4.8	3.8	14
66	3	MED	EPISTAXIS	.4146	4.3	3.3	13
67	3	MED	EPIGLOTTITIS	.9364	6.5	4.8	21
68	3	MED	OTITIS MEDIA & URI AGE >69 AND/OR CC	.6092	6.3	5.1	17
69	3	MED	OTITIS MEDIA & URI AGE 18-69 W/O CC	.5040	5.1	4.1	14
70	3	MED	OTITIS MEDIA & URI AGE 0-17	.5251	4.2	3.3	12

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
*** WEIGHT, LENGTH OF STAY, AND OUTLIER THRESHOLD ARE ESTIMATED; THEY WILL BE RECOMPUTED FOR FINAL.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	3	MED	LARYNGOTRACHEITIS	.6594	5.8	4.6	18
72	3	MED	NASAL TRAUMA & DEFORMITY	.5217	5.2	3.5	19
73	3	MED	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	.6049	5.1	3.4	16
74	3	MED	* OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	.3427		2.1	9
75	4	SURG	MAJOR CHEST PROCEDURES	2.9780	16.2	13.4	30
76	4	SURG	OTHER RESPIRATORY SYSTEM O.R. PROCEDURES WITH CC	2.3667	14.9	10.3	27
77	4	SURG	OTHER RESPIRATORY SYSTEM O.R. PROCEDURES W/O CC	1.6735	11.5	7.0	24
78	4	MED	PULMONARY EMBOLISM	1.4802	11.7	9.5	27
79	4	MED	***RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >69 AND/OR CC	1.9311	12.8	9.6	27
80	4	MED	***RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 18-69 W/O CC	1.4335	12.8	8.5	24
81	4	MED	* RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	.8632		6.1	23
82	4	MED	RESPIRATORY NEOPLASMS	1.1259	9.9	8.6	24
83	4	MED	MAJOR CHEST TRAUMA AGE >69 AND/OR CC	.8898	8.4	6.4	24
84	4	MED	MAJOR CHEST TRAUMA AGE <70 W/O CC	.5921	6.8	4.6	19
85	4	MED	PLEURAL EFFUSION AGE >69 AND/OR CC	1.1198	9.9	7.2	24
86	4	MED	PLEURAL EFFUSION AGE <70 W/O CC	.9761	8.8	5.9	23
87	4	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.8078	10.2	7.8	24
88	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0769	8.3	5.6	24
89	4	MED	***SIMPLE PNEUMONIA & PLEURISY AGE >69 AND/OR CC	1.1637	9.6	7.5	25
90	4	MED	***SIMPLE PNEUMONIA & PLEURISY AGE 18-69 W/O CC	.8828	7.7	5.2	22
91	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.6216	5.7	4.4	19
92	4	MED	INTERSTITIAL LUNG DISEASE AGE >69 AND/OR CC	1.1117	9.8	8.3	24
93	4	MED	INTERSTITIAL LUNG DISEASE AGE <70 W/O CC	.8892	7.5	5.4	22
94	4	MED	PNEUMOTHORAX AGE >69 AND/OR CC	1.3044	10.1	7.6	25
95	4	MED	PNEUMOTHORAX AGE <70 W/O CC	.8797	7.8	5.3	23
96	4	MED	BRONCHITIS & ASTHMA AGE >69 AND/OR CC	.8448	7.3	6.0	20
97	4	MED	BRONCHITIS & ASTHMA AGE 18-69 W/O CC	.7092	6.2	5.1	17
98	4	MED	BRONCHITIS & ASTHMA AGE 0-17	.7203	4.5	3.8	12
99	4	MED	RESPIRATORY SIGNS & SYMPTOMS AGE >69 AND/OR CC	.8078	6.4	4.6	22
100	4	MED	RESPIRATORY SIGNS & SYMPTOMS AGE <70 W/O CC	.6255	5.0	3.6	16
101	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES AGE >69 AND/OR CC	.8461	7.5	5.5	23
102	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES AGE <70 WITHOUT CC	.6843	6.1	4.3	21
103	5	SURG	HEART TRANSPLANT	.0000			
104	5	SURG	CARDIAC VALVE PROCEDURE WITH PUMP & WITH CARDIAC CATH	7.3161	21.6	16.6	35
105	5	SURG	CARDIAC VALVE PROCEDURE WITH PUMP & W/O CARDIAC CATH	4.5408	16.2	15.8	32

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	5	SURG	CORONARY BYPASS WITH CARDIAC CATH	5.3332	16.3	14.7	32
107	5	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.6614	14.5	12.7	30
108	5	SURG	OTHER CARDIOVASCULAR OR THORACIC PROC. WITH PUMP	4.7810	14.7	10.6	28
109	5	SURG	CARDIOTHORACIC PROCEDURES W/O PUMP	4.3597	14.7	9.8	26
110	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP AGE >69 AND/OR CC	3.3215	16.4	13.1	30
111	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP AGE <70 W/O CC	2.4581	13.1	11.2	28
112	5	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.2239	11.8	8.1	25
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.5406	21.8	17.2	34
114	5	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8946	17.2	12.4	29
115	5	SURG	PERM CARDIAC PACEMAKER IMPLANT WITH AMI, HEART FAILURE OR SHOCK	4.1634	16.6	13.9	31
116	5	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.9789	9.6	7.6	25
117	5	SURG	CARDIAC PACEMAKER REPLACE & REVIS EXC PULSE GEN REPL ONLY	1.4684	6.5	4.8	20
118	5	SURG	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY	1.8784	4.7	3.4	14
119	5	SURG	VEIN LIGATION & STRIPPING	.9165	7.7	5.6	23
120	5	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.2580	17.8	11.4	28
121	5	MED	CIRCULATORY DISORDERS WITH AMI & C.V. COMP. DISCH. ALIVE	1.7694	12.4	10.3	27
122	5	MED	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3270	10.6	8.8	26
123	5	MED	CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.3525	5.6	3.0	20
124	5	MED	CIRCULATORY DISORDERS EXC AMI, WITH CARD CATH & COMPLEX DIAG	1.2553	7.1	5.0	22
125	5	MED	CIRCULATORY DISORDERS EXC AMI, WITH CARD CATH W/O COMPLEX DIAG	.7266	3.8	2.8	11
126	5	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.9848	21.8	18.1	35
127	5	MED	HEART FAILURE & SHOCK	1.0100	8.9	6.8	24
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	.8456	9.9	8.6	24
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.7200	7.9	3.8	21
130	5	MED	PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR CC	.8254	8.3	5.7	23
131	5	MED	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O CC	.6712	8.7	4.5	22
132	5	MED	ATHEROSCLEROSIS AGE >69 AND/OR CC	.6040	7.8	5.3	22
133	5	MED	ATHEROSCLEROSIS AGE <70 W/O CC	.7000	5.2	3.8	16
134	5	MED	HYPERTENSION	.6365	6.6	5.1	20
135	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >69 AND/OR CC	.8936	7.3	5.3	22
136	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 18-69 W/O CC	.7526	5.6	3.8	18
137	5	MED *	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6315		3.3	20
138	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS AGE >69 AND/OR CC	.8138	6.5	4.9	21
139	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS AGE <70 W/O CC	.6517	5.1	3.9	16
140	5	MED	ANGINA PECTORIS	.6895	5.7	4.6	16

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141	5	MED	SYNCOPE & COLLAPSE AGE >69 AND/OR CC	.6188	5.7	4.4	18
142	5	MED	SYNCOPE & COLLAPSE AGE <70 W/O CC	.5335	4.7	3.6	14
143	5	MED	CHEST PAIN	.5895	4.5	3.5	13
144	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES WITH CC	1.1156	8.4	6.2	23
145	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.8477	7.1	5.0	22
146	6	SURG	RECTAL RESECTION AGE >69 AND/OR CC	3.0755	18.9	16.6	34
147	6	SURG	RECTAL RESECTION AGE <70 W/O CC	2.2737	15.4	14.0	31
148	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE >69 AND/OR CC	2.9487	17.8	15.3	32
149	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O CC	2.1872	14.3	12.6	30
150	6	SURG	PERITONEAL ADHESIOLYSIS AGE >69 AND/OR CC	2.3428	14.9	12.8	30
151	6	SURG	PERITONEAL ADHESIOLYSIS AGE <70 W/O CC	1.6902	11.5	10.1	27
152	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES AGE >69 AND/OR CC	1.4069	10.8	8.6	26
153	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O CC	1.0993	9.1	7.3	24
154	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >69 AND/OR CC	2.6886	15.1	11.5	29
155	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 18-69 W/O CC	1.7986	11.7	8.9	26
156	6	SURG	• STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8382		6.8	20
157	6	SURG	ANAL AND STOMAL PROCEDURES AGE >69 AND/OR CC	.7302	6.4	4.8	21
158	6	SURG	ANAL AND STOMAL PROCEDURES AGE <70 W/O CC	.5513	4.9	3.9	19
159	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >69 AND/OR CC	1.8008	7.8	6.3	22
160	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE 18-69 W/O CC	.7457	5.9	5.0	16
161	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >69 AND/OR CC	.6538	5.3	4.4	19
162	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE 18-69 W/O CC	.5264	4.1	3.6	18
163	6	SURG	HERNIA PROCEDURES AGE 0-17	.9648	5.6	4.2	18
164	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR CC	2.8649	13.2	10.7	28
165	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O CC	1.4379	9.2	8.4	19
166	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR CC	1.3686	9.6	7.5	23
167	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O CC	.8855	6.0	5.3	13
168	6	SURG	MOUTH PROCEDURES AGE >69 AND/OR CC	.9188	6.2	4.8	21
169	6	SURG	MOUTH PROCEDURES AGE <70 W/O CC	.6585	4.8	3.8	12
170	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE >69 AND/OR CC	2.7615	17.6	12.3	29
171	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE <70 W/O CC	2.3305	15.4	9.8	27
172	6	MED	DIGESTIVE MALIGNANCY AGE >69 AND/OR CC	1.0749	10.4	6.7	24
173	6	MED	DIGESTIVE MALIGNANCY AGE <70 W/O CC	.9604	9.3	5.4	22
174	6	MED	G.I. HEMORRHAGE AGE >69 AND/OR CC	.9875	7.5	5.8	23
175	6	MED	G.I. HEMORRHAGE AGE <70 W/O CC	.7069	6.0	4.7	18

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176	6	MED	COMPLICATED PEPTIC ULCER	.9310	8.3	6.3	23
177	6	MED	UNCOMPLICATED PEPTIC ULCER >69 AND/OR CC	.6617	6.6	5.4	16
178	6	MED	UNCOMPLICATED PEPTIC ULCER <70 W/O CC	.5556	5.5	4.6	15
179	6	MED	INFLAMMATORY BOWEL DISEASE	.9877	9.6	7.1	24
180	6	MED	G.I. OBSTRUCTION AGE >69 AND/OR CC	.7564	7.4	5.4	22
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O CC	.5826	5.8	4.5	18
182	6	MED	ESOPHAGITIS,GASTROENT.& MISC. DIGEST. DIS AGE >69 &/OR CC	.6034	6.1	4.8	18
183	6	MED	ESOPHAGITIS,GASTROENT.& MISC. DIGEST. DIS AGE 18-69 W/O CC	.5107	5.0	4.0	15
184	6	MED	ESOPHAGITIS, GASTROENTERITIS & MISC. DIGEST. DISORDERS AGE 0-17	.4828	3.7	2.6	12
185	6	MED	DENTAL & ORAL DIS. EXC EXTRACTIONS & RESTORATIONS,AGE >17	.7147	6.6	4.3	21
186	6	MED *	DENTAL & ORAL DIS. EXC EXTRACTIONS & RESTORATIONS,AGE 0-17	.4112		2.9	11
187	6	MED	DENTAL EXTRACTIONS & RESTORATIONS	.4211	2.9	2.5	7
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR CC	.7173	6.4	4.3	21
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O CC	.5272	4.8	3.3	17
190	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.9178	6.1	4.3	21
191	7	SURG	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	4.4688	22.8	18.1	35
192	7	SURG	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	4.0442	21.7	16.7	34
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 &/OR CC	2.8120	18.4	15.7	33
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O CC	2.1206	15.0	12.3	29
195	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR CC	2.2727	14.6	13.1	30
196	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O CC	1.5976	11.2	10.3	22
197	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR CC	1.7058	11.9	10.3	27
198	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O CC	1.1408	8.7	7.8	17
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3378	17.4	14.2	31
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5284	15.8	13.9	28
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.7138	16.1	13.4	27
202	7	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.1665	10.8	7.8	25
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0339	10.1	8.1	24
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9703	8.2	6.5	24
205	7	MED	DISORDERS OF LIVER EXC MALIG.CIRR.ALC HEPA AGE >69 AND/OR CC	1.0720	9.5	6.7	24
206	7	MED	DISORDERS OF LIVER EXC MALIG.CIRR.ALC HEPA AGE <70 W/O CC	.7735	7.5	5.3	22
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR CC	.7775	7.8	5.4	22
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O CC	.5794	5.2	4.3	16
209	8	SURG	MAJOR JOINT AND LIMB REATTACHMENT PROCEDURES	2.3938	15.8	14.4	31
210	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR CC	2.0320	16.9	14.6	32

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211	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O CC	1.7867	15.8	12.7	30
212	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6609	9.7	8.3	23
213	8	SURG	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM & CONN. TISSUE DISORDERS	1.9753	17.1	12.1	29
214	8	SURG	BACK & NECK PROCEDURES AGE >69 AND/OR CC	1.8776	15.6	13.1	30
215	8	SURG	BACK & NECK PROCEDURES AGE <70 W/O CC	1.4261	12.8	10.2	27
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5566	13.7	11.9	26
217	8	SURG	WND DEBRID & SKN GRFT EXC HAND,FOR MUSCSKELETAL & CONN.TISS.DIS	2.3100	18.8	11.2	28
218	8	SURG	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 &/OR CC	1.3798	11.2	8.9	26
219	8	SURG	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O CC	1.0437	8.1	6.7	22
220	8	SURG *	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242		5.3	22
221	8	SURG	KNEE PROCEDURES AGE >69 AND/OR CC	.9758	7.8	4.7	22
222	8	SURG	KNEE PROCEDURES AGE <70 W/O CC	.7113	4.7	3.4	15
223	8	SURG	***MAJOR SHOULDER/ELBOW PROC,OR OTHER UPPER EXTREMITY PROC WITH CC	1.2658	8.7	6.8	24
224	8	SURG	***SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.7294	5.2	4.8	16
225	8	SURG	FOOT PROCEDURES	.6520	4.8	3.9	15
226	8	SURG	SOFT TISSUE PROCEDURES AGE >69 AND/OR CC	.9811	6.1	5.4	22
227	8	SURG	SOFT TISSUE PROCEDURES AGE <70 W/O CC	.6872	5.2	3.8	17
228	8	SURG	***MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC WITH CC	.8041	5.8	3.9	14
229	8	SURG	***HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5147	3.3	2.5	9
230	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.0555	9.2	6.1	23
231	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.7516	5.6	3.8	19
232	8	SURG	ARTHROSCOPY	.6706	4.6	3.2	14
233	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE >69 &/OR CC	1.3723	11.5	8.1	25
234	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE <70 W/O CC	.9457	7.5	5.3	22
235	8	MED	FRACTURES OF FEMUR	1.4137	17.9	10.1	27
236	8	MED	FRACTURES OF HIP & PELVIS	1.0714	13.1	8.8	26
237	8	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.6849	7.4	5.4	22
238	8	MED	OSTEOMYELITIS	1.6470	15.8	11.1	28
239	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN.TISS.MALIGNANCY	.9272	10.6	6.8	25
240	8	MED	CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR CC	.9049	9.5	7.3	24
241	8	MED	CONNECTIVE TISSUE DISORDERS AGE <70 W/O CC	.7492	8.2	6.2	23
242	8	MED	SEPTIC ARTHRITIS	1.4562	13.5	9.7	27
243	8	MED	MEDICAL BACK PROBLEMS	.6843	8.8	6.2	23
244	8	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES AGE >69 AND/OR CC	.6748	7.9	6.1	23
245	8	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES AGE <70 W/O CC	.6487	6.7	5.1	22

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246	8	MED	NON-SPECIFIC ARTHROPATHIES	.5936	6.9	5.4	21
247	8	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5797	6.4	4.7	21
248	8	MED	TENDONITIS, MYOSITIS & BURSITIS	.5892	6.3	4.8	20
249	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.7899	8.8	5.6	23
250	8	MED	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE >69 &/OR CC	.5162	5.6	3.8	20
251	8	MED	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O CC	.4004	3.5	2.5	11
252	8	MED *	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE 0-17	.3496		1.8	7
253	8	MED	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE >69 &/OR CC	.6323	7.8	5.4	22
254	8	MED	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O CC	.4931	5.8	4.0	20
255	8	MED *	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638		2.9	15
256	8	MED	OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6993	7.2	4.9	22
257	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR CC	1.0634	8.7	7.8	19
258	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O CC	.9698	7.6	6.9	16
259	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR CC	.8685	7.0	4.9	22
260	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O CC	.6661	4.8	3.5	15
261	9	SURG	BREAST PROC FOR NON-MALIG EXCEPT BIOPSY & LOC EXC	.6104	4.1	3.3	11
262	9	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4252	2.8	2.3	6
263	9	SURG	SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE >69 AND/OR CC	2.4177	22.1	16.1	33
264	9	SURG	SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE <70 W/O CC	2.1802	21.7	14.9	32
265	9	SURG	SKIN-GRAFT AND/OR DEBRID EXC SKIN ULCER OR CELLULITIS WITH CC	1.3993	11.6	7.6	25
266	9	SURG	SKIN-GRAFT AND/OR DEBRID EXC SKIN ULCER OR CELLULITIS W/O CC	.7313	6.1	4.8	21
267	9	SURG	PERIANAL & PILONIDAL PROCEDURES	.6362	5.4	4.0	17
268	9	SURG	SKIN,SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.5690	3.9	2.8	12
269	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST O.R. PROC AGE >69 &/OR CC	1.1338	9.6	5.5	23
270	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST O.R. PROC AGE <70 W/O CC	.7625	6.3	3.8	21
271	9	MED	SKIN ULCERS	1.2609	14.1	10.1	27
272	9	MED	MAJOR SKIN DISORDERS AGE >69 AND/OR CC	.8523	9.5	7.2	24
273	9	MED	MAJOR SKIN DISORDERS AGE <70 W/O CC	.7972	9.4	6.5	24
274	9	MED	MALIGNANT BREAST DISORDERS AGE >69 AND/OR CC	1.0368	10.9	7.8	24
275	9	MED	MALIGNANT BREAST DISORDERS AGE <70 W/O CC	.5862	10.4	5.8	23
276	9	MED	NON-MALIGANT BREAST DISORDERS	.5676	5.4	3.4	19
277	9	MED	CELLULITIS AGE >69 AND/OR CC	.8866	7.2	7.3	24
278	9	MED	CELLULITIS AGE 18-69 W/O CC	.7594	7.9	6.2	23
279	9	MED *	CELLULITIS AGE 0-17	.4739		4.2	13
280	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >69 &/OR CC	.5417	6.4	4.6	22

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281	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 18-69 W/O CC	.4468	4.8	3.4	16
282	9	MED	• TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3424		2.2	9
283	9	MED	MINOR SKIN DISORDERS AGE >69 AND/OR CC	.6368	7.8	5.8	22
284	9	MED	MINOR SKIN DISORDERS AGE <70 W/O CC	.5172	5.3	3.7	18
285	10	SURG	AMPUTATION OF LOWER LIMB FOR ENDOCRINE,NUTRITIONAL&METABOLIC DIS.	3.2724	28.0	21.5	39
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.6731	15.8	13.3	30
287	10	SURG	SKIN GRAFTS & WOUND DEBRIDE FOR ENDOC,NUTRIT & METAB DISORDERS	2.3781	21.5	15.7	33
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1138	12.4	9.7	27
289	10	SURG	PARATHYROID PROCEDURES	1.3308	8.8	6.9	24
290	10	SURG	THYROID PROCEDURES	.8563	5.9	5.8	14
291	10	SURG	THYROGLOSSAL PROCEDURES	.6073	4.2	3.4	11
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC AGE > 69 &/OR CC	2.3131	16.7	11.3	28
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC AGE <70 W/O CC	1.7962	14.8	8.8	25
294	10	MED	DIABETES AGE =>36	.7454	8.3	6.7	24
295	10	MED	DIABETES AGE 0-35	.7886	6.7	5.0	22
296	10	MED	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE >69 AND/OR CC	.8271	8.3	6.1	23
297	10	MED	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE 18-69 W/O CC	.6998	7.8	4.9	22
298	10	MED	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE 0-17	.7202	5.3	3.3	18
299	10	MED	INBORN ERRORS OF METABOLISM	.8088	7.7	5.3	22
300	10	MED	ENDOCRINE DISORDERS AGE >69 AND/OR CC	.9349	9.2	6.9	24
301	10	MED	ENDOCRINE DISORDERS AGE <70 W/O CC	.6882	6.9	5.1	22
302	11	SURG	KIDNEY TRANSPLANT	4.6273	24.6	21.3	38
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.7610	16.6	14.2	31
304	11	SURG	KIDNEY,URETER & MAJ BLDR PROC FOR NON-NEOPL AGE >69 &/OR CC	2.0323	13.5	10.8	28
305	11	SURG	KIDNEY,URETER & MAJ BLDR PROC FOR NON-NEOPL AGE <70 W/O CC	1.4894	10.4	8.4	25
306	11	SURG	PROSTATECTOMY AGE >69 AND/OR CC	1.2595	9.8	8.1	25
307	11	SURG	PROSTATECTOMY AGE <70 W/O CC	.9587	7.7	6.5	19
308	11	SURG	MINOR BLADDER PROCEDURES AGE >69 AND/OR CC	1.1498	8.8	6.1	25
309	11	SURG	MINOR BLADDER PROCEDURES AGE <70 W/O CC	.8665	6.7	4.7	22
310	11	SURG	TRANSURETHRAL PROCEDURES AGE >69 AND/OR CC	.7266	5.6	4.3	17
311	11	SURG	TRANSURETHRAL PROCEDURES AGE <70 W/O CC	.5563	4.1	3.3	11
312	11	SURG	URETHRAL PROCEDURES, AGE >69 AND/OR CC	.7308	5.8	4.4	18
313	11	SURG	URETHRAL PROCEDURES, AGE 18-69 W/O CC	.5936	4.7	3.5	14
314	11	SURG	• URETHRAL PROCEDURES, AGE 0-17	.4323		2.3	11
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.7760	15.4	9.8	27

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3212	10.4	6.4	23
317	11	MED	ADMIT FOR RENAL DIALYSIS	.4987	3.4	2.3	10
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS AGE >69 AND/OR CC	.9231	8.8	5.5	23
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS AGE <70 W/O CC	.7418	6.6	3.8	21
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >69 AND/OR CC	.8629	8.2	6.5	24
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 18-69 W/O CC	.6753	6.4	5.1	19
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6998	6.4	5.2	19
323	11	MED	URINARY STONES AGE >69 &/OR CC, &/OR ESW LITHOTRIPSY	.5663	5.1	3.7	17
324	11	MED	URINARY STONES AGE <70 W/O CC, & W/O ESW LITHOTRIPSY	.4098	3.6	2.8	11
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >69 AND/OR CC	.6584	6.5	4.6	22
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 18-69 W/O CC	.5159	4.9	3.5	16
327	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5511	15.4	3.3	20
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR CC	.5939	5.4	4.0	18
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O CC	.4878	4.1	3.0	12
330	11	MED *	URETHRAL STRICTURE AGE 0-17	.2788		1.6	5
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >69 AND/OR CC	.8333	7.6	5.4	22
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 18-69 W/O CC	.6748	6.0	4.1	21
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.7915	5.9	3.7	21
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH CC	1.8838	13.5	12.3	28
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.4644	11.9	11.0	23
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR CC	.9871	7.9	7.0	18
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O CC	.7788	6.3	5.6	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8987	7.3	4.9	22
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANT AGE >17	.5766	4.4	3.4	12
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	.4335		2.9	7
341	12	SURG	PENIS PROCEDURES	.9974	6.4	5.3	16
342	12	SURG	CIRCUMCISION AGE >17	.4266	3.0	2.4	8
343	12	SURG *	CIRCUMCISION AGE 0-17	.3788		1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1216	8.3	8.3	23
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8196	6.5	4.8	22
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR CC	.8569	6.5	5.4	23
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O CC	.6441	5.9	3.7	21
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR CC	.6268	5.8	3.9	19
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O CC	.4854	3.9	2.9	11
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6278	5.9	4.0	17

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351	12	MED	STERILIZATION, MALE	.3334	1.9	1.6	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5588	4.8	3.3	16
353	13	SURG	***PELVIC EVISCERATION, RADICAL HYSTERECTOMY & VULVECTOMY	2.3844	17.2	10.8	32
354	13	SURG	***UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGN AGE >69 OR CC	1.3465	10.2	9.2	22
355	13	SURG	***UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGN AGE < 70 W/O C	1.0974	8.4	7.9	16
356	13	SURG	***FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8431	7.6	7.0	15
357	13	SURG	***UTERINE & ADNEXA PROCEDURES, FOR OVARIAN OR ADNEXAL MALIGNANCY	2.1881	14.5	12.7	30
358	13	SURG	***UTERINE & ADNEXA PROC FOR OTHER THAN MALIGNANCY, AGE > 69 OR CC	1.0969	9.0	8.2	18
359	13	SURG	***UTERINE & ADNEXA PROC FOR OTHER THAN MALIGNANCY AGE < 70 W/O CC	.9797	7.7	7.3	15
360	13	SURG	***VAGINA, CERVIX & VULVA PROCEDURES	.6355	5.1	3.6	17
361	13	SURG	***LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.6484	4.4	3.1	14
362	13	SURG	***ENDOSCOPIC TUBAL INTERRUPTION	.3589	2.0	1.8	4
363	13	SURG	D&C,CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6176	4.7	3.6	15
364	13	SURG	D&C,CONIZATION EXCEPT FOR MALIGNANCY	.3922	2.8	2.3	7
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9886	14.8	10.9	28
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR CC	.8626	6.4	4.9	22
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O CC	.5854	4.7	2.8	16
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7618	7.8	5.9	23
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5898	5.6	3.9	20
370	14	SURG	CESAREAN SECTION WITH CC	1.0806	7.9	7.1	16
371	14	SURG	CESAREAN SECTION W/O CC	.7678	6.2	5.6	12
372	14	MED	VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.5945	5.2	4.8	14
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3538	3.1	2.8	7
374	14	SURG	VAGINAL DELIVERY WITH STERILIZATION AND/OR D&C	.5755	3.7	3.3	8
375	14	SURG	* VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D&C	.6817		4.4	15
376	14	MED	POSTPARTUM AND POSTABORTION DIAGNOSES W/O O.R. PROCEDURE	.4523	4.9	3.3	16
377	14	SURG	POSTPARTUM AND POSTABORTION DIAGNOSES WITH O.R. PROCEDURE	.7886	4.3	3.3	15
378	14	MED	ECTOPIC PREGNANCY	.7358	5.2	4.3	14
379	14	MED	THREATENED ABORTION	.2989	2.6	1.9	4
380	14	MED	ABORTION W/O D&C	.3689	3.8	1.9	9
381	14	MED	ABORTION WITH D&C, ASPIRATION CURETTAGE, OR HYSTEROTOMY	.3783	2.1	1.7	5
382	14	MED	FALSE LABOR	.1137	1.5	1.2	3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4453	4.4	3.4	16
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.4586	4.4	2.6	15
385	15	*	NEONATES, DIED OR TRANSFERRED	.6811		1.8	14

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386	15	*	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6480		17.9	35
387	15	*	PREMATURITY WITH MAJOR PROBLEMS	1.8267		13.3	30
388	15	*	PREMATURITY W/O MAJOR PROBLEMS	1.1571		8.6	26
389	15	*	FULL TERM NEONATE WITH MAJOR PROBLEMS	.5425		4.7	16
390	15	*	NEONATES WITH OTHER SIGNIFICANT PROBLEMS	.3486		3.4	9
391	15	*	NORMAL NEWBORNS	.2218		3.1	7
392	16	SURG	SPLENECTOMY AGE >17	3.2494	17.3	13.7	31
393	16	SURG *	SPLENECTOMY AGE 0-17	1.5206		9.1	26
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD & BLOOD FORMING ORGANS	1.0891	8.0	5.0	22
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7153	6.7	4.7	22
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.2952	1.7	1.3	4
397	16	MED	COAGULATION DISORDERS	.9971	8.4	5.9	23
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE >69 AND/OR CC	.9753	8.1	5.5	23
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE <70 W/O CC	.7247	6.4	4.2	21
400	17	SURG	LYMPHOMA & LEUKEMIA WITH MAJOR O.R. PROCEDURE	2.6646	16.7	12.8	30
401	17	SURG	***LYMPHOMA & NON-ACUTE LEUKEMIA WITH OTHER O.R. PROC WITH CC	1.9445	14.4	10.2	27
402	17	SURG	***LYMPHOMA & NON-ACUTE LEUKEMIA WITH OTHER O.R. PROCEDURE W/O CC	1.0545	6.7	6.0	23
403	17	MED	***LYMPHOMA & NON-ACUTE LEUKEMIA WITH CC	1.3481	10.9	7.3	24
404	17	MED	***LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.9142	8.7	5.4	22
405	17	MED	* ACUTE LEUKEMIA WITHOUT MAJOR O.R. PROCEDURE AGE < 18	1.0407		4.9	22
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC & CC	2.5387	16.8	12.9	30
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.7127	13.8	8.6	26
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH OTHER O.R.PROC	1.0582	8.5	5.3	22
409	17	MED	RADIOTHERAPY	.9856	10.9	7.8	24
410	17	MED	CHEMOTHERAPY	.4285	3.1	2.4	9
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.5907	5.3	3.8	21
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3389	2.4	1.9	5
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 &/OR C.C	1.0457	10.7	6.9	24
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O CC	.8984	9.2	5.4	22
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.3292	20.5	14.7	32
416	18	MED	SEPTICEMIA AGE >17	1.6183	11.7	8.3	25
417	18	MED	SEPTICEMIA AGE 0-17	1.1532	7.6	5.4	22
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0026	9.8	7.5	25
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR CC	.9306	8.4	6.1	23
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O CC	.8319	7.5	5.5	23

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.5674	5.8	4.6	16
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.6582	5.2	3.6	18
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.3207	11.0	8.8	25
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.2112	22.1	15.0	32
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6097	7.6	4.8	22
426	19	MED	DEPRESSIVE NEUROSES	.8330	11.6	7.8	25
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7019	9.8	6.4	23
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.8513	11.9	7.4	24
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8424	11.8	7.6	25
430	19	MED	PSYCHOSES	1.0762	15.5	10.5	28
431	19	MED	CHILDHOOD MENTAL DISORDERS	.8495	10.4	6.6	24
432	19	MED	OTHER DIAGNOSES OF MENTAL DISORDERS	.6969	8.1	4.9	22
433	20		ALCOHOL/DRUG USE AND INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.3986	4.4	2.9	16
434	20		ALC/DRUG ABUSE,INTOX INDUCD MNTL SYN EXC DEPEND &/OR OTH SYMPT TR	.7098	8.2	5.4	22
435	20		ALCOHOL/DRUG DEPENDENCE, DETOX AND/OR OTHER SYMPTOMATIC TREATMENT	.7980	10.2	6.7	24
436	20		ALCOHOL/DRUG DEPENDENCE WITH REHABILITATION THERAPY	1.0166	14.2	9.8	27
437	20		ALCOHOL/DRUG DEPENDENCE, COMBINED REHABILITATION AND DETOX THERAP	1.3276	19.8	14.6	32
438			NO LONGER VALID	.0000			
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7936	15.4	11.1	26
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.0315	15.8	9.3	26
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7385	4.6	2.7	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR CC	1.8156	10.5	6.1	23
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O CC	1.4872	9.4	5.6	23
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR CC	.7874	7.7	5.4	22
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O CC	.6815	6.2	4.1	21
446	21	MED *	MULTIPLE TRAUMA AGE 0-17	.4796		2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4471	4.1	2.9	14
448	21	MED *	ALLERGIC REACTIONS AGE 0-17	.3470		1.9	9
449	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE >69 AND/OR CC	.6954	6.5	4.7	22
450	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 18-69 W/O CC	.5422	5.1	3.3	18
451	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 0-17	.5498	5.0	3.4	20
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR CC	.8068	7.8	4.7	22
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O CC	.7505	6.5	4.3	21
454	21	MED	OTHER INJURIES, POISONINGS & TOXIC EFF DIAG AGE >69 AND/OR CC	.8098	7.5	4.6	22
455	21	MED	OTHER INJURIES, POISONINGS & TOXIC EFF DIAG AGE <70 W/O CC	.6083	6.8	3.5	21

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
*** WEIGHT, LENGTH OF STAY, AND OUTLIER THRESHOLD ARE ESTIMATED; THEY WILL BE RECOMPUTED FOR FINAL.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.8156	11.9	5.5	23
457	22	MED	***EXTENSIVE BURNS W/O O.R. PROCEDURE	3.9655	11.9	4.3	21
458	22	SURG	NON-EXTENSIVE BURNS WITH SKIN GRAFTS	3.9455	26.0	18.9	36
459	22	SURG	NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT & OTHER O.R. PROC	3.2662	20.8	13.5	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.1595	11.2	7.5	25
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.3572	10.2	5.3	22
462	23	MED	REHABILITATION	2.1488	24.2	18.8	35
463	23	MED	SIGNS & SYMPTOMS WITH CC	.7951	8.8	5.9	23
464	23	MED	SIGNS & SYMPTOMS W/O CC	.6948	7.8	5.8	22
465	23	MED	AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2682	2.1	1.7	5
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.9153	4.5	2.7	16
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.7223	7.9	5.7	21
468			UNRELATED OR PROCEDURE	2.4542	17.1	11.7	29
469			** PDX INVALID AS DISCHARGE DIAGNOSIS	.0000		.0	0
470			** UNGROUPABLE	.0000		.0	0
471	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCEDURES OF THE LOWER EXTREMI	3.6994	23.5	20.7	38
472	22	SURG	***EXTENSIVE BURNS WITH O.R. PROCEDURE	12.3012	35.4	23.1	48
473	17	MED	***ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE > 17	2.3234	13.6	7.5	25

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
*** WEIGHT, LENGTH OF STAY, AND OUTLIER THRESHOLD ARE ESTIMATED; THEY WILL BE RECOMPUTED FOR FINAL.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
A. DRG Logic Issues	
DRG 385 (Neonates, Died or Transferred) includes transfers to foster care facilities, as well as other facilities, in addition to transfers to acute care hospitals. It is not appropriate to classify normal newborns transferred to foster care facilities, or similar facilities, into DRG 385.	Assign a newborn to DRG 385 only for cases with a reported discharge status of "died" or "transferred to an acute care hospital." Assign a newborn transferred to other than an acute care facility to DRGs 386-391, as appropriate, based on the diagnosis and procedure codes.
Procedure code 8421, thumb reattachment, had been inadvertently omitted from the procedures classified in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).	Add procedure code 8421 to DRGs 228 and 229.
B. SURGICAL HIERARCHY	
Cases showing multiple surgical procedures should be classified into the DRG that coincides with the most resource intensive procedure performed. Based upon the current weights:	
In MDC 2 (Diseases and Disorders of the Eye), extraocular procedures except orbit are more resource intensive than primary iris procedures.	1. Place extraocular procedures except orbit above primary iris procedures in the surgical hierarchy for MDC 2.
In MDC 3 (Diseases and Disorders of the Ear, Nose and Throat), cleft lip and palate repair and sinus and mastoid procedures, are more resource intensive than salivary gland procedures except sailoadenectomy.	2. Place cleft lip and palate repair and sinus and mastoid procedures above salivary gland procedures except sailoadenectomy in the surgical hierarchy for MDC 3.
In MDC 5 (Diseases and Disorders of the Circulatory System), permanent cardiac pacemaker implantations are more resource intensive than vascular procedures.	3. Place permanent cardiac pacemaker implantation above vascular procedures in the surgical hierarchy for MDC 5.
In MDC 6 (Diseases and Disorders of the Digestive System), mouth procedures are more resource intensive than anal and stomal procedures.	4. Place mouth procedures above anal and stomal procedures in the surgical hierarchy for MDC 6.

PROBLEM

In MDC 7 (Diseases and Disorders of the Hepatobiliary System), diagnostic procedures are more resource intensive than biliary tract procedures.

In MDC 21 (Injuries, Poisonings and Toxic Effect of Drugs), wound debridements are more resource intensive than skin grafts.

C. Homogeneity

In MDC 22 (Burns), cases assigned to DRG 457 show a high degree of heterogeneity. One of the factors contributing to this heterogeneity is the comingling of cases requiring surgical procedures with those treated medically.

In MDC 17 (Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms), a high degree of heterogeneity exists in DRGs 401 through 404. Two factors have been identified as contributing to this heterogeneity, that is, comingling of acute leukemia with lymphoma and other leukemia cases and differentiating classification on the basis of age.

GROUPER MODIFICATION

5. Place diagnostic procedures above biliary tract procedures in the surgical hierarchy for MDC 7.

6. Place wound debridements above skin grafts in the surgical hierarchy for MDC 21.

DRG 457, extensive burns, would be divided into 2 categories. The new DRG 457 would include only extensive burns without O.R. procedures. A new DRG 472 would include extensive burns with O.R. procedures.

DRGS 401 through 405 would be reconfigured to remove acute leukemia cases. Acute leukemia without major O.R. procedure would be classified into 2 DRGs, that is, DRG 405 for patients under age 18 and a new DRG 473 for patients over age 17. Lymphoma/non-acute leukemia without major O.R. procedure would be classified based on other O.R. procedures, with and without CC, and medical cases, with and without CC. Age would no longer affect DRG classification of lymphoma/non-acute leukemia.

PROBLEM

In MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), the construction of DRGs 223-224, upper extremity O.R. procedures, results in the comingling of a broad range of procedures that can be performed on a single body site. There is substantial variability in resources associated with these procedures.

Also in MDC 8, the construction of DRGs 228-229, hand O.R. procedures, results in the comingling of a broad range of surgical procedures, with DRG assignment dependent only on the presence or absence of ganglion diagnoses. There is substantial variation in the resources associated with these procedures.

In MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract), it was found that age or absence of CC had little effect on the resource consumption associated with extracorporeal shock wave lithotripsy (ESWL). Regardless of patient age and the absence of complications or comorbidities, the procedure is similar in resources to those cases classified into DRG 323, urinary stones, age greater than 69 and/or CC.

GROUPER MODIFICATION

DRGs 223-224 would be reconfigured to eliminate age considerations from this classification. Major shoulder and elbow joint procedures would be grouped to a single DRG. Other upper extremity O.R. procedures with CCs would be classified in the same DRG as major upper extremity joint procedures.

DRGs 228-229 would be reconfigured to eliminate ganglion diagnoses from consideration in the classification of hand procedures. Major wrist, hand and thumb O.R. procedures and other O.R. procedures with CC would be grouped to DRG 228. O.R. procedures other than major joint procedures without CC would comprise the proposed DRG 229.

All cases with a principal diagnosis of urinary stones that were treated with ESWL and no O.R. procedures would be assigned to DRG 323, regardless of age and/or CC.

TABLE 7 - MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY, FY 1984 DATA

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES 10TH	25TH	50TH	75TH	90TH
001	20,282	21.4	7.0	10.0	16.0	27.0	42.0
002	4,277	19.6	4.0	8.0	14.0	25.0	40.0
003	3	7.7	1.0	1.0	1.5	4.3	18.0
004	4,029	20.2	6.0	9.0	15.0	25.0	40.0
005	54,235	9.6	4.0	5.0	8.0	12.0	18.0
006	12,944	2.7	1.0	2.0	2.0	3.0	5.0
007	7,810	11.5	2.0	3.0	5.0	13.0	27.0
008	4,042	5.6	1.0	2.0	3.0	6.0	12.0
009	3,311	14.4	2.0	4.0	8.0	16.0	31.0
010	17,887	11.5	2.0	4.0	8.0	15.0	24.0
011	3,740	10.1	2.0	3.0	6.0	12.0	21.0
012	51,764	11.3	3.0	5.0	8.0	13.0	23.0
013	7,650	10.6	2.0	5.0	7.0	14.0	21.0
014	306,936	12.6	3.0	5.0	9.0	15.0	25.0
015	172,533	6.1	2.0	3.0	5.0	8.0	11.0
016	19,142	8.8	3.0	4.0	7.0	11.0	17.0
017	22,292	7.7	2.0	3.0	6.0	9.0	15.0
018	27,455	8.2	2.0	4.0	6.0	10.0	16.0
019	9,686	7.1	2.0	3.0	5.0	8.0	14.0
020	6,314	11.5	2.0	4.0	8.0	15.0	24.0
021	557	10.5	3.0	5.0	8.0	13.0	20.0
022	13,107	6.5	2.0	3.0	5.0	8.0	12.0
023	4,813	8.4	1.0	3.0	6.0	10.0	18.0
024	53,445	6.8	2.0	3.0	5.0	8.0	13.0
025	20,369	5.4	1.0	2.0	4.0	7.0	11.0
026	53	3.8	1.0	1.0	2.0	6.0	8.7
027	2,119	9.7	1.0	1.0	5.0	11.0	24.0
028	10,131	8.4	1.0	2.0	5.0	10.0	18.0
029	1,549	6.0	1.0	2.0	3.0	7.0	13.0
031	10,214	5.6	1.0	2.0	4.0	7.0	12.0
032	2,337	4.0	1.0	2.0	3.0	5.0	8.0
034	14,957	8.9	2.0	3.0	6.0	11.0	18.0
035	4,020	7.6	2.0	3.0	5.0	9.0	16.0
036	19,243	4.7	2.0	3.0	4.0	6.0	8.0
037	4,235	4.2	2.0	2.0	3.0	5.0	8.0
038	3,395	3.0	1.0	2.0	2.0	3.0	6.0
039	411,667	2.2	1.0	2.0	2.0	2.0	3.0
040	16,875	2.4	1.0	2.0	2.0	3.0	4.0
042	25,809	3.7	2.0	2.0	3.0	4.0	7.0
043	569	4.6	2.0	2.0	4.0	6.0	8.0
044	2,528	7.2	3.0	4.0	6.0	9.0	13.0
045	5,482	4.7	2.0	2.0	4.0	6.0	9.0
046	6,479	5.5	1.0	2.0	4.0	7.0	12.0
047	16,838	3.6	1.0	1.0	2.0	4.0	7.0
049	5,257	17.1	5.0	9.0	14.0	22.0	32.0
050	5,050	4.4	2.0	3.0	4.0	5.0	7.0
051	1,165	3.9	2.0	2.0	3.0	5.0	7.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
052	49	4.4	1.0	2.0	4.0	5.0	7.0
053	9,376	3.7	1.0	2.0	3.0	4.0	7.0
055	16,090	2.6	1.0	2.0	2.0	3.0	4.0
056	3,487	2.7	1.0	2.0	2.0	3.0	5.0
057	839	5.6	1.0	2.0	3.0	7.0	13.0
059	456	2.8	1.0	2.0	2.0	3.0	5.0
061	711	2.9	1.0	1.0	2.0	3.0	6.0
063	4,818	8.1	2.0	3.0	5.0	10.0	18.0
064	13,029	8.4	1.0	2.0	5.0	10.0	19.0
065	44,337	4.7	2.0	2.0	4.0	6.0	9.0
066	14,575	4.2	1.0	2.0	4.0	5.0	8.0
067	323	6.4	2.0	3.0	5.0	8.0	12.0
068	34,639	6.2	2.0	3.0	5.0	8.0	11.0
069	6,698	5.0	2.0	3.0	4.0	6.0	9.0
070	24	4.1	1.0	3.0	3.0	4.0	8.0
071	206	5.8	2.0	3.0	5.0	7.0	11.0
072	1,740	5.1	1.0	2.0	3.0	7.0	11.0
073	14,743	5.0	1.0	2.0	3.0	6.0	11.0
075	27,103	16.2	7.0	9.0	14.0	20.0	29.0
076	10,212	14.8	3.0	6.0	11.0	19.0	30.0
077	4,692	11.4	2.0	3.0	8.0	15.0	25.0
078	27,988	11.7	4.0	6.0	11.0	14.0	20.0
079	44,827	13.0	3.0	6.0	10.0	16.0	25.0
080	2,897	12.1	3.0	5.0	9.0	14.0	23.0
082	124,736	9.8	2.0	4.0	7.0	13.0	21.0
083	10,709	8.5	3.0	4.0	7.0	11.0	16.0
084	1,037	6.8	2.0	3.0	5.0	8.0	12.0
085	19,396	9.9	2.0	4.0	8.0	12.0	19.0
086	1,857	8.8	2.0	3.0	6.0	10.0	18.0
087	82,939	10.1	2.0	4.0	8.0	12.0	20.0
088	221,875	8.5	3.0	4.0	7.0	10.0	16.0
089	302,582	9.6	3.0	5.0	8.0	12.0	17.0
090	25,293	7.7	3.0	4.0	6.0	9.0	14.0
091	34	5.6	1.0	3.0	4.0	7.0	11.6
092	15,396	9.0	2.0	4.0	7.0	11.0	17.0
093	2,268	7.5	2.0	3.0	6.0	9.0	14.0
094	7,929	10.1	3.0	5.0	8.0	13.0	20.0
095	1,073	7.8	2.0	4.0	6.0	9.0	14.7
096	173,106	7.2	3.0	4.0	6.0	9.0	13.0
097	31,481	6.1	2.0	3.0	5.0	8.0	11.0
098	15	4.5	2.0	2.0	3.5	5.0	7.5
099	41,200	6.4	2.0	3.0	5.0	8.0	13.0
100	8,999	4.9	1.0	2.0	4.0	6.0	10.0
101	30,746	7.4	2.0	3.0	5.0	9.0	14.0
102	4,491	6.3	1.0	2.0	4.0	7.0	12.0
103	12	36.0	3.2	15.0	27.0	46.0	54.0
104	3,007	20.9	10.0	13.0	18.0	25.0	35.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
105	10,485	18.2	9.0	11.0	15.0	22.0	32.0
106	18,059	16.2	9.0	11.0	14.0	19.0	25.0
107	40,965	14.5	8.0	10.0	12.0	17.0	24.0
108	837	14.6	3.0	8.0	12.0	18.0	28.0
109	4,614	14.7	1.0	5.0	11.0	19.0	31.0
110	53,424	16.3	7.0	10.0	13.0	19.0	29.0
111	10,460	13.1	6.0	9.0	11.0	15.0	21.0
112	44,075	11.7	2.0	5.0	9.0	15.0	24.0
113	26,235	21.7	8.0	11.0	17.0	27.0	41.0
114	8,206	17.2	4.0	7.5	13.0	22.0	34.0
115	7,858	16.6	7.0	10.0	14.0	20.0	28.0
116	51,778	9.5	3.0	5.0	8.0	12.0	17.0
117	5,238	8.4	2.0	3.0	5.0	8.0	13.0
118	8,312	4.6	1.0	2.0	3.0	5.0	9.0
119	5,751	7.6	2.0	3.0	5.0	9.0	16.0
120	19,661	16.9	3.0	7.0	12.0	22.0	35.0
121	94,297	12.3	5.0	8.0	11.0	15.0	21.0
122	162,222	10.6	4.0	7.0	10.0	13.0	17.0
123	67,722	5.6	1.0	1.0	3.0	7.0	14.0
124	23,861	7.0	2.0	2.0	5.0	9.0	15.0
125	54,303	3.8	1.0	2.0	2.0	4.0	8.0
126	2,725	23.8	5.0	12.0	22.0	33.0	43.0
127	499,497	8.8	3.0	4.0	7.0	11.0	17.0
128	41,834	9.8	4.0	6.0	9.0	12.0	16.0
129	17,078	7.9	1.0	1.0	4.0	10.0	19.0
130	97,485	8.3	2.0	3.0	6.0	11.0	16.0
131	16,882	6.6	1.0	2.0	5.0	9.0	13.0
132	123,150	7.0	2.0	3.0	5.0	9.0	13.0
133	20,211	5.2	2.0	2.0	4.0	7.0	10.0
134	77,824	6.6	2.0	3.0	5.0	8.0	12.0
135	16,878	7.2	2.0	3.0	5.0	9.0	14.0
136	3,128	5.6	2.0	2.0	4.0	6.0	11.0
139	204,931	6.4	2.0	3.0	5.0	8.0	12.0
139	29,480	5.1	1.0	2.0	4.0	6.0	10.0
140	309,903	5.7	2.0	3.0	5.0	7.0	10.0
141	83,647	5.7	2.0	3.0	4.0	7.0	11.0
142	11,678	4.6	1.0	2.0	4.0	6.0	9.0
143	75,589	4.4	1.0	2.0	4.0	5.0	8.0
144	38,367	8.3	2.0	4.0	7.0	11.0	16.0
145	18,670	7.0	2.0	3.0	5.0	9.0	14.0
146	15,328	18.8	10.0	12.0	16.0	22.0	31.0
147	2,232	15.3	9.0	11.0	14.0	18.0	24.0
148	103,604	17.7	9.0	11.0	15.0	21.0	30.0
149	12,131	14.3	8.0	9.0	12.0	16.0	23.0
150	15,303	14.9	7.0	9.0	12.0	18.0	26.0
151	2,883	11.5	6.0	8.0	10.0	14.0	19.0
152	11,160	10.8	3.0	4.0	9.0	13.0	19.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
153	2,720	9.0	3.0	5.0	8.0	11.0	15.0
154	52,970	15.0	4.0	7.0	12.0	19.0	29.0
155	8,622	11.6	4.0	6.0	9.0	14.0	21.0
157	38,564	6.4	2.0	3.0	5.0	8.0	13.0
158	16,226	4.8	2.0	3.0	4.0	6.0	9.0
159	20,736	7.8	3.0	4.0	6.0	9.0	14.0
160	9,810	5.9	2.0	3.0	5.0	7.0	10.0
161	82,802	5.3	2.0	3.0	4.0	6.0	9.0
162	30,103	4.0	1.3	2.0	3.0	5.0	7.0
163	23	5.5	3.0	4.0	5.0	6.0	9.7
164	4,560	12.1	6.0	8.0	10.0	14.0	20.0
165	1,230	9.2	5.0	6.0	8.0	11.0	16.0
166	3,376	9.0	4.0	5.0	7.0	11.0	16.0
167	1,617	6.0	3.0	4.0	5.0	7.0	10.0
168	9,316	6.1	3.0	4.0	5.0	7.0	10.0
169	3,976	4.0	2.0	3.0	3.0	4.0	6.0
170	13,655	17.6	8.0	10.0	13.0	18.0	22.0
171	2,573	15.4	6.0	8.0	10.0	13.0	18.0
172	57,435	10.4	5.0	6.0	7.0	11.0	14.0
173	6,754	9.2	4.0	5.0	6.0	9.0	13.0
174	135,839	7.5	4.0	5.0	6.0	7.0	10.0
175	16,456	5.9	3.0	4.0	5.0	7.0	10.0
176	11,186	8.2	3.0	5.0	6.0	8.0	11.0
177	34,864	6.6	3.0	4.0	5.0	7.0	10.0
178	8,904	5.4	3.0	4.0	5.0	7.0	9.0
179	8,593	9.6	4.0	5.0	6.0	9.0	12.0
180	62,701	7.3	3.0	4.0	5.0	7.0	9.0
181	9,417	5.8	3.0	4.0	5.0	6.0	8.0
182	381,615	6.0	3.0	4.0	5.0	6.0	8.0
183	77,959	5.0	2.0	3.0	4.0	6.0	8.0
184	62	3.6	2.0	2.0	2.0	3.0	6.0
185	8,693	6.5	2.0	3.0	4.0	6.0	8.0
186	3	3.0	2.0	2.0	2.0	3.0	4.0
187	5,980	2.8	1.0	2.0	2.0	3.0	4.0
188	55,543	6.4	3.0	4.0	5.0	7.0	10.0
189	12,857	4.8	2.0	3.0	4.0	5.0	7.0
190	173	6.1	3.0	4.0	5.0	7.0	10.0
191	4,093	21.9	12.0	16.0	18.0	25.0	37.0
192	1,820	21.7	11.0	15.0	17.0	25.0	35.0
193	10,680	18.4	9.0	12.0	16.0	23.0	31.0
194	1,136	15.0	8.0	10.0	13.0	17.0	23.0
195	16,890	14.5	7.0	9.0	12.0	17.0	23.0
196	1,356	11.1	6.0	8.0	10.0	14.0	20.0
197	71,070	11.9	6.0	8.0	10.0	14.0	20.0
198	28,292	8.7	5.0	6.0	8.0	10.0	14.0
199	4,256	17.3	6.0	10.0	15.0	22.0	31.0
200	3,352	15.0	3.0	7.0	12.0	18.0	33.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
201	2,691	16.0	2.0	6.0	12.0	22.0	33.0
202	20,624	10.7	3.0	5.0	8.0	14.0	22.0
203	36,494	10.1	2.0	4.0	7.0	13.0	21.0
204	30,552	8.2	3.0	4.0	7.0	10.0	15.0
205	22,307	9.4	2.0	4.0	7.0	12.0	19.0
206	4,406	7.5	2.0	3.0	5.0	9.0	15.0
207	56,444	7.0	2.0	3.0	6.0	9.0	13.0
208	9,961	5.1	2.0	3.0	4.0	6.0	9.0
209	141,214	15.8	9.0	11.0	14.0	18.0	24.0
210	115,730	16.9	8.0	11.0	14.0	19.0	27.0
211	8,676	15.8	7.0	9.0	13.0	17.0	25.0
212	12	9.7	4.2	6.0	7.0	10.8	11.0
213	4,427	17.0	4.0	7.0	13.0	21.0	35.0
214	24,741	15.6	7.0	9.0	13.0	19.0	28.0
215	15,769	11.9	5.0	7.0	10.0	15.0	21.0
216	4,447	13.7	2.0	4.0	10.0	18.0	30.0
217	6,284	18.7	2.0	5.0	13.0	25.0	43.0
218	16,388	11.2	4.0	6.0	9.0	14.0	21.0
219	7,768	8.1	3.0	5.0	7.0	10.0	15.0
220	6	5.7	1.0	1.5	5.0	6.5	9.4
221	12,284	7.0	2.0	2.0	4.0	9.0	15.0
222	9,349	4.6	1.0	2.0	3.0	6.0	10.0
223	11,178	7.1	2.0	3.0	5.0	9.0	14.0
224	6,172	5.2	2.0	3.0	4.0	6.0	10.0
225	34,552	4.8	2.0	3.0	4.0	5.0	8.0
226	5,628	6.1	2.0	3.0	5.0	10.2	18.0
227	4,073	5.2	2.0	2.0	4.0	6.0	11.0
228	876	2.2	1.0	1.0	2.0	3.0	5.0
229	15,560	3.9	1.0	2.0	3.0	4.0	8.0
230	5,184	9.2	2.0	3.0	6.0	11.0	20.0
231	12,807	5.6	1.0	2.0	5.0	6.0	12.0
232	2,996	4.5	1.0	2.0	3.0	5.0	10.0
233	11,026	11.5	3.0	5.0	9.0	14.0	23.0
234	4,026	7.5	2.0	3.0	5.0	9.0	15.0
235	7,302	17.9	2.0	5.0	11.0	21.0	44.0
236	46,967	13.0	2.0	5.0	10.0	16.0	25.0
237	3,286	7.3	2.0	3.0	6.0	8.0	14.0
238	4,765	15.8	4.0	7.0	11.0	20.0	33.0
239	58,837	10.5	3.0	5.0	8.0	13.0	20.0
240	24,082	9.5	3.0	5.0	7.0	12.0	18.0
241	8,011	8.1	2.0	4.0	6.0	10.0	15.0
242	2,224	13.4	3.0	6.0	10.0	17.0	28.0
243	205,931	8.0	2.0	4.0	7.0	10.0	15.0
244	43,473	7.9	2.0	4.0	6.0	10.0	15.0
245	7,159	6.7	2.0	3.0	5.0	8.0	13.0
246	6,441	6.9	2.0	3.0	5.0	8.0	13.0
247	17,387	6.3	2.0	3.0	5.0	8.0	12.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
248	12,011	6.3	2.0	3.0	5.0	8.0	12.0
249	6,162	8.8	1.0	3.0	6.0	11.0	19.0
250	15,701	5.5	1.0	2.0	4.0	7.0	12.0
251	3,797	3.5	1.0	1.0	2.0	4.0	7.0
253	44,409	7.7	2.0	3.0	6.0	10.0	15.0
254	9,265	5.7	1.0	2.0	4.0	7.0	12.0
255	*	4.8	1.0	1.0	1.0	3.0	14.0
256	14,906	7.2	2.0	3.0	5.0	9.0	15.0
257	32,093	8.6	5.0	6.0	8.0	10.0	14.0
258	7,697	7.5	4.0	5.0	7.0	9.0	11.0
259	7,432	7.0	2.0	3.0	5.0	9.0	15.0
260	1,775	4.7	1.0	2.0	3.0	6.0	9.0
261	6,710	4.1	2.0	2.0	3.0	5.0	8.0
262	15,198	2.7	1.0	2.0	2.0	3.0	5.0
263	16,404	22.1	6.0	10.0	17.0	28.0	44.0
264	3,056	21.7	4.0	8.0	16.0	28.0	46.0
265	4,312	11.6	2.0	4.0	8.0	15.0	25.0
266	10,461	6.1	1.0	2.0	4.0	8.0	13.0
267	830	5.4	2.0	3.0	4.0	6.0	11.0
268	3,475	3.8	1.0	2.0	3.0	4.0	8.0
269	19,468	9.5	2.0	2.0	5.0	11.0	22.0
270	7,282	6.3	1.0	2.0	3.0	7.0	14.0
271	24,770	14.1	4.0	6.0	10.0	14.0	27.0
272	13,637	9.5	3.0	5.0	7.0	11.0	19.0
273	2,629	9.3	2.0	4.0	7.0	11.0	20.1
274	14,248	10.9	2.0	4.0	7.0	14.0	24.0
275	2,430	10.4	1.0	3.0	6.0	11.5	25.0
276	2,619	5.3	1.0	2.0	5.0	8.0	11.0
277	56,605	9.2	3.0	5.0	7.0	11.0	16.0
278	11,859	7.9	3.0	4.0	6.0	9.0	14.0
279	*	8.6	2.0	2.3	5.0	4.8	21.1
280	38,047	6.4	2.0	3.0	5.0	8.0	13.0
281	5,620	4.7	1.0	2.0	3.0	6.0	10.0
282	*	2.0	1.0	1.0	1.0	2.0	4.0
283	16,120	7.0	2.0	3.0	5.0	9.0	14.0
284	4,169	5.3	1.0	2.0	4.0	7.0	11.0
285	1,666	27.9	8.0	14.0	22.0	38.0	55.0
286	1,810	15.7	7.0	9.0	12.0	19.0	29.0
287	2,886	21.4	6.0	9.0	16.0	27.0	42.4
288	546	12.4	5.0	7.0	9.0	13.5	24.4
289	2,520	8.7	3.0	4.0	6.0	10.0	18.0
290	8,246	5.9	3.0	4.0	5.0	6.0	10.0
291	195	4.1	2.0	3.0	3.0	5.0	7.0
292	3,954	16.7	3.0	4.0	12.0	21.0	34.0
293	753	13.9	2.0	3.3	9.0	17.0	32.0
294	127,436	8.2	3.0	5.0	7.0	10.0	15.0
295	2,455	6.7	2.0	3.0	5.0	9.0	13.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
296	159,997	8.3	2.0	4.0	6.0	10.0	16.0
297	12,874	7.0	2.0	3.0	5.0	8.0	13.0
298	46	5.3	1.0	2.0	3.0	5.0	8.4
299	1,622	7.6	2.0	3.0	5.0	9.0	15.0
300	15,767	9.2	3.0	4.0	7.0	11.0	18.0
301	3,235	6.9	2.0	3.0	5.0	8.0	13.0
302	3,960	24.5	11.0	15.0	21.0	29.0	42.0
303	11,723	16.5	8.0	10.0	14.0	20.0	28.0
304	17,688	13.4	5.0	8.0	11.0	17.0	24.0
305	5,513	10.3	4.0	6.0	9.0	12.0	18.0
306	21,487	9.8	4.0	6.0	8.0	12.0	18.0
307	3,182	7.6	3.0	5.0	6.0	9.0	13.0
308	14,180	8.7	2.0	3.0	6.0	11.0	18.0
309	2,885	6.6	2.0	2.0	5.0	9.0	14.0
310	52,714	5.6	2.0	3.0	4.0	7.0	11.0
311	11,827	4.1	1.0	2.0	3.0	5.0	7.0
312	7,743	5.8	2.0	3.0	4.0	7.0	11.0
313	1,911	4.6	2.0	2.0	3.0	6.0	9.0
314	5	6.8	2.0	2.3	6.5	8.0	8.5
315	15,174	15.3	3.0	5.0	10.0	20.0	33.0
316	46,176	10.0	2.0	3.0	7.0	15.0	21.0
317	1,137	3.3	1.0	1.0	2.0	4.0	7.0
318	17,907	8.8	2.0	3.0	6.0	11.0	19.3
319	2,673	6.6	1.0	2.0	3.0	7.0	15.0
320	136,458	8.1	3.0	4.0	7.0	10.0	15.0
321	15,809	6.4	2.0	3.0	5.0	8.0	11.0
322	47	6.3	2.0	3.0	6.0	7.0	10.0
323	28,701	5.1	1.0	2.0	4.0	6.0	10.0
324	11,458	3.6	1.0	2.0	3.0	4.0	7.0
325	29,447	6.5	2.0	3.0	5.0	8.0	13.0
326	4,871	4.9	1.0	2.0	3.0	6.0	10.0
327	16	28.6	1.0	2.0	2.0	3.0	6.0
328	7,366	5.3	2.0	2.0	4.0	7.0	11.0
329	1,377	4.1	1.0	2.0	3.0	5.0	8.0
331	41,532	7.6	2.0	3.0	6.0	10.0	15.0
332	7,601	6.8	1.0	2.0	4.0	7.0	12.0
333	112	5.8	1.0	2.0	3.0	7.0	13.4
334	7,308	13.5	8.0	9.0	12.0	16.0	21.0
335	7,674	11.9	7.0	9.0	11.0	14.0	18.0
336	141,454	7.9	4.0	5.0	7.0	9.0	13.0
337	28,122	5.2	4.0	5.0	6.0	7.0	9.0
338	9,221	7.3	2.0	3.0	4.0	10.0	16.0
339	9,687	4.3	2.0	2.0	3.0	5.0	8.0
340	5	2.6	1.0	1.3	2.0	2.5	3.5
341	12,243	6.3	3.0	4.0	5.0	8.0	11.0
342	3,600	2.9	1.0	2.0	2.0	3.0	6.0
344	4,905	8.3	2.0	4.0	7.0	10.0	15.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
345	4,373	6.5	2.0	3.0	5.0	8.0	13.0
346	29,576	8.4	2.0	3.0	6.0	10.0	18.0
347	3,556	5.8	1.0	2.0	3.0	7.0	13.0
348	23,457	5.6	1.0	2.0	4.0	7.0	11.0
349	5,804	3.8	1.0	2.0	2.0	5.0	8.0
350	11,803	5.9	2.0	3.0	5.0	7.0	11.0
351	12	1.8	1.0	1.0	1.0	2.0	2.0
352	2,503	4.8	1.0	2.0	3.0	6.0	10.0
353	2,204	14.0	4.0	7.0	11.0	18.0	27.0
354	29,643	9.6	6.0	7.0	8.0	11.0	15.0
355	15,441	7.8	5.0	6.0	7.0	9.0	11.0
356	24,712	7.6	4.0	5.0	7.0	10.0	12.0
357	2,907	14.8	6.0	8.0	12.5	18.0	26.0
358	4,692	8.5	2.0	5.0	7.0	11.0	15.0
359	183	3.3	1.0	2.0	3.0	4.0	6.0
360	8,528	4.8	1.0	2.0	3.0	6.0	10.0
361	674	4.8	1.0	2.0	3.0	6.0	11.0
362	114	2.8	1.0	1.0	2.0	2.0	3.0
363	8,394	4.9	2.0	2.0	3.0	5.0	10.0
364	18,418	2.8	1.0	2.0	2.0	3.0	5.0
365	3,850	14.0	5.0	7.0	11.0	18.0	27.0
366	14,608	8.3	1.0	2.0	5.0	10.0	20.0
367	3,947	4.6	1.0	1.0	2.0	5.0	10.0
368	1,899	7.7	2.0	4.0	6.0	9.0	14.0
369	8,417	5.5	1.0	2.0	4.0	7.0	11.0
370	196	7.9	4.0	5.0	6.0	8.0	13.0
371	417	6.1	4.0	4.0	5.0	6.0	8.0
372	163	5.1	2.0	3.0	4.0	6.0	9.0
373	1,213	3.1	2.0	2.0	3.0	4.0	5.0
374	155	3.7	2.0	3.0	3.0	4.0	5.0
375	4	10.0	3.0	3.0	6.0	11.0	20.0
376	73	4.9	1.0	2.0	3.0	5.0	8.7
377	23	4.3	1.0	2.0	3.5	6.3	7.7
378	66	5.1	2.0	3.0	5.0	5.0	9.0
379	115	2.6	1.0	1.0	2.0	3.0	5.0
380	114	2.8	1.0	1.0	2.0	3.0	6.0
381	279	2.0	1.0	1.0	2.0	2.0	4.0
382	97	1.5	1.0	1.0	1.0	1.0	2.0
383	417	4.8	1.0	2.0	3.0	6.0	9.0
384	101	4.3	1.0	1.0	2.0	4.0	9.3
385	83	18.6	1.0	3.0	12.0	28.3	52.0
386	65	15.4	3.0	5.0	8.5	16.0	24.5
389	323	14.7	2.0	5.0	9.0	16.0	35.0
390	250	10.4	2.0	3.0	7.0	14.0	20.0
391	26	20.1	1.0	2.5	7.0	22.5	48.0
392	1,839	17.3	7.0	9.0	14.0	22.0	33.0
394	3,217	8.0	2.0	2.0	5.0	10.0	18.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
395	92,467	6.7	1.0	3.0	5.0	8.0	13.0
396	44	1.7	1.0	1.0	1.0	2.0	2.6
397	9,302	8.3	2.0	4.0	6.0	10.0	16.0
398	11,744	8.1	2.0	3.0	6.0	10.0	17.0
399	1,984	6.4	1.0	2.0	4.0	8.0	14.0
400	6,271	16.7	5.0	8.0	13.0	21.0	33.0
401	9,757	12.2	2.0	4.0	9.0	16.0	26.3
402	2,360	8.1	2.0	3.0	6.0	10.0	17.0
403	54,077	10.6	2.0	3.0	7.0	14.0	24.0
404	9,753	8.4	1.0	2.0	5.0	10.0	20.0
406	3,461	16.7	5.0	8.3	14.0	22.0	32.0
407	2,749	13.0	2.0	5.0	9.0	16.0	26.0
408	10,867	8.3	2.0	3.0	5.0	10.0	19.0
409	6,899	10.8	2.0	4.0	7.0	15.0	24.0
410	72,946	3.1	1.0	1.0	2.0	4.0	6.0
411	4,640	5.8	1.0	2.0	4.0	7.0	13.0
412	3,652	2.3	1.0	1.0	2.0	2.0	4.0
413	24,347	10.7	2.0	4.0	7.0	14.0	23.0
414	4,223	9.1	1.0	3.0	5.0	11.0	21.0
415	14,235	20.4	5.0	9.0	15.0	26.0	41.0
416	59,603	11.7	2.0	6.0	9.0	14.0	22.0
417	20	7.5	1.0	3.0	6.0	11.0	12.0
418	8,991	9.7	3.0	5.0	8.0	12.0	18.0
419	17,231	8.3	2.0	4.0	6.0	10.0	15.0
420	2,738	7.5	2.0	3.0	5.0	9.0	14.0
421	17,172	5.7	2.0	3.0	5.0	7.0	11.0
422	53	5.2	1.0	2.0	3.0	6.0	8.7
423	8,966	10.9	3.0	5.0	8.0	13.0	21.0
424	5,169	22.1	4.0	8.0	16.0	25.0	46.0
425	14,950	7.5	2.0	3.0	5.0	8.0	16.0
426	28,185	11.7	3.0	4.0	8.0	14.0	26.0
427	3,146	9.7	2.0	3.0	6.0	12.0	21.0
428	2,270	11.9	2.0	4.0	8.0	14.0	25.0
429	50,326	11.8	3.0	4.0	8.0	13.0	22.0
430	84,937	15.4	3.0	6.0	11.0	20.0	32.0
431	726	10.3	2.0	3.0	7.0	12.0	22.2
432	1,173	8.0	1.0	2.0	5.0	10.0	18.0
433	1,673	4.4	1.0	1.0	2.0	5.0	11.0
434	6,680	8.2	1.0	3.0	6.0	10.0	18.0
435	31,546	10.1	2.0	4.0	6.0	14.0	23.4
436	1,578	14.1	2.0	5.0	12.0	22.0	28.0
437	607	16.9	4.0	9.0	21.0	27.0	30.0
439	1,588	15.4	2.0	4.0	10.0	28.0	36.0
440	2,852	15.7	2.0	4.0	10.0	20.0	36.0
441	1,818	4.5	1.0	1.0	2.0	5.0	18.0
442	33,214	10.4	1.4	3.0	6.0	14.0	24.0
443	8,588	7.4	1.0	3.0	6.0	12.0	21.0

DRG NUMBER	NUMBER OF DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILES				
			10TH	25TH	50TH	75TH	90TH
444	8,685	7.6	2.0	3.0	6.0	9.0	15.0
445	1,751	6.2	1.0	2.0	4.0	7.0	12.0
447	2,898	4.0	1.0	2.0	3.0	5.0	8.0
449	40,935	6.4	2.0	3.0	5.0	8.0	12.0
450	8,716	5.1	1.0	2.0	3.0	6.0	10.0
451	10	4.9	1.0	1.0	3.0	7.5	8.0
452	21,724	7.0	1.0	3.0	5.0	8.0	15.0
453	6,516	6.5	1.0	2.0	4.0	8.0	14.0
454	5,850	7.5	1.0	2.0	5.0	9.0	16.0
455	806	5.9	1.0	2.0	3.0	7.0	13.0
456	145	11.9	1.0	2.0	5.0	13.0	27.5
457	352	22.0	1.0	8.0	12.0	29.0	54.0
458	1,680	25.9	6.0	11.0	20.0	35.0	52.0
459	787	20.8	4.0	8.0	14.0	26.0	45.0
460	3,856	11.1	2.0	4.0	8.0	14.0	22.0
461	8,257	10.2	1.0	2.0	5.0	12.0	24.0
462	3,284	24.2	6.0	11.0	20.0	32.0	46.0
463	12,267	8.0	2.0	4.0	6.0	10.0	16.0
464	11,288	7.0	2.0	3.0	5.0	8.0	15.0
465	3,454	2.0	1.0	1.0	2.0	2.0	3.0
466	4,325	4.4	1.0	1.0	2.0	5.0	10.0
467	17,811	7.0	1.0	2.0	3.0	8.0	16.0
468	161,861	17.1	3.0	7.0	13.0	21.0	35.0
471	1,664	23.5	12.0	15.0	21.0	28.0	38.0

TECHNICAL NOTE: The above lengths of stay were developed using the same FY 1984 discharges and GROUPER program used to compute the recalibrated DRG relative-weights which appeared in the September 3, 1985 Federal Register (50 FR 35722). Each percentile length of stay (LOS) value was computed according to the following formula:

Let n represent the number of discharges classified by DRG and let x_1, x_2, ..., x_n represent the ordered LOS values for each DRG set of discharges. For the t_{pp} percentile, where pw (/100), let $np = j + g$ where j is the integer part and g is the fractional part of np. The t_{pp} percentile, y, is defined as the LOS value at $x_{n,}$

$$y = (1-g)x_j + gx_{j+}$$

(See SAS User's Guide: Basics, Version 5 Edition, Cary, NC: SAS Institute Inc., 1985, p. 1186)

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Appendix A—Data Sources Used to Estimate the Market Basket Relative Weights, and Choice of Price Proxies

As discussed above in section III of the preamble, we are proposing to rebase and reweight the hospital market basket. The market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. Below we list the data sources used to estimate the relative weights in the hospital market basket and our choice of price proxies.

A. Data Sources Used to Estimate Relative Weights

1. Payroll Expenses: Wages and Salaries

Source: American Hospital Association, *Hospital Statistics*, Annual Survey, Chicago, Illinois, 1983.

2. Payroll Expenses: Employee Benefits

Source: Same as above.

3. Professional Fees

Source: Same as above.

This category was split into two components:

- Medical fees; and
- Other professional fees. Medical professional fees comprise the largest portion of the professional fees component in the AHA *Annual Survey* of hospital costs. The weight for medical fees was calculated as a residual. The latter weight for other professional fees was derived from an analysis of the value of input consumption by the hospital industry as published in "The Detailed Input-Output Structure of the U.S. Economy: 1977," compiled by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.[1] This weight was then subtracted from professional fees, resulting in the weight for medical professional fees.

4. Capital-Related Costs: Depreciation

Source: Same as above.

This item split into two asset components: (1) buildings and fixed equipment, and (2) moveable equipment, using unpublished data obtained from AHA.

5. Capital-Related Costs: Interest

Source: Same as above.

6. Capital-Related Costs: Other

This category consists of three components that are captured in the AHA classification "Residual-other expense," category. These components are—

- Fire and allied insurance;
- Leases and rentals; and
- Real estate taxes.

Under section 1886(a)(4) of the Act, Medicare providers are entitled to a "pass-through" reimbursement for these costs, as well as capital, depreciation and interest, for cost reporting periods beginning prior to October 1, 1986. In this proposed rule, this category would be included under the capital component of the hospital market basket.

The share for each cost is represented in the AHA residual expense category "Other" derived from an analysis of the value of input consumption by the hospital industry as published in "The Detailed Input-Output Structure of the U.S. Economy: 1977," compiled by BEA, U.S. Department of Commerce. The capital-related shares are combined into a single "Other capital-related" category and incorproated with the weights for depreciation and interest to form the aggregate capital component.

7. Utility and Energy Consumption

Source: Same as above.

This item was split into five cost components: (1) fuel, oil, coal and other fuel; (2) electricity; (3) natural gas; (4) motor gasoline; and (5) water and sewerage. The proportions of each cost were derived from an analysis of the value of input consumption by the hospital industry, as published in "The Detailed Input-Output Structure of the U.S. Economy: 1977," compiled by BEA.[2]

8. Malpractice Insurance

This cost category was derived from an analysis of the median percentage of professional liability insurance expense applied to total hospital insurance costs, as compiled in the *HAS/MONITREND Six-Month National Data Book*, published by the Hospital Administrative Service Division of AHA. The data from the six months ending June 30, 1982, and December 31, 1982, were combined and a weighted average based on bed-size was computed.

9. All Other Products and Services

This residual measures the weights of unattributed products and services included in the residual "Other" category published in the AHA Annual Survey. Shares were derived from an analysis of BEA's hospital input-output matrix and incorporates all noncapital-related categories (other capital-related shares was initially derived with the other residual costs shares and then incorporated into the capital component of the hospital market basket) consumed by the hospital industry, with the exception of utilities and energy consumption, malpractice insurance premiums, salaried and fee-paid other professional remuneration that were delineated above. The following major classifications were derived by aggregating like products and services consumed by the hospital industry:

Other Products

1. Pharmaceuticals.
2. Food.
   a. Direct Purchases.
   b. Indirect Purchases (by dietary contractors).
3. Chemical and Cleaning Products.
4. Surgical and Medical Instruments.
5. Photographic Supplies.
6. Rubber and Plastics.
7. Paper Products.
8. Apparel.
9. Minor Machinery and Equipment.
10. Miscellaneous Products.

Other Services

1. Business Services.
2. Computer and Data Processing Services.
3. Transportation and Shipping.
4. Telephone.
5. Blood Services.
6. Postage.
7. All Other Services: Labor-Intensive.
8. All Other Services: Nonlabor-Intensive.

B. Choice of Price Proxies

1. Payroll Expenses (Wages and Salaries)

External Wage Variable (used in Reimbursement Price Index)—Percentage change in weighted average of nine employment cost indexes and the internal wage variable, as described below.

Data Source—Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*.

Frequency—Monthly.

Payroll expenses (wages and salaries) include all expenses defined as payroll by the AHA in their annual survey. Remuneration for salaried physicians, residents, and interns is included in payroll expenses, while remuneration for physicians who bill the hospital for their fees is not. Their fees are included in the cost category "professional fees, medical." For purposes of establishing the 1982 base-year weights,

[1] The Interindustry Economics Division of BEA conducts a survey of the value of input consumption by major industry classification at five-year intervals. The last study was for cost consumption during 1977. The calculated cost of each individual input goods and services supplied to the hospital industry was aged and updated from 1977 to 1982 using appropriate historical price movements for the detailed expense categories. Relative expenditure weights were then computed for the various cost categories.

[2] Ibid.

expenditures for trainees and residents and interns are removed.

In order to construct an external occupation-specific measure of hospital wages and salaries, occupational data were derived from a survey by the U.S. Census Bureau Survey of employment by the hospital industry published in the *1980 Census of Population, Subject Report, Occupation of Industry* in May 1984. The survey reported the number of employees in 1980 and the mean 1979 earnings of each of these occupations. Earnings and employment levels were combined to yield total payroll (wages and salaries) costs for nine occupational categories that can be measured by a corresponding Employment Cost Index (ECI). The ECI maintains a series on the level of wages and salaries paid to private industry workers in each of these occupational groups. Total payroll for each occupation in 1979 was then updated to 1982 by using the change in the corresponding ECI. Weights for each category were calculated. By calculating a weighted average of price changes for each occupation, an external wage variable was constructed that associates the employment structure of the hospital industry with a reasonable measure of wage movements.

The following table describes the 1982 labor cost shares for wages and salaries paid employees of the hospital industry per ECI occupational groups.

TABLE—ECI OCCUPATIONAL GROUPS

	1982 wage cost shares (percent)
1. Professional/Technical	57.229
2. Managers/Administrators	7.248
3. Sales Workers	.337
4. Clerical Workers	12.887
5. Craft/Kindred Workers	2.461
6. Operatives, Except Transport	.394
7. Transport Equipment Operatives	.285
8. Nonfarm Workers	.166
9. Service Workers	18.723
Total	100.000

2. Employee Benefits

External Price Variable (used in Reimbursement Price Index)—Percentage change in supplements to wages and salaries per employee on nonagricultural payrolls.

Data Sources—

For supplements to wages and salaries—U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*. July issues have details on components.

For number of employees on nonagricultural payrolls—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*.

Frequency—For supplements to wages and salaries, quarterly; for number of employees on nonagricultural payrolls, monthly.

Employee benefits include employer-paid fringe benefits for Social Security, group insurance, retirement, and other fringe benefits. Supplements to wages and salaries have two major categories of benefits:

- Employer contributions for social insurance; and
- Employer contributions to private pension and welfare funds. Employer contributions for social insurance include Federal, State, and local social insurance funds. These funds are for old-age, survivors, disability, and hospital insurance; State unemployment insurance; workmen's compensation; and other programs. Employer contributions to private pension and welfare funds include pension and profit-sharing, group health insurance, group life insurance, workmen's compensation, and supplemental unemployment. Supplements to wages and salaries include an irrelevant third component, "Other," which was approximately 0.7 percent of the total in 1982.

In calendar year 1982, employee benefits were 15.2 percent of community hospital employee compensation.[3] For total nonfarm, supplements to wages and salaries were 16.0 percent of employee compensation, and for all domestic industries supplements to wages and salaries were 15.9 percent of employee compensation in 1982.[4] The percent change in supplements to wages and salaries per employee on nonagricultural payrolls provides an external indicator of fringe benefit cost pressure on per employee basis.

3. Professional Fees: Medical

External Price Variable (used in National Hospital Price Index)—Percentage change in the charges for physicians' services as measured by the Consumer Price Index for All Urban Consumers (component of medical care services).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly

The medical fees category primarily represents fees billed to hospitals by physicians for services furnished in hospital ancillary departments such as radiology, pathology and anesthesiology. These services are usually billed under Medicare Part B, and as such are not part of the prospective payment system inpatient market basket. Salaries for staff physicians as well as for interns and residents are not included in this classification. The physician services component of the Consumer Price Index is used to approximate percent changes in fees charged. It is assumed that the physician specialists working in hospitals exhibit similar cost pressures in maintaining their practice and, thus, would generally modify their charge structure in line with the rest of the profession.

4. Professional Fees: Other

External Price Variable—Percentage change in the employment cost index for professionals and technicians.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

The cost category "Professional Fees: Other," includes fees for legal, auditing, consulting, and other hospital-specific professional contracting. As such, this cost category reflects salaries as well as expenses for travel, research assistance, clerical assistance, and overhead. The proxy chosen is the Employment Cost Index for Professionals and Technicians.

5. Capital-Related Costs: Depreciation on Fixed Assets

External Price Variable—Percentage change in Engineering News-Record Building Cost Index (10-year quarterly moving average).

Data Source—Engineering News-Record

Frequency—First week of a month.

As a general rule, capital costing is an accounting concept that attempts to relate the value of an asset to its period of consumption ("time-release" basis) by allocating a fixed rate of depreciation on a periodic basis. Operating costs, in contrast, are generally considered to have a concurrent period of expenditure incurrence and asset consumption. By its very nature, accounting for depreciation costs entails judgment as to the useful life of a class of assets and a method for updating its replacement value. The following points highlight the critical areas of concern regarding the treatment of capital costs in the hospital market basket:

- Capital assets represent present and future costs that do not lend themselves to adjustment based on short-term financial conditions, as opposed to operating costs.

[3] American Hospital Association, *National Hospital Panel Survey*.

[4] U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, July 1982.

• Although capital investment costs do not change year-to-year, their replacement value does. The hospital industry must arrange the means by which a sufficient flow of capital payments provide for replacement costs.

• Two distinct methods can be recognized by the Medicare program in facilitating a "sinking fund" for capital asset replacement—

—The HCFA market incorporates changes in measured costs for constructing or manufacturing classes of assets. Any future increases in reimbursement to hospitals for its capital cost that were incurred in prior years can be invested and achieve a return contributing to ability to fund potential asset replacement; and

—Especially in the case of fixed assets, the depreciation flow rate to hospitals, based on the useful life of such assets, far exceeds the proportion of the mortgage payments devoted to the principal during the earlier years of the mortgage in cases in which capital is funded by debt. The substantial increment affords hospitals the ability to further enhance their fund for future asset replacement. In addition, the reimbursement practice has been to allow taxable institutions to achieve a return on equity investment far superior to market rates of return on other investment instruments.

In regard to depreciation on fixed capital assets such as buildings or fixed equipment, a judgmental determination is necessary for forecasting purposes on two elements of updating for replacement cost:

• The type of asset measured by the variable; and

• The lag period selected for incorporating price changes.

For purposes of developing this rebased market basket, the building cost index derived and maintained by the Engineering News-Record (ENR) was selected as the best currently available source of measuring changes in costs of fixed assets. The ENR building index is published monthly by the Bureau of Economic Analysis in its *Survey of Current Business* (Current Business Statistics). This index tabulates surveyed cost changes in 20 cities for three major building categories and three classifications of skilled tradesmen predominantly utilized by the construction industry. ENR assigned aggregate weights to fixed quantities of structured steel, Portland cement and lumber. In the labor component, it calculated an average wage paid to carpenters, bricklayers, and structural ironworkers. The actual weightings were based on the relative importance of the various components in construction that were obtained from a survey of construction authorities. Because the ENR index deals only with the effects of trends in wage rates and material prices, it is considered an appropriate means of updating the fixed asset component of the hospital market basket. (A number of other indexes were reviewed and evaluated for use, including some hospital or health-specific measures. This broad-based index met several criteria. We are continuing research in this area.)

The other element in forecasting price movements of fixed capital involves the selection of a 10-year (40-quarter) moving average of the ENR index. The concept of using current price depreciation as an appropriate indicator of depreciation relies on the notion that actual replacement activity mainly occurs across a proportion of facilities in any given year. Therefore, the introduction of a current price index should be effected on a longer term moving average basis. This has the added benefit of providing less volatility with which hospitals can develop and implement the planning processing. From an economic prospective, a longer term average is felt to be more reflective of the inherent stability of escalation in capital costs.

6. Capital-Related Costs: Depreciation on Moveable Assets:

External Price Variable—Percentage change in the cost of machinery and equipment as measured by the Producer Price Index (SIC code #11) (five-year quarterly moving average).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Similar concerns to those for fixed assets play a role in establishing an appropriate means of forecasting price movements in moveable assets. However, in this sector, replacement rates tend to be more frequent for various reasons: obsolescence, maintenance costs, and the shorter time span of the useful life assigned to such assets. A five-year (20 quarter) moving average of changes in the cost of machinery and equipment reflects changes in prices for the period in use of much of these assets before replacement. A broad-based index for machinery and equipment was used in the absence of a relevant fixed-weight index of hospital machinery and equipment. A disadvantage in the use of this proxy lies in the fact that rapid technological rate of improvements in medical care equipment may exhibit different price trends than that for other nonmedical furniture and appliances. The overwhelming rate of innovation in this segment of durable goods precludes the formulation of any index that could portray period-to-period changes in costs for health care equipment.

A broad-based index of machinery and equipment was selected to proxy all movable assets of hospitals because it encompasses a wide range of heavy duty electrical and mechanical products. Included in the array of manufactured products are furnaces and ovens, power tools and accessories, pumps and compressors, scales and balances, elevators, and air-conditioning and refrigeration equipment. Many electrical product components are also evaluated within this variable. Of special note, this proxy incorporates x-ray equipment and other testing and measuring instruments, as well as commercial laundry equipment.

Although it was preferable to disaggregate movable assets into distinct functional groupings so that the distinction in price movements could be recognized, there is no up-to-date, reliable fixed weight index for hospital assets available. When the 1977 Input/Output analysis for health sector capital goods is released, it may be possible to construct such an index.

7. Capital-Related Costs: Interest

External Price Variable—Weighted average of percentage change is yield on domestic municipal bonds, *Daily Bond Buyer* (20 bonds) (seven-year quarterly moving average) (85.34 percent) and percentage change in average yield on Moody's AAA corporate bonds (seven-year quarterly moving average) (14.66 percent).

Data Source—For municipal and corporate bonds, U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Finance Section. BEA publishes the yield on the Thursday nearest the end of the month.

Frequency— For municipal and corporate bonds, weekly.

Long-term debt is contracted over time at interest rates in effect at the time the debt is incurred. The effect of changing long-term interest rates is approximated by a seven-year quarterly weighted moving average of domestic municipal bonds and corporate bonds. To account for any differences that may occur in interest rates for proprietary hospitals, compared to voluntary hospitals, 1982 weights of proprietary interest costs were obtained from unpublished AHA data.

8. Capital-Related Costs: All Other

External Price Variable Percentage change in residential rent as measured by the Consumer Price Index for All Urban Consumers.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

In addition to depreciation and interest, which predominate the cost of capital, there are several other, relatively minor cost expenditures that may be considered as capital-related. Payments for fire and allied property insurance, leases and rentals, and real estate taxes all fall within this category. A measurement of rental costs would implicitly recognize these related cost factors. Since there exists no commercial rental proxy, residential rental is a reasonable proxy that can, over time, reflect the trend in price movements of the residual capital-related costs.

9. Fuel Oil, Coal, and Other Fuel

External Price Variable—Percentage change in the cost of refined petroleum products as measured by the Producer Price Index (SIC code #057).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Institutions purchase heating fuel in bulk quantities. Accordingly, price movement of this commodity is appropriately measured at the wholesale level. This proxy incorporates various distillates and grades of fuel oil that are primarily utilized in the heating of plants. Since the cost of refining is included in the price charged for this fuel, use of a proxy reflecting only changes in the cost of crude oil was not considered adequate.

10. Electricity

External Price Variable—Percentage change in the cost of electric power as measured by the Producer Price Index (SIC code #054).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

This proxy includes rates charged to commercial users (40 kw-demand), as well as to industrial users (500 kw-demand). Since the hospital industry is composed of both small and large size plants, its costs will incorporate both of these rate classifications and this cost index is, therefore, considered appropriate.

11. Natural Gas

External Price Variable—Percentage change in the cost of gas fuels as measured by the Producer Price Index (SIC code #0531).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

This proxy measures both domestic and imported costs of various gas fuels including liquified petroleum gas. Purchases by hospitals are generally from a regional gas company which may utilize all types of gas fuel; hence, a broadly-defined index of costs of gas fuels is appropriate.

12. Motor Gasoline

External Price Variable—Percentage change in the cost of gasoline as measured by the Producer Price Index (SIC code #0571).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Hospitals maintain a fleet of vehicles, including ambulances, and would generally purchase motor fuel at wholesale quantities. This index is composed of all grades of gasoline (regular, unleaded, and premium) used by different classes of vehicles.

13. Water and Sewerage

External Price Variable—Percentage change in the cost of water and sewerage maintenance, as measured by the Consumer Price Index for All Urban Consumers.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly

Costs for this combined product and service category are generally for purchases from municipal entities or utility companies. There are no data available on cost to preferred commercial users of these services and, thus, the Consumer Price Index for water and sewerage is used to approximate price changes facing hospitals.

14. Malpractice Insurance

External Price Variable—Percentage change in the hospital malpractice insurance component in the AHA Annual Survey (for the period 1966–1976). Set by DHHS in collaboration with AHA from 1977 to 1981. Percentage changes in hospital insurance premium data from the Insurance Services Offices from 1982 through April 1985 and thereafter extrapolated.

Data Source—Unpublished data provided to DHHS by AHA, Office of Research Affairs, and unpublished data from the Insurance Services Offices.

Frequency—For AHA and DHHS estimates and data, annually, and for the Insurance Services Offices data, quarterly.

The costs associated with professional liability in hospitals are difficult to quantify in both cross-section and time-series data. Hospitals may self-insure, pay on a claims-made basis, or purchase professional liability insurance for a fixed or changing level of coverage. Hospitals located in the same area may have varying experience ratings; therefore, premium rates may differ significantly. No national or regional data source currently exists that can quantify precisely the many variations in the cost associated with professional liability in hospitals.

15. Pharmaceuticals

External Price Variable—Percentage change in drugs and pharmaceuticals as measured by the Producer Price Index (SIC code # 063).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 23.

Frequency—Monthly.

Hospitals commonly purchase drugs in bulk quantities and, accordingly, the Producer Price Index is an appropriate measure. This category consists of medicinal and chemical preparation, prescription and over-the-counter drugs, and other biological products administered to patients for either diagnostic or therapeutic benefit.

16. Food: Direct Purchases

External Price Variable—Percentage change in the cost of processed foods and feeds, as measured by the Producer Price Index (SIC code # 02).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Items included under this variable are purchased directly by those hospitals that independently operate their dietary department or certain segments of their dietary service. Purchases tend to be in bulk quantity for both perishable and nonperishable foodstuffs, and prices generally reflect those available at the wholesale price level. Major groups of processed foods measured under this classification include cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, beverages, and other

miscellaneous processed foods. Other ingredients utilized in the course of preparing the culinary output, such as oils, shortening and confectionary sweeteners, are also reflected in this index. Since price movements for raw, unprocessed farm products, such as milk and eggs, tend to parallel the price trends for processed foods, it is appropriate to use this index as a proxy for both categories of food purchases.

17. Food: Indirect Purchases

External Price Variable—Percentage change in the cost of food purchased away from home, as measured by the Consumer Price Index for All Urban Consumers (SIC code # 19).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Much of the hospital industry employs outside contractors to facilitate dietary preparations and service requirements for hospital patients and personnel. As such, it includes the cost of food products, other labor costs and nonlabor costs, such as napkins, flatware and glassware incurred by these contractors. Although a consumer price index is utilized for products typically purchased at a bulk rate, this index is considered relevant in that much of the food inputs provided at food service establishments are generally purchased at the wholesale level, especially by the nationwide chains so prevalent in the restaurant industry today.

18. Chemical and Cleaning Products

External Price Variable—Percentage change in the cost of industrial chemical products, as measured by the Consumer Price Index for All Urban Consumers (SIC code #061).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

The hospital industry consumes a vast variety of chemical products, ranging from organic and norganic solutions and compounds to cleaning agents and hygienic paraphernalia. The variable "Industrial Chemicals" was selected as representatives of all chemical products and derivatives because the more broad-based index of "Chemicals and Allied Products" subsumes to a great extent the surveyed prices for drugs and pharmaceuticals, and for biological products, each of which is categorized and measured elsewhere in this market basket index. Industrial chemicals are comprised of both organic and inorganic solids, liquids, and gases.

19. Surgical and Medical Equipment

External Price Variable—Percentage change in Medical and Surgical Instruments, as measured by the Producer Price Index (SIC code #1562).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Products and parts used for surgical and medical purposes incorporate a multitude of minor equipment and accessories too low in price to capitalize. This equipment ranges from parts of diagnostic and therapeutic instruments to pacemakers. Since most of these products utilize electronic components, a proxy reflecting a broad diversification of electronic parts and accessories was selected to monitor price movements for this category of costs. Included in the BLS survey under this classification are x-ray equipment and parts, generator parts, batteries and transistors, and a host of intricate mechanisms that are utilized in manufacturing an electronic appliance. Most of these specialized products are generally not available at the consumer level, and the Producerr Price Index proxy is, therefore, indicated.

20. Photographic Supplies

External Price Variable—Percentage change in the cost of photographic supplies, as measured by the Producer Price Index (SIC code #1542).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

A considerable quantity of photographic materials are consumed by the hospital industry, especially in the diagnostic services. Radiology and pathology departments use a variety of photographic apparatus and films. Therefore, it is reasonable to conclude that items under this classification are usually purchased in wholesale lots and changes in prices are best quantified by the Producer Price Index proxy.

21. Rubber and Plastics

External Price Variable—Percentage change in the cost of rubber and plastic products, as measured by the Producer Price Index (SIC code #07).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

The rubber and plastic product category includes a wide array of miscellaneous rubber and plastic products, including rubber gloves, rubber hoses, and disposable plastic products. Among the items measured by this index are rubber clothing and coated fabrics, plastic packaging, and plastic tableware. Purchases are at the wholesale level, and the broad-based Producer Price Index for rubber and plastic products was chosen because it has tended to approximate combined price movements of both components historically.

22. Paper Products

External Price Variable—Percentage change in the cost of converted paper and paperboard products, as measured by the Producer Price Index (SIC code #0615).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Products measured under this category include printing and office paper goods, disposable garments and tableware, and packaging products. Hospitals are consumers in each of these areas. The proxy chosen encompasses an array of converted paper and paperboard products and various milled paper products, such as tissues and napkins, bags and writing paper.

23. Apparel

External Price Variable—Percentage change in the cost of apparel, as measured by the Producer Price Index (SIC code #361).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

Hospitals are major purchasers of various types of textile goods, including uniforms, gowns, sheets, blankets, pillow cases, towels, and washcloths. This proxy contains an array of men's and women's garments. Since these products tend to be acquired in multiple quantities, the Producer Price Index for apparel is an appropriate variable.

24. Minor Machinery and Equipment

External Price Variable—Percentage change in the cost of machinery and equipment, as measured by the Producer Price Index (SIC code #11).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

Frequency—Monthly.

This category is designed to measure the various types of tools, accessories and parts that are minor in cost and, therefore, not capitalized. A broad-based Producer Price Index for minor machinery and equipment is used to

approximate price movements for this cost category.

25. Miscellaneous Products

External Price Variable—Percentage change in the cost of all finished goods, as measured by the Producer Price Index.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly

This residual category is intended to measure a diversified grouping of consumable commodities utilized by the hospital, each of which is considered too small to individually have a measurable impact on price movements within this market basket. Some of these groups are identified as metals and metal products, nonmetallic mineral products, minor transportation equipment and parts, minor furniture and other household durables, photographic equipment, and other consumable products. Since these products are at the finished stage, a Producer Price Index measuring all finished goods is appropriate for such a broad-based grouping.

26. Business Services

External Price Variable—Percentage change in the average hourly earnings of employees engaged in the business services industry, as measured by the Employment and Earnings Index (SIC code #73).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*

Frequency—Monthly.

As is true in the majority of the service industry, the price charged for the various services furnished primarily reflects the salaries and wages paid the employees of each particular firm. Other costs do indeed play a role in setting prices, but the key ingredient, labor-related costs, are predominant. This is also true for the hospital service industry. Therefore, a measurement of changes in average labor costs for a particular service-based industry is an appropriate indicator of the changes in prices charged to clients of those services.

By far, the largest component of services provided to a hospital from external sources, representing over a third of the total, is business services. A broad spectrum of business services purchased by hospitals includes computer programming and data processing, management and consulting services, stenographic services, credit collection, marketing, and numerous other administrative functions. Among the industries surveyed by the Bureau of Labor Statistics and classified under Business Services are those enumerated above, as well as a number of miscellaneous business services such as public relations or protective services. Since computer and data processing services compose a sizable segment on their own, those services were measured and proxied separately from other business services.

27. Computer and Data Processing Services

External Price Variable—Percentage change is the average hourly earnings of employees engaged in firms furnishing computer and data processing services, as measured by the Employment and Earnings Index (SIC Code #737).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*

Frequency—Monthly.

This rapidly growing sector accounts for over 15 percent of all outside services purchased by hospitals. Although many hospitals rely on their internal staff for the day-to-day operations of their information processing needs, those institutions also often obtain the consulting services of firms specializing in the design and implementation of a computerized data-gathering-and-monitoring system. In addition, outside firms are often "on call" in facilitating solutions to any technical problems that may arise or to adopt a particular system to additional or modified uses. Changes in average hourly earnings in the computer and data processing services are an appropriate measure of price movements in this highly labor-intensive industry.

28. Transportation and Shipping

External Price Variable—Percentage change in the transportation component of the Consumer Price Index for All Urban Consumers.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

This cost category encompasses a diverse group of transportation services utilized by the hospital industry. It includes public transportation services that may be used for business travel and private transportation sources such as ambulance travel for hospital patients. The cost of shipping and motor freight fees are applied to many hospital purchases. Each of these types of transportation costs is embodied in the total transportation component of the Consumer Price Index, which measures both private and public transportation modes. Since shipping fees are basically a function of the cost of maintaining the vehicles used to haul freight, this index is considered appropriate in that it also measures the underlying cost of operating a vehicle such as repairs, insurance fees, motor fuels, finance charges, and other incidentals.

29. Telephone

External Price Variable—Percentage change in the cost of telephone services, as measured by the Consumer Price Index for All Urban Consumers.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

This component includes charges for both local and long-distance phone calls. In this rapidly changing industry, the cost to the phone companies of furnishing worldwide facilities fundamentally stems from a vast capital infrastructure and the most sophisticated, up-to-date equipment. Since labor-related costs are also accounted for in fixing telephone fees, the Consumer Price Index for telephones is used as the proxy.

30. Blood Services

External Price Variable—Percentage change in the cost of providing blood and related biologicals, as measured by the Producer Price Index (SIC code #063711).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

Blood supplies are often provided to hospitals from external sources, predominantly from public service agencies. In addition to whole blood products, many derivatives are obtained for specific types of operations. These include plasma, platelets, and other blood components. The index in the Producer Price Index measures both human blood and its derivatives, as well as other biological products, and, as such, is an appropriate measure of price movements.

31. Postage

External Price Variable—Percentage change in the cost of postage, as measured by the Consumer Price Index for All Urban Consumers.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

In recent times, many businesses, including the hospital industry, have begun to make use of alternative mail services for either parcel post or express mail. However, the prevalent cost of postage services still appears to be linked to mail transported by the U.S. Postal Service. As such, the index for postage surveyed by the Consumer Price Index is considered an appropriate measure of price movements for this service.

32. All Other Services: Labor-Intensive

External Price Variable—Percentage change in the average employment cost index for all service workers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*
Frequency—Monthly.

The majority of the residual services not measured before are highly labor-intensive and are grouped together for purposes of using the employment cost index for workers engaged in the services sector as a forecast proxy. Some of these individual services purchased by hospitals include miscellaneous repairs, commercial laundry, refuse systems, and general building services.

33. All Other Services: Nonlabor-Intensive

External Price Variable—Percentage change in the all-items component of the Consumer Price Index for All Urban Consumers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

The remaining residual services were classified as nonlabor-intensive and included such services as insurance (not capital-related), bank service charges, fees for business and professional associations, and vehicle rentals. In this case, an overall measure for all services covered by the Consumer Price Index is an appropriate indicator.

Appendix B—Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that would be likely to result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Several provisions proposed in this document would exceed the $100 million threshold under E.O. 12291. Therefore, we are including an impact analysis that contains a discussion of each significant proposed change.

In addition, for proposed regulations we prepare and publish an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. Under the RFA, we treat all hospitals as small entities. It is clear that these proposed changes would affect a substantial number of hospitals and the effects on some would be significant. Therefore, we are providing an initial regulatory flexibility analysis.

We are also including in this document a regulatory impact and flexibility analysis of the interim final rule published May 6, 1986 (51 FR 16772) to implement provisions of Pub. L. 99-272 related to operation of the prospective payment system during FY 1986. Due to time constraints, the Director of the Office of Management and Budget waived the requirements of E.O. 12291 for that interim final rule, and the Secretary deferred the preparation of a regulatory flexibility analysis, which is consistent with section 606 of the RFA. We promised in that document to prepare and publish the necessary analyses in conjunction with this proposed rule.

The discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Objectives

We expect these proposed changes to further our original objectives in implementing the prospective payment system. The prospective payment rates create incentives similar to the incentives a hospital would face in pricing and marketing its services in a conventional market. By paying all hospitals the same market-like rate for like services, we let hospitals know in advance the amount they will be paid per discharge. We give them both an opportunity to receive this payment regardless of their specific cost experience, and a strong incentive to operate more efficiently, minimizing unnecessary costs. Unlike a cost limitation approach, which achieves savings largely by disallowing Medicare payment for costs in excess of a specific limit, the prospective payment system achieves savings by intensifying hospitals' incentives to operate efficiently. Thus, our objectves include—

- Restructuring hospitals' economic incentives;
- Basing payment on a system that identifies the product being purchased more accurately than cost reimbursement;
- Reinforcing the role of the Federal government as a prudent buyer of services; and
- Restraining the rate of hospital cost increases, thus moderating the outflow of expenditures from the Medicare trust fund, while maintaining high quality care.

In addition, we share national goals of deficit reduction and restraints on government spending in general. We believe these proposals will further all of our goals while maintaining the financial viability of the hospital industry and assuring access to high quality care for beneficiaries.

We expect these proposed changes to further those objectives while avoiding or minimizing unintended adverse consequences and ensuring that the outcomes of this payment system are, in general, reasonable and equitable. Thus, the intent is to refine further the prospective payment system without undercutting our objectves.

C. Problems of Impact Quantification and Attributing Causality

In preparing previously published interim, proposed, and final rules concerned with the prospective payment system, we have used the best data available to analyze the rules and their implementing procedures. Moreover, since the beginning of the prospective payment system, we have developed increasingly sophisticated models of how the prospective payment system works. Nonetheless, at present, we still have no adequate way to model potential behavioral changes on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Further, changes in the private sector, such as changes in the ways that employers finance and control health benefits, interact with the behavioral incentives created by the Medicare payment system. We do not have the capability to model such interactions.

We continue to study many aspects of the prospective payment system with the intent of obtaining more adequate data for the purpose of better

quantifying the effects of behavioral changes caused by the payment system. Examples of these initiatives include various reports to Congress, as required by section 609 of Pub. L. 98–21 and sections 9113 and 9114 of Pub. L. 99–272. These studies will examine many issues, including the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates, the feasibility and desirability of applying the payment methodology to payment by all payors for inpatient hospital services, and the impact of outlier and transfer policies on rural hospitals. We are also required, under section 609(a)(2)(A) of Pub. L. 98–21, to study and report annually to the Congress on the impact of the prospective payment system. In addition to these initiatives, we and others (such as the hospital industry) have undertaken a variety of studies on the effects of the prospective payment system, such as examining selected aspects of hospital management behavior under the prospective payment system, to be able to predict better certain effects and outcomes from the system.

Nonetheless, we are limited in our ability to attribute the causation of particular changes in the hospital industry directly to particular regulations. This is made particularly difficult by the changing nature of the health care sector, and the nature of the prospective payment system itself. The prospective payment system is but one of numerous efforts aimed at controlling rapidly rising health care costs. In many cases, then, it may be difficult to determine the extent to which the prospective payment system, or some other initiative, caused the result, or whether two (or more) initiatives caused the result interactively. Further, the prospective payment system itself is interactive and it is sometimes difficult to isolate the effects, within the system, of a particular change of policy or procedure.

Apart from the more easily identifiable initiatives that are affecting the health care market, especially on the demand side, changes also have been occurring on the supply side. Most notable of these changes is the increase in the supply of physicians, which enhances the competition for patients among providers. There also has been significant growth of facilities furnishing out-of-hospital treatment and of health maintenance organizations (HMOs). In addition, home health services are the fastest growing component of the Medicare program.

In view of the problems we have experienced in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the most feasible one. In some cases we have included quantitative estimates of program savings or anticipated changes in payment levels. However, since it is not possible to develop a reliable quantitative analysis and comparison of the costs and benefits of all the provisions to the various affected parties, we have primarily focused on explaining the kinds of interactions and the decisions that these parties will have to consider. As with previous impact analyses, we are soliciting comments and information about the anticipated effects of these proposed changes to the prospective payment system.

D. Basis and Methodology of Estimates

Much of the available Medicare program data still reflect patterns and trends of utilization and payment under cost reimbursement. Where it is feasible and appropriate, we have used these data to model and analyze the effects of particular proposals. However, the quantitative estimats given below should be received with a qualified recognition of the limitations of the data on which they are based. Moreover, from October 1, 1985, through April 30, 1986, the prospective payment system was operating under legislative constraints that we had not expected; further, the inclusion of capital-related costs and implementation of changes required under Pub. L. 99–272 have made the task of modeling more complex. Our analysis is also made more difficult by the necessity to consider and present separately the impacts associated with the interim final rule published May 6, 1986.

Interactive effects, the recent legislative freeze, and the phasing in of different facilities (and sometimes areas) on different schedules compel us to be tentative. In particular, we must point out that as yet we have only incomplete data on the effect on hospital-specific costs per case of the change in the cost report allocation sequence for teaching hospitals in New York State. Thus, any estimates below, especially those reflecting regional rates for the Mid-Atlantic region, must be viewed as approximate.

Because this analysis includes a discussion of the May 6, 1986 final rule as well as provisions of this proposed rule, and because the provisions of Pub. L. 99–272 created certain analytic problems through extension of the transition period (with the Oregon exception) and requirements to restandardize the FY 1987 rates, we have had to consider carefully what baseline we would use to assess the relative impacts of the various provisions of this proposed rule. In previous impact analyses, we have simply used projected payments for the fiscal year preceding the year for which we were setting rates as the baseline, and represented the impact of specific provisions relative to the projected percent change in total payments.

As a result of the enactment of Pub. L. 99–272, however, for FY 1986 payments have been made on two distinct bases. Thus, we had a choice: we could use FY 1985 rates (that is, the rates actually paid during the first seven months of FY 1986), or the FY 1986 payment rates (that is, those paid during the period May 1, 1986 through September 30, 1986) as a baseline.

We decided to use the payment parameters in effect for the seven-month period from October 1, 1985 to April 30, 1986 as our initial baseline. Because of statutory postponements in implementing the September 3, 1985 rule, the rates paid during the first seven months of FY 1986 reflect the FY 1985 payment rates. Thus, the following discussion of the provisions of the interim final rule published May 6, 1986 compares payments for the baseline period to the May to September FY 1986 payments. The FY 1986 payments in effect from May through September 1986 are then used as the baseline for FY 1987 impact assessments of the provisions of this proposed rule. To ensure comparability, we assumed that all payment periods and payment parameters used in the comparisions were in effect for a full twelve months.

Generally, to assess the effect of a specific provision, we have treated all hospitals in our database as if they had the same cost reporting period; that is, a cost reporting period coinciding with the Federal fiscal year. In some instances, however, we want to reflect the effects of hospitals' phasing in on different schedules. Those instances, such as the estimates of payment per case, are clearly identified below. Our model does not take into account any prospective behavioral changes in response to these proposals.

E. Hospitals Included In and Excluded From the Prospective Payment System

Since October 1983, hospitals operating under prospective payment have been phasing into the system according to their own accounting year starting dates. Further, since September 1985, both Massachusetts and New York

have discontinued their waivers, and hospitals in those States have entered the prospective payment system. As of January 1, 1986, about 5700 hospitals (94 percent of all Medicare-participating hospitals) were operating under the prospective payment system. Only 169 hospitals remain excluded from the prospective payment system because of waivers (New Jersey and Maryland) or demonstrations (Rochester and Finger Lakes regions of New York State).

As of January 1, 1986, 739 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of reasonable cost reimbursement, subject to hospital-specific limits on the rate of their cost increases. Examples of these hospitals include psychiatric, rehabilitation, alcohol/drug, long-term, and children's hospitals. Another 1,598 psychiatric, rehabilitation and alcohol/drug units, in hospitals included in the prospective payment system, are excluded from prospective payment as of the same date. These units, too, are paid on the basis of reasonable cost reimbursement, subject to hospital-specific limits on the rate of their cost increases.

More than four hundred hospitals are being paid on various special bases under the prospective payment system, as required by statute. They include hospitals accorded special treatment as described in our regulations at 42 CFR Part 412, Subpart G, such as sole community hospitals, and cancer treatment and research hospitals. Also included in this group receiving payment on special bases are referral centers and hospitals that previously allowed extensive direct billing under Part B of Medicare.

F. Implementation of Certain Provisions of COBRA

1. General Discussion

On May 6, 1986, we published an interim final rule with comment period (51 FR 16772) implementing certain provisions of Pub. L. 99-272 that affected operation of the prospective payment system during FY 1986, as well as subsequent years. Although these statutory provisions generally afforded us little administrative discretion, we promised to prepare an analysis of the impact of implementation of those provisions and publish it in conjunction with this proposed rule.

2. Statutory Increase in Payment Rates

The final rule we published on September 3, 1985 would not have increased payment rates under the prospective payment system for FY 1986. However, as a result of Pub. L. 99-272—

- For prospective payment hospitals, the update to the adjusted standardized rates of one-half of one percent is effective for discharges occurring on or after May 1, 1986. The hospital-specific rates are increased by zero percent for discharges occurring during the first seven months of a hospital's cost reporting period beginning in FY 1986 and by one-half of one percent for discharges occurring during the remaining five months of that cost reporting period.
- For hospitals excluded from the prospective payment system, the hospital's target amount for cost reporting periods beginning in FY 1986 is the previous year's target amount increased by five-twenty-fourths of one percent (that is, an increase of one-half of one percent for five months of the 12-month cost reporting period).
- For purposes of determining update percentages for discharges occurring on or after October 1, 1986 or cost reporting periods beginning on or after October 1, 1986, as appropriate, the applicable percentage increase for both prospective payment hospitals and excluded hospitals, for discharges occurring in FY 1986 or cost reporting periods beginning in FY 1986, as appropriate, is deemed to have been one-half of one percent throughout the applicable period.

We estimate that these increases will result in increased payments to hospitals of $35 million in FY 1986 and $210 million in FY 1987. Excluded hospitals and units account for a small proportion of total inpatient hospital expenditures, and would receive, in the aggregate, less than $2 million more in cost reporting periods beginning in FY 1986.

Hospitals under the prospective payment system will benefit by a direct increase in payment rates. Because the increase is a simple percentage increase, hospitals that already received high payment amounts, on the average, based on their wage indexes and case mix, would receive higher dollar increases than hospitals that receive lower average payments.

Excluded hospitals and units will benefit from increased target amounts in different ways, depending on the change in the relationship of their average costs per case to their new target amounts. Hospitals that would have had costs per case under their target amounts before the increase will benefit from larger incentive payments (that is, payments in excess of cost under § 405.463(d)(2)). Hospitals that have costs greater than their target amounts even with the increase nonetheless will benefit from increased reimbursement. A few hospitals that might otherwise have experienced target amount payments slightly less than their cost per case may actually receive small incentive payments, instead. However, because the increase in the target amount is relatively small, such cases would be rare.

3. No Retroactive Application of the HCFA Adjusted Gross Wage Index

For purposes of determining the prospective payments to hospitals in FY 1984 and FY 1985, we used calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS's) ES 202 Employment, Wages and Contributions file for hospital workers to construct the wage index. However, the September 3, 1985 final rule set forth a revised hospital wage index that is based on an HCFA survey of hospital gross hourly wage and salary data. This wage index was developed in an attempt to overcome the limitation of the BLS data with regard to full-time and part-time employment.

This revised wage index was not implemented because of the provisions of the Emergency Extension Act of 1985 (Pub. L. 99-107) and the succeeding amendments to that Act. Section 9103(a) of Pub. L. 99-272 specifies that, for discharges occurring on or after May 1, 1986, prospective payments to hospitals are to be adjusted to reflect the changes made in the September 3, 1985 final rule relating to the hospital wage index. The retroactive application of the revised wage index to cost reporting periods beginning on or after October 1, 1983 is repealed.

In May the 6, 1986 rule, we made adjustments to the wage index published in the September 3, 1985 final rule to correct data errors. On the whole, the effect of these corrections was slight, especially in comparison with the effect of the repeal of retroactive application of the revised wage index.

As shown in the impact analysis of the September 3, 1985 final rule (50 FR 35757), the aggregate effect of retroactive application of the revised wage index would have been a 0.11 percent reduction in FY 1986 payments. However, as a result of the repeal of the retroactivity provision, there will be no such reduction.

4. Extension of the Transition Period

Section 9102 of Pub. L. 99-272 extended the prospective payment

system transition period by making the following changes:

• *Hospital-specific/Federal blend.* For cost reporting periods beginning on or after October 1, 1985 and before October 1, 1988, the blend of hospital-specific and Federal portions is 50 percent hospital-specific and 50 percent Federal for the first seven months of the cost reporting period and 45 percent hospital-specific and 55 percent Federal for the remaining five months of the cost reporting period. For cost reporting periods beginning in FY 1987, the blend is 25 percent hospital-specific and 75 percent Federal. Starting with cost reporting periods beginning in FY 1988, the payment rate is based exclusively on the Federal portion.

• *Regional/National Blend of Federal Rate.* For discharges occurring in FY 1986, the Federal portion is made up of 25 percent national and 75 percent regional. For discharges occurring in FY 1987, the combined rate is 50 percent national and 50 percent regional. The Federal portion is based exclusively on the national rate beginning in FY 1988.

Further, under the provisions set forth in section 9102(d)(4) of Pub. L. 99–272, all hospitals subject to the prospective payment system that are located in the State of Oregon are excepted from the changes made to the transition period by the preceding paragraphs of section 9102 of Pub. L. 99–272. Section 9102(d)(4) of Pub. L. 99–272 further specifies that for those hospitals located in Oregon, the following applies:

• *Hospital-specific/Federal blend for Oregon.* Section 9102(d)(4)(B) states that for the first seven months of a cost reporting period beginning in FY 1986, the payment rate consists of a blend of 50 percent of the hospital-specific rate and 50 percent of the Federal rate. For the remaining five months of a cost reporting period beginning in FY 1986, the blend is 25 percent of the hospital-specific rate and 75 percent of the Federal rate. For cost reporting periods beginning on or after October 1, 1986, the payment rate is comprised solely of the Federal rate.

• *Regional/National blend of Federal rate for Oregon.* For discharges occurring on or after October 1, 1985 and before May 1, 1986, the Federal rate consists of 75 percent of the regional rate and 25 percent of the national rate. For discharges occurring on or after May 1, 1986 and before October 1, 1987, the Federal rate consists of 50 percent of the regional rate and 50 percent of the national rate. For discharges occurring on or after October 1, 1986, the Federal rate is comprised solely of the national rate.

Thus, despite the delay of implementation of the September 3, 1985 final rule, Oregon hospitals will make the transition to a fully national Federal rate at the same time all hospitals would have, had the transition not been extended.

As discussed above in section D. of this analysis, to assess the impact of the revised transition provisions, we had to determine what to use as a baseline. We decided to use the seven-month period from October 1, 1985 to April 30, 1986, annualized to ensure comparability, as the main baseline. Thus, we have compared payment levels for the May 1, 1986 to September 30, 1986 period to that baseline. (See section L. of this impact analysis for the comparable discussion of FY 1987 payment rates.)

The Pub. L. 99–272 changes in blending of hospital-specific and Federal rates, and of national and regional portions of the Federal rates (including the special provisions for Oregon), affect payments to different categories of hospitals differently. The following table illustrates the magnitude of the effect on selected categories of hospitals.

TABLE I.—IMPACT OF PUB. L. 99–272 TRANSITION CHANGES ON PAYMENTS FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986

Category of hospitals	Annualized percent changes in total payments
All Hospitals	0.17
Urban Hospitals	0.19
0–99 beds	0.74
100–404 beds	0.13
405–864 beds	0.23
865+ beds	0.14
Rural Hospital	0.06
0–99 beds	0.07
100–149 beds	−0.12
150+ beds	0.20
By Census Region:	
New England	0.28
Mid Atlantic	0.36
South Atlantic	0.18
East North Central	0.17
East South Central	0.08
West North Central	−0.10
West South Central	−0.07
Mountain	0.11
Pacific	0.32
—Oregon	3.24

5. Additional Payments to Hospitals Serving a Disproportionate Share of Low-Income Patients

Section 9105 of Pub. L. 99–272 added a new section 1886(d)(5)(F) to the Act requiring additional payment for hospitals that serve a disproportionate share of low-income patients. For discharges occurring on or after May 1, 1986 and before October 1, 1988, an additional payment must be made for each prospective payment hospital that meets one of the following criteria:

• During the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—

—15 percent if the hospital is located in an urban area and has 100 or more beds;

—40 percent, if the hospital is located in an urban area and has fewer than 100 beds; or

—45 percent, if the hospital is located in a rural area.

• The hospital is located in an urban area, has 100 or more bed, and can demonstrate that, during its cost reporting period, more than 30 percent of its total inpatient care revenues is derived from State and local government payments for indigent care furnished to patients not covered by Medicare or Medicaid.

For purposes of meeting the latter criterion, it is incumbent upon a hospital to demonstrate that more than 30 percent of its total inpatient care revenues are from State and local government sources and that these revenues are specifically earmarked for the care of indigents (that is, none of that money may be used for any purpose other than indigent care). The following are among the types of care that are not to be included by the hospital as indigent care:

• Free care furnished to satisfy the hospital's Hill-Burton obligation.

• Free care or care furnished at reduced rates made available by the hospital to its employees or by a government hospital to any category of public employees.

• Funds furnished to the hospital to cover general operating deficits.

The disproportionate patient percentage used in the first criterion described above is the sum, expressed as a percentage, of the following two fractions.

1. Patient days of those patients entitled to both Medicare Part A and Supplemental Security Income (SSI) (excluding those patients receiving State supplementation only)

   Patient days of those patients entitled to Medicare Part A

2. Patient days of those patients entitled to Medicaid but not to Medicare Part A

   Total number of patient days

The method of computing a hospital's disproportionate patient percentage and the process for making payments to hospitals that serve a disproportionate share of low-income patients are discussed in detail in the May 6, 1986 rule (51 FR 16777).

The additional payment adjustment for hospitals that meet the

disproportionate patient percentage criterion is determined as follows:

- For urban hospitals with 100 or more beds, the hospital's total DRG revenue (as defined below) is increased by 2.5 percent plus one-half the difference between the hospital's percentage of low-income patients and 15 percent, up to a maximum of 15 percent; that is, the disproportionate share adjustment factor is the lesser of 15 percent or (P−.15)(.5)+.025, where P equals the hospital's disproportionate patient percentage expressed as a decimal.
- For urban hospitals with fewer than 100 beds, the hospital's total DRG revenue is increased by five percent.
- For rural hospitals, the hospital's total DRG revenue is increased by four percent.

For a hospital that meets the definition of a disproportionate share hospital based on the indigent care revenue criterion, the payment adjustment is determined by increasing the hospital's total DRG revenue by 15 percent. A hospital's total DRG revenue is the revenue based on DRG-adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment rates) including outlier payments but excluding any other additional payments such as the indirect medical education payment.

Between 900 and 1200 hospitals may qualify for these payments. The large majority, probably at least 700, are expected to be urban hospitals with more than 100 beds. Nonetheless, we expect between 170 and 200 rural hospitals to receive some additional payment under this provision.

We estimate that this will result in additional payments of $200 million to qualifying hospitals for the period May 1, 1986 to September 30, 1986. For FYs 1987 and 1988, we estimate that additional payments to qualifying hospitals will be $600 million and $825 million, respectively. This will not result in an overall increase in Medicare program expenditures for the latter two fiscal years, since the Federal rates for all hospitals will be adjusted to remove the effects of the estimated additional payments, as discussed in section II.A.1.e. of the Addendum to this proposed rule. See section L. of this impact analysis for the effects of that adjustment on the FY 1987 payment rates.

6. Paymnt for the Indirect Costs of Medical Education

Because the indirect costs of medical education are defined in terms of increased operating costs, they are not separately identifiable on the cost report or in other financial or accounting records. Rather, these incremental costs have been statistically estimated as a function of teaching intensity, and a proxy measure (the hospital's ratio of the number of interns and residents to the number of beds) has been used to measure teaching intensity. The coefficient describing this statistical relationship has been expressed as a percentage and applied as the indirect medical education adjustment factor.

Section 9104(a) of Pub. L. 99-272 reduced the education adjustment factor used to determine the indirect medical education payment from 11.59 percent to approximately 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1986. For discharges occurring on or after October 1, 1986, the adjustment factor is equal to approximately 8.7 percent. In addition to being reduced, the adjustment factor is no longer applied on a linear basis, but rather on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship; that is each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs. Therefore, the adjustment factors are only approximately 8.1 percent and 8.7 percent.

For discharges occurring on or after May 1, 1986 and before October 1, 1986, the indirect medical education factor equals the following:

$$2\times\left[\left(\frac{1+\text{interns and residents}}{\text{beds}}\right)^{.405}-1\right]$$

For discharges occurring on or after October 1, 1986, that factor equals the following:

$$1.5\times\left[\left(\frac{1+\text{interns and residents}}{\text{beds}}\right)^{.4755}-1\right]$$

We estimate that implementation of section 9104(a) of Pub. L. 99-272 will result in savings as follows:

Fiscal years	Savings (in millions)
1986	−$175
1987	−630
1988	−910
1989	−1,135
1990	−1,245
1991	−1,365

The savings for FY 1986 are for the period May 1, 1986 to September 30, 1986.

We analyzed the effect that the approximately 30 percent reduction in the education adjustment factor would have on both indirect medical education payments and total payments for teaching hospitals by comparing their annualized payment levels, for the period October 1, 1985 through April 30, 1986 to the new levels, also expressed on an annual basis. Because of the adoption of the required curvilinear method of computation, for most groups of hospitals the effective reduction of the amount of teaching payments was greater than the percent reduction in the teaching adjustment factor, as illustrated by Table II.

TABLE II.—ESTIMATED PERCENT REDUCTION IN TEACHING PAYMENTS [1] FOR THE PERIOD MAY 1, 1986, TO SEPTEMBER 30, 1986

Category of hospitals	Annualized percent change in teaching payments [2]
All Hospitals	−35.9
Urban Hospitals	−35.3
0-99 beds	−33.5
100-404 beds	−35.0
405-684	−36.0
685 + beds	−36.8
Rural Hospital	−34.6
0-99 beds	−32.2
100-169 beds	−31.9
170 + beds	−34.8
By Census Region:	
New England	−36.3
Mid Atlantic	−35.4
South Atlantic	−36.2
East North Central	−34.5
East South Central	−33.4
West North Central	−34.9
West South Central	−34.5
Mountain	−35.7
Pacific	−36.5
Teaching Status:	
Non-Teaching	0.0
Resident/Bed Ratio Less than 0.25	−32.7
Resident/Bed Ratio Greater than 0.25	−37.7
Disproportionate Share Hospitals (DHS):	
No Additional Payments	−34.8
Urban DSH less than 100 beds	−36.6
Urban DSH 100 beds or more	−34.7
Rural DSH	−30.7

[1] "Teaching payments" refers to payments under the adjustment for the indirect cost of medical education. See 42 CFR 412.118.

[2] This reflects the estimated proportional difference in total dollar payments for all teaching hospitals in each category, because teaching payments are made only in relation to the Federal portion of the prospective payment rate, and because the Federal portion increased from 50 percent to 55 percent between these two periods, the actual dollar decrease for all hospitals in the aggregate will be less than suggested by these percent changes.

As would be expected, the greatest proportional reduction in payments for the indirect costs of medical education would be experienced by teaching hospitals with high resident-to-bed ratios. Hospitals with resident-to-bed ratios of less than 0.25 are expected to experience, on the average, the equivalent of a 1.48 percent annual reduction in total payments. Hospitals with heavier teaching involvement (that is, hospitals with resident-to-bed ratios equal to or greater than 0.25) will experience, on the average, the equivalent of a 0.47 percent annual

decrease in total payments for the same period.

7. Payment for Indirect Medical Education Costs of Certain Clinics.

Section 602(k) of Pub. L. 98–21, the public law that established the prospective payment system, authorizes waiver of the statutory requirement that nonphysician services be furnished either directly or under arrangement in the case of a hospital that had followed a practice of direct billing under Medicare Part B so extensively that immediate compliance with these requirements would threaten the stability of patient care.

Section 602(k) of Pub. L. 98–21 also requires that we reduce the Medicare Part A payment to hospitals that have such waivers for the amount of Part B billings for nonphysician services furnished to the hospital's inpatients. Therefore, payments for inpatient services are reduced to take into account 100 percent of the reasonable charges (before application of the Medicare Part B deductible and coinsurance amounts) for nonphysician services furnished by an outside supplier.

Generally, a hospital's indirect medical education payment is determined on the basis of the total DRG revenue based on the Federal rates received by the hospital. The DRG revenue received by hospitals that qualify for a waiver does not include the Part B reasonable charges for nonphysician services furnished by an outside supplier. Therefore, our policy for determining the amount of the indirect medical education payment for a hospital that has a waiver has been to base the payment on the DRG revenue based on Federal rates after it has been reduced for Part B billing.

Section 9112(a) of Pub. L. 99–272 amended section 602(k) of Pub. L. 98–21 by adding a provision that specifies that the indirect medical education payment for hospitals that have a waiver is to be computed as if the hospital were receiving under Part A all the payments that were made under Part B because of the waiver. That is, a hospital with a waiver under section 602(k) of Pub. L. 98–21 is treated as if the waiver is not in effect for purposes of computing the additional payment for the indirect costs of medical education. Section 9112(b) of Pub. L. 99–272 specifies that this amendment is effective for cost reporting periods beginning on or after January 1, 1986.

In addition, section 9112(a) of Pub. L. 99–272 amended section 602(k) of Pub. L. 98–21 to specify that, effective April 17, 1986, Part A services billed under Part B under a waiver will be paid at 100 percent of the reasonable charge (or other applicable basis of payment), and that in order to retain its waiver, the hospital must ensure that the supplier that bills for the services accepts this payment as payment in full (that is, the beneficiary is not responsible for payment of the coinsurance, or for any amount in excess of the reasonable charge (or other applicable basis for payment)). In section 9112 of Pub. L. 99–272, Congress specifically stated that payment for Part A services billed under Part B is equal to 100 percent of the reasonable charge and that the entity furnishing the services must accept *this amount* as the full charge. For administrative simplicity, we will not apply the deductible to these payments.

Only 4 hospitals currently have waivers under 602(k). Further, the Secretary's authority under section 602(k) to waive those requirements specified in the Act does not extend to cost reporting periods beginning on or after October 1, 1986. As a result, in terms of overall Medicare expenditures, costs or savings resulting from these time-limited changes are negligible. Nonetheless, hospitals with a 602(k) waiver will experience a significant benefit from increased payments for the indirect cost of medical education. On the other hand, the outside suppliers furnishing services through some waiver hospitals will have to forego billing beneficiaries for charges in excess of Medicare reasonable charges. We expect that this time-limited requirement will not be so costly that affected hospitals will relinquish their waivers.

8. Cumulative and Interactive Effects

Because each of the several changes discussed above may affect a given hospital in different ways, we have analyzed the separate and combined effects of certain of them on selected categories of hospitals. The comparisons we made are based on the percent change in estimated annualized total payments for the periods October 1, 1985 to April 30, 1986, and May 1, 1986 to September 30, 1986. Table III, below, shows the comparative effect of implementation of certain provisions of Pub. L. 99–272, assuming that all hospitals phased into the system on the same schedule, on a Federal fiscal year basis. Note that the column titled "Total Combined Effects" reflects the use of the HCFA survey-based wage index and the 0.50 percent increase to standardized amounts and hospital-specific rates, as well as all the factors included in the separately identified columns.

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TABLE III-ESTIMATED IMPACT OF PUB. L. 99-272 REVISIONS TO OPERATING COST PAYMENTS (EXCLUDING CAPITAL) FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986, COMPARED TO OCTOBER 1, 1985 TO APRIL 30, 1986 PAYMENTS BASED ON FY 1985 PAYMENT PARAMETERS

	Reduction in Teaching Adjustment Factor	Additional Payments to Disproportionate Share Hospitals	Change in Blend (55/45)	Revised Outlier Criteria[1/]	Total Combined Effects[2/]
All Hospitals	-1.21	0.61	0.17	0.95	0.90
By Census Regions					
New England	-1.96	0.22	0.26	1.67	1.01
Mid Atlantic	-2.03	0.27	0.38	1.70	-0.03
South Atlantic	-1.06	0.84	0.18	0.87	0.75
East North Central	-1.43	0.48	0.17	1.11	0.49
East South Central	-0.49	0.96	0.08	0.79	1.85
West North Central	-0.84	0.34	-0.10	0.69	0.90
West South Central	-0.66	0.85	-0.07	0.68	0.87
Mountain	-0.87	0.22	0.11	0.50	0.58
Pacific	-1.12	0.95	0.32[3/]	0.43	2.16
Urban Hospitals	-1.43	0.73	0.19	1.05	0.97
0-99 Beds	-0.10	0.14	0.74	0.48	2.11
100-404 Beds	-0.74	0.85	0.13	0.89	1.87
405-684 Beds	-1.99	0.62	0.23	1.23	0.19
685 + Beds	-3.35	0.68	0.14	1.51	-1.20
Rural Hospitals	-0.16	0.07	0.06	0.46	0.56
0-99 Beds	-0.01	0.12	0.07	0.32	0.84
100-169 Beds	-0.02	0.05	-0.12	0.40	0.62
170 + Beds	-0.47	0.01	0.20	0.71	0.14

1/ These criteria were set forth in the September 3, 1985 final rule, but did not go into effect until May 1, 1986.

2/ This column includes the combined effects of all the previous columns, plus the statutory 0.5 percent increase to both standardized amounts and hospital-specific rates, plus the effect of implementation of the HCFA survey-based gross wage index.

3/ Oregon alone would receive payments based on 75 percent of the Federal rate and 25 percent of the hospital-specific rate, with a resulting payment increase of 3.24 percent.

TABLE III-ESTIMATED IMPACT OF PUB. L. 99-272 REVISIONS TO OPERATING COST PAYMENTS (EXCLUDING CAPITAL) FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986, COMPARED TO OCTOBER 1, 1985 THROUGH APRIL 30, 1986 PAYMENTS BASED ON FY 1985 PAYMENT PARAMETERS

	Reduction in Teaching Adjustment Factor	Additional Payments to Disproportionate Share Hospitals	Change in Blend (55/45)	Revised Outlier Criteria 1/	Total Combined Effects 2/
Teaching Status					
Non-Teaching	-0.00	0.50	0.11	0.65	1.76
Resident/Bed Ratio Less than 0.25	-1.48	0.58	0.14	1.16	0.77
Resident/Bed Ratio 0.25 or Greater	-6.47	1.30	0.55	1.76	-2.98
Disproportionate Share Hospitals (DSH)					
No Additional Payments	-0.99	0.00	0.18	0.93	0.47
Urban DSH less than 100 Beds	-0.24	2.77	1.21	0.62	4.71
Urban DSH 100 Beds or More	-2.12	2.94	0.09	1.08	2.50
Rural DSH	-0.01	1.95	0.33	0.31	2.71
Other Special Status					
Sole Community Hospital (SCHs)	-0.04	0.08	-0.00	0.19	0.65
Rural Referral Centers (RRCs)	-0.89	0.05	0.65	0.75	0.45
Both SCH and RRC	-0.17	0.00	0.00	0.30	0.98
Type of Ownership					
Voluntary	-1.25	0.50	0.15	1.03	0.81
Proprietary	-0.20	0.72	0.03	0.51	1.67
Government	-1.76	1.20	0.38	0.84	0.88

1/ These criteria were set forth in the September 3, 1985 final rule, but did not go into effect until May 1, 1986.

2/ This column includes the combined effects of all the previous columns, plus the statutory 0.5 percent increase to both standardized amounts and hospital-specific rates, plus the effect of implementation of the HCFA survey-based gross wage index.

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We also analyzed the effect these changes, as a whole, made on the average payment per case for operating costs (excluding capital). To do this, we modeled each hospital's total operating payments according to its own fiscal year. These payments again were compared for two annualized periods: the baseline used the FY 1985 payment parameters in effect for the 7-month period from October 1985 through April 1986, and the comparison period used the payment parameters established under Pub. L. 99-272. Payments included additional payment for the costs of indirect medical education and disproportionate share payments, but excluded payments for capital-related costs, the direct costs of medical education, and other pass-through costs. The results are shown in Table VI., in section L. of this impact analysis, along with projected average payments per case for FY 1987.

G. Referral Center Criteria

There are currently 187 rural referral centers and one urban referral center. Those that qualified for referral center status in FY 1984 must requalify in FY 1987, for a new three-year period to begin in FY 1988, or lose their referral center status. The bulk of referral centers qualified during FY 1985, and will not have to requalify for a new three-year period until FY 1988.

The proposed criteria may enable some hospitals that could not meet the earlier discharge criteria to qualify in FY 1987. Under the specific criteria set forth in section 9106(a) of Pub. L. 99-272, we expect a small number of osteopathic hospitals to qualify, perhaps as few as two. Since hospitals in Massachusetts and New York State entered the prospective payment system only recently, we also expect some additional hospitals from those States to qualify for referral center status.

The initial qualification criteria for referral centers that qualified in FY 1984 included only hospitals with 500 beds or more. For the most part, those centers have met the qualifying criteria for at least two years since FY 1984, and should requalify in FY 1987. The proposed revision to the discharge criteria would minimize the possibility that a hospital would fail to requalify because of that criterion. A hospital would have to have qualified on the basis of the 6000 discharges criterion (or the regional urban median) and have experienced a greater than average decline in discharges to fail to requalify solely on the basis of that criterioon. Some hospitals may not be able to meet the proposed case-mix requirement. However, we believe these requirements are set at appropriate levels and are crucial to identifying those hospitals that truly function in a referral capacity.

H. Excluded Hospitals and Units

1. Target Amount Updates

As noted above, 738 Medicare hospitals and 1,598 units in hospitals included in the prospective payment system currently are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 405.463. For cost reporting periods beginning in FY 1987, these hospitals would have a target amount equal to the 0.5 percent greater than the target amount for its previous cost reporting period. That is, the FY 1986 cost reporting period target amount, which was equal to the FY 1985 target amount increased by five-twenty-fourths of a percent in accordance with section 9101 of Pub. L. 99-272, would be multiplied by 1.005. As a result, excluded hospitals and units would be paid, in the aggregate, somewhat more than they would have been paid if the target amount included in the September 3, 1985 final rule had been implemented and carried forward for FY 1987.

The effect this would have on affected hospitals and units would vary depending on each one's existing relationship of costs per discharge to its target amount, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that achieve per discharge costs lower than their target amounts, the primary impact would be to affect the level of additional payments made under § 405.463(d)(2) proportional to the hospital's increase or decrease in per-discharge costs.

In general, we expect the increased ceiling on payments would maintain existing incentives for economy and efficiency experienced by excluded hospitals and units. We do not believe that these limits would achieve incentives comparable to those produced by the prospective payment system. Therefore, we will, as required under the law, continue to study means for establishing an appropriate prospective payment methodology for those hospitals and units that are currently excluded from the prospective payment system. Nontheless, we believe the proposed target amount level would ensure that services furnished to beneficiaries by affected hospitals and units would, for the most part, be paid for at a level no higher than necessary for the efficient delivery of needed health services.

2. Alcohol/Drug Hospitals and Units

In the September 3, 1985 final rule we extended the exclusion of alcohol/drug hospitals and units from the prospective payment system for an additional year (50 FR 35669). As of March 1986, there were 26 excluded alcohol/drug hospitals and 355 excluded units in PPS hospitals included in the prospective payment system. In June 1985, there were 23 hospitals and 317 units. Thus, there has been some increase in numbers over the additional extension period.

We do not expect that the further extension of this exclusion for one more year would result in a substantial increase in the number of participating alcohol/drug hospitals and units. Our study of the potential effects of the new DRGs proposed for these services is incomplete. Thus, we cannot predict the effect of bringing these hospitals and units under the prospective payment system.

I. DRG Classification Changes

Because we have attempted to respond as fully as possible to ProPAC's recommendations regarding DRG classification changes in addition to those we proposed on March 13, 1986, we have not yet modified the GROUPER program. Thus, we are unable to regroup claims in order to assess the impact of the proposed classification changes included in this proposed rule. We do not, however, expect the changes we are proposing for DRG classification to have a substantial impact on payment to any particular category of hospital, except possibly those hospitals specializing in treating cases that fall in affected DRGs.

The proposed DRG classification changes are intended to foster greater homogeneity within each DRG, or, when that is not possible, to ensure that the structure of a DRG is such that payment for the average case does not systematically advantage one group of hospitals at the expense of another. Because we evaluate the appropriateness of DRG classification changes in the aggregate, from the perspective of their ability to better explain variation in resource use across cases, and because most DRGs are defined broadly enough so that there is little concentration of cases in a given DRG among hospitals, we do not believe that an analysis of the economic impact of our proposed classification changes would reveal anything other than coincidental effects, particularly given the level of aggregation we generally work at.

J. Elimination of PIP

Approximately 3290 hospitals currently receive payments under the PIP method and would be affected by the proposal to eliminate PIP for discharges on or after July 1, 1987.

As a result of PIP, payments to PIP hospitals have been delayed less than reimbursement for non-PIP hospitals. Therefore, PIP hospitals have had a cash flow advantage over non-PIP hospitals. As a result of the elimination of PIP, the payment delay for hospitals presently under PIP could come to equal the current delay for current non-PIP hospitals. If this were to occur, our Medicare program outlays (as distinct from incurred expenditures) would be temporarily reduced. However, we anticipate that elimination of PIP would give current PIP hospitals incentives to speed up their billing process. Presently they have little incentive to speed up billing, or even to reduce any error rate, because timely payment is assured.

We anticipate that, in response to elimination of PIP, a hospital that does not currently file electronic media claims (EMC) would look at its own billing cycles and decide whether or not to bill through EMC. We expect that most hospitals have computer systems with the capability to submit claims electronically to the intermediary. At the present time our data show that 50 percent of all hospitals submit EMCs. We believe that the elimination of PIP would provide an incentive for more hospitals to convert to electronic claims.

For a hospital paid on a bill basis, billing errors may mean significant delay of payment. EMCs are prepared more easily by the hospital, with fewer errors than hardcopy claims. Additionally, EMCs are automatically entered into the intermediary's system, while hard copy bills must be individually typed. While data regarding average processing time under each method are not available, we believe that, in the absence of PIP, increased EMC could result in more rapid payment than under individual hard copy billing for some hospitals.

Hospitals with large numbers of patients with stays of 45 days and over may be slightly disadvantaged because only one interim payment per discharge would be allowed. Those hospitals having patients with unusually long lengths-of-stay may be slightly more disadvantaged if they have large numbers of patients falling between the end of the hospital's billing cycle and up to 45 days. We expect that the special interim payment for cases extending beyond 45 days would ease the impact of this proposal. However, this would apply only to payment for certain high-cost cases.

Monitoring and recomputation requirements under PIP, which occur not less often than quarterly, would be eliminated, as well as adjustment for PIP interim billing at cost settlement. Hence, we expect some administrative efficiencies. The data are not available to estimate the personpower and systems savings related to this activity.

K. Impact of Capital-Related Prospective Payments

1. Background

Section 601(a)2 of Pub. L. 98–21 and section 9107 of Pub. L. 99–272 authorize the Secretary to include, as hospital inpatient operating costs, capital-related costs for cost reporting periods beginning on or after October 1, 1986. By so doing, capital-related costs, which are currently reimbursed on a reasonable cost basis, would be incorporated into the prospective payment system. The hospital prospective payment rates would then include payments for these capital-related costs as well as for operating costs.

In our report to Congress entitled "Hospital Capital Expenses: A Strategy for the Future," we analyze the effects of the current system on hospital investment behavior and recommend that extension of the prospective payment system for capital-related costs would bring about a more rational and efficient distribution of capital resources. It also represents a less interventionist role for government and a much more market-oriented approach to the allocation of scarce resources than the current system. Based on our analysis of the industry, we believe it is an opportune time to revise our policy with respect to capital-related costs and subsume them under the prospective payment system.

By incorporating capital-related costs into the prospective payment system, we are extending the objectives underlying the current system to this area of inpatient hospital costs. Because capital costs remain fixed over an extended period of time, these types of expenditures generally do not correlate closely with variations in operating costs in the short-run. In a price-competitive market, however, capital-related costs will follow long-run charges in operating costs. Because we reimburse capital-related expenditures on a reasonable cost basis, hospitals have no strong economic incentive to conform their capital-related expenditures to the long-run patient market conditions of hospital operating characteristics. Thus, the principal objective we hope to achieve through integrating payments for inpatient capital-related costs into the prospective payment system is to establish the same kind of economic relationship between a hospital's operating costs and capital investment decisions as exist in price-competitive markets.

The difficulty in establishing a more price sensitive model for hospital capital investment decisions is the absence of a natural pricing mechanism that would serve to limit revenue sources for hospital capital investments. In fact, the current cost-based reimbursement system rewards hospitals through higher payments for investing in economically inefficient assets rather than for prudent purchasing and investment decisions. Rather than rewarding hospitals for investing in accordance with perceived market demand and the hospital's operating characteristics, the current cost-based reimbursement system rewards hospitals on the basis of their access to financial markets. For example, under cost-based reimbursement, a financially sound hospital with low utilization and with a low case-mix index can borrow funds for expansion of its plant even though it currently has surplus bed capacity. Under the current system, Medicare will reimburse these capital costs without regard to the prudence of the investment. Because of its higher capital costs, this hospital receives higher payments per discharge than a similar hospital with the same occupancy rate and case-mix index but which lacks the access to the financial market of the first hospital.

The proposal to establish prospective payment rates for inpatient hospital capital-related costs would establish a price that would result in hospitals accepting a certain degree of risk for their investment decisions. Incorporating payments for capital-related costs into the prospective payment system would subject these costs to the same financial and economic incentives to which operating costs are subject.

2. Expected Effects

Hospitals that either recently have or are about to make substantial commitments to building projects, either in the form of acquisitions or construction, could be adversely affected by this proposal. Building projects typically require long planning horizons and have long depreciable lives. Hence, hospitals that acquired major capital assets (for example, buildings and major fixed equipment)

and revalued these assets prior to the enactment of section 2314 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), or that either are about to begin, are in the midst of, or completed construction of major capital projects within the past few years, may now be obligated to substantial long-term capital-related expenditures. As a result these hospitals may have above average capital related costs and therefore may be adversely affected by our proposal. Hospitals with low operating margins may experience some cash flow difficulties as a result of implementation of capital-related prospective payment rates, and may have to adopt one or more of the following measures:

- Reduce planned or current capital expenditures through modifying or eliminating current or planned capital acquisition or construction projects;
- Increase revenues through increasing charges or expanding into new markets by either offering new services or reaching new segments of the population;
- Begin or expand fund raising activities; or
- Accept reduction of historically experienced margins or revenue over costs.

We must point out, however, that our proposal provides a transition period during which time hospitals would be afforded an opportunity to adjust their capital planning and budgeting to meet the constraints of the new payment system. In this context, it is also appropriate to restate our intention to consider various alternative time tables for phasing in prospective capital-related payments and for computing payments. As stated in section II.D. of the preamble, we are seriously considering an alternative capital proposal which would deal separately with long-term capital (plant and fixed equipment) and shorter-term capital (movable equipment), with a long transition period to national rates for long-term capital and an immediate move to national rates for movable equipment. This structure might be combined with a rolling base for the hospital-specific portion of long-term capital and an exceptions pool to provide relief to hospitals meeting specified exception criteria. We estimate that adoption of a proposal such as this would likely reduce the estimated savings of the basic proposal by about 25–30 percent.

While some hospitals may be adversely affected by our proposed capital-related prospective payments, other hospitals with below average capital related costs may benefit from this proposal. Many publicly controlled hospitals have been under-capitalized in recent years because of budget constraints and low patient revenues. Because these hospitals typically have not been able to invest in new plant and equipment, their capital-related costs tend to be below average. Once the capital prospective payment rates are fully phased in, these hospitals may be benefited significantly because payments will be based on national average capital-related cost per discharge rather than the hospital's own capital-related costs. Whether these additional revenues would enable hospitals to invest in plant and equipment will depend on the hospital's cash flow needs. Hospitals experiencing serious operating deficits would most likely apply the additional payments to help reduce their operating deficits, while hospitals in a stronger financial position may use the additional revenues to finance capital projects.

We have analyzed, based on available data, the impact the proposed phase-in of capital payment rates would have on certain classes of hospitals over the four-year phase-in period, beginning in FY 1987. Table IV summarizes the results of this analysis. (The combined effects of the proposed capital rates and the updated prospective payment rates for operating costs (excluding capital) are discussed in section M. of this impact analysis.) Table IV displays the effects of implementing the proposed payment system over the four year transition period in terms of the percent change in payments levels between payment amounts approximating what hospitals would receive under the current system for FY 1987 and what they could expect to receive under Federal capital-related prospective payment rates. That is, we compared payments hospitals would receive assuming a 100 percent hospital-specific methodology for FY 1987 with the Federal portion of the prospective capital payment rates phased in over the proposed four year transition period. We used constant dollars and assumed no behavioral change. Thus, this table essentially displays a static analysis of the effect of the proposed transition period.

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TABLE IV - ESTIMATED IMPACT OF PHASE-IN OF PROPOSED CAPITAL PAYMENT SYSTEM COMPARED TO PRESENT SYSTEM OVER FOUR YEAR TRANSITION PERIOD (FY 1987-1991)

Percent Change for Total Capital Payments Based on Blend Portions[1/]

Federal Share / Hospital-Specific Share	20 percent[2/] 80 percent	40 percent[3/] 60 percent	60 percent 40 percent	80 percent 20 percent	100 percent 0 percent
All Hospitals	-4.43	-6.35	-8.28	-10.21	-12.15
By Census Regions					
New England	-2.79	1.42	3.14	4.85	6.57
Mid Atlantic	-3.88	-4.70	-6.08	-7.45	-8.83
South Atlantic	-4.46	-5.65	-7.15	-8.65	-10.15
East North Central	-3.79	-6.11	-8.14	-10.17	-12.19
East South Central	-5.33	-7.93	-10.71	-13.49	-16.27
West North Central	-5.79	-8.25	-11.13	-14.02	-16.90
West South Central	-5.60	-8.66	-11.58	-14.51	-17.44
Mountain	-6.29	-10.22	-12.60	-14.99	-17.37
Pacific	-3.26	-6.62	-8.77	-10.92	-13.07
Urban Hospitals	-4.08	-5.68	-7.32	-8.96	-10.60
0-99 Beds	-6.73	-8.54	-10.29	-12.04	-13.79
100-404 Beds	-5.49	-8.51	-11.54	-14.57	-17.60
405-684 Beds	-1.71	-1.36	-1.06	-0.75	-0.45
685 + Beds	-0.78	0.84	2.24	3.65	5.05
Rural Hospitals	-5.94	-9.25	-12.47	-15.70	-18.92
0-99 Beds	-5.80	-8.57	-11.30	-14.03	-16.76
100-169 Beds	-6.94	-11.53	-15.83	-20.14	-24.44
170 + Beds	-5.26	-8.11	-10.99	-13.88	-16.76

1/ Each column below represents a comparison of the total capital payments that would result from capital prospective payment rates composed of a blend of Federal and hospital-specific portions, both updated by the proposed 0.5 percent update factor, to the total capital payments that would result from capital rates that were 100 percent hospital-specific and updated by the projected capital market basket increase for FY 1987.

2/ For the first year (that is, FY 1987), the Federal rates are 50 percent of the national rate plus 50 percent of the regional rate, except for sole community hospitals.

3/ For FY 1988 and thereafter, Federal rates are 100 percent national, except for sole community hospitals.

NOTE: The assumptions used in this analysis differ from those in the President's Budget.

TABLE IV - ESTIMATED IMPACT OF PHASE-IN OF PROPOSED CAPITAL PAYMENT SYSTEM COMPARED TO PRESENT SYSTEM OVER FOUR YEAR TRANSITION PERIOD (FY 1987-1991)

Federal Share / Hospital-Specific Share	Percent Change for Total Capital Payments Based on Blend Portions[1]				
	20 percent[2] / 80 percent	40 percent[3] / 60 percent	60 percent / 40 percent	80 percent / 20 percent	100 percent / 0 percent
Teaching Status					
Non-Teaching	-5.60	-8.52	-11.38	-14.24	-17.10
Resident/Bed Ratio Less than 0.25	-3.29	-4.38	-5.54	-6.70	-7.87
Resident/Bed Ratio 0.25 or Greater	-0.60	1.47	3.19	4.90	6.62
Disproportionate Share Hospitals (DSH)					
No Additional Payments	-4.97	-7.30	-9.66	-12.01	-14.37
Urban DSH less than 100 beds	4.36	9.41	15.10	20.79	26.48
Urban DSH 100 beds or more	-2.34	-2.70	-3.02	-3.34	-3.66
Rural DSH	-2.75	-4.02	-5.17	-6.32	-7.48
Other Special Status					
Sole Community Hospital (SCH)[4]	-7.79	-7.79	-7.79	-7.79	-7.79
Rural Referral Center (RRC)	-1.82	-1.58	-1.38	-1.19	-0.99
Both SCH and RRC[4]	-7.25	-7.25	-7.25	-7.25	-7.25
Type of Ownership					
Voluntary	-3.86	-5.38	-6.95	-8.52	-10.09
Proprietary	-10.15	-17.06	-23.90	-30.75	-37.59
Government	0.33	2.99	5.76	8.53	11.29

1/ Each column below represents a comparison of the total capital payments that would result from capital prospective payment rates composed of a blend of Federal and hospital-specific portions, both updated by the proposed 0.5 percent update factor, to the total capital payments that would result from capital rates that were 100 percent hospital-specific and updated by the projected capital market basket increase for FY 1987.

2/ For FY 1987, the Federal rates are 50 percent of the national rate plus 50 percent of the regional rate, except for sole community hospitals.

3/ For FY 1988 and thereafter, Federal rates are 100 percent national, except for sole community hospitals.

4/ Sole community hospitals will be paid 75 percent of their hospital-specific rate plus 25 percent of their Federal regional rate for FY 1987 and thereafter.

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In computing the capital prospective payment rates, we removed from the rates 100 percent of the interest earned on funded depreciation and adjusted the rates for the effect of outlier payments. We used the capital component of the hospital market basket to project hospital-specific capital costs through FY 1987. The Federal and hospital-specific portions of the proposed capital rates both were updated by the proposed prospective payment update factor of 0.5 percent.

If FY 1987 capital-related payments were based solely on the Federal rates, all hospitals under the prospective payments system could expect, on the average, a 12.15 percent payment reduction compared to their FY 1984 capital costs updated through FY 1987 by the capital component of the market basket. To the extent that capital costs increased more slowly than the capital component for a particular hospital or category of hospitals, the impact would be lessened. The overall reduction over the phase-in period reflects the combined effect of removing interest on funded depreciation and the different factors used to update hospitals' capital-related costs and the prospective capital-related payment rates for FY 1987. Hence, one can conclude the categories of hospitals with less than a 12.15 percent estimated reduction in payments have, on the average, capital-related costs that are lower than average. Conversely, hospitals sustaining a greater reduction in their capital-related payments have higher than average costs.

Although capital-related payments would decline overall under the proposed payment system, there are some notable exceptions to this trend. Small, urban, disproportionate share hospitals could expect a nearly 26.5 percent increase in their capital-related payments compared to their 1984 capital-related costs updated by the capital component of the market basket. This represents the largest gain of any hospital group. Other categories of hospitals that would benefit from the proposed system are publicly controlled (government) hospitals, hospitals heavily involved in teaching programs, and large, urban hospitals. On average, these hospitals could expect to receive a significant increase in capital-related payments. Also, hospitals in the New England census division could expect to receive, on the average, higher payments for capital-related expenditures. To the extent that a hospital's capital related costs increased faster than the capital component of the market basket, the hospital would benefit less.

Among those categories of hospitals that would sustain reductions in revenues under the proposed system, proprietary hospitals would be the most severely affected group. The extreme drop in payments to proprietary hospitals, we believe, reflects their generally heavier and more recent investments in major capital assets, compared to other hospital assets than other types of hospitals.

Rural hospitals in general would receive lower payments, and the second most severely affected hospital category, after proprietary hospitals, would be rural hospitals with between 100 and 169 beds. The major factors contributing to the reduced rates for these hospitals, we believe, are low occupancy levels and the effect of outlier payment adjustments.

On the whole, rural hospitals would experience a greater drop in capital-related revenues under the proposed system than would urban hospitals. On average, if the proposed Federal capital rates were imposed in full in FY 1987 all rural hospitals would see almost a 19 percent decline in payments relative to their FY 1984 capital-related costs updated by the capital component of the market basket through FY 1987, while urban hospitals, on the average, would experience less than an 11 percent decline compared to their FY 1984 capital-related costs updated through FY 1987. However, urban hospitals with between 100 and 404 beds would experience reductions comparable to rural hospitals.

Although the New England Region would experience some disadvantage for the first year of the phase-in, when regional and hospital-specific rates would depress payments, over the long run it is the one geographical area that would benefit the most from the proposed revamping of the capital-related payment system. The West South Central and Mountain regions of the country would be the most adversely affected areas. This may be the result of a large number of small rural hospitals being concentrated in those regions.

L. Updated Payment Rates and Resulting FY 1987 Payment Amounts

The addendum to this proposed rule, which is printed after the text of the proposed regulation changes and which precedes the appendices, sets forth the proposed methodology for computation of FY 1987 standardized amounts and includes tables of the proposed Federal national and regional rates, DRG relative weights, and outlier thresholds. In this section we present an analysis of the impact of those proposed payment rates. The combined effect of these rates and the proposed capitol rates is discussed in section M. of this impact analysis.

Many of the proposed changes to hospital prospective payments for FY 1987 result from changes required under sections 1886 (d) and (e) of the Act as amended by sections 9101 through 9105 of Pub. L. 99-272. The following changes are required under the statute as currently amended:

- Effective with cost reporting periods beginning in FY 1987, except for hospitals located in Oregon and for sole community hospitals, hospital prospective payment rates will be the sum of 75 percent of the Federal rates and 25 percent of a hospital-specific rate (section 1886(d)(1)(C) of the Act);
- For discharges occuring on or after October 1, 1986, (with the exception of discharges from sole community hospitals and hospitals located in Oregon), the Federal portion of the prospective payment rates will be comprised of 50 percent of the national standardized amount and 50 percent of the appropriate regional standardized amounts, per section 1886(d)(1)(D) of the Act;
- The hospital costs used to establish the rates will be restandardized to reflect the indirect costs of medical education as measured by the revised indirect medical education adjustment factor and to reflect payment adjustments to disproportionate share hospitals per sections 1886(d)(2)(C) (i) and (iv) of the Act as amended by sections 9104(b) and 9105(b) of Pub. L. 99-272; and
- The standardized amounts will be adjusted, by the indirect medical education payment equality factor, to reflect the savings from the change in the indirect medical education adjustment, as required under section 1886(d)(3)(C)(iii) of the Act, as added by section 9104(b) of Pub. L. 99-272.

In addition to reflecting changes required under the Act, the proposed hospital payment rates reflect changes we are proposing, some as a result of changes in the industry, in response to the prospective payment system and other influences, some as a result of more accurate data. We are proposing the following additional changes under general authority granted the Secretary in the prospective payment statute:

- A 0.5 percent update factor for both the Federal and hospital-specific rates (see section II.A.3.f. of the Addendum);
- A revised and rebased market basket, which results in different weights for the labor and non-labor components of the market basket (see section III of the preamble and

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Appendix A of this document for a detailed discussion); and

• The incorporation of the HCFA gross wage index into the restandardization of the Federal amounts and for computing the prospective payment rates (see section II.A.2. of the addendum).

Table IV summarizes the separate and combined effects of those of the above provisions that are estimable using available data. As noted above, changes often interact in complex ways, not simply multiplicatively or additively. The percent changes reflected below include total payments for operating costs (excluding capital), payments for the indirect costs of medical education, and additional payment for outlier cases and to disproportionate share hospitals.

The proposed FY 1987 prospective payments for capital are excluded to allow comparison with estimated FY 1986 payments. (See section M. of this impact analysis for a discussion of the combined effects of these rate changes and the proposed capital payments.) Direct medical education payments are also excluded. All hospitals are assumed to have the same cost reporting period, corresponding to the Federal fiscal year. The column titled "Total Combined Effects" includes the effects of the proposed 0.5 percent update factor.

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TABLE V--ESTIMATED IMPACT OF PROPOSED REVISIONS OF PAYMENTS FOR OPERATING COSTS (EXCLUDING CAPITAL) FOR FY 1987 COMPARED TO FY 1986 RATES FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986

	New Labor/ Nonlabor Portion	New Standardized Amounts (Federal Rates)[1]	Combined Effect of Portion & Rate Changes[2]	Blend Change (75/25)	Total Combined Effects[3]
All Hospitals	0.03	-0.45	-0.44	0.64	0.53
By Census Regions					
New England	-0.00	-0.01	-0.01	0.68	0.96
Mid Atlantic[4]	0.02	-0.00	-0.01	1.64	1.88[4]
South Atlantic	0.10	-0.66	-0.60	0.72	0.57
East North Central	0.02	-0.33	-0.33	-0.39	-0.42
East South Central	0.10	-0.78	-0.70	1.61	1.44
West North Central	0.04	-0.30	-0.29	0.33	0.41
West South Central	0.08	-0.70	-0.65	0.41	0.21
Mountain	0.01	-0.18	-0.20	1.17	1.29
Pacific	-0.08	-0.74	-0.85	1.13[5]	0.45
Urban Hospitals	0.01	-0.50	-0.52	0.73	0.53
0-99 Beds	0.05	-0.62	-0.60	2.87	2.59
100-404 Beds	0.02	-0.50	-0.51	0.92	0.72
405-684 Beds	0.02	-0.48	-0.49	0.47	0.30
685 + Beds	-0.06	-0.48	-0.57	-0.19	-0.45
Rural Hospitals	0.13	-0.20	-0.09	0.16	0.55
0-99 Beds	0.01	-0.09	-0.10	0.51	0.88
100-169 Beds	0.10	-0.20	-0.11	-0.57	-0.21
170 + Beds	0.32	-0.36	-0.07	0.30	0.73

1/ This column shows the combined effects of restandardization of base year cost data and adjustment of the standardized amounts by the indirect medical education payment equality factor.

2/ This column shows the combined effects of the first two columns.

3/ This column includes the effect of the proposed 0.5 percent update factor, and assumes that outlier criteria remain unchanged.

4/ The Federal regional rates for the Mid-Atlantic region reflect the adjustment of base year costs to recognize the effects of a revised sequence of cost allocation for certain teaching hospitals. This change and the corresponding effects on hospital-specific rates and payments for the indirect costs of medical education are reflected in the projected payments for hospitals in that region.

5/ Oregon alone would receive payment based 100 percent of the Federal national rate, with a resulting payment increase of 4.65 percent.

TABLE V--ESTIMATED IMPACT OF PROPOSED REVISIONS OF PAYMENTS FOR OPERATING COSTS (EXCLUDING CAPITAL) FOR FY 1987 COMPARED TO FY 1986 RATES FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986

	New Labor/ Nonlabor Portion	New Standardized Amounts	Combined Effect of Portion & Rate Changes	Blend Change (75/25)	Total Combined Effects
Teaching Status					
Non-Teaching	0.06	-0.46	-0.43	0.76	0.71
Resident/Bed Ratio Less than 0.25	0.03	-0.45	-0.45	0.44	0.31
Resident/Bed Ratio 0.25 or Greater	-0.09	-0.38	-0.50	0.68	0.44
Disproportionate Share Hospitals (DSH)					
No Additional Payments	0.03	-0.40	-0.40	0.49	0.43
Urban DSH less than 100 Beds	0.06	-0.86	-0.83	6.05	5.55
Urban DSH 100 Beds or More	0.04	-0.63	-0.62	1.10	0.81
Rural DSH	0.07	-0.18	-0.12	1.99	2.41
Other Special Status					
Sole Community Hospital (SCHs)	0.00	-0.07	-0.07	-0.00	0.43
Rural Referral Centers (RRCs)	0.47	-0.56	-0.12	2.00	2.38
Both SCH and RRC	0.18	-0.24	-0.07	0.00	0.42
Type of Ownership					
Voluntary	0.03	-0.41	-0.41	0.48	0.40
Proprietary	-0.00	-0.62	-0.65	0.66	0.37
Government	0.07	-0.52	-0.48	1.61	1.55

1/ This column shows the combined effects of restandardization of base year cost data and adjustment of the standardized amounts by the indirect medical education payment equality factor.

2/ This column shows the combined effects of the first two columns.

3/ This column includes the effect of the proposed 0.5 percent update factor, and assumes that outlier criteria remain unchanged.

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Each of the proposed changes has somewhat different distributive effects. The change in labor and nonlabor portions of the standardized amounts for operating costs (excluding capital) would benefit rural hospitals, as a whole, much more than urban hospitals. However, it would not significantly benefit rural hospitals with less than 100 beds. The only categories of hospitals that would experience a significant disadvantage from this proposed change would be the largest urban hospitals, hospitals with major teaching involvements, and hospitals in the Pacific region. The first two of the categories undoubtedly overlap to a large extent.

The restandardized adjusted standardized amounts result in lower payments for all categories of hospitals. There is a wide range of effects on different census regions, with the New England and Mid-Atlantic regions experiencing negligible effects, while the South Atlantic, East South Central, West South Central, and Pacific regions experience more adverse effects.

Interestingly, the category of hospitals most adversely affected by the restandardization and adjustment of the new Federal rates is disproportionate share hospitals with less than 100 beds. This appears to be the only change we are proposing that would affect this category adversely; they are the category most benefited by both the proposed capital prospective payments and the change of blend. (As can be seen in Table VII of section M. of this impact analysis, they are the only category projected to increase their Medicare profit margin for FY 1987.) This is a small group of hospitals, comprising less than one percent of all Medicare participating hospitals included in the prospective payment system. Apparently, their average hospital-specific costs, both for capital-related costs and operating costs excluding capital, are significantly below the national average. Thus, any change that would pay these hospitals an amount per case closer to the national average cost per case benefits them significantly.

Nationally, the great majority of hospitals would receive increased FY 1987 payments for their operating costs (excluding capital) as a result of these proposals. Geographically, only the East North Central region would decline, as a whole. The largest urban hospitals and medium-sized rural hospitals also would be somewhat disadvantaged.

The greatest overall payment increases would accrue to the Mid-Atlantic, East South Central, and Mountain regions. Other than the small urban disproportionate share hospitals already discussed, the categories of hospitals most benefiting would be the larger group of all urban hospitals with less than 100 beds, disproportionate share rural hospitals, and rural referral centers.

In addition to reviewing the effects of these proposals on total operating cost payments, we considered their effect on average payment per case, as we did for the FY 1986 changes discussed in section F. of this impact analysis. This enabled us to reflect the practical effect of hospitals phasing into the prospective payment system on the basis of their own cost reporting periods. Table VI shows the comparative average payment rates for FYs 1986 and 1987, compared to the baseline average payments per case for the period from October 1, 1985 to April 30, 1986. As can be seen, the national average payment per case continues to increase.

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TABLE VI--COMPARISON OF ESTIMATED OPERATING PAYMENTS PER CASE
(EXCLUDING CAPITAL AND CASE-MIX INCREASES)

	Average Payment Per Case		
	Baseline Period	FY 1986	FY 1987
All Hospitals	$3,843.78	$3,854.01	$3,880.20
Urban			
New England	4,187.06	4,203.20	4,261.40
Mid Atlantic	4,267.20	4,259.15	4,300.34
South Atlantic	3,548.63	3,557.22	3,583.90
East North Central	4,148.24	4,151.58	4,130.62
East South Central	2,877.69	2,891.98	2,942.78
West North Central	3,458.51	3,468.94	3,489.24
West South Central	3,371.34	3,383.11	3,403.53
Mountain	3,749.78	3,753.85	3,790.37
Pacific	4,814.71	4,848.99	4,915.44
Urban Hospitals			
0-99 Beds	4,331.05	4,343.55	4,373.45
100-404 Beds	3,260.70	3,280.00	3,368.40
405-684 Beds	4,029.55	4,055.87	4,110.29
685 + Beds	4,750.25	4,748.57	4,748.61
	5,480.30	5,451.04	5,392.61
Rural Hospitals			
0-99 Beds	2,475.64	2,479.51	2,495.29
100-169 Beds	2,187.12	2,192.64	2,214.82
170 + Beds	2,525.14	2,530.68	2,536.38
	2,940.73	2,940.03	2,954.23

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TABLE VI--COMPARISON OF ESTIMATED OPERATING PAYMENTS PER CASE
(EXCLUDING CAPITAL AND CASE-MIX INCREASES)

	Average Payment Per Case		
	Baseline Period	FY 1986	FY 1987
Teaching Status			
Non-Teaching	3,234.47	3,254.38	$3,297.37
Resident/Bed Ratio Less than 0.25	4,514.45	4,524.30	4,543.34
Resident/Bed Ratio 0.25 or Greater	6,816.92	6,725.22	6,608.94
Disproportionate Share Hospitals (DSH)			
No Additional Payments	3,736.08	3,739.51	3,753.00
Urban DSH less than 100 Beds	2,981.62	3,026.51	3,210.12
Urban DSH 100 Beds or More	4,476.87	4,517.60	4,598.13
Rural DSH	1,961.57	1,980.43	2,043.38
Other Special Status			
Sole Community Hospital (SCHs)	2,788.76	2,793.22	2,811.98
Rural Referral Centers (RRCs)	3,295.27	3,294.80	3,351.22
Both SCH and RRC	3,199.79	3,208.54	3,235.34
Type of Ownership			
Voluntary	4,019.51	4,029.14	4,052.01
Proprietary	3,562.42	3,582.47	3,613.00
Government	3,212.26	3,218.74	3,259.94

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M. Combined Impact of Proposed FY 1987 Prospective Payment Rates for Operating and Capital-Related Costs

As discussed in section II.A.3.f. of the Addendum to this proposed rule, operating margins of hospitals appear to have increased significantly under the prospective payment system. It is not our intention or our responsibility to determine what specific levels of hospital margins may be appropriate. Nonetheless, individual hospitals will assess the impact of these proposals on themselves largely in terms of the anticipated effects on the projected relationships of their FY 1987 revenues to their FY 1987 costs. The proposed inclusion of capital under the prospective payment system makes this of special concern to affected hospitals this year.

Based on available data, we have done our best to consider what the combined effects of these proposals would be on hospital profit margins for payments and costs related to services for Medicare beneficiaries. There are some limitations in the data and methodology that require us to view the results with caution, but we believe that they nonetheless throw significant light on the magnitude of anticipated overall effects of these proposals. Table VII shows the projected changes in Medicare total payments and profit margins from FY 1986 to FY 1987, taking into consideration payments for both capital-related costs and operating costs excluding capital. To estimate these margins, we had to estimate Medicare-related revenues and costs (excluding revenues and costs related to the direct costs of medical education) for each fiscal year, and compute the differences. To estimate costs, we used FY 1984 cost report data, most of which is unaudited, and brought it forward to the appropriate fiscal year basis using the hospital market basket.

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TABLE VII --COMPARISON OF ESTIMATED FY 1986 AND FY 1987 TOTAL MEDICARE PAYMENTS AND PROFIT MARGINS - SELECTED CATEGORIES OF HOSPITALS

	Percent Payment Difference 1/ (FY 1987/FY 1986)	Estimated FY 1986 2/ Profit Margin	Estimated FY 1987 3/ Profit Margin
All Hospitals	-0.36	17.1	12.8
By Census Regions			
New England	0.32	10.7	7.3
Mid Atlantic	0.88	18.7	15.8
South Atlantic	-0.42	14.3	10.1
East North Central	-1.11	18.0	12.8
East South Central	0.25	11.1	7.7
West North Central	-0.53	19.1	14.4
West South Central	-0.87	19.7	14.8
Mountain	0.16	17.3	13.7
Pacific	-0.26	21.2	16.9
Urban Hospitals	-0.35	18.9	14.6
0-99 Beds	1.17	17.7	15.2
100-404 Beds	-0.31	17.5	13.6
405-684 Beds	-0.58	20.1	15.6
685 + Beds	-1.10	21.7	16.4
Rural Hospitals	-0.43	9.2	5.1
0-99 Beds	-0.07	10.2	6.5
100-169 Beds	-1.20	9.5	4.7
170 + Beds	-0.27	7.5	3.7

1/ This column shows the projected change in total payments, including operating and capital costs, disproportionate share payments, indirect medical education payments, and outlier payments, but excluding payments for the direct costs of medical education.

2/ Estimated for a hypothetical full year of payments using the payment parameters in effect from May 1, 1986 through September 30, 1986.

3/ Projected for a hypothetical full year of payments with an 0.5 percent update factor applied to operating cost standardized amounts (labor, nonlabor, and capital components) and both the operating cost (excluding capital) and capital-related hospital-specific portions. All projected costs were inflated using the projected hospital market basket. All hospitals were assumed to have the same cost reporting period, corresponding to the Federal fiscal year.

TABLE VII.—COMPARISON OF ESTIMATED FY 1986 AND FY 1987 TOTAL PAYMENTS AND PROFIT MARGINS - SELECTED CATEGORIES OF HOSPITALS

	Percent Payment Difference 1/ (FY 1987/FY 1986)	Estimated FY 1986 2/ Profit Margin	Estimated FY 1987 3/ Profit Margin
Teaching Status			
Non-Teaching	-0.34	14.9	10.8
Resident/Bed Ratio Less than 0.25	-0.49	19.3	14.8
Resident/Bed Ratio 0.25 or Greater	-0.02	21.9	17.8
Disproportionate Share Hospitals (DSH)			
No Additional Payments	-0.50	16.0	11.6
Urban DSH less than 100 Beds	4.83	22.3	23.9
Urban DSH 100 Beds or More	0.03	21.7	17.7
Rural DSH	1.54	12.1	10.0
Other Special Status			
Sole Community Hospital (SCHs)	-0.06	7.9	4.2
Rural Referral Centers (RRCs)	1.47	14.5	12.4
Both SCH and RRC	-0.16	12.7	8.9
Type of Ownership			
Voluntary	-0.43	17.8	13.4
Proprietary	-1.30	14.6	9.5
Government	0.93	16.0	13.2

1/ This column shows the projected change in total payments, including operating and capital costs, disproportionate share payments, indirect medical education payments, and outlier payments, but excluding payments for the direct costs of medical education.

2/ Estimated for a hypothetical full year of payments using the payment parameters in effect from May 1, 1986 through September 30, 1986.

3/ Projected for a hypothetical full year of payments with an 0.5 percent update factor applied to operating cost standardized amount (labor, nonlabor, and capital components) and both the operating cost (excluding capital) and capital-related hospital-specific portions. All projected costs were inflated using the projected hospital market basket. All hospitals were assumed to have the same cost reporting period, corresponding to the Federal fiscal year.

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As can be seen, in the aggregate, we estimate that all of these selected categories of hospitals would show some margin of profit. Of course, not all individual hospitals have profits now, or will have profits in FY 1987. Table VIII shows the same comparisons as Table VII, broken down by payment cells, rather than by selected categories of hospitals. This analysis shows that rural hospitals in the South Atlantic region may experience, in the aggregate, an excess of costs over revenues in FY 1987.

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TABLE VIII--COMPARISON OF ESTIMATED FY 1986 AND FY 1987 TOTAL PAYMENTS AND PROFIT MARGINS - HOSPITALS BY PAYMENT CELL

	Percent Payment Difference 1/ (FY 1987/FY 1986)	Estimated FY 1986 2/ Profit Margin	Estimated FY 1987 3/ Profit Margin
All Hospitals	-0.36	17.1	12.8
Urban	-0.35	18.9	14.6
New England	0.41	10.7	7.4
Mid Atlantic	1.08	18.9	16.2
South Atlantic	-0.39	17.0	12.7
East North Central	-1.08	19.2	14.0
East South Central	0.54	15.1	12.0
West North Central	-0.65	24.3	19.5
West South Central	-1.14	22.1	16.8
Mountain	0.10	20.1	16.3
Pacific	-0.35	21.6	17.2
Rural	-0.43	9.2	5.1
New England	-0.58	10.9	6.5
Mid Atlantic	-0.80	17.1	12.4
South Atlantic	-0.53	3.6	-0.3
East North Central	-1.27	11.8	6.7
East South Central	-0.34	3.8	0.0
West North Central	-0.60	9.1	4.9
West South Central	0.18	11.3	7.8
Mountain	0.33	10.5	7.2
Pacific	0.97	16.3	13.5

N. Quality of and Access to Care

As we have stated on other occasions, the prospective payment system endeavors to change hospital behavior through financial incentives. While our goals are largely economic, we are also acutely concerned that for some hospitals economic considerations might, in some cases, overshadow their concerns for the quality of care delivered and maintaining access to appropriate services and levels of services for Medicare beneficiaries.

We believe that the incentives to increase the efficiency with which inpatient services are provided to Medicare patients should not conflict with established quality of care standards and access to needed services. Many hospitals have responded to the prospective payment system by eliminating marginally profitable services with low utilization. This has enabled them to concentrate their resources (both medical and managerial) by specializing in those services and types of cases that the hospitals are best equipped to treat. By focusing their efforts on specific types of cases it appears that hospitals have achieved economic gains, while at the same time improving the quality of care provided to patients. Through specialization, medical personnel are able to refine their medical knowledge and skill in providing better care. For instance, open heart surgery is a well-documented example of the direct relationship between the number of procedures performed and the increased chances of a successful outcome from such a procedure.

At the same time that specialization results in better care for patients, it also generally results in lower costs. First, through repeated encounters with the same types of cases, hospital staffs learn the most effective and efficient treatment methods, thus improving the chances of a successful outcome with a minimum of wasted effort and resources. Secondly, as patient utilization increases, costs per case usually decline as a result of economies of scale. Thus, we expect that the prospective payment system can provide a stimulus for improving quality of care by fostering more rational and market oriented approaches to the treatment of patients that also result in lower costs for the Medicare program.

As discussed in section II.A.3.f. of the Addendum to this proposed rule, we have not found any systematic evidence of compromise or deterioration in the quality of or access to inpatient hospital care under the prospective payment system. Nonetheless, we are mindful of those cases involving inappropriate care that have been identified through the efforts of Utilization and Quality Control Peer Review Organizations (PROs) or brought to our attention through other sources. While the confirmed number of cases involving substandard or inappropriate care is small compared to the total number of Medicare patients discharged from hospitals each year, they have attracted considerable attention from both Congress and the public. The Office of the Inspector General and HCFA have thoroughly investigated all cases brought to our attention to determine the magnitude of the problems, their causes, and efforts taken to correct them.

Of the more than 4000 cases involving substandard or inappropriate care that we have investigated, we have found no evidence indicating systematic mistreatment of Medicare patients under the prospective payment system. While it is true that average lengths of stay have declined under the prospective payment system, and a greater number of patients are being treated in nonhospital settings, these changes, by themselves, do not indicate poorer quality care. Our concern, however, for ensuring that economic interests do not compromise quality care has led us to develop a number of short-and long-range initiatives directed at identifying and correcting immediate problems while engaging in studies of fundamental policy issues that could influence quality of care over the long haul.

As part of our initiative to improve PRO surveillance of hospital and physician treatment of Medicare patients, we have been reviewing our experience from the first two years of PRO review. This has led us to refine PRO efforts in the area of quality of care and further to focus review on poor performing providers and practitioners. Every case a PRO reviews, whether or not it is explicitly part of a quality review, will be subjected to a "generic" quality review. This will involve an examination of several key medical indicators that we believe reflect the quality of care provided to the patient. A "generic" review may include reviewing the patient's medical records to determine the medical stability of the patient at time of discharge, adequacy of discharge planning, or unscheduled return to surgery. These new quality of care requirements will be incorporated into PROs' contracts for their next contract cycle. We also plan to expand review of apparently premature discharges so that we can more easily detect inappropriate discharges and transfers.

In addition to improving the process for identifying substandard or inappropriate care through modifying the PROs' scope of work, we will be strengthening our efforts to correct problems of poor quality whenever violations of accepted medical practice standards are discovered. Corrective action may range from education of the individual physician or hospital, to intensified review, or to payment denials where actions are taken to circumvent the prospective payment system, or if otherwise appropriate. As a final measure, we are prepared to exclude serious or repeat offenders from the Medicare program entirely.

In order to ensure that PROs conduct reviews in accordance with HCFA contracts, we have contracted with Systemetrics, a leading firm in the area of quality of care assessments, to act as a "super PRO". Systemetrics will monitor PRO review activities and validate PROs' medical determinations and identify PRO performance issues.

In many respects, beneficiaries who are informed of their rights under the prospective payment system can help us to assure that providers and physicians furnish appropriate care. While beneficiaries may not be able to prevent abuses or poor quality care, they can assist PROs in their medical oversight responsibilities by filing appeals or contacting the PRO when they believe that either the hospital or physician has acted improperly. Also, providers and physicians are less likely to provide substandard care to beneficiaries who are informed of their rights. In our efforts to educate beneficiaries of their rights, we are conducting outreach programs and requiring hospitals to inform beneficiaries at the time of admission of their rights under Medicare and how to contact the local PRO should the need arise.

Improving the PRO review methodology is a central feature of our effort for assuring high standards of medical care. Nevertheless, we are developing initiatives in other areas that we expect will have long-range systemic effects on the quality of care furnished in all settings. For example, we are pursuing more aggressive Federal oversight of State survey and certification of hospitals, skilled nursing facilities, home health agencies and other types of health care facilities. Finally, to gain a better grasp of the broader long-term quality of care issues affecting all beneficiaries and those specific to certain groups of

beneficiaries, we have contracted with several major research organizations to conduct studies related to quality, for example, on outcomes of surgery in the Medicare aged population, the health status of beneficiaries at time of discharge, and an evaluation of the quality effects of the prospective payment system on beneficiaries suffering from End Stage Renal Disease.

These initiatives represent our own efforts to monitor and evaluate the impact of the prospective payment system on quality of care. There are, however, numerous other monitoring and inspection programs carried out by other Federal agencies, State and local governments and private organizations. For example, the Food and Drug Administration sets standards for radiation exposure levels from imaging and therapy equipment, while State health departments monitor compliance with licensure requirements. The Joint Commission on Accreditation of Hospitals and the American Osteopathic Hospital Association set general operating standards for member hospitals that we accept as sufficient for participation in the Medicare and Medicaid programs. The combined efforts of all these private and governmental bodies all help establish appropriate standards of patient care and serve as a network to see that these standards are maintained.

Although the trust of the prospective payment system is explicitly directed at payment reform, we are deeply concerned and mindful of our responsibility to safeguard the quality of care beneficiaries receive under the aegis of the Medicare program. We have been unrelenting in our efforts to ensure that providers and practitioners do not use the prospective payment system as an excuse to increase the risk to patients' health and safety beyond accepted standards of care. We believe that most providers and practitioners have not compromised the quality of care they provide. The few that have or that may in the future try to economize at the expense of patients' safety will be dealt with appropriately. We believe that most breaches of medical treatment standards are the result of unintentional errors or unfamiliarity with accepted norms and medical practice. Corrective action in these cases usually entails educating the offending institution or practitioner as to the appropriate method or standard of treatment. Other more serious offenses will require more strenuous corrective action. The Office of the Inspector General has agreed to coordinate its investigative efforts with the PROs to identify serious and repeated violations of the Medicare law and of accepted medical standards. We are confident that our efforts to identify and correct immediate problems will eliminate the majority of cases involving inappropriate care. Our initiatives to investigate long-term quality of care issues will enable us to refine our payment policies so as to more precisely target those areas that require special attention.

O. Alternatives Considered

Throughout the discussions in the preamble and this analysis, we have explained why we are proposing to do one thing rather than another. Many interrelated decisions are involved in this process, and the number of possible combinations of different DRG weights, different update factors, and other proposals is large. Further, there are additional alternatives that had to be considered in developing the proposed DRG classification changes, the proposed capital rates, and the update factor for the proposed Federal rates. Altogether, there is a potentially enormous number of permutations.

Nonetheless, we have been particularly concerned with the impact of certain main options, and we have reviewed them in the light of how they would interact with each other. We also considered all the ProPAC recommendations. Each of the factors taken into consideration in the development of the proposed FY 1987 standardized amounts has been reviewed both individually and in combination with other factors.

P. Summary and Conclusions

E.O. 12291 requires us to assess the benefits, costs and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in impact analyses, and show that the potential benefits outweigh the potential cost to society. In addition, we must discuss alternative methods of achieving the objectives we propose in our regulations. Throughout the preamble, addendum, and this impact analysis, such alternatives are discussed. In this summary, we assess the overall costs of the proposals we are making, the overall benefits, and the resulting net benefits.

For the most part, the costs and disadvantages that could result from these proposals would take the form of limiting the amount of payment to affected hospitals. Most of the proposals would have their major effect through their influence on the level of FY 1987 prospective payments.

As we have said before, the primary benefit expected to result from this proposed rule is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economy and efficiency of operation of participating hospitals, and as improvements in trends of the health care marketplace as a whole. As noted earlier, the objective of these proposals is to refine the prospective payment system. Whereas the system as a whole has had a large and dramatic impact, the proposed refinements, with the exception of the proposal to include capital-related costs under prospective payment rates, generally are of a marginal nature, rather than large-scale adjustments.

We believe that, from this perspective, the overall benefits to society more than offset any resulting liabilities. For the above reasons, we believe that this analysis meets the objectives of E.O. 12291 and the Regulatory Flexibility Act, as noted in the Introduction to this Regulatory Impact Analysis.

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APPENDIX C

PROSPECTIVE PAYMENT
ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

APRIL 1, 1986

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April 1, 1986

Honorable Otis Bowen, M.D.
Secretary
Department of Health and Human Services
Washington, D.C. 20101

Dear Secretary Bowen:

I am pleased to transmit to you the second annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(4) of the Social Security Act as amended by Public Law 98-21. This report contains thirty-three recommendations updating the Medicare prospective payments and modifying the diagnosis-related group (DRG) classification and weighting factors.

The report also provides background on the Commission's priorities as well as an indication of its agenda for coming years.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

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* The Report Appendix is not reprinted in the Federal Register.

Executive Summary

In its April 1986 report, the Prospective Payment Assessment Commission (ProPAC) conveys its recommendations to the Secretary of the Department of Health and Human Services (HHS) on ways to update and improve the Medicare prospective payment system (PPS). The 33 recommendations reflect the key concerns of ProPAC's 15 commissioners. The proposed changes are necessary, in the Commission's view, to maintain access to high-quality health care, encourage hospital productivity and long-term cost-effectiveness, and facilitate innovation and appropriate technological change.

This summary highlights the major areas addressed in the recommendations.

Update Factor.—The Commission estimates that its update factor recommendation would result in a 2.8 percent increase in hospital payment per case for fiscal year 1987. That figure is derived from combining several components. These are: 1) increases for inflation in the hospital market basket (adjusted for forecast errors), scientific and technolgical advances in the hospital industry, and real case-mix changes; and 2) decreases for changes in hospital productivity, shifts in site of service, and reported changes in the case-mix index.

Sharing of Gains.—The Commission believes that hospitals, beneficiaries, and the Medicare program should share gains achieved under PPS. In this connection, the Commission urges legislative change in the formula determining Medicare beneficiaries' inpatient deductible. This change is necessary because of the inappropriate increase in the deductible caused by significant declines in the length of stay experienced since the beginning of PPS.

Capital.—The Commission recommends that beginning in fiscal year 1987 hospital capital payments be phased into PPS. The Federal portion of capital payments should be computed as a fixed percentage add-on to the standardized amounts based on a distinction between fixed and moveable capital. Such a system should be initiated in fiscal year 1987 with respect to moveable equipment. Federal payments for fixed plant and equipment, however, should replace cost reimbursement during a seven- to ten-year transition period.

Incorporating Technological Change.—The Commission recommends annual recalibration of diagnosis-related group (DRG) weights to reflect new technologies and other practice changes that affect the relative use of hospital resources among the DRGs. The Commission's recommendations on individual DRG classification and calculation of payment amounts would modify the current DRG system to incorporate costly new technologies, and respond to special problems like the high costs associated with increased use of sophisticated cardiac pacemakers.

Beneficiary Information.—Concerns and perceptions that PPS is adversely affecting the quality of care Medicare beneficiaries receive prompted the Commission's call for disseminating information to Medicare beneficiaries and providers about PPS and how it functions. Beneficiaries must understand how to utilize the Medicare appeals system to protect their right to appropriate hospital care. The Commission is deeply concerned about reports that DRG-specific average lengths of stay have been inappropriately used as maximum limits on hospital stays.

Quality of Care.—All of the Commission's recommendations regarding the update factor and DRG classifications were formulated with consideration of quality of care. The Commission is particularly concerned, however, about the role that Peer Review Organizations (PROs) play in this vital area. To the extent possible, PRO quality of care review should focus on the entire episode of care, including skilled nursing and home health care. In addition, the Commission recommends that PROs extend their review to selected outpatient surgery cases.

Adjustments to the Payment Formula.—The Commission reiterates its recommendation for prompt action on two PPS payment distribution problems. An adjustment to PPS rates should be implemented for hospitals serving a disproportionate share of low-income patients. Further-

more, the definition of hospital labor market areas should be improved, primarily by identifying additional labor markets within current definitions of urban and rural areas. The Commission is also concerned about the special problems of rural hospitals and the beneficiaries they serve.

AGENDA FOR THE FUTURE

The Commission's future analytic agenda calls for further study in three broad categories: improving the measurement of case mix, improving and updating hospital payment amounts, and assessing the effects of PPS on quality of care. Activities in these categories include the following:

- Improving the measurement of case mix:
  - —Analyses to support incorporation of new and changing technology and practice patterns into the DRG system.
  - —Examination of heterogeneity and case complexity on a DRG-specific basis, broadening the scope to all DRGs.
  - —Research on issues that cut across the measurement of case mix and payment amounts, such as outlier payment policy, and high device costs and the labor/nonlabor portion of the payment amounts.
- Improving and updating hospital payment amounts:
  - —Studies to further refine the discretionary adjustment factor (DAF), to improve the data and methods used to calculate the payment amounts, and to examine issues related to the hospital market basket.
  - —Analyses of issues related to the calculation of payment components, such as the area wage index adjustment.
  - —Evaluations of ProPAC's capital recommendations and the effects of paying for capital through PPS.
- PPS effects on quality of care:
  - —Studies using existing data to identify quality of care problems among targeted patient groups, such as the frail elderly.
  - —Research on hospital discharge planning services to assess how well hospitals link inpatient hospital care with needed post-discharge care.
  - —Assessment of methods to study the entire episode of illness in order to understand the relationship between shortened length of stay, the use of medical services at alternative sites of care, and health care outcomes.

This report appears shortly after publication of ProPAC's report to the Congress, *Medicare Prospective Payment and the American Health Care System*, which documents the impact of PPS during its first year. The two reports convey the Commission's conclusion that PPS is clearly achieving a number of its intended objectives. They also underscore the need for continued assessment of the consequences of PPS and for implementation of measures to improve the system.

REPORT ORGANIZATION

Chapter 1 discusses the Commission's role and the processes it uses to fulfill its mandate; changes in health care financing and public policy that occurred during 1985; and the commissioners' chief concerns. ProPAC's 33 recommendations for improving the prospective payment system are presented in Chapter 2 under three broad categories: improving DRG classification and case-mix measurement; improving and updating the payment amounts; and assessing the effects of PPS on care for beneficiaries. The Commission's proposed analytic agenda is outlined in Chapter 3, which describes areas and issues that ProPAC intends to study in 1987 and beyond.

The Technical Appendixes, a separate volume accompanying the report, contain both descriptive and analytical pieces developed by staff and outside experts that provided the groundwork for the Commission's recommendations.

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RECOMMENDATIONS FOR FISCAL YEAR 1987

The Update Factor

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1987, the standardized amounts should be updated by the projected increase in the hospital market basket, adjusted by the following:

- A correction factor for substantial errors previously made in forecasting inflation for fiscal year 1986, and
- A discretionary adjustment factor of minus 0.5 percentage points composed of two allowances:
  - —A minus 1.4 percent allowance for scientific and technological advancement, productivity change, and site-of-care substitution, and
  - —A 0.9 percent allowance for real case-mix change.

In addition, the DRG weights should be adjusted to remove any increase in observed case mix occurring during fiscal year 1986.

This recommendation reflects the Commission's collective judgment of the appropriate change in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed. The Commission's recommendation regarding the level of capital payments would also affect per-discharge Medicare payments to hospitals.

Recommendation 2: Allowance for Scientific and Technological Advancement and Productivity Goals, and Site-of-Care Substitution

For the fiscal year 1987 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and substitution in the site of service from inpatient to out-of-hospital settings should be set at minus 1.4 percentage points.

Recommendation 3: Allowance for Real Case-Mix Change

Prospective payments should reflect real changes in case mix that are due to changes associated with the characteristics of patients and not changes simply due to better coding of records. The DAF allowance for real case-mix change should reflect both shifts in patients among the DRG categories, as measured by changes in the average case-mix index (DRG case-mix change), and changes in the mix of patients within DRG categories (patient complexity change). For the fiscal year 1987 payment rates, the allowance for real case-mix change should be set at 0.9 percent. This allowance represents a 0.2 percent adjustment for changes in the DRG case-mix index and a 0.7 percent adjustment for patient complexity changes.

Recommendation 4: Update Factor for Excluded Hospitals and Distinct-Part Units

For fiscal year 1987, the target rate of increase limits for the group of psychiatric, rehabilitation and long-term care hospitals and hospital distinct-part units excluded from PPS should be updated to reflect the projected increase in the hospital market basket for these hospitals (corrected for forecast errors) minus a 0.8 percentage point adjustment for productivity and scientific and technological advancement goals established for PPS hospitals.

The target rate of increase limit for children's hospitals and distinct-part units should be updated to reflect the projected increase in the hospital market basket for PPS hospitals (corrected for forecast errors) minus a 0.8 percentage point adjustment for productivity and scientific and technological advancement goals established for PPS hospitals.

Capital

Recommendation 5: Including Capital in the Prospective Payment System

Beginning in fiscal year 1987, the Secretary should initiate a transition to all-inclusive prospec-

tive prices that combine operating and capital cost components in a single prospective payment per case for hospitals.

Recommendation 6: Capital Payment Method

The Federal portion of capital payments should be computed as a fixed percentage add-on to the standardized amounts beginning in fiscal year 1987. The Secretary should immediately develop capital components to be added to the hospital market basket. When appropriate data become available, the components of PPS payments should be recomputed to reflect the addition of capital costs. The results of this recomputation should be implemented as soon as possible, but no later than fiscal year 1988.

Recommendation 7: Level of Federal Capital Payment

Capital payment should be added to the Federal portion of PPS payments for hospital accounting years beginning in fiscal year 1987 at the following levels:

- For building and fixed equipment, projected average Medicare actual capital costs per discharge for fiscal year 1985, trended forward to fiscal year 1987 by an index of construction capital costs.
- For moveable equipment, average actual Medicare capital costs per discharge for hospital accounting years beginning in fiscal year 1983, trended forward to fiscal year 1987 by an index of equipment capital costs.
- The proportion attributed to moveable equipment should be the lesser of the 1983 proportion or 40 percent.

Recommendation 8: Capital Payment Transition

The transition to Federal capital payments under PPS should begin in fiscal year 1987 in accordance with the following provisions:

- There should be no transition for moveable equipment. All payments for moveable equipment should be included as a fixed percentage add-on to the Federal standardized amounts beginning in fiscal year 1987.
- Payments for fixed plant and equipment should be phased in as a fixed percentage add-on to the Federal standardized amounts over a seven to ten year period on a straight-line basis.
- For plant and fixed equipment, hospital-specific capital payment portions should be the actual costs incurred during each year of the transition.
- During the transition, the Federal portion for plant and fixed equipment should be updated each year by an index of construction capital costs.
- The addition of capital to the Federal standardized amounts should reflect base year treatment of return on equity and interest offsets. Return on equity payments should be added to the hospital-specific portion of operating payments. Once the transition to national rates for operating payments ends, there should be no hospital-specific payment for return on equity.

Adjustments to the Payment Formula

Recommendation 9: Disproportionate Share Hospitals

An adjustment to the PPS rates for hospitals serving a disproportionate share of low-income patients should be implemented as soon as possible. This adjustment should specifically incorporate a definition and methodology in keeping with the character of the adjustments already being considered by the Congress. This adjustment should not change the total aggregate dollar amount paid to all hospitals.

Recommendation 10: Improving the Definition of Hospital Labor Market Areas

The Secretary should improve the definition of hospital labor market areas for fiscal year 1987, if possible, and no later than fiscal year 1988. For urban areas, the improved definitions should account for a greater amount of the wage variation between inner-city and suburban hospitals. For rural areas, the improved definitions should account for a greater amount of the wage variation between different rural areas within each state and

between states. The implementation of improved definitions should not result in any change in aggregate hospital payments.

Recommendation 11: Rural Hospitals

In the original PPS legislation of 1983 and the Deficit Reduction Act of 1985, the Congress required the Secretary to study and report on a number of rural hospital issues. To date, none of these studies has been submitted to the Congress. Preliminary studies by the Commission suggest that there are potential problems in the way rural hospitals are treated under PPS. To facilitate open and informed public debate of rural hospital issues, the Commission urges the Secretary to complete and publish the congressionally mandated studies as soon as possible. If the results of the Secretary's studies indicate that changes in payment policies affecting rural hospitals are warranted, appropriate modifications to current policy should be implemented as soon as possible, including legislative change, if necessary. The Commission will continue its analysis of rural hospital issues and make specific recommendations in the future if findings indicate that changes in PPS payment policy are desirable.

The Standardized Amounts

Recommendation 12: Earlier Availability of Medicare Cost Data

The Commission is pleased that the Secretary has taken steps to speed up the availability of Medicare Cost Report data from the first year of PPS. The Commission recommends that making cost data available as soon as possible be an ongoing effort, since these data are vital both to assess the relationship between PPS payments and hospital costs and to analyze the costs of individual DRGs. As part of this ongoing effort, alternative strategies for sampling hospital cost data should be considered. The necessary additional resources should be allocated for timely processing of these data.

Recommendation 13: Recalculating the Standardized Amounts

The standardized amounts used to determine hospital payments under PPS should be recalculated using cost data that reflect hospital behavior under PPS. The results of such a recalculation, with appropriate modifications, could be used in determining the update factor or in rebasing the standardized amounts.

Recalibration

Recommendation 14: Recalibrating the DRG Weights

The DRG weights should be recalibrated annually in order to reflect the use of new technologies and other practice pattern changes affecting the relative use of hospital resources among the DRGs.

Beneficiary Concerns

Recommendation 15: Beneficiary and Provider Information

The Secretary should take immediate action to provide more and better-written information about the Medicare prospective payment system to beneficiaries and providers of care. The Department should work with providers, beneficiaries, and associations of these groups to produce and disseminate this information. Associations of providers and beneficiaries should also increase their own efforts to better educate and inform their members about the Medicare prospective payment system.

Recommendation 16: Notice to Beneficiaries of Rights

Beneficiaries should be made aware of the process of reconsideration and appeal of a hospital denial of coverage for continued inpatient hospital care. Notification should be through a written notice or information bulletin. It should explain beneficiary rights in a clear, helpful, and understandable manner. In addition to a clear statement of rights, the bulletin should inform beneficiaries that they should not accept any oral communication to the effect that they must leave the hospital because their "coverage" has "run out" or because there is a limit on the number of days "allowed" by Medicare for a DRG. The bulletin should be distributed at the time of admission or as soon thereafter as is appropriate based on the

patient's clinical condition. However, additional avenues of distribution should also be developed.

Recommendation 17: PRO Episode of Care Review

The focus of PRO quality of care review should be, to the extent possible, on the entire episode of care. The PRO's review should include, in addition to the period of hospitalization, the quality of care (and outcome) related to the overall episode of illness, including, if appropriate, skilled nursing or home health care.

Recommendation 18: PRO Review of Outpatient Surgery

The Commission is concerned that efforts to shift surgical services from the inpatient to the outpatient setting could have an adverse impact on quality of care for certain Medicare beneficiaries. The PROs should be required to review and monitor the quality of care (and outcome) of outpatient surgery for selected patients and procedures. As a starting point, the PROs should be required to review outpatient surgery cases for those procedures that have been identified for preadmission review, including in particular a sample of those cases for which the PRO has denied payment on preadmission review.

Recommendation 19: Recalculating the Inpatient Hospital Deductible

The Secretary should seek legislative change to the formula for computing the inpatient hospital deductible so that the annual increase in the deductible is more consistent with the annual per-case increase in Medicare payments to hospitals. The proportion of the costs of inpatient hospital care borne by Medicare beneficiaries has inappropriately increased as a result of significant declines in length of stay experienced since the beginning of PPS. This proportion should be lowered to its calendar year 1983 level.

Patient Classification and Case Mix

Recommendation 20: Improving the Measurement of Hospital Case Mix

The Commission believes that the DRG system is currently the most appropriate of the available measures of hospital case mix for the Medicare PPS and should be retained in principle as the system upon which to base Medicare payments to hospitals. Resource use varies considerably, however, within some DRGs. Therefore, the Commission intends to continue its analysis of individual DRGs and to undertake a systematic evaluation of the entire system. The goal is to identify potential problems in DRG construction and classification and to recommend changes that will improve the homogeneity within DRGs and the equity of payments across hospitals.

Recommendation 21: Process for Maintaining and Updating ICD-9-CM

The Secretary should establish a mechanism for maintaining and updating ICD-9-CM diagnosis and procedure codes in a timely and effective manner. This process should include adequate educational support for all users.

Recommendation 22: Process for Interpretation and Assignment of Existing Codes

The Secretary should ensure that interpretation and assignment of existing ICD-9-CM diagnosis and procedure codes for payment purposes strictly adhere to coding rules and guidelines. In order to maintain the integrity and uniformity of the coding system while allowing flexibility for payment purposes, the process for interpretation and assignment of existing ICD-9-CM codes should be assigned to one authorized group.

Recommendation 23: Interim Mechanism for Coding Problems

The Secretary should establish an interim mechanism to allow early identification of new technologies, procedures, and diagnoses and more appropriate DRG assignment when ICD-9-CM codes cannot be updated in a timely manner.

DRG Classification and Weighting Factors

Recommendation 24: Adjustment of the Labor Portion of the Standardized Amounts for Some DRGs Involving Expensive Devices

The labor and nonlabor portions of the standardized amounts should be redefined for DRGs 39, 104, 105, 209, 471, and the newly defined DRGs for pacemaker implantation and replacement (Recommendations 25 and 26), implantable defibrillators (Recommendation 27), and penile prostheses (Recommendation 28). The new portions should more closely reflect the labor-related and nonlabor-related shares of costs for cases in each of these DRGs. These recalculations should be made so that total hospital payments remain unchanged.

The correct labor and nonlabor portions of the standardized amounts should be calculated from data currently being generated in the Health Care Financing Administration's (HCFA) study of the labor portion of costs by DRG. If this information proves to be incomplete, the portions should be calculated from available cost and charge data for these DRGs. The Secretary should study the need for adjustments to the labor and nonlabor portions of the standardized amounts in all DRGs.

Recommendation 25: Reclassification of Pacemaker Cases Based on Type of Device

Prior to recalibration, the DRGs involving implantation of cardiac pacemakers (currently DRGs 115 through 118) should each be restructured into two DRGs, one for cases involving dual-chamber or functionally similar pacemakers, and one for cases receiving other single-chamber pacemakers. New ICD-9-CM procedure codes should be created to distinguish between these types of cases. A mechanism should be established to evaluate the appropriateness of all implants involving dual-chamber or functionally similar pacemakers. In the initial year of this new classification, the weights for all pacemaker DRGs should be calculated using charge data from the PATBILL file and data on cost differences between pacemaker types.

Recommendation 26: Reclassification of Pacemaker Replacement Cases

Prior to recalibration, the cases involving replacement of a permanent cardiac pacemaker, except those with myocardial infarction, congestive heart failure or shock, should be reassigned to DRGs that include only pacemaker replacements.

Recommendation 27: Implantable Defibrillator

Implantable defibrillator cases should be assigned to a unique DRG. The labor and nonlabor portions of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases.

Recommendation 28: Penile Prostheses

Prior to recalibration, cases involving the implantation of a penile prosthesis should be removed from DRG 341 and reassigned to a unique DRG. The labor and nonlabor portions of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases.

Recommendation 29: Additional Payment for Magnetic Resonance Imaging

For a period of three years, Medicare should pay hospitals an additional amount (hereafter termed an add-on) for each covered magnetic resonance imaging (MRI) scan performed on an inpatient Medicare beneficiary in a PPS hospital. Under existing capital payment policy, the add-on for fiscal year 1987 should be $124 for each scan performed on beneficiaries in institutions where Medicare pays for the capital costs of an MRI scanner and $282 for each scan performed on beneficiaries in other PPS hospitals. In fiscal year 1988 and fiscal year 1989, the add-on amounts for all hospitals should be recalculated to reflect any change in the average cost of an efficiently produced scan and any changes in capital payment policy.

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Recommendation 30: Extracorporeal Shock Wave Lithotripsy

Prior to recalibration, cases in which extracorporeal shock wave lithotripsy (ESWL) is the principal procedure should temporarily be removed from DRG 324 and reassigned to DRG 323. The payments and costs for all cases in this DRG should be monitored to determine the appropriateness of PPS payments for operating costs. A unique procedure code should be identified for ESWL.

Recommendation 31: Lymphomas and Leukemias

Prior to recalibration, cases currently assigned to DRGs involving lymphoma, leukemia, and other related diagnoses (DRGs 400-404) should be reclassified into one of five newly defined DRGs. The new classification should provide a unique DRG for acute leukemia cases not involving a major operative procedure, eliminate age as a criterion for DRG assignment, and modify present classification based on operative procedure, complications and comorbidity. Other ways of further improving these DRGs should continue to be explored.

Recommendation 32: Upper Extremity Procedures

Prior to recalibration, cases involving procedures of the upper extremity that are currently classified in DRGs 223, 224, 228, and 229 should be reassigned based on anatomical location and the presence of systemic collagen vascular disease or implantation of joint prostheses or complications and/or comorbidities. Nonsurgical hip fracture cases currently being assigned to DRGs 223, 224, 225, 228, and 229 should be reassigned to the appropriate medical DRG.

Data Development and Research

Recommendation 33: Maintaining a Commitment to Data Development and Research on PPS

The Secretary should continue to devote substantial resources to data development and research for monitoring and improving PPS and understanding its effects on the health care system. Studies mandated by the Congress that are already due should be completed and made public as soon as possible, and new studies that analyze more recent data should be designed and implemented as soon as possible. While ProPAC and other organizations will participate in this process, the major commitment to PPS data development and research must reside in the Department of Health and Human Services.

Chapter 1

Introduction and Commission Priorities

The Medicare prospective payment system (PPS) for payment of inpatient hospital services was enacted by the Social Security Amendments of 1983 (Pub. L. 98-21). In the same legislation, the Congress created the Prospective Payment Assessment Commission (ProPAC) to advise the executive and legislative branches on maintaining and updating PPS.

This report to the Secretary of the Department of Health and Human Services (HHS) contains the Commission's recommendations for updating and modifying Medicare's prospective payment system for inpatient hospital care. This chapter describes the Commission's role and responsibilities. It also summarizes major policy changes and issues in health care financing during the past year. Finally, it describes the priorities ProPAC has established to govern its functions and decision making. Chapter 2 contains the Commission's recommendations; Chapter 3 describes analyses and studies ProPAC has under way or plans for the future.

THE PROSPECTIVE PAYMENT ASSESSMENT COMMISSION: ITS ROLE, RESPONSIBILITIES, AND PROCESSES

The Congress established ProPAC as a permanent, independent commission with responsibilities related to maintaining and updating the new payment system. The 15 Commission members are appointed by the director of the Office of Technology Assessment (OTA), the Congress of the United States. Members are selected, as required by the law, to provide independent expertise in health care delivery, financing, and research. (Biographies of current Commission members appear in this report's appendix.)

Commission Role and Responsibilities

The role of the Commission is to function as a highly knowledgeable, independent panel that provides analysis of and advice on PPS to the executive and legislative branches of the Federal government. This report fulfills the Commission's two primary responsibilities mandated by Pub. L. 98-21. These are to:

- Recommend annually to the Secretary of the Department of Health and Human Services the appropriate percentage change in the Medicare payments for inpatient hospital care, called the "update factor," which is applied to the previous year's payment rates.
- Consult with and recommend to the Secretary of the Department of Health and Human Services necessary changes in diagnosis-related groups (DRGs), including advice about establishing new DRGs, modifying existing DRGs, and changing the relative weights of the DRGs.

Besides the report and recommendations submitted in April to the Secretary for consideration in rulemaking, each fall the Commission reports to the Congress its evaluations of adjustments made by the Secretary. ProPAC also reports to the Congress annually about the overall effects of PPS on American health care delivery and financing, and provides other reports and analyses to the Congress as requested.

Commission Processes

The Commission has established a subcommittee structure to facilitate its work. ProPAC holds open meetings and solicits comment and involvement from groups or people with information relevant to its responsibilities. To enhance the Commission's communications with the public, all meetings are announced in the *Federal Register*. ProPAC maintains a mailing list and schedules public comment periods at each open Commis-

sion and subcommittee meeting. Formal notice has been published in the *Federal Register* (50 Fed. Reg. 2657 [1985]) describing the process for interested parties to use in submitting information to the Commission. The Commission also has adopted a general policy statement. This statement, along with information about the subcommittee structure and Commission meeting dates, is published in this report's appendix.

The Commission requested and received, through the congressional appropriations process, a budget of $3.2 million to carry out its work in fiscal year 1985; a slight increase to approximately $3.3 million was approved for fiscal year 1986. These funds support the administrative, research, and analytic work of the Commission and an executive director and staff of no more than 25.

This report does not explain the background or operation of the prospective payment system. Rather, the Commission assumes that the reader has a general understanding of PPS. Historical perspectives on PPS and a full description of the system are found in the Commission's *Report and Recommendations to the Secretary, U.S. Department of Health and Human Services, April 1, 1985* and the report's *Technical Appendixes*. The 1985 report is available through the Government Printing Office, Superintendent of Documents.

CHANGES IN HEALTH FINANCING AND PUBLIC POLICY SINCE APRIL 1985

In the past year, the Federal policy debate has been dominated by the subject of reduction of the large national deficit. Because the Medicare program represents such a significant proportion of Federal spending (an estimated $74 billion in fiscal year 1986), the course of the debate is critical to those concerned about health financing policy, and the Commission monitored it closely. The debate culminated with the enactment in December 1985 of the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 98-177.

Congressional actions to reduce the deficit and to make other policy-related Medicare and PPS changes were similarly monitored. At the time the Commission adopted the recommendations contained in this report, 1986 Medicare PPS regulations had not been implemented due to congressionally mandated postponement.

While the Commission understands the reasons for the delay, it regrets that several major operational changes recommended by ProPAC and adopted by the Secretary in regulations were not implemented. The Commission is especially concerned about delays in the PPS recalibration process, which is designed to ensure that the system operates with DRG weights that represent the most current data base reflecting recent changes in medical practice patterns and technology.

Other policy concerns that surfaced during this time are of equal and continuing concern to the Commission. Many are addressed in ProPAC's recommendations and future priorities for work (see Chapters 2 and 3). Of particular importance to the Commission were congresssional hearings and media reports indicating that PPS might have adversely affected the quality of care that Medicare beneficiaries receive. While this subject is discussed elsewhere in this report, the Commission reiterates its commitment to continuing careful and thoughtful monitoring of this area.

There are serious methodological difficulties in measuring quality of care, and the definition of high-quality medical care may vary among individuals. The Commission believes, however, that there is a strong *perception* among some beneficiaries, physicians, and other providers that quality of care has already deteriorated under PPS or may deteriorate in the future. ProPAC will work to ensure that adequate systems are developed and implemented to monitor quality of care under PPS so that high-quality care will continue to be available to Medicare beneficiaries.

PRIORITIES AND CONCERNS OF THE PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

In its April 1985 report, the Commission set forth a list of cross-cutting priorities to guide all of its analysis and decision making. These priorities have again served to form the underlying basis of ProPAC's work. They are to:

- Maintain access to high-quality health care,
- Encourage hospital productivity and long-term cost-effectiveness,
- Facilitate innovation and appropriate technological change,
- Maintain stability for providers, consumers, and other payers, and
- Base decisions on reliable, timely data and information.

Maintaining Access to High-Quality Health Care

The Commission's paramount concern with the maintenance of quality of care has been expressed. With its altered financial incentives for hospitals, PPS has created the challenge of maintaining quality health care while restraining health care costs. Hospitals that are paid a fixed amount per type of case by Medicare and other payers (who adopt PPS or use other competitive strategies like preferred provider organizations) can no longer be indifferent to the resources expended in patient care. PPS encourages a reduction of hospital inputs—tests, special procedures, supplies, equipment, personnel time, and hospital days—because hospitals can lower their costs only by controlling resources devoted to inpatient stays. Clearly, as the increase in hospital spending is slowed and cost savings are realized, the need to develop methods to detect adverse effects on quality and access is intensified.

The Commission strongly perceives its role as supporting the establishment of payment rates that will enable hospitals to continue to deliver high-quality health care. The DRG classifications and weights must be modified appropriately to reflect changes in medical practice. Similarly, the update factor must be adequate to enable hospitals to expend the resources required to maintain the appropriate amount and type of care.

As it is reflected in this report, the Commission has begun active examination of quality issues. ProPAC's work in this area will continue and will intensify in the future.

Encouraging Hospital Productivity and Long-Term Cost-Effectiveness

The Commission's concern for maintaining quality under PPS is accompanied by a parallel concern for promoting productivity and long-term cost-effectiveness of the health care system.

PPS uses the diagnosis-related groups to classify patients and define the hospital product. Hospital care is only one of many "products" that contribute to improvement in health status. Other modes of care outside of the hospital also contribute to improved health. Thus, the Commission will look beyond the hospital setting to assess and measure productivity in the context of PPS.

PPS provides incentives for improving productivity and cost-effectiveness of services. PPS also creates incentives to move services to other settings. If these services can be provided at lower cost and equal quality in other settings, such a move should be encouraged. Adjustments need to be made in hospital payments to reflect the movement of services to alternative sites, however, to avoid paying for services twice—once in the hospital DRG payment and again in payment for substitute services.

ProPAC is also concerned that the emphasis on reducing costs may deter the adoption of new services and technologies that may initially increase costs, even though in the long-run they may improve patient care, productivity, and cost-effectiveness. The Commission's work will continue to carefully assess this potential problem.

Facilitating Innovation and Appropriate Technological Change

The Commission believes the Medicare prospective payment system should have an unbiased effect on technological advancement. PPS payment levels should not inhibit the development or diffusion of new technologies and practices, nor should payment levels result in their inappropriate adoption. Instead, technology and practices should be examined in light of both long- and short-term potential effects on quality and productivity.

In reviewing the potential effects of PPS on the adoption of new technologies and practices, the Commission must consider whether payment policies and amounts are sufficient to enable hospitals to adopt them. ProPAC has addressed these concerns by examining a series of options for adjustments to PPS that could help foster the appropriate adoption of new technologies. Continued analysis of these types of problems is a high priority for the Commission. One approach is to adjust the current DRG weights to reflect changes in technology and practice patterns. In addition, the Commission has considered—and will continue to explicitly consider—scientific and technological advances as part of recommendations related to the update factor.

Maintaining Stability for Providers, Consumers, and Other Payers

The Commission believes that in an environment where health care delivery and financing are changing rapidly, its recommendations should provide as much predictability and stability as possible. During its deliberations, the Commission has identified many problems which are described throughout this report. Equitable and workable solutions are much more difficult to develop. The Commission has made only those recommendations it considers most important and amenable to well-informed decision making.

The Commission's philosophy in decision making has been to act where there is immediate need for change and to allow the new PPS to become fully mature and operational—and stable—before suggesting new approaches or significant alterations.

Decision Making Based on Reliable, Timely Data and Information

The Commission's major contribution to the maintenance and evolution of the maturing PPS is the development of recommendations grounded in quantitative data and analytic reasoning, tempered by judgment and experience. The availability and use of accurate, timely data and information, analyzed and presented without bias as a basis for decision making, are critical priorities of the Commission and its staff. The Commission will continue to strive to fulfill a role in which its approach is always to inform itself with the best and most timely information available before making recommendations.

Chapter 2

Recommendations

The Commission's recommendations for fiscal year 1987 are the result of a process of agenda-setting, information collection, analysis, and deliberation continuing from publication of the April 1985 report to the Secretary. ProPAC selects issues for consideration to conform with its statutory mission and to contribute to an open policy debate on matters of substantial importance to beneficiaries, hospitals, and the Medicare program. The Commission's recommendations, with the analysis and reasoning that accompany them, are intended to inform the policy debate that will result in both regulatory and statutory changes in PPS.

The recommendations reflect the collective judgment of the full Commission. In some cases, however, individual commissioners did not always agree with the majority opinion.

Some recommendations, such as those that pertain to the annual update of payment rates, will be repeated in similar format every year. Others, such as the definition of hospital labor market areas, are elaborations or extensions of recommendations that ProPAC developed before this year. Finally, several issues are addressed in the Commission's recommendations for the first time.

Recommendations made previously, but not yet implemented by the Secretary, are still in effect. For example, the Commission considers it important for the Secretary to implement the 1985 recommendations concerning the hospital market basket, even though there are no additional recommendations on this topic this year.

Concern for reducing the Federal deficit and attaining a balanced budget were dominant public policy issues during the period in which these recommendations were developed. It is the role of the Congress rather than the Commission, however, to determine the extent to which Medicare payments should be reduced in light of the Federal deficit. While ProPAC did not explicitly take these budgetary concerns into account, the recommendations were developed in recognition of a very constrained fiscal environment. Furthermore, the Commission believes that budgetary pressures intensify the need to address technical issues related to the updating and distribution of payments that may bear on the quality of care furnished to Medicare beneficiaries.

The following discussion presents an overview of the Commission's 33 recommendations for fiscal year 1987, which are discussed in detail later in the chapter. Background information, statistical analyses, and alternative options are in the Technical Appendixes. The issue areas addressed by the Commission are:

- The update factor,
- Capital,
- Adjustments to the payment formula,
- Standardized amounts,
- Recalibration,
- Beneficiary concerns,
- Patient classification and case mix,
- DRG classification and weighting factors, and
- Data development and research.

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OVERVIEW OF THE COMMISSION'S RECOMMENDATIONS FOR FISCAL YEAR 1987

The Update Factor

The PPS statute requires the Commission to:

> . . . take into account changes in the hospital market basket . . ., hospital productivity, technological and scientific advances, the quality of care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient services,

in making its recommendations on the update factor. The Commission is required to report its recommendations on the update factor to the Secretary of Health and Human Services no later than April 1 of each year, and

> . . . taking into consideration the recommendations of the Commission, the Secretary shall determine . . . the percentage change . . . which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

Recommendation 1 reflects the Commission's overall judgment of the appropriate change in the level of payment per Medicare discharge in PPS hospitals for fiscal year 1987. The Commission believes its responsibility under the statute is to be as specific as possible in making its recommendation on the update factor. Therefore, the Commission has provided an interim estimate of the recommended update. Because several of the components of the update factor will probably change as a result of the receipt of new data before publication of the final rules for fiscal year 1987, the Commission's overall numerical recommendation is likely to be modified. The Commission will publicize its revised recommendation on the update factor during the rulemaking process.

Recommendations 2 and 3 cover the discretionary components of the update factor, which reflect considerations other than inflation in the market basket of hospital input prices. Recommendation 2 consists of a combined allowance for scientific and technological advancement and productivity goals and for changes in the site of services delivered to Medicare hospital inpatients. Recommendation 3 is an allowance for changes in patient mix and complexity that are not otherwise provided for in the PPS payment structure. Recommendation 4 satisfies the Commission's statutory obligation to recommend an update factor for hospitals and distinct-part units of hospitals excluded from PPS.

Capital

When the Commission established its agenda for the April 1986 report, it decided to examine PPS capital payment issues, expecting that the Administration's congressionally mandated capital payment report and proposal would have been published by early 1986 at the latest. In the fall of 1985, ProPAC began its work on capital by reviewing issues and developing principles for evaluation of capital payment proposals advanced by the Administration and others. In late 1985, it became evident that the Administration planned to address capital payment under PPS through regulation, without early publication of a detailed plan and analysis of options. The Commission then decided to develop recommendations related to components of a system for paying for capital under PPS without committing itself to the construction of a complete proposal for capital payment.

Early in its deliberations on capital payment, the Commission developed principles to guide the development of its recommendations. The principles regarded as most important are that the capital payment system should:

- Provide neutrality between capital and operating cost trade-offs,
- Reflect capital intensity variations across the DRGs, and
- Contribute to controlling aggregate expenditures and the level of capital growth.

These principles, which are more fully described in Technical Appendix A, are reflected in the Commission's recommendations on capital payment.

Recommendations 5 through 8 address the following capital payment components:

- The inclusion of capital in an all-inclusive price,
- The method for incorporating a capital component into PPS payments,
- The level at which capital payment is brought into PPS, and
- The transition from individual hospital capital payments to a fully implemented prospective system.

Although the capital payment recommendations do not constitute a comprehensive proposal, and other decisions are necessary before implementation, the Commission thinks its recommendations are a solid foundation for a fair and efficient system. As the discussions accompanying Recommendations 5 through 8 and in Chapter 3 indicate, the Commission will continue to address technical and policy issues concerning capital payment after publication of this report. It will also carefully review the detailed proposal that will be published by the Administration in its proposed regulations covering PPS changes for fiscal year 1987.

As of this writing, hospitals are scheduled to be paid fully national rates for operating payments beginning in fiscal year 1987. Action on the fiscal 1986 reconciliation bill or other legislation may extend the transition for operating payments, however. If a delay is enacted, the Commission will consider implications for implementation of capital payment under PPS and whether the capital payment transition should be coordinated with the operating payment transition.

The Commission's recommendations should not be construed as an endorsement of the Secretary's intention to implement capital payment under PPS by regulation rather than by seeking statutory change. The PPS statute requires the Commission to make all of its April report recommendations to the Secretary. Legislative proposals for capital payment already have been introduced in the Congress, and further proposals and modifications are likely. ProPAC will continue to share its data and analyses on this issue with legislative offices that are examining alternative capital payment strategies.

Adjustments to the Payment Formula

The Commission believes that the ways in which the PPS payment formula distributes payments to hospitals are extremely important both to Medicare beneficiaries and to interhospital equity. Payments that are adequate, on average, may be insufficient for certain types of hospitals and the beneficiaries who depend on these hospitals. Recommendations 9 through 11 address the distributional consequences of the PPS payment formula.

Recommendations 9 and 10 concern issues that were addressed in the 1985 April report. In Recommendation 9, the Commission reaffirms its conviction that hospitals serving a disproportionate share of low-income patients should receive an allowance under PPS to cover the added Medicare costs associated with their care. ProPAC supports the way the Congress approached this problem during the 1985 reconciliation process. It believes, however, that a reiteration of the recommendation is called for because no payment adjustment had been implemented by the time this report was written. In Recommendation 10, the Commission expands its 1985 recommendation on the definition of hospital labor market areas. This year, based on information it has collected, ProPAC recommends more detailed changes and will be even more specific during the rulemaking period.

In Recommendation 11, the Commission addresses issues related to the treatment of rural hospitals under PPS. The Commission is concerned that PPS may unduly place these hospitals and the beneficiaries they serve at a disadvantage. More information needs to be collected, however, before determining whether specific changes in the payment system are necessary. ProPAC's concerns include both individual components of the payment system and broad issues, such as the appropriateness of perpetuating differences in payment rates based on the historically lower costs of rural hospitals and, more generally, the appropriateness of the payment system for hospitals that tend to be small and isolated.

The Standardized Amounts

In the April 1985 report, the Commission recommended recalculating the standardized amounts with cost data reflecting hospital experience under PPS. This year, ProPAC expands its position on the standardized amounts in Recommendations 12 and 13. It is important to have cost data available as soon as possible after the end of hospital accounting years, and in Recommendation 12 the Commission urges exploration of alternative strategies to ensure early availability of such data. In Recommendation 13, the Commission again recommends recalculation of the standardized amounts with more current data. The results of the recalculation might be used to rebase the standardized amounts or to help determine the update factor for the upcoming year.

Recalibration

In Recommendation 14, the Commission states its belief that the DRG weights should be recalibrated annually. The accompanying discussion presents recommended steps in the recalibration process and further adjustment of the weights to remove observed changes in the DRG case-mix index. Even though the PPS statute requires recalibration only every four years, the benefits of annual recalibration far outweigh the associated administrative costs. Annual recalibration is especially desirable in view of evidence of rapidly changing patterns of medical practice in recent years.

Beneficiary Concerns

Chapter 1 cited quality of care under PPS as a paramount concern of the Commission since its inception. In Recommendations 15 through 18, the Commission notes ways in which quality of care can be maintained or improved under PPS. These recommendations do not cover the full range of ProPAC's concerns about quality, however. The Commission will continue to address quality in its analytic agenda and in future recommendations.

In Recommendations 15 and 16, the Commission responds to evidence of misinformation that, if not corrected, may be detrimental to Medicare beneficiaries. The Commission believes that both beneficiaries and providers need to be better informed about PPS. Existing misperceptions, particularly about length of stay limits imposed by PPS, should be dispelled immediately. In addition, beneficiaries should be systematically informed of their rights when hospitalized, including the process for appealing hospital denial of continued inpatient services.

In Recommendations 17 and 18, the Commission focuses on expanding the review activities of Peer Review Organizations (PROs) to include a broader range of quality-of-care considerations than those limited to the inpatient stay. The Commission believes that the PROs should examine the entire episode of care, which includes, but is not always limited to, an inpatient stay. Further, when PROs determine that inpatient surgical services are unnecessary, they should be required to monitor quality of care when surgery is performed on an outpatient basis. Both recommendations derive from a concern that changes in medical practice patterns partially attributable to PPS incentives may be accompanied by deterioration in quality of care if the effects of these changes are not monitored.

The Commission's concern for beneficiary welfare under PPS is not confined to quality of care issues. In Recommendation 19, the Commission notes that the inpatient hospital deductible has inappropriately risen partly because of declining length of stay under PPS. It recommends that the formula for setting the deductible be changed to be more consistent with the per-case orientation of PPS. The deductible should be reduced to the same proportion of the cost of an inpatient stay as was in effect before PPS implementation. Although this reduction would increase government outlays, it was never intended that PPS would increase the proportion of Medicare expenditures borne by beneficiaries.

Patient Classification and Case Mix

The April 1985 report identified several potential problems with the use of DRGs for prospective payment. In Recommendations 20 through 23, the Commission addresses some of these problems and states its intention to continue to explore ways to improve the DRGs for payment pur-

poses. The current DRG system should be retained for the time being, with improvements effected through incremental change. As stated in Recommendation 20, however, the Commission will systematically evaluate the DRG system. The Commission also calls for improvements, in Recommendations 21 through 23, in the International Classification of Diseases (ICD- 9-CM) coding system and the ways in which its codes are adapted for use in PPS.

DRG Classifications and Weighting Factors

The PPS statute requires the Commission to:

> . . . consult with and make recommendations to the Secretary with respect to the need for adjustments [in classifications and weighting factors] . . . based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities.

These adjustments refer to the system for:

> . . . classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

They also relate to the assignment of:

> . . . an appropriate weighting factor [to each diagnosis-related group] which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

To the extent possible, the Commission attempts to develop generic solutions to DRG classification and weighting problems so that its decisions will apply to several DRGs. In Recommendation 24, for example, the Commission addresses the general problem of pricing DRGs that include cases using expensive devices. Changes in the treatment of several specific DRGs are recommended, and the methodology the Commission proposes might also be applied to other DRGs.

Recommendations 25 through 32 concern DRG classification, weighting, and pricing issues covering a broad range of medical technologies and procedures:

- DRG classification of pacemaker cases (Recommendations 25 and 26),
- DRG classification and weighting for cases involving implantable defibrillators and penile prostheses (Recommendations 27 and 28),
- Supplementary payment for cases involving magnetic resonance imaging (Recommendation 29), and
- DRG classification and weighting for cases involving extracorporeal shock wave lithotripsy, lymphomas and leukemias, and upper extremity procedures (Recommendations 30 through 32).

The Commission realizes that its recommendations in these areas, if implemented, would add DRGs and increase the complexity of the PPS system. Nevertheless, ProPAC is convinced that these changes would improve payment equity and reduce hospital reluctance to adopt quality-enhancing new technologies. The benefits of these changes to beneficiaries would far outweigh any corresponding increases in administrative costs.

Data Development and Research

In Recommendation 33, the Commission expresses its belief that PPS requires extensive analysis with more recent data in order to understand its consequences for hospitals and beneficiaries and to effect improvements. Most of the analysis of PPS done by HHS and the Commission has utilized data that reflect only a relatively brief period of hospital payment under PPS. The Commission therefore recommends that HHS should continue to devote substantial resources to the PPS data development and research effort. The Commission's own plans for data development and research on PPS issues are described in Chapter 3.

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RECOMMENDATIONS FOR FISCAL YEAR 1987

The Update Factor

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1987, the standardized amounts should be updated by the projected increase in the hospital market basket, adjusted by the following:

- **A correction factor for substantial errors previously made in forecasting inflation for fiscal year 1986, and**
- **A discretionary adjustment factor of minus 0.5 percentage points composed of two allowances:**
  - **—A minus 1.4 percent allowance for scientific and technological advancement, productivity change, and site-of-care substitution, and**
  - **—A 0.9 percent allowance for real case-mix change.**

In addition, the DRG weights should be adjusted to remove any increase in observed case mix occurring during fiscal year 1986.

This recommendation reflects the Commission's collective judgment of the appropriate change in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed. The Commission's recommendation regarding the level of capital payments would also affect per-discharge Medicare payments to hospitals.

The Commission's current estimate is that this recommendation is likely to lead to a 2.8 percent increase in the per-case PPS payment amounts for fiscal year 1987. The estimate includes the adjustment to the DRG weights for all observed changes in the DRG case-mix index. The numerical amount of the Commission's update factor recommendation will probably change in coming months as more recent market basket forecasts and more information regarding changes in hospital case mix become available. The table below summarizes the components of the Commission's update factor recommendation.

The update factor should be applied to the standardized amounts as they exist at the end of

Estimated Increase in PPS Payment Amounts For Fiscal Year 1987 Under Commission Recommendations

Fiscal Year 1987 Market Basket Increase		4.6%[a]
Correction For Market Basket Forecast Errors In Fiscal Year 1986		−0.3[b]
Discretionary Adjustment Factor		−0.5
Scientific And Technological Advancement	0.7[c]	
Productivity	−1.5	
Site Substitution	−0.6	
Real Case-Mix Change In Fiscal Year 1986	0.9	
DRG Case-Mix Index	0.2[d]	
Within-DRG Patient Complexity	0.7[e]	
Subtotal (Update In Standardized Amounts)		3.8
Observed Change In Case-Mix Index (Adjustment Made To DRG Weights After Recalibration)		−1.0[d]
Total Change In DRG Prices		2.8[f]

[a] Data Resources Inc. (DRI) forecasts based on actuals through calendar year 1985. This estimate takes into account the Commission's April 1985 recommendation for changing the treatment of wages in the hospital market basket. The DRI forecast for the current MCBA market basket is 4.4 percent.

[b] ProPAC estimate comparing DRI forecasts based on actuals through calendar year 1984 to forecasts based on actuals through the third quarter of 1985. The estimated adjustment here excludes errors in forecasting internal price proxies, as recommended by the Commission in its April 1985 report.

[c] In addition to this allowance, the Commission's recommended add-on for Magnetic Resonance Imaging scans would increase payments to hospitals. If capital is added to PPS in fiscal year 1987 at a level lower than projected under current law, this component should be higher.

[d] For this report, the Commission has incorporated a one percent reduction in the DRG weights to account for observed changes in the DRG case-mix index during fiscal year 1986, although this figure may change as more recent data are reported. Based on historical trends, we estimate that the portion of this increase due to real changes in DRG case mix is 0.2 percentage points.

[e] Estimate based on data from the Commission on Professional and Hospital Activities through 1984. The estimate may change once 1985 data become available.

[f] As recommended by the Commission, the addition of capital would increase PPS payment amounts. Compared to the current law projection, however, ProPAC estimates that its capital recommendation would reduce capital payments by 10 percent in fiscal year 1987 and about 22 percent over the next five years.

fiscal year 1986. The final level of the 1986 amounts depends on the outcome of the budget reconciliation legislation, which would increase the amounts by 0.5 percent, and the Supreme Court ruling on the constitutionality of the Gramm-Rudman-Hollings deficit-reduction act, which lowered payments to hospitals by 1 percent beginning in March 1986. The actual increase in per-case payments to hospitals may be higher than the update factor if the overall DRG case-mix index increases during fiscal year 1987.

The Commission's recommendation for fiscal year 1986 would have increased payment amounts by 1.5 percent. ProPAC does not believe, however, that the difference between that recommendation and the actual amounts hospitals received is significant enough to take directly into account in determining the fiscal year 1987 update factor. Payments to hospitals may have been higher than reflected in the update factor due to changes in the DRG case-mix index. Moreover, analysis by the Commission and others indicates that the Federal portions of the original PPS rates were higher than intended.

Furthermore, overall the hospital industry appears to be financially healthy. Medicare's policy of continued cost reimbursement for capital has contributed to this financial health. Because of these factors, the Commission believes that applying its recommended update factor for fiscal year 1987 to the actual fiscal year 1986 amounts would be appropriate. This update would provide an aggregate payment level adequate to ensure the provision of accessible, cost-effective, quality inpatient hospital care to Medicare beneficiaries. If, however, future updates received by hospitals are substantially different from recommended levels, the Commission will consider these differences in developing its update factor recommendations.

ProPAC believes that the principle of correcting for the previous year's market basket forecast errors should be applied in determining the update factor each year. It can be argued, however, that hospitals should not have rates adjusted downward in fiscal year 1987 because there was no increase in the payment amounts in fiscal year 1986. On the other hand, the market basket forecast was used by the Secretary in developing fiscal year 1986 recommendations, although the market basket increase was offset by other factors.

In the current environment of fiscal stringency, an estimated 2.8 percent increase in PPS payment amounts for fiscal year 1987 may seem unduly high. Hospitals received no increase for the first half of fiscal year 1986, and may receive a net reduction for the second half of the year if the Gramm-Rudman-Hollings deficit-reduction act is upheld. The President's proposed budget for fiscal year 1987 estimates a 2.0 percent increase in PPS payment rates. The Commission's recommended increase is very stringent compared to historical trends in Medicare payments to hospitals, however. Between 1972 and 1983, these payments averaged about 3 percentage points *above* inflation, whereas the Commission estimates its recommendation for fiscal year 1987 to be 1.5 percentage points *below* inflation.

In its April 1985 report, the Commission made a number of recommendations for change in the hospital market basket. It is pleased that the Health Care Financing Administration has these recommendations under study, and hopes that appropriate changes are made for the fiscal year 1987 update factor. In particular, the Commission believes that wages should be treated differently in the market basket. In addition, the forecast error correction should be applied only to substantial errors in the external price change measures, and the market basket weights should be rebased. Other components of the update recommendation are addressed in more detail in the discussions accompanying Recommendations 2 and 3. Adjusting the weights to remove all observed case-mix change is discussed in Recommendation 14.

Other recommendations would also affect Medicare payments to hospitals. Recommendations 5 through 8 address the inclusion of capital payments in PPS. The addition of capital would increase per-case PPS payment amounts. But because the level at which the Commission recommends the addition of capital payments is lower than that forecasted for fiscal year 1987 under the current pass-through, the recommendation represents an estimated 10 percent reduction in per-case capital payments to hospitals from the cur-

rent law projection. Over five years, the reduction would be about 22 percent compared to a continuation of cost pass-through payment for capital. This reduction would represent less than 3 percent of total Medicare payments to hospitals during the five-year period.

Recommendation 29 would implement additional payments to hospitals for patients receiving a magnetic resonance imaging scan (MRI). This add-on would have a limited financial effect in the first year of implementation. Under the Commission's approach, all such increases in payment would be offset by reductions in the scientific and technological advancement component of the discretionary adjustment factor.

Recommendation 2: Allowance for Scientific and Technological Advancement and Productivity Goals, and Site-of-Care Substitution

For the fiscal year 1987 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and substitution in the site of service from inpatient to out-of-hospital settings should be set at minus 1.4 percentage points.

The Commission's update factor is composed of two overall elements—the hospital market basket inflation factor and the discretionary adjustment factor. The discretionary adjustment factor (DAF) is the quantitative expression of the Commission's judgment regarding the rate at which the Medicare standardized amounts should increase or decrease beyond inflation in the hospital market basket. This judgment reflects considerations outlined in the statute as well as other factors that ProPAC determines are important.

The Commission believes that its recommendation for the DAF results in an update factor which represents the smallest rate of increase that is consistent with maintaining high-quality services and sufficient access to hospital care for Medicare beneficiaries. While the Commission's recommendations do not explicitly take into account budgetary considerations related to the Medicare Hospital Insurance Trust Fund's solvency or the Federal deficit, they were developed in recognition of a very constrained fiscal environment.

The Commission recognizes that actions to reduce the Federal deficit could have a significant effect on the fiscal year 1987 update factor. Nevertheless, the Commission believes that the DAF should reflect its best judgment about the amount necessary to provide efficient, effective hospital inpatient services after accounting for inflation.

In constructing the DAF, the Commission is concerned with identifying factors that produce a change in the average cost of a discharge and determining the effect of these changes on the standardized amounts. The Commission recognizes that many factors can affect the average cost per case, and that it is difficult to develop precise estimates for the effect of individual factors. Because these factors are so closely related, available data frequently reflect more than one DAF component. For example, length-of-stay reductions reflect hospital productivity changes as well as shifts of services from inpatient to out-of-hospital settings.

Nevertheless, the Commission has attempted to allocate its fiscal year 1987 estimate of the overall discretionary adjustment factor to the following four components considered in its development: (1) scientific and technological advancement, (2) hospital productivity change, (3) site-of-care substitution, and (4) real case-mix change. A numeric allowance was developed for each component, after consideration of the interrelationships among the components. These allowances represent broad guidelines; they do not imply a high degree of precision or specificity in the estimation of the individual components.

DAF component	*Percentage allowance*
Scientific and Technological Advancement	+0.7
Hospital Productivity	−1.5
Site-of-Care Substitution	−0.6
Net Adjustment (Before Inclusion of the Allowance for Real Case-Mix Change)	−1.4
Real Case-Mix Change (Recommendation 3)	+0.9
DAF Total	−0.5

In total, the Commission recommends that the fiscal year 1987 update factor include a 0.5 per-

cent reduction to accommodate the considerations outlined in the DAF recommendation, compared to a 0.2 percent reduction recommended for fiscal year 1986. The numeric value of the Commission's DAF recommendation is subject to change in the next few months as more recent information on hospital case-mix change becomes available.

The Commission began the development of an overall DAF recommendation by examining trends in net intensity per admission. Net intensity is a measure of hospital expenditure changes after taking inflation into account. Changes in net intensity per admission reflect changes in productivity, case mix, and patterns of practice as well as errors in the measurement of input prices and time lags between input price increases and expenditure increases. Measures of net intensity also reflect increases in capital expenses that are currently not included in the standardized amounts.

Net intensity per case grew 3.9 percent during the first eight months of 1985—a rate of growth that is consistent with the pre-PPS long-term trend of double the real growth in the general economy. The Commission continues to believe that future growth in hospital expenditures should be constrained to reflect a balance between long-term growth in the hospital industry and in the rest of the economy.

The continued intensity growth in the hospital industry, however, masks some important changes under PPS. Measures of intensity are highly volatile and sensitive to short-term shifts in volume. The recent increase in net intensity per case can be largely attributed to decreases in admissions rather than to increases in hospital expenses. While net intensity per case increased 3.9 percent in the first eight months of 1985 compared to 1.7 percent in 1984, hospital admissions decreased 6 percent. Total inpatient expenses adjusted for inflation decreased in 1985. This suggests that reductions in net intensity are achievable as the hospitals adjust their use of resources to a lower volume of admissions.

Based on these overall considerations, the Commission has recommended a small negative aggregate allowance for the DAF. The remainder of this discussion addresses the first three components of the DAF recommendation for fiscal year 1987. The fiscal year 1987 adjustment for real case-mix change is addressed in Recommendation 3 and its accompanying discussion.

Scientific and Technological Advancement.—The scientific and technological advancement allowance is a future-oriented policy target. It reflects the Commission's judgment of the financial requirements for hospitals to implement quality-enhancing, cost-effective, but cost-increasing health care technologies and practices. This allowance reflects the judgment that the hospital industry will not and should not experience the same rate of growth as in the past decade. Nevertheless, a sufficient allowance must be provided to allow the industry to keep pace.

The Commission believes that advances resulting in greater efficiency for the hospital do not require a special allowance since they should ultimately be reflected in lower costs. The Commission also believes that scientific and technological innovations that neither improve quality or effectiveness nor lower costs are not relevant for consideration under the DAF since these innovations do not represent any real advancement. Those that contribute to changing the effectiveness and quality of hospital services may or may not contribute to increasing the cost of care.

This allowance represents the Commission's judgment about the funds required to cover increased hospital operating expenses related to the addition of both low- and high-cost quality-enhancing, cost-effective technologies. It reflects ProPAC's recognition that most of the requirements for funding technology in any given year result from the diffusion of existing technologies rather than from the introduction of new technologies. This allowance also reflects increased expenses attributable to changes in practice patterns that enhance quality and effectiveness but are not included in the allowance for real case-mix change.

In addition to this allowance, the Commission's recommended add-on for magnetic resonance imaging scans would increase payments to hospitals for technological improvement. ProPAC believes that targeted adjustments of this type should be offset in the DAF so that the total amount allowed remains unchanged by an add-on payment.

The scientific and technological advancement allowance does not reflect the anticipated changes in capital payments recommended by the Commission. Of the 3.9 percent increase in net intensity per case during the first eight months of 1985, as much as 1.0 percentage points can be attributed to capital expenses. If capital is added to the standardized amounts in fiscal year 1987 at a level lower than projected under current law, the scientific and technological advancement component of the DAF should be increased to reflect the additional appropriate capital resources required for funding this component of the DAF.

In developing the scientific and technological advancement allowance, the Commission recognized that the DAF was not the only source of financing technology adoption. As noted previously, the Commission expects that, during fiscal year 1987, hospitals will continue to be able to finance a portion of expenditures for new technology and improved practice patterns from gains in productivity. In addition, the increased operating margins that many hospitals appear to be achieving in the initial years of PPS are available to finance the implementation of scientific and technological advances.

Hospital Productivity.—The hospital productivity allowance in the DAF reflects the Medicare program's share of the potential changes in both efficiency and productivity resulting from PPS incentives to reduce the number and cost of resources for treating patients. The Commission adopted the position that it is both desirable and appropriate for productivity and efficiency gains to be translated into price reductions. The Commission also adopted the principle that such gains should be shared between the Medicare program, the Medicare beneficiaries, and the hospital industry. Productivity decreases, however, should not be directly subsidized by PPS.

Hospital productivity is difficult to measure due to problems in defining an appropriate output or product. Under PPS, the hospital product is defined as a discharge, as classified and labeled by the DRG system. At present, available data serve as an indicator of the potential for productivity gains but should not be viewed as direct measures of such change. The same data also frequently reflect changes in the types of services provided in inpatient and outpatient settings.

The potential for productivity gains was examined from a variety of perspectives, including changes in staffing patterns and length of stay and changes in the use of ancillary services. Historical trends formed the foundation upon which the Commission developed its productivity target for fiscal year 1987.

Although length of stay continues to decline, the rate of decline in 1985 was much slower than in 1984 (2.9 percent compared to 7.8 percent). A 2.9 percent reduction in length of stay cannot be directly or immediately translated into a 2.9 percent reduction in costs. The Commission believes, however, that for fiscal year 1987 such a decline could result in a 2.2 percent cost reduction associated with productivity gains, after accounting for real changes in case mix (Recommendation 3). In addition, changes in the use of ancillaries could contribute to between a 0.6 and a 2.5 percent reduction in costs. Savings from ancillary productivity gains, however, cannot be added in their entirety to savings from length of stay reductions. The estimates of length of stay savings reflect a 60 percent marginal cost assumption that includes some ancillary costs.

Since the Commission considers it appropriate for the industry to continue to benefit from the gains made in productivity, only a portion of these potential productivity gains are adjusted for in the DAF (minus 1.5 percent). The remainder of the potential cost savings is available to the industry to purchase improved technologies, to increase operating margins to fund future investments, or to offset costs associated with caring for more seriously ill patients who are not reflected in the real case-mix change adjustment.

Site-of-Care Substitution.—PPS provides significant incentives to change the nature of the hospital product, including incentives to shift services from an inpatient to an out-of-hospital setting or to move patients out of the hospital more quickly. Consequently, the services previously provided to patients during their hospital stay are now increasingly produced by using a mix of inpatient and out-of-hospital services. The Commis-

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sion has termed this type of product change "site-of-care substitution." For patients admitted to the hospital, this shift in services would reduce the cost to the hospital of DRG production. Under these circumstances, the Medicare program and the beneficiaries could be overpaying for services since the cost base used to calculate DRG rates includes the costs of services that are now being provided in other settings.

Because of the implications for overpayment, the Commission has included an adjustment in the DAF that reflects the impact of site-of-care substitution on average inpatient costs per case. The allowance is not meant to reflect how diverting an entire admission to other settings would affect costs. An impact of this type of shift would be more appropriately considered under the real case-mix change adjustment. Instead, the allowance reflects the provision of services before and after hospitalization, which formerly were provided during the patient's inpatient stay.

The Commission's allowance for site-of-care substitution began with analyses of 1980-1984 data from a study conducted for ProPAC by the Commission on Professional and Hospital Activities (CPHA). These data compare average length of stay before and after PPS implementation. They reflect the impact of discharging a higher proportion of patients to other organized care settings and the effects of discharging these patients earlier than was the case before PPS went into effect. The data indicate a reduction in length of stay associated with higher proportions of patients discharged to alternative settings.

The analyses were limited to formal sites of care (e.g., discharge to nursing homes, discharge to home with home health services). They do not, however, reflect the substantial changes in site of follow-up care to physicians' offices or outpatient departments, the results of earlier discharge to alternative care settings, or increased use of preadmission services. Moreover, many hospitals were not on PPS or were on PPS only for a short period during 1984, and thus had limited exposure to PPS incentives for site substitution. The Commission believes that these early data from CPHA represent only a fraction of the site substitution that has occurred under PPS. Consequently, the Commission has specified an allowance of 0.6 percent to reflect its best judgment about the total effect of site substitution on reducing Medicare cost per case.

The Commission recognizes that the potential for productivity increases and site-of-care substitution is likely to diminish over time. Nevertheless, ProPAC continues to believe that there are substantial opportunities for achieving productivity gains during fiscal year 1987. Furthermore, it believes that site-of-care substitution has occurred and should be reflected in a reduction in the DAF.

Although separate allowances for quality or long-term cost-effectiveness of care were not established, the Commission treated these factors as overarching considerations in setting the level of the DAF and in examining each of the DAF components. More specifically, the Commission viewed quality and long-term cost-effectiveness as objectives to be achieved by implementation of rational payment policies. For more information on this recommendation, see Technical Appendix A.

Recommendation 3: Allowance for Real Case-Mix Change

Prospective payments should reflect real changes in case mix that are due to changes associated with the characteristics of patients and not changes simply due to better coding of records. The DAF allowance for real case-mix change should reflect both shifts in patients among the DRG categories, as measured by changes in the average case-mix index (DRG case-mix change), and changes in the mix of patients within DRG categories (patient complexity change). For the fiscal year 1987 payment rates, the allowance for real case-mix change should be set at 0.9 percent. This allowance represents a 0.2 percent adjustment for changes in the DRG case-mix index and a 0.7 percent adjustment for patient complexity changes.

In the April 1985 report, the Commission concluded that since PPS payments automatically reflect all changes in reported DRG case mix as they occur, an adjustment would be necessary to ensure that only changes in real case mix are built into future payment rates. To accomplish this, the

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Commission recommended lowering all DRG weights to adjust for changes in DRG distribution but returning a portion of the lower payments to the hospitals through the DAF adjustment for real case-mix change. This adjustment was also intended to reflect changes in the complexity of patients within DRG categories.

The Commission did not actually specify a quantitative adjustment for real case-mix change in the April 1985 report. Quantification of the adjustment was provided in the Commission's comment on the Secretary's Notice of Proposed Rulemaking in July 1985. The Commission's estimate of real case-mix change was based on a preliminary study by the Rand Corporation. The Commission estimated that a 2.0 percent increase in reported case mix would occur during 1985. Of this increase, 0.8 percent was attributed to real case-mix change. This estimate reflected consideration of historical trends in real case-mix change, recent shifts to outpatient treatment, and within DRG patient complexity changes that would not be reflected in the DRG case-mix index.

For this report, the Commission has incorporated a 1.0 percent reduction in the DRG weights to account for observed changes in the DRG case-mix index during fiscal year 1986. Based on historical trends, the Commission estimates that the portion of this increase due to real changes in DRG case mix is 0.2 percentage points.

These figures may change as more recent data are reported. Currently, no data on DRG case-mix change for fiscal year 1986 are available. The most recent information is provided in another study by the Rand Corporation, which reports that the overall DRG case-mix index did not change from the fourth quarter of fiscal year 1984 through the second quarter of fiscal year 1985. The Commission believes, however, that while changes in the DRG case-mix index may have leveled off, it is consistent with recent experience to expect a small increase due to more accurate coding as hospitals continue to adjust to PPS and as hospitals in formerly waivered states (i.e., New York and Massachusetts) are brought into PPS for the first time.

Based on a study that CPHA conducted for ProPAC, the Commission has specified a 0.7 percent adjustment for increases in patient complexity during fiscal year 1986. This adjustment is a reflection of historical trends in length of stay associated with patient complexity changes that occurred in the two years before implementation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). In that period, both Medicare and non-Medicare patients experienced approximately the same rate of increase in length of stay associated with increased complexity.

Between 1982 and 1983, significant increases in length of stay associated with greater complexity were found for both populations. The increase was substantially greater, however, for Medicare patients. During 1984, length of stay related to complexity decreased compared with 1983, but not to the level of the period preceding TEFRA enactment. The Commission has assumed that the increase between 1982 and 1984 was highly subject to the influence of improved hospital coding practices and may not represent actual changes in complexity. Thus, the Commission has based its estimate of real complexity change on hospitals' experience before 1983. The Commission has also assumed that a 0.7 percent increase in length of stay associated with increased complexity would translate into a 0.7 percent increase in costs. These estimates are subject to revision later in the year when data for 1985 will be available from CPHA. For more information on this recommendation, see Technical Appendix A.

Recommendation 4: Update Factor for Excluded Hospitals and Distinct-Part Units

For fiscal year 1987, the target rate of increase limits for the group of psychiatric, rehabilitation, and long-term care hospitals and hospital distinct-part units excluded from PPS should be updated to reflect the projected increase in the hospital market basket for these hospitals (corrected for forecast errors) minus a 0.8 percentage point adjustment for productivity and scientific and technological advancement goals established for PPS hospitals.

The target rate of increase limit for children's hospitals and distinct-part units should be updated to reflect the projected increase in the hospital market basket for PPS hospitals (corrected for forecast errors) minus a 0.8 percentage point adjustment for productivity and scientific and technological advancement goals established for PPS hospitals.

The PPS statute created two broad classes of hospitals—those that would be paid on the basis of DRGs and those that would not. Excluded hospitals—psychiatric, rehabilitation, pediatric, and long-term care hospitals (hospitals with unusually long average lengths of stay)—continue under cost reimbursement rules, which limit reimbursement per discharge. Both the PPS standardized amounts and the reimbursement limits for excluded hospitals are to be updated each year.

The types of patients seen and the treatment they receive vary significantly between PPS and excluded hospitals. The Commission believes it is appropriate to develop a separate update factor for the hospitals and units excluded from PPS but still subject to the target rate-of-increase limits. The Secretary has stated in the final rule governing PPS payments for fiscal year 1986 that the PPS statute requires application of the same update factor to both PPS and excluded hospitals. The Commission nevertheless reaffirms its position that the Secretary has the authority to establish a separate update factor for excluded hospitals. If, however, uncertainty about this authority remains, the Secretary should seek legislative change to obtain explicit authority for establishing separate rates of increase appropriate to the two different payment systems.

The update factor for excluded hospitals includes two allowances in addition to inflation: one for scientific and technological advancement, and another for productivity change. While it has been more difficult to quantify these concepts for excluded hospitals than for PPS hospitals, the Commission continues to believe that the update factors for both types of hospitals should include an adjustment for these elements.

Based on currently projected inflation rates, ProPAC estimates that this recommendation would lead to a 3.5 percent increase in the target limits for children's hospitals and distinct-part units, and a 3.7 percent increase for the rest of the excluded facilities. A summary of the Commission's recommendations for excluded hospitals appears in the table following this discussion.

These estimates are based on the assumption that capital expenses will not be brought under the target rate-of-increase ceiling. The Commission will reevaluate the appropriateness of its update recommendation if—and when—these payments are made subject to the target limits. In addition, the numeric value of the Commission's recommendations for excluded facilities will need to be modified as more recent forecasts of inflation become available.

The Commission reaffirms its 1985 recommendation calling for development of an inflation factor for the group of psychiatric and rehabilitation hospitals and units, and long-term care hospitals. The factor should reflect the mix of labor and nonlabor resources used by these hospitals rather than those used in PPS hospitals. This recommendation is based on the Commission's observation that the labor share of expenses in these hospitals is substantially higher than in PPS hospitals.

The Commission also continues to recommend using the PPS market basket to calculate inflation for children's hospitals. Analysis by ProPAC and others indicates that the labor share of total expenses in these hospitals is close to the overall average on which the current PPS weights are based. Thus, the PPS market basket weights are appropriate for children's hospitals.

The Commission currently estimates a fiscal year 1987 market basket inflation factor of 4.8 percent for psychiatric and rehabilitation hospitals and units, and long-term care hospitals, compared with 4.6 percent for PPS and children's hospitals. After applying a minus 0.3 percent factor to correct for errors in the 1986 market basket forecast, the net inflation-related adjustment in the fiscal year 1987 payment rates would be 4.3 percent for children's facilities and 4.5 percent for the remainder of the excluded facilities. This adjustment is likely to change after more current forecasts of market basket inflation are received later in fiscal year 1986.

While it might be appropriate to adopt scientific and technological advancement and productivity allowances reflecting the production functions of the various classes of excluded hospitals, insufficient evidence precluded doing so in this report. For fiscal year 1987 at least, the Commission has concluded that it is reasonable to incorporate the PPS allowances for scientific and technological advancement and productivity in

the excluded facilities' update factor. The Commission will continue to study the feasibility of developing separate allowances as a part of its long-term research agenda.

Two other adjustments included in the update factor for PPS hospitals, however, are not relevant to excluded hospitals.

First, the Commission reaffirms its 1985 decision not to incorporate any adjustment for real case-mix change in the DAF for excluded hospitals. Since excluded hospitals are not paid on a DRG basis, they have no incentive to upgrade the coding of cases. On the other hand, excluded hospitals may be experiencing increases in the acuity of illness in the patients they see due to the earlier transfer of sicker patients from PPS hospitals. At present, however, there are no data suitable for estimating the degree to which case mix may be changing in excluded hospitals.

Excluded hospitals are somewhat protected from these case-mix changes by an exceptions process that allows them to appeal their payment rates if they can demonstrate significant changes in case mix. The exceptions process is not only extremely cumbersome, however, but provides only retroactive relief. If relief is granted, it typically takes more than two years from the time excess costs are incurred. Therefore, it is unclear whether this exceptions process can adequately adjust for changes in case mix.

Second, the Commission believes that there is insufficient justification for including an adjustment for site substitution in the update factor for excluded hospitals. Compared with PPS hospitals, excluded hospitals have much weaker incentives and opportunities to shift services to other settings. As discussed above, these hospitals are much more likely to receive transfers from other facilities than to discharge patients early and refer them elsewhere. Under these circumstances, a positive adjustment for site substitution might be justified. At present, however, there are no data on which to base such an adjustment.

HCFA and others have conducted studies that have enhanced understanding of the differences between the PPS hospitals and excluded hospitals and units. Their relevance to development of the update factor is, however, limited. The Commission intends to continue to study excluded hospitals and to develop trend data relevant to the update factor. For more information on this recommendation, see Technical Appendix A.

Estimated Increase in Excluded Hospital Payment Limits For Fiscal Year 1987 Under Commission Recommendations

	Children's	Psychiatric/ Rehabilitation/ Long-term Care
Fiscal Year 1987 Market Basket Increase[a]	4.6%	4.8%
Correction For Market Basket Forecast Errors In Fiscal Year 1986[b]	−0.3	−0.3
Discretionary Adjustment Factor	−0.8	−0.8
Scientific And Technological Advancement	*0.7*	*0.7*
Productivity	*−1.5*	*−1.5*
Total Change	3.5	3.7

[a]DRI forecasts based on actuals through the calendar year 1985. This estimate takes into account the Commission's April 1985 recommendation for changing the treatment of wages in the hospital market basket.

[b]ProPAC estimate comparing DRI forecasts based on actuals through calendar year 1984 to forecasts based on actuals through the third quarter of 1985. The estimated adjustment here excludes errors in forecasting internal price proxies, as recommended by the Commission in its April 1985 report.

Capital

Recommendation 5: Including Capital in the Prospective Payment System

Beginning in fiscal year 1987, the Secretary should initiate a transition to all-inclusive prospective prices that combine operating and capital cost components in a single prospective payment per case for hospitals.

Retrospective cost-based reimbursement for capital lacks incentives for hospitals to restrain overall investment costs. Instead, it promotes insensitivity to interest rates and alternative financing methods. In addition, some hospitals may have invested in capital to produce services that exceed the demands of the inpatient hospital services market.

The combination of Medicare PPS and the capital pass-through has introduced additional distorted incentives to substitute capital for labor or other operating costs. As a result, the hospital that

can substitute capital for operating costs (and assume the risk of additional capital acquisition) receives more in total Medicare payments (i.e., hospitals receive fixed DRG payments plus increased cost reimbursement for capital expenditures).

The Commission strongly believes that the capital payment policy adopted should provide neutrality in capital/operating cost trade-offs. The payment method should not favor either capital or operating costs. Instead, it should encourage hospital managers to choose the optimal combination of these cost components. An all-inclusive payment rate would allow individual providers the flexibility to make what they consider to be the most cost-effective decisions based on the unique characteristics of their institutions.

The Commission is aware, however, that implementation of an all-inclusive rate at the levels set forth in its proposal may affect some hospitals disproportionately due to their individual financial positions. The Commission's proposal for capital payment, as explained in subsequent recommendations, may cause some hospitals to face significant cash shortfalls as a result of current and near-term obligations. ProPAC believes, however, that these shortfalls would not occur during the early years of the phase-in of its proposed capital policy. During this period, payments for capital should be sufficient to meet these hospitals' capital-related cash needs. Meanwhile, the Commission will monitor the implementation of the new capital payment system to identify potential problem areas for hospitals. Moreover, for reasons stated elsewhere, ProPAC believes that there should be no delay in implementing capital payment under PPS.

The Commission will continue to study the impact of its capital payment proposal on hospitals, focusing on those institutions that may be disproportionately affected by new capital payment policy. If the Commission determines that certain hospitals are unfairly treated by bringing capital payment into PPS, and that the quality and accessibility of care furnished to beneficiaries by these hospitals are jeopardized, it will develop and recommend appropriate remedies to the Secretary. For example, ProPAC will examine public and private sector options such as a hospital "borrow forward" program for financing capital expenditures.

The Commission intends to evaluate recent changes in hospital investment strategies and their impact on inpatient capital spending and the adequacy of future payments. Estimates of inpatient capital spending should be examined closely since recent capital expenditures may be heavily devoted to outpatient services. Furthermore, the addition of capital payments to PPS creates incentives for increased outpatient treatment due to the difference in reimbursement methods for inpatient and outpatient services. Finally, the Commission will study the impact of paying hospitals for capital based on the volume of Medicare services rather than on costs.

The Commission decided not to address the role of health planning in capital payment under PPS. It is aware that the PPS statute calls for required application of Section 1122 of the Social Security Act to regulate Medicare inpatient capital payment beginning in fiscal year 1987, and that proposals have been advanced to repeal this provision. The Commission expects that the Congress will deal with this issue in its legislative agenda for fiscal year 1987.

In summary, the Commission is concerned about these and other influences of new capital payment policy on all hospitals and specifically on disproportionately affected hospitals. ProPAC plans to study these issues and share its analysis with policymakers in order to achieve a capital payment policy that provides for the financial needs of hospitals while offering incentives for cost-effective decision making in the future. For more information on this recommendation, see Technical Appendix A.

Recommendation 6: Capital Payment Method

The Federal portion of capital payments should be computed as a fixed percentage add-on to the standardized amounts beginning in fiscal year 1987. The Secretary should immediately develop capital components to be added to the hospital market basket. When appropriate data become available, the components of PPS payments should be recomputed to reflect the addition of capital costs. The results of this recomputation should be implemented

as soon as possible, but no later than fiscal year 1988.

The Commission believes that developing an all-inclusive rate eventually requires recomputation of several components of the PPS system. Specifically, the addition of capital will result in new standardized amounts with new proportions for labor and nonlabor components. It may also require new adjustment rates for indirect medical education and any other adjustments in effect at the time capital is added.

The Commission's recommendation to recompute payment components will require data not currently available that reflect the addition of capital under PPS. The Commission believes, however, that distorted incentives exist under the current capital expenditures pass-through system that require a new payment policy to be implemented as quickly as possible. For this reason, the Commission recommends that an interim payment method of the percentage add-on to the standardized amounts be implemented beginning in fiscal year 1987. Recomputation of the payment system to reflect the addition of capital differs from the issue of recalculating the standardized amounts using new data for the purpose of changing the overall level of payments (Recommendation 13).

The Commission plans to study the impact of the addition of capital on other payment system components and appropriate proxies for capital costs in the hospital market basket. The Commission will also study whether adjustments for geographic variations in construction capital costs are appropriate.

The add-on should be applied in such a way that the distribution of capital payments will not be affected by the area wage index or the indirect teaching adjustment. Payment would, however, reflect case-mix variations and the differentiations associated with the national and regional standardized amounts. In addition, if the transition to national rates for operating payments is delayed, the Commission will consider whether the capital payment transition should be coordinated with the operating payment transition. For more information on this recommendation, see Technical Appendix A.

Recommendation 7: Level of Federal Capital Payment

Capital payment should be added to the Federal portion of PPS payments for hospital accounting years beginning in fiscal year 1987 at the following levels:

- **For building and fixed equipment, projected average Medicare actual capital costs per discharge for fiscal year 1985, trended forward to fiscal year 1987 by an index of construction capital costs.**
- **For moveable equipment, average actual Medicare capital costs per discharge for hospital accounting years beginning in fiscal year 1983, trended forward to fiscal year 1987 by an index of equipment capital costs.**
- **The proportion attributed to moveable equipment should be the lesser of the 1983 proportion or 40 percent.**

The Commission believes that the capital payment system should distinguish between two components: fixed capital (land, buildings, and fixed equipment) and moveable capital (major moveable equipment). This approach recognizes the differences between fixed and moveable capital expenditures and the differing effects of PPS payment incentives on hospital decisions regarding these cost components.

Moveable capital is purchased and turned over more frequently than fixed. For each year, in fact, the composition of moveable capital changes as assets are disposed of and replaced. Fixed capital is purchased infrequently and involves major capital expenditures, often requiring external review. Moveable capital purchase decisions often require hospital managers to make judgments regarding capital/operating cost trade-offs. Fixed capital, on the other hand, is not easily converted to another use, and related expenditures cannot be eliminated in the short-term. Financing of moveable capital may include leasing or use of a hospital's own funds in addition to borrowing. On the other hand, financing of fixed capital costs usually requires the use of debt or additional equity.

Furthermore, the time lag for purchase decisions, financing, and completion of fixed capital projects is typically several years. In some cases,

fixed capital expenditure decisions made by hospital managers before the introduction of PPS have not yet been fully implemented. Other fixed capital projects initiated in the early 1980s have just recently been completed, yet the related costs may not be fully reflected in current Medicare capital cost data.

For reasons stated above, the Commission believes that moveable equipment is more susceptible to the incentives of the current payment system for capital/operating cost trade-offs. ProPAC therefore recommends that 1983 be adopted as the base year for calculating moveable equipment payments since 1983 reflects a time when capital and operating costs were treated equally. Furthermore, the Commission believes that this approach would provide for control of Medicare expenditures without causing financial hardship for hospitals. This is because capital pass-through payments since 1983 have been sufficient for hospitals to recover a substantial portion of their 1983 moveable equipment costs.

The Commission recognizes, however, that hospitals recover fixed capital costs over an extended period. Moreover, since there is significant lag time for fixed capital projects, hospitals cannot respond as quickly to the incentives of a new payment system or to warnings about the future treatment of capital. The Commission selected the base year of 1985 because fixed capital costs reported in that year would reflect decisions made before PPS. For fiscal year 1987, the 1985 base year fixed capital costs will have to be estimated. When actual 1985 capital cost data become available, the Commission will compare these data with previous estimates and consider recommending adjustments, if appropriate.

The base year amounts for fixed and moveable capital should be trended forward to 1987. Separate indexes should be used that recognize the differences in cost trends between fixed and moveable capital. The Commission will study the data and application of these trending factors and will participate in determining the most appropriate indexes.

Federal payments for fixed and moveable capital should be based on Medicare's current definition of these cost components. All capital-related costs should be allocated to these components, including depreciation, interest, leases, rentals, insurance, return on equity, and taxes on depreciable assets used for patient care. The Commission believes that the current proportion of capital-related costs attributable to moveable equipment is no more than 40 percent. If, in monitoring the implementation process, it is determined that moveable equipment comprises more than 40 percent, the Commission recommends that the excess over 40 percent be included in the hospital-specific capital payments during the transition.

The Commission estimates that its proposal for the level of capital payment, combined with the transition plan (see Recommendation 8), will result in savings of approximately $8 billion compared to estimated cost pass-through payments during the next five years. For more information on this recommendation, see Technical Appendix A.

Recommendation 8: Capital Payment Transition

The transition to Federal capital payments under PPS should begin in fiscal year 1987 in accordance with the following provisions:

- **There should be no transition for moveable equipment. All payments for moveable equipment should be included as a fixed percentage add-on to the Federal standardized amounts beginning in fiscal year 1987.**
- **Payments for fixed plant and equipment should be phased in as a fixed percentage add-on to the Federal standardized amounts over a seven to ten year period on a straight-line basis.**
- **For plant and fixed equipment, hospital-specific capital payment portions should be the actual costs incurred during each year of the transition.**
- **During the transition, the Federal portion for plant and fixed equipment should be updated each year by an index of construction capital costs.**
- **The addition of capital to the Federal standardized amounts should reflect base-year treatment of return on equity and interest offsets. Return on equity payments should be added to the hospital-specific portion of operating payments.**

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Once the transition to national rates for operating payments ends, there should be no hospital-specific payment for return on equity.

The purpose of a transition period for capital payments is to enable hospitals to position themselves to absorb the financial impact of the new capital payment system and to adjust their spending behavior accordingly.

The Commission considered several transition alternatives for moveable capital. It concluded that any transition period that would continue the cost pass-through for capital payments would perpetuate incentives for inappropriate hospital purchasing behavior. With the knowledge that moveable capital would eventually be included in PPS rates, hospitals would be encouraged to purchase and replace equipment unnecessarily during the transition, when a large portion of their hospital-specific costs would continue to be reimbursed.

The Commission believes that most of the costs related to moveable equipment acquired before the introduction of PPS have been already recovered. Therefore, a transition period is not necessary. A significant portion of payments for moveable capital would, in fact, support future purchases rather than the cash needs of prior purchases. Finally, the inclusion of moveable capital into the payment system without a transition provides funds immediately for hospitals that have not been able to afford equipment purchases.

The Commission believes that a relatively long transition period for fixed capital payments should be provided, however. The long-term commitments of individual hospitals for fixed capital must be recognized in the capital payment system. Unlike moveable capital, the costs related to fixed capital projects continue for many years. Hospitals must be provided the opportunity to position themselves in order to continue to meet the costs of fixed capital projects completed in the past. The Commission believes that a relatively long transition period will enable hospitals, regardless of their fixed capital commitments, to absorb the financial impact of the new capital payment system. If it is determined, however, that certain hospitals would be inappropriately disadvantaged during the transition, the Commission will consider options for assistance. (Refer to the discussion for Recommendation 5.)

Furthermore, hospitals should not be unduly penalized for fixed capital commitments made before the beginning of PPS, although it is difficult to determine the time of commitment due to the lags for fixed capital projects. In addition, some hospitals delayed fixed capital expenditures due to external constraints on construction or failure to secure needed funds. These factors make it difficult to select a threshold for fixed capital spending commitments. The Commission, therefore, recommends that hospitals' actual fixed capital costs be paid during each year of the transition. This will enable hospitals to meet their debt obligations while encouraging cost-effective decision making for construction and financing in the future.

The Commission recognizes that return-on-equity payments have been provided to investor-owned hospitals because cost reimbursement, in principle, does not afford an opportunity for these hospitals to earn profits. But DRG payments under PPS do provide opportunities for all hospitals to earn profits. The Commission believes it is unnecessary and undesirable to continue to pay return on equity in DRG prices. Therefore, return on equity should be phased out of hospital-specific payments for investor-owned hospitals in the same proportions and under the same schedule as the operating payment transition to national payment rates.

Proposals have been advanced to remove return on equity payments and to extend interest offset provisions to include interest earned on funded depreciation and donations. The Commission believes it would be inappropriate to remove these earnings from the Federal portion of capital payments to the hospital industry. Thus, it proposes including the associated revenues in the average capital payment per discharge calculations. Substantial reductions in capital payments, compared to current law, are already contained in the Commission's base year and trending recommendations. For more information on this recommendation, see Technical Appendix A.

Adjustments to the Payment Formula

Recommendation 9: Disproportionate Share Hospitals

An adjustment to the PPS rates for hospitals serving a disproportionate share of low-income patients should be implemented as soon as possible. This adjustment should specifically incorporate a definition and methodology in keeping with the character of the adjustments already being considered by the Congress. This adjustment should not change the total aggregate dollar amount paid to all hospitals.

This recommendation is a reaffirmation of a recommendation ProPAC made in the April 1985 report. The Commission remains convinced that hospitals serving a high volume of low-income patients (as measured by a variety of definitions) do incur higher Medicare costs per case. The update factor is likely to be constrained by broader government budget considerations. Consequently, the Commission is even more strongly convinced that a disproportionate share hospital adjustment should be implemented to provide equity to hospitals serving numerous low-income patients.

Although the Commission is pleased that the Congress addressed this issue as part of the reconciliation process, legislative change had not been enacted by the time this report was written. ProPAC is aware of the definition of disproportionate share hospitals published by the Secretary in the *Federal Register*, December 31, 1985. It believes, however, that this definition was not similar in character to the definition being developed in the Congress. In addition, the definition was not adequate to meet the special needs of disproportionate share hospitals and the beneficiaries they serve. The Commission hopes that further work by the Secretary will be more closely aligned with the intentions of the Congress.

Because the Commission is convinced of the seriousness of this issue, it intends to continue to study the consequences of changes in Medicare payment policies on the hospitals that serve disproportionate numbers of low-income patients. For more information on this recommendation, see Technical Appendix A.

Recommendation 10: Improving the Definition of Hospital Labor Market Areas

The Secretary should improve the definition of hospital labor market areas for fiscal year 1987, if possible, and no later than fiscal year 1988. For urban areas, the improved definitions should account for a greater amount of the wage variation between inner-city and suburban hospitals. For rural areas, the improved definitions should account for a greater amount of the wage variation between different rural areas within each state and between states. The implementation of improved definitions should not result in any change in aggregate hospital payments.

The Commission reiterates its belief that the current adjustment for area wage differences does not adequately account for the existence of separate labor markets within urban and rural areas.

In its April 1985 report, the Commission recommended that the Secretary develop and adopt improved definitions of hospital labor market areas. This recommendation was based on the results of studies that showed substantial variation between the wages paid by inner-city hospitals and the wages paid by suburban hospitals within the same Metropolitan Statistical Area (MSA). The Commission believed that the payment inequities resulting from this wage variation were substantial enough to warrant immediate correction.

Since this recommendation was made, the Commission has undertaken a study of hospital wage variation in both urban and rural areas using the most recently available HCFA data. The findings of this study, to date, support ProPAC's previous conclusion that substantial wage differences occur within many urban and rural areas.

The Commission believes that the most feasible approach for improving the definition of hospital labor market areas is to identify, wherever possible, additional labor markets within current area definitions. Alternative area definitions, such as the Bureau of Economic Analysis Areas (BEAAs) and Health Care Commuting Areas (HCCAs), do not account for a greater amount

of hospital wage variation than current area definitions. In the Commission's judgment, therefore, these alternative area definitions are not adequate replacements for the current area definitions.

The Commission's study suggests several promising and feasible approaches for identifying additional labor markets within current area definitions. Within urban areas, separating MSAs into central counties and surrounding counties accounts for a greater amount of hospital wage variation than the current areas. Within rural areas, the rural portions of BEAAs account for the greatest amount of hospital wage variation when compared to several alternatives. Separating rural counties into two groups (i.e., counties that are adjacent to MSAs and all others) accounts for an amount of wage variation comparable to the rural portions of BEAAs.

The Commission considers these approaches promising because they account for more hospital wage variation. In addition, they do not substantially increase the number of areas that contain only a few hospitals. ProPAC believes that labor market areas should contain a sufficient number of hospitals to prevent individual hospitals from having an inappropriate impact on their own area wage index. Therefore, the Commission recommends that any improvements in the definition of hospital labor market areas should not substantially increase the number of areas with a small number of hospitals.

The Commission is not yet prepared to make specific recommendations for improvements. Based on the preliminary findings of its study, however, it believes that improved definitions are warranted for both urban and rural areas. The Commission continues to believe that better definitions would substantially increase the equity of payments to some hospitals. ProPAC will provide specific recommendations to the Secretary before the completion of the rulemaking process for fiscal year 1987, if possible, and no later than April 1987. Furthermore, the Commission is prepared to share with the Secretary the preliminary findings of its ongoing study of hospital wage variation. For more information on this recommendation, see Technical Appendix A.

Recommendation 11: Rural Hospitals

In the original PPS legislation of 1983 and the Deficit Reduction Act of 1985, the Congress required the Secretary to study and report on a number of rural hospital issues. To date, none of these studies has been submitted to the Congress. Preliminary studies by the Commission suggest that there are potential problems in the way rural hospitals are treated under PPS. To facilitate open and informed public debate of rural hospital issues, the Commission urges the Secretary to complete and publish the congressionally mandated studies as soon as possible. If the results of the Secretary's studies indicate that changes in payment policies affecting rural hospitals are warranted, appropriate modifications to current policy should be implemented as soon as possible, including legislative change, if necessary. The Commission will continue its analysis of rural hospital issues and make specific recommendations in the future if findings indicate that changes in PPS payment policy are desirable.

Under PPS, various technical policies have been implemented that the Commission believes may adversely affect rural hospitals. Some of these effects result from policies applicable only to rural hospitals. Others result from policies that affect all hospitals, but that have a potentially stronger adverse impact on rural hospitals.

The PPS payment policy to calculate separate urban and rural standardized amounts reflects the historically lower average costs in rural hospitals. These cost differences remain even after adjusting for area wage differences, teaching activity, and DRG case mix. The cost differences partly reflect urban hospitals' larger size and wider range of services.

The differences also may be due to a triaging of more severely ill rural patients to urban hospitals, which is not reflected in the DRG case-mix index. A recent study by Health Economics Research, Inc. (HER) for HCFA suggests, however, that severity of illness explains no more than 1 percent of the cost difference between urban and rural hospitals. In contrast, the study indicates that a substantial portion of the cost difference can be accounted for by variations in medical practice patterns.

Whatever the underlying reasons for the cost differences, the establishment of separate standardized amounts has resulted in lower payments to rural hospitals. National standardized amounts were $2,985.05 for urban hospitals compared to $2,381.39 for rural hospitals in fiscal year 1985. The causes of the historical cost difference need further examination before permanently institutionalizing a two-tier payment system that potentially penalizes rural hospitals for historically achieving lower costs. This examination should include an assessment of the effects of a two-tier system on Medicare beneficiaries' access to or quality of care.

PPS payment policies related to outliers, area wage definitions, payments for DRGs with high device and low labor costs, and methods for calculating the standardized amounts further widen the difference between urban and rural average PPS payment levels. For further discussion of these policy issues, see Recommendation 10, 13, and 24 and Technical Appendixes A and B.

This discussion highlights technical issues related to the treatment of rural hospitals under PPS. Ultimately, however, the rural hospital policy debate may center on whether PPS, as currently structured, is appropriate for all rural hospitals. If it is not, the question is for which hospitals it is inappropriate.

In particular, the financial vulnerability of small rural hospitals to fluctuations in volume and case mix has caused concern. For larger institutions, minor fluctuations in volume and case mix are less critical. Larger hospitals can average these fluctuations from year to year and over a large number of cases. Small rural hospitals cannot take advantage of this "law of large numbers." If such hospitals are located in relatively isolated areas, and a deteriorating financial position results in closure of the facility, Medicare patients' access to services may be severely compromised.

Preliminary findings for 1984 indicate that hospitals in rural areas have experienced overall improvement in their financial position since implementation of PPS. The evidence regarding the first year of PPS should be viewed with caution, however. Given the reporting cycle of hospitals, many were not on PPS or were on PPS only for a short period in 1984. Moreover, recent evidence from the AHA's Panel Survey indicates that very small hospitals, the majority of which are rural, had negative patient revenue margins during 1985. Furthermore, these data provide little insight into the financial condition of hospitals under fully implemented national PPS payment rates or under all-inclusive rates encompassing capital and operating costs.

The Commission's PPS payments model indicates that, compared to the average experience of all hospitals, rural hospitals as a group would receive lower revenues per case as PPS moves to complete Federal rates. (See Technical Appendix C for further discussion of the effects of the transition.) Nevertheless, not all rural hospitals would lose under the system. Further analyses are required to determine which hospitals are jeopardized financially by Medicare's PPS policies and what, if any, technical adjustments would be appropriate.

In the end, the Congress or the Secretary or both may have to determine whether it is appropriate to pay slightly more money or to pay differently to avoid insolvency among certain small rural hospitals. That is, after correction for PPS' technical problems, small rural hospitals may still become insolvent due to declines or wide swings in volume or case mix or both. It may be cost-effective for Medicare to pay slightly more or slightly differently for care in these hospitals. This could be the case if, by doing so, rural patients are not required to seek care in distant urban hospitals where the care is less accessible and more costly. In this light, it will be important to analyze whether the current Sole Community Hospital provisions in PPS provide adequate adjustment for the problems of small, isolated rural hospitals.

In examining the potential cost-effectiveness of having Medicare pay more for services in isolated rural areas, it also will be important to assess the ability of other public funding sources to provide support for these hospitals. For example, 45 percent of the rural hospitals were government-owned in 1984. The question is the extent to which funding sources beyond PPS influence the continued ability of rural hospitals to provide services to Medicare beneficiaries.

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Some of the policy issues outlined here are the subject of congressionally mandated studies. As a part of the legislation creating PPS (Pub.L. 98-21), the Congress required the Secretary to conduct studies on: 1) the feasibility and impact of eliminating or phasing out separate urban and rural rates; 2) an equitable method of reimbursing Sole Community Hospitals, taking into account their unique vulnerability to substantial variations in occupancy; and 3) appropriate payment policies for large rural teaching hospitals. In addition, the Deficit Reduction Act of 1985 (Pub.L. 98-369) required the Secretary to review and report to the Congress on the appropriateness of urban/rural differential payments as they apply to DRGs with high nonlabor costs (e.g., device and supply costs). These studies have not yet been submitted to the Congress.

While the studies do not address the complete range of issues outlined by the Commission, they are likely to provide valuable baseline information for analyzing the impact of PPS on rural hospitals. The Commission, therefore, urges the Secretary to complete and publish the findings from the congressionally mandated rural hospital studies as soon as possible. The Commission also will continue to analyze rural hospital issues. It is prepared to share with the Congress and the Secretary its findings as they are developed. For more information on this recommendation, see Technical Appendix A.

The Standardized Amounts

Recommendation 12: Earlier Availability of Medicare Cost Data

The Commission is pleased that the Secretary has taken steps to speed up the availability of Medicare Cost Report data from the first year of PPS. The Commission recommends that making cost data available as soon as possible be an ongoing effort, since these data are vital both to assess the relationship between PPS payments and hospital costs and to analyze the costs of individual DRGs. As part of this ongoing effort, alternative strategies for sampling hospital cost data should be considered. The necessary additional resources should be allocated for timely processing of these data.

More timely cost data are essential for improving PPS and understanding how it affects hospitals. Cost data are needed to assess the appropriateness of the overall level of PPS payments, to examine the ways in which hospitals have reacted to the PPS incentives to lower costs, and to analyze the costs of individual DRGs and services. The Commission has felt at a disadvantage in making recommendations based on 1981 cost reports because these data do not reflect the effects of PPS or other recent changes that are likely to have changed hospital costs.

Most hospitals have accounting years that begin after the Federal fiscal year. Consequently, there is a considerable lag in obtaining a complete set of cost reports. For example, the set of cost reports from the first year of PPS, which began in October 1983, will include hospitals with accounting years that ended as late as August 1985. Hospitals have three months to submit the report, and additional time is needed for the fiscal intermediary to enter the data into the automated data processing system. Even more time is needed to complete an audit. It can take up to a year after the end of the hospital accounting year until final settlement is made.

Because of this time lag in obtaining a complete set of cost report data, accelerating the availability of cost data requires developing a sample of hospitals. Data from a sample will not be as thorough as data ultimately received on all hospitals. The extent of the errors is predictable, however, and the benefits of having more recent information outweigh the disadvantages.

HCFA has tried to speed up the compilation of cost data from the first year of PPS. Unaudited cost report data for all PPS hospitals were expected centrally at HCFA by February 1986. In addition, audited data from a sample of 1,200 hospitals were expected by March 1986. Audits would normally be performed in the order in which hospitals submit their cost reports. This sample was chosen so that audited data on a representative group of hospitals would be available earlier. Unfortunately, neither data set was available in time for the Commission to use in its deliberations for this report.

Statistical analysis performed for the Commission by the Rand Corporation indicates that HCFA's audit sample, when weighted for sampling by census region and bedsize, is represent-

ative of those hospitals used to create the current standardized amounts. For the most part, the weighted audit sample differs little from the overall set of hospitals by urban and rural status, Census Division, or bedsize (see Technical Appendix A). Further analysis needs to be done, however, before the Commission can comment on the precision with which the sample could be used to estimate costs for different groupings of hospitals.

Alternative strategies for sampling as-submitted (unaudited) and audited cost report data should also be considered. In particular, analysis is necessary to test the feasibility of developing a representative sample of PPS hospitals from the subset of hospitals with relatively early accounting year end-dates. If such a sampling method is practical, a set of unaudited cost report data could be developed much earlier in the year. The Commission intends to examine this approach, and would like to work with the Secretary in determining its feasibility.

Recommendation 13: Recalculating the Standardized Amounts

The standardized amounts used to determine hospital payments under PPS should be recalculated using cost data that reflect hospital behavior under PPS. The results of such a recalculation, with appropriate modifications, could be used in determining the update factor or in rebasing the standardized amounts.

Periodic recalculation of the standardized amounts would provide information about the relationship between hospital costs and PPS payments that could be valuable in setting future payment levels. Even though PPS was designed to break the direct link between each hospital's costs and the payments it receives from Medicare, payments on average should be reasonably related to costs. Using cost data as an input to PPS price-setting decisions does not interfere with hospital incentives to achieve greater efficiency.

The goal is not to return to cost reimbursement, but to use information about costs to maintain the PPS incentives for efficiency without adversely affecting quality of care. If average payments are much higher than average costs, Medicare may be spending more than necessary. Payments that are equal to or below costs may create financial problems for hospitals, which ultimately could affect beneficiary access to quality care. Analyzing the relationship between average costs and average payments is particularly important in the early years of PPS. Decisions about the size of the update factor have partly been based on judgments about the extent to which hospitals could increase their productivity and lower their costs. Reviewing more recent cost data is the best way to assess the accuracy of these judgments.

Some information about the relationship between costs and payments can be gleaned from indicators of the overall financial condition of hospitals, such as financial ratios and evidence of hospital closures. This information is indirect, however, since many factors other than Medicare payments might be involved. In addition, the interpretation of financial ratios is often controversial.

Once the standardized amounts are recalculated, the results can be used in two ways. Recalculated standardized amounts could be one piece of information used to select an update factor. Alternatively, the standardized amounts could be rebased—that is, the recalculated amounts could be updated and substituted for the current published rates.

The distinction between using recalculated standardized amounts in determining the update factor and using them to rebase is not as great as it may appear. Rebasing is not a complete substitute for choosing an update factor, since the recalculated payment amounts would have to be updated from the data year to the payment year. For example, the most recent cost data available to HCFA are for hospitals' first year on PPS. These data would have to be updated by as much as three years—to the end of Federal fiscal year 1987.

If the decision is made to rebase the standardized amounts, several other choices must be made. These include the frequency of rebasing and the possibility of setting a limit on how much effect rebasing could have on the standardized amounts.

A further choice involves the method used to average the standardized amounts. The current standardized amounts are hospital-weighted, so

that the resulting standardized amount represents the costs in the average hospital. An alternative method would be to discharge-weight the average, so that the standardized amounts represent the average cost of treating a case.

The redistributional effects of changing the averaging method would have to be considered. Discharge-weighting the national urban and rural amounts would result in a 3 percent increase in payments to rural hospitals and a 0.5 percent decrease in payments to urban hospitals. This result happens because there are many very small, low-cost rural hospitals with relatively few Medicare discharges that count more toward the current hospital-weighted average than they would toward a discharge-weighted average. For more information on this recommendation, see Technical Appendix A.

Recalibration

Recommendation 14: Recalibrating the DRG Weights

The DRG weights should be recalibrated annually in order to reflect the use of new technologies and other practice pattern changes affecting the relative use of hospital resources among the DRGs.

Since the PPS statute requires recalibrating the DRG weights at least every four years, the decision to recalibrate more frequently could be made on an ad hoc basis each year. The Commission believes, however, that a recalibration schedule should be set in advance so that the hospital industry can anticipate when changes in the weights will occur. Such a schedule is consistent with the prospective nature of PPS, which is designed in part to make Medicare payments more predictable for both hospitals and the Federal government.

Moreover, the Commission believes that the schedule for recalibration should be annual. Given how quickly practice pattern changes that affect relative resource use among the DRGs can occur, the four-year maximum cycle is clearly too long to keep the weights current. Even with an annual cycle, the most current patient billing data will be two years older than the year for which the weights are set (e.g., fiscal year 1985 data for fiscal year 1987 payment).

Less frequent recalibration would lead to greater changes in weights when recalibration occurs, and would also require making a greater number of interim adjustments to individual DRGs in lieu of recalibration. The Commission expects that the weights for most DRGs would not change much under annual recalibration. Large changes are possible for a few DRGs if, for example, a new medical device is being used, or many patients are being shifted to outpatient treatment.

The Commission considered the extent to which annual recalibration would pose a burden on hospitals. Frequent recalibration would require hospitals that compute their case-mix index to modify computer software to reflect the new weights. In addition, annual changes in the weights may make it more difficult for hospitals to predict their Medicare revenue. In both cases, however, the feedback from hospitals indicates that the benefits of more current relative DRG prices far outweigh any costs associated with annual recalibration.

The Commission is aware that if a recalibration is carried out for fiscal year 1987, the 1986 weights would have been in place for only six months because implementation of the weights recalibrated for fiscal year 1986 was delayed. Nevertheless, the Commission believes that the DRG weights should be based on the most recent data possible and that, despite the delay in 1986, the annual recalibration cycle should be continued for fiscal year 1987.

The Commission defines recalibration as a two-step process. First, new DRG relative weights are computed using the most recently available data. Second, the new weights are normalized (adjusted by a scaling factor) so that the average case weight after recalibration is the same as it was before recalibration. The Commission considers normalization an integral step in recalibration to ensure that recalculation of the relative weights does not affect aggregate payments to hospitals.

After recalibration, the DRG weights should be adjusted to remove any demonstrable change in reported DRG case mix that occurred during the previous fiscal year. This adjustment would ensure that changes in DRG case mix due to im-

proved coding would not be built into future PPS payments. Changes in payments due to real changes in the types of patients treated should be allowed, however, as discussed in Recommendation 3.

For this report, the Commission has incorporated a 1 percent reduction in the DRG weights to account for observed changes in the DRG case-mix index during fiscal year 1986. This figure may change as more recent data are reported. Currently, no data on DRG case mix change for fiscal year 1986 are available. The most recent information is provided in a study by the Rand Corporation, which reports that the overall DRG case-mix index did not change from the fourth quarter of fiscal year 1984 through the second quarter of fiscal year 1985. The Commission believes, however, that while changes in the DRG case-mix index may have leveled off, it is consistent with recent experience to expect a small increase due to more accurate coding as hospitals continue to adjust to PPS. Moreover, hospitals in New York and Massachusetts would be particularly prone to coding improvement since they only recently began participating in PPS.

For fiscal year 1986, the Commission recommended recalibrating the DRG weights, using charge data alone. Prior to the beginning of fiscal year 1986, the most recently available cost data were from hospital accounting years ending during fiscal year 1982, two years before the implementation of PPS.

HCFA has attempted to collect Medicare Cost Report data for the first year of PPS in time to be used during the rulemaking process for fiscal year 1987. These cost data should be used along with the charge data from the fiscal year 1985 PATBILL data set for recalibrating the DRG weights for fiscal year 1987, if they are available. Otherwise, the charge data should be used alone. Analyses of 1981 data have shown that weights based solely on charges differ only slightly from weights based on charges adjusted for costs. Changes in charge-setting practices in recent years may lead to greater differences between the weights, but more recent data must be analyzed before reaching this conclusion. If capital is added to PPS, cost weights should reflect capital as well as operating costs.

Beneficiary Concerns

Recommendation 15: Beneficiary and Provider Information

The Secretary should take immediate action to provide more and better-written information about the Medicare prospective payment system to beneficiaries and providers of care. The Department should work with providers, beneficiaries, and associations of these groups to produce and disseminate this information. Associations of providers and beneficiaries should also increase their own efforts to better educate and inform their members about the Medicare prospective payment system.

Negative perceptions of the quality of care received under the prospective payment system are widely held and have received increasing attention. Some of these negative perceptions may not reflect the actual quality of the care received; rather, they may flow from misperceptions about PPS communicated to the beneficiary. The Commission particularly takes note of reported instances in which the average lengths of stay for the DRGs, as published in PPS regulations, have been used either implicitly or explicitly to limit a patient's hospital stay. The instances, for example, include patients being told it is time for them to leave because "their DRGs have run out." In addition, some hospital notices of noncoverage are apparently predicated on a notion that a patient's DRG length of stay limit has been reached. The Commission emphasizes that published lengths of stay for each DRG should be regarded as averages. It is inappropriate to apply them as absolute limits.

The Commission urges considerably greater educational efforts to inform beneficiaries about PPS. Although the payment system began in most hospitals during late 1983 and early 1984, it was not until the spring of 1985 that HCFA made available any general purpose information aimed at beneficiaries explaining some of the common misperceptions about the system. It was not until February 1986 that HCFA mandated that hospitals inform patients of their appeal rights with respect to discharge decisions. Even today, there is no general PPS fact sheet or information available nationally from HCFA, for either beneficiaries or providers, including physicians.

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These groups badly need such information—particularly hospitals and physicians—because they are often called upon to explain the system to the beneficiaries, who have no other available information source. The Commission applauds HCFA's plans to develop such information for beneficiaries. It is not aware, however, of any plans for similar efforts to educate either hospital personnel or physicians. HCFA should make every effort to ensure that materials are widely available to both providers and beneficiaries.

In addition to an increased effort within HCFA and other appropriate HHS organizations, ProPAC also encourages other provider and beneficiary organizations to assist in this important but complex educational effort. The Commission commends efforts by groups such as the American Association of Retired Persons for the materials that they have already developed. It encourages other organizations to develop and disseminate educational materials to their members, patients, and the general public.

Recommendation 16: Notice to Beneficiaries of Rights

Beneficiaries should be made aware of the process of reconsideration and appeal of a hospital denial of coverage for continued inpatient hospital care. Notification should be through a written notice or information bulletin. It should explain beneficiary rights in a clear, helpful, and understandable manner. In addition to a clear statement of rights, the bulletin should inform beneficiaries that they should not accept any oral communication to the effect that they must leave the hospital because their "coverage" has "run out" or because there is a limit on the number of days "allowed" by Medicare for a DRG. The bulletin should be distributed at the time of admission or as soon thereafter as is appropriate based on the patient's clinical condition. However, additional avenues of distribution should also be developed.

HCFA provides, by regulation, that beneficiary coverage for continued inpatient care may be denied if a hospital determines that the beneficiary no longer requires this care. The beneficiary may appeal this denial. The hospital is not required to give such notice to a beneficiary routinely, but only when it intends to charge the beneficiary for continued stay. The PROs are responsible for monitoring the denial notices to see that they are correct and do not mislead the beneficiary or misstate the authority or responsibility of the hospital in issuing the notice.

In February 1986, HHS announced the development of a one-page summary of information describing the patient's rights. The hospital is to give this bulletin, entitled "An Important Message from Medicare," to each Medicare beneficiary upon admission. HHS developed the bulletin after careful consultation with a group of organizations representing Medicare beneficiaries and national health care provider organizations. The bulletin will fulfill the intent of this recommendation, and ProPAC commends the Secretary for the action that has been taken.

The Commission regards this bulletin as a critical first step in providing information to beneficiaries. Because it has not yet been distributed to hospitals, and its usefulness to beneficiaries is not yet known, the Commission has chosen to submit this formal recommendation. ProPAC will continue to monitor the use and usefulness of this bulletin.

Further, the Commission maintains that the Secretary should not limit distribution of the bulletin to the time of beneficiary admission. The Secretary should make every effort to distribute it at other appropriate times. Copies could be made available at offices of the Social Security Administration, for example, and in various Medicare program and Social Security Administration mailings to beneficiaries. They could also be distributed through the auspices of associations and other groups involved in health care for the elderly.

Recommendation 17: PRO Episode of Care Review

The focus of PRO quality of care review should be, to the extent possible, on the entire episode of care. The PRO's review should include, in addition to the period of hospitalization, the quality of care (and outcome) related to the overall episode of illness, including, if appropriate, skilled nursing or home health care.

A primary determinant of the quality of care administered to a hospital inpatient is the outcome

of the episode of care. Changed financial incentives under PPS, and changing patterns of care, are resulting in less frequent use of the hospital and more frequent use of skilled nursing facilities, other community facilities, and the patient's home for treatment.

The quality and level of care available to beneficiaries in these alternative settings directly influence, therefore, the outcomes of the illnesses or problems for which beneficiaries were originally hospitalized. They can directly affect the overall quality of care beneficiaries receive. The problem of premature discharge, for example, may not be insufficient hospital services, but rather inadequate clinical management of the post-acute patient.

The focus of PRO review should, therefore, be on quality of care and patient outcomes as measured over the entire spectrum of services provided—institutional and ambulatory. Quality-of-care monitoring during the course of inpatient care should be strengthened. Medical status at the time of discharge should be determined to deter and prevent premature discharges, and the availability of alternative services in the community should be determined. In addition, outcome measures such as follow-up data on patient survival and functional status should be established and applied. A pilot program of long-term review, based on an appropriate sample of beneficiaries and including outcome measures, should be instituted.

Recommendation 18: PRO Review of Outpatient Surgery

The Commission is concerned that efforts to shift surgical services from the inpatient to the outpatient setting could have an adverse impact on quality of care for certain Medicare beneficiaries. The PROs should be required to review and monitor the quality of care (and outcome) of outpatient surgery for selected patients and procedures. As a starting point, the PROs should be required to review outpatient surgery cases for those procedures that have been identified for preadmission review, including in particular a sample of those cases for which the PRO has denied payment on preadmission review.

An increasing number of surgical procedures that previously were performed on an inpatient basis are now being performed in ambulatory settings. The movement of surgical services from the inpatient to the outpatient setting has been further encouraged by HCFA policies requiring PROs to reduce admissions for procedures that could be performed in an ambulatory surgical setting. This has been accomplished through various review mechanisms, including preadmission review, random sampling for short stays, and the establishment of admission reduction objectives.

The Commission supports efforts to encourage performance of procedures in the most appropriate setting. It believes, however, that the impact of this shift on the quality of care furnished Medicare beneficiaries must be examined.

The Commission is aware that review of outpatient surgical cases is a significant expansion of the PROs' responsibilities. The PROs, however, are already required to perform preadmission review and to deny payment for procedures that could appropriately be furnished on an outpatient basis. The Commission believes that it is a reasonable next step to require the PROs to review the quality of outpatient care where payment for inpatient care has been denied. Further, since both HCFA and the PROs have developed criteria regarding procedures they deem appropriate for ambulatory settings, the cases undergoing outpatient surgery procedures established by these criteria should also be reviewed. In addition, categories of patients who may be at high risk because of outpatient surgery, such as the frail elderly, deserve special concern.

Recommendation 19: Recalculating the Inpatient Hospital Deductible

The Secretary should seek legislative change to the formula for computing the inpatient hospital deductible so that the annual increase in the deductible is more consistent with the annual per-case increase in Medicare payments to hospitals. The proportion of the costs of inpatient hospital care borne by Medicare beneficiaries has inappropriately increased as a result of significant declines in length of stay experienced since the beginning of PPS. This proportion should be lowered to its calendar year 1983 level.

Medicare beneficiaries pay a deductible for each hospital stay, unless they have already paid the deductible during a benefit period. A benefit

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period, or spell of illness, begins on the first day of hospitalization and ends when the beneficiary has not been an inpatient in a hospital or a skilled nursing facility for 60 days or more.

The formula for computing the inpatient hospital deductible, currently specified by law to approximate the average cost of a hospital day, is updated annually on a calendar-year basis. For 1986 the deductible is $492, up from $400 in 1985. The HCFA actuaries have estimated that beneficiary liability will increase by about $1.1 billion as a result of this update. Although most beneficiaries have supplemental insurance coverage that pays the Medicare deductible, increases in the deductible are reflected in higher premiums for this coverage.

About half the increase in the deductible for 1986 is due to the decline in length of stay attributable to PPS incentives. The deductible calculation is based on data for calendar year 1984, when the average length of stay for the over 65 population was 9.0 days, compared to 9.7 days in 1983. In the *Federal Register* notice announcing the new deductible calculation, HCFA stated that the large increase in the deductible would probably be limited to 1986 because the decline in length of stay was expected to level off.

Data from the American Hospital Association Panel Survey indicate that length of stay for patients over age 65 declined slightly during 1985, however. This suggests that another increase in the deductible related to decreasing length of stay would occur for 1987 under the current formula. The Panel Survey reports that length of stay for the over 65 group fell from 9.0 days to 8.8 days in the first 11 months of 1985.

Although the deductible approximates the average cost of an inpatient day, it was never intended to increase as a result of shorter lengths of stay. The Senate report accompanying the original Medicare legislation stated that the deductible should ". . . keep pace with hospital costs." Further, the current regulation states that "the result of the deductible increase is that the beneficiary continues to pay about the same proportion of the hospital bill."

Savings from shorter length of stay have benefited both hospitals and the Federal government, and the Commission believes that Medicare beneficiaries should share in these gains as well. Hospitals have gained from the decline in length of stay because they keep the difference between the PPS payment and their costs for treating the Medicare patients. The Federal government has also benefited since the decline in length of stay has been one of the factors considered in limiting increases in PPS rates.

The deductible should be calculated so that the proportion of total payment per stay borne by the beneficiary is the same as it was in calendar year 1983. In this way, the increase in the deductible would reflect the increase in Medicare payments per case and would not be affected by changes in length of stay since PPS began. Medicare beneficiaries would also then benefit from reduced increases in Medicare payments to hospitals over time. ProPAC estimates that the 1983 beneficiary share of payments was about 8.5 percent. Applying this proportion to the current forecast of 1986 hospital payments would yield a 1986 deductible of $400.

A change in the deductible would also affect Medicare coinsurance. Medicare hospital inpatients pay coinsurance equal to 25 percent of the deductible for days 61 through 90 of the benefit period. After 90 days, beneficiaries can choose to draw from a lifetime reserve of 60 hospital days, which are subject to a coinsurance amount equal to 50 percent of the deductible. In addition, coinsurance on Medicare-covered days in skilled nursing facilities is equal to 12.5 percent of the inpatient hospital deductible.

It may be appropriate to reconsider the overall structure of beneficiary cost-sharing in light of PPS incentives and policies. For example, some of the patients who are required to pay coinsurance are outlier patients—those patients whose stays are sufficiently long to warrant additional payments to the hospital. The coinsurance payments in isolated cases may be equal to or greater than the outlier amount that Medicare would have paid the hospital for these days. The Commission will study issues related to restructuring beneficiary cost-sharing that are suggested by changes in hospital practice associated with the incentives of PPS.

Patient Classification and Case Mix

Recommendation 20: Improving the Measurement of Hospital Case Mix

The Commission believes that the DRG system is currently the most appropriate of the available measures of hospital case mix for the Medicare PPS and should be retained in principle as the system upon which to base Medicare payments to hospitals. Resource use varies considerably, however, within some DRGs. Therefore, the Commission intends to continue its analysis of individual DRGs and to undertake a systematic evaluation of the entire system. The goal is to identify potential problems in DRG construction and classification and to recommend changes that will improve the homogeneity within DRGs and the equity of payments across hospitals.

The Commission has previously identified potential weaknesses with the use of DRGs for prospective payment. In its April 1985 report, ProPAC outlined several areas for further analysis to improve the measurement of case mix. These areas included DRG construction and classification, heterogeneity within DRGs, and case-mix distribution across hospitals that results in inequitable payments.

The April 1986 report contains a number of analyses of specific technologies and DRGs. To date, such analyses have been on a case-by-case basis. In some instances, ProPAC has recommended reclassifying a subgroup of patients, such as those receiving penile protheses, into different DRGs. In others, the Commission has recognized the need to restructure a group of DRGs; for example, hand procedures, DRGs 228-229. The Commission has also concluded that some DRGs may be heterogeneous, but that further analysis is necessary before specific recommendations are made; DRGs 456-460, for burns, are illustrative.

ProPAC has examined three broad approaches for improving case-mix measurement. Described in the April 1985 report, these approaches were to: 1) retain the current system, but revise it in an incremental fashion as problems are revealed; 2) retain the current system in principle, but reconstruct it using a newer and more complete data base; and 3) consider an alternative case-mix measurement system, either in conjunction with DRGs or to replace DRGs.

The Commission believes that the assignment of cases into individual DRGs should continue to be monitored and updated in response to changes in medical practice, medical technologies, and diagnosis and procedure coding. The Commission will continue, therefore to evaluate the assignment of cases into specific DRGs.

Furthermore, ProPAC has concluded that additional evaluation and analysis are necessary before replacing or modifying the DRGs using an alternative case-mix system. Currently, there are no generally accepted criteria for evaluating alternative systems. In addition, a comprehensive, comparative evaluation of all the alternative case-mix systems has not yet been performed. The Commission is aware of several comparative studies that are under way. It will continue to monitor the results of these studies.

The Commission has identified problems in the DRG assignment criteria, which may produce heterogeneity within DRGs or result in an inequitable distribution of patients across hospitals. Nevertheless, ProPAC does not recommend a major reconstruction of the system at this time. Unless the assignment criteria are changed, reconstruction would not necessarily produce a more homogeneous DRG system.

In the short-term, a systematic evaluation of the DRG system can identify areas for improvement to the current system. The evaluation may identify the need for changes in DRG assignment criteria, such as alternative complications and comorbidities; modification in grouping methodology, such as combinations of diagnoses or identification of specific devices; or refinements in policies, such as outlier payments. In addition, the Commission is aware of several studies to evaluate modifications of the DRG system using additional clinical variables. It will continue to monitor the results of these studies.

Recommendation 21: Process for Maintaining and Updating ICD-9-CM

The Secretary should establish a mechanism for maintaining and updating ICD-9-CM diagnosis and procedure codes in a timely and effective manner. This process should include adequate educational support for all users.

The DRG system uses ICD-9-CM diagnosis and procedure codes to assign each Medicare hospital discharge to a specific DRG for payment purposes. In order for the DRG system to remain current and accurate as medical technologies and practices change, the ICD-9-CM coding system must be updated. However, the ICD-9-CM classification, developed almost ten years ago, is not due for a major official revision until 1993. The current timetable and process for revision will not provide users with new or revised codes in a timely and effective manner. While this lengthy revision process is necessary to meet international commitments and satisfy needs for international data compatibility, it is inadequate to address more immediate problems experienced by ICD-9-CM users in the United States.

The Commission recognizes recent efforts to accommodate the need for shorter-term revisions to the ICD-9-CM system. Especially noteworthy is the recent organization of a HCFA/National Center for Health Statistics (NCHS) ICD-9-CM Coordination and Maintenance Committee, which is composed of representatives from various Federal agencies. The committee is responsible for considering errata and addenda as well as other modifications of the ICD-9-CM to reflect new procedures and technologies, recently identified diseases, and other coding problems. It is also charged with promoting the use of Federal and non-Federal educational programs and other communication techniques to standardize coding applications and upgrade the quality of coded medical data.

The ICD-9-CM Coordination and Maintenance Committee has begun to address some of the same coding issues the Commission has studied. The committee's recommendations on proposed coding changes for fiscal year 1987 are expected to be published in the *Federal Register*. ProPAC supports the committee's efforts to effect revisions or modifications to the ICD-9-CM as soon as possible. The Commission recommends that such changes be made to coincide with Grouper changes.

The Commission is concerned, however, that the committee has not publicly identified the specific procedures and processes it will follow. The committee currently plans to consider, on an ad hoc basis, coding changes requested by members and other interested parties, such as industry representatives. The committee's decisions regarding modifications to the ICD-9-CM must be formally accepted and issued, however, by NCHS and HCFA.

It is unclear whether the committee can and will have revisions or modifications available for use in a timely manner. Further, there is no clear relationship between this committee and the AHA central coding office concerning ICD-9-CM. The Commission also questions the lack of representation on the committee of non-Federal users of ICD-9-CM, and the extent to which the committee will be able to resolve disputes about the use of existing codes.

The Commission believes that the need for accurate timely coding decisions is vital to PPS. It is concerned that the committee will be unable to carry out its many responsibilities in a timely and effective manner. ProPAC is further concerned that the committee will be unable to provide it with advice soon enough for the Commission to carry out its responsibilities to consult with the Secretary before rulemaking. If this process does not ensure timely and effective changes, the Commission recommends adopting an alternative mechanism expeditiously.

The Commission also recommends that appropriate educational material for users accompany all revisions or modifications to ICD-9-CM. Such educational support is necessary to ensure the dissemination of revision notification and to help ensure consistency in code assignments.

Recommendation 22: Process for Interpretation and Assignment of Existing Codes

The Secretary should ensure that interpretation and assignment of existing ICD-9-CM diagnosis and procedure codes for payment purposes strictly adhere to coding rules and guidelines. In order to maintain the integrity and uniformity of the coding system while allowing flexibility for payment purposes, the process for interpretation and assignment of existing ICD-9-CM codes should be assigned to one authorized group.

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The Commission recognizes that it is important to maintain the integrity and uniformity of the ICD-9-CM coding system. At the same time, the system must provide a consistent mechanism for data reporting for Federal users and others. The system must also be flexible enough to be used by Medicare for payment purposes. Coding decisions related to payment should not violate coding rules and guidelines.

Decisions related to the interpretation and assignment of existing codes are critical for all the purposes for which codes are used. Besides maintaining and updating ICD-9-CM diagnosis and procedure codes discussed in Recommendation 21, there is a continuing need for interpreting and assigning existing codes. The AHA has performed this service since the mid-1960s under contract with NCHS. NCHS, HCFA, and the American Medical Record Association (AMRA) must concur with all of AHA's decisions. However, other groups, such as commercial abstracting services, also make coding decisions and provide coding information. This may have led to the dissemination of conflicting coding advice.

The expanded use of ICD-9-CM for payment intensifies the need for a central authorized source to address concerns about coding. The overlapping activities of AHA's central coding office, the HCFA/NCHS ICD-9-CM committee, and other groups should be clarified; the responsibilities of each group should be clearly defined. The designated group should also be responsible for providing official endorsement of coding manuals. A number of written coding references now exist without any official authorization.

Recommendation 23: Interim Mechanism for Coding Problems

The Secretary should establish an interim mechanism to allow early identification of new technologies, procedures, and diagnoses and more appropriate DRG assignment when ICD-9-CM codes cannot be updated in a timely manner.

The Commission's experience with coding problems, including inadequate coding of new and changing technologies and procedures, has illustrated the deficiencies and rigidities inherent in the current ICD-9-CM coding system. Besides the long-term improvements proposed in Recommendations 21 and 22, the Commission thinks a rapid, responsive interim mechanism is necessary to permit early identification of new technologies, procedures, and diagnoses. Such a mechanism would allow more flexibility—and therefore more appropriate DRG assignment—as problems are identified. The mechanism could also be used at times independent of changes in Medicare coverage policy or changes in the Grouper program. Such a mechanism would also facilitate the earlier collection of specific data needed when payment or policy changes are considered or implemented.

The interim mechanism selected should be significantly different from the ICD-9-CM format and codes to avoid confusion both while the interim mechanism is in use and again after a permanent ICD-9-CM code is assigned. It is anticipated that interim mechanisms would be utilized only until appropriate permanent ICD-9-CM codes could be established.

DRG Classification and Weighting Factors

Recommendation 24: Adjustment of the Labor Portion of the Standardized Amounts for Some DRGs Involving Expensive Devices

The labor and nonlabor portions of the standardized amounts should be redefined for DRGs 39, 104, 105, 209, 471, and the newly defined DRGs for pacemaker implantation and replacement (Recommendations 25 and 26), implantable defibrillators (Recommendation 27), and penile prostheses (Recommendation 28). The new portions should more closely reflect the labor-related and nonlabor-related shares of costs for cases in each of these DRGs. These recalculations should be made so that total hospital payments remain unchanged.

The correct labor and nonlabor portions of the standardized amounts should be calculated from data currently being generated in the HCFA study of the labor portion of costs by DRG. If this information proves to be incomplete, the portions should be calculated from available cost and charge data for these DRGs. The Secretary should study the need for adjustments to the labor and nonlabor portions of the standardized amounts in all DRGs.

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PPS currently adjusts individual hospital payments to reflect differences in area wage rates. This adjustment is applied equally to all cases in all DRGs and is based on labor-related costs of approximately 60 percent in the average discharge.

Hospital cases involving expensive devices are atypical. The devices are usually sold in a national market, resulting—in these cases—in a higher proportion of costs that are unrelated to local wage rates. Hospitals in high wage rate areas therefore receive a significantly higher payment, relative to cost, for cases in these DRGs when compared to hospitals with lower wage rates. ProPAC has studied this payment inequity in the 35 DRGs with the greatest number of cases involving expensive devices. The financial effect is most significant in DRGs with the highest proportion of cases involving expensive devices and with a ratio of supply costs to total costs of approximately 20 percent or more. These include DRGs 39, 104, 105, 209, 471, and the newly defined DRGs for cases involving pacemaker implantation and replacement (Recommendations 25 and 26), implantable defibrillators (Recommendation 27), and penile prostheses (Recommendation 28).

The payment inequity can be corrected if the labor and nonlabor portions of the standardized amounts are redefined for each of the DRGs mentioned above. It is important, however, that this change not affect total hospital payments. Therefore, after all DRG weights are recalibrated in a standard manner, the weights for the device DRGs should be recalculated (using the new labor-related portion for standardizing charges). This recalculation would offset the effect of changing the labor and nonlabor portions of the standardized amounts.

The new labor and nonlabor portions of the standardized amounts should be calculated from data currently being developed in HCFA's study of the labor portion of costs by DRG. If this new information is incomplete or unavailable in time for this recommendation to be implemented, the portions of the standardized amounts should be calculated from available cost and charge data. ProPAC will furnish the Secretary with the information it used to develop this recommendation.

Although the inequities of the area wage index adjustment are most important in cases involving expensive devices, there may be a similar problem in many more DRGs. In addition, the average labor-related share of costs for all discharges, which HCFA estimates at roughly 60 percent, may have changed significantly with declining length of stay and hospital responsiveness to PPS incentives. The Secretary should, therefore, complete the congressionally mandated analysis of the impact of the area wage index adjustment as soon as possible, ensuring that these issues are thoroughly addressed. For more information on this recommendation, see Technical Appendix B.

Recommendation 25: Reclassification of Pacemaker Cases Based on Type of Device

Prior to recalibration, the DRGs involving implantation of cardiac pacemakers (currently DRGs 115 through 118) should each be restructured into two DRGs, one for cases involving dual-chamber or functionally similar pacemakers, and one for cases receiving other single-chamber pacemakers. New ICD-9-CM procedure codes should be created to distinguish between these types of cases. A mechanism should be established to evaluate the appropriateness of all implants involving dual-chamber or functionally similar pacemakers. In the initial year of this new classification, the weights for all pacemaker DRGs should be calculated using charge data from the PATBILL file and data on cost differences between pacemaker types.

Under PPS, a hospital receives the same DRG payment regardless of the type or model of pacemaker implanted. The implantation of a dual-chamber cardiac pacemaker, however, differs significantly from the implantation of a single-chamber model in at least two ways. First, use of a dual-chamber model leads to greater hospital costs. This difference in costs is due to a number of factors, including the cost of the device, the need for a second cardiac lead, and the longer operative time required for implantation. The Commission estimates that in 1984 a dual-chamber pacemaker and the extra lead cost an additional $1,736 over single-chamber implants.

Second, some patients requiring dual-chamber pacemakers are clinically distinct from other pacemaker patients. Although expert physicians differ in their judgments about certain indications

for dual-chamber pacing, there are some universally accepted criteria. The patients meeting these criteria are therefore clinically distinct from other pacemaker patients. To retain the clinical coherence of the pacemaker DRGs, cases involving dual-chamber pacemakers should be classified into separate DRGs.

The Commission would have preferred to recommend a revised classification based on patient characteristics rather than on the therapy provided. Unfortunately, the accepted criteria for implantation of dual-chamber pacemakers cannot all be described with specific diagnostic labels. Therefore, until such diagnoses and related codes are identified, classification must be based on the type of pacemaker implanted. Although current ICD-9-CM codes are inadequate to distinguish between types of pacemaker models, new codes should be developed in time for implementation of this recommendation by October 1, 1986.

The Commission recognizes that this recommendation will likely lead to increased use of dual-chamber pacemakers. Failure to reclassify pacemaker discharges based on type of device, however, could result in limiting the access of Medicare beneficiaries to this important technology. The Secretary can restrain the inappropriate use of the more expensive pacemakers by developing a mechanism to evaluate all implants involving dual-chamber or functionally similar pacemakers. In addition, ProPAC plans to follow closely the issues surrounding cardiac pacing and especially the further refinement of clinical criteria for implantation of different types of pacemakers. The Commission will review the subject completely within the next three years as necessary.

The Commission understands that some single-chamber pacemaker models now undergoing clinical investigation may be functionally similar to dual-chamber pacemakers. That is, in some cases, these new single-chamber pacemakers could substitute for the more expensive dual-chamber models. Because ProPAC does not wish to inhibit the development of such alternative technologies, the Secretary should consider classifying new pacemaker models into DRGs based on both device function and cost.

Since current ICD-9-CM codes are inadequate to distinguish among pacemaker models, calculation of the initial weights for these new pacemaker DRGs cannot be based entirely on currently existing Medicare data bases. During the first year this policy is in effect, the Secretary should calculate weights based on relative charges or costs in the pacemaker DRGs and the difference between dual-chamber and single-chamber implants, which ProPAC estimates to be about $1,740. For more information on this recommendation, see Technical Appendix B.

Recommendation 26: Reclassification of Pacemaker Replacement Cases

Prior to recalibration, the cases involving replacement of a permanent cardiac pacemaker, except those with myocardial infarction, congestive heart failure or shock, should be reassigned to DRGs that include only pacemaker replacements.

Data from the 1984 PATBILL indicate that, on average, cases involving pacemaker replacement use fewer hospital resources than cases undergoing initial implant, but more resources than cases involving revision without replacement. The only exception to this finding is for patients with myocardial infarction, congestive heart failure, or shock. The costs of pacemaker replacement for these patients are similar to the costs of initial implantation.

Despite these important distinctions, the Grouper program is not consistent in classifying these replacement discharges. A case with pulse generator replacement only (i.e., no change in pacemaker leads) is generally classified into DRG 118, and a replacement that also involves a lead change is generally classified into DRG 117. Either kind of replacement, however, can be grouped into the higher-paying DRG 116 if the hospital uses certain ICD-9-CM procedure codes. Finally, any pacemaker case (initial implant or replacement) in a patient with congestive heart failure, myocardial infarction, or shock is classified into DRG 115.

This inconsistency in classification of pacemaker replacements has led to substantial pay-

ment inequities across hospitals. One hospital, for example, may be paid significantly more for a case than another hospital providing a similar patient with a similar service. The Commission strongly believes that this error should be corrected. The Secretary should develop specific coding guidelines for cases involving replacement and change the Grouper program to classify these cases into distinct DRGs.

It is important, however, that these changes be combined with those proposed in Recommendation 25. There is significant variability in the resources used in replacement cases. Patients can have a single-chamber model replaced with another single-chamber model, a dual-chamber model replaced with another dual-chamber model, or a single-chamber model replaced with a dual-chamber model and its additional cardiac lead. This variation among replacement cases can most appropriately be reduced by classifying DRGs based on pacemaker type.

Recommendations 25 and 26, combined, lead to seven newly defined DRGs for pacemakers. They are summarized below. For more information on this recommendation, see Technical Appendix B.

Description of the Proposed New Pacemaker DRGs Based on Recommendations 25 and 26

- Initial implantation or replacement of a dual-chamber or functionally similar cardiac pacemaker in a patient with myocardial infarction, congestive heart failure, or shock.
- Initial implantation or replacement of other cardiac pacemaker in a patient with myocardial infarction, congestive heart failure, or shock.
- Initial implantation of a dual-chamber or functionally similar cardiac pacemaker in a patient without myocardial infarction, congestive heart failure, or shock.
- Initial implantation of other cardiac pacemaker in a patient without myocardial infarction, congestive heart failure, or shock.
- Replacement of cardiac pacemaker with a dual-chamber or functionally similar cardiac pacemaker in a patient without myocardial infarction, congestive heart failure, or shock.
- Replacement of cardiac pacemaker with other cardiac pacemaker in a patient without myocardial infarction, congestive heart failure, or shock.
- Permanent cardiac pacemaker system revision except replacement.

Recommendation 27: Implantable Defibrillator

Implantable defibrillator cases should be assigned to a unique DRG. The labor and nonlabor portions of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases.

The implantable defibrillator is a new medical device used in the treatment of some life-threatening ventricular arrhythmias. Discharges involving the implantation of this device are now a covered Medicare service and have been assigned to DRG 104 (cardiac valve procedure with pump and with cardiac catheterization).

The Commission believes that implantable defibrillator cases should be assigned to a unique DRG. The diagnoses and procedures for these cases are unlike those of discharges in other DRGs. More importantly, the costs of the defibrillator cases are themselves unique: more than 50 percent of the total costs are due to the device. To avoid significant payment inequities across hospitals in such cases, the labor and nonlabor portions of the standardized amounts should be redefined to reflect the labor-related and nonlabor-related shares of costs (see Recommendation 24). This can be accomplished only if the defibrillator cases are assigned to a unique DRG. The weight for the DRG should be calculated from available data so that hospital payments approximate costs.

The implantable defibrillator is a new technology that is undergoing rapid change. As the device becomes more widely used, additional adjustments to DRG classification may be required for cases involving percutaneous implantation of the device and lead, replacement of a device, or the revision or removal of an existing device or

lead. It will be important that new ICD-9-CM codes currently under consideration allow differentiation and monitoring of these cases. For more information on this recommendation, see Technical Appendix B.

Recommendation 28: Penile Prostheses

Prior to recalibration, cases involving the implantation of a penile prosthesis should be removed from DRG 341 and reassigned to a unique DRG. The labor and nonlabor portions of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases.

The cases in DRG 341 (penis procedures) involving implantation of a penile prosthesis should be reclassified into a unique DRG for several reasons. First, as currently defined, DRG 341 is not clinically coherent. Although all the patients undergo an operation related to the penis, many of the procedures are quite distinct from one another and are performed for markedly different medical indications.

Second, penile prosthesis cases utilize significantly greater hospital resources than other cases in the same DRG. The difference in charges, estimated from the 1984 PATBILL at about 35 percent, is due largely to the cost of the prosthesis. Such a large difference was probably not recognized during the development of the DRGs. Hospital resources were originally measured using length of stay whereas these cases have high costs despite short lengths of stay.

Third, as discussed in detail under Recommendation 24, the high nonlabor costs in the prosthesis cases result in payment inequities across hospitals. To avoid these inequities, cases with expensive devices should not be classified with non-device cases. In addition, the labor and nonlabor portions of the standardized amounts should be redefined to reflect the high nonlabor costs of the device. For more information on this recommendation, see Technical Appendix B.

Recommendation 29: Additional Payment for Magnetic Resonance Imaging

For a period of three years, Medicare should pay hospitals an additional amount (hereafter termed an add-on) for each covered magnetic resonance imaging (MRI) scan performed on an inpatient Medicare beneficiary in a PPS hospital. Under existing capital payment policy, the add-on for fiscal year 1987 should be $124 for each scan performed on beneficiaries in institutions where Medicare pays for the capital costs of an MRI scanner and $282 for each scan performed on beneficiaries in other PPS hospitals. In fiscal year 1988 and fiscal year 1989, the add-on amounts for all hospitals should be recalculated to reflect any change in the average cost of an efficiently produced scan and any changes in capital payment policy.

Magnetic resonance imaging is an important new diagnostic technology that has been approved for marketing by the Food and Drug Administration (FDA) for imaging the internal structure of the head and body. It has proven efficacy in a number of medical conditions and has tremendous potential for use in many more areas.

ProPAC believes that an alternative payment mechanism is necessary for MRI for several reasons. First, although MRI has recently become a covered service for most indications in Medicare beneficiaries, hospital payments have not been increased to reflect the additional costs of using the technology.

Second, while the increased costs of new technologies such as MRI will automatically be reflected in the DRG weights in subsequent years through recalibration, this process will also increase payments for cases in which no MRI scan is performed. Since MRI scanners are currently available to only a small number of hospitals, this averaging effect will tend to underpay hospitals utilizing MRI and overpay those not using the technology. This inequity may discourage hospitals from providing MRI scans.

Finally, ProPAC is concerned that the incentives inherent in current payment policy may result in an inappropriate distribution of MRI scanners. Approximately 50 percent of the scanners in this country are located outside of hospitals in a variety of outpatient settings. This distribution is atypical of most expensive medical technologies and has likely occurred due to a number of factors. These include delays in coverage by many third-party payers, certificate-of-need requirements, the incentives under PPS, and characteristics of the technology itself.

The recent Medicare decisions to cover MRI scanning, reimbursing for each outpatient scan but not increasing inpatient payments, may inappropriately encourage scanning to be performed on an outpatient basis. Under current policy, these outpatient scans are reimbursed through Medicare Part B, with the beneficiary responsible for a 20 percent copayment. ProPAC believes that an additional payment for inpatient MRI scans will encourage hospitals to perform the scan as part of an inpatient hospital stay when it is more appropriate to do so.

The add-on would be paid to the hospital where the beneficiary is an inpatient. This policy encourages the hospital to provide scans in the most cost-effective manner. The proposed add-on amounts are estimates of the average cost of a scan at an efficiently run facility, adjusted for the degree to which MRI may substitute for other hospital resources. The Commission believes that the amount of the add-on should not bias a hospital's decision about whether to purchase an MRI scanner or to obtain scanning services from another provider. Thus, since institutions that own scanners receive an additional payment for the capital related costs of MRI, a higher add-on amount is provided for hospitals that do not own scanners.

With this approach, the total payment per scan for both types of institutions would include capital as well as operating costs. Furthermore, the add-on to either type of hospital should be adjusted over the next three years to reflect changes in the average costs of efficient scanning and any changes in capital payment policy. At the end of three years, the Commission will reevaluate the adequacy of PPS payments for MRI and the need for continuing an add-on.

In Recommendation 5, ProPAC proposes that the Secretary initiate a transition to all-inclusive prospective prices that combine operating and capital cost components in a single prospective payment per case. The exact timing and nature of any future changes in capital payment policy are not yet clear, however. If capital has not been included in PPS within three years, the Commission will consider the desirability of a single add-on payment for all hospitals and the exclusion of cost-based capital payments for MRI.

The Commission strongly believes that this add-on payment should not lead to an increase in total Medicare payments beyond that calculated for the scientific and technological advancement component of the discretionary adjustment factor (Recommendation 2). Targeted payment adjustments of this type should be offset in the DAF so that the total amount allowed remains unchanged by the add-on payment. When the appropriate data become available, the Commission will also recommend adjustments in DRG weights to account for the add-on. This should not be a significant problem in the interim, however, because MRI scans are performed in relatively few cases.

ProPAC recognizes that this recommendation departs from the concept of a single payment per discharge regardless of the resources used during the admission. The importance of MRI, however, and the potentially serious consequences of not providing the appropriate financial incentives for this technology have led the Commission to its decision. For more information on this recommendation, see Technical Appendix B.

Recommendation 30: Extracorporeal Shock Wave Lithotripsy

Prior to recalibration, cases in which extracorporeal shock wave lithotripsy (ESWL) is the principal procedure should temporarily be removed from DRG 324 and reassigned to DRG 323. The payments and costs for all cases in this DRG should be monitored to determine the appropriateness of PPS payments for operating costs. A unique procedure code should be identified for ESWL.

Extracorporeal shock wave lithotripsy is a new, noninvasive technology that uses shock waves to remove urinary tract stones. When DRGs were initially developed, ESWL was not a covered service for Medicare beneficiaries. In 1985, ESWL was covered and the cases were assigned to the medical DRGs 323 (urinary stones, age >69 and/or CC) and 324 (urinary stones, age <70 w/o CC).

The Commission examined data on ESWL costs, charges, and utilization rates from many different sources and concluded that payments for DRG 324 are inappropriately low. Payments for ESWL cases in DRG 323 more closely reflect operating costs. Neither clinical nor financial data were

found to justify splitting ESWL cases based on age, complications, or comorbidities. The newly defined DRGs could have the following proposed title changes:

DRG 323 Lithotripsy or urinary stones, age >69 and/or CC, and
DRG 324 Urinary stones, age <70 w/o CC, w/o lithotripsy.

While classification in DRG 323 results in the most appropriate payments for these cases, the average cost of treating a patient with ESWL is extremely sensitive to the number of procedures performed. The cost data used in the ProPAC analysis reflect, on average, a relatively low volume of cases in institutions with lithotripters. As hospitals utilize their equipment more efficiently, costs per case are likely to decrease. The Commission, therefore, recommends continued monitoring of ESWL procedure costs and other routine and ancillary hospital service charges over the next year.

ESWL does not have a unique ICD-9-CM procedure code. Cases involving ESWL are distinguished from cases undergoing other kinds of lithotripsy by combinations of two procedure codes. The Commission recommends establishing a unique code for ESWL so that these procedures can be monitored more accurately in the future. For more information on this recommendation, see Technical Appendix B.

Recommendation 31: Lymphomas and Leukemias

Prior to recalibration, cases currently assigned to DRGs involving lymphoma, leukemia, and other related diagnoses (DRGs 400-404) should be reclassified into one of five newly defined DRGs. The new classification should provide a unique DRG for acute leukemia cases not involving a major operative procedure, eliminate age as a criterion for DRG assignment, and modify present classification based on operative procedure, complications and comorbidity. Other ways of further improving these DRGs should continue to be explored.

The current lymphoma/leukemia DRGs (400-404) are very heterogeneous in terms of resource consumption. This is evident not only from public comment but also from high coefficients of variation obtained when studying charges and costs.

Alternative ways of grouping these cases have been considered in depth. Principal diagnosis, age, major and other operating room procedures, complications/comorbidity, and discharge status have been studied. Based on a number of considerations, including the intent and design of PPS and the amount of within-DRG heterogeneity that can be reduced, the Commission believes lymphoma and leukemia patients should be classified into the following groups:

DRG 400 Lymphoma/leukemia with major operating room procedure,
DRG 401 Acute leukemia without major operating room procedure,
DRG 402 Lymphoma/non-acute leukemia with other operating room procedure and complication/comorbidity,
DRG 403 Lymphoma/non-acute leukemia with other operating room procedure or complication/comorbidity, and
DRG 404 Lymphoma/non-acute leukemia without operating room procedure or complication/comorbidity.

The proposed DRGs would be an improvement over the current DRG classification in reducing heterogeneity. Cases in these DRGs should be monitored to determine if additional adjustments will be necessary. Other methods for improving these DRGs should continue to be studied. For more information on this recommendation, see Technical Appendix B.

Recommendation 32: Upper Extremity Procedures

Prior to recalibration, cases involving procedures of the upper extremity that are currently classified in DRGs 223, 224, 228, and 229 should be reassigned based on anatomical location and the presence of systemic collagen vascular disease or implantation of joint prostheses or complications and/or comorbidities. Nonsurgical hip fracture cases currently being assigned to DRGs 223, 224, 225, 228, and 229 should be reassigned to the appropriate medical DRG.

The current classification of cases in DRGs 223, 224, 228, and 229 fails to distinguish adequately between groups of cases with markedly different resource use according to meaningful clinical criteria.

The Commission studied many alternative groupings of these cases, using combinations of selected principal diagnoses, specific procedures, age, and complications. Based on a number of considerations, including the intent and design of PPS and the amount of within-DRG heterogeneity that can be reduced, the Commission believes patients with upper extremity procedures should be reclassified into the following groups:

DRG 223 Upper extremity procedure except humerus and hand; with joint prosthesis or complications and/or comorbidities,
DRG 224 Upper extremity procedure except humerus and hand; w/o joint prosthesis or complications and/or comorbidities,
DRG 228 Hand procedure; with joint prosthesis or collagen vascular disease or complications and/or comorbidities, and
DRG 229 Hand procedure; w/o joint prosthesis or collagen vascular disease or complications and/or comorbidities.

Currently, patients with the principal diagnosis of hip fracture who are treated medically but who also undergo a procedure on the upper extremity or foot are classified into DRGs 223, 224, 225, 228, or 229 based upon the procedure. The Grouper should be changed to assign these cases to the appropriate DRG for nonsurgical hip fractures. For more information on this recommendation, see Technical Appendix B.

Data Development and Research

Recommendation 33: Maintaining a Commitment to Data Development and Research on PPS

The Secretary should continue to devote substantial resources to data development and research for monitoring and improving PPS and understanding its effects on the health care system. Studies mandated by the Congress that are already due should be completed and made public as soon as possible, and new studies that analyze more recent data should be designed and implemented as soon as possible. While ProPAC and other organizations will participate in this process, the major commitment to PPS data development and research must reside in the Department of Health and Human Services.

For the foreseeable future, continued data development and research should be viewed as an intrinsic part of PPS. While new policy directions may require major investments in data collection and analysis, such investments should not displace needed further data development and research on PPS.

The Commission has identified a number of areas in which current data and analysis are sorely needed both for understanding the consequences of PPS and for the development of solutions to problems. A prime example is to determine the effects of PPS on the quality of care received by Medicare beneficiaries. Most of the research to date has been done with data that includes only a short period of time corresponding to hospital payment under PPS. Moreover, because the transition to Federal payments under PPS is incomplete, data collection and research must continue until the full effect of a completely phased-in system can be assessed.

It would be contrary to Medicare beneficiaries' interests to reduce the commitment to understanding PPS at a time when the potential for achieving this understanding is increasing. The Commission will continue to devote its resources to data development and research on PPS issues. It welcomes the opportunity to work with the Secretary on plans for the HHS agenda. The Commission will continue to make public the results of its research and hopes that the Secretary will also continue to share the results of HHS research.

Chapter 3

Analytic Plans for Improving the Prospective Payment System

This chapter summarizes the Commission's immediate and long-term analytic plans to improve the prospective payment system. These plans reflect a continuation and expansion of the studies supporting the recommendations presented in Chapter 2.

Improving and updating PPS are essential to make prospective payment an equitable system that enables hospitals to continue to deliver high-quality care in a cost-effective manner. Thus, through its analytic agenda, the Commission will identify and analyze problems and recommend improvements in current methods of DRG classification, case-mix measurement, and calculation of payment amounts. These improvements are necessary to ensure equitable payments to hospitals and to reflect changes in medical technology and practice patterns.

In some cases, the recommendations made this year called for temporary adjustments. Although it would have been desirable to propose permanent adjustments, the lack of current data as well as changes in medical practice since PPS implementation prevented this. The Commission intends to continue to monitor changes in medical practice and to collect and analyze additional data in order to recommend more permanent adjustments in the future.

The delivery of high-quality care in a cost-effective manner is one of ProPAC's chief priorities. While the Commission believes that implementation of PPS has so far been successful, some incidents have been reported that require particular attention to monitoring and measuring quality of care. The thrust of much of ProPAC's analytic work is designed to study this key area.

The first section of this chapter describes analyses aimed at improving DRG classification and case-mix measurement. Some of the issues discussed in this section emerge as cross-cutting problems between case-mix measurement and the establishment of payment amounts. The second section discusses methods to improve and update the payment amounts. The final section presents an overview of the Commission's strategy for research related specifically to quality of care and other beneficiary concerns.

IMPROVING DRG CLASSIFICATION AND CASE-MIX MEASUREMENT

In the April 1985 report, the Commission outlined problems related to the DRG patient classification system as it is used to measure hospital case mix. Three broad approaches for improving case-mix measurement were suggested:

- Retaining the current system but revising it incrementally as problems emerge,
- Retaining the system in principle but reconstructing it using newer, more complete data bases, and
- Considering an alternative system, either in conjunction with DRGs or to replace DRGs.

Based on the work undertaken since the April 1985 report, ProPAC has recommended retaining the current DRG system for the present along with making several incremental modifications and improvements to the system. The analyses completed by the Commission and others, however, have demonstrated that resource use varies considerably within some DRGs. The causes of the variations are complex and need to be better understood before recommending a major restructuring of the DRGs. To this end, the Commission has developed an analytic plan for systematically evaluating the heterogeneity of the DRGs. This evaluation will provide empirical evidence for

evaluating the principles of case-mix measurement.

Because of substantial differences in case complexity observed within individual DRGs, alternative case-mix measurement systems—especially those focusing on severity-of-illness measures—have gained considerable attention as a possible method for improving or replacing DRGs. While understanding of the complexities and deficiencies of the current system is increasing, much remains to be learned about the advantages and disadvantages of alternative systems. Currently, generally accepted criteria for evaluating these systems are nonexistent. Further, a comprehensive, comparative evaluation of DRGs as well as alternative case-mix systems has not yet been performed.

The Commission's analytic plans to improve the measurement of case mix will continue to follow the same approaches mentioned above. The major study areas are summarized here and discussed more fully in the rest of this section.

- Analysis and evaluation of new and changing technologies and practice patterns will continue. Incremental improvements to the current DRGs will be developed that reflect the results of these studies.
- The current studies of heterogeneity and case complexity for specific DRGs and groups of DRGs will continue. Further studies will expand the scope to a broader examination of all DRGs. Specifically, these studies will examine the adequacy and appropriateness of existing and alternative DRG assignment criteria. They will be designed to identify areas to improve DRG homogeneity and better account for case complexity and severity of illness.
- The analyses of specific DRGs and groups of DRGs have pointed to additional topics that will require further study. These topics relate to the measurement of case mix as well as the calculation of the payment amounts and include:
  - —Outlier payment policy,
  - —Geographic variations in resource use,
  - —High device costs and the labor/nonlabor portions of the payment amounts,
  - —Allocation of nursing costs, and
  - —Transfers and readmissions.
- Monitoring the development and comparative evaluation of alternative case-mix measurement systems will continue.

Technologies and Practice Patterns

The Commission and many others have been concerned about the need to incorporate new technologies and medical advances into the system. Part of ProPAC's resources have been and will be devoted to recommending appropriate adjustments in DRG classifications and weights in order to incorporate new technologies as they become Medicare-covered services. The Commission will also examine the need for adjustments to reflect changes in the use of existing technologies or changes in practice patterns. It will recommend improvements on an incremental basis when necessary.

The Commission is pleased that the Secretary has implemented procedures for making changes to the DRG classifications. Under these procedures, most changes will be made when annual PPS regulations are promulgated. Some new technologies will become covered services at other times, however, and the Commission will consult with HCFA on issues related to DRG assignment as these technologies are covered by Medicare.

Incorporating new technologies and practices into PPS may be difficult. The Commission recognizes that there are unique problems for new technologies that are expensive but enhance quality of care. The Commission is concerned about the mechanisms for providing timely and appropriate payments (e.g., recalibration and reclassification). These mechanisms may not always provide the appropriate incentives for the development, adoption, and diffusion of new technologies. Likewise, the Commission wishes to avoid financial incentives that result in the adoption of technologies that are unproven or unnecessary for the efficient delivery of high quality care.

Based on its evaluation of two new and costly technologies, ESWL and MRI, the Commission recommended two very different adjustments to the system: a reclassification of patients undergoing ESWL and an add-on payment for patients undergoing MRI scanning. The Commission will continue to address the special problems associated with costly new medical technologies on a case-by-case basis, recognizing that solutions may vary significantly depending on the technology.

The Commission will focus on improvements using existing payment policies, such as reweighting or "pricing" of certain DRGs. It is likely, as is the case for ESWL and MRI, that adjustments will be recommended on a temporary basis or for an interim period. This will permit the development of better data bases for accurately measuring costs and efficiency changes as technologies diffuse. ProPAC will continue monitoring these technologies as they are incorporated in medical practice.

While the financial incentives under PPS may adversely affect the development, adoption, and diffusion of costly new technologies, the objective evidence available to document such effects is limited. The Commission will monitor studies being conducted by other organizations and consider implementing a study to evaluate the effects of PPS in this area.

Improvements in the DRG system to incorporate changes in medical technologies and practice patterns, as well as general improvements in DRG homogeneity, must be achieved within the constraints of the current ICD-9-CM coding system for procedures and diagnoses. For some technologies or practices, new codes will need to be developed. In other instances, administrative mechanisms to identify specific procedures or conditions in the absence of an appropriate code will need to be devised. The Commission has made several recommendations this year regarding maintenance and updates to the ICD-9-CM system for payment purposes. ProPAC will continue to monitor changes in the coding system, recommending improvements that are necessary to keep the system up to date.

The availability of data bases for accurately pricing new technologies and services is a critical need for determining appropriate weights for new technologies. Typically, manufacturers are the only sources of data. These data bases provide limited information. The Commission has found it necessary in some cases, such as ESWL, to make temporary recommendations while monitoring the use of the technology and gathering additional data. In other cases, such as burn DRGs, the Commission has withheld recommendations until better data become available. ProPAC will continue to monitor the development of data for these technologies and use new data sources as they become available.

Heterogeneity

The Commission has identified significant heterogeneity problems in the DRG system as a result of its examination of classification problems for specific DRGs or groups of DRGs. Heterogeneity is a source of concern because of its association with payment inequities. (Heterogeneity is defined as the degree of dissimilarity among cases within a patient category.) These case-by-case analyses, prompted by concerns that case complexity varies widely within certain DRGs, have led the Commission to recommend structural changes in some DRGs. These include DRGs for lymphomas and leukemias, as well as DRGs involving upper extremity procedures. These case examples of heterogeneity reflect the inability of DRGs to capture differences in case complexity that may be due to: inadequate measures of complications and/or comorbidities; lack of specificity in operating room procedures performed; or other underlying problems with the DRG assignment criteria.

ProPAC will continue to examine the causes of heterogeneity and to develop recommendations for improvements to the DRG system on two levels. On a general level, the DRGs will be systematically evaluated to determine the global changes in the DRG assignment criteria necessary to increase the homogeneity of the DRG system. The Commission will also continue to study individual DRGs or groups of DRGs on a case-by-case basis and recommend improvements. In its efforts to improve the DRG system, the Commission will focus on the following heterogeneity issues.

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DRG Assignment Criteria

The analyses completed to date have provided evidence of variation in case complexity within DRGs. Much of this variation can be linked to inadequacies in the underlying principles, or assignment criteria, of the DRG system.

Complications and/or Comorbidities.—The use of complications and/or comorbidities (CCs)—particularly the sequence or combination of one or more diagnoses—needs to be carefully reviewed. Currently, one list of complications and/or comorbidities applies to all DRGs. These are not specific to DRGs or Major Diagnostic Categories (MDCs). Payment may not reflect the resources required to treat specific complications and/or comorbidities. Preliminary evidence from ProPAC analyses suggests that modifying the use of complications and/or comorbidities in DRG assignment may reduce heterogeneity within some DRGs. Creating DRG- or MDC-specific lists on the basis of resource intensity is a possible approach to DRG improvement.

Patient Age.—Patient age is used in a number of DRGs for assignment. As an assignment criterion, age is typically used in conjunction with the presence of a complication and/or comorbidity (e.g., "Age >69 and/or CC"). Some researchers have argued that to reduce DRG heterogeneity, other age splits may be more appropriate to identify older patients (e.g., persons who are at least 80 years of age), who are presumably sicker. Preliminary analyses of heterogeneity within DRGs indicate that age is probably less important than the presence of complications and/or comorbidities. Additional work is necessary to determine the validity of this finding for all DRGs and the appropriateness of combining the age criterion with the presence of complications and/or comorbidities. Moreover, if revised lists are developed, age splits may not be necessary.

Operating Room Procedures.—The list of operating room procedures and surgical hierarchies within MDCs should also be reviewed. Currently, cases are assigned to DRGs on the basis of the presence or absence of an operating room procedure within MDCs. ProPAC analyses (e.g., for DRGs involving upper extremity procedures) have suggested that heterogeneity can be reduced by further separating patients on the basis of specific operating room procedures.

Patient Disposition at Discharge.—Relatively few DRGs are defined on the basis of patient disposition at discharge. For example, only a few DRGs use death in the assignment criteria. Preliminary analyses of a sample of DRGs confirm that, on average, costs incurred in the care of patients who die in the hospital are much greater than costs incurred in the care of patients in the same DRG who do not die. Furthermore, for some DRGs (e.g., burn DRGs) patients who died were concentrated in certain types of hospitals. The inclusion of discharge disposition could be used more extensively as an assignment criterion if the severity of patients who die is not adequately measured using the current classification variables.

Other Assignment Criteria.—Other problems with the current assignment criteria for DRGs include the determination of principal diagnosis, the presence of multiple diseases during the same admission, and the definition of DRG 468 (operating room procedure unrelated to principal diagnosis). ProPAC will continue to consider changes in these areas that may improve homogeneity within DRGs.

Other Case-Mix Measurement Issues

In addition to the topics discussed above, the Commission's continuing efforts to improve the measurement of case mix will focus on several general issues that are also related to the determination of the payment amounts. These issues are discussed below.

Outlier Payment Policy

Analyses of specific DRGs (e.g., burn DRGs) have identified considerable differences in outlier rates among hospitals. These findings were supported by statistics for a broad range of DRGs, where outlier rates varied significantly across DRGs and by type of hospital within DRG. Differences in outlier rates across institutions may occur for various reasons. These include severity-of-illness differences not currently measured by the DRG system; hospital or physician inefficien-

cies, or both; or other problems in case-mix measurement, such as ICD-9-CM coding limitations.

Thus, the Commission believes that changes in the payment mechanism for outlier cases may be an important method for addressing the problems of heterogeneity. This may be true, for instance, for DRGs where the severity of illness for outlier patients is not adequately measured by the current system. It may be appropriate to adjust the outlier payment rates to more accurately account for the additional costs of treating these patients beyond outlier thresholds.

While changes in outlier payment policy will not make the DRGs more homogeneous, modifying the payment mechanism for outliers may limit the need for improving DRG homogeneity to only inlier cases. ("Inlier cases" are all cases that are not in the outlier category.) That is, the combination of homogeneous DRGs for *inlier* cases and adequate payment mechanisms for *outliers* may solve the inequity problems caused by heterogeneous DRGs. The Commission will continue to examine outlier cases in its analysis of DRG heterogeneity and to consider appropriate changes to outlier payment policies, including marginal payment rates and the outlier thresholds.

Geographic Variations in Resource Use

Geographic variations in resource use are another important source of heterogeneity within DRGs. During 1985, the Commission began examining the extent of geographic variations within DRGs using the existing Medicare data bases. In future analyses, ProPAC will attempt to determine the amount of geographic variations resulting from differences in severity or complexity that the DRG system does not capture adequately.

Documenting and understanding the sources of geographic variations in resource use are also important considerations for many of the other issues facing the Commission. Geographic variations must be considered when new and changing technologies or practice patterns are incorporated into the system. These variations are also important in the analyses of hospital efficiency and productivity to support the empirical basis for the DAF, and in the analysis of changes in the hospital product. Further, studies related to quality of care and the impact of PPS must also take geographic variations into account. The Commission will continue its efforts to document the extent and causes of geographic variations.

High Device Costs and the Labor/Nonlabor Portions of the Payment Amounts

In its 1985 report on the appropriateness of hospital payments for pacemaker implantation, the Commission identified several problems due to the high cost of pacemaker units and unique cost structure of hospital discharges involving pacemaker implantation. Subsequent analyses revealed similar problems with other expensive implantable devices including intraocular lenses, cochlear implants, penile prostheses, and artificial urinary sphincters. Analysis of DRGs involving expensive devices led the Commission to make several recommendations this year.

The Commission has examined the atypical cost structure for discharges involving expensive devices. Adjustments to the labor and nonlabor portions of the standardized payment amounts have been recommended for several DRGs (e.g., cardiac pacemakers) as a result of this analysis. The current methodology for the payment mechanism and for DRG weight calculation assumes that roughly 80 percent of the cost is labor-related. Since this percentage is adjusted for local wage rates, large distortions in payments occur for DRGs where device (nonlabor) costs account for much more than 20 percent. The Commission will continue to study the appropriateness of the current 80/20 policy for labor and nonlabor costs across all DRGs and will recommend improvements where necessary.

Allocation of Nursing Costs

In making its recommendations for improvements in case-mix measurement, the Commission will consider the ability of the DRG system to promote appropriate levels of nursing services to maintain quality care. The Commission has previously expressed concern that the methods used to allocate nursing costs have produced significant inaccuracies in the DRG weights, possibly requiring adjustments to the DRGs to better meas-

ure nursing intensity. Further, the Commission believes that adjusting for nursing intensity may be a useful mechanism for improving DRG homogeneity. The accuracy of the payment amounts may also be improved by incorporating measures of nursing intensity and skill mix into the current costing mechanism.

The Commission has completed, through a contract with Health Economics Research, Inc., a comprehensive evaluation of existing nursing patient classification systems. This contract also provided a review of the literature regarding alternative costing methods for nursing services, the effects of PPS on the quality of nursing care, and the relationship between nursing intensity and patient severity of illness. ProPAC will use this information and results from preliminary empirical analyses in the development of its research strategy for addressing the nursing intensity issue. The Commission will also monitor the empirical research on the allocation of nursing costs funded by HCFA and incorporate those findings into its planned research.

Transfers and Readmissions

The Commission recognizes the responsibility of the PROs to review the transfer and readmission of patients as part of their overall review of medical practice under PPS. The Commission's concern regarding transfers and readmissions relates to the severity difference of patients who are transferred and the adequacy of payments for these patients. The adequacy of payments between the transferring and receiving hospitals and the incentives provided by transfer payment policy will be examined in the context of specific DRG analyses (e.g., burn DRGs) and as part of the Commission's overall analysis of case-mix measurement issues.

As outcome measures, changes in readmission and transfer rates (for the same conditions) may provide empirical evidence about how PPS affects the quality of patient care. The Commission will analyze Medicare data bases to document changes in transfer and readmission rates as hospitals continue to respond to PPS incentives.

Alternative Case-Mix Measurement Systems

As discussed above, the Commission believes that the DRG classification system should be retained, for the present, as the most appropriate measure of hospital case mix. The Commission recognizes that, in the long-term, it may be necessary to consider alternative case-mix measurement systems. This would be the case if the DRG system proves to be inadequate for incorporating new and changing technologies and practice patterns, or for measuring case complexity and severity of illness. The Commission has examined possible criteria for evaluating alternative case-mix measurement systems and will continue to examine these systems as they are developed and improved. If the DRG system is to be replaced or combined with an alternative system, ProPAC believes that an evaluation of the alternative systems against a uniform set of criteria using a single data base would be necessary.

IMPROVING AND UPDATING THE PAYMENT AMOUNTS

The Commission seeks improvement in current methods of DRG classification and case-mix measurement so that PPS payments are distributed in a manner consistent with variations in the resource requirements of treating patients. ProPAC's approach to improving case-mix measurement focuses on both methods for incorporating new technologies and changing practice patterns, and generic improvements in the system necessary to maintain quality care.

In addition to accurate distribution of payments, the Commission is concerned about whether the PPS payment levels are adequate to enable hospitals to provide high-quality care to Medicare beneficiaries. Adequate payments may not ensure that individual hospitals will maintain quality care. The Commission believes, however, that PPS should provide appropriate incentives and payments to encourage hospitals to provide high-quality care.

The standardized amounts are the foundation of PPS payments and a major focus of ProPAC's work. The Commission's efforts include identifying appropriate updates to the standardized amounts as well as considering the effects of recalculating the amounts using more recent data. Furthermore, the Commission plans to perform analyses of other payment issues related to the standardized amounts.

Updating the Standardized Amounts

ProPAC's mandate includes the development of recommendations regarding an appropriate annual percentage change in the standardized amounts. This change, referred to as the update factor, is comprised of a market basket adjustment (with corrections for forecast error) and the discretionary adjustment factor. The Commission's work to refine these components and to assess strategies for recalculating them are discussed below.

The Discretionary Adjustment Factor

The DAF is a quantitative factor that reflects the Commission's judgment of an appropriate allowance for changes in hospital productivity, site-of-care substitution, real case-mix change, and scientific and technological advances. The underlying purpose of the DAF is to ensure that, in combination with ProPAC's other recommendations, the Medicare program continues to provide adequate payments for high-quality hospital care that promotes long-term cost-effectiveness.

The Commission has devoted significant resources toward developing more precise measures of changes in hospital practice patterns. During 1986, it will continue refining the information used to determine the allowance. Furthermore, ProPAC will explore new data sources to enhance the foundation for the discretionary adjustment factor.

Many of the indicators used to determine the DAF are influenced by multiple, cross-cutting factors. Changes in case complexity, for example, may be due to scientific and technological advances that enable hospitals to treat a wider range of patients. For each DAF component, the Commission will attempt to develop more precise indicators that take into account the interrelationships among the components. In this way, ProPAC can more precisely relate trends in overall expenditure patterns with the individual allowances it establishes for each component.

The following section describes specific analytic activities planned by the Commission to support development of the DAF.

Productivity.—The Commission will expand its consideration of changes in productivity to include the use of *total* inputs. This will require assessing the role of labor, capital, and other nonlabor costs in changes in hospital productivity. In addition, the data used to measure productivity will be refined. Specifically, ProPAC will examine more accurate methods to derive costs from existing charge data.

Site-of-Care Substitution.—Measuring site-of-care substitution requires knowledge of the services provided outside the hospital setting to patients who are hospitalized. While data are available to measure resources consumed in the inpatient setting, little information is available on services provided out of the hospital. The Commission plans to explore improved data sources that reflect care provided to patients for an entire episode of illness. Efforts will focus on refining Medicare Part B data and linkage of Medicare Part A and Part B data, by beneficiary, for episodes of illness.

Real Case-Mix Change.—In addition to observed shifts in patients among DRGs, the resource consumption of patients within a DRG may be changing. The Commission will refine its measure of changes in patient complexity within DRGs and associated changes in resource consumption. Analyses will focus on distinguishing real case-mix changes from coding changes, the relationship between case complexity and resource requirements, and measurement of changes in resources consumed.

Scientific and Technological Advances.—The Commission will emphasize studies to estimate the costs associated with new technologies and the ability of the DAF to support the diffusion of these technologies. It will also explore the broader implications of changes in practice patterns on scientific and technological advances. Changes in the application of new technologies in patient care and

the cross-cutting effects of new practice patterns on resources consumed will be analyzed.

The Hospital Market Basket

The hospital market basket index reflects inflation in goods and services purchased by hospitals. It is constructed by determining the inputs that hospitals purchase, the relative weight of each input, the appropriate proxy to measure price changes of each input, and estimates of price changes. Developing the market basket index involves judgments about the appropriate components and price change measures. Often, trade-offs are made between the validity of the measurements and the availability of data.

Recognizing the judgments and trade-offs made in developing the market basket index, the Commission plans further study of possible refinements. In its April 1985 report, ProPAC stated its intent to study certain features of the hospital market basket used to update the PPS standardized amounts. The studies described below will be used in the Commission's deliberations during 1986.

The Number of Market Baskets.—This study will update earlier HCFA analyses of regional market baskets. Information on regional variation in hospital expenses and price differences will first be developed. Then comparisons will be made of regional market basket indexes with the national index.

Effects of the Minimum Wage Law.—Initially, a survey will be conducted to determine existing data sources for comparing the effects of changes in the Federal minimum wage law on hospital workers compared with workers in other industries. If appropriate data are available, the relative effects of changes in the minimum wage law on hospital workers will be analyzed.

Correction of Errors in Forecasting Hospital Wage Increases.—A review will be conducted to determine the extent to which industry-specific wage information is used by public utility commissions or other regulators to set prices in regulated industries. The study will include an analysis of the conditions under which hospital behavior, including hospital response to PPS incentives, could affect the forecasted increase in the market basket.

Measurement of Employee Benefits.—A study will be conducted on the treatment of employee benefits in the PPS market basket. This will include a comparison of the current measure of employee benefits and alternative measures, such as those used by state prospective payment programs.

Recalculating the Standardized Amounts

The Commission believes that, in updating the payment amounts, information reflecting the relationship between hospital costs and PPS payments would be valuable. The Commission has also stressed the importance of more recent cost data on which to make judgments about appropriate payment amounts. ProPAC will continue to monitor the efforts of HCFA to produce more timely cost data. In addition, the Commission plans to examine other issues related to recalculating the standardized amount, which are described below.

Alternative Methods for Recalculation.—The original standardized amounts were calculated giving each hospital the same weight; that is, "hospital-weighted" averages were calculated. The Commission has documented significant distributional shifts in PPS payments if "discharge-weighted" averages were computed instead, giving hospitals with a greater share of Medicare discharges more weight. The Commission will continue to study this issue to determine the most appropriate method of calculation and to further document the distributional effects of each method.

Sampling Hospital Cost Data.—The Commission, through a contract with the Rand Corporation, has completed a preliminary evaluation of HCFA's sample of unaudited cost report data for 1,200 hospitals for the first year of PPS. While Rand found the sample to be representative of those hospitals used to create the standardized amounts, future analyses will determine the precision of estimates generated from this sample. The Commission also plans to examine the feasibility of developing a sample of PPS cost reports from the subset of hospitals with accounting year-end dates earlier in the fiscal year.

Analysis of Cost Data for the First Year of PPS.—The Commission expects to soon receive from HCFA the Medicare Cost Report data for the first year of PPS. A complete set of unaudited reports and audited reports for the sample of 1,200 hospitals (mentioned above) are expected. ProPAC plans to use these data for a number of analyses:

- Recalculating the standardized amounts,
- Updating the comparison of DRG weights calculated by using only charges, with weights calculated by using charges adjusted by costs,
- Documenting changes in costs by cost center since 1981,
- Studying the causes of differences in hospital costs, and
- Analyzing capital costs.

Other Issues Related to the Payment Amounts

Besides updating the PPS payment amounts to reflect changes in the cost of providing care, the Commission recognizes that problems exist in the calculation of certain payment components. Additional complexities arise from failure to reflect capital costs in the payment mechanism. The Commission plans to address these issues through improved understanding of historical cost differences among hospitals and the nature of these costs. Efforts to address other payment amount issues are described in this section.

Hospital Labor Market Areas and Wage Indexes

The urban and rural Federal portion of PPS payment amounts are adjusted to reflect variations in hospital employee wages based on hospital labor market areas. The Commission is concerned about the deficiencies in the current hospital labor market areas. Specifically, ProPAC questions whether they adequately reflect hospital wage variations within urban areas (that is, inner-city versus suburban areas) and variations within the rural areas of a state.

The Commission is studying this issue and has obtained preliminary evidence to justify its concern. Analysis will continue in an effort to develop specific improvements. ProPAC will also study whether current labor and nonlabor proportions of the standardized amounts are appropriate. In addition, it will examine factors that measure the difference in skill mix of hospital employees.

Furthermore, the Commission will continue to monitor the results of HHS evaluations related to hospital labor market areas and will consider these results in formulating improved definitions. Specific recommendations on improved definitions of hospital labor market areas will be made by the Commission no later than April 1987, and possibly in time for the fiscal year 1987 rulemaking process.

The Hospital Product

Understanding changes in the hospital product is important in updating payment amounts, improving DRG classifications and weights, and determining the health outcomes of beneficiaries. The definition of the hospital product, however, is subject to wide interpretation. The product can be characterized as a DRG, the inpatient stay, an entire episode of illness, or patient health outcomes. The Commission will continue to study the nature of the hospital product in order to more precisely define and measure product changes in the future.

Changes in the hospital product may be the result of shifts in the treatment provided during the inpatient stay or shifts in the site of care. The measurement of these changes requires associating hospital costs with the products produced. The Commission plans to study the factors influencing changes in the hospital product as well as alternative costing methodologies. This effort will provide insight regarding needed refinements to PPS and the potential effect of future policy decisions on the production function of hospitals.

Excluded Hospitals

Hospitals excluded from PPS by statute include psychiatric, rehabilitation, pediatric, and long-term care facilities. HCFA and others have con-

ducted studies to determine the differences between PPS hospitals and excluded hospitals. Little of the information developed to date, however, can be used to determine an appropriate payment update for excluded hospitals. The types of patients seen and the treatment provided vary significantly between PPS hospitals and excluded hospitals. The data for excluded hospitals, however, are significantly limited.

During 1986, ProPAC will continue to refine the data used to make its recommendations regarding excluded hospitals. This will include the development of trend data relevant to the update factor. The Commission also intends to continue its study of excluded hospitals in an effort to understand the unique production function of these institutions. Emphasis will be placed on better understanding changes in case mix, productivity, and the impact of scientific and technological advances on the care these hospitals provide. In addition, ProPAC will focus on improving methods for distinguishing between excluded hospitals and excluded units and their products. Finally, the Commission will examine the implications for the DAF of incorporating capital payments into the target rate of increase limits established for excluded hospitals and distinct part units.

Rural Hospitals

The Commission believes that several PPS policies may adversely affect rural hospitals. Some of the policies apply solely to rural hospitals. Others affect all hospitals, yet may have a stronger impact on rural providers. ProPAC, therefore, will focus on differences between urban and rural hospitals in the study of issues mentioned previously, such as hospital labor market areas, DRG classification and case-mix measurement, outlier payments, DRGs with high device costs, and calculation of the standardized amounts. In addition, the Commission will continue efforts to identify problems related to the treatment of rural hospitals under PPS.

Beyond the efforts described above, ProPAC is interested in identifying the reasons for the suspected vulnerability of rural hospitals. Analysis will focus on identifying factors contributing to lower costs, characteristics of access, and organizational trends of rural hospitals, with an emphasis on small rural hospitals. This information is necessary in order to determine the extent of problems facing rural hospitals and whether adjustments can be made to PPS, as currently structured, to alleviate these problems.

Disproportionate Share Hospital Adjustment

The Commission has completed analyses supporting its recommendation to develop a definition of hospitals that serve a disproportionate share of low-income patients and implement a payment adjustment for these hospitals. ProPAC will continue to monitor efforts by the Secretary and the Congress to implement such an adjustment.

Capital Payments Under PPS

ProPAC conducted and reviewed a number of analyses to support its recommendations on capital payment under PPS. The Commission also identified several additional areas for analysis of capital payment under PPS. Thus, the Commission intends to include the following topics on its near-term analytic agenda.

Impact of the Capital Payment Proposal.—The Commission will continue to examine the effects of its capital payment proposal on hospitals. Efforts will focus on identifying types of hospitals that may be disproportionately affected by the proposal due to their unique financial positions. ProPAC will examine appropriate provisions for these hospitals in the event that remedies are required.

The Commission will also examine recent hospital capital investment strategies and their effect on capital spending. For example, ProPAC is interested in the extent to which recent capital expenditures are related to expansion of outpatient services. If recent capital purchases are more heavily devoted to outpatient services, estimates of Medicare inpatient capital-related spending may be overstated.

Finally, the Commission intends to study the impact of incentives introduced by the proposed capital payment system. Specifically, by incorporating capital into PPS, hospitals may increase

outpatient services in order to recover more of their capital costs. Furthermore, the Commission is concerned about the impact of implementing a capital payment system that pays hospitals based on volume rather than on costs. The Commission will identify instances where the proposed payment basis might produce undue hardships for some hospitals and beneficiaries.

The Capital Component of the Hospital Market Basket and Capital Trend Factors.—Under an all-inclusive rate, as recommended by ProPAC, the hospital market basket must be revised to reflect the inclusion of capital. The Commission intends to examine proxies for changes in fixed and moveable capital and their appropriateness for inclusion in the hospital market basket. In addition, the Commission will participate in determining the most appropriate indexes for trending base year fixed and moveable capital amounts forward to 1987. Efforts will focus on identifying data to be used for the trending factors and the application of the factors to baseline amounts.

Construction Capital Cost Variations.—Using existing data sources, ProPAC will study the extent to which construction capital costs vary across regions of the country. This study is designed to determine whether capital market areas exist and, if so, how they relate to the labor market areas defined under PPS. Results of this analysis will enable the commissioners to make judgments about the need for payment adjustments for geographic variations in construction capital costs.

Effects of the Addition of Capital on Payment Components.—The Commission recommendation regarding the method of capital payment requires recomputing the components of PPS payments when appropriate data become available. ProPAC will analyze what effect the addition of capital has on the standardized amounts and the proportions for labor and nonlabor components. Analysis will include determination of the impact of capital inclusion on PPS adjustments, such as the indirect teaching and disproportionate share adjustments.

Separation of Fixed and Moveable Capital.—The Commission will examine technical issues concerning identification and separation of costs related to fixed and moveable capital. This will include an examination of the methods used to allocate fixed and moveable capital on the Medicare Cost Report. The Commission will also examine potential effects of the different treatment of these capital components on hospital behavior during the capital transition period.

DRG Capital Intensity Variations.—One of the capital payment evaluation criteria that the Commission regards as most important is that the payment mechanism should reflect capital intensity variations across DRGs. Many believe that existing charge-based weights reflect accurately the relative capital intensity of the DRGs because hospitals' billed charges include operating and capital expenses. The Commission will analyze this issue and recommend appropriate adjustments if needed.

Hospital-Level Effects of PPS

The Commission has developed a microsimulation model of PPS payments, based on HCFA data bases, to study the distributional effects of PPS payment policies on hospitals. This model was used in the Commission's analysis of the transition to national rates. It will also be used to evaluate the effects of future policy changes on hospitals.

In particular, the model will be used to analyze the effects of policy changes on different groups of hospitals or hospital types; that is, by region, bedsize, teaching status, urban/rural status, and disproportionate share status. Furthermore, the model will be expanded to incorporate other data bases, such as the American Hospital Association Annual Survey and the Area Resource File.

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ASSESSING THE EFFECTS OF PPS ON CARE FOR BENEFICIARIES

The Commission strongly believes that implementation of its recommendations will enable hospitals to maintain delivery of high-quality care for beneficiaries. It will, however, devote a significant portion of its resources to studying access and quality. While payment levels are currently adequate for the provision of quality inpatient care, changes in hospital services could diminish access to needed care or affect the quality of that care. Therefore, it is essential to continue to examine the relationship between payment levels and access to quality health care.

Unfortunately, no generally accepted basis for judging the effects of PPS on quality of care exists, and empirical evidence is limited. The Commission is keenly aware that the financial incentives of PPS may lead hospitals to undertake actions that could compromise quality of care. Furthermore, ProPAC is aware that incidents of compromises in quality have been reported and that there are perceptions among some beneficiaries and providers that quality has suffered. Recognizing this, during the past year the Commission has evaluated how it can best contribute to analyzing the effects of PPS on quality of care. This section outlines the Commission's strategy.

Developing ProPAC's Analytic Strategy for Quality of Care

The Commission recognizes that, with limited resources, consideration of quality issues needs to be carefully defined and targeted. The Commission, therefore, allocated staff resources during the past year to the following activities:

- Monitoring studies related to quality of care undertaken by organizations inside and outside of the federal government,
- Consulting with individuals with different perspectives on the quality issue to discuss ProPAC's role in analyzing quality of care,
- Assessing the activities of the PROs in measuring and maintaining quality of care for Medicare beneficiaries, and
- Conducting a study to provide information to support future judgments about the existence of problems and define areas for future studies.

The Commission's study consisted of a systematic review of anecdotal evidence and perceptions related to quality of care. Evidence, in the form of reported incidents and interviews with industry and beneficiary representatives, identified areas most sensitive to changes in quality. The following perceptions were most frequently cited:

- Patients are being discharged "quicker and sicker."
- Appropriate alternative providers are not routinely accessible or available.
- Providers misunderstand how PPS is supposed to work and may risk compromising quality, while beneficiaries are not informed of their rights of appeal within the system.
- PROs have focused on utilization review and do not have sufficient resources to adequately monitor quality of care.

The information obtained from the activities described above enabled the Commission to develop recommendations regarding the PROs, beneficiary and provider information, and beneficiary rights. Furthermore, this information served as the foundation for the Commission's quality of care research strategy.

Analysis of Beneficiary Cost Sharing

The Commission is concerned that changes in health care delivery, including shorter inpatient stays and increased reliance on outpatient surgery, may reduce beneficiary access to medical services. This may occur because beneficiaries have become financially responsible for a larger portion of the cost of their care. If services are not provided during an inpatient stay, beneficiaries pay a larger proportion of Medicare-covered services that are not provided during an inpatient hospital stay. For example, beneficiaries are responsible for 20

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percent of the approved charge for outpatient surgery covered under Medicare Part B. Though "Medigap" coverage pays this coinsurance for most beneficiaries, beneficiaries must pay higher premiums for these policies. In addition, Medicare coverage for services received in post-discharge settings is extremely limited. Most Medicare supplemental insurance policies do not cover services excluded from Medicare. ProPAC will continue to examine the increasing proportion of health care costs paid by beneficiaries and the effects of this shift.

The Commission believes that Medicare beneficiaries should share in cost reductions resulting from PPS incentives. It has recommended a change in the method of computing the beneficiary inpatient hospital deductible. The current deductible formula is based on the cost of an average hospital day. As a result, the recent declines in hospital length of stay have accounted for half the increase in the deductible for 1986. The Commission will examine alternative methods for structuring beneficiary cost sharing as the incentives of PPS change hospital practice. For example, the Commission will examine the relationship between outlier cases and Medicare coinsurance.

Analytic Agenda for Quality of Care Research

ProPAC's quality of care analytic agenda focuses on two major research activities. First, the Commission will attempt to detect possible problems related to quality by conducting a series of studies targeted at specific patient groups. Second, the Commission will examine hospital discharge planning practices under PPS to obtain insight into patients' conditions at discharge and their access to post-discharge care. The Commission is also interested in other methods for examining the post-discharge needs of patients, assessing the outcomes of episodes of illness, and disseminating beneficiary information and appeal rights. ProPAC's current direction for quality of care research and its developing analytic agenda are presented below.

Targeted Studies

The Commission's objective in conducting targeted studies is to monitor indirect measures of quality in order to isolate possible problem areas that merit more in-depth review. The studies will focus on changes in specific quality indicators for all beneficiaries and for targeted beneficiary groups believed to be most vulnerable to quality problems.

Quality Indicators.—Using routinely collected data, ProPAC will compare quality indicators during pre- and post-PPS periods. Indicators, or quality proxies, will include length of stay, readmissions, transfers, use of selected ancillary services, complication rates, mortality rates (overall and in-hospital), and emergency visits per discharge. Analysis of quality indicators will use the most current PPS data. In addition, the Commission will monitor the development of improved data bases by HCFA and others for use in its studies. While analysis of quality proxies has limitations, it nonetheless may identify areas for further study or improvement.

Selected Beneficiary Groups.—A major concern related to quality of care is that certain groups of patients with higher-than-average resource needs are more vulnerable to access and quality problems. The Commission will target its analysis of quality indicators on these groups.

One such group, the "frail elderly," is of particular concern to the Commission. This group can be characterized in several ways: the old elderly (e.g., 80 years of age of older), elderly patients having multiple illnesses; or poor elderly beneficiaries. ProPAC's review of anecdotal evidence related to quality indicated several incidents involving the "frail elderly." In addition, industry representatives, beneficiary groups, and health care researchers have expressed concerns for these patients. They fear that the frail elderly are more susceptible to the incentives for hospitals to treat the profitable patients and refer the unprofitable patients elsewhere.

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Study of Discharge Planning Under PPS

The Commission has chosen to examine the discharge arrangements hospitals make for beneficiaries from the many possible subjects for quality of care assessment. It is concerned about perceptions that hospitals are prematurely discharging patients and that appropriate post-discharge care is not consistently accessible or available.

To examine this aspect of health care quality, ProPAC will examine hospital discharge planning —an activity intended to connect inpatient hospital care with needed post-discharge care. Discharge planning activity is one measure that can be used to judge the availability of appropriate post-discharge care for beneficiaries. Results of this study may provide guidance for developing quality of care studies that focus on the complete episode of illness.

In its study, the Commission expects to learn how well local health care services are matched with Medicare patients who need post-discharge services. Initially, the Commission will look at the methods, resources, and criteria that hospitals use to discharge patients. The study will evaluate how discharge planning is organized within the hospital, including staffing patterns. It will also examine how available post-discharge services are identified. Finally, the Commission will explore how patients are channelled to appropriate post-discharge services, particularly for patients in areas with limited local supply of post-discharge services.

ProPAC's future research on access and quality will build on findings from this study.

Additional Efforts To Monitor Quality of Care

The dramatic decline in length of stay since the introduction of PPS requires careful monitoring. While this trend was emerging before the introduction of the system, PPS offers extraordinary incentives for hospitals to discharge patients earlier. The Commission is interested in the relationship between shortened hospital stays, the use of medical services at alternative sites of care, and health care outcomes.

Using information derived from the studies described above, ProPAC will develop post-discharge analyses that look more closely at this issue. Specifically, the Commission is interested in observed changes in patient case mix, disposition, health status, functional status, and satisfaction as well as sources and adequacy of care.

In the long-term, the Commission will focus on patients episode of illness. This type of analysis includes assessing all care provided to the beneficiary—preadmission services, acute care, acute after-care, long-term care, home health care, and ambulatory services. Conducting this type of analysis requires combining data that reflect all care the patient receives. ProPAC believes that the primary measure of quality care is the outcome of the episode of illness. The Commission recognizes, however, that development of appropriate data bases will require extensive resources and time. Nevertheless, the Commission will monitor activities in this area and contribute to this effort where appropriate.

ProPAC's review of beneficiaries' perceptions of hospitalization under PPS, as well as information obtained from other sources, clearly indicate a misunderstanding of the basic mechanics of PPS among hospitals, physicians, and beneficiaries. The Commission has made specific recommendations to address this problem. ProPAC will continue to monitor the dissemination of clear, accurate, and helpful information about PPS.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-357-FN]

Medicare Program; Changes to the DRG Classification System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: In the final rule published September 3, 1985 on the prospective payment system for inpatient hospital services (50 FR 35646), we stated that we would publish a later notice addressing issues related to the Diagnosis-Related Group (DRG) classification system. On March 13, 1986 we published that notice in the Federal Register (51 FR 8762). In that proposed notice, we responded to comments received on the DRG classification system, discussed Medicare coverage changes affecting the DRG system, listed procedures for which new identifying codes (in the coding system of the International Classification of Diseases—9th Edition—Clinical Modification (ICD-9-CM) on which DRG assignments are based) have been proposed, and proposed certain changes in the DRG classification system to resolve some of the problems identified by comments and our analysis up to that time.

This final notice responds to comments received on the March 13 proposed notice and makes final the proposals contained in that notice.

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594-0360.

EFFECTIVE DATE: These classification and coding changes are effective for discharges occurring on or after October 1, 1986.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prospective Payment System—General

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system (PPS) for Medicare payment for inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the diagnosis-related group (DRG) to which a beneficiary's stay is assigned. The list of DRGs currently contains 471 specific categories. All but 3 DRGs are categorized into 23 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. A few, such as MDC 14 (Pregnancy, Childbirth and the Puerperium) and MDC 22 (Burns), are not, because they involve multiple organ systems.

The formula used to calculate payment for a specific case takes a hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

B. Basic DRG Classification System

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician enters into a patient's medical record the principal diagnosis, any additional diagnoses, and any procedures performed during the stay. This information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM). The principal diagnosis, as many as four additional diagnoses, the principal procedure, and as many as two additional procedures are reported, along with a patient's age, sex, and discharge status, to the hospital's fiscal intermediary on the hospital request for payment.

The intermediary then enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights, and to classify current cases for purposes of determining payment.

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs are differentiated on the basis of diagnosis, age, and presence or absence of complications or comorbidities only. Generally, GROUPER does not look at other procedures; that is, those not surgical or those minor surgical procedures generally not done in an operating room and therefore not recognized as surgical by GROUPER.

C. Changes to the DRG Classifications and Weighting Factors

1. General

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify diagnoses and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

2. Publication of Proposed and Final Rules—1985

On June 10, 1985, we published a notice of proposed rulemaking (NPRM or proposed rule) in the Federal Register (50 FR 24366) to update the prospective payment system in general. As part of that NPRM, and as required by section 1886(d)(4)(C) of the Act, we proposed to adjust the DRG classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986.

On September 3, 1985, we published a final rule in the Federal Register (50 FR 35646) concerning the prospective payment system. We included in that rule the classification changes proposed in the June 10 proposed rule as we had modified them in response to comments and suggestions we received on the NPRM. We also included some

additional changes that followed the principles discussed in the proposed rule or that were similar to them. (As a result of the Emergency Extension Act of 1985 (Pub. L. 99–107) and subsequent extensions of that Act (Pub. Laws 99–181, 99–189, 99–201, and 99–272), the classifications and weights established by the September 3, 1985 final rule did not go into effect until May 1, 1986.)

We indicated in the final rule that we could not address certain classification issues that were raised in the NPRM comment period for various reasons; we also noted that those comments would be analyzed and reviewed during the several months after publication of the September 3 final rule and that actions on them would be published in a notice early in 1986. Also, we solicited comments on any other proposed classification changes, and provided an address for such comments.

II. Provisions of the Proposed Notice

In keeping with our commitment just discussed, we published a proposed notice in the Federal Register on March 13, 1986 (51 FR 8762). In that proposed notice we responded to comments received on the DRG classification system, discussed Medicare coverage changes affecting the DRG system, listed procedures for which new ICD–9–CM codes had been proposed, and proposed certain changes in the DRG classification system to resolve some of the problems identified by comments and our analysis up to that time. The provisions of the proposed notice follow.

A. Proposed Changes Resulting from Comment Process

1. *MDC 4: Diseases and Disorders of the Respiratory System.* We proposed to remove diagnosis code 4838 (Bacterial pneumonia not elsewhere classified) from DRGs 89, 90, and 91 (Simple Pneumonia and Pleurisy: Age over 69 and/or complications or comorbidities[1], Age 18–69 without C.C., and Age 0–17, respectively). We would place this code into DRGs 79, 83, and 84 (Respiratory Infections and Inflammations: Age over 69 and/or C.C., Age 18–69 without C.C., Age 0–17 with C.C., respectively.

2. *MDC 13: Diseases and Disorders of the Female Reproductive System.* We proposed to reconfigure DRGs 353, 354, 355, 357, 358, 359, 360, 361, and 362 to increase homogeneity and thus more accurately reflect resource intensity of cases assigned to these DRGs.

3. *MDC 20: Substance Use and Substance Induced Organic Mental Disorders.* We proposed to change the titles of DRGs 433 through 437 in MDC 20. Wherever the term "substance" appears in those DRGs we would substitute the term "alcohol/drug".

B. New Coverage Decisions

1. *Background.* Under § 412.16(c) of the regulations, we may make interim changes in the DRG classifications to reflect new additions to coverage made by the Medicare program. Such classification changes are to be included in the next annual notice of DRG classification changes and be subject to public comment.

Effective for procedures performed on or after January 24, 1986, Medicare coverage was extended to implantation of cardiac defibrillators under certain circumstances.

2. *Proposals.* We stated in our proposed notice that on an interim basis we will pay for this procedure using the weight for DRG 104 (Cardiac Valve Procedure with Pump and with Cardiac Catheter) for the time being and we solicited comments as to whether it may be more appropriate to use another DRG, such as DRG 109 (Cardiothoracic Procedures without Pump) or DRGs 115 and 116 (Permanent Cardiac Pacemaker Implant; with AMI, Heart Failure or Shock, and without AMI, Heart Failure or Shock, respectively).

Discrete ICD–9–CM procedure codes for this new technology had not yet been adopted. Consequently, for the present, we stated that payment will be made for such claims only on a manual basis when accompanied by appropriate documentation. We indicated that the ICD–9–CM Coordination and Maintenance Committee (a description of this committee is contained in section C, following) was considering new ICD–9–CM procedure codes for the implantation of cardiac defibrillators and that if these proposed new codes were adopted, we proposed to add the new procedure codes to the appropriate DRG.

C. New Coding Changes

1. *Background.* A Federal inter-agency committee, the ICD–9–CM Coordination and Maintenance Committee, has been formed to evaluate the International Classification of Diseases—9th Edition—Clinical Modification, (ICD–9–CM) updating and use for Federal programs. This committee holds public meetings quarterly for discussion on educational issues and proposed coding changes. Many of the proposed coding changes will result in one or more specific codes to identify discretely those diagnoses or procedures that are currently being coded under a more general diagnosis or procedure.

We noted in the proposed notice that new ICD–9–CM codes had been proposed to identify the following:

A. *Cochlear Prosthetic Device Implant.*

B. *Percutaneous Transluminal Coronary Angioplasty.*

C. *Cardioverter/Defibrillator.*

D. *Thoracoabdominal Aortic Aneurysm Repair.*

E. *Lithotripsy.*

F. *Artificial Urinary Sphincter Implant (AUS).*

G. *Penile Prosthesis—Inflatable and Non-Inflatable.*

H. *Chemonucleolysis.*

I. *Magnetic Resonance Imaging (MRI) and Intraoperative Ventricular Mapping.*

2. *Proposals.* In order to prevent the unwarranted delay of recognition of new codes by the Medicare program, we proposed to modify the GROUPER program, to the extent feasible, to recognize any new ICD–9–CM codes adopted in the future by the ICD–9–CM Coordination and Maintenance Committee and, in most cases, to classify discharges with such codes initially in the same DRG as the previous coding assignment. That is, any coding changes adopted by the committee prior to July 1, 1986 would be included in the Medicare GROUPER program for Federal fiscal year 1987 (October 1986 through September 1987), but would not necessarily result in changes to the classification of cases using these new codes. In addition, we indicated that we would consider interim revisions of the GROUPER to recognize new ICD–9–CM codes, should the volume of cases indicate it is appropriate. Because the use of most new ICD–9–CM codes would not result in DRG classification changes initially, the new codes would not be published for public comment. Of course, should reclassification become necessary, we stated we would follow the procedures set forth at § 412.10 of the regulations.

D. Effective Dates

We proposed that the changes in DRG classification and adoption of new ICD–9–CM codes set forth in the proposed notice would become effective for discharges occurring on or after October 1, 1986.

III. Summary of Comments on Proposed Notice

We received 19 public comments concerning changes to the DRG classification system. These comments were from health care associations, hospitals, The Prospective Payment Assessment Commission (ProPAC),

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[1] Complications or comorbidities is henceforth abbreviated C.C.

physicians and physician associations, businesses, researchers, and medical record administrators. ProPAC incorporated by reference its recommendations on DRG classifications included in its April 1, 1986 report to the Secretary. These recommendations are discussed in detail in the proposed rule setting forth PPS rate and changes for fiscal year 1987.

In addition to the specific comments discussed in sections IV through VII, below, we received some comments of a general nature.

Comment: One commenter expressed concern with our failure to provide what he believes to be sufficient information on changes affecting the Medicare program and the inadequate time period given to the industry to respond. The commenter recommended that full disclosure be made of the methodologies, criteria, calculations, supporting documentation and underlying assumptions used to reach conclusions. He stressed the need for independent evaluation of proposed changes using non-billing abstract data such as that maintained by CPHA. Finally, he requested that revised software and associated documentation be made available to the industry prior to the publication of final changes.

Response: We responded to a similar concern regarding availability of data in the September 3, 1985 final rule on the prospective payment system (50 FR 35657). As we pointed out in that publication, we have not provided the level of detail requested by the commenter due to the fact that such data is quite voluminous and would be of limited interest to the majority of readers. We believe we provided information in sufficient detail to allow for informed public comment. In this regard, we believe we have complied with the Administrative Procedure Act (5 U.S.C. 553). Moreover, more detailed information is available, to the extent it is disclosable under the Freedom of Information Act, to interested parties upon request.

We do not believe it is necessary or appropriate to revise GROUPER software prior to the publication of final changes based on proposed changes. This process could involve substantial costs in modifying and testing software for proposed changes that may never occur. Further, were we to develop the software changes at the time of a proposed notice, making classification changes beyond those originally proposed as a result of public comments or ProPAC's recommendations would further increase the number of software modifications necessary. Duplicating software modification costs by preparing one revision of GROUPER for proposed changes and a final revision to GROUPER once the final rule is prepared clearly is not cost effective.

Based on the specificity contained in the proposed notice, interested parties can identify cases that would be moved and assess how they would be affected. We believe this is sufficient to allow the industry to evaluate proposed changes.

Further, we do not agree that independent evaluation of the Medicare DRG classification system using non-Medicare claims data is necessary or advisable. As we pointed out in the June 10, 1985 Federal Register (50 FR 24373), "other payors of health care services that may be interested in using a hospital prospective payment system should recognize that DRG classifications and weights developed from Medicare discharges may not be appropriate for use in the payment of non-Medicare cases." We continue to believe it is inappropriate to revise the Medicare DRGs based on analysis of their effect on non-Medicare patient populations.

Finally, with regard to the length of the comment period, we emphasize that we recognize the importance of affording the public the opportunity to analyze the many issues raised in the document and to express their views. However, givens our commitment to publish a final DRG reclassification notice prior to or simultaneous with the proposed rule setting forth prospective payment system rates and changes for FY 1987, we had little alternative to limiting the comment period to 30 days. In order to analyze as many issues as possible and provide as complete a document as possible, extensive lead time is necessary. If we published the proposed notice earlier so as to provide for a longer comment period, it is likely that fewer classification changes would be considered because the time available to perform necessary analysis would be reduced. Finally, we note that the March 13, 1986 notice proposed only a small number of changes. We believe 30 days should be sufficient time to review and comment upon these few issues. We should point out, however, that comments are accepted and considered at any time, not just during the formal public comment period. Any proposed DRG classification changes should be made in writing. They should state succinctly the issue of concern. Any rationale for the change or supporting documentation should be included in the proposal and sent to the following address: The Health Care Financing Administration, Department of Health and Human Services, Grouper Changes, P.O. Box 26681, Baltimore, Maryland 21207.

IV. Comments and Responses on Proposed DRG Classification Changes

A. MDC 2: Diseases and Disorders of the Eye

Comment: One commenter disagreed with our position regarding classification of lens extractions involving anterior chamber injections to DRG 39 (Lens Procedures). The commenter believes that since DRG 42 procedures (Intraocular Procedures Except Retina, Iris and Lens) are ordered above lens procedures in the surgical hierarchy, lens procedures involving anterior chamber injections should be classified based on the higher weighted procedure. The commenter believes the current classification penalizes hospitals for clinical problems of their patients over which they have no control.

Response: We continue to believe, based on our analysis of the data, that anterior chamber injections in lens extractions cases are incidental procedures. As such, they should not drive the DRG classification of the cases. Moreover, we believe that it is clinically inconsistent to classify lens extraction cases to a DRG which specifically excludes lens procedures.

In addition, were we to classify lens extraction cases involving anterior chamber injection to DRG 42, they would represent approximately 15 percent of the total volume of cases in this DRG. To the extent that the average charge for such cases is lower than the average charge for intraocular procedures currently assigned to DRG 42, such a process would inappropriately reduce the weighting factor for this DRG.

B. MDC 5: Diseases and Disorders of the Circulatory System

Comment: One commenter objected to our decision (set forth in the September 3, 1985 final rule) to reclassify all procedures coded 360 (removal of coronary artery obstruction) that do not require a heart pump to DRG 112 (Vascular Procedures Except Major Reconstruction, Without Pump). He recommended instead that an edit be performed on all procedures coded 360. Only those cases involving percutaneous transluminal coronary angioplasty (PTCA) should be classified to DRG 112.

Response: The ICD-9-CM Coordination and Maintenance Committee has approved a unique code for PTCA. GROUPER will recognize and

assign such cases to DRG 122 effective for discharges on or after October 1, 1986. The new procedure code for open chest coronary angioplasty will be reassigned to DRG 106 as it was before the FY 86 change. Thus, cases involving open chest coronary angioplasty, such as endarterectomy, will be assigned to DRGs 106 (Other Cardiovascular or Thoracic Procedures, With Pump) or 109 (Cardio Thoracic Procedures Without Pump) depending upon the use of extracorporeal circulation. Since this issue will be remedied within a few months, we do not believe it is necessary to develop the edit procedure suggested.

Comment: One commenter suggested that the problem with the pacemaker DRGs 115, 116, 117, and 118) may be related to ICD-9-CM limitations rather than with proper application of existing codes.

Response: We agree that the ICD-9-CM procedure codes for pacemaker implantation and revision need review and may need modification. The ICD-9-CM Coordination and Maintenance Committee is evaluating this issue in conjunction with the recommendation presented by ProPAC.

If revised codes are adopted prior to July 1, 1986, they will be recognized by the GROUPER program for discharges on or after October 1, 1986.

Comment: One commenter expressed concern that the difficulty with the weight for several of the DRGs in MDC 5 was related to both a misunderstanding of coding guidelines and the quality of PRO review when applying the guidelines. He specifically cited the increase in the number of cases assigned to DRG 140 (Angina Pectoris) as evidence of this problem. However, no specific information was provided as to which coding guidelines were being misapplied.

Response: We share the commenter's concern that appropriate coding guidelines be consistently applied in reporting diagnoses and procedures on Medicare claims. As the commenter points out, inappropriate coding of cases can adversely affect the homogeneity of the DRGs and produce inappropriate weighting factors at recalibration.

This is largely an educational problem that requires the cooperation of the industry as well as the government to correct. We have been working with the American Hospital Association's editorial advisory board for the *Coding Clinic for ICD-9-CM* in reviewing and reemphasizing appropriate coding guidelines. We also participate on the ICD-9-CM Coordination and Maintenance Committee, which has as one of its missions educational activities related to appropriate use of ICD-9-CM codes. In addition, each PRO is being required to include a registered record administrator (RRA), or accredited record technician (ART) as the individual responsible for the overall DRG evaluation process and will utilize individuals trained and experienced in ICD-9-CM coding to perform the DRG validation process. Finally, we have established an internal coding workgroup to review coding issues. Through all these avenues, we are striving to improve the quality of data available for analysis or classification issues and recalibration of the DRGs. However, without specific information on which coding guidelines are being misapplied in these cases, we are not able to assist in correction of the alleged problem.

Comment: One commenter noted that in his review of hospital records, he found that physicians were recording thrombophlebitis when the medical record documentation indicated thrombosis was present. He believes that lack of specificity on the part of the attending physician is largely responsible for the disparity in the weighting factors for DRGs 129 (Deep Vein Thrombophlebitis) and 130 (Peripheral Vascular Disorders; Age Over 69 and/or C.C.) which are .9456 and .9254, respectively. He recommended further study in this area.

Response: We support the commenter's concern that physicians be attuned to accuracy and specificity in description of a patient's diagnosis. This is an educational problem that cannot be addressed by HCFA alone. Rather, improvement in this area requires the support of the entire medical community. Educational activities conducted by hospitals and reports in medical journals are likely to be more successful in this regard than any action on the part of the government. However, the Utilization and Quality Control Peer Review Organizations (PROs) do correct claims data and make educational contacts with physicians and hospital staff when they discover errors or lack of specificity in recording diagnosis and procedures.

However, we should note that certain types of both thrombosis and thrombophlebitis are included in both DRGs 128, 130, and 131. For example, both vena cava thrombosis (diagnosis code 4532) and thrombophlebitis leg, not otherwise specified (diagnosis code 4512) are included in DRG 128, while both venous thrombosis, not otherwise specified (code 4539) and thrombophlebitis, not otherwise specified (code 4519) are classified into one of the DRG pair 130–131 (Peripheral Vascular Disorders). Thus, it is not clear that the coding problem cited by the commenter is responsible for the minimal difference in the weighting factors for these DRGs.

Comment: One commenter objected to the length of stay data for infective endocarditis and osteomyelitis. The commenter stated that texts recommend a minimum interval of therapy for osteomyelitis of 28 days and for infective endocarditis of 28 to 42 days. He believes that the weighting factors are based on 12 and 18 days of care respectively, and therefore encourage premature discharge of a patient or force hospitals to incur substantial losses.

Response: The crux of this commenter's concern centers on the recurring issue of inappropriate reference to the length of stay data. The DRG classification system has established separate DRGs for acute and subacute endocarditis (DRG 126) and osteomyelitis (DRG 238). The weighting factors for these DRGs are based on average standardized hospital charges for all Medicare cases with these diagnoses. Consequently, payment levels reflect resources used in the actual average treatment patterns for such cases.

While it is true that the geometric mean length of stay, which is used only for purposes of calculating outlier or transfer payments, shows mean lengths of stay for endocarditis and osteomyelitis of 18.1 and 11.1 days, respectively, the arithmetic mean length of stay for each of these DRGs is considerably higher (23.8 and 15.8, respectively), indicating that there are some very long stays in these DRGs. As we have stated many times, the mean length of stay data for any DRG are not intended to reflect treatment protocols. Rather, each patient should be treated based on his or her medical needs.

We also wish to point out that during 1985 ProPAC investigated a similar allegation concerning treatment of infective endocarditis. They discovered, "It appears that the arithmetic mean length of stay for patients being treated for infective endocarditis was appropriate." (Technical Appendixes to the Report and Recommendations to the Secretary, U.S. Department of Health and Human Services April 1, 1986, page 60, topic number 17–85.)

C. MDC 6: Diseases and Disorders of the Digestive System

Comment: One commenter objected to our analysis concerning our decision not to include procedure code 5499 (abdominal region operation, not elsewhere classified) as an operating

room procedure. The commenter acknowledged that the code is broad in scope and covers a number of procedures, some of which do not require use of an operating room. However, he believes this should not be used to penalize hospitals. He also recommended that percutaneous extraction of common duct stones (procedure code 5196) be added to the list of operating room procedures.

Response: The problem of broad procedure codes that are used to identify numerous kinds of procedures, only some of which require an operating room, affects numerous DRGs. We are studying this issue generically, rather than on a DRG-specific level. We are working to develop an administrative mechanism whereby we can identify procedures that involve the use of an operating room, percutaneous approaches, endoscopic methods, etc. If such a mechanism is adopted, the DRGs may be revised accordingly once data are available.

D. MCD 8: Diseases and Disorders of the Musculoskeletal System and Connective Tissue

Comment: One commenter reemphasized the need for separate DRGs involving multiple procedures. He specifically recommended that multiple limb reattachments be classified into DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremities).

Response: We believe the creation of separate DRGs for multiple procedures is best addressed on an individual basis, although we would note that the general issue of additional resources associated with multiple procedures is being considered in our research on severity of illness. With regard to the specific need to include multiple limb reattachments into DRG 471, we will investigate this matter using more recent Medicare data and report our findings in the future.

Comment: One commenter continues to believe that replacing or repairing a major joint prosthesis should be assigned to DRG 209 (Major Joint and Limb Reattachment Procedures), rather than to one of the DRG pair 442–443 (Other O.R. Procedures for Injuries), in MDC 21. He argues that the procedures are equivalent from a resource perspective and that the differences are merely semantic.

Response: We must emphasize that the DRG classification system is a *diagnosis* based system, not a procedure based classification system. As we have pointed out previously, we can consider reclassification actions only to the extent that they comport with the basic framework of the classification system. Given the way the ICD-9-CM classification system is structured, numerous procedure and diagnosis codes may affect multiple organ systems. For example, infections, poisoning, toxic effects of drugs, burns, shock, and complications all may affect multiple organ systems. The DRG system responds to these multiple system diagnosis codes through the creation of several MDCs that are not organ-system specific, such as MDC 21 (Injury, Poisoning and Toxic Effects of Drugs), MDC 22 (Burns), MDC 23 (Factors Influencing Health Status), etc.

Moreovgr, the DRG system is structured so that each diagnosis code occurs in only one MDC. Thus, were we to reassign the nonspecific complication codes to MDC 8, all complications would be assigned to the musculoskeletal system, regardless of what organ was affected. Such an occurrence would seriously disrupt the clinical coherence of the DRGs as well as the homogeneity of resources associated with the DRGs. However, if future revision of the coding system should permit more precise identification of the organ system involved in infection and complication diagnoses, we will consider classification changes at that time.

Comment: One commenter noted ProPAC's recommendation (Recommendation 32: Upper Extremity Procedures on page 55 of ProPAC's April 1, 1986 Report) concerning reclassification of hand procedures. The commenter urges HCFA to adopt ProPAC's suggested classification.

Response: We believe the ProPAC recommendation has merit and are proposing to adopt reclassification of DRGs 223–224 (Upper Extremity Procedures Except Humerus and Hand) 228 (Ganglion (Hand) Procedures), and 229 (Hand Procedures Except Ganglion). For further details on this issue see the proposed rule on PPS changes for FY 1987.

E. MDC 9: Diseases and Disorders of the Skin, Subcutaneous Tissue, and Breast

Comment: One commenter continues to object to the addition of procedure codes 0722 (unilateral adrenalectomy), 073 (bilateral adrenalectomy), 0763 (partial excision of pituitary gland), 0769 (total excision of pituitary gland), and 6561 (removal of both ovaries and tubes at same operative episode) to the DRG pair 269–270 (Other Skin, Subcutaneous Tissue, and Breast O.R. Procedures), contending that they change the clinical homogeneity of the DRGs.

Response: We have responded to this comment in both the September 3, 1985 and March 13, 1986 Federal Registers. We continue to believe this change is appropriate. Unless presented with specific evidence, as opposed to a mere allegation, that homogeneity is altered, we do not have a basis to study this issue further. We should point out that when we compared the effect of this change to retaining the FY 1985 classification structure, we found that the addition of all 10 procedures to DRG 269 resulted in 886 cases being assigned to this DRG, in addition to the 19,553 cases that would have been assigned absent these changes. The average standardized charge of DRG 269 was altered by less than 3 percent as a result. The change impacted DRG 270 by adding 431 cases, with only a one-percent resulting change in the average standardized charge. We believe the minimal effect of these changes supports our conclusion that addition of these procedures is appropriate.

F. MDC 10: Endocrine, Nutritional and Metabolic Diseases and Disorders

Comment: One commenter objected to a change in GROUPER logic that was included in the September 3, 1985 final rule pertaining to classification of diabetes mellitus. Basically, GROUPER now classifies diabetic cases with a manifestation of a disease process, which is coded using one of the combination codes in the 250 series, into the organ system in which the disease manifestations occur. The commenter objected to this change with regard to reclassification of cases out of DRG 285 (Amputation of Lower Limb for Endocrine, Nutritional, and Metabolic Disorders). She believed amputations for diabetic patients should be classified to DRG 285 as they were previously.

Response: We can appreciate the commenter's desire that amputations on diabetic patients be classified into the highest weighted DRG. However, we do not believe it is appropriate to establish different GROUPER logic for manifestations of different disease in diabetic patients. That is, we do not believe it is appropriate to classify diabetic patients with renal manifestations into the kidney and urinary tract MDC, based on the renal manifestation, and diabetic patients with circulatory manifestations into the endocrine, nutritional and metabolic MDC, instead of the circulatory MDC. In order for a classification to be successful, it must be consistent in its basic underlying logic.

Although this logic change has resulted in classification to a lower weighted DRG in amputation cases, we should point out that in other cases the

change resulted in classification to higher weighted DRGs. For example, this change resulted in reassignment of Kidney transplants on diabetic patients from DRG 468 (weight of 2.4542) to DRG 302 (weight of 4.6273). In addition, we should point out that the reclassification of cases took place before the weights for the DRGs were recalibrated. In this regard, we note that the reclassification of diabetic patients with circulatory manifestation is largely responsible for the significant differences in the weighting factors for DRGs 113 (Amputation for Circulatory System Disorders Except Upper Limbs and Toe) and 285. The FY 1985 weighting factors for DRG 113 (2.6522) and DRG 285 (2.860) were much more closely aligned when diabetic patients with circulatory manifestations were included in DRG 285, than they were in FY 1986 when such patients were classified based on the manifestation (2.5406 for DRG 113 and 3.2724 for DRG 285.) Had diabetic patients with circulatory manifestations not been removed from DRG 285, the FY 1986 weight for this DRG would have been 2.7374.

G. MDC 11: Diseases and Disorders of the Kidney and Urinary Tract

Comment: One commenter complained about GROUPER logic. She noted that a patient admitted for a urinary tract infection could be classified into DRGs 320 (Kidney and Urinary Tract Infections; Age over 69 and/or C.C.). However, if this same patient also received a transurethral bladder biopsy, the case was classified into DRG 310 (Transurethel Procedures; Age over 69 and/or C.C.), which carries a lower weighting factor.

Response: We have received similar correspondence recently from other sources nothing what they consider to be an anomolous situation of surgical procedures driving classification of a case into a lower weighted. DRG than a medical DRG. We can appreciate the concern about this logic in those cases. However, given the construction of the DRG classification system, it is the presence or absence of surgical procedures, and not the level of weighting factors, that determines whether a case is clasified into a surgical or a medical DRG. Once cases are thus classified, it is the actual average resource intensity of cases in each DRG, relative to the average case in the average hospital, that determines the weighting factors. Revision of the basic GROUPER logic to ensure assignment of a surgical case to a medical DRG only when the medical DRG has a higher weighting factor would radically modify the entire classification structure and may create significant problems in other DRGs. Nonetheless, we will be investigating this issue further throughout the upcoming year.

Comment: One commenter submitted a detailed study of the cost of extracorporeal shock wave lithotripsy (ESWL). In the cases studied, Medicare payment at both DRGs 323 and 324 significantly understated the cost of ESWL. He recommended a separate DRG be established for ESWL cases.

Response: As we noted in the September 3, 1985 final rule, ESWL cases were classified into these DRGs on the basis of both clinical and resource-utilization considerations. That is, the procedure is noninvasive and, as such, belongs in a medical DRG. Moreover, the clinical course of patients treated with lithotripsy, particularly length of stay, more closely resembles that of nonsurgical rather than surgical patients in the renal MDC.

While the study presented interesting findings, the study's conclusions were based on data gathered from fifteen unidentified major medical centers. (There are over 50 hospitals currently providing ESWL.) We are not able to assure that such sampling is statistically valid, or that the study's results represent typical Medicare costs per case. Furthermore, the study's findings regarding the cost per case differed considerably from that of the ProPAC. We have decided, for the interim, to accept ProPAC's recommendation. (See full discussions in the proposed rule on PPS changes for FY 1987.)

H. MDC 12: Diseases and Disorders of the Male Reproductive System

Comment: One commenter noted ProPAC's recommendation concerning implantation of penile prostheses (Recommendation 28: Penile Protheses: page 53 of the April 1, 1986 report). The comment urged us to accept ProPAC's suggestion and establish a separate DRG for penile prosthesis implants.

Response: We do not believe it is appropriate to establish a separate DRG for implant of a penile prosthesis. Readers should see our response to this ProPAC recommendation in the proposed rule on PPS changes for FY 1987.

Comment: One commenter stated that clinical review of patients classified into DRGs 336 (Transurethral Prostatectomy) and 341 (Penis Procedures) support the greater resource intensity of the transurethral prostatectomy cases, given the intensity of ongoing therapy required by these patients. He continues to believe that patients undergoing both an internal urethrotomy and a transurethral prostatectomy should be assigned to DRG 336.

Response: FY 1984 data on Medicare beneficiaries indicate that penis procedures as currently grouped are slightly more intensive than transurethral prostatectomy cases. Should this relationship change, that is, should prostatectomies prove to be more resource-intensive than penis procedures at some time in the future, we would consider modifying the surgical hierarchy to reflect such change. At the present time, however, we do not believe it is appropriate to revise the classification system to provide less payment for cases involving both procedures than would have been available had the patient undergone the internal urethrotomy alone based on the clinical review of unspecified cases by a commenter. Consequently, we have not modified the DRG classifications based on this comment. Moreover, should this comment be arising out of concern that the geometric mean length of stay is lower for DRG 341 than for DRGs 336, we note that Medicare payment is not based on the actual length of stay unless the case meets the outlier threshold. In that regard, we note that the 16-day outlier threshold for DRG 341 is lower than the 18-day threshold for DRG 336. Consequently, outlier payments would be higher for DRG 341 than for 336, because cases would qualify earlier and the payment per day would be higher.

I. MDC 13: Diseases and Disorders of the Female Reproductive System

Comment: One commenter stated that she had modeled the classification changes for MDC 13. She noted that 59 percent of the cases studied that currently are assigned to one of DRGs 354 and 355 (Non Radical Hysterectomy; Age over 60 and/or C.C., and Age under 70 without C.C., respectively) were regrouped to DRG 356 (Female Reproductive System Reconstructive Procedure), which did not make sense clinically. She also noted that 25 percent of the patients who were regrouped into the new DRG 354 fell into this group because they had an incision of the uterus for the purpose of radium implantation, without further comment as to the impact of this observation.

Response: We are not aware of the exact methodology the commenter used in regrouping cases for purposes of her analysis. However, it appears that the methodology may be flawed. All patients currently grouped to DRGs 354 and 355 have undergone a hysterectomy, which is ordered above reconstructive procedures in both the current and proposed DRG surgical hierarchy.

Therefore, all of the hysterectomy cases would be searched out and assigned to DRGs 354, 355, 357, 358 or 359 before GROUPER would consider any reconstructive procedure that may also have occurred. In addition, since we suspect the methodology for analysis of this proposed change was flawed and since no conclusion was drawn from the comment concerning radium implantation, we are not able to respond to this portion of the comment.

J. MDC 14: Pregnancy, Childbirth, and the Puerperium

Comment: One commenter continues to object to the classification of any operating room procedure to MDC 14 (DRGs 378–384) and MDC 17 (DRGs 401, 402 and 403). The commenter believes that the logic that precludes classification to DRG 468 (Unrelated O.R. Procedure) in such cases violates the basic premise of the DRG system.

Response: There is little that we can add to our past responses on these issues. Our medical consultants have advised us that the nature of lymphoma is such that almost any surgical procedure can be performed in relation to the principal diagnosis. However, we are proposing other changes to these DRGs in response to ProPAC's recommendation. [See publication of proposed notice of PPS changes for FY 87].

With regard to MDC 14, it is so rare, especially among the Medicare population, to experience a case where none of the operating room procedures are related to the pregnancy principal diagnosis in appropriately coded claims that it was determined the classification to DRG 468 is unnecessary. We recognize that, despite the attendant risks, surgery is sometime unavoidable during pregnancy, particularly for medical emergencies. However, in most of those cases, the medical condition necessitating the surgery-and *not* the pregnancy-would be the principal diagnosis. We should point out that we are not aware of a single Medicare case for which assignment to DRG 468 would have occurred but for the GROUPER logic as it applies to surgical procedures.

We do not believe this logic violates the basic concept of the classification system. Rather, we believe this logic supports the concept of the establishment of DRG 468 as a unique classification category where none of the surgical procedures are related to the principal diagnosis.

K. MDC 15: Newborns and Other Neonates With Conditions Originating in the Perinatal Period

Comment: One commenter disagreed with our decision to remove diagnosis code 7746 (fetal/neonatal; jaundice, not otherwise specified) from the list of complications and comorbid conditions. He believes newborns afflicted with this condition consume substantially more resources.

Response: Due to the paucity of Medicare data on newborns, our decision in this regard was based primarily on the advice of our medical consultants. While it may be true that some newborns with severe fetal/neonatal jaundice require substantially more resources than other normal newborns, generally this is a transient physiologic condition with minimal resource impact. In addition, since this condition as a principal diagnosis, or as the only secondary diagnosis occurring with a principal diagnosis classified to DRG 391, is considered a normal newborn, it seems logical that this same diagnosis would not be viewed as a significant complication or comorbid condition.

Finally, when considered as part of the entire classification structure of MDC 15, it is very unlikely that the removal of diagnosis code 7746 from the list of complications and comorbidities alters the classification of any cases. Unlike most MDCs, which are partitioned based on the presence or absence of any C.C., MDC 15 is organized by type of C.C. Since fetal/neonatal jaundice, NOS (7746) has never been included in any of the complicated newborn and neonatal DRGs, its presence on the list of C.C.s would affect only cases assigned to other MDCs. In summary, we view the removal of diagnosis code 7746 from the list of C.C.s as a "housekeeping" change, in that its effect upon classification of cases should be negligible.

L. MDC 17: Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms

(See the Comment under MDC 14, which also refers to this MDC.)

Comment: One commenter continues to dispute our conclusion regarding DRG 410 (Chemotherapy). The commenter believes admissions for chemotherapy have historically been coded by the cancer diagnosis, not the chemotherapy. Therefore, the number of cases in the data base was not truly representative of the actual population of chemotherapy cases, which was therefore responsible for the low weighting factor.

Response: If a case is coded with cancer as the principal diagnosis, the claim would be paid in the appropriate DRG for the organ system in which the cancer occurred. Only cases for which chemotherapy is reported as the principal diagnosis are paid using the weighting factor for DRG 410. It would be extremely inappropriate for us to search out all cases in which chemotherapy was used for treatment of another principal diagnosis to be used in calculation of the weighing factor for DRG 410. We believe that the weighting factor for a particular DRG should be based exclusively on data from cases in that DRG relative to the average. We find no merit to the suggestion that the cost of chemotherapy in other DRGs be used for determining payment rates for DRG 410. Moreover, to the extent that the current weighting factor reflects coding practices that are no longer in use, the next recalibration of the DRG weights will reflect the relative resource intensity of cases as they were coded in the period from which the recalibration data base is drawn.

Comment: One commenter believes that our conclusions regarding DRGs 411 (History of Malignancy, Without Endoscopy) and 412 (History of Malignancy With Endoscopy) were based on erroneously coded data. He maintains that many hospitals did not routinely code endoscopies previously. He recommended a complete review of medical records should be initiated.

Response: If it is true that hospitals did not generally code endoscopic procedures in FY 1984, but have since modified coding, the data used in the next recalibration will reflect this. The weighting factors for DRGs 411 and 412, as for all other DRGs, were based upon the best data available at the time of the last recalibration. Any erroneous coding of data was beyond HCFA's control and will require further educational efforts on the part of coders, hospitals, and the PROs. Given the prospective nature of the prospective payment system, we do not believe it is necessary or appropriate to initiate a costly administrative review of the over 8,000 Medicare claims in these DRGs to verify if all endoscopic procedures were reported. Moreover, in light of the time period necessary to conduct such a review, it is quite likely that the next recalibration of the DRGs would take place simultaneously with or before such a review could be completed and the DRGs reweighted to correct for any coding errors.

M. MDC 20: Substance Use and Substance Induced Organic Mental Disorders

Comment: One commenter objected to the current policy regarding the exclusion of alcohol/drug hospitals and units. The commenter believes the current classification of the DRGs within MDC 20 has not been sufficiently tested. The commenter urged that the exclusion of alcohol/drug hospitals and units be extended until ProPAC has completed its evaluation of these DRGs.

Response: We addressed the issue of extension of the exclusion of alcohol/drug hospitals and units in the proposed rule setting forth changes to the prospective payment system for FY 1987. Readers are referred to that document for more information on our position in this regard.

N. MDC 23: Factors Influencing Health Status and Other Contacts with Health Services

Comment: One commenter believes that the alleged anomaly in the weighting factors for DRGs 465 (Aftercare With History of Malignancy as Secondary Diagnosis) and 466 (Aftercare Without History of Malignancy as Secondary Diagnosis) is due to coding errors.

Response: As with the responses to several previous comments, we do not believe it is necessary or appropriate to retrospectively review medical records of the claims in our data base to seek out coding omissions. A sample of Medicare claims are reviewed currently for DRG validity and coding accuracy. We believe review of current claims is more productive and valuable as an educational tool for PROs to identify and hospitals to correct coding problems. We simply do not have administrative funds available to intensively review medical records that are nearly 2 years old to test this commenter's hypothesis. As hospitals continue to improve coding of Medicare claims, the quality of program data on which future recalibrations are based will be superior, and the revised weighting factors in the future will reflect these differences. We will continue to work with the industry to educate medical records personnel on the importance of accurate, consistent and complete coding.

O. DRG 468: Unrelated OR Procedure

Comment: One commenter agreed with our decision not to establish a separate new technology DRG. However, the commenter urged that we develop an effective mechanism to respond to new technology more swiftly.

Response: We agree that it is important to respond to changing technologies promptly. We believe the establishment of the ICD-9-CM Coordination and Maintenance Committee will significantly contribute to our ability to be able to identify and gather necessary data on new technologies. In addition, we are considering the development of an administrative mechanism for ICD-9-CM procedure codes that would provide for more rapid recognition of new technologies. Once these processes are in place, we expect our ability to reflect new technologies in DRG assignment will be much more timely than in the past.

Comment: One commenter disagreed with our classification of lymphangioma and supported separate classification for lymphangioma and excision of lymphatic structure so that cases involving both would group to DRG 468. He said that current classification of the diagnosis does not take into account the location or complexity of the lymphangioma.

Response: We and other commenters continue to believe that lymphangioma treated surgically with excision of lymphatic structures should not be assigned to DRG 468. This DRG is appropriate only where none of the surgical procedures is related to the principal diagnosis. Clearly, excision of a lymphatic structure is related to treatment of lymphangioma in many cases, and, therefore, the treatment of this diagnosis with this procedure should not result in DRG 468 assignment.

Comment: One commenter supported an earlier comment pertaining to assignment of all pacemaker implants to DRG 115 or 116 rather than to DRG 468, regardless of the principal diagnosis. This commenter believes that continuing to assign pacemaker procedures to DRG 468 will adversely affect quality of care.

Response: As pointed out earlier, the fundamental principal of the DRG system is classification based on principal diagnosis. We do not believe it is appropriate to make an exception to this basic premise. In addition, we must point out that, while there is a substantial difference between the weighting factors for DRGs 115 and 468, the difference between the weighting factors for DRGs 116 and 468 is considerably smaller (.5167). Given the availability of outlier payments and the relatively low frequency of cardiac pacemaker cases assigned to DRG 468, we do not believe this decision will adversely affect the quality of services available.

Comment: One commenter stated that due to the enormous costs of transplants, the limited number of facilities performing them, and the realities of potential rejections, HCFA should develop a classification which accurately reflects the cost of performing re-transplants.

Response: We are continuing to study the impact of the DRG classification system on transplants and re-transplants. Until our analysis is completed we believe the current classification is an appropriate interim mechanism. If the results of our study indicate revision is necessary, changes will be proposed in the Federal Register for public comment.

Comment: One commenter disagreed with our decision not to include procedure code 8699 (Other operations on skin and substaneous tissue, not otherwise specified) as an O.R. procedure. He stated that "if procedure code 8699 must be used to describe any procedure that must be performed in an O.R., then the GROUPER must recognize this code as a valid O.R. procedure."

Response: The issue at hand is whether the case should be classified to a surgical DRG based on procedure code 8699 when no operating room procedure occurred. We continue to believe that, due to the variability in procedures coded as 8699, it is inappropriate to classify this an operating room procedure. As we have indicated elsewhere, we are working to develop an administrative approach that would permit us to further distinguish many types of procedures or approaches when several are identified by the same ICD-9-CM code.

V. Comments and Responses on New Coverage Decision

Comment: Six comments were received concerning our interim classification of Automatic Implantable Cardioverter—Defibrillators (AICDs). All commenters urged that classification to a lower weighted DRG not be considered. In addition, three commenters supported the creation of a new DRG exclusively for AICD.

Response: In the absence of a significant volume of claims data, we have decided to maintain classification of implantation of total system AICD cases to DRG 104 for Federal fiscal year 1987. A unique ICD-9-CM procedure code has been assigned to this procedure (see section VI) and appropriate GROUPER changes will be made to allow for the routine claims processing and data collection of such cases. We continue to be concerned with the appropriateness of

classification of this procedure into DRG 104. Once we have gathered sufficient Medicare data on this procedure, we will re-evaluate classification of this procedure. If the data indicate that DRG 104 classification is not appropriate, we will reclassify AICD cases as soon as practicable.

ProPAC had also recommended the creation of a new DRG devoted exclusively to AICD cases. We do not believe there is sufficient Medicare data as yet to permit appropriate evaluation of this proposal. We will consider this suggestion more fully in the future. For a more detailed explanation of our position in this regard, see our response to ProPAC comments in the proposed rule on prospective payment rates and changes for FY 1987.

VI. Comments and Responses on New Coding Changes

Comment: Two commenters objected to our decision not to publish precise ICD–9–CM rubrics for new codes for public comment. The commenters believe that, since new codes may ultimately contribute to DRG refinement, the codes should be subject to comment. One commenter also believes such a comment period would contribute to maintaining consistency and integrity of the coding system.

Response: We do not agree that it is necessary to publish the precise ICD–9–CM rubric for new codes for public comment. All proposed new ICD–9–CM codes are discussed at length in a public meeting of the ICD–9–CM Coordination and Maintenance Committee. The meetings are announced in the Federal Register and all interested members of the public are invited to submit agenda items, written comments and to attend the meeting.

Each past meeting has been attended by staff from ProPAC, the American Medical Records Association, the American Hospital Association, the Commission on Professional and Hospital Activities, as well as many other private parties. All comments presented, both oral and written, are considered by the Committee. We believe this process permits adequate opportunity for public input into the development of new ICD–9–CM codes.

In addition, the general areas for which new codes are being considered have been announced in the proposed notice of DRG classification changes. Further public comment on specific topics could be, and, in fact, was submitted for consideration at that time. In light of the fact that no DRG classification or payment changes are proposed, we do not feel it is essential to identify proposed ICD–9–CM rubrics in order to meet our commitment to the public of adequate notice and opportunity for suggestions. If, once the new codes are in use and data are available, we believe DRG refinement or classification change is appropriate, the proposed change will be published for review and comment in accordance with the procedures in § 412.10 of the regulations.

Comment: One commenter noted our statement that there are no explicit instructions or guidelines on coding bilateral procedures. The commenter suggested that we initiate action to establish such guidelines.

Response: As we also pointed out in the same discussion of coding bilateral procedures, it appears from review of claims data that the major portion of hospitals are coding the same procedure twice to indicate bilateral procedures. Consequently, we do not believe that in general hospitals are having difficulty coding bilateral procedures. Thus, this topic does not appear to represent a serious coding issue. Nonetheless, we have referred the commenter's recommendation to the ICD–9–CM Coordination and Maintenance Committee for consideration.

Comment: One commenter noted that new ICD–9–CM codes were proposed for cochlear prosthetic device implants. The commenter suggested specific ICD–9–CM rubrics and descriptions for appropriate identification of cochlear implants. He was particularly concerned that the new codes distinguish between single-channel and multi-channel devices.

Response: We share the commenter's concern that the new ICD–9–CM codes for cochlear prosthetic device implants adequately differentiate procedures with significant differences in resource utilization. The new codes for this procedure, as set forth below, allow for the identification of single, dual and not otherwise specified channel cochlear implants.

Comment: One commenter objected to the coding guideline that prohibits coding of surgical approaches. The commenter believes that coding of the surgical approach is often necessary to describe the procedure factually on the claim form to the Peer Review Organization (PRO). She specifically cited craniotomy and arthrotomy as issues.

Response: Volume 3 of the ICD–9–CM specifically directs that both arthrotomy (code 8016) and craniotomy (code 0124) not be coded when used as an operative approach. We do not believe the failure to code operative approaches in accordance with coding conventions interferes with appropriate PRO review of claims. The PROs have access to the medical records of patients in reviewing cases. The medical record should contain adequate information to allow the PROs to make appropriate determinations as to the medical necessity of the admission. In this regard, we would point out that the operative approach would be identified in the operating room report.

In addition, we would point out that coding of procedures used as surgical approaches can result in inappropriate DRG classification. For example, the coding of craniotomy when used as a means of access to perform cranial vascular or nerve procedures would result in classification of such cases to DRG 1 or 3 (Craniotomy Except for Trauma, Age Greater Than 17, and Craniotomy Under Age 18, respectively). Since DRG weighting factors are determined from past cases classified into each DRG, a preponderance of less intensive procedures classified into DRG 1 due solely to the coding of surgical approaches would inappropriately drive down the weight for this DRG. The result might be grossly inadequate payment for more intensive cranial procedures classified into DRG 1 or 3.

VII. Changes To Be Effective October 1, 1986

We are retaining, with slight modification, the provisions of the proposed notice, as discussed in section II. of this document.

A. DRG Classification Changes Resulting From Comment Process

1. *MDC 4: Diseases and Disorders of the Respiratory System.* Diagnosis code 4828 (Bacterial pneumonia not elsewhere classified) is removed from DRGs 89 (Simple Pneumonia and Pleurisy, Age over 69 and/or C.C.), 90 (Simple Pneumonia and Pleurisy; Age 18–69 without C.C.) and 91 (Simple Pneumonia and Pleurisy; Age 0–17). Code 4828 is included in DRGs 79 (Respiratory Infections and Inflammations Age over 69 and/or C.C.), 80 (Respiratory Infections and Inflammations, Age 18–69 without C.C.), and 81 (Respiratory Infections and Inflammations, Age 0–17).

2. *MDC 5: Diseases and Disorders of the Circulatory System.* Open chest coronary angioplasty (procedure code 3603) is assigned to DRG 109 (cardiothoracic procedures without pump). This procedure had previously been assigned to DRG 109, but had been removed in the September 3, 1985 reclassification changes due to the inability to distinguish it from PTCA through ICD–9–CM coding. Unique ICD–

9–CM codes have now been approved to distinguish the procedures; therefore, it is appropriate that open chest coronary angioplasty performed without extracorporeal circulation be classified to DRG 109.

3. *MDC 13: Diseases and Disorders of the Female Reprodcutive System.* We have revised the surgical hierarchy of this MDC, and, as proposed, have reconfigured DRGs 353, 354, 355, 357, 358, 359, 360, 361, and 362 to increase homogeneity and thus more accurately reflect resource intensity of cases assigned to these DRGs.

Unilateral vulvectomy (procedure code 7161) and bilateral vulvectomy (procedure code 7162) are removed from DRG 353 (Pelvic Evisceration, Radical Hysterectomy and Vulvectomy). These procedures are now assigned to DRG 360 (Vagina, Cervix and Vulva Procedures).

We are reconfiguring DRGs 354, 355, 357, 358, and 359 as follows:

- Uterus and adnexa procedures (except for incisional tubal interruption: procedure codes 6631, 6632, 6639, and 6663) are moved to the same section of the surgical hierarchy for MDC 13 as non-radical hysterectomies are currently in, above reconstructive procedures.
- Cases involving non-radical hysterectomies, uterus and adnexa procedures are divided into those with a principal diagnosis of malignancy and those without.
- Cases with a principal diagnosis of malignancy are further subdivided.

—Those with ovarian and adnexal malignancies (diagnosis codes 1830, 1832, 1833, 1834, 1835, 1836, 1839, 1858 and 2362) will be assigned to the new DRG 357 (Non-Radical Hysterectomy, Uterus and Adnexa Procedures, for Ovarian and Adnexal Malignancy).

—Those cases with a principal diagnosis of malignancy except ovarian and adnexal malignancy will be split on age and complications/comorbidities, and will be assigned to the new DRGs 354 and 355 (Non-Radical Hysterectomy, Uterus and Adnexa Procedures for Malignancy Except Ovarian/Adnexal Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

- Cases with a principal diagnosis of other than malignancy also are divided on age and complications/comorbidities, will be assigned to the new DRGs 358 and 359 (Non-Radical Hysterectomy, Uterus and Adnexa Procedures for Non-Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

We also are modifying DRGs 361 and 362 as follows:

- The procedure codes for incisional tubal interruption (6631, 6632, 6639 and 6663) are moved from DRG 359 and the uterine and adnexa part of the hierarchy to the laparoscopy section of the hierarchy.
- Cases involving these surgical procedures or laparoscopy (code 5421), are assigned to DRG 361.
- Cases involving endoscopic tubal interruption (procedure codes 6621, 6622, and 6629) are moved below the D & C, conization and radioactive implant section of the surgical hierarchy and are assigned to new DRG 362 (Endoscopic Tubal Interruption).

In order to accomplish this reconfiguration, it was necessary to reorder the surgical hierarchy of MDC 13. The revised surgical hierarchy for MDC 13 is as follows:

- Pelvic evisceration, radical hysterectomy and radical vulvectomy (DRG 353);
- Uterus and adnexal procedures (DRG 354, 355, 357, 358 and 359);
- Reconstruction (DRG 356);
- Vagina, cervix and vulva (DRG 360);
- Laparoscopy and incisional tubal interruption (DRG 361);
- D and C, conization and radioimplant (DRG 363 and 364);
- Endoscopic tubal interruption (DRG 362); and
- Other female reproductive system operating room procedures (DRG 365).

4. MDC 20: Substance Use and Substance Induced Organic Mental Disorders. The titles of MDC 20 and DRGs 433 through 437 are revised. Wherever the term "substance" appears in those DRGs, the term "alcohol/drug" is substituted.

B. New Coverage Decisions

Effective for procedures performed on or after January 24, 1986, Medicare coverage was extended to implantation of cardiac defibrillators under certain circumstances. On an interim basis, we will assign this procedure to DRG 104 (Cardiac Valve Procedure with Pump and with Cardiac Catheter).

Discrete ICD–9–CM procedure codes for this new technology had not yet been adopted at the time of publication of the proposed notice, but the ICD–9–CM Coordination and Maintenance Committee now has adopted new ICD–9–CM procedure codes for the implantation of cardiac defibrillators. The new procedure codes will be incorporated into the GROUPER software and thus classified into the appropriate DRG for discharges occurring on or after October 1, 1986. For discharges prior to October 1, 1986, payment will be made for such claims only on a manual basis when accompanied by appropriate documentation.

C. New Coding Changes

The following new ICD–9–CM codes have been approved for use effective October 1, 1986.

Cochlear Prosthetic Device Implant

20.96 Implantation of cochlear prosthetic device, not otherwise specified
20.97 Implantation or replacement of chochlear prosthetic device, single channel
20.98 Implantation or replacement of cochlear prosthetic device, multiple channel

Removal of Coronary Artery Obstruction

36.00 Unspecified
36.01 Percutaneous transluminal coronary angioplasty (PTCA) without mention of thrombolytic agent
36.02 Percutaneous transluminal coronary angioplasty (PTCA) with thrombolytic agent
36.03 Open chest coronary angioplasty
36.04 Intracoronary thrombolytic infusion
36.09 Other specified

Cardioverter/Defibrillator

37.94 Implantation or replacement of cardioverter/defibrillator, total system
37.95 Implantation of cardioverter/defibrillator lead(s) only
37.96 Implantation of cardioverter/defibrillator pulse generator only
37.97 Replacement of cardioverter/defibrillator lead(s) only
37.98 Replacement of cardioverter/defibrillator pulse generator only

Resection of Vessel with Replacement

(removal of the section mark allows the following unique fourth digit subclassification)

38.44 Aorta, abdominal
38.45 Thoracic vessels

Percutaneous Nephrostomy

55.03 Percutaneous nephrostomy without mention of fragmentation
55.04 Percutaneous nephrostomy with fragmentation of stone

Artificial Urinary Sphincter Implant

59.93 Implantation of artificial urinary sphincter (AUS)

Extracorporeal shockwave lithotripsy (ESWL)

59.96 Extracorporeal shockwave lithotripsy (ESWL)

Penile Prostheses

64.95 Insertion or replacement of internal non-inflatable prosthesis of penis
64.97 Insertion or replacement of internal inflatable prosthesis of penis

Chemonucleolysis

80.50 Excision or destruction of intervertebral disc, not otherwise specified
80.51 Excision

80.52 Chemonucleolysis
80.59 Unspecified

Magnetic Resonance Imaging (MRI)

88.90 Unspecified
88.91 Magnetic resonance imaging of brain and brain stem
88.92 Magnetic resonance imaging of chest and myocardium
88.93 Magnetic resonance imaging of spinal canal and contents, cervical, thoracic, and lumbar
88.94 Magnetic resonance imaging of musculoskeletal
88.95 Magnetic resonance imaging of pelvis, prostate and bladder
88.99 Magnetic resonance imaging, other and unspecified sites

As we pointed out in the March 13, 1986 proposed rule, these new codes will not result in DRG classification changes. Consequently, these new codes will be classified into the same DRGs that the procedure is currently classified using the previous coding rubric. We note that magnetic resonance imaging is not considered an operating room procedure and, therefore, will not affect the DRG classification of a case.

In order to prevent the unwarranted delay of recognition of new codes by the Medicare program, we will modify the GROUPER program, to the extent feasible, to recognize any new ICD–9–CM codes adopted in the future by the ICD–9–CM Coordination and Maintenance Committee and, in most cases, to classify discharges with such codes initially in the same DRG as the previous coding assignment. That is, any coding changes adopted by the committee prior to July 1, 1986 will be included in the Medicare GROUPER program for Federal fiscal year 1987 (October 1986 through September 1987), but will not necessarily result in changes to the classification of cases using these new codes. (See the proposed notice of PPS changes for FY 1987 for a list of other diagnoses and procedures for which new ICD–9–CM codes are being considered.) Coding changes approved subsequent to July 1, 1986 will be accommodated in future revisions of the GROUPER program. We will consider interim revisions of the GROUPER to recognize new ICD–9–CM codes, should the volume of cases indicate it is appropriate. Because the use of most new ICD–9–CM codes will not result in DRG classification changes initially, the new codes will not be published for public comment. Of course, should reclassification become necessary, we stated we would follow the procedures set forth at § 412.10 of the regulations.

D. Effective Dates

The changes in DRG classification and adoption of new ICD–9–CM codes are effective for discharges occurring on or after October 1, 1986.

VIII. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for notices such as this if the implementation of the notice would meet the criteria of a "major rule". A notice would be considered a major rule if its implementation would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These changes to the DRG classification system and GROUPER program will not meet any of these criteria. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We prepare and publish a regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), for notices such as this unless the Secretary certifies that implementation of the notice would not have a significant economic impact on a substantial number of small entities. We treat all hospitals under the prospective payment system as small entities for purposes of the RFA. Therefore, this notice clearly would affect a substantial number of small entities. However, it is our practice not to consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least 3 percent. These changes to the DRG classification system and the GROUPER program would not have results meeting this threshold. Therefore, we have determined and the Secretary certifies that a regulatory flexibility analysis is unnecessary.

IX. Information Collection Requirements

This final rule contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Secs. 1102, 1871, and 1886(d)(4) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww(d)(4)); 42 CFR 412.10)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: May 27, 1986

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: May 28, 1986.

Otis R. Bowen,
Secretary.

[FR Doc. 86–12286 Filed 5–29–86; 1:52 pm]
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Tuesday
June 3, 1986

Part V

Office of Science and Technology Policy

Proposed Model Federal Policy for Protection of Human Subjects; Response to the First Biennial Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research; Notice

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Proposed Model Federal Policy for Protection of Human Subjects; Response to the First Biennial Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Notice of proposed model policy for department/agency implementation.

SUMMARY: This Notice sets forth the Office of Science and Technology Policy response to the recommendations in the *First Biennial Report* of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. This response, made on behalf of all affected federal departments and agencies, is based on the work of the *Ad Hoc* Committee for the Protection of Human Research Subjects and further deliberations of the Interagency Human Subjects Coordinating Committee. The *First Biennial Report* was published in the Federal Register on March 29, 1982 (47 FR 13272–13305). Responses of the *Ad Hoc* Committee were reviewed by the Science Advisor to the President and, with some modifications, accepted by affected department and agency heads in May 1985. This Notice includes in response to the first and most important recommendation, a Model Federal Policy for the Protection of Human Research Subjects (Model Policy) involved in research conducted, supported or regulated by federal departments and agencies. The Notice also contains a list of departments and agencies that intend to adopt the Model Policy and describes what, if any, departures from the Model Policy departments and agencies propose to make at the time of their policy implementation in order to meet particular statutory requirements or program needs.

Public comment and that of the federal departments and agencies is requested on the Proposed Model Policy, proposed department and agency departures, and other aspects of this Notice. Based upon these comments, a Final Model Policy will be published in the Federal Register. Each department and agency will expeditiously and in a coordinated fashion promulgate the Final Model Policy through its normal procedures for implementing such policies, e.g., through publication of regulations in the Federal Register.

DATES: Comments must be received on or before August 4, 1986. The Interagency Human Subjects Coordinating Committee will consider these comments and refer them to the Office of Science and Technology Policy for use in development of a Final Model Policy and to departments and agencies for use in their policy implementation.

ADDRESSES FOR COMMENT AND FURTHER INFORMATION: Comments and requests for further information should be addressed to: Joan P. Porter, Staff Director, Interagency Committee for the Protection of Human Subjects, Building 31, Room 4B09, Bethesda, Maryland 20892 (301–496–7041). Please specify which recommendations or sections of the Model Policy to which the comments pertain.

John P. McTague,

Acting Director, Office of Science and Technology Policy.

SUPPLEMENTARY INFORMATION:

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- Background
- Office of Science and Technology Policy Response to the *First Biennial Report* of the President's Commission
- Proposed Model Federal Policy for Protection of Human Research Subjects
- Concurrences of Department and Agency Heads and Proposed Departures from the Model Policy

Background

The President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research was established on November 9, 1978, by Pub. L. 95–622. One of the charges to the President's Commission was to report biennially to the President, the Congress, and appropriate federal departments and agencies on the protection of human subjects of biomedical and behavioral research. In carrying out that charge, the President's Commission was directed to conduct a review of the adequacy and uniformity (1) of the rules, policies, guideline, and regulations of all federal departments and agencies regarding the protection of human subjects of biomedical or behavioral research which such departments and agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such agencies, such review to include appropriate recommendations for legislation and administrative action.

In December 1981 the President's Commission issued its *First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects.* In transmitting the Report to the President, Morris B. Abram, Chairman of the Commission noted:

> The Commission does not propose any major changes in the substance of the rules on human research, although a number of adjustments are recommended to recognize the flexibility needed by research institutions, particularly in responding to allegations of wrongdoing or other problems. We also propose a simple improvement in the reports filed by researchers, to provide information on the number of subjects and on any that are adversely affected by participation in a research project.
>
> The Commission does recommend one major organizational change, namely that a uniform core of regulations be adopted, based upon the present rules of the Department of Health and Human Services, and that HHS become the lead agency in this field. This consolidation would eliminate needless duplication in the rules of the 23 other Federal entities that support or regulate research, thereby simplifying both local compliance with the rules and Federal oversight of the system. Copies of this report are being sent to all affected Federal agencies, with a request for action, pursuant to the Commission's enabling legislation.

In accord with Pub. L. 95–622, each federal department or agency which receives recommendations from the President's Commission with respect to its rules, policies, guidelines or regulations, must publish the recommendations in the Federal Register and provide an opportunity for interested persons to submit written data, views and arguments with respect to adoption of the recommendations. On March 29 1982, (47 FR 13272–13305) the Secretary, HHS, published the report on behalf of all the departments and agencies affected by the recommendations.

In May 1982 the Chairman of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET), appointed an *Ad Hoc* Committee for the Protection of Human Research Subjects under the auspices of the FCCSET. The Committee, chaired by Dr. Edward N. Brandt, Jr., Assistant Secretary for Health, HHS, was composed of the representatives and *Ex Officio* members of affected departments and agencies. In consultation with the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget, the *Ad Hoc* Committee, after considering all public comments, developed responses to the recommendations of the President's Commission. After further review and refinement, OSTP responded on behalf of all affected department and agency heads to the recommendations of the President's Commission.

The first and most far-reaching recommendation of the President's Commission resulted in the development of a Proposed Model Federal Policy for the Protection of Human Research Subjects based on the January 1981 HHS regulations for the protection of human subjects (45 CFR Part 46):

> The President should, through appropriate action, require that all federal departments and agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR Part 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions.

The *Ad Hoc* Committee agreed that uniformity is desirable among departments and agencies to eliminate unnecessary regulation and to promote increased understanding and ease of compliance by institutions that conduct federally supported or regulated research involving human subjects. Therefore, the *Ad Hoc* Committee developed a Model Policy, which applies to research involving human subjects that is conducted, supported or regulated by federal departments and agencies. In accordance with the Commission's recommendation, the Model Policy is based on Subpart A of the regulations of the Department of Health and Human Services (HHS) for the protection of human research subjects (45 CFR Part 46). The Proposed Model Policy developed by the *Ad Hoc* Committee was later modified by OSTP to enhance uniformity of implementation among the affected federal departments and agencies and to provide consistency with other related policies. The revised Policy was concurred in by all affected federal departments and agencies heads in March 1985.

The President's Commission also recommended that the President authorize and direct the Secretary, HHS, to designate an office with governmentwide jurisdiction to coordinate, monitor and evaluate the implementation of all federal regulations governing research with human subjects. For the reasons set forth in its response, the *Ad Hoc* Committee recommended that the Office for Protection from Research Risks (OPRR), National Institutes of Health, serve in a federal coordinating role for the protection of human subjects. The Director, OPRR, chairs the Interagency Human Subjects Coordinating Committee described below.

The Proposed Model Policy and the other responses to the President's Commission accepted by OSTP and the affected department and agency heads, are set forth below. After a public comment period and publication of a Final Model Policy, each department and agency will promulgate the Model Policy expeditiously through whatever procedures are normally utilized for the implementation of policies or regulations, e.g. through publication as regulations in the Federal Register. Instances in which the policies of certain departments and agencies propose to depart from the Model Policy during their rulemaking or other implementation processes to accommodate statutory or program requirements are also described herein.

The Interagency Human Subjects Coordinating Committee chartered in October 1983 under the auspices of FCCSET, is composed of representatives of all federal departments and agencies that conduct, support or regulate research involving human subjects. The Committee is advisory to department and agency heads, and among other responsibilities, evaluates the implementation of the Model Policy and recommends changes as necessary. OSTP responses to the recommendations of the President's Commission based on the report of the *Ad Hoc* Committee; the Proposed Model Policy; and the concurrences and intended departures of each affected federal department or agency head are presented below.

Response to Recommendations of the President's Commission

Response of the Office of Science and Technology Policy (OSTP) to the recommendations of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research in *Protecting Human Subjects; the First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation for the Protection of Human Subjects in Biomedical and Behavioral Research* (December 1981).

This response is based on the work of the *Ad Hoc* Committee for the Protection of Human Research Subjects of the Federal Coordinating Council for Science, Engineering, and Technology which was modified to incorporate OSTP policy considerations in and accepted by affected Federal department and agency heads in June 1984.

Recommendation 1

> *The President should, through appropriate action, require that all federal departments or agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR Part 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions.*

(A timetable of 180 days should be established by the President to provide an incentive for the interagency group to resolve any remaining questions about the HHS core regulations and identify an initial set of special rules beyond the core that are needed by various departments and agencies. If action is not prompt, the Commission suggests that Congress enact legislation directing the Executive branch to establish by a specified date a uniform set of regulations under a lead agency.)

The *Ad Hoc* Committee agreed in principle with this recommendation and developed a Model Federal Policy (Model Policy) statement based upon adaptations of HHS regulations for the protection of human subjects involved in research (45 CFR Part 46). The Office of Science and Technology Policy has made several modifications to increase uniformity of procedures among the federal departments and agencies and to increase compatibility with other current federal policies.

The Model Policy represented the *Ad Hoc* Committee's attempt to meet the concerns of the Commission that unnecessary and confusing regulations impose burdens on institutions that conduct or support research involving human subjects. The Committee attempted to make the Model Policy consistent with the HHS regulations while allowing for flexibility and adaptability in its application to the programs of diverse federal departments and agencies.

The *Ad Hoc* Committee believed that, insofar as possible, federal departments and agencies should employ consistent policies and procedures in dealing with nonfederal research institutions. Accordingly, the Model Policy was drafted in a mode that strives for uniformity in assurance and certification procedures; in all matters pertaining to the establishment, membership, functions and responsibilities of Institutional Review Board (IRBs); and in procedural requirements including informed consent. Nevertheless, the Model Policy will allow agencies to continue to utilize time-tested directives and procedures in the conduct of their intramural research so long as these procedures are consistent with the Model Policy and adequately protect the rights and welfare of human research subjects.

Similarly, the Policy is designed to apply to research conducted, supported or regulated by United States departments or agencies in foreign situations. However, department or agency heads may accept other recognized standards in lieu of this Policy so long as these standards offer at least equivalent protections for research subjects.

The *Ad Hoc* Committee concurred with the findings of the President's Commission that there is already close correlation between the major provisions of the HHS regulations and current policies and procedures of other federal departments and agencies for protecting human subjects. The Model Policy is intended to further reduce the diversity so that nonfederal research institutions will not have to face inconsistent or contradictory requirements in their dealings with federal departments and agencies. The *Ad Hoc* Committee fully expected that adoption of the Policy will reduce the administrative burdens on institutions that conduct research involving human subjects.

The Model Policy document has been drafted in the form of a policy statement rather than in the form of a regulation so that it may be referenced by departments and agencies that will implement the Policy within a reasonable time and in a manner customary to each department or agency. In the future, department or agency heads may amend their policies so long as they note in advance in the Federal Register or other appropriate publications the way in which their amendments relate to provisions of the Model Policy.

Assuming a department or agency adopts the Model Policy it will retain the flexibility to waive individual requirements if waiver decisions are published in advance in the Federal Register or other appropriate publication. The *Ad Hoc* Committee believed that instances of waiver will be infrequent, and the requirement that each waiver be published will prevent inappropriate use of the waiver authority.

Highlights of key elements of the Model Policy for federalwide use are as follows:

Consistency with HHS Regulations

As noted previously, the *Ad Hoc* Committee Model Policy is patterned after HHS regulations. The word "Secretary" has been changed to "department or agency head" throughout the draft. Most of the provisions of the following subject areas are the same in the Model Policy and HHS regulations:

(1) The characteristics of IRBs; (2) the role of IRBs in providing prior review of research protocols, including their duties and authorities in relation to investigators, to their institutions, and to the sponsors of research; (3) the standards and procedures that should govern IRB decision making and investigators' behavior; (4) the provisons of assuring compliance with the policy; (5) the procedures for expedited review; (6) the the provisions for obtaining and documenting informed consent; and (7) the provisions for early termination of research support and evaluation of applications. The following highlights the major areas in which there is a difference in the Model Policy and Current HHS regulations.

Applicability

Sec. 101(a) specifies that

. . . .[The policy] includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency whether or not it is regulated as defined in Sec. 102(e) must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in Sec. 102(e) must be reviewed and approved, in compliance with Secs. 101, 102 and 107 through 117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

It should be noted that federal support of an activity does not necessarily render the policy applicable to that activity. Federal "support" must be used in "research" involving "human subjects" as defined in the policy. For example, a private physician who conducts research unrelated to the Medicaid program would not come under this policy solely because the sevices he/she provides some of his/her patients are reimbursed by Medicaid. Nor would a research project sponsored by a State agency be covered solely because nonresearch services administered by the same agency are federally reimbursed. Alternatively, if a privat physician or a State agency does employ federal support for research involving human subjects or if the physician or State agency voluntarily adopt this policy through the assurance mechanism, this policy would be applicable.

The Model Policy contains a definition of regulated research and indicates which sections of the policy are applicable to regulated research.

Sec. 102(e) defines regulated research.

'Research subject to regulation' and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

The provision in the HHS regulations which allows the Secretary to waive certain provisions is adapted to the Model Policy in the following manner:

Sec. 101(i) provides that

Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the Federal Register or in such other manner as provided in department or agency procedures.

Consequently, waiver determinations must normally be published in the Federal Register, thus subjecting them to public scrutiny.

Changes in Exemptions

Sec. 101(b) sets forth exemptions for certain research activities from coverage of the Model Policy. The Model Policy combines exemptions 45 CFR 46.101(b)(2),(3) and (4) of the HHS regulations dealing with the use of educational tests, survey and interview procedures and observation of public behavior. The HHS exemptions are reflected in Model Policy exemptions sec. 101(b)(2) and (3):

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(1) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and

(ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing or employability.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures,

interview procedures or observation of public behavior that is exempt under paragraph (2), if:

(i) the human subjects are elected or appointed public officials or candidates for public office; or

(ii) Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

Thus, provision is made in the Model Policy for exempting certain social science research when federal statutes require without exception that the confidentiality of the personally identifiable information will be maintained.

Sec. 101(b)(6) is a new exemption

Taste and food quality evaluation studies, if wholesome foods without chemical additive are consumed or if a limited amount of a food is consumed that contains a food additive or agricultural chemical at or below a level approved by the Food and Drug Administration, the Environmental Protection Agency, or the Animal Plant Health Inspection Service of the U.S. Department of Agriculture.

This exemption, requested by the U.S. Department of Agriculture (USDA) but appropriate for several other agencies as well, is intended to exempt certain taste and food quality evaluation studies from IRB review. The current USDA policy exempts taste and food quality evaluation studies which involve consumer acceptance testing and quality evaluation studies if a limited amount of food will be consumed containing a food additive or agricultural chemical at a level approved by the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA) or the Animal Plant Health Inspection Service (APHIS) of the USDA; or if the food chemical is normally found in food at concentrations at least equal to those being tested. The exemption is not intended to apply to task tests and quality evaluation studies if the food additive is being tested and the test chemical is *not* (1) on FDA's Generally Recognized as Safe (GRAS) list; (2) a permitted food additive as tested; or (3) normally found in food at concentrations being tested. In addition, the exemption is not intended to apply if a pesticide or other chemical residue is present and the acceptable level has not been established by FDA, EPA or APHIS.

Foreign Research

Sec. 101(g) states clearly what is only implicit in the HHS regulations, namely that the Model Policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections for human subjects. Furthermore, it allows department and agency heads discretion in accepting equivalent procedures for research carried out in foreign countries.

Sec. 101(h) provides that

When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the 1975 World Medical Assembly Declaration (Helsinki II) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections *that are at least equivalent* to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the Federal Register or such other publications as provided by department or agency procedures. (Italics supplied)

Assuring Compliance with the Model Policy

Sec. 103(a) requires that

Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy.

Current HHS regulations permit institutions which hold an approved assurance to delay submission of certification of IRB review and approval until 60 days after submission of an application or proposal for financial support. The Model Policy does not include a grace period.

Sec. 103(g) requires that

Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under Secs. 101(b) or (i). Along with the submission of an application or proposal for approval or support, an institution with an approved assurance covering the research shall certify that the application or proposal has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

IRB Membership

Sec. 107(a) includes a provision that

. . . The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. . . .

Sec. 107(a) of the Model Policy also replaces the current HHS requirement that if an IRB regularly reviews research that involves a vulnerable category of subjects, the IRB must include one or more individuals who are primarily concerned with the welfare of those subjects. Consideration of inclusion of such an individual(s) is left to the institution (or other authority) establishing the IRB in the Model Policy.

The Model Policy requires instead in 107(a) that

. . . If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

45 CFR 46.107(b) of the 1981 HHS regulations indicates that no IRB may consist entirely of men or entirely of women, or entirely of members of one profession.

Section 107(b) of the Model Policy reads

Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

This language was developed in consultation with the Department of Justice.

In seeking diverse membership on the IRB, the institution must consider both men and women who can contribute to the work of the IRB. Given the ready availability of well qualified persons of both genders, OSTP expects that only rarely, if ever, will an IRB consist solely of men or solely of women. In any event, no selection shall be made to the board on the basis of gender.

Recommendation 2

The President should authorize and direct the Secretary of Health and Human Services to designate an office with government-wide jurisdiction to coordinate, monitor and evaluate the implementation of all regulations governing research with human subjects

of Federal departments that conduct, support or regulate such research.

The *Ad Hoc* Committee endorsed the concept of the designation of an office to coordinate the implementation of the Model Policy developed under Recommendation 1. However, the *Ad Hoc* Committee did not believe that it is either necessary or useful to assign the coordinating office "government-wide jurisdiction to *monitor* and *evaluate* the implementation of *all* regulations governing research with human subjects." For example, the Food and Drug Administration (FDA) has jurisdiction over nearly 30 different categories of test articles—each covered by appropriate regulations governing clinical research. It would be entirely impractical to expect a central HHS office to monitor and evaluate each of these specialized regulations, but it is feasible and desirable that rules governing IRB review and informed consent be consistent throughout all of these regulations and consistent with procedures required by other departments and agencies. As the President's Commission notes, most departments and agencies already follow the HHS rules pertaining to IRBs and informed consent. To date, uniformity has been developing on a voluntary basis with assistance from OPRR.

Reporting Requirements for Institutions

In consideration of Recommendations 7 and 8 in the *Biennial Report*, language has been included in Sec. 103(b)(5) to indicate that assurances negotiated with supporting federal agencies or departments must specify

Written procedures for ensuring prompt reporting the IRB, appropriate institutional officials, and the department or agency head (i) any unanticipated problems or scientific misconduct involving risks to human subjects or others; (ii) any allegation or finding of serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and (iii) any suspension or termination of IRB approval.

This sets forth the requirement that all concerned parties be informed of problems and misconduct based on noncompliance with the Policy for the protection of human subjects. It allows research institutions flexibility in developing procedures compatible with their organizational structures, while requiring them to meet a reasonable standard of accountability. (See discussion of Recommendations 7 and 8, following.)

Role of the Office for Protection from Research Risks (OPRR)

In anticipation of designation of OPRR as a key coordinating office (described below in the *Ad Hoc* Committee's response to Recommendation 2), the following responsibility for OPRR has been made explicit in the Model Policy.

Sec. 103(f) requires that

In lieu of negotiating a separate assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, approved by and on file with the Office for Protection from Research Risks, HHS.

This provision will considerably reduce the administrative burden on institutions conducting research and on federal departments and agencies conducting or supporting research.

The *Ad Hoc* Committee, therefore, recommended that the President's Science Advisor request the Secretary, HHS, to direct the OPRR to exercise federalwide coordination of policies and procedures for the protection of human research subjects. The Model Policy has been drafted to reflect an OPRR role.

The coordinating responsibilities of OPRR include at least the following:

(1) OPRR shall continue to negotiate and approve Assurances of Compliance with the HHS regulations based on the Model Policy for HHS conducted and supported research. In lieu of negotiating a separate assurance, individual departments and agencies shall accept a current HHS assurance approved by and on file in OPRR if it is appropriate to the research in question.

(2) OPRR shall facilitate an exchange of information among all federal departments and agencies that conduct, support or regulate research involving human subjects.

(3) OPRR shall, when appropriate, amend and republish the list of categories of research that may be reviewed under the expedited procedures outlined under Sec. 110 of the Model Policy.

(4) OPRR shall continue to develop educational materials and programs for the benefit of (a) research investigators; (b) research administrators; (c) IRB members; and (d) federal officials with responsibility for research involving human subjects.

(5) Department and agency heads shall forward to OPRR for review and comment all proposed department or agency policies and regulations for the protection of human research subjects. OPRR shall within 90 days of receipt call to the attention of any department or agency issuing a proposed rule or policy any provisions inconsistent with the Model Policy.

(6) The Director, OPRR, shall chair an Interagency Human Subjects Coordinating Committee to facilitate coordination of federal policies and regulations for the protection of human subjects. (This Committee was established in October 1983 by the Director, OSTP, under the auspices of the Federal Coordinating Council for Science, Engineering and Technology and is advisory to department and agency heads.)

The *Ad Hoc* Committee believed that if these coordinating steps are taken (including advising, guiding, educating and reviewing as described), the purposes of the recommendations of the President's Commission will be accomplished. The Interagency Committee is well-positioned to evaluate the implementation of the Model Policy when necessary and appropriate.

The *Ad Hoc* Committee further believed that over many years the OPRR has established sound credentials in the protection of human subjects. It noted that OPRR has operated effectively with all necessary backing from the Office of the Secretary, HHS. Because OPRR is located in a research milieu, it has ready access to experts in biomedical and behavioral research with experience in dealing with the delicate balance of promoting high quality research while maintaining proper safeguards for human subjects.

By designating OPRR as the coordinating office, the *Ad Hoc* Committee believed that the Secretary, HHS, would give emphasis to the importance of the coordinating function to be exercised. Establishment of a permanent federalwide advisory group assures the continuation of this emphasis. By designating an existing office in HHS rather than creating a new office, the Secretary is able to accomplish the goals of the President's Commission with only minimal increases in monetary and personnel expenditures.

Recommendation 3

Each Federal department or agency should have a comprehensive set of rules and procedures governing research with human subjects that applies consistently to all submits within the department or agency.

No action required on Recommendation 3 will be needed if the procedures outlined in response to Recommendations 1 and 2 are adopted.

Recommendation 4

All Federal departments and agencies that conduct or support research with

human subjects should require principal investigators to submit, as part of their annual reports to the IRB and the funding agency, information regarding the number of subjects who participated in each research project as well as the nature and frequency of adverse effects.

The *Ad Hoc* Committee questioned the feasibility of developing a major data collection of numbers of human subjects who participate in Federally conducted or supported research. It acknowledged the importance of sound data relating to research injuries and adverse reactions and recognized such data would be helpful in making sound policy decisions concerning compensation for research injuries. Nevertheless, the *Ad Hoc* Committee recognized serious definitional problems associated with the collection of such data.

The President's Commission has acknowledged the difficulty in defining research-related injury. The Veterans Administration (VA) has made efforts to collect data of the type recommended by the President's Commission. The VA program, attempted as a pilot effort, has been fraught with technical difficulties.

The VA has described certain difficulties recently encountered in collecting data on human research subjects. The VA had issued circulars to its medical centers which were conducting research involving human subjects. The circulars requested that the centers collect data regarding the incidence of adverse results "or effects" of participation in biomedical and behavioral research. The collected data were forwarded to the central VA office. Figures received in November 1981 provided the VA with unreliable and incomplete reports of human subjects injured or otherwise adversely affected as the result of participation in research projects. Because of definitional problems, misunderstandings on the part of field research personnel, confounding of therapeutic and research data and instances of both underreporting and overreporting, the data were considered misleading or meaningless. The data were not amenable to synthesis.

Given the existing definitional problems and the expected poor quality of resulting data, the *Ad Hoc* Committee believed that the expenditure of scarce resources for data collection was not warranted at this time. In fact, implementation of this recommendation could produce results that are misleading and could generate inappropriate policies and procedures. Therefore, the *Ad Hoc* Committee recommended that the matter of data collection be addressed by an Interagency Human Subjects Coordinating Committee.

Recommendation 5

The Department of Health and Human Services and all other relevant Federal departments and agencies should proceed promptly to take action on the National Commission's recommendations concerning research involving children and research involving those institutions as mentally disabled, and other Federal agencies should also act on the final regulations of HHS governing such research. . . .

In early February 1983 HHS Secretary Schweiker approved Subpart D of Title 45 CFR Part 46, "Additional Protections for Children Involved as Subjects in Research." These were published as a Final Rule in the Federal Register on March 8, 1983, and became effective June 6, 1983. HHS is now considering action on the proposed regulations addressing research involving those institutionalized as mentally disabled.

Recommendation 6

Congress should attach the following condition to any direct appropriations for "private" research entities: "No funds appropriated under this Act may be used, directly or indirectly, to support research involving human subjects unless such research is reviewed and conducted in compliance with either (1) appropriate regulations of (the disbursing agency) or (2) the regulations of the Department of Health and Human Services (45 CFR Part 46)."

The *Ad Hoc* Committee was unaware of any "private" research entity which receives direct appropriations other than the Gorgas Memorial Institute of Tropical and Preventive Medicine, Inc. OPRR has negotiated an HHS Multiple Project Assurance of Compliance with Gorgas Memorial Institute which has indicated its intention to comply with HHS regulations. Consequently this recommendation has been met by administrative action, and no legislation is required. If other such entities are identified, the federal disbursing agency should arrange for a proper Assurance of Compliance with HHS or Model Policy requirements.

Recommendations 7 and 8

7. 45 CFR 46.103, which specifies the minimum requirements for an institutional assurance, should be amended by inserting two new clauses under (b) (5) and (6): to—

- *designate a specific office at each institution that will be responsible for: (i) receiving reports of alleged misconduct in research involving human subjects; (ii) investigating promptly and fairly; and (iii) reporting formal findings of misconduct both to the institution's IRB which approved the research and to the Secretary. The institutional office so designated need not be created specifically for this purpose but may be the relevant IRB itself or another existing office already having responsibility for quality assurance with the institution. Such office shall report on all ongoing investigations of alleged research misconduct involving human subjects as well as formal findings to the IRB, and shall consult with the IRB on all matters relating to the conduct of research with human subjects.* (paraphrased)
- *require written procedures for insuring prompt reporting to designated institutional officials, and by them to the Secretary, of the results of any investigation or inquiries carried out under the preceding subsection or under Sec. 46.109(c) that reveal research misconduct or serious or continuing noncompliance with Federal or institutional requirements for the protection of human subjects.* (paraphrased)

8. *45 CFR 46.109(c) should be revised to read as follows: (In order to fulfill the requirements of these regulations, each IRB shall) (c) be responsible for reporting to the appropriate institutional officials any serious or continuing noncompliance by investigators with the requirements and determinations of the IRB, or with the provisions of the regulations, or with good research practices, that is revealed during the IRB's continuing or annual review of research or through reports made directly to a member of the IRB or its staff (and that each IRB); (d) establish procedures for receiving and acting upon findings of misconduct in research involving human subjects, made in the office designated pursuant to Sec. 46.103(b)(5).* (paraphrased)

After careful review of the recommendations of the President's Commission, the testimony to the Commissioners leading to these recommendations, and public and interagency comment, the *Ad Hoc* Committee proposed the following: *Sec. 103(b)(5)* of the proposed Model Policy requires that in assurances submitted to heads of departments or agencies conducting or supporting research involving human subjects institutions must include

Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head (i) any unanticipated problems or scientific misconduct involving risk to human subjects or others, (ii) any allegation or finding of

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serious or continuing noncompliance with this policy or the requirements or determinations of the IRB, and (iii) any suspension or termination of IRB approval.

The *Ad Hoc* Committee concluded that addition of this language would permit deletion of the current 45 CFR 46.108(c) which states that an IRB ". . . be responsible for reporting to the appropriate institutional officials and the Secretary any serious or continuing noncompliance by investigators with the requirements and determination of the IRB."

By modification of current language in the HHS regulations, the *Ad Hoc* Committee believed that (a) any implication is eliminated that the IRB is required to be an investigatory and reporting body in the institution. Institutions may develop their own procedures to assure that allegations are promptly investigated and reported to appropriate institutional officials as well as to supporting federal department or agency officials, and (b) the establishment of reporting lines is assigned to the institutions; and groups which need to be informed are identified. Institutions are, therefore, afforded flexibility in meeting requirements of the Policy. The assurance is the appropriate document for identifying the specific offices to be notified and the timing and nature of reporting which may be tailored to each institution's organizational structure. The *Ad Hoc* Committee members noted that the language proposed in Recommendations 7 and 8 was perhaps too detailed for verbatim incorporation into the Model Policy.

Recommendation 9

Federal departments and agencies should establish government-wide procedures for making determinations on suspension and debarment of grantees and contractors alleged to have engaged in misconduct in Federally supported research with human subjects. Final determinations and sanctions imposed should be entered onto a consolidated list of individuals and made known to all Federal agencies involved with human research, to state licensing boards, and to appropriate professional societies.

The *Ad Hoc* Comment generally concurred with the recommendation for the establishment of government-wide procedures for making determinations on suspension and debarment of grantees and contractors alleged to have engaged in misconduct in federally-supported research with human subjects. However, the *Ad Hoc* Committee believed that this recommendation should be carried out as a part of an Executive Branch consideration of government-wide suspension and debarment procedures encompassing misconduct under all types of federal support.

The Executive Branch has undertaken several initiatives in this regard. With respect to contracts (i.e., procurement) the Office of Federal Procurement Policy on the OMB issued, on June 24, 1982, a Policy Letter setting forth government-wide policies and procedures for suspension and debarment of government contractors and for the establishment of a consolidated government-wide listing of these suspensions and debarments (47 FR 28854). The Policy Letter became effective on August 30, 1982, and the General Services Administration become responsible for maintaining the consolidated listing of suspensions and debarments of contractors on that date. The Policy Letter has now been incorporated in the Federal Acquisition Regulation (48 CFR Chapter 1) as Subpart 9.4, and on February 26, 1985 HHS published implementing procedures in 48 CFR 309.4.

With respect to grants and other forms of financial assistance (i.e., nonprocurement), on February 18, 1986, President Reagan signed Executive Order 12549 mandating the establishment, under the guidance of OMB, of a government-wide system for debarment and suspension from federal assistance programs. OMB published proposed Guidelines simultaneously with the Executive Order, which provided 60 days opportunity for comment. OMB is currently reviewing the comments and expects to publish the final Guidelines within six months. The Executive Order calls for implementing agency regulations within 12 months of the final OMB Guidelines. This will result in separate government-wide procedures for the suspension and debarment of contractors and of recipients of financial assistance. Although federally-supported research with human subjects is not specifically mentioned in the government-wide procedures, one or more of the specifically stated causes for suspension and debarment could arise in the course of such research. The Interagency Human Subjects Coordination Committee will monitor any suspension or debarment actions arising from research involving human subjects.

Model Federal Policy for Protection of Human Research Subjects

Sec. 101 To What Does This Policy Apply?
Sec. 102 Definitions.
Sec. 103 Assuring compliance with this Policy—research conducted or supported by any Federal Department or Agency.
Sec. 104 Section Reserved.
Sec. 105 Section Reserved.
Sec. 106 Section Reserved.
Sec. 107 IRB membership.
Sec. 108 IRB functions and operations.
Sec. 109 IRB review of research.
Sec. 110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
Sec. 111 Criteria for IRB approval of research.
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Sec. 113 Suspension or termination of IRB approval of research.
Sec. 114 Cooperative research.
Sec. 115 IRB records.
Sec. 116 General requirements for informed consent.
Sec. 117 Documentation of informed consent.
Sec. 118 Applications and proposals lacking definite plans for involvement of human subjects.
Sec. 119 Research undertaken without the intention of involving human subjects.
Sec. 120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
Sec. 121 Section reserved.
Sec. 122 Use of Federal funds.
Sec. 123 Early termination of research support; Evaluation of applications and proposals.
Sec. 124 Conditions.

Sec. 101 To What Does This Policy Apply?

(a) Except as provided in paragraph (b) below, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the Federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency whether or not it is regulated as defined in Sec. 102(e) must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in Sec. 102(e) must be reviewed and approved, in compliance with Secs. 101, 102, and 107 through 117 of this policy, by an institutional review board

(IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing or employability.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under paragraph (2), if: (i) the human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (i) public benefit or service program; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation studies, if wholesome foods without chemical additives are consumed or if a limited amount of a food is consumed that contains a food additive or agricultural chemical at or below a level approved by the Food and Drug Administration, the Environmental Protection Agency, or the Animal Plant Health Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for humans subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries; procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the 1975 World Medical Assembly Declaration (Helsinki II) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the Federal Register or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the Federal Register or in such other manner as provided in department or agency procedures.

Sec. 102 Definitions.

(a) "Department or agency head" means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) "Institution" means any public or private entity or agency (including federal, state, and other agencies).

(c) "Legally authorized representative" means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute "research" for purposes of this policy, whether or not they are conducted under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

(e) "Research subject to regulation," and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) "Human subject" means a living individual about whom an investigator (whether professional or student)

conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. "Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) "IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(h) "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(i) "Certification" means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

Sec. 103 Assuring compliance with this Policy—research conducted or support by any Federal Department or Agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under Secs. 101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head (i) any unanticipated problems or scientific misconduct involving risks to human subjects or others; (ii) any allegation or finding of serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and (iii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) In lieu of negotiating a separate assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, approved by and on file with the Office for Protection from Research Risks, HHS.

(g) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under Secs. 101 (b) or (i). Along with the submission of an application or proposal for approval or support, an institution with an approved assurance covering the research shall certify that the application or proposal has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a

request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

Sec. 104 Section reserved.

Sec. 105 Section reserved.

Sec. 106 Section reserved.

Sec. 107 IRB Membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

Sec. 108 IRB functions and operations.

In order the fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in Sec. 103(b)(4) and, to the extent required by, Sec. 103(b)(5).

(b) Except when an expedited review procedure is used (see Sec. 110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

Sec. 109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with Sec. 116. The IRB may require that information, in addition to that specifically mentioned in Sec. 116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with Sec. 117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

Sec. 110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published in the **Federal Register**, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the **Federal Register**.

(b) With the approval of department or agency heads, an IRB may use the expedited review procedure to review either or both of the following: (1) Some or all of the research appearing on the list and found by the reviewers to involve no more than minimal risk, (2) minor changes in previously approved research during the period for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in Sec. 108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

Sec. 111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks

and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by Sec. 116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by Sec. 117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

Sec. 112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

Sec. 113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

Sec. 114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

Sec. 115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in Sec. 103(b)(3).

(6) Written procedures for the IRB in the same detail as described in Secs.103(b)(4) and 103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by Sec. 116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

Sec. 116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) below, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about

the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

Sec. 117 Documentation of informed consent.

(a) Except as provided in paragraph (c) below, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the persons signing the form.

(b) Except as provided in paragraph (c) below, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by Sec. 116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A "short form" written consent document stating that the elements of informed consent required by Sec. 116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the "short form."

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each suject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in whch the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

Sec. 118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under Sec. 101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted to the department or agency.

Sec. 119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted to the department or agency, and final

approval given to the proposed change by the department or agency.

Sec. 120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

Sec. 121 Section reserved.

Sec. 122 Use of Federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

Sec. 123 Early termination of research support; Evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person who would direct or has directed the scientific and technical aspects of an activity has in the judgment of the department or agency head materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

Sec. 124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

Concurrences of Departments and Agencies Including Proposed Departures From the Model Policy

No Departures

Agency for International Development (AID)

Consumer Product Safety Commission (CPSC)

Department of Agriculture (USDA)

Department of Commerce (DOC)

Department of Defense (DOD)

Department of Energy (DOE)

Department of Housing and Urban Development (HUD)

Department of Justice (DOJ)

Department of Transportation (DOT)

Environmental Protection Agency (EPA)

National Aeronautics and Space Administration (NASA)

National Science Foundation (NSF)

Comment

Central Intelligence Agency (CIA)

The Central Intelligence Agency (CIA) is required by Executive Order 12333 to conform to the guidelines issued by the Department of Health and Human Services (HHS). Currently, the CIA follows the HHS regulations codified in 45 CFR Part 46. If, with respect to the CIA, HHS incorporates the Model Policy, the CIA will follow the model policy. The CIA fully concurs with the principles established in the Model Policy.

Proposed Departures

Department of Education (ED)

A departure for ED only that pertains only to research involving the use of educational tests, survey procedures, interview procedures, or observation of public behavior, conducted under a program subject to the General Education Provisions Act: *Revise* the exception to the Model Policy stated in Section 101(b)(3)(ii) to read as follows: "The research is conducted under a program subject to the protections of the General Education Provisions Act (GEPA), including GEPA Sections 400A (20 U.S.C. 1221–3), 438 (20 U.S.C. 1232g), and 439 (20 U.S.C. 1232h)."

Department of Health and Human Services (HHS)

1. Section 101(b)(6) of the HHS regulations (which becomes Section 101(b)(5) of the Model Policy) now has a qualifier found at 45 CFR 46.101(i): "(i) If, following review of proposed research activities that are exempt from these regulations under paragraph (b)(6), [of the HHS regulations] the Secretary determines that a research or demonstration project presents a danger to the physical, mental, or emotional well-being of a participant or subject of the research or demonstration project, then federal funds may not be expended for such a project without the written informed consent of each participant or subject."

HHS intends to retain this qualifier to exemption 6 in future regulations.

2. Section 103(g)—The Model Policy requires that institutions holding an approved assurance which covers a proposed research projects submit certification of IRB review and approval *along with* an application for funding. Current HHS regulations permit institutions to submit such certification along with the application or within 60 days of application for funding [45 CFR 46.103(f)]. At the time HHS publishes proposed rules and technical amendments designed to implement the Model Policy, HHS will request comment on whether or not the "60-day grace period" should be reduced or eliminated.

Food and Drug Administration (FDA)

1. Section 101(h)—The section of the Model Policy addresses research that takes place in foreign countries. FDA must diverge from the Model Policy with regard to those clinical investigations that take place in a foreign country and are conducted under a research permit granted by FDA. Such investigations must be carried out in accordance with the Federal Food, Drug, and Cosmetic Act (FD&C Act), which establishes certain requirements for the conduct of such investigations [see, e.g., 21 U.S.C. 355(i), 357(d)(3), and 360(g)]. For these investigations, FDA does not have the authority to accept the procedures followed in a foreign country in lieu of the procedures required by the FD&C Act.

2. Section 110(d)—This section of the Model Policy permits altering or waiving of the informed consent requirements. FDA must depart from this provision of the Model Policy (See 21 CFR 50.20). The FD&C Act requires that informed

consent be obtained from all subjects of clinical investigations except in very limited circumstances [see e.g., 21 U.S.C. 355(i), 357(d)(3), and 360(g)(3)(D)], which establish requirements for the conduct of clinical investigations for drugs, antibiotic drugs, and medical devices, respectively. FDA does not have authority under the FD&C Act to waive this requirement.

Veterans Administration (VA)

VA will continue intramural research and development practices of not permitting exempted research [Section 101(2)(b)] or expedited review [Section 110], not permitting waiver of informed consent [Section 116(c)] or "short form" written consent [Section 117(b)(2)], and not requiring written institutional assurances from VA medical centers [Section 103(a)]. Further, regarding cooperative research efforts under Section 114, VA requires that each VA medical center which participates in a cooperative or multi-hospital project must obtain the approval of its own Human Studies Subcommittee for such research.

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

Rental Rehabilitation Program; Revised Minimum Allocation Amounts; Final Rule

Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1986 and Deadlines for Submission of Program Descriptions; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-86-1290; FR-2250]

Rental Rehabilitation Program: Revised Minimum Allocation Amounts

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The current regulations for the Rental Rehabilitation Program impose a $50,000 minimum allocation amount for any city, urban county, or consortium otherwise eligible for a formula allocation under the program. The Department is concerned that the application of this minimum allocation amount to a city, urban county, or consortium that has a developed and operating local rental rehabilitation program would have a disruptive effect on the administration of the Rental Rehabilitation Program. To remedy this problem, the Department is revising the Rental Rehabilitation Program regulations to allow a city, urban county, or consortium that received a formula allocation in the preceding fiscal year and that has a formula allocation in the current fiscal year that is less than $50,000 to elect to receive its formula allocation.

EFFECTIVE DATE: July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Acting Director, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-7000, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 17 of the United States Housing Act of 1937 (the 1937 Act), 42 U.S.C. 1437o, established the Rental Rehabilitation Program. This Program provides grants to States and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families. This objective is achieved by: (1) Providing Rental Rehabilitation grant amounts to assist in the rehabilitation of existing units, and (2) authorizing the use of rental housing assistance, provided under section 8 of the 1937 Act, to lower income families to help them afford the rent for units in projects assisted with program funds, or to find alternative housing.

Section 511.31 establishes a $50,000 minimum for direct formula allocations of Rental Rehabilitation funds, except for States. A city or urban county that has a formula allocation below $50,000 (and is not part of a consortium described in § 511.05), may participate in the Program only through the State Program under Subpart F of Part 511. Such participation is dependent on meeting the criteria developed by each State for its particular program.

Reductions in program funding, as in fiscal year 1986, may cause many cities, urban counties, and consortia that have previously received formula allocations of $50,000 or more and have developed rental rehabilitation programs, to fail to meet the $50,000 minimum. In fiscal year 1986, these grantees would have to compete for funding through the applicable State Program, and would have to terminate their programs if they were not funded under the State Program.

The original purpose of the $50,000 minimum was to ensure that reasonable economies of scale existed with respect to the development and administration of local rental rehabilitation programs. These programs can be a time-consuming and costly undertaking and are frequently paid for by Community Development Block Grant funds under 24 CFR 570.202(b)(10). However, once programs have been developed and are operating, local administrative costs are lower and there is less need for such economies of scale. Therefore, to minimize the disruption of city, urban county, and consortium rental rehabilitation programs already developed in reliance on direct formula allocations, the Department is revising § 511.31 to allow a city, urban county, or consortium to elect to receive a formula allocation below $50,000 if the city, urban county, or consortium received a formula allocation in the preceding fiscal year. (Such an entity could also choose not to receive its formula allocation, which would then be added to the State's allocation. Then, the city, urban county, or jurisdictions making up the consortium, could participate in the State Program under the terms established by the State in question.

A city, urban county, or consortium that elects to receive a formula allocation below $50,000 must provide HUD written notification of its decision to receive the allocation. Such a city, urban county, or consortium has 30 days from the date of notification of the formula allocation in which to notify HUD of its decision. If it elects to receive the allocation, it has 45 days from the same date to submit its program description. For fiscal year 1986, the Department has provided notification of the formula allocations by publication, elsewhere in today's issue of the Federal Register, of its Notice of Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1986 and and Deadlines for Submission of Program Descriptions.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States and the rental rehabilitation grant amounts to be made available to any grantee are relatively small in relation to other sources of Federal funding for State and local government and in relation to private investment in rental housing.

The subject matter of this rulemaking action relates to grants and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions

containing such subject matter to public comment either before or after effectiveness of the action, notwithstanding the statutory exemption.

The Secretary has determined that notice and prior public procedure are impracticable and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible because publication of this rule for earliest practicable effect is needed to prevent potential disruptions in the rental rehabilitation programs of those cities and urban counties that would otherwise be unable to receive a formula allocation in fiscal year 1986.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 21, 1986, (51 FR 14036) under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in § 511.31 of this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

The Catalog of Federal Domestic Assistance program number is 14.230.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR 511 as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The citation of authority for Part 511 continues to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 511.31 is revised to read as follows:

§ 511.31 Minimum allocation amount.

(a) Except as provided in paragraph (b) of this section, the minimum allocation for any city, urban county, or consortium determined under the formula contained in § 511.30 for any fiscal year is $50,000. Cities, urban counties, and consortia with formula allocations of $50,000 or more will be deemed to meet this threshold, even if performance adjustments under § 511.32 reduce their grant amounts below $50,000. A formula allocation that is below $50,000 and is not received by a city, urban county, or consortium under paragraph (b) of this section will be added to the allocation for the State Program in which the city, urban county, or consortium is located. A city or urban county, or the jurisdictions in a consortium with a formula allocation below $50,000 that elects not to receive its allocation may participate in the State Program, as provided in Subpart F of this part.

(b) A city, urban county, or consortium that (1) received a formula allocation in the preceding fiscal year, and (2) has a formula allocation in the current fiscal year that is less than $50,000, may elect to receive its formula allocation by submitting written notification to HUD of its decision to do so within 30 days of the date of written notification of its proposed allocation for the fiscal year. If such a city, urban county, or consortium does not notify HUD within this period, HUD will regard the city, urban county, or consortium as having elected not to receive its formula allocation and will notify the appropriate State of its additional allocation. This election procedure does not affect the deadline for submitting program descriptions under § 511.20(a).

Dated: May 27, 1986.

DuBois L. Gilliam

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 86-12444 Filed 6-2-86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-86-1614; FR-2547]

Notice of Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1986 and Deadlines for Submission of Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice announces the allocations of Rental Rehabilitation Program funds for cities with populations of 50,000 or more, urban counties, consortia of units of general local government, and States for Fiscal Year 1986. It also sets the dates by which Program Descriptions must be submitted to HUD for these potential grantees to be considered for actual grants based upon these allocations.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Acting Director, Rental Rehabilitation Division, Room 7162, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. Telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Formula Allocations

The Rental Rehabilitation Program is authorized by section 17 of the United States Housing Act of 1937 (42 USC 1437o), hereafter referred to as section 17. The Program's interim regulations are published at 24 CFR Part 511 (49 FR 16936, April 20, 1984). Section 511.30 contains the formula for allocating Rental Rehabilitation Program funds. Cities having a population of 50,000 or more, urban counties, and consortia of units of general local government having a combined population of 50,000 or more and States are eligible to receive formula allocations. Since the amount of funding available for allocation in Fiscal Year 1986 is $71,775,000 instead of the $149,000,000 available in both Fiscal Year 1984 and Fiscal Year 1985, most cities, urban counties and consortia will receive less than half the amount they received in Fiscal Year 1985.

Appendix A to this notice contains the formula allocations for cities, urban counties and consortia that receive an allocation of $50,000 or more. Appendix B to this notice contains the minimum formula allocations for States. Appendix C to this notice contains formula allocations for localities that participated in the Rental Rehabilitation Program last year as formula grantees that may elect to participate as formula grantees in Fiscal Year 1986 (see discussion of this election in the following paragraphs).

The eligibility of cities with populations of 50,000 or more and urban counties for formula allocations is determined by whether they were so classified for purposes of the Community Development Block Grant Entitlement Program (24 CFR Part 570) for Federal Fiscal Year 1985. For city, urban county and consortium allocations, grant amounts have been rounded to the nearest thousand. The formula factors for allocating the Fiscal Year 1986 funds are the same as those used in Fiscal Years 1984 and 1985.

In the two prior years of the Rental Rehabilitation Program, a minimum allocation of $50,000 applied to all of these entities except States. For Fiscal Year 1986, because only $71.775 million is available for allocation, many entities that received a formula allocation and participated in the Program last year would, under current regulatory provisions, be excluded as direct formula grantees in Fiscal Year 1986 because their formula allocations are less than the $50,000 minimum allocation (see Appendix C). In order to avoid disruption to city and urban county rental rehabilitation programs that have been developed in reliance on direct formula allocations, the Department is allowing a city, urban county, or consortium that received a formula allocation in Fiscal Year 1985 and has a formula allocation in Fiscal Year 1986 that is less than 50,000 to elect to receive its formula allocation or to participate in a State Program or, if the State elects not to administer the Program, in a HUD-administered Rental Rehabilitation Program for Small Cities. The Department is implementing this revision by final rule published elsewhere in today's issue of the Federal Register.

The rationale for the existing minimum allocation policy in 24 CFR 511.31 is that it is not cost-effective for a grantee to set up a Rental Rehabilitation Program for only the very small number of units that are being rehabilitated using a total grant of less than $50,000. However, this rationale does not apply to grantees that have already set up their programs and then receive less than $50,000 for a fiscal year because of a general reduction in funds available for the program.

The allocations indicated for States are the minimum amounts that they would receive. Amounts for those localities listed in Appendix C that do not elect to receive their formula allocations will also be allocated to the appropriate States.

Localities that would receive a formula amount of less than $50,000 must decide by July 3, 1986, whether to participate as a formula grantee (see discussion of deadlines for submission of program description below). If a locality elects to participate in a State Program (whether State-administered or HUD-administered), there is no assurance that it will receive funding since funding in such programs is under procedures set by the State grantee (or HUD if the State's program is HUD-administered).

Section 17(b) provides that the Secretary shall allocate rental rehabilitation funds based on a formula prescribed by the Secretary by regulation, taking into account various "objectively measurable conditions" and "excluding data relating to . . . areas eligible for assistance under Title V of the Housing Act of 1949." 24 CFR 511.30(d) currently provides that HUD will exclude data concerning rental units located in Title V-eligible areas from *all* formula allocations. Since the statutory prohibition on the use of rental rehabilitation funds in Title V-eligible areas pertains only to States' allocations (see section 17(e)(1)), HUD has concluded that Title V-area data should be excluded only from the calculation of formula allocations for States' and consortia, but not from urban counties' allocations. (There are no cities that contain Title V-eligible areas.) Retention of the existing Title V-area data exclusion for urban counties tends to understate urban county allocations and adversely affects achievement of the purposes of the Rental Rehabilitation Program in urban counties, and it is therefore waived in Fiscal Year 1986. However, the Department emphasizes that States' allocation funds, even if they result from an urban county not qualifying for a minimum allocation under § 511.31 or from a reallocation under § 511.33(b), may not be used in a Title V-eligible area, no matter where located.

Section 511.50 of the interim rule authorizes a State that elects to administer a Rental Rehabilitation Program to carry out eligible activities (1) in cities having populations of less than 50,000, and (2) in cities and urban counties whose allocations are below a minimum specified amount. Section 103(e)(1) of the Housing and Community Development Technical Amendments Act of 1984 (Pub. L. 98-479), amended the range of section 17(e)(1) of the United States Housing Act of 1937 by

eliminating reference to "cities with populations of less than fifty thousand" and substituting "units of general local government and areas of the State that do not receive allocations under subsection (b)."

The Assistant Secretary for Community Planning and Development has determined that this legislatively mandated change must be implemented for all Fiscal Years 1984, 1985 and 1986. This change was designed to permit Rental Rehabilitation activities to be carried out in all areas that contributed demography in determining the States' allocations, including urban counties. Language in § 511.30 that reflects the previous statute and that is inconsistent with the 1984 amendment is inapplicable by operation of law. Areas eligible for assistance under Title V of the Housing Act of 1949, of course, do not contribute demography to States' allocations and are specifically barred by section 17(e)(1) from participating in the program through a States' allocation, whether administered by the State or by HUD. The Department notes that jurisdictions that are the subject of a published allocation of $50,000, or more, and that decline that allocation, are also barred from participating in their States' program. Such declined funds are available for reallocation pursuant to § 511.33 (c) and (d).

Concerning the 1984 legislative amendment that the Secretary assure that an equitable share of funds be used to provide units for families with children, particularly large families requiring three or more bedroom units, the Department has determined for Fiscal Year 1986 that the three or more bedroom priority can be satisfied if at least 15 percent of the Rental Rehabilitation Program grant amounts expended nationwide are expended for rehabilitation of units of three or more bedrooms. In addition, the existing requirement in § 511.10(k) that grantees use at least 70 percent of their grant funds to provide two or more bedroom units, unless otherwise approved by HUD under the criteria in that section, remains in effect. If Fiscal Year 1987 funds are made available, each grantee's performance in achieving a high percentage of rehabilitation of three-bedroom units among all units rehabilitated will also be publicly rated through the "performance adjustment system" (see 24 CFR 511.32). As part of this system, grantees will be financially rewarded or penalized based in part on the extent to which they rehabilitate three-bedroom units, as well as two-bedroom units.

The Department reserves the right to establish a mandatory standard for each grantee for achievement of three-bedroom and larger units should the data (which will be continually available) indicate any substantial prospect that the Secretary will not achieve the mandated minimum within any 2-year period.

Deadline for Submitting Program Descriptions

Section 511.20(a) of the Program regulations states that cities, urban counties and consortia eligible to receive a grant based on a formula allocation must submit a Program Description to the appropriate HUD Field Office within 45 days of written notification of their Rental Rehabilitation fund allocation, and that States have 75 days from the date of written notification of their allocations to submit their Program Descriptions. Because HUD is publishing allocations this year, HUD regards the date of written notification to all grantees to be the date of this notice. However, since those entities listed in Appendix C, that would receive less than $50,000 have the option this year of applying directly to HUD or participating in a State Program, they must notify the appropriate HUD Field Office of their decision within 30 days of publication of this notice, to allow HUD more time to advise the affected States of any additional moneys that they will be allocated. However, if entities listed in Appendix C decide to participate as formula grantees, they still must submit a Program Description to the appropriate HUD Field Office within 45 days of written notification of their allocation. States that elect to participate in the Rental Rehabilitation Program must submit a Program Description to the appropriate HUD Field Office within 75 days of written notification of their original allocation, and HUD will endeavor to notify States as soon as possible of any additional allocation amounts resulting from the elections of entities listed in Appendix C not to participate as direct grantees in Fiscal Year 1986. In addition, HUD will administer the allocation for any State that does not notify the responsible HUD Field Office of its election to administer the Rental Rehabilitation Program within 30 days of written notification of its initial allocation.

Thus, all cities, urban counties and consortia receiving a formula allocation must deliver their Program Descriptions to the appropriate HUD Field Office or have them postmarked no later than July 18, 1986 to be considered for a grant. If a formula-eligible unit of general local government that would receive less than a $50,000 formula allocation chooses to participate as a formula grantee, it must notify HUD in writing of its decision as soon as possible, but no later than July 3, 1986 to facilitate HUD's notification to the affected State of the additional allocation. If a State elects to administer the Rental Rehabilitation Program in Fiscal Year 1986, it must notify HUD in writing of its intent to participate in the program by July 3, 1986 and must deliver its Program Description or have it postmarked by August 9, 1986 to be considered for a grant.

If a State chooses not to participate in the Rental Rehabilitation Program, eligible units of general local government located in the State that wish to participate in the HUD-Administered State Program must submit a Program Description to the responsible HUD Field Office within 45 days of the date stated in a written notification from HUD to such potential grantees of fund availability under the program for the fiscal year. These notifications will be directly issued by HUD Field Offices when it is known which States, if any, are not participating in Fiscal Year 1986.

Particularly close attention must be paid to these deadlines in Fiscal Year 1986 since under current law all unobligated Rental Rehabilitation budget authority lapses at close of business on September 30, 1986.

Section 8 Vouchers in Support of the Rental Rehabilitation Program

When Field Offices approve Program Descriptions for formula grantees, or as soon as possible thereafter, they should also reserve the appropriate amount of Section 8 funds in support of the locality's Rental Rehabilitation Program. If they have not already been received, the Section 8 funds will be assigned to Field Offices soon. Up to one Section 8 Housing Voucher will be provided for each $5,000 of rehabilitation grant funds allocated to a grantee.

If there are city/urban county formula grantees that had Rental Rehabilitation Program grant funds deobligated for poor performance earlier this fiscal year, adjustments should be made in the Section 8 funds allocated to those grantees for this fiscal year. Thus, if a grantee had $50,000 taken away for poor performance, that grantee should receive approximately 10 fewer Section 8 Vouchers this fiscal year. On the other hand, the grantee that received a $50,000 reallocation of additional Rental Rehabilitation grant funds for good performance, should receive, if possible, 10 additional Vouchers this fiscal year

to compensate for its not receiving any additional Vouchers for previously reallocated rehabilitation grant funds. Further instructions will be sent to Field Offices concerning adjustments that should be made for reallocations of Rental Rehabilitation grant funds, but Field Offices need to be aware that these adjustments are to be made.

If a locality that would receive less than a $50,000 formula amount of Rental Rehabilitation grant funds elects not to participate as a formula grantee, the Section 8 funds allocated for that locality would be added to the State balance amount along with the Rental Rehabilitation grant funds, as described above in this notice.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC, 20410-0500.

The Catalog of Federal Domestic Assistance program number is 14.230 Rental Housing Rehabilitation.

The collection of information requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been assigned OMB Control No. 2502-0075.

Authority: Sec. 17, United States Housing Act of 1937, 42 U.S.C. 1437o; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 27, 1986.

Dudley L. Gilliam,

Acting General Deputy Assistant Secretary for Community Planning and Development.

BILLING CODE 4210-29-M

APPENDIX A

RENTAL REHABILITATION PROGRAM
FORMULA ALLOCATIONS
FOR
CITIES, URBAN COUNTIES AND CONSORTIA

FY1986

STATE LOCALITY	TYPE OF LOCALITY*	$ IN THOUSANDS
ALABAMA		
BIRMINGHAM	51	177
MOBILE	51	81
MONTGOMERY	51	74
JEFFERSON COUNTY	66	63
ALASKA		
ARIZONA		
PHOENIX	51	256
TUCSON	51	150
ARKANSAS		
LITTLE ROCK	51	84
CALIFORNIA		
ANAHEIM	51	83
BERKELEY	51	102
FRESNO	51	108
GLENDALE	53	82
HUNTINGTON BEACH	57	80
INGLEWOOD	53	80
LONG BEACH	51	242
LOS ANGELES	51	3051
OAKLAND	51	391
PASADENA	51	72
RIVERSIDE	51	82
SACRAMENTO	51	140
SAN BERNARDINO	51	134
SAN DIEGO	51	427
SAN FRANCISCO	51	608
SAN JOSE	51	180
SANTA ANA	51	86
SANTA BARBARA	51	81
SANTA MONICA	52	71
STOCKTON	51	80
ALAMEDA COUNTY	66	97
CONTRA COSTA	66	77
FRESNO COUNTY	66	81
KERN COUNTY	66	86
LOS ANGELES COUNTY	66	727
MARIN COUNTY	66	73
ORANGE COUNTY	66	145
RIVERSIDE COUNTY	66	106
SACRAMENTO COUNTY	66	143
SAN BERNARDINO COUNTY	66	160
SAN DIEGO COUNTY	66	146
SAN JOAQUIN COUNTY	66	84
SAN MATEO COUNTY	66	81
SANTA CLARA COUNTY	66	73
SONOMA COUNTY	66	66
COLORADO		
COLORADO SPRINGS	51	75
DENVER	51	200
CONNECTICUT		
BRIDGEPORT	51	122
HARTFORD	51	145
NEW HAVEN	51	108
WATERBURY	51	66
DELAWARE		
NEW CASTLE COUNTY	66	87
DISTRICT OF COLUMBIA		
WASHINGTON	51	443
FLORIDA		
FT LAUDERDALE	51	76
GAINESVILLE	51	52
HIALEAH	51	86
JACKSONVILLE	51	305
MIAMI	51	332
MIAMI BEACH	51	158
ORLANDO	51	96
ST PETERSBURG	51	108
TALLAHASSEE	51	62
TAMPA	51	129
BROWARD COUNTY	66	132
DADE COUNTY	66	368
HILLSBOROUGH COUNTY	66	84
ORANGE COUNTY	66	90
PALM BEACH COUNTY	66	91
PINELLAS COUNTY	66	85
POLK COUNTY	66	56
GEORGIA		
ATLANTA	51	311
COLUMBUS	51	79
MACON	51	71
SAVANNAH	51	87
DE KALB COUNTY	66	108
FULTON COUNTY	66	62
HAWAII		
HONOLULU	51	270
IDAHO		
ILLINOIS		
CHICAGO	51	2662
PEORIA	51	63
ROCKFORD	51	51
COOK COUNTY	66	239
DU PAGE COUNTY	66	72
MADISON COUNTY	66	66
ST CLAIR COUNTY	66	57
INDIANA		
EVANSVILLE	51	59
FORT WAYNE	51	64
GARY	51	69
INDIANAPOLIS	51	270
IOWA		
DES MOINES	51	60
KANSAS		
KANSAS CITY	51	51
WICHITA	51	101
KENTUCKY		
LEXINGTON-FAYETTE	51	97
LOUISVILLE	51	189
JEFFERSON COUNTY	66	66
LOUISIANA		
BATON ROUGE	51	122
NEW ORLEANS	51	503
SHREVEPORT	51	84
JEFFERSON PARISH	66	97
MAINE		
PORTLAND	51	59
MARYLAND		
BALTIMORE	51	620
BALTIMORE COUNTY	66	126
MONTGOMERY COUNTY	66	110
PRINCE GEORGES COUNTY	66	156
MASSACHUSETTS		
BOSTON	51	573
BROCKTON	51	56
CAMBRIDGE	51	67
FALL RIVER	51	72
LAWRENCE	51	69
LOWELL	51	81
LYNN	51	60
NEW BEDFORD	51	78
SOMERVILLE	52	54
SPRINGFIELD	51	108
WORCESTER	51	104
MICHIGAN		
ANN ARBOR	51	54
DETROIT	51	880
FLINT	51	74

STATE LOCALITY	TYPE OF LOCALITY*	$ IN THOUSANDS
MICHIGAN		
GRAND RAPIDS	51	88
KALAMAZOO	51	55
LANSING	51	63
OAKLAND COUNTY	66	67
WAYNE COUNTY	66	80
MINNESOTA		
DULUTH	51	52
MINNEAPOLIS	51	285
ST PAUL	51	124
HENNEPIN COUNTY	66	78
MISSISSIPPI		
JACKSON	51	84
MISSOURI		
KANSAS CITY	51	219
ST LOUIS	51	382
SPRINGFIELD	51	60
ST LOUIS COUNTY	66	130
MONTANA		
NEBRASKA		
LINCOLN	51	66
OMAHA	51	130
NEVADA		
LAS VEGAS	51	89
RENO	51	53
CLARK COUNTY	66	94
NEW HAMPSHIRE		
MANCHESTER	51	98
NEW JERSEY		
CAMDEN	51	89
EAST ORANGE	52	67
ELIZABETH	51	77
JERSEY CITY	51	219
NEWARK	51	391
PASSAIC	52	62
PATERSON	51	137
TRENTON	51	72
UNION CITY	52	83
BERGEN COUNTY	66	196
BURLINGTON COUNTY	66	52
CAMDEN COUNTY	66	87
ESSEX COUNTY	66	94
HUDSON COUNTY	66	167
MIDDLESEX COUNTY	66	90
MONMOUTH COUNTY	66	67
UNION COUNTY	66	79
NEW MEXICO		
ALBUQUERQUE	51	133
NEW YORK		
ALBANY	51	94
BUFFALO	51	361
MOUNT VERNON	52	67
NEW YORK	51	7523
ROCHESTER	51	194
SCHENECTADY	51	53
SYRACUSE	51	147
UTICA	51	62
YONKERS	52	116
NASSAU COUNTY	66	204
ORANGE COUNTY	66	51
ROCKLAND COUNTY	66	51
SUFFOLK COUNTY	66	66
WESTCHESTER COUNTY	66	107
NORTH CAROLINA		
CHARLOTTE	51	125
DURHAM	51	66
GREENSBORO	51	59
RALEIGH	51	66
WINSTON SALEM	51	68

STATE LOCALITY	TYPE OF LOCALITY*	$ IN THOUSANDS
NORTH DAKOTA		
OHIO		
AKRON	51	116
CINCINNATI	51	347
CLEVELAND	51	491
COLUMBUS	51	330
DAYTON	51	138
TOLEDO	51	173
YOUNGSTOWN	51	66
CUYAHOGA COUNTY	66	110
HAMILTON COUNTY	66	77
MONTGOMERY COUNTY	66	53
OKLAHOMA		
OKLAHOMA CITY	51	155
TULSA	51	130
OREGON		
EUGENE	51	65
PORTLAND	51	250
MULTNOMAH COUNTY	66	58
WASHINGTON COUNTY	66	59
PENNSYLVANIA		
ALLENTOWN	51	55
ERIE	51	67
PHILADELPHIA	51	1129
PITTSBURGH	51	333
READING	51	89
SCRANTON	51	61
ALLEGHENY COUNTY	66	335
BUCKS COUNTY	66	59
CHESTER COUNTY	66	61
DELAWARE COUNTY	66	76
LANCASTER COUNTY	66	57
LUZERNE COUNTY	66	61
MONTGOMERY COUNTY	66	84
WASHINGTON COUNTY	66	63
WESTMORELAND COUNTY	66	63
RHODE ISLAND		
PROVIDENCE	51	166
SOUTH CAROLINA		
CHARLESTON	51	86
COLUMBIA	51	84
GREENVILLE COUNTY	66	83
SOUTH DAKOTA		
TENNESSEE		
CHATTANOOGA	51	87
KNOXVILLE	51	103
MEMPHIS	51	313
NASHVILLE-DAVIDSON	51	178
TEXAS		
AUSTIN	51	199
CORPUS CHRISTI	51	83
DALLAS	51	411
EL PASO	51	178
FORT WORTH	51	140
HOUSTON	51	680
LUBBOCK	51	66
SAN ANTONIO	51	318
WACO	51	56
HARRIS COUNTY	66	79
UTAH		
SALT LAKE CITY	51	107
VERMONT		
VIRGINIA		
NEWPORT NEWS	51	61
NORFOLK	51	156
RICHMOND	51	150
ROANOKE	51	51
VIRGINIA BEACH	51	98

STATE LOCALITY	TYPE OF LOCALITY*	$ IN THOUSANDS
VIRGINIA		
ARLINGTON COUNTY	66	60
FAIRFAX COUNTY	66	86
WASHINGTON		
SEATTLE	51	306
SPOKANE	51	105
TACOMA	51	66
KING COUNTY	66	115
PIERCE COUNTY	66	77
WEST VIRGINIA		
WISCONSIN		
MADISON	51	109
MILWAUKEE	51	368
WYOMING		
PUERTO RICO		
MAYAGUEZ MUNICIPIO	51	81
PONCE MUNICIPIO	51	81
SAN JUAN MUNICIPIO	51	817

*51 = Central City
52 = Suburban City
66 = Urban County

APPENDIX B

RENTAL REHABILITATION PROGRAM ALLOCATIONS BY STATES
FISCAL YEAR 1986

	CITY/COUNTY AMOUNT	MINIMUM STATE AMOUNT	CITY/COUNTY/STATE TOTAL AMOUNT
ALABAMA	$ 482	$ 449	$ 931
ALASKA	47	29	76
ARIZONA	552	170	722
ARKANSAS	119	363	482
CALIFORNIA	7,897	1,566	9,463
COLORADO	562	275	837
CONNECTICUT	542	437	979
DELAWARE	116	20	136
DISTRICT OF COLUMBIA	443	0	443
FLORIDA	2,300	715	3,015
GEORGIA	808	648	1,456
HAWAII	270	39	309
IDAHO	35	139	174
ILLINOIS	3,401	794	4,195
INDIANA	667	513	1,180
IOWA	246	338	584
KANSAS	241	280	521
KENTUCKY	342	410	752
LOUISIANA	925	354	1,279
MAINE	59	241	300
MARYLAND	1,057	179	1,236
MASSACHUSETTS	1,452	931	2,383
MICHIGAN	1,554	781	2,335
MINNESOTA	537	328	865
MISSISSIPPI	84	403	487
MISSOURI	861	388	1,249
MONTANA	29	154	183
NEBRASKA	196	127	323
NEVADA	216	40	256
NEW HAMPSHIRE	85	138	223
NEW JERSEY	2,187	493	2,680
NEW MEXICO	123	184	307
NEW YORK	9,526	931	10,457
NORTH CAROLINA	472	653	1,125
NORTH DAKOTA	29	81	110
OHIO	2,204	931	3,135
OKLAHOMA	345	369	714
OREGON	514	279	793
PENNSYLVANIA	2,739	899	3,638
RHODE ISLAND	214	217	431
SOUTH CAROLINA	226	405	631
SOUTH DAKOTA	30	100	130
TENNESSEE	681	403	1,084
TEXAS	2,620	1,267	3,887
UTAH	222	97	319
VERMONT	0	110	110
VIRGINIA	830	391	1,221
WASHINGTON	773	435	1,208
WEST VIRGINIA	69	237	306
WISCONSIN	578	501	1,079
WYOMING	0	83	83
PUERTO RICO	651	302	953
U.S. TOTALS	$51,158	$20,617	$71,775

APPENDIX C

RENTAL REHABILITATION OPTIONAL GRANTEES FY1986

STATE	LOCALITY	$ IN THOUSANDS
ALABAMA	HUNTSVILLE	41
	TUSCALOOSA	46
	TOTAL	87
ALASKA	ANCHORAGE	47
	TOTAL	47
ARIZONA	GLENDALE	35
	MESA	30
	MARICOPA COUNTY	48
	PIMA COUNTY	31
	TOTAL	143
ARKANSAS	FORT SMITH	29
	PINE BLUFF	26
	TOTAL	55
CALIFORNIA	ALAMEDA	31
	ALHAMBRA	34
	BAKERSFIELD	41
	CHULA VISTA	28
	COMPTON	36
	CONCORD	28
	COSTA MESA	39
	EL CAJON	27
	EL MONTE	44
	ESCONDIDO CITY	27
	FREMONT	25
	GARDEN GROVE	35
	HAYWARD	31
	MODESTO	26
	OCEANSIDE	33
	ONTARIO	28
	ORANGE	29
	OXNARD	39
	POMONA	27
	REDONDO BEACH	27
	RICHMOND	32
	SALINAS	23
	SAN MATEO	29
	SANTA CLARA	30
	SANTA ROSA	25
	SOUTH GATE	31
	SUNNYVALE	31
	VALLEJO	29
	VENTURA	30
	TOTAL	930
COLORADO	AURORA	34
	BOULDER	46
	FORT COLLINS	34
	GREELEY	29
	PUEBLO	42
	TOTAL	184
CONNECTICUT	NEW BRITAIN	42
	STAMFORD	39
	TOTAL	81
DELAWARE	WILMINGTON	49
	TOTAL	49
FLORIDA	CLEARWATER	30
	DAYTONA BEACH	40
	HOLLYWOOD	39
	PENSACOLA	27
	WEST PALM BEACH	40
	VOLUSIA COUNTY	47
	TOTAL	223
GEORGIA	ALBANY	46
	COBB COUNTY	46
	TOTAL	92
IDAHO	BOISE	36
	TOTAL	36
ILLINOIS	AURORA	25
	CHAMPAIGN	37
	DECATUR	37
	EAST ST LOUIS	49
	EVANSTON	36
	JOLIET	29
	SPRINGFIELD	44
	LAKE COUNTY	44
	TOTAL	301
INDIANA	BLOOMINGTON	36
	HAMMOND	33
	MUNCIE	43
	SOUTH BEND	39
	TERRE HAUTE	28
	LAKE COUNTY	29
	TOTAL	208
IOWA	CEDAR RAPIDS	32
	DAVENPORT	42
	IOWA CITY	33
	SIOUX CITY	32
	WATERLOO	27
	TOTAL	166
KANSAS	LAWRENCE	37
	TOPEKA	42
	TOTAL	79
LOUISIANA	ALEXANDRIA	29
	LAFAYETTE	31
	LAKE CHARLES	26
	MONROE	33
	TOTAL	119
MARYLAND	ANNE ARUNDEL COU	46
	TOTAL	46
MASSACHUSETTS	BROOKLINE	37
	PITTSFIELD	25
	QUINCY	36
	WALTHAM	35
	TOTAL	133

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STATE	LOCALITY	$ IN THOUSANDS
MICHIGAN	BATTLE CREEK	29
	PONTIAC	37
	SAGINAW	44
	GENESEE COUNTY	42
	MACOMB COUNTY	30
	TOTAL	182
MINNESOTA	DAKOTA COUNTY	28
	TOTAL	28
MISSOURI	COLUMBIA	36
	ST JOSEPH	34
	TOTAL	70
MONTANA	BILLINGS	29
	TOTAL	29
NEW HAMPSHIRE	NASHUA	27
	TOTAL	27
NEW JERSEY	BAYONNE	37
	IRVINGTON	49
	GLOUCESTER COUNT	43
	MORRIS COUNTY	46
	OCEAN COUNTY	41
	SOMERSET COUNTY	32
	TOTAL	248
NEW YORK	BABYLON TOWN	35
	BINGHAMTON	47
	ISLIP TOWN	47
	NEW ROCHELLE	37
	NIAGARA FALLS	44
	TROY	46
	DUTCHESS COUNTY	38
	ERIE COUNTY	46
	MONROE COUNTY	48
	ONONDAGA COUNTY	33
	TOTAL	421
NORTH CAROLINA	ASHEVILLE	28
	FAYETTEVILLE	31
	HIGH POINT	30
	TOTAL	89
NORTH DAKOTA	FARGO	29
	TOTAL	29
OHIO	CANTON	48
	HAMILTON CITY	33
	LAKEWOOD	28
	LORAIN	25
	MANSFIELD	26

STATE	LOCALITY	$ IN THOUSANDS
OHIO (CONT)	SPRINGFIELD	47
	FRANKLIN COUNTY	45
	STARK COUNTY	24
	SUMMIT COUNTY	27
	TOTAL	203
OKLAHOMA	LAWTON	30
	NORMAN	30
	TOTAL	60
OREGON	SALEM	41
	CLACKAMAS COUNTY	41
	TOTAL	82
PENNSYLVANIA	ALTOONA	36
	HARRISBURG	40
	LANCASTER	28
	UPPER DARBY	28
	WILKES-BARRE	30
	BEAVER COUNTY	45
	BERKS COUNTY	36
	YORK COUNTY	43
	TOTAL	287
RHODE ISLAND	PAWTUCKET	48
	TOTAL	48
SOUTH CAROLINA	GREENVILLE	36
	NORTH CHARLESTON	28
	TOTAL	64
SOUTH DAKOTA	SIOUX FALLS	30
	TOTAL	30
TEXAS	ABILENE	30
	AMARILLO	41
	BEAUMONT	46
	BROWNSVILLE	39
	GALVESTON	35
	LAREDO	42
	PASADENA	29
	SAN ANGELO	29
	TYLER	28
	WICHITA FALLS	32
	TARRANT COUNTY	43
	CONSORT KILLEEN-TEMPLE	40
	TOTAL	430
UTAH	OGDEN	31
	PROVO	38
	SALT LAKE COUNTY	46
	TOTAL	115
VIRGINIA	ALEXANDRIA	48
	CHESAPEAKE	27
	HAMPTON	37
	LYNCHBURG	27
	PORTSMOUTH	45
	TOTAL	186

STATE	LOCALITY	$ IN THOUSANDS
WASHINGTON	EVERETT	29
	SNOHOMISH COUNTY	47
	TOTAL	76
WEST VIRGINIA	CHARLESTON	30
	HUNTINGTON	39
	TOTAL	69
WISCONSIN	GREEN BAY	30
	RACINE	31
	MILWAUKEE COUNTY	39
	TOTAL	101
PUERTO RICO	AGUADILLA	27
	ARECIBO	35
	BAYAMON MUNICIP	48
	CAMUAS MUNICIPIO	29
	CAROLINA MUNICIP	47
	TOTAL	182

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Part VII

Department of Education

Educational Media Research, Production, Distribution, and Training; Proposed Funding Priority for Fiscal Year 1986; Notice

DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training; Proposed Funding Priority for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Year 1986.

SUMMARY: The Secretary proposes an annual funding priority for the Educational Media, Research, Production, Distribution, and Training program. To ensure a continuing supply of Line 21 television decoders for the Nation's hearing-impaired population, the Secretary proposes to establish a single funding priority for fiscal year 1986 for a project to manufacture at least 33,000 additional Line 21 decoders. The Secretary would give an absolute preference to applications that meet the terms of the proposed priority.

DATE: Comments must be received on or before July 3, 1986.

ADDRESS: All written comments and suggestions should be sent to Dr. Malcolm J. Norwood, Division of Innovation and Development, Department of Education, 400 Maryland Ave., SW. (Room 4088, Switzer Building), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Telephone: (202) 732-1177.

SUPPLEMENTARY INFORMATION: The Educational Media, Research, Production, Distribution and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for handicapped persons; (b) Producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

In 1972 the Federal Government, through the former Office of Education, initiated the development of the closed-captioned Line 21 system to make television accessible to the Nation's hearing-impaired population. Closed-captioning is a system that uses Line 21 of the broadcasting signal for the benefit of viewers with hearing impairments to transmit captions (subtitles) which may be made visible only on television sets that are equipped with decoders.

Upon completion of the development of the system, the Department supported the creation of the National Captioning Institute to provide captioning services to the broadcasting industry and helped subsidize 100,000 large-scale integrated-circuit chips which made the manufacture of Line 21 decoders possible.

The system was implemented in March 1980 and has resulted in cooperative efforts between the public and private sectors to provide closed-captioned television to hearing-impaired Americans. All major networks are making closed-captioned programs available. Federal funding supports approximately 50% of current programming, the networks support approximately 30%, and corporate advertisers, foundations, and contributions account for the remaining 20%. Closed-captioning provides the only acceptable system that makes television access for deaf persons possible. Open captioning which would appear on all television sets is disturbing to the general viewing audience and, therefore, is not an acceptable alternative to the broadcasting industry and private sector supporters of captioning services.

The original stock of Line 21 decoders was depleted during 1985. The Congress, provided $1.5 million during fiscal year 1985 to assist in the underwriting of the manufacture of 50,000 more chips to ensure a continuing supply.

More recently the Senate Committee on Appropriations directed the Secretary to provide $1.0 million during fiscal year 1986 for the purpose of manufacturing additional Line 21 decoders to assure that these devices will be available to meet a continuing need.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under the Educational Media, Research, Production, Distribution, and Training program in fiscal year 1986 that respond to the priority described below. An absolute preference is one which permits the Secreary to select only those applications that meet the described priority.

All applications submitted under the Educational Media, Research, Production, Distribution and Training program must address the priority for a project to manufacture at least 33,000 additional Line 21 decoders to ensure a continuing supply of these devices for the Nation's hearing-impaired population.

The selection of this proposed priority is based upon the Congressional appropriation report language indicating that $1.0 million should be spent under Pub. L. 98-619 to underwrite the production of 50,000 additional Line 21 decoders before the current supply is exhausted. The proposed priority provides for the production of at least 33,000 additional Line 21 decoders rather than 50,000. At this level, a subsidy of $30 per decoder would be provided, thereby reducing the retail price of decoders. The Department believes that pricing at a lower level is necessary in order to promote the sale of decoders.

This proposed priority will support a cooperative agreement with an organization which has the technical expertise and knowledge to assure that the hearing-impaired population will have a continuing supply of Line 21 decoders available.

The applicant shall submit a working plan for the subsequent production of at least 33,000 additional Line 21 decoder modules as part of the application. The plan shall provide for a fully assembled unit (i.e., large-scale-integrated (LSI) circuit chip set, circuit board, and adapter unit) with evidence of commitment from one or more manufacturers and retailers to assure production and sale of the units. The plan shall contain a timeline for testing and production and an estimated retail price for the assembled units to be marketed to hearing-impaired consumers. The plan shall also provide assurances that at least 33,000 Line 21 decoders will be produced for marketing to consumers at the estimate price. An applicant, however, could propose a project for more than 33,000 Line 21 decoders if provisions can be made for the production and marketing of that number of decoders at an acceptable price.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final notice of priority. All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in room 4088, Mary E. Switzer Bldg., 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:30 p.m. (local time), Monday through Friday of each week, except Federal holidays..

(20 U.S.C. 1451, 1452)

(Catalog of Federal Domestic Assistance No. 84.026, Educational Media Research, Production, Distribution, and training)

Dated: May 29, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-12454 Filed 6-2-86; 8:45 am]

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Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 15, 30, 31, 52, and 53
Federal Acquisition Regulation (FAR); FAR System, Contracting by Negotiation, Cost Accounting Standards, Contract Cost Principles and Procedures, Solicitation Provisions, Contract Clauses, and Forms; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 15, 30, 31, 52, and 53

Federal Acquisition Regulation (FAR); FAR System, Contracting by Negotiation, Cost Accounting Standards, Contract Cost Principles and Procedures, Solicitation Provisions, Contract Clauses, and Forms; Proposed Rules

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; notice of availability and requests for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR Part 30 which will incorporate into the FAR as regulations, the Cost Accounting Standards (CAS) and certain rules and regulations promulgated by the Cost Accounting Standards Board (CASB) under Pub. L. 91–379.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 4, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties may obtain copies of the proposed text from the FAR Secretariat and written comments should be submitted to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405

Please cite FAR Case 86–31 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revisions to FAR Part 30 incorporating the CAS and CASB rules into the FAR as regulations require corollary changes to FAR Parts 1, 15, 31, 52, and 53. No changes to the substance of the Cost Accounting Standards or existing rules and regulations are being proposed at this time. However, it is anticipated that future revisions of the CAS as restated in Subpart 30.4 of this proposal will be processed as FAR revisions in accordance with normal procedures for revising the FAR.

The procedures for administering Facilities Capital Cost of Money under CAS 414 and previously included in DFARS 30.70 and 30.71, and FPR Subpart 1–3.13, have been rewritten with no material change in content and are relocated in FAR Subpart 30.8. Also, Form CASB–CMF, Facilities Capital Cost of Money Factors Computation, and Form CASB–DS–1, Disclosure Statement, are being changed to DOD forms with no change in format. Both forms will be illustrated in FAR Part 53. Finally, the clauses at FAR 52.215–30, Facilities Capital Cost of Money, and 52.215–31, Waiver of Facilities Capital Cost of Money, have been rewritten to facilitate their use.

It is recognized that proposed FAR 30.301 duplicates some definitions already contained in FAR 31.001. This will be adjusted in the final rule.

B. Regulatory Flexibility Act

The proposed revisions to FAR Parts 1, 15, 30, 31, 52, and 53 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the changes cover Cost Accounting Standards (CAS) and associated rules and regulations from which small business concerns are exempt.

C. Paperwork Reduction Act

The proposed revisions to FAR Parts 1, 15, 30, 31, 52, and 53 incorporate into the FAR as regulations the Cost Accounting Standards (CAS), and associated rules and regulations promulgated by the CAS Board under Pub. L. 91–379 and codified at 4 CFR Part 331. The rules do not change or otherwise affect the collection of information by Federal agencies from offerors, contractors, or members of the public because the rules previously existed as CAS Board Standards and Rules and Regulations. A request for a one-year extension of the recordkeeping and information requirements in Part 30 was submitted to the Office of Management and Budget on February 20, 1986.

List of Subjects in 48 CFR Parts 1, 15, 30, 31, 52, and 53

Government procurement.

Dated: May 29, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 86–12416 Filed 6–2–86; 8:45 am]

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Part IX

Department of Commerce

International Trade Administration

Oil Country Tubular Goods From Argentina; Final Determination of Sales at Not Less Than Fair Value; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-601]

Oil Country Tubular Goods From Argentina; Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that oil country tubular goods from Argentina are not being, nor are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to discontinue the suspension of liquidation of all entries of oil country tubular goods (OCTG) from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after January 27, 1986.

EFFECTIVE DATE: June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

Final Determination

We have determined that oil country tubular goods (OCTG) from Argentina are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondent during the period of investigation. The weighted-average margin is 0.05 percent which is *de minimis*.

Case History

On July 22, 1985, we received a petition from the Lone Star Steel Company (Lone Star) and CF&I Steel Corporation (CF&I) on behalf of the OCTG industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threatening material injury to, a United States industry. The petition also alleged that sales of the subject merchandise were being made at less than the cost of production.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. The petitioners, however, did not provide information sufficient to justify our initiating a cost of production investigation. We notified the ITC of our action and initiated such an investigation on August 12, 1985 (50 FR 33388). On September 11, 1985, the ITC determined that there is a reasonable indication that imports of OCTG from Argentina are materially injuring, or are threatening material injury to, a U.S. industry (10 FR 37008).

On September 3, we presented an antidumping duty questionnaire to Dalmine Siderca S.A.I.C. (Dalsid) the only known exporter of OCTG in Argentina. The respondent was requested to answer the questionnaire in 30 days. However, at the request of the company we granted an extension of time for the response submission, and on October 31, 1985, we received Dalsid's response to the questionnaire. After receipt of the response, the petitioners alleged that the reported sales were at prices below cost of production. We found that petitioners' allegation contained elements necessary for us to initiate a cost of production investigation, and did so on December 27, 1985.

On December 5, 1985, the petitioners requested that the Department postpone the preliminary determination until not later than January 21, 1986. The Department granted the request on December 10, 1985 (50 FR 51275). On December 26, 1985, the petitioners alleged that "critical circumstances" exist with respect to imports of OCTG from Argentina.

On January 27, 1986, we published a preliminary determination that OCTG from Argentina were being sold at less than fair value in the United States and that critical circumstances did not exist (51 FR 3367).

After the preliminary determination, the respondent in this investigation requested a postponement of the final determination date. We granted the request and postponed our final determination until May 21, 1986 on March 3, 1986 (51 FR 7977).

On February 14 through 17, 1986, we verified the information provided by the respondent at its facilities outside of Buenos Aires, Argentina on April 4, 1986, Houston, Texas. On April 21, 1986, we held a hearing to provide all interested parties with an opportunity to comment on the preliminary determination.

Products Under Investigation

The products covered by this investigation are oil country tubular goods (OCTG). The term OCTG covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It concludes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary) as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4958, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

This investigation covers the period from February 1 to July 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States.

We calculated the purchase price for Dalsid based on the C.I.F., duty paid, price to unrelated U.S. purchasers. We made deductions for port charges, inland freight, brokerage, duties, wharfage, marine insurance and ocean freight costs incurred in delivering the product to the United States.

Foreign Market Value

We determined that there were insufficient sales of OCTG in the home market for purposes of determining foreign market value. Therefore, we looked to third-country sales as the basis of comparison. We found that Bolivia and Canada were the third-country markets with sales of merchandise at the greatest degree of similarity and largest volumes to which Dalsid sold such or similar merchandise. We have based such or similar product

groupings on advice from Department of Commerce steel experts.

Petitioners alleged that the sales to third countries were made at prices below the cost of production. We examined production costs, including materials, labor and general expenses as reported in the response. In computing costs of production, we used actual cost for fiscal year 1984 based on the adjusted standard costs rather than 1985 standard costs, since the 1985 standard costs were implemented during the last days of the period of investigation and it was the 1984 standards that were in effect for virtually the entire period. Fixed overhead was adjusted to reflect depreciation expense indexed on a monthly rather than year-end basis.

Selling, general and administrative expenses (SG&A) were adjusted to include all financial effects except primary indexation of sales and non-operating income from investments. Imputed credit expense was included in SG&A expense after deducting a portion of the interest expense attributable to the accounts receivable, which portion was calculated on the basis of total trade receivables to total assets.

In comparing the cost of production to third county sales, we converted Argentine currency to U.S. dollars using the certified exchange rate in effect on the date of third country sale. We found that all such or similar merchandise sold to Bolivia and Canada was sold at prices below the cost of production over an extended period of time, in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, we disregarded these sales in our analysis in accordance with section 773(b) of the Act since there were insufficient sales at or above cost of production. Instead, we used constructed value to determine foreign market value. In accordance with section 773(e) of the Act, we calculated constructed value by adding the costs of materials, fabrication, SG&A expenses, as described above, and profit. We used the actual SG&A expenses since they exceeded the statutory minimum of ten percent. We used the statutory minimum of eight percent for profit prescribed in section 773(e)(1)(B) of the Act, since actual profit was less than eight percent of the sum of manufacturing costs and SG&A expenses. We added U.S. packing costs. We made an adjustment for differences in circumstances of sale for credit terms in accordance with § 353.15 of our regulations.

In calculating foreign market value, we made currency conversions from Argentina australs to U.S. dollars using certified exchange rates in accordance with section 353.56(a)(1) of our regulations.

Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, including examination of relevant sales and financial records of the company.

Petitioners' Comments

Comment 1. Petitioners assert that there are discrepancies between the U.S. sales prices reported by Dalsid to the Department and certain data submitted by respondent relative to its U.S. sales such as the customs duty reported in the response and commissions.

DOC Response. We have verified the information submitted relative to Dalsid's U.S. sales and found the information to be complete and accurate. Therefore, we have relied on that data in our determination.

Comment 2. Petitioners argue that Dalsid did not sell the "green shell," which is reported in the response, prior to its importation. This assertion is based on the following facts: (1) Some of the pipe has not been delivered to the U.S. customer and the long period between the contract and delivery is unusual in the trade and (2) some of this pipe has been offered to another U.S. customer.

DOC Response. We verified all aspects of the reported sales of "green shell." In the course of the verification we reviewed the contract, export and import documentation and other relevant documentation. The subject pipe has been shipped into the United States. It is being stored for the account of the customer identified by Dalsid with storage costs accruing to the customer's account. The customer also paid U.S. inland freight costs. Title has transferred with respect to some of the reported sales. Title has not transferred on some of the pipe because of a downturn in the oil industry. However, the contractual obligation is fixed. It is correct that Dalsid offered some of this pipe to another U.S. customer. However, if any pipe had been delivered to the second customer, Dalsid would have been obligated to replace that pipe for delivery to the original customer on the same terms. The proposed sale to the second customer was not completed. Based on the foregoing, we have treated the sales of "green shell" as sales which were made during the period of investigation and completed prior to importation.

Comment 3. Petitioners argue that, since Dalsid has not provided data quantifying adjustments for differences in physical characteristics between "green shell" and finished OCTG which was sold to third countries, the Department should assume that the "green shell" is identical to the finished OCTG.

DOC Response. Since we did not use third country prices as our basis of comparison, the issue is moot.

Comment 4. Petitioners claim that Dalsid has failed to provide certain necessary cost of production data, including product-specific cost data and meaningful explanations of allocation methods used to develop cost.

DOC Response. We disagree. Product-specific cost data were provided in the January 31, 1986 submission. Explanations of allocation methodologies were obtained during verification and described in the verification report.

Comment 5. Petitioners argue that meaningful participation by petitioners was precluded by Dalsid's failure to provide requested information which tied submitted cost information to the financial statements.

DOC Response. As the submission was prepared on a current cost basis, which is the Department's methodology for accounting for the effects of inflation on costs, the submitted costs were not traceable through the company's product cost accounting to the financial statements. However, during verification the submission was reconciled to the general ledger, disbursement records, and source documents.

Comment 6. Petitioners state that details of Dalsid's allocation of financial expenses to cost of production must be available under administrative protective order, so that the petitioners can comment on Dalsid's allocation of financial expenses to SG&A expense.

DOC Response. The petitioners have received a full narrative description which identifies discrete categories of financial expenses. These are sufficient to allow petitioners to comment on the appropriate classification of these expenses for purposes of our calculations.

Comment 7. Petitioners assert that the Plan Austral has not altered significantly the inflationary adjustments that need to be made to Dalsid's costs.

DOC Response. Because the submission was prepared on a current cost basis, we believe that the submitted costs adequately took into account inflation.

Comment 8. Petitioners argue that it is unclear whether the respondent's current cost methodology represented costs of material inputs at the time of purchase or at time of actual usage. Consequently, petitioners cannot assess whether the full effects of inflation have been captured. In addition, petitioners are unable to determine if Dalsid's current cost methodology adjusts for the carrying costs of inventory and materials inputs.

DOC Response. The submitted current costs for materials were calculated by using actual costs of purchases in the month of shipment of the OCTG. Inventory carrying costs were effectively included in the submission through allocation of financing expenses and manufacturing overhead.

Comment 9. Petitioners contend that in periods of high inflation, Dalsid's use of standard material usage and scrap recovery rates may obscure the true costs of production.

DOC Response. For the submission only standard material usage and scrap recovery rates, both of which approximate the actual expenses of the company, were used. As the actual costs for materials, for scrap and for the credits for scrap recovery were used, inflation has been taken into account.

Comment 10. Tax credits on Dalsid's sales to third country markets do not offset the value added tax (VAT) that Dalsid must pay on its input materials. Therefore, the VAT on raw materials should be included in the cost of production.

DOC Response. We disagree, since the company is reimbursed for the VAT paid on raw materials which are used for exported finished goods.

Comment 11. Petitioners argue that the Department must ensure that Dalsid does not understate its costs by valuing its scrap at market value. The per unit value of scrap must be reduced by Dalsid's cost of reclaiming and reprocessing its scrap or the credit will be overstated.

DOC Response. The process of reclaiming and reprocessing scrap is part of the normal operations of OCTG production and therefore is included in the cost of manufacturing.

Comment 12. Petitioners argue that the Department has not chosen the most suitable third-country sales for comparison with Dalsid's U.S. sales. They believe Bolivian sales would be more comparable than Colombian for "green shell" comparisons.

DOC Response. We have reviewed the submitted data and determined that sales to Bolivia constitute sales of the most comparable OCTG sold in adequate commercial quantities to a free market. Therefore, we have made comparisons with these sales.

Comment 13. Petitioners argue that because of the recent finding of Revenue Canada that Argentine casing was being sold at the time in question at approximately 40 percent below fair value, those sales may not present a fair basis for comparison. Other third-country sales would, therefore, form a more appropriate basis for comparison.

DOC Response. Since we found the sales to Canada were at less than cost, we used constructed value as our basis of comparison. Therefore, the issue is moot.

Comment 14. Petitioners contend that the methodology described in Dalsid's questionnaire response to calculate the credit adjustment on third-country sales appears to be inappropriate. They contend that the interest rate found at verification should be used to calculate the third-country credit adjustment. In addition, they claim that the interest rate used to calculate credit costs on U.S. sales, by Dalsid, is totally inappropriate.

DOC Response. We based our credit calculations on actual interest rates charged to Dalsid for equivalent borrowings and the days outstanding, which were verified.

Respondent's Comments

Comment 1. Respondent contends that Dalsid's sale of green shell is a purchase price sale made during the period of investigation.

DOC Response. See our response to Petitioners' Comment 2.

Comment 2. Respondent contends that its cost information is complete.

DOC Response. We believe that the submitted cost data and the cost data obtained during verification were sufficient to be used for purposes of our final determination.

Comment 3. Respondent argues that green shell is not similar merchandise to finished OCTG.

DOC Response. We disagree. Based on analysis performed by Department of Commerce industry experts, we have determined that green shell is similar to certain grades of finished OCTG. We compared the green shell sales to sales of similar OCTG to Bolivia with adjustments for differences in physical characteristics. In reaching our conclusion, we determined that green shell is made of essentially the same component materials with variations in proportions of those materials, can be used for the same purposes as finished OCTG, is commercially interchangeable with finished OCTG, and that the further processing is done at the option of the purchaser.

Comment 4. Respondent argues that if the Department is going to compare green shell with Dalsid's finished OCTG, it should be compared with J–55 grade, because it is more similar than any other finished OCTG based on physical characteristics, potential uses, and commercial value.

DOC Response. We agree that J–55 is the most similar grade to the green shell which was sold to the United States. There were insufficient sales of this grade in comparable sizes to free market third countries during the period of investigation. Therefore, we chose sales of N–80, the next most comparable grade, as our basis of comparison. We found that these sales were made at prices which were below the cost of production.

Comment 5. Respondent claims that N–80 grade cannot be considered similar to green shell because it does not have facilities to upgrade the green shell to that grade. Dalsid produces N–80 by another process.

DOC Response. Based on advice from our commodity experts, we have determined that N–80 meets the criteria for merchandise similar to green shell. The adjustments for differences in physical characteristics are based on direct manufacturing costs incurred; therefore, respondent's ability to upgrade the green shell is irrelevant.

Comment 6. Respondent argues that in making price-to-price comparisons, we should use the most comparable products sold to third countries.

DOC Response. See our responses to Petitioners' Comments 12 and 13 and Respondent's Comment 4.

Comment 7. Respondent argues that the Department was correct in its preliminary finding that critical circumstances do no exist.

DOC Response. Since this determination is negative, the issue is moot.

Comment 8. Respondent argues that in evaluating whether critical circumstances exist, we should not consider the March-June period in determining whether there were massive imports over a relatively short period. Respondent argues that there were no imports during this period because of the disruption in the market caused by a previous antidumping duty investigation of OCTG from Argentina. That investigation was terminated when the ITC found no injury on May 22, 1985 (50 FR 21147).

DOC Response. Since this determination is negative, the issue is moot.

Final Determination of Critical Circumstances

Since this determination is negative, the issue of whether critical circumstances exist is moot.

Discontinuance of Suspension of Liquidation

In accordance with section 735(c)(2)(A) of the Act, we are directing the United States Customs Service to discountinue the suspension of liqudation for all entries of OCTG from Argentina that were entered, withdrawn from warehouse, for consumption, on or after January 27, 1986. Accordingly all bonds should be cancelled and estimated antidumping duties deposited should be refunded.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-12610 Filed 6-2-86; 9:38 am]

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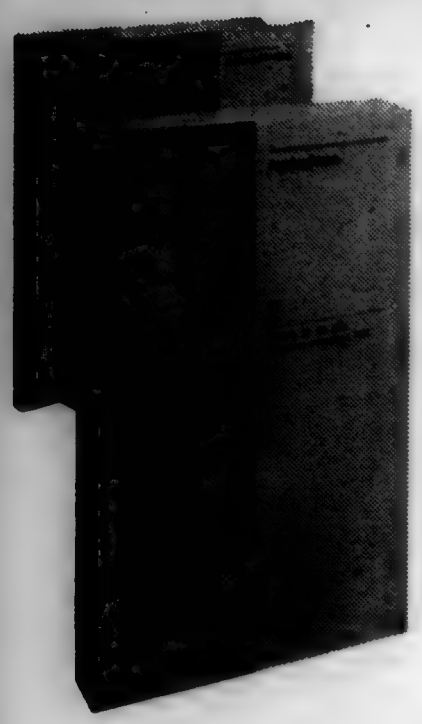

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DEPARTM

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7 CFR Pa

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General
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AGENCY:
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ACTION:

SUMMARY
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Rules and Regulations

Federal Register
Vol. 51, No. 107
Wednesday, June 4, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 3350S]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Late Planting Option (7 CFR Part 400, Subpart A), effective with the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Delete the adverse weather condition requirement; (2) publish a corrected list of crop insurance regulations to which the Late Planting Option applies; and (3) provide availability of the Late Planting Option beginning with 1987 crop year fall-planted crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the Late Planting Option Regulations are:

1. Section 400.5.—Delete the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434) as this plan is no longer offered under the provisions of Part 434.

Add Pea Crop Insurance Regulations (7 CFR Part 416) and Sweet Corn (Canning and Freezing) Crop Insurance Regulations (7 CFR Part 437) as crops eligible for the Late Planting Option.

Allow the Late Planting Agreement (LPA) to be used for fall-planted crops beginning with 1987 crop year. The LPA will be available on fall-planted crops and only in those areas where wheat, barley, oats and rye are not usually planted in the spring. The availability of this option to most spring planted crops has allowed FCIC to avoid extension of final planting dates with the concurrent reduction in yields. The Agreement allows an extension of the final planting date with a reduction in guarantee and is more actuarially sound than the previous procedure. FCIC has allowed the program in a limited winter wheat area and the results have been favorable for both the Corporation and the insured.

This change will allow the LPA to be used for fall planted wheat, barley, oat and rye areas provided these crops are insurable under the basic policy. All others areas will have the LPA available on a spring-planted basis only.

2. Section 400.6—Delete the adverse weather conditions requirement. It is difficult to determine if the planting delay is due to adverse weather conditions or some other factor. Since no actuarial basis exists for the restriction, FCIC deletes the requirement and allows an option regardless of the reason. This change will allow the Lake Planting Option to be used whenever the otherwise insurable crop is planted after the final planting date without regard to the reason.

On Friday, March 21, 1986, FCIC published a Notice of Proposed Rulemaking in the Federal Register at 51 FR 9826 to revise and reissue the Late Planting Agreement Option Regulations (7 CFR Part 400, Subpart A), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the rule, but none were received.

In reviewing the list of crops eligible for the LPAO, FCIC found that the Pea Crop Insurance Regulations (7 CFR Part 416) should have been included as a crop eligible for LPA. Accordingly, the Pea Crop Insurance Regulations are added as a crop determined to be eligible for the LPA.

Therefore, with the exception of minor language changes, the proposed rule, amended as outlined above, is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 400

Crop insurance; Late planting agreement option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Late Planting Agreement Option Regulations, Subpart A of Part 400, Title 7 of the

Code of Federal Regulations, effective for the 1987 and succeeding crop years, as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1987 and Succeeding Crop Years

Sec.

400.1 Availability of the late planting option.
400.2 Definitions.
400.3 Responsibilities of the insured.
400.4 Applicability to crops insured.
400.5 The Late Planting Agreement.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 400.1 Availability of the late planting option.

The Late Planting Option shall be offered under the provisions contained in 7 CFR Part 402, *et seq.*, within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this subpart.

§ 400.2 Definitions.

For the purposes of the Late Planting Option:

(a) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) "Late Planting Agreement" means that agreement executed by the final planting date, between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(c) "Production guarantee" means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement and for the accuracy of the data provided on that Agreement. The provisions of this subsection shall not relieve the insured of any responsibilities under the provisions of the insurance contract.

§ 400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR Part 416	Pea
7 CFR Part 418	Wheat
7 CFR Part 419	Barley
7 CFR Part 420	Grain Sorghum
7 CFR Part 421	Cotton
7 CFR Part 422	Potatoes
7 CFR Part 423	Flax
7 CFR Part 424	Rice
7 CFR Part 425	Peanuts
7 CFR Part 427	Oats
7 CFR Part 428	Sunflowers
7 CFR Part 429	Rye
7 CFR Part 430	Sugar Beets
7 CFR Part 431	Soybeans
7 CFR Part 432	Corn
7 CFR Part 433	Dry Beans
7 CFR Part 435	Tobacco (Quota Plan)
7 CFR Part 436	Tobacco (Guaranteed Production Plan)
7 CFR Part 437	Sweet corn (Canning and Freezing)
7 CFR Part 438	Tomatoes (Canning and Processing)
7 CFR Part 443	Hybrid Seed
7 CFR Part 447	Popcorn

The Late Planting Option shall be available in all counties in which the Corporation offers insurance on these crops.

§ 400.5 The Late Planting Agreement.

The provisions of the Late Planting Agreement are as follows:

U.S. DEPARTMENT OF AGRICULTURE

Federal Corp Insurance Corporation

Late Planting Agreement

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____

_____

Crop _____

Notwithstanding the provisions of section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date.

The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option.

If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this Agreement.

Insured's Signature _____
Date _____

Corporation Representative's Signature and Code Number _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and regulations promulgated thereunder (7 CFR 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies, U.S. Government contract collection agencies and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement not being accepted by the Corporation.

Done in Washington, DC, on April 22, 1986.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-12421 Filed 6-3-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 417

[Doc. No. 0069A]

Sugarcane Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the Federal Register on Tuesday, April 29, 1986, at 51 FR 15871, revising and reissuing the Sugarcane Crop

Insurance Regulations (7 CFR Part 417). In that publication the provision to cover the insurance attachment period in areas having three or more years' of stubble cane was inadvertently omitted. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to the Office of Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. No. 86-9488, appearing at page 15871, is corrected by adding a provision for an insurance period in those areas having three or more years' stubble cane (appearing on page 15873 in the right column) to read as follows:

PART 417—[AMENDED]

1. The authority citation for 7 CFR Part 417 continues to read as follows:

Authority: Secs. 508, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1508, 1516).

2. In §417.7(d), paragraph 7.a. of the Federal Crop Insurance Corporation Policy is amended by adding subparagraph (3) to read as follows:

§ 417.7 The application and policy.

* * * * *

(d) * * *

7. * * *

a. * * *

(3) All other stubble cane on the later of April 15 following normal harvest or 30 days after harvest.

* * * * *

Done in Washington, DC on May 29, 1986.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-12587 Filed 6-3-86; 8:45 am]

BILLING CODE 3410-08-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 111

Pollution Control; Eligibility Policy

AGENCY: Small Business Administration

ACTION: Final rule.

SUMMARY: This final rule provides that waste disposal concerns are not eligible for pollution control financing assistance under this Part.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Tallon, Director, Pollution Control Financing Staff (202) 653-2543.

SUPPLEMENTARY INFORMATION: On January 8, 1986, the Small Business Administration (SBA) published in the **Federal Register** (51 FR 966), a notice of proposed rulemaking which provided that waste disposal concerns are not eligible for pollution control financing assistance. The Agency received 21 written responses.

During the early stages of the Pollution Control Financing Guarantee (PCFG) program, SBA interpreted the legislative history of its guarantee authority to preclude assistance for the acquisition of a pollution control facility designed to control pollution caused by others than the applicant itself. For this reason applications from waste disposal concerns were considered ineligible.

Upon request of the (then) Administrator of SBA, the Comptroller General of the United States reviewed this conclusion. In an unpublished decision (B-149685) dated November 14, 1978, the Comptroller General stated that SBA could extend the benefit of the program to waste disposal concerns, if it chose to do so, because

> SBA is free, in the exercise of its discretion, to choose a definition of "pollution control facilities" which it feels will most effectively implement congressional intent and carry out the purposes of its guarantee program for such facilities.

But the Comptroller General cautioned that the legislative history did not necessarily support the eligibility of waste disposal concerns:

> It is possible to infer from these references [in the legislative history] that the Congress intended to exclude from guarantee benefits under Section 404, those small business concerns that provide pollution abatement services to others for profit, because investments made by these firms in facilities would be productive and income producing and could provide a satisfactory return. SBA apparently made that inference in the past, and construed the language of the second portion of the definition of "pollution control facilities" set forth above, as limiting solid waste facility coverage to those facilities ameliorating pollution problems caused by the small business concern's own solid waste.

In reexamining the question of the eligibility of waste disposal concerns for the PCFG program, SBA has concluded, after reviewing the responses, that the purposes of the PCFG program, as set forth in the legislative history and the statute, are better served by excluding such businesses from eligibility. Therefore, by the promulgation of this final rule SBA returns to its prior view that waste disposal concerns are not eligible for financial assistance under the PCFG program.

As both the Senate and House reports make clear, PCFG assistance, which is 100 percent underwritten by the Government, is intended for small concerns required to comply with ecological standards by installing nonproductive pollution abatement equipment, purchased incident to their other profit-oriented activities. Where pollution abatement is the main purpose of a concern, such equipment is dedicated to the profit-making activity itself, and is indistinguishable from equipment of any other industry providing a product or service. SBA believes that the purchase of such equipment by firms in the pollution control business is contrary to the purposes of the pollution control financing guarantee authority. The acquisition of such equipment by small concerns is properly assisted by either non-SBA programs or by SBA programs under Titles III and V of the Small Business Investment Act (15 U.S.C. 661 *et seq.*).

Of the 21 written comments, one respondent stated the regulation would preclude assistance to landfill, gas, etc., emissions; one stated that financial institutions would hesitate to lend to businesses which face clean up problems; three stated that the change would foster and encourage monopolization; three stated that expansion would be impossible without SBA assistance; four stated that the 7(a) Business Loan Program does not meet the needs of small business; nine were carbon copies that gave no reasons for their objections.

While there have been various interpretations of "pollution control facilities" over the years, the regulatory language, in accordance with such history, should clarify the distinction between the eligibility of those businesses providing pollution abatement services to others for profit and those businesses having a need to correct ongoing pollution problems caused by their own waste.

The final rule will not have a significant economic impact on a substantial number of small entities. It is not possible to predict the number of small concerns that would be affected by this final rule because our statistics are not kept on that basis, but if the final rule had been in effect during the time that the current rule was in effect (1980 to present), about one fifth, overall, of the pollution control guarantees would not have been made under this program:

Year	Total pollution control guarantees	Waste disposal concerns
1980	92	[1] 16
1981	83	[1] 15
1982	3	1
1983	4	1
1984	4	0
1985	5	2

[1] Estimate.

The final rule will not cause any increase in cost for consumers, Federal, State or local government agencies or geographic regions. As for a cost increase to the waste disposal industry, it is not possible to predict that there will or will not be such increase. On the one hand, the pollution control program offers fixed rate long-term 100% guaranteed financings up to $5 million, including tax-exempt financings, with a guarantee fee authorized by statute at one (1) percent to three and one-half (3½) percent. On the other hand, the regular business loan program offers two (2) percent guarantee fees for guaranteeing up to 85% on loans up to $500,000 for SBA's share and a term tailored to the borrower's ability to repay.

There are no reporting, recordkeeping or other compliance requirements inherent in this rule, nor does the rule duplicate, overlap or conflict with any other Federal rule.

This is not a major rule for purposes of E.O. 12291 because the annual economic effect will be less than $100 million. The maximum financing under the PCPG is $5 million. The total authority for PCPG in FY 1986 is $150 million. If the prior ratio of waste disposal concern financings to total PCPG authority were maintained, such financings would not exceed $30 million.

List of Subjects in 13 CFR Part 111

Environmental protection, Loan programs/business, Small business.

Accordingly, pursuant to the authority in section 308(c) of the Small Business Investment Act (15 U.S.C. 687(c)), SBA amends Part 111, Chapter I, Title 13 of the Code of Federal Regulations as follows:

PART 111—POLLUTION CONTROL

1. The authority citation for Part 111 is revised to read as follows:

Authority: 15 U.S.C. 687(c).

2. Section 111.2 is revised to read as follows:

§ 111.2 Policy.

It is the intent of Congress to assist existing small concerns which are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor, by authorizing SBA to guarantee fully (100 percent), directly or in cooperation with others, the periodic payments due in connection with the purchase or lease of such Facilities under a Qualified Contract. The guarantee shall be a full faith and credit obligation of the United States, and may be issued notwithstanding that the pollution control Facility is acquired by the use of proceeds from tax-exempt industrial revenue bonds.

(Catalog of Federal Domestic Assistance Program No. 59.031, Small Business Pollution Control Financing Guarantee.)

Dated: May 12, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12348 Filed 6-3-86; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 122

[Rev. 4; Amdt. 1]

Business Loans, Interest Rates

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule provides that with respect to any loan made prior to April 27, 1984, utilizing a quarterly fluctuating interest rate, such rate may be changed to a monthly fluctuation with the prior written consent of the borrower, the lender, the Small Business Administration (SBA), and the secondary market investor (if any).

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Wise, Financial Analyst, Office of Portfolio Management, (202) 653-6900.

SUPPLEMENTARY INFORMATION: On November 15, 1985, SBA published in the **Federal Register** (50 FR 47227), a notice of proposed rulemaking which clarified the intent of the Agency to allow quarterly fluctuating interest rates, on loans made prior to April 27, 1984, to be changed to monthly fluctuations, so long as there is obtained the prior written consent of the borrower, participating Lender, SBA, and any secondary market holder of the guarantee portion. The Agency received one written response which favored the proposal. The competitive banking industry requires that lenders structure their loans to attract business. The prevalent attitude of borrowing customers is that it is in everyone's interest to schedule loans which can take advantage more quickly of the downward trend of interest rates. Without this final rule, an announced reduction of the prime rate for example, in April or May 1985, could not have been passed along to a borrower of an SBA guaranteed loan made prior to April 1984, until July 1985. Consequently participating lenders were not able to serve their customers properly in a competitive environment. This final rule permits a quarterly interest rate fluctuating loan to be changed, with all the parties consenting, to a monthly fluctuation so that the borrower might obtain the benefit in May, for example, of an April reduction in the prime rate.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)). This change does not impose recordkeeping or paperwork requirements.

This is not a major rule for purposes of E.O. 12291 because the annual economic effect will be less than $100 million. The outstanding guaranteed loan portfolio at April 30, 1984, numbered 82,412 loans totaling $7,196,900,000. If two-thirds of these loans were variable rate loans still outstanding, the average effect on each loan would have to be $1,820 for a combined annual effect of $100,000,000 on average loan size of $87,328. This would be an annual effect of 2% on the interest rate with 100% participation in monthly adjustments. While borrower demand for conversion to monthly interest rate adjustments is unknown, neither the annual effect nor the participation rate will be to this degree.

List of Subjects in 13 CFR Part 122

Loan programs—business, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends Part 122, Chapter I, Title 13, Code of Federal Regulations as follows:

PART 122—BUSINESS LOANS

1. The authority citation for Part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.8-4 is amended by revising paragraph (a) to read as follows:

§ 122.8-4 Variable (fluctuating) rate.

* * * * *

(a) Frequency. The fluctuation may occur no more frequently than monthly, except for the first fluctuation, which may occur on the first business day of

the month following initial disbursement: *Provided*, That with respect to any loan made prior to April 27, 1984, utilizing a quarterly fluctuation, the interest rate may be changed to a monthly fluctuation with the prior written consent of the borrower, Participating Lender, SBA, and Registered Holder (if any).

* * * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans.)

Dated: March 19, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-12545 Filed 6-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24185; Amdt. No. 25-50]

Airworthiness Standards; Fire Protection Requirements for Cargo or Baggage Compartments

Correction

In FR Doc. 86-11048 beginning of page 18236 in the issue of Friday, May 16, 1986, make the following correction:

On page 18244, above the signature, insert the following line:

"Issued in Washington, D.C., on May 8, 1986."

BILLING CODE 1505-01-M

14 CFR Part 39

[Docket No. 85-NM-164-AD; Amdt. 39-5327]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which supersedes an existing airworthiness directive (AD) applicable to certain Boeing Model 707/720 airplanes. The existing AD requires inspection and repair, as necessary, of cracks in the wing front spar upper chord. A recent reassessment by the manufacturer has revealed that the maximum allowable length of a crack in the upper front spar which may be repaired in accordance with previous releases of the applicable service bulletin must be reduced from 2.5 inches to 2.0 inches. Cracks greater than 2.0 inches in length, previously repaired in accordance with the existing AD, may be subject to failure under maximum design conditions, and could result in buckling of the spar chord.

DATES: Effective July 14, 1986.

ADDRESSES: The applicable service documents may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) which supersedes an existing AD requiring inspections and repair, as necessary, of cracks in the wing front spar upper chord of certain Boeing Model 707/720 airplanes was published in the Federal Register on February 14, 1986, (51 FR 5543). The comment period for the proposal closed on April 7, 1986.

Interested parties have been afforded an opportunity to participate in the making of this AD, and due consideration has been given to all comments received.

The only comment received was from the manufacturer, which recommended substitution of the words "greater than 2.0 inches" for the words "between 2.0 and 2.5 inches" in paragraph D. of the proposed rule. The FAA concurs and the final rule has been revised accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously mentioned.

It is estimated that 18 airplanes will be affected by this AD. Airplanes which have been previously repaired will require approximately 40 manhours per airplane to review the existing repairs. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of this AD will be $28,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 707/720 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding Airworthiness Directive (AD) 85-08-07, Amendment 39-5044 (50 FR 16465; April 26, 1985), with the following new airworthiness directive:

Boeing: Applies to Model 707 and 720 series airplanes, certificated in any category, with 15,000 or more landings. To ensure continued structural integrity of the wing front spar upper chord, accomplish the following within 100 landings or 60 days after the effective date of this AD, whichever occurs first, unless previously accomplished within the last 900 landings or 305 days:

A. Perform a close visual inspection of the wing front spar upper chord for cracks and corrosion in accordance with Boeing Service Bulletin 3240, Revision 1, dated November 13, 1961, or later FAA-Approved revision. Repeat the inspection at intervals not to exceed 1,000 landings or one year, whichever occurs first.

B. If cracks or corrosion areas are found, repair prior to further flight in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965, or later FAA-approved revision.

C. Cracks which have been repaired in accordance with the "stop drilling" procedure described in Part III, Figure 2, of Service Bulletin 3240, Revision 1, dated November 13, 1961, or later FAA-approved revision, must be visually inspected at intervals not exceeding 300 landings, until permanently repaired in accordance with Part III, Figure 2, of Service Bulletin 3240, Revision 3, dated October 18, 1965, or later FAA-approved revision. A permanent repair must be completed within 1,000 landings or one year, whichever occurs first after the effective date of this AD.

D. Cracks greater than 2.0 inches in length, which have been previously repaired in

accordance with Boeing Service Bulletin 3240, Revision 2, dated May 3, 1985, or earlier, must be repaired in accordance with Revision 3, dated October 18, 1985, or later FAA-approved revision, 1,000 landings or one year, whichever occurs first after the effective date of this AD.

E. After each of the above inspections and repairs have been performed, apply BMS-3-23 corrosion inhibitor, or equivalent, to the affected areas.

F. Alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications require by this AD.

All persons affected by this proposal who have already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This AD supersedes AD 85-08-07, Amendment 39-5044.

This amendment becomes effective July 14, 1986.

Issued in Seattle, Washington, on May 28 1986.

David E. Jones,

Acting Director, Northwest Mountain Region

[FR Doc. 86-12479 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-159-AD; Amdt. 39-5326]

Airworthiness Directive: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective by individual telegrams to all known U.S. owners and operators of Boeing Model 747 airplanes powered by General Electric CF6 or Pratt and Whitney Aircraft JT9D-70A turbofan engines. The AD requires inspections and repair, if necessary, of the Engine Number 1 engine control cable to ensure control system integrity. This action is prompted by an incident in which a broken engine control cable resulted in extensive structural damage to a Model 747, and injury to its passengers, when the airplane veered off the runway due to uncontrollable asymmetric thrust during landing thrust reversal. A broken control cable can cause the engine to accelerate to an unusually high level of forward thrust (above takeoff power), which can result in an uncontrollable airplane asymmetric thrust situation.

DATES: Effective June 23, 1986. As to all persons except those persons to whom it was made immediately effective by telegraphic AD T85-25-55, issued December 20, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur D. Scholes, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office; telephone (206) 431-2972. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On December 2, 1985, Air France Flight 091, a Boeing Model 747-200 airplane powered by General Electric CF6 engines, was involved in an accident in which the airplane veered off the runway due to uncontrollable asymmetric thrust during landing thrust reversal. It was determined that the accident was caused by a broken Engine Number 1 control cable, which resulted in the inability of the flight crew to control the engine power. The accident resulted in injury to passengers and structural damage to the airplane.

The Engine Number 1 control cable is a 7-strand cable which goes through a cable passage hole in a support bracket on the strut. This installation is unique to CF6-powered Model 747's and JT9D-70A-powered Model 747's because of the common nacelle installation. Chafing of the cable against the side of the hole can result in the cable breaking. If the cable breaks while the throttles are in reverse thrust position, the release of cable tension will cause the thrust to decrease and may cause the reverser to retract. If the cable breaks while the throttles are in the forward thrust position, the release of cable tension will cause the thrust to increase—perhaps to the full throttle stop.

As a result to previous reports of broken control cable strands, including one broken cable which resulted in an inactive thrust reverser and loss of engine control (a less significant result than the Air France accident), Boeing issued Service Bulletin (SB) 747-76-2063 on July 12, 1985. This SB provides instructions to rework the support bracket and provided pulley bracket replacement to correct the chafing problem.

Following the Air France accident, Air France inspected sixteen CF6-powered Model 747 airplanes in Paris. Inspection results revealed that two Engine Number 1 control cables were worn and two had broken strands. Boeing then prepared an Alert Service Bulletin (ASB) 747-76A-2063, Revision 1, dated December 18, 1985, to provide instructions for inspection and necessary repairs of the Engine Number 1 control cables.

On December 20, 1985, telegraphic AD T85-25-55 was issued and made effective immediately as to all known U.S. owners and operators of Boeing Model 747 series airplanes powered by General Electric CF6 or Pratt and Whitney Aircraft JT9D-70A turbofan engines. The AD requires repetitive inspections and repair, if necessary, of the Engine Number 1 engine control cable in accordance with Boeing Alert Service Bulletin 747-76A-2063, Revision 1, dated December 18, 1985. Modification of the Engine Number 1 control cable in accordance with Boeing Service Bulletin 747-76-2063, dated July 12, 1985, constitutes terminating action for the required repetitive inspections.

Since a situation existed, and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis,

as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required.)

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, line number 1 through 607, powered by General Electric CF6 or Pratt & Whitney Aircraft JT9D-70A turbofan engines, certificated in any category.

To prevent failure of the Engine Number 1 control cable which may cause loss of control of the engine, accomplish the following, unless previously accomplished:

A. Within 48 hours following receipt of this AD, and thereafter at intervals not to exceed 600 flight hours, perform inspections and repair, if necessary, in accordance with Boeing Alert Service Bulletin 747-76A-2063, Revision 1, dated December 18, 1985, or later FAA-approved revisions.

2. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and modifications required by this AD.

4. Modification of the Engine Number 1 engine control cable in accordance with Boeing Service Bulletin 747-76-2063, dated July 12, 1985, constitutes terminating action for the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 23, 1986.

It was effective earlier to all recipients of telegraphic AD T85-25-55 issued December 20, 1985.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12480 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-9; Amdt. 39-5325]

Airworthiness Directives; Garrett Turbine Engine Company Model TFE731-2, -3, and -3R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes a currently effective priority letter Airworthiness Directive (AD) 86-04-02 applicable to Garrett Turbine Engine Company (GTEC) Model TFE731-2, -3, -3R turbofan engines. The priority letter AD requires the removal of certain fan rotor discs with more than 4000 total operating cycles in service. This final rule AD is needed to prevent the failure of the fan rotor disc due to fatigue cracking which could result in separation of the fan rotor assembly from the engine. Supersedure of priority letter AD 86-04-02 is necessary to include additional dash number fan rotor disc part numbers that were not listed in the priority letter AD.

DATES: Effective upon receipt of priority letter AD 86-04-02 dated February 14, 1986, for operators with GTEC TFE31-2, -3, -3R turbofan engines with fan rotor disc part numbers 3073436-1, -2, and -3, and 3072162-1, -2, and -3 installed.

Effective June 16, 1986 for operators with GTEC TFE731-2, -3, and -3R turbofan engines with rotor disc part numbers 3073436-4 and 3072162-4 installed.

Compliance required according to the complaince schedule as prescribed in the body of the AD.

ADDRESSES: The applicable service documents may be obtained from Garrett General Aviation Services Company, Department H65-1, Building 601AD, P.O. Box 29003, Phoenix, Arizona 85038.

A copy of the service documents is contained in the Rules Docket, FAA, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts, 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1382.

SUPPLEMENTARY INFORMATION: On February 14, 1986, Priority Letter AD No. 86-04-02 was issued and made effective immediately as to all known U.S. owners and operators of certain Garrett Turbine Engine Company Model TFE731-2, -3, and -3R turbofan engines. The priority letter AD requires removal from service of certian fan rotor discs with more than 4000 cycles. This AD action was prompted by fatigue failure of the fan rotor disc which caused separation of the fan rotor assembly from the engine. Priority Letter AD 86-04-02 is being superseded to add part numbers 3073436-4, and 3072162-4 to the list of affected fan discs. These -4 dics, subject to the same life limits, have become available since the issuance of the priority letter.

Since a situation exists affecting continued airworthiness of these engines that requires immediate adoption of this regulation, it is found that notice and public procedure thereon are impracticable and contrary to public interest, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the proecedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulation (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

2. By adding to Section 39.13 the following new airworthiness directive (AD):

Garrett Turbine Engine Company (formerly the AiResearch Manufacturing Company of Arizona): Applies to all Model TFE731-2, -3, and -3R turbofan engines installed is aircraft certified in all categories equipped with fan rotor discs, part number 3073438-1, -2, -3, and-4 and 3073162-1, -2, -3, and -4.

Compliance is required as indicated unless already accomplished.

To prevent failure of the fan rotor disc due to fatigue cracking, accomplish the following:

(a) For fan rotor discs with 4000 or less operating cycles on the effective date of this AD, remove fan roter disc from service before reaching 4000 total operating cycles.

(b) For fan roter discs with more than 4000 but with 6000 or less operating cycles on the effective date of this AD, remove fan rotor disc from service within the next 100 operating cycles or prior to reaching 6005 total operating cycles whichever occurs first.

(c) For fan roter discs with more than 6000 but with 8000 or less operating cycles on the effective date of this AD, remove fan rotor disc from service within the next 5 operating cycles or prior to reaching 8001 total operating cycles whichever occure first.

(d) For fan rotor discs with more than 8000 operating cycles on the effective date of this AD, remove fan roter disc from service prior to further flight.

Notes: (1) An operating cycle is considered as any engine operating sequence involving an engine start, at least one acceleration to 80 percent or more low pressure rotor speed, and an engine shutdown. An alternate method of determining cycles is to consider each airplane landing as one cycle. Fan rotor discs which have had their cyclic lives calculated by any other method are to have their cyclic lives recalculated using one of the two methods specified above.

(2) It has come to the attention of the FAA that some life limit log cards in the engine log book were incorrectly filled out in that the "dash number" of the disc part numbers (i.e. -1/-2/-3-/-4) may have been left off. This should be corrected when the disc is next available to read the entire part number. All fan rotor discs are -1,-2, -3, -4, and are affected by this AD. Fan rotor discs may be returned to GTEC for evaluation. Shipping information is contained in Garrett Alert Service Bulletin No. TFE731-A72-3325 Revision 2 dated April 4, 1986.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007 may adjust the compliance time specified in this AD.

This amendment supersedes Priority Letter AD 86-04-02 issued February 14, 1986.

There are two effective dates for this superseding AD.

For those operators who received Priority Letter AD 86-04-02, the effective date of this AD is the date of the priority letter AD.

The effective date of this AD is June 16, 1986, for operators with fan rotor disc part number 3073438-4 or 3073162-4 installed and for operators who did not receive the priority letter AD.

Issued in Burlington, Massachusetts, on May 22, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-12476 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

[Docket No. 51256-6082]

Exports of Crude Oil Derived From Alaska's Cook Inlet

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule modifies section 377 of the Export Administration Regulations by creating a new eligibility category under § 377.6(d)(1)—Exports of crude oil from Alaska's Cook Inlet. Each exporter is required to submit a license application along with supporting information demonstrating that the proposed export qualifies under this new category. No export can be made without the Department of Commerce first issuing an individual validated license. Exporters should be aware that any licenses issued will have a term of not greater than one year. Moreover, they should also be aware that outstanding licenses may be revoked if there is serious interruption to available U.S. oil supplies.

This rule is issued in final form following review and consideration of comments received in response to a proposed rule published on December 26, 1985 (50 FR 52798).

Only crude oil derived from state-owned submerged lands in Alaska's Cook Inlet and not subject to the restrictions contained in the Export Administration Act of 1979, as amended, Naval Petroleum Reserves Production Act of 1976, Outer Continental Shelf Lands Act, or Mineral Lands Leasing Act of 1920, as amended, is eligible to be exported under this rule. This excludes domestic crude oil derived from the North Slope or Outer Continental Shelf, or crude oil transported over a federal right-of-way granted pursuant to the Mineral Lands Leasing Act or the Trans-Alaska Pipeline Authorization Act.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney A. Joseph, Acting Manager, Short Supply Program, Room 3876, Office of Industrial Resource Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202/377-3984.

SUPPLEMENTARY INFORMATION: On December 26, 1985, the Department of Commerce published in the Federal Register (50 FR 52798) a notice requesting public comments on a proposed rule to revise Part 377 of the Export Administration Regulations (EAR) to permit exports of crude oil derived from Alaska's Cook Inlet. The proposed rule was intended to implement a finding made by Commerce Secretary Malcolm Baldrige on November 6, 1985 under section 103 of the Energy Policy and Conservation Act (EPCA), that the export of Cook Inlet oil was in the national interest and consistent with the purposes of EPCA ("national interest finding"). The Secretary's finding followed a decision by President Reagan contained in a Presidential Policy Directive, dated October 24, 1985, based on the recommendation of the Economic Policy Council, to use his administrative authority to permit the sale of Cook Inlet oil to other countries.

The State of Alaska estimates the 1986 crude oil production from state-owned submerged lands in Cook Inlet at approximately 40,000 barrels per day. This production has been declining, and is expected to continue to decline, at approximately 15 percent per year. The oil is produced by a number of companies and serves several U.S. markets, which are expected to continue to use some of the oil.

Without further development of Cook Inlet resources, it is estimated that no more than 20,000 barrels per day may be available for export and most likely only 4,000 to 5,000 barrels per day of state royalty oil may be exported. This

quantity would require only a few vessel sailings a year and would have a minimal impact on the shipping industry.

Comments

The Department received 32 comments in response to the notice of proposed rulemaking, including one comment which consisted of nine separate statements, for a total of 40 comments. All of the commentators addressed the substance of the decision to permit the export of oil from Alaska's Cook Inlet. Twenty-seven commentators favored and 13 commentators opposed such exports. Six of the commentators challenged the Secretary's national interest finding based on procedural grounds. Only four commentators addressed the proposed rule itself. These comments related to the definition of Cook Inlet oil and to the documentation requirements supporting export license applications.

The Office of the Governor of the State of Alaska commented on the definition of the area included under "Cook Inlet" in the proposed regulations recommending the phrase "state-owned submerged lands." The proposed regulations had used the term "state waters of Alaska's Cook Inlet". The final rule adopts the recommendation because "state-owned submerged lands" is a more precise term.

Two oil producers also commented on the definition of "Cook Inlet" suggesting inclusion of onshore Cook Inlet fields. Export from onshore fields in the Cook Inlet Basin would invoke other statutory export restrictions, most notably the Mineral Lands Leasing Act of 1920 as amended (MLLA). Therefore, that area is not included within the definition.

The Coalition to Keep Alaska Oil questioned the Department's ability to insure compliance with the MLLA. License applications submitted under § 377.6(d) of the EAR are subject to the documentation requirements of § 377.6(e). Section 377.6(e) requires: (1) Documentary evidence of an order as described in § 372.6(a)(1) and (2); (2) a sworn affidavit, signed by an authorized representative of the exporter, which demonstrates (in conjunction with such supporting evidence as may be required by the Department of Commerce) that the applicable criteria of § 377.6(d)(1) are satisfied; and (3) an affidavit, attesting that the crude oil has not been nor will be produced from a Naval Petroleum Reserve.

The affidavit required by item 2 must state that the crude oil to be exported was derived from state-owned submerged lands in Alaska's Cook Inlet and has not been and will not be transported by a pipeline over a federal right-of-way granted pursuant to section 28(u) of the Mineral Lands Leasing Act of 1920 or by section 203 of the Trans-Alaska Pipeline Authorization Act. The applicant also will be required to provide documented independent verification of the origin of the crude oil. The Department has the right under existing regulations to require any additional supporting documentation.

The remaining comments received did not address the proposed rule but rather the Secretary's national interest finding.

The comments that challenged the substance of the Secretary's finding alleged that: Exports would not increase incentives for investment in the exploration and development of domestic crude oil would not result in transportation efficiencies; and, would not materially enhance the energy security of our allies. The favorable comments received concluded that: Increased export market opportunities would provide economic incentives for domestic oil exploration and development; that transport of oil to Pacific Rim countries is more efficient than to the U.S. Gulf Coast; that allowing Pacific Rim allies to purchase oil from more-diverse sources strengthens their energy security; and, that removing restrictions on crude oil exports would provide an incentive for our trading partners to remove barriers to U.S. goods.

Comment that challenged the Secretary's national interest finding on procedural grounds asserted that EPCA and the Administrative Procedure Act require public notice and comment prior to the finding; that the notice of proposed rulemaking failed to disclose whether EPCA's "mandated" criteria were considered in making the finding; and, that the notice did not make public the substance of advice received from any government agency concerning the finding.

The notice of proposed rulemaking met all applicable statutory provisions relating to notice and comment requirements. Neither the language of the applicable statutory provisions, nor any reasonable interpretation of the language, imposes a notice and comment requirement with respect to the national interest finding. Furthermore, EPCA does not "mandate" criteria. It grants the Secretary broad discretion in making the finding subject only to the criteria that exemption be based on a "reasonable classification or basis" as the Secretary determines to be appropriate and consistent with the national interest and the purposes of EPCA. The basis for the Secretary's finding was included with the proposed rule. Finally, advice obtained from other agencies is not routinely placed in the public record so as to facilitate frank interagency communication in rulemaking decisions.

Another comment stated that the national interest finding was improper under the delegation provisions in section 2 of Executive Order 11912 because the rule did not state that the Secretary had consulted with the Secretary of Defense or other agencies. Section 2 of the Executive Order cites section 5(a) of the 1969 Export Administration Act. That section of the Act did not require consultation with the Secretary of Defense specifically but merely charged the Secretary to seek information and advice from other agencies. As stated with the proposed rule, the Secretary's decision was taken in "consultation with other appropriate U.S. Government officials" and, as noted above, after a decision by the President pursuant to a recommendation of the Economic Policy Council.

Finally, comments were received concerning the classification of the proposed rule as not a major rule under E.O. 12291, alleging that exports of oil would result in an annual impact on the economy of $100 million or more. The conclusion in the comment was based on the theoretical effects of Alaska oil exports in general and not Cook Inlet oil specifically. The Department confirms its conclusion that the readily forseeable impact of this rule is less than $100 million annually.

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Industrial Resource Administration has determined that:

1. This final rule is not a major rule within the meaning of section 1 of Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required, and neither a preliminary nor a final Regulatory Impact Analysis has been or will be prepared.

2. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this

final rule will not have a significant economic impact on a substantial number of small entities. This is because the rule relieves a U.S. government prohibition on crude oil exports derived from Alaska's Cook Inlet and has no direct or indirect costs of compliance other than a routine licensing requirement. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

3. This rule affects collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq*). These collections have been approved by the Office of Management and Budget under control numbers 0625–0001 and 0625–0155.

4. This rule is effective June 4, 1986 since it is a substantive rule that relieves a restriction on certain crude oil exports, and therefore is excepted under section 553(d)(1) of the Administrative Procedure Act (5 U.S.C. 553) from the requirement of a thirty (30) day delay in effective date.

List of Subjects in 15 CFR Part 377

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, Part 377 of Title 15, Code of Federal Regulations, is amended as follows:

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

1. The authority citation for Part 377 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat 503, 50 U.S.C. app. 2401 *et seq.* as amended by Pub. L. 97–145, of Dec. 29, 1981 and by Pub. L. 99–64 of July 12, 1985, E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Sec. 103, Pub. L. 94–163, as amended, (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; Sec. 28 Pub. L. 93–153, (30 U.S.C. 185); Sec. 28 Pub. L. 93–372, (43 U.S.C 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); Sec. 101 and 201(11)(e) Pub. L. 94–258, (10 U.S.C. 7420 and 7430(e)); and Presidential Findings (50 FR 25188, June 18, 1985).

2. Section 377.8(d)(1)(ix) is added as follows:

§ 377.8 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(ix) Exports from Alaska's Cook Inlet. The Group A commodity was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not been and will not be transported by a pipeline over a federal right-of-way granted pursuant to section 28(u) of the Mineral Lands Leasing Act of 1920 or by section 203 of the Trans-Alaska Pipeline Authorization Act.[1]

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Issued May 30, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–6645; File No. S7–38–84]

Definition of Annuity Contract or Optional Annuity Contract

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule.

SUMMARY: The Commission is adopting a rule, which establishes a "safe harbor" for certain forms of annuity contracts that will not be deemed subject to the federal securities laws. The Commission is also withdrawing its general statement of policy regarding the factors which should be considered in any determination of the status under the federal securities laws of certain contracts issued by insurance companies. The "safe harbor" rule enables a corporation subject to insurance regulation by any state to offer and sell a contract with reasonable assurance that it falls within the meaning of the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8) of the Securities Act of 1933, provided that the rule's conditions are satisfied. The release also addresses several related matters.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Special Counsel, (202) 272–2061, or Joseph R. Fleming, Attorney, (202) 272–3017, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting rule 151 under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Act") relating to certain types of annuity contracts issued by insurance companies, including what are generally known as guaranteed investment contracts.[1] Simultaneously, the Commission is withdrawing Securities Act Release No. 6051 (April 5, 1979) ("Release 6051"), 44 FR 21626 (April 11, 1979), an interpretative release concerning the availability of section 3(a)(8) of the Act to certain contracts issued by insurance companies. Rule 151 provides "safe harbor" from the federal securities laws for an "annuity contract or optional annuity contract," as those terms are used in section 3(a)(8) of the Act, that satisfies all of the rule's conditions. The rule specifies a three-prong test for determining whether an insurer is able to find refuge for its contract in the "safe harbor." The annuity or optional annuity contract must (1) be issued by a corporation (an "insurer") subject to the supervision of the state insurance commissioner, bank commissioner, or any agency or officer performing like functions; (2) include certain guarantees of principal and interest sufficient for the insurer to be deemed to assume the investment risk; and (3) not be marketed primarily as an investment. The general purpose of the rule is to provide greater certainty regarding the availability of section 3(a)(8) to certain annuity products and to facilitate the Commission's effective administration of its statutes. The Commission is also expressing its views on several ancillary items relating to the subject matter of the rule.

Rule 151 was proposed for public comment on November 21, 1984.[2] The original comment period closed February 15, 1985, but was subsequently extended to April 15, 1985.[3] In response

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[1] On November 8, 1985, the Secretary of Commerce determined that the export of crude oil derived from Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

[1] The contracts included within this term are discussed in Securities Act Rel. No. 5838 (June 22, 1977) [42 FR 32861 (June 28, 1977)]. As relevant here, these contracts, generally speaking, are deferred annuities under which the purchaser agrees to pay money to an insurer (either in a lump sum or in installments) and the insurer promises to pay interest at a guaranteed rate for the life of the contract. In some contracts, the insurer may periodically pay discretionary excess interest over and above the guaranteed rate. In addition, virtually all of these contracts allow the purchaser to buy an annuity with the monies accumulated under the contract. Finally, these contracts are issued on either an individual or a group basis.

[2] The reasons for proposing rule 151 and the administrative history of the rule are set forth in Securities Act Release No. 6558 (November 21, 1984) ("proposing release") [49 FR 46730 (November 28, 1984)].

[3] *See* Securities Act Rel. No. 6588 (February 15, 1985) [50 FR 7188 (February 21, 1985)]. This extension of the comment period was made at the request of the insurance industry's principal trade association to give it more time to study and prepare comments on the proposed rule.

to its request for comments, the Commission received twenty-two letters. While almost all of the commentators commended the Commission for attempting to bring greater certainty to a complex area through objective standards, many expressed concern over certain elements of the proposed rule and some of the positions taken by the Commission in the proposing release. Several commentators also suggested refinements which they believed would enhance the rule's usefulness. After considering the comments, the Commission has decided to adopt rule 151, subject to several technical and clarifying changes, and to issue this release, which (together with the proposing release to the extent not modified by this release) will assist in interpreting the rule.

Discussion

The first portion of this discussion will focus on specific elements of the rule and certain interpretive positions taken by the Commission in the proposing release about which comments and suggestions were offered. The remainder of the discussion will deal with the issues raised by the commentators about the Commission's views on several ancillary matters relating to the rule.

1. Characterization of the Rule as a Safe Harbor Definition

One commentator questioned the Commission's characterization of the rule as a "definition" of the phrase "annuity contract or optional annuity contract" as used in section 3(a)(8) of the Act. This commentator suggested that it would be more appropriate conceptually to caption the rule as a "safe harbor," since it is, in the commentator's opinion, simply "an interpretation describing those forms of annuity contracts that clearly fall within the boundaries of section 3(a)(8)."

Rule 151 is merely a "safe harbor," not an all-inclusive definition purporting to encompass every annuity contract that falls within the section 3(a)(8) exclusion. The rule, therefore, does not attempt to identify the outer limits of section 3(a)(8) beyond which a contract, though denominated "insurance," is a security subject to federal regulation. Rather, the rule simply defines a class of annuities that the Commission believes is clearly entitled to rely on the section. While compliance with rule 151 will assure "non-security status," failure to comply with the rule would not mandate "security status" for an annuity product. Finally, as stated in the proposing release, an insurer offering a contract that, for one reason or another, does not satisfy all of the rule's conditions may still rely directly on section 3(a)(8), albeit with no Commission assurance that the contract is covered by the section 3(a)(8) exclusion.[4] The Commission has revised the caption of the rule to better emphasize that it is just a "safe harbor."

2. Paragraph (a)(1)—State Regulation

Paragraph (a)(1), as proposed, would require that the contract be issued by a corporation subject to regulation as an issuer of insurance by any agency or officer of any State or Territory of the United States or District of Columbia. As stated in the proposing release, the purpose of this initial requirement is to determine whether the status under the Act of the investment vehicle in question should be analyzed under section 3(a)(8).[5]

One commentator noted that while paragraph (a)(1), as proposed, did not mirror exactly the corresponding language of section 3(a)(8), it appeared to be consistent with the purpose of the section. However, this commentator suggested that the rule should also provide that "the contract itself by subject to state regulation as an annuity or insurance contract." This requirement, according to the commentator, would insure that the rule would be available only for those contracts which were subject to relevant state regulation with respect to such matters as reserves, investment restrictions, and approval of contract forms.

The Commission agrees with the concerns that apparently prompted the comment—only bona fide annuity contracts should be able to rely on the "safe harbor" rule.[6] The wording of the rule has been modified slightly to make it clearer that only "annuity or optional annuity contracts" may use the rule. Any such contract issued by an insurer satisfying the rule's requirements would, no doubt, be "subject to state regulation as an annuity or insurance." Accordingly, the Commission believes no further modification is needed.

3. Mortality Risk

Release 6051 contained a requirement that the insurer assume a "meaningful mortality risk" under the contract by guaranteeing "permanent" annuity purchase rates that are not "significantly lower than those otherwise commercially available." In the proposing release, the Commission requested comments on whether a mortality risk assumption requirement should be an element of the rule, and, if so, how best to implement such a requirement.

Five commentators, associated primarily with the life insurance industry, supported omitting any *per se* mortality risk test from the proposed rule. In their view, eliminating such a test is supported by the legislative history of section 3(a)(8) and the relevant case law. These commentators went on, however, to urge the Commission to make clear that any decision to omit a mortality risk test is not intended to mean that mortality risk is not an appropriate consideration in a section 3(a)(8) "facts and circumstances" analysis for annuity contracts outside rule 151. One of the commentators emphasized that this approach is consistent with the Commission's position, as stated in the proposing release, that to the extent an insurer is unable to rely on the rule, it has the responsibility for determining the status of its contract under section 3(a)(8). Thus, the commentator contended that any assessment of the relevance of mortality risk for contracts not coming within the "safe harbor" should be left to the issuing insurance company.

Two commentators argued that rule 151 should contain a mortality risk assumption requirement. One of them noted that many owners of single premium deferred annuities ("SPDAs")[7] may not be protected by the insurance guaranty association laws of some states.[8] This commentator stated that insurance guaranty associations that do not cover SPDAs consider such contracts to be investment vehicles and not insurance. The reason for this determination, the commentator said, is because SPDAs frequently provide

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[4] In this regard, insurers offering life insurance contracts are in the same position as those who seek to offer annuity contracts in direct reliance upon section 3(a)(8). The securities law status of a life insurance contract may be analyzed by reference to the principles discussed in rule 151 and accompanying releases and by reference to relevant judicial interpretation of section 3(a)(8).

It should be noted that rule 151 is not intended to address appropriate accounting treatment under generally accepted accounting principles.

[5] 49 FR at 49752 (proposing release at 6).

[6] The case law seems to support the substance of the comment. *See Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65, 67 (1959) ("VALIC").

[7] SPDAs are a type of guaranteed investment contract. *See* note 1, *supra*.

[8] Generally, state association guaranty laws provide for the indemnification of losses suffered by contractowners due to the impairment or insolvency of an insurer. An association derives funds for this purpose from assessments against insurers doing business in the state.

lower guaranteed annuity conversion rates than "bona fide" annuities, and thus do not shift a material mortality risk to the insurer.

After analysis of the relevant cases, [9] as well as section 3(a)(8) and its legislative history, the Commission has determined not to include a mortality risk assumption requirement as a separate element of rule 151. [10] When Congress created the insurance exclusion under the Act, there were certain "traditional" annuity contracts in effect that involved no assumption of mortality or longevity risks by the insurer. [11] However, the Commission is not concluding by this action that consideration of mortality risk assumption has no place in a section 3(a)(8) analysis of annuity contracts outside the "safe harbor." The presence or absence of a mortality risk assumption may be an appropriate factor to consider in a general facts and circumstances analysis under section 3(a)(8).

4. Paragraph (a)(2)—Investment Risk

An insurer may rely on the rule only if it assumes the investment risk under the contract. [12] The rule approaches this issue in terms of the degree of investment risk assumed by the insurer and sets objective standards in paragraph (b) for the minimum risk that must be assumed under the contract. Paragraph (b) contains three conditions that a contract must meet in order for the insurer to establish that is has assumed sufficient investment risk for purposes of the "safe harbor" rule.

A. Paragraph (b)(1)—Separate Account Funding of Contracts

Paragraph (b)(1) of the rule provides that one of the conditions that must be met for the insurer to be deemed to have assumed the investment risk under the contract is that the value of the contract not vary according to the investment experience of a separate account. Commentators on paragraph (b)(1) asked whether contracts that provide for the allocation of contributions to a separate account but do *not* provide for contract values that depend on the success of any investments in the separate account are disqualified from relying on the "safe harbor" rule. This use of a separate account, they maintained, has absolutely no effect on the contractual guarantees made by the insurer. They also argued that funds in this type of account are supported by the totality of general account assets. The commentators noted that insurer use such "nonunitized" separate accounts to facilitate the matching of maturities of fixed-income securities that support contract liabilities and as a mechanism for complying with state law reserve requirements or statutory accounting standards. [13]

A contract which provides for the allocation of net contributions to a separate account but does not provide for contract values that vary with the investment performance of the separate account would satisfy paragraph (b)(1) of the rule. This position presupposes that such "nonunitized" separate accounts are used solely to accommodate the circumstances described above and that the assets of the insurer's general account will be available to meet the guarantees provided under the contract without resulting in additional investment risk. Put another way, these accounts are not functionally equivalent to the types of separate accounts with which paragraph (b)(1) is concerned.

B. Paragraph (b)(2)—Guarantee of Principal and a Minimum Rate of Interest

As proposed, the second condition of the rule's investment risk test would have required that the insurer must, for the life of the contract, (1) guarantee the principal amount of purchase payments (net of deductions for sales, administrative, or other expenses) and interest credited thereto (paragraph (b)(2)(i)); and (2) credit a specified rate of interest to purchase payments and interest credited thereto (paragraph (b)(2)(ii)). The main points raised by the commentators concerning this condition involved market value adjustment features, deferred charges and the guaranteed minimum interest rate.

Market Value Adjustment Features. In the proposing release, the Commission took the position that the requirements of paragraphs (b)(2) (i) and (ii) would preclude a contract with a market value adjustment ("MVA") feature from relying on the safe harbor provided by the rule. [14]

The Commission based its conclusion on the Supreme Court's determination in *VALIC* that the concept of

". . . 'insurance' involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts." [15]

Several commentators acknowledged that MVA features shift some investment risk back to the contractowner. These commentators and others, however, challenged what they viewed as an implicit conclusion by the Commission that this feature alone could jeopardize a contract's status under section 3(a)(8) generally. They maintained that the terms of these provisions vary widely from contract to contract and that the MVA feature of a given contract may well be designed so that the insurer assumes sufficient investment risk under the contract to qualify it for the section 3(a)(8) exclusion. Moreover, some of these commentators urged, based in part on similar reasoning, that some types of MVA features should be expressly permitted under the rule. [16] Accordingly,

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[9] *See, e.g., VALIC*, 359 U.S. 65; *Securities and Exchange Commission* v. *United Benefit Life Ins. Co.*, 387 U.S. 202 (1967) ("United Benefit").

[10] The Commission notes that the states are moving to eliminate the gaps in coverage and protection under their guaranty association systems for investors in guaranteed investment contracts. *See, e.g.*, 27 N.Y. Ins. Law 7701–7718 (McKinney's 1985 Pocket Part); NAIC Life and Health Insurance Guaranty Association Model Act (1985) (the former model law was the basis for guaranty association laws in 26 states). In any event, the presence or absence of coverage under these laws is not determinative of the issue of whether a mortality risk assumption requirement is necessary. The Supreme Court in *VALIC* said, "the meaning of 'insurance' or 'annuity' under these Federal Acts is a federal question." *VALIC*, 359 U.S. at 69.

[11] A commonly accepted form of "annuity" issued prior to 1933 provided for payments in fixed amounts at regular intervals over a stated number of years ("annuities certain"). *See, e.g.*, C. Crobaugh, *Annuities and Their Uses*, 21–22 (1933); G. Fitch, *What Everybody Wants to Know About Annuities*, 9–11 (1934).

[12] This position is well supported by the applicable case law. *VALIC*, 359 U.S. 65; *United Benefit*, 387 U.S. 202.

[13] The term "nonunitized," as used here, reflects the fact that this type of separate account is *not* structured as a single unit operating independently of the investment experience of the insurer's general account.

[14] 49 FR at 46752, n. 17 (proposing release at 10, n. 17). Under an MVA feature, the insured adjusts the proceeds a contractowner receives upon an early surrender (*i.e.*, a surrender made before the end of a period of guaranteed discretionary excess interest) to reflect change in the market value of its portfolio securities supporting the contract. If the market value of the insurer's assets has decreased (*e.g.*, interest rates have increased for comparable interest-bearing instruments) the amount payable upon surrender is adjusted downward. Many MVA features are based upon a formula that recognizes the disparity between the rate of interest being credited to the contract's accumulated value and the rate the insurer is crediting on new money received under new or existing contracts. For surrenders made at a time of increasing market rates, the adjustment could affect both interest accretions and principal.

[15] *VALIC*, 359 U.S. at 71.

[16] Commentators also argued for permitting some MVA features under the rule because, they said, these provisions act as additional surrender charges and thereby enhance the contract's appeal as a long-term retirement vehicle. The Commission believes, however, that the shifting of investment risk distinguishes an MVA feature from a surrender charge. *See* note 20, *infra*.

two commentators argued that the status of a contract with an MVA feature under either the rule or section 3(a)(8) should depend upon the total "facts and circumstances" in each case. In the commentators' view, among the factors relevant to this analysis are (1) the terms of the MVA provision; (2) the circumstances that trigger its application; (3) whether the value accumulated under the contract may be withdrawn in installments over time, or applied to the purchase of guaranteed annuity benefits, without diminution; and (4) whether the withdrawal provisions to which an MVA is applicable are primary or incidental features of the contract.

Because the Commission is concerned that a contract which includes an MVA feature may transfer investment risk to the contractowner to an extent that "safe harbor" treatment would be inappropriate, it continues to believe that it should not permit issuers of such contracts to rely on rule 151.[17] Further, while the proposing release referred only to an "MVA feature," the Commission regards any contract that incorporates a provision, irrespective of the name given to it, which functions in a fashion substantially similar to an MVA as not entitled to the protections afforded by the rule. For example, if a contract includes a damages or default clause that operates like an MVA feature, and if the clause is designed to compensate the insurer under certain circumstances for any loss in market value of the investments supporting the guarantees made by the insurer under the contract, that clause will result in the contract's failure to satisfy paragraph (b)(2) of the rule.[18]

By deciding that a contract with an MVA feature may not rely on rule 151, however, the Commission, as noted in the proposing release, emphasizes that the presence of this feature should not create the negative inference that no such contract is eligible for the exclusion under section 3(a)(8). The degree to which any given MVA feature affects investment risk, and, therefore, the status of the contract, would depend on, among other things, the terms of the feature. In this regard, an MVA feature that invaded principal would be more problematic under a section 3(a)(8) analysis than one that merely requires forfeiture of a small portion of previously credited excess interest.[19]

Deferred Charges. Paragraph (b)(2)(i) of the proposed rule would require that the insurer for the life of the contract guarantee ". . . the principal amount of purchase payments (net of deductions for sales, administrative, or other expenses) and interest credited thereto." The Commission received a substantial number of comments requesting that this provision of the rule be clarified to avoid any appearance of favoring front-end loaded contracts over those that incorporate contingent deferred sales charges or defray sales and other charges and expenses through a charge against the contract value. This interpretation, they said, results from the positioning of the parenthetical reference to deductions, which seems to modify only "purchase payments" and not the entire amount credited under the contract, including interest. A few of these commentators pointed out that the presence of deferred charges encourages the product's use as a long-term retirement vehicle. Thus, several commentators suggested that this interpretive problem would be resolved by moving the parenthetical to the end of paragraph (b)(2)(i).

This rule has been modified slightly by adopting in substance the revision suggested by the commentators. This revision, the Commission believes, makes clear that the rule does not discriminate against contracts that do not have front-end charge structures. In making this change, however, the Commission assumes that it will not result in expense structures that transfer additional investment risk from the insurer to a contractowner.[20]

Minimum Interest Rate. In footnote 16 of the proposing release, the Commission indicated that the specified interest rate credited under the contract, as prescribed in paragraph (b)(2)(ii) of the rule, must at least be equal to the minimum rate required to be credited by the Standard Nonforfeiture Law used by the states.

Two of the three commentators on this point cited practical concerns which they believe make this standard unworkable for measuring the adequacy of the specified interest rate guaranteed under the contract. They observed that (1) a few states have no annuity nonforfeiture law at all on which to base the minimum specified interest rate; (2) the states that currently have such a law may not remain uniform in the future; and (3) there may be forms of annuities, such as group contracts and individual "modified guaranteed annuities," that will not be subject to such a law. One of them mentioned that group annuity contracts generally do not provide interest rate guarantees (minimum or otherwise) of unlimited duration. This commentator further noted that group annuity contracts that include an interest rate guarantee, even a very conservative one, for an indefinite period of time might present the issuing insurer with problems in complying with state law reserving requirements, particularly during a period of rapidly declining interest rates. Thus, this commentator specifically recommended that insurers be permitted to adjust, not more frequently than once every five years, the minimum interest rate in group annuity contracts. The commentator stated that if an insurer modified or eliminated the minimum guarantee at the end of a current five year time period because, *e.g.*, of a sharp drop in interest rates, the group annuity contract would no longer fall within the "safe harbor", and the insurer would thereafter have to rely directly on section 3(a)(8).

Both of these commentators suggested that footnote 16 be reworded to provide that the specified interest rate must not be less than the minimum rate under the

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[17] The way in which an MVA feature may affect investment risk is perhaps best shown by example. Suppose a given contract has a minimum rate of 3% and an excess rate for the year of 5%. Further suppose that the contract is funded by Treasury bonds (paying, e.g., 8¼%) and has an MVA feature tied to the Treasury bond rate. The insurer, by the MVA feature, will have effectively shifted to the investor the risk of any changes in the Treasury bond rate. If the rate moves up, the investor would be more likely to wish to withdraw all or part of the money invested in the contract to reinvest at higher rates. If he or she does so, however, the insurer can adjust the amount withdrawn by discounting it in accordance with those rates. Thus, the insurer is able to protect against redemptions resulting from an upturn in interest rates by adjusting downward the amount payable upon redemption. Of course, the insurer would already be partially protected against a downturn in interest rates by being able to reassess the discretionary rate each year and lower interest if necessary.

[18] For an example of this type of damages or default clause, *see* State Mutual Life Assurance Company of America (pub. avail. December 9, 1985).

[19] In the simple example given *supra* at note 17, a sufficient increase in the Treasury bond rate could cause an invasion of principal, absent an express limitation. Thus, if the investor made a $1,000 payment on January 1 (at 8% simple interest, accrued daily), he or she would have $1,040 available for withdrawal on June 30. If that amount was adjusted for a Treasury bond rate of 10%, however, the investor would receive only $945.45 upon withdrawal, almost $55 less than principal.

Five guaranteed investment contracts have been registered with the Commission under the Act to date. Each had an MVA feature that could invade principal.

[20] For example, a contingent deferred sales load ("CDSL") is simply a sales load that is deducted upon partial or full redemption and that is contingent on the number of years the contract has been in effect. A CDSL normally does not shift additional investment risk to the contractowner, and should be distinguished from an MVA. *See* the MVA discussion *supra* note 16 and accompanying text.

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relevant nonforfeiture laws in the jurisdiction in which the contract is issued. Absent such a law, they maintained, the rate should be not less than the minimum rate required for individual annuity contracts under the Standard Nonforfeiture Law approved by the National Association of Insurance Commissioners ("NAIC").[21]

The third commentator in this area was critical of the inclusion of a minimum interest rate as a requirement of the rule. The Commission, this commentator said, "appears to assume the role of a state legislature by prescribing the substantive content of annuity contracts that are not necessarily within the purview of the Commission's jurisdiction." For that reason, this commentator urged the Commission to delete paragraph (b)(2)(ii) entirely or, alternatively, to remove the minimum rate requirement noted in the proposing release.

The Commission is adopting paragraph (b)(2)(ii) as proposed. It would be inappropriate, particularly in light of clear judicial precedent, to eliminate this provision of the proposal. The Supreme Court in *VALIC* unambiguously concluded that absent some element of a fixed return, *i.e.*, "[s]ome investment risk-taking on the part of the company,"[22] an annuity contract is outside the scope of section 3(a)(8). As stated in the proposing release, paragraphs (b)(2) (i) and (ii) of the rule's investment risk test work in tandem to ensure that a contract relying on the rule includes a guarantee by the insurer that at least some portion of benefits will be paid in a fixed amount.

With respect to footnote 16 of the proposing release, the Commission has clarified the minimum interest rate standard stated therein to take into account many of the practical problems noted by the commentators. In addition, the standard for both individual and group contracts is now set out in paragraph (c) of the rule to make it easier for readers to ascertain the meaning of the term "specified rate of interest," as used paragraph (b)(2)(ii) of the rule.

The Commission has determined not to extend this standard to allow, as requested by one commentator, insurers to modify the minimum interest rate in group annuity contracts at five-year intervals. As discussed above, a guarantee of a minimum interest rate for the life of the contract is critical for purposes of the "safe harbor" rule.

[21] This law is the model for the annuity nonforfeiture laws of most states.

[22] *VALIC*, 359 U.S. at 71.

C. Paragraph (b)(3)—Guarantee of Excess Interest for At Least One Year Periods

The final condition of the proposed rule's investment risk test would require the insurer to guarantee that the rate of any discretionary excess interest credited under the contract will not be modified more frequently than once per year. This provision of the rule elicited a variety of comments, which can generally be broken down into three categories. The commentators expressed concern about the legal justification for this provision, the meaning and application of the term "year," and adjustments to the excess interest rate.

Justification. On commentator contended that the guarantee of excess interest for one year periods still leaves the purchaser shouldering much, if not all, of the investment risk under the contract. This commentator further contended that the guarantees of principal and one year's interest are an inadequate substitute for federal securities law type disclosures about the insurer's financial status, its investment policies and the charges deducted under the contract.

On the other hand, five commentators strongly urged the Commission to omit paragraph (b)(3) from the final rule. They contended that the one-year requirement is both unnecessary and founded on erroneous premises. The frequency of excess interest credits, they maintained, is not a reasonable indicator of the allocation of attendant investment risk between insurer and contractowner. Accordingly, four of these commentators argued that if a contract satisfies the first two conditions of the rule's investment risk test, there is a sufficient amount of risk assumption by the insurer for purposes of section 3(a)(8). Finally, a few commentators argued that Congress, through fairly recent amendments to the federal tax laws, has already taken adequate steps to encourage the use of deferred annuity contracts to meet long-term investment goals, such as the accumulation of savings for retirement, and discourage their use as short-term, tax deferred investment vehicles.[23] They asserted that the new tax law provisions, in contrast to the provisions upon which the Commission based the one-year requirement, are better suited to prevent annuities from being used as a tax favored, short-term investment.[24]

While the commentators make some reasonable arguments, the Commission is adopting the one-year requirement as proposed. Taking the position that various types of excess interest contracts are entitled to rely on the section 3(a)(8) exclusion is itself a major step. The length of time between interest rate modifications is one legitimate measure of the degree of investment risk assumed by the insurer. Designing a "safe harbor" rule is essentially a matter of balancing the legitimate interests of flexibility in structuring insurance products against the need to provide adequate investor protection. Where the limits of the "safe harbor" are set is a matter of discretion and judgment. The Commission believes, therefore, that the one-year period is, on balance, a reasonable condition, complementing the two other components of the rule's investment risk test.

Interpretation of the Term "Year". To avoid a series of practical problems, the commentators generally agreed that if the Commission decided to retain the one-year requirement, the release accompanying the final rule should provide clarification and amplification of the term "year." They said that these problems stem from the diverse methods employed by insurance companies in calculating and declaring excess interest.

Several commentators mentioned that where excess interest is declared for a "year," that year may be a calendar year,[25] a contract year,[26] or some other

[23] The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 324 (1982) ("TEFRA"), changed the tax consequences to contractowners of "premature distributions" from annuity contracts; *i.e.*, distributions received under the contract prior to the annuity starting date. Under TEFRA, premature distributions are treated as taxable income to the extent the cash value of the annuity contract exceeds the investment therein and the remainder as a return of principal. I.R.C. 72(e) (1982). In addition, TEFRA imposed a five percent penalty tax on premature distributions not meeting certain conditions. I.R.C. 72(q) (1982). The Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 780 (1984), stiffened the penalty provision. I.R.C. 72(q) (1984).

[24] In the proposing release, the Commission cited certain TEFRA provisions as indirect support for using the one-year requirement. TEFRA provided special tax treatment to insurers for discretionary excess interest, provided that the excess interest rate was guaranteed in advance for not less than 12 months. I.R.C. 805(f) (1982). In 1984, Congress repealed this section when it redesigned the statutory scheme for taxation of life insurance companies. Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 787 (1984).

[25] Under a calendar year method, the excess rate may be adjusted once per year on January 1, regardless of when payments are received by the insurer from a particular contractowner.

[26] Under a contract year method, the excess rate may be adjusted once per year on the anniversary of the issuance of the contract, regardless of when payments are received by the insurer from a particular contractowner.

12-month period. Consequently, they asked that the Commission not restrict the use of these methods. In addition, a few commentators asked how the prescribed time period is to be linked to purchase payments under a given contract or class of contracts. In this regard, one commentator observed that excess rates may be established on a contract basis, pursuant to which rates are declared for all funds under the contract, or they may be determined on a payment basis, where specified rates are established for all payments received in a particular time period (day, month, quarter, etc.).

A number of commentators were concerned with what they referred to as "stub end" problems.[27] The commentators offered a series of hypothetical situations which they said illustrates only a few of the ways "stub end" problems arise. One such illustration involved the situation where an insurer guarantees on January 1 that all money received, *i.e.*, new money, on new or existing contracts during the ensuing calendar year will be guaranteed excess interest at a specified rate. Under this arrangement, any contract sold after the beginning of the 12-month period would not have a full one-year guarantee for money received that year.[28] If the insurer is not permitted to use the same discretionary interest rate for all new money received during the calendar year, it would be required to make separate 12-month guarantees with respect to each contract issued or each payment received. This, the commentators stressed, could burden insurers administering contracts in this manner with significant additional administrative and systems costs.

The Commission recognizes that the one-year requirement can raise interpretive issues such as those mentioned by the commentators. However, a "rule of reason" interpretation is desirable to afford some flexibility to insurers. More specifically, the Commission does not intend to foreclose insurers from using calendar year, contract year or other twelve-month periods.[29] Neither does it wish to prevent insurers from establishing rates on a contract basis or a per payment basis, as described above. Also, the Commission has no objection to insurers using a combination of different forms of 12-month periods under the same contract.[30] This position, the Commission believes, should eliminate the "stub end" difficulties about which the commentators were concerned.

In adopting this position the Commission expects that insurers will not manipulate the meaning of the term "year" in a way that circumvents the purposes of this provision of the rule. The Commission and its staff will scrutinize the operation of paragraph (b)(3) and will be prepared to adjust the rule, should any abuses appear.

Adjustments to the Excess Interest Rate. This discussion can be broken down into two sub-categories: (1) increases and "three-tier" contracts, and (2) indexed excess interest features.

Increases and "Three-Tier" Contracts

With respect to increases in the rate of excess interest, two commentators noted that paragraph (b)(3) of the rule appears to prohibit *any* modification of the rate during the one-year period. They suggested that the prohibition should apply only to reductions of the effective rate during the one-year period. One of them said that there appears to be no valid reason for preventing the insurer from increasing a rate during that period, provided the new rate is itself prospective and not subject to reduction during the remainder of the period. This, the commentator asserted, would benefit contractowners. Both commentators, therefore, recommended that paragraph (b)(3) be revised to permit explicitly increases in the excess rate during the one-year period.

In the same vein, two commentators requested the Commission to make clear that the one-year requirement is not intended to preclude the use of so-called "three tier" contracts.[31] They both argued that the third tier does not affect the investment risk borne by the insurer, as long as the second-tier rate is reasonably close to market rates at the time of its declaration. One of them further argued that this contract feature is principally designed to serve as a partial buffer between the insurer and the risk of adverse selection whenever market rates fall below the excess interest rate.[32]

The Commission has decided to extend the rule to permit increases in excess rates, provided that the new rate is not subject to reduction for a further one-year period. Thus, after each additional upward adjustment to the excess rate, the one-year period would begin anew. A downward adjustment would not be permitted until one year from the last increase in the excess rate.

However, "three tier" contracts and contracts that allow a reduction in the excess interest rate before a one-year period has run are excluded from the rule.[33] Such contracts are not necessary to protect against the risk of adverse selection; under the rule's flexible approach to the "stub-end" problems an insurer could structure the method used for establishing the excess interest rate to mitigate this risk.[34] More importantly, these contracts could, in effect, lead to a shorter time period for which total excess interest is guaranteed or could easily be structured to undermine the purpose of the one year guarantee.[35] In

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[27] Generally speaking, a "stub end" problem occurs when the excess interest rate credited to a particular purchase payment in either the initial or a subsequent year of the contract is guaranteed for less than a 12-month period. For example, if an insurer declares excess interest each January 1, but pays a more current rate on new contracts entered into or new payments received under existing contracts during the year, a payment received under a contract entered into on July 1 may be credited a given amount (the current rate) of excess interest at that rate for only six months (*i.e.*, until the next January 1).

[28] Of course, money received that year would receive twelve month guarantees for the remainder of the contract, *i.e.*, from the next excess interest declaration.

[29] Thus, a scenario such as that discussed in the example *supra* at note 27 is acceptable under the rule.

[30] For example, an insurer may provide separate 12-month guarantees with respect to each payment received under a multiple payment contract. On January 1, after the second contract year, an insurer could convert to a calendar year period for all funds accumulated to date under the contract. Each purchase payment received during the next two years could continue to receive separate 12-month guarantees. This process could be repeated at two year intervals.

[31] A "three-tier" contract is one type of guaranteed investment contract, under the terms of which the insurer agrees to credit a guaranteed minimum interest rate for the life of the contract, excess interest for a specified period (e.g., one year) at a rate near the market rate prevailing when the rate is set, and a third tier of excess interest for a shorter period (e.g., three months).

[32] If, for example, an insurer using a calendar year period guarantees that all money received on new or existing contracts during the ensuing year will be credited excess interest at a specified rate, this rate applies to a potentially unlimited amount of funds to be received during the 12-month period. Thus, if market rates drop below the insurer's specified rate, purchasers may take advantage of the insurer's more favorable rate. This possibility is the "risk of adverse selection." By setting the one-year, second-tier rate just below the market rate and by reserving the right to adjust the third-tier rate up or down on a periodic basis, this commentator maintained that an insurer could reduce the risk of adverse selection and yet still offer competitive rates.

[33] By definition, "three tier" contracts are precluded from relying on the rule. Under these contracts, the third tier rate may be increased *or decreased* at shorter intervals than once per year. *See* note 31, *supra*.

[34] *See* notes 27 and 28 and accompanying text, *supra*.

[35] For example, a "three tier" contract could permit a scenario under which an insurer guarantees a minimum rate of 3% and a second tier, one-year rate of .5%, enabling the insurer to adjust freely the third tier rate to the extent it exceeds 3.5%. Certain types of short-term increases in the excess interest rate could be similarly

Continued

the case of discretionary excess interest, the shorter the period for which such interest is guaranteed, the greater the degree of investment risk shifted from the insurer to the contractowner. With each additional adjustment to the rate of return credited to the value accumulated under the contract, the obligations of the insurer are measured less in fixed-dollar terms and the investor shares to a greater extent the investment experience of the company.[36]

Indexed Excess Interest Features

The Commission indicated in footnote 19 of the proposing release that it intended to exclude from the "safe harbor" any contract pursuant to which excess interest is determined in accordance with an external formula or index ("index feature"), such as a composite bond index or Treasury bill rate. The Commission reasoned that an insurer which uses an index feature externalizes its discretionary excess interest rate, and thus shifts to the contractowner all of the investment risk regarding fluctuations in the rate.

Eight commentators suggested that the Commission reconsider its position. They contended that the insurer bears an investment risk in that the return on its own invested assets may not equal the rate determined under the index feature. One commentator said that purchasers who use annuity contracts to meet long-term investment goals feel more comfortable in having a product where interest rates change more often and track more closely to those of shorter term funds. Finally, to the extent the rule is expanded to encompass index feature contracts, one commentator questioned whether the "safe harbor" is available to such a contract if the rate of excess interest paid (but not the formula pursuant to which the rate is calculated) changes more frequently than once per year.

After reviewing the comments, the Commission has determined that it would be appropriate to extend the rule to permit insurers to make limited use of index features in determining the excess interest rate, so long as the excess rate is not modified more frequently then once per year.[37] The insurer, therefore, would be permitted to specify an index to which it will refer, no more often than annually, to determine the excess rate that it will guarantee under the contract for the next 12-month or longer period. Once determined, the rate of excess interest credited to a particular purchase payment or to the value accumulated under the contract must remain in effect for at least the one-year time period established by the rule.[38] Thus, while the rate of interest calculated under a particular index or formula may fluctuate upward or downward on a daily basis, the excess interest rate actually credited may not fluctuate more than once per year.[39] The Commission is concerned that index feature contracts that adjust the rate of return actually credited on a more frequent basis operate less like a traditional annuity and more like a security and that they shift to the contractowner all of the investment risk regarding fluctuations in that rate.

5. Paragraph (a)(3)—Marketing

The third element of rule 151, as proposed, is the requirement that "[t]he contract is not marketed primarily as an investment." The Commission cited the *United Benefit* case as its principal support for the application of a marketing test as an element in determining whether or not a contract is within the scope of rule 151.[40] The commentators addressed (1) the necessity for a marketing test, (2) the standards to be used in its application, and (3) certain matters incidental to the test, *i.e.*, "opt-out" features.

Necessity For A Marketing Test

Virtually all commentators on this point stated that because of the largely subjective nature of the marketing test, it appears to be fundamentally inconsistent with the Commission's stated goal of providing greater certainty in this area. They emphasized that annuities have always had a large investment component, and that, therefore, it would be unfair to insurers and the public not to market these products as "wise investments."

Although several commentators acknowledged that the Court in *United Benefit* looked beyond the contract to review marketing, they contended that the Supreme Court's analysis was different from that which is implied in the proposing release. They argued that it was only after the Court had determined, based on the degree of investment risk assumption, that the contract was not an insurance product entitled to section 3(a)(8) treatment, did marketing become a part of the Court's ultimate analysis of the contract's status under section 2(1) of the Act.[41] Therefore, they asserted, marketing as a *per se* test has not been found by the Supreme Court to be an essential element of analysis under section 3(a)(8).

The Commission is adopting paragraph (a)(3) as originally proposed. it continues to believe,[42] as the relevant case law supports,[43] that the manner in which a contract is *primarily* marketed is a significant factor which must be considered in determining a contract's status under the federal securities laws. In *United Benefit*, the insurer advertised its product by "emphasizing the possibility of investment return and the experience of United's management in professional investing."[44] The Supreme Court found this activity to be highly relevant in concluding that the contract does not fall within the insurance exclusion of section 3(a)(8) of the Act.

The Standard and Its Application

One commentator suggested that the standard set forth in paragraph (a)(3) of the rule be changed to "not marketed as a security" because "the term security is well-defined in law." Three other commentators suggested that a more appropriate standard would be that "the contract is not marketed in a manner inconsistent with its character as an annuity."

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manipulated. Consider the following example. An insurer initially takes a conservative approach by setting the excess interest rate at a level below market. Six months later, after its investment posture becomes clearer, the insurer adjusts the excess rate upward (even to a level above market rates) in an attempt to produce a favorable annual rate of return to the contractowner. If the insurer adjusts the rate downward twelve months after the initial rate was set (*i.e.*, six months after the previous adjustment), it would have shortened to six months the period during which it assumed the risk of interest rate movements. This type of increase would, consequently, not be permissible under the rule.

[36] At some point, such a contract "between the investor and the organization no longer squares with the sort of contract in regard to which Congress in 1933 thought . . ." the disclosure and prospectus delivery requirements of the Act were unnecessary. *VALIC*, 359 U.S. at 78 (Brennan, J., concurring).

[37] The Commission's interpretation of the term "year," as discussed earlier, is pertinent here as well. *See* the discussion in Section 4.C., *supra*.

[38] In addition, an insurer cannot change the terms of the index feature pursuant to which the excess rate is calculated more frequently then once per year.

[39] An upward adjustment to the excess interest rate that is consistent with the Commission's position on increases in the excess rate would, however, be permitted. *See* the discussion titled "Increases and 'Three Tier' Contracts" in Section 4.C., *supra*.

[40] 49 FR at 48753 [proposing release at 12].

[41] 15 U.S.C. 77(b)(1). Section 2(1) defines the term "security" for purposes of the Act to include any "investment contract."

[42] The Commission's position here is consistent with its prior positions in this area. *See, e.g.*, Release 6051; Securities Act Release No. 6099 (April 5, 1979) [44 FR 21656 (April 11, 1979)].

[43] The Commission does not subscribe to the interpretation of the *United Benefit* case proffered by several commentators.

[44] *United Benefit*, 387 U.S. at 211, n.15.

Two of the commentators suggested that explicit guidelines be published. On the other hand, one commentator suggested that explicit guidelines would inhibit the creation of new products and would raise more issues than they solved.

The Commission believes that paragraph (a)(3) accurately sets forth the standard for applying the marketing test. By adopting this standard, however, the Commission is not saying, nor has it ever said, that an insurer in marketing its product cannot describe the investment nature of the contract, including its interest rate sensitivity and tax-favored status.[46] The standard adopted by the rule follows the Court's language in *United Benefit* and means simply that the thrust of the insurer's total marketing plan for the product must be targeted to appeal to purchasers " . . . on the usual insurance basis of stability and security. . . ."[46] For example, a marketing approach that fairly and accurately describes both the insurance and investment features of a particular contract, and that emphasizes the product's usefulness as a long-term insurance device for retirement or income security purposes, would undoubtedly "pass" the rule's marketing test.[47]

Because of the many different types of sales practices and the large mix of product features, it would be counterproductive for the Commission to attempt to provide insurers with a mechanical checklist of acceptable and unacceptable marketing techniques. Such a list would soon be outdated and, as one commentator noted, would deprive insurers of flexibility.

Accordingly, the Commission has determined not to publish specific guidelines for sales literature and marketing activities of insurers.[48]

[46] The Commission recognizes that consideration of the investment aspects of a contract is a natural consequence in any discussion of the traditional long-term nature of annuities. However, a presentation of the contract as one type of tax-sheltered investment that may be directly compared to, for example, tax-free municipal bonds, and that is pitched to the same consumer interest in tax-free or tax-deferred interest income, may lead to a different conclusion.

[46] *United Benefit*, 387 U.S. at 211.

[47] By way of contrast, if a contract is promoted with *primary* emphasis on current discretionary excess interest, and the possibility of future interest, or other investment-oriented features of the contract, that contract would likely fail the marketing test.

[48] The Commission, however, reiterates the position it took in footnote 13 of Release 6051. This position includes, among other things, a statement that the "mischievous oral comments of a single unscrupulous sales person" will not change the status of a company's contract.

"Opt-Out" Features

With respect to "opt-out" features,[49] three commentators wrote that they presumed the method of marketing this feature, rather than its actual presence or operation could cause a contract with this feature to be excluded from the proposed rule. They said "opt-out" provisions prompt insurers to continue crediting competitive discretionary rates, which, in turn, gives contractowners a greater incentive for retaining the contract as a long-term investment.

The presence of an "opt-out" feature in itself will not jeopardize a contract's status under the rule. The proposing release does not state that an "opt-out" feature may not or should not be mentioned when selling an annuity in reliance on the rule. Rather, the rule's approach is to examine the primary emphasis of the entire marketing environment. Depending on how an "opt-out" feature is promoted, its presence may be *one* factor relevant to a finding that a contract is being marketed primarily as an investment.[50]

6. Other Matters

A. Deposit Fund Riders

In the proposing release the Commission took the position that the appropriate method for analyzing deposit fund riders in the context of either rule 151 or section 3(a)(8) generally is to require all such riders to be tested separately from the contracts with which they are associated.[51]

Three commentators urged the Commission to take the position that for purposes of either rule 151 or section 3(a)(8) generally, deposit fund riders that are an integral part of the contract with which they are associated or that are incidental to the contract (and, as to the latter, do not involve a shift of a substantial portion of the investment risk to the contractowner) need not be analyzed independently.

[49] In general, "opt-out" or "bail out" provisions allow contractowners to redeem the annuity without the insurer deducting the surrender charge otherwise applicable to a redemption if at any time the rate of discretionary interest declared by the insurer drops below a rate specified in the annuity contract. *See* 49 FR at 46753, n.24 [proposing release at 13, n.24].

[50] An example of how an "opt-out" feature may enable a contract to be marketed as an investment is where an insurer, in an attempt to compete with short-term liquid investments, such as money market funds, promotes the feature by emphasizing its use as a device to provide liquidity.

[51] A deposit fund rider typically is associated with an insurance contract and permits monies in excess of the minimum purchase payments for the principal contract to be deposited with the insurer and credited with interest at a discretionary rate.

For purposes of rule 151, the Commission is of the view that it is appropriate to determine the status of all deposit fund riders separately from the contracts to which they relate. Such an approach, the Commission believes, is not only in accord with relevant precedent,[52] but also focuses primarily on the fundamental question of whether the insurer is assuming a significant degree of investment risk under any deposit fund rider to any annuity contract. If a deposit fund rider is structured as a security it should be treated as such, regardless of the status of the contract to which it is attached or the nature of its relationship to that contract.

B. Withdrawal of Release 6051

In the release proposing rule 151, the Commission indicated that upon final adoption of the rule it would withdraw Release 6051. Commentators generally agreed in principal that Release 6051 should be withdrawn upon adoption of rule 151. However, many commentators were troubled by the prospect of an absence of interpretive guidance on the factors which should be considered in determining the status of annuity contracts falling outside the "safe harbor." The commentators, therefore, urged the Commission to publish, in the release adopting rule 151 or in a separate release, such guidance.

The Commission has determined to withdraw Release 6051 because of certain reservations about its continued usefulness. Any insurer that is unable, or chooses not, to rely on rule 151 may still look to the rule and accompanying releases for interpretive guidance. The rationale underlying the conditions set forth in the rule is relevant to any section 3(a)(8) determination.[53]

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [15 U.S.C. 605(b)], the Chairman of the Commission previously certified that the adoption of rule 151 will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

Paperwork Reduction Act

The rule is not subject to the Act because it does not impose an information collection requirement.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

[52] *See United Benefit*, 387 U.S. at 208.

[53] *See supra* note 4.

Text of Rule 151

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citation:

Citations before * * * indicate general rulemaking authority.

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, * * * § 230.151 also issued under section 19(a) [15 U.S.C. 77(s)(a)].

2. By adding § 230.151 to read as follows:

§ 230.151 Safe harbor definition of certain "annuity contracts or optional annuity contracts" within the meaning of Section 3(a)(8).

(a) Any annuity contract or optional annuity contract (a "contract") shall be deemed to be within the provisions of section 3(a)(8) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)], *Provided*, That

(1) The annuity or optional annuity contract is issued by a corporation (the "insurer") subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(2) The insurer assumes the investment risk under the contract as prescribed in paragraph (b) of this section; and

(3) The contract is not marketed primarily as an investment.

(b) The insurer shall be deemed to assume the investment risk under the contract if:

(1) The value of the contract does not vary according to the investment experience of a separate account;

(2) The insurer for the life of the contract

(i) Guarantees the principal amount of purchase payments and interest credited thereto, less any deduction (without regard to its timing) for sales, administrative or other expenses or charges; and

(ii) Credits a specified rate of interest (as defined in paragraph (c) of this section to net purchase payments and interest credited thereto; and

(3) The insurer guarantees that the rate of any interest to be credited in excess of that described in paragraph (b)(2)(ii) of this section will not be modifed more frequently than once per year.

(c) The term "specified rate of interest," as used in paragraph (b)(2)(ii) of this section, means a rate of interest under the contract that is at least equal to the minimum rate required to be credited by the relevant nonforfeiture law in the jurisdiction in which the contract is issued. If that jurisdiction does not have any applicable nonforfeiture law at the time the contract is issued (or if the minimum rate applicable to an existing contract is no longer mandated in that jurisdiction), the specified rate under the contract must at least be equal to the minimum rate then required for individual annuity contracts by the NAIC Standard Nonforfeiture Law.

By the Commission.

Dated: May 28, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12505 Filed 6-3-86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430 and 442

[Docket No. 86N-0191]

Antibiotic Drugs; Sterile Cefotetan Disodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile cefotetan disodium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective June 4, 1986; comments, notice of participation, and request for hearing by July 7, 1986; data, information, and analyses to justify a hearing by August 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Norton, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile cefotetan disodium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430 and 442 (21 CFR Parts 430 and 442) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective June 4, 1986. However, interested persons may, on or before July 7, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before July 7, 1986, a written notice of participation and request for hearing, and (2) on or before August 4, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact

precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the persons(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements govering this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure; Antibiotics.

21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 430 and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR Part 430 continues to read as follows:

Authority: Secs. 507, 701(a), 59 Stat. 463 as amended, 52 Stat. 1055 (21 U.S.C. 357, 371(a)); 21 CFR 5.10.

2. Section 430.5 is amended by adding new paragraphs (a)(88) and (b)(90) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(88) *Cefotetan.* The term "cefotetan master standard" means a specific lot of cefotetan that is designated by the Commissioner as the standard of comparison in determining the potency of the cefotetan working standard.

(b) * * *

(90) *Cefotetan.* The term "cefotetan working standard" means a specific lot of a homogeneous preparation of cefotetan.

3. Section 430.6 is amended by adding new paragraph (b)(90) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(90) *Cefotetan.* The term "microgram" applied to cefotetan means the cefotetan activity (potency) contained in 1.012 micrograms of the cefotetan master standard.

PART 442—CEPHA ANTIBIOTIC DRUGS

4. The authority citation for 21 CFR Part 442 is revised to read as follows and the authority citations following the sections in Part 442 are removed.

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

5. New § 442.53a is added to read as follows:

§ 442.53a Sterile cefotetan disodium.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Sterile cefotetan disodium is a white to off-white lyophilized powder. It is so purified and dried that:

(i) If the cefotetan disodium is not packaged for dispensing, its potency is not less than 890 micrograms and not more than 970 micrograms of cefotetan per milligram on the anhydrous basis. If the cefotetan disodium is packaged for dispensing, its potency is not less than 890 micrograms and not more than 970 micrograms of cefotetan per milligram on the anhydrous basis and also, each container contains not less than 90 percent and not more than 120 percent of the number of milligrams of cefotetan that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 1.5 percent.

(v) Its pH in an aqueous solution containing 100 milligrams of cefotetan disodium per milliliter is not less than 4.0 and not more than 6.5.

(vi) It gives a positive identity test for cefotetan.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, moisture, pH, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) If the batch is packaged for repacking or for use in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*2*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—(1) Potency.* Proceed as directed in § 436.216 of this chapter, except use the resolution test solution to determine resolution in lieu of the working standard solution. Perform the assay at ambient temperature, using an ultraviolet detection system operating at a wavelength of 254 nanometers, a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl hydrocarbon bonded silicas, a flow rate not exceeding 2.0 milliliters per minute, and a known injection volume of between 10 and 20 microliters. Reagents, working standard solution, sample solution, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Reagents—(a) Diluting solution.* Mix water:methanol:acetonitrile (90:5:5).

(*b*) *Mobile phase.* Mix 0.1*M* phosphoric acid:glacial acetic acid:methanol:acetonitrile (1700:100:105:105). Filter through a suitable filter capable of removing particulate matter greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Preparation of working standard, sample, and resolution test solutions—(a) Working standard solution.* Accurately weigh approximately 50 milligrams of the cefotetan working standard into a 250-milliliter volumetric flask containing 12.5 milliliters of methanol. Swirl the flask for several minutes, then add 12.5 milliliters of acetonitrile. Swirl the flask until the cefotetan is dissolved. Dilute to volume with water to obtain a solution containing approximately 200 micrograms of cefotetan per milliliter. Mix well. Protect the working standard solution from light.

(*b*) *Sample solutions—(1) Product not packaged for dispensing (micrograms of cefotetan per milligram).* Dissolve an accurately weighed portion of the

sample with sufficient diluting solution described in paragraph (b)(1)(i)(*a*) of this section, to obtain a concentration of approximately 200 micrograms of cefotetan per milliliter.

(*2*) *Product packaged for dispensing.* Determine both micrograms of cefotetan per milligram of the sample and milligrams of cefotetan per container. Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(ii)(*b*)(*2*) (*i*) and (*ii*) of this section.

(*i*) *Micrograms of cefotetan per milligram.* Dissolve an accurately weighed portion of the sample with sufficient diluting solution described in paragraph (b)(1)(i)(*a*) of this section, to obtain a concentration of approximately 200 micrograms of cefotetan per milliliter.

(*ii*) *Milligrams of cefotetan per container.* Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Further dilute an aliquot of the solution thus obtained with sufficient diluting solution described in paragraph (b)(1)(i)(*a*) of this section, to obtain a concentration of approximately 200 micrograms of cefotetan per milliliter.

(*c*) *Resolution test solution.* Place 10 milliliters of the working standard solution in a stoppered flask containing a few milligrams of magnesium carbonate. Close the flask and sonicate for 10 minutes. If the solution is not slightly turbid, add more magnesium carbonate and repeat sonication. Filter the turbid solution through a 0.5-micron filter and use within 2 hours. As this solution stands, the tautomer concentration increases.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.3 at 10 percent of peak height in lieu of 5 percent of peak height.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 1,500 theoretical plates.

(*c*) *Resolution.* The resolution (*R*) between the peak for cefotetan and its tautomer is satisfactory if it is not less than 2.0.

(*d*) *Coefficient of variation.* The coefficient of variation (S_n in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter. Alternate chromatographic conditions are acceptable provided comparable system suitability requirements are met. However, the sample preparation described in paragraph (b)(1)(ii)(*b*) of this section should not be changed.

(iv) *Calculations*—(*a*) Calculate the micrograms of cefotetan per milligram of sample as follows:

$$\text{Micrograms of cefotetan per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the cefotetan peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefotetan peak in the chromatogram of the cefotetan working standard;

P_s = Cefotetan activity in the cefotetan working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(*b*) Calculate the cefotetan content of the container as follows:

$$\text{Milligrams of cefotetan per container} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the cefotetan peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefotetan peak in the chromatogram of the cefotetan working standard;

P_s = Cefotetan activity in the cefotetan working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(*2*) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(*3*) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of cefotetan per milliliter.

(*4*) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(*5*) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams of cefotetan disodium per milliliter.

(*6*) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section, compares qualitatively to that of the cefotetan working standard.

6. New § 442.253 is added to read as follows:

§ 442.253 Sterile cefotetan disodium.

The requirements for certification and the tests and methods of assay for sterile cefotetan disodium packaged for dispensing are described in § 442.53a.

Dated: May 29, 1986.

Kenneth R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 86-12488 Filed 6-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 220, 221, 236, 246, 251, and 255

[Docket No. R-86-1151; FR-1805]

Multifamily Housing Mortgage Insurance—Deregulation of Rents

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule generally ends HUD regulation of rents and charges for services and facilities in projects with mortgages insured under section 207 of the National Housing Act (NHA) on or after November 30, 1983. HUD regulation of these projects will continue for (1) rents and charges for facilities and services for units occupied by Section 8 tenants and for subsidized projects refinanced pursuant to section 223(f) of the NHA, and (2) rents for projects where the mortgagor opts for continued HUD regulation in order to maintain the project's tax-exempt status. HUD will also continue to regulate rents for a limited class of projects that otherwise qualify for deregulation, where the effect of deregulation would be imposition of State or local rent controls previously inapplicable by the terms of the State or local law by reason of HUD rent regulation.

The rule also decontrols rents on unassisted units in projects that are insured under section 220 or 221(d)(4) of the NHA and are receiving Section 8 Loan Management Set-Aside Assistance, and adds provisions (analogous to the section 207 revisions) for HUD rent regulation of projects insured under those authorities to maintain a project's tax-exempt status or to avoid local rent control. The rule specifies how maximum rents are determined when HUD preempts State

or local rent control, and makes a number of corresponding changes to the multifamily coinsurance authorities under 24 CFR Parts 251 and 255 that use sections 221 and 207 of the NHA, respectively, as their insuring authorities. Finally, the rule makes clear that in partially subsidized, HUD-insured or -held projects, rents for units that are occupied by tenants receiving Section 8 assistance qualify for automatic preemption of State or local rent controls under Subpart C of 24 CFR Part 246; rents for other units in these projects are subject to case-by-case preemption review and tenant participation under Subpart B of Part 246.

EFFECTIVE DATE: July 21, 1986.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Summary of the Statutory Scheme and Proposed Rule

Section 431(a)(1) of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98-181) (the 1983 Act) amended section 207(b)(2) of the National Housing Act (NHA) to make discretionary the Secretary's authority to regulate rents and other charges for multifamily housing projects insured under section 207. Before enactment of the 1983 Act, the Secretary was *required* to regulate these rents and charges. Section 431(c) of the 1983 Act provided that this change does not apply to mortgages insured by HUD before the date of enactment of the 1983 Act—November 30, 1983.

The proposed rule (49 FR 39690, published on October 10, 1984) added a new paragraph to § 207.19(e) deregulating rents and charges for facilities and services in projects insured under section 207 on or after November 30, 1983. The rule provided that HUD regulation would continue for charges for services and facilities in elderly or handicapped projects, and for rents and charges for services and facilities for units occupied by tenants receiving Section 8 assistance and for certain subsidized projects refinanced pursuant to section 223(f) of the NHA.

The proposed rule also amended § 207.19(e)(4) to provide that rents for HUD-regulated section 207 projects that were insured before November 30, 1983 and are receiving Section 8 Loan Management Set-Aside assistance could be determined under either of the formulas for determining HUD-regulated rents for unsubsidized section 207 projects. (The existing regulation provides that rents for unsubsidized section 207 projects could be determined (at the mortgagor's option) by applying the original "debt service factor" to anticipated operating expenses or by using a formula based on the property's fair market value or rentals for comparable projects. Rents for Section 8 Loan Management projects, however, can only be determined under the "debt service" approach.) Where the mortgagor chose to use the market-based section 207 rent formula, the proposed rule made clear that rents for units occupied by Section 8 tenants would continue to be determined under the Housing Assistance Payments Contract and applicable administrative instructions.

The proposed rule made similar changes to 24 CFR Part 255—the coinsurance program for the purchase or refinancing of existing multifamily projects. Part 255 uses section 207 of the NHA as its insuring authority.

The proposed rule also amended 24 CFR Parts 200 and 221, the regulatory authorities that implement the mortgage insurance programs under sections 220 and 221 of the NHA, respectively. The regulation of rents for multifamily projects insured under sections 220 and 221(d)(4) has long been discretionary with HUD. On April 19, 1983 (48 FR 16670), the Department published a final rule in the **Federal Register**, that, among other things, generally decontrolled rents and charges for facilities and services in projects insured under section 220 or 221(d)(4) of the NHA. One of the exceptions was the continued regulation of rents for insured projects with Section 8 Loan Management assistance. The proposed rule in this proceeding provided for the deregulation of rents and charges for facilities and services in projects receiving Loan Management assistance, except that rents and other charges for units occupied by tenants receiving Section 8 assistance were to be determined under the HAP Contract and other applicable requirements.

Finally, the proposed rule amended 24 CFR Part 246 to make clear that in partially assisted, HUD-insured or -held Section 8 projects, rents for units occupied by tenants receiving Section 8 assistance qualify for automatic rent control preemption under Subpart C, and that rents for unassisted units are subject to the case-by-case preemption and tenant participation procedures under Subpart B. The rule also specified the rent control mechanism to be used in determining maximum rents after HUD has preempted State or local rent control laws.

Public Comments

The proposed rule invited comment for a period of 60 days ending December 10, 1984. The Department received six comments on the proposed rule. The comments supported the rule or offered suggestions to extend the rule's coverage.

One commenter suggested that the "economic viability" of project mortgages insured before November 30, 1983 is of the same "paramount interest" to HUD as those insured on or after that date. The commenter concluded that HUD should consider deregulating rents on projects with mortgages insured before November 30, 1983.

The statute does not permit the Department to deregulate rents on projects covered by mortgages insured before November 30, 1983. As noted above, section 431(c) of the 1983 Act provides that the amendment to section 207(b)(2) (making the regulation of rents discretionary with HUD) does not apply to mortgages insured by HUD before that date. (This prohibition was specifically added during congressional consideration of the bill that was enacted as the 1983 Act, and was not a limitation that had been requested by this Department.)

A trade association commented that the rule would provide an incentive to owners to upgrade their buildings and to maintain them as rental housing. In furtherance of these objectives, the commenter urged HUD to implement the President's Housing Commission recommendation that the "Federal government should preempt the application of any State or local government rent controls" with respect to federally assisted housing.

HUD preemption of State and local rent control laws and ordinances is governed by 24 CFR Part 246 (formerly 24 CFR Part 403). Subpart C provides for automatic preemption of local rent controls for HUD-insured or -held projects that are subsidized under section 236 or 221(d)(3) BMIR of the NHA, or the Rent Supplement, Section 23, or Section 8 programs. (See §§ 246.1, 246.20, and 246.21.) Subpart B provides for preemption for unsubsidized, HUD-insured or -held projects on a case-by-case basis, where HUD determines that rent control will jeopardize its economic interest in the project. (See §§ 246.1 and 246.5.) The Department believes that the current Part 246 is the appropriate approach for dealing with rent controls,

and will not change this policy in the final rule.

The same commenter requested that the rule clarify whether private appraisers or HUD appraisers will be used to determine appraised market value. The provision in question—§ 207.19(e)(2)(i)(B) of the final rule—is clear that the appraised market value is determined by a qualified real estate appraiser of the mortgagor's choice. Owners are, therefore, free to select private appraisers.

Another commenter proposed that the rule deregulate rents on projects insured under section 207 that receive final Transfer of Physical Assets (TPA) approval after November 30, 1983. The commenter's rationale was that a TPA has the same effect on a project as a refinancing, in that repairs may be made and new debt is incurred. The commenter was alluding to an earlier point in its comment that " an existing section 207 project could be refinanced under section 223(f) after November 30, 1983 and qualify for rent deregulation."

The commenter is in error with respect to its assertion that properties whose assets were transferred after November 30, 1983 qualify for rent deregulation. Section 431(c) of the 1938 Act, as previously stated, provides that the amendment to section 207(b)(2) does not apply with respect to mortgages insured before November 30, 1983. Consequently, the fact that a project may be transferred after that date will not except it from the prohibitory language of section 431(c) if the project was *insured* before November 30, 1983. In short, insofar as section 431 is concerned, deregulation of rents is applicable only to those projects *insured* on or after November 30, 1983. Moreover, the contract of mortgage insurance is unaffected by a TPA, and continues in force even though there has been a change in title to a project as a result of a TPA. In contrast, refinancing results in a retirement of the existing debt and the assumption of new indebtedness that is covered by a new contract of mortgage insurance, and thus qualifies a project for rent deregulation.

The commenter raised a second argument that the rule should deregulate projects that receive final TPA approval after November 30, 1983 on grounds that "section 431(a) refers to mortgagors approved by the Secretary, which is the status of all new mortgagors upon receipt" of approval of a TPA. The commenter thought that this issue would be settled by the Department's response to its question of whether Congress intended "to regulate the mortgagor or the property insured under the mortgage."

The Department's earlier response that it is the date of insurance that is dispositive of the issue of which projects can be deregulated, and not other transactions affecting the property, including matters related to title, is adopted here as the response to the commenter's additional argument.

With respect to the commenter's specific question, a full reading of section 207(b)(2), including that portion not amended by section 431, shows that Congress intended to regulate the property covered by the insured mortgage, as well as to regulate the mortgagor. However, it does not follow, and there is nothing in section 207(b)(2) or section 431(c) that would lead to the conclusion, that deregulation of a project's rents is related to the Secretary's regulation or approval of a mortgagor or its successors, and not, as section 431(c) provides, to the date of insurance of the mortgage given by such mortgagor or its successors.

For further clarification, the Department notes that section 207(b) provides:

> In addition to mortgages insured under section 209, the Secretary is authorized to insure mortgages . . . which cover property held by—(1) Federal or State instrumentalities, . . . or (2) any other mortgagor approved by the Secretary.

It is clear that the function of clause (2), on which the commenter relies for its proposition that Secretarial approval of a mortgagor after November 30, 1983 should qualify the mortgagor's project for the benefits of this rule, is only to define or describe which types of mortgages the Secretary is authorized to *insure*—here, a mortgage held by a "mortgagor approved by the Secretary." This clause is not, therefore, relevant to the issue of which projects qualify for rent deregulation.

Summary of the Regulatory Revisions

The regulatory revisions proposed in the October 10, 1984 rule making, and incorporated, along with other amendments, in this final rule, affect several provisions. Because of the technical complexity of these revisions, the following Part-by-Part summary provides a guide to the changes made by the final rule.

Part 207

As noted above, a new paragraph is added to § 207.19(e), deregulating rents and other charges for projects covered by mortgages insured on and after November 30, 1983. To make clear what provisions apply to projects insured before and on and after that date, § 207.19(e) has been reordered and is redesignated. A new paragraph (e)(1) (Applicability) is added as a guidepost for which provisions apply to which mortgages. The following derivation chart lists the provisions of § 207.19(e) in the final rule and their counterparts in the existing regulations.

24 CFR 207.19(e)

Final rule	Existing regulation
§ 207.19(e)(1) (Rents and charges—Applicability).	
§ 207.19(e)(2) (Rents and charges—mortgages insured before November 30, 1983).	§§ 207.19(e)(1)(i)(A).
§ 207.19(e)(2)(i)(B) (Special Allowance).	§ 207.19(e)(4).
§ 207.19(e)(3) (Effective date of rent adjustments—mortgages insured before November 30, 1983, and projects described in paragraphs (e)(5) (iii) and (iv)).	§ 207.19(e)(2).
§ 207.19(e)(4) (Refund of additional rentals—mortgages insured before November 30, 1983, and projects described in paragraphs (e)(5) (iii) and (iv)).	§ 207.19(e)(3).
§ 207.19(e)(5) (Rents and Charges—mortgages insured on or after November 30, 1983).	
§ 207.19(e)(6) (Reasonable and moderate rental charges—mortgages insured on or after November 30, 1983).	
§ 207.19(e)(7) (Certain refinanced projects).	
§ 207.19(e)(8) (Rent control—all mortgages).	§ 207.19(e)(2).

As paragraph (e)(1) of the final rule states, paragraphs (e)(2), (e)(3), and (e)(4) apply to mortgages insured before November 30, 1983. Paragraphs (e)(3) and (e)(4) also apply to projects described in paragraphs (e)(5) (iii) and (iv). These projects are referenced in paragraphs (e)(3) and (e)(4) to make clear that the requirements of these paragraphs apply to projects in which HUD continues to regulate rents to ensure compliance with the Internal Revenue Code or State law or exemption from State or local rent control, even if the projects would otherwise qualify to have their rents decontrolled. Paragraphs (e)(5) and (e)(6) apply to mortgages insured on or after November 30, 1983, and paragraphs (e)(7) and (e)(8) apply to all mortgages.

These provisions are largely unchanged from the existing and proposed regulations. One minor change was made to § 207.19(e)(2)(i) (now § 207.19(e)(2)(ii)(A)), which provides that, with respect to rent adjustments, consideration will be given to increases in operating costs occurring within 12 months of *the effective date of the rent increase*, instead of, as previously provided, within 12 months of the *date of filing of the application for a rent adjustment*. This change is consistent with HUD's present method of determining rent adjustments. Also, in § 207.19(e)(2)(ii)(B)(*2*) (formerly

§ 207.19(e)(ii)(B)), the term "licensed", used in describing a real estate appraiser, has been deleted, since real estate appraisers are not licensed.

Section 207.19(e)(2)(iii) continues without substantive change the proposed rule provision in § 207.19(e)(4) permitting project rents for unsubsidized units in insured projects with Section 8 Loan Management assistance to be determined under either of the section 207 rent regulation formulae.

New paragraph (e)(5) in § 207.19 (proposed § 207.19(e)(7)) effectively allows rents and charges in projects insured under section 207 of the NHA on or after November 30, 1983 to be deregulated. Paragraph (e)(6) details that "reasonable and moderate" rentals under section 207(b)(2) of the NHA are determinable by reference to market rentals in the area. As indicated above, it too applies, like paragraph (e)(5), only to projects with mortgages insured after November 30, 1983.

There are exceptions in paragraph (e)(5) to the mortgagor's right to determine rents and charges. The mortgagor is restricted in the charges for facilities or services that may be collected in a project constructed for occupancy exclusively by elderly or handicapped tenants. There is an absolute prohibition against the mortgagor's imposing a charge for perpetual or life care. The mortgagor may charge for facilities and services and rentals for units occupied by tenants assisted under a Section 8 Housing Assistance Payments (HAP) contract only as permitted by the HAP Contract and HUD's regulations and administrative instructions, but in no event may the mortgagor impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

These provisions continue to reflect the Department's obligation to control rents and charges for certain projects and tenants. The prohibition against the mortgagor's charging for life care was not specifically identified in the proposed rule; it is not a new prohibition, but one that HUD currently enforces. It is spelled out in the final rule because, in the textual revision to proposed § 207.19(e)(7)(i), the requirement of "the prior approval of the Commissioner" for charges was eliminated in favor of language permitting the imposition of charges by the mortgagor in accordance with "HUD's administrative instructions." The Department also believes that, because of the potential for abuse with respect to life care contracts, it was necessary specifically to identify this prohibition.

The linguistic change also reflects Departmental policy of deemphasizing, where applicable, the Commissioner's direct role in approving charges since, in this regard, the Commissioner's instructions offer adequate guidance to the mortgagor. The prohibition against charging unassisted tenants lower charges for facilities and services is intended to assure that the unassisted tenants carry their proportionate share of the costs of the project's furnishing these facilities and services.

In this final rule, new paragraphs (iii) and (iv) have been added to § 207.19(e)(5) (similar provisions, where applicable, also are included in the amendments to 24 CFR Parts 220, 221, 251, and 255). The addition of paragraph (iii) permits HUD to continue to regulate project rents where deregulation could jeopardize a project's tax-exempt status. HUD will regulate project rents, if necessary, in accordance with 24 CFR 207.19(e)(2)(ii) (A) or (B), at the option of the mortgagor.

New paragraph (iv) provides for continued HUD regulation of rents for a limited class of projects that otherwise qualify for deregulation, but that in the absence of HUD regulation would be subject to State or local rent control. Specifically, paragraph (iv) provides that HUD will approve rental adjustments where the following conditions apply:

(1) The firm commitment to insure the project mortgage under Part 207 was issued before the effective date of the deregulation of HUD rent control contained in this rule;

(2) When the mortgagor (or its predecessor in title) (A) obtained a firm commitment to insure the mortgage under Part 207 or (B) acquired the project subject to a mortgage insured under Part 207, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon HUD regulation of the project rents; and

(3) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

Rental charges would be determined under § 207.19(e)(2)(ii) (A) or (B), at the mortgagor's option—the same way that rent adjustments are made for other unsubsidized projects whose rents are regulated by HUD.

The new paragraph (iv) applies only to situations in which HUD decontrol of project rents would cause the projects to become subject to State or local rent control. The Department believes that continuation of HUD rent control for these projects is consistent with the mortgagor's expectation when it acquired its interest in the project. That is, the mortgagor may have relied on the exclusion of HUD-controlled projects from the ambit of local rent control laws when it committed to construct or purchase the project. From the mortgagor's standpoint, continued rent control by HUD represents a benefit on which it relied in acquiring its interest. HUD's unilateral termination of its control, where it has the effect of subjecting the project to State or local rent control, could unfairly deprive the mortgagor of the benefit of its bargain. To protect mortgagors' interest to the fullest extent possible, the rule makes clear that HUD will continue to control project rents, thereby continuing the exclusion from local rent control provided by the State or local law, and that the benefit of the exclusion remains part of what the mortgagor can sell if it sells the project.

This provision in the final rule is intended to protect mortgagors who may have acquired an interest in the property in reliance upon continued HUD control of the project rents. It is not designed to extend to situations where this reliance is lacking. Thus, the new paragraph (iv) does not cover projects for which a Part 207 insurance commitment is issued after the rule's effective date—the date on which Part 207 rents are removed from HUD control. In addition, it does not apply to projects that (1) were originally insured under Part 220 or 221 pursuant to commitments issued on or after June 1, 1983—the date on which HUD rent regulation ended under those Parts—but (2) are refinanced under Part 207 before the effective date of this rule. In this latter circumstance, the mortgagor could not have acted in reliance on HUD regulation of its project rents when the mortgage was originally insured, and ought not be able to use later HUD control of its rents because of an insured refinancing under Part 207 as grounds for invoking the special relief afforded by new paragraph (iv).

HUD control of project rents under paragraph (iv) would end, and the mortgagor would be free to determine rents and charges for facilities and services in accordance with §207.19(e)(5), if the State or local law no longer excludes from its provisions rents regulated by HUD. In other words, paragraph (iv) is intended to protect the mortgagor from a unilateral termination of a benefit by HUD, but is not intended to protect the mortgagor from the effects of a valid change of local law.

The rule provides for mandatory HUD rent regulation where the regulatory criteria are met, rather than leaving the decision to accept HUD control to the mortgagor. This obviates questions about whether HUD is in fact still "regulating" rents when the owner has an option to accept HUD control or not. (See *Rent Control Bd. of Cambridge* v. *Cambridge Tower Corp.*, 394 Mass. 809 (1985).) It should be noted that projects not qualifying for HUD control under the new paragraph (iv) may seek preemption of the State or local law, as provided in 24 CFR Part 865.

Provisions similar to § 207.19(e)(5)(iv) have been added to 24 CFR Parts 220, 221, and 255. The amendments to Part 220 and 221 specify that the firm commitment to insure must have been issued before June 1, 1983—the effective date of the regulation ending HUD control of rents under those programs. The amendment to Part 255 parallels the Part 207 provisions, since Part 255 coinsurance derives its authority from Part 207. No amendment is made to Part 251. That Part draws its insuring authority from Part 221, but was not added until October 9, 1984, some 15 months after the deregulation of Part 221 rents. Thus, the essential ingredient to continued HUD control of rents—mortgagor reliance on the existence of HUD control—is missing.

Inclusion in Parts 220 and 221 of provisions analogous to those in § 207.19(e)(5)(iv) is entirely consistent with HUD's intent in promulgating the 1983 rule that deregulated HUD control of rents in projects insured under those Parts. The 1983 rule did not specifically address its effects on contractual rent control provisions in existing Regulatory Agreements. HUD's general policy, however, is that amendments to regulations should not adversely affect the interests of contracting parties under outstanding contracts with the Secretary. See, e.g., 24 CFR 220.751 (incorporating by reference, *inter alia*, § 207.499) and 221.749. The published decontrol regulation itself did not specifically include any reference to this policy, in large part because it would be an extremely rare occurrence to find a mortgagor adversely affected by decontrol.

However, recognizing that there could be instances in which a mortgagor operating under an existing Regulatory Agreement might be adversely affected by immediate and unilateral HUD decontrol, HUD provided, in its administrative instructions implementing the regulatory change, that decontrol of rents currently regulated pursuant to Regulatory Agreements would become effective only upon execution of an amendment to the Regulatory Agreement so providing. See, HUD Notice H-83-27. In this manner, the mortgagor would have the opportunity to determine for itself whether its interests were adversely affected by HUD decontrol, and, if it so determined, to preserve the *status quo* under the Regulatory Agreement by not requesting any amendment thereof. HUD did not intend to look behind the mortgagor's conclusion that decontrol would adversely affect its interests; the mortgagor's conclusion, as evidenced by its election not to request an amendment to its Regulatory Agreement, would be conclusive. As noted above, the final rule does not permit mortgagors to choose HUD rent control or not, at their option; mortgagors that meet the regulatory criteria must have their project rents regulated by HUD, in accordance with the rent control provisions for the Part under which the mortgage is insured.

Proposed § 207.19(e)(7)(iii) has been redesignated as § 207.19(e)(7) and captioned, "Certain refinanced projects". Its removal as a subparagraph under proposed paragraph (e)(7) clarifies that the projects covered by it are not limited to those with mortgages insured on or after November 30, 1983, but also includes projects with mortgages insured before that date. The final rule also makes substantive changes to the new paragraph (e)(7). The rents in covered projects will be determined in accordance with § 221.530 or § 236.55, whichever is appropriate, instead of in accordance with § 207.19(e)(2)(i), as provided in the proposed rule. This change is consistent with current Departmental policy with respect to these projects. Also, approval of the Commissioner is no longer required before the mortgagor could impose charges for facilities or services offered by these projects. Paragraph (e)(7) now provides that these charges are to be imposed only as permitted by HUD's administrative instructions. Here too, the change is consistent with the Department's liberalizing of its control over charges, by allowing the mortgagor to set the charges consistent with HUD instructions, but without HUD's advance approval.

Section 207.19(e)(8), specifying how HUD will determine project rents after State or local rent controls have been preempted, is unchanged from the proposed rule.

Part 220

The final rule amends proposed § 220.511(c)(1) to state that the mortgagor may charge for facilities or services in Section 8 projects only as permitted by the HAP Contract, applicable regulations, and HUD's administrative instructions. As under the Part 207 revisions, the Commissioner's advance approval would no longer be necessary before the mortgagor may impose these charges. Also, as in the Part 207 amendment, the mortgagor is prohibited from imposing higher charges on the assisted tenants for the facilities or services than are imposed on the unassisted tenants.

Section 220.511(c)(2) is amended in this rule, although its proposed amendment was not published in the predecessor rule. The amendment is insubstantial; it is principally a stylistic one intended to harmonize the language of § 221.511(c)(2) with parallel provisions in the final rule. See, e.g., § 221.531(a)(3). The amendment also corrects the inadvertent omission of State Agency projects assisted under 24 CFR Part 883 from those subject to § 220.511(c)(2).

Section 220.511(c)(3) contains the substance of the proposed rule's deregulation of rents and other charges in insured projects receiving Section 8 Loan Management assistance. Sections 220.511(c) (4) and (5) contain provisions analogous to those in § 207.19(e)(5)(iii) and (iv) with respect to HUD regulation of rents in cases where HUD deregulation would jeopardize a project's tax exempt status or result in State or local control of the project's rents. Section 220.511(d) contains the provision in the proposed rule regarding HUD's mode of regulating rents after a preemption.

Part 221

The final rule contains an amendment to § 221.530(a) that was not published in the proposed rulemaking of October 10, 1984. New § 221.530(a)(1) is basically a restatement of existing § 221.530's general deregulation policy; however, the rule notes that exceptions to this policy would have to comport with HUD's administrative instructions. As noted earlier, the revision is a salutary one for mortgagors and HUD, since the elimination of the approval process reduces the administrative burdens for both mortgagors and HUD.

Paragraph (a)(2), a new addition in this final rule to § 221.530, details the factors that the Commissioner uses in determining rents in projects covered by Part 221 that are still subject to HUD regulation. Specifically, the provision states that the Commissioner will take into account the sum of the project's operating costs and debt service (as determined by HUD), and the owner's

return on investment, with adjustment for vacancies, the project's non-rental income, and other factors that the Commissioner deems appropriate. This provision simply reflects the current practice for HUD's determination of rents for covered projects.

The final rule adds a new § 221.530(a)(3), which contains the substance (as amended by the final rule) of present § 221.531(c). This change is designed to accomplish two things: first, to make clear that no section 221(d)(3) mortgagors—neither market-rate nor BMIR—have had their rents and other charges deregulated; and second, that all section 221(d)(4) mortgagors—not just "general mortgagors"—qualify for deregulation. Under the existing regulatory framework; these points were unclear.

With respect to section 221(d)(3) mortgagors, the statute is clear that project rents and other charges must be regulated

> . . . under Federal or State laws or by political subdivisions of States . . ., or by the Secretary under a regulatory agreement or otherwise. . . .

With respect to section 221(d)(4) projects, the existing rule inadvertently limited its deregulation provisions to "general mortgagors" by its placement in § 221.531. The new § 221.530(a)(3) clarifies that all section 221(d)(4) mortgagors are indeed deregulated.

The new § 221.530(a)(3) states the general rule, that rents and other charges are deregulated, subject to listed exceptions. The exceptions conform to analogous provisions in Part 207 or 220, as appropriate. The provision also contains the previously discussed guidance regarding the manner in which rents are determined following preemption of State and local rent controls.

Part 236

The final rule contains an amendment (not in the proposed rule) to 24 CFR 236.55(a) specifying how HUD determines maximum rentals for section 236 projects. This addition is analogous to the rent determination provision added in § 221.530(a)(2), and (like that provision) merely reflects HUD's current practice in making rent determinations for covered section 236 projects.

Parts 251 and 255

The final rule also amends 24 CFR Parts 251 and 255. These authorities provide for coinsurance for the new construction or substantial rehabilitation of multifamily projects (Part 251) and the purchase or refinancing of existing projects (Part 255). They use sections 221 and 207 of the NHA, respectively, as their insuring authorities.

The final rule makes a number of changes in §§ 251.703 and 255.703 that were not contained in the proposed rule. Paragraph (a) of these sections adds the Section 8 Moderate Rehabilitation program to the list of Section 8 authorities that have their rents and other charges determined in accordance with HUD requirements. The Moderate Rehabilitation program is used in connection with projects coinsured under Parts 251 and 255, and its inclusion in the final rule conforms to the existing practice with respect to coinsured projects using the program. Paragraph (a) of each section also contains language limiting rents for units occupied by Section 8 tenants to levels charged for unassisted units (without HUD's approval), and prohibiting the imposition of lower facility and service charges on unassisted tenants. These provisions correspond to changes made in Parts 207, 220, and 221, and reflect current HUD practice.

Paragraph (c) of § 251.703 and paragraph (d) of § 255.703 require that requests for rent increases be submitted on a form prescribed by HUD. This is a minor change to conform to HUD practice. Paragraph (d) of § 251.703 prohibits mortgagors from charging tenants of elderly or handicapped projects for life care. As noted earlier, this provision reflects current HUD requirements. (No similar change is made in § 255.703, since projects exclusively for the elderly or handicapped may not be coinsured under Part 255.)

The provisions of paragraph (e) of § 251.703 and paragraph (c)(1) of § 255.703 parallel those of § 207.19(e)(5)(iii), relating to continued HUD rent control to ensure the tax-exempt status of the obligations issued to finance the project. Section 255.703(c)(2) tracks the provisions of § 207.19(e)(5)(iv), requiring continued HUD rent control to avoid imposition of State or local controls. As noted above, Part 251 does not contain an analogous provision. Paragraph (f) of § 251.703 and paragraph (e) of § 255.703 contain provisions similar to those in Parts 207, 220, and 221, specifying how HUD will determine rents when the mortgagor requests preemption.

Part 240

As a consequence of the deregulation of rents instituted by this rule, along with the deregulation already effected by the final rule of April 19, 1983 (48 FR 16670), projects that are partially assisted under Section 8 may qualify not only for Federal rent deregulation but also for automatic preemption of State of local rent control laws. Thus, unassisted tenants could be subject to wholly unregulated rental charges, without the opportunity to comment on the need for, or propriety of, preemption of local controls.

The final rule remedies that situation by making clear that the preemption of rent controls for units that house unassisted tenants in partially assisted projects is subject to 24 CFR Part 246, Subpart B. This subpart governs preemption actions in unassisted projects, and provides for preemption on a case-by-case basis, only after tenant comment and a showing that failure to preempt would jeopardize HUD's financial interest in the project. The final rule contains a number of technical revisions to the proposed rule, designed to make clear that the automatic preemption provisions of Subpart C continue to apply to assisted units and to fully subsidized projects.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule exercises the Department's discretionary authority to decontrol rents. The rule will eliminate cash deficiencies for some small entities but

will not result in additional costs to any small entities.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Numbers 2502–0314 and 2502–0324.

This rule was listed as sequence number 867 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036, 14060) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.134 and 14.149.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs-housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single Family Housing, Projects, Cooperatives.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 240 (formerly Part 403)

Intergovernmental review, low and moderate income housing, Mortgages, Rent subsidies, Rent control.

24 CFR Part 251

Mortgage insurance Coinsurance of multifamily mortgages

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR Parts 207, 220, 221, 236, 240, 251, and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In section 207.19, paragraph (e) is revised to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(e) (1) *Rents and Charges—Applicability.* Paragraphs (e)(2), (e)(3), and (e)(4) of this section apply to mortgages insured before November 30, 1983. Paragraphs (e)(3) and (e)(4) also apply to projects described in paragraphs (e)(5)(iii) and (iv) of this section. Paragraphs (e)(5) and (e)(6) of this section apply to mortgages insured on or after November 30, 1983. Paragraphs (e)(7) and (e)(8) of this section apply to mortgages insured both before and on or after November 30, 1983.

(2) *Rents and charges—mortgages insured before November 30, 1983.* The mortgagor may make no charges for the accommodations (rents), facilities, or services offered by a project insured before November 30, 1983 in excess of those that the Commissioner authorizes. In authorizing these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The determination will be made as follows:

(i) *Initial rent determination.* The Commissioner will set initial rents in the project before it opens for occupancy, based upon:

(A) A debt service factor determined by the Commissioner to cover debt service requirements and a rate of return to the mortgagor, multiplied by the sum of the Replacement Cost and working capital;

(B) Estimated project operating costs, including an allowance for management, using the latest available data from comparable properties; and

(C) Such additional factors as the Commissioner considers appropriate, such as local market conditions, vacancy rates, and use of commercial space.

(ii) *Rent adjustments.* After initial rents are determined, the Commissioner may approve rental adjustments in the amount provided in paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, at the option of the mortgagor:

(A) The sum of the most recent year's audited operating costs or, as appropriate, updated certified operating costs (taking into consideration reasonably anticipated increases in operating costs that will occur within 12 months of the anticipated effective date of the rent increase), and the amount derived under paragraph (e)(2)(i)(A) of this section; or

(B) The lesser of:

(*1*) The sum of the operating costs determined in accordance with paragraph (e)(2)(ii)(A) of this section and the amount derived by multiplying the debt service factor determined under paragraph (e)(2)(i)(A) of this section by the project's appraised market value as residential rental property at the time of the current application for rental adjustment; or

(*2*) Rents on comparable, conventionally financed projects in the same area, determined in accordance with procedures established by the Commissioner.

For purposes of paragraph (e)(2)(ii)(B)(*1*) of this section, the appraised market value shall be determined by a qualified real estate appraiser of the mortgagor's choice. The mortgagor must provide the information required under this paragraph (e) in a format required by HUD.

(iii) *Special Allocations.* Rent adjustments for projects with units assisted under Part 886 of this title (Section 8 Housing Assistance Payments Program—Special Allocations) shall be determined under paragraph (e)(2)(ii)(A) of this section, except that the mortgagor may, with HUD's prior approval, elect to have the rents determined under paragraph (e)(2)(ii)(B) of this section. However, if the mortgagor so elects, the rents for units occupied by assisted tenants shall be determined in accordance with the Housing Assistance Payments (HAP) contract, applicable regulations, and HUD's administrative instructions.

(3) *Effective date of rent adjustments—mortgages insured before November 30, 1983, and projects described in paragraphs (e)(5) (iii) and (iv) of this section.* Except for rents for projects described in paragraph (e)(2)(iii) of this section, no adjustment to maximum permissible rents may take effect before the end of 30 days after the mortgagor files the application for the adjustment with the appropriate HUD Field office. Rent adjustments are considered approved, unless the Commissioner disapproves them in writing. If the Commissioner does not approve the maximum permissible rents within this 30-day period, the mortgagor shall hold the additional rents received, as a result of the adjustment, in an escrow account under such terms as the Commissioner directs, or provide a letter of credit acceptable to the Commissioner sufficient to cover the additional rents collected, pending the Commissioner's approval or disapproval.

(4) *Refund of additional rents—mortgages insured before November 30,*

1983, and projects described in paragraphs (e)(5) (iii) and (iv) of this section. If the Commissioner disapproves all or part of the additional rents collected pursuant to paragraph (e)(3) of this section, the mortgagor shall promptly refund all disapproved amounts to the affected tenants.

(5) *Rents and charges—mortgages insured on or after November 30, 1983.* The mortgagor shall determine the charges for accommodations (rents), facilities, or services offered by a project insured on or after November 30, 1983, except as follows:

(i) For a project constructed for occupancy exclusively by elderly or handicapped tenants, the mortgagor may charge tenants for facilities or services offered by the project only as HUD's administrative instructions permit. The mortgagor may not charge for perpetual care or life care.

(ii) For units occupied by tenants assisted under a Section 8 HAP contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title, the mortgagor may charge tenants for accommodations (rents), facilities, or services only as the HAP contract, applicable regulations, and HUD's administrative instructions permit. Rents for units occupied by assisted tenants may not exceed rents charged for comparable, unassisted units in the project without the prior approval of the Commissioner, and in no event may the mortgagor impose lesser charges for facilities or services on unassisted tenants than those imposed on assisted tenants.

(iii) The Commissioner will continue to approve rents for units in a project that are not occupied by tenants receiving Section 8 assistance if the mortgagor and the Commissioner determine that such approval is necessary for the project to comply with the requirements of the Internal Revenue Code or State law. If such a determination is made, the Commissioner will approve rents in the amount provided in paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, at the option of the mortgagor.

(iv) The Commissioner will approve rental adjustments, in the amount provided in paragraph (e)(2)(ii) (A) or (B) of this section, at the option of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(A) The firm commitment to insure the mortgagor under this part was issued before June 4, 1986.

(B) At the time that the mortgagor (or its predecessor in title) (*1*) obtained a firm commitment to insure the mortgage under this part, or (*2*) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(C) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

This paragraph (iv) shall not apply to any mortgage insured under this Part, the proceeds of which were used to refinance a mortgage insured under 24 CFR Part 220 or 221 for which the firm commitment to insure under such Part 220 or 221 was issued on or after June 1, 1981.

(6) *Reasonable and moderate rental charges—mortgages insured on or after November 30, 1983.* With respect to projects on which rents are deregulated as provided in paragraph (5) of this section, "reasonable" and "moderate" rental charges for purposes of section 207(b)(2) of the National Housing Act are determinable by reference to market rentals in the area.

(7) *Certain refinanced projects.* Rents on refinanced projects insured under section 207 of the National Housing Act pursuant to section 223(f) of that Act that have a Rent Supplement contract under Part 215 of this title, or that receive assistance under Part 236 of this title, shall be determined in accordance with § 221.530(a)(2) or § 236.55, as appropriate. The mortgagor may charge tenants for facilities or services offered by the project only as HUD's administrative instructions permit.

(8) *Rent control—all mortgages.* Any State or local law, ordinance, or regulation regulating the rents of projects subject to this section may be preempted only as provided in Part 246 of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in paragraph (e)(2)(ii)(A) of this section.

(Approved by OMB under control numbers [illegible] and 2503-0324)

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

3. The authority citation for 24 CFR Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 220.511 is revised to read as follows:

§ 220.511 Supervision of mortgagors.

(a) All of the provisions of § 207.19 of this chapter apply, except that: (1) § 207.19(e) shall not apply, except as specifically referenced in this section; and (2) in the case of a mortgage covering property on which there is located a dwelling or dwellings designed principally for residential use for two to 11 families, § 207.19(d), relating to labor standards and prevailing wage requirements, shall not apply.

(b) Except as otherwise provided in paragraphs (c) and (d) of this section, the mortgagor shall determine the charges for accommodations (rents), facilities, or services offered by the project.

(c) (1) For units occupied by tenants assisted under the programs referred to in paragraphs (c)(2) and (c)(3) of this section, the mortgagor may charge for facilities and services only as the Housing Assistance Payments (HAP) contract, applicable regulations, and HUD's administrative instructions permit. The mortgagor may not impose lesser charges for facilities or services on unassisted tenants than those imposed on assisted tenants.

(2) Rent adjustments for units occupied by tenants assisted under a Section 8 HAP contract Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), or Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies) of this title shall be determined in accordance with the HAP contract, applicable regulations, and HUD's administrative instructions, and shall not, without the prior approval of the Commissioner, exceed rents charged for comparable, unassisted units in the project.

(3) Rent adjustments for projects with units assisted under Part 886 of this title (Section 8 Housing Assistance Payments Program—Special Allocations) shall be determined under § 207.19(e)(2)(ii)(A) of this chapter, or the mortgagor may, with the prior approval of the Commissioner, determine the rents, except that the

rents for units occupied by assisted tenants shall be determined in accordance with the HAP Contract, applicable regulations, and HUD's administrative instructions.

(4) The Commissioner will approve rents for units in a project not occupied by tenants receiving Section 8 assistance if the mortgagor and the Commissioner determine that such approval is necessary for the project to comply with the requirements of the Internal Revenue Code or State law. If such a determination is made, the Commissioner will approve rents in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the option of the mortgagor.

(5) The Commissioner will approve rental adjustments, in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the election of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(i) The firm commitment to insure the mortgage under this part was issued before June 1, 1983;

(ii) At the time that the mortgagor (or its predecessor in title) (A) obtained a firm commitment to insure the mortgage under this part, or (B) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(iii) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

(d) Any State or local law, ordinance, or regulation regulating the rents of projects subject to paragraph (b) or (c) of this section may be preempted only as provided in Part 246 of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority citation for 24 CFR Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 221.530, paragraph (a) is revised to read as follows:

§ 221.530 Supervision applicable to all mortgagors.

(a) (1) Except as otherwise provided in paragraph (a)(3) of this section, the mortgagor shall make no charges for accommodations (rents), facilities, or services offered by the project except as HUD's administrative instructions authorize.

(2) On the basis of information that the mortgagor provides on a form prescribed by the Commissioner, the Commissioner will determine the rents for projects (other than those referred to in paragraph (a)(3) of this section), using the sum of the project's operating costs and debt service (as calculated by the Commissioner), and the owner's return on investment, with adjustments for vacancies, the project's non-rental income, and other factors that the Commissioner deems to be appropriate.

(3) Mortgagors with mortgages insured under section 221(d)(4) of the National Housing Act shall determine the charges for accommodations (rents), facilities, or services offered by the project, except as follows:

(i) For a project constructed for occupancy exclusively by elderly or handicapped tenants, the mortgagor may charge tenants for facilities or services offered by the project only as HUD's administrative instructions permit. The mortgagor may not charge for perpetual care or life care.

(ii) For units occupied by tenants assisted under the programs referred to in paragraphs (a)(3) (iii) and (iv) of this section, the mortgagor may charge for facilities and services offered by the project only as the Housing Assistance Payments (HAP) contract, applicable regulations, and HUD's administrative instructions permit. The mortgagor may not impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

(iii) Rent adjustments for units occupied by tenants assisted under a section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), or Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies) of this title shall be determined in accordance with the HAP contract, applicable regulations, and HUD's administrative instructions, and shall not, without the prior approval of the Commissioner, exceed rents charged for comparable, unassisted units in the project.

(iv) Rent adjustments for projects with units assisted under Part 886 of this title (Section 8 Housing Assistance Payments Program—Special Allocations) shall be determined under paragraph (a)(2) of this section, or the mortgagor may, with the prior approval of the Commissioner, determine the rents, except that the rents for units occupied by assisted tenants shall be determined in accordance with the HAP Contract, applicable regulations, and HUD's administrative instructions.

(v) The Commissioner will approve rents for units in a project not occupied by tenants receiving section 8 assistance if the mortgagor and the Commissioner determine that such approval is necessary for the project to comply with the requirements of the Internal Revenue Code or State law. If such a determination is made, the Commissioner will approve rents in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the option of the mortgagor.

(vi) The Commissioner will approve rental adjustments, in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the election of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(A) The firm commitment to insure the mortgage under this part was issued before June 1, 1983;

(B) At the time that the mortgagor (or its predecessor in title) (*1*) obtained a firm commitment to insure the mortgage under this part, or (*2*) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(C) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

(vii) Any State or local law, ordinance, or regulation regulating the rents of projects subject to this paragraph (a) may be preempted only as provided in Part 246 of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

(Approved by OMB under control number 2503-0324)

§ 221.531 [Amended]

7. Section 221.531(c) is removed and reserved.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

8. The authority citation for 24 CFR Part 236 continues to read as follows:

Authority: Secs. 211, 236, National Housing Act (12 U.S.C. 1715b, 1715z–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. In § 236.55, paragraph (a) is revised to read as follows:

§ 236.55 Rental charges.

(a) *Approved rental charges.* The Commissioner will establish, and the mortgagor will maintain, a Basic Rent and Market Rent for each dwelling unit. On the basis of information that the mortgagor provides on a form prescribed by the Commissioner, the Commissioner will determine the rents for the project, using the sum of the project's operating costs and debt service (as calculated by the Commissioner), and the owner's return on investment, with adjustments for vacancies, the project's non-rental income, and other factors that the Commissioner deems appropriate.

* * * * *

(Approved by OMB under control number 2502–0334)

PART 246—LOCAL RENT CONTROL

10. The authority citation for 24 CFR Part 246 is revised to read as set forth below and any authority citation following any section in Part 246 is removed:

Authority: Sec. 211, National Housing Act (12 U.S.C. 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Section 246.20 is revised to read as follows:

§ 246.20 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of (a) interest reduction payments under section 236 of the National Housing Act; (b) below-market interest rates under sections 221(d) (3) and (5) of the National Housing Act; (c) direct loans at below-market interest rates under section 202 of the Housing Act of 1959; (d) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; (e) housing assistance payments under 24 CFR Part 886, Subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or (f) housing assistance payments pursuant to a contract covering all the units in the project under section 8 of the United States Housing Act of 1937 or section 23 of that Act, as in effect before January 1, 1975. This subpart also applies to projects with mortgages insured or held by HUD that receive housing assistance payments pursuant to a contract covering fewer than all units in the project, but only with respect to those units occupied by tenants receiving housing assistance thereunder.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

12. The authority citation for 24 CFR Part 251 is revised to read as set forth below and any authority citation following any section in Part 251 is removed:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 251.703 is revised to read as follows:

§ 251.703 Rents and charges.

(a) For units occupied by tenants assisted under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 882, Subpart E (Section 8 Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies) or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title, the Commissioner will determine the rents and charges for facilities and services in accordance with the HAP Contract, HUD's regulations, and administrative instructions governing the program under which the unit is receiving assistance. The Mortgagor may not charge rents for units occupied by Section 8 assisted tenants that exceed rents charged for comparable, unassisted units in the project without the prior approval of the Commissioner, and the Mortgagor may not impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

(b) For units (other than those governed by paragraph (a) of this section) in projects with mortgages coinsured under section 221(d)(3) of the National Housing Act, the Mortgagor may collect unit rents and other charges only in amounts less than or equal to those approved by the lender. In determining maximum allowable rents and charges and in acting upon applications for changes, the lender must adhere to standards that the Commissioner establishes. These standards are designed to set rents at a level needed to maintain the economic soundness of the project and to provide a reasonable return to the Mortgagor and reasonable rents to tenants.

(c) Any requests for rent increases must be submitted and processed on a form that the Commissioner prescribes.

(d) If the mortgage is coinsured under section 221(d)(4) of the National Housing Act, and the lender does not elect to regulate rents pursuant to paragraph (e) of this section, the Mortgagor will determine the rents for all units, except for those that are occupied by tenants receiving Section 8 assistance. For a project not constructed for occupancy exclusively by the elderly or handicapped, the Mortgagor may also determine the charges for facilities or services. For a project constructed for occupancy exclusively by the elderly or handicapped, the Mortgagor may charge for facilities or services offered by the project only after obtaining any lender approval that the Commissioner's administrative instructions require. These charges must be reasonable in amount, and may not exceed any amounts approved by the lender. The mortgagor may not charge for perpetual care or life care.

(e) For any mortgage co-insured under section 221(d)(4) of the National Housing Act, the lender may, subject to the Commissioner's administrative instructions, regulate rents and charges for any units not occupied by Section 8-assisted tenants, if the lender determines (under standards established by the Commissioner) that such regulation is necessary to comply with the requirements of the Internal Revenue Code or State law.

(f) Any State or local law, ordinance or regulation regulating the rents of projects subject to this part may be preempted only as provided in Part 246, Subpart B of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

(Approved by OMB under control number 2502–0314)

PART 255—COINSURANCE FOR PRIVATE MORTGAGE LENDERS

14. The authority citation for 24 CFR Part 255 is revised to read as set forth below and any authority citation following any section in Part 255 is removed:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 255.703 is revised to read as follows:

§ 255.703 Rents and charges.

(a) For units occupied by tenants assisted under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 882, Subpart E (Section 8 Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title, the Commissioner will determine rents and charges for facilities and services in accordance with the HAP Contract, HUD's regulations, and administrative instructions governing the program under which the unit is receiving assistance. The Mortgagor may not charge rents for units occupied by Section 8-assisted tenants that exceed rents charged for comparable, unassisted units in the project without the prior approval of the Commissioner, and the Mortgagor may not impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

(b) For units (other than those governed by paragraph (a) of this section) in projects with mortgages coinsured before November 30, 1983, the Mortgagor may collect unit rents and other charges only in amounts less than or equal to those that the lender approves. In determining maximum allowable rents and charges and in acting upon applications for changes, the lender must adhere to standards established by the Commissioner. These standards are designed to set rents at a level needed to maintain the economic soundness of the project and to provide a reasonable return to the Mortgagor and reasonable rents to tenants.

(c) For any mortgage coinsured on or after November 30, 1983, the Mortgagor will determine rents and charges for facilities and services for all units (except those occupied by tenants receiving Section 8 assistance) except as follows:

(1) For any mortgage co-insured on or after November 30, 1983, the lender may, subject to the Commissioner's administrative instructions, regulate rents and charges for any units not occupied by Section 8-assisted tenants, if the lender determines (under standards established by the Commissioner) that such regulation is necessary to comply with the requirements of the Internal Revenue Code or State law.

(2) The Commissioner (through the lender) will approve rental adjustments, in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the election of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(i) The firm commitment to insure the mortgage under this part was issued before June 4, 1986;

(ii) At the time that the mortgagor (or its predecessor in title) (A) obtained a firm commitment to insure the mortgage under this part, or (B) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(iii) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

This paragraph (c)(2) shall not apply to any mortgage coinsured pursuant to this Part, the proceeds of which were used to refinance a mortgage insured under 24 CFR Part 220 or 221 for which the firm commitment to insure under such Part 220 or 221 was issued on or after June 1, 1983.

(d) Any requests for rent increases must be submitted and processed on a form that the Commissioner prescribes.

(e) Any State or local law, ordinance or regulation regulating the rents of projects subject to this part may be preempted only as provided in Part 246, Subpart B of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

(Approved by OMB under control number 2502-0314)

Dated: May 27, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 86-12304 Filed 6-3-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8098]

Income Taxes; Temporary Regulations Under Section 338, Stock Acquisitions, Statements of Elections and Due Dates

Correction

In FR Doc. 86-10998, beginning on page 17929, in the issue of Friday, May 16, 1986, make the following corrections:

1. On page 17931, first column, second complete paragraph, ninth line, "and" should read "any".

2. On page 17932, second column, § 1.338-1T(m), in the fifth line, before "July" insert "December 9, 1985, and on or before".

3. On page 17933, second column, in § 1.338-1T(m)(7)(iii)(B), tenth line, the date should read "November 3, 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 10-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On December 17, 1985, the United States Marshals Service (USMS), Department of Justice, issued proposed regulations to exempt four systems of records from certain provisions of the Privacy Act.

Specifically, the USMS proposed to exempt the Threat Analysis Information System (JUSTICE/USM-009) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). These exemptions are necessary because adherence to these provisions of the Act would present a serious impediment to security measures necessary for the fulfillment of

law enforcement and the protection of participants in the judicial process, including but not limited to judges, witnesses, U.S. Attorneys, etc. For example, persons who have directly threatened or pose violent threat to USMS protectees could learn that countermeasures to specific threat situations are being developed and implemented. The exemptions will preclude such knowledge and thereby deny threat sources the opportunity to circumvent law enforcement and security efforts.

The USMS also proposed to exempt from subsections (c)(3) and (d) of the Privacy Act a system entitled "Judicial Facility Security Index System (JUSTICE/USM-10)" pursuant to 5 U.S.C. 552a(k)(5). This exemption is necessary to protect the identity of confidential sources.

Finally, the USMS also proposed to exempt from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f), and (g) of the Privacy Act a system entitled "U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files (JUSTICE/USM-012)" and from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f), and (g) of the Privacy Act a system entitled "U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM-013)." The exemptions are needed to protect the integrity of civil litigation, criminal investigatory information, the privacy of third parties and identity of confidential sources.

DATE: This rule will be effective June 4, 1986.

ADDRESS: J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Room 9002, Department of Justice, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark (202) 272-6474.

SUPPLEMENTARY INFORMATION: No comments were received regarding the proposed regulations published on December 17, 1985.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and the Sunshine Act.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793-78, the regulations published in the Federal Register on December 17, 1985 (50 FR 51411) are adopted without change as set forth below.

Dated: May 20, 1986.

[redacted]
Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. Section 16.101 is amended by redesignating existing paragraph (g) as paragraph (o), by revising the last sentence of newly redesignated paragraph (o), and by adding new paragraphs (g) through (n).

§ 16.101 Exemption of U.S. Marshals Service Systems—Limited access, as indicated.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

(1) U.S. Marshals Service Threat Analysis Information System (JUSTICE/USM-009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit a person to determine whether he or she has been identified as a specific threat to USMS protectees and to determine the need for countermeasures to USMS protective activities and thereby present a serious impediment to law enforcement.

(2) From subsection (c)(4) because it is inapplicable since an exemption is being claimed for subsection (d).

(3) From subsection (d) because to permit access to records would inform a person of the nature and scope of information obtained as to his or her threat-related activities and of the identity of confidential sources, and afford the person sufficient information to develop countermeasures to thwart protective arrangements and endanger lives of USMS protectees, informants, etc. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because the collection of investigatory information used to assess the existence, extent and likelihood of a threat situation necessarily includes material from which it is impossible to identify and segregate information which may not be important to the conduct of a thorough assessment. It is often impossible to determine in advance if all information collected is accurate, relevent, timely and complete but, in the interests of developing effective protective measures, it is necessary that the U.S. Marshals Service retain this information in order to establish patterns of activity to aid in accurately assessing threat situations. The restrictions of subsections (e) (1) and (5) would impede the protective responsibilities of the Service and could result in death or serious injury to Marshals Service protectees.

(5) From subsection (e)(2) because to collect information from the subject individual would serve notice that he or she is identified as a specific threat to USMS protectees and would enable the subject individual to develop countermeasures to protective activities and thereby present a serious impediment to law enforcement.

(6) From subsection (e)(3) because to inform individuals as required by this subsection would enable the subject individual to develop countermeasures to USMS protective arrangements or identify confidential sources and thereby present a serious impediment to law enforcement.

(7) From subsections (e)(4) (G) and (H) because they are inapplicable since an exemption is being claimed for subsections (d) and (f) of the Act.

(8) From subsection (e)(8) because to serve notice would give persons sufficient warning to develop countermeasures to protective arrangements and thereby present a serious impediment to law enforcement through compromise of protective procedures, etc.

(9) From subsection (f) because this system of records is exempt from the provisions of subsection (d).

(10) From subsection (g) because it is inapplicable since an exemption is being claimed for subsections (d) and (f).

(i) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (d):

(1) Judicial Facility Security Index System (JUSTICE/USM-010)

These exemptions apply only to the extent that information in this system is exempt pursuant to 5 U.S.C. 552a(k)(5).

(j) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) only to the extent that release of the disclosure accounting would reveal the identity of a confidential source.

(2) From subsection (d) only to the extent that access to information would reveal the identity of a confidential source.

(k) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

(1) U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files (JUSTICE/USM-012)

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5).

(l) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the existence and nature of the investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) because that portion of this system which consists of investigatory records compiled for law enforcement purposes is being exempted from the provisions of subsection (d), rendering this provision not applicable.

(3) From subsection (d) because to permit access to investigatory records would reveal the identity of confidential sources and impede ongoing investigative or law enforcement activities by the premature disclosure of information related to those efforts. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because it is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(5) From subsection (e)(2) because to collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(6) From subsection (e)(3) because to inform individuals as required by this subsection would enable the subject individual to identify confidential sources, reveal the existence of an investigation, and compromise law enforcement efforts.

(7) From subsections (e)(4) (G) and (H) because they are inapplicable since an exemption is being claimed for subsections (d) and (f) for investigatory records contained in this system.

(8) From subsection (e)(8) because to serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) From subsection (f) because investigatory records contained in this system are exempt from the provisions of subsection (d).

(10) From subsection (g) because it is inapplicable since an exemption is being claimed for subsections (d) and (f).

(m) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g):

(1) U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM-013).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) or (k)(5).

(n) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting for disclosures pursuant to the routine uses published for this system would permit the subject of a criminal or civil case or matter under investigation, or a case or matter in litigation, or under regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter, and present a serious impediment to law enforcement or civil legal activities, or reveal a confidential source.

(2) From subsection (c)(4) because the exemption claimed for subsection (d) will make this section inapplicable.

(3) From subsection (d) because to permit access to records contained in this system would provide information concerning litigation strategy, or case development, and/or reveal the nature of the criminal or civil case or matter under investigation or administrative review, or in litigation, and present a serious impediment to law enforcement or civil legal activities, or reveal a confidential source.

(4) From subsection (e)(2) because effective legal representation, defense, or claim adjudication necessitates collecting information from all individuals having knowledge of the criminal or civil case or matter. To collect information primarily from the subject individual would present a serious impediment to law enforcement or civil legal activities.

(5) From subsection (e)(3) because to inform the individuals as required by this subsection would permit the subject of a criminal or civil matter under investigation or administrative review to compromise that investigation or administrative review and thereby impede law enforcement efforts or civil legal activities.

(6) From subsections (e)(4) (G) and (H) because these provisions are inapplicable since this system is exempt from subsections (d) and (f) of the Act.

(7) From subsection (e)(8) because to serve notice would give persons sufficient warning to compromise a criminal or civil investigation or administrative review and thereby impede law enforcement of civil legal activities.

(8) From subsection (f) because this system of records is exempt from the provisions of subsection (d).

(9) From subsection (g) because it is inapplicable since an exemption is claimed for subsections (d) and (f).

(o) * * * The decisions to release information from these systems will be made on a case-by-case basis.

[FR Doc. 86-12522 Filed 6-3-86; 8:45 am]

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28 CFR Part 16

[AAG/A Order No. 11-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On December 17, 1985, the United States Marshals Service (USMS), Department of Justice, issued proposed regulations to exempt a system of records entitled "Warrant Information System, JUSTICE/USM-007" from subsections (e)(1) and (e)(5) of the Privacy Act. These exemptions are necessary because the relevancy, necessity, accuracy, timeliness and completeness provisions of subsections (e)(1) and (e)(5) would present a serious impediment to law enforcement in that it is impossible to determine in advance what information collected in the course of a criminal investigation will be

important or crucial to the apprehension of Federal fugitives or to the law enforcement activities of other agencies. These exemptions will permit the USMS to retain seemingly irrelevant, untimely or inaccurate information which, with the passage of time, would gain new significance in the criminal investigation. In addition, because a new paragraph has been added to exempt the system from the additional subsections (e)(1) and (e)(5), the USMS is also republishing existing paragraphs which reflect existing exemptions from other subsections. The existing paragraphs are being republished only to accomplish paragraph redesignation and clarity in Title 28, Part 16, of the Code of Federal Regulations. Their republication has no effect on the public because such republication does not effect any new exemptions.

DATE: This rule will be effective June 4, 1986.

ADDRESS: J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark (202-272-6474).

SUPPLEMENTARY INFORMATION: No comments were received regarding the proposed regulations published on December 17, 1985.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and Sunshine Acts.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Felxibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

Pursuant to authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by the Attorney General Order No. 793-78, the proposed regulations published in the Federal Register on December 17, 1985 (50 FR 51413) are adopted without change as set forth below.

Dated: May 20, 1986.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. Section 16.101 is amended by revising the introductory text of paragraph (a); by redesignating paragraphs (b)(4) through (b)(9) as paragraphs (b)(5) through (b)(10); by adding a new paragraph (b)(4); and by revising paragraphs (d) (5) through (7) and (d)(9) and paragraphs (f)(4) through (f)(9).

§ 16.101 Exemption of U.S. Marshals Service Systems—Limited Access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552(a)(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

* * * * *

(b) * * *

(4) From subsections (e)(1) and (e)(5) because the requirements of these subsections would present a serious impediment to law enforcement in that it is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of Federal fugitives. In the interest of effective law enforcement, it is appropriate in a thorough investigation to retain seemingly irrelevant, untimely, or inaccurate information which, with the passage of time, would aid in establishing patterns of activity and provide investigative leads toward fugitive apprehension and assist in law enforcement activities of other agencies.

* * * * *

(d) * * *

(5) From subsection (e)(3) for the reason stated in (b)(6) of this section.

(6) From subsection (e)(4) (G) and (H) for the reason stated in (b)(7) of this section.

(7) From subsection (e)(8) for the reason stated in (b)(8) of this section.

* * * * *

(9) From subsection (g) for the reason stated in (b)(10) of this section.

* * * * *

(f) * * *

(4) From subsection (e)(2) because the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to compromise the investigation and avoid detection or apprehension.

(5) From subsection (e)(3) for the reason stated in (b)(6) of this section.

(6) From subsections (e)(4) (G) and (H) for the reason stated in (b)(7) of this section.

(7) From subsection (e)(8) because the individual notice requirement of this subsection would present a serious impediment to law enforcement in that the subject of the investigation would be alerted as to the existence of the investigation and therefore be able to compromise the investigation and avoid detection, subpoena, etc.

(8) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records dealing with investigations of criminal or civil law violations would enable the individual to compromise the investigation and evade detection or apprehension. Since an exemption is being claimed for subsection (d) of the Act, the rules required pursuant to subsections (f)(2) through (f)(5) are not applicable to this system.

(9) From subsection (g) for the reason stated in (b)(10) of this section.

* * * * *

[FR Doc. 86-12523 Filed 6-3-86; 8:45 am]

BILLING CODE 4410-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

Privacy Act Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising Part 806b—Privacy Act Program. This revision simplifies procedures for answering Privacy Act requests, restores the distinction between Freedom of Information (FOIA) and Privacy Act requests and deletes two exemptions. It implements 5 U.S.C. 552a (Pub. L. 93-579), and DOD Directive 5400.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Updike, Department of the Air Force, HQ USAF/DAQD, Washington, D.C. 20330, telephone (202) 694-3488.

SUPPLEMENTARY INFORMATION: Because this regulation implements a higher authority directive it was not published as proposed for public comments. It is published as a final rule for information purposes. The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291; is not subject

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to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 806b

Privacy, Records.

Title 32 CFR Part 806b is revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Sec.

806b.0. Purpose.

Subpart A—The Privacy Act Program

806b.1. Air Force Policy.
806b.2. Terms defined.
806b.3. Access authorities.
806b.4. Judicial sanctions.

Subpart B—Collecting Personal Information

806b.5. Privacy Act Statements (PAS).

Subpart C—Maintaining Systems of Records

806b.6. Air Force standards.
806b.7. Personal notes.

Subpart D—Providing Information

806b.8. Access by subjects of records.
806b.9. Disclosures to third parties and organizations.

Subpart E—Privacy Act Exemptions

806b.10. Use of exemptions.
806b.11. General Exemptions.
806b.12. Specific exemptions.
806b.13. General and specific exemptions.

Authority: 5 U.S.C. 552a, Pub. L. 93-579.

§ 806b.0 Purpose.

This part sets policies and outlines procedures that govern collecting, safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the Department of the Air Force in systems of records. This part applies to all Air Force activities, including the Reserve Components, except for the Office of the Chief, National Guard Bureau; Air National Guard technicians; and Army-Air Force Exchange Service activities, including Motion Picture Service activities. It does not apply to civilian employee records maintained by Air Force activities which are covered by the Office of Personnel Management systems of records. Such records are subject to Parts 293, 294, and 297 of Office of Personnel Management regulations and the Federal Personnel Manual and Air Force supplements.

Subpart A—The Privacy Act Program

§ 806b.1 Air Force policy.

Air Force policy is to:

(a) Protect personal privacy as required by the Privacy Act of 1974. The Privacy Act and this part apply only to information in systems of records on living U.S. citizens and aliens admitted as permanent residents of the United States.

(b) Collect, maintain, and use information in such systems only to support programs authorized by law or Executive order.

(c) Ensure that records in these systems are timely, accurate, complete, and relevant, amending on request any record which does not meet these requirements.

(d) Let individuals know about and see or get copies of their own records in systems unless the Secretary of the Air Force (SAF) has approved an exemption, or the records were created in anticipation of civil action or proceeding.

(e) Safeguard records in systems.

(f) Provide a review of decisions that deny individuals access to or amendment of their records.

(g) Keep records the minimum time required to protect the rights and provide for the needs of the individual and the U.S. Government.

§ 806b.2. Terms defined:

(a) *Access.* The process of letting individuals see or get copies of their records from a system of records.

(b) *Agency.* The Department of Defense (DOD) for disclosures from systems of records. Any record may be disclosed to any component for a use compatible with the purpose for which the record was created. The Air Force is an agency for all other actions under the Privacy Act including access and amendment requests and appeals.

(c) *Confidential source.* Any person or organization that has given information under an:

(1) Expressed promise to withhold their identity; or

(2) Implied promise of confidentiality made before September 27, 1975.

(d) *Confidentiality.* A promise to withhold the identity of a source or the information provided. The information must be for use in an exempt system. This promise must be expressed and recorded.

(e) *Disclosure.* Giving information from a system, by any means, to anyone other than the subject.

(f) *Individual.* A living U.S. citizen or a permanent resident alien. The deceased, non-resident aliens, businesses, and third parties have no rights under the Privacy Act. However, a parent or guardian may exercise Privacy Act rights for a minor or incompetent person.

(g) *Maintain.* To collect, keep, use, or disseminate records.

(h) *Minor.* Anyone under the age of majority according to the law of the state where the records are located. If there is no state law, a minor is anyone under the age of 18. Military members and married persons are not minors.

(i) *Official use.* Any action by a Department of Defense member or employee to perform a mission or function prescribed or authorized by law or regulation.

(j) *Personal information.* All information about an individual except for matters of public record. Some examples of personal information are all medical files, financial records except for gross pay, criminal records except the findings of a court-martial, and details on a person's private life. Information about an individual's official duties is normally not personal.

(k) *Privacy Act request.* A request by an individual about the existence of, access to, or amendment of, a record about him or her that is in a system of records. The request must show dependence on the Privacy Act.

(l) *Record.* Any item, collection, or grouping of information about an individual.

(m) *Routine use.* Any disclosure outside of Department of Defense from a system for a use that is compatible with the purpose for which the record was created. Routine uses must be shown in the systems notice. These notices are published in the Federal Register and AFP 12-36, Privacy Act Systems of Records.

(n) *Statistical records.* A record kept only for statistical or reporting purposes. It is not used for making judgments about persons. Individual identity must not be discoverable using routine statistical or data manipulation methods.

(o) *System manager.* The official who initiates a system of records and issues policies and procedures for operating and safeguarding a system. Local systems managers operate such systems or are responsible for a segment of a decentralized system.

(p) *System of records.* Any group of records from which personal information is retrieved by name or personal identifier (See paragraph (l) of this section.) A record in a system of records must contain two elements, a personal identifier and at least one item of personal information. This identifier is some name, number, or symbol which is unique to the individual. The most often used personal identifiers in the Air Force are name and Social Security number (SSN). If a retrieval is possible

but not actually done, or if it depends on memory, the group is not a system of records. However, creating a retrieval or cross index, arranged by personal identifier for randomly filed records, makes that collection a system.

(q) *Workday or day.* A duty day, not including Saturdays, Sundays, and Federal holidays.

§ 806b.3 Access authorities.

The system manager, or individual or position designated in the system notice to receive requests is the access authority.

§ 806b.4 Judicial sanctions.

The Privacy Act has both civil remedies and criminal penalties for violations.

(a) *Civil remedies.* An individual can file a civil suit against the Air Force for failing to comply with the Privacy Act.

(b) *Criminal penalties.* Personnel may be found guilty of a misdemeanor and fined not more than $5,000 for willfully:

(1) Maintaining a system without meeting the public notice requirements.

(2) Disclosing information from a system to someone who is not entitled to have it knowing that disclosure is prohibited.

(3) Obtaining another's record from a system under false pretenses.

Subpart B—Collecting Personal Information

§ 806b.5 Privacy Act Statements (PAS).

Give PASs to individuals you ask to provide information about themselves which will go into a system of records. Do this regardless of how you collect or record the answers. You may read the statement or display a sign in area where people are often asked for the same type of information. However, a printed copy must be given out if the subject asks for one. A PAS is not required if the information will not go into a system of records or if it will go into a SAF exempted criminal investigative system. A PAS must show:

(a) The citation and title of the law or Executive Order that authorizes the program the system supports and the Air Force or lower level standard publications which covers the system. All systems of records must be governed by a standard publication.

(b) The principal purposes for the system. The reasons why the Air Force needs the information.

(c) The routine uses of the information. What disclosures, if any, will be made outside of DOD.

(d) Whether furnishing the information is mandatory or voluntary. An answer is mandatory only if the information is essential to an Air Force mission, and if failure to answer could make the person liable to some specific penalty.

(e) What will happen to an individual who does not respond. PASs are not to be signed and the language in them must be nonthreatening. These statements may be printed in simple paragraph form without separation of the five parts.

Subpart C—Maintaining Systems of Records

§ 806b.6 Air Force standards.

Records on individuals must be as accurate, relevant, timely, and complete as is reasonably necessary to make fair and informed decisions about them. Systems of records must be:

(a) Authorized by law or Executive Order.

(b) Controlled by an Air Force or lower echelon directive.

(c) Needed to carry out an Air Force mission or function.

(d) Described in a notice published in the Federal Register.

§ 806b.7 Personal notes.

Personal notes which are maintained on individuals as memory aids in the performance of supervisory or other official functions are not subject to the notice, access, or amendment provisions of the Privacy Act if both of the following conditions are met.

(a) The notes remain under the control of the originator and are never made available to any other person in the course of official business.

(b) The notes are not required by any Air Force directive, and they may be retained or disposed of as the originator sees fit.

Subpart D—Providing Information

§ 806b.8 Access by subjects of records.

Individuals may ask if the Air Force has any records on them. The Privacy Act gives rights of access and amendment for records in a system of records.

(a) *Privacy Act requests.* To be considered under the Privacy Act, a request must:

(1) Come from the subject of a record in a system of records, or from a designated agent or guardian. The subject must be a U.S. citizen or permanent resident alien.

(2) Cite the Privacy Act or at least show an awareness of the law and its requirement to provide an individual access to his or her records. For example it could be addressed to the Privacy Act officer or the system manager or cite the Privacy Act.

(3) Reasonably describe the records sought. The request does not have to name the system, but it should be fairly specific. Do not accept blanket requests for "all records about me." Instead, refer the individual to AFP 12-36 or the Federal Register and ask the requester to identify at least the types of records sought.

Note: Privacy Act requests are personal and not official business. Requests received on official letterhead, except for those from an area defense counsel, should be returned. No one may be penalized or harassed for exercising their rights under the Privacy Act. The Air Force will provide all reasonable aid to individuals exercising their rights.

(4) Requests which do not cite or refer to the Privacy Act, or are for information which is not in a system of records, are not processed under this part.

(b) *FOIA requests.* Request made under the FOIA or Part 806 of this chapter are processed as FOIA requests. Privacy Act exemptions must not be used to deny records under the FOIA. FOIA exemptions cannot be used to deny anyone any record which would be available under the Privacy Act. No person will be denied access to a record for failure to cite the proper act. FOIA requests must not be listed on the annual Privacy Act report.

(c) *Privacy Act requests for investigative records.* Requests for investigative records subject to the (j)(2) general exemption will be processed under both acts. Tell the individual in writing what records are exempt under the Privacy Act and that you are providing records, if any, which would be available under the FOIA. Clearly explain the reasons for this action in your reply.

(d) *Access requests that cite both the Privacy Act and the FOIA.* Use the act that gives the most information. This may mean processing part of the request under one act and part under another. Explain in your reply which act you are using in each case and why.

(e) *Functional requests.* Other directives give individuals access to records. If a person asks for his or her records and does not cite, or reasonably imply, the Privacy Act or the FOIA, and another directive authorizes the release of the records, use that directive as the releasing authority. Apply the fee schedule in Part 813 of this chapter.

(f) *Processing access requests*—(1) *Verifying identity.* Local system managers must verify the identity of all requests unless the record sought is available to anyone under the FOIA. Individuals do not have to state a reason for the request, nor can the request be denied if that person does not

give his or her SSN, unless disclosure of the SSN is required by Federal Statute or by a regulation adopted before January 1, 1975.

(2) *Notifying the requester.* Once the requester's identity is verified:

(i) Tell the individual if there is a record in a system of records about him or her, and when and where it may be reviewed. If possible, this should be done within 10 workdays from the date the request was received.

(ii) Let the subject see the record, or obtain one copy, unless the system is exempt and listed in Section 806b.13. Usually this should be done within 30 workdays from the date the request was received.

(A) If the requester wants to bring another person, the local system manager may ask for written consent for the other individual to be present during any review of the record.

(B) Do not create a new record simply to fulfill a request. The record must exist at the time of the request. However, do not deny a record just because it is not readily available in a convenient form. Information on magnetic or computer tape should be given in a format the requester can understand.

(iii) If you cannot answer the request in 10 workdays, tell the requester why in a letter and give an approximate completion date. That date should be no more than 20 workdays after the first Air Force office received the request. Send a copy of this letter to HQ USAF/DAQD through Privacy Act channels.

(3) *Fees.* When providing copies of records under the Privacy Act, charge only for the direct cost for reproduction.

(i) Use the following fee schedule:

Office copy (per page), 10 cents.
Microform media (paper copy) (per image), 25 cents.
Microfiche (per fiche), 85 cents.

(ii) Do not charge fees for:

(A) Searching records.

(B) Reproducing a document for the convenience of the Air Force.

(C) Reproducing a record only in order to let a requester review it. If he or she wants a personal copy, use the fees in paragraph (f)(3)(i) of this section.

(iii) Waive the fee, if the total amount is less than $30. Do not waive the fee when a previous waiver has been granted and subsequent requests appear to be an extension or duplication of the original request.

(iv) Locally determine fees for reproducing photographs or nonpaper material other than microform.

(4) *Denying access.* If the record should not be released, the local system manager sends a copy of the request, a copy of the record (or records), and the reasons for recommending denial (including the exemption being applied) to the denial authority through the local Privacy Act officer and the MAJCOM or SOA Privacy Act officer. Staff Judge Advocate (SJA) coordination is required. This should be done within 5 workdays from the date the request was received.

(i) *Record evaluation.* A record may not be withheld just because it is in an exempt system. Before recommending denial, the local system manager must determine that:

(A) The system is covered by an exemption approved by SAF and listed in § 806b.13.

(B) Each document is covered by the exemption, because all parts of a system are not automatically exempt.

(C) No nonexempt parts can be reasonably segregated.

(ii) *Medical records.* If a practitioner believes that access to a medical record by the subject could harm that person's mental or physical health, ask the requester to name a practitioner to receive the record. If this requirement poses a hardship on the individual, offer the service of a military practitioner other than the one who provided treatment. If the individual refuses to name a recipient, the record will not be released. This is not a denial under the Privacy Act and is not appealable.

(iii) *Third party information.* Third party information may not be deleted from a record when the subject requests access to the record unless there is an established exemption published in § 806b.13. This is because all information in a file must be presumed to pertain to the subject of the file. However, personal data such as SSNs and home addresses of third parties usually do not pertain to the subject of the record and, therefore, need not be released. This is not a denial under the Privacy Act and cannot be appealed.

(iv) *Information compiled for litigation.* Records in a system compiled in connection with a civil action or other proceeding may be withheld. This includes any action where judicial or administrative adjudicatory proceedings may reasonably be anticipated. Attorney work products prepared in support of such proceedings are not usually released under the Privacy Act at any point before, during, or after termination of the action or proceeding.

(v) *Denial authority action.* (A) The MAJCOM or SOA Privacy Act officer reviews the proposed denial, asks for written advice from the servicing SJA and the office responsible for the program under which the record was created, and makes a recommendation to the denial authority.

(B) The denial authority sends the requester a letter stating whether or not access will be granted. If the denial authority decides to grant access, he or she instructs the local system manager to release the record. If the denial authority denies access, he or she must tell the requester why, and that the decision may be appealed to SAF not later than 60 calendar days after receipt of the denial letter. Tell the requester to resubmit the original request and send any supporting material to the denial authority for forwarding to HQ USAF/DAQD for processing. The requester should be cautioned that failure to follow this procedure may delay the appeal.

(g) *Amendment requests.* Individuals may ask the Air Force to amend records about them that are in a system of records. The request must seek to change, delete, or add material to make a record accurate, timely, relevant, or complete. Requests for amendment of a record that is subjective, or involves a matter of opinion or interpretation will not be processed under this part. Return such a request and tell the individual to submit it either to the Air Force Board for the Correction of Military Records according to Part 865 Subpart A of this chapter, to follow grievance procedures in AFR 40-771. Coordinate these returns with the director of personnel. Record correction requests which have been denied by the Air Force Board for the Correction of Military Records, acting for the Secretary of the Air Force, are not subject to further consideration under this part.

(1) Requests for minor corrections may be made orally. All others must be written.

(2) Local system managers routinely correct any record if the requester can show it is factually wrong. After verifying identity, the local system manager makes the change, notifies all known recipients of the record, and informs the individual when the correction is made.

(3) If the local system manager decides not to amend or partially amend the record, he or she sends a copy of the request, a copy of the record (or records), and the reasons for this action to the denial authority through the base and the MAJCOM or SOA Privacy Act officers. SJA coordination is required. This must be done within 5 workdays from receipt of the request.

(i) The MAJCOM or SOA Privacy Act officer reviews the proposed denial, asks for written advice from the servicing SJA and the office responsible for the program under which the record

was created and makes recommendation to the denial authority.

(ii) The denial authority sends the requester a letter stating whether or not the amendment or partial amendment will be granted. If the denial authority decides to amend or partially amend the record, he or she tells the local system manager to amend the record and notify all subsequent recipients of the change. If the denial authority denies the amendment request, he or she must tell the requester why, and that the decision may be appealed to SAF not later than 60 calendar days after receipt of the denial letter. The requester is told to resubmit the original request and to send any supporting material to the denial authority for forwarding to HQ USAF/DAQD for processing. The requester should be cautioned that failure to follow this procedure may delay the appeal.

(h) *Appeals of denials to grant access or to amend records*— (1) *Request for Secretarial review.* An individual may request a review of the denial by writing to SAF not later than 60 calendar days after the denial is received. The request should be addressed to SAF/AA, and sent back to the denial authority for forwarding to HQ USAF/DAQD for processing. The denial authority sends a complete file arranged as follows:

(i) The request for review.

(ii) The original request for access or amendment.

(iii) The original denial.

(iv) A copy of the record or portions in question.

(v) Any internal records or coordination actions that relate to the denial.

(vi) Denial authority comments on the appellant's arguments.

(vii) A legal review prepared by the SJA servicing the denial authority.

(2) *Responsibilities for Review.* (i) HQ USAF/DAQD reviews the denial and makes a recommendation to the Office of the Vice Chief of Staff (HQ USAF/CV). HQ USAF/JACM coordination is required.

(ii) HQ USAF/CV decides whether to direct the denial authority to grant access or to amend the record. If HQ USAF/CV decides to uphold a denial, this recommendation is passed to SAF/AA through the Office of the General Counsel (SAF/GC) for final action.

(iii) SAF/AA considers the recommendation to uphold a denial, decides to grant or deny the appeal, and notifies both the individual and the denial authority of the decision. If SAF/AA upholds a denial to amend a record, the individual must be told of his or her right to send a statement of disagreement to the system manager.

(3) *Requests for Secretarial review.* These requests must be completed within 30 workdays after the date HQ USAF/DAQD received the appeal.

Note: Appeals for denial of access to law enforcement records subject to the (j)(2) exemption are processed under this part and Part 806 of this chapter since the original action should have been taken under both.

(i) *Statements of disagreement.* If an individual submits a statement of disagreement with a SAF/AA decision not to amend his or her record, the local system manager:

(1) Flags the record so that the disagreement may be seen by anyone who discloses or gains access to the record.

(2) Files the statement with the record. If this is not possible, the local system manager maintains it to allow ready retrieval when the disputed portion of the record is used.

(3) Tells previous recipients that the record has been disputed and, if they can be identified, gives them a copy of the statement.

(4) Lets subsequent users know that the record is disputed and gives them a copy of the statement along with the record. The system manager may include a brief summary of the reasons for not amending the record. Summaries are limited to the reasons SAF/AA gave to the individual. The summary is treated as a part of the individual's record, but is not subject to the amendment procedures.

§ 806b.9 Disclosures to third parties and organizations.

The fact that the Air Force tells an individual why the information is collected and how it will be used does not imply consent for release. When deciding to release information as authorized in paragraph (a) through (c) of this section, first consider the consequences of that disclosure. Before releasing any information, make a reasonable effort to ensure that it is accurate.

(a) *With consent of the subject.* You may disclose information from a system of records if the subject of the record asks you to do so or has given prior written consent. Make sure that no law or directive prohibits release. See AFR 11–24 on release of individual home telephone numbers and home addresses from unit locators.

(b) *Without consent of the subject.* An individual's records may be disclosed without his or her consent to:

(1) DOD officials and employees who need the record to perform their duties when the use is compatible with the purpose for which the record is maintained.

(2) The public, as required by the FOIA. See part 806 of this chapter.

(i) Some examples of information that may normally be released for individual military personnel without an unwarranted invasion of privacy are: Name; grade; marital status; number and sex of dependents; date of rank; gross pay (base pay and entitlements); present and past duty assignments and future assignments that are firm (except overseas); office and unit address and phone number; source of commission; professional miltiary education, civilian educational degrees and major areas of study, school, and year of graduation; promotion sequence number; awards and decorations; duty status at any given time; official photograph without the identification frame; and home of record, without street address. Lists of names, home and duty addresses, and telephone numbers of military members must not be provided in any form for solicitation regardless of the intent of the solicitation unless otherwise provided for by law or this part. See Federal Personnel Manual Supplement 990–1, part 294, on release of civilian personnel information.

(ii) A balancing test may be used to decide whether disclosure would be a clearly unwarranted invasion of individual privacy. Weigh the right of the subject to a reasonable expectation of privacy verus the public right to know. Consider the nature of the information to be disclosed. Do individuals usually expect this information to be kept private? Are the identities of the subject and the recipient already in the public eye? What is likely to happen to the individual as a result of the disclosure? How old is the information; is it still relevant? To what degree is the information already in the public domain?

(iii) Information may be released if the balancing test described above weighs in favor of disclosure. For example, home addresses may be disclosed to a requester who wants to enforce a court order for alimony or child support payments, or to local and state tax authorities to enforce tax laws.

(iv) Individuals must be allowed to decide if they wish their home addresses and phone numbers included in base directories.

(3) Agencies outside DOD for a routine use that has been listed in the notice describing the system of records published in the Federal Register. The routine use must be compatible with the purpose for which the information was collected.

(4) The Bureau of the Census to plan or carry out a census or survey under Title 13, U.S.C.

(5) A recipient for statistical research or reporting. The recipient must give advance written assurance that the record will be used solely as a statistical research or reporting record. The record must not be used, in whole or part, to make any decisions about the individual's rights, benefits, or entitlements. It must be sent in a form in which the identity of the individual cannot be found out through usual research methods.

(6) The National Archives of the United States as a record with enough value to warrant permanent retention, or for evaluation by the Archivist of the United States to see if the record has such value. However, records sent to Federal Archives and Records Centers for storage stay under Air Force control. These transfers are not disclosures under this section and do not need an accounting.

(7) A Federal, state, or local agency outside DOD for a civil or criminal law enforcement activity authorized by law. The head of the agency or a designee must send a written request to the system manager. The request must specify the record or part needed and the law enforcement purpose for which it is wanted. A record may also be disclosed to a law enforcement agency if a criminal violation is suspected. This disclosure is a routine use for all Air Force systems of records and has been published in the Federal Register.

(8) Another individual or agency under compelling circumstances that affect the health or safety of an individual. The individual whose records are disclosed does not have to be the one in danger. For example, records on several individuals could be disclosed to identify individuals injured in an accident. When an individual record is disclosed in this way, the subject must be sent a notification of disclosure to the last known address.

(9) Either House of Congress (a congressional committee or subcommittee) for matters within their jurisdictions.

(10) A congressional office acting for a constituent who is the record subject. This disclosure is authorized by a published blanket routine use.

(11) The Comptroller General or any authorized representatives on business of the General Accounting Office.

(12) A court of competent jurisdiction that has ordered the disclosure of the record. When a record is disclosed, reasonable efforts must be made to notify the individual to whom the record pertains, if the legal process is a matter of public record.

(13) A consumer credit agency according to the Debt Collection Act. This provision applies to the Air Force Accounting and Finance Center only.

(14) A contractor who is operating a system of records under a contract to perform an Air Force function. In this case, the contractor is considered an employee of the Air Force for Privacy Act purposes, and the system of records is considered an Air Force system. Disclosure of records to the contractor does not need the subject's consent nor does it require an accounting. Records maintained by the contractor for the management of contractor employees are not subject to the Privacy Act.

(c) *Medical records of minors.* The medical records of minors may be disclosed to the parents or legal guardians of the minor. However, the following conditions apply:

(1) The law of the state in which the records are located may protect certain types of medical records that deal with drug or alcohol abuse treatment, abortion, and birth control advice or devices. Such laws must be observed. Medical records custodians in the United States must be knowledgeable of local laws and coordinate any proposed local policies with their servicing SJA.

(2) Parents or guardians are not allowed to see the medical records of a minor when all four of the following conditions apply:

(i) The minor was between 15 and 17 years of age at the time he or she sought or consented to the treatment.

(ii) The treatment was sought in a program authorized by regulations or law to offer confidentiality of treatment records as a part of the program.

(iii) The minor specifically requested or indicated that he or she wished his or her treatment record to be handled with confidence and not released to a parent or guardian.

(iv) The parent or guardian seeking access does not have the written authorization of the minor or a valid court order for access.

Subpart E—Privacy Act Exemptions

§ 806b.10 Use of Exemptions.

SAF can exempt systems of records from parts of the Privacy Act. The two kinds of exemption are: General and specific. The general exemption frees systems from most parts of the Privacy Act; the specific from only a few parts.

§ 806b.11 General Exemptions.

(a) SAF has approved a general exemption for investigative systems used by activities whose principal function is criminal law enforcement. These include the SJA, and investigative and correctional activities. All records in such a system come under the exemption which will be observed and cannot be waived. This exemption is in subparagraph (j)(2) of the Privacy Act. It only applies to systems used to:

(1) Identify criminals and alleged criminals, with identity; arrests; type and disposition of charges; sentences, confinement and release records; and parole and probation status.

(2) Support criminal investigations (including efforts to prevent, reduce, or control crime) and reports of informants and investigators that identify an individual.

(3) Reports on an individual, compiled at any stage of the law enforcement process.

(b) The Air Force observes only subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the Privacy Act.

§ 806b.12 Specific exemptions.

(a) SAF has approved specific exemptions for all classified and a few other systems. These exemptions must be observed and cannot be waived. The Privacy Act citation appears in parentheses after each type below.

(1) Classified information in any system of records. Before denying access, make sure that the record is currently and properly classified and cannot be declassified ((k)(1)).

(2) Law enforcement records (other than those covered by the general exemption). However, the Air Force must allow access to any record which was used to deny someone a right, privilege or benefit, unless doing so would reveal a confidential source ((k)(2)).

(3) Statistical records required by law. The data must be used only as statistics and not to make decisions on the rights, benefits, or entitlements of individuals ((k)(4)).

(4) Data to determine suitability, eligibility, or qualifications for Federal service or contracts, or access to classified information. The Air Force can withhold this if access would reveal a confidential source ((k)(5)).

(5) Qualification tests for appointment or promotion in the federal service. The Air Force may withhold these if access would compromise the objectivity of the tests ((k)(6)).

(6) Information to determine promotability in the Armed Forces. The Air Force may withhold this if access would reveal a confidential source ((k)(7)).

(b) A specific exemption may free a system from any of the following parts of the Privacy Act: subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f).

§ 806b.12. General and specific exemptions.

(a) *General exemption.* The following systems of records are exempt under 5 U.S.C. 552a(j)(2):

(1) Counter Intelligence Operations and Collection Records, F124 AF A.

(2) Criminal Records, F124 AF C.

(3) Incident Investigation Files, F125 AF SP E.

(4) Investigative Support Records, F124 AF D.

(5) Correction and Rehabilitation Records, F125 AF A (that portion maintained by the 3320th Correction and Rehabilitation Squadron, but only for the period the individual is confined or in rehabilitation at an Air Force or Federal correctional facility).

(6) Management Information and Research System (MIRS), F125 ATC A (but only for the period the individual is confined or in rehabilitation at an Air Force or Federal correctional facility).

(b) *Specific exemptions.* The following systems of records are subject to the specific exemptions shown:

(1) *Classified records.*

(i) *Exemption.* All records in any systems of records that are properly classified according to Executive Orders 11652, 12065 or 12356, are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4)(G), (H), and (I); and (f), regardless of whether the entire system is otherwise exempt or not.

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(2) *Admissions and Registrar Records (F053 AFA C).*

(i) *Exemption.* Parts of this system of records (Liaison Officer Evaluation and Selection Panel Candidate Evaluation) are exempt from 5 U.S.C. 52a(d), (e)(4)(H), and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To ensure the frankness of information used to determine whether cadets are qualified for graduation and commissioning as officers in the Air Force.

(3) *Air Force Personnel Test 851, Test Answer Cards (F035 MPC R).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(6).

(iii) *Reasons.* To protect the objectivity of the promotion testing system by keeping the test questions and answers in confidence.

(4) *Cadet Personnel Management System (F035 AFA A).*

(i) *Exemption.* Parts of this system are exempt from 5 U.S.C. 552a(d), (e)(4)(H), and (f), but only insofar as disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To maintain the candor and integrity of comments needed to evaluate an Air Force Academy cadet for commissioning in the Air Force.

(5) *Cadet Records (F045 ATC C).*

(i) *Exemption.* Portions of this system (Detachment Professional Officer Course (POC) Selection Rating Sheets; Air Force Reserve Officer Training Corps (AFROTC) Form 0–24– Disenrollment Review; Memoranda for Record and Staff Papers with Staff Advice, Opinions, or Suggestions) are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G) and (H), and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of a confidential source who furnishes information necessary to make determinations about the qualifications, eligibility, and suitability of cadets for graduation and commissioning in the Air Force.

(6) *Child Advocacy Case Files (F168 AF SG B).*

(i) *Exemption.* Parts of this system are exempt from 5 U.S.C. 552a(c)(3) and (d), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k) (2) and (5).

(iii) *Reasons.* To encourage those who know of child abuse or neglect to come forward by protecting their identities, and to protect the integrity of ongoing and civil law investigations of criminal and civil law violations. Giving subjects access to their files could result in them concealing, altering, or fabricating evidence; could hamper the identification of offenders and alleged offenders; and could jeopardize the safety and well-being of parents and their children.

(7) *Effectiveness/Performance Reporting Systems (F035 AF MP A).*

(i) *Exemption.* The parts of this system that have completed AF Forms 705, Lieutenant Colonel Promotion Recommendation Report; and AF Forms 706, Colonel Promotion Recommendation Report; are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To ensure that selection boards have candid evaluations of officers being considered for promotion to the grades of Colonel and Brigadier General.

(8) *Equal Opportunity in Off-Base Housing (F030 AF LE A).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* To enforce civil laws, court orders, and the activities of the Departments of Housing and Urban Development and Justice.

(9) *Files on General Officers and Colonels Assigned to General Officer Positions (F035 MP A).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To protect the integrity of information used in the Reserve Initial Brigadier General Screening Board, the release of which would compromise the selection process.

(10) *General Officer Personnel Data System (F035 AF MP P).*

(i) *Exemption.* The parts of this system that have completed AF Forms 78, Air Force General Officer Effectiveness Report, are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To ensure selection boards get candid evaluations of officers being considered for promotion to Major General, Lieutenant General, and General.

(11) *Historical Airman Promotion Master Test File (F035 MPC L).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(6).

(iii) *Reasons.* To protect the integrity, objectivity, and equity of the promotion testing system by keeping test questions and answers in confidence.

(12) *Inspector General Records (F120 AF IG B).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f). However, if a person is denied any right, privilege, or benefit, he or she would otherwise be entitled to as a result of keeping this material, it must be released, unless doing so would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* Granting individuals access to information collected while an Inspector General inquiry is in progress could interfere with the just, thorough, and timely resolution of the complaint or inquiry and could possibly enable individuals to conceal wrong doing or mislead the inquiring officer. Disclosure might also subject sources, witnesses, and their families to harassment or intimidation.

(13) *Investigative Applicant Processing Records (F124 AFOSI B).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect those who gave information in confidence during Air Force Office of Special Investigations (AFOSI) applicant inquiries. Fear of harassment could cause sources not to make frank and open responses about applicant qualifications. This could compromise the integrity of the AFOSI personnel program that relies on selecting only qualified people.

(14) *Master Cadet Personnel Record (Active/Historical) (F035 AFB B).*

(i) *Exemptions.* Parts of these systems are exempt from 5 U.S.C. 552a(d), (e)(4)(H), and (f), but only to the extent that they would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To maintain the candor and integrity of comments needed to evaluate a cadet for commissioning in the Air Force.

(15) *Sensitive Compartmented Information Personnel Records (F205 AFIS A).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(a)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a (k)(2) and (k)(5).

(iii) *Reasons.* To protect the identity of sources to whom proper promises of confidentiality have been made during investigations. Without these promises, sources will often be unwilling to provide information essential in adjudicating access in a fair and impartial manner.

(16) *Security and Related Investigative Records (F124 AFB).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause sources to refuse to give this information in the frank and open way needed to pinpoint those areas in an investigation that should be expanded to resolve charges of questionable conduct.

(17) *Special Security Case Files (F205 AFSCO A).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d), (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause sources to refuse to give this information in the frank and open way needed to pinpoint those areas in an investigation that should be expanded to resolve charges of questionable conduct.

(18) *Special Security Files (F205 AF SP A).*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(ii) *Reasons.* To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause them to refuse to give this information in the frank and open way needed to pinpoint areas in an investigation that should be expanded to resolve charges of questionable conduct.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-12519 Filed 6-3-86; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3025-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a site-specific revision to the Illinois State Implementation Plan (SIP) for Carbon Monoxide (CO). This final rulemaking incorporates a January 24, 1985, Opinion and Order of the Illinois Pollution Control Board (PCB), PCB 84–147, into the SIP. This order grants Anderson Clayton Foods, Inc. (ACF) a variance from 35 Illinois Administrative Code 216.121, which governs CO emissions from the Fluidized Bed Combuster (FBC) retrofitted boiler at ACF's Jacksonville, Illinois, facility. This action is taken in response to a March 27, 1985, request from the State of Illinois.

USEPA proposed to approve this site-specific SIP revision on November 15, 1985 (50 FR 47234). No public comments were received on the proposed approval.

EFFECTIVE DATE: This final rulemaking becomes effective on July 7, 1986.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available at the following addresses for review: (it is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V Office.)

U.S. Environmental Protection Agency (5AR-26), Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Copies of the revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On March 27, 1985, the Illinois Environmental Protection Agency,

(IEPA) submitted a variance from 35 Illinois Administrative Code 216.121 [1] for a FBC retrofitted boiler at ACF's facility in Jacksonville, Illinois, as a final revision to its CO SIP. Jacksonville is located in an area that is classified as attainment with respect to the National Ambient Air Quality Standard (NAAQS) for CO.

The variance will allow the existing boiler, that will be retrofitted with FBC, to emit up to 400 parts per million (ppm) of CO, until January 24, 1988. Because the FBC boiler is a major new source in an attainment area, it must meet the best available control technology (BACT) requirement of the Prevention of Significant Deterioration (PSD) regulations. Under the existing federally approved CO SIP, a new source is required to meet a limit of 200 ppm. In today's rulemaking, USEPA's final finding is limited to determining that the CO NAAQS will not be violated by this variance. In this notice, USEPA makes no finding regarding the 400 ppm emission limit in relation to the BACT requirement.

The IPCB granted ACF a variance from 35 Illinois Administrative Code 216.121 which allows a temporary CO limit of 400 ppm until January 23, 1988. ACF's FCC boiler, is subject to the following operating conditions:

1. CO emissions during the period of the variance must be kept to a level below 400 parts per million.
2. ACF is required to develop and implement a program to study and evaluate any technical advances in the control of CO in fluidized bed combusters.
3. ACF is required to develop and evaluate the operation characteristics of their fluidized bed combuster.
4. ACF is required to submit to IEPA every 6 months, a written report describing the progress of the programs required by conditions 3, 4 and 5.
5. Within 45 days of the date of this Order, ACF shall execute a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance.

USEPA reviewed the air quality analysis section of ACF's preconstruction permit application that was completed as part of the PSD requirements. The details of this analysis are contained in the March 27, 1985, State submittal. The predicted CO impact is well below the maximum 1-hour and 8-hour secondary NAAQS.

ACF's retrofitted FBC boiler will not have a significant impact on CO air quality in Jacksonville and, therefore, will not interfere with attainment and maintenance of the CO NAAQS. USEPA proposed to approve this site-specific SIP revision on November 15, 1985 (50 FR 47234). No public comments were received to the proposed approval. USEPA is, therefore, approving PCB 84-147 as revision to the Illinois CO SIP.

However, USEPA is not affirming the 400 ppm emission limit for CO as BACT for FBC boilers. The final approval of this SIP revision does not in any way eliminate the requirements for ACF to comply with the PSD regulations or any other applicable new source regulation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Petitions for judicial review of this action under section 307(b)(1) of the Act must be filed in the United States Court of Appeals for the appropriate Circuit by August 4, 1986. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 52

Incorporation by Reference, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: May 27, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Illinois—Subpart O

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.720 is amended by adding new paragraph (c)(66) as follows:

§ 52.720 Identification of Plan.

* * * * *

(c) * * *

(66) On March 27, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a site-specific revision to its Carbon Monoxide State Implementation Plan for Anderson Clayton Foods, Inc. (ACF), a variance from 35 Illinois Administrative Code (IAC) 216.121 which governs Carbon Monoxide emissions from the Fluidized Bed Combuster retrofitted boiler at ACF's Jacksonville, Illinois facility. IAC 216.121 was incorporated in the Illinois SIP on May 31, 1972 (37 FR 10862), as Illinois Pollution Control Board Rule 206(a).

(i) Incorporation by reference.

(A) Illinois Pollution Control Board Opinion and Order of the Board, PCB 84–147, which was adopted on January 24, 1985.

[FR Doc. 86–12437 Filed 6–3–86; 8:45am]

BILLING CODE 6560–50–M

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40 CFR Parts 52 and 81

[FRL–3025–4]

Approval and Promulgation of State Implementation Plan and Designation of Areas for Air Quality Planning Purposes; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice, EPA approves the redesignation of the Medford-Ashland, Oregon "nonattainment" area to "attainment" for the primary ozone (O_3) standard and approves an air quality maintenance strategy as a revision to the Oregon State Implementation Plan (SIP). The redesignation request is based on supporting documentation prepared and submitted by the Oregon Department of Environmental Quality (ODEQ) pursuant to section 107(d) of the Clean Air Act. Air quality data and emission reductions achieved through implementation of control strategy measures support this redesignation.

EFFECTIVE DATE: August 4, 1986.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information, Reference Unit, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460
Air Programs Branch (10A–85–8), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101
State of Oregon, Department of Environmental Quality, Yeon Building, 522 SW. Fifth, Portland, OR 97204
Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442–4232, (FTS) 399–4232.

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[1] IAC 216.121 was incorporated in the Illinois SIP as Illinois Pollution Control Board Rule 206(a) on May 31, 1972 (37 FR 10862). This Rule was subsequently recodified as part of the Illinois Administrative Code. In a subsequent Federal Register notice, USEPA will propose to incorporate the recodification of the SIP.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1978 (43 FR 8962), EPA designated, pursuant to the requirements of section 107(d) of the Clean Air Act, all areas of the country as "attainment," "nonattainment," or "unclassifiable" in terms of meeting National Ambient Air Quality Standards (NAAQS). At that time, the Medford-Ashland, AQMA, encompassing a portion of Jackson County, Oregon, was designated "nonattainment" for primary O_3 standards in 40 CFR Part 81, § 81.338.

EPA approved, with conditions, the Medford-Ashland, O_3 SIP on June 24, 1980 (45 FR 42285). These conditions were satisfied by ODEQ and removed by EPA on November 5, 1981 (46 FR 54839). On March 11, 1982 (47 FR 10534), EPA approved additional revisions to the O_3 SIP.

ODEQ held a public hearing in Medford, Oregon, on December 4, 1984, to obtain public comment on the redesignation proposal. The proposal was then adopted by the Oregon Environmental Quality Commission on January 25, 1985. ODEQ submitted the redesignation request to EPA on February 28, 1985. The submittal included documentation of attainment for the O_3 standard based on both emission reductions, air quality improvement, and O_3 and precursor modeling.

On January 24, 1986 (51 FR 3219), EPA published a proposed rulemaking for approval of the redesignation request and the attendant plan to maintain the O_3 standard in the Medford-Ashland AQMA. The proposal contained a technical evaluation of the attainment and maintenance demonstrations, covering air quality data, emission reductions, VOC regulations, emission projections, and the use of a growth cushion, which will eliminate the necessity of case-by-case air quality analyses for new or modified major stationary sources subject to the ODEQ PSD rules.

No comments were received during the 30-day public comment period, which ended on February 24, 1986.

II. EPA Final Action

EPA is redesignating the Medford-Ashland, Oregon, O_3 nonattainment area to attainment for the primary O_3 standard and is approving the O_3 maintenance plan.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and record-keeping requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks and wilderness areas.

Dated: May 20, 1986.

Lee M. Thomas,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1970 is amended by adding paragraph (c)(77) as follows:

§ 52.1970 Identification of Plan.

* * * * *

(c) * * *

(77) On February 28, 1985, the Director of the Oregon Department of Environmental Quality submitted (1) a request to EPA to redesignate the Medford-Ashland Air Quality Maintenance Area (AQMA) from nonattainment to attainment for the primary O_3 standard and (2) a plan to maintain that standard.

(i) Incorporation by reference:

(A) Letter of February 28, 1985, from Oregon State Department of Environmental Quality to EPA Region 10.

(B) Oregon Administrative Rules, Chapter 340, Division 20, Section 4.8 "Medford-Ashland Air Quality Maintenance Area Plan for Maintenance of Ozone Standard," adopted by the Oregon Environmental Quality Commission on January 25, 1985.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 407(d), 7501(2) and 7601(a).

2. In § 81.338 the attainment status designation table for ozone is revised to read as follows:

§ 81.338 Ozone.

OREGON—OZONE

Designated area	Does not meet primary standard	Cannot be classified or is better than national standard
Portland-Vancouver AQMA (Oregon portion)	X	
Medford-Ashland AQMA		X
Salem	X	
Eugene-Springfield AQMA		X
Remainder of State		X

[FR Doc. 86-12441 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3008-6]

Standards of Performance for New Stationary Sources; Addition of Alternative Procedure to Method 1 of Appendix A; Measurement Location

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: An alternative, site location procedure addition to Method 1 was proposed in the Federal Register on May 10, 1985 (50 FR 19725). This action promulgates the addition of this alternative procedure. The alternative procedure applies to the determination of the acceptability of measurement locations that do not meet minimum criteria now in Method 1. The alternative is the application of a directional flow-sensing probe to determine pitch and yaw angles at a measurement location less than 2 equivalent diameters downstream or less than ½ an equivalent diameter upstream from a flow disturbance.

The intended effect of the addition of the alternative procedure is to allow the evaluation of the acceptability of measurement locations that do not otherwise meet the minimum criteria in Method 1. With the addition of the alternative procedure, source owners may choose to use an existing

measurement location, if the criteria in the alternative procedure are met, instead of installing new ports and access equipment at another location.

EFFECTIVE DATE: June 4, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–84–50, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin or Mr. Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The alternative procedure defines the directional probe equipment and the procedure. Also included are the acceptance criteria for the measured results and calibration procedures. In addition, as a result of the review of the effects of nonparallel gas flow on the measurement of mass concentrations, the Agency has determined that the acceptable limit for rotation angle should be increased from 10° to 20° in Section 2.4—Verification of Absence of Cyclonic Flow.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking provides a usable alternative procedure for determining the acceptability of a measurement location not meeting the other specifications in Method 1.

II. Public Participation

A public hearing was scheduled for June 27, 1985, at 10:00, but was not held because no one requested to speak. The public comment period was from May 10 to July 1, 1985. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the proposed rulemaking.

III. Significant Comments and Changes to the Proposed Rulemaking

One comment letter was received from a State regulatory agency. The major comments and the Agency's responses are summarized below.

The commenter believes that source owners and testing groups will use the alternative procedure to select sampling sites that are less than ideal. The commenter suggested that the method specify that the alternative procedure be used to determine the accepatability of an alternative site only when a measurement site meeting the other criteria in Method 1 is not available.

Method 1 includes guidelines and other criteria for determining the acceptability of a particular measurement location based on position relative to other process and structural features. The alternative procedure is intended to provide an evaluation technique for determining the acceptability of a measurement location not meeting any of the other guideline criteria. There is no indication that a measurement location found acceptable using the alternative procedure would be more or less acceptable for particulate or velocity testing purposes than a location meeting other Method 1 criteria. The addition of the wording suggested by the commenter is unnecessary.

The alternative procedure provides a direct measurement of the angle of nonaxial flow. With the limits specified in the alternative procedure, one can estimate the effect of the nonaxial flow on the particulate concentration measurement. The Agency has determined that the maximum potential bias in the particulate concentration measurement resulting from nonaxial flow is about 10 percent. This degree of bias is within acceptable limits for particulate sampling. Note that the method recognizes this degree of bias is possible at any measurement location regardless of whether that location meets the original Method 1 location criteria of the specification of the alternative procedure.

The commenter mentioned that considerable time and money could be wasted if a measurement location is found unacceptable and no other measurement location is available while the test group is on site.

The commenter is correct if impractical application of the alternative procedure is made. It would be more efficient and practical to determine the acceptability of a measurement location before a field test crew is on the site ready to conduct the test.

The commenter questioned the background and the availability of data used in support of the alternative procedure.

The Agency has included reports of field tests using the alternative procedure in the docket. These reports describe the method development work and field test data gathered using the procedure. References added to Method 1 present the titles and other necessary information about the sources of the materials.

The commenter referred to revisions to Method 1 promulgated on September 30, 1983 (48 FR 43035), that reduced the required maximum number of traverse points from 48 to 24 and suggested that Tables 1–1 and 1–2 should be returned to their earlier forms. This change is necessary according to the commenter to specify the location of traverse points required for the alternative procedure.

Tables 1–1 and 1–2 were not changed in the September 30, 1983, revision. The tables remain adequate in their present form as they provide information about locating the 40 points for circular ducts or 42 points for rectangular ducts as required for the alternative procedure.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The revisions to Method 1 do not add any requirements to the testing of new

sources, but, instead, provide an alternative procedure that may allow the use of an existing measurement location that does not otherwise meet Method 1 criteria. This alternative procedure may save the expense of preparing a new measurement location. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis (RFA) in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will have no economic impact on small entities because no additional testing costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Incorporation by reference.

Dated: May 29, 1986.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

Appendix A of 40 CFR Part 60 is amended by amending Method 1 as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, 301 Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By amending Section 2.1 of Section 2 by adding a second paragraph as follows:

2. *Procedure*

2.1 * * *

An alternative procedure is available for determining the acceptability of a measurement location not meeting the criteria above. This procedure, determination of gas flow angles at the sampling points and comparing the results with acceptability criteria, is described in Section 2.5.

3. By amending Section 2.4 of Section 2 by changing in the last sentence of the second paragraph the value "10°" to "20°", and by adding a third paragraph as follows:

2.4 * * *

The alternative procedure described in Section 2.5 may be used to determine the rotation angles in lieu of the procedure described above. The limit of acceptability for the average value of α would remain 20°.

4. By adding a new Section 2.5 to Section 2 as follows:

2.5 Alternative Measurement Site Selection Procedure. This alternative applies to sources where measurement locations are less than 2 equivalent stack or duct diameters downstream or less than ½ duct diameter upstream from a flow disturbance. The alternative should be limited to ducts larger than 24 in. in diameter where blockage and wall effects are minimal. A directional flow-sensing probe is used to measure pitch and yaw angles of the gas flow at 40 or more traverse points; the resultant angle is calculated and compared with acceptable criteria for mean and standard deviation.

Note.—Both the pitch and yaw angles are measured from a line passing through the traverse point and parallel to the stack axis. The pitch angle is the angle of the gas flow component in the plane that INCLUDES the traverse line and is parallel to the stack axis. The yaw angle is the angle of the gas flow component in the plane PERPENDICULAR to the traverse line at the traverse point and is measured from the line passing through the traverse point and parallel to the stack axis.

2.5.1 Apparatus.

2.5.1.1 Directional Probe. Any directional probe, such as United Sensor Type DA Three-Dimensional Directional Probe, capable of measuring both the pitch and yaw angles of gas flows is acceptable. (Note: Mention of trade name or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.) Assign an identification number to the directional probe, and permanently mark or engrave the number on the body of the probe. The pressure holes of directional probes are susceptible to plugging when used in particulate-laden gas streams. Therefore, a system for cleaning the pressure holes by "back-purging" with pressurized air is required.

2.5.1.2 Differential Pressure Gauges. Inclined manometers, U-tube manometers, or other differential pressure gauges (e.g., magnehelic gauges) that meet the specifications described in Method 2, § 2.2.

Note.—If the differential pressure gauge produces both negative and positive readings, then both negative and positive pressure readings shall be calibrated at a minimum of three points as specified in Method 2, § 2.2.

2.5.2 Traverse Points. Use a minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts for the gas flow angle determinations. Follow § 2.3 and Table 1–1 or 1–2 for the location and layout of the traverse points. If the measurement location is determined to be acceptable according to the criteria in this alternative procedure, use the same traverse point number and locations for sampling and velocity measurements.

2.5.3 Measurement Procedure.

2.5.3.1 Prepare the directional probe and differential pressure gauges as recommended by the manufacturer. Capillary tubing or surge tanks may be used to dampen pressure fluctuations. It is recommended, but not required, that a pretest leak check be conducted. To perform a leak check, pressurize or use suction on the impact opening until a reading of at least 7.6 cm (3 in.) H_2O registers on the differential pressure gauge, then plug the impact opening. The pressure of a leak-free system will remain stable for at least 15 seconds.

2.5.3.2 Level and zero the manometers. Since the manometer level and zero may drift because of vibrations and temperature changes, periodically check the level and zero during the traverse.

2.5.3.3 Position the probe at the appropriate locations in the gas stream, and rotate until zero deflection is indicated for the yaw angle pressure gauge. Determine and record the yaw angle. Record the pressure gauge readings for the pitch angle, and determine the pitch angle from the calibration curve. Repeat this procedure for each traverse point. Complete a "back-purge" of the pressure lines and the impact openings prior to measurements of each traverse point.

A post-test check as described in § 2.5.3.1 is required. If the criteria for a leak-free system are not met, repair the equipment, and repeat the flow angle measurements.

2.5.4 Calculate the resultant angle at each traverse point, the average resultant angle, and the standard deviation using the following equations. Complete the calculations retaining at least one extra significant figure beyond that of the acquired data. Round the values after the final calculations.

2.5.4.1 Calculate the resultant angle at each traverse point:

$$R_i = \text{arc cosine } [(\text{cosine } Y_i)(\text{cosine } P_i)] \quad \text{Eq. 1–2}$$

Where:

R_i = Resultant angle at traverse point i, degree.

Y_i = Yaw angle at traverse point i, degree.

P_i = Pitch angle at traverse point i, degree.

2.5.4.2 Calculate the average resultant for the measurements:

$$\bar{R} = \frac{\Sigma R_i}{n} \quad \text{Eq. 1–3}$$

where:

$\bar{R}$ = Average resultant angle, degree.

n = Total number of traverse points.

2.5.4.3 Calculate the standard deviations:

$$S_R = \sqrt{\frac{\sum_{i=1}^{n} (R_i - \bar{R})^2}{(n-1)}} \quad \text{Eq. 1–4}$$

Where:

S_R = Standard deviation, degree.

2.5.5 The measurement location is acceptable if $\bar{R} < 20°$ and $S_R < 10°$.

2.5.6 Calibration. Use a flow system as described in Sections 4.1.2.1 and 4.1.2.2 of Method 2. In addition, the flow system shall have the capacity to generate two test-section velocities: one between 305 and 730 m/min (1200 and 2400 ft/min) and one between 730 and 1100 m/min (2400 and 3600 ft/min).

2.5.6.1 Cut two entry ports in the test section. The axes through the entry ports shall be perpendicular to each other and intersect in the centroid of the test section. The ports should be elongated slots parallel to the axis of the test section and of sufficient length to allow measurement of pitch angles while maintaining the pitot head position at the test-section centroid. To facilitate alignment of the directional probe during calibration, the test section should be constructed of plexiglass or some other transparent material. All calibration measurements should be made at the same point in the test section, preferably at the centroid of the test section.

2.5.6.2 To ensure that the gas flow is parallel to the central axis of the test section, follow the procedure in Section 2.4 for cyclonic flow determination to measure the gas flow angles at the centroid of the test section from two test ports located 90° apart. The gas flow angle measured in each port must be ± 2° of 0°. Straightening vanes should be installed, if necessary, to meet this criterion.

2.5.6.3 Pitch Angle Calibration. Perform a calibration traverse according to the manufacturer's recommended protocol in 5° increments for angles from −60° to +60° at one velocity in each of the two ranges specified above. Average the pressure ratio values obtained for each angle in the two flow ranges, and plot a calibration curve with the average values of the pressure ratio (or other suitable measurement factor as recommended by the manufacturer) versus the pitch angle. Draw a smooth line through the data points. Plot also the data values for each traverse point. Determine the differences between the measured data values and the angle from the calibration curve at the same pressure ratio. The difference at each comparison must be within 2° for angles between 0° and 40° and within 3° for angles between 40° and 60°.

2.5.6.4 Yaw Angle Calibration. Mark the three-dimensional probe to allow the determination of the yaw position of the probe. This is usually a line extending the length of the probe and aligned with the impact opening. To determine the accuracy of measurements of the yaw angle, only the zero or null position need be calibrated as follows. Place the directional probe in the test section, and rotate the probe until the zero position is found. With a protractor or other angle measuring device, measure the angle indicated by the yaw angle indicator on the three-demensional probe. This should be within 2° of 0°. Repeat this measurement for any other points along the length of the pitot where yaw angle measurements could be read in order to account for variations in the pitot markings used to indicate pitot head positions.

5. By adding Citations 13, 14, and 15 to Section 3, as follows:

3. Bibliography.

* * * * *

13. Smith, W.S. and D.J. Grove. A Proposed Extension of EPA Method 1 Criteria. "Pollution Engineering." *XV*(8):36-37. August 1983.

14. Gerhart, P.M. and M.J. Dorsey. Investigation of Field Test Procedures for Large Fans. University of Akron. Akron, Ohio. (EPRI Contract CS-1651). Final Report (RP-1649-5) December 1980.

15. Smith, W.S. and D.J. Grove. A New Look at Isokinetic Sampling—Theory and Applications. "Source Evaluation Society Newsletter." *VIII*(3):19-24. August 1983.

[FR Doc. 86-12539 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 86-263]

Amendment of Part 0 to Delegate Authority to EICs To Grant Emergency Exemptions to Vessels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules to delegate authority to the Engineers-in-Charge of the Commission's field offices to grant emergency exemptions from certain vessel equipment requirements of the Communications Act, the Great Lakes Agreement and the Safety Convention. The Commission initiated this action to improve the convenience and efficiency of emergency exemption procedures.

EFFECTIVE DATE: June 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 20, 1986.
Released: May 22, 1986.

In the Matter of Amendment of Part 0 of the rules to delegate authority to EICs to grant emergency exemptions to vessels.

By the Commission.

1. We have determined to delegate authority to grant emergency exemptions from certain vessel equipment requirements contained in the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* (Act), the Great Lakes Radio Agreement, T.I.A.S. 7637, amended T.I.A.S. 9352 (GLA) or the International Convention for the Safety of Life at Sea, T.I.A.S. 9700 (Safety Convention) to the Engineers-in-Charge (EICs) of Commission field offices. This authority will be in addition to that already delegated to the Chief, Private Radio Bureau (Bureau). See § 0.331 of the rules, 47 CFR 0.331.

2. The emergency exemption process begins when the ship station licensee contacts the Bureau for an exemption from a particular statutory or treaty requirement. Typically, a station has failed the mandatory annual or periodic inspection because equipment required by the Act, the GLA or the Safety Convention is not functioning properly. The vessel cannot sail unless the licensee receives an emergency exemption from the statutory or treaty requirement in lieu of the required safety certificate. Unlike a standard exemption, which is usually granted for one year, an emergency exemption is temporary and expedient in nature. Typically an emergency exemption is granted for a single voyage to permit the ship to sail to another port for repair. In accordance with the Act, the GLA or the Safety Convention, emergency exemptions are granted only after it has been determined that the route and conditions of the proposed voyage, including other available communications equipment, render the failed equipment unnecessary for safety purposes during the exempted voyage.

3. The present procedure may consume several hours from the time the licensee contacts the Bureau to the time the exemption is sent. This is so because frequently the exemption requires coordination between the Bureau, the licensee and the FCC field office which conducted the inspection. This coordination is frequently complicated by differing time zones and sailing schedules.

4. It would be more convenient for the public and the Commission to also provide authority to grant such emergency exemptions to the EICs at field offices. EICs are near the vessel's location and are familiar with the functions of each piece of equipment. They are qualified to determine whether the lack of such equipment for the term of the exemption would pose a danger to life or property on a particular voyage. Furthermore, they are capable of recommending alternative measures within established paramenters which might satisfactorily function in lieu of the missing equipment.

5. Authority and parameters for exemptions are set forth in Title III, Parts II and III of the Act, Chapters I and IV of the Safety Convention, and Article IX of the GLA. The Commission's rules currently delegate exemption authority to the Chief, Private Radio Bureau. In cases of emergency, § 83.60(a) permits the owner, operator or master of a vessel to file an informal request for exemption for Title III, Part II or III of the Act, or from the Safety Convention or from the GLA. Joint authority to act on these requests in both the Private

Radio Bureau and the Field Operations Bureau will provide greater flexibility and expedition in processing them. This will be accomplished by amending § 0.314 of the rules to delegate this authority to the EICs. In order to ensure consistent policies, we are also amending § 0.332 of the rules to provide for coordination between the affected Bureau Chief regarding these emergency exemption actions.

6. For the reasons described above, we are amending the rules to delegate authority to grant emergency exemptions to EICs in addition to the authority already delegated to the Chief, Private Radio Bureau. Authority for this action is contained in sections 4(i) and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because these rule amendments involve Commission organization, the public notice, comment and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, and of § 1.413 of the Commission's rules do not apply. See § 1.412(b)(5) of the rules, 47 CFR 1.412(b)(5).

7. Accordingly, It Is Ordered, That Part 0 of the Commission's rules is amended as set forth below effective June 30, 1986.

8. For further information regarding matters covered in this document, contract Robert DeYoung at (202) 632-7175.

List of Subjects in 47 CFR Part 0

Authority delegations.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec 5, 48 Stat. 1066, as amended; 47 U.S.C. 155, unless otherwise noted.

2. Section 0.314 is amended by removing and reserving paragraph (o) and adding a new paragraph (s)(3) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(s) * * *

(3) Grant emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, the Great Lakes Agreement or the Commission's rules.

* * * * *

3. Section 0.332 is amended by adding a new paragraph (i) to read as follows:

§ 0.332 Actions taken under delegated authority.

* * * * *

(i) Requests for emergency ship exemptions-Chief, Field Operations Bureau.

[FR Doc. 86-12325 Filed 6-3-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 1

[MM Docket No. 85-313; RM-5037; FCC 86-181]

Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules to provide for modification of FM licenses (and permits) to higher class channels on existing or adjacent frequencies in the course of rule making proceedings amending the FM Table of Allotments. This action is taken in response to a petition filed by Fuller-Jeffrey Group.

EFFECTIVE DATE: July 7, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-313, adopted April 18, 1986, and released April 29, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 1440, Washington, DC. 20037.

Summary of Report and Order

1. The Commission amended § 1.420(g) of its Rules to provide a new procedure whereby the Commission may modify the licenses or permits of FM stations in the course of rule making proceedings amending the FM Table of Allotments, § 73.202(b) of the Rules, where the modifications would occur on mutually exclusive higher class adjacent or co-channels. Such modifications would be made regardless of the availability of additional equivalent higher class channels. In those circumstances, the Commission would not entertain the filing of expressions of interest by other parties.

2. This proceeding was commenced in response to a petition filed by Fuller-Jeffrey Group whose request was premised on recent Commission action in MM Docket No. 83-1148, *Amendment of the Commission's Rules Regarding Modification of FM and Television Station Licenses*, 98 F.C.C. 2d 916 (1984), *recon. denied*, FCC 86-32, Mimeo No. 36378, released January 17, 1986. In that proceeding the Commission added a new § 1.420(g) to its Rules, whereby the authorizations of FM stations seeking to upgrade to newly allotted superior class channels (e.g., from Class A to Class C) could be modified in rule making proceedings, provided at least one additional equivalent channel is available to accommodate others expressing interest in proposed channels. Fuller-Jeffrey proposed that the authorizations be modified in certain circumstances where equivalent channels are not available. Such circumstances would exist where a licensee seeks higher class use of its existing channel or of a mutually exclusive adjacent channel (e.g., a Class A licensee seeks to operate a Class C station, moving from Channel 241A to Channel 241C or to Channel 243C).

3. Commenters expressed nearly unanimous support for the proposal. They noted Commission policy favoring upgrades and public interest benefits from improving the ability of stations to increase service areas without fear of costly and time-consuming comparative license proceedings. They indicated that both Commission and licensee resources are wasted when requested upgrades are withdrawn in the face of other interests. Some contended that additional equivalent channels are not always available and that problems can arise where such channels are said to be not equivalent due to factors such as site restrictions. Other commenters claimed that the proposal is analogous to Commission preferences to daytime-only AM stations seeking full-time FM facilities or that precluding lower class FM stations from competing in nearby larger communities is not conducive to promoting a competitive marketplace environment.

4. The Commission concluded that existing procedures discourage expansion of FM service and thereby

deprive the public of significant benefits. Despite Commission action encouraging FM stations to upgrade their facilities, where no additional equivalent superior channels are available to accommodate other interests, licensees seeking to enhance service on co- or adjacent channels generally withdraw their requests rather than risk loss of existing authorizations and the expenses and delays associated with comparative license proceedings. When allotment proceedings are thereby terminated, Commission, licensee, and public resources are wasted, and spectrum is underutilized due to the incompatibility between petitioners' existing channels and the proposed channels. In light of this, the Commission believes that it makes no policy sense to provide for competing applications.

5. The Commission has legal authority to adopt and to implement the new procedure. Section 316 of the Communications Act of 1934, as amended, authorizes it to modify station licenses in order to promote the public interest, convenience, and necessity. The Commission believes that modifications to superior adjacent or co-channels make possible the expeditious provision of expanded radio service which would otherwise remain unrealized. The Commission does not believe that the Supreme Court's ruling in *Ashbacker Radio Corp.* v. *U.S.*, 326 U.S. 327 (1945), is controlling where such upgrades are sought. This is so, because the proposed channels, being precluded by existing operations, are, in effect, unavailable for application by others. Further, the Commission may promulgate rules limiting eligibility to apply for newly allotted channels where it determines that such a limitation promotes the public interest. *See: U.S.* v. *Storer*, 351 U.S. 192 (156).

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

7. The Rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modifed form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

Accordingly, it is ordered, that, under the authority contained in sections 1, 2, 4 (i) and (j), 303(r), 316, and 403 of the Communications Act of 1934, as amended, Part 1 of the Commission's Rules and Regulations is amended, effective July 7, 1986, as shown at the end of this document.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE PRACTICE AND PROCEDURE

8. The authority citation for Part 1 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

Section 1.420 is amended by revising paragraph (g) as follows:

§ 1.420 Additional Procedures in Proceedings for Amendment of the FM, Television or Air-Ground Table of Assignments.

* * * * *

(g) The Commission may modify the license or permit of an FM station to another class of channel or of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.202(b), § 73.504(a) or § 73.606(b) if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) If another interest in the proposed channel is timely filed an additional equivalent class of channel is also allotted, assigned or available for application, or

(3) With respect to FM, the modification of license or permit would occur on a mutually exclusive higher class adjacent or co-channel.

William J. Tricarico,
Secretary.

[FR Doc. 86-12483 Filed 6-3-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 79-219; RM-3099; RM-3273]

Deregulation of Radio; Program Record Keeping Obligation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action was taken in response to the decisions of the United States Court of Appeals vacating the Commission's *Second Report and Order* in this proceeding and remanding the case for further proceedings. A new program record keeping obligation for commerical radio licensees was developed to accommodate the court's concern for the proper functioning of the petition to deny process and the FCC's own information needs. Such licensees will be obliged, each quarter, to list those programs aired during the preceding quarter which, in the licensee's judgment, provided the station's most significant treatment of issues of concern to the broadcaster's community.

EFFECTIVE DATE: June 27, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, BC Docket 79-219, FCC 86-222, adopted May 1, 1986 and released May 27, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 "M" Street, Northwest, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 "M" Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On December 20, 1985, the Court of Appeals for the District of Columbia Circuit vacated the Commission's *Second Report and Order* in this proceeding and remanded the case to the Commission for further proceedings. The court found that the record keeping requirements adopted in the *Second Report and Order*—an illustrative issues/programs list documenting at least 5 to 10 issues addressed each quarter—did not further the FCC's stated regulatory goal of relying on effective public participation in the license renewal process. The court further concluded that an adequate explanation had not been given by the Commission for its rejection of an alternative record keeping requirement suggested by a commenter during an earlier stage of the proceeding. Under this alternative approach, commercial radio licensees would record all programming that afforded "significant treatment" to issues facing their communities.

2. By this *Memorandum Opinion and Order*, the FCC adopted a modified form of the "significant treatment"

alternative. Under the revised rule, a commercial radio licensee is obliged, each quarter, to list those programs aired during the preceding quarter which, in the licensee's judgment, provided the station's most significant treatment of issues of concern to the broadcaster's community. This program record keeping obligation accommodates the court's concern for the proper functioning of the petition to deny process and the FCC's own information needs. This requirement has been narrowly tailored to meet our regulatory needs and, therefore, is minimally burdensome to licensees. While it is a flexible technique for providing reliable programming information and is intended to vest maximum discretion in licensees to determine appropriate amounts and types of issue programming, the FCC noted its continued belief that a licensee that documents significant programming directed to 10 community issues during each quarter would likely be able to demonstrate compliance with its issue-responsive programming obligation.

Ordering Clauses

3. Authority for the action taken herein is contained in Section 4 (i) and (j) and 303 of the Communications Act of 1934, as amended.

4. Accordingly, it is ordered, that the Commission's Rules are amended, effective June 27, 1986, as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Section

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

47 CFR 73.3526 is amended by revising paragraph (a)(9), removing the Note after paragraph (a)(9), and revising paragraph (e) introductory text to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(9) For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth of the succeeding calendar quarter (*e.g.*, January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include, but is not limited to, the time, date, duration and title of each program in which the issue was treated.

* * * * *

(e) *Period of Retention.* The records specified in paragraph (a)(4) of this section shall be retained for periods specified in § 73.1940 (2 years). The manual specified in paragraph (a)(8) of this section shall be retained indefinitely. The letters specified in paragraph (a)(7) of this section shall be retained for the period specified in §73.1202 (3 years). The "significant treatment of community issues" list specified in paragraphs (a)(8) and (9) of this section shall be retained for the term of license (5 and 7 years for TV and radio, respectively). The certification specified in paragraph (a)(10) of this section shall be retained for the period specified in § 73.3580 (for as long as the application to which it refers). The records specified in paragraphs (a)(1), (2), (3), and (5) of this section shall be retained, as follows:

* * * * *

William J. Tricarico,
Secretary.

[FR Doc. 86-12326 Filed 6-3-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-138; RM-4778]

Radio Broadcasting Services; Silver Springs, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document changes paragraph 4 of the *Report and Order* in this proceeding concerning an FM channel allotment in Silver Springs, FL. (April 21, 1986, 51 FR 13512) to delete the window filing dates. The acceptance of applications for Channel 238A at Silver Springs, Florida, is conditioned on Station WNLT(FM), Channel 239, Clearwater, Florida, relocating its transmitter site. A filing window for Channel 238A at Silver Springs will be announced at a future date.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Erratum, MM Docket No. 85-318, released May 23, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Accordingly, MM Docket No. 85-138, RM 4778, published at 51 FR 13512, April 21, 1986 is corrected by removing paragraph 4.

Ralph Haller,
Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12327 Filed 6-3-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket 83-670]

Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In 1984, the Commission adopted a *Report and Order* in MM Docket No. 83-670, concerning deregulation of the nonentertainment programming and commercialization policies, ascertainment requirements, and program log requirements for commercial television stations. In response to this decision, the Commission received two petitions for reconsideration and/or clarification. This action is intended to reply to these petitions and to clarify that decision as requested.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission *Memorandum Opinion and Order* in MM Docket No. 83-670, adopted May 1, 1986 and released May 28, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230),

1919 "M" Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 "M" Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In August 1984, the Commission adopted a *Report and Order* (*Report*) in MM Docket No. 83–670 [49 FR 33588, August 23, 1984], eliminating guidelines relating to nonentertainment programming and amounts of commercial matter presented by commercial television stations and deleting our rules relating to formalized community ascertainment and the maintenance of comprehensive program logs by such stations. Two petitions were filed requesting reconsideration and/or clarification of that decision. The summarized *Memorandum Opinion and Order* (*Order*) responds to these concerns, denies the petitions for reconsideration, and clarifies the decision adopted in the *Report*.

2. Specifically, the petitioners objected to: (1) Deletion of the nonentertainment programming guidelines, (2) elimination of formal ascertainment requirements, (3) deletion of the commercial guidelines, (4) elimination of the requirement for comprehensive program logs in favor of quarterly "issues/programs" lists, and (5) the amount of notice provided to support the action in the *Report* eliminating the long form audit.

3. The *Order* rejects the arguments against elimination of the nonentertainment programming guidelines as unpersuasive and repetitive. The FCC re-emphasizes that all licensees remain individually responsible for contributing to the overall discussion of issues confronting the community and that fully adequate means remain available to bring to its attention the failings of any particular licensee. Petitioners also requested clarification or expressed concern on several issues relating to this point. In reply, the *Order* underscores that the decision in the *Report* in no way diminished the obligation of broadcasters to address the special needs of the child audience. It also clarifies that generally, where a station relies on the programming of another market station, that programming must actually be broadcast. Finally, the *Order* reaffirms the obligation of licensees to meet the needs of minority audiences, but also confirms the Commission's determination that in doing so, a broadcaster may look to other market stations and need not program in direct proportion to the size of the minority audience.

4. Petitioners also argued against elimination of the formal ascertainment requirements, maintaining that ascertainment is required by the Communications Act. The *Order* reiterates the *Report*'s finding that ascertainment is not statutorily compelled. The FCC acted within its allowable discretion in determining that, under current marketplace conditions, ascertainment is no longer a necessary or appropriate device to assure programming in the public interest. The focus of FCC inquiry is now upon the responsiveness of licensee programming, not upon the methodology utilized by a licensee to determine the issues addressed.

5. In response to petitioners' concerns about the deletion of commercial guidelines, the *Order* again states that marketplace forces are sufficient to determine appropriate levels of commercialization. The *Order* clarifies the FCC's intention in eliminating the commercialization guidelines to remove all quantitative commercial time limits from TV licensees, including those announced in prior policy pronouncements regarding the quantity of advertising in children's programming. It emphasized, however, that other protective mechanisms related to commercialization practices in children's programming, such as the bar to host selling and the requirement for adequate separation of program and commercial material, remain FCC policies.

6. The *Order* rejects the plea for retention of a comprehensive program logging system for television licensees because the petitioners did not present any new arguments to persuade the FCC to revisit the matter. However, with respect to revision of the existing illustrative issues/programs list requirement, the Court of Appeals recently vacated the Commission's decision in the *Second Report and Order* in the radio deregulation proceeding on the basis that amendment of the current program record keeping requirement is necessary. Therefore, the same modified program record keeping rule which has been adopted for radio licensees in response to the court's decision is adopted for television licensees as well. Under this rule, a television licensee would be required, each quarter, to list programs that provided the station's most significant treatment of community issues.

7. Finally, the *Order* rejects the contention of petitioners for reconsideration that the Commission's action deleting the "long" (audit) renewal form for television licensees was taken without sufficient notice. The Commission's reference (in the *Notice of Proposed Rule Making* in this Docket) to reassessing its "information needs" in light of its deregulation proposals provided adequate notice of the subject matter to sustain action upon the long form audit.

Ordering Clauses

8. Accordingly, it is ordered, That the Commission's Rules are amended effective June 27, 1986, as set forth below.

It is further ordered, That the petitions for reconsideration filed by Henry Geller and Donna Lampert, and by Telecommunications Research and Action Center, *et al.*, are denied.

9. Authority for the actions taken herein is contained in sections 4 (i) and (j) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Amendatory Section

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

10. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

11. 47 CFR 73.3526 is amended by revising paragraph (a)(8) to read as follows, and by removing the note after paragraph (a)(8).

§73.3526 Local public inspection file of commercial stations.

(a) * * *

(8) For commerical TV broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.*, January 10 for the quarter October–December, April 10 for the quarter January–March, etc.). The list include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include, but is not limited to, the time, date, duration and

title of each program in which the issue was treated.

* * * * *

William J. Tricarico,

Secretary.

[FR Doc. 86-12330 Filed 6-3-86; 8:45 am]

BILLING CODE 4710-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Amdts. 192-52 and 195-36; Docket No. PS-87]

Transportation of Gas or Hazardous Liquids by Pipeline, Welding Requirements

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Final rule.

SUMMARY: These amendments generally conform requirements of Parts 192 and 195 for welding procedure qualification and performance and for welder qualification, with the exception of requirements for low stress welder qualification applicable only to Part 192. Welding procedure requirements are now identical, worded in performance language for both regulations. Requirements for qualification of welders are editorially conformed, retaining the incorporation by reference of section 3 of API Standard 1104 and section IX of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, (202) 426-2082, regarding the content of this amendment, or the Dockets Branch, (202) 426-3148, regarding copies of the amendment or other information in this docket.

SUPPLEMENTARY INFORMATION:

Background

These amendments continue the process of conforming the welding requirements of 49 CFR Part 192 for gas pipelines with those for hazardous liquid pipelines under 49 CFR Part 195. As described in the Notice of Proposed Rulemaking (NPRM) (50 FR 49429, December 2, 1985), the two sets of requirements were developed separately at different times and as a result differ with each other in ways that cannot be explained on the basis of technical or safety differences between gas and liquid pipelines.

Based on prior petition by the industry and subsequent notice and comment, Part 195 was amended in 1984 (Amdt. 195-32, 49 FR 36859, September 20, 1984) to generally conform requirements for qualification of welders with those of Part 192. Both parts now require (except for welders who work on gas pipelines to be operated at a pressure that produces a hoop stress of less than 20 percent of the specified minimum yield strength of the pipe) that welders be qualified in accordance with either section 3 of API Standard 1104 or section IX of the ASME Boiler and Pressure Vessel Code. At the time of Amendment 195-32, other requirements relating to qualification of welders remaining in Part 192 but were not incorporated into Part 195 because the requirements were unnecessary for safety and could be misleading. As stated in the NPRM of this proceeding, paragraph (b) of § 192.227 exempted welders from separate qualification for differences in carbon and low alloy steels being welded when being qualified under the ASME Code. Because material, within broad limits, is not an essential variable for welder qualification, the paragraph is unnecessary and is deleted with this amendment.

Similarly, sections on preheating and stress relieving are deleted from Part 192 because, by specifying overly-liberal requirements, the sections did not regulate an actual safety hazard but instead created the impression that preheating and stress relieving may not be required when good engineering judgment would mandate that one or the other are necessary. Part 195 contains no separate requirements for preheating or stress relieving.

Qualification of welding procedures was discussed in detail in the NPRM preceding this amendment, and the difference between Parts 192 and 195 was pointed out regarding qualification of the welding procedure. Part 195 merely stated that the procedures must be tested and Part 192 required that the procedures must be qualified in accordance with API 1104 or the ASME Code. Because both of these industry standards require destructive testing of test weldments made to qualify the welding procedure, the requirement for destructive testing has been incorporated in both Parts 192 and 195. RSPA believes that there are two advantages, besides conformity between Parts 192 and 195, in incorporating this language. First, the language rules out qualification of welding procedures by various forms of nondestructive inspection, and second, the language allows qualification by more than one type of destructive testing, including tensile testing, nick-break, guided bend testing, as well as COD (crack opening displacement), CTOD (crack-tip opening displacement) and other forms or methods of destructive testing that may be fracture toughness or fracture mechanics oriented. Incorporated by reference of section 6 of API Standard 1104 for standards of acceptability of welds is not changed by this rulemaking for either Part 192 or Part 195.

The Proposal

The RSPA proposal published in the NPRM (Docket PS-87, Notice 1) is reproduced here for guidance in evaluating comments and arguments advanced in the next section of this preamble. As published on page 49431 of the Federal Register (50 FR 49429-49431, December 2, 1985), the proposal reads:

RSPA proposes to amend 49 CFR 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53, and Appendix A of Part 1.

§ 192.223 [Removed]

2. By deleting § 192.223 in its entirety.

3. By revising § 192.225 to read:

§ 192.225 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with established written welding procedures that have been tested and the quality of the test welds determined by destructive testing to meet the acceptability standards of this subpart.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

4. By deleting paragraph (b) of § 192.227, redesignating the existing paragraph (c) as (b), and by revising paragraph (a) to read:

§ 192.227 Qualification of welders.

(a) Except as provided in paragraph (b) of this section, each welder must be qualified in accordance with section 3 of API Standard 1104 or section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Appendix A may weld but may not requalify under that earlier edition.

* * * * *

§ 192.227 [Removed]

5. By deleting § 192.227 in its entirety.

§ 192.229 [Removed]

6. By deleting § 192.229 in its entirety.

PART 192—[AMENDED]

7. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 2002; 49 CFR 1.53, and Appendix A of Part 1.

8. By revising § 192.214 to read:

§ 192.214 Welding: Procedures.

(a) Welding must be performed by a qualified welder in accordance with established written welding procedures that have been tested and the quality of the test welds determined by destructive testing to meet the acceptability standards of this subpart.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

§ 192.222 Welding: Qualification of welders.

9. By revising the title of § 192.222 to read as set forth above. In the preamble to the proposal, RSPA provided justification for deletion of §§ 192.223, 192.227, and 192.229 as duplicative and unnecessary for safety. Comments on the deletion of these sections as well as on the balance of the proposal are discussed below as they apply to each section.

Comments in Response to Notice 1

RSPA received a total of 17 comment letters on the NPRM, 10 from gas pipeline operators, 1 from a combined liquid and gas operator, 3 from trade organizations representing gas operators, 1 from a State Public Service Commission, and from the American Petroleum Institute (API) and the American Welding Institute (AWI). All supported the proposal to delete §§ 192.223, 192.227, and 192.229 from Part 192 as unnecessary, and generally agreed with the proposed conformity between Parts 192 and 195, except the State Public Service Commission and the Boston Gas Company. The State Public Service Commission interpreted the reference to section 2 of API Standard 1104 in the existing § 192.225 to mean that all of section 2, including the development and establishment of the welding procedure, is presently incorporated by reference. The interpretation is incorrect. Section 2 of API 1104 and section IX of the ASME Boiler and Pressure Vessel Code are referred to in § 192.225 only for qualification, or testing, and not for development and establishment of the written welding procedure. The section now reads, in part:

§ 192.225 Qualification of welding procedures.

(a) Each welding procedure must be qualified under section IX of the ASME Boiler and Pressure Vessel Code or section 2 of API Standard 1104, whichever is appropriate to the function of the weld, except that a welding procedure qualified under an earlier edition previously listed in Appendix A may continue to be used but may not be required under the earlier edition.

The requirement for "established written welding procedures" is presently in § 192.223(a) which, by containing no reference to industry or other standards, is and has been a performance requirement since issuance of the regulations. The same paragraph also requires that the procedures be "qualified" under § 192.225, which is simply a duplication of the requirements of § 192.225.

RSPA believes that the error in interpretation is a common one because of the use of the word "qualified" in association with section 2 of API 1104 without further definition of the limited meaning of that term. However, if a State regulation includes other requirements of API 1104 or of the ASME Code as mandatory, there is no conflict with the Federal regulations. The applicable Federal laws permit States to apply to intrastate pipelines additional or more stringent State regulations that are compatible with Federal regulations.

The Boston Gas Company stated that they were concerned about the deletion of § 192.223 and the revision of § 192.225, eliminating reference to the industry standards. Boston Gas expressed their concerns as:

> It is our feeling that Parts 192.223, 192.225, and 192.227 should be retained. Subpart E has withstood the test of time. We do not believe it should be modified for the sake of alignment with another Part. We recommend that Part 195 be modified to be aligned with Part 192.

In the interest of assuring the Boston Gas Company that the requirements of Part 192 are not watered down to suit Part 195, all of the requirements of §§ 192.223 and 192.227 have been retained. Paragraph (a) of § 192.223 is relocated in § 192.225 and contains the same requirements. Paragraph (b) of § 192.223 is covered by incorporation by reference of section 3 of API 1104 and section IX of the ASME Code in § 192.227, and would be a duplication of the requirements of that section if retained. Section 192.227 remains as it is with the exceptions of reversal of order of reference to the industry standards to reflect the amount of usage on pipelines, and the deletion of paragraph (b), which, to the best of our knowledge, has never been invoked. Incorporation by reference of the industry standards for qualification of welding procedures under § 192.225 has been replaced by performance standards as explained in the NPRM. No effect on safety is anticipated from this change because essentially the same testing requirements, or their equivalents, will continue to be specified by operators to meet the acceptability standards of the regulations.

Therefore, with the exception of the two comments that RSPA believes are based on a misunderstanding, all commenters agreed with the intent of the rulemaking. Two others suggested further clarification by iterating the effect of the changes, and four additionally suggested a re-wording of the proposed §§ 192.225 and 195.214. These four are the API, AWI, the Northern Natural Gas Company, and the Interstate Natural Gas Association of America (INGAA) whose comments are discussed here because of the possible impact of the changes on the relatively large organizations. INGAA and Northern Natural recomended that these sections on qualification of welding procedures be limited to requirements on developing, documenting, and maintaining the procedures, and that the requirement for performance by qualified welders be moved to § 192.228, Limitations on welders. The API recommended that the word "acceptability" be deleted from the phrase "to meet the acceptability standards of this subpart," while INGAA would modify that phrase by changing the word "to" to "and." Both INGAA and the AWI recommended changing the wording of paragraph (b), INGAA again reflecting the intention to limit the requirements of the sections to that implied by the title. The AWI commented that both the original language and the proposed language cause problems in interpretation, defining the reasons as follows:

> It is customary to make test weldments to qualify a welding procedure. The welding parameters of this test assembly, along with the destructive test results, are recorded and this record becomes the Procedure Qualification Record (PQR). In applying that procedure to a production weld, a Welding Procedure Specification (WPS) is written. The WPS includes tolerances and other variations from the PQR which are allowed by code rules or other engineering judgment. The "record" (PQR) is not the specific document used by the welder in making his production welds. The WPS is the document with instructions for the welder.

The AWI suggested a wording change to refer to the welding procedure specification as the document that must be followed whenever the procedure is used.

Considering that conformity between Parts 192 and 195 is an objective of this rulemaking and that most of the comments are directed at the proposed

§§ 192.255 and 195.214 as a result of conforming the two, and also incorporating the requirements of § 192.223, RSPA recognizes a possible impasse in resolving the differences between the various comments. Because more commenters addressed the changes to § 192.225 and because the existing title of the section is "Qualification of welding procedures," it appears that the intent to include the general provisions of §§ 192.223 and 195.214 may have been overlooked because of the similarity of the proposed title, "Welding procedures." As proposed, the section does cover aspects of welding performance that would not normally be in a section on welding procedures, offering a reasonable explanation for the INGAA and Northern Natural comments. In order to clarify that the section is intended to cover other aspects as well as welding procedures, RSPA has reconsidered the title and feels that the problems may be more appropriately resolved by using the title, "Welding: General" as presently for § 195.214. Therefore, this final rule contains the title "Welding: General" for both §§ 192.225 and 195.214. Thus, the general nature of § 192.223 is included, including performance of welding, and the general and performance nature of § 195.214 is also retained.

To address the API comment to delete the word "acceptability," RSPA is replacing the term "acceptability standards" with the word "requirements" as presently in § 195.214 and as commonly used to denote any mandatory rule. The basis for the API comment is that the word "acceptability" would likely lead the reader to section 6 of API 1104 because of the title of that section, "Standards of Acceptability—Nondestructive Testing." The intent of the proposed language for §§ 192.225 and 195.214 is to require destructive testing of test weldments to qualify the welding procedure such that the weld soundness as governed by the acceptability standards would be met in production welding as determined by nondestructive testing. Therefore, RSPA considers that meeting the acceptability standards (or, more broadly, "requirements" of the subpart) is an objective of establishment and qualification of the procedure as well as of qualification of the welder. The final rule is editorially changed to reflect this. There is no intent to require nondestructive testing as a part of welding procedure qualification. Hence, RSPA does not accept the INGAA recommendation to change the word "to" to "and." The final phrase is "to meet the requirements of this subpart," meaning to meet all that follows in the subpart, including the standards of acceptability.

Similarly, RSPA feels that no change is necessary to acknowledge the AWI comment because, although using different language, the AWI had demonstrated that it understands the requirement and has specified the means that the industry uses to implement the requirement. AWI suggested the following for §§ 192.255(b) and 195.214(b):

> Each welding procedure test must be recorded in detail, including the results of the qualifying test. A welding procedure specification shall be prepared using the qualifying test record as justification and shall be followed whenever the procedure is used.

Although informative with regard to the use of a welding procedure specification, this wording is unacceptable to RSPA because it omits the requirement to record the entire procedure, including all variables of the procedure, such as the welding process, the material, size, joint design, type, class of consumables, preheating, stress relieving, and other characteristics. RSPA does not limit recording of the procedure to the tests, although the qualifying tests must be included. Further, once a welding procedure is qualified (referred to by AWI as the Procedure Qualification Record), that procedure may not change in ways that have an effect on the welds produced. Tolerances in prescribing instructions for the welder, as pointed out by the AWI, are understandable. However, in terms of enforcement, when, for example, the welding procedure is established in a way that preheating may be necessary but may not be adequately prescribed in the welding procedure specification, RSPA will enforce the need for adequate preheating, especially in cases where an unusual number of related weld defects are occurring. The phrase "to meet the requirements of this subpart" also means that no cracks are permitted in pipeline girth welds, and that if cracks occur, the entire welds must be removed or must be repaired using detailed, welding procedures developed for that purpose (§§ 192.245 and 195.230).

Northern Natural suggested substituting performance standards for welder qualification as proposed for qualification of welding procedures. Northern Natural commented in part:

> The stated purpose of this NPRM was to ". . . conform the two" (Parts 192 and 195) "by using the same *performance language* . . ." (emphasis added). This has been completed in 192.225, Welding Procedures, by removing the references to API 1104 Section 2 and ASME Section IX for destructive testing of the test welds when qualifying a procedure. We suggest that similar action be taken in 192.227(a) for welder qualification, namely the statement of requirements in performance language and the deletion of specification references.

RSPA has several problems with the Northern Natural suggestion. First, we do not find the quoted language in the NPRM. Second, RSPA had no intention of substituting performance language for the existing welder qualification requirements. As the summary of the NPRM stated:

> MTB proposes to amend Parts 192 and 195 by generally conforming requirements for welding procedure qualification and for welder qualification. Identical performance standards are proposed for qualification of welding procedures under both regulations, except for retained provisions for low stress level gas pipelines in Part 192. Industry standards incorporated by reference would be retained for qualification of welders and for weld acceptability.

Although we recognize that removing reference to the industry standards for welder qualification could potentially provide greater flexibility, RSPA has not proposed to do this, having limited the proposal to conforming the two regulations with a minimal change in both. This rulemaking is complete with regard to conformity of the welding procedure qualification and welder qualification requirements of Parts 192 and 195. Further change would have to be based on supportable petition and demonstration of need. RSPA presently believes that qualification of welders in accordance with the industry standards is an essential part of pipeline safety. Petitions for change would have to present convincing arguments as to why this may not be so.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), and section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2003(b)) require that each proposed amendment to a safety standard established under these statutes be submitted to a 15-member advisory committee for its consideration. The Technical Pipeline Safety Standards Committee, composed of persons knowledgeable about transportation of gas by pipeline, considered the proposed amendment to §§ 192.223, 192.225, 192.227, 192.237, and 192.239 in a meeting on December 10, 1985, in Washington, D.C. The Technical Hazardous Liquid Pipeline Safety Standards Committee considered the

proposed amendment to §§ 195.214 and 195.222 in a meeting on November 18, 1985, in Washington, D.C. Both committees found the proposed amendments to be technically feasible, reasonable, and practicable.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The rule merely conforms the requirements of 49 CFR Parts 192 and 195 with regard to welding procedures and welder qualification.

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 192

Pipeline safety, Welding requirements, Incorporation by reference

49 CFR Part 195

Pipeline safety, Welding requirements, Incorporation by reference

In view of the foregoing, RSPA amends 49 CFR Parts 192 and 195 as follows:

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53, and Appendix A of Part 1.

§ 192.223 [Removed]

2. By removing § 192.223 in its entirety.

3. By revising § 192.225 to read:

§ 192.225 Welding—General.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

4. By removing paragraph (b) of § 192.227, redesignating the existing paragraph (c) as (b), and by revising paragraph (a) to read:

§ 192.227 Qualification of welders.

(a) Except as provided in paragraph (b) of this section, each welder must be qualified in accordance with section 3 of API Standard 1104 or section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Appendix A may weld but may not requalify under that earlier edition.

* * * * *

§ 192.237 [Removed]

5. By removing § 192.237 in its entirety.

§ 192.239 [Removed]

6. By removing § 192.239 in its entirety.

7. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 2002; 49 CFR 1.53, and Appendix A of Part 1.

8. By revising § 195.214 to read:

§ 195.214 Welding: General.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

9. By revising the title of § 195.222 to read:

§ 195.222 Welding: Qualification of welders.

Issued in Washington, DC, on May 29, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-12352 Filed 6-3-86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 630

[Docket No. 60583-6083]

Foreign Fishing, and Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement portions of the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP). This rule (1) prohibits nighttime longlining during a closure, and (2) establishes a data collection program to monitor the fishery. The intended effect of the final rule is to maintain high landings in the form of larger fish that are preferred in the market, prevent growth overfishing, provide a buffer against possible recruitment overfishing, obtain the information necessary to monitor the fishery and refine the management regime, and minimize the impacts of foreign fishing on the domestic swordfish fishery.

EFFECTIVE DATE: June 29, 1986. This rule is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 630.5 (b) and (c). When the OMB control number is received, a notice will be published in the **Federal Register** making these sections effective on date of filing for public inspection with the Office of the Federal Register.

ADDRESSES: A copy of the combined final regulatory flexibility analysis/regulatory impact review may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION:

The South Atlantic Fishery Management Council (Council) prepared the Fishery Management Plan for Atlantic Swordfish in cooperation with the Caribbean, Gulf of Mexico, Mid-Atlantic, and New England Fishery Management Councils (Councils). The original Swordfish FMP submitted on April 29, 1985 was partially disapproved. The Council, on behalf of the Councils, resubmitted the disapproved measures. A notice of availability of the revised FMP was published in the **Federal Register** on March 21, 1986 (51 FR 9669). Proposed regulations to implement the resubmitted measures were published March 31, 1986 (51 FR 10690). The proposed rule presented supporting rationale for the resubmitted management measures and they are not repeated here.

Comments and Responses

Eleven comments were received addressing seven issues. The sources of the comments were a fishery management council, a foreign fishing association, two foreign governments, a commercial fisheries association, three conservation organizations, a commercial fisherman, an individual, the Department of State, the Office of Management and Budget, and the U.S. Coast Guard.

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Prohibition of Imports During the Variable Season Closure (VSC)

A fishery management council and an environmental organization commented in favor of a prohibition on imports of western North Atlantic swordfish harvested during the VSC. They indicated that the prohibition is necessary to prevent a shift in effort from domestic to foreign fleets fishing the same stock which would undermine the effectiveness of the domestic closure. NOAA acknowledges the potential effect of increased foreign effort on the western North Atlantic stock during a VSC but believes there is substantial doubt that an import prohibition would effectively control foreign fishing effort. Foreign fleets could continue to fish and export to alternative markets or freeze fish and export after a closure. In either case, the burden of requiring all exporters to provide certificates of eligibility for every shipment of swordfish during a closure and the burden of Federal enforcement costs would be substantial even though little conservation benefits would be realized.

NOAA is also concerned about the enforceability of this import prohibition. Most of the major exporters have far ranging longline fleets. It would be virtually impossible to determine whether or not a given shipment of swordfish was harvested from the western Atlantic and during a specific VSC. The certificate of eligibility would, in effect, be an honor system with little or no means of verification. For these reasons, NOAA has disapproved the import prohibition.

A commercial fishermen stated that allowing imports of western North Atlantic swordfish during a closure would adversely affect domestic price structure and increase reliance on imports. Given the magnitude of total swordfish imports entering the United States (approximately nine million pounds in 1985), NOAA does not believe the relatively small portion controlled through the import prohibition during a VSC would be a significant factor in determining price or market dependence.

A commercial fishery organization opposed the import prohibition because adverse impacts on importers, distributors, and consumers were not adequately evaluated. Further, the measure creates a burden for importers and distributors yet there is no assurance foreign fleets would reduce effort on the affected stock, i.e. no management benefits. NOAA agrees and has deleted the measure from the final rule.

Prohibition of Nighttime Longlining During a VSC

A foreign fishing association, and a fishery agency of a foreign government objected to this measure citing the reduced foreign fishing effort, substantial existing restrictions, and the failure to provide a reasonable opportunity to fish for tuna. The DOS expressed reservation but, ultimately agreed to the measure with the understanding that its implementation would still provide a reasonable opportunity to fish for tuna. A fishery management council and an environmental organization supported the prohibition as being necessary to reduce mortality during a VSC and to be fair and equitable to domestic fishermen already subject to the restriction. NOAA has retained this measure but will consider its effect when it evaluates the desirability of continuing the plan and regulations after December 1987.

NOAA considers this measure to be a less burdensome alternative than a total prohibition of longlining. The measure acknowledges the minimal incidental catch of swordfish during daylight hours and specifically allows tuna longlining during those hours. Allowing "tuna" longlining at night would be equivalent to allowing a directed fishery for swordfish during the closure because of the demonstrated high swordfish catch during those hours. NOAA believes that this measure does provide a reasonable opportunity to fish for tuna because (1) it applies only during a small portion of the fishing year (only the VSC and only at night); (2) other fishing methods may be used during the brief time longlines are prohibited; and (3) foreign fishermen are afforded the same opportunity to fish for tuna as are domestic fishermen.

Highly migratory species of tuna are not subject to the exclusive management authority of the U.S. under the MFCMA. It is the position of the U.S. that these highly migratory species can only be managed pursuant to international agreements. Approval of the ban on nighttime longlining does not reflect departures from that position. NOAA will not approve any measure under the MFCMA that would not allow a foreign vessel a reasonable opportunity to fish for tuna in the FCZ.

Caps on Incidental Catch of Swordfish by Foreign Longlines and Squid Trawls

A fishery management council and an environmental organization commented in support of the caps on incidental catch. A foreign fishing association, a fishery agency of a foreign government, and the Department of State opposed this measure on the basis that foreign incidental catch has been reduced to insignificant levels, the specified caps are far below mortality levels that would significantly affect the stock or availability to U.S. fishermen, and the restriction would not provide a reasonable opportunity to fish for tuna.

Although this measure was to be held in reserve, Council intent was for the respective foreign fisheries to be closed for the remainder of the year when the caps were reached. NOAA concludes that the specified levels of incidental catch are well below levels that would be reasonably expected to have a perceptible impact on the swordfish stock or abundance within U.S. waters. Such restriction would not provide a reasonable opportunity to fish for tuna and would not be considered a necessary and appropriate management measure. NOAA has disapproved this provision and it has been deleted from the final rule.

Area I Closure to Foreign Longlining

NOAA has disapproved the area closure measure for the area from Key West, Florida to Cape Lookout, North Carolina out to 100 nautical miles, from June 1 to September 30 (currently not in effect). At the request of the Council, or based on information from other sources, the Regional Director was to implement a closure when the numbers or severity of gear conflicts between foreign and domestic vessels within a given fishing year or patterns of fishing by foreign vessels resulted in a reduction in domestic vessel efficiency or damage to the swordfish stock.

A foreign fishing association and a foreign fishery agency objected to the proposed closure as being unnecessary, overly restrictive, and an unreasonable deprivation of the opportunity to catch tuna. They also stated that the definition of gear conflict was too broad, open to abuse, and would tempt deliberate conflicts.

A fishery management council supported the measure. The DOS did not object to the closure, but expressed reservations about use of specific numbers of conflicts to trigger the closure, inclusion of preemption of fishing grounds in the definition of gear conflict, and lack of a provision for lifting the closure if conflicts and fishing effort returned to low levels.

This measure was disapproved because it was determined that it violated National Standard 6. The total number of foreign longline vessels permitted in the Atlantic FCZ bears no direct relationship with the severity of potential conflicts in Area I. The use of a specific number of conflicts to

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implement the closure automatically lacks sufficient flexibility to allow a reasonable determination of the impact of those conflicts on the domestic fishery.

Prohibition of Drift Entanglement Nets

Three environmental organizations strongly supported implementation of this measure because of the nonselectivity of the gear and the significant incidental mortality of non-target species, such as seabirds, marine mammals, and sea turtles. A fishery management council, a commercial fisherman and one individual opposed the measure citing lack of scientific justification, natural limitations on the use of the gear, minimal incidental catch, and the small number of vessels using the gear. The east coast drift net fishery consists of approximately six vessels operating in the northeast that use the gear as a supplement to harpooning or longlining when sea conditions allow. There has been no significant expansion in use of the gear since its introduction on the east coast.

The Council recently compiled numerous reports and data regarding the effects of drift nets. Much of this information is based on the high seas drift net fisheries for salmon and squid in the Pacific Ocean. The Pacific fisheries have significant incidental catches of seabirds and porpoise, but the nature of the fisheries, including mesh size, length of gear, depth and area fished, differs substantially from the east coast drift net swordfish fishery.

The most applicable data are from the five observer trips aboard east coast swordfish drift net boats and the California swordfish drift net study. Reports from the observed trips revealed no mortality of marine mammals, endangered species, or billfish. The California study covered a four year period and involved observations of 355 sets by 79 different vessels. Incidental take included 97 sea lions, 7 whales, 2 dolphins, 2 seals and 2 turtles. The incidental take problem was resolved by establishing selective, time-area closures rather than a total prohibition of gear.

NOAA concludes that the best available scientific evidence does not support a prohibition on use of this gear. The information provided, particularly the California data, indicates a potential for incidental take, but a gear prohibition in the absence of more specific data on the east coast fishery is not warranted. NOAA will focus efforts on developing appropriate methods of collecting data so that the Council can further evaluate the effects of this gear. This measure has been disapproved and deleted from the final rule.

Mandatory Logbooks

One fishery management council expressed opposition to use of mandatory logbooks to collect effort data. NOAA disagrees with this commenter. Scientists on the Swordfish Working Panel and the Scientific and Statistical Committees of the Gulf of Mexico and South Atlantic Councils strongly supported the logbook concept. Assessment scientists have stressed the need for effort data to improve our understanding of the status of the swordfish stock. Data required are consisent with information normally recorded by most swordfish fishermen, thus the additional reporting burden should be minimal. This measure is implemented as proposed for a period of one year to establish the baseline data necessary for the best management of the fishery. NOAA will explore less burdensome methods of data collection during that initial period.

Mandatory Data Collection Using Onboard Technicians

The Council proposed an onboard technician program (3.0% sample) to collect biological samples (otoliths, fin spines, gonads) for age and sex analysis and to collect data on size selectivity of gear, incidental catch, and survival rates of released fish. It is generally agreed that these data cannot be obtained reliably without onboard technicians. The estimated cost of the program at the level the Council desires is $107,100–$142,800 per year. This program was proposed as mandatory under the original FMP but was disapproved principally because of insurance liability problems associated with mandatory technician coverage. The Council has revised the measure to be implemented as either mandatory or voluntary. The voluntary program has been approved, the mandatory option has been disapproved.

NOAA agrees with the concept of a voluntary onboard technician program. The intention is that the program be conducted in cooperation with the private sector on a voluntary basis to the extent funding from any source becomes available (i.e., 0–100%). The conduct of a voluntary program does not require implementing regulations, or necessarily require the expenditure of federal funds.

Changes From the Proposed Rule

The final rule differs from the proposed rule in the following respects, for the reasons discussed above and to clarify other minor aspects of the regulations:

Part 611

Paragraph 611.61(b)(4) has been removed.

Paragraph 611.61(g) has been removed.

Part 630

Section 630.2. The definition for "Gear conflict" is deleted.

Section 630.5. Paragraph (b) is revised by deleting reference to onboard technicians.

Paragraph (c) is revised by inserting the words "and are selected by the Center Director".

Paragraph (c)(2) is revised by adding "and official number".

Section 630.7. All Paragraphs are removed.

Section 630.21. In paragraph (c)(2) the first sentence is revised by substituting the words "South Atlantic Council, after consultation with the other four Councils," for the word "Councils".

Section 630.23. Paragraph (b) is deleted and the section remains as published in the final rule at 50 FR 33955, August 22, 1985.

Section 630.25. Section 630.25 is removed in its entirety.

Classification

The Regional Director determined that the approved portions of the FMP are necessary for the conservation and management of the Atlantic swordfish fishery and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared a final environmental impact statement for the FMP; a notice of availability was published on August 9, 1985; 50 FR 32306.

The Council prepared a supplementary regulatory impact review. You may obtain a copy of this review from the Council at the address listed above.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because the action proposed for implementation would effect only foreign fishermen. Domestic fishermen are already regulated by an equivalent restriction under the previously approved variable season closure program. In addition, the reporting burden under the mandatory logbook program will not be significant because the data required is already recorded by

most vessel captains. The burden is estimated to involve only 2.4 minutes per trip for transcribing the data to the logbook form. At an average of 100 trips per year, each vessel will incur a total annual burden of approximately 4 hours.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act which has been submitted for approval by the Office of Management and Budget.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of all the affected States. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 30, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 611 and 50 CFR Part 630 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 611.61 is amended by adding new paragraph (b)(4) to read as follows:

§ 611.61 Atlantic billfish and shark fishery.

* * * * *

(b) * * *

(4) Fishing with pelagic longlines is restricted to the hours 0600–1800, local time, in an area during the seasonal closure for that area as specified at 50 CFR 630.21.

* * * * *

PART 630—[AMENDED]

3. The authority citation for 50 CFR Part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. Section 630.5 is amended by designating the existing text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 630.5 Reporting requirements.

* * * * *

(b) The owner or operator of a vessel of the United States who has a permit issued under § 630.4 to fish for or land swordfish with gear other than rod and reel in the Atlantic, Gulf of Mexico, and Caribbean, and is selected by the Center Director must—

(1) Advise the Center Director by telephone 10 days in advance of each trip of the following:

(i) Departure information (port, dock, date, and time), and

(ii) Expected landing information (port, dock, and date).

(c) Owners or operators of vessels of the United States who have been issued a permit under § 630.4 and are selected by the Center Director must maintain a daily fishing record on forms provided by the Center Director according to instructions. These forms must be submitted to the Center Director on a monthly basis. The following information must be included on the forms:

(1) Date of set;

(2) Vessel name and official number;

(3) Federal permit number;

(4) Set location (latitude and longitude);

(5) Miles of gear per set;

(6) Number of hooks per set;

(7) Number of hooks between floats;

(8) Number of lights or lightsticks per set;

(9) Length of gangions (leader) used;

(10) Length of drop lines from floats;

(11) Sea surface temperature;

(12) Number of fish retained (for each species listed on the form);

(13) Number of fish discarded (for each species listed on the form); and

(14) Signature of captain.

5. Section 630.21 is amended by adding text to paragraph (c), which had been *Reserved*, to read as follows:

§ 630.21 Seasonal closures.

* * * * *

(c) *Adjustments.* (1) The VSC will be reviewed annually to determine the need for adjustment to respond to new stock assessment data, to specific fishery practices, and to correct size composition of catch by month.

(2) On or about May 1 of each year the South Atlantic Council, after consultation with the other four Councils, will recommend to the Regional Director the modifications to the VSC to be implemented. If the Regional Director, after receiving the recommended modifications from the Council, concludes that such modifications are consistent with the objectives of the FMP, the Magnuson Act, and other applicable law, the Regional Director will recommend on or about May 15 of each year that the Secretary publish a preliminary notice of any modifications to the VSC in the Federal Register. The public may comment on the modifications for 15 days after the date of publication. After consideration of public comments the Secretary shall publish a final notice in the Federal Register of any changes in the modifications to the VSC.

[FR Doc. 86-12574 Filed 5-30-86; 4:57 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 107
Wednesday, June 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 016CE, Notice No. SC-ACE-15]

Special Conditions; Fairchild Model SA227-AC Airplanes Incorporating Bendix EFS-10 Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Aircraft Corporation Model SA227-AC airplanes incorporating a Bendix EFS-10 Electronic Flight Instrument System (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of an electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Fairchild Aircraft Corporation Model SA227-AC airplanes.

DATE: Comments must be received on or before July 4, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 016CE, Room No. 1558, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 016CE. Comments may be inspected in the Rules Docket between 7:30 a.m. and 4:00 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5886.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the promulgation of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 016CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227-AC airplane is as follows: Part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23-1 through 23-6; § 23.175(d) as amended by Amendment 23-14, effective December 20, 1973; Special Conditions outlined in FAA letters November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; Amendment B of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36-1 through 36-6; and the special conditions that may result from this proposal.

An "A" designation following the serial number signifies that the airplane is not eligible for SFAR 41 approval of weights greater than 12,500 pounds. Certification basis same as noted herein except omit SFAR 41 approval.

Background

On March 24, 1986, King Radio Corporation, 400 N. Rogers Road, Olathe, Kansas 66062, made application to the FAA for approval of installation of a Bendix EFS-10 Electronic Flight Instrument System (EFIS) on the Fairchild Aircraft Corporation Model SA227-AC airplanes. This installation incorporates an electronic attitude direction indicator (ADI) and an electronic horizontal situation indicator (HSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the EFS-10 EFIS installation in the Fairchild Aircraft Corporation Model SA227-AC airplanes contains a number of novel or unusual design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the EFS-10 EFIS installation in the Fairchild Aircraft Corporation Model SA227-AC airplanes.

King Radio Corporation has proposed cathode ray tube (CRT) electronic display units for primary attitude, heading and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS

displays, an EADI and EHSI on the left and right instrument panels and a multifunction display in the center panel. All other displays; i.e. airspeed, altitude, vertical speed, etc., will be conventional instruments. An optional configuration would provide for an EADI and EHSI on the pilot's side, conventional instruments on the copilot's side, and a multi-function display in the center panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility mut be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single fault" or "fail safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case. Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight after the failure of any *one* of the required instruments; i.e., airspeed, altitude, attitude, and turn and slip (needle and ball). Backup instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplanes could be safely flown following a single instrument failure. The basic airman certification program for an IFR rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments, and has not required as a basic IFR rating requirement that all IFR rated airmen must demonstrate abilities using other backup instruments.

A special condition is proposed which would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display or system. The proposed special condition would also provide requirements to assure the reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the proposed special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The proposed special condition requires a detailed examination of each item of equipment/component of the electronic display system and the system installation to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The proposed special condition also requires that components of system(s) whose function is required and that requires a power supply, be considered an "essential load" on the power supply. The power source(s) and its distribution system must be able to supply power to the electronic display system(s) as stated in the proposed special condition since the operational reliability of the electronic display system(s) is dependent on the airplane electrical source.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into Part 23 by Amendment 23–14, effective December 20, 1973. The "single fault" or "fail safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgement have been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the EFS–10 EFIS installation. Therefore, the FAA considers it necessary to include the proposed system analysis requirements in the certification based in lieu of including present § 23.1309. This will allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems do not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance, but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently better substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

The availability of this "rational method" of safety analysis of systems, along with the difficulty in applying the existing "singly fault" or "fail safe" concept, has prompted the FAA to propose this special condition, because the Fairchild Aircraft Corporation Model SA227–AC airplanes incorporating the EFS–10 EFIS installation are proposed to have electronic displays where use of the single fault criterion is an unnecessary burden. The proposed special condition would require that a safety evaluation of the systems be made and specifies a level of safety in qualitative terms.

If it is determined that the airplane includes systems that perform more critical functions, it will be necesary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of systems failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The proposed special condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation in the Fairchild Aircraft Corporation Model SA227–AC airplanes.

The Fairchild Aircraft Corporation Model SA227–AC airplanes incorporating the EFS–10–EFIS installation may have both digital and analog instrumentation cues for the pilot. While a digital indication does show exact numbers, it may not provide adequate sensory cues to the pilot as to whether the numbers are increasing or decreasing, or a sense of how fast they are changing. A digital indication may not show the normal operating range or operational limits. Human factor authorities agree that such digital indications are not equivalent to an analog instrument which inherently provides usable sensory cues. Therefore, the proposed special condition includes requirements for sensory cues.

The FAA has considered the features proposed by King Radio Corporation for the EFS–10 installation in the Fairchild Aircraft Corporation Model SA227–AC airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such complex or critical systems, special conditions should be promulgated for the affected systems, in addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, a special condition is proposed.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Fairchild Aircraft Corporation Model SA227–AC airplanes when equipped with the Bendix EFS–10 Electronic Flight Instrument System:

1. In addition to the applicable airworthiness requirements, and requirements to the contrary, for instruments, systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system; and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane. The following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its functions for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following additional requirements:

(1) There must be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane or which would significantly reduce the capability of the airplane or the crew to cope with adverse operating conditions.

(2) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(3) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(4) If numerical analysis is used to support the engineering examination:

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane must be shown to be extremely improbable; and

(ii) The occurrence of any other failure condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be shown to be improbable.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane, or

(ii) Any power converter, or energy storage device, or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown

by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight,

(ii) In any normal mode of operation do not inhibit the primary display of attitude,

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units, and

(iv) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553 or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 23/SFAR 41 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the pilot, without need for immediate action by any crew member for continued safe operation, after any single failure or probable combination of failures.

Issued in Kansas City, Missouri, on May 23, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-12401 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-114-AD]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an amendment to an existing airworthiness directive (AD) applicable to Boeing Model 707/720 airplanes. The existing AD requires inspection and repair, as necessary, of Significant Structural Details (SSD) as described in the manufacturer's Supplemental Structural Inspection Document (SSID). Since the issuance of the AD, the manufacturer has revised the 707/720 Supplemental Structural Inspection Document to expand the sample size and revise certain inspection thresholds; this amendment would incorporate those revisions. This action is necessary to improve the information provided by the SSID program for identification and evaluation of unsafe conditions.

DATE: Comments must be received on or before July 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-114-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton A. Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-114-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. DISCUSSION: On May 20, 1985, the FAA issued Amendment 39-5073 (50 FR 20690), AD 85-12-01, which requires inspection and repair, as necessary, of Significant Structural Details (SSD) as specified in the manufacturer's Supplemental Structural Inspection Document (SSID) D6-44360, Revision L, dated May 31, 1983. Since the adoption of AD 85-12-01, the manufacturer has revised the 707/720 Supplemental Structural Inspection Document. This amendment would require inspections in accordance with the later revision.

The latest revision to the 707/720 Supplemental Structural Inspection Document incorporates modified inspection thresholds. Thresholds previously listed between 27,000 and 32,000 flight cycles have been lowered to 25,000 flight cycles. Thresholds previously listed between 17,000 and 25,000 flight cycles have been adjusted to 19,000 flight cycles. Previous thresholds below 17,000 flight cycles remained unchanged. In establishing the total number of airplanes to be inspected under its previous revision, the manufacturer utilized a statistical sample consisting of certain high time airplanes (Reference 707/720 SSID, D6-44360, Revision L, Section 1.30). This resulted in a total of over 200 airplanes to be monitored under the 707/720 SSID program. However, since that time, the number of high time airplanes available for inspection has declined considerably. This has resulted in an inadequate fleet sample of airplanes by which critical structural details may be monitored.

In addition, there have been two editorial changes to the SSID:

First, all Significant Structural Details (SSD) have been consolidated into one of two categories. These categories include Fleet Sampling Details for non-service bulletin related items, and Known Fatigue Problem Details for items addressed by service bulletin or AD. The Fleet Sampling Details apply to all Model 707/720 airplanes exceeding the given SSD threshold. Previously, these SSD's applied only to a selected number of airplanes with a high number of flight cycles within each model series. The Known Fatigue Problem Details apply to aircraft as specified in the applicable service bulletin or AD.

Secondly, the SSID has been revised so that each SSD lists all the affected models on one page. Previously, the document had been organized into separate sections for each model. As a result of this change, the bulk volume of

the SSID has been reduced considerably.

AD 85-12-01, which became effective on May 20, 1985, requires all affected operators to incorporate revisions to their FAA-approved maintenance programs to require accomplishment of the inspections as specified in the SSID. Furthermore, AD 85-12-01 requires that airplanes which are approaching or have already exceeded an SSD threshold be inspected within one year after the effective date, or upon reaching the threshold, whichever occurs later. Although this amendment would adjust some thresholds, these adjustments do not justify an additional one-year extension of the compliance times. Therefore, the compliance time for incorporating the proposed revisions is proposed to be 180 days. This amendment would require that airplanes which are near or beyond an SSD threshold be inspected within 180 days after the effective date of this amendment, or upon reaching the threshold, whichever is later.

The amendment, if adopted, would incorporate the aforementioned editorial changes and would provide an increased fleet sample of high time airplanes by which Significant Structural Details (SSD) may be monitored.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 18 airplanes of U.S. registry and 9 U.S. operators would be affected by this AD, and that approximately 100 manhours would be required to incorporate these revisions into a typical operator's maintenance program. Based on an average labor cost of $40 per hour, the cost to U.S. operators for implementation of this amendment is estimated to be $36,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 707/720 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Airworthiness Directive 85-12-01, Amendment 39-5073 (50 FR 20690; May 20, 1985), by revising paragraphs A., B., and C. to read as follows:

A. Within 180 days after the effective date of the amendment, incorporate a revision into the FAA-approved maintenance inspection program which requires accomplishment of the inspection and repairs, as necessary, of each Significant Structural Detail (SSD) as listed in Boeing Document D6-44860, Supplemental Structural Inspection Document (SSID), Revision M, or later FAA-approved revision. The revision to the maintenance program must include procedures to notify the manufacturer when SSD's are found cracked. The inspection thresholds, repetitive inspection intervals, inspection techniques, and terminating action for each SSD are listed in the SSID. Incorporate this revision to the maintenance program in accordance with paragraphs B., C., and D., below.

B. The increase of inspection intervals in accordance with Section 5.2 of Boeing Document D6-44860, Revision M, is not permitted, except as provided in paragraphs F. and G., below.

C. Inspect each Significant Structural Detail (SSD) which has exceeded the initial threshold specified in Boeing Document D6-44860, Revision M, within 180 days after the effective date of this amendment. Significant Structural Details which are below the inspection thresholds specified in Boeing Document D6-44860, Revision M, must have an initial inspection within 180 days after the effective date of this amendment or prior to reaching the threshold, whichever is later. Accomplish these inspections in accordance with Boeing Document D6-44860, Revision M, or later FAA-approved revisions.

All persons affected by this proposal who have not already received the appropriate documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12478 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-135-AD]

Airworthiness Directives: British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain Model BAe 125-800A Series airplanes, that would require the inspection of certain wire bundles and replacement, if necessary, if the insulation has been damaged. It also would require the installation of an improved protection for the cables to prevent further damage. This action is necessary to prevent fires which could result from shorted wires.

DATE: Comments must be received on or before July 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-135-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-135-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model 125-800A series airplanes. Certain wiring in the cockpit area has been found to be subject to chafing on surrounding structure. This condition, if not corrected, could lead to fires resulting from shorted wires. British Aerospace issued BAe Service Bulletin 24-250-(3017D), dated April 8, 1985, which describes inspection, modification, and repair procedures of the affected electrical cables to prevent this condition from occurring. the CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,320.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800 series airplanes, serial numbers as cited in BAe Service Bulletin 24-250-(3017D), dated April 8, 1985, certificated in any category. Compliance is required within 90 days after the effective date of this AD. To prevent a potential fire hazard associated with chafing of electrical wiring, accomplish the following, unless previously accomplished:

1. Inspect and replace as necessary, the affected electrical cables and install the protective treatment to adjacent structures in accordance with BAe Service Bulletin 24-250-(3017D), dated April 8, 1985.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive, who have not already received the applicable service document from the manufacturer, may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12474 Filed 6-3-86; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-134-AD]

Airworthiness Directives: British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the grounding connections of both AC and DC electrical circuits on certain BAe Model 125-800A series airplanes. This action is prompted by the manufacturer's analysis, which concluded that it is necessary to have dedicated ground terminals for both the AC and DC circuits to prevent power superposition and partial electrical system loss in the event of a grounding failure.

DATE: Comments must be received on or before July 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C.

20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2188. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model 125-800A airplanes. The manufacturer has determined that dedicated ground terminals are required for certain AC and DC electrical circuits in the signal summing system to prevent partial electrical system loss in the event of a ground failure. British Aerospace issued BAe Service Bulletin 24-251-(3014A), dated April 8, 1985, which describes a modification of the ground connections which will prevent this condition from occurring. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Febraury 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($400). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to BAe Model 125-800A airplanes, serial numbers as cited in BAe Service Bulletin 24-251-(3014A), dated April 8, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To provide dedicated AC and DC ground terminals, accomplish the following:

1. Modify electrical wiring in accordance with BAe Service Bulletin 24-251-(3014A), dated April 8, 1985.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12475 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-133-AD]

Airworthiness Directives: British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require an inspection and repair, if necessary, of the main landing gear main fittings on certain BAe Model 146 series airplanes. This action is prompted by reports of surface defects which, if not repaired, could lead to failure of the fittings.

DATE: Comments must be received on or before July 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-132-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2908. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-132-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model 146 series airplanes. As a result of a failure during testing conducted by the manufacturer, indications of possible forging defects were discovered in the landing gear main fitting. Similar defects have been discovered in other fittings subsequently examined. This condition, if uncorrected, could lead to landing gear failure. To detect any fitting flaws, and to make the necessary repairs, the CAA has mandated inspection and repair, if necessary, of these fittings in accordance with BAe Service Bulletin 32-18, Revision 1, dated November 28, 1984.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 series airplanes, with serial numbers as noted in BAe Service Bulletin 32-18, Revision 1, dated November 28, 1984, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent structural failure of the main landing gear, accomplish the following, unless previously accomplished:

1. Inspect and repair, if necessary, the main landing gear main fittings in accordance with BAe Service Bulletin 32-18, Revision 1, dated November 28, 1984.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive, who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12477 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NE-10-AD]

Airworthiness Directives: Gates Learjet Models 35, 36, 35A, 36A, and 55

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD)

applicable to Gates Learjet Model 35, 35A, 36, 36A, and 55 airplanes, equipped with certain J.E.T. autopilot/flight director systems. This proposed AD is needed to prevent possible lateral navigational errors during enroute and approach operations. This Ad would add a limitation to the Airplane Flight Manual Supplement (AFMS) that prohibits the use of the applicable J.E.T. flight director system for certain VOR/TACAN operations, and where appropriate, would modify or add a limitation to the AFMS relative to the use of wing flaps on autopilot-coupled VOR/TACAN approaches.

DATE: Comments must be received on or before July 28, 1986.

ADDRESSES: Mail comments on the proposal in duplicate to the Federal Aviation Adminstration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-109-Ad, 17900 Pacific Highway South, C68966, Seattle, Washington 98168. The applicable Temporary Airplane Flight Manual Supplement Changes may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, 1601 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1601 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or agruments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-109-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

Flight test investigations by the Gates Learjet Corporation have revealed that the J.E.T. FC-530, FC-535, and FC-550 flight director (FD) systems may provide lateral steering command errors during Very High Frequency Omni Range/Ultra-High Frequency Tactical Air Navigational (VOR/TACAN) operations, if the airplane, after the flight detector initially captures the navigation TRACK mode, deviates more than ⅝-dot Horizontal Situation Indicator (HSI) course deviation off the selected course, due to pilot inattention or for any other reason. A ⅝ dot course deviation sensing circuit, in combination with reduced flight director gains utilized during VOT/TACAN operations, results in more flight director steering authority being given to the actual selected course than to the course deviation. The pilot is presented a steering command that tends to parallel the selected course rather than providing a steering command back to the selected course. It should be noted that the problem is confined only to the flight director steering commands when not coupled to the autopilot. Autopilot-coupled operations and raw data displays are not affected.

Although the FAA has not received any official reports of flight director steering problems during VOT/TACAN operations, the airplane manufacturer requested and the FAA has approved an Airplane Flight Manual Supplement (AFMS) change which would prohibit the use of the flight director during all VOT/TACAN enroute and approach operations.

Since the FAA has determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design, this proposed regulation would require a change to the AFMS to prohibit the use of the J.E.T. flight director systems for VOR/TACAN enroute and approach operations.

In addition, where appropriate, a limitation would be modified, or added, to clarify the use of wing flaps during autopilot-coupled approaches. It has always been an operational requirement on the affected autopilot/FD installations that the airplane wing flaps be lowered to 8° or greater during VOR/TACAN approaches, since an electronic autopilot/FD gain change is accomplished during flap extension. On the FC-530 and FC-535 installations, the requirement for flap extension would be included as a system limitation, and this proposal would simply modify the limitation to remove any reference to FD-coupled approaches. On the FC-550 installation, the reference to wing flap extension was previously included as a procedural step only, and not a limitation. However, it has been determined that flap extension should be a limitation and to make the FC-550 limitations consistent with the FC-530 and FC-535 installation, a limitation would be added to require that wing flaps be extended 8° or beyond when conducting autopilot-coupled VOR/TACAN approaches.

The FAA has determined that this proposed regulation only involves the insertion of the Temporary Flight Manual (TFM) Supplement Changes in the Limitations Section of the appropriate Flight Manual Supplement on approximately 230 airplanes. Compliance would involve only a nominal monetary cost to operators.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Gates Learjet Corporation: Applies to Model 35, 35A, 36, 36A airplanes equipped with a J.E.T. FC-530 autopilot/flight director; Model 35A, 36A airplanes equipped with a J.E.T. FC-535 autopilot/flight director; and Model airplanes equipped with a J.E.T. FC-550 autopilot/flight director; certificated in any category. Compliance required as indicated, unless already accomplished.

To prevent operations with unsafe flight director steering commands, accomplish the following:

A. For the Model 35, 35A, 36, 36A airplanes equipped with J.E.T. FC-530 autopilot/flight director, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in Section I—Limitations of the Gates Learjet 35/36 series AFMS for the J.E.T. FC-530 Autopilot/Flight Director, AFMS W1029, dated 4/23/85 and revised 3/11/86 (or Gates Learjet 35A, 36A J.E.T. FC 530 autopilot/flight director, AFMS W1029, dated 9/20/82, revised 5/13/83):

1. Add the following limitation and Note:

Flight director VOR enroute and approach operations are prohibited.

Note.—Autopilot coupled VOR operations and raw data displays are not affected and may be used.

2. Change the final limitation to read as follows:

For autopilot VOR approach, the flaps must be lowered to 8° or more.

B. For Model 35A, 36A airplanes equipped with J.E.T. FC-535 autopilot/flight director, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in Section I—Limitations of the Gates Learjet Model 35A/36A AFMS for the J.E.T. FC-535 autopilot/flight director, AFMS T1204, dated 3/16/84 and revised 4/4/84:

1. Add the following limitation and Note:

Flight director VOR/TACAN enroute and approach operations are prohibited.

Note.—Autopilot coupled VOR/TACAN operations and raw data displays are not affected and may be used.

2. Change the final limitation to read as follows:

For autopilot VOR/TACAN approach, the flaps must be lowered to 8° or more.

C. For Model 55 airplanes equipped with J.E.T. FC-550 autopilot/flight director, airplanes S/N 55-003 through 55-042, not incorporating ECR 2524, ECR 2525, or AAK 55-83-1, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in Section I—Limitations of the Gates Learjet Model 55 AFMS for the J.E.T. FC-550 autopilot/flight director, AFMS W1001, dated 4/14/81 and revised 8/31/81:

1. Add the following limitation and Note:

Flight director VOR enroute operations are prohibited.

Note.—Autopilot coupled VOR enroute operations and raw data displays are not affected and may be used.

D. For Model 55 airplanes equipped with J.E.T. FC-550 autopilot/flight director, airplanes S/N 55-003 through 55-042 incorporating ECR 2524, ECR 2525 or AAK 55-83-1, and airplanes 55 S/N 55-043 and subsequent, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in Section I—Limitations of the appropriate Gates Learjet Model 55 AFMS for the J.E.T. FC-550 autopilot/flight director: AFMS W1002, dated 8/25/81 (for airplanes incorporating ECR 2524), or AFMS W1003 dated 8/31/81 and revised 2/15/83 (for airplanes incorporating ECR 2524 and ECR 2525 or AAK 55-83-1, and 55-043 and subsequent):

1. Add the following limitation and note:

Flight director VOR enroute and approach operations are prohibited.

Note.—Autopilot coupled VOR operations and raw data displays are not affected and may be used.

2. Add the following limitation:

For autopilot VOR approach, the flaps must be lowered to 8° or more.

E. In order to comply with the applicable requirements of paragraph A., B., C., or D., above, a copy of this AD may be used as a temporary amendment to the AFMS and carried in the airplane as part of the AFMS until replaced by the appropriate FAA Approved Gates Learjet published Temporary Flight Manual (TFM) Supplement Change. These include:

1. TFM Supplement Change to AFMS W1029 for the Model 35/36 series with J.E.T. FC-530 autopilot/flight director: TFM 86-1, dated 4/1/86.

2. TFM Supplement Change to AFMS T1204 for the Model 35A/36A with J.E.T. FC-535 autopilot/flight director: TFM 86-2, dated 4/1/86.

3. TFM Supplement Change to W1001 for the Model 55 with J.E.T. FC-550 autopilot/flight director: TFM 86-3, dated 4/1/86.

4. TFM Supplement Change to AFMS W1002 and AFMS W1003 for the Model 55 with J.E.T. FC-550 autopilot/flight director: TFM 86-4, dated 4/1/86.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this proposal who have not already received the appropriate Temporary Airplane Flight Manual Supplement Changes from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7007, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid Continent Airport, Wichita, Kansas.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12473 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 86N-0077]

New Drugs for Human Use: Proposed Clarification of Requirements for Application Supplements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to clarify the scope of certain reporting obligations imposed on holders of approved applications to market new drugs for human use. Specifically, the proposal would clarify the scope of a recently adopted final regulation that permits an applicant to make certain changes in an approved application without requiring a supplemental application if the changes are made to comply with an official compendium. The proposal is intended to end confusion about the scope of that specific provision.

DATE: Comments by August 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

Introduction

In the **Federal Register** of February 22, 1985 (50 FR 7452), FDA revised the regulations governing the review and approval of marketing applications for new drugs (21 CFR Part 314). Questions have been raised about a provision in the new drug regulations (§ 314.70(d)(1)) that permits a drug firm to make "any change to comply with an official compendium" without the filing of a supplemental application for the change, provided it is described in the next required annual report. FDA is now proposing to amend the regulation to

clarify the scope and applicability of that provision.

Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a)), a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has made effective the approval of a marketing application for it. FDA approves a marketing application only if the sponsor of the application shows that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. The marketing application is required to contain, among other data and information, detailed information about the composition of the drug, the method of its manufacture, and copies of the labeling for the product. In general, a manufacturer who wants to change the conditions under which the drug was approved for marketing must first inform FDA of the proposed change and, in some cases, await FDA approval before making the change. However, some changes do not require that prior notification be given to FDA. Specifically, under the revised regulations, changes are divided into three classes: (1) Changes that require an approved supplemental application before the change can be made (§ 314.70(b)); (2) changes that require that a supplement be submitted before a change is made but do not require approval before the change is made (§ 314.70(c)); and (3) changes that may be made without a supplemental application provided the change is described in the next annual report (§ 314.70(d)).

The regulations enumerate the changes that are required to be submitted in supplemental applications under § 314.70(b) or (c). If not listed in either of these two paragraphs, a change in the conditions of approval of the product may be implemented without a supplemental application provided the description of the change is contained in the next required annual report.

To illustrate the scope of § 314.70(d), the section gives a few examples of changes that may be made without a supplemental application provided the change is described in the next annual report. Among the types of changes described is "Any change made to comply with an official compendium" (§ 314.70(d)(1)). Confusion has arisen in interpreting the meaning of this phrase. The phrase has been read by some drug companies to include not only those changes specifically described in an official compendium, but also other changes that, although not described in the compendium, are, arguably, "made necessary" by the change that was described. Thus, for example, one drug company read the phrase as allowing it to reformulate a product on the basis that the official compendium had adopted a dissolution testing requirement for the product. Because the approved formulation of the product could not meet the newly adopted dissolution testing requirement, the company claimed that a change in formulation was "made necessary" by the compendial change even though the formulation itself was not described in the compendium. FDA advises that this view of the provision misreads its intended purpose: the provision is intended to be confined to changes specifically described in the compendium. Changes that as a practical matter are made necessary by compendial change, but that are not expressly adopted in the compendium, may not be made under the provisions of § 314.70(d). Such changes, if they are of the type that require a supplemental application under § 314.70 (b) or (c), can be made only in accordance with the specific provision that applies.

Therefore, in the example cited, because the reformulation of the drug product was not itself described in the official compendium, the reformulation could only be implemented under a supplemental application approved under § 314.70(b)(2)(i), which requires a supplement to add or delete an ingredient, or otherwise to change the composition of the drug product.

The agency's view of the scope of the provision in § 314.70(d) is supported by a consideration of the process that governs the adoption of revisions in the official compendium—*The United States Pharmacopeia—The National Formulary*. Underlying FDA's willingness to forgo supplemental applications for changes made to comply with an official compendium is the close cooperation between FDA and the United States Pharmacopeial Convention (USPC) in the development of compendial standards, including cooperation in the review of data and information supporting proposed changes in standards. This relationship ensures that proposed compendial changes will be brought to FDA's attention before they are incorporated into a compendial standard. It should be emphasized that agency review of proposed compendial changes under this process is limited to review of the particular revision being considered by the USPC.

To ensure that agency policy with respect to compendial changes is clearly understood, FDA proposes to revise § 314.70(d)(1) to clarify its intended scope. As proposed, the section would be revised to allow the holder of an approved application to adopt, without the filing of a supplemental application, "any test, method, labeling statement, or specification * * * to comply with the adoption of that same test, method, labeling statement, or specification in an official compendium." As now, the regulation would require that the change be reported in the next required annual report.

FDA expects that in some situations a manufacturer may be unsure whether a planned change in the conditions of approval is, in fact, a change made to comply with an official compendium under § 314.70(d). In such situations, FDA strongly encourages the manufacturer to discuss the matter with the appropriate reviewing officials in the division in the Center for Drugs and Biologics with responsibility for review and approval of the product in question.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the regulatory impact of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule would clarify a provision allowing a drug firm holding an approved marketing application for a new drug to comply with new standards adopted in an official compendium without requiring the firm to file a supplemental application for the change. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

Request for Comments

Interested persons may, on or before August 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR Part 314 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 51 Stat. 1049–1053 as amended, 1055–1058 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

2. In § 314.70 by revising paragraph (d)(1) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(d) * * *

(1) The adoption of a test, method, labeling statement, or specification to comply with the adoption of that same test, method, labeling statement, or specification in an official compendium.

* * * * *

Dated: April 28, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-12480 Filed 6-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 510 and 570

[Docket No. R-86-1296; FR-2151]

Section 312 Rehabilitation Loan Program and Urban Development Action Grant Program; Relocation Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department proposes to revise its relocation requirements for those displaced by rehabilitation activities under the Section 312 Rehabilitation Loan Program and the Urban Development Action Grant Program. These amendments would provide greater consistency in the treatment of persons who are displaced by HUD-assisted community development projects that are not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

COMMENT DUE DATE: Comments must be in writing and must be received on or before July 21, 1986.

ADDRESS: Comments should be sent to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at this address. Comments on the information collection requirement contained in this rule (which should include a reference to the docket number and title) should be submitted both to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: HUD Desk Officer.

FOR FURTHER INFORMATION CONTACT: Melvin Geffner, Deputy Director; Roland Brown, Georgian Carter, or Alvin West, Relocation and Real Estate Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000. Telephone (202) 755–6338. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Section 312 Rehabilitation Loan Program

Most displacement under the Section 312 Rehabilitation Loan Program is not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) because it does not involve the acquisition of real property by a "State agency." However, the current relocation provisions at 24 CFR 510.52 (effective May 12, 1980) require that tenants displaced by non-Uniform Act Section 312 activities be provided relocation assistance at levels similar to those provided under HUD Uniform Act regulations at 24 CFR Part 42, as modified by § 510.52. On February 27, 1986 (51 FR 7000), the Department issued a comprehensive revision of its Uniform Act regulations as part of a common final rule issued with 16 other Federal agencies. Because of the scope and applicability of that rulemaking, however, the displacement of tenants by non-Uniform Act Section 312 activities continues to be governed by the procedures in old 24 CFR Part 42. Thus, until the current Section 312 relocation requirements are changed, local agencies administering both a Section 312 program and other HUD-assisted community development programs will be required to follow two different HUD Uniform Act regulations—the old Part 42 and the new Part 42.

The Department is proposing to adopt relocation requirements for non-Uniform Act Section 312 Program activities that are similar to those it plans to adopt to implement Section 104(j) of the Housing and Community Development Act of 1974. Section 104(j) requires that "reasonable relocation benefits" be provided to persons displaced by rehabilitation or non-Uniform Act acquisition under the Community Development Block Grant (CDBG) Program or Urban Development Action Grant (UDAG) Program.

The proposed changes would simplify current requirements and make them more consistent with relocation requirements under other HUD-assisted activities not subject to the Uniform Act.

The proposed rule would expand a locality's flexibility in determining tenant eligibility requirements for relocation assistance and the amount of assistance to be provided. Consistent with certain minimums set forth in the rule, the locality would develop, adopt and make public the standards it will follow.

At a minimum, all residential and nonresidential tenants permanently displaced as a direct result of the rehabilitation project would be reimbursed for their reasonable moving expenses. A locality could (but would not be required to) continue to provide tenants the option of choosing a "fixed payment" in lieu of a payment for their actual reasonable moving expenses.

All displaced residential tenants would be eligible for rental assistance payments to obtain suitable, decent, safe and sanitary housing for at least a two-year period. Payments under the current rule are based on housing needs for a four-year period. The Department believes the reduced standard is consistent with Congressional intent in enacting the "reasonable relocation benefits" criterion, rather than extending Uniform Act coverage to displacement resulting from rehabilitation.

A locality may determine that a residential tenant will not be considered permanently displaced from his or her dwelling if the tenant has been offered a

decent, safe, and sanitary dwelling unit in the rehabilitated property at a monthly cost for rent and utilities that does not exceed the greater of (1) the tenant's cost for rent and utilities at the time of the submission of the Section 312 preapplication (or application, if there is no preapplication); or (2) 30 percent of the household's gross income. If temporary relocation to another dwelling unit is required, the tenant would be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation (including any moving costs and any increase in the monthly cost for rent and utilities).

2. Urban Development Action Grant Program

This rule proposed changes to § 570.457, the Urban Development Action Grant (UDAG) Program's requirements on relocation assistance. Paragraph (a) of this section makes it clear that the acquisition of real property by a "State agency" under the UDAG program and displacement resulting from such acquisition are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Rather than repeat standards contained in other regulations, paragraph (b) refers the user to § 570.606(a) and 24 CFR Part 42 for specific instructions on implementation of the Uniform Act.

Paragraph (c) of § 570.457 sets forth relocation requirements governing non-Uniform Act displacements subject to the provisions of Section 104(j) of the Housing and Community Development Act of 1974 (the Act). Section 104(j) requires that reasonable relocation benefits be provided to any family, individual, business, nonprofit organization or farm "involuntarily and permanently displaced as a result of the use of assistance" under the CDBG or UDAG programs to acquire or substantially rehabilitate property. Because the statute covers displacement brought about as a result of the "use of assistance", the displacement-causing acquisition or rehabilitation activities of private developers are subject to the law and these implementing regulations.

The proposed changes would improve consistency in relocation requirements under HUD-assisted community development programs not subject to the Uniform Act. Like the proposed Section 312 relocation requirements described above, the proposed rule would expand the flexibility of the grantee to determine eligibility requirements for tenants displaced from a dwelling and also the amount of assistance to be provided. Consistent with certain minimums set forth in the rule, the grantee would develop, adopt and make public the standards it would follow.

At a minimum, all persons permanently displaced as a direct result of non-Uniform Act acquisition or rehabilitation would be reimbursed for their reasonable moving expenses. All persons displaced from a dwelling unit would be eligible for financial assistance sufficient to rent suitable, decent, safe and sanitary housing for at least two years. Under the present rule assistance must reflect four-year housing needs. The Department believes the reduced standard is consistent with Congressional intent in enacting the "reasonable relocation benefits" criterion, rather than extending Uniform Act coverage to displacements resulting from rehabilitation.

A grantee may determine that a tenant has not been permanently displaced from his or her dwelling if the tenant has been offered a decent, safe, and sanitary dwelling unit in the rehabilitated property at a monthly cost for rent and utilities that does not exceed the greater of (1) the tenant's cost for rent and utilities at the time of the preliminary funding approval for UDAG assistance or (2) 30 percent of the household's gross income. If temporary relocation to another dwelling unit is required, the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including any moving costs and any increase in the monthly cost for rent and utilities.

The Department also is proposing to revise §570.458(c)(14)(ix)(I) to conform the required certification of compliance with applicable relocation and acquisition requirements to the proposed changes in §570.457 described above.

3. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act of 1980

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities, because it does not affect the amount of funds provided under the Urban Development Action Grant Program or Section 312 Rehabilitation Loan Program, but rather eliminates unnecessary, administrative relocation requirements by making revisions to the rule consistent with recently enacted legislation.

HUD Semiannual Agenda

This proposed rule was listed as item 910 in the Department's Semiannal Agenda of Regulations, published on April 21, 1986 (51 FR 14036, 14067) under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). All requirements have been approved and have been assigned OMB control number 2506–0084.

Catalog of Federal Domestic Assistance

The applicable Catalog numbers are 14.220 for the Section 312 Rehabilitation Loan Program and 14.221 for the Urban Development Action Grant Program.

List of Subjects

24 CFR Part 510

Loan programs: housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal

24 CFR Part 570

Community development block grants, Grant programs: housing and community

development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, it is proposed that 24 CFR Chapter V be amended as follows:

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

1. The authority citation for Part 510 is proposed to continue to read as follows:

Authority: Section 312 of the United States Housing Act of 1964 (42 U.S.C. 1452b) and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 510.32 is proposed to be revised to read as follows:

§ 510.32 Relocation/Displacement.

(a) *Responsibility of locality.* (1) The locality shall administer its Section 312 Rehabilitation Loan Program in a manner that minimizes any potential or actual involuntary displacement of tenants. Wherever it offers the potential of minimizing displacement, the locality shall require the owner to consider the feasibility of carrying out the rehabilitation in stages.

(2) The locality is responsible for ensuring compliance with the requirements of this section. To pay the cost of the assistance required, the locality may use local public funds or Community Development Block Grant funds. The locality also may secure a commitment from any participating party in the program to provide all or part of the necessary funds. (To use Block Grant funds, the locality shall adopt a written policy in accordance with § 570.606(b) of this chapter.)

(3) If a locality determines that a residential tenant will not be displaced, it shall ensure that the terms and conditions of the tenant's continued occupancy are consistent with the locality's standards, are not more restrictive than those customary in the jurisdiction, and are set forth in a lease which is offered to the tenant.

(4) The locality shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(b) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of the acquisition of real property by a "State agency" (defined in section 101 of the Uniform Act, 42 U.S.C. 4601) for a federally assisted project, including a project where the Federal assistance is a Section 312 Rehabilitation Loan.

(c) *Non-Uniform Act Displacement.* Projects not subject to the Uniform Act are subject to this paragraph (c). The locality shall provide reasonable relocation assistance to any residential or nonresidential tenant displaced as a direct result of an approved Section 312 Rehabilitation Loan activity. (The term "tenant" includes any family, individual, business, nonprofit organization or farm that is a renter.) The locality shall develop, adopt and make public the standards it will use for providing the relocation assistance, consistent with the following minimum requirements:

(1) A residential tenant who moves will be considered displaced from his or her dwelling if (i) The tenant has not been offered a decent, safe and sanitary dwelling unit on the real property at a cost for rent and estimated utility charges that does not exceed the greater of (A) the tenant's cost for rent and utilities at the time of the submission of the preapplication (or the application, if there is no preapplication) to the HUD Office or (B) 30 percent of the tenant household's gross income; or (ii) Temporary relocation is required and the tenant is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

(2) Eligibility criteria must cover (i) Any tenant legally occupying the property at the time of the submission of the preapplication (or application, if there is no preapplication) to the HUD office; and (ii) Any tenant who legally moves into the property between such event and the actual rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned rehabilitation.

(3) Any residential or nonresidential tenent (but not an owner-occupant) who is determined under local standards to be displaced as a direct result of Section 312 Rehabilitation Loan activity shall be provided with relocation assistance, including at a mimimum:

(i) Reasonable moving expenses;

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such manner that, wherever feasible, they will have a choice between relocating within their neighborhood and other neighborhoods consistent with the locality's responsibility to affirmatively further fair housing; and

(B) Either (*1*) Payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable, decent, safe and sanitary replacement dwelling unit or (*2*) The provision of a Certificate or Housing Voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program if the tenant is an eligible low-income person.

(d) *Appeals.* If a person disagrees with the locality's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the locality. The appeal procedures to be followed are described at 24 CFR 42.10.

(Approved by the Office of Management and Budget under control number 2506–0084)

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for Part 570 is proposed to continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 570.457 is proposed to be revised as follows:

§ 570.457 Relocation and acquisition.

(a) *Responsibility of the applicant.* (1) The applicant is responsible for ensuring compliance with the requirements of this section. To pay the cost of relocation assistance, including rental assistance payments, the applicant may use local public funds, action grant or entitlement community development block grant funds (see Subparts D and G of this part). The applicant also may secure a commitment from any participating party in the action grant program to provide all or a part of the necessary funds. In order to use Block Grant funds, the applicant shall adopt a written policy in accordance with § 570.606(b).

(2) If the applicant determines that a residential occupant will not be displaced, it shall ensure that the terms and conditions of the person's continued occupancy are consistent with its established standards, are not more restrictive than those customary in the jurisdiction, and are set forth in a lease which is offered to the person.

(3) The applicant shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(b) *Applicability of the Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations in Part 42 of this title apply to the acquisition of real property by a "State agency" for an activity assisted under this subpart and to the displacement of any person (family, individual, business, nonprofit organization or farm) that results from the acquisition. "State agency" is defined in section 101 of the Uniform Act (42 U.S.C. 4601). *See* also § 570.606(a) for additional instructions on the implementation of the Uniform Act.

(c) *Displacement not subject to the Uniform Act.* The displacement of any person (family, individual, business, nonprofit organization or farm) as a result of the acquisition of real property by an entity other than a State agency or rehabilitation for an activity assisted under this subpart is not subject to the Uniform Act. However, such dispacement is subject to section 104(j) of the Housing and Community Development Act of 1974, which requires that reasonable benefits be provided to persons permanently and involuntarily displaced as a result of the use of assistance received under this part to acquire or substantially rehabilitate property where such displacement is not subject to the Uniform Act. The grantee is responsible for developing the standards it will use for providing such benefits, consistent with the following minimum requirements:

(1) A residential tenant who moves will be considered displaced from his or her dwelling if:

(i) The tenant has not been provided a decent, safe, and sanitary dwelling unit on the property following the completion of the assisted activity at a monthly cost for rent and utilities that does not exceed greater of:

(A) The tenant's cost for rent and utilities at the time of preliminary funding approval for the UDAG assistance; or

(B) 30 percent of the tenant household's gross income; or

(ii) Temporary relocation is required and the tenant is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

(2) Eligibility criteria for benefits must cover:

(i) Any tenant legally occupying the property at the time the grantee enters into a contract to provide assistance for the acquisition or rehabilitation; and

(ii) Any tenant who legally moves into the property between such event and the actual acquisition or rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned acquisition or rehabilitation.

(3) Any residential or nonresidential tenant who is determined under grantee standards to be displaced as a direct result of rehabilitation or acquisition assisted under this part (not subject to the Uniform Act) must be provided relocation assistance, including at a minimum:

(i) Reasonable moving expenses;

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, wherever feasible, they will have a choice between relocating within their neighborhood and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(B) Either (i) Payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable, decent, safe and sanitary replacement dwelling unit, or (ii) The provision of a Certificate or Housing Voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program, if the tenant is an eligible low-income person.

(4) For purposes of this paragraph (c), the term "tenant" includes any family, individual, business, nonprofit organization or farm that is a renter. It also includes any owner-occupant displaced as a direct result of non-Uniform Act acquisition by an agency with the power of eminent domain and any displaced owner-occupant of a mobile home who rents the site.

(d) *Appeals.* If a person disagrees with the applicant's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the applicant. The appeal procedures to be followed are described in 24 CFR 42.10.

(Approved by the Office of Management and Budget under control number 2506-0084)

5. Section 570.458(c)(14)(ix)(I) is proposed to be revised as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), HUD implementing regulations in Part 42 of this title, and the relocation requirements in § 570.457(c) governing displacement subject to section 104(j) of the Housing and Community Development Act of 1974.

* * * * *

Dated: May 27, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 86-12450 Filed 6-3-86; 8:45 am]

BILLING CODE 4210-29-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 222

Superfund Cost Sharing Eligibility Criteria for Permanent and Temporary Relocation

Correction

In FR Doc. 86-10671 beginning on page 17501 in the issue of Tuesday, May 13, 1986, make the following correction:

On page 17502, in § 222.3(a), in the second column, in the thirteenth line, "(a)(2)" should read "(a)(1)".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-206, RM-5066, RM-5214, RM-5287, RM-5402]

Radio Broadcasting Services; Canton, GA et. al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the following: (a) the substitution of Channel 289C2 for Channel 288A in Canton, Georgia, and the modification of license of Station WCHK-FM to specify operation on Channel 289C2 in response to a petition filed by Cherokee Broadcasting in order to provide a grater coverage area, (b) the allotment of Channel 289A to Douglasville or to Villa Rica, Georgia, as a first FM service to either community in response to

petitions filed by Hugh J. Wheeler and Elizabeth Martin Henley respectively; and (c) the substitution of FM Channel 269A for Channel 244A at Newnan, Georgia, and the modification of license of FM Station WBUS to specify operation on Channel 269A to eliminate a severe short spacing and alleviate an alleged intermodulation interference problem.

DATES: Comments must be filed on or before July 21, 1986, and reply comments on or before August 5, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Edward W. Hummers, Jr., Fletcher, Heald and Hildreth, 125 Connecticut Ave., NW—Suite 400 Washington, DC 20036 (Counsel for Cherokee Broadcasting Co.)

Eric L. Bernthal, Asent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036 (Counsel for NEW Systems of Georgia, Inc.)

Timothy K. Brady, Esq., 1116 Weisgarber Road, Post Office Box 10569, Knoxville, Tennessee 37939, (Counsel for Hugh J. Wheeler)

Lawrence J. Bernard, Jr., Ward & Mendelsohn, P.C., 1110—17th Street NW—Suite 900, Washington, DC 20036 (Counsel for Elizabeth Martin Henley)

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau—(202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–206, adopted May 20, 1986, and released May 28, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12332 Filed 6–3–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–201, RM–5003]

Radio Broadcasting Services; Walton, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Florence Broadcasting Company proposing to allot FM Channel 245A to Walton, Kentucky as that community's first FM channel.

DATES: Comments must be filed on or before July 18, 1986, and reply comments on or before August 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Allan G. Moskowitz, Shrinsky, Weitzman & Eisen, P.C., Suite 270, 1120 Connecticut Ave. NW., Washington DC, 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–201, adopted May 15, 1986, and released May 27, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12333 Filed 6–3–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–203, RM–5247]

Radio Broadcasting Services; Scotland Neck, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 274A to Scotland Neck, North Carolina, as the community's first local FM service, at the request of WYAL Radio, Inc.

DATES: Comments must be filed on or before July 18, 1986, and reply comments on or before August 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Mark N. Prak, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Petitioner's counsel).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–203 adopted May 15, 1986, and released May 27, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800,

2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph Haller,

Acting Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 86-12330 Filed 6-3-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-202, RM-5208]

Radio Broadcasting Services; Penacook, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 227A to Penacook, New Hampshire, as the community's first local FM service, at the request of Harvest Broadcasting Services. Petitioner is requested to provide additional information regarding Penacook in order to determine if it is a "community" for allotment purposes since it is not listed in the 1980 U.S. Census.

DATES: Comments must be filed on or before July 18, 1986, and reply comments on or before August 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, Box 105 FM, Hinsdale, New Hampshire 03451 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-202, adopted May 15, 1986, and released May 27, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Steet NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph Haller,

Acting Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 86-12334 Filed 6-3-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-204, RM-5249]

Radio Broadcasting Services; Sullivan, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 256A to Sullivan, New Hampshire, as the community's first local FM service, at the request of Gary M. Kenny.

DATES: Comments must filed on or before July 18, 1986, and reply comments on or before August 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Gary, M. Kenny, P.O. Box 1326, Westfield, Massachusetts 01086 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-204, adopted May 15, 1986, and released May 27, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph Haller,

Acting Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 86-12335 Filed 6-3-86; 8:45 am]

BILLING CODE 6712-01-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 51, No. 107
Wednesday, June 4, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 30, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds under the Agricultural Marketing Act of 1946
On occasion
Individuals or households; Farms; Businesses or other for-profit;
Small businesses or organizations; 1,385 responses; 1,385 hours; not applicable under 3504(h)
Donald W. Ator (202) 447–6340

• Agricultural Stabilization and Conservation Service
Financial Statement
ASCS 395
On occasion
Farms; 15,000 responses; 15,000 hours; not applicable under 3504(h)
Beverly Pritts (202) 447–6374

• Agricultural Stabilization and Conservation Service
Record of Pooled Farm Allotment, Quota, or Acreage Base
ASCS–177 and ASCS–178
On occasion
Individuals or households; Farms; 60,000 responses; 30,000 hours; not applicable under 3504(h)
Harold Connor (202) 447–5103

• Food and Nutrition Service
Food Stamp Mail Issuance Report
FNS 259
Quarterly
State or local governments; 10,050 responses; 3,139 hours; not applicable under 3504(h)
Paul Jones (703) 756–3396

New

• Food and Nutrition Service
Food Stamp Program: Simplified Application and Standardized Benefit Project
Annually
State or local governments; 10 responses; 250 hours; not applicable under 3504(h)
Patricia Hagen (703) 756–3367

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 86–12558 Filed 6–3–86; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

Renewal of the Flue-Cured Tobacco Advisory Committee

Notice is hereby given that the Secretary of Agriculture has renewed the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

This Committee recommends opening dates and selling schedules for the flue-cured marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors.

The Committee consists of 39 members, 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the flue-cured tobacco industry.

The Committee shall report to the Director, Tobacco Division, Agricultural Marketing Service.

This Committee is authorized by Title 7, Code of Federal Regulations, § 29.9403, and the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

Authority for this Committee will expire two years from date of filing unless the Secretary formally determines that continuance is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act, (5 U.S.C. App. 1).

Dated: May 28, 1986.
William T. Manley,
Deputy Administrator, Marketing Programs.
[FR Doc. 86–12559 Filed 6–3–86; 8:45 am]
BILLING CODE 3410–02–M

Soil Conservation Service

Mill Haven Watershed, Louisiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Horace J. Austin, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Louisiana, is hereby providing notification that a record of decision to proceed with the installation of the Mill Haven Watershed project is available. Single copies of this record of

decision may be obtained from Horace J. Austin at the address shown below.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318)473-7751.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable.)

Dated: May 27, 1986.

Horace J. Austin,

State Conservationist.

[FR Doc. 86-12497 Filed 6-3-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission previously scheduled for May 30, 1986, convening at 1:00 p.m. and adjourning at 5:00 p.m., at the Ramada Hotel Airport East, Board Room, 1600 South 52nd Street, Tempe, Arizona (FR Doc. 86-10797, Page 17663) has a new meeting date.

The meeting convening and adjourning times and location will remain the same. The meeting date will change to June 20, 1986.

Dated at Washington, DC, May 30, 1986.

Donald A. Deppe,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-12508 Filed 6-3-86; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on June 26, 1986, at the Holiday Inn Downtown, the Burgundywood Room, 3233 Emerson Street, Jacksonville, Florida. The purpose of the meeting is to hold a briefing session in preparation for the community forum on June 27.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice-Chairperson, Michael Moorehead or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-12507 Filed 6-3-86; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on June 27, 1986, at the Florida Junior College, Auditorium, 101 W. State Street, Jacksonville, Florida. The purpose of the meeting is to hold a community forum on public employment and contractual services.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice-Chairperson, Michael Moorehead or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-12506 Filed 6-3-86; 8:45 am]

BILLING CODE 6335-01-M

North Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on June 27, 1986, at the Town House Motel, 301 Third Avenue, North, Fargo, North Dakota. The purpose of the meeting is to review current projects and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert Feder or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the sevices of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-12509 Filed 6-3-86; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on June 27, 1986, at the University of Texas Law School (Townes Hall) Dean's Conference Room 2.117D, 727 E. 26th Street, Austin, Texas. The purpose of the meeting is to review current projects and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570, (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the sevices of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-12510 Filed 6-3-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations

of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:30 p.m., on June 18, 1986, at the Sheraton Inn, 2nd Floor, 153 W. Main Street, Downtown, Clarksburg, West Virginia. The purpose of the meeting is to hear from individuals and groups about voting problems and other civil rights issues in West Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adam Kelly or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 523-5264, (TDD 202/523-5264). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-1280 Filed 6-3-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on June 17, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through The White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and place: Tuesday, June 17, 1986, 3:30 p.m., at the National Headquarters of American Red Cross, 17th & E Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Dated: May 28, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86-12800 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DW

International Trade Administration

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee will be held on June 26 and 27, 1986, 9:30 a.m. to 5:00 p.m. in the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, D.C. The meeting on June 26 will be held in Room 1092, and in Room 3407 on June 27. The Committee advises the Office of Technology and Policy Analysis with respect to licensing procedures and regulation that affect the level of export controls applicable to computer systems or technology.

Agenda

Open Discussion

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public on proposed equipment decontrol and discussions on problems experienced in obtaining export licenses.
3. Discussion and formulation of a proposal to revise U.S. controls regarding West/West export licenses.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, call (202) 377-2583.

Dated: May 30, 1986.

Margaret Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 86-12583 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DT-M

The Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on January 10, 1986, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: June 16 1986 at 9:30 a.m. to 5:00 p.m., in the Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C. The meeting will continue to its conclusion on June 17, 1986, in Room 1092, the Herbert C. Hoover Building.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Public comments invited on revisions to:

CCL 1529—Electronic Test Equipment
CCL 1531—Frequency Synthesizers
CCL 1522—Lasers and Laser Systems
CCL 1533—Radio Spectrum Analysers
CCL 1521—Solid State Broadband Amplifiers
CCL 1541—Cathode Ray Tubes
CCL 1572—Recording and Reproduce Equipment

Comments should consider the need for revision (strengthening, relaxation, or decontrol) of the current regulations based on technological trends, foreign availability, and national security. The committee is interested in proposals for revision to PRC guidelines and G-COM

regulations for the above commodites as well.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4217. For further information or copies of the minutes, call 202/377–4959.

Dated: May 23, 1986.

Margaret Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 86–12589 Filed 6–3–86; 8:45 am]

BILLING CODE 3510–DT–M

The MCTL Implementation Technical Advisory Committee; Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held Tuesday, June 24, 1986, 9:30 am, the Herbert Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Sessions will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information, (202) 377–4959.

Dated: May 30, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 86–12590 Filed 6–3–86; 8:45 am]

BILLING CODE 3510–DT–M

[A-351-605]

Frozen Concentrated Orange Juice From Brazil: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether frozen concentrated orange juice (FCOJ) from Brazil is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 23, 1986, and we will make ours on or before October 16, 1986.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 9, 1986, we received a petition in proper form filed by Florida Citrus Mutual, a voluntary cooperative marketing association of growers of citrus fruit for processing and processors of citrus fruits. The petition was filed on behalf of the United States industry producing FCOJ, including growers and processors. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on FCOJ from Brazil and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether FCOJ is being, or is likely to be, sold in the United States at less than fair value.

Scope of Investigation

The product covered by this investigation is FCOJ in a highly concentrated form for transport and further processing, sometimes referred to as frozen concentrated orange juice for manufacturing, currently provided for under the *Tariff Schedules of the United States (TSUS)* item number 165.29.

United States Price and Foreign Market Value

The petitioner based United States price on offers made by Brazilian producers to U.S. purchasers. Using price offers from the Brazilian producers, petitioner arrived at ex-factory prices by subtracting estimated charges for foreign inland freight, ocean freight, insurance, customs duties, brokerage, Brazilian export tax, Florida

citrus equalization tax and U.S. inland freight.

Petitioner alleged that sales of FCOJ in Brazil were too small to constitute a viable home market. Therefore, it based foreign market value on constructed value because the sales price to third countries was below the cost of production of the Brazilian producers. We will determine whether the home market is viable. If it is not viable, we will initiate a cost of production investigation with regard to sales to third countries.

Based on the comparison of these estimated values, petitioner alleged dumping margins ranging from 3.0 percent to 167.8 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 23, 1986, whether there is a reasonable indication that imports of FCOJ from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

May 29, 1986.

[FR Doc. 86-12582 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

Sugar and Syrups From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 20, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty order on sugar and syrups from Canada. The review covered the ten known manufacturers and/or exporters of this merchandise to the United States and the period April 1, 1982 through March 31, 1983.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. Based on our analysis of the comment received, we have changed the margin for Lantic Sugar Limited from that presented in the preliminary results of review.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 29428) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty order on sugar and syrups from Canada (45 FR 24120, April 9, 1980). The preliminary results covered the ten known manufacturers and/or exporters of Canadian sugar and syrups to the United States and the period April 1, 1982 through March 31, 1983.

In accordance with § 353.53a(a) of the Commerce Regulations, five of the ten firms requested that we complete the administrative review for those firms. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Canadian sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers five of the ten known manufacturers and/or exporters of sugar and syrups to the United States and the period April 1, 1982 through March 31, 1983.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results and tentative determination to revoke in part. We received a written comment from Lantic Sugar Limited (previously known as Atlantic Sugar, Ltd.).

Comment

During the review period, Lantic made only spot price sales to the United States. Lantic had three types of home market sales during the review period: spot price sales, spot price sales with fixed discounts, and fixed price long-term contract sales. Lantic argues that, through clerical error, it reported as the date of sale for the last group the dates of shipments under these contracts. The Department then included those individual shipments in the weighted-average foreign market values. Lantic contends that we should ignore the fixed price contract sales completely when creating the weighted average, because those sales are not of the same type as the U.S. sales. Alternatively, we should change the dates of those sales to the dates of original contract before deciding which sales to weight average.

Department's Position

The issue of whether fixed price contract sales should be included in creating a weighted-average is moot, since calculation under either method results in a zero margin.

Final Results of the Review

As a result of the comment received, we have revised our preliminary results for Lantic, and we determine that the following weighted-average margins exists for the period April 1, 1982 through March 31, 1983:

Manufacturer/exporter	Margin (percent)
Atlantic Sugar, Ltd. (now known as Lantic Sugar Limited)	0
Lantoo Ltd.	10.18
Redpath Sugars, Ltd.	0.01
St. Lawrence Sugar, Ltd. (now known as Lantic Sugar Limited)	0
Westcane Sugar Ltd. (now know as Lantic Sugar Limited)	0

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for each firm based upon the above margins as provided in section 751(a)(1) of the Tariff Act. Since the margin for Redpath Sugars, Ltd. is less than 0.5 percent and therefore *de minimis* for

cash deposit purposes, the Department waives the deposit requirement for that firm. For any shipments from the remaining five known manufacturers and/or exporters, not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (48 FR 49327, October 25, 1983). For any shipments from a new exporter not covered by this or prior administrative reviews, whose first shipments of Canadian sugar and syrups occurred after March 31, 1983, and who is unrelated to any covered firm, a cash deposit of 10.18 percent shall be required. These deposit requirements and waiver are effective for all shipments of Canadian sugar and syrups entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: May 23, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12583 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

California Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-011R. Applicant: California Institute of Technology, Pasadena, CA 91125. Instrument: VG Sector Thermal Ionization Mass Spectometer with Accessories. Manufacturer: VG Instruments, United Kingdom. Original notice of this resubmitted application was published in the Federal Register of November 13, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is equipped with a fully automated multiple collector system capable of providing an external precision on Neodymium (300 ng) of 0.003%. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12584 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

College of the Holy Cross; Decision on Application for Duty-Free Entry of Scientific Instrument

This application is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-074R. Applicant: College of the Holy Cross, Worcester, MA 01610. Instrument: Flash Photolysis with 1000J Capacitor Bank, Model KN-100. Original notice of this resubmitted application was published in the Federal Register of February 15, 1985.

Comments: None received.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 85-074, which was denied without prejudice to resubmission (DWOP). In the DWOP, we asked the applicant to demonstrate that the instrument *as ordered* was capable of making absorption measurements in the range between 750 and 900 nm claimed pertinent. In the resubmission the applicant did not do this. However, the applicant did confirm the NBS contention that the foreign article as ordered is of limited usefulness, stating that the foreign article "is equipped with a IP28 photomultiplier tube useful only to 600 nm." Although the applicant intends to purchase a photomultiplier tube extending the instrument range to the near IR, the purchase of optional parts that do not accompany the instrument cannot be considered (Subsection 301.5(d)(1)(ii). The applicant's contention "that the instrument will be used primarily in the region 700-900 nm" is irrelevant to the capability of the instrument *as purchased* since it is incapable of making measurements in this absorption range without a red sensitive photomultiplier tube.

We conclude, therefore, that the instrument available from the domestic manufacturer, Xenon Corporation, is scientifically equivalent to the foreign article as purchased.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12585 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Oakland University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the spcified time period. This is the case for each of the listed dockets.

Docket No. 85-166. Applicant: Oakland University, Rochester, MI 48063. Instrument: Scanning Electron Microscope, Model DS-130. Manufacturer: Akashi-Seisakusho Ltd., Japan. Date of denial without prejudice to resubmission: December 26, 1985.

Docket No. 85-249. Applicant: Georgia Baptist Medical Center, Atlanta, GA 30312. Instrument: Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Date of denial without prejudice to resubmission: January 22, 1986.

Docket No. 86-108. Applicant: North Texas State University, Denton, TX 76203. Instrument: CO_2 Breadboard Amplifier System. Manufacturer: Lumonics Inc., Canada. Date of denial without prejudice to resubmission: December 23, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12505 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

State University of New York et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 86-100. Applicant: State University of New York, Syracuse, NY 13210. Instrument: Electron Microscope, Model JEM-2000EX with Accessories. Manufacturer: Jeol, Ltd., Japan. Intended Use: See notice at 51 FR 6576. Instrument Ordered: October 9, 1985.

Docket No. 86-114. Applicant: Ohio State University, Columbus, OH 43210. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 51 FR 7844. Instrument Ordered: December 2, 1985.

Docket No. 86-116. Applicant: State University of New York, Stonybrook, NY 11794. Instrument: Electron Microscope, Model CM 12 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 51 FR 7844. Instrument Ordered: December 13, 1985.

Docket No. 86-117. Applicant: Medical College of Ohio, Toledo, OH 43699. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 51 FR 7845. Instrument Ordered: November 20, 1985.

Docket No. 86-120. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 51 FR 6576. Instrument Ordered: December 30, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as those instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12506 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

The Regents of the University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 86-119. Applicant: The Regents of the University of California, Davis, CA 95616. Instrument: Far infrared spectrometer with accessories. Manufacturer: SPECAC, Analytical Accessories Ltd., United Kingdom. Intended Use: See notice at 51 FR 6576.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a spectral range from 3 cm^{-1} to 200 cm^{-1} with a resolution of 0.1 cm^{-1}. The National Bureau of Standards advises in its memorandum dated April 24, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12507 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-801]

Preliminary Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of carbon steel wire rod (wire rod). The estimated net bounty or grant is 0.09 percent *ad valorem*. This rate is *de minimis*, and therefore our preliminary countervailing duty determination is negative. If this investigation proceeds normally, we will make our final determination on or before August 11, 1986.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose, Ellie Shea, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815, 377-0184, or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon the questionnaire responses, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of wire rod. For purposes of this preliminary determination, the following programs are found to confer bounties or grants:

- Export Tax Incentives
  - —An export allowance of five percent of the f.o.b. value of qualifying exported goods
  - —A double deduction for expenses related to export promotion
- Short-Term Export Financing

We preliminarily determine the estimated net bounty or grant to be 0.09 percent *ad valorem*. Although we have determined these programs to be countervailable, the respondents received *de minimis* benefits during the review period, calendar year 1985. Therefore, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided to manufacturers, producers, or exporters in Malaysia of wire rod.

Case History

On March 4, 1986, we received a petition in proper form from Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp., North Steel Texas, Inc., and Raritan River Steel Co., filed on behalf of the U.S. industry producing wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Malaysia of wire rod receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 24, 1986, we initiated an investigation (51 FR 10905). We stated that we expected to issue a preliminary determination on or before May 28, 1986.

Since Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Malaysia materially injure, or threaten material injury to, a U.S. industry.

On April 3, 1986, we presented a questionnaire to the government of Malaysia in Washington, DC, concerning petitioners' allegations. We received the government and company responses on May 9, 1986. According to the government response, Amalgamated Steel Mills Bhd. (ASM) is the only producer of wire rod in Malaysia. Angkasa Marketing Sdn. Bhd. (Angkasa), a wholly-owned subsidiary of ASM, is the only exporter of wire rod to the United States. Malayawata Steel Bhd. (Malayawata), alleged in the petition to be a producer and exporter of wire rod, does not produce wire rod or export wire rod to the United States.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States*.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

Petitioners allege in the petition that Malayawata, which is 51 percent government-owned, may have benefitted from government equity infusions on terms inconsistent with commercial considerations. In addition, petitioners allege that Malayawata has been uncreditworthy since at least 1983. According to the government response, Malayawata does not produce wire rod or export wire rod to the United States. Therefore, an analysis of the equityworthiness and creditworthiness of Malayawata is not necessary for this preliminary determination. At verification, however, we will verify that Malayawata is not a producer or exporter of wire rod.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1985. Based upon our analysis of the petition and the responses to our questionnaire submitted by the government of Malaysia, ASM, and Angkasa, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Malaysia of wire rod under the following programs:

A. Tax Incentives for Exporters. Petitioners allege that the government of Malaysia provides tax incentives to promote exports of wire rod. First, a double tax deduction is granted for expenses related to export promotion, such as market research, overseas advertising, participation in trade exhibitions, and overseas sales offices. Second, Malaysian companies allegedly can deduct from net taxable income eight percent of the f.o.b. value of export sales if Malaysian content of the product is more than 50 percent; they allegedly can deduct five percent if Malaysian content is less than 50 percent.

According to the government response, section 27 of the Investment Incentives Act of 1968 allows exporters to obtain a double deduction of eligible export promotion expenses. The double deduction allows these export related expenses to be deducted twice, once in the financial statement and then again in the income tax form. Section 29 of the same Act provided, for tax years prior to 1979, an export allowance of eight percent of the increase in the gross income derived from the export of products incorporating more than 50 percent local content, and an allowance of five percent if local content is less than 50 percent. For tax years 1980 to 1983, section 29 was amended to provide a deduction of two percent of the ex-factory value of exports from taxable income and a deduction of ten percent of the increase in export value from the preceding year. In 1983, the government of Malaysia amended section 29 of the law to provide a flat deduction of five percent of the f.o.b. value of export revenues from taxable income. This amendment became effective in 1984 and applied to all tax returns filed in 1985.

According to the company response, ASM did not claim any export allowance or the double deduction for export promotion on the tax return filed during the review period. Angkasa claimed the export allowance of five percent of the f.o.b. value of qualifying exports and made a provisional claim

for the double deduction for export promotion expenditures.

Because these tax incentives are available only to exporters, we preliminarily determine that they confer a bounty or grant. For tax programs, we generally determine the value of the bounty or grant by calculating the amount of the benefit based on the tax return filed during the review period. Although Angkasa claimed the export allowance and the double deduction on the tax return filed in 1985, these claims did not affect Angkas's tax liabilities during the review period since Angkasa would have incurred a tax loss even absent these claims. Therefore, although we preliminarily determine these tax incentives to be countervailable, the estimated net countervailable benefit is zero.

B. Short-Term Export Financing. Petitioners allege that the government of Malaysia provides preferential pre- and post-export short-term financing through the Malaysian banking system. The commercial banks allegedly provide loans to exporters at rates lower than those available for domestic transactions.

In its response, the government of Malaysia stated that Bank Negara, the central bank, maintains an export credit refinancing facility for both pre- and post-shipment refinancing. This facility allows commercial banks to finance export transactions for a period of up to 92 days. Access to these funds is usually limited to three million Malaysian dollars for each exporter. The annual interest rates on these loans has varied over the life of the program.

According to the company response, ASM had no loans through Bank Negara on which interest was paid during the review period. Angkasa, however, had two loans from Bank Negara on which interest was paid during the review period.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. The benchmark for short-term loans is the most comparable and predominant commercial rate for short-term financing. The Banker's Acceptance is the most comparable and commonly used alternative source of short-term financing. The government response lists the average Banker's Acceptance rate for 1985 as 9.53 percent. Comparing this rate to the rate charged on export loans, we find that the rate on export loans is preferential. Therefore, the export loans provided under this program confer a countervailable benefit upon wire rod from Malaysia. Using our short-term loan methodology, we calculate an estimated net bounty or grant of 0.09 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

A. Tax Holiday for Pioneer Status. Petitioners allege that the Malaysian government provides tax holidays for companies that have "pioneer status," utilize a certain amount of labor, produce a priority product, produce goods containing at least 50 percent local content or are located in designated development areas.

According to the government response only three programs provide for tax holidays: (1) Locational incentives; (2) labor utilization relief; and (3) pioneer status. The first two programs are discussed in the section of this notice entitled "Programs Determined Not to Be Used."

The designation of "pioneer status" is made by the Ministry of Trade and Industry. The criteria for designation of pioneer status are: (1) The number of pioneer companies already established which produce the products mentioned in the application; (2) the production of those pioneer companies; (3) the prospects for favorable development; and (4) the management of the company. Once granted pioneer status, a company is tax exempt for two to five years, depending on the level of investment. Furthermore, a company may be eligible for an extra one-year tax exemption for each of the following conditions that it meets: (2) The company makes a "priority" product; (2) the Malaysian content is at least 50 percent; and (3) the company is located in a development area. During fiscal years 1983 and 1984, ASM, but not Angkasa, was under pioneer status.

According to the government response, virtually all processed or manufactured goods produced in Malaysia have been designated as pioneer products. These include *inter alia*, agricultural products, textiles, furniture, rubber goods, industrial chemicals, cosmetics, fuel oils, steel, and electronic goods. Therefore, we preliminarily determine that the "pioneer status" tax holiday is not limited to a specific enterprise or industry or group of enterprises or industries.

B. Medium- and Long-Term Government Loans. Petitioners allege that the Malaysian Industrial Development Finance Bhd. (MIDF), the Industrial Development Bank of Malaysia, the Development Bank of Malaysia, the Borneo Development Corporation, and the Sabah Development Bank provide medium- and long-term government loans on terms inconsistent with commercial considerations. MIDF is discussed below; the other development banks are discussed in the "Programs Determined Not to Be Used" section of this notice.

MIDF was established in 1960 by the Malaysian government and several private investors. The original purpose of MIDF was to provide a source of long-term financing for industrial development in Malaysia. MIDF provides fixed-rate long-term loans for machinery, factory mortgages, and new plant or expansion projects. ASM had three MIDF loans outstanding during the review period.

According to the government response, MIDF has provided loans to a wide range of industries. These include, among others, the food, steel, non-ferrous metals, machinery, wood products, textile, rubber products, chemical and paper industries. Therefore, we preliminarily determine that the provision of MIDF loans is not limited to a specific enterprise or industry or group of enterprises or industries.

III. Programs Preliminarily Determined Not To Be Used

In accordance with our practice of accepting a response to an allegation which denies the receipt of benefits under a program, we preliminarily determine, subject to verification, that the manufacturers, producers, or exporters in Malaysia of wire rod did not use the following programs:

A. *Accelerated Depreciation Allowance for Exporters.* Petitioners allege that the Malaysian wire rod industry benefits from an accelerated depreciation allowance on capital expenditures incurred in acquiring plant or equipment to modernize production techniques if at least 20 percent of production is exported. According to the responses, neither ASM nor Angkasa has used an accelerated depreciation allowance.

B. *Other Tax Holidays.* As discussed in section II. A., the Malaysian government provides tax holidays for companies that utilize a certain amount of labor or are located in designated development areas.

According to the government response, a company may receive a tax holiday from two to five years depending on the level of employment. Moreover, a company is eligible for an additional one-year exemption for each of the following criteria that it meets: (1) The company produces a "priority" product; (2) the Malaysian content of the product is at least 50 percent; and (3) the

plant is located in a "development" area.

In addition, a company may receive a tax holiday if it is sited in a "locational incentive area". The length of the tax holiday varies from five to eight years, depending on the level of investment and the number of employees. Furthermore, a company is eligible for an additional one-year exemption for each of the following criteria that it meets: (1) The company makes a "priority" product; and (2) the Malaysian content of the product is at least 50 percent. The company response states that neither ASM nor Angkasa has used the above programs.

C. *Investment Tax Credits.* Petitioners allege that the government of Malaysia provides investment tax credits for approved projects which do not qualify under other incentive schemes (*e.g.*, pioneer status), and for investments which have heavy capital requirements and long start-up periods. The investment tax credit ranges from 25 to 40 percent of capital expenditures for plant, equipment, and buildings, is applied against taxable income, and can be carried forward until the entire credit is used. According to the responses, neither ASM nor Angkasa has received investment tax credits.

D. *Other Medium- and Long-Term Government Loans.* Petitioners allege that the Industrial Development Bank, the Development Bank of Malaysia, the Borneo Development Corporation and the Sabah Development Bank provide medium- and long-term government loans on terms inconsistent with commercial considerations. According to the responses, neither ASM nor Angkasa had loans outstanding from the aforementioned banks during the review period.

E. *Export Credit Insurance.* Exporters may benefit from the provision of export credit insurance at premium rates which are inadequate to cover the long-term operating costs and losses of the insurance program. According to the responses, neither ASM nor Angkasa has participated in this program.

F. *Industrial Building Allowance.* In 1984, the government of Malaysia instituted an industrial building allowance for warehouses and bulk installations used for storing goods for export. The allowance consists of an initial deduction of ten percent of the cost of acquisition, followed by an annual deduction of two percent. According to the responses, neither ASM nor Angkasa claimed the industrial building allowance on the tax return filed during the review period.

G. *Increased Capital Allowance.* An increased capital allowance may be available to projects which the government of Malaysia deems desirable and which do not qualify for other incentive schemes. The allowance applies to qualifying building and plant expenditures incurred in establishing a new factory or modernizing an existing one. Companies are permitted to deduct 40 percent of the cost of modernizing production techniques in an existing factory and three percent of the cost of constructing a building. Companies purchasing a building may increase the allowable percentage by 50 percent. According to the responses, neither ASM nor Angkasa claimed the increased capital allowance on the tax return filed during the review period.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on July 21, 1986 at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW. Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within ten days after publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 14, 1986. Oral presentation will be limited to issues in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within ten days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 28, 1986.

[FR Doc. 86-12504 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-798-601]

Preliminary Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod From Zimbabwe

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Zimbabwe of carbon steel wire rod (wire rod). The estimated net bounty or grant is 51.35 percent *ad valorem* for all manufacturers, producers, or exporters in Zimbabwe of wire rod.

We are directing the U.S. Customs Service to suspend liquidation of all entries of wire rod from Zimbabwe that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination on or before August 11, 1986.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Ellie Shea, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438 or 377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Zimbabwe of wire rod. For purposes of this preliminary determination, the following programs are found to confer bounties or grants:

- Export Incentive Scheme; and
- Government Equity Infusions and Other Financial Assistance to Ziscosteel-Zimbabwe Iron & Steel Co. Ltd. for the Years 1982-1985.

We preliminarily determine the estimated net bounty or grant to be 51.35 percent *ad valorem* for all

manufacturers, producers, or exporters in Zimbabwe of wire rod.

Case History

On March 4, 1986, we received a petition in proper form from Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., filed on behalf of the U.S. industry producing wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Zimbabwe of wire rod, directly or indirectly, receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 24, 1986, we initiated an investigation (51 FR 10906). We stated that we expected to issue a preliminary determination on or before May 28, 1986.

Since Zimbabwe is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this merchandise materially injure, or threaten material injury to, a U.S. industry.

On April 1, 1986, we presented a questionnaire to the government of Zimbabwe, in Washington, DC, concerning the petitioners' allegations, and we requested a response by April 30, 1986. This date was extended to May 9, 1986 for the government response and May 12, 1986 for the company responses. On May 22, 1986, we received a partial response from the government of Zimbabwe. No response has been received from the manufacturers, producers, or exporters of wire rod in Zimbabwe.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-furnished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and value over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States*.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

The response provided by the government of Zimbabwe in this investigation was incomplete and untimely. Furthermore, no response was received from the manufacturers, producers, or exporters of wire rod in Zimbabwe. Therefore, for purposes of this preliminary determination, we are using the best information available as required under § 355.37 of our regulations (19 CFR 355.37). The Department has no record of past countervailing duty investigations or administrative reviews involving Zimbabwe and, therefore, we are unable to include such information in estimating the benefit from programs alleged in the petition to the bounties or grants. If we do not receive a complete response in time to verify the information submitted, we will continue to seek information from available sources to determine the countervailability and level of benefits of the programs under investigation. As best information available, we are using the estimates of benefits included in the petition. For equity infusions into Ziscosteel-Zimbabwe Iron & Steel Co. Ltd. (Zisco), we are also using information obtained from published sources. For the sales value used in calculating the *ad valorem* rates for the domestic bounties or grants, we are using, as best information available, the total sales value for Zisco, as provided in the response. We are using this value because petitioners provided no information on total sales value, and we were unable to obtain this figure from public sources. For those programs on which the petitioners provided no estimates of benefits and for which we were unable to develop information from published sources, we are requesting additional information to determine whether a bounty or grant is being conferred.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1985. Based upon our analysis of the petition and the best information available, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Zimbabwe of carbon steel wire rod under the following programs:

A. *Export Incentive Scheme.* Petitioners allege that, under the Export Incentive Scheme, the Zimbabwean wire rod industry receives the following benefits:

- a tax-free payment equal to at least nine percent of the f.o.b. value of qualifying exported goods;
- bonus allocations of foreign exchange calculated at the rate of one percent of the f.o.b. value of the exporter's manufactured exports; and
- a tax-free payment of five percent of the value of exports within a given period, which are over and above the company's exports registered for the same period during the previous year.

Based upon the best information available, we preliminarily determine that the companies under investigation received a tax-free payment equal to at least nine percent of the f.o.b. value of qualifying exported goods, resulting in an estimated net bounty or grant of nine percent *ad valorem*, and that they also received bonus allocations of foreign exchange calculated at the rate of one percent of the f.o.b. value of manufactured exports, resulting in an estimated net bounty or grant of one percent *ad valorem*.

Based upon the best information available, we preliminarily determine that the companies under investigation received an additional tax-free payment of five percent of the increase in the value of exports between 1984 and 1985. To calculate the benefit from this payment, we took five percent of the difference between the value of the 1984 and 1985 exports of wire rod to the United States, as reported in the Department of Commerce Special Summary Steel Invoice Data. We allocated that amount over the value of exports of wire rod to the United States in 1985, resulting in an estimated net bounty or grant of .51 percent *ad valorem*.

Therefore, to calculate the total estimated net bounty or grant received through the Export Incentive Scheme, we summed the *Ad valorem* rates found under each component to arrive at an estimated net bounty or grant of 10.51 percent *ad valorem*.

B. *Government Equity Infusions and Other Financial Assistance to Ziscosteel-Zimbabwe Iron & Steel Co., Ltd. for Years 1982–1985.* Petitioners

allege that Zisco, which is 49.7 percent state-owned, has benefitted from government equity infusions and other government financial assistance, including cash grants, on terms inconsistent with commercial considerations. Petitioners also allege that Zisco has been uncreditworthy and unequityworthy since 1982. Information submitted in the petition indicates that Zisco has been incurring losses since at least 1982.

As best information available, we have used petitioners' information which states that the government of Zimbabwe provided to Zisco 30 million Zimbabwe dollars ($Z30 million) in 1983 to cover the company's cash shorfalls and $Z200 million in 1984 for a capital development program. Petitioners have provided additional information indicating that the government of Zimbabwe provided $Z120 million in 1985 to the national railways and Zisco. As best information available, we are assuming that one-half of the $Z120 million was allocated to Zisco. Based on these figures, government assistance totaled $Z290 million for the period 1983–1985.

There is no indication in the petition of the form in which this government assistance was provided; therefore, for purposes of this preliminary determination, we are assuming that all government assistance to Zisco was in the form of equity infusions. Our own research has confirmed that Zisco has been incurring large losses since 1981. Therefore, as best information available, we are assuming that Zisco has been unequityworthy since the time of the first alleged equity infusion in 1983. Using information from the petition and from publications and materials maintained by the Department, we calculated the benefit from these infusions according to the rate of return shortfall methodology outlined in the Subsidies Appendix. Neither the petitioners nor the Department were able to obtain or develop information on Zisco's rate of return on equity. Therefore, as best information avalable, we are using Zisco's rate of return on sales, which we have developed based on Zisco's total sales in 1985, as provided in the response, and Zisco's losses in 1984 (the most recent year for which this statistic is available), as reported in the 1985 *Quarterly Economic Review of Zimbabwe and Malawi*. For the national average rate of return, we used the 1985 average monthly earnings yield for industrial shares of 6.36 percent, as published in the Reserve Bank of Zimbabwe's *Quarterly Economic and Statistical Review* (December 1985). We multiplied the rate of return shortfall by the total amount of equity received by Zisco since 183. We then allocated the aggregate benefit over the value of Zisco's total sales in 1985, resulting in an estimated net bounty or grant of 40.84 percent *ad valorem*.

II. Programs for Which We Need Additional Information

Information regarding the level of benefits received under the following programs was not supplied by petitioners. We also have been unable to obtain any information on the level of benefits or potential countervailability of these programs from any sources other than the petition. Therefore, we preliminarily determine that we need additional information on the following programs.

A. *Export Promotion.* Petitioners allege that the Zimbabwean wire rod industry benefits from export promotional assistance, including financial assistance for participation in trade expositions, from the Export Promotion Section of the Ministry of Trade and Commerce.

Since the respondents did not provide a complete response in this investigation, and the Department was not able to obtain any information about this program, we cannot quantify the amount of any bounty or grant that may have been received.

B. *Training Investment Allowance.* Petitioners allege that the Zimbabwean wire rod industry may benefit from a training investment allowance, available to businesses which construct new buildings and purchase new equipment. The allowance, which is to be used exclusively for employee training, is equivalent to fifty percent of the costs of new buildings and/or equipment.

Since the respondents did not provide a complete response in this investigation, and the Department was not able to obtain any information about this program, we cannot quantify the amount of any bounty or grant that may have been received.

C. *Regional Tax Incentives.* Petitioners allege that the Zimbabwean wire rod industry benefits from special tax incentives to encourage commercial and industrial development in prescribed "growth-point areas." Industries in the designated areas benefit from special depreciation rates, including an investment allowance of 15 percent on buildings, machinery, and furniture, and a special initial allowance of 100 percent, instead of the normal 2.5 percent, on new commercial buildings.

Since the respondents did not provide a complete response in this investigation, and the Department was not able to obtain any information about this program, we cannot quantify the amount of any bounty or grant that may have been received.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from Zimbabwe which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated net bounty or grant. The estimated net bounty or grant is 51.35 percent *ad valorem* for all manufacturers, producers, or exporters in Zimbabwe of carbon steel wire rod. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, if we receive complete responses in a timely manner, we will verify the information used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 30, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the confidential version and seven copies of the nonconfidential version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by June 23, 1986. Oral Presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is

held, within ten days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 28, 1986.

[FR Doc. 86-12569 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Civil Designs, Inc., From an Objection by the Massachusetts Coastal Zone Management Office

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal withdrawal.

On May 8, 1986, the Secretary of Commerce granted the request of Civil Designs, Inc. to withdraw its appeal filed under section 307(c)(3)(A) of the Coastal Zone Management Act. The appeal had been taken from an objection by the Massachusetts Coastal Zone Management Office (MCZM) to Civil Designs' alteration of a marina in Quincy, Massachusetts without necessary federal, state and local permits. The MCZM found Civil Designs' project, specifically the retaining wall and 3000 square feet of fill placed in wetlands, was inconsistent with the federally-approved Massachusetts Coastal Management Program.

After negotiations between the parties, Civil Designs agreed to and in fact has begun restoring the shoreline to its original condition in accordance with a plan submitted and approved by the Massachusetts Department of Environmental Quality Engineering. Consequently, because the basis for MCZM's objection will no longer exist, Civil Designs moved for dismissal of its appeal on April 16, 1986. The request was unopposed by the State of Massachusetts.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, 3001 Wisconsin Avenue NW., Room 270, Washington, DC 20235; (202) 673-5200.

SUPPLEMENTARY INFORMATION: Notice of the appeal was published in the Federal Register on February 21, 1986 (51 FR 6294).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: May 22, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-12499 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-08-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council and its advisory bodies will convene separate public meetings as follows:

Americanization Committee—will convene June 9, 1986 at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center auditorium, 2725 Montlake Boulevard, East, Seattle, WA, to continue deliberations regarding Council-established phaseout dates for foreign fishing and foreign processing. The Committee has conducted two previous meetings on April 18-19, and May 12, 1986. The June 9 meeting will be open to the public; however, no public testimony will be taken. The opportunity to submit written and oral testimony was provided at the April meeting. Questions regarding the June meeting should be directed to Ron Miller, Special Advisor, North Pacific Fishery Management Council, 411 West 4th Avenue, Suite 2D, Anchorage, AK 99501; telephone: (907) 274-4563.

Council—will convene June 25, 1986 at 9 a.m., and continue through approximately noon, June 27, at the Kodiak Community College, Kodiak AK, to approve for public review proposed changes (Amendment 15) to the fishery management plan (FMP) for Gulf of Alaska groundfish. Proposed Amendment 10 to the Bering Sea/Aleutian Islands Groundfish FMP will be given final approval to go to Secretarial review. The Council also will make final decisions on its role in management of Alaska salmon fisheries and discuss procedures for managing Tanner crab.

A revised joint venture policy will be reviewed and sent out for public comment following the meeting. The need for company limits on both bycatch and target species will be one of the major discussion items in the revised policy. The Council also will receive recommendations from an industry workgroup on amendments to the Magnuson Fishery Conservation and Management Act relating to foreign directed and joint venture fisheries. There also will be a status report on Kodiak trawl closures from an industry workgroup, and the Council will review trawl restrictions in the Bristol Bay Pot Sanctuary. The Council will meet in executive session at least once during the week to review ongoing litigation and foreign affairs.

Scientific and Statistical Committee and Advisory Panel—will convene meetings at 9 a.m. on June 23, also at the Kodiak Community College. Other plan team and workgroup meetings may be held on short notice during the week.

For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: May 30, 1986.

Carmen Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-12573 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-355,953 (4,578,506)
Process for the Preparation of Tris(N-Carbalkoxylaminomethyl)-Phosphine Oxides and Sulfides

SN 6-818,567
Temperature Adaptable Textile Fibers and Method of Preparing Same

SN 6-822,574

Apparatus for Maintaining Stability of Mobile Land Vehicles on Sloping Terrain

Department of Commerce

SN 6-834,725
Three and Five Axis Laser Tracking Systems
SN 6-838,726
Method and Apparatus for Measuring Machine Cutting Tool Positions

Department of Health and Human Services

SN 6-186,735 (4,359,457)
Anti Thy 1.2 Monoclonal Antibody-Ricin Hybrid Utilized as a Tumor Suppressant
SN 6-199,781 (4,356,117)
Chemical Modifications of Proteins Which Induce New Receptor Specificities and Therefore Elicit New Effects in Cells
SN 6-341,572 (4,397,843)
Mannose-6-Phosphate-Low Density Protein Reagent Effective Against Hypercholesterolemia
SN 6-350,222 (4,520,011)
Inactivating Protein Synthesis by Incubating Anti-Thy 1.1 Ricin A Chain Monoclonal Antibody Hybrids with Target Protein Cells
SN 6-350,223 (4,440,747)
Monoclonal Antibody-Ricin Hybrids as a Treatment of Murine Graft-Versus-Host Disease
SN 6-399,257 (4,500,637)
Prevention of Graft Versus Host Disease Following Bone Marrow Transplantation
SN 6-456,401
Improved Protocol for the Treatment of Graft Verus Host Disease
SN 6-799,464
Protective Synthetic Peptide Against Malaria and Encoding Gene
SN 6-817,109
Method and Additives for Improving the Quality and Shelf Life of Stored Blood
SN 6-823,115
Improved Angle ROTOR Coil Planet Centrifuge for Countercurrent Chromatography and Particle Separation
SN 6-836,414
A Human Gene Related to but Distinct from EGF Receptor Gene
SN 6-844,503
Human Growth Hormone Produced by Recombinant DNA in Mouse Cells
SN 6-849,289
Vaccine Against RSV Infection

Department of the Air Force

SN 5-806,048 (4,577,192)
Electronic Countermeasures False Target System
SN 6-396,261 (4,577,812)
Centrifugally Operated Moving-Mass Roll Control System
SN 6-417,928 (4,564,839)
Feature Referenced Error Correction Apparatus
SN 6-486,478 (4,571,578)
Intrusion Barrier and Detection Apparatus
SN 6-546,222 (4,577,891)
Torque Limiting Collar
SN 6-585,092 (4,572,630)
Variable Contrast Direct Read-Out Vision Tester
SN 6-671,395 (4,574,700)
Solid Rocket Motor with Nozzle Containing Aromatic Amide Fibers
SN 6-721,835 (4,578,432)
Method for Making Heterocyclic Block Copolymer
SN 6-721,973, (4,578,435)
Method for Making Heterocyclic Block Copolymer
SN 6-722,028 (4,578,434)
Method for Making Heterocyclic Block Copolymer
SN 6-733,294
Ferrous and Sulfide Treatment of Electroplating Wastewater
SN 6-735,128
Remotely Controlled Aircraft Tire Inflation/Deflation Value
SN 6-797,581
Self-Retained Platform Cooling Plate for Turbine Vane
SN 6-805,518
Fatigue Test Machine
SN 6-811,901
Electronic Warfare Software System Design an Integrated Approach
SN 6-816,595
Low Phase Noise Two Port Voltage Controlled Oscillator
SN 6-817,637
A Conductively Cooled Laser Diode Array Pumped Laser
SN 6-817,714
Rocket Exhaust Probe
SN 6-818,922
Fiber Optic Rotary Switching Device
SN 6-818,923
Fast Response High-Torque Clutch Unit
SN 6-818,924
Test Configuration and Procedure for Determining the Operational Status of a Phased Array Antenna
SN 6-818,944
Non-Contact Polishing
SN 6-818,945
Micro Mushroom Instrumentation System
SN 6-819,073
Adaptive Microwave Channelization
SN 6-819,185
Improved Robotic Kitting Station
SN 6-819,322
Phenylquinoxaline Resin Compositions
SN 6-819,334
Phenylquinoxaline Resin Monomers
SN 6-819,558
Laser Induced Selective Electroless Plating
SN 6-822,579
Monlithic Low Noise Amplifier with Limiting
SN 6-823,872
Portable Glide Slope Indicator
SN 6-824,922
Synthesis of R_fOTeF_5
SN 6-824,998
Pulse Repetition Modulator Apparatus
SN 6-825,107
Double Sideband Generation with Serrodyne Modulators
SN 6-831,894
Motion Sensitive Frame Integration
SN 6-831,897
Monolithic Area for Laser Ranging Application
SN 6-831,906
CCD Gate Definition Process
SN 6-832,114
Low Mass Diffusion Bonding Tools
SN 6-836,043
Triple Cavity Laser
SN 6-836,850
Ductless Acoustical Noise Attenuator
SN 6-838,855
Flexible (Multi-Mode) Waveform Generator
SN 6-838,970
Active Matching Transmit/Receive Module
SN 6-838,976
Gas Mixture for Triggerable Spark Gaps

Department of the Army

SN 6-580,496 (4,578,384)
Polylactic-Polyglycolic Acids Combined with an Acidic Phospholipid-Lysozyme Complex for Healing Osseous Tissue
SN 6-740,610 (4,580,567)
Suture Needle Holder
SN 6-841,083
Random Beam Positioning Surveillance Process
SN 6-845,871
Selectively Etching Microstructures in a Glow Discharge Plasma
SN 6-848,415
A Linear Algorithm for Non-Linear Interpolation for Computer Aided Designs

Tennessee Valley Authority

SN 6-681,157 (4,557,909)
Method to Improve Acidulation Quality of North Carolina Phosphate Rock

[FR. Doc. 86-12521 Filed 6-3-86; 8:45 am]
BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License, Whale Scientific, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Whale Scientific, Inc., having a place of business at Commerce City, Colorado, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Implantation Device for Use In Vivo Stimulation and Collection of Monocytes from Peritoneum of Vertebrate," U.S. Patent 4,505,277. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-12488 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Peoples' Republic of China

May 28, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive of December 24, 1985, as amended, which established import limits for specified categories of cotton, wool and man-made fiber textile products, including women's girls' and infants' cotton skirts in Category 342, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, was published in the Federal Register on December 30, 1985 (50 FR 53182). Under the terms of the Bilateral Cotton Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the restraint limit for Category 342 is being increased from 184,807 dozen to 193,837 dozen by the application of swing for the agreement year which began on January 1, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983, (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston, III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 24, 1985, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which established restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on May 28, 1986, the directive of December 24, 1985 is hereby further amended to increase the previously established restraint limit for cotton textile products in Category 342 to 193,837 dozen [1] under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended.[2]

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1985.

[2] The agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553

Sincerely,

William H. Houston, III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12502 Filed 6-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

May 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 30, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Mexico have agreed to further amend their Bilateral Cotton, Wool and Man-Made fiber Textile Agreement of February 26, 1979, as amended and extended, to increase the consultation levels for Categories 334 (men's and boys' other cotton coats), 335 (women's, girls' and infants' cotton coats), 340 (men's and boys' cotton shirts), 359pt. (all TSUSA numbers except 361.0822, 361.6510, 384.0928 and 384.5227), 363 (cotton terry and other pile towels), 433 (men's and boys' wool suit-type coats), 604-A (only plied acrylic spun yarn in T.S.U.S.A. number 310.5040), and 640 (men's and boys' woven shirts of man-made fibers), produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986. The letter to the Commissioner of Customs which follows this notice implements these increases.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14,

1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 8, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1988).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

May 30, 1996.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of February 4, 1986, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1996 and extends through June 30, 1995.

Effective on May 30, 1996, the directive of February 4, 1986 is hereby further amended to increase the following limits:

Category	Amended 6-mo limit [1]
334	34,214 dozen.
335	39,089 dozen.
340	95,000 dozen.
359 pt. [2]	217,282 pounds.
363	3,809,809 numbers.
433	10,000 dozen.
604-A [3]	475,000 pounds.
640	190,800 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1995.
[2] In Category 359, all TSUSA numbers except 381.0552, 381.6510, 384.0628, and 384.5227.
[3] In Category 604, only T.S.U.S.A. number 310.5949.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-12581 Filed 6-3-96; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for a Proposed Ice Jam Flood Control Project on the Missisquoi River in the Village of Richford, Franklin County, VT

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY:

1. Description of Proposed Action.

The proposed project consists of a low overflow dam and a minor channel modification. The dam is an ogee weir located at 750 feet upstream of the Main Street Bridge with the crest elevation at 442.2. The crest length is 215 feet and the dam height is 12 feet. The base width is 30 feet. At the heel there is a 5 foot wide concrete key the full length of the spillway. At the toe there is a key extending 3 feet below the base of the dam. Downstream of the dam for a distance of 40 feet, there is a concrete apron with a stepped endsill. The abutment walls are cenli-levered concrete retaining walls that extend to the 100 year flood stage adjacent to and upstream of the dam. A capability for draining the dam is provided by a 10 foot stoplogged drain gate. The channel modification is located to the north of Big Island between Stations 87+50 and 93+00 and is approximately 750 feet downstream of the Main Street Bridge. The Channel modification consists of raising the weir into the Pilot Channel to elevation 430.0 and filling in the left bank to narrow the Main Channel between Stations 87+50 and 93+00. The proposed dam also includes provisions for hydopower at the site and the construction of a fish ladder to allow migration of resident fish.

2. Reasonable Alternatives

A reasonable alternative to the proposed dam is no action. Other alternatives considered include: a dam located 250 feet upstream of the Main Street Bridge and a dam with multiple stoplog openings.

3. Scoping Process

a. Public involvement

Preparation of the Draft Environmental Impact Statement (EIS) and the Detailed Project Study (DPS) involves coordination with several Federal, State and local agencies as well as coordination meetings held during the plan formulation stage. On March 19, 1996 the Corps conducted a public meeting attended by Congressional Representatives, U.S. Fish and Wildlife Serviced (USFWS), Vermont Agency of Environmental Conservation (VAEC) and local interests to review the Corps' alternative plans of improvement, discuss future steps necessary before a project for the Town of Richford could be recommended and to obtain the views and comments of local interests.

b. Significant issues requiring in-depth analysis

Water quality impacts; archaeological and cultural resources impacts; aquatic resources impacts; and terrestrial resources impacts.

c. Assignments

U.S. Fish and Wildlife Service will be coordinated with concerning the design of a fish ladder to be constructed as an integral part of the proposed dam.

d. Environmental review and consultation

Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and Corps regulations ER 200–2–2 dated August 25, 1990 (revised March 2, 1991).

4. Scoping Meeting will not be held.

5. Estimate date of statement availability July 1996.

Address:

Project Manager, Linda Baega, ATTN: NANPL–PB, Tel No. (212) 264–1060.

EIS Coordinator, Karen Gastina, ATTN: NANPL–E, Tel No. (212) 264–4662.

US Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10007.

Dated: May 23, 1996.

Richard J. Morelde,

Acting Chief, Planning Division.

[FR Doc. 96-13605 Filed 6-3-96; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs; Education.

ACTION: Notice of meeting.

SUMMARY: This sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices Programs; WEEA and Civil Rights Committees. The agenda will include Committee reports, election of officers, discussion of Council goals and objectives, budget review and general discussion. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend, and that a portion of the Executive Committee meeting will be closed.

DATES: June 11, 1986, 7:00 p.m. to 7:30 p.m., Executive Committee [closed session].

7:30 p.m. to close of business [open session].

June 12, 1986, 2:00 p.m. to close of business. Meetings of Federal Policies, Practices and Programs Committee; Civil Rights Committee and WEEA Program Committee.

June 13, 1986, 8:00 a.m. to 3:00 p.m., Full Council Meeting.

ADDRESS: All meetings will be held at the Capitol Hill Hotel, 200 C Street, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia A. Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036, [202] 634-6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) make recommendations to the Secretary with respect to the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on Wednesday, June 11, 1986, from 7:30 p.m. until close of business. From 7:00 p.m. to 7:30 p.m., the Executive committee will meet in closed session to discuss personnel matters. At 7:30 p.m. the Executive Committee will meet in open session. The agenda will include confirmation hearing up-date, budget review, forum up-date, goals and objectives review and orientation up-date.

The meetings of the Federal Policies, Practices and Programs; Civil Rights and WEEA Programs Committees, will take place on Thursday, June 12 at 2:00 p.m. until close of business.

The agenda for the Federal Policies, Practices and Programs Committee will include discussion of cataloguing project and forum up-date, unfinished business and new business.

The agenda for the Civil Rights Committee will include new legislation, unfinished business and new business.

The agenda for the WEEA Program Committee will include priority recommendations, discussion of site visits, unfinished business and new business.

The full Council will meet June 13, 1986, beginning at 8:00 a.m. to 3:00 p.m. The agenda will include election of officers, budget review, committee reports, discussion of goals and objectives, forum up-date and student financial aid briefing.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC, on May 16, 1986.

Sally A. Todd,

Executive Director.

[FR Doc. 86-12514 Filed 6-3-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Historical Factors Task Group; Meeting

Notice is hereby given that the Historical Factors Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Historical Factors Task Group is reponsible for the identification and analysis of events, governmental policies, and actions (federal, state, and local), and the reactions of the oil and gas industries to such events, policies and actions (i.e., the "factors") that affect the supply of and demand for oil and gas in the U.S. since the end of World War II.

The Historical Factors Task Group will hold its third meeting on Wednesday, June 11, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC.

The tentative agenda for the Historical Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discussion of the factors affecting natural gas supply and demand.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Historical Factors Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Historical Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 29, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-12577 Filed 6-3-86; 8:45 am]

BILLING CODE 6450-01-M

American Indian Tribal Participation in the Implementation of the Nuclear Waste Policy Act of 1982

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent to Increase the Scope of Work under Grant Number DE-FG01-84NE44506 with National Congress of American Indians (NCAI).

SUMMARY: The United States Department of Energy, Office of Civilian Radioactive Waste Management, Office of Policy and Outreach, is preparing a grant modification to increase the work effort under Grant Number DE-FG01-84NE44506.

The purpose of the grant is to encourage American Indian Tribal participation in the consultation and cooperative decision making process required by the Nuclear Waste Policy Act.

Eligibility—Award of this effort has been limited to NCAI because of its unique qualifications as a non-profit Indian Organization and its familiarity with the project. NCAI provides at this time the only demonstrated capability to provide this needed liaison activity.

The term of this grant effort shall be three months with an estimated cost of $34,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Diana

Mink, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on May 22, 1986.

Edward T. Lovett,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 86-12570 Filed 6-3-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-43; OFP Case No. 61061-8317-20-24]

Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by Corona CoGen, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Corona CoGen, Inc.

SUMMARY: On May 13, 1986, Corona CoGen, Inc. (Corona CoGen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for a cogeneration facility to be located in Corona, Riverside County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Corona CoGen is petitioning for an exemption based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

The proposed facility for which the petition was filed will consist of one natural gas-fired combustion turbine generator, and one unfired heat recovery steam generator which will produce approximately 47.8 megawatts (net) of electricity. The plant will burn natural gas only. It is expected that over 50 percent of the net annual electric power produced by the cogenerator will be sold to Southern California Edison, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 503.3. The facility will produce approximately 35,500 pounds of steam per hour which will supply Integrated Protein Technology Company's heating and process steam needs. Corona CoGen will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before July 21, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-86-43 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-093, 1000 Independence Avenue, Washington, DC 20585, Telephone (202) 252-6768;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy Forrestal Building, Room 8A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.6 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), Corona CoGen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Corona CoGen is entitled to the exemption requested. That determination will be based on the entire of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 29, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12579 Filed 6-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-42; OFP Case No. 67054-6320-20, 21-24]

Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by Sierra CoGen, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Sierra CoGen, Inc.

SUMMARY: On May 12, 1986, Sierra CoGen, Inc. (Sierra Cogen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for a cogeneration facility to be located in Bakersfield, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Sierra CoGen is petitioning for an exemption based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

The proposed facility for which the petition was filed will consist of two natural gas-fired combustion turbine generators, and two unfired heat recovery steam generators which will produce approximately 48.75 megawatts (net) of electricity. The gas turbine exhaust gases will be ducted to the heat recovery steam generators. The steam generators will utilize the heat in the hot exhaust gases to produce approximately 108,400 pounds per hour of steam to be used for enhanced oil recovery by Cities Service Oil and Gas Corporation. The electricity produced will be sold to the Pacific Gas & Electric Company.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before July 21, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case control Unit, Office of Fuels, Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-42 should be printed in the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6769.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), Sierra CoGen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact anaylsis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Sierra CoGen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 29, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12580 Filed 6-3-86; 8:45 am]

BILLING CODE 6450-01-M

Settlement Agreements; Hearing in Stripper Well Settlement

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Hearing on Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation.*

SUMMARY: The Economic Regulatory Administration of the United States Department of Energy (DOE) gives notice that a hearing has been scheduled before the Honorable Frank Theis on the Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378 (D. Kan.) in the United States District Court for the District of Kansas in Wichita at 1:30 P.M. on June 12, 1986. *See* 51 FR 19380, May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Carl A. Corrallo, Solicitor, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, 202–252–4167.

A copy of the Agreement is available for inspection or copying at the DOE Freedom of Information Reading Room. The Reading Room is located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, and can be reached at 202–252–6020.

Issued in Washington, DC, on May 30, 1986.

Marshall A. Staunton,
Acting Administrator, Economic Regulatory Administration.

[FR Doc. 86–12578 Filed 6–3–86; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–486–000 et al.]

Electric Rate and Corporate Regulation Filings; Interstate Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. ER86–486–000]

May 28, 1986.

Take notice that Interstate Power Company (Company) tendered for filing on May 15, 1986, new Electric Service Agreements between the following communities and Interstate Power Company:

Community name	FERC No.
Lakefield, MN	67
Springfield, MN	114
Westbrook, MN	105

These agreements provide for lower transformer losses when low side metering is involved, and increase in average power factor requirements and the implementation of late payment penalties.

Interstate Power Company also tendered for filing on May 15, 1986, a revision to the Electric Service Agreement between Interstate Power Company and the City of Windom, Minnesota (FERC No. 123, Supplement 1).

This supplement revised the basic agreement to provide for a reduction in the transformer loss compensation percentage, and increase in average power factor, the inclusion of late payment provisions and a plant test requirement.

Comment date: June 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Adams-Marquette Electric Cooperative, Central Wisconsin Electric Cooperative, Columbus Rural Electric Cooperative, Waushara Electric Cooperative, Inc. and Rock County Electric Cooperative v. Wisconsin Power and Light Company

[Docket No. EL86–41–000]

May 29, 1986.

Take notice that on May 13, 1986, Adams-Marquette Electric Cooperative, Central Wisconsin Electric Cooperative, Columbus Rural Electric Cooperative, Waushara Electric Cooperative, Inc. and Rock County Electric Cooperative (hereinafter "Coops") by and through their attorneys Dykema, Gossett, Spencer, Goodnow & Trigg, tendered for filing this Complaint under Rule 206 of this Commission's Rules of Practice and Procedure, 18 CFR 385.206, seeking a Commission Order which:

1. Opens an investigation into Wisconsin Power and Light Company's (hereinafter "WP&L") possible improper collection of certain fixed gas costs through its fuel adjustment clause; and

2. Requires WP&L to comply with the terms of its own tariff by constructing and paying for transmission line extensions required to serve W–2 customers.

Specifically, the Coops request the Commission to issue an order which provides the following:

1. Institutes an investigation into the properity of WP&L's collection of fixed charges through its fuel cost adjustment clause. If it is determined that said collection was improper, this proceeding would result in a refund to wholesale customers of the overcharge plus interest;

2. Finds that WP&L's failure to construct transmission line extensions in accordance with the terms of its W–2 tariff constitutes a violation of § 35.1 of this Commission's Regulations; and

3. Requires WP&L to cease and desist its violation of § 35.1 of this Commission's Regulations and to adhere to the terms of its tariff.

Comment date: June 30, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Bangor Hydro-Electric Company

[Docket No. ER86–501–000]

May 28, 1986.

Take notice that on May 22, 1986, Bangor Hydro-Electric Company (Bangor) tendered for filing a proposed rate schedule pertaining to a Purchase Sale Agreement (Agreement) made as of March 26, 1986 between Bangor Hydro-Electric Company (Bangor) and UNITIL Power Corp. (UNITIL) for the sale of power to UNITIL.

Bangor states that the Agreement provides for a sale to UNITIL of 25,000 kilowatts of unit power from Bangor's entitlement in four small power production facilities and up to 6,000 kilowatts of system power from a mix of Bangor's power resources for a period of approximately fifteen years commencing on or about November 1, 1986.

Bangor requests that the Commission permit the rate schedule to become effective on October 1, 1986.

Bangor states that a copy of the rate schedule has been mailed or delivered to UNITIL, Bedford, N.H.

Comment date: June 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Cities and Villages of Belmont, Black Earth, Brodhead, Columbus, Evansville, Gresham, Hazel Green, Hustisford, Juneau, Lodi, Mount Horeb, New Glarus, Pardeeville, Plymouth, Princeton, Reedsburg, Richland Center, Sauk City, Sheyboygan Falls, Stoughton, Sun Prairie, Wisconsin Rapids and Wonewoc, Wisconsin, and Pioneer Power & Light Company, and Wisconsin Public Power Incorporated SYSTEM, Complainants, v. Wisconsin Power and Light Company, Respondent.

[Docket No. EL86–40–000]

May 29, 1986.

Take notice that on May 8, 1986, cities and villages of Belmont, Black Earth, Brodhead, Columbus, Evansville, Gresham, Hazel Green, Hustisford, Juneau, Lodi, Mount Horeb, New Glarus,

BEST COPY AVAILABLE

Pardeeville, Plymouth, Princeton, Reedsburg, Richland Center, Sauk City, Sheyboygan Falls, Stoughton, Sun Prairie, Wisconsin Rapids and Wonewoc, Wisconsin, and Wisconsin Public Power Incorporated SYSTEM and Pioneer Power & Light (collectively, the Complainants) tendered for filing a complaint against Wisconsin Power & Light Company pursuant to sections 206 and 306 of the Federal Power Act (16 U.S.C. 825e) and Rule 206 of the Commission's Rules of Practice and Procedure. The Complaint alleges WP&L has violated section 205 of the Federal Power Act (16 U.S.C. 824d) and §35.14 (18 CFR 35.14) of the Federal Energy Regulatory Commission's FERC's Regulations by improperly collecting from the Complaints through operation of the Company's fuel adjustment clause certain fixed gas costs associated with the provision of boiler fuel by WP&L's gas utility to the Company's electric utility.

Specifically, the Complainants ask that the Commission commence an investigation and hearing concerning the fixed gas cost issue, find that WP&L violated section 205 of the Act and § 35.14 of the Commission's Regulations by improperly collecting fixed gas costs through the fuel adjustment clause, determine the amount of overcollection and direct WP&L to refund to the Complainants their share of the overcollection, with interest.

Comment date: June 30, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public investigation.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12583 Filed 6-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-344-000]

Consolidated Gas Transmission Corp.; Granting Extension of Time

May 28, 1986.

On February 25, 1986, Consolidated Gas Transmission Corporation (Consolidated) applied to the Federal Energy Regulatory Commission for a certificate to construct 33.5 miles of 24-inch natural gas pipeline, called Line No. TL-460, in Onondaga and Oswego Counties, New York. A measuring station in Oswego County called the Biddlecum Road Measuring Station was also proposed. The pipeline and measuring station were to be used to deliver gas to Niagara Mohawk Corporation, a gas distribution company, to accommodate anticipated increases in annual and peak day demand for natural gas. On May 8, 1986, the Commission issued a notice entitled "Notice of Intent to Prepare an Environmental Assessment on the Proposed Line No. TL-460 and Biddlecum Road Measuring Station, Request for Comments, and Notice of Public Meeting." 51 FR 17227 (May 9, 1986). The notice described the project and established dates for public comment and a public meeting.

On May 23, 1986, Consolidated filed a motion to postpone the June 2, 1986 public meeting regarding the proposed project until June 30, 1986. The meeting was to be held in Baldwinsville, New York. Consolidated also requests that FERC extend the deadline for its response to staff's May 16, 1986, data request from June 9, 1986, to June 20, 1986. Consolidated states that these extensions are necessary because Niagara Mohawk Corporation is revising its market data and estimate of delivery requirements, which may require changing the proposed facilities. It also states that such changes could affect the alternative proposals being reviewed by the staff. Consolidated states that it plans to file an amendment to its original application by June 16, 1986.

Consolidated's request for extensions of time are granted, with the exception that no date will be set for the public meeting. The motion indicates that Consolidated is not ready to proceed with the project as proposed. Since Consolidated's amendment may include changes in facility requirements, it is inappropriate to proceed with the public meeting until after the amendment is filed. After Consolidated files its amendment and the staff and parties have had time to review it, a new notice to prepare an environmental assessment, request for comments, and notice of public meeting will be issued. The new notice will describe the amended proposal and will set new dates for public comments and a public meeting. Since the notice of May 8, 1986 is no longer relevant, it is hereby withdrawn.

Accordingly, the public meeting on June 2, 1986 is postponed until further notice and the deadline for Consolidated responding to staff's data request is extended until June 20, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12584 Filed 6-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-80-000]

Jupiter Energy Corp.; Filing

June 2, 1986.

Take notice that Jupiter Energy Corporation ("Jupiter") on May 23, 1986 tendered for filing proposed rate schedules covering transportation services performed by Jupiter for its three jurisdictional customers, Union Oil, Philips Petroleum Company, and Kerr-McGee Corporation. Jupiter proposes by this rate schedule filing to increase the rate at which it renders transportation service. The proposed rate would increase revenues from jurisdictional transportation service by $272,144 based on the 12 month period ended December 31, 1985, as adjusted. Jupiter requests an effective date of June 23, 1986.

Jupiter states that the reasons for the proposed transportation service rate increase are that its costs of rendering such services are different now than they were when the existing rate was established in 1966, that Jupiter's transportation volumes have declined and continue to decline, and that Jupiter is not presently recovering even the out-of-pocket costs of such service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12565 Filed 6-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER81-426-001, ER82-483-000, and EL81-12-001]

Middle South Services, Inc.; Compliance Filing

May 28, 1986.

Take notice that on May 19, 1986, Middle South Services, Inc. tendered for filing six copies of revised pages 5, 6 and 7 of Article II; revised page 11 of Article III; revised page 13 of Article IV; revised page 1-3 of Service Schedule MSS-1 and revised pages 3-3, 3-4 and 3-5 of Service Schedule MSS-3 of the 1982 System Agreement.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before June 6, 1986. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12566 Filed 6-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-428-000]

Mobil Oil Corporation et al.; Application

May 28, 1986.

Take notice that on May 12, 1986, Mobil Oil Corporation, Mobil Producing Texas & New Mexico Inc., Mobil Oil Exploration & Producing Southeast Inc. and Mobil Exploration and Producing North America Inc. (jointly referred to as "Mobil") field an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales with pre-granted abandonment. The authority sought therein would grant limited-term abandonment of sales of gas released by purchasing pipelines and the resale of that gas with pre-granted abandonment, pursuant to section 7 of the Natural Gas Act. These authorizations are being requested, effective immediately. Eligibility for these authorizations is limited to gas with a ceiling price in excess of the lawful price under NGPA section 109.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12567 Filed 6-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-192-002]

Northern Natural Gas Co., a Division of InterNorth, Inc.; Filing

June 2, 1986.

Take Notice that on May 23, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariffs, Original Volume No. 2:

Original Sheet No. 966a
First Revised Sheet No. 990

These sheets consist of supplements dated June 8, 1983 to Rate Schedule X-63, a Gas Exchange Agreement dated April 1, 1967 between Northern Natural Gas Company and Cabot Petroleum Corporation. The supplements add two additional delivery points to the agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12568 Filed 6-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-429-000]

Phillips Petroleum Co., Application

May 30, 1986.

Take notice that on May 16, 1986, Phillips Petroleum Company (Phillips) filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the provisions of 18 CFR Parts 154 and 157 (1) authorizing blanket limited-term abandonment; (2) authorizing blanket limited-term certificate for the resale of gas into interstate commerce; (3) authorizing pre-granted abandonment of sales for resale; and (4) authorizing limited-term transportation and pre-granted abandonment.

The authorizations requested therein will permit Phillips to respond expeditiously to the release of shut-in gas supplies resulting in greater market efficiency and savings to the consumer.

Specifically, Phillips requests the Commission to authorize:

(1) Blanket limited-term abandonment for a period of two years to permit sales for resale of NGA gas previously certificated by the Commission to the extent natural gas is released by the interstate pipelines or not currently subject to a valid written contract;

(2) Sales for resale natural gas subject to the NGA for which the maximum lawful price is higher than the NGPA Section 109 ceiling price;

(3) Sales for resale in interstate commerce without market limitations of NGA gas produced from interests attributable to Phillips and its joint interest owners.

(4) Pre-granted abandonment of any sale for resale pursuant to the blanket certificate issued herein;

(5) Sales for resale in interstate commerce, NGA gas subject to gas sales contracts which has been expired for three months or more and have not been renegotiated; and,

(6) That natural gas which is sold pursuant to authorizations therein, be transported by any willing transporter to effectuate the sale of gas.

Any person desiring to be heard or to protest with reference to said application should on or before June 16, 1986 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing, therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Phillips is otherwise advised, it will be unnecessary for Phillips to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12569 Filed 6-3-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-380-000]

The Washington Water Power Co.; Filing

May 28, 1986.

Take notice that on May 21, 1986, The Washington Water Power Company (WWP) tendered for filing materials regarding Average System Cost (ASC) for the Washington and Idaho jurisdictions pursuant to its Residential Purchase and Sale Agreement with the Bonneville Power Administration. These materials include ASC for Washington and Idaho reflecting the revised methodology, and effective generally from October, 1984 to February, 1985, and ASC for Washington and Idaho based on increases in the costs of capital, investment, and operating expenses as approved by state regulatory commissions, and effective from February, 1985 to the present. Because WWP has deemed its ASC as being equal to the Bonneville Priority Firm rate, no residential exchange benefits currently accrue to them and this filing has no retail or wholesale rate effect.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12570 Filed 6-3-86; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180662; FRL-3024-4]

Emergency Exemptions; Fluazifop-butyl, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pest in the 9 States listed below. These exemptions, issued during the month of March, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of fluazifop-butyl on garlic to control grasses; March 31, 1986 to July 1, 1986. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of fluazifop-butyl on dry bulb onions to control barnyard and rabbitfoot grasses; March 17, 1986 to September 1, 1986. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of metalaxyl on strawberries to control red stele disease; March 17, 1986 to November 30, 1986. (Jim Tompkins)

4. Colorado Department of Agriculture for the use of fenvalerate on winter wheat to control the pale western cutworm and/or the army cutworm in 24 Colorado counties; March 26, 1986 to June 30, 1986. (Jack E. Housenger)

5. Florida Department of Agriculture and Consumer Services for the use of avermectin on chrysanthemums, gypsophila, gerbera daisies, and snapdragons to control serpentine leafminers; March 12, 1986 to March 11, 1987. A notice of receipt was published in the Federal Register of February 18, 1986 (51 FR 6034), with no comments received. The rationale for issuance is based on:

a. There are no registered alternative pesticides which will provide adequte control of leafminers on ornamental flowers.

b. A significant economic loss my occur if a suitable pesticide is not made available. (Libby Pemberton)

6. Michigan Department of Agriculture for the use of fluazifop-butyl on dry bulb onions grown on muck soil to control grasses; March 27, 1986 to September 1, 1986. (Jim Tompkins)

7. Minnesota Department of Agriculture for the use of the active ingredients 6-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester on sunflowers to control wild mustard; March 14, 1986 to August 15, 1986. A notice of receipt was published in the Federal Register of January 8, 1986 (51 FR 779); issuance is based on:

a. No postemergent herbicides are registered for control of wild mustard in sunflowers. Other products tested for this use are economically unacceptable.

b. The potential loss of $4.1 million threatens the long-term financial viability of the sunflower industry in this State. (Libby Pemberton)

8. Montana Department of Agriculture for the use of fenvalerate on oats, barley, and wheat to control pale western cutworms and/or the army cutworm; March 20, 1986 to June 30, 1986. (Jack E. Housenger)

9. North Dakota Department of Agriculture for the use of the active ingredients 6-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester on sunflowers to control wild mustard; March 14, 1986 to August 15, 1986. A notice of receipt published in the Federal Register of January 2, 1986 (51 FR 60); issuance is based on:

a. No postemergent herbicides are registered for control of wild mustard in sunflowers. Other products tested for this use are economically unacceptable.

b. The potential loss of $7.9 million threatens the long-term financial

viability of the sunflower industry in this State. (Libby Pemberton)

10. South Dakota Department of Agriculture for the use of the active ingredients 6-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester on sunflowers to control wild mustard; March 14, 1986 to August 15, 1986. (Libby Pemberton)

11. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-butyl on dry bulb onions grown on muck soil to control grasses; March 28, 1986 to September 1, 1986. (Jim Tompkins)

12. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of iprodione on ginseng to control leaf and stem blight; March 25, 1986 to September 15, 1986. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: May 22, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-12377 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00227; FRL-3024-3]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel to review the Office of Drinking Water's Draft Health Advisories for Fifteen Pesticide Chemicals. The meeting will be open to the public.

DATES: Wednesday and Thursday, June 25 and 26, 1986, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA. (703-557-7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is: Review of the Office of Drinking Water's Draft Health Advisories for the following 15 pesticide chemicals: alachlor, aldicarb, carbofuran, chlordane, 2,4-D, dibromochloropropane (DBCP), 1,2-dichloropropane, endrin, ethylene dibromide, heptachlor/heptachlor epoxide, lindane, methoxychlor, oxamyl, toxaphene, and 2,4,5-TP.

The Office of Drinking Water, through its Health Advisory Program, has been providing health effects guidance, along with technical assistance on analytical methodology and treatment techniques, to regional, State and local officials facing incidents of contamination of drinking water sources and supplies by chemicals for which no national drinking water standards existed. The Office of Drinking Water has prepared Draft Health Advisory documents dated September 30, 1985 for each of the 15 pesticide chemicals and has requested that the FIFRA Scientific Advisory Panel evaluate each of the Health Advisories for the 15 pesticide chemicals.

Health Advisories describe concentrations of contaminants in drinking water at which adverse non-carcinogenic effects would not be expected to occur. A margin of safety is included to protect senstive members of the population. Health Advisories are not legally enforceable Federal standards. They are subject to change as new and better information becomes available. To obtain copies of the Draft Health Advisory documents for specific substances please write to: Penelope Fenner-Crisp, Manager, Health Advisory Program, Criteria and Standards Division (WH-550), Environmental Protection Agency, Rm. E-1101C, 401 M St., SW., Washington, DC 20460, (202-382-7589).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than June 16, 1986, in order to ensure appropriate consideration by the Panel.

Dated: May 23, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-12379 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50657; FRL-3024-7]

Issuance of Experimental Use Permits; BASF Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

In person or by telephone: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

7969-EUP-21. Renewal. BASF Corporation Chemicals Division, 100 Cherry Hill Road, Parsippany, NJ 07054. This experimental use permit allows the use of 1,060 pounds of the herbicide sethoxydim on alfalfa to evaluate the control of grasses. A total of 1,060 acres are involved; the program is authorized only in the States of Arizona, California, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oregon, Texas, Washington, and Wisconsin. The experimental use permit was previously effective from April 30, 1985 to April 30, 1986. The permit is now effective from May 5, 1986 to May 5, 1987. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

464-EUP-80. Issuance. Dow Chemical Company, 9008 Building, P.O. Box 1706, Midland, MI 48640. This experimental

use permit allows the use of 4,320 pounds of the herbicides 2,4–D and triclopyr on pastures and rangelands to evaluate the control of weeds. A total of 8,640 acres are involved; the program is authorized only in the States of Kentucky, Illinois, Iowa, Missouri, Ohio, Oregon, Pennsylvania, Washington, and West Virginia. The experimental use permit is effective from April 1, 1986 to March 31, 1988. A permanent tolerance for residues of the active ingredient in or on pasture grasses and rangelands has been established (40 CFR 180.142 and 180.417). (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

352–EUP–116. Extension. E.I. duPont deNemours & Company, Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 298 pounds of the herbicide methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]sulfonyl]benzoate on forestry to evaluate the control of weeds. A total of 3,946 acres are involved; the program is authorized only in the of States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from May 6, 1986 to May 6, 1987. (Robert Taylor, PM 25, Rm. 245, CM#2, (704–557–1800))

352–EUP–133. Issuance. E.I. duPont deNemours & Company, Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 1,125 pounds of the herbicides 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazine-5(4H)-one and ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl] benzoate on soybeans to evaluate the control of weeds. A total of 3,000 acres are involved; the program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The experimental use permit is effective from April 30, 1986 to April 30, 1987. A permanent tolerance for residues of the active ingredient in or on soybeans has been established (40 CFR 180.332 and 180.439). (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: May 22, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–12376 Filed 6–3–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50655; FRL–3024–6]

Issuance of Experimental Use Permits; Dow Chemical Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

464–EUP–85. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 750 pounds of the herbicide 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)oxirane on grain sorghum to evaluate the control of broadleaf weeds and grasses. A total of 1,950 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Kansas, Missouri, Nebraska, Oklahoma, and Texas. The experimental use permit is effective from April 9, 1986 to April 9, 1988. A temporary tolerance for residues of the active ingredient in or on grain sorghum has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

352–EUP–126. Extension. E.I. duPont de Nemours and Company, Inc., Walkers's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 259 pounds of the fungicide 1-[[bis(4-fluorophenyl) methylsilyl]methyl]-1H-1,2,4-triazole on apples to evaluate the control of apple scab, cedar and apple rust, and powdery mildew. A total of 660 acres are involved; the program is authorized only in the States of California, Illinois, Indiana, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, West Virginia, and Wisconsin. (Henry Jacoby, PM 21, Rm. 245, CM#2, (703–557–1900))

352–EUP–127. Extension. E.I. duPont de Nemours and Company, Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 120 pounds of the fungicide 1-[[(bis(4-fluorophenyl) methylsilyl]methyl]-1H-1,2,4-triazole on grapes to evaluate the control of black rot and powdery mildew. A total of 480 acres are involved; the program is authorized only in the States of Arizona, California, Michigan, Missouri, New York, Ohio, Oregon, Pennsylvania, and Washington. This permit and the one above are effective from April 7, 1986 to April 7, 1987. Both permits are issued with the limitation that all treated crops are destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 245, CM#2, (703–557–1900))

352–EUP–135. Issuance. E.I. duPont deNemours and Company, Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 50 ounces of the herbicide methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate on soybeans to evaluate the control of various weeds. A total of 100 acres are involved; the program is authorized only in the States of Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The experimental use permit is effective from April 7, 1986 to April 7, 1987. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert

Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

748–EUP–18. Extension. PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272. This experimental use permit allows the use of 40 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate on soybeans to evaluate the control of broadleaf weeds. A total of 200 acres are involved; the program is authorized in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin. The experimental use permit is effective from May 1, 1986 to May 1, 1987. This permit is issued with the limitation that all food or feed derived from the experimental use will be destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

201–EUP–79. Issuance. Shell Oil Company, 1025 Connecticut Ave. NW., Washington, DC 20036. This experimental use permit allows the use of 10,000 pounds (5,000 pounds each year) of the herbicide 1-methyl-4-(1-methylethyl)-2-Exo[(2-methylphenyl)-methoxy]-7-oxabicyclo[2.2.1.]heptane on cotton, peanuts, and soybeans to evaluate the control of annual grasses and broadleaf weeds. A total of 10,000 acres (5,000 acres each year) are involved; the program is authorized in the States of Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 4, 1986 to April 4, 1988. A temporary tolerance for residues of the active ingredient in or on cotton, peanuts, and soybeans has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

11273–EUP–44. Issuance. Zoecon Corporation, 975 California Ave., Palo Alto, CA 94304. This experimental use permit allows the use of 837 pounds of the herbicide norflurazon on peanuts to evaluate the control of various grasses and broadleaf weeds. A total of 620 acres are involved; the program is authorized only in the States of Alabama, Georgia, North Carolina, Oklahoma, South Carolina, and Texas. The experimental use permit is effective from April 9, 1986 to April 9, 1988. A temporary tolerance for residues of the active ingredient in or on peanuts has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: May 22, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–12375 Filed 6–3–86; 8:45 am]

BILLING CODE 6560–50–M

[PF–459; FRL–3024–5]

Pesticide Tolerance Petitions; Nor-Am Chemical Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Nor-Am Chemical Co. has submitted to EPA pesticide and feed additive petitions proposing to establish tolerances for residues of the insecticide 3,6-bis-(2-chlorophenyl)-1,2,4,5-tetrazine (referred to in this document as "clofentezine") in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–459] and the petition number, attention Product Manager (PM–12), at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, (PM–12), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Room 202, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), and feed additive petitions (FAP), from Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, relating to the establishment of tolerances for residues of the insecticide clofentezine in or on certain agricultural commodities as follows:

Petition identity	CFR affected	Commodities	Part per million (ppm)
PP 6F3282	40 CFR Part 180.	Apples	0.15
		Meat	0.05
		Meat byproducts	0.05
		Milk	0.01
		Poultry, poultry byproducts	0.05
FAP 6H5500	21 CFR Part 561.	Apple pomace (dry).	1.0

The proposed analytical method of determining residues is gas chromatography.

Authority: 21 U.S.C. 346a and 348

Dated: May 22, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–12376 Filed 6–3–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–36117; FRL–3024–1]

Pesticide Registration Standards; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Proposed Standard for Comment.

SUMMARY: This notice announces the availability of certain proposed pesticide Registration Standard

documents for comment. The Agency has completed a review of each listed pesticide and is making available a document describing its regulatory conclusions and actions.

DATE: Written comments on each Registration Standard should be submitted on or before August 4, 1986.

ADDRESSES: Three copies of comments identified with the docket number listed with each Registration Standard should be submitted to:

By Mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, deliver comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be inlcuded in the public docket without prior notice. The public docket and indices to the public dockets are available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, to request information concerning the public dockets, or to request indices to the public dockets, contact Frances Mann of the Information Services Section, in Rm. 236 at the address given above (703–557–3262). Requests should be submitted no later than July 7, 1986 to allow sufficient time for receipt before the close of the comment period.

For technical questions related to each Registration Standard, contact the Product Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), published in the Federal Register of November 27, 1985 (50 FR 48908), before issuing certain Registration Standards, the Agency makes the proposed document available for public comment.

Proposed Registration Standards for the following pesticides are now available:

Name of pesticide	Docket No.	Contact person
1. Paraquat dichloride	1910-43-6	Robert Taylor, Product Manager 25, (703-557-1800).
2. Benomyl	17804-35-2	Henry Jacoby, Product Manager 21, (703-557-1900).
3. Thiophanate methyl	23564-25-08	Henry Jacoby, Product Manager 21, (703-557-1900).

Copies of each Registration Standard may be obtained from the Agency at the address listed under "FOR FURTHER INFORMATION CONTACT." Because of the length of each Standard and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. Each Registration Standard is also available for inspection and copying in EPA Regional Offices at the addresses listed below after July 7, 1986.

List of EPA Regional Offices

Pesticides Branch, EPA—Region I, JFK Federal Building, Boston, MA 02203, Contact person: Andrew Triolo

Pesticides Branch, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837, Contact person: Dave Andreassen

EPA—Region III, Curtis Building, 6th and Walnut Sts., Philadelphia, PA 19106, Contact person: John Smith

Pesticide and Toxic Substances Branch, EPA—Region IV, 345 Courtland St., NE, Atlanta, GA 30365, Contact person: Kent Williams

Toxic Materials Branch, EPA—Region V, 230 South Dearborn St., Chicago, IL 60604, Contact person: Lavarre Uhlken

Pesticide and Toxic Substances Branch, EPA—Region VI, 1201 Elm St., Dallas, TX 75270, Contact person: Norman Dyer

Pesticide and Toxic Substances Branch, EPA—Region VII, 324 East 11th St., Kansas City, MO 64106, Contact person: Leo Alderman

Toxic Substances Branch, EPA—Region VIII, 1860 Lincoln St., Suite 900, Denver, CO 80295, Contact person: Dean Gillan

Hazardous Materials Branch, EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, Contact person: Laurie Perrot

Air & Water Division, EPA—Region X, 1200 6th Ave., Seattle, WA 98101, Contact person: Chuck Shenk

Dated: May 9, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-12281 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3025-7]

Ocean Dumping Program—Final Determination To Deny a Research Permit for the Incineration of Chemical Wastes at Sea

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency has determined that it is not currently necessary to conduct a research burn at sea pursuant to its Incineration-at-Sea Research Strategy and is therefore denying the application for Chemical Waste Management, Inc. (CWM), Oak Brook, Illinois, for the Vulcanus II (the Applicant), for a permit to perform that research. The Agency made a tentative determination to issue the proposed research permit on December 18, 1985. After reviewing the public comments filed on this tentative determination and the Hearing Officer's recommendations based on those comments, the Agency has decided not to issue a research permit until the Agency promulgates its proposed Ocean Incineration Regulations.

DATE: Any request for an adjudicatory hearing for a review of the Agency's determination to deny issuance of the permit must be filed pursuant to 40 CFR 222.10(a) within ten days of the publication of this determination at the address listed below.

ADDRESS: Requests for adjudicatory hearings may be sent to: Tudor Davies, Director, Office of Marine and Estuarine Protection [WH-556M], Environmental Protection Agency, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa Barrera, (202) 382-5410.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

In enacting the Marine Protection, Research, and Sanctuaries Act (MPRSA or the Act) of 1972, as amended (33 U.S.C. 1401 *et seq.*) Congress authorized the EPA to permit the dumping (including incineration) of waste materials in ocean waters. In addition, Congress in 1981 enacted section 2 of Pub. L. 96-572 (33 U.S.C. 1412a(b)) specifically authorizing EPA to issue permits for research if the Agency determines, among other things:

(1) [T]hat the proposed dumping [incineration] is necessary to conduct research—

(A) On new technology related to ocean dumping [incineration], or

(B) To determine whether the dumping [incineration] of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

EPA initially implemented the statutory requirements of the MPRSA through the Ocean Dumping Regulations which the Agency promulgated in 1977. 40 CFR Subchapter H. Although EPA has in the past permitted both ocean dumping and ocean incineration programs pursuant to these regulations, the Agency decided in May 1984 to defer the issuance of any operational ocean incineration permits until the Agency developed regulations with criteria more specifically related to the evaluation of ocean incineration activities. The Agency proposed those regulations on February 28, 1985, to modify the ocean dumping regulations as they apply to the incineration of liquid wastes at sea. The proposed regulations also would specifically implement the authority granted to the Agency in 1981 by Pub. L. 96–572, to issue research permits. EPA received over 900 public comments on the proposed regulations and is currently in the process of evaluating those comments. Final regulations will be promulgated at a future date.

II. Prior Incineration-at-Sea Permit Decisions

Since 1974, there have been four series of research burns conducted on organochlorine wastes. The first two series of burns were conducted in late 1974, early 1976, and 1977 in the Gulf of Mexico. A third series of burns followed late in 1977 when Herbicide Orange was incinerated in the Pacific Ocean west of Johnson Atoll. The last series of burns were conducted in 1981 and 1982 when liquid PCB wastes were incinerated at the Gulf Incineration Site under a research permit issued to Chemical Waste Management, Inc. (CWM), and Ocean Combustion Services, B.V.

CWM also submitted an application for a research permit on July 10, 1981, and an application for a research permit on November 2, 1981. On October 17, 1983, EPA made a tentative determination to issue the special and research permits to CWM. After reviewing the public comments and the Hearing Officer's Report, the Assistant Administrator for Water on May 23, 1984, issued a final determination not to issue either permit. The Assistant Administrator's decision was based, in part, on his determination that the Agency should develop specific criteria for regulating ocean incineration activities before issuance of operational permits.

The Assistant Administrator also concluded that there was a need to develop a comprehensive research strategy to verify available information related to the human health and environmental risks of ocean incineration. To that end, EPA prepared a draft research strategy that was discussed at public meetings on November 13, 1984 and December 18, 1984. After evaluating comments, the Agency published its "Incineration-at-Sea Research Strategy" on February 19, 1985. (Support Document G to Tentative Determination). The Research Stategy has both short and long-term goals. Initial research was intended to validate sampling and analytical protocols that would be used to obtain scientific information and to collect information on types and quantities of emissions from incineration, and potential exposure and biological effects of such emissions. The primary focus of the long-term research is to evaluate long-term human health and environmental effects of such emissions, the characteristics of a site which make it suitable for incineration, the effects of different incineration technologies on emissions and any resultant environmental effects from alternative technologies.

To implement its Research Strategy, the Agency developed a detailed "Proposed Incineration-at-Sea Research Burn Implementation Plan." EPA released a working draft of that Plan on May 6, 1985. (Support Document E to the Tentative Determination). The Plan describes in detail the sampling and analytical protocols that would be used in obtaining the various types of scientific information identified in the Research Strategy. The Agency thereafter entertained applications to conduct the research.

III. Basis for Agency's Tentative Determination to Issue CWM a Research Permit

On May 24, 1985, CWM filed an application for a permit to conduct research consistent with the Agency's Research Strategy. (Support Document D to the Tentative Determination). In the application, CWM stated that the "immediate need for a research permit is to provide additional physical, chemical, and biological information on incineration of liquid organohalogen materials at sea." CWM noted that "EPA has prepared a detailed plan for a research burn at sea" a portion of which "CWM is prepared to perform . . . under the supervision of EPA". *Id.* at 5. CWM also identified the "long-term need" for the permit as providing "additional information in respect to use of ocean incineration as a means of permanently destroying liquid organic hazardous waste." *Id.* The permit application proposed to burn up to 3,500 metric tons of polychlorinated biphenyl (PCB) waste on board the Vulcanus II. The Vulcanus II would be loaded with the waste materials in the Port of Philadelphia and burn the wastes at a site designated by EPA.

EPA made a tentative determination on December 16, 1985, to issue the research permit to authorize CWM "to participate in research activities that have been designated by the Agency." 50 FR 51360. The proposed permit would have authorized CWM to burn 706,958 gallons of fuel oil containing 10–30 percent PCBs over a 10-day period at the proposed North Atlantic Incineration Site, approximately 104 miles east of the mouth of the Delaware River.

IV. Public Hearing and Comments

During January 1986, four public hearings on the proposed permit were held. The dates of these hearings, the number of persons who registered and the number of persons who presented statements are summarized below:

Date	Location	Registration	Statements
Jan. 13, 1986	Philadelphia, PA	1,322	91
Jan. 16, 1986	Red Bank, NJ	661	69
Jan. 21, 1986	Wilmington, DE	164	31
Jan. 27, 1986	Ocean City, MD	798	162
Totals		2,845	257

By the close of the comment period on February 15, 1986, 1,644 persons, including those who made statements at the public hearings, had submitted comments to the Agency on the tentative detemination to issue the research permit. The Agency received submissions from members of Congress, Federal, state and local government agencies, governors, public interest and environmental organizations, industrial and labor organizations, professional societies and academia.

V. Hearing Officer's Report

In accordance with 40 CFR 222.6–222.8, a Presiding Officer (or Hearing Officer) was designated to conduct the public hearings, summarize all the public comments and make recommendations to the Assistant Administrator for Water relating to the

issuance, denial, or modification of the proposed research permit. On May 1, 1986, the Hearing Officer submitted his report.

The Hearing Officer's Report did not specifically recommend that the Agency issue, deny, or modify the permit but rather presented a series of recommendations related to policy, technical and legal issues that the Hearing Officer believed the Agency should carefully consider before proceeding with a research burn. The Hearing Officer's Report also noted many of the provisional elements of the ocean incineration program, the primary element being the "proposed, but not finalized," ocean incineration regulations. (Report at 5). A review of the public comments reveals that the concerns of many of the commenters about the transportation and incineration of liquid hazardous waste extend far beyond the more narrow statutory and regulatory criteria relevant to a decision on the issuance of a research permit. In his Report, therefore, the Hearing Officer summarized and discussed not only the adequacy of the draft permit, but these larger concerns as well. In general, the Report reflects the strong concerns expressed by a majority of the public commenters and many members of Congress that it is premature to issue a permit for a research burn at sea. In making its final determination, the Agency has considered the applicable statutory and regulatory criteria for permit issuance in light of the Hearing Officer's recommendations and the public comments.

VI. Basis for Determination to Deny the Permit

After a careful review of all the public comments and the Hearing Officer's Report, the Agency has decided that it is not currently necessary to perform the research outlined in its Research Strategy and therefore is denying the application for a research permit. The Hearing Officer's Report and his summary of the public comments clearly establish that the extensive number of issues raised during the public comment period are issues which the Agency should carefully consider before granting a permit for a research burn. Most of these issues previously have been raised by the public and currently are being considered by the Agency in the Agency's ongoing rulemaking process for development of comprehensive ocean incineration regulations. These issues include: establishing financial responsibility requirements and clarifying questions related to liability; addressing concerns related to the risks associated with land and marine transport; delineating factors to consider in the assessment of need; establishing criteria for consideration of an applicant's integrity; establishing requirements of contingency plans; addressing the issue of whether the Agency must prepare an environmental impact statement; addressing the need to finalize the designation of the North Atlantic Incineration Site; addressing the applicability of other federal statutes such as the Coastal Zone Management Act and the Endangered Species Act to a research permit; establishing appropriate sampling, analytical, and monitoring techniques; and establishing appropriate performance and operational standards.

The Agency believes that the more appropriate process for addressing and resolving these complex policy, technical and legal questions is through the Agency's ongoing rulemaking for development of comprehensive ocean incineration regulations. The Agency currently is reviewing and formulating decisions on the numerous issues raised in the rulemaking. Many of those issues relate directly to the appropriate procedures that should be followed in issuing any incineration permit and to the substantive requirements that should be imposed in such permits. The rulemaking proceeding offers the Agency a preferable forum in which to address and respond fully to the public concerns related to ocean incineration.

EPA recognizes that it initially proposed that research be conducted prior to the promulgation of ocean incineration regulations. That decision reflected the Agency's response to public concerns about the need to verify information gathered during the past burns regarding the effects of incineration on human health and the marine environment. The Agency, therefore, developed its Research Strategy. While information that would be developed pursuant to the Research Strategy would be useful in the development of ocean incineration regulations, the Agency does not believe such data is a necessary prerequisite to their issuance. Many of the most controversial issues related to the establishment of a permitting program are complex issues of policy and law that do not depend for resolution on the type of information intended to be gathered through the Research Strategy.

The Agency's decision that is not necessary to initiate implementation of its Research Strategy until after promulgation of the ocean incineration regulations removes any need for issuance of a research permit at this time. An essential finding required by 33 U.S.C. 1412a(b) (section 2 of Pub. L. 96-572) for issuance of a research permit is a finding of need. The Agency has determined that sufficient need does not exist at this time to warrant issuance of a research permit. EPA continues to support the goals of the Research Strategy and believes that the information intended to be gathered by the proposed research permit remains important to the development of an operating incineration program. However, such information can and should be obtained at a later date.

VII. Conclusion

The Agency intends to proceed at this time with development of the comprehensive ocean incineration regulations. Through this process, the Agency will carefully address and establish its position on the many issues identified in this decision. During this process the Agency will also work to better define the role of ocean incineration with respect to the Agency's hazardous waste management program. The Agency will continue with the development of its regulations and evaluation of ocean incineration because the Agency does not believe that existing information demonstrates that ocean incineration presents an unreasonable risk to human health or the environment. The Agency believes that ocean incineration offers a potentially valuable technology for disposal of this nation's increasing volumes of hazardous waste. However, if a research burn is to take place at sea, it will be after the Agency promulgates final ocean incineration regulations so that the public will know precisely how such an activity will be regulated.

The Agency will continue to work closely with all interested persons in the development of its ocean incineration regulations and any future research and operational program that may be instituted.

Dated: May 28, 1986.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 86-12542 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3025-9]

Science Advisory Board; Radiation Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S.

Environmental Protection Agency, Conference Room #4 South (on the Ground Floor, near the EPA Washington Information Center) Waterside Mall, 401 M Street SW., Washington, DC on June 20, 1986. The meeting will begin at 8:00 a.m. and adjourn no later than 6:00 p.m.

There are four major parts to the meeting. The Office Radiation of Programs will update the Committee on its Activities, particularly those relating to radon in indoor air. The Office of Environmental Engineering and Technology will present its research plan on the mitigation of radon in houses for review later this summer. The Radioepidemiology Subcommittee will report on its review of epidemiological work on radon in indoor air planned by the Office of Health Research. Graduate students from Carnegie-Mellon University will present a project on radon in indoor air.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or obtain information should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by the close of business on June 17, 1986. The telephone number is (202) 382–2552.

Dated: May 28, 1986.

Kathleen Conway,
Acting Director, Science Advisory Board.

[FR Doc. 86–12541 Filed 6–3–86; 8:45 am]
BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee of the Export-Import Bank of the United States; Meeting

SUMMARY: The advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Monday , June 23, 1986 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda

The meeting agenda will include a discussion of Eximbank's Financial Report, objectives of Eximbank's reorganization, Charter renewal legislation update, Advisory Committee comments on 1985 Competitiveness Report, and foreign content issues.

Public Participation

The meeting will be open to public participation; and the last 20 minute will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8871, not later than June 18, 1986.

Further Information

For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8871.

Bart Fassenden,
General Counsel.

[FR Doc. 86–12575 Filed 6–3–86; 8:45 am]
BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 29, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of this Submission are available from Doris Benz, FCC, (202) 632–7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 395–7231.

OMB No.: 3060–0102
Form No.: FCC 915
Title: Priority Request and Certification
Action: Extension
Estimated Annual Burden: 225 Responses; 225 Hours

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86–12482 Filed 6–3–86; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Delegation of Authority With Respect to the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, Federal Insurance Administration.

ACTION: Delegation of authority regarding community probation.

FOR FURTHER INFORMATION CONTACT: Frank Thomas, Assistant Administrator, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, telephone (202) 646–2717.

Notice is hereby given that pursuant to 44 CFR 2.51, the Regional Directors are hereby authorized to exercise the authority set forth at 44 CFR 59.24(b). Under that section, the Regional Directors shall exercise all authorities and responsibilities involved in placing communities on and taking communities off probation status in the National Flood Insurance Program. The Federal Insurance Administrator shall retain responsibility for making the necessary adjustments to insurance rates for flood insurance policies covering properties located in affected communities.

This delegation supersedes all prior delegations of such authority.

EFFECTIVE DATE: This delegation shall be effective as of May 25, 1986.

Julius W. Becton, Jr.,
Director.

[FR Doc. 86–12485 Filed 6–3–86; 8:45 am]
BILLING CODE 6718-05-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American President Lines et al.

The Federal Maritme Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for

comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010949.

Title: Container Stevedoring and Terminal Services Agreement between American President Lines, Ltd., Eagle Marine Services, Ltd., and Toyofuji Kaiun Kaisha, Ltd.

Parties:

American President Lines, Ltd. (Eagle)

Eagle Marine Services, Ltd. (Eagle)

Toyofuji Kaiun Kaisha, Ltd. (Carrier).

Synopsis: The proposed agreement would permit Eagle to provide container stevedoring and terminal services in behalf of Carrier's vessels berthed at terminal facilities separately arranged for by Carrier and located at the Port of Oakland, Middle Harbor Terminal, Berths C & D. The term of the agreement shall be for one (1) year, and automatically renewable for successive years. Carrier or Eagle may terminate the agreement at any time by giving the other 90 days' written notice. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 30, 1986.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-12360 Filed 6-3-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Arthur State Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Arthur State Bancshares, Inc.*, Union, South Carolina; to become a bank holding company by acquiring at least 80 percent of the voting shares of Arthur State Bank, Union, South Carolina.

2. *Chesnee State Bancshares, Inc.*, Chesnee, South Carolina; to become a bank holding company by acquiring at least 80 percent of the voting shares of Chesnee State Bank, Chesnee, South Carolina.

3. *Woodruff State Bancshares, Inc.*, Woodruff, South Carolina; to become a bank holding company by acquiring at least 80 percent of the voting shares of Woodruff, State Bank Woodruff, South Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Brundidge Bancshares, Inc.*, Brundidge, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Brundidge, Brundidge, Alabama.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Prairie Bankshares, Inc.*, Georgetown, Illinois; to acquire 100 percent of the voting shares of The First National Bank of Ogden, Ogden Illinois.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Friendship Bancshares, Inc.*, Friendship, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Friendship, Friendship, Tennessee.

Board of Governors of the Federal Reserve System, May 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12459 Filed 6-3-86; 8:45 am]

BILLING CODE 6210-01-M

First Wisconsin Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23 (a)(1) of the Board's Regulation Y (12 CFR 225.23 (a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 25, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its joint venture subsidiary Elan Life Insurance Company, Phoenix, Arizona, in the underwriting as reinsurer of credit life and credit accident and health insurance that is directly related to extensions of credit by the banking and nonbanking subsidiaries of Applicant pursuant to § 225.25(b)(9) of the Board's Regulation Y. The remaining interest in the joint venture will be acquired by CLICO Management, Inc., Springfield, Ohio, a wholly-owned subsidiary of The Credit Life Companies, Inc., Springfield, Ohio.

These activities will be conducted in the State of Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Brookwood Bancshares, Inc.*, Oklahoma City, Oklahoma; to engage directly in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Oklahoma.

Board of Governors of the Federal Reserve System, May 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12460 Filed 6-3-86; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corporation et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 26, 1986.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to retain assets acquired from three Household Finance Corporation offices in Alaska and thereby engage in consumer finance, sales finance and commercial finance activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Alaska.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *AmeriWest Bancor, Inc.*, Phoenix, Arizona; to acquire Beeson, Inc., Scottsdale, Arizona, and thereby engage in management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12461 Filed 6-3-86; 8:45 am]

BILLING CODE 6210-01-M

WM Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 1986.

A. **Federal Reserve Bank of Richmond.** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *WM Bancorp*, Cumberland, Maryland; to become a bank holding company by the consolidation of GNB Bancshares, Oakland, Maryland, and LTC Bancorp, Cumberland, Maryland, and thereby indirectly acquire Garrett National Bank, Oakland, Maryland, and Liberty Bank of Maryland, Cumberland, Maryland.

Applicant has also applied to engage through its subsidiary Community Finance, Inc., Cumberland, Maryland, in consumer and commercial financial activities, including the extension of direct loans to consumers, the discount of retail and installment notes or contracts, the extension of direct loans to dealers for financing of inventory (floor planning) and to act as agent for the sale of life, accident and health insurance directly related to the extensions of credit through an agent arrangement pursuant to § 225.25(b)(1) and (b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Maryland.

Board of Governors of the Federal Reserve System, May 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12462 Filed 6-3-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet in 1986:

Name: Secretary's Private/Public Sector, Advisory Committee on Catastrophic Illness.

Date: June 19, 1986, 7:00 p.m. until 9:00 p.m.

Place: Humphrey Auditorium, 200 Independence Ave., SW., Washington, DC 20201.

Purpose: The purpose of the Private/Public Sector Advisory Committee on Catastrophic Illness will be to: (1) Solicit input from all interested parties regarding how government and the private sector can work together to address the problems of affordable insurance for catastrophic illness: and (2) Reflect periodically the views of the interested parties as well as the constituencies represented on the Committee regarding the report on catastrophic health care which the Secretary of Health and Human Services must submit to the Preisdent by the end of the year.

Agenda: The meeting of the Private/Public Sector Advisory Committee and the Health and Human Services Executive Advisory Committee will be an interim Report Session. The Private/Public Sector Advisory Committee will discuss major points and private sector inputs enunciated in the public forums. The Executive Advisory Committee will present a status report of what has been accomplished by midstudy. The Agenda will consist of: a welcome and opening remarks by James Balog, Chairman of the Private-Public Sector Advisory Committee; remarks from the Chairman of the Executive Advisory Committee and the Technical Work Groups; a review of purpose, scope and membership of the catastrophic illness study and discussion.

Anyone wishing to obtain a roster of members or other relevant information should write to or call Ms. Jean-Craft Comolli, Staff Director, Private/Public Sector Advisory Committee on Catastrophic Illness, or Ms. Nancy Hobbs, Public Forum Coordinator, 602E, Humphrey Building, 200 Independence Ave., SW., Washington, DC, (202) 245-2041.

Joseph Antos,
Vice Chairman, Executive Advisory Committee.

[FR Doc. 86-12561 Filed 6-3-86; 8:45 am]
BILLING CODE 4160-04-M

Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet in 1986:

Name: Secretary's Private/Public Sector, Advisory Committee on Catastrophic Illness.

Date: June 20, 1986, 9:00 a.m. until 4:00 p.m.

Place: Humphrey Auditorium, 200 Independence Ave., SW., Washington, DC 20201.

Purpose: The purpose of the Private/Public Sector Advisory Committee on Catastrophic Illness will be to: (1) Solicit input from all interested parties regarding how government and the private sector can work together to address the problems of affordable insurance for catastrophic illness: and (2) to reflect periodically the views of the interested parties as well as the constituencies represented on the Committee regarding the report on catastrophic health care which the Secretary of Health and Human Services must submit to the President by the end of the year.

Agenda: The forum of the Private/Public Sector Advisory Committee on Catastrophic Illness will consist of a welcome and opening remarks by Chairman James Balog and members of the Committee. Presenters will include:

The Honorable French Slaughter, Jr., U.S. House of Representatives
The Honorable David Dreier, U.S. House of Representatives
The Honorable Tarky Lombardi, New York State Senate
National Federation of Independent Businesses
Group Health Association
Peter Ferrara
National Association of Manufacturers
National Foundation for Long Term Care, National Medical Directors Association
American Association of Homes for the Aging
American Academy of Pediatrics
American Society of Internal Medicine
Oley Foundation
National Association of Children's Hospitals
Health Services, Inc.
American Nurses' Association
National Association of Rehabilitation Facilities
National Association of Social Workers
Maryland Office on Aging
Central Arkansas Area Agency on Aging
National Mental Health Association
Cancer Care, Inc.
Older Women's League
National Alliance for the Mentally Ill.

Anyone wishing to obtain information, a roster of members, or other relevant information should write to or call Ms. Jean-Craft Comolli, Staff Director, Private/Public Sector Advisory Committee on Catastrophic Illness, or Ms. Nancy Hobbs, Public Forum Coordinator, 602 E, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, (202) 245-2041.

Joseph Antos,
Vice Chairman, Executive Advisory Committee.

[FR Doc. 86-12562 Filed 6-3-86 8:45 am]
BILLING CODE 4160-04-M

Centers for Disease Control

Grants for Centers for Research and Demonstration of Health Promotion and Disease Prevention

Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces that competitive grant applications are being accepted for centers for research and demonstration of health promotion and disease prevention, hereinafter referred to as "Prevention Centers." The Catalog of Federal Domestic Assistance number is 13.135.

Objectives

Recent biomedical and behavioral research has demonstrated new leads toward the causation and prevention of health problems. This new knowledge has emphasized the need for a broadened approach, utilizing many disciplines heretofore not part of the prevention team. There are also important evaluation questions and methodological issues affecting disease prevention and health promotion programs. The specific objectives are:

1. To stimulate and support academic-based centers for research and demonstration of health promotion and disease prevention.

2. To establish linkages, where applicable, between ongoing basic research in a wide array of fields and

applied research in disease prevention and health promotion.

3. To bring the knowledge and expertise of academic health centers to bear on practical public health problems.

4. To field test and rigorously evaluate for cost-effectiveness various methods and strategies for preventing unnecessary illness and promoting good health.

5. To shorten the time lag between the development of new and proven effective disease prevention and health promotion techniques and their widespread application.

Type of Assistance

The award instrument to be used resulting from this announcement will be grants.

Availability of Funds

In Fiscal Year 1986, $1,400,000 is available to fund two to four awards. The awards will range from approximately $250,000 to $700,000 with the average award being approximately $450,000.

Authority

This program is authorized under Section 1706 of the Public Health Service Act (42 U.S.C. 300u–5).

The grant administration policies of the Department of Health and Human Services and the Public Health Service are applicable to the Prevention Centers Program.

Eligibility Requirements

Eligible applicants are schools of medicine, schools of osteopathy, and schools of public health. Eligible applicants may enter into contracts, including consortia agreements (as described in the PHS Grants Policy Statement), as necessary to meet the essential requirements of this program, and to strengthen the overall application.

Essential Requirements:

Section 1706 of the PHS Act stipulates that a Prevention Center shall:

1. Be located in an academic health center with—

a. A multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;

b. Graduate training programs relevant to disease prevention;

c. A core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration;

d. A demonstrated curriculum in disease prevention;

e. A capability for residency training in public health or preventive medicine.

2. Conduct—

a. Health promotion and disease prevention research, including retrospective studies and longitudinal prospective studies in population groups and communities;

b. Demonstration projects for the delivery of services relating to health promotion and disease prevention to defined population groups using, as appropriate, community outreach and organization techniques and other methods of educating and motivating communities; and

c. Evaluation studies on the efficacy of demonstration projects conducted under 2.b. above.

Other Characteristics:

A number of other characteristics, which are not specified by law, are desirable and will also be used in the evaluation of applications:

1. The availability of highly qualified professional staff to perform proposed activities with relevant experience in such fields as infectious and chronic diseases, injuries, occupational safety and health, environmental health, maternal and child health, international health, and health promotion and risk reduction;

2. The designation of a Director who is a recognized leader in health promotion and disease prevention, who has well-defined authorities and responsibilities, and who will devote sufficient time to accomplish the Prevention Center's objectives;

3. A continuing base of peer-reviewed projects or activities funded from other sources relevant to the goals of the prevention center and its central theme;

4. Demonstrated experience in successfully conducting and evaluating research, demonstration, and/or special projects relating to health promotion and disease prevention;

5. Commitment of the parent institution to the prevention center, so that the center will be recognized as a major element within the organizational structure; and manifested by various combinations of personnel, facilities, and activities funded from other sources;

6. Facilities and organizational arrangements that promote and foster collaboration among the staff and components of the prevention center;

7. A history of successful intramural cooperation among a variety of disciplines and, as appropriate, involving staff who will be part of the prevention center;

8. Effective working relationships with State and local health departments and other organizations (e.g., care providers, voluntary organizations, etc.) whose active support and participation are essential to successful implementation of proposed activities.

9. Effective mechanisms for linking prevention center activities with public health and biomedical and behavioral researchers and with recognized experts in proposed areas of emphasis;

10. Relevant data and experience for rigorously evaluating the efficacy and cost benefits of demonstrations and other center activities requiring rigorous evaluation; and

11. Plans for the establishment of a health promotion and disease prevention advisory committee or other suitable mechanisms for obtaining input from a variety of perspectives on the major aspects of the prevention center program.

12. Plans to become self-sustaining.

Applications

1. Copies—Place of Submission

Applications should be submitted on Form PHS–398 (revised May 1982). Applications should also adhere to the Errata to the Instruction Sheet for PHS–398 contained in the Grant Application Kit. The original and two copies of the application must be submitted on or before July 14, 1986, to the: Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305.

Application kits are available from the CDC Grants Management Officer.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. If the applicant elects to exercise this option, use asterisks on the original and two copies of the application to indicate those individuals for whom salaries and fringe benefits are being requested; the subtotals must still be shown.

In addition, submit an additional copy of page four of Form PHS–398, completed in full with the asterisks replaced by the amount of the salary and fringe benefits requested for each individual listed. This budget page will be reserved for internal CDC staff use only.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on, or before, the deadline date, or

b. Sent on, or before, the deadline date and received in time for submission to the peer review committee. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

3. Late Applications

Applications which do not meet the criteria in either paragraph 2. a. or b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to the review requirements of the National Health Planning and Resource Development Act of 1974 as amended (42 CFR parts 122 and 123), and are not subject to Inter-Governmental Review pursuant to Executive Order 12372.

5. Content of Application

Applications must include a narrative which details the following information:

a. The proposed theme for the center. Whether the proposed theme is broadly conceived or narrowly focused on one or a few closely related areas, activities to be conducted in conjunction with the center's theme should be clearly explained in terms of overall thrust, areas of emphasis, need, scientific basis, expertise, expected interactions, and anticipated outcomes.

While creativity and flexibility in selecting a theme are essential to stimulating innovative approaches and interactions, the center's proposed theme should be consistent with the Nation's health priorities or emerging health needs as defined by, "Promoting Health/Preventing Disease: Objectives For the Nation" (Department of Health and Human Services, 1980). In selecting a theme, applicants should also consider:

(1) The leading causes of preventable illness/injuries, premature death, and medical expenditures in the nation as a whole, as well as identified target populations; and/or

(2) Major cross-cutting issues affecting current or future health promotion and disease prevention efforts in the United States. The proposed theme should also reflect the interests and capabilities of the applicant and the health needs of community groups involved.

b. Clearly defined and measurable objectives consistent with the applicant's proposed theme and activities and the goals of the National program outlined under the Objectives section of this document. The center's proposed theme and objectives should likewise promote clarity of purpose and facilitate integration of center activities into a conceptual whole.

c. A detailed program plan describing the means by which the center's objectives will be achieved. The program plan must include a description of multidisciplinary interactions, developmental research, formal studies, community demonstrations, and shared expertise. For this purpose of this announcement, these terms are defined as:

(1) "Multidisciplinary interactions" means such investigations, surveys, literature searches, dialogues, assessments, initiatives, and other intramural or extramural activities as the applicant may propose in order to clearly explain, nurture, and further delineate specific needs and opportunities for furthering the aims of the prevention center program. The need for such interactions and now they will contribute to the center's objectives must be clearly defined.

(2) "Developmental research" means that series of steps leading to the development of specific studies or research projects. In addition to determining the need for further scientific research and methods development, developmental research includes identifying and synthesizing available scientific evidence or data about a specific health problem, population group, or health care setting. Applicants must clearly define the areas to be investigated and the methods to be used. The need for developmental research and how it will contribute to the center's objectives must be clearly defined.

(3) "Formal study" means an identified research project which is intended and designed to establish, discover, develop, clarify, or confirm information on the underlying mechanisms relating to a specific health problem, population group or health care setting. In the context of this program, formal studies include research on methods, retrospective studies and longitudinal prospective studies in defined populations, and controlled intervention trials. Proposed studies must adhere to the scienfitic method and fall within the framework of the Public Health Service's definition of "prevention research" as defined in (6) below. Grant funds cannot be used to support "prevention-relevant research" as defined in (7) below. The need for new studies, their contribution to the center's objectives, and the relevancy of ongoing studies conducted by core-faculty must be clearly defined.

(4) "Community demonstration" means a time-limited project aimed at testing the public health impact of an unproven intervention in remedying or reducing the underlying causes and/or influencing factoe of one or more preventable health problems in a well-defined community or target population. Testing the public health impact of a trial intervention, method, or approach on a community basis requires rigorous evaluation as well as quality control. The scientific basis and projected cost benefit of the intervention must be clearly delineated in the application along with a clear statement of the problem and methdology. Such demonstrations must also be consistent with the Public Health Service definition of "preventation research" as defined in (6) below. The need for each identified community demonstration and how it will contribute to the center's objectives must be clearly defined.

(5) "Shared expertise" means consultation to government public health agencies and other organizations in planning and evaluating health promotion and disease prevention activities matching the center's capabilities and theme. The mechanisms for offering such assistance, particularly as it relates to designing and/or conducting formal evaluations, and how it will enhance the center's objectives must be clearly defined.

(6) "Prevention research" includes only that research designed to yield results directly applicable to interventions to prevent occurrence of disease or disability, or progression of detectable but asymptomatic disease.

(a) Pre-intervention:

—Identification of risk factors for disease or disability.

—Development of methods for identification of disease controllable in the asymptomatic stage.

—Refinement of methodological and statistical procedures for quantitatively assessing risk and measuring the effects of preventive interventions.

(b) Intervention:

—Development of biologic interventions to prevent occurrence of disease or disability, or progression of asymptomatic disease.

—Development of environmental interventions to prevent occurrence of disease or disability, or progression of asymptomatic disease.

—Development of behavioral interventions to prevent occurrence of disease or disability, or progression of asymptomatic disease.

—Conduct of clinical and community trials and demonstrations to assess preventive interventions and to encourage their adoption.

Some interventions may be applicable to primary prevention as well as to disease treatment (e.g., diet and exercise as components of rehabilitation for coronary heart disease). Research into such intervention is considered prevention research.

(7) "Prevention-relevant research" includes that research which has a high probability of yielding results which will likely be applicable to disease prevention. Included are studies aimed at clearly explaining the chain of causation—the etiology and mechanism—of acute and chronic diseases. Such basic research efforts generate the fundamental knowledge which contributes to the development of future preventive interventions.

Applicants have broad flexibility in determining the appropriateness, scope and blend of these and other proposed activities, but at least twenty-five (25) percent of the center's resources must be allocated to defined formal studies/research projects and community demonstration as defined in parts c.(3) and c.(4) above. The need for such "other activities" that the applicant may consider necessary to accomplish its stated objectives must also be clearly defined along with expected outcomes.

d. A method of evaluation aimed at monitoring progress in meeting the center's objectives.

e. A description of the center director's role and authority relative to staffing the prevention center, coordination of effort, and control over center space and equipment.

f. A description of the core faculty and its role in implementing and evaluating the proposed program. Whether paid from the grant or other sources, the core faculty must include full or part-time faculty in epidemiology, biostatistics, social sciences, behavioral sciences, environmental health sciences, and one of the health disciplines which addresses the administration of health programs. The applicant may also include as a part of the core faculty other disciplines (e.g., health economics, biomedical ethics, occupational safety and health, health law, health education, medicine, and nursing) as needed to achieve the center's proposed objectives.

g. A list of staff, including the center director and core faculty, who are expected to participate in the center, including titles, tenure status, areas of expertise, and the amount of time devoted to each component of the proposed program, and whether paid from the grant or other sources.

h. A list of relevant current funded and/or pending grants and/or contracts for the core faculty (PHS 398, "Other Support") under part e. above. For each grant or contract include:

(1) Source of funds;
(2) Amount of funding;
(3) Identifying numbers;
(4) Whether funded or pending;
(5) Date of funding, initiation, and termination; and
(6) Relationship to the center's proposed theme, objectives and implementation plan.

i. Documentation of the involvement of appropriate public health agencies, care providers, community organizations, and other interested parties, including letters of support and a clear statement of their role, if applicable.

j. A description of how the applicant plans to obtain continuing input and advice from a variety of perspectives (e.g. scientists, public health officials, primary care providers, voluntary health organizations, and consumers) as counsel is needed, to maximize participation and "ownership" in prevention center activities and to obtain resources from other sources. Toward this end, applicants may establish an advisory committee or use other mechanisms suitable to their needs.

k. Documentation of the source, allocation and planned full use of State, local government, foundation, or institutional funds made available to the center and an indication of the discretion which the center has with these funds.

l. Charts showing the proposed organizational structure of the center and its relationship to the applicant institution and, where applicable, to affiliated institutions or collaborating organizations.

m. A detailed budget for the prevention center.

n. In regard to the Research Plan, instructions apply to community demonstration projects as well as formal research studies.

o. In citing preliminary studies or prior findings, the six phases of prevention research and demonstrations are:

(1) Hypothesis development;
(2) Methods development;
(3) Controlled intervention trials;
(4) Defined population studies;
(5) Demonstrations; and
(6) Wide-scale application of successful results.

The phase(s) to be conducted should be clearly delineated.

p. For community demonstration projects, also describe the scientific strength of the proposed interventions; the target population; projected cost benefits; data gathering activities and evaluations procedures; and possible future strategies for wide-scale application of the results if the specific aims of the project are accomplished.

q. Plans to become self-sustaining.

6. Review Criteria

Applications will be reviewed and evaluated by a dual review process.

a. A *peer review* will be conducted on all applications. The review process may include a site visit. Applications will be reviewed and evaluated in the peer review based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

(1) The degree to which the applicant satisfies the essential requirements described under Eligibility Requirements section of this document.

(2) The degree to which the applicant possesses Other Characteristics described under Eligibility Requirements section of this document.

(3) The quality of the program's measurabale objectives and the overall match between the applicant's proposed theme, activities, and objectives and the goals of the National program.

(4) The scientific merit of the overall application relative to the types of research, demonstration, and other activities proposed.

(5) The need for, significance of, proposed studies and demonstrations, such that at least 25 percent of the grant award will be directed toward the conduct of defined formal studies/research projects and community demonstrations.

(6) The adequacy of the methods for coordinating the overall program and its components and the consistency of proposed activities with the Public Health Service's definition of "prevention research."

(7) The adequacy of the methods for evaluating achievement of the program's measureable objectives.

(8) Overall qualifications, adequacy, and appropriateness of personnel to accomplish proposed activities.

(9) The degree of commitment by the parent institution as manifested by the organizational status of the prevention center and combinations of center personnel, facilities and activities funded from other sources, and the likelihood that this commitment will be sustained or expanded in future years.

(10) The degree of commitment and cooperation manifested by other

interested parties, including State and local health departments, and community organizations where applicable. The degree of this commitment will also be measured by the likelihood that it will be sustained or expanded in future years.

(11) The reasonableness of the proposed budget in relation to the proposed program.

b. A *secondary review* of all applications will be conducted by a CDC committee based on:

(1) The results of the peer review.

(2) The significance of proposed prevention center activities, including areas of emphasis for research and demonstration.

(3) National needs and geographic balance.

(4) Balance between multi-disciplinary interactions, research projects, community demonstrations, and other proposed activities.

(5) Budgetary considerations.

(6) Plans to become self-sustaining.

7. Awards

Awards will be made based on priority score ranking, secondary review, availability of funds, and such other significant factors deemed necessary and appropriate by the Director, CDC.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Betty Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575.

Technical assistance may be obtained from Tom G. Ortiz, Acting Director, Center for Professional Development and Training, Centers for Disease Control, Atlanta, Georgia 30333, or by calling (404) 262-6071 or FTS 236-6071.

Dated: May 30, 1986.

Donald R. Hopkins,

Deputy Director, Center for Disease Control.

[FR Doc. 86-12614 Filed 6-3-86; 8:45am]

BILLING CODE 4160-18-M

Food and Drug Administration

Blood Products Advisory Committee; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Blood Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on May 13, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: May 29, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-12601 Filed 6-3-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No: 86G-0066]

Gattefosse Etablissements; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 6G0306) has been filed on behalf of Gattefosse Etablissements proposing to affirm that glyceryl behenate is generally recognized as safe (GRAS) as an excipient in food prepared as tablets.

DATE: Comments by August 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 6G0306) has been filed on behalf of Gattefosse Etablissements, 36 Chemin de Genas, Saint Priest, France, proposing to affirm that glyceryl behenate is GRAS for use as an excipient in food prepared as tablets.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Interested persons may, on or before August 4, 1986, review the petition and/or file comments (two copies, identified with the Docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-12468 Filed 6-3-86; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Issuance of Social Security Acquiescence Rulings

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: As of April 30, 1986, the Social Security Administration (SSA) had issued 14 Social Security Acquiescence Rulings which are available to the public. Social Security Acquiescence Rulings are published under the authority of the Commissioner of Social Security. They are effective upon the date of publication. As additional Social Security Acquiescence Rulings are issued, we will periodically publish a notice to that effect in the Federal Register.

These rulings explain the manner in which SSA applies decisions of the United States Courts of Appeals, which

conflict with SSA policy, in adjudicating claims under title II and title XVI of the Social Security Act and Part B of the Black Lung Benefits Act.

Included in this notice are the following rulings which are available to the public.

AR 86-1(9)

Effective Date: January 23, 1986.

Summy v. *Schweiker*, 696 F.2d 1233 (9th Cir. 1982); Third party payments for medical care or services—Title XVI of the Social Security Act.

Issue

Whether the payment adjustment made by the Veterans Administration (VA) under its pension program in recognition of past unusual medical expenses qualifies as a third-pary payment for medical care or services, and therefore, does not constitute income under the Supplement Security Income (SSI) program.

Explanation of How SSA Will Apply the Decision Within the Circuit

The ruling applies only to cases where the individual resides in Washington, Idaho, Montana, California, Oregon, Nevada, Arizona, Alaska Hawaii, or the Northern Mariana Islands at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

When a case involves an individual who has received an additional pension or compensation payment from the VA as a result of unreimbursed medical expenses, the additional pension or compensation payment from the VA is not income for SSI purposes.

AR 86-2(2)

Effective Date: January 23, 1986.

Rosenberg v. *Richardson*, 536 F.2d 487 (2d Cir. 1976);

Capitano v. *Secretary of HHS*, 732 F. 2d 1066 (2d Cir. 1984) Entitlement of a Deemed Widow When a Legal Widow is Entitled on the Same Earning Record Title II of the Social Security Act.

Issue

Whether a "deemed widow" may be found entitled to Title II survior Social Security benefits when a legal widow is entitled to Title II survivor Social Security benefits on the same deceased person's Social Security earnings record and, if so, what is the appropriate amount of the "deemed widow's" benefits? This ruling also applies to widowers.

Explanation of How SSA Will Apply the Decision Within the Circuit

The ruling applies only to cases where the deemed widow resides in Connecticut, New York or Vermont at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

When a case involves a legal widow and a deemed widow as defined in 20 CFR 404.345 and 404.346(a), both have filed widow's claims on the same worker's earnings record and the legal widow is found entitled to receive less than a "full" widow's benefit, for whatever reason, the difference between the benefit amount the legal widow is entitled to receive and the amount of the full benefit will be paid to the deemed widow, subject to any reductions applicable to the deemed widow. As in any case involving auxiliary benefits, the family maximum cannot be exceeded.

AR 86-3(5)

Effective Date: January 23, 1986.

Martinez v. *Heckler*, 735 F.2d 795 (5th Cir. 1984) Disability Program—Individuals Who Are Illiterate and Unable to Communicate in English—Titles II and XVI of the Social Security Act.

Issue

Whether the Social Security disability vocational rules applicable to individuals who are illiterate or unable to communicate in English are applicable to individuals who are illiterate *and* unable to communicate in English.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases in which the individual resides in Texas, Mississippi or Louisiana at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review. For such individuals seeking disability benefits or continuation of disability benefits under title II or title XVI, when illiteracy and inability to communicate in English are alleged or appear to be in question, findings with respect to both issues must be made. Where individuals limited to sedentary work, age 18 to 44 with unskilled or no work history are found to be both illiterate *and* unable to communicate in English, the lowest category of the grid regulations [20 CFR Part 404 Subpart P, Appendix 2] which might be applied to such individuals, namely Rule 201.23, cannot be applied under the holding of the *Martinez* decision. The grid regulations may be used only as guidance for decisionmaking. (See Appx. 2, 200.00(a))

In addition, under the court's decision, Rule 202.16 can also no longer be applied. Rule 202.16 applies to individuals limited to light work who are younger with unskilled or no work history and illiterate or unable to communicate in English. Following the court's rationale, Rule 202.16 cannot be applied to individuals who are both illiterate *and* unable to communicate in English. Again, the grid regulations may be used only as guidance for decisionmaking.

AR 86-4(3)

Effective Date: March 24, 1986.

Paskel v. *Heckler*, 768 F.2d 540 (3d Cir. 1985) Necessity of a Determination under Sections 225(b) and/or 1631(a)(6) of the Social Security Act for Disability Benefits Recipient Engaged in an Approved Vocational Rehabilitation Program Prior to Cessation of His/Her Benefits Based on Medical Recovery—Titles II and XVI of the Social Security Act.

Issue

Whether a disability benefits recipient, who was expected to recover and despite evidence that his/her medical condition was no longer disabling, is entitled to a determination under Sections 225(b) and/or 1631(a)(6) of the Social Security Act prior to cessation of his/her benefits, when the recipient is engaged in an approved vocational rehabilitation program.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases involving the suspension or termination of disability benefits to an individual whose disability has ceased and who was, at the time of the suspension or termination, or who is participating in an approved VR program and who resides in Delaware, New Jersey, Pennsylvania or the Virgin Islands at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review. Since there is no SSI program in the Virgin Islands, this Ruling will apply only to Social Security disability claims there.

Disability benefits to such an individual cannot be terminated or suspended if the individual is participating in an approved VR program and the Commissioner of Social Security determines that specified continuation or completion of such programs will increase the likelihood

that such individual may be permanently removed from the disability benefit rolls. Such a "likelihood determination" must be made for the above described individual regardless of whether at the time he/she began the VR program his/her medical recovery was expected prior to the completion date.

AR 86-5(9)

Effective Date: March 24, 1980.

Leschniok v. *Heckler*, 713 F.2d 520 (9th Cir. 1983) Necessity of a Determination under Sections 225(b) and/or 1631(a)(6) of the Social Security Act for a Disability Benefits Recipient Engaged in an Approved Vocational Rehabilitation Program Prior to Cessation of His/Her Benefits Based on Medical Recovery—Titles II and XVI of the Social Security Act.

Issue

Whether a disability benefits recipient, who was expected to recover and despite evidence that his/her medical condition was no longer disabling, is entitled to a determination under Sections 225(b) and/or 1631(a)(6) of the Social Security Act prior to cessation of his/her benefits, when the recipient is engaged in an approved vocational rehabilitation program.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases involving the suspension or termination of disability benefits to an individual whose disability has ceased and who was, at the time of the suspension or termination, or who is participating in an approved VR program and who resides in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review. Since there is no SSI program in Guam, this Ruling will apply to Social Security disability claims there.

Disability benefits to such an individual cannot be terminated or suspended if the individual is participating in an approved VR program and the Commissioner of Social Security determines that specified continuation or completion of such program will increase the likelihood that such individual may be permanently removed from the disability benefit rolls. Such a "likelihood determination" mus be made for the above decribed individual regardless of whether at the time he/she began the VR program his/her medical recovery was expected prior to the completion date.

AR 86-6(3)

Effective Date: April 2, 1986.

Aubrey v. *Richardson*, 462 F.2d 762 (3rd Cir. 1972);

Shelnutt v. *Heckler*, 723 F.2d 1131 (3rd Cir. 1983)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Issue

Whether a presumption of death which must be rebutted by SSA arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for 7 years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases in which the claimant resides in Delaware, New Jersey, Pennsylvania or the Virgin Islands at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases which involve 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for 7 years. The agency then must bear the burden of rebutting the presumption either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner consistent with continued life rather than death.

AR 86-7(5)

Effective Date: April 2, 1986.

Autrey v. *Harris*, 639 F.2d 1233 (5th Cir. 1981);

Wages v. *Schweiker*, 659 F.2d 50 (5th Cir. 1981)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Issue

Whether a presumption of death which must be rebutted by SSA arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for 7 years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases in which the claimant resides in Texas, Louisiana or Mississippi at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases which involve 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for 7 years. The agency then must bear the burden under the *Autrey* and *Wages* holdings of rebutting the presumption, either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absense in a manner consistent with continued life rather than death.

AR 86-8(5)

Effective Date: April 2, 1986.

Johnson v. *Califano*, 607 F.2d 1176 (6th Cir. 1979)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Issue

Whether a presumption of death which must be rebutted by SSA arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for 7 years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases in which the claimant resides in Michigan, Ohio, Kentucky or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases which involve 20 CFR 404.72(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for 7 years. The agency then must bear the burden of rebutting the presumption, either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner consistent with continued life rather than death.

AR 86–9(9)

Effective Date: April 2, 1986.

Secretary of Health, Education and Welfare v. *Meza*, 368 F.2d 389 (9th Cir. 1966); *Gardner* v. *Wilcox*, 370 F.2d (9th Cir. 1966)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Issue

Whether a presumption of death which must be rebutted by SSA arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for 7 years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies to cases where the claimant resides in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, or the Northern Mariana Islands at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases which involve 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for 7 years. The agency then must bear the burden of rebutting the presumption, either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner consistent with continued life rather than death.

AR 86–10(10)

Effective Date: April 2, 1986.

Edwards v. *Califano*, 1619 F.2d (10th Cir. 1980)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Issue

Whether a presumption of death which must be rebutted by SSA arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for 7 years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases in which the claimant resides in Colorado, Kansas, New Mexico, Oklahoma, Utah or Wyoming, at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases which involve 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for 7 years. The agency then must bear the burden of rebutting the presumption, either by presenting evidence that the missing individual is alive or by an explanation, other than death, to account for the individual's absence in a manner consistent with continued life rather than death.

AR 86–11(11)

Effective Date: April 2, 1986.

Autrey v. *Harris*, 639 F.2d 1233 (5th Cir. 1981)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Issue

Whether a presumption of death which must be rebutted by SSA arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for 7 years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases in which the claimant resides in Alabama, Florida, or Georgia at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.*

In cases which involve 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for 7 years. The agency then must bear the burden under the *Autrey* holding of rebutting the presumption, either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner consistent with contipued life rather than death.

Autrey is a Fifth Circuit Case. However, the Eleventh Circuit formerly was part of the Fifth Circuit and Fifth Circuit decisions issued before October 1, 1981, which *Autrey* was, are precedent for the Eleventh Circuit. See *Bonner* v. *City of Prichard, Alabama*, 661 F. 2d 1206 (11th Cir. 1981).

AR 86–12(9)

Effective Date: April 8, 1986.

Hutcheson v. *Califano*, 638 F.2d 96 (9th Cir. 1981)—Determination of Stepchild and Resulting Entitlement to Auxiliary Benefits—Title II of the Social Security Act.

Issue

Definition of stepchild for purposes of entitlement to child's insurance benefits on the earnings record of a recipient of old-age insurance benefits.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases in which the child resides in California, Arizona, Nevada, Oregon, Washington, Idaho, Montana, the Northern Mariana Islands, Alaska, Hawaii, or Guam at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council. SSA will apply the State law of the insured wage earner's domicile at the time the application is filed, or, if the wage earner is dead, the wage earner's domicile at the time of death.

When a case involves the issue of whether or not a person is a stepchild of an insured individual for purposes of section 202(d)(1) of the Social Security Act, 42 U.S.C. 402(d)(1), the definition of "stepchild" as provided by State law rather than the Social Security regulation will be controlling, consistent with the *Hutcheson* decision.

AR 86–13(3)

Effective Date: April 8, 1986.

McNeal v. *Schweiker*, 711 F.2d 18 (3d Cir. 1983)—Child's Benefits—Contributions for Support—Title II of the Social Security Act.

Issue

Whether the Secretary must, in his evaluation of the worker's "contributions to the support" of an illegitimate child, consider the worker's means and the income of the family in which the child resided.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases where the child resides in Pennsylvania, New Jersey, Delaware, or the U.S. Virgin Islands at the time of determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.

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In a claim for surviving child's benefits under section 202(d)(3) and 216(h)(3)(C)(ii) of the Social Security Act (42 U.S.C. 402(d)(3) and 416(b)(3)(C)(ii)) where the worker's income had been irregular or insubstantial, the substantiality and regularity of the worker's contributions to the child 's support must be evaluated in light of the financial resources of *both* the worker and the household in which the child resides.

AR 86-14(4)

Effective Date: April 8, 1986.

Jones v. *Secretary of Health, Education and Welfare*, 629 F.2d 394 (4th Cir. 1980)—Child's Benefits—Contributions for Support—Title II of the Social Security Act.

Issue

Whether the Secretary must, in his evaluation of the worker's "contributions to the support" of an illegitimate child, consider the worker's means and the income of the family in which the child resided.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases where the child resides in North Carolina, South Carolina, Virginia, West Virginia or Maryland at the time of determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.

In a claim for surviving childs benefits under section 216(h)(3)(C)(ii) of the Social Security Act (42 U.S.C. 416(h)(3)(C)(ii)) where the worker's income had been irregular or insurbstantial, the substantiality and regularity of the worker's contributions to the applicant's support must be evaluated in light of the financial resources of *both* the worker and the household in which the child resides.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

Paperwork Reduction Act

This notice does not impose recordkeeping or reporting requirements on the public.

Dated: May 28, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 86–12560 Filed 6–3–86; 8:45 am]
BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8884–B]

Alaska Native Claims Selection; The English Bay Corporation

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to The English Bay Corporation for 2.77 acres. The lands involved are in the vicinity of English Bay, Alaska.

U.S. Survey No. 4788, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 7, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–12518 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–JA–M

[C–6–86]

California; Filing of Plat of Survey

May 21, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mono County

T. 4 S., R. 28 E.

2. This supplemental plat of the SE¼ section 2, Township 4 South, Range 28 East, Mount Diablo Meridian, California, is based upon the plat approved January 28, 1857 and the plat accepted January 22, 1986, was accepted May 12, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–12524 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–40–M

[Group 942]

California; Filing of Plat of Survey

May 21, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Imperial County

T. 13 S., R. 19 E.

2. This plat, representing the dependent resurvey of the west boundary of section 16, and the independent resurvey of a portion of the subdivisional lines, and the survey of the withdrawal boundary for the U.S. Navy in sections 5 and 6, T. 13 S., R. 19 E., San Bernardino Meridian, California, under Group No. 942 California, was accepted May 15, 1986.

The subdivisional lines shown on this plat are independent of and supersede corresponding lines depicted on the plat approved January 25, 1857. The plat approved January 25, 1857 will be cancelled upon approval of this plat (See File 9800 (C–042), Group 942), and the remaining affected lands (except any valid existing rights) have the status of unsurveyed public lands.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State

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Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Records & Information Section.

[FR Doc. 86–12525 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–40–M

[C–5–86]

California; Filing of Plat of Survey

May 21, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County
T. 32 S., R. 26 E.

2. This supplemental plat of section 12, Township 32 South, Range 26 East, Mount Diablo Meridian, California, designating the 18.51 acres area as Lot 1, is based on the plats approved June 1, 1855, and February 3, 1868, and the diagram dated June 12, 1868; plat was accepted May 12, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Records & Information Section.

[FR Doc. 86–12526 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–40–M

[Group 859]

California; Filing of Plat of Survey

May 21, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County
T. 27 S., R. 36 E.

2. This plat, representing the independent resurvey of a portion of the subdivisional lines of Township 27 South, Range 36 East, Mount Diablo Meridian, California, under Group No. 859, California, was accepted May 15, 1986.

The subdivisional lines shown on this plat are independent of and supersede corresponding lines depicted on the plat approved January 6, 1883. The subdivisional lines, except the easterly tier (sections 1, 12, 13, 24, 25 and 36), shown on said 1883 plat, are canceled upon approval of this plat (see File 9600 (C–942), Group No. 859), and the remaining affected lands (except any valid mineral claims) have the status of unsurveyed public lands. The dependent resurvey of sections 12, 13, 24, and 25, executed concurrently with the resurvey under Group 858, California, are as shown on the plat approved April 22, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This was executed to meet certain administrative needs of the United States Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Records & Information Section.

[FR Doc. 86–12527 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–40–M

Research Natural Area and Area of Critical Environmental Concern; Cedar Roughs Area, California; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of amendment.

SUMMARY: This notice amends errors in the legal description for the Cedar Roughs Research Natural Area, Area of Critical Environmental Concern as published in 49 FR 302248.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, Planning and Environmental Coordinator, P.O. Box 940, Ukiah, California 95482. Telephone (707) 462–3873.

SUPPLEMENTARY INFORMATION: The legal description for the Cedar Roughs RNA/ACEC should be amended as follows:

T. 8 N., R. 4W., M.D.M.,
Sec. 1: SW¼SW¼, E½SW¼;
Sec. 2: Lots, 2, 3, 4, 5, 8, SW¼NE¼, E½NW¼, SE¼SE¼, SW¼SW¼;
Sec. 10: N½, N½S½, S½SE¼.
T. 9 N., R. 4 W., M.D.M.:
Sec. 33: SW¼SW¼;
Sec. 35: W½SW¼, SE¼SW¼.

Dated: May 23, 1986.

Van W. Manning,
District Manager.

[FR Doc. 86–12404 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–40–M

[Serial No. I–22814]

Idaho; Proposed Withdrawal and Opportunity for Public Meeting; Correction

May 27, 1986.

In FR Doc. 86–8117 filed April 10, 1986, appearing on page 12574 of the issue for April 11, 1986, the following correction should be made:

T. 41 N., R. 5 E.,
Sec. 19, NE¼SE¼NE¼.
Should read:
T. 41 N., R. 5 E.,
Sec. 19, NW¼SE¼NE¼.

William E. Ireland,
Chief, Realty Operations Section.

[FR Doc. 86–12492 Filed 6–3–86; 8:45 am]
BILLING CODE 4310–84–M

AA–6662–A

Alaska Native Claims Selection; Choggiung Ltd.

The notice to issue conveyance to the Alaska Native Claims Selection; Choggiung, Ltd., published in the Federal Register on April 29, 1986, page number 15963, is revoked and reissued as follows:

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, and 1613, will be issued to Choggiung Limited for approximately six acres. The lands involved are in the vicinity of Ekuk, Alaska.

Seward Meridian, Alaska

T. 16 S., R. 56 W. (Surveyed),
Sec. 12, those lands within Sec. 3(e) application AA–12836 excluded from Interim Conveyance No. 230, dated September 17, 1979.

A notice of the decision will be published once a week for four (4) consecutive weeks in the ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the

decision shall have until July 7, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-12830 Filed 6-3-86; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service

Availability of Draft Land Protection Plan; Kenai Fjords National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of draft land protection plan.

SUMMARY: This notice announces the availability of the draft land protection plan for Kenai Fjords National Park, Alaska. The document will be available for public comment for 60 days. Public meetings are scheduled for Seward, Port Graham and English Bay, Alaska. Following consideration of public comments a final land protection plan will be prepared. This document dicusses nonfederal lands in and around the park and the proposed methods of protecting park resources and visitor uses.

DATES AND ADDRESSES: Comments on the draft document should be received no later than August 4, 1986, and should be addressed to: Superintendent, Kenai Fjords National Park, P.O. Box 1727, Seward, Alaska 99664.

Copies of the document are available upon request from the above address.

For further information contact park superintendent David Moore at the above address or at telephone number (907) 224-3874.

Dated: May 19, 1986.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 86-12812 Filed 6-3-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-231]

Certain Soft-Sculpture Dolls Popularly Known as Cabbage Patch Kids, Related Literature and Packaging Therefor; Commission Decision Not To Review Initial Determination Terminating Investigation as to Two Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to two respondents on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 17) granting a joint motion to terminate the investigation as to respondents Osco Drug, Inc., and Sav-On-Drugs, Inc., on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On October 1, 1985, Original Appalachian Artworks, Inc. (OAA), and Coleco Industries, Inc., filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain Cabbage Patch Kids dolls, together with the related literature and packaging. The unfair acts alleged were infringement of OAA's copyrights, failure to mark country of origin, and violation of 17 U.S.C. 601(a). On March 3, 1986, OAA, Coleco, Osco, and Sav-On jointly moved to terminate the investigation as to Osco and Sav-On pursuant to rule 210.51 on the basis of a settlement agreement. The motion was supported by the Commission investigative attorney. On April 25, 1986, the presiding administrative law judge (ALJ) issued an ID (Order No. 17) granting the joint motion and terminating the investigation as to Osco and Sav-On on the basis of the settlement agreement. No petitions for review or comments from the public or Government agencies concerning the ID were received.

Termination of the investigation as to respondents Osco and Sav-On the basis of the settlement agreement furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the Commission's rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's EDD terminal on 202-724-0002.

Issued: May 29, 1986.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12831 Filed 6-3-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use in Conducting Certain Competitive Analyses

The Commission has received a request from Economists Incorporated, who has been retained by the Diamond Shamrock Corporation, for permission to use the 1981-1984 and, when available, 1985 ICC Waybill Sample to conduct certain competitive analyses for a proceeding before the Federal Trade Commission involving the competitive consequences of an acquisition of Diamond Shamrock's chlorine/caustic soda plants by Occidental Chemical Corporation. The waybill sample will be used to identify the relevant antitrust geographic market. This involves identifying the degree to which producers of cholorine in one region are able to supply customers in other regions. This can be ascertained, in part, by observing existing rail shipment patterns over a period of time and, thus, the need for the 1981-1985 Waybill Sample. It should be noted that Diamond Shamrock is primarily engaged in the production of chemical, rubber, and plastic products and is not engaged in the provision of any commercial motor carrier services.

The Commission required rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State [49

CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who object will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-7003.

James H. Bayne,
Secretary.

[FR Doc. 86-12513 Filed 6-3-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-16,418]

Erti Co.; Dyersville, Iowa; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 28, 1986, applicable to all workers of Erti Company, Dyersville, Iowa. The Notice of Certification was published in the Federal Register on March 18, 1986 (51 FR 9290).

Based on additional information furnished to the Department on worker layoffs, the Office of Trade Adjustment Assistance reviewed the certification and supporting documents. The additional information revealed that layoffs of workers impacted by increased imports occurred at least two weeks prior to the January 2, 1985 impact date in the certification document.

The intent of the certification is to cover all workers who were adversely affected by increased import competition. Therefore, the notice is amended by providing a new impact date of December 1, 1984.

The amended notice applicable to TA-W-16,418 is hereby issued as follows:

All workers Erti Company, Dyersville, Iowa who became totally or partially separated from employment on or after December 1, 1984 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of May 1986.

Robert A. Schaerfl,
Director, Office of Program Management, UIS.

[FR Doc. 86-12471 Filed 6-3-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-16,522]

Foote Mineral Co.; New Haven, WV; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Foote Mineral Company, New Haven, West Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued:

TA-W-16,522; Foote Mineral Company, New Haven, West Virginia (May 7, 1986)

Signed at Washington, DC, this 27th day of May 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-12472 Filed 6-3-86; 8:45 am]
BILLING CODE 4510-30-M

Robe Tex, Inc., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 19, 1986-May 23, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,759; Robe, Tex, Inc., Brooklyn, NY

TA-W-16,658; Pocono Foundry, Inc., Stroudsbury, PA

TA-W-16,748; Cyclops Corp., Cytemp Div., Bridgeville, PA

TA-W-16,669; Pascoe Building Systems, Wathena, KS

TA-W-17,177; Monsanto Electronics Materials Co., Moore, SC

TA-W-16,619; Monsanto Electronics Materials, Co., St. Peters, MO

TA-W-16,703; Reserve Mining Co., Babbitt, MN, Silver Bay, MN

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,161; W.F. Davis Motor Co., Whitesburg, KY.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,679; Olsten Temporary Services, Akron, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,675; Kenwall Products Corp., Twinsburg, OH

Separations from the subject firm result from a transfer of production to another domestic facility.

TA–W–16,661; Parker-Hannifin, Saddlebrook, NJ

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–16,979; Commercial Shearing, Inc., Salt Lake City, UT

Separations from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA–W–16,620; Shopsmith, Inc., Dayton, OH

A certification was issued covering all workers of the firm separated on or after February 1, 1985.

TA–W–17, 025; Florsheim Shoe Co., Cape Girardeau, MO

A certification was issued covering all workers of the firm separated on or after December 31, 1985.

TA–W–16,710; RTE Powermate Co., Hackensack, NJ

A certification was issued covering all workers of the firm separated on or after November 4, 1984.

TA–W–17,076; Pawtucket Dress Corp., Pawtucket, RI

A certification was issued covering all workers of the firm separated on or after December 8, 1984 and before January 13, 1986.

TA–W–16,680; Howard Fashion Industries, Orangeburg Garment Co., Orangeburg, SC

A certification was issued covering all workers of the firm separated on or after October 10, 1984 and before March 31, 1985.

TA–W–16,670; Creative Industries, Div. of Santa Claus Industries, Waterloo, IA

A certification was issued covering all workers of the firm separated on or after July 15, 1985 and before January 1, 1986.

TA–W–16,676; Mayfair of Massachusetts, Inc., Indiana Orchard, MA

A certification was issued covering all workers of the firm separated on or after November 5, 1984 and before July 21, 1985.

TA–W–16,677; Mayfair Mills, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after June 21, 1985 and before July 21, 1985.

TA–W–16,605; Spiegel-Eugene Corporation, Lebanon, PA

A certification was issued covering all workers of the firm separated on or after September 15, 1984 and before December 31, 1985.

TA–W–16,668; Sea Gems Beachwear, Inc., Long Island City, NY

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before June 18, 1985.

TA–W–16,690; Markay Sportswear, Inc., Long Island City, NY

A certification was issued covering all workers of the firm separated on or after November 8, 1984 and before May 15, 1985.

TA–W–17,008; Regency Electronics, Inc., Indianapolis, IN

A certification was issued covering all workers of the firm separated on or after December 12, 1984.

TA–W–16,628; LaFarge Calcium Aluminates, Inc., (Formerly Lone Star LaFarge, Inc.), Chesapeake, VA

A certification was issued covering all workers of the firm separated on or after July 1, 1985 and before March 31, 1986.

TA–W–16,558; CG Mfg Co., Taunton, MA

A certification was issued covering all workers of the firm separated on or after September 25, 1984 and before November 22, 1985.

TA–W–16,723; U-Brand Corp., Ashland, OH

A certification was issued covering all workers of the firm separated on or after January 25, 1986.

TA–W–16,724; U-Brand Corp., Shelby, OH

A certification was issued covering all workers of the firm separated on or after January 25, 1986.

TA–W–16,699; Rexnord, Inc., Springfield, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,750; P & L Sportswear Co., Inc., Boston, MA

A certification was issued covering all workers of the firm separated on or after December 2, 1984 and before January 31, 1986.

TA–W–16,667; Jackson Sportswear, Worcester, MA

A certification was issued covering all workers of the firm separated on or after November 5, 1984 and before October 3, 1985.

TA–W–16,618; Marion Manufacturing Co., Marion, NC

A certification was issued covering all workers of the firm separated on or after October 23, 1984.

TA–W–16,667; Textron, Inc., CWC Castings Div., Plant #3, Muskegon, MI

A certification was issued covering all workers of the firm separated on or after December 6, 1984.

TA–W–16,622; Motorola, Inc., Austin, TX

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,688; Harrison Sportswear Co., Boston, MA

A certification was issued covering all workers of the firm separated on or after November 5, 1984 and before December 11, 1985.

TA–W–16,694; Allied Chemical, Solvay, NY

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,694A; Allied Chemical, Jamesville, NY

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,673; General Tire, Inc., Waco, TX

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,707; General Tire, Inc., Mayfield, KY

A certification was issued covering all workers engaged in employment related to the production of truck tires separated on or after January 1, 1985.

I hereby certify that the aforementioned determinations were issued during the period May 19, 1986–May 23, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213, during normal business hours or will be mailed to persons who write to the above address.

Dated: May 27, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-12604 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Within-State Incentive Grants for Service to Hard-to-Serve Individuals and Programs Exceeding Performance Standards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Department of Labor proposes a policy to clarify the use of Job Training Partnership Act (JTPA) within-State incentive grants (so-called "6 percent funds") for purposes specifically set forth in JTPA. Some States have requested that they be permitted to use the funds for other purposes.

DATE: Comments must be submitted on or before June 19, 1986.

ADDRESS: Submit comments to: Assistant Secretary for Employment and Training, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. Attention: Dr. Fred Romero, Administrator, Office of Strategic Planning and Policy Development.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Williams. Telephone: (202) 376-6700.

SUPPLEMENTARY INFORMATION:

Statutory Background

Section 202(b)(3) of the Job Training Partnership Act (JTPA) provides that:

(3)(A) Six percent of the allotment of each State for each fiscal year shall be available to carry out subparagraph (B) of this paragraph.

(B) The amount reserved under subparagraph (A) of this paragraph shall be used by the Governor to provide incentive grants for programs exceeding performance standards, including incentives for serving hard-to-serve individuals. The incentive grants made under this paragraph shall be distributed among service delivery areas within the State exceeding their performance standards in an equitable proportion based on the degree by which the service delivery areas exceed their performance standards. If the full amount reserved under subparagraph (A) is not needed to make incentive grants under this subparagraph, the Governor shall use the amount not so needed for technical assistance to service delivery areas in the State which do not qualify for incentive grants under this subparagraph.

[29 U.S.C. 1502(b)(3).]

The above-described incentive grants are referred to as "six percent funds."

Discussion

On January 14, 1986, the Department of Labor (DOL) published at 51 FR 1576 proposed revisions to the Job Training Partnership Act (JTPA) federal reporting requirements for Program Year (PY) 1986 (July 1, 1986—June 30, 1987). Those proposed revised instructions would require States and/or service delivery areas (SDAs) to collect and report on post-program employment and earnings information. Many commenters expressed concern over the additional costs involved with starting up new post-program data collection systems or refining existing automatic data processing (ADP) systems to include new post-program reporting instructions. As a result, some States have requested that DOL allow a broad interpretation of the use of six percent funds to support new post-program data collection and reporting activity.

At the outset of JTPA programs, Governors were permitted to use the full amount of the six percent funds for technical assistance (TA), since there was no previous period of performance for which to award incentives. TA was interpreted to include costs for developing Management Information Systems (MIS) necessary to carry out performance standards responsibilities.

No further guidance on use of six percent funds was provided to the Governors other than in Training and Employment Information Notice (TEIN) No. 40-84 (April 25, 1985), which indicated, consistent with 20 CFR 627.1, that "the Governor has the authority to interpret and issue determinations. The DOL will accept these interpretations unless they are inconsistent with the Act and pertinent regulations." However, several States have set policies and expended six percent funds on a continuing basis in ways which were intended clearly to be acceptable only during the initial nine months of the JTPA programs, such as for MIS support and purchase of ADP hardware. Use of six percent funds to comply with the new post-program reporting requirements would be a further misuse of those funds.

Proposed Policy

In an effort to prevent the misuse of six percent funds, and to identify appropriate funding sources for reporting costs, DOL proposes the following policy:

Effective October 1, 1986, six percent funds shall not be used for any purposes other than to provide incentive grants to SDAs which exceed performance standards, including incentives for serving hard-to-serve individuals, and, if the full amount of six percent funds is not needed to make incentive grants, to provide technical assistance to SDAs which do not qualify for incentive grants. Six percent funds shall not be used for MIS or post-program data collection or other activities properly chargeable to administration. Actions in violation of this policy are inconsistent with JTPA and the JTPA regulations. See 20 CFR 627.1.

The October 1, 1986, effective date is provided to allow States a reasonable transition period to make required adjustments to cost assignment arrangements to conform to the new policy. Funds expended prior to the effective date for purposes contrary to the above policy and other expenditures which are inconsistent with JTPA or pertinent regulations (see 20 CFR 627.1) may be questioned in the audit process. Such costs will be reviewed on a case-by-case basis in accordance with TEIN No. 40-84, but, in general, the above-cited policy will not be applied retroactively.

Signed at Washington, DC, this 20 of May, 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

[FR Doc. 86-12607 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-62-C]

Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1404-1 (braking system) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a trailing locomotive or equivalent devices be used on trains that are operated on ascending grades.

2. As an alternate method, petitioner proposes to equip all locomotives with devices capable of applying sand to all rails in either direction of travel; safe seating facilities; an audible warning device and a sealed beam headlight on either end.

3. Ropes and or chains will be provided between each car and the locomotive to prevent a runaway if an unplanned uncoupling occurs.

4. All operators of locomotives will be instructed to keep their locomotive under control and to operate at a safe rate of speed consistent with track conditions.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 7, 1986. Copies of the petition are available for inspection at that address.

Dated: May 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-12465 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-66-C]

Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (quanity and location of firefighting equipment) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that one portable fire extinguisher and 240 pounds of rock dust be provided at each temporary electrical installation.

2. Petitioner states that the rock dust and sacks deteriorate because of the humid conditions in the mine.

3. As an alternate method, petitioner proposes to use two multipurpose dry chemical-type fire extinguishers in lieu of rock dust for fire protection at temporary electrical installations.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 7, 1986. Copies of the petition are available for inspection at that address.

Dated: May 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-12466 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-64-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburg, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (quantity and location of firefighting equipment) to its Dilworth Mine (I.D. No. 36-04261) located in Greene County, Pennsylvania, its Franklin 125 Mine (I.D. No. 33-00963) located in Harrison County, Pennsylvania, its Oak Park Mine (I.D. No. 33-01158) located in Harrison County, Ohio, its Ireland Mine (I.D. No. 46-01438), its McElroy Mine (I.D. No. 46-01437) and its Shoemaker Mine (I.D. No. 46-01436) all located in Marshall County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that one portable fire extinguisher and 240 pounds of rock dust be provided at each temporary electrical installation.

2. Petitioner states that the rock dust and sacks deteriorate because of the humid conditions in the mine.

3. As an alternate method, petitioner proposes to use two multipurpose dry chemical-type fire extinguishers in lieu of rock dust for fire protection at temporary electrical installations.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 7, 1986. Copies of the petition are available for inspection at that address.

Dated: May 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-12467 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-65-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that air currents used to ventilate structures of areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that the Osage No. 3 Mine cannot ventilate all permanent pump houses in an area along the mainline haulage. Falls and water in areas adjacent to the pump houses cause hazardous conditions when trying to run new vent pipes to the return. Because of the age of the haulageway and adjacent entries, the returns have deteriorated and are no longer effective to create a sufficient pull on the vent pipe.

3. As an alternate method, petitioner proposes to:

a. House the pumps in a sealed fireproof enclosure with steel doors;

b. Mount a dry powder chemical fire extinguisher over the pump. The extinguisher will operate automatically when the heat from the fire is sufficient to activate its automatic mechanism assembly; and

c. Course the intake air ventilating these enclosures outside by use of the Brand, Dolls Run and Statler Fans.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 7, 1986. Copies of the petition are available for inspection at that address.

Dated: May 28, 1986.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 86-12468 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-27-C]

Croner, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Croner, Inc., R.D. 4, Box 83 C, Berlin, Pennsylvania 15530 has filed a petition to modify the application of 30 CFR 77.1109(e) (quantity and location of firefighting equipment) to its Pine Hill No. 2 Mine (I.D. No. 36-02690) located in Somerset County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that two portable fire extinguishers be provided near the transfer pump of each buried combustible liquid storage tank.

2. Petitioner states that the fuel storage tanks are above ground. All of the tanks are in areas within the mine sites, located away from other buildings and personnel. If a fire were to occur, the tanks could burn without causing any damage to property or personnel.

3. All equipment being refueled carry adequate fire protection. Except during refueling, no personnel are in the vicinity of tanks. All personnel are instructed to leave the area and call the fire department in the event of fuel tank fire.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 7, 1986. Copies of the petition are available for inspection at that address.

Dated: May 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-12469 Filed 6-3-86; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on May 21, 1986 (51 FR 18078), through May 28, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By July 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with

reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determinatin is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioners' name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station (PVNGS), Unit No. 2, Maricopa County, Arizona

Date of amendment request: April 15, 1986.

Description of amendment request: The proposed amendment would allow: (i) Co-owner El Paso Electric Company (El Paso) to transfer all or a portion of its fee interest in PVNGS Unit 2 to equity investors and (ii) the simultaneous transfer by the equity investors back to El Paso of a long term (approximately 27½ years) possessory leasehold interest of this share under the terms described in this application. It is comtemplated that the equity investors will be third parties not affiliated with El Paso. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust consideration may be present. Under the proposed transaction, it is represented that El Paso will remain in possession of its present interests in PVNGS Unit 2 under a leasehold rather than by virtue of ownership.

The proposed amendment is similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 FR 45055 (1985). By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 20, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's order. See 51 FR 1883 (1986). The Commission also has under consideration requests for additional similar transactions related to sale and leaseback of Palo Verde Units 1 and 2 ownership shares by PNM. See 51 FR 8250, 51 FR 8567, and 51 FR 9125 (1986).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to any of the design or criteria of the plant. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not vary or affect any plant operating condition or parameter. For this reason, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the design basis for any equipment in the plant. For this reason,

the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Furthermore, the proposed amendment would maintain El Paso in possession of its present interests in PVNGS and El Paso would continue to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any rights of possession in, absent further license amendment, or control over PVNGS Unit 2. Arizona Public Service Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above consideration, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Arizona Public Service Company et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station (PVNGS), Unit No. 2, Maricopa County, Arizona

Date of amendment request: May 2, 1986.

Description of amendment request: The proposed amendment would allow: (i) Co-owner Arizona Public Service Company (APS) to transfer all or a portion of its fee interest in PVNGS Unit 2 to equity investors and (ii) the simultaneous transfer by the equity investors back to APS of a long term (approximately 29½ years) possessory leasehold interest of this share under the terms described in this application. It is contemplated that the equity investors may be third parties affiliated with APS. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transaction, it is represented that APS will remain in possession of its present interests in PVNGS Unit 2, under a leasehold rather than by virtue of ownership. However, APS would continue to be the sole licensed operator of the facility.

The proposed amendment is similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 FR 45855 (1985). By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 23, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's order. See 51 FR 1669 (1986). The Commission also has under consideration requests for additional similar transactions related to sale and leaseback of Palo Verde Units 1 and 2 ownership shares by PNM. See 51 FR 8253, 51 FR 9587, and 51 FR 9125 (1986). Also, a request for a similar transaction related to sale and leaseback of Palo Verde Unit 2 ownership shares by El Paso Electric Company (request dated April 15, 1986) has been filed with the Commission.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amended to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to any of the design or criteria of the plant. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not vary or affect any plant operating condition or parameter. For this reason, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the design basis for any equipment in the plant. For this reason, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Furthermore, the proposed amendment would maintain APS in possession of its present interests in PVNGS and APS would continue to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any rights of possession in, absent further license amendment, or control over PVNGS Unit 2. Arizona Public Service Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 30, 1986.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to provide for a modification that would change the Combustible Gas Control System in Arkansas Nuclear One, Unit 1 (ANO-1) from a system based on a redundant Hydrogen Purge System (with capability to install an external hydrogen recombiner) to a system based on a redundant Internal Hydrogen Recombiner System as the means for controlling combustible gas concentrations in containment following a postulated Loss of Coolant Accident (LOCA).

Specifically, the amendment would change Specification 3.14, "Hydrogen Purge System" and specification 4.12, "Hydrogen Purge System Surveillance" to be consistent with the "Standard Technical Specifications for Babcock and Wilcox Pressurized Water Reactors," NUREG-0103 (Rev. 4, Fall, 1980) for atmospheric containments as applicable to Westinghouse Electric Hydrogen Recombiners. Conforming changes would be made to the Table of Contents.

Both the existing system and the Internal Hydrogen Recombiner System are in compliance with regulatory requirements of 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors." Both systems are consistent with associated regulatory guidance:

—Regulatory Guide 1.7 (Rev. 2, November, 1978) and Safety Guide 7 (1971), as applicable.
—General Design Criteria 41, 42, and 43.
—Standard Review Plan 6.2.5, as applicable.

The Combustible Gas Control System is not being changed for regulatory reasons, but is being changed due to considerations of maintainability. No changes are being made to the required capabilities for mixing or measuring combustible gases.

Basis for proposed no significanct hazards consideration determination: The proposed changes have been reviewed against each of the criteria in 10.CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed facility change from a redundant Hydrogen Purge System to a redundant Internal Hydrogen Recombiner System to control combustible hydrogen following an accident and the associated TS changes would in no way increase the probability or consequences of an accident previously evaluated. Installation of internal hydrogen recombiners improves hydrogen removal capability while minimizing the consequences of a postulated LOCA. The proposed system change would affect the type of equipment used to meet the regulatory requirement for control of combustible gas concentration in containment (10 CFR 50.44(b)(3)). The proposed system, consisting of hydrogen recombiners, is comprised of components which have been given a degree of regulatory preference. The proposed TSe would have no effect on the probabilty or consequences of an accident previously evaluated.

The proposed facility change and the associated changes in the TSe would not create the possiblity of a new or different kind of accident from any accident previously evaluated. The proposed hydrogen recombiners have been environmentally qualified, they are to be installed in locations which will ensure their effectiveness and no negative impact on other safety-related equipment, and they will be consistent with regulatory requirements relating to Combustible Gas Control Systems. The proposed TSs would not affect the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed facility modification and associated TS changes would not involve a significant reduction in a margin of safety. The proposed equipment change is from a type of system which allows controlled release of combustible gas from containment to a type of system that does not result in a release from containment (10 CFR 50.44(h)(2)). The recombiner system has been given regulatory preference because of its characteristic of not generating releases during a postulated LOCA. The recombiner system proposed to be installed has greater hydrogen removal capability than the current purge system, in the extent that it should be used. Although both systems meet the regulatory requirements, the proposed system is an improvement on the system currently in place. The proposed TSs are equivalent to or more conservative that the existing TSs for the Hydrogen Purge System and thus do not involve a reduction in margin of safety.

On these bases, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Libermen, Cook, Purcell and Reynolds, 1200 17th Street, NW., Suite 700, Washington, D.C. 20036.

NRC Project Director: John F. Stolz.

Carolina Power and Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 8, 1986.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant, Unit No. 2. The proposed revision involves reducing the reporting requirements for primary coolant iodine spiking from a short-term report to an item included in the Annual Report. In addition, the reporting of challenges to primary safety and relief valves will be removed as a Special Report and included as part of the Annual Report in accordance with Generic Letter 82-16. The licensee inadvertently placed these reports under special reports in the Technical Specification rather than under annual reports.

As part of a continuing effort to reduce or delete unnecessary reporting requirements, the Commission issued Generic Letter (GL) 85-19. GL 85-19 provided guidance for licensees to reduce reporting requirements for primary coolant iodine spikes. In addition, the GL provided guidance for eliminating unnecessary Technical Specification requirements to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance in the form of examples of amendments that are not considered likely to involve significant hazards considerations (48 FR 14870). Example (i) states "a purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specificiations, correction of an error or a change in nomenclature."

As discussed above, the licensee's request to change reporting requirements for the safety and relieve valves was clearly due to an error. This change request is therefore identical to example (i). Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The licensee's request for changing the reporting requirements for primary coolant iodine spiking does not match any of the examples. However, the licensee has determined and the NRC staff agrees that the proposed amendments will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because changing the reporting requirements and eliminating the coolant iodine limit would not adversely affect the accident analysis or safety margins as currently defined because other controls and operating limits currently implemented would prevent the Final Safety Analysis Report assumptions from being exceeded as a result of severely degraded fuel;

(2) create the possibility of a new or different kind of accident than that previously evaluated because changing reporting requirements does not involve any analyzed accident conditions;

(3) involve a significant reduction in a margin of safety because the requested reporting requirement change does not involve any safety analysis.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room Location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Treet, N.W., Washington, D.C. 20036

NRC Project Director: Lester S. Rubenstein.

Commonwealth Edison Company, Dockst No. 50–10, Dresden Station, Unit 1, Grundy County, Illinois

Date of amendment request: January 7, 1986.

Description of amendment request: The licensee proposed: (1) That License No. DPR–2 for Dresden Station, Unit No. 1 (the facility), be amended to possess-but-not-operate status; (2) that License No. DPR–2 be amended to delete requirements that the licensee believed were no longer applicable at the shutdown facility; and (3) that the technical specifications be revised to reflect the permanently shutdown possess-but-not-operate status of the facility. Items (2) and (3) will be noticed separately in the Federal Register. This notice applies only to item (1).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR Part 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the license. The proposed action to amend License No. DPR–2 to possess-but-not-operate status is more restrictive than the present license because the present license would permit operation of the facility if certain conditions are met. Therefore, since the proposed amendment is encompassed by example (ii) of the Commissions guidance, the staff has determined that the proposed action does not involve a significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael I. Miller, Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Herbert N. Berkow.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 14, 1986.

Description of amendment request: The proposed amendment would permit the performance of monthly surveillance tests on valve SI–NOV–24 (on the line from the refueling water storage tank) and on valve RH–MOV–874 (on the residual heat removal system pump discharge), in accordance with the licensee's application for amendment dated May 14, 1986. The monthly surveillance tests on the subject valves are required to assure the operability of a high pressure recirculation cooling mode following a certain range of small line break loss-of-coolant accidents.

Basis for proposed no significant hazards consideration determination: The proposed technical specification changes address a condition that was discovered as a result of the recent Haddam Neck Plant Probabilistic Safety Study, and for which an exemption for the single failure criterion was granted on April 28, 1986. The proposed changes are in additional to existing surveillance requirements and are being provided to increase the reliability of the high pressure safety injection (HPSI) method of high pressure recirculation cooling following a specific set of small break loss-of-coolant accidents.

The Commission has provided examples (48 FR 14870, April 6, 1983), of actions not likely to involve a significant hazards consideration. Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction, or control not presently in the technical specifications; for example, a more stringent surveillance requirement would not likely constitute a significant hazard. The staff has reviewed the proposed license amendment and concluded that it falls within the envelope example of (ii) since the proposed amendment adds additional surveillance requirements to the plant technical specifications concerning the operability of the subject valves. Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: May 1, 1986.

Description of amendment request: The proposed Technical Specification change would add a sentence to a Table which currently establishes the minimum requirements for shift crew composition during the various conditions of plant operation. The proposed sentence would provide flexibility for the Shift Supervisor to designate a Reactor Operator as the shift commander during his absence. This proposed change is also consistent with the intent of information previously submitted to and accepted by the NRC in response to NUREG–0737, Item I.A.1.2, Shift Supervisor Responsibilities.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

The operation of Big Rock Point in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will allow the Shift Supervisor, who holds the only required on-shift senior reactor operators license, the flexibility to leave the control room/Shift Supervisor Office area for short durations which will increase his ability to investigate and assimilate overall plant performance thereby allowing him to make better decisions in regards to safe operation of the plant. This change would therefore tend to decrease the probability of occurrence of previously evaluated accidents or their consequences.

The operation of Big Rock Point in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will allow the Shift Supervisor to not be in the control room/Shift Supervisor Office

area at all times. However, short notice communications to or from the Shift Supervisor are available through the plant public address system and/or portable radios. Previously evaluated accidents or malfunctions do not place restrictions on where the Shift Supervisor is located at the time an accident may be initiated. Therefore, this change would not create the possibility of an accident or malfunction of a different type from those previously evaluated.

The operation of Big Rock Point in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This proposed change enables the Shift Supervisor to make better, more complete, decisions in regards to safe operation of the plant which tends to reduce the probability of occurrence of an accident and therefore would tend to increase the margin of safety as defined in the technical specifications.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NCR Project Director: John A. Zwolinski.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 18, 1985.

Description of amendment request: The proposed amendments would change the expiration date in paragraph 2.L of Facility Operating License NPF-9 for Unit 1 from midnight on February 28, 2013, to midnight on June 12, 2021. Similarly, the expiration date in paragraph 2.K of Facility Operating License NPF-17 for Unit 2 would be changed from midnight on February 28, 2013, to midnight on March 3, 2023.

Basis for proposed no significant hazards consideration determination: McGuire Nuclear Station is currently licensed for a duration of 40 years commencing with issuance of the construction permits. The proposed amendments would provide a duration of 40 years beginning with issuance of the low power (5%) operating licenses.

Plant equipment, components and structures were designed considering a 40 year service life of the plant. Some equipment, such as the major components of the nuclear steam supply system, was designed for 40 years of service life. Other equipment is not expected to last for a full 40 years; however, in those cases, surveillance and maintenance procedures were implemented into the plant operation to assure that degradation is promptly identified and corrective actions, such as refurbishment and replacement, are taken. Those procedures were designed according to various industry codes and the plant Technical Specifications to ensure that plant structures, equipment and components would operate safely and as designed.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations and examples of actions likely to involve significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because plant equipment, components, and structures were designed considering a 40 year service life, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design would not be changed. Also, it would not (3) involve a significant reduction in a margin of safety because surveillance and maintenance procedures are implemented into the plant operation to assure that degradation is promptly identified and corrective actions are taken. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 1986.

Description of amendment request: The amendment would change Technical Specification Table 3.3.2-2, "Isolation Actuation Instrumentation Setpoints" by changing the trip setpoint and allowable value for the reactor core isolation cooling (RCIC) system steam line high flow.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has made an analysis of significant hazards considerations using the standards of 10 CFR 50.92 and has concluded that the proposed amendment does not involve a significant hazards consideration. The NRC staff has made a preliminary review of the licensee's analysis and associated bases. Staff's discussion of the proposed amendment as it relates to the three standards follows.

The RCIC steam line high flow trip setpoint would be changed from 363 inches of water to 56 inches of water and the allowable value would be changed from 371 inches of water to 64 inches of water. The change is needed to correct an error in the calculation of the present values. The specified values are differential pressures on flow meter in the RCIC steam supply line and are calculated based on 300 percent of rated RCIC steam flow. The present values were calculated for a four inch diameter steam line (which is the pipe size for other BWRs) rather than the six inch diameter steam line which is installed in the Grand Gulf Nuclear Station, Unit 1. The calculational model and input values for the model other than the pipe diameter are correct and were used in the calculation of the values proposed in this amendment. The only change in the

calculation of the proposed values is the use of a six inch diameter pipe instead of a four inch diameter pipe.

The safety function of the isolation valve in the RCIC steam supply line is to close following a postulated break of the steam supply line thus isolating the containment. The flow rate assumed in the loss of coolant accident (LOCA) safety analysis was 300 percent of rated RCIC steam flow and is not changed in the calculation of the proposed instrument setpoint and allowable values. Because the safety analysis for the LOCA would remain the same, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated. The change would make the actuation instrumentation setpoints consistent with the as-built plant. The setpoints have been and continue to be administratively controlled to the proposed values by plant administrative procedures. Because the plant equipment and operating procedures remain the same, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated. Because the proposed values are more conservative than the presently specified values, the proposed change would not involve a significant reduction in a margin of safety.

Accordingly, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, N.W., Washington, D.C. 20036.

NRC Project Director: Walter R. Butler.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit No. 3, Eureka, California

Date of amendment request: May 14, 1986.

Description of amendment request: The licensee proposes an amendment to License No. DPR–7 to approve a revised security plan for Humboldt Bay Power Plant, Unit No. 3 (the facility). The proposed security plan is reduced in scope to cover only the storage of spent fuel. The facility is permanently shut down and authority to operate has been deleted by an amendment to allow possess-but-not operate status issued on July 16, 1985.

Basis for proposed no significant hazards consideration determination: The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated because: (1) The security plan only eliminates areas, equipment and systems that are not operating with the facility permanently shutdown and (2) the spent fuel, which is the primary focus of the proposed plan, has a reduced potential for the probability or consequences of an accident because of the significant radioactive decay in the more than 9 years the facility has been shutdown.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated, because the method of storage of spent fuel has not changed, and with the reactor defueled and permanently shut down, no reactor accidents are possible.

The proposed change does not involve a reduction in a margin of safety because the security measures described in the plan are commensurate with the risks associated with the storage of fuel which have decreased because of radioactive decay of the fuel in the more than 9 years the facility has been shutdown.

Therefore, based on the above considerations the NRC staff has determined in accordance with 10 CFR Part 50.92 that this proposed amendment will not involve a significant hazards consideration.

Local Public Document Room location: Eureka-Humboldt County Library, 421 I Street (County Court House) Eureka, California 95501.

Attorney for licensee: Phillip A. Crane, Jr., Pacific Gas and Electric Company, Post Office Box 7442, San Francisco, California 94120.

NRC Project Director: Herbert N. Berkow.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 7, 1986.

Description of amendment request: The proposed amendment would delete Trojan Technical Specification (TTS), Paragraph 3.4.10.1.d. Paragraph 3.4.10.1.d of TSS ¾ 4.10, "RCS Structural Integrity," currently allows the licensee to perform an evaluation of reduced structural integrity as an alternative to restoring structural integrity. By letter dated February 10, 1986 the staff requested the licensee review Paragraph 3.4.10.1.d and propose revised Technical Specifications based on the staff's concern that safety related components, especially those which are part of the reactor coolant pressure boundary or attached thereto, should not be placed into service with reduced structural integrity. The proposed amendment responds to the staff's request.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining that a proposed amendment involves no significant hazards consideration. Accordingly the licensee has performed the following analysis:

This change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deleting TTS 3.4.10.1.d requires that strucutural integrity be restored in lieu of performance of an evaluation. This change constitutes an additional restriction not presently included in the TTS.

This change does not create the possibility of a new or different kind of accident from any accident previously evaluated because restoring structural integrity is more conservative than evaluating structural integrity from an accident analysis standpoint. By restoring structural integrity, assurance is provided that a new or different kind of accident will not occur.

This change does not involve a significant reduction in a margin of safety because restoring structural integrity in lieu of evaluating structural integrity assures that margins of safety are not reduced.

In the April 6, 1983 Federal Register (48 FR 14870), the NRC published a list of examples of amendments that are not likely to involve a significant hazards consideration. Example ii of that list applies to the changes proposed herein and states: "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

Since the above example is judged to apply to the proposed change, the proposed change is deemed not to involve a significant hazard consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve significant hazards considerations.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J.W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Steven A. Varga.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 9, 1986.

Description of amendment request: The proposed amendment request would revise the Trojan Technical Specifications (TTS) related to the reporting requirements for Reactor Coolant System specific activity as follows:

(1) TTS 3.4.8, Action, Modes 1, 2, and 3, Item a—The provision limiting operation with specific activity greater than 1.0 uCi/gram Dose Equivalent I–131 to 10 percent of the unit's total yearly operating time would be deleted. (The basis for this deleted provision also would be deleted.)

(2) TTS 3.4.8, Action, Modes 1, 2, 3, 4, and the 5, Item a—The requirement that the specific activity analysis results be submitted in the Annual Report would be added.

(3) TTS 6.9.1.5.d would be added to specify information regarding the specific activity analysis which must be included in the Annual Report.

The proposed amendment is in response to Generic Letter 85–19 which states the staff's determination that the reporting requirement for iodine spiking can be reduced from a short-term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be submitted in the Annual Report would more clearly designate the results to be included from the specific activity analysis and exclude information regarding fuel burnup by core region.

Additionally, Generic Letter 85–19 states the staff's determination that the requirement to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period (expressed as 10 percent of total yearly operating time in the TTS) can be eliminated. The limit is no longer considered necessary on the basis that proper fuel management by licensees (with the quality of nuclear fuel greatly improved) and existing reporting requirements [10 CFR 50.72(b)(1)(ii)] should preclude ever approaching the limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining that a proposed amendment involves no significant hazards considerations.

Accordingly, the licensee has performed the following analysis:

1. Does the license amendment involve a significant increase in the probability or consequences of an accident previously evaluated? Changing reporting requirements is administrative only. The provision regarding a percentage of total yearly operating time is no longer considered necessary since proper fuel management, improved fuel quality, and existing reporting requirements [10 CFR 50.72(b)(1)(ii)] should preclude approaching the limit. Therefore, the change in reporting requirements and the elimination of the operating limit will not involve a significant increase in the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? Changing reporting requirements is administrative only. Those changes and the elimination of an unnecessary operating limit do not create the possibility of a new or different type of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Changing reporting requirements is administrative only. Those changes and the elimination of the provision regarding a percentage of total yearly operating time do not involve a significant reduction in a safety margin since proper fuel management, improved fuel quality, and existing reporting requirements should preclude approaching the limit.

Based on the above analysis, the licensee concluded that the proposed amendment does not involve a significant hazards considerations. The staff has reviewed the licensee's determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J.W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Steven A. Varga.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: April 18, 1986.

Description of amendment request: This application for revision to the Indian Point 3 Technical Specifications seeks to increase the maximum allowable total core peaking factor, F_Q. Presently, the Technical Specifications limit the full power F_Q to less than or equal to 2.13. This change will increase the full power F_Q limit to less than or equal to 2.20.

The February 11, 1980 NRC Confirmatory Order had limited the calculated fuel peak clad temperature (PCT) to a maximum of 2000°F under large break LOCA conditions. As a result of this limit, a substantial penalty on F_Q had to be imposed.

The application provides the Appendix K Emergency Core Cooling System (ECCS) reanalysis assuming a uniform 24% steam generator tube plugging level, which was transmitted to the NRC via the Authority's May 5, 1983 letter. The limiting Final Acceptance Criteria (FAC) analysis case was the Double Ended Cold Leg Guillotine (DECLG) break, C_d=0.4. For this limiting case, the PCT was calculated to be 2039°F for a full power F_Q of 2.20. This case was re-analyzed with a full power F_Q of 2.14. The resultant PCT was 1995°F and thereby assured compliance with the February 11, 1980 Order. This F_Q limit was incorporated into the Indian Point 3 Technical Specification via Amendment 48, dated January 13, 1984.

By Rescission of Order, dated July 5, 1985, the February 11, 1980 Confirmatory Order was rescinded. As such, the aforementioned limiting case analysis with an F_Q of 2.20 can now be utilized as the resultant PCT of 2039°F satisfies the PCT requirement of 10 CFR 50.46.

However, the aforementioned Appendix K reanalysis, assuming a F_Q of 2.20, was performed in support of reactor operations with uniform 24% steam generator tube plugging. The Authority's March 14, 1986 letter transmitted Revision 1 to WCAP–10705, "Safety Evalution for Indian Point 3 with Asymmetric Tube Plugging Among Steam Generators (Non-proprietary)," which documented sensitivity of asymmetric steam generator tube plugging level on the LOCA and non LOCA transients. Enclosure 2 to this Safety Evaluation details the sensitivity of asymmetric tube plugging on calculated ECCS performance. The full power F_Q of 2.20 for the ECCS reanalysis

performed for a uniform 26% steam generator tube plugging level is not adversely impacted by asymmetric effects.

The Authority's April 23, 1985 letter transmitted proposed revisions to the Technical Specifications in support of the Cycle 5 refueling, which involved a fuel design transition from the Westinghouse 15×15 low parasitic (LOPAR) design to the 15×15 Optimized Fuel Assembly (OFA) design. The greater hydraulic resistance of the 15×15 OFA will cause an approximate reduction of 2.2% in reflood flow rate. This will result in an approximate 10°F increase in PCT under large break LOCA conditions. As a result of this increase in PCT, the F_Q limit had to be lowered from 2.14 to 2.13 so that the Confirmatory Order requirement of 2000°F PCT would not be exceeded. These revisions were incorporated into the Indian Point 3 Technical Specifications via Amendment 61, dated August 27, 1985.

Including the 10°F increase to account for the OFA design results in a PCT of 2049°F for a F_Q of 2.20 under the LOCA conditions. The limits of 10 CFR 50.46 are not exceeded. The F_Q assumed in all of the small break LOCA and non-LOCA transient analyses was 2.32. Asymmetric steam generator tube plugging and the OFA design did not necessitate any reductions in this assumed F_Q value. Hence F_Q of 2.20 assumed in the large break LOCA is limiting.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they related to this amendment follows:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change seeks to increase the F_Q limit to 2.20. The revised limit will not increase the probability of an accident previously analyzed as this limit is an operational restriction to limit the consequences of the accident. The analyses results are within the safety limits provided by 10 CFR 50.46.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Increasing the F_Q limit to 2.20 will not introduce the possibility of an accident of a different type than previously analyzed.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

In issuing Amendment 46 to the Indian Point 3 Technical Specifications, dated January 13, 1984, the NRC in their safety evaluation report reviewed and approved the ECCS reanalysis assuming a F_Q of 2.14, which results in a PCT of 1995°F. The proposed change increasing the F_Q limit of 2.20 will result in a PCT of 2039°F. The presence of OFA fuel in the core will result in a PCT of 2049°F.

The analyses results are within the safety limits specified in 10 CFR 50.46.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: December 18, 1984 , as revised April 26, 1985, supplemented May 22, 1985, and superseded October 30, 1985.

Description of amendment request: The amendment would revise the Technical Specifications to establish Limiting Conditions for Operation (LCOs) for the utilization of the Decay Heat Removal System (DHRS) to cool the spent fuel pool. This is required because the spent fuel pool has a single loop heat removal system. If this loop becomes unavailable for removing heat from the fuel pool, one of the DHRS loops can be utilized to assure that the pool temperature is kept low enough to prevent boiling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. The proposed amendment would add limitations and controls by adding LCOs for the use of the DHRS for cooling the fuel pool. The implementation of the proposed LCOs would provide additional controls and limitations not included in the current Technical Specifications. For this reason, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: June 10, 1985, as supplemented December 6, 1985.

Description of amendment request: The amendment would: (1) Combine diesel generator (DG) Technical Specification (TS) Surveillance requirements 4.8.1.1.2.a.3 and 4 into one reqirement, 4.8.1.1.2.a.3; (2) change the DG TS surveillance requirement regarding the 24 hour run, such that the requirement to operate for 2 hours at the 2 hour DG load rating can be performed at anytime during the 24 hours instead of during the first 2 hours of the 24-hour run; (3) add to the Bases section for DG TS 3/4.8 a reference to the June 10, 1985 and December 6, 1985, amendment requests; (4) change the DG load rejection test in the TS surveillance from 830 kW to 729 kW; and (5) add a note to TS 3.8.1.2 to clarify that the Engineered Safety Feature (ESF) Load Sequencer may be de-energized in Modes 5 and 6.

The initial application dated June 10, 1985, was noticed in the Federal Register on July 17, 1985 (50 FR 29016). Additional information and new changes were submitted by letter dated December 6, 1985. Upon review, the NRC has determined that some of the initial changes requested, along with the new changes, require renoticing.

Basis for proposed no significant hazards consideration determination: The license is proposing to change the requirement to perform the DG two hour test at the beginning of the 24 hour run

and allow it to be performed at any time during the 24 hour period (item 2 above). This proposal is in accordance with the requirements of Regulatory Guide 1.108, item C.2.a(3), which states that testing should, "demonstrate full-load carrying capability for an interval of not less than 24 hours, of which 22 hours should be at a load equivalent to the continuous rating of the diesel generator and 2 hours at a load equivalent to the 2 hour rating of the diesel generator."

TS surveillance requirement 4.8.1.1.2.e.2 requires a load rejection test of greater than or equal to the maximum single load placed on the diesel generators (item 4 above). As listed in the Virgil C. Summer Nuclear Station Final Safety Analysis Report (FSAR), Table 8.3-3, (Channel A), the largest load is 729 kW and is associated with the charging pump. Accordingly, the licensee proposes that the Technical Specifications should be changed from 830 kW to 729 kW to reflect this load.

The licensee also requested an additional clarifying note be added to TS 3.8.1.2 to indicate that the ESF Load Sequencer may be de-energized in Modes 5 and 6 (item 5 above). The solid state protection system, which the automatic signals that start the diesel go through at the plant, is not required to be operable in Modes 5 and 6. Therefore, to be consistent with the other solid state protection TS (see Table 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," items 1 and 7), this note is necessary to provide clarification for the determination of the diesel generators' operability in Modes 5 and 6.

The remaining changes, combining two TS line items into one (item 1 above), and referencing both amendment requests in the bases (item 3 above), are administrative in nature.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a purely administrative change to Technical Specifications such as a change to achieve consistency throughout the Technical Specifications. Three of the changes (items 1, 3 and 5) involved here are similar to this example. The other two changes (items 2 and 4) do not match any of the examples. However, the staff has reviewed the licensee's request for these two changes and has determined that should they be implemented, they will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the load run and load reject tests will be conducted based on Regulatory Guide 1.108 and the FSAR, respectively. Also, they will not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not changed. Finally, they will not (3) involve a significant reduction in a margin of safety because the changes are based on a regulatory guide and the FSAR, respectively. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: January 9, 1986, supplemented April 14, 1986.

Description of amendment request: The amendment would change License Condition 2.C (24) in Operating License No. NPF-12. Currently, the condition states, "SCE&G shall continue the seismic monitoring program discussed in Section 2.5.3 of the Safety Evaluation Report until December 31, 1983, at which time there shall be a reevaluation of the need for further monitoring to be made an additional licensing requirement." The amendment would change the condition to read, "SCE&G shall maintain responsibility for a seismic monitoring program as discussed in Section 2.5.3 of the Safety Evaluation Report until a request is made by the Licensee and approved by the NRC staff for reduction or elimination of the program."

Basis for proposed no significant hazards consideration determination: The University of South Carolina (USC) has indicated an interest in maintaining and operating the licensee's microseismic network to ensure continued monitoring in the future. The licensee has negotiated a contract (grant) with the USC Geology Department to provide complete operation, maintenance, and data analysis.

The original license condition required a reevaluation of the need for monitoring after December 31, 1983. Monitoring has continued since that time and by the recently negotiated contract will continue for some time into the future. Therefore, the license condition is being changed to reflect maintenance of a seismic monitoring program until a request is made by the licensee and approved by the NRC staff for reduction or elimination of the program.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the microseismic monitoring network is not part of the plant, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not being changed. Also, it will not (3) involve a significant reduction in a margin of safety because the microseismic monitoring will continue under improved controls. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 17, 1986.

Description of amendment request: The amendment would change Technical Specification 6.2.2, "Administrative Controls—Unit Staff," to clarify that the Director, Nuclear Plant Operations does not need to review individual overtime during extended shutdown periods. The amendment would also change Technical Specification 3.5.3, "ECCS Subsystems—Tavg Less than 350°F," to clarify that the residual heat removal system can be aligned to the reactor coolant system during Mode 4 operation and manual alignment to the refueling water storage tank would be utilized upon receipt of a safety injection signal.

Basis for proposed no significant hazards consideration determination: Technical Specification (TS) 6.2.2.d states that, "Except during extended shutdown periods, the use of overtime should be considered on an individual basis. . . ." The amendment would clarify that individual overtime does not need to be reviewed by the Director, Nuclear Plant Operations during extended shutdown periods.

TS 3.5.3.d would be changed to be more like the Westinghouse Standard Technical Specifications, thereby clarifying that the residual heat removal system can be aligned to the reactor coolant system during Mode 4 operation.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because both changes clarify existing Technical Specification requirements, and (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not being changed. Also, it will not (3) involve a significant reduction in a margin of safety because Technical Specification requirements are not being changed. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 25, 1984 and October 25, 1985 (Reference PCN-84).

Description of amendment request: The proposed change would delete License Condition 2.C(5) of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 Operating Licenses, NPF-10 and NPF-15, respectively. These license conditions define the requirements for the environmental qualification program for safety related electrical equipment. On February 23, 1983, the Commission issued a new rule, 10 CFR 50.49, which defines the requirements for environmental qualification of safety related electrical equipment and supersedes the SONGS 2 and 3 license conditions.

Specifically, License Condition 2.C(5)a requires that SCE be in compliance with the provisions of NUREG-0588 "Interim Staff Position on Environmental Qualification of Safety Related Equipment," Revision 1 dated July 1981. 10 CFR 50.49 encompasses the requirements of NUREG-0588 and states that equipment qualified in accordance with NUREG-0588 need not be requalified in accordance with the provisions of 10 CFR 50.49. However, replacement equipment must be qualified under the provisions of 10 CFR 50.49. License Condition 2.C(5)b requires that complete and auditable records, which describe the environmental qualification status of all safety related electrical equipment, be available and maintained and that such records be updated and maintained current as equipment is replaced or further tested. 10 CFR 50.49 encompasses the record keeping requirements of this license condition. License Condition 2.C(5)c requires implementation of an environmental qualification maintenance procedures program. Additionally, License Condition 2.C(5)d requires the implementation of an improved environmental qualification surveillance program to detect age-related degradation and any improved maintenance program procedures required by such a surveillance program. 10 CFR 50.49 encompasses these requirements by requiring that qualified equipment will meet its specified performance requirements when it is subjected to the conditions predicted to be present when it must perform its safety function, up to the end of its qualified life, and requires that replacement equipment must also be qualified. By letters dated August 23, 1983 and April 10, 1985, SCE affirmed that maintenance program procedures had been implemented and that an improved surveillance program had been implemented.

Basis for No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either results in some increase to the probability or consequences of a previously analyzed accident or may reduce, in some way, a safety margin but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP); for example, a change resulting from a small refinement of a previously used calculational model or design method. Example (vii) relates to a change to make a license conform to changes in the regulations where the license change results in a very minor change to facility operations currently within keeping with the regulations.

10 CFR 50.49, which was promulgated after the issuance of the SONGS 2 and 3 operating licenses, defines the Commission requirements for an acceptable environmental qualification program. Specifically, this rule identifies record keeping requirements, implementation schedule, and environmental qualification criteria. The rule supersedes previous Staff criteria for environmental qualifications such as those contained in NUREG-0588. License Conditions 2.C(5)a and 2.C(5)b identify schedule, environmental qualification criteria and record keeping requirements. These requirements have been superseded by 10 CFR 50.49; therefore, the proposed deletion of License Condition 2.C(5)a and 2.C(5)b makes the licenses conform to changes in the regulations. Thus, this change is similar to example (vii) of 48 FR 14870.

SRP Section 3.11, "Environmental Qualification of Mechanical and Electrical Equipment," describes the general requirements for the design and environmental qualification of all equipment. The specific acceptance criteria for assessing the acceptability of an environmental qualification program for safety related electrical equipment is provided by reference to NUREG-0588. 10 CFR 50.49 has superseded NUREG-0588 and thus specific SRP acceptance criteria are now found in 10 CFR 50.49. The proposed change deletes License Conditions 2.C(5)c and 2.C(5)d which define the requirements for an environmental qualification maintenance and surveillance program and requires the affirmation of implementation of the improved surveillance and maintenance procedures. 10 CFR 50.49 requires safety related electrical equipment remain qualified for its qualified life and that replacement equipment also be qualified. These two aspects of 10 CFR 50.49, while not specifically identifying

the means of accomplishing these requirements, achieve the same goal as License Conditions 2.C(5)c and 2.C(5)d; thus, while deletion of these license conditions removes the specificity of how equipment will be maintained in a qualified condition of its life, the same ultimate requirement is mandated by 10 CFR 50.49. Since the requirements of 10 CFR 50.49 must be met and since they define an acceptable environmental qualification program, the environmental qualification program will continue to meet the acceptance criteria even with the deletion of License Conditions 2.C(5)c and 2.C(5)d. Therefore, the proposed change is similar to example (vi) of 48 FR 14870.

Local Public Document Room Location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.

Date of amendment request: February 7, 1986 (Reference: PCN-210).

Description of amendment request: The proposed change would delete, in its entirety, Technical Specification 3/4.6.2.2, "Iodine Removal System," and replace it with a new technical specification requiring trisodium phosphate in the containment emergency sump area.

Technical Specification 3/4.6.2.2, "Iodine Removal System," requires that a spray additive tank, containing at least 1456 gallons of between 40 and 44% by weight of NaOH solution, and two chemical addition pumps be operable in Modes 1, 2 and 3. The original purpose of this iodine removal system was to ensure that in the event of a LOCA a sufficient amount of NaOH will be added to the containment spray to raise the pH to between 8 and 9 during the initial phase of the spray. The effects of the increased pH levels are to increase the iodine removal capability of the spray and the iodine retention in the sump.

An additional function of the NaOH in the iodine removal system, during the long term recirculation phase, is to maintain the pH level of sump at greater than or equal to 7.0 to minimize the potential for chloride induced stress corrosion of austenitic stainless steel.

A new analysis utilizing recent changes in NRC methodology (NUREG-0800, Section 6.5.2, Rev. 1), combined with knowledge gained from recent studies on the behavior of iodine in the post-LOCA environment, demonstrates that the deletion of the spray additive tank does not significantly change the calculated offsite thyroid doses. The pH of the containment spray does not need to be increased during the initial phase of containment spray during a LOCA to enhance iodine removal.

However, in the post-LOCA recirculation phase, the emergency core cooling system (ECCS) solution pH must be increased to greater than or equal to 7.0 to minimize chloride induced stress corrosion cracking of austenitic stainless steel components, and to minimize the hydrogen produced by the corrosion of galvanized surfaces and zinc based paints. To accomplish this increase in the ECCS solution pH, a new technical specification is proposed to replace Technical Specification 3.6.2.2. This new technical specification requires the presence of a specified amount of trisodium phosphate in the containment area. This amount of trisodium phosphate will maintain long term pH control in the ECCS recirculation solution, thereby minimizing the potential for chloride induced stress corrosion and maximizing iodine retention in the sump solution.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously-analyzed accident or may in some way reduce a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

SRP Sections 6.1.1, "Engineered Safety Features Materials," 6.5.2, "Containment Spray as a Fission Product Cleanup System," an 15.6.5, "Loss of Coolant Accidents Resulting From Spectrum of Postulated Piping Breaks Within the Reactor Coolant System," define the pertinent acceptance criteria. SRP Section 6.1.1 requires that the composition of containment spray and core cooling water be controlled to ensure a minimum pH of 7.0 following a loss of coolant accident to inhibit initiation of stress corrosion cracking. SRP Section 6.5.2 defines conditions under which the containment spray system can be credited for fission product removal. SRP Section 15.6.5 defines, by reference to 10 CFR 100, the post accident dose limits.

The only impact that the proposed technical specification change has on this system is the deletion of the use of NaOH in the initial containment spray phase following a postulated LOCA, and the substitution of trisodium phosphate for NaOH in the sump solution during the long term recirculation phase. Consistent with SRP Section 6.5.2, no credit is taken for containment spray removal of elemental iodine. The current analysis, taking credit for NaOH addition, calculates a 0-2 hour exclusion area boundary (EAB) thyroid dose of 86.0 rem and a 0-30 day low population zone (LPZ) thyroid dose of 11.5 rem.

The 10 CFR 100 acceptance criteria are 300 rem for both categories. For the new analysis, the corresponding conservative case EAB thyroid dose is 76.2 rem and the LPZ thyroid dose is 12.2 rem. An optimized case resulted in calculated EAB thyroid dose of 57.7 rem and LPZ thyroid dose of 8.7 rem. Depending on the degree of conservatism in the new analysis, the deletion of the spray additive tank may slightly increase or decrease the calculated thyroid dose at the LPZ, and will in all cases reduce the thyroid dose at the exclusion area boundary. It should be noted that in all cases there is significant margin between the calculated thyroid doses and the limits defined in 10 CFR 100, and this margin is essentially independent of whether the spray additive tank is operable, or if the SAT is deleted and the sump pH control system is operable. Thus, the proposed change meets the dose acceptance criteria of SRP Section 15.6.5.

The proposed requirements will assure a post accident sump pH greater than or equal to 7.0, thereby meeting the SRP 6.1.1 requirements to minimize the potential for chloride stress corrosion, the generation of hydrogen or the environmental qualification of equipment. Therefore, because the proposed change meets the SRP acceptance criteria, it is similar to example (vi) of 48 FR 14870.

Local Public Document Room Location: General Library, University of California at Irvine, California 92713.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Avenue, P.O.

Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, (KNPP), Kewaunee County, Wisconsin

Date of amendment request: April 29, 1986.

Description of amendment request: The licensee proposes one major revision related to a recent determination that the copper and nickel content of reactor vessel belt line welds is greater than initially assumed. This discovery results in a needed revision to the reactor coolant system heatup and cooldown rates curves in the Technical Specifications (TS). In addition, the discovery also resulted in eight changes regarding error corrections, minor administrative changes and changes to attain consistency between different sections of the TS.

Basis for proposed no significant hazards consideration determination: The major change requested in this proposed license amendment consists of revisions to the heatup and cooldown limit curves due to recently discovered higher amounts of nickel and copper in the limiting reactor vessel weld.

This proposed change does not involve a significant hazards consideration because operation of the KNPP in accordance with this change would not:

(1) Significantly increase the probability or consequences of an accident previously evaluated. The revised heatup and cooldown limit curves meet the applicable regulatory requirements that ensure the conservatism of the curves. The revised safety factor applied to the thermal stress intensity factor meets the requirements of the ASME Boiler and Pressure Vessel Code and the criteria in the NRC Standard Review Plan Section 5.3.2. The use of updated material information that had been revised in the conservative direction is also not a concern because this data agrees with the guidance set forth in Draft Regulatory Guide 1.99, Revision 2 (current version). With the preparation of the limit curves in accordance with the latest criteria and guidance, there is no significant hazards concern for any postulated change in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different type of accident from any previously analyzed. The revised heatup and cooldown curves do not create the possibility of a new or different type of accident. The curves were prepared in accordance with regulatory requirements and require plant operation within more limiting requirements to allow operation to 15 EFPY instead of 10 EFPY. Thus, no new or different type of accident has been created.

(3) Significantly reduce the margin of safety as defined in the basis for any Technical Specification. The safety factors and margins used in the preparation of the limit curves meet the requirements of the ASME Code and the guidance of Draft Regulatory Guide 1.99, Revision 2. The safety factor which was applied to the thermal stress intensity factor meets the requirements of the ASME code and the criteria in the Standard Review Plan. The use of updated material information does not present a safety concern as this data agrees with the guidance set forth in Draft Regulatory Guide 1.99, Revision 2. In addition, the margins added to the material reference temperature were consistent with the draft regulatory guide.

Regarding the remaining eight proposed changes the Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One of these examples (i) is a purely administrative change to technical specifications: For example a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. All eight of the remaining changes fall into these categories. Based on our evaluation of the first change involving revised heatup and cooldown limit curves, we have determined that this change does not involve a significant hazards consideration. The remaining eight proposed changes are similar to an example for which no significant hazards consideration exists. As a consequence of the above the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for Licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Project Directorate: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 5, 1986.

Brief description of amendment: The amendments would extend for Unit 1 only on a one-time basis and until the first refueling outage, certain 18-month or 24-month surveillances which can be conducted only when Unit 1 is shut down.

Dated of publication of individual notice in **Federal Register:** May, 21, 1986 (51 FR 18705).

Expiration date of individual notice: June 19, 1986.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: April 30, 1986.

Brief description of amendment request: The proposed amendments would permit plant operation with the reactor coolant pump and steam generator supports redesigned in accordance with the recently noticed amendment to General Design Criterion 4 (GDC–4), 10 CFR Part 50, Appendix A (51 FR 12502), which will be effective May 12, 1986.

Dated of publication of individual notices in **Federal Register:** May 9, 1986 (51 FR 17286).

Expiration date of individual notice: June 9, 1986.

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Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission s Public Document Room 1717 H Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: September 3, 1985.

Brief description of amendment: The amendment revises the ANO-1 TSs by removing those TSs related to the Reactor Vessel Material Surveillance Program.

Date of issuance: May 20, 1986.

Effective date: May 20, 1986.

Amendment No.: 98.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1985 (50 FR 26209).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of Application for amendment: May 30, 1984, as supplemented December 19, 1985.

Brief description of amendment: The amendment revises the Technical Specification operability and surveillance requirements for Snubbers. The changes were requested by NRC Generic Letter 84-13 dated May 3, 1984. The incorporation of this amendment clarifies and increases snubber surveillance, defies snubber testing and acceptance criteria, and includes a snubber service life program.

Date of issuance: May 19, 1986.

Effective date: Immediately to be implemented within 30 days.

Amendment No.: 112.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 (49 FR 29906) and February 12, 1986 (51 FR 5273).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: July 30, 1984 as revised May 24, 1985.

Brief description of amendment: The amendment adds the definition "Reportable Event," adds the term where appropriate and deletes specific reporting requirements from the Technical Specifications in response to the Commission's Generic Letter 83-43, Reporting Requirements of 10 CFR 50, Sections 50.72 and 50.73.

Date of issuance: May 12, 1986.

Effective date: May 12, 1986.

Amendment No. 85.

Facility Operating License No. DPR-6. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 20, 1984 (49 FR 36397).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, *City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia*

Date of application for amendment: March 7, 1986.

Brief description of amendment: The amendment revises the main steam line high radiation scram and isolation setpoints, on a one time short term basis, to facilitate test injections of hydrogen into the reactor coolant.

The test is expected to be completed within about 20 days of its start.

Date of issuance: May 21, 1986.

Effective date: within 30 days of issuance.

Amendment No.: 125.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10461).

The Commission's related evaluation of the amendments is contained in a Safey Evaluation dated May 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

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GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 7, 1985, as revised by March 3, 1986 (TSCR 135).

Brief description of amendment: The amendment approves changes to the Appendix A Technical Specifications (TS) pertaining to the facility licensed operator staffing requirements. The changes revise the facility staffing requirements in TS Section 6.2.2 for the minimum number of licensed operators in the control room during the various modes of reactor operation. It adds requirements on the number of licensed operators to specifically allow more such operators in the control room.

Date of issuance: May 12, 1986.

Effective date: May 12, 1986.

Amendment No. 102.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 18, 1985 (50 FR 51624); March 26, 1986 (51 FR 10459).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Indiana and Michigan Electric Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: March 14 and March 27, 1986, as supplemented by letters dated May 1 and May 5, 1986.

Brief description of amendment: The amendment revises the Technical Specifications for changes related to the cycle 6 reload, clarifications to make Unit 2 Specifications consistent with Unit 1 and the Standard Technical Specifications, and editorial changes.

Date of issuance: May 21, 1986.

Effective date: May 21, 1986.

Amendment No.: 62.

Facility Operating License No. DPR–74. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1986 (51 FR 12249).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of application for amendment: December 20, 1984, as supplemented February 22, 1985 and February 19, 1986.

Brief description of amendment: The amendment revises the Technical Specifications (TS) for: (1) Average power range monitor (APRM) flow transmitter calibration, (2) definition of "OPERABLE—OPERABILITY," (3) automatic depressurization system actuation logic and (4) Cooper Nuclear Station organizational changes.

Date of issuance: May 19, 1986.

Effective date: May 19, 1986.

Amendment No.: 99.

Facility Operating License No. DPR–62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1985 (50 FR 12148) and April 9, 1986 (51 FR 12251).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 28, 1986.

Brief description of amendment: The amendment modifies the Technical Specifications to eliminate the requirement for Emergency Cooling System operability during hydrostatic testing with the reactor not critical and reactor coolant temperature greater than 212°F.

Date of issuance: May 12, 1986.

Effective date: May 12, 1986.

Amendment No.: 62.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10466).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 3, 1986.

Brief description of amendment: The amendment restricts the replacement of dry tubes associated with the intermediate range monitor (IRM) and source range monitor (SRM) instrumentation.

Date of issuance: May 22, 1986.

Effective date: May 22, 1986.

Amendment No.: 83.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10466).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 14, 1986.

Brief description of amendments: These amendments revise the Technical Specification 5.3.1, "Fuel Assemblies" to increase the reload fuel maximum enrichment from 3.5 to 4.5 weight percent U–235.

Date of issuance: May 13, 1986.

Effective date: May 13, 1986.

Amendment Nos.: 7 and 5.

Facility Operating License Nos. DPR–80 and DPR–82: Amendments revised the Technical Specifications.

Date of initial in Federal Register: April 9, 1986 (51 FR 12235).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

South Carolina Electric & Gas Company, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1 Fairfield County, South Carolina

Date of application for amendment: March 15, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to reflect administrative changes—changes to a position title, changes to an index, clarification of monitoring instruments and changes in reporting.

Date of issuance: May 16, 1986.

Effective date: Seven days after date of issuance.

Amendment No. 49.

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1985 (50 FR 31072).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1 Fairfield County, South Carolina

Date of application for amendment: June 10, 1985.

Brief description of amendment: The amendment would revise Technical specification ¾ 8.1, "A.C. Sources," and its bases, and is based on NRC Generic Letter 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability." The proposed revision will reduce the number and severity of diesel generator starts, thereby decreasing engine wear and increasing reliability, and will also restructure the action and surveillance requirements for clarity and usability.

Date of issuance: May 20, 1986.

Effective date: Within 7 days from date of issuance.

Amendment No. 50.

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 17, 1985 (50 FR 29016)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington streets, Winnsboro, South Carolina 29180.

Southern California Edison Company et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 17, 1984, as amended March 17, 1986.

Brief description of amendment: The proposed change modifies the Technical Specifications to incorporate Reactor Coolant System pressure-temperature limits that have been updated to account for recently measured irradiation effects on the reactor pressure vessel's nil ductility temperature.

Date of issuance: May 21, 1986.

Effective date: May 21, 1986.

Amendment No. 92.

Provisional Operating License No. DPR–13. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 (49 FR 29921) and April 9, 1986 (51 FR 12239).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of Application of Amendments: January 25, April 27, and November 30, 1984.

Brief Description of Amendments: The amendments revise the following: (1) Technical Specification 3/4.6.3, "Containment Isolation Valves" and includes the Limiting Condition for Operation, Action Statements and Surveillance Requirements; (2) Table 3.3–6 of Technical Specification 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation and Technical Specification 3/4.7.1.5, "Main Steam Isolation Valves"; and Limiting Condition for Operating 3.6.4.1, Hydrogen Monitors and Surveillance requirement 4.6.4.1.

Date-of-Issuance: May 16, 1986.

Effective Date: May 16, 1986, to be fully implemented within 30 days of issuance.

Amendment Nos.: 46 and 35.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Date of Initial Notice in Federal Register: February 12, 1986, June 4, 1985 and July 3, 1985 (51 FR 5278, 50 FR 23550 and 50 FR 27509).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1986.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia

Date of application for amendments: August 6, 1985.

Brief description of amendments: The amendments delete the redundancy of reporting requirements presently specified in the North Anna, Units 1 and 2 Technical Specification 6.5.3.1.

Date of issuance: May 19, 1986.

Effective date: May 19, 1986.

Amendment Nos.: 79 and 68.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1985 (50 FR 38923).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Lousia, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: August 9, 1985, as superseded December 20, 1985.

Brief description of amendments: These amendments delete the snubber listings in T.S. Tables 4.17–1 and 4.17–2, and provide editorial changes in TS 3.20 and TS 4.17 to reflect the deletion of the snubber tables, and the implementation of an administratively controlled listing.

Date of issuance: May 15, 1986.

Effective date: May 15, 1986.

Amendment Nos. 107 and 107.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1986 (51 FR 12241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1986.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of application for amendment: January 17, 1986.

Brief description of amendment: This amendment will revise the WNP-2 Technical Specifications by changing the operation of value FPC-V-149 from manual to automatic. Valve FPC-V-149 is the interface between the Suppression Pool Cleanup System and the Fuel Pool Cooling (FPC) System. At present it is manually closed and locked during normal power operation. The change will provide a motorized isolation valve in the suppression pool cleanup return line and allow use of the FPC filter-demineralizers for suppression pool cleanup during reactor operations.

Date of Issuance: May 13, 1986.

Effective Date: May 13, 1986.

Amendment No. 24.

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Date of Initial Notice in the Federal Register: March 12, 1986 (51 FR 8503).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1986.

No significant hazards consideration comments received: No.

Local Public Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Dates of application for amendment: March 28, 1986, as supplemented May 7 and 8, 1986.

Brief description of amendment: This action amends a license condition of the WNP-2 Operating License NPF-21. Attachment 2, Paragraph 3.(a) of License Condition 2.C.(16) now requires that the licensee shall implement (install or upgrade) requirements of Regulatory Guide 1.97, Rev. 2, with the exception only of flux monitoring, prior to startup following the first refueling outage. This amendment permits implementation of this Regulatory Guide requirement to be delayed for the Suppression Pool Level Monitoring System until startup following the second refueling outage.

Date of Issuance: May 23, 1986.

Effective Date: May 23, 1986.

Amendment No. 25.

Facility Operating License No. NPF-21: Amendment revises Attachment 2, Paragraph 3. of License Condition 2.C.(16).

Date of Initial Notice in the Federal Register: April 23, 1986 (51 FR 15418).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Dates of application for amendment: January 17, 1986, and February 18, 1986.

Brief description of amendment: This action amends the WNP-2 Technical Specification Table 3.6.3-1, "Primary Containment Isolation Valves" to: (1) Reflect corrections and additions to and deletions from the Excess Flow Check Valve listings, Traversing Incore Probe System valve listings, Residual Heat Removal System valve listings and equipment qualification limits; (2) reidentify certain valves in accordance with current Supply System practices; (3) add valves previously omitted; (4) provide clarification to notes in the table; (5) correct typographical errors; and (6) delete maximum isolation time listings for valves not performing an automatic containment isolation function.

Date of Issuance: May 23, 1986.

Effective Date: May 23, 1986.

Amendment No. 26.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of Initial Notice in the Federal Register: April 23, 1986 (51 FR 15416).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Richard Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of application for amendment: January 17, 1986.

Brief description of amendment: This action will amend the WNP-2 Technical Specifications by changing Technical Specification Table 3.6.4.3-1, "Motor Operated Valves Thermal Overload Protection" to add valves previously omitted, add valves as a result of system upgrades, and remove valves having no safety related function.

Date of Issuance: May 23, 1986.

Effective Date: May 23, 1986.

Amendment No. 27.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of Initial Notice in the Federal Register: April 23, 1986 (51 FR 15416).

The Commission's related evaluation of the amendment is contained in a Safety Evalution dated May 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of application for amendment: February 26, 1986, as supplemented on April 7, 24, 25, 30 and May 22, 1986.

Brief description of amendment: This action amends the WNP-2 Technical Specifications to support the operation of WNP-2 at full rated power during the next fuel cycle, Cycle 2. This reload amendment changes the Technical Specifications in the following areas: (1) Establishes operating limits for all fuel types for the upcoming Cycle 2 operation; (2) reflects the replacement of 128 initial core fuel assemblies with Exxon Nuclear Company (ENC) fuel assemblies for the upcoming Cycle 2 operation; and (3) modifies the Bases section of the Technical Specification to account for the use of Exxon fuel assemblies.

Date of Issuance: May 23, 1986.

Effective Date: May 23, 1986.

Amendment No. 28.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of Initial Notice in the Federal Register: April 23, 1986 (51 FR 15417)

The Commission's related evaluation of the amendment is contained in a Safety Evalution dated May 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: May 26, 1981, as revised January 23, 1984 and February 28, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications (TS) for: (1) Safety injection tank temperature; (2) steam generator blowdown monitor setpoint; (3) a main coolant system surveillance requirement to reflect removal of the Low Pressure Surge Tank as part of the containment boundary; (4) remove a charging system valve from the ECCS surveillance requirements to reflect the current flowpath; (5) modify the reactor vessel wall fluence exposure curve; (6) modify the high pressure carbon dioxide limiting condition for operation (LCO) to allow maintenance in specified plant areas; (7) modify containment isolation terminology; (8) modify the specified composition of the plant on-site review committee; (9) modify the radioactive effluent TS LCO to require operation only when flow exists; and (10) add an additional flow rate measuring device to the radioactive liquid effluent TS.

Date of Issuance: May 14, 1986.

Effective Date: May 14, 1986.

Amendment No. 92.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of Initial Notice in the Federal Register: March 27, 1985, (50 FR 12186) and September 25, 1985 (50 FR 38924).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 1986.

No significant hazard consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 28, 1984, with additional information May 3, 1984, and supplemented May 7, 1985.

Brief description of amendment: The proposed change modifies the Technical Specifications (TS) to: (1) Allow movement of spent fuel pit building hatches (excluding the cask hatch cover) over the spent fuel pit after newly discharged spent fuel assemblies have discharged 60 days or less, depending on the number of assemblies discharged, as opposed to the current TS requirement of at least 90 days of decay; and (2) allow use of the travel crane to move the cask hatch over the spent fuel pit building, except that movement over fuel assemblies in the spent fuel pit will be prohibited.

Date of Issuance: May 20, 1986.

Effective date: May 20, 1986.

Amendment No. 93.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1985 (50 FR 32804).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1986.

No significant hazard consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and /or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 9, 1986.

Brief description of amendment: This licensee amendment revises the technical specifications to permit operation of the facility during the remainder of Cycle 14 without removing tube 37-73 in the No. 2 steam generator from service by plugging.

Date of issuance: May 14, 1986.

Effective date: May 14, 1986.

Amendment No. 76.

Facility Operating License No. DPR-61. Amendment revised the technical specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final no significant hazards considerations determination are contained in a Safety Evaluation dated May 14, 1986. The State of Connecticut was consulted concerning the waiver of compliance issued on May 8, 1986 and, at that time, expressed no concern from the standpoint of plant safety. On May 14, 1986, an attempt was made to notify the state representative of our intent to issue an emergency license amendment, however, he was unavailable due to official state business.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

NCR Project Director: Christopher I. Grimes.

Dated at Bethesda, Maryland, this 28th day of May 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director Division of BWR Licensing.

[FR Doc. 86-12415 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Ad Hoc Subcommittee on TVA; Meeting

The ACRS Ad Hoc Subcommittee on TVA will hold a meeting on June 12 and 13, 1986. The June 12-discussion will be held in the Tennessee Valley Authority's Chattanooga Office Complex, Tennessee River Room, 1101 Market Street, Chattanooga, TN. The June 13 discussion will be held in the Sequoyah Nuclear Plant, Managers Conference Room, Daisy, TN.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 12, 1986—8:30 a.m. until the conclusion of business

Friday, June 13, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will discuss TVA reorganization and related technical and management issues.

Oral statements may be presented by members of the public with the concurrence of the subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with

any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 29, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-12571 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320 License No. DPR-73 EA 84-137]

GPU Nuclear (Three Mile Island, Unit 2); Notice of Hearing

Commissioners: Nunzio J. Palladino, Chairman, Thomas M. Roberts, James K. Asselstine, Frederick M. Bernthal, Lando W. Zech, Jr.

General Public Utilities Nuclear Corporation (GPU Nuclear or licensee), Parsippany, New Jersey is the holder of Operating License No. DPR-73 issued by the Nuclear Regulatory Commission (NRC). The license was issued on February 8, 1978 and modified by Order on July 20, 1979.

The NRC's Office of Investigations (OI) conducted nine investigations into allegations dealing with various items involving management integrity at the Three Mile Island Nuclear Station. The NRC staff subsequently reviewed the reports and other pertinent materials and documented its review in Supplement 5 to the Safety Evaluation Report (SER) on TMI-1 Restart (NUREG-0680, Supplement 5). As a result of the review, an apparent violation of NRC requirements was identified.

On August 12, 1985, the Director, Office of Inspection and Enforcement, pursuant to the authority in section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282), and 10 CFR 2.205, served on the licensee a Notice of Violation and Proposed Imposition of Civil Penalty. This Notice alleged that Richard D. Parks, a Bechtel employee, was discriminated against for engaging in protected activities in reporting safety problems to management, requesting assistance from the NRC, and commencing a proceeding with the Department of Labor. By letter dated October 21, 1985, the licensee denied the allegations.

On March 4, 1986 the NRC issued an Order Imposing Civil Monetary Penalty. 51 FR 8681 (March 12, 1986). The Order required the license to pay a civil penalty in the amount of $64,000 and provided an opportunity to request a hearing on the Order.

In a letter dated March 20, 1986 the licensee responded by requesting a hearing with respect to the Order Imposing Civil Monetary Penalty.

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 2, notice is hereby given that a hearing will be held before the Honorable Ivan W. Smith, Administrative Law Judge, at a time to be set by the Administrative Judge.

The issues before the Administrative Law Judge to be considered and decided will be, as stated in the March 4, 1986 Order Imposing Civil Monetary Penalty, (1) whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty issued on August 12, 1985 and (2) whether, on the basis of such violation, the Order should be sustained.

Pursuant to 10 CFR 2.705, an answer to this Notice may be filed by the licensee within 20 days after service of this Notice of hearing.

A prehearing conference will be held by the Administrative Law Judge at a date and place to be set by the Administrative Law Judge to consider pertinent matters in accordance with the Commission's Rules of Practice. The date and place of hearing will be set at or after the prehearing conference and notice in the Federal Register.

Required papers shall be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch, or by delivery to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Pending further order of the Administrative Law Judge, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and two (2) copies of each document with the Commission.

Pursuant to 10 CFR 2.785, the Commission authorizes an Atomic Safety and Licensing Appeal Board to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission. The Appeal Board will be designated pursuant to 10 CFR 2.787, and notice as to membership will be published in the Federal Register.

Dated at Washington, DC, this 30th day of May, 1986.

For the Commission.[1]

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-12572 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Waste Policy Act: Proposed Establishment of a Federally Funded Research and Development Center for Waste Management

ACTION: Notice of intent.

SUMMARY: The Nuclear Regulatory Commission (NRC) announces that it is considering the establishment and sponsorship of a Federally Funded Research and Development Center (FFRDC) for waste management technical assistance and research as a potential solution to problems of conflict of interest and continuity of technical assistance. The Commission has not made a commitment to sponsor the FFRDC. Final approval by the Commission will be subject to review of the comments received in the repsonse to Notice of Intent and to finding a highly qualified contractor to manage and operate the FFRDC. The comment period expired April 24, 1986. The list of respondents to the Notice of Intent and all comments received are available for public inspection at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street, NW., Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

Under the Nuclear Waste Policy Act of 1982 (NWPA), the U.S. Nuclear Regulatory Commission (NRC) is responsible for licensing the construction, operation, and closure of facilities required for a high-level radioactive waste disposal system, which are to be designed, constructed, operated, and closed by the U.S.

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[1] Commissioner Bernthal was absent when this item was affirmed, if he had been present, he would have approved it.

Department of Energy (DOE). The facilities of the DOE waste disposal system will include mined geologic repositories; monitored retrievable storage (MRS) facilities or other interim storage measures; and transportation vehicles, casks and handling equipment.

NRC's high-level waste licensing program currently faces two critical problems with respect to contracted technical assistance and research. First, the continued use of contractors who also have a contractual relationship with DOE's high-level waste program, or with any other party who might be a participant in NRC's high-level waste licensing hearings, may give rise to an organizational conflict of interest situation, and may draw into question the independence and freedom from bias of the contractor's work and, consequently, of NRC's licensing decisions. According to the definition in 41 CFR 20–1.54, an "organizational conflict of interest" means that:

> . . . a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which: (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage.

Second, the long-term continuity of NRC's waste management technical assistance and research program over the next twenty years or more is threatened as a result of efforts to avoid organizational conflict of interest situations (contractors are required to choose between doing work for NRC's program or for DOE's much larger program) and by the possible recompetition of technical work. The loss of contractor expertise has a significant impact to NRC's technical program because of its evolving nature and NRC's need for contractor experts to appear as expert witnesses at adjudicatory hearings.

In light of the problems discussed above, the NRC believes that the long-term contractual support offered by a Federally Funded Research and Development Center (FFRDC) for waste management technical assistance and research is a potential solution for providing the special long-term contractual relationship needed by NRC in order to alleviate potential conflict of interest situations and provide long-term continuity.

Notice of Intent

This Notice of Intent indicates that NRC is considering the establishment and sponsorship of an FFRDC for waste management technical assistance and research as a solution to the problems of conflict of interest and long-term continuity. The FFRDC would be entitled, "The Center for Nuclear Waste Regulatory Analyses" (hereinafter referred to as the "Center"). The publication of this Notice of Intent, however, is not a commitment on the part of NRC to establish and sponsor an FFRDC. Any final decision to do so must be approved by the Commission and be in compliance with Office of Federal Procurement Policy (OFPP) Letter No. 84–1, "Federally Funded Research and Development Centers" (April 4, 1984).

Technical assistance and research tasks to be performed by the Center would encompass the following general areas: (1) Waste sytems engineering and integration; (2) long-term performance of a geologic setting; (3) long-term performance of an engineered barrier system; (4) performance of an MRS and repository during operation; (5) special analytical evaluations; and (6) transportation, environmental impacts, and other areas related to the Nuclear Waste Policy Act.

The period of performance for the Center would expand throughout the duration of NRC's high-level waste licensing responsibilities (estimated to be twenty years or more). The period of performance for the contract to manage and operate the Center would be for five years (to be renewed every five years, subject to comprehensive review by the NRC). The level of effort for the first five years would build up from about 20–25 staff years during the first year to about 50 staff years during the fifth year and may increase by up to 50%, depending upon program development and appropriations availability. ("Staff years" includes direct staff plus support staff.)

The NRC screening criteria for the Center are: (1) No conflict of interest with the high-level waste program; (2) operation of the Center as a not-for-profit organization free of control by any organization whose affiliations could give rise to conflict of interest; (3) capability to provide long-term continuity in resources to NRC throughout the duration of its high-level waste program under NWPA (e.g., 20 years or more); (4) multi-disciplined staff; (5) access to existing equipment and facilities (e.g., computational and experimental laboratories); (6) expertise in the areas of technical assistance and research identified above; and (7) capability to provide testimony by expert staff during NRC adjudicatory hearings.

Final Commission approval to issue a solicitation package will be subject to review of the public comments received in response to the draft solicitation package. The comment period expired April 24, 1986 and all comments received are available for public inspection at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street, NW., Washington, DC 20555. Final Commission approval to establish and sponsor the Center will be subject to finding a highly qualified contractor to manage and operate the Center.

Dated at Bethesda, Maryland, this 28th day of May 1986.

For the U.S. Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86–12604 Filed 6–3–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–247]

Consolidated Edison Co. of New York; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consolidated Edison (the licensee) to withdraw portions of its February 14, 1983 amendment application of the Indian Point Nuclear Generating Unit No. 2 (IP–2), located in Westchester County, New York. The proposed amendment would have revised the Technical Specifications to make certain positions as stringent as Standard Technical Specifications. The withdrawal affects the following Technical Specification sections.

Section 3.4—all changes.
Section 3.6—all changes.
Section 3.8—Paragraph 3.8.C.2.
Section 3.10—all changes.
Section 3.11—all changes.
Section 3.5—Paragraph 3.5.7, reference to 3.5.7 in paragraph 3.5.8, associated bases on page 3.5.5. Table 3.5–5 and associated bases on page 3.5–5.

The Commission issued a Notice of Consideration of Issuance of the Amendments in the Federal Register on September 21, 1983 (48 FR 43134). By letter dated May 14, 1985, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw portions of its application for the proposed amendment.

The Commission has considered the licensee's May 14, 1985 request and determined that permission to withdraw the identified portions of the February 14, 1983 application for amendment should be granted.

For further details with respect to this

action, see: (1) The Application for amendment dated February 14, 1983; (2) the licensee's letter dated May 14, 1985, requesting withdrawal of the application for license amendment; and (3) our letter dated May 29, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Bethesda, Maryland, this 29th day of May 1986.

Steven A. Varga,

Director, PWR Project Directorate No. 3, Division of PWR Licensing-A, NRR.

[FR Doc. 86-12906 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Export Nuclear Facilities or Materials; Transnuclear, Inc.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed before July 3, 1986. any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., May 14, 1986, May 16, 1986 XSNM02941, Amend 01.	Enriched uranium	Addl 52.500	Addl 46.963	Additional fuel for HFR Greenable Research Reactor.	France.

Dated this 29th day of May 1986 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 86-12902 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Co. et al., Salem Nuclear Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to Public Service Electric and Gas Company (the licensee) for the Salem Nuclear Generating Station, Units 1 and 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Actions. The proposed exemption would relieve the licensee from the requirement of conducting a full pressure airlock leakage test, pursuant to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, whenever airlocks are opened during periods when containment integrity is not required. Licensee would rely, instead, on the seal leakage test described in Paragraph III.D.2(b)(iii) when the reactor is in cold shutdown (Mode 5) or refueling (Mode 6) and when no maintenance has been performed on the airlock.

Licensee's request for exemption and the bases therefor are contained in a letter dated April 11, 1986.

The Need for the Proposed Actions. The proposed exemption is from performance of the leakage rate test required by Paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J, which takes at least 8 hours per airlock. Exemption from full pressure leakage tests on airlocks opened during a period when containment integrity is not required would provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impact of Proposed Actions. The proposed exemption would permit the substitution of an airlock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J. 10 CFR Part 50) for the full pressure airlock test otherwise required by Paragraph III.D.2.(b)(ii) when the airlock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by III.D.2(b)(i) and (iii) are current, no maintenance having been performed on the airlock and with it properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Actions. Because we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternatives would be to deny the requested exemption. Such action would not reduce environmental impacts of Salem Units 1 and 2 operations and would result in reduced operational flexibility or unwarranted delays in power ascension.

Alternative Use of Resources. These actions do not involve the use of resources not previously considered in connection with the "Final

Environmental Statement Related to Operation of Salem Nuclear Generating Station, Units 1 and 2," dated April 1973.

Agencies and Persons Consulted. The NRC reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed actions, see the licensee's request for exemption dated April 11, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Salem Free County Public Library, 112 W Broadway, Salem, New Jersey 08079.

Dated at Bethesda, Maryland, this 29th day of May 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, PWR Project Directorate No. 3, Division of PWR Licensing—A.

[FR Doc. 86-12695 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

Intent To Relocate Records for the Brunswick Steam Electric Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to relocate the records for the Brunswick Steam Electric Plant.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is moving the Local Public Document Room (LPDR) records collection for the Brunswick Steam Electric Plant from the Brunswick County Library (Library), Southport, North Carolina, to another as yet undetermined location. Because of the size of the collection, which now measures almost 50 shelf feet of material, it has become increasingly difficult for the Brunswick County Library to provide the shelf space necessary to maintain this collection, and they have asked that it be relocated. The purpose of this notice is to invite public comment on possible LPDR sites.

DATE: Comment period expires July 3, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESS: Written comments may be submitted o the Local Public Document Room Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, Chief, Local Public Document Room Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7536, or Toll Free 800-638-8061.

SUPPLEMENTARY INFORMATION: Since the early 1970's the Brunswick County Library, located at 109 W. Moore Street, Southport, North Carlina, has served as the Local Public Document Room repository for record relating to the Brunswick Plant. The document collection includes essentially all records considered by the NRC in the licensing and regulation of the Brunswick Plant. Because of the growth in the size of the collection, the Library no longer has the shelf space necessary to house the material and has asked that the LPDR collection be relocated.

Among the facotors the NRC will consider in selecting a new location for the collection are:

(1) The willingness and ability of the library to house and maintain the collection;

(2) The physical facilities available, including shelf space, workspace and copying and micrographics equipment;

(3) The willingness and ability of the library staff to assist the public to locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evenings and weekends hours;

(5) The proximity (within 50 miles) of the library to the Brunswick Plant located in Southport, North Carolina; and

(6) The proximity of the library to existing user groups of the collection, if known.

Public comments are requested on the desirability to moving the Brunswick LPDR collection to any appropriate library in the vicinity of the Brunswick Plant.

Dated at Bethesda, Maryland, this 30th day of May, 1986.

For the U.S. Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 86-12603 Filed 6-3-86; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Self-Employment Questionnaire
(2) Form(s) submitted: AA-4
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 600
(7) Annual reporting hours: 158
(8) Collection description: Section 2 of the RRA provides for payment of annuities to qualified employees and their spouses. In order to receive an annuity, the applicant must stop all railroad work and all work for pay outside the railroad industry that is considered "last person service" (LPS). This collection obtains information about the applicant's self-employment work to be used in making an LPS determination.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208,

New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-12498 Filed 6-3-86; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Statement of Death by Funeral Director
(2) Form(s) submitted: G-273
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Businesses or other for-profit
(6) Annual responses: 12,000
(7) Annual reporting hours: 600
(8) Collection description: The Railroad Retirement Act provides for payment of benefits to qualified individuals due to the death of a railroad worker. The statement obtains information needed to support a claim for death benefits.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-12501 Filed 6-3-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-15234]

Application and Opportunity for Hearing; Citicorp

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement (the "Agreement") dated as of March 1, 1986 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustanied the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396, and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On March 25, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of March 1, 1986 (the "1986-C Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on March 25, 1986 Mortgage Pass-Through Certificates, Series 1986-C 7.00% Pass-Through Rate (the "Series 1986-C Certificates"), which evidence fractional individend interests in a pool of conventional one-to-four-family mortgage loans (the "1986-C Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $51,911,000.11 at the close of business on March 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986-C Certificates. On March 25, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986-C Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1986-C Certificates, to be liable for 4% of the initial aggregate principal balance of the 1986-C Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986-C Guaranty. The 1986-C Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986-C Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986-C Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S-11 and S-3, File No. 33-780) as part of a delayed or continuous offering of

$1,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986–C Certificates were offered by a Prospectus Supplement Dated March 20, 1986, supplemental to a Prospectus dated October 9, 1985. The 1986–C Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1986–C Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1986–C Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the indentures and the 1986–C Agreement.

(5) The Applicant Company has waived notice of hearing, waived hearing, and waived any and all rights to special procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–15236, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is Further Given that any interested person may, not later than June 23, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

May 28, 1986.

[FR Doc. 86–12531 Filed 6–3–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15120 (812–6286)]

Merrill Lynch, Pierce, Fenner & Smith Inc., et al.; Notice of Filing of Application

Notice is hereby given that Merrill Lynch, Pierce, Fenner & Smith Incorporated, Shearson Lehman Brothers Inc., Prudential-Bache Securities Inc., Dean Witter Reynolds Inc., Paine Webber Incorporated ("Sponsors"); and all presently outstanding, or subsequently-issued, series ("Series") of Municipal Investment Trust Fund, The Municipal Income Fund, The Corporate Income fund, The Mortgage-Backed Income Fund, The Tax-Exempt Mortgage Fund, The International Bond Fund, The Government Securities Income Fund, The Equity Income Fund, Liberty Street Trust, The Fund of Stripped ("Zero") U.S. Treasury Securities and The Merrill Lynch Fund of Stripped ("Zero") U.S. Treasury Securities ("Funds"), c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Liberty Plaza, New York, N.Y. 10080; registered under the Investment Company Act of 1940 ("Act"), as unit investment trusts, filed an application on January 17, 1986, and amendments thereto on February 19, March 21, May 6, and May 20, 1986, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting the Funds from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 26(a)(2)(C) of the Act, and Rule 22c–1 thereunder, to permit sales charges on units of beneficial interest of the Funds ("Units"), to be imposed on a deferred basis, including charges levied through a contingent deferred sales load ("CDSL"), and pursuant to section 11 of the Act, approving certain offers of exchange between Funds. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, and to the Act for the text of the applicable provisions thereof.

Applicants state that each of the Funds is sponsored by one or more of the Sponsors, and that the Sponsors will determine a sales charge per Unit, subject to existing limits under applicable laws and regulations, and to other relevant factors, including deferral of sales charges. It is further stated that the portion of the sales charge deferred is to be collected through deductions from distributions ("Distribution Deduction") over the period necessary to recover the uncollected balance of the sales charge initially determined ("Collection Period"), but that in no event will the total of these deductions exceed the amount of sales charge per Unit determined on the date of purchase, nor will any amount be added to the sales charge so deferred for interest, or any similar or related charge, to reflect, or adjust for, any "time-value of money" calculation.

Applicants represent that the CDSL would be imposed only if an investor sells Units to the Sponsors, or redeems Units, before the Collection Period on those Units has been completed. No CDSL would be imposed on sales or redemptions of Units on which collections have been completed, and, in determining whether a CDSL is applicable, those Units will be the ones to be redeemed first. Applicants represent that at no time will the CDSL, plus the Distribution Deductions, exceed the amount of the aggregate sales charge determined as of the date of purchase. The CDSL will be computed in accordance, with the assumption that the Units held for the longest period of time are to be liquidated first, in the amount of the uncollected balance of the original sales charge.

Applicants submit that this deferred sales charge proposal would permit investors to reap the benefit of having their capital fully invested from the date of purchase, noting that the CDSL would only be imposed if Units are redeemed before the attributable selling expenses are collected through Distribution Deductions. Applicants represent that the amount, computation and timing of the CDSL are designed to promote fair treatment of all investors, and that the material provisions of the sales loading will be fully disclosed in the prospectus of each applicable Series.

The Sponsors are authorized to waive the CDSL on sales or redemptions within one year following death or disability (as defined in section 72(m)(7) of the Internal Revenue Code of 1954 ("Code") of the investor; on distributions from qualified retirement plans following retirement (or upon attaining age 59½ in the case of IRA, Keogh and Code section 403 (b) plans), or on return of excess contributions; on exchanges of Units for any other Series which assesses a CDSL (in which case, the Distrubtion Deductions on the newly-acquired Units would continue only until the remaining balances of the sales charge on the Units formerly held had been collected), or of Units acquired in an exchange from a Series with a front-end load; and on sales, or redemptions, of Units acquired pursuant to employee benefit plans of the Sponsors or their affiliates. In support of these variations in the applicability of the CDSL, Applicants state that waiver in the case of death or disability would be

appropriate because the contingency is unforeseen; that waiver on distributions from a qualified retirement plan is consistent with policies reflected in the Code and prior provisions of Rule 22d–1 under the Act; that waiver of the CDSL on an exchange of Units would be appropriate because any uncollected balance of the sales charge would eventually be recovered through the CDSL on the Units acquired, or because a full sales charge would have already been paid; and finally, that waiver on sales or redemptions by employees of the Sponsors and their affiliates would reflect savings in selling efforts and sales expenses in those circumstances.

Applicants also seek an order allowing a reduced sales charge on exchanges. The proposed reduced charge would generally be $15 per Unit ($15 per 1,000 Units, on $1 Units, or 1.5% of the offering side evaluation of the underlying securities). An adjustment would be made, however, on exchanges of Units occurring within five months of purchase for Units of a Series with a higher sales loading structure, or of Units which impose Distribution Deductions for Units of a Series which impose a front-end load at any time before the Distribution Deductions had at least equalled the per Unit sales charge then applicable to intermediate-term Series. In either such instance, the exchange fee will be the greater of the $15 per Unit charge (or its equivalent), or the difference between the sales charge collected and the normal sales charge on the Units being acquired. Applicants represent that these reductions are justified by cost savings. The Sponsors reserve the right to vary the sales charges and to modify, suspend, or terminate the exchange option at any time.

Applicants state that the CDSL, along with the Distribution Deductions, are intended to compensate the Sponsors for their expenses in offering Units for sale, and are therefore sales charges in the traditional sense except that they are not collected at the time of original investment. These expenses include those in organizing Series, disseminating advertising and sales literature, printing and distributing prospectuses, and compensating dealers and salesmen engaged in the selling effort. The CDSL is intended to help the Sponsors recoup these expenses on Units redeemed (or repurchased prior to a certain length of time by approximating the amount which would have been received if the charge had been collected in its entirety at the time of purchase. Applicants believe that this procedure will encourage the retention of Units for a longer term, and that it will generally be perceived by investors as a more fair and equitable technique for payment of the sales charge than loading these charges entirely at the inception of the investment.

Applicants assert, in addition, that the establishment of the CDSL would not prevent an investor from receiving his proportionate share of the current net assets of a Series, but rather, it would merely defer the deduction of the sales charges, and make it contingent upon an event which may never occur. Applicants submit further that the CDSL and the Distribution Deductions functionally qualify as "sales loads" within the meaning of section 2(a)(35) of the Act, inasmuch as they are paid to the Sponsors to reimburse them for expenses related to the sale of Units, and that by making the CDSL contingent upon an event which may never occur, Applicants do not alter this basic characteristic of the CDSL. Applicants also contend that the imposition of a CDSL upon redemption, instead of a sales charge at the time of purchase, would not cause an investor to receive a redemption price below that which would be determined by the current net asset value of the Units redeemed. Therefore, Applicants assert further that the proposed CDSL would not cause the Units to fall outside the meaning of "redeemable securities" as defined in section 2(a)(32) of the Act, and applied in Rule 22c–1 thereunder. It is stated that the price of Units upon redemption will continue to be based on their current net asset value. The CDSL will merely be deducted at the time of redemption in arriving at the investor's proportionate redemption proceeds. Applicants further submit that although a portion of the sales charge is deducted from each investor's income distributions until the investment is terminated, such charge should not be considered a Fund expense, and therefore should not be subject to the limits prescribed by section 26(a)(2) of the Act on payments to depositors and principal underwriters of unit investment trusts.

In summary, Applicants state that the proposed sales charge structure is consistent with all provisions of the Act; and that, while they believe that exemptive relief would not be required but for the proposed waivers of the CDSL, they have sought the exemptive relief described herein, in order to resolve any issues that may be raised by the proposed CDSL under sections 2(a)(32), 2(a)(35), 22(c) and 26(a)(2) of the Act, and Rule 22c–1 thereunder. They have also requested an order under section 11 of the Act which would permit offers of exchange without the imposition of a CDSL, on the grounds that consummation of exchanges on the basis of a fixed transaction fee of approximately $15 per $1000 Unit would not produce any inequitable results for the holders of Units.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 23, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

May 29, 1986.

[FR Doc. 86–12532 Filed 6–3–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15122; 812–6283]

Merrill Lynch KECALP Growth Investments Limited Partnership 1983 et al.; Application

May 29, 1986.

Notice is hereby given that Merrill Lynch KECALP Growth Investments Limited Partnership 1983 ("1983 Partnership"), 165 Broadway, One Liberty Plaza, New York, New York 10080, Merrill Lynch KECALP L.P. 1984 ("1984 Partnership"), Merrill Lynch KECALP L.P. 1986 ("1986 Partnership"), ML Venture Partners I, L.P. ("Venture Partnership"), Merrill Lynch & Co., Inc. ("ML&Co."), Merrill Lynch Venture Capital Inc. ("MLVC") and Merrill Lynch Interfunding Inc. ("MLIF", and collectively with the above, "Applicants"), filed an application on January 15, 1986, and an amendment thereto on May 7, 1986, for an order of the Commission, pursuant to sections 17(b) and 57(c) of the Investment Company Act of 1940 ("Act"), exempting them from the provisions of section 17(a) and 57(a), and, pursuant to section 17(d) and Rule 17d–1 thereunder, permitting:

(i) The 1986 Partnership to purchase up to 7,634 shares of common stock of FGIC Corporation ("FGIC") from ML&Co.; (ii) the 1983 Partnership, the 1984 Partnership and the 1986 Partnership to purchase an aggregate of 35,000 shares of convertible preferred stock issued by Alliant Computer Systems Corporation ("Alliant") from MLIF; and (iii) the 1986 Partnership and the Venture Partnership to purchase an aggregate of 731,707 shares of convertible preferred stock issued by Viewlogic Systems, Inc. ("Viewlogic") from MLVC. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions.

The application states that the 1983 Partnership, the 1984 Partnership and the 1986 Partnership (together, "KECALP Partnerships"), limited partnerships organized under the laws of Delaware, are non-diversified closed-end management investment companies registered under the Act. The investment objective of each Partnership is to seek long-term capital appreciation. Under the terms of the offerings as set forth in the registration statements of the KECALP Partnerships, units of limited partnership interest were offered exclusively to employees of ML&Co. and its subsidiaries and to non-employee directors of ML&Co. Applicants state that eligible employees must have received annualized compensation of at least $75,000 for the most recent year. Each of the KECALP Partnerships is an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and operates in accordance with the terms of an exemptive order ("KECALP Exemptive Order") issued, pursuant to section 6(b) of the Act, in Investment Company Act Release No. 12363 (April 8, 1982).

Applicants state that the Venture Partnership, a limited partnership organized under the laws of Delaware, is a business development company under the Act organized in 1982, the investment objective of which is to seek long-term capital appreciation by making venture capital investments. The Venture Partnership has five general partners, four of whom are individuals ("Individual General Partners"). In accordance with section 56(a) of the Act, a majority of the Individual General Partners are persons who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act; those persons are referred to herein as the "Independent General Partners".

The application indicates that the managing general partner for the Venture Partnership is Merrill Lynch Venture Capital Co., L.P. ("Managing General Partner"). The general partner of the Managing General Partner is MLVC, which is also the management company for the Venture Partnership. MLVC is an indirect subsidiary of ML&Co., a holding company which, through its subsidiaries, provides investment, financing, real estate, insurance and related services. MLIF, a Delaware corporation, is an indirect subsidiary of ML&Co. that is engaged in commercial financing transactions.

The application states that FGIC, a Delaware corporation, was organized in 1983 to provide, through one or more subsidiaries, insurance and financial guarantees for a variety of investment instruments. ML&Co. participated in the organization of FGIC and presently holds approximately 19% of FGIC's outstanding common stock and approximately 13% of FGIC's non-voting comulative convertible preferred stock. ML&Co. has agreed to sell to the 1986 Partnership up to 7,634 of the shares of common stock which it acquired in June, 1985; the price paid for those shares by ML&Co. was $131 per share. Applicants represent that the 1986 Partnership will not invest more than 10 percent of its limited partners' capital contributions in that stock.

The application indicates that the purchase price to be paid by the 1986 Partnership will be the lower of (i) the value of the investment on the date it is acquired by the 1986 Partnership (as determined by the board of directors of KECALP) or (ii) the cost to ML&Co. of purchasing and holding the investment. With respect to clause (ii), such cost shall be $131 per share plus carrying costs relating to such investment. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime rate charged by Citibank, N.A. during the period from the date the Investment Committee approved the 1986 Partnership's purchase of FGIC common stock from ML&Co. until the 1986 Partnership acquires the investment or (ii) the effective cost of borrowings by ML&Co. during such period. The effective cost of borrowings by ML&Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

Applicants state that Alliant, a corporation formed in 1982, has developed a series of computers which apply parallel processing to certain existing computer software programs. Pursuant to a stock purchase agreement, Alliant sold 1,152,008 shares of Series D convertible preferred stock on December 18, 1985, for a purchase price of $10 per share. Applicants indicate that MLIF purchased an aggregate of 35,000 shares of that stock for $350,000 on behalf of the KECALP Partnerships as follows: 10,000 shares for the 1983 Partnership, 10,000 shares for the 1984 Partnership and 15,000 shares for the 1986 Partnership. Applicants represent that all of those shares were acquired by MLIF since the 1986 Partnership had not yet closed its initial offering and thus had no funds to purchase such securities; in addition, since MLIF participated in that transaction, neither the 1983 nor 1984 Partnerships could participate directly in that transaction without an exemptive order permitting those co-investments with an affiliate of ML&Co. To the knowledge of Applicants, no other investor in such offering is an affiliated person of ML&Co. Applicants also represent that the terms of the purchase of the three KECALP Partnerships will be identical in all respects.

The purchase price to be paid by the KECALP Partnerships to MLIF for the shares of Series D preferred stock of Alliant proposed to be acquired by the KECALP Partnerships will be the lower of (i) the value of the investment on the date it is acquired by each of the KECALP Partnerships (as determined by the board of directors of KECALP) or (ii) the cost to MLIF of purchasing and holding the investment. With respect to clause (ii), such cost shall be the original purchase price of $10 per share paid for such shares, plus carrying costs relating to such investment. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period from the date MLIF purchased the investment until the KECALP Partnerships acquire the investment or (ii) the effective cost of borrowings by ML&Co. during such period, calculated as described above.

The application states that, Viewlogic, a corporation founded in 1984, was formed to build and market an integrated software system. Pursuant to a stock purchase agreement dated October 18, 1985, Viewlogic sold 1,829,269 shares of Class C preferred stock for a purchase price of $1.64 per share. Applicants state that MLVC purchased an aggregate of 731,707 shares of that stock; 600,756 were

purchased on behalf of the Venture Partnership and the balance, 121,951 shares, were acquired on behalf of the 1986 Partnership. Applicants represent that those shares were acquired by MLVC because the 1986 Partnership had not yet closed its initial offering and therefore had no funds to purchase the investment, and there was also a question under Section 17(d) and Rule 17d–1 thereunder as to whether the two Partnerships could co-invest in the offering without a Commission order. To the knowledge of Applicants, no other investor in such offering is an affiliated person of ML&Co. Applicants further represent that the terms of the purchases by the two Partnerships will be identical in all respects.

The application states that the purchase price to be paid by the Venture Partnership and the 1986 Partnership to MLVC for the shares of Class C preferred stock of Viewlogic will be the lower of (i) the value of the investment on the date it is acquired by each of the Venture Partnership and the 1986 Partnership (as determined by the board of directors of KECALP and the Independent General Partners of the Venture Partnership) or (ii) the cost to MLVC of purchasing and holding the investment. With respect to clause (ii), such cost shall be the original purchase price of $1.64 per share paid for such shares of Viewlogic stock, plus carrying costs relating to such investment. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period from the date MLVC purchased the investment until the Venture Partnership and the 1986 Partnership acquire the investment or (ii) the effective cost of borrowings by ML&Co. during such period, calculated as described above.

Applicants state that the issuance of an order is justified by both the terms of the transactions and the fact that the proposed investments are not otherwise available to the Venture Partnership and the KECALP Partnerships. Applicants represent that, with respect to the terms of the transactions, the board of directors of KECALP, including the members of the Investment Committee and the Managing General Partner are sophisticated and experienced in valuing securities and evaluating financial transaction generally. In this regard, Applicants further represent that the board of directors and the Investment Committee, on behalf of the KECALP Partnerships with respect to the transactions in securities of FGIC, Alliant and Viewlogic, and the Independent General Partners, on behalf of the Venture Partnership with respect to the transactions in Viewlogic's securities, considered all information deemed relevant, including the nature of the investments by affiliation of ML&Co. in FGIC, Alliant and Viewlogic, and the fairness of the purchase prices proposed to be paid by the KECALP Partnerships and the Venture Partnership.

According to the application, in evaluating the terms of the transactions, the Investment Committee of KECALP and the Independent General Partners of the Venture Partnership considered the fact that the proposed purchase prices to be paid by the KECALP Partnerships and the Venture Partnership will include carrying costs incurred by an affiliated person (i.e., ML&Co., MLVC and MLIF) if the value of each investment at the times of acquisition by the KECALP Partnerships and the Venture Partnership is more than the sum of the purchase price plus the affiliate's carrying costs. Both the KECALP Partnerships and the Venture Partnership believe that it is entirely appropriate for them to reimburse affiliates for carrying costs in a situation where affiliates purchased such investments as, in effect, their nominee and the partnerships would have purchased such investments directly if it had not been deemed necessary to obtain the orders requested herein. The Applicants submit that to deny reimbursement for carrying costs would result in a further and unwarranted loss to ML&Co., MLVC and MLIF and provide a disincentive to act on behalf of the KECALP Partnerships and the Venture Partnership in the future in transactions of this type.

Applicants state that in both the KECALP Exemptive Order and the 1986 Partnership's prospectus, it was indicated that affiliates of ML&Co. would be involved in identifying and investing in many of the 1986 Partnership's portfolio investments. The prospectus of the Venture Partnership indicated that Venture Partnership may be a co-investor in portfolio companies with affiliates of management. The Venture Partnership and the 1986 Partnership thus submit that the order requested herein is consistent with the purposes of the 1986 Partnership and the Venture Partnership, their stated policies and the disclosure made to prospective investors. Finally, Applicants represent that, in connection with the KECALP Bond, Investment Committee and Individual General Partners deliberations and determinations regarding the KECALP Partnerships' and the Venture Partnership's proposed transactions, appropriate record-keeping will be maintained and made available for inspection by the Commission in accordance with the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 18, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-in-law, by certificate), shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–12533 Filed 6–3–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15115; 812–6377]

ML Venture Partners I, L.P., et al.

May 27, 1986.

Notice is hereby given that ML Venture Partners I, L.P. ("Partnership"), Merrill Lynch Venture Capital, Inc. ("Management Company"), the management company for the Partnership, 717 Fifth Avenue, New York, NY 10022, and Merrill Lynch KECALP L.P. 1984 ("KECALP" and, together with Partnership and Management Company, "Applicants"), 165 Broadway, One Liberty Plaza, New York, NY 10080, filed an application on May 8, 1986, for an order of the Commission: (1) Pursuant to section 57(a)(4) of the Investment Company Act of 1940 ("Act"), and Rule 17d-1 thereunder, permitting the concurrent investment by the Partnership and KECALP in convertible preferred stock issued by Private Satellite Network, Inc. ("PSN"); and (2) pursuant to sections 17(b) and 57(c) of the Act, exempting from the provisions of sections 17(a)(1) and 57(a)(1) of the Act, the contingent sale of preferred stock of PSN by the Management Company to KECALP and the Partnership. All interested persons are referred to the application on file with the Commission for a statement of

the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

The Partnership was formed as a limited partnership under Delaware law in 1982; it has elected to be treated under the Act as a business development company, and has as its investment objective long-term capital appreciation through venture capital investments. The Partnership has five general partners, four of which are natural persons (referred to hereinafter as "Individual General Partners"). The Partnership's managing partner is Merrill Lynch Venture Capital Co., L.P. ("Managing General Partner"), and the general partner of the Managing General Partner is the Management Company. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML&CO."), a holding company which, through subsidiaries, provides investment, financing, real estate, insurance and related services. At December 31, 1985, the Partnership had net assets of approximately $65 million.

Applicants further state that KECALP, an employees' securities company as defined in section 2(a)(13) of the Act, is a limited partnership, registered under the Act as a closed-end, non-diversified management company, having as its investment objective long-term capital appreciation together with the tax advantages resulting from certain investments. Limited partnership interests in KECALP were sold in an aggregate principal amount of $3,747,000 in a registered public offering which closed in May, 1984, exclusively to those employees of ML&Co and its subsidiaries having annual compensation in 1985 of at least $75,000, and to non-employee directors of ML&Co. It is further stated that KECALP operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the Act on April 8, 1982 (Investment Company Act Release No. 12363) ("KECALP Exemptive Order"). Applicants state that the general partner of KECALP is KECALP Inc. ("KECALP General Partner"), a Delaware corporation and a wholly-owned subsidiary of ML & Co. The KECALP General Partner is responsible for managing and making investment decisions for KECALP, and all investments made by KECALP are approved by the investment committee of the board of directors of the KECALP General Partner.

It is further stated that PSN is engaged in the business of building and operating private television networks for geographically-diversified corporations and other organizations. In August 1984, the Partnership acquired 10.9% of the outstanding shares of PSN Series B Convertible Preferred Stock, and KECALP conditionally acquired 1.6% of the same issue, subject to the issuance of a Commission exemptive order on an application filed by the Partnership and KECALP regarding such transactions. That exemptive relief was granted (*In the Matter of ML Venture Partners I, L.P.*, Investment Company Act Release No. 14350 (February 1, 1985).

It is further stated that PSN intends to seek additional financing through a private placement of securities, which is presently scheduled to close on June 15, 1986. Some of such securities have been made available to KECALP and the Partnership, among others, on the basis of their current holdings in PSN, and the Managing General Partner and the KECALP General Partner have independently determined to approve investments of $58,075 and $8,715, respectively, which represents the pro rata shares of the new offering available to the Partnership and KECALP in respect of their respective acquisitions PSN Series B Stock. However, because the proposed new investments may not be made concurrently by the Partnership and KECALP without the relief requested herein, the Management Company has agreed that, if the application is not granted by the closing, the Management Company will make the proposed investments on behalf of the Partnership and KECALP, and then sell such securities to the Partnership and KECALP if and when the relief requested herein is granted.

Applicants further state that if the Management Company makes the purchases on behalf of KECALP and the Partnership, the purchase price to be paid by KECALP and the Partnership to the Management Company for the new shares of PSN stock will be the lower of (i) the value of the securities on the date they are acquired by each of the Partnership and KECALP (as determined by the Independent General Partners of the Partnership and the board of directors of the KECALP General Partner), or (ii) the cost to the Management Company of purchasing and holding the securities. With respect to clause (ii), such cost will be the original purchase price paid for the shares at the closing, plus carrying costs relating to such investment. Carrying costs would consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period from the date the Investment Committee of KECALP and the Board of Directors of the Partnership approved the purchase of the securities until KECALP and the Partnership acquire the securities, or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "average cost of funds," which ML & Co. calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

Applicants submit that the statutory standards are satisfied with respect to the relief requested under sections 17(b) and 57(c) of the Act. Applicants believe that such relief is justified by both the terms of the transaction and the fact that the proposed investments would not otherwise be available to the Partnership and KECALP. With respect to the terms of the transactions, the KECALP General Partner and the Managing General Partner have reviewed the proposed investments in detail. In evaluating the terms of the transactions, both the Investment Committee and the Independent General Partners considered the fact that the proposed purchase prices to be paid by the Partnership and KECALP would include carrying costs incurred by an affiliated person (i.e., the Management Company) if the value of the investments at the time of acquisition by the Partnership and KECALP should be greater than the sum of the purchase price of each plus the Management Company's carrying costs. Both KECALP and the Partnership believe that it is entirely appropriate for them to reimburse affiliates for carrying costs in a situation where an affiliate has purchased an investment as, in effect, their nominee, and KECALP and the Partnership would have purchased such investments directly if it had not been deemed necessary to obtain prior Commission exemptive relief. Applicants submit that to deny reimbursement for carrying costs would result in a further and unwarranted loss to the Management Company and provide a disincentive to act on behalf of the Partnership and KECALP in the future.

Applicants also state that the above-described investments are not otherwise available for purchase by the Partnership or KECALP, and cite the opinion of the Managing General Partner and the KECALP General Partner that it is important to maintain the respective positions of the Partnership and KECALP in PSN. The Managing General Partner and the KECALP General Partner, have approved such investments after review of a

considerable number of possible investments for the Partnership and KECALP, and their previous investments in PSN. Applicants thus submit that the respective investment programs of the Partnership and KECALP would be prejudiced if they are not permitted to make the proposed investments.

It is represented, in addition, that the KECALP General Partner believes that the proposed investments are consistent with the rationale underlying the establishment of KECALP as an "employees' securities company." In the application for exemptive relief granted in Investment Company Act Release No. 12363 (April 8, 1982), as well as in KECALP's prospectus, it was indicated that ML & Co. and its affiliates would be involved in structuring, identifying and investing in many of the KECALP's portfolio investments. Similarly, the proposed transactions are consistent with the Partnership's investment objective and the kinds of transactions in which it was contemplated the Partnership would participate.

In support of their request for an order permitting the proposed concurrent participation in accordance with the provisions of section 57(a)(4) of the Act, and Rule 17d-1 thereunder, Applicants reiterate that the Managing General Partner and the KECALP General Partner have reviewed the proposed participation in additional shares of PSN stock, determined that such participation would be consistent with the Partnership's and KECALP's investment objectives and that the proposed investments would not disadvantage either the Partnership or KECALP on the terms specified, maintaining their respective investment positions, or in disposing of such positions. Applicants also reiterate, that in the KECALP Exemptive Order as well as in KECALP's prospectus, it was indicated that affiliates of ML & Co. would be involved in identifying and investing in many of KECALP's portfolio investments. Similarly, the prospectus of the partnership indicated that the Partnership may be a co-investor in portfolio companies with affiliates of management. Applicants therefore submit that the relief requested herein is consistent with the purposes of KECALP and the Partnership, their stated policies and the disclosures they have made to prospective investors. Applicants also believe that the proposed investments are in the best interests of KECALP and the Partnership to the extent that the investments are not otherwise available to them.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 16, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12594 Filed 6-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15116 (812-6353)]

PaineWebber Master Series, Inc., (Formerly PaineWebber Special Income Fund); Application To Permit a Contingent Deferred Sales Load and Certain Offers of Exchange

May 27, 1986.

Notice is hereby given that PainWebber Master Series, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("the Act") as an openend, management investment company, located at 1285 Avenue of the Americas, New York, New York 10019, filed an application on April 21, 1986, and an amendment thereto on May 19, 1986, for an order of the Commission pursuant to section 6(c) of the Act granting exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to the extent necessary: (1) Authorizing Applicant's proposed operation of its contingent deferred sales charge when shares of two or more Series of Applicant are outstanding; (2) authorizing Applicant not to impose a contingent deferred sales charge on exchanges by shareholders between different Series of Applicant; and (3) permitting Applicant to waive the imposition of contingent deferred sales charges on redemptions made under Applicant's systematic withdrawal program; and for an order pursuant to section 11(a) of the Act authorizing Applicant to impose a $5.00 service charge on each exchange of shares between different Series. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicant, organized as a Maryland corporation, states that it currently offers one Series of shares to the public ("Existing Series") and may offer shares of two or more additional Series for public sale in the future ("Future Series"). Further, Applicant states that, on March 13, 1986, the Commission issued an order (Investment Company Act Release No. 14966) (the "Order") which granted certain exemptions to permit Applicant to impose a contingent deferred sales charge ("CDSL") upon certain redemptions of its Existing Series of shares, and to reduce or waive the CDSL that would otherwise be applicable in certain instances.

Applicant now proposes to offer shares of Future Series for public sale, permit exchanges between Series (subject to a $5.00 service charge for each exchange) ("Exchanges"), and implement a systematic withdrawal program as described below. Applicant states that the Order and the application underlying it did not address the operation of the CDSL should shares of two or more Series be outstanding, should Exchanges between Series be permitted, and should participation in a systematic withdrawal program be offered to shareholders of certain Series. Further, the Order and application underlying it did not address the imposition of a $5.00 service charge on Exchange transactions. Applicant states that it is filing this application to obtain exemptive relief for these matters.

Applicant represents that it in no manner proposes to alter the operation of the CDSL, waivers therefrom and reduction therein authorized previously by the Order. Applicant represents further that when a shareholder holds shares in two or more of its Series and redeems shares of one Series, the applicability and amount of the CDSL imposed on the redemption will be determined only with respect to the shareholder's investment in and purchase payments for the Series being redeemed, and not with respect to the shareholder's aggregate investment in all Series of Applicant.

Applicant further proposes that an exception to this procedure be implemented with respect to Exchanges between Series without any CDSL being imposed. (However, as discussed below, Applicant proposes to impose a $5.00 service charge on each Exchange.) For purposes of determining the applicability and rate of any CDSL, the

status of any shares surrendered in an Exchange as representing capital appreciation and/or dividend and capital gain distribution reinvestments in the Series exchanged out of will be passed on to the corresponding shares acquired in a second Series as a result of the Exchange. Accordingly, if an investor who has made an Exchange redeems shares of the Series exchanged into, no CDSL will be imposed to the extent such redemption represents capital appreciation of and/or reinvestments in the Series exchanged out of which occurred prior to the Exchange. In addition, any other shares of the Series acquired in an Exchange will be deemed to have been held for the same length of time as the corresponding shares of the first Series surrendered upon the Exchange.

Applicant states that in order to effect an Exchange order, shares will be exchanged out of a Series in the following order: First, shares representing capital appreciation of the Series being exchanged out of; next, shares representing the reinvestment of dividends and capital gain distributions in such Series; and, finally, other shares of such Series held by the shareholder for the longest period of time.

Applicant submits that the proposed operation of the CDSL where shares of two or more Series are outstanding as described above raises no questions under the Act or the rules thereunder, and that the application of the CDSL with respect to a shareholder's distinct investments in different Series of the Applicant is fair and reasonable and in the best interests of shareholders. Applicant further asserts that any possible variation of the CDSL due to the proposed Exchanges will be applied equally to all shareholders of a given class, and that it will comply with all provisions of Rule 22d–1 under the Act as if that rule were applicable to such Exchange.

Applicant further proposes that a $5.00 service charge be imposed on each Exchange transaction. Applicant states that such charge will be paid to Applicant for the costs it incurs in effecting Exchanges for shareholders of the Applicant. Applicant submits that permitting Exchanges without the imposition of a CDSL would provide shareholders with the opportunity to change their investment objectives and encourage them to do so when appropriate. Applicant further submits that the imposition of the $5.00 service charge on an Exchange is fair and reasonable, in that the charge is designed solely to defray Applicant's expenses in facilitating each Exchange. Applicant further states that the imposition of the service charge does not affect the basis on whch Exchanges between Series will be made.

In addition, Applicant proposes that a shareholder be permitted to elect to participate in Applicant's systematic withdrawal program (the "Program"). Under the Program, a dollar amount of a participating shareholder's investment in a participating Series will be redeemed automatically by Applicant on either a monthly, quarterly, semi-annual or annual basis, and the proceeds mailed to the shareholder. The amount to be redeemed and frequency of the automatic withdrawals will be specified by the shareholder upon his election to participate in the Program. Applicant reserves the right to change the terms and conditions of the Program and the Series with respect to which the Program is offered from time to time. Applicant states that no CDSL be imposed on redemptions made under the Program, and that this may create a variation in the amount of CDSL applicable to different classes of Applicant's shareholders.

Applicant asserts that the proposed waiver of the CDSL under the Program will be applied equally to all Applicant's shareholders of a given class, and is fair and reasonable and in the best interests of shareholders. Applicant further represents that, if the relief sought with respect to the Program is granted, it will comply with all provisions of Rule 22d–1 under the Act as if that rule were applicable.

Applicant asserts that the relief requested is appropriate and in the public interest, consistent with the protection of investors, and provisions of the Act. Applicant therefore requests that the Commission issue an order under sections 6(c) and 11(a) of the Act granting the exemptions as requested and permitting the Exchange.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR. Doc. 86–12535 Filed 6–3–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15112 (File No. 812–6277)]

RNC Liquid Assets Fund, Inc.; Application

May 23, 1986.

Notice is hereby given that RNC Liquid Assets Fund, Inc. ("Liquid Assets"), RNC Regency Fund, Inc. ("Regency"), and RNC Income Fund, Inc. ("Income"), each of which is registered under the investment Company Act of 1940 (the "Act") as an open-end management investment company (such investment companies, together with any management investment company organized subsequent to the date of the application for which Midvale Securities Corporation acts as principal underwriter (the "Distributor", collectively referred to with the Funds as "Applicants") 10960 Wilshire Boulevard, Los Angeles, California 90024, filed an application on January 5, 1986, for an order of the Commission pursuant to section 11(a) of the Act to permit offers to exchange shares of the Funds on a basis other than relative net asset value. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants represent that each of the Funds intend to make a continuous public offering of its shares at the current offering price mentioned in its prospectus. Since Liquid Assets is a no-load fund, the current offering price of its shares will equal the net asset value of the shares. However, the current offering price of Regency and Income (which will invest in equity and fixed income debt, respectively) will include a sales charge, contemplated to be 8.5%, subject to certain reductions for purchases of $10,000 or more. Applicants further state that the registration statement filed with the Commission by Regency has been declared effective and it has commenced offering its shares, and that the registration statements filed with the Commission by Liquid Assets and Income have not yet been declared effective.

According to the application, the Distributor, a California corporation, is a wholly-owned subsidiary of Roley, Nichols Capital Group, Inc., a financial services group, which is the parent of RNC Capital Management Co., the Funds' investment adviser. Applicant states that the Distributor serves as the principal underwriter for each of the existing Funds. Applicants further state that it is anticipated that the Distributor will act as the principal underwriter for additional registered investment companies, the shares of which may be sold at varying sales charges or on a no-load basis.

Applicants propose to permit each of the Funds to elect to offer to exchange its shares ("new shares") for shares ("outstanding shares") of any of the other Funds, provided that such other Fund has agreed to such exchange, on the basis of relative net asset value per share, plus an amount equal to the difference, if any, between the sales charge previously paid on the outstanding shares and the sales charge payable on the new shares if such new shares were purchased at the time of the exchange at their then public offering price. Applicants further request that the order permit the Funds to charge shareholders a fee, payable to the Distributor, of $5.00 for each exchange as a service charge for exercising the exchange privilege.

Applicants state that with respect to outstanding shares as to which previous exchanges have taken place, the sales charge previously paid shall include the aggregate of the sales charges paid with respect to such shares in the initial purchase and any subsequent exchange. The exchange privilege may not be exercised any more than twice in one calendar year. Applicants further state that shares issued pursuant to dividend reinvestment are sold on a no-load basis in each of the Funds. For purposes of the exchange privilege, Applicants represent, dividend reinvestment shares shall be deemed to have been sold with a sales charge equal to the sales charge previously paid on the shares on which the dividend was paid. In the event that a shareholder of a Fund wishes to exchange less than all his shares and the exchange involves a sales charge differential, those shares exchanged first will be those which are to be exchanged on the most favorable terms; i.e., shares previously exchanged involving a higher aggregate sales charge or shares sold at higher break points. Applicants state that to be exchanged, outstanding shares must have a value of $1,000 or more and have been outstanding for at least 15 days.

Applicants state that the purposes of the proposed exchange plan is to permit shareholders of the various Funds to exchange their shares for shares of the other Funds when their investment objectives change or when market conditions favor one type of investment over another. Applicants submit that the terms of the proposed order sought in the application provide shareholders of the Funds with desirable flexibility for their financial planning. Applicants further submit that the exchange formulation provides a fair and equitable exchange privilege to shareholders of all the participating Funds while preventing a shareholder from acquiring shares of a Fund having the highest sales charge by simply purchasing shares of another Fund with a lower sales charge or no sales charge and then exchanging such shares for those of the former Fund on the basis of relative net asset value per share. Applicants further submit that the imposition of the $5.00 service charge on exchanges between Funds is fair and will not harm shareholders or discriminate among shareholders of any Fund. It is designed merely to compensate each Fund for the costs incurred in facilitating exchanges.

Accordingly, Applicants submit that the granting of their request is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 16, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12830 Filed 6-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15114; File Nos. 812-6248 and 812-6229]

Application and Opportunity for Hearing; Sun Life Insurance and Annuity Co. of New York and Sun Life Assurance Co. of Canada (U.S.) et al.

May 21, 1986.

Notice is hereby given that Sun Life Insurance and Annuity Company of New York ("Sun Life New York"), a New York stock life insurance company with its home office at 67 Broad Street, New York, New York 10004; Sun Life (N.Y.) Variable Account C ("Account C"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust and established by Sun Life New York in connection with the proposed issuance of certain master group deferred combination fixed/variable annuity contracts ("contracts"); and Clarendon Insurance Agency, Inc. ("Clarendon"), located at 200 Berkeley Street, Boston, Massachusetts 02116, and the principal underwriter for the contracts, filed an application on November 12, 1985, and an amendment thereto on May 13, 1986. Sun Life Assurance Company of Canada (U.S.) ("Sun Life (U.S.)"), a Delaware stock life insurance company with its executive office at One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181; Sun Life (U.S.) Variable Account D ("Account D"), registered under the Act as a unit investment trust and established by Sun Life (U.S.) in connection with the proposed issuance of contracts similar to those to be issued by Sun Life New York; and Clarendon, the principal underwriter for the contracts (together with Sun Life New York and Account C, "Applicants"), filed an application on October 10, 1985, and an amendment thereto on May 12, 1986. Each set of Applicants requested an order pursuant to section 6(c) of the Act, exempting them from the provisions of sections 26(a)(2)(C) and 26(c)(2) of the Act to the extent necessary to permit transactions described in the applications. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein, which are summarized below and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Sections 26(a)(2)(C) and 27(c)(2)

Applicants request exemption from sections 27(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from Accounts C and D a mortality and expense risk charge determined annually based on total purchase

payments credited to all participants' accounts under a contract pursuant to the following schedule:

Purchase payments	Asset charge (percent)	Approximate breakdown for	
		Mortality (percent)	Expense (risk charge, percent)
Up to $250,000	1.50	0.80	0.50
$250,000 to $1,499,999	1.25	0.80	0.45
$1,500,000 to $4,999,999	1.10	0.80	0.30
$5,000,000 and over	0.95	0.80	0.15

Applicants represent that it is expected that during the first year the contracts are offered, the average asset charge for all paricipants' accounts will be approximately 1.21%. If, at the end of the first year, the average asset charge is higher than 1.25%, Applicants represent they will no longer rely on this exemptive order, but will seek additional exemptive relief. Applicants state the mortality risk arises from the contractual obligation to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The expense risk is the risk that the administrative charges provided in the contracts may be insufficient to cover the actual total administrative expenses incurred by Sun Life New York and Sun Life (U.S.). No sales charge is deducted from purchase payments and up to 10% of purchase payments credited to a participant's account may be withdrawn in any account year on a non-cumulative basis without the imposition of a deferred sales charge ("withdrawal charge"). Amounts withdrawn in excess of 10% will be subject to a withdrawal charge assessed against purchase payments credited to the participant's account as follows:

Number of years payments in participant's account	Withdrawal charge (percent)
1	6
2	6
3	5
4	4
5	3
6	2
7	1
8	0

All withdrawals will be processed on a first-in, first-out basis. No withdrawal charge is imposed upon withdrawals providing a death benefit or to purchase an annuity provided that payment under the annuity option elected is over a period of at least five years. No withdrawal charge is imposed upon amounts withdrawn after a participant's account has been established for twelve years. Applicants represent that in no event will aggregate withdrawal charges assessed against a participant's account exceed 6% of aggregate purchase payments made to that account. Applicants represent that the withdrawal charge which is assessed in connection with certain full or partial withdrawals will recoup expected distribution costs associated with registered and distributing the contracts. Applicants further represent that neither Sun Life New York nor Sun Life (U.S.) expect to realize a profit from the mortality and expense risk charge, and that the charges do not incorporate any charges for the assumption of distribution expense risks. Sun Life New York and Sun Life (U.S.) have determined their respective charges are reasonable in amount with respect to comparable annuity products. These latter representations are based upon analyses of publicly available information about comparable annuity products in light of the products' particular annuity features, taking into consideration such as factors as annuity rate guarantees, current charge levels, sales loads and expense charge guarantees. Both Sun Life New York and Sun Life (U.S.) undertake to maintain and make available to the Commission upon request, a memorandum setting forth the basis for their representation. Accounts C and D represent they will invest in a mutual fund only if such fund undertakes to have a Board of Directors with a disinterested majority formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the applications may, not later than June 17, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon the Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applications will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–12537 Filed 6–3–86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0238]

The Remington Fund, Inc.; Issuance of License To Operate as a Small Business Investment Company

On April 1, 1986, a notice was published in the **Federal Register** (51 FR 11134), stating that The Remington Fund, Inc. (Remington Fund), located at 1927 First Avenue North, Birmingham, AL. 35202, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1986), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on May 1, 1986, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 04/04–0238 to Remington Fund, Inc., effective May 16, 1986

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 23, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86–12547 Filed 6–3–86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2237]

California; Declaration of Disaster Loan Area

The County of San Francisco constitutes a disaster area because of an explosion and fire which occurred in a square block of the Bayview Industrial Park, bounded by Griffith Street, Quesada Avenue, an open area and Revere Avenue, on April 4, 1986. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on July 28, 1986, and for economic injury, as a direct result of this fire, until the close of business on September 2, 1986, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive,

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Suite 150, Sacramento, California 95825

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223704 for physical damage and for economic injury the number is 640000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 25, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12909 Filed 6-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; St. Lucie County, FL.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in St. Lucie County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation (FDOT), is preparing an Environmental Impact Statement (EIS) for the proposed improvements along Port St. Lucie Boulevard in the City of Port St. Lucie, Florida, from the Florida Turnpike east to a terminus at US-1/State Road 5, a distance of approximately 4.5 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include the No Project alternative, and alternate schemes for improving the roadway along the existing alignment in varying right of way widths. Included as part of the build alternatives is the widening or replacement of the existing bridges over Long Creek and the North Fork of the St. Lucie River.

Federal, State and local agencies have contributed early coordination comments through the State Advance Notification process. Additionally, a project planning team developing this project has contacted Federal, State and local agencies for information relative to land use planning, water quality analysis, and local planning needs. Public information meetings will be held during the development of the EIS. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

Issued on May 28, 1986.

P.E. Carpenter,

Division Administrator, Tallahassee, Florida.

[FR Doc. 86-12517 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier I Environmental Impact Statement will be prepared for a proposed highway project in Orange County, California.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The FHWA, working with the California Department of Transportation (CALTRANS) and Orange County Environmental Management Agency (OCEMA) will prepare an Environmental Impact Statement (EIS) on a proposal to locate on new alignment a multimodal facility with 6 to 8 lanes and a median of sufficient width for high-occupancy vehicles (HOV) or transit considerations. Transportation improvements are needed to serve existing and planned development. This document will address the entire length of the proposed corridor, a distance of 31 to 40 miles, which extends southerly from an interchange with the proposed Eastern Corridor near the City of Tustin to join the San Diego Freeway (I-5) between Ortega Highway (Route 74) in the City of San Juan Capistrano and the vicinity of the San Onofre Nuclear Generating Station within the U.S. Marine Corps Camp Pendleton property in northern San Diego County.

Alternatives Being Considered for the Project Are

A. New Highway Alternative

This involves locating and constructing between 6 to 8 general traffic lanes. An undetermined number of proposed interchanges will be included in this alternative.

B. Transit/HOV Improvements

In addition to the above, transit/high occupancy vehicle (HOV) lanes, located in the median, will be evaluated, along with Park-and-Ride facilities.

C. No Project

This alternative is essentially the "no build" option. Note: All other reasonable alternative including other corridors and possibly various transit options will be considered.

Consultation by Orange County with various State and local agencies began in February of 1982 for a northern segment of the corridor identified as extending southerly from the Eastern Corridor Interchange to just north of the future Oso Parkway extension near the community of Mission Viejo. In November of 1985 Orange County began consultation with State and local agencies for the southern segment of the corridor identified as beginning just north of the future Oso Parkway and extending southerly to a connection with the San Diego Freeway (I-5). These consultations identified areas of special concern along the proposed route, which were the focus of locally initiated environmental studies. FHWA believes that this early consultation has been extensive and consistent with 40 CFR 1501.7. However, in order to inform potentially affected agencies and the public of FHWA involvement, at least one formal scoping meeting will be held. Once a date and location is established,

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appropriate public notification will be given.

To ensure that the full range of issues related to this proposed route are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: May 23, 1986.

Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 86-12551 Filed 6-3-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 596]

Senior Executive Service: Appointments of Individuals To Serve as Members of the Performance Review Board

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4) requires that the appointment and changes in the membership of performance review boards be published in the Federal Register. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating year beginning July 1, 1985, and ending June 30, 1986. This notice effects changes in the membership of the ATF Performance Review Board previously appointed May 3, 1985 (50 FR 18957).

Name and Title

Michael H. Lane—Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement)—Department of the Treasury

David D. Queen—Deputy Assistant Secretary (Law Enforcement), Department of the Treasury

John W. Mangels—Director, Office of Operations, Department of the Treasury

John T. Blank—Director, Facilities Management Division, Department of the Treasury, Internal Revenue Service

Marvin J. Dessler—Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

FOR FURTHER INFORMATION CONTACT: James J. Panagis, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, (202-566-7146).

Signed: May 27, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-12409 Filed 6-3-86; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Special Medical Advisory Group will be held on June 19 and 20, 1986. The session on June 19 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW, Washington, DC 20006, and the session on June 20 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on June 19 will convene at 6 p.m. and the session on June 20 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389-5156) prior to June 16, 1986.

Dated: May 28, 1986.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-12544 Filed 6-3-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 107
Wednesday, June 4, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:02 p.m. on Wednesday, May 28, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First State Bank & Trust Company, Edinburg, Texas, which was closed by the Banking Commissioner for the State of Texas on Friday, May 23, 1986; (2) accept the bid for the transaction submitted by NBC Bank—Edinburg, Edinburg, Texas, a newly chartered State nonmember bank; (3) approve the applications of NBC Bank—Edinburg, Edinburg, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in First State Bank & Trust Company, Edinburg, Texas, and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B) Consider recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings involving certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof;

Name of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

At that same meeting, the Board of Directors, anticipating the closing of Roseland State Bank, Roseland, Nebraska, by the Director of Banking and Finance for the State of Nebraska later that same day, accepted the highest bid for a purchase and assumption transaction which may be submitted in accordance with the "Instruction for Bidding," subject to receipt of necessary approvals from appropriate State and/or Federal regulatory authorities.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters would be considered in a closed meeting pursuant to subsection (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 30, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-12645 Filed 6-3-86; 11:24 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:21 p.m. on Thursday, May 29, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Lone Rock Bank, National Association, Lone Rock, Iowa, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, May 29, 1986; (2) accept the bid for the transaction submitted by Swea City State Bank , Swea City, Iowa, an insured State nonmember bank; (3) approve the application of Swea City State Bank, Swea City, Iowa, for consent to purchase certain assets of and assume the liability to pay deposits made in The Lone Rock Bank, National Association, Lone Rock, Iowa, and for consent to establish the sole office of The Lone Rock Bank, National Association as a branch of Swea City State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 30, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-12646 Filed 6-3-86; 11:24 am]

BILLING CODE 6714-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, June 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21th Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations regarding deregulation of financial institutions.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–12676 Filed 6–2–86; 3:28 pm]

BILLING CODE 6210–01–M

4

POSTAL RATE COMMISSION

TIME AND DATE: June 3, 1986, at 3:00 p.m.

PLACE: Conference Room, Suite 300, 1333 H Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Discussion of matters pertaining to Docket No. MC86–1, Destination-BMC Parcel Post Classification and Rate Changes (Experiment), 1985.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 86–12675 Filed 6–2–86; 8:45 am]

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Wednesday
June 4, 1986

Part II

Department of Education

34 CFR Parts 76 and 653

Carl D. Perkins Scholarship Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 653

Carl D. Perkins Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations to govern the actions of designated State agencies in their administration of the Carl D. Perkins Scholarship Program. The regulations are needed to implement Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d–1119d–8. These regulations specify the responsibilities of the Secretary of the U.S. Department of Education in the administration of the program and, in addition, describe the responsibilities of State agencies which administer the scholarships and the responsibilities of the scholarship recipients.

DATE: Comments must be received on or before July 7, 1986.

ADDRESS: All comments concerning these proposed regulations should be addressed to Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, (Room 4026, ROB–3), 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Neil C. Nelson, Telephone (202) 472–4285.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Scholarship Program is authorized under Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984. The purpose of the program is to provide scholarships to enable and encourage outstanding high school graduates who demonstrate an interest in teaching to pursue teaching careers at the elementary or secondary school level.

The scholarships are to be awarded on the basis of academic merit and an interest in teaching. The intention in awarding a scholarship is not merely to enable the recipient to complete successfully a course of study and obtain a teaching certificate, but to commit that individual to the pursuit of a teaching career. The legislation requires that a scholarship recipient teach at the elementary or secondary school level for two years for each year of scholarship assistance. A scholar who does not complete the teaching obligation is required to repay the amount of the scholarships he or she has received, prorated according to the fraction of the teaching obligation not completed, plus interest and collection fees. The repayments are to be made in accordance with a schedule and at an interest rate prescribed by the Secretary. To encourage recipients to fulfill their commitment to teaching and to ensure that the program will not be viewed as a loan program, the Secretary proposes a substantial interest charge which is adjusted annually, from the time interest begins to accrue to the time the repayment period begins, and is set at a rate which is the greater of 14% or 5% above the average 91-day Treasury bill rate for the most recent quarter ending March 31. The interest charge applicable during the repayment period is the greater of these rates as determined when the repayment schedule is established. The interest rate, therefore, will be at least 2 percentage points higher than the highest rate charged by a Federal student financial assistance loan program; the PLUS Program, authorized under Title IV, Part B of the Higher Education Act of 1965, as amended, charges 12%.

To increase the likelihood that recipients will make a commitment to teaching as a career, the statute requires that the scholarship recipient satisfy the teaching obligation by teaching on a full-time basis. The Secretary is concerned, however, that this requirement to teach full-time not interfere with the recipients' ability to care for their own children, particularly during the early, formative months of life. The Secretary therefore requests comments on the practices of local education agencies in granting leaves of absence to individuals to adjust to the birth or adoption of a child, and on other factors relating to the full-time teaching requirement and its impact on the family responsibilities of scholarship recipients. Depending on the comments received, the Secretary will explore available regulatory alternatives to the teaching requirements in proposed § 653.40.

The reference to 34 CFR 662.410(b)(3) in proposed § 653.21(a)(4) is to a section in a Notice of Proposed Rulemaking published in the Federal Register on September 4, 1985 (50 FR 35964–36013), proposing to amend the regulations for the Guaranteed Student Loan Program and the PLUS Program.

The Secretary proposes to amend the Education Department General Administrative Regulations to make the provisions of 34 CFR Part 76 (State-Administered Programs) applicable to the Carl D. Perkins Scholarship Program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. State educational agencies administer the program. States and State agencies are not small entities under the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4026, ROB–3, 7th and D Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any

other agency or authority of the United States.

List of Subjects in 34 CFR Part 653

Education, Grant Programs—education, Scholarships, State-administered—education, Teachers.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.178: Carl D. Perkins Scholarship Program)

Dated: May 30, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 76 and adding a new Part 653, as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for Part 76 continues to read as follows:

Authority: Section 403(a)(1) of Pub. L. 90-247, 88 Stat. 559, 580, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

2. In the table following § 76.1 Section D., Higher Education Programs, is amended by adding a new entry at the end of Section D, to read as follows:

§ 76.1 Programs to which Part 76 applies.

* * * * *

Name of program	Authorizing statute	Implementing regulations (34 CFR)	CFDA No.
D. Higher Education Programs			
* * * * *			
Carl D. Perkins Scholarship Program.	Title V, Part E of the Higher Education Act (20 U.S.C. 1119d-1119d-8).	Part 653	84.178
* * * * *			

3. Section 76.102 is amended by adding a new paragraph (aa) to read as follows:

§ 76.102 Definitions of "State plan" for Part 76.

* * * * *

(aa) *Carl D. Perkins Scholarship Program.* The application under Section 563 of the Higher Education Act.

* * * * *

4. The table following § 76.125 is amended by adding the following language to the list under "Postsecondary Education Programs":

§ 76.125 What is the purpose of these regulations?

* * * * *

CFDA No. and name of program	Authorizing legislation	Implementing regulations (Title 34 CFR Part)
Postsecondary Education Programs		
* * * * *		
84.178 Carl D. Perkins Scholarship Program.	Title V, Part E of the Higher Education Act (20 U.S.C. 1119d-1119d-8).	653
* * * * *		

5. A new Part 653 is added, to read as follows:

PART 653—CARL D. PERKINS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

653.1 What is the Carl D. Perkins Scholarship Program?
653.2 Who is eligible to participate in this program?
653.3 What regulations apply to this program?
653.4 What definitions apply to this program?

Subpart B—What Assistance Does the Secretary Provide Under This Program?

653.10 For what purposes may a State use its payments under this program?

Subpart C—How Does a State Apply for Grants?

653.20 What must a State do to receive grants under this program?
653.21 What requirements must be met by States in the administration of this program?

Subpart D—How Does a State Select Scholars Under This Program?

653.30 What are the eligibility requirements?
653.31 Who selects the scholars?
653.32 What are the selection criteria and procedures?

Subpart E—What Are the Scholarship Conditions?

653.40 What agreement must a scholar have with the State agency?
653.41 What are the requirements for a scholar to continue to receive payments under this program?
653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

Authority: 20 U.S.C. 1119d-1119d-8, unless otherwise noted.

Subpart A—General

§ 653.1 What is the Carl D. Perkins Scholarship Program?

Under the Carl D. Perkins Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the elementary or secondary school level.

(20 U.S.C. 1119d)

§ 653.2 Who is eligible to participate in this program?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who wish to pursue teaching careers at the elementary or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(20 U.S.C. 1119d-2)

§ 653.3 What regulations apply to this program?

The following regulations apply to the Carl D. Perkins Scholarship Program:

(a) The regulations in this Part 653.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1119-d *et seq.*)

§ 653.4 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Elementary school
Nonprofit
Private
Public
Secondary school
Secretary
State
State educational agency

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.
(2) Two trimesters.
(3) Three quarters.

"Act" means the Higher Education Act of 1965, as amended.

"Award year" means the period of time from July 1 of one year through June 30 of the following year.

"Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by

the institution under standards applicable to all students enrolled in that student's program.

"Handicapped children" has the same meaning under this part as the same term defined in 34 CFR 300.5 of the Assistance to States for Education of Handicapped Children regulations.

"Limited English proficiency" has the same meaning under this part as the same term defined in 34 CFR 500.4 of the General Provisions regulations for the Bilingual Education Program.

"Scholar" means a scholarship recipient.

"Scholarship" means an award made to an individual under this part for one academic year.

(20 U.S.C. 1119d–1119d–5)

Subpart B—What Assistance Does the Secretary Provide Under This Program?

§ 653.10 For what purposes may a State use its payments under this program?

A State may use its payments under the Carl D. Perkins Scholarship Program only for making payments to scholars.

(20 U.S.C. 1119d)

Subpart C—How Does a State Apply for Grants?

§ 653.20 What must a State do to receive grants under this program?

(a) To receive grants under the Carl D. Perkins Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that—

(1) Designates as the State agency for the administration of the Carl D. Perkins Scholarship Program, either—

(i) The State agency which administers the State Student Incentive Grant Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Progam and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by §§ 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in § 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include—

(i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Carl D. Perkins Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selection of scholars were developed and in what ways they reflect the State's present and projected needs for elementary and secondary teachers in general those with training in specific academic disciplines;

(5) Provides assurances that—

(i) No changes will be made in the designation of an agency to administer the Carl D. Perkins Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Carl D. Perkins Scholarship without entering into an agreement with the designated State agency under which he or she agrees to the terms specified in § 653.40;

(iii) A copy of the agreement which the State agency will enter into with scholars under § 653.40 will be included in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of §§ 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(iii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding under this program.

(20 U.S.C. 1119d–2)

(Approved by the Office of Management and Budget under control number 1840–0678)

§ 653.21 What requirements must be met by States in the administration of this program?

(a) To continue to receive payments under this part, a State shall—

(1) Provide scholarship assistance only to students who meet the requirements of §§ 653.30, 653.40, and 653.41;

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of § 1653.42 and, in cases of noncompliance with these provisions, implement collection procedures consistent with 34 CFR 682.410(b)(3);

(5)(i) Litigate and attempt to obtain a judgment against a scholar for the amount of the debt prior to the expiration of the State's statute of limitations, in the event collection efforts under paragraph (a)(4) of this section are unsuccessful; or

(ii) Provide an amount equal to the amount of the debt from its own funds if the State fails to litigate in accordance with the requirements of paragraph (a)(5)(i) of this section; and

(6) Expend all funds received from the Secretary for scholarships during the award year specified by the Secretary with regard to those funds, except as otherwise provided in paragraph (d) of this section.

(b) A State shall award a scholarship in the amount of $5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the National Direct Student Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amount in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(6) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship.

(20 U.S.C. 1119d–3, 1119d–4, 1119d–5)

Subpart D—How Does a State Select Scholars Under This Program?

§ 653.30 What are the eligibility requirements?

To be selected as a scholar, an individual shall—

(a)(1) Be a United States citizen or National;

(2) Be a permanent resident of the United States;

(3) Provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Be a permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands;

(b)(1) Have graduated from high school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten per centum of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten per centum of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(20 U.S.C. 1119d–4)

§ 653.31 Who selects the scholars?

(a) Scholars must be selected by—

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary, or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(20 U.S.C. 1119d–4)

§ 653.32 What are the selection criteria and procedures?

(a) The panel or agency appointed or designated by the chief State elected official in accordance with § 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for elementary and secondary teachers as required by section 563(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 563(d) of the Act.

(c) The State shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select scholars without regard to the applicants' eligibility for assistance under Title IV of the Act and without regard to whether applicants plan to attend publicly or privately controlled institutions.

(20 U.S.C. 1119d–2, 1119d–4)

Subpart E—What Are the Scholarship Conditions?

§ 653.40 What agreement must a scholar have with the State agency?

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section—

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received—

(i) In a public elementary or secondary school in any State;

(ii) In a public elementary or secondary education program in any State;

(iii) In a private nonprofit elementary or secondary school located and serving students in a district eligible for assistance under Chapter 1 of the Education Consolidation and Improvement Act of 1981; or

(iv) Handicapped children, or children with limited English proficiency, in a private nonprofit elementary or secondary school;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of complaince with paragraphs (a) (1) and (2) of this section and § 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in § 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the individual ceases to pursue the postsecondary education degree program for which the scholarship was awarded.

(b) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis—

(1) In a school which is designated by the Secretary as meeting the provisions of 34 CFR 674.54(a) of the National Direct Student Loan Program regulations for the year in which the individual is teaching at the school or the prior year; or

(2) Handicapped children, or children with limited English proficiency, in an education program or school referred to in paragraph (a)(1) of this section.

(c) The agreement referred to in paragraph (a) of this section must include—

(1) A description of the procedures under which the provisions of § 653.42 (g) through (j) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of non-compliance with any provisions under this part.

(20 U.S.C. 1119d–2)

§ 653.41 What are the requirements for a scholar to continue to receive payments under this program?

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be—

(1) Enrolled as a full-time student in a postsecondary institution that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accodance with section 1201 (a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the elementary or secondary level, as determined by the State in which the postsecondary institution the student is attending is located; and

(3) Maintaining satisfactory progress as determined by the postsecondary institution the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(20 U.S.C. 1119d–5)

§ 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

(a) A scholar found by a State to be in noncompliance with the agreement entered into under § 653.40, or to have ceased to pursue the postsecondary

education degree program for which the scholarship was awarded, shall—

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not complete, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency but not to exceed 25 percent of the amount of the unpaid principal and accrued interest.

(b) The interest charge referred to in paragraph (a)(2) of this seciton accrues from—

(1) The date of the intitial scholarship paymet if the scholar has ceased to pursue the postsecondary education degree program for which the scholarship was awarded; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is adjusted annually, except as provided for under paragraph (c)(2) of this section, and is set at a rate which is the greater of:

(i) Fourteen percent; or

(ii) Five percent above the average of the bond equivalent rates of 91–day Treasury bills auctioned during the most recent quarter ending March 31.

(2) The interest charge applicable during the repayment period is the greater of the rates described in paragraph (c)(1)(i) and (ii) of this section as determined when the repayment schedule is established.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the calendar month after—

(i) The State has determined that the scholar has ceased to pursue the postsecondary education degree program for which the scholarship was awared;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligations; or

(iii) the latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which—

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for compete repayment within ten years after the scholar enters repayment status, exept as provided in paragraph (i) of this section; and

(ii) Amount annually to no less than $1200 or the unpaid balance, whichever is less.

(e) The State agency shall not require scholarship repayments amounting to more than $1200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education, as defined in 34 CFR 668.2 of the Student Assistance General Provisions regulations;

(2) Serving, not in excess of three years, as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit or a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Seeking and unable to find full-time employment as a teacher in a public elementary or secondary school or public education program.

(h) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments referred to in paragraph (d) of this section and interest does not accrue.

(i) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section.

(j) The State agency shall cancel a scholar's repayment obligations if it determines—

(1) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence of death that is conclusive under State law, that the scholar has died.

(20 U.S.C. 1119d–6, 1119d–7)

[FR Doc. 86–12516 Filed 5–30–86; 1:05 pm]
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federal register

Wednesday,
June 4, 1986

Part III

Department of Education

34 CFR Part 280

Magnet Schools Assistance Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 280

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends three sections of the regulations which implement the Magnet Schools Assistance Program. These amendments to the regulations implement the statutory changes to the Magnet Schools Assistance Act (Title VII of the Education for Economic Security Act, Pub. L. 98-377) which were enacted on November 22, 1985 as part of the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L 99-159.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2023, FOB-6), 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 472-7980.

SUPPLEMENTARY INFORMATION:

Summary of Amendments

Section 703 of the Act, which describes the purposes of the Magnet Schools Assistance Program, has been amended by combining the four clauses in the statement of purpose into two clauses. This language change does not significantly alter the purposes of the Magnet Schools Assistance Program. Section 280.1 of the regulations is amended to conform to the statutory change.

Section 706 of the Act has been amended to narrow the range of activities for which magnet schools funds may be used. Under section 706, grants may be used by an eligible local educational agency (LEA) for—

(1) Planning and promotional activities directly related to expansion and enhancement of academic programs and services offered at magnet schools;

(2) The acquisition of books, materials, and equipment (including computers) and the maintenance and operation thereof, necessary for the conduct of programs in magnet schools; and

(3) The payment of or subsidization of the compensation of elementary and secondary school teachers who are certified or licensed by the State and who are necessary for the conduct of programs in magnet schools.

With respect to clauses (2) and (3), assistance must be directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

Only the above-described activities may be supported with magnet schools funds. A new §280.40 setting out these authorized activities has been added to the regulations.

Section 709 of the Act has been amended by deleting the prohibition on secular humanism instruction. This prohibition, presently codified at §280.40(d) of the regulations, is deleted. The remaining provisions currently in §280.40 are redesignated as §280.41.

A Notice of Proposed Rulemaking was published in the Federal Register on March 10, 1986. The public had 30 days in which to submit written comments concerning the proposed amendments. Only one comment was received, and it recommended no changes to the proposed amendments.

Executive Order 12291

These proposed amendments have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Education Department, Elementary and secondary education, Grant programs-education, Magnet schools.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: May 30, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 280 as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 is revised to read as follows:

Authority: 20 U.S.C. 4051-4062, unless otherwise noted.

2. Section 280.1 is revised to read as follows:

§ 280.1 What is the Magnet Schools Assistance Program?

The Magnet Schools Assistance Program provides grants to eligible local educational agencies (LEAs) for use in magnet schools that are part of an approved desegregation plan and that are designed to bring students from different social, economic, ethnic and racial backgrounds together. The purposes of the program are to support, through financial assistance to eligible LEAs,—

(a) The elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial portions of minority students; and

(b) Courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending such schools.

(20 U.S.C. 4053)

§ 280.4 [Amended]

3. In § 280.4(b), under the definition, "special curriculum", in paragraph (4), the "of" is changed to "or" between the words, "elementary" and "secondary".

§ 280.10 [Amended]

4. Section 280.10 is amended by: removing "for planning and conducting programs" from paragraph (a); removing paragraphs (d) and (e); and revising the citation of authority to read "(20 U.S.C. 4054)".

§ 280.40 [Redesignated as § 280.41]

5. Section 280.40 is redesignated as § 280.41 and paragraph (d) is removed. After the semicolon at the end of paragraph (b) insert "or". At the end of paragraph (c) replace the semicolon and the "or" with a period.

6. A new § 280.40 is added to read as follows:

§ 280.40 What costs are allowable?

An LEA may use funds received under this part for the following activities:

(a) Planning and promotional activities directly related to the expansion and enhancement of academic programs and services offered at magnet schools, though planning activities are subject to the restriction in § 280.41(a).

(b) The acquisition of books, materials, and equipment (including computers) and the maintenance and operation thereof. Any books, materials or equipment purchased with grant funds must be—

(1) Necessary for the conduct of programs in magnet schools; and

(2) Directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

(c) The payment or subsidization of the compensation of elementary and secondary school teachers—

(1) Who are certified or licensed by the State;

(2) Who are necessary to conduct programs in magnet schools; and

(3) Whose employment is directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

(20 U.S.C. 4056)

[FR Doc. 86-12515 Filed 6-3-86; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 280

Hazardous Waste; Interim Prohibition Against Installation of Unprotected Underground Storage Tanks; Interpretive Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL 2988-8]

Hazardous Waste; Interpretive Rule on the Interim Prohibition Against Installation of Unprotected Underground Storage Tanks

AGENCY: Environmental Protection Agency.

ACTION: Interpretive rule.

SUMMARY: New Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, provides for the regulation of underground storage tanks. Section 9003(g) of Subtitle I establishes interim requirements for underground storage tanks that are installed between May 7, 1985 and the effective date of new tank standards required to be promulgated by EPA under section 9003(e). This notice sets forth EPA's interpretation of Section 9003(g).

FOR FURTHER INFORMATION CONTACT: Pamela Harris, (202) 382-4814; or Steven Way, (202) 475-9328; or the RCRA/Superfund Hotline at (800) 424-9346 (toll free or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION:

I. Introduction: The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616. These Amendments extend and strengthen the provisions of the Solid Waste Disposal Act of 1970 as amended by RCRA. A major portion of this new legislation, Subtitle I, provides for the development and implementation of a regulatory program for underground storage tanks used to contain regulated substances, which include petroleum and substances defined as hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).[1]

Among the provisions of new Subtitle I, section 9003 requires EPA to promulgate regulations pertaining to the detection, prevention, and correction of releases from underground storage tanks as may be necessary to protect human health and the environment.[2] Section 9003(c) sets forth minimum requirements that must be promulgated for all underground storage tanks and section 9003(e) sets forth additional requirements that must be promulgated for new underground storage tanks. Regulations under both sections 9003 (c) and (e) for tanks containing petroleum products are to be effective by May 8, 1987. With respect to tanks containing hazardous substances, regulations under section 9003(e) for new tanks are to be effective by November 8, 1987 and regulations under section 9003(c) for existing tanks are to be effective by November 8, 1988.

Until new tank standards promulgated under section 9003(e) become effective, section 9003(g)(1) establishes interim requirements for any tank installed on or after May 7, 1985. That section provides as follows:

. . . [N]o person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double walled construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

As a limited exception, section 9003(g)(2) allows the installation of tanks without corrosion protection in soil with a resistivity of 12,000 ohm-cm or more. Under that provision, soil tests must be conducted in accordance with American Society for Testing and Materials (ASTM) Standard G57-78.

II. Purpose of the Interpretive Rule

An interpretive rule is a statement issued by an agency to advise the public of the agency's construction of the statutes and rules that it administers. An interpretive rule simply construes the language of the statute or regulation and does not impose additional obligations. Such rules are exempt from the notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 553(b)(A) (1982). A substantive rule, such as the new tank standards authorized by section 9003(e), is a rule that is issued by an agency pursuant to statutory authority that implements the statute. EPA intends this notice to be an interpretive rule, not a substantive rule.

Section 9003(g) establishes statutory requirements that took effect on May 7, 1985 without prior action on the part of EPA. Several of the requirements set forth under section 9003(g) are in the form of performance standards. EPA believes that the interpretive rule clarifies obligations of the regulated community in complying with the interim prohibition. The rule also puts the regulated community on notice of the circumstances under which the Agency will proceed with enforcement action for noncompliance.

III. Other Related EPA Activities

On July 15, 1985, EPA codified the statutory language of section 9003(g) in its regulations at 40 CFR 280.2.

EPA is preparing a guidance document that is available in draft form in the Regional Offices. This document discusses methods and technologies for preventing releases from tanks due to corrosion, structural failure, or the storage of materials that are incompatible with the tanks' construction or lining. This guidance will assist tank users in determining effective approaches to meet the performance standards in section 9003(g).

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[1] "Underground storage tank" is defined under RCRA Subtitle I, section 9001(1) as any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any—

(A) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) Tank used for storing heating oil for consumptive use on the premises where stored,

(C) Septic tank,

(D) Pipeline facility (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968, (49 U.S.C. App. 1671, et seq.),

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(iii) Which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph;

(E) Surface impoundment, pit, pond or lagoon,

(F) Storm water or waste water collection system,

(G) Flow-through process tank,

(H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

"Regulated substances" are defined under RCRA Subtitle I, section 9001(2) as:

(A) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C), and

(B) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

[2] "Release" is defined under RCRA Subtitle I, section 9001(3) as any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

IV. Legislative History of Section 9003(g)

Many of the storage tank provisions now contained in Subtitle I, including section 9003(g), had their origins in a bill introduced by Senator Durenberger on February 29, 1984 as an amendment to the Safe Drinking Water Act, 130 Cong. Rec. S2023 (Feb. 29, 1984). Among these provisions was a requirement that EPA promulgate new tank standards within nine months of the date of enactment of the proposed amendments. Such standards were to include a prohibition on bare steel tanks. *Id.* at S2026. The provisions established an exception from the bare steel tank ban "where the Administrator finds there is minimal danger of corrosion." *Id.* In describing that provision, Senator Durenberger stated that "installation of common but less adequate tanks—those made of bare steel—would be prohibited unless the hydrogeology of the area is such that there is a minimal danger of corrosion." *Id.* at S2027.

On July 25, 1984, Senator Durenberger offered a modified version of his storage tank provisions as an amendment to RCRA. 130 Cong. Rec. S9164 (July 25, 1984). This amendment was passed by the Senate. *Id.* at S9201. In this modified version, the deadline for—new tank standards was extended and the bare steel ban was converted into an interim requirement that new tanks be installed in accordance with enforced national consensus code." This requirement was to go into effect ninety days after the bill was passed and remain effective until EPA promulgated new tank standards. *Id.* at S9163–64.

On the House of Representatives side, amendments to RCRA were passed but did not contain provisions for the regulation of underground storage tanks. 130 Cong. Rec. H9184 (November 3, 1983). On August 10, 1984, however, the House passed an underground storage tank bill as an amendment to CERCLA. 130 Cong. Rec. H8938, H9027 (August 10, 1984). The House bill contained an interim prohibition that provided as follows:

> Until the effective date of the regulations promulgated by the Administrator under subsection (a) and after 180 days after the date of the enactment of this title, no person may install or begin using an underground storage tank for the purpose of storing hazardous substances unless such tank, of either single or double wall construction, is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material which would prevent corrosion for the operational life of the tank, or contained in a manner designed to prevent the release or threatened release of any stored hazardous substance and unless in all cases the material used in the construction or lining of the tank is compatible with the substance to be stored. *Id.* at H8950.

Subsequently, a Conference Committee was formed to consider the RCRA amendments passed by the Senate and the House. Although the House CERCLA bill was not officially under consideration by the RCRA Conference Committee, the conferees adopted the language of that bill's interim prohibition with several significant modifications. 130 Cong. Rec. H11121 (Oct. 3, 1984). These modifications included the requirement that every new tank prevent releases due to "Structural failure" for its "operational life" (section 9003(g)(A)) and the exception from corrosion protection requirements for tanks located in soil with a resistivity of 12,000 ohm/cm or more. The Conference Report described the reported provision as follows:

> Following enactment, the installation of bare steel tanks, i.e. those which provide little or no protection against corrosion, will be prohibited until the Administrator promulgates regulations establishing the conditions for installation. Bare steel tanks may be installed (pending promulgation of EPA regulations) only where properly conducted soil tests show resistivity at 12,000 ohms/cm or more. This provision replaces the provision in the Senate amendment which prohibits installation of bare steel tanks except in states that enforce a national consensus code.

130 Cong. Rec. 11139 (Oct. 3, 1984).

The bill, as reported by the Conference Committee, ultimately passed both houses and was signed by the President on November 8, 1984.

The legislative history of section 9003(g) reveals that, as originally introduced in the Senate, the section was aimed at preventing the installation of steel tank systems without corrosion protection. Ultimately, however, section 9003(g) was expanded not only to prohibit installation of bare steel tanks, but also to include requirements pertaining to the structural integrity of all newly installed tanks and the compatibility of the substances stored with the materials used in the construction and lining of such tanks.

V. EPA's Interpretation of Section 9003(g)

EPA reviewed the statutory language of section 9003(g) and its legislative history. Based upon this review, EPA's conclusions are set forth below.

Section 9003(g) (codified as 40 CFR 280.2) establishes three requirements that must be satisfied by all underground storage tanks (including underground pipes connected to the tanks) installed between May 7, 1985 and the effective date of new tank standards promulgated under RCRA section 9003(e), with the exception of tanks qualifying for the exemption from corrosion protection requirements under section 9003(g)(2). There requirements are: (1) That the tank and underground piping be designed, constructed, and installed to prevent releases due to corrosion for the operational life of the tank and the piping; (2) that the tank and underground piping be designed, constructed, and installed to prevent releases due to structural failure for the operational life of the tank and the piping; and (3) that the materials used in the construction or lining of the tank and its underground piping be compatible with the substance to be stored in the tank.

The first two of the above requirements are established by section 9003(g)(1)(A), which provides that tanks must "prevent releases due to corrosion or structural failure for the operational life of the tank." The third requirement is established by section 9003(g)(1)(C). In addition, section 9003(g)(1)(B) sets forth minimum requirements for tank design and construction. Under section 9003(g)(1)(B), tanks must be either cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of any stored substance.

In addition to cathodically protected tanks and tanks constructed or clad with non-corrosive materials, section 9003(g)(1)(B) would permit the use of other types of tanks and protective measures if they are "designed in a manner to prevent the release or threatened release of any stored substance." Interested parties may consult with EPA on a case-by-case basis concerning the effectiveness of particular technologies for preventing releases.

There are several examples of tanks that do not satisfy the requirement of section 9003(g)(1)(A) that they prevent releases due to corrosion for the operational life of the tank. A steel tank whose only corrosion protection is a coating of noncorrosive materials that is applied in such a way that it will not prevent releases due to corrosion for the operational life of the tank is not adequate. Similarly, a cathodically protected tank whose cathodic protection is not designed to prevent releases for the operational life of the

tank will not be deemed to have satisfied this requirement.

Paint and asphalt coatings are not adequate for cathodic protection. Asphalt paints are soluble in a number of regulated substances that are normally stored in tanks, including solvents and hydrocarbons, such as gasoline. Applications of both asphalt paints and lead paints are thin, easily damaged during installation and easily worn away during use. They do not provide a complete seal for the tank. such paint or asphalt coatings do not provide corrosion resistance for the operational life of the tank and, therefore, do not comply with the interim prohibition.

Tanks that satisfy the requirement of section 9003(g)(1)(A) to prevent releases due to corrosion must still satisfy the requirements that they prevent releases due to "structural failure" and that the materials used in the construction of the tank be compatible with the substances to be stored. For example, a tank constructed of noncorrosive material that is subject to structural failure because of its design or installation would not satisfy the requirements of section 9003(g)(1). Similarly, a tank whose construction materials are not compatible with the product to be stored would not satisfy the requirements of section 9003(g)(1) because, although it satisfies the corrosion protection requirement of section 9003(g)(1)(A), it does not satisfy the compatibility requirement of section 9003(g)(1)(C).

Section 9003(g)(1) provides that "no person may install an underground storage tank" unless such tank satisfies the requirements of sections 9003(g)(1)(A), (B), and (C). EPA interprets the term "no person may install an underground storage tank" to encompass any persons responsible for having a tank installed, including among others owners, operators and installers. EPA also interprets section 9003(g) as applying to all new installations, including installation of previously used tanks and to any new installation of underground piping associated with underground tanks subject to the prohibition. When the new installation is only piping, only the new piping would be subject to the standards in section 9003(g).

With respect to the exemption from corrosion protection requirements provided by section 9003(g)(2), EPA interprets this provision as permitting the installation of a tank without corrosion protection if a person, prior to installation, demonstrates by means of soil testing conducted in accordance with ASTM Standard G57–58 that the soil at the location where the tank is to be installed does not have a resistivity of less than 12,000 ohm-cm.

A tank exempted from corrosion protection requirements under this section, however, must still satisfy the requirement that the tank be designed, constructed, and installed to prevent releases due to the structural failure of the tank and that the materials used in the construction or lining of the tank be compatible with the substances to be stored in the tank. Thus, for example, a steel tank without any type of corrosion protection may be installed at a location where the soil continues to have a resistivity of 12,000 ohm-cm during the operational life of the tank. However, if the tank is constructed or installed so that it suffers structural failure or is not compatible with the stored product and releases its contents, the tank would not be in compliance with section 9003(g).

VI. Summary of Supporting Analyses

1. Executive Order 12291

Executive Order 12291 [46 FR 13193, February 9, 1981] requires that a regulatory agency determine whether a new regulation will be "major" regulation and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not have any of the impacts listed above. The Agency did conduct an economic impact analysis of the interim prohibition as part of the Hazardous Waste Management System; Final Codification Rule published in the Federal Register July 15, 1985. The Regulatory Impact Analysis concludes that upper bound cost estimates for the Interim Prohibition are under $10 million per year.

The interpretive rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

The Regulatory Impact Analysis for the Final Codification Rule also addresses the impact of the Interim Prohibition on small entities and concludes that the Interim Prohibition will not have a significant economic impact on a substantial number of small entities. This interpretive rule does not, therefore, require a regulatory flexibility analysis.

Dated: May 21, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–12002 Filed 6–3–86; 8:45 am]

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Part V

Department of Education

34 CFR Parts 682 and 690
Guaranteed Student Loan Program and Pell Grant Program; Schedules of Expected Family Contributions; Final Regulations

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 690

Guaranteed Student Loan Program and Pell Grant Program; Schedules of Expected Family Contributions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the final regulations for the Schedule of Expected Family Contributions for the Guaranteed Student Loan (GSL) and Pell Grant programs. These amended regulations are required by section 16031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272. The expected family contribution schedules for these two programs are amended to exclude from family income the income realized from the proceeds of a sale of farm or business assets if the sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

EFFECTIVE DATES: These regulations take effect either 45 days after publication in the Federal Register or later, if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

When effective, for the GSL program, the regulations will apply to any loan made for a period of instruction which begins on or after July 1, 1985.

When effective, for the Pell Grant Program, the regulations will apply to a Pell Grant made for any award year which begins on or after July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW. [Regional Office Building 3, Room 4318] Washington, DC 20202. Telephone number (202) 472-4300.

SUPPLEMENTARY INFORMATION:

Background

Effect of Amendment on the Pell Grant and GSL Programs

Section 16031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, requires the Secretary to amend the 1985-86 and 1986-87 Schedules of Expected Family Contributions for the GSL and Pell Grant programs to exclude from the computation of an expected family contribution (EFC) any income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

Additional Effect of Amendment on the GSL Program

Section 16031 does not affect the GSL requirement set forth in the GSL program regulations, 34 CFR 682.301, that an institution must calculate a student's EFC to determine whether the student is eligible for interest benefits if the student's adjusted gross family income (AGFI) exceeds $30,000. In addition, section 16031 does not authorize the exclusion of such income when the institution determines whether a student's AGFI is over $30,000.

If the institution uses Appendix B to the GSL program regulations to calculate the student's EFC, it must adjust the student's AGFI to exclude the taxable portion of the income realized from the proceeds of a sale of farm or business assets if the sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy. However, if that adjustment reduces the student's AGFI to $30,000 or less, the institution may not use Appendix B to the GSL program regulations to calculate the student's EFC but must, instead, use a need analysis system approved by the Secretary under the campus-based programs.

If the institution calculates the student's EFC using a system of need analysis approved by the Secretary for use in the campus-based programs, (National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant), the EFC calculated for that student under that system must be adjusted to exclude from family income the taxable and nontaxable income realized from the proceeds of the sale of farm or business assets as described above.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary of offer interested parties the opportunity to comment on proposed regulations. However, section 16031 of Pub. L. 99-272 requires the Secretary to publish regulations to exclude, in the computation of an expected family contribution for the GSL program and Pell Grant program, the income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291 and are classified as nonmajor because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations revise the schedules of expected family contributions for the GSL and Pell Grant programs and do not affect small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 682

Administative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education and Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.032, Guaranteed Student Loan Program and 84.063, Pell Grant Program)

Dated: May 30, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 682 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN PROGRAM

1. The authority for Part 682 is revised to read as follows:

Authority: 20 U.S.C. 1071-1087-2, unless otherwise noted.

2. In § 682.301, paragraph (f)(2)(ii) is revised and paragraph (g) is added to read as follows:

§ 682.301 Eligibility for interest benefits on a GSLP loan.

* * * * *

(f) * * *

(2) * * *

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family, after taking the provisions of paragraph (g) of this section into account, is more than $30,000 and less than $75,000.

(g) In calculating a student's expected family contribution under paragraph (f) of this section—

(1) The institution shall exclude any taxable and nontaxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses a need analysis system approved by the Secretary for the campus-based programs to calculate the student's expected family contribution; and

(2) The institution shall exclude any taxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses the tables set forth in Appendix B to calculate the student's expected family contribution.

(20 U.S.C. 1078, 1082, and 1089)

PART 690—PELL GRANT PROGRAM

1. The authority for Part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

2. In § 690.33, paragraph (g) is revised to read as follows:

§ 690.33 Effective family income.

* * * * *

(g) The annual adjusted family income does not include any—

(1) Student financial assistance except those veteran's benefits cited in paragraph (b)(2) of this section; and

(2) Income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

(Sec. 5 of Pub. L. 97-301 as amended by Sec. 4 of Pub. L. 98-79 and Sec. 707 of Pub. L. 98-511; and 20 U.S.C. 1089)

3. In § 690.43, paragraph (e) is revised to read as follows:

§ 690.43 Effective family income.

* * * * *

(e) The annual adjusted family income does not include any—

(1) Student financial assistance except those veteran's benefits cited in paragraph (b)(2) of this section; and

(2) Income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

(Sec. 5 of Pub. L. 97-301 as amended by Sec. 4 of Pub. L. 98-79 and Sec. 707 of Pub. L. 98-511; and 20 U.S.C. 1089)

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Part VI

Environmental Protection Agency

40 CFR Parts 122 and 403
Water Pollution; General Pretreatment Regulations for Existing and New Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[FRL-3025-8]

Water Pollution; General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is making technical amendments to 40 CFR Part 403. This action is necessary to correct typographical errors, erroneous cross-references, and inadvertent omissions in the General Pretreatment Regulations. This final rule also makes several other minor revisions that clarify the regulations, remove inconsistencies, and update certain provisions in response to developments that have occurred since their promulgation.

DATE: The effective date of this regulation is July 7, 1986.

In accordance with 40 CFR Part 23, these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on June 18, 1986.

Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the CWA, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Hans I.E. Bjornson, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-9530.

ADDRESS: The supporting information for this rule will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA promulgated the General Pretreatment Regulations on June 26, 1978 (40 CFR Part 403; 43 FR 27736). These regulations established mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs). On January 28, 1981, the Agency promulgated amendments to the regulations pursuant to a settlement agreement with parties that had challenged the regulations in Federal court (46 FR 9404). The Agency has subsequently made several other amendments to the regulations, including revisions to the removal credits provision (40 CFR 403.7) on August 3, 1984 (49 FR 31212). (The revised removal credits provision was recently struck down by the United States Court of Appeals for the Third Circuit in *Natural Resources Defense Council, Inc.* v. *EPA*, No. 85-3012 (3d Cir. 1986). EPA is reviewing this decision to determine the appropriate response.) Today's notice corrects inadvertent omissions, erroneous internal cross-references, and typographical errors in the regulations. The Agency is also revising cross-references to the NPDES permit regulations to account for the deconsolidation of, and other changes to, those regulations (see 48 FR 14146, April 1, 1983; 47 FR 53666, November 26, 1982). Several other minor revisions are being made to clarify the regulations, remove inconsistencies, and update certain provisions to account for developments that have occurred since their promulgation.

Today's final rule has not been the subject of a previous notice of proposed rulemaking. Under the Administrative Procedure Act (APA), the requirement of providing prior notice and an opportunity for comment does not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). By this exception, "Congress has recognized that there is no need for giving the public an opportunity to participate in minor amendments to rules. . . ." *Texaco, Inc.* v. *Federal Power Commission*, 412 F.2d 740, 743 (3d Cir. 1969), quoting Administrative Procedure Act: Analysis Of Its Requirements As To Rule-Making, 33 A.B.A.J. 315, 318 (1947). "Unnecessary" means "unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved." S. Doc. No. 248, 79th Cong., 2d Sess. at 200, 258 (1946). See also, *National Nutritional Foods Association* v. *Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978); U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 31 (1947). Because today's action consists only of technical corrections or other minor amendments that conform the General Pretreatment Regulations to other actions already taken, and because of the reasons stated below, EPA finds that prior notice and opportunity for comment are not necessary.

Final Regulations

1. *Definition of POTW Pretreatment Program.* Section 403.3(d), which defines the term "POTW Pretreatment Program," states that a POTW program must meet the criteria of §§ 403.3 and 403.9 of the pretreatment regulations. However, § 403.3 does not contain criteria for local programs. These are contained in § 403.8, which delineates the specific substantive requirements for an approvable local POTW Pretreatment Program, and § 403.9, which sets out approval procedures and submission requirements. Therefore, § 403.3(d) is revised to remove the reference to § 403.3 and substitute § 403.8 in its place.

2. *Definition of NPDES State.* The definition of "NPDES State" in § 403.3(m) references the definition of "State" in the NPDES regulations at 40 CFR 122.3. However, as a result of deconsolidation of the permit regulations, § 122.3 was redesignated as § 122.2 (48 FR 14146, April 1, 1983). Section 403.3(m) of the pretreatment regulations is revised to reflect this change.

3. *Change from "Enforcement Division Director" to "Water Management Division Director".* At several places in the General Pretreatment Regulations, reference is made to the "Enforcement Division Director." As a result of an internal Agency reorganization, this position no longer exists; its pretreatment program responsibilities have been assumed by the Water Management Divison Director. Accordingly, EPA is replacing all references to "Enforcement Division Director" with "Water Management Division Director," and is also replacing the definition of the former term in § 403.3(e) with a new defintion of the latter.

4. *Category Determination Request.* Section 403.6(a)(1) requires new sources to request a category determination prior to commencement of discharge. However, the existing regulation does not specifically address the parallel situation in which a cateogry determination is requested by an existing industrial user that adds a new process or changes an operation such that it might be included under a different subcategory. (Many of these changes might result in a new source and are thus already covered under the current requirement for new sources.) Consistent with § 403.6(a)(1), EPA is today clarifying that an existing

industrial user who wishes to receive a category determination on an added or changed process must submit a category determination request prior to commencing its discharge from the added or changed process.

Section 403.6(a)(2)(ii) requires that the statement in a category determination application "contain an oath stating that the facts contained therein are true on the basis of the applicant's personal knowledge or to the best of his information and belief." That section also previously required that "[t]he oath shall be that set forth in § 403.7(b)(2)(ii), except that the phrase '§ 403.7(d)' shall be replaced with "§ 403.6(a).' " When the removal credits provisions in § 403.7 were amended on August 3, 1984 (49 FR 31212), the certification in § 403.7(b)(2)(ii) was removed and the reference to § 403.7(b)(2)(ii) was removed from § 403.6(a)(2)(ii). No substitute oath was provided for category determinations. However, in making these revisions, EPA did not intend to leave § 403.6(a)(2)(ii) without a reference to specific certification language, but merely to change the removal credits provisions. Therefore, the Agency is today correcting § 403.6(a)(2)(ii) by reinserting the original certification statement.

5. *Compliance Deadline for Categorical Standards.* Section 307(b) of the Clean Water Act states that each categorical Pretreatment Standard "shall specify a time for compliance not to exceed three years from the date of promulgation [of such Standard]. . . ." The pretreatment regulations (§ 403.6(b)) require existing sources to comply with categorical Pretreatment Standards "within 3 years of the date the standard is effective unless a shorter compliance time is specified in the appropriate [Standard] *but in no case later than July 1, 1984.*" (emphasis added). This outside deadline of July 1, 1984 was added to the regulations in 1981 to reflect provisions in the EPA–NRDC Consent Decree. The Consent Decree between EPA and several environmental groups was originally entered in 1976, in the case of *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976). The Consent Decree required EPA to, among other things, promulgate effluent limitation guidelines and standards (including pretreatment standards for indirect dischargers) for 21 industrial categories, with special emphasis on 65 toxic pollutants, by prescribed dates. Paragraph 10(b) of the Decree provided that the Agency would require compliance with pretreatment standards by June 30, 1983. This date was later changed to June 30, 1984. *Natural Resources Defense Council, Inc.* v. *Costle*, 12 ERC 1833, 1843 (D.D.C. 1979). However, on August 2, 1983, the United States District Court for the District of Columbia modified paragraph 10(b) of the decree at EPA's request, and with the consent of NRDC, to give the Agency greater flexibility in establishing compliance deadlines for pretreatment standards consistent with section 307(b) of the Act. Consistent with this order, EPA has been routinely establishing compliance deadlines for recently promulgated pretreatment standards beyond July 1, 1984. See, e.g., 48 FR 49149 (October 24, 1983) (Aluminum Forming); 49 FR 9134 (March 9, 1984) (Battery Manufacturing). Moreover, EPA has modified certain categorical pretreatment standards to reflect the change in the consent decree (49 FR 41408, September 15, 1983).

Consistent with the above developments, EPA is modifying § 403.6(b) to delete the reference to the July 1, 1984 deadline. That section now states that compliance will be required within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N.

6. *Combined Wastestream Formula.* In its present form, the combined wastestream formula (§ 403.6(e)) requires calculation of both "an alternative daily maximum value using the daily maximum value specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the *long-term* average value(s) specified in the appropriate categorical Pretreatment Standard(s)" (emphasis added). Categorical pretreatment standards are expressed in terms of daily maximum, and monthly or 30-day average values. The term "long-term average value(s)" refers to these latter values. To avoid confusion, the Agency is changing the language of § 403.6(e), replacing "long-term average value(s)" with the more accurate term "monthly average value(s)." This revision will not affect the electroplating regulations, 40 CFR Part 413. Electroplating pretreatment standards are expressed as daily maximum and 4-day average values. However, § 413.04 of those regulations requires that 30-day values, rather than 4-day values, be used in calculating alternative pretreatment standards for a combined wastestream if one of the non-electroplating streams, with which an electroplating stream is combined, is regulated by 30-day average values. Section 413.04 includes a table that converts the 4-day number to a 30-day number.

7. *Deadline for Program Approval.* Section 403.8(b) requires all POTWs whose permits are modified pursuant to section 301(h) of the Clean Water Act to receive approval of local pretreatment programs within 3 years, as provided in 40 CFR Part 125, Subpart G (citing the 1979 regulation). EPA promulgated final regulations to administer section 301(h) on November 28, 1982 (47 FR 53666). Therefore, the reference to the 301(h) regulations in § 403.8(b) is amended to reference the current version of the Subpart G regulations.

8. *POTW NPDES Permit Modifications.* When a POTW pretreatment program is approved, the POTW's NPDES permit is reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit. See § 403.8(c). Modifications to NPDES permits are normally processed in accordance with the procedures in 40 CFR Part 124, including public notice and comment. Section 122.63 sets out the exceptions to this rule by identifying certain types of modifications to NPDES permits as "minor." Minor modifications do not require public notice and comment.

The Part 124 public participation requirements currently used to modify NPDES permits are very similar to those EPA and States must follow in approving local pretreatment programs (§ 403.11). The public notice at the permit modification stage is thus duplicative since there is ample opportunity for public participation during the program approval process. In many cases, approval authorities avoid the unnecessary second notice by processing the two actions together, thus combining the public notice. Because two notice and comment periods are equally unnecessary where the approval and permit modification are not processed together, EPA is revising §§ 122.62, 122.63, and 403.8(c) to allow the insertion of enforceable conditions establishing an approved pretreatment program into a POTW's NPDES permit to be processed as a minor modification. The minor modification can only be used where the local program was approved in accordance with the public participation procedures in § 403.11. This provides all interested parties opportunity to comment on whether the program should be approved, making the second notice and comment unnecessary.

EPA believes it is appropriate to make this change as part of today's final rulemaking for several reasons. First, the change will not have any substantive

effect on the interested public's opportunity to participate in the pretreatment program approval process. Interested parties have a full opportunity to comment on the program when it is approved. Second, it is in the public interest to incorporate approved programs into the POTW's permit as early as possible; the sooner the program is incorporated into the permit, the sooner any failure to implement the program can be enforced as a permit violation against the POTW. Finally, further delay in making this change would render it moot. Of the approximately 1460 required POTW pretreatment programs, about 100 have yet to be approved. The Agency anticipates that these remaining programs will be approved (or referred for judicial action) by the end of the current fiscal year. Today's revision is thus necessary to avoid the delay and duplication of effort that would result if, after approval, these programs were required to undergo a second round of public notice and comment before being incorporated into the POTW's permit.

9. *Development and Submission of NPDES State Pretreatment Programs.* Several provisions in § 403.10 cross-reference various sections of the NPDES State Program regulations in 40 CFR Part 123. These references are to the May 19, 1980 version of Part 123 (Consolidated Permit Regulations). However, the Agency "deconsolidated" those regulations on April 1, 1983 (48 FR 14146), so that all the cross-referenced sections were renumbered in the NPDES permit regulations. Section 403.10 is being amended to reflect these changes.

10. *Removal Credit Approval Procedures.* In § 403.11(a) and (b), reference is made to § 403.7(d) which specified the contents for a removal credits application. As a result of the revisions to the removal credit provision, published on August 3, 1984 (49 FR 31212), the required contents of a removal credit application are now found in § 403.7(e). Therefore, EPA is deleting the references to § 403.7(d) and replacing them with "§ 403.7(e)."

11. *Self-Monitoring Requirements.* Section 403.12(g) states that monitoring frequency requirements for industrial users are found in the appropriate categorical pretreatment standards and that all users must monitor in accordance with such frequencies. In fact, the categorical standards do not specify monitoring requirements. Therefore, we are revising § 403.12(g) to delete this reference. (EPA will soon be publishing in the Federal Register a proposal to amend § 403.12(g) to clarify that the bi-annual reports submitted by industrial users in accordance with § 403.12(e) must be based on representative sampling and analysis data for the reporting period.)

12. *Reporting Requirements.* Paragraphs (j) and (k) of § 403.12 contain references to paragraph (i) and (j) of that section. However, on August 3, 1984 (49 FR 31212), EPA deleted paragraphs (i) and (j) and redesignated paragraphs (k)–(n) as (i)–(l). Accordingly, the references to paragraphs (i) and (j) in § 403.12 (j) and (k) are deleted.

13. *Net/Gross.* In 1981, EPA promulgated § 403.15, which provides for net/gross decisions. The preamble to those regulations states that "several commenters objected to the 60-day deadline for requesting a net/gross credit, noting that the Consolidated Permit Regulations do not impose a similar constraint. These commenters pointed out that in many cases treatment technology would need to be installed before a user could satisfy the demonstrations needed to receive a credit. EPA agrees with this comment and accordingly has deleted the time limitation on applying for a net/gross credit." 46 FR 9437 (January 28, 1981). However, § 403.15(a) states that applications for credit for intake pollutants must be made within 60 days after the effective date of the applicable categorical pretreatment standard. To correct this inadvertent mistake, EPA is deleting the 60-day deadline from §403.15(a).

14. *Appendices B and C.* The Pretreatment Implementation Review Task Force (PIRT), was established by the Administrator in February, 1984, to develop recommendations on how to improve implementation of the national pretreatment program. In its Final Report to the Administrator (1985), PIRT noted that Appendices B, C and D were out of date and recommended that they be updated. A proposed updated version of Appendix D was published in the Federal Register on May 9, 1985 (50 FR 19004). Today EPA is issuing final updated versions of Appendices B and C.

Appendix B lists the toxic pollutants designated pursuant to section 307(a)(1) of the Clean Water Act. This list also appears at 40 CFR 401.15. Since Appendix B was first published, EPA has deleted the following pollutants from the toxic pollutant list in 40 CFR 401.15: Dichlorofluoromethane and trichlorofluoromethane, 46 FR 76062 (January 8, 1981), and bis [chloromethyl] ether, 46 FR 10723 (February 4, 1981). The updated list issued today reflects these changes.

Appendix C is a list of the industrial categories for which national categorical pretreatment standards either have been or are planned to be issued. Several changes have been made to the previous categorization scheme since the list's initial publication:

(1) "Electroplating" (40 CFR Part 413) has been combined with the "Metal Finishing" category (40 CFR Part 433).

(Note.—Pretreatment standards are still in effect as previously identified under Part 413 for job shop electroplaters and printed circuit board manufacturers.)

(2) "Foundries" (40 CFR Part 464) is now the "Metal Molding and Casting" category.

(3) "Mechanical Products" is now covered by the "Metal Finishing" category (40 CFR Part 433) for those facilities containing one of the six core operations identified.

(4) "Organic Chemicals and Manufacturing" (40 CFR Part 414) has been combined with the "Plastics and Synthetics" category (40 CFR Part 416). The new category is called "Organic Chemicals and Plastics and Synthetic Fibers Manufacturing" (40 CFR Part 414).

(Note.—Pretreatment standards for new sources are still in effect as previously identified under 40 CFR Part 414, Subpart B.)

(5) "Paint and Ink Formulating" has been divided into two separate categories: "Paint Formulating" (40 CFR Part 446) and "Ink Formulating" (40 CFR Part 447).

(6) "Plastics Processing" is now the "Plastics Molding and Forming" category (40 CFR Part 463).

Two additional categories originally listed in Appendix C do not have pretreatment standards because there are no known existing indirect dischargers within these categories, and, to the Agency's knowledge, none are planned for the future. These are:

Coal Mining (40 CFR Part 434)
Ore Mining (40 CFR Part 440).

Six other categories have also been removed from the previous list since they have been exempted from national categorical pretreatment standards under provisions of Paragraph 8 of the NRDC–EPA Consent Decree, as modified. These are:

Adhesives and Sealants (40 CFR Part 456),
Auto and Other Laundries (40 CFR Part 444),
Explosives (40 CFR Part 457),
Gum and Wood Manufacturing (40 CFR Part 454),
Photographic Equipment and Supplies (40 CFR Part 459),

§ 403.8 POTW Pretreatment programs: development by POTW.

* * * * *

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. If (1) the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10, or (2) the POTW is located in a State which does not have an approved permit program under section 402 of the Act, the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. If the POTW is located in an NPDES State which does not have an approved State Pretreatment program, the approved POTW Pretreatment Program shall be incorporated into the POTW's NPDES Permit as provided for in § 403.10(d). The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

* * * * *

§ 403.8 [Amended]

15. In the first sentence of § 403.8(a), the first "of" is changed to read "or".

16. In the second sentence of § 403.8(c), "NPDEs State" is changed to read "NPDES State".

17. In the second sentence of § 403.8(f)(1)(vi)(A), "injuctive" is changed to read "injunctive".

18. In § 403.8(f)(2)(vii), § 403.8(f)(1)(iv)(B)" is changed to read "§ 403.8(f)(1)(vi)(B)."

§ 403.10 [Amended]

19. Section 403.10 is amended by revising the reference to "40 CFR 123.9" in paragraph (f)(1) to read "40 CFR 123.27", by revising the reference to "40 CFR 123.6" in paragraph (g)(3) to read "40 CFR 123.24", and by revising the reference to "40 CFR 123.13" in paragraph (h)(2) to read "40 CFR 123.62".

20. In § 403.10(f)(1)(iii), "incorportated" is changed to read "incorporated".

21. In § 403.10(g)(3), "Momorandum" is changed to read "Memorandum".

§ 403.11 [Amended]

22. Section 403.11 is amended by revising the references to "§ 403.7(d)" in paragraphs (a) and (b) to read "§ 403.7(e)".

§ 403.12 [Amended]

23. Section 403.12 is amended by removing from paragraph (g) the following sentence: "The frequency of monitoring shall be prescribed in the applicable Pretreatment Standard."

24. Section 403.12 is amended by revising paragraphs (j) and (k) to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(j) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (h) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(k) *Provisions governing fraud and false statements.* The reports required by paragraphs (b), (d), (e) and (h) of this section are subject to the provisons of 18 U.S.C. 1001 relating to fraud and false statements and the provisions of section 309(c)(2) of the Act governing false statements, representations or certifications in reports required under the Act.

* * * * *

§ 403.15 [Amended]

25. Section 403.15 is amended by revising the introductory paragraph of paragraph (a) to read as follows:

§ 403.15 Net/Gross calculation.

* * * * *

(a) *Application deadline and contents.* Any Industrial User wishing to obtain a credit for intake pollutants must make application therefor to the appropriate Water Management Division Director. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the intake water, if the User demonstrates that:

* * * * *

26. Part 403 is amended by revising Appendix B to read as follows:

Appendix B—65 Toxic Pollutants

Acenaphthene
Acrolein
Acrylonitrile
Aldrin/Dieldrin
Antimony and compounds
Arsenic and compounds
Asbestos
Benzene
Benzidine
Beryllium and compounds
Cadmium and compounds
Carbon tetrachloride
Chlordane (technical mixture and metabolites)
Chlorinated benzenes (other than dichlorobenzenes)
Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
Chloroalkyl ethers (chloroethyl and mixed ethers)
Chlorinated napthalene
Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
Chloroform
2-chlorophenol
Chromium and compounds
Copper and compounds
Cyanides
DDT and metabolites
Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
Dichlorobenzidine
Dichloroethylenes (1,1- and 1,2-dichloroethylene)
2,4-dichlorophenol
Dichloropropane and dichloropropene 2,4-dimethylphenol
Dinitrotoluene
Diphenylhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoranthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis-(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
Heptachlor and metabolites
Hexachlorobutadiene
Hexachlorocyclohexane
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Napthalene
Nickel and compounds
Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCBs)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds.

27. Part 403 is amended by revising Appendix C to read as follows:

Printing and Publishing (40 CFR Part 448).

(Note.—Portions of these exempted categories may be regulated in the future as technical studies update information on discharges from facilities in these industries.)

The updated Appendix C published today reflects these changes.

15. *Typographical Errors.* EPA today is also correcting various typographical errors in the general pretreatment regulations.

Executive Order 12291

This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely makes several technical corrections and other minor changes to the General Pretreatment Regulations.

Regulatory Flexibility Act

Today's promulgation makes technical corrections and other minor changes to the General Pretreatment Regulations.

Accordingly, I hereby certify that this regulation will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122 and 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 27, 1986.

Lee M. Thomas,

Administrator.

Accordingly, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95–217), Sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(b)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500), as amended by the Clean Water Act of 1977.

2. Part 403 is amended by removing the term "Enforcement Division Director" each place it appears and inserting in lieu thereof the term "Water Management Division Director."

§ 403.3 [Amended]

3. Section 403.3 is amended by revising the reference to "§ 403.3" in paragraph (d) to read "§ 403.5", revising paragraph (e) to read as follows, and revising the reference to "40 CFR 122.3" in paragraph (n) to read "40 CFR 122.2":

§ 403.3 Definitions.

* * * * *

(e) The term "Water Management Division Director" means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

* * * * *

§ 403.5 [Amended]

6. In the first sentence of § 403.5(a), "an" is changed to read "a".

7. In § 403.5(b)(1), "creat" is changed to read "create".

8. In § 403.5(c)(2), "Facilities" is changed to read "facilities".

§ 403.6 [Amended]

9. Section 403.6 is amended by revising paragraphs (a)(1), (a)(2) and (b), to read as follows:

§ 403.6 National Pretreatment Standards: Categorical standards.

* * * * *

(a) *Category Determination Request*

(1) *Application Deadline.* Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of Application.* Each request shall contain a statement:

(i) Describing which subcategories might be applicable; and

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of § 403.6(a). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

* * * * *

(b) *Deadline for Compliance With Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct Dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). Compliance with categorical Pretreatment Standards for New Sources will be required upon promulgation.

* * * * *

10. Section 403.6 is amended by removing the words "long-term average value(s)" from paragraph (e) each place they appear and inserting, in their place, the words "average monthly value(s)."

§ 403.7 [Amended]

11. In the second sentence of § 403.7(d)(1), "editional" is changed to read "additional".

12. In § 403.7(d)(2), "in not case later than July 1, 1983" is corrected to read "in no case later than July 1, 1983".

§ 403.8 [Amended]

13. Section 403.8 is amended by revising the reference to "[44 FR 34783 (1979)]" in paragraph (b) to read "(47 FR 53666 (November 26, 1982))".

14. Section 403.8 is amended by revising paragraph (c) to read as follows:

Appendix C—Industrial Categories Subject to National Categorical Pretreatment Standards

Aluminum Forming
Asbestos Manufacturing
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PART 122—[AMENDED]

28. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

29. 40 CFR 122.62 is amended by revising paragraph (a)(7) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *.

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations) or 40 CFR 403.10(d) (pretreatment program), except that when a modification clause established under 40 CFR 403.10(d) relates to the incorporation in a POTW's permit of a pretreatment program approved in accordance with the procedures in 40 CFR 403.11, such modification shall be deemed a minor modification subject to the procedures in § 122.63.

* * * * *

30. 40 CFR 122.63 is amended by adding a new paragraph (g) to read as follows:

§ 122.63 Minor modifications of permits.

* * * * *

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 as enforceable conditions of the POTW's permit.

* * * * *

FR Doc. 86-12540 Filed 6-3-86; 8:45 am]
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Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and FY 1987 Rates; Correction of Proposed Rule

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42 CFR P

[BERC-35

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-353-CN]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and FY 1987 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects the proposed rule, published on June 3, 1986, that would amend the Medicare regulations governing the inpatient hospital prospective payment system (51 FR 19970). We inadvertently failed to discuss in the preamble of the proposed rule an option concerning treatment of capital payments under the prospective payment system.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION: We are making this correction to add an option that we inadvertently failed to include in our proposals for payment of capital-related costs under the prospective payment system as described in the preamble to the June 3, 1986 notice of proposed rulemaking (NPRM). In section II.C. of that document, we discuss our proposed changes for the phase-in of payment of capital under the prospective payment system. In determining the capital-related hospital-specific rate, we proposed to update that rate by the prospective payment update factor, that is, the applicable percentage change under section 42 CFR 412.63(e) of the regulations.

In section II.D. of the preamble to the June 3, 1986 NPRM, we listed for public consideration a number of options for treatment of capital payments under the prospective payment system, in addition to our specific proposal. We listed these options because we wish to ensure that the capital payment method we use is fair and appropriate. We recognize that the capital payment transition period will be a critical time for hospitals to adjust their operations and plans in preparation for a single comprehensive payment mechanism.

However, in this section, we inadvertently omitted an important option which had been discussed in our March 14, 1986 Report to Congress ("Hospital Capital Expenses: A Medicare Payment Strategy for the Future"). Therefore, in the June 3, 1986 proposed rule (the public comment period for which ends on July 3, 1986, as specified in that rule) Federal Register Doc. 86-12287, make the following addition. Following section II.D.6. of the preamble, add section II.D.7. as follows:

II.D.7. Update of the Capital-Related Hospital-Specific Rate

Rather than updating the capital-related hospital-specific rate by the overall prospective payment update factor (Section 412.63(e)), we would alternatively update that rate by the amount of change in the capital component of the hospital market basket. The capital component of the hospital market basket represents the change from year to year of hospitals' cost of making capital investments.

This option has the advantage of using an inflation factor that is associated specifically with hospital investment. If the costs of capital investments increase, the capital component of the hospital market basket would increase in a similar fashion. Likewise, if the capital cost of investments decreases, the capital component of the hospital market basket would decrease.

If this option is adopted in the final rule, we would expect to forecast the changes in the capital component of the hospital market basket by hospital cost reporting period. We would provide for corrections for forecast errors in the capital component of the hospital market basket.

We note that this option could not be used in conjunction with the rolling base-year option, because the rolling base-year option would use actual capital costs for each year rather than updating a fixed base-year amount.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a-1(d), 1395hh, and 1395ww).

Dated: June 2, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 3, 1986.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86-12706 Filed 6-3-86; 11:19 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products [1] Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products. This rule will (1) revise the sampling plans for lot inspection by restricting the lot size; (2) revise and readjust the schedule of fees and charges for inspection of processed fruits, vegetables, and certain other products; (3) provide for control of labels bearing approved grade or inspection marks when a contract is cancelled; (4) revise the approved identification section which allows for the use of the official sample marks; and (5) amend the definitions section and make editorial and other changes for clarification. This revision will adjust the fees to cover costs, provide for greater utilization of inspection services, and facilitate identification of products that will be officially sampled. Effective Date: June 5, 1986, 12:01 a.m.

FOR FURTHER INFORMATION CONTACT: Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The Agricultural Marketing Act of 1946 authorizes the official inspection, grading, and certification of processed food products including processed fruits, vegetables, and processed products thereof. The Agricultural Marketing Service (AMS) makes available an impartial, official inspection service for processed fruits and vegetables. Applicants may make use of this service to obtain inspection of agricultural products. The service is voluntary and self-supporting and is offered on a fee-for-service basis.

The regulations set forth sampling plans as the basis for assigning quality levels to lots of processed fruits and vegetables and related products. The sampling plans are designed to allow for acceptance or rejection of the lot being sampled based on the sample results: The sampling plans for determining lot compliance now allow for a lot size with a representative maximum sample size of 60 sample units.

The final rule will limit the lot size to correspond to a sample size with a maximum of 29 sample units except where the Administrator has determined that the lot size may be increased. The following could cause an increase in sample size: (a) Numerous codes may make it necessary to exceed 29 sample units, or (b) appeal inspections or reinspections may be conducted where a sampling rate in excess of 29 sample units is required.

Inspection documents from preceding years indicate the sample size taken on a majority of lots was 29 sample units or less. By eliminating large lot sizes, submitted lots with non-uniform quality are reduced thereby increasing the reliability of the inspection results.

The schedule for fees and charges for services rendered to the processed fruit and vegetable industry will be amended to reflect the costs associated with the program. Such services are authorized under the Agricultural Marketing Act (AMA) of 1946, sec. 203(h), which requires that fees be reasonable, and as nearly as possible, cover the cost of rendering the services.

Each fiscal year, the fees for services are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services. These analyses also help assure that Department costs are kept to a minimum and any fee increases are those necessary to carry out an effective program. Since the last fee increase on May 11, 1982, there have been two government-wide salary increases. These increased costs have been associated with providing the services.

No appropriated funds are provided to the Agency to offset costs of rendering the services. Therefore, the Agency must recover all expenses in full through user fees charged to the applicants who request the services. Accordingly, it is found that good cause exists for making this final rule effective June 1, 1986, 12:01 a.m. because the present fees are not adequate to recover the costs of providing the service.

The revision will provide a uniform charge for inspection to applicants, regardless of the expenses (transportation and subsistence costs) incurred by the inspection activity. These travel expenses are incorporated into the hourly rate. The time required to travel to the applicant's location will continue to be charged at the set hourly rate. This revision will provide an hourly rate for analyses and other applicable services where no travel expenses are incurred. It will also increase the hourly rate and overtime payments to more closely reflect costs.

Editorial changes and clarifications have been made in the definitions and other sections to more closely reflect

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

current practices and procedures. One such change states that after an appeal inspection, a lot cannot be further appealed without authorization from the Administrator. Another change allows certificates of loading to be issued in lieu of official certificates. The revision also permits oral requests for inspection service without requiring confirmation in writing. New definitions include the deletion of "subordinate inspector" and the addition of "in-plant sampler". The addition of the subdefinition "approved plant lot inspection" is included as a further characterization of inspection services.

The regulations set forth official grade and inspection marks of the United States Department of Agriculture (USDA) for use by fruit and vegetable processors. These processors contract for the fee-for-service grading programs of the Department and, as permitted, may use various types of approved identification marks for processed fruits and vegetables and other related products.

Presently, the regulations do not specifically provide for control of approved grade or inspection marks when a contract between the inspection service and an applicant is cancelled. Therefore, this rule will provide for Agency control of cancellation and disposition of such approved grade or inspection marks. This provision will aid in eliminating possible misuse of such labels and marks.

Processed products which have been sampled for inspection, at the option of the Department, are identified by an authorized representative of the Department. The products are identified by stamping the shipping containers covering such lot(s) with official "sample marks." Revision of the "sample marks" will increase utilization of the official marks by affixing a non-permanent field office designation. These "sample marks" will identify products officially sampled by a particular field office using a field office number in place of geographic location.

A notice of proposed rulemaking was published in the Federal Register (51 FR 11043–11053) on April, 1, 1986, with a thirty day comment period. This comment period closed on May 1, 1986. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule.

List of Subjects in 7 CFR Part 52

Processed fruits and vegetables, Food grades, Standards.

PART 7—[AMENDED]

Accordingly, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.2, 52.7, 52.9, 52.24, 52.28, 52.37, 52.38, 52.39, 52.41, 52.42, 52.47, 52.48, 52.49, 52.50, 52.51, 52.52, 52.53) are amended to read as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090 as amended (7 U.S.C. 1622, 1624).

2. Section 52.2 is amended as follows:

a. The definitions "Certificate of loading" and Inspection Service; types of" are revised.

b. The definitions "In-plant sampler" and "Unofficial sample" are added.

c. The definition "Lot" is amended by revising the text preceding (a) and revising (b).

d. The definition "Unofficially drawn sample" is removed.

§ 52.2 Terms defined.

* * * * *

Certificate of loading. Certificate of loading means a statement, either written or printed, issued pursuant to the regulations in this part, relative to checkloading of a processed product subsequent to inspection thereof. The certificate of loading may be issued in lieu of an official inspection certificate when the same inspection procedures are applied and when authorized by the Administrator.

* * * * *

In-plant sampler. In-plant sampler means any employee of the Department authorized by the Administrator to draw samples of processed products and perform a limited number of miscellaneous duties in a plant operating under contract.

* * * * *

Inspection Service; types of. (a) Lot inspection means the inspection and grading of specific lots of processed fruits and vegetables which are located in plant warehouses, commercial storage, railway cars, trucks, or any other conveyance or storage facility.

(b) Approved plant-lot inspection means the inspection and grading of specific lots of processed fruits and vegetables which are located in plant warehouses, commercial storage, railway cars, trucks, or any other conveyance or storage facility. However, under "approved plant-lot inspection", the inspection service has knowledge that the products were processed or packaged in plants meeting the "plant approved" definition. This means that the plant facilities, sanitation, and methods of operation have been surveyed and approved for specific product(s) by the Administrator as suitable and adequate for inspection or grading service in accordance with § 52.81 through § 52.83 of this part.

(c) Continuous inspection is the conduct of inspection and grading services in an approved plant whereby one or more inspector(s) are present at all times the plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products under contract and to assure compliance with sanitary requirements.

(d) Pack certification is the conduct of inspection and grading services in an approvement plant whereby one or more inspector(s) may make inspection of the preparation and processing of products under contract, but are not required to be present at all times the plant is in operation.

(1) Under a Designated Lot-contract, inspector(s) will grade and certify only those lots designated by the applicant.

(2) Under a Quality Assurance contract, inspector(s) will use information available from the applicant's quality control records to certify lots, as requested, and will grade lots at random as often as necessary to verify the reliability of the applicant's quality control system.

* * * * *

Lot. Lot means any number of containers of the same size and type which contain a processed product of the same type and style located in the same warehouse or conveyance, and which is available for inspection service at any time: Provided, that the number of containers comprising lot may not exceed the maximum number specified in the sampling plans in § 52.38 of this Subpart: And further provided that:

* * * * *

(b) Under in-plant (in-process) inspection, the inspector is authorized to limit the number of containers of a processed product that may be included in a lot to a period of consecutive production equivalent to one production shift with a maximum of 24 hours of consecutive production.

* * * * *

Unofficial sample. Unofficial sample means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Administrator pursuant to the regulations in this part.

3. Section 52.7 is revised to read as follows:

§ 52.7 Information required in connection with application.

(a) Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, written confirmation may be required by the inspection service involved.

(b) In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product(s), including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previous to the application by any Federal agency and the purpose for which inspection is desired.

4. Section 52.9 is revised to read as follows:

§ 52.9 Record of filing time.

A record showing the date when each application for inspection or for an appeal inspection is received shall be maintained.

5. Section 52.24 is amended by revising paragraph (a)(1) to read as follows:

§ 52.24 Where to file for an appeal inspection and information required.

(a) * * *

(1) The supervisor in the office that issued the inspection certificate on which the appeal covering the processed product is requested; or

* * * * *

6. Section 52.28 is revised to read as follows:

§ 52.28 Appeal inspection certificate.

After an appeal inspection has been completed, the lot(s) cannot be further appealed unless authorized by the Administrator. An appeal inspection certificate shall be issued, showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms and certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished to all interested parties who received copies of the superseded certificate.

7. Section 52.37 is revised to read as follows:

§ 52.37 How official samples are to be identified and shipped.

Unless otherwise directed by the Administrator, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed products from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid any material change in the quality or condition of the sample of the processed product. Containers shall be identified and properly sealed with tape. A facsimile of the "Officially Sampled" stamp shall be placed over the taped container. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant.

8. Section 52.38 is amended by revising paragraphs (a) and (f) and Tables I, II, III, IV, and V to read as follows:

§ 52.38 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Administrator, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable sampling plans. The lot size is to correspond to a sample size with a maximum of 29 sample units: Provided, that at the discretion of the inspection service, the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans. The samples size may be increased beyond 29 sample units in accordance with the following sampling plan:

Sample Size	38	48	60
Acceptance Number	5	6	7

* * * * *

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, and V and (g)(1) and (g)(2) of this section which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container, size and amount of product to be sampled. The maximum sample size in tables I, II, III, IV, V, (g)(1), (g)(2) and processed products not included in these tables is 29 sample units.

* * * * *

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SAMPLING PLANS AND ACCEPTANCE LEVELS
TABLE 1
CANNED OR SIMILARLY PROCESSED FRUITS, VEGETABLES, AND PRODUCTS CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

CONTAINER SIZE GROUP	LOT SIZE (NUMBER OF CONTAINERS) 1/				
Group 1 ANY TYPE CONTAINER OF A VOLUME NOT EXCEEDING THAT OF A NO. 303 SIZE CAN.	3,000 OR LESS	3,001 TO 12,000	12,001 TO 39,000	39,001 TO 84,000	84,001 TO 145,000
Group 2 ANY TYPE OF CONTAINER OF A VOLUME EXCEEDING THAT OF A NO. 303 SIZE CAN BUT NOT EXCEEDING THAT OF A NO. 3 CYLINDER SIZE CAN.	1,500 OR LESS	1,501 TO 6,000	6,001 TO 19,500	19,501 TO 42,000	42,001 TO 72,500
Group 3 ANY TYPE OF CONTAINER OF A VOLUME EXCEEDING THAT OF A NO. 3 CYLINDER SIZE CAN, BUT NOT EXCEEDING THAT OF A NO. 12 SIZE CAN.	750 OR LESS	751 TO 3,000	3,001 TO 9,750	9,751 TO 21,000	21,001 TO 36,250
Group 4 ANY TYPE OF CONTAINER OF A VOLUME EXCEEDING THAT OF A NO. 12 SIZE CAN.	CONVERT TO EQUIVALENT NUMBER OF 6 POUND NET WEIGHT CONTAINERS AND USE GROUP 3				
LOT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	13	21	29
ACCEPTANCE NUMBER	0	1	2	3	4
ON-LINE IN-PLANT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	6	13	21
ACCEPTANCE NUMBER	0	1	1	2	3

1/ Under on-line in-plant inspection, a 5% overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

2/ When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1, 2, and 3 -- 1 container and its entire contents. Group 4 approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

TABLE II
FROZEN OR SIMILARLY PROCESSED FRUITS, VEGETABLES, AND PRODUCTS
CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

CONTAINER SIZE GROUP	LOT SIZE (NUMBER OF CONTAINERS) 1/				
Group 1 ANY TYPE OF CONTAINER OF 1 POUND OR LESS NET WEIGHT	2,400 OR LESS	2,401 TO 9,600	9,601 TO 31,200	31,201 TO 67,200	67,201 TO 116,000
Group 2 ANY TYPE OF CONTAINER OVER 1 POUND BUT NOT OVER 2-1/2 POUNDS NET WEIGHT.	1,200 OR LESS	1,201 TO 4,800	4,801 TO 15,600	15,601 TO 33,600	33,601 TO 58,000
Group 3 ANY TYPE OF CONTAINER OVER 2-1/2 POUNDS.	CONVERT TO EQUIVALENT NUMBER OF 2-1/2 POUND CONTAINERS AND USE GROUP 2				
LOT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	13	21	29
ACCEPTANCE NUMBER	0	1	2	3	4
ON-LINE IN-PLANT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	6	13	21
ACCEPTANCE NUMBER	0	1	1	2	3

1/ Under on-line in-plant inspection, a 5% overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

2/ When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1 and 2 - 1 container and its entire contents. Group 3 containers up to 10 pounds - approximately three pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

TABLE III
CANNED, FROZEN, OR OTHERWISE PROCESSED FRUITS, VEGETABLES, RELATED PRODUCTS OF A COMMINUTED, FLUID OR HOMOGENEOUS STATE

CONTAINER SIZE GROUP	LOT SIZE (NUMBER OF CONTAINERS) 1/				
Group 1 ANY TYPE OF CONTAINER OF 1 POUND OR LESS.	4,500 OR LESS	4,501 TO 18,000	18,001 TO 58,500	58,501 TO 126,000	126,001 TO 217,000
Group 2 ANY TYPE OF CONTAINER EXCEEDING 1 POUND BUT NOT EXCEEDING 60 OUNCES.	3,000 OR LESS	3,001 TO 12,000	12,001 TO 39,000	39,001 TO 84,000	84,001 TO 145,000
Group 3 ANY TYPE OF CONTAINER EXCEEDING 60 OUNCES BUT NOT EXCEEDING 10 POUNDS.	1,500 OR LESS	1,501 TO 6,000	6,001 TO 19,500	19,501 TO 42,000	42,001 TO 72,500
Group 4 ANY TYPE OF CONTAINER EXCEEDING 10 POUNDS.	CONVERT TO EQUIVALENT NUMBER OF 6 POUND CONTAINERS AND USE GROUP 3				
LOT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	13	21	29
ACCEPTANCE NUMBER	0	1	2	3	4
ON-LINE IN-PLANT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	6	13	21
ACCEPTANCE NUMBER	0	1	1	2	3

1/ Under on-line in-plant inspection, a 5% overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

2/ When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1, 2, and 3 -- 1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Group 4 -- approximately 16 ounces of product. When determined by the inspector that a 16 ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV
DEHYDRATED (LOW-MOISTURE) FRUITS AND VEGETABLES

CONTAINER SIZE GROUP	LOT SIZE (NUMBER OF CONTAINERS) 1/				
Group 1 ANY TYPE OF CONTAINER OF 1 POUND OR LESS.	1,800 OR LESS	1,801 TO 7,200	7,201 TO 23,400	23,401 TO 50,400	50,401 TO 87,000
Group 2 ANY TYPE OF CONTAINER OVER 1 POUND BUT NOT OVER 6 POUNDS NET WEIGHT.	600 OR LESS	601 TO 2,400	2,401 TO 7,800	7,801 TO 16,800	16,801 TO 29,000
Group 3 ANY TYPE OF CONTAINER OVER 6 POUNDS.	CONVERT TO EQUIVALENT NUMBER OF 5 POUND CONTAINERS AND USE GROUP 2				
LOT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	13	21	29
ACCEPTANCE NUMBER	0	1	2	3	4
ON-LINE IN-PLANT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	6	13	21
ACCEPTANCE NUMBER	0	1	1	2	3

1/ Under on-line in-plant inspection, a 5% overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

2/ When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Group 1 -- 1 container and its entire contents. Groups 2 and 3 -- 1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

TABLE V
RATES

CONTAINER SIZE GROUP	LOT SIZE (NUMBER OF CONTAINERS) 1/				
Group 1 ANY TYPE OF CONTAINER OF 1 POUND OR LESS NET WEIGHT.	2,400 OR LESS	2,401 TO 9,600	9,601 TO 31,200	31,201 TO 67,200	67,201 TO 116,000
Group 2 ANY TYPE OF CONTAINER OVER 1 POUND BUT NOT OVER 5 POUNDS NET WEIGHT.	800 OR LESS	801 TO 3,200	3,201 TO 10,400	10,401 TO 22,400	22,401 TO 38,667
Group 3 ANY TYPE OF CONTAINER OVER 5 POUNDS.	CONVERT TO EQUIVALENT NUMBER OF 5 POUND CONTAINERS AND USE GROUP 2				
LOT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	13	21	29
ACCEPTANCE NUMBER	0	1	2	3	4
ON-LINE IN-PLANT INSPECTION SAMPLE SIZE (NO. OF SAMPLE UNITS) 2/	3	6	6	13	21
ACCEPTANCE NUMBER	0	1	1	2	3

1/ Under on-line in-plant inspection, a 5% overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

2/ Samples consist of 25 ounce sample units, each of which may be a composite of product from a sufficient number of individual containers from 1 case to make up the weight. When previous inspection results from a particular source so indicate, 1 composite sample of 25 ounces of product may be formed from the 3 sample units in the smallest sample size, and 2 composite samples of 25 ounces each may be formed from the 6 sample units in the next to smallest sample size. Sample units in larger sample sizes may not be further composited.

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9. Section 52.39 is revised to read as follows:

§ 52.39 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that in-plant inspectors who inspect the samples which they have drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the licensed sampler and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Administrator.

10. Section 52.41 is revised to read as follows:

§ 52.41 Payment of fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and if so required by the inspection service, an advance of funds prior to rendering inspection service in an amount suitable to the Administrator, or a surety bond suitable to the Administrator, shall be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service performed pursuant to the regulations in this part shall be paid by check, draft, or money order payable to the United States Department of Agriculture, Remittance shall be sent to the address specified on the bill for collection on or before the due date to avoid a late payment charge.

11. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in part, shall be at the rate of $29.00 per hour plus an additional $5.50 per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

12. Section 52.47 is revised to read as follows:

§ 52.47 Fees to be charged for micro, chemical, certain other special analyses and other applicable services.

Fees for micro, chemical, and certain other special analyses, made at the request of the applicant, or because of additional specification requirements, and other applicable services, shall be at the rate of $25.00 per hour. Other applicable services include, but are not restricted to, grading unofficial samples, providing copies of score sheets and additional copies of certificates.

13. Section 52.48 is amended by revising paragraph (b) to read as follows:

§ 52.48 Charges for plant survey and sanitation inspection.

* * * * *

(b) Fees charged for a plant survey and a sanitation inspection under § 52.42 of this part will be credited back to plants entering into an in-plant inspection contract with AMS within 60 days of the survey.

14. Section 52.49 is revised to read as follows:

§ 52.49 Charges for copies of score sheets.

If the applicant for inspection service requests one or more copies of a score sheet referable to the processed product covered thereby, they may obtain such copies from the supervisor in the office of inspection serving the area where the service was performed at a charge of ½ hour per copy in accordance with the rate in § 52.47: Provided, that no charge shall be made for one copy if requested in connection with the request for inspection.

15. Section 52.50 is revised to read as follows:

§ 52.50 Charges for additional copies of inspection certificates.

Charges for additional copies of inspection certificates issued in accordance with § 52.21 may be supplied to any financially interested party at a charge of ½ hour per certificate in accordance with the rate in § 52.47 for each seven (7), or fewer copies.

16. Section 52.51 is revised to read as follows:

§ 52.51 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $29.00 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

17. Section 52.52 is amended by revising paragraphs (c) and (d) to read as follows:

§ 52.52 Charges for inspection service on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis: Each inspector—$22.00 per hour.

(2) For personnel assigned on less than a year-round basis: Each inspector—$27.00 per hour; In-plant sampler—$14.00 per hour.

(3) Holiday pay. An eight (8) hour charge will be made for each inspector assigned at their regular hourly rate. When work is performed, an additional hour at the regular hourly rate will be charged for each hour worked.

(4) Night differential. A 10 percent night differential charge will be made for all work performed between the hours of 6 p.m. and 6 a.m.

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraphs (c) (1) and (2) of this section plus $5.50 per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule: [3]

(1) Each inspector—$27.00 per hour [3]

(2) In-plant Sampler—$14.00 per hour.

(3) Holiday pay. An eight (8) hour charge will be made for each inspector assigned at their regular hourly rate. When work is performed, an additional hour at the regular hourly rate will be charged for each hour worked.

(4) Night differential. A 10 percent night differential will be charged for all work performed between the hours of 6 p.m. and 6 a.m.

(5) Overtime. All overtime hours will be charged at the regular rates specified in (d)(1) of this section plus $5.50 per hour.

* * * * *

18. Section 52.53 is amended by revising paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (d), (e) and adding new

[3] Except a minimum of 8 hours per day in lieu of a minimum of 40 hours a week for intermittent type in-plant services and less than four weeks in-plant assignment will be billed in accordance with § 52.42.

paragraphs (a)(7) and (i) to read as follows:

§ 52.38 Approved identification.

(a) * * *

(2) Have been produced or packed in an approved plant.

(3) Are truthfully and accurately labeled.

(4) When graded against a U.S. grade standard, meet the quality requirements for U.S Grade C or better;

(5) Meet applicable fill weight and/or drained weight, Brix or other characteristics of a commodity related to market value;

(6) Have been certified, or have been inspected and are eligible for certification, by an inspector; and, in addition, meet the specific requirements stated in (b), (c), and (d) of this section.

(7) Labels and advertising material containing or referring to approved identification must be approved by USDA inspection service prior to use.

* * * * *

(d) "Approved plant-lot inspection" grade and inspection marks. Processed products that are produced in an approved plant as defined in § 52.2 and inspected and certified by an inspector on a lot basis may be labeled with an official mark as defined in § 52.3 when adequate control and use is approved. The use of official marks for this type of service is restricted to grade marks (with or without plain shield) and/or the statement "Inspected by the U.S. Department of Agriculture" (with or without plain shield). The official marks shall be similar in form and design as illustrated in figures 11 through 14. Failure to have all lots bearing official marks either inspected and certified or certified as produced in an approved plant shall cause the debarment of the user from receiving subsequent services, and such other actions as provided for in the Agricultural Marketing Act of 1946.

(e) Sampling marks. Processed products which have been sampled for inspection as provided in this part may, at the option of the Department, be identified by an authorized representative of the Department. The products are identified by stamping the container(s) comprising such lot(s), with an official "sampling mark", similar in form and design to the example in figure 15 of this section. The "sampling marks" will identify products officially sampled by a particular field office. Such mark will include a code identifying the field office performing the sampling.

FIGURE 15

* * * * *

(i) Disposition of labels bearing approved grade or inspection marks when a contract is cancelled. Upon cancellation of a contract, labels bearing approved grade or inspection marks shall remain under the control of the inspection service. The inspection service will approve disposition of said labels for destruction, sale or transfer to another approved plant, remove or obliterate the grade or inspection mark, or other action as may be agreed upon by all interested parties.

Done at Washington, DC, on May 29, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-12651 Filed 6-4-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099

[Docket Nos. AO-366-A27, et al.]

Milk in the Georgia and Certain Other Marketing Areas; Interim Final Decision on Proposed Amendments and Opportunity To File Written Exceptions to Interim Final Marketing Agreements and to Orders

7 CFR Parts	Marketing area	Docket Nos.
1006	Upper Florida	AO-356-A25
1007	Georgia	AO-366-A27
1011	Tennessee Valley	AO-251-A30
1012	Tampa Bay	AO-347-A26
1013	Southeastern Florida	AO-356-A35
1046	Louisville-Lexington-Evansville	AO-123-A58
1093	Alabama-West Florida	AO-366-A8
1094	New Orleans-Mississippi	AO-103-A46
1096	Greater Louisiana	AO-257-A30
1098	Nashville, Tennessee	AO-184-A50
1099	Paducah, Kentucky	AO-183-A42

AGENCY: Agricultural Marketing Service.

ACTION: Interim final rule.

SUMMARY: This interim final decision would modify the plant location adjustments to prices under 11 southeastern Federal milk marketing orders. The proposed amendments would change the location adjustment provisions in the 11 orders to conform with the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. The decision denies proposals to limit in 8 orders the location adjustment applicable on bulk milk transferred from a plant to an other order plant. This decision is based on the record of a public hearing held in Atlanta, Georgia, on February 25–27, 1986. The hearing was requested by Dairyment, Inc. (DI).

DATE: Comments are due on or before June 20, 1986.

ADDRESS: Comments (nine copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 7 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not a significant economic impact on a substantial number of small entities. The proposed amendments modify the transportation allowances provided under the 11 orders to make them conform more closely to the economic conditions that currently exist in the marketplace. The main economic condition involved is the Class I differentials that became effective May 1, 1986, as mandated by the Food Security Act of 1985, and the costs of transporting milk as reflected in such Class I differentials. Reflection of these changed marketing conditions through amendments to plant location adjustments to order prices will not result in a significant added price impact on regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued February 7, 1986; published February 13, 1986 (51 FR 5363).

Extension of Time for Filing Briefs: Issued March 11, 1986.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this interim final decision with respect to proposed amendments to the interim final marketing agreements and the orders regulating the handling of milk in the aforesaid specified marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), and the Administrative Procedure Act (5 U.S.C. 556–557).

Interested parties may file written exceptions to this interim final decision with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the Federal Register. Nine copies of the exception should be filed. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informations impact of the proposals on small businesses. Several participants at the hearing testified in general about the impact of the proposals in certain orders on small businesses. There was specific testimony about the potential adverse impact of adopting a proposed 34-cent increase in the Class I price for a plant at Somerset, Kentucky, over the Class I price at Louisville, It was indicated that such price increases would threaten the continued viability of Southern Belle Dairy, a small business enterprise. As noted later in this decision, the proposed increase was not adopted. Instead, an increase of 15 cents, or less than one-half of the proposed increase, was adopted.

The findings and conclusions set forth below are based on the record of a public hearing held at Atlanta, Georgia, on February 27–27, 1986, pursuant to a notice of hearing issued February 7, 1986, (51 FR 5363).

The material issues on the record relate to:

1. Plant location adjustments applicable to handlers under 11 southeastern Federal milk orders;
2. Class I differentials applicable under 8 southeastern Federal milk orders on bulk milk transferred from a pool plant to an other order plant; and
3. The need for emergency action with respect to issues No. 1 and 2.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background Statement

A public hearing to consider amendments to the plant location adjustment provisions of 11 southeastern Federal milk orders was held at Atlanta, Georgia, February 25–27, 1986. The hearing was requested by DI to conform the location adjustment provisions of the 11 orders to the Class I differentials mandated by the Food Security Act of 1985. The mandated changes increased the Class I price differentials under 35 of the 44 milk orders, including the 11 orders being considered herein. The amount of increase differed among markets, with progressively greater amounts from northern markets to southern markets. In the 11 orders involved in this proceeding, the increases in the mandated Class I differential varied from a low 41 cents in the Louisville-Lexington-Evansville order to a high of $1.03 in the Southeastern Florida order.

The basic purpose of plant location adjustment provisions under Federal milk orders is to provide a transportation allowance to handlers who assemble milk at plant locations outside the primary marketing area and move it to plants located in the primary marketing area for use in Class I so that a handler's cost of milk so moved is competitive with the cost of milk that is obtained locally. In general, the current location adjustment rates under Federal milk orders are the same as the rates that were used until May 1, 1986, to determine Class I differentials under Federal milk orders, i.e., 1.5 cents per hundredweight for each 10 miles.

The Class I differentials applicable under the 11 southeastern Federal milk orders were established by using a common basing point, Eau Claire, Wisconsin. For many years, the Class I differentials under the orders increased from market to market at a rate approximating 1.5 cents per hundredweight for each 10 miles of distance from Eau Claire.

On May 1, 1986, the Class I differentials were increased in 35 of the 44 Federal milk orders. The reasons for implementing the increased Class I differentials were set forth in an expedited decision involving all orders (51 FR 9669). Four paragraphs of that decision and the pertinent information from a table listing the Class I differentials of the orders before and after May, 1, 1986, and the amount of the increase are quoted below:

"Each of the 44 Federal marketing orders should be amended to provide minimum Class I price differentials for a two-year period, and subsequently unless modified by amendment to the order involved.

"The Class I milk price (the highest priced use-classification) under each order is established each month by adding a specified dollar amount to the Minnesota-Wisconsin manufacturing grade milk price (M–W price) for the second preceding month. These specific amounts, which are provided in the orders but not defined, are commonly referred to throughout the industry as "Class I differentials" or "fluid differentials." It is these differentials that the Food Security Act of 1985 establishes at higher levels in 35 of the orders and fixes at a minimum level in each of the 44 orders.

"The Food Security Act of 1985, Title I, Dairy, Subtitle C—Milk Marketing Orders, amends section 8c(5)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)(A), reenacted with amendments by the Agricultural Marketing Agreement Act (Act). This new law (Pub. L. 99–198) mandates that the present 44 Federal milk marketing orders be amended, and that these amendments be applicable to milk received on and after May 1, 1986. The Food Security Act of 1985 increases Class I differentials in 35 of the 44 orders and provides a specific minimum Class I differential for each of the 44 orders for a two-year period.

"Official notice was taken at the public hearing held January 28, 1986, of Federal Milk Order Market Statistics for April 1985 and the Code of Federal Regulations for each of the 44 orders for the purpose of showing the present Class I differentials. The present Class I differentials, shown below, were taken from Table I on page 9 of the Federal Milk Order Market Statistics for April 1985. The new mandated Class I differentials that appear below are taken from the Congressional Record (official notice taken) dated December 17, 1985, at page H 12255."

Federal marketing order	Class I differentials		Increase
	Effective May 1, 1986	Before May 1, 1986	
Upper Florida	3.58	2.85	.73
Georgia	3.08	2.30	.78
Tennessee Valley	2.77	2.10	.67
Tampa Bay	3.80	2.95	.85
Southeastern Florida	4.18	3.15	1.03
Louisville-Lexington-Evansville	2.11	1.70	.41
Alabama-West Florida	3.08	2.30	.78
New Orleans-Mississippi	3.85	2.85	1.00
Greater Louisiana	3.29	2.47	.81
Nashville, Tennessee	2.52	1.85	.67
Paducah, Kentucky	2.39	1.70	.69

Class I differentials and plant location adjustments serve as price incentives to attract milk supplies to the locations where they are needed for fluid use. This is particularly critical in this southeastern region since many of the states in the region are deficit milk production states. The record indicates that Alabama, Georgia, Florida, North Carolina, and South Carolina are all deficit production areas, at least during the months of seasonally low milk production. These deficit milk production states rely regularly on milk produced in the nearby States of Virginia, Tennessee, and Kentucky to help meet the fluid milk sales demand. At times, there are not sufficient milk supplies in the region to satisfy fluid use demand and milk is imported from other distant production areas, particularly Wisconsin.

In this general milk supply situation, the changed Class I differentials will aid in assuring that adequate milk supplies will be made available for this southeast region and also cover much of the cost of needed movements of milk from where it is produced to where it is needed. Essentially, north to south movements of milk are required in this region to meet the milk needs of handlers regulated under the orders in the region. The changed differentials reflect this need. However, modification of plant location adjustments to the changed Class I differentials are needed to conform with the milk transportation allowances reflected in the new differentials.

Plant location adjustment rates for the Georgia order—Part 1007. The location adjustment provisions of the Georgia order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. Location adjustments for plants located in the Georgia marketing area should be determined on the basis of adjustments established for four separate zones. A minus 15-cent adjustment should apply in the Northern Zone, an area consisting of 14 counties. No adjustment should apply in the North Central Zone, an area consisting of 41 counties. A plus 10-cent adjustment should apply in the South Central Zone, an area consisting of 41 counties. A plus 30-cent adjustment should apply in the Southern Zone, an area consisting of all the Georgia counties in the marketing area with the exception of those counties in the Northern, North Central and South Central Zones.

For plants located outside the marketing area, the plant location adjustment should be as follows:

1. Minus 11 cents in North Carolina.

2. The Class I price applicable at the nearer of the city halls in Augusta, Savannah, Lavonia, Waycross, Albany, Columbus, Atlanta and Rome, Georgia, should be the Class I price that applies at plants in that area south of the southern boundary of the States of Tennessee and North Carolina, excluding the Tennessee Valley marketing area.

3. Minus 31 cents for the Tennessee Valley marketing area.

4. Minus 20 cents plus an additional reduction of 2.5 cents for each 10 miles or fraction thereof in excess of 110 miles from the city hall in Atlanta, Georgia, in that area north of the southern boundary of the States of Tennessee and North Carolina, excluding the State of North Carolina and the Tennessee Valley marketing area.

Under the current order, there are only two location adjustment rates in the Georgia marketing area—a minus 15 cents in the Northern Zone consisting of 29 counties and no adjustment in the remainder of the marketing area. Outside the marketing area, there is a minus adjustment of 15 cents beyond 100 miles from Atlanta and north of an east-west line extending from the city hall in Atlanta and minus an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles from Atlanta. The current order also limits the location adjustment in Alabama and South Carolina to not more than 15 cents.

The four location adjustment zones for the marketing area and the adjustments outside the marketing area adopted herein were proposed by DI. However, DI proposed that the adjustment for the South Central Zone be a plus 15 cents instead of the plus 10 cents adopted herein.

Kinnett Dairies, Inc., at Columbus, Georgia, opposed the establishment of two additional location adjustment zones in Georgia. The witness for the dairy indicated that the Secretary in a 1988 decision had found that "Atlanta is the major point of distribution in the marketing area and that higher prices paid by handlers south of Atlanta would attract milk away from Atlanta handlers, where it is needed, into the less populous areas of South Georgia where it is not needed for fluid consumption." The witness presented extensive data indicating that the population of Georgia continues to be concentrated in the Atlanta area.

The dairy's plant at Columbus is in the South Central Zone and under the location adjustment pricing adopted herein would have a 10-cent higher Class I price than plants at Atlanta.

Pet Dairy with plants at Waycross and Washington, Georgia, and a plant at Spartanburg, South Carolina, opposed the establishment of two additional pricing zones in Georgia and the deletion of a minus 15-cent adjustment in South Carolina. Pet Dairy's plant at Waycross, Georgia, would have a 30-cent higher Class I price than handlers at Atlanta under the pricing adopted herein. Also, no location adjustment would apply at Pet Dairy's plant in Spartanburg, South Carolina. Currently, a minus 15-cent location adjustment applies at the Spartanburg plant. Pet's plant at Washington, Georgia, is in a no location adjustment zone and would continue to be in such zone under the pricing adopted herein. The witness for Pet Dairy indicated that an adequate supply of milk is available to supply the fluid milk requirements of the plants of Pet Dairy at Waycross, Georgia, and Spartanburg, South Carolina.

Borden, Inc. opposed the establishment of the South Central and Southern Zones for location adjustment pricing in Georgia. Borden's plants at Macon and Augusta are located in the South Central Zone. Under the pricing adopted herein for the South Central Zone, the Class I price at the two Borden plants would be 10 cents higher than the Class I price applicable at Atlanta, Georgia. Currently, the Class I price at Macon and Augusta is the same as the Atlanta Class I price. Borden testified that the location adjustment pricing proposed by DI for South Central and Southern Georgia woud distort the present competitive relationships among handlers.

Location adjustment pricing of minus 15 cents should apply in the Northern Zone which includes 14 Georgia counties. Currently, the Northern Zone consists of 29 counties and a minus 15-cent location adjustment applies in such area. The pool plants of Dempsey Brothers, Rome, Georgia, and Meadowbrook Dairy at Calhoun,

Georgia, are currently in the Northern Zone and these plants are also in the newly defined Northern Zone.

A witness appearing on behalf of the two plants in the Northern Zone requested that the Class I price for plants be the same as the Class I price for plants in the Chattanooga area that are regulated under the Tennessee Valley order. The opponent of the minus 15-cent adjustment pointed out that the current Class I price applicable in the Northern Zone is 5 cents higher than the Tennessee Valley order price at Chattanooga. For this reason, the witness held that the Class I price at plants in the Northern Zone should not exceed the Class I price at Chattanooga by more than the 5 cents currently provided.

Continuation of a minus 15-cent location adjustment is appropriate for the Northern Zone. Such amount represents one-half the difference between the mandated Class I differentials at Atlanta and Chattanooga ($3.08—$2.77=$0.31). As indicated by the witness for the two plants in the Northern Zone, Dempsey Dairies is about 67 miles from Chattanooga and 70 miles from Atlanta. On the basis of the plant's location and in consideration of the fact that the Northern Zone consists of a band of 14 counties midway between Atlanta and Chattanooga, a minus 15-cent adjustment from the Atlanta Class I differential for the Northern Zone will provide proper Class I price alignment for plants in such zone with respect to the legislated Class I differentials at Chattanooga and Atlanta.

No location adjustment should be provided for milk received at plants in the North Central Zone consisting of 41 counties. Such zone includes the following cities in which pool plants are located: Atlanta, Athens, Eatonton, Decatur and Washington. Milk received at pool plants located in these cities is currently not subject to location adjustment pricing. Under the location adjustment pricing adopted herein, no location adjustment pricing would apply at such plant locations.

Plant location adjustment pricing of plus 10 cents should apply in the South Central Zone. The South Central Zone consists of the 41 counties proposed by DI for such zone. However, proponent cooperative proposed a plus 15-cent location adjustment for such zone instead of the 10-cent adjustment adopted herein.

There are three pool plants located in the South Central Zone. These plants are the Borden plant at Macon the Borden plant at Augusta and the Kinnett Dairies plant at Columbus. The Macon and Columbus plants are located to the south and southwest, respectively, from the heaviest milk production area within Georgia. The plant at Augusta is located to the east of an area of concentrated milk production. One of the counties located in this heavy production area is Putnam. In December 1985, dairy farmers from Putnam County pooled 6.2 million pounds of milk on the Georgia order, 1.4 million pounds on the Upper Florida order, 1.7 million pounds on the Tampa Bay order and 1.2 million pounds on the Southeastern Florida order. Morgan County which borders Putnam County on the north is another heavy milk production area. In December 1985, dairy farmers from Morgan County pooled 8.5 million pounds on the Georgia order.

DI operates a pool supply plant that is located in this area of heavy milk production. The pool supply plant is located at Eatonton which is in Putnam County and is approximately 40 miles north of Macon, Georgia.

As previously noted, milk moves from farms in the Eatonton area into the three Florida markets. In recognition that milk in the vicinity of the Eatonton plant represents a potential supply source for the Macon plant, i.e., milk moves from Putnam County bypassing Macon, Georgia, on its way to Florida markets, the Class I differential at the Macon plant should reflect the cost of transporting milk from the Eatonton area to Macon, a distance of approximately 40 miles. In that regard, a location adjustment rate 2.5 cents per 10 miles for the 40 miles distance yields a 10-cent adjustment. On the basis of distance to the supply area at Eatonton, a plus 10-cent adjustment is appropriate for the Macon plant.

The Kinnett Dairies plant at Columbus and the Borden plant at Augusta should also have the same location adjustment pricing as the plant at Macon. The Columbus and Augusta plants are more distant from the heavy production area than the plant at Macon. The Columbus plant is located southwest of Macon, Georgia, and, thus, is more distant from the Eatonton supply plant than the Macon plant. The Augusta plant is located east of Eatonton. The distance from Augusta to Eatonton exceeds the distance from Eatonton to Macon. However, Columbus, Macon, and Augusta are all about the same distance south of the North Central Zone which is the largest milk production zone in the marketing area.

A location adjustment of plus 30 cents should apply at plants located in the Southern zone. The counties making up the zone and the plus 30-cent adjustment adopted herein were proposed by DI.

There are three pool plants located in the Southern Zone. The three plants are the Pet plant at Waycross, Roberd's Dairy at Savannah, and the Dairymen, Inc., plant at Savannah.

The operator of the Waycross plant opposed the plus 30-cent location adjustment at the plant's location. The witness for the dairy indicated that the dairy has experienced no problem in securing a supply of milk at the current time and expects no future shortage of supply at the plant.

Several individuals who opposed plus location adjustments in Georgia testified that Atlanta represents the major milk consumption area in Georgia. These individuals indicated that much of the milk produced on farms in Georgia must be moved to Atlanta. They contented that the establishment of plus location adjustment zones would impede the flow of milk to the Atlanta area.

A review of the milk production by counties for the Georgia market for December 1985 reveals that more than one-half of the milk pooled as producer milk under the Georgia order originated on farms outside the State of Georgia. Furthermore, a large amount of Georgia-produced milk moves to Florida. Of the 96.5 million pounds of Georgia milk that was pooled under the Georgia order and the three Florida orders in December 1985, more than 25 percent (24.4 million pounds) of that milk supply was moved to plant located in Florida. The Georgia procurement area for the Florida markets extends into the heavy milk production area of the North Central Zone.

In recognition of the substantial volume of milk that moves from Georgia into the State of Florida, Class I differentials in the Southern Zone of Georgia should be set at levels that will assure a continuing adequate supply of milk at the Waycross and Savannah plants. A plus 30-cent location adjustment should be established for the Southern Zone to assure that a supply of milk is available to plants in such zone. Based on the Waycross plant's location relative to plants in Jacksonville, Florida, a distance of nearly 80 miles, the 30-cent adjustment reflects a price that is 20 cents less than the mandated price under the Upper Florida order at Jacksonville. The Class I price at Waycross needs to be at least at a level within 20 cents of the Jacksonville price to compete for milk supplies produced as far north as north central Georgia. In addition, the plant at Waycross has sales accounts in the Upper Florida market in competition with the handlers regulated under that order. Thus, the

plus 30-cent zone is needed to maintain equitable inter-order pricing.

A location adjustment of minus 11 cents should be provided for plants located in North Carolina. Such adjustment would provide a Class I differential of $2.97 and will equate the pricing of Class I milk at plants in North Carolina with the Class I pricing for that area that is provided under the Tennessee Valley order. The justification for that level of pricing in North Carolina is discussed under location adjustments for the Tennessee Valley order.

In the States of South Carolina, Alabama, Florida and other areas south of the southern boundary of the States of Tennessee and North Carolina and outside of the Georgia marketing area, the Class I pricing level should be the same as that provided for a number of cities located within the Georgia marketing area. The cities are Augusta, Savannah, Lavonia, Waycross, Albany, Columbus, Atlanta, and Rome, Georgia. In most instances, a pool plant outside the marketing area will be competing for milk supplies and sales with pool plants located within the Georgia marketing area. It is reasonable that the out-of-area plant should have a Class I price equivalent to that which applies to the nearest pool plant within the marketing area.

The pricing of milk in Class I uses at two pool plants in South Carolina would be determined by the Class I prices that would apply at the nearest of eight named cities located in the Georgia marketing area. The two pool plants are located at Greenville and Spartanburg, South Carolina. The nearest of the eight cities in this case would be Lavonia which is in Franklin County. On that basis, the Class I differential for two South Carolina plants would be $3.06 since Franklin County is within the North Central zone.

The minus location adjustments that currently apply at plants in South Carolina are no longer appropriate since South Carolina is a deficit milk production area and milk needs to be moved there from alternative supply areas. The use of minus location adjustments in the southern part of South Carolina would give pool plant operators in such area who are making sales into the Georgia market a competitive advantage over Georgia handlers located in plus location adjustment zones. Furthermore, plants in South Carolina are equally as far distant as Georgia plants from the alternative supply areas of Tennessee. In addition, Class I pricing in the South Carolina market during the period when the South Carolina Milk Commission established Class I prices and at the present time under a negotiated pricing system has been at least at the level of Class I pricing under the Georgia order and in most instances has exceeded the Georgia Class I price.

The operator of a partially regulated distributing plant under the Georgia order that is located in Charleston, South Carolina, opposed the creation of two plus location adjustment zones in Georgia. The opponent of the plus location adjustment zones sells milk in the Savannah area in competition with handlers fully regulated under Federal orders. Under the pricing adopted herein for the Savannah area, the plant operator would have to pay more per hundredweight for Class I sales in the Georgia marketing area only if the prices paid to its dairy farmers were less than the classified use value of the milk under the Georgia order.

The location adjustment for plants located in the Tennessee Valley marketing area should be a minus 31 cents. Such adjustment would result in a Class I differential of $2.77 at a Chattanooga pool plant that is regulated by the Georgia order. The 31-cent minus adjustment will provide the same location value for milk in Class I use at the Chattanooga plant as the Class I differential that is mandated by the Food Security Act of 1985 for the Chattanooga location under the Tennessee Valley order. The $2.83 Class I differential that would apply at the Chattanooga plant by using the location adjustment proposed by DI is not appropriate in this instance because it exceeds the mandated Class I differential by 6 cents.

The pricing of milk of Class I use in areas north of the southern boundaries of the States of North Carolina and Tennessee and outside the State of North Carolina and the Tennessee Valley marketing area should be determined on a mileage basis from Atlanta. The plant location adjustment should be a minus 20 cents plus an additional reduction of 2.5 cents for each 10 miles or fraction thereof in excess of 110 miles from Atlanta. The pricing of milk under this provision would apply to only one pool plant currently regulated under the Georgia order. Such pricing from Atlanta would result in a minus 47.5 cents at Murfreesboro, Tennessee, which is approximately 211 miles from Atlanta. On that basis, the Class I differential would be $2.805 at Murfreesboro. Such Class I differential is appropriate for the Murfreesboro plant which is located somewhat less than 30 miles south of Nashville and in recognition that the mandated Class I differential at Nashville is $2.52 under the Nashville, Tennessee order.

Amendment of the Georgia order to provide plus location adjustment zones requires that several conforming changes be made in the order. The provisions dealing with the computation of the uniform price and plant location adjustments for producers and on nonpool milk have been amended to incorporate the required changes.

Plant location adjustment rates for Upper Florida, Tampa Bay and Southeastern Florida Federal milk orders—Parts 1006, 1012 and 1013. The location adjustment provisions of the Upper Florida, Tampa Bay and Southeastern Florida orders, respectively, should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. Plants located in the State of Florida that are regulated under either the Upper Florida, Tampa Bay or Southeastern Florida orders but are physically located in the marketing area of either of the other two Florida orders should have a location adjustment (plus or minus) equal to the difference in the Class I prices existing in the order in which the plant is regulated and the order in which the plant is located. For plants located outside the State of Florida and regulated under one of the three Florida orders, a location adjustment rate of 2 cents for each 10 miles or fraction thereof should apply. Under the Upper Florida order, such minus adjustment should apply at plants located in excess of 85 miles from either Jacksonville or Tallahassee, and should be added to a minus adjustment of 15 cents that would apply at plants located more than 70 miles but less than 85 miles from such cities. For plants regulated under the Tampa Bay order, the location adjustment would be computed from the City Hall in Tampa. Under the Southeastern Florida order, the distance to a plant would be computed from the City Hall in West Palm Beach.

The current location adjustment provisions of the three Florida orders differ from the provisions adopted herein in the rate of the location adjustment per 10 miles, the adjustment under the Upper Florida order of 10 cents at a plant located more than 70 miles but less than 85 miles from either Jacksonville or Tallahassee, and the amount of the difference in the Class I differentials of the three orders. The current rate of adjustment per 10 miles is 1.5 cents. The difference between the

Class I differentials of the Upper Florida and Tampa Bay orders is 10 cents. The difference between the Tampa Bay and the Southeastern Florida Class I differentials is 20 cents. With respect to the Upper Florida and Southeastern Florida Class I differentials, there is a difference of 30 cents.

Three Florida cooperative associations proposed the location adjustments and the rates adopted herein. The only opposition to the cooperatives' proposal was expressed by a witness for Cumberland Farms, Inc. Cumberland Farms requested that a location adjustment rate of 2.3 cents per 10 miles be established for plants located outside the State of Florida. The witness also requested that in computing the distance of the plant from the basing point specified in the order regulating the plant, recognition be given to the location of the inspection station in Florida which must give clearance to bulk milk brought into the State of Florida. In the case of Cumberland Farms which ships milk to its distributing plant at Riviera Beach, Florida, from the pool supply plant at Dover, Delaware, the witness indicated that such milk must receive clearance at the inspection station located in White Springs, Florida. As a consequence, each load of milk shipped to Cumberland's Florida plant from the Delaware supply plant cannot be shipped by the most direct route and must travel approximately 120 additional miles.

A plant location adjustment for a Florida plant that is regulated by one of the Florida orders and located in the marketing area of either of the other two Florida orders should have a location adjustment (plus or minus) equal to the difference in the Class I prices that apply in the order under which the plant is regulated and the order in which the plant is located. The net result of the location adjustments adopted herein for plants located in the marketing areas of the three Florida orders is that the Class I differential when adjusted for plant location results in a Class I price for such plant that is identical to the one that would apply at such plant if the plant were regulated by the order for the marketing area in which the plant is located. For example, a plant located in the Upper Florida marketing area and regulated by the Southeastern Florida milk order would have a $3.58 ($4.18–60 cent location adjustment) Class I differential. Such Class I differential is identical to the Class I differential that applies to a plant located in the Upper Florida marketing area and regulated by such order.

A location adjustment rate of 2 cents per 10 miles for plants located outside the State of Florida is appropriate for the three Florida orders. For the Upper Florida order, the minus 15-cent adjustment for plants located more than 70 miles but less than 85 miles from the nearest city of Jacksonville or Tallahassee in conjunction with an additional reduction of 2 cents per 10 miles for plants located beyond 85 miles is appropriate. Such adjustments would result in a Class I differential of $3.23 ($3.58 minus 15 cents minus 2 cents for 10 zones beyond 85 miles) for a plant at Macon, Georgia, if such plant were regulated under the Upper Florida order. If the Macon plant were regulated by the Tampa Bay order, a Class I differential of $3.12 would apply ($3.88 minus 2 cents per 10 miles for 377 miles). Regulation of the Macon plant under the Southeastern Florida order would result in a Class I differential of $3.14 ($4.18 minus 2 cents per 10 miles for a distance of 512 miles).

The rate of 2 cents per 10 miles also will result in reasonable price alignment with one of the principal supply areas outside the State of Florida. Milk regularly moves from Putnam County, Georgia, to Florida and at various times the supply plant at Eatonton, Georgia, has been a source of supply for the Florida orders. The Class I differential for Tampa of $3.88 when adjusted back to Eatonton (a distance of 414 miles by 2 cents per 10 miles) results in a Class I differential of $3.04 ($3.88 minus $0.84). This results in a very close approximation to the $3.08 Class I price that would apply at the Eatonton plant if regulated by the Atlanta order.

The 2.3-cent location adjustment rate advocated by Cumberland Farms was derived by estimating what effect the mandated Class I differential would have on the blend price at Dover, Delaware, under the Southeastern Florida milk order as compared with the blend price at such location under the Middle Atlantic order. The projected blend price at the Dover plant using 1985 actual pricing and utilization percentages modified to reflect the mandated increase in the Class I differentials indicated a $12.985 blend under the Middle Atlantic order compared to a $13.885 blend under Southeastern Florida. The witness for Cumberland Farms indicated that an increase in the location adjustment from 1.5 cents to 2.3 cents would reduce the Southeastern Florida blend price by 84.8 cents per hundredweight. Such adjustment would result in the blend prices differing by 5 cents per hundredweight.

The 2.3-cent location adjustment rate proposed by Cumberland Farms was designed to equate blend prices of two orders at a single plant location. However, this is contrary to the purpose of the hearing, which was to amend the location adjustment provisions of the orders so that the value of producer milk at various plants will be aligned on a intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985.

The plant location adjustment provision of the three Florida orders should not be revised to recognize the added cost that results when out-of-state milk must receive clearance from Florida health authorities prior to delivery to Florida milk plants. The additional mileage involved in obtaining the inspection should be borne by the importing handler to encourage the lowest cost movements of milk, rather than having producers subsidize inefficient movements through increased location adjustments from the pool proceeds.

Plant location adjustment rates for Tennessee Valley order—Part 1011. The location adjustment provisions of the Tennessee Valley order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective May 1, 1986. No location adjustment should apply on milk physically received at a plant located within the marketing area except the Kentucky portion of the marketing area, or in the State of Virginia. For milk received at a plant located within the State of North Carolina or south of the southern boundary of the States of North Carolina and Tennessee, a plus location adjustment of 20 cents should apply. A location adjustment of minus 32 cents should apply in the Kentucky counties of Bell, Breathitt, Clay, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Perry, Pulaski and Whitley. For milk that is received at a plant located more than 90 miles from the city halls in Bristol, Chattanooga and Knoxville and outside the States of Virginia and North Carolina, the Kentucky counties previously named and north of the southern boundary of the States of North Carolina and Tennessee, the Class I price should be reduced 2.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the city halls in Bristol, Chattanooga and Knoxville.

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The location adjustment pricing adopted herein for the Tennessee Valley order was proposed by DI. Such pricing would be applicable to three of the 10 pool plants currently regulated under the Tennessee Valley order. The remaining seven pool plants are located in the marketing area of the Tennessee Valley order. No location adjustment currently applies at such plants and none was proposed by DI.

The Westover Dairy at Lynchburg, Virginia, would receive no location adjustment under DI's proposed pricing. Currently, a minus 30-cent adjustment applies at that plant's location. A Class I differential of $2.77 is appropriate for the Lynchburg plant. The plant is situated between the marketing area of the Tennessee Valley order and the marketing area of the Middle Atlantic order, which has a mandated Class I differential of $3.03. On the basis of the plant's distance from Washington, D.C., and a reduction of 1.5 cents per 10 miles in the Middle Atlantic Class I differential, the plant would have a minus location adjustment of 27 cents, or a $2.76 differential at Lynchburg. Under such circumstances, there is ample reason to abandon a minus location adjustment for the Lynchburg plant and to provide for no location adjustment at that location. Furthermore, Class I pricing by the Virginia Milk Commission at the Lynchburg plant has exceeded the level of the Federal order Class I price for the Tennessee Valley order for the last several years.

A Class I differential of $2.45 would apply at the Flav-O-Rich plant at London, Kentucky, under the minus 32-cent location adjustment proposed by DI for a number of Kentucky counties. The London plant currently has a minus 16.5-cent location adjustment based on a rate of 1.5 cents per 10 miles from Knoxville. The 32-cent adjustment represents a rate of 3 cents per 10 miles which is about the maximum rate that can be adopted in light of the current cost of moving milk.

DI's primary concern in establishing pricing at the London plant was to equate the Class I differential at that location with the Class I differential applicable under the Louisville-Lexington-Evansville order at a plant at Somerset, Kentucky. The plant at Somerset is in the adjoining county of Pulaski. As discussed in plant location pricing under the Louisville-Lexington-Evansville order, it is concluded that a Class I differential of $2.26 should apply at the Somerset plant. Such differential is 19 cents less than the $2.45 Class I differential for the London plant. Under the current provisions of the two orders, the Class I differentials differ by 33.5 cents.

While it is not feasible to apply the same Class I differential at the London and the Somerset plants when such plants are regulated by the Tennessee Valley and the Louisville-Lexington-Evansville orders, respectively, the two plants should have the same Class I differential when both plants are regulated by the same order. To accomplish this, the Tennessee Valley order should be amended to include Pulaski County, Kentucky, in the minus 32-cent zone. Thus, if the Somerset plant becomes regulated under the Tennessee Valley order, it would have a $2.45 Class I differential. Such pricing is appropriate for the two plants when they have the majority of their sales in the Tennessee Valley marketing area.

As discussed under the plant location adjustment pricing under the Louisville-Lexington-Evansville order, such order would be amended to include Pulaski County, Kentucky, in which the Somerset plant is located with Laurel County, Kentucky, (in which the London plant is located) and other counties in which a plus 15-cent location adjustment applies. This would result in a $2.26 Class I differential at the Somerset and the London plants when both plants are regulated under the Louisville-Lexington-Evansville order.

A plant location adjustment of plus 20 cents should apply at plants located in the State of North Carolina, or south of the southern boundary of the States of North Carolina and Tennessee and outside the marketing area of the order. The adjustment adopted herein was proposed by DI.

The current adjustment that applies at a North Carolina pool plant at Winston-Salem is minus 22.5 cents. An individual representing the Winston-Salem plant and two other North Carolina plants that are partially regulated under the Tennessee Valley order opposed any change in the current location adjustment.

Historically, the Class I prices that North Carolina plants have paid for milk sold in North Carolina have been in excess of the Federal order prices applicable in adjoining markets. In addition, North Carolina is a deficit milk production area and milk must be moved from Virginia into North Carolina plants to supply the Class I needs of the market. The Virginia milk must be procured in competition with handlers regulated under the Middle Atlantic order for which a $3.03 Class I differential is mandated. Also, North Carolina plants must compete for milk supplies with the South Carolina plants at Spartanburg and Greenville that are regulated under the Georgia order with a $3.06 Class I differential. Thus, the $2.97 differential for North Carolina plants is appropriate to hold milk supplies in competition with higher-priced markets to the south. Under these circumstances, a plus 20-cent location adjustment is appropriate for plants in North Carolina.

The location adjustment for plants more than 90 miles from Bristol, Chattanooga or Knoxville and north of the southern boundary of the States of North Carolina and Tennessee but outside the States of North Carolina and Virginia should be reduced by 2.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the city halls in Bristol, Chattanooga or Knoxville. This rate is the same as the rate that applies for the intervening distance between the Chicago and Knoxville areas under the mandated Class I differentials [($2.77 minus $1.40) divided by 543 miles]. On this basis, it is concluded that a 2.5-cent location adjustment rate is appropriate for the Tennessee Valley order.

Plant location adjustment rates for Louisville-Lexington-Evansville order—Part 1046. The location adjustment provisions of the Louisville-Lexington-Evansville order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. For milk received from producers at a plant and which is classified as Class I milk, the Class I price should be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg and Whitley, the Class I price should be increased by a location adjustment of 15 cents;

(2) For such milk that is physically received at plants located within the defined marketing area of the Paducah, Kentucky, Federal Milk Marketing Order, Part 1099, excluding those counties specified in the above paragraph (1), the Class I price should be increased by a location adjustment of 28 cents;

(3) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina,

the Class I price should be increased by a location adjustment of 41 cents;

(4) For such milk that is physically received at plants located in the marketing area of the State of Kentucky and outside the areas specified in the above paragraphs (1), (2), or (3), no location adjustment should apply; and

(5) For such milk that is physically received at plants located outside the areas specified in the above paragraphs (a), (2), (3), or (4) and 85 miles or more from the City Halls in Louisville and Lexington, Kentucky, and Evansville, Indiana, by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price distance as determined by the market administrator, the Class I price should be reduced by a location adjustment of 2.5 cents for each 10 miles or fraction thereof that such plant is from the City Hall in Louisville, Lexington or Evansville, whichever is nearest.

Currently, the order provides for a plus 15-cent location adjustment zone that encompasses 12 counties in southeastern Kentucky. No location adjustment applies at plants located in the marketing area, in the State of Kentucky except for the 12 counties in the plus 15-cent zone, in the State of Tennessee or in the area east of the Mississippi River and south of the southern boundary of Tennessee or the northern boundary of South Carolina. Outside of the areas previously enumerated and 85 miles or more from the city hall in Louisville, Lexington or Evansville, the Class I price is reduced by a location adjustment of 1.5 cents for each 10 miles or fraction thereof that the plant is from the nearest city hall in Louisville, Lexington or Evansville.

DI proposed that 2 plus location adjustment zones be established in Southern Kentucky. The cooperative proposed that the current 15-cent zone of 12 counties be expanded by 11 counties and that the amount of the adjustment be plus 34 cents (an increase of 19 cents). DI also proposed that a plus location adjustment of 15 cents apply in a 45-county area of Kentucky. For a plant located in the Paducah marketing area with the exception of several counties included in the proposed 15-cent zone a plus location adjustment of 28 cents would apply. For plants located east of the Mississippi River and south of the northern boundary of the States of Tennessee and North Carolina, a location adjustment of plus 41 cents would apply. Also, DI proposed that the current location adjustment rate of 1.5 cents be increased to 2.5 cents per 10 miles.

The reasons set forth by DI for the establishment of the new pricing zones in Kentucky are as follows:

(a) In southeastern Kentucky, there are two distributing plants, one at London and the other at Somerset. Under the Louisville order, there is no location adjustment applicable at the Somerset location but a plus 15-cent location adjustment applies to a zone that includes the London plant's location. The plant at London is regulated under the Tennessee Valley order and under the current location adjustment provisions would have a Class I differential of $2.605, or 49.5 cents higher than the $2.11 differential at Somerset. The cooperative contended that legislated Class I differentials at Louisville of $2.11 and at Knoxville of $2.77 require at least one intermediate price zone between Louisville and Knoxville.

Under DI's proposed pricing, the current zone in southeastern Kentucky would be expanded to include the Somerset, Kentucky, plant. The cooperative contended that the London and Somerset plants compete for sales and milk supplies in the same geographic area. For this reason, DI proposed that both plants should have a $2.45 Class I differential whether regulated by the Louisville or Tennessee Valley order.

(b) Lexington, Kentucky area—Currently, no location adjustment applies in the Lexington area under the Louisville order. The cooperative pointed out that there are two distributing plants in the Lexington area—the plant at Lexington is pooled under the Louisville order and the plant at Winchester is pooled under the Ohio Valley order.

DI noted that the two plants are less than 20 miles apart and for this reason the cooperative contended that the Class I differentials of the two plants should be the same irrespective of the order under which the plants are pooled.

(c) West Central Kentucky area—DI pointed out that there are two plants located in this area—one at Madisonville, Kentucky, regulated under the Louisville order and one at Hopkinsville, Kentucky, regulated under the Nashville order. The cooperative indicated that the West Central Kentucky area is a source of supply for the two plants. For this reason, the cooperative held that the Class I differential applicable at these two plants should be the same.

National Farmers Organization (NFO) opposed a 34-cent plus location adjustment for the pool distributing plant at Somerset, Kentucky. The cooperative indicated that if the Secretary decided that the Somerset plant should be in a plus zone, Pulaski County in which the plant is located should be placed in a 15-cent zone. NFO also proposed a location adjustment rate of a 2 cents per 10 miles instead of the 2.5-cent rate proposed by DI.

NFO expressed concern that a plus 34-cent location adjustment for the Somerset plant might deprive NFO of a sales outlet. The cooperative pointed out too that a number of manufacturing plants are located in the two proposed plus location adjustment zones and that milk diverted to such plants as producer milk could result in a reduction in the blend price to producers.

Southern Belle Dairy Company, Inc., the operator of the Somerset plant, opposed the 34-cent plus location adjustment. The company testified that Congress had mandated only a 26-cent difference in Class I prices between Louisville and Nashville whereas DI proposed a Class I price for Somerset 34 cents higher than Louisville even though Somerset is about midway between Louisville and Nashville.

In its brief, the Company listed 12 factors that should be taken into consideration in setting location adjustments. The company pointed out that the largest and third largest milk producing counties in Kentucky were proposed for inclusion in the plus 15-cent zone. The company also indicated that higher prices in the milkshed than in the city would encourage milk to go to manufacturing plants.

A representative of the Southeastern Graded Milk Producers Association, a cooperative association supplying Southern Belle Dairy Company, opposed DI's proposal to apply a plus location adjustment for milk received at the Somerset plant. The cooperative expressed concern that the proposed price increase would place Southern Belle Dairy at a disadvantage. According to the representative, such disadvantage might deprive the cooperative of a sales outlet.

Southeastern Dairies, the operator of a pool distributing plant at Louisville opposed the plus 15-cent location adjustment zone proposed by DI and the enlargement of the present plus 15-cent zone in conjunction with an increase in that zone's price to 34 cents. It was the company's position that milk in the Louisville market moves primarily from south to north. In that regard, the company indicated the Louisville plant draws 64 percent of its milk supply from the proposed plus 15-cent and plus 34-cent zones. The company contended that the price in south central Kentucky

should be lower than the Louisville price to encourage milk to move from the "production area" to the "consuming area."

Bel Cheese submitted a brief in opposition to the plus 15-cent location adjustment price that would apply at plants in Hart and Barren County. The company operates a nonpool manufacturing plant in the nearby county of Grayson, Kentucky, a county in which location adjustments would not apply. The company was concerned that it might be deprived of a fluid milk supply because there would be more of an incentive for dairy farmers to deliver milk to plants located in plus location adjustment zones than to plants in a no location adjustment zone. The company was concerned that it may have to pay higher prices to retain its milk supply due to the higher blend prices that would apply under DI's proposed pricing at similarly situated manufacturing plants in nearby counties.

Dean Foods, the operator of a pool distributing plant in Louisville, objected to the inclusion of Washington County in the plus 15-cent location adjustment zone. Dean Foods diverts milk during the flush months from its plant to the Armour Foods Company at Springfield, Kentucky, which is also a pool plant under the Louisville-Lexington-Evansville order. The company pointed out that those producers who are diverted during the flush months of production would have their price increased during the time of the year when prices generally decrease. When the milk of these producers is needed in Louisville for fluid use, they would find that their milk is priced 15 cents less than if it were received at Springfield.

A plus 15-cent location adjustment zone covering areas of southwestern and southeastern Kentucky should be provided to align Class I pricing for handlers under the Louisville order with handlers regulated under several nearby Federal order markets. Handlers regulated by the Louisville order compete with handlers located to the southeast, south and southwest of the Louisville market who are regulated under Federal orders which have higher Class I prices than the Louisville market. Class I differentials in the nearby southern markets are as follows: Tennessee Valley, $2.77; Nashville, Tennessee, $2.52; and Paducah, Kentucky, $2.30. These higher price levels to the south of the Louisville market dictate that Class I differentials for plants in southern Kentucky must be as high or higher than the $2.11 mandated for the Louisville-Lexington-Evansville market. Given the mandated Class I differentials in the adjoining Federal orders which vary from 20 cents in the southwestern market to 60 cents in the southeastern market more than the Class I differential at Louisville, it is necessary to establish an intermediate price zone in the southern Kentucky area to assure that an adequate supply of milk is made available to pool plants located in such area.

The plus 15-cent location adjustment zone should be structured to include two pool distributing plants in southern Kentucky and exclude the Kentucky counties in southern and south central Kentucky in which nonpool manufacturing plants are located. The two pool distributing plants are located in Madisonville and Somerset, Kentucky. The Kentucky counties in which nonpool manufacturing plants are located are as follows: Anderson (Lawrenceburg), Barren (Glasgow), Clinton (Albany), Davies (Owensboro), Grayson (Leitchfield), Hardin (Elizabethtown), Hart (Horse Cave), Mason (Maysville), Mercer (Harrodsburg), Monroe (Tompkinsville) and Washington (Springfield). A plus location adjustment is not warranted for those counties in which nonpool manufacturing plants are located for two reasons. A plus location adjustment for nonpool plants would provide an incentive for dairy farmers to deliver milk to nonpool plants in preference to delivering milk to fluid milk plants. Furthermore, a plus location adjustment at the nonpool plant locations would reduce the level of the blend price at the central market locations.

The plus 15-cent location adjustment zone should include Hopkins County, Kentucky. A pool distributing plant in such county is located at Madisonville. The plant competes for Class I sales with a plant at Hopkinsville which is regulated under the Nashville, Tennessee, order. As noted in the discussion of location adjustments under the Nashville order, a Class I differential of $2.26 should apply at the Hopkinsville location. Since the Madisonville plant competes with the Hopkinsville plant for raw milk supplies and for Class I sales, a Class I differential of $2.26 is appropriate for the Madisonville plant. A plus 15-cent location adjustment zone that includes Hopkins County would provide such Class I differential.

The plant at Somerset and the plant at London should have the same Class I differential when both plants are fully regulated. To accomplish this, the counties in which the plants are located should be in a plus 15-cent zone. Currently, Laurel County in which the London plant is located is in a plus 15-cent zone. Consequently, to achieve the same level of pricing at the Somerset plant, Pulaski County in which Somerset is located should be added to the same 15-cent location adjustment zone. Under such circumstance, both plants would have a $2.20 Class I differential if regulated under the Louisville order.

As noted in the discussion of location adjustments for the Tennessee Valley order, the London plant and the Somerset plant would have a $2.45 Class I differential if regulated under the Tennessee Valley order. In the event that the Somerset plant is regulated under the Louisville order and the London plant is regulated under the Tennessee Valley order, the Somerset plant would have a $2.20 Class I differential and the London plant would have a Class I differential of $2.45. Currently, there is a difference of 23.5 cents in the Class I prices at the Somerset and London locations. The revision would result in a difference of 19 cents in the Class I prices applicable at the two plants.

No basis exists on this record to establish a plus 15-cent location adjustment in the Lexington area. An area of heavy milk production is located about equidistant between Louisville and Lexington. Thus, an adequate supply of milk is available at the same price level for these two cities. Proponent cooperative's suggestion that a 15-cent plus location adjustment apply in the Lexington area appears to have been based on the expectation that the Class I differential for the Winchester plant would be established under the Ohio Valley order at $2.26. In the event that a Class I differential in excess of $2.11 is established at this Winchester location, recognition of such change and any accommodation that needs to be made to such change can be handled in a final decision.

A reduction of 2.5 cents per 10 miles should be used to determine the location adjustment for plants outside those areas in which plus location adjustments are provided under the order. The Class I price should be reduced by the 2.5-cent rate for each 10 miles or fraction thereof that the plant is located from the City Hall in Louisville, Lexington or Evansville, whichever is nearest. On the basis of mileage from Evansville and the use of the 2.5-cent rate, a plant in the Chicago area would have a Class I differential of $1.36 [$2.11 − (30 ten-mile zones × $.025)]. Such pricing approximates the $1.40 Class I differential mandated for the Chicago Regional order. Accordingly, the 2.5-cent

rate should provide appropriate price alignment.

Southeastern Dairies proposed that when milk of an individual producer is physically received at more than one location (including any nonpool plant) during the month, the location adjustment rate shall be the weighted average of the amounts computed for the respective locations, except that if 75 percent or more of such producer's milk is delivered to a plant or plants at which the same rate is applicable, such rate should be applicable to all deliveries of such producer during the month regardless of point of delivery. The company asked that such proposal be implemented only in the event that the "Secretary may be able to justify higher prices in the south central Kentucky milkshed as proposed by DI." According to proponent, the purpose of the proposal is to discourage the regular source of supply for Louisville from being diverted to manufacturing plants located in nearby areas in which plus location adjustments were proposed to take advantage of a higher blend price. Also, Southeastern Dairies indicated that its proposal was designed to mitigate the tendency of the DI proposals to reduce the blend price for milk delivered to Louisville. Furthermore, the company held that its proposal would greatly facilitate reporting, record-keeping and payment obligations under the order.

As noted earlier, none of the Kentucky counties in which a nonpool manufacturing plant is located has been included in the plus 15-cent location adjustment area. Such action obviates the need for Southeastern Dairies' proposal and, accordingly, there is no need to implement the proposal by Southeastern Dairies.

Plant location adjustment rates under the Alabama-West Florida order—Part 1093. The location adjustment provisions of the Alabama-West Florida order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986.

Plant location adjustments in Zones 1 through 4a should be as follows: Zone 1, minus 23 cents; Zone 2, no adjustment; Zone 3, plus 27 cents; Zone 4, plus 57 cents; and Zone 4a, plus 30 cents. For a plant located in any of the Tennessee and Georgia counties in which a minus 20 cents currently applies, the location adjustment should be a minus 31 cents. For a plant located in any of the Tennessee or Kentucky counties or in the Fort Campbell military reservation in which a minus 45-cent adjustment applies, the location adjustment should be a minus 56 cents. For a plant located outside the marketing area and in the State of Florida, a location adjustment of plus 50 cents should apply.

For a plant located outside the marketing area and north of a line extending through the northern boundaries of Georgia, Alabama and Mississippi (except the Tennessee and Kentucky counties in which a minus 31-cent of a minus 56-cent adjustment applies and Fort Campbell military reservation), the adjustment should be a minus 23 cents plus an additional reduction of 2.5 cents for each 10 miles or fraction thereof that the plant is from the nearer of the city halls in Florence or Huntsville, Alabama.

For a plant located outside the marketing area, the State of Florida and the Georgia counties in the Tennessee Valley marketing area and south of a line extending through the northern boundaries of Georgia, Alabama and Mississippi, the adjustment should be the adjustment applicable at Mobile, York, Tuscaloosa, Florence, Huntsville, Gadsden, Opelika, or Dothan, Alabama, whichever city is nearest. This provision is currently in the order and there was no proposal to change such provision. Accordingly, the provision should be continued without change.

The changes in the location adjustments adopted herein are identical to the changes proposed by DI except for Zone 4a. Zone 4a includes only Houston County and provides location adjustment pricing for a plant at Cowarts, Alabama. DI proposed that a plus 40 cents apply at such plant. However, a plus 30-cent adjustment is adopted herein.

Dairy Fresh opposed any change in the existing zone prices under the Alabama-West Florida order. The company operates two plants regulated under the order, one at Pritchard, Alabama, and one at Cowarts, Alabama.

Beatrice, which operates a pool plant at Huntsville, Alabama, proposed that the Class I differential at Huntsville should be aligned on the basis of the mandated Class I differentials for Nashville ($2.52) and Birmingham ($3.08) and the location of the Huntsville plant relative to those two pricing points. The company's representative pointed out that Huntsville is approximately 109 miles south of Nashville and 96 miles north of Birmingham. In Beatrice's view, the 56-cent difference in price between Nashville and Birmingham should be divided into two segments—30 cents for 109 miles between Nashville and Huntsville and 26 cents for the 96 miles between Huntsville and Birmingham.

DI opposed the 26-cent minus adjustment for Zone 1. The cooperative pointed out that the adjustment for such zone would apply to a pool plant at Decatur as well as to the Huntsville plant. The cooperative indicated that the Decatur plant is about 80 miles from Birmingham. On the basis of such distance, the cooperative held that an adjustment of no more than 23 cents is warranted.

The difference in the two proposed adjustments for Zone 1 amounts to only 3 cents per hundredweight. A further consideration is the level of the Class I differential that applies to the east of Zone 1 under the Georgia order in the Northern Zone ($2.93) and the Class I differential that applies to the west of Zone 1 in the northern Mississippi counties under the New Orleans-Mississippi order ($2.90). Such price levels in conjunction with the volume of milk that must be imported into the Alabama-West Florida order to meet Class I needs would indicated that a Class I differential of $2.85 is warranted for Zone 1.

No location adjustment should be provided in Zone 2. Currently, no adjustment applies in such zone and none was proposed at the hearing. Thus, the mandated Class I differential of $3.08 would apply to plants in Zone 2.

A plus location adjustment of 27 cents should apply in Zone 3. Such pricing would apply to 3 pool plants in Montgomery and 1 pool plant at Selma and result in a Class I differential of $3.35. The plants at Montgomery are about 92 miles from Birmingham. Thus, the 27-cent adjustment represents a rate of 2.7 cents per 10 miles. Furthermore, the Zone 3 area of the Alabama-West Florida order area is due east of the New Orleans-Mississippi Zone 3, an area in which a Class I differential of $3.35 would apply. Thus, the plus 27-cent location adjustment for Zone 3 is justified on the basis of distance from Birmingham and on the basis of Class I price alignment on an east-west axis with plants regulated under the New-Orleans-Mississippi order.

The plant location adjustment for Zone 4a should be plus 30 cents. This will provide a Class I differential of $3.38 for a plant of Cowarts in Houston County. Currently, a 20-cent difference in the Class I price exists between the plant at Cowarts and a pool distributing plant at Columbus, Georgia. As discussed under the section dealing with location adjustments for the Georgia order, a plus 10-cent adjustment would apply at the Columbus plant. The

resulting Class I differential would be $3.18 at the Columbus plant. The plus 30-cent adjustment to the Class I differential price at Birmingham of $3.08 resulting in a Class I differential of $3.38 at Cowarts will provide proper price alignment with the Columbus plant. Such pricing at Cowarts maintains the 20-cent difference in Class I pricing that currently exists between the Columbus, Georgia, plant and the plant at Cowarts, Alabama. Houston County is adjacent to the Southern Zone of the Georgia order where an identical $3.38 Class I differential is adopted. In addition, Cowarts is about 94 miles from Tallahassee, which is a basing point for location adjustments under the Upper Florida order. At 94 miles, the Upper Florida Class I differential would be adjusted to $3.41 at Cowarts. Thus, the $3.38 differential of Cowarts under the Alabama-West Florida order provides appropriate alignment in competition for milk supplies with handlers regulated under adjacent orders.

The location adjustment for the Mobile Alabama, area (Zone 4) should be a plus 57 cents. Such adjustment would result in a Class I differential of $3.65 for three pool plants—Mobile and Pritchard, Alabama, and Pensacola, Florida. On a east-west axis, the $3.65 Class I differential in the Mobile area is aligned with the Class I differential that applies at the Franklinton and Kentwood plants which are regulated under the New Orleans-Mississippi order. Furthermore, the Class I differential applicable in Zone 4 represents an increase of 96 cents over the current Class I differential that applies in such zone. Such increase is commensurate with the Class I price increase of $1.00 that was mandated for the New Orleans area by the Food Security Act of 1985.

The location adjustment should be minus 31 cents for a plant located in the Tennessee counties in the marketing area of the Tennessee Valley order plus Bledsoe County, Tennessee. The same adjustment should apply at a plant located in the Georgia counties included in the marketing area of the Tennessee Valley order. The 31-cent adjustment would result in a $2.77 Class I differential for milk at such plants. Such differential is the same as the mandated Class I differential that would apply at such plants if regulated under the Tennessee Valley order.

The location adjustment should be a minus 56 cents for a plant located in the Tennessee and Kentucky counties and Fort Campbell military reservation which are included in the marketing area of the Nashville, Tennessee, order. The 56-cent adjustment would result in a $2.52 Class I differential for milk at such plants. Such differential is the same as the mandated Class I differential that would apply at such plants if located within 50 miles of the State Capitol of Tennessee and regulated under the Nashville, Tennessee, order.

The location adjustment should be a plus 50 cents for a plant outside the marketing area and located in the State of Florida. The 50-cent adjustment would result in a $3.58 Class I differential for milk at such plant. Such differential is appropriate since it is the same as the mandated Class I differential that applies in the northern Florida area that is regulated under the Upper Florida order.

A minus adjustment of 23 cents plus an additional reduction of 2.5 cents per 10 miles should be used to determine the location adjustment for plants outside the marketing area and north of a line running through the northern boundaries of Georgia, Alabama and Mississippi except the Tennessee and Kentucky counties in which a minus 31-cent or minus 56-cent location adjustment applies. The plant's location should be measured from the nearer of the city halls in Florence or Huntsville, Alabama. On the basis of mileage from Huntsville, a plant in the Chicago area would have a Class I differential of $1.46 [$3.06—$0.23—(55 ten-mile zones × $.025]. Such pricing approximates the $1.40 Class I differential mandated for the Chicago Regional order. Accordingly, the reduction of 23 cents in conjunction with the 2.5-cent rate per 10 miles represents an appropriate adjustment to the Class I differential of the Alabama-West Florida order.

Plant location adjustment rates under the New Orleans-Mississippi order—Part 1094. The location adjustment provisions of the New Orleans-Mississippi order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. Plant location adjustments in the marketing area should be as follows: Zone 1, no adjustment; Zone 2, minus 20 cents; Zone 2A, minus 40 cents; Zone 3, minus 50 cents; Zone 3A, minus 65 cents; Zone 4, minus 75 cents; Zone 5, minus 80 cents; and Zone 6, minus 95 cents. Plant location adjustments outside the marketing area should be as follows: Zone III of the Greater Louisiana order, minus 7 cents; Zone II of the Greater Louisiana order, minus 30 cents; Zone I of the Greater Louisiana order, minus 57 cents; and in the State of Mississippi outside the marketing area, minus 95 cents. Also, the minus adjustment rate that is currently 1.5 cents per 10 miles should be changed to 2.5 cents per 10 miles.

The location adjustments adopted herein are unchanged from those proposed by DI except for Zone 2A. In Zone 2A, which includes the Hattiesburg, Mississippi, area, the adjustment should be a minus 40 cents instead of the minus 30 cents proposed by DI.

Dairy Fresh, the operator of pool plants at Columbus and Hattiesburg, Mississippi, proposed that the plant location adjustments for the marketing area zones be as follows: Zone 1, no adjustment; Zone 2, minus 20 cents; Zone 3, minus 40 cents; Zone 4, minus 70 cents; Zone 5, minus 80 cents; and Zone 6, minus 90 cents.

Barber Pure Milk Company supported a Class I price differential of $2.85 in Zone 6 of the New Orleans-Mississippi order. The company operates a plant at Tupelo, Mississippi, and estimated that approximately 20 percent of its Class I sales are in Alabama in competition with plants in Zone 1 of the Alabama-West Florida order. For this reason, the company wanted its Class I differential at Tupelo to be no greater than the Class I differentials applicable in Zone 1 of the Alabama-West Florida order.

Gulf Dairy Association supported the pricing proposed for the New Orleans-Mississippi order except the pricing proposed by DI for the Hattiesburg area. Although Gulf Dairy Association approved the creation of a new Zone 2A, and area that includes Hattiesburg, the cooperative requested that a location adjustment of minus 40 cents apply instead of the minus 30 cents proposed by DI. The spokesman for the cooperative indicated that the 10-cent higher Class I differential proposed by DI would result in a loss of sales by the Hattiesburg plant to its competitors. The cooperative was concerned that the loss in Class I sales would adversely affect the cooperative's sales to the Hattiesburg plant.

Gulf Coast Dairymen's Association opposed the creation of Zone 2A proposed by DI. The cooperative requested that Zone 3 not be restructured and that a minus 40-cent location adjustment apply at the Hattiesburg location. The cooperative also expressed the view that the Hattiesburg plant might lose Class I sales if the location adjustment was changed from minus 40 cents to the minus 30 cents proposed by DI.

Zones 1 and 2 should be continued with no change in the area within each zone. In Zone 1, which includes the city of New Orleans, no location adjustment currently applies and none would be provided under the provisions adopted herein. Such pricing would result in a Class I differential of $2.65 for plants in New Orleans which is mandated by the Food Security Act of 1985. In Zone 2, a plant location adjustment of minus 20 cents should apply. Such level of pricing for Zone 2 was proposed by DI and by Dairy Fresh. Currently, a plant location adjustment of minus 18 cents applies in Zone 2. There was no objection to the proposed change. Such change appears warranted in view of current transportation costs and, accordingly, is adopted herein.

The plant location adjustment of minus 40 cents that applies at a plant at Hattiesburg should be continued. The adjustment at the Hattiesburg plant should be accomplished by dividing the area in the current Zone 3 into a Zone 2A that includes Hattiesburg and a new Zone 3. While DI contended that the minus 40 cents was not warranted on the basis of the 110–115 miles between New Orleans and Hattiesburg, such view must be considered in light of the statement by representatives of two cooperatives who currently deliver milk to the Hattiesburg plant that their member-producers are willing to deliver milk for Class I use to the plant for a Class I differential of $3.45. Under such circumstances, it is concluded that the minus 40-cent location adjustment should be continued at the Hattiesburg location. Such adjustment would result in the $3.45 Class I differential supported by the two cooperatives that supply milk to the plant.

The Class I differentials for pool distributing plants located at Jackson, Meridian and Canton, Mississippi, that currently are in the same pricing zone as the Hattiesburg plant should be established at 10 cents less than the Hattiesburg plant. This should be accomplished by leaving the counties in which such plants are located in Zone 3 and specifying that a minus 50-cent location adjustment shall apply in Zone 3.

DI and Gulf Dairy Association supported a minus 50-cent location adjustment for the Jackson, Meridian and Canton plants. Gulf Coast Dairymen's Association held that the three plants should have a minus 40-cent adjustment.

The operator of the Jackson and Meridian plants offered no testimony in opposition to the 10-cent greater price adjustment. DI, the operator of the Canton plant, proposed the Class I differential that would apply at the Canton plant.

Both the Jackson and Meridian plants are more than 80 miles from Hattiesburg. The Canton plant is even more distant from Hattiesburg since Canton is located north of Jackson and Meridian. On the basis of mileage and a location adjustment of 2.5 cents per 10 miles, a difference of 20 cents could be justified between Hattiesburg and the Jackson and Meridian plants. DI supported such 20-cent difference. However, DI wanted to achieve such 20-cent difference by applying a 10-cent higher Class I differential at Hattiesburg than that adopted herein.

The 80 miles or more separating the Hattiesburg plant and the Jackson, Meridian and Canton plants warrants a restructuring of the current Zone 3 into a Zone 2A and Zone 3. The Hattiesburg plant should be in Zone 2A with a minus 40-cent location adjustment. The Jackson, Meridian and Canton plants should be in Zone 3 with a minus 50-cent location adjustment. The 10-cent lower Class I differential at plants in Zone 3 is warranted by the 80 or more miles separating the pool plants in Zone 2A and Zone 3.

Zone 4 should be divided into a Zone 3A and Zone 4. Under such zoning, a plant at Kosciusko, Mississippi, would be in Zone 3A and the plant at Columbus, Mississippi, would remain in Zone 4. Currently, the two plants are in Zone 4 and have the same Class I differential. Under the zoning adopted herein, the plant at Kosciusko would have a 10-cent higher Class I differential than the plant at Columbus. The 10-cent higher price is justified on the basis that Columbus is located about 283 miles from New Orleans while Kosciusko is approximately 239 miles from New Orleans. The 40-50 miles that the Columbus plant is beyond the Kosciusko plant warrants the 10-cent difference in Class I differentials at the two locations.

Zone 5 should be continued with no change in the area within the zone. The location adjustment for the zone should be minus 80 cents. The two pool plants that would be affected by such pricing are Grenada Farms, Grenada, Mississippi, and Elliott Dairy, Amory, Mississippi. There was no opposition to the location adjustment proposed for Zone 5.

In Zone 6, a minus 95-cent location adjustment should apply. This would result in a Class I differential of $2.90 at a plant in Tupelo. Although the Tupelo plant operator contended that the Class I differential at Tupelo should not exceed the Class I differential of $2.85 that applies at a Huntsville, Alabama, plant, the Class I differential must be held at the $2.90 level to provide price alignment with the Memphis market. Tupelo is located in the same price zone under the Memphis order as a nearby plant at Oxford, Mississippi, that is regulated under the Memphis order. A $2.90 Class I differential is provided for this zone under the Memphis order. [Official notice is taken of an emergency decision on proposed amendments to the marketing agreement and the order regulating the handling of milk in the Memphis, Tennessee, marketing area that was published in the Federal Register on May 16, 1986 (51 FR 17982–17986).] Accordingly, inter-market price alignment will be maintained with the adoption of a $2.90 Class I differential for Zone 6 under the New Orleans-Mississippi order.

The plant location adjustments under the New Orleans-Mississippi order for the marketing area covered by the Greater Louisiana order should be coordinated with the Class I differentials that apply at plants regulated by the Greater Louisiana order. This can be accomplished by providing the following plant location adjustments for the zones of the Greater Louisiana order: Zone I, minus 57 cents; Zone II, minus 30 cents and Zone III, minus 7 cents.

For milk received at a plant located outside the States of Mississippi, Alabama or Louisiana and the Florida counties of Escambia or Santa Rosa and more than 150 miles from the City Hall in New Orleans, the Class I price should be reduced by 45 cents plus an additional reduction of 2.5 cents per 10 miles or fraction thereof that the plant is more than 160 miles from the New Orleans Hall. The plant location adjustment rate of 2.5 cents per hundredweight per 10 miles for the New Orleans-Mississippi order is the same as that proposed by DI for the other 7 Federal orders for which the cooperative proposed changes in the location adjustment. On the basis of mileage from New Orleans, a plant in the Chicago area would have a Class I differential of $1.475 [$3.85—45 cents—(77 10-mile zones x $0.25)]. Such price approximates the $1.40 Class I differential mandated for the Chicago Regional order.

Plant location adjustment rates for the Greater Louisiana order—Part 1098. The location adjustment provisions of the Greater Louisiana order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1,

1986. For a plant located in the marketing area, no location adjustment should apply in Zone I, a plus 27-cent adjustment should apply in Zone II and a plus 50-cent adjustment should apply in Zone III. For a plant located outside the marketing area, the following location adjustments should apply:

(1) For a plant located in any of the following Louisiana parishes, the adjustment should be:

(i) Plus 57 cents.

Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, Terrebonne.

(ii) Plus 37 cents.

St. Tammany, Tangipahoa, Washington.

(2) For a plant located in any of the following Mississippi counties, the adjustment should be:

(i) Plus 37 cents.

George, Hancock, Harrison, Jackson, Pearl River, Stone.

(ii) Plus 17 cents.

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Walthal, Wayne and Wilkinson.

(iii) Plus 7 cents.

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren and Yazoo.

(3) For a plant located in any of the following Texas counties, the adjustment should be:

(i) Plus 54 cents.

Chambers, Hardin, Harris, Jefferson, Liberty, Orange.

(ii) Plus 37 cents.

Jasper, Newton, Polk, Tyler.

(iii) No adjustment.

Angelina, Cass, Harrison, Gregg, Marion, Nacogodoches, Panola, Rusk, Sabine, San Augustine, Shelby, Upshur.

(4) For a plant located outside of the areas described in the above paragraphs (1) through (3) and located more than 50 miles by the shortest hard-surfaced highway distance, as determined by the market administrator, from the nearer of the City Hall in Monroe or Shreveport, Louisiana, the adjustment should be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof.

The current location adjustments for Zone I, Zone II and Zone III are no adjustment, plus 19 cents, and plus 38 cents, respectively. Of the 12 pool plants regulated under the Greater Louisiana order, 7 are located in Zone I, none in Zone II and 5 in Zone III.

There was no controversy regarding location adjustment pricing for Zone I and Zone II. In Zone I, which includes the Shreveport area, no location adjustment applies currently and no change was proposed. Although there are no pool plants in Zone II, it is reasonable to provide for a 27-cent plus location adjustment for that zone in the event a plant should someday be located there. Zone II is the midpoint between Zone I, which provides for no adjustment, and Zone III, for which a plus 50-cent adjustment was proposed and is adopted herein.

A handler who operates a pool plant at New Orleans that is regulated under the New Orleans-Mississippi order testified on behalf of five dairies (including his own) located in Zone 1 of the New Orleans-Mississippi order, which would have a $3.65 Class I differential. These dairies requested that the Class I differential in Zone III of the Greater Louisiana order be continued at the same level as the New Orleans price. The witness indicated that currently the Class I differentials in these two areas are identical.

DI offered an amended proposal at the hearing that would have provided a $3.65 Class I differential for Zone III. The cooperative proposed that the Class I differential for Zone I of the Greater Louisiana order be increased from the mandated $3.28 to $3.35. Such differential in conjunction with the 50-cent plus location adjustment that DI proposed for Zone III would have maintained the Class I price relationship that had existed between plants in Zone III of the Greater Louisiana order and Zone I of the New Orleans-Mississippi order. Objections to the receipt of testimony on the amended proposal were made at the hearing and were sustained by the Administrative Law Judge. As a consequence, DI then supported its proposal as published in the hearing notice.

A representative of Dairy Fresh, which operates a plant at Baton Rouge, Louisiana, proposed that the existing plus 38-cent location adjustment for Zone III be continued. Such adjustment in conjunction with the mandated differential of $3.28 at Shreveport would result in a Class I differential for Zone III (which includes Baton Rouge) of $3.66.

While the Baton Rouge and Lake Charles plants have had the same Class I differentials as plants in Zone 1 of the New Orleans-Mississippi order, a lower price for the Zone III area of Greater Louisiana is appropriate. On the basis of a north-south location, Baton Rouge lies on an east-west line that is approximately 20 to 25 miles north of New Orleans. On the basis of such mileage, a Class I differential that is 7 cents less than New Orleans will provide appropriate pricing for the Zone III area.

For plants located in the New Orleans-Mississippi marketing area in Zones 1 through 3, plant location adjustments should be established that will provide Class I differentials for plants regulated by this order at the same level as would prevail if the plants were regulated by the New Orleans-Mississippi order.

For milk received at a plant located in the Texas counties of Angelina, Cass, Harrison, Gregg, Marion, Nacogodoches, Panola, Rusk, Sabine, San Augustine, Shelby or Upshur, no adjustment should be made to the Class I price. Currently, no location adjustment applies at plants located in any of these 12 Texas counties and none was proposed.

The location adjustment should be a plus 54 cents for milk received at a plant located in the Texas counties of Chambers, Hardin, Harris, Jefferson, Liberty and Orange. Such adjustment would result in a $3.82 Class I differential for milk received in the 6-county area. The same level of Class I pricing under the Texas order would apply in the 6-county area under the location adjustment proposed in the notice of hearing involving the Texas order (official notice is taken of such notice of hearing appearing in the Federal Register at 51 FR 6250).

For milk received at a plant located in the Texas counties of Jasper, Newton, Polk and Tyler, a location adjustment of plus 22 cents should apply. Such adjustment would result in a $3.50 Class I differential for milk received at a plant in the 4-county area. Currently, a plus 19-cent adjustment applies in the 4-county area. Although DI proposed that a plus 37-cent location adjustment should apply in these four Texas counties, the cooperative provided no specific basis for the 18-cent increase.

We presume that the cooperative intended that the Class I differential at plants in Jasper, Newton, Polk or Tyler be the same whether regulated under the Greater Louisiana order or the Texas order. The adjustment of plus 22 cents that is adopted herein would provide the same level of Class I pricing that would prevail under the Texas order in the four Texas counties if the location adjustment proposed for such counties in the notice of hearing involving the Texas order is adopted.

In the event that the location adjustments proposed for the 6-county and 4-county area, respectively, under the Texas order are not adopted as proposed, any accommodation to such change under the Greater Louisiana order can be handled in a final decision.

For milk received at a plant outside the marketing area and outside those areas in Louisiana, Mississippi and Texas in which either plus adjustments or no adjustments are specified under this order and located more than 50 miles from the nearer of the City Hall in Monroe or Shreveport, Louisiana, the Class I price should be reduced 2.2 cents per hundredweight for each 10 miles or fraction thereof that the plant is located from the nearest of such City Halls. The plant location adjustment rate of 2.2 cents per 10 miles for the Greater Louisiana order is 0.3 cents less than the rate proposed by DI for this order and the other 7 Federal orders for which the cooperative proposed changes in the location adjustment rates. On the basis of mileage from Shreveport and the 2.5-cent rate, a plant in the Chicago area would have a Class I differential of $1.13 [$3.28−(86 10-mile zones×$.025)]. Such price is 27 cents less than the $1.40 Class I differential mandated for the Chicago Regional order. Top achieve the needed Class I price alignment, a lower rate is needed. A rate of 2.2 cents per 10 miles would reduce the Class I differential for a plant in the Chicago area to $1.368 and achieve the needed Class I price alignment.

Plant location adjustment rate for the Nashville, Tennessee, order—Part 1098. The location adjustment provisions of the Nashville, Tennessee, order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. For milk received from producers which is classified as Class I milk, the Class I price should be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg, and Whitley, the Class I price should be decreased by a location adjustment of 28 cents;

(2) For such milk that is physically received at plants located within the defined marketing area of the Paducah, Kentucky, Federal Milk Marketing Order Part 1099, excluding those counties specified in the above paragraph (1), the Class I price should be decreased by a location adjustment of 13 cents;

(3) For such milk that is physically received at plants located outside the areas specified in the above paragraphs (1) or (2) and north of the northern boundary of Tennessee or the northern boundary of North Carolina and more than 50 miles from the State Capitol in Nashville by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price should be reduced by 17.5 cents plus an additional reduction of 2.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the State Capitol; and

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, no adjustment should be made.

The location adjustments for the Nashville order were proposed by DI. There was no opposition to the rates proposed.

There are only three pool plants currently regulated under the Nashville order. Purity Dairies at Nashville, Tennessee, and DI's plant at Lewisburg, Tennessee, are in the area in which no location adjustment applies. At such plants, the mandated Class I differential of $2.52 for the Nashville order would apply. The third plant is Model Pure Milk at Hopkinsville, Kentucky. This plant is located in Christian County, Kentucky, and a location adjustment of minus 28 cents should apply at such plant location.

A location adjustment of 28 cents for the Hopkinsville location is appropriate. Hopkinsville is situated in the triangular area formed by drawing a line from Evansville, Indiana, to Paducah, from Paducah to Nashville, and from Nashville to Evansville. The mandated Class I differentials for the three locations are $2.11 for Evansville, $2.39 for Paducah and $2.52 at Nashville.

The minus 28-cent location adjustment will result in similar Class I pricing for the Hopkinsville plant and the plant at Madisonville, Kentucky, which is regulated under the Louisville-Lexington-Evansville order. As noted in the discussion of the plant location adjustment rate for the Louisville-Lexington-Evansville order, the Class I differential would be $2.26 at Madisonville. The location adjustment of minus 26 cents from the Nashville Class I differential of $2.52 would result in a $2.26 Class I differential at Hopkinsville.

For milk received at a plant north of the northern boundary of the States of Tennessee and North Carolina (except those Kentucky counties where minus location adjustments of 13 cents and 26 cents apply) and more than 50 miles from the State Capitol in Nashville, the Class I price should be reduced 17.5 cents plus an additional reduction of 2.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the State Capitol. The plant location adjustment rate of 2.5 cents per hundredweight per 10 miles for the Nashville order is the same as that proposed by DI for the other 7 Federal orders for which the cooperative proposed changes in the location adjustment rates. On the basis of mileage from Nashville, a plant in the Chicago area would have a Class I differential of $1.395 [$2.52−(45 10-mile zones×$.025)]. Such price is equivalent to the $1.40 Class I differential mandated for the Chicago Regional order.

Plant location adjustment rate for the Paducah, Kentucky, order—Part 1099. The location adjustment provisions of the Paducah, Kentucky, order should be amended so that the value of producer milk at various plants will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary of the State of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit, the Class I price should be reduced by 12.5 cents, plus an additional reduction of 2.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

The order currently provides for a plant location adjustment of minus 7.5 cents per hundredweight for a plant located more than 40 but less than 50 miles from the nearest County Courthouse in any of the counties included in the marketing area. Beyond 50 miles, an additional adjustment of minus 1.5 cents per 10 miles or fraction thereof applies.

The rate adopted herein was proposed by Dairymen, Inc. There was no opposition to the proposed rate.

There is only one pool plant regulated under the Paducah order. The plant is not eligible for a location adjustment since it is within 40 miles of the nearest County Courthouse of any county in the marketing area.

The plant location adjustment rate of 2.5 cents per hundredweight per 10 miles for the Paducah order is the same as that proposed by DI for the other seven Federal orders for which the cooperative proposed changes in the location

adjustment rates. The mandated Class I differentials for the eight orders reflect a rate of about 2.5 cents from Chicago, Illinois. On the basis of mileage from Paducah, a plant in the Chicago area would have a Class I differential of $1.465 [$2.39—(37 10-mile zones×$0.25)]. Such pricing approximates the $1.40 Class I differential mandated for the Chicago Regional order. Thus, the use of the 2.5-cent rate to provide location adjustments under the Paducah order should result in a Class I alignment at plant locations north of Kentucky.

2. *Class I differential applicable under eight southeastern Federal milk orders on bulk milk transferred from a pool plant to an other order plant.* No change should be made in the Class I differentials applicable on bulk milk transferred to an other order plant from a pool plant regulated under either the Georgia, Tennessee Valley, Louisville-Lexington-Evansville, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, Nashville, or Paducah Federal milk orders.

DI proposed that the plant location adjustment provisions of these eight orders be changed to provide that milk transferred to an other order plant for Class I use from a pool plant regulated by one of these orders would be subject to a Class I price that is not less than the Class I price that would apply at the transferor plant if it were regulated under the other Federal milk order. The three Florida orders included in the notice of hearing currently contain such provisions. Under the proposed change, the amount of the location adjustment to handlers would be limited so that the Class I price for milk moved to other order plants would not be less than the Class I price applicable to handlers who are competing for Class I sales with the transferee plant.

National Farmers Organization opposed the proposed change on the basis that no marketing conditions exist to warrant the change.

The proposed change in the pricing of bulk milk transferred from a pool plant to an other order plant should not be made on the basis of this record. There was no indication that a pricing problem was present under the Class I differentials existing in the eight orders prior to May 1, 1986, or that a pricing problem was likely to develop under the Class I differentials that became effective on May 1, 1986. In the event a marketing problem does occur, then a hearing can be called to address that problem and amendatory language necessary to correct the problem can be considered on the basis of the actual marketing situation.

Another consideration in the eight southeastern orders is that the proposed change would have very limited applicability. The reason for this limited applicability is that the plant location adjustment rates for the individual orders, with the exception of the Greater Louisiana order, use a rate of 2.5 cents per 10 miles which, according to the record evidence, approximates the price surface in the Class I differentials of the eight southeastern orders that became effective on May 1, 1986. To illustrate this point, a Louisville plant regulated under the Louisville order would have a Class I differential of $2.11, while a Louisville plant regulated under the Georgia order would have a $2.18 Class I differential ($3.08 Class I differential at Atlanta less a 90-cent location adjustment).

3. *The need for emergency action with respect to issues No. 1 and 2.* A recommended decision is omitted on the basis that the due and timely execution of the Secretary's functions require such omission to conform the orders to the Class I differential changes that became effective on May 1, 1986. However, this decision should be issued as an interim final decision so that interested parties have an opportunity to file exceptions to the changes in the orders adopted with this decision.

The hearing notice states that evidence would be taken to determine whether conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure. Much of the testimony at the hearing on the need to omit a recommended decision centered on the view that the Department should have in place by May 1, 1986 amendments to the location adjustment provisions of the 35 Federal orders to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986.

In their briefs, DI and Beatrice Foods supported the omission of a recommended decision. NFO opposed the omission of a recommended decision. Five proprietary plant operators and three Florida cooperatives expressed no position in their briefs on the omission of a recommended decision. Counsel for several proprietary plant operators requested that an interim final decision be issued covering location adjustments for the Murfreesboro, Tennessee, plant and possibly the plant at London, Kentucky. For all other issues, Counsel requested additional briefing time and suggested that a recommended decision be issued covering such issues.

The complexity of the issues and the diversity of opinion regarding the proposals under consideration warrant the issuance of an interim final decision. This procedure will provide interested parties an opportunity to file exceptions to this interim final decision and, thereby, assist the Department in tailoring amendments so that the value of producer milk under each of the 11 orders at various plant locations will be aligned on an intra-market and inter-market basis to reflect changes in the Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A written statement by the Honorable H.L. Callahan, United States Congressman, First District of Alabama, was submitted at the hearing by Dairy Fresh. An additional copy of the statement, the letter transmitting such copy to the Department, and the Department's response thereto were filed with the Hearing Clerk and made a part of the record. The statement set forth several concerns regarding the level of Class I pricing proposed by Dairymen, Inc., for portions of the marketing areas of Federal Orders No. 93, 94 and 96. As indicated in the Department's response, the Congressman's statement was made part of the record to be considered in this proceeding.

A request was made by Counsel in briefs filed on behalf of several proprietary plants that the Secretary in reviewing the record for substantial record evidence should also make findings on "the basis of relevant evidence which was withheld by DI or was presented in only general form when specific data would be more probative." The Department's rules of procedure (7 CFR 900.9(b)) provide that in the filing of briefs, proposed findings and conclusions "factual material other than that adduced at the hearing or subject to official notice shall not be

alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order." Obviously, evidence that is withheld or specific data that is not presented at a hearing is outside the scope of this proceeding. Accordingly, the request must be denied.

In its brief, Dairy Fresh renewed an exception to the ruling of the Administrative Law Judge, upon objection by DI, excluding cross-examination of Mr. Jung (the principal witness for DI) by Counsel for Dairy Fresh on Sunbelt's premium or over-order pricing. If cross-examination had been permitted, Counsel believed it would have shown that "differences in effective prices between various locations do not correspond with greater differences DI has proposed and therefore undermines the economic rationale for DI's proposals."

Later witnesses testified at the hearing regarding the level of over-order prices. Dairy Fresh's representative revealed that between certain locations there was a direct correlation between over-order prices and DI's proposed prices. The locations noted by the Dairy Fresh witness were Hattiesburg and Jackson, Hattiesburg and New Orleans, and Hattiesburg and Kentwood. Another witness testified that the over-order price was the same in Georgia and South Carolina and the effective price was the same in Macon and Waycross, Georgia. This witness pointed out that DI now asserts a new price relationship should be established between such locations.

With regard to Dairy Fresh's request for a finding that "effective negotiated prices in differences now established under the Federal Orders and do not correspond with differences proposed by DI to be adopted by regulation", such finding would be in conflict with Dairy Fresh's testimony as noted in the immediately preceding paragraph. In any event, the degree of correlation between over-order prices at various market locations and the location adjustments proposed by DI was not a controlling factor in the adjustments adopted herein.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act as amended by the Food Security Act of 1985;

(b) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

(c) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made part hereof are two documents, as Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

November 1985 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the interim orders, as amended and as hereby proposed to be amended by interim orders, regulating the handling of milk in the aforesaid marketing areas, except the Louisville-Lexington-Evansville marketing area, is appproved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 20th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the order as amended and as hereby proposed to be amended by an interim order, regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during the representative period were engaged in the production of milk for sale within the marketing area.

The representative period for the conduct of such referendum is hereby determined to be November 1985.

The agent of the Secretary to conduct such referendum is hereby designated to be Armold M. Stallings.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099

Milk marketing orders, Milk, Dairy products.

Signed at Washinton, D.C., on May 28, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Interim Order [1] amending the orders, regulating the handling of milk in certain specified marketing areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.52, the table contained in paragraph (a) is revised to read as follows:

§ 1006.52 Plant location adjustments for handlers.

(a) * * *

Location of plant	Rate per cwt.
Outside the State of Florida:	
In excess of 70 but not more than 85 miles.	Subtract 15 cents.
For each additional 10 miles or fraction thereof	Subtract 2.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	Add 30 cents.
In the defined marketing area of Part 1013.	Add 60 cents.
The remaining area within the State of Florida.	No adjustment.

* * * * *

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.52, paragraphs (a) and (b) are revised to read as follows:

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purposes of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Bartow, Cherokee, Dawson, Floyd, Forsyth, Gilmer, Gordon, Habersham, Hall, Lumpkin, Pickens, Towns, Union, and White.

(2) "North Central Zone" means all the territory in the following Georgia counties:

Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, DeKalb, Douglas, Elbert, Fayette, Franklin, Fulton, Greene, Gwinnett, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lamar, Lincoln, Madison, Meriwether, Morgan, Newton, Oconee, Oglethorpe, Paulding, Pike, Polk, Putnam, Rockdale, Spalding, Stephens, Taliferro, Troup, Walton, and Wilkes.

(3) "South Central Zone" means all the territory in the following Georgia counties:

Baldwin, Bibb, Bleckley, Burke, Chattahoochee, Columbia, Crawford, Crisp, Dodge, Dooly, Emanuel, Glascock, Hancock, Harris, Houston, Jefferson, Jenkins, Johnson, Jones, Laurens, Macon, Marion, McDuffie, Monroe, Muscogee, Peach, Pulaski, Richmond, Schley, Stewart, Sumter, Talbot, Taylor, Treutlen, Twiggs, Upson, Warren, Washington, Webster, Wilcox, and Wilkinson.

(4) "Southern Zone" means all the territory within the marketing area not specified in subparagraphs (1), (2), or (3) of this paragraph.

(b) The Class I price for producer milk at a plant located outside the North Central Zone shall be adjusted as follows:

(1) For producer milk at a plant located in the "Northern Zone" the Class I price shall be reduced by 15 cents;

(2) For producer milk at a plant located in the "South Central Zone" the Class I price shall be increased by 10 cents;

(3) For producer milk at a plant located in the "Southern Zone" the Class I price shall be increased by 30 cents;

(4) For producer milk at a plant located in the State of North Carolina the Class I price shall be decreased by 11 cents;

(5) For producer milk at a plant located in the Tennessee Valley marketing area the Class I price shall be decreased by 3¢ cents;

(6) For producer milk at a plant located outside the marketing area and outside the Tennessee Valley marketing area and south of the southern boundary of the States of Tennessee and North Carolina the Class I price shall be the Class I price applicable at the nearer of the city halls in Augusta, Savannah, Lavonia, Waycross, Albany, Columbus, Atlanta, and Rome, Georgia; and

(7) For producer milk at a plant located outside the areas specified in subparagraph (1), (2), (3), (4), (5) or (6) of this paragraph the Class I price shall be reduced 20 cents and an additional 2.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall in Atlanta, Georgia.

* * * * *

2. In § 1007.61, paragraph (a)(3) is revised to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1007.75;

* * * * *

3. In § 1007.75, paragraph (a) is revised to read as follows:

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk is physically received at the rates set forth in § 1007.52(b); and

* * * * *

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.52, paragraph (a) is revised to read as follows:

§ 1011.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1011.9(c) or (d) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk which is physically received at a plant located within the State of North Carolina, or a plant located outside the Georgia counties in the marketing area and south of the southern boundary of the States of North Carolina and Tennessee, the Class I price shall be increased by 20 cents;

(2) No adjustment shall be applicable on such milk which is physically received at a plant located within the marketing area except the Kentucky portion of the marketing area, or in the State of Virginia;

(3) For such milk which is physically received at a plant located within the Kentucky counties of Bell, Breathitt, Clay, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Perry, Pulaski, and Whitley, the Class I price shall be decreased by 32 cents; and

(4) For such milk which is physically received at a plant located more than 90 miles by the shortest hard-surfaced highway distance as determined by the market administrator from the nearest of the city halls of Bristol, Chattanooga, and Knoxville, Tennessee, and outside the areas specified in subparagraph (1), (2), or (3) of this paragraph, the Class I price applicable at the nearer of the city halls in Bristol, Chattanooga, or Knoxville, Tennessee shall be reduced by 2.5 cents for each 10 miles or fraction thereof that such plant is from the nearest of the city halls in Bristol, Chattanooga, and Knoxville, Tennessee.

* * * * *

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.52, the table contained in paragraph (a) is revised to read as follows:

§ 1012.52 Plant location adjustments for handlers.

(a) * * *

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the city hall in Tampa, Fla.	Subtract 2.0 cents.
Inside the State of Florida:	
In the defined marketing area of Part 1013.	Add 20 cents.
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	No adjustment.
The remaining area within the State of Florida.	Minus 20 cents.

* * * * *

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.52, the table contained in paragraph (a) is revised to read as follows:

§ 1013.52 Plant location adjustments for handlers.

(a) * * *

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the U.S. Post Office in West Palm Beach, Fla.	Subtract 2.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of this order.	Subtract 30 cents.
The remaining area within the State of Florida.	Subtract 60 cents.

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.52, paragraph (a) is revised to read as follows:

§ 1046.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1046.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg and Whitley, the Class I price shall be increased by a location adjustment of 15 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingstone, Marshall and McCracken and the Missouri counties of Mississippi, New Madrid, Pemiscot and Scot, the Class I price shall be increased by a location adjustment of 28 cents;

(3) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, the Class I price shall be increased by a location adjustment of 41 cents;

(4) For such milk that is physically received at plants located in the marketing area or the state of Kentucky and outside the areas specified in paragraphs (1), (2), or (3) of this section, no location adjustment shall apply; and

(5) For such milk that is physically received at plants located outside the areas specified in paragraph (1), (2), (3), or (4) of this section, and 85 miles or more from the City Halls in Louisville and Lexington, Kentucky, and Evansville, Indiana, by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by a location adjustment of 2.5 cents for each 10 miles or fraction thereof that such plant is from the City Hall in Louisville, Lexington or Evansville, whichever is nearest.

* * * * *

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.52, the table contained in paragraph (a)(i) is revised to read as follows:

§ 1093.52 Plant location adjustments to handlers.

(a) * * *

(1) * * *

Zone:	Adjustment per hundredweight,
1	Minus 23 cents.
2	No adjustment.
3	Plus 27 cents.
4	Plus 57 cents.
4a	Plus 30 cents.

* * * * *

2. In § 1093.52(a)(2), the provision "20" is revised to read "31".

3. In § 1093.52(a)(3), the provision "45" is revised to read "56".

4. In § 1093.52(a)(4), the provision "20 cents. Such minus adjustment shall be increased 1.5" is revised to read "23 cents. Such minus adjustment shall be increased 2.5".

5. In § 1093.52(a)(5), the provision "55" is revised to read "50".

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.2, ZONE 3 and ZONE 4 are revised and zone 2A and zone 3A are added to read as follows:

§ 1094.2 New Orleans-Mississippi marketing area.

* * * * *

Zone 2A

Mississippi Counties

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthal, Wayne, and Wilkinson.

Zone 3

Mississippi Counties

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

Zone 3A

Mississippi Counties

Attala, Holmes, Humphreys, Noxubee, Washington, and Winston.

Zone 4

Mississippi Counties

Bolivar, Carroll, Choctaw, Leflore, Lowndes, Montgomery, Oktibbeha, Sunflower, and Webster.

* * * * *

2. In § 1094.52(a)(1), the table is revised to read as follows:

§ 1094.52 Plant location adjustment for handlers.

(a) * * *

(1) * * *

Zone:	Adjustment per cwt.
1	No adjustment.
2	Minus 20 cents.
2A	Minus 40 cents.
3	Minus 50 cents.
3A	Minus 65 cents.
4	Minus 75 cents.
5	Minus 80 cents.
6	Minus 95 cents.

* * * * *

3. In § 1094.52(a)(2)(i), the provision "No adjustment" is revised to read "Minus 7 cents".

4. In § 1094.52(a)(2)(ii), the provision "19" is revised to read "30".

5. In § 1094.52(a)(2)(iii), the provision "38" is revised to read "57".

6. In § 1094.52(a)(3), the provision "65" is revised to read "95".

7. In § 1094.52(a)(5), the provision "1.5" is revised to read "2.5".

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.52, paragraph (a) is revised to read as follows:

§ 1096.52 Plant location adjustments to handlers.

(a) For milk received at a plant from producers or a handler described in § 1096.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price computed pursuant to § 1096.50(a) shall be adjusted by an amount determined pursuant to paragraphs (a)(1) through (5) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1096.2, the adjustment shall be as follows:

Zone:	Adjustment per hundredweight
I	No adjustment.
II	Plus 27 cents.
III	Plus 50 cents.

(2) For a plant located in any of the following Louisiana parishes, the adjustment shall be as follows:

(i) Plus 57 cents.

Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, Terrebonne.

(ii) Plus 37 cents.

St. Tammany, Tangipahoa, Washington.

3. For a plant located in any of the following Mississippi counties, the adjustment shall be as follows:

(i) Plus 37 cents.

George, Hancock, Harrison, Jackson, Pearl River, Stone.

(ii) Plus 17 cents.

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Walthal, Wayne and Wilkinson.

(iii) Plus 7 cents.

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Warren and Yazoo.

(4) For a plant located in any of the following Texas counties, the adjustment shall be as follows:

(i) Plus 54 cents.

Chambers, Hardin, Harris, Jefferson, Liberty, Orange.

(ii) Plus 37 cents.

Jasper, Newton, Polk, Tyler.

(iii) No adjustment.

Angelina, Cass, Harrison, Gregg, Marion, Nacogdoches, Panola, Rusk, Sabine, San Augustine, Shelby, Upshur.

(5) For a plant located outside of the areas described in paragraphs (a)(1) through (4) of this section and located more than 50 miles by the shortest hard-surfaced highway distance, as determined by the market administrator, from the nearer of the City Hall in Monroe or Shreveport, Louisiana, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof.

* * * * *

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. In § 1098.52, paragraph (a) is revised to read as follows:

§ 1098.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1098.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg, and Whitley, the Class I price shall be decreased by a location adjustment of 25 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingstone, Marshall and McCracken and the Missouri counties of Mississippi, New Madrid, Pemiscot and Scot, the Class I price shall be decreased by a location adjustment of 13 cents;

(3) For such milk that is physically received at plants located outside the areas specified in paragraph (1) or (2) of this section and north of the northern boundary of Tennessee or the northern boundary of North Carolina and more than 50 miles from the State Capitol in Nashville by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by 17.5 cents plus 2.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the State Capitol; and

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, no adjustment shall be made under this paragraph.

* * * * *

PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. In § 1099.52, paragraph (a) is revised to read as follows:

§ 1099.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary

of the State of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1099.50(a) shall be reduced by 12.5 cents, plus 2.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

* * * * *

Tentative Interim Marketing Agreement Regulating the Handling of Milk in the Georgia and Certain Other Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provision of §§ [1] to, all inclusive, of the order regulating the handling of milk in the said marketing area (7 CFR PART [2]) which is annexed hereto; and

II. The following provisions:

§ [3] *Record of milk handled and authorization to correct typographical errors.* (Seal)

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of November 1985, [illegible] hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] *Effective date.* This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

IN WITNESS WHEREOF, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

By (Name) (Title)

(Address)

Attest

Date

[1] First and last sections of order.

[2] Appropriate part number.

[3] Next consecutive section number.

[FR Doc. 86-12370 Filed 6-4-86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities loan and grant servicing regulations to implement Pub. L. 99-88. This action is being taken to comply with Title I of Pub. L. 99-88 which gives certain FmHA Water and Waste Disposal (WWD) and Community Facility (CF) borrowers a choice of the interest rates on their loans. The law applies to WWD and CF loans closed or approved on or after November 12, 1983. The effect of this rule is to establish the procedures for FmHA to service those loans closed on or after November 12, 1983, in which the borrower requests a change of loan interest rate. This amendment also implements Pub. L. 99-198. Title XIII of Pub. L. 99-198 changes the criteria for determining what interest rate must apply to certain WWD and CF loans. This rule establishes procedures for FmHA to service those loans closed on or after December 23, 1985, and before March 25, 1986, wherein the interest rate in effect at the time of loan closing may be lower due to the provision of Pub. L. 99-198.

DATES: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Bonnie Justice, Loan Specialist, Community Facilities Division, (202) 382-1490, or William F. Hagy, Loan Specialist, Water and Waste Disposal Division, (202) 382-9636, Farmers Home Administration, USDA, South Building, 14th and Independence Avenue SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "non-major" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or price for consumers, individual industries; Federal, State or Local Government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.418 and 10.423 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. (49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The Office of Management and Budget's (OMB) clearance has been obtained for the reporting and recordkeeping requirement which this rule places on the public. This requirement stems from the borrower's notification, in writing, to FmHA that they request to change the interest rate on their loan(s) in accordance with Pub. L. 99-88 or wish to retain the original interest rate. The OMB approval number is 0575-0066.

This rule implements FmHA's servicing of loans and grants closed on or after November 12, 1983, when the borrower requests a change of interest rate. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

Pub. L. 99-88 requires that effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by FmHA to WWD and CF borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing and any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Until Pub. L. 99-88, WWD and CF borrowers did not have a choice of the interest rate of their loans. The

interest rate was established on the date of loan approval and the loan was closed at that rate.

Pub. L. 99–198 requires that the interest rate will not exceed 5 per centum per annum for loans that meet certain other requirements and where the median household income of the persons to be served by such facility is below the higher of 80 per centum of the statewide nonmetropolitan median household income or the poverty line established by the Office of Management and Budget, as revised under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Pub. L. 99–198 further requires the interest rate not be in excess of 7 per centum per annum on loans for such facilities that do not qualify for the 5 per centum interest rate but are located in areas where the median household income of the persons to be served by the facility does not exceed 100 per centum of the statewide nonmetropolitan median household income. For those WWD and CF borrowers whose loan(s) was closed on or after December 23, 1985, and before March 25, 1986, the loan will be re-evaluated based upon the provisions of Pub. L. 99–198, and if the interest rate at time of loan closing would have been lower based upon the provisions of Pub. L. 99–198, the borrower will have a choice of interest rate, in accordance with Pub. L. 99–88. If the borrower requests the lower rate, FmHA will administratively accomplish the resulting change of interest rate.

FmHA adds a provision to Subpart E of Part 1951 to service loans closed on or After November 12, 1985, to allow borrowers to request that their interest rate be changed and to administratively accomplish the resulting change in interest rate for WWD and CF loans. This action will bring existing FmHA Community Facility servicing regulations into compliance with Pub. L. 99–88 and Pub. L. 99–198.

FmHA amends Subpart E of Part 1951 by adding § 1951.221 to auhorize that, upon request of the borrower, FmHA will change the interest rate on a closed WWD or CF loan.

On March 3, 1986, a proposed rule was published in the Federal Register (51 FR 7282) for a 30-day review and comment period. Following is a summary of the comments received from the public review process and FmHA's responses.

a. Two comments were received concerning the use of the date of November 12, 1985, for offering borrowers, with loans closed on or after that date, a choice of interest rate of the lower of the rates in effect at either the time of loan approval or loan closing. Commentors felt that the provision should be effective October 1, 1985, or October 1, 1981, and the law should be changed accordingly. The date of November 12, 1985, remains in the final rule because this is the date set forth in Pub. L. 99–88 and unless legislation amends this date, FmHA has no authority to use another date.

b. One comment was received suggesting that there must be a legally binding instrument to evidence the change in interest rate and the instrument should be affixed to the bond. When FmHA administratively changes the interest rate for a loan, a copy of the borrower's letter to FmHA, signed by a duly authorized official requesting the interest rate change, will be attached to the debt instrument. The borrower is responsible to assure that the borrower official executing the letter is duly authorized and any action(s) necessary for this authorization has been taken as required. Any costs associated with a change in interest rate will be the responsibility of the borrower. FmHA has added a provision to § 1951.211(b) to clarify this borrower responsibility. FmHA has determined that no change to the debt instrument is necessary to accomplish the change of interest rate.

c. One comment was received suggesting that formal action should be taken so that the borrower will be assured that the lower interest change would be continued and suggested that the borrower adopt an amending ordinance modifying the interest rate and stamp a brief legend on the face of each bond so that any potential subsequent bondholder will be apprised of the reduced rate should FmHA sell the bonds at a future date. FmHA has determined that attaching the borrower's request, signed by an authorized borrower official, for an interest rate change to the bond instrument is sufficient to proceed with the administrative change of interest rate and would notify any interested third party of the change. The borrower is responsible to assure that any action(s) necessary for this authorization has been taken as required.

d. Several comments were received concerning FmHA administratively changing the interest rate but not reducing the loan installment payments for amortized accounts. One commentor stated that if FmHA can administratively change the interest rate in a borrower's account, the installment schedule could also be changed. Several commentors indicated that not reducing the payment installment amounts for amortized accounts penalizes those borrowers; that even though the loan is repaid earlier by not reducing the installment amount, lower payments are needed to reduce user rates so that present users could benefit from the lower interest rate through reduced user rates, rather than future users benefiting after the loan is repaid. Loan installment schedules are specifically set forth in debt instruments for loans with amortized accounts, therefore FmHA cannot administratively change that installment schedule. A new or amended debt instrument would be necessary and would, in most instances, result in costs to the borrower. FmHA determines, at the time of loan approval, that a project is economically feasible and the user rates are reasonable compared to other similar systems in the project area. A provision is included in § 1951.207 (f) of this Subpart for reamortization of a loan account if a borrower needs a reduced installment to provide for a sound operation.

e. Several commentors indicated that loan reamortization is expensive due to legal costs associated with a new or replacement debt instrument. FmHA has determined that changing the interest rate administratively will not place this burden of expense upon the borrowers.

FmHA has made changes to § 1951.221 (a) to implement Pub. L. 99–198 for loans closed on or after December 23, 1985 and before March 25, 1986, and added an Exhibit E, "Interest Rate Requirements and Effective Dates" for use by FmHA personnel to determine loan closing interest rates. This Exhibit will be available to the public, upon request, at any FmHA office. FmHA also changed § 1951.221 (b)(2) to clarify the requirement for the borrower response to FmHA within a 90 calendar day period. In addition, § 1951.250 is added to show OMB control number.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

Subpart E—Servicing of Community Program Loans and Grants

2. Section 1951.221 is added and reads as follows:

§ 1951.221 Special provision for interest rate change.

(a) *General.* Pub. L. 99–88 provides that effective November 12, 1985, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing and any FmHA grant funds associated wih such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed November 12, 1985, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after November 12, 1985, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA based upon interest rate requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA office) contains a summary of the interest rate requirements for specific time periods. Exhibit C, of Subpart O of this part will be used to determine the interest rate and effective dates by category of poverty, intermediate and market rates. Loans closed on or after December 23, 1985, and before March 25, 1986, wherein a borrower has received a choice of interest rate under the provisions of Pub. L. 99–88, shall be re-evaluated, utilizing Exhibit E and the changes in qualifying income levels provided in Pub. L. 99–198. If the re-evaluation results in a loan closing interest rate lower than that previously offered the borrower, the borrower will be provided a second choice of interest rate. This second choice of interest rate will be in accordance with this section. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers should notify FmHA within 90 calendar days of the date of FmHA notification indicating the borrower's election to retain the interest rate in effect at loan approval or to change the interest rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90 day period, FmHA will not consider a borrower's future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible to assure that the borrower official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower.

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already made to the loan account(s) will be reversed and reapplied, by FmHA, utilizing the changed interest rate. The balance of loan payments after the completion of the reversal and reapplication procedures will be applied to any delinquency on the account and the balance applied to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.221(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the paid-in-full borrower as a refund unless the borrower is delinquent on another FmHA loan of the same type, in which case the refund will be applied first to the delinquent account and any balance refunded to the borrower.

(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with the notification from the FmHA servicing official. The installment schedule as set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculated by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount.

(4) A borrower with an amortized account, who has requested a change of interest in accordance with this subpart and FmHA has accomplished this change by an administrative adjustment to the loan account, yet a reduction in installment amounts is needed to provide for a sound operation, may request FmHA to consider a reamortization of the account in accordance with § 1951.207(f) of this subpart.

3. Section 1951.250 is added and reads as follows:

§ 1951.250 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0066.

Dated: May 9, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–12649 Filed 6–4–86; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

[Docket No. 60478–6079]

Foreign Policy Controls; Export of Certain Chemicals to Syria

AGENCY: Office of Technology and Policy Analysis Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce, in consultation with the Department of State, is imposing foreign policy controls on the export to Syria of certain chemicals:

Potassium fluoride
Dimethyl methylphosphonate
Methyl phosphonyl difluoride
Thiodiglycol
Dimethylamine
Phosphorus oxychloride
Dimethylamine hydrochloride

Ethylene chlorohydrin (chloroethanol).

A validated license is now required to export any of these chemicals to Syria. This rule is in accordance with U.S. foreign policy, particularly the U.S. policy of opposing the prohibited use of chemical weapons and possible diversion of chemicals for prohibited use, maintaining neutrality in the Iran/Iraq war, and promoting a mediated end to that war.

This rule is issued in consultation with the Department of State and in compliance with all requirements and conditions in Section 6 of the Export Administration Act of 1979, as amended. The report required by section 6 of the Export Administration Act was submitted to the Congress on April 28, 1986.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Country Policy, Export Administration, Telephone: (202) 377-4252.

SUPPLEMENTARY INFORMATION: 1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary of final Regulatory Impact Analysis has to be or will be prepared.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Applicants for the validated export license required by this rule must complete and submit Form ITA-622P. This collection of information requirement has been approved by the Office of Management and Budget under control number 0625-0001.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and § 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

List of Subjects

15 CFR Part 385

Communist countries, exports.

15 CFR Part 399:

Exports.

PART 385—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Part 368–399) are amended as follows:

1. The authority citation for Parts 385 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985; Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

§ 385.4 [Amended]

2. Paragraph (e) of § 385.4 is amended as follows:

In the first sentence, the phrase "to Iran and Iraq" is revised to read "to Iran, Iraq and Syria";

After the third sentence, a new sentence is inserted, reading: "However, applications for Syria will be approved when the export is in performance of a contract or agreement entered into before April 28, 1986."; and

In the last sentence, the phrase "to Iran or Iraq" is revised to read "to Iran, Iraq or Syria".

PART 399—[AMENDED]

3. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

§ 399.1 [Amended]

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the following amendments are made:

The phrase "to Iran and Iraq" is revised to read "to Iran, Iraq and Syria" in the *Validated License Required* paragraph of ECCN 5799D;

The phrase "to Iraq and Iran" is revised to read "to Iran, Iraq and Syria" in the *Reason for Control* paragraph of ECCN 5799D; and

The phrase "to Iran and Iraq" is revised to read "to Iran, Iraq and Syria" in the *Validated License Required* paragraph of ECCN 6799C.

Dated: May 30, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-12069 Filed 6-4-86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Parts 385 and 399

[Docket No. 60476-6076]

Exports of Helicopters; Expansion of Foreign Policy Controls

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains foreign policy controls on exports of certain items to countries that have repeatedly provided support for acts of international terrorism. These countries are Cuba, Iran, Libya, People's Democratic Republic of Yemen, and Syria. Items controlled include crime control and detection equipment, military vehicles and items specially designed to produce certain military equipment, and other commodities specified in Part 385 of the Export Administration Regulations. This rule subjects all helicopters, regardless of weight, to antiterrorism controls if destined for any of the above mentioned countries.

This rule is issued in consultation with the Department of State and in compliance with all requirements and conditions contained in Section 6 of the Export Administration Act of 1979, as amended.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Country Policy, Export Administration, Telephone: (202) 377-4252.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the

United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, like other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

15 CFR Part 385

Communist countries, Exports.

15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

PARTS 385 AND 399—[AMENDED]

Accordingly, Parts 385 and 399 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Parts 385 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 99–223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

§ 385.4 [Amended]

2. Section 385.4(d)(2) is amended by removing from the first sentence the words "over 10,000 pounds empty weight" and by inserting a second-to-last sentence in (d)(2), reading "Licenses and authorizations for helicopters 10,000 pounds empty weight or less will be approved when the export is in performance of a contract or agreement entered into before April 28, 1986, but subject to applicable national security or other applicable controls."

§ 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by removing paragraph "1." under *Special Foreign Policy Controls* and redesignating paragraphs "2." and "3." as "1." and "2." and revising them to read as follows:

1460A Nonmilitary aircraft and helicopters, aero-engines, and aircraft and helicopter equipment.

* * * * *

Special Foreign Policy Controls: 1. For commodities defined in paragraph (a) of the List below, foreign policy controls apply to Libya, Iran, the Republic of South Africa, and Namibia for both aircraft and helicopters regardless of value; and to Syria and the People's Democratic Republic of Yemen for fixed-wing aircraft valued at $3,000,000 or more and for all helicopters (except aircraft and helicopters for use by regularly scheduled airlines, subject to certain assurances—see § 385.4(d)2)).

2. For commodities defined in paragraphs (b), (c), and (d) of the List below, foreign policy controls apply only to Libya and Iran.

* * * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 5460F is amended by adding the words "and all other helicopters" to the end of the heading and by adding the words "and helicopters" after the phrase "$3,000,000 each or more" in the *Special Foreign Policy Controls* paragraph.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6460F is amended by removing the words "and helicopters" from the heading and from the List of Aircraft and Helicopters Controlled by ECCN 6460F; by removing the comma and the word "helicopters" after the word "aircraft" in the *Unit* paragraph; by removing the words "(including helicopters)" from the *Special Foreign Policy Controls* paragraph; and by removing the words "helicopters and" from paragraph (b) under the List of Aircraft and Helicopters Controlled by ECCN 6460F.

Dated: May 30, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86–12670 Filed 6–4–86; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8641]

American Home Products Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1970 order with American Home Products Corp. (35 FR 12753) by removing some restrictions on the company's advertising for Preparation H. The modified order allows respondent to use in its advertising any claims that the Food and Drug Administration has tentatively approved.

DATES: Order issued June 9, 1970. Modified Order issued May 22, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, FTC/B–425, Washington, DC 20580. (202) 376–2891.

SUPPLEMENTARY INFORMATION: In the Matter of American Home Products Corporation, the prohibited trade practices and/or corrective actions, as set forth at 35 FR 12753, remain unchanged.

List of Subjects in 16 CFR Part 13

Non-prescription drug products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 8641]

Order Reopening the Proceeding and Modifying Cease and Desist Order

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of American Home Products Corporation.

On January 21, 1986, American Home Products Corporation (Petitioner) filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and Paragraph III of the order in question to reopen the proceeding and modify the final cease and desist order entered against it by the Commission on June 9, 1970, in Docket No. 8841 (77 F.T.C. 726).

The final order in this matter was the product of extended litigation concerning therapeutic advertising claims for Preparation H Ointment or Suppositories. The order effectively proscribes all therapeutic advertising claims for Preparation H Ointment or Suppositories, or any other non-prescription drug product for the treatment or relief of hemorrhoids or any of its symptoms, except for three specifically enumerated claims. The three claims permitted under the order are (1) that the use of the product will help reduce swelling of hemorrhoidal tissue caused by edema, infection, or inflammation; (2) that the use of the product will help reduce swelling of hemorrhoidal tissue by lubricating the affected area; and (3) that use of the product will afford temporary relief of pain and itching of hemorrhoidal tissue in many cases. The order concludes with a proviso (Part III) that if the Food and Drug Administration (FDA) should approve for such products any other claims as permissible in labeling, respondent may petition for a modification of the order on that ground.

Subsequently, the Food and Drug Administration (FDA) undertook a comprehensive review of the safety and effectiveness of over-the-counter (OTC) drug products under the "Drug Amendments of 1962" to the "Federal Food, Drug and Cosmetic Act." As part of this review, the FDA appointed panels of independent experts in medicine and pharmacology to review the available literature and data and evaluate the safety and effectiveness of ingredients used in OTC products. After completing their evaluations the panels reported their findings and conclusions concerning the classes of OTC products evaluated and recommended appropriate labeling claims for each of the classes of OTC products reviewed. The labeling recommendations are incorporated into proposed monographs which, after a three step procedure designed to determine appropriate revisions, if any, will be promulgated as final monographs or rules which will govern the labeling claims of OTC products. One such panel reviewed and evaluated OTC hemorrhoidal (anorectal) drug ingredients. Its findings and conclusions and recommendations and a proposed monograph for OTC anorectal drugs were published in the Federal Register on May 27, 1980. (45 FR 35575.)

It is this proposed monograph that forms the basis for Petitioner's requested modification. Under this proposed monograph OTC anorectal drug ingredients are classified into several groups on the basis of their pharmacologic action, such as local anesthetics, vasoconstrictors, protectants, and counterirritants. An OTC anorectal drug can be classified as a protectant if, for example, it contains cocoa butter 50 percent or greater per dosage unit or it contains white petrolatum USP 50 percent or greater per dosage unit. An OTC anorectal drug meeting these percentage requirements would be entitled under the proposed monograph to be labeled with certain specific protectant claims.

Petitioner claims that Preparation H Ointment contains 72.8% petrolatum and that Preparation H Suppositories contains 79.5% cocoa butter thereby qualifying those products as protectants under the proposed monograph. As a consequence, Petitioner argues that it should be entitled to make as labeling claims those claims permitted by the FDA under the proposed monograph. However, the Commission's final order prohibits the use of a number of these claims and Petitioner asserts this prohibition places it at a competitive disadvantage with OTC anorectal protectant drug products marketed by others. As a consequence, Petitioner has requested that the final order be modified to allow it to make all advertising claims it is allowed by the proposed monograph to use in its labeling for Preparation H Ointment or Suppositories.

We agree. In prior decisions, we have held that proposed FDA monographs may be relied on as a reasonable basis for performance claims. *AHC Pharmacal, Inc.*, 101 F.T.C. 40, 43 (1983); *Thompson Medical Co., Inc.*, 104 F.T.C. 648, 826 (1984); *Chesebrough-Pond's Inc.*, Docket No. C-602 (November 25, 1985). Such relief is particularly appropriate where, as here, the advertising claims would be dependent on their acceptability as labeling claims. Based on the foregoing, we conclude that Petitioner has made the requisite showing for a reopening of the proceeding and a modification of the order under Rule 2.51 and Paragraph III of the final order. Respondent has asked that Part III of the order be modified to make clear that it may make claims in advertising that the FDA has allowed in labeling.

It is therefore ordered that the proceeding as hereby reopened and that Paragraph III of the final order issued June 9, 1970, in Docket No. 8841 be, and it hereby is modified to read as follows:

"III. This Order is not intended to nor does it prohibit respondent from making any representations for non-prescription drug preparations for the treatment or relief of hemorrhoids or any of their symptoms which the Food and Drug Administration has determined, in the course of its over-the-counter drug review, relate to conditions for which the drug preparation is generally recognized as safe and effective and not misbranded. In the event that respondent at any time in the future markets any non-prescription drug preparation for the treatment of relief of hemorrhoids or any of its symptoms for which it desires to make any of the representations now prohibited under Paragraph I of the order, it may petition the Commission for a modification of the order. Such petition shall be accompanied by a showing that the representation is not false or misleading within the meaning of the Federal Trade Commission Act."

By the Commission. Commissioners Oliver and Strenio did not participate.

Issued: May 22, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-12852 Filed 6-4-86; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 295

Regulations Under Title VII of the Regional Rail Reorganization Act

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends its regulations pertaining to reviews and appeals of initial determinations under the benefit schedules promulgated by the Secretary of Labor pursuant to section 701 of the Regional Rail Reorganization Act. The benefit schedules are administered by the Board.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur A. Arfa, Assistant Director of Hearings and Appeals, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4793 (FTS 387-4793).

SUPPLEMENTARY INFORMATION: Section 295 of the Board's rules provided for certain time limits during which a claimant who wished to appeal an initial adverse determination might file such an appeal. The regulations were not precise as to when the time period

began to run since they used the phrase, "communicated" to the claimant as the start of the appeal time period. The use of that phrase makes it unclear whether the appeal period starts on the date the notice of the decision is sent to the claimant or when it is received by the claimant. The amendment to the regulation clarifies that the appeal period begins to run from the date the notice is mailed.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

A notice of proposed rulemaking was published in the Federal Register on February 24, 1986 (51 FR 6422). No comments were received from the public.

List of Subjects in 20 CFR Part 395

Employee benefit plans, Employee protection benefits, Railroad employees, Railroad Retirement.

PART 395—[AMENDED]

Title 20 CFR Part 395 is amended as follows:

1. The authority citation for Part 395 is revised to read:

Authority: 45 U.S.C. 362(1); 45 U.S.C. 797.

§ 395.9 [Amended]

2. Section 395.9 is amended by adding at the end of paragraphs (c)(1) and (d)(1) the following new sentence which reads as follows: Notice shall be deemed to have been communicated to the claimant when it is mailed to the claimant at the latest address furnished by him or her.

Dated: May 28, 1986.
By Authority of the Board.

Beatrice Eaerski,

Secretary to the Board.

[FR Doc. 86-12831 Filed 6-4-86; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 740

[Docket No. 78N-0486]

Cosmetic Product Warning Statements: Establishment of Effective Date for Label Caution Requirement on Children's Foaming Detergent Bath Products; Response to Comments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration [FDA] is announcing that it has completed its reconsideration of 21 CFR 740.17, a regulation that would require that directions for safe use and a caution statement appear on the label of foaming detergent bath products. The agency announced its intention to reconsider this regulation in the Federal Register of February 13, 1985 (48 FR 7203). Upon reconsideration, FDA has decided to take the following actions: (1) FDA is denying the petitions of the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), and of the Independent Cosmetic Manufacturers and Distributors (ICMD) to revoke the regulation for children's foaming detergent bath products or any such product whose label does not make clear that it is intended for use exclusively by adults. (2) FDA is granting these petitions to revoke the regulation for those products whose labels make clear that they are intended for use exclusively by adults. (3) FDA is establishing a new effective date for the regulation except with respect to those products whose label makes clear that they are intended for use exclusively by adults.

DATES: Effective June 5, 1987. All foaming detergent bath products except those intended for use exclusively by adults that are initially introduced or initially delivered for introduction into interstate commerce on or after June 5, 1987, shall comply with this regulation. FDA is continuing the interim stay of the effective date of 21 CFR 740.17 until June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Heinz J. Eiermann, Center for Food Safety and Applied Nutrition (HFF-440), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1530.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 19, 1980 (45 FR 55172), FDA published a final regulation (21 CFR 740.17) that requires that labels of foaming detergent bath products bear a prescribed caution statement and provide adequate directions for safe use. The statement cautions that excessive use of, or prolonged exposure to, foaming detergent bath products may cause irritation to the skin and the urinary tract. It urges consumers to discontinue use of such products if rash, redness, or itching occurs and to consult a physician if irritation persists.

Foaming detergent bath products are commonly identified and recognized by consumers as "bubble baths" or "foaming bath oils." These products are also known by other names such as "foaming bath," "milk foam bath," and "foaming bath powder." To avoid any confusion as to which products are subject to this regulation, FDA has adopted the general term "foaming detergent bath product" for these types of products. FDA has modified § 740.17 to reflect this new terminology.

Section 740.17 was to have gone into effect on August 18, 1981. However, on June 1, 1981, the agency issued a press release announcing its intention to stay this regulation. On February 18, 1983, FDA announced an interim stay of the effective date of the regulation (48 FR 7169).

In addition to issuing the interim stay, FDA proposed to stay the effective date of the regulation while it reconsidered the labeling requirement (48 FR 7203). The agency stated that it was still concerned about the adverse effects of foaming detergent bath products on children when not properly used, but that the petitions of CTFA and ICMD to revoke the labeling requirement had raised issues that merited a full review of the regulation.

In the February 18, 1983 notice of proposed stay, FDA invited interested persons to submit comments, data, or other information on how consumers could be informed of the risks associated with the use of foaming detergent bath products and effectively protected from irritation to the skin and urinary tract that might result from the misuse of these products. The agency asked that comments specifically address the following questions:

1. How may consumers be informed of the risks associated with the use of foaming detergent bath products other than by means of a required label caution statement and directions for safe use?

2. Did the reported adverse reactions associated with foaming detergent bath products marketed for adult use occur predominantly in adults or children?

3. Would a revised regulation applicable only to products intended for use by children provide adequate consumer protection taking into account the possibility of use (or misuse) of adult products as children's products?

4. What costs would be associated with the caution labeling requirements of § 740.17 or the alternatives suggested in comments?

FDA received 17 comments during the comment period on the proposal. Four comments were from consumers, three were from physicians, one was from a consumer organization, two were from cosmetic trade associations, and seven were from cosmetic manufacturers. Six comments were in favor of a caution labeling requirement, one comment recommended that cosmetic foaming

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detergent bath products be banned, and 10 comments were against the regulation. None of the comments suggested alternatives to requiring caution labeling, and none responded in a substantive manner to the questions about the risks of foaming detergent bath products to adults or about whether revised regulations would adequately protect children from use of adults' products. Three comments gave estimates of the costs to manufacturers of implementing the caution labeling as required by § 740.17.

FDA has now completed its review of the regulation, as well as of the petitions and of the comments that it received on the proposal to stay the regulation. Based on this review, the agency finds that there is a continuing cognizable risk for children from improper use of foaming detergent bath products. The agency has therefore decided to deny the petitions to revoke the caution labeling regulation except for products whose labels make clear that they are intended for use exclusively by adults.

FDA considers all products not labeled as intended for use exclusively by adults to be intended for use by children. Label statements that would identify products as being intended for use exclusively by adults would include: "Keep out of reach of children" and "For adult use only."

An explanation for the agency's decision on children's foaming detergent bath products, a description of the points made in the petitions and in the comments on the petitions, and the agency's responses to these points follow.

I. The Petitions and Comments Do Not Provide a Basis for Revoking the Rule

A. Need for the Regulation

1. The petitions and a number of the comments (FDA will hereinafter refer to the petitions and the comments on those petitions collectively as "the comments") restated arguments that FDA had discussed in the preamble to the final rule published in the **Federal Register** of August 19, 1980 (45 FR 55172–55173). The comments asserted that the number of injury complaints cited by FDA was not large enough, and that the reported injuries were not serious enough, to demonstrate a hazard warranting a label warning. These comments also stated that the annual numbers of reported adverse reactions had been decreasing since 1973. Two comments claimed that the risk of injury from use of foaming detergent bath products is insignificant. In support of this claim, these comments cited the July 1, 1977, to June 30, 1978, statistics on cosmetic injuries reported by hospital emergency rooms into the National Electronic Injury Surveillance System (NEISS) of the Consumer Product Safety Commission. Two manufacturers of foaming detergent bath products submitted their animal testing data as evidence of the safety of these products.

FDA disagrees with the argument that the consumer injury data do not demonstrate a hazard warranting a caution statement and directions for safe use on labels of foaming detergent bath products. The information presented in the preambles of the proposed and final regulations fully documented the need for these requirements.

There was a decrease during the mid-70's in the recorded number of complaints from consumers about foaming detergent bath products because of a change in complaint forwarding policy by district offices. FDA explained in the preambles to both the proposal (42 FR 5368) and the final rule (45 FR 55172) that the reason for the significantly higher number of complaints before 1973 was the press and radio solicitation by the Federal Trade Commission of reports of adverse reactions from consumers. The fact that a large producer of these products voluntarily added a caution statement to the label of its foaming detergent bath products in 1974 may also have contributed to the decline in consumer complaints. The decrease in complaints that occurred between 1975 and 1978 has not continued. The rate of these complaints in relation to the total numbers of complaints recorded annually has averaged 1.98 percent (standard deviation of 0.75 percent) since 1975. The adverse reaction data submitted to FDA by cosmetic manufacturers as part of the voluntary registration program show averages of 1.22 (standard deviation of 0.57) adverse reactions per million units distributed for the years 1974 to 1976 and 1.66 (standard deviation of 0.51) for the years 1982 through 1984.

The seriousness of the adverse reactions is reflected in part in the relatively high percentage of injuries reported that required medical attention. For the years 1979 through 1984, an average of 43.8 percent of the injuries associated with foaming detergent bath products that were reported under the voluntary industry reporting program required medical treatment, whereas the average for all product categories for the same time period was 17.9 percent (standard deviation of 11.3 percent). After feminine deodorant products (55.6 percent) and fragrance sachets (45.4 percent), both of which have low numbers of experiences reported, which may produce distortion, "bubble bath products" is the product category with the highest rate of injuries requiring medical attention. Additionally, of the 234 consumer complaints received by FDA associated with foaming detergent bath products between 1970 and 1984, 38 percent concerned urogenital disorders.

The NEISS data of July 1, 1977, to June 30, 1978, which were submitted by two comments in support of the argument that foaming detergent bath products do not present a health risk that requires caution labeling, usually reflect acute toxic manifestations, resulting from accidental product misuse, that are treated at the reporting hospital emergency rooms. As discussed in the **Federal Register** notices during the rulemaking, the injuries associated with foaming detergent bath products are not likely to result from just one exposure to this type of product, and consumers are not expected to seek treatment at an emergency room for a gradually worsening skin rash or urogenital irritation.

Equally inapplicable are the animal testing data for eye or skin irritation submitted by two manufacturers of foaming detergent bath products. The tests from which these data were obtained are typical for assessing the safety of detergent-containing products before conducting human studies. However, the data from these tests have no relevance to this proceeding because they are not indicative of the adverse reactions that may occur in consumers under the conditions of misuse that the caution labeling regulation is intended to address.

2. Of the three physicians who commented on the proposed stay of the effective date of the foaming detergent bath labeling regulation, two reported treating numerous cases of urogenital irritation or infection that were associated with foaming detergent bath products. Both of these physicians were pediatricians. One recommended that foaming detergent bath products be banned, and the other favored caution labeling. The third comment, from a physician principally involved in consumer product safety evaluation, described several cases of skin and urogenital irritation that occurred during the testing of foaming detergent bath products but expressed the opinion that the warning was not justified.

FDA has carefully considered the views of each of these three physicians along with other available information and concludes that, on balance, the medical opinions that have been submitted to the agency support the

need for the regulation. The medical observations reported by the two pediatricians complement those reported by the five physicians who commented on the proposed rule (see 45 FR 55172). Accordingly, seven of the nine physicians who have commented have supported the agency's finding that foaming detergent bath products can cause adverse reactions, particularly when misused. The caution statement and directions for safe use are justified as a means of preventing that misuse.

3. Two comments stated that the requirement of a caution statement and directions for safe use will undermine the impact of warnings on products that present serious risks, destroy the incentive to develop the least irritating product, and encourage use of noncosmetic substitute products, such as household detergents, in baths. Other comments asserted that manufacturers had cooperated with FDA to reduce the possibility of adverse reactions by reformulating products and voluntarily including caution language in labeling about the consequences of misuse. These comments claimed that the regulation threrefore was unnecessary.

Neither of these comments provides any evidence to support the predictions that they make. The need for both caution labeling and directions for safe use to prevent misuse and serious injury is fully documented in the record of this proceeding. The agency is not aware of any data that indicate that cosmetic manufacturers would stop striving to market the safest product possible, or that consumers would substitute household detergents for cosmetic foaming detergent bath products, if the agency puts this regulation into effect.

The agency reviewed all cosmetic foaming detergent bath product formulations voluntarily registered with FDA under 21 CFR Part 710 during the past 10 years. Of the formulation changes registered with FDA, few involved foaming agents. Furthermore, FDA is aware of only one cosmetic manufacturer that has voluntarily included caution language in the labels of its foaming detergent bath products. That manufacturer informed FDA that it also made several formulation changes in its products, including elimination of alkylarylsulfonate, in an effort to reduce those products' potential for irritating the skin.

4. One comment argued that the regulation is a burdensome and unnecessary rule that conflicts with the regulatory policy of Executive Order 12291.

FDA has carefully considered this comment. As the agency's responses in this document make clear, there is a need to caution users of foaming detergent bath products that injuries to children may result from the misuse of those products. Moreover, as explained in the discussion that follows, the costs of this regulation are low and therefore not burdensome. Nonetheless, to ensure that the obligations imposed by this regulation are no greater than necessary to protect children, FDA is not requiring the caution on those products whose labels make clear that they are intended for use exclusively by adults.

B. Labeling Costs

5. Four comments addressed the issue of the costs to cosmetic manufacturers of complying with the requirements of § 740.17. One manufacturer of foaming detergent bath products reported a cost of $35 per label for new silk screens and, because of the many brands involved, a total cost to the firm of $50,000 to $55,000. The manufacturer of a line of children's foaming detergent bath products estimated the total cost for its various label changes to be almost $50,000. A comment from a trade organization stated that the cost of compliance with the regulation will be about $10,000 for an existing product and $12,000 to $15,000 for a new product. This comment also argued that small firms would probably incur greater absolute, as well as comparative, costs than large firms because large firms would benefit from economies of scale. A trade organization reporting information obtained from two of its member firms stated that one firm estimated the cost to be between $50,000 and $55,000. The other firm estimated the cost to be in excess of $250,000.

FDA has conducted an independent study of the expected costs of compliance and has concluded that the total cost to industry will be approximately $300,000. This total includes the cost of changes in artwork, the expense of preparing new film representations for printing plates, and administrative costs for each producer of foaming detergent bath products. The agency has not, however, considered decreased revenues for producers of foaming detergent bath products as a cost. FDA concludes that any reduction in use of foaming detergent bath products that occurs will be toward safe levels, so that decreases in revenues cannot be counted as a true economic cost. Details of the FDA study can be found in the "Threshold Assessment for the Modification and Withdrawal of Stay of the Foaming Detergent Bath Products Caution Statement Regulation," which is on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Based upon the FDA study of compliance costs, and on the study of the costs of a one-time label change done by A.D. Little, Inc., for FDA in 1981, FDA can find no basis for some of the cost estimates submitted by industry. In particular, it is not clear why, as one comment asserted, the costs for a new product would be $12,000 to $15,000. Except for administrative costs, there should be no compliance cost for a new product because the label would be designed from the outset in compliance with existing labeling requirements. Furthermore, given all information currently available, FDA can find no substantive evidence that the cost for any one firm approaches the $250,000 figure cited by one company.

Considering that consumers are likely to benefit from caution labeling by having fewer adverse reactions to foaming detergent bath products, less severe injuries, less bodily suffering, and fewer medical expenses, the agency concludes that the cost of implementing the labeling requirement is well justified and is neither burdensome nor inflationary.

C. Procedural Issues

6. One comment argued that, in the preamble to the final regulation, the agency had failed to address certain important comments. According to the comment, FDA had not addressed the issue of exclusion of adult foaming detergent bath products, liquid products, and products in small size containers from the coverage of the rule; the argument that alkylarylsulfonates were the apparent source of adverse reactions; or the assertion that the complaint levels had decreased following reduced use of alkylarylsulfonate.

FDA disagrees with this comment. In the final rule, the agency addressed each of the contentions mentioned in the comment. FDA stated that the marketing of foaming detergent bath products in small packages does not offer the agency assurance that adverse reactions will not occur (45 FR 55174). It stated that the adverse reaction data in its consumer complaint files did not permit it to conclude that liquid products and products intended for use by adults did not cause a significant number of adverse reactions (*id.*). With regard to alkylarylsulfonate, a surface-active agent, the agency referenced its discussion of this ingredient in the preamble to the proposed regulation and explained why it was not persuaded that this ingredient alone was

responsible for the high complaint rates (45 FR 55173). Finally, in the final rule, the agency explained why it did not agree with claims that the rate of adverse reactions to foaming detergent bath products had declined since 1973 (*id.*). This explanation also responds to the assertion that complaint levels had decreased following reduced use of alkylarylsulfonate in foaming detergent bath products. For all these reasons, FDA finds that there is no basis for the comment's claim that the agency had failed to address important comments.

II. Continuing Need for Caution on Children's Products

As part of its reconsideration of this regulation, FDA considered not only whether the evidence establishes a need for the regulation, but also whether it establishes a basis for treating foaming detergent bath products intended for use by adults differently than those intended for use by children. As discussed above, in the February 18, 1983, notice, FDA specifically asked for comments on the latter question. FDA finds that the evidence establishes that consumer complaints are associated with both types of products, and that therefore there is an appropriate basis in the record for requiring adequate directions for safe use and some type of caution on both types of products.

FDA reviewed the foaming detergent bath product-related consumer complaint statistics and the adverse reactions voluntarily filed by some cosmetic manufacturers under 21 CFR Part 730. Between 1970 and 1984, FDA received 234 foaming detergent bath product-related consumer complaints. Sixty-seven percent of those complaints were related to products intended for use by children, and 24 percent were related to products intended for use by adults. The other complaints could not be classified.

FDA's review of the data voluntarily submitted by cosmetic manufacturers between 1979 and 1984 revealed that of the 345 reported adverse reactions to foaming detergent bath products, 87 percent were associated with adults' products, 5 percent were associated with children's products, and 8 percent were associated with products that could not be classified.

The two sets of statistics thus contradict each other, and FDA could not conclude that only one category of products was predominantly responsible for the reported adverse reactions. A review of the voluntarily registered foaming detergent bath formulations and of the technical trade literature also provided no evidence of distinctive differences in composition (other than generally higher fragrance concentrations in adult products) that would indicate that one type of product has a significantly greater potential for injury when misused than the other. It should be noted, however, that neither the data in FDA's files on consumer complaints nor those in the voluntary registration files permitted statistical evaluation of whether the adverse reactions associated with adults' products or with children's products always occurred in the respective age group. Some adverse reactions associated with adults' foaming detergent bath products may have occurred in children and vice versa.

Based on its review of the evidence, however, FDA finds that children are particularly vulnerable to the consumer hazard of primary concern, urogenital injury. There is evidence of an association between urogenital injury and children's products. Although the voluntarily registered industry data were not sufficiently detailed to permit analysis, the agency was able to analyze the complaints that it received directly from consumers about foaming detergent bath products and found that they reported 86 cases of urogenital adverse reactions. Eighty-two percent of those adverse reactions were associated with products intended for use by children. Although it may be that not all of those adverse reactions occurred in children, it is certain that the great majority of them did.

Further, FDA has received a number of reports that were specifically about urogenital injuries to children from foaming detergent bath products. Two pediatricians commented on the proposed stay and reported treating numerous children for urogenital irritation or infection associated with foaming detergent bath products. Thus, seven of the nine physicians who commented reported treating children for urogenital symptoms associated with these products (see 45 FR 55172).

Therefore, FDA is persuaded that, to give appropriate protection to children, § 740.17 should go into effect for all foaming detergent bath products except those intended for use exclusively by adults at the earliest practicable date. Because FDA has determined that 1 year is the appropriate lead time (see 45 FR 55175), the effective date of this regulation will be June 5, 1987.

In the absence of as large a number of urogenital adverse reactions in adults as were observed in children, FDA has decided not to require the caution on products intended for use exclusively by adults. Therefore, FDA is amending § 740.17(b) to make clear that the caution in that section is required on all products except those that are labeled as intended for use exclusively by adults. FDA believes it is appropriate to make these changes at this time because it solicited comment on the issue of the coverage of the regulation in the February 18, 1983, notice.

Consistent with these actions, FDA is continuing the interim stay of the effective date of 21 CFR 740.17 until June 5, 1987, the new effective date of this regulation.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (January 28, 1977; 42 FR 5368). FDA's regulations implementing the National Environmental Policy Act then in effect have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would be categorically excluded from an environmental assessment and an environmental impact statement under 21 CFR 25.24(a)(11).

IV. Economic Impact

FDA has examined the costs of this regulation and determined that the only significant economic costs are the activities which must be undertaken in order to change packages and labels of foaming detergent bath products. The agency has estimated these costs to be less than $300,000, well under the $100 million per year threshold established by Executive Order 12291 for determining what is a "major" rule. FDA therefore certifies that this is not a major rule as defined by Executive Order 12291, and that it is thus exempt from the requirement for a regulatory impact analysis.

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA has considered the effect that this regulation will have on small entities including small businesses and has determined that it will not place a significantly greater burden on small businesses than on large businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 740

Cosmetics, Safety substantiation, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 740 is amended as follows:

PART 740—COSMETIC PRODUCT WARNING STATEMENTS

1. The authority citation for 21 CFR Part 740 is revised to read as follows:

Authority: Secs. 201(n), 601, 602, 701(a), 52 Stat. 1041, 1054–1055 (21 U.S.C. 321(n), 361, 362, 371(a)); 21 CFR 5.10, 5.11.

2. By revising § 740.17 to read as follows:

§ 740.17 Foaming detergent bath products.

(a) For the purpose of this section, a foaming detergent bath product is any product intended to be added to a bath for the purpose of producing foam that contains a surface-active agent serving as a detergent or foaming ingredient.

(b) The label of foaming detergent bath products within the meaning of paragraph (a) of this section, except for those products that are labeled as intended for use exclusively by adults, shall bear adequate directions for safe use and the following caution:

Caution—Use only as directed. Excessive use or prolonged exposure may cause irritation to skin and urinary tract. Discontinue use if rash, redness, or itching occurs. Consult your physician if irritation persists. Keep out of reach of children.

(c) In the case of products intended for use by children, the phrase "except under adult supervision" may be added at the end of the last sentence in the caution required by paragraph (b) of this section.

Dated: April 28, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-12819 Filed 6-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 51

[Department Regulation 108.849]

Bureau of Consular Affairs; Execution of Passport Application

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending its passport regulations to extend the period of time within which persons previously issued United States passports may apply for new passports without appearing in person before a person authorized by the Secretary of State to administer oaths and accept applications. Additionally, the regulations are being amended to broaden the categories of persons who are eligible to apply for passports without appearing in person.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Room 5813, Department of State, 2201 C Street, NW, Washington, DC 20520. Telephone (202) 647–0635.

SUPPLEMENTARY INFORMATION: Present regulations allow a U.S. citizen to apply for a new U.S. passport under certain conditions without appearing in person before a person authorized by the Secretary to administer oaths and accept such applications. Personal appearance may not be required when: the most recently issued passport was issued when the citizen was 18 years of age or older; the application is made within eight years from the date on which the most recent passport was issued; and the citizen can present that passport with his or her application for a new passport.

These regulations were promulgated when the maximum validity period for which a passport could be issued was five years. Pub. L. 97–241 (96 Stat. 279 (1983)) extended the period of validity of a passport from five years to ten years. Thus, there was no longer a grace period beyond the passport's expiration date within which a person could apply without appearing before a person authorized by the Secretary of State to administer oaths and accept applications.

The revised regulations will allow persons who have been issued a full validity passport when they were 16 years of age or older to use the "mail-in" procedure to obtain a new passport within twelve years after the date on which the expired passport was issued.

Consideration has been given to the need to balance the requirements for identification and the convenience to the traveling citizen. The Federal Advisory Committee on False Identification (FACFI) evaluated various identification systems and processes. The conclusions and recommendations of FACFI's Report of November 1976 were taken into account at the time the Department was considering implementation of the 10 year passport legislation. The regulations permitting the use of this "mail-in" procedure allows applicants a grace period within which to apply without impairing the reliability of the passport as an identity document. In addition, extending the "mail-in" procedures to minors whose previous passports were issued when they were 16 years of age or older will extend the benefits of this procedure to an increased number of people.

Since this amendment to the regulations is being made to bring them into conformity with the legislation referred to above, and extends a benefit to passport applicants, the Department has determined that the public notice requirement of the Administrative Procedure Act (APA), 5 U.S.C. 553, as amended, may be dispensed with because it is unnecessary. 5 U.S.C. 553(b)(B).

The Department has also determined that this regulation will not impose unnecessary burdens on individuals or on the economy and, therefore, is not significant for the purpose of Executive Order 12044.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Passports and visas.

PART 51—[AMENDED]

22 CFR Part 51 is amended as follows:

1. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 1, 44 Stat. 887; sec. 1, 41 Stat. 750; sec. 2, 44 Stat. 887; sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 214, 217a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507.

2. In § 51.21, paragraphs (a), (c), and (d) are revised to read as follows:

§ 51.21 Execution of passport application.

(a) *First time applicants or persons who have not been issued a passport within the past twelve years.* A person who has never been issued a passport in his or her own name, or who has not been issued a passport in his or her own name within 12 years of the date of a new application, shall appear in person before a person authorized by the Secretary to give oaths, verify the application by oath or affirmation before that authorized person, provide two recent photographs, and pay the established fees.

* * * * *

(c) *Persons in the United States who have previously been issued a full validity passport.* A person in the United States who has been issued a passport in his or her own name may obtain a new passport by filling out and mailing a specially prescribed application together with his or her previous passport, two recent photographs, and the established fee to the nearest U.S. Passport Agency provided:

(1) The most recently issued previous passport was issued when the applicant was 16 years of age or older;

(2) The application is made not more than 12 years following the issue date of the previous passport;

(3) The most recently issued previous passport is submitted with the new application.

(d) *Persons outside of the United States who have previously been issued a full validity passport.* In a foreign country in which a U.S. consular district has been designated by the Secretary to receive such passport applications, a person who has been issued a passport in his or her own name may obtain a new passport by filling out a specially prescribed application and sending it (by mail or as prescribed by the Secretary), together with his or her previous passport, two recent photographs, and the established fee to the consular office in the consular district in which he or she is present, provided:

(1) The most recently issued passport was issued when the applicant was 16 years of age or older;

(2) The application is made not more than 12 years following the issue date of the previous passport;

(3) The most recently issued previous passport is submitted with the new application.

For the Secretary of State.

Dated: May 22, 1986.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 86-12543 Filed 6-4-86; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 15

[Docket No. R-86-1226; FR-2914]

Disclosure of Profit and Loss Information to Potential Purchasers of HUD-Held Mortgages

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises the regulations at 24 CFR Part 15 governing disclosure of departmental records. This rule clarifies the records that may be withheld from inspection or copying under 24 CFR 15.21(a)(4), i.e., "trade secrets and commercial or financial information", and provides for the disclosure of information on Form HUD-92410, Statement of Profit and Loss, to prospective eligible bidders (as defined in the auction announcement) on mortgages offered in the Department's multifamily mortgage auctions. HUD has determined that the disclosure to potential bidders of information in the Profit and Loss Statement is necessary for the successful conduct of these mortgage sales.

DATES: Effective date: July 21, 1986.

Comment due date: August 4, 1986.

Mortgagors of projects for which HUD holds the mortgage may request that HUD not release Form HUD-92410 in connection with any mortgage auctions conducted before the effective date of the final rule in this rulemaking. These requests must be addressed in writing to: Marvin Hillman, Director, Multifamily Property Disposition Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Room 6272, 451 Seventh Street SW., Washington, DC 20410. The Department must receive these request by August 4, 1986. Unless an affected mortgagor forwards its request to HUD within that deadline, HUD may release Form HUD-92410 to prospective eligible bidders subject to the conditions in this interim rule.

ADDRESS: Interested parties are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Marvin Hillman, Director, Multifamily Property Disposition Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Room 6272, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-7343. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD mortgage auctions involve two types of mortgages:

(2) *Assigned mortgages:* These mortgages secure loans that were originally made by the lender and insured by HUD under the National Housing Act. Lenders have assigned these mortgages to HUD after a default. The Department pays insurance benefits to the lender and thus becomes the new mortgagee.

(2) *Purchase money mortgages.* These mortgages were taken back by the Department in conjunction with the sale of a HUD-owned property. HUD acquired the property by foreclosing on an assigned mortgage, taking a deed-in-lieu-of-foreclosure, or by accepting conveyance of title from the insured lender.

The Department has determined that the disclosure of information on Form HUD-92410, Statement of Profit and Loss, to prospective eligible bidders (as defined in the auction announcement) on mortgage offered in HUD multifamily mortgage auctions is necessary for the successful conduct of future auctions. (For purposes of this interim rule, "auction" includes any mortgage sale procedure where oral or written bids are submitted to HUD or its authorized agent.) Such disclosure is important because eligible bidders have advised HUD that they need access to profit and loss information in order to make an informed decision about whether to bid and how much to bid on certain mortgages. Disclosure of this type of financial information concerning the property securing the mortgage is vital to enhancing the level of participation in and the success of HUD's mortgage auctions. The form includes specific income sources and amounts and project expense categories. (A listing of the data entry categories included in Form HUD-92410 is published as an appendix to this interim rule, so that commenters will be fully apprised of the kinds of data proposed to be made available in connection with mortgage auctions.)

The availability of this information to qualified bidders is particularly important because of the reaction of bidders during recent auctions. In the two 1984 auctions, when information from Form HUD-92410 was not released to potential bidders, 315 mortgages were offered, but only 47 were sold—a 15 percent sales rate. In five previous auctions during 1982–83, when such information was released to potential bidders, 1,372 mortgages were offered for sale, and 400 (20 percent) were sold. Similarly, the ratio of mortgages bids (i.e., bids received from a bidder other than the mortgagor) received to mortgages offered has significantly decreased in the two 1984 auctions. In those two auctions, a total of 57 mortgagee bids was received, (a ratio of bids to mortgages offered of approximately 1:5), as contrasted with 820 mortgagee bids in the previous four auctions (a ratio of approximately 2:3).

This substantial drop in interest on the part of potential mortgage purchasers is no doubt attributable in part to HUD's February 10, 1984 memorandum announcing discontinuation of FHA insurance on auction mortgages. However, it is also

true that sales have been retarded by the absence of adequate financial data concerning the projects securing the mortgages. According to discussions held with several financial institutions, in the absence of HUD mortgage insurance, their potential bids for mortgages must depend on some indication of a project's financial status.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act (see 24 CFR 10.1). Although this is the general policy of the Department, HUD has determined that there exists good cause to proceed with this rulemaking through the promulgation of an interim rule, rather than a proposed rule. This rule must be promulgated as an interim rule to meet the specific goals in the HUD Budget for Fiscal Year 1987 for proceeds resulting from the Department's mortgage auctions. In particular, the Department has determined that this interim rule is necessary in connection with a mortgage auction contemplated for the first quarter of Fiscal Year 1987. To reach the total proceeds planned for Fiscal Year 1987, it is anticipated that additional mortgage auctions will be conducted during the fiscal year. The mortgages will be sold without FHA mortgage insurance.

In order to protect the concern of any affected mortgagor for the confidentiality of the data contained in the project's Form HUD–92410 in connection with any mortgage auctions held before the effective date of the final rule in this rulemaking, HUD will allow mortgagors to notify the Department within 60 days after the publication of this interim rule that Form HUD–92410 for their project should not be released before the effective date of the final rule. The final rule will reflect HUD's consideration of any comments received within the comment due date for this interim rule.

II. Statutory Authority

The Department's authority to conduct auctions of HUD–held mortgages is based on sections 207(k) and 207(l) of the National Housing Act, 12 U.S.C. 1713(k) and 1713(l), and on section 7(i)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i)(3). Section 207(k) provides in part that pending acquisition by voluntary conveyance or by foreclosure, the Secretary is authorized, with respect to mortgages assigned to the Secretary under section 207, to sell such mortgages. Section 207(l) provides in part that the Secretary is authorized to expend from the General Insurance Fund necessary funds for the administration of such mortgage auctions.

Section 7(i)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i)(3), authorizes the Secretary to "sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix. . . ."

HUD has determined that the disclosure of information from Form HUD–92410 to potential bidders at HUD mortgage auctions is essential to the successful implementation of the above-mentioned statutory authorities. For this reason, the disclosure of information from Form HUD–92410 is authorized by law for disclosure under the Trade Secrets Act, 18 U.S.C. 1905, and, under the limited conditions described in this interim rule, information included on the form will be released to prospective eligible bidders. (However, under this interim rule, HUD will not release Form HUD–92410 before the effective date of the final rule for any affected mortgagor who forwards a request to HUD within the deadline specified elsewhere in this preamble (see discussion under "Comment Due Date", above).) An appendix published with this rule provides a list of the data entries included in Form HUD–92410 that will be subject to disclosure under this rule.

The Trade Secrets Act

In pertinent part, section 1905 of the Trade Secrets Act provides:

"Whoever, being an officer or employee of the United States or of any department or agency thereof, . . . *publishes, divulges, discloses, or makes known in any manner or of any extent not authorized by law* any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof of any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment." (Emphasis added.)

The interpretation of the phrase "authorized by law" in section 1905 of the Trade Secrets Act has been the subject of Federal judicial interpretation. The United States Supreme Court held in *Chrysler* v. *Brown*, 441 U.S. 281, 301–303 (1979), that in order for an agency regulation to constitute authority for disclosure of "trade secrets" or similar information, the regulation must be: (1) "Substantive", (2) promulgated under a grant of "quasi-legislative authority", and (3) issued in accordance with the procedural requirements of the Administrative Procedure Act (APA).

Concerning the first requirement under the *Chrysler* decision that a rule authorizing the disclosure of "trade secrets" be "substantive", the Court held that the key test is whether it affects "individual rights and obligations" rather than merely consisting of "general statements of policy, or rules of agency organization, procedure, or practice." The Department has determined that this interim rule meets this test. It would authorize the disclosure of mortgagor financial and management information contained in Form HUD–92410 to qualified bidders in HUD-sponsored mortgage auctions. This information is essential for the bidders' evaluation of the respective projects and the structuring of their bids for specific HUD-held mortgages.

As related to the second requirement of the *Chrysler* decision, i.e., that the disclosure of "trade secrets" be justified under a grant of "quasi-legislative authority", the Department has determined that the disclosure of the information in Form HUD–92410 is essential to the proper conduct of HUD's authority under sections 207(k) and 207(l) of the National Housing Act and section 7(i)(3) of the Department of Housing and Urban Development Act. This determination is based on the Department's recent experience at multifamily mortgage auctions and in discussions with financial institutions that have been active in the purchase of HUD-held mortgages in past auctions. Without HUD mortgage insurance to safeguard potential bidders' investment decisions, these institutions are concerned that if the information contained in Form HUD–92410 is not disclosed, they could not structure their bids in a manner consistent with their fiduciary responsibilities to their investors.

The Department's determination that this statutory authority provides a quasi-legislative authority to justify this qualified disclosure of "trade secrets" is also supported by an interpretation of section 1905 of the Trade Secrets Act in an Opinion of the Attorney General at 41 Op. Att'y Gen. 166 (1953). In that opinion, the Attorney General responded to an inquiry of the Secretary of the Treasury concerning whether

borrowers' financial statements (including profit and loss statements) and other information could be disclosed in connection with the liquidation of the assets and the winding up of affairs of the Reconstruction Finance Corporation (RFC). (Most of the RFC's assets were in the form of loans to businesses and mortgage notes and other securities issued by financial institutions, railroads, other business enterprises, and public agencies.) Although no statutory provision explicitly authorized disclosure of borrowers' financial information in connection with such assets, the Attorney General concluded that appropriate legislative authority to disclose the information to potential purchasers of the notes and securities could be inferred if disclosure were necessary for the "orderly and efficient liquidation" of the assets.

HUD has determined that a successful mortgage auction program (aided by an increased pool of bidders as a result of the disclosure of information contained in Form HUD–92410 would provide more competition as well as the assurance that the Department would realize the best price for mortgages sold. Furthermore, HUD's mortgage auction program reduces the Department's borrowing needs and related costs. In addition, since HUD will no longer need to perform accounting or servicing functions on the mortgages sold, the mortgage auction program reduces HUD's administrative workload and costs.

The third requirement of the *Chrysler* decision is that a regulation authorizing the disclosure of "trade secrets" be issued in accordance with the procedural requirements of the Administrative Procedure Act (APA), 5 U.S.C. 701. This rulemaking is being conducted in accordance with the Department's procedural regulations at 24 CFR Part 10 and in full compliance with the public participation provisions in those regulations (see § 10.10).

III. Amendment to 24 CFR Part 15 Under This Interim Rule

This interim rule adds a new § 15.21(c) to 24 CFR Part 15. Section 15.21 provides a list of departmental records exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, including "Trade secrets and commercial or financial information obtained from a person and privileged or confidential" (24 CFR 15.21(a)(4)). Section 15.21(c) of this interim rule authorizes the release of the Form HUD–92410 to eligible potential bidders and to potential investors in the mortgage (who receive Form HUD–92410 from a potential bidder) in connection with a multifamily mortgage auction conducted by the Department.

Under § 15.21(c), eligible potential bidders (as defined in the auction announcement) would be required to keep the information confidential, to disclose the information only to potential investors in the mortgage, to use the information for the sole purpose of their evalution of the mortgage in connection with the mortgage auction, and to follow disclosure procedures for that auction that have been established by the Secretary. The release of this information to potential bidders would be limited to the period from the date given in the announcement of the specific auction through the last date of any post-auction sale. In addition, any potential bidder is responsible for notifying potential investors in the mortgage who receive this information from that bidder of the investors' obligations under § 15.21(c)(3). Similar requirements are stated in the interim rule for potential investors in the mortgage who receive this information from potential bidders.

Disclosure of this information not in accordance with this rule will subject an eligible potential bidder or a potential investor (who has received the information from a potential bidder and has been notified by that potential bidder of its obligations under § 15.21(c)(3)) to HUD administrative sanctions under 24 CFR Part 24, including debarment, suspension, or placement in ineligibility status for purposes of HUD contracts, grants, mortgage insurance, or other form of HUD assistance described in Part 24.

The Department requests public comments on this interim rule to facilitate the limited disclosure of Form HUD–92410 to eligible potential bidders and potential investors in the mortgage in connection with a specific mortgage auction. In particular, HUD invites comments on: (1) Whether other mortgagor project or financial information that has been submitted to HUD for purposes of HUD mortgage insurance should be disclosed to eligible potential bidders and potential investors in the mortgage; (2) whether alternative or additional requirements and remedies should be included in this interim rule to limit the disclosure of Form HUD–92410 with respect to both eligible potential bidders and potential investors; and (3) whether only a portion of the information in Form HUD–92410 should be authorized for disclosure in connection with mortgage auctions.

IV. Miscellaneous

This interim rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the provisions of 5 U.S.C. 605 (the Regulatory Flexibility Act), the Secretary has determined that this rule would not have a significant economic impact on a substantial number of small entities, because the impact of this limited financial disclosure is not expected to be substantial, and because most mortgagors affected by the rule are not small firms.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the collection of information under Form HUD–92410 has been approved by OMB, and assigned approval number 2502–0052. This rule would not provide any additional collection of information burdens on affected firms, but would permit the disclosure of information from Form HUD–92410 for HUD mortgage auctions under limited conditions.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule was listed as item number 809 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036, 14049) under Executive Order 12291 and the Regulatory Agenda.

List of Subjects in 24 CFR Part 15

Classified information, Freedom of information.

Accordingly, 24 CFR Part 15 is amended as follows:

PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for 24 CFR Part 15 is revised to read as set forth below and any authority citation following any section in Part 15 is removed:

Authority: Freedom of Information Act (5 U.S.C. 552); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 15.21 paragraph (a)(4) is revised, and paragraph (c) is added to read as follows:

§ 15.21 Exemptions authorized by 5 U.S.C. 552.

* * * * *

(a) * * *

(4) Except as otherwise provided in paragraph (c) of this section, trade secrets and commercial or financial information obtained from a person and privileged or confidential;

* * * * *

(c) Subject to the following conditions, financial and related information submitted by a mortgagor and contained on Form HUD–92410, (Statement of Profit and Loss) or a HUD-approved substitute form that the mortgagor may have submitted, may be disclosed to eligible potential bidders (as defined in the auction announcement) in connection with a multifamily mortgage auction conducted by the Department.

(1) Information from Form HUD–92410 concerning a project may be made available in conjunction with the auction of a mortgage covering that project conducted under the authority of sections 207 (k) and (l) of the National Housing Act, 12 U.S.C. 1713 (k) and (l), or section 7(i)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i)(3). Included among the types of mortgage auctions affected by this provision are any mortgage sale procedures wherein oral or written bids are submitted to HUD or to its authorized agent.

(2) The release of this information by HUD to eligible potential bidders shall be limited to the period from the date given in the announcement of the specific auction through the last date of any post-auction sale.

(3) Eligible potential bidders who have received this information shall agree to keep the information confidential, to disclose the information only to potential investors in the mortgage, to use the information for the sole purpose of their evaluation of the mortgage in connection with the mortgage auction, and to follow disclosure procedures for that auction that have been established by the Secretary. Any disclosure by eligible potential bidders to potential investors in the mortgage shall be limited to the period from the date given in the announcement of the specific auction through the last date of any post-auction sale. Similarly, potential investors in the mortgage shall agree to keep the information confidential and to use the information for the sole purpose of their evaluation of the mortgage in connection with their investment decision. In addition, potential investors in the mortgage may not disclose the information to other entities, unless the disclosure is necessary for the investor's evaluation of the mortgage, is in accordance with disclosure procedures for the specific auction that have been established by the Secretary, and is limited to the period from the date given in the announcement of the specific auction through the last date of any post-auction sale. Any potential bidder is responsible for notifying potential investors in the mortgage who receive this information from that bidder of the investors' obligations under this section.

(4) Disclosure of information from Form HUD–92410 by an eligible potential bidder or by a potential investor (who has received the information from a potential bidder and has been notified by that potential bidder of its obligations under paragraph (c)(3) of this section) that is not in accordance with this section is a violation of this regulation and may subject the entity making the unauthorized disclosure to administrative sanctions under 24 CFR Part 24.

3. An appendix is added to Part 15 to read as follows:

Appendix to Part 15—List of Data Entries Included in Form HUD–92410, Statement of Profit and Loss

Income Accounts

Rent Income:
- Houses
- Apartments
- Rent supplement payments
- Furniture & equipment-owned by project for rent or lease
- Stores and commercial
- Offices
- Basement
- Garage or parking spaces
- Miscellaneous

Total rent income—Potential at 100% occupancy

Vacancies:
- Houses
- Apartments
- Furniture & equipment-owned by project for rent or lease
- Stores and commercial
- Offices
- Basement
- Garage or parking spaces
- Miscellaneous

Total vacancies

Net Rental Income

Total Service Income

Financial Income:
- Interest income
- Income from investments
- Income from sinking fund
- Miscellaneous

Total financial income

Total Other Income

Total Income

Project Expense Accounts

Renting Expenses:
- Advertising
- Commissions
- Concessions to tenants
- Alterations
- Miscellaneous

Total Renting Expenses

Administrative Expenses:
- Office salaries
- Office expense
- Office rent
- Management fee
- Manager of superintendent salaries
- Legal expenses (project)
- Auditing expenses (project)
- Telephone and telegraph
- Bad debts
- Miscellaneous

Total administrative expenses

Operating Expenses:
- Elevator payroll
- Elevator power
- Fuel
- Engineer payroll
- Janitor payroll
- Janitor supplies
- Bus operator payroll
- Gasoline, oil and grease
- Electricity
- Water
- Gas
- Exterminating payroll
- Exterminating supplies
- Exterminating contract
- Garbage and trash removal
- Miscellaneous

Total operating expenses

Maintenance Expenses:
- Protection payroll
- Protection fee, cost or contracts
- Grounds payroll
- Grounds supplies and replacements
- Grounds contract
- Cleaning payroll
- Repairs payroll
- Repairs material
- Repairs contract
- Repairs-extraordinary and nonrecurring
- Elevator maintenance
- Air conditioning, repair and maintenance
- Decorating payroll
- Decorating supplies
- Decorating contract

Motor vehicle repairs
Maintenance equipment repairs
Miscellaneous
Total maintenance expenses

Depreciation:
Buildings
Building equipment-fixed
Alterations
Building equipment-portable
Furniture for project administrative use
Furniture & equipment-project owned for rental or lease
Furnishings
Maintenance equipment
Motor vehicles
Miscellaneous
Total depreciation

Taxes and Insurance:
Taxes (list)
Insurance
Total taxes and insurance

Financial expenses:
Interest on bonds payable
Interest on mortgage payable
Interest on notes payable (long term)
Interest on notes payable (short term)
Insurance on mortgage
Miscellaneous
Total Service Expenses

Total Cost of Operations

Operating Profit or (Loss)

Corporate or Mortgagor Entity Expenses:
Officer salaries
Legal expenses (entity)
Federal income tax
State income tax
Other taxes (entity)
Leased furniture expenses (entity)
Other expenses (entity)
Total corporate expenses

Net Profit or Loss

Dated: May 27, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-12592 Filed 6-4-86; 8:45 am]

BILLING CODE 4310-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8068]

Income Taxes; Temporary Regulations Under Section 338, Stock Acquisitions, Statements of Elections and Due Dates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains a correction to the temporary regulations that were published in the Federal Register on May 16, 1986 (51 FR 17929). Those regulations, issued as Treasury Decision 8068, relate to section 338(g) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kane of the Legislation and Regulations Division, Office of the Chief Counsel, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attn: CC:LR:T). Telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision 8068 provides additional guidance to taxpayers concerning the filing of certain Statements of election on or after December 9, 1985, and on or before July 15, 1986; clarifies the application of the mitigation of limitations provisions; and extends the time for taking certain action under section 338 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8068 contains a typographical error in a date that appears in one of the examples in § 1.338-1T(m)(15).

Correction of Publication

Accordingly, the publication of Treasury Decision 8068, which was the subject of FR Doc. 86-10998, is corrected as follows:

§ 1.338-1T [Corrected]

In § 1.338-1T, paragraph (m)(15), *Example (10)*, on page 17936, first column, in the last sentence the language "November 3, 1983," is removed and the language "November 3, 1986," is added in its place.

Donald E. Ostenn,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-12606 Filed 6-4-86; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-229; Ref: Notice Nos. 522, 534, 542]

Wine Labeling and Advertising; Use of Geographic Brand Names

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the labeling regulation in 27 CFR 4.39(i), concerning geographic brand names of viticultural significance. In essence, the amended regulation permits a brand name of viticultural significance to be used on a label only if the wine meets the appellation of origin requirements for the geographic area named. However, the bottling winery need *not* be located in the geographic area used in the brand name.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta or John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision ATF-53 (43 FR 37672, August 23, 1978 and 43 FR 54024, November 22, 1978), set forth a new provision in 27 CFR 4.39(i) by providing that a brand name of viticultural significance may not be used unless the bottling winery is located within the geographic area used in the brand name, and the wine meets the appellation of origin requirements for the geographic area named, or; the brand name is qualified by the word "brand" immediately following the brand name in the same size of type and as conspicuous as the brand name itself.

As specified in § 4.39(i), a name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in 27 CFR Part 9, or by a foreign government, or when found to have viticultural significance by the Director.

Petition to Defer the Mandatory Compliance Date

The Wine Institute petitioned ATF to delay the effective date of § 4.34(c) (also promulgated under T.D. ATF-53), and § 4.39(i) from January 1, 1983, to January 1, 1985. Due to the fact that the validity of other regulations promulgated by T.D. ATF-53 was cast into doubt by *Wawszkiewicz* v. *Department of the Treasury*, 480 F.Supp. 739 (D.D.C. 1979), *rev'd in part* and *aff'd in part*, 670 F. 2d 296 (D.C. Cir. 1981), wine industry members could not effectively plan to redesign their labels to conform to all the requirements set forth in the Treasury decision. The Wine Institute believed that its members should only be required to redesign their labels once in order to conform to the rules promulgated in T.D. ATF-53, and they could not be sure what those rules were

until the *Wawszkiewicz* litigation was finalized.

Thereafter, ATF issued a notice of proposed rulemaking which resulted in T.D. ATF–128 (January 21, 1983; 48 FR 2762) deferring the effective date of 27 CFR 4.34(c) and 4.39(i) until January 1, 1985. A final rule concerning § 4.34(c) was subsequently published on January 7, 1985 (50 FR 759). The mandatory compliance date for § 4.39(i) was eventually extended until January 1, 1987, as a result of T.D. ATF–194 (January 7, 1985; 50 FR 758).

In their petition to defer the mandatory compliance date for §§ 4.34(c) and 4.39(i) in T.D. ATF–53, the Wine Institute reiterated their earlier position on the use of (TM) and (R), in lieu of the word "brand." They believed that the provision in § 4.39(i) requiring the word "brand" to appear in the same size of type as the brand name was unaesthetic. In addition, they believed the word "brand" would not preclude any misleading impressions that might be conveyed by a geographic brand name.

Notice No. 522

Based on the Wine Institute's petition, ATF published Notice No. 522 (May 7, 1984; 49 FR 19330), presenting four alternatives to § 4.39(i), but proposing action on one:

Alternative No. 1. This alternative consisted of leaving the regulation (§ 4.39(i)) as currently stated.

Alternative No. 2. This alternative proposed to eliminate the regulation, § 4.39(i), and therefore, any brand name found to be misleading without being qualified by the word "brand" would, under § 4.33(b), no longer be allowed to appear on labels of wine.

Alternative No. 3. This alternative would amend the type size requirement for the word "brand." Instead of the word "brand" appearing in the same size type as the brand name, it would only be required to appear in type of at least one-half the size of the brand name, but no smaller than two millimeters. The other requirements as stated in § 4.39(i) would remain the same.

Alternative No. 4. This was the alternative proposed by ATF. A brand name of viticultural significance may not be used unless: The bottling winery is located within the geographical area used in the brand name, and the wine meets the appellation of origin requirements for the geographical area name, *or;* the brand name is qualified by the word "brand" immediately following the brand name in the same size of type and as conspicuous as the brand name itself, *or;* the wine is labeled with an appellation of origin that is either a county or viticultural area if the geographic area named in the brand name is other than a state name and is a name to which the wine is not entitled as an appellation of origin, *or;* the wine is labeled with an appellation of origin that is a state name, county name, or viticultural area name, if the brand name contains a state name to which the wine is not entitled as an appellation of origin, *or;* the wine is labeled with a statement which the Director finds to be sufficient to dispel the impression that the geographic term used in the brand name is an appellation of origin.

The comment period for Notice No. 522 closed on July 6, 1984. It was extended until September 14, 1984, as a result of Notice No. 534 (July 12, 1984; 49 FR 28417), and extended again, until January 2, 1985, as a result of Notice No. 542 (September 4, 1984; 49 FR 34847).

Analysis of Comments

In response to Notice Nos. 522, 534 and 542, ATF received 26 comments. The majority of the commenters (17) favored Alternative Nos. 2 and 4. Nine commenters (representing mostly foreign interests) were in favor of Alternative No. 2. Most of the eight commenters favoring Alternative No. 4, represented domestic interests.

Most commenters favoring Alternative No. 2 believed that ATF's proposed Alternative No. 4 encouraged misleading brand names. For example, it was believed that a brand name of geographical significance, such as "Rheinhessen," would be acceptable as long as an appellation of origin (such as "The Hamptons") appeared on the label. In that regard, however, ATF would not approve "Rheinhessen" as a brand name on a label for wine other than from Germany, in accordance with 27 CFR 4.24(c) and 4.39(k).

One commenter, favoring Alternative No. 2, stated that Alternative No. 4 would allow "the possibility of using two appellations of origin, one which is truthful and one which is a brand name and thus misleading. The consumer would not be able to tell which is the truthful appellation."

Commenters favoring Alternative No. 2 also referred to various international resolutions and agreements, supported by the U.S., concerning protection of non-generic designations of origin. One specific reference was the exchange of letters (July, 1983) between the EEC Commission and the U.S. In their letter, the EEC noted with satisfaction the willingness of the U.S. to work within the framework of § 4.24(c)(3) to prevent "erosion" of non-generic designations of geographic significance indicating a wine-growing area in the EEC.

Basically, proponents of Alternative No. 4 believed that this alternative offered maximum flexibility to the industry while affording maximum protection to the consumer. As one commenter stated, the consumer is assured "that no misleading impression can be conveyed, either because the brand name correctly identifies the origin of the wine, or because the label contains one of a variety of definite statements sufficient to dispel the impression that the brand name refers to the origin of the wine." At the same time, industry is afforded several alternatives in lieu of having to use the "aesthetically unattractive" word "brand." In addition, this commenter noted that the word "brand" "would not resolve the question of misleading consumer information."

Final Rule

ATF believes that the brand name, usually the most prominent item on a wine label, in certain instances conveys information to the consumer. In the case of a geographic brand name of viticultural significance, ATF believes that such a name on a label indicates the origin of the wine, that is, the place where the grapes were grown. This was brought out in the comments received in response to Notice No. 522.

In addition, as mentioned earlier, some commenters believed that use of the word "brand" did not dispel any misleading impression that could be conveyed by a brand name of viticultural significance where the wine did not meet the appellation of origin requirements for the geographic area named.

Therefore, with the effective date of this final rule, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements of § 4.25a for the geographic area named. Further, the word "brand" may not be used on labels where the wine does not meet the appellation of origin requirements for the area named in the brand name. For example, the word "brand" may not be used with the brand name "Carmel Valley Vineyards" if the wine does not meet the appellation of origin requirements for Carmel Valley.

For certificates of label approval issued prior to the effective date of this final rule, the wine shall meet the appellation of origin requirements for the geographic area named in the brand name, *or;* the wine shall be labeled with an appellation of origin in accordance with § 4.34(b) as to location and size of

type of either: (A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or (B) a state or county appellation of origin or a viticultural area, if the brand name bears a state name, *or;* the wine shall be labeled with some other statement which the Director finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

As with new certificates of label approval, the word "brand" may not be used on labels where the wine does not meet the appellation of origin requirements for the area named in the brand name. ATF will be reviewing existing certificates of label approval to insure that the requirements of the new regulation are met.

ATF has reconsidered its position regarding the location of the bottling winery when a geographic brand name of viticultural significance is used. Under § 4.39(i), as well as ATF's proposed Alternative No. 4 in Notice No. 522, the bottling winery had to be located in the geographic area indicated in the brand name. By definition, an appellation of origin indicated where the grapes (fruit) are grown. There is no reference or requirement as to the location of the bottling winery. Only under the requirements of § 4.26 ("estate bottled") is the location of the bottling winery a factor. Therefore, unless otherwise required, when a geographic brand name of viticultural significance is used, the bottling winery need not be located in the geographic area named.

ATF believes that this final rule will provide industry with sufficient flexibility in designing their labels, while at the same time providing consumers with protection from any misleading impressions that might arise from the use of geographic brand names.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB).

Disclosure

Copies of the petition, the notices of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4406, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4, Labeling and advertising of wine is amended as follows:

Par. 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.39 is amended by revising paragraph (i) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(i) *Geographic brand names.*

(1) Except as provided in subparagraph 2, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.

(2) For brand names used in existing certificates of label approval issued prior to (effective date of final rule):

(i) The wine shall meet the appellation of origin requirements for the geographic area named; or

(ii) The wine shall be labeled with an appellation of origin in accordance with § 4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or;

(B) A state, county or a viticultural area, if the brand name bears a state name; or

(iii) The wine shall be labeled with some other statement which the Director finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in Part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the Director.

* * * * *

§ 4.34 [Amended]

Par. 3. Section 4.34(b)(3) is amended by deleting the reference to "brand name" and "§ 4.39(i)".

Signed: March 14, 1986.

Stephen E. Higgins,

Director.

Approved: May 16, 1986.

Francis A. Keating II,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 86-12574 Filed 6-4-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 12-86-01]

Drawbridge Operation Regulations; Sacramento River, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the California Department of Transportation, the Coast Guard is changing the regulations governing the Butte City bridge across the Sacramento River, mile 169.7, at Butte City, California to provide that the draw need not open. This change is being made because no requests have been made to open the draw since the bridge was completed in 1949. This action will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and still provide for the reasonable needs of navigation. The Coast Guard is also deleting the 1972 requirement that the draws above Chico Landing be returned to operable condition within six months after notification by the District Commander.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Assistant Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437–3514).

SUPPLEMENTARY INFORMATION: On Thursday, March 6, 1986 the Coast Guard published proposed rules (51 FR 7913) concerning this amendment. The Commander, Twelfth Coast Guard District, also published the proposal as a Public Notice dated 10 April 1986. Interested persons were given until 21 April 1986 to submit comments on the proposed rule. Interested persons were given until 9 May 1986 to submit comments on the public notice.

Drafting Information

The drafters of these regulations are Rose E. Guerra, project officer, and Lieutenant Commander Peter K. Mitchell, project attorney.

Discussion of Comments

Three comments were received. The Corps of Engineers and California State Resources Agency had no comment. California Department of Transportation was in favor of the proposal.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. There have not been any requests for openings since the bridge was constructed so there will not be any impact on navigation.

Since the economic impact of these regulations is expected to be minimal, the Cost Guard certifies that they will not have a signficant economic impact on substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.189(b) and (c) are revised to read as follows:

§ 117.189 Sacramento river.

* * * * *

(b) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, and mile 135.5 at Meridian, shall open on signal if at least 12 hours notice is given to the California Department of Transportation at Marysville.

(c) The draws of the bridges above Meridian need not be opened for the passage of vessels.

* * * * *

Dated: May 21, 1986.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 86–12865 Filed 6–4–86; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1177

Claims Collection

AGENCY: National Endowment for the Humanities.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982. It is consistent with regulations issued jointly by the Department of Justice and the General Accounting Office at 4 CFR 101–105 as amended by 49 FR 8889. This rule will enhance the Endowment's ability to collect debts by providing guidance to officers and employees charged with debt collection responsibilities. In addition, the rule provides notice to those with delinquent accounts of agency claims collection practices.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Deputy General Counsel, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786–0322.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities published a proposed rule for claims collection in the **Federal Register** on March 18, 1986, 51 FR 9228–9230. Interested parties were asked to submit comments within 30 days. The National Endowment for the Humanities received several comments. The comments suggested that the Endowment include provisions to: collect administrative costs for processing claims; assess penalty charges; and offset the salaries of Endowment employees who have delinquent accounts. The National Endowment for the Humanities has adopted these suggestions. Provisions to charge for administrative expenses incurred in processing claims and to assess penalty charges have been added at section 1177.7 of this rule. The National Endowment for the Humanities will include employee salary offset provisions by amending this rule at a future date.

E.O. 12291

This rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981 because it is unlikely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographical regions, or a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities including small businesses, small organizations and small local governments. Accordingly, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

The proposed rule would establish no burdens as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These regulations impose no new reporting or recordkeeping requirements

that must be cleared by the Office of Management and Budget.

List of Subjects in 45 CFR Part 1177

Administrative practice and procedures, Claims, Government employees, Privacy.

Approved:

Lynne Cheney,
Chairperson.

Title 45 of the Code of Federal Regulations, Chapter XI, is amended by adding a new Part 1177 to read as follows:

PART 1177—CLAIMS COLLECTION

Sec.

1177.1 Purpose and scope.
1177.2 Definitions.
1177.3 Other remedies.
1177.4 Claims involving criminal activity or misconduct.
1177.5 Collection.
1177.6 Notices to debtor.
1177.7 Interest, Penalties, and Administrative Costs.
1177.8 Administrative offset.
1177.9 Use of credit reporting agencies.
1177.10 Collection services.
1177.11 Referral to the Department of Justice or the General Accounting Office.
1177.12 Compromise, suspension and termination.
1177.13 Omissions not a defense.
1177.14–1177.99 [Reserved].

Authority: 31 U.S.C. 3711, 3716–3719.

§ 1177.1 Purpose and scope.

This part prescribes standards and procedures for officers and employees of the National Endowment for the Humanities who are responsible for the collection and disposition of debts owed to the United States. The authority for this part is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716–3719; the Federal Claims Collection Standards at 4 CFR Parts 101–105, as amended by 49 FR 8889; 5 U.S.C. 552a, and Office of Management and Budget Circular A–129. The activities covered include: collecting claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed $20,000 exclusive of interest and charges, and referring debts that cannot be disposed of by the Endowment to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1177.2 Definitions.

For the purpose of this part the following definitions will apply:

(a) "Claim" or "debt" means an amount of property owed to the United States. These include but are not limited to: overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue or delinquent if it is not paid by the due date specified in the initial notice of the debt (see sec. 1177.6 of this part) or if the debtor fails to satisfy his or her obligation under a repayment agreement.

(b) "Debtor" means an individual, organization, group, association, partnership, or corporation indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

(c) "Endowment" means the National Endowment for the Humanities.

(d) "Administrative offset" means satisfying a debt by withholding money payable by the United States to or held by the United States for a debtor.

§ 1177.3 Other remedies.

The remedies and sanctions available to the National Endowment for the Humanities under this part are not intended to be exclusive. The Chairperson of the National Endowment for the Humanities or his designee may impose other appropriate sanctions upon a debtor for prolonged or repeated failure to pay a debt. For example, the Chairperson or his designee may place the debtor's name on a list of debarred, suspended, or ineligible grantees and contractors, convert the method of payment under a grant from an advance to a reimbursement method, or revoke a grantee's letter of credit. In such cases the debtor will be advised of the Endowment's action.

§ 1177.4 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The Endowment will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false, claims, or misrepresentation shall not be compromised, terminated, suspended, or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend, or otherwise dispose of such debts.

§ 1177.5 Collection.

(a) The Endowment will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30 day intervals. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and the effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is involved in insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1177.6 Notice to debtor.

The first written demand for payment must inform the debtor of the following:

(a) The amount and nature of the debt;

(b) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(c) The assessment of interest under § 1177.7 from the date the notice was mailed if payment is not received within the 30 days;

(d) The right to dispute the debt;

(e) The office, address and telphone number that the debtor should contact to discuss repayment and reconsideration of the debt and;

(f) The sanctions available to the National Endowment for the Humanities to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or the Department of Justice for litigation.

§ 1177.7 Interest, penalties, and administrative costs.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The Endowment will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each

year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the Federal Register and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness, except that if a debtor defaults on a repayment agreement interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(c) The Endowment shall charge debtors for administrative costs incurred in handling overdue debts.

(d) Interest will not be charged on administrative costs.

(e) The Endowment shall assess a penalty charge, not to exceed 6 per cent per year on debts which have been delinquent for more than 90 days. This charge shall accrue from the date that the debt became delinquent.

(f) The Chairperson or his designee may waive in whole or in part the collection of interest and administrative and penalty charges if determined that collection would be against equity or not in the best interests of the United States. The Endowment shall waive the collection of interest on the debt or any part of the debt which is paid within 30 days after the date on which interest began to accrue.

§ 1177.8 Administrative offset.

(a) The Endowment may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the Endowment and the debtor agree to the offset;

(3) Offset is cost effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(b) The Endowment may offset a debt owed to another Federal agency from amounts due or payable by the Endowment to the debtor or request another Federal agency to offset a debt owed to the Endowment;

(c) Prior to initiating administrative offset, the National Endowment for the Humanities will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt and;

(3) The applicable interest.

(d) The National Endowment for the Humanities may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (c) of this section if:

(1) Failure to offset would substantially prejudice the Government's ability to collect the debt and

(2) The time before the payment is to be made does not reasonably permit completion of those procedures.

§ 1177.9 Use of credit reporting agencies.

(a) The Endowment may report delinquent accounts to credit reporting agencies consistent with the notice requirements contained in the § 1177.6 of this part. Individual debtors must be given at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency.

(b) Debts may be reported to consumer or commercial reporting agencies. Consumer reporting agencies are defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Endowment may disclose only an individual's name, address, social security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1177.10 Collection services.

(a) The Endowment may contract for collection services to recover outstanding debts. The Endowment may refer delinquent debts to private collection agencies listed on the schedule compiled by the General Services Administration. In such contracts, the National Endowment for the Humanities will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the Endowment any data contained in its files relating to the debt account upon agency request or upon returning an account to the Endowment for referral to the Department of Justice for litigation.

§ 1177.11 Referral to the Department of Justice or the General Accounting Office.

Debts over $600 but less than $100,000 which the Endowment determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding $100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1177.12 Compromise, suspension and termination.

(a) The Chairperson of the National Endowment for the Humanities or his designee may compromise, suspend or terminate the collection of debts where the outstanding principal is not greater than $20,000. Endowment procedures for writing off outstanding accounts are available to the public.

(b) The Chairperson of the National Endowment for the Humanities may compromise, suspend or terminate collection of debts where the outstanding principal is greater than $20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the National Endowment for the Humanities will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1177.13 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

§ 1177.14–1177.99 [Reserved]

[FR Doc. 86-12071 Filed 6-4-86; 8:45 am]
BILLING CODE 7536-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

48 CFR Parts PHS 301, 304, 305, 306, 314, 315, 323, 333, 335, 336, 352, and 380

Acquisition Regulation; Amendments

AGENCY: Public Health Service (PHS), HHS.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the final rule with request for comments published in the Federal Register on

September 14, 1984 (49 FR 36235–36270) that established the Public Health Service Acquisition Regulation (PHSAR) as Appendix A to the Department of Health and Human Services Acquisition Regulation (HHSAR), Chapter 3 of Title 48, Code of Federal Regulations (49 FR 13660, April 9, 1984). The PHSAR implements and supplements the HHSAR and the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1. The amendments being made in this rule reflect comments made by two respondents; administrative, clerical, and typographical corrections disclosed internally; changes resulting from the Competition in Contracting Act of 1984, Title VII of Pub. L. 98–369; and the transfer of construction and architect-engineer acquisition responsibilities from the Office of the Secretary, Health and Human Services (HHS), to the Public Health Service (PHS).

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Charleen Kelly (Procurement Analyst), (301) 443–2710.

SUPPLEMENTARY INFORMATION: The final rule published on September 14, 1984, requested comments from interested parties. Two responses were received and both indicated that the regulations concerning human subjects and care of laboratory animals were outdated. As a result, the program office responsible for these policies revised the regulations in the PHSAR to bring them into compliance with existing practices and regulations, and the revised material is included in this document.

Other amendments, including addition of a Part PHS 306, Competition Requirements, are a result of the Competition in Contracting Act of 1984 and its implementation in the FAR and HHSAR. Construction and architect-engineer coverage, originally published as Subpart 323.70 of the HHSAR, is added to the PHSAR because of a transfer of construction and architect-engineer acquisition responsibilities from the Office of the Secretary, HHS, to PHS. The remaining amendments correct administrative, clerical and typographical errors.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts PHS 301, 304, 305, 306, 314, 315, 323, 333, 352, and 380

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR Chapter 3, Appendix A, as set forth below.

Dated: May 28, 1986.

Henry G. Kirchheimer, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

As indicated in the preamble, Appendix A to Chapter 3, of Title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for Parts PHS 301, 304, 305, 306, 314, 315, 323, 333, 352, and 380 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART PHS 301—[AMENDED]

PHS 301.105 [Amended]

2. Section PHS 301.105 is amended by revising the table to read as follows:

* * * * *

PHSAR segment	OMB control No.
All segments (excluding PHS 352.223–70 and PHS 352.232–70)	0990–0138
PHS 352.223–70	0990–0137
PHS 352.232–70	0990–0134

PHS 301.270 [Amended]

3. Section PHS 301.270 is amended by removing the words "Acquisition Management Advisory Committee (AMAC)" in the title and first sentence of paragraph (a), and inserting, in their place, the words "Procurement Management Advisory Committee (PMAC)." In paragraph (b), the acronym "AMAC" is removed, and the acronym "PAMAC" is inserted in its place.

PHS 301.470 [Amended]

4. Paragraph (b) of section PHS 301.470 is amended by inserting the words "in addition to the information required by 301.470(b)" after the word "following" and before the semicolon. In addition paragraphs (b) (1), (2), and (5) of section PHS 301.470 are removed, and paragraphs (b) (3) and (4) are renumbered as PHS 301.470(b)(1) and PHS 301.470(b)(2) respectively.

PART PHS 304—[AMENDED]

PHS 304.670–1 [Amended]

5. Section PHS 304.670–1 is amended by removing the words after "are responsible" and inserting, in their place, the words "for ensuring that all required information is collected, submitted, and received into the PHSCIS in accordance with the central PHSCIS User Manual."

6. Section PHS 304.7101 is amended as follows:

a. Paragraph (b)(2)(i) is revised to read as follows:

PHS 304.7101 Contracts requiring review and approval.

(b)(2)(i) In addition to the reviews required by 304.7101(a) and PHS 304.7101(c), internal reviews are to be conducted of acquisitions made by the following contracting offices in the National Institutes of Health for contract awards that fall below the dollar threshold for review and approval set forth in PHS 304.7101(c) but exceed the dollar threshold set forth herein:

National Cancer Institute—$750,000
National Heart, Lung, and Blood Institute—$500,000
National Institute of Environmental Health Sciences—$250,000
National Institute of Allergy and Infectious Diseases—$250,000
National Institute of Child Health and Human Development—$250,000
Centralized procuring activity for all other National Institutes of Health Research Organizations (Research Contracts Branch)—$250,000

These internal reviews shall be conducted by senior personnel with each contracting office. Typically, the chief of contracting office or his/her deputy should be involved in the review. Personnel involved in the contract action shall not perform the review. Each review shall be documented in writing, and any substantive issues identified shall be resolved prior to award.

b. A new paragraph (b)(2)(iii) is added as follows:

* * * * *

(iii) Contract awards and modifications of proposed architect-engineer contracts expected to exceed $50,000 shall be reviewed and approved prior to award by the reviewing official designated in PHS 304.7101(c).

* * * * *

c. In paragraph (c), the chart showing the reviewing officials and the dollar thresholds for preaward contract review is revised to read as follows:

* * * * *

Review and approval required for contracts expected to exceed	PHS acquisition activity	Reviewing official
	Office of the Assistant Secretary for Health	
$300,000	Administrative Services Center, Office of Management	Director, Administrative Services Center.
	Alcohol, Drug Abuse and Mental Health Administration	
300,000	National Institute on Drug Abuse	Director, Division of Grants and Contracts Management.
300,000	National Institute on Alcohol Abuse and Alcoholism	Do.
300,000	National Institute of Mental Health	Do.
300,000	St Elizabeths, Hospital, NIMH	Do.
50,000	Addiction Research Center	Do.
	Centers for Disease Control	
300,000	Centers for Disease Control	Director, Procurement and Grants Office.
	Food and Drug Administration	
300,000	Division of Contracts and Grants Management	Director, Division of Contracts and Grants Management.
300,000	National Center for Toxicological Research	Do.
	National Institutes of Health	
1,500,000	National Cancer Institute	Director, Division of Contracts and Grants.
1,000,000	National Heart, Lung, and Blood Institute	Do
	National Institutes of Environmental Health Sciences	
1,000,000	Research and development awards	Do.
100,000	Other than research and development	Director, Division of Procurement.
750,000	National Institute of Child Health and Human Development	Director, Division of Contracts and Grants.
750,000	National Institute of Allergy and Infectious Diseases	Do.
500,000	National Institute of Neurological and Communicative Disorders and Stroke	Do.
	National Library of Medicine	
500,000	Research and development awards	Director, Division of Contracts and Grants.
250,000	Other than research and development	Director, Division of Procurement.
250,000	National Institute of Dental Research	Director, Division of Contracts and Grants.
250,000	National Institute of Arthritis, Metabolism and Digestive Diseases	Do.
750,000	Centralized procuring activity for all other National Institutes of Health Research Organizations	Do.
250,000	Procurement Branch, Division of Procurement, OFS	Director, Division of Procurement.
	Health Resources and Services Administration	
500,000	Awards made by Headquarters and the Indian Health Service	Director, Division of Grants and Procurement Management.
300,000	Awards made by other than Headquarters and the Indian Health Service	Do.

7. A new Part PHS 305 is added to read as follows:

PART PHS 305—PUBLICIZING CONTRACT ACTIONS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 305.2—Synopses of Proposed Contract Actions

PHS 305.202 Exceptions.

(b) A determination and finding has been executed by the Acting Assistant Secretary for Health after concurrence by the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, which exempts for the period September 30, 1985 through September 29, 1988, certain acquisitions with the National Academy of Sciences (NAS) from the synopsis requirements set forth in FAR 5.201. This exemption is applicable only to acquisitions where NAS is the only source which can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program requirements. To ensure that this exemption will be used only when appropriate, the agency competition advocate shall certify, prior to award, each acquisition with NAS which is not synopsized regardless of the dollar value. The certification must state that only NAS can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program needs.

8. A new Part PHS 306 is added to read as follows:

PART PHS 306—COMPETITION REQUIREMENTS

Subpart PHS 306.3—Other Than Full and Open Competition

Sec.

PHS 306.304 Approval of the justification.

Subpart PHS 306.5—Competition Advocates

PHS 306.502 Duties and responsibilities.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 306.3—Other Than Full and Open Competition

PHS 306.304 Approval of the justification.

(a)(3) The Deputy Assistant Secretary for Health, Operations, PHS, is designated as the approving official referenced in FAR 6.304(a)(3) and 306.304(a)(3).

Subpart PHS 306.5—Competition Advocates

PHS 306.502 Duties and responsibilities

(b) The competition advocates for the PHS activities shall coordinate their efforts with the PHS competition advocate, the Deputy Assistant Secretary for Health Operations.

PART PHS 314—[AMENDED]

9. Paragraph PHS 314.406–3(g)(3) is revised to read as follows:

PHS 314.407–3 Other mistakes disclosed before award.

(g)(3) In addition to the requirement in 314.406–3(g)(3), a copy of the data required by FAR 14.406–3(g)(3) shall be sent to the Office of General Counsel, Business and Administrative Law Division, Parklawn Building, Room 17A–32, 5600 Fishers Lane, Rockville, MD 20857. An information copy of the contracting officer's written statement of facts and circumstances shall be provided to the Contracts Management Branch, DGC/ORM/OM/PHS.

10. Paragraph PHS 314.406–4(e)(2) is revised to read as follows:

PHS 314.406–4 Mistakes after award.

(e)(2) The data shall be submitted as prescribed in PHS 314.406–3(g)(3).

PHS 314.407–8 [Removed]

11. PHS 314.407–8 is removed in its entirety.

PHS 314.470 [Removed]

12. PHS 314.470 is removed in its entirety.

PART PHS 315—[REMOVED]

13. Part PHS 315 is removed in its entirety.

14. A new Part PHS 323 is added to read as follows:

PART PHS 323—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart PHS 323.70—Safety and Health

Sec.
PHS 323.7000 Scope of subpart.
PHS 323.7001 General.
PHS 323.7002 Policy.
PHS 323.7003 Actions required.
PHS 323.7004 Contract clause.
PHS 323.7005 Solicitation notice—construction.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 323.70—Safety and Health

PHS 323.7000 Scope of subpart.

This subpart prescribes the use of a safety and health clause in contracts involving hazardous material or operations, and procedures for developing and administering safety and health provisions.

PHS 323.7001 General.

Various statutes and regulations (e.g., Walsh-Healey Act; Service Contract Act) require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. Positive action to reduce accidents and conditions hazardous to health under all contracts is in the Government's interest since the cost of such accident and health hazards is borne by the Government through higher prices and sometimes by direct indemnification of contractors against liability claims.

PHS 323.7002 Policy.

(a) The guidance contained in FAR Subpart 23.3 shall be used for hazardous material as the primary reference. When that guidance is judged insufficient or does not meet the safety and health situation in the instant acquisition, this subpart shall be followed.

(b) Whenever the performance of a contract will require use of hazardous materials or operations, the contracting activity shall require the prime contractor and subcontractors to:

(1) Provide protection for the life and health of PHS employees, contractor employees, other persons involved with work on PHS programs and projects, and the public;

(2) Avoid accidental work interruptions which could delay progress of PHS programs and project;

(3) Maintain controls for the prevention of damage and loss to property; and

(4) Accumulate and provide data necessary for analysis of risk and loss factors relating to PHS programs and projects.

PHS 323.7003 Actions required.

(a) *Contracting activities.* Contracting activities shall use the clause set forth in PHS 352.223–70 as a guide in developing appropriate safety and health clauses for use in prospective contracts involving the following:

(1) Services or products;

(2) Research, development, or test projects;

(3) Transportation of hazardous materials; and

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and contracting officers in:

(1) Determining whether safety and health provisions should be included in a prospective contract;

(2) Selecting or developing safety and health clause provisions for incorporation in a prospective contract;

(3) Evaluating a prospective contractor's safety and health programs; and

(4) Conducting post-award review and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall:

(1) During the preparation of a request for contract, and in the RFP or IFB:

(i) Ensure that hazardous materials and operations to be utilized in the performance of the contract are clearly identified; and

(ii) Coordinate with the appropriate safety officer to ensure that all hazardous materials and operations are evaluated and that adequate safety requirements are established in the RFP or IFB.

(2) During the period of performance:

(i) Apprise the contracting officer of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

PHS 323.7004 Contract clause.

All contracts which require the use of hazardous materials or operations shall include a clause to provide adherence to minimum safety and health standards. The clause set forth in PHS 352.223–70 may be used or appropriately modified to meet the needs of the individual contract.

PHS 323.7005 Solicitation notice—construction.

The contracting officer shall include the clause in PHS 352.223–71 in all solicitations and resultant contracts for construction and construction services.

15. A new Part PHS 333 is added to read as follows:

PART PHS 333—PROTESTS, DISPUTES, AND APPEALS

Subpart PHS 333.1–Protests

Sec.
PHS 333.102 General.
PHS 333.104 Protests to GAO.
PHS 333.105 Protests to GSBCA.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 333.1–Protests

PHS 333.102 General.

The Division of Grants and Contracts (DGC), ORM/OM/PHS, will participate directly in the resolution of protests against PHS agencies when the Office of the Secretary, HHS, requests DGC involvement, or when DGC considers a protest action to be sensitive or controversial, or otherwise has an interest in the protest. In cases where DGC will participate, the cognizant PHS contracting office shall be notified. In those instances, all file materials and written statements normally forwarded

directly to the Departmental Protest Control Officer shall be forwarded to DGC, ORM/OM/PHS.

PHS 333.104 Protests to GAO.

(a) *General.* (2) A copy of the protest files shall be sent to the Office of General Counsel, Business and Administrative Law Division (OGC-BAL), Parklawn Building, Room 17A-32, 5600 Fishers Lane, Rockville, MD 20857. In addition, an information copy of the contracting officer's statement of facts required by 333.104(a)(2)(i) shall be sent to the Contracts Management Branch, DGC/ORM/OM/PHS.

(b) *Protests before award.* (1) The head of the contracting activity authority to approve the written finding required by FAR 33.104(b)(1) to authorize a contract award while a protest is pending, may be delegated to an organizational level no lower than the Executive Officer of each PHS Agency.

(4) The data shall be submitted as prescribed in PHS 333.104(a)(2).

(c) *Protests after award.* (1) The data shall be submitted as prescribed in PHS 333.104(a)(2).

(2) The head of the contracting activity authority to authorize contract performance notwithstanding a protest as set forth in FAR 33.104(c)(2), may be delegated to an organizational level no lower than the Executive Officer of each PHS Agency.

PHS 333.105 Protests to GSBCA.

(b) The copy of the protest file to be sent to OGC-BAL shall be sent to OGC-BAL, Parklawn Building, Room 17A-32, 5600 Fishers Lane, Rockville, MD 20857. In addition, an information copy of the contracting officer's statement of facts required by 333.105(b)(1) shall be sent to the Contracts Management Branch, DGC/ORM/OM/PHS.

18. A new Part PHS 335 is added as follows:

PART PHS 335—RESEARCH AND DEVELOPMENT CONTRACTING

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PHS 335.000 Special determinations and findings affecting research and development contracting.

The Assistant Secretary for Health shall sign individual and class determinations and findings for:

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).

17. A new Part PHS 336 is added as follows:

PART PHS 336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart PHS 336.6—Architect-Engineer Services

Sec.
PHS 336.600 Program of Requirements approval.
PHS 336.601 Funding.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 336.6—Architect-Engineer Services

PHS 336.600 Program of Requirements approval.

The programmatic and technical requirements for PHS design projects are established in a special document known as a Program of Requirements (POR). In the case of design projects involving the construction of new space, including new facilities, replacement facilities, and building additions, the contracting officer shall ensure that the Office of the Assistant Secretary for Health has approved, or waived approval of, a POR prior to the issuance of the synopsis or solicitation for architectural/engineering services.

PHS 336.601 Funding.

(a) The contracting officer shall ensure that the agency financial management officer has identified and certified that design funds have been appropriated and apportioned prior to the release of a synopsis or solicitation for architect-engineer services for the types of acquisitions specified in PHS 336.600. New facilities, replacement facilities, and building additions must only be acquired with funds appropriated for that specific project as evidenced by either (1) specific language in an appropriations act, or (2) Congressional appropriations intent as reflected in appropriations committee reports or Congressional budget justification.

(b) In the case of ADAMHA, FDA, HRSA, and NIH, the referenced agency financial management officer is the Director of the agency's Division of Financial Management. In the case of CDC, this official is the Director of the Financial Management Office. Subject to HRSA concurrence, funding for projects of the Indian Health Service/HRSA may be certified by the designated financial management officer within the IHS Office of Administration.

(c) The funding source certification shall include identification of the title, appropriation symbol, and fiscal year of the appropriation plus any relevant project or activity description in the appropriation act or reports.

(d) In an unusual circumstance where time is critical, a synopsis or solicitation for architect-engineer services may be issued after the POR has been approved if the agency financial management officer certifies that appropriation and apportionment of proper funds as set forth in paragraph (a) above are expected within 60 days. In such cases, the synopsis or solicitation must specify that award is subject to the availability of funds. In these circumstances the contracting officer shall ensure that contract award is not made until the agency financial management officer has certified in writing that proper funds have been appropriated and apportioned. Other exceptions to the funding requirements set forth in paragraph (a) above, must be specifically approved in writing by the Office of the Assistant Secretary for Health prior to the release of a synopsis or solicitation for architect-engineer services for new facilities, replacement facilities, and building additions.

18. Subpart PHS 352.2 is amended to add sections PHS 352.223-70, PHS 352.223-71, and PHS 352.232-70:

PART PHS 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart PHS 352.2—Texts of Provisions and Clauses

Sec.
PHS 352.223-70 Safety and health.
PHS 352.223-71 Safety and health—construction.
PHS 352.232-70 Additional payment provision.

* * * * *

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 352.2—Texts of Provisions and Clauses

PHS 352.223-70 Safety and health.

The following clause is covered by the policy set forth in Subpart PHS 323.70 and is to be used in accordance with the instructions set forth in PHS 323.7002 and PHS 323.7003.

Safety and Health (APR 1984)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to all property; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards: (Insert codes, standards, and criteria (including any applicable State and local requirements) prescribed by the Safety Officer.)

Further, the Contractor shall take or cause to be taken such additional safety measures

as the Contracting Officer may determine to be reasonably necessary; *Provided*, that, if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause of this contract entitled "Changes."

(b) Prior to commencement of work, the Contractor will submit in writing its plan for complying with the safety and health provisions of this contract, and will meet with the Contracting Officer or his/her designated representative to discuss and develop a mutual understanding relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor shall comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and report to the Contracting Officer in such manner as the Contracting Officer may prescribe, all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to all property incident to work performed under the contract.

(e) The Contracting Officer shall notify (if otherwise, confirm in writing) the Contractor of any noncompliance with the provisions of this clause and corrective action to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action. (Such notice, when delivered to the Contractor or its representative at the site of the work, shall be deemed sufficient for the purpose.) If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) The Contractor shall insert the substance of this clause in each subcontract involving the use of hazardous materials or operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of clause)

PHS 352.223-71 Safety and health—construction.

The following clause shall be included in all solicitations and resultant contracts for construction and construction services, as required by PHS 323.7005.

Safety and Health—Construction (APR 1984)

Your attention is invited to the regulations issued by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitled "Safety and Health Regulations for Construction" (29 CFR Part 1926). The Contractor is required to comply with the referenced regulations to the extent that the resultant contract involves construction.

(End of clause.)

PHS 352.232-70 Additional payment provision.

The following clause shall be included in all solicitations and resultant contracts for construction which contain the "Payments Under Fixed-Price Construction Contracts" clause set forth in FAR 52.232-5:

Additional Payment Provision (APR 1984)

Unless otherwise stated in this contract, there will be taken into consideration in computing progress payments material that will be incorporated into the structure if such material is delivered at the site, or is delivered to the Contractor and properly stored by it in a suitable warehouse, storage yard, or similar place either within 25 miles of the site or as otherwise approved by the Contracting Officer. Before each payment is made, the Contractor shall furnish to the Contracting Officer such evidence as he/she may require of the quantity and value of such material and that it will be incorporated into the structure. If such material is stored off the site, the Contractor shall also furnish to the Contracting Officer, before payment, properly executed bills of sale to the Government for the delivered material upon which such payment is to be made.

(End of clause)

19. Section PHS 352.280-1 is revised to read as follows:

PHS 352.280-1 Protection of human subjects.

The policy and procedures to be followed whenever individuals may be involved as subjects in research activities supported or conducted by the Department under a contract are provided in Subpart PHS 380.1 and 45 CFR Part 46, Protection of Human Subjects.

(a) The following provisions shall be included in solicitations expected to involve human subjects:

Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects (Sep 1985)

(a) Copies of the Department of Health and Human Services (Department) regulations for the protection of human subjects, 45 CFR Part 46, are available from the Office for Protection from Research Risks (OPRR), National Institutes of Health, Bethesda, Maryland 20892. The regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of individuals who participate as subjects in research activities supported or conducted by the Department.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention of interaction with the individual, or (2) identifiable private information. The regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

(c) Activities in which the only involvement of human subjects will be in one or more of the categories set forth in 45 CFR 46.101(b)(1-6) are exempt from coverage.

(d) Inappropriate designations of the non-involvement of human subjects or of exempt categories of research in a project may result in delays in the review of a proposal. The Public Health Service will make a final determination of whether the proposed activities are covered by the regulations or are in an exempt category, based on the information provided in the proposal. In doubtful cases, *prior consultation with OPRR, (telephone: 301-496-7014), is recommended.*

(e) In accordance with 45 CFR Part 46, prospective Contractors being considered for award shall be required to file with OPRR an acceptable Assurance of Compliance with the regulations, specifying review procedures and assigning responsibilities for the protection of human subjects. The initial and continuing review of a research project by an institutional review board shall assure that the rights and welfare of the human subjects involved are adequately protected, that the risks to the subjects are reasonable in relation to the potential benefits, if any, to the subjects and the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate. Prospective Contractors proposing research that involves human subjects shall be contacted by OPRR and given detailed instructions for establishing an institutional review board and filing an Assurance of Compliance.

(f) It is recommended that OPRR be consulted for advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects.

(End of provision)

(b) The following clause shall be included in contracts involving human subjects:

Protection of Human Subjects (Sep 1985)

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR Part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Protection for Research Risks, National Institutes of Health, Public Health Service. The Contractor further agrees to provide certification at least annually that the institutional review board has reviewed and approved the procedures which involve human subjects in accordance with 45 CFR Part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper

manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agency or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgement or otherwise, as an independent Contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(End of clause)

20. PHS 352.280–2 is revised to read as follows:

PHS 352.280–2 Care of laboratory animals.

The policies and procedures to be used when contracts involve live vertebrate animals are provided in Subpart PHS 380.2, and in the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* and accompanying implementation instructions published in a special edition of the *NIH Guide for Grants and Contracts*, Vol. 14, No. 8, June 25, 1985.

(a) The following provision shall be included in solicitations expected to involve vertebrate animals:

Notice To Offerors of Requirement for Adequate Assurance of Protection of Vertebrate Animal Subjects (Sep 1985)

The *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* establishes a number of requirements for research activities involving animals. Before a PHS award may be made to an applicant organization, the organization shall file, with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), PHS, a written Animal Welfare Assurance which commits the organization to comply with the provisions of the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions*, the Animal Welfare Act, and the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources. In accordance with the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions*, applicant organizations must establish a committee, qualified through the experience and expretise of its members, to oversee the institution's animal program, facilities and procedures. No PHS award involving the use of animals shall be made unless the Animal Welfare Assurance has been approved by OPRR. Prior to award, the contracting officer will notify Contractor(s) selected for projects that involve live vertebrate animals that an Animal Welfare Assurance is required. The contracting officer will request that OPRR negotiate an acceptable Animal Welfare Assurance with those Contractor(s). *For further information, OPRR may be contacted at NIH, Bethesda, Maryland 20892 (301–496–7041).*

(End of provision)

(b) The following clause shall be included in all contracts involving research on vertebrate animals:

Care of Live Vertebrate Animals (Sep 1985)

(a) Before undertaking performance of any contract involving research on live vertebrate animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2316 and 9 CFR 2.25–2.28. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR 2.1–2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of any live vertebrate animals used or intended for use in the performance of this contract will conform with the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions*, the current Animal Welfare Assurance, the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources and the pertinent laws and regulations of the United States Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR Subchapter A, Parts 1–4). In case of conflict between standards, the more stringent standard shall be used.

Note.—The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(End of clause)

PHS 352.280–4 [Amended]

21. Paragraph (d) of Clause 6, Payment (June 1977), in PHS 352–280–4(a) is amended by adding the phrase "the Contractor to" between the phrases "shall be paid by" and "the Government, to the extent."

22. Subpart PHS 380.1 is revised to read as follows:

PART PHS 380—SPECIAL PROGRAM REQUIREMENTS AFFECTING PHS ACQUISITIONS

Subpart PHS 380.1—Acquisitions Involving Human Subjects

Sec.

PHS 380.101 Applicability.
PHS 380.102 Policy.
PHS 380.103 Assurances.
PHS 380.104 Notice to offerors.
PHS 380.105 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 380.1—Acquisitions Involving Human Subjects

PHS 380.101 Applicability.

This subpart applies to all research and development contracts involving human subjects except those that are exempt by Secretarial waiver under 45 CFR 46.101(e) or exempt under 45 CFR 46.101(b).

PHS 380.102 Policy.

(a) Safeguarding the rights and welfare of human subjects in activities under Public Health Service (PHS) research and development contracts is the responsibility of each institution that receives or is accountable to PHS for funds awarded for the conduct of that activity. To assure that this institutional responsibility is met, PHS shall not permit a nonexempt research activity involving human subjects to be undertaken unless the institution has an assurance on file with the Office for Protection from Research Risks (OPRR), NIH/PHS, and has filed a certification that an institutional review board (IRB) has reviewed and approved the activity in accordance with 45 CFR Part 46.

(b) Contracts involving human subjects will not be awarded to an individual unless he/she is affiliated with or sponsored by an institution which can and will assume responsibility for safeguarding the human subjects involved.

PHS 380.104 Assurances.

In accordance with 45 CFR 46.103, OPRR is responsible for negotiation of assurances covering all PHS-supported research activities involving human subjects. Consultation with OPRR (telephone: 301–496–7041) is recommended on issues regarding assurances, certification of IRB review and approval, and interpretation of the regulations for the protection of human subjects in 45 CFR 46.

PHS 380.105 Notice to offerors.

Solicitations shall contain the notice to offerors set forth in PHS 352–280–1(a) whenever contract performance is expected to involve human subjects.

PHS 380.105 Contract clause.

The clause set forth in PHS 352.280–1(b) shall be inserted in all contracts involving human subjects.

23. Subpart PHS 380.2 is revised to read as follows:

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PART PHS 380—SPECIAL PROGRAMS REQUIREMENTS AFFECTING PHS ACQUISITIONS

* * * * *

Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals

Sec.

PHS 380.201 Scope of subpart.
PHS 380.202 Definitions.
PHS 380.203 Policy.
PHS 380.204 Applicability.
PHS 380.205 Contractor implementation.

* * * * *

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals

PHS 380.201 Scope of subpart.

This subpart describes Public Health Service (PHS) contracts for projects or activities involving animals, and the responsibilities of the PHS agencies and subordinate elements for implementing policies and procedures described herein.

PHS 380.202 Definitions.

(a) *Animal.* Any live, vertebrate animal used or intended for use in research, research training, experimentation or biological testing or for related purposes.

(b) *Animal facility.* Any building, room, area, enclosure, or vehicle, including satellite facility, used for animal confinement, transport, maintenance, breeding or experiments of surgical manipulation. A satellite facility is any containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 24 hours.

(c) *Animal Welfare Act.* Pub. L. 89–544, 1966, as amended (Pub. L. 91–579 and Pub. L. 94–279) 7 U.S.C. 2131 et seq. Implementing regulations are published in the Code of Federal Regulations (CFR), Title 9, Subchapter A, Parts 1, 2, 3, and 4, and are administered by the U.S. Department of Agriculture.

(d) *Animal Welfare Assurance or Assurance.* The documentation from an awardee or a prospective awardee institution assuring institutional compliance with this policy.

(e) *Guide. Guide for the Care and Use of Laboratory Animals,* NIH Pub. No. 85–23, 1985 edition or succeeding revised editions.

(f) *Institution.* Any public or private organization, business, or agency (including components of Federal, State and local governments).

(g) *Institutional official.* An individual who has the authority to sign the institution's Assurance, making a commitment on behalf of the institution that the requirement of this subpart will be met.

(h) *Public Health Service.* The Public Health Service includes the Office of the Assistant Secretary for Health; the Alcohol, Drug Abuse, and Mental Health Administration; the Centers for Disease Control; the Food and Drug Administration; the Health Resources and Services Administration; and the National Institutes of Health.

(i) *Quorum.* A majority of the members of the Institutional Animal Care and Use Committee.

PHS 380.203 Policy.

It is the policy of PHS to require institutions to establish and maintain proper measures to ensure the appropriate care and use of all animals involved in research, research training and biological testing (hereinafter referred to as activities) supported by PHS. PHS endorses the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training" developed by the Interagency Research Animal Committee (IRAC). This policy is intended to implement and supplement those Principles.

PHS 380.204 Applicability.

(a) This policy is applicable to all PHS-supported activities involving animals, whether the activities are performed at an awardee institution, or any other institution, in the United States, the Commonwealth of Puerto Rico, or any territory or possession of the United States. Institutions in foreign countries receiving PHS support for activities involving animals shall comply with this policy, or provide evidence to PHS that acceptable standards for the humane care and use of the animals in PHS-supported activities will be met.

(b) No PHS support for an activity involving animals will be provided to an individual unless that individual is affiliated with or sponsored by an institution which can and does assume responsibility for compliance with this policy for PHS-supported activities, or unless the individual makes other arrangements with PHS.

(c) This policy does not supercede or preempt applicable State or local laws or regulations which impose more stringent standards for the care and use of laboratory animals. All institutions are required to comply, as applicable, with the Animal Welfare Act, and other Federal statutes and regulations relating to animals.

PHS 380.205 Contractor implementation.

(a) *Animal Welfare Assurance.* No activity involving animals will be supported by PHS until the institution conducting the activity has provided a written Assurance acceptable to PHS, setting forth compliance with the policy in this subpart for PHS-supported activities. Assurances shall be submitted to OPRR, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 4B09, Bethesda, Maryland 20892. The Assurance shall be typed on the institution's letterhead and signed by an institutional official. OPRR will provide the applicant institution with necessary instructions and an example of an acceptable Assurance. All Assurances submitted to PHS in accordance with the policy will be evaluated by OPRR to determine the adequacy of the institution's proposed program for the care and use of animals in PHS-supported activities. On the basis of this evaluation, OPRR may approve or disapprove the Assurance, or negotiate an acceptable Assurance with the institution. Approval of an Assurance will be for a specified period of time (no longer than five years) after which time the institution must submit a new Assurance to OPRR. OPRR may limit the period during which any particular approved Assurance shall remain effective or otherwise condition, restrict, or withdraw approval. Without an applicable PHS approved Assurance, no PHS-supported activity involving animals at the institution will be permitted to continue.

(1) *Institutional program for animal care and use.* The Assurance shall fully describe the institution's program for the care and use of animals in PHS-supported activities. PHS requires institutions to use the *Guide for the Care and Use of Laboratory Animals* (*Guide*) as a basis for developing and implementing an institutional program for activities involving animals. The program description must include the following:

(i) A list of every branch and major component of the institution, as well as a list of every branch and major component of any institution which is to be included under the Assurance;

(ii) The lines of authority and responsibility for administering the program and ensuring compliance with this policy;

(iii) The qualifications, authority and responsibility of the veterinarian(s) who will participate in the program;

(iv) The membership list of the Institutional Animal Care and Use

Committee(s) (IACUC) [1] established in accordance with the requirements set forth in this subpart;

(v) The procedures which the IACUC will follow to fulfill the requirements set forth in this subpart;

(vi) The health program for personnel who work in laboratory animal facilities or have frequent contact with animals;

(vii) The gross square footage of each animal facility (including satellite facilities), the species housed therein and the average daily inventory, by species, of animals in each facility; and

(viii) Any other pertinent information requested by OPRR.

(2) *Institutional status.* Each institution must assure that its program and facilities are in one of the following categories:

(i) *Category 1*—Accredited by the American Association for the Accreditation of Laboratory Animal Care (AAALAC). All of the institution's programs and facilities (including satellite facilities) for activities involving animals have been evaluated and accredited by AAALAC, or another accrediting body recognized by PHS.[2]

(ii) *Category 2*—Evaluated by the Institution. All of the institution's programs and facilities (including satellite facilities) for activities involving animals have been evaluated by the IACUC and will be reevaluated by the IACUC at least once each year. The IACUC shall use the *Guide* as a basis for evaluating the institution's program and facilities.

A report of the IACUC evaluation shall be submitted to the institutional official and updated on an annual basis.[3] The initial report shall be submitted to OPRR with the Assurance. Annual reports of the IACUC evaluation shall be maintained by the institution and made available to OPRR upon request. The report must contain a description of the nature and extent of the institution's adherence to the *Guide* and this policy.[4] The report must identify specifically any departures from provisions of the *Guide* and this policy, and state the reasons for each departure. If program or facility deficiencies are noted, the report must contain a reasonable and specific plan and schedule for correcting each deficiency. The report must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, in the judgment of the IACUC and the institutional official, is or may be a threat to the health or safety of the animals. Failure of the IACUC to conduct an annual evaluation and submit the required report to the institutional official may result in PHS withdrawal of its approval of the Assurance.

(3) *Institutional Animal Care and Use Committee (IACUC).* (i) Each institution shall appoint an Institutional Animal Care and Use Committee (IACUC), qualified through experience and expertise of its members, to oversee the institution's animal program, facilities and procedures.

(ii) The Assurance must include the names, position titles and credentials of the IACUC chairperson and the members. The committee shall consist of not less than five members, and shall include at least:

(A) One Doctor of Veterinary Medicine, with training or experience in laboratory animal science and medicine, who has direct or delegated program responsibility for activities involving animals at the institution;

(B) One practicing scientist experienced in research involving animals;

(C) One member whose primary concerns are in a nonscientific area (for example, ethicist, lawyer, member of the clergy); and

(D) One individual who is not affiliated with the institution in any way other than as a member of the IACUC, and is not a member of the immediate family of a person who is affiliated with the institution.

(iii) An individual who meets the requirements of more than one of the categories detailed in PHS 360.205(d)(2)(i)-(iv) above, may fulfill more than one requirement. However, no committee may consist of less than five members.

(b) *Functions of the Institutional Animal Care and Use Committee.* As an agent of the institution, the IACUC shall, with respect to PHS-supported activities:

(1) Review at least annually the institution's program for humane care and use of animals;

(2) Inspect at least annually all of the institution's animal facilities, including satellite facilities;

(3) Review concerns involving the care and use of animals at the institution;

(4) Make recommendations to the institutional official regarding any aspect of the institution's animal program, facilities or personnel training;

(5) Review and approve, require modifications in (to secure approval), or withhold approval of those sections of PHS applications or proposals related to the care and use of animals, as specified in PHS 360.205(f) of this subpart;

(6) Review and approve, require modifications in (to secure approval), or withhold approval of proposed significant changes regarding the use of animals in ongoing activities; and

(7) Be authorized to suspend an activity involving animals in accord with specifications set forth in this subpart.

(c) *Review of applications and proposals.* In order to approve applications and proposals or proposed changes in ongoing activities, the IACUC shall conduct a review of those sections related to the care and use of animals and determine that the proposed activities are in accordance with this policy. In making this determination, the IACUC shall confirm that the activity will be conducted in accordance with the Animal Welfare Act insofar as it applies to the activity, and that the activity is consistent with the *Guide*, unless the IACUC determines that acceptable justification for a departure is presented. Furthermore, the IACUC shall determine that the activity conforms with the institution's Assurance and meets the following requirements:

(1) Procedures with animals will avoid or minimize discomfort, distress and pain to the animals, consistent with sound research design.

(2) Procedures that may cause more than momentary or slight pain or distress to the animals will be performed with appropriate sedation, analgesia, or anesthesia, unless the procedure is justified for scientific reasons in writing by the investigator.

(3) Animals that would otherwise experience severe or chronic pain or distress that cannot be relieved will be painlessly sacrificed at the end of the procedure or, if appropriate, during the procedure.

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[1] The name Institutional Animal Care and Use Committee (IACUC) as used in this policy is intended as a generic term for a committee whose function is to ensure that the care and use of animals in PHS-supported activities is appropriate and humane in accordance with this policy. However, each institution may identify the committee by whatever name it chooses. Membership and responsibilities of the IACUC are set forth in PHS 360.205(d).

[2] As of the issuance date of this policy the only accrediting body recognized by PHS is the American Association for Accreditation of Laboratory Animal Care (AAALAC).

[3] The IACUC may, at its discretion, determine the best means of conducting an evaluation of the institution's programs and facilities. The IACUC may invite ad hoc consultants to conduct or assist in conducting the evaluation. However, the IACUC remains responsible for the evaluation and report.

[4] If some of the institution's facilities are accredited by AAALAC or other accrediting body recognized by PHS, the report should identify those facilities and need not contain any further information about evaluation of those facilities.

(4) The living conditions of animals will be appropriate for their species and contribute to their health and comfort. The housing, feeding and nonmedical care of the animals will be directed by a veterinarian or a scientist trained and experienced in the proper care, handling and use of the species being maintained or studied.

(5) Medical care for animals will be available and provided as necessary by a qualified veterinarian.

(6) Personnel conducting procedures on the species being maintained or studies will be appropriately qualified and trained in those procedures.

(7) Methods of euthanasia used will be consistent with the recommendations of the American Veterinary Medical Association (AVMA) Panel of Euthanasia [8], unless a deviation is justified for scientific reasons in writing by the investigator.

PHS 360.209 Public Health Service implementation.

(a) *Responsibility of the Office for Protection from Research Risks (OPRR).* OPRR is responsible for the general administration and coordination of this policy and will:

(1) Request and negotiate, approve or disapprove, and, as necessary, withdraw approval of Assurances;

(2) Distribute to executive secretaries of initial review and technical evaluation groups, and to PHS contracting offices, lists of institutions that have an approved Assurance;

(3) Advise contracting offices and awardee institutions concerning the implementation of this policy;

(4) Evaluate allegations of noncompliance with this subpart;

(5) Have the authority to review and approve or disapprove waivers of this subpart (see paragraph (d) of this section); and

(6) With other PHS officials, conduct site visits to selected institutions.

(b) *Responsibilities of PHS contracting offices.* PHS contracting offices shall not make an award for an activity involving animals unless the institution submitting the application or proposal is on the list of institutions that have an approved Assurance of file with OPRR, and the institutional official has provided verification of approval by the IACUC of those sections of the application or proposal related to the care and use of animals. If an institution is not listed, the contracting office shall ask OPRR to negotiate an Assurance with the institution before an award is made. No award shall be made until the Assurance has been submitted by the institution, approved by OPRR, and the institution has provided verification of approval by the IACUC of those sections of the application or proposal related to the care and use of animals in PHS-supported activities.

(c) *Conduct of special reviews/site visits.* Each awardee institution is subject to review at any time by PHS staff and advisors, which may include a site visit, to assess the adequacy of the institution's compliance with this policy.

(d) *Waiver.* Institutions may request a waiver of a provision of this policy by submitting a request to OPRR. No waiver will be granted unless sufficient justification is provided, and the waiver is approved in writing by OPRR.

[FR Doc. 86-12559 Filed 6-4-86; 8:45 am]

BILLING CODE 4160-17-M

[8] Journal of the American Veterinary Association (JAVMA), 1978, Vol. 143, No. 1, pp. 59-72, or succeeding revised editions.

Proposed Rules

Federal Register
Vol. 51, No. 108
Thursday, June 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-13-AD]

Airworthiness Directives; Cessna Models 208 and 208A Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice to adopt a new Airworthiness Directive (AD), applicable to all Cessna Models 208 and 208A airplanes. This AD would require modification of the airplane fuel system by adding frangible safety wires to secure the wing fuel tank selectors in the "on" position. In addition, the proposal would require a temporary instructional placard and temporary revision of the Pilots Operating Handbook and Airplane Flight Manual (POH/AFM) to inform the owner/operator of the procedures required because of the modification to the wing fuel tank selectors. Reports have been received of forced landings believed to have been caused by fuel starvation due to attempting takeoff with both wing fuel tank selectors in the "off" position. The proposed actions will help preclude fuel starvation during takeoff due to improper positioning of the wing fuel tank selectors.

DATES: Comments must be received on or before July 7, 1986.

ADDRESSES: Documents applicable to this AD may be obtained from the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4437.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filled in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-CE-13-AD, Room 1558, 601 East 12th Street Kansas City, Missouri 64106.

Discussion

Reports have been received of engine power loss due to fuel starvation and subsequent forced landings involving Cessna Models 208 and 208A airplanes. The fuel starvation is believed to have occurred because takeoff was attempted with both wing fuel tank selectors in the "off" position. With these selectors in the "off" position, the only fuel supply available for use is that contained in the fuel reservoir. Cessna is currently developing a fuel system modification which will preclude this situation of fuel mismanagement. Cessna has also developed warning placards and revised operational emergency procedures for inadvertent fuel flow interruption. The FAA has determined that these placards and revised procedures are needed as an interim measure and an Adopted Rule AD is currently being issued to require their installation and use. Additionally, the FAA has determined that further interim action is required until such time as the Cessna fuel system modification becomes available. Thus, the FAA proposes an AD requiring modification of the wing fuel tank selectors by adding frangible safety wires to insure the selectors are in the "on" position for takeoff, plus a temporary instructional placard and a temporary POH/AFM revision to inform the owner/operator of the procedures required due to the modification of the wing fuel tank selectors.

Since the condition described is likely to exist or develop in other Cessna Models 208 and 208A airplanes of the same design, the AD would require modification of the fuel system by the addition of frangible safety wires to the wing fuel tank selectors, the addition of a temporary instructional placard and a temporary POH/AFM revision. The FAA has determined there are approximately 100 airplanes affected by the proposed AD. The cost of modifying these airplanes as required by the proposed AD is estimated to be $30 per airplane. The total cost is estimated to be $3,000 to the private sector.

The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Models 208 and 208A (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fuel starvation during takeoff due to improper positioning of the wing fuel tank selectors, accomplish the following:

(a) Modify the wing fuel tank selectors as follows:

(1) Place both selectors in the "on" positions.

(2) While holding a metal sheet under the selectors, drill a 0.032 inch (0.81 mm) diameter hole in each selector knob as shown in Figure 1 of this AD.

(3) Replace the existing screw currently installed between the selectors with an AN 502-10-10 screw as shown in Figure 1 of this AD.

(4) Safety wire each selector knob separately to the screw (installed per paragraph (a)(3) of this AD) using the holes drilled per paragraph (a)(2) of this AD and 0.015 inch (0.384mm) frangible copper safety wire (Cessna Part Number 30310).

Note.—Refer to A.C. 65-9, Chapter 8, Pages 119-120 for standard safety wiring methods.

(b) Revise the airplane Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM) by adding the Temporary AFM Supplement shown in the Appendix of this AD.

(c) Fabricate and install adjacent to the wire fuel tank selectors the following placard using letters of a minimum of 0.10 inch (2.56 mm) in height:

"SEE TEMPORARY AFM SUPPLEMENT FOR FUEL SYSTEM OPERATION. BREAK SAFETY WIRE ON FUEL SELECTORS ONLY IN CASE OF AN EMERGENCY."

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Issued in Kansas City, Missouri, on May 22, 1986.

Edwin S. Harris,

Director, Central Region.

BILLING CODE 4910-13-M

VOL 51 ISS 108 JE 5 1986 UMI

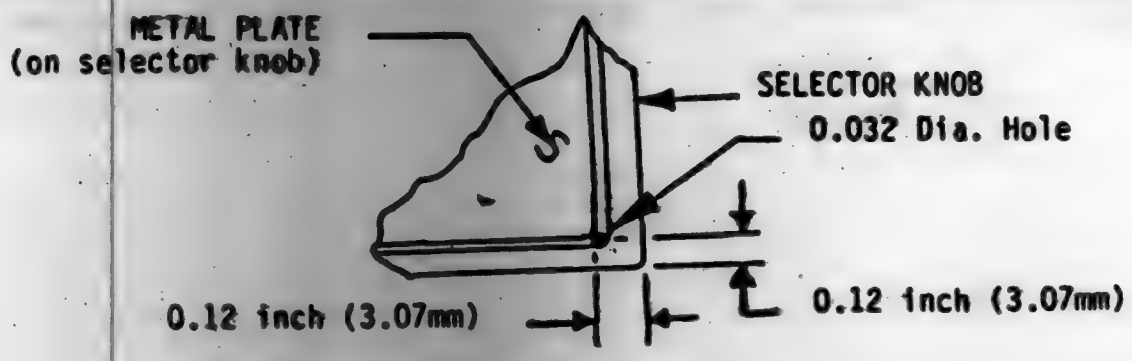

SELECTOR KNOB DETAIL

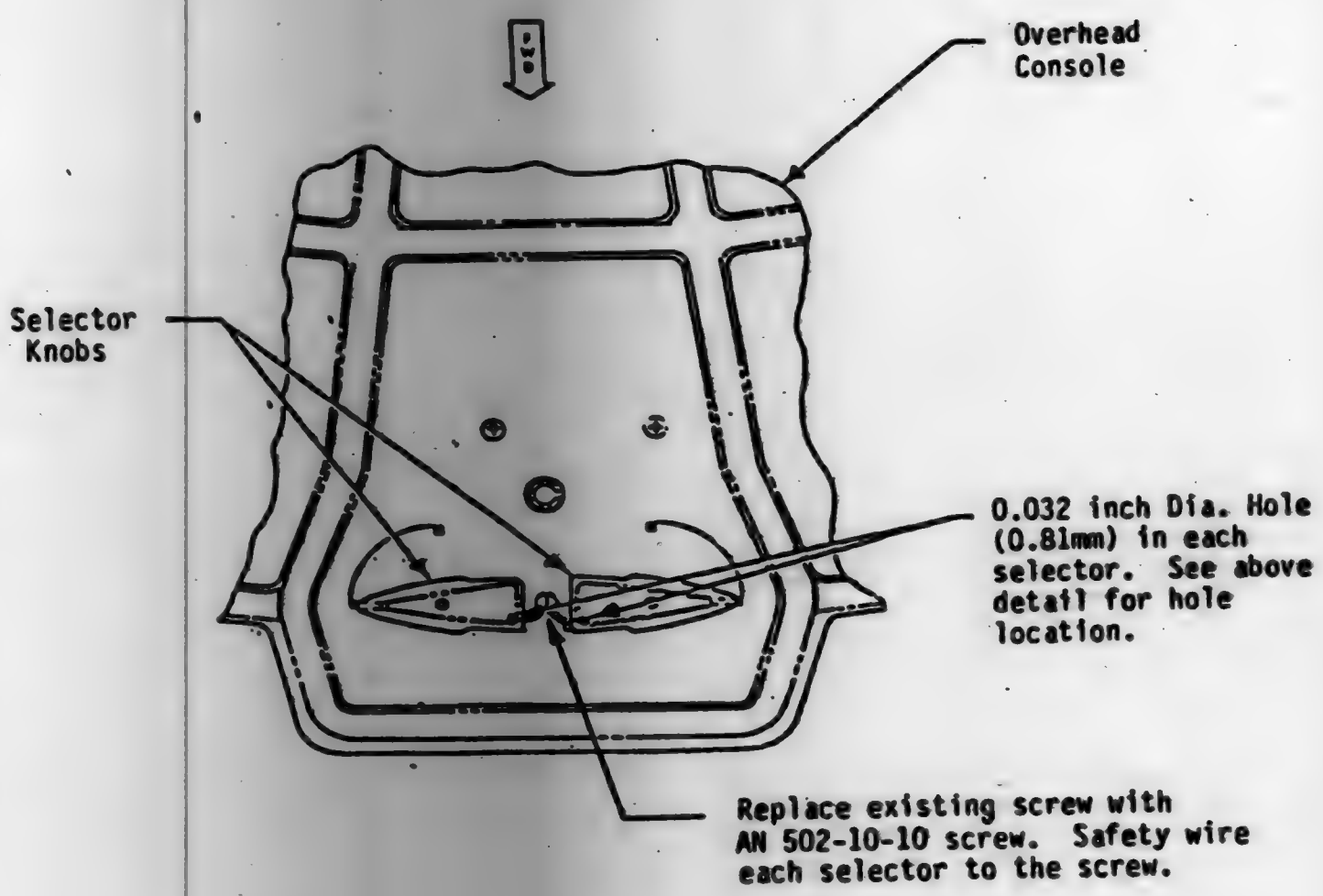

FIGURE 1.

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Appendix—Cessna Model 208/208A, Temporary Airplane Flight Manual Supplement

Temporary Fuel System Limitation and Operators Procedures

The fuel tank selector value knobs must be safety wired in the "ON" position as described in this AD. Any reference in the POH/AFM, in any section other than Section 3, Emergency Procedures, pertaining to shutting one or both fuel valves "OFF", must be disregarded and the values are both to remain "ON" for all normal operations. Emergency Procedures as specified in Section 3 of the POH/AFM are unchanged. If it becomes necessary to accomplish any Emergency Procedures where one or both fuel valves are to shut off, exert enough force to break the safety wire.

If one or both valves are turned off, resafety the selector valve knobs before the next flight.

It should be noted that the 200 pounds maximum fuel unbalance limit still applies. Therefore, to minimize uneven fuel feed and/or transfer between tanks, the airplane should be parked on a level ramp whenever possible and should be flown in a coordinated fashion to the extent possible. If fuel has transferred while the aircraft is parked, such that one tank has more than 200 pounds more fuel than the other, the fuel load must be rebalanced within limits before flight by defueling and/or refueling or by reparking with the fuller tank high on a sloping ramp.

If fuel does not feed evenly in flight, rudder trim should be reset to bias the ball in the slip-skid indicator approximately but not to exceed one-fourth (¼) ball towards the wing with the lesser fuel quantity to allow fuel to burn from the heavier tank. When operating in this condition, the fuel quantity indicator accuracy will be affected and the airplane will periodically have to be returned to coordinated flight to monitor the fuel quantity indicators to determine the balance situation. Under these conditions the fuel should be consumed from the heavier tank at least at a rate approximately equal to the fuel flow of the engine (e.g.: at an engine fuel flow rate of 335 pounds per hour, fuel should rebalance at a rate of approximately five pounds per minute. At this fuel flow, with a 100 pound unbalance, it will take approximately 20 minutes in a one-fourth (¼) ball out of trim condition to correct the unbalance.) If the above procedures do not result in maintaining equal fuel balance, land the airplane prior to exceeding the 200 pound unbalance limit.

When refueling after "topping" each tank (when full fuel is desired) the opposite tank should be "re-topped" to allow for any transfer that has occurred during refueling.

[FR Doc. 86-12324 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 841 0038]

The North Carolina Orthopaedic Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, prohibit The North Carolina Orthopaedic Assoc. from placing unreasonable restrictions against podiatrists seeking access to hospital facilities or surgical privileges and not to induce hospitals or medical staffs to deny such privileges to qualified podiatrists.

DATE: Comments will be received until August 4, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree Street, NW., Atlanta, GA 30367. (404) 881-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Hospital privileges, Podiatry, Trade practices.

Before Federal Trade Commission

[File No. 841-0038]

Agreement Containing Consent Order To Cease and Desist

In the matter of the North Carolina Orthopaedic Association, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the North Carolina Orthopaedic Association, a non-profit corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the North Carolina Orthopaedic Association, by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a non-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina.

2. Proposed respondent admits all of the jurisdictional facts set forth in paragraphs one through eight of the draft of the complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the North Carolina Orthopaedic Association, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement

purposes only and does not constitute an admission by the North Carolina Orthopaedic Association that the law has been violated as alleged in the draft compliant here attached.

6. This agreement contemplates that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the North Carolina Orthopaedic Association, (1) issue its complaint corresponding in form and substance to the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect as and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the address of proposed respondent's counsel, George L. Little, Jr., and F. Joseph Treacy, Jr., of Petree, Stockton, Robinson, Vaughn, Glaze, & Maready, 1001 West Fourth Street, Winston-Salem, North Carolina 27101, shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The North Carolina Orthopaedic Association has read the proposed complaint and order comtemplated thereby. Proposed respondent understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is so ordered that, for the purpose of this order, "respondent" means the North Carolina Orthopaedic Association, a non-profit corporation, its Executive Committee, officers, representatives, agents, employees, successors, and assigns.

II

It is ordered that respondent shall cease and desist from, directly or indirectly or through any corporate or other device, in or in connection with respondent's activities as a professional non-profit association in or affecting commerce, the following:

A. Entering into, continuing, maintaining, adhering to, acquiescing in, or aiding and abetting any agreement, combination or conspiracy to unreasonably exclude, unreasonably discriminate against, or place unreasonable restrictions on any podiatrist seeking or having surgical privileges at any hospital or access to or use of any hospital facilities, when such privileges, access or use is permitted under North Carolina law;

B. Inducing or seeking to induce any hospital, hospital medical staff, physician, or other person or entity to obstruct or deny surgical privileges at any hospital or access to or use of any hospital facilities by the podiatric profession or any licensed podiatrist through any representation that is false or deceptive within the meaning of the Federal Trade Commission Act.

Provided that nothing in subpart II(B) shall prohibit respondent from making or publishing a representation for which respondent possesses a reasonable basis regarding the training, education, practice, or other qualifications of podiatrists or any individual podiatrist.

Provided further that nothing in this order shall prohibit respondent from exercising rights guaranteed by the First Amendment to the United States Constitution to petition any federal, state, or local government, executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal, state, or local administrative or judicial proceeding.

III

It is further ordered that, within sixty (60) days after the date of service of this order, respondent shall:

A. Mail or otherwise furnish a copy of this order, accompanied by the cover letter attached as Appendix I, to each person who on the date of service of this order is a member of respondent and to each person who on the date of service of this order is an executive employee of respondent;

B. Mail or personally deliver a copy of this order, accompanied by the cover letter attached as Appendix I, to the President of the North Carolina Medical Society;

C. Withdraw any policy, standard, or position regarding podiatry, if any, that is inconsistent with the terms of Part II of this order.

IV

It is further ordered that respondent shall:

A. File a written report with the Commission within ninety (90) days following the date of service of this order, and annually on the anniversary of the date of service of this order for a period of five (5) years, and at such other times as the Commission or Commission staff may by written notice to respondent require, setting forth in detail the manner and form in which it has complied with this order;

B. For five (5) years after the date of service of this order, maintain and make available to the Commission staff, for inspection and copying upon reasonable notice, any documents regarding podiatric clinical privileges or access to hospital facilities, podiatric training or education, or the appropriate scope of practice by podiatrists; and

C. For five (5) years after the date of service of this order, provide each new member and each new executive employee of the respondent, or any other employee whose responsibilities include disseminating respondent's views, with a copy of this order at the time he or she is accepted into membership or employment.

V.

It is further ordered that respondent shall notify the Commission of any proposed change in its organization at least thirty (30) days prior to the proposed change in respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change that may affect compliance with this order.

Appendix I

Dear [Sir or Madam]:

As you may know, on _____ the Federal Trade Commission issued a Consent Order settling charges that the North Carolina Orthopaedic Association (NCOA) has been involved in activities that restricted the lawful practice of podiatry and restrained competition between medical doctors and podiatrists. This order was entered as part of a compromise settlement in order to save NCOA the expense of defending a costly litigation and without any admission whatsoever of any wrongdoing on the part of NCOA. NCOA has not admitted that it has violated the law, nor admitted that it has done the acts alleged in the Complaint except those relating solely to jurisdiction.

Under the terms of the Order issued by the Commission, among other things, NCOA is prohibited from entering into or maintaining any agreement or conspiracy to unreasonably exclude or discriminate against any podiatrist seeking or having surgical privileges at any hospital or access to or use

of any hospital facilities, when such privileges, access or use is permitted under North Carolina law.

The Order also prohibits NCOA from inducing any hospital, hospital medical staff, physician, or other person or entity to obstruct or deny surgical privileges at any hospital or access to or use of any hospital facilities by the podiatric profession or any licensed podiatrist through any representation for which NCOA does not have a reasonable basis.

The Order, however, does not prohibit NCOA or its members from exercising their First Amendment rights to petition any legislative or executive body concerning any rules, legislation, or procedures, or participating in any administrative or judicial proceeding. The Order does not prevent any individual from engaging in unilateral conduct, in an individual capacity and not as an officer, agent or representative of NCOA.

Pursuant to the Order issued by the Federal Trade Commission, we are withdrawing all of our policies and statements relating to podiatry, if any, that are not consistent with the Order.

Your attention to these matters will be appreciated. Thank you for your cooperation.

Sincerely,

President, The North Carolina Orthopaedic Association.

[File No. 841-0038]

THE NORTH CAROLINA ORTHOPAEDIC ASSOCIATION

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the North Carolina Orthopaedic Association ("NCOA"). The agreement would settle charges by the Commission that the proposed respondent, through certain acts and practices, has restrained competition between medical doctors and podiatrists in North Carolina, in violation of section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Proposed Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that NCOA agreed with some of its members and others to engage in conduct that unreasonably restrains the practice of podiatry. Specifically, the complaint alleges that NCOA entered into an agreement to take action to exclude or unreasonably discriminate against podiatrists who seek hospital privileges or access to hospital facilities within the scope of their state licenses. As part of the alleged conspiracy, NCOA passed two resolutions opposing the hospital practice of podiatry and enjoined its members to review or change hospital bylaws accordingly.

The complaint alleges that the restrictions imposed by NCOA unreasonably limited competition in the following respects:

(a) Competition based on price, quality and service in the delivery of professional health services has been lessened;

(b) The ability of patients and prospective patients to select a licensed practitioner of their choice has been hindered;

(c) The ability of podiatrists to compete with medical doctors has been restricted; and

(d) Podiatrists have been discouraged from practicing in North Carolina because of the difficulty of obtaining hospital privileges.

The Proposed Order

The proposed order prohibits NCOA from entering into or aiding and abetting any combination or conspiracy to unreasonably exclude or unreasonably discriminate against podiatrists who seek hospital privileges or access to hospital facilities when such privileges or access is authorized under state law. NCOA is also prohibited from inducing or seeking to induce any medical staff, physician, or hospital to obstuct or deny privileges to podiatrists by means of misrepresentations. However, NCOA may make statements about podiatry for which it has a reasonable basis. Further, the order does not prevent NCOA from exercising its First Amendment rights.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-12853 Filed 6-4-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 842 3209]

Saga International, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require a Compton, Calif. manufacturer and seller of ultrasonic pest-control devices to refund the full purchase price of its "Home Free" pest-control product to any consumer who bought the device after Dec. 31, 1983. Additionally, respondent would be required to provide signs for retailers to post about the availability of refunds and advertise their availability through newspaper ads. Further, respondent would be prohibited from making any performance or efficacy claims about any ultrasonic pest-control product unless it possesses and relies upon competent and reliable evidence that substantiates its claims.

DATE: Comments will be received until August 4, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, Director, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Avenue, San Francisco, CA 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period for sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Trade practices, Ultrasonic pest-control devices.

Before the Federal Trade Commission

[File No. 842-3209]

Agreement Containing Consent Order To Cease and Desist

In the matter of Saga International, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Saga International, Inc., a corporation (hereinafter sometimes referred to as proposed respondent or respondent), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Saga International, Inc., and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Saga International, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 1220 West Walnut Street, Compton, California 90220.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent and its attorney have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, proposed respondent will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Saga International, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary division or other device, in connection with the advertising, offering for sale, sale or distribution of the "Home Free" ultrasonic pest control device or any other ultrasonic pest control product or device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the Home Free or any other ultrasonic pest control product will:

(1) Eliminate cockroaches, rats, mice or other pests from a home or place of business;

(2) Eliminate rodents or insects from a home or place of business within four to six weeks, or within any other specified period of time;

(3) Protect an area where said product is in use in a home or place of business from rodents or insects, or will cause an area to be free of rodents or insects; or

(4) Serve as an effective alternative to the use of conventional products such as spray, powders, trap of other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any ultrasonic pest control product, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence which substantiates the representation. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing, directly or by implication, that any ultrasonic pest control product is effective in providing protection from insect or rodent infestation in a home or place of business, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence which either directly relates to such home or place of business use conditions, or which can properly be applied to such conditions. Evidence in the form of tests, experiments, analysis, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevent professions or sciences to yield accurate, reliable, and reproducible results.

II

It is further ordered that respondent, its successors and assigns, and its officers, employees, agents and representatives shall provide consumer refunds in accordance with the provisions of this paragraph to any retail purchaser of the HOME FREE device who purchased the HOME FREE device from any retail outlet at any time on or after January 1, 1984.

A. Notification of Consumers

1. Respondent shall:

(a) Within sixty (60) days from the date of service of this order, cause to be distributed to each of respondent's distributors, and to each retail outlet which is known by respondent or its distributors to have purchased the HOME FREE device for resale to the public, the "Notice" set out in Attachment A to this order, to which respondent shall cause to be affixed in tablet format (in sufficient quantities to anticipate foreseeable consumer demand) the form set out in Attachment B to this order;

(b) Within sixty (60) from the date of service of this order, cause to be disseminated to each retail outlet identified in response to paragraph II A.1.(a), a request that said retail outlet prominently display said "Notice" and tablet forms;

(c) Within sixty (60) days from the date of service of this order, as to those retail outlets which together have accounted for at least 75% of respondent's sales of the HOME FREE device, take all steps necessary to cause said "Notices" to be placed in public areas within each such retail outlet where such "Notices" are most likely to be seen by customers, particularly past purchasers of the HOME FREE device; and take all steps necessary to cause such "Notices" to remain in said public areas for a continuous period of six months from the date on which such "Notices" are first placed in each such retail outlet; and

(d) Within ninety (90) days from the date of service of this order, but no sooner than respondent has complied with the provisions of paragraph II.A.1. (a), (b) and (c), cause to be published, clearly and prominently, the text of the "Notice" set out in Attachment A of this order, in display advertising format in the weekend or Sunday edition of each local newspaper in which retailer identified in paragraph 11(A) (1) (c) regularly advertises.

2. The "Notice" referred to in paragraph II.A.1 above shall consist of a free standing sign or mounted wall poster of at least 8½ by 11 inches in dimension, on which is written, verbatim, in clear and prominent print of no less than 24 point print, the text as shown in Attachment A to this order.

3. Respondent shall, within ninety (90) days from the date of service of this order, cause to be published the text of the "Notice" set out in Attachment A to this order in each market area in which respondents caused newspaper, magazine, radio, or television advertisements for the HOME FREE to be placed at any time from January 1, 1983, to the date of service of this order. The text of the "Notice" shall be published in a clear and prominent form in display advertising format in the newspaper of greatest general circulation in the market area in which each such advertisement appeared.

B. Consumer Refund Procedures

1. Any purchaser of the HOME FREE shall be entitled to a refund in accordance with the provisions of this order upon: (a) return of a HOME FREE device to any retailer who has sold the HOME FREE on or after January 1, 1984, *and* submission of either a sales receipt for the device issued by that retailer and dated on or after January 1, 1984, or a signed "affidavit" (as hereinafter defined and described); OR (b) shipment of the HOME FREE device to respondent with either a sales receipt for purchase of the device issued by a retailer and dated on or after January 1, 1984, or a signed "affidavit" (as hereinafter defined and described).

2. The "affidavit" referred to in paragraph II.B.1 shall consist of either: (a) The form affixed in tablet format to the Notices furnished to all retailers in accordance with paragraph II.A.1.(a) above, or (b) at the discretion of the person claiming the refund, a substantially equivalent written and signed statement.

3. Where a consumer returns the purchased HOME FREE device(s) to respondent or to a participating retailer for refund(s), and the claim for refund is accompanied by some statement other than the affidavit form referred to herein (as permitted by paragraph II.B.2.(b) above), and respondent or a participating retailer rejects the alternate statement as not "substantially equivalent" to the affidavit, respondent shall immediately provide the consumer, or shall cause the consumer to be provided, with an affidavit form so that the consumer may promptly obtain the refund to which the consumer is entitled under the provisions of this order.

C. Respondent's Consumer Redress Obligations

Respondent or its successors or assigns shall: (1) Cause consumer refunds to be made by the retailers to any purchaser of the HOME FREE device who returns the device and submits to the retailer either (a) a sales receipt issued by a retailer and dated on or after January 1, 1984, or (b) a signed affidavit (or its equivalent) as described in paragraph II.B.2 above; and (2) make direct consumer refunds, including the cost of postage, to any purchaser of the HOME FREE device who returns the device and submits either (a) a sales receipt issued by the retailer and dated on or after January 1, 1984, or (b) a signed affidavit (or its equivalent) as described in paragraph II.B.2 above. Any claim in compliance with Part II of this Order shall be valid if made within one calendar year of the date of service of this order and, when made directly to respondent, shall be honored by respondent within thirty (30) days of receipt of the claim.

D. Amount of Individual Refund

Any consumer shall be entitled to a refund of the full amount of the purchase price paid for each HOME FREE device purchased as proven by a sales receipt issued by a retailer. In the absence of such a receipt, a consumer shall be entitled to a refund of no more than $19.95 plus postage if the device has been shipped to respondent at the consumer's expense.

E. Respondent's Reporting Requirements

Respondent shall report to the Federal Trade Commission the status of the consumer redress program required by this agreement in accordance with the following schedule:

(1) One hundred and twenty (120) days from the date of service of this order, respondent shall advise the Commission, in writing, of the number and location (by retail establishment address) of notices placed as required by paragraph II.A.1 of this agreement and shall provide the Commission with a sample of each advertisement caused by respondent to be disseminated in accordance with the provisions of paragraph II.A.1.(d) and II.A.3. of this order, along with the schedule of publication of such advertisements; and

(2) Fifteen (15) months from the date of service of this order, respondent shall provide the Commission with a summary report of the consumer redress program which shall include, but shall not necessarily be limited to, a tabulation, on a total cumulative basis, of the number of former purchasers of the HOME FREE who have claimed a refund as authorized by this agreement, the dollar amount of consumer refunds given (either by respondent directly or by retailers), and the number, name, and last known address of each claimant, if any, whose claim for refund has been denied by respondent.

F. Respondent's Record-Keeping Requirements

Respondent shall for at least two (2) years after service of this order, maintain and upon request make available to the Federal Trade Commission at a place it designates for

inspection and copying, sufficient records to identify:

(1) The name and last known address of each purchaser of the HOME FREE who received reimbursement and the amount of such reimbursement; and

(2) The name and last known address of each purchaser of the HOME FREE who requested reimbursement and was refused, and the reason for each refusal to reimburse.

III

It is further ordered that for a period of three (3) years after the last date of dissemination of any representation concerning the preformance characteristics of efficacy of any product covered by this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of all materials relied upon to substantiate such representation, and copies of all documents in respondent's possession that contradict, qualify, or otherwise call into question said representation, including complaints from consumers.

IV

It is further ordered that respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future managerial employees, distributors, independent sales agents, and former, present, and future direct purchasers from respondent of any product covered by this order.

V

It is further ordered that for a period of ten years:

A. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent that may affect compliance obligations arising out of this order, such as dissolution, assignment of the ultrasonic pest control business, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

It is further ordered that respondent shall, within one-hundred and twenty (120) days after service upon it of this order, file with the commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment A—Refund Announcement For Purchasers of the "Home Free" Pest Control Device

UNDER THE TERMS OF A FEDERAL TRADE COMMISSION ORDER, YOU ARE ENTITLED TO A REFUND FOR ANY "HOME FREE" PEST CONTROL DEVICE BOUGHT ON OR AFTER JANUARY 1, 1984, UPON RETURN OF THE PRODUCT AT ANY TIME UNTIL *[Date to Be Supplied: One Year From Date of Service of Order by Commission Upon Respondent]*. THE FEDERAL TRADE COMMISSION HAS CHARGED THAT SUCH DEVICES ARE NOT EFFECTIVE FOR THE PURPOSES ADVERTISED. SEE YOUR RETAILER ABOUT OBTAINING THE REFUND OR CALL 1-800-624-3083 *(if you are in California)* or 1-800-344-4522 *(if you are outside of California)*.

Attachment B—Statement of Purchase

TO OBTAIN A REFUND FROM A PARTICIPATING RETAILER, YOU MUST RETURN THE "HOME FREE" TO THE RETAILER AND SUBMIT EITHER (1) A DATED SALES RECEIPT OR (2) THIS FORM, COMPLETED AND SIGNED.

I purchased a HOME FREE pest control device from

_____

on or after (Name of Retailer) January 1, 1984.

On penalty of perjury I certify that all of the above information is true and correct to the best of my knowledge. *(See 28 United States Code § 1746 (1966))*.

Date _____

_____

(Signature)

_____

_____

(Address)

IF YOUR RETAILER IS NOT A PARTICIPATING RETAILER, OR YOU ARE UNABLE TO OBTAIN A REFUND FROM THE RETAILER FOR ANY REASON, YOU MAY OBTAIN A REFUND FROM THE MANUFACTURER BY SUBMITTING A DATED SALES RECEIPT OR THIS FORM (COMPLETED AND SIGNED) *AND* SHIPPING THE HOME FREE TO: *3055 University Drive, Compton, CA 90220, ATTN: Customer Service Department*. YOU MAY SHIP THE DEVICE C.O.D. OR THE MANUFACTURER WILL REIMBURSE YOU FOR THE COST OF SHIPMENT. EACH REFUND FOR A HOME FREE PURCHASE IS LIMITED TO $19.95 UNLESS YOU SUBMIT A SALES RECEIPT SHOWING YOU PAID A HIGHER PRICE.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed Consent Order from Sage International, Inc., 1220 West Walnut Street, Compton, California 90220.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed order.

The respondent has been and is engaged in the manufacture and marketing of an ultrasonic pest control product called the "HOME FREE." In marketing the HOME FREE, respondent has said that the device is an effective alternative to the use of "dangerous chemicals," pesticides, sprays, and poisons. It has claimed that the HOME FREE will eliminate roaches, rats, mice, mosquitoes, crickets, fleas, flies, spiders and other crawling and flying pests from a home or place of business in four to six weeks.

According to the Commission's Complaint, the HOME FREE will not completely or permanently rid a home or place of business from insect or rodent infestation, nor will it do so within four to six weeks as claimed. The Complaint alleges that even though rodents can hear ultrasound, they rapidly habituate to it and any reaction by rodents to the HOME FREE would, at best, only be of short duration. According to the Complaint, the use of ultrasound is not an effective alternative to the use of conventional pest control products. The Complaint additionally charges that the respondent did not possess a reasonable basis for the product claims it made.

Respondent has signed an Agreement containing a Consent Order which requires it to cease and desist from representing that the HOME FREE or any ultrasonic pest control product will: (1) Eliminate cockroaches, rats, mice or other pests from a home or place of business; (2) eliminate rodents or insects within four to six weeks or within any other specified period of time; (3) protect an area from or cause an area to be free of rodents or insects; or (4) serve as an effective pest control alternative to the use of conventional products such as sprays or other chemicals.

The Order further requires respondent to refrain from making any performance claims for the HOME FREE or any other ultrasonic pest control product unless it possesses and relies upon competent and reliable evidence which substantiates the claims of performance.

The Order also requires respondent to refund the purchase cost of the HOME FREE to any consumer who purchased one or more of the devices after

December 31, 1983, and to give prominent publicity to purchasers' rights to refunds. To qualify for a refund under the Order, a purchaser need only return the device to a retailer or ship it to respondent at respondent's expense, and submit either a sales receipt or a simple form affidavit provided by the retailer. In the absence of a sales receipt showing that a greater amount was paid for the device, consumer refunds are limited under the terms of the Order to $19.95 (plus postage, where applicable). Respondent is required under the Order to provide notice of the refund program to *all* retailers known by it or by its distributors to have sold the HOME FREE, and to encourage their participation in the refund program. The Order imposes special obligations upon respondent to ensure full participation in the refund program by retailers accounting for at least 75% of HOME FREE sales.

Finally, the Order imposes certain administrative obligations upon respondent, requiring it to notify the Commission of any proposed changes in its corporate structure and to notify all managerial and sales personnel of the Order by distributing a copy of the Order to each of them. The Order also requires respondent to file a compliance report and a special report relating to the results of the refund program.

Respondent's Agreement to enter into this Order is for settlement purposes only, and does not constitute an admission by respondent that it has violated the law as alleged in the Complaint issued with the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify its terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 12864 Filed 6-4-86; 8:45 am

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-23276; 40-15117; File No. S7-12-86]

Facilitating Shareholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposals intended to implement provisions of the recently enacted Shareholder Communications Act of 1985. The proposals will govern: (1) The process by which registrants communicate with the beneficial owners of securities registered in the name of a bank, association, other entity that exercises fiduciary powers or other nominee; and (2) the proxy processing activities of banks, associations and other entities that exercise fiduciary powers. In addition, the Commission is proposing certain other amendments to: (1) Rules 14a–13 and 14c–7 which would permit registrants to request from both brokers and banks beneficial owner lits that exclude owners who purchased securities through an employee benefit plan; and (2) Rules 14a–3 and 14c–2 regarding when and under what conditions registrants are no longer obligated to deliver annual reports or proxy or information statements to security holders.

DATE: Comments should be received on or before July 31, 1986.

ADDRESS: Comments should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–12–86. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sarah A. Miller, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a new proposed Rule 14b–2 and corresponding revisions to Rules 14a–13 [1] and 14c–7.[2] These proposals are intended to implement provisions of the recently enacted Shareholder Communications Act of 1985 by regulating the proxy processing activities of banks, associations and other entities that exercise fiduciary powers (hereinafter referred to collectively as "banks").[3] The other proposals relate to both banks and brokers. These proposals would amend Rule 14a–13 as to employee plan purchases and Rules 14a–3 and 14c–2 [4] as to proxy delivery obligations. Certain other clarifying amendments also are proposed to Rules 14a–1, 14b–1 and 14c–1.[5]

I. Executive Summary

On December 28, 1985, the Shareholder Communications Act of 1985 ("the Act") was enacted into law. That Act, which amends section 14(b) of the Securities Exchange Act ("Exchange Act") [6], confers on the Commission authority to regulate the proxy processing activities of banks. The Act is to become effective December 28, 1986, one year after the date of enactment.

Pursuant to this authority the Commission may now regulate the proxy processing activities of banks in much the same manner that the Commission now regulates, under Rule 14b–1,[7] the proxy processing activities of brokers and dealers. To permit recognition of the differences between the brokerage and banking industries and to avoid unnecessary confusion with respect to broker's obligations under Rule 14b–1, a new Rule 14b–2 is proposed. Proposed Rule 14b–2 delineates the obligations of banks in much the same manner that Rule 14b–1 presently does for brokers. These obligations include: (1) The process by which registrants communicate with the beneficial owners of securities registered in the name of a bank; and (2) the proxy processing activities of banks. The Commission also is proposing certain revisions to Rules 14a–13 and 14c–7 which specify a registrant's obligations in connection with forwarding proxy and information statements to beneficial owners, to reflect the role of banks in the system of shareholder communications.

With respect to the system of direct communications with beneficial owners, brokers and banks are required to provide registrants, upon their request, with lists of beneficial owners. For brokers, those lists include all beneficial owners who do not object to disclosure of their identity. For banks, however, the Act provides that the Commission shall not require disclosure of the names of beneficial owners of securities held in

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[1] 17 CFR 240.14a–13.

[2] 17 240.14c–7.

[3] Pub. L. 99–222, 99 Stat. 1737 (1986). The term "associations" is intended to cover: (1) Entities such as savings and loan associations and savings banks that maintain trust and custodian accounts and (2) other entities that engage in similar fiduciary activities. *See* H.R. Rep. No. 191, 99th Cong., 1st Sess. 3. For purposes of the Act, the Commission is proposing to define entities that exercise fiduciary powers as other than registered clearing agencies who hold in record name.

[4] 17 CFR 240.14a–3 and 240.14c–2.

[5] 17 CFR 240.14a–1, 14b–1 and 14c–1.

[6] 15 U.S.C. 78n(b) (1982).

[7] 17 CFR 240.14b–1.

an account by the bank on the date of enactment unless the beneficial owner consents to such disclosure ("affirmative consent standard"). The Act requires the bank to employ a good faith effort to obtain consent from beneficial owners. The Commission can require and is proposing that the names of beneficial owners of securities held in an account opened by the bank after the date of enactment must be supplied to registrants unless the beneficial owner objects to disclosure ("non-objection standard").

In addition, the Commission is proposing certain amendments to Rules 14a–13 and 14c–7 which would permit registrants to request from both brokers and banks beneficial owner lists that exclude those beneficial owners who purchased securities through an employee benefit plan and to which the registrant has access to the beneficial owner's name and address by some other means.

Finally, the Commission is proposing certain other amendments to Rules 14a–3 and 14c–2 which would: (1) Clarify when a registrant is no longer obligated to deliver an annual report or a proxy or information statement to security holders; and (2) provide that a registrant's obligation to deliver an annual report or a proxy or information statement is reinstated once a security holder delivers or causes to be delivered to the registrant notice setting forth his then current address.

This release discusses the rule proposals which are intended to implement the provisions of the Act. In order to assist banks in their understanding of how the shareholder communications system works, the release also provides an overview regarding implementation of these proposals and discusses the background to the shareholder communications rules as applied to brokers and dealers.

II. Background

The legislation represents the implementation of a recommendation of the Commission's Advisory Committee on Shareholder Communications, contained in its report, *Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities*.[8] Specifically, the Advisory Committee recommended legislation to confer on the Commission authority to regulate the proxy processing activities of banks in much the same manner that it regulates the proxy processing activities of brokers and dealers.

Previously, the Commission implemented Advisory Committee recommendations by substantially revising, *inter alia*, Rule 14b–1 in 1983.[9] In addition to tightening the timetable within which activities under the rule take place, the Commission adopted paragraph (c) to Rule 14b–1 to provide a means of direct communication between registrants and their beneficial owners by requiring brokers to provide requesting registrants with the names, addresses, and securities positions of their customers who are beneficial owners of the registrant's securities and who have not objected to such disclosure. In August 1984, the Commission deferred the original effective date of paragraph (c) from January 1, 1985 to January 1, 1986.[10] The deferral provided additional time to ensure the most effective implementation of the shareholder communications system. Representatives of the securities industry and the registrant community agreed that during this deferral period they would develop and establish both an efficient means of furnishing beneficial owner information to registrants and an appropriate schedule of reimbursement.

In September 1984, the New York Stock Exchange ("the NYSE") appointed the AD Hoc Committee on Identification of Beneficial Owners. The Ad Hoc Committee, composed of members of both the securities industry and registrant community, was formed to resolve the reimbursement issue and to develop a workable and effective system that would be of maximum use to registrants and not burdensome to brokers. The Ad Hoc Committee largely resolved the problems which initially lead to the deferral of the effective date of Rule 14b–1(c). The reimbursement of start-up costs issue was resolved through self-regulatory organization ("SRO") rule changes that permit brokers to assess a $.20 per proxy surcharge for the 1985 annual meeting proxy solicitation.[11] This surcharge, together with an additional $.165 surcharge for the 1986 annual meeting proxy solicitation, funds the start-up costs associated with furnishing the beneficial owner information to registrants.[12] The other cost issue—determination of reasonable costs for supplying beneficial owner lists—also has been addressed. Under the rules of the NYSE, registrants who request a list of non-objecting beneficial owners are obligated to pay $.065 per name to the broker for providing this information.[13]

In August 1985, the Ad Hoc Committee drafted a model letter to aid brokers in communicating with their customers in order to ascertain whether or not they object to disclosure of their names, addresses, and securities positions. The NYSE forwarded that letter to brokers and to the American Stock Exchange and the National Association of Securities Dealers.

To make the system work and to ensure that registrants find the beneficial owner lists useful and meaningful, the Ad Hoc Committee also determined that an intermediary was necessary.[14] By brokers employing an intermediary to compile and to supply beneficial owner lists to registrants, registrants are assured that the lists are compiled in a standardized manner. Moreover, brokers are assured that the source of the lists will be kept confidential. In addition, economies of scale can be realized by permitting brokers to delegate this function to an intermediary which maximizes costs savings while minimizing burdens on brokers. The Ad Hoc Committee requested proposals and selected Independent Election Corporation of America "(IECA") to serve as the intermediary between registrants and brokers in supplying lists of beneficial owners. The direct communications system became effective on January 1, 1986 and is operating smoothly and successfully.[15]

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[8] *See* Advisory Committee Report, June 1985, at 29–31.

[9] Release No. 34–20021 (July 28, 1983) [48 FR [illegible]].

[10] Release No. 34–21339 (September 21, 1984) [49 FR [illegible]].

[11] The $.20 surcharge rule change to the NYSE rules was approved by the Commission on March 28, 1985. Release No. 34–21900 (March 28, 1985) [50 FR 13287]. The Commission approved similar surcharges as part of the rules of the American Stock Exchange and National Association of Securities Dealers. Release No. 34–21915 (April 1, 1985) [50 FR 14000].

[12] The $.165 surcharge rule change to the NYSE AND AMEX rules was approved by the Commission on February 11, 1986 and April 15, 1986, respectively. Release No. 34–22989 (February 11, 1986) [51 FR 5821], Release No. 34–23121 (April 15, 1986) [51 FR 15063]. The Commission anticipates that other self-regulatory organizations soon will adopt as part of their proxy rules this surcharge for the 1986 annual meeting proxy solicitation.

[13] Release No. 34–22989 (February 11, 1986) [51 FR 5821], This fee does not include the fee to the intermediary which the Ad Hoc Committee also addressed. *See* Release No. 34–22989 at fn. 8.

[14] Employing an intermediary is, however, not a condition to complying with the shareholder communications rules.

[15] As of May 5, 1986, 1,816 requests for beneficial owner information involving 1,700 companies had been made through the central intermediary.

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III. Overview of Proposals

Currently, Rules 14a-13 and 14b-1 set forth two different procedures relating to the obligations of registrants and brokers in connection with communicating corporate information to beneficial owners. The first procedure relates to supplying proxy cards, proxy soliciting material and annual reports to record holders for distribution to beneficial owners, while the second procedure sets forth the requirements for those registrants who wish to communicate directly with their beneficial owners.

Proposed new Rule 14b–2 would extend to banks the requirements for communicating with beneficial owners under these two procedures when the securities of beneficial owners are held of record by banks. Proposed revisions to Rule 14a–13 would clarify registrants' obligations in connection with communicating with these beneficial owners.

Under the first procedure, registrants would continue to be required, pursuant to Rule 14a–13(a), to inquire of their record holders by means of a search card or otherwise the number of proxies and other proxy soliciting material or annual reports to security holders needed by the record holder to forward the material to beneficial owners. Record holders would include not only brokers and banks but now also associations and other entities that exercise fiduciary powers. The registrant must request this information at least 20 calendar days prior to the record date of the annual meeting. The new aspect of this system would require banks (and other entities) under proposed Rule 14b–2(a) to respond to this request within seven business days of receipt of the request. Upon receipt of the proxy, proxy soliciting material or annual report, the bank would be required, under proposed Rule 14b–2(b), to forward these materials within five business days of receipt to its customers who are beneficial owners.

Bank nominees often may hold securities for several other banks, each of which, in turn, may hold securities on behalf of other banks. This layering or piggybacking of accounts may create delays in distribution of corporate communications which are often of a time-critical nature. To alleviate such distribution delays, proposed Rule 14b–2(a)(1) would provide that the bank record holder respond, within seven business days of receipt, to the registrant's inquiry regarding the number of sets of proxy materials required for forwarding to beneficial owners on behalf of *its* customers who are beneficial owners. With respect to those banks on whose behalf the bank record holder holds securities ("respondent banks"), proposed Rule 14b–2(a)(2) would require the bank record holder to forward to the respondent bank, by first class mail, the registrant's inquiry within one business day of receipt. Proposed Rule 14b–2(a)(1) also would require the bank record holder to indicate, at the time it responds to the registrant's Rule 14a–13(a) inquiry, the identity of any bank on whose behalf it holds securities [6] and the date that it has forwarded the inquiry to the respondent bank.

Upon receipt of the registrant's inquiry from the bank record holder, the respondent bank would have seven business days, under proposed Rule 14b–2(a)(1), to respond to the inquiry. If other layers of banks exist, the procedure would be repeated. For example, on May 1, 1986, the bank record holder receives the registrant's inquiry, made pursuant to Rule 14a–13(a), for the number of proxies and other proxy soliciting material or annual reports to security holders needed by the bank record holder to forward the material to beneficial owners. The bank record holder would forward the registrant's inquiry by first class mail, pursuant to proposed Rule 14b–2(a)(2), to its respondent bank ("Bank B") on May 2, 1986. Seven business days after receipt of the registrant's inquiry or May 12, 1986, the bank record holder, pursuant to proposed Rule 14b–2(a)(1), would respond to the inquiry indicating: (1) The number of sets of proxy materials needed for distribution to its customers; (2) Bank B's identity, and (3) May 2, 1986, the date it forwarded the registrant's inquiry to its respondent bank.

On May 5, 1986, Bank B receives the registrant's inquiry from the bank record holder. On May 6, 1986, Bank B would forward, by first class mail, pursuant to proposed Rule 14b–2(a)(2), the registrant's inquiry to its respondent bank, Bank C. Seven business days after receipt of the registrant's inquiry or May 14, 1986, Bank B, pursuant to proposed Rule 14b–2(a)(1), would respond to the inquiry directly to the registrant indicating: (1) The number of sets of proxy materials needed for distribution to its customers; (2) Bank C's identity, and (3) May 6, 1986, the date it forwarded the registrant's inquiry to its respondent bank. Bank C, under proposed Rule 14b–2(a)(1), would respond to the inquiry directly to the registrant seven business days after it received the inquiry from Bank B.

To assure that this system works smoothly and efficiently, the Commission envisions that the registrant will employ a search card format or some other similar mechanism that will be conducive to the bank record holder responding to the registrant's inquiry on behalf of its beneficial owner customers and forwarding the inquiry to its respondent banks. At the same time, the search card employed by the registrant also should permit any successive layers of respondent banks to perform their obligations under proposed rule 14b–2(a).

After receiving responses to its inquiry from record holders and any respondent banks, the registrant, pursuant to proposed amendments to Rule 14a–13(a)(3), would supply each record holder and respondent bank that has responded to the registrant's inquiry with the requisite number of sets of proxy soliciting material and annual reports to security holders needed to forward to beneficial owners. Because state law requires that the right to vote reside with the record owner,[17] registrants would be required, under proposed amendments to Rule 14a–13(a)(3), only to supply record holders and not respondent banks with the requisite number of proxy cards needed to forward to beneficial owners.[18] Record holder banks would then be required to forward the proxy cards to their respondent banks within one business day of receipt and the proxy card, proxy soliciting material or annual report within five business days of receipt to those of its customers who are beneficial owners but not respondent banks. Respondent banks, in turn, would be required to forward proxy soliciting material and annual reports, together with the proxy card received from the record holder bank, within five business days after receipt of the proxy card. If additional layers exist, the respondent bank must send along the proxy card within one business day. Under proposed Rule 14a–13, registrants would be obligated to pay the reasonable expenses of both bank record holders and respondent banks in connection with the mailing of the materials to beneficial owners.

Rule 14a–13(b) sets forth the requirements for those registrants who wish to communicate directly with their beneficial owners. In order to recognize the two different standards for obtaining

[16] *See* further discussion of proposals concerning record holders' response to search cards *infra* at Section IV.E.1.

[17] *See, e.g.*, 8 Del. Code Section (1979).

[18] *See*, discussion *infra* at Section IV.E.2.

beneficial owner approval for disclosure of identity as mandated by the Act, the system, as proposed to be changed to include banks, would require that the registrant must request a list of beneficial owners who either have affirmatively consented or do not object to disclosure of their names, addresses and securities positions. If the registrant makes such a request, it must make that request of all banks as well as all brokers having customers who are beneficial owners of the registrant's securities. Because the registrant, in making its Rule 14a–13(a) inquiry, will have ascertained the identity of any respondent banks on whose behalf the bank record holder holds securities, the registrant would make its request for a list of beneficial owners to all banks, not just record holder banks, who have customers who are beneficial owners of the registrant's securities. A registrant could request the beneficial owner information more often than once a year and the bank would be required to comply with any such request. The lists would be compiled as of the record date for the registrant's next annual or special meeting. If no meeting is scheduled and the registrant requests a list of its beneficial owners, that list would be compiled as of a date to be selected by the registrant that is no less than five business days after the bank receives the request. The bank would forward the beneficial owner information to the registrant no later than five business days after the compilation date of the list, *e.g.*, the record date or other date selected. For example, if no annual or special meeting is scheduled and the bank receives a registrant's request for the list of beneficial owners on May 1, 1986, the list would be compiled as of a date selected by the registrant that is no earlier than May 8, 1986. The bank, in turn, would be required to forward the beneficial owner list to the registrant no earlier than May 15, 1986.

As the system currently applies to brokers, the proposed amendments would provide that, if it chooses, the registrant may mail annual reports directly to beneficial owners. At the time it submits a search card requesting the beneficial owner information, the registrant would notify the bank it intends to mail annual report directly to its non-objecting and affirmatively consenting beneficial owners. If so notified by the registrant, a bank would have no obligation in connection with that mailing to forward the annual report to non-objecting and affirmatively consenting beneficial owners but would have, of course, the obligation to forward annual reports to those beneficial owners who either have not consented or objected to the disclosure of their identities.

The proposed amendments would provide that, without assurances of the registrant's reimbursement of reasonable expenses associated with satisfying its obligations with respect to communications with beneficial owners, a bank has no obligation to perform its obligations under Rule 14b–2 (b), (c) and (f). The registrant would have a corresponding obligation to pay a bank's reasonable expenses associated with providing beneficial owner information.

Finally, proposed Rule 14b–2(c) would provide that a bank may designate an agent or intermediary to act on its behalf in performing its obligations under Rule 14b–2(c). If the bank chooses to do so, the registrant would make its request for a list of non-objecting and affirmatively consenting beneficial owners to that designated agent. The registrant would learn the agent's identity when it submits, pursuant to Rule 14a–13(a), the search card requesting the number of proxy cards, proxy soliciting material and annual reports needed by the bank record holder and any of its respondent banks to forward to beneficial owners. The bank, in turn, would be required under Rule 14b–2(a), to identify its agent, if one has been designated. After receiving the registrant's request, the agent would notify all banks of the registrant's request. Banks would supply the information to the agent, who then would compile the information in a standardized delivery format and forward it to the registrant. Using the above example, the registrant would make its request to the designated agent for a list of non-objecting and affirmatively consenting beneficial owners. If no annual or special meetings is scheduled and the designated agent receives the registrant's request for the list on May 1, 1986, the list would be compiled as of the date selected by the registrant that is no earlier than May 8, that 1986. The designated agent would make the request for a list of non-objecting and affirmatively consenting beneficial owners to all banks. Banks, in turn, would forward the requested information to the designated agent who would then compile the list and deliver it to the registrant no later than May 15, 1986.

IV. Specific Discussion of Proposals

A. 14A–1 Definitions

The Commission proposes to add a new paragraph (c) defining the term "entity that exercises fiduciary powers" as any entity that holds securities in nominee name on behalf of a beneficial owner. New paragraph (c) also would make clear that the term does not include a clearing agency registered under Section 17A of the Exchange Act.[19] Proposed paragraph (c) would further explain that, where a registered clearing agency is the record holder, the participants identified by such clearing agency in the securities position listing (as defined by Rule 17Ad–8 [20]) assume the rights and obligations associated with such record ownership under Rules 14a–13 and 14b–1 and proposed Rule 14b–2. An amendment cross-referencing proposed paragraph (c) also is proposed to be added to note 1 to Rule 14a–13(a).

B. 14a–3 Information To Be Furnished to Security Holders

The Commission proposes to amend Rule 14a–3(e)(2) in two ways.[21] First, paragraph (e)(2) would be amended to provide that a registrant will be excused, unless state law requires otherwise, from delivering a proxy statement or annual report to any security holder of record if at least two "payments of" rather than "checks made in payment of" dividends or interest on securities sent to the security holder's address of record have been returned undeliverable. Such a revision would make clear that dividend or interest payments made other than by check, such as dividends payable in securities, also are to be considered in determining whether a registrant is excused from delivering a proxy statement or annual report to security holders.

Second, paragraph (e)(2) currently provides that a registrant's obligation to deliver the proxy statement or annual report is reinstated once it has the security holder's current address. The Commission proposed to amend this provision to provide that a registrant's obligation will be reinstated once a security holder delivers or causes to be delivered to the registrant notice for the purpose of setting forth his then current address.[22] Under this proposal, a

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[19] 15 U.S.C. 78q–1 (1982).

[20] 17 CFR 240.17Ad–8.

[21] One commentator submitted these proposed revisions in response to the Commission's request for comments on its recent proposal of comprehensive amendments to the proxy rules and schedules. *See* Release No. 33–6582 (July 1, 1985) [50 FR 29409]. Because the Rule 14a–3(e) exemption from delivery was derived, in part, from a recommendation of the Advisory Committee on Shareholder Communications, *see* Advisory Committee Report at 27–28, the Commission believes it is appropriate to consider these proposed revisions in conjunction with the other shareholder communications proposals discussed herein.

[22] A similar provision is contained in 8 Del. Code § 220 (Supp. 1985).

registrant who has the security holder's current address as a result of dealings with the security holder in another context, such as if the security holder is the holder of a credit card issued by the registrant or has written to the registrant to complain about a product, would not be in violation of the rule if it had not resumed delivery of the annual report or proxy statements. This proposed revision would obligate a registrant to resume delivery, however, once the security holder has notified by means of a telephone, written communication or otherwise caused the registrant to be notified of his current address.

C. Rule 14a–13 Obligation of Registrants in Communicating With Beneficial Owners

Rule 14a–13, a registrant-related corollary to Rule 14b–1 and proposed Rule 14b–2, delineates a registrant's obligations in communicating with its beneficial owners and would work in tandem with both present Rule 14b–1 and proposed Rule 14b–2. Accordingly, the Commission proposes to amend Rule 14a–13 in several respects in order to recognize the role of the banks in the system of communications with beneficial owners.

First, Rule 14a–13 would be amended throughout to make clear that a registrant's obligations, such as making the appropriate inquiries of record holders and supplying record holders with the requisite proxy soliciting material, flow not only to brokers, dealers and banks but also to associations and other entities that exercise fiduciary powers.[23] Second, Rule 14a–13 would be revised to reflect the congressionally-mandated alternate standard of owner approval for disclosure of beneficial owner information required for bank customer accounts opened prior to December 28, 1985.[24] Specifically, Rule 14a–13 would be amended to reference both non-objecting and affirmatively consenting beneficial owners. Third, references in Rule 14a–13 to specific obligations of brokers under Rule 14b–1 would be expanded to include similar specific obligations of banks under proposed Rule 14b–2.

In addition, paragraph (a)(3) would be amended to reflect the piggybacking or layering of securities by banks.[25] Specifically, paragraph (a)(3) would require the registrant to supply proxy soliciting material and the appropriate number of annual reports to: (1) Record holders which would include not only brokers and dealers but also banks; and (2) banks that deposit for safekeeping customer securities with another bank who is listed on the stockholder list as the record holder. The rule would provide that the registrant need only supply proxy materials to those banks who deposit customer securities for safekeeping with other banks who have responded to the registrant's inquiry made under paragraph (a)(1) of Rule 14a–13 regarding the number of sets of proxy materials needed to supply beneficial owners. Because state law requires that record holders exercise the legal right to vote securities, Rule 14a–13(a)(3) would require registrants only to supply record holders and not respondent banks with the requisite number of proxy cards needed to forward to beneficial owners.

Paragraph (a)(3) also would be amended to provide that the registrant is obligated to reimburse those banks who deposit customer securities for safekeeping with the record holder the reasonable costs of completing the mailing or proxy soliciting material to beneficial owners. At present, registrants are only obligated to pay record holders the costs associated with mailing proxy soliciting material.

Paragraph (b) and (c) of Rule 14a—13 pertain to a registrant's obligations in connection with the system of direct shareholder communications. Under this system as proposed to be amended, registrants would request, under paragraph (b), access to the names, addresses and securities positions of non-objecting and affirmatively consenting beneficial owners. In this regard, the Commission is also including a proposal to amend paragraph (b)(1) to provide that a registrant need not include in its request for beneficial owners those owners who purchased securities through an employee benefit plan, such as an Employee Stock Ownership Plan ("ESOP") a Tax Reduction Act Stock Ownership Plan "(TRASOP") or a Payroll Stock Ownership Plan ("PASOP") and to which the registrant has access, by some other means, to the beneficial owner's name and address. Under this proposed amendment, registrants would not have to request and, therefore, pay for the names, addresses and securities positions of its employees who are beneficial owners of the registrant's securities if they can identify these beneficial owners who are employees by some means other than through lists obtained pursuant to Rules 14b–1(c) or 14b–2(c), such as payroll deductions. This proposed amendment only would apply where the plan confers voting authority on its participants. If voting authority rests with the plan trustee, the trustee would be considered, for purposes of the shareholder communications rules, the beneficial owner. While this proposal would enable registrants to recognize cost savings in obtaining beneficial owner information, the Commission is concerned about the ability of record holders to excise such beneficial owners without undue effort or expense and specifically requests comments as to the workability of this proposal and the cost/benefit effects thereof. Specifically, in considering the costs and benefits associated with this proposal, commentators should be aware that if registrants request a list of beneficial owners that does not include those owners who purchased through employee benefit plans, registrants would not be able, under the current shareholder communications rules, to realize the cost saving associated with direct mailing of annual reports to security holders to those beneficial owners. Instead, registrants would be required to forward the annual reports to security holders to record holders for distribution and to pay the costs of record holders and respondent banks associated with such mailing. Therefore, the Commission requests comment on whether the rules should be further amended to permit registrant to mail annual reports to security holders directly to plan participants and what type of notice to record holders would be necessary in order to assure that all plan participants will receive annual reports. Upon receipt of sufficient notice, record holders would be relieved of distribution obligations.

Further, paragraph (c) would permit registrants to mail annual reports directly to those non-objecting and affirmatively consenting beneficial owners so long as the registrant choosing to do its own annual report mailing informed the banks of its intention at the time it submitted, pursuant to paragraph (a), a search card requesting the beneficial owner information.

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[23] As would be defined in proposed Rule 14a–1(c) (see discussion Section IV.A, *supra*), entities that exercise fiduciary powers do not include clearing agencies registered under Section 17A of the Exchange Act.

[24] *See* discussion *infra* Section IV.E. 2.

[25] Rule 14a–13(a)(2) requires registrants to begin the process of soliciting beneficial owners by sending out search cards 20 calendar days before the record date. This and other time periods are discussed and comment concerning revisions is solicited *infra* at Section IV.E.1.

D. Rule 14b–1 Obligation of Registrant Brokers and Dealers in Connection With the Prompt Forwarding of Certain Communications to Beneficial Owners

The Commission proposes to revise the note to paragraph (c) of Rule 14b–1 to make clear that, with respect to requests not made in connection with a meeting, the five business day time period for calculating the compilation date for non-objecting beneficial owner lists commences upon receipt by the broker or its designated agent of the registrant's request.

E. Rule 14b–2 Obligations of Banks, Associations and Other Entities That Exercise Fiduciary Powers in Connection With the Prompt Forwarding of Center Communications to Beneficial Owners

Proposed new Rule 14b–2 is intended to delineate a bank's obligations in connection with providing beneficial owner information to registrants and forwarding proxy soliciting material to beneficial owners. In proposing Rule 14b–2, the Commission has drawn upon its experience in regulating the proxy processing activities of brokers and the system of direct communications with beneficial owners. Thus, proposed Rule 14b–2, to the extent possible, parallels the requirements of 14b–1.

1. Proposed 14b–2(a)

Proposed paragraph (a) would provide that a bank must respond, within seven business days of receipt, to a registrant's inquiry, made under 14a–13(a)(1), regarding the number of proxy cards and other proxy soliciting material needed by the banks to forward the material to beneficial owners. Respondent banks who receive the registrant's inquiry from the bank record holder also would be required to respond to the registrant's Rule 14a–13(a)(1) inquiry within seven business days. Paragraph (a)(1) provides that that response would be sent directly to the registrant and not to the bank record holder.

Once a bank record holder receives the registrant's Rule 14a–13(a)(1) inquiry, it would be required under proposed Rule 14b–2(a)(2) to forward that inquiry, by first class mail or other equally prompt means, within one business day to its respondent banks. The phrase "other equally prompt means" would permit banks to use other advantageous methods such as overnight mail or some sort of electronic delivery, in forwarding the registrant's Rule 14a–13(a)(1) inquiry to its respondent banks. In responding to the registrant's Rule 14a–13(a)(1) inquiry, banks would be required under proposed Rule 14b–13(a)(1) also to indicate the identity of any respondent bank and the date that it forwarded the registrant's inquiry to that bank.

The Commission notes that under proposed paragraph (a)(1) banks would be under the same time limits for responding to a registrant's Rule 14a–13(a)(1) inquiry as brokers currently are under Rule 14b–1(a) and, generally, a registrant would receive the banks' responses to its inquiry at the same time as it would receive broker responses. The practice of piggybacking bank accounts, however, will cause some delay in registrants receiving responses to the Rule 14a–13(a)(1) inquiry from respondent banks. For example, a bank record holder receives the registrant's Rule 14a–13(a) inquiry on May 1, 1986, and forwards it, by first class mail, pursuant to proposed Rule 14b–2(a)(2), to its respondent banks on May 2, 1986. Assuming three days for first class mail, the respondent banks would not receive the registrant's inquiry until May 6, 1986. The respondent bank would have, under proposed Rule 14b–2(a)(1), seven business days or until May 15, 1986, to respond to the registrant's inquiry while the bank record holder, pursuant to proposed Rule 14b–2(a)(1), would have to forward its response to the registrant's inquiry on May 9, 1986. The difference in response dates for bank record holders and respondent banks would increase, or course, depending on the number of layers of piggybacked accounts.

In view of the common practice of piggybacking bank accounts, and the delays attendant thereto, the Commission is soliciting specific comment on whether other revisions to the time periods for the beneficial owner solicitation process would be appropriate. First, the Commission inquires whether the proposed seven business day period for banks' response to the search card should be shortened and, if so, by how many days. Second, the Commission inquires whether Rule 14a–13(a) should require registrants to begin the process 30 calendar days before the record date instead of the 20 calendar days currently provided. The Commission notes that the latter change would advance the timetable for the process as a whole, including brokers.

2. Proposed Rule 14b-2(b)

a. Proposed system—separating proxy card from other material. Proposed paragraph (b) would require both bank record holders and respondent banks to forward proxy cards, proxy soliciting material and/or annual reports to security holders within five business days of receipt, to those of its customers who are beneficial owners of the registrant's securities but are not respondent banks on whose behalf the securities are held. Record holder banks as well as respondent banks who hold on behalf of other banks would have an additional obligation to forward proxy cards to their respondent banks within one business day of receipt from his registrant. A registrant will learn the identity of respondent banks when the respondent banks respond directly to the registrant's Rule 14a–13(a)(1) inquiry thus relieving bank record holders from the responsibility of forwarding proxy soliciting material and annual reports to security holders to respondent banks. All record holders, including banks and brokers as well as any respondent banks, will receive the proxy soliciting material and annual reports to security holders for forwarding to their customers who are beneficial owners at approximately the same time. On the other hand, registrants will send proxy cards to record holders for forwarding to respondent banks beneficial owners. In order to ensure that those beneficial owners whose securities are held through respondent banks will receive their proxy cards with the proxy soliciting material, respondent banks would be required to wait until they receive the proxy cards and then forward complete sets of materials to their beneficial owner customers within five business days thereafter. While the Commission has attempted to minimize delays by requiring the proxy cards be forwarded to respondent banks within one business day of receipt, delays would increase depending on the number of layers of respondent banks involved. Accordingly, the Commission solicits specific comment on whether it should shorten the five business day forwarding requirement when respondent banks are involved in order to compensate for delays caused by the layering of accounts.

b. Discussion of proposed system and approaches. The Commission is seeking specific comment as to whether the proposed system of forwarding proxy material to the ultimate, i.e., voting, beneficial owner is the most practical and expeditious system or whether a different system would be preferable. The proposal entails sending the proxy card to respondent banks seaparately from the other proxy soliciting material. The respondent banks would then recombine the card with the other proxy material for forwarding to the beneficial owner. The Commission is concerned that this may create practical difficulties in the proxy process.

An alternative would require registrant to send enough complete sets (proxy card and soliciting material and/or annual report) to the record holder bank to supply its owns beneficial owner customers as well those of the respondent banks on whose behalf it hold securities. Registrants would know the appropriate number as a result of the respondent banks' response to the search card. The record holder bank, after executing the proxy, would then be required to forward the complete sets to the respondent bank. This system would leave unchanged the current chain by which materials flow from the record holder, through the respondent bank, to the beneficial owner customer. Because the respondent bank frequently receives a limited number from the record holder, this alternative would require record holder banks to handle and forward sets of proxy materials that they do not now handle. The additional costs entailed would be reimburseable by the registrants. The proposed rule would avoid requiring this significant volume of paper to be processed and mailed at each level of respondent bank relationship.

Another alternative would have companies send complete sets, including proxy cards, directly to respondent banks and have the beneficial owners provide voting instructions to the bank record owners, similar to the process used by brokers. This approach would require a change from the current practice of some record holder banks in handling voting instructions. The bank record holder would then forward all signed proxy cards to the registrant. The record holder would still handle the proxy card, but would do so on the return phase of the process rather than at the outset, which is currently the practice for some banks.

A fourth alternative would be to have record holders execute, in the name of the respondent banks, powers of attorney, or omnibus proxies similar to that used by Depository Trust Company. This system would permit registrants to send the annual report, the proxy statement and proxy directly to the respondent banks for forwarding to beneficial owners. The respondent bank would execute the proxy. While some banks have suggested that the authorization process within the bank could be burdensome, the Commission believes that the practical efficiencies would seem to outweigh such burdens.

The Commission specifically requests commentators' views as to the preferability and feasibility of these four alternative approaches. The Commission also requests comments on any modifications or refinements of these alternatives. The Commission specifically is considering all four of these alternatives and is interested in pursuing that alternative which public commentators indicate is the most effective.

3. Proposed Rule 14b–2 (c) and (f)

Proposed paragraph (c) delineates the banks' obligations in connection with registrants communicating directly with their beneficial owners. Proposed paragraph (c) would require any bank to provide a registrant, upon its request, with the names, addresses and securities positions of its customers who are beneficial owners of the registrant's securities, subject to the appropriate customer consent standard.

The registrant could request the beneficial owner list whenever it wants and the bank, in response to that request, would be required to provide the list. Specifically, the registrant could request the beneficial owner list to be compiled either as of the registrant's record date for its latest annual or special meeting of security holders or, if the request is not made in connection with a meeting, a date no earlier than five business days after receipt of the registrant's request. Banks would be required to respond to a registrant's request for beneficial owner lists within five business days of the compilation date.

With respect to determining customer consent to disclosure of beneficial owner information, proposed paragraph (c) differentiates between bank customer accounts opened on or before December 28, 1985, the date of enactment of the Act, and those bank customer accounts opened after December 28, 1985. Specifically, in order to disclose the names, addresses and securities positions of those bank customers who opened their accounts with banks on or before December 28, 1985, the customer would have to have affirmatively consented to disclosure of the information. For those bank customers who opened their accounts with banks after December 28, 1985, the customer would need only not object to disclosure of the beneficial owner information.

This distinction between accounts opened on or before December 28, 1985 and those opened after December 28, 1985 is consistent with authority given the Commission by the Shareholder Communications Act. That Act directs that the standard for obtaining customer consent for disclosure of beneficial owner information for bank customers whose accounts were opened prior to the date of enactment be one of affirmative consent. The Act left to the Commission the discretion to establish the appropriate standard for customer consent for accounts opened after the date of enactment, *i.e.*, whether affirmative consent or the non-objection standard ultimately should apply to beneficial owner accounts held by banks.

In considering this question, Congress noted that, after an appropriate notice and comment period, the Commission established that a non-objection standard for brokers was the appropriate standard required for an effective implementation of the direct communications system. Congress was cognizant, however, of the special issues of privacy raised under state law with respect to existing bank customers and addressed these issues by applying an affirmative consent standard to existing accounts. As the House Report on the Act noted, however, banking industry representatives believed that these considerations would not apply to new customers, who could be advised upon the opening of an account that their names would be supplied to registrants unless they objected.[20] In view of the importance of the non-objection standard to the operation of the direct communications system and in recognition that brokers are held to a non-objection standard, the Commission believes that it is the appropriate standard to be applied after the date of the Act's enactment.

The Commission recognizes, however, that a question exists as to whether the application of this standard for the period of time between the date of enactment and the date of the rules' proposal poses undue burdens on banks. Accordingly, the Commission solicits specific comment on whether the Commission rules should require disclosure of beneficial owner information pursuant to a non-objection standard for bank customers whose accounts were opened after December 28, 1985, but before the proposal date of the rules contained herein.

With regard to obtaining customer consent for disclosure of beneficial owner information, the Commission anticipates that banks have incorporated into their customer account opening forms and procedures neutral language which explains the purposes of the direct shareholder communications system and is consistent with the non-objection standard for disclosure of beneficial owner information.

For those customer accounts opened on or before December 28, 1985,

[20] H.R. Rep. No. 101 at 3–4.

proposed paragraph (f) would provide that, unless banks make a good faith effort to obtain affirmative consent to disclosure of beneficial owner information, the disclosure must be made on a nonobjection basis. The two alternative proposals effect the directive of Congress that the affirmative consent standard adopted for existing bank accounts for privacy concern reasons is not used to frustrate the purposes of the direct communications system and hamper shareholder communications. Proposal I is intended to provide that bank notices to customers who opened accounts on or before December 28, 1985 contain neutral and complete explanations of the purposes of the direct communications rules.

Proposal II would add as a safe-harbor a specific delineation of what will be deemed to be a good faith effort to obtain affirmative consent to disclosure of beneficial owner information. This paragraph would provide that banks shall be deemed to have made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information if: (1) The inquiry is phrased in neutral language, explaining the purpose of the disclosure and the limitations on the registrant's use thereof; (2) the inquiry is made either in at least one mailing separate from other account mailings or in repeated mailings; and (3) the mailing includes return card, postage paid enclosures. This alternative proposal would provide specific guidance to banks while, at the same time, satisfying Congress' intent in mandating the use of good faith efforts on the part of banks to obtain affirmative consent to disclosure of beneficial owner information for customer accounts opened on or before December 28, 1985.[27] In contrast to the first proposal, this alternative proposal may not provide the same flexibility to banks in complying with the good faith requirement. Accordingly, the Commission solicits specific comment on the appropriate level of specificity required in the proposed rule to ensure that banks use good faith efforts to obtain affirmative consent to disclosure of beneficial owner information from their customers.

Finally, proposed paragraph (c) would provide that, like brokers, banks may designate an agent or intermediary to act on its behalf in performing its obligations under this paragraph and that a registrant must make its request of such intermediary. Registrants will make the request for a nonobjecting and affirmatively consenting beneficial owner list to the intermediary only after the bank's response to the search card identifying the intermediary is received. Should a bank later designate a new intermediary to act on its behalf, it would be to the benefit of all concerned parties for the bank to notify the registrant of this fact.

The Commission believes that the most effective implementation of the shareholder communications system would involve the use of an intermediary to compile and to supply beneficial owner lists. This will assure standardized delivery format and client confidentiality of banks. Further, economies of scale will be realized by maximizing cost savings while minimizing burdens on banks by permitting them to delegate this function to an intermediary. The fact that virtually all brokers have contracted with the intermediary to perform these functions indicates that brokers have found this to be the case.[28]

The intermediary would serve as a central processing agent between banks and registrants in the transmission of lists of beneficial owners. In addition, the intermediary would act, on behalf of banks, in performing all administrative functions required in providing beneficial owner information, including: receiving requests for beneficial owner information from registrants; advising banks of the record date for a registrant's request; receiving customer lists from banks; preparing, in a standardized format, lists of nonobjecting and affirmatively consenting beneficial owners; and billing registrants for fees associated with providing the beneficial owner information.

Employing an intermediary, however, would not be a condition to complying with the shareholder communications rules. Accordingly, proposed Rule 14b–2 and proposed revisions to Rule 14a–13 recognize that a bank may not wish to employ an intermediary to act on its behalf and that, in such cases, the registrant must make the request directly to the bank.

4. Proposed Rule 14b–2(d) and (e)

In addition to recognizing that a bank may designate an agent to act on its behalf, Rule 14b–2(d) would make clear that, without assurance by the registrant of reimbursement of reasonable expenses, both direct and indirect, incurred in connection with performing its obligations under the rule, a bank need not satisfy its obligations under proposed paragraphs (b), (c), and (f) of Rule 14b–2. A bank is obligated, under proposed paragraph (a), however, to supply the information requested by the registrant without regard to reimbursement.[29]

Proposed paragraph (e) to Rule 14b–2 addresses the issue of how the "reasonable expenses" of banks for forwarding proxy soliciting material and annual reports and providing beneficial owner lists are to be determined. In the rules applicable to brokers, the Commission has long left to the exchanges and other self-regulatory organizations the determination of what constitutes "reasonable expenses" and therefore what fees brokers appropriately may charge for forwarding proxy soliciting material. The Commission took the same approach as to the "reasonable expenses" of providing beneficial owner lists, believing that, because the self-regulatory organizations represent the interests of both registrants and brokers, they were in the best position to make a fair allocation of the costs associated with the rules. In this regard, the Commission has approved rule changes by the New York Stock Exchange, American Stock Exchange and the National Association of Securities Dealers, based on recommendations of the Ad Hoc Committee. These rule changes permit the start-up costs associated with the implementation of the beneficial owner identification rule to be funded by a surcharge of $.20 and $.185 respectively per proxy for each of a registrant's first two annual meeting proxy solicitations subsequent to the approval of the surcharge.[30] In addition, the rule changes set a charge of $.065 per name for registrants requesting beneficial ownership lists. The $.065 rate of reimbursement to brokers does not include fees which may be charged by an intermediary agent used by the broker. The NYSE also noted that the Ad Hoc Committee had considered the fees IECA Intermediary Services

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[27] H.R. Rep. No. 161 at 4.

[28] After requesting proposals, the Ad Hoc Committee selected Independent Election Corporation of America ("IECA") to serve as intermediary.

[29] Under Rule 14a–13(a)(3), a registrant is obligated to pay the record holder and respondent banks its reasonable expenses for completing the mailing of proxies, proxy soliciting material and/or annual reports to security holders to whom the material is sent.

[30] *See* Release Nos. 34–21800 (March 28, 1985) [50 FR 13297] (File No. SR–NYSE–85–2) and 34–21915 (April 1, 1985) [50 FR 14006] (File Nos. SR–NASD–85–7 and SR–Amex–85–2) approving first surcharge; Release No. 34–22939 (February 11, 1986) [51 FR 5021] (File No. SR–NYSE–85–43) approving second surcharge and setting per name charge; and Release No. 34–22908 (February 14, 1986) [51 FR 6047] (File No. SR–NYSE–85–46), approving increases in charges for forwarding proxy materials and annual reports.

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proposes to charge registrants for its services and determined the charges to be reasonable.

Because comparable self-regulatory organizations do not exist for banks, however, the Commission is proposing a safe-harbor provision which would allow banks to look to the fees charged by brokers for the same functions. Thus, if a bank charges no more than that which may be charged by brokers, the amount it charges registrants as reimbursement of "reasonable expenses" incurred in connection with the Rule 14b–2 functions shall not be deemed to be unreasonable. This safe harbor provision would cover fees charged for forwarding materials, the start-up surcharges, the per name fee for beneficial owner information and charges for intermediary services. The provision also would be nonexclusive. Banks which incur greater expenses could seek additional reimbursement, subject to the "reasonable expenses" limitation in paragraph (d)(1).

5. Proposed Rule 14b–2(g)

Proposed paragraph (g) would define the term beneficial owner to include any person who has or shares voting power. If more than one person shares voting power, then the provisions of the instrument determining the basis on which shares are voted would govern regarding the vote as to disclosure of beneficial owner information. Because banks often hold securities in various types of accounts where voting may rest entirely with either the bank or the customer or voting authority is shared among trustees, the proposed definitional provision may be necessary to alleviate any difficulties in determining whether disclosure of the identity of the beneficial owner is appropriate.

F. Rule 14c–1

The Commission proposes to amend Rule 14c–1 which is the definitional section for those rules governing the distribution of information statements and annual reports to security holders to conform, to the extent possible, to proposed revisions to Rule 14a–1.

G. Rule 14c–2

The Commission proposes to amend Rule 14c–2 which governs the distribution of information statements and annual reports to security holders to conform, to the extent possible, to proposed revisions to Rule 14a–3.

H. Rule 14c–7

The Commission proposes to amend Rule 14c–7 which governs the distribution of information statements and annual reports to security holders to conform, to the extent possible, to proposed revisions to Rule 14a–13.

VI. Cost—Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 14b–2 and the proposed amendments to Rules 14a–1, 14a–3, 14a–13, 14c–2 and 14c–7, the Commission requests commentators to provide views and data as to the costs and benefits associated with the rules incorporating banks into the shareholder communications system. In this regard, the Commission notes that the proposals will improve the proxy distribution process between registrants and beneficial owners thus ensuring that security holders will be able to exercise informed voting decisions. Further, by bringing banks into the direct communications system, registrants will be able to forward certain corporate communications to their beneficial owners which also will result in an increase in informed voting decisions on the part of beneficial owners. Registrants who mail corporate communications directly to beneficial owners whose securities are held of record by banks may realize increased cost savings. At present, registrants also may realize increased cost savings for those beneficial owners whose securities are held of record by brokers. As of May 5, 1986, 1,816 requests for beneficial owner information had been made, suggesting that registrants recognize the benefits associated with the direct communications system.

The costs associated with these proposals will result in banks being required to: (1) Process proxy materials; (2) respond to requests for beneficial owner information; and (3) perform certain recordkeeping obligations. Banks, however, will be reimbursed by registrants for the reasonable costs associated with performing these obligations. The proposals require that registrants who choose to avail themselves of the benefits associated with the proposals must reimburse banks for their reasonable costs incurred in performing their obligations.

VII. Regulatory Flexibility Act Inquiry

Proposed Rule 14b–2 and the corresponding revisions to Rules 14a–1, 14a–13, 14b–1, 14c–1 and 14c–7 and amendments to Rules 14a–3 and 14c–2 have been certified, pursuant to 5 USC 605(b), that, if promulgated, they will not have a significant economic impact on a substantial number of small entities. Nonetheless, because the Commission has not adopted a definition of small business or organization that would encompass banks for purposes of these Rules, the certification states that the Commission intends to use the definition of small bank as contained in 17 CFR 240.0–10(f) (1) and (3), regarding a municipal securities dealer that is a bank. The Commission requests comment as to whether this definition is appropriate for purposes of these Rules.

VIII. Request for Comments

Any interested persons wishing to submit written comments on the proposed revisions to the shareholder communication rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so.

The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[51]

IX. Statutory Basis and Text of Proposed Amendments

These amendments are being proposed pursuant to sections 12, 14 and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Banks, Associations.

X. Text of Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * §§ 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, 240.14c–2 and 240.14c–7 also issued under Sections 12, 15 U.S.C. 781, and 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n.

2. By redesignating current paragraphs (c) through (f) as (d) through (g) and by adding new paragraph (c) to § 240.14a–1 to read as follows:

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[51] 15 U.S.C. 78w(a)(2) (1982).

§ 240.14b–1 Definitions.

* * * * *

(c) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name on behalf of a beneficial owner but does not include a clearing agency registered pursuant to Section 17A of the Act. Where such registered clearing agency is the record holder, the participants identified by such clearing agency in the securities position listing (as defined by § 240.17Ad–8) assume the rights and obligations associated with record ownership under §§ 240.14a–13, 240.14b–1 and 240.14b–2.

* * * * *

3. By revising paragraph (e)(2) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(e) * * *

(1) * * *

(2) Unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if (i) an annual report and a proxy statement for two consecutive annual meetings or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable. If any such security holder delivers or causes to be delivered to the registrant notice setting forth his then current address for security holder communications purposes, a registrant's obligation to deliver an annual report or a proxy statement under this section is reinstated.

4. By revising § 240.14a-13 to read as follows:

§ 240.14a-13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, or bank, association, other entity that exercises fiduciary powers or their nominees, the registrant shall:

(1) By first class mail or other equally prompt means: (i) inquire of such record holders: (A) whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to beneficial owners; and, in the case of an annual (or special in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to beneficial owners to whom such reports are to be distributed by the broker, dealer, voting trustee, or bank, association, other entity that exercises fiduciary powers or their nominees and not by the registrant; and (B) if the record holder has an obligation under § 240.14b–1(c) or § 240.14b–2(c), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and (ii) indicate to such record holders which are brokers, dealers, or banks, associations or other entities that exercise fiduciary powers whether the registrant, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities who either have consented or not objected to disclosure of their names, addresses and securities positions.

(2) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or (ii) if, consents or authorizations are solicited, and such inquiry is impracticable 20 calendar days before the earliest date on which they may be used to effect corporate action, as many days as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

(3) Shall supply, in a timely manner: (i) the record holders of whom the inquiry is made with additional copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities who is to be furnished with such material by the broker, dealer, voting trustee, or bank, association, other entity that exercises fiduciary powers, or their nominees; and (ii) those banks, associations or other entities that exercise fiduciary powers on whose behalf the record holder holds securities and who have responded to the registrant's inquiry made under paragraph (a)(1) of this section, with additional copies of the proxy soliciting material, and/or the annual report to security holders, (but not the proxy) in such quantities assembled in such form and at such a place, as such bank, association or other entity that exercises fiduciary powers may reasonably request in order to address and send one copy of each to each beneficial owner of securities who is to be furnished with such material by such bank, association or other entity that exercises fiduciary powers. The number of annual reports supplied shall be sufficient to supply those beneficial owners to whom the report is to be distributed by the broker, dealer, voting trustee, or bank, association, other entity that exercises fiduciary powers, or their nominees. The registrant shall upon the request of such record holder or such bank, association or other entity that exercises fiduciary powers, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

Note 1.—If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14a–1(c)).

Note 2.—The attention of registrants is called to the fact that brokers, dealers, or banks, associations and other entities that exercise fiduciary powers have an obligation pursuant to § 240.14b–1(b), § 240.14b–2(b) and applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxy soliciting materials to all beneficial owners, and (b) annual reports to security holders, to all beneficial owners unless the registrant has notified the broker, dealer, or bank, association or other entity that exercises fiduciary powers that it has assumed responsibility to mail such material to consenting and non-objecting beneficial owners in which case the broker, dealer, or bank, association and other entity that exercises fiduciary power shall mail such material to non-consenting and objecting beneficial owners.

(b) Any registrant requesting pursuant to § 240.14b–1(c) and § 240.14b–2(c) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) Request such list from all brokers, dealers, or banks, associations and other entities that exercise fiduciary powers (through their agents) having customers who are beneficial owners of

the registrant's securities *provided, however,* such request for a list of beneficial owners need not include beneficial owners of securities where (A) those beneficial owners have purchased securities pursuant to an employee benefit plan as defined in § 230.405; and (B) the registrant has access, by some means other than pursuant to paragraph (b) of this section to the beneficial owner's name and address;

(2) Use the information so furnished exclusively for purposes of corporate communications; and

(3) Upon the request of such brokers, dealers, or banks, associations or other entities that exercise fiduciary powers, through their agents, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

Note.—A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the broker, dealer, or bank, association or other entity that exercise fiduciary powers and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by brokers, dealers, or banks, associations or other fiduciary entities that exercise fiduciary powers, through their agents, pursuant to § 240.14b–1(c) and § 240.14b–2(c), provided that such registrant notifies the brokers, dealers, or banks, associations or other fiduciary entities that exercise fiduciary powers, at the time a search card requesting the beneficial owner information in accordance with paragraph (a) of this section is sent that the registrant will mail the annual report to security holders to the beneficial owners so identified.

5. By revising paragraph (c) and the note to paragraph (c) of § 240.14b–1 to read as follows:

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(c) Through its agent or directly, provide the registrant, upon the registrant's request, with the names, addresses and securities positions, compiled as of a date specified in the registrant's request which may be the registrant's record date for its next annual or special meeting of security holders, or, if not in connection with a meeting, another date which is no earlier than five business days after receipt of the registrant's request, of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information. A broker or dealer, through its agent or directly, will be required to transmit the data to the registrant no later than five business days after the record date or other date specified by the registrant.

Note.—Where a broker or dealer employs a designated agent to act on its behalf in performing the obligations imposed on the broker or dealer by paragraph (c) of this section, the five business day time period for determining the date as of which the beneficial owner information for non-meeting lists is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (c) of this section, a broker or dealer need only supply the registrant with the names, addresses and securities positions of non-objecting beneficial owners.

* * * * *

6. By adding § 240.14b–2 to read as follows (There are alternative proposals for paragraphs (f) and (g)):

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

A bank, association or other entity that exercises fiduciary powers shall:

(a)(1) Respond directly to the registrant no later than seven business days after receipt of an inquiry made in accordance with § 240.14a–13(a) by or on behalf of a registrant soliciting proxies, consents or authorizations by indicating, by means of a search card or otherwise: (i) the approximate number of its customers who are beneficial owners of the registrant's securities that are held of record by the bank, association, other entity that exercises fiduciary powers or its nominees;

(ii) With respect to customer accounts opened on or before December 28, 1985, the number of customers who are beneficial owners of the registrant's securities and who have affirmatively consented to disclosure of their names, addresses and securities positions if the registrant has indicated, pursuant to § 240.14a–13(a)(1)(ii), that it will distribute the annual report to security holders to beneficial owners of its securities who have affirmatively consented to disclosure of their names, addresses and securities positions; (iii) with respect to customer accounts opened after December 28, 1985, the number of customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of their names, addresses and securities positions if the registrant has indicated, pursuant to § 240.14a–13(a)(1)(ii), that it will distribute the annual report to security holders to beneficial owners of its securities who have not objected to disclosure of their names, addresses and securities positions; (iv) the identity of any bank, association or other entity that exercises fiduciary powers on whose behalf it holds securities and the date that it has forwarded the inquiry made in accordance with § 240.14a–13(a) to those banks, associations or other entities that exercise fiduciary powers on whose behalf it holds securities; and (v) the identity of its designated agent, if any, acting on its behalf in fulfilling its obligations under paragraph (c) of this section;

(2) Upon receipt of the inquiry made in accordance with § 240.14a–13(a) by or on behalf of a registrant soliciting proxies, consents or authorizations, forward the inquiry, by first class mail or other equally prompt means, within one business day to those banks, associations or other entities that exercise fiduciary powers on whose behalf it holds securities.

(b) Upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders, forward: (1) such materials to its customers who are beneficial owners of the registrant's securities (but are not banks, associations, or other entities that exercise fiduciary powers on whose behalf it holds securities) no later than five business days after the receipt of the proxy material or annual reports; (2) the proxy to those banks, associations or other entities that exercise fiduciary power on whose behalf it holds securities no later than one business day after the receipt of the proxy; *Provided, however,* that banks, associations or other entities that exercise fiduciary powers which receive other proxy soliciting material pursuant to § 240.14a–13(a)(3)(ii) shall not forward such material pursuant to paragraph (b)(1) of this section until such entities have received the proxy pursuant to paragraph (b)(2) of this section, at which time such entities shall then forward all such materials together, within the five business day period provided by paragraph (b)(1) of this section; and

(c) Through its agent or directly, provide the registrant, upon the registrant's request, with the names, addresses and securities positions, compiled as of a date specified in the registrant's request which may be the registrant's record date for its next annual or special meeting security holders, or, if not in connection with a

meeting, another date which is no earlier than five business days after receipt of the registrant's request, of: (1) With respect to customer accounts opened on or before December 28, 1985, its customers who are beneficial owners of the registrant's securities and who have affirmatively consented to disclosure of such information, subject to paragraph (f) of this section; and (2) with respect to customer accounts opened after December 28, 1985, its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information. A bank, association or other entity that exercises fiduciary powers, through its agent or directly, will be required to transmit the data to the registrant no later than five business days after the record date or other date specified by the registrant.

Note.—Where a bank, association or other entity that exercises fiduciary powers employes a designated agent to act on its behalf in performing the obligations imposed on the bank, association or other entity that exercises fiduciary powers by paragraph (c) of this section, the five business day time period for determining the date as of which the beneficial owner information for non-meeting lists is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (c) of this section, a bank, association or other entity that exercises fiduciary powers need only supply the registrant with the names, addresses and securities positions:

(1) With respect to customer accounts opened on or before December 28, 1985, of its customers who are beneficial owners of the registrant's securities and who have affirmatively consented to disclosure of such information, subject to paragraph (f) of this section; and (2) with respect to customer accounts opened after December 28, 1985, of its customers who are beneficial owners of the registrant's securities and who do not object to disclosure of such information.

(d) A bank, association or other entity that exercises fiduciary powers need not satisfy: (1) its obligations under paragraphs (b), (c) and (f) of this section if a registrant does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by this section; or (2) its obligation under paragraph (b) of this section to forward annual reports to consenting and non-objecting beneficial owners identified by the bank, association or other entity that exercises fiduciary powers, through its agent or directly, pursuant to paragraph (c) of this section if the registrant notifies the bank, association or other entity that exercises fiduciary powers pursuant to § 240.14a–13(c) that the registrant will mail the annual report to such consenting and non-objecting beneficial owners, identified by the bank, association or other entity that exercises fiduciary powers and delivered in a list to the registrant pursuant to paragraph (c) of this section.

(e) For purposes of determining the fees which may be charged to registrants pursuant to § 240.14a–13(b)(3) and paragraph (d)(1) of this section for performing obligations under paragraphs (b), (c) and (f) of this section, an amount no greater than that permitted to be charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by § 240.14b–1 shall not be deemed to be unreasonable.

Alternative Proposal I

(f) For customer accounts opened on or before December 28, 1985, unless banks, associations and other entities that exercise fiduciary powers have made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information pursuant to paragraph (c) of this section, such information shall be provided as to customers who are beneficial owners and do not object to disclosure of such information.

(g) For purposes of this section, the term "beneficial owner" includes any person who has or shares voting power which includes the power to vote, or to direct the voting of, such security.

Note.—If more than one person shares voting power, the provisions, of the instrument creating that voting power shall govern with respect to whether disclosure of beneficial owner information is made.

Alternative Proposal II

(f) For customer accounts opened on or before December 28, 1985, unless banks, associations and other entities that exercise fiduciary powers have made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information pursuant to paragraph (c) of this section, such information shall be provided as to customers who are beneficial owners and do not object to disclosure of such information. Banks, associations and other entities that exercise fiduciary powers shall be deemed to have made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information if: (1) The inquiry is phrased in neutral language, explaining the purpose of the disclosure and the limitations on the registrant's use thereof; (2) the inquiry is made either in at least one mailing separate from other account mailings or in repeated mailings; and (3) the mailing includes return card, postage paid enclosures.

(g) For purposes of this section, the term "beneficial owner" includes any person who has or shares voting power which includes the power to vote, or to direct the voting of, such security.

Note.—If more than one person shares voting power, the provisions of the instrument creating that voting power shall govern with respect to whether disclosure of beneficial owner information is made.

§ 240.14a–1 [Amended]

8. Section 240.14c–1 is amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively, and by adding a new paragraph (b) to read as follows:

* * * * *

(b) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act. Where such registered clearing agency is the record holder, the participants identified by such clearing agency in the securities position listing (as defined by § 240.17Ad–8) assume the rights and obligations associated with record ownership under § 240.14c–7.

* * * * *

9. By revising § 240.14c–2(a) to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the registrant of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the registrant pursuant to section 14(a) of the Act: *Provided however,* that (1) in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the registrant, and (2) no such statements need to transmitted to a security holder if a registrant would be excused from delivery of an annual report or a proxy statement under Rule 14a–3(e)(2) (§ 240.14a–3(e)(2)) if such section were applicable.

* * * * *

10. By revising § 240.14c-7 to read as follows:

§ 240.14c-7 Providing copies of material for certain beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, voting trustee, or bank, association, or other entity that exercises fiduciary powers or their nominees, the registrant shall:

(1) By first class mail or other equally prompt means, inquire of such record holders whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to beneficial owners and, in the case of an annual (or special in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to such beneficial owners for whom proxy material has not been and is not to be made available and to whom such reports are to be distributed by the brokers, dealer, voting trustee, or bank, association, other entity that exercises fiduciary powers on their nominees and not by the registrant; and

(2) Indicate to such record holders which are brokers, dealers, or banks, associations or other entities that exercise fiduciary powers whether the registrant pursuant to paragraph (c) of this section, intends, to distribute the annual report to security holders to beneficial owners of its securities who either have consented or objected to disclosure of their names, addresses and securities positions; and

(3) Supply, in a timely manner: (i) such record holder of whom the inquiry is made; and (ii) those banks, associations or other entities that exercise fiduciary powers on whose behalf the record holder holds securities and who have responded to the registrant's inquiry made under paragraph (a)(1) of this section, with additional copies of the information statement and the annual report to security holders, in such quantities, assembled in such form and at such a place, as the record holder or bank, association or other entity that exercises fiduciary powers on whose behalf the record holder holds securities may reasonably request in order to address and send one copy of each to each beneficial owner of securities who is to be furnished with such material by the broker, dealer, voting trustee, or bank, association, other entity that exercises fiduciary powers or their nominees. The number of annual reports supplied shall be sufficient to supply those beneficial owners to whom the report is to be distributed by the broker, dealer, voting trustee, or bank, association, [other entity that exercises fiduciary powers or their nominees. The registrant shall, upon the request of such record holder or bank, association or other entity that exercises fiduciary powers on whose behalf the record holder holds securities, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

Note 1.—If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such a clearing agency who may hold on behalf of a beneficial owner, and shall comply with the above rule with respect to any such participant (*see* § 240.14c-1).

Note 2.—The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available to registrants, however, where banks, associations, other entities that exercise fiduciary powers, brokers and dealers and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

Note 3.—The attention of registrants is called to the fact that brokers, dealers, and banks, associations and other entities that excise fiduciary powers have an obligation pursuant to applicable self-regulatory organization requirements to obtain and forward, in a timely manner, (a) information statements to all beneficial owners, and (b) when requested by the registrant annual reports to security holders to beneficial owners for whom such brokers and dealers hold securities.

(b) Any registrant requesting a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or not objected to disclosure of such information shall:

(1) Request such list from all brokers and dealers (through their agents) having customers who are beneficial owners of the registrant's securities *provided however*, such request for a list of beneficial owners need not include beneficial owners of securities where (i) those beneficial owners have purchased securities pursuant to an employee benefit plan as defined in § 230.405; and (ii) the registrant has access, by some means other than pursuant to paragraph (b) of this section, to the beneficial owner's name and address;

(2) Use the information so furnished exclusively for purposes of corporate communications; and

(3) Upon the request of such brokers, dealers, and banks, associations, and other entities that exercise fiduciary powers, through their agents, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

Note.—A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the broker, dealer, or bank, association or other entity that exercises fiduciary powers and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by brokers, dealers, or banks, associations and other entities that exercise fiduicary powers, through their agents, provided that such registrant notifies the brokers, dealers, or banks, associations and other entities that exercise fiduciary powers in accordance with paragraph (a) of this section that the registrant will mail the annual report to security holders to the beneficial owners so identified.

By the Commission.

Shirley E. Hollis,
Acting Secretary.
May 29, 1986.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adjustments to Piece Rates

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is proposing to amend its regulations for the certification of nonimmigrant aliens for temporary employment in agriculture in the United States. The proposed rule would amend the procedures for adjustment of peice rates employers offer and pay to United States and alien workers. The rule would require each piece rate to be no less than the prevailing piece rate for the crop activity

in the area of intended employment. It would also permit productivity requirement increases if justified by the employer and approved by the ETA Regional Administrator (RA). The rule would also discontinue the requirement that piece rates be designed to produce average hourly earnings at least equal to the adverse effect wage rate (AEWR).

DATES: Written comments on the proposed rule must be received on or before July 7, 1986.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration, Room 8100, Patrick Henry Building, 601 D Street NW., Washington, DC 20213. Attention: Mr. Richard C. Gilliland, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening. Telephone: (202) 376–6228.

SUPPLEMENTARY INFORMATION:

I. Background

A. Temporary Alien Labor Certification Process

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 8 CFR 2.1. Pursuant to the requirement in 8 U.S.C. 1184(c) that the Attorney General consult with appropriate agencies of the Government concerning the importation of nonimmigrant (so called "H–2") workers, INS has determined that prior to granting or denying such a petition, it first will request the Department of Labor (DOL) to advise INS on availability of qualified United States workers for the jobs offered to the H–2 aliens, and whether the wages and working conditions attached to such a job offer will adversely affect similarly employed U.S. workers.

Pursuant to the INS regulations, the Employment and Training Administration (ETA) has published regulations at 20 CFR Part 655, Subpart C, for the certification of temporary employment of nonimmigrant aliens in agriculture and logging in the United States. DOL has determined that similarly employed U.S. workers have been adversely affected by the importation and employment of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specially computed adverse effect wage rates (AEWRs) would adversely affect the wages of similarly employed U.S. workers. 20 CFR 655.202(b)(9) and 655.207.

B. Piece Rates in the H–2 Program

Many employers who seek certification to employ foreign workers use the piece rate method of paying workers. The Department of Labor's (DOL's) regulation currently in effect on piece rates under this program provides that:

> (i)n any year in which the applicable adverse effect rate is increased, employers shall adjust their piece rates upward to avoid requiring a worker to increase his or her productivity over the previous year in order to earn an amount equal to what the worker would earn if the workers were paid at the adverse effect rate.

20 CFR 655.207(c) (1983); see 43 FR 10306, 10317 (March 10, 1978).

Historically, DOL has determined that workers should not be required to increase their level of productivity in order to earn, at a minimum, the hourly AEWR. See, e.g., 20 CFR 655.207(c) (1983); 20 CFR 602.10b(a)(2) (1971). Conversely, if the employer's piece rate for a particular crop activity allowed the average worker to receive earnings at or above the AEWR, that piece rate has been acceptable. Thus, if average hourly earnings for the average worker in the preceding year equalled or exceeded the applicable AEWR, the piece rate for that crop activity did not need to be raised. This interpretation of DOL's regulation on piece rates was reflected in its issuance to ETA regional offices and to State Job Service Agencies in General Administration Letter (GAL) No. 46–81, issued in September 1981.

In 1982 and 1983, the U.S. District Court for the District of Columbia, in two orders resulting from a suit filed by farmworkers *(NAACP, Jefferson County Branch* v. *Donovan),* issued an interpretation of the established regulation which differed with the Department's original intent in promulgating it. 566 F. Supp. 1202 (D.D.C. 1983); and 558 F. Supp. 218 (D.D.C. 1982). The court rule and ordered that the piece rates be increased each time the AEWRs are increased, based upon productivity in the specific crop activity in 1977, or the first year after 1977 in which the employer first entered the program. The 1977 productivity rate is determined by dividing the 1977 AEWR by the piece rate paid for that crop activity. Under this formula, the current piece rate would be equal to the current AEWR divided by the 1977 productivity rate or the 1977 piece rate increased by the same percentage as the increase in the AEWR since 1977.

Under the court's interpretation, employers who had paid a higher than average piece rate in 1977, and whose workers received, at that time, earnings above the adverse effect level, would have been bound to maintain their workers at levels of earnings above the hourly AEWR required by 20 CFR 655.207. In order to clarify its original intent, DOL promulgated a revised rule (20 CFR 655.207(c) (1985), 48 FR 40168 (September 2, 1983)) to reinstate and to reflect the original intent.

In promulgating the 1983 rule, the adjective "U.S." was added to modify the noun "workers" in the final rule to clarify DOL's intent, although the adjective had not appeared in the July 22, 1983, proposed rule. Addition of "U.S." was in response to public comments on the proposed rule and made it clear that in each year piece rates would be based on previous year's average earnings of U.S. workers. Some employers in Florida challenged this addition of "U.S." before the U.S. District Court for the Southern District of Florida. That court found, in a ruling issued March 19, 1984, that the piece rate regulation, as amended, was partially invalid, holding that adequate notice and opportunity to comment was not provided on the addition of the adjective "U.S." in the final regulation. In *Florida Fruit and Vegetable Association* v. *Donovan,* 583 F. Supp. 268 (S.D. Fla. 1984), the court ordered that the six references to "U.S." be deleted. However, it further held that the "final rule as modified, which is exactly as it was proposed, is a valid final rule." Only the procedure by which the adjective "U.S." was included in the final rule was questioned by the court, not the substance of the rule itself. (A similar ruling was issued later by the U.S. District Court in Burlington, Vermont, *Shoreham Cooperative Apple Producers' Association, Inc.* v. *Donovan,* Civ. No. 83–326 (D. Vt. November 9, 1984)).

While the Florida federal court struck down the revised rule on Administrative Procedure Act (APA) grounds, the U.S. District Court for the District of Columbia, in an order issued on August 15, 1984, found that the rulemaking had complied with the APA. *NAACP, Jefferson County Branch* v. *Donovan,* Civ. No. 82–2315 (D.D.C. August 15, 1984). This ruling was appealed by attorneys representing workers.

In order to satisfy the Florida federal court ruling of March 1984 (and the later Vermont federal court ruling), DOL published a notice in the Federal Register on December 10, 1984, announcing (and requesting comments on) a proposed rulemaking to repromulgate the piece rate rule to include the adjective "U.S." before "workers". 49 FR 48061. Following the review of submitted comments, a final rule was published on June 21, 1985. 50 FR 25706. Then, on July 8, 1985, the U.S. Court of Appeals for the District of

Columbia Circuit issued a ruling which overturned the decision made in the U.S. District Court for the District of Columbia on August 15, 1984. *NAACP, Jefferson County Branch* v. *Brock*, 705 F. 2d 1178 (D.C. Cir. 1983), *rev'g*, Civ. No. 82–2315 (D.D.C. August 15, 1984). The D.C. Circuit ruled that DOL had not sufficiently identified and justified a change in policy as required by the Administrative Procedure Act. This had the effect of reinstating the piece rate regulation at 20 CFR 655.207(c) as published in the Federal Register at 43 FR 10817, on March 16, 1978, and interpreted by the U.S. District Court for the District of Columbia in its 1982 and 1983 orders (556 F. Supp. 1202 and 558 F. Supp. 218). See *NAACP, Jefferson County Branch* v. *Brock*, Civ. No. 82–2315, final order and judgment (D.D.C. August 21, 1985). Subsequent to this development, ETA took steps to abide by the interpretation of the court and to condition 1985 temporary alien agricultural labor certifications upon employers' assurances to pay piece rates computed according to the D.C. District Court's interpretations.

All East Coast apple growers who were required to pay the piece rates did provide the necessary assurances that they would do so, with the exception of two growers in West Virginia. When the West Virginia growers were denied certification, they filed suit against DOL in the U.S. District Court for the Northern District of West Virginia. *Tri-County Growers, Inc.* v. *Brock*, Civ. No. 85–38–M (N.D.W.Va); *Fuller* v. *Brock*, Civ. No. 85–37–M (N.D.W.Va.). The West Virginia federal court, on August 28, 1985, ordered DOL to certify the temporary employment of H–2 workers by these growers, on the provision that the growers establish escrow accounts to cover the piece rate differences in dispute. These two cases (since then being heard together) are still pending.

Although 1985 certifications were issued to other apple growers who agreed to pay the required rates, information provided to ETA in September 1985 by farmworker attorneys indicated that the rates were not being paid. Subsequently, most of the growers sued DOL on this issue on September 20, 1985, contending that DOL could not require them to pay the rates because they were not parties to the litigation in the U.S. District Court for D.C. that resulted in the higher piece rate requirements. This case is pending before the U.S. District Court in the Western District of Virginia. *Frederick County Fruit Growers' Association* v. *Brock*, Civ. No. 85–0142IH (W.D.Va.). Subsequent payroll audits performed by ETA revealed that about two-thirds of the certified growers who had agreed to pay the rates as a condition of certification were not doing so. Pending a final ruling on the case, the Virginia federal court, on December 17, 1985, also ordered the growers to escrow the amounts in dispute.

II. Scope of Piece Rate Regulation Review and Considerations Involved

A. Scope of Review

A DOL/USDA interagency task force was established to examine possible alternatives to the current piece rate regulation at 20 CFR 655.207(c). While the piece rate regulation revisions promulgated in 1983 and 1985 were invalidated by the courts in 1985, the decision of the U.S. Court of Appeals for the District of Columbia Circuit clearly provided an opportunity for DOL to reexamine that regulation, consider other options, and if it chose, to change the rule. *NAACP, Jefferson County Branch* v. *Brock*, 705 F. 2d 1178 (D.C. Cir. 1983). The court wrote:

> We emphasize again that *NAACP I* and *NAACP II* do not themselves prevent DOL from altering its piece rate regulation even in a way that would represent a dramatic shift in policy. Those decisions require only that the Department admit that the new regulation is a change of policy.

705 F. 2d at 1183. The court continued:

> We do not hold that no reasoned justification for the new piece rate regulation is possible. The Department may find, for example, that the as-yet unconsidered consequences of the new regulation are overborne by problems the old regulation engendered. But we are not now positioned to consider the reasonableness of any particular explanation DOL might proffer to salvage its current regulatory formulation.
>
> As a reviewing court, "we may not supply a reasoned basis for the agency's action that the agency itself has not given." (Citation omitted) Accordingly, we reverse the District Court's judgment and remand the case to the District Court with instructions to return the amended regulation to DOL so that the Department may proceed to reconsider the matter in a manner consistent with this opinion.

705 F. 2d 1185.

DOL therefore undertook to examine the piece rate issued de novo, evaluating not only the reinstated 1978 rule and the 1983 and 1985 revisions which were invalidated by the courts, but also several other options.

B. Considerations Involved in Review

A number of considerations involving basic H–2 program objectives, administrative feasibility and economic factors were carefully weighed in reviewing the piece rate issue.

The major ones were:

1. Under the Immigration and Nationality Act and INS regulations, DOL has a mandate to protect the wages and job opportunities of U.S. workers. Specifically, DOL is responsible for determining whether U.S. workers are available to perform the work for which nonimmigrant foreign workers are being sought, and whether the employment of such aliens will adversely affect the wages of working conditions of similarly employed U.S. workers. Protecting the job opportunities and wages and working conditions of U.S. workers is of paramount importance when considering any aspects of the program. This objective must be balanced, however, with a concern for the ligitimate business interests of growers.

2. The hourly adverse effect wage rate (AEWR) is the primary wage standard designed to protect the jobs and earnings of U.S. workers; not the federal or State minimum wage, or the prevailing wage, or average hourly earnings, or piece rates. Piece rate requirements have always been defined in relation to the AEWR.

3. With the exception of the NEWR, which tends to be more than the prevailing wage, other wage and working condition requirements which are not specifically required as a minimum are related to those which are prevailing among U.S. workers similarly employed.

4. DOL has traditionally been concerned about situations where employers require increasing productivity, in piece-rate-paid occupations, in order to achieve a given hourly wage standard. Thus, the H–2 program regulations have contained language expressing that concern. This language was the basis for litigation brought by farmworker attorneys in 1982, which resulted in the interpretation upheld by the DC Circuit in 1985, cited above, requiring that piece rates be increased by the same proportion as the AEWR increases. The courts accepted the plaintiffs' contention that the DOL rule meant that a productivity increase could not be required or result for *any* U.S. worker because of an AEWR increase. The courts rejected DOL's contention that the rule was meant to prevent productivity increases required for the *average* U.S. worker.

5. While many of DOL's programs are concerned solely with the interests of U.S. workers, it is clear in the H–2 program that the interests of both workers and growers must be balanced. This principle has been clearly enunciated in federal court decisions.

6. Information on prevailing piece rates is collected by certain State Employment Security Agencies (SESAs). Information is obtained by crop and crop area. The survey, however, does not contain, for most States, sufficient information on aggregate earnings and hours worked to convert data to average hourly earnings.

7. Information on worker productivity is currently available only from payroll records of H–2 growers. These records have always been, by regulation, subject to on-site audit; in 1985, the Office of Management and Budget (OMB), approved the submission of such records to ETA for U.S. workers employed in 1983–1985. These records permit calculations of whether the "average U.S. worker" earned the AEWR. The records, however, are usually not detailed enough to make this determination separately for activities paid at different piece rates with the same grower and present other problems when no U.S. workers are employed.

8. The proportionate increase approach uses 1977 as the base year, implying that the productivity requirements in that year were appropriate. In addition to questioning the validity of that year's requirements, there are problems in determining what the appropriate requirement should be for new growers entering the H–2 program. The DC federal court's interpretation permitted new growers to use their current standards for the first year (subject to DOL administrative review against prevailing standards), which became the base for subsequent years' piece rate determinations. In DOL's view, based upon its experience and expertise, it is questionable whether this approach is appropriate for new States and crops which may come into the program.

9. The proportionate increase formula calls for grower-by-grower determinations. An approach using whatever productivity rates existed in 1977, or the first year a grower utilized the H–2 program thereafter, could result in inequities between growers if the productivity differences were not due to justifiable factors. Similarly, grower-by-grower determinations under the "average U.S. worker" approach could result in inequities due to a small number of nonrepresentative U.S. workers.

10. In considering whether productivity requirements should be permitted to change, whether on a grower-by-grower or area-wide basis, for justifiable reasons, the administrative requirements including objective criteria, staff expertise required and consistency of application must be considered. The availability of USDA State Extension Service Offices to assist in the process requires consideration.

11. Piece rates are generally accepted as a valuable tool which can be set within management's discretion to achieve desirable productivity and earnings outcomes, to the benefit of both employers and workers. Preservation of this principle is inherent in any piece rate regulation review.

12. While it is possible that workers' earnings could be manipulated by growers in changing productivity requirements, it should be recognized that there are many legitimate and desirable reasons for such productivity changes—from season-to-season, between growers, and even within one grower's operation. A piece rate regulation should give weight to the possibility.

III. Options Considered

Building on recommendations made by the DOL/USDA Task Force, DOL considered five major options for addressing the piece rate regulation issue. For two of those options, two sub-options were considered for each; for two more of the options, one sub-option was considered for each.

All of these options assume no change in any other aspects of the H–2 program. Only the treatment of piece rates was considered within the scope of review. This ruled out numerous other possible options for the treatment of piece rates, such as tying them to an hourly standard other than the AEWR, (e.g., the prevailing hourly rate or the Federal or State minimum wage). Since the AEWR is the primary wage standard in the H–2 program, DOL did not consider a piece rate approach tied to any other hourly standard.

Similarly, DOL did not consider possible options which would not address the productivity issue at all.

For example, the prevailing piece rate could be required with an AEWR guarantee, with no consideration of how the piece rate earnings of the U.S. workers relate to the AEWR, and with no administrative oversight of the productivity requirements on job orders.

Another option was not considered because it does not relate to "U.S. workers similarly employed;" namely, the "average worker" approach. This was the construction of DOL's 1963 rule by a Florida federal court. *Florida Fruit and Vegetable Association, Inc.* v. *Donovan*, 563 F. Supp. 286 (S.D. Fla. 1984). It would base the adequacy of the piece rate on whether the "average worker" (including foreign workers as well as U.S. workers) can earn the AEWR. Because of the generally higher productivity of the specially selected foreign workers, this would result in considerably lower piece rates, and would not protect the wage standards of similarly employed U.S. workers as required by law and regulation.

Each option has two major elements: (1) The basic derivation of the required piece rate, (*e.g.*, the prevailing piece rate, as determined by State employment security agency (SESA) wage surveys, or a rate indexed to AEWR changes, as in the DC District Court approach); and (2) how productivity requirements are dealt with (*e.g.*, self contained by the piece rate methodology itself, as in the court's approach, or by firing thresholds designated by growers in job orders and administratively examined by DOL). All options would require make-up pay to the AEWR level for any worker who did not earn the AEWR at the required rate. 20 CFR 655.202(b)(9)(ii) (1985).

Description of these options and a summary of pertinent factors for each option follow:

Option 1—Continue with the current regulation, as interpreted by the U.S. District Court for DC. Under this approach, the piece rate is adjusted each year by the percent change in the AEWR. The basis of these calculations are 1977 productivity rates which are determined on a grower-by-grower basis by dividing the 1977 AEWRs by the piece rates paid at that time. The current piece rate is then determined by dividing the current AEWR by the 1977 productivity rate (this is the equivalent of increasing the 1977 piece rate by the same percentage as the increase in the AEWR since 1977). In the case of a grower who uses the H–2 program for the first time in a year later than 1977, the productivity rate for that year is used as the basis for calculating the current piece rate, subject to DOL administrative review against prevailing standards. This approach is basically self contained with respect to productivity requirements; *i.e.*, the required piece rate adjustments would assure that U.S. workers would not have to increase their productivity in order to earn the AEWR when it is raised.

Sub-option A: Permit justifiable productivity requirement increases from the base year standard, on a grower-by-grower basis, based on information submitted by individual growers. Adjust required piece rates accordingly.

Sub-option B: Use area-wide, rather than grower-by-grower prevailing productivity standards in 1977 among h–2 growers, as base (or first year of H–2

wage in an area); permit area-wide justifiable productivity standard increases from the base year, based on information submitted by grower associations representing an area. Adjust required piece rates accordingly.

Option 3—Repromulgate the "average U.S. worker" approach, as promulgated in September 1983 and June 1985 and later invalidated on APA grounds by the courts, including procedures for addressing the productivity requirement increase issue noted by the U.S. Court of Appeals for the D.C. Circuit. Under this approach, the previling piece rate, as determined by ETAA–232 reports, is required as a minimum. Upward adjustments are required only if the average U.S. workers' productivity in the previous year would not yield the current AEWR at the prevailing piece rate. In that case, the piece rate would be increased by the amount necessary to yield the AEWR. This would be applied on an area-wide basis.

Sub-option A: Add administrative oversight of productivity requirements on job orders. Use 1977 as base year, on grower-by-grower basis; permit justifiable productivity increases based on information submitted by individual growers.

Sub-option B: Same as Sub-option A, except on area-wide, rather than grower-by-grower, basis.

Option 3—Minimum piece rates would be no less than the prevailing piece rates in the area of intended employment, as determined by ETA–232 report findings. Administratively review productivity requirements on job orders (firing threshold). Use 1977 as base year, on grower-by-grower basis; permit justifiable productivity increases based on information submitted by individual growers.

Sub-option A: Same, except on area-wide, rather than grower-by-grower, basis.

Sub-option A: Same, except on areawide, rather than grower-by-grower, basis.

Option 4—Require that the prevailing piece rate, plus a differential be paid. The differential could account for previous and prospective adverse effect, plus approximately 15 percent for social security and unemployment insurance taxes not paid for foreign workers. This approach would be self contained with respect to productivity requirements; *i.e.*, the higher piece rate would assure that U.S. workers would not have to increase their productivity in order to earn the AEWR when it is raised.

Option 5—Have no piece rate requirement except to insure that piece rate earnings be supplemented, when necessary, by make-up pay, to reach the AEWR level; administratively control productivity requirements on job orders (firing threshold). Use 1977 as base year, on grower-by-grower basis; permit justifiable productivity increases based on information submitted by individual growers.

Sub-option A: Same, except on area-wide, rather than grower-by-grower, basis.

Factor Summary

Option 1—Proportionate Increase Approach

—Provides strongest assurance that no productivity increases would be required, or result, for U.S. workers.
—Administratively feasible and easy, once base productivity rates have been established for individual growers, and for separate activities performed for a grower.
—Addresses to some degree the contention that the prevailing piece rate has probably already been adversely affected by the use of foreign workers, and would continue to be in the absence of this or a similar requirement.
—Provides strong incentives for U.S. workers to seek jobs with H–2 growers.
—Departs for AEWR as main wage standard; departs from "prevailing" principle; may require rates far in excess of prevailing piece rates.
—Automatic increases tied to 1977 base (or first year in program) do not provide for justifiable productivity increases; they discourage management initiatives to improve productivity.
—Designation of 1977 (or first year) as base year is arbitrary; based only on date chosen in D.C. federal court decision, but not based on any objective study or assessment by DOL. Could result in inequities between growers in same area, and between new and veteran H–2 program users.
—Undermines use of piece rate as management tool; growers would probably abandon piece rates in favor of hourly rates plus bonuses.

Sub-option A: Permit justifiable productivity increases, grower-by-grower.

—Provides for justifiable productivity requirement increases.
—Increases administative complexity; may require staff resources and expertise not available in DOL.

Sub-option B: Permit justifiable productivity requirement increases, area-wide.

—Increases administrative complexity.
—May not provide for justifiable productivity requirement increases for individual growers.

Option 2—Repromulgate Average U.S. Worker Approach

—Recognizes principle of not requiring undue productivity increases, without being inflexible; attempts to balance productivity concerns with principle of AEWR being main wage standard.
—Automatically permits some (but not all) justifiable productivity increases, without complex administrative burden of determining such increases on a case-by-case basis. Preserves piece rate as management tool to some extent.
—Tends to support "prevailing" concept in H–2 program, and standards for "U.S. workers similarly employed."
—Administratively feasible.
—Overcomes, to some degree, argument that prevailing piece rate has been and will continue to be adversely affected by foreign workers.
—May require, or result in, some increases in productivity requirements for U.S. workers unrelated to justifiable changes; this is the issue on which the DC Circuit invalidated DOL's 1985 rule.
—Has a number of administrative shortcomings and problems:

(1) large administrative burden for DOL;

(2) paperwork burden on employers to submit complete payroll records;

(3) payroll records cover only U.S. workers employed by H–2 growers, not *all* U.S. workers similarly employed;

(4) distortions may occur in some areas due to scarcity of U.S. workers;

(5) may be a big problem in new States and crops;

(6) growers' records are generally not well maintained, with insufficient detail for determining piece rate adequacy for separate activities (*e.g.*, drop vs. fresh market picking).

—Contains some disincentives for H–2 growers to hire low producing U.S. workers who may not be able to earn AEWR at prescribed piece rates.

Sub-option A: Review productivity firing threshold administratively, grower-by-grower.

—Strengthens observance of productivity principle; removes major defect identified by DC Circuit.
—Increases administrative burden in determining justifiable productivity increases.
—Reintroduces an arbitrary base year standard.

Sub-option B: Review productivity administratively on an area-wide basis.

—Strengthens productivity principle observance; addresses weakness identified by DC Circuit.

—Fails to recognize justifiable productivity variances between individual growers.

Option 3—Prevailing Piece Rate; Administratively Control Productivity Firing Threshold

—Recognition of AEWR as main wage standard.
—Gives strong support to prevailing standards principle in H–2 program and to standards for "U.S. workers similarly employed."
—Recognizes and addresses productivity requirement concerns; at same time, permits justifiable productivity requirement increases.
—Survey already in place (Domestic In-season Farm Labor Report, Form ETA–232) for obtaining prevailing piece rates; no new data collection required; survey contains adequate categorization by crop and area.
—Supports piece rate as management tool; provides flexibility to growers.
—Would result in discontinuation of requirement at 655.202(b)(9)(ii) that piece rate should yield AEWR—major policy change.
—Has administrative shortcomings and problems which must be acknowledged: (1) ETA–232 report is not as structured as USDA surveys; (2) determining justifiable productivity requirement increases may be administratively complex; (3) may require staff resources and expertise not available in DOL.
—Relatively low piece rates may be disincentive for U.S. workers to seek jobs with H–2 growers; may also be disincentive for growers to hire U.S. workers, since relatively few would be able to earn AEWR.

Sub-option A: Same, except review productivity on area-wide basis.

—May be somewhat easier to administer than grower-by-grower determinations.
—Penalizes individual growers who may introduce productivity-improving innovations.

Option 4—Prevailing Piece Rate Plus Differential

—Addresses productivity requirement concerns.
—Once formula for differential is established, would be easy to administer; ETA–232 report would provide base data; no problem with selecting a base year.
—Easy to apply to new growers, and those who don't use any U.S. workers.
—Compensates for past (and future) adverse effect on piece rates from use of foreign workers.
—Relatively high piece rates will be incentive for U.S. workers to seek jobs with H–2 growers; growers will have little disincentive to hire U.S. workers, most could earn AEWR.
—Departs from long-standing DOL principle of AEWR as main wage standard.
—Departs from prevailing standards principle of H–2 program; does not relate to standards of "U.S. workers similarly employed."
—Where an area/crop is dominated by H–2 workers, there will be constant escalation as this year's required piece rate (prevailing rate plus differential) becomes next year's prevailing rate, to which a differential will be added.
—Difficult to determine and document amount of differential for past adverse impact.
—Represents major departure from past DOL policy, and practice.
—Does not provide sufficient flexibility for justifiable productivity requirement increases.
—Disregards piece rate as management tool.
—Significant increase in labor costs may be required.

Option 5—No Piece Rate Requirement; Review Productivity Firing Threshold Administratively, Grower-by-Grower

—Unequivocably establishes AEWR as main wage standard.
—Recognizes and addresses productivity requirement concerns.
—Easy to administer; no surveys or payroll records needed.
—Gives maximum flexibility to account for justifiable productivity increases in setting piece rates; gives maximum flexibility to piece rate as management tool.
—Contradicts prevailing standard principle in H–2 program on major wage issue; does not address standards of U.S. workers similarly employed.
—Administratively complex determining justifiable grower-by-grower productivity firing thresholds; may require staff resources and expertise not available in DOL.
—Does not address issue that piece rates may have already been adversely affected by use of foreign workers.
—Highly productive foreign workers may hold down, or drive down further, prevailing piece rates.
—Probably poorest incentive of the five options for U.S. workers to seek jobs with H–2 growers; probably least incentive of the five options for H–2 growers to seek U.S. workers.

—*Sub-option A:* Same, except review productivity requirements on area-wide basis.

—May be somewhat easier to administer than grower-by-grower determinations.
—Penalizes individual growers who may introduce productivity-improving innovations.

IV. Method Selected

DOL has concluded that Option 3 is the best method for administering a piece rate policy in the H–2 program. This option represents the most balanced approach, taking into account the primary program responsibility to protect wages of U.S. workers, considerations of administrative feasibility and the legitimate concerns of agricultural employers that excessive piece rate earnings at levels maintained consistently above the AEWR will result in an economic disincentive to utilize domestic or certified foreign workers.

DOL recognizes that this approach departs from long standing policy that piece rates be designed to yield the AEWR (20 CFR 655.202(b)(9)(ii) and that Option #2 (with Sub-option A) would not result in this change. However, DOL believes there are too many practical weaknesses in the available tools for implementing Option #2. These weaknesses would present particularly serious problems when applying this approach to growers, crops and States coming into the program for the first time.

Under Option #3, growers would be required to offer and pay no less than the prevailing piece rate in the area of intended employment. This is currently a minimum Employment Service System-wide requirement for all agricultural employers who utilize the agricultural clearance system under the DOL regulation at 20 CFR 653.501(d)(4). The prevailing rate is determined by State Employment Service (ES) agencies and submitted in ETA–232 reports for review by ETA. Since the early 1950's, State ES agencies have been required to conduct annual prevailing wage surveys in areas where a sizable number of migratory farmworkers are employed or requested through the agricultural clearance order system, or where one or more "H–2" foreign workers are employed. The survey is conducted during the peak of the crop activity and consists of employer and worker interviews. Collected data are area and crop specific (e.g., apple picking in the Hudson Valley of New York). The surveys gather data on domestic worker wages only; H–2 workers are excluded. However, employers who hire both domestic and foreign workers at the same time are contacted for wage information on their domestic workers.

Along with requiring the payment of the prevailing piece rate as a minimum, DOL proposes to administratively review and determine the validity of productivity minimum requirements on job orders.

Beginning in 1986, all H–2 growers who pay by the piece rate will be required to specify minimum productivity levels required of workers to insure job retention on their job orders if they have not done so before, and if such productivity requirements are conditions of employment. Such levels will be permitted to move upward from their 1977 levels (or first year after 1977 in the program) only if they are justified in writing to the Regional Administrator and are approved by ETA. Thereafter, any future productivity increases must be justified in a similar fashion for technological, economic or other reasons on a yearly basis. (A paper prepared by the U.S. Department of Agriculture, "Factors Affecting Productivity of Agricultural Hand Field Workers," which was utilized by DOL in this proposed rulemaking is reprinted as an appendix to this Notice of Proposed Rulemaking.) For employers entering the program for the first time, minimum productivity requirements may not exceed those which are normally required by other employers growing similar crops in the area of intended employment.

V. Discretion in Establishing a Piece Rate Adjustment Policy

Section 214(c) of the Immigration and Nationality Act gives the Attorney General (and his designee the Commissioner of INS) broad discretion in the admission of nonimmigrant aliens to the United States. 8 U.S.C. 1184(c); 8 CFR § 2.1. With respect to determinations under the immigration laws on the availability of U.S. workers for jobs offered to nonimmigrant alien workers, and the adverse effect those aliens' employment may have on the wages and working conditions of similarly employed U.S. workers, the Secretary of Labor and DOL have been given broad discretion. See, *e.g.*, 8 CFR 214.2(h)(3)(i). This broad discretion, particularly with respect to methodologies for setting minimum wage rates under the immigration laws, has been recognized in the federal appellate and district courts. *Virginia Agricultural Growers' Association, Inc.* v. *Donovan*, 774 F. 2d 89 (4th Cir. 1985); *Florida Fruit & Vegetable Association, Inc.* v. *Brock*, 771 F. 2d 1455 (11th Cir. 1985), *cert. denied*, No. 85–1352, 54 U.S.L.W. 3659 (April 7, 1986); *Shoreham Co-operative Apple Producers' Association, Inc.* v. *Donovan*, 764 F. 2d 135 (2d Cir. 1985); *Rowland* v. *Marshall*, 650 F. 2d 28 (4th Cir. 1981); *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; *Florida Sugar Cane League* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976); and *Limoneira Co.* v. *Wirtz*, 327 F. 2d 499 (9th Cir. 1964), *aff'g* 225 F. Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F. 2d 1154 (1st Cir. 1974). These decisions acknowledge DOL's discretion in the area of wages involving nonimmigrant alien agricultural workers and form the basis for construction of DOL's temporary alien labor certification regulations. See 20 CFR 655.0(e).

Since this is an area in which DOL has great "discretion to reach a number of different results rather than an area of pure statutory interpretation as to which there is in theory only a single answer" (See *Building & Construction Trades' Department, AFL–CIO* v. *Donovan*, 712 F. 2d 611, 619 (DC Cir. 1983), *cert denied*, 464 U.S. 1069 (1984)), DOL is proposing the rule below.

Regulatory Impact

The proposed promulgation of this rule would currently affect only those employers using non-immigrant alien workers ("H–2 visaholders") in temporary agricultural jobs paid by piece rate in fourteen States. It would not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127, 5 U.S.C. 601 note.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that proposal would not have a significant economic impact on a substantial number of small entities. It applies only to the small number of employers (and their workers) who employ nonimmigrant aliens in piece-rate-paid agricultural employment in the United States.

Catalogue of Federal Domestic Assistance Number

This progam is listed in the Catalogue of Federal Domestic Assistance as Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forests and forest products, Guam, Labor, Migrant labor, Wages.

Proposed Rule

Accordingly, it is proposed that Part 655 of Chapter V of Title 20, Code of Federal Regulations, be amended as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 is proposed to be revised to read as follows and the separate authority citations following all the sections in Part 655 are proposed to be removed:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 29 U.S.C. 49 *et seq.*; 8 CFR 214.2(h)(3)(i).

2. It is proposed to amend § 655.202 by revising paragraph (b)(9)(ii) to read as follows:

§ 655.202 Contents of job offers.

* * * * *

(b) * * *

(9) * * *

(ii) (A) If the worker will be paid on a piece rate basis, and the piece rate does not result at the end of the pay period in average hourly earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the adverse effect rate, the worker's pay will be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the adverse effect rate.

(B) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention, *(1)* such standards shall be no more than those applied by the employer in 1977, unless the RA approves a higher minimum; or *(2)* if the employer first applied for temporary labor certification after 1977, such standards shall be no more than those normally required (at the time of that first application) by other employers for the activity in the area of intended employment, unless the RA approves a higher minimum.

* * * * *

§ 655.207 [Amended]

3. It is proposed to amend § 655.207 by removing paragraphs (c) and (d) and by redesignating paragraph (e) as new paragraph (c).

Signed at Washington, DC this 29th day of May, 1986.

William E. Brock,

Secretary of Labor.

Appendix

The material in this appendix is for information purposes only. It will not be codified as part of the final rule in the Code of Federal Regulations.

Factors Affecting Productivity of Agricultural Hand Field Workers—Executive Summary

- Research has demonstrated that productivity rates of agricultural hand field workers are affected by tree size, pruning of trees, yields, size of fruit, use of harvesting aids, varieties of fruits and vegetables harvested, type of supervision, type of product market, and experience of workers.
- Employers can increase worker productivity in the short term by changing pruning methods, supervisory practices, and type of harvesting equipment used; switching from fresh to processed markets; hiring more experienced workers; and placing workers in field so that they pick individually instead of in groups.
- Replanting orchards with smaller, higher-yielding trees have longer-term effects on labor productivity.
- The potential for improving the productivity of hand field workers without increasing worker effort exists on many farms. However, employers who hire H–2 workers are not currently permitted to increase their minimum productivity rates. Farmers who improve the efficiency of their farm operation and increase labor productivity may be penalized because increased worker productivity is not recognized in the formulation of piece rates in the H–2 program.

Factors Affecting Productivity of Agricultural Hand Field Workers

A recent court order issued by U.S. District Court Judge Charles R. Richey ruled that farm employers hiring H–2 workers cannot increase the minimum productivity rate required of piece rate workers for them to earn a wage equivalent to the adverse effect wage rate (AEWR). This decision implies that worker productivity rates are constant and that employers can do nothing to increase worker productivity except require workers to work harder. However, a review of research revealed that several factors, short of fully mechanizing operations, can affect productivity of hand field workers. These factors include changes in cultural techniques, changes in the way field work is organized and supervised, increased use of mechanical harvesting aids and more efficient product handling methods, and improved recruitment techniques which encourage the employment of more experienced and productive workers.

Cultural Techniques, Organization of Work, and Type of Market

One of the most comprehensive studies examining the productivity of harvest workers was done at Michigan State University in the late 1960's.[1] This study identified practices that affected labor productivity in Michigan apple harvesting, including the type of supervision that workers received, the type of picking equipment used by the workers, whether the apples harvested were for fresh or processed markets, degree of tree pruning, and the way workers were grouped into harvest units.

Worker productivity was increased by close supervision of workers, providing workers with metal picking equipment instead of canvas or other types of equipment, and placement of workers in orchards so that they picked individually instead of in groups. Picking appes for the fresh market resulted in lower productivity rates compared to picking for the processed market. For example, when workers were required to pick apples for the fresh market in such a manner that stems remained on all apples, their average productivity was almost 1 bushel per hour lower than when apples were picked without regard for stems. A moderate degree of tree pruning was associated with higher apple picking rates on the average than was little or no tree pruning. Tree age and tree spread were negatively related to the number of bushels of apples picked per hour by workers, although the effects of these variables on worker productivity were much less than for other variables mentioned above.

Another study of apple harvest labor productivity in Washington State determined that tree type (dwarf, semi-dwarf, semi-standard, and standard), yield per acre, and apple variety were important factors affecting worker productivity.[2] This study concluded that productivity rates were lower for larger trees compared to smaller trees because workers spent more time moving and climbing ladders when picking the larger trees. Higher yields per acre were found to increase the productivity rate. Also, apple variety was found to be an important factor affecting the productivity rate with varieties like McIntosh requiring more time to pick than other varieties.

An incentive piece-rate system is widely used for lemon harvesting in Ventura County, California.[3] This system recognizes that worker productivity is affected by tree height, furit size, and yield per tree. The wage rates developed under this incentive piece-rate system reflect the decreasing productivity in terms of boxes picked per hour associated with picking successively taller trees, picking trees with lower yields, and picking smaller sized fruit. A schedule of piece rates which vary by these factors results in an average worker being able to achieve the same hourly wage rate regardless of grove yields and picking conditions.

A similar wage incentive system was developed for the Valencia orange harvest in central Arizona.[4] This system also reflects differences in worker productivity based on tree height, fruit size, and yield per tree. As in California, worker productivity increases with smaller trees, larger fruit, and larger yields per tree.

Increased Use of Mechanical Harvesting Aids

Two types of mechanical technologies are useful for increasing the productivity of harvest workers: (1) Worker-positioning machinery for use in tree harvesting, and (2) bag and ladder picking which can be supplemented with mechanical harvesting aids for handling picked fruits in the field. Worker-positioning machines for tree harvest are designed to replace the ladder with a machine that positions the worker(s) so that fruit may be picked more efficiently. There are two basic types of worker-positioning machines: (1) A basket to hold the picker on a mast mounted on a movable chassis, and (2) a multi-person platform on which pickers stand as the platform moves or is pulled through the field or orchard. Research on these machines has been conducted most extensively in California. These studies show that worker-positioning machines can increase labor productivity by as much as 35 percent.[5] However, use of these machines is constrained in some fields and orchards by tree size, tree spacing, size of groves, and slope of land.

While actually picking fruit, the bag and ladder picker can compete effectively with workers using worker-positioning machines, but the bag and ladder picker spends a large portion of his time and energy in climbing ladders and emptying his bag into a field container. Traditionally, pickers dump their bags or containers of fruits into field boxes or pallets which are hand-loaded onto flat-bed trucks and taken to semi-trailers used to haul the fruit to a packing house. However, the use of conveyor belts, tractor fork-lifts, hydraulic boom lifts or other mechanized methods of handing fruits and vegetables in the field increases worker productivity by reducing time needed for loading and handling of products.

Improved Recruitment Techniques

The characteristics of workers have been shown to affect labor productivity rates. The Michigan study concluded that the productivity rate of apple pickers was significantly different by a worker's age, gender, work experience, ethnic origin, and residence.[6] Workers with the highest

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[1] Cuskaden, Charles M. "Labor Productivity in Apple Harvesting", *American Journal of Agricultural Economics*, Vol. 55, No. 4, pp. 633–636, November 1973.

[2] West, Donald A., Marlen F. Miller, and Samuel M. Doran. *Labor Productivity and Earnings in Apple Picking*. Washington, Agricultural Experiment Station, Washington State University, Circular 533, April 1971.

[3] Jorgensen, Edward and Roger Fox. *The Development of an Incentive Wage System for Harvesting Valencia Oranges in Central Arizona*. The University of Arizona, Report No. 28, May 1982, pp. 23–27, November 1973.

[4] Webb, James L. et al., *The Citrus Labor Market of the Lower Rio Grande Valley of Texas: A Study of Labor Utilization Problems*. University of Texas, May 1975.

[5] Webb, James L. et al., *The Citrus Labor Market of the Lower Rio Grande Valley of Texas: A Study of Labor Utilization Problems. University of Texas, May 1975.*

[6] Cuskaden, Charles M., "Labor Productivity in Apple Harvesting", *American Journal of Agricultural Economics*, Vol. 55, No. 4, pp. 633–636, November 1973.

productivity rates were migrant Mexican or Puerto Rican males between 25 and 50 years old with at least two years of apple picking experience. A study in Arizona showed that the profile of the most efficient citrus picker in Arizona was a married male nonsmoker.[7] However, the study concluded that most of the variance in productivity among workers was explained by other factors such as worker supervision, grove conditions, grove yields, weather, and coordination of harvest operations. Recruitment of workers with characteristics associated with higher labor productivity in harvesting fruits and vegetables can help growers establish a more productive work force.

Research has also indicated that experienced workers are more productive than inexperienced workers. Thus, efforts made by employers to encourage workers to return each year increase worker productivity. Migrant apple harvest workers in Pennsylvania who had returned to work for the same apple producer for 4 of more years averaged 11 percent greater production per hour than first year workers.[8] Improved skill level as well as success of the employer in attracting the more conscientious workers to return annually contributed to the greater productivity of these workers. Apple harvest workers in Michigan with 2 years or more of experience picked approximately 2 bushels an hour more than did the less experienced worker.[9]

The Coastal Growers Association in California has adopted innovative policies for management-employee relations which encourage lemon workers to return to the same jobs each year. The association recognized that trained workers who are willing to come back each year are more productive. Thus, the association offers wages and other benefits that encourage lemon pickers to return the next year—such as paid vacations to employees who work over 480 hours per year, opportunities for promotion, health insurance, a retirement plan, modern housing, adult education, and worker training. Between 1966, when new management policies were first adopted, and 1980, the total number of workers employed by Coastal Growers dropped from around 8,300 to less then 1,000, while the total number of boxes picked rose from 4.3 to 5.8 million.[10]

[7] Jorgenson, Edward and Roger Fox, *The Development of An Incentive Wage System for Harvesting Valencia Oranges in Central Arizona*. The University of Arizona, Report No. 28, May 1982.

[8] Holt, James S. and Lawrence Barton, "Management of Migrant Labor in the Pennsylvania Apple Harvest." Unpublished manuscript, December 1981.

[9] Cuskaden, Charles M., "Labor Productivity in Apple Harvesting", *American Journal of Agricultural Economics*, Vol. 55, No. 4, pp. 623-628, November 1973.

[10] U.S. Department of Agriculture, "The Profit Approach to Managing Hired Labor", *Farmline*, Vol. 11, No. 8, pp. 7-8, October 1981.

Conclusions

Research has suggested that employers can increase worker productivity in the short run by changing pruning methods, supervisory practices, and type of harvesting equipment used; switching from fresh to processed markets; hiring more experienced workers; and placing workers in fields so that they pick individually instead of in groups. Replanting orchards with smaller, higher-yielding trees have longer-term effects on labor productivity.

The potential for improving the productivity of hand field workers without increasing worker effort exists on many farms. However, employers who hire H-2 workers are not currently permitted to increase their minimum productivity rates for these workers. Farmers who improve the efficiency of their farm operation and increase labor productivity may be penalized because the increased worker productivity is not recognized in the formulation of piece rates in the H-2 program.

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UNITED STATES INFORMATION AGENCY

22 CFR Part 508

Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: U.S. Information Agency.

ACTION: Notice of proposed rules.

SUMMARY: The U.S. Information Agency proposes to add a new regulation for nondiscrimination on the basis of sex in education programs and activities receiving or benefitting from federal financial assistance. These rules are intended to implement Title IX of the Education Amendments of 1972, as amended, which prohibits (with certain exceptions) sex discrimination in federally-assisted education programs or activities. The public is invited to comment.

DATE: Comments must be received on or before July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Horace G. Dawson, Jr., Director, Office of Equal Employment Opportunity and Civil Rights, Room M-10, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Phone: (202) 485-7156.

SUPPLEMENTARY INFORMATION: On June 4, 1975, the then Department of Health, Education, and Welfare (HEW) issued final rules implementing Title IX. 45 CFR Part 86. The rules proposed by this Agency are intended to be consistent with the HEW rules

Section 508.15 exempts certain activities which are not referred to in the HEW rules. These exemptions reflect recent amendments to Title IX. See Pub. L. 94-482, 90 Stat. 2234.

One other difference in these rules and the HEW rules should be noted. In the HEW rules, "student" is defined as a person who has gained "admission." The term "admission" means "selection for . . . enrollment, membership, or matriculation in or at education program or activity . . . ." In § 508.2(m), the term "admission" is expanded to include selection for "participation" in an education program or activity to ensure that participants (who may not be members or enrollees) in U.S.I.A.-funded education activities are clearly included within the protection of these rules. By expanding the definition of "admission," the term "student" (to whom the rules repeatedly make reference) is also expanded. This change has been made to ensure that any informal education activities funded by U.S.I.A. in which participation is not dependent upon "enrollment, membership, or matriculation" are included.

Section 508.11 contains a divergence from HEW's rule on the application of these regulations which reflects the international functions of this Agency. U.S.I.A.'s regulations are restricted in their application to "each education program or activity operated *within the United States* . . . ."

This rule will not have a significant economic impact on a substantial number of small entities.

This rule contains reporting requirements that have been approved by OMB under the Paperwork Reduction Act and 5 CFR 1320 (Clearance number 3116-0181).

In consideration of the above, it is proposed that Part 508 be added to Title 22 of the Code of Federal Regulations to read as set forth below.

Dated: May 30, 1986.

Charles Z. Wick,

Director.

PART 508—NON-DISCRIMINATION IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE—EFFECTUATION OF TITLE IX OF EDUCATION AMENDMENTS OF 1972

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Subpart F—Enforcement

506.71 Procedures.
506.72 Delegation of authority.

Appendix

Authority: Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855 and section 412 of Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1686.

Subpart A—Introduction

§ 506.1 Purpose and effective date.

The purpose of this part is to effectuate Title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855, and Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.

§ 506.2 Definitions.

As used in this part, the term:

(a) "Title IX" means Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855 and section 412 of Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) "Agency" means the United States Information Agency, and includes each of its organizational units.

(c) The term "Director" means the Director of the United States Information Agency (U.S.I.A.) or any person specifically designed by him or her to perform any function provided for under this part, except where it is specified that only the Director is intended.

(d) "Federal financial assistance" means any of the following, when authorized or extended under a law administered by the Agency:

(1) A grant or loan of Federal financial assistance, including

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(e) "Recipient" means the State or a political subdivision thereof, of any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any submit, successor, assignee, or transferee thereof.

(f) "Applicant" means one who submits an application, request, or plan required to be approved by an Agency official, or by a recipient, as a condition to becoming a recipient.

(g) "Educational institution" means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (h), (i), (j), or (k) of this section.

(h) "Institution of graduate higher education" means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(i) "Institution of undergraduate higher education" means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associated degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(j) "Institution of professional education" means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(k) "Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(l) "Administratively separate unit" means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(m) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, participation, or matriculation in or at an education program or activity operated by a recipient.

(n) "Student" means a person who has gained admission.

(o) "Transition plan" means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(p) "Educational recipient" means an educational institution as defined in section 508.2(q) and every other recipient which has education as a significant purpose.

(q) "Education program or activity" means:

(1) Every program or activity operated by an educational recipient; and

(2) Every program or activity operated by other recipients where a significant purpose of the financial assistance is education.

(r) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

§ 508.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative Action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient shall, within one year of the effective date of this part:

(1) Evaluate in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following the effective date of this part or completion of the evaluation required under paragraph (c) of this section, whichever is longer, and shall provide to the Director upon request, a description of any modifications made pursuant to paragraph (c)(1) of this section and of any remedial steps taken pursuant to paragraph (c)(2) of this section.

§ 508.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipeint to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with section 508.3(a) to eliminate existing discrimination whether occurring prior or subsequent to the submission to the Adminstrator of such assurance.

(b) *Transfers of Property.* If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B.

(c) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurances shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(d) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§506.5 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(d) *Effect of compliance with HEW regulations.* If a recipient is covered by the Title IX regulations issued by HEW, 45 CFR Part 86, and has already complied with the HEW requirements corresponding to §§ 506.3(c), 506.4(a), 506.7(a) and (b), and 506(a) and (b), then the requirements of those sections need not be duplicated in order to comply with this part. However, if the requirements have not been applied to all programs funded by this Agency, then the requirements will have to be met as to those programs.

§ 506.6 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 506.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry our its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragaph. Should the employee terminate employment at any time, the employer shall notify promptly all interested parties of the replacement.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

§ 506.8 Dissemination policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein and to admission there to unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to 506.7 or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in

(i) Local newspapers,

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employees of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise use in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

Subpart B—Coverage

§506.11 Application.

Except as provided in this subpart, Part 506 applies to every recipient and to each education program or activity operated within the United States by such recipient which receives or benefits from Federal financial assistance pursuant to any authority held or delegated by the Director of the United States Information Agency, including the Federally-assisted programs and activities listed in Appendix A of this part.

§506.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenents of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Director a statement by

the highest ranking official of the institution identifying the provisions of this part which conflict with a specific tenet of the religious organization.

§ 508.13 Military and merchant marine educational institution.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marines.

§ 508.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Mens' Christian Association, the Young Womens' Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501 (a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 508.15 Exempt activities.

(a) These regulations shall not aply to:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Girls State Conference, Boys Nation Conference, or

(2) The selection of students to attend any such conference.

(b) These regulations shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex.

(c) These regulations shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

§ 508.16 Admission.

(a) Admission to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purpose only of this section, §§ 508.17 and 508.18, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraph (d) and (e) of this section, Subpart C applies to each assisted education program or activity. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

§ 508.17 Educational institutions eligible to submit transition plans.

(a) This section applies to each public institution of undergraduate higher education which traditionally and continually from its establishment had a policy of admitting only students of one sex, but which after June 23, 1972 begins the process of changing to being an institution which admits students of both sexes.

(b) An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in section 508.18 which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than seven years after the institution begins the process of changing to an institution which admits students of both sexes.

§ 508.18 Transition plans.

(a) *Submission of plans.* An institution to which 508.17 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each sub-unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacle to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which sec. 508.17 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 508.17 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment

programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 508.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §508.17 and 508.18.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 508.22 Preference in admission.

A recipient to which Subpart C applies shall not give preference to applicants for admission on the basis of attendance at any educational institution or other school or entity which admits as students only or predominately members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

§ 508.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 508.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 508.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominately members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 508.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in the part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student, or applicant, including eligibility for in-State fees and tuitions;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at, or who are graduates of the recipient institution, provided a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex, provides or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in education consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 508.32 Housing.

(a) *General.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or other person which provides all or part of such housing to students only of one sex.

§ 508.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 508.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of tis education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports, the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class had an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominately one sex.

§ 508.35 Access to schools operated by L.E.A.'s.

A recipient which is a local education agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipients; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 508.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipient shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 508.37 Financial assistance.

(a) *General.* Except as provided in paragraph (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria or othewise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such asistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests or similar legal instruments or by acts of a foreign government which require that awards be made to members of a particular sex specified therein: Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(1) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form financial assistance designed for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aids, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 508.41.

§ 508.38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its student:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its student shall not do so in a manner which violates Subpart E.

§ 508.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ 508.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education programs or activities, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recover therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregenancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§ 508.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by the recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection of such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

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(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

§ 508.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 508.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipients in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 508.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 508.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

§ 508.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

§ 508.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is bona fide occupational qualification for the positions in question as set forth in § 508.61.

§ 508.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service policy or plan, any profit-sharing or bonus plan, leave and any other benefit or service of employment not subject to the provision of § 508.54.

(b) Prohibitions: A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

§ 508.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 508.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation service, or benefit to members of the other sex.

§ 508.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 508.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 508.61 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Enforcement

§ 508.71 Procedures.

For the purpose of implementing this part, the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found at 22 CFR 209.6–209.13.

§ 508.72 Delegation of authority.

Responsibility for administration and enforcement of this part with respect to programs administered by another Federal department or agency pursuant to delegation, transfer, interagency service agreement, or other arrangement is vested in the head of such department or agency, or his delegate, and subject to such delegations or redelegations as that head may make or authorize.

Appendix—Program of Financial Assistance Administered by USIA To Which These Regulations Apply

1. Grants to individuals, public or private nonprofit organizations, State and local governmental institutions in the United States and in other countries for interchanges of books, periodicals and government publications, and preparation, distribution and interchange of other educational materials (Section 202 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1447).

2. Grants to individuals, public or private nonprofit organizations, State and local governmental institutions in the United States and in other countries to assist libraries and community centers abroad, founded or sponsored by citizens of the United States, and serving as demonstration centers for methods and practices employed in the United States (Section 203 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1448).

3. Grants to private agencies, including existing American press, publishing, radio, motion picture, and other agencies in disseminating abroad information about the United States, its people, and policies (Section 1005 of the United States Information and Educational Exchange Act, 22 U.S.C. 1437).

4. Grants to public or private nonprofit foundations, institutions, or organizations for educational and cultural exchanges, visits, and interchanges, (Section 102 of the Mutual Eduational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. 2452).

[FR Doc. 86–12650 Filed 6–4–86; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 86-14]

Regatta; Blessing of the Fleet and Water Show, Hudson River, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Blessing of the Fleet and Water Show which is sponsored by the City of Albany Tricentennial River Festival Committee. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this event.

DATES: Comments must be received on or before July 7, 1986.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 86-14) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone will be accepted.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Blessing of the Fleet and Water Show is an event sponsored by the City of Albany Tricentennial River Festival Committee as part of the City of Albany's three hundredth anniversary celebration. The event will be comprised of two parts. The first part is the blessing of the fleet during which the participating vessles will parade on the Hudson River from the southern end of the Port of Albany, north to the area in the vicinity of the Corning Preserve. After rounding the swing railroad bridge at mile 146.2 on the Hudson River, they will proceed back downstream and anchor near the east bank in the area between the Dunn Memorial bridge (river mile 145.4) and the swing railroad bridge to the north. The river between the railroad bridge and the I-90 highway bridge (river mile 147.2) will serve as a staging area for the parade and water show activities which form the second part of this tricentennial event. The sponsor anticipates that some 300 vessels ranging in size from 14 feet to 140 feet will participate in the blessing of the fleet parade which is scheduled to begin on Sunday, July 20, 1986 at 11:00 a.m. and last until noon that same day. A variety of activities on and over the water will make up the water show which is scheduled to take place from 12:00 noon (following the blessing of the fleet parade) to 7:00 p.m. The sponsor will provide several vessels from the Albany Police, Albany County Sheriff's and New York State Parks, Recreation and Historic Preservation Departments to assist the Coast Guard Patrol Commander in providing for the safety of the event and spectator craft. The Coast Guard intends to restrict vessel movement within the above outlined sections of the Hudson River during this event to provide for the safety of the participants and spectators on navigable waters. Vessels not participating in this marine event will not be allowed to pass through the regulated area during the effective period of this regulation except as the discretion of the Coast Guard Patrol Commander. Spectator vessels including those which participated earlier in the blessing of the fleet parade but not part of the water show activities will be directed to spectator areas near the East bank of the Hudson River prior to start of the water show. Any vessels wishing to transit the regulated area during the effective period of these regulations shall make this intention known to the Coast Guard Patrol Commander via one of the patrol craft. These vessels will be directed to waiting areas south and north of the regulated area. This regulation will be published in the Local Notice to Mariners to advise the general public and commercial users on the Hudson River of the event.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event is expected to draw a large number of spectator craft and shore spectators into the area for the duration of the celebration. This should have a favorable impact on commercial facilities providing services to the spectators. Since the Port of Albany is participating in this event, this commercial facility will not be adversely affected by this regulation. In addition, the regulated area includes the Port of Albany waterfront only for about one hour during the Blessing of the Fleet parade. As part of the Albany Tricentennial celebration this event will receive wide publication in the local news media. General marine navigation will be notified in advance through the Third Coast Guard District Local Notice To Mariners. Any vessels still wishing to transit the area will be allowed to do so at the discretion of the Coast Guard Patrol Commander when this can be safely accomplished.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–324 to read as follows:

§ 100.35–324 Blessing of the Fleet and Water Show, Albany, New York.

(a) *Regulated Area.* During the Blessing of the Fleet parade (11 a.m. to approximately 12 noon), the regulated area includes that section of the Hudson River between the southern end of the Port of Albany turning basin and the I–90 Highway bridge at river mile 147.2. After the Blessing of the Fleet parade is completed (approximately noon) the regulated area is shortened to include only that section of the Hudson River from the Dunn Memorial Bridge, north to the I–90 highway bridge.

(b) *Effective Period.* This regulation is effective from 11:00 a.m. to 7:00 p.m. on July 20, 1986.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No person or vessel may enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area prior to the start of the Blessing of the Fleet parade and watershow activities as directed by the sponsor or Coast Guard Patrol Commander.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: May 27, 1986.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 86–12804 Filed 6–4–86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 9

Floodplain Management and Protection of Wetlands; Temporary Relocation Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule exempts from the floodplain management requirement stated in 44 CFR Part 9 the placement of families in existing resources under Temporary Relocation Assistance provided under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

DATE: FEMA will consider all comments received by August 4, 1986.

ADDRESS: Send comments to the Rule Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street SW., Washington, DC 20472

FOR FURTHER INFORMATION CONTACT: Karen Forbes, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 "C" Street, SW—Room 701, Washington, DC 20472, (202) 646–3807.

SUPPLEMENTARY INFORMATION: FEMA has determined that the placement of families in existing resources under Temporary Relocation Assistant (CERCLA) should be exempt from the review process because:

(1) The need for temporary relocation is often immediate and the review process would significantly delay placement;

(2) FEMA's use of existing resources in the floodplain does not cause degradation of the floodplain;

(3) Non-use of existing resources in a floodplain could result in use of resources which would be more expensive;

(4) Temporary relocation usually lasts for a short period of time.

Environmental Consideration

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), FEMA has prepared an environmental assessment covering the issuance of these proposed regulatory changes. FEMA has determined that there will be no significant impact caused by issuance of this regulation, and an environmental impact statement will not be prepared. A finding of no significant impact has been issued. Copies of the environmental assessment and finding are available from the Office of Disaster Assistant Programs, Federal Emergency Management Agency, 500 "C" Street, SW, Washington, DC 20472, and from the Rules Docket Clerk.

Executive Order 12291 "Federal Regulations"

This proposed rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

This rule will not have a significant economic impact on small entities within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

Accordingly, FEMA proposes to amend Chapter 1, Part 9 of Title 44, Code of Federal Regulations as follows:

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

1. The authority citation for Part 9 continues to read.

Authority: E.O. 11988, E.O. 11990, Reorganization Plan No. 3, 1978; E.O. 12127, E.O. 12148, 42 U.S.C. 5201.

§ 9.5 [Amended]

2. The introductory paragraph of § 9.5(c) is amended by adding in the parentheses phrase at the end of the third sentence the following "except as noted".

3. Section 9.5 is amended by adding new paragraph (c)(14) to read:

* * * * *

(14) Placement of families in existing resources and Temporary Relocation Assistance provided to those families so placed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510.

* * * * *

Dated: May 30, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–12834 Filed 6–4–86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 86–16]

Conference Service Contract Authority

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of not significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 86–16 and found that its final resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due June 16, 1986.

ADDRESS: Petitions for review (original and 15 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that the Commission's proposed rule in Docket No. 86–16 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et. seq.*, and the preparation of an environmental impact statement is not required.

In Docket No. 86–16 Commission proposes to revise its regulations governing agreements by common carriers and other persons subject to the Shipping Act of 1984.

Conferences have stated their service contract authority in a variety of ways, some so generally as to allow almost unlimited discretion with regard to any particular conduct taken in regulating service contracts. Other service contract authorities may provide for a particular method of regulating the contract, but allow for a change without filing an amendment to the agreement with the Commission. These authorities do not appear to be in keeping with the regulatory requirements of the 1984 Act.

The proposed rule would require (1) a Conference agreement that contains service contract authority to state the method by which the contract will be regulated, and (2) that any change in the method of such regulation can not be implemented prior to filing a modification with the Commission.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection upon request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523–5725.

By the Commission.

John Robert Ewers,
Secretary

[FR Doc. 86–12877 Filed 6–4–86; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82–05; Notice 2]

Federal Motor Vehicle Safety Standards; Seating Reference Point and Driver's Eye Range

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to the definition of seating reference point in 49 CFR 571.3 which would amend the reference to the Society of Automotive Engineers (SAE) Recommended Practice J826, "Manikins for Use in Defining Vehicle Seating Accommodations," to make it clear that the SRP is independent of the length of the manikin's legs. The agency believes this change will bring the definition into line with current industry practices and promote international harmonization of standards.

This notice implements the agency's granting of a petition for rulemaking on this subject by Mercedes-Benz of North America, Inc., and follows the issuance of an advance notice for proposed rulemaking (ANPRM). This notice also terminates agency consideration of two other proposals on which the ANPRM solicited comments. The first proposal would have required vehicle manufacturers to specify the location of a vehicle's seating reference point by placing permanent reference marks or points on the vehicle structure. At this time, the agency does not believe that such marks are necessary to facilitate compliance testing.

A second proposal would have implemented NHTSA's granting of another petition by Mercedes-Benz to amend several safety standards containing visibility requirements by changing the reference to a driver's eye range from SAE Recommended Practice J941 to a more recent version, SAE Recommended Practice J941c. The agency believes that the current reference does not impose the restrictions which the petitioner attributes to it and therefore considers further rulemaking unnecessary.

A petition filed by Mercedes-Benz on Standard No. 210, *Seat Belt Assembly Anchorages*, is being addressed in a separate rulemaking proceeding. Although separate, the instant rulemaking action has issues in common with the Standard No. 210 rulemaking. Final rules in the two proceedings will be coordinated.

DATE: Comments must be received on or before August 4, 1986. The proposed effective date is the publication date of a final rule.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Rutland, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2154).

SUPPLEMENTARY INFORMATION:

Seating Reference Point

In 1980, Mercedes-Benz petitioned this agency to amend the definition of "seating reference point" (SRP). That term is defined in 49 CFR 571.3 as:

"[T]he manufacturer's design reference point which—

(a) Establishes the rearmost normal design driving or riding position of each designated seating position in a vehicle;

(b) Has coordinates established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two dimensional templates described in SAE Recommended Practice J826, 'Manikins for Use in Defining Vehicle Seating Accommodations.' November 1962."

The Mercedes petition, and the comments to the ANPRM issued in response to it (48 FR 9865; March 8, 1982), present several questions about the use of the SRP in the Federal motor vehicle safety standards. The first question is whether the reference to SAE J826 should be updated to refer to a later edition which specifies a manikin with the dimensions of a 95th percentile male rather than those of a 90th

percentile male. The second is whether the SRP must be determined with the seat in the rearmost position or whether it may be determined with the seat in a position ahead or the rearmost position. The third question is whether the SRP should be employed as the universal reference point for fore and aft measurement in the standards. The final question is whether fiducial marks representing the SRP should be inscribed on the vehicle. The following discussion deals with each of these questions in turn.

SAE J826

In its petition for rulemaking, Mercedes stated that the November 1962 version of SAE J826 was out of date. That version of J826 specified a two-dimensional template with upper and lower leg segments based on 90th percentile male leg measurements, while later versions of SAE J826 used 95th percentile male leg segments. Mercedes stated that the use of the longer segments would bring the definition up to date with industry practices and promote the harmonization of United States and European safety standards. Mercedes therefore requested the adoption of the January 1974 version, SAE J826b, which specified the use of the 95th percentile segments.

In the ANPRM, the agency stated that it found merit in the Mercedes request, noting that to the extent industry used the 95th percentile leg segments in designing vehicles, implementation of safety standards based on 90th percentile leg segments would require "largely duplicative, although slightly different, measurements to be made."

In response to the agency's request for comments on Mercedes' petition, the industry commenters generally supported the change to the 95th percentile leg segments. Ford Motor Company suggested the adoption of the latest version of SAE J826, issued in 1980 as SAE Standard J826 APR80, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation," which continues the use of the 95th percentile leg segments. Those comments which objected to revising the reference to SAE J826 appeared to rest on the erroneous belief that the agency intended to use the revised reference to designate a specific design reference point. In fact, the agency intends to permit each manufacturer to continue to select the location of the SRP consistent with the manufacturer's design considerations.

Upon reviewing the comments, the agency has tentatively concluded that the best way to deal with the question posed by the incorporation of SAE J826 would be to limit the incorporation to aspects of SAE J826 other than leg segment length. One constant feature of SAE J826 throughout its successive editions has been the location of the template's H-point with reference to the seat cushion and seat back. This location has not varied with the changes in leg segment length, and would appear to be a uniform design consideration in the manufacturers' placement or their SRP's. The agency is accordingly proposing to limit the reference to SAE J826 in the definition of SRP, thereby excluding leg segment length as a factor in the location of the SRP.

The agency has examined the effects of variation in leg segment length for the various Federal motor vehicle safety standards which incorporate SAE J826. The leg segments of the 95th percentile template, for example, are 0.6 inches longer overall than those of the 90th percentile template. If a manufacturer had located its SRP by extending the legs of the 90th percentile template as fully as the SAE J826 procedures permit, substitution of the 95th percentile template would permit the manufacturer to move the SRP rearward by approximately 0.5 inches. The decision to move the SRP would be largely up to the manufacturer, since by bending the 95th percentile legs at the knee, a vehicle designer could keep the SRP at the same point as before.

Two groups of vehicle safety standards refer to the SRP. In the 100 series, Standards No. 103, 104, 107, and 111 define certain areas of the windshield or field of view by using the SRP, directly or indirectly, as a reference point. If a manufacturer elected to move the SRP on one of its vehicles rearward by 0.5 inches, it would thereby increase the areas of the windshield or field of view defined by these standards. Insofar as no manufacturer objected to the use of the 95th percentile dimensions, the agency infers either that the manufacturers have already employed the 95th percentile dimensions for their design purposes, as Mercedes suggests to be the case, or that they would be able to do so without significant changes in vehicle design. Among the 200 series standards, Standards No. 201, 202, 203, 207, and 210 refer to the SRP directly or indirectly. As in the case of the 100 series standards, these standards could be marginally affected by a 0.5 inch rearward movement of the SRP.

The agency has therefore tentatively concluded that the variations in the manufacturers' placement of their SRP's which are likely to occur as a result of using different leg segments would have negligible safety consequences. Comments are invited as to whether this proposal would make any difference in the design of vehicle interiors or in the compliance of planned vehicles with applicable safety standards.

The SRP in Relation to Seat Position

The second question posed by Mercedes' petition is whether the SRP should be determined with the seat in the rearmost position or with the seat in a position ahead of the rearmost position. Mercedes argues that paragraph (a) of the SRP definition, which specifies that the seat is in the "rearmost normal design driving position," should be construed to permit the SRP to lie ahead of the rearmost seat position. Mercedes has designed an elongated seat track for the convenience of occupants who want additional leg room. This track extends rearward of the position necessary to accommodate a 95th percentile male. Mercedes' concern, and the main thrust of its petition, is that the procedure in SAE J826 for positioning the two-dimensional manikin appears to assume that the seat will be adjusted to its rearmost position. If the seat must be in the rearmost position when determining the SRP, then all the measurements in the standards which reference the SRP would also have to be made from the rearmost position. This would mean that the SRP measured at the 95th percentile point would also determine the rearmost seat position, precluding the use of the elongated seat track. Mercedes' solution is to amend the definition of SRP to specify that the SRP would be measured at a point representing the specified manikin dimensions, regardless of the amount of seat track to the rear of that point.

In the ANPRM the agency responded to Mercedes by issuing an interpretation of paragraph (a) of the definition as follows:

> [the SRP] represents the rearmost design position from which manufacturers are required to meet various performance standards. It does not establish the absolute rearmost design point to which a seat may be adjusted. (47 FR at 9766)

Upon further analysis, and in the light of the comments on the ANPRM, the agency believes that the interpretation in the ANPRM was incorrect, and is modifying the interpretation as discussed hereafter. While on its face the ANPRM interpretation was favorable to Mercedes' position, it did not resolve the question presented by standards such as Standard No. 210, which uses the SRP as a reference point but states that all measurements are to be made with the seat in the rearmost

position. In its comment to the ANPRM, Mercedes included a chart to show how the safety belt anchorages under Standard No. 210 would still have to be measured with the seat in the rearmost position, regardless of what flexibility is given the manufacturers in the definition of the SRP.

The question presented by Standard No. 210 has caused the agency to reexamine its position on the SRP. The agency plans to issue a separate NPRM on Standard No. 210, responding to a petition from Mercedes.

Because Standard No. 210 uses the SRP as its reference point, the requirement that the seats be in the absolute rearmost position would dictate that the SRP be established with the seat in that position. A manufacturer could not establish two seating reference points, so that the location dictated by Standard No. 210 would prevent a manufacturer from having seat positions to the rear of the SRP. In effect, the SRP usage in Standard No. 210 would decide the question presented by Mercedes in favor of the rearmost position. The agency surveyed the location of the SRP's in the vehicles it tested during its most recent compliance testing program, and found that, without exception, the manufacturers had determined the SRP with the seat in the rearmost position.

These circumstances have led the agency to modify the SRP interpretation announced in the ANPRM. That interpretation could lead a manufacturer to conclude that a seating position rearward of the SRP could be occupied while the vehicle is in motion. However, there is test data indicating that an anchorage positioned forward of the SRP may allow for increased head movement. It is therefore the agency's opinion that the reference in the SRP definition to the "rearmost normal design driving or riding position" means the rearmost position to which a seat can be adjusted when the vehicle is in operation. To further clarify this meaning, the agency is proposing to delete the world "normal" from the SRP definition.

SRP vs. Rearmost Position

In its comment on the ANPRM, Rolls-Royce Motors stated that the interpretation that the SRP was not necessarily the rearmost position would create confusion in the interpretation of standards, in that some refer to SRP, others to "rearmost position," and some to both. The company suggested that this confusion could be resolved by amending several standards to refer to the SRP rather than to other rearward positions. In view of the modified interpretation of SRP set forth in the preceding section, the agency takes the view that such amendments are not necessary. Standard No. 104, for example, substitutes the SRP for "H point" or manikin H point" whenever those terms are used in the SAE standards and recommended practices incorporated by the standard. This substitution results in references to "SRP with seat in rearmost position" (Figure 1, SAE Recommended Practice J903a), a concept that would be internally contradictory if the SRP could be at a position other than the rearmost position. However, if the SRP must be defined with the seat at its rearmost position, the contradiction disappears. There would thus seem to be no reason to amend Standard No. 104 or the other standards which refer both to SRP and to rearmost position.

Standard No. 208, on the other hand, refers to "rearmost position" but not to the SRP. In specifying the conditions for testing, the standard provides that an adjustable seat is in the position "midway between the forwardmost and rearmost positions." Insofar as this condition refers to the position of the seat itself, and not to the location of any point or points relative to the seat, substituting "SRP" for "rearmost position" could arguably change the location of the seat for testing purposes, since the SRP itself is a point in space forward of the seat back. Because substituting "SRP" would thus not clarify Standard No. 208, the agency is not proposing the substitution.

The agency requests comments on any specific problems in vehicle design or compliance testing which may result from the continuance of the existing variety of references to seat position, or from restrictions in the existing standards that occur as a result of seating position specifications for the compliance test. However, at this time the agency is not proposing to make any change in the terms used in the standards.

Fiducial Marks

The ANPRM stated that the agency would consider proposing a requirement that manufacturers specify a vehicle's SRP in terms of accessible permanent marks or points, known as fiducial marks, on the vehicle structure. Most manufacturers opposed the use of these marks as an unnecessary burden, since the marks would be used only for the small number of vehicles actually tested by the agency. Upon review of its own test experience, the agency concludes that it has not had significant difficulty in understanding the manufacturers' descriptions of their SRP's. The agency does not believe that fiducial marks will be of significant value and has therefore, decided not to consider this issue further.

Driver's Eye Range

In a second petition for rulemaking, Mercedes-Benz sought to update the references to SAE Recommended Practice J941 in Motor Vehicle Safety Standard Nos. 104, *Windshield Wiping and Washing Systems*, and 107, *Reflecting Surfaces*. Two standards which rely on Standard No. 104's measurements, Standard No. 103, *Windshield Wiping and Washing System*, and Standard No. 111, *Rearview Mirrors*, would also be affected. Mercedes-Benz argued that the 1965 version of SAE J941 currently incorporated into these standards restricts seat back angles to the range of 22 to 28 degrees, a range which the company believed to be too narrow for modern seat designs. The petition therefore sought the substitution of a later version, SAE J941e (1979), which specifies seat back angles from 5 to 40 degrees.

The agency combined its initial response to the Mercedes-Benz petition with its response to the SRP issues. In the March 1982 ANPRM, the agency indicated that it was considering changing the reference from SAE J941 to SAE J941e, as requested by Mercedes. Most industry commenters favored adoption of the later version because of its presumed effect on seat back angles.

Upon further analysis of the aspect of SAE J941 incorporated by the vehicle safety standards, the agency has concluded that the standards do not limit the seat back angles. Although SAE J941 states in section 3, *Limitations*, that interior dimensions on the driver's side must include a seat back angle of 22 to 28 degrees, the actual procedure for locating the driver's eye range contour employs calculations based on the SRP, not on the seat back angle. Because Standard Nos. 104 and 107 incorporate only the procedure for locating the eye range contour, and not the full text of SAE J941, they should not be construed as incorporating any restrictions on the seat back angle. It is the agency's view that the broader range of seat back angles sought by Mercedes-Benz is therefore acceptable under the vehicle safety standards incorporating the 1965 version of SAE J941. A manufacturer may thus adopt seat back angles outside the 22–28 degree range without violating any provisions of the standards incorporating SAE J941. This interpretation constitutes a substantive

grant of Mercedes-Benz's petition on the question of seat back angles.

It may be that other reasons could be advanced for updating the references to SAE 1941. However, it is not clear on the present record whether the advantages of the later versions of SAE J941 would justify the more elaborate procedures those versions would impose on the manufacturers. The agency has accordingly decided not to update the references to SAE J941 at this time. If additional petitions for rulemaking on the question of SAE J941 are received, the agency will give them appropriate attention.

Costs and Other Effects

The agency has considered the costs and other effects of this proposal and has determined that the proposal would not be major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory procedures. Further, the agency concludes that the economic and other consequences of the proposed amendment would be so minimal as not to require the preparation of a full regulatory evaluation. The proposed change to amend the definition of seating reference point by limiting the incorporation of SAE Recommended Practice J826 to its H-point dimensions would have little or no effect on the design or cost of vehicles.

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that amending 49 CFR Part 571 to amend the reference to the SAE recommended practice referred to in the paragraph above would not have a significant economic impact on a substantial number of small entities. Only motor vehicle manufacturers would be affected, few of whom are small entities. Small organizations and governmental units would not be affected since the cost of compliance would not be changed.

Finally, NHTSA has analyzed this proposal for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submissions, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard of the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, Part 571 of Title 49 would be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Part 571.3 would be amended by revising the definition of "seating reference point" in paragraph (b), *Other Definitions*, to read as follows:

§ 571.3 Other definitions.

* * * * *

(b) * * *

"Seating reference point" means the manufacturer's design reference point which—

Establishes the rearmost design driving or riding position of each designated seating position in a vehicle;

Has coordinates established relative to the designed vehicle structure; and

Simulates the position of the pivot center of the human torso and thigh relative to the vehicle seat, as defined by the H-point of the two-dimensional template described in SAE Recommended Practice J826, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation," November 1962.

* * * * *

Issued on May 28, 1986.

Barry Felrice,

Associate Administrator, for Rulemaking.

[FR Doc. 86-12553 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 51, No. 105
Thursday, June 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Advisory Committee.
Date: June 18, 1986.
Time: 2 p.m.
Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss the establishment of marketing areas, submarketing areas, selling schedules, related matters for the 1986 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Washington, DC 20250, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: June 3, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 86-12713 Filed 6-4-86; 12:05 pm]
BILLING CODE 3410-02-M

Forest Service

Henry's Fork and Warm River Wild and Scenic Rivers Study, Targhee National Forest, Fremont County, ID; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare a legislative environmental impact statement which analyzes alternatives for including portions of the Henry's Fork of the Snake River and Warm River in the National Wild and Scenic River System.

The Targhee National Forest Land and Resource Management Plan was completed and approved on October 4, 1985. One of the management directions in the Plan was to study the suitability of portions of the Henry's Fork of the Snake River and Warm River for possible inclusion in the National Wild and Scenic River System.

A range of alternatives will be considered. One alternative will consider full designation of the river to the highest appropriate level of classification. Another alternative will consider nondesignation. Other alternative levels of designation will also be examined. The study will determine which of the proposed hydropower projects will be foregone with full designation, alternative levels of designation, or nondesignation.

Federal, State and local agencies; potential developers; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environment review.
4. Determination of potential cooperating agencies and assignment of responsibilities.
5. Scoping Meetings (which will be arranged locally).

Other Federal, State, county, and local government agencies and entities will be invited to participate in the study. The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to evaluate potential impacts on threatened and endangered species habitat.

Richard E. Lyng, Secretary of Agriculture, is the responsible official.

The legislative draft environmental impact statement should be available for public review in July 1987. A legislative final environmental impact statement will be released upon transmittal of the legislative proposal to Congress.

Written comments and suggestions concerning the analysis should be sent to John Burns, Forest Supervisor, Targhee National Forest, P.O. Box 208, St. Anthony, Idaho, 83445, by June 30, 1986.

Questions about the proposed action and environmental impact statement should be directed to Paul Oakes, Study Team Leader, Targhee National Forest, phone 208-624-3151.

Dated: May 29, 1986.

R. Max Peterson,
Chief.

[FR Doc. 86-12825 Filed 6-4-86; 8:45 am]
BILLING CODE 3410-11-M

Land and Resource Management Plan; Lake Tahoe Basin Management Unit, California and Nevada; Notification of Extention of Public Comment Period for Dratt Environmental Impact Statement and Proposed Forest Plan

The public comment period for the Tahoe Basin Management Unit proposed Land and Resource Management Plan and Draft Environmental Impact Statement is being extended. Comments must now be received by July 27, 1986.

This amends the Notice of Availability published in the Federal Register of March 21, 1986 (ER-FRL 2988-4) Volume 51 #55.

The former due date was June 27, 1986.

For Further information contact: Jon Hoefer, Planning Staff Officer, Lake Tahoe Basin Management Unit, P.O. Box 8465, South Lake Tahoe, Ca. 95731; telephone (916) 544-6420.

Dated: May 29, 1986.

Ralph C. Cisco,
Forest Supervisor.

[FR Doc. 86-12687 Filed 6-4-86; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Cedar Run Watershed, PA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guideliens (7 CFR Part 650); The Soil Conservation Service, U.S. Department of Agriculture, gives

notice that an environmental impact statement is not being prepared for the Cedar Run Watershed, Clinton and Centre Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782–4453.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James H. Olson, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the installation of conservation and management practices for erosion and sediment control on 2,600 acres of cropland and agricultural waste management systems to reduce pollution to the streams.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting James H. Olson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10–904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: May 29, 1986.

James H. Olson,

State Conservationist.

[FR Doc. 86–12629 Filed 6–4–86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Meeting

AGENCY: Commission on the Bicentennial of the United States Constituion.

ACTION: Notice of meeting.

SUMMARY: This Notice announces a forthcoming meeting of the Commission on the Bicentennial of the United States Constitution, to be held in Washington, DC and chaired by the Commission's Chairman, Chief Justice Warren E. Burger.

Time and date: Friday, June 20, 1986 at 1:00 p.m.; Saturday, June 21, 1986 at 8:30 a.m.

Place: On June 20, from 1:00 p.m. to 3:00 p.m., in the Hall of Flags meeting room of the United States Chamber of Commerce, at 1615 H Street, NW., Washington DC 20062. Tel. (202) 659–6000. On June 21, from 8:30 a.m. to 12:00 noon, in the Executive Council Room of the AFL–CIO Building, at 815 16th Street, NW., Washington, DC 20006. Tel. (202) 637–5000.

Status: On June 20, the meeting will be a public hearing in open session; on June 21, the meeting will be an executive session, closed to the public.

Matters to be Considered

Open Session. Progress on commemorative plans and programs; announcement of project and other recognition decisions; proposed regional and national bicentennial projects; and, reception of testimony from witnesses presenting proposals and programs for consideration of the Commission.

Executive Session. Evaluations of proposed projects, programs and bicentennial activities; review of Commission financing and budgets; personnel structure and selection procedures; status of office space; pending appropriations, legislation and regulations; and negotiations involving national commenorative programs.

Statements

The Commission is interested in hearing from all persons and organizations with proposed plans, projects or programs which would enhance the bicentennial commemoration of the U.S. Constitution, the Bill of Rights or the founding of the Federal Government. All such statements which can be prepared prior to the Commission meetings on June 20 and 21 should be filed with the Commission on or before June 20, 1986, at 734 Jackson Place, NW., Washington, DC 20503. All statements will be reviewed by the Commission and its staff.

Presentations

At the public hearing on June 20, available time will permit only a few oral presentations. The Commission will notify in advance those witnesses who have been asked to appear and will limit oral presentations to those selected.

FOR FURTHER INFORMATION CONTACT: Gene Mater, Special Assistant to the Director, 734 Jackson Place, NW., Washington, DC 20503. Tel: (202) USA–1787.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to give the Commission an opportunity to review the current status of operations and to report on its activities. It also provides an opportunity for witnesses and persons filing statements to advise the Commission about proposed bicentennial plans and programs.

Dated: June 2, 1986.

Mark W. Cannon,

Staff Director.

[FR Doc. 86–12662 Filed 6–4–86; 8:45 am]

BILLING CODE 6340-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka To Review Trade in Category 351

May 30, 1986.

On May 2, 1986, the Government of the United States requested consultations with the Government of Sri Lanka with respect to cotton textile products in Category 351 (pajamas and other nightwear). This request was made on the basis of the agreement between the Governments of the United States and Sri Lanka of May 10, 1983, as amended, relating to trade in cotton, wool and man-made fiber textile products. The agreement provides for consultations when imports, due to market disruption, or the threat thereof, threaten to impede the orderly development of trade between the two countries.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period which began on May 2, 1986.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 351 exported during the 90-day consultation period which began on May 2, 1986 and extends through July 30, 1986 at the prescribed limit of 25,496 dozen.

The United States remains committed

to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Sri Lanka, further notice will be published in the Federal Register.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Category 351 under the agreement with Sri Lanka, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Sri Lanka—Market Statement

Category 351—Pajamas and Other Cotton Nightwear

April 1986.

Summary and Conclusions

U.S. imports of Category 351 from Sri Lanka were 73,000 dozens during year-ending February 1986 compared with 23,000 dozens a year earlier. During full year 1985, 57,000 dozens were imported, a 160 percent increase from 1984.

The rapid growth of low valued Category 351 imports from Sri Lanka are contributing to the disruption of the U.S. cotton pajamas and nightwear market.

U.S. Production and Market Share

U.S. production of Category 351 dropped from 4.0 million dozens in 1981 to 3.8 million dozens in 1983, or 5 percent. In 1984, production rebounded moderately to 3.9 million dozens, but remained 1.5 percent below the 1981 level.

Between 1981 and 1984, the market for cotton pajamas and other nightwear grew by 502,000 dozens. However, this expansion was supplied by imports and the U.S. producers' share fell from 69 percent to 63 percent.

U.S. Imports and Import Production Ratios

With the exception of 1983 which saw a slight decline in imports, world imports of Category 351 have risen steadily. In 1985 total imports were 2.6 million dozens, up 14 percent from 1984.

The import to production ratio has correspondingly risen. From 44 percent in 1981, it jumped to 54 percent in 1982 and to 59 percent in 1984.

Import and Domestic Values

Approximately 80 percent of the recent Category 351 imports from Sri Lanka entered under the following two TSUSA numbers: 384.0925—women's, girls', infants' cotton pajamas or nightwear, lace, net or ornamented knit; 384.5226—women's, girls', infants' other cotton nightwear, yarn-dyed, not knit, not ornamented, nsp. These garments entered the U.S. at duty-paid values below U.S. producer prices for comparable items.

May 30, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultual Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 5, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 351, produced or manufactured in Sri Lanka and exported during the ninety-day period which began on May 2, 1986 and extends through July 30, 1986, in excess of the following limit:

Category	90-day limit [1]
351	25,406 dozen

[1] The limit has not been adjusted to account for any imports exported after May 1, 1986.

Textile products in Category 351 which have been exported to the United States prior to May 2, 1986 shall not be subject to this directive.

Textile products in Category 351 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484 (a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12879 Filed 6-4-86; 8:45 am]

BILLING CODE 10-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Mattress Flammability Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through May 1, 1989, of information collection requirements in the flammability standard for mattresses and mattress pads (16 CFR Part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads with acceptable results. Sale or distribution of mattresses or mattress pads without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads which they produce.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, 1111 18th Street, Washington, D.C. 20207.

Title of information collection: Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, Amended); 16 CFR Part 1632.

Type of Request: Extension of approval.

Frequency of collection: Varies depending upon the number of individual combinations of materials and methods of construction used to produce mattresses or mattress pads.

General description of respondents: Manufacturers and importers of mattresses or mattress pads.

Estimated number of respondents: 800

Estimated average number of hours per respondent: 26 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7340. Copies of the request for extension of approval are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 30, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86–12648 Filed 6–4–86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board.

Date of Meeting: 1 July 1986.

Time: 0800–1600.

Place: Walter Reed Army Institute of Research.

Proposed Agenda: Reports by the Preventive Medicine Consultants of the Army, Navy, Air Force and Coast Guard: Human T-lymphotropic virus, Type III positivity update; therapy resistant gonorrhea infections in the Air Force; review of potential for visus transmission by jet injector guns; status, malaria vaccine trials; subcommittee reports and report by the Armed Forces Global Epidemiology Working Group.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG–AFEB, Room 2D455, Pentagon, Washington, DC 20310–2300, (202) 695–0115.

Dated: 23 May 1986.

Robert A. Wells,

Col, USA, MSC, Executive Secretary.

[FR Doc. 86–12622 Filed 6–4–86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Request for Public Comments on the Reauthorization of the Education Consolidation and Improvement Act of 1981

AGENCY: Department of Education.

ACTION: Notice of request for public comments on the reauthorization of the Education Consolidation and Improvement Act of 1981 (ECIA).

SUMMARY: The Secretary of Education has initiated development of a proposal by the Department for reauthorization of the ECIA. The Secretary invites written comments on the current ECIA, and suggestions for changes for consideration by the Department during development of the proposal.

DATE: Written comments must be submitted on or before July 7, 1986.

ADDRESS: Written comments should be addressed to: ECIA Reauthorization, 400 Maryland Avenue SW., Room 2189 (Mail Stop 6257), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: ECIA Reauthorization, 400 Maryland Avenue SW., Room 2189 (Mail Stop 6257), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The ECIA has two major components: Chapter 1 (formerly Title I), which provides funds to State and local educational agencies for special compensatory education services for disadvantaged children, and Chapter 2, which provides a block grant to the States for improvement of elementary and secondary education. Chapter 2 also authorizes a Secretary's Discretionary Fund for educational improvement activities of national significance.

In preparing its reauthorization bill, the Department will undertake a thorough review of the Chapter 1 and Chapter 2 evaluation data and solicit comments from and consult with those who have an interest in these programs. The Secretary wishes to ensure that there is a full and frank discussion of all the issues and that the Department's final proposal reflects the most effective means of serving educationally disadvantaged children and fostering educational improvement. The final proposal will also present a comprehensive response to problems identified with the structure or administration of the current programs.

Need for Reauthorization

The authorization for the ECIA expires on September 30, 1987. In order to contribute in a timely manner to the congressional reauthorization discussions, the Secretary is beginning a review of the ECIA at this time.

To ensure an opportunity for public participation, the Secretary invites public comments on the reauthorization effort.

Issues for Public Comment

Among the issues that the Department will consider in developing its

reauthorization proposal for Chapters 1 and 2 are:

- How compensatory education services can be focused most effectively on children who most need them;
- What educational strategies would yield the greatest benefits for disadvantaged children;
- How parents of disadvantaged children can be given greater opportunity to select appropriate educational options for their children; and
- Whether the current structure of the Chapter 2 program is best serving the goal of educational improvement.

Format for Comments

This request for comments is designed to elicit views of interested parties on how the current ECIA can most effectively serve educationally disadvantaged children and foster educational improvement.

The Secretary requests that each respondent identify his or her role in elementary and secondary education. In proposing modifications or alternatives, the respondents may want to address each issue listed under Issues for Public Comment.

The Secretary urges each commenter to be specific regarding his or her suggestions and include, if possible, the data requirements, procedures, technology, delegation of responsibility, and actual legislative language changes that the commeter suggests for the ECIA programs.

Dated: June 3, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-12754 Filed 6-4-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 86-24-NG]

Carlyle Energy, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Carlyle Energy Inc. (Carlyle). The order issued in ERA Docket No. 86-24-NG authorizes Carlyle to import up to 100 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 30, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12893 Filed 6-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-433-000 et al.]

Southern Natural Gas Co. et al.; Natural Gas Certificate Filings

May 29, 1986.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

May 29, 1986

[Docket No. CP86-433-000]

Take notice that on April 10, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-433-000 an application pursuant to Section 7 of the Natural Gas Act for a limited-term certificate of pubic convenience and necessity authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta) acting as agent for Georgia Kaolin Company, Inc. (Georgia Kaolin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 9 billion Btu of natural gas per day for Atlanta, as agent for Georgia Kaolin, on an interruptible basis, for a one-year term. It is indicated that Georgia Kaolin would purchase the gas from Sonat Exploration Company. Applicant states that it would receive the gas for the account of Georgia Kaolin at various existing points on Applicant's system in Marion County, Mississippi, and St. Mary Parish, Louisiana. Applicant proposes to redeliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas, at existing delivery points to Atlanta in Georgia.

Applicant proposes to charge Atlanta a transportation rate of 48.2 cents per million Btu where the aggregate of the volumes transported by Applicant for Atlanta under any and all transportation agreements between Applicant and Atlanta, when added to the volumes of gas delivered under Applicant's Rate Schedule OCD, does not exceed Atlanta's daily contract demand from Applicant. For those volumes that exceed Atlanta's daily contract demand, Applicant proposes to charge 77.0 cents per million Btu. In addition Applicant proposes to collect the GRI surcharge of 1.35 cents per Mcf.

In the notice issued April 30, 1986, in Docket No. CP86-433-000, it was inadvertently stated that Applicant proposed to charge Atlanta a 34-cent take-or-pay surcharge per million Btu of gas transported for volumes for which Applicant received no credit against its take-or-pay obligations. It was stated in the notice that the proposed transportation service would increase Applicant's take-or-pay liability. However, it is stated in Applicant's application that Applicant would receive take-or-pay credit for all volumes of gas transported. It is further stated that the gas transported would be released by Applicant for resale to Georgia Kaolin and that the released gas would be subject to the pricing provisions of NGPA sections 102(c), 103 and 107. Applicant states that it would also release Section 102(d) gas subject to receipt of appropriate abandonment authorization.

Applicant also requests flexible authority to add delivery points in the event that Georgia Kaolin obtains alternative sources of supply. It is stated that the redelivery point, the recipient and the maximum daily transportation volume would remain unchanged. It is further stated that Applicant would file a report providing certain information with regard to the addition of any delivery points.

Comment date: June 16, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP86-467-000]

Take notice that on April 21, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-467-000 an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of pubic convenience and necessity authorizing for one year the transportation of natural gas for the City of Austell Natural Gas System (Austell), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of Austell in accordance with the terms and conditions of a transportation agreement between Austell and Southern dated April 3, 1986 (Agreement). It is said that subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport, on an interruptible basis, up to 6,500 MMBtu of gas per day purchased by Austell from SNG Trading Inc. (SNG Trading). Southern requests that the Commission issue a certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

The Agreement, it is said, provides that Austell would cause gas to be delivered to Southern for transportation at the existing various points of delivery on Southern's contiguous pipeline system as specified in Exhibit A to the Agreement. Southern states that it would redeliver to Austell at the Austell Area Delivery Point (consisting of Meter Station No. 1 located near Mile Post 445.9 on Southern's North Main Line in Douglas County, Georgia, and Meter Station No. 2 located near Mile Post 12.67 on Southern's 12-inch Marietta Branch Line in Cobb County, Georgia), an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Austell's *pro-rata* share of any gas delivered for Austell's account which is lost or vented for any reason.

Southern states that Austell has agreed to pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Austell under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Austell do not exceed the daily contract demand of Austell, the transportation rate shall be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Austell under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Austell exceed the daily Contract Demand of Austell, the transportation rate for the excess volumes shall be 77.6 cents per MMBtu.

Southern states further that it would collect from Austell the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Austell obtains alternative sources of supply of natural gas. The additional transportation service, it is said, would be to the same redelivery points, the same recipient, and within the same maximum daily transportation volume of gas as stated in the application. Southern indicates that it would file periodic reports providing certain information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Austell to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern states that it would obtain take-or-pay relief on all volumes transported pursuant to the Agreement.

Comment date: June 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company

[Docket No. CP86-436-000]

Take notice that on April 14, 1986, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP86-436-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to transport up to a maximum of 20,000 MMBtu of natural gas per day, on an interruptible basis, for Norchem, Inc. (Norchem), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to provide an interruptible transportation service for Norchem for a period of two years from the date of first delivery and month-to-month thereafter. Applicant states that it would provide such service pursuant to the terms and conditions of a gas transportation agreement (Agreement) between Applicant and Norchem dated March 21, 1986.

According to Applicant, it would receive gas for Norchem's account at the following receipt points:

(1) the existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of Norchem's designee, Endevco Pipeline Company (Endevco), located in the Ignacio Sanchez Survey A-509, Nacogdoches County, Texas;

(2) the existing point of interconnection between the measurement facilities of Oasis Pipeline (Oasis) and the pipeline facilities of Applicant, located in Section 29, H&TCRR Co. Survey, Blk 34, Ward County, Texas;

(3) the existing point of interconnection between the measurement facilities of Norchem's designee, Houston Pipeline Company (HPL), and the pipeline facilities of Applicant, located in Section 11, Jose Vincente Lopez de Herrera Grant A-145 Survey, Nueces County, Texas;

(4) the existing point of interconnection between the measurement facilities of Norchem's designee HPL, and the pipeline facilities of Applicant, located in the Ruebin Holbeins Subdivision of the Las Aminas Hrs. of the Felipe de la Pena Survey, Jim Hogg County, Texas;

(5) the existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of Norchem's designee, ONG Transmission Company (ONG) located in Section 6, Township 20 North, Range 18 West, Woodward County, Oklahoma;

(6) the existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of Norchem's designee, ONG, located in Section 21, Township 13 North, Range 16 West, Custer County, Oklahoma;

(7) the existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of Norchem's designee, ONG, located in Section 23, Township 1 North, Range 4 West, Stephens County, Oklahoma; and

(8) the existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of Norchem's designee, ONG, located in Section 7, Township 4 North, Range 7 West, Grady County, Oklahoma.

Applicant proposes to redeliver equivalent volumes of gas for the account of Norchem, to Interstate Power Company (Interstate) at an existing point of interconnection between Applicant and Interstate located near Hooppole, in Henry County, Illinois, for redelivery by Interstate to Norchem at Norchem's plant in Clinton County, Iowa. Applicant states that on February 11, 1986, Interstate filed a separate petition with the Commission in Docket No. CP86-316-000, requesting a declaratory order exempting it from

Commission jurisdiction for its own transportation service.

Applicant further states that it would reduce the volumes that it redelivers to Norchem by certain percentages for fuel consumed and lost, and for gas that is unaccounted for, as provided by their agreement.

Applicant proposes to charge Norchem the following transportation rates:

Point of receipt	Point of delivery	Transportation rate per MMBtu (cents)
ONG-Woodward Co., OK	Henry Co., IL	27.0
ONG-Custer Co., OK	Henry Co., IL	28.8
ONG-Stephens Co., OK	Henry Co., IL	30.32
ONG-Grady Co., OK	Henry Co., IL	30.32
Endevco-Nacog. Co., TX	Henry Co., IL	30.22
Oasis-Ward Co., TX	Henry Co., IL	30.32
HPL-Nueces Co., TX	Henry Co., IL	30.32
HPL-Jim Hogg Co., TX	Henry Co., IL	30.32

Applicant also proposes to charge Norchem the currently-effective GRI surcharge.

Applicant reports that no new facilities would be required for its transportation service. Applicant requests authorization to add or delete additional receipt points in the future that may pertain to this service.

Comment date: June 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to particpate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12886 Filed 6-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 86-514-000]

Arkansas Power & Light Co.; Filing

June 3, 1986.

Take notice that on May 28, 1986, Arkansas Power and Light Company (APL) submitted for filing the Eleventh Amendment to the Power Coordination, Interchange and Transportation Service Agreement between APL and Arkansas Electric Cooperative Corporation (AECC). The amendment provides for an increase in capacity at four delivery points, the transfer of capacity at one delivery point, the addition of two points of delivery, and the abandonment of four points of delivery.

APL requests that the Commission waive any requirements with which APL has not already complied.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12881 Filed 6-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-61-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 22, 1986, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, revised tariff sheets as listed in Appendix A attached hereto. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 29, 1986.

On March 26, 1986 Texas Eastern filed revised tariff sheets to reflect a revision to the Contract Adjustment Demand rate to incorporate actual costs of facilities in accordance with Article VI of the Offer of Settlement approved by Commission order issued August 15, 1985 in Docket No. CP84-429-001. Such filing was designated Docket No. RP86-61-000.

Texas Eastern's March 26, 1986 filing was accepted subject to conditions imposed by Commission order issued May 7, 1986 in Docket No. RP86-61-000. Ordering Paragraph (A) of the May 7, 1986 order requires Texas Eastern to refile its tariff sheets submitted March 26, 1986 within 15 days of the date of issuance of the May 7, 1986 order to reflect a 14.704 percent rate of return as set forth in Texas Eastern's general rate filing in Docket No. RP85-177, *et al.* subject to refund. Such revised tariff sheets will be subject to the outcome of Docket No. RP85-177 *et al.* and are set forth in Appendix A to this filing. In addition, Texas Eastern proposes for filing herein revised tariff sheets amending the Contract Adjustment Demand rate as set forth above on all appropriate tariff sheets filed and made effective subsequent to December 31, 1985. Such tariff sheets are also set forth in Appendix A attached hereto.

The proposed effective dates for the tariff sheets listed in Appendix A are as designated at December 31, 1985, January 1, 1986, February 1, 1986 and April 1, 1986. With the exception of the December 31, 1985 date which is the date previously approved for service to commence under the Contract Adjustment Program, all other proposed effective dates are for corresponding tariff sheets previously approved by the Commission at those dates and are submitted for filing at this time solely to reflect the required revision to the

Contract Adjustment Demand rate as discussed above.

The proposed effective dates of the subject tariff sheets are as indicated on Appendix A attached hereto.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

Appendix A

Effective December 31, 1985
- Second Substitute Seventy-sixth Revised Sheet No. 14
- Second Substitute Seventy-sixth Revised Sheet No. 14A
- Second Substitute Seventy-sixth Revised Sheet No. 14B
- Second Substitute Seventy-sixth Revised Sheet No. 14C
- Second Substitute Seventy-sixth Revised Sheet No. 14D

Effective January 1, 1986
- Second Substitute Seventy-sixth Revised Sheet No. 14

Effective February 1, 1986
- Third Substitute Seventy-seventh Revised Sheet No. 14
- Second Substitute Seventy-seventh Revised Sheet No. 14A
- Second Substitute Seventy-seventh Revised Sheet No. 14B
- Second Substitute Seventy-seventh Revised Sheet No. 14C
- Second Substitute Seventy-seventh Revised Sheet No. 14D

Effective April 1, 1986
- Second Substitute Seventy-eighth Revised Sheet No. 14
- Substitute Seventy-eighth Revised Sheet No. 14A
- Substitute Seventy-eighth Revised Sheet No. 14B
- Substitute Seventy-eighth Revised Sheet No. 14C
- Substitute Seventy-eighth Revised Sheet No. 14D.

[FR Doc. 86-12084 Filed 6-4-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-2-17-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 22, 1986, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Seventh Revised Sheet No. 110
Seventh Revised Sheet No. 111

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 28, 1986.

These tariff sheets are being filed in compliance with Ordering Paragraph (A) of the Commission Order issued May 7, 1986 in Docket Nos. TA86-2-17-002 and TA85-4-17-007, accepting tariff sheets subject to conditions requiring Texas Eastern to file revisions to its PGA clause (1) reflecting the adoption of the methodology required by the Commission for out-of-balance concurrent exchange transactions; (2) reflecting the effect of deferred taxes on the Account No 191 balance; and (3) clarifying that adjustments are made to the balance in Account No. 191 for the purpose of carrying charge and surcharge calculations.

Texas Eastern herewith submits for filing the above mentioned tariff sheets containing the revisions required by Commission order dated May 7, 1986 proposed to become effective on February 1, 1986, the date the Commission order issued May 7, 1986 accepted Texas Eastern's February 28, 1986 compliance filing to become effective subject to conditions.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12085 Filed 6-4-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-2-23-002]

Eastern Shore Natural Gas Co.; Tariff Filing

June 3, 1986.

Take notice that Eastern Shore Natural Gas Company (ESNG) on May 28, 1986 tendered for filing the following proposed tariff sheets to Original Volume No. 1 of ESNG's FERC Gas Tariff:

To Be Effective May 1, 1986

Substitute 31st Revised Sheet No. 5
Substitute 31st Revised Sheet No. 6
Substitute 14th Revised Sheet No. 7
Substitute 31st Revised Sheet No. 10
Substitute 31st Revised Sheet No. 11
Substitute 31st Revised Sheet No. 12
Substitute 6th Revised Sheet No. 13
Substitute 2nd Revised Sheet No. 14

ESNG proposes to "track" Transcontinental Gas Pipe Line Corporation (Transco) rate adjustments as proposed in their amended rate filing dated May 14, 1986 in Docket No. TA86-5-29 to be effective May 1, 1986. Please refer to Appendix B, Schedule 1.

The purpose of these tariff sheets is to reflect an overall decrease of $1.5011 per dt in the commodity charge of ESNG's CD, PS, and G-1 Rate Schedules. This decrease is the net result of a 61.31 cent per dt decrease in the current gas cost portion of the commodity rates and a 88.8 cent per dt decrease in the Deferred Adjustment. Such Deferred Adjustment is incorporated herein by reference to ESNG's PGA filing of April 4, 1986 in Docket No. TA86-2-23-000. The demand charge decrease in ESNG's CD and G-1 Rate Schedules is due to the elimination of 25% of the demand charges of Transco's Canadian supplier, Sulpetro Limited, which have been previously passed through to ESNG.

ESNG requests the instant filing to be effective May 1, 1986 and, if approved, will substitute for the rates, also proposed to be effective May 1, 1986 reflected in ESNG's PGA filing of April 4, 1986 in Docket No. TA86-2-23-000 which was accepted subject to refund by Commission order issued May 7, 1986.

ESNG states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12682 Filed 6-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-62-002]

Northwest Pipeline Corp.; Tariff Revisions

June 3, 1986.

Take notice that on May 28, 1986, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 132
First Revised Sheet No. 132-A
First Revised Sheet No. 132-B

Northwest states the purpose of the filing is to expand the language contained in section 16.11 of its General Terms And Conditions to satisfy concerns raised by the Commission in its order dated April 25, 1986 at Docket No. RP86-62-000 and to fully comply with the terms of such order.

Northwest has requested an effective date of April 28, 1986 for all tendered tariff sheets to conform to the effective date granted by the Commission in its April 25, 1986 order at the above referenced docket.

A copy of this filing has been served on all jurisdictional customers and affected state regulatory commissions and furthermore on all parties of record in Docket No. RP86-62-000.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Pracitice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12683 Filed 6-4-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Renewal

This notice is published in accordance with the provisions of § 101-6.1015 of the Interim Rule on Advisory Committee Management. Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Magnetic Fusion Advisory Committee has been renewed for a 2-year period ending on May 25, 1988.

The renewal of the Magnetic Fusion Advisory Committee has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463), the Department of Energy Organization Act (Pub. L. No. 95-91), the GSA Interim Rule on Advisory Committee Management, and other relevant rules and regulations.

Further information regarding this advisory committee may be obtained from Gloria Decker (202)-252-8990.

Issued at Washington, DC, on June 2, 1986.

Charles R. Tierney,

Advisory Committee Management Officer.

[FR Doc. 86-12684 Filed 6-4-86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection
Title: Evaluation of IAFF/IAFC National Apprenticeship Program
Abstract: FEMA has funded since 1981 a national apprenticeship program for firefighters, fire medics, emergency medical techniciana, and paramedics through IAFF/IAFC. The questionnaires are needed to assist in this first evaluation of the program, and will be used to solicit input from approximately 3,000 firefighters
Type of respondents: Individuals or households; State or local governments
Number of respondents 3,000
Burden hours: 750.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 29, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-12633 Filed 6-4-86; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0127
Title: Exemption of State-Owned Properties under Self-Insurance Plan
Abstract: Information collection enables FIA to determine whether the applying State meets the requirements for an exemption pursuant to section 102(c) of the Flood Disaster Protection Act of 1973, which enables FIA to grant a State having an adequate policy of Self-insurance for its State-owned structures an exemption from the insurance purchase requirements 1973 Act
Type of respondents: State or local governments
Number of respondents: 100
Burden hours: 100

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB Rm. 3235, New Executive Office Building, Washinton, DC 20503.

Dated: May 29, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86–12667 Filed 6–4–86; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0124.

Title: State Administrative Plan for Temporary Housing Assistance.

Abstract: Plan is required to enable the Federal Government to evaluate the State's ability to administer all or part of the Temporary Housing Assistance Program. This document supports decisions regarding State administration of a Federally-funded program.

Type of respondents: State or local governments

Number of respondents: 15

Burden Hours: 810.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Wasington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 29, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86–12668 Filed 6–4–86; 8:45 am]

BILLING CODE 6718–01–M

Redelegation of Authority With Respect to the National Flood Insurance Program and the Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency, Federal Insurance Administration.

ACTION: Redelegation of authority of Federal Insurance Administrator.

FOR FURTHER INFORMATION CONTACT: James M. Rose, Jr., Executive Assistant to the Administrator, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, D.C. 20472, telephone (202) 646–2781.

Notice is hereby given, until an Administrator is appointed, that pursuant to § 2.51 of Title 44 of the Code of Federal Regulations, Francis V. Reilly, Deputy Administrator, is hereby authorized to exercise the delegation of authority set forth at § 2.64 of Title 44 of the Code of Federal Regulations with all the powers, functions, and duties delegated or assigned to the Federal Insurance Administrator.

This delegation supersedes the delegation appearing on Tuesday, May 13, 1986 at 51 FR 17533.

EFFECTIVE DATE: This delegation and designation shall be effective as of May 29, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–12632 Filed 6–4–86; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–483]

North Land Savings and Loan Assoc.; Ashland, WI; Final Action Approval of Conversion Application

Date: June 2, 1986.

Notice is hereby given that on May 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of North Land Savings and Loan Association, Ashland, Wisconsin for permission to convert to the stock form or organization. Copies of the application are available for inspection at the Secaretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–12656 Filed 6–4–86; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Hooker National Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may expres their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hooker National Bancshares, Inc.*, Hooker, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Hooker, Oklahoma.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Newell Bancshares, Inc.*, Wells, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Wells, Texas.

Board of Governors of the Federal Reserve System, May 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12017 Filed 6-4-86; 8:45 am]

BILLING CODE 6210-01-M

Winter Park Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that ourweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Winter Park Bancshares, Inc.*, Park Falls, Wisconsin; to acquire 100 percent of the voting shares of Voyageur Development Corporation, Park Falls, Wisconsin, and thereby indirectly acquire Park Falls State Bank, Park Falls, Wisconsin, and Chippewa Valley Agency, Ltd., Winter, Wisconsin.

Applicant has also applied to acquire Chippewa Valley Agency, Ltd. Winter, Wisconsin, and thereby engage in general insurance agency activites in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in Sawyer County, Wisconsin.

Board of Governors of the Federal Reserve System, May 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12018 Filed 6-4-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-0832—The Prospect Group, Inc.'s proposed acquisition of assets of Illinois Central Gulf Railroad Co., (IC Industries, UPE).	Apr. 27, 1986.
(2) 86-0864—Gerard P. Joyce's proposed acquisition of assets of Outdoor Advertising Associates, L.P.	May 1, 1986.
(3) 86-0866—Gerard P. Joyce's proposed acquisition of assets and voting securities of Metromedia's Foster and Kleiser Division, (John W. Kluge, UPE).	Do.
(4) 86-0886—The Dow Chemcial Company's proposed acquisition of voting securities of Magma Power Company.	Do.
(5) 86-0888—Jonathen O. Lee's proposed acquisition of voting securities of Power Transmission Division, (Koppers Company, Inc., UPE).	Do.
(6) 86-0889—Thomas H. Lee's proposed acquisition of assets of Power Transmission Division, (Koppers Company, Inc., UPE).	Do.
(7) 86-0952—Thomas J. Stewart and Testamentary Trust under Will of Frederick R. Smith's proposed acquisition of voting securities of Pacific Gamble Robinson Co.	May 2, 1986.
(8) 86-0953—Thomas J. Stewart and Testamentary Trust under Will of Frederick R. Smith's proposed acquisition of voting securities of Pacific Gamble Robinson Co.	Do.
(9) 86-0956—Thomas J. Stewart and Testamentary Trust under Will of Frederick R. Smith's proposed acquisition of voting securities of Pacific Gamble Robinson Co.	Do.
(10) 86-0960—Thomas J. Stewart and Testamentary Trust under Will of Frederick R. Smith's proposed acquisition of voting securities of pacific Gamble Robinson Co.	Do.
(11) 86-0961—Thomas J. Stewart and Testamentary Trust under Will of Frederick R. Smith's proposed acquisition of voting securities of Pacific Gamble Robinson Co.	Do.
(12) 86-0962—Thomas J. Stewart and Testamentary Trust under Will of Frederick R. Smith's proposed acquisition of voting securities of Pacific Gamble Robinson Co.	Do.
(13) 86-0972—Inland Steel Company's proposed acquisition of voting securities of J.M. Tull Industries, Inc., (Bethlehem Steel Company, UPE).	Do.
(14) 86-0927—PILC Corp.'s proposed acquisition of voting securities of Cable Systems, Inc.	May 5, 1986.
(15) 86-0933—Kinder-Care Learning Centers, Inc.'s proposed acquisition of voting securities of P.W. Co., (Kansas City Southern Industries, Inc., UPE).	May 6, 1986.
(16) 86-0958—Ramada Inns, Inc.'s proposed acquisition of voting securities of Maria Callender Pie Shops, Inc., (Donald W. Callender, UPE).	Do.
(17) 86-0961—Norlek, Inc.'s proposed acquisition of voting securities of Universal-Rundle Corporation, (Sears, Roebuck and Co., UPE).	Do.
(18) 86-0962—Norlek, Inc.'s proposed acquisition of voting securities of Universal-Rundle Corporation, (Sears, roebuck and Co., UPE).	Do.
(19) 86-1014—Wickes Companies, Inc.'s proposed acquisition of voting securities of Vera Imported Parts Corp.	Do.
(20) 86-0943—Cablevision Industries Limited Partnership's proposed acquisition of assets of Group W Cable, (Westinghouse electric Corp., UPE).	May 7, 1986.
(21) 86-0949—Saatchi & Saatchi Company PLC's proposed acquisition of voting securities of Backer & Spielvogel, Inc.	Do.
(22) 86-0977—Reynolds Metals Company's proposed acquisition of assets of Non-manufacturing assets of the "Cut-Rite" wax paper business, Scott Paper Co., UPE).	Do.

Transaction	Waiting period terminated effective
(23) 86-0087—Peter J. Callahan's proposed acquisition of voting securities of John Blair and Co.	Do.
(24) 86-0088—Peter J. Callahan's proposed acquisition of voting securities of John Blair and Co.	Do.
(25) 86-0089—Peter J. Callahan's proposed acquisition of voting securities of John Blair and Co.	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12655 Filed 6-4-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research on the Homeless With Alcohol-Related Problems

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of a Request for Applications for Research on the Homeless with Alcohol-Related Problems.

SUMMARY: The National Institute on Alcoholism announces the availability of a Request for Applications (RFA) for Research on the Homeless with Alcohol-Related Problems. The RFA is intended to encourage investigator interest in the area of research on the homeless with alcohol-related problems. Investigators are also encouraged to study the role of alcohol in conjunction with drug and mental health problems in the homeless. These studies are expected: (1) To develop new knowledge about the homeless with alcohol-related problems and their treatment, housing and support needs; (2) to provide identification and assessment of programs related to the care and treatment of the homeless alcoholic; and (3) to identify barriers inhibiting appropriate legal, medical psychological, and social responses to their needs. Priority will be given to grant applications for support of research focused upon epidemiology, clinical and ethnographic studies including service systems and settings. Support may be requested for up to 5 years. Applications recommended for approval by the National Advisory Council on Alcohol Abuse and Alcoholism will be considered for funding on the basis of the overall scientific and technical merit of the proposal as determined by peer review; NIAAA program needs and balance; and the availability of funds.

Receipt Date of Applications: February 1, June 1 and October 1 of each year. Applications must be received by October 1, 1986 for FY 1987 funding.

For a Copy of the Request for Applications Contact: The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone (301) 468-2600.

Robert L. Trachtenberg,

Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-12624 Filed 6-4-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85N-0063(DESI 5731); Formerly Docket No. FDC-D-896]

Deprol Tablets; Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug application for Deprol Tablets containing meprobamate and benactyzine. The drug's major use has been in the treatment of depression and associated anxiety.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than July 7, 1986. Disclosure of data and information and submission of narrative statement by FDA's Center for Drugs and Biologics by July 21, 1986, and by other participants by August 19, 1986. Prehearing conference on September 25, 1986, at 10:00 a.m.

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Submissions should be identified with the above docket number and clearly labeled "Deprol Hearing." Prehearing conference in the FDA Hearing Room, Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Division of Regulations Policy (HFC-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 27, 1974 (39 FR 23291), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) issued a notice of opportunity for hearing on a proposal to withdraw approval of the new drug application for Deprol Tablets (NDA 11-226; Wallace Laboratories, Division of Carter-Wallace, Inc., P.O. Box 1, Cranberry, NJ 08512). The Director found that there were no adequate and well-controlled clinical investigations, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) (now 21 CFR 314.126) and 300.50 which provide substantial evidence of effectiveness of Deprol for its labeled indications.

In response to the notice, Wallace requested a hearing and submitted data and information in support of its request. The Commissioner has considered the material submitted and has concluded that a hearing should be held.

Two questions will be addressed at the hearing:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of Deprol Tablets; and

2. Whether, on the basis of any such adequate and well-controlled investigations, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs and Deprol satisfies the combination policy set forth in 21 CFR 300.50 and will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. 21 U.S.C. 355(d); 21 CFR 314.125.

The parties to the hearing will be FDA's Center for Drugs and Biologics (Center) and Wallace. Any other interested persons shall be permitted to participate in the hearing as a nonparty participant (see 21 CFR 12.89) provided that they file a notice of participation pursuant to 21 CFR 12.45(a). The presiding officer will be Administrative Law Judge Daniel J. Davidson.

Under 21 CFR 12.85, the Center would normally file with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a summary of the types of evidence to be introduced in

BEST COPY AVAILABLE

support of its position in the hearing, together with copies of data and information contained in the Center's files that relate to the issues raised herein, at the time when this notice issues. I am, under 21 CFR 10.19, modifying that requirement to the extent that the Center will be granted until July 21, 1986, to make these submissions. I have concluded that this modification of this regulation in the context of this proceeding does not prejudice any participant in the hearing, serves the ends of justice, is in accordance with law, and thus is authorized by § 10.19. The modification allows the FDA to advise the parties that a hearing is pending on this matter prior to the completion by the Center of the sometimes lengthy process of complying with the requirements of §12.85.

After it is filed, interested persons may obtain a copy of the Center's narrative statement from the Dockets Management Branch (address above). They may also examine the data on Deprol (with the exception of any data identified as confidential pursuant to 21 CFR 10.20(j)) at the Dockets Management Branch from 9:00 a.m. to 4:00 p.m., Monday through Friday.

A prehearing conference will be held at 10:00 a.m., on September 24, 1986, in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857. The date and time of the prehearing conference may be subject to change by order of the presiding officer. Hearing participants will be notified of any such change. Others may wish to confirm the schedule for the prehearing conference by telephoning the contact person listed above shortly before the announced date. The hearing itself will also be held in the FDA hearing room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than July 7, 1986. All participants are required to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92. Participants other than the Center shall disclose data and information and submit narrative statements pursuant to 21 CFR 12.85 on of before August 19, 1986. Pursuant to 21 CFR 10.20(j)(2)(ii), confidential material submitted by a participant must be segregated and clearly marked.

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings (21 CFR Part 10, Subpart C). These procedures are primarily intended to expedite media access to FDA's public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the Federal Register notice announcing issuance of the guideline (Apr. 13, 1984, 49 FR 14723), for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set out in this notice.

Dated: May 28, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-12821 Filed 6-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0141 (Deal 12706); Formerly Docket No. FDC-D-506]

Diutensen Tablets; Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug application for Diutensen Tablets containing cryptenamine (as tannate salts) and methyclothiazide. The drug is used in the treatment of hypertension.

DATES: Notice of participation shall be filed with the Dockets Management Branch no later then July 7, 1986. Disclosure of data and information and submission of narrative statement by FDA's Center for Drugs and Biologics by September 3, 1986, and by other participants October 3, 1986. The date and time of the prehearing conference will be announced in a later notice.

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockvile, MD 20857. Submissions should be identified with the above docket number and clearly labeled "Diutensen Hearing."

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Division of Regulations Policy (HFC–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 9, 1973 (38 FR 4008), the Food and Drug Administration (FDA) issued a notice of opportunity for hearing on a proposal to withdraw approval of the new drug application for Diutensen Tablets (NDA 12–706; now held by Wallace Laboratories, Division of Carter-Wallace, Inc., P.O. Box 1, Cranberry, NJ 08512). The FDA concluded that there was a lack of substantial evidence showing either that each component of the fixed combination drug contributes to the total effect claimed for the drug or that the drug was effective for its labeled indications. In response to the notice, a hearing was requested and data and information in support of the request were filed. The Commissioner has considered the material submitted and has concluded that a hearing should be held.

Two questions will be addressed at the hearing:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of Diutensen Tablets; and

2. Whether, on the basis of any such adequate and well-controlled investigations, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that Diutensen satisfies the combination policy set forth in 21 CFR 300.50 and will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. 21 U.S.C. 355(d); 21 CFR 314.126.

The parties to the hearing will be FDA's Center for Drugs and Biologics (Center) and Wallace. Any other interested person shall be permitted to participate in the hearing as a nonparty participant (see 21 CFR 12.89) provided that they file a notice of participation pursuant to 21 CFR 12.45(a). The presiding officer will be Administrative Law Judge Daniel J. Davidson.

Under 21 CFR 12.85, the Center would normally file with the Dockets Management Branch a narrative

statement setting forth its position on the issues for hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data and information contained in the Center's files that relate to the issues raised herein, at the time when this notice issues. I am, under 21 CFR 10.19, modifying that requirement to the extent that the Center will be granted until September 3, 1986, to make these submissions. I have concluded that this modification of this regulation in the context of this proceeding does not prejudice any participant in the hearing, serves the ends of justice, is in accordance with law, and thus is authorized by § 10.19. The modification allows the FDA to advise the parties that a hearing is pending on this matter prior to the completion by the Center of the sometimes lengthy process of complying with the requirements of § 12.85.

After it is filed, interested persons may obtain a copy of the Center's narrative statement from the Dockets Management Branch (address above). They may also examine the data and information on Diutensen (with the exception of any material identified as confidential pursuant to 21 CFR 10.20(j)) at the Dockets Management Branch from 9:00 a.m. to 4:00 p.m., Monday through Friday.

A prehearing conference will be held in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD, at a date and time to be announced in a later notice. The prehearing conference may be subject to change by order of the presiding officer. Hearing participants will be notified of any such change. Others may wish to confirm the schedule for the prehearing conference by telephoning the contact person listed above shortly before the announced date. The hearing itself will also be held in the FDA hearing room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than July 7, 1986. All participants are required to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92. Participants other than the Center shall disclose data and information and submit narrative statements pursuant to 21 CFR 12.85 on or before October 3, 1986. Pursuant to 21 CFR 10.20(j)(2)(ii), confidential material submitted by a participant must be segregated and clearly marked.

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings (21 CFR Part 10, Subpart C). These procedures are primarily intended to expedite media access to FDA's public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline (Apr. 13, 1984, 49 FR 14723), for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set out in this notice.

Dated: May 28, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–12620 Filed 6–4–86; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Availability of Funds for Four Acquired Immune Deficiency Syndrome (AIDS) Service Demonstration Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Bureau of Health Care Delivery and Assistance (BHCDA), Health Resources and Services Administration (HRSA) announces that Fiscal Year 1986 funds are now available for grants to projects demonstrating a comprehensive cost effective health and support system for persons with Acquired Immune Deficiency Syndrome (AIDS) and AIDS-related disorders. Grant applications are now being accepted from the four Standard Metropolitan Statistical Areas (SMSAs) with the highest concentration of AIDS cases. These SMSAs, reported by the Centers for Disease Control (CDC) as of December 18, 1985, are: New York, San Francisco, Los Angeles, and Miami.

Funds were appropriated by Pub. L. 99–178 for this purpose under the authority of Section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241).

DATE: The deadline for receipt of applications is July 22, 1986.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from: Mr. Joseph Baldi, Division of Primary Care Services, Special Programs Branch, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A–55 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–5295.

Grant application kits (Standard Form 424 approved under OMB #0348–0006) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from: Mr. Waddell Avery, Grants Management Branch, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A–08 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–1440.

The original and two (2) copies of the applications must be submitted to Mr. Avery.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Acquired immune deficiency syndrome (AIDS), a disease complex characterized by a collapse of the body's immune system, continues to grow as a major public health problem in the United State's. A retrovirus, Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus (HTLV–III/LAV) is viewed as causing AIDS. It appears to be transmitted through sexual contact, use of contaminated needles, and transfusion of blood or blood products from persons who are infected with the AIDS virus. High risk groups include the following: Homosexual and bisexual men with

multiple partners, abusers of intravenous drugs, heterosexual contacts of someone with AIDS, persons with hemophilia, and infants born to mothers infected with the AIDS virus.

Through April 21, 1986, 19,816 AIDS cases were reported to the CDC, of which 10,406 have resulted in death. It is equally disturbing that of the approximately 1,000,000 people estimated to be positive for the AIDS virus, perhaps 200,000 people may develop AIDS-Related Complex (ARC) and an unknown number of those who test positive (best estimates range from 4 to 34 percent) will develop AIDS. ARC is an often debilitating syndrome of persistent node swelling, fever, weight loss, and multiple complications that occasionally prove fatal without progressing to AIDS as formally defined by CDC.

The cost of providing the full range of services to AIDS patients for the duration of their illness is very high. Hospital costs alone for each AIDS patient in the United States are estimated to be about $147,000. However, hospital costs vary greatly from city to city, with the lowest reported in San Francisco. The high average cost appears related to the high cost of providing in-patient hospital care. Moreover, it is generally recognized that the largest access problem for AIDS patients is the limited availability of ambulatory and community-based, out-of-hospital services.

Purpose

The AIDS Service Demonstration Program is intended to address the service delivery aspects of the AIDS problem. Specifically, it is intended to demonstrate the most cost effective ways of providing treatment and support for patients with AIDS in the four SMSAs with the highest concentration of persons with AIDS. It is generally recognized that there is a need for development of more innovative, alternative approaches to managing patients with AIDS, which emphasize service delivery in outpatient and community settings and reduce the amount of time spent in hospital settings. The service demonstration projects to be carried out under Section 301 of the PHS Act are intended to serve as models for other communities with significant numbers of persons with AIDS.

Availability of Funds

HRSA intends to make available approximately $15 million to be expended by grantees over a 3-year period to support AIDS Service Demonstration Program projects in the 4 SMSAs reporting the largest number of AIDS cases as of the date of the enactment of Public Law 99–178. As noted below, Public Law 99–178 was enacted on December 12, 1985, but CDC statistics as of December 16, 1985 were used as that was the closest reporting date to December 12. Only one grant award will be made in each of the 4 SMSAs. Initially $13 million will be targeted as follows:

SMSA	Number of AIDS cases reported to CDC as of Dec. 16, 1985 [1]	Percent of total AIDS cases in the 4 SMSA's	Funds targeted
New York	5012	58.7	$8,822,200
San Francisco	1721	20.2	2,741,200
Los Angeles	1308	15.3	2,221,600
Miami	498	5.8	1,214,600

[1] Statistics reported to the CDC as of 12/16/85 are those reported closest to the 12/12/85 date Public Law 99–178 went into effect.

Funds will be targeted as a result of allotting a $600,000 base figure to each SMSA and then distributing the remainder of funds based on the percent distribution of AIDS cases by SMSA.[1] The remaining funds will be held in reserve to potentially support the provision of additional services and assess the effectiveness of the 4 service demonstration grant projects. It is anticipated that the grants will be awarded for one 3-year period.

Collaboration/Coordination With Other AIDS Programs

To the maximum extent possible, HRSA's AIDS Service Demonstration Program grantees will be expected to work closely with the Robert Wood Johnson Foundation, which is the sponsor of another new AIDS program entitled the AIDS Health Services Program. Both the Foundation and HRSA grant programs share the same basic thrust—to support the establishment of specialized comprehensive AIDS health and supportive service demonstration projects. Both emphasize the development of community-based, out-of-hospital services. The primary objective of both programs is to provide more effective, compassionate care at reduced costs. Grantees supported by HRSA will be expected, to the extent possible, to coordinate their projects with other Federal, State and local programs addressing AIDS and ARC concerns, including, but not limited to, the public education and prevention programs administered by the Centers for Disease Control, and the drug clinical trial studies conducted by the National Institutes of Health.

[1] See Appendix A.

Eligible Applicants

All public and private entities, non-profit and for-profit, located in and providing services in the 4 SMSAs named above, are eligible to apply for these grant awards. Eligible entities include but are not limited to, public or private hospitals, local health departments, or consortia of health care and community organization which can develop a comprehensive AIDS services demonstration project.

The Review and Evaluation Criteria

Grant applications will be reviewed and rated by an objected review committee according to the applicant's ability to demonstrate the most cost effective ways of providing treatment and support to the largest number of AIDS and ARC patients within the four SMSAs cited above. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Allowable Costs

A successful applicant under this notice must spend funds it receives according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, the regulations of the Department applicable to grants, and the applicable cost principles of OMB circulars specified for nonprofit grantees, in subpart Q of 45 CFR Part 74, and, for for-profit grantee, in subpart AA of 45 CFR Part 74 and the applicable cost principles described in 45 CFR Part 74.175.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulation which apply under 45 CFR Part 74, Subpart J—Monitoring and Reporting of Program Performance.

The program for Acquired Immune Deficiency Syndrome (AIDS) Service Demonstration Projects has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packaged to be made available under this notice (Standards Form No. 424

Approved Under OMB 0348–0006) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Since States are allowed 60 days for this review, applicants are advised to discuss projects with, and provide copies of their applications to State contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the regional office.

The OMB Catalogue of Federal Domestic Assistance number for the Acquired Immune Deficiency Syndrome Service Demonstration Project is Number 13.113

Dated: May 6, 1986.

John H. Kelso,

Acting Administrator.

APPENDIX A.—STANDARD METROPOLITAN STATISTICAL AREAS ELIGIBLE FOR FUNDS UNDER THE AIDS SERVICE DEMONSTRATION PROGRAM

SMSA	Cities and counties included in the SMSA
1. New York, N.Y.–N.J.	That part of the area in NY: New York City. Bronx County. Kings County. New York County. Putnam County. Queens County. Richmond County. Rockland County. Westchester County. That part of the area in NJ: Bergen County.
2. San Francisco-Oakland, CA.	San Francisco City. Oakland City. Alameda County. Contra Costa County. Marin County. San Francisco County. San Mateo County.
3. Los Angeles-Long Beach, CA.	Los Angeles City. Long Beach City. Los Angeles County.
4. Miami, FL	Miami City. Dade County.

[FR Doc. 86–12732 Filed 6–4–86; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Announcement of Availability of Grants for General Family Planning Training Projects; Correction

AGENCY: Office of Family Planning, OPA, PHS.

ACTION: Notice; Correction.

SUMMARY: This document corrects a misstatement of a grant award criterion contained in the Announcement of Availability of Grants for General Family Planning Training Projects published on April 25, 1986 (51 FR 15690).

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, Room 736E, HHH Building, 200 Independence Avenue SW., Washington, D.C. 20201.

DATE: Applications must be postmarked or received by close of business June 24, 1986.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245–0146 or Program Office at area code 202/245–0151.

SUPPLEMENTARY INFORMATION: On April 25, 1986, the Office of Population Affairs announced the availability of funds for training grants under sec. 1003 of the Public Health Service Act, for family planning training projects. The notice stated that—

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will take into consideration such factors as the following:

7. Where competing projects are of approximately equal quality and only one grant can be funded, priority will be given to grantees not previously funded by OPA.

51 FR 15697, second column. This is to advise that Item 7 is changed to read as follows:

7. Where competing projects are of approximately equal quality and only one grant can be funded, priority will be given to offerors who will maintain or expand the diversity of experience and approaches of grantees within the Title X training program.

Dated: May 29, 1986.

Jo Ann Gasper,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 86–12678 Filed 6–4–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Elko District (Nevada) Advisory Council; Meeting

In accordance with Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that the BLM Elko District Advisory Council will meet at 7:00 a.m. on June 30, 1986, at the new Elko District Office at 3900 East Idaho Street, Elko, Nevada.

The meeting will be a tour during which time the West Cherry Creek Allotment Management Plan will be discussed and the following aspects of the plan visited: The Paris Seeding Project, wildlife improvement projects, riparian areas, and various range improvements such as fencing and water developments.

The public is invited to attend, but must supply their own transportation. Anyone wishing to make a statement to the Council may do so, however, they should contact the District Manager, BLM, Elko District, P.O. Box 831, Elko, Nevada 89801, or call 702–738–4071 no later than June 23, 1986, so that arrangements for the time may be made.

Summary minutes of the meeting will be prepared and available for public inspection or reproduction during regular business hours within 30 days following the meeting.

Rodney Harris,

District Manager.

[FR Doc. 86–12639 Filed 6–4–86; 8:45 am]

BILLING CODE 4310–HC–M

[A–22068]

Lease of Public Land; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Lease of Public Land Under the Recreation and Public Purposes (R&PP) Act.

SUMMARY: The Arizona State Parks Department proposes to develop an archeological theme park along the Little Colorado River near Winslow, Navajo County on the following described 80 acres of public land:

G&SR Meridian, Arizona

T. 19 N., R. 16 E., sec. 20, E½NE¼.

The land has been examined and found suitable for classification for recreation and public purposes under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (44 Stat. 741: 43 U.S.C. 869; 869–4).

Classification of this land under the provisions of the R&PP Act segregates it on the date of publication in the **Federal Register** from all appropriations including location under the mining laws, but not from applications under the mineral leasing laws or the R&PP Act.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 27, 1986.

Marlys W. Jones,

District Manager.

[FR Doc. 86-12636 Filed 6-4-86; 8:45 am]

BILLING CODE 4310-32-M

[I-21338]

Exchange of Public and Private Lands, Cassia County, ID

The United States has issued an exchange conveyance document to Michael, Douglas, and Willard Cranney Jr., of Oakley, Idahol 83346, for the following-described lands under Section of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 13 S., R. 21 E.,
sec. 4, E½SE¼.
Comprising 80.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 13 S., Rs. 20 and 21 E.,
Beginning at corner No. 1 from which the west ¼ corner sec. 30, T. 13 S., R. 21 E., bears N. 0°11' E., 6.07 chs. distant.

From the initial point by metes and bounds:

N. 26°43' E., 49.13 chs to corner No. 2;
S. 75°07' E., 16.90 chs to corner No. 3;
S. 32°19' W., 04.45 chs to corner No. 4;
N. 59°19' W., 5.86 chs to corner No. 5;
N. 59°19' E., 6.51 chs to corner No. 6;
N. 26°43' E., 11.71 chs to corner No. 1, the place of beginning.
Comprising 88.88 acres of private land.

The purpose of the exchange was to acquire the non-Federal land which has high public value for recreation and wildlife habitat. The public interest was well served through completion of this exchange.

The values of the Federal public land and the non-Federal land in the exchange were both appraised at the equal value of $12,400.00.

Dated: May 22, 1986.

Jimmie Buxton,

Acting Deputy State Director for Operations.

[FR Doc. 86-12637 Filed 6-4-86; 8:45 am]

BILLING CODE 4310-GG-M

[CA 17632]

Direct Sale of Public Land—San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—Direct sale of public land: San Diego County, California.

SUMMARY: The following described public land has been examined and found suitable for disposal by direct sale at the appraised market value of $48,000.00 pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719). The land will not be offered for sale until 60 days after the date of this notice.

Parcel serial No.	Legal description	Acres	Appraised value
CA 17632	T. 17S., R. 6E., SBM; Sec. 20: W½SW¼.	80.00 ac±	$48,000

Purpose

The purpose of this direct sale is to dispose of a parcel of public land which became of location, lack of administrative access and small size, makes it difficult and uneconomic to manage as part of the public land and not suitable for management by another Federal agency. The public interest will be well served by offering this land for sale to the existing grazing lessee, Don Lee, Incorporated.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect shall terminate upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

The land described above has no known mineral values. Conveyance of the mineral interests will occur simultaneously with the sale of the Land. Acceptance of a direct sale offer will constitute an application for conveyance of mineral interest, and a $50.00 nonrefundable filing fee must be paid as required by Sec. 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

A certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM, for not less than $4,800.00 shall be received at the place of sale—California Desert District, 1695 Spruce Street, Riverside, California 92507, by 10:00 a.m. on the sale date. The payment will be enclosed in a sealed envelope clearly marked as follows: "Public Land Sale—Direct", Parcel No. CA 17632, August 6, 1986.

The remainder of the full purchase price ($43,200.00) shall be submitted 180 days from the sale date. Failure to submit the balance of this full purchase price within the above specified time period shall result in cancellation of the sale and the deposit shall be forfeited.

The terms and conditions applicable to the sale are: The patent will reserve to the United States a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

Detailed information concerning the sale, including the environmental assessment/land report are available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 30, 1986.

Wes Chambers,

Acting District Manager.

[FR Doc. 86-12647 Filed 6-4-86; 8:45 am]

BILLING CODE 4310-40-M

Request for OMB Extension of Approval of Use of Permit Fee Envelope

AGENCY: Bureau of Land Management, Interior.

ACTION: Information collection submitted to the Office of Management and Budget under the Paperwork Reduction Act.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for extension of approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau of Land Management's clearance officer and to

the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7340.

Title: Permit Fee Envelope, 36 CFR Part 71.

Abstract: Respondents supply identifying information and data on the campsite number, dates camping, number in party, zip code, fee paid, vehicle license number, and primary purpose of visit. This information allows the Bureau of Land Management to determine if all users have paid the required fee, the number of users, and their state of origin.

Bureau Form Number: 1370–36.

Frequency: Whenever someone wishes to camp in a campground where fees are collected.

Description of Respondents: Individuals desiring to use the campground.

Annual Responses: 42,300.

Annual Burden Hours: 2,115.

Bureau clearance officer: Rebecca Daughtery, (202) 653–8853.

Dated: March 31, 1986.

Vincent J. Hecker,

Acting Assistant Director for Land Resources.

[FR Doc. 86–12636 Filed 6–4–86; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Royalty Management Advisory Committee, Gas Valuation Regulations Review Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that the Gas Valuation Regulations Review Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated below.

On February 5, 1986, MMS published an advance notice of proposed rulemaking in the **Federal Register** making available for public comment draft regulations pertaining to the valuation of gas and associated products as well as gas processing allowances and transportation allowances. All public comments will be made available to the Royalty Management Advisory Committee and the Gas Valuation Regulations Review Working Panel. The Panel will review the draft regulations and make recommendations as to necessary clarifications and revisions.

Location and dates: The Gas Valuation Regulations Review Working Panel will meet at the Sheraton Inn Hotel, 360 Union Boulevard, Lakewood, Colorado, June 12 and 13, 1986.

The Panel will meet from 8 a.m. to 5 p.m. daily.

The public is invited to attend these meetings and make oral or written comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by June 27, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

SUPPLEMENTARY INFORMATION: The Gas Valuation Regulations Review Working Panel is one of six working panels established by the Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice and recommendations to give to the Department of the Interior (DOI) and the MMS. Although the panels may meet with DOI or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panels will be made to the Advisory Committee and not to the DOI or the MMS.

Dated: May 28, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86–12672 Filed 6–4–86; 8:45 am]

BILLING CODE 4310–MR–M

Royalty Management Advisory Committee, Oil Valuation Regulations Review Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that the Oil Valuation Regulations Review Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated below.

On February 5, 1986, MMS published an advance notice of proposed rulemaking in the **Federal Register** making available for public comment draft regulations pertaining to the valuation of oil and transportation allowances. All public comments will be made available to the Royalty Management Advisory Committee and the Oil Valuation Regulations Review Working Panel. The Panel will review the draft regulations and make recommendations as to necessary clarifications and revisions.

Location and Dates: The Oil Valuation Regulations Review Working Panel will meet at the Denver Federal Center, Building 85, Auditorium, June 10, 11, and 12, 1986.

The Panel will meet from 8 a.m. to 5 p.m daily.

The public is invited to attend these meetings and make oral or written comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by June 26, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

SUPPLEMENTARY INFORMATION: The Oil Valuation Regulations Review Working Panel is one of six working panels established by the Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice and recommendations to give to the Department of the Interior (DOI) and the MMS. Although the panels may meet with DOI or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panels will be made to the Advisory Committee and not to the DOI or the MMS.

Dated: May 28, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86–12673 Filed 6–4–86; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-335 (Preliminary)]

Import Investigations; Tubeless Steel Disc Wheels From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission gives notice of the institution of preliminary antidumping investigation No. 731-TA-335 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of tubeless steel disc wheels,[1] provided for in item 692.32 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete a preliminary antidumping investigation in 45 days, or in this case by July 7, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 23, 1986 by the Budd Company, Troy, Michigan.

[1] Such wheels are designed to be mounted with pneumatic tires and are suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m. on June 16, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202-523-0369) not later than June 12, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before June 16, 1986, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 2, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12097 Filed 6-4-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-112)]

Baltimore & Ohio Railroad Co. et al.; Abandonment of the Georgetown Subdivision Rail Line Between Montgomery County, MD and Georgetown, District of Columbia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare an environmental impact statement and to hold a public scoping meeting.

SUMMARY: The Interstate Commerce Commission has directed that an environmental impact statement be prepared for the above-referenced proceeding in which three railroads seek a license authorizing abandonment of the Georgetown Subdivision rail line. A preliminary scope of study is proposed within. Written comments are invited. An informal public scoping meeting also is planned.

DATE: A scoping meeting will be held on June 18, and, if necessary June 19, 1986, beginning at 7 p.m. in Hearing Room A of the Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC. All written comments on the scope of study must be received by July 3, 1986 at the address given below to be considered in development of the final scope of study.

ADDRESS: Interstate Commerce Commission, Section of Energy and Environment, Room 3115, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert Maestro, (202) 275–7918.

SUPPLEMENTARY INFORMATION: On April 9, 1986, the Baltimore and Ohio Railroad Co., Metropolitan Southern Railroad Co., and Washington and Western Maryland Railway Co. filed an application with the Interstate Commerce Commission (ICC) seeking a license authorizing abandonment of the Georgetown Subdivision rail line, which extends from Georgetown Junction, through Bethesda, Maryland to its terminus in Georgetown, District of Columbia. Upon abandonment, rail operations will cease, rails, ties and bridges will be salvaged, and other use(s) will be made of the right-of-way. additionally, coal, previously delivered by rail to a GSA heating plant in Georgetown, will move by truck from a transloading facility near the intersection of Kenilworth Avenue and Route 50, westward along New York Avenue and K Street to the heating plant.

Two documents have been prepared by the ICC's Section of Energy and Environment on the proposed abandonment. A report initiating compliance with Section 106 of the National Historic Preservation Act (NHPA) provided an initial identification of historical and archeological resources present along the rail line and proposed coal truck route and requested comments to assist us in fulfilling compliance with Section 106.[1] On May 15, 1986, the ICC served an evironmental assessment which concluded that abandonment may result in significant effects on the human environment, including historical and archeological resources; that information for a satisfactory evaluation was incomplete and inconclusive; and that an EIS was required and recommended. Copies of either document are available upon request at the address given above.

We are approaching the development of a scope of study for the draft environmental impact statement (EIS) by defining the impact-producing actions that would occur as a result of abandonment, the components of the human environment that would be affected, the nature of effect, and the degree of effect. The first three items included in this approach have been identified in our environmental assessment served on May 15, 1986 and are listed below. Also included are alternatives to the proposed action as well as measures designed to avoid or reduce adverse impacts. We are also integrating the Section 106 National Historic Preservation Act process into the environmental impact statement process.

I. Salvage Operations

A. effect on archeological resources
B. eligibility of bridges and the rail line for listing in the *National Register of Historic Places*
C. effects on rare or endangered species
D. effects on aquatic ecosystems
E. effect on the Georgetown Historic District

II. Alternative Uses of the Right-of-Way

A. conflicts with objectives of Federal, state, regional and local land use plans, policies and controls
B. effects on the C&O National Historic Park
C. effects on archeological and historical resources within and adjacent to the right-of-way
D. effects on wildlife habitats and aquatic ecosystems
E. effects on adjacent land uses

III. Truck Transport of Coal

A. effects of vibrations and air emissions on adjacent historical structures
B. effects of noise, vibrations and air emissions on adjacent residential and commercial areas
C. effects on traffic congestion and safety

IV. Possible Alternatives to the Proposed Action

A. the Commission denying a grant of abandonment authority (the no action alternative)
B. the Commission granting only discontinuance of operations
C. mitigation, including alternate truck routes, restrictions on time of day truck movements, supplementing the heating plant's demand with other interconnected GSA heating plants, heavier reliance on oil and/or natural gas at the GSA heating plant and delivery of coal by barge.

We invite input from interested individuals, organizations, and agencies to help us identify additional items that should be considered as part of each area of investigation identified above. We also request assistance in defining the appropriate level of analysis for each component of the human environment that may be affected.

Any individual, organization, or agency who wishes to make a presentation at the informal public scoping meeting must call Robert Maestro [(202) 275–7918] by June 13, 1986 for scheduling purposes. It would be extremely helpful if common concerns or interests were expressed by a single spokesperson. Written comments are also welcomed and should be submitted by or before July 3, 1986. Oral presentations are not a prerequisite to filing written comments. A final scope of study will be prepared, published in the **Federal Register** and served on all parties to the proceeding.

Anyone wishing to receive copies of the final scope, the draft EIS and all other documentation served by the ICC on this proceeding (including decisions) should call the Office of the Secretary at (202) 275–7999 and request placement on the service list as an "advice of proceedings" party for docket number AB–19 (Sub-No. 112). Those individuals who intend to participate more actively and wish, additionally, to receive all documentation submitted by all parties to the proceeding must submit a written request to the same office for listing as a "party of record".

James H. Bayne,
Secretary.

[FR Doc. 86–12842 Filed 6–4–86; 8:45 am]
BILLING CODE 7035-01-M

[1] Section 106 of NHPA (16 U.S.C. 470f) requires that, prior to issuing any license, the Federal licensing agency must evaluate the effects of the licensed undertaking on any district, site, building, structure or object that is listed or found eligible for listing in the *National Register of Historic Places*.

[Docket No. 30786 (Sub-1)]

Missouri Pacific Railroad Co.; Construction and Operation Exemption; Ogden and San Antonio, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 10901, the construction and operation of two connecting tracks totaling 4,207 feet at Ogden and San Antonio, TX, by Missouri Pacific Railroad Company.

DATES: The decision is effective on June 16, 1986. Petitions to reopen must be filed by June 25, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30786 (Sub–No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Railroad's representative: Jeanna L. Regier, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 27, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-12944 Filed 6-4-86; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Applications To Consolidate, Merge or Acquire Control

The following applications seek approval to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied. Findings:

The findings for these applications are set forth at 49 CFR 1182.6.

MC-F-17437, filed April 23, 1986. Tri-State Coach Lines, Inc. (Tri-State) (2101 West 37th Avenue, Gary, IN 46408)—Purchase—Evansville & Ohio Valley Transportation Company, Inc. (Evansville) (1420 N. Stockwell Road, Evansville, IN 47715). Representative: Robert B. Walker, Sims, Walker & Steinfield, P.C., 1275 K Street, NW, Suite 875, Washington, DC 20005. Tri-State (MC-129038), seeks authority to purchase the operating authority of Evansville contained in certificate No. MC-39305, which authorizes the transportation of passengers between (1) Evansville, IN, and Mt. Vernon, IN, over Indiana Hwy. 62, (2) Evansville, IN, and Henderson, KY, over U.S. Hwy. 41, (3) Grand View, IL, and Cannelton, IN, over Indiana Hwy. 66, (4) Evansville, IN, and Grand View, IN, over Indiana Hwy. 66, and (5) the junction of Indiana Hwys. 66 and 75 adn Owensboro, KY, over Indiana Hwy. 75 and the Owensboro Bridge; serving all intermediate points along routes (1), (2), (3) and (5), and the intermediate points of Rockport, Hatfield, Yankeetown, and Newburg, IN, along route (4). Al routes include incidental charter rights. Tri-State, a motor passenger carrier, is owned by John and Margaret Shoup, who also control Cardinal Buses, Inc. (Cardinal) (MC-187339), and Shoup Buses, Inc. d/b/a Cardinal Charter Tours (SBI) (MC-70384), both motor passenger carriers. The Shoup's control of Tri-State, Cardinal, and SBI was approved in Nos. MC-F-12459 and MC-F-15639.

Decided: May 29, 1986.

By the Commission, Motor Carrier Board, Members Berry, Johnson, and Metz (Board Member Metz not participating).

James H. Bayne,

Secretary.

[FR Doc. 86-12943 Filed 6-4-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-105)]

Southern Pacific Transportation Co., Abandonment; Jefferson and Orleans Parish, LA; Findings

The Commission has found that the public convenience and necessity permit Southern Pacific Transportation Company to abandon its 2.177-mile line between Algiers (milepost 1.327) and Gretna (milepost 3.504) in Jefferson and Orleans Parish, LA.

A certificate will be issued authorizing this abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

By the Commission, Division 1, Commissioners Sterrett, Gradison, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86-12892 Filed 6-4-86; 8:46 am]

BILLING CODE 7035-01-M

[Ex Parte No. 393 (Sub-No. 1)]

Standards for Railroad Revenue Adequacy; Decision To Expand Scope of Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision expanding the scope of the proceeding.

SUMMARY: The Commission is expanding the scope of this proceeding to include a broad reexamination of the manner in which we presently measure and determine revenue adequacy, including our use of a current cost of capital return on investment as the sole standard for revenue adequacy. This proceeding was originally instituted to refine and improve the existing standard, adopted in Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981). However, the Commission has become increasingly concerned that the annual revenue adequacy determinations made under this standard may not have provided an accurate representation of the financial condition of the railroad industry. See Ex Parte No. 463, Railroad Revenue Adequacy—1984 Determination (unpublished decision served May 5, 1986). Thus, it seeks public comment and assistance to enable the Commission to make more accurate railroad revenue adequacy findings in the future.

The Commission's decision discusses (but takes no action on) the previous proposals for refining its existing measure. It also discusses several other possible refinements, including use of depreciation accounting for road and

track structures, use of embedded cost of debt, and different treatment of deferred tax reserves as well as other possible standards for measuring revenue adequacy.

DATES: Notice of intent to participate shall be submitted to the Commission by June 16, 1986. A service list will then be prepared and served on all parties. Comments are due by August 4, 1986. Reply comments will be due by September 3, 1986. A Commission voting conference deciding the case will be scheduled for a date within 30 days of the close of the record.

ADDRESSES: Send the notice of intent to participate and an original and 15 copies of comments and replies to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: May 30, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons commented with a separate expression. Commissioner Andre was absent and did not participate in this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 86–12727 Filed 6–4–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1986 Aggregate Production Quotas.

SUMMARY: This notice establishes 1986 aggregate production quotas for phencyclidine and 1-piperidinocyclohexanecarbonitrile.

DATE: This order is effective June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code, Section 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On April 14, 1986, a notice proposing aggregate production quotas for phencyclidine and 1-piperidinocyclohexanecarbonitrile was published in the **Federal Register** (51 FR 12660). All interested persons were invited to comment on or object to the proposal on or before May 14, 1986. No comments or objections were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1986 aggregate production quotas for phencyclidine and 1-piperidinocyclohexanecarbonitrile, expressed in grams of anhydrous base, be established as follows:

Basic class	1986 aggregate production quotas
Schedule II:	
Phencyclidine	10
1-piperidinocyclohexanecarbonitrile	35

Dated: May 28, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–12661 Filed 6–4–86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–40]

Performance Review Board; Senior Executive Service; Membership

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Pub. L. 95–454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register.**

The performance review function of the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals have been serving on the Committee and the Board as of March 1, 1986:

Senior Executive Committee
William R. Graham, Chairperson
Ann P. Bradley
C. Robert Nysmith
Thomas P. Murphy, Assistant Chief Administrative Officer, Prince George's County Government, Maryland

Performance Review Board
Ann P. Bradley, Chairperson
Carl E. Grant, Executive Secretary
Dale L. Compton (Term expires February 1988)
Louis B. DeAngelis (Term expires November 1988)
Edward A. Frankle (Indefinite Term)
Robert C. Goetz (Term expires February 1988)
John M. Klineberg (Term expires July 1986)
John J. Quann (Term expires November 1986)
Robert Rosen (Term expires November 1989)
Jeffrey D. Rosendhal (Term expires November 1988)
Richard J. Wisniewski (Term expires February 1988)

Thomas N. Tate, Special Assistant to the Chairman, Committee on Science and Technology, House of Representatives (Indefinite Term)

James C. Fletcher,
Administrator.

[FR Doc. 86-12613 Filed 6-4-86; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Expansion Arts Advisory Panel; Meeting; Correction

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts that was to be held on June 16-17, 1986, from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 has been changed. This meeting will now be held on June 17 only, from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include guidelines and policy.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 29, 1986.

[FR Doc. 86-12626 Filed 6-4-86; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: NRC Form 313M, "Application for Materials License—Medical".

3. The form nmber if applicable: NRC Form 313M.

4. How often the collection is required: For an initial license and for renewals every five years.

5. Who will be required or asked to report: Applicants for a specific license to possess and use byproduct material in humans.

6. An estimate of the number of responses: 600.

7. An estimate of the total number of hours needed to complete the requirement or request: 12,000.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Applications for specific licenses to possess and use byproduct material in humans are filed on NRC Form 313M. Information submitted on the form is used to evaluate the applicant's experience, training, facilities and procedures for adequacy of protection of the public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 29th day of May 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Director, Office of Administration.

[FR Doc. 86-12625 Filed 6-4-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-346-ML; ASLBP No. 86-525-01-ML]

Toledo Edison Co. et al.; Memorandum and Order and Designating Matters To Be Addressed at Hearing

May 29, 1986.

Before Helen F. Hoyt, Administrative Judge.

Preliminary Matters

This proceeding involves the approval by the United States Nuclear Regulatory Commission (Commission) of a request by the Toledo Edison Company (Toledo Edison or Licensee) for authorization under 10 CFR § 20.302(a) to dispose of byproduct material on the site of its Davis-Besse Nuclear Power Station, Unit 1. The materials in question are radioactively contaminated resins from the plant's secondary system demineralizer. On October 9, 1985, the NRC Staff published in the Federal Register an "Environmental Assessment and Finding of No Significant Impact" relating to Toledo Edison's request (50 FR 41265), and by letter dated October 15, 1985, approved the Licensee's request for disposal authorization. After the approval of the Licensee's request, various groups petitioned the Commission asking the Commission to rescind approval of Toledo Edison's disposal authorization request. The Commission on February 20, 1986 issued an order instituting an informal hearing in this matter and the undersigned was appointed presiding officer of February 25, 1986 by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

The action approved by the Commission is for the periodic disposal of low level-radioactive dredgings from the onsite settling basins onto land owned by Toledo Edison. It is the Licensee's intention to continue the current practice of transferring each year approximately 1,000 cubic feet of radioactively contaminated secondary-side clean up resins and about 5,000 cubic feet of non-radioactive wastes from the water treatment facility to onsite settling basins. About six times over the remaining operating life of the facility, *i.e.* about once every five years, the settling basins will be dredged and the removed material will be disposed of on land at a minimum thickness of two feet, covered with four inches of clean soil and seeded.

The Commission order of February 20, 1986 determined that interested persons should be afforded a hearing under section 189a of the Atomic Energy Act,

42 U.S.C. 2239(a). The Commission noted that its decision in *Kerr McGee Corp.* (West Chicago Rare Earths Facility), CLI–82–2, 15 NRC 232 (1982), aff'd, *City of West Chicago v. NRC*, 701 F2d 632 (7th Cir. 1983), had indicated that there was no entitlement to a formal trial-type hearing under either the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Neither the hearing requests of the various groups or individuals nor any other information caused the Commission to exercise its discretion and grant a formal hearing under the "public interest" standard of 10 CFR §§ 2.140(a) and 2.105(a)(7).

In accordance with the Commission order of February 20, 1986 in regard to the conduct of this informal proceeding, a *Memorandum and Order* (Notice of Informal Hearing and Opportunity to Become a Party) dated March 10, 1986 was issued by me in which I invited petitions to intervene and set out the procedures to be followed in considering the proposed disposal of by-product material at Davis-Besse. By this order the following petitions to intervene are granted based upon findings that each of the named petitioners has demonstrated standing to intervene as governed by 10 CFR 2.714(d) and existing agency precedents regarding this section:

State of Ohio—Petition for leave to Intervene (submitted by Anthony J. Celebrezze, Jr., Attorney General of Ohio) filed April 14, 1986.

Toledo Coalition For Safe Energy and Susan A. Carter—filed November 6, 1985.

Western Reserve Alliance—November 10, 1985; May 13, 1986 and May 20, 1986.

Save Our State From Nuclear Waste, Consumers League of Ohio, Arnold Gleisser and Genevieve S. Cook—filed April 11, 1986.

In the conduct of this oral hearing, I hereby designate as lead intervenor. The State of Ohio, to facilitate an orderly presentation of intervenors' interests and as lead counsel for party intervenors, the Assistant Attorney General of Ohio, Jack A. Van Kley; Edward Lynch or Sharon Sigler (whose Notices of Appearance have been made on this record) will conduct the intervenor's presentations and question witnesses presented by the Licensee with the assistance of counsel or representatives of the other party participants.

Petitions to intervene from elected representatives, municipalities and others have been considered as well as the Licensee's statements concerning the standing to intervene of the individuals, organizations or governmental bodies. In reaching the decision to deny these petitions to intervene and the connotation that party participation has even in an informal proceeding, I have decided to provide each of these petitioners with an opportunity to make a sworn statement on this record of not more than ten minutes or to submit their written arguments pertaining to the questions raised by me below. These sworn statements, oral or written, will be considered by me along with other testimony given by the parties but will not be subject to cross-examination. The order of presentation below will establish time for these presentations. Notice of intent to submit the sworn testimony or statement will be given *three days* in advance of this informal hearing date.

Name of petitioner	Date of petition	Why petition denied
City of Ashtabula, Ohio.	April 15, 1986	Lacks standing as to 10 CFR 2.714(d) because it does not demonstrate injury; the town is 120 miles from Davis-Besse site. Distance precludes § 2.715(c) standing.
Lakewood, Ohio.	April 10, 1986	Lacks standing because of distance from site.
Citizens for land and water use.	April 11, 1986	Fails to identify interest of any kind to qualify for standing, or particular deficiencies in method of disposal.
George Esroch.	April 8, 1986	Petitioner alleges no injury; fails to demonstrate standing; and has not identified any issue.

Matters Within the Scope of Proceeding to be Addressed at the Hearing

The following matters are those concerns which I find are not clearly enunciated in the documents related to the Commission's action in this matter:

1. What final location on the Davis-Besse site has been selected for waste burial?

2. What will be the dimensions of the waste burial site in its final configuration (after 30 years)?

3. Is the waste burial site located within the bounds of Navarre Marsh? Provide a description of the location of the burial site relative to the Marsh.

4. What is the observed flooding frequency at the the waste burial site?

5. What soil erosion from storms has been actually observed at or near the disposal site?

6. What is the direction of groundwater flow from the burial site relating to Lake Erie, Navarre Marsh, and the Toussaint River?

7. What is the depth to bedrock of unconsolidated glacial deposits at the burial site?

8. What is the average depth and upper and lower range of the water table at the disposal site?

9. What endangered species of plant or animal have been actually observed on the Davis-Besse site? What crticial habitats for endangered species exist on the Davis-Besse site?

10. What will be the total radionuclide inventory of the burial site after 30 years of operation under expected levels of resin contamination?

11. What is the estimated dose to an individual standing on covered basin dredgings after 30 years of operation under expected levels of resin contamination?

12. What criteria will be used to decide whether resins will be buried on site or transported to a licensed burial site in the event that resins become contaminated at higher than expected levels (from steam generator tube leaks or ruptures, for example)?

13. What is the estimated upper limit of radionuclide inventory that could exist on site after 30 years under the above criteria?

14. What is the estimated upper limit of dose to the whole body for an individual standing on the burial site that could exist after 30 years under the above criteria?

15. Why has SR–90 not been included in the licensees' assessments?

16. What would be the total estimated whole body dose equivalent for an indivudal through the food ingestion pathway that could result from the final 30-year inventory of radionclides including Sr–90? Provide estimates for expected levels and upper limits of radionuclide inventory after 30 years.

17. What are the principal chemical components of the non radioactive sludge that are mixed with radioactively contaminated resins?

18. What is the rate of biological or chemcial degredation of resins?

19. What biological hazards are there from resin degredation that have been published in the scientific literature or are known from manufacturers' tests?

20. Describe the licensees' plans for site management during operation, for marking the burial site, and for recordkeeping at the burial site.

Hearing Procedure

Prior to the hearing, I will tour Toledo Edison's proposed waste disposal burial site at Davis-Besse. One representative of each of the admitted parties may accompany me.

The burial site tour is scheduled for June 23, 1986 at 2:00 p.m. The parties should report to the Visitor's Center at the Toledo Edison Davis-Besse site.

I have indicated in my March 10, 1986 Order and with this Order that the hearing will be informal. Although it was not my intention to permit cross-examination by the parties, I find that questions on the issues designated for hearing may better be phrased by the lead intervenor or the Licensee without the need to screen each question. Where a need is perceived by the parties, a request may be submitted for permission to present brief supplemental testimony designated to respond to another party's testimony. The following order of presentation is established:

June 19, 1986—Prefiled direct testimony of witnesses by Licensee and admitted intervenors due for filing and exchanged among the parties. Testimony will be limited to those issues described in the section of this Order titled Matters to be Addressed at the Hearing.

June 23, 1986—Tour of proposed low level waste site on Davis-Besse (2:00 p.m.).

June 24, 1986 through June 25, 1986—9:30 a.m. Hearing begins. Order of presentation of witnesses is as follows: Licensee's witnesses or panels will complete direct testimony. Questioning by counsel for lead intervenor will follow immediately. Licensee's counsel will be permitted rebuttal questions limited to matters disclosed through lead intervenor's questions. Lead intervenor will present direct testimony on the issue and Licensee's counsel will be permitted to question these witnesses. Lead intervenor's counsel will be permitted rebuttal questions limited to matters disclosed through questioning by Licensee's counsel.

June 25, 1986—7:00 p.m.–10:00 p.m. General Public-oral limited appearance statements for persons not a party or who have not submitted Petitions to Intervene. Each statement will deal with the position of the individual on those issues described in the section of this Order titled Matters to be Addressed at the Hearing. Statement will be limited to 5 minutes. Persons wishing to make an oral limited appearance statement may register with a designated representative at any time during these 3 days of oral hearings.

June 26, 1986—9:30 a.m. Sworn statements for those individuals or organizations who had submitted Petitions to Intervene but whose petitions were denied. These individuals will be limited to 10 minutes. When these statements are completed, the hearing will continue with the five minute limited appearance statements described above. The hearing will remain open until 5:00 p.m. when the record will be closed.

Limited appearance statements have been received from organizations and individuals described in Appendix to this Memorandum and Order. It is not necessary that those persons submit additional oral or written statements. Persons wishing to submit a written statement may do so by addressing it to U.S. Nuclear Regulatory, Office of the Secretary, Docketing and Services Branch, Attention: Docket No. 50-346-ML, 1717 H Street, NW., Washington, DC 20555.

Hearing Location

The location for the hearing is Sandusky High school, 2130 Hayes Avenue, Sandusky, Ohio.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 29th day of May, 1986.

Helen F. Hoyt,
Administrative Judge.

Appendix

Comments have been received from the following and are placed in Docket No. 50-346-ML in *Limited Appearance Section.*

City of Brook Park, Ohio—May 6, 1986—Resolution No. 19-1986 Opposing Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station, and Declaring an Emergency.

City of Mentor, Ohio—December 17, 1985—Resolution 85-R-134-Resolution Requesting NRC to Rescind Approval for Disposal of Radioactive Waste at Davis-Besse Plant Site.

City of Euclid, Ohio—January 21, 1986—Resolution No. 10-1986—Expressing Opposition to City of Euclid Council to Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station.

City of Mayfield Village, Ohio—February 17, 1986—Resolution 86-8 Opposing to Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station.

City of Willowick, Ohio—April 15, 1986—Resolution No. 86-11 Expressing Opposition by Council of the City of to Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station.

City of Rocky River, Ohio—April 17, 1986—Amended Resolution No. 29-86 Emergency Resolution Urging the Governor of State of Ohio to Aggressively Examine and the NRC to Hold Formal Hearings on Burial of Nuclear Waste on Site at Davis-Besse Nuclear Plant.

City of Middleburg Heights, Ohio—April 22, 1986—Resolution 1986-51 to NRC Opposing to Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station.

City of Painesville, Ohio—April 7, 1986—Resolution Requesting NRC to Rescind Approval for Disposal of Radioactive Waste at Davis-Besse Plant Site.

League of Ohio Sportsmen and subsidary *Ohio Wildlife Federation*—Edward A. Stupka, President—April 10, 1986—Resolution 86-19X Oppose Burial of Radioactive Waste On-Site at Davis-Besse Nuclear Power Station.

Dwight Wise—Ohio House of Representatives, 85th House District—May 2, 1986—Letter to Chairman Nunzio J. Palladino urging NRC to revoke its approval of Toledo Edison's application to bury low-level radioactive waste at Davis-Besse Power Plant.

Greater Cleveland Boating Association—April 9, 1986—Resolution opposing Toledo Edison Co. application to amend its license to permit burial of radioactive sludge on the power station site and unrestricted use of the land in the future.

Lawrence J. Lucas—February 1, 1986, March 2, 1986 and April 21, 1986—Letters to U.S. NRC requesting a hearing and opposing NRC giving permission to bury waste without public participation.

City of Mayfield Heights, Ohio—February 17, 1986—Resolution 1986-12 Requesting NRC to Rescind Approval for Disposal of Radioactive Waste at the Davis-Besse Plant Site.

League of Women Voters of Rocky River, Ohio—April 10, 1986—Statement objecting to process of site selection; suitability of proposed site for low-level nuclear waste disposal; and lack of environmental impact statement for Davis-Besse Power Station burial of low-level nuclear waste.

U.S. Representative Edward Feighan—April 14, 1986—19th District of Ohio, Statement-Petition to Participate.

Elbert J. Waldorf—May 17, 1986—Letter.

Al and Irene P. Kay—May 13, 1986—Letter requesting Save Our State be allowed to intervene and opposing burial of radioactive waste in area of Great Lakes.

Paul E. Dornbusch—undated letter opposing burial of radioactive waste because it may leach into ground water.

League of Women Voters Lake Erie Basin Committee—April 10, 1986—Letter from Secretary opposing burial of low-level radioactive waste at Davis-Besse.

Ohio Radioactive Materials Users Group—April 10, 1986—Letter opposing analysis of possible impacts on burial of low-level radioactive waste at Davis-Besse. Statement to be available by August 1, 1986.

Russell M. Bimber—April 5, 1986—Letter opposing burial of nuclear waste at Davis-Besse.

Intervening Statement of Councilwoman Joan Klein (Lyndhurst, Ohio Resolution No. 66–10)—February 17, 1986—Resolution Expressing Opposition to the NRC of Council of City of Lyndhurst, Ohio to Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at Davis-Besse Nuclear Power Station.

Ohio Citizens for Responsible Energy (OCRE)—November 27, 1985 and March 25, 1986 (Susan L. Hiatt)—Limits participation to limited appearance status. OCRE urges "disposal of low-level radioactive waste at properly licensed disposal site.

City of Olmstead Falls, Ohio—April 28, 1986—Resolution 63–86 Opposing the Burial of Radioactive Sludge in Lands on Davis-Besse Nuclear Power Station Near Navarre Marsh Lands Adjacent to Lake Erie and Declaring an Emergency.

City of Seven Hills, Ohio—May 12, 1986—Resolution 15–1986 to the NRC Opposing the Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station; and Declaring an Emergency.

City of Broadview Heights—May 20, 1986—Resolution 86–45 Opposing the Application of Toledo Edison Co. for Permission to Bury Radioactive Sludge at its Davis-Besse Nuclear Power Station and Declaring an Emergency.

[FR Doc. 86–12626 Filed 6–4–86; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Investigation of Claim for Possible Days of Employment.

(2) Form(s) submitted: ID–5i, ID–5R(SUP), UI–48 and UI–54.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

(6) Annual responses: 13,700.

(7) Annual reporting hours: 1,450.

(8) Collection description: Under the RUIA, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection obtain information from the claimant, claims agent, railroad and non-railroad employer about work performed during the same period as unemployment benefits are claimed.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86–12628 Filed 6–4–86; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15113; File No. 812–6285]

Application and Opportunity for Hearing; Aetna Life Insurance and Annuity Company et al.

May 23, 1986.

Notice is hereby given that Aetna Life Insurance and Annuity Company (the "Company") and Variable Life Account B of Aetna Life Insurance and Annuity Company (the "Account B"), (collectively, "Applicants") filed an application on December 20, 1985, and an amendment thereto, on April 21, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants and certain transactions from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from Rule 6e–3(T) (b)(12), (b)(13), (c)(1), (c)(2), and (c)(4) and Rule 22c–1 thereunder, to the extent necessary to issue individual flexible premium variable life insurance contracts (the "Contracts") as defined in paragraph (c)(1) of Rule 6e–3(T) and as described in the application. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants state that the Company is a stock life insurance company organized under the laws of the State of Connecticut and is the sponsor-depositor for Account B, a segregated investment account of the Company registered under the Act as a unit investment trust. Applicants also state that under the Contract, net premiums are, according to the Owner's instructions, allocated between Aetna's General Account and Account B. Net premiums allocated to Account B are, in turn, allocated among its sub-accounts. Each sub-account of Account B invests exclusively in shares of a corresponding open-end management investment company: Aetna Variable Fund, Aetna Income Shares or Aetna Variable Encore Fund (the "Funds"). Applicants indicate that shares of the Funds are also sold to other separate accounts of Aetna in connection with certain variable annuity contracts. Applicants represent that net premiums allocated to the General Account earn interest at a rate determined by Aetna from time to time which will be not less than 4½%. To the extent that charges under the Contract are applicable to cash value in the General Account as well as to cash value in the Variable Account, such charges are, Applicants represent, in each instance, assessed in the same manner and computed on the same basis. Applicants state that under the Contract, the Owners can vary the frequency and amount of premium payments. Also, the death benefit may, and the cash value will, increase or decrease based upon the investment performance of amounts allocated to the subaccounts of the Account B and interest credited to the General Account. Applicants maintain that the Contracts generally allow the contractowner to increase or decrease the specified amount under the Contracts.

According to the registration statement for the Contract, which Applicants incorporate by reference into the application, at the contractowner's election, the death benefit will be either

(i) "Option 1", the greater of the specified amount or the cash value multiplied by the cash value corridor percentage required by the Internal Revenue Code, or (ii) "Option 2," the greater of the specified amount plus cash value or cash value multiplied by the cash value corridor percentage. Applicants state that optional incidental insurance benefits are available by riders to a Contract. Cash value will reflect the amount and frequency of payments, the investment experience of Account B, any partial withdrawals, any loans, and any charges and deductions under the Contracts. A Contract, Applicants assert, will remain in force, without regard to the owner making purchase payments, unless the cash value reduced by any current Surrender Charge, as described below, and any outstanding debt is insufficient to cover the periodic charges and deductions under the Contract and a grace period expires without a sufficient additional payment.

Applicants state that a general condition to the order granting the relief requested in the Application, Applicants agree that to the extent the final version of Rule 6e–3 (or any other rule adopted as the final version of Rule 6e–3(T)) imposes terms or conditions on the granting of exemptive relief of the nature requested in the Application, Applicants shall take such steps as may be necessary to comply with Rule 6e–3. Applicants assert that the relief requested in the application meets the standards of section 6(c), is well precedented, and involves technical matters and matters unforseen when Rule 6e–3(T) was adopted.

Rule 6e–3(T)(c)(1)

Applicants request exemption from Rule 6e–3(T)(c)(1), to the extent necessary to permit, in connection with the Contracts, the allocation of net permiums, and transfer of cash value to Aetna's General Account. Although Applicants do not necessarily agree that the right under the Contracts to allocate or transfer monies to the General Account results in the Contracts not falling within the definition in Rule 6e–3(T)(c)(1), of a "flexible premium variable life insurance contract," Applicants request relief from Rule 6e–3(T)(c)(1) to resolve any question concerning their ability to rely on the rule.

Applicants state that, while Rule 6e–3(T)(c)(1) defines a "flexible premium variable life insurance contract" as a contract "funded by a separate account" and providing for a "cash value which varies to reflect the investment experience of the separate account," it does not require that the contract be exclusively funded by such a separate account, or that the contract provide for a cash value that exclusively varies to reflect the investment experience of the separate account. Applicants assert that the Commission's use of the word "exclusively" elsewhere in Rule 6e–3(T), but not in paragraph (c)(1), suggests it did not intend to require exclusive funding by a separate account, or require cash value that varies exclusively to reflect the investment experience of a separate account. Thus, Applicants submit that the Commission intended to permit allocation of premiums, and transfer of cash value, to general accounts as well as separate accounts.

Applicants further argue that the requested relief is consistent with the Commission's administration of the Act in the context of flexible premium variable life insurance prior to and after the adoption of Rule 6e–3(T), scheduled premium variable life insurance under Rule 6e–2 under the Act, and variable annuities. Applicants recognize that it is the position of the Commission staff that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to, nor will any such order extend to, the propriety or impropriety of registration or non-registration of either interests in the General Account as securities under the 1933 Act or the General Account as an investment company under the Act.

Rule 6e–3(T)(c)(2) and 6e–3(T)(c)(4)(vii)

Applicants request exemption from paragraphs (c)(2) and (c)(4)(vii) of Rule 6e–3(T) to the extent that the Greater of Monthly Deduction or Basic Premium Benefit (the "Rider") option under the Contract may not be deemed to meet the definition of "incidental insurance benefits" in that paragraph. Applicants state that the Rider provides that, in the event of disability of the insured, as defined therein, the Company will waive during the period of disability the greater of (i) the monthly cost of insurance charge, any expense charges and any rider charges or (ii) the basic premium. The monthly cost of insurance charge can vary with the investment experience of the Variable Account in certain respects. Nevertheless, Applicants argue that the benefits, i.e., the waiver of the monthly cost of insurance and rider charges, is predominantly a fixed benefit. Applicants represent that these charges are waived regardless of how much the cash value and the net amount at risk may vary. Similarly, Applicants argue that the waiver of the basic premium is fixed insofar as the amount waived does not depend on the investment experience of Account B. Thus, Applicants submit that the Rider should be treated as "fixed" for purposes of Rule 6e–3(T).

Sections 2(a)(32), 22(c), (26)a(2), 27(c)(l), 27(c)(2), and 27(d) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13)(iii), and 22c–1

Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) and Rule 6e–3(T)(b)(12), (b)(13)(iii), and 22c–1 to the extent necessary to permit an administrative charge for expenses incurred in connection with the issuance of a Contract or the increase of specified amount to be deducted on a contingent deferred basis upon surrender or lapse of the Contract.

Applicants state that the Contract provides for the calculation of the amount of a contingent deferred surrender charge ("Surrender Charge") upon the issuance of the Contract and upon an increase in specified amount. Applicants represent the Surrender Charge set upon the issuance of the Contract has two elements: 30% of the charge is sales load and the remainder is a reimbursement to Aetna for administrative costs it incurs in issuing the Contract. An additional Surrender Charge is set in the event a Contract's specified amount is increased. Applicants state that the amount of the surrender charge (as set forth in surrender charge tables in the prospectus and the Contract) varies depending upon issue age, sex and smoker/non-smoker status of the insured. Applicants also maintain that the Surrender Charge calculated upon an increase in specified amount will be entirely to reimburse Aetna for administrative expenses incurred in processing the increase in the Specified Amount, and will not contain any sales load component.

Applicants state that the administrative charge component of the Surrender Charge is designed to reimburse Aetna for the cost of processing applications, or increases in specified amount, conducting medical examinations, determining insurability and the insured's risk class, and establishing or revising records relating to the Contract. Applicants represent that the Surrender Charge will be deducted only if all or part of cash value of the Contract is withdrawn, or if it lapses after a grace period. Even then no Surrender Charge will be deducted at all for Contracts that stay in force ten years after the issuance of the Contract or increase in specified amount. For each

additional full year that the Contract stays in force subsequent to the fifth anniversary of the issuance or increases, as appropriate, the charge is reduced so that it is eliminated on the tenth anniversary of, as applicable, the issuance or increase in specified amount. The charge imposed on partial surrenders is calculated on a pro rate basis.

Applicants submit that imposition of this administrative charge in the form of a contingent deferred charge, as described above, is much more favorable to the contractowner than would be a charge that is deducted entirely from premiums in the first Contract Year. First, the amount of the contractowner's investment in the Account B is not reduced as it would be if this charge were taken in full in the first Contract year. Second, the total amount charged to an contractowner is not greater than if this charge were taken in full in the first Contract year, and it is less for contractowners who do not lapse or surrender during the first five Contract years. Third, even contractowners who lapse or withdraw during the first five Contract years are benefited because the cost of insurance charges deducted monthly from the amounts credited to them in Account B will be lower than they would have been had this administrative charge for issuance expenses been deducted in full during the first year or upon an increase in specified amount. Fourth, in the event the death benefit is paid under the Contract, no such charge is deducted from the amount payable, thereby increasing the amount otherwise payable. Finally, Applicants argue that under Death Benefit Option 2, the fact that the Surrender Charge has not been deducted will favorably affect the amount of the Death Benefit since cash value will be greater.

Applicants also represent that the administrative charge element of the Surrender Charge does not take into account the time-value of money (which would increase the charge to factor in the investment cost to Aetna of deferring the charge) or the likelihood that not all contractowners will incur the charge (which would increase the charge for those surrendering or lapsing over what they would have paid had all contractowners been required to pay this administrative charge).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12860 Filed 6-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23266; File No. SR-MSRB-85-8 Amdt. 1]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission on March 5, 1985, and amended on May 21, 1986, a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing amendments to rule G-35 relating to arbitration (hereafter referred to as the "proposed rule change") as follows: [1]

Rule G-35. Arbitration

Sections 1 to 4. No change.

Section 5. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Arbitration Code shall be instituted as follows:

(a) No change.

(b) (1) No change.

(2)(i)-(ii) No change.

(iii) A respondent, responding claimant, cross-claimant or third party respondent who fails to file an answer within 20 business days from receipt of service, or unless the time to answer has been extended pursuant to subsection (e) below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

(c) through (f) No change.

Sections 6 to 11. No change.

Section 12. Designation of Number of Arbitrators.

(a) Controversies Involving Persons Other Than Municipal Securities Brokers of Municipal Securities Dealers.

(1) Except as otherwise provided in this Arbitration Code, in all arbitration matters in which a person other than a municipal securities broker or municipal securities dealer is involved and where the matter in controversy does not exceed the amount of [$100,000] *$500,000,* or where the matter in controversy does not involve or disclose a money claim or the amount of damages cannot be readily ascertained at the time of commencement of the proceeding, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three nor more than five arbitrators, at least a majority of whom shall not be associated with a broker, dealer or municipal securities dealer unless such person requests a panel consisting of a majority of arbitrators associated with a broker, dealer or municipal securities dealer.

(2) In all arbitration matters in which a person other than a municipal securities broker or municipal securities dealer is involved, and where the amount in controversy exceeds [$100,000] *$500,000,* the Director of Arbitration shall appoint an arbitration panel which shall consist of five arbitrators, *unless the parties agree in writing to a panel of three arbitrators,* at least three of whom shall not be associated with any broker, dealer or municipal securities dealer unless such person requests a panel consisting of a majority of arbitrators associated with a broker, dealer or municipal securities dealer.

(b) No change.

Sections 13 to 19. No change.

Section 20. Adjournments.

(a) The arbitrators may, in their discretion, adjourn any hearing either upon their own initiative or upon the request of any party to the arbitration.

(b) A party requesting an adjournment after arbitrators have been appointed, if said adjournment is granted, shall pay a fee equal to the deposit of costs but not

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[1] Italics indicate new language; [brackets] indicate deletions.

mroe than $100. The arbitrators may waive this fee or in their award may direct the return of this adjournment fee.

Sections 21 to 35. No change.

* * * * *

B. Not applicable.
C. Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The Uniform Arbitration Code (the "Uniform Code") was developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of the representatives of the Board, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established a uniform system of arbitration procedures throughout the securities industry.

The proposed rule change is intended to conform the provisions of the Board's arbitration code, contained in rule G–35, to recent amendments to the Uniform Code approved by SICA.

a. *Section 5. Initiation of Proceedings.* The current rule does not address instances in which an answer is not submitted within the 20-business-day time limitation required by the rule. The failure to file a timely answer or request an extension of time within which to file an answer with the Director of Arbitration causes delays in arbitration procedures and may operate unfairly against the Claimant.

The proposed rule change would amend section 5(b)(iii) to empower the panel of arbitrators to bar Respondents from presenting any matter, arguments or defenses at the hearing if the answer was not filed within the required time limitation. The proposed rule change would not apply to replies to counterclaims. Such replies are not required and rate filled at the pleasure are not required and are filed at the pleasure of the Claimant.

b. *Section 12. Designation of Number of Arbitrators.* Under the current rule, a panel of five arbitrators is required in cases involving public customers in which the amount in controversy is $100,000 or more. The proposed rule change would amend section 12(a) to give the Director of Arbitration the discretion, when appropriate, to appoint a panel of three or five arbitrators if the amount in controversy is less than $500,000. The ability to choose a panel of three arbitrators would promote economy of efforts and facilitate the scheduling of hearings. This becomes increasingly important in cases which require multiple hearing sessions. The proposed rule change also provides that, if the amount in controversy is $500,000 or more, the parties may agree in writing to a panel of three, rather than five, arbitrators.

Amending this section would make it more consistent with the provision empowering the Director of Arbitration to appoint three of five arbitrators in inter-industry disputes over $100,000. Panels of three have been successfully used in the vast majority of these cases. In addition, it should be noted that the securities industry is the only arbitration forum which appoints larger panels of arbitrators as the amount in controversy increases. The use of smaller panels has been successful in other industry forums.

c. *Section 20. Adjournments.* The proposed rule change would amend section 20 to impose a fee, not to exceed $100, on any party who requests and is granted an adjournment after the arbitrators have been appointed. Its purpose is to discourage frivolous, last-minute requests for postponements of hearing dates in cases in which a panel of arbitrators already has been appointed. Such adjournments frustrate efforts to provide expeditious conclusions to cases.

Under the proposed rule change, the party requesting the adjournment must submit such request in writing and include a check in the amount of the fee. The adversary party would be notified of the request and be given an opportunity to oppose it. The request and any opposition would be submitted to the panel of arbitrators for its consideration. If the request were granted, the panel may, in its discretion, waive the adjournment fee at the time of the request or in its final award.

The proposed rule change is not intended to apply to claims filed under the small claims procedures. It should be noted that it is the standard practice of other arbitration forums to impose adjournment fees.

b. (2) The Board has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) and 15B(b)(2)(D) of the Securities Exchange Act of 1934. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed

> to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

Section 15B(b)(2)(D) states that the Board shall, if it deems appropriate

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change. The proposed rule change was the subject of extensive discussions by SICA which approved the provisions as part of the Uniform Code.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12068 Filed 6-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23285; File No. SR-MSRB-86-9]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Uniform Practice and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1986, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board ("Board") is filing amendments to rules G-12(c)(vi)(C) and G-15(a)(iii)(C) relating to inter-dealer and customer confirmation disclosures (hereafter referred to as the "proposed rule change"), as follows:

Rule G-12. Uniform Practice[1]

(a)-(b) No change.

(c) Dealer Confirmations.

(i)-(v) No change.

(vi) In addition to the information required by paragraph (v) above, each confirmation shall contain the following information, if applicable:

(A)-(B) No change.

(C) if the securities are identified by the issuer or sold by the underwriter as subject to federal taxation, a designation to that effect;

[(C)-(G)] renumbered (*D*)-(*H*) (d)-(1) No change.

* * * * *

Rule G-15. Confirmation, Clearance and Settlement of Transactions with Customers [1]

(a) Customer Confirmations.

(i)-(ii) No change.

(iii) In addition to the information required by paragraphs (i) and (ii) above, each confirmation to a customer shall contain the following information, if applicable:

(A)-(B) No change.

(C) if the securities are identified by the issuer or sold by the underwriter as subject to federal taxation, a designation to that effect;

[(C)-(H)] renumbered (*D*)-(*I*) (b)-(e) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Municipal securities are defined in Section 3(a)(29) of the Securities Exchange Act as:

> Securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5) and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

Section 3(a)(2) of the Securities Exchange Act contains identical language concerning industrial development bonds.

The definition turns on whether the security is an obligation of a state or political subdivision of a state, and not whether income derived from the security is taxable. Board rules, therefore, would apply to transactions in taxable municipal securities.

Recently, there have been several "taxable" issues of municipal securities brought to market. Moreover, under certain proposed revisions to the federal tax code, certain categories of municipal securities may no longer be exempt from federal taxation.

Although under rule G-17, on fair dealing, a dealer should orally advise customers of the taxable status of municipal securities at the time of or prior to execution of a transaction in such securities, the Board's confirmation rules currently have no disclosure requirements regarding transactions in such securities. The Board has determined that such disclosure would be appropriate since the majority of municipal securities likely will continue to be tax-exempt and dealers and customers may find it necessary to preserve a record of transactions in "taxable" municipal securities.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which requires in pertinent part that the Board's rules be designed

> to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will apply equally to all industry participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[1] Italics indicate new language; [brackets] indicate deletions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

May 30, 1986.

[FR Doc. 86-12660 Filed 6-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23263; File No. SR-NASD-86-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. submitted on April 17, 1986 copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Article II, section 1 of the NASD Rules of Fair Practice to change the guidelines for fees that NASD member firms may charge issuers for forwarding proxy and other materials to the issuer's shareholders.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 34-23173) April 24, 1986) and by publication in the Federal Register (51 FR 16124, April 30, 1986). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a).

Shirley E. Hollis,

Acting Secretary.

May 30, 1986.

[FR Doc. 86-12660 Filed 6-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-99; Dockets 42064, 36553, and 41467]

Revocation of the Section 401 or 418 Certificates of Flirite, Inc., Profit Airlines, Inc. and Nelson Island Air Service, Inc. d/b/a Executive Charter; Order to Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 86-99), Dockets 42064, 36553, and 41467.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the section 401 or 418 certificates issued to Flirite, Inc., Profit Airlines, Inc., and Nelson Island Air Service, Inc. d/b/a Executive Charter.

DATES: Persons wishing to file objections should do so no later than June 20, 1986.

ADDRESS: Responses should be filed in Dockets 42064, 36553, and 41467 and addressed to the Office of Documentary Services, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 755-3812.

Dated: May 30, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-12657 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 44016]

United States-Japan Small Package Service Proceeding; Postponement of Prehearing Conference

Notice is hereby given that the Prehearing Conference in this proceeding earlier scheduled to be held on June 12, 1986, has been postponed, and is rescheduled to be held on June 26, 1986 at 9:30 a.m. (local time) in Room 5332, Nassif Bldg., 400 7th Street, SW., Washington, DC, before the undersigned.

Dated at Washington, DC, May 30, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-12658 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 86-4-19 set the currently effective two-month SFFL applicable through March 31, 1986.

In establishing the SFFL for the two-month period beginning June 1, 1986, we have projected nonfuel costs based on the year ended March 31, 1986 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 86-5-102 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.0288
Latin America	1.1915
Pacific	1.2447
Canada	1.2560

For further information contact: Julien P. Schrenk (202) 472-5126.

By the Department of Transportation.

Dated: May 30, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-12858 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Temporary Airman Certificate Issuance

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice concerning issuance of Temporary Airman Certificate.

SUMMARY: On May 5, 1986, the FAA issued a policy letter directed to all FAA regions announcing a change from the 120-day term provided by FAR § 61.17 for Temporary Airman Certificates, FAA Form 8060-4, to 180 days, until October 1, 1986. Until that date, FAA inspectors and examiners will endorse these temporary certificates to provide for an effective period of 180 days. This action is necessary to permit FAA to contend with the backlog of certification files awaiting processing.

FOR FURTHER INFORMATION CONTACT: Carol S. Rayburn, Manager, General Aviation and Commercial Division, APS-800, Telephone: (202) 426-8196 Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Carol S. Rayburn,

Manager, General Aviation and Commercial Division.

[FR Doc. 86-12815 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Walworth County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement in Walworth County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Michael M. Moravec, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705. Telephone (608) 264-5947.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an EIS for transportation improvements to State Trunk Highway (STH) 120 in Walworth County, Wisconsin. The study area is located north of the Illinois-Wisconsin state line, extending approximately four miles from County Trunk Highway BB in the Town of Linn, northerly through the City of Lake Geneva to STH 36. Planning, environmental, and engineering studies are underway to develop transportation improvement alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) The no-build alternative; (2) Reconstruction of the existing roadway; and (3) A bypass to the east of the existing route

The section of STH 120 under study has a high accident rate due to its limited vehicular capacity, poor roadway geometrics, and heavy traffic. For many years, there has been interest in improving safety and relieving congestion in this transportation corridor.

Coordination and scoping activities will begin soon and will involve agencies that are identified as having an interest in or jurisdiction by law regarding the proposed action. Agencies will be notified by mail of the date of the formal scoping meeting. In addition, coordination will continue with local units of government, private interest groups, and local citizens, including public meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified. Comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on May 27, 1986.

Frank M. Mayer,

Division Administrator.

[FR Doc. 86-12827 Filed 6-4-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Exemption From the Vehicle Theft Prevention Standard; Volkswagen of America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: Volkswagen of America, Inc. petitioned the agency for an exemption from the marking requirements of the vehicle theft prevention standard for the Audi 5000S passenger car line, pursuant to the provisions of section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on that line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard. Therefore, the agency grants the petition.

DATE: The exemption granted by this notice will become effective beginning with the 1987 model year.

SUPPLEMENTARY INFORMATION: On December 13, 1985, Volkswagen of America, Inc. (VWoA) petitioned the agency for an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to section 605 of the Motor Vehicle Information and Cost Savings Act. On January 7, 1986 (51 FR 706), NHTSA published an interim final rule establishing requirements to be followed by manufacturers in preparing and submitting petitions for exemption during model year 1987 (49 CFR Part 543). VWoA submitted supplemental information in a letter dated February 4, 1986, to meet the requirements for petitions in Part 543, and requested an exemption for the Audi 5000S passenger car line. The agency reviewed the material submitted by VWoA with its letters and concluded that VWoA had met the requirements for petitions in Part 543.5, as of February 5, the date on which the last VWoA letter was received by the agency. Accordingly, the 120-day period for processing VWoA's petition began on that date since, as provided by section 543.7, the processing of a petition does not begin until the petition is complete.

In its petition, VWoA described an antitheft device that is activated by removing the key from the ignition and locking the driver's door. These two steps render the starter motor non-functional. They also arm an audible alarm which is triggered by sensors in the doors, trunk, engine hood and radio.

The agency has determined that installation of VWoA's device in the Audio 5000S is likely to be as effective as that line's compliance with the parts marking requirements of Part 541 in reducing and deterring vehicle theft. This determination is based on the information submitted by VWoA with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(2), i.e.,

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promote activation, attract attention to unauthorized entries, prevent defeating or circumventing of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device.

As required by section 605(b) of the statute and § 543.6(b), the agency also thinks that VWoA has provided viable reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on VW's discussion of the National Crime Information Center (NCIC) theft data and this agency's Preliminary Regulatory Evaluation analysis of theft date for the Nissan 280 ZX/300 ZX car lines. The standard equipment antitheft device in both the 1984 Nissan 300 ZX and the Audi 5000S care lines have very similar methods of encouraging activation and preventing defeat. The NCIC data shows that the theft rate for the 1984 Nissan 300 ZX cars is approximately 50 percent less than that of the 1983 280 ZX models which lacked the antitheft devices. VW state that its antitheft device contains additional protective features, which VW believes will result in its device reducing and deterring theft to the same degree as the Nissan device.

As an aside, the agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs makes it difficult in this first year of the theft legislation's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

For the reasons stated above, the agency grants VWoA's petition for exemption from the parts marking requirements of Part 541 for the Audi 5000S care line based on substantial evidence that this standard equipment antitheft device is likely to be as effective in reducing and deterring theft of this line as compliance with Part 541 would be. This exemption will become effective beginning with the 1987 model year.

NHTSA notes that if VWoA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(c) provides that an exemption granted under Part 543 applies only to vehicles which are equipped with the antitheft device on which the exemption of the line including those vehicles was based. Further § 543.9(b)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(b)(2) could place on exempted vehicle manufacturers and itself. The agency does not believe that Congress intended, in providing for the exemption process, to require the submission of a modification petition for every change, no matter how insubstantial, in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA reserves the authority to consider as *de minimis* any changes whose effects might be so characterized, and to advise a manufacturer that a modification petition is not required.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on June 2, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-12691 Filed 6-2-86; 5:05 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 20-86]

Treasury Notes, Series K-1991

Washington, May 29, 1986.

The Secretary announced on May 28, 1986, that the interest rate on the notes designated Series K-1991, described in Department Circular—Public Debt Series—No. 20-86 dated May 21, 1986, will be 7-⅛ percent. Interest on the notes will be payable at the rate of 7-⅛ percent per annum.

John A. Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-12663 Filed 6-4-86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private Organizations," expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Transition from Military to Civilian Democratic Rule: The Office of Private Sector Programs, Initiative Grants/Bilateral Accords Division will develop a series of seven-day international workshops on the transition of military-dominated political systems to enduring civilian democratic governments. The first workshop will examine the transition issue with special reference to the analytical factors which contributed to the development of civilian democratic government in South America and the Iberian peninsula. Tentatively scheduled for the fall 1986, the first workshop will take place either in the United States or in South America.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to sucessfully design, develop and conduct the above project. While not restricted by region, USIA would prefer proposals from U.S. non-profit institutions located in the southern part of the U.S., or from institutions which demonstrate their ability to conduct the first workshop in South America through strong logistical support from a Latin American cosponsoring institution.

Emphasis during the preliminary consultative process will be on identifying organizations able to meet the above criteria. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining third-party private-sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must*

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postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Grants/ Bilateral Accords Division), United States Information Agency, 301 4th Street SW., Washington, D.C. 20547.

Dated: May 23, 1986.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 86-12680 Filed 6-4-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a request for an extension and revison of a form and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504 (h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 30, 1986.

By direction of the Administration.

Jack J. Sharkey,

Director, Office of Data Management and Telecommunications.

Extension

1. Department of Veterans Benefits
2. Statement of Person Claiming to having Stood in Relation of Parent
3. VA Form 21-524
4. On occasion
5. Individuals or households
6. 2,000 responses
7. 4,000 hours
8. Not applicable

* * * * *

Revision

1. Department of Veterans Benefits
2. Request for Details of Expenses
3. VA Form 21-8049
4. On occasion
5. Individuals or households
6. 22,800 responses
7. 5,700 hours
8. Not applicable.

[FR Doc. 86-12612 Filed 6-4-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 108
Thursday, June 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 10, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, June 12, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1986-17
Stephen Gillers on behalf of Mark Green
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Mary W. Dove,
Administrative Assistant.

[FR Doc. 86-12750 Filed 6-3-86; 2:59 p.m.]

BILLING CODE 6715-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m., June 9, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 85-24—Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: John Robert Ewers, (202) 523-5725.

John Robert Ewers,
Secretary.

[FR Doc. 86-12729 Filed 6-3-86; 1:48 pm]

BILLING CODE 6730-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 21, 1986.

CHANGE IN THE MEETINGS: Deletion/rescheduling.

A closed meeting scheduled for Wednesday, May 28, 1986, at 2:30 p.m., to consider the following items, has been cancelled.

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Report of investigation.

An open meeting scheduled for Thursday, May 29, 1986, at 3:30 p.m., has been rescheduled for Thursday, June 12, 1986, at 2:30 p.m.

The Commission will hear oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, May 29, 1986, has been rescheduled for Thursday, June 12, 1986, following the 2:30 p.m. open meeting.

Post oral argument discussion.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

Shirley E. Hollis,
Acting Secretary.
June 2, 1986.

[FR Doc. 86-12768 Filed 6-3-86; 4:00 pm]

BILLING CODE 8010-01-M

federal register

Thursday
June 5, 1986

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Housing Development Grant Program; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-86-1603; FR-2236]

Housing Development Grant Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Invitation for applications.

SUMMARY: This Notice invites any unit of general local government, including cities, counties, towns or townships, parishes, villages or other general purpose political subdivisions of a State, and any State, acting on behalf of, and with the concurrence of, units of general local government, to submit applications for grants under HUD's Development Grant Program. The Grant funds awarded under the program will be used to support the construction or substantial rehabilitation of residential rental, cooperative or mutual housing in which at least 20 percent of the units will be occupied by lower income families. Applicants that responded to the June 20, 1984, or February 13, 1985, Invitation for Applications must reapply to be considered for funding. A revised or a new proposal may be submitted which is consistent with the guidance provided in this Invitation for Applications, the revised (May, 1986) Application Packet and the List of Designated Eligible Areas published in this **Federal Register** issue. Neither Fiscal Year 1986 funds, nor recaptured or cancelled funds from previously awarded grants will be set aside to fund projects which were submitted in response to previous Invitations for Applications.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Acting Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 755-6142 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The statutory authority for the Housing Development Grant Program is provided by Section 17 of the U.S. Housing Act of 1937. Section 17 was added to the U.S. Housing Act of 1937 by Section 301 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) which was enacted on November 30, 1983. On June 14, 1984, HUD published interim implementing regulations for the new program (see 49 FR 24634). The interim regulations were effective on August 7, 1984, and continue to apply to this program.

Program Funds

HUD has been authorized to provide $72,175,000 in Housing Development Grant funds during Fiscal Year 1986. Funds recaptured or cancelled from previously awarded projects will be added to this new authorization. An estimate of these funds is not available at this time. HUD estimates that the authorized funds will be adequate to support applications for approximately 4,000 units of rental, cooperative or mutual housing.

Nature of and Limits on Program Assistance

Under the Housing Development Granf Program, HUD provides grants to units of general local government, including cities, counties, towns, townships, parishes, villages, or any other general purpose political subdivision of a State, and to States, acting on behalf of, and with the concurrence of, units of general local government. These grantees, in turn, may use the grant funds to provide either grants, loans, interest reduction payments, rental assistance payments, or other forms of assistance to promote the construction or substantial rehabilitation of residential rental, cooperative or mutual housing. The maximum grant that may be approved for a project is limited to an amount sufficient to produce decent rental housing of modest design that is affordable by families and individuals without other reasonable and affordable housing alternatives in the private market. Grant assistance may not exceed 50 percent of the total costs associated with the rehabilitation or construction of the project, normally excluding the cost of acquisition, debt service and operating deficit reserves, working capital, sponsor profit and risk allowance, and relocation costs in excess of an amount that HUD determines to be reasonable. Under certain limited circumstances, HUD may permit the cost of acquisition to be included in the base amount to which the 50 percent limitation is applied. The program regulations and the application packet to be distributed to prospective applicants provide guidance on the circumstances under which the inclusion of acquisition cost may be permitted.

Eligible Applicants/Grantees

Any unit of general local government, or any State, acting on behalf of, and with the concurrence of, units of general local government is eligible to apply for and receive grant assistance under the Housing Development Grant Program. For purposes of qualifying as an eligible applicant under this program, the term "unit of general local government" means any city, county, town, township, parish, village or other general purpose political subdivision of a State; any Indian tribe as defined in section 102(a)(17) of the Housing and Community Development Act of 1974; and the District of Columbia, Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. Entities that qualify as "States" include each of the several States and the Commonwealth of Puerto Rico. Applications from "State" applicants must be signed by the Governor. Housing Finance Agencies are not eligible to apply.

Previously Submitted Applications

Applications submitted under this program in response to the June 20, 1984, or February 13, 1985, Invitation for Applications will not be considered for funding. A revised or a new proposal may be submitted which is consistent with the guidance provided in this Invitation for Applications, the revised (May, 1986) Application Packet and the List of Designated Eligible Areas published in this **Federal Register** issue. Neither Fiscal Year 1986 funds, nor recaptured or cancelled funds from previously awarded grants will be set aside to fund projects which were submitted in response to previous Invitations for Applications.

Eligible Types of Applications

There are three types of applications eligible for submission under this program:

(1) *Eligible Area Application*—This is an application for a project located in an area determined by HUD, on the basis of statutorily prescribed factors, to be experiencing a severe shortage of decent rental housing opportunities for families and individuals without other reasonable and affordable alternatives in the private market. Notwithstanding the determination of a rental housing shortage based upon statutorily prescribed factors, any city shall also be designated as an eligible area if (a) according to the most recent data compiled by the U.S. Bureau of the Census, such city has a population of not less than 450,000; and (b) the percentage of the total rental units in such city that are vacant and available for rent is less than 10 percent. HUD's

list of designated eligible areas (i.e., units of general local government, including cities, counties, towns or townships, parishes, villages or other general purpose political subdivision of a State) is published elsewhere in today's issue of the Federal Register.

(2) *Special Housing Need Application*—This is an application for a project that is not located in a designated eligible area, but is intended to meet a special housing need that cannot be met through the moderate rehabilitation of housing stock located in the project neighborhood. A special need application must address either a special renter group need (e.g., need for housing to accommodate large families), or a special need resulting from a rapid change or other dislocation in the housing market that has occurred since the taking of the 1980 Census (e.g., need resulting from rapid population growth or dislocation) provided the current rental vacancy rate is less than seven (7) percent.

(3) *Neighborhood Preservation Purpose Application*—This is an application for a project that is not located in a designated eligible area, but is intended to advance a particular neighborhood preservation purpose that cannot be advanced through moderate rehabilitation of housing stock located in the project neighborhood. The proposed project must be located in a neighborhood preservation area in which concentrated housing, physical development, and public service activities are being carried out in a coordinated manner pursuant to a locally developed strategy for neighborhood improvement, conservation, or perservation.

Project Eligibility

To be eligible for assistance under the Housing Development Grant Program, a project must involve new construction or substantial rehabilitation. For purposes of this program, "substantial rehabilitation" is defined as repairs, replacements and improvements, (a) the cost of which exceeds the greater of 15 percent of the property's value after rehabilitation or $6,500 per dwelling unit (adjusted by an appropriate supportable local high cost factor), or (b) which entail the replacement of more than one major building component (e.g., roof structure; ceiling, wall or floor structures; plumbing system; or electrical system). Projects must be designed primarily for nontransient, residential rental use and may not contain special purpose space (e.g., medical facilities) requiring specialized features which increase the cost of construction. Generally, not more than 10 percent of the gross floor area of a project may be utilized for commercial purposes. HUD may approve commercial space of up to 20 percent of the gross floor area if special conditions warrant exceeding the 10 percent limit. (This restriction applies to all functionally related facilities on the project site notwithstanding the fact that the commercial space is separated from the residential units by condominium ownership.) Cooperative and mutual housing projects are eligible under this program, but must be controlled to assure the continued availability and affordability of at least 20 percent of the units to lower income households. For a project with two or more sites, all sites must be located within the same neighborhood and within a three block radius of each other. Further, each site must contain both lower income and market rate units.

The lower income units must be of the same construction type, but need not contain the same amount of floor space or interior amenities as the market rate units. The exterior of the lower income units must be indistinguishable from the exterior of the market rate units. The estimated value of a project after construction or substantial rehabilitation may not exceed the amount of mortgage that could be insured for the project under Section 207 of the National Housing Act based on the sum of the statutory per-unit limits (adjusted by the appropriate supportable local high-cost factor) and an allowance determined by HUD for costs not attributable to dwelling use (including costs for commercial space).

Projects currently assisted (or for which assistance is anticipated) under any other Federal housing assistance program or which were formerly owned by HUD are ineligible for assistance under this program.

Minimum and Maximum Project Size Limitations

Applications may not be submitted in response to this IFA for projects containing fewer than 20 or more than 200 dwelling units.

Applicability of Gautreaux Consent Decree

Applications for projects to be developed within the Chicago, Illinois SMSA must comply with all applicable requirements of the Gautreaux Consent Decree. For further information on such requirements, prospective applicants should contact the HUD Chicago Regional Office (Attention: Ms. Mary Anderson) by calling (312) 353–6616. (This is not a toll-free number.)

Other Program Requirements

The following are additional requirements of the Housing Development Grant Program which are not mentioned elsewhere in this Notice:

(1) *Lower Income Units.* At least 20 percent of the units in any project assisted under the Housing Development Grant Program must be occupied, or available for occupancy, by lower income households (i.e., families or individuals whose incomes do not exceed 80 percent of the area median income, with adjustments, determined by HUD) during the period beginning when the project is initially available for occupancy and ending 20 years from the date on which 50 percent of the project units are first occupied. Owners must reexamine the income of each household occuping a lower income unit at least once a year.

(2) *Lower Income Unit Rents.* Rents (including utilities) charged for the units designated for lower income occupancy may not exceed 30 percent of the adjusted income for a family whose income equals 50 percent of the area median income, as determined by HUD with adjustments for smaller and larger families. HUD will provide the median income data and standard income adjustments to be used by owners in establishing the maximum rents for lower income units.

(3) *Restriction on Conversions.* During the 20 year period starting when the project is initially available for occupancy, owners may not convert units to condominium ownership or any form of cooperative ownership which would be ineligible for assistance under the Housing Development Grant Program.

(4) *Marketing and Tenant Selection.* In renting units, owners may not discriminate against prospective tenants because of their eligibility for, or receipt of, housing assistance under any Federal, State or local housing assistance program, or because they have children (unless the units in a project are designated for occupancy only by the elderly). An owner must have a HUD-approved Affirmative Fair Housing Marketing Plan and must carry out all marketing activities in accordance with HUD's Affirmative Fair Housing Marketing Regulations at 24 CFR Part 200, Subpart M.

(5) *Displacement/Relocation.* A project may not be assisted under the Housing Development Grant Program if its development will cause the involuntary displacement of very low-income households from the project site by households which are not very low-

income. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD's implementing regulations (24 CFR Part 42) apply to any displacement resulting from acquisition by a State agency, as defined in 24 CFR 42.85. Note that revised Uniform Relocation Act regulations took effect on May 1, 1986. See 51 FR 7010, February 27, 1986. In any case where there will be project-related displacement or relocation and the Uniform Act is not applicable, the following requirements apply:

(a) The applicant (grantee) must have a written tenant assistance policy;

(b) No tenant may be required to move permanently unless provided adequate advance written notice and appropriate advisory services;

(c) Lower income tenants required to move permanently must receive adequate advance notice, appropriate advisory services, and financial assistance sufficient to obtain decent, safe, sanitary, and affordable replacement housing;

(d) Lower income tenants required to move temporarily must be provided with: decent, safe and sanitary temporary housing; financial assistance to cover reasonable moving expenses and any increase in monthly housing costs during the temporary relocation period; and an opportunity to occupy a unit in the newly constructed or substantially rehabilitated project at rent levels determined by 24 CFR 813.107(a).

(6) *Construction and Design Standards.* The HUD Multifamily Minimum Property Standards will not apply to projects under the Housing Development Grant Program unless they are HUD-insured. All projects must, however, meet applicable State and local building codes.

(7) *Environmental Standards.* Projects are subject to Section 104(f) of the Housing and Community Development Act of 1974, the National Environmental Policy Act of 1969, and will be subject to HUD's implementing regulations at 24 CFR Part 58. Under this program, the applicant/grantee, not HUD, is responsible for performing an environmental assessment of the proposed project, as necessary, in accordance with the requirements of 24 CFR Part 58. Certifications of compliance must be submitted with the application.

(8) *Labor Standards.* Projects consisting of 12 or more units are subject to the prevailing wage requirements of the Davis-Bacon Act and the provisions of the Contract Work Hours and Safety Standards Act. (Since the minimum project size is 20 units, all HDG projects are subject to these Acts.)

(9) *HAP Consistency.* A proposed project must be consistent with any applicable local Housing Assistance Plan approved by HUD.

(10) *OMB Circulars.* The policies, guidelines and requirements of OMB Circulars A–102 Revised (Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments), A–122 (Cost Principles for Non-profit Organizations), A–87 (Cost Principals Applicable to Grants, Contracts and Other Agreements with State and Local Governments), and 24 CFR Part 44 implementing A–128 (Single Audit Act) apply to this program.

(11) *Intergovernmental Review.* The provisions of Executive Order 12372 and HUD's implementing regulations at 24 CFR Part 52 apply to this program. Applicants are required to submit applications directly to the reviewing body.

(12) *Debarred, Suspended or Ineligible Contractors.* HUD's regulations at 24 CFR Part 24 relating to the use of debarred, suspended or ineligible contractors or subcontractors apply to this program. Grantees will be responsible for assuring that such contractors or subcontractors are not used for projects assisted under this program during any period of debarment, suspension or placement in ineligibility status.

(13) *Flood Insurance.* No site proposed for a project to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program, or less than a year has passed since FEMA notification regarding such hazards, and the applicant (grantee) will assure that flood insurance on the structure is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973.

(14) *Nondiscrimination and Equal Opportunity.* Grantees and owners must comply with the requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (Pub. L. 90–284) and implementing regulations, Executive Order 11063 and implementing regulations at 24 CFR Part 107, and Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and implementing regulations at 24 CFR Part 1. Under Title VI and 24 CFR Part 1, no determination regarding the selection of a site or location of a Federally assisted project may be made with the purpose of or effect of excluding individuals from, or denying them the benefits of, or subjecting them to discrimination on the basis of race, color, or national origin, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or 24 CFR Part 1. Grantees and owners must also comply with prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the prohibitions on discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60; and the requirements of Section 3 of the Housing and Urban Development Act of 1968.

(15) *Minority and Women's Business Enterprise Opportunity.* The grantee and owner must prepare, implement and maintain a minority and women-owned business development plan which shall contain specific and measurable goals and an affirmative strategy to promote awareness and participation by such businesses in the contracting and procurement activities generated by the project.

(16) *Administrative Costs.* Grant funds may not be used for administrative costs incurred by an applicant/grantee in carrying out its responsibilities under the Housing Development Grant Program. Such administrative costs include, but are not limited to, staff and consultant salaries and operating expenses of the applicant/grantee.

(17) *Construction Start Deadline.* Project construction or rehabilitation must commence within 24 months of HUD's notice of application selection.

(18) *Owner-Grantee Agreement.* The owner and grantee must enter into an agreement requiring the owner to comply with certain statutory and regulatory restrictions (e.g., items (1), (2), and (3) above). The grantee will be responsible for assuring that the owner complies with the agreement even if the grantee delegates responsibility for administration of the project to another entity. Any Housing Development Grant assistance provided to the owner will constitute a debt payable in the event of failure to comply with the Agreement. In the event of an uncorrected violation, the owner will be required to pay the grantee an amount equal to the total amount of the grant assistance (plus interest thereon at a rate determined by HUD based on the Federal Government's borrowing rate) less 10 percent for each year in excess of 10

years from the effective date of the agreement. The owner's contingent debt must be secured by a security instrument (e.g., a lien against the property). The owner(s) and lender(s) must agree that the requirements of 24 CFR 850.151 (b), (c), (d) and (e) will be imposed as covenants running with the land or deed restrictions for the Project Term as defined in the Grant Agreement.

Application Submission Requirements

The application submission requirements are described in general terms in § 850.33 of the program regulations. The Application Packet that HUD will make available to prospective applicants will describe in much greater detail the required contents of an application and will contain detailed guidance to assist applicants in preparing acceptable applications.

HUD Review and Selection of Applications

Applications will be reviewed both by HUD Headquarters and by HUD Field Offices. Filed Offices will be responsible for making review comments and recommendations, but all selections will be made by Headquarters. HUD may request clarification of information in the application after the deadline for submission has passed. Where there is no documentation or the documentation provided is clearly insufficient to make appropriate determinations, the application may be rejected.

To be considered eligible for ranking and possible selection, an application must meet all threshold requirements. The threshold requirements are specified in the program regulations at 24 CFR 850.37.

HUD will rate and rank applications on the basis of the following factors (maximum number of points to be awarded for each factor is shown in parentheses).

(1) *Shortage of decent affordable housing (28 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to those projects that are located in areas with lower rental vacancy rates in the jurisdiction as a whole and in all lower income census tracts in the jurisdiction (or where requested in the application and approved by HUD, in the market area).

(2) *Leveraging ratios (20 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to projects with higher project leveraging ratios (i.e., total private and non-Federal public financial resources committed to the project divided by the requested grant amount) and higher private project leveraging ratios (i.e., total private financial resources committed to the project divided by the requested grant amount).

(3) *Neighborhood development and mitigation of displacement (2 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to those projects that have a more favorable effect on neighborhood development and that cause little or no displacement or that provide for effective mitigation of displacement.

(4) *Demonstrated performance and capacity (2 points).* HUD will consider the applicant's record of performance in meeting its assisted housing needs and the applicant's capacity to commence and carry out the project in a timely manner. More favorable consideration will be given to those with the better record of performance in meeting annual and three-year Housing Assistance Plan goals and administering programs of federally assisted housing.

(5) *Efficient use of grant funds (10 points).* HUD will consider the extent to which the housing development grant requested will provide the maximum number of units for the least cost to the Federal government. More favorable consideration will be given to projects wih the better performance in achieving this result, and where the grant is to be repaid to the Grantee under conditions specified in the Application Packet. HUD has developed least cost ratios to account for differences in unit size (number of bedrooms), types of tenants being served, financing alternatives, construction costs, and project type.

(6) *Rent affordability (3 points).* HUD will consider two elements under this factor. More favorable consideration will be given to projects that provide a more effective mechanism for assuring that rents for lower income units meet the rent requirements of § 850.151(e) of the program regulations, and that provide the greater amount of assistance, if any, to assure that rents are affordable for very low-income households.

(7) *Financial feasibility (10 points).* All projects must present adequate documentation of firm financial commitments. However, the strength of these commitments, e.g., the level of documentation and absence of qualifying conditions above and beyond the minimum threshold, will determine the points earned in this subcategory. Another subcategory of determination will be based upon project rents, costs and expenses. Projects will be rated as to (a) feasibility of rents, reasonableness of costs and expenses, and (b) financial feasibility over the Project Term.

(8) *Family housing (15 points).* More favorable consideration will be given to projects that provide the greater number of units for families and for large families with children. Assisted units with an average bedroom size of 3 or more and projects with the highest overall average bedroom size above 2 will receive the maximum points.

(9) *Minority and women's business enterprise (5 points).* Points will be awarded to applications that include a certification that controlling project ownership will be vested in, and exercised by, minority persons and women.

(10) *Promoting nondiscrimination and equal opportunity (5 points).* HUD will take into account the present pattern of assisted housing location and occupancy. Favorable consideration will be given to projects that are located (a) outside areas of minority concentration where the current pattern shows most assisted projects in minority areas, or (b) in areas where there is no other assisted housing, or (c) in areas undergoing revitalization through public or private investment and in which rental opportunities for lower income households are declining.

Priority Projects/Bonus Points

In making selections, HUD will give priority (up to 15 bonus points) to projects located in areas where waiting lists for housing assistance are relatively long and where Section 8 certificate-holders require an excessive length of time to find housing, provided that more than 25 percent of the units will be made available for occupancy by lower-income families.

More specific information on how HUD will rate applications on the selection criteria and apply the selection priority will be provided to prospective applicants in the Application Packet.

Where To Obtain Application Packets

Beginning on June 16, 1986, Application Packets containing all required application forms and exhibits, detailed application instructions, and pertinent program guidance may be obtained from the HUD Field Offices listed in Appendix A of this Notice. Each prospective applicant should obtain and carefully review an application packet before attempting to prepare an application for submission to HUD.

Deadline for Submission of Applications

The deadline for application submission is July 21, 1986, at both

Headquarters and the local HUD field office covering the jurisdiction in which the project is located. Close of business for Headquarters in Washington, DC is 5:15 p.m. EDT. The addresses, locations and commercial telephone numbers of each local field office are included in Appendix A of this publication. Obtain information on the official close of business directly from the respective office.

Announcements and Awards

Grant awards will be announced no later than September 30, 1986. Projects that do not win an award will receive written notification.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the office of the General Counsel, Rules Docket Clerk, at the above address.

The collection of information requirements referenced in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2502-0523.

The Catalog of Federal Domestic Assistance program number for this program is 14.174.

Authority: Sec. 17(d), United States Housing Act of 1937 (42 U.S.C. 1437(o)); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 28, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing.

Appendix A—HUD Field Offices

Region I

Boston Regional Office

John F. Kennedy Federal Building, Room 800, Boston, Massachusetts 02203-0801, (617) 223-4066

Hartford Office

One Hartford Square West, Suite 204, Hartford, Connecticut 06106-2943, (203) 722-3636

Manchester Office

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101-2487, (603) 666-7681

Providence Office

John O. Pastore Federal Building and U.S. Post Office, Kennedy Plaza, Room 330, Providence, Rhode Island 02903, (401) 528-5351

Region II

New York Regional Office

26 Federal Plaza, New York, New York 10278-0068, (212) 264-8053

Buffalo Office

Statler Building, Mezzanine, 107 Delaware Avenue, Buffalo, New York 14202-2068, (716) 846-5755

Caribbean Office

Federico Degetau Federal Building, U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918-2276, (809) 753-4301

Newark Office

Military Park Building, 60 Park Place, Newark, New Jersey 07102-5504, (201) 877-1662

Region III

Philadelphia Regional Office

Liberty Square Building, 105 S 7th St., Philadelphia, Pennsylvania 19106-3392, (215) 597-2560

Baltimore Office

The Equitable Building, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202-1865, (301) 962-2121

Charleston Office

405 Capitol Street, Suite 708, Charleston, West Virginia 25301-1795, (304) 347-7000

Pittsburgh Office

412 Old Post Office Courthouse Building, 7th Ave. and Grant St., Pittsburgh, Pennsylvania 15219-1906, (412) 644-6388

Richmond Office

701 East Franklin Street, Richmond, Virginia 23219-2591, (804) 771-2721

Washington, DC Office

HUD Building, 451 Seventh Street, Room 3186, Washington, DC 20410-5500, (202) 453-4534

Region IV

Atlanta Regional Office

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303-3388, (404) 331-5136

Birmingham Office

Daniel Building, 15 South 20th Street, Birmingham, Alabama 35233-2006, (205) 254-1617

Columbia Office

Strom Thurmond Federal Building, 1835-45 Assembly Street, Columbia, South Carolina 29201-2480, (803) 765-5592

Greensboro Office

415 North Edgeworth Street, Greensboro, North Carolina 27401-2107, (919) 333-5363

Jackson Office

U.S. Federal Building, 100 W. Capitol Street, Suite 1006, Jackson, Mississippi 39269-1096, (601) 965-4702

Jacksonville Office

325 West Adams Street, Jacksonville, Florida 32202, (904) 791-2626

Knoxville Office

One Northshore Building, 1111 Northshore Drive, Knoxville, Tennessee 37919-4060, (615) 558-1384

Louisville Office

601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201-1044, (502) 582-5251

Nashville Office

One Commerce Place, Suite 1600, Nashville, Tennessee 37239-1600, (615) 251-5213

Region V

Chicago Regional Office

300 South Wacker Drive, Chicago, Illinois 60606-6765, (312) 353-5680

Cincinnati Office

Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202, (513) 684-2864

Cleveland Office

One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44114-1670, (216) 522-4065

Columbus Office

200 North High Street, Columbus, Ohio 43215-2499, (614) 469-7345

Detroit Office

McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226-2592, (313) 226-7900

Grand Rapids Office

2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505-3409, (616) 456-2216

Indianapolis Office

151 North Delaware Street, P.O. Box 7047, Indianapolis, Indiana 46204-2526, (317) 269-6303

Milwaukee Office

Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203-2290, (414) 291-1493

Minneapolis-St. Paul Office

220 Second Street, South, Bridge Place Building, Minneapolis, Minnesota 55401-2195, (612) 349-3000

Region VI

Fort Worth Regional Office

1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113-2905, (817) 885-5401

Houston Office

National Bank of Texas Bldg., 2211 Norfolk, Suite 300, Houston, Texas, 77098-4096, (713) 229-3850

Little Rock Office

320 West Capitol, Suite 700, Little Rock, Arkansas 72201, (501) 378-5931

New Orleans Office

1661 Canal Street, P.O. Box 70288, New Orleans, Louisiana 70172-0288, (504) 589-2300

Oklahoma City Office

Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4181

San Antonio Office

Washington Square Building, 800 Dolorosa, P.O. Box 9163, San Antonio, Texas 78285, (512) 229–6781

Region VII

Kansas City Regional Office

Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64104, (816) 374–2661

Des Moines Office

Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50309, (515) 284–4512

Omaha Office

Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102–1622, (402) 221–3703

St. Louis Office

210 North Tucker Boulevard, St. Louis, Missouri 63101–1997, (314) 425–4761

Region VIII

Denver Regional Office

Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513

Region IX

San Francisco Regional Office

Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Honolulu Office

300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850–4991, (808) 546–2136

Los Angeles Office

1615 W. Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122

Phoenix Office

One North First Street, 3rd Fl., Post Office Box 13468, Phoenix, Arizona 85005–3468, (602) 261–4434

Sacramento Office

777 12th Street, Suite 200, P.O. Box 1978, Sacramento, California 95809–1978, (916) 551–1351

Region X

Seattle Regional Office

Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2054, (206) 442–5414

Anchorage Office

701 C Street, Box 64, Module G, Anchorage, Alaska 99513–0001, (907) 271–4170

Portland Office

Cascade Building, 520 Southwest Sixth Avenue, Portland, Oregon 97204–1596, (503) 221–2561

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BILLING CODE 4210–27–M

[Docket No. N–86–1809; FR–2248]

Housing Development Grant Program; List of Designated Eligible Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR 850.13, this Notice lists those entities that the Secretary has determined meet the minimum standards for designated eligible areas under the Housing and Urban Development Grant Program.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Acting Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 755–6142. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 301 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approval November 30, 1983) added a new section 17 to the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437(o)) which, among other things, established the Housing Development Grant Program.

Under the Program, HUD is authorized to make grants to cities, counties and other general purpose political subdivisions of a State, or to a State, acting on behalf of units of general local government, to be used to support the new construction or substantial rehabilitation of primarily residential rental projects. An application must fall within one of three categories to receive consideration for funding. The application must be (1) from an applicant located in a designated eligible area (2) meet a special housing need, or (3) advance a particular neighborhood preservation purpose. This Notice concerns designated eligible areas, which section 17(d)(2) of the 1937 Act defines as areas determined by HUD to be experiencing a severe shortage of decent rental housing opportunities for families and individuals without other reasonable and affordable housing alternatives in the private market.

Section 17(d)(2) of the 1937 Act requires HUD to establish minimum standards for determining designated eligible areas, taking into account certain statutory conditions and other objectively measurable conditions specified by the Secretary. These conditions are set out in 24 CFR 850.13(b) which also provides that from time to time HUD will publish a Notice in the **Federal Register** listing those areas that have been so determined. This Notice is published in accordance with this requirement.

Areas which are not designated eligible areas may still be considered for Housing Development Grants for projects that meet special housing needs or advance neighborhood preservation purposes (see the HDG Application Packet, Revised, May, 1986 for instructions on how to apply under these circumstances. Cities, counties, towns, townships, parishes, villages, cities and other general purpose subdivisions of a State may submit applications under the special needs or neighborhood preservation criteria on their own behalf. States may also submit such applications on behalf of, and with the concurrence, of units of general local government (see 24 CFR 850.15)).

The following is a list of those areas that have been determined by HUD, based upon current U.S. Census estimates, to be designated eligible areas. Because of Census updates, many of the areas that were designated eligible in the June 20, 1984, Notice will not be eligible in this Notice. However, such areas, with the exception of Urban Counties, may submit an application under the special housing needs or neighborhood preservation procedures. Urban Counties are no longer eligible to apply in accordance with the current statute. Counties, on the other hand, are eligible. Many counties appear in this Notice as designated eligible areas. With the exception of eligible counties, all eligible areas may be found by identifying first the state, second the county in which the desired area is located and finally the community (city, town, village, etc). Eligible counties, by State, are found on a separate listing at the end of the list for all other areas.

List of Designated Eligible Areas Other Than Eligible Counties

State of Alabama

Autauga County

Autaugaville
Billingsley

Baldwin County

Bay Minette
Daphne
Foley
Loxley
Summerdale

Barbour County

Blue Springs
Clayton
Clio
Eufaula
Louisville

Bibb County

Brent
Centreville
West Blocton

Blount County

All Good
Blountsville
Cleveland
County Line
Hayden
Nectar
Rosa
Snead
Susan Moore

Bullock County

Midway — Union Springs

Butler County

Georgiana — McKenzie
Greenville

Calhoun County

Anniston — Hobson City
Blue Mountain — Oxanchee

Chambers County

Five Points — Lanett
Lafayette — Waverly

Cherokee County

Centre — Gaylesville

Chilton County

Clanton — Thorsby
Maplesville

Choctaw County

Gilbertown — Pennington
Lisman — Silas
Needham — Toxey

Clarke County

Coffeeville — Grove Hill
Fulton — Thomasville

Clay County

Lineville

Cleburne County

Edwardsville — Fruithurst

Coffee County

Kinston — New Brockton

Colbert County

Leighton — Sheffield

Conecuh County

Castleberry — Repton
Evergreen

Coosa County

Goodwater — Rockford

Covington County

Andalusia — Lockhart
Carolina — Red Level
County Line — River Falls
Florala — Sanford
Gantt

Crenshaw County

Brantley — Luverne
Dozier — Rutledge

Cullman County

Colony — South Vinemont
Garden City — West Point
Hanceville

Dale County

Ariton — Ozark
Daleville — Pinckard
Grimes

Dallas County

Orrville — Selma

De Kalb County

Collinsville — Powells Crossroads
Hammondville — Shiloh
Lakeview — Sylvania
Mentone — Valley Head
Pine Ridge

Elmore County

Coosada — Millbrook
Eclectic — Wetumpka

Escambia County

Atmore — Pollard
Flomaton

Etowah County

Altoona — Ridgeville
Gadsden — Sardis City
Mountainboro — Walnut Grove
Reece City

Fayette County

Belk — Glen Allen
Berry

Franklin County

Hodges — Russellville
Phil Campbell — Vina
Red Bay

Geneva County

Black — Malvern
Coffee Springs — Samson
Hartford — Slocomb

Greene County

Boligee — Union
Forkland

Hale County

Akron — Moundville
Greensboro — Newbern

Henry County

Abbeville — Headland
Haleburg — Newville

Houston County

Ashford — Madrid
Cottonwood — Taylor
Gordon — Webb
Kinsey

Jackson County

Bridgeport — Paint Rock
Dutton — Section
Hollywood — Stevenson
Langston — Woodville

Jefferson County

Adamsville — Lipscomb
Bessemer — Maytown
Birmingham — Mulga
Brighton — North Johns
Cardiff — Roosevelt City
Fairfield — Trafford
Graysville — Warrior

Lamar County

Detroit

Lauderdale County

Anderson — Waterloo
Lexington

Lawrence County

Courtland — North Courtland
Hillsboro — Town Creek

Lee County

Auburn — Opelika
Loachapoka

Limestone County

Ardmore — Lester
Elkmont — Mooresville

Lowndes County

Benton — Lowndesboro
Fort Deposit — Mosses
Hayneville — Whitehall

Macon County

Franklin — Tuskegee
Notasulga

Madison County

Gurley — Owens Cross Roads
New Hope — Triana

Marengo County

Dayton — Myrtlewood
Demopolis — Providence
Faunsdale — Sweetwater
Linden — Thomaston

Marion County

Guin

Marshall County

Douglas — Union Grove

Mobile County

Bayou La Batre — Prichard
Citronelle — Satsuma

Monroe County

Beatrice — Monroeville
Frisco City — Vredenburgh

Montgomery County

Montgomery

Morgan County

Somerville — Trinity

Perry County

Marion — Uniontown

Pickens County

Aliceville — McMullen
Carrollton — Memphis
Ethelsville — Reform

Pike County

Banks — Goshen
Brundidge — Troy

Randolph County

Roanoke — Wedowee
Wadley

Russell County

Hurtsboro — Phenix City

St. Clair County

Ashville — Ragland
Margaret — Springville
Odenville — Whites Chapel
Pell City

Shelby County

Calera — Vincent
Columbiana — Wilsonville
Helena — Wilton

Sumter County

Emelle — Gainesville
Epes — Geiger

Talladega County

Childersburg — Talladega
Lincoln — Talladega Springs
Oak Grove — Waldo
Sylacauga

Tallapoosa County

Alexander City
Camp Hill
Dadeville
Daviston
Goldville
Jackson's Gap
New Site

Walker County

Carbon Hill
Cordova
Dora
Eldridge
Kansas
Nauvoo
Oakman
Parrish
Sipsey

Washington County

Chatom
Millry

Wilcox County

Camden
Oak Hill
Pine Apple
Pine Hill

Winston County

Addison
Arley

State of Alaska

Aleutian Islands Census

Akutan
King Cove
St. Paul
Unalaska
Anchorage Borough

Bethel Census Area

Akiachak
Akiak
Nunapitchuk
Aniak
Atmautluak
Bethel
Chefornak
Chuathbaluk
Eek
Goodnews Bay
Kasigluk
Kwethluk
Lower Kalskag
Napakiak
Napaskiak
Newtok
Nightmute
Quinhagak
Tuntutuliak
Tuluksak
Tununak
Upper Kalskag

Dillingham Census Area

Clark's Point
Dillingham
Ekwok
Manokotak
Newhalen
New Stuyahok
Port Heiden
Togiak

Kenai Peninsula Borough

Kachemak
Seldovia

Ketchikan Gateway Borough

Saxman

Kobuk Census Area

Ambler
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noorvik
Selawik
Shungnak

Kodiak Island Borough

Akhiok
Old Harbor
Ouzinkie
Port Lions

Matanuska-Susitna Borough

Houston

Nome Census Area

Brevig Mission
Diomede
Elim
Gambell
Golovin
Koyuk
St. Michael
Savoonga
Shaktoolik
Shishmaref
Stebbins
Teller
Unalakleet
Wales
White Mountain

North Slope Borough

Anaktuvuk Pass
Nuiqsut
Point Hope

Prince of Wales-Outer Ke

Craig
Hydaburg
Kasaan

Sitka Borough

Skagway-Yakutat-Angoon Census

Angoon
Hoonah
Tenakee Springs

Southeast Fairbanks Census

Eagle

Wade Hampton Census Area

Alakanuk
Emmonak
Fortuna Ledge
Hooper Bay
Kotlik
Mountain Village
Pilot Station
Russian Mission
Scammon Bay
Sheldon Point

Wrangell-Petersburg Census

Port Alexander

Yukon-Koyukuk Census Area

Allakaket
Anvik
Fort Yukon
Galena
Holy Cross
Huslia
Koliug
Koyukuk
Nenana
Nikolai
Nulato
Ruby
Shageluk
Tanana

State of Arizona

Apache County
St. Johns
Springerville

Cochise County

Bisbee
Douglas
Tombstone
Wilcox

Coconino County

Williams

Gila County

Miami
Payson
Winkelman

Graham County

Pima
Safford
Thatcher

Greenlee County

Duncan

La Paz County

Parker

Maricopa County

Avondale
Buckeye
Chandler
El Mirage
Gilbert
Goodyear
Guadalupe
Surprise
Tolleson

Mohave County

Kingman

Navajo County

Holbrook
Taylor Town
Winslow

Pima County

Marana
South Tucson

Pinal County

Casa Grande
Coolidge
Eloy
Florence
Kearny
Mammoth
Superior

Santa Cruz County

Nogales
Patagonia

Yavapai County

Chino Valley
Clarkdale
Cottonwood
Jerome

Yuma County

San Luis
Somerton
Wellton

State of Arkansas

Arkansas county

Almyra
De Witt
Gillett
Humphrey
St. Charles
Stuttgart

Ashley County

Fountain Hill
Hamburg
Montrose
Parkdale
Portland
Wilmot

Baxter County

Big Flat
Cotter
Gassville

Benton County

Avoca
Bethel Heights
Decatur
Gravette
Sulphur Springs

Boone County

Bergman
Everton
Omaha
South Lead Hill
Zinc

Bradley County

Hermitage
Warren

Calhoun County

Hampton
Harrell
Thornton

Carroll County

Beaver
Blue Eye
Eureka Springs
Oak Grove

Chicot County

Dermott
Eudora
Lake Village

Clark County

Gum Springs
Okolona

Clay County

Corning
Datto
Greenway
Knobel
Peach Orchard
Piggott
Pollard
Rector
Success

Cleburne County

Quitman

Cleveland County

Kingsland
Rison

Columbia County

Emerson
McNeil
Magnolia
Taylor
Waldo

Conway County

Menifee — Plumerville
Oppelo

Craighead County

Black Oak — Cash
Bono — Lake City
Brookland — Monette
Caraway

Crawford County

Alma — Mulberry
Chester — Rudy
Dyer — Van Buren
Mountainburg

Crittenden County

Crawfordsville — Sunset
Earle — Turrell
Edmondson — West Memphis
Gilmore

Cross County

Cherry Valley — Parkin
Hickory Ridge — Wynne

Dallas County

Sparkman

Desha County

Arkansas City — Mitchellville
Dumas — Reed
McGehee — Watson

Drew County

Monticello — Winchester
Wilmar

Faulkner County

Enola — Mount Vernon
Greenbrier — Vilonia
Guy

Franklin County

Altus — Denning
Branch

Fulton County

Mammoth Spring — Viola

Garland County

Hot Springs — Mountain Pine
Lonsdale

Grant County

Leola — Prattsville
Poyen

Greene County

Lafe — Oak Grove Heights
Marmaduke — Paragould

Hempstead County

Blevins — Patmos
Fulton — Washington
Ozan

Hot Spring County

Malvern — Rockport
Perla

Independence County

Cushman — Oil Trough
Newark — Sulphur Rock

Izard County

Calico Rock — Mount Pleasant
Guion — Oxford
Melbourne — Pineville

Jackson County

Amagon — Jacksonport
Beedeville — Newport
Campbells Station — Swifton
Diaz — Tuckerman
Grubbs — Tupelo

Jefferson County

Altheimer — Sherrill
Pine Bluff — Webbseeka

Johnson County

Clarksville — Lamar
Coal Hill

Lafayette County

Bradley — Lewisville
Buckner — Stamps

Lawrence County

Alicia — Powhatan
Black Rock — Ravenden
Hoxie — Sedgwick
Imboden — Smithville
Minturn — Strawberry
Portia — Walnut Ridge

Lee County

Aubrey — Moro
Haynes — Rondo
Marianna

Lincoln County

Gould — Star City

Little River County

Foreman — Wilton
Ogden — Winthrop

Logan County

Blue Mountain — Ratcliff
Booneville — Scranton
Magazine — Subiaco
Morrison Bluff

Lonoke County

Allport — England
Auston — Humnoke
Carlisle — Keo
Coy — Ward

Madison County

St. Paul

Marion County

Flippin — Summit
Pyatt

Miller County

Fouke — Texarkana
Garland

Mississippi County

Burdette — Manila
Dell — Marie
Dyess — Osceola
Joiner — Victoria
Leachville — Wilson
Luxora

Monroe County

Brinkley — Holly Grove
Clarendon — Roe

Montgomery County

Black Springs — Norman
Mount Ida — Odas

Nevada County

Bluff — Prescott
Bodcaw — Rosston
Emmet — Willisville

Newton County

Jasper — Western Grove

Ouachita County

Bearden — Louann
Camden — Reader
Chidester — Stephens

Perry County

Adona — Houston
Bigelow — Perry
Casa

Phillips County

Elaine — Marvell
Helena — West Helena
Lake View

Pike County

Antoine — Delight
Daisy — Murfreesboro

Poinsett County

Harrisburg — Marked Tree
Lepanto — Tyronza

Polk County

Cove — Mena
Grannis — Vandervoort
Hatfield — Wickes

Pope County

Hector — Pottsville

Prairie County

De Valls Bluff — Hazen
Biscoe Town — Ulm

Pulaski County

Wrightsville City

Randolph County

Biggers — Ravenden Springs
Maynard — Reyno
O'Kean

St. Francis County

Caldwell — Madison
Colt — Palestine
Forrest City — Widener
Hughes

Saline County

Bauxite — Traskwood
Haskell

Scott County

Waldron

Searcy County

Gilbert — Marshall
Leslie

Sebastian County

Bonanza — Lavaca
Hackett — Mansfield
Hartford — Midland
Huntington

Sevier County

Gillham — Lockesburg
Horatio

Sharp County

Ash Flat — Hardy
Cave City — Williford
Evening Shade

Stone County

Fifty Six — Mountainview

Union County

Calion
El Dorado
Huttig
Junction City
Norphlet
Smackover
Strong

Van Buren County

Clinton
Damascus
Shirley

Washington County

Elkins
Elm Springs
Farmington
Lincoln
Tontitown
Winslow

White County

Bald Knob
Beebe
Bradford
Garner
Griffithville
Higginson
Kensett
Latona
McRae
Pangburn
Russell
West Point

Woodruff County

Augusta
Cotton Plant
Hunter
McCrory
Patterson

Yell County

Belleville
Havana
Ola
Plainview

State of California

Alameda County

Berkeley
Newark
Oakland

Amador County

Plymouth

Butte County

Biggs
Oroville

Colusa County

Colusa
Williams

Contra Costa County

Brentwood
Pittsburg
Richmond
San Pablo

Fresno County

Firebaugh
Fowler
Huron
Kingsburg
Mendota
Orange Cove
Parlier
Reedley
Sanger
San Joaquin
Selma

Glenn County

Orland

Humboldt County

Blue Lake
Rio Dell

Imperial County

Brawley
Calexico
Calipatria
El Centro
Westmorland

Kern County

Arvin
Delano
McFarland
Maricopa
Tehachapi
Wasco

Kings County

Avenal
Corcoran
Hanford

Lake County

Clearlake

Los Angeles County

Artesia
Azusa
Baldwin Park
Bell
Bell Gardens
Carson
Commerce
Compton
Cudahy
El Monte
Gardena
Hawaiian Gardens
Huntington Park
Industry
Inglewood
Irwindale
Lawndale
Los Angeles
Lynwood
Maywood
Montebello
Monterey Park
Norwalk
Paramount
Pasadena
Pico Rivera
Pomona
Rosemead
San Fernando
San Gabriel
Santa Fe Springs
South El Monte
South Gate

Madera County

Chowchilla
Madera

Marin County

Ross

Mendocino County

Fort Bragg
Point Arena
Willits

Merced County

Dos Palos
Livingston
Los Banos
Merced

Monterey County

Gonzales
Greenfield
King City
Marina
Sand City
Seaside
Soledad

Nevada County

Nevada City

Orange County

Buena Park
Garden Grove
Placentia
Stanton

Riverside County

Blythe
Coachella
Indio
Lake Elsinore
Perris
San Jacinto

San Benito County

Hollister
San Juan Bautista

San Bernardino County

Barstow
Big Bear Lake
Colton
Montclair
San Bernardino

San Diego County

Imperial Beach
National City
San Diego

San Francisco County

San Francisco

San Joaquin County

Ripon
Stockton
Tracy

San Luis Obispo County

Grover City

San Mateo County

Daly City
Redwood City
South San Francisco

Santa Barbara County

Guadalupe

Santa Clara County

Gilroy
Milpitas
San Jose

Santa Cruz County

Santa Cruz
Scotts Valley

Siskiyou County

Dorris
Etna
Fort Jones
Montague

Stanislaus County

Newman
Patterson
Riverbank
Waterford

Sutter County

Live Oak

Tulare County

Dinuba
Exeter
Farmersville
Lindsay
Porterville
Tulare
Woodlake

Ventura County

Fillmore
Oxnard
Santa Paula

Yolo County

Winters

State of Colorado

Adams County

Brighton

Alamosa County

Alamosa
Hooper

Archuleta County

Pagosa Springs

Baca County

Campo
Pritchett
Two Buttes
Vilas
Walsh

Bent County

Las Animas

Boulder County

Lyons
Superior
Ward

Chaffee County

Buena Vista

Conejos County

Antonito
La Jara
Sanford

Costilla County

Blanca
San Luis

Crowley County

Crowley
Olney Springs
Ordway
Sugar City

Custer County

Silver Cliff
Westcliffe

Delta County

Delta
Hotchkiss
Orchard City

Denver County

Denver

Dolores County

Dove Creek — Rico

Douglas County

Larkspur — Parker

Elbert County

Elizabeth

El Paso County

Ramah

Fremont County

Brookside — Rockvale
Coal Creek — Williamsburg
Prospect Heights

Garfield County

Parachute

Gunnison County

Crested Butte

Huerfano County

La Veta — Walsenburg

Kiowa County

Haswell

Kit Carson County

Flagler — Seibert

La Plata County

Bayfield — Ignacio

Las Animas County

Aguilar — Starkville
Kim — Trinidad

Logan County

Iliff

Moffat County

Dinosaur

Montezuma County

Dolores — Mancos

Montrose County

Naturita — Olathe

Morgan County

Brush — Log Lane Village

Otero County

Cheraw — Manzanola
Fowler — Rocky Ford
La Junta

Phillips County

Haxtun — Paoli
Holyoke County

Prowers County

Granada — Lamar
Hartman County

Pueblo County

Boone

Rio Grande County

Del Norte — Monte Vista

Routt County

Yampa

Saguache County

Center — Saguache

San Miguel County

Sawpit — Telluride

Sedgwick County

Sedgwick

Teller County

Cripple Creek — Victor

Washington County

Otis

Weld County

Ault — Hudson
Fort Lupton — Keenesburg
Frederick — La Salle
Garden City — Lochbuie
Grover — Milliken

Yuma County

Eckley — Yuma

State of Connecticut

Fairfield County

Bridgeport

Hartford County

Hartford — Hartland Town

Litchfield County

North Canaan Town — Salisbury Town

Middlesex County

Deep River Town

New Haven County

New Haven — Woodbridge Town

New London County

Jewett City — Norwich
New London

Tolland County

Union Town — Vernon Town

Windham County

Danielson

State of Delaware

Kent County

Clayton — Magnolia
Frederica — Smyrna
Harrington — Woodside
Little Creek

New Castle County

Arden — New Castle
Ardencroft — Odessa
Delaware City — Townsend
Middletown — Wilmington

Sussex County

Bladee — Greenwood
Bridgeville — Laurel
Ellendale — Milford
Frankford — Milton

District of Columbia

Washington

District of Columbia

State of Florida

Alachua County

Alachua — La Crosse
Archer — Micanopy
Hawthorne — Newberry
High Springs — Waldo

Baker County

Glen St. Mary — MacClenny

Bay County

Springfield

Bradford County

Brooker — Lawtey
Hampton — Starke

Brevard County

Palm Shores

Broward County

Dania — North Lauderdale

Calhoun County

Altha — Blountstown

Citrus County

Crystal River

Collier County

Everglades

Columbia County

Fort White — Lake City

Dade County

Florida City — Miami Beach
Hialeah — Opalocka
Homestead — South Miami
Indian Creek — Sweetwater
Medley — West Miami
Miami

De Soto County

Arcadia

Dixie County

Cross City — Horseshoe Beach

Duval County

Baldwin

Escambia County

South Flomaton — Pensacola

Flagler County

Bunnell

Franklin County

Apalachicola — Carrabelle

Gadsden County

Chattahoochee — Havana
Greensboro — Quincy
Gretna

Gilchrist County

Fanning Spring — Trenton

Gulf County

Port St. Joe — Wewahitchka
Ward Ridge

Hamilton County

Jasper — White Springs
Jennings

Hardee County

Bowling Green
Wauchula
Zolfo Springs

Hendry County

Clewiston
Labelle

Hernando County

Brooksville

Highlands County

Avon Park
Lake Placid

Hillsborough County

Plant City
Tampa

Holmes County

Bonifay
Esto
Noma
Ponce De Leon
Westville

Indian River County

Fellsmere

Jackson County

Alford
Bascom
Campbellton
Cottondale
Graceville
Grand Ridge
Greenwood
Malone
Marianna
Sneads

Jefferson County

Monticello

Lafayette County

Mayo

Lake County

Astatula
Groveland
Lady Lake
Leesburg
Mascotte
Montverde
Mount Dora
Umatilla

Levy County

Bronson
Cedar Key
Chiefland
Inglis
Otter Creek
Williston

Madison County

Greenville
Madison

Manatee County

Palmetto

Marion County

Dunnellon
Ocala
Reddick

Martin County

Ocean Breeze Park

Nassau County

Callahan

Okaloosa County

Cinco Bayou
Laurel Hill

Okeechobee County

Okeechobee

Orange County

Apopka
Bay Lake
Eatonville
Okoland
Winter Garden

Palm Beach County

Belle Glade
Mangonia Park
Pahokee
Riviera Beach
South Bay
West Palm Beach

Pasco County

Dade City
St. Leo

Polk County

Bartow
Davenport
Dundee
Eagle Lake
Fort Meade
Frostproof
Haines City
Lake Wales
Mulberry
Polk City

Putnam County

Crescent City
Interlachen
Palatka
Pomona Park
Welaka

St. John County

Hastings
St. Augustine

St. Lucie County

Fort Pierce

Seminole County

Sanford

Sumter County

Bushnell
Center Hill
Coleman
Webster
Wildwood

Suwannee County

Branford
Live Oak

Taylor County

Perry

Union County

Lake Butler
Raiford
Worthington Springs

Volusia County

De Land
Oak Hill
Pierson

Wakulla County

St. Marks
Sopchoppy

Walton County

De Funiak Springs
Freeport
Paxton

Washington County

Chipley
Vernon
Wausau

State of Georgia

Appling County

Baxley
Surrency

Atkinson County

Pearson
Willacoochee

Bacon County

Alma

Baker County

Newton

Baldwin County

Milledgeville

Barrow County

Auburn
Carl
Winder

Bartow County

Emerson
Kingston
Taylorsville
White

Ben Hill County

Fitzgerald

Berrien County

Alapaha
Enigma
Nashville
Ray City

Bibb County

Macon
Payne

Bleckley County

Cochran

Brantley County

Hoboken
Nahunta

Brooks County

Morven
Quitman

Bryan County

Pembroke

Bulloch County

Brooklet
Portal
Register
Statesboro

Burke County

Girard
Midville
Sardis
Waynesboro

Butts County

Flovilla
Jackson
Jenkinsburg

Calhoun County

Arlington
Edison
Leary
Morgan

Camden County

Kingsland

Candler County

Metter
Pulaski

Carroll County

Villa Rica
Whitesburg

Charlton County

Folkston
Homeland

Chatham County

Savannah

Chattahoochee County

Cusseta

Chattooga County

Lyerly
Menlo

Cherokee County

Ball Ground
Canton
Holly Springs
Waleska

Clarke County

Athens
Winterville

Clay County

Fort Gaines

Clinch County

Du Pont
Homerville

Cobb County

Powder Springs

Coffee County

Ambrose
Broxton
Douglas
Nicholls

Colquitt County

Berlin — Moultrie
Doerun — Norman Park
Ellenton

Columbia County

Grovetown — Harlem

Cook County

Adel — Lenox
Cecil — Sparks

Coweta County

Grantville — Senoia
Newnan — Turin

Crawford County

Roberta

Crisp County

Arabi — Cordele

Dawson County

Dawsonville

Decatur County

Attapulgus — Brinson
Bainbridge — Climax

De Kalb County

Lithonia — Pine Lake

Dodge County

Chauncey — Milan
Chester — Rhine
Eastman

Dooly County

Byromville — Unadilla
Lilly — Vienna
Pinehurst

Dougherty County

Albany

Early County

Blakely — Jakin
Damascus

Effingham County

Guyton

Elbert County

Bowman — Elberton

Emanuel County

Nunez — Summertown
Oak Park — Swainsboro
Stillmore — Twin City

Evans County

Claxton — Hagan
Daisy

Fannin County

Blue Ridge — Mineral Bluff
McCaysville

Fayette County

Brooks — Fayetteville

Floyd County

Rome

Forsyth County

Cumming

Franklin County

Lavonia — Royston

Gilmer County

East Ellijay — Ellijay

Glascock County

Edge Hill — Mitchell
Gibson

Glynn County

Brunswick

Gordon County

Calhoun — Plainville
Fairmount — Resaca

Grady County

Cairo — Whigham

Greene County

Greensboro — White Plains
Siloam — Woodville
Union Point

Gwinnett County

Dacula — East Haven
Lawrenceville

Habersham County

Baldwin

Hall County

Clermont — Lula
Flowery Branch

Hancock County

Sparta

Haralson County

Buchanan

Harris County

Hamilton — Shiloh
Pine Mountain — Waverly Hall

Hart County

Bowersville — Hartwell

Heard County

Franklin

Henry County

Hampton — McDonough
Locust Grove — Stockbridge

Houston County

Perry

Irwin County

Ocilla

Jackson County

Arcade — Jefferson
Braselton

Jasper County

Monticello — Shady Dale

Jeff Davis County

Denton — Hazlehurst

Jefferson County

Avera — Stapleton
Bartow — Wadley
Louisville — Wrens

Jenkins County

Millen

Johnson County

Adrian — Wrightsville
Kite

Jones County

Gray

Lamar County

Aldora — Milner
Barnesville

Lanier County

Lakeland

Laurens County

Cadwell — Dudley
Dexter — East Dublin
Dublin — Montrose

Lee County

Leesburg — Smithville

Liberty County

Gumbranch City — Riceboro
Midway — Walthourville

Lincoln County

Lincolnton

Lowndes County

Hahira — Remerton
Lake Park — Valdosta

McDuffie County

Dearing — Thomson

McIntosh County

Darien

Macon County

Ideal — Montezuma
Marshallville — Oglethorpe

Madison County

Colbert — Danielsville
Comer — Ila

Marion County

Buena Vista

Meriwether County

Gay — Manchester
Greenville — Warm Springs
Lone Oak — Woodbury
Luthersville

Miller County

Colquitt

Mitchell County

Baconton — Pelham
Camilla — Sale City

Monroe County

Forsyth

Montgomery County

Alley — Tarrytown
Higgston — Uvalda
Mount Vernon

Morgan County

Bostwick — Madison
Buckhead — Rutledge

Murray County

Eton

Muscogee County

Bibb City

Newton County

Covington
Mansfield
Newborn
Porterdale

Oconee County

Bishop
North High Shoals

Oglethorpe County

Crawford
Lexington
Maxeys

Paulding County

Dallas
Hiram

Peach County

Byron
Fort Valley

Pickens County

Talking Rock

Pierce County

Blackshear
Patterson

Pike County

Concord
Meansville
Molena
Williamson

Polk County

Aragon
Cedartown
Rockmart

Pulaski County

Hawkinsville

Putnam County

Eatonton

Quitman County

Georgetown

Rabun County

Tiger

Randolph County

Coleman
Cuthbert
Shellman

Richmond County

Augusta

Schley County

Ellaville

Screven County

Hilltonia
Newington
Oliver
Rocky Ford
Sylvania

Seminole County

Donalsonville
Iron City

Spalding County

Griffin
Orchard Hill
Sunny Side

Stephens County

Martin

Stewart County

Lumpkin
Omaha
Richland

Sumter County

Americus
Andersonville
De Soto
Plains

Talbot County

Geneva
Junction City
Talbotton
Woodland

Taliaferro County

Crawfordville
Sharon

Tattnall County

Cobbtown
Collins
Glennville
Manassas

Taylor County

Butler
Reynolds

Telfair County

Helena
Jacksonville
Lumber City
Scotland

Terrell County

Bronwood
Dawson
Parrott
Sasser

Thomas County

Barwick
Boston
Coolidge
Meigs
Ochlocknee
Pavo
Thomasville

Tift County

Omega
Tifton
Ty Ty

Toombs County

Lyons
Vidalia

Towns County

Young Harris

Treutlen County

Soperton

Troup County

Hogansville
La Grange
West Point

Turner County

Ashburn
Rebecca
Sycamore

Twiggs County

Danville
Jeffersonville

Union County

Blairsville

Upson County

The Rock
Thomaston
Yatesville

Walker County

La Fayette
Linwood

Walton County

Between
Jersey
Loganville
Monroe
Social Circle
Walnut Grove

Ware County

Waycross

Warren County

Norwood
Warrenton

Washington County

Davisboro
Harrison
Oconee
Riddleville
Sandersville
Tennille

Wayne County

Jesup
Odum
Screven

Webster County

Weston

Wheeler County

Alamo
Glenwood

White County

Cleveland
Helen

Whitfield County

Cohutta
Tunnel Hill
Varnell

Wilcox County

Abbeville
Pineview
Pitts
Rochelle

Wilkes County

Rayle
Tignall
Washington

Wilkinson County

Allentown
Gordon
Irwinton
McIntyre
Toomsboro

Worth County

Poulan
Sumner
Sylvester
Warwick

State of Hawaii

Hawaii County

Honolulu County

Kauai County

Maui County

State of Idaho

Adams County

Council

Bannock County

Arimo
Lava Hot Springs
McCammon

Bear Lake County

Montpelier

Benewah County

Plummer

Bingham County

Blackfoot

Boise County

Idaho City

Bonner County

Clark Fork
Kootenai
Sandpoint

Bonneville County

Ucon

Boundary County

Moyie Springs

Butte County

Butte City

Canyon County

Melba
Middleton
Nampa
Notus
Parma
Wilder

Caribou County

Grace

Cassia County

Declo — Oakley
Malta

Clark County

Dubois

Clearwater County

Elk River

Custer County

Challis — MacKay
Clayton

Elmore County

Glenns Ferry

Franklin County

Clifton — Preston
Franklin — Weston
Oxford

Fremont County

Ashton — St. Anthony
Newdale — Teton

Gem County

Emmett

Gooding County

Gooding — Hagerman

Idaho County

Cottonwood — Stites
Kooskia — White Bird

Jefferson County

Lewisville — Rigby
Menan — Ririe
Mud Lake — Roberts

Jerome County

Eden — Hazelton

Kootenai County

Athol — Huetter
Dalton Gardens — Rathdrum
Hayden Lake — Spirit Lake

Latah County

Onaway

Lemhi County

Leadore — Salmon

Lewis County

Reubens

Minidoka County

Acequia — Minidoka
Heyburn — Rupert

Nez Perce County

Lapwai

Owyhee County

Homedale — Marsing

Payette County

Fruitland — Payette

Power County

Rockland

Shoshone County

Smelterville

Teton County

Tetonia

Twins Falls County

Castleford — Hollister

Valley County

Donnelly

Washington County

Midvale — Weiser

State of Illinois

Adams County

Beverly Township — Keene Township
Camp Point — Liberty
Camp Point Township — Liberty Township
Clayton — Lima
Clayton Township — Lima Township
Columbus Township — McKee Township
Concord Township — Meadon
Columbus — La Prairie
Houston Township — Plainville
Lorraine — Richfield Township

Alexander County

Cairo — Thebes
Tamms

Bond County

Burgess TOWNSHIP — Old Ripley Township
LaGrange Township — Pleasant Mound Township
Pocahontas — Sorento
Mills Township — Shoal Creek Township
Mulberry Grove — Tamaloo Township
Mulberry Grove Township — Pierron
Old Ripley

Boone County

Boone Township — Spring Township
LeRoy Township

Brown County

Buckburn Township — Mount Sterling Township
Cooperstown Township — Pea Ridge Township
Elkhorn Township — Ripley Township
Missouri Township — Versailles
Mount Sterling — Versailles Township

Bureau County

Arispie Township — Fairfield Township
Bureau Township — Ladd
Dover — Mineral
Buda — Wheatland Township

Calhoun County

Brussels — Hardin
Hamburg

Carroll County

Cherry Grove-Shannon Tow — Fairhaven Township
Elkhorn Grove Township — Freedom Township
Chadwick — Wysox Township
— Thomson

Case County

Arenzville — Panther Creek Township
Arenzville Township — Philadelphia Township
Hagener Township — Sangamon Valley Township
Newmansville Township
Chandlerville

Champaign County

Broadlands — Royal
Ayers Township — Longview
Crittenden Township — Raymond Township
Harwood Township — Sadorus
Ivesdale — Stanton Township

Christian County

Palmer — Ricks Township
Bear Creek Township — Rosemond Township
Greenwood Township — Sullivan
King Township — Jeisenyville
Mosquito Township — Kincaid
Mount Auburn Township

Clark County

Anderson Township — Marshall Township
Auburn Township — Melrose Township
Darwin Township — Parker Township
Douglas Township — York Township
Johnson Township

Clay County

Bible Grove Township — Flora
Blair Township — Oskaloosa Township
Harter Township — Pixley Township
Iola — Xenia
Larkinsburg Township — Xenia Township
Sailor Township

Clinton County

Clement Township — Santa Fe Township
Keyesport — Wade Township
Albers — Wheatfield Township

Coles County

Ashmore — Hutton Township
Ashmore Township — Morgan Township
Oakland — Seven Hickory Township

Cook County

Chicago Heights — Summit
East Chicago Heights — Harvey
Chicago — Robbins
Franklin Park — Maywood
Willow Springs — Stone Park
Hodgkins — Phoenix

Crawford County

Honey Creek Township — Montgomery Township
Licking Township — Stoy
Martin Township

Cumberland County

Cottonwood Township — Woodbury Township
Crooked Creek Township

De Kalb County

Kingston — Sesemesk Township
Pierce Township — South Grove Township

De Witt County

Creel Township — Wilson Township
Rutledge Township

Douglas County

Bourbon Township — Sargent Township
Hindsboro

Edgar County

Brouilletts Creek Twp — Vermilion
Buck Township — Shiloh Township
Edgar Township — Metcalf
Redmon — Young America Township
Brocton

Edwards County

Bone Gap

Effingham County

Shumway — Montrose
Banner Township — St. Francis Township
Liberty Township — Union Township
Lucas Township — West Township
Edgewood

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Fayette County

Bear Grove Township
Bowling Green Township
Carson Township
Hurricane Township
Kaskaskia Township
Loudon Township
Otego Township
Pope Township
Brownstown
Ramsey
Ramsey Township
Seminary Township
Shafter Township
Bingham
South Hurricane Township
Wheatland Township

Ford County

Pella Township
Cabery

Franklin County

Barren Township
Hanaford
Benton Township
Benton
Buckner
West City
Browning Township
Thompsonville
Cave Township
Orient
Denning Township
Eastern Township
Ewing Township
Northern Township
Royalton
North City
Tyrone Township

Fulton County

Banner
St. Davod
Deerfield Township
Farmers Township
Marietta
Harris Township
Joshua Township
Lee Township
Table Grove
Liverpool
Orion Township
Union Township
Vermont Township
Waterford Township
Woodland Township

Gallatin County

Bowlesville Township
Eagle Creek Township
Equality
Equality Township
Gold Hill Township
New Haven
New Haven Township
North Fork Township
Shawneetown
Omaha
Omaha Township
Old Shawneetown
Shawnee Township

Greene County

Athensville Township
Eldred
Carrollton
Carrollton Township
Kane
Kane Township
Linder Township
Hillview
Wilmington
Patterson Township
Rockbridge
Roodhouse
Roodhouse Township
Rubicon Township
Walkerville Township
White Hall
White Hall Township
Woodville Township
Wrights Township

Grundy County

Braceville
Carbon Hill
Goose Lake Township
Kinsman
Highland Township
Nettle Creek Township

Hamilton County

Beaver Creek Township
Belle Prairie City
Crouch Township
Knight Prarie Township
McLeansboro
Macedonia
Mayberry Township
South Crouch Township
South Flannigan Township
Twigg Township

Hancock County

Bear Creek Township
Bowen
Chili Township
Durham Township
Fountain Green Township
Hancock Township
Bently
Harmony Township
La Harpe Township
Pilot Grove Township
Pontoosuc Township
Rocky Run Township
West Point
St. Albans Township
Plymouth
St. Mary Township
Wilcox Township

Hardin County

Cave-in-Rock
Elizabethtown
Rosiclare

Henderson County

Bald Bluff Township
Lomax Township
Rosetta Township
Terre Haute Township

Henry County

Alba Township
Andover
Andover Township
Annawan
Burns Township
Cornwall Township
Loraine Township
Bishop Hill
Weller Township
Yorktown Township

Iroquois County

Ash Grove Township
Ashkum
Beaver Township
Beaverville Township
Concord Township
Fountain Creek Township
Iroquois Township
Lovejoy Township
Papineau
Papineau Township
Prairie Green Township
Thawville
Stockland Township

Jackson County

Ava
Degogina Township
Dowell
Elvills
Elk Township
Grand Tower
Grand Tower Township
Kinkaid Township
Levan Township
Makanda
Ora Township
Gorham
Sand Ridge Township

Jasper County

Hidalgo
Grove Township
Hunt City Township
Wheeler
Ste Marie Township
Smallwood Township

Jefferson County

Blissville Township
Hesen
Elk Prairie Township
Farrington Township
Field Township
Grand Prairie Township
McClellan Township
Mount Vernon Township
Belle Rive
Webber Township

Jersey County

English Township
Otterville
Grafton
Fieldon
Richwood Township
Ruyle Township

Jo Daviess County

Apple River
Apple River Township
Berreman Township
Council Hill Township
Rice Township
Stockton
Thompson Township
Wards Grove Township

Johnson County

Belknap
New Burnside

Kane County

Burlington
Elburn
Pingree Grove

Kankakee County

Aroma Park
Bon River Terrace
Momence Township
Pembroke
Pembroke Township
Reddick

Kendall County

Lisbon
Plano
Little Rock Township

Knox County

Cedar Township
Chestnut Township
Elba Township
Abingdon
Galesburg Township
Haw Creek Township
Henderson
Indian Point Township
Victoria
Maquon
Maquon Township
Rio
Rio Township
Victoria Township

Lake County

Hainesville
Long Grove
Newport Township

La Salle County

Leland
Dimmick Township
Freedom Township
Grand Rapids Township
Meriden Township
Rutland Township
North Utica
Utica Township

Lawrence County

Allison Township
Birds
Bond Township
Sumner
Christy Township
Lukin Township
Petty Township
Russellville
Russell Township

Lee County

Bradford Township
East Grove Township
Hamilton Township
Marion Township
South Dixon Township
Viola Township

Livingston County

Fayette Township
Reading Township
Waldo Township

Logan County

Corwin Township
Eminence Township
Hartsburg

McDonough County

Blandinsville Township
Blandinsville
Colchester
Colchester Township
Eldorado Township
Hire Township
Industry Township
Tennessee Township

McLean County

Cropsey Township
Downs Township
Lawndale Township
West Township

Macon County

Decatur Township
Niantic
Oakley Township

Macoupin County

Barr Township
Eagarville
East Gillespie
Wilsonville
Dorchester
Mount Clare
Royal Lakes
Hillyard Township
Honey Point Township
North Otter Township
North Palmyra Township
Standard City
Scottville
Scottville Township
Palmyra
Shaws Point Township
South Otter Township
South Palmyra Township

Madison County

Alhambra
South Roxana
Foster Township
Pontoon Beach
Hartford
Nameoki Township
New Douglas
New Douglas Township
Williamson
Madison
Venice
Venice Township

Marion County

Alma
Alma Township
Central City
Foster Township
Iuka
Iuka Township
Kinmundy
Kinmundy Township
Omega Township
Patoka
Romine Township
Junction City
Sandoval
Sandoval Township
Stevenson Township

Marshall County

Hopewell Township
La Prairie Township
Richland Township
Whitefield Township

Mason County

Allen Grove Township
Forest City Township
Havana
Havana Township
Kilbourne Township
Lynchburg Township

BEST COPY AVAILABLE

Manito Township
Mason City
Pennsylvania Township
Topeka
Quiver Township
Sherman Township

Massac County

Metropolis

Mercer County

Seaton
Abingdon Township
Duncan Township
Elba Township
Keithsburg
Keithsburg Township
Joy
Millersburg Township
New Boston
New Boston Township
Perryton Township
Sherrard

Monroe County

Columbia
Maeystown
Valmeyer
Waterloo

Montgomery County

Chinese
Audubon Township
Butler Grove Township
Fillmore Township
Donnellson
Grisham Township
Harvel
Harvel Township
Irving
Irving Township
Coalton
Pitman Township
Witt
South Fillmore Township
Walshville
Walshville Township
Witt Township

Morgan County

Chapin
Woodson

Moultrie County

Jonathan Creek Township
Sullivan
Geys
Whitley Township

Ogle County

Brookville Township
Eagle Point Township
Grand Detour Township
Leaf River
Leaf River Township
Lincoln Township
Adeline
Maryland Township
Monroe Township
Davis Junction

Peoria County

Mapleton
Hollis Township
Bartonville
Millbrook Township
Trivoli Township

Perry County

St. Johns
Willisville

Pike County

Atlas Township
Barry Township
Chambersburg Township
Derry Township
Barry
Detroit
Florence
Detroit Township
Fairmount Township
Valley City
Flint Township
Hadley Township
Time
Hardin Township
Hull
Kinderhook Township
Montezuma Township
Baylis
New Salem
New Salem Township
Pearl
Pearl Township
Perry
Perry Township
Pleasant Hill
Pleasant Hill Township
New Canton
Pleasant Vale Township
Rose Township
Nebo
Spring Creek Township

Pope County

Eddyville
Hamletsburg

Pulaski County

Karnak
Mound City
Mound
Olmstead
Pulaski
Ullin

Randolph County

Baldwin
Evansville
Rockwood

Richland County

Claremont

Rock Island County

Bowling Township
Buffalo Prairie Township
Carbon Cliff
Rock Island Township
Rural Township

St. Clair County

Washington Park
Canteen Township
Alorton
Centreville
Centreville Township
East St. Louis
East St. Louis Township
Lebanon Township
Lenzburg
Lenzburg Township
National City
Mascoutah
Mascoutah Township
Prairie Du Long Township
Brooklyn
Stites Township
East Carondelet

Saline County

Carriers Mills
Carriers Mills Township
Cottage Township
Eldorado
East Eldorado Township
Galatia Township
Independence Township
Long Branch Township
Mountain Township
Raleigh
Rector Township
Stonefort Township
Tate Township

Sangamon County

Illiopolis
Illiopolis Township
Berlin
Grandview

Schuyler County

Birmingham Township
Brooklyn Township
Browning
Browning Township
Camden
Camden Township
Huntsville Township
Littleton
Littleton Township
Oakland Township
Woodstock Township

Scott County

Alsey
Bluffs
Naples

Shelby County

Cold Spring Township
Flat Branch Township
Herrick
Herrick Township
Holland Township
Lakewood Township
Penn Township
Sigel Township
Tower Hill
Tower Hill Township

Stark County

Valley Township

Stephenson County

Dakota
Dakota Township
Winslow

Tazewell County

South Pekin
Malcom Township

Union County

Alto Pass
Cobden
Dongola

Vermilion County

Carroll Township
Danville Township
Belgium
Danville
Potomac
Muncie
Pilot Township
Sidell
Sidell Township
Henning
Fairmount
Vance Township

Wabash County

Allendale

Warren County

Ellison Township
Roseville
Swan Township
Tompkins Township

Washington County

Ashley
Ashley Township
Bois Township
Du Bois
New Minden
Du Bois Township
Johannisburg Township
Lively Grove Township
Pilot Knob Township

Wayne County

Sims
Arrington Township
Barnhill Township
Berry Township
Big Mound Township
Elm River Township
Four Mile Township
Grover Township
Fairfield
Hickory Hill Township
Jasper Township
Keith Township
Jeffersonville
Lamard Township
Massilon Township
Mount Erie
Wayne City
Orel Township

White County

Burnt Prairie Township
Maunie
Hawthorne Township
Heralds Prairie Township

Whiteside County

Clyde Township
Coleta
Genesee Township
Deer Grove Township
Hahnaman Township
Portland Township
Tampico Township
Ustick Township

Will County

Custer Township
Florence Township
Romeoville
Godley
Will Township

Williamson County

Bush
Colp
Creal Springs
Hurst
Johnston City
Pittsburg
Whiteash
Freeman Spur

Winnebago County

Durand
Durand Township
Machesney Park
Morristown

Woodford County

Kansas Township
Bay View Gardens

State of Indiana

Adams County

Blue Creek Township
Jefferson Township
Wabash Township

Allen County

Marion Township
Springfield Township

Bartholomew County

German Township
Hope
Jonesville

Benton County

Ambia
Hickory Grove Township
Paris Grove Township
Earl Park
Richland Township
Union Township

Blackford County

Jackson Township

Boone County

Advance
Washington Township

Brown County

Jackson Township

Carroll County

Camden

Clark County

Oregon Township
Union Township
Washington Township

Clay County

Jackson Township
Carbon
Harmony
Washington Township

Clinton County

Kirklin Township
Owen Township

Crawford County

Alton
Boone Township
Carefree
Leavenworth
Jennings Township
Marengo
Liberty Township
Ohio Township
Milltown
English
Sterling Township
Union Township
Whiskey Run Township

Daviess County

Cannelburg
Montgomery
Barr Township
Bogard Township
Elnora
Elmore Township
Alfordsville
Reeve Township
Van Buren Township

Dearborn County

West Harrison
Harrison Township
Jackson Township
Greendale
Lawrenceburg
Manchester Township
Moores Hill

Decatur County

Milford
Clay Township
Jackson Township
Newpoint
Salt Creek Township
Westport

De Kalb County

Butler Township
Waterloo
Newville Township
Corunna
Richland Township
Stafford Township

Delaware County

Center Township
Muncie
Liberty Township
Gaston

Dubois County

Boone Township
Marion Township

Fayette County

Connersville Township
Jackson Township
Orange Township

Fountain County

Hillsboro
Kingman
Mellott
Newtown
Wabash Township

Franklin County

Bath Township
Fairfield Township
Laurel
Laurel Township
Posey Township
Oldenburg
Mount Carmel
Springfield Township
Whitewater Township

Fulton County

Fulton
Kewanna
Union Township
Wayne Township

Gibson County

Patoka
White River Township

Grant County

Green Township
Upland
Jonesboro

Greene County

Newberry
Cass Township
Switz City
Smith Township
Stafford Township
Linton
Taylor Township
Washington Township
Jacksonville
Wright Township

Hancock County

Jackson Township

Harrison County

Blue River Township
Boone Township
Mauckport
Palmyra
Taylor Township
New Amsterdam
Washington Township

Hendricks County

Pittsboro

Henry County

Mooreland
Straughn
Dudley Township
Greensboro
Cadiz
New Castle
Springport

Huntington County

Polk Township
Union Township
Wayne Township

Jackson County

Carr Township
Driftwood Township
Grassy Fork Township
Hamilton Township
Owen Township
Pershing Township
Salt Creek Township

Jasper County

Barkley Township
Hanging Grove Township
Walker Township

Jay County

Bear Creek Township
Jackson Township
Knox Township
Salamonia
Noble Township
Pennville
Wabash Township

Jefferson County

Graham Township
Hanover
Brooksburg
Milton Township
Saluda Township
Shelby Township
Smyrna Township

Jennings County

Bigger Township
North Vernon
Center Township
Columbia Township
Geneva Township
Lovett Township
Marion Township
Sand Creek Township
Vernon
Vernon Township

Johnson County

Blue River Township
Edinburg
Whiteland

Knox County

Oaktown
Busseron Township
Decker Township
Harrison Township
Decker
Johnson Township
Wheatland
Steen Township
Edwardsport
Bicknell
Vincennes
Vincennes Township
Brucerville
Widner Township

Kosciusko County

Claypool
Jefferson Township
Scott Township
Burket
Milford

LaGrange County

Clay Township
Clearspring Township
Eden Township
Newbury Township
Springfield Township

Lake County

Calumet Township
Gary
Lowell
East Chicago
St. John

La Porte County

Johnson Township
Lincoln Township
Union Township
Kingsbury

Lawrence County

Bono Township
Guthrie Township
Perry Township
Pleasant Run Township
Spice Valley Township

Marion County

Center Township
Castleton
Ravenswood

Martin County

Center Township
Shoals
Halbert Township
Lost River Township
Mitchelltree Township
Loogootee

Miami County

Union Township

Monroe County

Stinesville
Bean Blossom Township
Bloomington Township
Polk Township

Montgomery County

Brown Township
New Market
Alamo

Morgan County

Adams Township
Ashland Township
Bethany
Clay Township
Paragon
Ray Township

Newton County

Morocco
Beaver Township
Mount Ayr
McClellan Township

Ohio County

Pike Township
Union Township

Orange County

French Lick Township
Greenfield Township
Northeast Township
Orangeville Township
Stampers Creek Township

Owen County

Clay Township
Franklin Township
Harrison Township
Marion Township
Morgan Township
Gosport
Wayne Township

Parke County

Greene Township
Jackson Township
Liberty Township
Raccoon Township
Reserve Township
Montezuma
Mecca
Judson

Perry County

Clark Township
Oil Township
Tobin Township
Troy
Union Township

Pike County

Clay Township
Lockhart Township
Logan Township
Madison Township
Marion Township
Winslow

Porter County

Pines
Kouts

Posey County

Griffin
Bethel Township
Mount Vernon
Black Township
Point Township
Cynthiana
Smith Township

Pulaski County

Beaver Township
Cass Township
Franklin Township
Harrison Township
Jefferson Township
Rich Grove Township
Medaryville
White Post Township

Randolph County

Jackson Township
Stoney Creek Township
Modoc
Ward Township

Ripley County

Center Township
Franklin Township
Heltonn
Otter Creek Township
Shelby Township

Rush County

Anderson Township
Jackson Township
Noble Township
Orange Township
Glenwood
Richland Township
Walker Township
Washington Township

St. Joseph County

Indian Village
Roseland

Scott County

Austin
Jennings Township
Johnson Township
Lexington Township

Shelby County

Morristown
Hendricks Township

Spencer County

Hammond Township
Hall Township
Luce Township

Starke County

Knox
Center Township
Railroad Township

Steuben County

Orland
Millgrove Township
Richland Township
Hudson
Scott Township

Sullivan County

Fairbanks Township
Merom
Haddon Township
Hymera
Jefferson Township

Switzerland County

Craig Township
Vevay
Jefferson Township
Pleasant Township
Patriot
Posey Township
York Township

Tippecanoe County

Battle Ground
West Lafayette

Tipton County

Kempton

Union County

Brownsville Township
Harmony Township
Harrison Township
Union Township

Vanderburgh County

Pigeon Township

Vermillion County

Fairview Park
Universal
Cayuga
Helt Township
Newport
Vermillion Township

Vigo County

Prairieton Township
West Terre Haute
Sugar Creek Township

Wabash County

Lagro

Warren County

Adams Township
Jordan Township
Medina Township
West Lebanon
Warren Township

Warrick County

Boonville
Boon Township
Campbell Township
Tennyson
Skelton Township

Washington County

Campbellsburg
Brown Township
Franklin Township
Gibson Township
Howard Township
Jefferson Township
Madison Township
Monroe Township
Pierce Township
New Pekin
Polk Township
Fredericksburg
Vernon Township

Wayne County

Richmond
Greene Township
Harrison Township
Cambridge City
East Germantown
Mount Auburn
Fountain City
Economy
Perry Township
Milton

Wells County

Liberty Township

White County

West Point Township

Whitley County

Richland Township
Union Township

State of Iowa

Adair County

Orient

Adams County

Carbon

Allamakee County

Harpers Ferry
Waterville

Appanoose County

Centerville
Cincinnati
Exline
Moravia
Moulton
Mystic
Numa
Rathbun
Udell
Unionville

Audubon County

Exira

Benton County

Garrison
Norway
Shellsburg

Black Hawk County

Evansdale

Boone County

Fraser
Pilot Mound

Bremer County

Janesville
Plainfield
Waverly

Buchanan County

Aurora
Brandon
Lamont
Quasqueton
Stanley

Butler County

New Hartford

Calhoun County

Farnhamville
Jolley
Knierim
Pomeroy
Rinard
Somers
Yetter

Carroll County

Lanesboro
Ralston
Willey

Case County

Cumberland
Griswold
Maxsena

Cerro Gordo County

Dougherty
Meservey
Rock Falls
Swaledale

Cherokee County

Quimby
Washta

Chickasaw County

New Hampton

Clarke County

Murray
Woodburn

Clay County

Dickens
Gillett Grove
Peterson

Clayton County

Littleport
McGregor
Marquette
Strawberry Point
Volga

Clinton County

Andover
Toronto
Welton
Wheatland

Crawford County

Arion
Buck Grove
Deloit
Ricketts
Schleswig

Dallas County

Linden

Davis County

Drakesville
Floris
Pulaski

Decatur County

Davis City
Decatur City
Garden Grove
Grand River
Van Wert
Weldon

Delaware County

Delaware
Delhi
Dundee
Edgewood
Hopkinton
Manchester
Masonville

Des Moines County

Middletown

Dickinson County

West Okoboji

Dubuque County

Farley
Graf
Luxemburg
New Vienna
Sherrill
Zwingle

Emmet County

Dolliver

Fayette County

Arlington
Fayette

Floyd County

Marble Rock

Franklin County

Alexander
Popejoy

Fremont County

Riverton Sidney

Greene County

Paton

Guthrie County

Bagley Casey

Hardin County

Radcliffe Steamboat Rock

Harrison County

Dunlap Magnolia
Little Sioux Mondamin

Henry County

Hillsboro Rome

Howard County

Protivin

Humboldt County

Bradgate Renwick
Hardy

Ida County

Arthur

Iowa County

Marengo

Jackson County

Andrew Horstville
Baldwin Springbrook
Green Island

Jasper County

Valeria

Jefferson County

Batavia

Johnson County

Shueyville

Jones County

Morley Onslow

Keokuk County

Delta Martinsburg
Hayesville Richland
Hedrick Thornburg

Kossuth County

Lu Verne Swea City

Linn County

Coggon Prairieburg

Louisa County

Columbus City Grandview
Cotter Oakville
Fredonia

Lucas County

Derby Williamson
Lucas

Lyon County

Doon George

Madison County

Winterset

Mahaska County

Barnes City University Park

Marion County

Bussey Harvey
Dallas Marysville
Hamilton

Marshall County

St. Anthony

Mills County

Henderson Pacific Junction

Mitchell County

Osage Stacyville

Monona County

Castana Ute
Rodney

Monroe County

Melrose

Montgomery County

Coburg Grant
Elliott Villisca

Muscatine County

Conesville Stockton
Nichols

Page County

Clain Northboro

Palo Alto County

Curlew Graettinger
Cylinder

Pocahontas County

Palmer

Polk County

Runnells

Pottawattamie County

Carson Oakland

Poweshiek County

Brooklyn Searsboro

Ringgold County

Beaconsfield Redding
Delphos Tingley
Diagonal

Sac County

Auburn

Scott County

Buffalo New Liberty
Donahue Plain View
Maysville

Shelby County

Westphalia

Sioux County

Chatsworth Maurice
Matlock

Story County

Collins Sheldahl
Maxwell

Tama County

Chelsea Vining
Elberon

Taylor County

Conway New Market
Gravity Sharpsburg

Union County

Afton Lorimor
Arispe Shannon City
Cromwell Thayer
Kent

Van Buren County

Birmingham Mount Sterling
Milton

Wapello County

Kirkville

Warren County

Lacona St. Marys
New Virginia

Washington County

Ainsworth Crawfordsville

Wayne County

Allerton Promise City
Linnville Seymour
Millerton

Webster County

Callender Clare

Winnebago County

Scarville

Winneshiek County

Ossian

Woodbury County

Anthon Hornick
Bronson Lawton
Correctionville Smithland

Worth County

Kensett

Wright County

Galt

State of Kansas

Allen County

Elsmore Township La Harpe
Geneva Township Logan Township
Bassett

Anderson County

Lincoln Township Reeder Township
Monroe Township Kincaid
North Rich Township Rich Township
Ozark Township Westphalia Township
Putnam Township

Atchison County

Muscotah Lancaster
Grasshopper Township Mount Pleasant Township
Kapioma Township Walnut Township
Huron

Barber County

Deerhead Township Moore Township
Eagle Township Nippawalla Township
Elm Mills Township Sun City
Hardtner Sun City Township
Elwood Township Turkey Creek Township
Lake City Township

Barton County

Beaver Township South Homestead Township
Cheyenne Township Union Township
Clarence Township Albert
Cleveland Township Walnut Township
Eureka Township Wheatland Township
Lakin Township
Logan Township
North Homestead Township

Bourbon County

Drywood Township
Franklin Township
Fulton
Freedom Township
Bronson
Redfield
Marmaton Township
Pawnee Township
Mapleton
Timberhill Township
Walnut Township

Brown County

Hamlin Township
Horton
Reserve
Irving Township
Mission Township
Morrill
Morrill Township
Padonia Township
Powhattan
Powhattan Township
Robinson Township
Fairview
Walnut Township
Everest

Butler County

Bloomington Township
Chelsea Township
Hickory Township
Lincoln Township
Leon
Logan Township
Murdock Township
Rosalia Township
Casseday
Latham
Union Township

Chase County

Bazaar Township
Cedar Township
Cottonwood Township
Elmdale
Diamond Creek Township
Falls Township
Homestead Township
Strong City
Toledo Township

Chautauqua County

Chautauqua
Peru
Belleville Township
Harrison Township
Elgin
Lafayette Township
Niotaze
Little Caney Township
Sedan

Cherokee County

Baxter Springs
Cherokee Township
Columbus
Galena
Lowell Township
Mineral Township
Neosho Township
Ross Township
Salamanca Township
Scammon
Sheridan Township
Spring Valley Township
Weir

Cheyenne County

Calhoun Township
Cherry Creek Township
Jaqua Township
Orlando Township

Clark County

Englewood
Englewood Township

Clay County

Athelstane Township
Elaine Township
Bloom Township
Chapman Township
Clay Center Township
Garfield Township
Goshen Township
Green
Mulberry Township
Oak Hill
Oakland Township
Wakefield
Republican Township
Sherman Township
Union Township

Cloud County

Aurora Township
Buffalo Township
Collins Township
Jamestown
Grant Township
Lawrence Township
Lyon Township
Meredith Township
Nelson Township
Oakland Township
Sibley Township

Coffey County

Avon Township
Hampden Township
Le Roy
Le Roy Township
Lebo
Lincoln Township
Neosho Township
Pleasant Township
Waverly
Spring Creek Township
Star Township

Cowley County

Beaver Township
Cedar Township
Fairview Township
Grant Township
Harvey Township
Richland Township
Rock Creek Township
Sheridan Township
Silverdale Township
Spring Creek Township
Tisdale Township
Cambridge
Windsor Township

Crawford County

Grant Township
McCune
Osage Township
Pittsburg
Cherokee
Walnut
Walnut Township
Arma
Washington Township

Decatur County

Allison Township
Bassettville Township
Beaver Township
Center Township
Custer Township
Dresden
Dresden Township
Finley Township
Logan Township
Jennings
Lyon Township
Roosevelt Township
Sappa Township
Sherman Township

Dickinson County

Buckeye Township
Choover Township
Flora Township
Holland Township
Solomon
Chapman
Noble Township
Sherman Township
Union Township
Wheatland Township
Willowdale Township

Doniphan County

Troy
Independence Township
White Cloud
Iowa Township
Denton
Union Township
Wayne Township
Leona
Severance
Wolf River Township

Douglas County

Lecompton Township
Wakarusa Township

Edwards County

Belpre
Belpre Township
Franklin Township
Lincoln Township
South Brown Township
Lewis
Wayne Township

Elk County

Elk Falls
Elk Falls Township
Howard
Howard Township
Liberty Township
Oak Valley Township
Painterhood Township
Paw Paw Township

Ellis County

Buckeye Township
Catherine Township
Ellis Township
Freedom Township
Wheatland Township

Ellsworth County

Ash Creek Township
Black Wolf Township
Clear Creek Township
Columbia Township
Ellsworth Township
Garfield Township
Green Garden Township
Lincoln Township
Sherman Township
Valley Township

Finney County

Garden City Township
Holcomb
Sherlock Township
Terry Township

Ford County

Concord Township
Fairview Township
Ford
Ford Township
Grandview Township
Royal Township
Sodville Township
Spearville

Franklin County

Hayes Township
Richmond
Richmond Township
Williamsburg
Williamsburg Township

Geary County

Jackson Township
Lyon Township
Smoky Hill Township

Gove County

Baker Township
Gaeland Township
Gove City
Gove Township
Grainfield Township
Grinnell
Jerome Township
Larrabee Township
Payne Township

Graham County

Bryant Township
Gettysburg Township
Graham Township
Happy Township
Indiana Township
Morland (Part)
Morlan Township
Nicodamus Township
Pioneer Township
Wild Horse Township

Gray County

Ingalls
Ingalls Township

Greeley County

Horace

Greenwood County

Fall River Township
Hamilton
Janesville Township
Virgil
Lane Township
Otter Creek Township
Pleasant Grove Township
Quincy Township
Salem Township
Fall River
Salt Springs Township
South Salem Township
Spring Creek Township
Severy
Twin Grove Township

Hamilton County

Bear Creek Township
Coolidge
Coolidge Township
Kendall Township

Harper County

Attica
Township No. 2
Township No. 3
Danville

Harvey County

Garden Township
Highland Township
Lake Township
Pleasant Township
Sedgwick Township

Haskell County

Lockport Township

Hodgeman County

Benton Township
Hallat Township
Sterling Township
Valley Township

Jackson County

Adrian Township
Mayetta
Hoyt
Denison
Circleville
Whiting
Whiting Township

Jefferson County

Oskaloosa Township

Jewell County

Allen Township
Athens Township
Browns Creek Township
Buffalo Township
Burr Oak Township
Calvin Township
Center Township
Erving Township
Esbon Township
Grant Township
Highland Township
Iowa Township
Jackson Township
Montana Township
Odessa Township
Randall
Prairie Township
Sinclair Township
Vicksburg Township
White Mound Township

Johnson County

Edgerton
McCamish Township
Shawnee Township
Westwood

Kearny County

Deerfield
Kendall Township
Southside Township
West Hibbard Township

Kingman County

Allen Township
Belmont Township
Norwich
Bennett Township
Dale Township
Dresden Township
Eagle Township
Galesburg Township
Cunningham
Kingman Township
Peters Township
Richland Township
Zenda
Rochester Township
Union Township
Valley Township

Labette County

Canada Township
Chetopa
Edna
Fairview Township
Howard Township
Labette
Liberty Township
Mound Valley
Mound Valley Township
Richland Township

Lane County

Alamota Township
Blaine Township
Cleveland Township
White Rock Township

Leavenworth County

Alexandria Township

Lincoln County

Battle Creek Township
Cedron Township
Franklin Township
Golden Belt Township
Grant Township
Hanover Township
Highland Township
Madison Township
Orange Township

Linn County

Blue Mound
Blue Mound Township
Parker
Liberty Township
Mound City
Paris Township
Pleasanton
Potosi Township
Scott Township
Prescott
Sheridan Township
Stanton Township
Valley Township

Logan County

Elkader Township
McAllaster Township
Russell Springs
Russell Springs Township
Winona
Winona Township

Lyon County

Bushong
Olpe
Elmerdaro Township
Reading
Waterloo Township

McPherson County

Battle Hill Township
Harper Township
Hayes Township
Jackson Township
Marquette
New Gottland Township
Spring Valley Township
Union Township

Marion County

Catlin Township
Clark Township
Lincolnville
Clear Creek Township
Colfax Township
Durham
Durham Park Township
Fairplay Township
Grant Township
Lehigh Township
Liberty Township
Logan Township
Lost Springs
Lost Springs Township
Burns
Milton Township
Wilson Township

Marshall County

Balderson Township
Bigelow Township
Blue Rapids
Blue Rapids City Township
Center Township
Clear Fork Township
Elm Creek Township
Franklin Township
Herkimer Township
Lincoln Township
Logan Township
Axtell
Murray Township
Vermillion
Noble Township
Otoe Township
Richland Township
Summerfield
Rock Township
St. Bridget Township
Frankfort
Vermillion Township
Walnut Township
Wells Township

Meade County

Fowler Township
Logan Township
Mertilla Township
Sand Creek Township

Miami County

Richland Township
Stanton Township

Mitchell County

Asherville Township
Beloit Township
Center Township
Hunter
Custer Township
Hayes Township
Tipton
Pittsburg Township
Salt Creek Township
Solomon Rapids Township
Turkey Creek Township

Montgomery County

Caney
Cherryvale
Tyro
Coffeyville
Drum Creek Township
Elk City
Louisburg Township
Rutland Township

Morris County

Highland Township
Dunlap
Township No. 1
White City
Township No. 5
Township No. 7
Township No. 8

Morton County

Richfield

Nemaha County

Adams Township
Center Township
Clear Creek Township
Credda
Gilman Township
Goff
Harrison Township
Corning
Marion Township
Mitchell Township
Nemaha Township
Neuchatel Township
Red Vermillion Township
Reilly Township
Richmond Township
Rock Creek Township
Bern
Washington Township
Wetmore
Wetmore Township

Neosho County

Canville Township
Chetopa Township
Grant Township
Ladore Township
Mission Township
Shiloh Township
Walnut Grove Township

Ness County

Bazine
Eden Township
Franklin Township
Highpoint Township
Johnson Township
Ohio Township

Norton County

Almena
Almena—District 4 Township
Harrison—District 6 Township
Lenora
Highland—District 2 Township
Solomon—District 3 Township

Osage County

Arvonia Township
Barclay Township
Dragoon Township
Grant Township
Lincoln Township
Melvern
Olivet
Olivet Township
Scranton
Scranton Township

Osborne County

Bloom Township
Corinth Township
Delhi Township
Hawkeye Township
Jackson Township
Liberty Township
Penn Township
Downs
Ross Township
Round Mound Township
Winfield Township

Ottawa County

Blaine Township
Buckeye Township
Chapman Township
Concord Township
Fountain Township
Garfield Township
Grant Township
Tescott
Morton Township
Delphus
Sherman Township
Stanton Township

Pawnee County

Ash Valley Township
Conkling Township
Grant Township
Keysville Township
Lincoln Township
Morton Township
Orange Township
Pawnee Township
Pleasant Valley Township
River Township
Santa Fe Township
Sawmill Township

Phillips County

Arcade Township
Bow Creek Township
Crystal Township
Dayton Township
Deer Creek Township
Glenwood Township
Granite Township
Greenwood Township
Kirwin
Kirwin Township
Mound Township
Plum Township
Prairie View Township
Rushville Township
Glade
Solomon Township
Sumner Township
Towanda Township
Valley Township

Pottawatomie County

Olsburg
Blue Valley Township
Center Township
Clear Creek Township
Emmett
Emmett Township
Havensville
Grant Township
Onaga
Mill Creek Township
Pottawatomie Township
St. Clere Township
St. George
Sherman Township
Spring Creek Township
Vienna Township

Pratt County

Township No. 9

Rawlins County

Achilles Township
Center Township
Driftwood Township
Jefferson Township
McDonald
Rosewood Township

Reno County

Albion Township
Arlington
Bell Township
Castleton Township
Partridge
Center Township
Enterprise Township
Grove Township
Hayes Township
Langdon
Langdon Township
Medford Township
Turon
Miami Township
Ninnescah Township
Plevna
Plevna Township
Roscoe Township
Sumner Township
Troy Township
Abbyville
Yoder Township

Republic County

Narka
Albion Township
Beaver Township
Big Bend Township
Courtland
Courtland Township
Farmington Township
Freedom Township
Grant Township
Jefferson Township
Liberty Township
Lincoln Township
Cuba
Scandia
White Rock Township

Rice County

Bell Township
Center Township
East Washington Township
Galt Township
Mitchell Township
Odessa Township
Pioneer Township
Sterling Township
Alden
Valley Township
Geneseo
Wilson Township

Riley County

Leonardville
Bala Township
Center Township
Fancy Creek Township
Randolph
Jackson Township
Madison Township
May Day Township
Swede Creek Township

Rooks County

Township No. 4
Township No. 6
Denver
Township No. 7
Palco
Township No. 8
Zurich

Rush County

Alexander
Alexander-Bella Prairie
Banner Township
Rush Center
Center Township
McCracken
Hampton-Fairview Township
Nekoma
Lone Star Township
Pleasantdale Township
Union Township

Russell County

Center Township
Fairfield Township
Lucas
Fairview Township
Grant Township
Luray
Luray Township
Paradise
Paradise Township
Waldo
Winterset Township

Saline County

Falun-Gypsum Township
Assaria
Solomon Township
Washington Township

Scott County

Beaver Township
Michigan Township

Sedgwick County

Illinois Township

Seward County

Seward Township

Sheridan County

Adell Township
Prairie Dog Township
Solomon Township
Union Township
Valley Township

Sherman County

Logan Township
Sunky Township
Kanorado

Smith County

Beaver Township
Kensington
Cedar Township
Gem Township
Dar Township
Garfield Township
Harlan Township
Lincoln Township
Logan Township
Martin Township
Lebanon
Oak Township
Pawnee Township
Pleasant Township
Swan Township
Valley Township
White Rock Township

Stafford County

Byron Township
Clear Creek Township
Cleveland Township
Fairview Township
Richland Township
Rose Valley Township
Stafford
Stafford Township
Union Township
West Cooper Township
York Township

Sumner County

Avon Township
Bluff Township
Chikaskia Township
Creek Township
Downs Township
Falls Township
Goode Springs
Hunnewell
Valverde Township
Wellington Township

Thomas County

Barrett Township
Menlo
Menlo Township
North Randall Township
Rexford
Smith Township

Trego County

Ogallah Township
Riverside Township

Wabaunsee County

Mission Creek Township
Rock Creek Township
Wabaunsee Township

Wallace County

Harrison Township
Sharon Springs
Sharon Springs Township
Wallace Township
Weskan Township

Washington County

Barnes
Barnes Township
Charleston Township
Coleman Township
Franklin Township
Grant Township
Greenleaf
Greenleaf Township
Haddam
Haddam Township
Hanover
Hanover Township
Highland Township
Kimeo Township
Lincoln Township
Logan Township
Morrowville
Mill Creek Township
Palmer
Sherman Township
Strawberry Township
Mahaska
Washington Township

Wilson County

Altoona
Cedar Township
Chetopa Township
Buffalo
Clifton Township
Colfax Township
Duck Creek Township
Fredonia
Benedict
Guilford Township
Neodesha
Pleasant Valley Township
Talleyrand Township
Coyville
Verdigris Township
Webster Township

Woodson County

Eminence Township
Liberty Township
Neosho Falls
Neosho Falls Township
Owl Creek Township

Wyandotte County

State of Kentucky

Adair County

Columbia

Allen County

Scottsville

Ballard County

Barlow
Kevil
Wickliffe

Barren County

Cave City
Hiseville
Park City

Bath County

Owingsville
Salt Lick
Sharpsburg

Bell County

Middlesborough
Pineville

Bourbon County

Millersburg
Paris

Boyd County

Catlettsburg

Boyle County

Junction City

Bracken County

Augusta
Brooksville
Foster

Breathitt County

Jackson

Breckinridge County

Cloverport
Hardinsburg
Irvington

Bullitt County

Lebanon Junction

Butler County

Rochester

Calloway County

Hazel

Campbell County

Bellevue
California
Dayton
Melbourne
Newport
Wilder

Carlisle County

Arlington
Bardwell

Carroll County

Ghent
Prestonville
Sanders
Worthville

Carter County

Grayson
Olive Hill

Casey County

Liberty

Christian County

Crofton
Pembroke

Clark County

Winchester

Clay County

Manchester

Clinton County

Albany

Crittenden County

Marion

Cumberland County

Burkesville

Daviess County

Whitesville

Edmonson County

Brownsville

Elliott County

Sandy Hook

Estill County

Irvine
Ravenna

Fleming County

Ewing
Flemingsburg

Floyd County

Allen
Martin
Wayland
Wheelwright

Fulton County

Fulton
Hickman

Gallatin County

Glencoe
Sparta
Warsaw

Garrard County

Lancaster

Grant County

Corinth
Dry Ridge

Graves County

Mayfield
Water Valley
Wingo

Grayson County

Caneyville
Clarkson

Green County

Greensburg

Hancock County

Hawesville

Hardin County

Sonora
Upton
Vine Grove
West Point

Harlan County

Benham
Comberland
Evarts
Harlan
Wallins Creek

Harrison County

Berry
Cynthiana

Hart County

Bonnieville
Horse Cave
Munfordville

Henry County

Eminence
Lockport
Pleasureville

Hickman County

Clinton
Columbus

Hopkins County

Dawson Springs
Earlington
Hanson
Morton Gap
St. Charles
White Plains

Jefferson County

Louisville
Middletown City
Minor Lane Heights

Jessamine County

Nicholasville

Kenton County

Bromley
Covington
Latonia Lakes
Ludlow
Visalia

Larue County

Hodgenville

Lawrence County

Blaine
Louisa

Lee County

Beattyville

Leslie County

Hyden

Letcher County

Fleming-Neon
Jenkins
Whitesburg

Lewis County

Tollesboro
Vanceburg

Lincoln County

Crab Orchard
Hustonville
Stanford

Livingston County

Salem
Smithland

Logan County

Adairville
Auburn
Lewisburg

McCracken County

Paducah

McLean County

Calhoun
Island
Livermore
Sacramento

Madison County

Richmond

Magoffin County

Salyersville

Marion County

Bradfordsville
Lebanon
Loretto

Martin County

Inez
Warfield

Mason County

Dover
Germantown
Maysville
Sardis
Washington

Meade County

Ekron
Muldraugh

Mercer County

Burgin
Harrodsburg

Metcalfe County

Edmonton

Monroe County

Fountain Run
Tompkinsville

Montgomery County

Camargo
Jeffersonville
Mount Sterling

Morgan County

West Liberty

Muhlenberg County

Bremen
Central
Drakesboro
Powderly
South Carrollton

Nelson County

Bardstown
Bloomfield
Fairfield
New Haven

Nicholas County

Carlisle

Ohio County

Beaver Dam
Fordsville
Hartford
Mckleary
Rockport

Owen County

Gratz
Owenton

Owsley County

Booneville

Pendleton County

Butler
Falmouth

Perry County

Hazard
Vicco

Pike County

Elkhorn City
Pikeville

Powell County

Clay City
Stanton

Pulaski County

Eubank
Ferguson
Science Hill
Somerset

Robertson County

Mount Olivet

Rockcastle County

Brodhead
Livingston
Mount Vernon

Rowan County

Morehead

Russell County

Jamestown
Russell Springs

Scott County

Georgetown
Sadieville
Stamping Ground

Shelby County

Shelbyville

Simpson County

Franklin

Spencer County

Taylorsville

Todd County

Elkton
Guthrie
Trenton

Trigg County

Cadiz

Trimble County

Bedford

Union County

Waverly

Warren County

Bowling Green
Oakland

Washington County

Mackville
Springfield
Willisburg

Wayne County

Monticello

Webster County

Clay
Dixon
Providence
Sebree
Wheatcroft

Whitley County

Williamsburg

Wolfe County

Campton

Woodford County

Midway

State of Louisiana

Acadia Parish

Church Point
Crowley
Estherwood
Mermentau
Morse
Rayne

Allen Parish

Kinder
Oberlin
Reeves

Ascension Parish

Donaldsonville
Sorrento

Assumption Parish

Napoleonville

Avoyelles Parish

Bunkie
Cottonport
Evergreen
Marksville
Moreauville
Simmesport

Beauregard Parish

De Ridder

Bienville Parish

Arcadia
Bryceland
Castor
Gibsland
Lucky
Mount Lebanon
Ringgold
Saline

Bossier Parish

Plain Dealing

Caddo Parish

Belcher
Gilliam
Greenwood
Houston
Oil City
Rodessa
Shreveport

Calcasieu Parish

De Quincy

Caldwell Parish

Clarks
Columbia

Catahoula Parish

Harrisonburg
Jonesville
Sicily Island

Claiborne Parish

Athens
Haynesville
Homer
Lisbon

Concordia Parish

Clayton
Ferriday
Vidalia

De Soto Parish

Keatchie
Logansport
Longstreet
Mansfield
South Mansfield
Stanley

East Carroll Parish

Lake Providence

East Feliciana Parish

Clinton
Norwood
Slaughter
Wilson

Evangeline Parish

Basile
Chataignier
Mamou
Pine Prairie
Turkey Creek
Ville Platte

Franklin Parish

Baskin
Gilbert
Winnsboro
Winnsr

Grant Parish

Colfax
Dry Prong
Georgetown
Montgomery
Pollock

Iberia Parish

Jeanerette
New Iberia

Iberville Parish

Crosse Tete
Maringouin
Plaquemine
Rosedale
White Castle

Jackson Parish

Chatham
East Hodge
Eros
Hodge
North Hodge

Jefferson Parish

Grand Isle
Gretna
Westwego

Jefferson Davis Parish

Elton
Fenton
Jennings

Lafayette Parish

Broussard
Carencro
Duson
Youngsville

LaFourche Parish

Lockport
Thibodaux

La Salle Parish

Olla
Tullos

Lincoln Parish

Choudrant
Vienna

Livingston Parish

Springfield
Walker

Madison Parish

Richmond
Tallulah

Morehouse Parish

Bastrop
Bonita
Collinston
Mer Rouge

Natchitoches Parish

Ashland
Campti
Clarence
Goldonna
Natchez
Natchitoches
Powhatan
Provencal
Rodeline

Orleans Parish

New Orleans

Ouachita Parish

Monroe
Richwood

Pointe Coupee Parish

Fordoche
Livonia
Morganza
New Roads

Rapides Parish

Alexandria
Boyce
Chenyville
Forest Hill
LeCompte
Woodworth

Red River Parish

Coushatta
Hall Summit

Richland Parish

Delhi
Mangham
Rayville

Sabine Parish

Converse
Fisher
Florien
Many
Pleasant Hill
Zwolle

St. Helena Parish

Greensburg
Montpelier

St. James Parish

Gramercy
Lutcher

St. Landry Parish

Arnaudville
Eunice
Grand Coteau
Krotz Springs
Leonville
Melville
Opelousas
Palmetto
Port Barre
Sunset
Washington

St. Martin Parish

Breaux Bridge
Henderson
Parks
St. Martinville

St. Mary Parish

Baldwin
Franklin
Morgan City
Patterson

St. Tammany Parish

Abita Springs
Covington
Folsom
Madisonville
Pearl River
Sun

Tangipahoa Parish

Amite City
Hammond
Independence
Kentwood
Ponchatoula
Roseland
Tangipahoa
Tickfaw

Tensas Parish

Newellton
St. Joseph
Waterproof

Terrebonne Parish

Houma

Union Parish

Bernice
Farmerville
Junction City
Lillie
Marion

Vermilion Parish

Abbeville
Delcambre
Erath
Gueydan
Kaplan
Maurice

Vernon Parish

Anacoco
Lewisville
Simpson

Washington Parish

Angie
Bogalusa
Franklinton

Webster Parish

Cullen
Heflin
Minden
Shongaloo
Sibley
Springhill

West Baton Rouge Parish

Addis
Port Allen

West Carroll Parish

Eppe
Forest
Kilbourne
Oak Grove
Pioneer

West Feliciana Parish

St. Francisville

Winn Parish

Calvin
Dodson
Winnfield

State of Maine

Androscoggin County

Livermore Falls Town
Sabattus Town

Aroostook County

Allagash Town
Amity Town
Bancroft Town
Blaine Town
Bridgewater Town
Caribou
Cary Plantation
Caswell Plantation
Crystal Town
Cyr Plantation
Dyer Brook Town
Easton Town
Fort Fairfield Town
Fort Kent Town
Frenchville Town
Garfield Plantation
Grand Isle Town
Haynesville Town
Hersey Town
Houlton Town
Linneus Town
Littleton Town
Ludlow Town
Mapleton Town
Mars Hill Town
Merrill Town
Monticello Town
Moro Plantation
Nashville Plantation
New Canada Town
New Limerick Town
Oakfield Town
Orient Town
Oxbow Plantation
Perham Town
Reed Plantation
St. Agatha Town
St. Francis Town
St. John Plantation
Sherman Town
Smyrna Town
Van Buren Town
Wade Town
Washburn Town
Westfield Town
Westmanland Plantation
Weston Town
Winterville Plantation
Woodland Town

Cumberland County

Baldwin Town
Brunswick Town
Freeport Town
Harrison Town
Portland
Pownal Town
Westbrook

Franklin County

Avon Town
Carthage Town
Chesterville Town
Industry Town
Kingfield Town
Madrid Town
New Vineyard Town
Phillips Town
Rangeley Town
Strong Town
Temple Town
Weld Town

Hancock County

Amherst Town
Aurora Town
Brooksville Town
Bucksport Town
Dedham Town
Franklin Town
Frenchboro Town
Gouldsboro Town
Lamoine Town
Marlaville Town
Orland Town
Osborn Plantation
Otis Town
Penobscot Town
Sedgwick Town
Stonington Town
Surry Town
Swans Island Town
Tremont Town
Waltham Town

Kennebec County

Albion Town
Chelsea Town
Clinton Town
Monmouth Town
Vassalboro Town
Vienna Town
Waterville
Windsor Town

Knox County

Appleton Town
Camden Town
Cushing Town
Hope Town
Isle Au Haut Town
Owls Head Town
Rockland
Union Town
Vinalhaven Town
Warren Town
Washington Town

Lincoln County

Alna Town
Boothbay Town
Bremen Town
Bristol Town
Damariscotta Town
Dresden Town
Edgecomb Town
Jefferson Town
Monhegan Plantation
Nobleboro Town
Somerville Town
Waldoboro Town
Westport Town
Whitefield Town
Wiscasset Town

Oxford County

Andover Town
Byron Town
Greenwood Town
Hartford Town
Hebron Town
Hiram Town
Mexico Town
Newry Town
Otisfield Town
Oxford Town
Paris Town
Porter Town
Stow Town
Sumner Town
Upton Town
Waterford Town
West Paris Town
Woodstock Town

Penobscot County

Alton Town
Bradford Town
Burlington Town
Carmel Town
Carroll Plantation
Charleston Town
Chester Town
Corinna Town
Corinth Town
Dexter Town
Dixmont Town
Drew Plantation
Edinburg Town
Exeter Town
Greenbush Town
Howland Town
Kenduskeag Town
Lagrange Town
Lakeville Plantation
Lee Town
Levant Town
Lincoln Town
Mount Chase Plantation
Newport Town
Orono Town
Patten Town
Penobscot Indian Island
Plymouth Town
Prentiss Plantation
Springfield Town
Stacyville Town
Stetson Town
Webster Plantation
Winn Town

Piscataquis County

Abbot Town
Blanchard Plantation
Lake View Plantation
Medford Town
Monson Town
Parkman Town
Sangerville Town
Sebec Town
Wellington Town
Willimantic Town

Sagadahoc County

Arrowsic Town
Bowdoin Town
Phippsburg Town
Richmond Town

Somerset County

Anson Town
Athens Town
Bingham Town
Brighton Plantation
Cambridge Town
Canaan Town
Caratunk Plantation
Cornville Town
Embden Town
Fairfield Town
Harmony Town
Hartland Town
Highland Plantation
Madison Town
Moscow Town
New Portland Town
Palmyra Town
Ripley Town
St. Albans Town
Skowhegan Town
Smithfield Town
Solon Town
Starks Town
West Forks Plantation

Waldo County

Belfast
Belmont Town
Brooks Town
Burnham Town
Frankfort Town
Freedom Town
Islesboro Town
Jackson Town
Knox Town
Monroe Town
Montville Town
Northport Town
Palermo Town
Prospect Town
Searsmont Town
Searsport Town
Stockton Springs Town
Swanville Town
Thorndike Town
Troy Town
Unity Town
Waldo Town

Washington County

Addison Town
Alexander Town
Beals Town
Beddington Town
Calais
Centerville Town
Charlotte Town
Cherryfield Town
Columbia Town
Columbia Falls Town
Crawford Town
Cutler Town
Danforth Town
Deblois Town
Dennysville Town
East Machias Town
Eastport
Grand Lake Stream Plantation
Harrington Town
Jonesport Town
Lubec Town
Machias Town
Machiasport Town
Marshfield Town
Milbridge Town
Northfield Town
Pembroke Town
Perry Town
Plantation No. 21
Princeton Town
Robbinston Town
Steuben Town
Topsfield Town
Wesley Town
Whiting Town
Whitneyville Town

York County

Hollis Town
Lebanon Town
Newfield Town
Parsonsfield Town
Sanford Town

State of Maryland

Allegany County

Barton
Cumberland
Lonaconing
Midland

Calvert County

North Beach

Caroline County

Denton
Greensboro
Marydel
Ridgely

Carroll County

Manchester
Mount Airy

Cecil County

Cecilton
Port Deposit

Dorchester County

Cambridge
Church Creek
East New Market

Frederick County

Burkittsville

Garrett County

Deer Park
Friendsville
Kitzmillerville
Loch Lynn Heights
Oakland

Kent County

Chestertown
Millington

Montgomery County

Laytonsville

Prince George's County

Capitol Heights
Colmar Manor
District Heights
Fairmount Heights
Morningside
North Brentwood
Seat Pleasant
Upper Marlboro

Queen Anne's County

Queen Anne
Templeville

St. Mary's County

Somerset County

Crisfield

Talbot County

St. Michaels
Trappe

Washington County

Hancock
Keedysville
Sharpsburg
Smithburg

Wicomico County

Delmar
Fruitland
Pittsville

Worcester County

Berlin — Baltimore

State of Massachusetts

Barnstable County

Provincetown Town

Berkshire County

Lanesborough Town — Sandisfield Town
Lenox Town — Savoy Town
North Adams — Sheffield Town
Pere Town — Washington Town

Bristol County

Dighton Town — New Bedford Town
Fall River Town — Swansea Town

Essex County

Essex Town — Salisbury Town
Lawrence — West Newbury Town
Lynn

Franklin County

Ashfield Town — Shelburne Town
Heath Town — Sunderland Town
Leverett Town — Warwick Town

Hampden County

Holyoke — Springfield
Russell Town — Tolland Town

Hampshire County

Amherst Town — Huntington Town
Cummington Town — Middlefield Town
Hadley Town — Northhampton
Hatfield Town

Middlesex County

Cambridge

Norfolk County

Holbrook Town

Plymouth County

Brockton — Marion Town

Suffolk County

Boston — Chelsea

Worcester County

Hardwick Town — New Braintree Town
Lancaster Town — Paxton Town
Millbury Town

State of Michigan

Alcona County

Caledonia Township — Harrisville Township
Curtis Township — Hawes Township
Greenbush Township — Haynes Township
Gustin Township — Millen Township
Lincoln

Alger County

Burt Township — Munising Township
Limestone Township — Rock River Township
Mathias Township

Allegan County

Clyde Township — Manlius Township
Ganges Township — Douglas
Heath Township — Trowbridge Township
Lee Township — Wayland Township

Alpena County

Green Township — Ossineke Township
Long Rapids Township — Wilson Township

Antrim County

Central Lake — Bellaire
Central Lake Township — Jordan Township
Chestonia Township — Mancelona Township
Echo Township — Torch Lake Township

Arenac County

Adams Township — Mason Township
Arenac Township — Moffatt Township
Au Gres Township — Omer
Clayton Township — Twining
Sterling — Sims Township
Deep River Township — Turner
Lincoln Township — Turner Township

Baraga County

Arvon Township — Lanse Township
Baraga — Spurr Township
Baraga Township

Barry County

Barry Township — Orangeville Township
Freeport — Woodland

Bay County

Bay City — Mount Forest Township
Gibson Township

Benzie County

Beulah — Honor
Blaine Township — Thompsonville
Colfax Township — Inland Township
Elberta — Joyfield Township
Gilmore Township — Weldon Township

Berrien County

Bainbridge Township — Galien Township
Benton Township — Hagar Township
Coloma Township — Niles
Berrien Springs — Oronoko Township
Eau Claire — Sodus Township

Branch County

Butler Township — Union City
Gilead Township — Sherwood

Calhoun County

Albion Township — Burlington
Athens — Springfield

Cass County

Cassopolis — Newberg Township
La Grange Township — Vandalia
Marcellus — Wayne Township

Charlevoix County

Chandler Township — Norwood Township
Hudson Township — St. James Township
Marion Township — Wilson Township

Cheboygan County

Aloha Township — Mentor Township
Burt Township — Munro Township
Cheboygan — Nunda Township
Forest Township — Wolverine
Grant Township — Walker Township
Hebron Township — Waverly Township
Koehler Township — Wilmot Township

Chippewa County

Bay Mills Township — Sault Sainte Marie
Dafter Township — Sugar Island Township
Drummond Township — Superior Township
Hulbert Township — Trout Lake Township
Pickford Township — Whitefish Township
Raber Township

Clare County

Arthur Township — Hayes Township
Franklin Township — Lincoln Township
Frost Township — Redding Township
Greenwood Township — Surrey Township
Hamilton Township — Winterfield Township

Clinton County

Fowler — Riley Township
Eagle — St. Johns
Lebanon Township

Crawford County

Beaver Creek Township — Maple Forest Township
Grayling

Delta County

Cornell Township — Garden Township
Ensign Township — Maple Ridge Township
Fairbanks Township — Masonville Township
Garden — Nahma Township

Dickinson County

Breen Township

Eaton County

Benton Township — Sunfield
Chester Township — Sunfield Township
Hamlin Township

Emmet County

Friendship Township — Pellston
McKinley Township

Genesee County

Argentine Township — Gaines
Atlas Township — Gaines Township
Flint — Mount Morris
Otisville — Mount Morris Township

Gladwin County

Bourrett Township — Gladwin
Buckeye Township — Gladwin Township
Clement Township — Grim Township

Gogebic County

Erwin Township — Watersmeet Township
Ironwood

Grand Traverse County

Fife Lake — Kingsley
Fife Lake Township — Paradise Township
Grant Township — Whitewater Township
Mayfield Township

Gratiot County

Arcada Township — North Shade Township
Emerson Township — Pine River Township
Perrinton — St. Louis
Lafayette Township — Wheeler Township
New Haven Township

Hillsdale County

Adams Township — Fayette Township
Allen — Jefferson Township
Allen Township — Litchfield Township
Amboy Township — Moscow Township
Camden — Pittsford Township
Montgomery — Reading
Camden Township — Woodbridge Township
Jonesville

Houghton County

South Range — Houghton
Adams Township — Laird Township
Calumet — Osceola Township
Copper City — Quincy Township
Laurium — Lake Linden
Duncan Township — Schoolcraft Township
Franklin Township — Torch Lake Township

Huron County

Ubly — Dwight Township
Bingham Township — Fairhaven Township
Bloomfield Township — Gore Township
Owendale — Kinde
Brookfield Township — Huron Township
Chandler Township — Lincoln Township

Meade Township
Paris Township
Port Hope
Rubicon Township
Sand Beach Township
Sebewaing
Sebewaing Township
Sheridan Township
Sherman Township
Verona Township

Ingham County

Aurelius Township
Bunker Hill Township
Dansville
Webberville
Leslie Township
Locke Township
Stockbridge
Stockbridge Township
White Oak Township

Ionia County

Danby Township
Keene Township
Pewamo
Hubbardston
North Plains Township
Lake Odessa
Odessa Township
Orleans Township
Ronald Township

Iosco County

Baldwin Township
Reno Township
Sherman Township
Whittemore

Iron County

Caspian
Gaastra
Mansfield Township
Alpha

Isabella County

Chippewa Township
Coldwater Township
Denver Township
Fremont Township
Gilmore Township
Rolland Township
Wise Township

Jackson County

Hanover
Hanover Township
Henrietta Township
Jackson
Leoni Township

Kalamazoo County

Galesburg
Kalamazoo
Vicksburg

Kalkaska County

Blue Lake Township
Clearwater Township
Excelsior Township
Kalkaska
Orange Township
Springfield Township

Kent County

Cedar Springs
Courtland Township
Gaines Township
Grand Rapids
Lowell Township
Nelson Township
Sparta

Keweenaw County

Ahmeek
Allouez Township
Great Township
Sherman Township

Lake County

Chase Township
Cherry Valley Township
Dover Township
Elk Township
Ellsworth Township
Luther
Newkirk Township
Pinora Township
Pleasant Plains TWP
Baldwin
Sweetwater Township
Webber Township
Yates Township

Lapeer County

Clifford
Burnside Township
Imlay Township
Marathon Township
Columbiaville
Rich Township

Leelanau County

Centerville Township
Cleveland Township
Kasson Township

Lenawee County

Clayton
Madison Township
Cement City
Medina Township
Morenci
Raisin Township
Britton

Livingston County

Handy Township

Luce County

Columbus Township
Pentland Township

Mackinac County

Bois Blanc Township
Hendricks Township
Hudson Township
Marquette Township

Macomb County

Ray Township

Manistee County

Arcadia Township
Brown Township
Copemish
Cleon Township
Manistee Township
Pleasanton Township
Stronach Township

Marquette County

Champion Township
Ely Township
Ewing Township
Michigamme Township
Powell Township
Richmond Township
Skandia Township
Turin Township
Wells Township

Mason County

Amber Township
Branch Township
Eden Township
Meade Township
Sheridan Township
Sherman Township

Mecosta County

Aetna Township
Big Rapids
Morley
Chippewa Township
Barryton
Park Township
Hinton Township
Millbrook Township
Mecosta
Sheridan Township
Wheatland Township

Menominee County

Daggett
Daggett Township
Faithorn Township
Gourley Township
Harris Township
Meyer Township
Carney
Nadeau Township
Powers
Stephenson Township

Midland County

Geneva Township
Greendale Township
Hope Township
Jasper Township
Mills Township
Mount Haley Township
Porter Township

Missaukee County

Aetna Township
Bloomfield Township
Butterfield Township
Caldwell Township
Clam Union Township
Lake Township
Norwich Township
Reeder Township
Riverside Township

Monroe County

Carleton
Dundee
Dundee Township
Maybee
La Salle Township
Milan Township

Montcalm County

Belvidere Township
Bloomer Township
Bushnell Township
McBridde
Day Township
Evergreen Township
Fairplain Township
Ferris Township
Elmore
Pierson
Howard City
Reynolds Township
Richland Township
Winfield Township

Montmorency County

Avery Township
Briley Township
Hillman Township
Loud Township
Montmorency Township
Rust Township

Muskegon County

Blue Lake Township
Casnovia Township
Lakewood
Dalton Township
Holton Township
Moorland Township
Muskegon
Casnovia
Muskegon Heights
Ravenna
Ravenna Township

Newaygo County

Ashland Township
Barton Township
Beaver Township
Croton Township
Ensley Township
Everett Township
Goodwell Township
Grant Township
Home Township
Lilley Township
Merrill Township
Monroe Township
Sheridan Township
Troy Township
White Cloud
Wilcox Township

Oakland County

Leonard
Ortonville

Oceana County

Claybanks Township
Colfax Township
Crystal Township
Elbridge Township
Ferry Township
Rothbury
Grant Township
Hesperia
Hart Township
New Era
Walkerville
Leavitt Township
Otto Township
Shelby
Shelby Township

Ogemaw County

Churchill Township
Cumming Township
Edwards Township
Goodar Township
Hill Township
Horton Township
Klacking Township
Logan Township
Mills Township
Ogemaw Township
Prescott
Richard Township
Rose Township
Rose City
West Branch

Ontonagon County

Greenland Township
Haight Township
Interior Township
Matchwood Township
Stannard Township

Osceola County

Burdell Township
Evart
Hartwick Township
Highland Township
Marion
Marion Township
Middle Branch Township
Orient Township
Osceola Township
Sherman Township
Sylvan Township

Oscoda County

Clinton Township
Elmer Township
Mentor Township

Otsego County

Chester Township
Charlton Township

Ottawa County

Allendale Township
Holland Township
Wright Township
Zeeland Township
Zeeland Township

Presque Isle County

Allis Township
Millersburg
Case Township
Krakow Township
Metz Township
Moltke Township
North Allis Township
Ocqueoc Township
Onaway
Posen Township
Pulawski Township

Roscommon County

Denton Township
Gerrish Township
Nester Township
Richfield Township

Saginaw County

Albee Township
Chapin Township
Fremont Township
Lakefield Township
Marion Township
Saginaw
St Charles Township
Swan Creek Township

St. Clair County

Berlin Township
Burtchville
Ira Township
Kenockee Township
Capac
Massey Township
Port Huron
Port Huron Township
Wales Township

St. Joseph County

Burr Oak Township
Colon
Florence Township
Mendon
Mendon Township
Centreville
Nottawa Township
White Pigeon

Sanilac County

Austin Township
Delaware Township
Flynn Township
Fremont Township
Greenleaf Township
Lamotte Township
Maple Valley Township
Deckerville
Minden City
Minden Township
Melvin
Speaker Township
Applegate
Wheatland Township

Schoolcraft County

Doyle Township
Germfask Township
Inwood Township
Seney Township
Thompson Township

Shiawassee County

Burns Township
Fairfield Township
New Haven Township
Morrice
Rush Township
Bancroft
Vernon

Tuscola County

Arbela Township
Unionville
Akron
Elkland Township
Care
Ellington Township
Gagetown
Fremont Township
Indianfields Township
Kingston Township
Kingston
Millington Township

Van Buren County

Almena Township
Bangor
Bangor Township
Bloomingdale
Columbia Township
Covert Township
Decatur
Decatur Township
Geneva Township
Gobles
Hamilton Township
Hartford
Hartford Township
Keeler Township
Porter Township

Washtenaw County

Bridgewater Township
Ypsilanti

Wayne County

Detroit
Grosse Ile Township
Hamtramck
Highland Park
River Rouge

Wexford County

Antioch Township
Colfax Township
Greenwood Township
Hanover Township
Liberty Township
Manton
Slagle Township
Springville Township
Wexford Township

State of Minnesota

Aitkin County

Ball Bluff Township
Balsam Township
Beaver Township
Cornish Township
Glen Township
Haugen Township
Hill Township
Idun Township
Jevne Township
Kimberly Township
Lee Township
Libby Township
Logan Township
McGregor
McGregor Township
Malmo Township
Morrison Township
Palisade
Rice River Township
Salo Township
Spalding Township
Tamarack
Turner Township
Verdon Township
Wagner Township
Waukenabo Township
Wealthwood Township
White Pine Township
Williams Township
Workman Township

Anoka County

Bethel
Burns Township

Becker County

Atlanta Township
Callaway
Callaway Township
Carsonville Township
Evergreen Township
Green Valley Township
Hamden Township
Height of Land Township
Lake Eunice Township
Lake Park Township
Maple Grove Township
Ogema
Osage Township
Pine Point Township
Riceville Township
Richwood Township
Runeberg Township
Savannah Township
Shell Lake Township
Silver Leaf Township
Spring Creek Township
Spruce Grove Township
Sugar Bush Township
Toad Lake Township
Walworth Township
White Earth Township
Wolf Lake
Wolf Lake Township

Beltrami County

Battle Township
Bemidji
Bemidji Township
Bearville Township
Blackduck
Bunnie Township
Cormant Township
Eckles Township
Grant Valley Township
Hagali Township
Hines Township
Hornet Township
Jones Township
Kelliher
Kelliher Township
Lammers Township
Lee Township
Maple Ridge Township
Moose Lake Township
Nebish Township
Northern Township
Oteton Township
Quiring Township
Roosevelt Township
Shooks Township
Spruce Grove Township
Steenerson Township
Tan Lake Township
Tenstrike
Turtle River
Turtle River Township
Woodrow Township

Benton County

Alberta Township
Gilman
Gilmanton Township
Graham Township
Granite Ledge Township
Maybew Lake Township
Maywood Township
St. George Township

Big Stone County

Akron Township
Artichoke Township
Beardsley
Browns Valley Township
Correll
Foster Township
Malta Township
Johnson
Meenahine Township
Odessa
Odessa Township
Otrey Township
Prior Township

Blue Earth County

Beauford Township
Cambria Township
Cereseo Township
Danville Township
Decoria Township
Judson Township
Le Ray Township
Lincoln Township
McPherson Township
Holst Township
Itasca Township
La Prairie Township
Leon Township
Leonard
Minerva Township
Moose Creek Township
Nora Township
Pine Lake Township
Popple Township
Rice Township
Shelvin
Shelvin Township
Sinclair Township

Cottonwood County

Amboy Township
Ann Township
Bingham Lake
Carson Township
Dale Township
Delton Township
Germantown Township
Highwater Township
Jeffers
Midway Township
Mountain Lake Township
Rose Hill Township
Selma Township
Southbrook Township
Springfield Township
Storden
Storden Township
Westbrook Township

Crow Wing County

Bay Lake Township
Brainerd
Breezy Point
Crosby
Daggett Brook Township
Deane Lake Township
Emily
Fairfield Township
Fifty Lakes
Fort Ripley
Gail Lake Township
Garrison
Ideal Township
Irondale Township
Jenkins
Jenkins Township
Little Pine Township
Long Lake Township
Manhattan Beach
Maple Grove Township
Mission Township
Nokay Lake Township
Pequot Lakes
Perry Lake Township
Platte Lake Township
Rose Lake Township
St. Mathias Township
Timothy Township
Trommald

Dakota County

Castle Rock Township
Douglas Township
Hampton
Hampton Township
Marshan Township
New Trier
Randolph Township

Dodge County

Ashland Township
Canisteo Township
Ellington Township
Mantorville Township
Milton Township
Vernon Township

Douglas County

Bella River Township
Brandon Township
Evansville Township
Holmes City Township
Hudson Township
Ida Township
Kensington
Leaf Valley Township
Lund Township
Millerville
Miltona
Miltona Township
Moe Township
Nelson
Orange Township
Osakis Township
Oskie
Solem Township
Spruce Hill Township

Faribault County

Barber Township
Clark Township
Delavan
Dunbar Township
Elmore Township
Emerald Township
Foster Township
Lura Township
Rome Township
Seely Township
Verona Township
Walnut Lake Township
Walters
Winnebago City Township

Fillmore County

Amherst Township
Arendahl Township
Bloomfield Township
Canton
Carimona Township
Carrolton Township
Chatfield Township
Fillmore Township
Forestville Township
Fountain Township
Jordan Township
Mabel
Newburg Township
Norway Township
Peterson
Preble Township
Preston Township
Rushford (Village)
Spring Valley Township
Wykoff
York Township

Freeborn County

Conger
Freeborn Township
Geneva Township
Hartland Township
London Township
Manchester Township
Mansfield Township
Moscow Township
Newry Township
Riceland Township
Shell Rock Township

Goodhue County

Belichester
Belle Creek Township
Belvidere Township
Dennison
Florence Township
Goodhue
Hay Creek Township
Holden Township
Pine Island Township
Roscoe Township
Wanamingo Township
Zumbrota Township

Grant County

Elbow Lake Township
Elk Lake Township
Erdahl Township
Land Township
Lawrence Township
Lien Township
Logan Township
Norcross
Pelican Lake Township
Pomme de Terre Township
Wendell

Hennepin County

Corcoran
Dayton
Minnetrista

Houston County

Black Hammer Township
Brownsville
Brownsville Township
Caledonia Township
Houston
Jefferson Township
Mayville Township
Money Creek Township
Mound Prairie Township
Sheldon Township
Spring Grove
Spring Grove Township
Wilmington Township
Yucatan Township

Hubbard County

Akeley
Badoura Township
Clover Township
Fern Township
Guthrie Township
Hart Lake Township
Hendrickson Township
Hubbard Township
Lake George Township
Lake Hattie Township
La Porte
Nevis
Park Rapids
Rockwood Township
White Oak Township

Isanti County

Dalbo Township
Maple Ridge Township
Oxford Township
Stanchfield Township
Stanford Township

Itasca County

Alvwood Township
Ardenhurst Township
Bearville Township
Bovey
Bowstring Township
Carpenter Township
Deer River
Effie
Feeley Township
Good Hope Township
Grattan Township
Iron Range Township
Lawrence Township
Max Township
Moose Park Township
Morse Township
Nore Township
Oteneagen Township
Squaw Lake
Stokes Township
Third River Township
Wabana Township

Jackson County

Alba Township
Alpha
Belmont Township
Delafield Township
Des Moines Township
Enterprise Township
Ewington Township
Heron Lake Township
Hunter Township
Kimball Township
La Crosse Township
Minneota Township
Rost Township
Round Lake Township
Sioux Valley Township
Weimer Township
West Heron Lake Township
Wisconsin Township

Kanabec County

Ann Lake Township
Arthur Township
Brunswick Township
Comfort Township
Grass Lake Township
Hay Brook Township
Hillman Township
Kanabec Township
Knuechel Township
Ogilvie
Peace Township
Pomroy Township
Quamba
South Fork Township
Whited Township

Kandiyohi County

Arctander Township
Blomkest
Colfax Township
East Lake Lillian Township
Edwards Township
Fahlun Township
Irving Township
Lake Andrew Township
Lake Elizabeth Township
Lake Lillian Township
Mamre Township
Norway Lake Township
Regal
Roseland Township
Roseville Township
St. Johns Township
Sunburg
Whitefield Township

Kittson County

Arveson Township
Caribou Township
Donaldson
Granville Township
Hazelton Township
Hill Township
Lake Brownson
Lancaster
McKinley Township
Norway Township
Pelan Township
Percy Township
Poppleton Township
Richardville Township
St. Joseph Township
St. Vincent Township
Skane Township
Spring Brook Township
Tegner Township

Koochiching County

Big Falls
Mizpah
Northome
Ranier

Lac Qui Parle County

Arena Township
Augusta Township
Baxter Township
Boyd
Camp Release Township
Cerro Gordo Township
Freeland Township
Garfield Township
Hamlin Township
Hantho Township
Lac Qui Parle Township
Lake Shore Township
Louisburg
Madison Township
Manfred Township
Marietta
Maxwell Township
Meburin Township
Nassau
Perry Township
Providence Township
Riverside Township
Walter Township
Yellow Bank Township

Lake of the Woods County

Williams

Le Sueur County

Cleveland Township
Kasota
Kilkenny
Kilkenny Township
Lexington Township
Ottawa Township
Sharon Township
Waterville Township

Lincoln County

Alta Vista Township
Diamond Lake Township
Drammen Township
Hansonville Township
Hendricks Township
Hope Township
Lake Benton Township
Lake Stay Township
Limestone Township
Marble Township
Marshfield Township
Royal Township
Shaokatan Township
Verdi Township

Lyon County

Clifton Township
Coon Creek Township
Custer Township
Eidsvold Township
Fairview Township
Florence
Grandview Township
Island Lake Township
Lucas Township
Monroe Township
Nordland Township
Rock Lake Township
Sodus Township
Stanley Township
Vallers Township
Westerheim Township

McLeod County

Bergen Township
Brownton
Collins Township
Glencoe Township
Hutchinson Township
Lynn Township
Penn Township
Rich Valley Township
Round Grove Township
Sumter Township

Mahnomen County

Beaulieu Township
Chief Township
Clover Township
Gregory Township
Heier Township
Island Lake Township
La Garde Township
Lake Grove Township
Mahnomen
Marsh Creek Township
Pembina Township
Roosdale Township
Twin Lakes Township
Waubun

Marshall County

Augsburg Township
Big Woods Township
Bloomer Township
Cedar Township
Como Township
Comstock Township
East Valley Township
Eckvoll Township
Espelie Township
Excel Township
Fork Township
Holt Township
Humboldt Township
Lissell Township
McCrea Township
Middle River
Moylan Township
Nelson Park Township
New Maine Township
New Solum Township
Parker Township
Rollis Township
Spruce Valley Township
Strandquist
Tamarac Township
Valley Township
Veldt Township
Viking Township
Wanger Township
Whiteford Township
Wright Township

Martin County

Center Creek Township
Dunnell
East Chain Township
Elm Creek Township
Fairmont Township
Fraser Township
Galena Township
Lake Fremont Township
Nashville Township
Pleasant Prairie Township
Rolling Green Township
Silver Lake Township
Waverly Township
Westford Township

Meeker County

Acton Township
Cedar Mills
Cedar Mills Township
Danielson Township
Darwin Township
Forest Prairie Township
Harvey Township
Kingston
Kingston Township
Manannah Township
Union Grove Township

Mille Lacs County

Bock
Bogus Brook Township
Borgholm Township
Dailey Township
East Side Township
Foreston
Hayland Township
Isle Harbor Township
Kathio Township
Lewis Township
Milaca Township
Milo Township
Modgett Township
Onamia Township
Page Township
Pease
South Harbor Township
Wahkon

Morrison County

Agram Township
Bellevue Township
Bowlus
Buckman
Buckman Township
Buh Township
Culdrum Township
Cushing Township
Darling Township
Elmdale
Elmdale Township
Flensburg
Glenola
Granite Township
Harding
Hillman
Hillman Township
Lakin Township
Lastrup
Little Falls
Morrill Township
Mount Morris Township
Parker Township
Pierz
Pierz Township
Motley
Pike Creek Township
Platte Township
Pulaski Township
Randall
Richardson Township
Fort Ripley Township
Royalton
Scandia Valley Township
Sobieski
Swan River Township
Swanville Township
Two Rivers Township

Mower County

Adams Township
Austin Township
Brownsdale
Clayton Township
Frankford Township
Le Roy Township
Lodi Township
Mapleview
Marshall Township
Nevada Township
Pleasant Valley Township
Sargeant Township
Taopi
Udolpho Township

Murray County

Belfast Township
Bondin Township
Cameron Township
Chanarambie Township
Des Moines River Township
Ellsborough Township
Fenton Township
Holly Township
Iona Township
Lake Sarah Township
Leeds Township
Lime Lake Township
Lowville Township
Mason Township
Murray Township
Shetek Township
Skandia Township
Slayton Township

Nicollet County

Bernadotte Township
Brighton Township
Courtland Township
Granby Township
Lake Prairie Township
New Sweden Township
Nicollet Township
Ridgely Township
Traverse Township
West Newton Township

Nobles County

Adrian
Bigelow Township

Bloom Township
Dewald Township
Dunlee
Elk Township
Graham Lakes Township
Grand Prairie Township
Hersey Township
Indian Lake Township
Kinbrae
Larkin Township
Lismore
Lismore Township
Little Rock Township
Lorain Township
Olney Township
Ransom Township
Seward Township
Summit Lake Township
Westside Township
Worthington Township

Norman County

Anthony Township
Bear Park Township
Flom Township
Fossum Township
Green Meadow Township
Hegne Township
Home Lake Township
Lake Ida Township
McDonaldsville Township
Mary Township
Perley
Pleasant View Township
Rockwell Township
Shelly
Shelly Township
Strand Township
Sundal Township
Weshon Township
Wild Rice Township

Olmsted County

Dover Township
Eyota Township
Farmington Township
Pleasant Grove Township

Otter Tail County

Aastad Township
Amor Township
Blowers Township
Bluffton
Bluffton Township
Cassler Township
Carlisle Township
Clitherall
Compton Township
Corliss Township
Dalton
Dead Lake Township
Deer Creek Township
Dent
Dora Township
Dunn Township
Eagle Lake Township
Eastern Township
Eden Township
Effington Township
Elizabeth
Elmo Township
Erhard
Erhards Grove Township
Folden Township
Gorman Township
Henning
Henning Township
Homestead Township
Inman Township
Leaf Lake Township
Leaf Mountain Township
Lida Township
Maine Township
Maplewood Township
Newton Township
Nidaros Township
Norwegian Grove Township
Oak Valley Township
Oscar Township
Otto Township
Parkers Prairie
Parkers Prairie Township
Pelican Township
Pine Lake Township
Richville
Rush Lake Township
St Olaf Township
Star Lake Township
Tordenskjold Township
Trondhjem Township
Tumuli Township
Vergas
Vining
Western Township
Woodside Township

Pennington County

Clover Leaf Township
Deer Park Township
Goodridge
Goodridge Township
Krotha Township
Mayfield Township
Numedal Township
Polk Centre Township
Star Township

Pine County

Arlone Township
Arna Township
Barry Township
Birch Creek Township
Brennan Township
Brook Park Township
Bruno
Bruno Township
Chengwatana Township
Clover Township
Dell Grove Township
Denham
Finlayson
Fleming Township
Henriette
Hinckley Township
Kerrick Township
Kettle River Township
Nickerson Township
Norman Township
Ogema Township
Park Township
Pine City Township
Pine Lake Township
Rock Creek
Royalton Township
Sandstone
Sandstone Township
Sturgeon Lake Township
Willow River

Pipestone County

Astna Township
Altona Township
Burke Township
Eden Township
Edgerton
Elmer Township
Fountain Prairie Township
Grange Township
Grey Township
Hatfield
Jasper
Holland
Ihlen
Osborne Township
Rock Township
Ruthton
Sweet Township
Troy Township

Polk County

Angus Township
Badger Township
Belgium Township
Beltrami
Brandsvold Township
Brandt Township
Brislet Township
Bygland Township
Columbia Township
Eden Township
Erskine
Euclid Township
Fanny Township
Fisher Township
Garfield Township
Godfrey Township
Grand Forks Township
Grove Park Township
Gully
Hill River Township
Hubbard Township
Johnson Township
King Township
Knute Township
Langby
Lessor Township
McIntosh
Mentor
Nesbit Township
Northland Township
Parnell Township
Queen Township
Reis Township
Rhinehart Township
Rosebud Township
Russia Township
Sandsville Township
Sletten Township
Sullivan Township
Tilden Township
Trail
Tynsid Township
Winger
Winger Township
Woodside Township

Pope County

Bangor Township
Barsness Township
Ben Wade Township
Blue Mounds Township
Chippewa Falls Township
Cyrus
Farwell
Gilchrist Township
Grove Lake Township
Hoff Township
Langhei Township
Lowry
New Prairie Township
Nora Township
Reno Township
Rolling Forks Township
Sedan
Villard
Walden Township
Westport
Westport Township

Ramsey County

Falcon Heights

Red Lake County

Bronks
Browns Creek Township
Emardville Township
Equality Township
Garnes Township
Gervais Township
Lambert Township
Louisville Township
Poplar River Township
River Township
Terrebonne Township
Wylie Township

Redwood County

Brookville Township
Charlestown Township
Delhi
Delhi Township
Gales Township
Granite Rock Township
Johnsonville Township
Kintire Township
Lamberton
Lamberton Township
Morgan Township
New Avon Township
North Hero Township
Paxton Township
Redwood Falls Township
Revere
Sheridan Township
Sherman Township
Springdale Township
Sundown Township
Sweden Forest Township
Underwood Township
Vail Township
Vesta
Vesta Township
Waterbury Township
Westline Township
Willow Lake Township

Renville County

Birch Cooley Township
Boon Lake Township
Cairo Township
Camp Township
Crooks Township
Ericson Township
Flora Township
Hawk Creek Township
Hector Township
Henryville Township
Kingman Township
Martinsburg Township
Melville Township
Norfolk Township
Osceola Township
Palmyra Township
Troy Township
Wang Township
Wellington Township

Rice County

Dundas
Erin Township
Forest Township
Morristown Township
Richland Township
Warsaw Township
Wells Township
Wheatland Township
Wheeling Township

Rock County

Battle Plain Township
Beaver Creek Township
Clinton Township
Denver Township
Kanaranzi Township
Kenneth
Luverne Township
Magnolia Township
Martin Township
Mound Township
Rose Dell Township
Springwater Township
Steen

Roseau County

Barnett Township
Cedarbend Township
Deer Township
Dewey Township
Distar Township
Falun Township
Golden Valley Township
Grimstad Township
Hereim Township
Huss Township
Jadis Township
Lacna Township
Lind Township
Mickinock Township
Moose Township
Moranville Township
Nereson Township
Pohlitz Township
Polonia Township
Popler Grove Township
Reine Township
Soler Township
Strathcona

St. Louis County

Alborn Township
Angora Township
Arrowhead Township
Bassett Township
Beatty Township
Cook
Culver Township
Ellsburg Township
Field Township
Greaton Township
Kinney
Great Scott Township
Halden Township
Lakewood Township
McKinley
Meadowlands
Meadowlands Township
Morcom Township
Northland Township
Payne Township
Portage Township
Prairie Lake Township
Stoney Brook Township
Van Buren Township

Scott County

Belle Plaine
Blakeley TWP
New Market Township

Sherburne County

Becker
Clear Lake
Santiago Township
Zimmerman

Sibley County

Alfsborg Township
Bismarck Township
Cornish Township
Dryden Township
Faxon Township
Grafton Township
Green Isle
Green Isle Township
Henderson Township
Jessenland Township
Kelso Township
Severance Township
Sibley Township
Transit Township
Washington Lake Township

Stearns County

Albany Township
Ashley Township
Brooten
Brockway Township
Cold Spring
Crow Lake Township
Crow River Township
Elrosa
Fair Haven Township
Farming Township
Getty Township
Grove Township
Holding Township
Krain Township
Lake George Township
Lake Henry Township
Luxemburg Township
Maine Prairie Township
Metro Grove
Melrose Township
Millwood Township
New Munich
North Fork Township
Oak Township

Raymond Township
Richmond
Rockville Township
Roscoe
St. Anthony
St. Martin
St. Martin Township
St. Rose
St. Wendel Township
Sauk Centre
Sauk Centre Township
Spring Hill
Wakefield Township
Zion Township

Steele County

Aurora Township
Berlin Township
Blooming Prairie Township
Deerfield Township
Lemond Township
Medford Township
Merton Township

Stevens County

Alberta
Baker Township
Darnen Township
Donnelly Township
Eldorado Township
Everglade Township
Framnas Township
Hodges Township
Horton Township
Moore Township
Pepperton Township
Rendsville Township
Scott Township
Stevens Township
Swan Lake Township
Synnes Township

Swift County

Appleton Township
Benson Township
Camp Lake Township
Clontarf Township
Danvers
De Graff
Edison Township
Fairfield Township
Hayes Township
Holloway
Kerkhoven
Kerkhoven Township
Kildare Township
Maryland Township
Moyer Township
Murdock
Pillsbury Township
Six Mile Grove Township
Swenoda Township
Tara Township
West Bank Township

Todd County

Bartlett Township
Bertha Township
Birchdale Township
Browerville
Bruce Township
Burleene Township
Burnhamville Township
Clarissa
Eagle Valley Township
Fawn Lake Township
Germania Township
Gordon Township
Grey Eagle Township
Hartford Township
Hewitt
Iona Township
Little Elk Township
Staples
Little Sauk Township
Long Prairie Township
Morse Township
Reynolds Township
Round Prairie Township
Staples Township
Stowe Prairie Township
Turtle Creek Township
Villard Township
Ward Township
West Union
West Union Township
Wykeham Township

Traverse County

Arthur Township
Browns Valley
Clifton Township
Croke Township
Folsom Township
Lake Valley Township
Leonardsville Township
Monson Township
Redpath Township
Tara Township
Taylor Township
Wells Township
Windsor Township

Wabasha County

Chester Township
Elgin Township
Glasgow Township
Greenfield Township
Hammond
Highland Township
Hyde Park Township
Lake Township
Millville
Oakwood Township
Pepin Township
Plainview Township
West Albany Township
Zumbro Falls

Wadena County

Aldrich
Blueberry Township
Leaf River Township
Lyons Township
Meadow Township
Menahga
Nimrod
North Germany Township
Red Eye Township
Sebeka
Shell River Township
Verndale
Wadena Township
Wing River Township

Wasoca County

Alton Township
Byron Township
Freedom Township
St. Mary Township
Vivian Township
Waldorf
Woodville Township

Washington County

Bayport
Lake Elmo

Watonwan County

Adrian Township
Antrim Township
Butterfield
Butterfield Township
La Salle
Lewisville
Long Lake Township
Madelia Township
Odin Township
Riverdale Township
Rosendale Township
South Branch Township

Wilkin County

Akron Township
Atherton Township
Bradford Township
Connelly Township
Dearborn Township
Foxhome
Foxhome Township
Manston Township
Meadows Township
Mitchell Township
Nashua
Nordick Township
Sunnyside Township
Tanberg Township
Welverton Township

Winona County

Altura
Fremont Township
Minnesota City
Norton Township
Pleasant Hill Township
St. Charles Township
Saratoga Township
Utica
Utica Township
Whitewater Township
Wiscoy Township

Wright County

Clearwater Township
Maple Lake Township
Middleville Township

Yellow Medicine County

Burton Township
Echo
Fortier Township
Hammer Township
Hazel Run Township
Lisbon Township
Minnesota Falls Township
Normania Township
Omro Township
Oshkosh Township
Porter
Posen Township
St. Leo
Sandnes Township
Stony Run Township
Swede Prairie Township
Tyro Township
Wergeland Township
Wood Lake Township

State of Mississippi

Adams County

Natchez

Alcorn County

Rienzi

Amite County

Gloster
Liberty

Attala County

Ethel
Kosciusko
McCool
Sallis

Benton County

Ashland

Bolivar County

Alligator
Benoit
Beulah
Boyle
Cleveland
Duncan
Gunnison
Mergold
Mound Bayou
Pace
Renova
Rosedale
Shaw
Shelby
Winstonville

Calhoun County

Big Creek
Bruce
Calhoun City
Derma
Pittsboro
Vardaman

Carroll County

Carrollton
North Carrollton
Vaiden

Chickasaw County

Houston
New Houlka
Okolona
Woodland

Choctaw County

Ackerman
French Camp
Weir

Claiborne County

Port Gibson

Clarke County

Enterprise
Pachuta
Quitman
Stonewall

Clay County

West Point

Coahoma County

Clarksdale
Coahoma
Friars Point
Jonestown
Lula
Lyon

Copiah County

Beauregard
Crystal Springs
Georgetown
Hazlehurst

Covington County

Collins
Mount Olive
Seminary

De Soto County

Hernando
Horn Lake
Newport
Olive Branch

Forrest County

Hattiesburg

Franklin County

Bude
Roxie

Greene County

Leakesville
McLain
State Line

Grenada County

Grenada

Harrison County

Pass Christian

Hinds County

Bolton
Edwards
Jackson
Terry
Utica

Holmes County

Cruger
Durant
Goodman
Lexington
Pickens
Tchula
West

Humphreys County

Belzoni
Isola
Louise
Silver City

Issaquena County

Mayersville

Itawamba County

Tremont

Jackson County

Moss Point

Jasper County

Bay Springs
Heidelberg
Louin
Montrose

Jefferson County

Fayette

Jefferson Davis County

Bassfield
Prentiss

Jones County

Ellisville
Laurel

Kemper County

De Kalb
Scooba

Lamar County

Lumberton
Sumrall

Lauderdale County

Marion
Meridian

Lawrence County

Silver Creek

Leake County

Carthage
Lena
Walnut Grove

Lee County

Guntown
Plantersville

Leflore County

Greenwood
Itta Bena
Morgan City
Schlater
Sidon

Lincoln County

Brookhaven

Lowndes County

Artesia
Columbus
Crawford

Madison County

Canton
Flora

Marion County

Columbia

Marshall County

Byhalia
Holly Springs

Monroe County

Aberdeen
Amory
Gattman
Hatley

Montgomery County

Duck Hill
Kilmichael
Winona

Neshoba County

Philadelphia

Newton County

Decatur
Newton
Union

Noxubee County

Brooksville
Macon
Shuqualak

Oktibbeha County

Maben
Sturgis

Panola County

Batesville
Como
Courtland
Crenshaw
Pope
Sardis

Pearl River County

Picayune
Poplarville

Perry County

Beaumont
New Augusta
Richton

Pike County

McComb
Magnolia
Osyka
Summit

Pontotoc County

Ecru
Sherman
Thaxton
Toccopola

Prentiss County

Baldwyn
Jumpertown

Quitman County

Crowder
Falcon
Lambert
Marks
Sledge

Rankin County

Florence
Flowood
Pelahatchie
Puckett

Scott County

Forest
Lake
Morton
Sebastopol

Sharkey County

Anguilla
Cary
Rolling Fork

Simpson County

Braxton
D'Lo
Magee
Mendenhall

Smith County

Mize
Polkville
Raleigh
Sylvarena
Taylorsville

Stone County

Wiggins

Sunflower County

Doddsville
Drew
Indianola
Inverness
Moorhead
Ruleville
Sunflower

Tallahatchie County

Charleston
Gelndora
Sumner
Tutwiler
Webb

Tate County

Coldwater
Senatobia

Tippah County

Blue Mountain
Dumas
Ripley
Walnut

Tishomingo County

Paden
Tishomingo

Tunica County

Tunica

Union County

Blue Springs
Myrtle
New Albany

Walthall County

Tylertown

Warren County

Vicksburg

Washington County

Arcola
Greenville
Hollandale
Leland
Metcalfe

Wayne County

Waynesboro

Webster County

Eupora
Mantee
Mathiston

Wilkinson County

Centreville
Crosby
Woodville

Winston County

Louisville
Noxapater

Yalobusha County

Coffeeville
Oakland
Water Valley

Yazoo County

Benton
Eden
Yazoo City

State of Missouri

Adair County

Brashear
Millard
Novinger

Andrew County

Amazonia
Bolckow
Cosby
Rea

Audrain County

Rush Hill

Barry County

Exeter
Seligman
Washburn

Barton County

Barton City Township
Doylesport Township
Golden City
Golden City Township
Leroy Township
Milford
Milford Township
North Fork Township
Burgess
Mindenmines
South West Township
Union Township

Bates County

Deepwater Township
East Boone Township
Elkhart Township
Amoret
Homer Township
Hume
Lone Oak Township
Mingo Township
Butler
Mount Pleasant Township
Rich Hill
Osage Township
Pleasant Gap Township
Rockville
Rockville Township
Summit Township
Walnut Township
West Boone Township

Benton County

Cole Camp
Ionia

Bollinger County

Glenallen
Lutesville
Sedgewickville
Zalma

Boone County

Hartsburg

Buchanan County

Agency

Butler County

Fish
Neelyville
Poplar Bluff
Qulin

Caldwell County

Breckenridge
Breckenridge Township
Davis Township
Braymer
Gomer Township
Grant Township
Kingston
Lincoln Township
Mirabile Township
Rockford Township

Callaway County

Auxvasse
Cedar
Mokane

Camden County

Macks Creek
Stoutland
Sunrise Beach

Cape Girardeau County

Delta
Oak Ridge
Pocahontas
Whitewater

Carroll County

Cherry Valley Township
Combs Township
Eugene Township
Fairfield Township
Hill Township
Hale
Hurricane Township
Leslie Township
Prairie Township
Bosworth
Ridge Township
Rockford Township
Stokes Mound Township
Trotter Township
Bogard
Van Horn Township
Wakenda Township
Washington Township

Carter County

Ellsinore
Grandin

Cass County

Garden City
Lake Annette
Strasburg

Cedar County

El Dorado Springs
Jerico Springs
Stockton

Chariton County

Bee Branch Township
Dalton
Chariton Township
Clark Township
Cockrell Township
Sumner
Cunningham Township
Mussellfork Township
Salt Creek Township
Triplett
Triplett Township
Wayland Township

Christian County

Billings

Clark County

Alexandria
Kahoka
Luray
Revere

Clay County

Birmingham
Glenaire
Holt
Mosby

Clinton County

Plattsburg
Trimble
Turney

Cole County

Centertown
Eugene

Cooper County

Blackwater
Bunceton
Pilot Grove
Prairie Home

Crawford County

Cuba
Steelville

Dade County

Center Township
Greenfield
Ernest Township
Grant Township
Lockwood
Lockwood Township
North Township
Pilgrim Township
Everton
Rock Prairie Township
Sac Township
Smith Township
South Greenfield

Dallas County

Buffalo

Daviess County

Colfax Township
Grand River Township
Lock Spring
Jackson Township
Jamesport
Jamesport Township
Altamont
Liberty Township
Coffey
Salem Township
Sheridan Township

De Kalb County

Osborn
Camden Township
Colfax Township
Dallas Township
Grant Township
Union Star
Polk Township
Sherman Township
Washington Township

Douglas County

Ava

Dunklin County

Cardwell
Buffalo Township
Clay Township
Hornersville
Malden
Cotton Hill Township
Arbyrd
Clarkton
Freeborn Township
Holcomb
Holcomb Township
Kennett
Independence Township
Senath
Salem Township
Campbell
Union Township

Franklin County

Berger

Gasconade County

Gasconade
Morrison

Gentry County

Darlington
Howard Township
Higgins Township
King City
Jackson Township
McFall
Miller Township
Wilson Township

Greene County

Brookline

Grundy County

Spickardsville
Harrison Township
Jackson Township
Jefferson Township
Galt
Liberty Township
Lincoln Township
Madison Township
Brimson
Taylor Township
Laredo
Wilson Township

Harrison County

Adams Township
Bethany Township
Bethany
Butler Township
Clay Township
Blythedale
Colfax Township
Cypress Township
Fox Creek Township
Grant Township
Jefferson Township
Ridgeway
Eagleville
Cainsville
Madison Township
Marion Township
Sherman Township
Sugar Creek Township
Trail Creek Township
Washington Township
New Hampton
White Oak Township

Henry County

Bethlehem Township
Big Creek Township
Bogard Township
La Due
Davis Township
Deer Creek Township
Deepwater
Fairview Township
Urich
Honey Creek Township
Leesville Township
Brownington
Osage Township
Shawnee Township
Springfield Township
Tebo Township
Walker Township
Windsor Township

Hickory County

Cross Timbers
Hermitage

Holt County

Corning
Craig

Howard County

Armstrong
Franklin

Howell County

Brandsville
Mountain View
Willow Springs

Iron County

Annapolis
Pilot Knob

Jackson County

Lone Jack
Sibley

Jasper County

Asbury
Avilla
Carterville
Carytown
Fidelity
La Russell
Neck City
Oakland Park
Oronogo
Purcell
Reeds

Jefferson County

Kimmswick

Johnson County

Chilhowee
Holden

Knox County

Baring
Hurdland
Knox City
Newark
Novelty

Laclede County

Conway
Phillipsburg

Lafayette County

Concordia
Cordet
Lexington
Waverly

Lawrence County

Aurora
Freistatt
Halltown
Hoberg
Marionville
Miller
Pierce City
Stotts City
Verona

Lewis County

Lewistown

Lincoln County

Elsberry
Hawk Point
Silex
Winfield

Linn County

Benton Township
Browning
Clay Township
Enterprise Township
Grantsville Township
Jackson Township
Linneus
Locust Creek Township
North Salem Township

Livingston County

Cream Ridge Township
Fairview Township
Grand River Township
Green Township
Jackson Township
Medicine Township
Ludlow
Monroe Township
Mooresville Township
Rich Hill Township
Sampsel Township

McDonald County

Anderson
Goodman
Lanagan
Noel
Pineville

Macon County

Callao
Elmer
Ethel

Madison County

Cobalt City
Fredericktown
Junction City
Marquand

Mercer County

Lindley Township
Madison Township
Mercer
South Lineville
Marion Township
Medicine Township
Morgan Township
Ravanna Township
Somerset Township

Miller County

Bagnell
Iberia
Lakeside
Olean
St. Elizabeth
Tuscumbia

Mississippi County

Anniston
Charleston
Wilson City
Wyatt

Moniteau County

Clarksburg
Lupus

Monroe County

Holliday
Madison
Stoutsville

Montgomery County

Bellflower
Jonesburg
Middletown
New Florence

Morgan County

Stover
Syracuse
Versailles

New Madrid County

Canalou
Catron
Gideon
Howardville
Lilbourn
Marston
Morehouse
New Madrid
North Lilbourn
Parma
Portageville
Risco
Tallapoosa

Newton County

Diamond
Granby
Midway
Newtonia
Ritchey
Seneca
Shoal Creek Drive
Stella

Nodaway County

Atchison Township
Green Township
Hopkins Township
Graham
Parnell
Independence Township
Clyde
Jefferson Township
Lincoln Township
Skidmore
Monroe Township
Union Township
Washington Township
White Cloud Township

Oregon County

Alton
Koshkonong
Thayer

Osage County

Chamois
Westphalia

Ozark County

Bakersfield
Theodosia

Pemiscot County

Bragg City
Caruthersville
Hayti
Hayti Heights
Hayward
Homestown
North Wardell
Pascola
Steele
Wardell

Perry County

Lithium
Longtown

Pettis County

Green Ridge
Houstonia

Phelps County

Doolittle

Pike County

Curryville
Eolia
Frankford

Platte County

Northmoor
Weatherby Lake

Polk County

Aldrich
Pair Play
Flemington
Halfway
Humansville

Pulaski County

Dixon
Richland
Waynesville

Putnam County

Worthington
Elm Township
Grant Township
Livonia
Liberty Township
Lincoln Township
Lucerne
Medicine Township
Richland Township
Sherman Township
Union Township
Unionville (Part)
Wilson Township
Powersville
York Township

Ralls County

Center
New London

Randolph County

Clark
Higbee

Ray County

Camden
Henrietta
Lawson

Reynolds County

Bunker
Centerville
Ellington

Ripley County

Doniphan
Naylor

St. Charles County

Augusta
New Melle

St. Clair County

Appleton City
Collins
Gerstar
Lowry City
Osceola
Roscoe
Vista

Ste. Genevieve County

Bloomsdale
St. Mary's

St. Francois County

Bismarck
Desloge
Elvins
Esther
Fairview Acres
Flat River
Leadington
Leadwood
Rivermines

St. Louis County

Hillsdale
Kinloch
Pagedale
Pine Lawn
Sycamore Hills
Valley Park
Wellston

Saline County

Blackburn
Emma
Gilliam
Grand Pass
Malta Bend
Miami
Mount Leonard
Nelson
Slater

Schuyler County

Downing
Lancaster

Scotland County

Memphis
Rutledge
South Gorin

Scott County

Blodgett
Diehlstadt
Haywood City
Kelso
Morely
Vanduser

Shannon County

Eminence
Winona

Shelby County

Clarence
Leonard

Stoddard County

Castor Township
Duck Creek Township
Dudley
Puxico
Elk Township
Bernie
New Lisbon Township
Bell City
Pike Township
Essex
Penermon

Stone County

Blue Eye
Crane
Galena
Lakeview

Sullivan County

Humphreys
Bowman Township
Buchanan Township
Clay Township
Duncan Township
Jackson Township
Morris Township
Green City
Pleasant Hill Township
Milan
Polk Township
Taylor Township

Taney County

Taneyville

Texas County

Boone Township
Summersville
Burdine Township
Cabool
Carroll Township
Cass Township
Raymondville
Jackson Township
Lynch Township
Morris Township
Ozark Township
Pierce Township
Roubidoux Township
Sargent Township
Sherrill Township
Upton Township

Vernon County

Harwood
Schell City
Bacon Township
Blue Mound Township
Coal Township
Dover Township
Milo
Moundville
Stotesbury
Henry Township
Lake Township
Metz
Metz Township
Montevallo Township
Bronaugh
Moundville Township
Osage Township
Richards
Richland Township
Virgil Township
Walker
Walker Township
Washington Township

Warren County

Truesdail

Washington County

Irondale
Mineral Point
Potosi

Wayne County

Mill Spring
Piedmont
Williamsville

Webster County

Diggins
Niangua
Rogersville

Worth County

Allendale
Denver

Wright County

Boone Township
Brush Creek Township
Clark Township
Elk Creek Township
Gasconade Township
Hartville
Norwood
Hart Township
Mountain Grove
Montgomery Township
Mountain Grove Township
Pleasant Valley Township
Union Township
Van Buren Township
Wood Township
St. Louis

State of Montana

Big Horn County

Hardin
Lodge Grass

Blaine County

Chinook
Harlem

Carbon County

Fromberg
Joliet

Carter County

Ekalaka

Custer County

Ismay

Dawson County

Richey

Fallon County

Plevna

Fergus County

Denton
Winifred

Gallatin County

Three Forks
West Yellowstone

Glacier County

Browning

Golden Valley County

Ryegate

Granite County

Philipsburg

Hill County

Hingham

Judith Basin County

Hobson

Lake County

Ronan
St. Ignatius

Lincoln County

Eureka
Rexford
Troy

Madison County

Twin Bridges

Mineral County

Alberton

Musselshell County

Melstone

Park County

Clyde Park

Petroleum County

Winnett

Prairie County

Terry

Ravalli County

Darby

Roosevelt County

Poplar
Wolf Point

Sanders County

Hot Springs

Sheridan County

Medicine Lake
Outlook
Westby

Butte-Silver Bow County

Walkerville

Wheatland County

Judith Gap

Wibaux County

Wibaux

Yellowstone County

Broadview

Yellowstone National Park

State of Nebraska

Adams County

Holstein
Cottonwood Township
Hansen Township
Ayr
Kenesaw
Little Blue Township
Logan Township
Silver Lake Township
Prosser
Verona Township
Zero Township

Antelope County

Blaine Township
Burnett Township
Cedar Township
Clearwater
Clearwater Township
Crawford Township
Eden Township
Elgin Township
Brunswick
Ellsworth Township
Elm Township
Frenchtown Township
Grant Township
Lincoln Township
Logan Township
Neligh Township
Oakdale
Oakdale Township
Royal
Royal Township
Sherman Township
Stanton Township
Verdigris Township
Willow Township

Arthur County

Arthur

Boone County

Albion
Primrose

Boyd County

Bristow
Bristow Township
Butte Township
Lynch
Lynch Township
McCulley Township
Morton Township
Spencer Township

Brown County

Ainsworth
Long Pine

Buffalo County

Miller
Armanda Township
Beaver Township
Cedar Township
Cherry Creek Township
Gardner Township
Garfield Township
Amherst
Grant Township
Harrison Township
Logan Township
Loup Township
Platte Township
Schneider Township
Scott Township
Sharon Township
Thornton Township

Burt County

Arizona Township
Craig Township
Logan Township
Oakland Township
Riverside Township
Summit Township
Tekamah

Butler County

Alexis Township
Octavia
Bone Creek Township
Center Township
Franklin Township
Abie
Linwood Township
Olive Township
Linwood
Platte Township
Surprise
Read Township
Dwight
Richardson Township
Bruno
Skull Creek Township
Summit Township
Ulysses Township
Union Township

Cass County

South Bend

Cedar County

Belden
Hartington
Laurel
Obert
St. Helena

Chase County

Wauneta

Cherry County

Crookston
Merriman

Cheyenne County

Lodgepole
Potter

Clay County

Deweese
Inland Township
Lewis Township
Ong
Logan Township
Lone Tree Township
Marshall Township
School Creek Township
Sheridan Township
Spring Ranch Township
Sutton Township

Colfax County

Richland

Cuming County

Bancroft
Bancroft Township
Bismarck Township
Blaine Township
Cleveland Township
Cuming Township
Elkhorn Township
Garfield Township
Lincoln Township
Logan Township
Monterey Township
Neligh Township
Wisner Township

Custer County

Mason City
Algernon Township
Arnold Township
Berwyn Township
Broken Bow Township
Cliff Township
Comstock
Comstock Township
Corner Township
Callaway
Delight Township
East Custer Township
Ilim Township
Elk Creek Township
Garfield Township
Grant Township
Lillian Township
Loup Township
Milburn Township
Myrtle Township
Ryno Township
Sargent
Sargent Township
Triumph Township
Wayne Township
Westerville Township
West Union Township
Oconto
Wood River Township

BEST COPY AVAILABLE

Dakota County

Hubbard — Jackson

Dawes County

Crawford — Whitney

Dixon County

Clark Township — Hoskins Township
Concord — Logan Township
Dixon — Newcastle
Concord Township — Newcastle Township
Daily Township — Waterbury
Emerson Township — Otter Creek Township
Martinsburg — Ponca Township
Galena Township — Silver Creek Township
Maskell — Wakefield Township

Dodge County

Canning Township — Pleasant Valley Township
Uehling — Union Township
Logan Township — Webster Township
Pebble Township

Douglas County

Boys Town

Fillmore County

Strang — Franklin Township
Belle Prairie Township — Glengary Township
Bennett Township — Grafton
Chelsea Township — Grafton Township
Exeter — Madison Township
Exeter Township — Momence Township
Ohiowa — West Blue Township

Franklin County

Upland — Macon Township
Antelope Township — Riverton
Ash Grove Township — Campbell
Bloomington — North Franklin Twp
Bloomington Township — Naponee
Grant Township — Turkey Creek Township
Lincoln Township — Washington Township

Frontier County

Curtis

Furnas County

Edison — Holbrook
Hendley — Wilsonville

Gage County

Barneston Township — Holt Township
Blue Springs — Hooker Township
Blue Springs Township — Island Grove Township
Clatonia Township — Liberty
Elm Township — Liberty Township
Filley Township — Logan Township
Barneston — Paddock Township
Clearwood Township — Virginia
Grant Township — Sherman Township
Hanover Township — Sicily Township
Pickrell

Garfield County

Burwell

Greeley County

Greeley Center — Wolbach
Spalding

Hall County

Cameron Township — Mayfield Township
Jackson Township — Prairie Creek Township
Lake Township

Hamilton County

Stockham

Harlan County

Albany Township — Orleans
Alma — Ragan
Alma Township — Orleans Township
Eldorado Township — Republican City Township
Emerson Township — Scandinavia Township
Fairfield Township — Turkey Creek Township
Republican City

Hitchcock County

Culbertson — Stratton
Palisade

Holt County

Antelope Township — Iowa Township
Bella Township — Lake Township
Cleveland Township — McClure Township
Coleman Township — Rock Falls Township
Conley Township — Scott Township
Deloit Township — Shamrock Township
Dustin Township — Sheridan Township
Ewing Township — Steel Creek Township
Fairview Township — Stuart
Francis Township — Stuart Township
Golden Township — Swan Township
Green Valley Township — Willowdale Township
Holt Creek Township — Wyoming Township
Inman

Howard County

Farwell

Jefferson County

Reynolds

Johnson County

Elk Creek — Tecumseh
Sterling

Kearney County

Heartwell — May Township
Eaton Township — Wilcox
Liberty Township — Oneida Township
Lowell Township — Sherman Township
Norman

Kimball County

Bushnell

Knox County

Addison Township — Peoria Township
Bohemia Township — Verdel
Central Township — Raymond Township
Cleveland Township — Santee
Columbia Township — Santee Township
Creighton Township — Spade Township
Dolphin Township — Sparta Township
Dowling Township — Union Township
Eastern Township — Valley Township
Harrison Township — Verdigre
Hill Township — Verdigre Township
Jefferson Township — Walnut Grove Township
Logan Township — Washington Township
Winnetoon — Western Township
Miller Township

Lancaster County

Davey — Hallam

Lincoln County

Brady

Logan County

Stapleton

Madison County

Tilden

Merrick County

Central Township — Midland Township
Lone Tree Township — Prairie Creek Township
Palmer — Silver Creek
Loup Township — Silver Creek Township

Morrill County

Bayard

Nance County

Beaver Township — Genoa Township
Cedar Township — Loup Ferry Township
Cottonwood Township — Prairie Creek Township
East Newman Township — South Branch Township
Fullerton Township — Belgrade
Genoa — Timber Creek Township

Nemaha County

Julian — Nemaha

Nuckolls County

Hardy — Lawrence

Otoe County

Burr — Lorton
Douglas — Palmyra

Pawnee County

Burchard — Pawnee City

Perkins County

Madrid

Phelps County

Anderson Township — Lake Township
Center Township — Union Township
Cottonwood Township — Westside Township
Garfield Township — Williamsburg Township
Atlanta
Industry-Rock Falls Town

Pierce County

Foster — McLean
Hadar — Plainview

Platte County

Tarnov — Joliet Township
Burrows Township — Monroe Township
Creston Township — Lindsay
Grand Prairie Township — Sherman Township
Granville Township — Walker Township
Humphrey Township

Polk County

Polk

Red Willow County

Indianola — Lebanon

Richardson County

Dawson — Salem

Saline County

Dorchester — Western

Saunders County

Bohemia Township — Malmo
Center Township — Mariposa Township
Weston — Morse Bluff Township
Chapman Township — Newman Township
Chester Township — Valparaiso
Memphis — Oak Creek Township
Prague (Part) — Rock Creek Township
Douglas Township — Ithaca
Elk Township

Scotts Bluff County

Lyman — Mitchell
Minatare — Terrytown

Seward County

Beaver Crossing — Staplehurst
Garland — Utica

BEST COPY AVAILABLE

Sheridan County

Gordon
Hay Springs
Rushville

Sherman County

Ashton
Ashton Township
Bristol Township
Elm Township
Hazard
Rockville
Rockville Township
Scott Township
Washington Township

Sioux County

Harrison

Stanton County

Pilger

Thayer County

Alexandria
Carleton
Chester

Thomas County

Halsey

Thurston County

Anderson Township
Blackbird Township
Bryan Township
Rosalie
Flournoy Township
Merry Township
Walthill
Omaha Township
Pender Township
Perry Township
Thayer Township
Winnebago
Winnebago Township

Valley County

Geranium Township
North Loup Township

Washington County

Kennard
Herman

Wayne County

Sholes
Winside

Webster County

Blue Hill
Cowles
Guide Rock

Wheeler County

Ericson

York County

Bradshaw
Lushton
Waco

State of Nevada

Clark County

North Las Vegas

Elko County

Elko

Esmeralda County

Eureka County

Humboldt County

Lander County

Lincoln County

Caliente

Lyon County

Mineral County

Nye County

Pershing County

Lovelock

Storey County

Washoe County

White Pine County

State of New Hampshire

Belknap County

Center Harbor Town

Carroll County

Albany Town
Brookfield Town
Chatham Town
Eaton Town
Effingham Town
Sandwich Town
Wakefield Town

Cheshire County

Alstead Town
Gilsum Town
Nelson Town
Sullivan Town
Surry Town
Troy Town
Winchester Town

Coos County

Columbia Town
Dalton Town
Lancaster Town
Pittsburg Town
Stark Town
Stewartstown Town
Stratford Town
Whitefield Town

Grafton County

Ashland Town
Bath Town
Benton Town
Canaan Town
Dorchester Town
Grafton Town
Groton Town
Hanover Town
Landaff Town
Lisbon Town
Lyman Town
Piermont Town
Warren Town

Hillsborough County

Francestown Town
Mont Vernon Town
Sharon Town
Wilton Town

Merrimack County

Allenstown Town
Chichester Town
Hill Town
Pittsfield Town
Sutton Town
Warner Town

Rockingham County

North Hampton Town
Sandown Town

Strafford County

Durham Town
Middleton Town

Sullivan County

Claremont
Lempster Town
Newport Town
Springfield Town
Washington Town

State of New Jersey

Atlantic County

Atlantic City
Buena
Buena Vista Township
Egg Harbor City
Mullica Township

Bergen County

Wyckoff Township

Burlington County

Beverly
Fieldsboro
New Hanover Township
Pemberton
Springfield Township
Washington Township

Camden County

Camden
Chesilhurst
Gloucester City

Cape May County

Millidwood
Woodbine

Cumberland County

Bridgeton
Commercial Township
Downe Township
Fairfield Township
Greenwich Township
Lawrence Township
Maurice River Township
Upper Deerfield Township

Essex County

Belleville Township
Bloomfield Township
East Orange
Irvington Township
Newark
North Caldwell Township

Gloucester County

Clayton
National Park
Paulsboro
South Harrison Township
Swedesboro
Woolwich Township

Hudson County

East Newark
Harrison
Hoboken
Jersey City
Kearny
Union City
Weehawken Township
West New York

Hunterdon County

Clinton Township

Mercer County

Trenton

Middlesex County

New Brunswick
Perth Amboy
South Amboy

Monmouth County

Asbury Park
Bradley Beach
Keyport
Millstone Township
Union Beach

Morris County

Dover
Montville Township
Rockaway
Victory Gardens

Ocean County

Eagleswood Township
Island Heights
Lakewood Township
Ocean Gate
South Toms River
Tuckerton

Passaic County

Haledon
Passaic
Paterson

Salem County

Lower Alloways Creek Township
Mannington Township
Penns Grove
Salem

Somerset County

Bedminster Township

Sussex County

Andover
Frankford Township
Hamburg
Ogdensburg

Union County

Elizabeth
Plainfield

Warren County

Hardwick Township
Washington

State of New Mexico

Bernalillo County

Tijeras

Catron County

Reserve

Chaves County

Dexter — Roswell
Lake Arthur

Colfax County

Cimarron — Springer
Maxwell

Curry County

Grady — Texico

De Baca County

Fort Sumner

Dona Ana County

Hatch — Mesilla

Eddy County

Hope

Grant County

Bayard — Hurley
Central — Silver City

Guadalupe County

Santa Rosa — Vaughn

Harding County

Mosquero — Roy

Hidalgo County

Lordsburg — Virden

Lea County

Jal — Tatum
Lovington

Lincoln County

Capitan — Corona
Carrizozo — Ruidoso Downs

Luna County

Columbus — Deming

McKinley County

Gallup

Mora County

Wagon Mound

Quay County

House — San Jon
Logan — Tucumcari

Rio Arriba County

Espanola

Roosevelt County

Dora — Portales
Floyd

Sandoval County

Bernalillo — Jemez Springs
Cuba

San Miguel County

Las Vegas — Pecos

Sierra County

Truth or Consequences

Socorro County

Magdalena — Socorro

Taos County

Questa — Taos

Torrance County

Encino — Moriarty
Estancia — Mountainair

Union County

Clayton — Folsom
Des Moines — Granville

Valencia County

Bosque Farms — Los Lunas

State of New York

Albany County

Albany — Green Island Town
Green Island — Altamont

Allegany County

Alfred — Cansadea Town
Allen Town — Centerville Town
Alma Town — Friendship Town
Amity Town — Genesee Town
Andover — Grange Town
Andover Town — Grove Town
Angelica — Richburg
Angelica Town — Fillmore
Belfast Town — Hume Town
Birdsall Town — Independence Town
Bolivar — New Hudson Town
Bolivar Town — Rushford Town
Canaseraga — Ward Town
Burns Town — Willing Town

Broome County

Barker Town — Windsor
Binghamton

Cattaraugus County

Cold Spring Township — Leon Town
Conewango Town — East Randolph
South Dayton — Mansfield Town
Dayton Town — Napoli Town
East Otto Town — Cattaraugus
Farmersville Town — Portville Town
Franklinville — Randolph
Franklinville Town — Randolph Town
Hinsdale Town — Salamanca

Cayuga County

Meridian — Moravia Town
Genoa Town — Sempronius Town
Port Byron — Throop Town
Mentz Town — Victory Town
Montezuma Town

Chautauqua County

Arkwright Town — Harmony Town
Cherry Creek — Predonia
Cherry Creek Town — Pomfret Town
Clymer Town — Bracton
Dunkirk — Portland Town
Dunkirk Town — Sherman
Ellington Town — Sherman Town
French Creek Town — Cassadaga
Silver Creek — Stockton Town
Panama

Chemung County

Wellsburg — Van Etten
Catlin Town — Van Etten Town
Elmira — Millport
Erin Town

Chenango County

Columbus Town — Pharsalia Town
Coventry Town — Pitcher Town
German Town — Plymouth Town
Lincklaen Town — Preston Town
McDonough Town — Sherburne
New Berlin — Smyrna
New Berlin Town — Smyrna Town
Otselic Town

Clinton County

Altona Town — Ellenburg Town
Keeseville — Mooers
Champlain — Mooers Town
Chazy Town — Plattsburgh
Clinton Town — Saranac Town

Columbia County

Ancram Town — Hudson
Clermont Town — Taghkanic Town
Chatham

Cortland County

Cincinnatus Town — Preetown Town
Cortland — Harford Town
McGraw — Lapeer Town
Cuyler Town — Solon Town
Homer — Willet Town

Delaware County

Andes Town — Fleischmanns
Bovina Town — Margaretville
Franklin Town — Middletown Town
Hancock — Roxbury Town
Hancock Town — Hobart
Meredith Town — Stamford Town
Stamford

Dutchess County

Poughkeepsie

Erie County

East Aurora — Springville
Farnham — Hamburg
Buffalo — North Collins

Essex County

Chesterfield Town — Port Henry
Essex Town — Moriah Town
Lewis Town — North Hudson Town
Minerva Town — Ticonderoga Town

Franklin County

Bangor Town — Dickinson Town
Bellmont Town — Fort Covington Town
Bombay Town — Franklin Town
Brandon Town — Malone
Burke — Malone Town
Burke Town — Brushton
Chateaugay — Moira Town
Chateaugay Town — Westville Town
Constable Town

Fulton County

Broedalbin Town — Northville
Ephrath Town — Northampton Town
Gloversville — Oppenheim Town
Mayfield — Stratford Town

Genesee County

Alexander — Byron Town

Greene County

Ashland Town — Hunter
Athens — Tannersville
Cairo Town — Hunter Town
Greenville Town — Windham Town
Halcott Town

Herkimer County

Danube Town — Norway Town
Ilion — Ohio Town
German Flatts Town — Cold Brook
Herkimer — Salisbury Town
Litchfield Town — Warren Town
Dolgeville — Webb Town
Newport

Jefferson County

Adams — Antwerp
Alexandria Town — Antwerp Town

Dexter
Ellisburg
Mannsville
Ellisburg Town
Hounsfield Town
Lyme Town
Philadelphia Town
Rodman Town
Theresa Town
Watertown
Carthage
Deferiet
Herrings
Wilna Town
Worth Town

Kings County

New York

Lewis County

Croghan Town
Denmark Town
Diana Town
Greig Town
Harrisburg Town
Leyden Town
Lyonsdale Town
New Bremen Town
Osceola Town
Pinckney Town
Turin
Watson Town
West Turin Town

Livingston County

Geneseo
Geneseo Town
Leicester Town
Dansville
West Sparta Town

Madison County

Brookfield Town
Georgetown Town
Lebanon Town
Canastota
Lincoln Town
Smithfield Town
Munnsville
Stockbridge Town
Chittenango

Monroe County

Brockport
Churchville
Rochester

Montgomery County

Fort Johnson
Ames
Charleston Town
Glen Town
Nelliston
Palatine Town

Nassau County

Freeport
Hempstead
Great Neck Estates
Russell Gardens
Muttontown

Niagara County

Cambria Town
Niagara Falls
Wheatfield Town

Oneida County

Oriskany Falls
Augusta Town
Bridgewater
Bridgewater Town
Camden Town
Florence Town
Marshall Town
Clayville
Waterville
Steuben Town
Utica
Verona Town
Sylvan Beach
Vienna Town
Oriskany
Whitesboro

Onondaga County

Camillus
Fabius Town
Skaneateles
Syracuse

Ontario County

Naples

Orange County

Cornwall on Hudson
Crawford Town
Deerpark Town
Middletown
Kiryas Joel
Monroe Town
Walden
Newburgh
Port Jervis

Orleans County

Clarendon Town

Oswego County

Altmar
Albion Town
Boylston Town
Cleveland
Fulton
Hannibal
Orwell Town
Palermo Town
Redfield Town
Lacona
Phoenix
Williamstown Town

Otsego County

Cherry Valley Town
Decatur Town
Edmeston Town
Exeter Town
Harpwick Town
Laurens
Schenevus
Maryland Town
New Lisbon Town
Oneonta
Pittsfield Town
Plainfield Town
Richfield Springs
Roseboom Town
Springfield Town
Westford Town
Worcester Town

Rensselaer County

Rensselaer
Stephentown Town
Troy

Rockland County

Haverstraw
Haverstraw Town
Grand View-on-Hudson
Hillburn
New Square

St. Lawrence County

Brasher Town
Rensselaer Falls
Richville
De Kalb Town
De Peyster Town
Edwards
Edwards Town
Fowler Town
Gouverneur
Gouverneur Town
Hammond
Hammond Town
Hermon Town
Hopkinton Town
Lawrence Town
Lisbon Town
Macomb Town
Massena
Madrid Town
Massena Town
Morristown
Morristown Town
Norfolk Town
Ogdensburg
Heuvelton
Oswegatchie Town
Parishville Town
Norwood
Pierrepont Town
Potsdam
Potsdam Town
Rossie Town
Russell Town
Waddington
Waddington Town

Saratoga County

Day Town
Edinburg Town
Greenfield Town
Providence Town
Schuylerville

Schenectady County

Schenectady

Schoharie County

Blenheim Town
Conesville Town
Fulton Town
Schoharie
Schoharie Town
Seward Town
Summit Town

Schuyler County

Burdett
Montour Falls
Montour Town
Orange Town
Tyrone Town

Seneca County

Junius Town
Tyre Town
Varick Town

Steuben County

Addison
Addison Town
Avoca Town
Bath
Bath Town
Bradford Town
Cameron Town
Canisteo
Canisteo Town
Caton Town
Riverside
Greenwood Town
Hornby Town
Hornell
Howard Town
Jasper Town
Prattsburg Town
Pulteney Town
Rathbone Town
Thurston Town
Troupsburg Town
Tuscarora Town
Wayne Town
West Union Town
Woodhull
Woodhull Town

Suffolk County

Belle Terre
Patchogue
Shoreham

Sullivan County

Cochecton Town
Delaware Town
Fremont Town
Liberty
Liberty Town
Bloomingburgh
Wurtsboro
Mamakating Town
Rockland Town

Tioga County

Barton Town
Candor Town
Richford Town
Spencer

Tompkins County

Caroline Town
Ithaca

Ulster County

Hardenbergh Town
Kingston
Rochester Town
Pine Hill
Ellenville

Warren County

Chester Town
Hague Town
Horicon Town
Lake Luzerne Town
Stony Creek Town
Thurman Town

Washington County

Argyle Town
Cambridge Town
Dresden Town
Fort Ann
Fort Ann Town
Fort Edward
Granville
Granville Town
Hartford Town
Hebron Town
Putnam Town
Salem
Salem Town
Whitehall Town

Wayne County

Clyde
Galen Town
Huron Town
Wolcott
Rose Town
Savannah Town
Sodus
Sodus Town
Red Creek
Wolcott Town

Westchester County

Buchanan
Elmsford
Larchmont
Mount Vernon
New Rochelle
Port Chester
Rye Town

Wyoming County

Bennington Town
Eagle Town
Genesee Falls Town
Pike

Yates County

Barrington Town
Italy Town
Penn Yan
Jerusalem Town
Milo Town
Potter Town
Dresden

State of North Carolina

Alamance County

Alamance

Alexander County

Taylorsville

Anson County

Ansonville
Lilesville
McFarlan
Morven
Peachland
Polkton
Wadesboro

Ashe County

Jefferson
Lansing

Avery County

Elk Park
Newland

Beaufort County

Aurora
Bath
Belhaven
Chocowinity
Pantego
Washington

Bertie County

Askewville
Aulander
Kelford
Lewiston
Powellsville
Roxobel
Windsor

Bladen County

Bladenboro
Clarkton
Dublin
Elizabethtown
Tar Heel

Brunswick County

Navassa
Sunset Beach

Burke County

Glen Alpine

Cabarrus County

Concord

Carteret County

Beaufort

Caswell County

Milton

Catawba County

Brookford
Newton

Cherokee County

Andrews
Murphy

Chowan County

Edenton

Cleveland County

Belwood
Casar
Fallston
Grover
Kings Mountain
Lattimore
Lawndale
Mooresboro
Shelby
Waco

Columbus County

Bolton
Brunswick
Cerro Gordo
Chadbourn
Fair Bluff
Lake Waccamaw
Tabor City

Craven County

Bridgeton
Cove City
Dover
Havelock
New Bern
Vanceboro

Cumberland County

Godwin
Linden
Spring Lake
Wade

Dare County

Kitty Hawk

Davidson County

Lexington

Duplin County

Beulaville
Calypso
Greenevers
Magnolia
Rose Hill
Teachey
Warsaw

Edgecombe County

Leggett
Pinetops
Princeville
Speed
Whitakers

Franklin County

Bunn
Franklinton
Louisburg
Youngsville

Gaston County

Belmont
Bessemer City
Cramerton
Dallas
Lowell
McAdenville
Mount Holly
Ranlo

Graham County

Robbinsville

Granville County

Creedmoor
Oxford

Greene County

Snow Hill
Walstonburg

Halifax County

Enfield
Hobgood
Littleton
Roanoke Rapids
Scotland Neck
Weldon

Harnett County

Angier
Coats
Dunn

Haywood County

Canton
Clyde
Hazelwood
Waynesville

Henderson County

Hendersonville

Hertford County

Ahoskie
Cofield
Como
Murfreesboro

Iredell County

Harmony
Love Valley
Statesville

Johnston County

Benson
Clayton
Four Oaks
Kenly
Micro
Pine Level
Princeton
Selma
Smithfield

Jones County

Maysville
Pollocksville
Trenton

Lenoir County

Kinston
Pink Hill

McDowell County

Old Fort

Madison County

Hot Springs
Marshall

Martin County

Hamilton
Hassell
Oak City
Parmele
Robersonville
Williamston

Mecklenburg County

Cornelius

Mitchell County

Bakersville

Montgomery County

Biscoe
Mount Gilead
Star
Troy

Moore County

Cameron
Robbins
Vass

Nash County

Bailey
Castalia
Dortches
Middlesex
Nashville
Red Oak
Rocky Mount
Sharpsburg
Spring Hope

New Hanover County

Wilmington

Northampton County

Conway
Garysburg
Jackson
Seaboard
Severn
Woodland

Onslow County

Holly Ridge

Orange County

Hillsborough

Pamlico County

Alliance
Bayboro
Mesic
Oriental
Stonewall
Vandemere

Pasquotank County

Elizabeth City

Pender County

Burgaw

Perquimans County

Hertford
Winfall

Person County

Roxboro

Pitt County

Ayden
Bethel
Falkland
Farmville
Fountain
Grifton
Grimesland
Winterville

Polk County

Tryon

Randolph County

Archdale
Randleman
Staley

Richmond County

Ellerbe
Hamlet
Hoffman
Norman

Robeson County

Fairmont
Maxton
Orrum
Parkton
Pembroke
Proctorville
Raynham
Red Springs
Rennert
Rowland

Rockingham County

Reidsville

Rowan County

East Spencer
Landis
Rockwell

Rutherford County

Alexander Mills
Bostic
Lake Lure
Ruth
Spindale

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Sampson County

Autryville
Clinton
Harrells
Newton Grove
Roseboro
Turkey

Scotland County

East Laurinburg
Gibson
Laurinburg
Wagram

Stanly County

New London
Richfield

Stokes County

Walnut Cove

Surry County

Mount Airy

Swain County

Bryson City

Transylvania County

Rosman

Tyrrell County

Columbia

Union County

Marshville
Monroe

Vance County

Henderson
Kittrell
Middleburg

Wake County

Holly Springs
Zebulon

Warren County

Norlina
Warrenton

Washington County

Creswell
Plymouth
Roper

Wayne County

Eureka
Fremont
Mount Olive

Wilkes County

Ronda

Wilson County

Elm City
Saratoga
Stantonsburg
Wilson

Yadkin County

Arlington
East Bend
Jonesville

Yancey County

Burnsville

State of North Dakota

Adams County

Clermont Township
Gilstrap Township
Holden Township
North Lemmon Township
Orange Township
Scott Township
Taylor Butte Township
Whetstone Township
Wolf Butte Township

Barnes County

Anderson Township
Ashtabula Township
Dazey Township
Getchell Township
Grand Prairie Township
Greenland Township
Hemen Township
Lake Town Township
Meadow Lake Township
Nelson Township
Nome
Oakhill Township
Oriska Township
Pierce Township
Potter Township
Rogers Township
Rosebud Township
Sanborn
Sibley Trail Township
Skandia Township
Spring Creek Township
Stewart Township
Valley Township
Weimer Township
Wimbledon

Benson County

Albert Township
Arna Township
Aurora Township
Beaver Township
Brimmada
Butte Valley Township
East Fork Township
Impark Township
Knox Township
Lake Ibsen Township
Lallie Township
Mission Township
Normania Township
North Viking Township
Oberon Township
Rich Valley Township
Rock Township
South Viking Township
Twin Tree Township
Warwick Township
West Antelope Township
West Bay Township
Wood Lake Township
York

Bottineau County

Amity Township
Antler Township
Bentinck Township
Blaine Township
Cecil Township
Cordelia Township
Dalen Township
Elma Township
Elysian Township
Gardenia
Haram Township
Hastings Township
Kane Township
Kramer
Lands
Lewis Township
Maxbass
Newborg Township
Oak Creek Township
Oak Valley Township
Pickering Township
Renville Township
Roland Township
Sergius Township
Sherman Township
Tacoma Township
Wayne Township
Wellington Township
Whitby Township
Willow City

Bowman County

Amor Township
Boyesen Township
Buena Vista Township
Gem Township
Goldfield Township
Haley Township
Hart Township
Minnehala Township
Rhame Township
Scranton Township
Star Township
Talbot Township

Burke County

Bowbells Township
Cleary Township
Colville Township
Dale Township
Flaxton
Garness Township
Harmonous Township
Kandiyohi Township
Lakeview Township
Larson
Lignite
North Star Township
Portal
Portal Township
Powers Lake
Richland Township
Rossland Township
Soo Township
Vale Township
Ward Township

Burleigh County

Canfield Township
Clear Lake Township
Cromwell Township
Estherville Township
Florence Lake Township
Frances Township
Ghylin Township
Gibbs Township
Grass Lake Township
Harriett Township
Hazel Grove Township
Lein Township
Logan Township
Long Lake Township
McKenzie Township
Menoken Township
Missouri Township
Morton Township
Painted Woods Township
Regan
Rock Hill Township
Sibley Butte Township
Steiber Township
Sterling Township
Taft Township
Telfer Township
Wild Rose Township
Wing

Cass County

Addison Township
Alice
Amenia
Arthur Township
Ayr Township
Buffalo
Buffalo Township
Clifton Township
Dows Township
Durbin Township
Eldred Township
Everest Township
Gardner
Gill Township
Highland Township
Hill Township
Howes Township
Lake Township
Leonard
Leonard Township
Maple River Township
Noble Township
Pontiac Township
Rich Township
Rochester Township
Rush River Township
Watson Township

Cavalier County

Alma Township
Alsen
Billings Township
Calio
Cypress Township
Dresden Township
Easby Township
East Alma Township
Fremont Township
Glenila Township
Gordon Township
Grey Township
Hannah
Hay Township
Hope Township
Langdon Township
Loam Township
Milton
Minto Township
Moscow Township
Series
Mount Carmel Township
Nekoma Township
North Loma Township
North Olga Township
Oxford Township
Perry Township
Seivert Township
South Dresden Township
Waterloo Township

Dickey County

Ada Township
Albertha Township
Clement Township
Divide Township
Ellendale Township
Elm Township
Fullerton
German Township
Hamburg Township
Hudson Township
Kantner Township
Keystone Township
Lovell Township
Menango
Port Emma Township
Porter Township
Riverdale Township
Spring Valley Township
Valley Township
Wright Township
Young Township

Divide County

Ambrose Township
Blooming Valley Township
Coalfield Township
Fillmore Township
Gooseneck Township
Hayland Township
Noonan
Palmer Township
Smoky Butte Township
Stoneview Township
Troy Township
Westby Township

Dunn County

Dunn Center City

Eddy County

Cherry Lake Township
Columbia Township
Eddy Township
Gates Township
Hillsdale Township
Lake Washington Township
Munster Township
New Rockford Township
Rosefield Township
Sheldon Township
Tiffany Township

Emmons County

Braddock
Buchanan Valley Township
Campbell Township
Danbury Township
Hague
Harding Township
Hazelton Township
Lincoln Township
Linton
Prairie View Township
Strasburg

Foster County

Birtsell Township
Bordulac Township
Bucephalia Township
Eastman Township
Estabrook Township
Florance Township
Glenfield Township
Haven Township
Grace City
McHenry Township
McKinnon Township
Nordmore Township
Rolling Prairie Township
Rose Hill Township
Wyard Township

Golden Valley County

Beach Township
Delhi Township
Golva
Lone Tree Township
Saddle Butte Township

Grand Forks County

Agnes Township
Chester Township
Elm Grove Township
Falconer Township
Gilby Township
Grace Township
Hegton Township
Inkster Township
Levant Township
Lind Township
Moraine Township
Niagara Township
Oakville Township
Strabane Township
Turtle River Township
Walle Township
Washington Township
Wheatfield Township

Grant County

Carson
Elm Township
Fisher Township
Lark Township
Leipzig Township
Leith
Minnie Township
Otter Creek Township
Pretty Rock Township
Raleigh Township
Rock Township
Schultz Township
Winona Township

Griggs County

Bell Hill Township
Bartley Township
Broadview Township
Bryan Township
Hazenford
Helena Township
Kingsley Township
Lenora Township
Mabel Township
Romness Township
Rosendal Township
Sverdrup Township
Tyrol Township
Washburn Township

Hettinger County

Acme Township
Alden Township
Berry Township
Black Butte Township
Campbell Township
Cannon Ball Township
Chilton Township
Farina Township
Highland Township
Madison Township
Merrill Township
Mott Township
Odessa Township
Rifle Township
St Croix Township
Steiner Township
Wagendorf Township

Kidder County

Allen Township
Atwood Township
Baker Township
Buckeye Township
Bunker Township
Clear Lake Township
Crystal Springs Township
Dawson
Excelsior Township
Prettin Township
Graf Township
Haynes Township
Kickapoo Township
Lake Williams Township
Manning Township
Merkel Township
Peace Township
Petersville Township
Pettibone
Pettibone Township
Pleasant Hill Township
Sibley Township
Steele
Tappen
Tappen Township
Tuttle
Tuttle Township
Valley Township
Vernon Township
Weiser Township
Westford Township
Williams Township
Woodlawn Township

La Moure County

Badger Township
Berlin
Black Loam Township
Dean Township
Dickey City
Glen Township
Gleenmore Township
Grand Rapids Township
Greenville Township
Henrietta Township
Mikkelson Township
Nora Township
Norden Township
Ovid Township
Pearl Lake Township
Pomona View Township
Roscoe Township
Russell Township
Ryan Township
Saratoga Township
Verona
Wano Township

Logan County

Bryant Township
Dixon Township
Fredonia
Gutschmidt Township
Haag Township
Kroeber Township
Napoleon
Red Lake Township
Sealy Township

McHenry County

Anamoose
Anamoose Township
Balfour Township
Bantry
Bantry Township
Berwick Township
Bjornson Township
Brown Township
Cottonwood Lake Township
Deep River Township
Deering Township
Denbigh Township
Drake
Egg Creek Township
Falson Township
Karlsruhe
Karlsruhe Township
Kief
Kottke Valley Township
Lake George Township
Lake Hester Township
Land Township
Layton Township
Mouse River Township
Newport Township
Normal Township
North Prairie Township
Odin Township
Olivia Township
Pratt Township
Rose Hill Township
Schiller Township
Spring Grove Township
Strege Township
Villard Township
Voltaire
Wegar Township

McIntosh County

Lehr
Zeeland

McKenzie County

Alex Township
Alexander
Arnegard
Bear Den Township
Charison Township
Elk Township
Elm Tree Township
Grail Township
Northfork Township
Randolph Township
Rhoades Township
Sioux Township
Twin Valley Township
Wilbur Township

McLean County

Amundsville Township
Andrews Township
Blackwater Township
Blue Hill Township
Butte Township
Byersville Township
Deepwater Township
Dogden Township
Douglas Township
Gate Township
Horseshoe Valley Township
Lake Williams Township
Loquemont Township
McGinnis Township
Malcolm Township
Max
Medicine Hill Township
Roseglen Township
Rosemont Township
St. Mary Township
Snake Creek Township
Turtle Lake
Victoria Township
Wise Township

Morton County

Almont
Ingelter Township

Mountrail County

Alger Township
Austin Township
Burke Township
Clearwater Township
Cottonwood Township
Crane Creek Township
Crowfoot Township
Debing Township
Egan Township
Fertile Township
Howie Township
Kickapoo Township
Lostwood Township
Lowland Township
Mcalmond Township
McGahan Township
Model Township
Mountrail Township
Osborn Township
Osloe Township
Palermo
Palermo Township
Parshall
Powers Lake Township
Rose Township
Sidonia Township
Sikes Township
Sorkness Township
Spring Coulee Township
Van Hook Township

Nelson County

Adler Township
Bergen Township
Field Township
Forde Township
Lakota
Lakota Township
McVille
Melvin Township
Nesheim Township
Ore Township
Petersburg Township
Rugh Township
Sarnia Township

Pembina County

Advance Township
Beaulieu Township
Crystal
Crystal Township
Elora Township
Hamilton Township
Joliette Township
Midland Township
Neche Township
Park Township
Pembina Township
Thingvalla Township

Pierce County

Alexander Township
Antelope Lake Township
Balta
Barton
Elling Township
Hagel Township
Jefferson Township
Meyer Township
Reno Valley Township
Truman Township
White Township

Ramsey County

Bartlett Township
De Groat Township
Dry Lake Township
Funcher Township
Freshwater Township
Harding Township
Klingstrup Township
Lawton
Lawton Township
Lillehoff Township
Minnewaukan Township
Noonan Township
Northfield Township
Odessa Township
Overland Township
Royal Township
South Minnewaukan Township
Starkweather
Triumph Township

Ransom County

Alicaton Township
Allegheny Township
Big Bend Township
Casey Township
Coburn Township
Elliott
Fort Ransom
Fort Ransom Township
Greene Township
Hanson Township
Isley Township
Liberty Township
Moore Township
Owego Township
Preston Township
Rosemeade Township
Sandoun Township
Scoville Township
Sheldon
Shenford Township
Springer Township
Sydna Township

Renville County

Brandon Township
Eden Valley Township
Fairbanks Township
Grassland Township
Grover Township
Hamlet Township
Hurley Township
Ivanhoe Township
Lockwood Township
McKinney Township
Muskego Township
Prosperity Township
Rockford Township
Stafford Township
Tolley

Richland County

Abercrombie Township
Belford Township
Brandenburg Township
Brightwood Township
Center Township
Danton Township
Devillo Township
Dexter Township
Duerr Township
Elma Township
Freeman Township
Garborg Township
Grant Township
Great Bend
Greendale Township
Hankinson
Homestead Township
Ibsen Township
Mantador
Mooreton Township
Moran Township
Sheyenne Township
Viking Township
Wyndmere Township

Rolette County

Currie Township
Dunseith
Maryville Township
Mylo
Rolla
Shell Valley Township
South Valley Township

Sargent County

Cogswell
Dunbar Township
Hall Township
Harlem Township
Herman Township
Kingston Township
Rutland Township
Sargent Township
Shuman Township
Southwest Township
Tewaukon Township
Vivian Township

Sheridan County

Berlin Township
Boone Township
Denhoff Township
Fairview Township
Goodrich
Goodrich Township
Highland Township
Holmes Township
Lincoln Dale Township
Martin
Martin Township
Mauch Township
New Germantown TWP
Pickard Township
Streeeburg Township

Sioux County

Fort Yates
Selfridge
Solen

Slope County

Connor Township
Marmarth
Sand Creek Township

Stark County

Belfield City
Richardson City
South Heart City
Taylor City

Steele County

Beaver Creek Township
Colgate Township
Edendale Township
Franklin Township
Golden Lake Township
Greenview Township
Hugo Township
Melrose Township
Primrose Township
Riverside Township
Sharon Township

Stutsman County

Alexander Township
Ashland Township
Corinne Township
Cuseator Township
Durham Township
Eldridge Township
Gerber Township
Germania Township
Glacier Township
Griffin Township
Hidden Township
Jim River Valley Township
Kensal
Kensal Township
Lenton Township
Lowery Township
Lyon Township
Manns Township
Marston Moor TWP
Medina
Montpelier Township
Nogosek Township
Paris Township
Peterson Township
Pingree
Pingree Township
Pipestem Valley Township
Rose Township
Severn Township
Sharlow Township
Stirton Township
Strong Township
Valley Spring Township
Walters Township
Weld Township
Ypsilanti Township

Tower County

Armourdale Township
Atkins Township
Coolin Township
Crocus Township
Dash Township
Grainfield Township
Hansboro Township
Lansing Township
Mount View Township
Penlerm Township
Rocklake Township
Sidney Township
Smith Township
Springfield Township
Teddy Township
Twin Hill Township
Victor Township

Traill County

Belmont Township
Clifford
Eldorado Township
Garfield Township
Herberg Township
Norman Township
Norway Township
Portland Township
Stavanger Township
Viking Township
Wold Township

Walsh County

Action Township
Adams Township
Ardoch Township
Cleveland Township
Dewey Township
Dundee Township
Eden Township
Edinburg
Fairdale
Farmington Township
Fertile Township
Fordville
Forest River Township
Glenwood Township
Golden Township
Grafton Township
Harriston Township
Hoople
Kensington Township
Lampton Township
Latona Township
Martin Township
Minto
Norton Township
Perth Township
Pisek
Prairie Center Township
Pulaski Township
Rushford Township
St. Andrews Township
Sauter Township
Shepherd Township
Silvesta Township
Tiber Township
Vernon Township
Walshville Township

Ward County

Drillian Township
Carbondale Township
Carpio Township
Denmark Township
Des Lacs
Donnybrook
Elmdale Township
Freedom Township
Granly Township
Greenbush Township
Lund Township
Meadow Township
Maryland Township
Mayland Township
Rae Township
Rolling Green Township
Rushville Township
Ryder
Sauk Prairie Township
Sawyer
Sawyer Township
Sheakley Township
Spencer Township
Torning Township
Vang Township
Waterford Township
Willis Township

Wells County

Barlin Township
Blodaun Township
Bowdon
Bull Moose Township
Cathay
Chamley Township
Crystal Lake Township
Dolgar Township
Fairville Township
Forward Township
Hamburg
Hawkeseat Township
Hilladale Township
Lynn Township
Manfred Township
Norway Lake Township
Pony Gulch Township
St. Anna Township
Sykeston
Sykeston Township
Valhalla Township
Wells Township
Western Township
West Norway Township
W. Ontario Township
Woodward Township

Williams County

Alamo
Big Meadow Township
Big Stone Township
Blue Ridge Township
Bonetrail Township
Climax Township
Dry Fork Township
East Fork Township
Equality Township
Farmvale Township
Hardscrabble Township
Helsco Township
Lindahl Township
Mont Township
Round Prairie Township
Scorio Township
Springbrook Township
Stony Creek Township
Strandahl Township
Trenton Township
Truax Township
View Township
West Bank TWP
Wheelock

State of Ohio

Adams County

Bratton Township
Brush Creek Township
Franklin Township
Rome
Green Township
Jefferson Township
Liberty Township
Manchester
Manchester Township
Peebles
Meigs Township
Monroe Township
West Union
Oliver Township
Seaman
Scott Township
Sprigg Township
Tiffin Township
Wayne Township
Winchester
Winchester Township

Allen County

Harrod
Lima
Sugar Creek Township

Ashland County

Clear Creek Township
Jackson Township
Mifflin
Mifflin Township
Orange Township
Sullivan Township
Troy Township

Ashtabula County

Cherry Valley Township
Colebrook Township
Denmark Township
Dorset Township
Lenox Township
Pierpont Township
Richmond Township
Rome Township
Windsor Township

Athens County

Amos Township
Athens
Bern Township
Albany
Canaan Township
Carthage Township
Dover Township
Lodi Township
Rome Township
Glouster
Jacksonville
Trimbel
Trimbel Township
Coolville
Troy Township
Waterloo Township
Buchtel
Nelsonville
York Township

Auglaize County

Salem Township

Belmont County

Colerain Township
Flushing
Holloway
Flushing Township
Kirkwood Township
Bridgeport
Bellaire
Pultney Township
Somerset Township
Morristown
Union Township
Barnesville
Washington Township
Wayne Township
Wheeling Township

Brown County

Byrd Township
Hamersville
Clark Township
Eagle Township
Franklin Township
Green Township
Huntington Township
Russellville
Jefferson Township
Higginsport
Lewis Township
Fayetteville
Perry Township
Pike Township
Georgetown
Pleasant Township
Scott Township
Sterling Township
Ripley
Union Township
Sardinia
Washington Township

Butler County

Hamilton
Liberty Township
Somerville
New Miami
Jacksonburg

Carroll County

Fox Township
Lee Township
Dellroy
Perry Township
Union Township
Washington Township

Champaign County

Adams Township
Harrison Township
Union Township

Clark County

Lawrenceville
Springfield

Clermont County

Batavia
Chilo
Felicity
Franklin Township
Jackson Township
Ohio Township
New Richmond
Newtonsville
Wayne Township
Williamsburg

Clinton County

Adams Township
Chester Township
Martinsville
Clark Township
New Vienna
Green Township
Midland
Jefferson Township
Port William
Sabina
Richland Township
Clarksville
Washington Township
Wayne Township
Wilson Township

Columbiana County

East liverpool
Summitville
Franklin Township
Salineville
Rogers
Washingtonville
East Palestine
Washington Township
Wellsville

Coshocton County

Bedford Township
Clark Township
Crawford Township
Linton Township
Mill Creek Township
Newcastle Township
Perry Township
Tiverton Township
Tuscarawas Township
Washington Township

Crawford County

Tiro
Auburn Township
Chatfield
Chatfield Township
Dallas Township
Tod Township
Vernon Township

Cuyahoga County

Cleveland
East Cleveland
Cleveland Heights

Darke County

Castyberg
Union City
New Weston
Jackson Township
Allen Township
Palestine
Castine
Richland Township
Butler Township
Arcanum
Hollansburg
York Township

Defiance County

Farmer Township
Mark Township

Delaware County

Berlin Township
Ostrander
Harlem Township
Sunbury

Erie County

Margaretta Township

Fairfield County

Amanda
West Rushville
Amanda Township
Richland Township
Stoutsville
Pleasantville
Clear Creek Township
Millersport

Fayette County

Green Township
Paint Township
Milledgeville
Bloomingburg
Jasper Township
Perry Township
Jeffersonville
Washington
Madison Township

Franklin County

Lockbourne
Columbus
Urbancrest
Harrisburg

Fulton County

Chesterfield Township
Gorham Township
Wauseon
York Township
Franklin Township

Gallia County

Clay Township
Vinton
Gallipolis
Huntington Township
Gallipolis Township
Morgan Township
Greenfield Township
Ohio Township
Guyan Township
Springfield Township
Harrison Township
Walnut Township

Geauga County

Parkman Township
Troy Township

Greene County

Cedarville
Ross Township
Cedarville Township
Jamestown
Bowersville
Silver Creek Township
Yellow Springs
Spring Valley
Miami Township

Guernsey County

Adams Township
Monroe Township
Jefferson Township
Lore City
Knox Township
Oxford Township
Kimbolton
Senecaville
Liberty Township
Richland Township
Fairview
Cumberland
Londonderry Township
Spencer Township
Quaker City
Valley Township
Salesville
Washington Township
Millwood Township
Wheeling Township

Hamilton County

Cincinnati
Cleves
Elmwood Place
Miami Township
Lincoln Heights
St Bernard
Addyston
Woodlawn

Hancock County

Vanlue
Portage Township
Blanchard Township
Rawson
Cass Township
Jenera
Arlington
Van Buren Township

Hardin County

Buck Township
Alger
Dudley Township
McCuffey
Goshen Township
Marion Township
Mount Victory
Roundhead Township
Lynn Township
Taylor Creek Township
McDonald Township
Washington Township

Harrison County

New Athens
Hopedale
Athens Township
Green Township
Deersville
Moorefield Township
Freeport
Nottingham Township
Freeport Township
Short Creek Township
German Township
Washington Township

Henry County

Flatrock Township
Malinta

Highland County

Bush Creek Township
Marshall Township
Concord Township
Paint Township
Highland
Salem Township
Jackson Township
Union Township
Liberty Township
Washington Township
Greenfield
Mowrystown
Madison Township

Hocking County

Benton Township
Starr Township
Laurel Township
Murray City
Marion Township
Ward Township
Laurelville
Washington Township
Perry Township

Holmes County

Berlin Township
Paint Township
Clark Township
Prairie Township
Millersburg
Ripley Township
Killbuck
Salt Creek Township
Monroe Township
Walnut Creek Township

Huron County

Clarksfield Township
Wakeman
Ripley Township
Wakeman Township
Sherman Township

Jackson County

Bloomfield Township
Oak Hill
Coalton
Jackson
Coal Township
Lick Township
Franklin Township
Madison Township
Hamilton Township
Milton Township
Jackson Township
Scioto Township
Jefferson Township
Washington Township
Liberty Township
Wellston

Jefferson County

Empire
Bergholz
Ross Township
Springfield Township
Irondale
Steubenville
Saline Township
Bloomingdale
Smithfield
Brilliant
Amsterdam

Knox County

Brown Township
Jefferson Township
Butler Township
Miller Township
Clinton Township
Pike Township
Harrison Township
Danville
Canterbury
Gann
Hilliar Township
Union Township
Jackson Township

Lawrence County

Aid Township
Athalia
Decatur Township
Symmes Township
Elizabeth Township
Chesapeake
Hanging Rock
Proctorville
Hamilton Township
Union Township
Lawrence Township
Upper Township
Mason Township
Washington Township
Ironton
Windsor Township

Licking County

Bowling Green Township
Hartford Township
Fallsbury Township
Hopewell Township
Kirkersville
Alexandria
Harrison Township
Buckeye
Hartford

Logan County

Zanesfield
Miami Township
West Liberty
De Graff
Huntsville
Perry Township
McArthur Township
Pleasant Township
Quincy
Union Township

Lorain County

Kipton
Lagrange
South Amherst
Lagrange Township
Grafton Township
Sheffield

Lucas County

Harbor View
Toledo
Spencer Township

Madison County

Canaan Township
Pleasant Township
Darby Township
Range Township
Plain City
South Solon
Pike Township
Stokes Township
Mount Sterling
Union Township

Mahoning County

Jackson Township
Youngstown
Craig Beach

Marion County

Grand Township
Morrel
New Bloomington
Salt Rock Township
Pleasant Township

Medina County

Homer Township
Spencer
Montville Township

Meigs County

Bedford Township
Rutland Township
Chester Township
Salem Township
Columbia Township
Pomeroy
Lebanon Township
Salisbury Township
Letart Township
Racine
Olive Township
Syracuse
Orange Township
Sutton Township
Rutland

Mercer County

Burkettsville
Hopewell Township
Montezuma

Miami County

Bradford
Pleasant Hill
Elizabeth Township
Newton Township
Casstown
Potsdam

Monroe County

Adams Township
Clarington
Benton Township
Seneca Township
Bethel Township
Lewisville
Stafford
Summit Township
Franklin Township
Beallsville
Miltonsburg
Switzerland Township
Malaga Township
Washington Township
Perry Township
Wayne Township

Montgomery County

Dayton

Morgan County

Deerfield Township
Chesterhill
Marion Township
Penn Township
Union Township
Stockport
Windsor Township
York Township

Morrow County

Congress Township
Franklin Township
Fulton
Peru Township
Troy Township

Muskingum County

Adams Township
Blue Rock Township
Case Township
Falls
Harrison Township
Gratiot
Madison Township
Meigs Township
Fultonham
Newton Township
Rich Hill Township
South Zanesville
Norwich
Zanesville

Noble County

Batesville
Beaver Township
Buffalo Township
Sarahaville
Center Township
Elk Township
Enoch Township
Jackson Township
Dexter City
Jefferson Township
Summerfield
Marion Township
Belle Valley
Stock Township

Paulding County

Haviland
Blue Creek Township
Melrose
Oakwood
Brown Township
Cecil
Crane Township
Broughton
Washington Township

Perry County

Bearfield Township
Clayton Township
Crooksville
Glenford
Junction City
Jackson Township
Madison Township
Roseville
Corning
Rendville
Monroe Township
New Lexington
Pike Township
Hemlock
Shawnee
Salt Lick Township

Pickaway County

Circleville
Williamsport
Deer Creek Township
Madison Township
New Holland
Derbyville
Muhlenberg Township
Perry Township
Tarlton
Wayne Township

Pike County

Beaver Township
Benton Township
Beaver
Camp Creek Township
Jackson Township
Marion Township
Mifflin Township
Newton Township
Pebble Township
Perry Township
Sciotto Township
Piketon
Seal Township
Sunfish Township
Union Township

Portage County

Deerfield Township
Brady Lake

Preble County

Dixon Township
Verona
West Elkton
Jefferson Township
Eldoredo
Camden
Somers Township

Putnam County

Cloverdale
Dupont
Union Township
Belmore

Richland County

Blooming Grove Township
Butler Township
Shiloh
Cass Township
Lucas
Butler

Ross County

South Salem
Buckskin Township
Concord Township
Deerfield Township
Franklin Township
Green Township
Harrison Township
Jefferson Township
Liberty Township
Paint Township
Bainbridge
Paxton Township
Twin Township

Sandusky County

Fremont
Riley Township

Scioto County

Bloom Township
Otway
Brush Creek Township
Green Township
Harrison Township
Jefferson Township
Madison Township
Morgan Township
New Boston
Nile Township
Portsmouth
Rarden
Rarden Township
Rush Township
Union Township
Valley Township
Vernon Township
Washington Township

Seneca County

Bloomville
Hopewell Township
Republic
Scipio Township

Shelby County

Russia
Turtle Creek Township
Kettlersville
Lockington

Stark County

Navarre
Wilmot

Summit County

Clinton
Macedonia
Twinsburg Township

Trumbull County

Bloomfield Township
West Farmington
Farmington Township
Greene Township
Johnston Township
Mesopotamia Township
Orangeville

Tuscarawas County

Bucks Township
Clay Township
Sarahill
Ulricksville
Mill Township
Goudenhutten
Midvale
Rush Township
Dennison
Salem Township
Union Township
Warren Township
Washington Township
Wayne Township

Union County

Richwood
Unionville Center
Magnetic Springs
Millcreek Township
Union Township

Van Wert County

Scott
Elgin

Vinton County

Brown Township
Hamden
Clinton Township
Eagle Township
Elk Township
Harrison Township
Jackson Township
Knox Township
Madison Township
Richland Township
Swan Township
Vinton Township
Wilkesville

Warren County

Hamilton Township
Pleasant Plain
Harlan Township
Harveysburg
Massie Township
South Lebanon
Morrow
Salem Township
Union Township
Corwin

Washington County

Macksburg
Aurelius Township
Barlow Township
Decatur Township
Matamora
Grandview Township
Independence Township
Lawrence Township
Liberty Township
Ludlow Township
Palmer Township
Warren Township
Waterford Township
Wesley Township

Wayne County

Marshallville
Burbank
Congress
Paint Township
Fredericksburg
Salt Creek Township
Sugar Creek Township

Williams County

Bridgewater Township
Blakeslee
Northwest Township

Wood County

Bairdstown
Bloomdale
Jerry City
Custar
Bradner
Rising Sun
Portage Township

Wyandot County

Nevada
Jackson Township
Kirby
Marseilles
Marseilles Township
Harpster
Pitt Township
Ridge Township
Salem Township
Sycamore
Sycamore Township
Tymochtee Township

State of Oklahoma

Adair County

Stilwell
Watts
Westville

Alfalfa County

Aline
Burlington
Carmen
Goltry
Jet

Atoka County

Atoka
Stringtown
Tushka
Wardville

Beaver County

Gate
Knowles

Beckham County

Carter
Erick
Sayre

Blaine County

Geary
Greenfield
Longdale

Bryan County

Achille
Bennington
Caddo
Colbert
Durant
Hendrix
Kemp

Caddo County

Anadarko
Binger
Bridgeport
Carnegie
Cement
Rakly
Gracemont

Carter County

Ardmore
Dickson
Gene Autry
Ratliff City
Tatums
Wilson

Cherokee County

Hulbert
Tahlequah

Choctaw County

Boswell
Fort Towson
Soper

Cimarron County

Boise City

Cleveland County

Lexington

Coal County

Centrahoma
Coalgate
Lehigh
Phillips
Tupelo

Comanche County

Cache
Fletcher
Geronimo
Indiahoma
Medicine Park
Sterling

Cotton County

Temple
Walters

Craig County

Big Cabin
Ketchum
Vinita

Creek County

Bristow
Depew
Drumright
Kiefer
Oilton
Shamrock

Custer County

Arapaho
Butler
Clinton
Custer City
Thomas

Delaware County

Bernice
Colcord
Jay
Kansas
Oaks
West Siloam Springs

Dewey County

Camargo
Oakwood
Seiling

Ellis County

Gage

Garfield County

Carrier
Drummond

Garvin County

Elmore City
Erin Springs
Maysville
Paula Valley
Stratford

Grady County

Alex
Bradley
Chickasha
East Ninnekah
Norge
Rush Springs

Grant County

Lamont
Manchester
Nash
Pond Creek

Greer County

Granite
Mangum
Willow

Harmon County

Gould
Hollis

Harper County

May

Haskell County

Keota
Kinta
McCurtain
Stigler
Tamaha
Whitefield

Hughes County

Calvin
Dustin
Holdenville
Lamar
Wetumka

Jackson County

East Duke
Eldorado
Elmer
Martha
Olustee

Jefferson County

Addington
Cornish
Hastings
Ringling
Ryan
Sugden
Terral

Johnston County

Bromide
Mannsville
Milburn
Ravia
Tishomingo
Wapanucka

Kay County

Blackwell
Kaw

Kingfisher County

Dover
Hennessey
Okarche

Kiowa County

Cooperton
Gotebo
Hobart
Lone Wolf
Mountain Park
Mountain View
Roosevelt
Snyder

Latimer County

Red Oak
Wilburton

Le Flore County

Arkoma
Bokoshe
Cameron
Cowlington
Fanshawe
Heavener
Howe
Le Flore
Panama
Poteau
Sandy Point
Spiro

Lincoln County

Agra
Chandler
Davenport
Fallis
Kendrick
Sparks
Tryon
Warwick
Wellston

Logan County

Coyle
Crescent
Guthrie
Langston
Marshall
Meridian
Mulhall
Orlando

Love County

Leon
Marietta
Thackerville

McClain County

Byars
Cole
Dibble
Purcell
Rosedale
Washington

McCurtain County

Broken Bow
Garvin
Harris
Haworth
Idabel
Millerton
Smithville
Valliant
Wright City

McIntosh County

Checotah
Eufaula
Hanna
Hitchite
Stidham

Major County

Cleo

Marshall County

Kingston
Madill
Oakland
Woodville

Mayes County

Adair
Disney
Locust Grove
Salina
Spavinaw

Murray County

Dougherty
Sulphur

Muskogee County

Boynton
Bragge
Council Hill
Fort Gibson
Haskell
Muskogee
Oktaha
Porum
Summit
Taft
Webbers Falls
Wainwright

Noble County

Billings
Marland
Red Rock

Nowata County

Delaware
Lenapah
New Alluwe
Wann

Okfuskee County

Bixby
Castle
Okemah
Paden
Weleetka

Oklahoma County

Harrah
Jones
Luther
Nicoma Park
Smith Village

Okmulgee County

Beggs
Bryant
Dewar
Grayson
Henryetta
Hoffman
Morris
Okmulgee

Osage County

Avant
Burbank
Fairfax
Osage
Pawhuska

Ottawa County

Afton
Commerce
Fairland
North Miami
Peoria
Picher
Quapaw
Wyandotte

Pawnee County

Blackburn
Hallett
Jennings
Ralston
Skedee
Terlton

Payne County

Glencoe
Ripley

Pittsburg County

Alderson
Ashland
Canadian
Crowder
Halleyville
Hartshorne
Indianola
Kiowa
Pittsburg
Quinton
Savanna

Pontotoc County

Ada
Francis
Roff
Stonewall

Pottawatomie County

Asher
Brooksville
Earlsboro
Johnson
Maud
St. Louis
Shawnee
Tribbey
Wanette

Pushmataha County

Albion
Antlers
Clayton
Rattan

Roger Mills County

Hammon — Reydon

Rogers County

Chelsea — Oologah
Fuyil

Seminole County

Konawa — Seminole
Lima — Wewoka
Sasakwa

Sequoyah County

Gans — Muldrow
Gore — Sallisaw
Marble City — Vian
Moffett

Stephens County

Comanche — Marlow
Loco

Texas County

Texhoma

Tillman County

Davidson — Hollister
Frederick — Manitou
Grandfield — Tipton

Tulsa County

Glenpool

Wagoner County

Coweta — Tullahassee
Redbird — Wagoner

Washington County

Ochelata — Ramona

Washita County

Canute — Foss
Dill City

Woods County

Decona — Freedom

Woodward County

Mutual — Sharon
Quinlan

State of Oregon

Baker County

Haines — Halfway

Clackamas County

Molalla

Clatsop County

Hammond

Columbia County

Prescott — Vernonia

Coos County

Powers

Curry County

Port Orford

Douglas County

Yoncalla

Gilliam County

Lonerock

Grant County

Long Creek — Monument

Jackson County

Gold Hill — Talent

Jefferson County

Culver — Metolius

Klamath County

Chiloquin — Merrill

Lane County

Lowell

Linn County

Brownsville — Sweet Home
Sodaville

Malheur County

Nyssa — Vale

Marion County

Aurora — Jefferson
Gates — Scott Mills
Gervais — Woodburn

Morrow County

Ione — Irrigon

Polk County

Falls City

Tillamook County

Rockaway

Umatilla County

Echo — Weston
Stanfield

Union County

Imbler — Union
North Powder

Wallowa County

Joseph — Lostine

Wasco County

Maupin

Washington County

Banks — North Plains
Gaston

Wheeler County

Fossil — Mitchell

Yamhill County

Amity — Yamhill
Dayton

State of Pennsylvania

Adams County

Bendersville — Littlestown
Bonneauville — McSherrystown
Conewago Township — Menallen Township
Hamilton Township — Oxford Township
Hamiltonban Township — Straban Township

Allegheny County

Braddock — Rankin
Clairton — Sharpsburg
Dravosburg — South Versailles Township
Duquesne — Stowe Township
Edgeworth — Tarentum
Glenfield — West Deer Township
Homestead — West Elizabeth
McKeesport — Whitaker
McKees Rocks
Pittsburgh

Armstrong County

Apollo — North Apollo
Atwood — Perry Township
Boggs Township — Pine Township
Bradys Bend Township — Rayburn Township
Burrell Township — Redbank Township
Dayton — Valley Township
Ford City — Wayne Township
Manor Township — Worthington

Beaver County

Beaver Falls — Glasgow
Eastvale — Hanover Township
Fallston — Midland
Frankfort Springs — Patterson Heights
Freedom

Bedford County

Bloomfield Township — Lincoln Township
Broad Top Township — Londonderry Township
Coaldale — Mann Township
Colerain Township — Manns Choice
East Providence Township — Monroe Township
East St. Clair Township — Napier Township
Everett — Pleasantville
Harrison Township — St. Clairsville
Hopewell — Saxton
Hopewell Township — Schellsburg
Juniata Township — Southampton Township
Kimmel Township — Woodbury Township

Berks County

District Township — Reading
Hamburg — Upper Tulpehocken Township
Lyons
Pike Township

Blair County

Greenfield Township — Tyrone
Huston Township — Williamsburg
Juniata Township — Woodbury Township
Newry

Bradford County

Armenia Township — Rome
Athens Township — Rome Township
Burlington Township — Sayre
Canton — Smithfield Township
Franklin Township — South Creek Township
Granville Township — Springfield Township
Herrick Township — Standing Stone Township
Le Raysville — Stevens Township
Leroy Township — Sylvania
Litchfield Township — Terry Township
Monroe — Towanda
Monroe Township — Troy Township
New Albany — Tuscarora Township
Orwell Township — West Burlington Township
Overton Township — Wilmot Township
Pike Township
Ridgebury Township

Bucks County

Bristol — Langhorne
Hulmeville — Tinicum Township

Butler County

Cherry Township — Jackson Township
Cherry Valley — Muddy Creek Township
Connoquenessing — Oakland Township
Donegal Township — Venango Township
Eau Claire — West Liberty

Cambria County

Ashville — Johnstown
Blacklick Township — Lilly
Cassandra — Loretto
Chest Township — Portage
Chest Springs — Reade Township
Croyle Township — Summerhill Township
Dean Township — Susquehanna Township
Ehrenfeld — White Township
Elder Township — Wilmore
Gallitzin Township

Cameron County

Lumber Township

Carbon County

Banks Township
Franklin Township
Lower Towamensing Township
Summit Hill
Towamensing Township
Weissport

Centre County

Curtin Township
Haines Township
Marion Township
Miles Township
Penn Township
Philipsburg
State College
Unionville

Chester County

Coatesville
Modena
New Garden Township
Parkesburg
South Coatesville
Upper Oxford Township
Upper Uwchlan Township
West Nottingham Township
West Sadsbury Township
West Vincent Township

Clarion County

Ashland Township
Callensburg
Foxburg
Hawthorne
Highland Township
Knox
Licking Township
Limestone Township
Madison Township
Perry Township
Piney Township
Richland Township
Shippenville
Strattanville
Toby Township
Washington Township

Clearfield County

Bell Township
Bigler Township
Bloom Township
Bradford Township
Burnside
Burnside Township
Chest Township
Chester Hill
Covington Township
Ferguson Township
Girard Township
Goshen Township
Gulich Township
Houtzdale
Irvona
Jordan Township
Karthaus Township
Lumber City
Mahaffey
Newburg
Osceola Mills
Penn Township
Ramey
Wallaceton
Westover

Clinton County

Beech Creek Township
Castanea Township
Colebrook Township
Gallagher Township
Greene Township
Leidy Township
Lock Haven
Porter Township
Renovo
Wayne Township
West Keating Township

Columbia County

Beaver Township
Benton
Benton Township
Bloomsburg
Briar Creek Township
Catawissa Township
Fishing Creek Township
Franklin Township
Greenwood Township
Jackson Township
Locust Township
Madison Township
Mount Pleasant Township
Pine Township

Crawford County

Athens Township
Beaver Township
Bloomfield Township
Cambridge Springs
Centerville
Conneaut Township
Cussewago Township
East Fallowfield Township
Greenwood Township
Linesville
North Shenango Township
Pine Township
Rockdale Township
Rome Township
South Shenango Township
Sparta Township
Spartansburg
Spring Township
Steuben Township
Titusville
Troy Township
Venango Township

Cumberland County

Cooke Township
Lower Frankford Township
South Newton Township
West Fairview

Dauphin County

Berrysburg
East Hanover Township
Harrisburg
Lykens Township
Royalton
Wiconisco Township

Delaware County

Chester
Colwyn
Darby
Lower Chichester Township
Marcus Hook
Millbourne
Tinicum Township
Trainer
Upland

Elk County

Benezette Township
Highland Township
Johnsonburg

Erie County

Concord Township
Elk Creek Township
Erie
Greenfield Township
Le Boeuf Township
North East
Platea
Springfield Township
Union City
Wattsburg

Fayette County

Brownsville
Brownsville Township
Connellsville
Connellsville Township
Dawson
Dunbar
Dunbar Township
Everson
Fairchance
Fayette City
Franklin Township
Georges Township
German Township
Henry Clay Township
Jefferson Township
Luzerne Township
Markleysburg
Masontown
Menallen Township
Nicholson Township
Ohiopyle
Perry Township
Redstone Township
Saltlick Township
Smithfield
South Connellsville
Springfield Township
Springhill Township
Stewart Township
Uniontown
Upper Tyrone Township

Forest County

Barnett Township
Hickory Township
Kingsley Township
Tionesta
Tionesta Township

Franklin County

Fannett Township
Warren Township

Fulton County

Ayr Township
Belfast Township
Bethel Township
Brush Creek Township
Licking Creek Township
Taylor Township
Thompson Township
Todd Township
Union Township
Wells Township

Greene County

Aleppo Township
Dunkard Township
Freeport Township
Gilmore Township
Gray Township
Jackson Township
Jefferson
Monongahela Township
Morris Township
Perry Township
Richhill Township
Springhill Township
Washington Township
Wayne Township
Whitley Township

Huntingdon County

Alexandria
Brady Township
Broad Top City
Carbon Township
Caseville
Clay Township
Coalmont
Cromwell Township
Dublin Township
Dudley
Franklin Township
Hopewell Township
Mapleton
Marklesburg
Mill Creek
Morris Township
Petersburg
Saltillo
Shade Gap
Shirley Township
Shirleysburg
Tell Township
Three Springs
Tod Township
Union Township
Wood Township

Indiana County

Banks Township
Black Lick Township
Canoe Township
Conemaugh Township
East Wheatfield Township
Ernest
Glen Campbell
Grant Township
Green Township
Indiana
Marion Center
Montgomery Township
Pine Township
Plumville
Saltsburg
Washington Township
West Mahoning Township

Jefferson County

Barnett Township
Clover Township
Gaskill Township
Henderson Township
McCalmont Township
Perry Township
Polk Township
Porter Township
Summerville
Sykesville
Timblin
Washington Township

Juniata County

Beale Township
Delaware Township
Greenwood Township
Lack Township
Port Royal
Spruce Hill Township
Susquehanna Township
Turbett Township
Tuscarora Township
Walker Township

Lackawanna County

Archbald
Elmhurst Township
Jefferson Township
La Plume Township
Lehigh Township
Madison Township
Throop
Vandling

Lancaster County

Brecknock Township
Colerain Township
Earl Township
East Cocalico Township
Eden Township
Lancaster
Leacock Township
Littlz
Sadsbury Township
Salisbury Township
Strasburg Township
Terre Hill
Warwick Township
West Earl Township

Lawrence County

Enon Valley
Hickory Township
New Beaver
New Castle
New Wilmington
Plain Grove Township
South New Castle
Volant
Wampum
Washington Township
Wilmington Township

Lebanon County

Millcreek Township
North Londonderry TWP

Luzerne County

Avoca
Butler Township
Courtdale
Dorrance Township
Fairmont Township
Lake Township
Larksville
Nescopeck Township
Pittston
Plymouth
Rice Township
Ross Township
Union Township

Lycoming County

Anthony Township
Bastress Township
Brady Township
Brown Township
Cascade Township
Clinton Township
Cogan House Township
Cummings Township
Jordan Township
Lewis Township
Limestone Township
McHenry Township
McIntyre Township
McNett Township
Montgomery
Muncy Township
Penn Township
Piatt Township
Pine Township
Plunketts Creek Township
Porter Township
Williamsport

McKean County

Annin Township
Bradford
Liberty Township
Mount Jewett
Norwich Township

Mercer County

Deer Creek Township
Delaware Township
Farrell
Greene Township
Mill Creek Township
New Lebanon
Salem Township
Sheakleyville
Springfield Township
West Middlesex
Wilmington Township
Wolf Creek Township

Mifflin County

Armagh Township
Bratton Township
Kistler
Lewistown
Menno Township
Newton Hamilton
Oliver Township
Wayne Township

Montgomery County

Green Lane
Telford
Upper Salford Township

Montour County

Anthony Township
Liberty Township
Limestone Township
West Hemlock Township

Northampton County

East Bangor
Easton
North Catasauqua

Northumberland County

Delaware Township
East Cameron Township
Jordan Township
Lewis Township
Lower Mahanoy Township
Mount Carmel Township
Shamokin
Snydertown
Sunbury
West Cameron Township

Perry County

Blain
Centre Township
Jackson Township
Landisburg
Liverpool Township
Miller Township
Northeast Madison TWP
Saville Township
Westhwest Madison Township
Toboyne Township

Philadelphia County

Philadelphia

Pike County

Milford

Potter County

Allegany Township
Bingham Township
Galeton
Harrison Township
Hebron Township
Hector Township
Homer Township
Keating Township
Oswayo
Oswayo Township
Pike Township
Roulette Township
Sharon Township
Shinglehouse
Summit Township
Sylvania Township
Ulysses
West Branch Township
Wharton Township

Schuylkill County

Ashland
Auburn
Branch Township
Butler Township
Eldred Township
Foster Township
Gilberton
Gordon
Hegins Township
Hubley Township
Middleport
Mount Carbon
New Ringgold
North Union Township
Port Clinton
Pottsville
Reilly Township
Shenandoah
South Manheim Township
Tremont
Tremont Township
Union Township
Upper Mahantongo Township
Wayne Township

Snyder County

Adams Township
Beaver Township
Center Township
Chapman Township
Jackson Township
McClure
Middlecreek Township
Spring Township
Union Township
Washington Township

Somerset County

Addison
Addison Township
Allegheny Township
Benson
Black Township
Boswell
Casselman
Elk Lick Township
Fairhope Township
Greenville Township
Larimer Township
Lincoln Township
Meyersdale
Middlecreek Township
Northampton Township
Shade Township
Shanksville
Somerset Township
Southampton Township
Stonycreek Township
Summit Township
Ursina
Wellersburg

Sullivan County

Davidson Township
Forks Township
Forksville
Shrewsbury Township

Susquehanna County

Apolacon Township
Ararat Township
Auburn Township
Brooklyn Township
Forest Lake Township
Franklin Township
Harford Township
Harmony Township
Hop Bottom
Jessup Township
Lathrop Township
Lenox Township
Middletown Township
Oakland Township
Rush Township
Springville Township
Thompson Township

Tioga County

Bloss Township
Brookfield Township
Chatham Township
Clymer Township
Duncan Township
Elk Township
Elkland
Farmington Township
Gaines Township
Hamilton Township
Jackson Township
Lawrence Township
Liberty Township
Mansfield
Middlebury Township
Morris Township
Osceola Township
Putnam Township
Richmond Township
Roseville
Rutland Township
Shippen Township
Sullivan Township
Tioga
Union Township
Westfield
Westfield Township

Union County

Hartley Township
Lewis Township
Limestone Township
White Deer Township

Venango County

Allegheny Township
Barkeyville
Emlenton
Jackson Township
Pinegrove Township
Polk

Warren County

Bear Lake
Clarendon
Columbus Township
Deerfield Township
Freehold Township
Southwest Township
Sugar Grove Township
Youngsville

Washington County

Amwell Township
Bentleyville
Blaine Township
Canton Township
Centerville
Coal Center
Coloburg
Cross Creek Township
Deemston
Donegal Township
Donora
East Bethlehem Township
East Finley Township
Elco
Ellsworth
Fallowfield Township
Finleyville
Hanover Township
Independence Township
Jefferson Township
Marianna
North Bethlehem Township
Roscoe
Smith Township
Washington
West Bethlehem Township
West Brownsville
West Finley Township
West Pike Run Township

Wayne County

Berlin Township
Bethany
Damascus Township
Dyberry Township
Hawley
Lebanon Township
Manchester Township
Mount Pleasant Township
Oregon Township
Scott Township
Starling Township

Westmoreland County

Allegheny Township
Arona
Bell Township
Donegal
East Huntingdon Township
East Vandergrift
Latrobe
Suterville
Upper Burrell Township
Washington Township

Wyoming County

Clinton Township
Falls Township
Lemon Township
Mehoopany Township
Meshoppen
Nicholson
Nicholson Township
Northmoreland Township
Windham Township

York County

Fawn Township
Felton
Franklintown
Hallam
Lower Chanceford Township
Seven Valleys
Warrington Township
West Manheim Township
Winterstown
Wrightsville
York
York Haven

State of Rhode Island

Newport County

Newport

Providence County

Central Falls
Foster Town
Providence
Woonsocket

State of South Carolina

Abbeville County

Abbeville
Calhoun Falls
Donalds
Lowndesville

Aiken County

Burnettown
Perry
Salley
Wagener

Allendale County

Allendale
Fairfax

Anderson County

Anderson
Belton
Honea Path
Iva
Starr

Bamberg County

Bamberg
Denmark
Ehrhardt
Govan
Olar

Barnwell County

Barnwell
Blackville
Elko
Hilda
Kline
Snelling

Beaufort County

Bluffton

Berkeley County

Bonneau
Jamestown
Moncks Corner
St. Stephen

Calhoun County

Cameron
St. Matthews

Charleston County

Charleston
Hollywood
Meggett
Ravenel

Cherokee County

Gaffney

Chester County

Chester — Great Falls
Fort Lawn — Richburg

Chesterfield County

Cheraw — Mount Croghan
Chesterfield — Pageland
McBee — Patrick

Clarendon County

Manning — Summerton
Paxville — Turbeville

Colleton County

Lodge — Williams
Walterboro

Darlington County

Darlington — Lamar
Hartsville — Society Hill

Dillon County

Dillon — Latta

Dorchester County

Harleyville — St. George
Ridgeville

Edgefield County

Edgefield — Johnston

Fairfield County

Winnsboro

Florence County

Florence — Pamplico
Lake City — Scranton
Olanta — Timmonsville

Georgetown County

Andrews — Georgetown

Greenville County

City View — Woodside
Cesar

Greenwood County

Greenwood — Troy
Hodges

Hampton County

Brunson — Hampton
Estill — Luray
Furman — Varnville
Gifford

Horry County

Atlantic Beach — Loris
Conway

Jasper County

Hardeeville — Ridgeland

Kershaw County

Camden

Lancaster County

Lancaster

Laurens County

Cross Hill — Waterloo
Laurens

Lee County

Bishopville — Lynchburg

Lexington County

Batesburg — Leesville
Gilbert — Swansea

McCormick County

McCormick — Plum Branch
Mount Carmel

Marion County

Marion — Sellers
Mullins

Marlboro County

Bennettsville — McColl
Blenheim — Tatum
Clio

Newberry County

Chappells — Prosperity
Newberry — Silverstreet
Pomaria — Whitmire

Oconee County

Westminster — West Union

Orangeburg County

Bowman — Neeses
Branchville — North
Cope — Norway
Elloree — Orangeburg
Eutawville — Rowesville
Holly Hill — Vance

Pickens County

Central — Liberty
Easley — Norris

Richland County

Eastover

Saluda County

Monetta — Saluda
Ridge Spring — Ward

Spartanburg County

Campobello — Pacolet
Central Pacolet — Pacolet Mills
Cheenee — Spartanburg
Cowpens — Woodruff
Landrum

Sumter County

Mayesville — Sumter
Pinewood

Union County

Carlisle — Union
Jonesville

Williamsburg County

Greeleyville — Lane
Kingstree

York County

Clover — McConnells
Fort Mill — York

State of South Dakota

Aurora County

Aurora Township — Gales Township
Belford Township — Lake Township
Bristol Township — Plankinton Township
Center Township — Pleasant Lake Township
Cooper Township — Stickney
Crystal Lake Township — Truro Township
Dudley Township — Washington Township
Eureka Township — White Lake
Firesteel Township — White Lake Township

Beadle County

Allen Township — Sonilla Township
Altoona Township — Broadland
Banner Township — Burr Oak Township
Belle Prairie Township — Carlyle Township
Caveur Township — Nance Township
Clifton Township — Pearl Creek Township
Custer Township — Richland Township
Dearborn Township — Theresa Township
Fairfield Township — Valley Township
Grant Township — Vernon Township
Hartland Township — Virgil
Hitchcock — Westington Township
Iowa Township — Wessington
Kellogg Township — Whiteside Township
Lake Byron Township — Wolsey Township
Liberty Township — Yale

Bennett County

Martin

Bon Homme County

Tabor — Tyndall

Brookings County

Afton Township — Oak Lake Township
Alton Township — Oakwood Township
Bangor Township — Parnell Township
Bruce — Preston Township
Elkton Township — Richland Township
Eureka Township — Sterling Township
Lake Hendricks Township — Volga Township
Laketon Township — Winsor Township

Brown County

Bath Township — Lansing Township
Brainard Township — Liberty Township
Cambria Township — Lincoln Township
Carlisle Township — North Detroit Township
Claremont — Oneota Township
Claremont Township — Ordway Township
Columbia Township — Osceola Township
East Hanson Township — Palmyra Township
East Rondell Township — Portage Township
Franklyn Township — Richland Township
Frederick Township — Savo Township
Garden Prairie Township — Shelby Township
Garland Township — South Detroit Township
Greenfield Township — West Hanson Township
Groton Township — Westport
Hecla Township — Westport Township
Henry Township — West Rondell Township
Highland Township

Brule County

America Township — Plummer Township
Chamberlain Township — Pukwana
Cleveland Township — Red Lake Township
Eagle Township — Richland Township
Highland Township — Smith Township
Kimball — Torrey Lake Township
Kimball Township — Union Township
Lyon Township — Waldo Township
Ola Township — West Point Township
Plainfield Township — Wilbur Township
Pleasant Grove Township — Willow Lake Township

Buffalo County

Elvira Township

Butte County

Nisland — Union Township

Campbell County

Artas — Mound City
Herreid — Pollock

Charles Mix County

Bryan Township — Hamilton Township
Carroll Township — Highland Township
Choteau Creek Township — Howard Township
Denis — Jackson Township
Darlington Township — Kennedy Township
Parker Township — Lake Andes
Geddes — La Roche Township
Goose Lake Township — Lawrence Township

Lone Tree Township
Moore Township
Plain Center Township
Ravinia
Ree Township
Rhoda Township
Rouse Township
Wagner
Wahehe Township
White Swan Township

Clark County

Ash Township
Blaine Township
Bradley
Clark
Cottonwood Township
Darlington Township
Day Township
Eden Township
Elrod Township
Fordham Township
Garden City
Garfield Township
Hague Township
Lake Township
Lincoln Township
Marion Township
Mount Pleasant Township
Naples
Pleasant Township
Raymond Township
Richland Township
Rosedale Township
Spring Valley Township
Thorp Township
Warren Township
Washington Township
Willow Lake

Clay County

Bethel Township
Garfield Township
Glenwood Township
Meckling Township
Pleasant Valley Township
Spirit Mound Township
Star Township
Vermillion
Vermillion Township
Wakonda

Codington County

Dexter Township
Eden Township
Fuller Township
Germantown Township
Graceland Township
Henry Township
Kampeska Township
Kranzburg Township
Leola Township
Phipps Township
Rauville Township
South Shore
Wallace

Corson County

Custer Township
McIntosh
McLaughlin Township
Mahto Township
Mission Township
Morristown
Rolling Green Township
Sherman Township
Wakpala Township

Custer County

Buffalo Gap
Hermosa
Pringle

Davison County

Badger Township
Baker Township
Beulah Township
Blendon Township
Ethan
Lisbon Township
Mitchell Township
Mount Vernon Township
Perry Township
Rome Township
Tobin Township
Union Township

Day County

Andover
Butler
Butler Township
Eggland Township
Grenville
Grenville Township
Highland Township
Homer Township
Independence Township
Kidder Township
Koschkonong Township
Liberty Township
Lynn Township
Morton Township
Nutley Township
Oak Coleh Township
Pierpont
Racine Township
Raritan Township
Scotland Township
Valley Township
Westby
Westby Township
Webster Township
Wheatland Township
York Township

Deuel County

Altamont
Altamont Township
Blom Township
Brandt
Clear Lake Township
Gary
Glenwood Township
Goodwin
Goodwin Township
Grange Township
Havana Township
Herrick Township
Hidewood Township
Lowe Township
Norden Township
Portland Township
Rome Township
Toronto

Dewey County

Isabel
Timber Lake

Douglas County

Clark Township
Delmont
East Choteau Township
Garfield Township
Grandview Township
Holland Township
Independence Township
Iowa Township
Joubert Township
Lincoln Township
Valley Township
Washington Township

Edmunds County

Belle Township
Bowdle Township
Bryant Township
Clear Lake Township
Cleveland Township
Clayd Valley Township
Cortlandt Township
Cottonwood Lake Township
Glen Township
Glover Township
Hillside Township
Hosmer
Hosmer Township
Hudson Township
Huntley Township
Ipswich Township
Kent Township
Liberty Township
Madison Township
Modena Township
Montpelier Township
Odessa Township
Pembrook Township
Rosette Township
Union Township
Vermont Township

Fall River County

Antelope Township
Ardmore
Harmony Township

Faulk County

Arcade Township
Centerville Township
Clark Township
Dewee Township
Ellisville Township
Enterprise Township
Fairview Township
Faulkton
Freedom Township
Lafoon Township
Myron Township
Orient
Orient Township
Pioneer Township
Seneca
Union Township
Wesley Township

Grant County

Adams Township
Big Stone Township
Blooming Valley Township
Georgia Township
Grant Center Township
Kilborn Township
Lura Township
Madison Township
Marvin
Maseppa Township
Osceola Township
Revillo
Stockholm Township
Troy Township
Twin Brooks Township
Vernon Township

Gregory County

Bonesteel
Burke Township
Carlock Township
Dallas
Dickens Township
Dixon Township
Edens Township
Elston Township
Fairfax
Fairfax Civil Township
Gregory
Herrick
Jones Township
Landing Creek Township
Lone Star Township
Pleasant Valley Township
St. Charles Township
Schriever Township
Spring Valley Township
Star Valley Township
Whetstone Township

Hamlin County

Brantford Township
Bryant
Castlewood
Castlewood Township
Cleveland Township
Dempster Township
Estelline Township
Florence Township
Garfield Township
Hayti Township
Lake Norden
Norden Township
Opdahl Township

Hand County

Alden Township
Alpha Township
Bates Township
Burdette Township
Campbell Township
Carlton Township
Cedar Township
Como Township
Florence Township
Gilbert Township
Glendale Township
Grand Township
Greenleaf Township
Hiland Township
Holden Township
Howell Township
Hulbert Township
Linn Township
Logan Township
Midland Township
Miller Township
Ohio Township
Ontario Township
Park Township
Pearl Township
Plato Township
Pleasant Valley Township
Riverside Township
Rockdale Township
Rose Hill Township
St. Lawrence Township
Spring Hill Township
Wheaton Township
York Township

Hanson County

Beulah Township
Edgerton Township
Fairview Township
Hanson Township
Plano Township
Pleasant Township
Rosedale Township
Spring Lake Township
Taylor Township
Worthen Township

Harding County

Camp Crook

Hughes County

Logan Township
Reber Township

Hutchinson County

Clayton Township
Fair Township
Foster Township
German Township
Grandview Township
Kassel Township
Kaylor Township
Menno
Milltown Township
Oakhollow Township
Pleasant Township
Sharon Township
Starr Township
Susquehanna Township
Tripp
Wittenberg Township
Wolf Creek Township

Jackson County

Belvidere
Interior

Jerauld County

Alpena
Alpena Township
Anina Township
Blaine Township
Chery Township
Crow Township
Crow Lake Township
Dale Township
Franklin Township
Harmony Township
Lane
Logan Township
Media Township
Vicia Township

Jones County

Draper
Dunkel Township
Kolls Township
Morgan Township
Murdo
Williams Creek Township

Kingsbury County

Baker Township
Denver Township
De Smet
Erwin
Hartland Township
Manchester Township
Iroquois
Mathews Township
Oldham
Spirit Lake Township
Spring Lake Township
Whitewood Township

Lake County

Badus Township
Clarno Township
Concord Township
Farmington Township
Franklin Township
Lake View Township
Le Roy Township
Nunda
Nunda Township
Ramona
Summit Township
Wayne Township
Wentworth
Wentworth Township
Winfred
Winfred Township

Lawrence County

Central City
Lead
St. Onge Township
Spearfish

Lincoln County

Brooklyn Township
Canton Township
Delaware Township
Eden Township
Fairview Township
Grant Township
Highland Township
La Valley Township
Lincoln Township
Norway Township
Pleasant Township
Worthing

Lyman County

Bailey Township
Butte Township
Darling Township
Iona Township
Lund Township
Morningside Township
Oacoma
Oacoma Township
Presho Township
Reliance
Reliance Township
Rose Township

McCook County

Benton Township
Bridgewater
Bridgewater Township
Brookfield Township
Canistota Township
Emery Township
Grant Township
Greenland Township
Montrose Township
Ramsey Township
Richland Township
Salem Township
Spring Valley Township
Sun Prairie Township

McPherson County

Hoffman Township
Long Lake
Wechter Township
Weber Township

Marshall County

Buffalo Township
Dayton Township
Domerce Township
Eden
Fort Township
Hamilton Township
La Belle Township
Lake City
Langford
McKinley Township
Newark Township
Newport Township
Northend Township
Pleasant Valley Township
Red Iron Lake Township
Sisseton Township
Stone Township
Veblen
Veblen Township
Waverly Township
Weston Township
White Township
WiesnerTownship

Meade County

Lakeside Township
Union Township
Upper Red Owl Township

Mellette County

Red Nation Township
Blackpipe Township
Corn Creek Township
Fairview Township
Mosher Township
Norris Township
Riverside Township
Rosebud Township
Running Bird Township
Surprise Valley Township
White River
Wood

Miner County

Beaver Township
Belleview Township
Canova
Canova Township
Carthage
Carthage Township
Clearwater Township
Clinton Township
Grafton Township
Green Valley Township
Howden
Howard
Howard Township
Miner Township
Rock Creek Township
Roswell Township
Vermillion Township

Minnehaha County

Benton Township
Buffalo Township
Burk Township
Clear Lake Township
Edison Township
Garretson
Grand Meadow Township
Humbird Township
Logan Township
Lyons Township
Palisade Township
Red Rock Township
Sherman
Split Rock Township
Sverdrup Township
Tuopi Township
Valley Springs Township
Wall Lake Township
Wellington Township

Moody County

Clare Township
Colman Township
Egan
Enterprise Township
Fremont Township
Grovena Township
Jefferson Township
Spring Creek Township
Ward Township

Pennington County

Ash Township
Cedar Butte Township
Huron Township
Lake Flat Township
New Underwood Township
Owanka Township
Peno Township
Rainy Creek Township
Scenic Township
Wasta
Wasta Township

Perkins County

Antelope Township
Bison
Bison Township
Burdick Township
Cash Township
Castle Butte Township
Chance Township
Clark Township
Dewitt Township
Flat Creek Township
Grand River Township
Horse Creek Township
Independence Township
Liberty Township
Lodgepole Township
Lone Tree Township
Meadow Township
Rainbow Township
Scotch Cap Township
Strool Township
Viking Township
Whitney Township
Wilson Township

Roberts County

Agency Township
Alto Township
Bosako Township
Bryant Township
Dry Wood Lake Township
Easter Township
Enterprise Township
Garfield Township
Goodwill Township
Lake Township
Lawrence Township
Lee Township
Linn Township
Minnesota Township
Norway Township
One Road Township
Ortley
Ortley Township
Peever
Sisseton
Springdale Township
Spring Grove Township
Summit
Summit Township
White Rock Township
Wilmot

Sanborn County

Alton Township
Artesian
Benedict Township
Butler Township
Elliott Township
Floyd Township
Jackson Township
Letcher Township
Logan Township
Oneida Township
Silver Creek Township
Twin Lake Township
Union Township
Warren Township
Woonsocket Township

Shannon County

Batesland

Spink County

Antelope Township
Ashton
Belle Plaine Township
Belmont Township
Benton Township
Bertha Township
Buffalo Township
Capitola Township
Clifton Township
Conde
Conde Township
Cornwall Township
Exline Township
Frankfort
Garfield Township
Great Bend Township
Groveland Township
Harmony Township
La Prairie Township
Lincoln Township
Lodi Township
Mellette
Northville Township
Prairie Center Township
Redfield Township
Richfield Township
Spring Township
Sumner Township
Tetonka Township
Three Rivers Township
Tulare Township
Turton
Turton Township
Union Township

Todd County

Mission
St. Francis

Tripp County

Black Township
Carter Township
Colome Township
Cooddn Township
Carlew Township
Dog Ear Township
Elliston Township
Huggins Township
Ideal Township
Irwin Township
King Township
Lake Township
Lamro Township
Lincoln Township
Lone Tree Township
McNeely Township
Millboro Township
New Witten
Plainview Township
Pleasant View Township
Ramos Township
Rosedale Township
Rosebud Township
Star Prairie Township
Stewart Township
Valley Township
Weaver Township
Willow Creek Township
Wilson Township
Winner
Witten Township

Turner County

Centerville
Centerville Township
Danville Township
Davis
Dolton Township
Germantown Township
Home Township
Hurley
Hurley Township
Marion Township
Middleton Township
Monroe
Monroe Township
Rosefield Township
Salem Township
Spring Valley Township
Turner Township
Viborg

Union County

Alcester
Big Springs Township
Civil Bend Township
Emmet Township
North Sioux City
Prairie Township
Sioux Valley Township
Spink Township
Virginia Township

Walworth County

Glenham
Java
Mobridge

Yankton County

Gayville Township
Jamesville Township
Mariendahl Township
Mayfield Township
Mission Hill
Utica
Volin
Volin Township
Walshtown Township

Ziebach County

Dupree

State of Tennessee

Anderson County

Lake City
Oliver Springs

Benton County

Big Sandy

Blount County

Friendsville

Campbell County

Caryville
Jacksboro
Jellico

Cannon County

Woodbury

Carroll County

Atwood
Hollow Rock
Huntingdon
McKenzie

Carter County

Watauga

Cheatham County

Pegram

Chester County

Enville
Henderson

Claiborne County

New Tazewell
Tazewell

Cocke County

Parrottsville

Crockett County

Alamo
Bells
Friendship
Gadsden
Maury City

Cumberland County

Crab Orchard

Davidson County

Nashville-Davidson

Decatur County

Decaturville

De Kalb County

Dowelltown
Liberty
Smithville

Dickson County

Vanleer

Dyer County

Trimble

Fayette County

Gallaway
La Grange
Moscow
Oakland
Piperton
Rossville
Somerville
Williston

Fentress County

Allardt
Jamestown

Franklin County

Cowan
Huntland
Winchester

Gibson County

Gibson
Humboldt
Milan
Trenton
Yorkville

Giles County

Ardmore
Elkton
Lynnville
Minor Hill
Pulaski

Grainger County

Rutledge

Greene County

Baileyton
Mosheim

Grundy County

Altamont
Coalmont
Gruetli-Laager
Monteagle
Palmer

Hamilton County

Chattanooga

Hancock County

Sneedville

Hardeman County

Bolivar
Grand Junction
Hickory Valley
Hornsby
Middleton
Silerton
Toone
Whiteville

Hardin County

Saltillo
Savannah

Hawkins County

Surgoinsville

Haywood County

Brownsville
Stanton

Henderson County

Lexington
Sardis
Scotts Hill

Henry County

Henry

Hickman County

Centerville

Houston County

Erin

Jackson County

Gainesboro

Jefferson County

New Market
White Pine

Johnson County

Mountain City

Lake County

Ridgely
Tiptonville

Lauderdale County

Gates
Halls
Henning
Ripley

Lawrence County

Ethridge
Iron City

Lincoln County

Petersburg

Loudon County

Greenback
Loudon

McMinn County

Englewood
Etowah
Niota

McNairy County

Bethel Springs
Finger
Michie
Milledgeville
Ramer
Stantonville

Macon County

Red Boiling Springs

Madison County

Denmark

Marion County

New Hope
Powells Crossroads
Richard City
Whitwell

Marshall County

Chapel Hill

Maury County

Columbia
Mount Pleasant
Spring Hill

Monroe County

Tellico Plains
Vonore

Morgan County

Oakdale

Obion County

Kenton
Obion
Rives
Samburg
South Fulton

Overton County

Livingston

Perry County

Linden
Lobelville

Polk County

Benton
Copperhill
Ducktown

Putnam County

Baxter
Monterey

Rhea County

Dayton
Graysville

Robertson County

Adams
Cedar Hill
Cross Plains
Orlinda
Ridgetop
Springfield

Scott County

Huntsville
Oneida

Sevier County

Sevierville

Shelby County

Arlington
Collierville
Lakeland
Memphis

Sumner County

Millersville
Mitchellville

Tipton County

Atoka
Burlison
Covington
Garland
Gilt Edge
Mason

Union County

Luttrell
Maynardville

Warren County

Centertown
Morrison
Viola

Washington County

Jonesboro

Wayne County

Clifton
Collinwood

Weakley County

Greenfield
Sharon

White County

Doyle
Sparta

Williamson County

Fairview

Wilson County

Mount Juliet

State of Texas

Anderson County

Frankston
Palestine

Andrews County

Andrews

Angelina County

Burke
Diboll
Fuller Springs
Huntington
Lufkin
Zavalla

Aransas County

Fulton
Rockport

Atascosa County

Charlotte
Christine
Jourdanton
Lytle
Pleasanton
Poteet

Austin County

Bellville
San Felipe
Sealy
Wallis

Bailey County

Muleshoe

Bandera County

Bandera

Bastrop County

Bastrop
Elgin
Smithville

Bee County

Beeville

Bell County

Belton
Killeen
Nolanville

Bexar County

Elmendorf
Grey Forest
San Antonio
Selma
Somerset

Blanco County

Johnson City

Bosque County

Crawfills Gap
Iredell
Morgan

Bowie County

De Kalb

Brazoria County

Brazoria
Clute City

Brewster County

Alpine

Briscoe County

Quitaque
Silverton

Brooks County

Falfurrias

Brown County

Blanket

Burleson County

Caldwell
Somerville

Burnet County

Bertram

Caldwell County

Lockhart
Luling

Calhoun County

Port Lavaca
Seadrift

Callahan County

Cross Plains
Putnam

Cameron County

Bayview
Brownsville
Combes
Harlingen
Indian Lake
La Feria
Los Fresnos
Port Isabel
Primera
Rio Hondo
San Benito
Santa Rosa

Camp County

Rocky Mound

Cass County

Avinger
Bloomburg
Domino
Douglassville
Queen City

Castro County

Dimmitt
Hart
Nazareth

Chambers County

Anahuac
Cove

Cherokee County

Alto
Jacksonville
New Summerfield
Rusk
Wells

Childress County

Childress

Clay County

Bellevue
Byers
Dean
Jolly

Cochran County

Morton
Whiteface

Coleman County

Coleman
Novice
Santa Anna

Collin County

Anna
Blue Ridge
Celina
Farmersville
Josephine
Lowery Crossing
McKinney
Melissa
Westminster

Collingsworth County

Dodson
Wellington

Colorado County

Columbus
Eagle Lake
Weimar

Comanche County

Comanche
De Leon
Gustine

Concho County

Eden
Paint Rock

Cooke County

Valley View

Coryell County

Event
Gatesville
Oglesby

Cottle County

Paducah

Crosby County

Crosbyton
Lorenzo
Ralls

Culberson County

Van Horn

Dallas County

Cockrell Hill
Sunnyvale
Wilmer

Dawson County

Ackerly
Lamesa

Deaf Smith County

Hereford

Delta County

Cooper
Pecan Gap

Denton County

Aubrey
Hickory Creek
Northlake

De Witt County

Cuero
Nordheim
Yorktown

Dickens County

Dickens
Spur

Dimmit County

Asherton
Big Wells
Carrizo Springs

Donley County

Hedley
Howardwick

Duval County

Benavides
Freer
San Diego

Eastland County

Carbon
Gorman
Rising Star

Ector County

Goldsmith

Edwards County

Rocksprings

Ellis County

Bardwell
Ferris
Garrett
Italy
Maypearl
Midlothian
Milford
Waxahachie

El Paso County

Anthony
Clint
El Paso

Falls County

Lott
Marlin
Rosebud

Fannin County

Ector
Honey Grove
Landonia
Leonard
Trenton
Windom

Fayette County

Fayetteville
Flatonia
La Grange
Round Top
Schulenburg

Fisher County

Roby
Rotan

Floyd County

Floydada
Lockney

Foard County

Crowell

Fort Bend County

Arcola
Beasley
Pulehear
Kendleton
Richmond
Thompsons

Freestone County

Kirvin
Streetman

Frio County

Dilley
Pearsall

Gaines County

Seagraves
Seminole

Goliad County

Goliad

Gonzales County

Gonzales
Nixon
Smiley
Waelder

Gray County

McLean

Grayson County

Collinsville
Southmayd
Tioga
Whitewright

Gregg County

Easton
Gladewater

Grimes County

Navasota

Guadalupe County

Marion
New Berlin
Seguin

Hale County

Abernathy
Edmonson
Hale Center
Petersburg
Plainview

Hall County

Estelline
Lakeview
Memphis

Hamilton County

Hico

Hardeman County

Chillicothe

Hardin County

Kountze
Silsbee

Harris County

Morgan's Point
South Houston

Harrison County

Marshall
Nesbitt
Scottsville

Haskell County

Haskell
O'Brien
Rochester
Rule
Weinert

Hays County

Buda
Kyle
San Marcos

Henderson County

Athens
Chandler
Coffee City
Eustace
Malakoff
Moore Station
Murchison
Poynor
Tool
Trinidad

Hidalgo County

Alamo
Alton
Donna
Edcouch
Edinburg
Elsa
Hidalgo
La Joya
La Villa
McAllen
Mercedes
Mission
Palmview
Pharr
Progreso Lakes
San Juan
Weslaco

Hill County

Abbott
Aquilla
Blum
Bynum
Covington
Hubbard
Itasca
Malone
Mertens
Mount Calm
Penelope
Whitney

Hockley County

Anton
Levelland
Ropesville
Sundown

Hopkins County

Como
Tira

Houston County

Crockett
Grapeland
Kennard

Howard County

Big Spring
Coahoma

Hudspeth County

Dell City

Hunt County

Caddo Mills
Campbell
Celeste
Lone Oak
Neylandville
West Tawakoni
Wolfe City

Jack County

Bryson

Jackson County

Edna
Ganado
La Ward

Jasper County

Browndell
Jasper

Jeff Davis County

Valentine

Jefferson County

Nome
Port Arthur

Jim Wells County

Alice
Orange Grove
Premont

Johnson County

Alvarado
Crandview
Rio Vista
Venus

Jones County

Hamlin
Hawley
Leuders
Stamford

Karnes County

Falls City
Karnes City
Kenedy
Runge

Kaufman County

Kaufman
Kemp
Mabank
Oak Ridge

Kendall County

Boerne

Kent County

Jayton

Kerr County

Ingram

Kimble County

Junction

Kinney County

Brackettville
Spofford

Kleberg County

Kingsville

Knox County

Gorse
Knox City
Munday

Lamar County

Deport
Paris
Roxton
Toco

Lamb County

Amherst
Earth
Littlefield
Olton
Springlake

Lampasas County

Lampasas
Lometa

La Salle County

Cotulla
Encinal

Lavaca County

Moulton
Shiner
Yoakum

Lee County

Giddings
Lexington

Leon County

Buffalo
Jewett
Leona
Marquez
Normangee
Oakwood

Liberty County

Ames
Cleveland
Devers
Kenefick
North Cleveland

Limestone County

Coolidge
Groesbeck
Kosse
Mexia
Tehuacana
Thornton

Lipscomb County

Booker

Live Oak County

George West
Three Rivers

Llano County

Llano

Lubbock County

New Deal
Slaton
Wolfforth

Lynn County

New Home
O'Donnell
Wilson

McCulloch County

Brady

McLennan County

Crawford
Hallsburg
Lorena
McGregor
Mart
Moody

Madison County

Madisonville

Marion County

Jefferson

Martin County

Stanton

Mason County

Mason

BEST COPY AVAILABLE

Matagorda County

Bay City

Maverick County

Eagle Pass

Medina County

Devine
Hondo
La Coste
Natalie

Menard County

Menard

Milam County

Buckholts
Cameron
Milano
Thorndale

Mills County

Goldthwaite
Mullin

Mitchell County

Colorado City
Loraine
Westbrook

Montgomery County

Cut and Shoot
Magnolia
Montgomery
Spendora
Willis

Moore County

Cactus
Sunray

Morris County

Naples

Motley County

Matador
Roarding Springs

Nacogdoches County

Chireno
Cushing
Garrison

Navarro County

Blooming Grove
Corsicana
Dawson
Emhouse
Frost
Goodlow
Powell
Rice

Nolan County

Roscoe
Sweetwater

Nueces County

Agua Dulce
Bishop
Corpus Christi
Driscoll
Robstown

Orange County

Rose City

Palo Pinto County

Gordon
Strawn

Panola County

Beckville
Gary

Parker County

Reno
Weatherford

Parmer County

Bovina
Farwell
Friona

Pecos County

Fort Stockton
Iraan

Polk County

Corrigan
Goodrich
Seven Oaks

Presidio County

Marfa
Presidio

Rains County

Emory
Point

Reagan County

Big Lake

Real County

Camp Wood
Leakey

Red River County

Annona
Avery
Bogata
Clarksville
Detroit

Reeves County

Balmorhea
Pecos
Toyah

Refugio County

Austwell
Refugio
Woodsboro

Robertson County

Brumond
Calvert
Franklin
Hearne

Rockwall County

Fate
Royse City

Runnels County

Ballinger
Miles
Winters

Rusk County

Henderson
New London
Tatum

Sabine County

Hemphill
Pineland

San Augustine County

San Augustine

San Jacinto County

Oakhurst
Shepherd

San Patricio County

Aransas Pass
Gregory
Lake City
Mathis
Odem
Sinton
Taft

San Saba County

Richland Springs
San Saba

Schleicher County

Eldorado

Shackelford County

Moran

Shelby County

Center
Tenaha
Timpson

Smith County

Arp
Lindale
Whitehouse

Starr County

La Grulla
Roma

Sterling County

Sterling City

Stonewall County

Aspermont

Sutton County

Sonora

Swisher County

Kress
Tulia

Tarrant County

Blue Mound
Briar
Haslet
Sansom Park Village

Taylor County

Tye

Terry County

Brownfield
Meadow
Wellman

Throckmorton County

Woodson

Titus County

Talco

Travis County

Manor
Pflugerville

Trinity County

Groveton
Trinity

Tyler County

Chester
Colmesneil

Upshur County

Big Sandy
West Mountain

Upton County

McCamey
Rankin

Uvalde County

Sabinal
Uvalde

Val Verde County

Del Rio

Van Zandt County

Fruit Vale
Grand Saline
Wills Point

Victoria County

Victoria

Walker County

New Waverly
Riverside

Waller County

Brookshire
Hempstead
Pattison
Waller

Ward County

Barstow
Grandfalls
Monahans

Washington County

Burton

Webb County

Laredo

Wharton County

El Campo

Wilbarger County

Vernon

Willacy County

Lyford
Raymondville
San Perlita

Williamson County

Bartlett
Granger
Hutto
Taylor
Thrall

Wilson County

Floresville
Poth
Stockdale

Winkler County

Wink

Wise County

Alvord
Aurora
Boyd
Chico
Lake Bridgeport
Newark
Rhome

Wood County

Alba
Winnsboro

Yoakum County

Plains

Young County

Newcastle

Zavala County

Crystal City

State of Utah

Beaver County

Beaver
Minersville

Box Elder County

Deweyville
Garland
Perry
Portage
Snowville
Tremonton
Willard
Yost

Cache County

Lewiston
Millville
Newton
Providence
Richmond

Carbon County

Helper

Davis County

Farmington
West Point

Duchesne County

Myton

Emery County

Castle Dale
Clawson
Cleveland
Elmo
Emery
Green River

Garfield County

Antimony
Hatch
Panguitch

Iron County

Brian Head
Enoch
Kanarraville
Parowan

Juab County

Eureka
Mona

Kane County

Alton

Millard County

Delta
Fillmore
Hinckley
Kanosh
Lynndyl
Meadow
Oak City
Scipio

Piute County

Circleville
Kingston

Rich County

Garden City
Laketown

Salt Lake County

Alta
Bluffdale
South Jordan

Sanpete County

Ephraim
Fayette
Fountain Green
Manti
Moroni
Mount Pleasant
Spring City
Sterling
Wales

Sevier County

Aurora
Glenwood
Koosharem
Redmond
Sigurd

Summit County

Coalville
Kamas

Tooele County

Ophir
Vernon
Wendover

Uintah County

Ballard

Utah County

Cedar Fells
Cocola
Goshen
Highland
Provo
Santaquin
Springville

Wasatch County

Charleston
Wallsburg

Washington County

Hildale
Hurricane
La Verkin
Leeds
Santa Clara
Toquerville
Virgin
Washington

Wayne County

Bicknell
Loa
Torrey

Weber County

Harrisville

State of Vermont

Addison County

Bridport Town
Bristol
Bristol Town
Hancock Town
Leicester Town
Lincoln Town
Orwell town
Panton Town
Ripton Town
Waltham Town
Weybridge Town
Whiting Town

Bennington County

Landgrove Town
Peru Town
Sandgate Town

Caledonia County

Barnet Town
Danville Town
Hardwick
Hardwick Town
Kirby Town
Newark Town
Sheffield Town
Stannard Town
Sutton Town
Waterford Town
Wheelock Town

Chittenden County

Burlington
Huntington Town
Milton
Richmond Town
Westford Town
Williston Town
Winooski

Essex County

Bloomfield Town
Canaan Town
East Haven Town
Granby Town
Guildhall Town
Lemington Town
Maidstone Town
Norton Town
Victory Town

Franklin County

Bakersfield Town
Berkshire Town
Enosburg Falls
Enosburg Town
Fairfax Town
Fairfield Town
Franklin Town
Highgate Town
Montgomery Town
Richford
Richford Town
St. Albans
Sheldon Town
Swanton
Swanton Town

Grand Isle County

Alburg
Alburg Town

Lamoille County

Belvidere Town
Cambridge
Eden Town
Elmore Tower
Hyde Park Town
Johnson Town
Morristown Town
Waterville Town
Wolcott Town

Orange County

Bradford
Chelsea Town
Corinth Town
Thetford Town
Topsham Town
Tunbridge Town
Washington Town
West Fairlee Town

Orleans County

Albany
Albany Town
Barton
Orleans
Barton Town
Brownington Town
Charleston Town
Coventry Town
Craftsbury Town
Derby Center
Derby Town
Glover Town
Greensboro Town
Holland Town
Irasburg Town
Lowell Town
Morgan Town
Newport
Newport Town
North Troy
Troy Town
Westfield Town
Westmore Town

Rutland County

Benson Town
Brandon Town
Danby Town
Fair Haven Town
Hubbardton Town
IRA Town
Middletown Springs Town
Mount Holly Town
Mount Tabor Town
Pawlet Town
Sudbury Town
West Haven Town

Washington County

Cabot
Cabot Town
Duxbury Town
Marshfield
Marshfield Town
Plainfield Town
Roxbury Town
Warren Town
Waterbury
Worcester

Windham County

Athens Town
Brattleboro Town
Grafton Town
Halifax Town
Jamaica Town
Marlboro Town
Bellows Falls
Rockingham Town
Wardsboro Town
North Westminster
Westminster
Westminster Town
Jacksonville
Whittingham Town

Windsor County

Bethel Town
Ludlow
Ludlow Town
Pomfret Town
Rochester Town
Royalton Town
Sharon Town

State of Virginia

Accomack County

Accomac, Belle Haven, Chincoteague, Hallwood, Keller, Melfa, Onancock, Painter, Saxis, Tangier

Albemarle County

Scottsville

Alleghany County

Iron Gate

Brunswick County

Brodnax, Lawrenceville

Buckingham County

Dillwyn

Caroline County

Port Royal

Charlotte County Charlotte Court House

Drakes Branch

Craig County

New Castle

Dickenson County

Clintwood Hayel

Fauquier County

The Plains

Fluvanna County

Columbia

Giles County

Glen Lyn Pembroke

Grayson County

Fries Troutdale

Greene County

Stanardsville

Halifax County

Clover, Scottsburg, Virgilina

Isle of Wight County

Windsor

Lee County

Pennington Gap, St. Charles

Loudoun County

Lovettsville, Round Hill

Lunenburg County

Kenbridge

Mathews County

Mecklenburg County

Chase City, Clarksville, La Crosse, South Hill

Northampton County

Cape Charles, Cheriton, Exmore, Nassawadox

Nottoway County

Blackstone, Burkeville

Orange County

Gordonsville, Orange

Page County

Stanley

Pittsylvania County

Chatham, Gretna

Prince William County

Occoquan, Quantico

Rockbridge County

Goshen

Rockingham County

Mount Crawford

Russell County

Honaker

Scott County

Clinchport, Dungannon, Gate City, Nickelville

Shenandoah County

Edinburg, Mount Jackson

Smyth County

Saltville

Southampton County

Boykins, Branchville, Capron, Courtland, Newsoms

Surry County

Claremont, Dendron

Sussex County

Stone Creek, Waverly

Tazewell County

Cedar Bluff

Washington County

Damascus, Glade Spring

Westmoreland County

Colonial Beach

Wise County

Appalachia, Pound

Wythe County

Wytheville

York County

Bristol, Clifton Forge, Covington, Emporia, Franklin, Norton, Petersburg, Richmond, Roanoke, South Boston, Suffolk, Winchester

State of Washington

Adams County

Hatton

Asotin County

Clarkston

Chelan County

Entiat

Clark County

Ridgefield

Columbia County

Starbuck

Douglas County

Mansfield, Rock Island

Ferry County

Republic

Franklin County

Connell, Pasco

Grant County

Coulee City, Hartline, Mattawa, Quincy, Royal City, Soap Lake, Warden

Grays Harbor County

Montesano

King County

Carnation, Duvall, Seattle, Skykomish

Kittitas County

South Cle Elum

Klickitat County

Bingen

Lewis County

Morton, Mossyrock, Toledo, Vader, Winlock

Lincoln County

Harrington

Okanogan County

Conconully, Nespelem, Oroville, Riverside, Tonasket, Twisp, Winthrop

Pacific County

Long Beach

Pend Oreille County

Cusick, Ione, Newport

Pierce County

Carbonado, Roy, South Prairie, Wilkeson

Skagit County

Concrete, Hamilton, Lyman, Sedro Woolley

Snohomish County

Darrington, Gold Bar, Granite Falls, Index, Sultan

Spokane County

Latah, Rockford

Stevens County

Springdale

Thurston County

Bucoda, Yelm

Walla Walla County

Prescott

Whatcom County

Everson

Whitman County

Colton
Malden
Pullman
Tekoa

Yakima County

Grandview
Granger
Mabton
Moxee City
Sunnyside
Tieton
Toppenish
Wapato

State of West Virginia

Barbour County

Belington
Junior
Philippi

Berkeley County

Hedgesville
Martinsburg

Boone County

Danville
Whitesville

Braxton County

Burnsville
Flatwoods
Gassaway
Sutton

Cabell County

Milton

Calhoun County

Grantsville

Clay County

Clay

Doddridge County

West Union

Fayette County

Ansted
Meadow Bridge
Mount Hope
Smithers
Thurmond

Gilmer County

Glenville
Layopolis

Grant County

Bayard

Greenbrier County

Falling Springs
Lewisburg
Rainelle
Rencoverie

Hampshire County

Capon Bridge
Romney

Hancock County

New Cumberland

Hardy County

Moorefield
Wardensville

Harrison County

Anmoore
Lost Creek
Lumberport
Salem

Jackson County

Ripley

Jefferson County

Charles Town
Ranson
Sharpsburgtown

Kanawha County

Cedar Grove
Clendenin
Handley

Lewis County

Weston

Lincoln County

Hamlin
West Hamlin

Logan County

Man

McDowell County

Anawalt
Bradshaw
Davy
Iaeger
Keystone
Kimball
Northfork
War

Marion County

Fairmont
Fairview
Farmington
Riversille
Worthington

Marshall County

Cameron

Mason County

Hartford City
Henderson

Mercer County

Bramwell
Matoaka
Oakvale

Mineral County

Elk Garden
Piedmont
Ridgeley

Mingo County

Delbarton
Gilbert
Kermit
Matewan
Williamson

Monongalia County

Blacksville
Osage

Monroe County

Peterstown
Union

Morgan County

Paw Paw

Ohio County

West Liberty

Pleasants County

Belmont

Pocahontas County

Cass
Durbin
Marlinton

Preston County

Albright
Brocton Mills
Masontown
Newburg
Reedsville
Rowlesburg
Tunnelton

Putnam County

Bancroft
Buffalo

Raleigh County

Lester
Rhodell
Sophia

Randolph County

Beverly
Mill Creek
Womelsdorff

Ritchie County

Auburn
Cairo
Harrisville
Pennsboro
Pullman

Roane County

Reedy

Summers County

Hinton

Taylor County

Flemington
Grafton

Tucker County

Davis
Hambleton
Hendricks
Parsons
Thomas

Tyler County

Friendly
Sistersville

Upshur County

Buckhannon

Wayne County

Ceredo
Fort Gay
Kenova
Wayne

Webster County

Addison
Camden-on-Gauley
Cowen

Wetzel County

Hundred
Littleton
Smithfield

Wirt County

Elizabeth

Wyoming County

Mullens

State of Wisconsin

Adams County

Colburn Town
Friendship
Jackson Town
Leola Town
Lincoln Town
Richfield Town
Springville Town
Strongs Prairie Town

Ashland County

Agenda Town
Ashland Town
La Pointe Town
Mellen
Peeksville Town
Sanborn Town
Shanagolden Town
White River Town

Barron County

Almena Town
Arland Town
Bear Lake Town
Cedar Lake Town
Chetek Town
Clinton Town
Crystal Lake Town
Dallas Town
Dallas
Dovre Town
Doyle Town
Maple Plain Town
Sioux Creek Town
Stanfold Town
Sumner Town
Turtle Lake Town
Vance Creek Town

Bayfield County

Clover Town
Delta Town
Drummond Town
Eileen Town
Hughes Town
Kelyy Town
Keystone Town
Lincoln Town
Mason Town
Mason
Oulu Town
Tripp Town

Brown County

Green Bay Town
Morrison Town

Buffalo County

Buffalo Town
Canton Town
Cross Town
Dover Town
Gilmanton Town
Lincoln Town
Maxville Town
Modena Town
Mondovi Town
Montana Town
Naples Town
Nelson Town
Nelson

Barnett County

Blaine Town
Daniels Town
Dewey Town
La Follette Town
Meenon Town
Oakland Town
Rusk Town
Sand Lake Town
Scott Town
Sioux Town
Siren
Webb Lake Town
Webster

Calumet County

Brothertown Town
Charlestown Town

Chippewa County

Arthur Town
Auburn Town
Birch Creek Town
Bloomer Town
Boyd
Cleveland Town
Colburn Town
Cornell
Delmar Town
Edson Town
Howard Town
Lake Holcombe Town
Sampson Town
Sigel Town
Stanley
Tilden Town
Woodmohr Town

Clark County

Beaver Town
Butler Town
Colby Town
Dewhurst Town
Fremont Town
Granton
Green Grove Town
Hendren Town
Hixon Town
Hoard Town
Loyal Town
Mayville Town
Mead Town
Mentor Town
Neillsville
Raseburg Town
Seif Town
Sherman Town
Thorp Town
Unity Town
Washburn Town
Weston Town
Withee Town
Worden Town
York Town

Columbia County

Caledonia Town
Courtland Town
Fountain Prairie Town
Lewiston Town
Pacific Town
Scott Town
Springvale Town

Crawford County

Ball Center
Bridgeport Town
Clayton Town
Eastman Town
Eastman
Ferryville
Freeman Town
Gays Mills
Haney Town
Marietta Town
Seneca Town
Soldiers Grove
Steuben
Utica Town
Wauzeka Town

Dane County

Primrose Town

Dodge County

Beaver Dam
Chester Town
Hubbard Town
Leroy Town
Lowell Town
Shields Town
Trenton Town

Door County

Forestville Town

Douglas County

Brule Town
Dairyland Town
Gordon Town
Hawthorne Town
Highland Town
Solon Springs Town
Wascott Town

Dunn County

Colfax Town
Dunn Town
Eau Galle Town
Elk Mound Town
Elk Mound
Grant Town
Hay River Town
Knapp
Lucas Town
Otter Creek Town
Peru Town
Sheridan Town
Spring Brook Town
Tiffany Town
Wheeler

Eau Claire County

Bridge Creek Town
Clear Creek Town
Otter Creek Town
Wilson Town

Florence County

Fence Town
Homestead Town
Long Lake Town
Tipler Town

Fond Du Lac County

Ashford Town
Calumet Town
Metomen Town
Oakfield Town

Forest County

Alvin Town
Argonne Town
Blackwell Town
Caswell Town
Crandon
Crandon Town
Hiles Town
Lincoln Town
Nashville Town
Popple River Town
Ross Town

Grant County

Beetown Town
Bloomington Town
Bloomington
Blue River
Boscobel Town
Castle Rock Town
Clifton Town
Harrison Town
Hazel Green Town
Hickory Grove Town
Liberty Town
Little Grant Town
Marion Town
Millville Town
Mount Hope Town
Mount Ida Town
Muscoda Town
North Lancaster Town
Paris Town
Patch Grove Town
Platteville
Potosi Town
Smelser Town
Waterloo Town
Wattstown Town
Wingville Town
Woodman Town
Wyalusing Town

Green County

Brooklyn Town
Browntown
Exeter Town
Jordan Town
Mount Pleasant Town
New Glarus Town
Spring Grove Town
Washington Town
York Town

Green Lake County

Berlin Town
Kingston Town
Kingston
Mackford Town
Manchester Town
Marquette Town
Marquette
Princeton
Seneca Town

Iowa County

Arena Town
Avoca
Barneveld
Clyde Town
Eden Town
Highland Town
Linden Town
Moscow Town
Pulaski Town
Rewey
Ridgeway Town

Iron County

Gurney Town
Hurley
Montreal
Oma Town
Sherman Town

Jackson County

Adams Town
Albion Town
Alma Town
Bear Bluff Town
Brockway Town
City Point Town
Cleveland Town
Curran Town
Franklin Town
Garden Valley Town
Garfield Town
Irving Town
Knapp Town
Komensky Town
Manchester Town
Melrose Town
Merrillan
Millston Town
North Bend Town
Northfield Town
Springfield Town

Jefferson County

Aztalan Town
Ixonia Town
Milford Town
Sumner Town
Waterloo Town

Juneau County

Clearfield Town
Cutler Town
Fountain Town
Germantown Town
Hustler
Kildare Town
Kingston Town
Lyndon Town
Lyndon Station
Marion Town
Necedah Town
Necedah
Plymouth Town
Seven Mile Creek Town
Summit Town
Wonewoc Town

La Crosse County

Barre Town
Burns Town
Hamilton Town
Rockland

Lafayette County

Argyle Town
Belmont Town
Benton
Blanchardville
Darlington Town
Fayette Town
Gratiot Town
Kendall Town
Lamont Town
Seymour Town
Shullsburg
South Wayne
White Oak Springs Town
Willow Springs Town
Wiota Town

Langlade County

Ackley Town
Ainsworth Town
Antigo Town
Evergreen Town
Langlade Town
Parrish Town
Peck Town
Polar Town
Rolling Town
Summit Town
Upham Town
Vilas Town
White Lake
Wolf River Town

Lincoln County

Harrison Town
Rock Falls Town
Russell Town
Schley Town
Scott Town
Skanawan Town
Soma Town

Manitowoc County

Centerville Town
Eaton Town
Franklin Town
Mishicot Town
Two Creeks Town

Marathon County

Bern Town
Bevent Town
Brighton Town
Cassel Town
Cleveland Town
Day Town
Eau Pleine Town
Elderon Town
Elderon
Emmet Town
Frankfort Town
Franzen Town
Green Valley Town
Guenther Town
Halsey Town
Hamburg Town
Harrison Town
Hatley
Holton Town
Hull Town
McMillan Town
Norrie Town
Plover Town
Reid Town
Reitbrock Town

Marinette County

Amberg Town
Athelstane Town
Beaver Town
Grover Town
Lake Town
Niagara Town
Peshtigo
Porterfield Town
Pound Town
Pound
Stephenson Twp
Wausaukee

Marquette County

Buffalo Town
Crystal Lake Town
Endeavor
Harris Town
Mecan Town
Montello
Moundville Township
Neshkoro Town
Neshkoro
Newton Town
Shields Town
Springfield Town

Menominee County

Menominee Town

Milwaukee County

Milwaukee

Monroe County

Angelo Town
Clifton Town
Glendale Town
Grant Town
Greenfield Town
New Lyme Town
Oakdale Town
Ridgeville Town
Scott Town
Sheldon Town
Tomah Town
Warrens
Wellington Town
Wells Town
Wilton Town

Oconto County

Armstrong Town
Breed Town
Gillett Town
How Town
Lakewood Town
Lena Town
Little River Town
Morgan Town
Oconto Falls Town
Spruce Town
Stiles Town
Underhill Town

Oneida County

Monico Town
Nokomis Town

Outagamie County

Bear Creek
Deer Creek Town
Hortonville
Maine Town
Maple Creek Town
Nichols

Pepin County

Durand Town
Frankfort Town
Lima Town
Washeck Town

Pierce County

Clifton Town
Elmwood
El Paso Town
Gilman Town
Maiden Rock Town
Oak Grove Town
River Falls
Rock Elm Town
Salem Town
Trimbelle Town
Union Town

Polk County

Alden Town
Balsam Lake Town
Beaver Town
Clam Falls Town
Farmington Town
Garfield Town
Georgetown Town
Lakeiown Town
Lorain Town
Luck
Milltown
St. Croix Falls Town
Sterling Town
West Sweden Town

Portage County

Almond Town
Almond
Belmont Town
Lanark Town
Nelsonville
New Hope Town
Pine Grove Town
Rosholt

Price County

Catawba Town
Catawba
Emery Town
Georgetown Town
Hackett Town
Kennan Town
Knox Town
Ogema Town
Prentice Town
Prentice

Richland County

Akan Town
Bloom Town
Cazenovia
Dayton Town
Eagle Town
Forest Town
Henrietta Town
Marshall Town
Orion Town
Richwood Town
Rockbridge Town
Sylvan Town
Willow Town

Rock County

Avon Town
Bradford Town
Harmony Town
Plymouth Town
Spring Valley Town

Rusk County

Atlanta Town
Big Bend Town
Conrath
Grow Town
Hawkins Town
Hawkins
Hubbard Town
Ingram
Ladysmith
Lawrence Town
Marshall Town
Richland Town

Rusk Town
Sheldon
Strickland Town
Stubbs Town
Tony
True Town
Washington Town
Weyerhaeuser
Willard Town
Wilson Town

St. Croix County

Baldwin Town
Cady Town
Cylon Town
Eau Galle Town
Emerald Town
Erin Prairie Town
Glenwood Town
Pleasant Valley Town
Rush River Town
Springfield Town

Sauk County

Bear Creek Town
Dellona Town
Fairfield Town
Honey Creek Town
Hoodsburg Town
Rock Springs
Spring Green Town
Troy Town
Washington Town
Westfield Town
Winfield Town
Woodland Town

Sawyer County

Bass Lake Town
Couderay Town
Draper Town
Edgewater Town
Hunter Town
Lenroot Town
Meadow Brook Town
Meteor Town
Ojibwa Town
Sand Lake Town
Spider Lake Town

Shawano County

Alaiton Town
Aniwa Town
Aniwa
Bartelme Town
Bowler
Fairbanks Town
Germania Town
Grant Town
Green Valley Town
Gresham
Hartland Town
Maple Grove Town
Mattoon
Morris Town
Red Spring Town
Seneca Town
Washachon Town
Wittenberg Town

Sheboygan County

Herman Town

Taylor County

Aurora Town
Browning Town
Chelsea Town
Ford Town
Gilman
Hammel Town
Holway Town
Jump River Town
Little Black Town
Lublin
McKinley Town
Maplehurst Town
Pershing Town
Roosevelt Town
Taft Town
Westboro Town

Trempealeau County

Albion Town
Arcadia Town
Caledonia Town
Chimney Rock Town
Dodge Town
Pigeon Town
Preston Town
Strum
Sumner Town
Trempealeau Town
Unity Town

Vernon County

Christiana Town
Clinton Town
De Soto
Forest Town
Franklin Town
Greenwood Town
Hamburg Town
Harmony Town
Hillsboro Town
Jefferson Town
Kickapoo Town
La Farge
Liberty Town
Ontario
Readstown
Stark Town
Sterling Town
Stoddard
Union Town
Viroqua Town
Webster Town
Wheatland Town
Whitestown Town

Vilas County

Eagle River
Lac Du Flambeau Town
Land O'Lakes Town
Plum Lake Town
St. Germain Town

Walworth County

Darien Town
Richmond Town
Sharon Town
Whitewater

Washburn County

Barronett Town
Beaver Brook Town
Birchwood Town
Casey Town
Frog Creek Town
Long Lake Town
Minong Town
Sarona Town
Shell Lake
Springbrook Town
Stone Lake Town
Trego Town

Waupaca County

Dupont Town
Harrison Town
Helvetia Town
Larrabee Town
Lind Town
Little Wolf Town
Royalton Town
Scandinavia Town
Wyoming Town

Waushara County

Aurora Town
Bloomfield Town
Coloma Town
Hancock Town
Leon Town
Marion Town
Plainfield Town
Plainfield
Richford Town
Warren Town

Winnebago County

Nekimi Town
Rushford Town

Wood County

Arpin Town
Auburndale Town
Hiles Town
Lincoln Town
Marshfield Town
Milladore Town
Pittsville
Port Edwards Township
Remington Town
Richfield Town
Rudolph Town

State of Wyoming

Albany County

Rock River

Big Horn County

Byron
Deaver
Frannie

Crook County

Hulett

Fremont County

Hudson

Goshen County

Fort Laramie
La Grange
Yoder

Lincoln County

La Barge
Thayne

Park County

Meeteetse

Sheridan County

Clearmont

Commonwealth of Puerto Rico

Adjuntas Municipio
Aguada Municipio
Aguadilla Municipio
Aguas Buenas Municipio
Aibonito Municipio
Anasco Municipio
Arecibo Municipio
Arroyo Municipio
Barceloneta Municipio
Barranquitas Municipio
Bayamon Municipio
Cabo Rojo Municipio
Caguas Municipio
Camuy Pueblo
Canovanas Municipio
Carolina Municipio
Catano Municipio
Cayey Municipio
Ciales Municipio
Cidra Municipio
Coamo Municipio
Comerio Municipio
Corozal Municipio
Culebra Municipio
Dorado Municipio
Fajardo Municipio
Florida Municipio
Guanica Municipio
Guayama Municipio
Guayanilla Municipio
Guaynabo Municipio
Gurabo Municipio
Hatillo Municipio
Hormigueros Municipio
Humacao Municipio
Isabela Municipio
Jayuya Municipio
Juana Diaz Municipio

Juncos Municipio
Lajas Municipio
Lares Municipio
Las Marias Municipio
Las Piedras Municipio
Loiza Municipio
Luquillo Municipio
Manati Municipio
Maricao Municipio
Maunabo Municipio
Mayaguez Municipio
Moca Municipio
Morovis Municipio
Naguabo Municipio
Naranjito Municipio
Orocovis Municipio
Patillas Municipio
Penuelas Municipio
Ponce Municipio
Quebradillas Municipio
Rincon Municipio
Rio Grande Municipio
Sabana Grande Municipio
Salinas Municipio
San German Municipio
San Juan Municipio
San Lorenzo Municipio
San Sebastian Municipio
Santa Isabel Municipio
Toa Alta Municipio
Toa Baja Municipio
Trujillo Alto Municipio
Utuado Municipio
Vega Alta Municipio
Vega Baja Municipio
Vieques Municipio
Villalba Municipio
Yabucoa Municipio
Yauco Municipio

List of Designated Eligible Areas That Are Counties

State of Alabama

Autauga County
Baldwin County
Barbour County
Bibb County
Blount County
Bullock County
Butler County
Chambers County
Cherokee County
Chilton County
Choctaw County
Clarke County
Clay County
Cleburne County
Coffee County
Conecuh County
Coosa County
Covington County
Crenshaw County
Calhoun County
Dallas County
De Kalb County
Elmore County
Escambia County
Etowah County
Fayette County
Franklin County
Geneva County
Greene County
Hale County
Henry County
Houston County
Jackson County
Lamar County
Lawrence County
Lee County
Lowndes County
Macon County
Marengo County
Monroe County
Montgomery County
Perry County
Pickens County
Pike County
Randolph County
Russell County
St. Clair County
Sumter County
Talladega County
Tallapoosa County
Walker County
Washington County
Wilcox County
Winston County

State of Alaska

Aleutian Islands Census Area
Bethel Census Area
Dillingham Census Area
Kobuk Census Area
Matanuska-Susitna Borough
Nome Census Area
North Slope Borough
Prince of Wales-Outer KE
Skagway-Yakutat-Angoon C
Southeast Fairbanks Census
Wade Hampton Census Area
Yukon-koyukuk Census Area

State of Arizona

Apache County
Coconino County
Gila County
Graham County
La Paz County
Navajo County
Pinal County
Santa Cruz County
Yuma County

State of Arkansas

Arkansas County
Ashley County
Bradley County
Calhoun County
Carroll County
Chicot County
Clark County
Clay County
Cleburne County
Cleveland County
Columbia County
Conway County
Crawford County
Crittenden County
Cross County
Dallas County
Desha County
Franklin County
Fulton County
Greene County
Hot Spring County
Izard County
Jackson County
Jefferson County
Johnson County
Lafayette County
Lawrence County
Lee County
Lincoln County
Little River County
Logan County
Lonoke County
Madison County
Marion County
Miller County
Mississippi County
Monroe County
Montgomery County
Nevada County
Newton County
Ouachita County
Perry County
Phillips County
Pike County
Poinsett County
Polk County
Prairie County
Randolph County
St. Francis County
Scott County
Searcy County
Sevier County
Sharp County
Stone County
Union County
Van Buren County
Woodruff County
Yell County

State of California

Alpine County
Colusa County
Fresno County
Glenn County
Imperial County
Kern County
Kings County
Lake County
Los Angeles County
Madera County
Merced County
San Benito County
San Francisco County
Tulare County

State of Colorado

Alamosa County
Archuleta County
Baca County
Bent County
Conejos County
Costilla County
Crowley County
Custer County
Dolores County
Huerfano County
Kiowa County
Las Animas County
Otero County
Prowers County
Rio Grande County
Saguache County
San Miguel County
Teller County
Washington County
Yuma County

State of Connecticut

None

State of Delaware

None

District of Columbia

Washington, DC–MD–VA MSA

Washington

State of Florida

Baker County
Bradford County
Calhoun County
Columbia County
Dade County
De Soto County
Dixie County
Franklin County
Gadsden County
Gilchrist County
Glades County
Gulf County
Hamilton County
Hardee County
Hendry County
Highlands County
Holmes County
Jackson County
Jefferson County
Lafayette County
Lake County
Levy County
Liberty County
Madison County
Okeechobee County
Putnam County
St. John County
St. Lucie County
Sumter County
Suwannee County
Taylor County
Union County
Wakulla County
Walton County
Washington County

State of Georgia

Appling County
Atkinson County
Bacon County
Baker County
Banks County
Barrow County
Ben Hill County
Berrien County
Bibb County
Bleckley County
Brantley County
Brooks County
Bryan County
Bulloch County
Burke County
Butts County
Calhoun County
Candler County
Charlton County
Chatham County
Chattooga County
Cherokee County
Clay County
Clinch County
Coffee County
Colquitt County
Cook County
Coweta County
Crawford County
Crisp County
Dade County
Dawson County
Decatur County
Dodge County
Dooly County
Dougherty County
Early County
Echols County
Effingham County
Elbert County
Emanuel County
Evans County
Fannin County
Franklin County
Gilmer County
Glascock County
Gordon County
Grady County
Greene County
Habersham County
Hancock County
Harris County
Hart County
Heard County
Henry County
Irwin County
Jackson County
Jasper County
Jeff Davis County
Jefferson County
Jenkins County
Johnson County
Jones County
Lamar County
Lanier County
Laurens County
Lee County
Lincoln County
Lowndes County
Lumpkin County
McDuffie County
McIntosh County
Macon County
Madison County
Marion County
Meriwether County
Miller County
Mitchell County
Monroe County
Montgomery County
Morgan County
Murray County
Newton County
Oglethorpe County
Paulding County
Peach County
Pickens County
Pierce County
Pike County
Polk County
Pulaski County
Putnam County
Quitman County
Randolph County
Richmond County
Schley County
Screven County
Seminole County
Spalding County
Stewart County
Sumter County
Talbot County
Taliaferro County
Tattnall County
Taylor County
Telfair County
Terrell County
Thomas County
Tift County
Toombs County
Towns County
Treutlen County
Troup County
Turner County
Twiggs County
Union County
Upson County
Walton County
Ware County
Warren County
Washington County
Wayne County
Webster County
Wheeler County
White County
Wilcox County
Wilkes County
Wilkinson County
Worth County

State of Hawaii

Hawaii County

State of Idaho

Adams County
Bingham County
Bonner County
Boundary County
Cassia County
Fremont County
Gem County
Jefferson County
Lemhi County
Lincoln County
Madison County
Minidoka County
Oneida County
Payette County
Power County
Teton County
Washington County

State of Illinois

Alexander County
Bond County
Brown County
Cook County
Fayette County
Gallatin County
Greene County
Hamilton County
Hardin County
Johnson County
Massac County
Pike County
Pope County
Pulaski County
St. Clair County
Scott County
Wayne County

State of Indiana

Crawford County
Jennings County
Knox County
Ohio County
Scott County
Switzerland County

State of Iowa

Adair County
Allamakee County
Appanoose County
Clarke County
Clayton County
Davis County
Decatur County
Delaware County
Fremont County
Harrison County
Howard County
Ida County
Lucas County
Monona County
Ringgold County
Taylor County
Van Buren County
Wayne County

State of Kansas

Brown County
Chase County
Chautauqua County
Cherokee County
Clay County
Cloud County
Doniphan County
Elk County
Gove County
Graham County
Jewell County
Linn County
Marshall County
Morris County
Nemaha County
Norton County
Republic County
Sheridan County
Smith County
Stanton County
Wallace County
Washington County
Wilson County

State of Kentucky

Adair County
Allen County
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Authority: Sec. 17(d), United States Housing Act of 1937 (42 U.S.C. 1437o); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 28, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-12451 Filed 6-4-86; 8:45 am]

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Federal Register

Friday
June 6, 1986

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to (1) prescribe a formula by which the Secretary of Agriculture will determine the prevailing world market price (adjusted to United States quality and location) for the 1986 through 1990 crops of upland cotton (hereinafter referred to as the "adjusted world price") and (2) provide a mechanism by which such adjusted world price will be announced periodically. These actions are required by section 103A(a)(5)(E)(i)–(iii) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major". It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans an Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this rule and a final Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(a) A formula to define the prevailing world market price for cotton; and

(b) A mechanism by which such prevailing world market price shall be announced periodically.

The prevailing world market price for upland cotton, adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price"), as determined in accordance with the formula set forth in this final rule, shall be utilized under several provisions of the upland cotton program for the 1986 through 1990 crops.

A notice of proposed rulemaking was published in the Federal Register on March 11, 1986, at 51 FR 8330, requesting comments with respect to the proposed formula for determining the adjusted world price for upland cotton and the proposed mechanism for periodically announcing such price. The proposed rule provided for a 15-day comment period which ended March 26, 1986.

The Department received a total of 10 comments with respect to the proposed rule. The Department has considered all comments received in developing this final rule. All comments received are on file and available for public inspection in Room 3741, South Building, 14th and Independence Avenue SW., Washington, DC 20250.

Discussion of Comments

Four respondents opposed the provision in the proposed rule which provided for the use of a single day northern Europe price quotation as the basis for determining the prevailing world market price for upland cotton. Instead, they proposed that a longer period be used. The respondents asserted that use of a longer period would help smooth out aberrations in prices. After reviewing the comments submitted on this issue, it has been determined that § 26.2 of the proposed rule should be changed to provide for the use of a 5-day average of the northern Europe price quotations as the basis for determining the prevailing world market price for upland cotton.

In addition, § 26.2 of the proposed rule provided that if no price quotations of the northern Europe price were available for any Thursday, the prevailing world market price would be based upon the latest available price quotations. It has been determined that this would not provide the Secretary sufficient flexibility to adjust the prevailing world market price to accurately reflect changing market conditions if no northern Europe price quotations are available. Therefore, § 26.2 of the proposed rule has been changed to provide that if no northern Europe price quotations are available during any Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

Three respondents suggested that price quotations for a 156-week period, rather than for a 52-week period, should be used to adjust the Northern Europe price to average designated U.S. spot market location. The respondents felt that the use of a longer period would smooth out aberrations in the adjustment and would more nearly reflect the anticipated costs of transporting cotton during the 1986/87 marketing year. After reviewing the comments received on this issue, it has been determined that § 26.3(b)(1) of the proposed rule should be changed to

provide that price quotations for a 156-week period will be used to adjust the Northern Europe price to average designated U.S. spot market location.

Two respondents requested that price quotations for the period when the northern Europe quotations for Memphis territory and California/Arizona territory cotton are being changed from old crop price quotations to new crop price quotations be disregarded in the calculation of the adjustment in the Northern Europe price to average designated U.S. spot market location.

The northern Europe price quotations for Memphis territory and California/Arizona territory change from old crop to new crop price quotations in the period immediately preceding August 1, the beginning of the new crop marketing year. U.S. designated spot market quotations are for current shipment of upland cotton. The respondents assert that price data from weeks when shipment periods do not correspond should be disregarded in calculating the adjustment in the Northern Europe price to average designated spot market location. After reviewing the comments submitted on this issue, it has been determined that price quotations during June, July and August will be disregarded in making this adjustment. It has been determined that it is necessary to exclude these months from the calculation in order to ensure that the transition from old crop price quotations to new crop price quotations does not cause undue aberrations in the adjustment calculation.

Six respondents recommended an additional adjustment for qualities of upland cotton which are distinctly lower in grade and shorter in staple than Middling (M) 1⅛s inch cotton. They suggested that the adjusted world price be further adjusted in order to make U.S. growths of such cotton competitive in world markets. They suggested that the additional adjustment be made by deducting the difference between the Northern Europe price and the prices quoted for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (Northern Europe coarse count price) on the same day. The quality differential so determined would be adjusted to reflect the price of the U.S. base quality by deducting the difference between the applicable loan rate for a crop of upland cotton for M1$^{3}/_{32}$ inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the base quality.

After reviewing the comments submitted on this issue, it has been determined that § 26.3 of the proposed rule should be changed to provide for an additional adjustment to be made in the adjusted world price for any grade of upland cotton with a staple length of one inch or shorter or for any length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of upland cotton. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). The additional adjustment will not be made if no such official classification is available. Such additional adjustment shall be made by deducting from the adjusted world price the difference between the Northern Europe price and the average of the price quotations for the corresponding Friday through Thursday period of the Northern Europe "coarse count" price, from which there has been subtracted the difference between the applicable loan rate for a crop of upland cotton M 1⅛s inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for Strict Low Middling (SLM) 1 inch (micronaire 3.5 through 4.9) cotton. The additional adjustment will not be made if the amount of the adjustment is less than 1.0 cent per pound.

In determining the Northern Europe coarse count price, if no quotes are available for one or more days of the five-day period, the available quotes will be used, except that if quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration. In addition,if quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined for the latest available week will continue to be applicable.

One respondent urged that the Northern Europe price and the components from which it is derived be made publicly available at the earliest possible opportunity in order to avert potential market disruption stemming from early access to the components of the Northern Europe price. After reviewing the comments submitted on this issue, it has been determined that § 26.3 of the proposed rule should be changed to provide that the adjusted world price and the new additional adjustment for any grade of upland cotton with a staple length of 1-inch or shorter or for any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or more will be announced as soon as possible after 4:00 p.m. Eastern time each Thursday beginning July 3, 1986 instead of on or before 10:00 a.m. Eastern time each Friday beginning August 1, 1986.

One respondent felt that the proposed formula would result in too much of an adjustment thereby resulting in unjustified Government expenditures. The respondent generally disagreed with most components of the proposed world price formula and suggested instead a different set of adjustments. After reviewing this comment, it has been determined that the formula set forth in this final rule will result in the best possible approximation of the world market price for upland cotton.

No further changes have been made in the proposed rule.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Final Rule

Accordingly, 7 CFR Subtitle A is amended by adding a new Part 26—Determination of World Market Price for Certain Commodities as follows:

PART 26—DETERMINATION OF WORLD MARKET PRICE FOR CERTAIN COMMODITIES

Subpart A—Determination of World Market Price for Upland Cotton

Sec.
26.1 Applicability.
26.2 Determination of the prevailing world market price for upland cotton.
26.3 Adjusted world price for upland cotton.

Authority: Sec. 103A(a)(5)(E), Pub. L. 81-439, 639 Stat. 1031, as amended, (7 U.S.C. 1444-1(a)(5)(E)).

Subpart A—Determination of World Market Price for Upland Cotton

§ 26.1 Applicability.

This subpart sets forth the procedures for determining the prevailing world market price for upland cotton and the mechanisms for periodically announcing such price as required by section 103A(a)(5)(E) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act").

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for Middling one and three-thirty-second inch (M1$^{2}/_{32}$ inch) cotton C.I.F. (cost, insurance, and

freight) northern Europe (hereinafter referred to as the "Northern Europe price"). If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

§ 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted to average U.S. quality and location (hereinafter referred to as the "adjusted world price"), determined in accordance with paragraph (b) of this section, shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2, adjusted to average U.S. quality and location as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 156-week period between:

(i) The average of price quotations from the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday from M1⅛s inch cotton C.I.F. Northern Europe; and

(ii) The average price of M1⅛s inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (b)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1⅛s inch (micronaire 3.5 through 4.9) cotton (hereinafter referred to as the "U.S. base quality") by deducting the difference, as announced by the Secretary of Agriculture, between the applicable loan rate for a crop of upland cotton for M 1⅛s inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (b)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by the Secretary of Agriculture.

(c) In determining the average difference in the 156-week period as provided in paragraph (b)(1) of this section:

(1) Price quotations made during the months of June, July and August of each year will not be taken into consideration; and

(2) If Thursday price quotations are not available for either the Northern Europe or the spot market quotations for any week, that week will not be taken into consideration.

(d) The adjusted world price for upland cotton, as determined in accordance with paragraph (b) of this section and the amount of the additional adjustment, as determined in accordance with paragraph (e) of this section, shall be determined weekly by the Secretary of Agriculture and shall be announced as soon as possible after 4:00 p.m. Eastern time each Thursday, beginning July 3, 1986, and continuing through the last Thursday of July 1991. In the event that Thursday is a nonworkday, the determination will be announced the next workday.

(e)(1) The adjusted world price, as determined in accordance with paragraph (b) of this section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 inch or shorter or for any staple length of upland cotton with a grade which has a price support loan discount of 3.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of upland cotton. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (e)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price and the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count price"), minus

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1⅛s inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 inch (micronaire 3.5 through 4.9) cotton.

(3) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (e)(2)(i) of this section:

(i) If no quotes are available for one or more days of the five-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (e)(2) of this section for the latest available week will continue to be applicable.

(4) If the difference determined in accordance with paragraph (e)(2)(i) of this section is not more than 1.0 cent higher than the difference determined in accordance with paragraph (e)(2)(ii) of this section, the adjustment provided for by this paragraph shall not be made.

(f) The adjusted world price, determined in accordance with paragraph (b) of this section, shall be subject to further adjustments, as determined by the Executive Vice President, Commodity Credit Corporation, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the upland cotton price support loan program for a crop of upland cotton.

Signed at Washington, DC on May 19, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86-12706 Filed 6-5-86; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 266]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 266 establishes the quantity of such fruit that may be shipped to market during the period June 6–12, 1986. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 366 (§ 908.666) is effective for the period June 8–12, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on June 3, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is fair.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges, Valencias.

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.666 is added to read as follows:

§ 908.666 Valencia Orange Regulation 366.

The quantities of Valencia oranges grown in California and Arizona which may be handed during the period June 8, 1986, through June 12, 1986, are estblished as follqws:

(a) District 1: 360,000 cartons;
(b) District 2: 390,000 cartons;
(c) District 3: Unlimited cartons.

Dated: June 4, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–12946 Filed 3–5–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Colloidal Ferric Oxide Injection

Correction

In FR Doc. 86–11136, beginning on page 18313, in the issue of Monday, May 19, 1986, make the following correction:

PART 522 [CORRECTED]

On page 18314, in the first column, the Authority citation for Part 522 should read:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[T.D. 8067]

Income Taxes; Transfers of Property by U.S. Persons to Foreign Corporations

Correction

In FR Doc. 86–10831 beginning on page 17936 in the issue of Friday, May 16, 1986, make the following correction:

§ 602.101 [Corrected]

On page 17961, in the first column, in paragraph 11., in the sixth line, "§ 1.367(a)–1T" should read "§ 1.367(d)–1T".

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–8–FRL–3022–7]

Air Quality; Approval and Promulgation of State Implementation Plans; Montana; Visibility

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is approving the New Source Review (NSR) and monitoring plan for visibility as a revision to the Montana State Implementation Plan (SIP). This action results from rulemaking on October 23, 1984, (49 FR 42670) in which EPA proposed to disapprove SIPs of states not complying with the provisions of 40 CFR 51.305 (Visibility Monitoring) and 51.307 (Visibility NSR).

The Governor of Montana submitted a SIP Revision for Visibility Protection and the Visibility Regulation on August 21, 1985. EPA proposed to approve the Montana Visibility SIP and regulations for NSR and monitoring on January 2, 1986, at 51 FR 38. No comments were received. Review of the plan and regulations indicates that Montana has

met the criteria of 40 CFR 51.305 and 51.307.

DATE: This action will be effective July 7, 1986.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202, (303) 293–1757.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400–437.) Section 169A specifically directs EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.* These regulations required the states to submit revised SIPs to satisfy such provisions no later than September 2, 1981. (See 45 FR 80081, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, a judicial stay was granted pending EPA action on related administrative petitions for reconsideration of the visibility regulations.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A settlement agreement between EPA and EDF outlined a schedule for the promulgation of visibility SIPs. It required EPA to incorporate Federal regulations in states where SIPs were found deficient with respect to the 1980 Visibility New Source Review and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement did allow an opportunity to avoid Federal promulgation if the state submitted a SIP no later than May 6, 1985. Montana is one of the states listed in 49 FR 42670 as having an inadequate New Source Review (NSR) and monitoring plan for visibility protection.

On August 21, 1985, the Governor of Montana submitted a Visibility SIP and regulations for visibility monitoring and New Source Review.

The SIP declares that the States will implement a comprehensive visibility protection program in order to meet the objectives of the Clean Air Act. The SIP is to be reviewed from time-to-time (but not less frequently than three years) for the purpose of assessing progress toward meeting the national goal of visibility protection.

On January 2, 1986, 51 FR 38, EPA proposed to approve the Montana SIP and regulations for visibility monitoring and new source review. No comments were received.

The monitoring strategy section of this Visibility SIP consists of a statement of goals, a list of monitoring objectives, and the provision for future plan revisions.

The Montana Plan combines new visibility rules and existing regulations to meet the requirements of 40 CFR 51.307. A new rule, ARM 16.8.1001, Visibility Requirements Applicability, incorporates existing permit regulations and clearly states that the visibility requirements apply to major sources locating in any attainment or nonattainment area. The incorporated regulations, Administrative Rules of Montana, Title 16, Chapter 8, Subchapters 9 (PSD) and 11 (Permits), specify the standard requirements for any permit application and permit approval.

The Visibility Regulation provide for the Department (Montana Bureau of Air Quality permit issuing authority) to consider any analysis performed by the State and the FLM and to deny a permit if the proposed source or modification would have adverse impact in any Federal Class I area.

If the Department does not agree with the FLM that adverse impact will result, it will provide written notification to the effected FLM within 5 days of its final decision on the permit. The notification will include an explanation of the Department's decision or give notice as to where the explanation can be obtained. Notification to the public is originally made by the applicant; the Department will then notify the applicant and interested parties of its determination and the location of the analysis of the application.

The State of Montana has afforded the FLM (through the National Park Service (NPS) and the Forest Service (FS)) opportunities to participate and comment on its visibility SIP and regulations. Comments by the NPS and FS were considered and incorporated where applicable. The State has commited in the SIP to consult continually with the FLM on the review and implementation of the visibility program. As appropriate, the plan may be modified in accordance with proper public review in order to attain and maintain the national goal. The State has agreed to notify the FLM of any advance notification or early consultation with a major new or modified source that may affect Federal Class I area visibility; such notification will be made prior to the submission of the permit application.

Summary of action

The August 21, 1985 submittal by the Governor of Montana includes an adequate visibility plan and regulation to meet the requirments of 40 CFR 51.305 and 51.307 and the criteria discussed in 49 FR 42670. (One should reference **Federal Register** notices on October 23, 1984, 49 FR 42670, July 12, 1985, 50 FR 28544, and January 2, 1986, 51 FR 38, for additional information).

The SIP is deficient for all the other requirements of Subpart P (except 51.305 and 51.307). See 51 FR 3046, January 23, 1986.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated May 5, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart BB—Montana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1370 is amended by adding paragraph (c)(20) as follows:

§ 52.1370 Identification of Plan.

* * * * *

(c) * * *

(20) A revision to the SIP was submitted by the Governor on August 21, 1985, for visibility monitoring and new source review.

(i) Incorporation by reference.

(A) Revision to the Montana SIP was made on July 19, 1985, for visibility new source review and monitoring.

(B) Revision to the Administrative Rules of Montana (ARM) was made on July 19, 1985, for visibility which includes new regulations ARM 16.8.1001–.1008 and revising ARM 16.8.1107(2).

[FR Doc. 86–12715 Filed 6–5–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[A–6–FRL–3026–9]

Delegation of Authority to the State of New Mexico for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On October 18, 1984, the State of New Mexico requested a delegation of authority for the implementation and enforcement of the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA has reviewed the laws of New Mexico and the rules and regulations of the New Mexico Environmental Improvement Division (NMEID) and has determined that the State's regulations and resources are adequate for the implementation and enforcement of the Federal standards. Based on this evaluation, EPA granted the authority to the State as requested, applicable in certain areas of the State. This delegation of authority does not apply to the sources located in the Bernalillo County, New Mexico, or to the sources on Indian governed lands as specified in the delegation agreement and in this notice.

EFFECTIVE DATE: March 15, 1985.

ADDRESSES: The related material in support of these delegations may be requested by writing to one of the following addresses:

Chief, SIP New Source Section (6T–AN), Air Programs Branch, U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270

Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, P.O. Box 968, Crown Building, Santa Fe, New Mexico 87504–0968

All other requests, reports, applications and such other communications which are required to be submitted under 40 CFR Part 60 and 40 CFR Part 61 (including the notifications required under Subpart A of the regulations) for the affected facilities in New Mexico should be sent directly to the State of New Mexico at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Rehnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767–9870.

SUPPLEMENTARY INFORMATION: On August 17 and August 30, 1982, partial delegation authority was granted to New Mexico by EPA for the technical and administrative portions of the NSPS and NESHAP programs. On October 19, 1984, New Mexico requested full delegation authority for the implementation and enforcement of NSPS through March 14, 1984, and NESHAP through December 9, 1983. The State also requested partial delegation of authority for the technical and administrative review of new or amended NSPS and NESHAP in the October 19 letter. These delegation requests were granted to the State subject to the conditions and limitations specified in the delegation agreement which is reprinted in this notice.

Introduction

On October 19, 1984, the Governor of New Mexico requested that the U.S. Environmental Protection Agency (EPA) delegate full authority to New Mexico for the New Source Performance Standards (NSPS) program and for the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. The Governor based his request upon the adoption by the New Mexico Environmental Improvement Board of Air Quality Control Regulation 750 (New Source Performance Standards), and Air Quality Control Regulation 751 (Emission Standards for Hazardous Air Pollutants) on July 13, 1984.

Under the New Mexico Air Quality Control Act, the City of Albuquerque and Bernalillo County have established a program for the local administration and enforcement of the Air Quality Control Act, in lieu of the New Mexico Environmental Improvement Board. The authority delegated in this document excludes all sources located within the boundaries of Bernalillo County.

Full Delegation

EPA has reviewed the Governor's request, Air Quality Control Regulations 750 and 751, and all other available information on the New Mexico Environmental Improvement Division (NMEID), including its implementation of the partial delegation of these programs. EPA finds that the NMEID has an adequate and effective procedure for implementing and enforcing the NSPS and NESHAP programs in the State of New Mexico, except for Indian lands, as defined at 18 U.S.C. 1151. Therefore, EPA hereby delegates the following authority for the implementation and enforcement of the NSPS and NESHAP to the State of New Mexico, subject to the conditions and limitations specified below:

1. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to the NSPS promulgated in 40 CFR Part 60 through March 14, 1984.

2. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to the NESHAP promulgated in 40 CFR Part 61 through December 9, 1983.

Conditions and Limitations

1. Implementation and enforcement of NSPS and NESHAP in the State of New Mexico, outside Indian lands, will be the primary responsibility of the NMEID. If the State of New Mexico or the NMEID determines that such implementation or enforcement is not possible or feasible, either with respect to an individual source, a class of sources, or generally, the NMEID shall, within 30 days, notify EPA Region 6 of such impossibility or infeasibility so that EPA may timely exercise its concurrent authority with respect to sources within the State of New Mexico.

2. Acceptance of this delegation constitutes agreement by the State of New Mexico and the NMEID to follow all interpretations, past and future, made by EPA of 40 CFR Parts 60 and 61, including determinations of applicability. Prior EPA concurrence shall be obtained on any matter involving the interpretation of sections 111 or 112 of the Clean Air Act or 40 CFR Parts 60 or 61 to the extent that application, implementation, administration, or enforcement of these sections have not been covered by prior EPA determinations or guidance.

3. The State of New Mexico and the NMEID are not authorized to approve or disapprove any application, exemption, variance, or grant waiver of compliance with any provision of 40 CFR Part 61. The State of New Mexico or the NMEID are, however, authorized to receive, review, evaluate, and recommend to EPA approval or disapproval of an application, exemption, variance or waiver.

4. The Federal NSPS regulations in 40 CFR Part 60, as amended, do not have provisions for granting waivers by class of testing requirements or variances, hence this delegation does not convey to the State of New Mexico or the NMEID authority to grant waivers by class of testing requirements or variances from NSPS regulations.

5. The State of New Mexico and the NMEID shall utilize the methods specified in applicable Appendices and Subparts of 40 CFR Parts 60 or 61 in determining compliance with the regulations, including requiring tests at the times required by the regulations.

Authority is delegated to approve minor modifications to the reference test methods in 40 CFR Parts 60 and 61, during either a pre-test meeting or the actual sampling period. These minor modifications would have to produce results essentially identical to the reference method results. Approval of these minor modifications should be based on sound engineering judgment. Under no circumstances are modifications to be used which might result in the non-uniform application of the standards.

6. If at any time there is a conflict between any State regulation and any provision of 40 CFR Parts 60 and 61, the Federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of New Mexico or the NMEID does not have the authority to enforce the more stringent Federal regulation, the NMEID shall immediately notify EPA Region 6 pursuant to Condition 1 above. This delegation may be revoked by EPA, in whole or in part, in the event any such conflict makes implementation or enforcement of NSPS or NESHAP administratively impractical.

7. If a claim of confidentiality or any other reason should ever legally prevent the State of New Mexico and the NMEID from providing to EPA any or all information required by or pertaining to the implementation of NSPS and NESHAP, the NMEID shall, upon request, assist EPA Region 6 in obtaining the information directly from the source. At a minimum, such assistance shall consist of providing to EPA an identification of the nature of the information which the State cannot provide. In the absence of such a legal reason, the State and the NMEID shall make available to any designated representative of EPA upon request all records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of 40 CFR Parts 60 or 61.

8. All matters in process at the time of delegation of authority may be processed through to completion by EPA Region 6, at the request of the NMEID and at the discretion of EPA, be transferred to the NMEID for completion. Appropriate reproduction of pertinent file material in the EPA Region 6 files in relation to source regulation under NSPS and NESHAP shall be provided through mutual cooperation of the staffs of the respective offices.

9. Existing monthly reports normally submitted to EPA Region 6 for the Compliance Data System (CDS) shall be expanded to contain pertinent information relating to the status of sources subject to 40 CFR Parts 60 or 61. As a minimum, the following information must be provided to EPA: The name, address, type and size of each facility; date that operation at the facility commenced and dates of most recent compliance test; the compliance status of each facility with accompanying explanations of noncompliance where applicable; notice of enforcement actions brought against facilities because of violations of 40 CFR Parts 60 or 61; surveillance actions undertaken for each facility; and the results of all reports relating to emissions data, including excess emissions reports.

10. Emission data, as defined in 40 CFR 2.301(a)(2), shall be made available to the public. Emission data is to be correlated with applicable emission limitations or other measures in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions which are allowable under the applicable emission limitations. If any information which is defined as emission data is found to be not available to the public by reason of State law or other legal requirement, the NMEID shall so notify EPA, Region 6, so that EPA may take the action necessary to release such data.

11. No authority is granted to the State or the NMEID to take any action which would require rulemaking by EPA. This limit on authority includes the grant of a waiver of testing requirements for any class of sources.

Partial Delegation

The NMEID has requested that it have partial delegation for sources for which new regulations or revised regulations are promulgated, except for sources in Indian lands, as defined at 18 U.S.C. 1151. EPA hereby delegates the following partial authority for the implementation of the NSPS and NESHAP to the State of New Mexico subject to the following conditions and limitations:

1. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NSPS promulgated in 40 CFR Part 60 after March 14, 1984, for which full delegation has not been granted above.

2. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NESHAP promulgated in 40 CFR Part 61 after December 9, 1983, for which full delegation has not been granted above.

3. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NSPS for which full delegation is granted above, when part or all of that NSPS has been revised after March 14, 1984.

4. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NESHAP for which full delegation is granted above, when part or all of that NESHAP has been revised after December 9, 1983.

Conditions and Limitations

1. The NMEID shall conduct only the technical and administrative review including determination of applicability, review and evaluation of NSPS and NESHAP applications, review and evaluation of requests for waivers of compliance under 40 CFR 61.11 and/or waivers of emission tests under 40 CFR 61.13, performance and evaluation of inspections, and observance and evaluation of compliance tests and continuous emission monitoring tests.

2. All conditions and limitations specified above for full delegation apply also to this partial delegation.

Effective immediately, all reports required pursuant to the Federal NSPS and NESHAP [40 CFR Part 60 and 40 CFR Part 61] by sources located in the State of New Mexico should be

submitted directly to the New Mexico Health and Environment Department, Environmental Improvement Division, Air Quality Bureau, P.O. Box 968, Crown Building, Santa Fe, New Mexico, 87504-0968. Any such reports which may be received by EPA, Region 6, after the effective date of this delegation will be promptly transmitted to the NMEID.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation is issued under the authority of sections 111(c) and 112(d) of the Clean Air Act, as amended [42 U.S.C. 7411(c) and 7412(d)].

List of Subjects:

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-fuel fired steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Radionuclides, Vinyl chloride.

Dated: May 23, 1986.

Frances E. Phillips,

Regional Administrator.

[FR Doc. 86-12715 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 84-069b]

Lifesaving Equipment; Thermal Protective Aids

Correction

In FR Doc. 86-12058 beginning on page 19842 in the issue of Thursday, May 29, 1986, make the following corrections:

1. On page 19843, in the third column, in the table of contents for Part 160, in § 160.174-25, "Productive" should read "Production".

§ 160.174-25 [Corrected]

2. On page 19848, in the first column, in the section heading for § 160.174-25, "Productive" should read "Production".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-177; RM-5772]

Radio Broadcasting Services; Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 217A to Barstow, CA, as that community's first noncommercial educational FM broadcast service, in response to a petition filed by the First Assembly of God Church. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-177, adopted April 17, 1986, and released April 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.504(a) is amended by adding the following:

§ 73.504 Noncommercial educational FM Table of Allotments

* * * * *

(a) * * *

City	Channel No.
Barstow, CA	217A

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12740 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-60; RM-5063]

Television Broadcasting Services; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 32 to Kansas City, Missouri, in response to comments filed by Dr. Sam Walters. The assignment could provide for a seventh commercial television broadcast service for Kansas City. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-60, adopted April 23, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.606(b) is amended by adding the following:

§ 73.606 Table of Assignments

* * * * *

(b) * * *

City	Channel No.
Kansas City, MO	32-

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12741 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense, Federal Acquisition, Regulation Supplement; Limitation of Progress Payments

AGENCY: Department of Defense (DoD).
ACTION: Final rule; correction.

SUMMARY: This document corrects language contained in a final rule which was published April 21, 1986 (51 FR 13513) and corrected by 51 FR 18042 of April 30, 1986 and 51 FR 18567 of May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

The Department of Defense is correcting language to read as follows:

1. Section 252.232-7007 is corrected by revising paragraph (j)(3)(i) of the clause to read as follows:

252.232-7007 Progress payments.

* * * * *

(j) * * *

(3) * * *

(i) Are substantially similar to the terms of the clause at 252.232-7007, Progress Payments, for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;

* * * * *

[FR Doc. 86-12736 Filed 6-5-86; 8:45 am]
BILLING CODE 3810-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 702, 731, 752, and Appendices B, C, F, G and H

[AIDAR Notice 86-3]

Miscellaneous Changes to the AID Acquisition Regulation

AGENCY: Agency for International Development, IDCA.
ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to reflect revised office titles.

EFFECTIVE DATE: June 6, 1986.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, telephone (703) 235-9655.

SUPPLEMENTARY INFORMATION: We have determined that the changes being made by this Notice are not significant or major changes as defined by FAR 1.301(b), or FAR 1.501, or E.O. 12291.

As required by the Regulatory Flexibility Act, it is hereby certified that this Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 702, 731, 752, and Appendices

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 702, 731, 752, and the Appendices to Chapter 7 are unchanged and continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR Part 1979 Comp., p. 435.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

702.170-3 [Amended]

2. In section 702.170-3, *Contracting activities*, paragraph (a) is amended by removing the reference to "Office of Acquisition and Assistance Management", replacing it with a reference to "Office of Procurement".

702.170-10 [Amended]

3. In section 702.170-10, *Head of the contracting activity*, paragraph (a) is amended by removing the reference to "Director, Office of Acquisition and Assistance Management", replacing it with a reference to "Director, Office of Procurement", and by removing the reference to "M/SER/AAM approved forms", replacing it with a reference to "M/SER/PPE approved forms".

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

731.109 [Amended]

4. Section 731.109, *Advance agreements*, is amended by removing the reference to "Office of Acquisition and Assistance Management", replacing it with a reference to "Office of Procurement".

Subpart 731.2—Contracts With Commercial Organizations

731.205-6 [Amended]

5. In section 731.205-6, *Compensation for personal services*, paragraph (b)(2) is amended by removing the reference to "Office of Acquisition and Assistance Management" appearing at the end of the paragraph, replacing it with a reference to "Office of Procurement."

Subpart 731.3—Contracts With Educational Institutions

731.371 [Amended]

6. In section 731.371, *Compensation for personal services*, paragraph (a) is amended by removing the reference to "Office of Acquisition Assistance Management" appearing at the end of the paragraph, replacing it with a reference to "Office of Procurement".

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 [Amended]

7. In section 731.770, *OMB Circular A-122*, Cost Principles for Nonprofit Organizations; AID implementation, paragraph (a) is amended by removing all references to "Office of Acquisition Assistance Management", replacing it with a reference to "Office of Procurement".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

8. In section 752.7002, *Travel and transportation*, paragraph (d), *Alternate 73*, the contract clause titled *"Travel Expenses and Transportation and Storage Expenses"* is amended by:

a. Changing the date of the clause from "(Nov. 1985)" to "(May 1986)"; and

b. Amending subparagraph (o)(i) of the clause to remove the reference to "Office of Acquisition and Assistance Management", replacing it with a reference to "Office of Procurement".

752.7004 [Amended]

9. In section 752.7004, *Source and Nationality Requirements*, the contract clause titled *"Source and Nationality Requirements for Procurement of Goods and Services"* is amended by:

a. Changing the date of the clause from "(Nov. 1985)" to "(May 1986)"; and

b. Amending paragraph (b)(2) of the clause to remove the reference to "Office of Acquisition and Assistance Management", replacing it with a reference to "Office of Procurement".

APPENDICES TO CHAPTER 7

Appendix B—Notice to Cost-Reimbursement Type Contractors of Changes in Applicable Standardized Government Regulations

10. Paragraph 5, *Duties and Responsibilities*, of Appendix B, is amended as follows:

a. Subparagraph 5(a)(1) is amended by removing the reference to "the Office of Acquisition and Assistance Management Acquisition Support Division, Support Services Branch (SER/AAM/A/SUP)", replacing it with a reference to "the Office of Procurement, Procurement Support Division, Support Services Branch (SER/OP/PS/SUP)";

b. Subparagraph 5(b) is amended by changing the subparagraph title from "*SER/AAM/A/SUP*" to "*SER/OP/PS/SUP*";

c. Subparagraph 5(c) is amended by removing the reference "SER/AAM/A/SUP", replacing it with a reference to "SER/OP/PS/SUP"; and

d. Subparagraphs 5(c)(2) and 5(c)(3) are amended by removing the references to "SER/AAM/A/SUP", replacing them with references to "SER/OP/PS/SUP".

Appendix C—Logistic Support Overseas to AID-Direct Contractors

11. Subparagraph 2(b)(3) of Appendix C is amended by removing the reference to "SER/AAM", appearing in the last sentence, replacing it with a reference to "SER/OP".

Appendix F—Use of Collaborative Assistance Method for AID-Direct Contracts for Technical Assistance

12. Subparagraph 4(d)(3)(iii) of Appendix F is amended by removing the reference to "AAM/A/OCC", replacing it with a reference to "OP/PS/OCC".

Appendix G—Approval and Reporting Procedures for Contractor Salaries

13. Appendix G is amended as follows:

a. Subparagraph 1(c) is amended by removing the reference to "SER/AAM/A/SUP", replacing it with a reference to "SER/OP/PS/SUP";

b. Paragraph 3 is amended by removing the references to "SER/AAM" appearing in the paragraph title and the second sentence of the paragraph, replacing them with references to "SER/OP" and by removing the reference to "SER/AAM/A/SUP", replacing it with a reference to "SER/OP/PS/SUP"; and

c. Paragraph 4 is amended by removing the reference to "the Office of Acquisition and Assistance Management.", replacing it with a reference to "the Office of Procurement".

Appendix H—Responses to Audit Recommendations

14. Appendix H is amended as follows:

a. References to "SER/AAM", appearing in paragraphs 2 and 6, and in subparagraphs 5(b), 5(b)(1)(b), 5(b)(1)(c), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c)(iii), 5(b)(4)(a), and 7(a) are removed and replaced with references to "SER/OP"; and

b. References to "AAM/A/SUP", appearing in subparagraphs 5(b)(1)(b), 5(b)(1)(c), 5(b)(1)(d), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c)(iii), and 5(b)(4)(a), and in paragraph 6, are removed and replaced with references to "OP/PS/SUP".

Dated: May 27, 1986.

John F. Owens,

AID Procurement Executive.

[FR Doc. 86-12623 Filed 6-5-86; 8:45 am]

BILLING CODE 8116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 60586-6086]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The North Pacific Fishery Management Council (Council) has determined, and the Secretary of Commerce (Secretary) has concurred, that an emergency exists in the groundfish fishery in the Bering Sea. This emergency results from extremely low abundance of the Tanner crab species *Chionoecetes bairdi* and the red king crab, *Paralithodes camtschatica*. Incidental catches of these crab species in the trawl fisheries for yellowfin sole and other flatfish could depress the populations of these crab species to dangerously low levels and retard their population growth to levels capable of sustaining productive commercial fisheries. This rule (1) closes an area of the exclusive economic zone (EEZ) in the Bering Sea to all commercial fishing with trawl gear; (2) sets incidental catch limits for *C. bairdi* Tanner crabs in the foreign and domestic commercial trawl fisheries and for red king crabs in the domestic trawl fisheries operating in other parts of the Bering Sea; and (3) requires that fishing be terminated if and when the incidental catch limits are achieved. The incidental catch limits established by this action reflect a compromise between the need to curtail commercial fishing effort detrimental to depressed crab populations while achieving the optimum yield from the domestic trawl fishery. This action is necessary to provide the Council and the Secretary additional time to evaluate alternative long-term solutions. The intended effect of this action is to provide immediate interim conservation protection for the crab species identified while allowing continued commercial fishing to the maximum extent practicable.

EFFECTIVE DATES: June 3, 1986 until September 2, 1986. Public comments are invited for the duration of this rule.

ADDRESS: Copies of documents supporting this action may be requested from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Comments may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ (coterminous with the fishery conservation zone) in the Bering Sea and Aleutian Islands area are managed in accordance with the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 and Part 675.

At its meeting of January 15-17, 1986, the Council determined that two species of commercially important crabs in Bering Sea Area I are at dangerously low levels of population abundance. Concern was expressed that commercial trawl fishing for groundfish, particularly yellowfin sole and flounder species, is contributing to Tanner and king crab mortality through incidental catches in trawl nets and mutilation from trawl gear as it passes over the sea bottom. Additional concern was expressed about incidental catches of halibut from

trawl fishing. Although regulations governing foreign trawl fishing in this area provide certain closed areas and prohibited species catch (PSC) limits for Tanner and king crabs and halibut, domestic trawl fishing vessels have not been similarly restricted. Domestic trawl fishing for groundfish includes U.S. vessels working in joint ventures with foreign processing vessels (JVP) and U.S. vessels processing their catch on board or delivering it to U.S. processors (DAP). Together, JVP and DAP fisheries account for the domestic annual harvest (DAH).

The Council recommended emergency regulations that would close a part of Bering Sea Area I to all commercial trawling with an exception for trawl fishing for Pacific cod, establish PSC limits for Tanner crab (*C. bairdi*), red and blue king crabs, and halibut, close a fishery that achieves a PSC limit, and provide for NMFS-approved observers on domestic fishing vessels in certain areas. Because the council voted not unanimous, the Secretary has discretion in implementing the recommended emergency regulations under section 305(e)(2)(B) of the Magnuson Act. Accordingly, this emergency rule provides for the following restrictions on commercial trawling for groundfish.

1. Closed Area

Domestic and foreign trawl fishing is not permitted in the EEZ north of the Alaska Peninsula, south of 58° N. latitude, west of 160° W. longitude, and east of 162° W. longitude (area B in Figures 1 and 2). The Secretary may allow domestic trawl fishing for Pacific cod in a portion of this area lying south of a line generally conforming to the 25-fathom depth contour, provided that such fishing is conducted under a data gathering program approved by the Regional Director after consultation with the Council. The program would be designed to provide data useful for management of the trawl and Tanner and king crab fisheries, and would be monitored to prevent overfishing of Tanner and king crab stocks in the area. All such trawl fishing would cease when a PSC limit of 12,000 red king crabs had been taken in the area.

This part of the rule is as originally recommended by the Council with one exception. The Council originally recommended an exception to the ban on trawl fishing in the area for Pacific cod trawling in waters shallower than 25 fathoms by any domestic vessel carrying an observer approved by NMFS, subject to an incidental catch rate of 2 red king crabs per metric ton of groundfish (for a total estimated incidental mortality of 12,000 king crabs). When it proved impracticable to provide the observer coverage that was envisioned in this exception, the Council recommended that the ban be implemented without any exceptions.

There is some possibility that an alternative means may be found to provide additional data and to provide sufficient monitoring to prevent overfishing of Tanner and king crab stocks in the area by Pacific cod trawlers. In order to provide for this, the rule authorizes the Secretary to allow such trawling in the area under the conditions described above. If data will not be obtained from each participating vessel, the Secretary will consult with the Council when considering whether to authorize trawling for Pacific cod.

The area closed by this rule contains the highest concentrations of legal male and large female *C. bairdi* Tanner crabs and red king crabs. The closure will protect about 70 percent of the female spawning stock of red king crabs, according to NMFS scientists, and will effectively keep the incidental fishing mortality rate of these crabs to a minimum.

Finally, the foreign trawling prohibition in the Bristol Bay "pot sanctuary" (described at § 611.93(c)(2)(ii)(A)) is expanded to encompass the area closed by this rule. This is to ensure protection of crab stocks to the full extent envisioned by the Council.

2. Incidental Catch Limits

The PSC limits for *C. bairdi* Tanner crabs and red king crabs implemented by this rule are as recommended by the Council and apply equally to JVP and DAP fisheries.

The DAH fishery for yellowfin sole and other flatfish is limited to a PSC of 80,000 *C. bairdi* Tanner crabs and to a PSC of 135,000 red king crabs in the EEZ north of the Alaska Peninsula, south of 58° N. latitude, and east of 165° W. longitude, which is zone 1 (area A in Figure 2).

The area described as zone 1 is important to directed fishing for yellowfin sole and other flatfish, especially during April, May, and June when sea ice prevents fishing farther north. Although the area closed by this rule protects the highest concentration of legal male and large female *C. bairdi* Tanner crabs and red king crabs, significant numbers of these crabs occur outside of the closed area but east of 165° W. longitude. The PSC limit for this larger area will provide necessary additional protection for these crabs. Foreign fishing with trawl gear is already prohibited in a large portion of this area known as the "pot sanctuary" under § 611.93(c)(2)(ii).

A PSC limit of 326.00 *C. bairdi* Tanner crabs applicable to the domestic fishery for yellowfin sole and other flatfish is established in the area of the EEZ bounded by straight lines beginning at 54°30′ N. latitude and 165° W. longitude, extending north to 58° N. latitude, west to 58° N. latitude and 171° W. longitude, north to 60° N. latitude, west to 179°20′ W. longitude, south to 50°25′ N. latitude, then extending on a diagonal straight line southeast to the intersection of 167° W. longitude and 54°30′ N. latitude, and then extending eastward along 54°30′ N. latitude to 165° W. longitude, which is zone 2 (area C in Figure 2).

This zone 2 encompasses a large majority of the population of small female and pre-recruit male *C. bairdi* Tanner crabs. The combined PSC limits for zones 1 and 2 (406,000 *C. bairdi* Tanner crabs) will provide protection for 86 percent of the *C. bairdi* stocks.

A PSC limit of 64,000 *C. bairdi* Tanner crabs applicable to the foreign directed fisheries for yellowfin sole and other flatfish is established in the combined areas of zones 1 and 2 (areas A and C in Figure 1). This PSC will provide greater protection to *C. bairdi* Tanner crabs specifically taken by the foreign fishery for flounder than is provided by the less restrictive Bering Sea and Aleutian Islands area-wide PSC for Tanner crabs contained in § 611.93(c)(2)(ii)(E) of the foreign fishing regulations.

3. Closure Due to Catch Limits

Continued fishing by the domestic and foreign fisheries for yellowfin sole and other flatfish is not allowed in any area after the fishery has achieved its fishery-specific PSC limit and foreign directed fishing for these species is not allowed in zone 1 (area A in Figures 1 and 2) after it is closed to domestic fishing due to achievement of the PSC limit for red king crabs.

Domestic and foreign directed fishing for yellowfin sole and other flatfish in any area in which a fishery-specific PSC limit is achieved is prohibited, as the Council recommended, by this rule. An exception is provided to give the Secretary some discretion in carrying out closures due to PSC limits. This will allow some management latitude in imposing restrictions on domestic fishermen in areas and under circumstances where continued fishing can be determined to have insignificant deleterious effects on either crab stock. This discretionary authority is designed to strike a balance between conservation of depressed crab stocks and excessive regulatory burden on the

domestic groundfish fishery. Allowing continuation or resumption of domestic fishing for yellowfin sole and other flatfish in an area that is otherwise closed due to a PSC limit will permit the domestic industry to use groundfish resources more fully. However, a thorough assessment and consideration of existing conditions within domestic fisheries and the biological and socioeconomic risks involved will be made and relevant findings published before this discretionary authority can be fully exercised. This authority does not extend to foreign fisheries. If a closure of the DAH fishery occurs in zone 1 due to the red king crab PSC limit, then this rule also provides for closing foreign directed fishing for yellowfin sole and other flatfish when domestic fishing for these species is closed.

The closure of either or both zones 1 and 2 (areas A and C in figures 1 and 2) due to achievement of a PSC limit will not preclude either the domestic or the foreign fishery from continuing to fish for yellowfin sole and other flatfish in the remainder of the Bering Sea and Aleutian Islands Management Area, which has no domestic PSC limits.

Prohibiting foreign fishing with trawl gear in the area defined at § 611.93(c)(2)(ii)(F) (area B in Figure 1) effectively extends the existing closure to foreign trawlers in the Bristol Bay "pot sanctuary" (area D in figure 1) under § 611.93(c)(2)(ii)(A). The purpose of this rule is to close the entire area specified by the Council (south of 58° N. latitude, between 160° and 162° W. longitude, and north of Alaska Peninsula) to all commercial groundfish trawling. Failure to extend the "pot sanctuary" closure in this rule would unfairly allow foreign fishing in an area closed to domestic fishing and undermine the conservation of *C. bairdi* Tanner crabs and red king crabs in the area of their greatest concentration.

The Council's recommendations for halibut PSC limits are not included in this rule because they cannot be justified as a conservation emergency in light of the 19 percent increase in the halibut quota from 1985 to 1986 by the International Pacific Halibut Commission. This omission does not deny the concern that uncontrolled incidental catches of halibut by the growing JVP and DAP fishing fleets could result in decreased halibut abundance in the future. In the absence of a well-documented resource emergency involving halibut, the question of halibut PSC limits should bear the analysis and discussion of a regular amendment to the FMP.

These restrictions of fishing vessels trawling for yellowfin sole and other flatfish species are intended to reduce the deleterious effects of this fishing on *C. bairdi* Tanner crab and red king crab stocks. Recent data suggest that *C. bairdi* and red king crabs have declined to extremely low abundances (Report to Industry on the 1985 Eastern Bering Sea Crab Survey, NMFS Northwest and Alaska Fisheries Center Processed Report 85–20, November 1985). A summary of these data follows:

1. C. Bairdi Tanner Crabs

The abundance of this species has declined to its lowest level since 1975. The number of legal-sized male crabs is estimated to have decreased from about 210 million in 1975 to about 4.4 million in 1985, the lowest historical record. The estimated abundance of legal-sized males declined 24 percent between 1984 and 1985, continuing an almost steady trend over the past decade. The decrease in abundance from 1984 to 1985 was more severe in other segments of the population. Between these years the abundance of sublegal males, mature females, and immature females declined by 56 percent, 55 percent, and 77 percent, respectively. Preliminary data from the commercial fishery indicate that 3.2 million pounds of *C. bairdi* was landed in 1985. Based on the NMFS crab survey, the 1986 harvest would be in the range of 2.0 to 5.0 million pounds, had it occurred. These harvest levels are substantially below the optimum yield range of 5.0–28.5 million pounds specified for *C. bairdi* in the fishery management plan for Tanner crabs. For this reason, the Secretary delayed indefinitely the scheduled January 15 opening of the 1986 commercial fishing season for *C. bairdi* (51 FR 2892, January 22, 1986).

2. Red King Crabs

The abundance of legal-sized male red king crabs is low. Estimated numbers have dropped 93 percent from 1980 through 1985. Sublegal male crabs have decreased in abundance an estimated 50 percent during the same period. The estimated abundance of female crabs also is at a record low. The abundance of mature female crabs declined from about 17.6 million to 6.8 million from 1984 to 1985. This estimated abundance is substantially below the range of 20 million to 40 million fecund females considered optimal for future fishery production. Commercial catches of red king crabs in Bristol Bay reflect the declining abundance estimates. In 1980, 130 million pounds was landed. This harvest decreased to 34 million pounds in 1982. The Alaska Department of Fish and Game closed the commercial red king crab fishery in Bristol Bay in 1983 due to low abundance estimates. The fishery was reopened in 1984 and landed 4.2 million pounds. However, abundance estimates of legal males decreased again from 1984 to 1985 by 14 percent.

The 1985 fishery opened September 25 on an estimated legal stock of 12.5 million pounds (approximately 2.5 million crabs). The fishery closed October 2 with final landings exceeding 4.1 million pounds. These data show that from 1984 to 1985, the abundance of pre-recruit and legal males decreased by 17 percent and 14 percent, respectively, and that the 1985 legal male abundance was the second lowest since 1969.

In addition to commercial catches in the directed Tanner and king crab fisheries, incidental catches in other fisheries also contribute to fishing mortality of these species. For example, observer data indicate that 700,000 to 800,000 female red king crabs would have been captured during the *C. bairdi* fishery. These king crabs would be subject to handling mortality as they are removed from pots and returned to the sea. Consequently, the Secretary intends to keep closed the 1986 fishery for *C. bairdi* in Bristol Bay south of 58° N. latitude and east of 164° W. longitude to preclude this source of mortality. Substantial numbers of crabs are taken also in the JVP trawl fishery. About 814,000 Tanner crabs (*C. bairdi* and *C. opilio*) and 970,000 king crabs (all species) were harvested incidentally in the 1985 JVP trawl fishery in Bering Sea Area I. Despite being returned immediately to the sea, most of these incidentally harvested crabs probably die, especially if caught during the molting period when their shells are soft. The actual number of crabs killed may be higher, considering those struck and run over by non-capturing portions of the trawl gear.

For these reasons, the Council has determined and the Secretary has concurred that an emergency exists involving the *C. bairdi* Tanner crab and red king crab species and directed fishing for yellowfin sole and other flatfish in the Bering Sea Area, and that emergency action is required under section 305(e) of the Magnuson Act. This emergency rule will be effective for 90 days from its effective date and may be extended for an additional 90 days if emergency conditions persist. This rule places additional restrictions on all foreign and domestic commercial trawl fisheries in Bering Sea Area to some extent. Commercial fisheries for Tanner and king crabs either have been or likely will be further restricted by other

management actions. Other commercial fisheries using nets, pots, or longline gear are not apt indirectly to catch Tanner and king crabs.

For purposes of enforcing a prohibition against directed fishing for yellowfin sole and "other flatfish" after a PSC limit is reached, a definition of directed fishing is added to § 611.93.

3. Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553 (b) and (d) of the Administrative Procedure Act. The Secretary will consider comments on this rule during its effective period. He also will consider comments from the Council and public during the Council meeting scheduled for June 25–27, 1986.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this rule and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the address above.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comments. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Dated: June 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are amended as follows:

1. The authority citation for Parts 611 and 675 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

PART 611—[AMENDED]

2. Section 611.93 is amended by adding new paragraphs (b)(1)(iii), (c)(2)(ii)(E)(*2*)(*iv*), and (c)(2)(ii) (F) and (G), and figure 1 to be effective from June 3, 1986 to September 2, 1986 read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(iii) *Directed fishing*, with respect to any species, stock, or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish and amount to 20 percent or more of the total amount by weight of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more by weight of the catch, take, or harvest, or 20 percent or more of the total amount by weight of fish or fish products on board at any time, such fishing was directed fishing for such fish.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) * * *

(*2*) * * *

(*iv*) When, during the fishing year, the trawl vessels of foreign nations conducting directed fishing for yellowfin sole and "other flatfish" in either zone 1 or zone 2 (areas A and C in Figure 1) catch the PSC limit of 64,000 *C. bairdi* Tanner crabs, the Regional Director will publish a notice in the **Federal Register** prohibiting foreign trawling for yellowfin sole and "other flatfish" in both of these areas for the remainder of the fishing year. For this purpose, zone 1 is defined as that part of the management area south of 58° N. latitude and east of 165° W. longitude exclusive of other closed areas specified under this part (area A in Figure 1), and zone 2 is defined as that part of the management area bounded by straight lines connecting the following coordinates in the order listed and exclusive of other closed areas specified under this part (area C in Figure 1):

54°30′ N. latitude, 165°00′ W. longitude;
58°00′ N. latitude, 165°00′ W. longitude;
58°00′ N. latitude, 171°00′ W. longitude;
60°00′ N. latitude, 171°00′ W. longitude;
60°00′ N. latitude, 179°20′ W. longitude;
59°25′ N. latitude, 179°20′ W. longitude;
54°30′ N. latitude, 167°00′ W. longitude;
54°30′ N. latitude, 165°00′ W. longitude;

(F) At all times in the area enclosed by straight lines connecting the following coordinates: 57°30′ N. latitude, 162°00′ W. longitude; 58°00′ N. latitude, 162°00′ W. longitude; 58°00′ N. latitude, 160°30′30″ W. longitude (area B in Figure 1).

(G) When the domestic fishery for yellowfin sole and other flatfish is prohibited under § 675.21(a) of this chapter, the directed fishery for yellowfin sole and "other flatfish" is prohibited in the same area specified in § 675.21(a) exclusive of other closed areas specified under this part.

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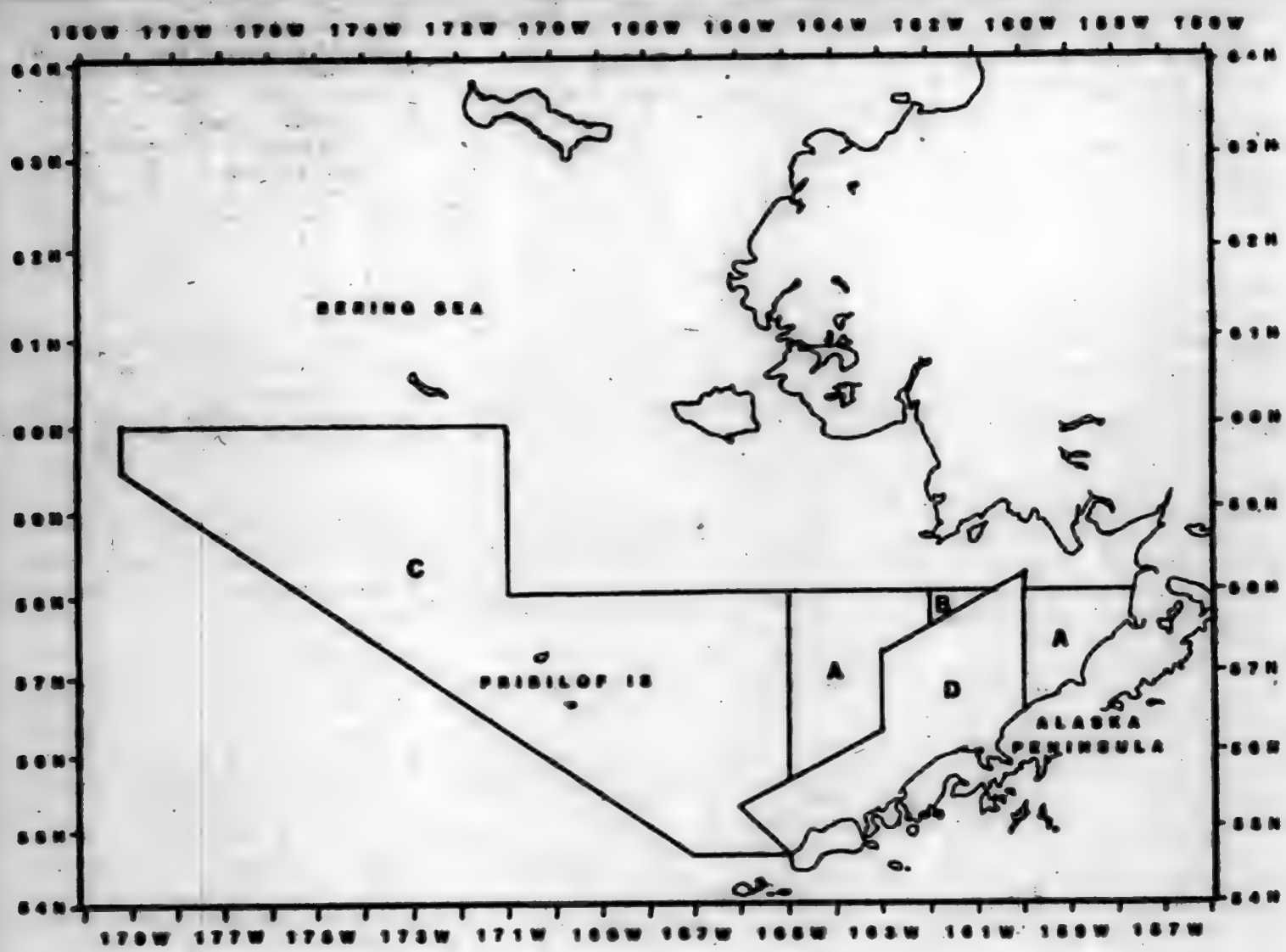

FIGURE 1

A. Zone 1 area defined at §611.93(c)(2)(ii)(E)(2)(iv) and §611.93(c)(2)(ii)(G).

B. Closed area defined at §611.93(c)(2)(ii)(F).

C. Zone 2 area defined at §611.93(c)(2)(ii)(E)(2)(iv)

D. Bristol Bay "pot sanctuary" defined at §611.93(c)(2)(ii)(A).

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PART 675—[AMENDED]

3. In § 675.7, paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added, to read as follows:

§ 675.7 General prohibitions.

* * * * *

(g) Use a vessel (1) to fish with trawl gear in Area B of Figure 2 unless the owner or operator of such vessel has agreed with the Secretary to comply with an approved data gathering program; or (2) to fish with trawl gear in the area at any time when no approved data gathering program exists or after such a program has been terminated; or (3) to fish with trawl gear in that area without complying fully with an approved data gathering program; or

* * * * *

4. In § 675.20, paragraph (c)(1) is suspended from June 3, 1986 to September 4, 1986, a new paragraph (e) is added, to be effective from June 3, 1986 to September 4, 1986, to read as follows:

§ 675.20 General limitations.

* * * * *

(e) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish in the Bering Sea and Aleutian Islands management area, the retention of which is prohibited by other applicable law. Any catch of Pacific halibut by fishing vessels regulated under this part is a catch of a prohibited species, unless retention is authorized by regulations of the International Pacific Halibut Commission. Any catch of Tanner crab, king crab, or salmon by vessels regulated under this part is a catch of a prohibited species.

5. A new § 675.21 and Figure 2 are added, to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) *Tanner crab (C. bairdi).* (1) If, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00′ N. latitude and east of 165°00′ W. longitude, which is zone 1 (area A in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year, subject to paragraph (c) of this section.

(2) If, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 326,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea bounded by straight lines connecting the following coordinates in the order listed, which is zone 2 (area C in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in zone 2 by vessels the of United States for yellowfin sole and "other flatfish" for the remainder of the year, subject to paragraph (c) of this section:

54°30′ N. latitude, 165°00′ W. longitude;
58°00′ N. latitude, 165°00′ W. longitude;
58°00′ N. latitude, 171°00′ W. longitude;
60°00′ N. latitude, 171°00′ W. longitude;
60°00′ N. latitude, 179°20′ W. longitude;
58°25′ N. latitude, 179°20′ W. longitude;
54°30′ N. latitude, 167°00′ W. longitude;
54°30′ N. latitude, 165°00′ W. longitude.

(b) *Red king crab.* If, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 135,000 red king crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00′ N. latitude and east of 165°00′ W. longitude, which is zone 1 (area A in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in zone 1 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year, subject to paragraph (c) of this section.

(c) When the fishing vessels of the United States to which a PSC limit applies have caught an amount of prohibited species equal to that PSC limit (but less than an amount which would constitute overfishing), the Secretary may allow some or all of those vessels to continue or resume directed fishing for yellowfin sole and "other flatfish" under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors, and subject to other provisions of this part. Such other factors may include delivery of a vessel's catch to United States fish processors. In authorizing and conditioning such continued or resumed directed fishing by those vessels, the Secretary will take into account the following considerations:

(1) A determination by the Regional Director of the risk of biological harm to Tanner and king crab stocks and of socioeconomic harm to authorized crab users posed by authorizing continued or resumed directed fishing for yellowfin sole and "other flatfish";

(2) A determination by the Regional Director of the extent of incidental catches of Tanner and king crabs in specific areas;

(3) A determination by the Regional Director of the accuracy of the estimates of incidental catches of Tanner and king crabs;

(4) A determination by the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources; and

(5) A determination by the Regional Director that continued or resumed directed fishing for yellowfin sole and "other flatfish" will not lead to overfishing of prohibited species.

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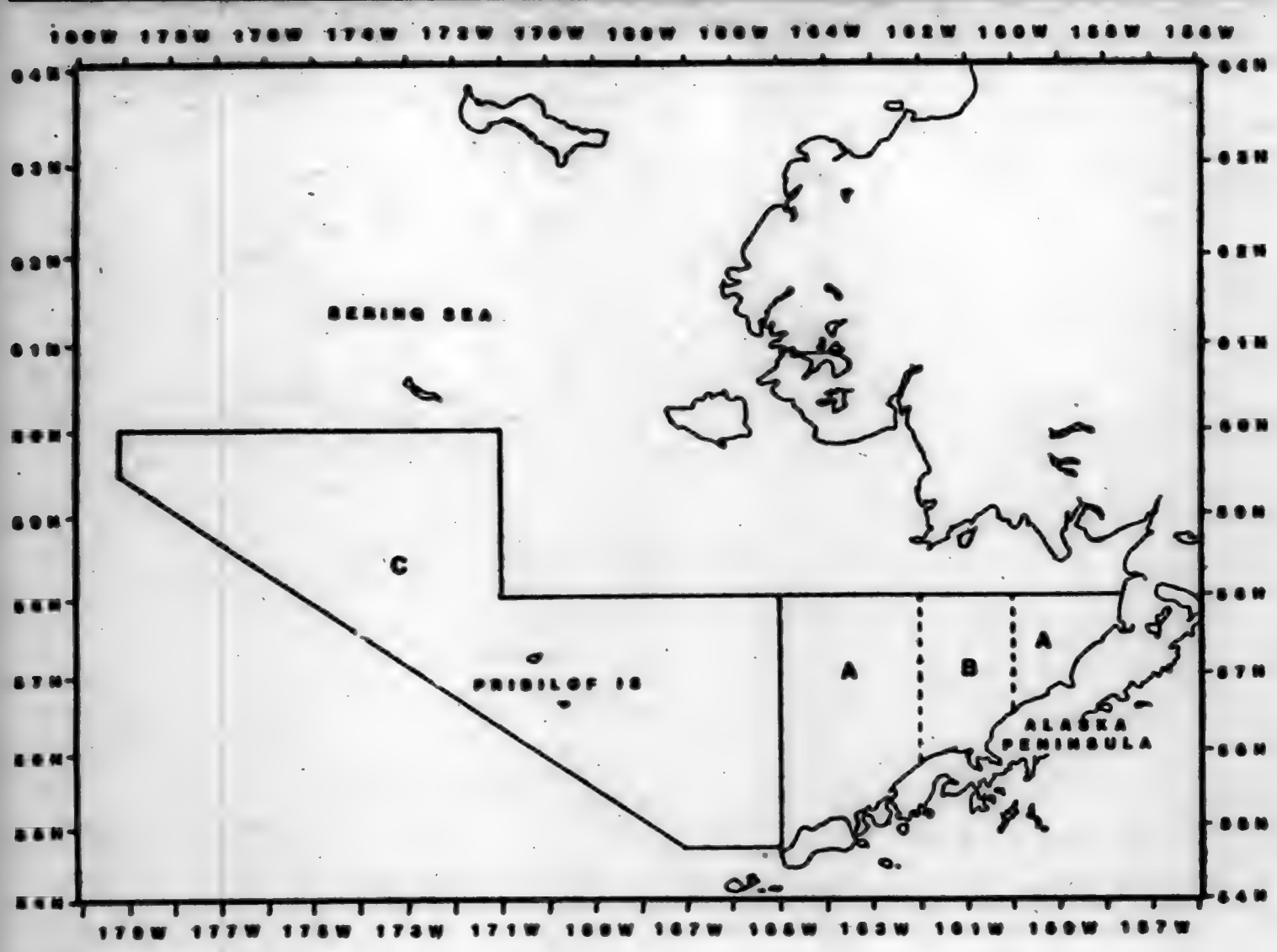

FIGURE 2

A. Zone 1 area defined at §675.21(a)(1).

B. Closed area defined at §675.22.

C. Zone 2 area defined at §675.21(a)(2).

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6. A new § 675.22 is added, to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of the Area I of the Bering Sea subarea that is south of 58°00' N. latitude, east of 162°00' W. longitude and west of 160°00' W. longitude (area B in Figure 2).

(b) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 58°43' N. latitude, 160°00' W. longitude, and 58°00' N. latitude, 162°00' W. longitude, provided that such fishing is in accordance with a data gathering program approved by the Regional Director after consultation with the Council designed to provide data useful in the management of the trawl fishery and the Tanner crab and king crab fishery and which will be monitored to prevent overfishing of the Tanner and king crab stocks in the area.

(c) The owner or operator of each vessel which fishes in Area B pursuant to an approved data gathering program must agree with the Secretary to comply with all requirements of that program.

(d) If the Regional Director determines that vessels fishing with trawl gear in the area described in paragraph (a) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately close all fishing with trawl gear in that area by notice in the Federal Register and will make reasonable attempts to notify all parties to each agreement referred to in paragraph (c) that the program has terminated.

[FR Doc. 86-12774 Filed 6-3-86; 5:03 pm]
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50 CFR Part 672

[Docket No. 60587-6087]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fishery of the Gulf of Alaska resulting from the current regulatory requirement that he close all fishing for groundfish in any regulatory area when the optimum yield (OY) for any groundfish species or that portion of the sablefish OY allocated to any gear type is achieved. The 1986 sablefish OYs in all areas are expected to be achieved within a few weeks. Closure of these areas upon the achievement of the sablefish OYs would cause irreparable harm to the domestic groundfish fishing industry by denying them access to substantial quantities of other groundfish species. This rule authorizes the Secretary: (1) To close a regulatory area or district of the Gulf of Alaska to directed fishing for sablefish by any specific gear type prior to achievement of the share of the sablefish OY that has been allocated to that gear type, thereby providing for bycatch, and (2) to allow continued fishing for other groundfish species in a regulatory area or district when the OY of any groundfish species has been reached, if the Director, Alaska Region, NMFS (Regional Director), determines that the resulting mortality inflicted on the species for which the OY had been reached would not constitute overfishing. Public comments are invited on this emergency rule and will be considered in the promulgation of a final rule permanently implementing these measures. The emergency rule is necessary to promote the full utilization of all groundfish species without biological harm to any one species and without inhibiting the development of fisheries that are dependent on sablefish and other groundfish species. It is intended as a conservation and management measure to optimize groundfish yields from the fishery in 1986 and subsequent years.

EFFECTIVE DATE: June 3, 1986, until September 2, 1986. Written comments on this rule and its supporting documents must be received on or before July 3, 1986.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Copies of this rule and its supporting documents may be obtained from Mr. McVey.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fishery in the fishery conservation zone (3-200 miles offshore) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations at 50 CFR Part 672.

At its January 15-17, 1986, meeting, the Council reviewed regulations at §§ 672.20(b) and 672.24(b) with respect to the FMP's objectives for groundfish management, and recommended to the Secretary that these regulations be amended in two ways. First, § 672.20(b) should be amended to authorize the Secretary to allow fishing for other species to continue if the OY for a single species in a regulatory area or district has been reached, on the condition that such fishing will not result in overfishing of the single species. Second, § 672.24(b) should be amended to reduce the potential for exceeding sablefish OYs by allowing the Secretary to close directed fishing for sablefish by pot, hook-and-line, or trawl vessels prior to their taking the share of the sablefish OY assigned to any gear type for any year and any area or district, leaving an amount of sablefish available for bycatch in fishing other species. Upon such closure, sablefish could continue to be landed by that gear type only as an incidental catch until that portion of the OY allocated to it had been acheived, after which sablefish would be treated as a prohibited species. Each of the Council's recommendations and the action taken by the Secretary is discussed below:

Recommendation To Amend 50 CFR 672.20

Ten species (or species groups) of groundfish are managed under the FMP, which establishes OYs for each species. Each OY represents the best estimate of an annual harvest level for that species, taking into account biological, ecological and economic factors. Since the FMP was implemented, OYs for each species have constituted a "cap" above which additional fishing would not be allowed. Such management has been in response to: (1) Management Objective A of the FMP, "Rational and optimal use, in both the biological and socioeconomic sense, of the region's fishery resources as a whole", and (2) National Standard 1 of the Magnuson Act, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery". Overfishing is considered to be the level of fishing mortality that jeopardizes the capacity of a stock to recover to a level at which it can produce maximum biological or economic value on a long-term basis under prevailing biological and environmental conditions.

Both the foreign and domestic regulations implementing the FMP at §§ 611.92(c)(2)(ii) and 672.20(b)(1)

contain measures that require closure of entire regulatory areas or districts to all fishing whenever an OY for any species is reached, with the exception that foreign hook-and-line fisheries for Pacific cod and sablefish may continue until the OY for each of these species is achieved.

Both domestic and foreign regulations recognize that hook-and-line gear takes few, if any, target groundfish species of other fisheries, thereby justifying continued fishing with this gear when the OYs for those target species have been reached. Only when the OYs for Pacific cod or sablefish have been reached is hook-and-line gear in a regulatory area also prohibited, at which time all fishing would finally be prohibited.

The Council did not recommend that the emergency rule amend the foreign fishing regulations. Most of the groundfish resources in the Gulf of Alaska are being fully utilized, or will be fully utilized, by U.S. fishermen in wholly domestic (DAP) or joint venture (JVP) operations. As a result, directed foreign trawling in the Gulf of Alaska has greatly diminished since 1978 and none is expected in 1986. Foreign hook-and-line fishing for Pacific cod could be eliminated in future years.

Certain species groups, such as sablefish, are available only in relatively small amounts each fishing year which, depending on market demand, could be fully harvested within a short period of time. In 1985, the OYs for sablefish in all regualtory areas and districts were reached a few weeks after active sablefish fishing began. The required closure of the entire area or district to all fishing would have created a severe economic hardship on fishermen who otherwise could have continued to fish for underutilized species. In the Central Regualtory Area, the economic hardship would have been especially severe, because the sablefish OY was reached on June 8. Domestic fishermen had almost six months of fishing time left in which they potentially could have harvested about 117,000 metric tons (mt) of other groundfish in DAP fisheries and 49,600 mt in JVP fisheries. To avoid making U.S. fishermen forego these amounts, the Secretary promulgated an emergency rule under section 305(e) of the Magnuson Act that amended the applicable rules on an interim basis to authorize the prohibition of fishing for a species for which the OY had been reached in an area or district and declare that species to be a prohibited species (50 FR 28560, July 15, 1985). That emergency rule expired on December 31, 1985.

The original regulations are again in effect for the 1986 fishing year and could result in U.S. hook-and-line and trawl vessels being denied access to large amounts of available groundfish species. Pot vessels are expected to harvest only sablefish and would not be affected similarly once the pot vessel share of sablefish had been reached. Gross revenues lost by hook-and-line and trawl vessels could be substantial. These revenues are estimated in the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), using actual numbers of vessels and price data from 1985. The EA/RIR/IRFA shows that, in the extreme, each of 46 trawl vessels targeting on pollock, Pacific cod, flounders, and the trawl share of the sablefish OY could potentially forego gross revenues of $129,000, $471,000, $79,000, and $37,000, respectively, from these catches. Each of 440 hook-and-line vessels targeting on Pacific ocean perch, rockfish, thornyhead rockfish, and their share of sablefish could potentially forego gross revenues of $7,000, $11,000, $10,000 and $34,000, respectively from catches of each species. Processing, wholesale, and retail industries would also suffer losses in revenues. Because the total amount earned at these three levels is three to five times the exvessel value, more revenues would be foregone by the U.S. fishing industry.

The EA/RIR/IRFA contains data on the size of bycatches expected in the various target fisheries. Although DAP catches are by themselves too small to provide adequate information, data from JVP fisheries do yield adequate information. In the JVP fishery for pollock, in the Shelikof Strait, off-bottom trawl gear is known to take relatively small amounts of other groundfish species. On-bottom trawl gear used to harvest pollock and Pacific cod takes larger numbers of other species, but the bycatches are still relatively small. However, when bottom trawl gear is used to harvest flounders, bycatches of other groundfish species can be quite large. Bycatches of "other rockfish", thornyhead rockfish, and squid are low whether on- or off-bottom gear is used during any month of the year. After reviewing the bycatch rates of all groundfish species in the various fisheries, the Secretary has determined that certain groundfish fisheries take small to insignificant amounts of other groundfish species as bycatch. He has also determined that further bycatches of such species for which the OY had already been attained, in most cases, would not necessarily constitute overfishing under the Magnuson Act. He has concluded, therefore, that prohibiting all fishing in a regulatory area or district, or part thereof, when the OY for a single species is reached is not justified in all cases, and that such unqualified closures would impose unacceptable, negative economic effect on the fishing industry.

The likelihood of unqualified closures early in 1986 is great. The 1986 sablefish season for hook-and-line gear throughout the Gulf of Alaska and for pot gear in the Western and Central Regulatory Areas of the Gulf of Alaska started on April 1. The season for trawl gear started on January 1. Substantial fishing effort for sablefish by all gear types should harvest the OYs in each area/district within a few weeks, forcing the Secretary to impose general and unqualified closures.

Secretarial Action

The Secretary, therefore, is promulgating this emergency rule to amend, on an interim basis, the current rules at § 672.20(b) to authorize species-specific fishery closures. The Secretary requests public comment on this rule because he anticipates effecting this change permanently by a subsequent final rule.

Recommendation To Amend 50 CFR 672.24

Amendment 14 to the FMP (50 FR 43193, October 24, 1985) contained seven parts. One part established that legal commercial fishing gear types for use in the directed sablefish fishery are pots, hook-and-line, and trawls. This part also allocates percentages of the sablefish OY for each regulatory area and district to each gear type and establishes a schedule for phasing out pot gear (Table 1).

TABLE 1.—PERCENTAGES OF SABLEFISH ALLOCATED BY YEAR AMONG HOOK-AND-LINE (H AND L), POT, AND TRAWL GEAR USERS FOR EACH REGULATORY AREA IN THE GULF OF ALASKA

Regulatory area	Year				
	1986	1987	1988	1989	1990
Eastern:					
H and L	95	[a]	[a]	[a]	[a]
Pot	0	[a]	[a]	[a]	[a]
Trawl	5	[a]	[a]	[a]	[a]
Central:					
H and L	55	80	[b]	[b]	[b]
Pot	25	0	[b]	[b]	[b]
Trawl	20	20	[b]	[b]	[b]
Western:					
H and L	55	55	55	80	[c]
Pot	25	25	25	0	[c]
Trawl	20	20	20	20	[c]

[a] 1987 and subsequent years—same as 1986.
[b] 1988 and subsequent years—same as 1987.
[c] 1990 and subsequent years—same as 1989.

Under current regulations implementing Amendment 14, when the share of the sablefish OY assigned to any gear type for any year and any area or district has been taken, the Regional Director is required to close that regulatory area or district to all fishing for groundfish with that gear type for the remainder of that year. The Council considered the effects that this measure would have on other segments of the groundfish industry and determined that the potential negative economic effects on the industry are of the same type as discussed above under the recommendation to amend § 672.20. The Council, on a recommendation from its Advisory Panel, recommended that directed fishing should be prohibited for sablefish by any gear type prior to full attainment of the portion of the OY allocated to that gear type to assure that a portion of the sablefish OY would remain to support an adequate bycatch of sablefish in fisheries for other groundfish species. Thus, the Council recommended that the Regional Director close directed fishing for sablefish by any gear type in a regulatory area or district if he determines that the share of sablefish OY assigned to that gear type in that regulatory area or district may be taken before the end of the year. "Directed fishing" is defined at § 672.2 to mean fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. Sablefish could continue to be landed only as incidental catch until the portion of the OY allocated to that gear type is achieved. At that time, further sablefish catches by that gear type would have to be treated as a prohibited species under this section, unless closure of all fisheries were necessary to prevent overfishing of sablefish. Again, the likelihood that a specific gear type will harvest all of its sablefish allocation early in 1986 is great. The season for trawl gear started on January 1. Over half of the sablefish OY allocated to trawlers in the Central Regulatory Area has already been harvested. The 1986 sablefish season for hook-and-line gear throughout the Gulf of Alaska and for pot gear in the Western and Central Regulatory Areas of the Gulf of Alaska started on April 1. Substantial fishing effort for sablefish by each gear type could harvest the OYs in each area or district within a few weeks, forcing the Regional Director to impose general area or district closures on any gear type that had reached its sablefish allocation.

Secretarial Action

The Secretary, therefore, is promulgating this emergency rule to amend, on an interim basis, the current rules at § 672.24 to authorize closure of the directed fishery for sablefish by any legal gear type prior to reaching its share of the OY and retaining a portion of the sablefish OY for bycatch to support groundfish fishing for other species with that gear type. The Secretary also requests public comment on this rule because he anticipates effecting this change permanently by a subsequent final rule.

Summary of the EA/RIR/IRFA

The amendment to § 672.20 recommended by the Council and implemented by this emergency rule is superior among alternatives considered, because certain fisheries for other groundfish species could be allowed to continue after the OY for a single species had been reached, providing that overfishing would not occur. Although the nature of the Gulf of Alaska groundfish fisheries is changing, target fisheries by each gear type in 1986 are expected to be similar to those in 1985. Fisheries using trawl gear will target primarily on pollock, Pacific cod, flounder, and sablefish, and possibly Atka mackerel. Fisheries using hook-and-line gear will target primarily on sablefish, Pacific ocean perch, rockfish, and thornyhead rockfish. Pot gear might target primarily on sablefish.

Benefits under the proposed action presented in Table 2 below are those accruing to fishermen on a per-boat basis by gear type as a result of being able to fully harvest OYs for all groundfish species, as estimated for 1986, using 1985 price data and 1986 available amounts of groundfish. Independent price effects are assumed.

Processing, wholesale, and retail industries also earn income. Because the total amount earned at these three levels is three to five times the exvessel value, i.e. the value paid to fishermen, additional revenues would accrue to the U.S. fishing industry if the Secretary implements this alternative.

Without this measure, U.S. fishermen might be forced to forego earnings equal to the amounts of available groundfish multiplied by the exvessel values of fish unharvested as a result of a regulatory area's being closed after the OY for any one species had been reached (Table 2); existing and newly developing fisheries in the Gulf of Alaska could be substantially harmed.

TABLE 2.—MAXIMUM POTENTIAL GROSS EXVESSEL REVENUE ON A PER-BOAT BASIS OF TARGET SPECIES BY HOOK-AND-LINE AND TRAWL GEAR

46 Trawl vessels:	
Pollock:	
Western Central	110,909
Eastern	19,409
Pacific cod:	
Western	189,209
Central	207,609
Eastern	75,400
Flounders:	
Western	23,009
Central	27,109
Eastern	21,809
Sablefish:	
Western	10,009
Central	21,509
Eastern	5,209
Atka mackerel:	
Western	(1)
Central	(1)
Eastern	(1)
448 Hook-and-line vessels:	
Sablefish:	
Western	4,909
Central	10,709
Eastern	18,009
Pacific ocean perch:	
Western	2,509
Central	2,809
Eastern	1,709
Rockfish:	
Gulf-wide	9,809
Central Southeast Outside	1,309
Thorny-head rockfish:	
Gulf-wide	10,279

[1] Price data not available.

The amendment to § 672.24 recommended by the Council and implemented by this emergency rule would allow the Regional Director to prohibit directed fishing for sablefish by a gear type in order to provide sufficient amounts of the sablefish OY to support a bycatch of sablefish in target fisheries for other groundfish species. Bycatch amounts of sablefish could still be retained and sold. The same total amount of sablefish would be harvested by each gear type as was assigned to that gear type as its share of the sablefish OY. In 1986, the gear types that receive shares of the sablefish OYs in the management areas are hook-and-line gear, trawl gear, and pot gear. On a per-boat basis, each vessel could potentially realize the maximum returns (assuming independent price effects) for sablefish, as shown in the table above. For purposes of this analysis, however, fishing for each species is considered independent of fisheries for other species. Besides targeting on sablefish, vessels using trawl gear might target primarily on pollock, Pacific cod, flounder, and possibly Atka mackerel. Vessels using hook-and-line gear might target primarily on Pacific ocean perch, rockfish, and thornyhead rockfish. Vessels using pot gear will, however, target only on sablefish.

Without this measure, each trawler, which might have targeted on pollock, Pacific cod, or flounder in the Western Area, could forego a maximum of $111,000 (for pollock in the combined Western/Central Area), $188,000, and $29,000, respectively, or a total of $328,000. Each trawler that might have targeted on Pacific cod or flounder in the Central Area would forego a maximum of $207,000, and $27,000, respectively, or a total of $234,000 per vessel. Each hook-and-line vessel that might have targeted on Pacific ocean perch would forego a maximum $2,000 in the Western Area and $3,000 in the Central Area. If each vessel targeted on other rockfish, it would forego about $10,000 in the Gulf and $1,000 in the Central Southeast Outside District. If each vessel targeted on thornyhead rockfish, it would forego about $10,000. Each pot vessel will likely have targeted only on sablefish and would not be expected to forego any additional revenues after it has reached its share of the sablefish OY.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act.

The Assistant Administrator also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, as required by section 553 (b) and (d) of the Administrative Procedure Act. Early implementation of this rule will benefit groundfish fishermen who otherwise might have to forego substantial amounts of other groundfish species if the OY for a species is caught. Similarly, sablefish fishermen might have to forego substantial amounts of other groundfish species if the share of the OY allocated to a legal gear type is reached.

The Regional Director prepared an environmental assessment for this rule as part of the EA/RIR/IRFA, and concluded that no significant impact on the human environment would result from this rule, either from implementing it for the interim under section 305(e) or for subsequently amending it permanently by final rule under section 305(g). You may obtain a copy of this document from the address above.

The Administrator of NOAA determined that this emergency rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on the socioeconomic analysis contained in the EA/RIR/IRFA, which is summarized above. This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis as part of the regulatory impact review, which concludes that this rule, if adopted permanently, would potentially have significant beneficial economic effects on small entities. You may obtain a copy of this analysis at the address above. The socioeconomic analysis contained in the EA/RIR/IRFA upon which the determinations that this rule is a non-major and significant were based is summarized above. The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under section 604(a) of the Regulatory Flexibility Act no final regulatory flexibility analysis has to be or will be prepared.

This rule contains no collection of information for purposes of the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 2, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation of Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (b) is suspended from June 3, 1986 until September 2, 1986 and a new paragraph (f) is added to be effective from June 3, 1986 until September 2, 1986 to read as follows:

§ 672.20 Optimum yield.

* * * * *

(f) *Notices.*

(1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table 1 of paragraph (a) of this section has been or will be reached, the Secretary will issue a notice of closure under § 672.22(a) closing fishing for that species in that area or district, or part thereof, declaring that species in that area or district to be a prohibited species for purposes of paragraph (d) of this section. During the time that such a notice is in effect, the operator of every vessel regulated by this part must minimize its catch of that species in the area or district, or part thereof, to which the notice applies.

(2) When the Regional Director determines that continued fishing for other groundfish species in an area or district, or part thereof, may lead to overfishing of a species for which an OY has been or will be reached, the Secretary will, by notice in the **Federal Register**, close or limit such fishing for other groundfish species by methods, including time, area, or gear adjustments, that will prevent overfishing of the species for which the OY is taken.

(3) When making closures or imposing limitations under paragraph (f)(1) of this section, the Regional Director will take into account the following considerations and may allow continued fishing with certain gear types, issuing findings relevant to these considerations:

(i) The risk of biological harm to a groundfish species for which the OY has been reached;

(ii) The risk of socioeconomic harm to authorized users of the groundfish for which the OY has been reached;

(iii) The impact that a continued closure might have on the socioeconomic wellbeing of other domestic fisheries.

* * * * *

3. In § 672.24, paragraphs (b)(1) and (b)(2) are suspended from June 3, 1986 until September 2, 1986 and new

paragraphs (b)3), (b)(4), and (b)(5) are added, to be effective from June 3, 1986 until September 2, 1986 to read as follows:

§ 672.24 Gear limitations.

* * * * *

(b) *Sablefish gear restrictions and allocations.*

* * * * *

(3) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear when fishing for groundfish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested as bycatch 5 percent of the OY for sablefish during any year, further trawl catches of sablefish must be treated as a prohibited species as provided by paragraph (b)(5)(ii) of this section.

(4) *Central and Western Areas.* During 1986 in the Central Area, and during 1986, 1987, and 1988 in the Western Area, hook-and-line gear may be used to take up to 25 percent of the sablefish OY and trawl gear may be used to take up to 20 percent of that OY. After the years specified above, hook-and-line gear may be used to take up to 80 percent of the sablefish OY in each area and trawl gear may be used to take up to 20 percent of that OY. No person may use any gear other than hook-and-line, pot, or trawl gear in fishing for groundfish in these areas during the years specified above. After those years, no person may use any gear other than hook-and-line or trawl gear in fishing for groundfish in the Gulf of Alaska.

(5) *Sablefish bycatch amounts.* (i) When the Regional Director determines that the share of the sablefish OY assigned to any type of gear for any year and any area or district under this paragraph may be taken before the end of that year, the Regional Director, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by notice in the **Federal Register**, prohibit directed fishing for sablefish by persons using that type of gear for the remainder of that year.

(ii) If the share of the sablefish OY assigned to any type of gear for any year and any area or district under this paragraph is reached, further catches of sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

* * * * *

[FR Doc. 86-12720 Filed 6-3-86; 3:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 108
Friday, June 6, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A9 & AO-229-A7]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Notice of Hearing on Proposed Amendment of Marketing Orders 907 and 908, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Order No. 907 (7 CFR Part 907) and Marketing Order No. 908 (7 CFR Part 908). These marketing orders regulate handlers of navel and Valencia oranges grown in Arizona and part of California, respectively, and are hereinafter referred to collectively as the "orders."

The purpose of the hearing is to receive testimony on proposals to amend those provisions of the orders concerning the structure of the committees established to administer the programs.

DATE: The hearing will begin at 9:00 a.m., June 10, 1986.

ADDRESS: The hearing will be held at the Holiday Inn, 9000 West Airport Drive, Visalia, California 93722.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250; telephone: (202) 447-5697 or David B. Fitz, Officer-In-Charge, Fresno Marketing Field Office, 5150 N. 6th St., Suite 180, Fresno, California 93710; telephone: (209) 487-5837.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small business.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The hearing is being held to receive testimony on proposals to amend those provisions of the orders concerning the structure of the Navel Orange Administrative Committee and the Valencia Orange Administrative Committee. These committees are established under their respective order for the purpose of administering the programs. Proposals under consideration concern committee composition, eligibility to serve, nomination and selection procedures, procedures for filling committee vacancies, order definitions relevant to committee structure, or order provisions directly affected by committee structure such as quorum requirements and number of concurring votes required to carry committee motions.

Proposals have been received from the Sequoia Orange Company, Mr. R.E. Herrick of Belridge Farms and Packing Company, the Naval Orange Administrative Committee, and Valencia Orange Administrative Committee. These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the orders concerning committee structure; (ii) determining whether there is a need to amend those provisions of the orders concerning committee structure; and (iii) determining whether the proposed amendment concerning committee structure or appropriate modifications of them will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges (Navel), (Valencia).

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PARTS 907 AND 908—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA, VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

PROPOSALS SUBMITTED BY SEQUOIA ORANGE COMPANY

Proposal No. 1

Amend § 907.20 as follows:

Section 907.20 Establishment and membership

(a) There is hereby established a Navel Orange Administrative Committee consisting of 13 members, for each of whom there shall be one alternate. Reference to "member" hereafter shall be deemed to include "alternate" and "additional alternate" unless the context indicates otherwise. Nine of the members shall be growers. Three of the members shall be handlers, employees of handlers, or employees of central marketing organizations. The grower and handler members shall represent the prorate districts in which they were nominated. One member of the committee and an alternate shall be know as the "public" member of the committee.

(b) Except as otherwise provided by § 907.22(j), the grower and handler members of the committee shall be nominated by prorate district and group, in accordance with the following schedule:

S-074999 0001(00)(05-JUN-86-13:09:37)

	Major co-op marketing organizations		All other co-op marketing organization		Nonaffiliated growers—	
	Grower	Handler	Grower	Handler	Grower	Handler
Districts 1 and 4	3	1	2	1	2	1
Districts 2 and 3	1					1

Proposal No. 2

Amend Section 907.21 by adding the following two sentences at the end of §907.21:

The failure of any member to maintain the qualifications required for nomination and selection shall result in disqualification of the member and his position shall become vacant. Such vacancy shall be filled as provided in § 907.28.

Proposal No. 3

Amend Section 907.22 as follows:

Section 907.22 Nominations.

(a) With respect to paragraphs (c) and (d) of this section, the time and manner of nominating members of the committee shall be prescribed by the Secretary. With respect to paragraph (c) of this section, the Secretary shall adopt procedural rules and regulations to be observed for (1) the nomination of candidates for member, alternate member, and additional alternate member, and (2) the conducting of such nominations by mail balloting.

(b) Grower and handler members shall be nominated from each prorate district by the growers in that district and the number nominated from each district shall be in direct proportion to the average of the volume of fresh domestic shipments in each district handled during the two preceding fiscal years, *provided however,* that in each district with 8% or more of the total fresh domestic shipments, at least one member shall be nominated. A district having less than 8% of total fresh domestic, shipments shall be combined, for purposes of nomination and representation, with a district having the most comparable production and marketing conditions.

(c) The major cooperative marketing organization, or the growers affiliated therewith, which handled, during the fiscal year in which nomination for members are made:

(1) 50 percent or more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee.

(d) All cooperative marketing organizations, or the growers affiliated therewith, which market oranges and which are not qualified under paragraph (c), and which together handled, during the fiscal year in which nomination for members and alternates are made:

(1) 50 percent or more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(4) More than 20 but less than 30 percent of the total fresh domestic shipments may nominate two grower and one handler member of the committee; or

(5) More than 10 but less than 20 percent of the total fresh domestic shipments may nominate one grower and one handler member of the committee; or

(6) More than 3 but less than 10 percent of the total fresh domestic shipments may nominate one member of the committee; or

(7) 3 percent or less of the total fresh domestic shipments shall be deemed to be non-affiliated growers.

(e) All growers which are not qualified under paragraphs (c) and (d) of this section shall nominate that portion of the nine grower and three handler members and alternates not nominated by cooperative marketing organizations.

(f) In order to qualify as a nominee from a district such nominee must be a grower with a growing operation in that district or be employed by a first handler operating in that district.

(g) When voting for nominees from each district, each grower not affiliated with a cooperative marketing organization shall be entitled to cast one vote for each position, which vote shall be cast on behalf of himself, his agents, subsidiaries, affiliates, and representatives. Such vote shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. The votes of cooperative marketing organizations under paragraph (d) of this section shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. *Provided,* that, to the extent practicable, each cooperative marketing organization shall be entitled to have representation on the committee.

(h) The public member (and alternate) of the committee shall be selected by the Secretary pursuant to § 907.23 and shall not be a grower or handler, or employee, agent, or representative of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

(i) A cooperatively owned packinghouse shall not be considered a cooperative marketing organization.

(j) The Secretary, upon recommendation of the committee, or upon other information, shall reapportion the number of grower or handler members, or both, to be nominated pursuant to this section and may realign the number of grower or handler members in and between districts. Any such change shall be based, insofar as practicable, upon the proportionate amounts during the fiscal year of domestic fresh shipments of the respective groups, domestic fresh shipments from each district, and the number of marketing organizations within each group.

Proposal No. 4

Amend Section 904.23 as follows:

Section 907.23 Selection.

From the nominations made pursuant to §§ 907.22 (c), (d), and (e), or from other qualified growers and handlers, the Secretary shall select from the district nominations nine grower and three handler members of the committee and their alternates. The Secretary shall select one public member and one alternate public member of the committee from qualified persons suggested by the committee, the public, and industry at large.

Proposal No. 5

Amend Section 907.29 by deleting paragraph (n).

Proposal No. 6

Amend Section 907.30 as follows:

Section 907.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least seven concurring votes, *provided however*, that eight concurring votes shall be required in order to recommend size or volume regulation, and ten concurring votes shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation. In any vote to recommend regulation, only the votes of members whose districts are to be regulated by the proposed regulation shall be counted. In this event a majority plus one concurring votes of those eligible to vote shall be required in order to recommend size or volume regulation, and a majority plus two concurring votes of those eligible to vote shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation.

(b) Except to recommend size or volume regulation, the committee may vote by telegraph, telephone or any other means of communication; and any votes so cast shall be confirmed promptly in writing. *Provided*, that if an assembled meeting is held, all votes shall be cast in person.

Proposal No. 7

Proposals 1, 2, 3, 4, 5, and 6 to amend the Navel Orange Marketing Order shall also apply to the Valencia Orange Marketing Order, except for the schedule in Proposal 1 which is revised as follows:

	Major co-op marketing organizations		All other co-op marketing organizations		Nonaffiliated growers	
	Grower	Handler	Grower	Handler	Grower	Handler
District 1	2		1			
District 2	2	1	1	1	1	1
District 3	1					

PROPOSALS SUBMITTED BY R.E. HERRICK OF SELRIDGE FARMS AND PACKING COMPANY

Proposal No. 8

Amend § 907.20 as follows:

Section 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee consisting of 13 members, for each of whom there shall be one alternate. Reference to "members, hereafter shall be deemed to include "alternate" and "additional alternate" unless the context indicates otherwise. Nine of the members shall be growers or employees of growers. Three of the members shall be handlers, employers of handlers, or employees of central marketing organizations. The grower and handler members shall represent the prorate districts in which they were nominated. One member of the committee and an alternate shall be known as the "public" member of the committee.

(b) Except as otherwise provided by § 907.22(k), the grower and handler members of the committee shall be nominated by prorate district and group, in accordance with the following schedule:

	Major co-op marketing organizations		All other co-op marketing organizations		Nonaffiliated growers	
	Grower	Handler	Grower	Handler	Grower	Handler
District 1 and 4	3	1	2	1	2	1
District 2 and 3	1					1

Proposal No. 9

Amend § 907.21 by adding the following two sentences at the end of § 907.21:

The failure of any member to maintain the qualifications required for nomination and selection shall result in disqualification of the member and his position shall become vacant. Such vacancy shall be filled as provided in § 907.26.

Proposal No. 10

Amend § 907.22 as follows:

907.22 Nominations.

(a) With respect to paragraphs (c) and (d) of this section, the time and manner of nominating members of the committee shall be prescribed by the Secretary. With respect to paragraph (a) of this section, the Secretary shall adopt procedural rules and regulations to be observed for (1) the nomination of candidates for member, alternate member, and additional alternate member, and (2) the conducting of such nominations by mail balloting.

(b) Grower and handler members shall be nominated from each prorate district by the growers in that district and the number nominated from each district shall be in direct proportion to the average of the volume of fresh domestic shipments in each district handled during the two preceding fiscal years, provided however, that in each district with 8% or more of the total fresh domestic shipments, at least one member shall be nominated. A district having less than 8% of total fresh domestic shipments shall be combined, for purposes of nomination and representation, with a district having the most comparable production and marketing conditions.

(c) The cooperative marketing organization, or the growers affiliated therewith, which handled the largest percentage of the total fresh domestic shipments handled by all cooperative marketing organizations during the fiscal year in which nomination for members are made, shall nominate members in accordance with the following schedule. Such major cooperative marketing organization which handled:

(1) 50 percent or more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee.

(d) All cooperative marketing organizations, or the growers affiliated therewith, which market oranges and which are not qualified under paragraph (c), and which together handled, during the fiscal year in which nomination for members and alternates are made:

(1) 50 percent or more of the total fresh domestic shipments may nominate

five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(4) More than 20 but less than 30 percent of the total fresh domestic shipments may nominate two grower and one handler member of the committee; or

(5) More than 10 but less than 20 percent of the total fresh domestic shipments may nominate one grower and one handler member of the committee; or

(6) More than 3 but less than 10 percent of the total fresh domestic shipments may nominate one member of the committee; or

(7) 3 percent but less of the total of the total fresh domestic shipments shall be deemed to be non-affiliated growers.

(e) All remaining growers which together accounted, during the fiscal year in which nominations for members and alternates are made, for:

(1) 50 percent of more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(4) More than 20 but less than 30 percent of the total fresh domestic shipments may nominate two grower and one handler member of the committee; or

(5) More than 10 but less than 20 percent of the total fresh domestic shipments may nominate one grower and one handler member of the committee; or

(6) 10 percent or less of the total fresh domestic shipments may nominate one member of the committee.

(f) If the nominations pursuant to paragraphs (c), (d) and (e) of this section result in less than 12 in number, additional nominees shall be nominated as follows: If one additional member is to be nominated, the right to make such nomination shall go to the group in paragraph (c), (d), and (e) which has the percentage of domestic fresh shipments close to qualifying for an additional nomination. If a second additional member is to be nominated, the right to make such nomination shall go to the group which was second closest to qualifying for an additional nomination. If a third additional member is to be nominated, the right to make such nomination shall go to the group which was third closest to qualifying for an additional nomnation. Any further additional nominees shall be nominated in the above sequence.

(g) In order to qualify as a nominee from a district such nominee must be a grower with a growing operation in that district, an employee of such grower, or be employed by a first handler operating in that district.

(h) When voting for nominees from each district, each grower not affiliated with a cooperative marketing organization shall be entitled to cast one vote for each position, which vote shall be cast on behalf of himself, his agents, subsidiaries, affiliates, and representatives. Such vote shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. The votes of cooperative marketing organizations under paragraph (d) of this section shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. *Provided*, that, to the extent practicable, each cooperative marketing organization shall be entitled to have representation on the committee.

(i) The public member (and alternate) of the committee shall be selected by the Secretary pursuant to § 907.23 and shall not be a grower or handler, or employee, agent, or representative of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

(j) A cooperatively owned packinghouse shall not be considered a cooperative marketing organization.

(k) The Secretary, upon recommendation of the committee, or upon other information, shall reapportion the number of grower or handler members, or both, to be nominated pursuant to this section and may realign the number of grower or handler members in and between districts. Any such change shall be based, insofar as practicable, upon the proportionate amounts during the fiscal year of domestic fresh shipments of the respective groups, domestic fresh shipments from each district, and the number of marketing organizations within each group.

Proposal No. 11

Amend § 907.23 as follows:

Section 907.23 Selection.

From the nominations made pursuant to §§ 907.22 (c), (d), and (e), or from other qualified growers and handlers, the Secretary shall select from the district nominations nine grower and three handler members of the committee and their alternates. The Secretary shall select one public member and one alternate public member of the committee from qualified persons suggested by the committee, the public, and industry at large.

Proposal No. 12

Amend § 907.29 by deleting paragraph (n).

Proposal No. 13

Amend § 907.30 as follows:

Section 907.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least seven concurring votes, *provided however*, that eight concurring votes shall be required in order to recommend size or volume regulation, and ten concurring votes shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation. In any vote to recommend regulation, only the votes of members whose districts are to be regulated by the proposed regulation shall be counted. In this event a majority plus one concurring votes of those eligible to vote shall be required in order to recommend size or volume regulation, and a majority plus two concurring votes of those eligible to vote shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation.

(b) Except to recommend size or volume regulation, the committee may vote by telegraph, telephone, or any other means of communication; and any votes shall be confirmed promptly in writing. *Provided*, that if an assembled meeting is held, all votes shall be cast in person.

Proposal No. 14

Proposals 1, 2, 3, 4, 5, and 6 to amend the Navel Orange Marketing Order shall also apply to the Valencia Orange Marketing Order, except for the schedule in Proposal 1 which is revised as follows:

	Major co-op marketing organizations		All other co-op marketing organizations		Nonaffiliated growers	
	Grower	Handler	Grower	Handler	Grower	Handler
District 1	2		1		1	1
District 2	1	1	1	1	1	
District 3	1					

PROPOSALS SUBMITTED BY THE NAVEL ORANGE ADMINISTRATIVE COMMITTEE

Proposal No. 15

Amend § 907.20 to read as follows:

Section 907.20 Establishment and membership.

There is hereby established a Navel Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Ten of the members and their respective alternates shall be growers, employees of growers, handlers, or employees of handlers or of central marketing organizations. One member of the committee and an alternate of such member shall be nominated as provided in § 907.22(g).

Proposal No. 16

Amend § 907.21 to read as follows:

Section 907.21 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for a period of two years, and such terms shall begin on October 1 of each even-numbered year: *Provided,* That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

(b) A member, alternate member and additional alternate member, including persons nominated in accordance with § 907.22(g), shall be disqualified if such person ceases to be affiliated as a grower or an employee of a grower or handler, or as an employee of a handler or central marketing organization with the group that nominated him or her.

Proposal No. 17

Amend § 907.22 to read as follows:

Section 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions on the committee may be made by the following entities only:

(1) The cooperative marketing organization, or the growers affiliated therewith, which handled the largest percentage of the total volume of navel oranges handled by all cooperative marketing organizations in all outlets during the fiscal year preceding the period for which nominations are being made.

(2) A handler or declared handler grouping not affiliated with the organization eligible to nominate under (a)(1) of this section.

(3) The body of growers affiliated with those handlers not participating in the nominations proceedings referred to herein.

(b)(1) The number of nominations which any nominating entity may make shall be determined by its volume percentage, as follows:

Nominating entity's percentage of total volume of navel oranges handled by all handlers in all outlets during previous fiscal year	Number of members, plus alternates and additional alternates, which may be nominated
0.00 to 9.99	(1)
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 or above	5

[1] See Subsection (b)(2).

Provided, that if any nominating entity's percentage exceeds 50%, percentage figures in the above schedule shall change according to the following formula:

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member plus alternates}$$

Provided further, that no handler may participate as a member of more than one nominating group.

(2) A handler or declared handler grouping not affiliated with the organization referred to in paragraph (a)(1) and which did not handle a sufficient quantity of oranges to meet the requirement to nominate under paragraph (b)(1) shall be considered for eligibility to nominate under paragraph (b)(3).

(3) If nominations for member positions pursuant to paragraph (b)(1) total less than ten in number, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternates, is to be nominated under this section, the right to make such nominations shall go to that nominating entity which comes the closest to qualifying for the right to make the additional nomination. If a second member, plus alternates, is to be nominated under this subsection, the right to make such nominations shall go to that nominating entity which is second closest to qualifying for the right to make an additional nomination, and so forth.

(c)(1) Nominating procedures shall be in accordance with rules and regulations adopted by the committee with the approval of the Secretary.

(2) Each nomination made by an entity authorized by paragraph (a)(2) to nominate must be approved by growers. Approval shall be determined by mail balloting. To be eligible to participate in the approval process, a grower must have delivered oranges to one or more of the entity's handlers in the then-current fiscal year and must be committed to deliver oranges to one or more of said handlers in the following fiscal year. A nomination shall be deemed to have the requisite grower approval if it is approved by the growers of more than 50% of the total quantity of oranges handled for participating eligible growers in the then-current fiscal year by the handler or handlers comprising the nominating entity.

(3) Nominations authorized by paragraph (a)(3) shall result from the conduct of mail balloting proceedings wherein candidates for committee membership are voted on by the growers.

(d) Nominations by the entities authorized by paragraphs (a)(1) and (a)(2) to nominate shall be submitted no later than September 1 of each even-numbered year. Thereafter, the Secretary shall determine the

percentage applicable to the nominating entity referred to in paragraph (a)(3), shall determine the eligibility of the various entities to make the remaining nominations, and shall administer the mail balloting proceedings referred to in paragraphs (c)(2) and (c)(3).

(e)(1) Persons nominated under this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	Grower.
2	1 Grower, 1 Handler.
3	2 Growers, 1 Handler.
4	2 Growers, 2 Handlers.
5	3 Growers, 2 Handlers.

(2) Nominees for grower positions shall be growers or employees of growers. Nominees for handler positions shall be handlers, employees of handlers, or employees of central marketing organizations.

(f) The committee shall notify each handler by August 1 of each even-numbered year of the handling percentages that are to be ascribed under paragraph (b)(1) to: (1) The cooperative marketing organization qualifying under paragraph (a)(1); and (2) the handler receiving the notice.

(g) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate a member and an alternate member of the committee, which persons shall not be growers or handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or education institution which is a grower or handler), or of a central marketing organization.

Proposal No. 18

Amend § 907.23 to read as follows:

Section 907.23 Selection.

From the nominations made pursuant to § 907.22 (a) through (f) or from other qualified growers and handlers, the Secretary shall select ten members of the committee, and an alternate and additional alternate for each member. From the nominations made pursuant to § 907.22(g) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

Proposal No. 19

Amend § 907.24 to read as follows:

Section 907.24 Failure to Nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 907.23.

Proposal No. 20

Amend § 907.25 to read as follows:

Section 907.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

Proposal No. 21

Amend § 907.26 to read as follows:

Section 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any persons selected as a member or as an alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to the unexpired term of such member or alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such person for the term, or from other qualified persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 907.22.

Proposal No. 22

Amend § 907.27 to read as follows:

Section 907.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member: *Provided,* That a member may designate any alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the additional alternate shall so act. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

Proposal No. 23

Delete § 907.29(n) Duties.

Proposal No. 24

Amend § 907.30 to read as follows:

Section 907.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least six concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication; and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

(c) A grower member or producer member, including an alternate, is eligible to vote on a volume regulation recommendation under § 907.51 only if such member produces or handles oranges, or is an employee of a producer, handler, or central marketing organization which produces or handles oranges, in one or more districts in which volume regulation is being recommended or for which volume regulation was considered in developing such recommendation. An alternate member nominated from the same entity which was authorized to nominate the member and who is eligible to cast a vote on recommendations for volume regulation shall act for the member when such member is not eligible to vote on such recommendations.

PROPOSAL SUBMITTED BY THE VALENCIA ORANGE ADMINISTRATIVE COMMITTEE

Proposal No. 25

Amend § 908.20 to read as follows:

Section 908.20 Establishment and membership.

There is hereby established a Valencia Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Ten of the members and their respective alternates shall be growers, employees of growers, handlers, or employees of handlers or of central marketing organizations. One member of the committee and an alternate of such member shall be nominated as provided in § 908.22(g).

Proposal No. 26

Amend § 908.21 to read as follows:

Section 908.21 Term of office.

(a) The term of office of each member and alternate member of the committee

shall be a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided*, That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified.

(b) A member, alternate member and additional alternate member, including persons nominated in accordance with § 908.22(g), shall be disqualified if such person ceases to be affiliated as a grower or an employee of a grower or handler, or as an employee of a handler or central marketing organization with the group that nominated him or her.

Proposal No. 27

Amend § 908.22 to read as follows:

Section 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions on the committee may be made by the following entities only:

(1) The cooperative marketing organization, or the growers affiliated therewith, which handled the largest percentage of the total volume of Valencia oranges handled by all cooperative marketing organizations in all outlets during the fiscal year preceding the period for which nominations are being made.

(2) A handler or declared handler grouping not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section.

(3) The body of growers affiliated with those handlers not participating in the nominations proceedings referred to herein.

(b)(1) The number of nominations which any nominating entity may make shall be determined by its volume percentages, as follows:

Nominating entity's percentage of total volume of valencia oranges handled by all handlers in all outlets during previous fiscal year	Number of members, plus alternates and additional alternates, which may be nominated
0.00 to 9.99	(1)
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 or above	5

[1]See subsection (b)(2).

Provided, That if any nominating entity's percentage exceeds 50%, percentage figures in the above schedule shall change according to the following formula:

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{percentage required to nominate one member plus alternates.}$$

Provided Further, That no handler may participate as a member of more than one nominating group.

(2) A handler or declared handler grouping not affiliated with the organization referred to in paragraph (a)(1) and which did not handle a sufficient quantity of oranges to meet the requirements to nominate under paragraph (b)(1) shall be considered for eligibility to nominate under paragraph (b)(3).

(3) If nominations for member positions pursuant to paragraph (b)(1) total less than ten in number, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternates, is to be nominated under this subsection, the right to make such nominations shall go to that nominating entity which comes the closest to qualifying for the right to make the additional nomination. If a second member, plus alternates, is to be nominated under this subsection, the right to make such nominations shall go to that nominating entity which is second closest to qualifying for the right to make an additional nomination, and so forth.

(c)(1) Nominating procedures shall be in accordance with rules and regulations adopted by the committee with the approval of the Secretary.

(2) Each nomination made by an entity authorized by paragraph (a)(2) to nominate must be approved by growers. Approval shall be determined by mail balloting. To be eligible to participate in the approval process, a grower must have delivered oranges to one or more of the entity's handlers in the then-current fiscal year and must be committed to deliver oranges to one or more of said handlers in the following fiscal year. A nomination shall be deemed to have the requisite grower approval if it is approved by the growers of more than 50% of the total quantity of oranges handled for participating eligible growers in the then-current fiscal year by the handler or handlers comprising the nominating entity.

(3) Nominations authorized by paragraph (a)(3) shall result from the conduct of mail balloting proceedings wherein candidates for committee membership are voted on by the growers.

(d) Nominations by the entities authorized by paragraphs (a)(1) and (a)(2) to nominate shall be submitted no later than January 1 of each even-numbered year. Thereafter the Secretary shall determine the percentage applicable to the nominating entity referred to in paragraph (a)(3), shall determine the eligibility of the various entities to make the remaining nominations, and shall administer the mail balloting proceedings referred to in paragraphs (c)(2) and (c)(3).

(e)(1) Persons nominated under this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	Grower.
2	1 Grower, 1 Handler.
3	2 Growers, 1 Handler.
4	2 Growers, 2 Handlers.
5	3 Growers, 2 Handlers.

(2) Nominees for grower positions shall be growers or employees of growers. Nominees for handler positions shall be handlers, employees of handlers, or employees of central marketing organizations.

(f) The committee shall notify each handler by December 1 of each odd-numbered year of the handling percentages that are to be ascribed under paragraph (b)(1) to : (1) The cooperative marketing organization qualifying under paragraphs (a)(1); and (2) the handler receiving the notice.

(g) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate a member and an alternate member of the committee, which persons shall not be growers or handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

Proposal No. 28

Amend § 908.23 to read as follows:

Section 908.23 Selection.

From the nominations made pursuant to § 908.22 (a) through (f) or from other qualified growers and handlers, the Secretary shall select ten members of the committee, and an alternate and additional alternate for each member. From the nominations made pursuant to § 908.22(g) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

Proposal No. 29

Amend § 908.24 to read as follows:

Section 908.24 Failure to Nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 908.23.

Proposal No. 30

Amend § 908.25 to read as follows:

Section 908.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

Proposal No. 31

Amend § 908.26 to read as follows:

Section 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to the unexpired term of such member or alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which nominated such person for the term, or from other qualified persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 908.22.

Proposal No. 32

Amend § 908.27 to read as follows:

Section 908.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member: *Provided,* That a member may designate any alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the additional alternate shall so act. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

Proposal No. 33

Delete § 908.29(n) Duties.

Proposal No. 34

Amend § 908.30 to read as follows:

Section 908.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least six concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication; and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

(c) A grower member or producer member, including an alternate, is eligible to vote on a volume regulation recommendation under Section 908.51 only if such member produces or handles oranges, or is an employee of a producer, handler, or central marketing organization which produces or handles oranges, in one or more districts in which volume regulation is being recommended or for which volume regulation was considered in developing such recommendation. An alternate member nominated from the same entity which was authorized to nominate the member and who is eligible to cast a vote on recommendations for volume regulation shall act for the member when such member is not eligible to vote on such recommendations.

PROPOSAL SUBMITTED BY THE FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE

Proposal No. 35

Make such changes as may be necessary to make both marketing orders conform with any amendment thereto that may result from the hearing.

Dated: June 4, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-12818 Filed 6-5-86; 8:45 am]

BILLING CODE 3410-02

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[SWH-FRL-3027-1]

Solid Waste Disposal; Public Meeting on Revisions to Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Environmental Protection Agency (EPA) will hold a public meeting on the issues and options being considered by the Agency in the development of the revisions to the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). These revisions, which are mandated by the Hazardous and Solid Waste Amendments (HSWA) of 1984, will apply to solid waste disposal facilities that receive household and small quantity generator hazardous wastes, including municipal waste landfills.

DATES: The public meeting will be held on June 27, 1986, from 9:00 a.m. to 4:00 p.m. The meeting will be adjourned earlier if there are no remaining comments. Written comments on the material presented at the meeting should be submitted on or before July 18, 1986.

ADDRESSES: The public meeting will be held at the Vista International Hotel, 1400 M Street, SW., Washington, DC (202) 429-1700. A block of rooms has been reserved at the Vista for the convenience of attendees requiring lodging. When making reservations, indicate that you will be attending the EPA Solid Waste Meeting.

Written comments on the issues and options presented at the meeting should be submitted to: Michael Flynn, Office of Solid Waste (WH-565E), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000, or Ms. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-7388. For technical information, contact Allen Maples, Office of Solid Waste (WH-565E), U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-4663.

SUPPLEMENTARY INFORMATION: In 1979, under the authority of sections 1008(a)(3) and 4004(a) of Subtitle D of the Resource Conservation and

Recovery Act (RCRA), EPA promulgated the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). These Criteria include environmental performance standards that are used for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on human health or the environment. Those facilities that violate the Criteria are deemed "open dumps." The Criteria are currently enforced by the States or through citizen suits.

In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), which include several major provisions regarding the solid waste regulatory program. The Amendments require the Agency, by November 8, 1987, to submit a report to Congress addressing whether the current Criteria (40 CFR Part 257) are adequate to protect human health and the environment, and recommending whether additional authorities are needed to enforce the Criteria. Further, EPA is required to revise the Criteria, by March 31, 1988, for facilities that may receive household hazardous waste or small quantity generator (SQG) hazardous waste. These revisions must include, at a minimum, ground-water monitoring, location criteria, and corrective action, as appropriate. HSWA also requires the States to have a permit program for the existing Criteria by November 1987 and to have a revised permit program 18 months after the revised Criteria are promulgated.

In response to these Congressional mandates, the Agency is currently gathering extensive data for both the report to Congress and the Criteria revisions. In addition, the Agency is evaluating numerous issues and developing options for the Criteria revisions. In order to meet the statutory deadline for the Criteria revisions of March 31, 1988, EPA's schedule calls for publication of proposed revisions by March 1987.

The purpose of this public meeting is to brief the public on the issues and options EPA is considering in the development of the revised Criteria, and to solicit comment on these issues and options. Due to the potential significant impacts of this rulemaking, EPA is particularly interested in early public input on the direction of this program.

The morning session of the meeting will include a briefing by EPA Officials on the issues and options developed to date on the revised Criteria. In the afternoon session, an opportunity will be provided for the public to present oral comments, and time will also be provided for questions and answers. Those wishing to make oral comments should contact Ms. Geraldine Wyer in writing at the above address.

EPA is currently evaluating numerous general and specific issues regarding the revised Criteria. The key general issues EPA is considering include:

1. What overall regulatory approach should be taken in the revised Criteria (e.g., risk-based, performance, or design and operating standards, or combination)?

Recognizing the importance of site-specific factors, EPA is considering several alternative regulatory approaches that would allow for various levels of control depending on site-specific conditions. These alternative approaches will be presented and discussed in detail at the meeting. Included in this presentation will be a discussion of issues pertaining to how various site-specific factors, such as quality and usage of ground water, may be addressed in the revisions.

2. What should be the scope of the revised Criteria?

HSWA of 1984 requires that the revised Criteria include, at a minimum, ground-water monitoring, location criteria, and corrective action, as appropriate. It is expected that the revised Criteria will also include certain of the basic requirements (or modified version of these requirements), such as landfill gas control, now contained in the existing Criteria. EPA is evaluating the need to include additional requirements in the revisions. Additional regulatory areas being considered include waste restrictions (including liquids), closure, post-closure care, financial responsibility, liners, and run-on and run-off controls.

3. What approach should be taken to new, existing, and closed waste management units?

EPA is evaluating whether different regulatory approaches should be taken for new versus existing waste management units. For example, certain requirements, such as any liner requirement that may be included, may only apply to new units. Also, the Agency is considering whether any requirements should apply to solid waste disposal units (that received household or SQG hazardous wastes) that close or stop receiving these wastes prior to the effective date of the rule.

4. What approach should be taken to different types of solid waste land disposal facilities?

HSWA requires that the revised Criteria apply to those solid waste disposal facilities that receive household hazardous waste and SQG hazardous waste. This universe includes municipal waste landfills (which receive household hazardous wastes and, in some cases, SQG hazardous wastes), as well as industrial landfills, surface impoundments, land application units, and waste piles that receive SQG hazardous waste. The Agency is evaluating whether different regulatory approaches should be taken for municipal waste landfills versus industrial facilities that receive SQG hazardous waste.

5. Should the revised Criteria be phased in over time?

EPA is examining whether some or all of the requirements in the revised Criteria should be phased in over a period of time. The issue depends, to a large extent, on the resolution of the issues pertaining to the overall approach to the rule and the scope of the rule.

The Agency is also evaluating many significant issues in each of the following specific regulatory areas:

Ground-water protection standards
Ground-water monitoring
Corrective action
Location criteria
Landfill gas
Liners
Waste restrictions/liquids management
Closure and post-closure care
Financial responsibility

The key issues pertaining to ground water (ground-water protection standard, ground-water monitoring, and corrective action) and landfill gas are identified below. The issues in the remaining areas, as well as the options being considered in all of the above areas, will be presented at the public meeting.

The key questions pertaining to ground water and landfill gas include:

Ground-Water Protection Standard

- What constituents should be included in the ground-water protection standard?
- What should be the limits for the constituents in the grtound-water protection standard?
- Where should the ground-water protection standard be applied?

Ground-Water Monitoring Program

- What should be the overall structure of the ground-water monitoring program? (i.e., include three phases?)
- What regulatory approach should be taken to the selection of indicator parameters for detection monitoring?
- What regulatory approach should be taken to determine the number and placement of wells, monitoring frequency, and sample size?

- What regulatory approach should be taken to specify how long groundwater monitoring should be conducted during the post-closure period?
- How should statistical evaluations be addressed in the revised Criteria?

Corrective Action

- When, and to what extent, should corrective action be required?

Landfill Gas

- Are there constituents of concern other than explosive gases (i.e., methane)?
- What should the limits be for the constituents of concern?
- To what extent should monitoring of landfill gas be required?
- What type of monitoring standards are appropriate?
- What requirements should be placed on the disposal of landfill gas condensate?

EPA will provide at the public meeting written material that outlines issues in all of the above areas and describes the various options being considered for each issue. Comments on this material will be accepted for a limited time following the meeting. The deadline and mailing address for these comments are identified above.

List of Subjects in 40 CFR Part 257

Waste treatment and disposal.

Dated: May 30, 1986.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-12717 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Child Support Enforcement Program; Prohibition of Federal Funding of Costs of Incarceration and Counsel for Indigent Absent Parents

45 CFR Part 304

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend 45 CFR 304.23 to reflect longstanding agency policy that Federal funding under the Child Support Enforcement (IV–D) program for costs of incarceration of absent parents in child support enforcement cases and costs of counsel for indigents in IV–D actions is not available. In addition, 45 CFR 304.27, which concerns Federal funding prior to December 31, 1975, would be deleted because it is obsolete.

DATES: Consideration will be given to comments received by August 5, 1986.

ADDRESSES: Send comments to Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in Room 1010 of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Joyce Linder or Betsy Matheson (301) 443–5550.

SUPPLEMENTARY INFORMATION:

Background

Costs of Incarceration and Providing Counsel for Indigent Absent Parents

The Senate Committee on Finance, in its report on H.R. 4325, which became the Child Support Enforcement Amendments of 1984, stated: "It is not the intent of the Congress to match all costs that might be related to operating a child support enforcement program. For example, the Committee believes Federal matching should not be available for expenditures related to incarceration of delinquent obligors and providing defense counsel for absent parents." (See S. Rep. No. 98–387, 98th Cong., 2d Sess., p. 23.)

Periodically, through the years, States have requested that the costs of incarceration of delinquent obligors and of defending indigent absent parents in IV–D cases should be reimbursed. OCSE's policy since the inception of the program has been that costs of incarceration of delinquent obligors and costs of defense counsel are not necessary and reasonable costs associated with the proper and efficient administration of the title IV–D program, are a general expense of State or local governments, and therefore do not meet the cost principles found in OMB Circular No. A–87, Attachment A, section C.1.a. (Cost Principles for State and Local Governments). Furthermore, there is no statutory authority for payment of such costs. Because program regulations do not explicitly include this longstanding policy, we propose to modify those regulations to incorporate this policy.

Federal Funding in the Operation of the Child Support Enforcement Program in the Absence of an Assignment

Current regulations at 45 CFR 304.27 make Federal funding available at the 70 percent rate for expenditures made under an approved IV–D State plan until December 31, 1975, irrespective of the requirement of an assignment of rights to support. Furthermore, § 304.27(b) states that this section remains in effect until December 31, 1975. Because it was repealed as of the close of business on that date, we propose to delete this obsolete section.

Statutory Authority

This regulation is proposed under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 requires the Secretary to publish the regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Regulatory Provisions

In enacting title IV–D of the Act in 1975, Congress did not intend that every expense incurred by the State in enforcing child support obligations would be reimburseable by Federal funding. In fact, Congress expected "the States to continue to devote to this purpose [law enforcement] at least as much non-Federal funding as they currently provide." S. Rep. No. 93–1356, 93rd Cong., 2nd Sess., p. 50. Incarceration is a punishment for violation of State and local laws in general, not just those related to child support enforcement. Imposing a jail sentence for wilful refusal to abide by a court order to pay support promotes respect for the laws and the judicial decisions of the State and its courts. Therefore, we believe that payment for the costs of incarceration is entirely a responsibility of State and local governments and should not be subject to Federal funding under the IV–D program.

Title IV–D of the Act was enacted for the purpose of enforcing the support obligations owed by absent parents. Nowhere in the Act nor in any legislative history explaining the IV–D program is there language providing funding for costs incurred in connection with the defense of absent parents who have failed to support their children. In fact, as stated previously, Congress indicated in connection with the Child Support Enforcement Amendments of 1984 that Federal funding should not be available for these costs. Such funding would be antithetical to the purpose of the program, i.e., to ensure that children receive the support to which they are entitled. A defense attorney's function is to promote the best interests of the client, which may actually be to limit or avoid imposition of support liability.

To make these policies explicit, we are amending 45 CFR 304.20 by adding a new paragraph (i) which would prohibit Federal funding for expenditures resulting from the jailing of absent parents in IV–D cases and a new paragraph (j) which would prohibit Federal funding for costs of counsel for indigent defendants in IV–D actions.

We are deleting 45 CFR 304.27, Federal financial participation in the operation of the Child Support Enforcement Program in the absence of an assignment, because it is obsolete.

Paperwork Reduction Act

This regulation contains no information collection requirements that are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in significant impact on a substantial number of small entities. The primary impact is on State governments and political subdivisions and we believe that this impact will be nominal because the proposal merely puts in regulation longstanding OCSE policy.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competitions, employment, investment productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The proposal is expected to have an insignificant impact on State and Federal expenditures because it only specifies in regulation current OCSE policy.

List of Subjects in 45 CFR Part 304

Child welfare, Grant programs/social programs.

PART 304—[AMENDED]

For the reasons discussed above, 45 CFR Part 304 is proposed to amended as follows:

1. The authority citation for Part 304 continues to read as forth below:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(a), 1396b(p), 1396(k).

2. 45 CFR 304.23 is amended by adding introductory text and new paragraphs (i) and (j) to read as follows:

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

* * * * *

(i) Any expenditures for jailing of parents in child support enforcement cases.

(j) The costs of counsel for indigent defendants in IV–D actions.

§ 304.27 [Removed and reserved]

3. 45 CFR 304.27 is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: March 11, 1986.

Steven Ritchie,

Director, Office of Child Support Enforcement.

Approved: April 18, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–12752 Filed 6–5–86; 8:45 am]

BILLING CODE 4150–11–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–186, RM–5083]

Radio Broadcasting Services; Greenwood, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Morgan County Broadcasters, Inc. proposing to allot FM Channel 294A to Greenwood, Indiana as that community's first FM channel.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Samuel J. Buffone, Buffone & Privitera, P.C., 1302 18th Street, NW., Suite 303, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–186, adopted April 29, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12748 Filed 6–5–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–183, RM–5139]

Radio Broadcasting Services; Camden, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Northern Lights Broadcasting, proposing the allotment of Class B FM Channel 277 to Camden, Maine. This allotment could provide a second FM broadcast service for the community.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kirk Tollett, National Communications Consultants, First National Bank Building, Liberty Square, Sparta, Tennessee (consultant to Northern Lights Broadcasting).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–183, adopted April 30, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12744 Filed 6–5–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–178, RM–5178]

Radio Broadcasting Services; Southern Pines, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 273A to Southern Pines, North Carolina, as the community's second local FM service, at the request of LRE Communications Co. The allocation requires a site restriction of 1.9 kilometers and grant of a license to Station WGNI, Wilmington, North Carolina, as a Class C1, as specified in its construction permit (BPH–831117AA).

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–178, adopted April 23, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12746 Filed 6–5–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–184, RM–5156]

Radio Broadcasting Services; Lincoln, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the substitution of Channel 236C1 or Channel 236C2 for Channel 237A at Lincoln, Ne., at the request of Sequel Communications, and modification of its license for Station KJUS–FM to specify the higher powered channel. No other expressions of interest in the Lincoln allotment need be considered in light of the recent amendment of Section 1.420(g) by *Report and Order*, MM Docket 85–313, released April 29, 1986, FCC 86–161.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to petitioner) and Sequel Communications, Stn. KJUS–FM, 339 North Cotner, Suite 4, Lincoln, Nebraska 68505 (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–184, adopted April 30, 1986, and released May 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

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See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12745 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-185, RM-5189]

Radio Broadcasting Services; Clearfield, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the substitution of Channel 230B1 for Channel 228A at Clearfield, PA, and the modification of Station WQYX (FM)'s license to specify the higher powered channel at the request of Clearfield Broadcasters, Inc. No other expressions of interest in the Clearfield allotment need be considered in light of the recent amendment of § 1.420(g) by *Report and Order*, MM Docket 85-313, released April 29, 1986, FCC 86-181.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20544.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NE., #205, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-185, adopted April 29, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suited 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not aply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12747 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86-207; RM-5208; FCC 86-262]

Amateur Radio Service; Proposed Amendment To Permit the Transmission of Emission F8E on Frequency Band 0.35 Meters and Above (1240 Mhz and Above)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would allow amateur operators to use emission F8E on frequency band 0.35 meters and above (1240 MHz and above. The proposed rule is necessary so that amateur operators can experiment with a new transmission mode and utilize the spectrum more efficiently. The effect of the proposed rule is to permit several different channels of information to be transmitted simultaneously from one location to another.

DATES: Comments must be filed on or before August 15, 1986, and reply comments on or before September 15, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4984.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted May 20, 1986 and released May 27, 1986 (RM-5208). The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In response to a petition for rule making filed by the Southern California Repeater and Remote Base Association (SCRRBA), the FCC proposes to amend the Amateur Rules to allow the use of frequency modulated complex emission F8E on amateur frequencies in the 0.35-meter band and above (1240 MHz and above). Authorization of F8E emission would serve the dual purpose of permitting amateur operators to experiment with a new transmission mode on these frequencies, and to utilize the spectrum efficiently when several different channels of information must be transmitted simultaneously from one location to another. The proposed rule is set forth at the end of this document.

2. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because such entities may not use the Amateur Radio Service for commercial radio communication and because use of the proposed additional emission for frequencies in the 0.35-meter band and above is optional rather than mandatory.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or

record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 15, 1986 and reply comments on or before September 15, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

6. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(i) and 303 (g) and (r).

7. A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clause

8. Rule Making petition RM–5209 filed by SCRRBA is granted.

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Frequencies, Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97—[AMENDED]

Part 97 of Title 47 of the Code of Federal Regulations would be amended as follows:

9. The authority citation for Part 97 would continue to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

10. Section 97.61(c) would be revised to read as follows:

§ 97.61 Authorized emissions.

* * * * *

(c) *Above 144.1 MHz:* Amateur stations are authorized to transmit the following emissions on amateur frequencies above 144.1 MHz. N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F2A, F3E, G3E, F3C, F3F, H3E, J3E, and R3E. P0N emission (the emission letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars) may be transmitted on all amateur frequencies above 2300 MHz, except in the 10.0–10.5 GHz band. F8E emission may be used on amateur frequency band 0.35 meters and above.

* * * * *

[FR Doc. 86–12742 Filed 6–5–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: In the March 21, 1986, Federal Register (51 FR 9654) the public was notified that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1986–87, and provided information on certain proposed regulations. This proposed rulemaking provides supplemental proposals for the early- and late-season migratory bird hunting regulations frameworks and a proposal to amend 50 CFR Part 20 by revising the authority citation to include the Alaska Game Act of 1925.

The early hunting seasons open prior to October 1 and include seasons on mourning doves; white-winged doves; white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails, moorhens and gallinules; teal; sea ducks; experimental early duck seasons in Florida, Iowa, Kentucky, and Tennessee; an experimental early goose season in a portion of Michigan; a special sandhill crane-Canada goose season in southwestern Wyoming; sandhill cranes in the Central Flyway and Arizona; migratory bird hunting seasons in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and extended falconry seasons. Late seasons open about October 1 or later and include those for most waterfowl, and seasons not previously selected for other species. The Service annually prescribes hunting regulations frameworks within which the States select specific seasons. The effect of this proposed rule is to facilitate establishment of early- and late-season migratory bird hunting regulations for the 1986–87 season.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico and the Virgin Islands will end on June 19, 1986; that for other early-season framework proposals will end on July 14, 1986; that for late-season framework proposals on August 25, 1986; and that for the proposal to revise the authority citation of 50 CFR Part 20 will end on July 18. Public hearings on proposed early- and late-season frameworks will be held on June 19 and August 1, 1986, respectively (51 FR 9654).

ADDRESS: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. The public hearings will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets NW., Washington, DC. Notice of intention to participate in either hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the interior, Matomic Building, Room 536, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which open before October 1, while late seasons open about October 1 or later. Regulations are developed independently for early and late seasons. The early-season regulations cover mourning doves; white-winged doves; white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; experimental early duck seasons in Florida, Iowa, Kentucky, and Tennessee; an experimental early goose season in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; a special sandhill crane-Canada goose season in southwestern Wyoming; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots, moorhens and gallinules, and snipe in the Pacific Flyway; and other extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a Federal Register document published in

March and opened to public comment. These proposals are supplemented, as necessary, with additional Federal Register documents. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the Federal Register. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the Federal Register, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits, and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows: On March 21, 1986, the Service published in the Federal Register (51 FR 9854) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. All comments on the March 21 proposal received through May 2, 1986, have been considered in developing this document. Comment periods on this second document are specified above under "DATES". Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for Federal Register publication on or about July 18, 1986, and those for early seasons in other areas of the United States on August 4, 1986; and those for late seasons on September 11, 1986.

On June 19, 1986, a public hearing will be held in Washington, DC, as announced in the Federal Register of March 21, 1986 (51 FR 9854), to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails moorhens and gallinules, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species and migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. Statements or comments are invited.

On August 1, 1986, a public hearing will be held in Washington, DC, as announced in the Federal Register of March 21, 1986 (51 FR 9854), to review the status and proposed hunting regulations for waterfowl not previously discussed at the June 19 public hearing.

On January 24, 1986, in *Alaska Fish and Wildlife Federation and Outdoor Council, Inc., et al. v. Jantzen, et al.*, No. J84-013 CIV, the U.S. District Court in Alaska ruled that:

> Until such time as the Secretary of the Interior adopts regulations pursuant to section 3(h)(2) of the Fish and Wildlife Improvement Act, the Congress has authorized Alaska Natives to harvest migratory waterfowl under the Alaska Game Act of 1925 (as amended) during any season of the year, including but not limited to spring and summer months, when they or members of their family are in need of food and other sufficient food is not available.

In that ruling, the court found that Congress intended the 1925 Game Act to comprehensively regulate all game and bird hunting in Alaska and replace the Migratory Bird Treaty Act as a source of authority for issuing regulations in Alaska. As a result of the court's finding, the Service finds need to propose to amend Title 50 Code of Federal Regulations Part 20—Migratory Bird Hunting by revising the authority citation to include the Alaska Game Act of 1925, as amended.

As noted in the March 21, 1986, Federal Register (at 51 FR 9858), the Service is assessing the District court's decision in order to determine what action is needed for the 1986 and 1987 spring and summer subsistence hunting seasons in Alaska. The Service will announce any actions to be taken in a future Federal Register notice(s).

This supplemental proposed rulemaking describes a number of changes which have been proposed by commentors on the original framework proposals published on March 21, 1986, in the Federal Register.

Review of Public Comments and the Service's Response

Written Comments Received

As of May 2, 1986, the Service had received comments on proposals published in the March 21, 1986, Federal Register (51 FR 9854) from 10 correspondents, including three individuals, three State agencies and four waterfowl flyway councils. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals; however, because they were received during the comment period and generally relate to migratory game bird hunting regulations, they are treated as comments. The comments are discussed below with particular attention to new proposals and modifications or clarifications to previously described proposals. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 21, 1986, Federal Register. Comments received subsequent to May 2, 1986, as well as those received at the June 19, 1986, public hearing will be addressed in the next supplemental proposal to be published in the Federal Register in early July.

General Comments

The Central Flyway Council has recommended adoption of the proposed basic regulations frameworks for 1986–87 hunting seasons on webless and waterfowl species pertinent to the Central Flyway except for specific recommendations given in the numbered headings that follow.

The Pacific Flyway Council has recommended that no change be made in frameworks for waterfowl and sandhill crane seasons in Alaska and for mourning dove, white-winged dove and band-tailed pigeon seasons pertinent to the Western Management Unit and the Pacific Flyway from those of 1985–86 except as identified below. The Council also recommended that in order to accommodate hunting and depredation control of ravens and magpies, 50 CFR 20.133 "Hunting regulations for crows" be amended by adding ravens and magpies, and § 21.43 "Depredation order for blackbirds, cowbirds, grackles, crows and magpies" be amended by adding ravens. The Service solicits comments on these recommended amendments to § 20.133 and 21.43 and requests the Council provide justifications for both amendments.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* (a) The Central Flyway Council has recommended that the 1986–87 framework opening date for duck hunting in the Flyway be returned to the Saturday nearest to October 1. The Mississippi Flyway Council's Upper Region Regulations Committee has recommended that the 1986–87 framework opening and closing dates for duck hunting be the Saturday nearest October 1 and the Sunday nearest January 20, respectively, with the exception that Wisconsin would always

employ a fixed October 1 opening date, and that in subsequent years no changes be made to these framework dates without full discussion through the flyway council process. The Council's Lower Region Regulations Committee has recommended that the 1985–87 framework opening and closing dates for duck hunting be October 1 and January 20, respectively, and the Committee reaffirmed the Council's 1985 position that changes in harvest opportunities be made equitably among flyways.

Response. Floating framework dates are of long standing in the Pacific and Central Flyways and have been a feature of the Mississippi Flyway opening framework date since 1979, but the Atlantic Flyway has always operated under fixed framework dates. However, in 1985 the framework dates were compressed and established as fixed dates in all flyways as one element of generally restrictive duck hunting regulations.

The Service notes the recommendations from the Central and Mississippi Flyway Councils for a return to outside framework dates similar to 1984 but extended compared to the framework dates of 1985. Although there was considerable objection to the compressed framework dates in 1985, the Service notes that shortened framework dates were used during a previous drought cycle in the 1960s and notice was given in the Federal Register dated February 15, 1985 (50 FR 6366), that framework dates were one of the tools available for managing harvest. The Service intends to retain this harvest management option.

The Service will not make a decision on framework dates until the 1986 status information for ducks is available, reviewed and considered during the late-season regulations cycle. However, in order to provide maximum notice the Service announces it is considering uniform framework dates (for ducks) for the four flyways. States may of course be more restrictive but not more liberal.

(b) The Central Flyway Council has also recommended that the Service require that the extra duck hunting days allowed in the High Plains Mallard Management Unit be taken beginning no earlier than the Saturday nearest to December 10, and that the Service give stronger consideration to comparative biological data and equitability among flyways in any future deliberations to construct regulations to reduce the harvest of ducks than was exhibited for mallard and pintail drake regulations for the 1985–86 season.

Response. The Service proposes to require that the extra days allowed in the High Plains Mallard Management Unit be taken starting no earlier than the Saturday nearest December 10. The Service intends to utilize all available biological data in the development of equitable harvest regulations for the 1986–87 waterfowl season.

(c) Massachusetts has requested that in order to provide 40 days of waterfowl hunting in the State, the Service allow compensatory waterfowl hunting season days for those season days lost because of the State's prohibition on Sunday hunting.

Response. The Service notes that the loss of hunting days because of a ban on Sunday hunting is the result of a regulation imposed by the State rather than the Federal Government. Therefore, the Service feels it is the responsibility of Massachusetts to remove the restriction as it is the State's action that is causing the loss of hunting opportunity.

(d) A sportsman from New York requested the duck season length be increased from the 40 days permitted in 1985–86 to 75 days in 1986–87.

Response. As noted in an earlier response, the Service will not make a decision on duck season frameworks until the 1986 status information for ducks is available, reviewed and considered during the late-seasons regulations cycle. At that time, the request from the New York sportsman and all other requests/comments received will be brought to the attention of the Service Regulations Committee.

(e) During the 1985–86 regulations development process the Atlantic Flyway Council and several member States requested the establishment of a Northeast Management Unit in the Flyway. They argued that many ducks in the requested Unit originate from more eastern breeding grounds, that several of the ducks important in the harvest there, are species for which annual breeding ground harvest information is limited or not available, and that mallard numbers in the Unit are increasing.

Response. The Service weighed those arguments against evidence that many ducks in the requested unit are transients and subjected to hunting pressure there and elsewhere in the Flyway and that two species important in the harvest presently warrant concern and are covered by restrictive regulations, and subsequently established a Northeast Management Unit, consisting of Maine, New Hampshire, Vermont, Massachusetts and Rhode Island, on an experimental basis. The Service did not accept the Council's request to include Connecticut and parts of New York and New Jersey in the Unit.

Although the Service established the Unit, it noted that in the coming year (1986) the Flyway Council and Service must strive to better define the management objectives and boundaries of the Unit. The Atlantic Flyway Council is again reminded to develop and submit to the Service a detailed proposal, before the late-season regulations meetings, that provides justification, management objectives and an evaluation plan for a Northeast Management Unit. The Service solicits additional information and/or comments from all sources regarding a Northeast Management Unit in the Atlantic Flyway.

3. *American black ducks.* The Atlantic Flyway Council has recommended that black duck harvest restrictions initiated in the Flyway in 1983 to reduce black duck harvest 25 percent from the 1977–81 average harvest level be continued, but that additional black duck harvest restrictions be developed for those States that have not achieved an average 25 percent reduction (1983–85) from the 1977–81 level.

Response. In the March 21, 1986, **Federal Register** (at 51 FR 9861) the Service noted its intent to assess the effect of the black duck harvest management program in the Atlantic and Mississippi Flyways, and indicated that the strategies of those States that have not reached the program's harvest reduction goal will be reviewed and additional restrictions imposed.

8. *Experimental September duck seasons.* The Mississippi Flyway Council's Upper Region Regulations Committee has recommended continuation of the experimental September duck season in Iowa in 1986. The Council's Lower Region Regulations Committee has recommended continuation of the experimental September duck hunting seasons in Kentucky and Tennessee in 1986, with modification if deemed necessary after evaluation of the final reports.

Response. As noted in the March 21, 1986, **Federal Register** (at 51 FR 9862), the Service proposes to continue the September duck seasons in Iowa, Kentucky, Tennessee and Florida as experimental in 1986–87 unless final or progress reports provide evidence of a detrimental effect on any segment of the duck resource.

12. *Canvasback and redhead ducks.* In the March 21, 1986, **Federal Register** (at 51 FR 9862) the Service indicated that when the 1986 canvasback breeding population survey data and the harvest data from the 1985–86 hunting season become available, the Service, in coordination with the flyway councils,

will consider specific changes, including a closure on hunting, in the 1986–87 regulations frameworks for canvasbacks. New Jersey has indicated it favors canvasback regulations that provide for a limited harvest in traditional canvasback areas rather than a return to regulations based on an area closure system.

Response. New Jersey's comments will be considered during the development of the 1986–87 regulations frameworks for hunting canvasbacks.

13. *Duck zones.* The Upper Region Regulations Committee of the Mississippi Flyway Council has endorsed requests from Michigan, Indiana and Missouri for duck zone boundary changes as follows:

Michigan

North Zone: The Upper Peninsula.
South Zone: That portion of the Lower Peninsula south of a line running east from the western shore of Lake Michigan along Highway M–20 to U.S. Highway 10; east on U.S. Highway 10 to the mouth of the Saginaw River
Middle Zone: The remainder of the State.

Indiana

North Zone: That portion of the State north of a line running east from the Illinois border on State Highway 18 to U.S. Highway 31; north on U.S. Highway 31 to U.S. Highway 24; east on U.S. Highway 24 to Highway 224 at Hunnington; southeast on U.S. Highway 224 to the Ohio border.
Ohio River Zone: That portion of the State south of a line running east from the Illinois border on Interstate 64 to State Route 62 at New Albany; east on State Route 62 to State Route 56; east on State Route 56 to State Route 156 at Vevay; northeast on State Route 156 to State Route 56; north on state Route 56 to U.S. Highway 50; northeast on U.S. Highway 50 to the Ohio border.
South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Missouri

North Zone: That portion of the State north of a line running west from the Illinois border on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas border.
South Zone: The remainder of the State.

Response. In the March 21, 1986, **Federal Register** (at 51 FR 9962) the Service gave notice that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* (a) The Atlantic Flyway Council has recommended that frameworks be developed that permit Georgia to establish, in cooperation with the Service, a Canada goose hunting season on Eufaula National Wildlife Refuge (NWR) concurrent with the State's duck hunting season and governed by refuge-specific regulations for migratory game birds on Eufaula NWR.

Response: The Service understands this hunt is based almost entirely on the annual recruitment from a group of resident Canada geese introduced on the Refuge beginning in 1985. The Service defers final action until the late-seasons regulations cycle.

(b) Delaware has requested approval to conduct an experimental 10-day snow goose hunt in certain coastal marshes in October to disperse early migrants and thereby reduce destruction of marsh habitat by snow geese. The 10-day experimental season would be in addition to the State's regular 90-day snow goose season.

Response: The Service notes this request should receive Atlantic Flyway Technical Section and Council reviews and recommendations. However, the Service believes the existing frameworks for a 90-day snow goose hunting season, an opening date of October 1 and the option to split the season provide Delaware ample opportunity to test its dispersal proposal without resorting to an experimental season or additional days of hunting.

(c) The Central Flyway Council has recommended that a 3-year experimental snow goose hunting season (107 days, 5 snow geese daily and 20 in possession) and management unit with the following description be established in New Mexico: the Central Flyway portion of New Mexico that lies west of a line beginning at the intersection of U.S. Highway 54 and the New Mexico-Texas State line, north on U.S. Highway 54 to its intersection with U.S. Highway 60; thence west on U.S. Highway 60 to its intersection with U.S. Highway 285; thence north on U.S. Highway 285 to its intersection with the New Mexico-Colorado State line.

The Council indicated that the size of the population of snow geese (70,000 to 80,000) now using the Middle Rio Grande Valley (MRGV) far exceeds the available habitat, and severe crop depredations by the geese continue in New Mexico. The Council expects the increase in season length will provide additional protection against crop depredations and along with the possession limit increase (plus ten geese), may slow the growth of the MRGV snow goose population.

Response: The Service seeks additional comment and information on this recommendation. Final action is deferred until the late-seasons regulations cycle.

(d) The Mississippi Flyway Council's Upper Region Regulations Committee has endorsed requests from Illinois for (a) five additional days to its 20-day goose season in the Tri-County Area as part of the State's giant Canada goose management efforts. The season would open concurrently with the duck season in the State's Central Duck Zone in October prior to the peak migration of Mississippi Valley Population (MVP) Canada geese through the zone; and (b) two 9-day Canada goose hunting seasons in the northeastern nine counties of Illinois (McHenry, Lake, Kane, Cook, Du Page, Kendall, Will, Grundy and Kankakee counties) to harvest local giant Canada geese. The first season would open in early October or possibly late September while the second season would open in late December-early January. The bag limit would be 2 Canada geese daily during both seasons. The seasons are timed to avoid migrant Canada geese.

Response: The Service notes there is concern that late-September and early-October seasons aimed at giant Canada geese may result in the harvest of MVP Canada geese. The Service seeks additional information and/or comment on Illinois' request. Of particular interest would be survey information relating to goose numbers in Illinois by area during the September-December period.

(e) The Upper Region Regulations Committee has also endorsed Michigan's request for a 9-day early-September (6th–14th) Canada goose season. The daily bag limit would be 3 geese. The purpose of the hunt is to provide control over local giant Canada goose populations. The season would be statewide with the exceptions of the Allegan and Shiawassee River State Game Areas and the Fish Point Wildlife Area.

Response: The Service questions inclusion of such a large area in the proposal to harvest giant Canada geese. The Service defers action on the Michigan request and solicits additional

comment. It is noted that early-September seasons need to be considered during the early-season regulations development cycle.

(f) The Mississippi Flyway Council's Lower Region Regulations Committee has recommended that the framework closing date for snow and white-fronted goose hunting seasons in Arkansas be extended from January 20 to January 31.

Response. The Service seeks additional comment on this recommendation.

(g) Massachusetts has requested the following changes in the State's frameworks for Canada goose hunting: The framework closing date be extended from January 20 to January 31; season length be increased from 70 days to 90 days; and the daily bag limit be increased from 3 daily to 5 daily for those days of the season after January 15. The State indicated that the major purpose of its request is to harvest locally produced Canada geese and therefore aid in population control of nuisance flocks.

Response. Service action on this request is deferred pending its review by the Atlantic Flyway Council's Technical Section and receipt of a recommendation from the Council.

(h) A sportsman from Michigan has requested the Service provide for a 55-day Canada goose season in Michigan in 1986–87.

Response. A decision on regulations frameworks for goose hunting seasons will not be made until the 1986 waterfowl status and the 1985–86 goose harvest information have become available and regulations recommendations from the flyway councils have been received. At that time, the request from the Michigan sportsman and all other requests/comments received will be brought to the attention of the Service Regulations Committee for consideration.

(i) The Service notes that with the increasing numbers of resident flocks of Canada geese in the United States there has been an increase in nuisance complaints and/or reports of crop depredations by these geese. As a result, requests from States for special hunting seasons to control these geese are becoming more frequent. The Service endorses sport hunting as a management strategy to control resident Canada geese; however, the endorsement is conditional. First and foremost, the Service believes that sport hunting of resident Canada geese that can be accommodated within the regular season frameworks should take precedence over the establishment of frameworks for a special hunting season on resident Canada geese in addition to a State's regular Canada goose season. Second, the potential adverse impact of special, resident-goose hunting seasons on geese migrating into or through the area is of concern to the Service. In addition, there is a practical limit to the number of seasons and/or areas for hunting migratory birds that can be described in the Federal Register. There also is a limit to the number of experimental hunting programs that can be evaluated by the Service and States. Pending development of criteria for special resident-goose seasons, the Service will require that prior to approval of such a season, the requesting State must provide in its proposal acceptable evidence (survey data, neck collar observations, etc.) that the area to be hunted does not receive appreciable numbers of migrant geese; or if migrant geese use the area they would not be expected during the special season. If approved by the Service, the respective State will be required to monitor the season by gathering goose population and harvest data.

16. *Sandhill cranes.* (a) The Central Flyway Council has endorsed New Mexico's request for a 16-day sandhill crane hunting season between October 10 and November 5 with daily bag and possession limits of 3 and 6 cranes, respectively, within the following boundary:

The part of the Rio Grande Valley bounded on the north by the south boundary of Isleta Pueblo; on the west by Interstate 25, but including all portions of Bosque del Apache and Sevilleta National Wildlife Refuges lying west of I–25; on the south by the southern boundary of Bosque del Apache NWR; on the east by the Bosque del Apache NWR boundary from I–25 southeast then north to the refuge's northeast corner, then by a dirt road running southeast approximately 0.5 miles from that corner to the western boundary of the White Sands Missile Range Extension Co-Use area (WSMREC), then by the WSMREC boundary north then east to the southeastern corner of Sevilleta NWR, then by the eastern boundary of Sevilleta NWR north to U.S. 60, by U.S. 60 west to N.M. 47, and then by N.M. 47 north to the south boundary of Isleta Pueblo.

The hunting season will be an additional management method for controlling crop depredations by sandhills and will aid in the control of an increasing crane population that now exceeds management objectives.

Response. The Service notes the Central and Pacific Flyway Councils share management responsibilty for these cranes. Action is deferred on this request pending receipt of a proposal supported by both Councils.

(b) The Central and Pacific Flyway Councils have endorsed Wyoming's request for a 14-day sandhill crane/Canada goose hunting season between September 1 and September 22 in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties in western Wyoming. Bag limits will be 3 sandhill cranes and 1 Canada goose per season—75 permits will be issued for the hunt.

Response. The Service seeks comments on Wyoming's request and notes that pending completion of harvest guidelines for the Rocky Mountain Population of greater sandhill cranes, any such season would be regarded as being an experimental expansion of the operational season in Lincoln County.

(c) The Pacific Flyway Council also recommended no change in either the 1986–87 sandhill crane hunting season in Arizona on the operational sandhill crane/Canada goose hunting season in Wyoming from the 1985–86 seasons.

Response. The Service proposes to continue these two hunting seasons without change.

21. *Woodcock.* (a) New Jersey has requested exemption from the 10-day penalty in season length normally taken by them for selecting zoning as a woodcock harvest strategy, or that at the very least the penalty be only 7 days in order to remove what the State views as a disproportionate penalty when compared to other Atlantic Flyway States.

Response. The Service notes that the option to select zones as a woodcock harvest strategy is only available to New Jersey. As stated in the July 5, 1985, Federal Register (at 50 FR 27642) the 10-day penalty taken by New Jersey for selecting its option to zone is long-standing and the Service feels it should be continued. In view of the long-term decline in woodcock in the eastern region and the restrictions of recent years designed to reduce harvest opportunity on these birds, the Service questions the wisdom of continuing to offer the option to zone New Jersey for woodcock hunting.

(b) In 1985 the Service initiated a program whereby the hunting regulations for woodcock in the Atlantic Flyway were adjusted to bring harvest opportunities to a level commensurate with the current woodcock population status. A sportsman from Maine has indicated he does not object to the restricted bag limit but he does take exception to the delayed framework opening date and the decrease in season

length because from his personal hunting experiences the past 25 years, he feels that the status of the woodcock population is good.

Response. The Service notes that the number of woodcock in the Atlantic Flyway has significantly declined since the 1960s and reiterates the statement made in the March 21, 1986, Federal Register (at 51 FR 9964) that no changes in seasons and bag limits for woodcock from those in effect in 1985–86 are anticipated at this time pending an evaluation of the restrictive changes implemented in the Atlantic Flyway.

22. *Band-tailed pigeons.* The Pacific Flyway Council has recommended that the mandatory permit requirement for hunting band-tailed pigeons in Nevada be removed.

Response. the Service believes the requirement for a permit in previous years established the fact that bandtail seasons in Nevada had little or no impact on the resource. Therefore the Service concurs with the Pacific Flyway Council's recommendation and proposes to remove the mandatory permit requirement for band-tailed pigeon hunting in Nevada.

24. *White-winged and white-tipped doves.* The Central Flyway Council has recommended that the 1986–87 regulations for white-winged doves provide for resumption of a 4-day white-winged dove season in the special white-winged dove area of Texas' South Dove Zone. The Council indicated that continuing recovery of citrus nesting habitat and the anticipated recovery of the white-winged dove breeding population during the 1986 nesting season warrants a return from the 2-day special season permitted in 1985–86 to a 4-day season in 1986–87.

Response. In the March 21, 1986, Federal Register (at 51 FR 9965) the Service noted that the normal 4-day white-winged dove season in Texas' special white-winged dove area of its South Zone was shortened to 2 days in 1985 because of declines in white-winged dove numbers as a result of reduced citrus nesting habitat. The Service defers a decision on a 4-day season in 1986 pending receipt of additional status information on whitewings and their nesting habitat.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate in the rulemaking process by submitting written comments to the Director, U.S. Fish and Wildlife Service, MBMO—Matomic Building, Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington DC.

All relevant comments on proposals will be considered provided those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands are received no later than June 19, 1986; those on early-season proposals (except Alaska, Hawaii, Puerto Rico, and the Virgin Islands) are received no later than July 14, 1986; those on late season proposals are received by August 25, 1986; and those on the proposal to revise the authority citation of 50 CFR are received by July 18, 1986.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of flyway councils:

Atlantic Flyway—Williamsburg, Virginia (Williamsburg Lodge) July 27–30

Mississippi Flyway—Des Moines, Iowa (Holiday Inn South) July 28–29

Central Flyway—Tulsa, Oklahoma (Hilton Inn) July 28–30

Pacific Flyway—Reno, Nevada (Sundowner Hotel—Casino) July 28

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality of June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service at the address indicated above.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that the Secretary "shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and shall take "such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Section 7 consultation are presently underway regarding both the early- and late-season regulatory proposals. It is possible that the findings from the consultation, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications that may be desirable will be reflected in the final frameworks for Alaska, Puerto Rico, and the Virgin Islands, scheduled for publication in the Federal Register on or about July 18, 1986; those for other early seasons on or about August 4, 1986; and for later seasons on or about September 11, 1986.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Office of Endangered Species, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the Federal Register dated March 21, 1986, (51 FR 9654), the Service reported measures it has undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above Federal Register publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

Accordingly, it is proposed to amend Part 20 of Chapter 1 of Title 50 of the Code of Federal Regulations as set forth below:

PART 20—[AMENDED]

1. The authority citation for Part 20 would be revised to read as follows and the authority citations following their sections in part 20 would be removed:

Authority: Migratory Bird Treaty Act, sec. 3, Pub.L. 95–186, 40 Stat. 755 (16 U.S.C. 701–709h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

Dated: June 6, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–12758 Filed 6–5–86; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 51, No. 109
Friday, June 6, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 17-86]

Foreign-Trade Zone 22, Chicago, IL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of Foreign-Trade Zone 22, requesting authority to expand its zone to include a site located in Manteno Township, Kankakee County, Illinois, adjacent to the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 15, 1986.

On October 29, 1975, the Board authorized the Chicago Regional Port District to establish a foreign-trade zone in the Lake Calumet Harbor area of Chicago, Illinois (Board Order 108, 40 FR 51242, Nov. 4, 1975). The project currently covers a 25-acre industrial park site within the 2,250-acre Lake Calumet Harbor area, within the Chicago Customs port of entry.

The proposed expansion involves a 578-acre planned industrial/commercial complex, located on Bernard Road at County Highway 9 in Manteno Township, Kankakee County, some 18 miles south of Chicago. The facility would be operated by the Illinois Diversatech Campus Corporation.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph E. Lowry (Chairman), Foreign-Trade Zones Staff, U.S Dept. of Commerce, Washington, DC 20230; Larry Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 S. Canal St., Chicago, IL 60607; and Lt. Col. Frank R. Pinch, District Engineer, U.S Army Engineer District Chicago, 219 S. Dearborn St. Chicago, IL 60604–1797.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 11, 1986.

A copy of the application is available for public inspection at each of the following location:

U.S. Department of Commerce District Office, 1406 Mid Continental Plaza Building, 55 East Monroe Street, Chicago, IL 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: June 2, 1986.

Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 86-12759 Filed 6-5-86; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[Docket No. 1614-02]

Anatoli Tony Maluta, Respondent; Order

On May 21, 1986, the Administrative Law Judge issued his Decision and Order in the matter of Anatoli Tony Maluta, which was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.8(a) for final action.

Pursuant to a charging letter of August 5, 1983, Anatoli Tony Maluta was charged with multiple violations of the Export Administration Act of 1979. He was found to have shipped illegally a variety of controlled electronic equipment to the Federal Republic of Germany and to the Netherlands, having failed to obtain the required validated licenses. He had also submitted export control documents containing false representations of material facts.

Pursuant to the findings of the Administrative Law Judge, Anatoli Tony Maluta is hereby denied all export privileges for a period of 20 years. In addition, a civil penalty of $110,000 is imposed which is suspended for 5 years. This suspension is conditioned upon his committing no further violations of the Export Administration Act or any of its successors. If no further violation occurs, then this civil penalty will be vacated.

Having reviewed the record and based on the facts addressed in this case, I affirm the Order of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated: June 2, 1986.

Paul Freedenberg,
Assistant Secretary, for Trade Administration.

[FR Doc. 86-12730 Filed 6-5-86; 8:45 am]
BILLING CODE 3510-25-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In FR Doc. 86-11270 beginning on page 18475 in the issue of Tuesday, May 20, 1986, make the following correction:

On page 18475, in the third column, the table of Countervailing duty Proceedings should read as follows:

Countervailing duty Proceedings	Period to be reviewed
Wool from Argentina	01/85–12/85.
Leather Wearing Apparel from Colombia	07/84–12/85.
Leather Wearing Apparel from Mexico	07/84–12/85.

BILLING CODE 1505-01-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: June 25, 1986 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Ave. NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.
3. Action items underway.
4. New Business.
5. Action items due at next meeting.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of this Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes call 202–377–2583.

Dated: June 3, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–12731 Filed 6–5–86; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Mr. Richard C. Connor (P376)

On April 9, 1986, notice was published in the Federal Register (51 FR 12190) that an application had been filed by Mr. Richard C. Connor, Division of Biological Sciences, University of Michigan, Ann Arbor, Michigan 48109, for a permit to import bottlenose dolphins *(Tursiops sp.)* specimen materials for scientific research.

Notice is hereby given that on May 27, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: May 30, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86–12776 Filed 6–5–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Gerald Kooyman (P 161)

On March 4, 1986, notice was published in the Federal Register (51 FR 7464) that an application had been filed by Dr. Gerald Kooyman, Scipps Institution of Oceanography, University of California, La Jolla, California 92093, to conduct scientific research on fifteen (15) Weddell seals (*Leptonychotes weddelli*) in Terra Nova Bay, Antarctica.

Notice is hereby given that on May 22, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415.

Dated: May 22, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–12772 Filed 6–5–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Gerald L. Kooyman

On March 5, 1986, notice was published in the Federal Register (51 FR 7806) that an application had been filed by Dr. Gerald L. Kooyman, Physiological Research Laboratory A–004, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093, for a Scientific Research Permit to study the respiratory functions of harbor seals (*Phocavitulina*) and California sea lions (*Zalophus californianus*).

Notice is hereby given that on May 29, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 30, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86–12775 Filed 6–5–86; 8:45 p.m.]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Dr. Daniel P. Costa, Mr. John M. Francis and Ms. Carolyn B. Heath; Modification No. 1 to Permit No. 422

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 422 issued to Dr. Daniel P. Costa, Mr. John M. Francis and Ms. Carolyn B. Heath, Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064 on June 22, 1983 (48 FR 29936) is modified as follows:

Section B.1 is replaced by:

"1. The research shall be conducted by the means, in the areas and for the purposes set forth in the application and the modification request."

This Modification is effective on May 28, 1986.

Documents submitted in connection with the above modification are

available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 30, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86-12773 Filed 6-5-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Restraint Limits for Certain Cotton and Man-Made Fiber Textiles Produced or Manufactured in Thailand

June 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 9, 1986. For further information contact Kathy Davis, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

In consultations held in April 1986, the Governments of the United States and Thailand agreed, under the terms of their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of July 27 and August 8, 1983, as amended, on the disposition of charges for overshipments in the cotton and man-made fiber apparel group (Categories 330–359 and 630–659), which occurred during the previous agreement period. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to reduce the cotton and man-made fiber apparel group limit, established for imports during the thirteen-month period which began on December 1, 1985, from 90,423,480 square yards equivalent to 89,379,567 square yards equivalent. The new limit includes the transfer of 1,625,000 square yards equivalent from the limit established for wool textile products in Categories 410–425 and 431–459, as a group, reducing that limit to 1,625,000 square yards equivalent for the thirteen-month period. The Commissioner of Customs is further directed to reduce the import charges to the restraint limits established for man-made fiber textile products in Categories 631, 640, and 647/8, produced or manufactured in Thailand and exported during the thirteen-month agreement period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 3, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of November 27, 1985 which established limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the thirteen-month period which began on December 1, 1985 and extends through December 31, 1986.

Effective on June 9, 1986, the directive of November 27, 1985 is hereby amended to reduce the following group limits as indicated below:

Category	13-mo restraint limit [1]
330–359 and 630–659	89,379,567 square yards equivalent.
410–425 and 431–459	1,625,000 square yards equivalent.

[1] The limits have not been adjusted to reflect any imports exported after November 30, 1985.

Also effective on June 9, 1986, you are directed to reduce the import charges made to the limits previously established for man-made fiber textile products in Categories 631, 640 and 647/648 as follows:

Category	Amount of reduction
631	82,400 dozen pairs.
640	114,024 dozen.
647/648	97,974 dozen.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12761 Filed 6-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

May 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

On February 19, 1986, a notice was published in the Federal Register (51 FR 6025) which announces that, on January 31, 1986, the Government of the United States had requested the Government of Mauritius to enter into consultations concerning exports to the United States of cotton trousers in Category 347/348, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 31, 1986 and extends through January 30, 1987. Inasmuch as no solution was reached during consultations between the two governments, the United States Government has decided to control imports in Category 347/348, exported during the twelve-month period which began on January 31, 1986 and extends through January 30, 1987 at a level of 331,332 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, which are anticipated but not yet scheduled, further notice will be published in the Federal Register.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

May 30, 1986.

Committee for The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 9, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 347/348, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 31, 1986 and extends through January 30, 1987, in excess of 331,332 dozen.[1]

Textile products in Category 347/348 which have been exported to the United States prior to January 31, 1986 shall not be subject to this directive.

Textile products in Category 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12760 Filed 6-5-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after January 30, 1986.

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

May 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On March 26, 1986, a notice was published in the Federal Register (51 FR 10421) which announced that, on February 28, 1986, the Government of the United States had requested the Government of Mauritius to enter into consultations concerning exports to the United States of woven cotton blouses and shirts in Category 341, produced or manufactured in Mauritius and exported during the twelve-month period which began on February 28, 1986 and extends through February 27, 1987. Inasmuch as no solution has been reached in consultations on a mutually satisfactory limit for this category, the United States Government has decided to control imports in Category 341, exported during the twelve-month period which began on February 28, 1986, at a level of 118,584 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, further notice will be published in the Federal Register.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

May 30, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 9, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 341, produced or manufactured in Mauritius and exported during the twelve-month period which began on February 28, 1986 and extends through February 27, 1987, in excess of the following level of restraint:

Category	12-mo restraint level [1]
341	118,584 dozen.

[1] The level has not been adjusted to account for any imports exported after February 27, 1986.

Textile products in Category 341 which have been exported to the United States prior to February 28, 1986 shall not be subject to this directive.

Textile products in Category 341 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12762 Filed 6-5-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND SEVERELY HANDICAPPED

Procurement List 1986; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1986 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 6, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 21, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 6295) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41609).

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986:

Mat, Sleeping, Cold weather
8465-01-109-3369.

C.W. Fletcher,
Executive Director.

[FR Doc. 86-12734 Filed 6-5-86; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before: July 9, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1986, October 15, 1985 (50 FR 41609):

Commodities

Smock, Medical Assistant's
8532-00-117-7467
8532-00-117-7542
8532-00-117-7543
8532-00-117-7546

Vest, Ammunition Carrying
8415-00-146-1667
8415-00-146-1668

Belt, Trousers
8440-01-167-7246
8440-01-175-7851
8440-01-175-7853
8440-01-175-7850
8440-01-304-3810
8440-01-175-7854
8440-01-175-7852
8440-01-181-4410
8440-01-181-4411

Tray, Canvas
PS Item No. 0-1046-T

Services

Mailing Service, U.S. Department of Interior, Bureau of Land Management, Oregon State Office, Portland, Oregon.

Repair of Air Cargo Pallet Top and Side Nets, Norton Air Force Base, California.

Reproduction Service, Army Material Command Headquarters, Alexandria, Virginia.

Deletion

It is proposed to delete the following commodities from Procurement List 1986, October 15, 1985 (50 FR 41609):

Liner, Coat, Cold Weather
8415-00-782-2866
8415-00-782-2867
8415-00-782-2868
8415-00-782-2869
8415-00-782-2850
8415-00-082-0879

(All Government requirements except for the Mechanicsburg Depot, Mechanicsburg, Pennsylvania)

C.W. Fletcher,
Executive Director.

[FR Doc. 86-12735 Filed 6-5-86; 8:45 am]
BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 86-1]

Johnson & Johnson Baby Products Company, Inc.; Publication of Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a Complaint under the Federal Hazardous Substances Act.

SUMMARY: Under Provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the Federal Register Complaints which it issues under the Federal Hazardous Substances Act 16 CFR 1025.11(c).

Printed below is a Complaint issued in the matter of Johnson & Johnson Baby Products Company, Inc., a corporation.

Dated: June 3, 1986.

Sheldon D. Butts,
Deputy Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission

[CPSC No. 86-1]

In the matter of Johnson & Johnson Baby Products Co., Inc., a corporation.

Complaint Nature of Proceedings

1. This is an administrative adjudicative proceeding pursuant to section 15 of the Federal Hazardous Substances Act (hereinafter, the "FHSA"), as amended, 15 U.S.C. 1274, Pub. L. 98-491, 98 Stat. 2289 (Oct. 17, 1984), for public notification and remedial action to protect the public from substantial risks of injury presented by children's toys (hereinafter, "toys"). This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR Part 1025.

Jurisdiction

2. The Consumer Product Safety Commission (hereinafter, the "Commission" or "CPSC") has jurisdiction over the subject matter of

this proceeding pursuant to section 15 of the FHSA, 15 U.S.C. 1274.

Respondent

3. Respondent Johnson & Johnson Baby Products Company, Inc. (hereafter, Johnson & Johnson) is a corporation organized and existing under the laws of the State of New Jersey, with corporate offices located at Grandview Road, Skillman, New Jersey, 08558 and 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

4. Respondent imported and introduced into commerce toys known as "Soft Triplets" (hereafter, "Triplets"), "Piglet Crib Gym" (hereafter, "Piglets"), and "Triplets Marching Band" (hereafter, "Marching Band"), and sold them in interstate commerce within the meaning of 15 U.S.C. 1261(b) and 1274.

5. Respondent is a "manufacturer" of the toys as that term is defined in section 15(f) of the FHSA, 15 U.S.C. 1274(f).

Articles Intended for Use by Children

6. The Triplet and Marching Band toys consist of three soft figures attached together by means of elastic with a plastic ring at each end. The Piglet toy is constructed in the same way, but has, in addition, two attachment devices of plastic and elastic bands that can be separated from, but are supplied with the toy. (See Exhibits 1, 2, and 3.)

7. All of the toys were sold for use by children from birth to 24 months. All of the toys were sold as multi-use toys. All of the toys can be hung across a crib or playpen.

8. Between 1979 and 1986, Respondent imported and distributed in interstate commerce approximately 1.6 million Triplets; 62,000 Piglets; and 3,000 Marching Band toys.

9. The Triplets were sold by mail and Respondent has the names and addresses of purchasers with the exception of approximately 250,000.

10. The toys are "toys" or "other articles intended for the use of children" within the meaning of 15 U.S.C. 1274(c), as amended.

Substantial Risks of Injury

11. Children can become caught on the toy itself or entangled in the strings or cords that may be used to hang or tie it over a crib or playpen and strangle or suffer serious injury.

12. In October, 1984, a ten month old boy strangled to death when he became entangled in cords used to tie a Triplet toy to his crib.

13. In December of 1985, a seven month old girl was asphyxiated when she became caught on the Triplet toy which was hung over the crib.

14. The toys contain a defect or defects which, because of the pattern of defect, the number of defective toys distributed in commerce, the severity of the risk of injury or otherwise, create a substantial risk or risk of injury to children within the meaning of section 15(c) of the FHSA, 15 U.S.C. 1274(c).

Relief Sought

Wherefore, Complaint Counsel requests that the Commission:

A. Determine that the toys contain a defect or defects which create a substantial risks or risks of injury to children within the meaning of section 15 (c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274 (c)(1) and (c)(2).

B. Determine that public notification under section 15(c)(1) of the FHSA, 15 U.S.C. 1274(c)(1), is required to adequately protect the public from the toys.

C. Order Respondent under section 15(c)(1), FHSA, 15 U.S.C. 1274(c)(1), to

(1) Give public notice that the toys contain a defect or defects which create a substantial risk or risks of injury to children and of the remedies available to remove the risk(s) of injury.

(2) Mail such notice to each person who is a manufacturer, distributor, or dealer of the toy.

(3) Mail such notice to every person to whom Respondent knows the toy was delivered or sold.

D. Specify the form and content of any notice required to be given.

E. Determine in accordance with section 15(c)(2), FHSA, 15 U.S.C. 1274(c)(2), that it is in the public interest to repair the toys so that they will not contain a defect which creates a substantial risk of injury to children, to replace the toys with a like or equivalent product which is not defective, or to refund to consumers the purchase price of the toys.

F. Order Respondent under section 15 (c) (2) FHSA, 15 U.S.C. 1274 (c)(2), to repair the toys so that they do not contain a defect which creates a substantial risk of injury to children; replace the toys with a like or equivalent toy or article which is not defective; or refund to consumers the purchase price of the toys.

G. Specify that refunds must be made to consumers if refunds are given.

H. Order Respondent to make no charge to consumers and to reimburse them for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any order issued under section 15(c) FHSA, 15 U.S.C. 1274(c), as provided for in section 15(d)(1) of the FHSA, 15 U.S.C. 1274(c)(1).

I. Order Respondent to reimburse distributors and dealers for expenses in connection with carrying out any orders issued under sections 15 (c)(1) or (c)(2) with regard to the toys as provided for in section 15(d)(2) of the FHSA, 15 U.S.C. 1274(d)(2).

J. Prohibit Respondent from manufacturing the toys; from selling and distributing the toys in commerce; and from importing the toys into the customs territory of the United States, in accordance with section 15(c)(2) of the FHSA, 15 U.S.C. 1274 (c)(2).

K. Order Respondent to submit a plan satisfactory to the Commission within 15 days of the issuance of the Final Order directing the actions specified in paragraphs C through J above in accordance with section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2).

L. Order Respondent to keep records of their actions taken to comply with paragraphs C through K above, and to supply these records to the Commission staff for a period of three years after entry of a Final Order issued by the Commission requiring notice and remedial action, for the purpose of monitoring compliance with the Final Order.

M. Order Respondent to notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale, or by petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, the creation or dissolution of subsidiaries, the dissolution of the corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission requiring notice and corrective action for a period of three years after issuance of said Final Order.

N. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the FHSA.

Dated: May 29, 1986.

Issued by order of the Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director for Compliance and Administrative Litigation.

Johnson & Johnson Inc., a Corporation; List and Summary of Documentary Evidence

1. In-Depth Investigation 860210CAA3053.

2. In-Depth Investigation 841015NYC5004.

3. "Soft Triplets: Play and Learning Guide," Johnson & Johnson Child Development Publications [1981].

4. "Soft Triplets: Play and Learning Guide," Johnson & Johnson Child Development Publications [1984].

5. "Soft Triplets: Play and Learning Guide," Johnson & Johnson Child Development Publications [1985].

6. "Piglet Crib Gym: Play and Learning Guide," Johnson & Johnson Child Development Publications [1981] and Insert, "How to Turn Your Baby's Soft Piglet Toy into a Piglet Crib Gym," [1982].

7. "Triplets Marching Band: Play and Learning Guide," Johnson & Johnson Child Development Publications [1985].

8. Advertisement, Parents Magazine, January, 1985.

9. Advertisement, Baby Talk, February, 1985.

10. Advertisement, Parents, 1985.

[FR Doc. 86-12712 Filed 6-5-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of meeting: Monday-Friday, 23-27 June 1986.

Times of meeting: 0800-1630.

Places: Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Helicopter Lift Capabilities in Europe will meet to review Army models and processes for determination of requirements and capabilities of helicopters. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-12705 Filed 6-5-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate

AGENCY: Department of Energy, DOE.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant in the amount of $25,000 for fiscal year 1987, as the first of three projected awards of $25,000 each in partial support of the United Nations Institute for Training and Research. Pursuant to § 600.7(b) of the DOE Financial Assistance rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to the United Nations Institute for Training and Research.

Procurement request number: 01-86FE60820.000.

SUPPLEMENTARY INFORMATION: The United Nations Institute for Training and Research (UNITAR/UNDP) is preparing to publish the Catalogue of Heavy Crude and Tar Sands Resources, and World Legislation on Heavy Crude Oil.

UNITAR is the organization in the world dedicated to promoting international cooperation concerning heavy crude and tar sands resources and developing and distributing related information. The DOE is vitally interested in helping meet the world's demands of the future.

Therefore, the DOE has determined that this award to the UNITAR/UNDP on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Shirley Jones/Glen R. Taranto, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Ave. SW., Washington, DC 20585, [202] 252-4065.

Issued in Washington, DC, on May 30, 1986.

David G. Newman,

Director, Office of Procurement Operations.

[FR Doc. 86-12711 Filed 6-5-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues indentified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its third meeting on Friday, June 20, 1986, starting at 10:00 a.m., in the Odessa Room of the DuPont Hotel, DuPont Conference Center, Eleventh and Market Street, Wilmington, Delaware.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Review the factors affecting petroleum supply and demand.

3. Discuss the Group assignments.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 29, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-12710 Filed 6-5-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines, After Partial Wellhead Decontrol (Cranberry Pipeline Corp.; Order Denying Request for Clarification

Issued: June 2, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

On March 20, 1986, Cranberry Pipeline Corporation (Cranberry) filed a request for clarification to confirm that its transportation arrangement on behalf of Columbia Gas Transmission Corporation would qualify under the transitional rules of Order No. 436. We deny Cranberry's request.

Cranberry is an intrastate pipeline company in the State of West Virginia and an affiliate of Cabot Corporation (Cabot). On February 28, 1962, pursuant to a reorganization plan approved by the Public Service Commission of West Virginia, Cabot was authorized to convey its gathering and pipeline facilities to Cranberry. Cranberry became an intrastate pipeline, and Cabot shed its intrastate pipeline functions and became a local distribution company.

Cabot has a producer certificate [1] and a transportation rate schedule on file at this Commission. Under color of that authority it has transported gas for Columbia Gas Transmission Corporation (Columbia). Cabot received the gas at its Big Creek Compressor Station in McDowell County, West Virginia and redelivered equivalent quantities to Columbia in Wyoming County, West Virginia. In an effort to continue this transportation service for Columbia, on April 9, 1985 Cranberry executed and agreement with Columbia to transport, under section 311 of the Natural Gas Policy Act (NGPA), 6,000 MMBtu of natural gas per day, for redelivery in Wyoming or Kanawha Counties, West Virginia. However, the effectiveness of the transportation agreement was made contingent upon: (1) Cabot's obtaining Commission approval in Docket No. G-5236 to abandon the similar transportation service Cabot previously provided for Columbia, and (2) Cranberry's obtaining Commission approval to transport for Columbia on a long-term basis under then effective § 284.127 of the Commission's Regulations.

[1] Docket No. G-5236, order issued October 24, 1956.

On June 4, 1985, Cabot filed an application seeking Commission approval to abandon its certificate in Docket No. G-5236-006. Cranberry, filing concurrently with Cabot, applied for Commission authorization pursuant to section 311(a)(2) of the NGPA and § 284.127 of the Commission's Regulations for authorization to transport on behalf of Columbia. As of October 9, 1985, neither application had been acted upon. As to that date, Cranberry was not transporting gas pursuant to section 311 and Part 284, and neither was Cabot.

Cranberry argues that it should be accorded transition treatment because Cranberry's corporate parent, Cabot was transporting gas on behalf of Columbia long before the issuance of Order No. 436. Cranberry argues that it should be construed as a successor in interest to Cabot. We disagree.

Section 284.105 specifically limits transitional treatment to transportation arrangements that were authorized and commenced on or before October 9, 1985. As of that date, Cranberry had not commenced transportation. Cranberry's "successor in interest" argument is devoid of merit. Cranberry cannot substitute itself for Cabot in any event [2] and, more to the point, Cabot performed the transportation for Columbia pursuant to a certificate under the Natural Gas Act, not pursuant to section 311 and Part 284. Therefore, there is no basis for any claim of a right to transitional treatment; as of October 9, 1985, there was no section 311 transportation arrangement in existence, and therefore nothing to be accorded transitional treatment.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12782 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Natural Gas Pipeline Co. of America); Order Granting Request for Clarification

Issued: June 2, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

On January 17, 1986, Natural Gas Pipeline Company of America (Natural) filed a request for clarification of § 284.223(g)(1) of the regulations adopted in Order No. 436.[1] specifically, Natural seeks clarification that the volume of high-priority end-use gas eligible for continued transportation authorization under the transitional provisions of § 284.223(g)(1) is the highest daily volume of gas actually transported for high-priority end uses prior to October 9, 1985. In other words, Natural seeks clarification that this high-priority "peak" is the permissible level of transportation service for high-priority gas under § 284.223(g)(1). Natural also seeks clarification that it may rely on "later-in-time affidavits" from its high-priority end users to establish this "peak" or permissible volume of transportation under § 284.223(g)(1). We grant the clarification request.

Natural reports that it halted transportation of certain transactions originally authorized under former § 157.209(e) (which authorized transportation for any end use regardless of priority) as of November 1, 1985, because of uncertainty as to whether those transactions would be "grandfathered" pursuant to § 284.223(g)(1). Natural states that under some of those transportation arrangements, both high-priority and low-priority end-use volumes were transported. However, the percentage of gas transported for high-priority end uses did not remain constant and may have fluctuated on daily basis.

In the order granting rehearing in *Midwest Solvents Company*, 33 FERC ¶ 61,395 (December 19, 1985), we determined that transportation for high-priority end users qualifies for continuing authorization under § 284.223(g)(1), even though originally applied for under § 157.209(e), because such high-priority transportation was automatically authorized under former § 157.209(a)(1). In a subsequent *Southern Natural Gas Company* clarification order, 33 FERC ¶ 61,444 (December 27, 1985), we stated that gas which would have qualified for transportation under former § 157.209(a)(1) for high-priority end use, and for which transportation had commenced prior to October 9, 1985, was eligible for the transitional provisions of § 284.223(g)(1) to the extent of the high-priority use, even though not all of the gas flowing to the end user was for such high-priority uses.

The transitional provisions limit transactions qualifying thereunder to the operative terms and conditions that

[2] *See, e.g.*, Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol [Hadson Gas Systems, Inc.], 33 FERC ¶ 61,142 (issued October 30, 1985); *see also*, Berkshire Gas Company), 33 FERC ¶ 61,378 (issued December 13, 1985).

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

existed on October 9, 1985.[2] The transitional rule for high-priority transportation arrangements (18 CFR 284.223(g)(1)) states:

> In the case of transportation authorized under § 157.209(a)(1) which commenced on or before October 9, 1985, such transportation is deemed to be authorized under this section for the full term originally certificated subject to the provisions of § 284.7 of this chapter. *In all other respects, the terms and conditions existing prior to November 1, 1985, shall continue for this period.* (Emphasis added.)

The purpose of this provision was to allow a transporter to continue its high-priority transportation service as that service existed on and prior to October 9, 1985. Transporters, like Natural, which have transactions where an end user consumed gas for both high-and low-priority uses, are authorized under the transitional rule to continue their high-priority transportation at pre-October 10, 1985 levels.

We grant Natural's request for clarification that the highest daily volume of gas actually transported for a high-priority use prior to October 10, 1985, may be used to measure the volume eligible for continuation under § 284.223(g)(1). Further, Natural's proposal to accept "Later-in-time affidavits" supplied by those end users to verify the highest daily volume of high-priority gas actually transported prior to October 10, 1985, is acceptable.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12783 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines, After Partial Wellhead Decontrol (Natural Gas Pipeline Co. of America—Texoma); Order Denying Petition for Clarification

Issued: June 2, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

On March 12, 1986, Natural Gas Pipeline Company of America filed a petition for clarification or waiver of Order Nos. 436 and 436-A to enable it to elect to perform transportation services under Order No. 436 on a physically isolated segment of its system without subjecting the rest of its system generally to the requirements of Order No. 436. This order denies the petition.

Specifically, Natural states that it has acquired 39 miles of pipeline that is physically isolated from Natural's system.[1] The pipeline segment was part of a crude oil pipeline purchased and converted to gas service by Houston Pipeline Company (HPL), Transok, Inc., and Natural (or their affiliates). The remaining portions other than the 39-mile segment are owned and operated by Transok as part of its Oklahoma intrastate system and by HPL as part of its Texas intrastate system.[2] Natural further states that in the October 18, 1984 order authorizing it to acquire and operate the 39-mile segment, the Commission established an initial rate based on the incremental cost of service of that segment. That order also requires Natural to keep all costs associated with that segment separate from its integrated system costs, to maintain separate accounts and to support all costs if Natural later seeks to integrate that segment into its general system.

Natural states that, based on the foregoing, this segment is physically isolated from its general system. It has separate customers, tariffs and gas supplies, none of Natural's own system supply gas is transported through this segment, and no sales are made by Natural from this segment. Natural therefore contends that it should be permitted to obtain a blanket transportation certificate under Subpart G of Part 284 limited to this segment without affecting Natural's general system or customers on that system. It requests that the Commission clarify or waiver Order Nos. 436 and 436-A to assure Natural that it may provide Order No. 436 transportation through this 39-mile segment without subjecting its general system to the requirements of Order No. 436.

On April 16, 1986, Transok filed a statement supporting Natural's petition. Transok states that as an intrastate pipeline, it has already submitted its system to the open access provisions of Order No. 436, and that granting Natural's petition will broaden Transok's access to transportation transactions under section 311 of the Natural Gas Policy Act of 1978.

We deny Natural's petition. When we issued Order No. 436, we contemplated that pipelines would file blanket certificate applications for their entire systems and not merely some parts of their systems.[3]

Natural cites our order in *Midwestern Gas Transmission Company*, 34 FERC ¶ 61,007 (1986) as support for its application. In that decision, we permitted Midwestern to perform transportation services under Order No. 436 on its Northern System without subjecting its Southern System to the requirements of Order No. 436. However, we made clear in that order that Midwestern's application was unique in that these two systems had been treated as two separate pipelines since their inception in 1959. Moreover, Midwestern's bifurcated system came into existence only after the Commission rejected an earlier Midwestern proposal to construct a single, integrated pipeline from Tennessee to the Canadian border. That application was rejected because, as the Commission stated at that time, "the system was not designed so that the two sources of supply [one Canadian, the other domestic] could be used alternatively for the greater part of the customer at either end."[4]

The history and design of Natural's system is significantly different than that of Midwestern's. Unlike *Midwestern*, connection of the 39-mile segment to Natural's general system was contemplated when Natural first sought authorization to acquire and operate this segment.[5] As Natural notes in its petition, Natural currently has pending an application in Docket No. CP85-600-000 to interconnect its Amarillo and Gulf coast mainline systems to the new Texoma pipeline, thereby physically intergrating the 39-mile segment (and the remaining portion of the oil pipeline) with its gerneral

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[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order Denying Request For Clarification (J. R. Simplot Company), 33 FERC ¶ 61,379 (December 13, 1985).

[1] The Commission authorized Natural's acquisition, operation and transportation of gas through that facility in its October 18, 1984 order. Natural gas Pipeline Company of America, 29 FERC ¶ 61,073 (1984).

[2] Natural states that an application is currently pending in Docket No. CP85-601-000 for a new partnership, Texoma Interstate Pipeline Company, to acquire and operate portions of the converted pipeline, including the 39-mile segment, as a separate interstate pipeline company. As discussed below, Natural has also filed an application in Docket No. CP85-600-000 to interconnect its Amarillo and Gulf Coast mainline systems to the new Texoma pipeline.

[3] Indeed, there was some concern that some pipelines might attempt to circumvent the conditions of Order No. 436 by seeking blanket certificate authorization only for part of their systems while exempting the remaining portions of their systems, and thereby disadvantage some of their customers. 50 FR 42408, 42432 (1985), Order No. 436, *mimeo* at IV. A. 41.

[4] *See Midwestern*, 34 FERC ¶ 61,007 (1986).

[5] *See* Docket No. CP84-433-000, Letter from Henry S. May, Jr. to Robert J. Capina, September 24, 1984, with attached agreement among Houston Natural Gas Corp., Transok, Inc. and Midcon, Inc. dated April 3, 1984. In that agreement, Midcon (Natural's parent company) explicitly reserves "the right to interconnect the Amarillo system and the Gulf Coast system of Natural to the interstate segment" as part of a Phase II expansion plan of its acquisition.

system. In light on Natural's demonstrated intent to connect the systems physically as soon as approval can be obtained, and in light of the fact that one jurisdictional entity currently comprises both systems, we see no justification for treating the systems separately for purposes of Order No. 436.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12784 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.); Order Denying Petition for Extension

Issued: June 2, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On April 30, 1986, Tennessee Gas Pipeline Company, a division of Teneco, Inc., filed a petition for extention of time to correct imbalances arising from certain transportation services. In United Gas Pipeline Company, *et al.*, 34 FERC ¶ 61,207 (1986), we established, among other things, (1) an April 30, 1986 deadline for correcting imbalances for inactive contracts (contracts which have terminated or ceased to be authorized under the transition rules, beyond October 31, 1985), and (2) a deadline for correcting imbalances for active contracts (contracts authorized under §§ 284.105 and 284.223(g)) of 90 days from the date the transportation arrangement terminates.[1]

Tennessee contends that this rolling time period is unnecessarily brief and inconsistent with current industry practice. Tennessee contends that, due to the time involved in receiving, compiling, verifying and analyzing raw data, time is required to allow for confirmation of imbalances and negotiation of a method to eliminate the imbalances. With respect to volumes transported by other pipelines, Tennessee states that data becomes available from 45 days to 105 days after the month in which the activity occurs, depending on the complexity of the agreements. In view of the complexity and difficulties associated with correcting imbalances, Tennessee requests that (1) the April 30, 1986 deadline be extended until June 30, 1986, for inactive contracts, and (2) that the 90 day rolling period for active contracts be extended to 180 days from the date the transportation arrangement terminate.

We are denying Tennessee's petition. We established the current deadlines in the *United* order based on requests filed by United Gas Pipeline Company and Natural Gas Pipeline Company. Both petitioners in that proceeding requested a rolling time period of approximately 90 days for active contracts. For inactive contracts, United requested a deadline until March 31, 1986, and Natural requested a deadline until April 30, 1986. We granted both requests, and in order to give the industry the benefit of the doubt, we permitted corrections for inactive contracts until April 30, 1986.

That order was issued on February 18, 1986, and Tennessee did not seek rehearing. Now, on the day of the April 30 deadline and more than two months after its issuance, Tennessee complains that "[c]urrent industry practice requires longer periods of time." Based on the statement in both Statements in both United's and Natural's earlier petitions which resulted in our February 18, 1986 order, we see no compelling reason to grant Tennessee's petition. If the current deadlines are satisfactory not only to these two pipelines, but also other pipelines that did not file petitions for extension of time, we fail to understand why the "current industry practice" is any different for Tennessee. Nor does Tennessee set forth any compelling reasons unique to it that justify a waiver of the deadline. Absent a compelling reason to extend the current deadlines, we see no reason to modify our *United* order.

For the reasons stated above, Tennessee's petition is denied.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12785 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (TransAmerican Natural Gas Corp.; Order dismissing Request for Waiver

Issued: June 2, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 7, 1986, TransAmerican Natural Gas Corporation (TransAmerican) filed a request for waiver of the restrictions in the transitional provisions of § 284.105(a) of the regulations adopted in Order No. 436.[1] TransAmerican seeks the waiver to permit the transportation of gas by Natural Gas Pipeline Company (Natural) on behalf of TransAmerican until such time as Natural is issued a certificate, pursuant to section 7 of the Natural Gas Act, authorizing the transportation of gas for TransAmerican. On November 1, 1985, Natural filed an application for the certificate in Docket No. CP86-131-000. On May 1, 1986, the Commission issued a certificate to Natural in that docket.[2] We are, therefore, dismissing TransAmerican's request for waiver as moot.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12786 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (U.S. Steel); Order Denying Rehearing

Issued: June 2, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 13, 1986, the Commission issued an order denying a request by U.S. Steel Corporation for clarification and waiver of Order No. 436. On March 14, 1986, U.S. Steel filed a request for rehearing. This order denies the petition.

In our February 13, 1986 order, we denied U.S. Steel's petition for clarification or waiver to permit Natural Gas Pipeline Company of America to continue transporting gas under the transition provisions of Order No. 436. Briefly, U.S. Steel's transportation contract references transportation authorization under § 157.209(e)(1) and (e)(2) of the Commission's regulations, even though the transportation qualified for high priority authorization under § 157.209(a). The February 13, 1986 order denied U.S. Steel's petition on the basis that U.S. Steel's contract authorized transportation for 120 days from the date of first delivery, and for a period of two years after receiving prior authorization under §157.209(e). Since neither U.S. Steel nor Natural filed for § 157.209(e) authorization, we concluded that the two year provision of the contract never took effect and that the transportation was only authorized for 120 days.

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[1] Tennessee states that the *United* order did not expressly include exchanges, but that Tennessee assumes that the discussion therein of the deadlines for correcting imbalances also applies to imbalances arising out of exchanges. Tennessee's interpretation is correct.

[1] 35 FERC ¶ 61,007 50 FR. 42408 (October 18, 1985).

[2] 35 FERC ¶ 61,142 (issued May 1, 1986).

On rehearing, U.S. Steel has raised a number of arguments why the transportation should be authorized for the full two year term. First, it argues that the issuance of Order No. 436 constituted a condition of *force majeure* as defined in the contract and that this event suspended the contract. Since the agreement was never terminated, but was in effect on November 1, 1985, U.S. Steel contends that the transportation qualifies for transitional treatment under § 284.223(g).

We decline to decide whether the issuance of Order No. 436 constituted a *force majeure* event as defined in U.S. Steel's contract since it is irrelevant. We denied U.S. Steel's petition on the basis that the two year provision never took effect because neither U.S. Steel nor Natural filed the prior notice application required by their contract to extend its term. Thus, the contract terminated after the expiration of the 120 day period. However, even if the contract had been suspended by the issuance of Order No. 436 as U.S. Steel contends, neither U.S. Steel nor Natural could activate the two year provision since the provisions in § 157.209(e) are no longer effective. In either case, it is irrelevant whether Order No. 436 constituted a *force majeure* event because the condition precedent to activate the two year provision was not, and cannot now, be satisfied.

U.S. Steel further contends that the intent of the parties was to have a contract for a term of two years, once the necessary regulatory approval was secured. It cites a number of cases and treaties for the proposition that contracts should be interpreted to effectuate the intent of the parties and that the Commission should therefore permit the two year term to take effect.

The parties may well have intended to have a two year transportation arrangement. However, in order for the two year term to take effect, we would have to ignore the clear language of the condition the parties inserted as a predicate. In our view, it would be inappropriate in these circumstances to ignore one provision in the contract merely to permit another provision to take effect, or to rewrite a contract to conform it to our presumption of what the parties may have intended.

U.S. Steel argues that Natural's subsequent actions ratified their transportation agreement and that the agreement has therefore remained in effect. Specifically, U.S. Steel contends that on October 31, 1985, the same day Natural ceased transportation to U.S. Steel, Natural filed an application for section 7(c) authority to transport gas to the Gary Works plant. That application was based on the same transportation agreement at issue in this clarification. U.S. Steel contends that by filing the section 7(c) application based on the same transportation contract, Natural ratified its agreement with U.S. Steel and that the contract therefore remains in effect beyond the 120 day period.

We are not convinced by this argument. It seems to us a matter of semantics whether the contract is no longer in effect, or whether the contract remains in effect but the two year authorization is not effective because the condition precedent has not been satisfied. In either case, there is no contractural authorization to continue transportation. While Natural's application for a section 7(c) certificate indicates its willingness to transport gas for U.S. Steel, the fact remains that, under the transition provisions, this contract does not provide that authorization.

In a similar vein, U.S. Steel contends that even if the Commission's interpretation is correct, the Commission should grant relief because both Natural and U.S. Steel made a mutual mistake of fact—that a prior notice application would be filed in a timely manner. U.S. Steel contends that when such a mistake goes to a material term of the contract—in this case, the duration—the Commission should reform the contract to accommodate the intent of the parties to the extent that other parties would not be unfairly affected.

The problem with this argument is that U.S. Steel requests us to reform the contract to the extent that other parties are not unfairly affeced. However, the means for determining whether any party is unfairly affected is the prior notice procedure, the condition U.S. Steel requests us to waive. If we were to reform the contract to effectuate the two-year term without the prior notice procedure, there would be no way of knowing whether other parties would be unfairly affected.[1]

For the reasons stated above, U.S. Steel's petition for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12787 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[1] We note that this denial does not result in economic harm to U.S. Steel's plant in Gary, Indiana. On May 1, 1986, the Commission issued an order authorizing Natural to transport gas under section 7(c) of the Natural Gas Act to the Gary plant. 35 FERC ¶ 61,142 (1986). That authorization extends for one year from the date of issuance. While we are denying U.S. Steel's petition, U.S. Steel will still be able to receive its required gas supplies.

[Docket No. RP86-90-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Black Marlin Pipeline Company (Black Marlin) on *May 30, 1986*, tendered for filing as part of its FERC Gas Tariff, the following Tariff Sheets:

Original Volume No. 1

Cover Sheet

1st Revised Sheet No. 1
2nd Revised Sheet No. 3
1st Revised Sheet No. 102
1st Revised Sheet No. 105
1st Revised Sheet No. 106
Original Sheet No. 106A
Original Sheet No. 109
Original Sheet No. 110
Original Sheet No. 111
Original Sheet No. 112
Original Sheet No. 113
Original Sheet No. 114
1st Revised Sheet Nos. 115–119
Original Sheet No. 219
1st Revised Sheet Nos. 220–299

Original Volume No. 2

Cover Sheet

Revised Cover Sheets to both volumes of Black Marlin's FERC Gas Tariff are being filed to change the name to whom communications concerning the tariff should be addressed.

Sheet Nos. 1 and 3 are being revised to update the Table of Contents and the system map, respectively.

Sheet 102 is being revised to delete references to Original Sheet No. 104 which has been suspended.

Sheet Nos. 105 and 106, are being revised and Sheet Nos. 106A and 109 are being submitted to make service rendered under existing Rate Schedule T–2 equal to service rendered under new Rate Schedule T–3 for the purpose of allocation of available capacity, and to provide for Maximum and Minimum Rates.

Sheet Nos. 219 and 220–299 are being revised to update the index showing delivery points and shippers.

The remaining tariff sheets are being in order to implement a new Rate Schedule T–3, which is applicable to existing transportation service rendered by Black Marlin pursuant to Part 284, Subpart G, of 18 CFR, Chapter I, as such Subpart G was effective prior to November 1, 1985 (hereinafter referred to as "Subpart G").

On October 9, 1985, the Federal Energy Regulatory Commission in Docket No. RM85–1–000 (Parts A–D), issued Order No. 436 (Final Rule). § 284.105 of the Commission's

Regulations provides for the "grandfathering" of self-implementing transportation service authorized and commenced under Subparts B and G prior to October 9, 1985. The applicable regulations also provide that such services may continue after that date, without additional filings, until the earlier of (1) the expiration of the original term of the transportation agreement as it was in effect on October 9, 1985, or (2) October 9, 1987. The Final Rule provides that the § 284.7 rate conditions apply to previously authorized transactions by interstate pipelines but that a pipeline could utilize the rates in existence in October 9, 1985 on an interim basis. The Final Rule also requires pipelines offering transportation service pursuant to Subpart B, G of Part 284 (including grandfathered transportation arrangements) to file rates to be effective no later than July 1, 1986 in conformance with the rate conditions of § 284.7.

Prior to October 9, 1985, Black Marlin commenced transportation service for Florida Gas Transmission Co. pursuant to § 284.221 of 18 CFR, Chapter I. The rate applicable to this service was established in Black Marlin's in Docket No. RP81-67-000. Black Marlin has, however, never filed a rate schedule applicable to such transportation arrangement.

Also prior to October 9, 1985, black Marlin commenced transportation service for Lone Star Gas Co. and Humble Gas Transmission Company under Rate Schedule T-2 pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 ("NGPA").

Black Marlin is a Nonmajor natural gas company whose transmission system consists of a fifty-four (54) mile sixteen-inch (16") pipeline extending from a point near Texas City, Texas to the Shell Offshore, Inc. platform in HI Block 136 and a thirteen (13) mile sixteen-inch (16") extension from the Shell Platform in HI Block A-6 to the point of interconnection with the mainline in HI Block 137. Black Marlin' system does not include any mainline compressor facilities. (Black Marlin also owns a two mile, two-inch gathering system in Webb County, Texas used to deliver company owned production to Transco which is not a part of its transmission system). Because of the nature of its system and the services it renders, Black Marlin experiences no material variation in the cost of providing service whether the service is provided during peak or off-peak periods nor are there significant differences in cost in providing transportation over the entire length of its system or only a portion thereof. Also, primarily because of the absence of compression facilities, Black Marlin has no material variable costs which can be segregated and identified to establish a minimum rate as provided for in § 284.7. However, for the purpose of complying with the requirement contained in § 284.7(d)(5)(i) that any rate schedule filed under this section must state a meximum rate and a minimum rate, Black Marlin proposes to establish one cent (1¢) per Mcf as the minimum rate to be charged under Rate Schedule T-2 and T-3. Black Marlin at this minimum rate, would not be charging less than the average variable costs incurred to provide the transportation service.

Black Marlin proposes that the revised tariff sheets filed herein become effective on July 1, 1986, which date is not less than thrity (30) days after receipt of this filing by the Commission.

By Order issued April 29, 1986 in *Black Marlin Pipeline Company*, Docket No. CP80-397-003, the Commission amended its Order of May 28, 1981 in Docket No. CP80-397 (15 FERC ¶ 61,183), which authorizes Black Marlin to transport up to 25,000 Mcf of natural gas per day for Northern Natural gas Company ("Northern") from Galveston Area Block 99, Offshore, Texas, so as to authorize Black Marlin to include up to 15,000 Mcf of gas per day within the existing 25,000 Mcf/d contract quantity for transportation from High Island Area Block 171, Offshore Texas. Accordingly, black Marlin is filing an executed Service Agreement dated May 1, 1986 between Black Marlin and Northern which covers the transportation of up to 25,000 Mcf/d for Northern from Galveston Area Block 99 and High Island Area Block 171 (including up to 15,000 Mcf/d from High Island Block 171) andf supersedes the previously effective Service Agreements dated July 13, 1982 between the parties, covering the transportation for Northern of up to 25,000 Mcf/d from Galveston Area Block 99.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12796 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-95-000]

Canyon Creek Compression Co.; Change in FERC Gas Tariff

June 3, 1986.

Take notice that on May 30, 1986, Canyon Creek Compression Company (Canyon) submitted for filing Second Revised Sheet No. 4 and Original Sheet Nos. 9 and 10 as part of its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986.

Canyon states that the purpose of this filing was to (i) establish transportation rates, to be effective July 1, 1986, which comply with § 284.7(b)(2) of the Commission's Regulations; and (ii) submit initial Rate Schedule T-1 (Transitional Transportation) govening transitional interruptible transportation service provided pursuant to Part 284 of the Commission's Regulations. Implementation of Rate Schedule T-1 will allow Canyon to continue its existing grandfatherd transportation agreements pursuant to 18 CFR 284.105.

The maximum rate Canyon will charge for interruptible transportation will be based on a 100% load factor of its Rate Schedule C transportation rate. The minimum transportation rate will be each interruptible Customer's allocated share of Canyon's variable electric power costs incurred during the month. Canyon proposes to continue to dispose of any interruptible transportation revenue as provided for by Commission Order issued April 23, 1984, Docket No. CP82-538-002.

A copy of this filing was mailed to Canyon's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

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with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12787 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-12-000, 001]

Distrigas Corp., Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

June 3, 1986.

Take notice that Distrigas Corporation (Distrigas) on May 30, 1986 tendered for filing Nineteenth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC) on the above date tendered for filing Nineteenth Revised Sheet No. 3A.

Nineteenth Revised Sheet No. 1 and Nineteenth Revised Sheet No. 3A are being filed pursuant to Distrigas' and DOMAC's purchased LNG cost adjustment provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (decrease) of the price paid for the purchase of LNG together with an amortization over the six-month period, July 1, 1986 through December 31, 1986, of the balance of the unrecovered purchased LNG cost account.

The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC's rates for resale to its distribution customer companies and the amortization over the six-month period, July 1, 1986 through December 31, 1986, of the balance in DOMAC's unrecovered purchased LNG cost account and the GRI Surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effecive July 1, 1986.

A copy of this filing is being served on all affected parties and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12788 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-2-000, 001]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 3, 1986.

Take notice that on May 30, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Nineteenth Revised Sheet No. 4 and Sixth Revised Sheet No. 122 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1986.

East Tennessee states that the purpose of these revised tariff sheets is to reflect PGA rate adjustments based on its anticipated cost of purchased gas and reflects (1) a rate change filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. in Docket No. TA86-3-0 and (2) purchases from various local suppliers. East Tennessee respectfully requests that the Commission grant any waivers of its regulations required in order to make these tariff sheets effective as proposed.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accord with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12789 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-84-000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Florida Gas Transmission Company (FGT) on May 30, 1986 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 3 the following tariff Sheets:

Original Sheet No. 657
Original Sheet No. 658
Original Sheet No. 659
Original Sheet No. 660
Original Sheet No. 661

The above listed tariff sheets are being filed in order to implement a new Rate Schedule WDTS (Western Division Transportation Service), which is applicable solely to existing "grandfathered" self-implementing transportation service rendered by FGT under Part 284 of the Federal Energy Regulatory Commission's (Commission) Regulations in effect on October 8, 1985.

On October 9, 1985, the Commission in Docket No. RM85-1-000 issued Order No. 436 (Final Rule) which substantially changed Commission Regulation of interstate natural gas transportation. Pursuant to § 284.105, the Commission provided for the "grandfathering" of self-implementing transportation service rendered under Part 284. Such service could continue after that date, without additional filings, until the earlier of (1) the expiration of the original term of the transportation agreement as it was in effect October 9, 1985, or (2) October 9, 1987. The Final Rule provided that the rate conditions of § 284.7 will apply to previously authorized transactions by interstate pipelines provided however, that any person offering transportation service pursuant to Subpart B, G or H of Part 284 (including grandfathered transportation arrangements) must file rates to be effective no later than July 1, 1986 pursuant to such rate conditions of § 284.7. Also, under §284.7, FGT is required to have an appropriate rate schedule on file with the Commission for such service not later than July 1, 1988.

Over the past several years, FGT has provided transportation service in the Western portion of its system (facilities west of FGT's mainline compressor No. 12 located in Santa Rosa County, Florida) for various parties pursuant to Part 284. The rates charged for this service have been established in FGT's various rate proceedings. Terms and conditions of the transportation service have been pursuant to individual

contracts, rather than to any filed rate schedule.

FGT's currently effective rates for transportation service in the Western portion of its system were established pursuant to FGT's Stipulation and Agreement in Docket No. RP83–104. Such rates became effective on January 1, 1984 and, with the addition of a minimum rate as set forth below, conform substantially to the requirements of § 284.7. Such rates are volumetric in form and consist of a Facility Charge (12.6¢/MMBTU) designed to recover the non-mileage costs allocated to the service and a Service Charge (4.0¢/MMBTU/100 miles of forward haul) designed to recover the mileage costs allocated to the service. Such rates were designed to recover on a per unit basis the cost allocated to such service on the basis of projected units of service.

The Service Charge component of the rate is based upon the actual distance the gas is transported. There is no material variation in the cost of providing the service due to peak or off-peak periods.

The rates set forth in Rate Schedule WDTS do provide for a maximum and minimum rate. The maximum rates is the currently effective rate established in Docket No. RP83–104. The minimum rate was derived based upon the average variable costs which were allocated to the service in Docket No. RP83–104. Accordingly, Rate Schedule WDTS and the rates set forth therein are tendered for filing pursuant to the requirements of §284.7, to be applicable only to transportation services which are "grandfathered" under Order Nos. 436, *et seq.*

The proposed effective date of the above tariff sheets is July 1, 1986.

Copies of the filings were served on FGT's customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 2 and 3 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12800 Filed 6–5–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84–1–53–017]

K N Energy, Inc.; Proposed Change in FERC Gas Tariff

June 3, 1986.

Take notice that K N Energy, Inc. ("K N") on May 30, 1986, tendered for filing a proposed change in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in compliance with the Commission's February 23, 1984 order issued in Docket No. TA84–1–53. The filing results from the expiration, as of June 30, 1986, of the 31 month "Mid-La Surcharge" collection period which commenced December 1, 1983. The proposed change would decrease the commodity rate under each of K N Energy's jurisdictional rate schedules by 15.78¢ per Mcf.

Copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 12796 Filed 6–5–86; 8:45 am]

BILLING CODE 6710-01-M

[Docket No. RP86–79–000]

Northern Natural Gas Co., Division of Enron Corp.; Tariff Filing

May 27, 1986.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern) on May 21, 1986, tendered for filing proposed changes to its FERC Gas Tariff. Such changes have been filed to comply with §§ 284.7(a) and 284.7(b)(2) of the Commission's regulations, all as more fully explained in the filing which is available for public inspection.

Northern currently provides transportation services under the transitional provisions of Order No. 436 (grandfathered services). It is stated that, pursuant to § 284.7(b)(2) of the Commission's regulations, Northern must file rates in accordance with § 284.7(a) to be effective not later than July 1, 1986, in order to continue providing such services after that date. In this filing, Northern is proposing to charge rates, for its grandfathered services, equivalent to the rates filed in Northern's Offer of Settlement and Stipulation and Agreement of Settlement (S&A) in Docket No. RP85–206, for interruptible transportation service under Rate Schedule IT–1. These rates are proposed to become effective on July 1, 1986, and to remain in effect until rates filed in the S&A are approved to become effective by a final nonappealable order of the Commission.

Copies of the filing were served upon all of Northern's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of 18 CFR. All such motions or protests should be filed by June 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12780 Filed 6–5–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–91–000]

Midwestern Gas Transmission Co., Rate Change and Tariff Revisions

June 4, 1986.

Take notice that on May 30, 1986, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1986.

Substitute Nineteenth revised Tariff Sheet No. 5

Twenty-first Revised Tariff Sheet No. 6

Third Revised Tariff Sheet No. 32
Fourth Revised Tariff Sheet No. 33
Fourth Revised Tariff Sheet No. 34
Third Revised Tariff Sheet No. 120

Midwestern states that these tariff sheets are filed (1) pursuant to § 284.7 of the Commission's regulations in order to reflect maximum and minimum rates for service under Midwestern's Rate Schedules IT-1 and IT-2, and (2) to delete those sections of Rate Schedule IT-1 which reference a now-expired provision of the Settlement Agreement dated February 5, 1985, in *Tennessee Gas Pipeline Company, Division of Tenneco Inc.* Docket Nos. RP83-8 and CP84-441-002.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12802 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-3-5-000, 001]

Midwestern Gas Transmission Co.; Filing Pursuant to Tariff Rate Adjustment Provisions

June 3, 1986.

Take notice that on May 30, 1986, Midwestern Gas Transmission Company (Midwestern) filed Nineteenth Revised Sheet No. 5, Eleventh Revised Sheet No. 7, and Third Revised Sheet No. 163 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1986.

Midwestern states that the purpose of the filing is to reflect for its Southern System PGA rate adjustments based on (1) rate changes filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., (2) purchases directly from Tennessee, and (3) purchases from local producer supplies.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12803 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-67-000]

Mountain Fuel Resources, Inc., Tariff Filing

June 3, 1986.

Take notice that on May 30, 1986, Mountain Fuel Resources, Inc. (MFR) filed, pursuant to Part 154 of the Federal Energy Regulatory Commission Regulations Under the Natural Gas Act, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

MFR states that consistent with the requirements of Order No. 436 *et al.*, the tendered tariff sheets serve to establish, as part of MFR's FERC Gas Tariff, the rates, rate schedules, operating terms and conditions and pro forma service agreements applicable to: (1) Transportation service provided pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and 18 CFR 284.102 and 284.7, and (2) transitional transportation transactions performed in accordance with 18 CFR 284.105, 284.223(g) and 284.7(b). MFR proposes that new Original Volume No. 1-A to its currently effective FERC Gas Tariff, which will incorporate new Rate Schedules T-1, T-2, and T-3, become effective July 1, 1986.

It is explained that proposed Rate Schedules T-1 and T-2 will provide for firm and interruptible transportation service, respectively, on behalf of local distribution companies or intrastate pipeline companies pursuant to NGPA section 311. MFR further explains that Rate Schedule T-3 is restricted to interruptible "grandfathered" transportation service that commenced prior to October 9, 1985, and is provided by MFR for certain existing customers.

MFR additionally states it has reached an agreement with its only sale-for-resale customer, Mountain Fuel Supply Company (MFS), concerning MFS's right to reduce its sale-for-resale maximum daily quantity and, to implement such agreement, is tendering revised rates and tariff provisions to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule CD-1, and a new Sales Service Agreement.

MFR requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1986, and states that copies of the filing have been served upon all of its sales and transportation customers and all pertinent state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

Appendix

Mountain Fuel Resources, Inc.

First Revised Volume No. 1

Fourth Revised Sheet No. 12
First Revised Sheet No. 15
Original Sheet No. 15-A
Original Sheet No. 15-B

Original Volume No. 1-A

Original Revised Sheet Nos. 1-9
Original Revised Sheet Nos. 10-22
Original Revised Sheet Nos. 40-45
Original Revised Sheet Nos. 65-69
Original Revised Sheet Nos. 70-111
Original Revised Sheet Nos. 118-121
Original Revised Sheet Nos. 125-135

[FR Doc. 86-12804 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-67-000]

Natural Gas Pipeline Co. of America, Change in FERC Gas Tariff

June 3, 1986.

Take Notice that on May 30, 1986, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective June 1, 1986:

Original Sheet Nos. 5F and 5G
Second Revised Sheet No 51
First Revised Sheet Nos. 53, 54, and 56
Original Sheet Nos. 91 through 93

Natural states that the purpose of this filing was to (i) submit transportation rates pursuant to § 284.7(b)(2) of the Commission's Regulations; (ii) submit initial Rate Schedule TRT-1 (Transitional Transportation Service) governing transitional interruptible transportation service pursuant to Part 284 of the Commission's Regulations; and (iii) cancel Rate Schedules T-1, T-2, IOST, and EUT-1. Implementation of Rate Schedule TRT-1 would allow Natural to continue its existing grandfathered transportation arrangements in accordance with § 284.105.

A copy of this filing was mailed to Natural's jurisdictional sales customers, applicable transportation customers and to interested state regulatory agencies.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12805 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-82-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

June 3, 1986.

Take notice that on May 30, 1986, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1-A, and Original Volume No. 2 the following tariff sheets:

Original Volume No. 1-A

Third Revised Sheet No. 201
Original Sheet Nos. 337 through 399

Original Volume No. 2

First Revised Sheet No. 2.1
Third Revised Sheet No. 2.2
Second Revised Sheet No. 2.3
Original Sheet No. 2.4
Seventh Revised Sheet No. 3-A
First Revised Sheet No. 3-A.1

Northwest states that the purpose of this filing is to establish Rate Schedule T-6 which applies to Part 284 transportation transactions "grandfathered" under Order No. 436 *et seq.*

The proposed effective date of the tendered tariff sheets is July 1, 1986.

A copy of this filing has been served on all sales and transportation customers and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12806 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-86-000]

Overthrust Pipeline Co.; Tariff Filing

June 4, 1986.

Take notice that on May 30, 1986, Overthrust Pipeline Company (Overthrust) filed, pursuant to Part 154 of the Federal Energy Regulatory Commission Regulations under the Natural Gas Act, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

Overthrust states that the tendered tariff sheets serve to establish a new Rate Schedule T-1, pursuant to 18 CFR § 284.7(b). It is explained that this new rate schedule is proposed to become effective July 1, 1986, and, in accordance with the rate conditions made applicable to "grandfathered" transportation transactions by Commission Order No. 436 *et al.*, will permit the continuation of interruptible transportation service commenced by Overthrust prior to October 9, 1985. Additionally, Overthrust asks to delete a tariff sheet which is no longer applicable to the services it provides.

Overthrust requests waiver of any Commission rules and regulations necessary to permit the tendered tariff sheets to become effective July 1, 1986, and states that copies of the filing have been served upon all of its transportation customers.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

Appendix—Overthrust Pipeline Company

Original Volume No. 1

First Revised Sheet No. 1
Second Revised Sheet No. 2
Fourth Revised Sheet No. 6
Original Sheet No. 6-A (Delete)
Original Sheet No. 12A
Original Sheet No. 12B
Original Sheet No. 12C
Original Sheet No. 12D

[FR Doc. 86-12808 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-96-000]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Sabine Pipe Line Company (Sabine) on May 30, 1986, tendered for filing its First Revised Volume No. 1, proposing changes to and superseding its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986. The proposed changes reflect an increase in revenues from jurisdictional transportation of

approximately $1,600,000 based on the 12 month period ending January 31, 1986. Sabine also proposes to: (1) Eliminate its cost-of-service cost formula basis of rate design; (2) adopt a volumetric rate methodology for cost classification, allocation, and rate design; (3) change its depreciation rates for its offshore transmission plant; and (4) provide open-access transportation services pursuant to FERC Order Nos. 436 and 436–A by tendering for filing initial rate schedules as part of its FERC Gas Tariff, First Revised Volume No. 1. Sabine has filed, on this same date, an abbreviated application for a blanket certificate under the provisions of § 284.221 of the Commission's regulations.

Sabine states that the principal reasons for the proposed increase are: (1) An increase in its operating and maintenance expenses, (2) an increase in its cost of capital and overall rate of return, and (3) its proposed change in depreciation rates.

Copies of the filing were served upon Sabine's customers, the Louisiana Department of Natural Resources and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12809 Filed 6–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–84–000]

Sea Robin Pipeline Co.; Compliance Tariff Filing

June 3, 1986.

Take notice that on May 30, 1986, Sea Robin Pipeline Company (Sea Robin) submitted tariff sheets in compliance with Section 284.7 of the Federal Energy Regulatory Commission's Regulations (Commission's Regulations) to be effective on July 1, 1986.

Sea Robin states that the filing of the tariff sheets is in compliance with the Commission's transportation regulations to reflect rates which will be applicable to a limited number of "grandfathered" interruptible transportation arrangements which the Commission has authorized under § 284.105 of the Regulations to continue until the earlier of contractual expiration or October 9, 1987.

Sea Robin states that its tariff sheets contain both maximum and minimum rates, and are based on costs which underlie Sea Robin's currently effective rates.

Sea Robin states that a copy of its compliance filing was mailed to each of its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12810 Filed 6–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–81–000]

Tarpon Transmission Co.; Proposed Change in FERC Gas Tariff

June 3, 1986.

Take notice that Tarpon Transmission Company ("Tarpon"), on May 28, 1986, tendered for filing First Revised Sheet No. 19 to its FERC Gas Tariff, Original Volume No. 1. Tarpon states that the purpose of the filing is to incorporate into its FERC Gas Tariff the terms of Amendment No. 3 to the Transportation Agreement dated February 15, 1977 ("Agreement") between Tarpon and its sole customer, Trunkline Gas Company ("Trunkline"). Tarpon states further that Amendment No. 3 extends the availability of the Agreement's rate redetermination provision (Article X, Section 10.5) by allowing either Tarpon or Trunkline to request a change in the unit rate utilized to determine Tarpon's monthly charge for transportation service by giving 90 days' written notice to the other prior to the end of the 10th year of the Agreement's primary term (*i.e.*, by giving 90 days notice prior to July 1, 1986). A copy of Amendment No. 3 is included in Tarpon's filing.

Tarpon requests waiver of the notice requirement of the Commission's regulations in order to allow First Revised Sheet No. 19 to become effective on May 28, 1986, the date of filing. Tarpon submits that good cause exists to grant such request because Tarpon and its only customer (Trunkline) concur in the contract amendment which underlies the proposed tariff change.

Tarpon states that copies of its filing have been served upon Trunkline.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–12811 Filed 6–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP86–511–000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

May 28, 1986.

Take notice that on May 22, 1986, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–511–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of natural gas for Cenergy Exploration Company (Cenergy), all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 5,000 dt equivalent of natural gas per day, which Cenergy is said to have available for transportation from reserves in the South East Saturday Island Field, Plaquemines Parish, Louisiana, pursuant to a transportation agreement dated

May 19, 1986. Tennessee would receive the gas at the existing interconnection between the facilities of Cenergy and Tennessee at Tennessee's Meter No. 1–1764 in South East Saturday Island Field, Barataria Bay, Plaquemines Parish, Louisiana.

Tennessee would deliver the gas at (1) the existing interconnection of Creole Gas Company and Tennessee at Tennessee's Meter No. 2–0361, at the tailgate of the Ysclosksy plant, in St. Bernard Parish, Louisiana (Ysclosksy); (2) the existing interconnection between the facilities of Tennessee and Riverway Gas Pipeline Company at Tennessee's Meter No. 2–0003 in LaFourche Parish, Louisiana (Golden Meadows); and/or (3) the existing interconnection between the facilities of Tennessee and Columbia Gulf Transmission Company at Tennessee's Meter No. 1–1034 in Acadia Parish, Louisiana (Egan).

Tennessee states that it is currently transporting on behalf of Monterey Pipeline Company (Monterey), an intrastate pipeline, approximately 4,000 dt per day of casinghead and gas-well gas which Monterey pruchases from Cenergy at Cenergy's offshore statewater platform located in the South East Saturday Island Field, Plaquemines Parish, Louisiana, pursuant to Natural Gas Policy Act of 1978 section 311(a) authority.

Tennessee proposes to charge Cenergy for this transportation service the applicable quantity charge set forth below as well as the effective GRI surcharge is currently 1.32 cents per dt, if applicable:

Point of Delivery and Rate per dt

Ysclosksy—5.00 cents
Golden Meadows—4.89 cents
Egan—11.22 cents

Additionally, it is stated that Cenergy would either (1) provide to Tennessee, at no cost to Tennessee, a daily quantity of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to the applicable percentages as listed below:

Point of Delivery and Fuel Percentage

Ysclosksy—0.46 percent
Golden Meadows—0.54 percent
Egan—0.70 percent

or (2) Tennessee may, at its sole option, elect to provide the applicable fuel quantities to Cenergy at a charge to Cenergy equal to Tennessee's actual weighted average cost of gas for the month in which service was rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–12781 Filed 6–5–86; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TA86–3–9–000,001]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions

June 3, 1986.

Take notice that on May 30, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1986:

First Revised Volume No. 1

Original Sheet Nos. 30A through 30H
First Revised Sheet Nos. 20, 21, and 23 through 30

Sixth Revised Volume No. 2

Fourth Revised Sheet No. 2AA
Third Revised Sheet No. 2DD

Tennessee states that the revised tariff sheets reflect a decrease of 15.65 cents per dth in Tennessee's Gas Rate, consisting of a negative 29.41 cents per dth Current Cost of Gas Rate Adjustment and a 13.76 cents per dth Gas Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account. Tennessee also indicates that the tariff sheets set forth demand surcharges for recovering retroactive Order No. 94 payments in accord with Article VI of the Settlement Agreement (February 5, 1985) in Docket No. CP84–441, *et al.*

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–12788 Filed 6–5–86; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP86–85–000]

Texas Gas Transmission Corp.; Filing

June 4, 1986.

Take notice that on May 30, 1986, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, tendered for filing proposed changes to its FERC Gas Tariff. Such changes have been filed to comply with §§ 284.7(a) and 284.7(b)(2) of the Federal Energy Regulatory Commission's (Commission) Regulations, all as more fully set forth in the filing, which is on file with the Commission and open to public inspection.

Texas Gas currently provides transportation services under the transitional provisions of Order No. 436. Texas Gas states that, pursuant to § 284.7(b)(2) of the Commission's Regulations, Texas Gas must file rates in accordance with § 284.7(a) to be

effective not later than July 1, 1986, in order to continue providing such services after that date. Texas Gas requests waivers of all Commission's Rules and Regulations, as necessary, to permit the tendered tariff sheets to become effective on July 1, 1986.

Copies of the filing were served upon all of Texas Gas's jurisdictional customers and its affected state commissions.

Any person desiring to be heard or to protest said filing, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed by June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12789 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-86-000]

Trailblazer Pipeline Co.; Change in FERC Gas Tariff

June 3, 1986.

Take notice that on May 30, 1986, Trailblazer Pipeline Company (Trailblazer) submitted for filing Third Revised Sheet No. 4 and Original Sheet Nos. 10 and 11 as part of its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986.

Trailblazer states that the purpose of the filing was to (i) establish transportation rates pursuant to § 284.7(b)(2) of the Commission's Regulations; and (ii) submit initial Rate Schedule T-1 (Transitional Transportation) governing transitional interruptible transportation service provided pursuant to Part 284 of the Commission's Regulations. Implementation of Rate Schedule T-1 will allow Trailblazer to continue its existing grandfathered transportation agreements pursuant to 18 CFR 284.105.

The maximum rate Trailblazer will charge for interruptible transportation will be based on a 100% load factor of its Rate Schedule T transportation rates. The minimum rate Trailblazer will charge for interruptible transportation will be one cent per Mcf transported. Trailblazer proposes to continue to dispose of interruptible transportation revenues as provided for in Docket No. CP82-486-000.

A copy of this filing was mailed to Trailblazer's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12790 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-83-000]

United Gas Pipe Line Co.; Compliance Tariff Filing

June 3, 1986.

Take notice that on May 30, 1986, United Gas Pipe Line Company (United) submitted tariff sheets in compliance with § 284.7 of the Federal Energy Regulatory Commission's Regulations (Commission's Regulations) to be effective on July 1, 1986.

United states that the filing of the tariff sheets is in compliance with the Commission's transportation regulations to reflect rates which will be applicable to a limited number of "grandfathered" interruptible transportation arrangements which the Commission has authorized under § 284.105 of its Regulations to continue until the earlier of contractual expiration or October 9, 1987.

United states that its tariff sheets contain both maximum and minimum rates, reflect transportation distance factors, and are based on costs which underlie United's currently effective rates.

United states that a copy of its compliance filing was mailed to each of its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12791 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-11-000, 001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 3, 1986.

Take notice that on May 30, 1986, United Gas Pipe Line Company (United) tendered for filing as part of its Federal Energy Regulatory Commission (FERC or Commission) Gas Tariff, First Revised Volume No. 1, the following tariff sheets: Seventy-Fourth Revised Sheet No. 4; Thirteenth Revised Sheet No. 4-A; Thirteenth Revised Sheet No. 4-B; and Nineteenth Revised Sheet No. 4-C. Tariff Sheets 4, 4-A and 4-B and supporting information are being filed pursuant to Sections 19, 21, 23 and 24 of United's Tariff. Tariff Sheet No. 4-C is submitted pursuant to the letter order issued by the Office fo Pipeline and Producer Regulations dated January 27, 1982 in Docket No. CP81-387-000. The proposed effective date of each preceding Tariff Sheet is July 1, 1986.

United reports that it mailed appropriate copies of the proposed Tariff Sheets and supporting data to its jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before June 11, 1986. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12792 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-83-000]

United Gas Pipe Line Co.; Tariff Revision

June 4, 1986.

Take notice that on May 30, 1986, United Gas Pipe Line Company (United) tendered for filing Original Sheet Nos. 74-F3 and 74-F4 for inclusion in United's FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets reflect revisions to the purchased gas adjustment (PGA) clause in Section 19 of the General Terms and Conditions of United's tariff.

United is proposing a new § 19.13 to its PGA to permit United, in addition to the required semi-annual PGA filings, to adjust its gas rates on two days notice to reflect known and measurable changes in its purchased gas costs.

United reports that it mailed appropriate copies of the proposed Tariff Sheets and supporting data to its jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before June 11, 1986. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12793 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-82-000]

Williston Basin Interstate Pipeline Co.; Tariff Change

June 3, 1986.

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin) on May 30, 1986, tendered for filing, proposed changes to its FERC Gas Tariff. Such changes have been filed to comply with §§ 284.7(a) and 284.7(b)(2) of the Commission's Regulations, all as more fully explained in the filing which is available for public inspection.

Williston Basin currently provides transportation services under the transitional provisions of Order No. 436 (grandfathered services). It is stated that, pursuant to § 284.7(b)(2) of the Commission's Regulations, Williston Basin must file rates in accordance with § 284.7(a) to be effective not later than July 1, 1986, in order to continue providing such services after that date. In this filing, Williston Basin is proposing to revise its Rate Schedule T-4 to allow it to charge rates, for its grandfathered services, in accordance with the compliance cost of service filed in Williston Basin's general rate case in Docket No. RP86-10-000, and on which its currently effective rates are based. These rates are proposed to become effective on July 1, 1986, and to remain in effect for the remaining term of all existing grandfathered services.

Copies of the filing were served upon all of Williston Basin's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed by June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 86-12794 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-82-000]

Wyoming Interstate Co., Ltd., Revised Changes in Rates

June 4, 1986.

Take notice that Wyoming Interstate Company, Ltd. (WIC), on May 30, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1

The purpose of this filing is to comply with 28 CFR 284.105 and 284.7, where the Commisson has required restated rates for transportation under "grandfathered" agreements under Order No. 436. The proposed effective date of the tariff sheets is July 1, 1986.

Copies of this filing have been served on all WIC's transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants to the proceeding. Any person wishing to become a party must file a motion to invtervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12795 Filed 6-5-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140075; FRL-3026-4]

Access to Confidential Business Information by Versar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the Versar, Inc. of Springfield, Virginia for access to information which has been submitted to EPA under sections 4, 5, 6 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than June 20, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll-free: (800-424-9065).

In Washington, DC: (554-1404).

Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-03-3339, Versar, 6850 Versar Center, Springfield, Virginia will conduct studies and report information to EPA that will answer questions concerning the appropriate level of treatment necessary to protect humans and aquatic life from exposure and risks caused by discharges, runoffs, and other sources of chemicals to surface waters. Versar's work under the contract will support exposure and risk assessment work performed under both TSCA and the Clean Water Act (CWA). Some tasks under this contract may require Versar to assist EPA by taking and shipping to designated agents, soil, sediment, and/or fish samples, and helping to write sampling procedures.

Pursuant to 40 CFR 2.306(j), EPA has determined that under EPA Contract No. 68-03-3339, Versar will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to successfully perform specific examinations of water quality on selected river reaches and evaluations of toxic pollutants to surface waters. The studies required by Versar will include the collection and analyses of EPA documents as well as other data available in literature concerning chemicals and their sources to waters. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Versar access to these CBI materials at its facilities in Springfield, Virginia and at EPA Headquarters on a need-to-know basis. Upon completing review of the CBI materials, Versar will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract is scheduled to expire on May 18, 1987.

Versar has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" Security manual. EPA has approved Versar's security plan and has performed the required inspection of their facilities and has found them to be in compliance with the requirements of the manual.

Versar personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 27, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86-12722 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3035-1]

Environmental Impact Statements; Availability; Weekly Receipts

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed May 27, 1986 Through May 30, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860196, DSuppl, AFS, CA, Pacific Southwest Region National Forests, Management of Vegetation for Reforestation, Additional Information, Due: August 11, 1986, Contact: Michael Srago (415) 556-2563.

EIS No. 860198, Draft, FHW, CA, CA-71 Improvements, Halt Avenue Interchange near CA-10 to CA-91, Los Angeles, San Bernardino and Riverside Counties, Due: July 21, 1986, Contact: Michael Cook (916) 551-1307.

EIS No. 860200, Draft, FHW, KY, Blankenbaker Road/I-64 Interchange Improvement, KY-1819 to US 60, Jefferson County, Due: July 21, 1986, Contact: Robert Johnson (502) 227-7321.

EIS No. 860201, DSuppl, COE, AL, Black Warrior and Tombigbee Rivers Maintenance and Operation, New Information, Due: July 21, 1986, Contact: Diane Findley (205) 694-3657.

EIS No. 860202, Report, COE, LA, Larose to Golden Meadows, Hurricane Protection Project, Reactivation of an Access Flotation Channel, Lafourche Parish, Contact: E. Scott Clark (504) 862-2521.

EIS No. 860203, Report, COE, OH, North Fork Local Protection Project, Modifications, Selected 90 foot Channel Plan, Licking River, Licking County, Contact: Willard Hunter (304) 529-5634.

EIS No. 860204, Final, AFS, MT, Helena National Forest, Land and Resource Management Plan and Wilderness Recommendation, Due: July 7, 1986, Contact: Robert Gibson (406) 449-5201.

EIS No. 860205, Final, FHW, IN, Lynch Road Extension, Oak Hill Road to Telephone Road/IN-62 Intersection, Vanderburgh and Warrick Counties, Due: July 7, 1986, Contact: Lawrence Tucker (317) 269-7492.

EIS No. 860206, Final, BOP, OR, Sheridan Federal Correctional Institution Complex, Construction and Operation, Yamhill County, Due: July 7, 1986, Contact: Loy Hayes (202) 272-6535.

EIS No. 860207, Final, AFS, MT, Jardine Joint Venture Gold Mine Project, Permit Approval, Gallatin National Forest, Park County, Due: July 7, 1986, Contact: Sherman Sollid (406) 587-6709.

Dated: June 3, 1986.

Kenneth P. Mittelholtz,

Acting Director, Office of Federal Activities.

[FR Doc. 86-12813 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3029-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 19, 1986 through May 23, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-J82003-MT, Rating EC1, Beaverhead Nat'l Forest, Noxious Weed and Poisonous Plant Control Progam, MT. Summary: EPA endorses control of noxious weeds and supports the integrated pest management alternative described in this draft EIS. However, there are potential impacts associated with the use of chemical and biological pest controls and caution should be exercised in order to avoid damaging non-target plants or animals. EPA stresses that technical comments and recommendations provided by the Department of Agriculture, Environmental Management Division, should be carefully followed and pesticide applications must be made only by State-certified applicators or operators.

ERP No. D-AFS-J82005-MT, Rating EC1, Lewis and Clark Nat'l Forest, 1986-1990 Noxious Weed Control Program, MT. Summary: EPA supports the decision to use an integrated pest management alternative rather than selecting a strict chemical approach. EPA stresses that technical comments and recommendations provided by the Montana Department of Agriculture, Environmental Management Division, should be carefully followed and pesticide applications must be made only by State-certified applicators or operators.

EPA No. D-COE-K85058-CA, Rating EO2, Lighthouse Marine Residential and Commercial Development, Construction and Operation, Permit, CA. Summary: EPA requested a more thorough analysis

of the involved riparian habitat to determine the extent of federally classified wetlands and more information regarding how mitigation for the loss of this habitat will be accomplished. In addition, EPA expressed objections because the removal of riparian vegetation, dredging and other construction/maintenance activities could have significant adverse impacts on water quality and beneficial uses of the Sacramento River. EPA also recommended that other alternatives, including relocating or downsizing both the marina and residential units, could reduce adverse impacts and should be more fully considered. EPA requested additional discussion of groundwater impacts resulting from project construction, maintenance and future activities. EPA further requested additional analysis of impacts to air quality, particularly a more complete description of project impacts on ozone concentrations in the area.

ERP No. D1-FHW-B40041-CT, Rating EO3, CT-11 Improvements, CT-82 in Salem to I-95 in Waterford, 404 Permit, CT. Summary: EPA's major environmental objections relate to the possibility of significant impacts on drinking water resources, wetlands and water quality. EPA recommended that a supplemental EIS be prepared to correct the inadequate impact mitigation analysis contained in the draft statement.

ERP No. D-BR-K36003-CA, Rating EC2, Westland Water District, Drainage Disposal Project, Central Valley Project, CA. Summary: EPA expressed concerns primarily because of potential impacts associated with runoff and seepage of contaminated drainage water; the failure of septic tank systems; and contamination of crops with selenium, due to recycling.

ERP No. D-OSM-L01005-WA, Rating EC1, Black Diamond Petition Area, Designation of Lands Unsuitable for Surface Coal Mining Operations, WA. Summary: EPA suggested three subareas for unsuitable designation and identified Alternative A (Grant the Petition) as the environmentally preferred alternative. Denial of the unsuitability petition could result in moderate air quality impacts, long-term adverse impacts on a wetland, and noise, vibration, psychological, and health-related impacts on area residents. EPA requested that OSMRE clarify how conclusions from the NEPA analysis and petition evaluation will be integrated in the decision-making for this project.

ERP No. D-UAF-K65060-CA, Rating LO, White Point, Air Force Space Division Housing Project, Construction and Operation, Los Angeles Air Force Station, CA. Summary: EPA requested that the final EIS discuss air quality mitigation measures in more detail and whether the project is consistent with regional air quality plans.

Final EISs

ERP No. F-AFS-J65089-MT, Lolo Nat'l Forest, Land and Resource Mgmt. Plan, MT. Summary: EPA is pleased in the final EIS that projects which cannot meet State water quality standards will either be redesigned so that they meet the standards or they will be dropped. EPA believes that application of best management practices (BMPs) does not necessarily guarantee protection of water quality and stream uses. Strong water quality, watershed, and fisheries monitoring programs must be developed and maintained to assure protection of water quality and stream uses.

Regulation

ERP No. R-ASC-A99068-00, Conservation Reserve Program (CRP)—Interim Rule, 7 CFR Part 704 (51 FR 8780). Summary: EPA supports the conservation reserve program, but is concerned that its implementing regulations do not adequately incorporate water quality and beneficial use objectives. Further, the program should involve appropriate water quality and fish and wildlife agencies and should establish an effective monitoring and evaluation requirement.

Dated: June 3, 1986.

Kenneth P. Mittelholtz,

Acting Director, Office of Federal Activities.

[FR Doc. 86-12814 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59767; FRL-3026-6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-149—June 9, 1986.

Y 86-150 and 86-151—June 8, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-149

Manufacturer. Confidential.
Chemical. (G) Silicone polyester.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-150

Manufacturer. Confidential.
Chemical. (G) 2-propenoic acid copolymer, potassium salt.
Use/Production. (G) Dispersant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-151

Manufacturer. Confidential.
Chemical. (G) 2-propenoic acid copolymer, alkali metal salt.
Use/Production. (G) Dispersant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: May 27, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-12723 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51625; FRL-2988-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1043 and 86-1044—August 13, 1986.
P 86-1045, 86-1046, 86-1047, 86-1048 and 86-1049—August 16, 1986.
P 86-1050, 86-1051, 86-1052, 86-1053, 86-1054, 86-1055, 86-1056, 86-1057, 86-1058, 86-1059, 86-1060, 86-1061, 86-1062, 86-1063, 86-1064, 86-1065, and 86-1066—August 17, 1986.
P 86-1067, 86-1068 and 86-1069—August 18, 1986.
P 86-1070, 86-1071 and 86-1072—August 19, 1986.

Written comments by:

P 86-1043 and 86-1044—July 14, 1986.
P 86-1045, 86-1046, 86-1047, 86-1048 and 86-1049—July 17, 1986.
P 86-1050, 86-1051, 86-1052, 86-1053, 86-1054, 86-1055, 86-1056, 86-1057, 86-1058, 86-1059, 86-1060, 86-1061, 86-1062, 86-1063, 86-1064, 86-1065 and 86-1066—July 18, 1986.
P 86-1067, 86-1068 and 86-1069—July 19, 1986.
P 86-1070, 86-1071 and 86-1072—July 20, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51625]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1043

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Monosubstituted alkoxyaminotriazine.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,500 mg/kg; Irritation: Eye—Very mild; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P 86-1044

Manufacturer. E.I. Pont de Nemours and Company, Inc.
Chemical. (G) Monosubstituted alkoxyaminotriazine.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential
Toxicity Data. Acute oral: 980 mg/kg; Irritation: Eye—Very mild; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P 86-1045

Manufacturer. Confidential.
Chemical. (G) Hydroxy ester.
Use/Production. (S) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1046

Manufacturer. Confidential.
Chemical. (S) Dialkyl carbamate.
Use/Production. (S) Industrial lubricant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential
Environmental Release/Disposal. Confidential. Disposal by incineration.

P 86-1047

Importer. Ciba-Geigy Corporation.
Chemical. (S) Polyaminoamide.
Use/Import. (S) Industrial maintenance and marine coatings architectural. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, inhalation and ocular, a total of 2 workers, up to 4-8 hrs/da.
Environmental Release/Disposal. No data submitted.

P 86-1048

Manufacturer. Hach Company.
Chemical. (S) N,N-dimethylethanedithioamide.
Use/Production. (S) Industrial and commercial indicator for determination of platinum and palladium. Prod. range: 5 kg.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 12 workers, up to 2 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. Less than 1 kg released to water. Disposal by publicly owned treatment works (POTW).

P 86-1049

Importer. Lonza Inc.
Chemical. (S) Acetic acid, cyano-2-ethoxyethyl ester.
Use/Import. (S) Material will be experimentally tested as an adhesive to many industries currently being used in medical casting material. Import range: 8-12 metric tons.
Toxicity Data. No data submitted.
Exposure. Import: dermal and inhalation, a total of 8 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Trace to 1 kg/batch released to air. Disposal by own water treatment works.

P 86-1050

Importer. Confidential.
Chemical. (S) Di(phenoxyethyl)formal.
Use/Import. (S) Industrial and commercial plasticizer for paints. Import range: 1,000-1,200 kg/yr.
Toxicity Data. Acute oral: 8.93 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Distribution fatty tissue test: 1,000 mg/kg.
Exposure. Processing: a total of 10 workers.
Environmental Release/Disposal. No release.

P 86-1051

Manufacturer. Confidential.
Chemical. (G) Polyether urethane polymer.
Use/Production. (S) A protective coating for fabrics and other flexible substrates. A combining or laminating adhesive for fabrics and plastics. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. Confidential.

P 86-1052

Importer. Confidential.
Chemical. (G) Siloxane, dimethyl, dihydroxyalkyl, terminated reaction product with oxepanone.
Use/Import. (G) Paint additive, open, non-dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: 10.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight.
Exposure. Use: dermal and inhalation.
Environmental Release/Disposal. No data submitted.

P 86-1053

Importer. Confidential
Chemical. (G) Siloxane, dimethyl, dihydroxyalkyl, terminated reaction product with oxepanone.
Use/Import. (G) Paint additive, open, non-dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: 10.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Use: dermal and inhalation.
Environmental Release/Disposal. No data submitted.

P 86-1054

Importer. Confidential.
Chemical. (G) Subetituted polyacrylamide.
Use/Import. (G) Non-dispersive use. Import range: 3,500-25,000 kg/yr.
Toxicity Data. Acute Oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; EC_{50} 3 hr; 1,713 mg/1; LC_{50} 96 hr (Brachydanio rerio): 4.4 mg/1.
Exposure. Processing: dermal and ocular, a total of 2 workers/shift, 1 hr/shift.
Environmental Release/Disposal. Disposal by POTW.

P 86-1055

Manufacturer. Confidential.
Chemical. (G) Polyester urethane methacrylate blocked.
Use/Production. (S) Industrial component of radiation cure elastomeric printing stamp resin. Prod. range: 20,000-48,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 18 workers, up to 6 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. 1 to 8 kg/batch to control techlogy. Disposal by incineration.

P 86-1056

Manufacturer. Confidential.
Chemical. (G) Polyester urethane methacrylate blocked.
Use/Production. (S) Industrial component of radiation cure elastomeric printing plate resin. Prod. range: 50,000-120,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 18 workers, to 6 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 1 to 8 kg/batch to control technology. Disposal by incineration.

P 86-1057

Manufacturer. Confidential.
Chemical. (G) Poly-[(alkoxycarbonyl) alkyl]polysulfide.
Use/Productions. (G) Commercial and consumer additive for fertilizers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1058

Manufacturer. Confidential.
Chemical. (G) Poly-(alkyl) polysulfide.
Use/Production. (G) Commercial and consumer additive for fertilizers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1059

Manufacturer. Confidential.
Chemical. (G) Acrylate capped brominated polyether ester of benzophenonetetracarboxylic dianhydride.
Use/Production. (S) Electronic photoresist and solder mask. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1060

Manufacturer. Confidential.
Chemical. (G) Heterocyclic aminal.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1061

Manufacturer. Confidential.
Chemical. (G) Alkoxylated terephthalate glycol ester polymer.
Use/Production. (S) Industrial component for urethane foam insulating product. Prod. range: 16,000,000-28,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, up to 17 hrs/da, up to 2 da/yr, 250 man hrs/yr.
Environmental Release/Disposal. 5 to 10 kg/batch released to water with 10 to 30 kg/batch to control technology. Disposal by POTW.

P 86-1062

Manufacturer. The Good Year Tire and Rubber Company.
Chemical. (G) Butadiene/bound antioxidant copolymer.
Use/Production. (S) Industrial polymeric antioxidant. Prod. range: 120,000-2,721,600 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 29 workers, up to 24 hrs/da, up to 272 da/yr.
Environmental Release/Disposal. Release to air and water. Disposal by POTW.

P 86-1063

Manufacturer. Confidential.
Chemical. (G) AMPS co-polymer.
Use/Production. (G) Dispersive. Prod. range: confidenial.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1064

Importer. Rohm and Haas Company.
Chemical. (G) Alkyl methacrylate copolymer.
Use/Import. (G) Additive for petroleum oil products. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Processing: dermal and ocular, a total of 3 workers, up to 8 hrs/da, up to 300 da/yr.
Environmental Release/Disposal. Disposal by solid waste disposal facility.

P 86-1065

Importer. Rohm and Haas Company.
Chemical. (G) Vinyl heterocycle alkyl methacrylate copolymer.
Use/Import. (G) Additive for petroleum oil products. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Processing: dermal and ocular, a total of 3 workers, up to 8 hrs/da, up to 300 da/yr.
Environmental Release/Disposal. Disposal by solid waste disposal facility.

P 86-1066

Importer. Rohm and Haas Company.
Chemical. (G) Vinyl heterocycle alkyl methacrylate copolymer.
Use/Import. Additive for petroleum oil products. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal and ocular, a total of 3 workers, up to 8 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Disposal by solid waste disposal facility.

P 86-1067

Manufacturer. Confidential.

Chemical. (G) Saturated polyester.

Use/Production. (G) Resin converted to paint for use in automotive systems. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1068

Manufacturer. Confidential.

Chemical. (G) Cyanoacrylate ester polymer.

Use/Production. (G) Intermediate for adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1069

Manufacturer. Confidential.

Chemical. (G) Substituted ketone.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1070

Importer. Marubeni America Corporation.

Chemical. (S) 2-Naphthalenesulfonic acid, 7,7'-[(2,4,6-trimethyl-5-sulfo-1,3-phenylene)bis[imino(6-chloro-1,3,5-triazine 4,2-diyl)imino]]bis[4-hydroxy-3-[(4-methoxy-2-sulfophenyl)azo], pentasodium salt.

Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Negative; TLm 48 hrs (Orange medaka): 1,000 parts per million (ppm).

Exposure. Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 86-1071

Importer. Marubeni America Corporation.

Chemical. (S) Benzoic acid, 2-[(2-cyanoethyl)amino]-5-[(5-nitro-2-thiazolyl)azo]-, 2-(2-methylpropoxy)ethyl ester.

Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Negative; TLm 48 hrs (Orange medaka): 1,000 ppm.

Exposure. Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 86-1072

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl phosphine.

Use/Production. (G) Ligand for homogenous catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin-Non-irritant, Eye-Slight.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: May 27, 1986.

Denise Devoe,

Acting Director Information Management Division.

[FR Doc. 86-12734 Filed 6-5-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 86-190, File No. 50100-CM-P-85 and File No. 50134-CM-P-85]

Contemporary Communications Corp. and Microband Corporation of America; for Construction Permits in the Multipoint Distribution Service for a New Station on Channel 2 at Buffalo, NY

Memorandum Opinion and Order

Adopted May 9, 1986.
Released May 29, 1986.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Buffalo, New York. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Contemporary Communications Corporation, Microband Corporation of America and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc 86-12746 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86-191, File No. 50167-CM-P-85, and File No. 50008-CM-P-86]

Microband Corporation of America and Broadcast Data Corp.; For Construction Permits in the Multipoint Distribution Service for a New Station on Channel 2 at Birmingham, AL

Memorandum Opinion and Order

Adopted May 9, 1986.
Released May 30, 1986.
By the Common Carrier Bureau.

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 30 (1980).

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Birmingham, Alabama. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Microband Corporation of America, Broadcast Data Corporation and the Chief of the Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Broadcast Data Corporation, which is a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-301, released August 25, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 86-12749 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in Frank M. Spinks, 77 FCC 2d 20 (1980).

FEDERAL HOME LOAN BANK BOARD

Seapointe Savings and Loan Association, Carlsbad, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Seapointe Savings and Loan Association, Carlsbad, California on May 30, 1986.

Dated: May 30, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-12733 Filed 6-5-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004177-002.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle (port)

Stevedoring Services of America (SSA)

Synopsis: The proposed amendment would add a copy of Agreement No. 224-010804 between the same parties as an appendix to the basic agreement. The appendix sets forth the procedures followed by the parties to resolve disputes and apportion responsibility for claims, judgements, payments and expenses arising from injury to SSA employees which result in claim against SSA or the Port. The appendix was previously allowed to take effect on April 18, 1986. It would supersede any provision to the contrary in any existing leases, contracts or agreements between the parties. It would also apply only to personal injury claims and any future claims which relate to an event or occurrence which arises on or during the period from January 1, 1986 through December 31, 1986.

Dated: June 3, 1986.

By Order of the Federal Maritime Commission

John Robert Ewers,

Secretary.

[FR Doc. 86-12751 Filed 6-5-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens and Southern Georgia Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.219a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commening would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation,* Atlanta, Georgia; to engage *de novo* through its subsidiaries, Citizens and Southern Trust Company (Georgia), N.A., Atlanta, Georgia, Citizens and Southern Trust Company (Florida), N.A., Fort Lauderdale, Florida, and Citizens and Southern Trust Company (South Carolina), N.A., Columbia, South Carolina, in all functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature) pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted throughout the states where each trust is located.

Board of Governors of the Federal Reserve System, June 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12770 Filed 6-5-86; 8:45 am]

BILLING CODE 6210-01-M

Commonwealth Bancshares Corp., et al.; Formations of; Acquisitions of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 fo the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)):

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commonwealth Bancshares Corporation,* Williamsport, Pennsylvania; to acquire 24.99 percent of the voting shares of Heritage Financial Services Corporation, Lewistown, Pennsylvania, and thereby indirectly acquire Russell National Bank, Lewistown, Pennsylvania.

2. *Neffs Bancorp, Inc.,* Neffs, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Neffs National Bank, Neffs, Pennsylvania.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bancshares of Valley City, Inc.,* Valley City, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Valley City, Valley City, North Dakota.

Board of Governors of the Federal Reserve System, June 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12702 Filed 6-5-86; 8:45 am]

BILLING CODE 6210-01-M

Granite State Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Granite State Bankshares, Inc.,* Keene, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Keene Savings Bank, Keene, New Hampshire.

2. *Katahdin Bankshares, Corp.,* Patten, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Katahdin Trust Company, Patten, Maine. Comments on this application must be received not later than June 27, 1986.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Corporation of Alexander City, Inc.,* Alexander City, Alabama; to acquire 100 percent of the voting shares of First Montgomery Bank, Montgomery, Alabama.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation,* Elk Grove Village, Illinois; to acquire 100 percent of the voting shares of Northern Illinois Bancorp, Inc., Joliet, Illinois, and thereby indirectly acquire Louis Joliet Bank and Trust Company, Joliet, Illinois.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First State Bancorp, Inc.*, Caruthersville, Missouri; to merge with Bancshares of Hayti, Hayti, Missouri.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Texcorp, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of First Texas Bank—Irving, N.A., Irving, Texas.

2. *San Diego Bancshares, Inc.*, San Diego, Texas; to become a bank holding company by acquiring 99.05 percent of the voting shares of First State Bank of San Diego, San Diego, Texas.

Board of Governors of the Federal Reserve System, June 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12771 Filed 6-5-86; 8:45 am]

BILLING CODE 6210-01-M

The Summit Bancorp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation*, Summit, New Jersey; to engage *de novo* through its subsidiary, The Summit Mortgage Company, Inc., Summit, New Jersey, in making, servicing, and selling loans such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activites will be conducted in New Jersey.

Board of Governors of the Federal Reserve System, June 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12703 Filed 6-5-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 30, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages.)

Food and Drug Administration

Subject: Adverse Drug Experience Reporting (21 CFR 314.80)—Existing Collection.

Respondents: State or local governments; Businesses or for-profit; Non-profit institutions; Small businesses or organizations.

Subject: Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—Extension—(0910-0045).

Respondents: Businesses or other for-profit; Small businesses or organizations.

Office of Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Screening interview for Household Survey)—NEW.

Respondents: Individuals or households.

National Institutes of Health

Subject: Research and Research Training Grant Application and Related Forms—Extension—(0925-0001).

Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations.

OMB Desk Officer: Bruce Artim.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of packages.)

Office of Inspector General

Subject: Multiple Prospective Payment Related Studies—NEW.

Respondents: Businesses or other for-profit: Non-profit institutions.

OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (Name of OMB Desk Officer).

Dated: May 30, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-12707 Filed 6-3-86; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Study of the Transmission of Human T-Lymphotropic Viruses Type III (HTLV-III) Among Prostitutes

AGENCY: Centers for Disease Control, Public Health Service, HHS.

SUMMARY: The Centers for Disease Control (CDC) has awarded Cooperative

Agreements for the Study of the Transmission of Human T-Lymphotropic Viruses Type III (HTLV-III) Among Prostitutes. Because some of the participants in the study will be incarcerated, the regulations for research involving prisoners as subjects (45 CFR 46.306(C)) apply. The regulatory requirements of 45 CFR Part 46 have been met; therefore, the CDC intends to release funds to commence the research.

FOR FURTHER INFORMATION CONTACT: James W. Curran, M.D., Director, Acquired Immunodeficiency Syndrome Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: A research study on the transmission of human T-Lymphotropic Viruses Type III (HTLV-III) is being conducted under authority of section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

The objectives of the study are (1) to determine the prevalence of HTLV-III infection, as measured by HTLV-III antibody, among female prostitutes, and (2) to correlate seropositivity with behavioral characteristics among female prostitutes. For purposes of this study, a female prostitute is considered to be a woman who has provided sexual services for money or other consideration to males in the past 12 months.

Cooperative Agreements announced in the Federal Register (50 FR 30295) on July 25, 1985, for the support of this study have been awarded to five areas. In two of these areas, Miami and Los Angeles, the recipients of the cooperative agreements propose to offer participation to women who have been arrested for prostitution. For the purposes of this announcement these women are designated as prisoners. The regulatory requirements of 45 CFR Part 46 pertaining to research involving prisoners as subjects have now been met and CDC intends to release funds to commence these research activities.

Dated: June 2, 1986.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 86-12709 Filed 6-5-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86M-0207]

CILCO®, Inc.; Premarket Approval of VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate) (Ophthalmic Surgical Aid)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CILCO®, Inc., Huntington, WV, for premarket approval, under the Medical Device Amendments of 1976, of VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate) (ophthalmic surgical aid). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 7, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

SUPPLEMENTARY INFORMATION: On March 13, 1985, CILCO®, Inc., Huntington, WV 25701, submitted to CDRH an application for premarket approval of VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate). VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate) is indicated for use as an ophthalmic surgical aid in anterior segment procedures including cataract extraction and intraocular lens implantation.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1986.

James S. Benson,

Deputy Director Center for Devices and Radiological Health.

[FR Doc. 86-12704 Filed 6-5-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute, Board of Scientific Counselors Division of Cancer Etiology; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 12–13, 1986, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 1:00 p.m. to recess on June 12, and from 9:00 a.m. to adjournment on June 13, for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

The Board of Scientific Counselors meeting will be closed to the public from 9:00 a.m. to approximately 1:00 p.m. on June 12, 1986, in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evalution of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: May 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–12738 Filed 6–5–86; 8:45 am]

BILLING CODE 4140–01–M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and its subcommittees on June 16, 1986, 8:00 a.m. to adjournment, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616, Bethesda, Maryland, 20892, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: May 28, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–12739 Filed 6–5–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14874–A]

Alaska Native Claims Selection; NANA Regional Corp., Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, 1613, will be issued to NANA Regional Corporation, Inc., U.S. Survey No. 4269, lot 7, block 4, for approximately 1.57 acres. The lands involved are in the vicinity of Kiana, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks in the TUNDRA TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until July 7, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–12899 Filed 6–5–86; 8:45 am]

BILLING CODE 4310–JA–M

Draft Resource Management Plan/ Environmental Impact Statement and Proposed Areas of Critical Environmental Concern for the San Juan Resource Area, Moab District, Utah

May 27, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft resource management plan/ environmental impact statement.

SUMMARY: The draft resource management plan/environmental impact statement (RMP/EIS) for the San Juan Resource Area, Moab District has been prepared for review and comment by the public, federal, state and local agencies, and Indian tribes. The RMP/EIS presents five land use alternatives for management of 1.8 million acres of public land in San Juan County, Utah. Several areas of critical environmental concern (ACECs) are proposed under different alternatives discussed in this document.

The purpose of the RMP is to guide management of the public lands and resources in the San Juan Resource Area, Bureau of Land Management (BLM). A second purpose is to provide a grazing EIS as ordered by the United States District Court.

A 90-day review and comment period will commence with publication of Notice of Availability in the Federal Register by the Environmental Protection Agency. A public meeting will be held July 16, 1986, from 2 to 8 p.m. at the San Juan Resource Area Office, Monticello, UT, to discuss the draft RMP/EIS. To be considered in the final RMP/EIS, comments must be received in the San Juan Resource Area office postmarked no later than Friday, September 5, 1986.

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 1610.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, BLM, Box 7, Monticello, UT 84535; (801) 587–2201.

SUPPLEMENTARY INFORMATION: The San Juan RMP/EIS analyzes five alternative multiple use management plans. Each plan provides management guidance for all relevant resource management programs administered by the San Juan Resource Area. Various combinations of special designations are analyzed under the different alternatives.

Alternatives Analyzed: Five alternative plans are analyzed:

1. Alternative A (no action) presents the continuation of current management.

2. Alternative B emphasizes the production of mineral resources and livestock forage.

3. Alternative C emphasizes use of the public lands for recreation, protection of wildlife habitat, and preservation of watershed values.

4. Alternative D emphasizes the preservation of large tracts of public land to protect vegetation resources.

5. Alternative E (the preferred alternative) provides for continuation of livestock grazing at current levels; protection of certain recreational opportunities, wildlife habitats and watershed values; and making public lands available for production of mineral resources.

Proposed ACECs: Sixteen areas are proposed for special management designation under various alternatives analyzed in the RMP/EIS. Special management designations analyzed were ACEC, Research Natural Area (RNA), and Outstanding Natural Area (ONA). Nine of these areas were considered for ACEC designation in at least one alternative; some were considered for RNA or ONA designation. The other seven areas were considered for ONA designation in at least one alternative.

Special management designations are summarized in the accompanying table.

Gene Nodine,

District Manager.

SPECIAL MANAGEMENT DESIGNATIONS CONSIDERED SAN JUAN RMP/EIS

Special designation area			Value protected	Resource use limitations
Spec. Des.	Acres	EIS alts.		
Bridger Jack Mesa:				
ACEC	3,280	C	Relict plant communities	No surface occupancy; no grazing; closed to ORV use.
RNA	1,760	B	Relict plant communities	No Surface occupancy (C, E) or no lease (D); no grazing; closed to ORV use.
	3,280	D, E		
Lavender Mesa:				
ACEC	640	C	Relict plant communities	No surface occupancy; no grazing; closed to ORV use.
RNA	640	B, D, E	Relict plant communities	No surface occupancy (C, E) or no lease (D); no grazing; closed to ORV use.
Alkali Ridge:				
ACEC	170,320	C, D	Cultural resources	Special conditions on use (C, E) or no surface occupancy (D); limited to ORV use.
	25,880	E		
North Abajo:				
ACEC	85,450	C, D	Cultural resources	Special conditions on use (C, E) or no lease occupancy (D); segregated from mineral entry (D); limited to ORV use (C, E) or closed to ORV use (D).
	35,880	E		
Grand Gulch:				
ACEC	4,240	C, D	Cultural resources (C, D); cultural resources/natural values (E).	No surface occupancy (C, E) or no lease (D); segregated from mineral entry; no grazing in canyon bottom; closed to ORV use (C, D) or limited to ORV use (E).
	49,730	E		
ONA	68,500	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
Hovenweep: ACEC	2,000	D	Cultural resources	No surface occupancy; limited to ORV use.
Dark Canyon:				
ACEC	62,040	E	Natural values	No surface occupancy; segregated from mineral entry; no grazing; closed to ORV use.
ONA	68,100	C, D	Natural values	No surface occupancy (C) or no lease (D); segregated from mineral entry; closed to ORV use.
Slickhorn Canyon: ONA	35,860	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
John's Canyon: ONA	17,500	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
Fish and Owl Canyons: ONA	40,960	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
Road Canyon: ONA	26,500	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
Lime Canyon: ONA	25,200	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
Mule Canyon: ONA	6,080	C, D	Natural values	Special conditions on use or no surface occupancy (C); no lease (D); segregated from mineral entry partially (C) or totally (D); partially limited to ORV use (C); closed to ORV use partially (C) or totally (D).
Arch Canyon: ONA	4,200	D	Natural values	No lease; segregated from mineral entry; closed to ORV use.
Lockhart Basin: ACEC	68,680	C, D	Scenic values	Special conditions on use (C) or surface occupancy (D); partially segregated from mineral entry (D); limited to ORV use or partially closed to ORV use (D).
Cajon Pond: ACEC	40	E	Wildlife values	Special conditions on use (C); partially closed to grazing; limited to ORV use.

[FR Doc. 86-12520 Filed 6-5-86; 8:45 am]

BILLING CODE 4310-DQ-M

Idaho; Public Review Period for USGS/USBM "Mineral Survey Reports"; Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Idaho, Bureau of Land Management (BLM), is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been or will be completed for preliminarily suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the Bureau of Land Management will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Boise, Burley, Idaho Falls, Salmon, Shoshone and Coeur d'Alene.

DATE: New information will be accepted on the report enumerated in this notice until August 22, 1986.

ADDRESS: Send information on reports to: Deputy State Director for Minerals, BLM, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Bob DeTar or Bill LaVelle, BLM, Idaho State Office, Division of Mineral Resources, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1169.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the State Director, Idaho is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluations received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation are not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land designation by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information. Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the Public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

WSA No.	Name	Report No.
[illegible]	Jerry Peak and Jerry Peak West.	MF–1468A, MF–1468B MF–1468C MF–1468D MF–1468E

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed MF reports may be purchased from: Western Distribution Branch, U.S. Geological Survey, Box 25286, Federal Center, Denver, CO 80225, (303) 236–7477.

Dated: May 30, 1986.

Alan B. Tripp,

Acting Deputy State Director for Mineral Resources.

[FR Doc. 86–12700 Filed 6–5–86; 8:45 am]

BILLING CODE 4310–GG–M

Land Tenure Adjustment Project; California Desert Plan; Amendment

AGENCY: Bureau of Land Management; Interior.

ACTION: Initiation of public scoping process for a Land Tenure Adjustment Project through a Notice of Intent to amend the California Desert Plan and initiation of a 30-day public comment period for the Planning Criteria through a Notice of Availability.

SUMMARY: Pursuant to the authorities in the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (section 206) and 43 CFR 1610.2, a 30-day public comment period is initiated to review the planning criteria for amendments to the California Desert Plan and the San Bernardino County General Plan (to include the development of a County safety overlay) as a part of a Land Tenure Adjustment Project proposed jointly by the Bureau of Land Management (BLM) Barstow and Ridgecrest Resource Areas, California Desert District, and the Department of Defense (DOD), Edwards and George Air Force Bases. The Project includes 2.5 million acres of public and private land within Kern, Los Angeles, and San Bernardino Counties. The China Lake Naval Weapons Center serves as the northern boundary of the project area with Fort Irwin Road and Highway 15 as the eastern, the Angeles National Forest as the southern, and the Tehachapi Mountains as the western boundaries.

SUPPLEMENTARY INFORMATION: The Land Tenure Adjustment Project stems from BLM concerns regarding resource management effectiveness where a checkerboard landownership pattern prevails in the Barstow Resource Area. Valuable resource—from fossils to petroglyphs to tortoise habitat to recreation areas-are essentially unprotectable and unmanageable due to the ownership/authority changing every mile. This checkerboard pattern promotes "leapfrog" development, a land use incompatible with the San Bernardino County General Plan policies of creating a logical and orderly residential pattern, directing new urban development to areas where requisite urban services are available, and supporting an essentially open, rural character of the desert.

To further complicate management, the Department of Defense has three airspace corridors (two existing and one proposed) overflying portions of the project area. These corridors include: (1) Ingress into George Air Force Base; (2) a proposed expanded Precision Impact Range Area; and (3) a supersonic/low flying test area.

A number of preliminary management issues (problems, concerns, opportunities) have been identified for the project. These issues include: (1) Landownership Pattern—the checkerboard pattern results in inefficient and costly management of the public resources as well as unavailability of County utilities and services; (2) Multiple Use Classifications—overflying DOD activities are not considered in the designation of public land under various multiple use classifications; (3) Land Use Categories—overflying DOD activities are not considered in the designation of private land under various land use categories; and (4) Public Health and Safety—no safety overlay has been developed by San

BEST COPY AVAILABLE

Bernardino County to address the impacts to public health and safety from the overflying DOD activities

In order to finalize the above issues as well as the planning criteria, the public is invited to submit written comments. Four public workshops have been scheduled to answer questions, discuss the project, and collect any comments available at that time. The workshops are scheduled from 4:00 p.m. to 8:00 p.m. for the following dates and locations in California: June 24, 1986—Quality Inn in San Bernardino at 668 Fairway Drive; June 25—Holiday Inn in Victorville at Interstate 15 and Palmdale Road; June 26—Antelope Valley Inn in Lancaster at 44055 North Sierra Highway; and June 27—Holiday Inn in Barstow at 1520 E. Main.

The planning criteria is available for review at the following locations:

California Desert District Office, 1695 Spruce Street, Riverside, California, 92507, (714) 351–6432;
Barstow Resource Area Office, 831 Barstow Road, Barstow, California, 92311, (619) 256–3565;
Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California, 93555, (619) 375–7125;
Kern County Libraries:
1315 Truxtun Ave., Bakersfield, California, 93301, (805) 861–2135;
9607 California City Blvd., California City, California, 93505, (619) 373–4757, and
131 E. Los Flores, Ridgecrest, California, 93555, (619) 375–7989;
Los Angeles County Library, 1150 W. Avenue J, Lancaster, California, 93534, (805) 948–5029;
Los Angeles Public Library, 630 W. 5th St., Los Angeles, California, 90071, (714) 626–7461;
Palmdale Public Library, 700 E. Palmdale Blvd., Palmdale, California, 93550, (805) 273–3320;
Riverside Public Library, 3581 7th St., Riverside, California, 92501, (714) 787–7203;
San Bernardino County Libraries:
104 W. Fourth St., San Bernardino, California, 92401, (714) 383–1734;
11744 Bartlett, Adelanto, California, 92301, (619) 246–5681;
22061 Highway 18, Apple Valley, California, 92307, (619) 247–2022;
304 E. Buena Vista, Barstow, California, 92311, (619) 256–8491;
16170 Walnut, Hesperia, California, 92345, (619) 244–4699, and
15011 Circle Dr., Victorville, California, 92392, (619) 245–4222;
San Bernardino Public Library, 401 Arrowhead Ave., San Bernardino, California, 92401, (714) 383–5277.

DATES: Written comments on the planning criteria must be received no later than July 7, 1986. Four public workshops are scheduled from June 24–27, 1986 in San Bernardino, Victorville, Lancaster, and Barstow, California (see above for exact times and locations).

ADDRESSES: Written comments should be sent to: Barstow Area Manager, Bureau of Land Management, 831 Barstow Road, Barstow, California, 92311.

FOR FURTHER INFORMATION CONTACT: Wendy Waiwood, Land Use Planner, Bureau of Land Management, 831 Barstow Road, Barstow, California, 92311, (619) 256–3565.

Dated: May 23, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86–12176 Filed 6–5–86; 8:45 am]

BILLING CODE 4310–40–M

[A–21760]

Realty Actions; Arizona; Notice of Reconveyance and Order Providing for Opening Lands

Corrections

In FR Doc. 86–11022 appearing on page 18045 in the issue of Friday, May 16, 1986, make the following corrections:

1. In the first column, under *Parcel A*, ninth line, "South 46° 41′ 39″ " should read "South 46° 42′ 39″ ".

2. In the second column, under *Parcel B*, fifth line, "North 4°K 46′ " should read "North 4°46′ ".

3. In the third column, second line, "West" should read "East".

BILLING CODE 1505–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–17 and 18, 701–TA–275 through 278, and 731–TA–327 through 334 (Preliminary)]

Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, Kenya, Mexico, the Netherlands, and Peru

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.[1]

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 303–TA–17 and 18 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) and Nos. 701–TA–275 through 278 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain fresh cut flowers which are alleged to be subsidized by governments of the following countries:

Canada [2] [Investigation No. 701–TA–275 (Preliminary)],
Chile [3] [Investigation No. 701–TA–276 (Preliminary)],
Israel [4] [Investigation No. 701–TA–277 (Preliminary)],
Kenya [5] [Investigation No. 303–TA–17 (Preliminary)],
The Netherlands [6] [Investigation No. 701–TA–278 (Preliminary)], and Peru [7] [Investigation No. 303–TA–18 (Preliminary)].

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–327 through 334 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that in industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of certain fresh cut flowers which are alleged to be sold in the United States at less than fair value:

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[1] A prior notice of institution and scheduling of a conference was mailed to all persons on the Commission's mailing list, was made available to all those requesting copies, and was posted in the Commission on May 28, 1986. That notice incorrectly assigned the following investigation numbers: Colombia [Investigation No. 701–TA–277 (Preliminary)]; Costa Rica [Investigation No. 303–TA–17 (Preliminary)]; Ecuador [Investigation No. 303–TA–18 (Preliminary)]; Israel [Investigation No. 701–TA–278 (Preliminary)]; Kenya [Investigation No. 701–TA–279 (Preliminary)]; the Netherlands [Investigation No. 701–TA–280 (Preliminary)]; and Peru [Investigation No. 701–TA–281 (Preliminary)].

[2] Fresh cut flowers from Canada subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, of the Tariff Schedules of the United States (TSUS).

[3] Fresh cut flowers from Chile subject to investigation include standard carnations, provided for in item 192.21 of the TSUS.

[4] Fresh cut flowers form Israel subject to investigation include miniature (spray) carnations and gerbera, provided for in items 192.17 and 192.21, respectively, of the TSUS.

[5] Fresh cut flowers from Kenya subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, of the TSUS.

[6] Fresh cut flowers form the Netherlands subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard chrysanthemums, alstroemeria, and gerbera, provided for in item 192.21 of the TSUS.

[7] Fresh cut flowers from Peru subject to investigation include miniature (spray) carnations (TSUS item 192.17), and pompom chrysanthemums and gypsophila, provided for intem 192.21 of the TSUS.

Canada [2] [Investigation No. 731-TA-327 (Preliminary)],
Chile [3] [Investigation No. 731-TA-328 (Preliminary)],
Colombia [4] [Investigation No. 731-TA-329 (Preliminary)],
Costa Rica [5] [Investigation No. 731-TA-330 (Preliminary)],
Ecuador [10] [Investigation No. 731-TA-331 (Preliminary)],
Kenya [6] [Investigation No. 731-TA-332 (Preliminary)],
Mexico [11] [Investigation No. 731-TA-333 (Preliminary)], and Peru [7] [Investigation No. 731-TA-334 (Preliminary)].

As provided in sections 303, 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by July 7, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0300) or Daniel Dwyer (202-523-4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 21, 1986 by Floral Trade Council, Davis, California.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names of addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 13, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202-523-0300) or Daniel Dwyer (202-523-4618) not later than June 10, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before June 17, 1986 a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6)

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to sectoin 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12862 Filed 6-5-86; 8:45 am]

BILLING CODE 7020-02-M

[2] Fresh cut flowers from Colombia subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard carnations, standard chrysanthemums, alstroemeria, gerbera, and gypsophila, provided for in item 192.21 of the TSUS.

[3] Fresh cut flowers from Costa Rica subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard carnations and pompom chrysanthemums, provided for in item 192.21 of the TSUS.

[10] Fresh cut flowers from Ecuador subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard carnations, standard chrysanthemums, and pompom chrysanthemums, provided for in item 192.21 of the TSUS.

[11] Fresh cut flowers from Mexico subject to investigation include standard carnations, standard chrysanthemums, pompom chrysanthemums, provided for in item 192.21 of the TSUS.

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: American Hardware Supply Company, P.O. Box 1510, Butler, PA 16001-1510.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and states of incorporation:

Name and State

Advocate Services, Inc., PA
Total Exposition Concepts, Inc., PA
Speer Hardware Company, AR

B. 1. Parent corporation and address of principal office:

Heritage Container Corp., 454 Livonia Avenue, Brooklyn, New York 11207.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Corrugated Leasing Corp., 454 Livonia Avenue, Brooklyn, New York 11207

State of Incorporation: New York.

C.1. Parent corporation and address of principal office:

Laporte Inc., 3503 Cedar Knoll Drive, Kingwood, Texas 77339

State of Incorporation: Delaware.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

(i) Chemical Specialties, Inc. Old Clyattville Road, P.O. Box 1745, Valdosta, Georgia 31601
State of Incorporation: Georgia.
(ii) Mineral Research and Development Corporation, P.O. Box 610 (Highway 49 at Rocky River), Harrisburg, North Carolina 28075.
State of Incorporation: North Carolina.

D.1. Parent Corporation and Address of Principal Office: United Technologies Corporation, United Technologies Building, Hartford, Connecticut 06101.

2. Wholly-owned subsidiaries or sub-subsidiaries which will participate in the operations, and address of their respective principal offices:

(i) United Technologies Automotive Holdings, Inc., 5200 Auto Club Drive, Dearborn, MI 48126
State of Incorporation: Delaware
(ii) United Technologies Automotive, Inc., 5200 Auto Club Drive, Dearborne, MI 48126
State of Incorporation: Delaware
(iii) United Technologies Automotive, Trim, Inc., 5200 Auto Club Drive, Dearborn, MI 48126
State of Incorporation: Delaware
(iv) United Technologies Electro Systems, Inc., P.O. Box 2226, McCrary Road, Columbus, MS 39701
State of Incorporation: Delaware
(v) Harding Machine Company, Inc., P.O. Box 97, 13060 State St., Route 287, East Liberty, OH 43319,
State of Incorporation: Delaware
(vi) Alma Plastics Company, 303 Valley Avenue, Alma, MI 48126,
State of Incorporation: Delaware
(vii) United Technologies Diesel Systems, Inc., 3664 Main Street, Springfield, MA 01107
State of Incorporation: Delaware
(viii) Carrier Corporation, 6304 Carrier Parkway, P.O. Box 4800, Syracuse, NY 13221
State of Incorporation: Delaware
(ix) Carrier International Corporation, P.O. Box 4808, Syracuse, NY 13221
State of Incorporation: Delaware
(x) FES, Inc, RD #5, Board Road, P.O. Box 2398, York, PA 17405
State of Incorporation: Pennsylvania
(xi) Elliott Turbomachinery Co., Inc., North Fourth Street, Jeannette, PA 15644
State of Incorporation: Delaware
(xii) Diamond Wire & Cable Company, 1601 Wall Street, Fort Wayne, IN 46804
State of Incorporation: Illinois
(xiii) US Samica Export, Inc., P.O. Box 848, Rutland, VT 07501
State of Incorporation: Vermont
(xiv) Hamilton Standard Controls, Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware
(xv) Hamilton Test Systems, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware
(xvi) Hamilton Test Systems California, Inc., Bradley Field Road Windsor Locks, CT 06096
State of Incorporation: Delaware
(xvii) Hamilton Test Systems Wisconsin, Inc., Bradley Field Road, Windsor Locks, CT 06096,
State of Incorporation: Delaware
(xviii) Carrier Service Company, P.O. Box 4800, Syracuse, NY 13221
State of Incorporation: Delaware
(xix) Giffen Service Company, 3422 East Roeser Road, Phoenix, AZ 85040
State of Incorporation: Arizona
(xx) Essex Group, Inc., 1601 Wall Street, Fort Wayne, IN 46804
State of Incorporation: Michigan
(xxi) US Samica Corporation, Rutland, VT 07501,
State of Incorporation: Vermont
(xxii) Excel Wire & Cable Co., 1601 Wall Street, Fort Wayne, IN 46804
State of Incorporation: Illinois
(xxiii) Hamilton Standard Electronics Systems, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware
(xxiv) CTVIP, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware
(xxv) Hamilton Test Systems NAO, Inc., Bradley Field Road, Windsor Locks CT 06096
State of Incorporation: Delaware
(xxvi) Hamilton Standard Digital System, Inc., P.O. Box 115031, 1419 Dunn Drive, Carrollton, TX 75011–5031
State of Incorporation: Delaware
(xxvii) Homogeneous Metals, Inc., P.O. Box 294, Clayville, NY 13322
State of Incorporation: New York
(xxviii) Norden Systems, Inc., Norden Place, P.O. Box 5300, Norwalk, CT 06856
State of Incorporation: Delaware
(xxix) Autosense Systems Limited, Bradley Field Raod, Windsor Lock, CT 06096
State of Incorporation: Delaware
(xxx) P&WC Aircraft Services, Inc., 1150 Airport Dr, South Burligton, Vermont 05401
State of Incorporation: Delaware
(xxxi) PWA International Services, Inc., P.O. Box 2691, West Palm Beach, FL 33402
State of Incorporation: Delaware
(xxxii) Sikorsky Export Corporation, North Main Street, Stratford, CT 06601
State of Incorporation: Delaware
(xxxiii) Turbo Power and Marine Systems, Inc., 3970 RCA Boulevard, Palm Beach Gardens, FL 33410
State of Incorporation: Delaware
(xxxiv) USBI Booster Production Co., Inc., 3910 S. Washington Avenue, Titusville, FL 32708
State of Incorporation: Delaware
(xxxv) International Support Systems, Inc., 308 Farmington Avenue, Farmington, CT 06032
State of Incorporation: Delaware
(xxxvi) Otis Elevator Company, 10 Farm Springs, Farmington, CT 06032
State of Incorporation: New Jersey
(xxxvii) United Technologies Automotive (U.K.) Ltd., 5200 Auto Club Drive, Dearborn, MI 48126
State of Incorporation: Delaware
(xxxviii) Pratt & Whitney Aircraft of West Virginia, Inc., Box 16, Route 3, Bridgeport, West Virginia 26330
State of Incorporation: Delaware
(xxxix) Pratt & Whitney Support Services, Inc., P.O. Box 2691,
State of Incorporation: Delaware
(xxxx) Sikorsky Support Serivces, Inc., North Main Street, Stratford, CT 06601
State of Incorporation: Delaware
(xxxxi) United Space Boosters, Inc., 140 Sparkman Drive, P.O. Box 1626, West Station, Huntsville, AL 35807
State of Incorporation: Delaware
(xxxxii) United Technologies Microelectronics Center, Inc., 1365 Garden of the Gods Road Colorado Springs, 80907
State of Incorporation: Delaware

James H. Bayne,
Secretary.

[FR Doc. 86-12728 Filed 6-5-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/reporting requirements under review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements

under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Miner's Claim for Benefits Under the Black Lung Act; Employment History; Miner Medical Reimbursement Form
1215-0052; CM-911; CM-911a; CM-915
On occasion
57,500 responses; 20,834 hours, 3 forms

The application form filed by the miner for benefits; the coal miner's work history, request by a miner payee for reimbursement of out of pocket covered medical expenses.

Survivor's Claim for Benefits Under the Black Lung Benefits Act
1215-0068; CM-912
On death of miner
Individuals or households
2,350 responses; 783 hr.; 1 form

A survivor of coal miner must file a claim for benefits under the Black Lung Benefits Act, as amended, in order to receive benefits. The claims and supporting documentation are revised by DCMWC claims examiners to determine the survivor's eligibility for benefits.

Survivor's Notification of Beneficiary's Death
1215-0067; CM-1089
On occasion
Individuals or households
3,000 responses; 250 hours; 1 form

The CM-1089 is used to gather information from a beneficiary's survivor to ensure that benefits due the survivor on behalf of a deceased miner a are accurate and continue.

Report of Ventilatory Study; Roentgenographic Interpretation; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study
1215-0090; CM-907; CM-933; CM-933B; CM-988, CM-1159
On occasion
Non-profit institutions; Small businesses or organizations
38,500 responses; 7,70o hours; 5 forms

20 CFR Part 718 specifies that certain information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis be obtained as a routine function of the claims adjudication process. The medical specfications of the regulations have been formatted in a variety of forms to promote efficiency and accuracy in gathering the required data. These forms were designed to meet the need of establishing medical evidence.

Notice of Law Enforcement Officer's Injury or Occupational Disease; Notice of Law Enforcement Officer's Death
1215-0116; CA-721; CA-722
On occasion
Individuals or households; State or local governments; Small businesses or organizations
75 responses; 103 hours; 2 forms

The forms are used for filing claims for compensation for injury and death to non-Federal law enforcement officers under the provisions of 5 U.S.C. 8191 et seq. The forms provide the basic information needed to process the claims made under the Federal Employee's Compensation Act.

Signed at Washington, DC, this 29th day of May, 1986.

Reggie Moore,
Acting Departmental Clearance Officer.

[FR Doc. 86-12470 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-23-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Burlington Industries et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identifed in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 16, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 16, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of May 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
Burlington Industries Domestic Div. (workers)	Rocky Mount, VA	5/8/86	5/5/86	TA-W-17,437	Water bed sheets.
Bingham-Willamette Co. (workers)	Shreveport, LA	5/5/86	4/25/86	TA-W-17,438	Pumps and repair.
Brower Manufacturing Co. (workers)	Quincy, IL	5/16/86	5/13/86	TA-W-17,439	Animal feeders, waters, brooders, incubators, automatic feed systems.
Dresser Atlas (workers)	Williston, ND	5/15/86	5/9/86	TA-W-17,440	Oilwell logs.
Elco Housewares, Inc. (USWA)	Massillon, OH	5/16/86	5/15/86	TA-W-17,441	Kitchen pots and pans.
Florsheim Shoe Co. (ACTWU)	Chicago, IL	5/7/86	5/5/86	TA-W-17,442	Men's shoes.
Jeffrey Chain Co. (Shopmens)	Morristown, TN	5/6/86	5/2/86	TA-W-17,443	Industrial chains and chain parts.
J. Seven Sportswear Inc. (ILGWU)	Wind Gap, PA	5/16/86	4/11/86	TA-W-17,444	Ladies' sportswear.
Lone Star Steel (USWA)	Lone Star, TX	5/16/86	5/15/86	TA-W-17,445	Oil country tubular goods.
Nowsco Well Service (workers)	Wooster, OH	5/17/86	5/9/86	TA-W-17,446	Oil well servicing.
Pittsburg and Midway Mining Co., Pleasant Hill Mine (workers)	White Plains, KY	5/15/86	5/13/86	TA-W-17,447	Mine and clean coal.
Robertshaw Controls Co., Tennessee Div. (UAW)	Lebanon, TN	5/16/86	5/12/86	TA-W-17,448	Mechanical timing mechanisms.
Rochet Sales & Rental, Inc. (workers)	Williston, ND	5/17/86	5/9/86	TA-W-17,449	Oilfield service rentals, oil tanks.
T & N Warehouse (USWA)	Lone Star, TX	5/16/86	5/15/86	TA-W-17,450	Warehousing and distribution of oil country tubular goods.
TMBR Drilling, Inc. (workers)	Midland, TX	5/8/86	5/2/86	TA-W-17,451	Contract oil and gas drilling.
U.S. Steel Zinc Mines (workers)	Jefferson City, TN	5/12/86	5/7/86	TA-W-17,452	Zinc concentrates.
Haspel Drilling Co. (workers)	Casper, WY	4/24/86	4/21/86	TA-W-17,453	Contract oil and gas drilling.

[FR Doc. 86-12815 Filed 6-5-86; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: The Employment and Tranining Administration is republishing the notice of revised Lower Living-Standard Income Levels (LLSILs) used in determining whether individuals meet the economically disadvantaged criteria as defined in the Job Training Partnership Act (JTPA) published at 51 FR 12752, April 15, 1986. This republication is being done to correct errors in the data on 25 selected Metropolitan Statistical Areas (Table 3) and the figures for the family size (Table 4). In computing this data we inadvertently used data for the wrong period of time. Therefore, we are hereby republishing the entire document below.

EFFECTIVE DATE: April 30, 1986.

ADDRESS: Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo. Telephone: 202-376-6093.

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those *economically disadvantaged* individuals . . . , who are in special need of such training to obtain productive employment." (Emphasis added.) JTPA Section 2; See 20 CFR 626.1(a)(2). JTPA Section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4. Similar definitions of "economically disadvantaged," which also include references to the LLSIL, are provided at JTPA sections 201(b)(3) and 202(a)(3) for JTPA Title II allotment and within-State allocation purposes. See 20 CFR 629.39 and 630.1.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes.

JTPA Section 4(16) defines LLSIL as follows:

> The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary (of Labor) based on the most recent "lower living family budget" issued by the Secretary.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under the JTPA, the Employment and Training Administration (ETA), published the 1985 updates to the LLSIL in the Federal Register of June 11, 1985. (50 FR 24506.) ETA has again updated the LLSIL to reflect cost of living increases for 1986, by applying the percentage change in the December 1985 consumer price index (CPI), compared with the December 1984 CPI, to each of the June 11, 1985, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(8) of JTPA, those figures are listed as well.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION *

Region	Updated 1986 LLSIL	70 percent of LLSIL
Northeast:		
Metropolitan	$18,580	$12,950
Nonmetropolitan	18,190	12,550
North Central:		
Metropolitan	17,920	12,540
Nonmetropolitan	17,480	12,240
South:		
Metropolitan	17,110	11,980
Nonmetropolitan	16,050	11,240
West:		
Metropolitan	18,840	13,090
Nonmetropolitan	18,010	13,310

* For ease of calculation, these figures have been rounded to the nearest ten.

Jurisdictions included in the various regions, based generally on Census

Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

North Central

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Kentucky
Louisiana
Maryland
Mississippi
North Carolina
Northern Marianas
Oklahoma
Puerto Rico
South Carolina
Tennessee
Texas
Trust Territories
Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii and Guam as indicated in Table 2 below.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII, AND GUAM *

	Updated 1986 LLSIL	70 percent of LLSIL
Alaska:		
Metropolitan	$28,550	$19,980
Nonmetropolitan	24,790	17,350
Hawaii and Guam:		
Metropolitan	23,690	16,580
Nonmetropolitan	21,940	15,360

* Rounded to the nearest ten.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available, although the timeframes used for the updated data are not exactly the same. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the nearest ten, are set forth in Table 3 below.

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL—25 MSAS

MSA	Updated LLSIL	70 percent of LLSIL
Anchorage, AK	$26,050	$18,240
Atlanta, GA	17,160	12,030
Baltimore, MD	17,970	12,580
Boston, MA	19,580	13,710
Buffalo, NY	17,380	12,170
Chicago, IL/Northwestern, IN	18,410	12,890
Cincinnati, OH/KY/IN	18,340	12,840
Cleveland, OH	18,720	13,100
Dallas, Forth Worth, TX	16,960	11,870
Denver-Boulder, CO	18,400	12,880

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL—25 MSAS—Continued

MSA	Updated LLSIL	70 percent of LLSIL
Detroit, MI	17,340	12,140
Honolulu, HI	23,410	16,390
Houston, TX	16,640	11,650
Kansas City, MO/KS	17,630	12,340
Los Angeles/Long Beach/Anaheim, CA	19,280	13,480
Milwaukee, WI	18,160	12,710
Minneapolis-St. Paul, MN	17,660	12,360
New York, NY/Northeastern, NJ	18,820	13,170
Philadelphia, PA/NJ	18,150	12,710
Pittsburgh, PA	18,130	12,690
San Diego, CA	19,430	13,600
San Francisco-Oakland, CA	19,380	13,560
Seattle-Everett, WA	19,450	13,620
St. Louis, MO/IL	17,830	12,480
Washington, D.C./MD/VA	18,040	12,630

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1986 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figures, the figure is indicated in parentheses.

(Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. Poverty level guidelines were transmitted to the States on April 1, 1986.)

TABLE 4.—70 PERCENT OF UPDATED 1986 LLSIL, BY FAMILY SIZE

Family Size					
One	Two	Three	Four*	Five	Six
$(4,050)	$6,830	$9,100	$11,240	$13,260	$15,510
(4,160)	6,870	9,440	11,650	13,750	16,060
(4,270)	7,000	9,610	11,870	14,010	16,360
(4,310)	7,070	9,700	11,980	14,140	16,530
(4,330)	7,100	9,740	12,050	14,200	16,600
(4,370)	7,160	9,830	12,140	14,330	16,750
(4,380)	7,180	9,860	12,170	14,360	16,790
(4,410)	7,220	9,910	12,240	14,440	16,890
(4,440)	7,280	10,000	12,340	14,560	17,030
(4,450)	7,290	10,010	12,360	14,580	17,060
(4,490)	7,360	10,110	12,480	14,730	17,220
(4,510)	7,400	10,160	12,540	14,800	17,310
(4,530)	7,420	10,190	12,580	14,840	17,360
(4,550)	7,450	10,230	12,630	14,900	17,430
(4,560)	7,460	10,270	12,680	14,960	17,500
(4,570)	7,490	10,280	12,690	14,970	17,510
(4,580)	7,500	10,300	12,710	15,000	17,540
(4,620)	7,580	10,400	12,840	15,150	17,720
(4,640)	7,600	10,430	12,880	15,200	17,770
(4,640)	7,610	10,440	12,890	15,210	17,790
(4,660)	7,640	10,480	12,950	15,280	17,870
(4,700)	7,700	10,570	13,050	15,400	18,010
(4,720)	7,730	10,610	13,100	15,460	18,080
(4,740)	7,770	10,670	13,170	15,540	18,170
(4,760)	7,800	10,700	13,210	15,710	18,370
(4,800)	7,860	10,820	13,460	15,910	18,600
(4,880)	7,990	10,980	13,550	15,980	18,700
(4,900)	8,020	11,020	13,600	16,050	18,770
(4,900)	8,040	11,030	13,620	16,070	18,800
(4,940)	8,090	11,110	13,710	16,180	18,920
(5,530)	9,060	12,440	15,380	18,120	21,200
(5,800)	9,570	13,150	16,390	19,340	22,620
(5,970)	9,780	13,430	16,580	19,580	22,880
(6,250)	10,240	14,050	17,350	20,470	23,940
(6,570)	10,780	14,770	18,240	21,520	25,170
(6,620)	10,840	14,860	18,360	21,660	25,360

*Figures provided in Tables 1–3 of this notice are for a family size of four persons. To use Table 4, the appropriate figure should be found in the family size of the *Four* column. Then one may read across the row for family sizes other than four in the appropriate columns.

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies (SESAs) and employers in their States to use in determining eligibility for JTPA programs. Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in Philadelphia, MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulation at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the

extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI. Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA.

Signed at Washington, DC, this 2nd day of June, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-12836 Filed 6-5-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC86-1 (Jan. 3, 1986) ..... p. 80, pp. 83-85.
Massachusetts:
MA86-1 (Jan. 3, 1986) ..... p. 350.
Maryland:
MD86-1 (Jan. 3, 1986) ..... pp. 384-385.
New York:
NY86-2 (Jan. 3, 1986) ..... p. 645.
NY86-4 (Jan. 3, 1986) ..... p. 670.
NY86-9 (Jan. 3, 1986) ..... p. 723.
NY86-10 (Jan. 3, 1986) ..... p. 725.
NY86-14 (Jan. 3, 1986) ..... p. 760.
Pennsylvania:
PA86-5 (Jan. 3, 1986) ..... p. 829, pp. 831-832.
PA86-7 (Jan. 3, 1986) ..... pp. 850-852.
PA86-8 (Jan. 3, 1986) ..... pp. 859-861.
PA86-9 (Jan. 3, 1986) ..... pp. 872-874.
PA86-10 (Jan. 3, 1986) ..... pp. 880-881.
PA86-12 (Jan. 3, 1986) ..... p. 888.
PA86-19 (Jan. 3, 1986) ..... pp. 920-923.
PA86-21 (Jan. 3, 1986) ..... pp. 933-934.
PA86-23 (Jan. 3, 1986) ..... pp. 949-950.
PA86-24 (Jan. 3, 1986) ..... pp. 954-956.

Volume II

Arkansas:
AR86-7 (Jan. 3, 1986) ..... p. 21.
Iowa:
IA86-5 (Jan. 3, 1986) ..... p. 44.
Kansas:
KS86-7 (Jan. 3, 1986) ..... p. 333.
Nebraska:
NE86-3 (Jan. 3, 1986) ..... p. 624.
Ohio:
OH86-1 (Jan. 3, 1986) ..... pp. 633, 668.
OH86-2 (Jan. 3, 1986) ..... pp. 678, 690.
OH86-29 (Jan. 3, 1986) ..... p. 777.

Volume III

Idaho:
ID86-1 (Jan. 3, 1986) ..... p. 129.
Washington:
WA86-1 (Jan. 3, 1986) ..... p. 229.
WA86-2 (Jan. 3, 1986) ..... pp. 328-329, p. 332.
Wyoming:
WY86-1 (Jan. 3, 1986) ..... pp. 367-368.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 80 Regional Government Depository

Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 30th Day of May 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–12808 Filed 6–5–86; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health, Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on June 26, 27, 1986 in Room N–3437 ABC at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

NACOSH was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The public is invited to attend these meetings. The committee will discuss general issues affecting workplace safety and health. A detailed agenda will be prepared, made publicly available and sent to members prior to the meeting. Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Committee chairperson to the extent which time permits.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, Third Street and Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–523–8151.

Official records of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 2nd day of June 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86–12714 Filed 6–5–86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86–41]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATES: Date and Time: June 23, 1986, 9 a.m. to 5 p.m.; June 24, 1986, 8:30 a.m. to 5 p.m.; and June 25, 1986, 8 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room Nos. as noted in the agenda below, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. This committee is chaired by Mr. Leonard Jaffe and is composed of 34 members. The committee operates both through a number of informal subcommittees and as a whole. The sessions on June 24, 1986, from 10 a.m. to 5 p.m., and June 25, 1986, from 8 a.m. to 5 p.m., of the Communications Subcommittee will be closed to the public. The Subcommittee will meet with the U.S. communications industry executives on an individual basis to gather critical information concerning industry plans for the development of advanced communications systems and technology. This information is needed to insure that NASA, in its preparation of a long range space communications plan for the United States, will develop a complementary rather than duplicative plan that will meet the needs of the U.S. industry. Often during individual meetings with an industry leader, views and plans pertaining to potential new markets, new technologies, etc., that are generally proprietary to the organization which the industry leader represents, will be discussed. Discussion of these matters in a public session would constitute release of confidential, commercial and financial information obtained from private industry. Since this meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c) (4), it has been determined that it should be closed to the public.

Type of Meeting: Open—except as noted in the agenda below.

Agenda

Full Committee

June 23, 1986, Room 226A
11 a.m.—Briefing on Space Applications Advisory Committee (SAAC) Charter, Purposes and Procedures for All New Members.
12 noon—Adjourn.
June 24, 1986, Room 226A
8:30 a.m.—Introduction of New Members. Chairperson's Remarks. Actions Requested of SAAC and subcommittees.
10 a.m.—Recess Full Committee to Convene Subcommittee Meetings.
June 25, 1986, Room 226A
11 a.m.—Wrap-up Session to Receive Subcommittee Reports.
12 noon—Adjourn.

Information Systems Subcommittee

June 23, 1986, Room 226B
9 a.m.—Planning for a 1987 Workshop on "A View From the Future."
5 p.m.—Adjourn.
June 24, 1986, Room 305 Capitol Gallery Building
10:30 a.m.—Review of Information Systems Operating Five Year Plan.
1 p.m.—Continue Workshop Planning.
5 p.m.—Adjourn.
June 25, 1986, Room 305 Capitol Gallery Building
8:30 a.m.—Update work plans for 1986/1987.
10 a.m.—Formulate Subcommittee Report.

11 a.m.—Adjourn for Recovening of the Full Committee.

Remote Sensing Subcommittee

June 23, 1986, Room 226A
1 p.m.—Establish Goals and Objectives For The Long-Range Plan for Remote Sensing Applications.
5 p.m.—Adjourn.

June 24, 1986, Room 226A
10 a.m.—Indepth Review of NASA's Remote Sensing Research Programs.
5 p.m.—Adjourn.

June 25, 1986, Room 226A
8 a.m.—Adopt Remote Sensing Goals.
9 a.m.—Adopt Next Steps on Long-Range Planning.
10 a.m.—Approve NASA/Industry Policy Paper.
11 a.m.—Adjourn for Recovening of the Full Committee.

Communications Subcommittee

June 24, 1986, Room 770 Capitol Gallery Building
10 a.m.—Closed Session For Industry Hearings.
5 p.m.—Adjourn.

June 25, 1986, Room 770 Capitol Gallery Building
8 a.m.—Closed Session for Industry Hearings.
5 p.m.—Adjourn.

Microgravity Subcommittee

June 24, 1986, Room 226B
10 a.m.—Briefing on Extended Duration Orbiter (EDO).
1 p.m.—Briefings on NASA's Plans to Measure "G-Levels" on The Shuttle.
5 p.m.—Adjourn.

June 25, 1986, Room 226B
8:30 a.m.—Update Workplans for 1986/1987.
10 a.m.—Formulate Subcommittee Report.
11 a.m.—Adjourn for Reconvening of the Full Committee.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
June 2, 1986.

[FR Doc. 86-12668 Filed 6-5-86; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Public Meeting

June 2, 1986.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public meeting of the National Commission for Employment Policy at the Crystal City Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

DATES: Monday, June 23, 1986—9:00 a.m. to 5:00 p.m.; Tuesday, June 24, 1986—9:00 a.m. to 5:00 p.m.

Status: the meeting will be open to the public.

Matters to be discussed: Commission members will discuss the priorities of the Commission for the next program year.

FOR FURTHER INFORMATION CONTACT: Mr. Robert V. Mahaffey, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. Handicapped individuals wishing to attend should contact Kathy McMichael of the Commission staff so that appropriate accommodations can be made.

Copies of the Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's offices, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed this 2nd day of June 1986.

Scott W. Gordon,
Director.

[FR Doc. 86-12817 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Date: June 20, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315

Program: This meeting will review applications in the fields of the humanities submitted to the Projects category of the Interpretive Research Program, Division of Research Programs, for projects beginning after September 1, 1986.

Date: June 23-24, 1986.
Time: 9:00 a.m to 5:00 p.m.
Room: 430

Program: This meeting will review Challenge Grants applications from small museums, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1986.

Date: June 26-27, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430

Program: This meeting will review Challenge Grants applications from Professional Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 86-12709 Filed 6-5-86; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Periodic Reports to Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 8 No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "as unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the Federal Register (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the fourth calendar quarter of 1985. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were two abnormal occurrences at the nuclear power plants licensed to operate. The first involved inoperable main steam isolation valves and the second involved management deficiencies at Fermi Nuclear Power Station. There were three abnormal occurrences at the other NRC licensees. Two involved diagnostic medical misadministrations and the other involved a therapeutic medical misadministration. There were no abnormal occurrences reported by the Agreement States.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol. 8, No. 4 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20012–7982. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Mastercard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 29th day of May 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–12765 Filed 6–5–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–456–OL 50–457–OL; ASLBP No. 79–410–03–OL]

Commonwealth Edison Co., (Braidwood Station, Unit Nos. 1 and 2); Hearing Changes

June 2, 1986.

Before Administrative Judges: Herbert Grossman, Chairman, Richard F. Cole, A. Dixon Callihan.

Please take notice that the evidentiary hearing in the matter of the Braidwood Station will move from the Circuit Court of Cook County to the College of St. Francis, in the President's Room and the Moe Room (connecting rooms), 500 North Wilcox Street, Joliet, Illinois 60435, for the weeks of June 9, 16 and 23, 1986. Thereafter, beginning with the week of June 30, 1986, it will return to the Circuit Court of Cook County.

The public is invited to attend all hearing sessions.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 86–12763 Filed 6–5–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Co.; Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License Nos. DPR–80, and Amendment No. 6 to Facility Operating License No. DPR–82, issued to Pacific Gas and Electric Company (the licensee), which revise the combined Technical Specifications for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (the facilities) located in San Luis Obispo County, California.

The amendments permit the expansion of the spent fuel storage capacity for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, increasing the storage capacities from 270 to 1324 spaces for each of the two spent fuel pools. This expansion would be accomplished by reracking the existing spent fuel storage pools with new spent fuel racks composed of individual cells made of stainless steel. The new fuel storage racks will be arranged in two discrete regions within each pool. Region 1 will provide 290 poisoned cell locations which will normally be used for new fuel with an enrichment equal to or less than 4.5% U–235. Region 2 will provide 1034 unpoisoned cell locations which will provide normal storage for spent fuel assemblies with an initial enrichment equal to or less than 4.5% U–235 and meeting required burnup considerations in accordance with the amended Technical Specifications. The existing fuel storage racks have a nominal center-to-center spacing of 21 inch. The new racks will have a nominal 11 inch center-to-center spacing for both regions. The major components of the fuel racks are the fuel assembly cells, gap channels, rack base plate assembly including support legs, a girdle bar around the upper part of the rack assembly, and, in Region 1 only, neutron absorbing (poison) material Boraflex, including cover sheets. The fuel racks are designed to maintain the required subcriticality of K_{eff} equal to or less than 0.95 for Regions 1 and 2.

The letter requesting the license amendments, dated October 30, 1985 (LAR–85–13), includes the requested Technical Specification changes and the licensee's determination on significant hazards consideration. The supporting report on "Reracking of Spent Fuel Pools for Diablo Canyon Units 1 and 2" had been submitted to the staff by letter, dated September 19, 1985.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was initially published in the Federal Register on January 13, 1986. (51 FR 1451), and in the bi-weekly publication on May 21, 1986 (51 FR 18609). A request

for hearing was filed by (1) Mothers for Peace on February 7, 1986, (2) Sierra Club-Santa Lucia Chapter on February 10, 1986, and (3) Consumers Organized for Defense of Environmental Safety (C.O.D.E.S.) on February 12, 1986.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from persons, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that these amendments involve no significant hazards consideration.

The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, these amendments have been issued and made immediately effective and any hearing will be held after issuance.

A separate Environmental Assessment has been prepared pursuant to 10 CFR Part 51. The Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the Federal Register (51 FR 19430) on May 29, 1986.

For further details with respect to the action see (1) the application for the amendments dated October 30, 1985 and additional information provided by the licensee in letters dated September 19, December 20, and December 24, 1985 and January 28 (2 letters), March 11 and April 24 (2 letters), 1986, (2) Amendment Nos. 8 and 6 to Facility Operating License Nos. DPR–80 and DPR–82, (3) the Commission's related Safety Evaluation and (4) Environmental Assessment and Notice of Issuance of Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 30th day of May 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, PWR Project Directorate No. 3, Division of PWR Licensing-A, NRR.

[FR Doc. 86–12757 Filed 6–5–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445–CPA]

Texas Utilities Electric Co. et al., (Comanche Peak Steam Electric Station, Unit 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of May 29, 1986, oral argument on the appeals of the applicants Texas Utilities Electric Company, *et al.*, and the Nuclear Regulatory Commission staff from the Licensing Board's May 2, 1986 Special Prehearing Conference Memorandum and Order will be held at 2:00 p.m. on Wednesday, June 18, 1986, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: June 2, 1986.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86–12764 Filed 6–5–86; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 2, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Tonka Corporation
Common Stock, $0.66⅔ Par Value (File No. 7–8975)

Albertson's, Incorporated
Common Stock, $1.00 Par Value (File No. 7–8976)

James River Corporation of Virginia
Common Stock, $0.10 Par Value (File No. 7–8977)

Supermarkets General Corporation
Common Stock, $1.00 Par Value (File No. 7–8978)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 23, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–12767 Filed 6–5–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24114]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 29, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 23, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/

or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of New Mexico et al. (38–813)

The Public Service Company of New Mexico ("PNM"), Alvarado Square, Albuquerque, New Mexico 82158, a New Mexico corporation, and Sunbelt Mining Co., Inc. ("Sunbelt"), 1650 University Boulevard NE., Albuquerque, New Mexico 87106, a wholly owned New Mexico subsidiary of PNM, have filed with this Commission an application for an order (i) pursuant to section 3(a)(1) of the Act exempting a new holding company from provisions of the Act applicable to it as such and (ii) declaring that, upon the closing of the transactions described in the application, Sunbelt will not be an "electric utility company" under section 2(a)(3) of the Act.

PNM is engaged primarily in the production, transmission, distribution, and sale of electricity, natural gas, and water within the State of New Mexico. PNM makes off-system energy and capacity sales on a contingent basis to other utilities. None of PNM's subsidiaries is a "public utility company" as defined in section 2(a)(5) of the Act.

On December 1, 1985, the total assets of PNM and its subsidiaries, on a consolidated basis, were approximately $3,010,000,000, of which approximately $2,674,000,000 were utility assets attributable to electric and retail natural gas operations. Approximately $657,000,000 of these utility assets were attributable to PNM's investment in the Palo Verde Nuclear Generating Station ("PVNGS") and transmission facilities located in Arizona.

Sunbelt, a wholly owned subsidiary of PNM, either directly or through a subsidiary, conducts coal mining and natural gas gathering operations in New Mexico and holds substantial mineral interests in New Mexico, along with relatively minor interests in other states.

On May 20, 1986 the stockholders of PNM were asked to approve a corporate reorganization as a result of which a new holding company organized in New Mexico, would own all of the common stock of PNM. Thereafter, the stock of Sunbelt and another non-utility subsidiary and other non-utility assets would be transferred to the new holding company. PNM would continue to conduct its utility businesses without any other change in its functions or capital structure.

PNM is a 10.2% participant in PVNGS. It has sold to investors and leased back about 72% of PNM's 10.2% interest (including related common facilities) in Unit 1 of PVNGS, now in service, in transactions exempt under Rule 7(d). PNM proposes to sell its remaining 28% interest in PVNGS Unit 1 to Sunbelt, on substantially the same terms agreed upon in the earlier nonaffiliated sale/leaseback transactions. Sunbelt will purchase the interest through a trustee, which will arrange the long-term financing for the purchase. The trustee will also take actual title to the PVNGS Unit 1 interest. The trust will then lease the PVNGS Unit 1 interest back to PNM. Under the terms of the lease, neither the trustee nor Sunbelt will have any right of control over any aspect of the operation and maintenance of PVNGS Unit 1. PNM will be responsible for payment of all taxes, insurance premiums, and all other costs associated with the PVNGS Unit 1 interest. The obligation of PNM to make rental payments under the lease will be absolute and in no way based on revenue derived from power sales from PVNGS Unit 1, nor will it be contingent upon the actual operation of the facility.

Annual pre-tax lease income from rental payments to be made to Sunbelt under the proposed lease are not expected to exceed 5% of its 1985 gross revenues. Sunbelt will sell no electricity from any source whatsoever. Sunbelt's participation in the sale/leaseback is the subject of a pending application before the New Mexico Public Service Commission.

Jersey Central Power & Light Company (70–6923)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed a further post-effective amendment to its application in this proceeding pursuant to sections 9(a) and 10 of the Act.

By orders dated November 16, 1983, November 19, 1984, and July 30, 1985 (HCAR Nos. 23121, 23486, and 23773), JCP&L was authorized to acquire from time to time until December 31, 1989, up to $2,000,000 of obligations of its customers and to incur up to $60,000 of administrative and other related expenses pursuant to the SOLAR, HELP, and Electric Heat Conversion Programs. As a result of the great interest recently shown by its customers in participating in such energy conservation programs and the projections of future participation, JCP&L now proposes to acquire an aggregate amount of obligations of its customers for such programs through December 31, 1989, of up to approximately $15 million and will incur aggregate administrative expenses in the amount of up to approximately $200,000. Interest on the loans will range between zero percent and the prevailing market rate, depending upon the income level of the customer. The amount and term for repayment of each such loan will range up to a maximum of $6,000 and eight years, respectively.

Georgia Power Company (70–7192)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric utility subsidiary of the Southern Company, a registered holding company, has filed an amendment to its application-declaration filed with this Commission pursuant to sections 6(b) and 12(c) of the Act and Rules 42 and 50 thereunder.

A notice was issued (HCAR No. 24005, January 28, 1986) with regard to Georgia's proposal to finance certain pollution control facilities in the State of Georgia and/or to issue and sell up to $550 million of first mortgage bonds ("New Bonds"). Georgia, by amendment, now proposes that the restriction on common stock dividends and distributions to be contained in each Supplemental Indenture relating to the New Bonds be identical to that set forth in the Supplemental Indenture, dated June 1, 1984, relating to its outstanding first mortgage bonds of the 16% Series due in 2014. Thus, Georgia proposes: (i) To use March 31, 1984, rather than the respective dates of issuance of the series of the New Bonds, as the starting date for accumulation of earned surplus; and (ii) to use $302 million as the annual dividends allowance.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–12768 Filed 6–5–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Agreements Filed With the Department of Transportation During the Weeks Ending May 23 and 30, 1986

Date filed	Docket No.	Parties	Subject	Proposed effective date
May 22, 1986	AA047	Members of International Air Transport Association	Rounding Procedures for Europe-Africa fares	July 1, 1986.
May 22, 1986	44049, R-1—R-17.	do.	Europe-Africa fares	July 1, 1986.
May 22, 1986	44048, R-1—R-2	do.	Europe-SE Asia fares	Apr. 1, 1986.
May 29, 1986	44082	do.	Canada—TC2 fares	June 1, 1986

Answers may be filed within 21 days from the date of filing.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-12777 Filed 6-5-86; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended May 30, 1986

Subpart Q—Applications

The due for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show cause order, a tentative order, or inappropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
June 30, 1986	44063	Continental Airlines Corporation, c/o Emory M. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, NW., Washington, DC 20036. Application of Continental Airlines Corporation pursuant to section 401 of the Act and Subpart Q of the Regulations to amend its certificate for Route 176 by adding Papeete, Tahiti as an intermediate point and by amending or removing a condition attached to the certificate. As amended, Continental's certificate authority would be as follows: "Between the terminal point Los Angeles, California, the intermediate point Honolulu, Hawaii and intermediate points within the following areas: American Samoa, Fiji, Tahiti and New Zealand, and intermediate points and a terminal point in Australia." Conforming Applications, Motions to Modify Scope and Answers may be filed by June 27, 1986.
May 28, 1986	39034	Kuwait Airways Corporation, c/o G. Joseph Minetti, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037. Amendment to the Application of Kuwait Airways Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations to update the information submitted with respect to the operation and management of KAC. Answers may be filed by June 25, 1986.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-12778 Filed 6-5-86; 8:45 am]
BILLING CODE 4910-62-M

[Docket 39978]

Braniff International Airways Employee Protection Program Investigation; Resumption of Hearing

Notice is hereby given that the hearing in the above-entitled matter will resume on July 22, 1986, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, June 3, 1986.

Ronnie A. Yoder,
Administrative Law Judge.
[FR Doc. 86-12779 Filed 6-5-86; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Policy on Use of Airport Improvement Program Discretionary Funds

AGENCY: Federal Aviation Administration (FAA), DOT.

POLICY: The FAA will consider a public airport sponsor's use of airport revenues to support non-aviation transportation facilities in assessing requests for Federal discretionary grant assistance available under the Airport Improvement Program (AIP) as authorized by the Airport and Airway Improvement Act of 1982 (AAIA). Such diversion of funds from airport use is viewed as evidence of the sponsor's ability to fund airport projects without discretionary aid.

The policy is not applicable to AIP apportionment funds provided to sponsors of primary commercial service airports or to airport sponsors receiving only state apportionment funds.

Background

Section 511(a)(12) of the AAIA requires that sponsors of airport development projects assure that all revenues generated by the airport, if it is a public airport, be expended for the capital or operating costs of the airport or the local airport system. This section, however, does allow airport revenues to be used for other local (non-aviation) facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. Since the demand for discretionary money available under section 507(a)(3) of the AAIA far exceeds the discretionary money available in any given year, FAA has determined that it is appropriate to consider the airport sponsor's use of airport revenues to fund non-aviation transportation facilities as evidence that the sponsor has the ability to fund

airport projects without Federal discretionary airport grant assistance.

DATE: This policy is effective immediately for AIP projects which have not yet received an allocation of funds.

FOR FURTHER INFORMATION CONTACT: Mr. Edgar M. Williams, Manager, Program Guidance Branch, APP–510, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, Room 619, Washington, DC 20591, Telephone: (202) 426–3857.

Issued in Washington, DC on June 2, 1986.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 86–12701 Filed 6–5–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 2, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0115
Form Number: ATF F 5220.4(2140)
Type of Review: Revision
Title: Monthly Report—Export Warehouse Proprietor

Clearance Officer: Robert G. Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: 1557–0136
Form Number: CC 7029–06
Type of Review: Extension
Title: List of National Bank Directors

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Stephen Basbain,

Departmental Reports Management Office.

[FR Doc. 86–12812 Filed 6–5–86; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 109
Friday, June 6, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, June 16, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement in a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: June 4, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86-12901 Filed 6-4-86; 2:34 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:00 p.m. on Friday, May 30, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Banco de Ahorro, F.S.B., Mayaquez, Puerto Rico, which was closed by the Federal Home Loan Bank Board on Friday, May 30, 1986; (2) accept the bid for the transaction submitted by Banco Popular de Puerto Rico, San Juan (Hato Rey), Puerto Rico, an insured State nonmember bank; (3) approve the application of Banco Popular de Puerto Rico, San Juan (Hato Rey), Puerto Rico, for consent to purchase certain assets of an assume the liability to pay deposits made in Banco de Ahorro, F.S.B., Mayaquez, Puerto Rico, and for consent to establish the five offices of Banco de Ahorro, F.S.B. as branches of Banco Popular de Puerto Rico; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Mr. Michael Patriarca, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting purusant to subsections (c)(B), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 5:03 p.m., and at 8:42 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A) Adopted a resolution: (1) Making funds available for the payment of insured deposits made in The First National Bank and Trust Company of Norman, Norman, Oklahoma, which had been closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, May 29, 1986, (2) accepting the bid of The Liberty National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (3) designating The Liberty National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and

(B)(1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Columbia Falls, Columbia Falls, Montana, which was closed by the Commissioner for Financial Institutions for the State of Montana on Friday, May 30, 1986; (2) accepted the bid for the transaction submitted by First Citizens Bank National Association, Columbia Falls, Montana, a newly-chartered national bank subsidiary of Citizens Development Company, Billings, Montana; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not required consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 3, 1986.

Federal Deposit Insurance Corporation.

Woyle R. Robinson,

Executive Secretary.

[FR Doc. 86-12833 Filed 6-4-86; 11:07 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 9:00 a.m. on Tuesday,

June 3, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding petitions to reconsider certain prohibition governing securities subsidiaries and affiliates contained in Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Banking Practices."

By the same majority vote, the Board further determined that no notice earlier than May 29, 1986 of this change in the subject matter of the meeting was practicable.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 9:30 a.m. the same day, of a summary audit report re: Trend Analysis of Liquidation Site Audit Results (memorandum dated May 14, 1986).

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)); and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: June 3, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-12834 Filed 6-4-86; 11:08 am]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 9:30 a.m. on Tuesday, June 3, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Memorandum and Resolution re:
National Bank and Trust Company of Traverse City, Traverse City, Michigan

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 3, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 12835 Filed 6-4-86; 8:45 am]
BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

June 3, 1986.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.
TIME AND DATE: June 10, 1986, 10:00 a.m.
PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 837th Meeting—June 10, 1986, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8332-000, city of Ellensburg, Washington
Project No. 9605-001, Kittitas Reclamation District
CAP-2.
Project No. 2113-012, Wisconsin Valley Improvement Company
CAP-3.
Project No. 2713-003, Niagara Mohawk Power Corporation
CAP-4.
Project Nos. 9572-002, Skookumchuck Creek Associates
CAP-5.
Project Nos. 9597-003, 004 and 006, Hazard Creek Conservationists
Project No. 9598-002, 003 and 004, Hard Creek Conservationists
CAP-6.
Project No. 9716-001, Hydrodynamics, Inc.
CAP-7.
Project No. 9147-000, Baltic Associates
Project No. 9522-001, Swift River/Hafslund Company
CAP-8.
Project No. 7802-003, Natural Energy Resources Company
CAP-9.
Project Nos. 6610-006 and 6611-006, Douglas Mendenhall
CAP-10.
Project No. 2774-003, Modesto Irrigation District, Turlock Irrigation District and the city and county of San Francisco, California
CAP-11.
Docket No. ER86-372-002, Virginia Electric and Power Company
CAP-12.
Docket Nos. ER84-348-007 and 008, American Electric Power Service Corporation
CAP-13.
Docket Nos. ER86-309-002 and ER86-310-002, Arizona Public Service Company
CAP-14.
Docket No. ER84-570-005, AEP Generating Company
CAP-15.
Docket No. ER86-252-000, Pacific Power & Light Company, an assumed business name of Pacificorp.
CAP-16.
Docket Nos. ER86-76-004, 005, ER86-230-002 and 003, Commonwealth Edison Company
CAP-17.
Docket Nos. ER86-107-001, 002, ER86-120-001 and 002, Pacific Gas and Electric Company
CAP-18.
Docket No. ER86-163-001, Commonwealth Edison Company
CAP-19.
Docket Nos. ER85-646-007 and ER85-647-005 (Phase II), New England Power Company
CAP-20.
Docket No. QF85-210-000, Pynoyl Corporation
CAP-21.
Docket No. QF86-23-000, Freeport-McMoran Inc. and Gunnison Capital, Ltd.
CAP-22.
Docket No. IR-000-980, California Department of Water Resources
CAP-23.
Docket No. EL86-25-000, Arkansas Power & Light Company.

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM85-1-170 (Parts A-D), Regulation of natural gas pipelines after partial wellhead decontrol (Lone Star Gas Company)

Docket No. SA86-7-002, Lone Star Gas Company

CAM-2.
Docket No. GP86-2-000, Southern Union Company

CAM-3.
Docket No. RO86-15-000, J.R. Cone

Consent Gas Agenda

CAG-1.
Docket No. RP86-79-000, Northern Natural Gas Company

CAG-2.
Docket No. TA86-5-29-003, Transcontinental Gas Pipe Line Corporation

CAG-3.
Omitted

CAG-4.
Docket No. RP86-70-000, Texas Eastern Transmission Corporation

CAG-5.
Docket Nos. TA85-3-28-005 and TA86-2-28-003, Panhandle Eastern Pipe Line Company

CAG-6.
Docket No. CP85-57-007, Natural Gas Pipeline Company of America

CAG-7.
Docket Nos. RP82-71-018 and TA83-1-59-009, Northern Natural Gas Company, Division of Internorth, Inc.

CAG-8.
Docket No. RP86-7-002, Mountain Fuel Resources, Inc.

CAG-9.
Docket No. RP86-52-003, Kentucky West Virginia Gas Company

CAG-10.
Docket Nos. RP86-54-002 and 003, Florida Gas Transmission Company

CAG-11.
Docket Nos. RP86-53-002 and 003, Transwestern Pipeline Company

CAG-12.
Docket No. ST85-528-001, Mississippi River Transmission Corporation

CAG-13.
Docket No. TA86-1-20-000, Natural Gas Pipeline Company of America

CAG-14.
Docket Nos. RP79-23-024, 025, RP79-24-016, 017, RP81-34-011, RP83-138-004 and RP85-125-002, Distrigas of Massachusetts Corporation and Distrigas Corporation

CAG-15.
Docket Nos. IS78-1-000, IS80-4-000, IS80-20-000, IS80-28-000, IS80-42-000, IS81-23-000, IS81-56-000, IS81-57-000, IS81-77-000, IS81-115-000, IS81-117-000, IS81-118-000, IS81-120-000, IS81-123-000, IS81-165-000, IS82-8-000, IS82-40-000, IS82-81-000, IS82-99-000, IS83-101-000, IS82-108-000, IS82-176-000 and IS83-1-000, Phillips Pipe Line Company

CAG-16.
Docket Nos. IS85-13-000 and SP85-14-000, Dome Pipeline Corporation

CAG-17.
Docket No. CI86-175-001, Felmont Oil Corporation and Essex Offshore, Inc.

CAG-18.
Docket Nos. RI74-186-081 and RI75-21-076, Independent Oil & Gas Association of West Virginia

CAG-19.
Docket Nos. RI74-186-082 and RI75-21-077, Independent Oil & Gas Association of West Virginia

CAG-20.
Docket No. CP84-637-002, Northern Natural Gas Company, Division of Enron Corp.
Docket No. CP84-579-003, Northern Border Pipeline Company

CAG-21.
Docket Nos. CP85-821-000, CP85-874-000, CP85-713-000, 001, CP85714-000, 001, CP85-170-000, CP85-828-000, CP85-888-000, CP86-10-000, CP86-53-000 and CP86-55-000, ANR Pipeline Company

CAG-22.
Docket Nos. RP86-14-005 through 015, Columbia Gulf Transmission Company
Docket Nos. RP86-15-005 through 015, Columbia Gas Transmission Corporation

CAG-23.
Docket Nos. RP71-29-030 through 037 (Phase III), United Gas Pipe Line Company

CAG-24.
Docket Nos. TC-79-8-002 through 005, Transcontinental Gas Pipe Line Corporation

CAG-25.
Docket No. CP80-82-000, ANR Pipeline Company and Texas Eastern Transmission Corporation

CAG-26.
Docket No. CP82-74-003, Midwestern Gas Transmission Company

CAG-27.
Omitted.

CAG-28.
Docket No. CP86-335-000, Northern Natural Gas Company, Division of Internorth, Inc.

CAG-29.
Docket No. CP86-327-000, Northern Natural Gas Company, Division of Internorth, Inc.

CAG-30.
Docket No. CP79-58-000, Pacific Interstate Transmission Company

CAG-31.
Docket No. CI84-921-001, Champlin Petroleum Company
Docket No. CI78-849-002, Amoco Petroleum Company
Docket No. CS77-406-001, Robert Klabzuba
Docket No. CS72-753-001, Frank A. Schultz
Docket No. CI80-82-001, Geo. Oil and Gas Company of Houston
Docket No. CI84-921-001, Geo. Oil and Gas Company of Houston and Tenneco Oil Company Operator, *et al.*

I. Licensed Project Matters

P-1.
Project No. 199-037, South Carolina Public Service Authority

II. Electric Rate Matters

ER-1.
Docket No. EL80-10-000, Kentucky Power Company

ER-2.
Docket No. QF85-541-000, City of New Martinsville

Miscellaneous Agenda

M-1.
Docket No. RM83-57-000, payments for benefits from headwater improvements

M-2.
Reserved

M-3.
Reserved

M-4.
Docket No. RM83-71-038, elimination of variable costs from certain natural gas pipeline minimum commodity bill provisions

M-5.
Docket Nos. RM85-1-172 and 173 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc.)
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (North Central Public Service Co., Endevco, Inc., Essex Exploration Company, Trinity Pipeline Company, Creole Gas Pipeline Corp., Archer-Daniels-Midland Company and Hamilton Brothers Oil Company)

I. Pipeline Rate Matters

RP-1.
Docket Nos. ST81-280-006, 007, CP82-206-003 and 004, Mustang Fuel Corporation

RP-2.
Docket Nos. OR78-1-041, 042 and 043, Trans Alaska Pipeline System
Docket No. IS84-13-000, Sohio Pipe Line Company

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP84-94-004, ANR Pipeline Company

CP-2.
Docket No. CP80-283-000, Columbia Gas Transmission Corporation

CP-3.
Docket No. RP86-74-000, Algonquin Gas Transmission Company v. Texas Eastern Transmission Corporation

CP-4.
Docket No. CP80-349-000, Texas Gas Transmission Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12807 Filed 6-4-86; 9:03 am]

BILLING CODE 6717-01-M

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FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 2:30 p.m., Wednesday, June 11, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed joint policy statement regarding basic banking services by depository institutions.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–12944 Filed 6–4–86; 400 pm]

BILLING CODE 6210–01–M

7

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: Approximately 3:30 p.m., Wednesday, June 11, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federl Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–12945 Filed 6–4–86; 4:01 pm]

BILLING CODE 6210–01–M

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June 6, 1986

Part II

Department of Labor

Employment Standards Administration

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Labor proposes to revise the regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to Federal employees injured or killed in the performance of duty. In the process, regulations will be issued governing special categories of employees, sections will be amended which have proven ineffective, the terminology and usage in the existing regulations will be made current, and provisions governing the release of information (Privacy Act and Freedom of Information Act) will be updated. The chief effects of the proposed rulemaking will be to make the claims process clearer and more orderly, to standardize the application of the Federal Employees' Compensation Act to classes of employees not previously expressly covered and to make more specific the duties and responsibilities of the various parties in the claims process. Major new provisions include restricting the procedures for using COP, defining the term "subluxation," reducing monetary compensation for failure or refusal to participate in vocational rehabilitation plan development efforts, and defining the procedures for declaring and waiving overpayments.

DATE: Written comments must be submitted on or before July 21, 1986.

ADDRESS: Send written comments to Thomas M. Markey, Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523–7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Associate Director for Federal Employees' Compensation, Telephone (202) 523–7552.

SUPPLEMENTARY INFORMATION: The FECA provides compensation for wage loss, medical care, and vocational rehabilitation to Federal employees who are injured in the performance of their duties, or who develop illness as a result of factors of their Federal employment, as well as monetary benefits to the survivors of employees who are killed in the performance of duty or die as the result of factors of their Federal employment. The FECA was last amended in 1974, at which time some sweeping changes were made in the benefits structure. The regulations which were promulgated in 1975 to accommodate the changes have been subjected to intense scrutiny in the intervening ten years. As a result of this review, the Department of Labor has determined that many areas of the regulations would benefit from either greater definition or thorough revision.

Recognition of the problems of the FECA and its regulations has existed for years. Various agencies, including the General Accounting Office (GAO), the Department of Labor's Inspector General, the OWCP Interagency Task Force and the United States Postal Service among others, have identified deficiencies in the regulations and procedures as well as in the FECA itself, and have made recommendations and suggestions for improving the operation of the program. While many of the recommended changes require legislation, the Department has determined that in the absence of new legislation, a majority of the desired improvements can be made by revision of the existing regulations. The summary of the proposed changes which follows addresses the major areas of concern. Other changes are intended to bring the wording of the regulations into conformity with current practice or usage.

Subpart A is revised to delete reference to employees of the District of Columbia, who are no longer covered by the FECA, and to substitute the Panama Canal Commission for the Panama Canal Company and Canal Zone Government (5 U.S.C. 8146; E.O. 12215). Sections dealing with the release of records and the Privacy Act are amended to conform with the general regulatory provisions issued by the Department (29 CFR Part 70 and 70a). Section 10.5 is amended to include the meanings of words and terms commonly used but previously left undefined and to clarify terms already defined.

Subpart B is amended to make more explicit the requirements for filing claims for compensation and the responsibilities of the claimant, the employing agency and the Office of Workers' Compensation Programs (OWCP). The experience of OWCP as confirmed by investigative reports from GAO and the Office of the Inspector General and the observations of numerous employing agencies, is that the existing regulations are too vague. In addition, many provisions in the existing regulations do not accurately reflect the most desirable or expedient means of furthering a claim to adjudication. Some time frames for the submission and processing of forms have been changed to bring them into concert with Program experience under optimum conditions as observed in client agencies. The combined effects of delineating responsibilities and establishing realistic time limits will result in a faster, easier and more equitable adjudication process.

Agencies should note that sections dealing with the obligations of the injured employee and the employing agency in cases of partial disability have been expanded to accommodate the need for explicit directions for returning the injured worker to gainful employment as soon as possible. In prescribing the steps to be taken, the proposal allocates the responsibilities equitably and assures that both the claimant and the employing agency are involved in preserving the worker's position as a Federal employee while permitting the healing process to continue without detrimental effect on the employee.

There was also found to be a lack of adequate and effective sanctions when a permanently disabled employee refuses or fails to participate or continue participation in the early but necessary phases (plan development) of a directed vocational rehabilitation effort. In the early phases of the rehabilitation effort, no decision as to suitable vocational rehabilitation program has been made, no specific program has been offered, and little or no information about the claimant's aptitudes, knowledge, and skills is available to allow the Office to find that participation would increase the claimant's earning capacity. Thus, where the injured employee fails or refuses to cooperate and participate in the early phases of the rehabilitation effort, the Office's ability to apply the existing sanction (i.e., 5 U.S.C. 8113(b)) is hampered. However, to be consistent in the sanction to be applied, § 10.124 as proposed will provide that, lacking evidence to the contrary participation in a directed vocational rehabilitation effort is expected to result in a return to work with no loss of wage-earning capacity, and that where a permanently disabled employee fails or refuses to undergo vocational rehabilitation, reduction of monetary compensation will be made under 5 U.S.C. 8113(b) on that basis.

With regard to the necessary proof for continuing entitlement to benefits or augmented benefits, the sections for

both death and disability claims have been revised. For example, § 10.125 and § 10.127 as proposed would clarify the need for periodic reports of earnings and medical status in disability claims as well as for such proofs of continued entitlement as certification of school enrollment for dependent beneficiaries in death claims.

Provisions for the appellate process have been revised to make clear that there is no entitlement to a hearing on a decision of the Office if the claimant first requests a reconsideration of the claim (20 CFR 10.131, as proposed). (See Barney L. Bailey, Jr., 33 ECAB 1243.) In addition, § 10.137 as proposed defines the circumstances under which it shall be deemed that a claimant has abandoned a request for a hearing. In order to provide quicker decisions at this level of the appellate process, § 10.131 as proposed would give a claimant the opportunity to request a hearing on the written record in lieu of an oral hearing. Provisions governing subpoenas, and fees and mileage for subpoenaed witnesses have also been added (§ 10.134).

A major new provision governs the right of an employing agency to attend a hearing requested by one of its employees solely in an observer capacity (§ 10.135). In addition, § 10.140 as proposed makes more explicit the responsibility of an employing agency to submit all relevant and probative factual and medical evidence which it may possess or acquire. These changes have been made in recognition of the role of the employing agency in the claims process, both as a provider of information and as the instrumentality which bears the cost of injury claims. Furthermore, the proposed revisions provide that if an office accepts a claim which has initially been controverted by an employing agency, the office will provide the agency with the reasons for accepting the claim. Such participation will assure full development of claims without resort to adversarial proceedings.

In order to limit what is currently an open-ended process, and to encourage claimants to submit fully documented and prompt requests for reconsideration, § 10.138 as amended provides for review of a decision denying or terminating a benefit provided the application for review is filed within one year of the date of the decision.

A new §§ 10.160—10.166 dealing with the requirements for representative payment has been added in response to inquiries from oversight bodies. The proposal seeks to define the circumstances under which a representative payee may be chosen and the responsibilities of the payee for ensuring proper disbursement of monies received and for reporting to the Office on the disposition of such payments.

Subpart C dealing with Continuation of Pay (COP) as authorized by 5 U.S.C. 8118 has been significantly revised to reflect ten years' experience with a novel provision of the compensation program as well as to reflect the improved claims processing times of the Office. The time for initiating use of COP has been shortened from six months to 90 days from the date of injury. The Department has determined that the six month period was unrealistically remote in time from the occurrence of an injury to the onset of first disability for continuation of pay purposes. In a related change, the period for using COP days remaining after the first return to duty has been shortened from six months to 90 days.

Under § 10.204 as proposed, the employing agency will be authorized to terminate COP if medical evidence substantiating disability is not submitted within 10 days of the filing of a claim for COP, including such claim for recurrence of disability. COP will not be continued where an injured employee refuses suitable alternative duties nor where an employee's period of employment would otherwise be terminated.

As provided in Subpart B for periods of compensable disability, Subpart C will be amended to state explicitly the responsibilities of the claimant and the employing agency during the COP period for completion of forms, submission of evidence and the provision and acceptance of suitable employment during periods of disability for the employee's regular duties. These provisions will eliminate much uncertainty about the purpose of COP and the conditions under which it is payable. Communications between the agency and the employee will be improved, and return to duty will be facilitated.

Subpart D has been amended to incorporate the formula for determining a partially disabled employee's wage earning capacity and the basis for establishing cost-of-living increases. Neither provision is new to the program, and each reflects the practice currently in use by the Office as established either by sanction of the Employees' Compensation Appeals Board or by statute.

It should be noted that the section dealing with overpayments has been greatly expanded to inform beneficiaries of their rights to due process when an overpayment occurs. We have included the basis for requesting waiver, definitions of "equity and good conscience," and circumstances where recovery would defeat the purpose of the FECA. The effect is to bring OWCP into concert with other Federal benefits programs in its handling of overpayments.

Subpart E, which was substantially revised in May 1984 (49 FR 18976–80), is further revised to include a definition of the term "subluxation" (§ 10.400). This change has been made to provide a definition usable by both chiropractors and other physicians. Also, a time limitation on the payment of medical and related expenses submitted by injured Federal employees and medical providers has been added (§ 10.413).

Subpart F dealing with the exclusion of physicians and other providers of medical services and supplies remains unchanged.

Subpart G dealing with identification and recovery of liability by a third party remains substantially unchanged, the primary revision being made for the purposes of clarity and conformity with current usage.

Subpart H has been added, and contains provisions applicable to special classes of employees which were not covered by explicit regulations in the past. The three categories are Peace Corps Volunteers, which were designated Federal employees by the Peace Corps for the purpose of injury and disability compensation (5 U.S.C. 8142); non-Federal law enforcement officers who in certain circumstances are eligible for benefits comparable to what an injured Federal employee would receive (5 U.S.C. 8191), and Federal grand and petit jurors who are afforded the protection of the Act while engaged in certain activities in connection with their duties as jurors (5 U.S.C. 8101(1)(F); 28 U.S.C. 1877). At the present time these beneficiaries are covered solely by means of internal procedures.

The Office of Workers' Compensation Programs has studied the regulations of various other Federal agencies to ascertain how they address particular issues. Where practical, the proposed regulations have been drafted consistent with those of other agencies, especially when providing due process. We have examined the current regulations to determine whether we might best make only minor changes and have concluded that the Program and its beneficiaries would profit from a comprehensive review of all provisions. We believe that the proposed rules will accomplish the major objectives of the FECA and the Program at this time and will correct problems which have come to light since

1975 when the regulations were promulgated.

Classification—Executive Order 12291

The Department of Labor does not believe that the regulatory proposal constitutes a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations will not differ significantly from those currently in effect. No new forms are required. All forms that are referenced have been submitted previously for approval by the Office of Management and Budget where required.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 81 Stat. 1164 (5 U.S.C. 605(b)). The proposed regulations apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities, in this case, medical providers and physicians. The Under Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and records, Health records, Freedom of information, Privacy, Penalties, Health profession, Workers' compensation, Employment, Administrative practices and procedures, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney diseases, Lung diseases, and Tort claims.

Accordingly, it is proposed that 20 CFR Part 10 be amended as set forth below.

1. The authority citation for 20 CFR Part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 6-84, 49 FR 32473; Employment Standards Order 78-1, 43 FR 51466.

2. By revising the table of contents of Part 10 to read as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

Subpart A—General Provisions

Introduction

Sec.
10.1 Statutory provision.
10.2 Administration of the Act and this chapter.
10.3 Purpose and scope of this part.
10.4 Applicability of other parts within this chapter.
10.5 Definitions and use of terms.

Information in Program Records

10.10 Custody of records relating to Federal Employees' Compensation Act matters.
10.11 Confidentiality of records relating to Federal Employees' Compensation Act matters.
10.12 Protection, release, inspection and copying of records.

Miscellaneous Provisions

10.20 Forms.
10.21 Waiver of compensation rights invalid.
10.22 Exclusiveness of remedy.
10.23 Penalties.

Subpart B—Notice of Injury and Claim for Compensation, Administrative Procedures

Notice of Injury or Death

10.100 How to file a notice of injury or death.
10.101 When a notice of injury or death must be given.
10.102 Report of injury by the official superior.
10.103 Report of death by the official superior.
10.104 Report of the attending physician.

Claims for Compensation

10.105 Time for filing a claim for compensation.
10.106 How to file a claim for disability compensation.
10.107 Application for augmented compensation for disability.
10.108 How to file an original claim for death benefits.
10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.

Evidence

10.110 Burden of proof.
10.111 Submission of other evidence.

Termination and Continuation of Eligibility

10.120 Report of termination of disability or return to work.
10.121 Recurrence of disability.
10.122 Claim for continuing compensation for disability.
10.123 Official superior's responsibilities in returning the employee to work.
10.124 Employee's obligation to return to work or to seek work when able.
10.125 Affidavit or report by employee of employment and earnings.
10.126 Claims for continuing compensation for death.
10.127 Continuation of compensation for a child, brother, sister, or grandchild who has reached the age of 18.
10.128 Termination of right to compensation for death; reapportionment of compensation.

Determination of Claims, Hearing and Review Procedures

10.130 Processing of claims.
10.131 Request for a hearing.
10.132 Time and place of hearing; prehearing conference.
10.133 Conduct of hearing.
10.134 Subpoenas; witness fees.
10.135 Employing agency attendance at hearings and submission of evidence.
10.136 Termination of hearing; release of decision.
10.137 Postponement; withdrawal or abandonment of request for hearing.
10.138 Review of decision.
10.139 Review by Employees' Compensation Appeals Board.
10.140 Participation in claims process by employing agency.
10.141 Representation of the Director.
10.142 Representation of claimants.
10.143 Qualification of representative.
10.144 Authority of representative.
10.145 Fees for services.
10.146 [Reserved]
10.147 [Reserved]
10.148 [Reserved]
10.149 [Reserved]
10.150 Statement relative to substantive rules.

Representative Payment

10.160 Indications for designation of a representative payee.
10.161 Selection of a payee.
10.162 Responsibilities of a representative payee.
10.163 Use of benefit payments.
10.164 Conservation and investment of benefit payments.
10.165 Termination of representation.
10.166 Accounting for benefit payments.

Subpart C—Continuation of Pay

General

10.200 Statutory provisions.

Procedures

10.201 Right to continuation of pay.
10.202 Election of annual or sick leave.
10.203 Controversion by employing agency.
10.204 Termination and forfeiture of continuation of pay.

10.205 Pay defined for continuation of pay purposes.
10.206 Agency accounting and reporting of continuation of pay.

Official Superior's and Beneficiary's Responsibilities

10.207 Official superior's responsibility in continuation of pay cases.
10.208 Recurrence of disability.
10.209 Employee's responsibilities in continuation of pay cases.

Subpart D—Payment of Compensation

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3. By revising § 10.1 to read as follows:

§ 10.1 Statutory provisions.

(a) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The Act has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officer Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers in Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (see 5 U.S.C. 5351, 8144), employees of the Panama Canal Commission and certain employees of the Alaska Railroad (see 5 U.S.C. 8146), certain law enforcement officers not employed by the United States (see 5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The Act provides for the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties in service to the United States. In addition to monetary compensation, eligible employees are entitled to receive, at reasonable expense to the United States, medical and related services made necessary by the compensable condition. In appropriate cases, vocational rehabilitation services shall be provided to eligible beneficiaries.

(c) The Act also provides for the payment of monetary compensation to specified survivors of an employee whose death is the result of an employment-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) Each of the types of benefits and conditions of eligibility enumerated in this section is subject to the applicable provisions of the Act and the provisions of this part. This secton shall not be construed to modify or enlarge upon the provisions of the Act.

4. By revising § 10.2(b) to read as follows:

§ 10.2 Administration of the Act and this chapter.

* * * * *

(b) In the case of employees of the Panama Canal Commission, the Federal Employees' Compensation Act is administered by the Panama Canal Commission and inquiries pertaining to such coverage should be directed to that Commission.

5. By revising § 10.3 to add a new paragraph (i) which reads as follows:

§ 10.3 Purpose and scope of this part.

* * * * *

(i) Subpart H of this part contains rules for particular groups of employees whose status requires special application of the provisions of the Act.

6. By revising § 10.4 to read as follows:

§ 10.4 Applicability of other parts within this chapter.

This revised Part 10 is applicable to Part 25 of this chapter except as modified by Part 25.

7. In § 10.5, paragraphs (a)(6), (a)(11)(iv) through (xx), (a)(12), and (a)(14) through (a)(20) are revised; paragraphs (a)(21) through (a)(28) are added; paragraph (b) is revised, and paragraphs (c) and (d) are removed to read as follows:

§ 10.5 Definitions.

(a) * * *

(6) "Benefits" or "Compensation" means the money paid or payable under the Act to the employee on account of loss of wages or loss of wage-earning capacity and to enumerated survivors on account of the employee's death, and includes any other benefits paid for from the Employee's Compensation Fund such as scheduled compensation under 5 U.S.C. 8107, medical diagnostic and treatment services supplied pursuant to the Act and this part, vocational rehabilitation services, additional money for services of an attendant or for vocational rehabilitation under 5 U.S.C. 8111, and funeral expenses under 5 U.S.C. 8134, but does not include continuation of pay as provided by 5 U.S.C. 8118.

* * * * *

(11) * * *

(iv) An individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(v) An individual selected pursuant to Chapter 121 of Title 28, United States Code, and serving as a petit or grand juror;

(vi) Members of the Reserve Officers Training Corps;

(vii) Civil Air Patrol Volunteers;

(viii) Peace Corps Volunteers and volunteer leaders;

(ix) Job Corps enrollees;

(x) Youth Conservation Corps enrollees;

(xi) Volunteers in Service to America;

(xii) Members of the National Teachers Corps;

(xiii) Members of the Neighborhood Youth Corps;

(xiv) Student employees as defined in 5 U.S.C. 5351;

(xv) Employees of the Panama Canal Commission;

(xvi) Certain employees of the Alaska Railroad;

(xvii) Law enforcement officers not employees of the United States and Federal law enforcement officers who are pensioned or pensionable under sections 521–535 of Title 4, District of Columbia Code;

(xviii) An individual covered under the provisions of section 105(e)(1) of Pub. L. 93–638 (Indian Self-Determination and Education Assistance Act of 1975); and,

(xix) Other persons performing service for the United States within the purview of the Act and all acts in amendment, substitution or extension thereof;

(xx) But does not include:

(A) A commissioned officer of the Regular Corps of the Public Health Service;

(B) A commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(C) A commissioned officer of the Environmental Science Services Administration.

(12) "Official Superior" means officers and employees having responsibility for the supervision, direction or control of employees, or other employees of the agency designated by the employing agency to carry out the responsibilities vested in the agency under the Act and this subpart.

(13) * * *

(14) "Injury" means a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment for which benefits are provided under the Act. The term "injury" includes damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired; except that eyeglasses and hearing aids shall not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.

(15) "Traumatic injury" means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.

(16) "Occupational disease or illness" means a condition produced by systemic infections; continued or repeated stress or strain; exposure to toxins, poisons, fumes, etc., or other continued or repeated exposure to factors or conditions of the work environment over a period of time longer than a single work day or shift.

(17) "Disability" means the incapacity, because of employment injury, to perform the duties of the position held at the time of injury.

(18) "Temporary aggravation" means that factors of employment have directly caused an underlying or pre-existing condition, disease or illness to be more severe for a definite limited period of time and thereafter leaves no greater impairment than existed prior to the employment injury.

(19) "Impairment" means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(20) "Pay rate for compensation purposes" means the employee's pay, as determined under section 8114 of the Act, at the time of injury, or at the time disability begins, or at the time compensable disability recurs if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under section 8113 of the Act with respect to any period.

(21) "Organ" means a part of the body that performs a special function, and for purposes of this part excludes the brain, heart and back.

(22) "United States Medical Officers and Hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Veterans Administration, and United States Public Health Service, and any other medical officers or hospitals designated as a United States medical officer or hospital by the Secretary.

(23) "Representative" means a person authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the Act or this part.

(24) "Surviving spouse" means the husband or wife living with or dependent for support on a deceased employee at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

(25) "Student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(i) A school or college or university operated or directly supported by the United States, or by any State or local

government or political subdivision thereof; or

(ii) A school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body; or

(iii) A school or college or university not so accredited but whose credits are accepted on transfer by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an accredited institution; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof providing courses of not less than 3 months duration, that prepares the individual for a livelihood in a trade, industry, vocation, or profession.

An individual continues to be a student during any interim between school years if the interim does not exceed 4 months and the individual shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately after the interim, or during periods of reasonable duration during which, in the judgment of the Office, the individual is prevented by factors beyond his or her control from pursuing his or her education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(26) "A year beyond the high school level" means—

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she has indicated an intention to continue schooling within 4 months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance, or

(ii) If the individual has indicated that he or she will not continue schooling within 4 months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

(b) *Dependents and survivors.* In addition to basic disability benefits for employees the Act provides in section 8133 that certain monthly benefits shall be payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty. Section 8110 of the Act provides that any employee who is found eligible for a basic benefit shall be entitled to have such a basic benefit augmented at a specified rate for certain persons living in the beneficiary's household or who are dependent upon the beneficiary for support. The provisions of 5 U.S.C. 8101, 8110, and 8133 defining the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or augmented benefit shall be applicable as appropriate to the provisions of this part.

8. By revising § 10.10 to read as follows:

§ 10.10 Custody of records relating to Federal Employees' Compensation Act matters.

All records, medical and other reports, statements of witnesses and other papers relating to the injury or death of a civil employee of the United States or other person entitled to compensation or benefits from the United States under the Act and all amendments and extensions thereof, are the official records of the Office and are not records of the agency, establishment or department making or having the care or use of such records.

9. By revising § 10.11 to read as follows:

§ 10.11 Confidentiality of records relating to Federal Employees' Compensation Act matters.

Records of the Office pertaining to an injury or death are confidential, and are exempt from disclosure to the public under section 552(b)(6) of Title 5, United States Code. No official or employee of an agency, establishment or department who has investigated or secured statements from witnesses and others pertaining to a claim for benefits, or any person having the care or use of such reports, shall disclose information from or pertaining to such records to any person, except in accordance with applicable regulations (see 20 CFR 70 and 70a).

10. By adding new § 10.12 as follows:

§ 10.12 Protection, release, inspection and copying of records.

(a) The protection, release, inspection and copying of records of the Office pertaining to an injury or death shall be accomplished in accordance with the rules, guidelines and provisions contained in Part 70 and Part 70a of Title 29 of the Code of Federal Regulations and the annual notice of systems of records and routine uses as published in the Federal Register. However, since the records of the Office are contained within a government-wide system of records under the control of the Department of Labor, § 70a.1(b)(3) of Title 29 of the Code of Federal Regulations provides that the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act. Where request to amend such records in possession of the agency is received, the agency shall so advise the Office and shall provide the Office with a copy of any amended record.

(b) When an employee or beneficiary is prosecuting an action for damages under 5 U.S.C. 8131, records may be released as provided for in Part 70a of Title 29 of the Code of Federal Regulations.

11. By amending § 10.20(b) table by revising (11) through (14) and adding (15) to read as follows:

§ 10.20 Forms.

* * * * *

(b) * * *

(11) CA–12—Claim for Continuance of Compensation.

(12) CA–16—Authorization of Examination and/or Treatment.

(13) CA–17—Duty Status Report.

(14) CA–20—Attending Physician's Report.

(15) CA–20a—Attending Physician's Supplemental Report.

* * * * *

12. By revising § 10.23(a) to read as follows:

§ 10.23 Penalties.

(a) Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided by the Act or who knowingly accepts compensation to which that person is not entitled is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions, be punished by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

* * * * *

13. By revising § 10.100 to read as follows:

§ 10.100 How to file a notice of injury or death.

(a) *Traumatic injury.* An employee who sustains a traumatic injury which the employee believes occurred while in the performance of duty shall give written notice of the injury of Form CA–1 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf.

(b) *Occupational disease or illness.* An employee who has a disease or illness which the employee believes to be employment-related shall give written notice of the condition on Form CA–2 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf. If it is impractical to give written notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office. Form CA–2 must be accompanied by a statement from the employee to include (1) a detailed history of the disease or illness with identification of part(s) of the body affected; (2) complete details of types of substances or conditions of employment believed responsible for the disease or illness; (3) a description of specific exposures to substances or stressful conditions including locations, frequency and duration, and (4) whether the employee ever suffered a similar condition and, if so, full details of onset, history and medical care received with names and addresses of physicians rendering treatment.

(c) *Death.* If an employee dies because of a traumatic injury believed to have been sustained in the performance of duty or because of a disease or illness believed to have been employment-related, the employee's survivor(s), or any person acting on behalf of the survivor(s), shall notify the official superior of the death. If it is impractical to give notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office.

14. By redesignating § 10.102 as § 10.101 and revising it to read as follows:

§ 10.101 When a notice of injury or death must be given.

(a) *Traumatic injury.* Notice of a traumatic injury or death due to a traumatic injury shall be given as soon as possible but, pursuant to 5 U.S.C. 8119, no later than 30 days from the date on which the injury or death occurred. The failure to give notice within 30 days may result in a loss of compensation rights.

(b) *Occupational disease or illness.* Notice of disease or illness believed to be employment related shall be given as soon as possible but no later than 30 days from the date on which the employee was first aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the disease or illness and the conditions or factors of employment.

(c) *Death.* In the case of death, notice shall be given as soon as possible but no later than 30 days from the date of death or the date the employee's survivor first became aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the death and the conditions or factors of employment. The failure to give notice within 30 days may result in a loss of compensation rights.

15. By redesignating § 10.103 as § 10.102 and revising it to read as follows:

§ 10.102 Report of injury by the official superior.

(a) As soon as possible but no later than 10 working days after receipt of written notice of injury from the employee, the official superior shall submit to the Office a written report of every injury or occupational disease or illness which is likely to:

(1) Result in a medical charge against the Office;

(2) Result in disability for work beyond the day or shift of injury;

(3) Require prolonged treatment;

(4) Result in future disability;

(5) Result in permanent impairment or;

(6) Result in a continuation of pay pursuant to 5 U.S.C 8118.

Portions of Forms CA–1 or CA–2 are provided for this purpose. If the injury does not come under any of the categories enumerated in this paragraph, the Form CA–1 or CA–2 need not be submitted to the Office but shall be retained as a permanent record in the employee's personnel folder.

(b) If the official superior has reason to disagree with any particular of the injury as reported by the employee, the official superior or other agency official shall explore the circumstances of the injury and submit to the Office, at the same time as Form CA–1 or CA–2, a full written explanation specifying the areas of disagreement and the findings upon which the disagreement is based. The report may be accompanied by supporting documentation such as witness statements, medical reports or records, or any other relevant information. If written explanation in support of the disagreement is not submitted, the Office may accept as factual the report of injury made by the employee.

(c) In cases of disease or illness, Form CA–2 must be accompanied by the following from the official superior:

(1) A detailed description of the employee's duty assignments including the nature, extent and duration of exposure to fumes, chemicals, or other irritants or situations;

(2) Copies of all physical examination reports, including x-ray reports and laboratory data, on file for the employee;

(3) A record of the employee's absences from work showing the reason for the absence in each instance, if known;

(4) Statements from each co-worker who has firsthand knowledge about the employee's condition and its cause, and;

(5) The official superior's comments on the accuracy of the employee's statement required by § 10.100(b) of this part.

(d) Other reports shall be submitted by the official superior as described elsewhere in this part or as may be required by the Office.

16. By redesignating § 10.101 as § 10.103 and revising it to read as follows:

§ 10.103 Report of death by the offical superior.

If an employee dies because of a traumatic injury or a disease or illness sustained in the performance of duty, the official superior shall immediately report the death to the Office by telephone or telegram. As soon as possible but no later than 10 working days after receipt of knowledge of death, the official superior shall complete and send Form CA–6 to the Office.

17. By adding a new § 10.104 to read as follows:

§ 10.104 Report of the attending physician.

(a) In all cases reported, the employee must submit, or arrange for the submission of, a medical report to the Office from the attending physician. This report should include: dates of examination and treatment; history given by the employee; findings; results of x-rays and laboratory tests; diagnosis; course of treatment, and the physician's opinion, with medical reasons, regarding causal relationship between the diagnosed condition(s) and the factors or conditions of the employment. This report may be made:

(1) On Part B of Form CA–16;

(2) On Form CA–20 or CA–20a; or

(3) By narrative report on the physician's letterhead stationery. The report shall be submitted to the Office as soon as possible after medical examination or treatment is received. (See also § 10.204(a)(1).)

(b) Other reports shall be submitted by the attending physician as described elsewhere in this part or as may be required by the Office.

18. By revising paragraph (a) and adding paragraph (e) to § 10.105 to read as follows:

§ 10.105 Time for filing a claim for compensation.

(a) Claim for disability compensation. An injured employee is required to file a written claim for compensation within 3 years after the injury before compensation may be paid. If, however, the official superior had actual knowledge of the injury within 30 days, or if written notice was given within 30 days, compensation may be allowed regardless of whether a written claim was made within 3 years after the injury. Actual knowledge must be such as to put the official superior reasonably on notice of an on-the-job injury.

* * * * *

(e) If no claim is filed by an injured employee or by someone acting on the employee's behalf prior to his or her death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

19. By revising § 10.106 to read as follows:

§ 10.106 How to file a claim for disability compensation.

(a) Whenever an employee, as a result of an injury in the performance of duty, is disabled with loss of pay for more than 3 calendar days or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the official superior shall furnish the employee with Form CA–4 (occupational disease or illness) or CA–7 (traumatic injury), as appropriate, for the purpose of claiming compensation and shall advise the employee of his or her rights under the Act.

(b) The employee, upon termination of wage loss if the period of wage loss is less than 10 calendar days, or at the expiration of 10 calendar days from the date pay stops if the period of wage loss will be 10 calendar days of more, should file Form CA–4 or CA–7 with the Office or with any person designated by the Office to receive claims. The employee's official superior is so designated to receive claims on behalf of the Office. The employee, or someone acting on the employee's behalf, must complete the front of Form CA–4 or CA–7 and, unless special circumstances require otherwise, submit the form to the official superior for completion and transmission to the Office.

(c) Upon receipt of Form CA–4 or CA–7 from the employee (or from someone acting on the employee's behalf), the official superior shall complete the appropriate portions of the claim form, items 1–4 on the front of the attached Form CA–20, insert the appropriate Office address on the back thereof, detach the Form CA–20 and send it to the attending physican for completion and submission to the Office. As soon as possible, but not later than 5 working days after its receipt from the employee, the official superior shall forward the completed Form CA–4 or CA–7 to the Office.

20. By revising § 10.107 to read as follows:

§ 10.107 Application for augmented compensation.

(a) While the employee has one or more dependents as defined in 5 U.S.C. 8110, the employee's basic compensation for wage loss as provided in section 8105 or 8106(a), or for permanent impairment as provided in section 8107(a), shall be augmented as provided in section 8110. Forms CA–4 and CA–7 include an application for such augmented compensation.

(b) Augmented compensation payable while an employee has an unmarried child as defined by 5 U.S.C. 8110, which would otherwise terminate because the child reaches the age of 18, may be continued while the child is a student as defined by the Act and in § 10.5(a)(25) of this part.

(c) The Office may require an employee to submit an affidavit or statement as to any dependents, in the manner and at the times the Office specifies, in order to determine the employee's entitlement to augmented compensation. If an employee when required, fails within 30 days of the date of the request to submit such affidavit or statement, the employee's right to augmented compensation otherwise payable shall be suspended until such time as the requested affidavit or report is received, at which time augmented compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such augmented compensation.

(d) An employee augmented compensation shall promptly notify the Office of any event which would terminate the employee's continued entitlement to augmented compensation. Any checks or payments received after such event shall be returned to the Office as soon as possible. Where augmented compensation is paid by the Office beyond the date entitlement terminated, the Office shall make proper adjustment and any difference between actual entitlement and the amount already paid is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129.

21. By revising § 10.109 to read as follows:

§ 10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.

(a) If an employee who has sustained compensable impairment within the meaning of 5 U.S.C. 8107, and has filed a valid claim during his or her lifetime, dies from causes other than the injury which resulted in the compensable impairment before the entire amount due for the schedule was paid, a claim for the unpaid balance may be made on a form approved by the Office by the surviving spouse or child in accordance with 5 U.S.C. 8109(a)(3)(D). If there is no surviving spouse or child, then a claim for the unpaid balance may be made by any other survivors pursuant to 5 U.S.C. 8109(a)(3)(D) and benefits shall be paid in the proportions and under the conditions and in the order as follows:

(1) To the parent or parents wholly dependent for support upon the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(2) To the parent or parents partially dependent for support upon the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(3) To the parent or parents partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

(b) Any survivor referred to in paragraph (a) of this section must be alive to receive any payment and any such survivor shall not have a vested right to any such payment. Claims for continuation of payments under 5 U.S.C. 8109 shall be made in the manner described by § 10.126 of this subpart.

(c) The entitlement of any survivor to payment under 5 U.S.C. 8109 shall cease upon the happening of any event which would terminate such right under 5 U.S.C. 8133. The termination of such right and any necessary

reapportionment shall be governed by § 10.128 of this subpart.

(d) The disposition of any balance not paid under the foregoing paragraphs shall be made in accordance with 5 U.S.C. 8109(a)(D)(v).

22. By redesignating § 10.110 as § 10.125 and revising it to read as follows:

§ 10.125 Affidavit or report by employee of employment and earnings.

(a) While in receipt of compensation for partial or total disability, an employee may be required to submit an affidavit or other report of earnings from employment or self-employment on either a part-time of full-time basis. If an employee when required, fails within 30 days of the date of the request to submit such an affidavit or report, the employee's right to compensation for wage loss under section 8105 or 8106 is suspended until such time as the requested affidavit or report is received by the Office, at which time compensation will be reinstated retroactive to the date of suspension. If, in making an affidavit or report, an employee knowingly omits or understates any earnings or remuneration, the employee shall forfeit the right to compensation with respect to any period for which the affidavit or report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment or earnings in a required affidavit or report may, in addition to forfeiture, subject the employee to criminal prosecution.

(b) Where the right to compensation is forfeited, any compensation already paid for the period of forfeiture may be recovered pursuant to 5 U.S.C. 8129 by deducting the amount from compensation payable in the future. If further compensation is not payable, the compensation already paid may be recovered pursuant to 5 U.S.C. 8129 and the Federal Claims Collection Act (31 U.S.C. 952). Earnings from employment referred to in this section or elsewhere in this part means gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses, or any other advantages received in kind as part of the wages or remuneration. In general, earnings from self-employment means a reasonable estimate of the rate of pay it would cost the employee to have someone else perform the work or duties the employee is performing. Where self-employment is in the form of a corporation, partnership, or sole-proprietorship, a lack of profits for such entity does not remove the employee's obligation to report the employment or the rate of pay.

(c) For the purpose of administering the Act, including the making of proper determinations as to an employee's entitlement to benefits, the Office may, with the written consent of the employee, obtain from the Social Security Administration wage information concerning that employee to include the names and addresses of employers for whom the employee worked during a specified period of time, the periods employed, and the gross amount of wages earned.

23. By adding a new § 10.110 to read as follows:

§ 10.110 Burden of Proof

(a) A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the claimed condition and the disability, if any, was caused, aggravated, or adversely affected by the claimant's Federal employment. As a part of this burden, the claimant must specify the employment incident or the factors or conditions of employment to which the injury, disease or disability is attributed, and must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing causal relationship between the claimed condition and the Federal employment. The fact that a condition or disease manifests itself during a period of Federal employment by itself does not raise an inference that there is causal relationship between the two. Neither the fact that the condition or disease became manifest during a period of Federal employment, nor the belief of the claimant that the condition or disease was caused or aggravated by employment conditions or factors, is sufficient in itself to establish causal relationship.

(b) If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. Subsequent submissions of evidence still not sufficient to carry the burden of proof will not require another notification of defects. The Office may, in its discretion, undertake to develop either factual or medical evidence for determination of the claim. For example, when the claim is based on exposure to hazardous material or noise at work, or when relevant evidence is in the possession of the Federal government and not accessible to the claimant (e.g., a deactivated employing agency facility), the Office will undertake to develop the necessary evidence.

(c) Once the Office has accepted a claim and paid compensation, it has the burden, before terminating or reducing compensation, of establishing by the weight of the evidence that the disability for which compensation was paid has ceased, or that the disabling condition is no longer causally related to the employment, or that the claimant is only partially disabled, or that its initial decision was in error.

24. By revising § 10.111 to read as follows:

§ 10.111 Submission of other evidence.

The responsibilities of the official superior and the claimant to submit evidence are specified elsewhere in this part. A claimant, a person acting on the claimant's behalf, or the employing agency may submit to the Office any other evidence which is deemed relevant and pertinent to the initial and ongoing determination of the claim.

25. By revising § 10.120 to read as follows:

§ 10.120 Report of termination of disability or return to work.

In all cases reported to the Office the official superior shall notify the Office immediately upon the injured employee's return to work or termination of disability. Form CA-3 is provided for this purpose. It shall be used unless a report of termination of disability is made to the Office on Form CA-1 or CA-2, or CA-4, or CA-7 as appropriate, or in some other manner.

26. By revising § 10.121 to read as follows:

§ 10.121 Recurrence of disability.

(a) The official superior shall notify the Office if, after the employee returns to work, the original injury causes the employee to stop work again. Form CA-2a is provided for this purpose. If the original injury was not previously reported to the Office, notice of the original injury shall be made on Form CA-1 or CA-2, as appropriate, and attached when Form CA-2a is submitted. Medical reports concerning the original injury should also be attached if not previously submitted. The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(b) When the employee has received medical care as a result of the

recurrence, he or she should arrange for a detailed medical report to be submitted by the attending physician. The report should include: dates of examination and treatment; history given by the employee; findings; results of x-ray and laboratory tests; diagnosis; course of treatment; the physician's opinion, with medical reasons, regarding causal relationship between the employee's condition and the original injury; work limitations or restrictions, and prognosis. The employee should also submit, or arrange for the submission of, similar medical reports for any examination and/or treatment received subsequent to returning to work following the original injury.

(c) The employee must also give the reasons for believing the recurrence of disability is related to the original injury. A statement from the employee must accompany Form CA–2a describing the employee's duties upon return to work after the original injury, stating whether there were any other injuries or illness, and giving a general description of the employee's physical condition during the intervening period. The official superior may submit comments concerning the employee's statement.

(d) If the injured employee does not return to duty prior to the date Form CA–2a is submitted to the Office, the return to duty or termination of disability shall be reported to the Office on Form CA–3 unless otherwise reported on Form CA–4 or CA–7 or Form CA–8.

(e) Claim for compensation as a result of the recurrence of disability should be made using Form CA–4 or CA–7, as appropriate, unless such form was previously filed after the original injury. If Form CA–4 or CA–7 was previously filed, compensation must be claimed using Form CA–8. A completed claim form plus a medical report on Form CA–20 or CA–20a (or in narrative form) must be submitted before compensation may be paid.

27. By revising § 10.122 to read as follows:

§ 10.122 Claim for continuing compensation for disability.

Form CA–8 is provided to claim compensation for additional periods of time after Form CA–4 or CA–7 is submitted to the Office. It is the responsibility of the employee to submit Form CA–8. Without receipt of such claim, the Office has no knowledge of continuing wage loss. Therefore, while disability continues, a claim on Form CA–8 should be submitted every 2 weeks until the employee is otherwise instructed by the Office. The employee shall complete and sign the face of the form, and the official superior shall complete the reverse side. The official superior also shall complete items 1–6 on the front of the attached Form CA–20a and insert the appropriate Office address on the back thereof, and then detach the Form CA–20a and send it to the attending physician for completion and submission to the Office. The official superior shall forward the completed Form CA–8 to the Office within 5 working days of receipt from the employee.

28. By redesignating § 10.124 as § 10.126 and revising it to read as follows:

§ 10.126 Claims for continuing compensation for death.

A beneficiary to whom an award of compensation has been made on account of an employee's death shall submit additional claims for continuing compensation to the Office once each year, or when required by the Office. Form CA–12 is provided by the Office for this purpose and will be sent to the beneficiary when an additional claim is required. If a beneficiary when required, fails within 30 days of the date of request to submit the form (or an equivalent written statement), the beneficiary's right to compensation, including compensation payable to that beneficiary for or on behalf of another (e.g., compensation payable to a widow on behalf of a child), shall be suspended until such time as the requested form or equivalent written statement is received, at which time compensation will be reinstated at the appropriate rate retroactive to the date of suspension.

29. By redesignating § 10.123 as § 10.124 and revising it to read as follows:

§ 10.124 Employee's obligation to return to work or to seek work when able.

(a) An employee whose disability has ceased and who is able to resume regular Federal employment has the obligation to do so. No further compensation for wage loss is payable once the employee has recovered from the employment injury to the extent that he or she could perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) Where an employee has been advised by the employing agency in writing of the existence of specific alternative positions within the agency, the employee shall furnish the description of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. Where an agency has advised the employee of its willingness to accommodate where possible the employee's work limitations and restrictions, the employee shall so advise the attending physician and request the physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(c) Where an employee has been offered suitable employment (or reemployment) by the employing agency (i.e., employment or reemployment which the Office has found to be within the employee's educational and vocational capabilities, within any limitations and restrictions which pre-existed the injury, and within the limitations and restrictions which resulted from the injury), or where an employee has been offered suitable employment as a result of job placement efforts made by or on behalf of the Office, the employee is obligated to return to such employment. An employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified.

(d) When a permanently disabled employee who cannot return to the position held at the time of injury due to the residuals of the employment injury has recovered sufficiently to be able to perform some type of work, the employee must seek suitable work either in the Government or in private employment. Such an employee must report the efforts made to obtain suitable employment at such times and in such manner as the Office may require including the names and addresses of the persons or establishments to whom the employee has applied for work.

(e) If a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work has been offered to, procured by, or secured for the employee, the employee is not entitled to compensation provided by sections 8105, 8106, and 8107 of the Act.

(f) Pursuant to 5 U.S.C. 8104(a), the Office may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in a vocational rehabilitation effort when so directed, the office will, in accordance with 5 U.S.C. 8113(b), reduce prospectively the

employee's monetary compensation based on what would probably have been the employee's wage-earning capacity had there not been such failure or refusal. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in the early but necessary stages of a vocational rehabilitation effort (i.e., interviews, testing, counselling, and work evaluations), the Office cannot determine what would have been the employee's wage-earning capacity had there not been such failure or refusal. It will be assumed, therefore, in the absence of evidence to the contrary, that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and the Office will reduce the employee's monetary compensation accordingly. Any reduction in the employee's monetary compensation under the provisions of this paragraph shall continue until the employee in good faith complies with the direction of the Office.

30. By adding a new § 10.123 to read as follows:

§ 10.123 Employing agency's responsibilities in returning the employee to work.

(a) Upon authorization of medical care, the official superior shall advise the employee of his or her obligation to return to work as soon as possible and, with respect to alternative work, shall

(1) Advise the employee in the same manner as provided by § 10.207(b)(1); and

(2) Advise the employee of his or her responsibilities under § 10.124 of this subpart.

(b) The employing agency shall monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is provided for this purpose.

(c) Where the employing agency is notified in writing that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform in a specific alternative position which is available within the agency and for which the agency has furnished the employee with a written description of the specific duties and physical requirements, the agency shall notify the employee immediately of the date of availability. To facilitate early return to work, the agency may inform the employee of the offer and its availability by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

(2) Perform restricted or limited duties, the agency shall determine whether necessary accommodation can be made, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may inform the employee of the offer by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

(d) Where the nature and extent of injury prohibit the employee from returning to the duties of the position held at the time of injury, and the agency is unable to accommodate the restrictions and limitations imposed on the employee by the injury, and employment is consequently terminated, the agency may, in cooperation and coordination with the Office, subsequently determine the former employee's current physical condition and offer reemployment in a position suitable to the former employee's capabilities. Such reemployment offer must be in writing and include a description of the duties of the position being offered, the physical requirements of those duties, and the date the former employee is to return to work or, in the alternative, the date by which the former employee must notify the agency of his or her decision with respect to acceptance or refusal of the reemployment offer.

(e) A complete copy of any agency offer of employment or reemployment should be sent to the Office at the same time as it is sent to the employee.

31. By adding a new § 10.127 as follows:

§ 10.127 Continuation of death compensation for a child, brother, sister or grandchild who has reached the age of 18.

Compensation payable on behalf of a child, brother, sister, or grandchild under 5 U.S.C. 8133, which would otherwise be terminated because such individual has reached 18 years of age, shall be continued if and for so long as he or she is not married and is physically or mentally incapable of self-support, or if he or she is a student as defined in § 10.5(a)(25) for so long as he or she is not married and continues as a student. An individual in receipt of compensation under the provisions of 5 U.S.C. 8133 shall furnish, when so required by the Office, proof of continuing entitlement to such compensation, including certification of school enrollment. If a beneficiary when required, fails within 30 days of the date of the request to submit such proof, the beneficiary's right to compensation shall be suspended until the requested information is received, at which time compensation will be reinstated retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

32. By adding a new § 10.128 as follows:

§ 10.128 Termination of right to compensation for death; reapportionment of compensation.

(a) When a beneficiary who is receiving compensation on account of death ceases to be entitled to such compensation by reason of death, remarrying before age 60, marrying, reaching the age of 18, ceasing to be dependent, ceasing to be student, or becoming capable of self-support, the beneficiary or someone acting on the beneficiary's behalf shall immediately notify the Office of such event. If the beneficiary, or someone acting on the beneficiary's behalf, receives a check which includes payment of compensation for any period after the date when entitlement ceased for any of the above reasons, the check shall be promptly returned to the Office. The terms marrying and remarrying include common law marriage as recognized and defined by state law in the state where the beneficiary resides.

(b) An event as described in paragraph (a) of this section which results in the termination of compensation to a beneficiary may also result in a reapportionment of the amount of compensation payable to one or more of the remaining beneficiaries. Similarly, the birth of a posthumous child of the deceased employee may also result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify the Office of the birth and submit a certified copy of the birth certificate.

33. By revising § 10.130 to read as follows:

§ 10.130 Processing of claims.

Claims for compensation for disability and death are processed by claims examiners of the Office, whose duty it is to apply the law to the facts as reported, received, or obtained upon investigation. The Federal Employees' Compensation Act, as amended, requires that a decision with respect to entitlement contain findings of fact and be based on consideration of the claim presented by the claimant, the report by his or her immediate official superior, and the completion of such investigation as the Office may deem necessary. There is no required procedure for the production of evidence but the evidence should be in written form. The final authority in the Office in the determination of a claim is

vested in the Director of the Office. The decision shall contain findings of fact and a statement of reasons. A copy of the decision, together with information as to the right to a hearing, to a reconsideration, and to an appeal to the Employees' Compensation Appeals Board, shall be mailed to the claimant's last known address. If the claimant is represented before the Office, a copy of the decision will also be mailed to such representative.

34. By revising §10.131 to read as follows:

§ 10.131 Request for a hearing.

(a) Any claimant not satisfied with a decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative designated by the Director. A hearing must be requested in writing within 30 days of the date of issuance of the decision and be made to the Office set forth in the decision. A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing, or if request is made for a hearing on the written record as provided in paragraph (b) of this section. At an oral hearing, the claimant shall be afforded the opportunity to present oral testimony and/or written evidence in further support of the claim.

(b) In lieu of an oral hearing, a claimant shall be afforded an opportunity for a hearing on the written record by an Office representative designated by the Director. Such a hearing will not involve oral testimony or attendance of the claimant; however, the claimant may submit any written evidence which he or she believes relevant. A hearing on the written record must be requested in writing within 30 days of the date of issuance of the decision, specify the decision and/or issue which is the subject of the request, and be made to the office set forth in the decision. A claimant is not entitled to a hearing on the written record if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing on the written record. By requesting a hearing on the written record under this paragraph, the claimant waives the right to an oral hearing on the same issue. Where timely request for a hearing on the written record is received, the Office shall furnish the employing agency with a copy of the claimant's request and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Following a review of the record and any evidence submitted, the Office representative shall decide the claim and inform the claimant, the claimant's representative and the employing agency of the decision.

35. By revising § 10.132 to read as follows:

§ 10.132 Time and place of hearing; prehearing conference.

The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant at least 10 days prior to the hearing. When practicable, the hearing will be set at a time and place convenient for the claimant. At the request of the claimant, the Office representative may schedule a prehearing conference to further define or clarify the issues. Request for such a conference must be made to the Office representative in writing at least 5 days prior to the scheduled date of the hearing. The decision whether or not to schedule a prehearing conference shall be solely within the discretion of the Office representative.

36. By revising § 10.133(a) to read as follows:

§ 10.133 Conduct of hearing.

(a) In conducting the hearing, the Office representative shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 5 of the Administrative Procedures Act, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded. The recording, either by magnetic tape or by transcription, shall be made a part of the case record.

* * * * *

§ 10.136 [Redesignated From § 10.137]

37. By redesignating § 10.137 as § 10.136 without revision.

38. By redesignating § 10.138 as new § 10.138 and revising it to read as follows:

§ 10.138 Review of decision.

(a) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation at any time on its own motion and may, as a result of that review, affirm, reverse or modify the previous decision and inform the claimant, the claimant's representative and the employing agency of the decision.

(b)(1) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation on application of the claimant. No formal application for review is required, but the claimant must make a written request identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to recondsider, and give the reasons why the decision should be changed. Where the decision or issue cannot be reasonably determined from the claimant's application for review, the application will be returned to the claimant for clarification without further action by the Office with respect to the application. The claimant may obtain review of the merits of the claim by—

(i) Showing that the Office erroneously applied or interpreted a point of law, or

(ii) Advancing a point of law or a fact not previously considered by the Office, or

(iii) Submitting relevant and pertinent evidence not previously considered by the Office.

(2) Any application for review of the merits of the claim which does not meet at least one of the requirements listed in subparagraphs (b)(1)(A)–(C) of this section will be denied by the Office without review of the merits of the claim. Such a denial of application is not an award for or against the payment of compensation and is not subject to review under this section or to hearing under § 10.131. Further, the Office will not review a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision. Where proper application is submitted and the Office finds that merit review of the claim is warranted, the Office shall furnish the employing agency with a copy of the claimant's application for reconsideration and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in

question. The Office shall then review the decision and any agency submission, decide the claim, and inform the claimant, the claimant's representative and the employing agency of the decision.

39. By redesignating § 10.135 as § 10.137 and revising it to read as follows:

§ 10.137 Postponement; withdrawal or abandonment of request for hearing.

(a) A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least 3 days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant.

(b) A claimant may withdraw a request for a hearing at any time by written notice to the Office representative before the hearing is held, or on the record at the hearing.

(c) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, another hearing will be scheduled. Unless extraordinary circumstances such as hospitalization, a death in the family, or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.

40. By redesignating § 10.134 as § 10.136 and revising it to read as follows:

§ 10.136 Termination of hearing; release of decision.

The Office representative shall fix the time within which evidence will be received and shall terminate the hearing by mailing a copy of the decision, setting forth the basis therefor, to the claimant's last known address and to the claimant's representative, if any. A copy of the decision will also be mailed to the employing agency.

41. By adding a new § 10.135 as follows:

§ 10.135 Employing agency attendance at hearings and submission of evidence.

The employing agency does not have the right to request a hearing pursuant to 5 U.S.C. 8124. However, the employing agency has an interest in the outcome of the hearing and frequently possesses information pertinent to issues raised at the hearing. Therefore, the employing agency shall be afforded the opportunity to have an agency representative in attendance at the hearing and/or to request that it receive a copy of the hearing transcript. Where the employing agency sends a representative, the representative will attend primarily in the role of an observer without the right to question the claimant or make any argument. However, since the claimant is entitled to present evidence in support of the claim, the agency representative may, upon the specific request of the claimant, be called upon by the Office representative to give oral testimony. Where the employing agency requests that it receive a copy of the hearing transcript, the agency will be allowed 15 days following release of the transcript to submit comments or additional material for inclusion in the record. Any comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant.

42. By adding a new § 10.134 to read as follows:

§ 10.134 Subpoenas; witness fees.

(a) When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. A claimant who desires the issuance of a subpoena shall, not less than 20 days prior to the date fixed for the hearing, file with the Office representative a written request therefor, designating the witness or documents to be produced, and describing the address and location thereof with sufficient particularity to permit such witness or documents to be found. The request for a subpoena shall state the pertinent facts which the claimant expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. A subpoena issued under the provisions of this section shall be issued in the name of the Office hearing representative, and shall be served either in person by an authorized representative of the Office or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. Where service is made in person by an authorized Office representative, such representative shall make an affidavit stating that he or she personally served a copy of the subpoena upon the person named therein. Where service is by certified mail, the signed returned post office receipt shall serve as proof of service.

(b) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the Office (e.g., impartial physicians, rehabilitation specialists, etc.) shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. Fees and mileage requested by such witnesses shall be paid by the Office.

(c) Witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the claimant (e.g., the claimant's attending physician), or who have not submitted evidence into the case record but have testimony which is relevant and material to the issue in question and were subpoenaed at the request of the claimant, shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. Fees and mileage requested by such witnesses shall be paid by the claimant.

43. By revising § 10.140 to read as follows:

§ 10.140 Participation in claims process by employing agency.

Proceedings conducted with respect to claims filed under the Act are nonadversary in character. Accordingly, a claimant's employing agency shall not have the right, except as provided in Subpart C of this part, to actively participate in the claims adjudication process. However, the employing agency may, under circumstances other than that described in § 10.102(b), investigate the circumstances surrounding an injury to an employee and the extent of disability (e.g., an agency may investigate an employee's activities where it appears the employee alleging total disability may be performing other employment or may be engaging in activities which would indicate less than total disability). Further, the agency

has the responsibility to submit to the Office at any time all relevant and probative factual and medical evidence in its possession or which it may acquire through investigation or other means. All evidence submitted will be considered and acted upon by the Office as appropriate, and the Office will inform the claimant, the claimant's representative and the employing agency of such action. In those instances where an employing agency contests a claim at time of initial submission and the claim is subsequently approved, the office will notify the agency of the rationale for approving the claim.

44. By revising § 10.141 to read as follows:

§ 10.141 Representation of the Director.

The Director shall be represented in proceedings with respect to any claim conducted before the Employee's Compensation Appeals Board (ECAB) by attorneys from the Office of the Solicitor of Labor.

45. By revising § 10.144 to read as follows:

§ 10.144 Authority of representative.

A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it has been sent to the claimant.

46. By revising paragraphs (c) introductory text, (d), (g), (h) and (i) of § 10.145 to read as follows:

§ 10.145 Fees for services.

* * * * *

(c) In every case where a representative's fee is desired, an application for approval of the fee shall be made to the Office. The application should be made when the representative has submitted the final piece of information believed necessary for the adjudication of the claim. Each request for approval of a fee shall be accompanied by a complete itemized statement, in duplicate, describing the services rendered. Such itemization shall contain the following information:

* * * * *

(d) The representative shall arrange for the claimant to review the request for a fee and to comment as to the services provided and as to the reasonableness of the fee. The claimant's written comments should accompany the application for approval of a fee submitted to the Office.

* * * * *

(g) Any claimant aggrieved or adversely affected by an award of a fee may request a hearing or reconsideration by the Office, or may request review by the Employees' Compensation Appeals Board.

(h) A representative aggrieved or adversely affected by an award of a fee may request review by the Employees' Compensation Appeals Board.

(i) Any person who receives a fee, other consideration or gratuity on account of services rendered with respect to a claim under this part, unless approved by the Office, or who solicits employment for himself or another in respect to a case or claim under (or to be brought under) this Act shall be guilty of a misdemeanor under 18 U.S.C. 292 and upon conviction of each offense, will be punished by a fine of not more that $1,000 or imprisoned not to exceed 1 year, or both. Utilization of an escrow deposit of funds by a representative for the deposit of a client's funds, prior to approval by the Office of the representative's fee, is not considered receipt or collection of a fee by the representative; provided, the escrow deposit of funds is one made by the claimant/client into the hands of a third party to be held by that third party until receipt of the Office's approval of the representative's fee, and then delivered by the third party to the representative in accordance with the decision of the Office and the provisions of the escrow agreement.

47. By adding new § 10.160 through § 10.166 under the subheading Representative Payment under Subpart B as follows:

Representative Payment

§ 10.160 Indications for designation of a representative payee.

When the Office determines that a beneficiary is incapable of managing or directing the management of benefits either because of a mental or physical disability, or because of legal incompetence, or because the individual is under 18 years of age, the Office in its sole discretion may approve an individual designated or appointed to serve as the representative payee for funds due the eligible beneficiary.

§ 10.161 Selection of a Payee.

(a) In approving a payee, the Office shall approve the person, agency, organization or institution which, in its judgment, will best serve the interest of the beneficiary. In making its decision the Office shall consider:

(1) The relationship of the person to the beneficiary;

(2) The amount of interest that the person shows in the welfare of the beneficiary;

(3) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(4) Whether the potential payee has custody of the beneficiary;

(5) Whether the potential payee is in a position to know of and to look after the needs of the beneficiary.

(b) For beneficiaries 18 years old or older, the general order of preference subject to the provisions of paragraph (a) of this section, shall be

(1) A legal guardian, spouse or other relative who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public on nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary.

(c) For beneficiaries under age 18, the general order of preference subject to the provisions of paragraph (a) of this section shall be—

(1) A biological or adoptive parent who has custody of the beneficiary, or a legal guardian;

(2) A biological or adoptive parent who does not have custody of the beneficiary, but is contributing to the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;

(3) A biological or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support, but is demonstrating strong concern for the beneficiary's well-being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well-being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well-being; and

(7) An authorized social agency or custodial institution.

§ 10.162 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Spend or invest payments received only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines to be in the best interests of the beneficiary, subject to the guidelines contained in §10.163;

(b) Notify the Office of any event that would affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to the Office, upon its request, a written report accounting for the benefits received; and

(d) Notify the Office of any change in the payee's circumstances that would affect performance of the payee's responsibilities.

§ 10.163 Use of benefit payments.

To assure that the general welfare of the beneficiary is properly served, benefit payments received by a representative payee shall be used in the following manner, and in the prescribed order:

(a) Current maintenance, including costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

(b) Institutional care, including the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

(c) Support of the beneficiary's legal dependents after current maintenance needs or institutional care of the beneficiary are met; and

(d) Claims of creditors only if the current and reasonably foreseeable needs of the beneficiary are met.

§ 10.164 Conservation and investment of benefit payments.

If payments either in whole or in part are not needed for any of the purposes listed in § 10.163 of this part, they shall be conserved or invested on behalf of the beneficiary in non-speculative accounts. Conserved funds should be invested in accordance with rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. The account should provide for withdrawal upon demand without penalty. The interest and dividends, as well as all other profits, which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 10.165 Termination of representation.

The services of a representative payee may be terminated when:

(a) The payee has not used the funds in the interests of the beneficiary as stipulated in this subpart;

(b) The payee has not discharged other responsibilities described in this subpart, or has not done so in a timely manner;

(c) The payee dies, wishes to be discharged from responsibility, or is unable to carry out the responsibilities of payee;

(d) The Office, after receipt of competent evidence, determines that the beneficiary is capable of managing his or her own funds; or

(e) A minor beneficiary attains majority.

§ 10.166 Accounting for benefit payments.

A representative payee is accountable for the use of benefit payments. The Office may require periodic written reports from the representative payee, and in certain cases, verification of how the funds were used. The representative payee shall keep records of how the funds were used so as to be able to furnish the following information to the Office:

(a) The amount of benefit payments on hand at the beginning of the accounting period;

(b) A description of how the benefit payments were used;

(c) An accounting of the amounts of payments which were saved or invested;

(d) The place(s) of residence of the benficiary during the accounting period; and

(e) The amount of the beneficiary's income from other sources during the accounting period so as to assist the Office in evaluating the use of the benefit payments.

48. By revising § 10.200 to read as follows:

§ 10.200 Statutory provisions.

(a) Pub. L. 93–416, approved September 7, 1974, significantly revised the Act to provide that specified employees who file a claim for a period of wage loss caused by a traumatic injury shall be entitled, under certain circumstances, to have their regular pay continued for a period not to exceed 45 days.

(b) Continuation of pay shall be considered regular income and not compensation and unlike compensation, shall be subject to all taxes and other payroll deductions applicable to regular income.

49. By revising § 10.201 to read as follows:

§ 10.201 Right to continuation of pay.

(a) An employee is not entitled to continuation of pay unless:

(1) The employee is one of the types of employees listed in § 10.5(a)(11)(i), (iii), or (v), except that an individual selected pursuant to Chapter 121 of Title 28 and serving as a petit or grand juror but who is not otherwise an employee of the United States is not entitled to continuation of pay;

(2) The employee sustains a traumatic job-related injury;

(3) The employee claims continuation of pay within 30 days of the injury on a form approved by the Secretary. Form CA–1 may be used for this purpose.

(4) The employee's disability begins within 90 days of the date of injury.

(b) An employee entitled to continuation of pay shall have regular pay continued without a break in time for a period not to exceed 45 calendar days of disability, unless the right to continuation of pay is controverted and pay is terminated under § 10.203 or is terminated under § 10.204. Where the employee stops work due to the disabling effects of the injury, the 45-day period starts with the first day or shift following the date of shift of injury during which the claimant is disabled, provided the disability begins within 90 days of the occurrence of the injury. With regard to the date of injury, the employing agency will keep the employee in a pay status for any fraction of the day or shift of injury for which the employee was disabled with no "charge" to the 45-day period. If the employee stops work for a part of a day or shift other than the day or shift of

injury, that day or shift will be considered one calendar day for the purpose of counting 45 days. If a disabled employee returns to work with duties other than the duties performed at the time of injury, continuation of pay is chargeable only when there has been a formal assignment to an established job which is normally paid at a lower salary and would otherwise result in loss of income to the employee. Continuation of pay must be charged against the employee's 45-day entitlement when, due to the effects of the injury upon the employee, (1) a personnel action has been taken to assign or detail the employee to an identified position for which a position description exists which is classified at a lower salary level than that earned by the employee when injured; or (2) a personnel action has been taken to change the employee to a lower grade, or to a lower rate of basic pay; or (3) a personnel action has been taken to change the employee to a different schedule of work which results in loss of salary or premium pay (e.g., Sunday pay or night differential) authorized for the employee's normal administrative workweek. If the employee's job-related disability continues after entitlement to continuation of pay ceases, the employee shall be entitled to receive compensation subject to the provisions of 5 U.S.C. 8117.

(c) Where an employee's pay is continued under this subpart, it shall not be terminated or interrupted as a part of a disciplinary action.

(d) The administration and interpretation of the Act, including section 8116 of the Act, is the function of the Office. While the employing agency shall make certain preliminary decisions with respect to an employee's entitlement to pay continuation under this subpart, final determinations as to such entitlement are a function of the Office.

(e) If the Office finds that the employee is not entitled to continuation of pay after it has been paid, the payments, at the employee's option, shall be charged to annual or sick leave or considered overpayments of pay under 5 U.S.C. 5584.

(f) If the Office determines that pay has been continued at an incorrect rate, the Office shall notify the employing agency and the employee of the correct rate of pay, and the employing agency shall make the necessary adjustment.

§ 10.203 [Removed]

50. By removing § 10.203.

51. By redesignating § 10.202 as § 10.203 and revising it to read as follows:

§ 10.203 Controversion by employing agency.

(a) With respect to continuation of pay under 5 U.S.C. 8118, the employing agency shall, on the basis of information submitted by the employee, or secured on investigation, controvert a claim and terminate an employee's pay only if:

(1) The disability is caused by an occupational disease or illness; or

(2) The employee is the type employee defined by § 10.5(a)(11) (ii) or (iv), or is an individual selected pursuant to Chapter 121 of Title 28 and serving as a petit or grand juror and who is not otherwise an employee of the United States;

(3) The employee is neither a citizen nor a resident of the United States or Canada; or

(4) The injury occurred off the employing agency's premises and the employee was not performing official duties; or

(5) The injury was caused by the employee's willful misconduct, or the employee's intent to kill or injure himself or herself or another person, or was proximately caused by the employee's intoxication; or

(6) A written claim for wage loss required by 5 U.S.C. 8118(a) was not filed within 30 days after the date of injury; or

(7) The employee first stopped work as a result of the injury more than 90 days following the injury; or

(8) The employee reports the injury after employment has terminated; or

(9) The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs, or another similar group.

(b) If for reasons other than those listed in paragraph (a) of this section, the agency believes the employee is not entitled to continuation of pay, the agency may controvert an employee's right to continuation of pay; however, the employee's regular pay must be continued and may not be interrupted during the 45-day period unless the controversion is sustained by the Office and the agency is so notified, or unless entitlement ceases under the provisions of § 10.204 of this subpart.

(c) To controvert a claim for continuation of pay, employing agency shall complete the appropriate section of Form CA–1 and submit detailed information in support of the controversion to the Office.

(d) If the Office determines that the employing agency has incorrectly controverted and terminated the employee's pay, the Office shall notify the agency and the employee's pay shall be continued for a period not to exceed 45 days or as otherwise directed by the Office, and the Office shall notify the agency to convert periods of sick or annual leave or leave without pay to COP.

52. By redesignating § 10.210 as § 10.202 and revising it to read as follows:

§ 10.202 Election of annual or sick leave.

An employee may use accumulated or advanced annual or sick leave instead of claiming continuation of pay; however, the time provisions of 5 U.S.C. 8117, governing the date upon which an employee's entitlement to compensation begins, do not begin to run until the use of annual or sick leave ends. The "buy back" provisions specified in § 10.310 may not be used to repurchase the leave taken while an employee was otherwise eligible for pay continuation as provided by this subpart to affect the section 8117 time provisions. An election to use annual or sick leave is not irrevocable and an employee may subsequently request continuation of pay in lieu of previously requested annual or sick leave. Where an employee is eligible, the employing agency shall continue pay prospectively effective the date of the employee's request; however, conversion and restoration of leave used prior to the date of request is within the sole discretion of the employing agency. The use of leave may not be used to delay or extend the 45-day continuation of pay period. Therefore, where previously used leave is not converted and restored, the 45 days will be counted as though the employee had been in a continuation of pay status.

53. By revising § 10.204 to read as follows:

§ 10.204 Termination and forfeiture of continuation of pay.

(a) Where pay is continued after an employee stops work due to a disabling traumatic injury, such pay shall be terminated if:

(1) Within 10 calendar days after the date the employee submits claim for continuation of pay, including such claim for a recurrence of disability, the employing agency has not received prima facie medical evidence that the employee sustain a disabling traumatic injury, except that pay shall be continued without interruption in the absence of such medical evidence if investigation shows to the official superior's satisfaction that the employee sustained a disabling traumatic injury.

Where medical evidence is received by the agency more than 10 calendar days after work stoppage, the agency shall continue the employee's pay retroactive to date of termination provided the medical evidence supports injury-related disability beyond the 10 calendar-day period. The provisions of this paragraph also apply to periods of recurrent disability as described in § 10.208; or

(2) The employing agency receives evidence that the attending physician has found the employee no longer disabled (i.e., the employee can perform the duties of the position held at the time of injury); or

(3) The employing agency receives evidence that the attending physician has found the employee to be partially disabled and the employee refuses suitable work which has been offered by the agency in accordance with § 10.207; or

(4) The employee's scheduled period of employment expires or employment is otherwise terminated, except as provided by § 10.201(c); or

(5) The employing agency receives notification from the Office that pay should be terminated; or

(6) The 45-day continuation of pay period expires.

(b) When an employee refuses to submit to or obstructs an examination required by the Office under the provisions of 5 U.S.C. 8123(a), the right to continuation of pay under this subpart may be suspended until the refusal or obstruction stops. Pay otherwise paid or payable under this subpart for the period of the refusal or obstruction may be forfeited and, where already paid, is subject to the provisions of § 10.201(e).

(c) If the Office determines that the employing agency has incorrectly terminated the employee's pay or selected an incorrect date of termination, the Office shall instruct the agency to take appropriate corrective action.

54. By revising § 10.205 to read as follows:

§ 10.205 Pay defined for continuation of pay purposes.

(a) For a full or part-time worker, either permanent or temporary, who works the same number of hours each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the hourly pay rate on the date of injury multiplied by the number of hours worked each week, excluding overtime.

(b) For a part-time worker, either permanent or temporary, who does not work the same number of hours each week but who does work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during the one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week.

(c) For all WAE (when actually employed), intermittent and part-time workers, either permanent or temporary, who do not work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during that one year period. For the purpose of this computation, if the employee worked only a part of a workweek, such week is counted as one week. However, the average weekly earnings may not be less than 150 times the average daily wage earned in the employment during the days employed within the one year period immediately preceding the date of injury divided by 52 weeks.

(d) Premium, Sunday and holiday pay, night and shift differential, or other extra pay shall be included when computing wages for continuation of pay, but overtime pay shall not be included.

(e) Changes in pay or salary which would have otherwise occurred during the 45-day period (e.g., promotion, within-grade increase, demotion, termination of a temporary detail, etc.) are to be reflected in the continuation of an employee's pay under this subpart, and are to take effect at the time the event would otherwise have occurred.

55. By revising § 10.206(a) to read as follows:

§ 10.206 Agency accounting and reporting of continuation of pay.

(a) Pending development of a system within the Office for directly capturing and tabulating data on continuing payments to employees under 5 U.S.C. 8118, each agency and instrumentality of the United States having an employee who is in a continuation of pay status during the calendar quarter shall submit a report to the Office within 30 days after the end of each quarter (address: Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210).

* * * * *

56. By revising § 10.207 to read as follows:

§ 10.207 Official superior's responsibility in continuation of pay cases.

(a) Upon receiving notice that an employee has suffered an employment-related traumatic injury, an official superior shall:

(1) Promptly authorize medical care in accordance with Subpart E of this part;

(2) Provide the employee with Form CA–1 for reporting the injury and upon receipt of the completed form, return to the employee the "Receipt of Notice of Injury";

(3) Fully advise the employee of the right to elect continuation of regular pay or use annual or sick leave, if the injury is disabling;

(4) Advise the employee that medical evidence of a disabling traumatic injury must be submitted to the official superior within 10 calendar days of the date disability begins or pay may be terminated in accordance with § 10.204(a)(1);

(5) Inform the employees whether continuation of pay will be controverted, and, if so, whether pay will be terminated and the basis for the controversion and termination of pay;

(6) Submit Form CA–1, completed by the employee and official superior, and all other available pertinent information to the Office as soon as possible, but no later than 10 work days after the official superior has received Form CA–1. If the claim is controverted, the official superior will proved explanation on Form CA–1 or in a separate narrative statement or both.

(b) Upon authorization of medical care, the official superior shall advise the employee of his or her obligation to return to work as soon as possible and;

(1) Where the agency has specific alternative positions available for partially disabled employees, the agency shall furnish the employee with a written description of the specific duties and physical requirements of those positions;

(2) Where, in addition to any specific alternative positions, the agency is willing to accommodate the limitations and restrictions imposed on the employee by the injury, shall so advise the employee; and

(3) Shall advise the employee of his or her responsibilities under § 10.209 of this subpart.

(c) The employing agency shall monitor the employee's medical progress and duty status by obtaining

periodic medical reports. Form CA–17 is provided for this purpose. Addditional information or clarification may be obtained by the agency through telephone contact with the employee's attending physician provided such contact is by a physician or nurse who is an employee of the agency.

(d) Where employing agency is notified that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform one of the specific alternative positions referred to in § 10.207(b)(1), the employing agency shall notify the employee immediately of the description of the job and its physical requirements and of the date the job will be available. To facilitate early return to work, the agency may contact the employee by telephone, and provide written confirmation of availability as soon as possible thereafter. A complete copy of the offer, including the description of the duties of the job, the physical requirements and the date of availability, should be sent to the Office at the same time as it is sent to the employee.

(2) Perform restricted or limited duties referred to in § 10.207(b)(2), the employing agency shall determine whether duties suitable to the employee's limitations and restrictions are available, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may contact the employee by telephone, but must provide written confirmation of the offer as soon as possible thereafter. A complete copy of any offer made to the employee should also be sent to the Office at the same time as it is sent to the employee.

57. By revising § 10.206 to read as follows:

§ 10.206 Recurrence of disability.

(a) If an employee claims a recurrence of disability, the official superior shall promptly complete Form CA–2a. The employee shall request on Form CA–2a to continue to receive regular pay or to charge the absence to sick or annual leave.

(b) Where the employee requests continuation of pay, the official superior shall continue pay if:

(1) The original claim of disability has not been denied by the Office; and

(2) Pay has not been continued for the entire 45 days; and

(3) The disability recurs within 90 days of the date the employee first returned to work following the initial period of disability.

(c) If the employee's pay has been continued for 45 days, or disability recurs more than 90 days after the employee first returns to work, the employee is entitled to compensation only, provided the claim is approved by the Office, and the employing agency may not continue regular pay. An employee who is no longer entitled to continuation of pay should file a claim for compensation on Form CA–7 or CA–8.

58. By revising § 10.209 to read as follows:

§ 10.209 Employee's responsibilities in continuation of pay cases.

(a) An employee who sustains a traumatic job-related injury, or someone acting on the employee's behalf, shall complete and submit the employee's portion of Form CA–1 to the official superior as soon as possible but no later than 30 days after the date of injury. An employee shall elect on Form CA–1 either to receive continuation of pay or use sick or annual leave while disabled for work as a result of the injury. (See § 10.201 and § 10.202.)

(b) Where the agency has advised of the existence of specific alternative positions, the employee shall furnish the description of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. The employee must furnish the employing agency with a copy of the physician's response.

(c) Where the agency has advised of its willingness to accommodate where possible the employee's work limitations and restrictions, the employee shall so advise the attending physician and request the attending physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(d) Where an employee has been offered duties within the limitations and restrictions imposed by the physician, the employee is obligated to return to duty. Where an employee refuses such an offer of suitable work, entitlement to continuation of pay ceases as of the effective date of availability of such work.

(e) Where the Office determines that, due to the failure of the employee to meet his or her obligations and responsibilities under this section, pay was continued beyond the date it would otherwise have terminated, the Office will advise the official superior and the employee of the period of disability which is approved, and the official superior may require the employee to resolve any overpayment in accordance with § 10.201(e) of this subpart.

(f) Where return to suitable work results in a loss of pay such as premium pay, Sunday pay, holiday pay, night or shift differential, etc., continuation of pay will be granted for the lost elements of pay (see § 10.205(d) of this subpart).

59. By revising § 10.301 to read as follows:

§ 10.301 Temporary total disability rate.

(a) Compensation based on loss of wages is payable, subject to the provisions of 5 U.S.C. 8117, after the expiration of continuation of pay as provided by Subpart C of this part or from the beginning of pay loss in all other cases.

* * * * *

60. By revising § 10.302 to read as follows:

§ 10.302 Permanent total disability rate.

When the injury causes permanent total disability, an injured employee is entitled to total disability compensation until death unless the employee is medically or vocationally rehabilitated to either full or partial earning capacity. The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes is prima facie evidence of permanent total disability. However, the presumption of permanent total disability as a result of such loss is rebuttable by evidence to the contrary, such as evidence of sustained work and earnings despite the loss. Compensation for permanent total disability is payable at the rate of 66⅔ percent of the pay rate established for compensation purposes, or at 75 percent when where is a dependent (see § 10.301(b) of this section).

61. By revising § 10.303 to read as follows:

§ 10.303 Partial disability rate.

(a) An injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity. Compensation for partial disability is payable at 66⅔ percent (or at 75 percent if the employee has a dependent) of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. A narrative description of the formula used by the Office to compute the compensation payable is contained in paragraph (b) of this section. In determining the compensation payable

for partial disability, an employee's wage-earning capacity is determined by the employee's actual earnings if those earnings fairly and reasonably represent the wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or if the employee has no actual earnings, the employee's wage-earning capacity shall be determined by the Office by selection of a job after having given due regard to the nature of the employee's injury, the degree of physical impairment, the employee's usual employment, the employee's age, the employee's qualification for other employment, the availability of suitable employment, and other factors or circumstances which may affect the employee's wage-earning capacity in his or her disabled condition. The salary of such a job shall be considered the employee's wage-earning capacity. The Office will not secure employment for the claimant in the position selected for establishing an earning capacity.

(b) For the purpose of describing the formula utilized by the Office for computing the compensation payable for partial disability, the following terms are defined: pay rate for compensation purposes is as defined in § 10.5(a)(20) of this part; current pay rate means "current" salary or pay rate for the job held at the time of injury; and earnings means the claimant's actual earnings, or the salary or pay rate of the job selected by the Office as representative of the employee's wage-earning capacity. An employee's wage-earning capacity in terms of percentage is obtained by dividing the employee's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. Any convenient date may be chosen by the Office for making the comparison as long as the two wage rates are in effect on the date used for comparison. The employee's wage-earning capacity in terms of dollars is computed by multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity and the resulting dollar amount is subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity. Compensation for partial disability is payable at the rate of 66⅔ percent (or at 75 percent if the employee has a dependent) of this loss of wage-earning capacity. The compensation payable shall be increased by applicable cost-of-living adjustments.

62. By revising § 10.304 to read as follows:

§ 10.304 Schedule compensation rate.

(a) Compensation is provided for specified periods of time for the permanent loss or loss of use (referred to as impairment) of each of certain members, organs and functions of the body. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. The compensation for scheduled awards will equal 66⅔ percent of the employee's pay or 75 percent of the pay when there is a dependent. Compensation for loss of wage-earning capacity may be paid after the schedule expires. Proper and equitable compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck if of a character likely to handicap a person in securing or maintaining employment.

(b) Authority is provided under 5 U.S.C. 8107(c)(22) to add other internal and external organs to the compensation schedule. Pursuant to this authority, the following is added:

	Weeks
Breast (one)	52
Kidney (one)	156
Larynx	160
Lung (one)	156
Penis	205
Testicle (one)	52
Tongue	160

(c) Compensation under this schedule is:

(1) Payable regardless of whether the cause of the impairment originates in part of the body other than the impaired member or organ;

(2) Payable regardless of whether the disability also involves another impairment of the body; and

(3) Payable in addition to but, with the exception of compensation for serious disfigurement of the face, head or neck, not concurrently with compensation for temporary total or temporary partial disability.

(d) The period of compensation payable under the schedule in 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for and earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts or the same member or function or for disfigurement; and

(2) The Office finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(e) Where compensation is reduced as provided by paragraph (d) of this section, compensation for continuing wage loss starts on expiration of the schedule period as reduced.

§10.307 [Redesignated from § 10.306]

63. By redesignating § 10.306 as § 10.307 without revision.

64. By redesignating § 10.305 as § 10.306 and revising it to read as follows:

§ 10.306 Eligibility for death benefits and death benefit rates.

(a) If there is no child entitled to compensation , the employee's surviving spouse shall receive compensation equal to 50 percent of the employee's pay until death or remarriage before reaching 60 years of age. Upon remarriage, the surviving spouse will be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage. If remarriage occurs at age 60 or older, the lump sum payment will not be paid and compensation shall continue until death.

(b) If there is a child entitled to compensation, the compensation for the surviving spouse equal 45 percent of the employee's pay plus 15 percent for each child, but the total percentage may not exceed 75 percent.

(c) If there is a child entitled to compensation and no surviving spouse, compensation for one child equals 40 percent of the employee's pay. Fifteen percent will be awarded for each additional child, not to exceed 75 percent, the total amount to be shared equally among all children.

(d) Parents, brothers, sisters, grandparents and grandchildren dependent upon the deceased employee at the time of death may be entitled to compensation as provided by 5 U.S.C. 8133.

(e) A child, brother, sister or grandchild may be entitled to receive death benefits until death, marriage, or the attainment of age 18. Regarding entitlement after reaching age 18, refer to § 10.127 of this part.

65. By adding a new § 10.305 as follows:

§ 10.305 Attendant allowance

An employee who has been awarded compensation may receive an additional sum of not more than $500 a month, as the Office considers necessary to pay for the service of an attendant, when the Office finds that the service of an attendant is necessary constantly

because the employee is totally blind or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of any impairment resulting from the injury making the employee so helpless as to require constant attendance.

66. By revising § 10.310 to read as follows:

§ 10.310 Buy back of annual or sick leave.

(a) An employee who sustains a job-related disability may use sick or annual leave or both to avoid interruption of income. If the employee uses leave during a period of disability caused by an occupational disease or illness, and a claim for compensation is approved, the employee may, with the approval of the employing agency, "buy back" the used leave and have it recredited to the employee's account. If the employee uses leave during a period of disability caused by a traumatic injury and a claim is approved by the Office, the employee may "buy back" leave taken after the 45-day continuation of pay period. The employee may not repurchase leave taken during the 45-day continuation of pay period unless the employee was not entitled to receive continuation of pay. The computation of the amount due the agency to effect the leave repurchase is the responsibility of the employing agency and is to be done in accordance with the accounting principles and practices of that agency.

(b) If the employing agency does not approve a repurchase of leave, then no compensation may be paid for the period leave was used. Where the agency agrees to the leave repurchase, the employee may elect to have the compensation payable for the period paid directly to the employing agency to be applied against the amount due the agency to effect the repurchase.

67. By revising § 10.311(b) and (c) to read as follows:

§ 10.311 Lump sum awards.

* * * * *

(b) The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health and Human Services, which shall be updated from time to time, but the lump sum payment to a surviving spouse of the deceased employee may not exceed 60 months compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(c) On remarriage before age 60, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

* * * * *

68. By revising paragraph (a) and adding paragraph (c) to § 10.313 to read as follows:

§ 10.313 Dual benefits.

(a) Except as otherwise provided by law, a person may not concurrently receive compensation pursuant to the Act and a retirement or survivor annuity under the U.S. Civil Service Retirement Act or a retirement or survivor annuity which stands in lieu of the U.S. Civil Service Retirement Act, such as Foreign Service or Central Intelligence Agency disability and retirement programs. Such beneficiary shall elect the benefit which he or she wishes to receive, and such election, once made, is revocable.

* * * * *

(c) The Office may require an employee to submit an affidavit or statement as to the receipt of any Federally funded or Federally assisted benefits, in the manner and at the times the Office specifies, in order to determine the employee's entitlement to compensation. If an employee when required, fails within 30 days of the date of the request to submit such affidavit or statement, the employee's right to compensation otherwise payable shall be suspended until such time as the requested affidavit or report is received, at which time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

69. By removing § 10.314 and adding a new § 10.314 to read as follows:

§ 10.314 Cost-of-living adjustments.

(a) Cost-of living adjustments shall be made from time to time in accordance with 5 U.S.C. 8146a.

(b) Compensation payable on account of disability or death which occurred more than one year before the effective date of the cost-of-living adjustment shall be increased as determined in accordance with 5 U.S.C. 8146a. In disability cases, a beneficiary is eligible for cost-of-living adjustments where injury-related disability began more than one year prior to the effective date of the adjustment without regard to the fact that for any part of that period of disability the beneficiary may have elected to receive continuation of pay as provided by 5 U.S.C. 8118, or to use sick or annual leave. Where an injury does not result in disability but compensation is payable pursuant to 5 U.S.C. 8107 for permanent impairment of a covered member or function of the body, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the effective date of the award for such impairment. In the case of a recurrence of disability where the pay rate for compensation purposes is the pay rate at the time disability recurs, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the disability recurs. In death cases, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

70. By adding new § 10.320 through § 10.324 under the centerheading Overpayments as follows:

Overpayments

§ 10.320 Definitions.

(a) "Fault" as used in the term "without fault" in 5 U.S.C. 8129(b) and § 10.321(c) of this subpart applies only to the individual who has received a payment in his or her own name or on behalf of a beneficiary. Although the Office may have been at fault in making the overpayment, that fact does not relieve the overpaid individual or any other individual from whom the Office seeks to recover the overpayment from liability for repayment if such individual is not without fault.

(b) "With fault." In determining whether an individual is with fault, the Office will consider all pertinent circumstances, including age, intelligence, education, and physical and mental condition. An individual is with fault in the creation of an overpayment who:

(1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or

(2) Failed to furnish information which the individual knew or should have known to be material; or

(3) With respect to the overpaid individual only, accepted a payment

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which the individual knew or should have been expected to know was incorrect.

(c) "Without fault." Whether an individual is "without fault" depends on all the circumstances surrounding the overpayment in the particular case. The Office will consider the individual's understanding of any reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return payments which were not due, and ability to comply with any reporting requirements (e.g., age, comprehension, memory, physical and mental condition). Although "without fault" is not limited to the overpayment circumstances described below, an individual is "without fault," except as provided in paragraph (b) above, if it is established after consideration of all the factors stated above that failure to report an event that would affect compensation benefits or acceptance of an incorrect payment was due to one of the following:

(1) The individual relied on misinformation given to him or her (or his or her representative) by an official source within the Office (or other governmental agency which the individual had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the Act or the regulations pertaining thereto; or

(2) The Office erred in calculation of cost-of-living increases, schedule award length and/or percentage, and loss of wage earning capacity, unless the claimant had knowledge of the calculation errors.

(d) "Degree of care." An individual will be "with fault" if the Office has evidence which shows either a lack of good faith or failure to exercise a high degree of care in reporting changes in circumstances which may affect entitlement to or the amount of benefits. As indicated in paragraphs (b) and (c) of this section, the degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he or she is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the individual exercised the degree of care necessary to warrant a finding of "without fault."

§ 10.321 Recovery of overpayments.

(a) Whenever by reason of an error of fact or law, an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed, a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

(b) Where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office may proceed to recover the same.

(c) There shall be no adjustment or recovery under paragraphs (a) or (b) of this section by the United States in any case when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.

(d) Before adjusting future payments or otherwise seeking to recover an overpayment, the Office shall provide the individual with written notice of:

(1) The fact and amount of overpayment;

(2) Its preliminary finding of whether the individual is at fault in the creation of the overpayment;

(3) The individual's right to inspect and copy Government records relating to the overpayment;

(4) The individual's right to request a pre-recoupment hearing within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary finding of fault, or for the purpose of requesting waiver;

(5) The individual's right to submit additional written evidence within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary fault finding, or for the purpose of requesting waiver.

(e) Additional evidence must be submitted, or a pre-recoupment hearing requested, within 30 days of the Office's written notice to the individual. Failure to exercise the right to a pre-recoupment hearing within 30 days of the date of notice of overpayment shall constitute a waiver of that right.

(f) Pre-recoupment hearings shall be conducted in all matters in exactly the same manner as provided in § 10.131 through § 10.137.

(g) When an overpayment exists because a claim was accepted in error, or because benefits were otherwise denied or terminated, the Office representative shall determine any and all issues raised at the pre-recoupment hearing, including those regarding the correctness of the decision to deny or terminate compensation. If an employee requests a pre-recoupment hearing as provided by this section with respect to an overpayment, and also requests a hearing as provided by 5 U.S.C. 8124(b) with respect to the decision denying or terminating benefits and resulting in the overpayment, both requests for a hearing shall be combined and one hearing held on any and all issues.

(h) If additional written evidence is not submitted, or a hearing requested, within the 30-day period, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The final decision concerning an overpayment, whether rendered subsequent to a pre-recoupment hearing or in the absence of the submission of additional written evidence, is not a "decision for or against the payment of compensation" and, therefore, is not subject to the hearing provision of 5 U.S.C. 8124(b) nor the reconsideration provision of 5 U.S.C. 8128(a). An individual aggrieved or adversely affected by a decision concerning an overpayment may request review by the Employees' Compensation Appeals Board.

§ 10.322 Waiver of recovery—defeat the purpose of the subchapter.

(a) *General.* Recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section. Recovery will defeat the purpose of subchapter to the extent that:

(1) The individual from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(2) The individual's assets do not exceed the resource base of $3000 for an

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individual or $5000 for an individual with a spouse or one dependent plus $600 for each additional dependent. This base includes all of the claimant's assets not exempted from recoupment in (d) below. The first $3000 or more depending on the number of the claimant's dependents is also exempted from recoupment.

(b) *Income.* The individual's total income includes any funds which may be reasonably considered available for his or her use, regardless of the source. Income to a spouse will not be considered available to the individual unless the spouse was living in the household both at the time the overpayment was incurred and at the time waiver is considered. Types of income include but are not limited to:

(1) Government benefits such as Black Lung, Social Security, and Unemployment Compensation benefits;

(2) Wages and self-employment income;

(3) Regular payments such as rent or pensions; and

(4) Investment income.

(c) Ordinary and necessary living expenses. An individual's ordinary and necessary living expenses include:

(1) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, transportation, insurance (e.g., life, accident, and health insurance);

(2) Medical, hospitalization, and other similar expenses;

(3) Expenses for the support of others for whom the individual is responsible.

(4) Church and charitable contributions made on regular basis. [This shall not include large one-time gifts made after receipt of the preliminary notice of overpayment]; and

(5) Miscellaneous expenses (e.g., newspaper, haircuts) not to exceed $25.00 per month.

(d) *Assets.* An individual's assets include:

(1) Liquid Assets—cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and the like; and

(2) Non-Liquid Assets—the fair market value of property such as a camper, second home, extra automobile, jewelry, etc.

Assets for these purposes shall not include the value of household furnishings, wearing apparel, family automobile, burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income producing property if the income from such property has been included in comparing income and expenses.

§ 10.323 Waiver of recovery—against equity and good conscience.

(a) Recovery of an overpayment is considered to be "against equity and good conscience" when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria to be applied in determining severe financial hardship are the same as in § 10.322.

(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's present ability to repay the overpayment is not considered. To establish that a valuable right has been relinquished, it must be shown that the right was in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the payments or on the notice of payment. To establish that the individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss. An example of such "detrimental reliance" would be a decision to enroll in college based on the award of benefits. The funds have been spent and cannot be recovered nor can the purchase be liquidated.

§ 10.324 Responsibility for providing financial information.

In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in § 10.322, as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in denial of waiver, and no further requests for waiver shall be entertained until such time as the requested information is furnished.

71. By revising § 10.400(e) to read as follows:

§ 10.400 Physician and medical services, etc. defined.

* * * * *

(e) The term "medical services" as used in subparts E and F of this part includes services and supplies provided by or under the supervision of physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practices as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-ray performed by or required by a chiropractor to diagnose a subluxation of the spinal column. The term "subluxation" means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section.

* * * * *

72. By adding a new § 10.413 as follows:

§ 10.413 Time limitation on payment of bills.

The Office will reimburse claimants and providers promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the calendar year in which the claim was first accepted as compensable by the Office, whichever is later.

73. By revising § 10.500 to read as follows:

§ 10.500 Prosecution of third party action by a beneficiary.

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person or persons other than the United States to pay damages, the Office may require the beneficiary to prosecute an action for damages against the third party. When so required, the cause of action shall be prosecuted in the name of the beneficiary.

74. By amending § 10.503 by revising the introductory text, and revising paragraphs (b), (c), and (d) to read as follows:

§ 10.503 Distribution of damages recovered by a beneficiary.

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon a person or persons other than the United States to pay

damages and, as a result of claim brought by or settlement made by the beneficiary or by someone acting on the beneficiary's behalf, the beneficiary recovers damages or receives money or other property in satisfaction of the liability on account of that injury or death, the proceeds of the recovery shall be applied as follows:

(a) * * *

(b) The beneficiary is entitled to retain one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted.

(c) There shall then be remitted to the Office the benefits which have been paid on account of the injury including payments made on account of medical treatment, transportation costs, funeral expenses, and any other payments made under the Act on account of the injury or death. If an attorney was employed, the amount to be remitted to the Office shall be reduced by an amount equivalent to a reasonable attorney's fee proportionate to any refund to the United States.

(d) Any surplus remaining after proper refund has been made to the Office may be retained by the beneficiary but shall be credited by the Office against future payment of benefits to which the beneficiary may be entitled under the Act on account of the same injury or death.

75. By adding a new § 10.506 as follows:

§ 10.506 Official superior's responsibility in cases involving potential third party liability.

If it appears that an injury or death for which benefits are payable under the Act was caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages, the official superior or other agency official shall investigate the third party aspect of the injury or death and submit a report of the findings with related documents to the Office.

76. By adding a new § 10.507 as follows:

§ 10.507 Satisfaction of the interest of the United States.

No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or the beneficiary's designee the proceeds of any suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.

77. By adding a new Subpart H as follows:

Subpart H—Special Category Employees

Peace Corps Volunteers

§ 10.600 Definition of volunteer.

The term "volunteer" means—

(a) A volunteer enrolled in the Peace Corps under 22 U.S.C. 2504;

(b) A volunteer leader enrolled in the Peace Corps under 22 U.S.C. 2505; and

(c) An applicant for enrollment as a volunteer or volunteer leader during a period of training under 22 U.S.C. 2507(a) before enrollment.

§ 10.601 Applicability of the Act.

Except as provided by 5 U.S.C. 8142 and elsewhere in this subpart, the provisions of the Act are applicable to Peace Corps volunteers.

§ 10.602 When disability compensation commences.

Pursuant to 5 U.S.C. 8142(b), entitlement to disability compensation payments does not commence until the day after the date of termination of the volunteer's service.

§ 10.603 Pay rate for compensation purposes.

(a) The pay rate of a volunteer is the lowest step of grade 7 of the General Schedule.

(b) The pay rate of a volunteer leader is the lowest step of grade 11 of the General Schedule.

(c) The pay rate of a volunteer with one or more minor children as defined in 22 U.S.C. 2504 is the lowest step of grade 11 of the General Schedule.

(d) The pay rate for compensation purposes is defined as the pay rate in effect on the date following separation, provided that it is equal to or greater than the pay rate on the date of injury, and is not subject to the provisions of 5 U.S.C. 8101(4).

§ 10.604 Period of service as a volunteer.

The period of service of an individual as a volunteer includes any period of training under 22 U.S.C. 2507(a) before enrollment as a volunteer and the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

§ 10.605 Conditions of coverage while serving outside the United States and the District of Columbia.

(a) Any injury suffered by a volunteer during any time when the volunteer is located abroad shall be presumed to have been sustained in the performance of duty and any disease or illness contracted during such time shall be presumed to be proximately caused by the employment, except the presumption will be rebutted by evidence that:

(1) The injury or disease or illness was caused by the volunteer's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication of the injured volunteer; or

(2) The disease or illness is shown to have pre-existed the period of service abroad; or

(3) The disease or illness or condition claimed is either a manifestation of symptoms of or consequent to a pre-existing congenital defect or abnormality.

(b) If an injury is not presumed to have been sustained in the performance of duty as provided by paragraph (a) of this section, the volunteer has the burden of proving by the submission of substantial and probative evidence that the injury was sustained in the performance of duty with the Peace Corps.

(c) If a disease or illness or claimed condition, or episode thereof, comes within exception (a)(2) or (a)(3) of this section, the volunteer has the burden of proving by the submission of substantial, probative and reasoned medical evidence that it was proximately caused by the factors of conditions of Peace Corps service, or that the condition was materially aggravated, or accelerated or precipitated by factors of Peace Corps Service.

Non-Federal Law Enforcement Officers

§ 10.610 Definition of a law enforcement officer.

For purposes of this subpart, a law enforcement officer is defined as an employee of a State or local government including the governments of U.S possessions and territories, or an employee of the United States pensioned or pensionable under Sections 521–535 of Title 4, District of Columbia Code, whose functions include one or more of the following:

(a) The apprehension of persons sought for the commission of crimes, including those sought by a law enforcement agency for such commission, as well as material witnesses sought in connection with criminal cases; or

(b) The protection or guarding of persons held for the commission of crimes or as such material witnesses; or

(c) The prevention of the commission of crimes.

§ 10.611 Applicability.

Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this subpart,

the provisions of the Act and subparts A, B, and D through G are applicable to law enforcement officers, as defined in § 10.610.

§ 10.612 Conditions for eligibility.

(a) The benefits of the Act are available as provided in 5 U.S.C. 8191 *et seq.* and this subpart to a law enforcement officer as defined in § 10.610 and his or her survivors if the Office determines that an individual on any given occasion was—

(1) A law enforcement officer and to have been engaged on a given occasion in the apprehension or attempted apprehension of any person:

(i) For the commission of a crime against the United States, or

(ii) Who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or

(iii) Who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) A law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such crime; or

(3) A law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in 5 U.S.C. 8101(1), and to have sustained on that occasion a personal injury for which the United States would be required under 5 U.S.C. 8101 to pay compensation if the individual has been on that occasion an employee within the meaning of 5 U.S.C. 8101(1) engaged in the performance of duty.

(b) The mere fact that an injury to a law enforcement officer is in some way related to the commission of a Federal crime does not in itself bring the injury within the scope of this subpart. For the purpose of this subpart, being engaged in the apprehension or attempted apprehension of a person for the commission of a crime against the United States requires that the specific criminal activity which caused the officer's repsonse was an actual Federal crime. Further, where the actions which result in an injury to an officer are based solely on a local police matter, the later discovery (i.e., discovery after the arrest has been made) of a Federal crime or potential Federal crime does not in itself bring the injury within the meaning of 5 U.S.C. 8191. For example, coverage under this subpart would extend to an officer who responded to an armed robbery and who was shot by the suspect. (For the purpose of this example, the suspect must be illegally in possession of a firearm in violation of Federal law.) With the officer's knowledge of an armed robbery (and/or the actual viewing of a firearm in the possession of the suspect), the firearm would be both an integral part of a Federal crime and a part of the specific criminal activity to which the officer was reacting. Coverage would be extended in this situation even though the officer may not have been aware at the time that the suspect was in fact in violation of Federal law. However, coverage under this subpart would not be extended to an officer injured while apprehending an individual for a violation of local law where it is discovered during a search of the individual (i.e., after the arrest has been made) that the individual was in violation of Federal law due to illegal possession of a controlled substance. In this situation, even though the individual was in violation of Federal law, the existence of the controlled substance was not a part of the specific criminal activity to which the officer was responding and thus did not play a part in the apprehension. Coverage would be extended in this situation if the officer had been aware of the existence of the substance prior to the arrest being made. To be considered a part of the criminal activity, it would not be necessary for the officer to know the nature of the substance, but only that the officer had reason to believe it was a controlled substance. If later investigation showed that the substance was not in fact a controlled substance, coverage would not be extended since no Federal crime had in fact been committed. Similarly, an officer injured while responding to an alarm of a robbery at a federally insured bank would be entitled to benefits as provided by this subpart. However, coverage would not be extended where the alarm was false since no Federal crime had actually occurred.

(c) Coverage for injuries or death while a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States shall not attach unless a Federal crime had been committed or was about to be committed. Whether or not a Federal crime was about to be committed cannot be open to speculation. The threat must be actual and imminent. However, in situations where the officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other individual entitled to be provided or actually provided protection by the United States Secret Service pursuant to 18 U.S.C. 3056(a), 3 U.S.C. 202–209, and the regulations promulgated pursuant to the latter provisions at 13 CFR 13.1–13.8, coverage will be extended for injury or death sustained in such activity, because the threat of Federal crime in those circumstances is presumed to be always imminent.

(d) No person otherwise eligible to receive a benefit under this subpart because of the disability of death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

(e) Coverage for members of the Executive Protective Service, the United States Park Police and those members of the United States Secret Service who are covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act is limited to specific activities involving crimes against the United States, and does not include numerous tangential activities of law enforcement, such as reporting for work, changing clothing etc., even though the laws enforced in the job deal solely with crimes against the United States.

§ 10.613 Time for filing a claim.

A claim for benefits under the Act must be received by the Office within 5 years after the injury or death. The five-year limitation is maximum and mandatory and is not subject to waiver.

§ 10.614 How to file a notice of injury or death.

(a) A claim for benefits due to the injury or death of an eligible officer shall be made by—

(1) Any eligible officer or survivor of an eligible officer,

(2) Any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his or her estate, or any of his or her survivors, or

(3) Any association of law enforcement officers which is acting on behalf of an eligible officer or any of his or her survivors.

(b) The form provided for filing a claim for injury or occupational disease is CA–721.

(c) The form provided for filing a claim for death is CA–722.

(d) A claim for benefits should be submitted to the officer's employing agency for completion and forwarding to the Office of Workers' Compensation Programs.

§ 10.615 Benefits.

(a) In the event of injury the Office shall furnish to any eligible officer the benefits, except for Continuation of Pay, to which he or she would have been entitled under subparts A through H of this Part if, on the occasion giving rise to eligibility, the officer had been an employee as defined in 5 U.S.C. 8101(1) engaged in the performance of duty. However, such benefits shall be reduced or adjusted as the Secretary in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which the officer would have been entitled to receive but for this subpart) by virtue of actual employment on that occasion. When an eligible officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) In the event of death the Secretary shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee defined in 5 U.S.C. 8101(1) engaged in the performance of duty on the occasion giving rise to eligibility, and the comparable benefits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subpart) by virtue of the officer's actual employment on that occasion. When an eligible officer has contributed to a survivor's benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivors' benefits coverage for the eligible officer.

§ 10.616 Computation of benefits.

(a) In determining the amount of benefits payable to an eligible officer or survivors of an eligible officer, the Office shall compute the beneficiaries' entitlement under the Act including applicable cost-of-living adjustments under 5 U.S.C. 8148(a), then reduce the amounts by any comparable benefits payable by a State or local entity for the same injury or death.

(b) Benefits payable under the Public Safety Officers' Benefit Act (42 U.S.C. 3796) for the same death constitute a prohibited dual benefit and any benefits payable under the Act will be reduced commensurate with the amounts payable under 42 U.S.C. 3796. Where a lump sum benefit is paid under 42 U.S.C. 3796, no benefits under the Act will be paid to a beneficiary until the entire amount, or the individual beneficiaries' portions of the entire amount, has been fully recovered.

(c) Where one or more beneficiaries in a death claim is not eligible to receive compensation due to the fact that comparable benefits from a State or local program or benefits payable under another Federal program exceed what is payable to the individual(s) under the Act, no adjustment shall be made to the percentage(s) upon which compensation is computed for other beneficiaries until the happening of an event which would otherwise change the criteria for determining entitlement under the Act, e.g., death or remarriage of a spouse, a child turning 18 or marrying, or the birth of a posthumous child.

§ 10.617 Responsibilities of the claimant, the employing agency and the Office.

(a) The claimant, or someone acting on his or her behalf as specified in § 10.004(a), shall be responsible for fully completing all forms, or portions thereof, which require information of the claimant, as well as for providing any supporting documentation or statements requested in support of the claim for benefits.

(b) The employing law enforcement agency is responsible for fully completing all necessary portions of claim forms designated for the employing agency and for submitting evidence necessary to the Officer's determination of coverage under 5 U.S.C. 8191 including police reports, investigative reports, and records providing or disproving the involvement of a Federal crime or Federal felony.

(c) The Office is responsible for evaluating a claim, advising of the deficiencies in a claim and requesting supportive information of the claimant and employing agency. Nothing in this subpart shall be construed as placing the burden on the Office to secure the information needed to discharge the responsibilities of the claimant(s) of the employing agency.

§ 10.618 Consultation with Attorney General and other agencies.

The Secretary may refer any application received pursuant to this subpart to the Attorney General for assistance, comments and advice as to any determination required to be made pursuant to 5 U.S.C. 8191. The Secretary may request any Federal department or agency to supply any statistics, data or any other materials deemed necessary to carry out the functions of this subpart. each such department or agency shall cooperate with the Secretary and, to the extent permitted by law, furnish such materials to him or her.

§ 10.169 Cooperation with State and local agencies.

The Secretary shall cooperate fully with the appropriate State and local officials, and shall take all other practicable measures, to assure that the benefits of this subpart and the Act are made available to eligible officers and their survivors with a minimum of delay and difficulty.

Federal Grand and Petit Jurors

§ 10.620 Definition of juror.

The term "juror" means an individual selected pursuant to Chapter 21 of Title 28, United States Code, and serving as a petit or grand juror.

§ 10.621 Applicability.

Except as provided by 28 U.S.C. 1877 and elsewhere in the subpart, the provisions of the Act and subparts A, B, C, and D through G are applicable to Federal grand or petit jurors as defined in § 10.620.

§ 10.622 Performance of duty.

(a) Performance of duty as a juror includes that time when a juror is

(1) In attendance at court pursuant to a summons,

(2) In deliberation,

(3) Sequestered by order of a judge, or

(4) At a site, by order of the court, for the taking of a view.

(b) For the purposes of this subpart, a juror is not in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs(a)(1)–(4) of this section.

§ 10.623 When disability compensation commences.

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

§ 10.624 Pay rate for compensation purposes.

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for grade GS–2 of the General Schedule unless his or her actual pay as a Government employee while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

Signed at Washington, DC, this 23rd day of May, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–12816 Filed 6–5–86; 8:45 am]

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Part III

Small Business Administration

13 CFR Part 108

Loans to State and Local Development Companies; Final Rule and Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amdt. 14]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: 13 CFR Part 108 delineates regulations for development companies. This final rule clarifies and strengthens regulations for development companies in general and 503 development companies (companies certified under section 503 of the Small Business Investment Act of 1958) specifically. In addition, recent experience has warranted the addition of new provisions for 503 companies, including the subordination of seller financing to the 503 loan. Certain sections or paragraphs, set forth below, are published as "interim final", because they were not contained, or treated differently in the proposed rules. These interim final amendments include: Sections 108.2(m), 108.503–1(b)(3), 108.503–3(f), 108.503–8(b)(2) and 108.503–15(a)–(d). SBA invites comments on these matters and will thereafter publish changes, based on the comments received, or announce that no changes will be made, or both.

DATES: *Effective date:* June 6, 1986. Comments on the interim final amendments must be submitted on or before August 5, 1986.

ADDRESS: Written comments on the interim final amendments, in duplicate, may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Small Business Administration, Office of Economic Development, 1441 L Street, NW., Room 720, Washington, DC 20416, (202) 653–6076.

SUPPLEMENTARY INFORMATION: On July 5,1985, at 50 FR 27754 SBA published proposed amendments to its regulations for development companies under Title V of the Small Business Investment Act of 1958, and especially for companies under section 503 of that Act (15 U.S.C. 697) ("Act"). The comment period ended September 3, 1985. The explanation of the amendments was set forth in the cited publication. This publication sets forth the changes from the proposed rule, and discusses the 31 timely comments received relative thereto

Apart from stylistic changes, the following substantive changes were made:

Section 108.1(b). The term "distressed areas" used in the proposed rule has been amplified by reference to labor surplus areas as listed in the Department of Labor's "area trends."

Section 108.2(c) has been expanded to make clear the definition of "small business concern" includes such concern's affiliates.

Section 108.2(d)(3) has been abbreviated by deleting the reference to "certified development company" because the term "504 company" is used throughout the rule instead.

Section 108.2(i) In the proposed rule a definition of "net debenture proceeds" was inadvertently omitted. This definition has been included in this final rule.

Section 108.2(j) proposed as (i), has been abbreviated to omit, as unnecessary, the clause including both industrial and commercial plants.

Section 108.2(m). A new paragraph (m) has been added to the definition section § 108.2 which defines independent public accountant as either a CPA or a public accountant licensed on or before December 31, 1971. This definition conforms to that used in other SBA programs and to the "Standard for Audits of Governmental Organizations, Programs, Activities and Functions" published by the General Accounting Office (1981 revision). SBA deems this new definition as "interim final" and invites comments thereon within 60 days of publication. SBA will thereafter publish a change based on comments received, or announce that no change will be made.

Section 108.4(a). One commenter suggested a uniform fiscal year for development companies, coinciding with SBA's fiscal year. SBA sees no need for such uniformity.

Section 108.4(c). The good character requirement of § 108.4 has been amended as to felonies. The proposed regulations would have established a formal charge or indictment as an element of bad character. It was pointed out that this rule would be inconsistent with the principle "innocent until proven guilty".

Section 108.4(d). One comment proposed that full disclosure of any prohibited relationship between the 503 company and the borrower or related parties, and abstention from voting on a project by such related party, should constitute compliance with the conflict of interests prohibition. Another comment expressed the view that 503 companies should be able to make equity investments in their portfolio concerns and that such investments should not be considered a conflict of interest. SBA feels the prior approval alternative contained in the regulation provides adequate flexibility for meritorious cases.

Section 108.4(d)(2) has been amended to make clear that a lender providing financing for the development company project is prohibited from self-dealing pursuant to § 108.4(d)(1).

Section 108.4(d)(3)(i) has been amended to make clear that a second-round financing by the 503 company under this part is permitted, notwithstanding the prior investment.

Section 108.4(d)(3)(ii) has been amended to require SBA approval of purchases of property by the portfolio concern from the development company or its associates, etc. (bail-out).

Section 108.5(c). A comment proposed that only SBA-related litigation should be subject to the litigation reporting requirement. SBA thinks that the potential impact of unrelated litigation on the 503 company also warrants such advice to SBA.

Section 108.5(d). This subsection dealing with reports has been amended in two ways: (1) The SBA Form number was changed to its current number Form 1081. (2) A clause has been added to make clearer that changes in the conditions of eligibility of a development company must be promptly reported and are subject to SBA's approval as a condition of continued participation in the programs under this Part.

Section 108.5(e). Several commenters have found the requirement to furnish SBA copies of general publications concerning the financial operations of the 503 company or its portfolio concerns overly broad, and have proposed that such requirements should be limited to reports on situations affecting the survival of the 503 company. SBA is of the opinion that any report which merits general publication is of interest to SBA. Internal reports such as report to the board or an executive committee of the board, correspondence concerning servicing options, advice on servicing matters are not considered general publications. It follows that only publications that reach all or most owners or members are "general publications" that should be submitted also to SBA.

Section 108.7. A comment proposed striking as redundant the statement that nonperformance of any agreement with, or an intentional misstatement to SBA constitutes a violation of the regulations, and entitles SBA to accelerate its financing. SBA has added a reference to

"other provisions" of this Part to the statement of violations contained in this section, and has eliminated the reference to nonperformance of any condition of a note as a regulatory violation. Also, the word "knowing" has been inserted before "misrepresentation" to make clear that not every error in a document is considered a violation of the regulations.

Section 108.8(e). This rule provides that availability of funds from the personal resources of owners shall not disqualify a concern for assistance. The rationale of this provision was questioned. It is justified by the purpose of the program, which is economic development of an area or community. If a project contributes to such development it should not be disqualified merely because the owners could undertake it, but chose not to do so. For the sake of clarity, this section has been expanded to include § 108.8(h) as published in proposed rulemaking. A comment on the proposed § 108.8(h) criticized the requirement that the availability to the small concern of private funds "on reasonable terms" (Section 503(b)(2) of the Act, 15 U.S.C. 697) be judged by comparison to development company loans. The comment emphasized that such loans have better terms than most private loans. The commenter would require 6 letters from financial institutions explaining why they are not providing the required financing. The lack of availability of private funds on "reasonable terms" is a statutory requirement of the program. SBA views its purpose under this Part as one of improving and stimulating the flow of long-term funds to small concerns for the benefit of economic development in a given region or area. (§ 108.1). It is consistent with this purpose to offer terms, such as longer maturities, which are not available to such project from private sources on reasonable terms. On the other hand, SBA does not view this purpose as competitive with, or inimical to, private enterprise. Accordingly, this provision is designed to limit assistance under this Part to viable projects which cannot obtain sufficient private enterprise lending on terms that are reasonable for the projects. SBA feels qualified to make such judgment without the extensive paperwork and time required to obtain explanations from several financial institutions.

Section 108.8(d). Several comments proposed broadening the so called "alter ego" rule to allow several small concerns to share a single project (e.g. a building). SBA rejects this proposal, because the rule is in itself an exception to the principle that passive concerns are ineligible for SBA assistance. Under the proposal, the percentage of ownership of the several small concerns and of the single borrower are not identical.

Section 108.8(d)(6) has been amended in response to comments received to require only the owners of 20% or more of the equity of a small concern to guarantee the 503 loan.

Section 108.8(e). In response to several comments that this proposed subsection governing leases is unduly long and complicated, SBA has simplified it by shortening it and reducing the test of eligibility for a leased project to two criteria: either SBA obtains a lien on the property itself, or SBA's investment is secured by other collateral.

Section 108.503(b)(1). Several comments were critical of the requirement that a 503 project should create one job for each $15,000 guaranteed by SBA, or an average of one job for each $37,500 invested in each project. The criticisms were that such requirement favored labor-intensive industries, that a longer period of years for establishing the job average should be chosen, and that a penalty for failure to attain the job opportunity goal should be prescribed. SBA's position is that economic development implies the creation or maintenance of job opportunities, that a project should accomplish its job objective within two years, and that SBA is without legislative authority to impose a penalty for failure to achieve the required job objective. It should be noted, however, that certain disincentives are designed to encourage the attainment of job opportunity goals—see § 108.503(d). As one comment put it: "The true intent of this program should not be liberalized by accepting long-term predictions of job attainment."

Section 108.503(c) has been changed to allow for average job opportunity costs in excess of $15,000 in Alaska, Hawaii, and in labor surplus and redevelopment areas, as approved by SBA on an individual basis.

Section 108.503(d). Several comments criticized the requirement that 503 companies monitor job creation by obtaining and retaining in their records certifications from portfolio concerns supporting job opportunity claims of the 503 company. It was argued that 503 companies do not control their portfolio companies, and could not be held responsible for their failure to supply required data. In response to such criticism SBA has relaxed the requirements of the withholding provisions of § 108.503–3(f)(5) and 108.503–13(d). It must be borne in mind that such records are crucial to the accurate evaluation of the program. A 503 company should remain sufficiently close to its portfolio concerns to obtain essential data on a timely basis—compare § 108.503–1(b)(3). A lack of cooperation between portfolio concern and 503 company may reflect unfavorably on the 503 company's servicing ability. See also comment under the heading "Miscellaneous".

Section 108.503–1(b). One comment finds fault with SBA's decision not to certify any additional for-profit 503 companies in the future. It should be noted that any qualified for-profit company which has applied for certification before the effective date of these regulations will remain eligible to become a full-fledged program member. A requirement that such for-profit companies must comply with all eligibility requirements has been added. The reason for SBA's decision is the desire to emphasize the *pro bono publico* character of the industry over the profit incentive. The nature of the 503 company is to be a catalyst in fostering economic development, and not a profit center for owners or members. This policy decision should not be interpreted as a reflection on any 503 company now in the program or to be admitted soon, which is organized on a for-profit basis.

Section 108.503–1(b)(2). Several comments took exception to the requirement that a director with commercial lending experience be involved in lending or servicing decisions. They argued that 503 company staff acquires such experience through their review of loan requests. In response, SBA has modified this provision to require that at least one person with commercial lending experience acceptable to SBA participate in each lending and servicing decision. One comment took exception to the requirement that board members be "responsible officials" of the organizations they represent, and to the occupational distribution requirement of the board. The term "responsible official" was chosen to preclude delegation to a token level of representation and is not synonymous with "top executives". The occupational distribution requirement is intended to make the board, as nearly as practical, representative of the membership.

Section 108.503–1(b)(3). A comment objected to the annual SBA approval requirement of external contracts for marketing, packaging, processing and servicing functions of the 503 company,

and proposed to allow for staffing with SCORE and SBI officers. Nothing in the proposed regulations now prohibits such participation, and the annual approval requirement is in line with other SBA programs which also require annual review of arrangements which may become obsolete. See, for example, 13 CFR 107.501. However, a clause has been added to make clear that a management contract (other than an employment contract with an individual) requires SBA's initial prior written approval as well as annual approvals, and has added other approval criteria: (1) Such contract may not adversely affect the financial condition of the 503 company. (2) Compensation under such contracts must be reasonable and customary and billed on an hourly basis. (3) These contracts will be subject to audit by SBA at no cost to the 503 company. SBA considers it useful to publish these approval criteria for greater specificity.

Section 108.503–1(b)(3) and (4). Several comments strongly objected to the requirement of a full-time staff and the ability to provide management services to small concerns. The short answer is that section 503(d) of the Act (15 U.S.C. 697(d)) requires it. Moreover, the phrase, "cause to be provided" allows for avoidance of duplication of otherwise available services.

Section 108.503–1(d)(2). Many comments took issue with the provision that appropriate government economic development organizations be members of the 503 company, stating that such membership would politicize 503 company activity. While SBA recognizes the validity of this concern, it seems to us outweighed by the advantage of governmental cooperation in 503 company projects. The regulations will also provide that the Director of SBA's Office of Economic Development may approve another form of Government participation, e.g. where prohibited by law. Also, many comments objected to major city representation in multi-county 503 companies. SBA has deleted this requirement.

Section 108.503–2(c) has been amended to state that the surrender of a 503 certificate, like a certificate transfer, may not take place without SBA's prior written approval.

Section 108.503–3(b). Objection was made to the portfolio diversification requirement. SBA thinks that economic development requires diversification, and the concentration in any one industry, or on start-up businesses, does not serve the entire business community in a representative way. No change was made as a result of this comment.

Section 108.503–3(d). Two comments took issue with the requirement that a separate file be established for each project. These comments reflect the assumption that only a single folder constitutes a file. The regulation permits an unlimited number of folders to constitute a file. The lead-in paragraph to subsection (d) has been amended to make clear that a photographic copy may replace an original document for record keeping purposes.

Section 108.503–3(e). Numerous comments took issue with the proposed accounting provisions. In response, SBA has determined to reserve this issue to a later time.

Section 108.503–3(f). Several commenters objected to the requirement of an "opinion audit" for the annual financial statements, as exceedingly costly. SBA has raised the threshold for "opinion audits" in response to this objection. 503 company's with a portfolio under $10 million may submit statements on a "review" basis. SBA needs an "audit opinion" from the larger companies because of their stewardship over very substantial assets, but has added a waiver provision for hardship cases. Further, notwithstanding the vital need to measure the effect of the program on the small concerns assisted, SBA has (in response to other comments) relaxed the reporting rule to the extent that a 503 company which can persuade SBA that it has made every conceivable effort to obtain required report information and has failed, may be excused by SBA from filing such reporting items, subject to § 108.503–13(b), q.v. An editorial change makes clear that this subsection on annual reports does not contain all reporting requirements by referring to the other sections with reporting requirements. Further, the annual report will require regulatory compliance information to be prepared by the independent public accountant as specified in an Annual Report Guide to be provided by SBA in the near future. In addition to being submitted as part of the annual report, a copy of the compliance information will be submitted to SBA's Inspector General. The Inspector General may request related workpapers. 503 companies are not required to furnish the compliance information for fiscal years ending on or before December 31, 1986. Such information needed during this period will be gathered by SBA's Inspector General in special compliance audits, § 108.503–15(d), as needed. 503 companies are required to submit compliance information for fiscal years ending after December 31, 1986. However, 503 companies with no compliance deficiencies and no change in their eligibility or operations are permitted to submit compliance information on a biennial basis. This method of verifying compliance was chosen in preference to mandatory compliance audits by SBA's Inspector General, in order to rely to a greater extent on the private sector and to give 503 companies the option of avoiding the audit expense otherwise prescribed by § 108.503–15(c). The requirement of compliance reports is published as "interim final". SBA invites comments thereon within 60 days of publication, and will thereafter publish a change based on these comments, or announce that no change will be made.

Section 108.503–3(g). Two comments objected to the flat prohibition on 503 loans to concerns in which the 503 company or its associate hold an equity interest. SBA, however, is persuaded that this situation has a conflict of interest potential which should be avoided.

Section 108.503–3(h) has been amended to allow SBA to transfer the portfolio of a 503 company unable or unwilling to service it, to another 503 company or another entity for servicing.

Section 108.503–4(a). Three comments criticized the limitation to 15% of excess (leasing) space in a newly constructed facility. SBA feels that a greater amount of permissible excess space would derogate from the development purpose of this program.

Section 108.503–4(b)(4). In response to comments this paragraph has been clarified to include as ineligible projects or project components only automobiles, trucks, and airplanes. An exception (in specific circumstances) has been added for Alaska and Hawaii since these states do not possess a road network such as exists in the contiguous 48 States.

Section 108.503–4(c)(3) has been amended to make clear that SBIC investments in 503 projects are subject to Part 107 of these regulations and to differentiate between SBIC's with and without SBA financial assistance; in the latter case; the SBIC financing will qualify as non-governmental for purposes of § 108.503–3(a).

Section 108.503–5(a). In response to a comment, the examples of eligible costs essential to the project have been expanded to include legal and accounting costs directly attributable to the project and not related to underwriting or other financing expenses, but interest charges on interim financing are also eligible. Moving costs, while ineligible, have not

been added to the examples of ineligible costs in subsection (c) of this section because the description is intended to be illustrative rather than all inclusive. The section has also been reorganized, without substantive change, for greater clarity. The reduction of the contingency reserve from 15% to 10% was questioned. SBA reduced that reserve in order to avoid having to reduce the debenture amount if unused contingency funds exceed 2% of that amount. Cost overruns in excess of the reserve must be borne by the small concern.

Section 108.503–5(d). In response to the suggestion that previously acquired land should be eligible as the small concern's or the 503 company's contribution (injection) to the project, SBA has amended the proposed rule to provide that the equity in such land may be included in a new construction project at the lower of cost or market, but no refund of such cost may be made from loan proceeds.

Section 108.503–6(a) has been rewritten in several ways: (1) It is now made clear that the cost of interim financing provided by the 503 Company is not regulated by SBA, (2) instead of the term "administrative costs of the loan", the regulation now enumerates them as "packaging, processing, and non-legal staff functions related to loan closings", (3) since the final rule defines "Net Debenture Proceeds", the processing fee is now based on such proceeds for greater ease of calculation. The prior mode included in the base of the calculation the Reserve Account (two monthly payments). Since the new calculation of the servicing fee (see Fiscal Agent Agreement) results in an increased fee, that increase will compensate for the slight reduction of the processing fee. SBA will consider an increase in the processing fee for future amendments because several commentors consider it too low. (4) the provision for legal fees has been amended in response to comments criticizing the limitation of $2,500 as either too high or too low. The limitation was adopted to indicate that in most instances the legal cost should be kept below that amount. The final rule now provides for SBA approval of a higher fee in cases of unusual complexity. (5) Paragraph (3) concerning the service charge has been amended to remove the erroneous word "original" from "original outstanding balance" and a clause has been added to the effect that the outstanding balance is to be measured in five-year intervals from the original anniversary date.

Section 108.503–6(b) has similarly been amended to base the calculation of the 1½% "earnest money" on "net debenture proceeds". Two commenters feel that a 503 company should be permitted to retain all or part of the deposit received with an application if considerable effort has gone into the examination, but resulted in a denial. SBA considers the deposit in the nature of "earnest money", to discourage frivolous applications, not as a source of revenue for the 503 company. Accordingly, SBA favors retention of the deposit only in cases where the applicant rejects a loan offer, but not in cases where the application is rejected.

Section 108.503–6(c) has been amended to permit the 503 company to charge a one-time fee for negotiating a purchase-money mortgage at the request and on behalf of the small concern. In contrast to the 503 company injection, such negotiation is not a nominal function of the 503 company and may be compensated if the parties so agree. While two comments applauded the authority for the 503 company to charge a fee up to 1½% for non-Federal financings procured, one comment found it unjustified, especially in light of the fees charged by the non-Federal lenders themselves. Since such fee may only be charged on the basis of a written agreement for services actually rendered, SBA thinks that it is the borrower's choice whether or not to incur this fee.

Section 108.503–7(a). Several comments took issue with the requirement that the interim lender certify to the 503 company that the small concern has suffered no adverse change since loan approval. It was argued that this requirement would discourage private lender participation and drive up the bridge financing cost. In deference to these apprehensions SBA has modified the clause to require only that the interim lender have no knowledge of such change, and has provided the same standards of adverse change as apply to the 503 company itself.

Section 108.503–7(c) has been amended to remove the word "cost" from "the total project cost". The impact of this change is to make clear that it is not the dollar value, but the importance to the project of the missing project component that determines whether the debenture sale can go forward. An item of relatively minor cost may be important to the project; conversely, a rather costly item (e.g. a parking lot) may not be essential to the operation of the new facility. One comment questioned the use of the unexpended project funds which are to be returned to the central fiscal agent after one year. SBA has amplified this provision to make clear that these funds would be credited to the reserve account for eventual return, with interest, to the small concern pursuant to § 108.503–11(b)(2).

Section 108.503–8(a). Several comments objected to the proposed composition of the total 503 financing in terms of Federal, private and non-Federal governmental, as too rigid. SBA has therefore rewritten this provision to make clear that at least half of the project cost must originate from sources other than Federal, and the restriction on non-Federal governmental sources has been eliminated. Industrial revenue bonds are considered a non-governmental source of funds.

Section 108.503–8(b)(1). A comment proposed that the term of the first mortgage should exceed the debenture term by no more than five years. SBA thinks that this would limit the flexibility of the 503 company unduly, since the first mortgage terms are an intrinsic part of the package that SBA and the 503 company must approve. As a special exception to the general ten-year rule, SBA will permit the private sector financing to be for seven years or more where the project does not involve real estate and the debenture is for ten years. Experience has shown that private sector lenders are reluctant to make ten-year loans for purposes not involving real estate, while SBA is willing to go to ten year debenture financing for machinery, etc. in pursuit of its economic development philosophy.

Section 108.503–8(b)(2). SBA has added a provision to this paragraph requiring that seller financing (such as a purchase money mortgage on project property) be subordinate to the 503 loan. Our reason is that, without such subordination, the 503 loan would secure the seller against the default of the purchaser, because in a liquidation SBA would have to pay off the purchase money mortgage. Thus, SBA would be assisting the seller of the project property, instead of the project itself. This subordination requirement was not part of the notice of proposed rulemaking. For this reason, SBA invites comments on this provision at the address shown above and will give careful consideration to such comments.

Section 108.503–8(b)(4). One comment objected to the lack of specificity of the requirement, that SBA approve the terms and conditions of the private financing. Since SBA's acceptance is implicit in the project approval, this requirement is omitted. We have, however, added a provision authorizing use of the private financing for debt

consolidation related to project property. [§ 108.503–8(b)(5)]

Section 108.503–8(a)(7). A comment said that a 30-day notice period before foreclosure sale is adequate. In response, SBA has extended the notice period to 60 days.

Section 108.503–8(a)(2). Two comments objected to the $50,000 minimum for a 503 debenture. SBA feels that, as a general rule, a debenture of less than $50,000 is not cost-effective, because of certain fixed costs, but that in exceptional cases (e.g. in a rural area) a debenture of as little as $25,000 may be authorized. All debentures must be denominated in amounts rounded up to the next one thousand dollars.

Section 108.503–9(a)(4). Nine comments proposed that a new 10-year debenture be authorized for real property, as well as machinery and equipment. SBA has accepted that proposal, and will require in such cases that the private sector financing of projects involving real estate also have a 10-year maturity.

Section 108.503–9(a)(5). Three comments criticized the provisions authorizing subordination of the 503 debenture to other obligations of the 503 company, stating that such debenture should be subordinated to any other debt of the 503 company and of the small business concern. These comments reflect a misunderstanding: the 503 debenture is an obligation of its issuer, the 503 company, and as such cannot be subordinated to the debts of another entity. This provision, moreover, is a paraphrase of the statute, 15 U.S.C. 697(a)(4). If these commenters were correct, the 503 debenture could be subordinated to the small concern's 503 note securing it, an obvious impossibility. (See also comment on § 108.503–8(b)(1) above.)

Section 108.503–9(a)(6). The provision authorizing the issuance of one debenture secured by two or more loan notes was questioned. It restates prior § 108.503–4(a)(1) (1980) and was then adopted to provide for the case where several small projects would be assisted, and the cost of a debenture for each would be excessive. See comment on § 108.503–9(a)(2) above. In such case it may be advantageous to combine several projects in one debenture. The cost to SBA of the default or prepayment by one of the project concerns would not be greater than it would be under individual debentures.

Section 108.503–9(a)(9). Several comments pointed out a drafting error. As corrected, the provision covering 503 Loan conditions now allows the loan to include the amounts necessary to cover the reserve account and the 503 company and CFA processing fees. Two comments criticized the late payment fee. Its purpose is to encourage prompt payments under the loan contract. It is therefore appropriate that the fee be proportionate to the late amount, and discourage arbitrage between prompt payment and other uses. Late payments cause additional servicing costs, which should be compensated.

Section 108.503–9(a)(11) has been rewritten to make clear that any premium on the 503 Debenture occasioned by a prepayment on the part of the small concern is the responsibility of the small concern. Conversely, any discount enures to the benefit of the small concern.

Section 108.503–11(b)(2). Several comments criticized the proposal that funds in the Reserve Account could accumulate (through interest accretions) to unreasonably high amounts. Since this matter requires further study, consideration will be given to a relaxation of the rule in a subsequent amendment. One comment proposed that the small concern be allowed to reduce its monthly payment by the amount of accrued interest in the reserve account. This procedure, however, seems unacceptable since the reserve account including interest thereon is needed for semi-annual debenture payments should the small concern default. In this connection it should be noted that the pricing method for the debenture has been changed. The amount to be placed in the reserve account will henceforth be computed as equal to two percent of the net debenture proceeds, as defined (§ 108.2(i)), instead of equal to two monthly payments, as heretofore.

Section 108.503–13(c)(6). One comment proposed that a special 503 company fee of 1% of the outstanding balance be authorized in cases where the responsibility of a 503 borrower is assumed by another company pursuant to § 108.503–13(g). SBA will give this suggestion further study for possible inclusion in a future amendment.

Section 108.503–13(d). SBA has relaxed the provision authorizing withholding of the service fee from the 503 company if the borrower is delinquent. This action responds to several comments that the provision is too harsh. It now provides that the service fee will be paid from payments received, i.e. it will be withheld only during the period and to the extent of delinquency. However, willful or negligent failure of the 503 company to comply with the reporting and servicing requirements will also trigger withholding after 30 days. After 30 days of such uncured failure, the fee will be paid to SBA, to compensate it for its efforts to obtain compliance. In this connection it should be noted that the Note, SBA Form 1218, authorizes the holder with the consent of SBA, to declare all or part of the indebtedness due and payable upon nonperformance by the small concern of any agreement with, or any condition imposed by, the development company.

Section 108.503–13(h) has been expanded to include the standards by which SBA will consent to a deferment. These standards include a finding of the benefits expected from the deferment, and the provision of additional collateral to secure SBA's additional risk. The small concern must compensate SBA for its cost in making the deferment. The proposed requirement that all other lenders to the project must defer their claims for the same period has been abandoned as too limiting, since it would prevent SBA from saving a project if all lenders do not agree to a like deferment. The provision that the small concern remain liable for deferred payments, and that SBA's payments on behalf of the small concern be added to the principal balance of the note is now included among the note provisions and need not be stated in the regulations.

Section 108.503–14. This section has been reworded for clarification. The revised version provides that SBA may terminate the servicing functions of the 503 company and the central fiscal agent when the 503 loan is transferred to liquidation, but that SBA may negotiate with and compensate the 503 company for continued servicing or liquidation of the loan, as the case may be.

Section 108.503–15(a) through (d). Many comments took exception to a proposed audit fee for audits by SBA's Inspector General (at $35 per hour) pursuant to the Inspector General's Act of 1978, Pub. L. 95–452. In response, SBA has redesigned this section entirely. As explained under § 108.503–3(f) *supra*, SBA now gives a 503 company the option of having annual compliance audits performed by its own independent public accountant at its own expense, instead of by SBA's Inspector General. The independent public accountant shall forward the compliance portion of the report directly to the Inspector General. Should the 503 company fail to have their independent Accountant perform this compliance audit, SBA's Inspector General will perform the audit at the 503 company's expense, payable on an hourly basis not to exceed $35 per hour. Special audits conducted at the Inspector General's initiative shall be conducted free of

charge. In addition, SBA is authorized to conduct operational reviews (as distinguished from compliance audits) by appointment with the 503 company.

Section 108.503–15(e). The proposed rule, formerly subsection (d), has been rewritten at the request of SBA's Office of Hearings and Appeals. It now provides that SBA shall give ten (10) days written notice of a proposed suspension, informing the 503 company of its right to a hearing. Revocation proceedings and appeals shall be conducted entirely in conformity with the formal procedures of Part 134 of SBA's Regulations. SBA has determined that it is not in the public interest to require a suspension to await the outcome of a hearing on the record. The reference to Part 134 naming SBA's reviewing official in suspension or revocation cases has been changed to § 134.32(b)(7) and § 134.34 for greater accuracy.

Miscellaneous. A comment proposed a minimum capitalization of $1 million for statewide 503 companies. Since § 108.503–1(b) requires each 503 company to demonstrate financial capacity, there is no logical reason why SBA should treat statewide 503 companies differently from local companies. Another comment criticized terms like "significant impact" (§108.1(b)) as too vague. The regulations attempt to amplify this term by enumerating job creation, national objective and similar specifics—see §108.503(b). But in the final analysis, acceptance or rejection of a proposed project requires the exercise of SBA's informed judgment. The same comment also proposed higher interest rates to discourage "bargain rate" shopping by applicants. This proposal overlooks the economic development purpose of the program—see discussion relating to § 108.8(a). Another comment expressed regret that the new regulations would not reduce the paperwork burden on 503 companies and SBA district offices. Given the continuing need to evaluate the program carefully, and the strict observance of the Paperwork Reduction Act of 1980 by SBA, we believe that our information requirements are reasonable. Two comments advocated respectively: (a) Fewer and bigger and (b) more and smaller 503 companies, reflecting the respective needs of the areas from which these comments came. SBA is confident that over time the program will adjust to the variety of regional needs, possibly with the help of additional legislation. Several comments would require legislation to be implemented, and therefore are not discussed here.

For purposes of compliance with E.O. 12291 of Febraury 17, 1981, SBA hereby certifies that this proposal, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this final rule will not result in a major increase in costs or price to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, certain provisions of this proposal may have a significant economic impact on a substantial number of small entities. The following analysis of those provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. Section 108.8 incorporates eligibility requirements which are derived from Part 120 of the regulations. Part 120 applies to all SBA financial assistance to businesses other than development company loans. Section 108.8(d) clarifies the agency's policy regarding development company loans to passive borrowers who rent premises to an eligible concern. Because such borrowers are not eligible for assistance, the agency will not approve such a project unless the eligible concern's ownership is identical with the ownership of the passive borrower.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement. An exemption from coverage of this rule for small entities is not feasible since it is entirely addressed to small business concerns.

2. Section 108.9 changes the existing regulation to provide that SBA will not participate in projects which include funds resulting from tax-exempt financings unless the agency's lien position would be equal or superior to the lien position of the portion of the project so financed. The agency has decided that subordination of its position to such "tax-exempt" portion of the project would result in a double subsidy to such project which is not intended by section 503 of the Small Business Investment Act.

The legal basis for these changes are 15 U.S.C. 687(c) and 697(a)(4). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement. An exemption from coverage of this rule for small entities is not feasible.

3. Section 108.503–4(b) limits 503 eligibility for projects involving "limited use" assets and projects which involve types of businesses found by the agency to have a high rate of failure or low economic impact.

The legal basis for the change are 15 U.S.C. 687(c) and 696(1). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement. An exemption from coverage of this rule for small entities is not feasible.

4. Section 108.503–6 permits a 503 company to require an applicant small concern to deposit with the 503 company the sum of $1,000 or 1½% of the amount of the requested debenture, whichever is less. This deposit is refunded if the small concern does not voluntarily withdraw its application. The deposit is intended to compensate the 503 company for processing applications which are later withdrawn when an applicant finds other financing or changes its plans.

This section also permits the 503 company to charge a small concern (or the lender) a one-time fee, not to exceed 1 and ½% of the non-Federal portion of the permanent financing, for procuring such financing if permitted by a written agreement executed by the 503 company and the small concern.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement. An exemption from coverage of this rule for small entities is not feasible.

All other significant changes contained herein affect only the 503 company. The purpose of these rule changes is to adjust the administration of the program based on the Agency's experience since the inceptions of the 503 program.

The following sets forth the collection of information or recordkeeping requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Section		OMB approval Nos.
§108.4(c)	Good character	3245–0176
§108.5(a)	Records	3245–0074
§108.503(b)	Objectives	3245–0071

Section		OMB approval No.
§108.503(a)	Monitoring	3245-0074
§108.503-1(a)	General	3245-0073
§108.503-1(c)	Area of operations	3245-0073
§108.503-1(d)	Membership	3245-0073
§108.503-2(a)	Application for certification.	3245-0073
§108.503-3(b)(1)	Reporting requirements	3245-0074
§108.503-3(b)(2)	Reporting requirements	3245-0074
§108.503-3(b)(3)	Reporting requirements	3245-0074
§108.503-3(b)(4)	Reporting requirements	3245-0178
§108.503-5(a)	Disclosure of charges to SBA.	3245-0071
§108.503-5(a)	Application	3245-0071

List of Subjects in 13 CFR Part 108

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Part 108 is hereby amended as follows:

1. The authority citaton for Part 108 is revised to read as follows:

Authority: Secs. 308(c), 501, 502, Pub. L. 85-699, 72 Stat. 689; Sec. 113, Pub. L. 90-302 (15 U.S.C. 631 note).

2. The table of contents appearing for Part 108 is amended by adding § 108.4 through 108.10 numerically under the center heading "General", by removing § 108.503 through 108.503-8 and by adding a new center heading entitled "Assistance under Section 503", followed by new § 108.503 through § 108.503-15.

* * * * *

General

Sec.

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108.4 Operational requirements.
108.5 Records and reports.
108.6 [Reserved]
108.7 Violations based on false filings and nonperformance of agreements with SBA.
108.8 Borrower requirements and prohibitions.
108.9 Participation with tax exempt financing.
108.10 Savings clause.

* * * * *

Assistance Under Section 503

108.500 Program objectives.
108.503-1 Eligibility requirements for 503 companies.
108.503-2 Certification.
108.503-3 Operational requirements for 503 companies.
108.503-4 Project eligibility.
108.503-5 Eligible and ineligible uses of 503 Loan proceeds.
108.503-6 Costs which may be charged to the small concern by the 503 company.
108.503-7 Interim financing.
108.503-8 Private sector financing.
108.503-9 503 Debenture financing.
108.503-10 503 Company injection.
108.503-11 Central fiscal agent.
108.503-12 Loan closing.
108.503-13 Servicing loans and debentures.
108.503.14 Liquidation of 503 Loans and security.
108.503.15 Overright and evaluation; suspension and revocation.

3. Section 108.1 is amended by adding a new paragraph (b) and by redesignating existing paragraph (b) as (c). New paragraph (b) reads as follows:

§ 108.1 Policy.

* * * * *

(b) Financing provided under this part must demonstrate to SBA's satisfaction that it will result in significant impact on the community where the business or project is located and no adverse significant impact outside of the community (see § 108.8(f)(1) of this part). "Significant impact" may be demonstrated on the basis of—

(1) Jobs being created or retained which would not have been possible without such financing;

(2) Community economic development including diversification or stabilization of the economy within the community; or,

(3) Achieving a national objective such as: Increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20-39), and assisting businesses in labor surplus areas as listed by the U.S. Department of Labor in its publication "Area Trends". Loans made to acquire plants, as defined in § 108.2(j) of this part, shall be made in conformity with the same program objectives as set forth under § 108.503(b)-(d) for this 503 program.

* * * * *

4. Section 108.2 is amended by revising paragraph (c) thereof as follows:

§ 108.2 Definitions.

* * * * *

(c) "Small business concern" or "small concern" means a business concern which, together with its affiliates as defined in §121.3(a) of this chapter, qualifies as small under Part 121 of this chapter.

* * * * *

5. Section 108.2 *Definitions* is further amended by adding new paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) A "503 Company" is a development company as defined in paragraphs (d)(1) or (2) of this section which meets the requirements of § 108.503-1 of this part and is certified by SBA to operate pursuant to section 503 of the Small Business Investment Act, 15 U.S.C. 697.

* * * * *

6. Section 108.2 *Definitions* is further amended by redesignating paragraph (g) as (j) and revising it, redesignating paragraph (h) as (l) and by adding new paragraphs (g), (h), and (i) as follows:

* * * * *

(g) "503 Debenture" means a debenture issued by a 503 company and guaranteed by SBA ("503 guaranty") for sale, the proceeds of which are to be used to make one or more loans to small concerns pursuant to § 108.503-5 of this part.

(h) "503 Loan" means a loan made to a small business concern from the proceeds of a 503 debenture.

(i) "Net Debenture Proceeds" means that part of the 503 debenture proceeds that will finance eligible project costs, and does not include administrative costs (see § 108.503-5(a)).

(j) "Plant" means any long-term fixed asset which may include land, buildings, machinery, and equipment employed or to be employed by the small business concern in the conduct of its business.

* * * * *

7. Section 108.2 *Definitions* is further amended by adding two new paragraphs (k) and (m) to read as follows:

* * * * *

(k) "SIC Code" means the four digit designation by industry found in the Standard Industrial Classification Manual as prepared by the Office of Management and Budget and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(m) "Independent Public Accountant" means a certified public accountant or a public accountant licensed on or before December 31, 1971.

8. Sections 108.4, 108.5, 108.6, 108.7, 108.8, 108.9, and 108.10 are added immediately after § 108.3 to read as follows:

§ 108.4 Operational requirements.

(a) *Fiscal year.* Each development company shall establish a fiscal year which shall not be changed without SBA prior written approval.

(b) *Place of business.* Each development company shall maintain a reasonably accessible place of business, shall have a separately listed telephone number, and shall be open to the public during normal business hours.

(c) *Good character.* A development company shall possess continuing good

character. Such character will be deemed to exist where all the directors, officers, employees and members or shareholders possess good character. Officers, directors, and the manager of day-to-day operations of a development company shall file SBA Form 1061, Statement of Personal History. Good character shall be deemed absent if any one of the listed persons—

(1) Is currently incarcerated, on parole or probation,

(2) Is convicted of a felony,

(3) Suffered an adverse final civil judgment in a case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or relationships, or

(4) Made a misrepresentation or false statement to SBA, as defined in § 108.7(a)(2).

Any change affecting this requirement shall be promptly reported to SBA. No application for development company assistance shall be approved while an officer, director, or owner of 10% or more of such applicant small concern is under indictment for, or formally charged with a felony.

(d) *Prohibition of Self-dealing.* (1) Self-dealing by the development company, its board of directors, members, employees, and other related parties (as hereafter defined) to the prejudice of the small concern, the development company, or SBA is prohibited.

(2) The development company's loan application to SBA shall contain a full disclosure statement from the development company and from the small concern relative to all relationships described in §120.102–10 of this chapter, between (i) the small concern, (ii) the development company including any person employed by the development company or regularly serving the company (e.g. professional staff as defined in § 108.503–1(b)(3) or (iii) its associate (as defined in § 120.2–2 of this chapter), or any lender providing financing for the development company project, all herein referred to as "related parties", that exist or have existed within six months prior to the date of the development company's application. Where no such relationships exist, the development company and the small concern shall so certify.

(3) Without prior written approval of SBA, a development company shall not permit a relationship to exist or to be created between the development company or related parties and a small concern to be assisted under this Part or while such assistance is outstanding, if such relationship could constitute a conflict of interest, or the appearance thereof, as between the development company or related parties and the small concern. As examples of such relationships and for illustrative purposes only, the following relationships are prohibited without prior SBA approval:

(i) A development company shall not, directly or indirectly, provide financial assistance to a small concern in which the development company or a related party has any financial interest, other than pursuant to this part.

(ii) A development company shall not permit a small concern to purchase property or services (including insurance and legal services) from the development company, a related party, or a designee of either.

(iii) A development company shall not provide financial assistance to be used in repaying or refinancing an existing debt due the development company or a related party unless SBA shall have first made a written determination, upon the basis of evidence in the file, that:

(A) The terms of the existing indebtedness are causing undue hardship to the small concern; and

(B) Refinancing, extension or modification of the outstanding indebtedness is not available.

(e) *Compliance with other laws.* Development companies and projects financed with federal assistance are subject to all applicable laws, including (without limitation) the civil rights laws (see Parts 112, 113, 116, and 117 of these Regulations).

(Reporting and recordkeeping requirements in paragraph (c) have been approved by the Office of Management and Budget under control numbers 3245–0178, and 3245–0080)

§ 108.5 Record and reports.

(a) *Records.* Financial records of a development company including books of account are to be maintained in accordance with generally accepted accounting principles. All financial records and minutes of meetings of members, stockholders, directors, executive committees, or other officials, and all documents and supporting material relating to a development company's transactions shall be kept at its principal office and shall be currently posted (within 45 days): *Provided, however,* That portfolio items held by a custodian pursuant to written agreement shall be excepted from this requirement. Financial reports furnished to SBA shall make complete disclosure of matters relevant to the Act and regulations. See also § 108.503–3(d).

(b) *Preservation of records.* (1) Each development company shall preserve, for the periods required by the Internal Revenue Service and generally accepted accounting practices and in a manner that permits the immediate location of such records, such documents which are the basis for or related to the financial statements (including 503 loans) required from development companies.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a miniaturized reproduction of any records may be substituted for the original and preserved for the required time in the required manner: *Provided, however,* That the development company shall:

(i) Cause a duplicate reproduction to be made on a current basis and stored separately from the original reproduction for the time required;

(ii) At all times have available facilities for clear projection and the production of clear facsimile enlargements.

(c) *Litigation reports.* When a development company becomes a party to litigation or other legal proceedings (including any action by the development company, or by a security holder thereof in a personal or derivative capacity, against an officer, director, employee or other member of such developoment company in an official capacity), it shall file a written report by certified mail with SBA within 10 working days, describing the proceedings, the identity of and the development company's relationship to other parties involved and, upon request by SBA, submit copies of the pleadings and other documents specified. Where such proceedings have been terminated by settlement or final judgment, the development company shall promptly advise SBA of the terms thereof.

(d) *Changes to be reported.* Any change in the articles or by-laws of the development company or in the conditions of the development company's eligibility to participate in the programs under this part (see §§ 108.2(d) and 108.503–1, as the case may be), shall be promptly reported to SBA with an SBA Form 1061 where applicable (see § 108.4(c)), and shall be subject to SBA's approval as a condition of the development company's continued participation in the programs under this part. Any change in the development company's name, address, or telephone number shall be reported to SBA not later than thirty days after these events. A development company shall submit notice of changes to SBA via certified mail or other form of delivery from which a receipt of acceptance is obtained.

(e) *Reports to owners or members.* In addition to other specified reporting requirements, the development company

shall furnish the SBA field office with a copy of any general notice, letter, or other publication concerning the financial operations of the development company or any of its portfolio concerns provided to its owners or members.

(f) *Expense of documents.* A development company shall make available, at its own expense, documents or copies requested by SBA.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0074. Reporting and recordkeeping requirements in paragraphs (b), (c), (d), (e), and (f) have been approved by the OMB under control number 3245–0080)

§ 108.6 [Reserved]

§ 108.7 Violations based on false filings and nonperformance of agreements with SBA.

(a) In addition to the other provisions set forth in this part, the following shall constitute a violation of these regulations:

(1) Nonperformance of any requirements of any written agreement with SBA.

(2) Document(s) submitted to SBA which include a false statement knowingly made, a knowing misrepresentation, or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made.

(b) A violation of these regulations by a small concern or the development company shall allow SBA to accelerate any indebtedness of such concern issued to, held or guaranteed by SBA or, in the case of a lease assigned to or held by SBA, to terminate such lease.

§ 108.8 Borrower requirements and prohibitions.

(a) *Principals of concern receiving assistance.* Personal resources of the owner or owners of the small concern shall not disqualify such concern from eligibility under this part. However, applications for financial assistance will not be accepted for processing and no assistance shall be provided unless the development company can demonstrate to the satisfaction of SBA that the desired financing is not available from non-Federal sources on reasonable terms.

(b) *Credit requirements.* Section 120.103–2 (a) through (e) of this chapter also applies to development company assistance.

(c) *Eligible concerns.* A development company loan may be approved only to assist an identifiable small concern in accomplishing a sound business purpose. Whether the small concern is a proprietorship, partnership, or corporation is not a determining factor with respect to eligibility. A business may qualify as small, provided it meets the requirements of Part 121 of this chapter.

(d) *Eligibility of passive small concerns ("alter ego").* A concern is ineligible if it is a passive business (i.e. one not requiring a regular and continuous activity): *Provided, however,* That such passive small concern may be assisted if the applicant acquires the Plant with the proceeds of a section 502 loan or a 503 loan and leases it to an otherwise eligible small operating concern, and all of the following conditions are met:

(1) The applicant concern is a business that is organized for profit.

(2) The operating small concern is an eligible small business and the proposed use of proceeds would be eligible for such assistance if the operating small concern were the owner of the property that is owned or to be owned by the applicant.

(3) The proceeds of the loan to be used to benefit directly such applicant will be used only to acquire or improve real or personal property for the exclusive use by such operating small concern of the entire facility.

(4) The The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small business concern, and this identity of interests shall remain unchanged until the section 502 loan or 503 loan is repaid in full or if SBA sooner gives approval to a change.

(5) Collateral includes an assignment of the lease between the applicant an the operating small concern and a lien on the property itself. The lease shall be for a term of not less than the term of the section 502 loan or 503 loan.

(6) The operating small concern must be either a guarantor or co-borrower, and any owners with 20% or more of the equity of the operating small concern and of the applicant must also guarantee the loan.

(7) The operating small concern must lease the entire facility and may sublease a part under conditions set forth in § 108.503–4(a).

(e) *Leasehold improvements.* In order to be eligible for development company assistance to construct or modify a facility on leased land, (except as in paragraph (d) of this section or if the land is owned by the development company) the remaining term of the lease must equal or exceed the greater of the useful life of the facility or the term of the debenture. In such instances, financing may be permitted—

(1) Where the land owner allows the SBA to secure lien positions on the land and improvements sufficient to fully secure its exposure, or

(2) Where other collateral sufficient in value to protect fully the interest of the Government is offered.

(f) *Ineligible concerns.* A development company shall not assist a small concern:

(1) If such small concern, or any part thereof, is to be relocated and such relocation could result in a substantial increase of unemployment in any area of the country or could result in the small concern's avoidance of its obligations;

(2) If the loan is intended to finance a plant that is not located in the United States or its possessions;

(3) If the loan to be made with the proceeds of a debenture guaranteed by SBA will provide funds to an enterprise primarily engaged in the business of lending or investing; or to any othewise eligible enterprise for the purpose of financing investments not related or essential to the enterprise. This requirement prohibits the granting of financial assistance to banks, life insurance companies, finance companies, factors, investment companies and other businesses whose stock in trade is money and who are engaged in placing capital or providing financing in a way intended to secure profits from its employment.

(g) *Other Loan eligibility requirements.* Sections 120.101–2 (except paragraph (e)), 120.102–5 and 120.102–9 of this chapter shall apply to loans made or guaranteed under this part.

§ 108.9 Participation with tax exempt financing.

A development company may use debenture or loan proceeds to make loans for projects also financed through obligations the income of which is exempt from Federal income taxes: *Provided, however,* That SBA's lien position shall not be subordinate to loans made from the proceeds of such tax-exempt obligations. Should the development company be authorized to issue such tax-exempt obligations, the SBA loan or debenture shall not be subordinated to such tax-exempt obligation.

§ 108.10 Savings clause.

The legality of transactions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA

enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

10. Sections 108.503 through 108.503–8 are removed and under a new center heading, "*Assistance under Section 503,*" §§ 108.503 through 108.503–15 are added to read as follows:

Assistance Under Section 503

§ 108.503 Program objectives.

(a) *Statute.* The relevant statutory provisions will be found at 15 U.S.C. 697.

(b) *Objectives.* The purpose of this program is to foster economic development in both urban and rural areas by providing a portion of long term fixed-asset financing for small business projects through the guaranty by SBA of debentures issued by 503 companies. In order to qualify for such guaranty, the 503 company must demonstrate to SBA's satisfaction that the project will have significant impact in its community. Subject to paragraph (c) of this section, each project shall achieve at least one of the following three economic development objectives:

(1) *Jobs.* To effect, at a minimum, one "job opportunity" per $15,000 of 503 debenture assistance. The job opportunity estimate shall be based on objective data and the basis for such estimate shall be submitted with the application for guaranty (SBA Form 1244). "Job opportunity" means:

(i) Full time (or equivalent) permanent employment created as a direct result of the project within two years of the sale of the Debenture, or

(ii) Full time (or equivalent) permanent employment retained that would have been lost to the community but for the project.

(2) *Community or area development.* A project which is expected to stimulate other business development in the community, bring new income into the area, or assist the community in diversifying and stablizing its economy. Applications for such projects shall be accompanied by written documentation demonstrating the community impact. Such project may be approved only if the average job opportunity cost for the 503 company's 503 portfolio do not exceed the standards of paragraph (c) of this section.

(3) *National objectives.* A project which will result in increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20–40), or assisting businesses in labor surplus areas as defined by the U.S. Department of Labor (see paragraph (c) of this section below). Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed the standard of paragraph (c) of this section.

(c) *Job opportunity average.* The 503 company shall maintain an average of at least one job opportunity per $15,000 of 503 financing: *Provided, however,* That the Director, Office of Economic Development, SBA, may permit a job opportunity average higher by up to twenty-five percentum (25%), for good cause shown, in Alaska, Hawaii, or in labor surplus areas listed monthly in the Department of Labor publication "Area Trends", or in "redevelopment areas" as defined in the Public Works Economic Development Act, 42 U.S.C. 3161, or "Urban Jobs and Enterprise Zones", as designated by State law. Such average shall be based on job opportunities actually provided within the first two years after the project is completed and shall be measured at the end of the 503 company's fiscal year.

(d) *Monitoring.* Each 503 company shall monitor the job opportunities provided by its 503 loans. Each 503 company shall report in its annual report the job opportunities actually provided by each project computed in accordance with paragraph (c) of this section, and shall justify an investment average in excess of that permitted by paragraph (c) of this section, setting forth measures to reduce such average (See § 108.503–3(f)(2)). Unless SBA directs otherwise in writing, the 503 company shall obtain, and have available in its records for SBA inspection, a certification from the small business concern assisted, based on its employment data, which supports the job opportunity figures.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 3245–0071. Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control number 3245–0074).

§ 108.503–1 Eligibility requirements for 503 companies.

(a) *General.* SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the United States is pledged to the payment of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA, each of the following:

(b) *Organizational requirements.* The purpose of a 503 company shall be to foster economic development in its area of operations; any benefits flowing to shareholders, members or other related parties shall be merely incidential to such purpose. Each 503 company shall be organized as a non-profit corporation under applicable laws and shall be in good standing. Those 503 companies organized on a for-profit basis and certified by SBA or those having an application for certification on a for-profit basis pending prior to June 6, 1986, shall be allowed to continue as participants provided they comply with the applicable eligibility requirements. Each applicant for certification and each 503 company shall demonstrate to SBA's satisfaction as a condition of such company's participation in the program that it has:

(1) *Management.* Adequate management ability in its board of directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the 503 company. Legal and accounting functions may be contracted out (See also paragraph (b)(3) of this section.

(2) *Board of directors.* The board of directors shall be composed of individuals who are involved in the economic development of the area of operations and chosen from the membership by the stockholders or members to represent at least three of the four elements specified in paragraph (d)(2) of this section. However, no single element shall control. The board members shall be responsible officials of the organizations they represent and at least one of these directors must possess commercial lending experience. Such board shall meet at least quarterly to make management decisions for the 503 company, and shall be responsible for the loan making and servicing decisions of the staff, as specified in paragraph (b)(3) of this section. Regardless of the number of board

members, a quorum of such board shall never be less than five members. If loan approval or servicing actions are put to a vote, the quorum shall include at least one director with commercial experience, unless the 503 company can document that such director or another person approved by SBA as possessing commercial lending experience has recommended approval of the loan or servicing actions.

(3) *Professional staff.* Each 503 company shall have a full-time professional staff. The number of personnel may vary but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience, satisfactory to SBA, to market the 503 program throughout its area of operations, package and process loan applications, assist in closing loans, and service the 503 company's loan portfolio. The marketing, packaging, processing, and servicing functions may be contracted out only if those performing the functions have prior related experience and training and are qualified individuals or organizations who reside or do business in the 503 company's area of operations. Any contract for these functions other than contracts for employment of individuals, shall require SBA's prior written approval, shall be approved annually by SBA and shall prohibit self serving actions which would increases costs to a Small Business borrower or which would adversely affect the financial condition of the 503 company. Compensation under such contracts shall be reasonable and customary for like services by like organizations in the area of operations of the 503 company and be billed on an hourly basis. Such contracts shall be subject to audit by SBA at no cost to the 503 company.

(4) *Management service.* A 503 company shall have the ability to provide, or cause to be provided, management advice and services to small concerns. Where a 503 company performs such services pursuant to a contract for other then employment of individuals, such contracts shall be subject to audit by SBA at no cost to the 503 company. The conditions set forth for such contracts in paragraph (b)(3) of this section shall also apply.

(5) *Financial capability.* A 503 company shall have the ability to sustain its operations on a continuous basis from reliable sources of funds, such as income from services rendered, contributions from government or other financial sponsorship or from the 503 company's capital. Applicant shall submit with its application (SBA Form 1246) a budget for the 503 company's operations approved by its board of directors which demonstrates that adequate resources will be available to perform the 503 company functions. Where the professional staff functions are provided by a 503 company's affiliate as defined in § 121.3(a), the approved budget of such affilitate may be substituted.

(c) *Area of operations.* (1) 503 company shall be certified to operate in a defined area which shall not exceed the boundaries of its State of inpcorporation: *Provided, however,* That such company may—

(i) Operate in more than one State if a state line bisects a contiguous economic area, as determined by SBA, in which case such company may operate within such area, or

(ii) With SBA prior approval expand its area to include a Territory or possession of the United States.

(2) The proposed area of operations shall be sufficient to support the level of activity prescribed by § 108.503–3(c) but not greater than can be sustained by their membership and staff, and as permitted by this subsection. An applicant shall demonstrate the need for its services in its proposed area of operations to SBA's satisfaction. Such showing shall discuss why another 503 company is needed in a given area if a 503 company already operates there, provide a plan to avoid duplication or overlap, and demonstrate how the applicant proposes to meet the three objectives specified in § 108.503(b) without specialization in a particular industry. The applicant shall also provide evidence that it will receive the active support of the government for its area, e.g., city government for citywide 503 companies, county government for countywide operations, etc.

(3) There shall be no limit on the number of citywide, county, or multi-county 503 companies per State, subject to paragraphs (c)(1) and (2) of this section: *Provided, however,* That no State shall be permitted more than one statewide 503 company.

(4) *Application for expansion of the area of operations.* (i) Application for expansion of area of operations shall be written request to the SBA district office or branch office serving the area in which the 503 company's headquarters are located, containing the following:

(A) Definition of the new area of operations.

(B) Justification of the need for expansion to the new area, including:

(1) Identification of existing 503 companies in the area;

(2) Description of the services the 503 company can provide that others are not providing, and

(3) Description of the adequacy of the 503 company's staffing to serve the proposed area.

(C) A list of proposed members, by sub-area and groups as proposed.

(D) A certified copy of the resolution of the board of directors to expand as proposed.

(E) A projection of the 503 company's activity in existing and new areas for the next two years.

(ii) Prior to approval, SBA shall provide notice to all 503 companies presently servicing the proposed area, allowing 30 days for comment.

(iii) A 503 company proposing to expand shall also provide public notice as set forth in §108.503–2(b).

(d) *Membership.* The 503 company must be representative of the State, or subdivision thereof, in which the company operates. Evidence of such representation shall include the following:

(1) The 503 company must have at least 25 members or stockholders. Members or stockholders must be geographically representative of the 503 company's area of operations. No person or concern may own or control more than ten percent of the 503 company's stock or voting membership.

(2) The membership must be representative of the following four groups. A 503 company certified by SBA prior to June 6, 1986, shall have 12 months from that date to comply with this requirement:

(i) *Government* representation must be from the level of government corresponding to the area of operation, unless otherwise approved by the Director, Office of Economic Development, SBA. Such representation shall be from the government organization responsible for economic development functions. For example, a multi-county 503 company shall have representation or evidence of support from each county government or from a regional government council encompassing its area of operation, and a statewide 503 company shall have representation or evidence of support from the State government department responsible for economic development. With the approval of the Director, Office of Economic Development, another form of active government participation satisfactory to SBA may be chosen;

(ii) *Private-sector lending institutions* representative of the area of operations such as banks, savings and loan institutions and others in the business of

providing commercial long-term fixed asset financing;

(iii) *Community organizations* such as chambers of commerce operating within the area of operations, foundations, trade associations, colleges, universities and other organizations dedicated to economic development;

(iv) *Business concerns* that are representative of the area and the business population within the area.

(3) Local 503 companies may have a representative in the membership of broader based 503 companies (e.g., Statewide or multi-county) that serve the local 503 company's area of operations.

(e) *Permissible functions of a 503 company.* A 503 company shall provide financial assistance in participation with SBA only under Title V of the Small Business Investment Act and this part. Such company may also help small concerns obtain other assistance from SBA by preparing loan applications, facilitating management and procurement assistance, and obtain assistance from other government and non-government programs. 503 companies are encouraged to marshall resources for the benefit of small business in a manner that will result in community economic development. A 503 company is not prohibited from participating in the 501 or 502 loan program if such company meets the qualifications set forth in § 108.501 or § 108.502. A Small Business Investment Company (SBIC) licensed by SBA may not be certified as a 503 company.

(f) *Required functions of a statewide 503 company.* A 503 company operating on a statewide basis shall comply with the eligibility and operational requirements for all 503 companies. In addition, such company shall:

(1) Foster economic development throughout the State;

(2) Demonstrate its compatibility with and relationship to existing 503 companies; and

(3) Provide development company assistance to those areas not being served by a 503 company.

(g) *Prohibition.* No officer, director, or manager of a 503 company may be an officer, director or manager of any other 503 company, except that the board of directors of a 503 company covering a broader area of operations may include a member or director of a local 503 company within the area of operations.

[Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245-0071. Reporting and recordkeeping requirements in paragraphs (b), (c), and (d) have been approved by the OMB under control number 3245-0073]

§ 108.503-2 Certification.

(a) *Application for certification.* Application for certification as a 503 company shall be submitted on SBA Form 1246, hereby made a part of these regulations, to the SBA field office serving the area in which the prospective 503 company's headquarters are located. The field office shall forward the application and its recommendation, through the Regional Office, to the Director, Office of Economic Development, for final determination of eligibility. Qualified companies shall receive a certificate evidencing eligibility for participation in this program.

(b) *Public notice.* The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operations, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include such appropriate information including the name and location of the proposed company, its purpose and area of operations, and the names and addresses of its officers, directors, and members. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

(c) *Transfer and surrender of certificate.* A certificate may not be transferred without SBA's prior written approval, nor surrendered without such SBA consent. Request for approval or consent shall be accompanied by a plan to transfer the 503 company's portfolio to another 503 company or a participant in another SBA lending program or to SBA for servicing. Upon receipt of the 503 company's request for transfer or in the event the 503 company surrenders its certificate to SBA, SBA may conduct a special audit of the 503 company (see § 108.503-15(d)). The 503 company's name will be removed from the published list of 503 companies.

[Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245-0073]

§ 108.503-3 Operational requirements for 503 companies.

(a) *Responsibilities.* A 503 company shall:

(1) Offer its services to the business community in its area of operations and cooperate with financial institutions;

(2) Package and process loan applications;

(3) Close and service loans;

(4) Offer management services; and

(5) Maintain the eligibility requirements set forth in § 108.503-1 of this part.

(b) *Diversified 503 loan portfolio.* A 503 company shall not concentrate its 503 loan portfolio in any one industry or type of business nor shall such portfolio be concentrated in new businesses. A "new business" is an entity which, together with any predecessor of such entity, has been in business for less than 2 years.

(c) *Level of activity.* In order to meet the needs of small business in its area of operations, a 503 company shall conduct active operations. For the purposes of this paragraph, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under Title V of the Small Business Investment Act to at least two small concerns: *Provided, however,* That written justification for inactivity, acceptable to SBA, may rebut the presumption. Examples of acceptable justification may include recent entry into the program, a large number of small concerns assisted in the preceding fiscal year, or demonstration to SBA's satisfaction that the 503 company has achieved its goals and has had a significant impact on its operating area.

(d) *Records.* The 503 company shall develop a system to ensure the following information and documents or a photographic copy thereof relating to its 503 loan portfolio are available for review at its principal office: A separate file for each 503 loan which shall contain all documents and material relating to the loan application submitted to SBA including the loan authorization and all correspondence relating to such Loan prior to closing; all documents relating to the Loan closing, including documents relating to the sale of Debentures, evidence of the 503 company's injection and the amortization schedule; financial statements of the small concern, related correspondence, evidence of field visits, condition of the collateral, and evidence of payment of taxes and insurance, and other items that have been reviewed.

(e) [Reserved]

(f) *Reporting requirements.* In addition to the requirements of §§ 108.4(c), 108.5(d) and 108.503(d), each 503 company shall submit to the SBA field office serving the area where its headquarters are located, within 90 days after the end of its fiscal year, an annual report, in duplicate, containing financial statements, operational and management information, and regulatory compliance information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for the Preparation of the Annual Report (SBA

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Form 1099). The regulatory compliance information need not be furnished by 503 companies for a fiscal year ending on or before December 31, 1986. For fiscal years ending after December 31, 1986, regulatory compliance information will be required annually unless two consecutive annual compliance reports have shown no compliance deficiencies. In such cases, the compliance part of the annual report shall be required on a biennial basis; *Provided, however,* any changes in the eligibility or operation of the 503 company shall require such compliance report to be filed for the year in which the changes occurred.

(1) The financial statements contained in the annual report shall accompany a report of an opinion audit conducted in accordance with generally accepted auditing standards and submitted by the 503 company's independent public accountant. Financial statements of 503 companies with an outstanding portfolio of 503 loans of less than $10 million may be submitted on no less than a "review" basis, as defined in "Statements on Standards for Accounting and Review Services #1" (published by the American Institute for Certified Public Accountants). Where this may cause an undue hardship to the 503 company, SBA may grant an appropriate waiver of this requirement.

(2) The operational and management part of the annual report shall contain an assessment of needs and resources available as well as an explanation of the 503 company's 503 loan activity and other accomplishments for the year then ended and plans for the next year.

(3) The independent public accountant shall complete the regulatory compliance part of the annual report if required. A copy of this part of the report shall be submitted by the independent public accountant to the Inspector General (see § 108.503–15(b) of this part). Upon request by the SBA Office of the Inspector General, the independent public accountant shall make its work papers available for review and copying.

(4) In addition to the required Forms 1061, personal résumés of new officers, directors and professional staff employed by the 503 company shall be promptly filed with the SBA office serving the area of operations. The requirement for personal résumés may be waived by SBA if such résumé has been previously filed with SBA under a development company program, and no significant change has occurred.

(5) Unless it can be demonstrated to SBA's satisfaction that every reasonable effort has been made by the 503 company to secure such information and such efforts have proven unavailing, SBA shall not process 503 loan applications from a 503 company while a required report is outstanding or, in the opinion of SBA, incomplete.

(6) See also § 108.503–13(b) of this part.

(g) *Restriction on equity participation.* The 503 company may not provide assistance to a small concern in which either such 503 company or its associates (as defined in § 120.3–2) own an equity interest, nor may a 503 company or any of its associates acquire an equity interest in any concern assisted by such 503 company.

(h) *Substitution of a 503 company.* A 503 company in good standing approved by SBA may assume all or part of the portfolio of another 503 company within its area of operations or contiguous thereto when the original 503 company is unable or unwilling to service its portfolio and such assumption is approved by SBA. If no suitable 503 company can be found, SBA may approve a transfer to another entity. An assumption shall not be approved if the transferee does not have a demonstrated capability to service such Loans. (See § 108.503–2(c).)

[Reporting and recordkeeping requirements in paragraph (f)(4) have been approved by the Office of Management and Budget under control number 3245–0178. Other reporting and recordkeeping requirements in paragraph (f) have been approved by the OMB under control number 3245–0074]

§ 108.503–4 Project eligibility.

(a) *Eligible projects.* The proceeds of 503 debentures shall be used for the purpose of assisting identifiable small concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. Each project must comply with § 108.503(b). Sections 120.101–2(a)–(d) and (g), 120.102–7, and 120.103–2(a)–(e) of this chapter also apply. Up to fifteen (15) percent of the total project may be leased if—

(1) The project is to construct a new facility,

(2) Reasonable projections of growth indicate the applicant concern will need additional space within three years and

(3) It is not feasible to build an addition to the building in the future.

In purchasing existing facilities, at least 51% of the space must be occupied by the applicant concern and the balance may be leased to another concern, provided that proceeds from the 503 loan are not used to remodel or convert the rental space.

(b) *Ineligible projects.* Ineligible projects or project components include, but are not limited to:

(1) Those whose purpose is to finance the acquisition, construction, improvement, or operation of real property which is, or is to be, held primarily for sale or investment and is not to be used in connection with the applicant's otherwise eligible business.

(2) Assets so limited in potential use or marketability that they could not be resold in the event of failure of the borrower, or if sold, the price could result in a substantial loss on the 503 debenture. Such financing may be considered if other collateral sufficient in value to protect fully the interests of Government is offered.

(3) Applicant businesses of any kind, where the majority of owners, or the management does not have demonstrated management capability.

(4) Automobiles and trucks of any kind, and airplanes: *Provided, however,* That in Alaska and Hawaii airplanes may be a part of a project not to exceed 20% of the project cost if it can be demonstrated to SBA's satisfaction that such airplane(s) are indispensable to the success of the project.

(c) *Restrictions.*—(1) *Working capital.* Proceeds from the 503 loan may not be used for working capital purposes or to refinance prior obligations of the small concern, unless a portion of the funds are needed to replace expenditures made in anticipation of a 503 loan (see § 108.503–5(d)).

(2) *Statutory ceiling.* Proceeds from the SBA 7(a) loan program shall not (i) be used to replace working capital invested in the 503 project by the small concern as the 503 company's injection, nor (ii) be used to finance part of the 503 project. No such loan shall be approved if the total amount outstanding for the benefit of any small concern from the Business Loan and Investment Fund established under section 4(c) of the Small Business Act exceeds $500,000.

(3) Subject to the requirements and prohibitions of the Small Business Investment Act, and Part 107 of these regulations, Small Business Investment Companies (SBICs) may—

(i) Provide joint financing in projects,

(ii) Provide financing to the small concern who then invests in the project, or

(iii) Replace funds invested by the small concern:

Provided, That—

(A) Such funds shall be considered to be from federal sources as defined in § 108.503–8(a) where the SBIC has leverage funds (SBA guaranteed or

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direct funds including preferred stock purchases);

(B) Such funds shall be subordinated to the 503 loan;

(C) Such funds shall not be repaid at a faster rate than the debenture; and

(D) Where the SBIC has not received leverage funds, such investment will be considered from private funds.

§ 108.503-5 Eligible and ineligible uses of 503 loan proceeds.

(a) *Eligible project cost* shall include the cost necessary to acquire, construct, convert or expand the plant, including land, site improvements (e.g. grading, streets, parking lots, utilities, landscaping), buildings, machinery and equipment and interest on interim financing (see § 108.503–7). Project costs shall also include professional fees directly attributable and essential to the project (e.g. surveying, engineering, architectural, legal, accounting). In projects involving construction, a contingency reserve not to exceed 10% of construction cost may be added to project cost. Upon completion of the project, if the unused contingency reserve exceeds 2% of the anticipated debenture amount, such amount will be reduced by the amount of such excess.

(b) *Eligible administrative costs*—Reserve account (§ 108.503–11(b)(2)), and processing fee (§ 108.503–6(a)(1)), closing costs including legal fees (§ 108.503–6(a)(2)), and CFA initiation fee (§ 108.503–11(a))—are not part of the project cost, but may be included in the 503 debenture amount (§ 108.503–9(a)(2)).

(c) *Ineligible costs.* Costs incurred by the 503 company or the small concern that are not necessary to the acquisition, construction or conversion of the plant are ineligible project costs and may not be financed with 503 debenture proceeds. Examples of such ineligible items, for illustration purposes only, are:

(1) *Management services.* While a small concern may engage a management firm for continuous assistance or counseling, the cost is ineligible for purposes of 503 project cost determination;

(2) Except as permitted in paragraphs (a) and (b) of this section, financing costs and fees including those associated with tax-exempt financing (e.g. finders fees, commitment fees, application fees, origination fees, trustee fees, advertising cost, underwriting expenses and related legal cost).

(3) Franchise fees and other costs that do not contribute directly to the physical asset.

(d) *Expenditures made in anticipation of a 503 loan.* (1) Except as provided in paragraph (d)(2) of this section, expenditures made in anticipation of a 503 loan prior to notice to SBA may not be included in project cost unless the applicant files a written notice with the 503 company and SBA within 60 days after expenditure or SBA gives written approval.

(2) Land previously acquired by the small concern or the 503 company may be contributed as the 503 company's injection in projects involving new construction. The contribution shall be the equity interest in such land valued at the lesser of cost or market. None of the loan proceeds may be used for reimbursement of the acquisition cost of the land.

(3) When notice is given to SBA prior to an expenditure, there is no time limitation.

§ 108.503–6 Costs which may be charged to the small concern by the 503 company.

(a) *Charges and fees.* Except as otherwise provided in § 108.503–7(b)(4), the following charges or fees on the 503 loan are permitted:

(1) *Loan processing fee.* The cost incurred by the 503 company for loan packaging, processing and non-legal staff functions related to loan closings shall be recovered through a processing fee not to exceed one and one-half percent (1.5%) of the net debenture proceeds (§ 108.2(i)), payable at closing (see also paragraph (b) of this section).

(2) Legal fees related to loan closing: *Provided, however,* That fees of counsel representing the 503 company in excess of $2,500 shall be borne by such company, unless SBA approves in writing a higher fee in a case of unusual complexity. All legal fees shall be based on time and hourly charges and shall be collected by the 503 company and paid to its closing attorney.

(3) A periodic service charge not to exceed 2 percent (2%) per annum on the outstanding balance of the 503 loan measured at 5 year anniversary intervals; *Provided, however,* That a service charge in excess of one-half of one (0.5) percent shall require the prior written approval of SBA, based on evidence satisfactory to SBA, of substantial need.

(b) *Deposits.* A 503 company may require a maximum deposit of $1,000 or 1½% of the net debenture proceeds, whichever is less, at the time it accepts an application for processing. A written agreement shall specify that the small concern shall receive a refund of the deposit when the 503 debenture proceeds are disbursed by the Central Fiscal Agent (see § 108.503–11), or within 10 days of denial if the loan is not approved. If the small concern decides to withdraw its application prior to funding, the 503 company is authorized to deduct administrative costs incurred in the packaging and processing of the loan request that are reasonable, necessary and documented before refunding any balance of the deposit.

(c) *Additional charge for private sector financing.* 503 companies may charge a one-time fee not to exceed one and one-half percent (1½%) of the non-Federal permanent financing (exclusive of 503 company injection) for services actually rendered by the 503 company pursuant to a written agreement setting forth the services to be performed by the 503 company. This amount, which is not included in eligible project costs, may be paid by the private sector lender or the small concern, but not both.

(d) *Disclosure of charges to SBA.* The loan application submitted to SBA by the 503 company shall disclose the full amount of all fees and charges, together with names of the recipients and a description of the services rendered.

(Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control number 3245–0071.)

§ 108.503–7 Interim financing.

(a) *Certification of Project Completion.* Interim financing, except for that portion provided by injection, may be necessary for those projects involving construction or significant remodeling. Except as provided in subsection (c) below, such projects shall be completed in accordance with the terms and conditions of the authorization before SBA issues its guarantee of the 503 debenture. Following completion of the project, the interim lender shall certify to the 503 company that it has no knowledge of an adverse change in the condition of the small concern since the issuance of the 503 authorization (SBA Form 1248). Conversely, if the interim lender has such knowledge, it shall advise the 503 company accordingly. The small concern shall certify to the 503 company whether there has been an adverse change in the condition of the small concern and shall furnish current interim financial statements. Before SBA issues its guaranty of the 503 debenture, the 503 company shall issue an opinion to the best of its knowledge whether an adverse change has intervened since SBA approval, including but not limited to:

(1) Deterioration of the borrower's financial condition to the extent that it would endanger the borrower's ability to meet debt service on the 503 loan.

(2) Fraud or misrepresentation as defined by § 108.7(a)(2) of this part by

the small concern in the loan application and financial exhibits submitted to SBA.

(3) A filing under the Bankruptcy Code by or against the small concern.

(4) Assignment of the small concern's assets for the benefit of its creditors.

(5) Receivership of the small concern, imposed by a third party creditor.

(6) Forfeiture of the corporate charter of the small concern.

(7) Discontinuance of the business.

(b) *Source of interim financing.* There are no restrictions on the source of interim financing provided:

(1) The terms and conditions of such financing are acceptable to SBA;

(2) The interim lender is not associated with the small concern. (See § 120.2–2 of this chapter.)

(3) SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager, if the interim lender lacks the experience or qualifications to monitor construction and/or progress payments properly.

(4) A 503 company with adequate financial capacity may provide interim financing and may charge a reasonable rate of interest thereon.

(c) *Use of construction escrow account.* If acquisition of machinery and equipment or other portions of a project (e.g. a parking lot) represent a relatively minor portion of the total project and it has been contracted for completion at a specified price and future date, the 503 debenture may be sold and the proceeds authorized for acquisition of such assets may be held in escrow by the central fiscal agent (see § 108.503–11) or a local title insurance company or bank. After appeoval by the 503 company and the SBA, disbursement from such accounts shall be supported by invoices and made payable jointly to the small concern and the supplier in order to assure authorized use of debenture proceeds. Funds at a local institution remaining undisbursed after 1 year shall be returned to the central fiscal agent for credit to the reserve account, see § 108.503–11(b)(2).

§ 108.503–8 Private sector financing.

(a) *General.* The maximum private participation shall be required in each project. Financing for at least fifty percent of the cost of each project, as defined in § 108.503–5, shall be derived from non-Federal sources, which are not associates of the small concern, as defined in § 120.2–2 of this chapter. Obligations issued by a governmental unit, the income of which is exempt from Federal income taxation and which are not backed by the credit or taxing power of a governmental unit shall be deemed non-governmental. [See § 108.9.]

(b) *Terms of private sector financing.* (1) The maturity of the non-Federal or private sector financing shall be at least seven years when the Debenture is for a term of ten years and the project does not include real estate. Otherwise, such private sector financing shall be for the greater of ten years or half the maturity of the 503 debenture for all other maturities. Balloon payments must be justified in the loan report and clearly identified in the loan authorization. Under no circumstances may a balloon payment be due in less than 10 years. The SBA must determine in writing that the balloon payment will not adversely affect the small concern's ability to satisfy its financial obligation to SBA.

(2) Where private financing is supplied by the seller of property, such financing shall be subordinate to the 503 loan.

(3) Any private sector financing subordinate to the 503 loan shall not be prepaid without SBA's prior written approval which shall be based on a finding that such prepayment will substantially benefit the small concern. See also §§ 108.9, 108.503–4(c)(3)(B), and 108.503–8(a)(5).

(4) SBA shall not participate in a financing unless the interest rate on the non-Federal and/or private sector financing is legal and reasonable.

(5) The private sector portion of the financing may include consolidation of existing debt on the 503 project property: *Provided,* That such pre-existing debt is not considered part of project cost, and collateral is adequate to fully protect the Government.

(6) SBA shall not participate in a financing unless the private lender has the capacity of, or has arranged for, servicing adequate to protect SBA's interests.

(7) The non-Federal or private lender shall agree to notify SBA in writing within 30 days after a default and 60 days prior to a foreclosure sale.

(8) Except as otherwise permitted in this Part, SBA shall not participate in a financing where the private sector lender has a preference as described in § 120.301–1 of this chapter. (See §§ 108.503–8(a)(5) and 108.503–13(c).)

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

§ 108.503–9 503 Debenture financing.

(a) *Application.* Upon application (SBA Form 1244) to the field office serving the area where the small concern is located, SBA may guarantee debentures (SBA Form 1243) of the 503 company. The proceeds of such debenture shall be used to finance part of a fixed asset project for a small concern on either a loan or lease basis subject to the following conditions:

(1) *Purpose.* Subject to § 108.503(b), such debenture is issued for the purpose of assisting an identifiable small concern in accomplishing a sound business purpose in compliance with the regulations of this part.

(2) *Amount.* The aggregate amount of such debenture, rounded up to the nearest $1,000, shall not exceed the amount of the loan or loans to be made from the proceeds of the debenture other than any excess attributable to the eligible administrative costs (as specified in § 108.503–5) of such loan. The minimum amount of a 503 debenture that may be guaranteed by SBA shall be $50,000, unless SBA determines that a smaller debenture is reasonable and necessary. In no case shall a debenture be for less than $25,000.

(3) *Interest rate.* The interest rate on 503 debentures shall be a rate determined by the purchaser, but not less than a rate determined from time to time by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable U.S. obligations with comparable maturities. Such rate can be obtained from the appropriate SBA field office.

(4) *Maturity.* The maturity of the 503 debenture shall be 10, 15, 20, or 25 years. (For interrelation with private sector financing, see § 108.503–8(b)(1).)

(5) *Subordination.* SBA may permit the subordination of the 503 debenture(s) to any other debt or obligation of the 503 company: *Provided, however,* That any debt or obligation incurred by such company to satisfy the injection requirement (§ 108.503–10) shall be subordinated to the 503 debenture. (See also §§ 108.9, 108.503–4(c)(3), and 108.503–8(b)(3).)

(6) *Multiple Loan Debenture.* A 503 company that has demonstrated management ability, adequate financial capacity, and has shown an active use of this program may, with the approval of the Director, Office of Economic Development, SBA, be allowed to issue a 503 debenture to fund more than one loan.

(7) *Collateral.* All loans to small concerns provided from the proceeds of a 503 debenture shall be so secured (as determined by SBA) as to reasonably assure repayment. SBA shall require that the 503 company's injection pursuant to § 108.503–10 be subordinated to the loan made from the proceeds of the 503 debenture. In the event of default on the debenture, the liability of the 503 company shall be limited to all payments made by the

small concern to the 503 company and the collateral securing the defaulted loan. All collateral shall be insured against such hazards and risks as SBA may require and the insurance policies shall provide for notice to the 503 company or to SBA in the event of their impending lapse.

(8) *Proof of use of proceeds.* At the time of closing of the debenture, the 503 company shall submit evidence satisfactory to SBA that the proceeds will be used in accordance with the statutory purpose. Such evidence shall include, but not be limited to a certification (SBA Form 1429) that proceeds will be used for eligible project costs and, if the Plant is owned by the development company, proof that the small concern has the right to use the plant for at least as long as the term of the debenture.

(9) *503 Loan conditions.* (i) A 503 loan may not exceed the lesser of forty percent of total project cost (as defined in § 108.503–5) plus administrative costs authorized under §§ 108.503–6(a)(1) and 108.503–11 (a) and (b)(2), or an amount which, together with the outstanding balance of all other SBA financings to any one small business concern and its affiliates (as defined in § 121.3(a) of this chapter) under section 7(a), 15 U.S.C. 636(a), does not exceed $500,000: *Provided, however,* That for good cause shown, SBA may authorize a 503 loan up to fifty percent. Such cause shall be deemed to exist if a project meets all three objectives of § 108.503(b) and it can be demonstrated to SBA's satisfaction that without such authorization the project would be lost to the community.

(ii) Each loan to be made from the debenture proceeds shall be approved by SBA.

(iii) The terms and conditions shall be sufficient to assure timely payments by the 503 company on the debenture. Payments received after the 15th of each month shall be subject to a late payment fee equal to 5% of the late amount of $100, whichever is greater, payable to the Central Fiscal Agent for remittance at SBA's direction. Late payments may be accepted without such late payment fee but such fee shall be received within 15 days thereafter to avoid a declaration of default.

(10) *503 lease conditions.* All conditions applicable to 503 loans set forth in this part shall be equally applicable to the leasing of assets by the 503 company to a small concern. In addition, the lease agreement between the 503 company and the small concern shall be for a term at least as long as the term of the 503 debenture; and the rent paid by the small concern during the term of the debenture shall be sufficient to retire principal and interest on all debts incurred by the 503 company in financing this project, and all related expenses, and may include a reasonable return on the 503 company's investment. (See also § 108.503–6 of this part.)

(11) *Loan/Debenture prepayment.* If the small concern exercises its right voluntarily to prepay the 503 loan, the 503 company shall prepay the 503 debenture in an amount sufficient to repay the corresponding balance of the debenture with interest and adjusted for any premium or discount provided for in such debenture. Where SBA for any reason prepays (repurchases) a 503 debenture secured by the note evidencing the 503 loan, any premium resulting from such purchase shall be treated as a recoverable expense and shall be considered as part of the indebtedness defined in such note. Any discount resulting from such repurchase shall reduce the indebtedness defined in such note.

(b) [Reserved]

[Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0071.]

§ 108.503–10 503 Company injection.

The 503 company shall be required to inject into each project an amount equal to at least ten percent of the project cost, as defined in § 108.503–5 (exclusive of administrative costs). Such injection may come from any source, including the borrower small concern and such injection shall be subordinated to the 503 debenture. For the purpose of this paragraph, the 503 company may inject cash and property valued at fair market value received as a contribution to the 503 company or in exchange for shares of non-voting stock issued by the 503 company. Contributions or loans to the 503 company for such company's injection into a project may not be conditioned on the granting of voting rights, stock options, or any other interest in the 503 company or the small concern. The interest on such injection shall not exceed a rate which is legal and reasonable, and such injection shall not be repaid at a faster rate than the 503 loan. See also § 108.503–9(a)(5).

§ 108.503–11 Central Fiscal agent.

(a) *Services of a central fiscal agent.* SBA shall appoint a central fiscal agent (CFA) to act for the 503 company as the disbursement, collection and payment agent for 503 debentures and loans. The 503 company shall, in consideration of SBA's guaranty of the Debenture, contract with the CFA as its agent and abide by the CFA procedures established to receive and disburse proceeds from the sale of the debenture, to receive from the small concern 503 loan payments and remit such payments pursuant to SBA's instructions. Each small concern receiving a 503 loan shall abide by these CFA procedures. The CFA may charge an initiation fee as well as a monthly service fee, payable by the small concern, which shall be in addition to the fees and charges permitted by § 108.503–6 of this Part. The CFA service fee shall be negotiated pursuant to a contract between the CFA and SBA and shall be published from time to time in the Federal Register. In negotiating any changes in fees, the agency will accept public comments on these notices and consider such comments in establishing fees.

(b) *Accounts maintained by the CFA.*—(1) *Escrow account.* The monthly installments received from the small concern shall be placed in an interest bearing escrow account, until such amounts are subject to withdrawal to meet the required semi-annual payment on the 503 debenture.

(2) *Reserve Account.* Upon sale of the debenture, an amount equal to two percent (2%) of the net debenture proceeds shall be placed in an interest bearing reserve account. Neither the reserve account nor any interest earned/accrued thereon shall be available to the small concern until the loan and the debenture have been fully paid: *Provided, however,* That when the balance of the account exceeds the outstanding balance of the 503 loan, such excess funds may be released to the small concern. In addition, sufficient funds from the reserve account may be released at the small concern's request to meet the small concern's Federal income tax liability relating to earnings on the reserved account if there is no shortage in the Reserve Account, and all monthly installments are current.

A small concern may make this request through its 503 company to the appropriate SBA field office at least 45 days prior to the filing of its Federal Income Tax Return. Such requests shall not be processed in amounts of less than $100.00.

(c) *Reserve and escrow account balances.* Any balance in either or both the reserve and escrow accounts shall be used to make debenture payments in the event the small concern is delinquent in meeting its monthly payments. Any remaining balance in either account shall be remitted to the small concern within 30 days after the 503 loan is paid in full.

§ 108.503–12 Loan closing.

The closing of the loan between the small concern and the 503 company is the responsibility of the 503 company. The debenture closing is the responsibility of the 503 company and the SBA.

§ 108.503–13 Servicing loans and debentures.

(a) *General.* The 503 company shall service the 503 loan according to the related instruments and the loan authorization until paid in full, subject to the conditions specified herein.

(b) *Specific servicing functions.* The 503 company shall conform to servicing standards of prudent lending.

(1) The 503 company shall submit to SBA a quarterly written report on accounts in its portfolio which are sixty (60) days or more past due, explaining the reason(s) for non-payment, the steps that the 503 company is taking to bring the account(s) current, and advice regarding the payment status of all other financing involved in the project(s). Special interim reports will be provided by the 503 company upon request by SBA.

(2) The 503 company shall review the financial statements, the small concern's payment of taxes and insurance, U.C.C. filings, and shall make field visits as necessary, or as requested by SBA.

(3) Any other adverse trend, condition or information shall be reported to SBA promptly.

(c) *Prohibitions.* Without the prior written consent of SBA, the 503 company shall not—

(1) Make or consent to any substantial alteration in the terms of any 503 loan instrument;

(2) Make or consent to release of collateral;

(3) Accelerate the maturity of any note;

(4) Sue upon any loan instrument;

(5) Waive any claim against any borrower, guarantor, obligor, or standby creditor arising out of any loan instrument;

(6) Directly or indirectly charge or receive any bonus, fee, commission, or other payment or benefit in connection with the making and servicing of any loan, except as authorized under this part;

(7) Increase the amount of any prior lien on property securing the 503 loan;

(8) Require or obtain any funds, certificates of deposit, compensating balance not under the unrestricted control of the small concern, or any other agreement establishing any preference in favor of the 503 company. "Preference" as used herein, shall include but shall not be limited to any arrangement whereby the 503 company obtains a position superior to the position of SBA in the repayment of its injection pursuant to § 108.503–10.

(d) *Service fee.* The 503 company's monthly service fees (§ 108.503–6) are paid only from loan payments received. Such fees may be accrued without interest and collected by the 503 company from the CFA when the payments are made. Failure by the 503 company to comply with the reporting and servicing requirements contained in this part is a basis for withholding service and late fees. Willful or negligent noncompliance with the reporting and servicing requirement for ninety days or longer after the respective due dates shall authorize SBA to receive the fees withheld as compensation for its effort to obtain compliance.

(e) *Servicing deficiencies.* SBA shall provide written notice to the 503 company of any servicing or collection deficiencies. Such notice shall state the deficiencies and action to be taken that will correct such deficiencies. Should the 503 company fail to take such action, expenses and administrative costs incurred by SBA to correct such deficiencies may be assessed to and must be paid by the 503 company computed on a daily basis, not to exceed $250 per day: *Provided, however,* That this amount shall be reduced by the amounts withheld by SBA pursuant to paragraph (d) above.

(f) *Termination of fees.* If the 503 company persists in its failure to take corrective action pursuant to subsection (e) hereof, SBA shall have the right, pending suspension or revocation purusant to § 108.503–15, to take over servicing of all or part of the 503 company's portfolio or require the 503 company to assign all or part of its portfolio to another 503 company. In such event, the assignor 503 company shall have no rights to any further fees which shall be paid to the transferee. If SBA does the servicing it shall collect the fees. In addition, the 503 company's processing authority will be temporarily suspended.

(g) *Assumption of a 503 loan.* A 503 loan may be assumed by another small concern with SBA's prior written approval. Such approval shall not be unreasonably withheld.

(h) *Deferments.* At the request of the 503 company, SBA may agree to a deferment of monthly payment(s) by the small concern at it sole discretion if it finds that without such deferment the small concern will become or remain insolvent; with such deferment the small concern will become or remain viable and the small concern agrees to compensate SBA for its cost in making such deferment, and to offer such additional security as SBA may require. No such deferment shall be made for a period exceeding six months, and may be renewed if the preceding deferment period has produced beneficial results. In no event may such deferment period exceed five years, nor may the maturity of the Loan exceed twenty-five years in the aggregate.

§ 108.503–14 Liquidation of 503 loans and security.

When a 503 loan is tranferred to liquidation status by SBA, the servicing functions of the 503 company and CFA may be terminated upon notice by SBA: *Provided, however,* That the 503 company and SBA may negotiate an agreement whereby the 503 company continues to service or to liquidate the loan on a fee basis.

§ 108.503–15 Oversight and evaluation; suspension and revocation.

(a) *Operational review.* Each 503 company shall be subject to operational review by SBA. Such review shall take place by appointment during the 503 company's regular business hours. The 503 company shall cooperate with SBA by making its staff, records, and facilities available.

(b) *Periodic compliance audit.* Each 503 company shall be subject to periodic compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General. The regulatory compliance part of the annual report prepared in accordance with §108.503–3(f) shall be submitted to the SBA Ofice of Inspector General within ninety days after the end of the 503 company's fiscal year and shall satisfy this requirement. Otherwise, unless the requirement of a compliance report has been waived pursuant to §108.503–3(f), SBA's Office of Inspector General may conduct such periodic compliance audit.

(c) *Fees.* Each 503 company shall bear the costs of the compliance part of the annual report prepared by its independent public accountant. The 503 company shall be assessed for each periodic compliance audit conducted by SBA, on an hourly basis not to exceed $35 per hour as prescribed by SBA's Inspector General.

(d) *Special audits.* A 503 company may be subject to special audit conducted by SBA's Office of Inspector General. Such audits shall be conducted at no cost to the 503 company. The 503 company shall make all books and records and related materials available for review and copying for purposes of periodic and special compliance audits.

(e) *Revocation, suspension and other corrective actions.—(1) Corrective Actions.* SBA reserves the right to revoke the certification of any 503 company, to suspend temporarily the eligibility of any 503 company, or to

require any other corrective action for a violation of law or SBA regulation, of the terms of a debenture or any agreement with SBA, or any inability to meet the operation requirements set forth in this Part; but such action shall not invalidate any guarantee previously issued by SBA.

(2) *Suspension.* SBA shall give written notice at least 10 business days prior to the effective date of a suspension action. Such notice shall inform the 503 company of the opportunity for a hearing pursuant to Part 134 of this chapter.

(3) *Revocation and Appeal of Suspensions.* Revocation proceedings and appeals of suspension actions shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §134.32(b)(7) and 134.34.

(Catalog of Federal Domestic Assistance Program Nos. 59.013 State and Local Development Company Loans and 59.036 Certified Development Company Loans)

Dated: June 3, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12852 Filed 6-5-86; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 108

[Rev. 4; Amdt. 15]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Interim Final rule.

SUMMARY: Section 1800S of the Deficit Reduction Amendments of 1985 signed into law on April 7, 1986, (Pub. L. 99-272) requires SBA to conduct a 2 year pilot program where debentures guaranteed under section 503 of the Small Business Investment Act of 1958 (SBI Act) and 505 Certificates representing an interest in a Pool or Trust of 504 Debentures are sold to investors through public sale or private placement. This Interim Final Rule adds §§ 108.504 and 108.505 to 13 CFR Part 108. These regulations implement the pilot program.

EFFECTIVE DATE: Interim Final Rule effective June 6, 1986. Written comments must be submitted by August 5, 1986.

ADDRESS: Written comments may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street, NW., Washington, DC 20416. All timely comments will be available for public review during normal business hours.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Small Business Administration, Office of Economic Development, 1441 L Street, NW., Room 720, Washington, DC 20416, (202) 653-6075.

SUPPLEMENTARY INFORMATION:

Highlights

Existing § 108.2 has been expanded to add definitions of the following terms: 504 Debenture, 504 Loan, Pool or Trust, 505 Certificate, Central Fiscal Agent, Fiscal Agent, Transfer Agent, Selling Group, and Reserve Deposit.

The new § 108.504 of these Regulations relates to the sale of debentures to investors other than the Federal Financing Bank (FFB). This corresponds to a pilot program mandated by section 504 of the SBI Act. Essentially, these debentures (504 debentures) must meet all credit and other requirements for section 503 debentures, unless specifically superseded by these Regulations. There are minor differences in the terms of the debenture and pricing mechanism of section 504 debentures.

Debentures (section 504) will have a standard prepayment clause which requires the borrower to pay a declining premium based on the number of years the debenture has been outstanding. The investor will receive a pro rata share of the prepaid principal amount plus a pro rata share of any prepayment premium assessed. However, SBA is permitted to purchase a 504 debenture at the outstanding balance plus interest to the date of repurchase and is not required to pay a premium. The term of 504 debentures will be limited to 10 or 20 years as opposed to 503 debentures which are for 15, 20, and 25 years. This should result in larger pools of homogeneous debentures. Section 504 also provides for a single Master Reserve Account in place of the separate Escrow and Reserve Accounts which are presently used for 503 debentures. Although the borrower will have the Reserve Deposit returned on payment in full of the debenture, the accrued interest will be used to make timely payment of principal and interest on 504 debentures and 505 certificates. Lastly, the new § 108.504 provides that the process of marketing and servicing 505 Certificates will also apply to 504 debentures that are sold to investors.

Section 505 of these Regulations implements section 505 of the SBI Act. This section authorizes SBA to issue certificates representing ownership of all or a fractional part of Pools of 504 debentures. The Administration is additionally authorized to guarantee the timely payment of principal and interest on these certificates under such terms and conditions as the Administration deems appropriate. The regulations explain the process by which Certificates, which may be guaranteed by SBA and which are backed by a Trust or Pool of debentures by 503 companies, are to be issued and sold. SBA has the right to cancel a certificate when all the underlying debentures are prepaid (or repurchased by SBA). This statute also requires SBA to engage an agent to provide transfer agent functions related to the certificate process. Such agents' fees are subject to SBA approval. Lastly, the statute requires the seller of any certificate to disclose to the purchaser certain information as required by statute. Should a broker or dealer fail to disclose this information to a purchaser, SBA has the right to exclude such broker or dealer from participating in the sale of certificates. These regulations implement the statutory requirements.

Executive Order 12291, Regulatory Flexibility and Paperwork Management

For purposes of compliance with E.O. 12291 of February 17, 1981, SBA hereby certifies that this proposal, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this final rule will not result in a major increase in costs or price to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this Interim Final Rule will not have a significant economic impact. The level of debenture funding available remains unchanged. The only differences from the existing 503 program are the identity of the purchasers and the existence of 504 Debentures and 505 Certificates. SBA certifies pursuant to section 605 of the Regulatory Flexibility Act, (5 U.S.C. 605) that this Interim Final Rule is being published pursuant to an emergency. The reason for the emergency is the statutory deadline of June 7, 1986, which was imposed on SBA for the promulgation of final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act. Therefore, a regulatory flexibility analysis has not been provided. In addition, SBA certifies pursuant to 5 U.S.C. 553(b)(B) that good

cause exists for not seeking public comment due to the statutory deadline for implementation of these regulations. Nevertheless comments are invited and will be considered for possible revision of this regulation.

There is no alternative to these regulations which would have less economic impact or be less costly to the government. These regulations do not duplicate, overlap, or conflict with any existing Federal Rules.

This regulation contains no reporting requirements which are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act, (44 U.S.C. Ch. 35).

List of Subjects in 13 CFR Part 108

Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Part 108 is hereby amended as follows:

1. The authority citation for Part 108 continues to read as follows:

Authority: Secs. 308(c), 501, 502, Pub. L. 85–699, 72 Stat. 689; Sec. 113, Pub. L. 98–302 (15 U.S.C. 631 note); Sec. 18008, Pub. L. 99–272 (15 U.S.C. 687a).

2. The table of contents appearing for Part 108 is amended by adding at the end, new center heading entitled "Assistance Under Sections 504 and 505" followed by new §§ 108.504 through 108.505.

* * * * *

Assistance Under Sections 504 and 505

108.504 Pilot program.
108.505 Debenture pool certificates (505 certificates).

3. Section 108.2 *Definitions* is amended by adding nine new paragraphs (n), (o), (p), (q), (r), (s), (t), (u), and (v) as follows:

§ 108.2 Definitions.

* * * * *

(n) "504 Debenture" means a debenture issued by a 503 company and guaranteed by SBA for sale to private investors (see § 108.504), either individually or as part of a pool or trust which backs 505 certificates.

(o) "504 Loan" means a loan made to a small business concern from the proceeds of 504 debenture.

(p) "Pool" or "trust" means an aggregation of 504 debentures approved by SBA.

(q) "505 certificate" means a certificate of interest issued by SBA or its agent representing ownership of all or a fractional part of a Pool or Trust.

(r) "Central fiscal agent" or "CFA" shall mean an agent of the 503 company appointed by SBA to receive and disburse funds related to 503 and 504 Loans. (See § 108.503–11(a) of this part.)

(s) "Fiscal agent" means an agent appointed by SBA to direct the planning, organization, control, integration and completion of sales of debentures pursuant to section 504 and/or 505 certificates pursuant to section 505.

(t) "Transfer agent" means an agent engaged by SBA to issue 505 certificates and perform the registration and transfer functions as well as collection and paying functions for either debentures sold pursuant to section 504 or 505 certificates sold pursuant to section 505, or both.

(u) "Selling group" means one or more parties who have been approved by SBA and/or its fiscal agent to market 504 debentures or 505 certificates.

(v) "Reserve deposit" shall be an amount equal to two percent (2%) of the net debenture proceeds.

4. Following § 108.503–15 add a new center heading, "Assistance under Section 504, and add §§ 108.504 through 108.505 to read as follows:

Assistance Under Sections 504 and 505

§ 108.504 Pilot program.

(a) *Statutory authority* for this section is section 504 of the Small Business Investment Act of 1958, 15 U.S.C. 698.

(b) *Pilot program.* SBA is required to conduct a pilot program involving the sale to investors of 504 debentures, as defined in § 108.2(n) or 505 certificates, as defined in § 108.2(q), either publicly or by private placement.

(c) *Purpose.* The terms and conditions upon which assistance may be rendered under the pilot program shall be for the same purposes and shall be the same as set forth in §§ 108.503 to 108.503–15 of this Part, except as superseded by paragraphs (d)–(i) of this section.

(d) *Term.* 504 debentures shall be issued only for maturities of ten (10) or twenty (20) years.

(e) *Master reserve account.* the CFA shall establish an interest bearing master reserve account in which it will place all reserve deposits and all payments on 504 loans. These funds, together with funds as necessary provided by SBA in honoring its guarantees, will be used to insure that timely payments are made to holders of 504 debentures and/or 505 certificates. In the event the borrower fails to make timely payment(s), the reserve deposit may be applied to reduce the outstanding indebtedness. The reserve deposit, without accrued interest, shall be returned to the borrower upon payment in full of the 504 debenture.

(f) *Prepayment.* If the small concern voluntarily exercises its right to prepay its loan or lease made with the proceeds of a 504 debenture, it shall pay a prepayment premium equal to that required of the 504 debenture. In the event of such voluntary prepayment, the 503 company shall prepay the 504 debenture with a like premium.

(g) *Purchase by SBA.* If SBA purchases a 504 debenture, in the event of default by the small concern or otherwise, the purchse price shall equal the unpaid debenture balance plus unpaid interest thereon, as of the time of such purchase, without premium. SBA shall not be required to reimburse the investor for any premium paid for the 504 debenture or 505 certificate.

(h) *Termination of interest.* Interest on 504 debentures prepaid pursuant to paragraph (f) of this section, or purchased by SBA pursuant to paragraph (g) of this section, shall accrue only through the date of such prepayment or purchase.

(i) *Marketing 504 debentures.* Section 108.505 (f) through (l) of this part shall also apply to individual 504 debentures sold to investors.

§ 108.505 Debenture pool certificates (505 certificates).

(a) *Statutory authority* for this section is section 505 of the Small Business Investment Act of 1958, 15 U.S.C. 699.

(b) *Purpose.* Section 505 of the Small Business Investment Act authorizes SBA or its agent to issue certificates representing ownership of all or a fractional part of a pool or trust composed of 504 debentures. Such certificates shall be sold to investors either publicly or by private placement.

(c) *Guaranty.* SBA is authorized to guarantee the timely payment of principal and interest on 505 certificates, not to exceed the outstanding principal and interest on the guaranteed debentures which comprise the pool. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such certificates. No State or local law, and no Federal law shall preclude or limit SBA's exercise of its ownership rights in the pooled debentures and related collateral.

(d) *Prepayment.* In the event of prepayment or SBA purchase pursuant to § 108.504 (f) or (g), as the case may be, proceeds shall be passed through *pro rata* to the holder(s) of such certificates, and SBA's guaranty shall be proportionately reduced. In the event all

504 debentures constituting the pool are so paid off, SBA may call all certificates backed by such Pool for cancellation.

(e) *505 certificates* shall be initially issued in amounts of at least one hundred thousand dollars ($100,000). Such certificates shall be issued in registered form, and shall be transferable only by entry on the central registry maintained pursuant to paragraph (f)(2) of this section. No such transfer shall take place within 10 business days before any payment date. Payment on such certificates shall be made only to registered holders.

(f) *Fiscal and transfer agent(s).* SBA will appoint an agent or agents to perform functions necessary to market and service debentures sold pursuant to § 108.504(b) of this part or 505 certificates sold pursuant to § 108.505(b) of this part.

(1) *Fiscal agent.* SBA will appoint a fiscal agent to:

(i) Establish performance criteria for the selling group and select qualified candidates to comprise the selling group. Such action shall be subject to SBA prior written approval and paragraph (g) of this section.

(ii) Negotiate the terms and conditions of periodic offerings of 504 debentures and/or 505 certificates with the selling group.

(iii) Direct and coordinate periodic sale of 504 debentures and/or 505 certificates and monitor performance of transfer agent, and selling group members.

(iv) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding 504 debentures or 505 certificates.

(v) Perform other functions as SBA may from time to time prescribe.

(2) *Transfer agent.* SBA will appoint a transfer agent to:

(i) Issue 505 certificates in the form prescribed by SBA at the time of the primary sale of debentures.

(ii) Effect the transfer of 505 certificates upon resale in any secondary market transactions.

(iii) Maintain physical possession of the 504 debentures for SBA and the certificate holders.

(iv) Establish and maintain a system for central registration of:

(A) Debenture pools including identification of the debentures that are included in each pool, identification of the development companies which are obligors of such debentures, and the interest rate paid on each such debenture;

(B) 505 certificates issued or transferred with respect to each sale including identification of the pool backing the certificate, name and address of such certificate purchaser, price paid by each purchaser, the interest rate on such certificates and fees or charges assessed by the transfer agent;

(C) Brokers and dealers in 505 certificates and commissions, fees or discounts granted to such brokers of or dealers in such certificates; and

(D) Other information as SBA may from time to time prescribe.

(v) Receive semi-annual payments of amounts due on 504 debentures, or amounts paid under voluntary prepayments or prepayments by SBA pursuant to §§ 108.504 (f) and (g) of this Part.

(vi) Make periodic payments to registered holders of 504 debentures or 505 certificates as scheduled or required by their terms and pay all amounts required to be paid upon prepayment of 504 debentures.

(vii) Before any resale of such debenture(s) or certificate(s) is recorded on the registry, assure that the seller has disclosed to each purchaser in writing information required to be disclosed by § 108.505(j) of this part.

Such agent shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(g) *Selling group requirements.* Each member of the selling group shall:

(1) Be regulated by a federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD);

(2) Have a net worth in accordance with the requirements of the appropriate regulatory authority and have the financial capability to market 504 Debentures and 505 Certificates;

(3) Maintain its books and records in accordance with generally accepted accounting principles and in accordance with the guidelines promulgated by the regulatory body governing its activities;

(4) Conduct its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations;

(5) Be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment (see paragraph (l) of this section) and with any Federal regulatory body governing the entity's activities or with NASD, if it is a member;

(h) *Access to records.* The fiscal agent, transfer agent and selling group shall make all books, records, and related materials associated with 504 Debentures or 505 Certificates available to SBA for review and copying purposes. Such access shall be at the place of business during normal business hours.

(i) *Fees and charges.* In addition to those fees delineated in § 108.503–6 of this part, fiscal or transfer Agent fees and other fees and charges necessary to market and service debentures sold pursuant to § 108.504(b) of this Part or 505 Certificates pursuant to § 108.505(b) of this Part may be assessed to the recipient of the 504 loan or charged to the purchaser of the debenture or certificate. Such fees shall be approved by SBA and shall be published from time to time in the **Federal Register.**

(j) *Disclosure statement.* Prior to any sale of a 505 Certificate, the seller, or the broker or dealer as agent for the seller, shall in the form prescribed or approved by SBA, disclose to the purchaser of such certificate information on the terms, conditions and yield of such certificate including information on any premium or other characteristics not guaranteed by SBA.

(k) *Prohibition.* In addition to § 108.4(d) of this Part, a 504 loan recipient or any officer, director, partner, shareholder of such loan recipient or close relative of any of the foregoing (as defined in § 120.2(d) of SBA Regulations) may not purchase the debenture which funded its 504 loan. In such cases, SBA shall have the option of canceling its guarantee of such 504 debenture. Also see §§ 108.7 and 108.503–15(e) of this part.

(l) *Suspension or revocation of brokers and dealers.* (1) SBA may exclude from the sale and all other dealings in, 504 debentures or 505 certificates, any broker or dealer:

(i) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(ii) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for 504 debentures or 505 certificates, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(iii) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for 504 debentures or 505 certificates may be terminated.

(iv) When such broker or dealer has failed to make full disclosure of the information required by § 108.505(j) of this part, such broker's or dealer's participation in the market for 504 debentures or 505 certificates may be terminated.

(2) Proceedings to terminate such broker's or dealer's participation in the market for such certificates shall be conducted in accordance with Part 134 of this title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34.

(Catalog of Federal Domestic Assistance #59.013 State and Local Dev. Co. Loans)

Dated: May 22, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12853 Filed 6-5-86; 8:45 am]

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federal register

Friday
June 6, 1986

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 81 and 82
Color Additives; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Yellow No. 6, D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19 for use as color additives in drugs and cosmetics and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be August 6, 1986. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used. Published elsewhere in this issue of the Federal Register is a document terminating the provisional listing of D&C Red No. 37.

EFFECTIVE DATE: Effective June 6, 1986, the new closing date for FD&C Yellow No. 6, D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19 will be August 6, 1986.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5876.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of June 6, 1986, for the provisional listing of FD&C Yellow No. 6, D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19 by regulation published in the Federal Register of September 4, 1985 (50 FR 35783). FDA extended the closing date for these color additives until June 6, 1986, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives and for publication of a regulation in the Federal Register regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the June 6, 1986, closing date for the provisional listing of these color additives until August 6, 1986.

FDA has essentially completed its review and evaluation of available information relevant to the use of these color additives in food, drugs, and cosmetics. The agency has concluded that the external drug and cosmetic uses of D&C Red No. 8, D&C Red No. 9, D&C Orange No. 17, and D&C Red No. 19, and the food, drug, and cosmetic uses of FD&C Yellow No. 6 are safe. Thus, the agency has decided to permanently list the color additives for these uses. The agency has also decided, based on its evaluation of the ingested drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9 that they are safe and may be permanently listed for these uses at significantly reduced concentrations. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until August 6, 1986, to provide time for the preparation and publication of appropriate Federal Register documents. The agency intends to move expeditiously to publish these documents as soon as possible, but not later than August 6, 1986. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d (D.C. Cir. 1982).

Elsewhere in this issue of the Federal Register, FDA is terminating the provisional listing of D&C Red No. 37 effective June 6, 1986. The agency's decision is based on the fact that the petitioner has withdrawn its petition for this color additive and, thus, a basis for its continued provisional listing no longer exists.

Because of the shortness of time until the June 6, 1986, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of June 6, 1986. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d)(1) and (3), this postponement is issued as a final regulation, effective on June 6, 1986.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Orange No. 17," "D&C Red No. 8," "D&C Red No. 9," and "D&C Red No. 19" in paragraph (b) to read "August 6, 1986."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of Provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Orange No. 17," "D&C Red No. 8," "D&C Red No. 9," and "D&C Red No. 19" in paragraph (d) to read "August 6, 1986".

Dated: June 3, 1986.

Frank E. Young

Commissioner of Food and Drugs.

[FR Doc. 86-12980 Filed 6-5-86; 10:44 am]

BILLING CODE 4160-01-M

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21 CFR Parts 81 and 82

[Docket No. 86C-0228]

Termination of Provisional Listing of D&C Red No. 37 for Use in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is terminating the provisional listing of the color additive D&C Red No. 37 for use in coloring externally applied drugs and cosmetics. FDA is taking this action because the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., has withdrawn its petition for the use of D&C Red No. 37 in externally applied drugs and cosmetics. Therefore, D&C Red. No. 37 may not be added to externally applied drugs and cosmetics after June 6, 1986.

EFFECTIVE DATE: June 6, 1986.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food

Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5870.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of June 6, 1986, for the provisional listing of D&C Red No. 37 by a regulation published in the Federal Register of September 4, 1985 (50 FR 35783). FDA extended the closing date for D&C Red No. 37 until June 6, 1986, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of D&C Red No. 37 and for publication of a regulation in the Federal Register regarding the agency's final decision on the petition for the permanent listing of color additive.

As noted in the Federal Register of August 6, 1973 (38 FR 21199), D&C Red No. 37 is a subject of petition (CAP 9C0091) filed by the Toilet Goods Association, Inc. (how the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005) for use in coloring drugs and cosmetics. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376). By letter dated April 29, 1986, CTFA withdrew its petition requesting permanent listing of D&C Red No. 37 for use in externally applied drugs and cosmetics without prejudice to a future refiling. (See letter of April 29, 1986, from Mr. E. Edward Kavanaugh, CTFA, to Gerad L. McCowin.) Because the petitioner has withdrawn that portion of the petition pertaining to use in externally applied drugs and cosmetics, there is no longer a basis for continued provisional listing of these uses (21 U.S.C. 376, note).

Accordingly, in the absence of a petition for such uses, FDA concludes that (1) the provisional listing of D&C Red No. 37 for use in externally applied drugs and cosmetics should be terminated under section 203 (a)(2) and (d)(1)(E) of the transitional provisions of the amendments; (2) all certificates heretofore issued for batches of D&C Red No. 37, its lakes, and all mixtures containing this color additive for externally applied drugs and cosmetics are cancelled as of June 6, 1986; and (3) after that date the addition of D&C Red No. 37 to externally applied drugs or cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to the externally applied use of the straight color additive, its lakes, and mixtures of the color additive and its lakes. On February 4, 1988 (48 FR 5282), the agency terminated the provisional listing of D&C Red No. 37 for use in ingested drug and cosmetic products. FDA also concludes that the health concern regarding the use of this color additive is such that the current use of the color additive does not represent an acute imminent hazard. Therefore, the protection of the public health does not require (1) the recall from the market of drug and cosmetic products for externally applied use that contain the color additive, or (2) the destruction of such drug or cosmetic preparations to which the color additive has already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that may be externally applied and that contain D&C Red No. 37 may either discontinue use of the color additive or substitute a different color additive in accordance with the provisions of 21 CFR 314.70(c)(1) or 21 CFR 514.8 (d)(3) and (e), as appropriate. If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or supplemental new animal drug application containing data describing the new composition and showing that the change is composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate. The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit the data as they become available, and to recall from the market any batch found to fail outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing the subject color should promptly amend the IND or INAD to indicate that the color additive has been deleted or a different color additive subetituted.

FDA is aware that supplies of alternative color additives may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Red No. 37 may continue to be used with the uncolored product or products containing alternative colors during the time necessary to obtain supplies of revised labeling or until June 6, 1987, whichever occurs first.

The agency has considered the environmental effects of this action. Because FDA's action will not result in the production or distribution of any substance and, therefore, will not result in the introduction of any substance in the environment, FDA concludes that this action will not have any impact on the quality of the human environment. This action is similar to actions involving human and animal drugs that are excluded from preparation of an environmental assessment under 21 CFR 25.24 (c)(3) and (d)(3) of FDA's final rule implementing the National Environmental Policy Act (50 FR 16636; April 26, 1985).

Notice and public procedure are not necessary prerequisites to promulgating these regulations because section 203(d)(2) of the Pub. L. 86–618 so provides.

List of Subjects in 21 CFR Parts 81 and 82

Color additives, Cosmetics, Drugs.

Therefore, under the transitional provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 81 and 82 are amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* in paragraph (b) by removing the entry for "D&C Red No. 37".

3. In § 81.10 by redesignating paragraph (q) as paragraph (q)(1) and adding new paragraph (q)(2) to read as follows:

§ 81.10 Termination of provisional listings of color additives.

* * * * *

(q) (1) * * *

(2) *D&C Red No. 37.* In the absence of a petition to list D&C Red No. 37 for external uses, there no longer exists a

basis for provisional listing for such uses. Accordingly, the Commissioner of Food and Drugs hereby terminates the provisional listings of D&C Red No. 37 for use in externally applied drugs and cosmetics, effective June 6, 1986.

§ 81.27 [Amended]

4. In § 81.27 *Conditions of provisional listing* in paragraph (d) by removing the entry for "D&C Red No. 37".

5. In § 81.30 by revising paragraph (r)(2) and adding new paragraph (r)(3) to read as follows:

§ 81.30 Cancellation of certificates.

* * * * *

(r) * * *

(2) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market ingested drugs and cosmetics to which D&C Red No. 19 and D&C Red No. 37 were added on or before February 4, 1963, or externally applied drugs and cosmetics to which D&C Red No. 37 was added on or before June 6, 1986.

(3) Certificates issued for D&C Red No. 37, its lakes, and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after June 6, 1986, and use of this color additive in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

* * * * *

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

6. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1058 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.1337 [Removed]

7. By removing § 82.1337 *D&C Red No. 37.*

Dated: June 4, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-12979 Filed 6-5-86; 10:44 am]

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Federal Register

Friday
June 6, 1986

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

General Conference Committee of the National Poultry Improvement Plan Meeting; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 86-058]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Announcement of meeting.

SUMMARY: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held June 23, 1986 (9 a.m.–12 noon), June 24 and 25, 1986 (9 a.m.–5 p.m.), and June 26, 1986 (9 a.m.–2 p.m.).

ADDRESSES: The meeting will be held at the Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, California. Written comments may be mailed to Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, APHIS–VS, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301–436–5140). Comments received may be inspected at this address between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, (301) 436–5140.

SUPPLEMENTARY INFORMATION: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan to be held June 23, 1986, through June 26, 1986. The sessions on June 24, 25, and 26, 1986, will include the delegates to the biennial National Plan Conference, who represent State officials and poultry industry personnel from the 47 cooperating States. The purpose of the Committee is to make recommendations to the Department concerning the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

At the meeting consideration will be given concerning whether to recommend to the Department that the following changes be made in the regulations in 9 CFR Parts 145 and 147:

1. Provide for a minimum number of birds to be tested from each house when blood testing commercial poultry flocks for salmonella and mycoplasma.

2. Provide for the enzyme-labeled immunosorbent assay test (ELISA) as one of the official tests for pullorum and fowl typhoid diseases.

3. Provide alternative procedures for examining certain types of birds that react to a blood test for pullorum-typhoid to determine if the birds are false reactors.

4. Amend the method Official State Agencies use to determine the number of birds to be tested in determining U.S. Pullorum-typhoid status of multiplier breeding flocks on poultry premises of unknown status.

5. Add a program to recognize a State when certain requirements for the control of *Mycoplasma gallisepticum* are met in poultry flocks.

6. Add a program for turkey breeding flocks meeting certain husbandry and sanitary requirements.

7. Provide egg yolk testing as an alternative method of monitoring certain multiplier breeding flocks classified as "U.S. M. Gallisepticum Clean".

8. Add a program recognizing States which meet certain minimum standards for poultry disease prevention.

The meeting will be open to the public. Written statements concerning these and other matters may be filed with the Committee before or at the time of the meeting.

Dated: June 5, 1986.

D.F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86–12972 Filed 6–5–86; 12:36 pm]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 275]

Food Stamp Program; Supplemental Security Income and Social Security Provisions of the Food Security Act of 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends Food Stamp Program regulations to implement a provision of the Food Security Act of 1985 which reinforces and strengthens current regulations in regard to Food Stamp Program services in Social Security Administration offices.

DATES: This action is effective October 1, 1986. Comments must be received on or before August 8, 1986, to be assured of consideration.

ADDRESSES: Comments should be submitted to Bruce Clutter, Chief, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: If there are any questions, please contact Judith M. Seymour, Supervisor, Certification Rulemaking Section, at the above address or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The rule will not result in an annual economic impact of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as "nonmajor."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015 Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Public Participation

This rule implements the portion of the Food Security Act of 1985 regarding the provision of Food Stamp Program information and simplified applications at Social Security Administration offices. These provisions are nondiscretionary in that the required action is specifically set forth in the statute and therefore cannot be affected by public comment. For this reason, the Department has determined in accordance with 5 U.S.C. 553(b) that notice and prior public comment are impracticable, unnecessary and contrary to public interest. Further, since this rulemaking merely recites the statutory provision, it constitutes an interpretative rule for which notice and public comment are not required under 5 U.S.C. 553. However, since the Department believes that an opportunity for public comment could result in improved and simplified administration of the rule and expose any errors or oversights in the rule, it is being published as an interim rule with a 60-day comment period.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. This rule implements a provision from the Food Security Act of 1985 which does not represent a major change in application processing or operational policy.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Food Stamp Applications for SSI Applicant/Recipients

Current rules at § 273.2(k) allow State agencies to select from one of two options in processing food stamp applications of Supplemental Security Income (SSI) applicants and recipients through Social Security Administration (SSA) offices. Under the first option, SSA has the authority to accept food stamp applications and to conduct interviews at SSA offices for households consisting entirely of SSI applicants or recipients and which have neither applied for food stamps during the previous 30 days nor have an application pending. Although this is normally done when an initial application for SSI is taken or SSI eligibility is redetermined, food stamp applications are accepted from individuals who are eligible to file them at SSA offices at any time they request to do so. They are assisted in completing the application and interviewed at that time. Under this option, SSA employees inform SSI households of their right to apply for food stamps at the SSA office (or a food stamp office) and complete the application for the household, using much of the information already obtained during the SSI interview. SSA uses either the national food stamp application form or an FNS-approved State food stamp application and uses a transmittal form to facilitate forwarding and completing the food stamp application. These applications are forwarded to the food stamp office for determination of eligibility for the Food

Stamp Program within one working day after receipt of a signed application.

Under the second option, the State agency, with SSA concurrence, outstations at least one food stamp caseworker at the SSA office to accept food stamp applications and conduct interviews. The outstationed worker must accept applications and interview households which contain at least one applicant for or recipient of SSI. Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under Title II of the Social Security Act (Old-Age, Survivors, and Disability Insurance (OASDI)), may have their applications filed and be interviewed by the outstationed eligibility worker if SSA and the State agency have an agreement to allow the processing of such households at SSA offices.

State agencies have the authority to choose between the above two options for any SSA office, subject to a negotiated agreement between the Departments of Agriculture and Health and Human Services (HHS). This agreement, originally signed on February 1, 1983, provides for reimbursement by the Secretary of Agriculture to the Secretary of HHS for services performed by HHS pursuant to the joint processing of food stamp applications under Part 273 of the food stamp regulations.

Food Security Act SSI/Social Security Provisions

The Food Stamp Act of 1977, as amended, (Section 11(i)) provided that households in which all members are recipients of SSI shall be permitted to apply for participation in the Food Stamp Program by completing a simple application at the social security office and be certified using information contained in SSA files. Section 1531 of the Food Security Act of 1985, Pub. L. 99-198, changes this wording slightly to provide that households in which all members are applicants for or recipients of SSI must be informed of the availability of Food Stamp Program benefits and assisted in making a simple application to participate in the Program. Current regulations, as explained above, already offer services to applicant/recipients consistent with the Food Security Act language for SSI households; therefore, no regulatory change is necessary in this area.

The Food Security Act also stipulates that any individual who is an applicant/recipient of benefits under Title II of the Social Security Act must be informed of the availability of Food Stamp Program benefits and informed of the availability of a simple application to participate in the Program at the social security office. However, there is not a requirement in the Food Security Act of 1985 for SSA employees to accept and complete these applications as there is for households composed solely of SSI applicants/recipients. As explained above, current regulations at § 273.2(k)(1)(ii) specify that if the State agency chooses to outstation eligibility workers at SSA offices, then households which contain an applicant for or recipient of social security benefits may apply for food stamps and be interviewed at the SSA office if the State agency and SSA have so agreed. This requirement is being retained. In accordance with the Food Security Act which specifies that *all* title II social security applicants/recipients shall be informed of the availability of benefits under the Food Stamp Program and informed of the availability of a simple application to participate in the Program at the social security office, we are adding regulatory language to that effect in a separate paragraph following § 273.2(k) which addresses SSI households.

The aforementioned agreement between the Department and HHS is being revised to reflect the above Food Security Act requirements.

Implementation

The effective date of this rule is October 1, 1986. This date is specified in the Food Security Act of 1985. There is no special implementation effort required by the State agencies to effectuate the changes in this rulemaking.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs, Social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 and are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011-2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1(g), a new paragraph (77) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(77) *Amendment No. 275.* The program change in § 273.2(1) of Amendment No. 275 shall be effective October 1, 1986.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, a new paragraph (1) is added to read as follows:

§ 273.2 Application processing.

* * * * *

(1) *Households applying for or receiving social security benefits.* An applicant for or recipient of social security benefits under Title II of the Social Security Act shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a Food Stamp Program application at the SSA office. The SSA office is not required to accept applications and conduct interviews for Title II applicants/recipients in the manner prescribed in § 273.2(k) for SSI applicants/recipients unless the State agency has chosen to outstation eligibility workers at the SSA office and has an agreement with SSA to allow the processing of such households at SSA offices. In these cases, processing shall be in accordance with § 273.2(k)(1)(ii).

Dated: June 2, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-12832 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Filing of Occupational Preference Petitions

Correction

In FR Doc. 11441, beginning on page 18568, in the issue of Wednesday, May 21, 1986, make the following corrections:

1. On page 18569, second column, first complete paragraph, fifth line, "their" should read "there".

§ 204.1 [Corrected]

2. On page 18571, first column, § 204.1(d)(2)(i), second line, "May 21, 1986," should read "June 20, 1986".

3. On the same page, second column, in § 204.1(d)(2)(i), first line, "and" should

read "an", and in the third line after "not" insert "refiled".

4. On the same page, § 204.1(d)(2)(ii), second column, second line, "May 21, 1986" should read "June 20, 1986", and in the eighth line the second "the" should be removed.

BILLING CODE 1505-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Definition of Small Business for Engineering, Architectural and Surveying Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is amending its size standard regulations for engineering, architectural, and surveying services to $2.5 million in annual receipts, averaged over the firm's most recent three completed fiscal years, as the appropriate size standard for all three services. This is a decrease from the current size standards of $7.5 million for engineering services and $3.5 for architectural services and surveying services.

This rule does not include the size standards applicable to engineering services for military and aerospace equipment and weapons, for marine engineering or for naval architecture. These services have separate size standards.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Size Standards Staff, Small Business Administration, (202) 653–6373.

SUPPLEMENTARY INFORMATION: On September 16, 1985, SBA published in the Federal Register (50 FR 37530) a proposed rule to lower the size standards for engineering, architectural, and surveying services, allowing a 60-day comment period. The proposal was in response to the urging of a number of firms and several industry associations for the SBA to lower the size standards considerably. The proposal informed the public that SBA intended to reduce the size standard for these services to as low as $1.5 million. Upon request, the comment period was extended by 30 days. The comments reflected that the proposed reduction to $1.5 million was inappropriate. SBA received 153 comments from firms in the affected industries and an additional 164 comments from others in the private sector such as associations, firms in other industries, and employees of firms in the industries affected. Comments were also received from federal agencies and several members of Congress. Sixty-two percent of the comments received from firms in the affected industries were in opposition to the proposed reduction to $1.5 million. Federal agencies were split in their acceptance of a $1.5 million size standard. A more modest reduction was suggested by a number of commenting firms as well as by several of the Federal agencies opposed to the $1.5 million size standard.

Considering the arguments presented by those commenting as well as the industry structure, the SBA has decided that a more moderate reduction to $2.5 million is appropriate.

Comments From the Public

On September 16, 1985, after continuous urging by a number of sources including the largest engineering services trade association, SBA published notification of its intent to lower the size standards for engineering, architectural, and surveying services. SBA proposed $1.5 million as the new standard for these services. All three activities share the same Standard Industrial Classification. Including an extension, the comment period was 90 days.

SBA received 153 comments from firms in the subject industries, 57 were in favor of a reduction, 94 were opposed and 2 firms submitted vague comments. Among industry groups, 137 were from consulting engineering firms (81 opposed the proposal), 5 from architectural firms (4 opposed the proposal), and 11 from surveying firms (9 opposed the proposal). Overall, 62 percent of the commenting firms in the affected industries opposed a proposed reduction to $1.5 million. In cases where a firm's comments failed to give sufficient reasons for that firm's position or where the size of the commenting firm could not be determined by SBA, that commentor was contacted, by letter, to obtain additional information; about half replied. The positions, by size of firm in these industries, are summarized in Table 1.

TABLE I.—COMMENTS BY SIZE OF FIRMS TO THE PROPOSAL OF SEPTEMBER 1985 TO LOWER THE ENGINEERING, ARCHITECTURAL, AND SURVEYING SERVICES SIZE STANDARDS TO $1.5 MILLION

Annual receipts of firm commenting	For the proposal	Against the proposal	Vague
Over $7.5 million	19	3	0
$3.5 to $7.4 million	2	29	1
$1.5 to $3.4 million	0	36	0
Under $1.5 million	26	6	0
Firm size unknown	10	20	1
Totals	57	94	2

More important than a count of those comments for or against the proposal are the various points presented. Firms with annual receipts of under $1.5 million had a strong tendency to support the proposal. These firms pointed out their difficulty in obtaining Federal contracts and attributed this to the preference of procuring agencies for firms above $1.5 million in annual receipts. Firms with annual receipts between $1.5 and $7.5. million, basically, did not want to lose eligibility for set-asides and stressed their dependence upon this benefit.

However, this group often recommended a more moderate reduction than $1.5 million. A number of firms reported their level of Federal contracts. A few of the larger firms now within the size standards received Federal contracts in the range of $600,000 to over $1 million per year. Those firms with receipts of under $1.5 million usually reported receiving no, or very few Federal contracts per year.

Comments From Federal Agencies

The commenting agencies had mixed positions. Three agencies, including the Department of Defense, supported the proposed reduction to $1.5 million. DoD accounts for 80 percent of all procurement to which the subject size standards apply. Five agencies, including the Veterans Administration, had no objection to the proposed $1.5 million size standard. The Veterans Administration is the largest non-defense Federal procurer of these services. Eight agencies opposed the full reduction. However, half of these suggested a reduction of less magnitude.

Industry Structure

Engineering services include numerous separate activities, but approximately 84 percent of the receipts of engineering firms is for design services used in construction. The engineering services industry as a whole, however, is not highly sensitive to Federal procurement activity; less than 6 percent of its receipts come from

Federal contracts. Many engineering firms have in-house capability for architectural services and a lesser number for surveying services. However, most firms engaged primarily in architectural or surveying services specialize only in that discipline and are relatively much smaller in average size than engineering firms. Table II contains the latest available Census data on industry structure.

TABLE II.—ENGINEERING, ARCHITECTURAL AND SURVEYING SERVICES INDUSTRY STRUCTURE IN BRIEF—1982 CENSUS

	Eng. firms	Arch. firms	Surv. firms
Number of Firms Operating Entire Year:			
With receipts under $1 million	16,231	11,119	5,937
With receipts $1 to 2.4 million	1,480	687	107
With receipts $2.5 to 4.9 million	550	185	26
With receipts $5.0 to 9.9 million	282	119	9
With receipts $10 million or more	258		
Totals	20,814	12,110	6,079
Average Firm Size in Receipts	$1,282,728	$464,126	$175,222
Percentage of 1982 Industry Receipts:			
Firms under $1 million in receipts	15.04	42.95	66.01
Firms $1.0 to 2.4 million in receipts	8.62	16.09	14.30
Firms $2.5 to 4.9 million in receipts	7.21	11.36	8.47
Firms $5.0 to 9.9 million in receipts	7.34	27.58	9.22
Firms with $10 million or more in receipts	61.79		
Total (percent)	100.00	100.00	100.00

Source: U.S. Bureau of the Census, 1982 "Census of Service Industries, SC 82-1-1."

Federal Contracting in Recent Years

The unique feature of Federal purchasing of engineering services is that the Federal agencies rate proposals in order of merit. The price and other terms are then negotiated with the highest rated proposal. If agreement is not reached, negotiations are made for the next highest rated proposal. This process continues until the contract is placed.

The Department of Defense accounts for approximately 80 percent of the value of all construction related architectural and engineering services purchased by the Federal Government. Legislation to constrain the Department of Defense from setting aside architecture and engineering service contracts exceeding $85,000 in total value went into effect starting in FY 1985. As a result, the percentage of dollars set aside by DoD dropped from 54.1 percent in FY 1984 to 22.6 percent for FY 1985. However, the small business share of awards dropped only 7 percentage points from 74.1 percent in FY 1984 to 66.6 percent in FY 1985, indicating that small business was successful in obtaining a large share of awards without benefit of set-aside provisions. These data are shown in Table III.

Table III.—Department of Defense Construction Related Architecture and Engineering Awards FY 1984–85

(Dollars in millions)

	FY 1984	1985
All awards	$413	$456
Awards to small business	$306	$304
Percent to small business	74.1	66.6
Value of set-asides	$224	$103
Set-aside percent—		
of all procurement	54.1	22.6
of small business share	73.0	33.9

Source: Department of Defense.

In non-defense agencies, slightly less than half the value of awards are through set-asides. Small firms receive about 90 percent of the awards of under $100,000. Over 80 percent of all awards are under $100,000 in value. The General Services Administration and the Veterans Administration are the leading procuring agencies for these services.

There are approximately 3,000 Federal awards per year in the subject industries. A relatively small percentage of firms receive more than one award in any year. Where more than one award was received in a year, the recipient usually had annual receipts in excess of $3.5 million. The dollar value of Federal awards to specific contractors with over $7.5 million in annual receipts was several times that to specific contractors with receipts of under $7.5 million. These figures do not include 8(a) program contracts.

The Decision to Set the Size Standard at $2.5 Million

The following factors were taken into consideration in setting the size standards for engineering, architectural, and surveying services at $2.5 million:

1. Based on the 1982 Census of Service Industries, engineering firms with receipts of under $1.0 million accounted for only 15.4 percent of the industry receipts. In general, SBA would prefer a higher level of coverage such as that associated with a size standard of $2.5 million in order to maintain some comparability with the coverage occurring in other service industries.

2. From the comments, and particularly those from Federal agencies, there is the indication that too few Federal contracts would be set-aside at a size standard of $1.5 million. This is due to the perceived absence of firms with sufficient technical capabilities with receipts of $1.5 million or less. At the $2.5 million size standard level there should be a sufficient number of firms with the technical capability to meet Government contracting requirements.

3. The information developed from the comments indicates that the small business share is made up largely of contracts awarded to firms with receipts from $2.5 to $7.5 million. The Department of Defense data show that from FY 1984 to FY 1985, those firms within the size standard were capable of maintaining almost all their share of the architecture and engineering contracts even though the set-aside value dropped to less than half. This indicates that firms between $2.5 and $7.5 million in annual receipts are competitive in the unrestricted market. There would seem to be no reason to continue small business preference for these firms. Therefore, the Agency is setting the size standard to direct assistance to the smaller firms not currently receiving an adequate share of the set-aside contracts.

Compliance With Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

This final rule defines which firms are eligible to bid on Federal contracts set aside for small business for engineering, architectural, and surveying services where these services are not for military and aerospace equipment and weapons. SBA has determined that this regulation is a major rule as defined by Executive Order 12291 because it is likely to have an annual economic effect of $100 million or more. In FY 1985, the Department of Defense (DoD) set aside $103 million of engineering, architectural, and surveying services contracts and non-defense agencies are estimated to have set aside $32 million of such contracts. Thus, the total amount of set-asides which are likely to be affected by this rule is approximately $135 million, well above the $100 million criterion for a major rule. SBA notes, however, that this rule does not qualify as a major rule under the other two criteria of the Executive Order: it would not be likely to result in a major increase in costs or prices, nor would it be likely to have a significant adverse effect on the United States economy.

SBA certifies that this regulation will not have a significant adverse impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601 *et seq.* It may, however, have some negative impact on a few firms which are currently considered small within SBA's size standards, but which are larger in size than the industry average. Therefore, in compliance with the Regulatory Flexibility Act and Executive Order 12291, SBA offers this regulatory flexibility and economic impact analysis.

There are many more firms in the industry than Federal contracts awarded in any year. Thus, most firms do not receive a single Federal contract in any year, but depend on the non-Federal marketplace for their business. Most firms that receive awards in any year receive only one award and that, most often, is less than $100,000 in value. The few firms that receive more than one award in any year are not generally dependent upon Federal contracts for the bulk of their business. Furthermore, most contracts in these industries are not set aside for exclusive small business bidding and would not be affected by this rule. There is no evidence that any firm's loss of eligibility to bid on set-asides would result in its discontinuance in business.

The subject industries are comprised of 39,003 firms, according to the latest Census. Of these, 38,505 are currently eligible under SBA size standards. Under a size standard of $2.5 million, 37,574 firms will retain eligibility and 931 firms will lose eligibility. Most losing eligibility are not in the Federal marketplace; thus, this rule affects only a minority of firms who use Federal contracts to supplement their sales. Firms losing eligibility to bid on contracts set aside for small business will still be able to bid on the bulk of Federal contracts which are not presently set aside. Those losing eligibility for set-asides are the larger of the now eligible firms and are generally in a stronger economic position than firms in the sector retaining eligibility.

This regulation is likely to have a favorable impact on small entities with receipts below the reduced size standard. Federal contracts set aside for small business should be directed to those firms with a greater need to participate in the Federal marketplace. Thus, those businesses which are truly small will benefit the most from this rule. The rule, by itself, imposes no costs on the Government, nor on firms seeking Government procurements. Consequently, the smaller firms will enjoy the net benefits of the rule.

These size standards will also be used to determine a firm's eligibility to receive an SBA business loan. Almost all SBA loans are made to the smallest of firms, often those just starting in business or in the early stages of growth. Thus, this rule will have virtually no impact on engineering, architectural or surveying firms at a size level of $2.5 million or more in annual receipts for purposes of financial assistance.

The rule defines the maximum size a firm may be to receive SBA assistance and to bid on contracts set aside by all Federal agencies for small firms for the subject services. The legal bases for this final rule are sections 3(a) and 5(b)(6) of the Small Business Act, (15 U.S.C. 632(a) and 634(b)(6)). There are no Federal rules which would duplicate, overlap or conflict with this final rule.

SBA certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act. 44 U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant Programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small business.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 632(a) and 634(b)(6).

§ 121.2 [Amended]

2. The table in § 121.2(c)(2), for Major Group 89—Miscellaneous Services, Item 8911, is revised to read as follows:

SIC	Description	Size Standards in number of employees or millions of dollars
	Major Group 89—Miscellaneous Services	
8911	Engineering Services, Except Military and Aerospace Equipment, and Except for Military Weapons.	$2.5
8911	Engineering Services for Military and Aerospace Equipment and for Military Weapons (Except Marine Engineering).	13.5
8911	Marine Engineering and Naval Architecture	9.0
8911	Architectural Services (Except Naval) and Surveying Services	2.5

Dated: June 3, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12858 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-19; Special Conditions No. [illegible]-10]

Special Conditions: American Aviation Industries Reengined JetStar Model 1329 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) to American Aviation Industries (AAI) for a Supplemental Type Certificate (STC) for the AAI reengined JetStar Model 1329 series airplane. The reengined JetStar airplanes will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The ATTCS will allow the airplane to take off with less than maximum takeoff thrust approved for the airplane; and, if an engine fails, the system will automatically provide maximum takeoff thrust on the operating engine. These special conditions contain safety standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the regulations applicable to the AAI reengined JetStar airplane because of the novel or unusual features.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: James Walker, Policy and Procedures Branch, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1984, American Aviation Industries (AAI), 1870 Roscoe Boulevard, Van Nuys, California 91406, made an application to the Federal Aviation Administration (FFA), Northwest Mountain Region, for an STC to reengine the JetStar Model 1329 series airplane with two General Electric Model CF34–1A turbofan engines. The JetStar Model 1329 series airplane currently has installed four Pratt and Whitney Model JT12A turbobjet-engines or four Garrett AiResearch Model TFE–731 turbine engines. The Model CF34–1A engine installation will include an ATTCS.

On March 9, 1984, Volpar, Inc. Van Nuys, California, dba American Aviation Industries, Inc., petitioned for an exemption from § 21.19(b)(1) of the Federal Aviation Regulations (FAR) to permit Volpar, Inc., dba American Aviation Industries, Inc., to apply for supplemental type certification of a design change from four engines to two engines on the Lockheed Model 1329 series JetStar airplane. Section 21.19(b)(1) requires a new application for type certificate if the proposed change to a product is a change in the number of engines or rotors. Exemption No. 4225 was granted on December 19, 1984. The exemption permitted the applicant to apply for an STC for a design change to the JetStar Model 1329 airplane from a four-engined to a two-engined airplane provided that compliance is shown with § 21.19(a) and with the applicable airworthiness regulations of Part 25 in effect on the date of application for the design change to all areas, systems, components, equipment, or appliances that are changed or significantly affected by the modification.

The AAI supplemental type certificated airplane, Model 1329 series, is a low wing, pressurized transport category airplane with certificated takeoff gross weights ranging from 40,921 pounds to 44,500 pounds. The airplane has a maximum permissible altitude of 45,000 feet and a total occupancy of 12 persons, including a crew of two. The modified airplane series will be equipped with two General Electric Model CF34–1A turbofan engines each rated at 8,650 pounds for normal takeoff thrust at sea level standard day and 9,140 pounds for maximum takeoff thrust at sea level standard day and will incorporate an ATTCS. The ATTCS is designed to automatically increase the thrust on the operating engine to the maximum installed thrust approved for the takeoff ambient conditions, in the event an engine fails during the takeoff.

The ATTCS proposed for this installation is similar to the currently approved system on the Canadair Challenger Model 601 equipped with the same CF34 engine (48 FR 12334; March 24, 1983) and incorporates the manual thrust increase/decrease capability. The application of maximum takeoff thrust, whether set by the ATTCS or manually, will not result in the operating limits of the engine to be exceeded.

The supplemental type design of the JetStar Model 1329 airplane equipped with the ATTCS contains a number of novel and unusual design features for an airplane type certificated under the airworthiness requirements incorporated by reference in Type Certificate No. 2A15 or under the applicable airworthiness requirements in effect on the date of the STC application for change to that type certificate. In either case, the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate and the certification basis for the reengining STC, and to support a finding by the Administrator that no feature or characteristic of the airplane with the ATTCS installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum power increment which may be applied to the operating engine by the ATTCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff thrust approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff thrust would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

Discussion of Comments

Notice of proposed special conditions No. SC–86–1–NM for the AAI Reengined JetStar Model 1329 series airplane was published in the Federal Register on March 26, 1986 [51 FR 10402]. No comments were received in response to this published notice.

Type Certification Basis

The supplemental type certification basis for the American Aviation Industries modified JetStar Model 1329 series airplanes equipped with two General Electric Model CF34–1A engines and an ATTCS is:

1. Part 4b of the Civil Air Regulations (CAR) (effective December 31, 1953); Amendments 4b–1 thru 4b–9 together with Special Civil Air Regulation SR–422B, SR–450A and the Special Conditions contained in FAA letter to Lockheed dated December 19, 1958, as revised by FAA letter to Lockheed dated January 10, 1961. Also the following sections of Part 25 of the Federal Aviation Regulations (FAR) through Amendment 25–56 in lieu of the sections of the CAR 4b shown in parenthesis are only for those items which have been established to be affected by the engine change as follows: Part 25 of the FAR, Subpart B, 25.21–25.237, 25.251,* 25.253, 25.255 (4b.160–4b.190 and SR–422B, 4T.110–4T.122), 25.301–25.303 (4b.216), 25.307–25.371 (4b.216), 25.571 (4b.270), 25.581, (for engine/nacelle), 25.601–25.629 (4b.300–4b.308) (for engine/nacelle support structure), 25.671 (4b.320), 25.672, 25.681–25.685 (4b.327–4b.329) (for rudder bias system), 25.863–25.867 (4b.385, 4b.490), 25.901 (4b.400), 25.903 (4b.401), 25.933 (4b.407), 25.934, 25.939–25.943 (4b.408), 25.951–25.953 (4b.410–4b.411), 25.955 (4b.413, 4b.414), 25.959 (4b.416), 25.961 (4b.417), 25.991–25.999 (4b.430–4b.436), 25.1011–25.1025 (4b–440–4b.445), 25.1041–25.1045 (4b.450–4b.457), 25.1091 (4b.460), 25.1093 (4b.461), 25.1103 (4b.463), 25.1107 (4b.466), 25.1121 (4b.467), 25.1123 (4b.467), 25.1141–25.1145 (4b.470–4b.472), 25.1155 (4b.474), 25.1163–25.1165 (4b.477–4b.478), 25.1181–25.1191 (4b.480–4b.486), 25.1193–25.1207 (4b.487–4b.490), 25.1301 (4b.600, 4b.601), 25.1305–25.1309 (4b.604–4b.606), 25.1322, 25.1337 (4b.613), 25.1351 (4b.621–4b.622), 25.1353 (4b.625), 25.1355 (4b.623), 25.1357 (4b.624), 25.1359 (4b.626), 25.1363, 25.1461, 25.1505 (4b.711–4b.712), 25.1513 (4b.717), 25.1519 (4b.719), 25.1521 (4b.718), 25.1527 (4b.722), 25.1529, 25.1533–25.1543 (4b.730, 4b.731), 25.1549 (4b.734), 25.1551 (4b.735), 25.1581–25.1587 (4b.740–4b.743 and SR–422B, 4T.123 and 4T.743).

—Part 36 of the FAR (Stage 2 noise level limits), Amendment current on the date of certification.

—Special Federal Aviation Regulations (SFAR) 27, Amendment current on the date of certification.

* Section 25.251, Amendment 22, with the Special Conditions contained in FAA letter to Lockheed dated December 19, 1958 (CAR Ref. 4b.160(b) and 4b.711(b) "Operation V–N Envelope" and stipulation that the first paragraph of the Special Conditions must be interpreted to mean "A buffet onset boundary chart and investigation of inadvertent excursion beyond the boundaries of buffet onset."

—Equivalent safety findings: CAR 4b.160 and 4b.161.
—Special Conditions contained herein for installation of an "Automatic Takeoff Thrust Control System (ATTCS)."

2. With the concurrence of the FAA, American Aviation Industries has elected to voluntarily comply with the following requirements.

—CAR 4b.361: Ditching provisions.
—CAR 4b.640: Ice protection.
—Part 36 of the FAR, Appendix C, Section C36.5(a)(3) (Stage 3 noise level limits).

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, may be issued after public notice, in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to American Aviation Industries for the reengined JetStar Model 1329 series airplane equipped with an automatic takeoff thrust control system (ATTCS).

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

A. *General.* With the ATTCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. *Definitions.*

1. *ATTCS.* An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATTCS takeoff, the critical interval is between V1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required actual flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph:

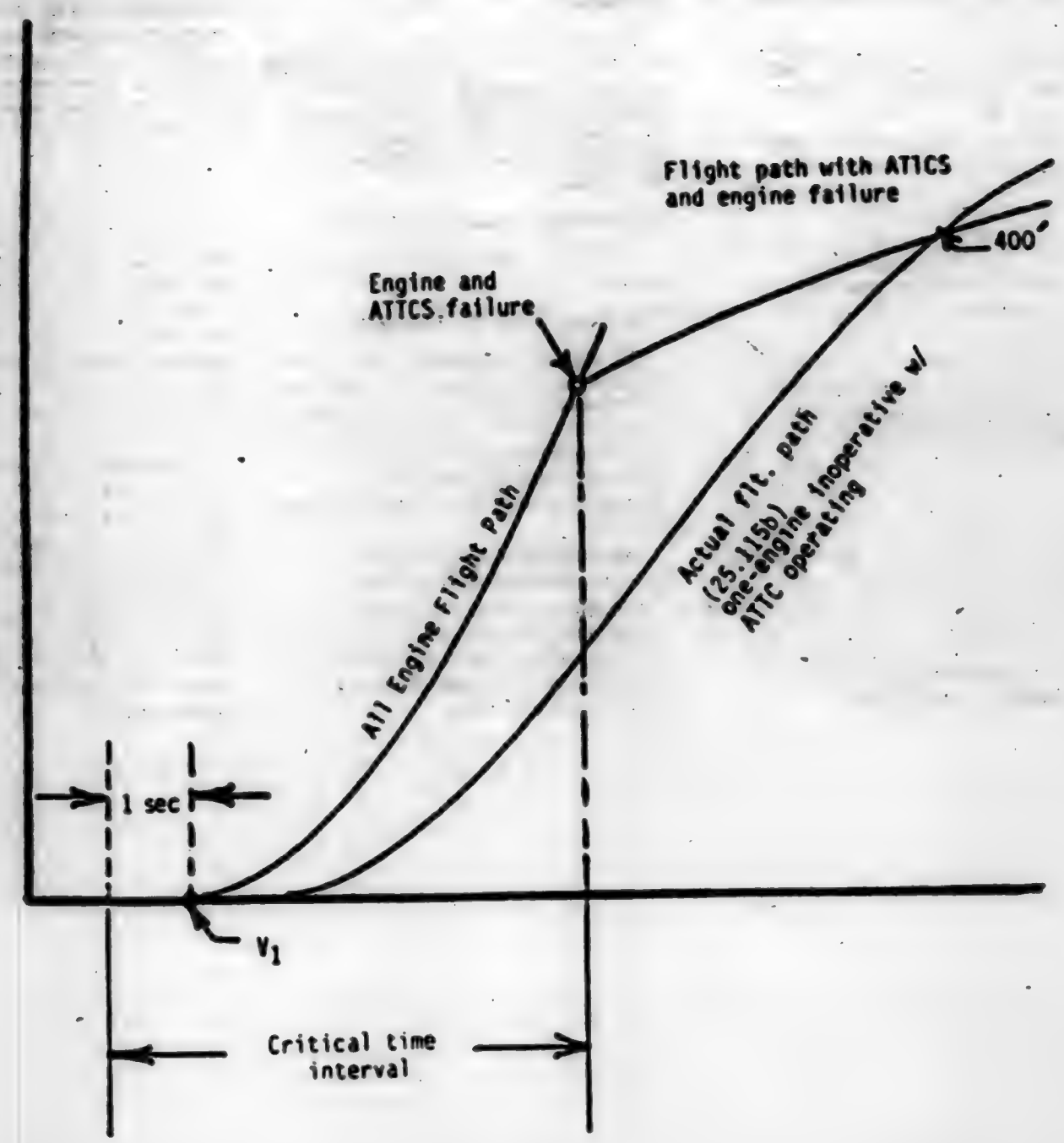

3. *Takeoff Thrust.* Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the performance and reliability requirements as follows:

1. An ATTCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATTCS failure and engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTCS system functioning.

D. *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power level position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. *Powerplant Controls.*

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the

failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to:

a. Apply thrust on the operating engine, following an engine failure during takeoff, to achieve the maximum approved installed takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum installed takeoff thrust approved for the airplane under existing conditions through the use of the power lever, except that for aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levers in the event of an ATTCS failure, provided the means is located on or forward of the power levers, is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meets the requirements of § 25.777, paragraphs (a), (b), and (c).

c. Provide a means to verify to the flightcrew prior to takeoff that the ATTCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

Issued in Seattle, Washington, on May 22, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12819 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASW-6]

Amendment of Transition Area; Shawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Shawnee, OK. The intended effect of the amendment is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Prague Municipal Airport, Prague, OK. The Shawnee transition area is being amended because it extends to within 5 nautical miles southwest and 2 nautical miles south of the Prague Municipal Airport and already provides part of the necessary controlled airspace. This amendment is necessary since an SIAP is being developed using a new nonfederal nondirectional radio beacon (NDB) that the city of Prague, OK, is establishing to serve the Prague Municipal Airport. Coincident with this action the airport status will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:

History

On February 24, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Shawnee, OK, transition area (51 FR 7951).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Shawnee, OK, transition area, thereby establishing a 700-foot transition area encompassing the Prague Municipal Airport, Prague, OK. Coincident with this action the Prague Municipal Airport status will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Shawnee, OK—Amended

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

The airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Shawnee Municipal Airport (latitude 35°21'16" N., longitude 96°56'33" W.); within 3.5 miles each side of the 007-degree bearing from the Shawnee NDB (latitude 35°20'51" N., longitude 96°56'48" W.) extending from the 8.5-mile radius area to 11.5 miles north of the NDB; within an 8.5-mile radius of Seminole Municipal Airport (latitude 35°16'15" N., longitude 96°40'30" W.); and within 3.5 miles each side of the 353-degree bearing from the Seminole NDB (latitude 35°16'08" N., longitude 96°40'30" W.) extending from the 8.5-mile radius area to 11.5 miles north of the NDB; within an 8.5-mile radius of Prague Municipal Airport (latitude 35°28'45" N., longitude 96°43'03" W.); and within 4 miles each side of the 360-degree bearing from the Prague NDB (latitude 35°31'00" N., longitude 96°43'05" W.) extending from the 8.5-mile radius area to 14 miles north of the NDB, excluding the portion which overlies the Chandler, OK, transition area.

Issued in Fort Worth, TX, on May 23, 1986.

Richard L. Fallor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-12820 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-8]

Designation of Transition Area; Madisonville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate transition area at Madisonville, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Madisonville Municipal Airport. This amendment is necessary since there is a proposed VOR/DME SIAP to the Madisonville Municipal Airport utilizing the Leona VORTAC (LOA). This action will benefit aircraft conducting instrument flight rules (IFR) activity at Madisonville Municipal Airport. Coincident with this action the airport status is changed from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2522.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Madisonville, TX, transition area (51 FR 7082).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area at the Madisonville Municipal Airport, Madisonville, TX. This action will ensure segregation of aircraft operating under IFR conditions and other aircraft operating under VFR. This amendment will also change the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Madisonville, TX—New

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Madisonville Municipal Airport (latitude 30°54'05" N., longitude 95°57'05" W.).

Issued in Fort Worth, TX, on May 23, 1986.

Richard L. Peiler,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-12821 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AEO-5]

Alteration of Transition Area; New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the New Bern, North Carolina, transition area to accommodate a new instrument approach procedure which has been developed to serve Simmons-Nott Airport. This action will lower the base of controlled airspace, southwest of the airport, from 1,200 to 700 feet above the surface. This additional controlled airspace is required for protection of Instrument Flight Rules (IFR) aeronautical activities.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, March 31, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the New Bern, North Caroline, transition area to designate additional controlled airspace southwest of Simmons-Nott Airport. This airspace is required to support IFR aeronautical activities in the New Bern area (51 FR 10881). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the New Bern, North Caroline, transition area to accommodate revised instrument approach procedures serving Simmons-Nott Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

New Bern, NC—[Amended]

By adding at the end of the present description the following words ". . . within 4.5 miles southeast and 6.5-miles northwest of the Simmons-Nott localizer southwest course, extending from the 6.5-mile radius area to 12.5 miles southwest of the outer marker . . . ."

Issued in East Point, Georgia, on May 29, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-12822 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3184]

Albert Schneider; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the President of Cellular Capital Corporation to cease making misrepresentations to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission. Additionally, respondent is required to make two affirmative disclosures to prospective applicants: (1) That the purchase of a cellular application is a high-risk investment, and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

DATE: Complaint and Order issued May 23, 1986*.

FOR FURTHER INFORMATION CONTACT: David C. Fix, FTC/H-272, Washington, DC 20580. (202) 523-3814.

SUPPLEMENTARY INFORMATION: On Tuesday, March 11, 1986, there was published in the **Federal Register**, 51 FR 8335, a proposed consent agreement with analysis In the Matter of Albert Schneider, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.15 Business status, advantages, or connections; § 13.15-80 Government connection; § 13.70 Fictitious or misleading guaranties; § 13.85 Government approval, action, connection or standards; 13.135 Nature of product or service. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1425 Government connection.

List of Subjects in 16 CFR Part 13

Cellular lottery preparation services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-12847 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 303

Textile Fiber Products Identification Act; Request for Establishment of a Generic Name

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: On December 6, 1983, Celanese Corporation applied to the Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures. On May 29, 1985, the Commission published a Notice of Proposed Rulemaking (50 FR 21855) soliciting comments on whether Rule 7 should be amended to include a new generic definition covering Celanese's fiber. This document summarizes the comments received in response to the May 29, 1985, document and sets out the Commission's final action.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney (202/376-8934), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On December 6, 1983, Celanese Corporation applied to the Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures. The application was filed pursuant to Rule 8[1] of the Rules and Regulations under the Textile Fiber Products Identification Act[2] and Subpart C of Part 1 of the Commission's Rules of Practice.[3] In its application, Celanese declared that the generic names presently established by the Commission in Rule 7[4] are inappropriate for its fiber because of the fiber's uniqueness. Celanese proposed that the new fiber be defined as:

A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups

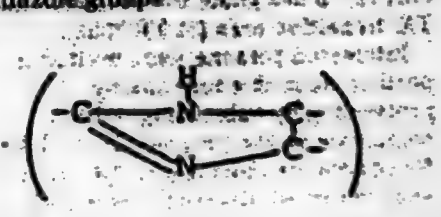

as an integral part of the polymer chain.

Celanese included an alternative definition, which is as follows:

A manufactured fiber in which the fiber-forming substance is a long chain aromatic nitrogenous polymer, in which at least 85% by weight of the polymer is represented as consisting essentially of reoccurring units of the formula:

*Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave. NW., Washington, DC 20580.

[1] 16 C.F.R. 303.8.
[2] 15 U.S.C. 70.
[3] 16 C.F.R. 1.26.
[4] 16 C.F.R. 303.7.

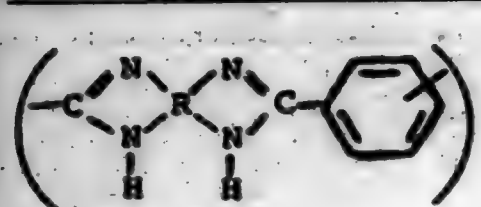

wherein R is an aromatic nucleus symmetrically tetra substituted with nitrogen atoms forming the benzimidazole ring paired upon adjacent carbon atoms of the said aromatic nucleus.

Celanese also included several suggested names for the fiber as well as technical data and other information in support of the petition.

On May 29, 1985, the Commission published a Notice of Proposed Rulemaking [5] soliciting comments on whether Rule 7 should be amended to include a new generic definition covering Celanese's fiber. The Notice also stated that a Certificate of No Effect under the Regulatory Flexibility Act had been forwarded to the Small Business Administration.

This Notice summarizes the comments received in response to the May 29 Notice and sets out the Commission's final action in this matter.

Section A. Background

Rule 6 [6] of the Rules and Regulations under the Textile Fiber Products Identification Act requires manufacturers to use the generic names of the fibers contained in their textile fibers products in making required disclosures of the fiber content of the products. Rule 7 [7] sets forth the generic names and definitions that the Commission has established for synthetic fibers. These generic synthetic fibers have been found by the Commission to be individually unique and distinctive by virtue of their chemical composition and physical properties.

Rule 8 [8] sets out the procedures for establishing new generic names. Upon receipt of an application for a new generic name, the Commission must, within 60 days, either deny the application or assign to the fiber a numerical or alphabetical symbol for temporary use during further consideration of the application. The Commission may then initiate rulemaking proceedings under Subpart C of Part 1 of its Rules of Practice [9] to determine whether to establish a new generic name and definition or to designate the proper existing generic name for the fiber.

Celanese submitted its application in this matter in December of 1983. After an initial analysis, the Commission, on February 29, 1984, granted Celanese the designation "CE0001" for temporary use in identifying the fiber until the final determination could be made as to the merits of the application for a new generic name.

In its application, Celanese describes the fiber, its manufacture and possible uses as follows:

> [T]he new fiber is a polybenzimidazole fiber . . . . The process for making the fiber involves the condensation reaction of tetraaminobiphenyl and diphenyl isophthalate. In the first prepolymerization step, equal mole proportions of the monomers are charged to a reactor, blanketed with an inert gas, and then heated and agitated at atmospheric pressure. A low molecular weight, glassy, friable foam forms during the initial heating period. The foam is broken up and reheated resulting in a brown amorphous polybenzimidazole polymer. An extrusion dope is prepared by dissolving the polybenzimidazole polymer in dimethyl acetamide containing minor amounts of lithium chloride at a temperature of about 235 ° C. and under an autogenous pressure of about 80 psi. The polymer is present in a concentration of approximately 24% by weight based upon total weight of the dope. The dope is cooled to 100 ° C. and filtered. Filaments are then dry down spun in a column having a down draft flow [of nitrogen], the temperature of the column being maintained within the range of from 200 ° C. to 300 ° C. The final fiber is characterized by reoccurring units of the following formula:

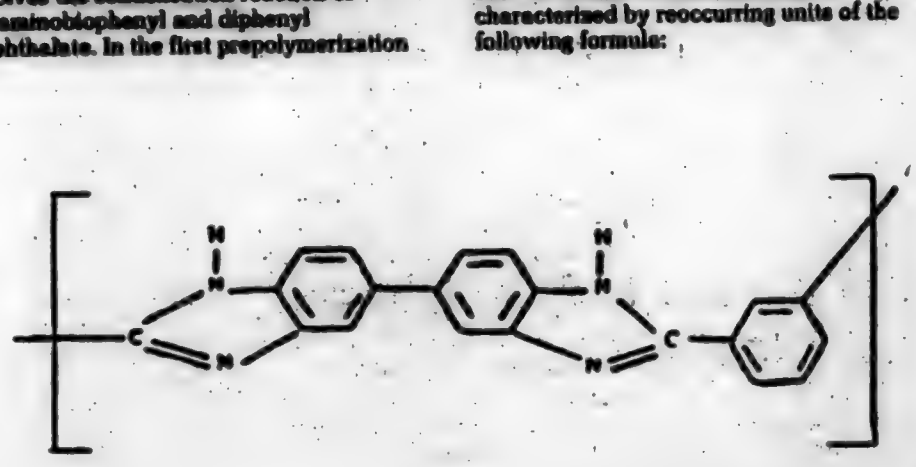

> The fiber may then be subjected to various heat, shrink or thermal stabilization treatments such as sulfonation, which may account for up to 35% of the fiber weight.
>
> * * * * *
>
> In addition to the radical chemical differences between a polybenzimidazole fiber and any fiber for which a generic name and definition has been granted . . . . radically different performance characteristics are also found . . . . The exceptional stability of polybenzimidazole provides important properties that benefit consumers in apparel and household applications, including thermally protective clothing.
>
> Apparel offering protection from high heat and direct flame must be nonflammable, have high thermal stability and low heat-shrinkage. Abrasion resistance, flexibility and comfort are also desirable in such apparel. These properties are inherent in polybenzimidazole. Fabrics of polybenzimidazole do not burn or melt and thermally stabilized polybenzimidazole fabrics have very low shrinkage when exposed to a flame. Even when charred, polybenzimidazole fabrics remain supple and intact. Polybenzimidazole's thermal and chemical properties combined with its flexibility and outstanding comfort give it possible applications in high-performance protective apparel.
>
> In addition, properly designed fabrics of polybenzimidazole fiber have pleasant esthetics and are comfortable. One reason for their comfort is the fiber's high moisture regain., At 65% relative humidity and 68 °F. (20 °C.), polybenzimidazole fabric has a moisture regain of 15%. (The corresponding regain figure for cotton is 10%).
>
> * * * * *

Celanese proposed in its petition that the new fiber be identified, in descending order of preference, as: (1) PBI, (2) arazole, (3) benzimid, (4) imidazole, and (5) benzimidazole.

In subsequent correspondence with Commission staff, Celanese withdrew the suggested names "PBI," "benzimid," "imidazole," and "benzimidazole" from consideration from their petition, and indicated a preference for "arazole."

In the May 29 Notice, the Commission solicited comment on all aspects of the appropriateness of Celanese's application, but especially comments on which alternative definition, if either, is more appropriate, and whether the application meets the following three criteria, which have been set out by the Commission as grounds upon which it

[5] 50 FR 21855 (May 29, 1985) (the "Notice").
[6] 16 CFR 303.6.
[7] 16 CFR 303.7.
[8] 16 C.F.R. 303.8.
[9] 16 C.F.R. 1.29.

would grant petitions for new generic names.[10]

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

2. The fiber must be in active commercial use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

Section B. Summary and Analysis of Comments

1. Summary

There were three comments submitted during the comment period in this proceeding.[11]

Dr. Wayne St. John, of the Clothing and Textiles Programs of the Department of Vocational Educational Studies of the University of Southern Illinois[12] commented that Celanese's request for a new generic name should be granted. Dr. St. John noted that the chemical structure of Celanese's new fiber is radically different from the fibers currently listed in the Textile Rules. He posed a question as to whether the fiber is or will be in active commercial use, and noted that, if the fiber does not become active commercially, the granting of a new generic name would be important to the consuming public at large. Dr. John also expressed a preference to Celanese's proposed name "PBI" because that name is already well known to professionals in textiles. As a second choice, Dr. St. John selected "benzamid." He was not in favor of the Commission's adoption of Celanese's first choice, "arazole," because of possible confusion between that proposed name and the existing generic name "aramid."[13] Finally, Dr. John noted that, while the first definition proposed by Celanese seems appropriate, the structure should have double bond between the two right hand carbon atoms.

A second comment was submitted by the Textile Fibers Department of the Industrial Fibers Division of the E.I. du Pont De Nemours & Co.[14] Du Pont was also concerned about the possibility of confusion resulting from the similarity of "arazole" to "aramid."

Du Pont noted:

> Aramid fiber products have participated in the thermal protective apparel industry since at least as early as 1967. The performance features and physical properties of garments made of aramid fibers as well known by the trade and by purchasers of such clothing. Similarly, the performance features and physical properties of products made of Celanese's PBI fiber are well known.
>
> Thermal protective clothing and other textile products made of aramid fiber are recognized in the trade as separate and distinct from products made from PBI fiber. In apparel applications, this distinction assists purchasers in selecting a product that is economical and best meets a specific need.
>
> Du Pont believes that the distinction between aramid and PBI fiber will be seriously jeopardized if the Commission approves Celanese's petition to designate the term "Arazole" as a generic name for polybenzimidazole fiber. Such a term which employs a prefix similar to that used in the term aramid is likely to be mistaken as representing a product which features the same or similar physical properties, or which originates from the same chemical elements or process as aramid fiber products used in the thermal protective clothing market.

The third comment came from the petitioner, Celanese.[15] In this comment, Celanese responded to the points raised by Dr. St. John and by Du Pont in their comments.

Celanese first addressed the point, made by Dr. St. John, that "the structure shown should have a double bond between the two right hand carbon atoms."[16] Celanese agreed that a double bond or bonds should indeed be present on the two right hand carbons, but noted that the exact positioning of the bond or bonds depends upon that chemical moiety which is attached to the imidazole group. Thus, Celanese noted, either of the following structures could be correct:

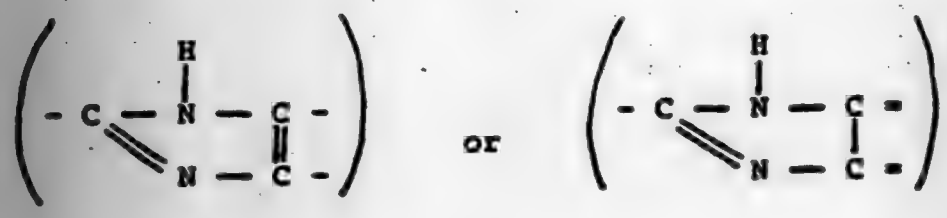

Celanese stated that the term "imidazole group" is well recognized in the area and that the presence of a plurality of structural formulae would not improve the definition. Accordingly, Celanese proposed to amend the definition by deleting the structural formula and causing the definition to read as follows:

> A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups as an integral part of the polymer chain.

Celanese noted that precedent exists in the definitions of manufactured fibers set forth in Rule 7 of the Textile Rules for a definition that is devoid of structural formula.

The remainder of Celanese's comment was devoted to a discussion of the appropriateness of Celanese's proposed name for the new fiber, "arazole," and the allegations in the comments from Dr. St. John and Du Pont that "arazole" would be confused by the general public with the generic name "aramid".[17] Celanese made three points in response to these allegations.

First, Celanese noted that the proposed name "arazole" is a registered trademark that was registered without opposition in the United States Patent and Trademark Office and that the registration was issued for the name as applied to polybenzimidazole fiber for various end use applications.

Second, in response to Du Pont's objections that the fact that polybenzimidazole fibers are frequently woven together with aramid fibers for use in thermally protective clothing would cause confusion, Celanese pointed out that commercially acceptable fabrics containing polybenzimidazole are not limited to blends containing polybenzimidazole and aramid, and that polybenzimidazole fibers are bonded with fire resistant

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[10] 38 FR 34112, 34114 (December 11,1973).

[11] The comments have been placed on the public record in this proceeding under category 18 of Public Record Docket 208. They are designated 18–2 through 18–4. References to the comments will be made by means of the name of the commenter, the number of the comment and, where appropriate, the page of the comment.

[12] 18–3. Dr. St. John notes that he has a Ph.D in organic chemistry.

[13] 16 CFR 303.7(a).

[14] 18–4 ("Du Pont").

[15] 18–3.

[16] St. John, 18–2.

[17] 16 CFR 303.7(a).

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cotton, wool and rayon, and glass and modacrylic fibers. Celanese concluded that questions concerning possible confusion in fiber identification of thermally protective clothing should not be limited, therefore, to a comparison between the proposed name "arazole" and the established generic term "aramid", but should be concerned with all conceivable fiber blends containing polybenzimidazole.

Third, Celanese addressed the question of the similarity between the words themselves. Specifically, Celanese took issue with Du Pont's position that a new generic name that employs the prefix "ara" would cause confusion in the trade when used to identify a fiber use in the same thermally protective clothing as the existing fiber "aramid," which has the identical prefix "ara." Celanese pointed out that there are two pairs of fiber definitions under the rules that share common prefixes—"nytril"[18] and "nylon"[19] and "vinal"[20] and "vinyon."[21] Celanese further noted that there are many registered and pending trademarks that share the prefix "ara,"[22] suggesting the conclusion that the United States Patent and Trademark Office does not believe that the common prefix "ara" in itself causes confusion in marketing textile goods. Celanese also noted, on this point, that, with respect to the proposed name "arazole" and the existing generic name "aramid," the suffixes "zole" and "mid" are radically different, a point that Celanese suggests is important, in view of the four pairs of generic names under Rule 7 of the Textile Rules that share common suffixes:

acrylic [23]	azlon [24]
modacrylic [25]	nylon [26]
acetate [27]	rayon [28]
triacetate [29]	vinyon [30]

Celanese then concluded by citing a "well recognized rule of law in trademark proceedings" that "Marks must be compared in their entireties and not dissected into their component parts in determining likelihood of confusion."[31]

At the end of its comment, Celanese re-elected, as a second choice for a proposed name, the name "PBI", in the interest of "advancing the processing of the instant Petition and Application . . . ." Celanese noted that "PBI is a registered trademark of Celanese Corporation for polybenzimidazole fiber for various end use applications . . ." but pointed out that the registration is for a stylized mark, the" acronym "PBI" having been dedicated to the public.[32]

2. Analysis

The Commission has considered all the information available to it in this matter and has concluded that Celanese's application meets the three aforementioned criteria for granting a new generic name and definition for its fiber.

Distinct Chemical Composition

The Commission believes, after studying Celanese's application and consulting with experts knowledgeable in the area, that Celanese's fiber has a chemical composition radically different from other fibers. More specifically, the polybenzimidazole polymer, which is the fiber-forming substance, consists of an aromatic polymer having reoccurring imidazole groups. This type of chemical constitution is unique with respect to the current definitions of manufactured fibers listed in Rule 7.

The Commission believes that the distinctive chemical composition of Celanese's fiber results in distinctive physical properties of significance to the general public. It is already recognized in the literature and general knowledge in this area that polybenzimidazole, because of its extreme flame resistance and low smoke emission when exposed to heat, is ideal for heat resistant apparel for fire fighters, astronauts, fuel handlers, race car drivers, welders and foundry workers, and hospital and operating room personnel. It is also ideal for upholstery, curtains, draperies and carpets in commercial aircraft, hospitals and submarines.

Active Commercial Use

According to Celanese, polybenzimidazole fiber is presently manufactured by Celanese in a plant having an annual capacity of approximately one million pounds. In addition to the applications mentioned above, Celanese is beginning to produce polybenzimidazole fabrics that are designed specifically for children's sleepwear.

Importance to the Consuming Public at Large

The applications discussed above for polybenzimidazole are certainly of significance to the consuming public at large, rather than to a small group of knowledgeable professionals. Thermally protective wearing apparel, as well as flame resistant interior furnishings are certainly important to the consuming public. It is important for the public to be able to recognize the flame-resistant characteristics of this fiber, and the Commission believes that granting it a new generic name and definition will help further the public's ability to do so.

The Commission will grant, therefore, Celanese's application for a new fiber name and definition. The Commission must determine, however, which name to assign to polybenzimidazole and must decide on a definition, since several have been proposed in this matter.

The Generic Name

As noted earlier in the discussion of comments submitted in this matter, two of the three commenters, Dr. St. John and Du Pont, opposed adoption of Celanese's proposed choice for a generic name—"arazole." These commenters believed that, because of the similarity between "arazole" and the existing generic definition "aramid," the granting of "arazole" would result in consumer and industry confusion between the two names. The Commission agrees with this position.

The third commenter, Celanese, argued against this position in a well-presented comment. Celanese noted that "arazole" had been registered as a trademark without opposition, that polybenzimidazole is combined with fibers other than aramid to produce textile products, and that there are similar sounding definitions already in Rule 7, such as "nylon" and "nytril," "acrylic" and "modacrylic," and others. The Commission, while recognizing the persuasiveness of these arguments, remains concerned that there would be confusion between these two similar sounding names—"arazole," proposed by Celanese, and "aramid," already a definition under Rule 7. Therefore, in order to avoid adding to the admittedly somewhat confusing names in Rule 7, the Commission selects Celanese's second choice, "PBI." This acronym is already recognized in the industry as identifying polybenzimidazole. In addition, petitioner Celanese has registered the stylized mark "PBI" with the U.S. Patent and Trademark Office without opposition to either the stylized mark or the acronym itself. Since the

[18] 16 CFR 303.7(h).
[19] 16 CFR 303.7(i).
[20] 16 CFR 303.7(l).
[21] 16 CFR 303.7(n).
[22] Celanese attached a compilation (Exhibit A) of such names to its comment.
[23] 16 CFR 303.7(a).
[24] 16 CFR 303.7(g).
[25] 16 CFR 303.7(b).
[26] 16 CFR 303.7(i).
[27] 16 CFR 303.7(c).
[28] 16 CFR 303.7(d).
[29] *Id.*
[30] 16 CFR 303.7(n).

[31] Citing "Shearing Corporation v. Alza Corporation (PO TM TApp Bd) 207 USPQ 504."
[32] 16-3/7.

acronym "PBI" has been dedicated to the public, there is no impediment to its being used as a generic name.

The Generic Definition

The Commission agrees with the comments submitted by Dr. St. John and by Celanese with respect to the modifications of the originally proposed definition for polybenzimidazole. Consequently, the Commission is adopting the definitions proposed by Celanese in its comment. This definition deletes the structural formula, for which there is precedent in Rule 7, and the Commission has adopted, without change, Celanese's final proposed definition.

The designation "CE0001", previously assigned petitioner's fiber for temporary use, is hereby revoked as of the effective date of this amendment.

Section C. Regulatory Flexibility Act

In publishing the proposed amendments, the Commission determined that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis, 5 U.S.C. 603, 604, were not applicable because it was believed the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. In considering the economic impact of the proposed amendment on manufacturers and retailers, the Commission noted that the amendment would impose no obligations, penalties or costs. In light of this, it was certified under the provisions of section 5 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this aspect of the rulemaking during the comment period.

On the basis of all the information before it, the Commission has determined the final regulations will not have a significant economic impact on a substantial number of small entities. Consequently, the Commission concludes that a final regulatory flexibility analysis is not required and has filed a Certificate of No Effect under the Regulatory Flexibility Act with the Small Business Administration to that effect.

Section D. Paperwork Reduction Act

This amendment contains no provisions that constitute information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, and the implementing regulation, 5 CFR 1320.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

Accordingly, after consideration of the views, arguments and data submitted pursuant to the May 29 Notice in this matter, and in consideration of other pertinent information and material available to the Commission, the Commission has determined to amend 16 CFR Part 303, Rules and Regulations under the Textile Fiber Products Identification Act, in the manner set forth below:

1. The authority citation for Part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Indentification Act, 15 U.S.C. 7(c); Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 303.7, Generic Names and Definitions for Manufactured Fibers, of 16 CFR Part 303 is hereby amended by adding a new paragraph (u) to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(u) *PBI.* A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups as an integral part of the polymer chain.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12736 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 303

Textile Fiber Products Identification Act; Request for Establishment of a Generic Name

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: In February of 1983, The Phillips Fibers Corporation applied to the Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures. The application was filed pursuant to Rule 8 [1] of the Rules and Regulations under the Textile Fiber Products Identification Act,[2] and Subpart C of Part 1 of the Commission's Rules of Practice.[3] In its application, Phillips declared that the generic names presently established by the Commission in Rule 7 [4] are inappropriate for its fiber because of the fiber's uniqueness. Phillips proposed that the new fiber be defined as:

"A manufactured fiber in which the fiber-forming substance is a long chain synthetic polysulfide in which at least 85% of the sulfide (—S—) linkages are attached directly to two (2) aromatic rings."

Phillips also included several suggested names for the fiber as well as technical data and other information in support of the petition.

On May 29, 1985, the Commission published a Notice of Proposed Rulemaking [5] soliciting comments on whether Rule 7 should be amended to include a new generic definition covering Phillips' fiber. The Notice also stated that a Certificate of No Effect under the Regulatory Flexibility Act had been forwarded to the Small Business Administration.

This Notice summarizes the comments received in response to the May 29 Notice and sets out the Commission's final action in this matter.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney (202/376-8934), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

Rule 6 [6] of the Rules and Regulations under the Textile Fiber Products Identification Act requires manufacturers to use the generic names of the fibers contained in their textile fiber products in making required disclosures of the fiber content of the products. Rule 7 [7] sets forth the generic names and definitions that the Commission has established for synthetic fibers. These generic synthetic fibers have been found by the Commission to be individually unique and distinctive by virtue of their chemical composition and physical properties.

Rule 8 [8] sets out the procedures for establishing new generic names. Upon

[1] 16 CFR 303.8.
[2] 15 U.S.C. 70.
[3] 16 CFR 1.26.
[4] 16 CFR 303.7.
[5] 50 FR 21854 (May 29, 1985) (the "Notice").
[6] 16 CFR 303.6.
[7] 16 CFR 303.7.
[8] 16 CFR 303.8.

receipt of an application for a new generic name, the Commission must, within 90 days, either deny the application or assign to the fiber a numerical or alphabetical symbol for temporary use during further consideration of the application. The Commission may then initiate rulemaking proceedings under Subpart C of Part 1 of its Rules of Practice,[9] to determine whether to establish a new generic name and definition or to designate the proper existing generic name for the fiber.

Phillips submitted its application in this matter in February of 1983. After an initial analysis, the Commission granted Phillips the designation "PP0001" for temporary use in identifying the fiber until a final determination could be made as to the merits of the application.

In its application, Phillips describes the fiber, its manufacture and possible uses as follows:

> The fiber is composed predominately of poly (phenylene sulfide), a sulfide-linked aromatic polymer, which can be prepared by a process proprietary to Phillips Petroleum Company and covered by various issues and pending patents in the United States and elsewhere.

Typical Properties of Poly (Phenylene Sulfide) Fiber

1. *Flammability:*
   Self-extinguishing.
   Limiting Oxygen Index Percent 35
2. *Physical Properties:*

Tenacity, GPD	3.0–3.5
Elongation, Percent	25–35
Modulus 10 Percent Extension	18
Elastic Recovery, Percent:	
2 Percent Extension	100
5 Percent Extension	96
10 Percent Extension	88
Boiling Water Shrinkage, Percent	10–15
Moisture Regain, Percent	0.6
Specific Gravity	1.37
Melting Point, °F (°C)	545 (285)

3. *Resistance to Chemicals:*
Not soluble in any known solvent below 392 °F (200 °C).
Limited solubility in a few solvents above 392 °F.
Highly resistant to acids and alkalis:

Acid alkali	Strength loss, percent [1]
Acetic acid	None.
Conc. HCl	None
Conc. H_3PO_4	0 to 5.
48 percent H_2SO_4	None.
30 percent NaOH	None 7[1] days at 200 °F.

[1] Degraded by strong oxidizing acids such as conc. nitric, sulfuric and chromic.

[9] 16 CFR 1.20.

4. *Electric Properties:*

Dielectric Constant:	
KH	3.1–3.3
MH	3.1–3.3
Dissipation Factor:	
1 KH	0.0003–0.0005
1 MH	0.0005–0.0009
Volume Resistivity, ohm-cm.	$2.2–4.2\times10^{16}$

Phillips also submitted the following information relating to its fiber:

> Granting of a new generic classification for Ryton polyphenylene sulfide fiber will be important to a large body of industrial buyers who need to be able to identify Ryton PPS fiber as distinct from all other fibers. Ryton PPS fibers offer a combination of properties and performance benefits which are unique and cannot be found in other fibers. Commercial and industrial buyers of fabrics for filtration of flue gas from coal fired boilers, as well as filters for liquid and gas industrial processes, need to be able to identify this new fiber development. Other diverse markets in which Ryton fiber has applications are papermaker felts, electrolysis membranes, high performance composites, gasket packing, rubber reinforcement, and electrical insulation.
>
> The public at large will benefit from the performance features of Ryton; for example, through improved air quality resulting from filtration of emission from coal fired industrial boilers. One example of this is the use of Ryton filtration bags at Coors Brewery in Goldren, Colorado, which was nationally advertised in [a] television commercial.

* * * * *

Phillips proposed in its petition that the new fiber be identified, in descending order of preference, as: (1) "arofide," (2) "sulfar," and (3) "arosul."

In the May 29 Notice, the Commission solicited comment on all aspects of the appropriateness of Phillips' application, but especially comments on whether the application meets the following three criteria, which have been set out by the Commission as grounds upon which it would grant petitions for new generic names:[10]

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.
2. The fiber must be in active commercial use or such use must be immediately foreseen.
3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

[10] 38 FR 34112, 34114 (December 11, 1973).

Section B. Summary and Analysis of Comments

1. Summary

There were three comments submitted during the comment period in this proceeding.[11]

Dr. Wayne St. John, of the Clothing and Textiles Programs of the Department of Vocational Education Studies of the University of Southern Illinois,[12] commented that Phillips' request for a new generic name should be granted. Dr. St. John noted that the chemical structure of Phillips' new fiber is radically different from the fibers currently listed in the Textile Rules. He posed a question as to whether the fiber is or will be in active commercial use, and noted that, if the fiber does become active commercially, the granting of a new generic name would be important to the consuming public at large. Dr. St. John also expressed a preference for Phillips' proposed name "sulfar" over the other two choices—"arofide" and "arosul"—because of the latters' similarity to the existing generic definition "aramid".[13] Dr. St. John stated that he was sure that students in his textiles classes would be confused by the similarity between "aramid" and the other proposed fiber names.

A second comment was submitted by the Textile Fibers Department of the Industrial Fibers Division of the E.I. du Pont De Nemours & Co.[14] Du Pont was also concerned about possible confusion stemming from the similarity of "arofide" and "arosul" to "aramid".

Du Pont noted:

> Aramid fiber products have participated in the hot gas filtration industry since at least as early as 1967. The performance features and physical properties of filters made of aramid fibers are well known by the trade and by purchasers of such products. Similarly, the performance features and performance properties of products made of Phillips' polyphenylene sulfide fiber are well known.
>
> Hot gas filters made of aramid fiber and those made of Phillip's PPS fiber are now recognized in the trade as separate, distinct and unrelated products. This distinction assists purchasers in selecting the product that best meets a specific need.
>
> Du Pont believes that the distinction between aramid and PPS fiber will be seriously jeopardized if the Commission

[11] The comments have been placed on the public record in this proceeding under category 20 of Public Record Docket 208. They are designated 20-2 through 20-4. References to the comments will be made by means of the name of the commenters the number of the comment, and, where appropriate, the page of the comment.

[12] 20-2. Dr. St. John notes that he has a Ph.D. in organic chemistry.

[13] 16 CFR 303.7(e)

[14] 20-4. "Du Pont."

approves Phillips' petition to designate either the term "Arofide" or "Arosul" as a generic name for polyphenylene sulfide fiber.[15]

The third comment was submitted by the petitioner, Phillips Fibers Corporation.[16] Phillips desired to avoid potential confusion between its own third choice for a generic name "arosul" and a request for a new generic fiber name and definition filed by the Celanese Corporation, currently under consideration by the Commission. Celanese has proposed, as its first choice for a name for its new fiber, the name "arazole."[17] In order to avoid potential confusion between these new fibers, Phillips withdrew, therefore, its submission of "arosul" as a possible choice for the name of its new generic fiber, if granted. This leaves the Phillips application with two proposed names in the following order of preference: (1) "Arofide" (2) "sulfar."

2. Analysis

The Commission has considered all the information available in this matter and has concluded that Phillips has provided sufficient information to meet the three aforementioned criteria for granting a new generic name for its manufactured fiber.

Distinct Chemical Composition

The Commission, after studying Phillips' application and consulting with experts knowledgeable in the field, believes that the chemical composition of Phillips' fiber is radically different from the chemical composition of any of the fibers encompassed by the present definitions under Rule 7. More specifically, the poly (phenylene sulfide) polymer, which is the fiber-forming substance, consists of aromatic rings that are attached together by sulfide (—S—) linkages. This type of linkage is unique with respect to the current definitions under Rule 7.

The Commission believes that, because of this unique chemical composition, Phillips' fiber has properties that will be significant to the general public. One of the primary characteristics of this fiber is its suitability for filtration of emissions from coal-fired industrial boilers. The resulting improved air quality will benefit the public in general.

Commercial Use

In order to substantiate the fact that its fiber is in active commercial use and that such commercial use will continue, Phillips submitted to the Commission sales figures for 1983, for January through August of 1984 and projected sales for 1985. The Commission is convinced, on the basis of these figures, that Phillips' fiber is indeed in active production and that such production will continue.

Importance to the Consuming Public at Large

As noted in the discussion of the first criterion, above, the performance properties of Phillips' fiber in industrial applications for coal-fired boiler flue gas filtration will be important to the public at large. More importantly, commercial and industrial buyers of flue filtration fabrics all over the country will be able to identify this fiber by its generic name.

It only remains, then, for the Commission to determine the best name for Phillips' fiber. Since Phillips has withdrawn one of its choices, "arosul," only two choices remain. In order to avoid any possibility of confusion between the proposed name "arofide" and the existing generic name "aramid," the Commission, therefore, has chosen the name "sulfar."

The designation "PF0001" previously assigned petitioner's fiber for temporary use is hereby revoked as of the effective date of this amendment.

Section C. Regulatory Flexibility Act

In publishing the proposed amendment, the Commission determined that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis, 5 U.S.C. 603 and 604, were not applicable because it was believed the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. In considering the economic impact of the proposed amendment on manufacturers and retailers, the Commission noted that the amendment would impose no obligations, penalties or costs. In light of this, it was certified, under the provisions of section 5 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this aspect of the rulemaking during the comment period.

On the basis of all the information before it, the Commission has determined that the final regulations will not have a significant economic impact on a substantial number of small entities. Consequently, the Commission concludes that a final regulatory flexibility analysis is not required and has filed a Certificate of No Effect under the Regulatory Flexibility Act with the Small Business Administration to that effect.

Section D. Paperwork Reduction Act

This amendment contains no provisions that constitute information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, and the implementing regulation, 5 CFR 1320.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTION IDENTIFICATION ACT

Accordingly, after consideration of the views, arguments and data submitted pursuant to the Notice of Proposed Rulemaking in this matter, and in consideration of other pertinent information and material available to the Commission, the Commission has determined to amend 16 CFR Part 303, Rules and Regulations under the Textile Fiber Products Identification Act, in the manner set forth below:

1. The authority citation for Part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act, 15 U.S.C. 7(c); Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

§ 303.7 [Amended]

2. Section 303.7, Generic Names and Definitions for Manufactured Fibers, of 16 CFR Part 303 is hereby amended by adding a new paragraph (t) to read as follows:

* * * * *

(t) *Sulfar.* A manufactured fiber in which the fiber-forming substance is a long chain synthetic polysulfide in which at least 85% of the sulfide (—S—) linkages are attached directly to two (2) aromatic rings.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12737 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

[15] 20-4/4.

[16] 20-3.

[17] See 50 FR 21183 (May 23, 1985).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 178

[T.D. 86-107]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: The Caribbean Basin Economic Recovery Act ("CBERA") implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 1995 on most products imported from Caribbean and Central American countries designated as beneficiary countries.

Title V of the Trade Act of 1974 authorized the President to establish a Generalized System of Preferences ("GSP") which permits the duty-free entry of eligible merchandise arriving directly from designated "beneficiary developing countries."

On January 5, 1984, interim Customs Regulations were published as T.D. 84-14 in the Federal Register (49 FR 852) to implement the CBERA. A final rule was published as T.D. 84-237 in the Federal Register on December 7, 1984 (49 FR 47960). However, based upon public comments received in response to the solicitation of comments provision of the January 5, 1984, interim regulations, the documentation requirements of the rules were modified by T.D. 84-238 which was published in the Federal Register on December 7, 1984 (49 FR 47995), as interim regulations. In addition, to ensure that the documentary requirements of the Caribbean Basin Initiative ("CBI") and the GSP did not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements were modified by that document to conform them to the CBI documentary requirements, except for the requirement of foreign government certification of the GSP Certificate of Origin Form A. A notice of proposed rulemaking was published in the Federal Register on December 7, 1984 (49 FR 48003), which proposed to modify the requirement of foreign government certification.

This document contains the final rule with respect to the documentation requirements and eliminates mandatory foreign government certification except for those beneficiary countries with which the U.S. Customs Service has a bilateral enforcement agreement.

DATE: This rule is effective on July 9, 1986.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: William L. Marchi, Duty Assessment Division (202-535-4134);

Legal Aspects: Myles B. Harmon, Classification and Value Division (202-566-2938); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade Act of 1974 authorized the President to establish a Generalized System of Preferences ("GSP") which permits the duty-free entry of eligible merchandise arriving directly from designated "beneficiary countries." To implement the provisions of the GSP, on December 31, 1975, Customs published regulations as T.D. 76-2 in the Federal Register (40 FR 60047).

Subtitle A, Title II, Pub. L. 98-67, the Caribbean Basin Economic Recovery Act (the "Act"), commonly referred to as the Caribbean Basin Initiative ("CBI"), implements an economic recovery program for nations of the Caribbean and Central America announced by the President on February 24, 1982, in an address to the Organization of American States.

The Act provides for the waiver of duties until September 30, 1995, on most products imported from Caribbean and Central American countries designated as beneficiary countries. Beneficiary countries must meet several criteria before the President is authorized to designate them as eligible under the CBI. Further, certain products cannot be declared duty-free. Under other provisions of law, duty-free treatment can be withdrawn for articles imported in such quantities as to cause injury to a competing U.S. industry. A rule of origin specifies under what conditions articles will be considered products of a beneficiary country, and, therefore, entitled to duty-free entry.

Pursuant to Presidential Proclamation 5133, dated November 30, 1983 (48 FR 54453), the President designated the countries and territories or successor political entities set forth in the Annex to the Proclamation as "beneficiary countries", thus conferring duty-free treatment for all eligible articles from those beneficiary countries. This action was effective with respect to all articles that were entered, or withdrawn from warehouse consumption, on or after January 1, 1984, and on or before September 30, 1995. Presidential Proclamation 5142 of December 29, 1983 (49 FR 341), and Presidential Proclamation 5308 of March 14, 1985 (50 FR 10927), amended Presidential Proclamation 5133 and the Annex to the Proclamation to extend the benefits of the Act to certain additional Caribbean and Central American nations.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84-14 in the Federal Register on January 5, 1984 (49 FR 852). The interim regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the Federal Register on March 8, 1984 (49 FR 8900), to May 4, 1984. A final rule was published as T.D. 84-237 in the Federal Register on December 7, 1984 (49 FR 47960).

Numerous commenters on the interim rule submitted observations and proposals for amendments to the interim CBI regulations. A particularly large number of comments were received on § 10.198 of the interim Customs Regulations amendments (19 CFR 10.198), which concerned the documentary evidence of country of origin and required the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. In light of the comments received, it was apparent that some changes should be made in this regard. However, after consideration of the comments and proposals submitted, Customs was of the opinion that none of the commenters had presented a proposal which would represent a proper solution to the documentary evidence issue. Since both the GSP regulations and the CBI interim regulations contain documentary requirements which assist in the determination of eligibility of merchandise for the two programs, it was decided to modify the documentary requirements of the interim CBI regulations and submit the modification, which differed from both the initial interim CBI regulatory provision and the various proposals put forth by the commenters, for further public comment. Further, to ensure that the documentary requirements of the CBI and GSP did not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements, except for the requirement for foreign government certification of the GSP Certificate of Origin Form A, were modified to conform them to the CBI documentary requirements. That document was published as T.D. 84-238 in the Federal

Register on December 7, 1984 (49 FR 47995).

The proposal to change the requirement for foreign government certification of the GSP Certificate of Origin Form A was published in the Federal Register on December 7, 1984 (49 FR 48003). A discussion of the comments received on this notice and the other documentary requirements is set forth below.

Discussion of Comments

Documentation Requirements

Three commenters responded to the interim CBI and GSP regulations setting forth the new requirements for country of origin documentation. Some comments related only to the CBI texts, some concerned only the GSP texts, and others were directed to both the CBI and GSP texts.

With regard to the comments directed solely to the CBI texts, none of the commenters disagreed with the interim decision to use the Certificate of Origin Form A in place of the declaration/endorsement as evidence of country of origin. However, two commenters were of the opinion that the regulation should require certification of the CBI Form A by a designated beneficiary country government official as in the case of the GSP. The reason given for this proposal was that the beneficiary country government officials are in a better position to determine the relevant facts than are foreign manufacturers or exporters.

As concerns the comments directed only toward the GSP provisions, this commenter suggested that the GSP regulations should not be aligned on the CBI provisions since the GSP has worked well in the past and the Congress did not indicate a need for any changes when consideration was given to the extension of the GSP program. This commenter further argued that the requirements to maintain records in the exporting country for 5 years and to submit more documentation (*i.e.*, the declaration), if requested, are both burdensome and not in line with the original intent of the GSP program. Another commenter argued that the GSP provision should be amended to allow the manufacturer, rather than the exporter, to prepare the supporting declaration if the exporter has inadequate knowledge of the operations of, and no financial ownership in, the manufacturer. Under this proposal the manufacturer would prepare the declaration and provide it to the exporter who would submit it to Customs.

Two commenters submitted comments regarding both the CBI and GSP interim regulatory provisions. One recommended that a statement be required on the Form A indicating whether the CBI or GSP origin criteria were used, so that the exporter would thereby acknowledge that there are differences in the origin rules under the two programs. Another commenter stated that the prior recordkeeping requirements were sufficient to protect the revenue and that it is burdensome and unfair to penalize U.S. importers (*i.e.*, by making the imported merchandise dutiable) because of the failure of the foreign firm to supply the requested information since the importer has little, if any, control over the diligence of the foreign producer or exporter in adhering to Customs recordkeeping requirements. One commenter argued that the CBI/GSP requirement for submission of the supporting declaration should be deleted based on the following considerations: (1) The 5-year record retention requirement is extreme, (2) the failure of the exporter to comply with Customs belated request for the declaration creates an uncontrollable exposure for the importer since, once the exporter receives payment for the goods, the importer loses control over the exporter who would not be likely to supply the declaration unless there is significant continuing business with the importer, and (3) requesting the declaration from the exporter, but without any involvement on the part of the importer, will cause problems since Customs does not have a foreign language capability to communicate with small exporters and the assistance of the importer may be necessary as regards technical manufacturing processes. This commenter further recommended that, if the declaration requirement is retained, the regulations should be amended (1) to provide for centralization at Customs Headquarters of the decisons as to whether to request submission of the declaration, with the request then going to the importer who would pass it on to this supplier, and (2) to allow the district director some discretion by providing that failure to submit the declaration in a timely fashion "may" (rather than "will") result in a denial of duty-free treatment. Finally, as regards the provision relating to further verification of the submitted evidence of country of origin, one commenter argued that whereas the foreign government can make such further verification, the U.S. Government cannot do this (due to protocol and sovereignty problems) and the importer cannot control a denial of access on the part of the foreign government or exporter. This commenter recommended that the decision on whether further verification is necessary should be made in each case at Customs Headquarters, and the importer should be allowed an alternate means of satisfying Customs (*e.g.*, by verification performed by an in-country public accounting firm) if Customs is prevented from obtaining the necessary further verification.

As regards the comment directed solely to the CBI interim texts, Customs does not agree that the regulation should require certification of the CBI Form A by a designated beneficiary country government official as has been the case in GSP. The reason for this proposal does not appear to be valid since a beneficiary country government official is not involved in the manufacturing operation and thus is not privy to the facts relating thereto. Since the certifying official must obtain the relevant facts from the manufacturer or exporter, such second-hand government certification of the Form A, which has no binding legal effect on Customs, represents merely another bureaucratic or adminstrative step in the export/import process. Customs remains of the opinion that the CBI program will operate more efficiently, from both a legal and operational standpoint, without government certification of the Form A.

For essentially the same reasons, Customs disagrees with the suggestion that the GSP regulations should not be aligned on the CBI provisions. The initial CBI requirement for submission of the declaration/endorsement as documentary evidence of country of origin, as well as the new interim CBI requirement for submission of the declaration to support the Form A, were based on Customs experience under the GSP which has been found to have not always worked as well as this commenter appears to believe. The fact that the Congress did not indicate a need for any such changes in the GSP is largely irrelevant since this issue was never raised in connection with the amendments of the GSP affected by the Trade and Tariff Act of 1984. Customs is also of the opinion that the 5-year record retention period should be retained since it is consistent with the normal Customs recordkeeping requirements which must be followed by importers. The requirement should benefit importers who will be better assured that the backup records necessary to support the importer's claim will be available. Moreover, there is no merit to the argument that the record retention

and supporting declaration requirements should be deleted for the reason that these requirements are burdensome and not in line with the original intent of the GSP program. The record retention and documentary requirements set forth in the interim GSP regulation are intended to assist Customs in administering the origin rules contained in the GSP statute and are consistent with the regulatory authority conferred on the Secretary of the Treasury by that statute. Acceptance of this commenter's argument would serve to minimize the importance which the Congress placed on the GSP rules of origin and would deny the fact that taking advantage of the GSP program implicitly imposes a certain burden of proof in this regard.

With regard to the comments directed toward both the CBI and the GSP interim provisions, Customs does not agree with the suggestion that a statement be included on the Form A to indicate whether the CBI or GSP origin criteria were used. The present regulations adequately cover this point. Submission of the entry summary with the "A" designation, coupled with submission of the "Generalized System of Preferences" Form A, will make it clear that a GSP transaction is involved. Submission of the entry summary with the "C" designation, coupled with the submission of a Form A containing instead the required words "Caribbean Basin Initiative", will indicate that the CBI transaction is involved. It would be inappropriate to conclude that a conscious decision to use one program rather than the other was made without any perception as to the differences in the origin rules under the two programs.

Customs does not agree that the prior recordkeeping requirements were sufficient to protect the revenue. As was clearly stated when the interim 5-year record retention and supporting declaration requirements were included in the CBI and GSP regulations, past experience under the GSP has shown that problems have arisen from the fact that in many cases exporters were not fully aware either of the need for maintaining information to support the Form A or of the type of information needed. The CBI and GSP provisions do not set forth new substantive requirements as such but rather merely serve to clarify what has always been necessary in order to establish compliance with the origin criteria.

Customs also does not agree that the supporting declaration requirement should be deleted based on the alleged uncontrollable exposure faced by the importer due to his inability to control the actions of the exporter regarding the retention of records and the submission of the declaration. Since the importer of record is legally liable for the payment of duty on imported merchandise, the importer's ability to avail himself of duty-free treatment under the GSP or CBI will of necessity depend on his being supplied with merchandise which meets the GSP or CBI origin requirements. To the extent that the importer cannot control his foreign supplier as regards the record retention and declaration requirements, he would be equally unable to control his supplier as regards the actual production of the merchandise which is the basis upon which GSP or CBI duty-free status is determined. It would be inconsistent with commercial and legal reality to conclude that an importer neither assumes a risk nor bears any responsibility when he engages in a GSP or CBI transaction. It is incumbent on the importer to select a reliable foreign supplier so as to ensure the availability of the GSP or CBI benefits, and the mere fact that an importer is unable or unwilling to do so is not a sufficient basis for doing away with regulatory requirements which are specifically intended to ensure that Customs will be able to determine whether there is compliance with the statutory rules of origin.

It was with the above considerations in mind that Customs prepared the GSP and CBI regulations to provide that failure to submit the supporting declaration in a timely fashion "will" result in a denial of duty-free treatment. Since a request for the declaration will normally only be made based on a specific determination that there appears to be an insufficient basis for granting GSP or CBI duty-free treatment, any failure to submit the requested declaration so as to support the claim must result in a dutiable entry. Customs' statutory responsibility for ensuring that there is compliance with the GSP and CBI requirements, consistent with the Congressional intent behind the rules of origin, precludes the exercise of any discretion in this regard so as to give the importer the benefit of the doubt. Therefore, the regulations are not being amended to provide that the imported merchandise "may" be treated as dutiable in such a case.

In view of Customs decision to delete the original CBI declaration/endorsement approach because such an approach would cause the foreign manufacturer to disclose confidential business information to the importer, it would not be appropriate to require the involvement of the importer when a request for the declaration is made. While there is nothing which would prevent a foreign manufacturer from requesting assistance from the importer, the decision to involve the importer should be left to the manufacturer.

Customs believes that it would be inappropriate to provide in the regulations for centralization at Customs Headquarters of all decisions to request the supporting declaration or to seek further verification of the submitted evidence of country of origin. Such a requirement would unnecessarily delay the entry/liquidation process. Further, the Customs field office is in the best position to decide what is necessary in an individual case. Finally, Customs does not believe that it would be appropriate to specify in the regulations the manner in which further verification should be obtained. Since protocol and sovereignty considerations and other factors may vary from country to country and from case to case, it is preferable to leave it to the discretion of the district director to use all reasonable means at his disposal to obtain such further verification. Although verification by the foreign government or by an in-country public accounting firm would not be precluded, the decision whether to accept such verification should also be left to the discretion of the district director.

Based on the above, Customs has determined that the interim CBI regulations regarding CBI documentary evidence of country of origin contained in § 10.198 and the interim GSP provisions concerning the supporting declaration contained in § 10.173(c) should be adopted as final rules. However, Customs agrees with the suggestion that the GSP regulations should be amended to allow a party other than the exporter to prepare the supporting declaration in a case where the exporter has insufficient knowledge of the manufacturer's operations, as, for example, where the exporter is an independent selling or buying agent. Since the same considerations would apply in the case of the CBI, Customs believes that the final CBI regulations should contain a similar provision. Accordingly, appropriate modification have been made to §§ 10.173 and 10.198.

Elimination of Foreign Government Certification of GSP Form A

A total of 15 comments were received on the proposal to do away with mandatory certification of the Form A by the designated beneficiary developing country (BDC) governmental authority. Seven commenters were in favor of the proposal, six were opposed, and two were neither in favor of nor

against the proposal as such but rather proposed alternate approaches.

As concerns the arguments in favor of the proposal, commenters suggested that removal of the certification requirement would alleviate procedural difficulties encountered in obtaining a certified Form A from a foreign government under circumstances where the merchandise nevertheless meets the GSP origin requirements. Some commenters pointed out that these difficulties were encountered in particular where duplicate or retroactive Form A's were needed, as, for example, where the foreign manufacturer is controlled by the U.S. importer (who maintains the books and records) and the cost data to be reflected on the Form A can be determined only at the end of the company fiscal year. Even though the cost data can be made available to Customs from the domestic corporate headquarters, mandatory certification requires that the Form A be obtained from the foreign government. One commenter stated that the untimely issuance of the Form A by the foreign government adds to the importer's cost due to the need to post a bond for the missing document. Another commenter argued that the proposal would reduce the paperwork burden on brokers and Customs and would allow entries to move without being held up for missing documents since the exporter can usually supply the Form A at the time of exportation. One commenter suggested that mandatory certification is a shield which prevents Customs from verifying the information on the Form A and that the verification procedure is cumbersome since Customs must go through the Department of State in order to obtain such verification from the BDC government. As concerns the legal effect of BDC government certification, one commenter pointed out that Customs, and not the foreign government, inevitably must be satisfied as to the GSP eligibility of the imported merchandise. Another commenter pointed out that under the Customs laws the importer is still legally liable for supplying the proof as to GSP eligibility. One commenter argued that government certification of the Form A is procedural and thus can be dispensed with under the regulatory authority conferred on the Secretary of the Treasury, and that deletion of the certification requirement would not be inconsistent with any United Nations Conference on Trade and Development (UNCTAD) agreements since it has been recognized that the requirements and procedures under the GSP should be those which are imposed by the preference-giving country. One commenter suggested that the provision for submission of a detailed declaration to support the statements made on the Form A would overcome any drawback arising from deletion of the certification requirement. Finally, commenters argued that deletion of the certification requirement would align the GSP and CBI requirements and thus avoid confusion between the two programs.

Commenters in favor of deletion of the mandatory certification requirement also proposed an alternate approach in the event that the certification procedure is retained. Under this proposal, a provision would be made for not requiring government certification of the Form A if the importer has a controlling interest in the exporter. In favor of this alternate approach, it was argued that the importer would have automatic access to the necessary books and records and thus could readily make them available to Customs. One of these commenters suggested that the importer should be allowed to file a written statement with the district director advising of the importer's control over the exporter and requesting a waiver of the certification requirement.

With regard to the arguments against the proposal to do away with mandatory government certification of the Form A, commenters argued that the foreign government officials are in a better position than foreign manufacturers or exporters to determine the relevant facts, and in many cases the exporter does not have access to the manufacturer's confidential business records. Commenters further argued that the GSP certification procedure has worked well and thus should not be changed, and in this regard it was alleged that: (1) BDC governments have often refused to certify inaccurate Form A's, (2) the proposal will allow unscrupulous manufacturers and exporters to make false claims, particularly since the deterrent value of a penalty imposed by the BDC for a false claim will be lost, and (3) there will be delays in clearing shipments because Customs will have no authority to verify the facts in the source country. Commenters argued that adoption of the proposal would make it difficult or impossible for a BDC government to monitor GSP exports and exporters. Moreover, commenters stated that the proposal would shift the burden of verification from the BDC government to Customs, and that Customs may have difficulty in locating the exporter due to insufficient manpower.

Two commenters were of the opinion that the proposal would both increase the burden on exporters and adversely affect importers. With regard to the adverse effects on importers it was argued that: (1) Since the importer has little control over the diligence of the foreign manufacturer or exporter in adhering to Customs recordkeeping requirements, it would be burdensome and unfair to penalize an importer (by making the imported merchandise dutiable) because of a failure of a foreign firm to supply the requested documentation, and (2) whereas BDC government certification acts as a buffer for the importer and a letter of credit is normally contingent on the existence of a certified Form A, the proposed deletion of the certification requirement would put the importer at the mercy of his supplier and would thus increase the importer's exposure to fraud and to the assessment of duties and penalties. Two commenters were of the opinion that the proposal would further complicate an already complicated system. With regard to Customs' view that the GSP and CBI requirements should be the same, commenters argued that such conformity is not necessary since the GSP and the CBI are separate and distinct but that, if conformity is deemed necessary, the CBI should follow the GSP rather than vice versa.

It was also argued that the proposal would harm both BDC's and the GSP program as a whole in that: (1) The present documentary requirements for verfication of GSP claims will be even more important under the recently amended GSP statute since any evidence of malpractice or fraud will weigh heavily in any future study made to determine whether the most competitive BDC's should continue to benefit under the program, (2) the proposal will disrupt the trade of those BDC's which are heavily dependent on exports and which produce goods identical to those made elsewhere, and (3) the absence of certification will give rise to greater opposition to the GSP on the part of U.S. producers. One commenter also suggested that in the event that certification of the Form A were made voluntary, but the BDC government nevertheless were to continue to require it, acceptance of an uncertified Form A by Customs would constitute acquiescence in a violation of the BDC law. Two commenters further argued that the proposal would be inconsistent with both the UNCTAD suggestions for documentary requirements and the requirements of GSP programs administered by other developed nations. As regards the

proposed change to § 10.175(c)(4), Customs Regulations, which concerns merchandise shipped through a free trade zone in a BDC, one commenter was of the opinion that the regulation should not be amended. Finally, a BDC government opposed to the proposal suggested that if mandatory certification were not to be retained, the U.S. authorities should specifically designate that BDC government as being responsible for the Form A's covering merchandise imported from that BDC.

One commenter pointed out that as a result of the proposal an exporter who purchases goods from an independent BDC manufacturer in an arms-length transaction would be placed in an impossible position since he would no longer be able to rely on the BDC government certification as regards the GSP eligibility of the goods. This commenter therefore suggested that the regulation provide that the manufacturer, rather than the exporter, be responsible for completing and signing the Form A if the exporter has inadequate knowledge of the operations of, and no financial ownership in, the manufacturer. Under this proposal Customs would still look to the exporter to supply the Form A. Another commenter merely suggested that the regulation refer to the Form A signed by the exporter of the merchandise "and by the representative of the Chamber of Commerce or the Chamber of Industries" in the country from which it is directly imported.

Based on the comments submitted, and its own experience with the value of the beneficiary-government certification as a guarantee of compliance with GSP legal requirements, Customs believes that the arguments in favor of the proposal to do away with mandatory government certification of the GSP Form A outweigh the arguments made in favor of its retention.

The arguments in favor of deletion of the mandatory certification requirement, which were submitted mainly by private domestic parties, clearly demonstrate that mandatory government certification has led to problems both as concerns the issuance of retroactive or duplicate Form A's and as concerns the need to post a bond if issuance of the Form A is untimely. Customs is of the opinion that in the absence of a significant law enforcement benefit attributable to beneficiary or government certifications, those problems should not be allowed to continue, particularly to the extent that they are not attributable to a party directly involved in the commercial transaction. The GSP regulations should further the program, consistent with the need to ensure compliance with the legal requirements thereunder, rather than hinder it. Customs agrees that deletion of the mandatory certification requirement will reduce the paperwork burden on all concerned parties and will allow GSP entries to move more quickly and efficiently.

Customs is also of the opinion that deletion of the mandatory certification requirement would remove any confusion as to the legal effect of BDC government certification and would facilitate verification of the statements made on the Form A. As concerns the legal effect of government certification, Customs agrees that certification has no binding legal effect on the duty-free eligibility of imported merchandise since it is Customs, and not the BDC government, which is charged with the responsibility under U.S. law to determine the proper tariff status of imported merchandise. Moreover, notwithstanding what occurs in this regard in the exporting country, it is the importer who is legally responsible for establishing to Customs that there is compliance with the GSP requirements. With regard to verification of the statements made on the Form A, Customs also agrees that mandatory government certification has necessitated the use of a cumbersome and often ineffective procedure to obtain such verification. Use of an uncertified Form A will avoid a situation in which a request for further verification implicitly draws into question the veracity of a governmental certifying official and allow the verification procedure to be completed in a more timely and efficient manner.

Customs also agrees that deletion of the mandatory certification requirement is permissible under the regulatory authority conferred on the Secretary of the Treasury and is not inconsistent with any UNCTAD agreements. Whereas the GSP statute does not even require the use of a Form A in connection with GSP importations, that statute does confer upon the Secretary the authority to promulgate regulations to carry out its provisions. Since foreign government certification is not a proper legal basis for determining whether there is compliance with the statutory standards, deletion of the mandatory requirement would not be in conflict with the intended purpose of those regulations. With regard to the UNCTAD, Customs agrees that it was recognized that the applicable requirements and procedures in each case would be those imposed by the preference-giving country. Moreover, Customs is unaware of any binding international agreement which requires that the U.S. use the UNCTAD Form A incorporating government certification. Customs understands that general use of the Form A came about as a result of a non-binding UNCTAD recommendation.

For the reasons stated in connection with the discussion of the comments on the CBI interim regulations, Customs does not agree that foreign government officials are in a better position than foreign manufacturers or exporters to determine the relevant facts. Therefore, this argument is insufficient to support retention of mandatory government certification. Moreover, the discussion of the comments on the CBI and GSP interim provisions adequately disposes of those arguments in favor of the status quo which are based on the alleged adverse effect which deletion of mandatory certification would have on importers due to an importer's inability to control his foreign supplier so as to reduce his exposure to the assessment of duties and penalties. For essentially the same reasons, Customs does not agree that mandatory government certification should be retained because the deletion thereof would shift the burden of verification from the BDC government to Customs which allegedly has insufficient manpower for this purpose. As has already been pointed out, ultimate responsibility for verification has, as a legal matter, always rested with Customs, and the argument regarding alleged manpower limitations incorrectly suggests that Customs has the discretion to cede to others its statutory responsibility for the enforcement of the law.

Nor does Customs agree that mandatory certification should be retained based on the argument that the GSP certification procedure has worked well. While a great many proper GSP claims have been made, and although Customs would not deny that BDC governments have in some instances refused to certify, or imposed penalties for, inaccurate Form A's, it is equally true that over the years a significant number of GSP claims have been found by Customs not to be valid in spite of the government certification. The practical (as opposed to legal) value of the BDC government certification is directly dependent on the extent to which actual verification takes place in the BDC at the time of certification. Although Customs recognizes that government certification could be of value, Customs actual experience under the GSP has demonstrated that government certification does not necessarily ensure that an unscrupulous

exporter will not make a false statement on the Form A.

With regard to the arguments that removal of mandatory government certification would have an adverse effect on BDC's, Customs does not necessarily agree that the proposal would make it difficult or impossible for a BDC government to monitor GSP exports and exporters. A BDC government in principle would still retain the authority under its own laws to impose necessary export controls, including mandatory government certification of the Form A. Moreover, even if a BDC government were to require certification, acceptance of an uncertified Form A for purposes of the GSP program would not represent acquiescence in a violation of the BDC law since such "acquiescence" implies a responsibility on the part of the U.S. government (i.e., to enforce the BDC law) which does not exist. Nor does Customs believe that the proposal would harm BDC's or the GSP program as a whole either on the ground that certification has become more important vis-a-vis the retention of GSP benefits by most competitive BDC's or on the ground that the absence of certification will give rise to greater opposition to the GSP on the part of U.S. producers. As regards the first point, the provisions in the GSP statute, as amended by the Trade and Tariff Act of 1984, regarding most competitive BDC's concern the withdrawal of GSP benefits based on economic performance and do not refer in any way to BDC government certification. As regards the second point, Customs is firmly of the view that opposition to the GSP both within domestic industry and within the Congress would be significantly greater if it were to appear that Customs was giving legal effect to BDC government certification so as to not look beyond the Form A to verify GSP compliance. Finally, given the fact that government certification has no legal effect on the question of GSP eligibility, there does not appear to be any basis for the argument that deletion of mandatory certification will disrupt the trade of those BDC's which are heavily dependent on exports and which produce goods identical to those made elsewhere.

Based on our analysis of the comments and further review of the matter, Customs has determined that the proposal to make BDC government certification permissive, rather than mandatory, should be adopted as a final rule. Accordingly, the proposed change to § 10.175(c)(4) concerning merchandise shipped through a BDC free trade zone should also be adopted since government certification would also not be required in such a case. However, Customs recognizes the possibility, suggested by one commentor, that verification procedures can be implemented by a beneficiary government in such a manner as to warrant a requirement for government certification. In such cases, Customs believes that it may be appropriate to enter into agreements on verification procedures providing for government certification. The proposal to also provide for signature on the Form A by the representative of the Chamber of Commerce or the Chamber of Industries should not be adopted since this would complicate the procedures and could lead to inconsistency in the requirements as regards BDC's not having such organizations. However, for the reasons stated in connection with the discussion of the GSP and CBI supporting declaration, Customs agrees with the suggestion that the GSP regulations should provide for preparation of the Form A by another party if the exporter has no knowledge of the relevant facts. A similar change should be included in the corresponding CBI provisions since the same consideration would apply.

Amendments to the GSP and CBI Regulations

In view of our determination, the GSP and CBI texts are amended by this document to provide for preparation of the Certificate of Origin Form A by the exporter or other appropriate party having knowledge of the relevant facts (see §§ 10.173(a)(1), 10.198(a)(1)). In addition, the GSP and CBI regulations have been amended to provide similar flexibility as regards the preparation of the supporting declaration, subject to the requirement that the parties preparing the Certificate of Origin and the declaration must be the same so that Customs will be able to contact the appropriate party to request the declaration based on the information appearing on the Certificate of Origin (see §§ 10.173(c) (1) and (2), 10.198(c) (1) and (2)). Since the exporter will not always be the party preparing the GSP and CBI declarations, the titles of the declarations have been amended to read "GSP Declaration" and "CBI Declaration" rather than "Declaration of Exporter" (see §§ 10.173(c)(1), 10.198(c)(1)).

Section 206 of Pub. L. 98–573, the Trade and Tariff Act of 1984, amended section 498(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(1)), by increasing the informal entry limit from $250 to $1250. However, it exempted all articles valued in excess of $250 classified in Schedule 3, parts of Schedule 7, and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated or any other article for which formal entry is required without regard to value. Under 19 U.S.C. 1498(a)(1), the Secretary of the Treasury may specify the exact amount of the informal entry limit. The limit may vary for different classes or kinds of merchandise or different classes of transactions. After thorough consideration, it was determined that, with the exception of the specific statutory exclusions, the informal limit for all articles should be set initially at $1,000, with the option to increase it to $1250 in the future. Accordingly, on July 23, 1985, a document was published in the Federal Register as T.D. 85–123 (50 FR 29949) which amended various sections of the Customs Regulations, including § 10.173 of the GSP regulations, to establish the new informal entry monetary limit. While the GSP regulations have always included the dollar amount of the informal entry monetary limit, the CBI regulations simply refer to "formal" and "informal" entries. Upon reflection it is believed that the approach taken in the CBI regulations is the better approach since it will not be necessary to amend numerous sections of the regulations when the monetary limit is changed. Accordingly, § 10.173 (a), (b) and (c)(1) of the GSP regulations have been amended to replace the dollar figures with references to "formal" and "informal" entries. These amendments will align the GSP and CBI regulations.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Accordingly, applicable sections have been cleared by the Office of Management and Budget and assigned control number 1515–0112. On March 28, 1985, Customs published in the Federal Register (50 FR 11849) a

document as T.D. 85-38 which amended the Customs Regulations by setting forth in a new Part 178 (19 U.S.C. Part 178) a list of information collections contained in the regulations and the OMB assigned control numbers. An amendment to Part 178, relating to approval of information collection requirements has been made which includes the OMB control number granting approval for the information collection requirements of § 10.173 in the numerical listing of approval provisions.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 10 and 178

Caribbean Basin Initiative, Customs duties and inspection, Generalized System of Preferences, Imports.

Amendments to the Regulations

Parts 10 and 178, Customs Regulations (19 CFR Parts 10, 178), are amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: May 13, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. Sections 10.171–10.178 also issued under 19 U.S.C. 2461 *et seq.* Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.*

2. Section 10.173(a) as amended by T.D. 85-123 published in the Federal Register on July 23, 1985 (50 FR 29949) is amended by removing the words "$1,000 (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated)" in the first sentence of paragraph (a)(1) and inserting in their place the words "covered by a formal entry".

3. Section 10.173(a)(1) is further amended by revising the last sentence to read as follows:

§ 10.173 Evidence of the country of origin.

(a) *Shipments covered by a formal entry.*—(1) *Certificate of Origin.*

* * * The Form A shall be properly completed and signed by the exporter of the merchandise, or other appropriate party having knowledge of the relevant facts. The Form A need not be certified by the designated governmental authority in that country unless that country has a verification agreement with the U.S. Customs Service.

* * * * *

4. Section 10.173(a)(2) is amended by removing the words "appropriate governmental body" in the first sentence of the paragraph and inserting in their place the word "party".

5. Section 10.173(b) is amended by removing the words "valued at $250 or less" in the heading of paragraph (b) and the text of the paragraph and in each instance inserting in their place the works "covered by an informal entry".

6. Section 10.173(c) is revised to read as follows:

§ 10.173 Evidence of the country of origin.

* * * * *

(c) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country.*—(1) *Declaration.* In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the party which prepared and signed the Certificate of Origin shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the merchandise, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

GSP Declaration

I, _____ (name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party which prepared and signed the Certificate of Origin for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, he may treat the entry as dutiable.

7. Section 10.175(c)(3) is amended by removing the words "issued by" in the first sentence and inserting, in their place, the words "prepared and signed in".

8. Section 10.175(c)(4) is revised to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(c) * * *

(4) The person responsible for the articles in the free trade zone, or any person having knowledge of the facts, shall prepare and sign an additional Certificate of Origin, Form A, declaring what operations, if any, were performed on the articles within the free trade zone. The additional Certificate of

Origin shall be provided to the U.S. importer or consignee who shall present it to the district director along with the Certificate of Origin required by § 10.173 (a)(1). The provisions of § 10.173(a)(2), (a)(3), (a)(4) and (a)(5) are applicable to this paragraph.

§ 10.198 [Amended]

9. Section 10.198 is amended by adding the words ", or other appropriate party having knowledge of the relevant facts," after the word "merchandise" in the second sentence of the paragraph.

10. The heading of § 10.198(c)(1) is amended by removing the words "of the exporter".

11. Section 10.198(c)(1) is further amended by removing the word "exporter" in the first sentence and inserting in its place the words "party which prepared and signed the Certificate of Origin".

12. The title to the declaration in § 10.198(c)(1) is amended by removing the words "Declaration of Exporter" and inserting in their place the words "CBI Declaration".

13. Section 10.198(c)(2) is amended by removing the words "exporter files" in the first sentence of the paragraph and inserting, in their place, the words, "files of the party which prepared and signed the Certificate of Origin".

14. Section 10.198(c)(2) is further amended by removing the word "exporter" in the second sentence of the paragraph and inserting, in its place, the words "appropriate party".

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 44 U.S.C. 3501 *et. seq.*

2. Section 178.2 is amended by including § 10.173 in the proper numerical sequence of the listing of OMB approval control numbers as set forth below:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
*	*	*
§ 10.173...	Claim for duty-free entry of eligible articles under the Generalized System of Preferences.	1515–0112.
*	*	*

[FR Doc. 86–12898 Filed 6–6–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

Deletion of Non-Primary Route From the National Network for Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is modifying six sections of the non-primary system that were inadvertently placed on the National Network on June 5, 1984, in the State of North Carolina, as identified on April 1, 1985, in an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 12825).

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 426–0233 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 96 Stat. 2097 (STAA) mandated that the full Interstate System be available for the operation of commercial vehicles of the dimensions authorized. In addition, the Secretary was requested to designate qualifying Federal-Aid Primary System highways on which the larger vehicles could operate. The authority to designate the National Network on which these vehicles could operate was delegated to FHWA. The National Network as identified in the **Federal Register** at 49 FR 23302, June 5, 1984, included some sections of non-primary highways that were inadvertently included in some States.

In the April 1, 1985, ANPRM, FHWA declared its intention to identify and delete from the Network routes not on the primary system that were inadvertently placed on the National Network in the June 5, 1984, regulation. The FHWA reviewed these non-primary sections where the authority of the U.S. Secretary of Transportation was the basis for the June 5, 1984, route designation. It did not review those States that had made available non-primary sections under State statute. In States where authority exists under State law for the designation of non-primary sections, actions were not necessary.

On November 8, 1985, FHWA published a final rule (50 FR 46425) removing non-primary routes from the National Network in five States.

In one of these States, North Carolina, FHWA deferred action on six segments not on the primary system to provide the State the opportunity to take action to allow the STAA vehicles on these segments. The State has reviewed the route segments in question and with FHWA approval has placed the following five highway sections on the Federal-aid primary system:

Route	From	To
SR 1409 (Truck Rt.).	US 70	US 17.
SR 1958–2028	US 70 Bethesda	I–40.
I–85 Connector (SR 1007).	I–85 Salisbury	US 29–601 Salisbury.
US 76	Junction US 17/74 West of Wilmington.	SR 1409.
US 158	I–40 Winston-Salem.	US 29 Reidsville.

In addition, the State has requested that the following section be removed from the National Network:

Route	From	To
NC 18	US 64 near Morganton.	I–40.

The State also requested that the network in this area be corrected by replacing the above section with US 64 from NC 18 to I–40 which is a 1.88-mile primary section consisting of four 12-foot lanes. The remaining section of NC 18 from US 64 to US 321 near Lenoir is on the primary system.

Consequently, with the above actions, non-primary sections no longer remain on the National Network in North Carolina.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under regulatory policies and procedures of the Department of Transportation. Since the amendment in this document merely brings the Appendix into full compliance with the statutory language mandated by the STAA of 1982, public comment is unnecessary. Therefore, FHWA finds good cause to make the amendment

final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. It is anticipated that the economic impact oif this rulemaking action will be minimal, since such economic impact that occurs is mandated by the cited statutory provisions themselves, and not by the rulemaking action. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: June 2, 1986.

R.D. Morgan,

Executive Director, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of North Carolina to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Sections 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix—[Amended]

2. The Appendix to Part 658 is amended for the State of North Carolina by removing the Posted Route Number entry:

Route	From	To
NC 16	I-40 near Morganton.	US 321 near Lenoir.

and inserting in its place the following:

Route	From	To
NC 16	US 321 near Lenoir.	US 64.
US 64	NC 16	I-40.

[FR Doc. 86-12936 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments for the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of certain amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted by letters dated November 15, 1985, and March 4, 1986, consist of proposed changes to the Ohio statute concerning establishment of a reclamation penalty fund, a reclamation fee fund, and the defaulted areas fund, clarification of the applicability of performance standards to prime farmland reclamation and excess spoil. Also included in the proposed amendments are provisions to increase the permit renewal fee, procedures for using the defaulted areas fund, procedures for transferring monies into the defaulted areas fund for reclamation on sites where bond has been forfeited, and many minor editorial changes. This amendment package includes amendments enacted by the Ohio legislature as House Bills 201 and 238.

On September 16, 1985, the Ohio Department of Natural Resources (ODNR) submitted House Bill 238 to OSMRE to satisfy the last remaining condition on the program. A notice announcing the receipt of the amendment and soliciting public comments was published in the **Federal Register** on October 30, 1985 (50 FR 45120). The action taken in this final rule on the proposed amendment House Bill 238 does not affect OSMRE's decision concerning the condition on Ohio's program. The condition concerns the adequacy of Ohio's alternative bonding program and will be addressed in a separate rulemaking action.

OSMRE published a notice in the **Federal Register** on April 4, 1986, inviting public comment on the adequacy of the proposed amendments (51 FR 11589). The public comment period closed on May 5, 1986. No comments were received.

After providing an opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSMRE has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal rules at 30 CFR 935.15, which codify decisions on the Ohio program, are being amended to implement these actions.

The final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to bring their programs into conformance with the Federal standards without undue delay; consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Discussion of Amendments

By letters dated November 15, 1985, and March 4, 1986, Ohio submitted three proposed program amendment packages numbered 19, 20, and 24 to OSMRE. Amendments were proposed to Ohio Revised Code (ORC) sections 1513.02, 1513.03, 1513.07, 1513.08, 1513.10, 1513.16, 1513.18, 1513.20, 1513.25, 1513.27, 1513.28, 1513.29, 1513.30, 1513.32, 1513.33, 1513.37, 1513.181, 5749.02 and 5749.021.

The changes proposed in ORC 1513.07, 1513.08, 1513.18, 1513.181, 5749.02, and 5749.021 were announced in the October 30, 1985 **Federal Register** (50 FR 45120). The amendments include a fee increase for permit applications and renewals of permit applications with the requirement to divide the revenues

received between the various reclamations funds. The amendments also divide forfeited permit sites into two separate categories known as Phase I and Phase II forfeitures. Phase I forfeitures are those on lands affected under permits issued after April 10, 1972, and before September 1, 1981, on which an operator has defaulted. Phase II forfeitures are those affecting permits issued on or after September 1, 1981, on which an operator has defaulted. The proposed amendments also specify the State fund to be used and amount of funding available to reclaim these two types of forfeitures.

These amendments were submitted to OSMRE to address Condition (h) of the Secretary's approval of the Ohio regulatory program. Condition (h) requires ODNR to demonstrate the adequacy of its alternative bonding program. The proposed amendments establish the mechanism for funding the reclamation of forfeited sites under Ohio's alternative bonding system. The Director is continuing to study the adequacy of the Ohio alternative bonding program. The adequacy of the proposed changes in relationship to removal of Condition (h) will be addressed in a separate rulemaking action.

Proposed changes to ORC 1513.07, 1513.33 and 1513.37 concerning payment of a filing fee for permit applications filed with county recorders, provisions for removal of permit applications after public review is completed and clarification of certain procedures in the filing and discharging of Abandoned Mine Lands liens were approved by OSMRE in the April 9, 1986 Federal Register (51 FR 12141). This final rule contains some additional amendments to these same ORC sections. Section 1513.07 increases the fee for a permit application or permit renewal from $50 to $75, section 1513.33 contains an editorial change, and section 1513.37 creates the Abandoned Mine Reclamation Fund in the State treasury.

Other amendments create several funds in the State treasury which are to be used to reclaim mine lands on which an operator has defaulted and there is insufficient bond to complete reclamation. The amendments also clarify that all performance standards apply to prime farmland reclamation and excess spoil. The other amendments are primarily editorial and include changing the names of the funds to be consistent throughout ORC Chapter 1513.

Ohio also proposed an amendment to ORC 1513.03. The amendment states that inspectors of coal mining operations serve at the pleasure of the Chief of the Division of Reclamation. OSMRE did not propose this amendment for public comment because the application of State civil service protection is outside OSMRE's authority regarding State programs.

On April 4, 1986, OSMRE published an announcement of the receipt of the amendments and invited public comment on the adequacy of the proposals (51 FR 11589). The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing one was not held. The comment period closed on May 5, 1986. No comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on November 15, 1985, and March 4, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below.

Ohio Revised Code—Chapter 1513 Ohio Coal Mining and Reclamation Law

1. ORC 1513.02 creates the reclamation penalty fund and places it in the custody of the State treasurer but not as a part of the State treasury. This fund serves as an escrow account for holding the proposed penalty amount through administrative or judicial review of the penalty. Section 1513.02 also contains several minor editorial changes. This statutory section is in accordance with SMCRA and the same or similar to 30 CFR 845.19.

2. ORC 1513.03 provided that inspectors of coal mining operations serve at the pleasure of the Chief of the Division of Reclamation. The Director finds that the application of the State's civil service protection is outside OSMRE's authority regarding State programs. Therefore, no action will be taken on this amendment.

3. ORC 1513.07 in addition to correcting references, increases the permit application fee from fifty dollars per acre to seventy-five dollars per acre and applies the fees to permit renewals. This section is in accordance with SMCRA and no less effective than 30 CFR 777.17.

4. ORC 1513.08 places the reclamation supplemental forfeiture fund in the State treasury. This fund is established to reclaim sites operating with permits issued on or after September 1, 1981, that the operators failed to reclaim. This section allows the Director of Budget and Management to transfer money from the unreclaimed lands fund to the reclamation supplemental forfeiture fund at the request of the Chief of the Division of Reclamation to maintain the fund level at $2 million. However, the section provides that $1 million is the maximum that may be moved in any fiscal year. The final amendment to this section is the correction of a reference. The regulation is in accordance with requirements in section 509(c) of SMCRA and the Director finds that it is no less effective than the Federal rules.

5. ORC 1513.10 places the reclamation fee fund in the State treasury. The fund had previously been housed in the State special revenue fund. In this section and throughout these rules, the term "special account" has been replaced by "fund". While neither SMCRA nor the Federal regulations contain a similar provision, ORC 1513.10 is not inconsistent with Federal requirements.

6. ORC 1513.16 clarifies that all performance standards apply to prime farmland reclamation and to excess spoil. It deletes the phrase ". . . and is available for use by the Chief, who shall proceed as under section 1513.18 of the Revised Code. Section 1513.16 now requires the Chief to certify the amount of the forfeited bond to the Attorney General instead of seeking certification from the State auditors. This section contains several editorial changes, largely correcting typographical and grammatical errors. In ths section and throughout these amendments "assure" has been changed to "ensure" and "Chapter 1513 of the Revised Code" has been changed to "this Chapter". These amendments are no less effective than 30 CFR 800.50 and 30 CFR Parts 816, 817, and 823.

7. ORC 1513.18 creates two separate funds for the reclamation of coal mining sites on which bond has been forfeited. The reclamation forfeiture fund receives money forfeited under section 1513.16 (A) to (G) and is used to reclaim land affected by coal mining under permits issued on or after September 1, 1961, on which the operator has defaulted. All money forfeited under section 1513.16(H) is deposited in the State treasury to the credit of the defaulted areas fund. This fund is used to reclaim land affected by coal mining under permits issued after April 10,1972, but before September 1, 1961 on which the operator has defaulted. The Federal Act and regulations do not contain additional requirements for interim program bonds. Ohio's rules on bonding interim sites are not inconsistent with any requirements in SMCRA or its regulations. This section also allows for the expenditure of additional funds if those in the defaulted areas fund are insufficent to accomplish the necessary reclamation. The section also provides

for recovering the additional expenditures from the operator through legal action. This amendment is not inconsistent with sections 501 and 505 of SMCRA, dealing with interim program bonds and is no less effective than 30 CFR 800.50 for permanent program bonds.

8. ORC 1513.20, 1513.25, 1513.27, 1513.28 1513.29, 1513.30, 1513.32, 1513.33 and 1513.37 have all been amended so that the language referring to Ohio's various reclamation funds are consistent. "Special account" has been changed to "fund", "disbursements" has been changed to "expenditures", and other editorial and grammatical changes have been made to these sections. This action does not conflict with any requirements of SMCRA or the Federal regulations.

9. ORC 1513.181 sets forth the procedures used to transfer money from the coal mining administration and enforcement reserve fund to the defaulted areas fund as allowed in 1513.18. This money would be used to reclaim sites mined under permits issued after April 10, 1972 but before September 1, 1981, on which the operator has forfeited bond. While there is no direct counterpart to this section either SMCRA or the Federal regulations, it is in accordance with section 509(c) of SMCRA.

10. ORC 5749.02 and 5749.021 have been amended to be consistent with the other amendments in ORC 1513. "Special account" has been changed to "fund". This action does not conflict with any reqirements of SMCRA or the Federal regulations.

IV. Public Comments

No public comments were received on the proposed amendments.

V. Director's Decision

The Director, based on the above findings, is approving the November 15, 1985 and March 4, 1986 amendments. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments.

VI. Procedural Matters

(1) Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

(2) Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE and exemption from section 3, 4, 7, and 8 of the Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

(3) Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 935.15 is amended by adding a new paragraph (u) as follows:

* * * * *

§ 935.15 Approval of regulatory program amendments.

* * * * *

(u) The following amendments submitted to OSMRE on November 15, 1985 and reconciled on March 4, 1986, are approved effective June 9, 1986. Ohio Revised Code 1513.02, 1513.07, 1513.08, 1513.10, 1513.16, 1513.18, 1513.20, 1513.25, 1513.27, 1513.28, 1513.29, 1513.30, 1513.32, 1513.33, 1513.37, 1513.181, 5749.02, and 5749.021.

[FR Doc. 86–12915 Filed 6–6–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 81

[CGD 86–019]

Alternative Compliance, Inland and International Navigation Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination of exemption period.

SUMMARY: Rule 38 of both the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and the Inland Navigation Rules exempts vessels which were built before the rules became effective from certain technical provisions concerning the position of lights. Certain temporary exemptions terminate nine years after the effective date. The nine year exemption periods expire July 15, 1986 on COLREGS waters, December 24, 1980 on Inland waters and March 1, 1982 on the Great Lakes. Vessels which have been operating under the temporary exemption of Rule 38 are expected to be in full compliance by these dates; however, vessels of special construction or special purpose, especially those 20 to 50 meters in length with the pilothouse located forward of a single mast and the sidelights forward of the masthead light, may be entitled to Alternative Compliance Certificates, which will allow them to continue to operate with their existing lights.

Those owners or operators who believe an exception should be made on the basis of the special construction or purpose of the vessel should follow the procedures described below to obtain a Certificate of Alternative Compliance from the technical requirements for positioning lights.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles K. Bell, Chief, Navigation Rules and Information Branch, U.S. Coast Guard Headquarters, Office of Navigation (G–NSR), Washington, DC 20593, telephone number (202) 426–1950 for Rule interpretations or Lieutenant Commander Bruce Pickard, U.S. Coast Guard Headquarters, Compliance and Enforcement Branch (G–MVI–1), Washington, DC 20593, telephone number (202) 426–1464 for inspection or enforcement questions.

Background Information:

The drafters of the 72 COLREGS recognized that complete and immediate compliance with the technical requirements for lights by existing

vessels and vessels then under construction would be unreasonable. Rule 38 of the 72 COLREGS (found following 33 U.S.C. 1602) provides that vessels under construction prior to the effective date of the 72 COLREGS (July 15, 1977) are exempt from complying with specific technical provisions for nine years.

The drafters were also aware that some vessels were designed to serve such a specialized purpose that some flexibility in permanent application of the technical requirements would be needed on a case-by-case basis. Under 72 COLREGS, Rule 1(e), this flexibility is to be administered by the government under whose jurisdiction the vessel is operated, with the proviso that the government, before authorizing alternative compliance, will require that the vessel be in the "closest possible compliance" with the Rules.

To implement the 72 COLREGS, THE Coast Guard promulgated regulations for issuing Alternative Compliance Certificates in 1982. These procedures are described in 33 CFR, Part 81. Notice is published in the Federal Register listing those vessels which have been issued such certificates.

Similar provisions apply under the Inland Navigational Rules.

Discussion

Sidelight and Masthead Light Placement (Annex I, Section 3(b)): Vessels of twenty or more meters in length built prior to July 15, 1977 operating at any time on COLREGS waters must comply by July 15, 1986 with the following requirements for the placement of sidelights: "On a power-driven vessel of 20 meters or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel" (the Inland ANNEX is identical to the International ANNEX on this point.) The forward masthead light refers to the light located "forward" as required by Rule 23(a), and, therefore, the requirement that sidelights not be forward of this light applies whether or not a vessel less than 50 meters carries the optional second masthead light aft. Vessels built after July 15, 1977 should have been constructed to fully comply with the COLREGS.

Vessels may qualify for Certificates of Alternative Compliance with respect to the above requirements. This may be of particular interest for a vessel which:

(1) Is between 20 and 50 meters in length; and

(2) Is a single masted vessel with a pilothouse in the forward or midship part of the vessel, and with sidelights located forward of the single mast.

Vessels of this type frequently have their sidelights mounted on the pilothouse well inboard of the sides of the vessel.

A vessel qualifies for a Certificate of Alternative Compliance if:

(1) The vessel is of special construction or purpose due to its trade or employment (these vessels are typically involved in towing or fishing); and

(2) Relocation of the forward masthead light or sidelights would interfere with its special function.

Examples of interference are that the repositioning of the lights to conform with the ANNEX would cause glare in the eyes of the vessel operator and, therefore, would affect the ability of the operator to maintain a proper lookout; or the repositioning of the sidelights or masthead light may cause the lights to be less visible due to deck working lights or rigging.

Owners or operators of vessels who believe they are entitled to an Alternative Compliance Certificate for the placement of sidelights and masthead light are urged to apply, following the procedures in 33 CFR 81, by June 15 or as soon as possible. The Coast Guard anticipates a large number of applications, and may be unable to respond to all applications by July 15.

Applications should include information as to why the applicant believes the present or proposed installation constitutes the closest possible compliance with the Rules.

Owners, operators or agents may submit an application identifying a *class* in which several vessels have the same relevant characteristics. This single application should include a blueprint or drawing of a representative of the class, and should identify each vessel in the class by name and official number. Where the application is approved, the Coast Guard District Commander (m) will issue a "class" certificate containing a list of the approved vessels.

Vessels operated only on waters to which Inland Navigational Rules apply which were build before December 24, 1980 are exempted until December 24, 1990 for inland waters and March 1, 1992 for the Great Lakes. Owners and operators of such vessels are requested to defer any application concerning exempted installations until after December 31, 1986.

Compliance Action

Compliance with the COLREG provisions by July 15, 1986 is the responsibility of the vessel owner/operator. Vessels of special construction or purpose that are not in compliance should carry a Certificate of Alternative Compliance on board in accordance with 33 CFR 81.

In taking any enforcement action against vessels not in compliance, the Coast Guard will take into account the scheduling of vessel modifications, any pending application for a Certificate of Alternative Compliance, and related matters. However, such considerations may not affect civil liability in case of collision.

Dated: June 4, 1986.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-12907 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD3 86-07]

Special Local Regulations; Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Empire State Regatta which is sponsored by the Empire State Regatta Fund, Inc. of New Scotland, New York. This marine event, involving approximately 250 crew racing shells, will be held from 13 to 16 June 1986 on the Hudson River at Albany, New York. These regulations are needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation is effective from 6:00 a.m. on June 13, 1986 through 6:00 a.m. on June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. L.A. Dlhopolsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 28, 1986, the Coast Guard published a Notice of Proposed Rule Making in the Federal Register for these regulations (51 FR 15795-15796). Interested persons were requested to submit comments, and one commentor responded. These regulations are being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. L.A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn ARISMAN, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

This is the second consecutive year that the Empire State Regatta will be held in the same location on the Hudson River on the second weekend in June. The sponsor plans to hold this three day event annually on the first or second weekend in June. In preparation for the event, floats used to mark the race course are connected to anchors that were installed in the rock river bottom in 1985. In order to make use of these permanently set anchors, the event must be held in the same location each year. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Each year the Coast Guard will provide the public full and adequate notice of the annual crew race event by publication in the Third District Local Notice to Mariners and in a Federal Register notice. The Empire State Regatta is sponsored by the Empire State Regatta Fund, Inc. of New Scotland, New York on behalf of the United States Rowing Association. This crew racing event serves as the annual Northeast Regional Championships. The races are held on a 2000 meter course on the Hudson River adjacent to Albany, New York. Approximately 250 crew shells, ranging in size from 26 to 68 feet in length race in heats throughout the day from as early as 7:30 a.m. to 6:00 p.m. on June 14 and 15, 1986. The race course consists of six lanes marked by seven rows of buoys anchored to the bottom of the river. Small styrofoam buoys marked with retroreflective tape will be set in the river on June 13, 1986 and will be removed overnight on June 15 into early June 16, 1986. The sponsor shall arrange for several vessels which will assist the Coast Guard Patrol Commander in providing for the safety of the event and spectator craft. The Coast Guard intends to restrict vessel movement within this section of the Hudson River during this event to provide for the safety of the participants and spectators on navigable waters. Vessels less than 20 meters in length will be allowed to transit the regulated area at no-wake speeds at specified intervals (approximately every two hours) throughout each race day as directed by the Coast Guard Patrol Commander. Larger vessels will not be allowed to pass through the regulated area at any time during the effective period unless in an emergency and authorized by the Coast Guard Patrol Commander. The Coast Guard Captain of the Port of New York will again, as last year, contact the numerous commercial facilities along the Hudson River north of the regulated area to ask their cooperation in scheduling any vessel transits so as not to interfere with this event. Mariners are urged to use extreme caution when transiting the regulated area. The Coast Guard will issue a safety voice broadcast and this regulation will be published in the Local Notice to Mariners to advise the general public and commercial users on the Hudson River of the event.

Discussion of Comments

Four comments were received from the sponsor. The sponsor's name has been changed to The Empire State Regatta Fund, Inc. This change has been made wherever the old name (Capital Rowing Club, Inc.) appeared in the Notice of Proposed Rulemaking. The sponsor pointed out that the races could begin as early as 7:30 a.m. on the 14th and 15th of June. These Special Local Regulations are in effect from 6:00 a.m. on June 13, 1986 when work begins to install the race course grid. Transiting vessel movement is at the discretion of the Coast Guard Patrol Commander from that point until 6:00 a.m. on June 16, 1986. Race starts at 7:30 a.m. instead of 9:00 a.m. on June 14 and 15, as stated in the Proposed Rule, would therefore create little additional impediment to transiting vessels. The sponsor remarked that only recreational vessels less than 20 meters were allowed to transit the race course last year. This was neither the case nor the intent of the regulation. Any vessel, commercial or recreational, within the 20 meter length limit may transit the regulated area at the discretion of, and using the route prescribed by, the Coast Guard Patrol Commander. The sponsor remarked that vessels docked within the regulated area may get under way only with the permission of the Coast Guard Patrol Commander. This point is already covered in these regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large spectator crowd along the shores of the Hudson River which should compensate certain area merchants for the inconvenience of having navigation restricted. Smaller craft will be allowed to transit the regulated area at designated times during each race day and after the conclusion of each day's racing. In 1985 a survey of river traffic users indicated that any inconvenience to waterway transportation would be minimal. In fact most commercial marine interests successfully adjusted their schedules to avoid transiting this area last year during the effective period of the regulation which was from 6:00 a.m. on June 7 through 6:00 a.m. on June 10, 1985.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended by adding § 100.308 to read as follows:

§ 100.308 Empire State Regatta, Albany, New York.

(a) *Regulated Area:* That section of the Hudson River between the I–90 Interchange Bridge on the north and the northern end of Culver Dike on the south.

(b) *Effective Period.* This regulation is effective from 6:00 a.m. on June 13, 1986 through 6:00 a.m. on June 16, 1986 and thereafter annually on the first or second weekend (Friday, Saturday, Sunday into early Monday) in June as published in the Third District Local Notice to Mariners and in a Federal Register notice.

(c) *Special Local Regulations:* (1) The regulated area shall be intermittently closed to all vessel traffic from 6:00 a.m. on Friday to 6:00 a.m. on Monday except as specified below or as directed by the Coast Guard Patrol Commander.

(2) Vessels greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless allowed to do so by the Coast Guard Patrol Commander.

(3) Vessels less than 20 meters in length may transit the regulated area only if escorted by an official patrol vessel. From 7:30 a.m. through 6:00 p.m. on Saturday and Sunday, official patrol vessels will escort transiting vessels less than 20 meters at specified intervals (approximately every two hours) as directed by the Coast Guard Patrol Commander. At all other times, the regatta sponsor shall provide a sufficient number of escort vessels to ensure timely transits for vessels less than 20 meters.

(4) Unless otherwise directed by the Coast Guard Patrol Commander, transiting vessels shall: proceed at no-wake speeds, remain clear of the race course area as marked by the sponsor-provided buoys, not interfere with races or any shells in the area, make no stops and keep to the eastern edge of the Hudson River.

(5) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels, New York State and local police boats and other vessels so designated by the regatta sponsor or Coast Guard Patrol Commander.

(6) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(7) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(8) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the other owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: May 30, 1986.

J.C. Uthe,

Captain, U.S. Coast Guard Acting Commander, Third Coast Guard District.

[FR Doc. 86-12909 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 162

[CGD 85-060]

Inland Waterways Navigation Regulation; Connecting Waters From Lake Huron To Lake Erie

Correction

In FR Doc. 86-10371 beginning on page 17013 in the issue of Thursday, May 8, 1986, make the following correction:

§ 162.132 [Corrected]

On page 17016, second column, in § 162.132(e), in Table I, in the second column, ninth line, insert "Dock" between "Salt" and "Light".

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 79

Direct Grant Programs and Intergovernmental Review of Department of Education Programs and Activities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Intergovernmental Review of Department of Education Programs and Activities. These regulations are amended to comply with the OMB guidance memorandum entitled Procedural Changes in Agency Implementation of E.O. 12372, issued by OMB on March 14, 1985 to improve the implementation of the Executive Order. The regulations governing direct grant programs are also amended to improve the Department's procedures for soliciting applications for continuation awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: F. LeRoy Walser, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs, Room 2083, FOB-6, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 447-7501.

SUPPLEMENTARY INFORMATION: The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for coordination and review of proposed Federal financial assistance and direct development. The Executive Order, which revoked OMB Circular A-95—

(1) Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance; and

(2) Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why these views will not be accommodated.

On July 31, 1985, a notice of proposed rulemaking (NPRM) was published in the Federal Register (50 FR 30959) proposing to amend the regulations for 34 CFR Part 79 (48 FR 29158-29168) published on June 24, 1983, implementing Executive Order 12372, Intergovernmental Review of Federal Programs.

All comments received supported the proposed amendments and commended the Department of Education for amending the regulations.

Procedural Changes

The Secretary amends Parts 75 and 79 of Title 34 of the Code of Federal Regulations to accommodate the following procedural changes:

1. In § 79.3, the amendments to the regulations substitute OMB criteria entitled "Determining Program Coverage" issued on March 14, 1985 for criteria found at Appendix A—General Criteria Used by Federal Agencies in Identifying the Scope of Executive Order 12372, published at 48 FR 29160-29170 on June 24, 1983.

An effect of this change is that State and municipal colleges and universities, as well as other non-governmental entities (other than federally recognized Indian tribal governments), are now covered under E.O. 12372.

2. In § 79.8, paragraph (a) is revised, paragraphs (b) and (c) have been redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) has been added to clarify how the Secretary establishes deadlines for the receipt of comments resulting from the State review process.

The current regulations are silent on the issue of how deadline dates are handled. However, the Education Department General Administrative Regulations (EDGAR) require that deadline dates for the receipt of applications by the Department be included in application notices published in the Federal Register. In the absence of clarifying regulations in 34 CFR Part 79, the Department has developed a practice of publishing in the

Federal Register deadline dates for the receipt of comments resulting from the State review process. The new paragraph (b) clarifies that for applications for new grants the Secretary will continue to publish in the Federal Register deadline dates for receipt of comments resulting from the State review process. However, for applications for continuation awards, the Secretary will provide notice directly to the grantees and the State Single Points of Contacts (SPOCS). These changes will simplify administration of programs subject to E.O. 12372 and should also lower the costs of administering these programs.

3. In § 79.8, the amendments to the regulations provide that State process recommendations be clearly identified.

4. The Secretary has also decided to amend Part 75 of EDGAR through this final rulemaking document to improve the procedures for soliciting continuation award applications. Publication of an application notice in the Federal Register regarding the availability of continuation awards is unnecessary because the applicants are all existing grantees known to the Department. Further, the closing dates set in application notices for continuation awards are stated as targets, not as requirements. Thus, the Secretary will provide all the information and forms necessary for filing a continuation application, including the information formerly included in the application notice, in the application package mailed to each eligible grantee. However, the Secretary would continue to have discretion to provide notice through a publication in the Federal Register. A related amendment to 34 CFR Part 79 will ensure that the Secretary informs grantees of the target deadline for the receipt of comments resulting from the State review process as well.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Waiver of Rulemaking.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the only change made by this document that was not previously published for public comment involves a change in the Department's procedures for soliciting continuation award applications establishing target deadline dates for comments resulting from the State review process. These notifications will be made to each affected grantee and SPOC, rather than through a notice published in the Federal Register and are procedural in nature. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(A) that proposed rulemaking on the changes is not required.

Assessment of Educational Impact

In the NPRM, published on July 31, 1985, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, and Grants administration.

34 CFR Part 79

Education Department, Grant programs—education, Grants administration, Intergovernmental relations, and State administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: June 3, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 75 and 79 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

2. In § 75.100, paragraph (a) is revised, paragraph (b)(2) is removed, paragraph (b)(3) is redesignated as paragraph (b)(2), and a new paragraph (c) is added to read as follows:

§ 75.100 Publication of an application notice; content of the notice.

(a) Each fiscal year the Secretary publishes application notices in the Federal Register that explain what kind of assistance is available for new grants under the programs that the Secretary administers.

* * * * *

(c)(1) Each fiscal year the Secretary informs grantees that are eligible for continuation awards under § 75.253 about the procedures used to apply for those awards.

(2) The Secretary informs the grantees by individual notice or by publication in the Federal Register.

(20 U.S.C. 1221e–3(a)(1))

§ 75.101 [Amended]

3. In § 75.101, paragraphs (a) (7) through (9) inclusive are removed, and paragraphs (a) (10) and (11) are redesignated as paragraphs (a) (7) and (8), respectively.

§ 75.102 [Amended]

4. In § 75.102, paragraph (c) is removed and reserved.

5. In § 75.153, paragraph (a) is revised to read as follows:

§ 75.153 Deadlines for State approval.

(a)(1) The Secretary may publish in the Federal Register a notice that establishes a deadline date for receipt of State approvals of new grant applications under a program covered by § 75.150.

(2) The Secretary may establish a deadline date for the receipt of State approvals of continuation award applications under a program covered by § 75.150 by—

(i) Notifying each State of the deadline for its approval; or

(ii) Publishing a notice of the deadline in the Federal Register.

* * * * *

PART—79 INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

6. The authority citation for Part 79 is revised to read as follows:

Authority: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

7. In § 79.3, paragraphs (a) and (b) are revised and new paragraphs (c) and (d) are added to read as follows:

§ 79.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the Federal Register a list of the

Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

(b) If a program or activity of the Department that provides Federal financial assistance does not have implementing regulations, the regulations in this part apply to that program or activity.

(c) The following programs and activities are excluded from coverage under this part:

(1) Proposed legislation.

(2) Regulation and budget formulation.

(3) National security matters.

(4) Procurement.

(5) Direct payments to individuals.

(6) Financial transfers for which the Department has no funding discretion or direct authority to approve specific sites or projects (e.g., block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981).

(7) Research and development national in scope.

(8) Assistance to federally recognized Indian tribes.

(d) In addition to the programs and activities excluded in paragraph (c) of this section, the Secretary may only exclude a Federal financial assistance program or activity from coverage under this part if the program or activity does not directly affect State or local governments.

(E.O. 12372)

8. In § 79.8 paragraph (a) is revised, a new paragraph (b) is added, and the current paragraphs (b) and (c) are redesignated as (c) and (d) respectively, to read as follows:

§ 79.8 How does the Secretary provide States an opportunity to comment on proposed Federal financial assistance?

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities—

(1) At least 30 days to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days to comment on proposed Federal financial assistance other than noncompeting continuation awards.

(b) The Secretary establishes a date for mailing or hand-delivering comments under paragraph (a) of this section using one of the following two procedures:

(1) If the comments relate to continuation award applications, the Secretary notifies each applicant and each State Single Point of Contact (SPOC) of the date by which SPOC comments should be submitted.

(2) If the comments relate to applications for new grants, the Secretary establishes the date in a notice published in the Federal Register.

* * * * *

9. In § 79.9, paragraph (a)(2) is revised to read as follows:

§ 79.9 How does the Secretary receive and respond to comments?

(a) * * *

(2) That office or official transmits a State process recommendation, and identifies it as such, for a program selected under § 79.6.

* * * * *

[FR Doc. 86-12753 Filed 6-6-86; 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Parts 230 and 231

Asbestos Detection and Control; Local and State Educational Agencies; Removal of Obsolete Provisions

Correction

In FR Doc. 11793 beginning on page 19173 in the issue of Wednesday, May 28, 1986, the name of the signing official was omitted and should be inserted on page 19173 in the third column, above the third line from the bottom, as follows:

William J. Bennett,

Secretary of Education.

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Miscellaneous Minerals Provisions; Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: Misty Fjords and Admiralty Island National Monuments were established by the Alaska National Interest Lands Conservation Act on December 2, 1980, for the purpose of protecting objects of ecological, cultural, geological, historical, prehistorical, and scientific interest. Section 503(f)(2)(A) of the Act provides that the holders of valid mining claims on public lands within the Monuments may conduct mineral activities in accordance with regulations promulgated by the Secretary of Agriculture to ensure that the mineral activities are compatible, to the maximum extent feasible, with the purpose of which the Monuments were established. The final rule establishes the procedures the Forest Service will use in meeting the standard of section 503(f)(2)(A) of the Act.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: Harry G. Stumpf, Minerals and Geology Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013 ((703) 235-8011).

SUPPLEMENTARY INFORMATION: The lands within the Misty Fjords and Admiralty Island National Monuments were withdrawn from mineral entry on December 1, 1978, by Presidential Proclamations 4611 and 4623 and on December 2, 1980, by the Alaska National Interest Lands Conservation Act (section 503(f)(1)) (94 Stat. 2400). However, the Act provided for the continued evaluation and development of valid mining claims on public lands within the Monuments. To meet the standards of section 503(f)(2)(A) of the Act, the final rule requires an identification of the resources that the Monuments were established to protect. In addition, the final rule establishes guidelines to assist Forest officers in determining whether final mineral activities are compatible with the protection of the indentified Monument resources. The final rule also provides guidance to Forest officers in determining whether mitigating measures are feasible, that is, whether the measures will successfully prevent or reduce adverse environmental impacts of mineral activities on the identified resources without jeopardizing the economic viability of the overall project. The intent of this rule is to provide environmental safeguards under which development can continue, not to prevent the evaluation and development of valid mining claims.

Analysis of Public Comment

A proposed rule was published in the Federal Register on September 11, 1985 (50 FR 37005), with a comment period of 60 days. Six public comments were received. Two comments were submitted by mining companies, one by an environmental group, one by a miners' association, and two by Alaska State organizations. The general reaction to the proposed rule was favorable, with some suggestions and comments for clarifying specific points.

Two respondents wanted clarification that this rule does not apply to patented

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claims. As stated in section 503(f)(2)(A) of the Act, this regulation is limited to valid mining claims on public lands in the Monuments. Once a patent is issued, the land is removed from public ownership; therefore, this regulation would not apply to patented lands.

One respondent questioned why neither an environmental assessment nor an environmental impact statement was prepared for the proposed rule. In conducting the environmental analysis and based on past experience with similar actions, it was determined that this rule will have no significant effects on the human environment. Therefore, this final rule has been categorically excluded from documentation as provided by recently revised Forest Service Procedures (50 FR 26078) for implementing the National Environmental Policy Act.

One respondent stated that the Act does not require the validity test within the technical meaning of the term. We disagree; Sections 504(a), (b), (c), and (e) of the Act repeatedly define validity "within the meaning of the mining laws of the United States." We interpret that to mean that a discovery of a valuable mineral deposit within the boundaries of a properly located and maintained claim must be demonstrated before operations may be approved.

Three respondents suggested that consideration be given to the cost-effectiveness of mitigating measures and to the effects of such measures on the short-term as well as on the long-term economic viability of mining operations in the Monuments. We agree and have included short-term considerations, since Congress made no distinction between short- and long-term economic feasibility. We have also revised the rule to expand the factors to be considered in determining the feasibility of mitigating measures.

One respondent asserted that economics should not be considered in assessing feasibility. This comment ignores the clear language of the statute and the Act's legislative history to the effect that any environmental safeguards contained in the regulations are not to be used to prevent further evaluation and development of valid mining claims in the Monuments. The respondent also misinterpreted the preamble to the proposed rule in suggesting that it authorized deletion of any mitigating measures when they affect the short-term costs of a mining project. Mitigating measures may be imposed as deemed necessary by the authorized officer as long as further evaluation and development of the claims are not clearly prevented by such measures. A statement was added in the final rule to clarify our intent.

One respondent argued that the rule should address section 505(b) of the Act. We do not believe that section 505(b) is relevant since it applies specifically to the Quartz Hill project and is quite detailed and self-implementing, and it does not require any regulations to be promulgated. Compliance with section 505(b) standards will be enforced through the process already established in 36 CFR 228 Subpart A for the approval of plans of operations in the National Forest System.

We have supplemented the provisions of Subpart A for modifications to the original plan of operations should unforeseen changes in circumstances affect the determinations of compatibility and feasibility. Although the procedures for modifications are incorporated by reference, we felt that it was useful to repeat the specific requirements of the Act as additional conditions.

One respondent argued that section 503(f)(2)(A) of the Act requires the promulgation of site-specific environmental standards for mining operations in the Monuments. We find no support for this argument in the statutory language or the legislative history. The incorporation by reference of 36 CFR 228 Subpart A should adequately incorporate compliance with Federal, State, and local environmental statutes and regulations. Development of site-specific standards for the conduct of mining should await the site-specific evaluation of each plan of operations. Any attempt at uniform standards would ignore the potential differences in requirements associated with the particular terrain, location, and nature of operations involved in each case.

It was suggested the wilderness be included as a Monument resource in this rule. This suggestion was rejected because parts of each National Forest Monument, particularly where the major mining operations are located, were deliberately not designated as wilderness by Congress. Additionally, wilderness is not listed in section 502 of the Act as a purpose for which the Monuments were established. Wilderness is therefore not a Monument resource to be protected by regulations mandated by section 503(f)(2)(A). Wilderness Act protections (as modified by the Alaska National Interest Lands Conservation Act) apply separately to mining operations in the Monuments under 36 CFR 228 Subpart A and other applicable law and regulation, as do many other legal requirements. It is not necessary to reincorporate all of the requirements of existing mining and access regulations in this rule.

Several respondents suggested publication of any changes as another proposed rule to allow for additional comment prior to publication as a final rule. We do not believe that another opportunity to comment would result in more constructive points being raised.

Regulatory Impact

The final rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that this regulation is not a major rule. The regulation will not have an effect on the economy of $100 million or more and, in and of itself, will not increase major costs to consumers, geographic regions, industry, or Federal, State, and local agencies. The regulation is essentially procedural, and, therefore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Controlling Paperwork Burdens on the Public

The final rule contains no information collection requirements not already required by regulations (36 CFR 228 Subpart A) for approval of locatable mineral activities in the National Forest System. Those requirements were approved by the Office of Management and Budget through September 30, 1986, and assigned Clearance Number 0596–0022.

Small Entity Impact

In accordance with the Regulatory Flexibility Act of 1981 (5 U.S.C. 601 et seq.), the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities. It imposes no new paperwork or recordkeeping requirements on small entities. The information collection and reporting requirements to which a small entity will be subject under the final rule have not been increased and have been kept to the minimum necessary for the protection of the surface resources of the Misty Fjords and Admiralty Island National Monuments. These requirements are well within the capability of small entities involved in extracting minerals; therefore, the final rule will not affect the competitive position of small entities in relation to large entities, nor will it affect their cash flow, liquidity, or ability to remain in the market.

Environmental Impact Statement

Based on environmental analysis and past experience with similar actions, the Forest Service has determined that this final rule will have no significant effects on the human environment. Therefore, this final rule has been categorically excluded from documentation (FSM 1952.2).

List of Subjects in Part 228

Administrative practice and procedure, Environmental protection, Mineral resources, Mines, National forests, National monuments, Surety bonds.

For reasons set out in the preamble, Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 228—[AMENDED]

Subpart D—[Amended]

1. Revise the authority citation for Part 228 to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), and 94 Stat. 2400, unless otherwise noted.

2. In Subpart D, add a new § 228.80, *Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska*, to read as follows:

§ 228.80 Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska.

(a) Mineral activities on valid mining claims in the Misty Fjords and Admiralty Island National Monuments must be conducted in accordance with regulations in Subpart A of this Part and with the provisions of this section.

(b) Prior to approving a plan of operations, the authorized officer must consider:

(1) The resources of ecological, cultural, geological, historical, prehistorical, and scientific interest likely to be affected by the proposed operations, including access; and

(2) The potential adverse impacts on the identified resource values resulting from the proposed operations.

(c) A plan of operations will be approved if, in the judgment of the authorized officer, proposed operations are compatible, to the maximum extent feasible, with the protection of the resource values identified pursuant to paragraph (b)(1) of this section.

(1) The authorized officer will deem operations to be compatible if the plan of operations includes all feasible measures which are necessary to prevent or minimize potential adverse impacts on the resource values identified pursuant to paragraph (b)(1) of this section and if the operations are conducted in accordance with the plan.

(2) In evaluating the feasibility of mitigating measures, the authorized officer shall, at a minimum, consider the following:

(i) The effectiveness and practicality of measures utilizing the best available technology for preventing or minimizing adverse impacts on the resource values identified pursuant to paragraph (b)(1) of this section; and

(ii) The long- and short-term costs to the operator of utilizing such measures and the effect of these costs on the long- and short-term economic viability of the operations.

(3) The authorized officer shall not require implementation of mitigating measures which would prevent the evaluation or development of any valid claim for which operations are proposed.

(d) In accordance with the procedures described in Subpart A and paragraphs (c)(1) through (c)(3) of this section, the authorized officer may approve modifications of an existing plan of operations:

(1) If, in the judgment of the authorized officer, environmental impacts unforeseen at the time of approval of the existing plan may result in the incompatibility of the operations with the protection of the resource values identified pursuant to paragraph (b)(1) of this section; or

(2) Upon request by the operator to use alternative technology and equipment capable of achieving a level of environmental protection equivalent to that to be achieved under the existing plan of operations.

Dated: May 13, 1986.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86-12940 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-11-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Nonmatriculated Students; Correction

AGENCY: Veterans Administration.

ACTION: Final regulations; correction.

SUMMARY: In the Federal Register of Thursday, May 29, 1986, (51 FR 19331-19332), the VA (Veterans Administration) adopted a new, more liberal rule concerning nonmatriculated students. This notice corrects previously published information.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: In the preamble, the VA inadvertently published May 8, 1985, as the date the document was approved and as the effective date. This should be corrected to read May 8, 1986, in both instances.

Dated: June 3, 1986.

Patricia Viars,

Chief, Directives Management Division.

[FR Doc. 86-12905 Filed 6-6-86; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Limit on Reimbursement of Wages Under the Veterans' Job Training Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: A few employers have been circumventing the intent of VJTA (Veterans' Job Training Act) in order to receive more than 50% of the wages paid to veterans training under the Act. These amended regulations contain an additional limitation on the amount payable on behalf of a single veteran. The limitation will prevent this abuse.

EFFECTIVE DATE: May 22, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 50642 and 50643 of the Federal Register of December 11, 1985, there was published a notice of intent to amend Part 21 to impose a limitation on the amount that may be paid to an employer on behalf of a veteran who is training under the Veterans' Job Training Act.

It was also proposed that any VA payment to an employer in excess of or contrary to payment limitations shall constitute an overpayment for which the employer will be liable.

Interested people were given 30 days to submit comments, suggestions or objections. The VA received four letters. Two were from the same college official. One was from an official of a State employment service. One was from a service organization.

The university official stated in both letters that he did not wish to comment on the proposal.

The State official commented that the proposal did not state who will monitor whether an employer is reducing the wages paid to a trainee during a training period.

Admittedly, § 21.4632, as amended, does not state who will monitor a trainee's wages. However § 21.4642(a) states, "The VA may determine compliance with the provisions of §§ 21.4642(a) states, "The VA may determine compliance with the provisions of §§ 21.4620 through 21.4632 by (1) monitoring employers and veterans participating in job training programs, (2) investigating any matter necessary to determine compliance, and (3) requiring the submission of information deemed necessary by the Administrator of Veterans' Affairs before, during or after training." This paragraph is based on Pub. L. 98–77, section 12. Since it is clear from § 21.4642(a) that the VA will monitor the provisions of § 21.4632, the VA does not think it necessary to repeat that information in § 21.4632 itself.

The service organization did not object to the amendment of § 21.4634. However, that organization did object to the amendment of § 21.4632. The letter writer stated that the service organization is unaware of any employer who is trying to circumvent the intent of the VJTA.

Through its monitoring function described above, the VA has become aware of some employers who have tried to circumvent the intent of the VJTA. Although this is just a small percentage of the employers participating in the program, the VA believes that their number is sufficient to require the amendment to §21.4632. Accordingly, the VA is making the amended regulations final.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

It is the intent of the VJTA that no employer be reimbursed for more than 50% of the wage he or she is paying the trainee. This certification, therefore, can be made because this clarification of VA regulations is required to make them consistent with, and to carry out the intent of the VJTA.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.121.)

List of Subjects in 38 CFR Part 21

Civil rights, claims, education, grant programs-education, loan programs-education, reporting and recordkeeping requirements, schools, veterans, vocational education, vocational rehabilitation.

Approved: May 22, 1986.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. Section 21.4632, is amended by adding paragraph (e)(3) to read as follows:

§ 21.4632 Payments.

* * * * *

(e) *Limitations on payments.* * * *

(3) If an employer reduces the wages paid to a trainee for a training period so that the trainee is paid at a rate which is less than the starting wage rate, the VA shall not pay the employer an amount in excess of 50 percent of the wages (exclusive of overtime and premium pay) paid to the trainee for the training period. (Sec. 8, Pub. L. 98–77)

2. In § 21.4634, paragraphs (d) and (e) are revised and new paragraph (f) is added to read as follows:

§ 21.4634 Overpayments.

* * * * *

(d) *Payment contrary to limitations.* Whenever the VA finds that payment has been made to an employer, on behalf of a veteran, in an amount which exceeds or is otherwise contrary to the limitations set forth in § 21.4632(e), such amount shall constitute an overpayment for which the employer shall be liable to the United States. (Sec. 8, Pub. L. 98–77; 97 Stat. 443)

(e) *Waivers of overpayments.* Any overpayment established under this section may be waived, entirely or partly, as provided by §§ 1.955 through 1.970 of this chapter. (Sec. 8, Pub. L. 98–77; 97 Stat. 443)

(f) *Recovery of overpayments.*

(1) Any overpayment referred to in paragraph (a), (b), (c), or (d) of this section may be recovered in the same manner as any other debt due the United States.

(2) If both the veteran and employer are found liable to the United States under paragraph (a), (b), (c) or (d) of this section for all or part of the overpayment, they shall be considered to be jointly and severally liable to the extent of their respective liabilities.

(Sec. 8, Pub. L. 98–77, 97 Stat. 443)

[FR Doc. 86–12904 Filed 6–6–86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[FRL 3025–8]

Water Pollution; General Pretreatment Regulations for Existing and New Sources

Correction

In FR Doc. 86–12540 beginning on page 20426 in the issue of Wednesday, June 4, 1986, a portion of the document text appeared out of order. The text appearing on page 20430 should have preceded the text appearing on page 20429.

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–26

[FPMR Temp. Reg. E–84]

Procurement of Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation changes the number of consolidated procurements of sedans, station wagons, and light trucks that are made by GSA each year on behalf of agencies and revises the schedules for agencies to submit orders to GSA for these types of vehicles. The regulation also establishes a consolidated program for the procurement of medium and heavy trucks and provides for a change in GSA's centralized leasing program. The changes in the consolidated procurement program provided in this

regulation are designed to correlate the ordering of vehicles with current production practices in the industry and thereby expedite delivery to Federal agencies.

DATES: Effective date: April 1, 1986. Expiration date: March 31, 1987. Comments due on or before: July 31, 1986.

ADDRESS: Comments should be addressed to: General Services Administration (FCA), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Norberg, Automotive Commodity Center (703–557–8295).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

The Interagency Advisory Committee on Regulatory Review has developed a proposed revision of FPMR Subchapter E (see 51 FR 4619). The revision would delete §§ 101.26.501 thru 101–26.501–8 which cover the procurement of motor vehicles. The amended text of these sections would be incorporated into FPMR Subchapter G, Transportation and Motor Vehicles. Because the timing and final form of the Subchapter E revisions are uncertain and the changes in the text on the procurement of motor vehicles are needed immediately, this temporary regulation is being issued in lieu of a permanent change to the FPMR.

List of Subjects in 41 CFR Part 101–26

Government property management.

(Sec. 205(c) 63 Stat. 390; (40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

Federal Property Management Regulations Temporary Regulations E–84

May 12, 1986.

TO: Heads of Federal agencies

SUBJECT: Procurement of motor vehicles

1. *Purpose.* This regulation revises the schedule for the consolidated procurement of motor vehicles performed by GSA, expands the program to include medium and heavy-duty trucks, and provides for a change in GSA's centralized program for leasing motor vehicles.

2. *Effective date.* This regulation is effective April 1, 1986.

3. *Expiration date.* This regulation expires March 31, 1987, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.* A review of the procurement operated by GSA for the benefit of agencies indicates that changes in the regulations are needed to correlate the ordering of motor vehicles with current production practices in the industry so as to eliminate delay, to provide for the procurement of additional types of motor vehicles, and to clarify the extent to which motor vehicles are procured for DOD. This temporary regulations was developed to incorporate these changes into the FPMR on a trial basis.

6. *Explanation of changes.* Subpart 101–26.5 is amended as indicated below.

PART 101–26—[AMENDED]

1. Section 101–26.501 is amended to revise the text identifying standard vehicles in paragraph (a), paragraphs (b) and (c), and the introductory text in paragraph (d), as follows:

§ 101–26.501 Purchase of new motor vehicles.

(a) * * *

Sedans, class 1A–small, class 1B–subcompact, or class II-compact; station wagons, class 1B–subcompact or class II compact vehicles, as described in Federal standard No. 122; and light trucks, as defined in Federal standard Nos. 292 and 307. (Federal standard Nos. 122, 292, and 307 as used in this section mean the latest editions.) Requisitions submitted to GSA for motor vehicles shall be in conformance with the requirements of Subpart 101–38.1.

(b) Requisitions submitted to GSA for new passenger vehicles and light trucks shall contain a certification by the agency head or designee that the acquisition is in conformance with Pub. L. 94–163 and Executive Order 12375. The certification may be placed on the requisition or on an appropriate attachment thereto. Agency passenger vehicle requisitions omitting this certification will be processed provided that the certification is forthcoming from the requisitioning agency.

(c) Trucks shall be requisitioned in accordance with the provisions of this § 101–26.501 and the following:

(1) Light trucks in accordance with Federal standard Nos. 292 and 307; and

(2) Medium and heavy trucks in accordance with the latest editions of Federal specifications KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579.

(d) Selection of additional systems or equipment in vehicles shall be made by the requiring agency and shall be based on the need to provide for overall safety, efficiency, economy, and suitability of the vehicle for the purposes intended pursuant to § 101.38.104–2.

* * * * *

2. Section 101–26.501–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–26.501–1 General.

* * * * *

(a) DOD shall submit to GSA for procurement its orders for purchase in the United States of all commercial-type passenger motor vehicles (FSC 2310), including buses and trucks (FSC 2320) up to 11,000 pounds gross vehicle weight (GVW) except the following:

(1) Buses convertible to ambulances.

(2) Trucks convertible to ambulances.

(3) Trucks 4x4, dump, 9,000 GVW with cut-down cab.

(4) Any commercial trucks above 11,000 pounds GVW.

(b) When it is determined by the ordering activity that requirements for passenger motor vehicles and trucks indicate the need for procurement by buying activities other than GSA, a request for waiver justifying the procurement shall be submitted in writing to the General Services Administration (FCA), Washington, DC 20406. GSA will notify agencies in writing whether a waiver has been granted. Justification may be based on the urgency of need or the vehicles having unique characteristics such as special purpose body or equipment that may require close supervision by agency personnel to ensure proper installation of the equipment by the contractor; e.g., when a medical van is to be equipped with Government- or contractor-supplied equipment. Requests for procurement through sources other than GSA will be handled on an individual basis provided full justification is submitted therefor.

* * * * *

3. Section 101–26.501–2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 101–26.501–2 Consolidated purchase program.

(a) To achieve maximum benefits and economies, GSA (except as noted in § 101–26.501–1(a)), makes consolidated procurement of all motor vehicle types each year as follows:

(1) Two volume procurements of sedans and station wagons of the types covered by covered by the Federal standard No. 122, excluding family buys.

(2) Two volume procurements of the types Federal standard Nos. 292 and 307, excluding family buys.

(3) Three volume procurements of the types covered by Federal specification Numbers KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification Number KKK–B–1579.

(b) Volume consolidated purchases are made after consolidation of requirements in accordance with the dates set forth in § 101–26.501–4(a). Agencies should submit their

requirements for the types of vehicles covered by Federal standard Nos. 122, 292, 307, Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and Federal specification KKK-B-1579 that can be competitively procured, to the General Services Administration (FCA), Washington, DC 20406, in time for inclusion in the appropriate consolidated purchase as scheduled in § 101-26.501-4(a).

(c) When justified as indicated in § 101-26.501-4, requirements for sedans, station wagons, and light, medium, and heavy trucks will be consolidated and procured on a monthly basis.

* * * * *

4. Section 101-26.501-3 is amended to revise the introductory paragraph and paragraph (b) to read as follows:

§ 101-26.501-3 Submission of orders.

Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition—Delivery Order, or DD Form 448, Military Interdepartmental Purchase Request (MIPR), to the General Services Administration (FCA), Washington, DC 20406, and shall contain required FEDSTRIP data for mechanized processing. The Department of Defense shall ensure that appropriate MILSTRIP data are entered on DD Form 448.

* * * * *

(b) For vehicles within the category of Federal standard Nos. 122, 292, or 307, but for which deviations from such standards are required, unless already waived by the Director, Automotive Commodity Center (FCA), GSA, Federal Supply Service, Washington, DC 20406, requisitions shall include a justification supporting each deviation from the standards and shall contain a statement of the intended use of the vehicles, including a description of the terrain where the vehicles will be used. Prior approval of deviations shall be indicated on the requisition by citing the waiver authorization number.

* * * * *

5. Section 101-26.501-4 is amended by revising paragraphs (a) and (b)(2) and deleting paragraph (b)(3), as follows:

§ 101-26.501-4 Procurement time schedules.

(a) *Volume consolidated purchases.* Requisitions covering vehicle types included in Federal standard Nos. 122, 292, 307, Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and Federal specification KKK-B-1579 will be consolidated for volume procurement unless a statement is included justifying the need for delivery other than at the times indicated in this section. Requisitions containing a statement of specification will be handled on a monthly basis in accordance with this section, or on an emergency basis in accordance with § 101-26.501-4(c).

TIME SCHEDULE FOR VOLUME CONSOLIDATIONS

Vehicle category	Consolidation date
A. Sedans and station wagons of types covered by Federal standard No. 122.	June 1 to Nov. 15, Nov. 16 to May 31.
B. Light trucks of types covered by Federal standard Nos. 292 and 307.	June 16 to Dec. 1, Dec. 2 to June 15.
C. Medium and heavy trucks in accordance with Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and KKK-B-1579.	March 10 to Aug. 9, Aug. 10 to Dec. 15, Dec. 16 to March 9.

(b) * * *

(2) Solicitations issued in July for the consolidated purchase of vehicles will cover only the requirements of those executive agencies with requisitions required by § 101-26.501-1 to be placed with GSA. (Submission of requirements for vehicles in categories (i) and (ii), above, is mandatory to the extent provided in § 101-26.501-1.)

6. Section 101-26.501-6 is amended by revising paragraph (c) to read as follows:

§ 101-26.501-6 Forms used in connection with delivery of vehicles.

* * * * *

(c) Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration (formerly GSA Form 6317). This information is printed on the reverse of the consignee copy of the delivery order. Personnel responsible for receipt and operation of Government motor vehicles should be familiar with the instructions and information contained in the document entitled "Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration."

7. Section 101-26.501-8 is amended by revising the addresses of manufacturers in paragraph (a), revising paragraph (b), and deleting paragraph (c) as follows:

§ 101-26.501-8 Notification of vehicle defects.

* * * * *

(a) * * *

Addresses of Manufacturers:

American Motors Corp., Fleet Sales Department, 27777 Franklin Road, Southfield, MI 48034, (for Jeep, Renault, Eagle, and American Motors vehicles only).

LTV Aerospace and Defense Co., AM General Division, 701 West Chippewa Avenue, South Bend, IN 46623. (Formerly AM General of the American Motors Corporation).

Ford Parts and Service Division, Service Engineering Office, 3000 Schaefer Road, PO Box 1904, Dearborn, MI 48121.

Director of Services, FWD Corporation, 105 East 12th Street, Clintonville, WI 54929.

Navistar International, Inc., 7927 Jones Branch Drive, Suite 400, McLean, VA 22102. (Formerly known as International Harvester Co.)

Chrysler Corporation, Product Investigations and Government Liaison, PO Box 1087, Detroit, MI 48288.

General Motors Corporation

Chevrolet Motor Division, Service Department, Chevrolet Central Office, 30007 Van Dyke Avenue, Warren, MI 48090.

Buick Motor Division, Service Department, 902 East Hamilton Avenue, Flint, MI 48550.

Oldsmobile Motor Division, Service Department, 920 Townsend Street, Lansing MI 48921.

Pontiac Motor Division, Service Department, One Pontiac Plaza, Pontiac, MI 48053.

GMC Truck and Bus Group, Federal Government Sales, 31 Judson Street, Pontiac, MI 48058.

Mack Trucks, Inc., 2100 Mack Blvd., PO Box M, Allentown, PA 18105-5000

Thomas Built Buses, Inc., 1408 Courtesy Road, PO Box 1848, High Point, NC 27261.

Supervisor, Vehicle Service and Safety Programs, Volvo White Truck Corporation, PO Box D-1, Greensboro, NC 27402.

(b) When motor vehicles are manufactured by a concern other than one for which an address is shown in § 101-26.501-8(a) and the address of the manufacturer is not known, agencies shall inform GSA of the vehicle location address. In these cases, agencies shall forward the vehicle location address to the General Services Administration (FCA), Washington, DC 20406. GSA will forward the vehicle location address to the manufacturer or advise the agency concerned.

8. Section 101-26.501-9 is revised to read as follows:

§ 101-26.501-9 Centralized motor vehicle leasing program.

GSA has a centralized leasing program to provide an additional source of motor vehicle support to all Federal agencies. This program relieves Federal agencies that use it from both the time constraints and administrative costs associated with independently entering into lease contracts. The centralized leasing program covers subcompact, compact, and midsize sedans, station wagons, and certain types of light trucks (pickups and vans). Participation in the centralized leasing program is mandatory on all executive agencies of the Federal Government (excluding the Department of Defense and the U.S. Postal Service) within the 48 contiguous States and Washington, DC. However, agencies must obtain GSA authorization to lease in accordance with § 101-39.205 prior to using these established mandatory use contracts. For further information on existing contracts, including vehicles covered, rates, and terms and conditions of the contract(s), contact General Services Administration (FCA), Washington, DC 20406.

9. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration (FCA), Washington, DC 20406, not later than July 31, 1986, for consideration and possible incorporation into a permanent regulation.

10. *Effect on other directives.* This regulation supersedes portions of the regulations appearing at FPMR 101-26.501

thru 101-26.501-4, FPMR 101-26.501-6, FPMR 101-26.501-8, and FPMR 101-26.501-9.

T.C. Golden,
Administrator of General Services.

[FR Doc. 86-12950 Filed 6-6-86; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-208]

Organization and Delegation of Powers and Duties

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Assistant Secretary for Policy and International Affairs, the Deputy General Counsel and the Federal Aviation Administrator certain authorities resulting from amendment of section 1115 of the Federal Aviation Act of 1958, as amended, and related provisions which were enacted as a part of the "International Security and Development Cooperation Act of 1985" to improve foreign airport security. This amendment also makes a technical correction to the existing delegation concerning aviation safety to the FAA Administrator.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Becky L. Benton, Office of the General Counsel, Department of Transportation, Washington, DC., (202) 412-5517.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Department management, procedures, and practice, notice and comment on it are unnecessary, and it may be made effective in fewer than thirty days after publication in the Federal Register.

The Secretary's powers and duties to assure the security of foreign airports under section 1115 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1515), (the FAAct), were recently expanded (and supplemented with related new responsibilities) as a part of the recently enacted "International Security and Development Cooperation Act of 1985." (See Part B of title V, entitled "Foreign Airport Security.") The Secretary has determined that implementation of the expanded section 1115 and the related provisions will require complex and well coordinated interaction of several DOT offices and other executive departments, and that delegation of these responsibilities is therefore needed.

In an unrelated matter, this amendment also updates the delegation of important aviation safety powers and duties to the Federal Aviation Administrator, simply to conform to rewording of the statutory language on which the delegation has been patterned. This rewording occurred in 1983, when Congress enacted into positive law as 49 U.S.C. 106(g)(1) language which had formerly appeared as a proviso to the first sentence of section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)).

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.47 is amended by revising paragraphs (a) and (p) to read:

§ 1.47 Delegations to Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to:

(a) Carry out the powers and duties transferred to the Secretary of Transportation by, or subsequently vested in the Secretary by virtue of, section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)), including those pertaining to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 306(b) of title 49, U.S.C., and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX (excluding section 902(h)), and XII of the Federal Aviation Act of 1958, as amended.

* * * * *

(p) Carry out the functions vested in the Secretary by:

(1) Section 553(b) of Pub. L. 99-83 (99 Stat. 226), which relates to the authority of Federal Air Marshals to carry firearms and make arrests, in coordination with the General Counsel; and

(2) The following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports: Subsection 1115(a), in coordination with the General Counsel and the Assistant Secretary for Policy and International Affairs; subsection 1115(b), in coordination with the Assistant Secretary for Policy and International Affairs; and subsection 1115(e)(2)(A)(ii), in coordination with the General Counsel and the Assistant Secretary for Policy and International Affairs.

3. Section 1.56 is amended by revising paragraphs (j) introductory text and (j)(1) to read:

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

The Assistant Secretary for Policy and International Affairs is delegated authority to:

* * * * *

(j) Carry out the functions vested in the Secretary by:

(1) The following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports: Subsection 1115(e)(1), in coordination with the General Counsel and the Federal Aviation Administrator; and paragraph 1115(e)(3), in coordination with the General Counsel, the Federal Aviation Administrator, the Assistant Secretary for Governmental Affairs, and the Assistant Secretary for Administration.

* * * * *

4. Section 1.57a is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read:

§ 1.57a Delegations to the Deputy General Counsel.

(a) * * *

(b) The Deputy General Counsel is delegated authority to initiate and carry out enforcement actions relating to foreign airport security on behalf of the Department under subsection 1115(e)(2)(B) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1515). In carrying out this function, the Deputy General Counsel is not subject to the supervision of the General Counsel.

Issued in Washington, DC on December 14, 1985.

Elizabeth Hanford Dole,
Secretary of Transportation.

[FR Doc. 86-12937 Filed 6-6-86; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 60237-6037]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency rule amending regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) is in effect through June 6, 1986. The Secretary of Commerce (Secretary) extends this rule for an additional nine days, continuing the closure of four areas near Kodiak Island to nonpelagic trawling through June 15, 1986. This extension is necessary to reduce the number of crabs killed during their molting and mating period by trawl fishing gear operating in contact with the seabed. The closure is intended to help the red king crab population increase in abundance.

EFFECTIVE DATES: Noon Alaska Daylight Time (ADT), June 6, 1986, through noon ADT, June 15, 1986.

FOR FURTHER INFORMATION CONTACT: Aven M. Anderson (Fishery Management Biologist, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION: Under section 305(e) of the Magnuson Fishery Conservation and Management Act, the Secretary issued an emergency rule effective on March 6, 1986 (51 FR 8502, March 12, 1986), to protect concentrations of red king crabs near Kodiak Island during their molting and mating period.

The North Pacific Fishery Management Council has voted to extend the emergency rule (which is currently in effect until June 6, 1986) until noon ADT, June 15, 1986.

The reasons for this closure, which are discussed in the preamble to the emergency rule, still continue. Molting and mating of red king crabs near Kodiak Island should be effectively completed by mid-June. The areas of the closure are defined in § 672.24 of the emergency rule. Therefore, the Secretary extends the emergency rule, without change, until noon, June 15, 1986.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 4, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 86-13027 Filed 6-5-86; 2:19 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 110
Monday, June 9, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

Freedom of Information Act; Availability of Official Information; Service Charges for Information

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its schedule of service charges for information requested under the Freedom of Information Act (FOIA). These regulations would bring these fees into conformance with current costs for responding to FOIA requests.

DATE: Comments must be received on or before August 8, 1986.

ADDRESS: Send or deliver written comments to William C. Duffy, Chief, Information Systems Plans and Policies Division, Office of Personnel Management, Room 6410, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James M. Farron, (202) 632–7714.

SUPPLEMENTARY INFORMATION: Specifically, we are proposing to increase the fees for manual records searches for professional and clerical employees to hourly rates of $15 and $10.25, respectively, which is the average cost for OPM employees handling FOIA requests. In addition, the charges for computer records would be the actual cost of producing the requested data. The cost for duplicating paper records would increase to $0.13 per page. The fee for unpriced printed material would remain $0.25 per 25 pages or fraction thereof. Other duplication costs not specifically identified would be chargeable at actual cost.

We are also proposing to add a provision to the current regulations to reserve the right to request prepayment before releasing documents. Therefore, under this provision, if fees for previous requests are not paid, we would not release additional records without payment of all amounts previously due and prepayment for the new documents.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities because they relate entirely to the fees charged for requesting information from the Office of Personnel Management.

List of Subjects in 5 CFR Part 294

Administrative practice and procedure, Freedom of information.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is proposing to amend Title 5 of the Code of Federal Regulations as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for Part 294 continues to read as follows:

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In Subpart A of Part 294, § 294.107 is revised to read as follows:

Subpart A—General Provisions

§ 294.107 Service charges for information.

(a) The Office will furnish, without charge, reasonable quantities of information that it has produced for free distribution to the public.

(b) The Office may furnish information made available to the public, other than that described in paragraph (a) of this section, subject to payment of a fee. Individuals may pay the fee by check or money order, payable to the Office of Personnel Management.

(c) Schedule of Fees—When responding to a request under section 552 of title 5, United States Code, the Office will charge fees as follows:

Photocopies, per page (up to 8½" x 14")	$0.13
Printed materials, per 25 pages or fraction thereof	$0.25
Manual records search, per hour:	
Professional employees	$14.00
Clerical employees	$10.25
Other costs not identified above	Actual cost to the Office.
Computerized Records	Actual costs for the services rendered. This includes the cost for programmer and other labor, equipment usage, storage, materials, and any other costs associated with the services rendered.

(d) The Office will not release records if a request may reasonably result in a fee assessment of more than $25 unless the requestor has agreed to pay (1) all costs regardless of the amount; or (2) costs up to a specified amount which is sufficient to cover the anticipated charges. If the request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, the responsible organization within OPM will promptly notify the requestor of the estimated fees. Upon agreement to pay these fees, and payment of any required deposit, the Office will further process the request.

(e) The Office reserves the right to demand full prepayment before releasing records. If fees for previous requests have not been paid by the requestor, records will not be released without payment.

(f) Normally, when the anticipated fees exceed $50, the requestor must deposit at least 50 percent of the anticipated amount within 30 days after notification of that fact. The Office will not release the information until it has received the deposit.

(g) The Office will assess charges in cases of unproductive or unsuccessful searches unless an appropriate Office official waives charges. Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(h) The Office will furnish information under the Freedom of Information Act without charge, or at a reduced charge, when an authorized official finds that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

[FR Doc. 86-12970 Filed 6-6-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-039]

Federal Animal Quarantine Stations

Correction

In FR Doc. 86-12119 beginning on page 19560 in the issue of Friday, May 30, 1986, make the following correction:

On page 19560, third column, in the "DATE" caption, the deadline for comments should read "July 29, 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-17]

Proposed Amendment to Eagle, CO, Transition Area.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 1,200 foot transition area at Eagle, Colorado. The amendment is necessary to provide controlled airspace for aircraft in a holding pattern associated with a new instrument approach procedure.

DATE: Comments must be received on or before July 18, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel, ANM-7, at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-533, Federal Aviation Administration, Docket No. 86-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-affressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-17". The postcard will be date/time stamped and returned to the commenter. All communications recieved before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the adress listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the 1,200 foot transition area at Eagle, Colorado. The action will provide controlled airspace for aircraft in a holding pattern associated with a new instrument approach procedure at the Eagle County Airport, Colorado. The existing 1,200 foot transition area for the present holding pattern is no longer needed and will be eliminated by this action.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.171 is amended as follows:

Eagle, Colorado—(Amended)

That airspace extending upward from 700 feet above the surface within a 9 mile radius

of the Eagle County Airport (lat. 39°38'42" N., long. 106°54'43" W.); within 3.5 miles each side of the 072° bearing from the Eagle County Airport extending from the 9 mile radius area to 19 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 39°11'00" N. long. 106°42'00" W.; to lat. 39°11'00" N., long. 107°14'00" W.; to lat. 40°21'00" N., long. 107°14'00" W.; to lat. 40°21'00" N., long. 106°42'00" W.; to the point of beginning excluding all controlled airspace which overlaps this airspace.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-12823 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 841 0021]

Independent Insurance Agents of America, Inc.; Independent Insurance Agents Association of Montana, Inc.; Independent Insurance Agents and Brokers of California, Inc.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, these consent agreements, accepted subject to final Commission approval, would, among other things, prohibit: (1) A New York City-based insurance agent association and its Montana affiliate from encouraging their members to refuse to deal with companies based on the companies' sales policies; and (2) a California agents' group from urging its members to take action against insurance companies who use direct marketing.

DATE: Comments will be received until August 8, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580. (202) 254-0024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

Before Federal Trade Commission

[File No. 841-0021]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Independent Insurance Agents of America, Inc.,

The Federal Trade Commission having initiated an investigation of certain acts and practices of Independent Insurance Agents of America, Inc. ("IIAA"), an association incorporated under the laws of New York, and it now appearing that IIAA, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated.

It is hereby agreed by and between IIAA, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. IIAA is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its mailing address at 100 Church Street, New York, New York 10017.

2. IIAA admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. IIAA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by IIAA that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify IIAA, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission Rules, the Commission may, without further notice to IIAA, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to IIAA's address as stated in this agreement shall constitute service. IIAA waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

7. IIAA has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. IIAA further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

ORDER

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "IIAA" means Independent Insurance Agents of America, Inc., its officers, employees, directors, committee and task force members, its successors and assigns; and

B. "Independent insurance agents" means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies.

C. "Direct marketing" means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II

It is further ordered that IIAA, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAA's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAA or any member of IIAA in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that the provisions of Part II of this Order shall not be construed to prevent IIAA from: (1) Participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV

It is further ordered that IIAA shall:

A. At the first regularly-scheduled meeting of the IIAA National Board of Directors, but in no event later than 120 days after this Order becomes final, repeal the Dual Marketing Task Force report;

B. Within sixty days from the date this Order becomes final, mail a copy of this Order, and a letter specifying any changes made pursuant to Paragraph A of this Part, to every IIAA state affiliate; and

C. Within sixty days from the date this Order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this Order, publish this Order in *Independent Agent* in the same type size normally used for articles that are published in *Independent Agent*.

V

It is further ordered that IIAA shall:

A. Within ninety days from the date this Order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAA, require;

B. For a period of three years from the date this Order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAA affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAA's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

Before Federal Trade Commission

[File No. 841-0021]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Independent Insurance Agents Association of Montana, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Independent Insurance Agents Association of Montana, Inc. ("IIAAM"), an association incorporated under the laws of Montana, and it now appearing that IIAAM, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated.

It is hereby agreed by and between IIAAM, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. IIAAM is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana with its mailing address at P.O. Box 5593, Helena, Montana 59604.

2. IIAAM admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. IIAAM waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by IIAAM that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be

placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify IIAAM, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to IIAAM, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to IIAAM's address as stated in this agreement shall constitute service. IIAAM waives any right it may have to any other manner of service. The complainant attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

7. IIAAM has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. IIAAM further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

ORDER

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "IIAAM" means Independent Insurance Agents Association of Montana, Inc., its officers, employees, directors, committee and task force members, its successors and assigns; and

B. "Independent insurance agents" means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance compaines.

C. "Direct marketing" means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II

It is further ordered that IIAAM, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAAM's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAAM or any member of IIAAM in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that the provisions of Part II of this Order shall not be construed to prevent IIAAM from: (1) Participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV

It is further ordered that IIAAM shall:

A. Within sixty days from the date this Order becomes final, mail a copy of this Order, to every IIAAM local affiliate; and

B. Within sixty days from the date this Order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this Order, publish this Order in *Montana TAGS* in the same type size normally used for articles that are published in *Montana TAGS*.

V

It is further ordered that IIAAM shall:

A. Within ninety days from the date this Order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAAM, require;

B. For a period of three years from the date this Order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAAM affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAAM's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

Before Federal Trade Commission

[File No. 841-0021]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Independent Insurance Agents and Brokers of California, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Independent Insurance Agents and Brokers of California, Inc. ("IIABC"), an association incorporated under the laws of California, and it now appearing that IIABC, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated,

It is hereby agreed by and between IIABC by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. IIABC is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its mailing address at 465 California Street, Suite 600, San Francisco, California 94104.

2. IIABC admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. IIABC waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by IIABC that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceedng unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify IIABC in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to IIABC, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to IIABC's address as stated in this agreement shall constitute service. IIABC waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

IIABC has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. IIABC further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

ORDER

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "IIABC means Independent Insurance Agents and Brokers of California, Inc., its officers, employees, directors, committee and task force members, its successors and assigns; and

B. "Independent insurance agents" means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies.

C. "Direct marketing" means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counseling insureds, serving accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II

It is further ordered that IIABC individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIABC's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIABC or any member of IIABC in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that the provisions of Part II of this Order shall not be construed to prevent IIABC from: (1) Participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade groups; (3)

providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV

It is further ordered that IIABC shall:

A. Within sixty days from the date this Order becomes final, mail a copy of this Order to every IIABC local affiliate; and

B. Within sixty days from the date this Order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this Order, publish this Order in *NEWS 'N VIEWS* in the same type size normally used for articles that are published in *NEWS 'N VIEWS*.

It is further ordered that IIABC shall:

A. Within ninety days from the date this Order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIABC, require;

B. For a period of three years from the date this Order become final, maintain in its files for a period of three years a copy of all correspondents referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIABC affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIABC's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from the Independent Insurance Agents of America, Inc. ("IIAA"), the Independent Insurance Agents Association of Montana ("IIAAM"), and the Independent Insurance Agents and Brokers of California ("IIABC"). These proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The proposed consent agreements are the result of a Commission investigation of the activities of various associations of independent insurance agents. Specifically, the investigation focused on the response of the associations to innovative, lower cost insurance programs that reduce the role of independent agents in the marketing of insurance policies, and that were being introduced or considered by a number of insurance companies. Property and casualty insurance have traditionally been marketed to consumers through a variety of channels. Some insurance companies employ sales personnel to market policies directly to consumers, others use independent agents exclusively, and some use both employees and independent agents. In recent years, certain insurance companies that traditionally used independent agents have begun to experiment with direct marketing approaches to reduce costs and achieve operating efficiencies in the sale of their policies. For example, the Hartford Insurance Company developed a program to provide low-cost automobile and homeowners insurance to members of the American Association of Retired Persons using a form of direct marketing.

The complaints issued simultaneously with the provisionally accepted consent orders allege that the agent associations reacted to these new direct marketing programs by organizing (or threatening) refusals to deal with insurers that have proposed or adopted direct marketing programs. The complaints allege that this activity, which amounts to a boycott of the insurance companies, adversely affected competition by deterring the insurers from experimenting with efforts to reduce costs and achieve efficiencies, and by depriving consumers of the benefits of competition in the form of potentially more efficient, lower-cost insurance. Therefore, the proposed consent agreements order the associations to cease and desist from threatening, or engaging in, refusals to deal with companies that adopt or propose direct marketing programs. Such boycott activity would constitute illegal refusals to deal with section 5 of the Federal Trade Commission Act, and would be subject to federal jurisdiction under applicable provisions of the McCarran-Ferguson Act, 15 U.S.C 1013(b). Because the Commission has found reason to believe that IIAA, IIAAM and IIABC each have engaged in such illegal activity, entry of an order is appropriate in each instance.

The proposed consent orders provide adequate safeguards against future boycott activity while allowing the trade associations to perform their legitimate functions in representing their members' interests. Section I of the orders defines "direct marketing" to mean "attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, sevicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers."

Section II of the orders contains substantive prohbitions against the associations' engaging in conduct which amounts to recommending, advising, or encouraging their members to refuse to deal with insurance companies that have engaged in the direct marketing of insurance. Conduct designed to coerce or intimidate insurance companies to refrain from adopting direct marketing programs is also prohibited, as is the publication of information or surveys of actual or threatened refusals to deal by independent agents.

Section III of the orders identifies areas of legitimate association activity not proscribed by the orders, namely, (1) participation in legislative, judicial, or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to members; and (4) adoption of policy statements and presentation of views, so long as such activity is not undertaken to encourage or facilitate actual refusals to deal.

Section IV of the IIAA order requires the repeal of the IIAA Dual Marketing Task Force Report, which contained language that might be viewed as coercive, and directs the association to disseminate copies of the order to every state affiliate of IIAA. Copies of each of the three orders are to be printed in the appropriate publications which are sent to association members.

Section V of each of the orders contains provisions which require IIAA, IIAAM and IIABC to (1) file reports with the Federal Trade Commission detailing

the manner in which they have complied with the order; (2) maintain records, for a limited period of time, of specified correspondence for possible inspection by the Commission; and (3) notify the Commission prior to any organizational changes that may affect compliance with the order.

The public interest is served by the adoption of these orders in several respects. First, associations of independent insurance agents are placed on notice as to specific types of conduct which the Commission might deem unlawful. Second, agency companies which might have refrained from pursuing beneficial direct marketing programs because of fear of adverse agent reaction may be less inhibited in attempting such programs. Finally, acceptance of this consent order can be expected to save substantial private and public resources that would otherwise have been expended in an effort to resolve the matter through litigation.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-12848 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 86-12]

National Standards for Traffic Control Devices; Revision of Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices; request for comments.

SUMMARY: The FHWA is inviting comments concerning the need for a new Manual on Uniform Traffic Control Devices (MUTCD) and a new format. If adopted, these standards would result in a new MUTCD. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads.

DATE: Comments must be received on or before July 20, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 86-12, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $30.00 from the Superintendent of Documents, U.S Government Printing Office, Washington, DC 20402, Stock No. 050-001-51001-6.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426-0411, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 426-0782, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD presents traffic control device (TCD) standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

The MUTCD fulfills a statutory responsibility imposed on the Secretary of Transportation in sections 109(b), 109(d), and 402(a) of 23 U.S.C. and delegated to the Federal Highway Administrator in 49 CFR 1.48 (b), (c), and (n). Generally, 23 U.S.C. 109 authorizes the Secretary to develop, approve, and apply standards for the construction of highways in which Federal funds participate. Section 109(b) calls for standards for the Interstate System to be applied "uniformly throughout the States." Section 109(d) directs the Secretary to approve only such standards for "the location, form, and character" of signs, signals, and marking on Federal-aid highways "as will promote the safe and efficient utilization of the highways." Section 402(a) authorizes the Secretary to promulgate uniform national standards relating to "highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic," etc., for use on all public roads.

This advance notice is being issued so that interested persons and/or organizations may have the opportunity to participate in the consideration of this request for amendments to the MUTCD. Based upon comments received in response to this advance notice and upon its own experience, the FHWA may prepare a notice of proposed amendments. Any final amendments which result from this rulemaking action will be published in the Federal Register and incorporated by reference in the Code of Federal Regulations.

Discussion of Problem

The FHWA is concerned with the extent of the changes made to the 1978 MUTCD and projected changes over the next few years. One of the major concerns is to reduce the number of page changes. Revisions 1 through 4 have included 74 adopted changes which represent about 600 page changes. The FHWA expects that about 10 to 15 changes per year will take place over the next 5 years which will result in about 100 page changes per year for another 400 to 500 page changes. Quite often when revising one seciton, it requires changes to subsequent sections. Sometimes in spite of diligent reviews, the effects of a change are not always followed throughout the MUTCD.

New and additional provisions are anticipated for several sections of the MUTCD for specific applications such as the channelizing devices in part 6. Also, much information could be removed. For example, there are many provisions in the MUTCD that deal with "how-to" or provide guidance and discussion. The FHWA believes that these are more appropriate for inclusion in the Traffic Control Devices Handbook [1] than in the MUTCD. The FHWA's regulatory involvement would be reduced significantly if the how to, guidance and discussion items were removed from the MUTCD.

From a liability aspect there are current concerns with the existing format of "shall", "should", and "may." An alternative would be to reword the MUTCD to simply establish the traffic control device standards, warrants for use, and placement criteria. This concept is in keeping with standards for other elements of highway features.

If a new MUTCD or a new format is needed within the next 3 to 5 years, the FHWA will need to begin this effort now. A new MUTCD would involve removing general discussion information, provide continuity of existing changes throughout the MUTCD, and add standards and

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[1] Available for $20.00 from the Government Printing Office, Washington, DC 20402, Stock No. 050-001-00270-1. Copies are also available for inspection at the Federal Highway Administration, Office of Traffic Operations (HTO-21), Room 3419, 400 7th St. SW., Washington, DC 20590.

provisions where needed. To develop a new format would involve all the previously mentioned requirements plus elimination of the "shall", "should" and "may" conditions as well as establishing standard traffic control devices and standards for application and placement. This would be a major effort.

The following text from page 2B–1 of the MUTCD is an example of removing guidance information and other discussion material:

Existing Text

2B–1 Application of Regulatory Signs

Regulatory signs inform highway users of traffic laws or regulations and indicate the applicability of legal requirements that would not otherwise be apparent. These signs shall be erected wherever needed to fulfill this purpose, but unnecessary mandates should be avoided. The laws of many States specify that certain regulations are enforceable only when made known by official signs.

Some regulatory signs are related to operation controls but do not impose any obligations or prohibitions. For example, signs giving advance notice of or marking the end of a restricted zone are included in the regulatory group.

Regulatory signs normally shall be erected at those locations where regulations apply. The sign message shall clearly indicate the requirements imposed by the regulation and shall be easily visible and legible to the vehicle operator.

New Text

2B–1 Standard Regulatory Sign Applications

Regulatory signs are erected to inform highway users of traffic laws or regulations and indicate the applicability of legal requirements that would not otherwise be apparent.

Regulatory signs are erected at those locations where regulations apply. The sign message clearly indicates the requirements imposed by the regulation and is easily visible and legible to the vehicle operator.

An example of eliminating the "shall", "should" and "may" conditions can be seen in the first paragraph of MUTCD section 2B–4:

Existing Text

2B–4 STOP Signs

STOP signs are intended for use where traffic is required to stop. The STOP sign shall be an octagon with white message and border on a red background. The standard size shall be 30 x 30 inches.

New Text

2B–4 STOP Signs

STOP signs are used where traffic is required to stop. The standard STOP sign is an octagon with white message and border on a red background. The standard size is 30 x 30 inches. The FHWA has formulated the following questions and invites responses concerning the need for reformatting or revising the MUTCD:

1. Will a new MUTCD be needed in keeping with the above or other reasons in the next 3 to 5 years?

2. If so, in revising the MUTCD, what format should be followed?

3. Are there specific sections which need major revisions such as combining sections 2E and 2F or major additions to Part 6? For example, are warrants needed for the application of the different channelizing devices?

4. Is it appropriate to remove guidance material from the MUTCD? Will this make the MUTCD a more effective standard?

5. Will this lead to more effective and efficient use of the MUTCD?

6. As a related item, should the FHWA continue to be responsible for maintaining the MUTCD? If not, who should maintain the MUTCD? This item was addressed in detail in a January 1983 FHWA staff study. The study was made available to the public in a June 30, 1983 Federal Register Notice of availability of staff study and proposed procedural changes, and request for comments, 48 FR 30145, FHWA Docket No. 83–18.

This advance notice of proposed rulemaking to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

It is anticipated that any proposed changes to the MUTCD resulting from the comments received would be included in a subsequent notice of proposed rulemaking.

The FHWA has determined, at this time, that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. This determination will be reevaluated and a draft regulatory evaluation will be prepared, if necessary, based upon the data received in response to this advance notice. Based upon the information available to the FHWA at this time, the action proposed in this advance notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and Roads, Signs, Traffic regulations, Incorporation by references.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 28, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86–12955 Filed 6–6–86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Public Comment Period on a Proposed Amendment to the Alabama Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment, Senate Bill 445, extends the existence of the Alabama Surface Mining Commission and amends sections of the Code of Alabama 1975. This notice sets forth the times and locations that the Alabama program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on July 9, 1986 will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for July 7, 1986, at the address listed below under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business June 24, 1986.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 731-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for review and copying at the OSMRE Field Office, the OSMRE Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the amendment by contacting the OSMRE Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW. Washington, DC 20240.

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the date listed under "DATES." If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions. The public hearing will continue on the specific date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons whishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the Alabama program, can be found at 47 FR 22020 (May 20, 1982) and 48 FR 34206 (July 27, 1983). Subsequent actions concerning the Alabama program are listed in 30 CFR 901.15.

III. Proposed Amendment

On May 7, 1986, Alabama submitted a proposed amendment to its approved regulatory program. The amendmemt is contained in Senate Bill 445 (S. 445). The bill relates to the Alabama Sunset Law, and continues the existence and functioning of the Alabama Surface Mining Commission (ASMC) (which was voted to be abolished by the Alabama Sunset Commission) as provided in Section 9-16-70 through 9-16-107 of the Code of Alabama 1975. The bill also amends Sections 9-16-73, 9-16-74, 9-16-78, 9-16-85, and 9-16-88 of the Code of Alabama 1975.

Sections 1 and 2 of the S. 445 continue the existence of the ASMC until October 1, 1987, and provide for the review of the ASMC by the Sunset Committee between the 1986 and 1987 Regular Legislative Sessions, and that the ASMC shall be terminated on October 1, 1987, unless a Sunset Bill passes at the 1987 Regular Session to continue the ASMC.

Section 3 of S. 455 amends Sections 9-16-73, 9-16-74, 9-16-78, 9-16-85, 9-16-88 of the Code of Alabama 1975. Section 9-16-73 concerns the composition of the ASMC and how its members are determined. It establishes conflict of interest requirements for members; election procedures for offices; appointment of a director of the ASMC; compensation of ASMC members; what shall constitute a quorum; where the office facilities will be located; disbursment of funds; removal of members from office for neglect of duty, malfeasance or misfeasance; the creation of a subcommittee of the Legislative Sunset Committee, called the Legislative Surface Mining Oversight Committee; and, the appointment of a technical assistant to serve as liaison between the commission and the oversight committee.

Section 9-16-74 is amended to confer on the ASMC, in addition to other powers conferred on it by law, the power to adopt, amend, suspend, repeal and enforce rules and regulations, provided they are no more stringent than those promulgated by Federal law and regulations, and to control surface coal mining operations consistent with legislative requirements; hold public hearings and related requirements; issue and enforce orders; promulgate and enforce blaster certification requirements; and various other listed powers including issuing and denying permits.

Section 9-16-78 establishes requirements concerning hearings and hearing officers' duties and responsibilities.

Section 9-16-88 establishes requirements for permitting for mining and reclamation, including written findings to be made by the regulatory authority before permit approval.

Section 9-16-88 covers requirements for public notification concerning permit applications and applications for revision of existing permits. It establishes provisions for written

comments and informal conferences. It requires issuance of a permit if the application is approved and provides for hearings following a final decision of permit approval or denial.

Section 4 of S. 445 states that the legislature concurs with the recommendations of the Sunset Committee as provided in section 1, 2, and 3 of S. 445.

Section 5 of S. 445 states that the provisions of the bill are severable.

Section 6 of S. 445 repeals all laws or parts of laws in conflict with the bill. It expressly appeals "regulations set forth as 880-X-2E, Rules and Regulations of Alabama Surface Mining Commission, adopted as rulemaking 85–2 on September 17, 1985." Those rules concern extraction of coal incidental to extraction of other minerals.

Section 7 of S. 445 terminates, on October 1, 1987, the Legislative Oversight Committee established in section 9–16–73(k).

Section 8 of S. 445 states: "This Act shall become effective immediately upon its passage and approval by the governor, or upon its otherwise becoming a law."

Therefore, the Director, OSMRE is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of the Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86–12917 Filed 6–6–86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 931

Permanent State Regulatory Program of New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is seeking comment on New Mexico's request to further extend the deadline for New Mexico to promulgate and submit rules governing the training, examination and certification of blasters. On March 3, 1986, New Mexico requested an additional year for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by July 9, 1986 at the address below will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Room 216, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Room 216, Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9886). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSMRE's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSMRE that it would be unable to meet the March 4, 1984 deadline and requested an extension to develop and adopt a blaster certification program. On May 14, 1984, OSMRE granted New Mexico an extension to March 4, 1985 (49 FR 20287).

On February 6, 1985, the Director of the Energy and Minerals Department advised OSMRE that the State would require another extension of time to submit its blaster training and examination program. On May 8, 1985, OSMRE granted New Mexico an extension to March 4, 1986 (50 FR 19356). On March 3, 1986, the Director of the Energy and Minerals Department requested another one-year extension of time for the submission of its blaster certification program. Following on April 29, 1986, the State of New Mexico sent details of the activities which transpired during the past year (NM–324) and the causes which delayed New Mexico's program development. This letter also explains the steps New Mexico is expected to complete through June 30, 1986, including submittal of a draft proposal stating the alternative New Mexico wishes to use in order to fulfill the requirement.

OSMRE is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

ADDITIONAL DETERMINATIONS

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-12916 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 86-20]

Regatta; River Spectacular on the Delaware, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the River Spectacular on the Delaware sponsored by River Spectacular, Inc. of Philadelphia, Pennsylvania. This event will include high speed boat races using unlimited hydroplane vessels and Jersey Skiffs on about 3.4 miles of the Delaware River in the vicinity of Philadelphia, PA. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this event.

DATE: Comments must be received on or before July 9, 1986.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004-5098. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 86-20) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The River Spectacular on the Delaware, sponsored by River Spectacular, Inc. is a series of marine events to be held on the Delaware River on August 22, 23, and 24, 1986. The events will consist of unlimited hydroplane races (known as "Hydrocade '86") sanctioned by the Unlimited Racing Commission and limited class ("Jersey Skiff") races. In addition, there will be water ski exhibitions and celebrity races at various times on Saturday and Sunday. The powerboats participating in the races will be 30 foot unlimited hydroplanes and 16 foot Jersey Skiffs. The oval race course will be located on the Delaware River between the Walt Whitman bridge (river mile 96.8) and the Benjamin Franklin bridge (river mile 100.2) and will involve the full width of the river.

Time trials will be run on Friday, August 22 and Saturday, August 23, 1986 from 10:00 a.m. to 12:00 noon and again from 2:00 p.m. to 5:00 p.m. each day. In addition, on Sunday, August 24, 1986 there will be a hydroplane testing period between 10:00 a.m. and 12:00 noon. During these times waterborne commerce will be allowed to transit the regulated area after providing at least two hours advance notice to the Coast Guard Patrol Commander at his discretion and in accordance with his instructions. Transiting vessel's speed will be such that wake is minimized while steerageway is maintained. Recreational craft wishing to transit the regulated area will also be permitted to pass at the discretion of the Coast Guard Patrol Commander.

The hydroplane and Jersey Skiff races will be held on Sunday, August 24, 1986 from 12:00 noon to 5:00 p.m. During these hours no vessel traffic other than race participants and patrol craft will be permitted in the regulated area. In the event of inclement weather on 24 August, the races will be postponed to the following day, Monday, August 25, 1986 during the same times. If this occurs, these special local regulations will be effective on Monday instead of Sunday.

Spectator areas will be established up and downstream of the race course in the vicinity of the two bridges. Spectator vessels will remain clear of the existing navigable channel and heed the instructions of the Coast Guard Patrol Commander and patrol personnel particularly in regard to the turning zones at the up and downstream ends of the race course. The sponsor plans to place temporary buoys on the river to mark these turning points.

The sponsors has met with local commercial marine interests represented by the Ports of Philadelphia Maritime

Exchange. As a result of these meetings agreement was reached concerning transit of waterborne commerce during the effective period of these regulations. The U.S. Coast Guard will assist the sponsor and local authorities in providing a safety patrol during this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement and establish spectator areas prior to and during this event.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should have a favorable impact on commercial facilities providing services to the spectators. Coordination with local commercial marine interests which has already been accomplished should minimize any adverse impact on waterborne commerce during the effective period of these regulations.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35–326 is added to read as follows:

§ 100.35–326 River Spectacular on the Delaware, Philadelphia, PA.

(a) *Regulated Area:* That portion of the Delaware River between the Walt Whitman bridge (river mile 96.8) and the Benjamin Franklin bridge (river mile 100.2) for the full width of the river.

(b) *Effective Period:* This regulation is effective from 10:00 a.m. through 5:00 p.m. each day on August 22, 23 and 24, 1986. In case of postponement of the races due to weather, those regulations in effect on Sunday, August 24, 1986 are in effect the following day.

(c) *Special Local Regulations:* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No person or vessel shall enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) At least 30 minutes prior to the start of the races and other events, spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the events.

(4) On Friday and Saturday, August 22 and 23, 1986 between 10:00 a.m. and 5:00 p.m. each day and on August 25, 1986 between 10:00 a.m. and 12:00 noon, commercial vessels may transit the regulated area after providing two hours advance notice to, and at the discretion of, the Coast Guard Patrol Commander. During these times, recreational vessels may transmit the regulated area at the discretion, and in accordance with the directions, of the Coast Guard Patrol Commander.

(5) On Sunday, August 25, 1986 between 12:00 noon and 5:00 p.m., during the unlimited hydroplane and Jersey Skiff races, no vessel shall enter or transit the regulated area unless so directed by the Coast Guard Patrol Commander.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of these regulations, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: May 30, 1986.

J.C. Ulthol,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 86–12910 Filed 6–6–86; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 86–16]

Safety Zone; Port of Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard intends to establish safety zones in the Port of Los Angeles around dredging, pipeline laying, and construction vessels and around the landfill area during the construction of the Pacific Texas Oil Pipeline Co. Island (Hereinafter referred to as Pactex Island).

These zones will be needed to protect recreational boaters and commercial vessels from the safety hazards associated with the dredging, pipeline laying, and construction.

Entry into these zones will be prohibited unless authorized by the Captain of the Port.

DATE: Comments must be received on or before July 24, 1986.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach, 165 N. Pico Ave., Long Beach, CA 90802. The comments and other materials referenced in this notice will be available for inspection and copying at U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach, 165 N. Pico Ave., Long Beach, CA 90802, in the Port Management Division Office. Normal office hours are between 9:00 AM and 3:00 P.M. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG M.E. Cutts at (213) 590–2300.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice COTP LA/LB 86–16 and the specific portion of the notice to which their comments apply and give reasons for each comment. The regulations may change in light of comments received. No public hearing is planned, but one may be held if written requests are received and it is determined that the

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opportunity to make oral presentations will aid the rulemaking process.

Comments should be limited to the subject of Safety Zones, Vessel Movement, and Commercial Vessel Safety. Comments for or against the project are outside the scope of the United States Coast Guard. The opportunity for public comment on the project itself was available during the EIR/EIS period and ended 23 August 1985. Questions or arguments about the project itself should be directed to the Los Angeles Harbor District and the Bureau of Land Management.

Drafting Information

The drafters of this notice are LTJG M.E. Cutts, project officer for the Captain of the Port, and LCDR J.R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

Pacific Texas Pipeline Co. has received approval to build a 115 acre island in outer Los Angeles Harbor centered at approximate position 33–43.45N, 118–14.30W. The island will be an oil tanker terminal facility for a 42 inch diameter submarine pipeline which will cross under Cerritos Channel to Terminal Island. An area of about 300 acres centered in approximate position 33–42.83N, 118–14.88W will be dredged to a depth of 75 feet to provide a turning basin and entrance channel for vessels calling at the facility. Since exact dates and locations of each activity are not available at this time and may change without notice in the future, the safety zones may shift from day to day depending on progress of construction. Public notice of the exact location and timing will appear in Broadcast and Local Notices to Mariners.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The areas within the port affected by this proposal are so small that costs incurred as a result will be negligible. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations by establishing three safety zones as follows:

1. *Dredging:* The safety zone will include the area within a 100 yard radius of the dredging vessel and support vessels, if any, when they are engaged in dredging operations while anchored or underway from 15 July 1986 to 1 June 1987. A portion of the dredging will disrupt vessel traffic in the Los Angeles Main Channel, the Los Angeles Pilot Area, and Angel's Gate. Other channels closed to vessel traffic will be published in Broadcast and Local Notices to Mariners when information becomes available.

2. *Pipeline laying:* The safety zone will include the area within a 100 yard radius of the pipeline laying vessel when it is engaged in pipeline laying operations while anchored or underway from 1 May 1987 to 1 September 1987. The pipeline will run from the vicinity of the east edge of the circle for anchorage site C–3 on NOAA chart 18749 to the point where the Naval Base Mole connects to Terminal Island.

3. *Island Construction:* The safety zone will include the area within 100 yards of any construction barges or vessels associated with the operation while anchored or underway. In addition, the safety zone will include the area bounded by the following four positions:

(1) 33 43.23 N., 118 13.91 W.,
(2) 33 43.00 N., 118 14.52 W.,
(3) 33 43.62 N., 118 14.61 W.,
(4) 33 43.62 N., 118 14.13 W.

The zone will be in effect from 1 August 1986 to 1 June 1987.

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

Dated: May 28, 1986.

L.E. Beaudin,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 86–12911 Filed 6–6–86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Benefits; Charges for Car or Medical Services

AGENCY: Veterans Administration.

ACTION: Proposed regulations; correction.

SUMMARY: On pages 19814 and 19815 of the **Federal Register** of June 2, 1986, the Veterans Administration (VA) published a notice of proposed rulemaking to implement portions of section 19013 of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985. The law allows the VA to recover the cost of medical care furnished to nonservice-connected veterans from third party health insurance policies carried by those veterans. This notice is to correct the erroneous reference to revising paragraph (d) to § 17.48. The correct paragraph being revised is § 17.48(g).

EFFECTIVE DATE: This correction is effective June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service (136F), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2337.

SUPPLEMENTARY INFORMATION: On page 19814 of the **Federal Register** of June 2, 1986, the first instruction indicates that paragraph (d) to § 17.48 is being revised. Paragraph (g), *not paragraph (d)* is the correct paragraph being revised in this proposed rulemaking. Section 17.48(d) was revised as part of a proposed rulemaking published in the **Federal Register** of May 14, 1986 at pages 17651 to 17656. This correction is also made to the first paragraph of the shown text of § 17.48, which erroneously shows (d)(1). The first paragraph revised should read (g)(1).

Dated: June 4, 1986.

Patricia Viers,

Chief, Directives Management Division.

[FR Doc. 86–12902 Filed 6–6–86; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effective Date of Refund Upon Disenrollment From VEAP

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The law provides a few veterans with the opportunity to choose between receiving benefits under 38 U.S.C. Ch. 34 (commonly called the Vietnam Era G.I. Bill) or 38 U.S.C. Ch. 32 VEAP (Post-Vietnam Era Educational Assistance Program). Once such a veteran begins receiving benefits under the Vietnam Era G.I. Bill, he or she may never receive benefits under VEAP. Current regulations do not provide for a refund of the veteran's contributions to the VEAP fund when this situation occurs unless the veteran applies for a refund. This proposal permits a refund even if the veteran does not fill out an application for it, and provides an effective date for the refund.

DATE: Comments must be received on or before July 10, 1986.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 24, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.5064(b) is amended to provide an effective date for a refund of contributions to the VEAP fund when the veteran is in receipt of benefits under 38 U.S.C. Ch. 34. It is not necessary for the veteran to submit an application to receive the refund.

The Veterans Administration (VA) and the Department of Defense have determined that this proposed regulation is not a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The proposal will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense certify that the proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this change affects only individual benefit recipients.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 21, 1986.

Thomas K. Turnage,

Administrator.

Approved: May 14, 1986.

[illegible] General R.A. Chavarrie,

Deputy Assistant Secretary of Defense.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising § 21.5064 paragraph (b)(2) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) *Effective date of refund.*

* * *

(2) If an individual voluntarily disenrolls from the program after discharge or release from active duty, under other than dishonorable conditions, the effective date of the refund or his or her contributions shall be determined as follows.

(i) If an individual described in § 21.5040(g)(1) voluntarily disenrolls by deciding to receive educational assistance allowance under 38 U.S.C. Ch. 34 rather than electing to receive educational assistance allowance under Ch. 32, his or her contributions shall be refunded no earlier than 60 days of the date the VA first authorized benefits for the veteran under Ch. 34.

(ii) If an individual voluntarily disenrolls under circumstances other than those described in subparagraph (i) of this paragraph, the individual's contributions shall be refunded within 60 days of receipt by the VA of an application for a refund from the individual. (38 U.S.C. 1602, 1623, 1632)

* * * * *

[FR Doc. 86-12903 Filed 6-6-86; 45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 61, 71, 91, 167, 169, and 189

[CGD 84-024]

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

Correction

In FR Doc. 86-12059 beginning on page 19720 in the issue of Friday, May 30, 1986, make the following correction:

1. On page 19720, in the first column, under "**DATES**", the deadline for comments should read "July 29".

§ 31.10-23 [Corrected]

2. On page 19727, in the second column, in § 31.10-23(d), in the second line after "of" insert "alternate".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60600-6100]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; preseason adjustment.

SUMMARY: The Secretary of Commerce issues a preliminary preseason adjustment of the total allowable catch (TAC), permitting requirements, and bag limits for the Gulf migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This notice proposes (1) reductions in TAC and allocations for the Gulf migratory group of king mackerel based on recent catch data; (2) changes in the requirements for permits for commercial fishing vessels; and (3) provisions for reducing bag limits for recreational fishermen to zero (0). The intended effects are to protect the Gulf migratory group of king mackerel and still allow a catch by the important recreational and commercial fisheries that are dependent on this species, to allow charter vessels to fish commercially when not under charter, and to ensure that the recreational allocation is not exceeded.

DATE: Comments must be received on or before June 24, 1986.

ADDRESSES: Comments on the rule and supplemental regulatory impact review are invited and should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Comments on the collection of information requirement are invited and should be addressed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king mackerel fishery is regulated under the FMP and its final regulations (50 CFR Part 642). An amendment to the FMP (Amendment 1) was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985).

The Councils recommended a TAC for the Gulf migratory group of king mackerel at 5.2 million pounds and this was implemented by emergency regulation (51 FR 8320, March 11, 1986), which resulted in the closure of the commercial fishery for this group on March 12, 1986, after its quota was exceeded (51 FR 9013).

In conformance with stock assessment procedures at § 642.27, the Councils convened the Stock Assessment Panel (Panel), reviewed its report, and made recommendations to the Regional Director for changes in the TAC, quotas, and permits for the Gulf group of king mackerel.

The Councils recommended that TAC for the fishing year of July 1, 1986, through June 30, 1987, be set at 2.9 million pounds, which is at the upper limit of the range of the acceptable biological catch (ABC) provided for by the Panel. This action is expected to allow the spawning stock to recover in the next decade to between 18 and 112 percent of the adequate stock levels of 1975–78.

In accordance with the provisions of the FMP, the TAC is allocated to users and areas by prescribed formula. The recreational fishery is allocated 68 percent of the TAC (1.97 million pounds), and the commercial fishery is allocated 32 percent (0.93 million pounds). The commercial allocation is subdivided into three quotas with 0.06 million pounds for the purse seine fishery, 0.60 million pounds for the eastern geographic zone and 0.27 million pounds for the western geographic zone. The commercial fishery quota is regulated under § 642.21(a).

The recreational fishery quota is regulated under § 642.21(b) and bag limits under § 642.28. When the quota of 1.97 million pounds is reached or projected to be reached, the bag limit will be reduced to zero (0) by notice action in the Federal Register. Prior to publication of such notice action, the Regional Director will consult with the Councils and advise them of the data on which the bag limit reduction to zero (0) is based.

The recreational bag limit for the Gulf group of king mackerel specified at § 642.28(a)(1) will remain unchanged because of the expected reduction in availability of fish and total effort. Bag limits at the opening of the season will remain at three king mackerel per person per trip for anglers, excluding captain and crew, or two king mackerel per person per trip including the captain and crew, whichever is the greater for persons fishing on charter boats. For persons fishing from other recreational vessels the bag limit will remain at two king mackerel per person per trip.

Vessels fishing commercially for either migratory group will continue to be required to obtain a permit annually and may do so providing the owner or operator has derived at least ten percent of his earned income from commercial fishing in the previous calendar year.

Prior to this regulatory action, charter boats fishing the Gulf migratory group of king mackerel have been ineligible to obtain commercial permits. The rationale was that charter anglers on permitted vessels could exceed bag limits, and the catch would not be reported against the commercial quota. The catch would exceed bag limit estimates causing TAC to be exceeded. A mechanism to allow charter boats to fish under bag limits, when under charter, was subsequently developed and adopted for the Atlantic migratory group, and extension of this authority to charter boats fishing the Gulf group would make the regulations equitable and consistent. Charter vessels fishing off Louisiana and Florida have traditionally engaged in commercial fishing, when not under charter.

Charter boats may obtain a permit to fish commercially if they meet the earned income requirement of ten percent for commercial fishing and provided they adhere to bag limits while under charter. A charter vessel with a commercial permit will be considered to be under charter if more than three persons are aboard including the captain and crew. Permits to fish on the commercial quotas will be issued by the Regional Director at no cost and will be available 60 days prior to the beginning of the season. Permits may be issued at other times for newly registered vessels or in cases of demonstrated hardship. Also, permits are nontransferable. The issuance of commercial permits for charter vessels will assist in determining the distribution of the lowered TAC between commercial and recreational fishermen and will be an aid in evaluating the status of the catch of each user group. The minimum income percentage requirement for a permit for commercial fishermen also will prevent recreational fisherman from obtaining permits and thereby circumventing the bag limitations.

Other Matters

This action is taken under the authority of 50 CFR 642.27 and is taken in compliance with Executive Order 12291. This action is covered by the supplemental regulatory impact review (SRIR) which concluded that the authorizing regulations could have a significant economic impact on a substantial number of small entities. Comments on the SRIR are invited and should be sent to the ADDRESS listed above. A copy is also available from the ADDRESS listed above.

This rule revises a collection of information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0007. A request to collect this information has been submitted to OMB for review under section 3504(h) of the PRA. Comments on the collection of information requirements are invited (See ADDRESSES).

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 4, 1986.

Carmen J. Blondin,

Deputy Assistant, Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 642.1 is amended by revising paragraph (b) to read as follows:

§ 642.1 Purpose and scope.

* * * * *

(b) This part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States off the Atlantic Coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

3. Section 642.2 is amended by revising the definition of "Charter vessel" to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with permits to fish on the commercial allocation for king mackerel will be considered under charter if there are more than three (3) persons aboard including captain and crew.

* * * * *

4. Section 642.4 is amended by revising paragraphs (a) (1) and (2), and (b)(6) to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* (1) Owners or operators of fishing vessels which fish for king mackerel under the commercial quotas in § 642.21(a) are required to obtain an annual vessel permit.

(2) Owners or operators of charter vessels may obtain a permit to fish under the commercial allocations for king mackerel provided they adhere to bag limits while under charter.

(b) * * *

(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the preceding calendar year (January 1 through December 31);

* * * * *

§ 642.7 [Amended]

5. Section 642.7 is amended by revising paragraph (a)(18), adding a new paragraph (a)(27), deleting paragraph (a)(28), and renumbering paragraphs (a)(29) through (31) as (a)(28) through (30) to read as follows

(a) * * *

(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted to fish under § 642.4 king mackerel from a migratory group or allocation zone after the commercial quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22(a) (Table 2);

* * * * *

(27) Possess king mackerel harvested in the FCZ under a recreational allocation set forth in § 642.21(b) after the bag limit for that recreational allocation has been reduced to zero (0) as specified in § 642.22(b);

* * * * *

6. Section 642.21 is amended by revising paragraphs (a), (b), and (c), and redesignating existing paragraph (i) as (f) to read as follows:

§ 642.21 Quotas and allocations.

(a) *Commercial quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 0.93 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.60 million pounds for the eastern allocation zone;

(ii) 0.27 million pounds for the western allocation zone; and

(iii) 0.06 million pounds for purse seines (see Figure 2 and paragraph (f) of this section for description of allocation zones).

(2) The commercial allocation and quota for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year.

(3) A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Recreational allocations for king mackerel.* (1) The recreational allocation for the Gulf migratory group of king mackerel is 1.97 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

(c) *Purse seine quota for king mackerel.* (1) The total harvest of king mackerel by purse seines from the Gulf of Mexico is limited to 0.06 million pounds each fishing year.

(2) The total harvest of king mackerel by purse seine from the Atlantic Ocean is limited to 400,000 pounds each fishing year.

(3) King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

* * * * *

7. Section 642.22 is amended by revising paragraph (b) to read as follows:

§ 642.22 Closure.

* * * * *

(b) The Secretary, after consulting with the Councils and by publication of a notice action in the Federal Register, may reduce the bag limit for the recreational fishery for king mackerel in the Atlantic or Gulf migratory group to zero (0) when the allocation for that group under § 642.21(b) is reached or is projected to be reached. After such reduction, all king mackerel caught must be returned to the sea immediately and possession of king mackerel aboard recreational vessels is prohibited.

* * * * *

8. Section 642.28 is amended by revising paragraph (c) to read as follows:

§ 642.28 Bag and possession limits.

* * * * *

(c)(1) After a closure under § 642.22(a) is invoked for the allocations and quotas specified in § 642.21(a), vessels permitted under § 642.4 may not fish for king mackerel in the zone(s) for that allocation or quota under the bag limits specified in paragraph (a) of this section except as provided for under paragraph (c)(2).

(2) Charter vessels permitted to fish under the commercial quotas for king mackerel may fish under the bag limit specified in paragraph (a) of this section provided they are under charter and the recreational fishing allocation for the respective migratory group of king mackerel under § 642.21(b) has not been closed under § 642.21(b).

* * * * *

9. Table 2 of Appendix A is amended in its entirety to read as follows:

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Fishing year quota TAC (million pound)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic Commercial	1 April-31 March	All types	Entire range [2].	3.59	Sales from migratory group are projected to reach quota.
Atlantic Commercial	1 April-31 March	PS [3]	Atlantic Ocean [4].	0.40	Landings from migratory group are projected to reach quota.
Atlantic Recreational	1 April-31 March	All types	Entire range [2].	6.09	Catches from migratory group are projected to reach allocation.

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]—Continued

Migratory group(s)	Fishing year	Gear	Allocation zone	Fishing year quota TAC (million pound)	Prohibition on sale and/or catch invoked when—
Gulf Commercial.	1 July–30 June	All types	Western zone [2].	0.27	Sales from migratory group and zone are projected to reach quota.
Gulf Commercial.	1 July–30 June	PS [3]	Eastern zone [2].	0.80	Sales from migratory group and zone are projected to reach quota.
Gulf Commercial.	1 July–30 June	All types	Entire range [2].	0.68	Landings from migratory group are projected to reach quota.
Gulf Recreational.	1 July–30 June	All types	Entire range [2].	1.27	Landings from migratory group are projected to reach quota.
Spanish Mackerel	1 January–31 December.	All types	GA [4]	27.00	When landings are projected to reach TAC.
	1 January–31 December.	PS [3]	Atlantic Ocean.	0.30	When landings are projected to reach quota.
	1 January–31 December.	PS [3]	Gulf of Mexico.	0.30	When landings are projected to reach quota.

[1] See Figure 2 for delineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.27)—see Figure 2.
[3] See Figure 2 and § 642.21(e).
[4] See § 642.21(d).
[5] Purse seines.
[6] Gulf & Atlantic.

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50 CFR Part 651

[Docket No. 60206-6099]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement the conservation and management measures prescribed by the New England Fishery Management Council (Council) in the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), which was resubmitted without change but with additional supporting justification following disapproval by the Secretary. This FMP addresses problems identified in the multispecies finfish fishery and would replace the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). The proposed rule would (1) establish new minimum sizes for seven major commercial species; (2) establish minimum sizes for recreationally-caught cod and haddock; (3) extend closing spawning areas for haddock on Georges Bank; (4) establish a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) substantially revise the regulations governing small-mesh fisheries; (6) substantially increase the mesh size of mobile trawl gear; (7) establish a marketing requirement for gill net gear, and (8) establish a seasonal mesh-size restriction for redfish to increase the spawning potential for redfish. The intended effect of the proposed rule is to maintain the abundance and viability of the stocks to support both commercial and recreational fisheries.

DATE: Comments on the proposed rule must be received on or before June 17, 1986.

ADDRESS: Comments on the proposed rule, the FMP, or supporting documents should be sent to Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on the Multispecies FMP".

Copies of the FMP, the final environmental impact statement, and the draft regulatory impact review are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi (Groundfish Coordinator), 617–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION:

Background

The FMP was previously disapproved by the Secretary of Commerce, because it did not demonstrate that it would prevent overfishing, or result in benefits outweighing costs. The New England Council (Council) considered the Secretary's comments, and resubmitted the FMP for further review and implementation. The Council made no changes in the previously disapproved proposed management measures, but provided additional justification for the measures.

Two minority reports were appended to the resubmitted FMP. One report states that the Council has failed to address and resolve a long-standing conflict between commercial and recreational fishermen. The second report charges that the conservation in the FMP is inadequate, and recommends specific improvements for management measures. Both reports are available to the public from the Council.

The FMP was developed by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic Fishery Management Council. The FMP has evolved from the Council's longstanding management efforts first begun in 1977 on cod, haddock, and yellowtail flounder in the original Atlantic Groundfish Plan and more recently the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). The FMP was developed to replace the Interim Plan on the assumption that cod, haddock, and yellowtail flounder are not isolated stocks, but are part of a highly complex and diversified fishery resource. As a result, the management unit encompasses the interrelated species of a demersal finfish complex, which includes cod, haddock, yellowtail flounder, pollock, redfish, winter flounder, American plaice, witch flounder, windowpane flounder, and white hake.

The goal of the Council in multispecies management is to preserve this mix of species at sufficient abundances to assure that the regulated species maintain adequate spawning potential, so that the resource, as a whole, can recover from outside influences, such as the pressure imposed by fishing. This goal is embodied in the major objectives of the FMP, which are (1) to control fishing mortality on juvenile fish (primarily) and on adults (secondarily) of selected finfish stocks to maintain sufficient spawning potential so that year classes, on a long-term average, replace themselves, and (2) to reduce fishing mortality in order to rebuild those stocks which have insufficient spawning potential to maintain a viable fishery resource. The objectives promote greater egg production by controlling or reducing mortality on non-spawning, juvenile fish, thus allowing more fish to reach sexual maturity and reproduce before they are removed by the fishery.

The objectives are accomplished through several management measures designed to protect species within the

multispecies complex. The Council believes that the measures implement conservation over and above that afforded by the Interim Plan. The measures are: (1) Minimum sizes for seven major commercial species; (2) minimum sizes for recreationally-caught cod and haddock; (3) major extensions of closed spawning areas for haddock on Georges Bank; (4) a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) major changes in the regulations governing small-mesh fisheries; (6) a major increase in the mesh size of mobile trawl gear; (7) a marking requirement for gill net gear, and (8) a seasonal mesh-size restriction for redfish to increase spawning potential.

The Council believes that these measures will ensure long-term abundance of the demersal finfish complex at levels that will support a viable fishery, and retain the fishing industry's traditional access to a multispecies fishery with a minimum of government regulation. This approach has been designed to be responsive to changing circumstances in the fishery, through the establishment of a Technical Monitoring Group (TMG). The TMG will conduct periodic analyses of changing conditions in the fishery resource, and make recommendations that will keep a continual focus on achievement of the FMPs objectives. The FMP is expected to be a framework on which to build to ensure effective management in the long term.

The FMP takes into account the willingness of fishermen to comply with changes in fishing regulations and the ability of the NMFS, the States, and the Coast Guard to enforce them. In summary, the Council believes that the FMP: (1) sets objectives that establish a standard against which success can be measured; (2) reconciles the tension between the need to respond to the condition of stocks within the resource complex and the limitations imposed by the multispecies industry by which those stocks are utilized; (3) takes into account NMFS' enforcement capability; and (4) represents a consensus position within the parameters of what is desirable, possible, and supportable at this stage in the evolution of fishery management in New England.

The Secretary specifically requests comments on:

(1) The likelihood of overfishing considering the present condition of the stocks, the proposed management measures, and the spawning potential objectives of the FMP;

(2) The impact of the exempted fisheries program on the ability of the mesh-size conservation measures to achieve the FMPs spawning potential objective; and

(3) The enforceability of the management measures if no additional funds are available for enforcement.

One of the premises of the long-term calculation of the appropriate spawning stock is a constant level of fishing mortality. The number of otter trawl vessels has increased an average of 10 percent per year (1976–1983); 44 percent of the total of 302 vessels added to the fleet by 1981 were new and 169 were existing vessels which either switched gear, moved to New England, or were newly-acquired used vessels. However, the number of active otter trawls declined by about 5 percent from 1984 to 1985. Comment is specifically invited on the relationship of increased fishing pressure to the well-being of the fishery resource.

The exempted fisheries program allows the use of a mesh size smaller than the proposed regulated mesh for certain species and seasons throughout the fishing year. Comment is specifically invited on the impact of this program on the attainment of the FMPs spawning potential objectives.

Annual enforcement costs for this FMP, if implemented, would be $2.6 to $3.3 million higher than those of the Interim Plan. It is unlikely that additional funds will be available. Comment is specifically invited on the enforceability and effectiveness of closed areas if additional funding is not available.

Classification

Section 304(b)(3)(B) of the Magnuson Act, as amended, requires the Secretary, upon receipt of a revised previously disapproved FMP and proposed implementing regulations, to publish the proposed implementing regulations as soon after receipt as possible. At this time, the Secretary has not determined that the revised FMP that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a draft environmental impact statement for this FMP; a notice of availability was published on October 24, 1985 (50 FR 43201).

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule, including regulations for minimum fish size, minimum mesh size, exempted fisheries, closed areas, and a redfish area, may result in a maximum loss to the industry of $15.4 million (7.8 percent) and 952 man-years during the first year of implementation. The present cost (discounted at 10 percent) of the program (measured as foregone revenues) over a ten-year period is expected to be about $6.9 million (0.4 percent). The proposed gear marking requirements may result in a maximum annual cost of $100,000. An annual increase in the cost of enforcement is expected to be $2.6 to $3.3 million; however, enforcement may remain at current levels, if additional funding is unavailable. The purpose of the FMP is to enhance productivity and thus promote investment and innovation in the fishery once the industry has absorbed the initial losses. The proposed rule is not expected to have a significant adverse effect on the Northeast multispecies industry. The Council prepared a supplemental regulatory impact review (RIR) for the resubmitted FMP which concluded that this rule will produce long-term benefits associated with the achievement of the FMP objectives within the fourth year of implementation. A copy of this supplemental RIR may be obtained from the Council at the address above.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule as soon as possible after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of the order.

A determination as to whether or not the rule has a significant economic impact on a substantial number of small entities will be made in conjunction with publication of the final rule.

This rule contains a collection of information requirement under the exempted fisheries program, which is subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, Attention: Desk Officer for NOAA. The permit requirement contained in the proposed rule has been cleared by OMB under Control Number 0648–0097.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent

practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting requirements.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries, Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, Chapter VI of 50 CFR is proposed to be amended by revising Part 651, to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.

651.1 Purpose and scope.
651.2 Definitions.
651.3 Relationship to other laws.
651.4 Vessel permits.
651.5 Recordkeeping and reporting requirements. [Reserved]
651.6 Vessel identification.
651.7 Prohibitions.
651.8 Facilitation of enforcement.
651.9 Penalties.

Subpart B—Management Measures

651.20 Regulated mesh area and gear limitations.
651.21 Closed areas.
651.22 Exempted fishery programs.
651.23 Minimum fish size.
651.24 Additional measures.
651.25 Experimental fishing.
651.26 Gear marking requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where finfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, 3300 Whitehaven Street, NW, Washington, DC 20235, or a designee.

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bottom-tending gill net means any gill net, anchored or otherwise, that is fished on or near the bottom in the lower third of the water column.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish aboard a vessel.

Charter and party boats mean vessels carrying recreational fishing parties for a per capita fee or for a charter fee.

Codend means the terminal portion of an otter trawl, pair trawl, beam trawl, Scottish seine, or mid-water trawl in which the catch is retained.

Council Means the New England Fishery Management Council

Exclusive economic zone (EEZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Exempted fisheries means those species found in the exempted fisheries program (§ 651.22).

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Adding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish or to transfer fish to another vessel.

Longline gear means fishing gear which is set horizontally, either anchored, floating or attached to a vessel, which consists of a main or ground line with three or more gangions and hooks.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Mid-Atlantic area means that area west and south of a line commencing at 41°18'16.2" N. latitude by 71°54'28.5" W. longitude and proceeding south 37°22'32.75", then east to the point of intersection with the outer boundary of the EEZ.

Mid-water trawl gear means pelagic trawl gear, no portion of which is operated in contact with the bottom.

Multispecies finfish means all finfish in the Northeast portion of the Atlantic EEZ not otherwise regulated under the Magnuson Act or by international treaty or otherwise excluded by the management unit of the FMP. These species are cod, yellowtail flounder, haddock, American plaice, pollock, redfish, witch flounder, white hake, winter flounder, and windowpane flounder.

New England area means that area east and north of a line commencing at 41°18'16.2"N. by 71°54'28.5"W. and proceeding south 37°22'32.75", then east to the point of intersection with the outer boundary of the EEZ.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Owner with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows

control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws or any State), and any Federal, State, local, or foreign government or any entity of any such government.

Plan means the Northeast Multispecies Fishery Management Plan (FMP) described at § 651.1.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Retain aboard means to fail to return to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

Technical monitoring group (TMG) means that group of scientists/technical analysts which will report to the Council for the purposes of (a) monitoring the implementation of the FMP relative to achievement of the objectives, and (b) making recommendations for changes in the management program.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 651.3 Relationship to other laws.

(a) Fishing for squid, mackerel, and butterfish, which is affected by these rules, also is governed by other domestic rules under Chapter VI, Title 50, Part 655 of the Code of Federal Regulations.

(b) Fishing vessel operators will exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(c) Nothing in these regulations will supersede more restrictive State or local multispecies finfish management measures.

§ 651.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for multispecies finfish, except commercial vessels fishing exclusively within State waters and recreational fishing vessels, must have a permit required by this part aboard the vessel.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by State or local law differ, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a fishing vessel to participate in the multispecies finfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least two months prior to the date on which the applicant desires to have the permit made effective to ensure that he will receive the permit on time.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's official number;

(iv) The home port and gross tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 45 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(d) *Surrender.* (1) A permit issued for a vessel may be surrendered by the owner thereof by certified mail addressed to the Regional Director.

(2) The Regional Director will reissue a permit which has been surrendered within 45 days from the date the reissuance was requested.

(e) *Expiration.* A permit expires when the owner or the name of the vessel changes.

(f) *Duration.* A permit is valid until it is voluntarily returned or expires or is revoked, suspended, or modified under 15 CFR Part 904.

(g) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(h) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be displayed for inspection in the pilot house of the vessel or in another appropriate place.

(k) *Suspension and revocation.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act is not satisfied.

(l) *Fees.* No fee is required for any permit under this part.

(m) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change.

(n) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program (§ 651.22) by telephoning 617–281–4454. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of authorization aboard at all times while he/she is engaged in an exempted fishery.

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Official number.* Each fishing vessel over 25 feet in length subject to this part must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet in length, and at least 10 inches in height for vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be the length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part will

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(d) *Nonpermanent markings.* Vessels carrying fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be diplayed in conformity with the above requirements when the vessel is fishing for multispecies finfish.

§ 651.7 Prohibitions.

(a) It is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

(1) Land or possess any multispecies finfish which fails to meet the minimum fish sizes specified in § 651.23; and

(2) Fail to affix and maintain permanent markings as required by § 651.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting, or landing any multispecies finfish taken from the EEZ unless the vessel or operator has a valid permit issued under this part and the permit is aboard the vessel;

(2) Fish within the large-mesh area specified in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) unless the vessel is registered in an exempted fisheries program established under § 651.22;

(3) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(4) Dump the contents of the net after being signaled by an authorized officer that the vessel is to be boarded.

(5) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, or export any multispecies finfish taken, retained or imported in violation of the Magnuson Act, this part or any other regulation under the Magnuson Act;

(6) Import regulated species which are inconsistent with § 651.23;

(7) Make any false statement in connection with an application under § 651.4 or fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(8) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchasing, selling, or transfering of any multispecies finfish.

(9) Refuse to permit an authorized officer to board a fishing vessel or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act.

(10) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(5) of this section;

(11) Resist a lawful arrest for any act prohibited by this part;

(12) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(13) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(14) Fail to comply immediately with enforcement and boarding procedures specified in § 651.8;

(15) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested multispecies finfish not otherwise specifically authorized under § 651.26 to any foreign fishing vessel within the EEZ; or

(16) Violate any provisions of the exempted fisheries program specified in § 651.22.

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession of multispecies finfish which do not meet the minimum sizes specified in § 651.23 for sale will be *prima facie* evidence that such multispecies finfish were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel fishing exclusively within State waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

(e) *Dumping.* No person, having been signaled by an authorized officer, may dump on board or into the water the contents of the net before the authorized officer has permitted the net to be emptied.

§ 651.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high

frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.— .—)[1], is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (.—. —.—— —.—. —.——) means "You should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... ——.— ...——) means "You should stop or heave to, I am going to board you."

(4) "L" (.—..) means "You should stop your vessel instantly."

§ 651.15 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, to 50 CFR Part 621 and 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 651.20 Regulated mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within the areas bounded by straight lines (rhumb lines) in the order stated (see Figure 1):

(1) The line drawn from the intersection of the outer boundary of the territorial sea, eastward along 41°35′ N. latitude to the intersection with 69°40′ W. longitude, then southward along 69°40′ W. longitude to the intersection of line LORAN C, 9960–Y–43500;

(2) Then eastward along LORAN C, 9960–Y–43500 to the intersection of line LORAN C, 5930–Y–30750;

(3) Then northeastward along LORAN C, 5930–Y–30750 to the point of intersection with the United States/Canada Maritime Boundary;

(4) Then northward along the United States/Canada Maritime Boundary demarcated by projection of a line through the coordinates

(i) 40°27′05″ N., 65°41′49″ W.;
(ii) 42°31′08″ N., 67°28′05″ W.;
(iii) 42°53′14″ N., 67°44′35″ W.;
(iv) 44°11′12″ N., 67°16′46″ W.; and

(5) Then along the shoreward boundary of the regulated mesh area, which is the outer boundary of the territorial sea.

(6) The regulated mesh area described above is divided in two by a line drawn from the eastern shore of Cape Cod at the point of intersection of the outer boundary of the territorial sea, northward along 70°00′ W. longitude to 42°20′N. latitude, 70°00′W. longitude and then eastward along 42°20′ N. latitude to the point of intersection with the United States/Canada Maritime Boundary. The area north of this dividing line will be known as the Gulf of Maine regulated mesh area, and the area south of this line will be known as the Georges Bank regulated mesh area.

(b) *Trawl nets.*

(1) *Diamond mesh.* Except as provided for in § 651.20 (d) and (e) and § 651.22, the minimum mesh size for any trawal net or scottish seine used by a vessel fishing in the mesh area described in paragraph (a) of this section is 5½ inches in the cod end in the Gulf of Maine regulated mesh area; and 5½ inches in the cod end in the Georges Bank regulated mesh area.

(2) *Square mesh.* Vessels may use square mesh which the Regional Director has certified to be equivalent in terms of haddock escapement to the mesh sizes specified in (b)(1).

(c) *Gill nets.* (1) Except as provided for in § 651.22, the minimum mesh size for any gill net used by a vessel fishing in the mesh area described in paragraph (a) of this section will be the same as that specified under paragraph (b).

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b), during the months of November through February, the mesh in bottom-tending gill nets must be the same as that in effect for the Georges Bank regulated mesh area.

(d) *Redfish area.* The area defined below will be unregulated with respect to mesh size only beginning March 1 and ending either July 31 or when 3,500 metric tons (mt) of redfish have been landed within the calendar year, whichever occurs first. The redfish area is bounded by lines in the following order (see Figure 1)—

(1) The line drawn from the intersection of 42°20′ N. latitude with 69°40′ N. longitude, northward along 69°40′ W. longitude to the intersection with line LORAN C, 9960–X–25600;

(2) Then northeastward along LORAN C, line 9960–X–25600 to the intersection with 43°00′ N. latitude;

(3) Then eastward along 43°00′ N. latitude to the seaward boundary of the U.S. EEZ;

(4) Then southward along the seaward boundary of the U.S. EEZ to the intersection with 42°20′ N. latitude; and

(5) Then westward along 42°20′ N. latitude to the point of origin.

(e) *Mid-water gear.* (1) In the portion of the regulated mesh area where exempted fishing is prohibited under § 651.22, fishing for Atlantic or blueback herring, mackerel and squid may take

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

place throughout the fishing year with cod end mesh sizes less than the regulated size, provided that mid-water trawl gear is used exclusively, and the bycatch of multispecies finfish is not greater than one percent by weight of all other fish aboard the vessel at the end of each fishing trip.

(2) In the closed area described for the Southern New England/Mid-Atlantic Region in § 651.21, fishing for herring, mackerel, and squid with mid-water trawl gear may be permitted by the Regional Director subject to the stipulation that no regulated species may be retained aboard or landed.

(f) *Mesh measurements.* (1) Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least 10 meshes from the lacings, beginning at the after-end and running parallel to the long axis.

(2) No fishing vessel may use any means or device, including, but not limited to, chafing gear, liners, or double nets, if it would obstruct the meshes of the cod end or otherwise diminish the size of the meshes of the cod end. However, canvas, netting, or other material may be attached to the under side of the cod end to reduce wear and prevent damage so long as no more than 50 percent of the meshes are obstructed. Net strengtheners may be attached to the cod end of trawl nets, providing such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

§ 651.21 Closed areas.

(a) *Georges Bank.* No person may fish within the following areas during the months of February through May.

(1) An area known as Closed Area I (see Figure 2) bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(i) 40°53′ N. latitude, 68°53′ W. longtitude;

(ii) 41°35′ N. latitude, 68°30′ W. longtitude;

(iii) 41°50′ N. latitude, 68°45′ W. longtitude; and

(iv) 41°50′ N. latitude, 69°40′ W. longtitude;

(2) An area known as Closed Area II (see Figure 2) bounded by three straight lines described as follows:

(i) A line originating at 41°15′ N. latitude, 67°00′ W. longitude, projected eastward along 41°15′ N. latitude to the point of intersection with the United States/Canada Maritime Boundary;

(ii) A second line originating at 41°15′ N. latitude, 67°00′ W. longitude, projected northward along 67°00′ W. longitude to the point of intersection with the United States/Canada Maritime Boundary; and

(iii) That portion of the United States/Canada Martime Boundary that intersects with the lines described in (2)(i) and (ii).

(3) *Exceptions.* Paragraphs (a) (1) and (2) of this section do not apply to the following:

(i) Longline vessels that fish with hooks having a gape of not less than 1.18 inches (30 mm), Closed Area I, only;

(ii) Pot gear designed and used to take lobsters; or

(iii) Dredges designed and used to take scallops.

(4) The Regional Director may open either or both Closed Areas I and II prior to the scheduled opening in May by notice in the Federal Register, if he determines that concentrations of spawning fish are no longer in the area(s).

(b) *Southern New England/Mid-Atlantic Region.*

(1) Except as provided in § 651.20(d), and paragraph (b)(3) of this section, during a closure, no person may fish within the area bounded by straight lines (rhumb lines) in the order stated (see Figure 3):

(i) The line drawn from the intersection of LORAN C, 9960–Y–43700 and 72°20′ W. longtitude southward along 72°20′ W. longtitude to the intersection with line LORAN C, 9960–Y–43500;

(ii) Then eastward LORAN C, 9960–Y–43500 to the intersection with line 72°00′ W. longtitude;

(iii) Then northward along 72°00′ W. longtitude to the intersection with line LORAN C, 9960–Y–43600;

(iv) Then eastward along LORAN C, 9960–Y–43600 to the intersection with line 70°40′ W. longtitude;

(v) Then southward along 70°40′ W. longtitude to the intersection with line LORAN C, 9960–Y–43500;

(vi) Then eastward along LORAN C, 9960–Y–43500 to the intersection with line 69°40′ W. longtitude;

(vii) Then northward along line 69°40′ W. longtitude to the intersection with line 40°50′ N. latitude;

(viii) Then eastward along 40°50′ N. latitude to the intersection with line 70°30′ W. longitude;

(ix) Then northward along 70°30′ W. longitude to the intersection with line 41°00′ N. latitude;

(x) Then westward along 41°00′ N. latitude to the intersection with line LORAN C, 9960–Y–43750;

(xi) Then westward along LORAN C, 9960–Y–43750 to the intersection with line 72°00′ W. longitude;

(xii) Then southward along 72°00′ W. longtitude to the intersection with line LORAN C, 9960–Y–43700; and

(xiii) Then westward along LORAN C, 9960–Y–43700 to the point of origin.

(2) The area defined in (b)(1) of this section will be regulated as follows—

(i) The portion of the area east of 71°30′ W. longtitude will close on March 1 of each year and the portion west of 71°30′ W. longtitude will close on April 1 of each year.

(ii) The entire area will be reopened by the Regional Director on or after May 1 of each year after the Regional Director has determined that the closure achieved the 20 percent spawning potential for yellowtail flounder and winter flounder.

(3) *Exceptions.* (i) Paragraph (b)(1) of this section does not apply to—

(A) Pot gear designed and used to take lobsters; and

(B) Dredge gear designed and used to take scallops, ocean quahogs, or surf clams.

(ii) The Regional Director may permit the use of mid-water trawl nets with cod ends constructed of mesh less than the size prescribed in § 651.20(b) in the closed area described in § 651.21(b) to fish for herring, mackerel, and squid provided that the total amount of multispecies finfish taken does not exceed one percent of the weight of all other fish aboard the vessel at the end of each fishing trip.

(A) Upon final implementation of the Plan, the Regional Director will determine the allowable mesh that may be used in mid-water trawl nets within the closed area. Such determination will be published in the Federal Register.

(B) Any person intending to use mid-water trawl nets in any area described in paragraph (b) of this section must notify the Regional Director in writing 30 days prior to the date on which the nets will be used. The Regional Director will issue a letter authorizing the use of such nets. Fishing in these areas with mid-water trawl nets may not commence without a letter of authorization carried aboard the vessel.

§ 651.22 Exempted fishery programs.

(a) *General.* The Regional Director will establish and implement an exempted fishery program to allow fishing vessels to engage in small mesh fisheries for species which require the use of mesh smaller than the size

specified in § 651.20(b). Exempted fishing may be conducted shoreward of the area bounded by the straight lines (rhumb lines) in the order stated (see Figure 1)—

(1) The line beginning at the intersection of the territorial sea and 41°35′ N. latitude and proceeding eastward along 41°35′ N. latitude to the intersection with line 69°40′ W. longitude;

(2) Then northward along 69°40′ W. longitude to the intersection with line LORAN C, 9960–X–25600;

(3) Then eastward along LORAN C, 9960–X–25600 to the intersection with the line demarking the U.S./Canadian boundary; and

(4) Then northward along the U.S./Canadian boundary line to the intersection with the territorial sea.

(b) *Entry.* (1) Any person holding a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedures set forth in § 651.4(n).

(2) The period of participation must be for at least 7 days, but not longer than 30 days. There is no limit on the number of times a vessel can apply to participate in the exempted fisheries program.

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program. Entry may be denied to an applicant based upon previous violations of the Magnuson Act or these regulations. Any applicant denied entry into the program may request a hearing. The hearing will be conducted in accordance with the procedures of 15 CFR Part 904.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the exempted fisheries program may begin after the applicant has received the certification from the Regional Director provided that a letter of authorization is retained aboard the vessel and displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(e) *Limitations.* (1) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and to restrictions placed on the allowable percentage of multispecies finfish to other specified species as follows:

Period	Exempt species	Comment
June to November.	Open	Regulated species may not exceed 10 percent of the total landings of all species during the reporting period.
December to January.	Whiting	Regulated species may not exceed 10 percent of the amount of whiting landed over the reporting period; the fishery will be monitoring by sea sampling.
January to April	Shrimp	Regulated species may not exceed 10 percent of the amount of shrimp landed during the reporting period.
December to May.	Herring mackerel	Regulated species may not exceed 10 percent of the amount of herring plus mackerel landing over the reporting period.

(2) Adjustments in the seasons, species or percentages of the exempted fisheries will be accomplished in accordance with the procedures detailed in § 651.24(c).

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be 30 calendar days. Within one week from the expiration of the reporting period or withdrawal from the program under paragraph (h), or receipt of a notice of revocation under paragraph (i), the participant must mail or deliver to the Regional Director a NOAA Form 88–153 "Fishing Vessel Record" listing or on business records that provide equivalent information, in pounds, all fish landed during participation in the exempted fishery program on a trip-by-trip basis. The participant must maintain trip landing records that are certified as accurate by both the buyer and seller for one year after his/her participation in the exempted fishery program. These forms must be supplied upon the request of the Regional Director to confirm the information presented in NOAA Form 88–153. Buyer certification may be satisfied by the buyer's signature on the trip record that is retained by the seller (vessel operator). The responsible fishing vessel owner or operator may maintain accurate trip-by-trip landings data on a form provided by the Regional Director.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(n), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of any applicant in the exempted fisheries program upon issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and take effect upon receipt by the participant. Any applicant whose certification is revoked may request a hearing. The hearing will be conducted in accordance with the procedures of 15 CFR Part 904.

§ 651.23 Minimum fish size.

(a) The minimum sizes (total length) for certain related finfish follow:

(1) Commercial	Year 1	Year 2
Cod, haddock and pollock.	17 inches	19 inches.
Witch flounder (gray sole).	14 inches	14 inches.
Yellowtail flounder, American plaice (dab).	12 inches	12 inches.
Winter flounder (blackback).	11 inches	11 inches.

(2) Recreation fishing vessels, charter and party boats, and individuals.

(i) Effective—Year 1—

Cod and haddock: 15 inches.

(ii) Effective—Years 2 and 3—

Cod and haddock: 17 inches.

(iii) Effective—Years 4 and onward)—

Cod and haddock: 19 inches

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail

§ 651.24 Additional measures.

(a) *Regulated mesh areas.* If fishing mortality for a key species is determined to jeopardize achievement of the management objectives, or if a new year class of haddock is jeopardized by the conduct of the fishery, then four additional options to control fishing mortality will be considered for Council action (no priority implied):

(1) Modify existing measures;

(2) Establish further time/area restrictions;

(3) Increase minimum fish size; or

(4) Increase mesh size.

(b) *Non-regulated mesh area.* If fishing mortality for key stocks not adequately protected by the regulated mesh area remains too high to achieve the plan objectives, then three additional options to further control fishing mortality will be considered for Council action using the regulatory amendment process (public hearings will be held):

(1) Close key fishing grounds in appropriate areas and times necessary to control fishing mortality;

(2) Increase minimum fish size; or

(3) Establish a minimum mesh size for all or part of the area during a specified period of the year.

(c) *Adjustment of management measures.* (1) The Council will establish a Multispecies Technical Monitoring Group (TMG). The TMG will meet at least annually or more often to evaluate the effectiveness of the Plan in meeting its objectives. The TMG will make its recommendations to the Council of alternative or additional measures including but not limited to the scope of those measures described in paragraphs (a) and (b) of this section.

(2) *Determination.* A Committee designated by the Council will review the recommendations of the TMG in consultation with industry advisors. The Council will consider the recommendations of the TMG and the Committee and the views of the industry advisors and will determine whether and what additional or alternative measures will be proposed to achieve the objectives of the Plan.

(3) *Public comment.* The Council will hold public hearings at appropriate times and places to allow interested persons an opportunity to be heard on the proposed changes to the FMP.

(4) *Procedure.* (i) *FMP amendment.* If the recommendations of the Council are outside the scope of paragraphs (a) and (b) of this section, the Council will amend the FMP.

(ii) *Regulatory amendment.* If the recommendations of the Council are within the scope of paragraphs (a) and (b) of this section and do not impose gear or area restrictions in the Mid-Atlantic area with which the Mid-Atlantic Fishery Management Council has not agreed, the Council will forward the recommendations to the Regional Director.

(A) The Regional Director will review the Council's recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Council for the rejection and existing regulations will remain in effect until the issue is resolved.

(B) If the Regional Director concurs that the Council's recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director shall recommend that the Secretary publish a proposed rule in the Federal Register prior to the appropriate fishing year. A 30-day period for public comment will be afforded. The Secretary will consider all comments received and will publish a final rule, with revisions as may be required, following the end of the public comment period.

§ 651.25 Experimental fishing.

The Secretary may authorize experimental fishing for the acquisition of information and data activities, not otherwise authorized by these regulations.

§ 651.26 Gear marking requirements.

(a) Bottom-tending fixed gear (gill nets and longlines) fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gill nets, or longlines.

(b) Bottom-tending gill net or longline gear must be marked so that the westernmost end (meaning the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear must display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gill nets must not exceed 6,600 feet between the end buoys.

(d) In the Gulf of Maine large mesh area specified in § 651.20, sets of gill net gear which are of an irregular pattern or which deviate more than 30° from the original course of the set will be marked at the extremity of the deviation with an additional marker which must display two or more visible streamers and may either be attached to or independent of the gear.

BILLING CODE 3510-22-M

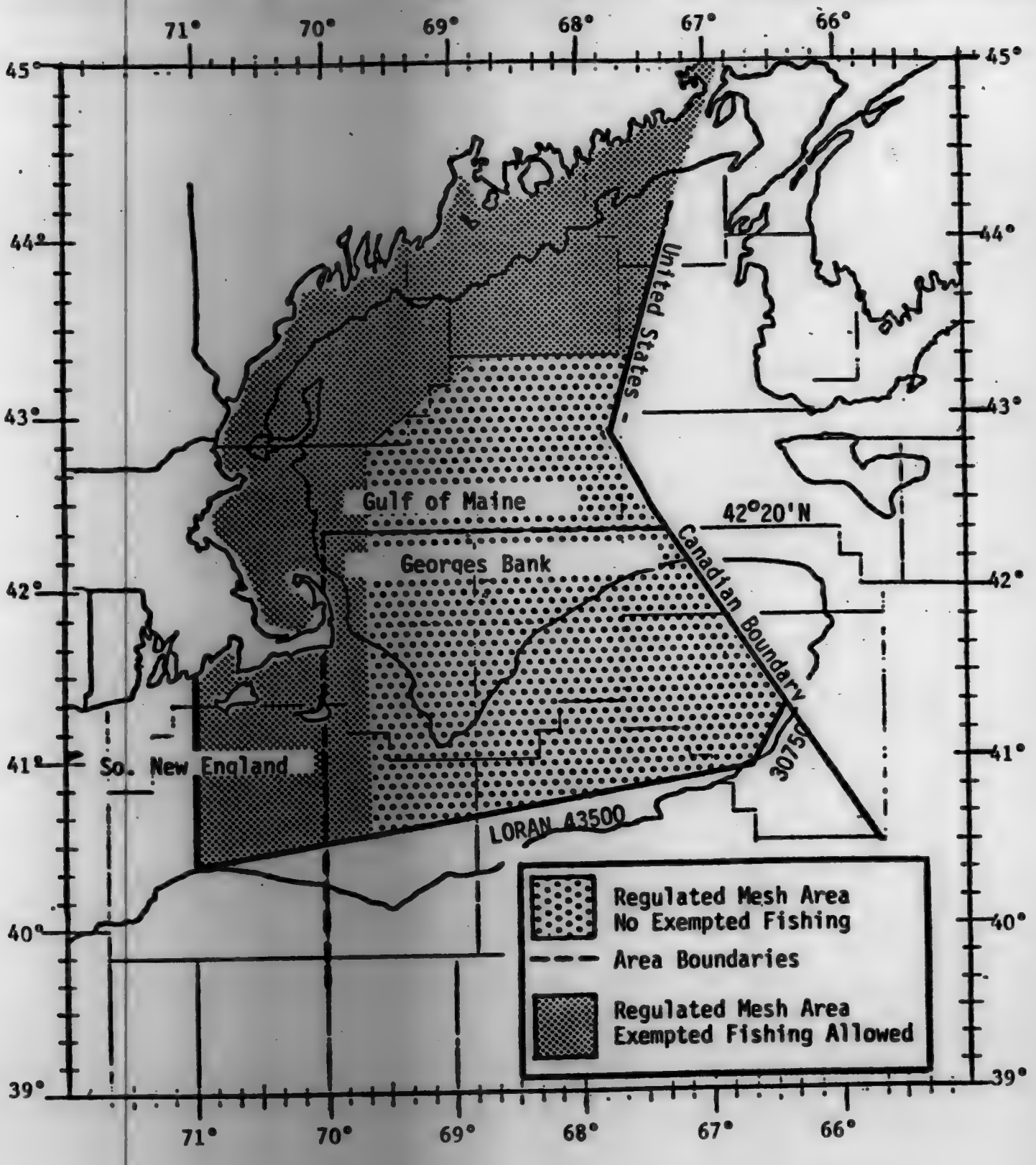

Figure 1. Regulated large mesh area showing the part where exempted fishing can occur. Not to scale. For information purposes only.

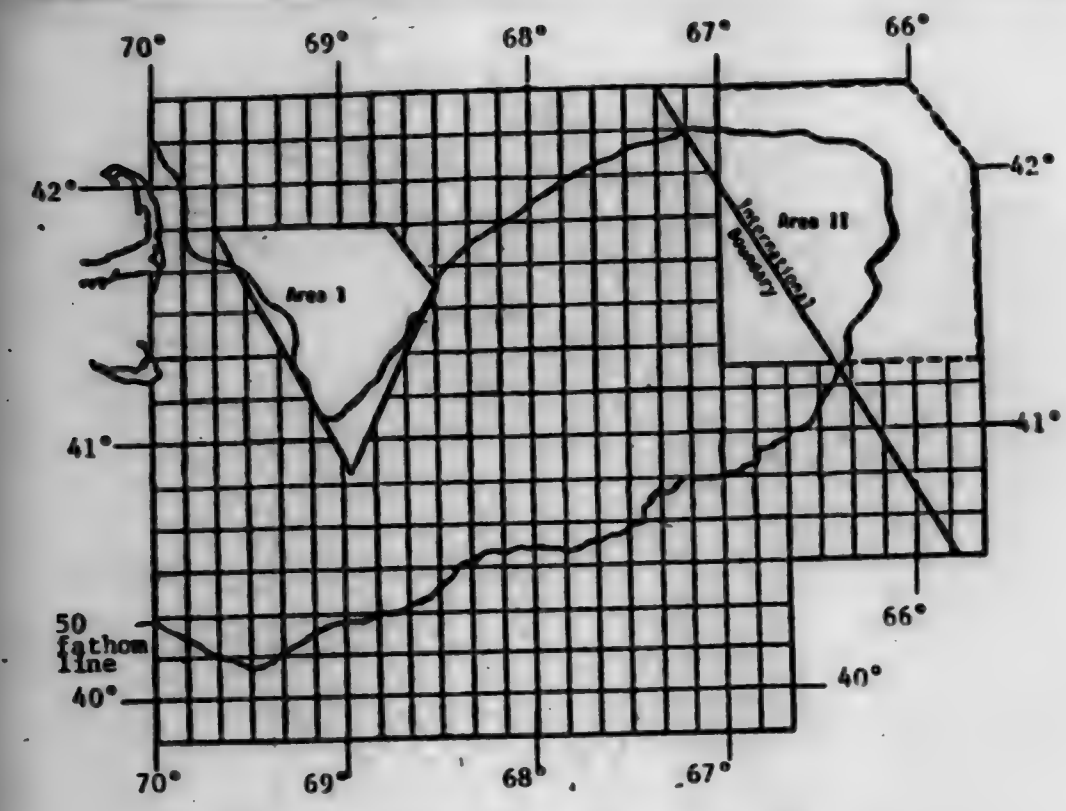

Figure 2. Closed spawning Areas I and II. Not to scale. For information purposes only.

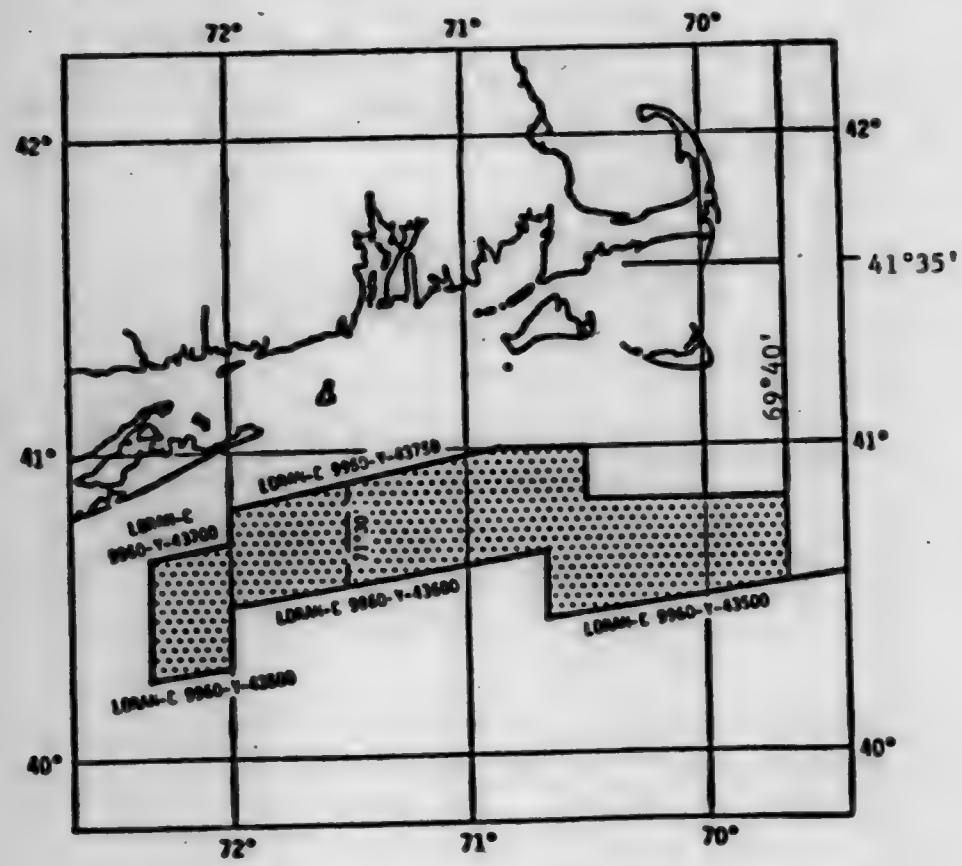

Figure 3. Southern New England closed spawning area. Not to scale. For information purposes only.

[FR Doc. 86-12725 Filed 6-4-86; 3:21 pm]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 51, No. 110
Monday, June 9, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 19, 1986 at 1:15 p.m. and Friday, June 20, 1986 at 9:30 a.m. in the Amphitheater of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects.

1. Agencies' Use of Alternative Dispute Resolution Techniques.
2. Non-lawyer Assistance and Representation in Agency Activity.
3. Use of the Federal Rules of Evidence in Federal Agency Adjudications.
4. The Split-Enforcement Model for Agency Adjudication.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Dated: June 4, 1986.

Richard K. Berg,
General Counsel

[FR Doc. 86–12880 Filed 6–6–86; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Cooperative Agreements; Alabama A&M University

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to enter into a cooperative agreement.

The Office of International Cooperation and Development intends to enter into a cooperative agreement with Alabama A&M University to provide partial support funding for collaborative international agricultural research on "Development of Nutritious Weaning Foods for Sierra Leone."

Authority: Section 1458 of the National Agricultural Research, Extenson and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development announces the availability of funds during Fiscal Year 1986 to enter into a cooperative agreement with Alabama A&M University to collaborate on internatonal research on "Development of Nutritious Weaning Foods for Sierra Leone." Approximately $30,000 will be available in fiscal year 1986 to the University to conduct collaborative research with Sierra Leone's Fourah Bay College.

Assistance will be provided only to Alabama A&M University which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for supplies, computer time, and international travel. Sierra Leone's Fourah Bay College will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated that approximately $30,000 will be available in fiscal year 1986 to support this work. A total of $58,000 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture (58–319R–6–028).

Dated: 4 June, 1986.

Allen Wilder,
Chief, Management Services Branch.

[FR Doc. 85–12841 Filed 6–6–86; 8:45 am]
BILLING CODE 3410-DP-M

Cooperative Agreements; American Soybean Association et al.

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to enter into cooperative agreement(s).

Activity: The Office of International Cooperation and Development intends enter into cooperative agreements to collaborate with the several agribusiness organizations in carrying out technical training courses and study tours for agriculturalists from middle income countries under the auspices of the Cochran Middle Income Country Training Program. Current planning includes agreements with the following organizations: American Soybean Association, U.S. Wheat Associates, American Seed Trade Association, American Holstein Association, National Forest Products Association, Rice Council, National Renderers Association, U.S. Feed Grains Council, Tobacco Associates, and the Brown Swiss Cattle Breeders Association.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development announces the availability of funds during fiscal year 1986 to enter into cooperative agreements collaborating with the above listed agribusiness organizations in carrying out technical courses and study tours for agriculturalists from middle income countries. Technical courses will take place at universities and private industries. The study tours will take place on farms and at industries. Assistance will be provided only to the above listed agribusiness organizations who will be involved in participant identification, selection, and program

development. Therefore, this is not a formal request for applications. It is estimated that approximately $100,000 will be available in fiscal year 1986 to support this work. It is anticipated that the cooperative agreements will be funded over a budget period of 12 months.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture, Washington, DC 20250.

Dated: June 4, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 86-12842 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-DF-M

Federal Grain Inspection Service

U.S. Standards for Barley; Meeting

Notice is hereby given of a public meeting to be held to discuss possible changes in the U.S. Standards for Barley. Major changes to the barley standards were last made in 1976. Since these changes became effective, some members of the barley industry have asked that certain provisions of the barley standards be modified. Accordingly, the following meeting is scheduled.

Name: Federal Grain Inspection Service Meeting on Barley Standards.

Date: June 24, 1986.

Place: Thunderbird Motel, 28th Avenue and Highway 494, Bloomington, Minnesota.

Time: 10:00 a.m.

Purpose: To provide and solicit pertinent information to make the barley standards a more useful marketing tool. Information obtained at this meeting will be utilized to evaluate possible future action on the U.S. Standards for Barley. The agenda includes a discussion by the Federal Grain Inspection Service of possible changes in the barley standards and provides an opportunity for comments from interested persons.

Persons who wish to present comments during the meeting are requested to inform Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1738 by June 17, 1986.

Dated: June 4, 1986.

Kenneth A. Gilles,

Administrator.

[FR Doc. 86-12947 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Coronado National Forest, Graham County, AZ; Revised Release of an Environmental Impact Statement

As announced on July 16, 1985, the Department of Agriculture, Forest Service, is preparing an environmental impact statment for a proposed astrophysical area on the Safford Ranger District, Coronado National Forest, Graham County, Arizona.

A range of alternatives for future management of this area are being considered. Several of these include no astrophysical development, as required by the agency and also suggested by the public. Other alternatives include different levels of astrophysical development and the location of support facilities.

The revised schedule to have a draft environmental impact statement available for public review is approximately late September 1986. The final environmental impact statement should be available by January 1987.

Sotero Muniz, Regional Forester of the Southwestern Region of the Forest Service in Albuquerque, New Mexico, is the responsible official.

Questions concerning the analysis and schedule should be addressed to Robert Tippeconnic, Forest Supervisor, Coronado National Forest, Tucson, Arizona 85701.

Dated: May 30, 1986.

Sotero Muniz,

Regional Forester.

[FR Doc. 86-12828 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[(A-201-504) and (C-201-505) Mexico; (A-583-508) and (C-583-509) Taiwan; (A-570-506) The People's Republic of China]

Postponement of Antidumping Duty Determinations for Porcelain-On-Steel Cooking Ware from Mexico, Taiwan and the People's Republic of China, and Postponement of the Deadline for Final Countervailing Duty Determinations for Porcelain-On-Steel Cooking Ware from Mexico and Taiwan

ACTION: Notice.

SUMMARY: The final antidumping duty determinations involving porcelain-on-steel cooking ware from Mexico, Taiwan, and the People's Republic of China are being postponed until not later than October 2, 1986, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), the deadline for the final countervailing duty determinations on porcelain-on-steel cooking ware from Mexico and Taiwan is also extended until October 2, 1986, to coincide with the revised date of the final antidumping duty determinations. In keeping with paragraph 8 of the "Understanding Between Mexico and the United States Regarding Subsidies and Countervailing Duties," the Department will terminate the suspension of liquidation in the countervailing duty investigation on porcelain-on-steel cooking ware from Mexico 120 days after the date of publication of the preliminary determination in that case.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen (all countries), (202) 377-0167 or Betsy Killian (Mexico) 377-1873; Laurel LaCivita (Taiwan) 377-0189; Tom Bombelles (the People's Republic of China) 377-3174. Written inquiries should be addressed to the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, Attn: Room B-099.

SUPPLEMENTARY INFORMATION: On December 4, 1985, we received antidumping duty and countervailing duty petitions filed in proper form by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, producers of porcelain-on-steel cooking ware. The Department found that the petitions contained sufficient grounds on which to initiate investigations, and on December 24, 1985, the Department initiated countervailing duty investigations on porcelain-on-steel cooking ware from Mexico and Taiwan (50 FR 53355 and 50 FR 53354) and antidumping duty investigations on the subject merchandise from Mexico, Taiwan and the People's Republic of China (50 FR 53352 and 50 FR 53353, and 50 FR 53352).

On March 7, 1986, we issued a preliminary affirmative countervailing duty determination for Mexico (51 FR 7978) and a preliminary negative countervailing duty determination for Taiwan (51 FR 7982). These notices stated that we expected to issue our final determinations by May 13, 1986.

On March 10, 1986, petitioners requested, and the Department

subsequently granted, a postponement of the deadline for the final countervailing duty determinations in the investigations of the subject merchandise from Mexico and Taiwan to coincide with the final determinations in the antidumping investigations (51 FR 10249 and 51 FR 15519 respectively).

On May 20, 1986, the Department preliminarily determined that porcelain-on-steel cooking ware from Mexico, Taiwan, and the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value (51 FR 18470, 51 FR 18472, and 51 FR 18470 respectively). The notices stated that we would issue our final determinations by July 28, 1986. On May 16, 1986, counsel for respondents in the antidumping duty investigations on porcelain-on-steel cooking ware from Mexico and Taiwan requested that the Department postpone the final determinations until not later than 135 days after the date of publication of the preliminary determinations in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). On May 21, 1986, counsel for respondents from the People's Republic of China filed a similar request. The respondents are qualified to make this request because they are exporters who account for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly the period for the final determinations in these cases is hereby extended. We intend to issue the final determinations no later than October 2, 1986.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), at petitioner's request the Department postponed the deadline for the final countervailing duty determinations in the investigations of the subject merchandise from Mexico and Taiwan to coincide with the final determinations in the antidumping duty investigations. Therefore, in accordance with 19 U.S.C. 1671(a)(1), the final countervailing duty determinations are also extended until October 2, 1986.

As required by the "most favored nation" clause in paragraph 8 of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties," which was signed on April 23, 1985, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on porcelain-on-steel cooking ware from Mexico on July 5,1986, which is 120 days from the date of publication of the preliminary determination in that case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after July 5, 1986. The suspension of liquidation will not be resumed unless and until a final affirmative ITC determination is published in that case. We will also direct the U.S. Customs Service to hold the entries suspended prior to July 5, 1986, until the conclusion of that investigation.

In accordance with § 355.35 of our regulations, we will hold hearings, if requested, to afford interested parties an opportunity to comment on the preliminary antidumping duty determinations. Individuals who wish to participate in the hearings must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within ten (10) days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

The United States International Trade Commission is being advised of the postponements in accordance with section 735(d) and section 705(d) of the Act.

Comments

In order to have written comments considered for our final antidumping duty and countervailing duty determinations, parties must submit them by September 2, 1986. All written views should be filed at the U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, in at least 10 copies.

This notice is published pursuant to section 735(d) and 705(d) of the Act.

Dated: June 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–12928 Filed 6–6–86; 8:45 am]

BILLING CODE 3510–DS–M

Short Supply Review on Certain Flat Rolled Products; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain flat rolled products.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for a certain AISI 1060 flat rolled carbon spring steel product, in coils, that is hardened, tempered, grinded, and polished. It will be used as a component in a carpet pile looping and tufting device. The product ranges from 0.120 to 0.875 inch in width and from 0.038 to 0.090 inch in thickness.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Dated: June 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12933 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-177R. Applicant: University of California, Livermore, CA 94550. Instrument: Mass Spectrometer, Model VG 3001A with Accessories. Manufacturer: VG Instruments, Inc., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of June 11, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of providing an absolute sensitivity of N_2 (nitrogen 28 peak) stable to 0.4 percent over 24 hours and two percent over one week; and relative sensitivity of CO_2 (44 of CO_2/28 of N_2) and n-butane (43 of n-C_4H_{10}/28 of N_2) stable of 0.2 percent over 24 hours and one percent over one week. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12935 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-024R. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Thermal Ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Limited, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of November 6, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of providing an external precision of 30 parts per million on neodymium. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-12934 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In FR Doc. 86-12162 appearing on page 19580 in the issue of Friday, May 30, 1986, make the following correction:

In the second column, in the second table, under "Periods to be reviewed", the last entry should read "10/83-12/84".

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[C-351-604]

Preliminary Negative Countervailing Duty Determination; Brass Sheet and Strip From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip. The estimated net subsidy is 0.48 percent *ad valorem*. The rate is *de minimis*, and therefore our preliminary countervailing duty determination is negative. We have notified the U.S. International Trade Commission (ITC) of our determination.

If this investigation proceeds normally, we will make our final determination by August 18, 1986.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 377-3174, or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that the following programs are countervailable:

- Preferential Working Capital Financing for Exports—Resolution 950;
- Export Financing Under the CIC-CREGE 14-11 Circular; and
- Income Tax Exemption for Export Earnings.

We preliminarily determine the estimated net subsidy to be 0.48 percent *ad valorem*. Although we have determined these programs to be countervailable, the respondents received *de minimis* benefits during the review period, calendar year 1985. Therefore, we preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip.

Case History

On March 10, 1986, we received a petition in proper form from American Brass, Bridgeport Brass Corporation, Chase Brass and Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and by the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics

Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC), filed on behalf of the U.S. industry producing brass sheet and strip.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of brass sheet and strip receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 31, 1986, we initiated such an investigation (51 FR 11776). We stated that we expected to issue a preliminary determination by June 3, 1986.

Since Brazil is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On April 24, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of brass sheet and strip (51 FR 16235).

On April 9, 1986, we presented a questionnaire to the government of Brazil in Washington, D.C. concerning the petitioners' allegations and we requested a response by May 9, 1986. On April 30, 1986, upon request of respondent, we granted additional time to submit a response. On May 16, 1986, we received a response to our questionnaire.

There are two known producers and exporters in Brazil of brass sheet and strip that exported to the United States during the review period. These are Laminacao Nacional de Metais S.A. (Laminacao) and Eluma S.A. Industria e Comercio (Eluma). According to the government of Brazil, Laminacao and Eluma account for substantially all exports of brass sheet and strip to the United States.

Scope of Investigation

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently classified under the *Tariff Schedules of the United States Annotated (TSUSA)* item numbers 612.3960, 612.3962, and 612.3966. The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985. In its response, the government of Brazil provided data for the applicable period, including financial statements for Laminacao and Eluma.

Based upon our analysis of the petition and the response to our questionnaire, we preliminary determine the following:

I. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that countervailable benefits are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip under the following programs:

A. *Preferential Working-Capital Financing for Exports.* The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. These working-capital loans were originally authorized by Resolution 674. During the review period, these loans were provided under Resolution 950 as amended by Resolution 1009.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 20 percent of the adjusted value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates, which must be used within one year of their issue, may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation. Loans provided through this program are made for a term of up to one year.

Resolution 950 loans are available from commercial banks, with interest calculated at the time of repayment. Under Resolution 950, the Banco do Brasil paid the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). Resolution 950 was amended in May 1985 and the equalization fee was increased to 15 percent of the interest (after monetary correction). Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. According to the response, the lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financieras (IOF), a tax charged on all domestic financial transactions in Brazil.

Since receipt of working-capital financing under Resolution 950 is contingent on export performance, and provides funds to participants at preferential rates, we preliminarily determine that this program confers an export subsidy.

In order to calculate the benefit, we multiplied the value of the Resolution 950 loans repaid in 1985 by the sum of the equalization fee and the IOF. We then allocated the benefit over the total value of all 1985 exports, resulting in an estimated net subsidy of 0.43 percent *ad valorem*.

B. *Export Financing Under the CIC–CREGE 14–11 Circular.* Under its CIC–CREGE 14–11 Circular (14–11), the

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Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. Loans under this program are also exempt from the IOF.

According to the response, one company received one 14–11 loan on which interest was paid during the review period. We compared the interest charged on the 14–11 loan to our short-term loan benchmark for Brazil, i.e., the nominal discount rate on accounts receivable. This comparison shows that the rate on the 14–11 loan is below the benchmark. Since 14–11 loans are available only to exporters and since the interest charged is less than the benchmark, we preliminarily determine that the 14–11 loan confers an export subsidy.

In order to calculate the benefit from this program, we multiplied the principal of the 14–11 loan by the difference between our benchmark rate and the interest rate charged on 14–11 loan, adjusted by the value of the IOF exemption. We allocated that benefit over the total value of all exports, resulting in an estimated net subsidy of 0.05 percent *ad valorem*.

C. *Income Tax Exemptions for Export Earnings.* Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we preliminarily determine that this exemption confers an export subsidy.

In its response, the government of Brazil stated that even though the brass sheet and strip producers under investigation claimed this deduction on their 1984 tax returns, this claim did not affect their tax liability during the review period because the respondents would have incurred a tax loss even absent this exemption. Therefore, although we preliminarily determine this tax exemption program to be countervailable, the estimated net countervailable benefit during the review period is zero.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Brazil of brass sheet and strip did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Brass Sheet and Strip from Brazil" (51 Fed. Reg. 11776).

A. *Resolution 330 of the Banco Central do Brasil.* Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of brass sheet and strip would be eligible for financing under this program. However, the government of Brazil stated in its response that none of the brass sheet and strip producers under investigation participated in this program during the review period; therefore, we preliminarily determine that this program was not used.

B. *Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI).* Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

The government of Brazil stated in its response that none of the brass sheet and strip producers subject to the investigation received incentives under this program during the review period.

C. *The BEFIEX Program.* The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from four to six years; and
- Undr article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved products.

In its response, the government of Brazil stated that brass sheet and strip producers under investigation did not participate in this program during the review period.

D. *The CIEX Program.* Decree-Law 1428 authorized the Comissao para Incentivos a Exportacao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. In its response, the government of Brazil stated that none of the brass sheet and strip producers under investigation participated in this program during the review period.

E. *Accelerated Depreciation for Brazilian-Made Capital Equipment.* Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. In the response, the government of Brazil stated that none of the brass sheet and strip producers under investigation used this program during the review period.

F. *Incentives for Trading Companies.* Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 950. In its response, the government of Brazil stated that the brass sheet and strip producers under investigation did not receive any benefits under this program during the review period.

G. *The PROEX Program.* Short-term credits for exports are available under the Programa de Financiamento a Producao para a Exportacao (PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development, or BNDES). In its response, the government of Brazil stated that none of the brass sheet and strip producers under investigation received loans or had loans outstanding under this program during the review period.

H. *Resolution 68 and 509 (FINEX) Financing.* Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis. In its response, the government of Brazil stated that neither the brass sheet and strip producers under investigation nor U.S. buyers of

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the subject merchandise received Resolution 68 or 509 financing or had outstanding loans during the review period.

I. *Loans Through the Apoio o Desenvolvimento Tecnologica a Empresa Nacional (ADTEN).* Petitioners allege that the government of Brazil maintains, through the Financiadora de Estudos Projectos (FINEP), a loan program, ADTEN, that provides long-term loans on terms inconsistent with commercial considerations to encourage the growth of industries and development of technology. In its response, the government of Brazil stated that none of the companies under investigation had loans through this program outstanding during the review period.

J. *Preferential Pricing of Electricity.* Petitioners allege that the government of Brazil provides electricity at preferential prices to manufacturers, producers, and exporters of brass sheet and strip in Brazil. In its response the government of Brazil stated that the brass sheet and strip producers under investigation paid normal published rates for all electricity consumed.

K. *BANDES Financing and Other Regional Financing.* Petitioners allege that the government of Brazil provides financing on terms inconsistent with commercial considerations to the brass sheet and strip industry through regional development banks, such as BANDES. BANDES is the regional development bank for the state of Espirito Santo, where the respondent companies are located. In its response, the government of Brazil stated that a BANDES loan was made to a subsidiary of Eluma. However, that company does not produce the product under investigation. Accordingly, we preliminarily determine that BANDES financing was not used by producers of the subject merchandise.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested to afford interested parties an opportunity to comment on this preliminary determination at 10:00 on July 11, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the Federal Register.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the confidential version and seven copies of the nonconfidential version of the prehearing briefs must be submitted to the Deputy Assistant Secretary by June 30, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.34, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 4, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12929 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-427-603]

Preliminary Affirmative Countervailing Duty Determination: Brass Sheet and Strip From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufactures, producers, or exporters in France of brass sheet and strip. The estimated net subsidy is 7.19 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination on or before August 18, 1986.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830 or (202) 377-0167.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in France of brass sheet and strip. For purposes of this investigation, the following programs are found to confer subsidies:

- Government Equity Infusions and Other Financial Assistance to Trefimetaux S.A. (Trefimetaux) through Pechiney S.A. (Pechiney); and
- Certain Financing from Credit National.

We preliminarily determine the estimated net subsidy to be 7.19 percent *ad valorem* for all manufacturers, producers, or exporters in France of brass sheet and strip.

Case History

On March 10, 1986, we received a petition in proper form from American Brass, Bridgeport Brass Corporation, Chase Brass & Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and the International

Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC), filed on behalf of the U.S. industry producing brass sheet and strip. In complaince with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in France of brass sheet and strip, directly or indirectly, receive subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to intitiate a countervailing duty investigation, and on March 31, 1986, we initiated such an investigation (51 FR. 11778). We stated that we expected to issue a preliminary determination on or before June 3, 1986.

Since France is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from France materially injury, or theaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On April 24, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France of certain brass sheets and strip (51 FR. 16235).

On April 9, 1986, we presented a questionnaire to the government of France, in Washington, DC, concerning the petitioners' allegations, and we requested a response by May 9, 1986. On May 7, 1986, we received a letter from the French Embassy in Washington, DC., requesting an extension of tex days for the filing of the questionnaire responses. An extension until May 16, 1986, was granted by the Department. On May 19, 1986, we received responses to our questionnaire from Pechiney, Trefimetaux, and the government of France. Additional information was supplied on May 22, 27, 29, and 30, 1986.

The government's response stated that Griset S.A. (Griset) had exported one small shipment of brass strip to the United States in 1985, but that it had no intention of exporting the products to the United States in the future. Griset requested that it be allowed not to respond to the questionnaire and that it be excluded from any countervailing duty order that the Department might publish. Griset's application for exclusion was not timely because it was not made within 30 days after publication of the notice of initiation of the countervailing duty investigation. See 19 CFR 355.38. Moreover, Griset did not state that it had not participated in the programs under investigation. Therefore, we have not excluded Griset from this investigation.

Scope of Investigation

The products covered by this investigation are brass sheet and strip other than leaded brass and tin brass sheet and strip, currently classified under the *Tariff Schedules of the United States Annotated (TSUSA)* item numbers 612.3960, 612.3982, and 612.3986. The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR. 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the prelimiary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1985.

Petitioners alleged that Trefimetaux has been both unequityworthy and uncreditworthy since 1981. We address this issue in the program-specific section of this notice.

Based upon our analysis of the petition and the responses to our questionnaire submitted by the government of France, Pechiney and Trefimetaux, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in France of brass sheet and strip under the following programs:

A. Government Equity Infusions and Other Financial Assistance to Trefimetaux

Trefimetaux is the copper subsidiary of Pechiney, which has been owned by the French government since it was nationalized by French Law No. 82–155 of February 11, 1982. During 1985, the French government owned 85 percent of the voting shares of Pechiney and Societe Francaise de Participations Industrielles, a nationalized company, owned all the remaining voting shares with the exception of one share owned by each of the members of Pechiney's board. Pechiney owns virtually all the stock of Trefimetaux.

The Government of France provided funds to Pechiney during 1982–1985 in the form of direct equity investments, conversion of debt into equity, and subordinated shareholder investments. These subordinated shareholder investments, which were treated by the company as equity for financial analysis purposes, have a yearly return based on the company's yearly cash flow and gross income and a fixed percentage component. Although the French government made no direct investments in Trefimetaux, Pechiney provided equity infusions and other financial assistance to Trefimetaux. For purposes of this preliminary determination, we consider Pechiney to be under the direction of the French government, its sole owner, and the transfer of money from Pechiney to Trefimetaux to constitute a receipt of money indirectly from the French government.

1. Equity Infusions

During 1983–1985, Pechiney provided Trefimetaux with equity infusions. These infusions resulted from conversion of debt, stock purchases and subordinated shareholder investments which were made without provisions for schedules of repayment or payments of interest.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government infusions bestow countervailable benefits only when provided on terms

inconsistent with commercial considerations.

For the purpose of this preliminary determination, government equity purchases bestow countervailable bounties or grants only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether equity purchases in the company are reasonable commercial investments. Trefimetaux's shares are not publicly traded and there are no market-determined prices for its shares.

For purposes of this preliminary determination, we reviewed and assessed financial statements from 1976 to 1985. In analyzing the financial statements, we considered the impact of the accounting practices used by the company on its overall financial results. In this review, we analyzed the results and evaluated the information from the viewpoint of an investor. This review included analysis of the following ratios:

- Rate of return on sales and equity;
- Gross margin to sales;
- Financial expenses to sales;
- Cash flow to debt service payment;
- Current ratio; and
- Debt to equity.

Based on these factors, we preliminarily determine Trefimetaux to be unequityworthy between 1983–1985. Consequently, the action of the government, through Pechiney, in taking an equity position in the company in those years is inconsistent with commercial considerations and may confer a subsidy.

To calculate the benefit, we compared Trefimetaux's rate of return on equity with the average rate of return in France for 1985. We then applied the "rate of return" shortfall to all purchases of equity that we consider to be inconsistent with commercial considerations. For this preliminary determination, we used as best information available for the rate of return on equity in France figures developed for U.S. Direct Investment Abroad as published in *Survey of Current Business*.

Because the amount of benefit calculated exceeded the amount of benefit calculated by treating the equity infusions as outright grants, we have limited the benefits realized to the "grant cap." We divided these benefits by Trefimetaux's total sales in 1985 to calculate an estimated net subsidy of 4.47 percent *ad valorem*.

2. Preferential Loans

During the period 1982–1985, the government, through Pechiney, provided loans to Trefimetaux on terms inconsistent with commercial considerations. We have no information indicating that such loans are available to any other company in France. Petitioners alleged that Trefimetaux has been uncreditworthy since at least 1981. We preliminarily determine that Trefimetaux was uncreditworthy for the years 1982–1985. To determine the creditworthiness of Trefimetaux, we analyzed its present and past health, as reflected in various financial indicators calculated from its financial statements. In making our perliminary determination of uncreditworthiness, we considered Trefimetaux's inability to meet its costs and financial obligations from its cash flow, its consistent pattern of losses, and its deteriorating capital structure.

We applied the loan methodology for uncreditworthy companies described in the Subsidies Appendix. We treated all loans with variable interest rates as short-term loans and compared the principal and interest a company would pay a normal commercial lender in any given year with amounts actually repaid in that year under these loans. We also treated the loans with fixed interest rates as short term loans because no information was provided on the duration of these loans.

For the benchmark rate, we used the "taux de base bancaire" (TBB), plus the maximum premium and other charges, plus the risk premium as explained in the Subsidies Appendix. The TBB is the rate used in France by banks for loans to corporations. We allocated the benefits from these loans over Trefimetaux's total sales in 1985 and calculated an estimated net subsidy of 0.44 percent *ad valorem*.

3. Government Grant

During 1983, the government, through Pechiney, provided Trefimetaux with a short-term advance. This debt was subsequently written off. Since no additional information has been provided about this money, we have preliminarily determined to treat it as a grant. We have no information indicating that such grants are available to any other company in France, nor do we have reason to believe that the grant was tied to exports. Therefore, we are considering the grant to be a domestic subsidy.

To calculate the benefits attributable to this grant, we used our grant methodology and allocated the grant money over 14 years (the average useful life of renewable physical assets for the manufacture of primary nonferrous metals) using the weighted-average cost of capital for Trefimetaux as the discount rate. The estimated net subsidy is 1.10 percent *ad valorem*.

B. Certain Financing from Credit National (CN)

Trefimetaux received financing from Credit National during the period 1976–1985. Credit National is a major financial institution which plays an important role in the French financial banking system, and it has a special legal status. See "Final Affirmative Countervailing Duty Determination; Industrial Nitrocellulose from France" (48 FR 11971 at 11974). Though not nationalized, 36.85 percent of Credit National's stock is owned by nationalized institutions. The General Manager of Credit National is nominated by the President of France and the government is at least indirectly represented by a majority of its board of directors. Credit National undertakes special operations for the government. These include extending "special procedure loans" on behalf of the government and performing certain advisory and management functions on projects designated for the government, its agencies and authorities. A substantial portion of Credit National's economic and financial activity is directed to sectors of French national interest. Thus, while Credit National is not a government institution, it does maintain a variety of official, semi-official and indirect ties with the government of France.

While some of the loans made by Credit National are of a "special" nature (i.e., at interest rates set by the government and made in conjunction with medium term credits which may be rediscounted), "ordinary loans are also extended on commercial terms, with interest rates similar to those of commercial banks in France. In the Nitrocellulose case cited above, we found the "ordinary" loans to be made on commercial terms and hence not countervailable. We have no indication that the nature of these loans has changed from our previous determination.

Trefimetaux states that it received both "ordinary" and "special" loans from Credit National. While some of the special loans were for products not subject to this investigation, one loan was specifically related to brass sheet and strip. This "special" loan included an interest reduction contingent upon increasing exports of certain products including brass sheet and strip.

Because the "special" Credit National loan for the products under investigation is at a preferential interest rate that is specifically linked to a target level of exports, we preliminarily determine that

it is an export subsidy within the meaning of the countervailing duty law.

We calculated the benefits conferred by this loan in accordance with our long-term loan methodology as contained in the Subsidies Appendix. We divided the benefit provided by the loan by the value of Trefimetaux's 1985 exports of brass sheet and strip to arrive at an estimated net subsidy of 0.18 percent *ad valorem*.

II. Program Preliminarily Determined not To Confer Subsidies

We preliminarily determine that the French government is not providing subsidies to manufacturers, producers or exporters in France of brass sheet and strip under the following program:

Fonds National de l'Emploi (FNE)

The FNE was established in 1963 to provide vocational training programs and early retirement allowances to workers confronted with industrial changes brought about by economic development. The government of France's response states that the FNE's adjustment assistance programs are generally available in France. The FNE provides benefits to individuals and groups dismissed from employment because of technological evolution or by adverse economic conditions. These benefits consist of training agreements for wage-earners eligible for retraining and allowance agreements for older wage-earners who are not likely to be reemployed. The allowance agreements involve employees between the ages of 55 and 60 who choose early retirement and then receive their unemployment allowance from the FNE until they reach the retirement age of 60. The special allowance funds are obtained entirely from dues paid by employers and employees.

Trefimetaux's response states that it was not compensated by the French government through FNE for reductions in its work force. To avoid labor problems, Trefimetaux entered into collective agreements with the labor unions which provided training programs and severance pay to certain employees in amounts that exceeded the amounts the company would have otherwise been legally required to pay.

Because this program does not appear to be limited to a specific enterprise or industry or group of enterprises or industries, we preliminary determine that the program is not countervailable.

III. Programs Preliminary Determined Not To Be Used

We preliminary determine that the following programs are not used by the manufacturers, producers or exporters in France of brass sheet and strip:

A. Preferential Electricity Rates for Trefimetaux

Pechiney on behalf of several subsidiaries entered into agreements with Electricite de France to provide electricity. However, Trefimetaux's response states that it did not receive electricity under any agreement providing preferential rates. Trefimetaux purchases electricity from Electricite de France at rates established by published tariffs depending on the type of current and the customers' power requirements.

B. Regional Development Incentives

The government of France provides a series of tax and non-tax regional incentives to French and foreign businesses to establish new, or to expand existing businesses in certain French regions selected as those in which to promote additional development. The Delegation a l'Amenagement du Territoire et a l'Action Regionale (DATAR) coordinates the programs of various government agencies and ministries. The responses state that Trefimetaux did not receive any benefits through DATAR.

C. Export Credit Insurance for Political, Exchange Rate Fluctuation and Inflation Risks

The Compagnie Francais d'Assurance pour le Commerce Exterieur (COFACE) is a government corporation that provides export insurance to cover commercial, political, exchange rate fluctuation and inflation risks. We have previously determined that COFACE export insurance does not confer a subsidy with respect to exports to the United States. See "Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from France" (47 Fed. Reg. 42422 at 42427). Trefimetaux's response states that COFACE does not insure the company for inflation or exchange rate fluctuation risks. In addition, Trefimetaux has no COFACE political risk insurance on its sales to the United States.

D. Export Financing

In France, exports may be financed or guaranteed through the Banque Francais du Commerce Exterieur (BFCE), and French companies may receive financing for the transfer abroad of their inventories of capital goods from Compagnie pour le Financement du Stock a l'Etranger (COFISE). Trefimetaux's response stated that it received no export financing under these programs during the review period.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from France which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* rate. The estimated net subsidy is 7.19 percent *ad valorem* for all manufacturers, producers, or exporters in France of brass sheet and strip. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with section 355.35 of the Commerce Regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. July 16, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the **Federal Register**. Requests should contain: (1)

The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the confidential version and seven copies of the nonconfidential version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 10, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to sectin 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 4, 1986.

[FR Doc. 86-12930 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 31, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers the period January 1, 1983 through June 30, 1983 and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all of the comments received, the Department has determined the bounty or grant during the period of review to be zero for 19 firms and 2.17 percent *ad valorem* for all other firms.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 20013) a countervailing duty order on ceramic tile from Mexico. We began this review under our old regulations on July 18, 1983, and published the preliminary results of the review on October 31, 1984. After the promulgation of our new regulations, the Mexican government, on November 15, 1985, and several exporters, on September 10, September 19, and October 15, 1985, requested that we complete the administrative review of this order, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall tile. Such merchandise is currently classifiable under items 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983 through June 30, 1983 and eight programs: (1) CEDI; (2) FOMEX; (3) CEPROFI; (4) FOGAIN; (5) FONEI; (6) state tax incentives; (7) import duty reductions and exemptions; and (8) National Development Plan ("NDP") preferential discounts.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. At the request of the petitioner, the Title Council of America, Inc., we held a public hearing on December 17, 1984.

Comment 1: The Title Council contends that the Mexican government's questionnaire response was sketchy, inconsistent, and contained numerous omissions making the data suspect. For example, the list of names and addresses covered 23 firms, while the annexes setting forth sales and exports listed approximately 80 firms. In addition, the response contained some quantities in square meters and others in kilograms, it stated some export values in dollars and others in pesos, and it failed to list any ratios or exchange rates for converting the disparate figures to a common base.

Department's Position: We disagree with the petitioner's characterization of the response. The first example is not a discrepancy, merely an incomplete listing of addresses. As for the second example, our questionnaire did not specify the unit of measurement for reporting the quantity and value of sales. Each firm reported volume figures in the unit in which it kept its records. We could convert all volume figures to the same unit for comparison, but in this case it is unnecessary because we have calculated the benefits based on value rather than volume. Most companies reported export values in dollars, but some reported them in pesos. Some firms maintain export sales in dollars and domestic sales in pesos, and other firms maintain all records in pesos. To arrive at the same unit of measurement in the absence of any reported conversion factor, we converted all peso amounts to dollars using as the best information available the average exchange rate for the period of review, as published by the Federal Reserve Bank of New York.

Comment 2: The Department verified only three programs (FOMEX, CEPROFI and FOGAIN) of the eight programs under review. Even for the three programs examined, the Department did not verify whether the questionnaire response included all ceramic tile recipients of benefits. For example, in verifying CEPROFI, the Department checked the Mexican government's printout for the 19 zero-rate firms and the four firms listed as receiving CEPROFI's, but did not check the printout for other ceramic tile exporters to the United States. Thus the Department failed to verify the completeness of the response. The Department should examine the use of CEPROFI's by firms listed in the response as exporters but not discussed in the response with regerd to this program.

The Tile Council also contends that on-site verification occurred at so few firms as to render the exercise meaningless. The Department failed to subject to on-site verification any firm listed in the response as using FOGAIN benefits. Of the 11 firms listed in the response as receiving benefits under one of the eight programs, the Department did not verify nine of them on-site. Among those nine were the largest recipient of FOMEX export loans, the largest recipient of FOGAIN loans, and the second-largest recipient of FOMEX pre-export loans. In addition, the Department should have done an on-site verification of the exporter in Chihauhau, Mexico, since that firm is one of the largest tile firms and firms in that area are eligible for NDP preferential discounts.

Department's Position: It would be administratively impossible to verify all programs and all companies in this case. Therefore, we selected a sample of programs and companies to concentrate on during verification. The purpose of a verification is to establish the accuracy, completeness, and overall reliability of the entire questionnaire response, and our verification process in this case met this standard.

We based our selection of programs to verify on the degree of use and the amount of benefits we have found for each program in this and other Mexican cases. Using these guidelines, we chose to specifically examine FOMEX, CEPROFI, and FOGAIN.

Our next step was to choose the companies to verify at the government level and/or company level. We chose to verify through government records 19 zero-rate firms for any receipt of the three programs mentioned above. We believe that concentration on such zero-rate firms is important because of the unique status a zero-rate firm has in our administration of this order. We have only permitted zero-rate certification in this and one other Mexican case. *See* the final results of administrative review of the countervailing duty order on leather wearing apparel from Mexico (48 FR 13474, March 31, 1983). In order to assure that the certification process is not abused, we must check whether the government was correct in its listing of firms not receiving benefits.

For the firms we verified at the company level, we chose to verify at the government level the use of all three programs. For each of the four firms listed as receiving CEPROFI benefits, we verified the accuracy of the amounts reported. The 23 firms we verified for CEPROFI benefits at the government level accounted for over 52 percent of the value of tile exported to the United States during the period.

We chose the firms for on-site verification based on the amounts of exports to the United States and on the amount of benefits reported. Our sample included three zero-rate firms and two firms with reported benefits, including by far the largest tile exporter to the United States (representing almost 40 percent of all exports to the United States).

Although the Tile Council did not name "the largest recipient of FOMEX export loans" and "the second-largest recipient of FOMEX pre-export loans," it appears that both these categories apply to one firm which we successfully verified during our last review. We chose not to verify on-site "the largest recipient of FOGAIN loans" because it accounted for a small percentage of exports to the United States. We did verify the response for that firm by a detailed review at the government level. We also chose not to verify the manufacturer located in Chihuahua because it accounted for less than 3 percent of the total exports of Mexican tile to the United States. Any possible benefit from NDP preferential discounts found during verification would have had a minimal effect on the overall subsidy level for all firms. It should be emphasized that the Tile Council has not presented any evidence contradicting the Mexican government's statement that no tile firm received NDP preferential discounts.

We found no significant discrepancies at the on-site verifications or at the Mexican government agencies. Therefore, through sampling, we have confirmed the validity of the questionnaire responses.

Comment 3: The Tile Council claims that the Department did not provide to the petitioner advance notice of the verification trip. This prevented the Tile Council from full participation in the verification process.

Department's Position: It is not mandatory for the Department to notify specifically all interested parties of verification schedules. The petitioner was served with a copy of the non-confidential version of the questionnaire responses and should have been aware that the next step was possible verification.

Comment 4: The Tile Council argues that the Department failed to consider four programs found countervailable in other Mexican cases: Article 94 loans, FOMEX loans to U.S. importers, NAFINSA loans, and delays in payments of loans or of fuel charges.

Department's Position: Our policy during verification is to review government and company records for any unreported benefits a company might have received. We found no benefits other than those reported. In our current review, we are further investigating these programs.

Comment 5: The Tile Council argues again that the Department should not use the zero-rate certification mechanism. The mechanism goes against the Department's long-standing policy of a single country-wide rate.

Department's Position: We discussed this issue at great length in the original final determination and order and in subsequent reviews. The Department has determined to continue the use of the zero-rate procedure in this case.

Comment 6: The petitioner argues that the difference between the Department's preliminary rate of 2.10 percent for "all other" firms and the zero rate is not a "significant" difference, either under the Commerce Regulations or under the 1984 changes in the Tariff Act. The Department therefore should not set separate rates of zero for selected firms.

Department's Position: We have previously found that there is a significant difference between zero and any positive rate. *See* the final results of administrative review of the countervailing duty order on cement from Mexico (50 FR 51732, December 19, 1985).

Comment 7: The petitioner asserts that, if the Department does set zero rates for individual firms, such rates should apply only to firms certified as not receiving any benefits from February 23, 1982, the date of the preliminary determination in this case, through June 30, 1983, the end of the review period. The Department should not permit a firm that persisted after the preliminary determination in receiving benfits to forego benefits in 1983, receive a zero deposit rate, obtain benefits in 1984 and not have to pay duties until at least 1985, if at all.

Department's Position: We disagree. Using the petitioner's example, the firm may have received a zero deposit rate during 1984, but in a subsequent review of 1984 we would determine the amount of benefits received and would assess countervailing duties plus interest. Furthermore, we would declare the firm ineligible for a zero rate in the future.

Comment 8: The petitioner believes that the Department relied on inaccurate response data. The value of exports to the United States in Annex 1 of the questionnaire response, which the Department used as the denominator in calculating benefits, is at least 20 percent higher than the U.S. import statistics (IM–146) for the period. This had the effect of lowering the *ad valorem* benefits.

Department's Position: Mexican tariff numbers for ceramic tile at the most disaggregated level include merchandise not covered by this order, such as paving stones and certain other ceramic products. Therefore, the Mexican government export figures for tile cannot be separated from the other products for calculation purposes. To compensate for the higher value of exports, the Mexican government reported and we used as our numerator all benefits received by the firms on the larger product range covered by the response.

Comment 9: The Tile Council believes that the Department erred in not excluding from the denominator used in calculating FOMEX benefits the export figures for two zero-rate firms, Juan Rodriguez Benavides and Reynaldo

Gutierrez (Ladrillera la Casa). Inclusion improperly decreased the calculated benefit.

Department's Position: There were no export figures for Reynaldo Gutierrez (Ladrillera la Casa). Thus, there was nothing to exclude. This was also true for a few other zero-rate firms not mentioned by the petitioner. As for Juan Rodriguez Benavides, we agree that the firm's export figure should have been deducted from the total. That firm however accounted for a relatively small share of exports, and eliminating those exports from the total increases FOMEX benefits from 1.62 to 1.64 percent.

Comment 10: The petitioner states that the Department in its preliminary results should not have reduced the CEPROFI benefits that Ladrillera Monterrey received on purchases of Mexican-made equipment.

Department's Position: In the final affirmative determination and countervailing duty order on oil country tubular goods from Mexico (49 FR 47054, November 30, 1984), the Department held that a five percent CEPROFI is available to all purchasers of Mexican-made capital goods, and that we would countervail only the difference between the generally available five percent and the higher 20 percent rate granted in that case to OCTG manufacturers. In this case, since the CEPROFI rate available to ceramic tile manufacturers was 10 percent, the benefit is the difference between the 10 percent and five percent rates. However, the CEPROFI amount that Ladrillera Monterrey received is so small that, even if we countervailed the entire 10 percent CEPROFI for Mexican-made equipment, the overall CEPROFI benefit would not change from the 0.31 percent we calculated for the preliminary results.

Comment 11: The Department failed to calculate a rate for FONEI benefits received by a firm for which the Mexican government filed a supplemental submission on February 3, 1984.

Department's Position: We agree. Based on the information submitted by the Mexican government, we determine that the amount of bounty or grant under FONEI during the period was 0.05 percent *ad valorem*.

Final Results of the Review

After consideration of all of the comments received, we determine the total bounty or grant during the period of the review to be zero for the following 19 certified firms:

(1) Alfareria San Marcos, S.A. de C.V;
(2) Arturo Carranza de la Peña;
(3) Ceramica Santa Fe;
(4) Ceramica Santa Julia;
(5) Ceramicas y Pisos Industriales de Culiacan, S.A. de C.V.;
(6) Corporacion Euromexicana Comercial, S.A.;
(7) Eduardo S. Garcia de la Peña;
(8) Francisco Heriberto Villa Vega;
(9) Impulsora Normax, S.A. de C.V.;
(10) Industrias AGE, S.A.;
(11) J. Garza Arocha, S.A.;
(12) Juan Rodriguez Benavides;
(13) Juana Maria Ramos Trevino;
(14) Luz Maria de la Peña Sanchez;
(15) Manuel Alvarez Ramon (Pisos de Barro);
(16) Pisos Coloniales de Mexico, S.A.;
(17) Porcelanite;
(18) Prodibe, S.A.; and
(19) Reynaldo Gutierrez (Ladrillera la Casa).

For all other firms, we determine the total bounty or grant during the period to be 2.17 percent *ad valorem*.

The Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the 19 certified firms and to assess countervailing duties of 2.17 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1983 and on or before June 30, 1983.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 19 certified firms and to collect a cash deposit of 2.17 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 15, 1985).

Dated: June 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12951 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to U.S. Shippers Association (USSA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All Products (except that Export Trade does not include export by the Members of chlorine, sodium carbonate, sodium hydroxide, sodium hydrosulfite, and phosgene).

Export Trade Facilitation Services (as they relate to the export of Products)

Procurement of Transportation Services for products exported or in the course of being exported. Transportation Services include overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and creating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; insurance; forwarder services; export sales documentation and services; and customs clearance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern

Mariana Islands, and the Trust Territory of the Pacific Islands).

Members

FMC Corporation, Olin Corporation, and Stauffer Chemical Company.

Export Trade Activities and Methods of Operation

USSA and its Members may:

(1) Act jointly to negotiate charges and other terms and enter into contracts with providers of Transportation Services, including the chartering and space chartering of vessels, for any or all of the Members, and/or non-members;

(2) Enter into agreements among themselves on the terms of their participation in the negotiation and fulfillment of transportation contracts, incuding the amount of Transportion Services that each will commit to purchase under such contracts, provided that no such agreements or contracts shall contain product-specific volume commitments;

(3) Meet and exchange the following information on Transportation Services:

(a) Potential suppliers of Transportation Services,

(b) Rates and terms,

(c) Volume of products anticipated to be exported through USSA,

(d) Scheduling,

(e) Other information on Transportation Services necessary to analyze, negotiate for, and procure Transportation Services.

(4) Prescribe the following conditions with respect the membership in USSA:

(a) A Member may withdraw its membership from USSA as of the last day of any calendar year by giving 180 days' prior written notice to the remaining Members. The remaining Members shall then have the option to terminate USSA or to pay the withdrawing Member the value of its capital account, as adjusted, on the date of its withdrawal. The withdrawing Member shall remain responsible for commitments made by such Member and by USSA on behalf of such Member prior to the effective date of such Member's withdrawal.

(b) Additional parties may be admitted to membership in USSA from time to time upon:

(i) Receiving a minimum of a two-thirds affirmative vote of USSA's existing Members,

(ii) Executing a counterpart of USSA's membership agreement, and

(iii) Making such capital contribution in cash as is determined in good faith by USSA's Board of Directors to represent a fair allocation of the start-up and capital cost of USSA.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 4, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-12932 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DR-M

University of New Mexico; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 86-12301 appearing on page 19779 in the issue of Monday, June 2, 1986, make the following correction: In the first column, in the second paragraph, in the first line, "86-002" should read "86-002".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Lawler, Matusky & Skelly Engineers

On February 25, 1986, notice was published in the Federal Register (51 FR 6578) that an application had been filed by Lawler, Matusky & Skelly, Engineers, One Blue Hill Plaza, Pearl River, New York 10965, for a permit to take shortnose sturgeon for the purpose of scientific research.

Notice is hereby given that on May 29, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 30, 1986.

Henry R. Beasley,

Director, Office of International Fisheries National Marine Fisheries Service.

[FR Doc. 86-12900 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase in Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 10, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated October 31, 1985 (50 FR 46152) established limits for certain specified categories of cotton, wool, and man-made fiber textile products within the aggregate, including Categories 351, 640, and 641, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extends through June 30, 1986. Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, between the Governments of the United States and Indonesia, carryforward is being applied to the restraint limits established for Categories 351, 640, and 641.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on

December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of October 31, 1985 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extends through June 30, 1986.

Effective on June 10, 1986, the directive of October 31, 1985 is hereby further amended to adjust the previously established restraint limits for Categories 351, 640 and 641 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended: [1]

Category	Adjusted Twelve-Month Limit [1] (July 1, 1985–June 30, 1986)
351	116,600 dozen.
640	348,800 dozen.
641	1,165,500 dozen.

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12928 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Establishment of an Import Restraint Level for Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 10, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 27, 1985 a notice was published in the **Federal Register** (50 FR 52968) establishing specific limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

During consultations held under the terms of the bilateral agreement of November 8, 1982, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) agreed to establish a specific limit of 3,915,000 dozen pairs for man-made fiber textile products in Category 631, as a whole, in lieu of the individual limits previously established for work gloves (Category 631–W) and gloves other than work gloves (631–O), produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 631 be limited to the designated limit during the twelve-month period beginning January 1, 1986 and extending through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1986.

Commissioner of Customs,
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 23, 1985, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on June 10, 1986, the directive of December 23, 1985 is hereby further amended to include a specific limit for man-made fiber textile products in Category 631 of 3,915,000 dozen pairs.[1] This limit cancels and supersedes the limit established in the directive of December 23, 1985 for man-made fiber textile products in Category 631pt. (only TSUSA numbers 704.3215, 704.8525, and 704.9000).

Textile products in Category 631pt. (all TSUSA numbers except 704.3215, 704.8525, and 704.9000) which have been exported to the United States prior to January 1, 1986, shall not be subject to this directive.

Textile products in Category 631pt. (all TSUSA numbers except 704.3215, 704.8525, and 704.9000) which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12727 Filed 6-9-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Secretary of the Navy Health Care Advisory Committee

Under the provisions of Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given that the Secretary of the Navy Health Care Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law and is being renewed effective June 19, 1986.

This committee serves the public interest by functioning as an independent external source of expert knowledge, experience, and judgment in health care management and administration. The committee will explore and recommend alternatives for the improvement of policy implementation, health care planning, and resource allocation.

Patricia Means,

OSD Federal Registration Officer, Department of Defense.

June 2, 1986.

[FR Doc. 86–12844 Filed 6–6–86; 8:45 am]

BILLING CODE 3810-01-M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 1, 1986; Tuesday, July 8, 1986; Tuesday, July 15, 1986; Tuesday, July 22, 1986; and Tuesday, July 29, 1986 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1986.

[FR Doc. 86–12846 Filed 6–6–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 10–11 July 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Policy Board is to advise the Secretary of Defense, Deputy Secretary and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with the Pacific area, nuclear deterrence and the Strategic Defense Initiative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this DPB Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1986.

[FR Doc. 86–12845 Filed 6–6–86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Task, Force of Export Controls; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Task Force on Export controls will be held Monday, 21 July 1986 from 9:00 A.M. to 5:00 P.M. at the Pittsburgh Hilton, Gateway Center, Pittsburgh PA.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Carolson, Intermetricsk, 4733 Bethesda Avenue, Suite 415, Bethesda, MD 20814, (301) 657–3775.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

June 4, 1986.

[FR Doc. 86–12968 Filed 6–6–86; 8:45 am]

BILLING CODE 3810-01-M

U.S. Court of Military Appeals Code Committee Meeting

ACTION: Notice of public hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on June 9, 1986, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, NW., Washington, DC 20442–0001. The agenda for this meeting will include various matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, NW., Washington, DC 20442–0001; telephone (202) 272–1448.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1986.

[FR Doc. 86–12969 Filed 6–6–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the aircraft wash rack function at Columbus, AFB, MS; Laughlin AFB, TX; Reese AFB, TX; Williams AFB, AZ will be converted to contract.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Moore, HQ ATC/XPMR, Randolph AFB, TX, telephone (512) 652–2384.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–12949 Filed 6–6–86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23 June—3 July 1986.

Times of Meeting: 0800–1730 hours weekdays and as needed on weekends.

Place: National Academy of Sciences Study Center, Woods Hole, Massachusetts.

Agenda

The Army Science Board 1986 Summer Studies on Technology Forecast for Key Operational Capabilities and C³I Requirements for AirLand Battle will meet for discussions of briefings to-date to develop and write the final report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–13088 Filed 6–6–86; 8:45 am]

BILLING CODE 3710-08-M

Rocky Mountain Arsenal Containment Cleanup

AGENCY: Department of the Army, DOD.

ACTION: Request for Public Comment on Draft Report on Accelerated Cleanup Plan for the Contamination at Rocky Mountain Arsenal (RMA), Denver, Colorado.

SUMMARY: The Secretary of the Army gives notice that, pursuant to Pub.L. 99–167, section 822, of the 1986 Military Construction Act, the Army requests public comment on a draft report on an accelerated cleanup for the contamination at RMA, Denver, Colorado.

DATE: Comments should be submitted on or before July 24, 1986.

ADDRESS: Comments should be sent to Captain Andrew Kingery, Office of the Program Manager, Rocky Mountain Arsenal Contamination Cleanup, ATTN: AMXRM–PM, Aberdeen Proving Ground, Maryland 21010–5401. Correspondence should be labeled "Comments on Draft Accelerated Cleanup Report."

Copies of Report: Copies of the draft report may be reviewed during normal business hours at the Denver Public Library, Aurora Public Library, Commerce City Library, Environmental Protection Agency Library, 999 18th Street, Denver, Colorado, and Rocky Mountain Arsenal Program Manager's Staff Office, Building 111, Rocky Mountain Arsenal, Commerce City.

FOR FURTHER INFORMATION CONTACT: Captain Andrew Kingery, Office of the Program Manager, Rocky Mountain Arsenal Contamination Cleanup, ATTN: AMXRM–PM, Aberdeen Proving Ground, Maryland 21010–5401, (301) 671–3261.

Introduction

Section 822 of the 1986 Military Construction Authorization Act (ACT) requires the Army to develop and transmit to the Congress a comprehensive plan for completing the cleanup of Rocky Mountain Arsenal (RMA) by September 30, 1993. Accordingly, the Program Manager for RMA had Environmental Science and Engineering, Inc., develop a draft report which establishes study constraints and examines critical path elements, and presents accelerated schedules with associated cost estimates. The accelerated schedules utilize the existing technologies of excavation, incineration, and secure disposal in order to remedy an estimated 16 million cubic yards of contaminated materials at approximately 88 sites on RMA. Various scenarios consider the use of existing or proposed commercial landfills and/or an onsite disposal facility.

The draft report finds that the earliest possible date for cleanup and closure (with reclamation) at the Rocky Mountain Arsenal could be in January 1995. Only the removal and disposal of contaminated material at the Arsenal could be accomplished by September 1993, even with a scenario of round-the-clock operations and simultaneous onsite and offsite disposal. The cost of implementing this scenario is estimated at $2.5 billion. The least expensive scenario (again with three shifts per day) would secure all of the contaminated material in an onsite vault and could accomplish cleanup and closure in December 1996, at a cost of $972 million.

The accelerated cleanup schedule could be affected by a number of factors including volume of contaminated material; available landfill capacity; litigation developments; necessary plan modification in response to public comment; and the design, construction, and operation of large-scale remedial action systems.

It should be noted that these accelerated scenarios are prepared solely in response to the Act and are not consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which was adopted pursuant to the Comprehensive Environment Response, Compensation and Liability Act of 1980 (CERCLA). In particular, the development of these scenarios is not consistent with the NCP's requirements for scoping of response actions, development of alternatives, initial screening of alternatives, detailed analyses of alternatives, notice and public comment, consideration of cost-effectiveness and other factors, and selection of the final response action. Nevertheless, the Army has endeavored to have significant aspects of the NCP[1] incorporated into the draft report wherever possible.

It should be further noted that the submission of this plan in no way indicates that the Program Manager's Office has abandoned its efforts under the NCP. The NCP remedial action decision-making process for the arsenal cleanup is presently on-going and is

[1] On February 18, 1986, the most recent revision of the NCP became effective. 50 FR 47912 (1985). As part of this rulemaking, the preamble stated that "no permits, Federal or State, will be required in carrying out CERCLA Sections 104 and 106 on site response actions . . ." 50 FR 47925. Since the Army is the lead agency under the NCP in this instance, the scenarios presented in the report assume a need for substantive compliance with all applicable or relevant and appropriate law, but not with the procedural aspects of these laws, such as permits. This is intended to ensure expedited compliance with appropriate state standards without the additional time delays inherent in obtaining permits. In this regard, it should be noted that the NCP requires substantial state and public participation in the remedy selection process.

expected to result in the selection of a final response action, fully consistent with NCP, by March 1988. The final response action will be selected from a list of alternatives to be developed during the feasibility study (FS) process (October 1987). While it is possible that one or more of the FS alternatives may substantially resemble the scenarios presented in this plan, the Program Manager's Office is at this time not committed to adopting any of the listed scenarios and remains committed to considering fully all of the information which will be developed during the remedial investigation/feasibility study and to select the final response accordingly.

Comments from the General Public

With the publication of this notice, the Army commences its 45 day comment period on the draft report. During this period, the public is encouraged to submit all written comments and suggestions with respect to the draft report.

Comments from State and Local Officials

The Army is making a special effort to consult with State and local officials (including officials of water districts) and obtain their views on the draft report. Copies of the draft report will be provided directly to these officials and thereafter Army representatives will meet with them at length to discuss the various scenarios and any proposed modifications of the suggested plans.

Submission of Final Report

At the end of the comment period, the Army will review and consider all of the written and oral comments which it has received. Thereafter, appropriate modifications will be made of the various proposed scenarios in response to these comments. A final comprehensive cleanup report will be submitted to Congress by September 1, 1988.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-12861 Filed 6-6-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Graduate Academic Facilities Program

AGENCY: Department of Education.

ACTION: Application notice for new awards under the graduate academic facilities program for fiscal year 1986.

SUMMARY: Applications are invited for new projects for the construction, reconstruction and renovation of academic facilities.

Authority for this program is contained in Title VII, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1132a and 1132a-1).

Accredited undergraduate and graduate institutions of higher education are eligible to apply for funding, as directed by the Department of Education Appropriation Acts of 1985 and 1986.

The purpose of these awards is to assist colleges and universities to construct, reconstruct or renovate academic facilities.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 31, 1986.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.172), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th & D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

Grants awarded under this program are authorized for the support of projects which provide construction assistance for new or existing academic facilities and which enable institutions of higher education to (1) economize on the use of energy resources; (2) comply with the Architectural Barriers Act of 1968, and section 504 of the Rehabilitation Act of 1973, or with environmental protection or health and safety programs mandated by law, if these requirements were not in effect at the time the facilities were constructed; (3) improve research facilities, including libraries, and acquire special research equipment; (4) accommodate unusual increases in enrollment; or, (5) detect, remove, or contain asbestos hazards.

Program Priorities

Program funding priorities for fiscal year 1986 have been established in two grant categories and in certain academic areas for research facilities, as authorized by the proposed program regulations.

The two categories of projects that will be funded are (1) environmental protection or health and safety programs mandated by Federal, State, and local law, if these requirements were not in effect at the time the facilities were constructed; and, (2) research facilities, including libraries, and the acquisition of special research equipment. Pursuant to 34 CFR 75.105(c), (3), the Secretary will give an absolute preference to applications for projects in either of these two categories. Since only two categories of projects will be funded, no additional priority points will be assigned to applications, as provided for in § 619.30(d) of the proposed program regulations. For purposes of review under § 619.36(e), the academic areas which are designated as priorities are: physical sciences, mathematics, engineering, environmental sciences, biological sciences, and social sciences.

Because of the limited amount of funds available for the Title VII–B program, applications in all other authorized funding categories will not be accepted. Although the category related to the detection, removal or containment of asbestos hazards will not be considered for funding, projects designed to comply with environmental protection or health and safety laws

may, however, include the removal or containment of asbestos hazards.

Technical Assistance Workshops

Applicants are invited to participate in technical assistance workshops to be held in five regional locations to assist applicants in the preparation of applications. The workshops will take place in San Francisco on June 9, 1986, Dallas on June 12, 1986, Washington, DC on June 16, 1986, Atlanta on June 18, 1986, and Cincinnati on June 20, 1986. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 245–3253.

Other Information

Pursuant to § 619.51 of the proposed program regulations, grants will not be made to institutions that are financially insolvent, are in default on a construction loan previously made under Part C of Title VII of the Higher Education Act or Title VI of the Housing Act of 1950, or are in default of any other obligation made under any other Federal program (34 CFR 619.51).

Available Funds

A total of $37,570,000—$28 million from the FY 1985 appropriation and $9,570,000 from the FY 1986 appropriation—is available to fund approximately 150 projects, with awards ranging between $25,000 and $500,000 and averaging about $250,000. The Secretary expects to make awards of no more than $500,000. Pursuant to § 619.50 of the proposed program regulations, no award shall exceed fifty percent of the total eligible development costs of the project. The minimum grant award will be $25,000. The total amount of all awards made to institutions located in a single State will not exceed $4,696,250, which is 12.5 percent of the total available funds, as prescribed by the program's authorizing legislation.

The project period for an award will be determined when the appropriate official of the Department approves the project. Construction must begin within a reasonable time—usually within eighteen months of project approval. The project period will end when construction is completed and final eligible project costs are determined.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages are expected to be available by June 16, 1986. These may be obtained by writing to the Division of Higher Education Incentive Programs, Graduate Academic Facilities Program, Office of Postsecondary Education, U.S. Department of Education, Room 3022 ROB #3, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms, included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the research applications not exceed 20 pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1840–0580)

Applicable Regulations

The following regulations apply to this program:

(a) When published in final and effective, the Graduate Academic Facilities Program regulations, as proposed in the Federal Register on April 22, 1986, 51 FR 15292–15297. (If any substantive changes are made in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.)

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (with the exception of § 75.217 and §§ 75.219 through 75.222), and Parts 77 and 78.

FURTHER INFORMATION: For further information contact Charles I. Griffith, Director, Division of Higher Education Incentive Programs, U.S. Department of Education, Room 3022, ROB #3, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245–3253.

(20 U.S.C. 1132c)

(Catalog of Federal Domestic Assistance Number 84.172, Construction, Reconstruction, and Renovation of Academic Facilities)

Dated: June 5, 1986.

[illegible] J. Bennett,

Secretary of Education.

[FR Doc. 86–13019 Filed 6–5–86; 2:07 pm]

BILLING CODE 4000-01-M

Carl D. Perkins Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of closing date for receipt of State applications for fiscal year 1986.

The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1986 funds under the Carl D. Perkins Scholarship Program. This program is a Federally-funded program to provide college scholarships to outstanding high school graduates to enable and encourage them to pursue teaching careers at the elementary or secondary school level.

Authority for this program is contained in Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984.

A State that desires to receive Carl D. Perkins Scholarship Program funds for fiscal year 1986 must submit an application as provided for under the authofizing law. The State must provide the information requested in section 563 of the authorizing law and should be guided by § 653.20 of the Notice of Proposed Rulemaking for the Carl D. Perkins Scholarship Program which was published in the Federal Register on June 4, 1986, 51 FR 20408–20412. If proposed § 653.20 is changed in the final regulations, the Secretary will notify the States of any application revisions they must make and the date by which the revisions must be submitted.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands (20 U.S.C. 1119d–1119d–8).

Closing Date for Transmittal of Applications

An application for fiscal year 1986 Carl D. Perkins Scholarship Program funds must be mailed or hand-delivered by July 9, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202, Attention: Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Room 4026, ROB #3.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice or receipt from a Commercial Carrier; or

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first-class mail.

Each late applicant for fiscal year 1986 funds will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., Room 4028, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The Secretary requires the submission of an application for receipt of Carl D. Perkins Scholarship Program funds. State allotments are determined by population formula and are not subject to negotiations.

Application Information

There is no required application form for receiving Carl D. Perkins Scholarship Program funds. Applications must be prepared and submitted in accordance with the authorizing law and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations

The following regulations are applicable to the Carl D. Perkins Scholarship Program:

(1) When published in final and effective, the Carl D. Perkins Scholarship Program regulations, published as proposed regulations in the Federal Register on June 4, 1986, 51 FR 20406–20412.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and strengthened federalism by relying on processes developing by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State will be attached to the copy of this notice which the Department will mail to the State agencies designated to administer the Carl D. Perkins Scholarship Program.

In States that have not established a process for or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by Aug. 8, 1986, to the following address:

The Secretary, U.S. Department of Education, Room 4161, (CFDA No. 84.176), 400 Maryland Avenue, SW., Washington, DC 20202.

Please Note That the Above Address is Not the Same Address as the One to Which the Applicant Submits Its Completed Application. *Do Not Send Applications to the Above Address.*

For Further Information

For further information contact Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202 telephone (202) 472–4265.

(20 U.S.C. 1119d–1119d–3)

(Catalog of Federal Domestic Assistance Number 84.176, Carl D. Perkins Scholarship Program)

Dated: June 5, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86–13086 Filed 6–6–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangements With Canada and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following sales:

Contract Number S–CA–388, to the Key Lake Mining Corp., Saskatchewan, Canada, 63.581 grams of natural uranium, for use as standard reference material.

Contract Number S–JA–387, to the National Institute for Environmental Studies, Japan, 3.31 grams of natural uranium contained in pitchblende ore, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–12967 Filed 6–6–86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the export of 1,500,000 kilograms of natural uranium to Canada for conversion to uranium hexafluoride and the subsequent transfer to enrichment facilities in the European Community for enrichment and fabrication of fuel assemblies. The material is to be used as low-enriched power reactor fuel in various reactors in the United States and in the European Community. This subsequent arrangement is to be carried out under the above-mentioned agreements pursuant to section 402(A) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12958 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangements With European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following sales:

Contract Number S-EU-892, for the sale of 0.011 gram of thorium in monazite ore, and 0.001 gram of uranium in pitchblende ore, to the Littlemore Scientific Engineering Co., Oxford, England, for use as standard reference material.

Contract Number S-CA-389, for the sale of 0.001 gram of plutonium-244 to the University of Toronto, Toronto, Canada, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12959 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following transfer:

RTD/JA(EU)-37, for the transfer of 501 kilograms of uranium, enriched to 18.7 percent in the isotope uranium-235 from Hanau, the Federal Republic of Germany to Japan, for use in the fabrication of fuel for the JOYO experimental fast breeder reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12960 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale:

Contract Number S-JA-368, for the supply of 3 grams of plutonium-238 for use in the evaluation of alpha irradiation effects on vitrified high level radioactive waste at the waste safety testing facility at the Japanese Atomic Energy Research Institute, Tokyo, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12961 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42

U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retranafer:

RTD/NO(EU)-52, for the retransfer from the Federal Republic of Germany to Norway of 24 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235, for blending and use as fuel for the heavy water boiling water reactor at Halden, Norway.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12862 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement with Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(SW)-17, for the transfer of 10,000 grams of uranium containing 400 grams of the isotope uranium-235 (4.00 percent enrichment) from Sweden to Norway, for analysis for safeguards and control. After examination the samples will be disposed of as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12863 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Crude Oil From Naval Petroleum Reserve; Elk Hills, CA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Solicitation of comments and suggestions on NPR-1 crude oil sales.

SUMMARY: The U.S. Department of Energy (DOE) solicits written comments and suggestions on methods to improve the provisions under which DOE sells crude oil from Naval Petroleum Reserve No. 1 (NPR-1), Elk Hills, near Bakersfield, California. Under the existing provisions, DOE solicits bids in the form of bonuses or discounts to a "base price," composed of the average of the three highest prices posted in nearby oil fields for comparable quality crude oil. For the last several sales, the contract durations have been for six months, but the law permits contract terms of up to one year. See title 10, section 7430, United States Code, for the law governing DOE's sale of NPR-1 crude oil.

DATES: Those wishing to submit written comments and suggestions on alternative contract durations, bidding and pricing provisions (including the establishment of minimum prices), and other contractual provisions or techniques which might increase competition, should submit them to the address below. Comments need to be received by June 16, 1986 in order for DOE to fully consider them prior to the next sale (deliveries scheduled to begin October 1, 1986).

ADDRESS: Comments should be addressed to: Mr. Arnold A. Gjerstad, Contracting Officer, United States Department of Energy, Office of Procurement Operations, MA-453.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-1880.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Green, Contract Specialist, United States Department of Energy, Office of Procurement Operations, MA-453.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-8248.

Issued in Washington, DC, on May 30, 1986.

Edward T. Lovett,

Director, Procurement Operations Division "B" Office of Procurement Operations.

[FR Doc. 86-12850 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-16-NG]

Canterra Natural Gas Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Canterra Natural Gas Inc. (CNG). The order issued in ERA Docket No. 86-16-NG authorizes CNG to import up to 25 Bcf per year for a period of two years beginning on the date of first delivery. CNG would either purchase and resell the imported gas, or act as agent for its Canadian suppliers and U.S. purchasers.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 30, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12851 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Technical Panel on Magnetic Fusion; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub.

L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Technical Panel on Magnetic Fusion of the Energy Research Advisory Board.

Date and Time: June 25, 1986—9:00 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research (ER–6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252–2283.

Purpose of the Technical Panel

To perform a review of the conduct of the national magnetic fusion energy program and make recommendations to the Energy Research Advisory Board. After consideration of the Panel report, the Board shall submit such report, together with any comments that the Board deems appropriate, to the Secretary of Energy. The purpose of the Energy Research Advisory Board is to advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Presentation of Office of Energy Research senior staff member on fusion energy issues
- Presentations by Office of Fusion Energy staff on laboratories' current programs and issues
- Review of international collaboration on the Engineering Test Reactor
- Presentation by staff from involved private firms
- Review of past recommendations of the Magnetic Fusion Advisory Committee
- Public Comment—10 minute rule

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 4, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–12965 Filed 6–6–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–502–000 et al.]

Appalachian Power Co. et al.; Electric Rate and Corporate Regulation Filings

May 30, 1986.

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Co.

[Docket No. ER86–502–000]

Take notice that Appalachian Power Company (Appalachian) on May 23, 1986, tendered for filing a modification to its April 18, 1977 Power Service Agreement (Agreement) with the City of Bedford, Virginia (Bedford). The modification revises the service Agreement between the parties to reflect the addition of a new electric service delivery point. Appalachian has requested an effective date of June 1, 1986.

Copies of the filing have been provided to the Virginia State Corporation Commission and to Bedford.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Co.

[Docket No. ER86–513–000]

Take notice that on May 27, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a Letter Agreement dated April 1, 1986 between AP&L and the City of Ruston, Louisiana (Ruston) for transmission services through the system of AP&L to the system of Louisiana Power & Light Company to permit a sale by Arkansas Electric Cooperative Corporation to Ruston of 27 MW of capacity and associated energy. AP&L requests an effective date of July 1, 1986 for the Agreement.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Co.

[Docket No. ER86–507–000]

Take notice that Carolina Power & Light Company ("Company"), on May 27, 1986, tendered for filing in Docket No. ER86–507, an Amendment, dated January 16, 1986, between the City of Fayetteville ("Customer") and Carolina Power & Light to the Service Agreement dated October 27, 1972, which is on file with the Commission as Carolina Power & Light Company Rate Schedule FPC No. 102. The Amendment, dated January 16, 1986, provides for the supplying of Backstand and Replacement Power by Company for Customer's generation and the purchase by Company from Customer of Peak, Reserve, and Surplus Power when such is available from Customer. Included in the Agreement are provisions for the addition of a heat recovery steam generating unit. Partial requirements service will be rendered under Company's filed Resale Service Schedule. Provisions are also made for Company to purchase from Customer any capacity not being used by Customer for peak shaving service.

The Amendment between the parties, dated January 16, 1986, supersedes the Amendments to the Service Agreement dated June 30, 1977 (Supplement No. 10 to FPC No. 102), and February 19, 1981 (Supplement No. 1 to Supplement No. 10 to FPC No. 102.

Appendix C, dated May 1, 1986, amending the Amendment to the Service Agreement provides for equal sharing of any savings when Company offers Replacement power to Customer and Customer elects to receive Replacement power; and the "metered demand or computed demand" to which the ratchet applies shall be the demand provided in the applicable Resale Service Schedule.

It is proposed that the Amendment, dated January 16, 1986, be effective sixty days after filing or on July 1, 1986, if allowed by the Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this document.

4. Iowa Power and Light Co.

[Docket No. ER86–506–000]

Take notice that Iowa Power and Light Company ("Iowa Power") on May 27, 1986, tendered for filing an Amendment to Transmission Service Agreement ("Amendment"), between Iowa Power and Waverly, Iowa Municipal Electric Utility ("Waverly"), dated September 7, 1983. The proposed changes would increase revenues from jurisdicitonal sales and service by $1,148.52 based on the twelve month period ending December 31, 1985.

The Amendment provides for Waverly's continued use of certain portions of Iowa Power's electric transmission system for delivery of power to Waverly at a proposed increased rate to recover increased

costs incurred by Iowa Power in its fixed costs at the Hills substation terminal, and as a result of storm damage incurred on its Montezuma-Hills transmission line.

Copies of the filing were served upon Waverly and the Iowa State Commerce Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Southern Utilities Co.

[Docket No. ER86-509-000]

Take notice that Iowa Southern Utilities Company (Iowa Southern) on May 27, 1986, submitted for filing modifications to Iowa Southern's Electric Tariff Original Volume No. 1, including the termination and commencement of wholesale electrical service agreements.

Iowa Southern filed a Utility Service Contract between Iowa Southern and the United States of America for interruptible wholesale power under Rate 52 to the Iowa Army Ammunition Plant and request that such contract be effective on July 1, 1986.

Iowa Southern also filed a Notice of Termination of Service Agreements between Iowa Southern and Albia Light and Railway Company and between Iowa Southern and Seymour Municipal Utilities, and request that such terminations be effective on July 1, 1986.

Iowa Southern also filed revised tariff sheets to conform Iowa Southern's tariff to said terminations and commencement of service.

Copies of this filing have been served upon all parties in interest.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Southern Utilities Co.

[Docket No. ER86-510-000]

Take notice that Iowa Southern Utilities Company (Iowa Southern), an Iowa corporation, on May 27, 1986, submitted for filing a Notice of Succession in Ownership pursuant to § 35.16 of the Commission's regulations.

Iowa Southern states that it is the successor in interest to Iowa Southern Utilities Company, a Delaware corporation, and as such adopts and ratifies all existing applicable tariffs, rate schedules and supplements thereto on file with the Federal Energy Regulatory Commission (Commission).

Iowa Southern requests that such Notice be effective on May 31, 1986.

Copies of this filing have been served upon all parties of interest.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas Gas and Electric Co.

[Docket No. ER86-503-000]

Take notice that Kansas Gas and Electric Company (KG&E) on May 23, 1986 tendered for filing a proposed Participation Power Agreement between KG&E and Oklahoma Municipal Power Authority (OMPA).

This filing is necessary because OMPA desires to purchase power and energy to assure its ability to meet the needs of its muncipal systems. KG&E has requested an effective date of July 1, 1986.

Copies of the filing were served upon OMPA and the utilities Division of the Kansas Corporation Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of the this notice.

8. The Kansas Power and Light Co.

[Docket No. ER86-512-000]

Take notice that on May 27, 1986, the Kansas Power and light Company (KPL) tendered for filing certain changes to a Non-Contract Service to Ark Valley Electric Cooperative Association, Inc., from the Kansas Power and Light Conmpany (KPL) dated June 1, 1983 extending previous service under Supplement No. 11 to Rate Schedule FERC No. 148. This supplement provides for the deletion of the Abbyville (Noblesville), Hudson, Tobias, and Zenith delivery points. A new delivery point at Huntsville will be added allowing for a delivery voltage of 115 KV. Additionally, the Little River delivery point maximum capacity will change from 700 KW to 1,500 Kw and the Sand Hill delivery point will change from 3,000 KW to 6,000 KW with increased delivery voltage from 69 KV to 115 KV. The redistribution of load will allow for greater efficiency by the Cooperative. Copies of the filing have been mailed to Ark Valley Electric Cooperative Association, Inc., and the State Corporation Commission of Kansas.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Co.

[Docket No. ER 86-504-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on May 23, 1986, as a Supplement to Rate Schedule FERC No. 68 an executed agreement dated as of May 20, 1986 between PP&L and UGI Corporation (UGI). The agreement reduces the prescribed rate of return on common equity from 15.50% to 14.50%. A Certificate of Concurrence executed by UGI accompanied PP&L's filing

Copies of PP&L's filing have been served upon UGI and the Pennsylvania Public Utility Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric Co.

[Docket no. ER86-505-000]

Take notice that on May 23, 1986 Sand Diego Gas & Electric company ("SDG&E) tendered for filing a Certificate of Concurrence assenting to and concurring with Arizona Public Service Company's filing of the Power coordination Agreement between Arizona Public Service (APS) and San Diego Gas & Electric Company.

The Agreement provides for the terms and conditions of interconnection between the two parties.

Copies of this Certificate of Concurrence were served upon the Public Utilities Commission of the state of California and APS.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Co.

[Docket No. ER86-511-000]

Take notice that, on May 27, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of change of rates for the modification of Table 1 of Appendix B of the Integrated Operations Agreement ("IOA") to reflect the scheduling units for scheduling and dispatching of entitlement in Intermountain Power Project ("IPP") under the provisions of the following rate schedule:

	Rate schedule FERC No.
City of Anaheim	95

Edison requests, to the extent necessary, Waiver of Notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comments date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Electric Power Co.

[Docket No. ER86-506-000]

Take notice that on May 23, 1986,

Southwestern Electric Power Company ("SWEPCO") tendered for filing decreases in the return on common equity component of the formula rates for requirements service to Northeast Texas Electric Cooperative, Inc. ("NTEC"), the Cities of Bentonville ("Bentonville") and Hope ("Hope"), Arkansas and Cajun Electric Power Cooperative, Inc. ("Cajun") and decreases in rates for transmission service to the Oklahoma Municipal Power Authority ("OMPA") for the period of January 1, 1986 to December 31, 1986. SWEPCO also tendered for filing executed letter agreements between SWEPCO and Bentonville and between SWEPCO and Cajun amending the contracts for service to Bentonville and Cajun. SWEPCO requests that the changes in rates be made effective as of January 1, 1986, that the letter agreement with Bentonville be made effective as of December 1, 1982, and that the letter agreement with Cajun be made effective as of September 1, 1982. Accordingly, SWEPCO requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on NTEC, Bentonville, Hope, Cajun, OMPA, the Arkansas Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12863 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-730-000 et al.]

Amoco Production Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

May 29, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Amoco Production Co.

[Docket No. QF86-730-000]

On May 12, 1986, Amoco Production co. (Applicant), of P.O. Box 3092, Houston, Texas 77253 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Yoakum County, Texas. The facility will consist of a natural gas-fired combustion turbine and a waste heat recovery system. Heat recovered by this system will be utilized in the applicant's Wasson Carbon Dioxide Removal Plant for the regeneration of various amines used to remove carbon dioxide from natural gas. The net electric power production capacity of the facility will be approximately 20.66 MW. The installation of the facility is expected to begin in September 1986.

2. Penntech Papers, Inc.

[Docket No. QF86-722-000]

On May 6, 1986, Penntech Papers, Inc. (Applicant), of 3 Barker Avenue, White Plains, New York 10601, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Johnsonburg, Elk Co., Pennsylvania. The facility will consist of two coal fired boilers, one black liquor recovery boiler, and one extraction/condensing turbine generating unit. Extraction steam produced by the facility will be used to supply the pulp and paper mill process requirement. The electric power production capacity of the facility will be 38 MW. The primary energy sources will be coal and black liquor. The installation of the facility will begin in early 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12864 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-107-000]

Algonquin Gas Transmission Co.; Filing of Tariff Sheets

June 4, 1986.

Take notice that on May 30, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed the following nine proposed sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Seventh Revised Sheet No. 100
First Revised Sheet Nos. 538-550
First Revised Sheet No. 551
First Revised Sheet No. 552
First Revised Sheet No. 553
First Revised Sheet No. 554
First Revised Sheet No. 555
First Revised Sheet No. 556
First Revised Sheet Nos. 557-599

Algonquin Gas states that such tariff sheets are proposed to become effective October 31, 1985 in order to comply with § 284.7(b)(1) of the Commission's Regulations.

The filing indicates that such tariff sheets, which comprise Algonquin Gas' Rate Schedule 311-T, are being filed in order to give Algonquin Gas the flexibility to render NGPA Section 311 transportation service under such Rate Schedule after June 30, 1986 if the Commission should allow such service to be rendered after such date under the same terms and conditions as currently apply to NGPA Section 311

BEST COPY AVAILABLE

transportation service, and without subjecting Algonquin Gas to the CD reduction/conversion provisions in § 284.10 of the Commission's Regulations. Algonquin Gas states that by this filing it is not in any way committing itself to provide any transportation service after June 30, 1986. Algonquin Gas further states that any decision on whether to extend service will be implemented in a non-discriminatory fashion.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986——. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12865 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-105-000]

ANR Pipeline Co.; Changes in Rates

June 4, 1986.

Take notice that ANR Pipeline Company ("ANR"), on May 30, 1986, tendered for filing a proposed new Original Volume 1-A of its FERC Gas Tariff.

The purpose of this filing is to comply with 18 CFR 284.7, which requires restated rates for transportation under "grandfathered" agreements under Order No. 436. The proposed effective date of the tariff sheets is July 1, 1986.

Copies of this filing have been served on all of ANR's customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determinig the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12866 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-104-000]

Colorado Interstate Gas Co.; Revised Changes in Rates

June 4, 1986.

Take notice that Colorado Interstate Gas Company (CIG) on May 30, 1986, tendered for filing a proposed changes in its FERC Gas Tariff, Original Volume No. 1.

The purpose of this filing is to comply with 18 CFR 284.105 and 284.7, where the Commission has required restated rates for transportation under "grandfathered" agreements under Order No. 436. The proposed effective date of the original tariff sheets is July 1, 1986.

Copies of this filing have been served on all of CIG's jurisdictional customers.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determinig the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12867 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-112-000]

Columbia Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Columbia Gas Transmission Corporation (Columbia Gas), on May 30, 1986, tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986:

One hundred and eighth Revised Sheet No. 16
Fourth Revised Sheet No. 16A2

Columbia Gas states that these changes are being filed to comply with the provisoins of § 284.7(a) and 184.7(b)(2) of the Commission's Regulations as promulgated by Order No. 436.

Columbia Gas also states that it filed an Offer of Settlement in Docket No. RP86-15 that covers its implementation of nondiscriminatory transportation under Order No. 436, and includes the transportation rates shown on Fourth Revised Sheet No. 16A2 to be charged by Columbia Gas under proposed Rate Schedules FTS and ITS. In addition, Columbia Gas proposed to provide a Standby Sales Service under certain rate schedules in said Offer of Settlement. The rates for this service, shown on One hundred and eighth Revised Sheet No. 16, were also included as part of the Offer of Settlement.

It is also stated that the transportation rates shown on Fourth Revised Sheet No. 16A2 fully comport with the requirements of § 284.7 of the Commission's Regulations, as promulgated by Order No. 436, by including a reservation charge and a commodity charge for firm transportation and one-part, volumetric rates for interruptible transportation service; separately identifying cost components; and stating maximum and minimum rates. Columbia Gas states that it cannot verify material variations in the cost of providing service due to time or distance because of the nature of its integrated pipeline system and therefore does not propose to differentiate rates on the basis of time and distance.

Copies of the filing were served upon the Company's jurisdictional customers, interested state regulatory commissions, and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12918. Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-109-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on May 30, 1986, tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986:

Original Volume No. 1
Original Sheet Nos. 160, 161, 199, 200, 236 through 246 and 284 through 294

Columbia Gulf states that these changes are being filed to comply with the provisions of §§ 284.7(a) and 284.7(b)(2) of the Commission's Regulations as promulgated by Order No. 436.

Columbia Gulf also states that it filed an Offer of Settlement in Docket No. RP86-14 that covers its implementation of nondiscriminatory transportation under Order No. 436, and includes the transportation rates shown on the above proposed Tariff Sheets to be charged by Columbia Gulf under proposed Rate Schedules FTS-1 & 2 and ITS-1 & 2.

It is also stated that the transportation rates shown on the attached proposed Tariff Sheets fully comport with the requirements of § 284.7 of the Commission's Regulations, as promulgated by Order No. 436, by including a reservation charge and a commodity charge for firm transportation and one-part, volumetric rates for interruptible transportation service; separately identifying cost components; and stating maximum and minimum rates.

Copies of this filing were served upon the Company's jurisdictional customers, interested state regulatory commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12868 Field 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-102-000]

Equitable Gas Co., a Division of Equitable Resources, Inc.; Tariff Filing

June 4, 1986.

Take notice that on May 30, 1986, Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1
Twelfth Revised Sheet No. 1
Original Sheet No. 1-A
Second Revised Volume No. 10-II
First Revised Sheet No. 36
Original Volume No. 3
Original Sheet Nos. 1-41

Equitable states that it has been providing open-access transportation services pursuant to the self-implementing provisions of Section 311 of the Natural Gas Policy Act of 1978 ("NGPA") and in accordance with the Commission's Order No. 436 issued at Docket No. RM85-1, as amended. Consistent with the requirements of Order No. 436, as amended, the tendered tariff sheets serve to establish as part of Equitable's FERC Gas Tariff the rates, rate schedules, and operating conditions applicable to such transportation service rendered by Equitable under Subpart B of Part 284 of the Commission's Regulations, as well as service to be rendered upon receipt of blanket certificate authorization pursuant to Order No. 436, as amended.

Equitable requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1986, and states that copies of the filing have been served upon all jurisdictional customers and all affected state regulatory commisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12869 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-113-000]

Gas Transport, Inc.; Tariff Filing

June 4, 1986.

Take notice that on May 30, 1986, Gas Transport, Inc., 109 North Broad Street, Lancaster, Ohio 43130, ("Gas Transport") filed First Revised Volume No. 1 and Original Volume No. 2 to its FERC Gas Tariff. Gas Transport states that this filing is in compliance with the order issued by the Commission in *Gas Transport, Inc.*, Docket No. CP86-291-000, on May 21, 1986. In that order, the Commission granted Gas Transport a blanket transportation certificate under the Commission's Order Nos. 436, et al., and directed Gas Transport to "file new transportation rates, to be effective not later than July 1, 1986, that conform to the provisions of § 284.7 as required under § 284.7(b)(2) of the Regulations."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12870 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-99-000]

Granite State Gas Transmission, Inc.; Filing Proposed Tariff Changes

June 4, 1986.

Take notice that on May 30, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1 for effectiveness on July 1, 1986:

Seventeenth Revised Sheet No. 7
Second Revised Sheet No. 11
Fourth Revised Sheet No. 68
Third Revised Sheet No. 70
Second Revised Sheet No. 71
Third Revised Sheet No. 75
First Revised Sheet No. 75-A
First Revised Sheet No. 82
Original Sheet No. 116

According to Granite State, the foregoing revised tariff sheets propose changes in rates for wholesale sales of natural gas to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) based on a cost of service for the twelve months of actual experience ended February 28, 1986, adjusted for changes that are known and measurable with reasonable accuracy and which will become effective within nine months thereafter. Granite State further states that the proposed rates, based on the adjusted test year cost of service, reflect increased costs for new plant, increased operating and maintenance expenses, increased ad valorem taxes, an increased cost of capital and income taxes that are not recovered in its underlying rates. According to Granite State, the proposed rates have been derived by applying the Modified Fixed Variable methodology of cost allocation and rate design to the adjusted test year cost of service which is a departure from the *United* cost allocation and rate design methodology on which its underlying rates are based.

Granite State avers that its underlying wholesale rates are those made effective as of April 1, 1986 in Docket No. RP86-65-000 in which Granite State restated its Base Tariff rates in compliance with the requirements of Section 154.38(d)(4)(vi)(a) of the Regulations. According to Granite State, the proposed rates submitted herewith result in an increase of $826,464 annually for Bay State and a reduction of $14,375 annually for Northern Utilities, exclusive of gas costs, compared to the underlying rates in docket No. RP86-65-000.

According to Granite State, copies of its filing were served on the foregoing customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Dated:

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12871 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-103-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

June 4, 1986.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on May 30, 1986 tendered for filing Original Sheet No. 57(iii), FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective July 1, 1986.

Original Sheet No. 57(iii) reflects the minimum and maximum rates to be charged by Great Lakes to Southeastern Michigan Gas Company for transportation service under Subpart B of Part 284 of the Commission's Regulations as grandfathered under Order No. 436 issued by the Commission on October 9, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12872 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-100-000]

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Kentucky West Virginia Gas Company on May 30, 1986 tendered for filing revisions to its FERC Gas Tariff so as to establish rates and reasonable operating conditions implementing Kentucky West's concurrently filed blanket certificate of public convenience and necessity wherein Kentucky West will become an "open access" national gas transporter pursuant to Order No. 436 effective July 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12873 Filed 6-6-86; 8:45 am]

Billing Code 6717-01-M

[Docket No. CP85-57-009]

Natural Gas Pipeline Co. of America; Tariff Filing

June 4, 1986.

Take notice that on May 27, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Fifth Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the sheet is filed in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986, at

Docket No. CP86-57-000. The purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of June, 1986.

Natural requests waiver of the Commission's regulations to the extent necessary to permit this tariff sheet to become effective June 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12878 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-57-002]

Northwest Pipeline Corp.; Tariff Revisions

June 4, 1986.

Take notice that on May 30, 1986, May 30, 1986, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet:

Eleventh Revised Sheet No. 2-B

Northwest states that the purpose of the filing is to satisfy the concerns raised by the Commission in its order dated April 2, 1986 in the above-referenced docket.

Northwest has requested an effective date of May 1, 1986 for the tendered tariff sheet to conform to the effective date granted by the Commission in its April 2, 1986 order in the above-referenced docket.

A copy of this filing has been served on all jurisdictional customers and affected state regulatory commissions and on all parties of record in Docket No. RP86-57-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12875 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-116-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

June 4, 1986.

Take notice that on May 30, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheet for its FERC Gas Tariff, Original Volume No. 1.

Eleventh Revised Sheets No. 1
Original Sheet No. 3-F
Original Sheet No. 32-Y
Original Sheet No. 32-Z

The proposed effective date of these revised traiff sheets is July 1, 1986.

Panhandle states this new PT Rate Schedule is submitted because of the requirements of § 284.7(b)(2) of the Commission Regulations and to enable Panhandle to continue providing interruptible service to the grandfathered shippers that are authorized to receive such service at the present time.

In accordance with the provisions of Part 154 of the Commission's Regulations, Panhandle states that these tariff sheets reflect establishment of Panhandle's new Rate Schedule for the continuation of interruptible service to customers that had been authorized for transportation as of June 30, 1986 under 18 CFR Part 284 or § 157.209 self-implementing provisions of the Commission's Regulations or that may subsequently be authorized under Section 7(c) certificates. As of the date of this submission, Panhandle has not agreed to become an open access transporter on a permanent basis, nor to become subject to the contract demand reduction or conversion provisions of § 284.10.

Pandhandle also respectfully requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's Regulations thereunder, including section 154 and § 284.7 as may be necessary, so that the enclosed tariff sheets may be accepted for filing and made effective on July 1, 1986. Grant of such waivers is reasonable given the nature of this filing, the limited scope of its applicability and the desirability of having the proposed tariff sheets become effective July 1, 1986.

Copies of this letter and enclosures are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12913 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-8-000, 001]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that on May 30, 1986, South Georgia Natural Gas Company (South Georgia) tendered for filing Thirty-Seventh Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting informationis being filed with a proposed effective date of July 1, 1986, pursuant to the Purchased Gas Cost Adjustments provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Thirty-Seventh Revised Sheet No. 4 reflects an increase of 4.74¢ per MMBtu in the Current Adjustment and a decrease of 7.79¢ per MMBtu in the Surcharge Adjustment presently in effect.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12876 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-114-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Southern Natural Gas Company (Southern) on May 30, 1986, tendered for filing proposed changes to its FERC Gas Tariff to become effective July 1, 1986. Southern states that the filing is made pursuant to Section 284.7 of the Commission's Regulations and revises the transportation rates applicable to the short-term, interruptible transportation services performed by Southern pursuant to the "grandfathered" provisions of Order No. 436 in accordance with the requirements of that section.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12877 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-101-000]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that on May 30, 1986, Superior Offshore Pipeline Company ("SOPCO") tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. SOPCO states that this filing was made in order to comply with Order No. 436. SOPCO currently transports natural gas pursuant to 18 CFR 284.102 and 284.221.

SOPCO states that its tariff filing replaces its existing transportation tariff and encompasses all of the services provided by SOPCO, including certificated service. The tariff includes both firm and interruptible transportation service on a first-come/first-served basis. The tariff states that existing customers may choose between firm or interruptible service.

SOPCO requests that the Commission waive its regulations to permit SOPCO to collect a one cent per Mcf rate for transportation. When SOPCO received a certificate of public convenience and necessity, the Commission waived its regulations to allow SOPCO to collect a one cent rate until it filed for a rate change under section 4(e) of the Natural Gas Act. SOPCO now seeks a similar waiver to permit collection of the same one cent rate for self-implementing transportation services.

Copies of the filing were served upon the company's jurisdictional customers and other parties and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12878 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-100-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Rate Change and Tariff Revisions

June 4, 1986.

Take notice that on May 30, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1986:

Second Revised Sheet No. 22
Original Tariff Sheet No. 22A
First Revised Tariff Sheet No. 97

Tennessee states that pursuant to § 284.7 of the Commission's regulations the revised tariff sheets reflect maximum and minimum rates for service under Tennessee's Rate Schedule IT and a revision to Rate Schedule IT to provide that Tennessee may adjust the rates for service to any Shipper between the maximum and minimum.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12879 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-110-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Texas Eastern Transmission Corporation ("Texas Eastern") on May 30, 1986 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Seventy-ninth Revised Sheet No. 14
First Revised Seventy-ninth Revised Sheet No. 14A

First Revised Seventy-ninth Revised Sheet No. 14B
First Revised Seventy-ninth Revised Sheet No. 14C
First Revised Seventy-ninth Revised Sheet No. 14D
Original Sheet No. 14F

Pursuant to 18 CFR 284.7(b)(2), any person offering a transportation service under Subparts B, G, or H of Part 284 must file rates in accordance with the requirements of 18 CFR 284.7 with a proposed effective date not later than July 1, 1986. Texas Eastern Transmission Corporation ("Texas Eastern") respectfully requests that its offer of settlement filed on March 13, 1986 in Docket No. RP85–177 et al. be accepted, by reference, as the filing contemplated by 18 CFR 284.7(b)(2). Further, Texas Eastern asks that the Commission act on this request prior to July 1, 1986. The March 13, 1986 offer of settlement is currently pending before the Commission pursuant to the "Certification of Offer of Settlement and Record" issued by the Honorable Samuel Z. Gordon, Presiding Administrative Law Judge on May 12, 1986. As part of the March 13, 1986 offer of settlement, Texas Eastern filed a pro forma copy of a proposed FERC Gas Tariff, Fifth Revised Volume No. 1, containing inter alia rate and rate schedules in full compliance with the requirements of 18 CFR 284.7. The March 13, 1986 offer of settlement represents a comprehensive approach to the issues raised by Order No. 436 and Texas Eastern urges expeditious approval in order to permit its implementation.

Until such time that the March 13, 1986 offer of settlement becomes effective, it is Texas Eastern's desire and intent to continue offering Shippers firm, if available, and interruptible open-access, non-discriminatory transportation, authorized by Section 311 of the Natural Gas Policy Act and 18 CFR 284.102 of the Commission's Regulations, to the extent such service does not result in Texas Eastern being deemed to have agreed to offer its firm sales customers the options set out in paragraphs (c) and (d) 18 CFR 284.10 (Transition Transportation Service). Texas Eastern proposes to charge Shippers, with certain exceptions discussed below, for such Transition Transportation Service the applicable rate under Texas Eastern's Rate Schedule TS–3. The rates under Rate Schedule TS–3 and the terms and conditions are currently subject to refund in Docket No. RP85–177. Texas Eastern also proposes to continue transportation under certain agreements which are "grandfathered" as defined below.

The above listed tariff sheets (with the exception of Original Sheet No. 14F) set forth the applicable rates under Rate Schedule TS–3 in compliance with the requirements of 18 CFR 284.7. Original Sheet No. 14F sets forth relevant information regarding the transportation services authorized and commenced by Texas Eastern on or before October 9, 1985 under Subpart B and G of Part 284, as such Subparts were effective before November 1, 1985 ("grandfathered agreements"). Pursuant to 18 CFR 284.105, these agreements may be continued under the terms and conditions that applied prior to November 1, 1985 with the exception of the requirements of 18 CFR 284.7 and 18 CFR 284.106 until the earlier of the expiration of the authorized arrangement or October 9, 1987. With the exception of the agreements identified as being exchanges, Texas Eastern proposes to charge Shippers under these agreements the applicable rate under Texas Eastern's Rate Schedule TS–3.

With regard to the exchange agreements identified on Original Sheet No. 14F, Texas Eastern believes it is appropriate, based on the individual circumstances as more fully set forth in the initial reports filed in the relevant ST Dockets, that service under these agreements continue to be provided by the parties at no charge. To the extent necessary, Texas Eastern respectfully requests a waiver of 18 CFR 284.7 and any other rule or regulation necessary to permit the parties to continue to render service under these agreements at no charge.

Texas Eastern respectfully requests that the Commission accept the March 13, 1986 offer of settlement as in compliance with 18 CFR 284.7(b)(2). Until such time that the offer of settlement becomes effective, Texas Eastern requests that the Commission approve the above mentioned tariff sheets to become effective July 1, 1986.

Copies of this filing are being posted in accordance with § 154.16 of the Commission's Regulations. Copies of this filing are being mailed to all parties of record in Docket No. RP85–177 et al., and to all Shippers under grandfathered agreements and Rate Schedule TS–3, and to all Authorized Purchasers of Natural Gas from Texas Eastern Transmission Corporation and Interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–12880 Filed 6–6–86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86–111–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on May 30, 1986 tendered for filing Original Sheet No. 19 to its FERC Gas Tariff, Second Revised Volume No. 1. The tariff sheet is proposed effective July 1, 1986.

The purpose of this filing is to establish, in accordance with the requirements of Order Nos. 436 and 436–A, rates for ongoing "grandfathered" interruptible transportation services rendered by Transco pursuant to Section 311 of the NGPA and Part 284 of the Commission's Regulations. Transco states that in determining these rates, Transco has utilized the cost and throughput determinants which underlie Transco's currently effective rates approved by the Commission in Docket Nos. RP83–137 and RP83–30 effective April 1, 1984.

Transco filed on May 13, 1986 a revised "Stipulation and Agreement" in Docket Nos. TA85–1–29–000 *et al.* (Agreement) proposed to be effective July 1, 1986, the provisions of which, upon approval by the Commission, will enable Transco to become an "open access" transporter. Included in the Agreement are rates for interruptible transportation service which, pursuant to the Agreement, are deemed to comply with the requirements under the Commission's Order Nos. 436 and 436–A. Transco states that the interruptible transportation rates reflected in this instant filing are identical to those proposed in the Agreement. Transco further states that the instant filing is without prejudice to (1) its litigating position on interruptible transportation

issues if these matters are not resolved through approval of the Agreement, and (2) its right to file revised compliance rates in conformance therewith.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12881 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-115-000]

Trunkline Gas Co.; Change in Tariff

June 4, 1986.

Take notice that on May 30, 1986 Trunkline Gas Company (Trunkline) tendered for filing the following sheets for its FERC Gas Tariff, Original Volume No. 1.

Fourteenth Revised Sheet No. 1
Original Sheet No. 3-A.3
Original Sheet No. 9-BJ
Original Sheet No. 9-BK
Original Sheet No. 9-BL.

The proposed effective date of these revised tariff sheets is July 1, 1986.

Trunkline states this new PT Rate Schedule is submitted because of the requirements of § 284.7(b)(2) of the Commission Regulations and to enable Trunkline to continue providing interruptible service to the grandfathered shippers that are authorized to receive such service at the present time.

In accordance with the provisions of Part 154 of the Commission's Regulations, Trunkline states that these tariff sheets reflect establishment of Trunkline's new Rate Schedule for the continuation of interruptible service to customers that had been authorized for transportation as of June 30, 1986 under 18 CFR Part 284 or § 157.209 self-implementing provisions of the Commission's Regulations or that may subsequently be authorized under Section 7(c) certificates. As of the date of this submission, Trunkline has not agreed to become an open access transporter on a permanent basis, nor to become subject to the contract demand reduction or conversion provisions of Section 284.10.

Trunkline also respectfully requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's Regulations thereunder, including section 154 and § 284.7 as may be necessary, so that the enclosed tariff sheets may be accepted for filing and made effective on July 1, 1986. Grant of such waivers is reasonable given the nature of this filing, the limited scope of its applicability and the desirability of having the proposed tariff sheets become effective July 1, 1986.

Copies of this letter and enclosures are being served on all affected customers, jurisdictional customers, and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12882 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3025-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR's are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Mobile Sources Emission Factors Survey (EPA ICR #0619). (This is an extension of a previously approved ICR; there are no changes.)

Abstract: The Emission Factors Survey tests a random sample of privately owned motor vehicles, stratified by class of vehicle and by mileage of vehicle use within each class, for the purpose of characterizing levels of exhaust pollutants for each combination of class and mileage in the sample. The data generated by this survey are used to model air pollution attributable to mobile sources and to determine the impact of regulations and the benefits of control programs.

Respondents: Random sample of private owners of motor vehicles.

Office of Water

Title: Provision for Discharge Authorization—Ore Recovery Mills (EPA ICR #1013). (This is an extension of a previously approved ICR; there are no changes.)

Abstract: Ore mills using the froth flotation process may request permission to discharge wastewater if necessary to eliminate interference in ore recovery. Applicants submit technical data once to the permit authority (EPA or State agency), which reviews it and approves or denies the discharge.

Respondents: Owners and operators of ore mills using the froth flotation process.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0004, Pretreatment Removal Credit Approval Request, was approved 4/29/86 (OMB #2040-0020; expires 9/30/87).

EPA ICR #0009, Industry and POTW Maintenance of Monitoring Records, was approved 4/29/86 (OMB #2040-0022; expires 12/31/88).

EPA ICR #0126, Report by Publicly Owned Treatment Works (POTWs) of New or Increased Pollution Introduction, was approved 4/29/86 (OMB #2040–0010; expires 12/31/88).

EPA ICR #0229, Information Requirements for 404 State Permit Applications, was approved 5/16/86 (OMB #2090–0015; expires 5/31/88).

EPA ICR #0663, New Source Performance Standards (NSPS) for Beverage Can Surface Coating (Subpart WW)—Information Requirements, was approved 5/14/86 (OMB #2060–0001; expires 5/31/89).

EPA ICR #1025, National Pollution Discharge Elimination System (NPDES) Notice of Actual Production Level—Automotive Manufacturing Industries, was approved 5/13/86 (OMB #2040–0077; expires 5/31/87).

EPA ICR #1245, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs, was approved 5/22/86 (OMB #2030–0021; expires 10/31/88).

EPA ICR #1296, Used Oil Regulatory Impacts, was approved 5/15/86 (OMB #2050–0056; expires 12/31/86).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss (ICR #0619) or Rick Otis (ICR #1013), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: June 2, 1986.

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86–12719 Filed 6–6–86; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–3028–8]

Environmental Engineering Committee, Science Advisory Board; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a two-day meeting on June 24–25, 1986 of the Environmental Engineering Committee of the Science Advisory Board. The meeting will be held at the Environmental Protection Agency, Hazardous Waste Engineering Research Laboratory/ORD, 26 West St. Clair Street, Cincinnati, OH. The meeting will begin at 9:00 a.m. each day, and last until 5:00 p.m. on June 24, and until 1:00 p.m. on June 25.

The purpose of the meeting will be to review the Office of Research and Development's Alternative Technology Research Program. This review is one of a series of quarterly research reviews conducted by the Science Advisory Board at the request of EPA's Deputy Administrator.

The meeting will be open to the public on June 24, and will be closed for a writing session of June 25. Any member of the public wishing to attend or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382–4126.

Dated: June 4, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86–12883 Filed 6–6–86; 8:45 am]

BILLING CODE 6560–50–M

[PF–458; FRL–3028–8]

Pesticide Tolerance Petition; Mobay Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Mobay Chemical Corp. has submitted to EPA a feed/food additive petition proposing to establish regulations permitting residues of the insecticide [cyano-(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxy-late] (referred to in this notice as cyfluthrin) in or on certain agricultural committees.

ADDRESS: By mail, submit comments identified by the document control number [PF–458] and the petition number, attention Product Manager (PM–15), at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca (PM–15), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA has received a feed/food additive petition (FAP), from Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn, Kansas City, MO 64120, proposing to amend 21 CFR Part 193 (food) and Part 561 (feed) by establishing regulations permitting residues of the insecticide cyfluthrin in or on certain processed agricultural commodities as follows:

Petition identity	CFR affected	Commodities	Part per million (ppm)
FAP 5H5470...	21 CFR Part 193.	Concentrated tomato products.	0.5
FAP 5H5470...	21 CFR Part 561.	Tomato pomace (dry).	5.0
		Tomato pomace (wet).	2.0

Authority: 21 U.S.C. 348.

Dated: June 2, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–12884 Filed 6–6–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Evaluation of Mesothelioma Production by Asbestos Substitutes Test Protocol for "Project Firesmoke"; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the

public for observation and participation, limited only by the space available:

Evaluation of Mesothelioma Production by Asbestos Substitutes

Date: June 25, 1986
Time: 9 a.m.–4 p.m.
Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226

Purpose: To review and discuss the scientific merit of an experimental investigation designed to determine the ability of modified chrysotile asbestos to produce mesotheliomas.

Additional information may be obtained from: S. Frank Platek, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8400, Commercial: (513) 533–8400.

Test Protocol for "Project Firesmoke"

Date: June 25, 1986
Time: 9 a.m.–4:30 p.m.
Place: Room 138–B, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888

Purpose: To discuss the research study protocol for "Project Firesmoke" which will measure workplace protection factors using in-facepiece and outside carbon monoxide measurement and will characterize the fireground for particulate and gaseous exposures.

Additional information may be obtained from: Gary P. Noonan, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, Telephones: FTS: 923–4362, Commercial: (304) 291–4362.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: June 2, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–12838 Filed 6–6–86; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–86–1614]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

Action

Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Section 8 HAPP Application for Existing Housing
Office: Housing
Form Number: HUD–52515
Frequency of Submission: Annually and On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 6,000
Status: Extension
Contact: Myra Newbill, HUD, (202) 755–6477; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System; Determination of Operating Subsidy
Office: Public and Indian Housing
Form Number: HUD–52728A, 52728B, and 52728C
Frequency of Submission: On Occasion and Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 61,200
Status: Revision
Contact: John Comerford, HUD, (202) 426–1872; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Housing Counseling Program & Recordkeeping Requirements (Funded)
Office: Housing
Form Number: HUD–9921
Frequency of Submission: Monthly and On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 5,635
Status: Reinstatement
Contact: O.T. Miles, HUD, (202) 755–6664; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Community Development Block Grant (CDBG) Program Small Cities Performance Assessment Report (PAR)
Office: Community Planning and Development
Form Number: HUD–4052
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 17,197
Status: Reinstatement
Contact: Patricia G. Myers, HUD, (202) 755–6322; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the

Department of Housing and Urban Development Act, 42 U.S.C 3535(d).

Dated: May 23, 1986.

Proposal: Compliance Inspection Report and Mortgagee's Assurance of Completion
Office: Housing
Form Number: HUD–92051 and 92300
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 253,500
Status: Extension
Contact: Bud Carter, HUD, (202) 426–7212; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Annual Public Housing Agency (PHA) Performance Awards
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: State of Local Governments
Estimated Burden Hours: 6,000
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 472–4703; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Donald J. Kusch, Jr.,
Deputy Assistant Secretary.

[FR Doc. 86–12918 Filed 6–6–86; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Friday, June 27, 1986, beginning at 8:30 am, in Rooms 5 and 10 in the Minnesota State Office Building, 435 Park Street, St. Paul, MN 55155. Due to heavy citizen participation the hearing will be split into two concurrent sessions in the rooms listed above.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testiy by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111 20th Street, NW, Washington, DC 20036–8547, (202) 634–7310.

Dated: June 3, 1986.

Victor H. Ashe,
Executive Director, President's Commission on American Outdoors.

[FR Doc. 86–12839 Filed 6–6–86; 8:45 am]
BILLING CODE 4310–70–M

Bureau of Land Management

Information Collection Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: 43 CFR Part 3160—Onshore Oil and Gas Operations Non-form Items.

Abstract: Federal and Indian (except Osage) oil and gas lessees and operators are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Lessees and operators of Federal and Indian (except Osage) oil and gas leases.

Annual Responses: 191,980.

Annual Burden Hours: 93,559.

Annual Clearance Officer: Rebecca Daugherty, 202–653–8853.

Dated: May 6, 1986.

George F. Brown,
Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 86–12951 Filed 6–6–86; 8:45 am]
BILLING CODE 4310–84–M

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sections 14(h)(1), 14(h)(7), and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), 1613(h)(7), 1621(j), will be issued to Sealaska Corporation. The lands involved are in the Tongass National Forest, Alaska.

Serial No.	Land description	Approximate acreage
	Copper River Meridian	
AA–10446	T. 73 S., R. 84 E., Secs. 1 and 12.	4.55
AA–10451	T. 82 S., R. 98 E., Sec. 11	19.20
AA–10462	T. 83 S., R. 85 E., Sec. 14	8.70
AA–10464	T. 66 S., R. 78 E., Sec. 36	
	T. 69 S., R. 79 E., Sec. 3	5.30
AA–10469	T. 63 S., R. 89 E., Sec. 3	8.79
AA–10473	T. 66 S., R. 77 E., Sec. 23	3.10
AA–10474	T. 66 S., R. 77 E., Secs. 11 and 14.	1.40
AA–10475	T. 66 S., R. 77 E., Sec. 14	3.60
AA–10482	T. 62 S., R. 72 E., Sec. 24	
	T. 62 S., R. 73 E., Sec. 19	13.80
AA–10496	T. 58 S., R. 70 E., Sec. 11	9.70
AA–10507	T. 54 S., R. 68 E., Sec. 6	1.40
AA–10530	T. 32 S., R. 40 E., Sec. 11	178.50

A notice of the decisions will be published once a week for four (4) consecutive weeks in the JUNEAU EMPIRE. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until July 9, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,
Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–12952 Filed 6–6–86; 8:45 am]
BILLING CODE 4310–JA–M

[OR 36278 (WA)]

Modification of Notice of Realty Action; Exchange of Public Lands in Okanogan and Kittitas Counties, WA

This notice modifies that Notice of Realty Action published in the Federal Register, Volume 50, No. 45 on March 7, 1985, (50 FR 9333, March 7, 1985), by adding the following described parcel of land that has been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 36 N., R. 20 E., W.M.
Sec. 13, SE¼SW¼.

Publication of this notice segregates the public lands from the operation of all forms of appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of first publication.

For a period of 45 days from the date of first publication, interested parties may submit comments to the District Manager, Bureau of Land Management, U.S. Department of the Interior, East 4217 Main Avenue, Spokane, Washington 99202.

Dated: May 12, 1986.

Joseph K. Buesing,
District Manager.

[FR Doc. 86-12825 Filed 6-6-86; 8:45 am]
BILLING CODE 3410-11-M

Fish and Wildlife Service

Togiak National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Togiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes five strategies for long-term management of the 4.3 million acre refuge. Lands suitable for wilderness designation are identified for four of the alternatives. Each one identifies lands that would be suitable for addition to the National Wilderness Preservation System.

DATE: Remarks on the final CCP/EIS must be submitted on or before July 25, 1986 to receive consideration by the Regional Director.

ADDRESS: Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

A final CCP/EIS has been prepared for general distribution. Copies of it will be sent to all persons, organizations, and agencies which participated in the public-review process (either scoping meetings, alternative workshops, and/or public meetings/hearing). In addition, copies will be sent to all persons who have requested them. Those wishing to review the final document may obtain a copy by contacting Mr. Knauer.

Copies of the final CCP/EIS are available for public review at the office of the Regional Director, at the above address; at the Togiak National Wildlife Refuges Office, Dillingham, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg. 18th and C Streets, NW, Washington, DC 20240.

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103.

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111.

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell, Federal Bldg., 75 Spring Street, Atlanta, GA 30303.

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158.

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Togiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans. In addition, the final CCP/EIS and Wilderness Review also describe the general wilderness suitability of various acreages of refuge lands, under each of the management alternatives, in order to comply with the requirements of section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987.

Issues addressed by the plan focus on fish and wildlife management; problems with intensive human use in subarctic, sensitive fish and wildlife habitats; potential conflict between subsistence use, sport fishing, and off-refuge commercial fisheries; lack of resource data; potential oil and gas exploration and development; development and use of adjacent State and private lands; and management of refuge inholdings. Overall goal of the plan is to afford maintenance of fish and wildlife populations in their present state while creating opportunities for hunting, fishing, and other recreation uses, plus retention of historical subsistence use of the area.

This plan describes five options for management of the Refuge; the process pursued in their development; and the environmental consequences of implementing each alternative. The alternatives cover a broad spectrum of management emphasis. Alternative A describes the current situation which would maintain the Refuge in an undeveloped state. Alternative E is the more development oriented alternative, allowing for compatible oil and gas development and support facilities in designated areas. A modified alternative (Alternative CM), created in response to the comments to the draft plan made by the local residents and recreational users, emphasizes maintenance of existing (1985) recreational-use levels and traditional-access opportunities on the Refuge's rivers until affected user groups, adjacent landowners, and other interested groups can make recommendations on river management and until the Service completes a detailed public-use management plan. The Service chose this new alternative (Alternative CM) as the preferred alternative. By ensuring the Refuge's natural diversity, Alternative CM would support maintenance of key fish and wildlife populations and habitats by minimizing potential impacts from development. Furthermore, Alternative CM will provide for maintenance of

traditional access and for continued subsistence use of the Refuge's resources, while affording opportunities for oil and gas studies where compatible with refuge purposes. In response to recommendations made during the public review process, Alternative B has been revised to address local concerns: emphasis on protection of fish and wildlife resources and opportunities for subsistence harvests. The Service would conduct detailed subsistence studies and limit levels of river recreational use to 1980 levels. Alternative C has not been changed significantly from that in the draft plan, while Alternative D, parts of which are now embodied in other alternatives, was dropped.

The final plan also describes the general wilderness suitability of differing acreages of refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987. About half (2.3 million acres) of the Refuge is designated as wilderness. A range of recommendations is included in the plan's five alternative management strategies. Two alternatives (Alternatives C and CM) call for the same amount of acreage in designated wilderness while in one alternative (Alternative E) none is recommended; another (Alternative B) suggests as much as 1.4 million acres be considered for the National Wilderness Preservation System.

The Notice of Intent to prepare the draft CCP/EIS was published in the May 24, 1985, Federal Register. Other government agencies and the general public contributed to the development of this final CCP/EIS and Wilderness Review. After dissemination of the draft version nine public meetings were held during June and August, 1985, in Quinhagak; Tegiak/Twin Hills; Manokotak (at Igushik fish camp); Good News Bay; Platinum; and Dillingham. A public hearing was held in Anchorage, on July 9, 1985.

The U.S. Fish and Wildlife Service will issue a Record of Decision on this CCP/EIS after July 25, 1986.

Dated: June 2, 1986.

Robert E. Gilmore,

Regional Director.

[FR Doc. 86-12857 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species; Receipt of Applicants for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Florida State Museum, Gainesville, FL—PRT-707883, 708073, and 708074.

The applicant requests a permit to import and reexport collected and salvaged specimens of *Caiman latirostris, Caiman crocodylus yacare,* and *Melanosuchus niger* for scientific purposes. Specimens will be imported from and reexported to Bolivia, Brazil, and Paraguay.

Applicant: Duke University Primate Center, Durham, NC 27705—PRT-707856.

The applicant requests a permit to export one male and one female captive-bred ringtailed lemurs (*Lemur catta*) to Wielkopolski Park Zoo in Poland for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 2, 1986.

Earl S. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-12812 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventeenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on June 23 and 24, 1986.

The purpose of the meeting is to discuss issues and problems involving the establishment of international networks for transfer of technology generated in the implementation of international collaborative research support programs in food and agriculture by U.S. and developing country institutions. A new format for JCARD's operation and relationship with BIFAD will also be discussed.

JCARD will meet from 9:00 a.m. to 5:00 p.m. on June 23, 1986 and from 9:00 a.m. to 5:00 p.m. on June 24, in Rooms 3524 and 1107 respectively, New State Department Building, 22nd and C Streets, NW., Washington, DC (The Executive Committee will meet from 9:00 a.m. to 12:00 noon on June 23rd, 1986 in Room 5316, New State Building and the purpose of this meeting is to consider agenda items for future JCARD meetings). Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, DC 20523 or telephone him at (202) 647-8532.

Dated: May 30, 1986.

John Stovall,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 86-12899 Filed 6-6-86; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Petroleum Environmental Research Forum ("PERF") has filed a written notification

simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of PERF. The change consists of the addition of Ashland Oil, Inc., P.O. Box 391, Ashland, Kentucky 41114, to the membership of PERF.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification disclosing the identities of the original parties to the venture and the objectives of PERF and the area of its planned activity was published at 51 FR 8903, on March 14, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-12836 Filed 6-6-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket Nos. 85-61, 85-63, and 86-3]

Geoffrey A. W. DiBella, M.D. et al.; Hearings

Notice is hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Geoffrey A. W. DiBella, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AD6591843 and AD1452787, and deny his applications, executed on May 11, 1985 and May 21, 1985, respectively, for renewal of his registration as a practitioner under 21 U.S.C. 823(f).

Notice is also hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Manuel A. Sanchez-Acosta, M.D., two Orders To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AA 5052256 and AS2396011, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Notice is also hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice issued to Irving M. Greenfarb, D.O., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG4091714, and deny his application for renewal of that registration, executed on September 3, 1985, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since each said Order To Show Cause was received by the respective Respondent, and a written request for hearing having been filed with the Drug Enforcement Administration on behalf of each Respondent, notice is hereby given that hearings in these matters will be held, commencing at 10:00 a.m. on Monday, June 16, 1986, in the U.S. Tax Court Courtroom, Room 208, 26 Federal Plaza, New York, New York.

Dated: May 29, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-12843 Filed 6-6-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-5319 et al.]

Proposed Exemptions; Annuity Trust Fund of Exxon Corp., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Annuity Trust Fund of Exxon Corporation (the Fund) Located in Houston, Texas

[Application No. D-5319]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply on and after June 30, 1984, to: (1) The retention by the Fund of certain oil and gas royalty interests in properties where Exxon Corporation is the lessor, or retains a working interest or operates those properties through its division, Exxon Company, U.S.A.; (2) the Fund's disposition of oil for fair market value to

Exxon Corporation, its divisions or affiliates or other parties in interest; and (3) the Fund's receipt of the fair market value of gas from Exxon Corporation, its divisions or affiliates or other parties in interest.

The proposed exemption is subject to the condition that all terms and conditions under which the above-described transactions take place are at least as favorable to the Fund as could be obtained in an arm's-length transaction.

Summary of Facts and Representations

1. The Annuity Plans of Exxon Corporation, its divisions and affiliates which participate in the Fund (the Plans) are defined benefit pension plans having, as of December 31, 1984, approximately 84,000 participants and net assets of $4.5 billion. The Fund consists of a group of trusts created to hold plan assets such as securities and real property. Prior to 1982, the Fund was a consolidated trust for reporting purposes. On January 1, 1982, a master trust format was adopted, with the majority of assets held by Irving Trust, as trustee, and managed by several investment managers.

2. The named fiduciary of the Plans for financial matters is the Administrator-Finance, Mr. E.A. Robinson, who is Vice President and Treasurer of Exxon Corporation. The Administrator-Finance is responsible for establishing and carrying out funding policies and methods consistent with the objectives of the Fund. He also appoints trustees to hold, manage and control Fund assets and may direct any such trustee in the management and control of any assets held by the trustee. In addition, he is responsible for appointing and vesting in one or more investment managers the power to manage any Fund assets, including the power to acquire and dispose of Fund assets. The performance of all trustees is reviewed by the Administrator-Finance on a periodic basis.

3. Beginning in 1947, oil and gas royalty interests were acquired as investments for the 1932 Annuity Trust Fund, a predecessor of the current Fund. While these interests were created by conveyance from various parties from 1947 to 1973, the majority of acquisitions occurred from 1955 through 1957. No royalty interests have been acquired since the enactment of the Act in 1974.

4. The Fund owns royalty interests created under 431 oil and gas leases. Exxon Corporation (hereafter referred to as Exxon) has an interest in 230 of those leases, as follows: Exxon, through its division, Exxon Company, U.S.A., operates 151 leases; Exxon retains a working interest or has a royalty interest in an additional 79 leases; and Exxon has fee title to the property under three of the 230 leases. The Fund's royalty interests in the properties having Exxon involvement are small relative to other royalty interests that are widely held by parties unrelated to Exxon.

5. The Fund's royalty interests are held in two separate trusts. The Administrator-Finance has appointed First City National Bank of Houston (hereafter referred to as First City National Bank), Houston, Texas, and Louisiana National Bank, Baton Rouge, Louisiana, as trustees to hold Fund royalty interests in various oil and gas fields located in Louisiana, Texas, New Mexico and Mississippi. Louisiana National Bank holds title to the interests located in Louisiana and First City National Bank holds title to all other Fund royalty interests. The banks are independent trustees having the necessary authority to exercise independent judgment on administration and disposition of these royalty interests. The trust department of each bank has other accounts holding substantial oil and gas properties and maintains a staff experienced in managing these investments. As of December 31, 1984, Fund royalty interests accounted for less than 1% of all assets managed by First City National Bank and those interests together with Fund common stocks accounted for 1.2% of all assets managed by the bank. As of the same date, Fund royalty interests accounted for less than 1% of all assets managed by Louisiana National Bank. That bank does not hold any other Fund assets as trustee. Exxon and its affiliates account for less than 1% of the commercial credit and deposit business of each bank.

6. A typical oil and gas lease usually entitles a royalty interest owner to a fraction of oil produced and saved from the property; alternatively, the lessee has a right to take the royalty oil, paying the royalty owner the market price prevailing in the field on the date of purchase. In addition, a royalty interest owner is usually entitled to a fraction of the market value of gas produced from the leased property and sold or used off the premises, but is not entitled to take gas in kind. If a party owns only a royalty interest in a property, the party normally does not participate in leasing the property and does not have control over the terms of the lease. The royalty interest owner is simply entitled to a share of the proceeds of production if the property under lease is productive of oil and/or gas. Moreover, royalty owners not engaged in the refining and marketing of petroleum, such as the trustees of the Fund, have no means of disposing of their share of oil production under the royalty interests except to other parties, usually the operator of the lease. Payments for royalty owners' respective shares are generally made to them directly by the operator.

7. The Fund, acting through its trustees, currently disposes of its share of produced oil, as determined by a division order, to various oil purchasers. This has occurred since the inception of production from the leases covering these royalty interests and is planned to continue until no further oil is produced from the leased property. In many cases, the Fund's royalty oil, where Exxon operates or has a working interest in a lease, is acquired by Exxon. In some cases where Exxon acquires this oil, the oil is processed through Exxon-operated field facilities and may go to an Exxon refinery through pipelines connecting the leased property with a refinery.

8. From 1947 through 1984, Fund royalty interests provided more than $229 million of income, before depletion. In 1984, total Fund royalty interest income was $12 million, before depletion. At year-end 1984, the estimated market value of all Fund royalty interests was $41 million, or 1.1% of the market value of all trusteed Fund assests. The annual percentage returns on the Fund's royalty interests for the one, three, five, and ten-year periods ending December 31, 1984, were 25.1%, −4.2%, 12.1%, and 25.2%. The comparable annual percentage returns on the total trusteed assets of the Fund were 4.9%, 12.9%, 13.2%, and 12.2% and on the total trusteed assets of the Fund combined with insurance company contracts were 5.4%, 12.2%, 12.4%, and 11.0%. These rates of return take into account both cash income received by the Fund during the period and changes in the market value of the underlying assets during the period. The three-year negative return (−4.2%) on royalty interests was principally due to a one-time change in assumptions as to the future applicability of the windfall profits tax.

9. An exemption is requested to allow the Fund to continue holding its royalty interests in properties in which Exxon has related interests and to dispose of the oil to, and receive the market value of gas from, Exxon or other parties in interest of the Plans. The applicants believe that an administrative exemption for these transactions is not needed for the period prior to June 30, 1984, because of the transitional relief provided under sections 414(c)(2) and

2003(c)(2)(B) of the Act, relating to certain leases or joint uses of property.[1]

10. The applicants represent that sales of the royalty interest investments where Exxon has an interest would be difficult and economically injurious to the Fund. Unlike stocks and bonds, royalty interests generally are not traded on an exchange. The Fund's royalty interests could be sold only as the result of negotiated arrangements. Moreover, it is likely that these geographically dispersed interests would have to be packaged in some manner to make a sale economically attractive to a purchaser. In addition, each of the properties underlying the leases would need to be examined in detail and valued. The applicants believe that, overall, the cost to the Fund of selling these interests would be substantial and that there is a high risk the Fund would not receive fair market value since such a sale would be forced and the market for royalty interests is not liquid. The applicants also represent that the Fund would be interested in acquiring replacement royalty interests, to maintain its investment diversity, if the royalty interests with Exxon involvement were sold. However, there would be similar difficulties and expenses in identifying suitable, high-quality replacements and reserve data for replacement royalty interests would be controlled by third parties.

11. The applicants further represent that, if the Fund is allowed to retain the royalty interests with Exxon involvement, it would be impractical to prohibit the Fund from disposing of oil to Exxon and from receiving its fractional share of the value of gas from Exxon, for the following reasons:

(a) Since gas royalty interests normally do not permit the interest owner, such as the Fund, to receive its share of production in kind, the Fund cannot preclude Exxon, as operator, from taking the gas, selling it and paying the Fund its royalty share. Consequently, the Fund has no gas to sell directly to a third party. More than one-half of the Fund's 1984 royalty interest income was attributable to proceeds of gas production.

A similar result can arise where the royalty provisions in a lease specifically preclude taking oil in kind. The Fund would have to negotiate the right to take in kind with third-party operators. However, an operator, including Exxon, has no incentive to allow a royalty owner to take oil in kind. Generally, if there is any right to take oil in kind, this right is established when a lease is given. Successful attempts to negotiate this right after the lease has been given and the property has produced for a number of years are unlikely; an operator calculates facilitates needed to produce the minerals prior to actual operations on the basis of the quantity of oil and gas available to the operator.

(b) Even if the Fund could arrange to take its share of oil production in kind for disposition to third parties, this option is substantially curtailed by the logistics and economics of transporting produced oil. Currently, wells in fields where the Fund's royalty interests are located in many instances have been and now are being served by Exxon-operated field facilities built and maintained to gather oil from all wells in the field. The Fund's royalty interests are widely dispersed through these fields. There is no economic incentive for a third party to invest in a costly delivery system for geographically dispersed wells, each producing relatively small amounts of Fund royalty oil.

An alternative would be shipment of oil from the well by tank truck. To make this attractive, the Fund would have to install tanks and metering facilities at each well and provide and maintain access roads suitable for tank truck operations. Even if oil brokers could be attracted to take the small volumes of royalty oil available at each well in this manner, the cost of providing these facilities could be high relative to the value of the oil. Also, additional marketing and accounting expenses would have to be borne by the Fund to dispose of the royalty oil in this manner.

(c) Under the existing arrangement, the Fund receives the same proportionate amount of income as other royalty interest owners on a given lease. In protecting their own interests, these royalty holders protect the Fund's interests. Moreover, Fund trustees can independently verify price and production data at all times to assure that the Fund is receiving fair market value. For example, oil is sold at nonregulated market prices that are posted for large areas, not on a lease-by-lease basis. The posted prices are well known and widely disseminated. Gas prices are regulated under the Natural Gas Policy Act. Ceiling prices, by category of gas, are published monthly by the Federal Energy Regulatory Commission. Royalty owners can review information on volumes of oil and gas production that producers are required to report to state regulatory agencies. Also, royalty owners have a legal right of access to sales contracts on oil and gas sold from royalty properties.

12. The applicants indicate that Exxon's involvement in properties where the Fund has royalty interests is advantageous to the Fund. Exxon is an operator of established competence; its enhanced recovery and other production technology capabilities can assure that the value of the Fund's royalty interests is maximized. The operators of the leases in which Exxon has only working interests are companies in whose competence Exxon has sufficient confidence to invest its own money. In addition, Exxon's operation of, or its working interest in, producing leases affords the Fund superior access to important reserve information.

13. Louisiana National Bank, acting as an independent fiduciary on behalf of the Fund, represents that it believes the Fund's Louisiana royalty interests are good investments that have provided a high investment return, carry a relatively stable market value and add to the diversification of plan assets. Similarly, First City National Bank, acting as an independent fiduciary on behalf of the Fund, represents that it considers the Fund's royalty interests under its management to be a prudent investment within the meaning of section 404(a)(1)(B) of ERISA. Each bank further represents that it maintains adequate controls for tracking royalty payments, that it will monitor payments on a regular basis to assure their accuracy and completeness, and that in the event of discrepancies it will take appropriate actions, including legal action, to enforce the rights and protect the interests of the Fund.

14. In summary, the applicants represent that the transactions meet the criteria for an exemption under section 408(a) of the Act because: (1) First City National Bank and Louisiana National Bank have been appointed as independent fiduciaries having authority to administer and dispose of the royalty interests; (2) the royalties paid to the Fund are proportionately comparable to those received by other royalty interest owners from Exxon in arm's-length transactions; (3) market prices and production volumes of oil and gas can be independently verified; (4) the royalty interests now yield, and are predicted to yield, attractive returns in comparison to other Fund investments; (5) it would be difficult and costly for the Fund to divest the royalty interests and to acquire comparable replacement investments; or to provide for the disposition of oil to, and the receipt of gas value from, entities other than Exxon or other parties in interest with

[1] The Department expresses no opinion concerning the status of the royalty interest investments under sections 414(c)(2) and 2003(c)(2)(B) of the Act.

respect to the Plans; (6) Exxon's involvement has certain advantages for the Fund; and (7) the independent fiduciaries will take appropriate actions to enforce the rights and protect the interest of the Fund.

Notice to Interested Persons: Notice to interested persons will be provided within 45 days of the date of publication of this notice in the Federal Register. Comments and hearing requests are due within 75 days of the date of publication.

For Further Information Contact: Mr. John S. Hunter of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of June, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-12948 Filed 6-6-86; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for improving the quality of law school civil clinical programs. The Corporation will distribute between eight and twenty-four one-time grants to geographically dispersed law schools of varying sizes. Each grant will be for 12 months. Applicants may request funding of up to $50,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Grantees are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit schools. appropriate documentation of eligibility.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before July 10, 1986. Grant awards will be announced by August, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Moses, Legal Services Corporation, Office of Field Services, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: In 1984, LSC funded fourteen (14) law school clinics in a nationwide research project designed to test the utility of LSC involvement with clinical legal education. In 1985, this effort was supplemented by a special Congressional appropriation which allowed LSC to fund an additional twenty (20) law school clinics. On the basis of these experiments, LSC has discovered that such law school clinics offer a unique opportunity for augmenting existing legal services programs. Efficient and cost-effective services can be provided by permitting law students to participate directly in the delivery of legal services. More importantly, such clinics create a "ripple" effect which encourage law students to become actively involved in the provision of legal services to the poor. They provide an excellent training ground for future legal services attorneys by encouraging more clinic trained students to actively seek employment with legal services field offices. Further, after being exposed to the special needs of LSC eligible clients, law students are more likely to continue to provide *pro bono* representation or reduced fee representation in private practice. This clinical experience provides students with the legal knowledge necessary to insure effective future representation. In these ways, law school clinics can not only help to meet the immediate needs of indigent persons, but potentially work, now and into the future, to reduce the ever increasing case burden of federally funded legal assistance programs.

Consequently, the LSC Board of Directors has annualized law school clinical education as a separate item in the LSC budget. This marks the first year in which Congress has been specifically requested by LSC for an additional sum of money to be dedicated to law school clinical education. These clinical grant competitions are planned to continue on a yearly basis.

This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs which address the civil legal needs of poor persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population (e.g., Native American, handicapped, homebound,

isolated, and rural residents) or filling in the gaps in existing services and resources.

A variety of methods could be used to provide these services including but not limited to: (1) An independent university sponsored clinic; (2) a joint clinic in which existing faculty provide legal instruction while LSC field attorneys provide the necessary clinical supervision; (3) a law school clinic concentrating on a previously underserved, specific client population (e.g., Native American); (4) a law school clinic concentrating totally in one field of law (e.g., Social Security Disability, SSI); and (5) a joint model in which an attorney becomes appointed as an adjunt professor at the law school thereby becoming responsible for both the law education and the clinical supervision of law students.

All proposals will be evaluated by an advisory committee comprised of outside experts and Corporation staff using selection criteria which include: (1) The provision of a clear description of clinic activities to increase legal services to the local LSC eligible client population, and an effective plan for management of the project; (2) evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic, especially to appropriate levels of student supervision; (3) the extent to which a cooperative effort is shown between an area's legal services provider and the corresponding area law school clinics. Letters or other evidence of support by this organization for the proposed clinic may be attached where appropriate; (4) evidence that the proposed clinic provides for the high quality education and training of students in the necessary areas of the law; (5) the degree to which the institution's regular budget is currently allocated to its clinical education program, and to its clinical activities. Assurances or evidence that such budgetary support will be maintained during and beyond the term of the grant. The viability of the civil clinic beyond the term of the grant must be specifically addressed; (6) the provision of the budget which is adequate to support clinic activities which cites costs that are reasonable in relation to the duration and objectives of the proposed clinic. Funds should be used to maximize the number of student participants and quality service provision; and, (7) demonstration that the applicant plans to make an adequate in-kind contribution which, among other things, could include contribution of adequate facilities and equipment to the proposed clinic. Indirect administrative costs cannot be charged to the LSC grant funds.

Note.—*Federally funded assets and projects cannot be counted as an in-kind contribution).* Final funding decisions will be made by the President of LSC.

To ensure nationwide participation and geographic distribution, OPS has created seven administrative regions to be used strictly for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion combined with the desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be selected in each of the seven regions.

The seven LSC/OPS Law School Civil Clinical Program regions containing all areas in which LSC provides legal services are listed below:

Region #1

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Rhode Island
Vermont

Region #2

Delaware
District of Columbia
Kentucky
Maryland
North Carolina
Virginia
West Virginia

Region #3

Alabama
Arkansas
Florida
Georgia
Louisiana
Mississippi
Tennessee
Puerto Rico
South Carolina
U.S. Virgin Islands

Region #4

Illinois
Indiana
Michigan
Ohio
Pennsylvania

Region #5

Colorado
Kansas
Missouri
New Mexico
Oklahoma
Texas

Region #6

Alaska
Idaho
Iowa
Minnesota
Montana
Nebraska
North Dakota
Oregon
South Dakota
Washington
Wisconsin
Wyoming.

Region #7

Arizona
California
Hawaii
Nevada
Utah
Micronesia
Guam

James H. Wantzel,
President, Legal Services Corporation.
[FR Doc. 86-12859 Filed 6-6-86; 8:45 am]
BILLING CODE 6820-35-M

NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-220]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corporation for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, New York.

The application for amendment dated May 22, 1986, would modify Technical Specification (TS) section 6.12, High Radiation Area, Table 3.6.2a, Instrumentation That Initiates Scram, Table 3.6.2b, Instrumentation That Initiates Primary Coolant System or Containment Isolation, Table 3.6.2h, Vacuum Pump Isolation, and the notes to these three tables to allow Niagara Mohawk to demonstrate the feasibility of a Hydrogen Water Chemistry System as a mitigator of intergranular stress corrosion cracking of stainless steel piping at Nine Mile Point Unit 1.

Niagara Mohawk is investigating the implementation of Hydrogen Water Chemistry as a possible mitigator of intergranular stress corrosion cracking in reactor recirculation system piping. To demonstrate the feasibility of a permanent Hydrogen Water Chemistry System for Nine Mile Point Unit 1, a pre-implementation test will be conducted. The test is to be performed by Niagara Mohawk and General Electric and is similar in scope to hydrogen injection tests previously performed at other nuclear power plants. Experience gained from these programs will be incorporated into the Nine Mile Point Unit 1 test plan.

The pre-implementation test involves injecting hydrogen into the feedwater system from zero to approximately 45 standard cubic feet per minute in predefined increments of 2-4 standard cubic feet per minute. A stoichiometric amount of oxygen will be added upstream of the recombiner to aid in proper off-gas recombination. During this stage, various chemical and operating parameters (e.g., H_2O_2, electrochemical potential) will be monitored to define the intergranular stress corrosion cracking immune regime for Nine Mile Point Unit 1.

The addition of hydrogen lowers the solubility of the nitrogen in the reactor

water causing increased nitrogen carryover in the main steam; thereby resulting in approximately a one- to five-fold increase in the N–16 activity in the steam. The resultant increase in the background radiation level necessitates a temporary change to the main steam line high radiation scram and isolation setpoints.

The changes made to the Technical Specifications are the inclusion of a note to the main steam line high radiation scram and isolation setpoints (Tables 3.6.2a, 3.6.2b) and vacuum pump isolation (Table 3.6.2h). This change will allow the setpoints initially to be changed based on a calculated value of the radiation level expected during the test. Once the test has begun, these setpoints may be changed based on either revised calculations or measurements of actual radiation levels resulting from hydrogen injection.

The test will be performed with the reactor power at greater than 20% rated power. The initial setpoint changes may be made within 24 hours prior to the planned start of the hydrogen injection test. The setpoints shall be re-established to five times normal rated power background within 24 hours following completion of the test or within 12 hours of establishing reactor power levels below 20% rated power, while these functions are required to be operable. Additionally, hydrogen injection shall be terminated and the injection system secured if reactor power is less than 20% rated power.

The only accident which takes credit for this setpoint is the control rod drop accident. This accident is most severe at hot standby with the main steam lines wide open as opposed to power operation because:

(1) Reactivity worths of the control rods are greater at hot standby than at power, and

(2) Fission products released as a result of the excursion are transported to the main condenser, then to the high flow mechanical vacuum pump system and eventually offsite, instead of the offgas system.

A bounding analysis (FSAR Revision 3, Chapter XV, section C.4, Control Rod Drop Accident) has been performed to establish limits for incremental control rod worths to ensure that the peak fuel enthalpy does not exceed 280 cal gm (a limiting value) if the maximum worth control rod were to drop out. The analysis has shown that limits on control rod worths are necessary for power levels less than 20 percent of design rated. Above 20 percent of rated design power inherent feedback mechanisms, primarily in the form of steam voids, limit the control rod worth to such an extent that the control rod drop accident need not be considered.

As stated in Chapter XV, section C.4.5.2 of the Final Safety Analysis Report for Nine Mile Point Unit 1, the doses resulting from this accident are well below 10 CFR 100 guidelines. Hence, even assuming a five-fold increase in the accident because of the increase in the background level following hydrogen injection, the resulting off-site radiological effects would conservatively reamin below 10 CFR 100 guidelines.

The bases for 3.6.2 and 4.6.2, Protective Instrumentation, indicates that in addition to the control rod drop accident, the radioactivity at the main steam line radiation monitor, due to the gross failure of one rod with complete fission product release from the rod, would exceed the normal background at the monitor. This function of the main steam line radiation monitor can also be provided by the condenser air ejector radioactivity monitor and the stack monitor, which must meet the operability requirements of Specification 3.6.14. These monitors can detect lower levels of radioactivity than the main steam line radiation monitor.

In addition to the above, a note is being added to Specification 6.12 to indicate that certain areas may temporarily exceed 1000 mrem/hr during the hydrogen water chemistry test without having access controlled by locked doors under the administrative control of the Station Shift Supervisor. These areas do not have to be continually manned to safely shut the plant down.

An ALARA review will be performed prior to beginning the injection test. The hydrogen water chemistry tests will be conducted at night to minimize potential exposure to plant personnel. Extensive in-plant and site radiation surveys will be conducted at regular intervals during the test to monitor the actual doses. As required, radiation protection measures will be implemented to maintain doses as-low-as-reasonably achievable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of no significant hazards consideration as follows:

10 CFR 50.91 requires that at the time a license requests an amendment, it must provide to the Commission its analysis, using the standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed:

Operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The only accident which takes credit for the Main Steam Line High Radiation trip is the design basis control rod drop accident (Technical Specification Bases for 3.6.2 and 4.6.2, Protective Instrumentation). As stated in the FSAR, Chapter XV, section C.4, a control rod drop accident occurring at power greater than 20%, regardless of the rod pattern, will never result in a peak fuel enthalpy that will result in fuel damage. Since the Main Steam Line High Radiation Monitor setpoints will be increased for hydrogen injection at power levels of 20% or higher, there is no affect on the Technical Specification Bases and the design function of the Main Steam Line High Radiation Monitor trip will remain valid.

If the reactor drops below 20% rated power prior to setpoint readjustment, the hydrogen injection shall be terminated and the system secured. The necessary setpoint readjustment shall be made within 12 hours, while these functions are required to be operable. At all times the capability to monitor for fuel failures, which is the purpose of the Main Steam Line Radiation trip setpoint, will be maintained by: (i) The continued operability of the main steam radiation monitors which provide signals to the reactor protection and primary containment isolation systems; (ii) routine radiation surveys; (iii) the performance of primary coolant water analysis; and (iv) the continued operability of the condenser air ejector radioactivity monitor and stack monitor. Due to these continued monitoring capabilities, the proposed license amendment does not involve a significant increase in the consequences of an accident previously evaluated.

The addition of the note to Specification 6.12 to allow certain areas to exceed 100 mrem/hr without having access controlled by locked door (gates) under the administrative control of the Station Shift Supervisor is an administrative control to maintain personnel exposure ALARA. Since additional administrative controls are being taken during the hydrogen water chemistry test, personnel exposure will still be maintained ALARA and the proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

Operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the only event affected by the temporary increase on the main steam line High Radiation scram and isolation setpoints is the control rod drop accident, which has been previously evaluated. This proposed amendment will result only in the changing of a setpoint; which by itself, cannot introduce a new or different kind of accident from any previously evaluated.

The addition of the note to Specification 6.12 is an administrative control to assist in maintaining personnel exposure ALARA. Therefore, this proposed change also cannot create the possibility of a new or different kind of accident from any previously evaluated. *Operation of Nine Mile Post Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.* A temporary increase in the Main Steam Line High Radiation scram and isolation setpoints will not affect any FSAR Chapter 15 accident or transient analysis, other than the control rod drop accident, which is the only event that takes credit for this signal. Also, since the Main Steam Line Radiation monitor setpoint will be increased only for hydrogen injection at power levels of 20% or higher, the Technical Specification Bases and the design function of the Main Steam Line High Radiation trip will remain valid.

The addition of the note to Specification 6.12 has no affect on any margins of safety.

As determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. By July 8, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the poceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Director, BWR Project Directorate #1, Division of BWR

Licensing; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania, NW, Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the State University College at Oswego, Penfield Library—Documents, Oswego, New York.

Dated at Bethesda, Maryland, this 3rd day of June 1986.

Jack N. Donohew, Jr.,

Acting Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-12925, Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

Commonwealth Edison Co.; La Salle County Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-11 for La Salle Unit 1, and Facility Operating License No. NPF-18 for La Salle Unit 2, issued to the Commonwealth Edison Company (licensee), for operation of the La Salle County Station, Units 1 and 2 located in La Salle County, Illinois.

Environmental Assessment

Identification of Proposed Actions

The proposed actions would provide revisions to Appendix B "Environmental Protection Plan" for La Salle County Station, Units 1 and 2 by: (1) Terminating the present required monitoring of fog and ice due to the cooling pond to determine whether there is an environmental impact, and (2) terminating the requirement to report violations of the National Pollutant Discharge Elimination System (NPDES) Permit or State Certification to the NRC.

The fog and ice monitoring program was undertaken to explore the validity of a concern expressed in the La Salle County Station Final Environmental Statement for the possible occurrence of heavy fog arising from the cooling pond drifting to and obscuring the state, county, and township roads that border the site or the possible formation of rime ice on nearby vegetation. Reporting violations of the NPDES to the NRC is done for the NRC's general information; licensee's complaince with the NPDES is regulated by the Illinois Environmental Protection Agency.

The licensee's request for these revisions, and the basis therefor, are contained in its letter dated March 10, 1986.

The Need for the Proposed Actions

The licensee's justification for terminating the fog and ice monitoring programs is that the results of the monitoring programs have met the requirements of performing analyses for a 12 month period of one unit in operation and a 12 month period of two unit operation. The results of the monitoring program showed icing not to be a factor in vegetation injury in or around La Salle County Station and that fogging was of minimal occurrence. In the area of NPDES compliance, the NRC relies on the Illinois Environmental Protection Agency for regulation; and therefore, the NPDES noncompliance reports to the NRC are not needed.

Environmental Impacts of the Proposed Actions

The results of the observations of fog and icing conditions relating to the cooling pond operation during the cold periods from 1980 through 1984, indicated minimal impact in that fog and icing events were primarily on site, in close proximity to the cooling pond and, thus, did not affect public roads or structures offsite which was the concern stated in the La Salle County Station Environmental Statement. Termination of the monitoring program will have no impact on the environment. Regarding the reporting of NPDES noncomplaince, since NPDES matters are regulated by the Illinois Environmental Protection Agency and not by the NRC, submittal of noncomplaince reports to the NRC was only for general information. Discontinuing the submittal of the reports to the NRC will have no environmental effect of any kind. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed revisions.

Alternative to the Proposed Actions

Because the Commission has concluded that there is no measurable environmental impact associated with the proposed revisions, any alternative to the revisions would have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the revisions. Such action would not reduce environmental impact of the operation of La Salle County Station, Units 1 and 2 and would require actions no longer necessary.

Alternative Use of Resources

These revisions to Appendix B do not involve the use of sources not previously considered in connection with the La Salle County Station Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request to support the proposed revisions. In addition, the NRC staff contacted the state of Illinois for any comments and the state of Illinois had no comment.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the propsoed actions will not have significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed revisions.

For further details with respect to the actions, see the licensee's request for the revision dated March 10, 1986, which is available for public inspection at the Commission's Public document Room 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Bethesda, Maryland, this 4th day of June 1986.

For The Nuclear Regulatory Commission.

Anthony Bournia,

Acting Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86-12919 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

BEST COPY AVAILABLE

[Docket No. 50-251]

Florida Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c)(4) to Florida Power and Light Company (the licensee), for the Turkey Point Plant, Unit No. 4, located at Dade County, Florida.

Environmental Assessment

Identification of Proposed Action

The exemption would grant schedular extensions for the completion of the following fire protection items for Unit 4 and common areas.

1. Cable reroute.
2. Penetration seals.
3. Raceway (conduit) protection by fire rate barriers.
4. Alternate Shutdown System, common procedures and areas (control room, cable spreading rooms and the Auxiliary Building north-south breezeway).

The scope of additional work needed in these areas was identified as the result of reverification effort by the licensee.

The Need for the Proposed Action

When the reverification program indicated the need for additional modifications, necessary engineering and procurement were required by the licensee. The magnitude of the work associated with the modifications is such that it does not allow the 10 CFR 50.48(c) schedule to be met. The exemptions are strictly schedular in that they allow the modification schedule to be extended, with interim compensatory measures in place, which will provide the necessary fire protection until the corresponding modifications are completed.

Environmental Impact of the Proposed Action

The proposed action only affects the length of time for the required modifications to be completed. The licensee has proposed interim compensatory measures to provide the necessary level of fire protection until the modifications are completed. Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the 50.48(c)(4) requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Turkey Point Plant, Units 3 and 4.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for exemption dated October 11, 1985 and April 4, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 3rd day of June 1986.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-12920 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Babcock and Wilcox (B&W) Reactor Plants; Meeting

The ACRS Subcommittee on Babcock and Wilcox (B&W) Reactor Plants will hold a meeting on June 25, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 25, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will consider the B&W Owners Group plans to reassess the long-term safety of B&W reactors, including, the implications of operating experience on the adequacy of B&W plant designs. The focus of this section of the meeting will be the B&W Owners Group Trip Reduction and Transients Response Improvement Program. The Subcommittee will also be briefed on the NRC Staff's Incident Investigation Team's (IIT) findings related to the December 26, 1985 loss of integrated control sysem power and overcooling transient at the Rancho Seco nuclear power plant.

Oral statements may be presented by members of the public with the concurence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizants ACRS staff member, Mr. Richard Major (telephone 202/634-1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 2, 1986.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 86-12922 Filed 6-6-86; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Davis-Besse; Meeting

The ACRS Subcommittee on Davis-Besse will hold a meeting on June 27, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, June 27, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will review start-up activities for Davis-Besse.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable to that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 2, 1986.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 86-12921 Filed 6-6-86; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Gas Cooled Reactor Plants; Meeting

The ARCS Subcommittee on Gas Cooled Reactor Plants will hold a meeting on June 26, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thurdsay, June 26, 1986—1:00 P.M. until the conclusion business

The Subcommittee will review the applicability of NRC requirements for equipment qualification and cable testing and other topics related to Fort St. Vrain, an HTGR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intitial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John C. McKinley (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Person planning to attend this meeting are urged to contact one of the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 2, 1986.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 86-12923 Filed 6-6-86; 8:45 am]
BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.56, "General Guidance for Designing, Testing, Operating, and Maintaining Emission Control Devices at Uranium Mills," describes procedures acceptable to the NRC staff for designing, testing, operating, and maintaining these emission control devices to ensure the realiability of their performance.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated At Silver Spring, Maryland, this 2nd day of June 1986.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 86-12894 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Revision of OMB Circular A-21, "Cost Principles for Educational Institutions"

AGENCY: Office of Management and Budget.

ACTION: Notice of revision to OMB Circular A-21, "Cost Principles for Educational Institutions".

SUMMARY: This ntoice revises OMB Circular A-21, "Cost Principles for Educational Institution." This revision is based on the numerous thoughtful comments received in response to the proposed revision published for comment in the February 12, 1986 Federal Register.

Effective July 1, 1987, Circular A-21 is revised to set a fixed overhead allowance for the administration of federally sponsored grants and contracts by department heads and faculty. The fixed allowance will equal 3 percent of modified total direct costs. No faculty reporting will be required to support the allowance. University indirect cost rates will be the sum of the rate negotiated for departmental administration, the negotiated rates for the remaining six cost pools, plus the 3 percent fixed allowance. The revision takes effect on July 1, 1987. Indivdual Federal agencies may elect to utilize the fixed allowance prior to July 1, 1987.

We agree with many of the comments received during the 3 month consultation with the university and scientific community begun with the February 12, 1986 Federal Register notice. We have refined the February 12th proposal accordingly. The final revision focuses on the narrow area of departmental administration. This area is costly to document and subject to considerable audit controversy.

A fixed allowance for the salaries of faculty and department heads engaged in administrative activities which support federally-funded research will eliminate any Federal requirement for faculty reporting to document overhead allocations. The elimination of this requirement will greatly reduce the controversy among individual researchers, their institutions, and the Federal funding and audit agencies. In addition, the allowance will restore, a more appropriate balance between direct Federal research support and overhead payments.

When additional data become available, we will consider an adjustment to the 3 percent fixed rate for departmental administration by department heads and faculty. We are also willing to consult further with universities on ways to improve the conduct of research.

Background

Prior to 1966, the Federal Government used a fixed, national rate to establish the amount of Federal payments for overhead allocated to federally sponsored research. After the Federal Government adopted the current policy of negotiating individual cost-based requirement rates with individual universities, Federal overhead payments increased from 22 percent of total Federal research support to universities in 1970 to 24 percent in 1974 and 31 percent in 1985.

The disproportionate growth of overhead payments has been recognized as a threat to maintaining appropriate levels of research support. This growing share of overhead payments has provoked tensions within universities, between scientists and administrators, and between universities and Federal funding and audit agencies.

The discussion of increasing overhead payments resulted in a consensus among Congress, the General Accounting Office, the Inspector General of the Department of Health and Human Services (HHS), the Office of Science and Technology Policy, and the White House Science Council on the need for a government-wide policy to address the share of Federal university research spending expended on allocated overhead.

Congressional Directives

The FY82 Senate Labor/HHS Appropriation report stated, "Should indirect costs continue to increase as a percentage of total costs, the amount of money appropriated by the Congress will finance less and less actual research." (Report 97-288, p. 48) The House Appropriations subcommittee on Labor/HHS, expressing itself in its FY85 report (House Report 98-911, p. 31), held that allocated overhead should be addressed through a government-wide plan. In the conference report for the RY86 Labor/HHS appropriation bill (House Report 99-402, p. 28), Congress stated that containing research costs and payments for allocated overhead should be a high priority of all executive branch agencies.

General Accounting Office

In the 1984 report, "Assuring Reasonableness of Rising Indirect Costs on NIH Research Grants—A Difficult Problem," (GAO/HRD-84-3) the General Accounting Office found that university allocations of departmental adminsitration overhead to federally sponsored research are subjective and difficult toverify. The General Accounting Office also found that: first, current A-12 allocation criteria give universities broad discretion in allocation of overhead to Federal research grants and, second, universities' overhead allocations are rarely audited by HHS, which sets overhead payment rates for 98 percent of the universities receiving Federal research grants.

The General Accounting Office recommended that OMB revise A-21 to limit overhead allocations to a fixed percentage of departmental administration expenses, thus ensuring reasonable reimbursement for overhead and a reduction of universities' accounting and reporting burden.

HHS Inspector General

In December, 1985, the HHS Inspector General published the report, "The Impact of Indirect Costs on Research Sponsored by the Federal Government at Universities and Colleges." The report recommended a 7 percent fixed allowance for all departmental administration overhead allocated to federally sponsored research. The 7 percent fixed allowance applied to the entire departmental administration pool—deans, department heads, faculty, clerical support, and miscellaneous overhead.

In a sample of 13 research universities, the HHS Inspector General found that faculty administration (and the associated salaries) tends primarily to benefit instruction and not federally sponsored research—and recommended that no allowance be made for such salaries. The HHS Inspector General also found that clerical support which ought properly to be allocated to instruction and other institutional activities is being charged to federally sponsored research—and recommended that a fixed allowance be established for such support activities. In the view of the HHS Inspector General, OMB Circular A-21 lacks clear criteria for allocation of departmental administration overhead to federally sponsored research, particularly with respect to the allocation guidelines for faculty salaries.

Office of Science and Technology Policy

The Office of Science and Technology recommended last fall that a single fixed rate for all allocated administrative overhead, based on a five year average, be phased in over two years. In addition to restoring the balance between direct Federal research support and overhead payments, the Office of Science and Technology Policy argued that the plan would eliminate the need for faculty activity reporting to document university allocations of faculty and department heads salaries to federally sponsored research.

Packard-Bromley Panel

On May 13, 1986, the White House Science Council released the report of the Panel on the Health of U.S. Colleges and Universities. Among its numerous recommendations, the Panel recommended a fixed, national rate for allocated administrative overhead. The Panel proposed to phase-in the national rates over two years. The Panel also proposed: (1) Elimination of faculty reporting to document overhead allocations, (2) peer review of allocated overhead as well as direct costs, (3) increases in use allowances for facilities and equipment, and (4) reductions of Federal administrative burdens.

Proposed Revision of February 12, 1986

On February 12, 1986, OMB proposed to phase-in a fixed rate for administrative allocated overhead to: first, reduce the controversy among researchers, their institutions, and Federal funding and auditing agencies and, second, restore an appropriate balance between direct Federal research support and overhead payments. This proposal followed up on Congress' directive to address the growth of overhead payments, and was based on recommendations of the General Accounting Office, the HHS Inspector General, and the Office of Science and Technology Policy to set a fixed rate for a subset of the overhead categories. The proposal also adopted the HHS Inspector General's specific recommendation to reduce administrative overhead rates from the current national average.

Comments on the February 12th Proposal

Over 300 comments were received in response to the February 12th publication. The major comments were:

Comment: Due to organizational differences, some universities charge clerical support as allocated overhead while others charge it as a direct cost. The February 12th proposed revision would impact more heavily on universities which charge clerical support as allocated overhead.

Response: We agree. In light of these legitimate organizational differences, a more selective approach is preferable to the February 12th proposal. We have accordingly focused the fixed allowance on salaries of faculty and department heads. This will avoid disruption to the organizational arrangements of universities and will not restrict the allocation of clerical support costs.

Comment: Set payments for faculty administrative efforts at a fixed percentage of faculty salaries.

Response: We agree conceptually with this approach. The revision applies this concept against the base of modified total direct costs of federally sponsored research.

Comment: Focus the revision on departmental administration, excluding non-controversial administrative overhead from the fixed rate.

Response: We agree.

Comment: Allocated overhead as well as direct costs should be reviewed during scientific peer review of funding applications.

Response: We agree.

Comment: Universities should be permitted to charge more of allocated overhead as direct costs.

Response: We agree. Charging more of existing allocated overhead as direct costs would subject these charges to proper scientific peer review and improve the allocation and management of scarce research funds.

Comment: Federal administrative burdens, such as effort reporting, application requirements, and funding controls should be reduced to a minimum.

Response: We agree. The three percent fixed allowance for research administration by faculty and department heads will result in the elimination of Federal requirements for faculty reporting to document overhead allocations. OMB encourages the research community to identify areas where federally-imposed administrative burdens could be reduced. In addition, OMB will conduct a thorough review of all paperwork requirements associated with Circular A–21.

Comment: Universities would not have time to adjust to reduced payments for allocated overhead.

Response: We agree that the February 12th notice did not clearly indicate that the fixed rate would be phased-in gradually by being applied to only new grants. We have corrected this, and believe most universities are able to adjust to the revision. Those facing a severe hardship will, under the current notice, be able to apply for a waiver.

Comment: Freeze overhead payment rates at 90 percent of current rates for one year rather than changing A–21.

Response: An arbitrary reduction would affect all universities regardless of their current overhead payment rate, and would run counter to specific Congressional guidance. In addition, a rate freeze would not permit the elimination of Federal requirements for faculty reporting to document overhead allocations.

Comment: OMB proposed the revision without consulting the affected parties.

Response: The February 12th proposal was published to initiate the consultation process. We believe that consultation is best achieved when all affected parties have a specific proposal to discuss and analyze, thus permitting the presentation of alternatives. We believe in fostering the university-government partnership by opening the debate on issues to all affected parties. Since the February 12th proposal, we have heard from and consulted with numerous affected parties.

Comment: The proposal departs from the White House Science Council report.

Response: The report, released in early May, is currently being reviewed by the Executive Branch. Based on a preliminary review, we believe that the report's recommendations regarding overhead deserve considerable attention. We believe the 3 percent fixed allowance is consistent with the report's recommendations. We note that the formal requirement for cost sharing has already been eliminated. Further, we note that the Department of Health and Human Services (HHS) intends to adopt the National Science Foundation's practices for the award and payment of overhead allocated by universities to federally sponsored research. HHS also intends to institute peer review of allocated overhead associated with proposed grant budgets. Together, these initiatives will respond to a significant number of the report's recommendations.

Comment: Circular A–21 should be revised to change the use allowances for buildings and equipment.

Response: While use allowances are beyond the scope of the February 12, 1986 notice, we will consider any proposals advanced as part of future discussions on improving the administration of research. Until a further revision of Circular A–21, institutions may find it profitable to use the current A–21 provisions which allow depreciation of facilities.

Revision of Circular A–21

We continue to share Congress' concern that the growth of allocated overhead threatens the continued productivity of the Federal/university research partnership.

Consistent with the reports of the General Accounting Office, the HHS Inspector General, and the Office of Science and Technology Policy, we believe that Circular A–21 should be revised to reduce the controversy among scientists, their institutions, and the various Federal funding and auditing agencies. In addition, the revision should restore an appropriate balance between direct Federal research spending and overhead payments.

Responding to the numerous thoughtful insights of commenters, a fixed 3 percent allowance for the research administration efforts of faculty and department heads is established, effective July 1, 1987. The revision will greatly reduce the current friction among researchers, universities, and Federal funding and auditing agencies. The allowance focuses on the area of greatest concern, salaries of department heads and faculty in departmental administration, but adopts the thrust of numerous suggestions that the revision recognize the organizational diversity of educational institutions.

Overhead payments for salaries of faculty and department heads will be calculated as 3 percent of modified total direct costs. University indirect cost rates will be the sum of the rate negotiated for departmental administration, the negotiated rates for the remaining six pools, plus the 3 percent fixed allowance.

Faculty reporting will not be required to support the 3 percent allowance.

Implementation

The revision is effective July 1, 1987. Individual Federal agencies may implement the revision upon publication.

June 4, 1986.

Circular No. A–21, Revised Transmittal Memorandum No. 2

To the Heads of Executive Departments and Establishments

SUBJECT: Cost Principles for Educational Institutions

This transmittal memorandum revises OMB Circular No. A–21, "Cost Principles for Educational Institutions," to establish a 3 percent allowance to cover the administrative work of department heads and faculty.

Effective on grants and contracts awarded on or after July 1, 1987, Circular A–21 is revised as follows:

Departmental administration expenses.

Revise F.4.a.(2)(a):

(2) Academic departments

(a) Salaries and fringe benefits attributable to the administrative work of department heads, directors of divisions and organized research units, faculty and professional staff shall be allowed at a rate of 3 percent of modified total direct costs. This allowance shall be added to the computation of the indirect cost rate for major function in section G.; the expenses covered by the allowance shall be excluded from the development and allocation of the departmental administration cost pool. No documentation is required to support this allowance.

General Administration and General Expenses

Add the following sentence to F.3.a.:

General administration and general expenses shall not include expenses incurred within dean's offices, academic departments, organized research units, or similar organizational units (see section F.4., departmental administration expenses).

Sponsored Projects Administration

Revise F.5.a. as follows:

(a) The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal) special security, purchasing , personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation/use allowances. Appropriate adjustments will be made for services priovided to other functions or organizations.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

Federal agencies are authorized to implement these changes earlier if they choose.

James G. Miller III,

Director.

[FR Doc. 86–12868 Filed 6–6–86; 8:45 am]

BILLING CODE 3110–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Application for Employee Annuity Under the Railroad Retirement Act.

(2) Form(s) submitted: AA–1, AA–1d, G–214 and G–204

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 26,700.

(7) Annual reporting hours: 11,925.

(8) Collection description: The Railroad Retirement Act provides for payment of age, disability and supplemental annuities to qualified employees. The application and related forms obtain information about the applicant's family, work history, military service, disability benefits from other government agencies and public or private pensions. The information is used to determine entitlement to and amount of annuity applied for.

(1) Collection title: Application for Spouse Annuity Under the Railroad Retirement Act.

(2) Form(s) submitted: AA–3.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 17,000.

(7) Annual reporting hours: 7,367.

(8) Collection description: The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet

the requirements under the Act. The application will obtain information supporting the claim for benefits based on being a spouse of an annuitant. The information will be used for determining entitlement to and amount of annuity applied for.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86–12953 Filed 6–6–86; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal

(1) Collection title: Application for Survivor Death Benefits.

(2) Form(s) submitted: AA–21, AA–11a, G–131 and G–273a.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individual's or households, Businesses or other for-profit.

(6) Annual responses: 28,200.

(7) Annual reporting hours: 10,459.

(8) Collection description: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the RRA. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86–12954 Filed 6–6–86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15126; File No. 812–6397]

Co-operative Bank Investment Fund; Application

June 3, 1986.

Notice is hereby given that the Co-operative Bank Investment Fund, a registered investment company (the "Applicant"), 265 Franklin Street, Boston, Massachusetts 02110 filed an application on May 29, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") to amend a prior order to confirm the Applicant's exemption from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) (2) and (3) of the Act, to the extent required by certain proposed changes in Massachusetts law. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, the Applicant was organized as a corporation effective April 7, 1985, pursuant to a special act of the Commonwealth of Massachusetts, primarily to provide a mutual fund investment medium to Massachusetts states charted thrift banks. Investment in the Applicant is limited to such banks and a retirement association organized under Massachusetts law. Pursuant to the Commission's order dated October 17, 1985 (Investment Company Act Release No. 14760, the "1985 Order"), the Applicant was granted an exemption from the provisions of section 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) and (3) of the Act. The application indicates that since the time of the 1985 Order, a bill was introduced in the Massachusetts Legislature, designated as House No. 5624, which would amend the Applicant's charter and amend another Massachusetts statute relating to the Applicant.

The application indicates that House No. 5624 would make three additional organizations eligible to invest in the Applicant, namely The Co-operative Central Bank (the "Central Bank"), the Massachusetts Co-operative Bank League (the "League"), and the National Consumer Cooperative Bank (the "National Cooperative Bank"). The Central Bank is the reserve bank and a deposit insurer for Massachusetts co-operative banks. The Central Bank's Board of Directors are constituted as the incorporators of the Central Bank. The Central Bank and the Applicant also share the same executive management. The Applicant indicates that allowing the Central Bank to invest in the Applicant would give their common management greater operational flexibility and allow for economies with regard to investments in similar assets.

The application further indicates that the League is a voluntary association of Massachusetts co-operative banks, and that the National Cooperative Bank is a body corporate established by the National Consumer Cooperative Bank Act (12 U.S.C. 3001 *et seq.*) as an instrumentality of the United States. None of the National Cooperative Bank's stockholders or borrowers, or organizations eligible to borrow from the National Cooperative Bank, would be eligible to invest in the Applicant (other than the Central Bank, which is currently a stockholder in the National Cooperative Bank). The Applicant states that the ability of the League and the National Cooperative Bank to invest in the Applicant would provide those organizations with a vehicle in which their liquid funds could be invested on a short-term, readily redeemable basis. The Applicant indicates that the Central Bank, the League and the National Co-operative Bank are financially sophisticated institutions, and the Applicant undertakes to provide, or make available, to them all disclosure materials which it currently provides or makes available to its current investors.

The application further indicates that House No. 5624 would reduce the minimum and maximum number of its directors. In addition, House No. 5624 would forbid any person from holding office in the Applicant both as a director and as an officer. The Applicant contends that this provision would ensure the independence of its board of directors.

House No. 5624 would change applicable Massachusetts law regulating the amount which a Massachusetts co-operative bank and savings bank may invest in a "district investment fund" comprised of debt obligations which is established by the Applicant. The Applicant states that the proposed change is not likely to lead to excess

concentration of investment by investor-banks because of the regulatory oversight of such banks exercised by the Massachusetts Commissioner of Banks.

The application indicates that House No. 5624 would limit to some degree the Applicant's authority to invest in government obligations. The Applicant states that this restriction on investment would not affect the Applicant's current obligations.

House No. 5624 would give the Applicant the power to borrow money, provided that such borrowings may not be for a term in excess of three business days. The Applicant indicates this authority is designed to meet its short-term liquidity needs, which might otherwise require liquidation of portfolio assets. The Applicant states that any borrowings made under this authority would be limited to borrowings allowable under section 18 of the Act and applicable regulations promulgated thereunder.

House No. 5624 would give the Applicant the authority to enter into repurchase agreements, provided that such agreements may not be for a term in excess of three business days. The Applicant states that this authority complements the Applicant's current authority to enter into money market type repurchase agreements with banks. The Applicant further states that this authority would not be a major expansion of its current repurchase agreement authority, and in any case it is the Applicant's policy to minimize risk under any repurchase agreement into which it enters. Applicant represents for one thing, that its custodian takes possession under such an agreement.

The Applicant states that the changes proposed under House No. 5624, individually and as a whole, are in the best interests of its current investors and the three proposed investors. The Applicant further states that in view of the supervisory powers of the Massachusetts Commissioner of Banks, the form of the Applicant's organization, and the nature of the Applicant's current and proposed investors, the continuation of the Applicant's exemption from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) (2) and (3) of the Act is justified.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated below. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12941 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15124; File No. 812-6276]

Delaware Fund, Inc., et al.; Notice of Exchange Offer Application

June 2, 1986.

Notice is hereby given that Delaware Fund, Inc., Decatur Fund, Inc., Delta Trend Fund, Inc., Delchester Bond Fund, Inc., DMC Tax-Free Income Trust—PA, DMC Tax-Free Income—USA, Inc., Delaware Group Government Fund, Inc., Delcap Fund, Inc., Delaware Cash Reserve, Delaware Tax-Free Money Fund, Inc., Delaware Treasury Reserves ("Funds"), Delaware Management Company, Inc. ("DMC") and Delaware Distributors, Inc. ("DDI"), each at Ten Penn Center Plaza, Philadelphia, PA 19103, filed an application on January 6, 1986, and an amendment thereto on May 16, 1986, for a Commission order pursuant to section 11(a) of the Investment Company Act of 1940 ("Act") permitting certain offers to exchange among the Funds and any other investment company for which DMC (or its subsidiaries or affiliates) serves as investment manager or for which DDI (or its subsidiaries or affiliates) acts as national distributor. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable sections and rules.

According to the application, each Fund has entered into an investment management contract with DMC pursuant to which DMC provides investment advice and management services to each Fund. Applicants state further that DDI is the national distributor for each Fund, and that each existing Fund maintains a continuous public offering of its shares at the respective net asset value of each no-load Fund ("No-Load Funds") and at a public offering price including a sales charge for each load Fund ("High-Load Funds" or "Reduced-Load Funds").

Applicants propose the following exchange privileges:

(i) Shares of the High-Load Funds may be exchanged for shares of any other Fund on the basis of relative net asset value at the time of the exchange without any sales load;

(ii) Shares of the Reduced-Load Funds may be exchanged for shares of a Reduced-Load or No-Load Fund at their relative net asset value without any sales load; and

(iii) Shares of the Reduced-Load Funds which have not been held six months may be exchanged for shares of a High-Load Fund at their relative net asset value upon payment of the difference between the sales load paid on the original shares and the load payable on the shares being acquired;

(iv) Shares of No-Load funds may be exchanged for shares of other No-Load Funds at their relative net asset value without any of a sales load; and

(v) Shares of No-Load Funds may be exchanged for shares of a Reduced- or High-Load Fund upon payment of the public offering price.

(vi) Shares of Reduced-Load Funds which have been held six months (or which are outstanding as a result of a previous exchange of sales load fund shares which in combination with the currently held shares have been outstanding for six months or more) may be exchanged for shares of High-Load Funds at relative net asset value without any sales charge.

Applicants state that where a shareholder has exchanged shares of a High-Load Fund for shares of a Fund with a lower or no sales load, and thereafter exchanges those shares to any Fund with a higher sales load (not exceeding the load that was paid on the original shares), no further sales load will be imposed. Applicants also state that shareholders eligible for the one-time privilege to reinvest the proceeds of any redemption effected within the preceding 90 days may purchase shares of any Fund at the same sales charge, if any, which would have been payable on an exchange of their shares if not redeemed.

In the relative net asset value exchanges described above the Funds' service agent, on behalf of the Funds, performs the requisite recordkeeping functions, arranges for the issuance of necessary confirmations to the shareholder, may arrange reissuance of

certificates without charge (if requested), updates all relevant accounts, checks documents, etc., and the cost of these functions is a factor in determining the fees and expenses of the Funds. To reflect the benefit of such services to that shareholder, the shareholder is charged a nominal processing fee to meet the costs to the Funds of performing the transaction, currently $5.00 per transaction. This nominal fee has been set to defray the expense incurred by the Fund to permit a shareholder to utilize the exchange privilege. The charge is assessed whenever the transaction does not involve the imposition of a sale charge. If a transaction involves a sales charge, the Funds do not assess any "user" fee for the exchange.

Applicants request an order under section 11(a) of the Act permitting the exchange privileges described above to the extent some of the proposed exchanges may be effected on a basis other than relative net asset value. In support of this request, Applicants submit that the proposed exchanges will not dilute the assets of any Fund. Applicants also submit that the proposed exchanges are fair and equitable to all Fund shareholders and will give them flexibility in their financial planning. Further, Applicants represent that the Funds' shareholder servicing personnel, who receive a substantial portion of exchange requests direct from shareholders through the Funds' shareholder servicing system, are salaried personnel who do not receive any commission income and have no incentive to promote exchanges for their personal gain.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

[redacted] E. Hollis,

Acting Secretary.

[FR Doc. 86-12942 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15125; File No. 811-1492]

Hemisphere Fund, Inc.; Application for Investment Company Deregistration

June 2, 1986.

Notice Is Hereby Given that Hemisphere Fund, Inc. ("Applicant"), 342 Madison Avenue, New York, NY 10173, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on April 23, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, Applicant registered under both the Act and the Securities Act of 1933 on or about April 20, 1967, to issue and sell shares representing interests in two classes of stock; Income Shares and Capital Shares. Applicant states that its registration became effective on June 21, 1967, and that the initial public offering of its stock commenced on said date. Applicant also states that its Board of Directors took action authorizing a merger of Applicant and Manhattan Fund, Inc. ("Manhattan") at a meeting held on July 18, 1985, and reaffirmed this action at a meeting held on January 13, 1986. Applicant represents that its shareholders authorized the merger on February 28, 1986, and that thereafter, all portfolio securities and other assets of Applicant were transferred to Manhattan in exchange for shares of Manhattan having an equivalent net asset value. Applicant further represents that no brokerage commissions were paid in connection with the merger.

According to the application, immediately preceding the merger on February 28, 1986, Applicant had 949,662.930 Capital Shares outstanding (Income Shares of Applicant were retired on June 30, 1985, in accordance with Applicant's charter), total net assets of $4,783,998.97 and a per share net asset value of $5.05. Applicant represents that a total of 528,117.281 shares of Manhattan, having a value of $4,787,667, were issued to Applicant's shareholders and that the conversion ratio was .55494505 shares of Manhattan for each share of Applicant. Applicant further states that Manhattan and Applicant each bore their own expenses in connection with the merger, and that Applicant and Manhattan paid approximately $41,400 and approximately $4,600, respectively. Applicant further represents that it has no debts or liabilities outstanding as of the time of filing of this application.

Applicant states that it is not a party to any current or pending litigation or administrative proceedings, and that it does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs. According to the application, Articles of Merger were filed with the State Department of Assessments and Taxation of the State of Maryland on February 27, 1986, and became effective on February 28, 1986. Applicant also states that the Merger Agreement, with certifications attached thereto, was filed with the Secretary of State of the State of Delaware on February 28, 1986, and that its legal existence ceased pursuant to Delaware law under which Applicant was created.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than June 27, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the addr.ss stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applicant will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12943 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 3, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American General Corporation
Warrants (File No. 7-8979)
Navistar International Corporation
Series B Warrants (File No. 7-8980)
Triton Energy Corporation
Preferred, Minority Interest: $15,059,000; $1.10
Convertible Exchangeable Depositary Preferred; $1.10
Convertible Exchangeable Depositary Preferred Stock: 24,300,000 Shares (No Par Value); Represents 0.10
Shares of $11.00 Convertible Exchangeable Preferred; Convertible into Common or 11% Debentures (File No. 7-8981)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 86-12940 Filed 6-6-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-23264; File No. SR-PCC-85-06]

Self-Regulatory Organizations; Pacific Clearing Corp.; Order Approving Proposed Rule Change

The Pacific Clearing Corporation ("PCC") on October 17, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") concerning payment in connection with PCC's Securities Collection Division ("SCD") Service.[1] Notice of the proposal appeared in the **Federal Register** on November 11, 1985.[2] No comments were received. This Order approves the proposal.

I. Description

PCC's proposal amends PCC Rule IX, section 2 to permit non-members to pay amounts less than $1,000 due PCC in connection with SCD Service [3] by non-certified or non-cashier's checks.[4] PCC will continue to require non-members to pay PCC with certified and cashier's checks for amounts equal to or exceeding $1,000. The rule change also clarifies PCC's authority to require, in its discretion, certified checks for any amount due PCC from either Members or non-members. (Currently, Members are required to pay PCC with certified or cashier's checks only for amounts over $10,000.)[5]

II. PCC's Rationale

PCC believes that the proposal is consistent with the Act, particularly section 17A(b)(3)(F), because it will promote the prompt and accurate clearance and settlement of securities transactions and will foster cooperation and coordination among persons engaged in the clearance and settlement of securities transactions. PCC believes that Rule IX in its current form is unduly burdensome on non-members using PCC's SCD Service and occasionally delays the processing of transactions. For example, non-members often do not learn that certified checks are required for small payments until they attempt to pay PCC with uncertified checks. Thus, completion of the transactions is delayed until the non-members provide PCC with replacement certified checks. Moreover, PCC notes that frequently non-members refuse deliveries because of the inconvenience and expense of obtaining cashier's checks for small amounts.

PCC believes that the proposal will facilitate non-members' use of the SCD Service without subjecting PCC or other users of the SCD Service to undue risk. PCC believes that the risk to PCC is small because, among other things, PCC's exposure is only $1,000 and both the non-member and the delivering Member (to whom PCC would turn if it could not collect from the non-member) would have to become insolvent. PCC believes that such an occurrence is unlikely.

III. Discussion

For the following reasons, the Commission agrees with PCC that the proposal is consistent with the Act and should be approved. First, the Commission agrees with PCC that the proposed rule change should facilitate settlements between PCC members and non-members. Requiring non-members to provide PCC with certified checks in all cases seems to have resulted in settlement delays and extra processing costs. The proposal should eliminate those delays and costs.

Second, the Commission believes that the potential financial exposure to PCC from eliminating the certified check requirement is minimal. According to PCC, it receives each month, on average, only 30 checks from non-members in amounts of less than $1,000. The Commission believes that PCC's exposure, if all these payments are now made with non-certified or non-cashier's checks is not so significant that is poses a serious risk to PCC. Indeed, because PCC may look to both the non-member and the Member for payment, PCC would suffer no loss unless both the delivering Member and receiving non-member became insolvent.

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[1] PCC's SCD Service provide a mechanism through which Members can deliver or receive securities. Members may make securities deliveries to, and receive securities from, other Members or non-members by any of three methods. First, Members may physically deliver securities to PCC for delivery through SCD. Alternatively, Members may draft securities directly from daily balances due the Member from PCC. Finally, Members may deliver securities to SCD through their Pacific Securities Depository Trust Company ("PSDTC") accounts.

[2] *See* Securities Exchange Act Release No. 22807 (November 8, 1985), 50 FR 47484 (November 18, 1985).

[3] Non-Members pay PCC for the value of securities PCC delivers to them on behalf of the PCC Member.

[4] On May 12, 1986, PCC filed an amendment to the proposed rule change which clarified PCC's ability to require certified or cashier's checks from Members and non-members for SCD Service should PCC decide it necessary.

[5] On May 12, 1986, PCC filed an amendment to the proposed rule change which clarified PCC's ability to require certified or cashier's checks from Members and non-members using the SCD Service for amounts less than $10,000 or $1,000, respectively.

PCC also has developed a set of safeguards to further limit its risks. First, PCC will require a cashier's or certified check where multiple deliveries are made to the same broker and the total amount due exceeds $1,000. PCC also has reserved the discretion to require certified checks for any amount from non-members whenever PCC feels it necessary. Moreover, if a non-member's check for less than $1,000 is returned, PCC will demand payment in either a cashier's or certified check and will insist on certified checks from that non-member for the next six months for all payments.[6] After six months, in PCC's discretion, the privilege of paying with non-cashier's and non-certified checks may be restored to the defaulting broker. PCC will, as a last resort, look to its Member for the money it credited to its Member's account that it is unable to collect from the non-member.

IV. Conclusion

The Commission believes that PCC's proposed amendment to Rule IX, section 2 will lessen the burden on non-member users of PCC's SCD Service for transactions involving small dollar amounts. Furthermore, the Commission believes that PCC's proposed amendment will adequately safeguard PCC and SCD Service users from financial loss. The Commission therefore finds PCC's proposed rule change consistent with the Act and, in particular, Section 17A of the Act.

Accordingly, It Is Therefore Ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1986.

Shirley E. Hollis,

Acting Secretary

[FR Doc. 86-12936 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23287; File No. SR-PSE-86-7]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Proposal to Change the Method for Billing IPC Telephone Service Rates to Exchange Members

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 16, 1986, The Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes to change its method for charging IPC telephone service rates to its members. The Exchange will go to a system of billing the members the actual Interconnect Planning Corp. ("IPC") charges for installation, moves and other charges, plus a 20 percent (20%) administration fee to cover the Exchange's direct costs of coordination and control. At the current time the Exchange currently charges flat fixed rates. These proposed changes will more accurately match the IPC charges of the services provided, with the member receiving such service, and will therefore result in a more equitable distribution of these charges to the members.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change proposes to alter the current system of allocating IPC charges for installation, moves and other changes to the IPC telephone instruments and lines located on the Options and Los Angeles Equity Trading Floors. Currently the Exchange charges flat fixed rates for these charges.

When such changes are effected IPC does the actual servicing work and they then bill the PSE at agreed upon rates for time and materials. In an attempt to more acurately match the IPC charges to the services provided and to the member receiving the service, the Exchange is requesting approval to bill the members utilizing the service the acutal amount of the IPC charges plus a 20 percent (20%) administration fee to cover the Exchange's direct cost of coordination and control. This will generate approximatley the same monthly revenue, but more equitably pass on the costs to the member receiving the service. Currently most of the services are charged by IPC at a rate of $45 per hour in San Francisco and $54 per hour in Los Angeles, plus materials. All IPC invoices are reviewed by the Exchange's DPI Communications Department for reasonability and adherence to contractual rates.

The proposed changes are consistent with section 6(b)(4) of the Securities Exchange Act of 1934 ("Act") in that they will provide for an equitable allocation of reasonable fees and charges among members which use failities provided by the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes on burden on competiton.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

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[6] If PCC must resort to legal action to obtain payment from the non-member, PCC will notify all its Members that PCC will not make, on behalf of PCC Members, any deliveries to the defaulting non-member.

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All Submissions should refer to the file number in the caption above and should be submitted by June 30, 1986.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: May 30, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12859 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 10 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of form, request for clearance (S.F. 83), supporting statment, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231.

Title: Development Company Reporting Requirements

Frequency: On occasion

Description of Respondents: Development companies must provide basic information to determine the viability and eligibility of the development companies and to protect SBA's financial interest.

Annual Responses: 2,422

Annual Burden Hours: 424

Type of Request: Reinstatement

Dated: June 2, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-12856 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

Declaration of Disaster Loan Area #2238 Iowa

Polk County in the State of Iowa constitutes a disaster area because of heavy rains and flash flooding which occurred on May 9, 1986. Applications for loans for physical damage may be filed until the close of business on July 31, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (nonprofit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223806 for physical damage and for economic injury the number is 641000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12855 Filed 6-6-86; 8:45am]

BILLING CODE 8025-01-M

[License No. 06/06-0228]

Retail Capital Corp.; License Surrender

Notice is hereby given that Retail Capital Corp., 7915 FM 1960 W, Houston, Texas 77070, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Retail Capital Corp. was licensed by the Small Business Administration on May 20, 1980. Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 20, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 29, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-12854 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV, located in the geographical area of Birmingham, Alabama, will hold a public meeting at 9:00 a.m.-2:00 p.m., on Monday, June 23, 1986, in the Birmingham District Office of the U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203—(205) 731-1341.

Joan M. Nowak,

Director, Office of Advisory Councils.

May 30, 1986.

[FR Doc. 86-12857 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[OGD 86-040]

National Boating Safety Advisory Council; Applications for Appointment to Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Secretary of Transportation on rulemaking matters related to recreational boating.

Seven members will be appointed as follows: Three (3) members from the recreational boating industry; two (2) members from the State Boating Administrators; and two (2) members from boating organizations and the public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Council normally meets twice each year at a location selected by the Coast Guard.

DATE: Requests for applications should be received no later than July 10, 1986.

ADDRESS: Persons interested in applying should write to Commandant (G-BBS/43), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Captain M. B. Stenger, Executive Director, National Boating Safety Advisory Council (G-BBS), Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 426-1060.

Dated: June 4, 1986.

L. C. Kindbom,

Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86-12908 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Palm Beach County, Florida, for Palm Beach International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Palm Beach International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before December 30, 1986.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is May 16, 1986. The public comment period ends July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Community Planner, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648-6583.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Palm Beach International Airport are in compliance with applicable requirements of Part 150, effective May 16, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 30, 1986. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operation who has submitted noise exposure maps that are found by FAA to be compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which set forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Palm Beach County, Florida, submitted to the FAA on December 13, 1985, with minor modifications on May 1, 1986, noise exposure maps, descriptions, and other documentation which were produced during the development of Palm Beach International Airport FAR Part 150 Noise Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Palm Beach County, Florida. The specific maps under consideration are depicted as the "1983 Ldn Contours" (current NEM) and the "Five Year Noise Exposure Map" (5-year NEM) in the submission. The FAA has determined that these maps for Palm Beach International Airport are in compliance with applicable requirements. This determination is effective on May 16, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedure contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship or specific properties to noise exposure contours depicted on the noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying

of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Palm Beach International Airport, also effective on May 16, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 30, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility programs are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812

Mr. Bruce Pelly, Director of Airports, Palm Beach International Airport, Bldg. 846, West Palm Beach, Florida 33406-1491.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Orlando, Florida, May 16, 1986.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 86-12824 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, American-European Reinsurance Corp.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American-European Reinsurance Corporation, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27107, July 1, 1985.

With respect to any bonds currently in force with American-European Reinsurance Corporation, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2214.

Dated: May 30, 1986.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-12826 Filed 6-6-86; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 23]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, Hudson Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Hudson Insurance Company, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27118, July 1, 1985.

With respect to any bonds currently in force with Hudson Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2214.

Dated: May 30, 1986.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-12829 Filed 6-6-86; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 22]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, IGF Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to IGF Insurance Company of Des Monies, Iowa under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27118, July 1, 1985.

With respect to any bonds currently in force with IGF Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2347.

Dated: May 29, 1986.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-12830 Filed 6-6-86; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, Universal Security Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Universal Security Insurance Company, under the United States Code, Title 31, sections 9304–

9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27134, July 1, 1985.

With respect to any bonds currently in force with Universal Security Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2119.

Dated: May 30, 1986.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86–12831 Filed 6–6–86; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 110
Monday, June 9, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 19820.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 10, 1986.

CHANGE IN THE MEETING: The meeting has been changed to June 11, 1986 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-13015 Filed 6-5-86; 12:04 pm]

BILLING CODE 6351-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

Previously Held Emergency Meeting

TIME AND DATE: 1:30 p.m., Wednesday, June 4, 1986.

PLACE: 1776 G Street, NW., Washington, DC, 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Litigation.

The Board unanimously voted that the Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under exemption (10). The General Counsel certified that the meeting could be closed under that exemption.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-13042 Filed 6-5-86; 2:50 pm]

BILLING CODE 7535-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 9, 1986:

Closed meetings will be held on Tuesday, June 10, 1986, at 1:00 p.m., on Thursday, June 12, 1986 following the 2:30 p.m. open meeting and on Friday, June 13, 1986, at 10:00 a.m. An open meeting will be held on Thursday, June 12, 1986, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 10, 1986, at 1:00 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Report of investigation.
Settlement of injunctive actions.
Formal orders of investigation.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, June 12, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, June 12, 1986, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Friday, June 13, 1986, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272-2149.

Shirley E. Hollis,

Acting Secretary.

June 3, 1986.

[FR Doc. 86-13050 Filed 6-5-86; 3:56 pm]

BILLING CODE 8010-01-M

federal register

Monday
June 9, 1986

Part II

Small Business Administration

13 CFR Part 115

Surety Bond Guarantee; Emergency Final Regulation

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Rev. 1, Amdt. 3]

Surety Bond Guarantee

AGENCY: Small Business Administration.

ACTION: Emergency final regulation.

SUMMARY: These amendments lower the maximum guaranty for surety losses (resulting from the breach of the conditions of a bond) from 90 percent to 80 percent, increase the maximum premium that a surety may charge a small concern from 1.5 percent to 1.8 percent, and raise SBA's guarantee fee from $5 per thousand of contract amount to $6 per thousand. This action more fairly apportions the risk inherent in this program between SBA, the contractor, and the private sector surety companies. This action will also mitigate the sureties' increased exposure resulting from the lower guarantee percentage by the increase in the premium charge.

EFFECTIVE DATE: June 24, 1986. Applications for surety bond guarantees received by SBA before the effective date shall be processed under the prior rules.

ADDRESS: Comments may be addressed before August 5, 1986, to Howard F. Huegel, Director, Office of Surety Guarantees, Small Business Administration, 4040 No. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, (703) 235–2900.

SUPPLEMENTARY INFORMATION: Section 411 of the Small Business Investment Act, 15 U.S.C. 694a, authorizes SBA to guarantee a surety against up to 90% of its loss under a bond guaranteed by SBA resulting from the breach of the terms by a small concern of any contract up to $1 million. Current SBA policy, as set forth in 13 CFR 115.2(b) is to pay up to 90% of loss under a bonded contract up to $250,000, and up to 80% on contracts beyond that amount, not to exceed $1 million. Current policy also limits the maximum premium change in excess of the Surety Association of America's "Rating Manual" to 1.5% if approved by the appropriate State Insurance Department [13 CFR 115.9(c)(2)].

Increased losses in the insurance industry have resulted in a sharp decline in surety bond availability to small contractors from standard sureties, and in a corresponding increase in the demand for SBA's guarantees. Our efforts to meet this demand have prematurely exhausted our authorized guarantee level for the first quarter of Fiscal Year 1986, and in most regions for the second quarter as well. This exhaustion of SBA's program authority has caused severe hardship to some small business contractors unable to obtain contracts requiring bonds, which include nearly all government contracts. Since an increase in our authorized guarantee level cannot be expected, and because our guarantee authority is allotted in quarterly increments, we must anticipate that our authority would again be exhausted before the end of each calendar quarter as long as present conditions prevail. It is therefore necessary to reduce our present maximum guaranty to 80% of the surety's loss on all contracts up to the statutory limit of $1 million. This will allow existing SBA resources to accommodate the demand by allocating more of the risk inherent in this program to the participating sureties.

At the same it is our intention to avoid, as best we can, discouraging surety companies from participation in this program. Accordingly, SBA must weigh any proposed guarantee percentage reduction against possible reduction of private sector participation resulting from the concomitant exposure to loss. With this dilemma in mind, SBA has considered several methods of using our guarantee authority. Of these, the reduction of SBA's guarantee to 80% for all contracts—not, as now, 90% for contracts below $250,000, and 80% for contracts above that amount—appears the simplest in its application and the most promising in terms of benefit to small business and acceptability by the industry. We estimate that the proposed reduction would enable us under our present guaranty authority to satisfy demand, while maintaining maximum participation in the surety bond guarantee program by the surety bonding industry.

It should be noted that the indicated percentage is a maximum figure, and that SBA will continue to reserve the right, now stated in § 115.6(b), to vary terms, depending on its experience with a particular surety.

The reduction of the maximum guarantee percentage, however, doubles the exposure to loss of the guaranteed sureties under bonds for contracts up to $250,000 from 10% to 20% of loss. The majority of bonds guaranteed by SBA falls into this category. In order to encourage continued participation by the private sector in this program, SBA is also raising the maximum premium that the surety may charge the small concern from 1.5 percent to 1.8 percent of the contract price or bond amount, whichever is greater [Section 115.9(c)(2)]. The Surety Association of America has proposed a 20 percent increase in the "Contract Bonds" section of its Rating Manual, and as of January, 1986, thirty-nine States had adopted this increase. As a result, the premium differential between standard surety bonds and the high risk bonds partially guaranteed by SBA, has been diminished. We believe that the permitted premium increase will help to restore the prior ratio.

An increase in SBA's guarantee fee from $5 per thousand to $6 per thousand corresponds to the increase proposed by the industry. The increase will help SBA defray the cost of losses from bond default.

In order to prevent a cessation of SBA's surety bond guaranty program, these amended regulations must be put into effect quickly, and are therefore published without prior notice. The policies announced here will become effective June 23, 1986. Accordingly, SBA will guarantee bonds subject to and in accordance with prior regulations, if the guaranty was applied for before June 23, 1986.

Notwithstanding the promulgation of these amendments in final form, SBA invites comments before August 8, 1986.

On August 21, 1985, at 50 FR 33706, SBA published a Notice of Proposed Rule Making which would revise the entire regulatory system of its surety bond guarantee program. Under that proposed revision, the maximum guarantee percentage would not exceed 85% of loss [Section 115.3(b)], the limitation on premium rates would be removed entirely, and the guarantee fee would have remained at $5 per thousand. SBA intends to go forward with promulgation of the final rule as expeditiously as possible. Any comments received on this emergency final rule will be taken into consideration when the proposed revision is promulgated in final form.

Executive Order 12291 of February 17, 1981.

SBA has determined that these amendments are not a major rule for purposes of the Executive Order as they cannot result in an annual economic effect of $100 million or more. Moreover, they are unlikely to result in a major increase in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions and will not have a significant adverse effect on competition, unemployment, investment, productivity, innovation or on the ability of U.S.-based businesses to compete in domestic or export markets.

Regulatory Flexibility Act

For purposes of 5 U.S.C. 601 *et seq.*, the provisions of this proposal may have a significant impact on a substantial number of small entities. The following analysis of the impact of these provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act:

1. The amendment to § 115.2(b) lowers the 90% ceiling on the guaranty against loss by a surety on bonds covering contracts under $250,000. Thus, the maximum guaranty against loss by a surety will be a uniform 80% on all contracts up to the statutory limit of $1 million. At the present time there are between 30 and 40 sureties actively participating with SBA in this program. Their exposure to loss will be doubled, from 10% to 20% of loss, on bonds covering contracts under $250,000 which constitute the majority of bonds guaranteed under this program. This increased exposure is inevitable if SBA is to serve the demand for the program. As explained above, this increase in surety exposure was chosen among several other options (lesser or greater increase in exposure, or a "layered" approach with differing percentages of guaranty for different sizes of contracts) as promising the greatest benefit to small businesses with the least detriment to the surety industry.

2. We believe that the benefit derived by small concerns from this increased exposure of our participating sureties will outweigh the detriment of the additional cost to these sureties, which should be able to reduce their additional cost to some extent by more exacting underwriting, and to some further extent by virtue of the other rule change enacted herewith. In addition, it will result in a more equitable risk-sharing between SBA and the sureties.

3. The second rule change revises the maximum premium that a surety may charge a contractor for an SBA-guaranteed bond from 1.5% to 1.8% of the contract price or bond amount, whichever is greater, provided such greater premium is acceptable to the respective State insurance regulator. As noted above, the maximum premium charged by standard sureties on standard risks has been raised (as of January 1986) to 1.44% in 39 States. This increase has virtually obliterated the historic premium differential between standard and high-risk sureties. The present increase for high risk surety premiums by 20% to 1.8% of contract price or bond amount will restore this differential and will partially compensate our participating sureties for the increased exposure caused by the reduced maximum guaranty. The premium increase, if also approved by State regulators, will affect all the contracts for which we expect to guarantee bonds in one fiscal year. Since our experience is that we guarantee on the average three bonds per year for one client contractor, we estimate that this increased premium burden will fall on approximately 3,700 small business concerns. We anticipate that this increased burden to small contractors will be outweighed by the benefit accruing to both participating sureties and small contractors from the greater number and greater aggregate dollar amount of contractors for which SBA will be able to guarantee bonds.

4. Because of the detrimental impact of the recurring exhaustion of our guaranty authority in each quarterly period on some small business contractors, SBA deems it necessary to adopt these regulatory changes forthwith without an opportunity for prior comments. SBA invites such comments, nevertheless, and will take them into consideration before the proposed revision of all surety bond guarantee regulations (see 50 FR 33766) is promulgated in final form.

There are no Federal rules which may duplicate, overlap or conflict with these amended regulations. There are no significant alternatives to these regulations consistent with the stated objectives of the statute, 15 U.S.C. 694 a and b. These amendments to the regulations do not impose any reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 115

Surety bonds.

Accordingly, pursuant to the authority of sections 308(c) and 411(d) of the Small Business Investment Act of 1958, as amended, sections 687(c) and 694(d), Part 115 of Chapter I, Title 13, code of Federal Regulations, is hereby amended effective June 23, 1986, as follows:

PART 115—SURETY BOND GUARANTEE

1. The authority citation for Part 115 continues to read as follows:

Authority: Title IV–Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694B) and the Inspector General Act of 1978 (5 U.S.C. App. 1)

2. Section 115.2(b) is revised to read as follows:

§ 115.2 Policy.

* * * * *

(b) *Percentage guarantee.* SBA may guarantee up to eighty percent (80%) of the loss incurred and paid under a bond on a contract up to $1,000,000 in face value.

* * * * *

§ 115.9 [Amended]

3. Section 115.9(c)(2) is hereby amended by striking the words "1.5 percent" and substituting "1.8 percent" therefor.

4. Section 115.9(a) is hereby amended by striking the words "$5 per thousand" and substituting "$6 per thousand" therefor.

(Catalog of Federal Domestic Assistance No. 59.016, Bond Guarantees for Surety Companies)

Dated: May 28, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12548 Filed 6-6-86; 8:45 am]

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Part III

Department of Transportation

Research and Special Program Administration

Illinois Fee on Transportation of Spent Nuclear Fuel; Application for Inconsistency Ruling by Wisconsin Electric Power Company; Notice

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-17; Docket No. IRA-34]

Illinois Fee on Transportation of Spent Nuclear Fuel; Application for Inconsistency Ruling by Wisconsin Electric Power Company

Applicant: Wisconsin Electric Power Co. [WEPCO]

State Law Affected: Section 4(7) of the Illinois Nuclear Safety Preparedness Act, codified as § 4304(7), chapter 111½, Illinois Revised Statutes.

Applicable Federal Requirements: The Hazardous Materials Transportation Act (49 U.S.C. 1801–1811); and the Hazardous Materials Regulations (49 CFR, Parts 171–179).

Modes Affected: Rail and Highway.

Ruling: The requirement imposed by *Ill. Rev. Stat.*, chap. 111½, § 4304(7) is not inconsistent with the Hazardous Materials Transportation Act or the Hazardous Materials Regulations promulgated thereunder.

SUMMARY: This inconsistency ruling is the opinion of the Department of Transportation concerning whether a fee of $1,000 per cask, which Illinois has statutorily imposed upon owners of spent nuclear fuel being transported through Illinois, is inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. (Tel: 202/755–4972).

I. General Authority and Preemption under the HMTA

The Hazardous Materials Transportation Act (HMTA) authorizes the Secretary of Transportation to promulgate substantive regulations governing the safe transportation of hazardous materials in commerce. Known as the Hazardous Materials Regulations (HMR), they are codified at 49 CFR Parts 171–179.

The HMR apply to persons who offer hazardous materials for transportation (shippers), those who transport the materials (carriers), and those who manufacture and retest the packagings and other containers intended for use with the materials. The scope of transportation activity affected includes: packaging of shipments of hazardous materials; package markings (to show content) and labeling (to show hazard); vehicle placarding (to show hazard); handling procedures, such as loading and unloading requirements; routing; care of vehicle and lading during transportation; preparation and use of shipping papers to show the identity, hazard class and amount of each hazardous material being shipped; and requirements for reporting any unintentional release of a hazardous material during transportation.

A discussion of the preemptive effects of the HMTA appears in previous inconsistency rulings. The discussion in IR–6 (48 FR 760, January 6, 1983) is extracted and summarized here.

The HMTA at Section 112(a) (49 U.S.C. 181(a)) preempts" . . . any requirement of a State or political subdivision thereof, which is inconsistent with any requirements set forth in [the HMTA] or regulations issued under the HMTA." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirement that are "inconsistent."

In 49 CFR Part 107, Subpart C, the Department has published procedures by which a state or political subdivision thereof having a requirement pertaining to the transportation of hazardous materials, or any person affected by the requirement, may obtain an administrative ruling as to whether the requirement is inconsistent with the HMTA or regulations under the HMTA. The Department may also initiate such a proceeding *sua sponte*. At the time these procedures were published, the Department observed that "(t)he determination as to whether a State or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature." (41 FR 38167, September 9, 1976). Despite this judicial tradition, the Department found that there were two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling could provide an alternative to litigation for a determination of the relationship of Federal and state or local requirements. Second, if a state or local requirement were found to be inconsistent, such a finding would provide the basis for an application to the Secretary of Transportation for a waiver of preemption (49 U.S.C. 181(b); 49 CFR 107.215–107.225). Subsequent to the adoption of these procedures, a third purpose has become apparent. The inconsistency rulings have come to constitute a body of precedent to guide state and local governments contemplating rulemaking action. The rulings, thus, have a value which goes beyond the resolution of individual conflicts.

Because the instant proceeding is being conducted pursuant to the provisions of the HMTA, this ruling will consider only the question of statutory preemption. A Federal court may find that a state requirement which is not preempted statutorily is, nonetheless, preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. The Department of Transportation, however, does not make such determinations in the context of an inconsistency ruling proceeding.

Given the judicial character of the inconsistency ruling proceeding, the Department has incorporated case law criteria for analyzing preemption issues into the inconsistency ruling procedures (See *e.g. Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978).) At 49 CFR 107.209(c) the following tests are set forth for determining whether a state or local requirement is "inconsistent".

(1) Whether compliance with both the [state or local] requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the [state or local] requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, known as the "dual compliance" test concerns those state or local requirements that are incongruous with Federal requirements; that is, compliance with the state or local requirement causes the Federal requirements to be violated, or *vice versa*. The second criterion, known as the "obstacle" test, essentially subsumes the first and concerns those state or local laws that, regardless of conflict with a Federal requirement, stand as "an obstacle to the accomplishment and execution of the [HMPTA] and the regulations issued under the [HAMTA]." In determining whether a state or local requirement presents such an obstacle, it is necessary to look at the full purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objective have been caried out through the Department's regulatory program.

In enacting the HMTA, Congress recognized that the Department's efforts in hazardous materials transportation regulation lacked coordination by being divided among the various transportation modes and lacked

completeness because of gaps in Department authority. In order to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801), Congress enacted the HMTA, which both consolidated and expanded the Department's regulatory and enforcement authority.

With specific reference to the preemption provision of the HMTA, the legislative history indicates that Congress intended it "to preclude a multiplicity of state or local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93rd Cong., 2nd Sess. 37(1974)). While the HMTA does not totally preclude state and local action in this area, it is the Department's opinion that Congess intended, to the extent possible, to make such state and local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state and local activity. The nature, necessity and number of hazardous materials shipments make nationally uniform safety standards essential.

In summary, the Department applies two tests to determine whether a state or local requirement is inconsistent and, therefore, preempted: the "dual complianace" test and the "obstacle test". When a state or local rule presents an issue which has already been considered in a previous inconsistency ruling, however, the Department may cite the established precedent without reiterating the underlying tests.

II. Background and Chronology

By letter dated March 21, 1985, Wisconsin Electric Power Company (WEPCO) applied for an administrative ruling on the question of whether a transportation fee imposed by the State of Illinois is inconsistent with and, thus, preempted by the HMTA or the regulations issued thereunder. The specific requirement on which WEPCO seeks an inconsistency ruling is *Ill. Rev. Stat.*, chapter 111⅓ Section 4304(7) which reads as follows:

> Sec. 4304. Persons engaged within this State in the business of producing electricity utilizing nuclear energy or operating facilities for storing spent nuclear reactor fuel for others shall pay fees to cover the cost of establishing plans and programs to deal with the possibility of nuclear accidents. Except as provided below, the fees shall be used exclusively to fund those Departmental and local government activities defined as necessary by the Director to implement and maintain the plans and programs authorized by this Act. Local governments incurring expenses attributable to implementation and maintenance of the plans and programs authorized by this Act may apply to the Department for reimbursement of those expenses, and, upon approval by the Director of claims submitted by local governments, the Department shall reimburse local governments from fees collected pursuant to this Section, except that such reimbursements, in the aggregate, shall not exceed $150,000 in any year. In addition, a portion of the fees collected may be appropriated to the Illinois Emergency Services and Disaster Agency for i.e. activities associated with preparing and implementing plans to deal with the effects of nuclear accidents. Such appropriation shall not exceed $350,000 in any year. Such fees shall consist of the following: . . .
>
> (7) A fee assessed at the rate of $1,000 per cask for shipments of spent nuclear fuel traversing the State to be paid by the owner of such shipments.

As required by 49 CFR 107.205, WEPCO served a copy of its application on the State of Illinois. On May 8, 1985, Illinois submitted its comments on the application. Illinois challenged the WEPCO application on both precedural and substantive grounds.

On October 30, 1985, the Department published a notice and invitation to comment under docket No. IRA–34 (50 FR 45186). A subsequent amendment (50 FR 51767) extended the period for public comment to January 21, 1986.

On February 12, 1986, Illinois requested an opportunity to file final comments responding to arguments first raised during the comment period. WEPCO indicated, by letter dated February 13, 1986, that it had no objection to a reopening of the comment period so long as all parties had an opportunity to respond. The Departmental objective in soliciting public comment on applications for inconsistency rulings is to obtain the broadest possible compilation of views. Unlike in an adversarial proceeding, no party is assigned a burden of proof and, correspondingly, no party has a right to present final arguments. For these reasons, the Department granted both Illionis' request for a reopening of the comment period and WEPCO's request that all parties be permitted to supplement their comments. The notice was published on March 5, 1986 (51 FR 7661) with comments due by April 21, 1986. A total of eight parties (including Illionis and WEPCO) submitted comments on this proceeding. Where appropriate these comments, as well as previous administrative determinations, are discussed in this ruling.

III. Analysis

A. Introduction

This ruling considers the question of whether a particular provision of the Illinois Nuclear Safety Preparedness Act (INSPA) in inconsistent with and, thus, preempted by the HMTA. The legislative purpose in enacting INSPA was the establishment of a Nuclear Safety Preparedness Program "to protect the people of the State of Illinois against adverse health effects resulting from radiological accidents" and "to mitigate the effects of such accidents." (*Ill. Rev. Stat.*, Chap. 111½, § 4302). In order to fund the Preparedness Program, INSPA required that certain fees be paid in connection with specified nuclear activities. As originally enacted in 1979, INSPA imposed fixed fees on owners of nuclear power stations and away-from-reactor (AFR) spent fuel storage facilities in Illinois; it also imposed a per-cask fee on shipments of spent fuel received at AFR storage facilities in the state. It did not impose fees on shipments which passed through the state.

In 1984 INSPA was amended by P.A. 83–1342 to increase the fees payable by operators of nuclear power and storage facilities. The amendment also imposed, for the first time, fee assessments at the rate of $1000 per cask on owners of spent nuclear fuel traversing the State of Illiois. (*Ill. Rev. Stat.*, Chap. 111½, § 4304(7)). The new fee on shipments in transit is the subject of the proceeding. For the sake of brevity, it is hereinafter referred to as the "transit fee". As amended, INSPA imposes the transit fee on both interstate and intrastate shipments of spent fuel. Such fees are payable prior to the movement of such shipments within the state. (*Ibid.*, § 4305).

All fees collected under INSPA are deposited into a special fund from which monies may be expended only to support the activities of the Illinois Nuclear Safety Preparedness Program (INSPP). (*Ibid.*, § 4307). The major components of the INSPP are described at pages 40–41 of Illionis' supplemental comments dated January 20, 1986. These include: (1) Development of a coordinated system of Federal, state and local responsibilities for planning for and responding to radiological emergencies; (2) inspection of all highway shipments upon entry into Illinois to ensure compliance with Federal radiological standards and motor vehicle safety regulations; and (3) escort of all shipments by a hazardous materials officer and a health physicist

who remain in radio or visual contact with the transport vehicle at all times.

B. Procedural Arguments

Throughout this proceeding, the State of Illinois has maintained that the Department should dismiss the application for procedural defects in both the instant proceeding and the administrative process itself. The Department has considered these arguments and has concluded (1) that the validity of the inconsistency ruling process is well-established and (2) that its procedural requirements have been fully satisfied in this proceeding. I, therefore, find that Illinois' procedural arguments are without merit. Since this ruling upholds Illinois' position on substantive grounds, summary dismissal of Illinois' procedural arguments will not adversely affect the State's position. Nor is WEPCO, which urged rejection of Illinois' procedural arguments, adversely affected by summary dismissal. Accordingly, no further discussion is offered on this point.

C. Substantive Arguments

The first criterion for determining the consistency of a state requirement with the HMTA is the dual compliance test. The state requirement being considered herein is a transit fee. Compliance with the state requirement consists of payment of a sum certain to the State of Illinois. Nothing in the HMTA or HMR prohibits regulated party from paying such fees. Consequently, on the narrow question of whether it is physically possible to comply with both the Federal and state requirements, I find in the affirmative. The transit fee cannot be deemed inconsistent on the basis of the dual compliance test.

The second criterion for determining consistency is the obstacle test, which requires consideration of the extent to which the transit fee impedes the accomplishment and execution of the HMTA and HMR. As described above, this test require an examination of the challenged state requirement in light of the Congressional objectives in enacting the HMTA and the manner and extent to which those objectives have been carried out through the Department's regulatory program.

The principal Congressional objectives in enacting the HMTA were "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801) and "to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S.Rep. 1192, September 30, 1974, p. 37). The Department, therefore, considers state or local requirements to be inconsistent with these objectives if they reduce safety and/or enhance multiplicity.

WEPCO, as well as those commenters supporting WEPCO's application, argued that the transit fee constitutes a clear impediment to the execution and accomplishment of the Congressional objectives underlying enactment of the HMTA. Illinois, and those commenters opposing WEPCO's application, offered both rebuttal arguments and affirmative reasons for finding the transit fee to be consistent with the HMTA. These arguments are considered below, beginning with separate analyses of the transit fee's impacts on the highway and rail modes.

Is the transit fee a prohibited routing rule within the meaning of the Department's regulations on highway routing of radioactive materials?

In 1981 the Department issued a Final Rule on highway routing of radioactive materials which is commonly referred to by its docket number as HM-164 (46 FR 5298, January 19, 1981). In addition to establishing Federal rules on highway routing and driver qualifications, HM-164 added an Appendix A to Part 177 of the HMR. Appendix A is not a regulation. It is a policy statement in which the Department has set forth its interpretation of the general preemptive effect of its regulations on state and local highway routing requirements. As such, it was intended to advise state and local government contemplating rulemaking action of the likelihood of such actions being deemed inconsistent.

To consider whether the transit fee is a routing rule within the meaning of Appendix A, one must refer to the definition contained therein:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. Traffic controls are not included if they are not based on the nature of the cargo, such as truck routes based on vehicles weight or size, nor are emergency measures.

There is no question that the transit fee "applies because of the hazardous nature of the cargo." There is considerable room for difference, however, on the question of whether the transit fee "effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing" spent nuclear fuel. The comments offered extensive discussion on this point which actually involves three questions:

(1) Does the transit fee effectively redirect highway shipments of spent fuel away from preferred routes in Illinois?

(2) Does it significantly restrict the highway transportation of spent fuel in Illinois?

(3) Does it significantly delay the movement by public highway of motor vehicles carrying spent fuel?

Each of these questions is addressed in turn below.

(1) Does the transit fee effectively redirect highway shipments of spent fuel away from preferred routes in Illinois? No commenter argued that the transit fee had the direct effect of diverting spent fuel shipments, as would be the case with, *e.g.*, a transportation ban. Several commenters, however, asserted that the foreseeable indirect impact of the transit fee was to redirect shipments away from Illinois whenever possible. Reference was made to a prior inconsistency ruling in which the Department found a Vermont fee requirement to be inconsistent with the HMTA. (IR-15, 49 FR 46660, November 27, 1984.) The Vermont requirement involved a fee of $1000 on each shipment of highway route controlled quantity radioactive waste proposed to be transported in Vermont. In that ruling, the Department stated: (49 FR 46664)

> The immediate and direct result of Vermont's transport approval fee is to cause transporters to redirect shipments away from Vermont whenever possible. Such diversion onto less direct routes would reduce Vermont's exposure to the risks of radioactive materials transportation at the expense of neighboring jurisdictions by increasing total transport time and, therefore, overall exposure to risk.

WEPCO, *et al.*, argue that Illinois' $1000 transit fee is indistinguishable from Vermont's $1000 transport approval fee and should, therefore, also be deemed inconsistent. The facts, however, do not support such a conclusion.

IR-15 was one of nine inconsistency rulings which were issued together. They involved state and local requirements in Michigan, New York and Vermont whose combined effect had been to divert and ultimately blockade shipments of spent fuel originating in Canada. Because the shipments were not subject to HM-164 when in Canada, the carrier had a choice of entry points into the United States. In fact, shipments had been diverted as a result of, *inter alia*, Vermont's transport approval fee.

The situation in Illinois is considerably different. Highway shipments of spent fuel entering Illinois

necessarily arrive already subject to the routing requirements of HM–164. As Illinois has correctly noted, carriers have no choice but to comply with the requirement of HM–164 to "operate over preferred routes selected to reduce time in transit . . ." (49 CFR 177.825(b)). Of course, the Department acknowledged at the time it adopoted HM–164 that "more than one route could qualfiy as an acceptable alternative and it is not incumbent on [transporters] to make detailed calculations in selecting the most appropriate route." (46 FR 5309). Thus, there is some scope for carriers to avoid and still comply with HM–164. As pointed out by Illinois, however, such diversions would also entail costs which could exceed the amount of the fee to be avoided. Furthermore, no evidence was offered to suggest that such diversions have occurred.

On the basis of the foregoing, I find that the transit fee does not have the effect of redirecting highway shipments of spent fuel away from preferred routes in Illinois.

(2) Does the transit fee significantly restrict the highway transportation of spent fuel in Illinois? In previous inconsistency rulings, the Department has considered a variety of state and local requirements which significantly restricted the highway transportation of spent fuel. These have included prenotification (IR–6, 8, 10–15, and 16), advance approval (IR–8, 10–15), and additional packaging design standards (IR–8). The common aspect of all these inconsistent requirements was the prohibition of highway transportation by carriers of radioactive material, notwithstanding their compliance with all Federal safety standards, unless and until there had been compliance with additional mandatory (and sometimes discretionary) requirements imposed by the enacting jurisdiction. Such requirements were based on the false assumption that the non-Federal jurisdiction had the authority to prohibit a form of interstate commerce which is the subject of a pervasive system of Federal regulation.

The transit fee does not appear to present the kind of significant restriction described above. It requires highway transporters to pay a fee, submit to a safety inspection, and accept the state-provided escort. The state has not denied entry to any shipment for failure to pay the required fee in advance. (This matter is discussed further in connection with the question of delay.)

The safety inspections are based on the Federal regulations, not on additional or different state requirements. From an examination of the record, it appears that the only highway shipments whose movement is restricted in Illinois are those which have been found to be in violation of applicable Federal safety standards. This is not the sort of significant restriction which the Department considers to be inconsistent with the HMTA. Rather, it is precisely the sort of state action which the drafters of the HMTA intended and which the Department endorses as sound enforcement policy.

The additional escorts are provided by the state. This contrasts with state or local requirements that require the transporter to provide additional or differently equipped escorts when in the enacting jurisdiction. Such requirements have the effect of prohibiting the transportation of radioactive material, notwithstanding compliance with Federal safety standards, unless and until there is compliance with additional non-Federal requirements. Since Illinois provides the additional escorts, the only requirement placed upon transporters is to accept their company. (The operational impacts of this are discussed below in connection with the question of delay.)

On the basis of the foregoing, I find that the transit fee does not significantly restrict the highway transportation of spent fuel in Illinois.

(3) Does the transit fee significantly delay the movement by public highway of motor vehicles carrying spent fuel? After considerable research and analysis, the Department adopted a highway routing rule based, in large part, on the finding of a direct correlation between transportation risk and time in transit. State or local requirements which delay shipments, thereby increasing time in transit, necessarily increase transportation risk. The Department, therefore, considers non-Federal requirements which have such an effect to be inconsistent with HM–164.

In previous inconsistency rulings, the Department has found a number of non-Federal requirements to be inconsistent with HM–164 because they had the effect of delaying radioactive materials transportation. Most recently, the Department considered a Tucson ordinance requiring carriers to provide notification 48 hours in advance of transporting radioactive materials in the city. (IR–16, 50 FR 20672, May 20, 1985). For many radiopharmaceuticals, the time between placement of an order and delivery is 8–24 hours. The Department thus concluded that "[i]n view of these operational realities, transportation delay is inherent in compliance with Tucson's requirement for 48-hour advance notification." (50 FR 20679)

Several commenters asserted that the potential for transportation delay was inherent in the transit fee. They noted that § 4305 of INSPA states that the transit fee "shall be paid to the Department [of Nuclear Safety] prior to the movement of such shipments within this State." (*Ill. Rev. Stat.*, ch. 111½, § 4305). From this, the commenters concluded that, if a shipment reached Illinois before the fee had been paid, there would be a potential for delay until the fee were paid or the shipment rerouted. To date, no shipment has been delayed or refused entry into Illinois for non-payment of the fee. The commenters acknowledge that this has been the state's practice, but rely on IR–16, wherein the Department refused to base its ruling on enforcement policy rather than the wording of a regulation. At that time, the Department stated "[n]otwithstanding the City's explanation of its legislative intent, the actual language of the law must govern." (50 FR 20677) The Tucson ordinance, however, is distinguishable from the transit fee.

The Tucson ordinance stated explicitly that "[i]t shall be unlawful for any person to transport . . . radioactive materials . . . except as provided in subsection C." Subsection C required such persons to notify the city fire chief "at least forty-eight (48) hours prior to commencement of transportation." (Tucson City Code, § 13–12.) Therefore, regardless of the City's having instructed its emergency personnel to accept whatever notice was possible in a given circumstance, transporters remained liable for performing an unlawful act if they gave less than 48 hours notice.

The transit fee presents a different situation. The language of the law is that the transit fee "shall be paid . . . prior to the movement of such shipments within this State." (§ 4305) Applying a strict interpretation, one may reasonably argue that § 4305 establishes payment of the fee as a condition precedent to transportation of spent fuel within Illinois. Assuming, *arguendo*, that § 4305 must be so interpreted, the question remains as to whether this delays transportation. As noted above, some commenters argue that, if a shipment reached the state before the fee had been paid, there would be a potential for delay until payment had been made. In such an instance, however, the delay would be attributable to the transporter's failure to act in a timely manner. Given the long lead time in planning spent fuel shipments, transporters have ample time to pay the fee. Delay in inherent when the act of

complying with a requirement causes the delay. This was the case with Tucson's requirement of 48 hours advance notice of shipments which would otherwise have arrived in 8 hours.

Commenters also attributed delay to the safety inspections and escorts funded by the transit fee. These require a different analysis.

As part of the emergency preparedness program funded, in part, by the transit fee, Illinois provides for the inspection of all highway shipments of spent fuel through the state at the point of entry. The purpose of this inspection is to identify and rectify any violations of Federal radiological standards or motor vehicle safety regulations before the transport vehicle proceeds through the state. Illinois concedes that a delay of twenty to sixty minutes in inherent in its inspection program, but asserts that this is not a significant delay. Rather, it is commensurate with other delays inherent in spent fuel transportation, such as rest, food and fuel stops. WEPCO argued that "[i]f a comprehensive inspection is undertaken at point of origin, duplicative enroute inspections do not add to safety but do create demands for notifications and scheduling problems that severely impair the most time efficient transport of the radioactive material." (WEPCO comments, January 21, 1986, p.11). WEPCO also described the extent to which its own shipments had undergone repetitive inspections. (*Ibid.*, 6). Illinois responded that the reasonableness of its inspection program was substantiated by the number of violations it found among shipments which had been inspected prior to entry into Illinois.

Upon considering these arguments, the Department finds merit in both positions. States clearly have a responsibility to protect the public, and may do so by ensuring that motor carriers of hazardous materials comply with the safety regulations promulgated for that purpose. Transporters clearly have a responsibility to comply with those regulations. But when the cumulative effect of several states independently exercising their respective enforcement responsibilities is to render transporters less able to comply with their responsibility to reduce time in transit, conflicts must arise. The solution, however, does not lie in preemption of valid state inspection programs.

The Department has long sought to develop a Federal/state partnership in hazardous materials transportation safety. Under the authority of the HMTA, the Department developed and funded the State Hazardous Materials Enforcement Development Program whose primary objective was adoption and enforcement of the HMR by the states. In view of these affirmative efforts, the Department can hardly be expected to find that the objective sought in furtherance of the HMTA is inconsistent with the HMTA. The Department does recognize, however, that its success in fostering state adoption of the Federal rules has contributed to the rise of parallel state enforcement programs. This has not seemed to be a problem with hazardous materials transportation generally, since the sheer volume of shipments operates to prevent significant duplication of effort. With regard to highway route controlled quantity radioactive materials, however, the situation is different. The level of public concern is much higher and the total number of shipments is much smaller. This results in shipments of such materials, especially spent fuel, being subjected to multiple, duplicative and time-consuming inspections during the course of transportation.

Illinois, like many other states, has assumed a responsibility to ensure the safety of radioactive materials being transported within its borders. But independent, uncoordinated state inspection programs can result in costly and inefficient duplication of effort. And the scope of this problem can be expected to increase significantly once transportation begins under the Nuclear Waste Policy Act (42 U.S.C. 10101). For this reason, Department of Energy favored a national inspection program: (DOE supplemental comments, April 22, 1986)

> The Department in its concern for safe and efficient transportation under the Nuclear Waste Policy Act (NWPA) strongly favors a national safety inspection program, and in this regard plans to work with the States and DOT to institute a program for rigorous pre-shipment inspections of the transportation equipment and packaging at the point of origin. This should minimize the need for interim inspections enroute and thus control unnecessary additional costs as well as prevent undesirable transit delays.

The Department believes that such an approach has merit so long as developed in the context of a Federal/state partnership. In the absence of such a program, however, there is no basis for a finding that Illinois' inspection program constitutes an obstacle to the accomplishment of the purposes of the HMTA or the regulations issued thereunder.

Commenters also suggested that the state escorts partially funded by the transit fee were a source of transportation delay. WEPCO asserted that "[t]he escort requirement imposed both a financial and logistical burden on the spent fuel transportation campaign because of the need to give precise information regarding time of arrival at the Illinois border to reduce waiting time for the Illinois State Police." (WEPCO comments, January 21, 1986, p. 6). Since the HMR require all shipments of spent fuel to comply with a physical protection plan (49 CFR 173.22(c)) which provides for escorts capable of communicating with local law enforcement agencies, the operational impact of notifying Illinois of shipment arrival time would not appear to involve any significant transportation delay.

Having considered the operational impacts of the transit fee, the inspection program and the escorts, I do not find that the challenged requirement significantly delays the movement by public highway of motor vehicles carrying spent fuel.

In summary I find that the transit fee does not effectively redirect or otherwise significantly restrict or delay the movement by public highway of motor vehicles containing spent nuclear fuel. Accordingly, I find that the transit fee is not a prohibited routing rule within the meaning of HM-164.

Does the transit fee effectively redirect or otherwise significantly restrict or delay rail shipments of spent nuclear fuel?

The Department has not promulgated routing requirements for rail shipments or radioactive materials as it has for highway shipments. Therefore, there is no routing regulation with which the transit fee can be compared for consistency. This does not, however, prevent an application of the obstacle test with respect to the transit fee's impact on rail transportation of spent nuclear fuel.

In the course of issuing inconsistency rulings, the Department has developed a body of precedent regarding its interpretation of the HMTA's objectives and the manner in which state or local regulations may pose an obstacle to the accomplishment and execution of those objectives. Some basic precepts have been articulated, several of which are reflected in Appendix A to Part 177. The precepts, however, apply to hazardous materials transportation by all modes.

An important precept addresses the problem of transportation delay. As first articulated in IR-2: (44 FR 75566, 75571, December 20, 1979)

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous

with safe transportation. Given that the materials are hazardous and that their transport is not risk-free, it is an important safety aspect of the transportation that the time between loading and unloading be minimized.

This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

Closely related to the problem of delay is that of redirection. In the absence of a Federal requirement to use certain routes, the mere threat of delay (or other restrictions) may operate to redirect shipments into other jurisdictions. This impermissible exportation of risk (see, *e.g., Kassel* v. *Consolidated Freightways*, 450 U.S. 662, 1981) can actually increase transportation risk. State or local requirements which directly or indirectly divert hazardous materials shipments onto longer, more circuitous routes increase the time both that these shipments are in transit and that the public is exposed to the risks inherent in their transportation.

In view of these established precepts, it is possible to apply the same analysis to the transit fee's impact on rail shipments of spent fuel as was completed above with respect to highway shipments.

(1) Does the transit fee effectively redirect rail shipments of spent fuel away from Illinois? As discussed in connection with highway shipments, compliance with the transit fee does not require the redirection of shipments. Rather, it was argued that redirection of shipments was a foreseeable result of the requirement to pay the transit fee. Rail shipments, unlike highway shipments, are not subject to Federal routing regulations. Therefore, shippers by rail have relatively greater discretion in selecting routes which avoid Illinois, although they have fewer routes to choose from. The basis for such routing decisions, however, would be based on economic considerations. And the cost savings achievable by avoiding Illinois would have to be balanced against the increased operational costs of a more circuitous route. If it could be shown that the cost savings clearly exceeded the increased operational costs, then it would be reasonable to conclude that redirection of rail shipments was a logical result of the transit fee. That point, however, has not been demonstrated in this case. The Department acknowledges that the transit fee will stimulate shipper consideration of alternate routes. But the Department does not conclude that such alternates are categorically more cost-effective. Longer routes increase not only risks but also costs of transportation. Thus, safety and economics can both operate to ensure selection of the most direct route. Granted, the imposition of an extortionary fee can so upset this balance as to operate as a *de facto* ban, but that is not the situation alleged here.

On the basis of the foregoing, I do not find that the transit fee effectively redirects rail shipments of spent fuel away from Illinois.

(2) Does the transit fee significantly restrict rail shipments of spent fuel in Illinois? In the foregoing analysis of whether the transit fee significantly restricts highway shipments of spent fuel, the Department found in the negative. Since rail shipments are not limited to the use of "preferred routes" and, moreover, are not subjected to state inspections upon entry into Illinois, the restrictive effect of the transit fee is even less than on highway shipments. I, therefore, find no basis for concluding that the transit fee significantly restricts rail shipments of spent fuel in Illinois.

(3) Does the transit fee significantly delay the movement by rail of spent fuel shipments? The foregoing discussion of highway shipments considered and dispensed with the comment that the potential for transportation delay was inherent in the requirement that the transit fee be paid prior to the movement of spent fuel shipments in Illinois. The impact on rail shipments being identical to that on highway shipments, I find no basis for reaching a different conclusion here.

A different type of delay was attributed to the requirement that all rail shipments be accompanied by state-provided escorts. DOE asserted that "[t]he concept of State motor vehicles escorting rail shipments on parallel roads in itself has the potential to be a safety hazard and unduly delays the rail shipping transit time in order to accommodate the escort vehicle." (DOE comments, January 21, 1986, p. 5). But the Illinois requirement recognizes the problems inherent in a highway escort of a rail shipment and, therefore, prescribes that escorts shall remain in visual *or radio* contact with the shipment. Absent more specific information, the Department cannot conclude that the escorts significantly delay time in transit.

In summary, I find that the transit fee does not effectively redirect or otherwise significantly restrict or delay rail shipments of spent nuclear fuel.

Is the transit fee an inconsistent permit requirement?

Supporters of WEPCO's application argued that the requirement for a premovement payment rendered the transit fee indistinguishable from the various permit requirements which the Department has found to be inconsistent.

The Department first addressed the issue of state transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR–2, 44 FR 75566, December 20, 1979). In that ruling, the Department articulated the policy which it has subsequently applied in interpreting other state permit requirements: (44 FR 75570–1)

> A permit may serve several legitimate State police power purposes, and the bare requirement . . . that a permit be applied for and obtained is not inconsistent with Federal requirements. However, a permit itself is inextricably tied to what is required in order to get it. Therefore, the permit requirement . . . must be considered together with the application requirements . . .

The Rhode Island permit which the Department found to be inconsistent required transporters to apply for a permit not less than four hours before transporting certain gases in the state. But the application for a permit required information that could be obtained only after loading. Thus, the permit process on its face created a delay of at least four hours between loading of a cargo tank and movement of the shipment. The Department considered this permit requirement to be inconsistent because it unnecessarily delayed the transportation of hazardous materials.

This ruling has already addressed the question of whether the transit fee has the effect of delaying spent fuel shipments and has found no such effect. Thus, the precedent of IR–2 does not apply.

WEPCO further argued that the transit fee was indistinguishable from a Vermont permit requirement which was found to be preempted in IR–15. (49 FR 46660, November 27, 1984.) The Vermont requirement imposed a fee of $1,000 on each shipment of highway route controlled quantity radioactive waste proposed to be transported in Vermont. Payment of the fee was a necessary precondition for written approval by the State Secretary of Transportation, such written approval being a necessary precondition to transportation in the State of Vermont.

The Vermont permit requirement (including the fee) was found to be preempted by the HMTA principally because it prohibited the interstate

transportation of spent nuclear fuel and other radioactive waste notwithstanding a shipment's full compliance with all Federal regulations until there was full compliance with additional state requirements. "If Vermont could impose such preconditions upon access to preferred routes, any State could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA." [49 FR 40564].

The transit fee involves no application for state approval to transport spent fuel. Neither does it involve any assertion by Illinois of a right to deny entry to any shipment which is in compliance with Federal safety standards. Even if one narrowly construes the requirement at § 4305 that payment of the transit fee occur prior to transportation in the state, the nature of the "precondition" is qualitatively different from that imposed by the Vermont regulations. Because Vermont's permit system involved a detailed application, administrative processing by the state and, finally, an affirmative action by the state to grant written approval, the potential for delay was both significant and beyond the control of the transporter. the transit fee, by contrast, involves only one action by the transporter, i.e., payment of the fee. The nature of spent fuel transportation is such that there is ample time between identification of a shipment and commencement of transportation to enable transporters to perform that action prior to movement of a shipment in Illinois. Thus, the potential for delay is not inherent in the transit fee, even if it is construed as a precondition. (*N.B.* This is not the case with most hazardous materials shipments, so the conclusion reached here cannot be applied directly to per-trip fees on other kinds of hazardous materials.)

When considering the consistency of the Vermont regulations in IR–15, the Department made a number of findings with respect to the arguments Vermont had offered in support of its permit scheme. Several commenters on this proceeding have cited these subsidiary findings as a basis for finding the transit fee to be inconsistent. These subsidiary findings addressed the discriminatory application of the fee, the characterization of the state-provided escorts as a mobile emergency response program, and the claim of unique circumstances justifying denial of entry for non-payment of the fee. These findings were presented as rebuttal of Vermont's assertion that its unique circumstances justified its requiring transporters of radioactive waste to pay a fee before being allowed to operate in Vermont. They were not, however, the basis for finding the fee provision to be inconsistent. That conclusion was based on the finding that (1) the fee effectively redirected shipments of radioactive materials away from preferred routes in Vermont; and (2) if Vermont's *inconsistent* requirement were allowed to stand, all other states could enact such *inconsistent* requirements, thereby totally undermining the national system of radioactive materials transportation safety regulation. Since the subsidiary findings were related to Vermont's arguments rather than the principal holding, they should not be considered to have precedential effect and need not be considered further in connection with the transit fee.

Commenters opposing WEPCO's application argued that the transit fee was analogous to the New Hampshire hazardous materials permit fee which the First Circuit Court of Appeals found not to be preempted by the HMTA in *N.H. Motor Transport Assoc. v. Flynn*, 751 F.2d 43 (1984). The New Hampshire law requires transporters of placarded shipments of hazardous materials or waste to obtain a license for an annual fee of $25 or a per-trip fee of $15. While most of the funds collected thereby go into the state's superfund for cleanup of hazardous *wastes*, the Court found that the fees were not improperly assessed on hazardous *materials* shipments because the total amount collected was not shown to be excessive in comparison to the enforcement and response costs actually incurred by the state as a result of this type of transportation. The Court also noted that the fees were assessed upon both interstate and intrastate transportation. The Court, therefore, concluded that the license fees could be justified as a constitutionally permissible "user fee" under the standards relied on in *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Airlines, Inc.*, 405 U.S. 707 (1972). Several commenters asserted that the transit fee was equally justified as a "user fee." It may be, but that question arises under the Commerce Clause, not the HMTA, and is, therefore, beyond the scope of the inconsistency ruling process.

The primary relevance of *Flynn* for this proceeding is the Circuit Court's reversal of the District Court's finding that the New Hampshire licensing law created transportation delay and was, therefore, inconsistent with an important objective of the HMTA. The District Court found delay in the fact that licenses could be obtained only during ordinary business hours. Therefore, shippers wishing to have materials transported at night or on weekends, would be restricted to those vehicles already licensed. But the Circuit Court found that "[p]recisely this type of delay arises out of the licensing requirements that New Hampshire (and other states) imposes on all interstate motor carriers . . .; that is to say, the shipper must restrict its choice to truckers that are licensed to drive in New Hampshire. Yet, no one claims that such requirements are inconsistent with HMTA." (*Flynn* at (51). Because carriers anticipating nighttime or weekend shipments could obtain an annual license for $10 more than a single-trip license, thereby avoiding the risk of being caught unprepared to accept a shipment, the Circuit Court found that the essential objection to the license fee rested upon cost. Having found nothing unreasonable about the cost, or any unreasonable about the cost, or any unreasonable interference with Federal objectives, the Circuit Court concluded that there was no inconsistency between the license fee and the HMTA.

Supporters of WEPCO's application attempted to distinguish the transit fee from the New Hampshire license fee on a number of grounds. First, they pointed to differences in the amount of the fee and the scope of its applicability. The transit fee is $1000 per cask of spent fuel. The New Hampshire fee was much lower ($25 per year or $15 per trip) and was spread over a much broader field (all placarded shipments of hazardous materials or wastes). However, the *Flynn* Court did not find that the New Hampshire fee was reasonable because it was a relatively nominal amount of money. Reasonableness was a function of the nexus between the amount collected from transporters and the costs incurred by the state as a result of that transportation activity. Illinois offered evidence to demonstrate that the amount collected by the transit fee was commensurate with the costs incurred as a result of the shipments on which the fee was assessed. Supporters of the WEPCO application did not rebut this evidence but argued that the state's costs resulted from activities which were inconsistent with the HMTA. This ruling, however, has already considered the state's requirements for shipment inspections and escorts and found no inconsistency.

Supporters of the WEPCO application also argued that *Flynn* was not on point because it involved hazardous materials generally, for which there is no Federal regulation comparable to HM–164. The transit fee, by contrast, affects spent nuclear fuel for which there is a specific

highway routing regulation and a Departmental policy statement (Appendix A to Part 177) which expresses the view that a routing rule which embodies a licensing fee is likely to be deemed inconsistent. Since no comparable policy statement exists with respect to other hazardous materials, this argument goes, the decision in *Flynn* is not relevant here. This argument is flawed for two reasons. First, as discussed previously in this ruling, the transit fee is not a "routing rule" within the meaning of HM–164, so the language of Appendix A does not apply. Second, the New Hampshire license fee was assessed on all placarded shipments of hazardous materials, a category which includes highway route controlled quantity shipments of spent fuel. Thus, no distinction is possible on the basis of whether or not fees were assessed on shipments subject to a Federal routing rule.

Upon consideration of the foregoing arguments, I conclude that the transit fee is not an inconsistent permit requirement. I make no finding as to whether or not the transit fee is a valid user fee, as this is a Commerce Clause question properly addressed by the courts.

Is the transit fee part of a regulatory program which is inconsistent with the HMTA?

The transit fee, and the inspections and escorts which it partially funds, are part of a larger state program, the Illinois Nuclear Safety Preparedness Program (INSPP). Many comments in this proceeding revolved around the question of whether the INSPP is a valid state program or whether it constitutes the type of varying state requirements which the HMTA was intended to preclude. In short, has the field of emergency preparedness for nuclear emergencies been occupied by the Federal Government to the exclusion of the states?

WEPCO *et al.* argued that the INSPP was redundant in that it duplicated Federal programs and, therefore, enhanced multiplicity. For this reason, they urged that the INSPP and the fees which support it be deemed inconsistent with the HMTA. This argument was based, in large part, on the reference in IR–15 to Vermont's decision to field a completely independent response team, rather than relying on available Federal resources. "By requiring transporters to pay a fee, Vermont seeks to transfer the financial burden of its decision to replicate Federal efforts . . ." (49 FR at 46864). According to WEPCO, "Illinois has apparently chosen to develop a completely independent response mechanism in addition to the federal response capability." (WEPCO comments, January 21, 1986, p. 16).

Unlike the Vermont regulations addressed in IR–15, however, the INSPP provides the necessary framework for access to available Federal assistance. As expressed by Illinois in its supplemental comments on this proceeding: (January 20, 1986, p. 34)

> Illinois recognizes that there are multiple Federal agencies that have programs that relate, in one fashion or another, to emergency planning elements. However, these programs relate to generic planning and training issues. They are not site-specific either in their planning or implementation and they have almost no day-to-day operational components. It has been left to the respective States to undertake the burden of developing site-specific inspection and emergency preparedness plans and programs and to ensure their implementation and smooth operation.

While noting that Federal programs also exist for hands-on response in the event of emergencies, the Department agrees that the Federal programs were designed as supplements, rather than substitutes, for "an integrated, on-going State/local system of emergency response preparedness." (IR–6, 49 FR 46637, 46641, November 27, 1984). When the Department referred to emergency preparedness as "an innately governmental responsibility" (Ibid.), it pointedly avoided reference to any single level of government. This was because the Department has long recognized that certain aspects of hazardous materials transportation are not amenable to effective nationwide regulation. One such aspect is emergency response. "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." (IR–2 at 75568).

WEPCO acknowledged the Department's finding in IR–8 that emergency preparedness was "an innately governmental responsibility" which could not be shifted to particular users. WEPCO then extended this reasoning to argue that the cost of preparedness could not be shifted either, citing *Bd. of Commissioners, County of Cuyahoga* v. *Nuclear Assurance Corp.*, 588 F. Supp. 856, 863 (N.D. Ohio 1984) (a local government has not sustained an injury giving rise to recovery because it has incurred expenses in preparing for a possible radiological accident). The Department notes, however, that the court in *Cuyahoga County* followed the holding in *In re TMI Governmental Entities Claims*, 544 F. Supp. 853, 855 (M.D. Pa. 1982) (responsibility for public expenditures made in the performance of governmental functions falls upon the governmental body providing the service absent statutory authority to the contrary). Since the transit fee constitutes such "statutory authority to the contrary", WEPCO's reliance on *Cuyahoga County* is misplaced.

In summary, the Department has long recognized that preparedness for transportation emergencies is not the exclusive province of any single level of government; Federal courts have held that governmental entities may statutorily require payment for services provided in the performance of governmental functions; and Illinois has by statute created an emergency preparedness program which coordinates Federal, state and local responsibilities and provides for financing of the state and local expenditures incurred thereby. Having found no evidence that the INSPP either reduces transportation safety or increases regulatory multiplicity, I find that the INSPP is not inconsistent with the HMTA. Accordingly, I find that the transit fee is not part of a regulatory program which is inconsistent with the HMTA.

Does the transit fee increase regulatory multiplicity by encouraging other jurisdictions to enact similar requirements?

In its application, WEPCO made the following argument: (p. 3)

> If Illinois is permitted to charge transport fees, transporters will no doubt divert shipments onto less direct routes through other states, increasing total transport time and potential risk of accident and imposing an unreasonable burden on interstate commerce. Surrounding jurisdictions are likely to respond to this diversion of shipments by imposing and escalating their own fees. Ultimately, as such fee structures develop, increasing numbers of transporters will be forced to select routes with an eye towards minimizing state fees as opposed to minimizing time in transit.

This argument is premised on the belief that transporters of spent fuel can and will divert shipments onto less direct routes in order to avoid the transit fee. The Department considered and rejected this premise earlier in this ruling. That reasoning is not repeated here.

WEPCO subsequently expanded on the theme of cumulative effect (WEPCO comments, January 21, 1986, p. 20):

> . . . the interstate transportation of spent fuel, which is necessitated by the federally supported policy of power generation by nuclear fuel, will be disrupted or destroyed by states and localities which determine that existing federal emergency response

capability is inadequate and that the shipper must pay for a system which they deem "adequate." If Illinois can finance a supplementary program from fees imposed on shippers, so can other states, counties and municipalities which feel a need for greater protection.

This line of argument goes beyond the question of redirection and requires further analysis.

First, WEPCO correctly characterizes nuclear power generation as an area of Federal interest. But this interest is not one of the Federal objectives under the HMTA. Assuming *arguendo* that the transit fee impedes the accomplishment of this Federal objective, there would be no basis for preemption under the HMTA. There might be a basis for preemption under the Atomic Energy Act or under the Commerce or Sovereignty Clauses of the U.S. Constitution, but an inconsistency proceeding is not the proper forum for consideration of these issues.

Next, WEPCO argues that if Illinois can impose a transit fee, other jurisdictions can and will do so; and the cumulative effect will be far greater than that of the Illinois requirement alone. To some extent, this echoes language which the Department has used in prior inconsistency rulings. (See e.g.–IR–8, 48 FR 760, 765–"If the approach taken by Covington were deemed an appropriate local activity, it would be no less so for Covington's neighbors . . ."; also IR–10, "49 FR 46645, 46647 . . . if one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may be so.") The Department, however, has never relied on the potential cumulative effect of a requirement as a basis for finding inconsistency. Rather, the Department has used this device to illustrate more effectively the adverse impact of a requirement already found to be inconsistent. In its first inconsistency ruling (IR–1, 43 FR 16854, April 20, 1978), the Department found no Federal requirement under the HMTA with which to compare a New York City transportation ban for inconsistency and acknowledged the great likelihood that other jurisdictions would enact similar restrictions, the cumulative effect of which could seriously impact transportation safety. Because of the potential cumulative effect, the Department announced that it would initiate rulemaking to address the problem. This, and not a finding of inconsistency, was the response to anticipated cumulative effect.

Finally, WEPCO argues that a finding of consistency with respect to the transit fee will require a similar finding with respect to fees imposed not only by other states, but also by any political subdivision of a state. The Department is not prepared to accept this proposition. This proceeding involves a state fee which is part of a state program of emergency preparedness. It is not at all clear that the municipal role in nuclear safety preparedness is coextensive with that of the states. In any event, that question is not presented in this proceeding and no finding is made.

In responding to the cumulative effect argument, Illinois and the States of Colorado and Wisconsin, relied on the holding in *Flynn*. In that case, the court was presented with arguments that the proliferation of fees similar to New Hampshire's would greatly increase transport costs and seriously burden interstate commerce. The court stated simply that "the Commerce Clause does not prevent states from charging for services they provide" but noted that this answer was "not totally satisfactory, however, for the "burden of proof" rules mean that each state can charge an amount that cannot be *proved* excessive", the sum total of which "may well exceed the sum total of the *actual* cost of state services." (*Flynn* at 50, emphasis in original). The court went on to find a conclusive answer to the argument in the Department's power to promulgate rules that preempt state law in this area. "DOT can promulgate a regulation prohibiting or controlling the imposition of excessive license fees." (*Ibid.*) Here, the court may have overestimated the Department's regulatory creativity. The Department may require transporters to maintain such strict compliance with Federal rules adopted under the HMTA that few additional state requirements could withstand the dual compliance or obstacle test. But such rules would have to serve a legitimate safety purpose. In any event, the Department has not adopted any rules which preempt state fees *per se*.

On the basis of the foregoing, I find that the "multiplicity" that may result from other jurisdictions enacting requirements similar to the transit fee is not the type of regulatory multiplicity which would give rise to a finding of inconsistency with the HMTA.

D. Conclusion

Upon consideration of the foregoing arguments, the Department has concluded that the issues presented in this proceeding lie at the outer reaches of the HMTA's scope of preemption. So long as a state-imposed fee is not an element of an inconsistent transportation requirement, there is no basis for preemption under the HMTA. There may be multiple reasons for finding such a fee to be preempted under other statutes or under the U.S. Constitution. But these are not issues to be resolved by the Department of Transportation. The Department's responsibility is limited to issuing interpretations of the preemptive effect of that statute under which it has implemented a national program of safety regulation, the HMTA. And even the most confirmed federalist must concede that there are limits to the scope of Federal preemption under the HMTA.

IV. Ruling

For the foregoing reasons, I find that the transit fee imposed by Illinois under Illinois Revised Statutes, Chapter 111½, § 4304(7), which imposes a fee of $1000 per cask upon owners of spent nuclear fuel traversing the State of Illinois, is not inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder.

Issued in Washington, DC, on June 4, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–12967 Filed 6–6–86; 8:45 am]

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Federal Register

Monday
June 9, 1985

Part IV

Federal Trade Commission

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Exemption for Wisconsin

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final determination to grant a statewide exemption from the Commission's Used Car Rule to apply within Wisconsin.

SUMMARY: The Federal Trade Commission has determined that the petition for statewide exemption filed by the State of Wisconsin meets the standard for such exemptions in § 455.6 of the Commission's Used Car Rule. This notice announces that action and also sets forth the Commission's reasons for reaching this determination.

DATE: This statewide exemption is effective as of June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lee J. Plave (202/376-2806) or Lemuel W. Dowdy (202/376-2893), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On March 21, 1985, the Wisconsin Department of Transportation (the "Petitioner" or "WisDOT") filed a petition for a statewide exemption (the "Petition"), pursuant to § 455.6 of the Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Used Car Rule" or the "Rule"), 16 CFR Part 455.6[1] The Petition sought to allow Wisconsin used vehicle dealers to use a disclosure label required by a Wisconsin administrative regulation, in the place of the Buyers Guide required by the Commission's Used Car Rule.[2]

On May 8, 1985, the Commission stayed the effective date of the Used Car Rule, as it applied within the State of Wisconsin, for a period of 120 days, from May 9, 1985, to September 6, 1985. 50 FR 20094 (May 14, 1985). Shortly thereafter, the Commission published in the Federal Register a detailed request for public comment on the Petition. 50 FR 21269 (May 23, 1985). The period for public comments expired on June 24, 1985.

On September 5, 1985, the Commission extended the stay of the effective date of the Used Car Rule as it applied within the State of Wisconsin for a period of 90 days, until December 5, 1985, to allow the Commission's staff and opportunity to meet with Wisconsin officials and discuss the Petition. 50 FR 37345 (Sept. 13, 1985).

On September 27, 1985, the Commission's staff met with representatives of WisDOT and the Wisconsin Attorney General's office in Madison. At that meeting, WisDOT's representatives agreed to consider recommending several changes to the Wisconsin Regulation. In response to this meeting, WisDOT sent a letter to staff, which indicated that all of the changes tentatively agreed to at the September 27th meeting would be proposed as amendments to the regulations that form the basis for the Petition.[3]

To put these amendments into effect, WisDOT had to start a rulemaking process. In order to give WisDOT time during which to proceed with its regulatory process, the Commission extended the stay of the effective date of the Rule for an additional 180 days, until June 3, 1986. 50 FR 50162 (Sept. 13, 1985). On May 2, 1986, WisDOT informed the FTC's staff by letter that the proposed amendments had been adopted and would become effective on June 1, 1986 (hereinafter referred to as the "1986 Amendments").[4]

II. Exemption Standards and Procedures

Section 455.6 of the Rule sets forth the standard for state exemptions. This provision states that:

(a) If, upon application to the Commission by, an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) The state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination for so long as the state administers and enforces effectively the state requirement.

(b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in subsection (a), and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

The effect of an exemption is that the Used Car Rule will no longer be in effect in the petitioning state, to the extent indicated by the Commission, for so long as the state administers and enforces effectively its law.[5] The Commission has stated that it intends to determine the appropriate relationship between the Used Car Rule and state law on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice.[6]

Section 1.16 of the Commission's Rules of Practice is a general provision allowing any person to whom a trade regulation rule would otherwise apply to petition the Commission for an exemption.[7] This provision provides no specific guidance to state agencies seeking statewide exemption from trade regulation rules. Final staff guidelines for state exemption petitions have, however, been developed for the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453 (the "Funeral Rule").[8] Because the Funeral Rule has an exemption provision that is virtually identical to the provision included in the Used Car Rule,[9] the Commission previously announced that it would follow the Funeral Rule exemption guidelines in handling the Wisconsin Petition.[10]

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[1] The Wisconsin Petition has been placed on the Commission's public record and is identified as Document 100-1 in FTC File No. 215-54. The Petition, and all other public documents referred to in this notice, are available for inspection at the Public Reference Room, Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580 (202/523-3598).

[2] The Buyers Guide is the standard disclosure form which must be affixed to a side window of a used vehicle offered for sale by a dealer, under Section 455.2(a) of the Used Car Rule. In this notice, the Wisconsin disclosure label will be referred to as the "Wisconsin Label" or the "disclosure label." A copy of the recently revised Wisconsin Label accompanies this notice as Appendix A. A copy of the FTC Buyers Guide accompanies this notice as Appendix B.

[3] This letter has been placed on the Commission's public record and is identified as Document 100-6 in FTC File 215-54. This letter outlines the substance of the proposed amendments. *See also* note 4, *infra*.

[4] This letter (hereinafter referred to as the "WisDOT Letter") has been placed on the Commission's public record and is identified as Document 101-16 in FTC File No. 215-54.

[5] 16 CFR 455.6. *See also* Statement of Basis and Purpose for the Used Car Rule, 49 FR 45692, 45711 (Nov. 19, 1984).

[6] *See* Statement of Basis and Purpose at 45711. *See also* 16 CFR 1.16.

[7] *See also* section 18(g) of the FTC Act, 15 U.S.C. 57a(g).

[8] 50 FR 12821 (Mar. 28, 1985). Because these are staff's guidelines, they are in no way binding upon the Commission. The purpose of the guidelines is to give states and other interested parties as much guidance as possible when seeking to file an exemption.

[9] *Compare* 16 CFR 453.9 *with* 16 CFR 455.6.

[10] Request for Public Comments at 21270. The Commission's decision to follow the procedures set forth in staff's Funeral Rule state exemption guidelines, 50 FR 12821 (1985), was predicated upon two factors. First, as noted herein, the text of the Funeral Rule state exemption provision, 16 CFR 453.9, is virtually identical to the text of the Used Car Rule state exemption provision, 16 CFR 455.6. Second, in the Statement of Basis and Purpose, it was noted that the Used Car Rule state exemption provision "conform[s] to the congressional directive

Continued

The Petition and the comments received pursuant to the Request for Public Comments[11] are analyzed in the section that follows.

III. The Petition

A. Generally

As noted above, the State of Wisconsin filed its petition for statewide exemption on March 21, 1985. The application was filed by the Wisconsin Department of Transportation ("WisDOT"). WisDOT is the state agency charged with regulation of the used vehicle industry, and therefore is the appropriate state agency to file the Petition for statewide exemption.[12] The appendices submitted with the Petition include the following information: (1) a provision-by-provision comparison of the Used Car Rule with the Wisconsin Regulation and information concerning Wisconsin's willingness and ability to enforce its laws (Appendix A); (2) the text of the Wisconsin regulation (Appendix B); (3) a sample Wisconsin Label (Appendix C); (4) a sample Wisconsin purchase contract (Appendix D); (5) a sample Wisconsin dealer inspection report (Appendix E); and (6) a letter from the Wisconsin Attorney General regarding the Petition (Appendix F).

B. Does the Wisconsin Regulation Apply to the Same Transactions to Which the Used Car Rule Applies?

Wisconsin regulates the sale of used motor vehicles by statute and by administrative agency regulations. The administrative regulations that govern motor vehicle trade practices are embodied in Chapter 139 of the Wisconsin Administrative Code.[13] In this notice, the provisions contained in Chapter 139 of the Wisconsin Administrative Code will be referred to as the "Wisconsin Regulation."

The scope of the Used Car Rule is determined largely by the definitions of the key terms which are set out in § 455.1(d) of the Rule. The Used Car Rule applies to all dealers when they offer to sell used vehicles to anyone, except when they offer to sell a vehicle *only* to other dealers. Under § 455.1(d)(2) of the Rule, a "used vehicle" is one that has been driven more than the limited distance necessary to move it to a new car dealership or to test drive it prior to delivery. Therefore, "demonstrators" (or company cars) are covered; cars being sold as scrap are not.[14]

Specifically, the term "vehicle" covers all motorized vehicles that have a gross vehicle weight rating of less than 8,500 pounds, a curb weight of less than 6,000 pounds, and a frontal area of less than 46 square feet.[15] This includes the sale of most automobiles, light-duty vans, and light-duty trucks.[16] Motorcycles are specifically excluded.[17]

A "dealer" is defined in § 455.1(d)(3) of the Rule as any individual or business that offers five or more used vehicles for sale in a twelve month period. The Rule does not, however, cover banks and financial institutions offering used vehicles forfeited as collateral on consumer loans.[18] The term "consumer" is broadly defined in § 455.1(d)(4) of the Rule to mean any purchaser (whether an individual or a business) that is not a used vehicle dealer.

The Wisconsin Regulation, on the other hand, applies to "dealer licensees."[19] The term "licensee" is defined to mean "any motor vehicle manufacturer, distributer, dealer, or salesperson, or any combination thereof, licensed by the department."[20] In its comment, WisDOT clarified the definition of term "dealer licensee" by explaining that this term includes "those, who for anything of value, sell three or more motor vehicles in a year."[21] In practice, the definitions of the terms "used vehicle," "consumer"[22] and "vehicle"[23] are essentially the same under both the Used Car Rule and the Wisconsin law. Thus, the Commission concludes that the Wisconsin Regulation applies to the same transactions as does the Used Car Rule.

C. Does the State Law Provide a Level of Protection to Consumers Which is as Great as or Greater Than That Provided by the Commission's Rule?

This section of this notice will summarize the provisions of state law that are relevant to the question of whether state law affords an overall level of protection to consumers that is as great or greater than that provided by the Used Car Rule. Accordingly, the state law is compared with the Used Car Rule on a provision-by-provision basis. Where appropriate, the similarities and differences between the state law and the Used Car Rule are noted.

1. Sections 455.1 (a) and (b)— General Duties of Used Vehicles Dealers

Sections 445.1 (a) and (b) of the Used Car Rule set out the acts or practices which are deceptive or unfair when committed by used vehicles dealers in or affecting commerce. These unfair or deceptive practices are listed in the Rule's text in order to meet the specificity requirement enunciated in *Katherine Gibbs School, Inc. v. FTC*, 612 F.2d 658, 662 (2d Cir. 1979). Because this portion of the Rule has been included only to meet the procedural requirements of *Katherine Gibbs*, these provisions of the Rule have not been part of the final analysis on the merits of the Petition.

2. Section 455.2—Buyers Guide

(a) *Format.* The Used Car Rule and the Wisconsin Regulation both require dealers to complete and display a disclosure form or each used vehicle offered for sale.[24] Both laws specify the

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in the FTC Improvements Act of 1980 concerning state exemptions from the Funeral [Rule]." 49 FR at 45711.

[11] In response to the Commission's notice, eight parties commented on the Petition. These comments were placed on the Commission's public record in FTC File 215-50 and are identified with the document numbers indicated below. The following parties submitted comments: (1) The Hon. Jim Moody, U.S. House of Representatives (Document 105-1); (2) The National Independent Automobile Dealers Association (Document 105-2) (the "NIADA Comment"); (3) The Hon. Bronson C. LaFollette, Attorney General of Wisconsin (Document 105-3) (the "Attorney General's Comment"); (4) WisDOT (Document 105-4); (5) The Wisconsin Automobile and Truck Dealers Association (Document 105-5) (the "WATDA Comment"); (6) The Center for Auto Safety (Document 105-6); (7) The Wisconsin Department of Agriculture, Trade and Consumer Protection (Document 105-7) (the "DATCP Comment"); (8) The Center for Public Representation (Document 105-8). All expressed support for the Petition, except for the NIADA Comment, which opposed granting an exemption.

[12] The Attorney General of Wisconsin stated in a letter to the Commission's Secretary that the law of Wisconsin supports the enforcement of the Wisconsin used vehicle regulations by the Wisconsin Department of Transportation. *See* Petition, Appendix F.

[13] Wis. Admin. Code Ch. Trans 139 (hereinafter cited as "Trans 139"). WisDOT has the authority to promulgate these regulations pursuant to Wis. Stat. §§ 110.03, 218.01(3) and 227.014.

[14] *See* Statement of Basis and Purpose at 45707.

[15] 16 CFR 455.1(d)(1). *See also* Final Staff Report on the Proposed Used Car Rule, at 387 (1976) (definitions of the terms "gross vehicle weight rating," "curb weight," and "frontal area").

[16] Statement of Basis and Purpose at 45707.

[17] 16 CFR 455.1(d)(1).

[18] 16 CFR 455.1(d)(3). *See* Statement of Basis and Purpose at 45708.

[19] Trans 139.02(6).

[20] Trans 139.02(8).

[21] WisDOT Comment at 3 (citing Wis. Stat. § 218.01(3)(a)(29)).

[22] *Compare* 16 CFR 455.1(d) *with* Trans 139.02.

[23] *Compare* 16 CFR 455.1(d)(1) *with* Wis. Stat. § 218.01(1)(m).

[24] *Compare* 16 CFR 455.2(a) *with* Trans 139.04(6)(a). The Wisconsin Label contains the information required on the FTC Buyers Guide, and in addition, requires disclosure of: (1) the prior use of the vehicle; (2) odometer information; (3) the asking price, identification number, and type of engine; (4) deductibles that apply to any warranty coverage offered; (5) the availability of mechanical breakdown insurance; and (6) the defects discovered by the dealer during a mandatory inspection of the general condition and safety systems of the vehicle. Trans 139.04(a)(6)(1)—(6).

exact format of the disclosure form. The FTC Buyers Guide is a two-sided form that must be displayed on a side window of the used vehicle so that the front side (with the caption "Buyers Guide") can be read from the outside.[25] The Wisconsin Label, however, is printed in a single-sided format.[26] The Petitioner acknowledges that the single-sided format necessitates the use of smaller print, but concludes that its disclosure form "is more effective [because] it reasonably contains all of the important provisions on the face of a single document" that is "directly exposed to the shopper."[27]

The Request for Comments noted the difference between the type size on the FTC Buyers Guide and the Wisconsin Label.[28] In response to this concern on the part of the Commission and the Commission's staff, WisDOT amended its disclosure label to enlarge certain specific words and to make the label more "readable."[29]

In the Request for Public Comments, it was also noted that there is no requirement in the Wisconsin Regulation that the disclosure label be displayed in a window.[30] Trans 139.04(6)(a) merely requires dealers to display the form "from within the vehicle [so it] shall be readable from the outside." In its comment, WisDOT acknowledges that although the Wisconsin Regulation does not require placement of the disclosure label in the window, it is WisDOT's policy to recommend that the label be placed in the window.[31] WisDOT noted that "[t]he overwhelming majority of Wisconsin dealers affix the labels to a window, usually a rear side window . . . Placement on a seat or the floor is unacceptable."[32]

In the Commission's opinion, the smaller size of the type used in the Wisconsin Label is somewhat offset by the recent changes to that form and the fact that the Wisconsin Label is in a single-sided format. However, the format and type size used in the FTC Buyers Guide make the Buyers Guide easier to read than the Wisconsin Label. In the Commission's opinion, despite the changes to the Wisconsin Label and the fact that it is a single-sided form, the Wisconsin Label's format is not as readable as the FTC Buyers Guide. On balance, however, the Commission does not believe that this difference between the Used Car Rule and the Wisconsin Regulation warrants that the Petition be denied.

(b) *The "As Is" Disclosure.* Section 455.2(b)(1)(i) of the Used Car Rule requires dealers to check the large box on the Buyers Guide when a used vehicle is offered on an "as is" basis. The "as is" disclosure on the Buyers Guide is printed in conspicuously large type. The purpose of the "as is" disclosure is to inform consumers that the dealer will not be responsible for post-purchase repairs to the vehicle.[33] Moreover, as was noted in the Statement of Basis and Purpose, this disclosure on the Buyers Guide should ensure that consumers are made aware of this information at a time when "the information can influence their purchasing decision."[34]

The Wisconsin Regulation has a corresponding disclosure requirement on its label. Dealers are required to check a box to indicate that the vehicle is offered "as is." The "as is" statement on the Wisconsin Label is lengthier and printed in smaller type than that on the FTC Buyers Guide. However, as a part of the 1986 Amendements, WisDOT enlarged the words "AS IS–NO WARRANTY" on its disclosure label, in response to concerns about the readability of this disclosure.[35] On balance, the Commission believes that the Wisconsin "as is" disclosure provides consumers with an overall level of protection equal to that provided by the FTC Buyers Guide.

(c) *The "Implied Warranties Only" Disclosure.* Section 455.2(b)(1)(ii) of the Used Car Rule addresses two issues. First, this provision informs dealers in those states that limit or prohibit "as is" sales that the FTC Used Car Rule does not override any such provision of state law. Second, this provision of the Rule requires that an "Implied Warranties Only" disclosure be used in place of the "as is" disclosure on the Buyers Guide, (1) in those states that prohibit "as is" sales and (2) in those instances where a dealer chooses to sell a used vehicle with neither an express warranty nor an "as is" disclaimer. The "Implied Warranties Only" disclosure required under § 455.2(b)(1)(ii) of the Rule must read as follows:

Implied Warranties Only

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

Wisconsin law does not limit or prohibit "as is" sales of used vehicles.[36] Wisconsin has therefore chosen not to include an implied warranties disclosure in the applicable regulations, although Wisconsin dealers may choose to offer their vehicles with only implied warranties. Because a Wisconsin dealer not offering a written warrantly is unlikely to advertise the car with just implied warranties, the Commission does not believe that this difference adversely affects the overall level of protection afforded to consumers under the Wisconsin Regulation.

(d) Information About Express Warranties. Section 455.2(b)(2) of the Used Car Rule requires dealers that offer an express warranty to describe the terms of the warranty on the Buyers Guide. This provision requires dealers to set out the following information: (1) Whether the warranty is full or limited;[37] (2) the specific systems that are covered by the warranty;[38] (3) the

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[25] 16 CFR 455.2(a)(1).

[26] Trans 139.04 (6)(a).

[27] Petition, Appendix A, at 2.

[28] Request for Public Comments at 21271–72, 21277 (Question 2(a)).

[29] *See* WisDOT letter at 2. *But see* NIADA Comment at 1–2: The Wisconsin Label "is exceedingly harder to read than the . . . [Buyers Guide] . . . and does not afford the consumer the protection intended."

[30] Request for Public Comments at 21271–72.

[31] WisDOT Comment at 4.

[32] *Id. See also* Attorney General's Comment at 2 ("[T]he Label is produced with adhesive and certainly in most cases will be attached to the window. . . . "); and WATDA Comment at 4 ("Dealers normally display the Wisconsin Label by affixing it to the window in the same manner required by the Used Car Rule.").

[33] Statement of Basis and Purpose at 46708.

[34] *Id.* at 46709. Most state laws simply require disclosure of such warranty information at the consumation of the deal, in the closing room. The Statement of Basis and Purpose observed that the "pressurized atmosphere of the 'closing room' thwarted consumers' full understanding of the warranty coverage." *Id.* at 46702.

[35] *See* WisDOT Letter at 2.

[36] *See* Petition, Appendix A, at 3. *See also* Attorney General's Comment at 2: "We believe that it is extremely unlikely that a Wisconsin dealer would choose to sell a vehicle with neither an express warranty nor an "as is" disclaimer. . . . If such a sale were made, there is an area on the purchase contract . . . in which the disclosure could be made."

[37] A "full" warranty is defined by the federal minimum standards as set forth in section 104 of the Magnuson Moss Warranty Act, 15 U.S.C. 2304. The Magnuson Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, in offering such vehicles for sale, dealers have the option to simply cross out the terms "full" and "limited" on the Buyers Guide, leaving just the term "warranty." 16 CFR 455.2(b)(2)(i) n.2. However, all other provisions of the Used Car Rule apply to sale of such vehicles.

[38] Section 455.2(b)(2)(ii) of the Rule prohibits the use of shorthand terms such as "drive train" or "power train" to describe covered systems. Dealers must name the specific systems covered [e.g., engine, transmission, differential]. The Commission found that shorthand phrases such as "drive train" or "power train" are not understood by consumers and therefore do not facilitate assessment of the value of the warranty. Statement of Basis and Purpose at 46710. Additionally, these shorthand terms are not uniformly defined; they have different meanings for different people.

duration of the warranty; (4) the percentage of the labor and parts cost that the dealer agrees to pay; and (5) an optional disclosure that the vehicle is still under the manufacturer's warranty. In addition, Section 455.2(b)(2) requires dealers to describe in writing on the Buyers Guide any negotiated changes in warranty coverage.

The Wisconsin Regulation has a corresponding warranty disclosure requirement.[39] The Commission notes, however, that there are several distinctions between the Rule and the Wisconsin Regulation. First, the Wisconsin Label does not give the dealer the option of offering a "full" warranty. Rather, the required Wisconsin disclosure states that "[the] vehicle has a *limited* warranty as follows. . . ." (emphasis added)[40] Second, the Wisconsin Regulation does not require dealers to indicate negotiated changes in warranty coverage on the Wisconsin Label.[41]

In the Request for Public Comments, the Commission noted that under the then-existing Wisconsin Regulation, dealers "need not indicate all of the terms of the warranty."[42] In response to the concern expressed by the Commission and the Commission's staff, the 1986 Amendments require the disclosure of warranty information in much the same manner as on the FTC Buyers Guide.[43] The 1986 Amendments ensure that Wisconsin consumers can determine the essential features of the warranty offered by the dealer simply by looking at the disclosure label. This is one of the most important purposes of the Used Car Rule. Therefore, in the Commission's opinion, the disclosure of express warranty terms on the Wisconsin Label provides an overall level of protection to consumers that is equal to that afforded by the FTC Buyers Guide.

(e) Service Contract Availability. Section 455.2(b)(3) of the Used Car Rule requires used vehicle dealers to disclose the availability of service contracts (except in those states where service contracts are regulated as the business of insurance) by marking a small box on the Buyers Guide. In addition, the following disclosure is required, if service contracts are available:

Service Contract. A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.[44]

The Wisconsin Label also discloses the availability of service contracts.[45] It does not, however, include the implied warranty information included in the service contract disclosure on the FTC Buyers Guide. However, the Wisconsin Label requires disclosure of the availability of mechanical breakdown insurance, which the Buyers Guide does not.[46]

The Request for Public Comment set forth this distinction, and invited comment on the issue.[47] WisDOT acknowledged that its disclosure label did not contain a disclosure alerting consumers to their rights under Section 108 of the Magnuson Moss Warranty Act.[48] WisDOT's comment suggests that this difference is compensated for by the inclusion of a place on the disclosure label to disclose the availability of mechanical breakdown insurance.[49] In its comment, WATDA states that it "has advised Wisconsin dealers that any attempt to disclaim implied warranties in transactions involving written warranties or service contracts to which the dealer is a party is a potential unfair or deceptive practice under federal and state law."[50]

In the Commission's opinion, the absence of a disclosure on the Wisconsin Label concerning consumers' rights under section 108 of the Magnuson Moss Warranty Act may not afford consumers an overall level of protection equal to that afforded by the FCT Buyers Guide. However, on balance, this distinction between the Used Car Rule and the Wisconsin Regulation does not warrant denial of the Petition.

(f) Vehicle, Dealership and Complaint Information. Section 455.2(c) of the Rule requires the dealer to fill in the name and address of the dealership (or the dealer's place of business or home address). This information is designed to enhance the value of the Buyers Guide as evidence of the agreement between the dealer and the consumer.[51] The state law requires only the name of the dealership on the Wisconsin Label.[52] WisDOT asserts that the address on the actual contract is sufficient, and thus, it contends that the absence of the dealer's address from the Wisconsin Label is not significant.[53]

Section 455.2(d) of the Used Car Rule requires dealers to include certain vehicle information on the Buyers Guide, including the make, model, model year and vehicle identification number. Dealers may also include their stock number. These disclosures, like the dealership information discussed above, are designed to enhance the value of the Buyers Guide as evidence of the agreement between the dealer and the consumer.[54] The Wisconsin Label requires disclosure of the same information and, in addition, requires the dealer to indicate the asking price, the type of transmission and the type of engine.[55]

Section 455.2(e) of the Used Car Rule requires dealers to disclose on the Buyers Guide the name and telephone number of the person to be contacted if a consumer complaint arises after the sale. This information helps the consumer identify the individual responsible for resolving disputes.[56] There is no similar requirement in the Wisconsin Regulation.

In the Commission's opinion, these differences between the FTC Buyers Guide and the Wisconsin disclosure label do not adversely affect the overall level of protection afforded consumers by the Wisconsin Regulation.[57]

(g) *Disclosures Concerning Independent Inspections and Spoken Promises.* The FTC Buyers Guide includes a disclosure which suggests that consumers inquire about the availability of an independent pre-purchase inspection.[58] In addition, the

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[39] Trans 139.04(6)(a)(4) (as amended). *See* note 45, *infra*, for the text of this provision of the Wisconsin Regulation, as changed by the 1986 Amendments.

[40] Trans 139.04(6)(a) (part of required format). However, in a telephone conversation, WisDOT's staff said that a dealer that wished to offer a "full" warranty could cross out the word "limited" and write in the word "full."

[41] *See* 16 CFR 455.2(b)(1)(i) and 455.2(b)(2)(v).

[42] Request for Public Comments at 21273.

[43] *See* WisDOT Letter at 2. The amended provision requires disclosure of:

The basic terms and conditions of warranty, if offered, identifying the systems covered using such terms as engine, transmission, differential, cooling system or electrical system and specifying the duration of the warranty and the percentage of any repair costs to be paid by the consumer. Use of the terms "power train" or "drive train" to describe systems covered is prohibited.

Trans 139.04(6)(a)(3) (as amended).

[44] This disclosure alerts consumers to the automatic implied warranties which accompany a service contract, pursuant to Section 108 of the Magnuson Moss Warranty Act, 15 U.S.C. 2308.

[45] Trans 139.04(6)(a) (part of required format).

[46] *Id.*

[47] Request for Comments at 21273, 21277 (Question 2(f)).

[48] WisDOT Comment at 6.

[49] *Id.*

[50] WATDA COMMENT AT *.

[51] Statement of Basis and Purpose at 45710.

[52] Trans 139.03(2)(1).

[53] Petition, Appendix A, at 7.

[54] Statement of Basis and Purpose at 45710.

[55] Trans 139.04(6)(a)(3).

[56] Statement of Basis and Purpose at 45710.

[57] *See* WATDA Comment at 9 ("There is virtually no possibility of a Wisconsin dealer escaping responsibility for the contents of the Wisconsin Label through a claim of 'mistaken identity.'").

[58] 16 CFR 455.2(a) (part of required format). This disclosure states:

"PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT."

Buyers Guide includes a disclosure to warn consumer that all oral promises should be reduced to writing.[59]

In the Request for Public Comments, it was noted that the Wisconsin Regulation had no parellel provision for a pre-purchase inspection disclosure or for a spoken promises warning.[60] These issues were also raised when the Commission's staff met with WisDOT's staff on September 27, 1985. In response to the concern expressed by the Commission and Commission's staff, the 1986 Amendments include a disclosure concerning independent inspection and a disclosure concerning spoken promises.[61] In light of these changes in the Wisconsin Regulation, the Commission concludes that the inspection disclosure and spoken promises warning on the Wisconsin Label affort consumers an overall level of protection equal to that afforded by the FTC Buyers Guide.

(h) List of Major Vehicle Systems and Inspection Disclosure. The back of the FTC Buyers Guide includes a list of the fourteen major mechancial and safety systems of an automobile and some of the major problems that can occur in these systems.[62] The Wisconsin Regulation includes an inspection-disclosure provision which is somewhat analogous to this list.[63]

The Commission included the list of potential problems on the Buyers Guide because the rulemaking record demonstrated dealer misrepresentations about the mechanical condition were often made on a system-by-system basis.[64] The components listed include those most likely to be represented by dealers as being in good condition without any confirmation of such representations in writing.[65] The list also counters specific dealer mispresentations that certain consumer-noted problems are minor.[66] Further, the Commission intended that the list be used by consumers as a means to identify the potential problems to be checked in an independent pre-purchase inspection.[67]

The Wisconsin Label includes a list of several specific vehicle systems under the headings of "general condition" and "safety equipment condition."[68] Under the "general condition" category, dealers must mark a box for each of 31 specific mechanical conditions, indicating whether that condition exists in the vehicle.[69] In the "safety equipment condition" category, dealers must mark a box to indicate that each of the 30 listed components are "ok" or "not ok."[70] The Wisconsin Regulation requires that the dealer disclose the defects that can be determined through an inspection of "reasonable diligence, which shall consist of, but is not limited to, a walk-around and interior inspection, underhood inspection, under-vehicle inspection, and a test drive."[71] The inspection disclosure requirement on the Wisconsin Label provides much of the same information about potential mechanical problems that is found on the FTC Buyers Guide.

In its Petition, WisDOT acknowledges that the Commission considered and rejected a proposal to include a defect disclosure provision in the Used Car Rule. Wisconsin contends that its mandatory inspection and inspection-disclosure requirement augments, rather than detracts, from, the protection afforded by the other state law disclosure requirements.[72]

There are two significant differences between the current Wisconsin inspection disclosure scheme and the known defect proposal that the Commission considered and rejected in 1984. In first place, the Wisconsin inspection disclosure is predicated upon a mandatory inspection of the vehicle by the dealer.[73] While the inspection requirements in the Wisconsin Regulation are couched in general terms, in practice, dealers must inspect and disclose on the Wisconsin Label the condition of 61 items of specific information about the systems and components of the vehicle.[74] In contrast, the Commission is precluded from instituting a requirement that dealers conduct any inspection, because such a required inspection would create warranties under state law.[75] Section 102(b)(2) of the Magnuson Moss Warranty Act, 15 U.S.C. 2302(b)(2), explicitly prohibits the Commission from mandating warranties.[76] Although the Commission expressed its concern in the Statement of Basis and Purpose that a mandatory inspection requirement would serve to induce consumers' reliance on dealer-provided information about the vehicle,[77] WisDOT's substantial enforcement program tends to mitigate this possibility.

The second major difference between the Wisconsin inspection disclosure and the known defect provision rejected by the Commission concerns enforcement. WisDOT not only employs a general counsel's staff, but also has eleven field investigators who make about 1,500 inspections annually among Wisconsin's 3,000 dealers.[78] In 1983 and 1984,

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[59] 16 CFR 455.2(a) (part of required format). This disclosure reads: "IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

[60] Request for Public Comments at 21274, 21277 (Questions 2[h] and 2[i]).

[61] *See* WisDOT Letter at 1–2. As amended, the bottom of the Wisconsin Label will include disclosures that state:

INDEPENDENT INSPECTION: Ask the dealer if you may have a more detailed inspection of this vehicle done by your mechanic on or off the display lot.

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing.

Trans 139.04(6)(b) (2) and (3) (as amended).

[62] 16 CFR 455.2(a) (part of required format).

[63] Trans 139.04(4), (5), and (6)(a)(6).

[64] Statement of Basis and Purpose at 45709. As discussed in the Statement of Basis and Purpose, industry members also recognized the need for this disclosure. *Id.* at 45709 n.211.

[65] *Id.* at 45709.

[66] *Id.*

[67] *Id.*

[68] Trans 139.04(4), (5), and (6)(a)(6). See Petition, Appendix C. State law requires that safety equipment must be in good working order before a vehicle may be driven on Wisconsin highways. Therefore, one of the purposes of the disclosure of safety components is to inform consumers whether the vehicle can be legally operated.

[69] Trans 139.04(4). Dealers must mark either a box on the window sticker labelled "yes" or "no" to indicate the existence of "all significant existing mechanical and structural defects and damage." *Id.*

[70] Trans 139.04(5). There are fourteen major vehicle systems listed on the FTC Buyers Guide. These same systems are included on the Wisconsin Label; seven under the category of "general condition" and seven under "safety equipment."

[71] Trans 139.04(4) and (5) and (6)(a) (part of required format).

[72] Petition, Appendix A, at 11–16. WisDOT also points out that its inspection-disclosure requirements have been changed since the Commission examined them. *Id.* at 16. WisDOT notes that its regulations were amended so that as of April, 1983, *both* warranty and inspection-disclosures are required to appear on the Wisconsin Label. *Id.* Prior to that time, inspection disclosures were included on a separate form provided to the purchaser at the time of sale. *Id. See also* Statement of Basis and Purpose at 45715 (discussion of Baseline Survey findings concerning Wisconsin inspection-disclosure requirement).

In the Request for Public Comments, the Commission recognized that the current Wisconsin inspection-disclosure requirement differs from the defect disclosure provision considered and rejected by the Commission in that the current Wisconsin provision requires dealers to disclose defects discovered during a mandatory inspection. 50 FR at 21275 n.26. *See* Trans 139.04(4) and (5). The Commission rejected a requirement for mandatory inspections. *See* Statement of Basis and Purpose at 45715–19.

[73] Trans 139.04(4) and (5).

[74] Trans 139.04(6)(a) (part of required format).

[75] *See* Statement of Basis and Purpose at 45715.

[76] *Id.*

[77] *Id.* at 45719.

[78] *See* Petition, Appendix A, at 17–18. In the Petition, WisDOT contended that "[d]ealers know WisDOT will pursue defect disclosure violations." *Id.* at 14. *See also* the discussion of WisDOT's enforcement history, *infra*. The automotive trade association's comment concurs: "[T]he Wisconsin DOT continues to be very aggressive in enforcing the Wisconsin Regulation . . . . From the unfortunate experiences of some of its own

Continued

WisDOT obtained an average of 10 special orders (injunctions) annually.[79] In addition to WisDOT's enforcement presence, consumers in Wisconsin have a private right of action for violations of the Wisconsin Regulation that cause pecuniary injury (including a dealer's failure to disclose a defect discoverable during the required inspection).[80] The known defects proposal that the Commission considered did not include any provision for a private right of action. Taken as a whole, in the Commission's opinion, the Wisconsin inspection disclosure does not significantly detract from the overall level of protection afforded to consumers under the Wisconsin Regulation.

3. Section 455.3—Use of the Buyers Guide

Section 455.3(a) of the Used Car Rule directs dealers to give purchasers of used vehicles a Buyers Guide that includes any changes in warranty coverage agreed upon.[81] Section 455.3(b) requires dealers to include the following disclosure, which incorporates the information on the completed Buyers Guide into each contract of sale:

> The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Section 455.3 of the Rule serves several purposes. First, it ensures that the purchaser will obtain the disclosures required by the Rule, because the consumer will be given the Buyers Guide.[82] Second, by incorporating the information into the contract of sale, the Commission intended that the Buyers Guide become part of the contract between the dealer and consumer.[83] Third, it permits consumers to rely on the information in the Guide because it invalidates contrary provisions in the contract. Fourth, this disclosure advises consumers to look to *both* the contract and the Buyers Guide for all of the terms of the sale.

Although the state law requires dealers to give consumers a copy of the Wisconsin Label, it does not automatically incorporate the warranty on the Wisconsin Label into the contract of sale.[84] The Commission's staff raised this issue with WisDOT's staff in the September 1985, meeting. In their comments, WisDOT and the Wisconsin Attorney General expressed the opinion that consumers are adequately protected by both their private right of action [85] and aggressive follow-up actions by WisDOT after consumer complaints.[86]

In the September meeting with the Commission's staff, WisDOT's representatives stated that the parol evidence rule would not prevent consumers from using the Wisconsin Label to prove actual warranty terms, despite the fact that the form is not automatically incorporated into the contract. In *State* v. *Keehn,* 246 N.W.2d 547 (Wis. 1976), the Supreme Court of Wisconsin held that the parol evidence rule will not bar admission of evidence of a fraudulent misrepresentation to demonstrate that the written terms of contract are invalid because they were induced by fraud. 246 N.W.2d at 551. Having reviewed *Keehn,* the statutory private right of action, and after considering staff's discussions with the staff of WisDOT and the Wisconsin Attorney General's office, the Commission finds that the absence of a provision in the Wisconsin Regulation analagous to Section 455.3(b) of the Used Car Rule does not materially affect the overall level of protection afforded to consumers by the Wisconsin Regulation.

4. Section 455.4—Contrary Statements

Section 455.4 of the Used Car Rule prohibits dealers from making any statements, oral or written, or from taking other actions which alter or contradict the disclosures required by the Rule. Further, it permits dealers to negotiate with consumers over warranty coverage, so long as the final warranty terms are identified in the contract of sale and summarized on the final Buyers Guide that is given to the consumer.

Although Wisconsin law prohibits the use of false, deceptive or misleading representations by dealers to induce the purchase of a motor vehicle,[87] it does not specifically prohibit dealers from taking other actions which alter or contradict the disclosures on the Wisconsin Label, and it does not specifically prohibit statements which alter or contradict the disclosures on the disclosure label.[88] Thus, this provision of the Wisconsin Regulation does not appear to be the practical equivalent of Section 455.4 of the Used Car Rule. However, because of the private right of action under Wisconsin law and the enforcement posture of WisDOT,[89] the Commission does not believe that this difference between the Wisconsin Regulation and the Used Car Rule materially affects the overall level of protection afforded to consumers by the Wisconsin Regulation.

5. Section 455.5—Spanish Language Sales

The Used Car Rule requires that if a dealer conducts a sale in Spanish, the Buyers Guide and the contract disclosures must be written in Spanish.[90] It also permits dealers to display both a Spanish and an English window form on the same vehicle. The Spanish language requirement was added to the Rule because, after English, Spanish is the language used most frequently in used vehicle transactions.[91] The Wisconsin law does not include a similar provision.[92] WisDOT concluded that requiring Spanish language forms in Wisconsin would be both burdensome and a waste of resources.[93]

In its Petition, WisDOT contrasted the Spanish-speaking population residing in Wisconsin and in the rest of the nation.[94] WisDOT contends that the Hispanic population in Wisconsin is more dispersed than it is throughout the

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members. WATDA can vouch for the fact that the sanctions available and imposed under state law provide a sufficient deterrent against violations . . . ." WATDA Comment at 12.

[79] Petition, Appendix A, at 20.

[80] In pertinent part, the relevant Wisconsin statute provides that: "[A]ny retail buyer suffering loss because of a violation by a licensee of sub. (3) (a) 4. [wilful failure to comply with the Wisconsin Regulation] . . . may recover damages for the loss in any court of competent jurisdiction together with costs, including reasonable attorney fees." Wis. Stat. § 218.01(9) (b). WisDOT suggested that the "very existence [of the private right of action] can and does motivate Wisconsin dealers to comply with the applicable provisions of Wisconsin law." WisDOT Comment at 12.

[81] The Rule permits the dealer to give consumers an accurate copy in place of the original Buyers Guide.

[82] Statement of Basis and Purpose at 45713-11.

[83] *Id.* In the event of disputes between dealer and consumer, the information on the Buyers Guide will therefore not be subject to the parol evidence rule of contract law. *Id.*

[84] Trans 139.04(6)(a). *See* Petition, Appendix A. at 8.

[85] Wis. Stat. § 218.01(9)(b). *See also* WisDOT Comment at 11–12; Attorney General's Comment at 4.

[86] *See e.g.,* WATDA Comment at 11: "A Wisconsin dealer who unilaterally alters or refuses to abide by the terms of warranty coverage disclosed on the Wisconsin Label faces severe sanctions for violating Trans 139, including the prohibition against false, deceptive or misleading representations under Trans 139.03(1)." *See e.g., Department of Transportation* v. *Transportation Commission,* 220 N.W.2d 189 (Wis. 1963).

[87] Trans 139.03(1).

[88] *Compare* Trans 139.03(1) *with* 16 CFR 455.4.

[89] *See* Section III(D), *Infra.*

[90] 16 CFR 455.5. In addition to a Spanish language disclosure requirement, the Rule provides a format for a Spanish language Buyers Guide. *Id.*

[91] Statement of Basis and Purpose at 45711.

[92] *See* Petition, Appendix A, at 9–10.

[93] *Id.*

[94] *Id.*

rest of the country.[96] The Petition suggests that in "regional centers," such as New York City, Miami, Chicago and the Southwest, the high concentration of Hispanic population makes it "likely that many Hispanics do not speak English and are accustomed to dealing exclusively in Spanish."[98] WisDOT concludes that a Spanish-language disclosure label, similar to that required under Section 455.5 of the Rule, is not necessary in Wisconsin due to the small percentage and concentration of non-English speaking Hispanic persons.[97]

In the Request for Public Comments, the Commission sought comment on the absence of a requirement in the Wisconsin Regulation for a Spanish language disclosure label.[98] Two parties commented on this issue. WisDOT provided census figures to support its claim that a Spanish language disclosure label would be unnecessary. For example, WisDOT cites the 1980 Census of Population for the following statistics: "In 1980, Wisconsin's total Spanish origin population was 62,972. Of those persons with a Spanish origin, 54,123 lived in metropolitan areas, and 8,849 lived outside a metropolitan area. . . . Milwaukee, with a total population of 636,212, was the area of residence for 34,343 of these persons of Spanish origin."[99] WATDA commented that it was "not aware of used car transactions involving Wisconsin dealers ever having been conducted in Spanish."[100] WATDA also noted that in Wisconsin's ethnic communities, "prospective buyers who do not speak English are accompanied by friends or family who do."[101]

WisDOT's contention is that outside of areas in which Hispanic population is very heavily concentrated, Hispanics do not necessarily conduct all of their business in the Spanish language. The Commission is uncomfortable with the failure of the Wisconsin Regulation to make provisions for consumers who speak only Spanish. However, viewing the Wisconsin Regulation in its entirety, the Commission does not believe that this omission represents a fatal flaw in the overall level of protection afforded to consumers under the Wisconsin Regulation.

[96] *Id.* WisDOT cites the 1980 census and states that the percentage of Hispanics in Wisconsin is 1.3% of the population, contrasted to a 6.4% figure nationwide. *Id.*

[97] *Id.*

[98] Request for Comments at 21275–76, 21277 (Question 2[i]).

[99] WisDOT Comment at 8.

[100] WATDA Comment at 12.

[101] *Id.*

D. Does the State Evidence a Willingness and Ability To Enforce Its Laws?

The final requirement for obtaining and retaining a statewide exemption from the Rule, pursuant to § 455.8, is a showing that a state enforces effectively the state requirement that would replace the FTC Used Car Rule. Accordingly, the state exemption guidelines suggest that states submit certain materials and information to assist the Commission's determination on this issue.[102] Specifically, the guidelines suggest that the elements of a complete application include the following:

(a) The fiscal arrangements and funding of the state agency (or agencies) which is charged with enforcing the state law, or other information showing that the state agency had adequate funding to properly enforce the law.

(b) The number and qualifications of persons engaged in the enforcement and administration of the state law, or other information indicating that the state has adequate qualified personnel to administer and enforce the law. . . .

(c) The state's enforcement procedures and policies. . . .

(d) The state's past history of enforcement of any statutes or regulations which are comparable to the Rule.

(e) The level of compliance with any state statutes or regulations governing [the practices covered by the Used Car] Rule, insofar as this information is relevant to the state's enforcement history.[103]

1. The State Agency

As discussed earlier, the state agency responsible for enforcement of the Wisconsin Regulation is the Wisconsin Department of Transportation.[104] Within WisDOT, the "Dealer Inspection Unit" ("DIU") is responsible for both general enforcement of all motor vehicle dealer laws and for the investigation and resolution of all consumer complaints against dealers.[105] The funding, staffing, and procedures pertaining to WisDOT's enforcement program are set out below.[106]

[102] 50 FR at 12335 ("Elements of a Complete Application").

[103] *Id.*

[104] *See generally* Petition, Appendix F (letter from Attorney General of Wisconsin); Wis. Stat. §§ 218.01(1)(d), 218.01(1)(k), 218.01(1s).

[105] Petition, Appendix A, at 17.

[106] The main explanation of WisDOT's enforcement program is found in the Petition, Appendix A, at 13–20. No comments were received to suggest that this information is inaccurate.

2. Funding

In fiscal 1984, the DIU's expenditure was $571,040.[107] Of this amount, $426,500 was spent on employee salaries and benefits.[108] In the Petition, WisDOT noted that the expenditures for the DIU have "remained fairly constant over recent years," adjusted for inflation.[109]

3. Staffing

The DIU employs at least 17 persons to carry out its enforcement activities.[110] Of these, four are based at the DIU's central office in Madison: The field unit supervisor, two consumer specialists, and a program assistant. In addition, two area supervisors and eleven field investigators are based in different locations throughout the state.[111]

The Petition states that most of the field investigators are former state troopers.[112] In addition, the Petition states that field investigators attend a one-week course focusing on civil investigation of motor vehicle dealerships.[113]

4. Enforcement Procedures

The eleven field inspectors make an average of about 135 inspections a year, for a total of approximately 1,500 inspections annually.[114] Depending on the size of a dealership, an inspection takes from two hours to two days.[115] During an inspection, investigators review all the dealer's records and disclosure statements, and they inspect a random sample of the used vehicles offered for sale to see if they correspond to the information on the applicable disclosure statements.[116]

DIU investigators are authorized to initiate and conduct investigations. These investigations can lead to suspension, revocation or denial of dealer licenses or to cease and desist orders.[117] Generally, when a field

[107] WisDOT Comment at 9–10.

[108] *Id.* at 10.

[109] Petition, Appendix A, at 22.

[110] *Id.* at 17.

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.* at 18. The Petition notes that "investigators spend more time inspecting dealers with a large number of complaints filed against them." *Id.* WisDOT estimates that there are approximately 3,000 dealers in Wisconsin. *Id.*

[115] *Id.*

[116] *See* Petition, Attachment E (the "Dealer Inspection Report"). This form shows the items that DIU investigators examine when they perform inspections. Items 23–32 are of particular relevance to the Petition. *See also* Petition, Appendix A, at 18–19.

[117] *Id.*

investigator inspects a dealer and notes violations of law, [the inspector] warns the dealer on [the] inspection report to correct these violations:

Often a written letter of assurance is requested, and a follow-up inspection is made. If the misconduct is more serious, WisDOT pursues a licensing action before the Wisconsin Commissioner of Transportation. If civil or criminal violations occur, the DIU works with district attorneys in pursuing civil forfeitures or criminal actions against the violating dealer.[118]

There are various sanctions available against dealers that operate in violation of the Wisconsin Regulation. WisDOT is empowered to deny, suspend or revoke a dealer's license for any of 32 prohibited practices, including: wilful failure to comply with the Wisconsin Regulation, wilfully defrauding a retail buyer, wilful failure to perform any written agreement made with a retail buyer, and fraudulent misrepresentation or concealment of material facts.[119] In addition, WisDOT can seek a "special order" (injunction) to prevent dealers from committing any of these practices.[120] WisDOT can also seek civil penalties of up to $500 for each violation of the Wisconsin Regulation or the provisions of the Wisconsin law that prohibits certain practices by dealers in the sale of used motor vehicles.[121]

Consumers and competitors have private rights of action under state law. Consumers who have sustained pecuniary loss because of a dealer's violation of the Wisconsin Regulation may seek civil damages for the loss, together with costs and reasonable attorney's fees.[122] Competitors who have suffered pecuniary loss due to another licensee's failure to comply with the Wisconsin Regulation may recover three times the pecuniary loss, plus costs and reasonable attorney's fees.[123]

5. Enforcement History

WisDOT received 1,915 consumer complaints about dealers in 1982, 2,585 in 1983, and 2,862 in 1984.[124] Of the 2,862 complaints received in 1984, 65%, or 1,849, dealt specifically with use vehicles.[125] In 1984, as a result of all 2,862 complaints, manufacturers and dealers returned $654,000 to consumers, over $500,000 of which was paid by Wisconsin dealers.[126] In addition, DIU investigations in 1984 resulted in 18 administrative hearings and 8 special orders against dealerships.[127]

6. Compliance With State Law

Neither the Petition nor the public comments provide specific information as to the level of compliance with the Wisconsin Regulation among dealers. However, several of the comments generally address the issue. The Wisconsin Attorney General commented that "[o]f particular importance are the eleven field investigators employed by [WisDOT] . . . . When one contrasts the Wisconsin regulatory scheme with the federal one, effective enforcement against Wisconsin dealers appears much more likely on the state level than on the federal level. This office pledges its support and cooperation in assisting [WisDOT] in enforcing the Wisconsin [Regulation]."[128] The Attorney General's comments were echoed by several other commenters. The Center for Public Representation noted that the Wisconsin Regulation "has been in effect since the early 1970's, is a well administered and enforced program, and is known to consumers and dealers alike."[129]

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") is the state agency responsible for enforcement of the Wisconsin Little FTC Act.[130] DATCP commented that WisDOT "is doing a very adequate job of enforcing [the Wisconsin Regulation]."[131] In its comment, the Wisconsin Automobile and Truck Dealers Association states that "incidents of non-compliance with the Wisconsin Regulation are infrequent and isolated."[132] As discussed earlier in this memorandum, WATDA also commented that WisDOT "continues to be very aggressive in enforcing the Wisconsin Regulation."[133]

7. Conclusion With Regard to Enforcement

In the Petition, WisDOT contends that it "has in place a comprehensive enforcement program addressing used motor vehicle trade practices in Wisconsin."[134] After reviewing the Petition and the public comments, the Commission has concluded that WisDOT has demonstrated the willingness and ability to enforce effectively the state requirements.

IV. Conclusion and Recommendations

A. General Conclusion

For the reasons set forth herein, the Commission determined that WisDOT has met the exemption standard set out in § 455.6 of the Used Car Rule. The Commission has determined: (1) That the Wisconsin Regulation applies to the same transactions to which the Used Car Rule applies; (2) that the Wisconsin Regulation affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the Used Car Rule; and (3) that WisDOT administers and enforces the Wisconsin Regulation effectively. Accordingly, the Commission grants a statewide exemption, for so long as the State of Wisconsin administers and enforces effectively its law.

B. Reporting Requirements

Under § 455.6 of the Rule, any statewide exemption continues only "for as long as the State administers and enforces effectively the state requirement." To ensure that the standards for statewide exemption continue to be met, as a condition to the statewide exemption, the State of Wisconsin will be required to provide timely notice to the Commission of any changes in state law, policies or procedures, including court decisions, that significantly affect: (1) Whether state law continues to afford consumers an overall level of protection that is

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[118] WisDot Comment at 10.

[119] Wis. Stat. § 218.01(3)(c). In Wisconsin, the term "wilful" has been interpreted to mean "intentional," and proof is not required of fraudulent intent or motive. *Department of Transportation v. Transportation Commission*, 330 N.W.2d 189 (Wis. 1982). In *Transportation Commission*, WisDot sought, *inter alia*, a special order to enjoin a dealer from future violation of Wis. Stat. § 218.01(3)(a)(9) (revocation or suspension of license for wilful failure to perform any written agreement made with a retail buyer). The dealer had made a unilateral error in a purchase order, and declined to perform the written agreement. 330 N.W.2d at 191. The Wisconsin Supreme Court held that a dealer who has made a unilateral mistake in a written agreement may not refuse to perform the agreement with a customer. *Id.* at 195. The court also distinguished those sections of Chapter 218 referring to "wilful" conduct from those referring to "fraudulent" conduct. *Id.* at 195.

[120] Wis. Stat. § 218.01(3)(h). *See* note 128, *infra*.

[121] *Compare* Wis. Stat. § 218.01(8) ($25 to $500 per violation) with 15 U.S.C. 45 (m)(1)(A) (up to $10,000 per violation).

[122] Wis. Stat. § 218.01(9)(b). Consumers can similarly recover for losses due to a dealer's wilful failure to perform any written agreement made with a retail buyer, fraudulent misrepresentation or concealment of a material particular, fraudulent sale, wilful defrauding, or indulgence in an unconscionable practice. *Id. See* note 120, *supra*, for a discussion of the term "wilful."

[123] Wis. Stat. § 218.01(9)(a).

[124] Petition, Appendix A, at 20.

[125] *Id.*

[126] *Id.* at 14.

[127] *Id.* at 20. In 1983, DIU investigations resulted in 17 administrative hearings and 12 special orders against dealerships. *See supra* text accompanying note 120.

[128] Attorney General's Comment at 4–5.

[129] Center for Public Representation Comment at 1.

[130] DATCP Comment at 2.

[131] *Id.*

[132] WATDA Comment at 13.

[133] *Id.*

[134] Petition, Appendix A, at 20.

equal to or greater than that provided by the Used Car Rule, or (2) whether the state is administering and enforcing effectively its laws. The Commission reserves the right to revise this reporting requirement at a later date or to request additional information, should circumstances warrant such action. The Commission also specifically reserves the right to revise, modify, or revoke this statewide exemption, should the public interest so require.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

[illegible]

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USED VEHICLE DISCLOSURE LABEL Appendix A

Dealer Name		Vehicle Stock No.	Asking Price $	
Vehicle Year	Make	[illegible] No.	Engine Type	Transmission

VEHICLE USE: This vehicle was previously used as a: (check all that apply)

- ☐ Privately Driven Vehicle
- ☐ Leased Vehicle
- ☐ Demonstrator Vehicle
- ☐ Executive Driven Vehicle
- ☐ Driver Education Vehicle
- ☐ Business Vehicle
- ☐ Rental Vehicle
- ☐ Government-Owned Vehicle
- ☐ Police Vehicle
- ☐ Taxi-Driven Vehicle
- ☐ Unknown

OTHER VEHICLE HISTORY:

- ☐ Flood Damaged Vehicle
- ☐ Junked Vehicle
- ☐ Glider Kit

☐ **WARRANTY** - Subject to limitations and exclusions of the warranty document, vehicle has limited warranty as follows: (Ask salesperson for copy of warranty document):

Systems Covered:

Duration: _____

Percentage of Repair Costs Paid by Purchaser: _____%

Deductible Paid by Purchaser: $_____

☐ **AS IS - NO WARRANTY** - No warranty express or implied EXCEPT FOR ANY EXPRESS OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS VEHICLE, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE VEHICLE IS WITH THE BUYER, AND SHOULD THE VEHICLE PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE BUYER WILL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR.

☐ **SERVICE AGREEMENT** - A service agreement is available for purchase, ask salesperson for details.

☐ **MECHANICAL BREAKDOWN INSURANCE** - MBI is available for purchase, ask salesperson for details.

ODOMETER read _____ miles/kilometers at time of sale or purchase, which is considered by the prior owner's statement which will be shown to you, the purchaser, and to the best of dealer's knowledge: (CHECK ONE)

☐ The reading is actual mileage/km.
☐ The reading is not actual mileage/km.
☐ The odometer was repaired or replaced and corresponds a reading identical to the odometer before service.
☐ The odometer was repaired or replaced and was reset or installed at zero and the original miles/km were _____
☐ The reading is in excess of 99,999 miles/km.

See salesperson for name and address of prior owner.

DISCLOSURE STATEMENT - I have exercised reasonable diligence in inspecting this vehicle, including at least a review of my repair records, the prior owner's disclosure, a walk-around and interior inspection, an under-hood inspection, an under-vehicle inspection, and a test drive. On the basis of such inspection, I declare the apparent existing condition to be as indicated in the boxes below. (REQUIRED BY TRAN. 139.04(4), (5) WIS. ADMIN. CODE)

GENERAL CONDITION

Line out items that do not apply

YES	NO	
		FRAME OR UNIBODY
☐	☐	Apparent cracks or corrective welds on frame or supportive portion of unibody
☐	☐	Dogtracks - bent or twisted frame or unibody
☐	☐	Apparent weakened frame or unibody due to damage or rust
		ENGINE
☐	☐	Known or visible oil leakage, excluding normal seepage
☐	☐	Cracked block or head
☐	☐	Belts missing, salvaged/re
☐	☐	Knocks or misses
☐	☐	Abnormal visible exhaust discharge
☐	☐	Changed from manufacturer's original equipment specification
		TRANSMISSION & DRIVE SHAFT
☐	☐	Improper fluid level or visible leakage, excluding normal seepage
☐	☐	Cracked or damaged case, which is visible
☐	☐	Abnormal noise or vibration
☐	☐	Improper shifting into or functioning in all gears
☐	☐	Manual clutch slip or chatters
		DIFFERENTIAL
☐	☐	Improper fluid level or visible leakage, excluding normal seepage
☐	☐	Cracked or damaged housing, which is visible
☐	☐	Abnormal noise or vibration
		COOLING SYSTEM
☐	☐	Improper fluid level or visible leakage
☐	☐	Leaky radiator
☐	☐	Improperly functioning water pump
☐	☐	Inadequate antifreeze strength for season of year
☐	☐	Improperly functioning cooling system - fan
		ELECTRICAL SYSTEM
☐	☐	Improper fluid level or visible leakage of battery
☐	☐	Battery fails to start engine
☐	☐	Improperly functioning alternator, generator, starter or ignition system
		ACCESSORIES - INOPERATIVE
☐	☐	Gauges and warning devices
☐	☐	Radio
☐	☐	Heater
☐	☐	Air Conditioner
☐	☐	Dash Lights
☐	☐	Windows
☐	☐	Spare tire, wheelwrench jack not furnished

Explain probable cause for malfunction or defect on all items marked "Yes"

SAFETY EQUIPMENT CONDITION

"ALL REQUIRED safety equipment items below, except those marked "Not OK", are in legal operating condition. WARNING: Until all "Not OK" items are corrected, this vehicle cannot be legally operated on Wisconsin highways and may not be safe."

NOT OK	OK	
☐	☐	Headlamps and Aim
☐	☐	Parking Lamps
☐	☐	Directional Lamps
☐	☐	Flashing Warning Lamps
☐	☐	Sidemarker Lamps and Reflectors
☐	☐	Tail Lamps
☐	☐	Back Up Lamps
☐	☐	Brake Lamps
☐	☐	License Plate Lamps
☐	☐	Steering System
☐	☐	Suspension System
☐	☐	Bumpers and Fenders
☐	☐	Hood and Trunk Latches
☐	☐	Emission System
☐	☐	Door Latches and Locks
☐	☐	Tires
☐	☐	Exhaust System
☐	☐	Fuel System
☐	☐	Windshield
☐	☐	Windows: Vent, Side, Rear
☐	☐	Windshield Wipers and Washers
☐	☐	Windshield Defroster-Defogger
☐	☐	Horn
☐	☐	Mirror
☐	☐	Speed Indicator
☐	☐	Odometer
☐	☐	Restraining Devices and Seats
☐	☐	Service Brake System
☐	☐	Parking Brake
☐	☐	Floor and Trunk Pans

Explain all items marked "Not OK"

NOTE: Unless otherwise agreed to in the written purchase contract, these inspection disclosures shall neither create any warranties, express or implied, nor affect warranty coverage provided for in the purchase contract.

INDEPENDENT INSPECTION: Ask the dealer if you may have a more detailed inspection of this vehicle done by your mechanic on or off the dealer lot.

BEST COPY AVAILABLE

APPENDIX B

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☐ WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

BEST COPY AVAILABLE

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

September 21, 1984

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12969 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

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federal register

Monday
June 9, 1986

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

Rangeland Grasshopper Cooperative Management Program Environmental Impact Statement; Notice

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-323]

Rangeland Grasshopper Cooperative Management Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice of the intent to prepare an environmental impact statement (EIS) for the Rangeland Grasshopper Cooperative Management Program. The Rangeland Grasshopper Cooperative Management Program EIS will discuss the potential environmental impacts for the control of grasshoppers and Mormon crickets.

This document also requests comments and gives notice of public meetings to provide the initial opportunity for involvement in the scoping process as the first step in the development of the EIS. Accordingly, comments at the public meetings and written comments to be submitted by mail are invited from all interested members of the public, from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any national program issue or environmental impact that should be discussed in the EIS.

DATES: Written comments concerning the development of the Rangeland Grasshopper Cooperative Control Program EIS must be received on or before July 11, 1986. Public meetings concerning issues affecting the development of the EIS will be held on July 8, 1986, in Denver, Colorado, and on July 10, 1986, in Boise, Idaho.

ADDRESSES: Written comments concerning issues affecting the development of the EIS should be submitted to Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-323. Written comments received may be inspected in Room 663 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The public meetings will be held at the following locations: (1) on July 8, 1986, in the Auditorium, Denver Federal Center, Building 25, 6th and Kipling, Denver, CO, and (2) on July 10, 1986, in Room 523, Federal Building, 550 West Fort Street, Boise, ID.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Public Meetings

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public meetings. Comments will be taken concerning any issues that would be relevant for discussion in the EIS. Any interested person may appear and be heard in person, by attorney, or by other representative.

Each meeting will begin at 9:30 a.m. and is scheduled to end at 4 p.m., local time. However, a meeting may be terminated at any time after it begins if all of those persons at the meeting who desire an opportuntiy to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the meeting. The premeeting registration will be conducted at the location of the meeting from 9 a.m. to 9:30 a.m. Registered persons will be heard in the order of their registration. However, any other person who wishes to speak at the meeting will be afforded such opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants in attendance at the meeting warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Background

Grasshoppers and Mormon crickets are destructive native pests on rangeland, forage, and crops, mainly in the States west of the Mississippi River. Infestations are often of such an extent as to be beyond the capability of individuals to handle. Additionally, the migratory and widespread nature of the pests makes coordination of cooperative control efforts across State boundaries essential. Therefore, the Department has, in conjunction with cooperating State Departments of Agriculture, provided direct supervision and leadership of grasshopper and Mormon cricket control programs.

A notice was published in the Federal Register on April 4, 1986 (51 FR 11603), announcing the availability of a Supplement to the July 1980 Final Environmental Impact Statement (FEIS) for the Rangeland Grasshopper Cooperative Management Program. The FEIS, as Supplemented, was filed with the U.S. Environmental Protection Agency and made available to the public on April 11, 1986. The FEIS, as supplemented, was intended for the 1986 treatment program only. Before beginning a program in 1987, APHIS will be preparing a new programmatic environmental impact statement to assist APHIS officials in making plans and decisions about treatment programs in 1987 and subsequent years. The new EIS will be prepared in accordance with section 102 of the National Environmental Policy Act (42 U.S.C. 4321).

The potential environmental impact of a control program will be discussed in the EIS. The initial step in the process of developing the EIS is the scoping process. The scoping process is used for determining the scope of issues to be addressed and for identifying the significant issues related to the grasshopper and Mormon cricket control programs. The opportunity for involvement by the public and Federal, State, and local agencies in the scoping process will be provided at the public meetings to be held on July 8 and 10, 1986, and through written comments to be submitted by mail. The written comments must be received on or before July 11, 1986.

In order to facilitate discussion at these meetings, persons may wish to become familiar with the issues presented in the July 1980 FEIS for the Rangeland Grasshopper Cooperative Management Program and its April 1986 Supplement (these documents are available from the person identified under the heading "ADDRESSES"). The following issues are some of the major issues discussed in these documents:

1. Programs alternatives, e.g., no action, chemical controls, biological controls, integrated pest management,
2. The use of carbaryl bait,
3. The use of *Nosema locustae*,
4. The need for multiple applications of pesticides on a site within the same season,
5. The use of buffer strips to protect land adjacent to Federally-owned rangeland,

8. Compliance with all applicable Federal laws in conducting control programs,

7. Mitigating measures employed to protect the environment, and

8. Cost-benefit considerations for applying control measures.

The second step in the EIS process will be the development of a draft Rangeland Grasshopper Cooperative Management Program EIS. A "notice of availability" will be published in the Federal Register when the draft EIS has been prepared and is available for distribution.

Done at Washington, DC, this 5th day of June 1986.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-13015 Filed 6-6-86; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

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[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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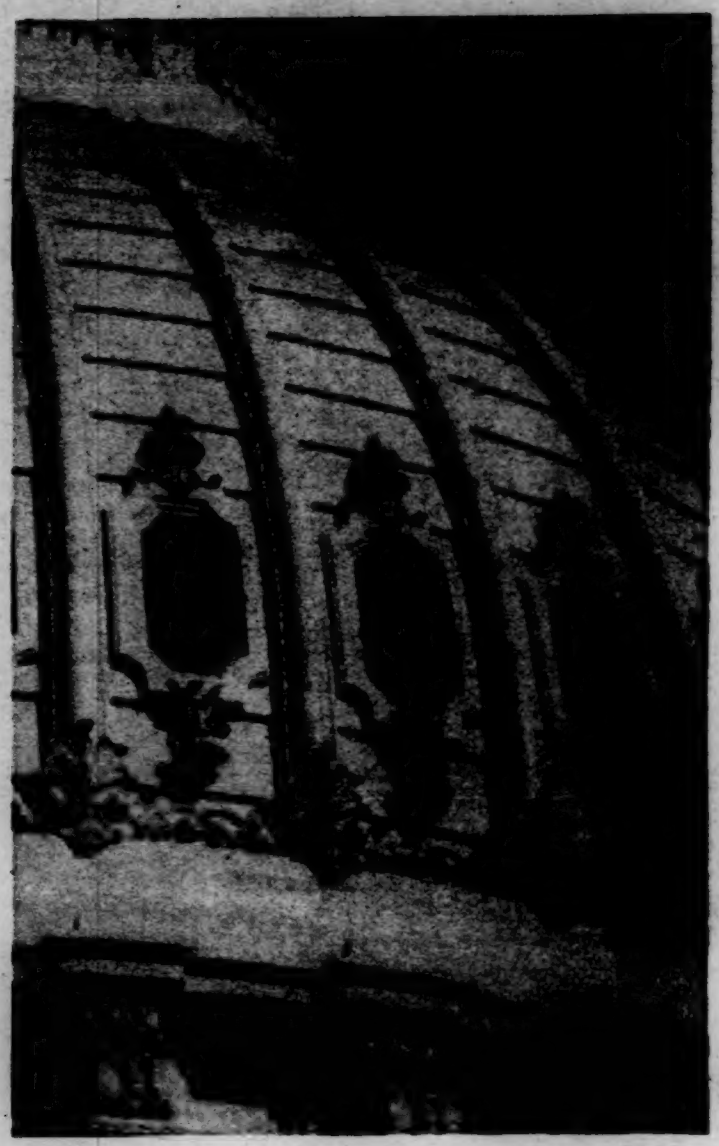

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